

1 VAN NUYS, CALIFORNIA; THURSDAY, DECEMBER 21, 1995

2 9:35 A.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (ANNAMARIE PAPA, OFFICIAL REPORTER)

7

8 THE COURT: OKAY. THE DEFENDANTS ARE IN COURT,
9 THEIR LAWYERS ARE HERE. THE PEOPLE ARE HERE. THE JURY
10 IS HERE AS WELL. WE'LL HAVE THEM COME OUT, PLEASE.

11 (THE JURY ENTERS THE COURTROOM AND THE
12 FOLLOWING PROCEEDINGS WERE HELD:)

13

14 THE COURT: THE JURY IS IN COURT. GOOD MORNING,
15 LADIES AND GENTLEMEN.

16 WE'RE READY TO RESUME WITH THE TRIAL, AND
17 THE CROSS-EXAMINATION OF THE DEFENDANT, ERIK MENENDEZ.

18 MR. CONN: THANK YOU.

19

20 CROSS-EXAMINATION (CONTINUED)

21 BY MR. CONN:

22 Q. MR. MENENDEZ, ON FRIDAY NIGHT WHEN YOU
23 WERE CARRYING THE SHOTGUN IN YOUR TENNIS BAG TO YOUR
24 BEDROOM, YOU INDICATED THAT YOU WALKED UP THE STAIRS AND
25 WERE GOING TO TURN LEFT TO GO INTO YOUR BEDROOM; IS THAT
26 CORRECT?

27 A. THAT'S WHAT I DID.

28 Q. AND YOU INDICATED THAT YOU WERE NOT

1 CONCERNED AT THAT TIME THAT YOUR MOTHER MIGHT BE ABLE TO
2 USE HER POWERS TO FIGURE OUT WHAT WAS INSIDE YOUR BAG?

3 A. DIDN'T CROSS MY MIND.

4 Q. NOW, CONCERNING YOUR BELIEF IN YOUR
5 MOTHER'S POWERS, DID YOU FEEL THAT SHE HAD POWERS TO DO
6 CERTAIN THINGS AND NOT OTHER THINGS?

7 MR. LEVIN: OBJECTION. VAGUE.

8 THE COURT: DO YOU UNDERSTAND THE QUESTION?

9 THE WITNESS: YES.

10 THE COURT: YOU CAN ANSWER IT.

11 THE WITNESS: I SIMPLY BELIEVED THAT SHE HAD AN
12 ABILITY TO KNOW THINGS IN MY LIFE THAT SHE COULD NOT
13 KNOW. I DIDN'T BELIEVE SHE HAD POWERS OR HAD MAGICAL
14 ABILITIES, IT WAS SIMPLY SOMETHING THAT I COULDN'T
15 RECONCILE WITH WHAT I BELIEVED.

16 Q. BY MR. CONN: WHEN YOU SAY THAT YOU HAD THE
17 BELIEF THAT SHE HAD THE POWER TO KNOW THINGS IN YOUR
18 LIFE, YOU TOLD US YESTERDAY THAT YOU BELIEVED THAT SHE
19 HAD SOME POWER THAT WENT BEYOND THE ORDINARY FIVE
20 SENSES; IS THAT CORRECT?

21 A THAT'S THE ONLY CONCLUSION THAT I COULD
22 COME TO.

23 Q. OKAY. SO YOU DID BELIEVE THAT SHE HAD SOME
24 EXTRAORDINARY POWER; IS THAT RIGHT?

25 A. YES.

26 MR. LEVIN: OBJECTION. ASKED AND ANSWERED, YOUR
27 HONOR.
28 THE COURT: OVERRULED. THE ANSWER WILL STAND.

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1 Q. BY MR. CONN: AND IF YOU FELT THAT SHE HAD
2 SOME EXTRAORDINARY POWER TO KNOW WHAT WAS GOING ON IN
3 YOUR LIFE, WHY WOULD WHAT YOU ARE CARRYING IN YOUR BAG
4 NOT BE ONE OF THE THINGS THAT SHE MIGHT KNOW ABOUT YOUR
5 LIFE?

6 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

7 THE COURT: REPHRASE THE QUESTION.

8 Q. BY MR. CONN: YES.

9 DID YOU BELIEVE THAT IF SHE HAD THE POWER
10 TO KNOW THINGS ABOUT YOUR LIFE THAT SHE MIGHT BE ABLE TO
11 KNOW WHAT WAS CONTAINED INSIDE YOUR BAG?

12 A. WHEN I WAS WALKING UP THE STAIRS ON FRIDAY
13 NIGHT?

14 Q. YES.

15 A. I DIDN'T BELIEVE THAT HER POWER, IF YOU
16 CALL IT THAT, HAD ANYTHING TO DO WITH HOW CLOSE I WAS TO
17 HER AT THE TIME, WHICH IS SOMETHING THAT I COULDN'T
18 RECONCILE WITHIN MYSELF, AND WASN'T IN MY MIND EVERY
19 SECOND. I JUST DIDN'T THINK ABOUT IT AT THE TIME. I
20 WAS CONCERNED ABOUT GETTING TO MY BEDROOM BEFORE MY DAD
21 WALKED OUT OF THE ROOM OR MY MOM WALKED OUT OF THE ROOM.

22 I JUST WANTED TO GET UP THE STAIRS, IT WAS DARK, AND GO

23 STRAIGHT TO MY BEDROOM.

24 Q. WELL, AT ANY TIME THAT WEEKEND, FROM THE

25 TIME THAT YOU DECIDED TO BUY THE SHOTGUNS UP UNTIL THE

26 TIME YOU SHOT YOUR PARENTS TO DEATH, DID IT OCCUR TO YOU

27 THAT BECAUSE YOUR MOTHER HAD CERTAIN POWERS SHE MIGHT BE

28 ABLE TO DETERMINE EITHER THAT YOU HAD A SHOTGUN IN YOUR

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1 POSSESSION OR THAT YOU WERE ARMED AND READY TO USE THAT

2 AGAINST YOUR PARENTS?

3 A. PROBABLY.

4 Q. SO, YOU FELT THAT SHE WAS ABLE TO DETERMINE

5 THAT?

6 A. I DON'T REMEMBER FEELING THAT, BUT PROBABLY

7 IT CROSSED MY MIND.

8 Q. YOU'RE TELLING US THAT YOU'RE NOT SURE IF

9 YOU BELIEVED THAT YOUR MOTHER WOULD BE ABLE TO KNOW THAT

10 YOU WERE ARMED WITH A WEAPON?

11 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

12 THE COURT: SUSTAINED.

13 Q. BY MR. CONN: ARE YOU SAYING THAT YOU ARE

14 NOT SURE IF YOU REALIZED THAT SOMETIME THAT WEEKEND?

15 MR. LEVIN: OBJECTION. ARGUMENTATIVE TO THE FORM

16 OF THE QUESTION.

17 THE COURT: I HAVEN'T HEARD THE FULL QUESTION

18 YET.

19 Q. BY MR. CONN: ARE YOU SAYING THAT YOU WERE
20 NOT SURE IF YOU REALIZED SOMETIME THAT WEEKEND THAT YOUR
21 MOTHER WAS ABLE TO KNOW WHAT YOU AND YOUR BROTHER WERE
22 UP TO?

23 MR. LEVIN: SAME OBJECTION.

24 THE COURT: OVERRULED.

25 THE WITNESS: WHAT I AM SAYING IS THAT THIS
26 WASN'T A BELIEF AND A KNOWLEDGE THAT I WOULD SWEAR UPON
27 AND THAT I WOULD SAY WAS ABSOLUTE IN TERMS OF ME
28 THINKING SHE HAD POWERS. I COULD BELIEVE SHE HAD

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1 POWERS, AND YET I COULDN'T SEE ANY OTHER WAY, AND I
2 JUST -- I DIDN'T BELIEVE THAT ANYTHING I DID IN MY LIFE
3 MY MOTHER WOULD ABSOLUTELY FIND OUT ABOUT. THAT WASN'T
4 TRUE. SHE JUST KNEW CERTAIN THINGS WHERE SHE COULDN'T
5 KNOW, AND IT WASN'T SOMETHING -- IT'S VERY DIFFICULT TO
6 DESCRIBE, BUT IT WASN'T A SURE FEELING.

7 Q. BY MR. CONN: MR. MENENDEZ, HAVEN'T YOU
8 PREVIOUSLY TESTIFIED IN BOTH THIS TRIAL AND THE LAST
9 TRIAL THAT YOU BELIEVED THAT YOUR MOTHER HAD SOME
10 EXTRAORDINARY POWER?

11 A. YES.

12 Q. AND DID IT OCCUR TO YOU ANY TIME THAT
13 WEEKEND THAT SHE MIGHT BE ABLE TO USE THAT EXTRAORDINARY

14 POWER TO DETERMINE WHAT YOU AND YOUR BROTHER WERE UP TO?

15 MR. LEVIN: OBJECTION. ASKED AND ANSWERED.

16 THE COURT: SUSTAINED. THIS HAS BEEN GONE INTO.

17 Q. BY MR. CONN: DID YOU EVER SAY TO YOUR

18 BROTHER, "PERHAPS WE SHOULD ABANDON THIS PLAN BECAUSE OF

19 OUR MOTHER'S ABILITY TO KNOW THINGS IN MY LIFE"?

20 A. NO.

21 Q. WHY NOT?

22 A. I DON'T KNOW. I JUST DIDN'T.

23 Q. OKAY.

24 SO THEN YOU WOKE UP ON SATURDAY AND YOU

25 DECIDED THAT DAY THAT YOU WERE GOING TO DO TWO THINGS,

26 GO TO THE MALL AND -- WELL, DID YOU DECIDE THAT YOU WERE

27 GOING TO GO TO THE MALL THAT DAY?

28 A. I DON'T REMEMBER DECIDING TO GO TO THE

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1 MALL. I KNOW THAT I HAD A CONVERSATION WITH MY BROTHER

2 IN HIS GUESTHOUSE AFTER I WOKE UP, AND WE WANTED TO

3 LEAVE THE HOUSE, BECAUSE WE JUST WANTED TO SHOW UP LATE

4 FOR THE FISHING TRIP. I DON'T SPECIFICALLY REMEMBER

5 WANTING TO GO TO THE MALL.

6 Q. NOW, WHEN YOU SAW YOUR BROTHER SATURDAY

7 MORNING, YOU HAD ALREADY HAD BY THAT TIME ONE FULL DAY

8 TO GO TO THE POLICE; IS THAT CORRECT, SINCE THE TIME OF

9 THE DISPUTE WITH YOUR FATHER ON THURSDAY?

10 A. YES.

11 Q. OKAY. AND DID EITHER YOU OR YOUR BROTHER
12 SAY TO EACH OTHER, "IN LIGHT OF THE FACT THAT OUR FATHER
13 STILL HASN'T KILLED US AFTER GIVING US ONE FULL DAY OF
14 AN OPPORTUNITY TO GO TO THE POLICE, THAT MAY BE AN
15 INDICATION THAT HE'S NOT GOING TO KILL US"?

16 CAN YOU TELL US WHY YOU NEVER RAISED THAT
17 ISSUE WITH YOUR BROTHER?

18 A. I CAN'T TELL YOU WHY. I DIDN'T -- I DIDN'T
19 THINK GOING TO THE POLICE AT THAT TIME WAS CONSIDERED AN
20 OPTION. I JUST DIDN'T.

21 Q. MY QUESTION WAS NOT WHETHER YOU THOUGHT OF
22 GOING TO THE POLICE OR NOT. MY QUESTION FOCUSED ON
23 WHETHER YOU OR YOUR BROTHER CONSIDERED THE FACT THAT
24 SINCE YOUR FATHER HADN'T KILLED YOU ANY TIME FRIDAY WHEN
25 YOU HAD AN OPPORTUNITY TO GO TO THE POLICE, WHETHER THAT
26 CAUSED YOU TO BELIEVE THAT PERHAPS YOUR FATHER IS NOT
27 GOING TO KILL YOU AFTER ALL?

28 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

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1 THE COURT: OVERRULED.

2 THE WITNESS: IF I WENT TO THE POLICE HE WOULD
3 CERTAINLY KILL ME AT THAT POINT. SO IF I DIDN'T BELIEVE
4 HE WOULD KILL ME, WHY WOULD I GO TO THE POLICE?

5 Q. BY MR. CONN: DO YOU UNDERSTAND THE

6 QUESTION I AM ASKING YOU, MR. MENENDEZ?

7 MR. LEVIN: OBJECTION. VAGUE. ASK IT BE

8 RESTATED.

9 THE COURT: WHY DON'T YOU REPHRASE THE QUESTION.

10 Q. BY MR. CONN: YES.

11 I AM QUESTIONING WHETHER YOU AND YOUR

12 BROTHER CONSIDERED THE FOLLOWING ISSUE: SINCE YOUR

13 FATHER HAD NOT KILLED YOU ON FRIDAY WHEN YOU HAD AN

14 OPPORTUNITY TO GO TO THE POLICE, THAT WAS AN INDICATION,

15 PERHAPS, THAT YOUR FATHER WAS NOT GOING TO KILL YOU AT

16 ALL.

17 DID YOU CONSIDER THAT ISSUE SATURDAY

18 MORNING?

19 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE WHAT

20 HE INDICATED.

21 THE COURT: JUST ASK THE QUESTION AS TO WHAT HE

22 CONSIDERED ON SATURDAY MORNING WITHOUT THE PREFACE.

23 Q. BY MR. CONN: YES.

24 DID YOU CONSIDER THAT ISSUE SATURDAY

25 MORNING?

26 A. WHAT EXACTLY IS THE ISSUE?

27 Q. THE FACT THAT YOUR FATHER HAD NOT KILLED

28 YOU OR ATTACKED YOU ANY TIME FRIDAY, AND WHETHER THAT

1 WAS AN INDICATION TO YOU THAT YOUR FATHER WAS NOT GOING

2 TO KILL YOU.

3 A. NO, IT WAS NOT AN INDICATION TO ME THAT HE
4 WAS NOT GOING TO KILL ME.

5 Q. SO THAT WAS IN NO WAY CONSIDERED OR
6 DISCUSSED BY YOU AND YOUR BROTHER AT ANY TIME ON
7 SATURDAY; IS THAT CORRECT?

8 A. ON SATURDAY I WAS CONCERNED ABOUT THE
9 FISHING TRIP. I WASN'T CONCERNED ABOUT WHAT HAPPENED ON
10 FRIDAY.

11 Q. SO -- DID YOU LEAVE THE MAIN HOUSE ON
12 SATURDAY MORNING TO GO OVER AND SEE YOUR BROTHER IN THE
13 GUESTHOUSE ON SATURDAY?

14 A. YES.

15 Q. AND WAS IT DECIDED AT THAT TIME THAT YOU
16 WERE GOING TO GO TO THE MALL?

17 A. I DON'T REMEMBER DECIDING TO GO TO THE
18 MALL.

19 Q. WHAT WAS YOUR PURPOSE TO GO TO THE
20 GUESTHOUSE SATURDAY MORNING?

21 A. TO TALK TO MY BROTHER.

22 Q. DID YOU BRING A WEAPON WITH YOU WHEN YOU
23 LEFT YOUR BEDROOM?

24 A. NO.

25 Q. WHERE WAS YOUR WEAPON?

26 A. IT WAS IN MY ROOM.

27 Q. AND WHERE IN YOUR ROOM DID YOU LEAVE YOUR
28 GUN?

1 A. AT NIGHT I KEPT IT IN MY BED. WHEN I LEFT
2 THE HOUSE, I PUT IT IN MY CLOSET, UNLESS I TOOK IT WITH
3 ME.

4 Q. AND WHERE INSIDE YOUR BEDROOM -- WHERE
5 INSIDE YOUR CLOSET DID YOU KEEP YOUR GUN?

6 A. ON THE FLOOR BEHIND A LOT OF -- I DON'T
7 KNOW IF THERE WERE BOXES. THERE WAS A LOT OF STUFF ON
8 THE FLOOR. I ALSO HAVE A MEMORY OF PUTTING IT ON ONE OF
9 THE SHELVES BEHIND SWEATERS AND CLOTHING AS WELL ONE
10 TIME.

11 Q. WELL, WHAT DO YOU MEAN ONE TIME? ARE YOU
12 SAYING THAT YOU LEFT IT IN YOUR CLOSET MORE THAN ONCE
13 WHEN YOU LEFT THE HOUSE?

14 A. I LEFT IT IN MY CLOSET WHEN I WOKE UP ON
15 SATURDAY MORNING BEFORE I LEFT THE HOUSE, AND I TOOK IT
16 WITH ME WHEN I LEFT THE HOUSE, AND LEFT IT IN MY CLOSET
17 ON SUNDAY.

18 Q. SO YOU'RE SAYING ONE TIME WHEN YOU LEFT IT
19 IN YOUR CLOSET YOU LEFT IT ON THE FLOOR, AND ANOTHER
20 TIME WHEN YOU LEFT IT IN YOUR CLOSET YOU LEFT IT ON THE
21 SHELVES?

22 A. I REMEMBER MORE LEAVING IT ON THE FLOOR
23 THAN PUTTING IT ON TOP. I DON'T KNOW IF IT WAS A
24 THOUGHT TO PUT IT ON IT OR A THING I ACTUALLY DID, BUT I
25 REMEMBER CERTAINLY PUTTING IT ON THE FLOOR BEHIND A LOT
26 OF STUFF.

27 Q. AND WHEN YOU SAY YOU PUT IT BEHIND A LOT OF
28 STUFF, WHAT WAS COVERING UP YOUR GUN?

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1 A. I NO LONGER REMEMBER WHAT WAS ON THE FLOOR
2 OF MY CLOSET.

3 Q. WAS IT CLOTHING?

4 A. I DON'T KNOW IF IT WAS CLOTHING OR BOXES OR
5 A BEAN BAG OR WHAT IT WAS, BUT IT WAS JUST STUFF ON THE
6 FLOOR.

7 Q. BUT YOU COVERED IT UP IN SOME WAY?

8 A. YES.

9 Q. AND WERE YOU CONCERNED THAT YOUR MOTHER OR
10 YOUR FATHER MIGHT LOOK INSIDE YOUR CLOSET?

11 A. THAT THEY WOULD RANSACK MY CLOSET AND GO
12 THROUGH EVERYTHING?

13 Q. NOT RANSACK, LOOK INSIDE YOUR CLOSET. WERE
14 YOU CONCERNED AT ALL THAT THEY MIGHT LOOK INSIDE YOUR
15 CLOSET?

16 A. THE THOUGHT OCCURRED TO ME THAT MY MOM
17 MIGHT COME INTO MY ROOM, WHICH IS WHY I HID IT IN THE
18 CLOSET.

19 Q. BUT YOU HAD NO CONCERN WHATSOEVER THAT YOUR
20 MOTHER MIGHT LOOK IN YOUR CLOSET?

21 A. LOOK IN MY CLOSET WELL ENOUGH OTHER THAN
22 JUST GLANCE INSIDE OF IT?

23 Q. DID YOU HAVE ANY CONCERN ABOUT YOUR MOTHER

24 LOOKING IN YOUR CLOSET?

25 A. I DON'T REMEMBER. I DON'T REMEMBER THAT

26 CONCERN.

27 Q. AND DID YOU FEEL THAT, HOWEVER, IF YOU

28 COVERED IT UP IT WOULD BE SUFFICIENT TO CONCEAL IT FROM

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1 YOUR PARENTS SO THAT THEY WOULD NOT BE ABLE TO FIND IT?

2 A. PRETTY MUCH.

3 Q. AND WAS YOUR GUN STILL LOADED?

4 A. YES.

5 Q. AND YOU INDICATED YOU HAD LOADED IT WITH

6 TWO ROUNDS OF BIRD SHOT; IS THAT CORRECT?

7 A. YES.

8 Q. IS THAT BECAUSE YOU PUT IN ONE ROUND FOR

9 YOUR MOTHER AND ONE ROUND FOR YOUR FATHER?

10 A. NO.

11 Q. THEN WHY ONLY TWO?

12 A. I JUST THOUGHT TWO WOULD BE A LOT.

13 Q. WELL, HOW DID YOU BREAK THAT DOWN IN YOUR

14 OWN MIND? WHY WOULD TWO BE A LOT?

15 A. I JUST PUT IN TWO SHELLS SO THAT I COULD

16 FIRE THEM IN CASE I WAS ATTACKED, AND TWO SHELLS JUST

17 SEEMED TO BE A LOT. I DON'T KNOW WHY I DIDN'T LOAD

18 MORE.

19 Q. WELL, DID YOU FEEL THAT THAT WOULD BE
20 SUFFICIENT TO STOP YOUR PARENTS?
21 A. ON FRIDAY I DID.
22 Q. AND YOU DIDN'T QUESTION YOUR BROTHER, LYLE
23 MENENDEZ, AS TO HOW MANY SHELLS HE HAD LOADED IN HIS?
24 A. I DON'T REMEMBER DOING SO.
25 Q. AND FRIDAY NIGHT HE SLEPT IN THE
26 GUESTHOUSE; IS THAT CORRECT?
27 A. RIGHT.
28 Q. AND YOU KNEW THAT IF YOUR PARENTS WERE TO

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1 ATTACK YOU IN THE MAIN HOUSE, THAT YOU WOULD BE ALONE;
2 IS THAT CORRECT?
3 A. EXACTLY.
4 Q. AND YOU NEVER -- DID IT EVER OCCUR TO YOU
5 THAT MAYBE YOU SHOULD PUT IN A THIRD SHELL OR A FOURTH
6 SHELL JUST FOR GOOD MEASURE?
7 A. I DIDN'T THINK ABOUT THAT. I JUST THOUGHT
8 ABOUT THE FACT THAT I DIDN'T WANT TO SLEEP IN THE MAIN
9 HOUSE, AND THAT I WANTED TO SLEEP IN THE GUESTHOUSE, AND
10 TO TAKE MY GUN WITH ME WHEN I WENT. AT THAT TIME IT
11 DIDN'T OCCUR TO ME TO PUT MORE IN.
12 Q. OKAY.
13 AND SO WHEN YOU -- AFTER SPEAK -- HOW LONG
14 DID YOU SPEAK TO YOUR BROTHER AT THE GUESTHOUSE SATURDAY

15 MORNING BEFORE YOU LEFT?

16 A. I DON'T REMEMBER HOW LONG. I DON'T BELIEVE

17 IT WAS LONG.

18 Q. DID YOU HAVE TO COME BACK TO THE GUESTHOUSE

19 TO GET SOMETHING BEFORE YOU LEFT?

20 A. YOU MEAN THE MAIN HOUSE?

21 Q. YEAH, THE MAIN HOUSE.

22 A. I KNOW THAT WHEN WE DECIDED TO LEAVE, I

23 TOOK MY GUN WITH ME.

24 Q. AND DID YOU TELL YOUR BROTHER THAT YOU WERE

25 GOING TO GO BACK TO THE MAIN HOUSE AND GET YOUR GUN?

26 A. I DON'T REMEMBER.

27 Q. SO YOU CAME BACK TO THE GUESTHOUSE, YOU

28 WENT INTO YOUR CLOSET, AND THEN YOU TOOK THE GUN OUT?

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1 A. I CAME BACK FROM THE GUESTHOUSE INTO THE

2 MAIN HOUSE, AND WENT INTO MY CLOSET AND TOOK MY GUN.

3 Q. WHEN YOUR GUN WAS INSIDE THE CLOSET, WAS IT

4 INSIDE A BAG?

5 A. I DON'T REMEMBER. I KNOW THAT IT WASN'T

6 INSIDE A BAG WHEN IT WAS UNDER MY BED. I DON'T REMEMBER

7 IF I PUT IT INSIDE THE BAG WHEN I PUT IT IN THE CLOSET.

8 I MAY HAVE.

9 Q. SO THEN IN ANY EVENT, AS YOU WERE GOING OUT

10 YOUR BEDROOM DOOR NOW WITH YOUR GUN, IT WAS INSIDE THE

11 BAG ONCE AGAIN?

12 A. YES.

13 Q. AND WHERE WERE YOUR PARENTS AT THIS TIME?

14 A. I BELIEVE THEY WERE IN THEIR BEDROOM.

15 Q. AND WHAT TIME OF DAY WAS THAT?

16 A. ABOUT 9:30, 10:00 O'CLOCK IN THE MORNING IS

17 MY BEST RECOLLECTION.

18 Q. OKAY. AND ONCE AGAIN YOU WALKED DOWN THE

19 STAIRS CARRYING YOUR BAG WITH THE GUN INSIDE OF IT?

20 A. YES.

21 Q. AND WHEN YOU GOT IN THE CAR, DID YOU -- LET

22 ME ASK YOU THIS:

23 YOU BROUGHT YOUR GUN ALONG BECAUSE YOU

24 WANTED TO DO WHAT WITH YOUR GUN?

25 A. I AM NOT SURE WHEN I THOUGHT WHAT. I KNOW

26 THAT SOMETIME AT THE MALL I WAS LOOKING -- WHEN I WAS

27 LOOKING UP FOR A GUN STORE, THE FRIGHT OF IT AND HAVING

28 IT AND NOT KNOWING HOW TO SHOOT IT, NEVER SHOOTING IT

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1 BEFORE, I WANTED TO TALK TO SOMEONE ABOUT THAT, AND I

2 KNOW THAT MY BROTHER HAD A CONCERN ABOUT THE SHELLS THAT

3 WE HAD BOUGHT THE DAY BEFORE, WHETHER THEY WERE EXACTLY

4 THE RIGHT SHELLS TO HAVE OR NOT.

5 AT SOME POINT I EITHER DISCUSSED IT THAT

6 MORNING OR ON FRIDAY NIGHT. I JUST REMEMBER HAVING THAT

7 THOUGHT.

8 Q. LET ME REPEAT THE QUESTION.

9 WHEN YOU TOOK YOUR GUN WITH YOU FROM YOUR
10 HOUSE, WHAT WAS YOUR REASON FOR TAKING YOUR GUN WITH
11 YOU?

12 A. I DON'T REMEMBER SPECIFICALLY, BECAUSE I
13 DON'T REMEMBER AT WHAT TIME I THOUGHT WHAT.

14 Q. WELL, YOU TOOK YOUR GUN FROM YOUR HOUSE
15 BECAUSE YOU WANTED TO TARGET PRACTICE WITH IT; IS THAT
16 CORRECT?

17 A. I KNOW THAT I WANTED TO WHEN I WAS AT THE
18 MALL LATER. I MAY HAVE THOUGHT THAT ON SATURDAY
19 MORNING, AND THAT'S WHY I TOOK THE GUN. I JUST DON'T
20 REMEMBER FOR SURE ABOUT THAT.

21 Q. DID YOU HAVE ANY OTHER REASON TO TAKE YOUR
22 GUN FROM YOUR HOUSE OTHER THAN TO TARGET PRACTICE?

23 A. I DON'T KNOW.

24 Q. SO YOU DON'T KNOW WHY YOU TOOK THE GUN WITH
25 YOU THAT MORNING?

26 A. WHAT I AM SAYING IS I CAN'T RECALL
27 SPECIFICALLY WHY.

28 Q. SO YOU TOOK THIS GUN WITH YOU, AND DID YOU

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1 ASK YOUR BROTHER AT ANY TIME IF HE WAS BRINGING HIS GUN
2 ALONG?

3 A. I KNOW THAT HE DIDN'T BRING HIS GUN. I
4 DON'T REMEMBER. I'M SURE THAT WE DISCUSSED IT. I DON'T
5 REMEMBER THE DISCUSSION.

6 Q. SO IT WAS IN THE MALL THAT YOU DECIDED, TO
7 YOUR RECOLLECTION, THAT YOU WANTED TO FIND A PLACE WHERE
8 YOU COULD PRACTICE SHOOTING THAT GUN?

9 A. NO. I KNOW THAT WHEN I WAS LOOKING UP A
10 STORE, IT WAS IN MY MIND TO FIND A STORE THAT HAD A
11 RANGE ATTACHED TO IT SO I COULD DO THAT, BUT I DON'T
12 REMEMBER HOW LONG THAT THOUGHT WAS IN MY MIND WHEN IT
13 WAS THERE.

14 Q. AT SOME POINT YOUR BROTHER RAISED THE ISSUE
15 OF PURCHASING MORE AMMUNITION?

16 A. NOT SO MUCH PURCHASING MORE AMMUNITION AS
17 TO FINDING OUT IF THESE SHELLS WERE SPECIFICALLY THE
18 RIGHT SHELLS.

19 Q. OKAY. AND WHAT WAS IT THAT SUDDENLY CAUSED
20 DOUBTS ABOUT THE AMMUNITION THAT YOU HAD PURCHASED
21 YESTERDAY?

22 A. I'M NOT SURE. I DON'T KNOW WHY. PROBABLY
23 JUST THE REALITY OF THE SITUATION.

24 Q. WHAT DO YOU MEAN THE REALITY OF THE
25 SITUATION?

26 A. BEING BACK AT HOME VERSUS BEING IN SAN
27 DIEGO, HAVING THE FEAR LEVEL THERE, AND JUST BEING
28 UNCERTAIN ABOUT A LOT OF THINGS. AND I KNOW I GOT

1 INSECURE ABOUT THE GUN, WHETHER OR NOT I COULD FIRE IT,
2 WHETHER OR NOT I REALLY KNEW HOW TO FIRE IT, AND SO --

3 Q. AND DID EITHER YOU OR YOUR BROTHER SAY TO
4 EACH OTHER THAT MORNING, "I PICKED OUT THIS AMMUNITION
5 YESTERDAY BECAUSE I BELIEVE THAT THIS IS THE CORRECT
6 KIND OF AMMUNITION"?

7 A. WE DIDN'T BELIEVE IT WAS THE CORRECT TYPE
8 OF AMMUNITION.

9 Q. AND YOU WERE SATISFIED AT THE TIME THAT IT
10 WAS THE CORRECT TYPE OF AMMUNITION, WEREN'T YOU?

11 A. YES.

12 Q. AND WHO WAS IT THAT FIRST RAISED THE ISSUE
13 OF MAYBE YOU BOUGHT THE WRONG KIND OF AMMUNITION AFTER
14 ALL?

15 A. I BELIEVE IT WAS LYLE.

16 Q. AND DID YOU ASK HIM "WHAT MAKES YOU THINK
17 THAT? WE WERE BOTH SATISFIED YESTERDAY THAT THIS WAS
18 THE RIGHT KIND OF AMMUNITION"?

19 A. I DON'T BELIEVE WE DISCUSSED IT WITH ANYONE
20 AT THE BIG-5 IN SAN DIEGO, AND I KNOW WHEN I WAS IN MY
21 BEDROOM ON FRIDAY I FELT VERY INSECURE, AND I FELT VERY
22 INSECURE NOT KNOWING MUCH ABOUT THE GUN OTHER THAN WHAT
23 HAD BEEN EXPLAINED TO ME. SO I WAS ALL FOR LEARNING
24 ANYTHING MORE THAT I COULD, SINCE WE WERE TRYING TO BE
25 OUT OF THE HOUSE ANYWAY.

26 Q. WHEN WAS IT YOU FELT VERY INSECURE?

27 A. FRIDAY NIGHT.

28 Q. YOU WERE LYING IN YOUR BED THINKING ABOUT

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1 USING THAT GUN?

2 A. I WAS LYING IN MY BED THINKING IF THEY COME
3 TO MY DOOR, USE THE GUN. I REMEMBER I HELD THE GUN WITH
4 ME. I WAS KIND OF INSECURE WHETHER I REALLY KNEW HOW TO
5 USE THIS.

6 Q. SO YOU WERE CONTEMPLATING IN YOUR OWN MIND
7 YOUR ABILITY TO SHOOT THE WEAPON; IS THAT CORRECT?

8 A. I DON'T KNOW IF CONTEMPLATING IS THE RIGHT
9 WORD. IT JUST WAS A THOUGHT. I WAS VERY ANXIOUS AND
10 VERY UNEASY WITH THIS GUN. I HAD NEVER HELD A RIFLE OR
11 A SHOTGUN BEFORE, AND HOLDING IT MADE ME FEEL UNEASY,
12 AND JUST EVERYTHING ABOUT IT. I SUDDENLY WAS GETTING
13 INSECURE ABOUT IT.

14 Q. YOU HAD THOUGHTS ABOUT SHOOTING THE WEAPON
15 AS YOU WERE LYING IN BED FRIDAY NIGHT?

16 A. I DON'T KNOW IF I COULD CALL THEM SHOTS --
17 THOUGHTS OF SHOOTING THE RIFLE.

18 Q. AND YOU QUESTIONED YOUR ABILITY AND YOUR
19 ACCURACY IN USING THAT WEAPON?

20 A. NO.

21 Q. YOU DIDN'T?

22 A. NO.

23 Q. THEN WHAT WAS IT THAT YOU WERE QUESTIONING

24 CONCERNING YOUR PERFORMANCE IN THE USE OF THAT WEAPON?

25 A. I WAS QUESTIONING WHETHER I COULD EVEN FIRE

26 THE GUN IN TERMS OF IT -- DO I KNOW EVERYTHING TO DO.

27 IF THEY COME IN THE ROOM -- I WASN'T EVEN SURE ABOUT THE

28 SAFETY OR ANYTHING. I MEAN, I DIDN'T KNOW ANYTHING

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1 REALLY ABOUT THE GUN OTHER THAN WHAT HAD BEEN EXPLAINED

2 TO ME IN A FIVE-MINUTE OR TEN-MINUTE LITTLE SPEECH.

3 BUT I REALLY -- I FELT VERY INSECURE JUST

4 BEING IN THAT HOUSE AND BEING ALONE WITH MY BROTHER IN

5 THE GUESTHOUSE, AND THE GUN DIDN'T MAKE ME FEEL SECURE

6 ENOUGH.

7 Q. MR. MENENDEZ, YESTERDAY YOU TOLD US THAT IT

8 WAS A RELATIVELY SIMPLE WEAPON TO LOAD; IS THAT CORRECT?

9 A. IT WAS.

10 Q. AND YOU HAD NO PROBLEM FIGURING OUT HOW TO

11 PUT THOSE ROUNDS INSIDE AND OPERATING THE SAFETY; ISN'T

12 THAT WHAT YOU SAID YESTERDAY?

13 A. LIKE I SAID, I DON'T REMEMBER THE SAFETY,

14 BUT IT WAS SIMPLE IN TERMS OF LOADING IT; MAKING SURE

15 THAT IT'S -- THAT IT'S RIGHT AND THAT YOU'VE GOT

16 EVERYTHING IN ITS RIGHT ORDER IS VERY DIFFERENT WHEN

17 IT'S LATE AT NIGHT AND IT'S ON FRIDAY, AND I'M THINKING

18 ABOUT MOM AND DAD COMING IN THE ROOM, AND I AM THINKING

19 ABOUT USING IT.

20 Q. WELL, HOW ABOUT ON SATURDAY MORNING? DID
21 YOU REALIZE ON SATURDAY MORNING THAT NOW THAT THE GUN IS
22 FULLY LOADED, ALL YOU'VE GOT TO DO IS POINT IT AND PULL
23 THE TRIGGER?
24 MR. LEVIN: OBJECTION. MISSTATES HIS TESTIMONY.
25 THE COURT: REPHRASE THE QUESTION.
26 Q. BY MR. CONN: DID IT OCCUR TO YOU ON
27 SATURDAY MORNING THAT ALL YOU HAVE TO DO IS POINT AND
28 PULL THE TRIGGER?

-20780

1 MR. LEVIN: OBJECTION. ASSUMES FACTS NOT IN
2 EVIDENCE.
3 THE COURT: OVERRULED.
4 THE WITNESS: RIGHT. THAT'S WHAT I THOUGHT ON
5 FRIDAY, AND THAT'S WHAT I THOUGHT ON SATURDAY. FRIDAY
6 NIGHT I WAS INSECURE ABOUT THAT, AND I WASN'T ABSOLUTELY
7 CERTAIN. IT JUST MADE ME FEEL UNEASY THAT I HAD NEVER
8 FIRED A GUN BEFORE, AND I AM JUST TELLING YOU THAT WAS
9 MY THOUGHT.
10 Q. BY MR. CONN: AND YOU BEGAN TO HAVE THESE
11 THOUGHTS IN YOUR MIND FRIDAY NIGHT; IS THAT CORRECT?
12 MR. LEVIN: OBJECTION. VAGUE WITH RESPECT TO
13 WHAT THOUGHTS.
14 THE COURT: SUSTAINED.
15 Q. BY MR. CONN: YOU BEGAN TO HAVE THOUGHTS

16 ABOUT YOUR ABILITY TO OPERATE THAT WEAPON FRIDAY NIGHT;

17 IS THAT CORRECT?

18 A. YES.

19 Q. AND DID YOU HAVE THOUGHTS IN YOUR MIND

20 ABOUT THE ADEQUACY OF THE AMMUNITION ON FRIDAY NIGHT?

21 A. I DON'T REMEMBER THAT.

22 Q. WELL, WHILE YOU WERE HAVING THESE THOUGHTS

23 ABOUT HOW THE WEAPON WORKED AND YOUR ABILITY TO USE THE

24 WEAPON, DID YOU HAVE ANY THOUGHTS FRIDAY NIGHT ABOUT

25 UNDER WHAT CIRCUMSTANCES WOULD I ACTUALLY SHOOT MY

26 PARENTS, HOW WOULD I KNOW FOR SURE?

27 A. IT WAS ONLY IN MY MIND ONE WAY. I MEAN,

28 THAT WAS THEM COMING FROM THROUGH THE DOOR. I DIDN'T

-20779

1 THINK ABOUT ANY OTHER.

2 Q. SO YOU SPENT A LOT MORE TIME THINKING ABOUT

3 OPERATING THAT WEAPON THAN YOU DID THINKING ABOUT

4 WHETHER OR NOT AND UNDER WHAT CIRCUMSTANCES YOU WOULD

5 SHOOT YOUR PARENTS; IS THAT WHAT YOU'RE SAYING?

6 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

7 THE COURT: SUSTAINED.

8 Q. BY MR. CONN: DID YOU HAVE ANY THOUGHTS

9 SATURDAY MORNING BEFORE YOU WENT TO SEE YOUR BROTHER AT

10 THE GUESTHOUSE ABOUT WHEN SHOULD YOU SHOOT YOUR PARENTS

11 AND UNDER WHAT CIRCUMSTANCES?

12 A. SATURDAY MORNING?

13 Q. YES.

14 A. NO.

15 Q. BUT SATURDAY MORNING WERE YOU STILL

16 THINKING ABOUT THE OPERATION OF THE WEAPON?

17 A. I WASN'T THINKING ABOUT IT. IT WAS JUST A

18 CONCERN. I HAD THE CONCERN FROM THEN ON.

19 Q. IT WAS A CONCERN ABOUT WHICH YOU DID NOT

20 HAVE ANY THOUGHTS; IS THAT WHAT YOU'RE TELLING US?

21 A. NO. IT'S A CONCERN WHICH I DIDN'T

22 CONTEMPLATE AND THINK OVER ON SATURDAY MORNING. IT WAS

23 A CONCERN ON SATURDAY MORNING, AND I DON'T KNOW WHAT

24 ELSE TO TELL YOU.

25 Q. NOW, YOU WANTED TO -- SATURDAY MORNING YOU

26 WANTED TO BE ABLE TO SHOOT YOUR MOTHER AND FATHER AS

27 QUICKLY AND ACCURATELY AS YOU COULD; IS THAT CORRECT?

28 MR. LEVIN: OBJECTION. ARGUMENTATIVE AND

-20778

1 MISSTATES HIS TESTIMONY.

2 THE COURT: SUSTAINED.

3 Q. BY MR. CONN: WAS IT -- WAS ONE OF YOUR

4 CONCERNS SATURDAY MORNING YOUR ABILITY TO SHOOT YOUR

5 PARENTS QUICKLY AND ACCURATELY?

6 A. NO.

7 Q. YOU WANTED TO BE ABLE TO MAKE SURE THAT YOU

8 WOULD BE ABLE TO KILL THEM IF NECESSARY; IS THAT

9 CORRECT?

10 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

11 THE COURT: OVERRULED.

12 THE WITNESS: NO.

13 Q. BY MR. CONN: YOU WANTED TO BE ABLE -- YOU

14 WANTED TO BE SURE THAT YOU COULD RELIABLY SHOOT THEM IF

15 NECESSARY; IS THAT CORRECT?

16 A. THESE THOUGHTS JUST WEREN'T IN MY MIND.

17 Q. THEN WHAT WAS THE PURPOSE OF GOING OUT TO A

18 GUN RANGE THAT DAY?

19 A. BECAUSE I WAS NOT SURE HOW TO FIRE THE GUN,

20 IF I KNEW HOW TO FIRE THE GUN. I REMEMBER THINKING THAT

21 AT THE MALL WHEN I WAS FLIPPING THROUGH THE PAGES AND

22 LOOKING FOR A STORE.

23 Q. AND YOU WANTED TO BE ABLE TO FIRE THE GUN

24 PROPERLY SO THAT YOU COULD SHOOT YOUR PARENTS; IS THAT

25 CORRECT?

26 A. I DIDN'T WANT TO SHOOT MY PARENTS.

27 Q. YOU WANTED TO BE ABLE TO FIRE THE GUN

28 PROPERLY IN ORDER TO SHOOT YOUR PARENTS; IS THAT

-20777

1 CORRECT?

2 A. I DON'T UNDERSTAND WHAT YOU MEAN.

3 Q. WHY DID YOU PURCHASE THE GUNS,

4 MR. MENENDEZ?

5 A. BASICALLY FOR THE REASON YOU'RE SAYING.

6 Q. TO SHOOT YOUR PARENTS IF NECESSARY, RIGHT?

7 A. YES.

8 Q. OKAY. NOW, YOU WANTED TO BE SURE THAT WHEN

9 IT CAME TIME TO SHOOT THEM THAT YOU WOULD BE ABLE TO DO

10 IT RIGHT; IS THAT CORRECT?

11 A. I DON'T THINK THAT THAT'S WHAT I WAS

12 THINKING. I REMEMBER MY FEAR WAS IF THEY COME THROUGH

13 THE DOOR IS THIS GUN EVEN GOING TO GO OFF IF I PULL THE

14 TRIGGER. I DIDN'T KNOW. I HAD NEVER FIRED IT, BUT IT

15 WAS A CONCERN. I WAS VERY UNEASY AND I WAS ANXIOUS THAT

16 NIGHT, AND THAT'S ALL I AM TRYING TO SAY TO YOU.

17 Q. WHEN YOU WERE COMING BACK FROM SAN DIEGO

18 THE PREVIOUS DAY, YOU WERE SATISFIED THAT YOU HAD A GUN

19 THAT WAS IN OPERABLE CONDITION AND THAT YOU COULD USE TO

20 SHOOT YOUR PARENTS; IS THAT CORRECT?

21 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

22 THE COURT: OVERRULED.

23 THE WITNESS: WAS I SATISFIED? I SUPPOSE. I

24 REALLY DIDN'T THINK ABOUT IT AT THAT TIME.

25 Q. BY MR. CONN: MR. MENENDEZ, WEREN'T YOU

26 CONCERNED ABOUT YOUR SAFETY THAT WEEKEND?

27 A. YES.

28 Q. AND YOU'RE TELLING US THAT YOU DID NOT

1 THINK ABOUT WHETHER OR NOT YOUR GUN WAS OPERABLE FRIDAY
2 AS YOU WERE COMING BACK FROM SAN DIEGO?

3 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

4 THE COURT: SUSTAINED.

5 Q. BY MR. CONN: ARE YOU SAYING THAT YOU DID
6 NOT THINK ABOUT WHETHER YOUR GUN WAS OPERABLE AS YOU
7 WERE COMING BACK FROM SAN DIEGO ON FRIDAY?

8 A. I AM SAYING I JUST ASSUMED THAT IT WAS
9 OPERABLE. I WASN'T FACED WITH THE SITUATION OF USING
10 IT, SO I DIDN'T THINK ABOUT IT. I JUST ASSUMED THAT IT
11 WAS.

12 Q. THAT ASSUMPTION THAT THE GUN WAS OPERABLE
13 WAS BASED UPON THE INFORMATION THAT YOU PICKED UP FROM
14 TALKING TO SEVERAL PEOPLE IN THE GUN STORE; IS THAT
15 CORRECT?

16 A. THERE WERE TWO DIFFERENT GUN STORES.

17 Q. IS THAT CORRECT?

18 A. YES.

19 Q. AND IT WAS ALSO BASED UPON YOUR APPARENT
20 ABILITY TO HOLD THE GUN AND OPERATE THE SAFETY; IS THAT
21 CORRECT?

22 A. I DON'T REMEMBER THE SAFETY, BUT I REMEMBER
23 THAT LOADING WAS SIMPLE.

24 Q. OKAY. AND SO ARE YOU TELLING US THAT YOU
25 NO LONGER HAD THAT SAME ASSUMPTION THAT THIS WAS AN
26 OPERABLE GUN THAT YOU CAN OPERATE ON SATURDAY MORNING?

27 A. WHAT I'M SAYING IS THAT WHEN I'M COMING
28 BACK FROM SAN DIEGO AND I WAS ACTUALLY INSIDE MY HOUSE

1 AT NIGHT LOCKED IN MY BEDROOM, THAT I DIDN'T FEEL AS
2 UNEASY; AND ON FRIDAY NIGHT WHEN I WAS THINKING ABOUT
3 THIS, WHAT IF THEY COME, WHAT IF THEY COME NOW, AND
4 SUDDENLY THESE THOUGHTS START JUST RACING THROUGH MY
5 MIND WITHOUT EFFORT, AND IT MADE ME INSECURE. AND ON
6 SATURDAY MORNING I WAS STILL INSECURE ABOUT THAT.

7 Q. AND WHAT DID YOU INTEND TO DO AT THE RANGE
8 THAT DAY?

9 A. SEE IF I COULD FIRE THE GUN. I ABSOLUTELY
10 KNEW THAT -- I KNEW HOW TO FIRE THEM.

11 Q. AND SHOOT AT TARGETS?

12 A. I HAD NEVER BEEN TO A RANGE BEFORE. I
13 DIDN'T KNOW WHAT A RANGE WAS.

14 Q. AND DID YOU THINK YOU WERE JUST GOING TO BE
15 SHOOTING INTO A WALL WITHOUT TARGETS?

16 A. I DON'T KNOW. I ASSUMED THAT YOU WOULD
17 LEARN HOW TO FIRE A GUN, AND THAT'S WHAT THE PURPOSE OF
18 A RANGE IS.

19 Q. AND THEN YOU DIDN'T WANT TO -- YOU WANTED
20 TO BE SURE THAT WHEN IT CAME TIME TO SHOOT YOUR PARENTS
21 YOU WOULD BE ABLE TO HIT THEM; IS THAT CORRECT?

22 MR. LEVIN: OBJECTION. MISSTATES HIS TESTIMONY.

23 THE COURT: OVERRULED.

24 THE WITNESS: I WANTED TO BE SURE THAT IF I
25 POINTED THE GUN I COULD FIRE IT.

26 Q. BY MR. CONN: AND YOU DOUBTED WHETHER YOU
27 COULD SIMPLY FIRE A GUN SATURDAY MORNING; IS THAT WHAT
28 YOU'RE TELLING US?

-20774

1 A. YES.

2 Q. NOW, AS YOU WERE GOING TO THE MALL WITH
3 YOUR BROTHER, OR AS YOU WERE GOING TO THE RANGE WITH
4 YOUR BROTHER, DID EITHER YOU OR YOUR BROTHER SAY TO EACH
5 OTHER, "THIS IS GETTING OUT OF HAND. NOW WE'RE
6 PRACTICING TO FIRE THE WEAPON. IT'S TIME TO MOVE OUT."

7 DID YOU HAVE THAT CONVERSATION?

8 A. THE WHOLE SITUATION WAS OUT OF HAND. THE
9 WHOLE WEEKEND WAS OUT OF HAND. THAT DID NOT OCCUR.

10 Q. IT DIDN'T OCCUR TO YOU TO MOVE OUT UNTIL
11 THINGS CALMED DOWN; IS THAT CORRECT?

12 A. NO.

13 Q. AND YOU KNEW THAT THE MORE YOU HUNG AROUND,
14 THE GREATER LIKELIHOOD THERE WAS THAT EVENTUALLY THERE
15 WAS GOING TO BE A SHOOT-OUT IN YOUR HOUSE; IS THAT
16 CORRECT?

17 A. NO.

18 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: SUSTAINED. THE ANSWER IS STRICKEN.

20 Q. BY MR. CONN: DID YOU FEEL THAT THE LONGER
21 YOU AND YOUR BROTHER HUNG AROUND THE GREATER LIKELIHOOD

22 THERE WOULD BE THAT SOMEONE WAS GOING TO SHOOT SOMEONE?

23 A. NO.

24 Q. WHY NOT?

25 A. I KNEW THAT STAYING THERE MEANT THE
26 SITUATION WAS GOING TO BE RESOLVED. RUNNING AWAY WAS
27 ABSOLUTELY JUST GOING TO BRING IT TO A HEAD, AND THERE
28 COULD BE ONLY ONE RESULT.

-20773

1 BUT STAYING THERE THE SITUATION WAS GOING
2 TO BE RESOLVED, AND I WAS JUST WAITING FOR ANY SIGNS OF
3 TALKING AND -- I JUST DIDN'T THINK I COULD LEAVE, AND SO
4 THERE WASN'T ANYTHING ELSE TO DO.

5 Q. NOW, WHEN YOU -- DID YOU DECIDE TO GO TO
6 THE RANGE BEFORE OR AFTER THERE WAS CONVERSATION
7 CONCERNING PURCHASING ADDITIONAL AMMUNITION?

8 A. I DON'T --

9 MR. LEVIN: OBJECTION, YOUR HONOR. ASSUMES FACTS
10 NOT IN EVIDENCE.

11 THE COURT: SUSTAINED TO THE FORM OF THE
12 QUESTION.

13 Q. BY MR. CONN: AT SOME POINT WAS THERE A
14 DISCUSSION BETWEEN YOU AND BROTHER -- YOU AND YOUR
15 BROTHER CONCERNING AMMUNITION?

16 A. CONCERNING WHETHER THE SHELLS WE HAD WERE
17 THE RIGHT SHELLS.

18 Q. OKAY. AND DID THAT TAKE PLACE BEFORE OR
19 AFTER YOU STARTED LOOKING FOR A RANGE TO SHOOT YOUR
20 WEAPON?

21 A. I BELIEVE IT WAS BEFORE.

22 Q. OKAY. AND THEN YOU LOOKED FOR A PLACE
23 WHERE YOU COULD BOTH PURCHASE AMMUNITION AND USE YOUR
24 GUN; IS THAT CORRECT?

25 A. ESSENTIALLY, YES.

26 Q. AND YOU FOUND SUCH A PLACE?

27 A. YES.

28 Q. AND WHAT HAPPENED WHEN YOU GOT TO THAT

-20772

1 PLACE?

2 A. I WENT INSIDE THE STORE, AND IT WAS A SMALL
3 GUN STORE, AND TALKED TO THE CLERK OR THE MANAGER OR THE
4 OWNER BEHIND THE DESK.

5 Q. AND WHAT DID YOU LEARN AT THAT LOCATION?

6 A. THAT THE FIRING RANGE THAT WAS ACROSS THE
7 STREET YOU COULD NOT FIRE ANY SHOTGUN IN.

8 Q. DID YOU EVER GO TO THE RANGE ITSELF?

9 A. NO.

10 Q. SO, YOU JUST STAYED THERE IN THE PORTION OF
11 THE STORE WHERE THEY SELL AMMUNITION?

12 A. YES.

13 Q. AND THERE WAS A CONVERSATION BETWEEN

14 YOURSELVES AND THE -- AND THE GUN STORE OWNER CONCERNING
15 AMMUNITION?

16 A. YES.

17 Q. AND WHAT DID THAT CONVERSATION CONSIST OF?

18 A. IT CONSISTED OF HIM ASKING WHAT THE PURPOSE
19 OF IT WAS IN TERMS OF HUNTING OR FOR HOME PROTECTION,
20 AND WE SAID IT WAS FOR HOME PROTECTION, FOR BURGLARS,
21 THIS AND THAT, AND WE ASKED HIM IF BIRD SHOT -- OR DOVE
22 SHOT, I DON'T REMEMBER WHAT I -- WHAT I CALLED THESE
23 SHOTS AT THE TIME, AND HE JUST EXPLAINED THAT BIRD SHOT
24 WASN'T GOOD FOR THAT, AND WOULDN'T STOP A PERSON, AND
25 THAT WE SHOULD USE BUCKSHOT THAT HE PICKED OUT.

26 Q. DID THE CONVERSATION BEGIN WITH YOU OR YOUR
27 BROTHER TELLING HIM THAT YOU HAD ALREADY PURCHASED BIRD
28 SHOT?

-20771

1 A. YES.

2 Q. AND THIS PERSON IN THE STORE TOLD YOU THAT
3 IT WOULDN'T STOP A PERSON, OR THAT IT WOULDN'T STOP A
4 PERSON AS EFFECTIVELY AS BUCKSHOT?

5 A. I DON'T REMEMBER. IT WOULDN'T STOP A
6 PERSON IS WHAT I GOT OUT OF THE CONVERSATION.

7 Q. AND DID YOU BELIEVE HIM WHEN YOU HEARD THAT
8 BIRD SHOT WOULD NOT STOP A PERSON?

9 A. YES.

10 Q. AND WHY DID YOU BELIEVE THAT BIRD SHOT
11 FIRED FROM A SHOTGUN WOULD NOT STOP A PERSON?
12 A. BECAUSE HE KNEW BETTER THAN I.
13 Q. AND YOU DON'T REMEMBER THE NAME OF THAT
14 MAN, DO YOU?
15 A. YOU KNOW THE STORE I WAS AT.
16 Q. I KNOW?
17 A. YOU KNOW THE DAY I WAS THERE.
18 Q. I KNOW?
19 A. YES.
20 Q. HOW DO I KNOW?
21 MR. LEVIN: OBJECTION. ARGUMENTATIVE.
22 THE COURT: OVERRULED.
23 THE WITNESS: BECAUSE I'M TELLING YOU WHAT STORE
24 IT WAS. IT WAS A STORE IN VAN NUYS, A SMALL STORE WITH
25 A TARGET RANGE ACROSS THE STREET.
26 Q. BY MR. CONN: AND WHAT IS THE NAME OF THE
27 MAN?
28 A. I DON'T KNOW WHAT THE MAN'S NAME IS.

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1 Q. IS THERE A MAN THERE THAT CAN IDENTIFY YOU?
2 MR. LEVIN: OBJECTION. SPECULATION.
3 THE COURT: SUSTAINED.
4 Q. BY MR. CONN: IS THERE A MAN THERE YOU CAN
5 IDENTIFY?

6 A. I HAVE NEVER SEEN THE MAN BEFORE OR AFTER
7 IN MY LIFE, BUT ON AUGUST, I GUESS 19, THE MAN THAT WAS
8 WORKING THAT DAY IS THE MAN WE TALKED TO.

9 Q. AND YOU CAN'T GIVE US THE NAME OF THE MAN
10 THAT TOLD YOU THAT BIRD SHOT WILL NOT STOP A PERSON; IS
11 THAT CORRECT?

12 A. THAT'S WHAT I REMEMBER HIM SAYING, THAT IT
13 WAS THE WRONG TYPE OF AMMUNITION TO USE IN THAT
14 SITUATION.

15 Q. AND AFTER LOOKING AT THE PHOTOGRAPHS OF
16 YOUR MOTHER, YOU REALIZE THAT BIRD SHOT CAN STOP A
17 PERSON?

18 A. YES.

19 Q. AND YOU FEEL THAT THAT MAN LIED TO YOU?

20 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

21 THE COURT: SUSTAINED TO THE FORM OF THE
22 QUESTION.

23 Q. BY MR. CONN: DID YOU REALLY HAVE THIS
24 CONVERSATION?

25 A. IT WAS ABSOLUTELY AT THE STORE.

26 Q. AND SO YOU -- HE TOLD YOU THAT BIRD SHOT
27 WAS ESSENTIALLY USELESS; IS THAT CORRECT?

28 A. THAT'S WHAT I GOT OUT OF THE CONVERSATION.

1 Q. NOW, AS YOU AND YOUR BROTHER WERE

2 REEVALUATING THE TYPE OF AMMUNITION THAT YOU WERE GOING
3 TO USE TO POSSIBLY SHOT YOUR PARENTS, DID YOU REEVALUATE
4 WHETHER YOU SHOULD CONTINUE TO GO HOME AND PLACE
5 YOURSELF IN THAT SITUATION?

6 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

7 THE COURT: OVERRULED.

8 THE WITNESS: I KNOW THAT WE WANTED TO ARRIVE
9 HOME LATE FOR THE FISHING TRIP, BECAUSE WE DIDN'T REALLY
10 WANT TO GO ON THE FISHING TRIP.

11 Q. BY MR. CONN: I AM TALKING ABOUT WHETHER
12 YOU REEVALUATED WHETHER OR NOT YOU SHOULD RETURN HOME AT
13 ALL?

14 A. NO.

15 Q. SO YOU PURCHASED A BOX OF BUCKSHOT AT THAT
16 TIME; IS THAT CORRECT?

17 A. I HAVE NO -- I PURCHASED BUCKSHOT. THAT'S
18 THE ONLY THING THAT STICKS OUT IN MY MIND.

19 Q. AND THE BOX OF BUCKSHOT CONTAINED 10
20 ROUNDS; IS THAT CORRECT?

21 A. I DON'T REMEMBER SPECIFICALLY.

22 Q. WELL, YOU PREVIOUSLY TESTIFIED YOU
23 PURCHASED ONE BOX CONTAINING 10 ROUNDS, DIDN'T YOU?

24 A. IF -- IF -- IF I DID, THEN I DID. I MIGHT
25 HAVE REMEMBERED BETTER TWO YEARS AGO.

26 Q. SO YOU DON'T KNOW IF YOU DID OR NOT; IS
27 THAT CORRECT?

28 A. I DON'T REMEMBER HOW MANY ROUNDS THE BOX OF

1 BUCKSHOT HAD ANY MORE.

2 MR. CONN: PAGE -- VOLUME 94, PAGE 15,794.

3 MR. LEVIN: I'M SORRY. I DIDN'T HEAR THE CITE,
4 COUNSEL.

5 MR. CONN: VOLUME 94, PAGE 15,794, LINES 11
6 THROUGH 18.

7 MS. ABRAMSON: JUST A SECOND, COUNSEL.

8 MR. LEVIN: LINES?

9 MR. CONN: ELEVEN THROUGH EIGHTEEN.

10 MS. ABRAMSON: IF THIS IS FOR REFRESHING
11 RECOLLECTION, YOUR HONOR, IT SHOULD BE SHOWN TO THE
12 WITNESS, SINCE THE WITNESS IS NOT DENYING IT.

13 MR. LEVIN: I ADOPT THAT, YOUR HONOR.

14 THE COURT: WELL, HE CAN EXAMINE HIM BY
15 CROSS-EXAMINATION HERE WITHOUT REFRESHING HIS
16 RECOLLECTION.

17 Q. BY MR. CONN: MR. MENENDEZ, DO YOU REMEMBER
18 BEING ASKED THE FOLLOWING QUESTIONS AND GIVING THE
19 FOLLOWING ANSWERS AT THE FIRST TRIAL:

20 "Q. NOW, DID YOU, AFTER
21 PURCHASING THE BUCKSHOT -- BY THE
22 WAY, HOW MANY BOXES OF BUCKSHOT WERE
23 PURCHASED AT THE VAN NUYS GUN STORE?

24 "A. ONE.

25 "Q. AND HOW MANY ROUNDS, IF
26 YOU REMEMBER, WERE IN THAT BOX?"

27 MR. LEVIN: IN THAT ONE BOX, YOUR HONOR. HE
28 MISSTATED THE QUESTION.

-20767

1 Q. BY MR. CONN: I WILL READ THAT AGAIN.

2 "Q. AND HOW MANY ROUNDS, IF
3 YOU REMEMBER, WERE IN THAT ONE BOX?

4 "A. TEN."

5 A. THAT'S -- MAY I SEE IT?

6 Q. ARE YOU LOOKING FOR SOMETHING?

7 A. I JUST WAS CROSS-EXAMINED AND EXAMINED ON
8 THESE ISSUES SO MANY TIMES THAT I WAS LOOKING TO SEE IF
9 IT WENT ON FURTHER, OR IF IT WAS JUST ONE TIME.

10 Q. WAS THAT YOUR TESTIMONY IN THE FIRST TRIAL,
11 THAT YOU PURCHASED ONE BOX OF BUCKSHOT AND THERE WERE 10
12 ROUNDS IN THAT ONE BOX?

13 A. I KNOW THAT'S WHAT I SAID THERE IS.

14 Q. MY QUESTION IS WAS THAT YOUR TESTIMONY IN
15 THE FIRST TRIAL?

16 A. AND I SAID THAT WHEN I WAS ASKED THEN, YES.

17 Q. THAT WAS YOUR BEST RECOLLECTION AT THE
18 TIME; IS THAT CORRECT?

19 A. I BELIEVE SO.

20 Q. AND IS THAT YOUR RECOLLECTION TODAY?

21 MR. LEVIN: OBJECTION WITH RESPECT TO WHAT IS HIS
22 RECOLLECTION TODAY.

23 THE COURT: REPHRASE THE QUESTION.

24 Q. BY MR. CONN: WHAT IS YOUR RECOLLECTION

25 TODAY CONCERNING WHAT YOU PURCHASED THAT DAY?

26 A. I NO LONGER -- I DON'T -- WHAT I AM SAYING

27 IS I DON'T KNOW. IT WAS SIX YEARS AGO. I KNOW THAT 10

28 ROUNDS OF BUCKSHOT WERE FIRED, OR AT LEAST THAT'S WHAT I

-20766

1 THOUGHT, AND SO MAYBE THAT'S WHY I THOUGHT THERE WERE 10

2 ROUNDS IN THE BOX. MAYBE THERE WERE 10 ROUNDS IN THE

3 BOX. I HAVE NO IDEA. I JUST KNOW THAT I PURCHASED

4 BUCKSHOT THERE THAT DAY, AND THAT'S WHAT I KNOW.

5 Q. NOW, AFTER YOU PURCHASED THE BUCKSHOT,

6 WHERE DID YOU GO?

7 A. I DON'T REMEMBER SPECIFICALLY. I KNOW THAT

8 I ARRIVED HOME ABOUT AN HOUR AFTER WE WERE SUPPOSED TO

9 BE THERE.

10 Q. AND WHAT TIME WERE YOU SUPPOSED TO BE HOME

11 TO GO ON THE FISHING TRIP?

12 A. I DON'T RECOLLECT THE EXACT TIME. MY

13 MEMORY IS THAT IT WAS SOMETIME AROUND 2:30 OR 3:00

14 O'CLOCK.

15 Q. AND SO YOU ARRIVED HOME SOMETIME ABOUT 3:30

16 OR 4:00 O'CLOCK?

17 A. YES.

18 Q. SO YOU WERE SOMEWHERE BETWEEN A HALF HOUR

19 TO AN HOUR LATE?

20 A. I REMEMBER BEING ABOUT AN HOUR LATE.

21 Q. WERE YOU INTENTIONALLY LATE?

22 A. YES.

23 Q. WHY?

24 A. BECAUSE WE DIDN'T WANT TO GO ON THE FISHING
25 TRIP, AND WE WERE HOPING THAT MAYBE THEY WOULD LEAVE
26 WITHOUT US. WE COULDN'T REASONABLY BE MORE THAN AN HOUR
27 LATE WITHOUT THERE BEING A SERIOUS PROBLEM ABOUT IT.

28 Q. NOW, YOU THOUGHT THAT YOU MIGHT BE KILLED

-20765

1 ON THAT TRIP; IS THAT CORRECT?

2 A. YES.

3 Q. AND WERE YOU PLANNING ON TAKING YOUR
4 SHOTGUNS ALONG ON THE TRIP WITH YOU?

5 A. I DIDN'T KNOW AT THAT POINT. IT DEPENDED
6 ON WHAT HAPPENED. I WAS HOPING NOT TO GO ON THE FISHING
7 TRIP AT ALL.

8 Q. MY QUESTION IS BEFORE YOU WENT HOME THAT
9 SATURDAY, WERE YOU PLANNING ON TAKING SHOTGUNS WITH YOU
10 IF YOU WERE TO GO ON THAT TRIP?

11 A. I DON'T KNOW.

12 Q. ARE YOU SAYING, MR. MENENDEZ, THAT YOU FELT
13 THAT THERE WAS A POSSIBILITY THAT YOU MIGHT BE ABLE TO
14 CARRY ON YOUR TENNIS BAGS WITH YOUR SHOTGUNS IN THEM

15 WHEN YOU WENT ON THIS FISHING TRIP?

16 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

17 THE COURT: OVERRULED.

18 THE WITNESS: I DON'T KNOW.

19 Q. BY MR. CONN: WELL, DID YOU AND YOUR

20 BROTHER DISCUSS THE POSSIBILITY OF CARRYING ON TENNIS

21 BAGS CONTAINING SHOTGUNS ONTO THAT LITTLE BOAT?

22 A. IT WASN'T SUPPOSED TO BE A LITTLE BOAT. I

23 DON'T REMEMBER DOING IT. I KNOW THAT THE SITUATION AS

24 IT PRESENTED ITSELF IN FRONT OF THE HOUSE DID NOT GIVE

25 US A CHANCE TO DO THAT. I DID NOT HAVE THE ABILITY TO

26 TAKE THE BAG OVER TO THE CAR. WE WERE GOING STRAIGHT TO

27 THE CAR, AND IT WAS A RUSH SITUATION.

28 I KNOW THAT WE THOUGHT ABOUT WHAT HAPPENS

-20764

1 IF IT'S JUST DAD AND MOM ON THE BOAT, AND NOT GOING ON

2 THE BOAT IF WE GOT TO THE MARINA. I DON'T REMEMBER THE

3 GUNS.

4 Q. I AM NOT ASKING YOU WHAT HAPPENED WHEN YOU

5 GOT HOME, I AM ASKING YOU AS YOU WERE OUT WITH YOUR

6 BROTHER THAT DAY IN THE MALL AND IN THE RANGE AND THE

7 GUN STORE, DID YOU DISCUSS WITH YOUR BROTHER WHETHER OR

8 NOT YOU WOULD BE ABLE TO GO ON THAT BOAT CARRYING TENNIS

9 BAGS WITH SHOTGUNS IN THEM?

10 A. I DON'T REMEMBER DISCUSSING IT WITH HIM,

11 NO.

12 Q. WHAT WAS YOUR BELIEF CONCERNING WHETHER OR
13 NOT YOU WOULD BE ABLE TO GO ON THAT BOAT CARRYING BAGS
14 WITH SHOTGUNS IN THEM?

15 MR. LEVIN: OBJECTION. ASSUMES HE HAD A BELIEF.

16 THE COURT: OVERRULED.

17 THE WITNESS: I THOUGHT I PROBABLY WOULD NOT BE
18 ABLE TO DO THAT.

19 Q. BY MR. CONN: OKAY. AND ARE YOU TELLING US
20 THAT ALTHOUGH YOU FELT THAT YOU WOULD PROBABLY NOT BE
21 ABLE TO DO THAT, YOU NEVER ONCE ANY TIME THAT DAY TURNED
22 TO YOUR BROTHER AND SAID, "YOU KNOW, LYLE, I DON'T THINK
23 WE'RE GOING TO BE ABLE TO TAKE THE SHOTGUNS ON THE BOAT
24 WITH US"?

25 A. I MAY WELL HAVE SAID THAT. I JUST DON'T
26 REMEMBER IT.

27 Q. WASN'T IT IMPORTANT FOR YOU TO STAY ALIVE
28 THAT WEEKEND?

-20763

1 A. IT WAS VERY IMPORTANT TO STAY ALIVE, BUT I
2 DON'T KNOW WHAT THAT HAS TO DO WITH WHETHER OR NOT I
3 ASKED MY BROTHER -- IF I TOLD MY BROTHER MY WORRY AND MY
4 CONCERN AT THAT POINT. I JUST DON'T REMEMBER SAYING IT.

5 Q. YOU FELT THAT YOU AND YOUR BROTHER WERE IN
6 THE SAME SITUATION OF DANGER; IS THAT CORRECT?

7 A. YES.

8 Q. AND ARE YOU TELLING US THAT YOU DIDN'T

9 SHARE YOUR THOUGHTS WITH HIM CONCERNING WHETHER OR NOT

10 YOU MIGHT HAVE TO GO UNARMED ON A BOAT WITH THE PEOPLE

11 THAT YOU BELIEVED WERE GOING TO KILL YOU?

12 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

13 THE COURT: SUSTAINED.

14 Q. BY MR. CONN: IS IT YOUR TESTIMONY,

15 MR. MENENDEZ, THAT YOU DID NOT DISCUSS WITH YOUR BROTHER

16 AT ANY TIME WHETHER OR NOT YOU WOULD BE ABLE TO TAKE THE

17 GUNS ON THE BOAT?

18 A. NO.

19 Q. THEN WHAT IS YOUR TESTIMONY IN THAT REGARD?

20 MR. LEVIN: OBJECTION. IT'S BEEN ASKED AND

21 ANSWERED.

22 THE COURT: OVERRULED.

23 THE WITNESS: THAT I HAD THE FEELING THAT IT

24 WOULD PROBABLY NOT BE ABLE TO HAPPEN. I DON'T REMEMBER

25 SAYING IT TO MY BROTHER. I MAY VERY WELL HAVE, I JUST

26 CAN'T RECALL IT.

27 Q. BY MR. CONN: SO RECOGNIZING, AS YOU SAY

28 THAT YOU DID, THAT YOU WOULD PROBABLY NOT BE ABLE TO GET

-20762

1 ON THE BOAT WITH YOUR SHOTGUN, DID YOU CONCLUDE IN YOUR

2 OWN MIND THAT THERE WAS NO WAY YOU WERE GOING TO GO ON

3 THAT BOAT AND GIVE YOUR FATHER AN OPPORTUNITY TO KILL
4 YOU?

5 A. NO.

6 Q. WHY NOT?

7 A. BECAUSE BY RUNNING EVERYTHING WAS GOING TO
8 COME TO A HEAD. IT WAS ABSOLUTELY GOING TO KILL ME. I
9 KNOW THAT IT WAS IN MY MIND THAT IF WE GOT TO THE BOAT
10 AND IT WAS JUST MY PARENTS GOING OUT ON THE BOAT ALONE
11 WITH US, THAT I DID NOT WANT TO GO ON THE BOAT, AND I
12 PROBABLY WOULD NOT GO ON THE BOAT, AND AT THAT POINT I
13 WOULD RUN.

14 Q. SO YOU'RE SAYING YOU WANTED TO WAIT AND SEE
15 HOW MANY PEOPLE WERE THERE, AND THEN DEPENDING ON WHO
16 ELSE WAS PRESENT YOU WOULD MAKE A DETERMINATION AT THAT
17 TIME WHETHER OR NOT YOU WERE GOING TO GO ON THE BOAT?

18 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 Q. BY MR. CONN: ARE YOU SAYING THAT YOU WERE
21 GOING TO MAKE A FINAL DETERMINATION AS TO WHETHER OR NOT
22 YOU WOULD GET ON THE BOAT ONCE YOU ARRIVED AT THE
23 MARINA?

24 A. ESSENTIALLY I DIDN'T WANT TO GO ON THE
25 TRIP. IF I WAS FORCED TO GO ON THE TRIP -- I WAS MAKING
26 QUICK DECISIONS AT EVERY STEP, AND CERTAINLY THAT WAS IN
27 MY MIND, YES.

28 Q. AND THAT WAS YOUR DECISION AT THAT TIME,

1 YOU WERE GOING TO WAIT UNTIL YOU GOT TO THE MARINA AND
2 MADE A FINAL DECISION?

3 A. I DIDN'T WANT TO WAIT TO GET TO THE MARINA.
4 I DIDN'T WANT TO GO ON THE TRIP IN THE FIRST PLACE.

5 Q. WELL, DID YOU FEEL THAT IT MIGHT BE MORE
6 DIFFICULT TO AVOID GETTING ON THE BOAT ONCE YOU ARRIVED
7 AT THE MARINA IN THE COMPANY OF YOUR PARENTS THAN IT
8 WOULD BE IF YOU JUST DIDN'T GET HOME IN TIME?

9 A. IT'S A VERY CONFUSING QUESTION. NOT
10 GETTING HOME IN TIME IS WHAT WE DID. NOT GETTING HOME
11 AT ALL WOULD MEAN THAT THE SITUATION WOULD BE BROUGHT TO
12 A HEAD IMMEDIATELY.

13 AT THE MARINA I THOUGHT THERE WOULD BE
14 PEOPLE AROUND, AND THAT IF I DIDN'T WANT TO GET ON THE
15 BOAT AT THAT POINT, IF I CHOSE NOT TO GET ON THE BOAT,
16 THAT MEANS I ABSOLUTELY BELIEVED THAT I WOULD BE KILLED
17 NO MATTER WHAT, AND AT THAT POINT I MIGHT AS WELL RUN,
18 BECAUSE I AM GOING TO BE KILLED EITHER WAY.

19 Q. THAT'S NOT THE QUESTION I AM ASKING,
20 MR. MENENDEZ. LET ME RE-ASK THE QUESTION.

21 DID YOU FEEL IT WOULD BE MORE DIFFICULT TO
22 AVOID GETTING ON THE BOAT IF YOU WENT TO THE MARINA WITH
23 YOUR FATHER THAN IF YOU SIMPLY ARRIVED HOME LATE AND
24 DIDN'T GO TO THE MARINA WITH YOUR FATHER AT ALL?

25 A. IT'S IMPOSSIBLE TO ANSWER.

26 Q. WHY IS THAT IMPOSSIBLE TO ANSWER?

27 A. YES. NOT GETTING HOME WOULD NOT BE A

-20760

1 GO HOME OR I DON'T. THERE IS NO DIFFICULTY IN THE

2 ACTION, ONLY IN THE THINKING ABOUT IT.

3 AND IN TERMS OF ACTUALLY PHYSICALLY GETTING

4 AWAY FROM MY PARENTS AT THE MARINA, THAT IS NOT A MATTER

5 OF DIFFICULTY COMPARED TO GETTING HOME IS WHAT I AM

6 TRYING TO SAY.

7 Q. TO GET AWAY FROM YOUR PARENTS AT THE

8 MARINA, ONCE YOU WERE PRESENT YOU WOULD JUST HAVE TO

9 WALK AWAY FROM THEM AND ABSOLUTELY REFUSE TO GET ON THE

10 BOAT; ISN'T THAT CORRECT?

11 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

12 THE COURT: OVERRULED.

13 THE WITNESS: I DON'T KNOW HOW IT WAS GOING TO

14 BE, BUT IF I THOUGHT I WAS ABSOLUTELY GOING TO DIE ON

15 THAT BOAT, I WAS NOT GOING TO GET ON THE BOAT.

16 Q. BY MR. CONN: MR. MENENDEZ, YOU WERE

17 CONCERNED ABOUT NOT BRINGING THINGS TO A HEAD; ISN'T

18 THAT THE TERM THAT YOU USED?

19 A. RIGHT.

20 Q. AND DIDN'T YOU FEEL -- DID YOU FEEL THAT IF

21 YOU WENT TO THE MARINA AND DECIDED NOT TO GO ON THE

22 BOAT, HOW WOULD YOU AVOID GETTING ON THE BOAT WITHOUT

23 REALLY BRINGING THINGS TO A HEAD AT THAT POINT?

24 A. WELL, IF I DECIDED NOT TO GO ON THE BOAT AT
25 THAT POINT, THAT MEANT THAT I KNEW I WAS GOING TO DIE ON
26 THE BOAT. SO YOU MIGHT AS WELL RUN, BECAUSE I AM GOING
27 TO DIE EITHER WAY.

28 BUT I DIDN'T WANT TO JUST RUN AWAY AND NOT

-20759

1 GET HOME TO GO TO THE MARINA, BECAUSE AT THAT POINT THE
2 DECISION WOULD BE MADE. I WAS HOPING THAT NOTHING WOULD
3 HAPPEN ON THE BOAT. I DIDN'T KNOW THAT ABSOLUTELY
4 SOMETHING WOULD.

5 Q. WELL, WOULDN'T THE BEST WAY TO AVOID THE
6 SITUATION ALTOGETHER BE TO JUST WAIT UNTIL LATE IN THE
7 DAY WHEN YOU KNEW YOUR PARENTS WERE ABSOLUTELY GONE, AND
8 THEN ARRIVE HOME LATE AND MISS THE TRIP ALTOGETHER?

9 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

10 THE COURT: OVERRULED.

11 THE WITNESS: I COULD NOT DO THAT.

12 Q. BY MR. CONN: WHY NOT?

13 A. ARRIVING ANY LATER THAN AN HOUR WAS
14 SOMETHING THAT -- I JUST COULDN'T DO IT.

15 Q. SO YOU WANTED TO ARRIVE AN HOUR LATE, BUT
16 NO LATER THAN AN HOUR; IS THAT CORRECT?

17 A. I FIGURED AN HOUR I COULD GET AWAY WITH.

18 Q. AND WHY DID YOU FEEL YOU COULD GET AWAY
19 WITH ARRIVING HOME AN HOUR AFTER YOUR FATHER HAD ALREADY

20 LEFT FOR THE MARINA?

21 A. WELL, IF HE HAD LEFT FOR THE MARINA, THEN

22 IT DIDN'T MATTER IF I GOT HOME FIVE MINUTES LATER. I

23 DIDN'T KNOW IF HE HAD LEFT FOR THE MARINA.

24 Q. WHY DID YOU FEEL YOU COULD GET AWAY WITH

25 ARRIVING HOME ONE HOUR LATE?

26 A. BECAUSE I FIGURED I COULD HAVE AN EXCUSE

27 FOR ARRIVING HOME AN HOUR LATE, BUT ARRIVING THREE

28 HOURS, FOUR HOURS, FIVE HOURS LATE, IT'S PRETTY OBVIOUS

-20758

1 I AM MAKING A CONSCIOUS DECISION NOT TO GO ON THE TRIP,

2 AND MY PARENTS WOULD REALIZE THAT.

3 AN HOUR LATE I COULD SAY "I'M SORRY. I'M

4 LATE. I DIDN'T THINK, DIDN'T KNOW WHAT I WAS DOING."

5 Q. AND HOW WOULD YOUR PARENTS KNOW IF YOU GOT

6 HOME AN HOUR LATE?

7 A. IF THEY HADN'T, I NEEDED AN EXCUSE. IF

8 THEY HADN'T LEFT FOR THE MARINA AND I SHOWED UP THREE OR

9 FOUR HOURS LATE, PRETTY MUCH I WAS IN TROUBLE.

10 Q. BUT YOU REALIZED THAT THE -- THAT YOUR

11 PARENTS WERE GOING TO GO TO THE MARINA THAT DAY; IS THAT

12 CORRECT?

13 A. THAT'S WHAT I THOUGHT, YES.

14 Q. AND YOU BELIEVED YOU WERE GOING TO GO TO

15 THE MARINA WHETHER OR NOT YOU GOT IN LATE; ISN'T THAT

16 TRUE?

17 A. NO. I DIDN'T KNOW.

18 Q. SO ARE YOU SAYING THAT YOU CONCLUDED IN
19 YOUR OWN MIND THAT IF YOU WERE LATE YOUR PARENTS WOULD
20 THEREFORE STAY AND WAIT FOR YOU AS LONG AS IT TOOK?

21 A. I WAS HOPING THEY WEREN'T.

22 Q. BUT DID YOU CONCLUDE THAT THEY WERE?

23 A. I CONCLUDED THAT PROBABLY THEY WERE GOING
24 TO WAIT.

25 Q. SO, IF THEY -- IF YOU CONCLUDED THAT THEY
26 WERE PROBABLY GOING TO WAIT ANYWAY, THEN WHY ARRIVE HOME
27 AN HOUR LATE? THEY WOULD JUST BE WAITING FOR YOU.

28 A. BECAUSE I WAS HOPING THAT THEY WOULDN'T.

-20757

1 Q. AND IF THEY WOULDN'T BE WAITING FOR YOU,
2 THEN IT DIDN'T MATTER WHETHER YOU GOT HOME ONE HOUR LATE
3 OR THREE HOURS LATE, BECAUSE THEY'D BE GONE IN ANY
4 EVENT; ISN'T THAT CORRECT?

5 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

6 THE COURT: OVERRULED.

7 THE WITNESS: I DON'T THINK YOU UNDERSTAND WHAT
8 I'M SAYING AT ALL.

9 Q. BY MR. CONN: JUST ANSWER THE QUESTION. I
10 UNDERSTAND YOU VERY WELL, MR. MENENDEZ.

11 THE COURT: ALL RIGHT. LET'S NOT HAVE THESE

12 REMARKS. THE COMMENT OF COUNSEL IS STRICKEN.

13 THE WITNESS: IF THEY HAD ALREADY LEFT FOR THE

14 MARINA, IT WOULDN'T MATTER WHETHER I GOT HOME AN HOUR OR

15 FIVE MINUTES OR FOUR HOURS LATE. YOU'RE RIGHT. BUT IF

16 THEY HADN'T LEFT FOR THE MARINA, IT WOULD MATTER.

17 Q. BY MR. CONN: AND SO WHAT YOU DECIDED TO DO

18 WAS TO BE A LITTLE LATE, BUT NOT TOO LATE; IS THAT

19 CORRECT?

20 A. RIGHT.

21 Q. AND SO -- AND YOU DIDN'T KNOW FOR SURE

22 WHETHER THEY WERE GOING TO BE GONE BY THE TIME YOU GOT

23 HOME; IS THAT CORRECT?

24 A. RIGHT.

25 Q. EVEN IF YOU WERE ONE HOUR LATE YOU DIDN'T

26 KNOW FOR SURE THEY WERE GOING TO BE GONE; IS THAT

27 CORRECT?

28 A. RIGHT.

-20756

1 Q. SO DID YOU TELL YOUR BROTHER, LYLE, RATHER

2 THAN JUST RUSH RIGHT INTO YOUR DRIVEWAY IN YOUR CAR,

3 PERHAPS YOU OUGHT TO STAY A DISTANCE AWAY FROM THE HOUSE

4 AND EYE IT FROM A DISTANCE AND SEE IF THEIR CAR WAS

5 STILL IN THE DRIVEWAY?

6 A. WHEN WE WERE DRIVING UP THE STREET MY MOM

7 WAS WALKING OUT THE FRONT DOOR AND SHE SAW US. AT THAT

8 POINT I HAD TO PULL IN THE DRIVEWAY. EVEN IF THEY
9 WAITED AN HOUR DIDN'T MEAN ABSOLUTELY THAT WE WERE GOING
10 TO DIE ON THE FISHING TRIP.

11 Q. NO. WHAT I AM ASKING YOU, MR. MENENDEZ, IS
12 SOMETHING DIFFERENT.

13 DID YOU HAVE A CONVERSATION WITH YOUR
14 BROTHER, LYLE MENENDEZ, IN WHICH YOU SAID TO HIM, "SINCE
15 WE DON'T KNOW FOR SURE IF OUR PARENTS WILL HAVE GONE TO
16 THE MARINA, TO BE ON THE SAFE SIDE WHY DON'T WE STAY
17 SOME DISTANCE AWAY FROM THE HOUSE AND LOOK IN TO SEE IF
18 THE CAR IS STILL THERE, AND THEN WE'LL KNOW WHETHER OR
19 NOT IT'S SAFE TO DRIVE INTO THE DRIVEWAY"?

20 A. NO.

21 Q. AND WHY DIDN'T YOU HAVE THAT CONVERSATION,
22 MR. MENENDEZ, IF YOU FELT THAT YOU MIGHT BE KILLED IF
23 YOU WENT ON THAT TRIP?

24 A. BECAUSE THE WHOLE POINT OF ME GOING HOME AN
25 HOUR LATE WAS SO THAT I WOULD BE ABLE TO HAVE AN EXCUSE
26 TO BE HOME ONLY AN HOUR LATE. IF THEY WERE STILL HOME
27 AND I THEN LEFT AND CAME BACK THREE, FOUR HOURS LATER, I
28 WOULD HAVE NO EXCUSE, BECAUSE WE WOULD THEN BE --

-20755

1 ESSENTIALLY WE WOULD HAVE RUN AWAY IN MY PARENTS' EYES.
2 IF WE CAME HOME AN HOUR LATE, THEY WERE
3 STILL THERE, THE FISHING TRIP MIGHT STILL BE ON. WE

4 WERE GOING TO HAVE TO GO. IT WASN'T AN OPTION AT THAT
5 POINT.

6 Q. SO THEN YOU DECIDED AFTER BEING ONE HOUR
7 LATE IT WAS NOT YOUR INTENTION TO AVOID YOUR PARENTS
8 ANYMORE, YOU WERE GOING TO GO HOME, AND IF THEY WERE
9 THERE, YOU WERE GOING TO GO ON THE TRIP; IS THAT
10 CORRECT?

11 A. RIGHT.

12 Q. AND IF YOU WERE KILLED, YOU WERE KILLED; IS
13 THAT CORRECT?

14 A. NO.

15 Q. WHY NOT?

16 A. I WAS HOPING NOT TO BE KILLED.

17 Q. BUT YOU REALIZED THAT BY GOING ON THE TRIP
18 YOU MIGHT BE KILLED; IS THAT CORRECT?

19 A. RIGHT.

20 THE COURT: ALL RIGHT. LET'S TAKE OUR RECESS,
21 AND WE'LL RESUME AT 10:30.

22 (A RECESS WAS TAKEN FROM
23 10:15 TO 10:35 A.M.)

44782

1 THE COURT: ALL RIGHT. WE HAVE EVERYONE
2 PRESENT. WE'LL RESUME WITH THE CROSS-EXAMINATION.

3 (THE JURY ENTERED THE
4 COURTROOM AND THE FOLLOWING
5 PROCEEDINGS WERE HELD:)

6

7 THE COURT: THE JURY'S IN THE JURY BOX.

8 WE'LL CONTINUE WITH THE CROSS-EXAMINATION.

9 MR. CONN: THANK YOU.

10 Q WHEN YOU GOT HOME FROM DRIVING AROUND
11 WITH YOUR BROTHER ON SATURDAY, YOU PULLED INTO THE
12 DRIVEWAY AND WAS THAT -- WAS IT AT THAT TIME THAT YOU
13 SAW YOUR MOTHER?

14 A I SAW MY MOTHER JUST BEFORE I PULLED
15 INTO THE DRIVEWAY.

16 Q WHAT WAS SHE DOING WHEN YOU SAW HER?

17 A SHE WAS EXITING THE HOUSE.

18 Q AND DID YOU SEE YOUR FATHER AT THAT
19 POINT IN TIME?

20 A NO.

21 Q DID YOU SEE HER BEFORE YOU PULLED INTO
22 THE DRIVEWAY?

23 A YES.

24 Q SHE WAS EXITING BEFORE YOU PULLED INTO
25 THE DRIVEWAY?

26 A YES.

27 Q AND THE GATE WAS OPEN?

28 A YES.

1 Q HOW DO YOU OPEN THAT GATE? DO YOU HAVE

2 A REMOTE TO OPEN THAT GATE?

3 A THERE'S A REMOTE THAT OPENS THE GATE.

4 Q DID YOU HAVE A REMOTE IN YOUR CAR, IN

5 THE ESCORT?

6 A I'M SURE I DID.

7 Q IS THAT HOW YOU GOT IN THAT DAY, OR WAS

8 THE GATE ALREADY OPEN?

9 A THE GATE WAS ALREADY OPEN.

10 Q AND WHAT DID YOU DO AFTER YOU PULLED

11 INTO THE CARPORT AREA THERE?

12 A I PULLED IN THE DRIVEWAY AND I REMEMBER

13 MY MOM SAYING SOMETHING ALONG THE LINES OF NOW THAT

14 YOU'RE HERE LET'S GO. SHE WAS IN A HURRY. AND I

15 REMEMBER GOING BACK TO THE HATCHBACK AND I BELIEVE I

16 COVERED THE GUN OR DID SOMETHING WITH IT, CLOSED THE

17 HATCHBACK AND WENT TO THE CAR.

18 Q NOW, YOU HAD FOUND OUT THAT THE

19 AMMUNITION THAT YOU HAD PURCHASED IN SAN DIEGO WAS

20 ESSENTIALLY USELESS; IS THAT WHAT YOU WERE TOLD?

21 A THAT IT WASN'T -- IT WASN'T THE RIGHT

22 AMMUNITION FOR WHAT I NEEDED.

23 Q WELL, IN YOUR TESTIMONY DID YOU REFER TO

24 THE AMMUNITION AS BEING ESSENTIALLY USELESS?

25 A THAT'S WHAT I GOT OUT OF IT, YES.

26 Q AND YOU HAD YOUR SHOTGUN WITH YOU IN THE

27 CAR AS YOU WERE DRIVING BACK FROM THAT GUN STORE TO

28 YOUR HOME ON ELM STREET; IS THAT CORRECT?

1 A YES.

2 Q AND YOU HAD THE BOX CONTAINING 10 ROUNDS
3 OF BUCKSHOT WITH YOU AS YOU WERE DRIVING FROM THE
4 GUN STORE BACK TO YOUR HOME ON ELM STREET; IS THAT
5 CORRECT?

6 A YES.

7 Q AND WAS YOUR BROTHER, LYLE MENENDEZ,
8 DRIVING THE CAR?

9 A YES.

10 Q OKAY. SO DID YOU USE THAT OPPORTUNITY
11 TO LOAD UP YOUR GUN JUST IN CASE YOU NEEDED IT WHEN
12 YOU GOT HOME?

13 A NO.

14 Q WHY NOT?

15 A I DON'T KNOW.

16 Q MR. MENENDEZ, WERE YOU IN FEAR FOR YOUR
17 SAFETY ON SATURDAY, THE DAY BEFORE YOU SHOT YOUR
18 PARENTS TO DEATH?

19 A YES.

20 Q AND DID IT OCCUR TO YOU THAT IF YOU WERE
21 GOING TO USE THAT GUN, IT WOULD BE BETTER NOT TO
22 HAVE AMMUNITION INSIDE THAT GUN THAT WAS ESSENTIALLY
23 USELESS?

24 A AFTER I BOUGHT THE AMMUNITION, JUST

25 WRAPPED UP IN WORRYING ABOUT THE FISHING TRIP, AND
26 I -- I DIDN'T -- I DIDN'T -- EITHER I DIDN'T THINK TO
27 LOAD IT OR I DIDN'T. THE NEXT THOUGHT I HAVE ABOUT
28 THE ACTUAL AMMUNITION IN THE GUN IS BEING IN MY

44785

1 BEDROOM ON SATURDAY NIGHT WHEN MY DAD WAS BANGING ON
2 THE DOOR SAYING, JESUS, I DIDN'T LOAD THE GUN.

3 Q SO IT WAS ON SATURDAY NIGHT THAT YOU
4 SAID TO YOURSELF YOU DIDN'T LOAD THE GUN; IS THAT
5 CORRECT?

6 A WITH THE NEW AMMUNITION.

7 Q AND IT MUST HAVE BEEN YOUR INTENTION,
8 SATURDAY NIGHT, TO LOAD UP THAT GUN AS SOON AS YOU
9 POSSIBLY COULD; IS THAT CORRECT?

10 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

11 THE COURT: SUSTAINED.

12 Q BY MR. CONN: WOULD YOU SAY, WAS IT YOUR
13 INTENTION AT THAT TIME, WHEN YOUR FATHER WAS BANGING
14 ON THE DOOR AND YOU WERE SITTING IN YOUR BEDROOM
15 WITH A GUN AND AMMUNITION THAT WAS ESSENTIALLY
16 USELESS, TO LOAD UP THAT GUN AT THE VERY FIRST
17 OPPORTUNITY THAT YOU HAD?

18 A ON SATURDAY NIGHT?

19 Q YES.

20 A I DON'T REMEMBER THINKING THAT. I JUST
21 REMEMBER THINKING WHAT DO I DO IF HE BREAKS DOWN THE
22 DOOR. I'M GOING TO TRY TO SHOOT.

23 Q SO AS YOUR FATHER WAS -- AS YOU WERE
24 CONCERNED ABOUT YOUR FATHER BREAKING DOWN THE DOOR,
25 YOU DID NOT RESOLVE IN YOUR OWN MIND TO LOAD UP THAT
26 GUN WITH THE BUCKSHOT THE FIRST OPPORTUNITY YOU
27 GOT?

28 A MY DAD WAS BANGING ON THE DOOR. I WAS

44786

1 FREAKING OUT. I WAS -- I WAS SITTING THERE SHAKING
2 HOLDING THIS GUN, NOT KNOWING IF I WAS GOING TO BE
3 ABLE TO FIRE IT. I WASN'T THINKING ABOUT THESE
4 THINGS. IT JUST DOESN'T OCCUR TO ME WHEN I'M
5 AFRAID.

6 Q YOU WEREN'T THINKING ABOUT WHAT, HAVING
7 A GUN WITH AMMUNITION THAT YOU COULD DEFEND
8 YOURSELF?

9 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

10 THE COURT: SUSTAINED.

11 Q BY MR. CONN: ARE YOU SAYING THAT AS
12 YOUR FATHER WAS BANGING DOWN THE DOOR, YOU WEREN'T
13 THINKING ABOUT HAVING A GUN WITH AMMUNITION THAT YOU
14 COULD USE TO DEFEND YOURSELF?

15 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

16 THE COURT: OVERRULED.

17 THE WITNESS: THE GUN WAS IN MY LAP. ALL I
18 WAS THINKING WAS IF HE BREAKS DOWN THAT DOOR, AM I
19 GOING TO BE ABLE TO FIRE? IF I FIRE IT IS IT GOING
20 TO STOP HIM? IF IT STOPS HIM IS MY MOM GOING TO
21 COME RIGHT AWAY WITH THE RIFLES. THESE ARE THE
22 THINGS THAT ARE RACING THROUGH MY MIND, AND MY HEART
23 BEAT IS WAY UP AND I'M JUST SITTING THERE. I'M NOT
24 THINKING ABOUT -- ABOUT THE FUTURE.

25 Q BY MR. CONN: YOU TOLD US THAT ONE OF
26 THE THINGS YOU WERE THINKING ABOUT AT THAT MOMENT IN
27 TIME WAS THAT YOU HAD FORGOTTEN TO LOAD THE CORRECT
28 AMMUNITION INSIDE THE GUN; IS THAT CORRECT?

44787

1 A IT OCCURRED TO ME, AS I WAS -- AS DAD
2 STARTED BANGING ON THE DOOR AND I'M SITTING THERE, I
3 ONLY HAVE TWO SHELLS. I DIDN'T LOAD THE OTHER
4 SHELLS. WHY DIDN'T I DO THAT? IT WAS A STUPID
5 THING. AND THESE THOUGHTS ARE JUST BOUNCING IN MY
6 BRAIN.

7 Q SO WHILE THAT THOUGHT WAS BOUNCING IN
8 YOUR BRAIN, DID IT ALSO BOUNCE IN YOUR BRAIN THAT
9 THE FIRST THING YOU SHOULD DO MONDAY MORNING IS LOAD

10 THE GUN?

11 A NO.

12 Q WHY NOT?

13 A I CAN'T TELL YOU WHY THE THOUGHT DIDN'T

14 OCCUR TO ME, IT JUST DIDN'T.

15 Q IS THAT BECAUSE YOU WERE NEVER IN DANGER

16 ANY TIME THAT WEEK, MR. MENENDEZ?

17 A CERTAINLY NOT.

18 Q SO IT DIDN'T OCCUR TO YOU AS YOU WERE

19 GOING FROM THE GUN STORE BACK TO ELM STREET,

20 SATURDAY, TO LOAD YOUR GUN; IS THAT CORRECT?

21 A I KNOW THAT I DIDN'T DO IT.

22 Q OKAY. DO YOU RECALL ANY CONVERSATION

23 BETWEEN YOURSELF AND YOUR BROTHER LYLE MENENDEZ IN

24 WHICH YOUR BROTHER LYLE MENENDEZ TOLD YOU, NOW WOULD

25 BE AN OPPORTUNITY TO LOAD YOUR GUN. YOU HAVE YOUR

26 GUN. YOU HAVE THE AMMUNITION. YOU'RE NOT DRIVING.

27 GO AHEAD AND LOAD.

28 A NO.

44788

1 Q DID YOU HAVE ANY PLAN IN YOUR MIND AS TO

2 WHEN YOU WERE GOING TO LOAD YOUR GUN?

3 A I DON'T REMEMBER.

4 Q DO YOU FEEL THAT YOU WERE JUST THINKING

5 ABOUT MORE IMPORTANT THINGS?

6 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

7 THE COURT: SUSTAINED.

8 Q BY MR. CONN: WAS IT BECAUSE YOU HAD NO
9 INTENTION OF USING YOUR GUN UNTIL SUNDAY EVENING,
10 MR. MENENDEZ?

11 A NO.

12 Q SO YOU GOT HOME, AND I TAKE IT THAT BY
13 THE -- WHEN YOU PULLED UP IN THAT DRIVEWAY, YOUR GUN
14 WAS STILL INSIDE THE TENNIS BAG; IS THAT CORRECT?

15 A I DON'T REMEMBER. I REMEMBER IN THE
16 DRIVEWAY DOING SOMETHING WITH THE GUN. I DON'T
17 REMEMBER WHAT IT WAS. MAYBE I JUST COVERED THE
18 SHELLS. MAYBE I COVERED THE GUN. I DON'T KNOW.

19 Q OKAY. LET ME REPEAT THE QUESTION. WHEN
20 YOU PULLED UP INTO THE DRIVEWAY AFTER COMING FROM
21 THE GUN STORE ON THAT SATURDAY, YOUR GUN WAS STILL
22 IN THE TENNIS BAG, WASN'T IT?

23 A I DON'T KNOW.

24 Q WELL, MR. MENENDEZ, WHEN YOU CARRIED
25 YOUR GUN DOWN FROM YOUR BEDROOM TO TAKE IT WITH YOU
26 THAT DAY, YOU HAD IT IN THE TENNIS BAG, DIDN'T YOU?

27 A YES.

28 Q AND IT WAS IN THE TENNIS BAG WHEN YOU

1 PUT IT IN THE BACK OF YOUR ESCORT; IS THAT CORRECT?

2 A YES.

3 Q NOW, YOU HAD NO REASON TO TAKE IT OUT OF

4 THE BAG THAT DAY, DID YOU?

5 A I DON'T KNOW WHAT YOU MEAN BY THAT.

6 Q WELL, YOU DIDN'T TAKE IT OUT TO LOAD IT,

7 DID YOU?

8 A NO.

9 Q WHEN -- AND YOU DIDN'T TAKE IT INTO THAT

10 GUN STORE WHEN YOU WENT IN TO PURCHASE SOME

11 AMMUNITION; IS THAT CORRECT?

12 A RIGHT.

13 Q AND YOU DIDN'T GO TO THE RANGE THAT DAY;

14 IS THAT CORRECT?

15 A RIGHT.

16 Q AND YOU DIDN'T JUST CARRY IT AROUND IN

17 THE STREET OUTSIDE OF THE TENNIS BAG; IS THAT

18 CORRECT?

19 A NO, I DIDN'T DO THAT.

20 Q WHEN YOU WENT INTO THE GUN STORE, YOUR

21 GUN WAS STILL INSIDE THE TENNIS BAG INSIDE YOUR CAR;

22 IS THAT CORRECT?

23 A I GUESS SO. I DON'T HAVE A VISUAL IMAGE

24 OF DOING ANYTHING WITH THE GUN AT THIS POINT.

25 Q CAN YOU THINK OF ANY REASON WHY YOUR GUN

26 WOULD HAVE BEEN OUT OF THE TENNIS BAG WHILE YOU WERE

27 AT THE GUN STORE?

44790

1 DON'T KNOW THAT THOSE HAPPENED. I DON'T REMEMBER
2 WHERE THE GUN WAS. I SIMPLY DON'T. IF IT WAS IN
3 THE BAG, IT WAS IN THE BAG. I DON'T REMEMBER.

4 Q DO YOU REMEMBER EVER TAKING YOUR GUN OUT
5 OF THE BAG DURING ANY TIME THAT DAY, SATURDAY?

6 A THAT DAY, NO.

7 Q OKAY. SO IT WAS -- BY THE TIME YOU
8 PULLED INTO THE DRIVEWAY, AFTER DRIVING AROUND WITH
9 YOUR BROTHER, IT WAS YOUR BELIEF THAT THE GUN WAS
10 STILL INSIDE THE TENNIS BAG; IS THAT CORRECT?

11 A I DON'T REMEMBER WHAT MY BELIEF WAS AS
12 TO WHERE MY GUN WAS. IT WAS SO MANY YEARS AGO, I'M
13 SURE ALL KINDS OF BELIEFS AND THINGS OCCURRED TO ME
14 AND DIDN'T OCCUR TO ME. I JUST -- I DON'T KNOW WHERE
15 THE GUN WAS, WHETHER IT WAS INSIDE THE BAG OR OUT.

16 Q MR. MENENDEZ, DID YOU COVER YOUR BAG UP
17 WHILE YOU WERE IN THAT DRIVEWAY?

18 A I DON'T REMEMBER IF IT WAS MY BAG THAT I
19 COVERED UP.

20 Q DID YOU GO TO YOUR CAR TO COVER
21 SOMETHING UP?

22 A IT WAS IN MY CAR. I OPENED THE

23 HATCHBACK TO COVER SOMETHING UP.

24 Q WHY DID YOU WANT TO COVER SOMETHING UP
25 AT THAT POINT IN TIME?

26 A BECAUSE I THOUGHT SOMETHING WAS EXPOSED.

27 Q WHAT DID YOU THINK WAS EXPOSED AT THAT
28 POINT IN TIME?

44791

1 A I DON'T REMEMBER WHAT I THOUGHT WAS
2 EXPOSED. WELL, IT WAS THE GUN. MY MEMORY IS THAT I
3 THOUGHT IT WAS THE GUN.

4 Q YOU PREVIOUSLY TESTIFIED THAT YOU WENT
5 TO YOUR CAR TO COVER UP YOUR GUN WITH CLOTHING; IS
6 THAT CORRECT?

7 A I DON'T REMEMBER IF I TESTIFIED TO
8 THAT. I'M SURE I DID. THAT'S WHAT I THINK.

9 MR. CONN: OKAY. VOLUME 99, PAGE 16,584,
10 LINES 6 THROUGH 15.

11 MR. LEVIN: JUST A MOMENT.

12 MR. CONN: MAKE THAT 6 THROUGH 19.

13 MR. LEVIN: OBJECTION, YOUR HONOR. IT'S NOT
14 IMPEACHING.

15 THE COURT: ALL RIGHT. WHY DON'T YOU HAND IT
16 UP HERE.

17 (PAUSE IN PROCEEDINGS.)

18

19 THE COURT: OBJECTION OVERRULED.

20 Q BY MR. CONN: MR. MENENDEZ, DO YOU

21 RECALL TESTIFYING TO THE FOLLOWING RESPONSES IN

22 RESPONSE TO THE FOLLOWING QUESTIONS IN THE FIRST

23 TRIAL?

24 "QUESTION: NOW, WHEN YOU SAW

25 YOUR PARENTS IN THE DRIVEWAY AT ABOUT

26 4:00 IN THE AFTERNOON, DID YOU

27 IMMEDIATELY GET INTO THE CAR AND THEN

28 JUST DRIVE OFF TO THIS SHARK-FISHING

44792

1 TRIP?

2 "ANSWER: YEAH. I DIDN'T EVEN --

3 WE WENT RIGHT FROM MY CAR. AND I

4 BELIEVE, IF I'M REMEMBERING CORRECTLY,

5 I WANTED TO COVER THE GUN UP REAL

6 QUICKLY. SO I WENT BACK TO THE

7 HATCHBACK, BECAUSE CLEARLY I DIDN'T

8 WANT THEM TO SEE IT, AND THEN WE WENT

9 DIRECTLY TO MY DAD'S BIG MERCEDES AND

10 LEFT.

11 "QUESTION: SO YOU COULD SEE THE

12 SHOTGUNS IN THE BACK OF YOUR CAR?

13 "ANSWER: IF YOU OPENED UP THE
14 CARPORT, YES. THE CAR HATCHBACK."
15 DO YOU RECALL --
16 MR. LEVIN: YOUR HONOR, I WOULD ASK THE NEXT
17 QUESTION AND ANSWER BE READ ALSO.
18 THE COURT: OKAY.
19 MR. CONN: I'LL READ THAT.
20 Q "WAS THE BOX STILL IN THE CAR?
21 "ANSWER: I BELIEVE SO."
22 DO YOU RECALL GIVING THOSE ANSWERS?
23 A I DON'T SPECIFICALLY RECALL IT, BUT I'M
24 SURE -- I BELIEVE THAT IS MY TESTIMONY. YES, THAT'S
25 WHAT HAPPENED.
26 Q SO IN THE FIRST TRIAL YOU SAID THAT YOU
27 WANTED TO COVER THE GUN UP; IS THAT CORRECT?
28 A I BELIEVE YOU JUST READ THAT I WANTED TO

44793

1 COVER THE GUN AND BOX UP.
2 Q WELL, YOU TOLD US THAT, IN THIS TRIAL,
3 WHEN YOU TRAVELED AROUND WITH THAT GUN, THAT GUN WAS
4 INSIDE A BAG; IS THAT CORRECT?
5 A I DON'T THINK THAT THAT'S WHAT I SAID.
6 Q YOU DON'T THINK YOU TESTIFIED IN THIS
7 TRIAL THAT AS YOU WERE DRIVING AROUND ON SATURDAY

8 THE GUN WAS INSIDE THE TENNIS BAG?

9 A I REMEMBER SAYING THAT I DON'T REMEMBER
10 IF IT WAS INSIDE THE TENNIS BAG. IT MAY WELL HAVE
11 BEEN. THAT'S WHAT I REMEMBER SAYING.

12 Q AND YOU CAN'T THINK OF -- YOU DON'T
13 RECALL TAKING THE GUN OUT OF THE BAG FOR ANY REASON
14 THAT DAY, DO YOU?

15 A SURE.

16 Q SO THERE WAS NO NEED TO COVER UP THE GUN
17 ON THAT SATURDAY AS YOU TESTIFIED IN THE FIRST
18 TRIAL, WAS THERE?

19 A I CAN'T TELL YOU TODAY WHETHER I COVERED
20 UP THE GUN, WHETHER I COVERED UP THE BOXES TO THE
21 GUN, WHETHER I COVERED UP THE BOXES OF SHELLS, OR
22 WHAT I COVERED UP. ALL I REMEMBER IS GOING TO THE
23 HATCHBACK TO COVER THEM UP.

24 Q YOU CAN'T TELL US TODAY, BUT YOU -- IN
25 THE FIRST TRIAL YOU SAID YOU COVERED UP THE GUN; IS
26 THAT CORRECT?

27 A THE GUN AND THE BOX.

28 Q NOW, HOW MANY CARS DID YOU GO IN TO GET

44794

1 TO THE MARINA?

2 A ONE.

3 Q WHY?

4 A I DON'T KNOW.

5 Q DID YOU VOLUNTEER TO GO IN THE SAME CAR
6 WITH YOUR FATHER?

7 A IT WASN'T A MATTER OF VOLUNTEERING. I
8 WAS TOLD TO GET INTO THE CAR AND THAT'S WHAT I DID.

9 Q AND WHO DROVE?

10 A MY FATHER.

11 Q NOW, HAD YOU SPOKEN TO YOUR FATHER SINCE
12 THURSDAY NIGHT WHEN HE TOLD YOU -- WHEN HE CAME
13 LUNGING AT YOU AND TOLD YOU THAT HE HAD NEVER -- THAT
14 HE TOLD YOU NEVER TO TELL ANYONE ABOUT THE
15 MOLESTATION?

16 A I DON'T BELIEVE I HAD SEEN MY FATHER
17 SINCE THAT NIGHT.

18 Q SO YOU HAD NO CONVERSATION WITH YOUR
19 FATHER SINCE THE MOMENT THAT YOU PUSHED HIM AWAY
20 FROM YOU AND RAN OUT OF YOUR BEDROOM; IS THAT
21 CORRECT?

22 A THAT'S CORRECT.

23 Q SO HOW DID THIS TRIP TO THE MARINA GO?

24 A IT WENT -- IT WAS A VERY EERY TRIP. I
25 JUST REMEMBER THE SILENCE. THERE WAS NO
26 CONVERSATION.

27 Q NO ONE SPOKE TO ANYONE?

28 A I REMEMBER NO CONVERSATION.

1 Q AND DID YOU DECIDE IT MIGHT BE BETTER TO
2 STRIKE UP A CONVERSATION AND EASE THE TENSION A
3 LITTLE BIT?

4 A I WASN'T THE TYPE OF PERSON THAT WOULD
5 DO THAT.

6 Q DID YOU DECIDE AT THAT POINT IT MIGHT BE
7 BETTER TO TELL YOUR FATHER YOU WERE SORRY?

8 A FOR WHAT?

9 Q FOR TELLING.

10 A NO.

11 Q DID YOU DECIDE AT THAT POINT THAT IT
12 MIGHT BE BETTER TO TELL YOUR FATHER THAT YOU WERE
13 NOT GOING TO TELL ANYONE ELSE?

14 A I DIDN'T.

15 Q AND YOU KNEW YOUR MOTHER KNEW AT THAT
16 POINT; IS THAT CORRECT?

17 A SHE DID.

18 Q AND YOU -- DID YOU DECIDE AT THAT POINT
19 TO GET A CONVERSATION GOING TO TRY TO RESOLVE THIS
20 SITUATION A LITTLE BIT?

21 A I WOULD HAVE LOVED FOR A CONVERSATION TO
22 HAVE BEEN STARTED. I WAS WAITING FOR THEM TO
23 INITIATE ONE, ANYTHING. NOTHING HAPPENED. IT WAS
24 SILENCE ON THE WAY TO THE MARINA.

25 Q DID YOU ASK YOUR FATHER IF HE STILL HAD
26 BAD FEELINGS TOWARDS YOU?

27 A NO.

28 Q DID YOU ASK YOUR FATHER IF HE WAS GOING

44796

1 TO KILL YOU?

2 A NO.

3 Q AND YOUR BROTHER LYLE MENENDEZ STRUCK UP
4 NO CONVERSATION?

5 A THAT'S CORRECT.

6 Q WAS IT YOUR DESIRE TO EASE THE TENSION A
7 LITTLE BIT?

8 A I DIDN'T KNOW HOW TO EASE THE TENSION.
9 I COULD NOT STRIKE UP A CONVERSATION WITH MY FATHER,
10 OR EVEN WITH MY MOTHER, LIKE THAT UNDER THAT TENSE
11 PRESSURE. IT JUST WAS NOT IN MY NATURE. I'M NOT
12 THE TYPE OF PERSON TO DO THAT.

13 Q NOW, THAT WEEKEND YOU WANTED TO AVOID
14 SUSPICION; IS THAT CORRECT?

15 A WHAT DO YOU MEAN?

16 Q DIDN'T YOU WANT TO BEHAVE IN A WAY SO
17 THAT YOUR FATHER WOULD NOT BE SUSPICIOUS THAT YOU
18 AND LYLE WERE UP TO SOMETHING?

19 A I DEFINITELY WANTED HIM TO FEEL
20 COMFORTABLE THAT WE WERE NOT RUNNING AWAY OR GOING
21 TO THE POLICE.

22 Q YOU WANTED TO PUT HIM AT EASE; IS THAT

23 RIGHT?

24 A I DON'T KNOW THAT I WANTED TO PUT HIM AT

25 EASE VERSUS MAKE SURE THAT I DIDN'T DO ANYTHING THAT

26 SPECIFICALLY MADE HIM UNEASY.

27 Q AND SO WHAT YOU DID TO ENSURE THAT HE

28 WOULD NOT BE UNEASY WAS YOU STAYED TOTALLY OUT OF

44797

1 HIS SIGHT ALL DAY FRIDAY AND ALL DAY SATURDAY UP

2 UNTIL THE TIME OF THE BOAT TRIP?

3 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

4 THE COURT: SUSTAINED TO THE FORM OF THE

5 QUESTION.

6 Q BY MR. CONN: DID YOU CONSIDER, IF YOU

7 WANTED TO PUT YOUR FATHER AT EASE, WHETHER IT WOULD

8 BE A GOOD IDEA TO SPEND SO MUCH TIME AWAY FROM THE

9 HOUSE WITH YOUR BROTHER ON FRIDAY AND SATURDAY?

10 A I WAS BACK BY FRIDAY NIGHT SOMETIME

11 BETWEEN SEVEN, EIGHT, 8:30, AND I FELT THAT THAT WAS

12 GOOD, THAT WOULD PUT HIM AT EASE. I WASN'T OUT. I

13 HADN'T RUN AWAY. AND ON SATURDAY MORNING I DIDN'T

14 CARE. I WAS TRYING TO AVOID GOING ON THE FISHING

15 TRIP.

16 Q BUT YOU DIDN'T SEE HIM ON FRIDAY, DID

17 YOU?

18 A I DID NOT SEE HIM ON FRIDAY.

19 Q AND SO YOU HAD NO KNOWLEDGE OF YOUR
20 FATHER SEEING YOU ON FRIDAY; IS THAT CORRECT?

21 A NO.

22 Q SO WHAT DID YOU DECIDE TO DO, IF
23 ANYTHING, TO RELIEVE YOUR FATHER OF ANY CONCERNS
24 THAT YOU AND LYLE MIGHT BE UP TO SOMETHING?

25 A IT WASN'T A MATTER OF RELIEVING MY
26 FATHER. I DON'T THINK MUCH COULD HAVE BEEN DONE TO
27 RELIEVE MY FATHER. IT WAS A MATTER OF NOT DOING
28 ANYTHING TO PUT HIM -- TO MAKE HIM FEEL AS THOUGH WE

44798

1 WERE RUNNING AWAY OR WERE GOING TO THE POLICE.

2 Q WELL, DID YOU THINK THAT SPENDING THE
3 DAY AWAY FROM HOME ON FRIDAY AND SPENDING THE DAY
4 AWAY FROM THE HOME ON SATURDAY WAS CONSISTENT WITH
5 THAT GOAL?

6 A I WAS BACK BY FRIDAY NIGHT. I THOUGHT
7 THAT WAS CONSISTENT. I WAS AN HOUR LATE TO THE
8 FISHING TRIP, WHICH WAS AS MUCH AS I COULD BE. AND
9 SO THERE WAS NOTHING -- THERE WAS NOTHING THAT I
10 COULD DO ABOUT IT. I DIDN'T LEAVE AT 6:00 IN THE
11 MORNING ON SATURDAY. I DIDN'T -- PROBABLY IT WOULD

12 HAVE BEEN BETTER TO STAY AT HOME, BUT I JUST WANTED

13 TO MISS THE FISHING TRIP.

14 Q DID YOU TELL YOUR BROTHER LYLE, AT ANY

15 TIME THAT WEEKEND, WHY DON'T WE JUST TELL OUR FATHER

16 WE'RE NOT GOING TO GO TO THE POLICE AND PERHAPS THAT

17 WILL LIGHTEN UP THE TENSION A LITTLE BIT?

18 A NO.

19 Q SO AFTER DRIVING IN SILENCE TO THE

20 MARINA, YOU THEN GOT ON THE BOAT?

21 A YES.

22 Q AND DID YOU HAVE ANY CONCERNS WHEN YOU

23 GOT ON THE BOAT ABOUT THE PEOPLE WHO WERE PRESENT OR

24 THE SIZE OF THE BOAT OR ANYTHING OF THAT NATURE?

25 A I REMEMBER SPECIFICALLY MY MOTHER SAYING

26 THAT THE BOAT WAS SMALLER THAN SHE HAD EXPECTED AND

27 I -- I REMEMBER HER SAYING THAT THERE WERE MORE

28 PEOPLE THAN SHE THOUGHT WOULD BE ON THE BOAT, WHY

44799

1 WERE THERE MORE THAN JUST THE BOAT CAPTAIN ON THE

2 BOAT, AND SHE WAS AGITATED AT THAT, WHICH I LIKED.

3 Q AND DID THAT CAUSE YOU SOME CONCERN?

4 A JUST THE OPPOSITE. IT MADE ME FEEL MORE

5 COMFORTABLE THAT THERE WERE UNEXPECTED THINGS THAT

6 SHE HADN'T EXPECTED. I DIDN'T KNOW WHY SHE CARED

7 WHETHER OR NOT THERE WAS ONE PERSON ON THE BOAT
8 VERSUS THREE. THAT CONCERNED ME A LITTLE BIT. THE
9 FACT THAT THE THREE PEOPLE WERE STAYING ON THE BOAT
10 MADE ME FEEL BETTER.

11 Q SO YOU FELT AT THAT POINT THAT YOU WERE
12 NOT GOING TO BE KILLED?

13 A NO.

14 Q WHY NOT?

15 A IN THE FRAME OF MIND I WAS IN, I JUST --
16 I NEVER THOUGHT THAT. IT MADE ME A LOT MORE AT EASE
17 THAT THERE WERE TWO EXTRA PEOPLE ON THE BOAT, ONE OF
18 THEM BEING A WOMAN, THAT SHE HAD NOT EXPECTED TO BE
19 THERE. I LIKED THAT. BUT IT -- IT CERTAINLY DIDN'T
20 PUT TO REST ALL OF MY FEARS.

21 Q ARE YOU SAYING, MR. MENENDEZ, THAT YOU
22 STILL FELT THAT YOUR MOTHER AND FATHER WERE GOING TO
23 KILL YOU ON THAT BOAT IN THE PRESENCE OF THREE
24 STRANGERS?

25 A IT'S NOT WHAT I'M SAYING.

26 Q THEN WHY WERE YOU CONCERNED FOR YOUR
27 SAFETY?

28 A BECAUSE AS ANXIOUS AS I WAS FROM

44800

1 THURSDAY AND FRIDAY, THERE WAS NO WAY THAT IN THE

2 PRESENCE OF MY -- OF MY PARENTS I WAS GOING TO FEEL
3 AT EASE EVER. I JUST -- IT COULDN'T -- I COULDN'T
4 PHYSICALLY BE AT EASE AROUND THEM.

5 Q AND THAT IS BECAUSE YOU ACCEPTED THE
6 POSSIBILITY THAT YOUR MOTHER AND FATHER WERE GOING
7 TO KILL YOU IN THE PRESENCE OF THREE STRANGERS; IS
8 THAT WHAT YOU'RE SAYING?

9 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

10 THE COURT: SUSTAINED.

11 Q BY MR. CONN: ARE YOU SAYING THAT YOU
12 ACCEPTED THE POSSIBILITY THAT YOUR MOTHER AND FATHER
13 WERE GOING TO KILL YOU IN THE PRESENCE OF THREE
14 STRANGERS?

15 A IT'S NOT WHAT I'M SAYING.

16 Q THE ONLY REASON WHY YOU WERE AFRAID WAS
17 BECAUSE YOU BELIEVED YOUR PARENTS MIGHT KILL YOU; IS
18 THAT CORRECT?

19 A RIGHT.

20 Q AND YOU BELIEVED YOUR PARENTS MIGHT KILL
21 YOU ON THE BOAT; IS THAT CORRECT?

22 A RIGHT.

23 Q IN THE PRESENCE OF THREE STRANGERS; IS
24 THAT CORRECT?

25 A WHEN I FOUND OUT THAT THERE WERE TWO
26 STRANGERS MORE THAN THE ONE PERSON THAT SHE
27 EXPECTED, IT PUT ME MORE AT EASE. IT DIDN'T TAKE
28 AWAY ALL OF MY CONCERN AND SAY, OH, WOW, THIS IS

1 GOING TO BE A NICE, FUN TRIP, I'M GOING TO ENJOY
2 THIS. IT MADE ME FEEL MORE AT EASE, LIKE MOST
3 PROBABLY NOTHING WAS GOING TO HAPPEN NOW. BUT IT
4 CERTAINLY DIDN'T PUT TO REST MY FEARS.

5 Q SO THEN YOU STILL HAD SOME CONCERN THAT
6 YOUR PARENTS WERE GOING TO KILL YOU IN THE PRESENCE
7 OF THREE STRANGERS; ISN'T THAT TRUE, MR. MENENDEZ?

8 A YES, I GUESS.

9 Q OKAY. NOW, DID THAT SEEM REASONABLE TO
10 YOU?

11 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

12 THE COURT: YOU HAVE TO REPHRASE THE QUESTION
13 AS TO WHAT SEEMED REASONABLE.

14 Q BY MR. CONN: DID THE NOTION OF YOUR
15 FATHER AND MOTHER KILLING YOU IN THE PRESENCE OF
16 THREE STRANGERS SOUND REASONABLE TO YOU?

17 A NOTHING WAS REASONABLE ABOUT THAT
18 WEEKEND. THE IDEA THAT THIS WAS HAPPENING IN MY
19 LIFE AND WHAT WAS OCCURRING WAS ACTUALLY OCCURRING
20 WAS UNBELIEVABLE. I MEAN, NOTHING LIKE THIS HAD
21 EVER OCCURRED TO ME BEFORE. I DIDN'T KNOW WHAT WAS
22 GOING TO HAPPEN NEXT. AND I DIDN'T BELIEVE THAT
23 THEY WERE GOING TO DO ANYTHING AT THAT POINT ON THE
24 FISHING TRIP. BUT I -- JUST BEING AROUND MY FATHER,
25 BEING AROUND MY MOTHER, AT THAT TIME, MADE ME

26 QUEASY. IT MADE ME VERY UNCOMFORTABLE AND AFRAID.

27 Q WHAT I'M ASKING IS: DID YOU FEEL IN

28 YOUR OWN MIND THAT IT WAS A REASONABLE BELIEF THAT

44802

1 YOUR MOTHER AND FATHER MIGHT KILL YOU IN THE

2 PRESENCE OF THREE STRANGERS?

3 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

4 THE COURT: YOU'RE ASKING DID HE FEEL THAT HE

5 WAS REASONABLE IN BELIEVING THIS?

6 MR. CONN: YES.

7 THE COURT: OVERRULED.

8 THE WITNESS: I DON'T KNOW WHETHER OR NOT I

9 WAS REASONABLE. I WASN'T THINKING IN TERMS OF AM I

10 THINKING REASONABLY. ALL I THOUGHT WAS, I'M STILL

11 AFRAID, PROBABLY NOTHING'S GOING TO HAPPEN, I'M

12 STILL AFRAID. I DON'T KNOW IF IT WAS REASONABLE OR

13 NOT. IT'S JUST WHAT I THOUGHT.

14 Q BY MR. CONN: SO DID YOU GET A REALITY

15 CHECK? DID YOU TURN TO YOUR BROTHER LYLE AND SAY TO

16 HIM, LYLE, DO YOU FEEL THAT OUR MOTHER AND FATHER

17 ARE GOING TO KILL US IN THE PRESENCE OF THREE

18 STRANGERS?

19 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

20 THE COURT: SUSTAINED.

21 Q BY MR. CONN: DID YOU ASK YOUR BROTHER
22 WHAT HIS -- IF HE HAD ANY CONCERNS ABOUT YOUR PARENTS
23 KILLING YOU IN THE PRESENCE OF THREE STRANGERS?

24 A AS SOON AS MY MOTHER SAID THAT WHILE WE
25 WERE IN FRONT OF MY PARENTS AND ALL OF THE REST OF
26 THE PEOPLE? NO.

27 Q AT ANY TIME DURING THAT TRIP DID YOU SAY
28 TO YOUR BROTHER, DO YOU THINK OUR PARENTS ARE GOING

44803

1 TO KILL US IN THE PRESENCE OF THREE STRANGERS?

2 A I BELIEVE WE PROBABLY DID. I'M SURE WE
3 SAID -- I SAID TO HIM OR HE SAID TO ME, THIS IS
4 GOOD. THIS IS GOOD. THIS LOOKS GOOD. I'M SURE --
5 WE WERE UP IN FRONT OF THE BOAT. 90 PERCENT OF THE
6 TRIP WE TALKED. I'M SURE THAT WE SAID THAT.

7 Q AND HOW DID YOUR BROTHER RESPOND TO
8 YOU?

9 A I DON'T REMEMBER HIS WORDS. IT'S JUST
10 IMPOSSIBLE TO REMEMBER THEM. NO DOUBT HE AGREED
11 WITH ME. IT'S HOW I FELT.

12 Q I'M NOT ASKING YOU FOR EXACT WORDS. I'M
13 JUST TRYING TO ASK YOU WHAT WAS THE CONVERSATION
14 BETWEEN YOURSELF AND YOUR BROTHER CONCERNING THE
15 REALISTIC LIKELIHOOD THAT YOUR PARENTS WERE GOING TO

16 TRY TO KILL YOU IN THE PRESENCE OF THREE STRANGERS.

17 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE AS
18 PHRASED.

19 THE COURT: OVERRULED.

20 THE WITNESS: I DON'T REMEMBER A CONVERSATION
21 ABOUT THE REALISTIC LIKELIHOOD. I'M SURE MY BROTHER
22 AND I -- IN FACT, I KNOW MY BROTHER AND I WERE
23 EXCHANGING GLANCES AND LOOKS THROUGHOUT THE WHOLE
24 BEGINNING AS WE WERE GETTING ON TO THE BOAT AND WHAT
25 WAS HAPPENING. I WAS ON THE -- ON THE EDGE OF MY
26 FEET, SO TO SPEAK, IN AN EXPRESSION. I WAS
27 CONSTANTLY WAITING TO SEE WHAT WAS GOING TO HAPPEN,
28 WHAT'S GOING TO -- I'M SURE I LOOKED AT HIM, HE

44804

1 LOOKED AT ME, AND AT ONE POINT ONE OF US SAID, LET'S
2 GO UP TO THE FRONT OF THE BOAT. AND I'M SURE WE
3 SAID, WHAT DO YOU THINK? THERE'S TWO EXTRA PEOPLE.
4 WHAT DO YOU THINK ABOUT WHAT MOM SAID? OH, THIS IS
5 GOOD. I'M SURE ALL OF THAT HAPPENED. I JUST -- I
6 JUST CAN'T REMEMBER IT NOW.

7 Q BY MR. CONN: YOU'RE SAYING, AT LEAST AS
8 YOU SIT THERE TODAY, YOU DO NOT REMEMBER ANY
9 CONVERSATION BETWEEN YOURSELF AND YOUR BROTHER
10 CONCERNING WHETHER OR NOT THERE WAS A REALISTIC

11 LIKELIHOOD THAT YOUR PARENTS WERE GOING TO KILL YOU
12 IN THE PRESENCE OF THREE STRANGERS; IS THAT
13 CORRECT?

14 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

15 THE COURT: SUSTAINED.

16 Q BY MR. CONN: ARE YOU SAYING THAT TO THE
17 BEST OF YOUR RECOLLECTION THERE WAS NO CONVERSATION
18 BETWEEN YOURSELF AND YOUR BROTHER CONCERNING THE
19 LIKELIHOOD OF YOUR PARENTS KILLING YOU IN THE
20 PRESENCE OF THREE STRANGERS?

21 A I THINK I'M TRYING TO CONVEY JUST THE
22 OPPOSITE OF WHAT YOU'RE SAYING.

23 Q THAT YOU RECALL THE CONVERSATION?

24 A NO. THAT IN ALL PROBABILITY I BELIEVE
25 THERE WAS A CONVERSATION. I WOULD BE SURPRISED IF
26 THERE WASN'T. I JUST CAN'T SPECIFICALLY RECALL IT.

27 Q SO YOU RECALL NO SPECIFIC DISCUSSIONS TO
28 THAT EFFECT --

44805

1 MR. LEVIN: OBJECTION. ASKED --

2 Q BY MR. CONN: -- AS YOU SIT THERE?

3 MR. LEVIN: ASKED AND ANSWERED.

4 THE COURT: THAT'S WHAT HE SAID. OVERRULED.

5 Q BY MR. CONN: SO WHERE DID YOU GO WHEN

6 YOU GOT ON THE BOAT?

7 A I KNOW BEFORE WE LEFT THE MARINA, BEFORE
8 WE STARTED -- OR AS WE WERE JUST STARTING OUT OF THE
9 MARINA, WE WENT UP TO THE FRONT OF THE BOAT.

10 Q AND HOW LONG DID YOU REMAIN IN THE FRONT
11 OF THE BOAT?

12 A FOR A VERY LONG TIME. ALMOST ALL OF THE
13 TRIP.

14 Q WHY?

15 A BECAUSE IT JUST FELT SAFER UP THERE.

16 Q NOW, WHEN YOU SAY THE FRONT OF THE BOAT,
17 DIRECTING YOUR ATTENTION TO EXHIBIT 348, YOU'RE
18 SAYING -- WELL, LET ME DIRECT YOUR ATTENTION FIRST TO
19 347, WHICH DEPICTS DETECTIVE ZOELLER IN THE FRONT OF
20 THE BOAT.

21 WERE YOU WHERE DETECTIVE ZOELLER IS
22 DURING MOST OF THE TRIP OR WERE YOU UP AGAINST THIS
23 GLASS AREA HERE AT THE FRONT OF THE BOAT?

24 A DETECTIVE ZOELLER'S STANDING ON THE SIDE
25 OF THE BOAT. I REMEMBER AS WE WERE HEADING OUT OF
26 THE MARINA THAT IT WAS CHOPPY, THAT THE BOAT WAS
27 GOING UP AND DOWN, THAT WAVES WERE CRASHING ALL
28 OVER. I REMEMBER THAT I WAS FREEZING, AND I

1 REMEMBER I WAS SITTING WHERE THE -- THERE'S -- IN
2 FRONT OF THE HOOD WITH MY BACK PRETTY MUCH AGAINST
3 THE WINDOW BECAUSE IT WAS WET AND IT WAS SLIPPERY;
4 AND I REMEMBER FEELING AT TIMES THAT AS THE BOAT WAS
5 ROCKING, I WOULD SLIDE TOWARD ONE SIDE. THOSE ARE
6 THE THINGS THAT I WAS DOING AS I WAS SITTING ON THE
7 BOAT.

8 Q WHAT I'M ASKING YOU IS: WHERE DID YOU
9 SPEND MOST OF THE TRIP, WHERE DETECTIVE ZOELLER WAS
10 OR SOME OTHER PLACE IN THE FRONT OF THE BOAT?

11 A IN THAT AREA --

12 MR. LEVIN: OBJECTION, YOUR HONOR. I DON'T
13 BELIEVE DETECTIVE ZOELLER'S ON THE BOAT.

14 THE COURT: WELL, IT'S UNCLEAR FROM THAT
15 PHOTOGRAPH WHETHER HE'S ON THE BOAT OR ON THE DOCK.

16 REPHRASE THE QUESTION.

17 Q BY MR. CONN: CAN YOU TELL US WHERE ON
18 THE BOAT YOU SPENT MOST OF THE TRIP, SPECIFICALLY.

19 A RIGHT THERE, SITTING IN FRONT.

20 Q RIGHT WHERE? WOULD YOU BE MORE
21 SPECIFIC? LET ME GIVE YOU THE POINTER. YOU CAN
22 REMAIN WHERE YOU ARE.

23 A RIGHT HERE. IF I STOOD UP HERE, IT WAS
24 SO WET AND SLIPPERY YOU WOULD SLIP AND FALL RIGHT
25 OFF THE BOAT BECAUSE IT WAS ROCKING ON THIS -- AT THE
26 TIME THAT THEY WERE -- EVEN AT THE TIME IT WAS
27 FISHING IT WAS ROCKING. I REMEMBER HEADING OUT
28 RIGHT HERE AND I STAYED RIGHT HERE, ALMOST ALL OF

1 THE TRIP.

2 Q ALL RIGHT. THANK YOU.

3 AND WHERE DO YOU REMEMBER YOUR FATHER
4 BEING MOST OF THE TRIP?

5 A I REMEMBER HIM BEING IN THE BACK, AND I
6 WOULD HEAR BLIPS OF WORDS AND CONVERSATIONS SPOKEN,
7 DEPENDING ON HOW QUIET OR HOW CHOPPY OR WHAT WAS
8 HAPPENING.

9 Q AND WHERE DO YOU REMEMBER YOUR MOTHER
10 BEING DURING MOST OF THE TRIP?

11 A I REMEMBER HER BEING IN THE BACK WITH
12 DAD, AND THEN I REMEMBER AT SOME POINT HER GETTING
13 SEASICK AND GOING UNDERNEATH.

14 Q SO YOU REMAINED IN THE FRONT OF THE BOAT
15 BECAUSE YOU FELT MORE SAFE THERE?

16 A YES.

17 Q AND WHY DID YOU FEEL THAT IT WAS MORE
18 SAFE IN THE FRONT OF THE BOAT OVER HERE THAN IT
19 WOULD BE ABOUT 15 FEET AWAY THERE?

20 A WELL, THE FACT THAT IT WAS 15 FEET
21 DIDN'T HAVE ANYTHING TO DO WITH IT. IT WAS THE
22 FURTHEST WAY AWAY FROM WHERE MY FATHER WAS AND
23 THAT'S WHERE I FELT MOST SAFE.

24 Q AND DID YOU FEEL THAT THAT REDUCED THE
25 LIKELIHOOD THAT YOUR FATHER WAS GOING TO KILL YOU?
26 A THE LIKELIHOOD THAT MY FATHER WAS GOING
27 TO KILL ME HAD GREATLY DIMINISHED. WHEN WE WERE
28 FISHING FOR SHARKS, I REMEMBER THE SCENE VERY

44808

1 CLEARLY. AND IT WAS A VERY UNCOMFORTABLE THING
2 BEING IN FRONT OF THE BOAT. AS STRANGE IT AS
3 SOUNDS, THERE WAS LITTLE CHANCE THAT I WAS GOING TO
4 ACCIDENTALLY FALL OVERBOARD WHEN THE SHARKS WERE ALL
5 AROUND EATING ON THE BLOOD.

6 Q YOU STAYED IN THE FRONT OF THE BOAT
7 BECAUSE YOU FELT THAT WAS THE BEST PLACE TO AVOID
8 FALLING OVERBOARD?

9 A I DIDN'T -- I DIDN'T MEAN TO PORTRAY
10 THAT. I MEANT DURING THAT PORTION OF THE TRIP, I
11 JUST FELT SAFER UP THERE AND THAT WAS ONE OF THE
12 THINGS THAT WAS IN MY MIND. I WENT UP TO THE FRONT
13 OF THE BOAT AT THE VERY BEGINNING OF THE TRIP. IT
14 JUST WAS THE FURTHEST AWAY POSSIBLE THAT I COULD BE
15 FROM MY FATHER. MY MOTHER WAS IN THE BACK AS WELL.
16 IT JUST -- IT JUST FELT -- MADE ME MORE EASY.

17 Q DID YOU FEEL IT WOULD BE MORE DIFFICULT
18 FOR YOUR FATHER TO KILL YOU IF YOU REMAINED AT THE

19 FRONT OF THE BOAT?

20 A IN A SENSE.

21 Q IN WHAT SENSE?

22 A IN THE SENSE THAT IT WOULD MAKE IT MORE
23 DIFFICULT.

24 Q HOW WOULD IT MAKE IT FOR DIFFICULT FOR
25 YOUR FATHER TO KILL YOU IF YOU WERE IN THE FRONT OF
26 THE BOAT?

27 A LESS THINGS ACCIDENTALLY COULD OCCUR TO
28 ME IF I WAS FAR AWAY FROM HIM AND HE WASN'T AROUND

44809

1 ME.

2 Q BUT YOU DIDN'T REMAIN UP THERE THE WHOLE
3 TIME, DID YOU?

4 A I REMAINED UP THERE AS MUCH AS I
5 BASICALLY COULD.

6 Q THERE WERE TIMES WHEN YOUR FATHER CALLED
7 YOU BACK AND YOU WENT TO THE BACK OF THE BOAT; IS
8 THAT CORRECT?

9 A I REMEMBER ONE SPECIFIC TIME, AFTER THE
10 SHARK WAS REELED IN, WHEN HE CALLED, EITHER BOTH OF
11 US BACK OR ONE OF US BACK, AND WE WENT BACK. AND I
12 REMEMBER LOOKING AT THE SHARK.

13 Q BUT THERE WERE TIMES WHEN YOU WENT TO

14 THE BACK EVEN WHEN YOU WEREN'T CALLED TO GO TO THE
15 BACK; IS THAT CORRECT?

16 A I REMEMBER A SPECIFIC TIME WHEN I -- I
17 WAS FEELING ILL, A LITTLE BIT SEASICK. I HAD TO USE
18 THE RESTROOM, AND I WENT TO THE BACK OF THE BOAT AND
19 BELOW.

20 Q THERE WERE TIMES WHEN YOU WERE IN THE
21 BACK OF THE BOAT TALKING TO ONE OF THE OTHER PEOPLE
22 ON THE BOAT; IS THAT CORRECT?

23 A WHAT DO YOU MEAN BY THAT?

24 Q WELL, DID YOU EVER SPEAK TO ANY OF THE
25 THREE PEOPLE WHO WERE ON THE BOAT BESIDES YOUR
26 PARENTS AND YOUR BROTHER?

27 A I'M SURE THAT I DID.

28 Q AND YOU'VE HEARD TESTIMONY IN THIS

44810

1 COURTROOM ABOUT THE FACT THAT YOU CHATTED A LITTLE
2 BIT WITH ONE OR MORE OF THOSE PERSONS; IS THAT
3 CORRECT?

4 A I DON'T REMEMBER THAT.

5 Q DID YOU SPEAK TO THE CAPTAIN?

6 A I KNOW THAT HE WAS THERE WITH MY FATHER
7 TALKING ABOUT THE FACT THAT THE SHARK WAS ONLY FOUR
8 FEET AND MY FATHER WANTED A BIGGER SHARK, AND THERE

9 WAS -- JUST THE GENERAL CONVERSATION. I WAS STANDING
10 THERE. I DON'T SPECIFICALLY REMEMBER SAYING
11 ANYTHING. I REMEMBER -- I REMEMBER HAVING TO TOUCH
12 THE SHARK AT ONE POINT.

13 Q DO YOU REMEMBER HAVING A CONVERSATION
14 WITH THE CAPTAIN ABOUT THE FACT THAT THAT BOAT HAD
15 BEEN USED IN SOME MOTION PICTURES?

16 A RIGHT. I THINK THAT -- I THINK I --
17 YOU'RE RIGHT.

18 Q AND YOU TALKED TO THE CAPTAIN ABOUT THE
19 FACT THAT IT WAS USED IN THE MOVIE "TEQUILA
20 SUNRISE"; IS THAT CORRECT?

21 A YEAH, THAT -- I THINK IT WAS ASKED WHY IT
22 WAS CALLED MOTION PICTURE -- I DON'T KNOW WHAT THAT
23 SAYS. MOTION PICTURE BOAT. AND THEN THAT WAS
24 TALKED ABOUT. I DON'T REMEMBER IF I ASKED ABOUT
25 IT. I MAY HAVE. BUT I TALKED ABOUT IT.

26 Q AND WHEN YOU WERE IN THE BACK OF THE
27 BOAT TALKING TO THE CAPTAIN ABOUT "TEQUILA SUNRISE,"
28 IT WASN'T BECAUSE YOUR FATHER WAS DEMANDING YOUR

44811

1 PRESENCE IN THE BACK OF THE BOAT AT THAT MOMENT, WAS
2 IT?

3 A I DON'T KNOW.

4 Q AND DO YOU RECALL THAT YOU FOUND IT KIND
5 OF INTERESTING THAT IT HAD BEEN USED IN THE MOVIE
6 "TEQUILA SUNRISE" AND AT ONE POINT YOU CALLED YOUR
7 BROTHER AND SAID, COME TO THE BACK OF THE BOAT AND
8 LISTEN TO THIS ABOUT "TEQUILA SUNRISE"?

9 A I DON'T REMEMBER CALLING MY BROTHER TO
10 THE BACK OF THE BOAT TO FIND OUT ABOUT "TEQUILA
11 SUNRISE" OR THAT I INFORMED HIM ABOUT THE "TEQUILA
12 SUNRISE." NO. I MAY HAVE -- HE MAY HAVE BEEN
13 STANDING FIVE FEET AWAY AND I -- AND I SAID THAT TO
14 HIM, BUT I DON'T RECALL THAT.

15 Q AND YOUR BROTHER CAME TO THE BACK OF THE
16 BOAT FROM TIME TO TIME, DIDN'T HE?

17 A I REMEMBER MY BROTHER COMING TO THE BACK
18 OF THE BOAT ONCE, MAYBE TWICE. BUT ABOUT FIVE AND A
19 HALF OF THE SIX HOURS HE REMAINED IN THE FRONT OF
20 THE BOAT.

21 Q AND IS THAT BECAUSE YOU AND YOUR BROTHER
22 WERE UP IN THE FRONT OF THE BOAT TALKING ABOUT
23 WHETHER OR NOT YOU WERE GOING TO KILL YOUR PARENTS
24 SUNDAY NIGHT?

25 A THAT MAKES NO SENSE TO ME.

26 Q IT WASN'T BECAUSE YOU AND YOUR BROTHER
27 WERE CONSPIRING TO KILL YOUR PARENTS THE NEXT
28 NIGHT?

1 A NO.

2 Q WERE YOU TALKING ABOUT WHAT YOU WERE
3 GOING TO DO WITH THESE SHOTGUNS THAT YOU HAD
4 PURCHASED ON FRIDAY?

5 A NO. STAYING UP IN FRONT OF THE BOAT WAS
6 COLD AND IT WAS WET AND IT WAS UNCOMFORTABLE AND I
7 DIDN'T WANT TO BE UP THERE, BUT I JUST DIDN'T WANT
8 TO BE IN THE BACK. AND I DON'T REMEMBER DISCUSSING
9 THE GUNS.

10 Q IT WAS VERY UNCOMFORTABLE IN THE FRONT
11 OF THE BOAT, WASN'T IT?

12 A YES, IT WAS.

13 Q AND YOU STAYED UP THERE FOR A REASON; IS
14 THAT CORRECT?

15 A YES, I DID.

16 Q AND THAT IS BECAUSE YOU FELT IT WOULD BE
17 SO MUCH MORE DANGEROUS IN THE BACK OF THE BOAT?

18 A I DON'T KNOW IF I'D USE THOSE WORDS, BUT
19 IT JUST MADE ME FEEL MORE COMFORTABLE SITTING IN THE
20 FRONT OF THE BOAT. I DIDN'T LIKE THE FACT THAT I
21 WAS ON THE BOAT IN THE FIRST PLACE, FISHING FOR
22 SHARKS IN THE MIDDLE OF THE NIGHT, MILES AWAY FROM
23 ANYWHERE.

24 Q DID YOU SAY TO YOUR BROTHER, WHILE YOU
25 WERE SITTING IN THE FRONT OF THE BOAT, YOU KNOW,
26 LYLE, IT'S VERY WET AND COLD AND UNCOMFORTABLE UP
27 HERE. DO YOU THINK WE CAN GO TO THE BACK OF THE

44813

1 OUR FATHER WILL KILL US IF WE DO THAT?

2 A I REMEMBER AT ONE POINT SAYING THAT I
3 HAD TO GO TO THE BATHROOM AND I WAITED AS LONG AS I
4 COULD, AND I WAS SAYING I HAVE TO GO BACK AND GO TO
5 THE BATHROOM.

6 I REMEMBER THAT THERE -- WE -- WE DID --
7 THERE WERE WORDS ABOUT HOW COLD IT WAS, OF COURSE,
8 AND THINGS OF THAT SORT.

9 Q AND DID YOU DISCUSS WHETHER IT WAS
10 REALLY NECESSARY TO BEAR THAT DISCOMFORT OR WHETHER
11 YOU CAN GO BACK AND SIT IN A PLACE THAT'S WARMER?

12 A PROBABLY WE DISCUSSED IT.

13 Q AND HOW DID YOU RESOLVE THAT ISSUE?

14 A WE STAYED IN THE FRONT OF THE BOAT.

15 Q AND IS THAT BECAUSE YOU AGREED THAT YOU
16 WERE MORE LIKELY TO BE KILLED IF YOU WENT TO THE
17 BACK?

18 A I DON'T KNOW IF WE WOULD HAVE PUT IT IN
19 THAT WAY, BUT THAT'S HOW WE FELT.

20 Q WAS THAT SOMETHING THAT YOU DISCUSSED,
21 THAT YOU WOULD BE MORE LIKELY TO BE KILLED IF YOU
22 WENT TO THE BACK OF THE BOAT?

23 A WE DISCUSSED THAT IT WOULD BE SAFER TO
24 STAY IN THE FRONT OF THE BOAT. SO IN CONVERSE WE
25 WERE MEANING THAT.

26 Q AND DID YOU GIVE EACH OTHER REASONS WHY
27 IT WOULD BE SAFER TO STAY IN THE FRONT OF THE BOAT?

28 A I DON'T REMEMBER.

44814

1 Q DID YOU TALK ABOUT THE DIFFICULTY OF
2 YOUR FATHER TRAVERSING THAT 10 FEET OR SO TO GET TO
3 THE FRONT OF THE BOAT?

4 A I DON'T THINK I NEEDED TO DISCUSS IT.
5 IT WAS -- IT WAS A DANGEROUS WALK UP THERE. IT WAS
6 EASY TO SLIP OFF THE BOAT.

7 Q YOU AND YOUR BROTHER DID IT SEVERAL
8 TIMES, GOING BACK AND FORTH, DIDN'T YOU?

9 A YES.

10 Q AND YOUR FATHER WAS ONLY 45 YEARS OLD;
11 IS THAT CORRECT?

12 A HE WAS.

13 Q AND HE HAD GOOD EYESIGHT?

14 A YES.

15 Q AND HE WAS IN GOOD HEALTH?

16 A NOT REALLY.

17 Q WHAT WAS WRONG WITH HIM?

18 A HE'D HAD A HEART ATTACK ABOUT SIX MONTHS
19 BEFORE.

20 Q DID YOU THINK THAT YOUR FATHER WOULD
21 HAVE ANY DIFFICULTY GETTING TO THE FRONT OF THE
22 BOAT?

23 A NO.

24 Q AND IS THAT ONE OF THE REASONS WHY --
25 STRIKE THAT.

26 WHAT DID YOU TALK ABOUT WITH YOUR
27 BROTHER THE WHOLE TIME YOU WERE IN THE FRONT OF THE
28 BOAT?

44815

1 A I DON'T KNOW WHAT WE TALKED ABOUT. IN
2 GENERAL, WE ARE TALKING ABOUT THE SITUATION, WHAT
3 WAS HAPPENING, THE FAMILY, AND SOME OF THE THINGS
4 THAT HAD OCCURRED TO US OVER OUR LIFE. SPECIFICALLY
5 WHAT WE TALKED ABOUT AT THAT POINT, I DON'T KNOW.

6 Q NOW, AS YOU WERE SITTING IN THE FRONT OF
7 THE BOAT, WERE YOU CONCERNED ABOUT WHETHER YOUR
8 BEHAVIOR MIGHT APPEAR TO BE SUSPICIOUS TO YOUR
9 FATHER?

10 A I DON'T THINK I REALLY CARED.

11 Q DIDN'T YOU TESTIFY PREVIOUSLY THAT YOU
12 WERE CONCERNED ABOUT NOT DOING ANYTHING THAT MIGHT

13 APPEAR TO BE SUSPICIOUS TO YOUR FATHER?

14 A YES, BUT --

15 MR. LEVIN: OBJECTION.

16 THE WITNESS: -- ON THE BOAT --

17 MR. LEVIN: WITHDRAWN.

18 THE WITNESS: -- I WAS MORE CONCERNED ABOUT MY
19 SAFETY. I JUST -- IT JUST OUTWEIGHED MY CONCERN NOT
20 TO BE SUSPICIOUS.

21 Q BY MR. CONN: SO DID YOU FEEL THAT IT
22 MIGHT LOOK SUSPICIOUS TO YOUR FATHER IF YOU REMAINED
23 IN THE FRONT OF YOUR -- IN THE FRONT OF THE BOAT THE
24 WHOLE TIME WITH YOUR BROTHER TALKING RATHER THAN
25 GOING BACK AND MINGLING WITH YOUR PARENTS IN THE
26 FISHING?

27 A WHAT WAS THE QUESTION? DO I THINK IT
28 DID?

44816

1 Q DID YOU FEEL THAT IT WOULD -- DID YOU
2 BELIEVE THAT IT MIGHT LOOK SUSPICIOUS TO YOUR
3 PARENTS IF YOU REMAINED IN THE FRONT OF THE BOAT THE
4 WHOLE TIME RATHER THAN GOING TO THE BACK OF THE BOAT
5 AND MINGLING WITH YOUR PARENTS?

6 A I'M NOT SURE. THERE WASN'T ANY
7 CONVERSATION ON THE WAY OVER TO THE MARINA.

8 CLEARLY, THERE WAS A LOT OF AGITATION INSIDE THE
9 FAMILY AT THAT POINT. I DON'T REMEMBER THOSE
10 THOUGHTS, OF IT BEING SUSPICIOUS, ACTUALLY BEING
11 THERE. THERE MIGHT HAVE BEEN.

12 Q AND HOW LONG DID THAT TRIP LAST, THAT
13 FISHING TRIP?

14 A ROUGHLY SIX HOURS.

15 Q AND WHEN YOU WERE DRIVING HOME FROM THE
16 FISHING TRIP, WAS THERE CONVERSATION IN THE CAR?

17 A I DON'T REMEMBER ANY CONVERSATION IN THE
18 CAR.

19 Q WAS IT QUIET JUST LIKE ON THE WAY OVER
20 TO THE FISHING TRIP, AS FAR AS YOU CAN RECALL?

21 A MY PARENTS DIDN'T SPEAK WITH US.

22 Q DO YOU RECALL YOU OR YOUR BROTHER TRYING
23 TO SPEAK TO YOUR PARENTS?

24 A NO.

25 Q DO YOU RECALL A CONVERSATION BETWEEN YOU
26 AND YOUR BROTHER IN THE PRESENCE OF YOUR PARENTS?

27 A AT WHAT POINT?

28 Q IN THE CAR ON THE WAY HOME.

44817

1 A NO, I DON'T.

2 Q SO STILL NO ONE WAS MAKING AN EFFORT TO

3 BREAK THE ICE OR TO RELIEVE THE TENSION A LITTLE

4 BIT?

5 A THAT'S EXACTLY RIGHT.

6 Q AND AS SOON AS YOU GOT HOME, THE FIRST

7 THING THAT YOU TOLD YOUR PARENTS WAS THAT YOU AND

8 YOUR BROTHER WERE GOING TO GO OUT AND HAVE A TALK;

9 IS THAT CORRECT?

10 A I DON'T THINK I USED THOSE WORDS. I

11 BELIEVE I SAID TO MY MOTHER, I'M GOING OUT. I DON'T

12 SPECIFICALLY REMEMBER SAYING IT. I REMEMBER OPENING

13 UP THE STUDY DOOR.

14 Q THIS WAS ABOUT MIDNIGHT THAT YOU AND

15 YOUR BROTHER WERE GOING OUT?

16 A RIGHT.

17 Q WAS THAT USUAL BEHAVIOR ON YOUR PART,

18 FOR YOU AND YOUR BROTHER TO JUST GO OFF SOMEWHERE AT

19 MIDNIGHT?

20 A I DON'T REMEMBER WHAT I SAID TO MY

21 MOTHER. BUT IT WAS THE SUMMER AND ORDINARILY HAD

22 NOTHING BEEN HAPPENING IN THE FAMILY, I COULD GO OUT

23 ANY TIME I PLEASED.

24 Q AND SO DID YOU GIVE YOUR PARENTS ANY

25 INDICATION AS TO WHERE YOU AND YOUR BROTHER WERE

26 GOING?

27 A I DON'T KNOW WHETHER I SAID TO MY MOTHER

28 I'M GOING OUT FOR A FEW MINUTES, I'LL BE BACK, OR

1 WHAT. BUT I -- I BELIEVE I DID SAY SOMETHING TO
2 HER.

3 Q WHY DO YOU BELIEVE YOU SAID SOMETHING TO
4 HER?

5 A BECAUSE I WOULDN'T HAVE LEFT WITHOUT
6 SAYING ANYTHING TO HER.

7 Q WHY?

8 A BECAUSE IT WAS MIDNIGHT AND I WANTED
9 THEM TO FEEL AT EASE AND I JUST DON'T BELIEVE I
10 COULD HAVE LEFT WITHOUT SAYING SOMETHING TO HER.

11 Q WHY DID YOU WANT THEM TO FEEL AT EASE AT
12 THAT POINT?

13 A I DIDN'T KNOW IF THEY MIGHT WONDER WHY
14 WE'RE LEAVING AT MIDNIGHT OR WHAT. I BELIEVE I
15 MENTIONED SOMETHING TO MY MOTHER.

16 Q AND WHAT WAS YOUR CONCERN ABOUT THEM
17 WONDERING WHERE YOU WERE GOING AT MIDNIGHT?

18 A MY CONCERN WAS ANYTHING THAT MADE THEM
19 FEEL UNEASY WHEN I DIDN'T WANT TO MAKE THEM FEEL
20 UNEASY, ANYTHING THAT MADE THEM FEEL OR WONDER, ARE
21 LYLE AND I UP TO SOMETHING STRANGE, ARE WE GOING TO
22 GO AWAY, ARE WE GOING TO GO TALK TO SOMEONE; ANY
23 TIME I DIDN'T HAVE TO DO THAT, I TRIED TO DO JUST
24 THE OPPOSITE.

25 Q WELL THEN, WHY, WHEN YOU WERE GOING HOME

26 IN THE CAR THAT DAY, WERE YOU SITTING THERE WITH
27 YOUR BROTHER IN TOTAL SILENCE AND NOT SAYING A WORD
28 TO THEM RATHER THAN SAYING SOMETHING LIKE, HEY, THAT

44819

1 WAS A GREAT TRIP?

2 A MAYBE I'M NOT CONVEYING THE UNEASINESS
3 THAT WAS GOING ON AT THE TIME. I'M IN THE CAR. I'M
4 WITH MY PARENTS. THERE'S BEEN THIS EXTREME BLOWUP
5 ON THURSDAY. THINGS HAVE COME OUT THAT I DIDN'T
6 FATHOM BEFORE. I HAVE NOT SPOKEN TO MY FATHER SINCE
7 THURSDAY NIGHT, AT LEAST NOT A SUBSTANCE
8 CONVERSATION, AND I'M NOT GOING TO BRING UP TO MY
9 PARENTS A SINGLE THING. I'M NOT THE TYPE OF PERSON
10 THAT WAS ABLE TO DO THAT. I WASN'T -- I WAS TRAINED
11 TO DO JUST THE OPPOSITE IN MY LIFE. AND I JUST --
12 THE PRESSURE AND THE INTENSITY OF THE DRIVE HOME WAS
13 OF THE KIND THAT I JUST COULD NOT DO THAT AND I
14 WOULDN'T.

15 Q DIDN'T THE FACT THAT IT WAS SO UNEASY
16 AND SO UNCOMFORTABLE IN THAT CAR GIVE YOU ALL THE
17 MORE REASON TO SAY SOMETHING THAT WOULD LIGHTEN THE
18 MOOD A LITTLE BIT?

19 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

20 THE COURT: SUSTAINED.

21 Q BY MR. CONN: DID YOU FEEL THAT IN LIGHT
22 OF THE FACT IT WAS SO UNEASY AND SO UNCOMFORTABLE IN
23 THAT CAR, THAT IF YOU SAID SOMETHING SUCH AS ENJOYED
24 THE TRIP, IT MIGHT HELP TO LIGHTEN THE ATMOSPHERE A
25 LITTLE BIT?

26 A I CAN ONLY CONVEY TO YOU THE
27 RELATIONSHIP THAT I HAD WITH MY MOTHER, THAT MY
28 BROTHER HAD WITH MY MOTHER, THAT WE HAD WITH OUR

44820

1 FATHER, AND IT WASN'T OF THE SORT TO ENTER INTO
2 CONVERSATIONS UNDER EXTREME PRESSURE UNDER ANY
3 CIRCUMSTANCES. UNDER THIS KIND OF PRESSURE AND THIS
4 KIND OF INTENSITY, IT WAS JUST -- I MEAN, I CANNOT
5 EVEN FATHOM IT. I JUST -- I COULDN'T DO IT.

6 Q NOW, AFTER SPENDING THE WHOLE DAY -- MOST
7 OF THE DAY SITTING IN THE FRONT OF THE BOAT TALKING
8 TO YOUR BROTHER LYLE, WHY WAS IT THAT WHEN YOU GOT
9 HOME AT ABOUT MIDNIGHT THE ONE THING THAT YOU WANTED
10 TO DO WAS GO OUT WITH YOUR BROTHER AND TALK A LITTLE
11 BIT MORE?

12 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.
13 IT CALLS FOR A CONCLUSION AND IT'S COMPOUND. AND
14 MISSTATES THE TESTIMONY.

15 THE COURT: IT'S ARGUMENTATIVE.

16 Q BY MR. CONN: CAN YOU TELL US WHY IT IS
17 THAT YOU WANTED TO GO OUT WITH YOUR BROTHER AFTER
18 YOU GOT HOME ON SATURDAY NIGHT?
19 A BECAUSE NOTHING HAD HAPPENED ON THE
20 FISHING TRIP. I WANTED TO TALK TO HIM ABOUT THAT.
21 I FELT BETTER ABOUT THAT. I DIDN'T KNOW WHY MY
22 MOTHER WAS SO CONCERNED THAT THERE WERE TWO EXTRA
23 PEOPLE ON THE BOAT OR THE FACT THAT IT WAS SMALLER.
24 I BRUSHED IT OFF AS SOMETHING THAT COULD BE
25 ANYTHING. BUT I DIDN'T UNDERSTAND WHY SHE WAS
26 CONCERNED ABOUT TWO EXTRA PEOPLE, YET I FELT MUCH
27 BETTER AND VERY RELIEVED THAT NOTHING HAD HAPPENED
28 ON THE FISHING TRIP, STILL THAT NO ONE WAS SAYING

44821

1 ANYTHING INSIDE THE CAR. I DIDN'T KNOW WHAT WE WERE
2 GOING TO DO THE NEXT DAY. I WANTED TO TALK ABOUT IT
3 WITH MY BROTHER.

4 Q YOU -- YOU WERE CONCERNED ABOUT YOUR
5 MOTHER'S CONCERN ABOUT TWO EXTRA PEOPLE ON THE
6 BOAT?

7 A YES.

8 Q ISN'T THAT SOMETHING THAT YOU AND YOUR
9 BROTHER HAD ABOUT FIVE OR SIX HOURS TO TALK ABOUT
10 WHILE YOU WERE ON THAT BOAT?

11 A YES.

12 Q AND NOW YOU'RE TELLING US THAT AFTER YOU
13 GET HOME, AFTER SITTING NEXT TO YOUR BROTHER IN THE
14 FRONT OF THAT BOAT FOR FIVE OR SIX HOURS, ONE OF THE
15 REASONS WHY YOU WANTED TO GO OUT WAS TO TALK TO YOUR
16 BROTHER SOME MORE ABOUT YOUR MOTHER'S CONCERN ABOUT
17 TWO EXTRA PEOPLE ON THE BOAT?

18 A WHAT I'M TRYING TO CONVEY TO YOU IS THAT
19 THERE WERE SO MANY THINGS THAT WERE UNCERTAIN AND WE
20 DIDN'T KNOW WHAT WAS GOING ON AT THE TIME THAT ALL
21 OF THESE THINGS WERE JUST MUSHED TOGETHER AND THERE
22 WASN'T A SPECIFIC POINT THAT I WANTED TO TALK TO
23 LYLE ABOUT. I WANTED TO TALK TO LYLE ABOUT, JUST IN
24 GENERAL, EVERYTHING THAT HAD HAPPENED WHEN WE WERE
25 WITH OUR PARENTS ON THE TRIP AND WHAT IT MEANT AND
26 WHAT WE WERE GOING TO DO ABOUT IT.

27 Q MR. MENENDEZ, IF YOU WERE CONCERNED
28 ENOUGH TO TELL YOUR MOTHER THAT YOU WERE GOING OUT

44822

1 BECAUSE YOU DIDN'T WANT TO ROUSE ANY SUSPICION, DID
2 YOU FEEL THAT THE VERY FACT THAT YOU'RE GOING OUT
3 WITH YOUR BROTHER THAT LATE AT NIGHT, WITHOUT HAVING
4 ANY CONVERSATIONS WITH YOUR PARENTS ALL DAY LONG,
5 MIGHT TEND TO CAUSE THEM EVEN MORE CONCERN ABOUT

6 YOUR BEHAVIOR?

7 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

8 THE COURT: REPHRASE THE QUESTION.

9 Q BY MR. CONN: DID YOU FEEL THAT GOING
10 OUT WITH YOUR BROTHER AT MIDNIGHT, HAVING NOT SPOKEN
11 TO YOUR PARENTS ALL DAY LONG, MIGHT ROUSE SOME
12 SUSPICION IN THEM?

13 A NOT IF I TOLD THEM THAT I WAS GOING TO
14 OUT.

15 Q SO YOU FELT THAT AS LONG AS YOU TOLD
16 YOUR MOTHER YOU WERE GOING OUT, THEN SHE WOULD HAVE
17 ABSOLUTELY NO CONCERN OR SUSPICION ABOUT WHY YOU AND
18 YOUR BROTHER WERE GOING OUT; IS THAT CORRECT?

19 A I DIDN'T KNOW WHAT WAS IN MY MOTHER'S
20 MIND.

21 Q I'M ASKING YOU WHAT WAS IN YOUR MIND?

22 A IF I MENTIONED THAT I WAS GOING OUT TO
23 HER, AND I'M CERTAIN THAT I DID, THEN THAT WOULD --
24 THAT WOULD JUST TAKE AWAY THAT -- THAT UNEASE. I
25 MEAN, IT WOULDN'T -- YES.

26 Q YOU BELIEVED THAT THE FACT THAT YOU WERE
27 GOING OUT LATE AT NIGHT WOULD NOT CAUSE YOUR MOTHER
28 ANY CONCERN?

1 MR. LEVIN: OBJECTION. ASKED AND ANSWERED.

2 THE WITNESS: HAD I NOT --

3 THE COURT: OVERRULED.

4 THE WITNESS: HAD I NOT SAID ANYTHING TO HER,
5 IT MIGHT HAVE. BUT I DID.

6 Q BY MR. CONN: HOW LONG DID YOU STAY OUT
7 WITH YOUR BROTHER?

8 A LESS THAN AN HOUR.

9 Q AND YOU WENT TO THE STADIUM AT U.C.L.A.?

10 A THE TRACK FIELD.

11 Q DID YOU TALK ABOUT KILLING YOUR PARENTS
12 THE NEXT DAY?

13 A NO.

14 Q AND YOU CAME BACK TO YOUR HOME AND WHAT
15 DID YOU DO WHEN YOU ARRIVED HOME?

16 A I TRIED THE STUDY DOOR, WHICH I'D OPENED
17 BEFORE I LEFT. IT WAS NOW LOCKED. SO I RANG THE
18 DOORBELL.

19 Q OKAY. NOW, YOU FELT THAT YOUR PARENTS
20 WERE PERHAPS ON THE EDGE OF KILLING YOU AT ANY
21 MOMENT, DIDN'T YOU?

22 A WELL, BECAUSE OF MY DISCUSSION AT
23 U.C.L.A., I WASN'T CERTAIN, DIDN'T KNOW WHAT WAS
24 HAPPENING; AND I DIDN'T KNOW WHAT WAS GOING TO
25 HAPPEN, AND THAT'S WHAT CAUSED A LOT OF THE THINGS.

26 Q WELL, WHAT DID YOU DISCUSS AT U.C.L.A.
27 THAT YOU HADN'T DISCUSSED ON THE BOAT?

28 A WHAT THE OVERALL EFFECT OF THE BOAT

1 TRIP, WHAT WE WERE GOING TO DO THE NEXT DAY, WHY WE
2 WERE GOING TO DO IT, WHAT THE SILENCE IN THE CAR
3 BACK MEANT, IF THAT HAD ANYTHING TO DO WITH IT. IT
4 WAS JUST EVERYTHING. I -- NOT SPECIFIC THINGS. IT
5 WAS EVERYTHING, WHAT WE DISCUSSED.

6 Q NOW, YOU COULD HAVE JUST GONE OVER TO
7 THE GUESTHOUSE AND SLEPT IN THE GUESTHOUSE WITH YOUR
8 BROTHER; IS THAT CORRECT?

9 A I COULD HAVE AND I WANTED TO.

10 Q BUT YOU DECIDED THAT THE WISER THING TO
11 DO WOULD BE TO WAKE UP YOUR PARENTS?

12 A THAT WAS THE DECISION THAT WAS
13 DETERMINED TO BE THE WISEST, I SUPPOSE.

14 Q WAS IT -- DID YOU FEEL THAT THAT WAS THE
15 WISER DECISION?

16 A NOT REALLY, NO.

17 Q WHY'D YOU DO IT?

18 A BECAUSE IN TALKING TO LYLE, I FELT IT
19 WAS THE BEST THING. I DIDN'T FEEL THAT IT WAS THE
20 WISEST MORE EMOTIONALLY. I DIDN'T WANT TO BE IN
21 THAT HOUSE. SO WHETHER IT WAS A GOOD IDEA OR NOT, I
22 WASN'T AS CONCERNED ABOUT AS I JUST DIDN'T WANT TO
23 BE THERE.

24 Q NOW, YOU DIDN'T HAVE A KEY TO THE

25 HOUSE?

26 A NO.

27 Q AND YOU DIDN'T HAVE A KEY BECAUSE YOUR

28 MOTHER DIDN'T WANT YOU TO HAVE A KEY?

44825

1 A YES.

2 Q AND SINCE THAT WAS THE RULE, YOU DIDN'T

3 VIOLATE THAT RULE; IS THAT CORRECT?

4 A I DON'T THINK IT CROSSED MY MIND TO GET

5 A KEY. IT JUST WAS THE RULE OF THE HOUSE.

6 Q AND YOU NEVER MADE A COPY OF A KEY

7 WHENEVER YOU HAD THE KEY -- A COPY OF THE KEY IN YOUR

8 POSSESSION, DID YOU?

9 A SHE DID NOT WANT ME TO HAVE A KEY ON MY

10 KEY CHAIN, SO I DIDN'T HAVE A KEY ON THE KEY CHAIN.

11 Q WELL, REGARDLESS OF WHETHER IT'S ON YOUR

12 KEY CHAIN OR NOT, DID YOU EVER MAKE A COPY OF A KEY

13 SO YOU CAN KEEP A COPY OF THE KEY IN YOUR POCKET

14 WHENEVER YOU NEEDED IT?

15 A EVEN THOUGH MY MOTHER HAD ASKED ME -- OR

16 BASICALLY TOLD US THAT WE WERE NOT SUPPOSED TO DO

17 THAT?

18 Q YES.

19 A NO.

20 Q AND BECAUSE YOU DIDN'T -- FELT YOU DIDN'T

21 HAVE PERMISSION TO DO THAT?

22 A RIGHT.

23 Q MR. MENENDEZ, YOU DIDN'T FEEL YOU HAD

24 PERMISSION TO CARRY SHOTGUNS INSIDE THE HOUSE AND

25 OUT, DID YOU?

26 A IT'S A COMPLETELY DIFFERENT SITUATION,

27 NOT EVEN RELATED, NOT EVEN ANALOGOUS. I CAN'T

28 IMAGINE HOW YOU CAN PUT THE TWO TOGETHER.

44826

1 Q WHY NOT?

2 A VIOLATING MY PARENTS' ORDERS WASN'T

3 SOMETHING I WAS GOING TO DO. IF SHE DID NOT WANT ME

4 TO HAVE A KEY, SHE TOLD ME SHE DIDN'T WANT ME TO

5 HAVE A KEY. IT WAS THE RULE FROM THE HOUSE BEFORE,

6 IT JUST -- I JUST DIDN'T DO IT.

7 Q AND YOU CAN'T IMAGINE YOURSELF VIOLATING

8 THAT RULE; IS THAT CORRECT?

9 A WHO I WAS AT THE TIME, I WOULDN'T HAVE

10 DONE IT AND I DIDN'T DO IT.

11 Q YOU WERE THE KIND OF PERSON WHO WOULD

12 NOT CARRY A KEY INTO THAT HOUSE WITHOUT YOUR

13 MOTHER'S PERMISSION, BUT YOU WERE THE KIND OF PERSON

14 WHO WOULD CARRY A LOADED SHOTGUN INTO THE HOUSE TO

15 POSSIBLY SHOOT YOUR MOTHER?

16 A UNDER THE CONDITIONS AT THE TIME, IT'S
17 COMPLETELY DIFFERENT. I DON'T -- THE ANSWER IS YES.

18 Q THE ANSWER IS YES TO WHAT? YOU ARE THAT
19 TYPE OF PERSON?

20 A I WOULD NOT HAVE VIOLATED MY MOTHER'S
21 ORDER TO NOT CARRY A KEY. I DON'T SPECIFICALLY
22 REMEMBER IT. I'M SURE I COMPLAINED I WANT TO HAVE A
23 KEY. SHE SAID NO. I -- THAT WAS THE FINAL DECISION
24 AND SO I DIDN'T HAVE A KEY. ME CARRYING A SHOTGUN
25 HAD ONLY TO DO WITH THE BLOWUP ON THURSDAY AND
26 WHAT -- WHAT HAPPENED ON THURSDAY AND WHAT WAS
27 REVEALED. IT WAS A VERY DIFFERENT SITUATION.

28 Q MR. MENENDEZ, CAN YOU EXPLAIN TO US HOW

44827

1 YOU COULD BE THE TYPE OF PERSON WHO WOULD CARRY A
2 LOADED SHOTGUN INTO THE HOUSE TO POSSIBLY USE
3 AGAINST YOUR MOTHER AND YET AT THE SAME TIME NOT BE
4 THE KIND OF PERSON WHO WOULD CARRY A KEY INTO THE
5 HOUSE WITHOUT YOUR MOTHER'S PERMISSION?

6 A I DON'T BELIEVE THAT --

7 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

8 THE COURT: SUSTAINED.

9 Q BY MR. CONN: SO WHEN YOU RANG THE

10 DOORBELL, WHAT HAPPENED?

11 A MY MOTHER CAME DOWN FROM UPSTAIRS.

12 Q AND HOW DID SHE RESPOND TO YOUR

13 AWAKENING HER AT THAT TIME OF THE NIGHT?

14 A SHE WAS --

15 MR. LEVIN: OBJECTION, YOUR HONOR. IT

16 ASSUMES FACTS NOT IN EVIDENCE.

17 THE COURT: SUSTAINED. REPHRASE THE

18 QUESTION.

19 Q BY MR. CONN: WHAT HAPPENED WHEN SHE

20 CAME DOWNSTAIRS?

21 A SHE WAS UPSET AT US.

22 Q AND WHAT DID SHE SAY TO YOU?

23 A SHE TOLD US THAT WE SHOULD HAVE HAD A

24 KEY.

25 Q AND DID YOU TELL HER, THIS IS YOUR IDEA,

26 MOM. I'D BE WILLING TO CARRY A KEY?

27 A ALMOST EXACTLY WHAT LYLE SAID TO HER IN

28 THE FOYER. AND SHE SAID THAT'S NO EXCUSE. YOU

44828

1 SHOULD HAVE HAD A KEY, SHOULDN'T HAVE WOKEN HER OR

2 HAVE HER HAVE TO GET OUT OF BED AT THAT TIME OF

3 NIGHT.

4 Q DID LYLE SAY, OKAY, I'LL MAKE A KEY

5 TOMORROW?

6 A NO. THERE WAS JUST A BIG -- SHE JUST
7 STARTED SCREAMING. IT WAS A BIG BLOWUP OVER THE KEY
8 AND WE -- LYLE SAID, IT'S YOUR IDEA. SHE SAID,
9 THAT'S NO EXCUSE. I SAID SOMETHING. SHE TOLD ME TO
10 SHUT UP, THAT IT WAS ALL MY FAULT. IF I WOULD HAVE
11 KEPT MY MOUTH SHUT THINGS WOULD HAVE WORKED OUT IN
12 THIS FAMILY. AND IT ENDED SOON AFTER THAT.

13 Q AND THEN YOU --

14 A IT WAS SHORT AND THEN SHE WENT BACK
15 UPSTAIRS.

16 Q AND THEN YOU KNEW FOR SURE THAT YOUR
17 PARENTS WERE GOING TO KILL YOU; IS THAT CORRECT?

18 A THAT MADE ME FRIGHTENED, YES.

19 Q SURE BUT NOT CERTAIN THAT YOUR PARENTS
20 WERE GOING TO KILL YOU?

21 A RIGHT.

22 Q SO TELL US HOW YOU COULD BE SURE BUT NOT
23 CERTAIN THAT YOUR PARENTS WERE GOING TO KILL YOU.

24 A SHE WAS TALKING ABOUT US BEING A FAMILY
25 IN THE PAST TENSE. THAT FRIGHTENED ME. I WAS
26 ALREADY UNEASY. IT JUST HEIGHTENED MY CONCERN. I
27 THOUGHT THAT SOMETHING VERY DEFINITELY MIGHT HAPPEN
28 AT THAT POINT WHEN SHE WAS TALKING ABOUT -- AFTER SHE

1 SAID THAT, BUT I COULDN'T BE CERTAIN.

2 Q AND BECAUSE YOU COULDN'T BE CERTAIN, YOU
3 STAYED HOME THAT NIGHT?

4 A I WANTED TO SLEEP IN THE GUESTHOUSE AT
5 THAT POINT. LYLE TOLD ME TO SLEEP IN MY BEDROOM.

6 Q IF YOU HAD BEEN CERTAIN THAT YOUR
7 PARENTS WERE GOING TO KILL YOU, YOU WOULD HAVE LEFT;
8 IS THAT CORRECT?

9 A HAD I BEEN CERTAIN MY PARENTS WERE GOING
10 TO KILL ME, I DON'T KNOW WHAT I WOULD HAVE DONE.

11 Q YOU MIGHT HAVE STAYED ANYWAY?

12 MR. LEVIN: OBJECTION. CALLS FOR
13 SPECULATION.

14 THE COURT: OVERRULED.

15 THE WITNESS: I DON'T KNOW WHAT I WOULD HAVE
16 DONE.

17 Q BY MR. CONN: BUT SINCE YOU WEREN'T
18 CERTAIN THAT YOUR PARENTS WERE GOING TO KILL YOU,
19 YOU DECIDED TO STAY; IS THAT CORRECT?

20 A RIGHT.

21 Q AND YOU STAYED IN YOUR OWN ROOM THAT
22 NIGHT?

23 A YES.

24 Q NOW, BEFORE -- AFTER YOUR MOTHER HAD THIS
25 CONVERSATION WITH YOU, DID SHE THEN GO BACK UP TO
26 THE BEDROOM AND LEAVE YOU AND LYLE ALONE
27 DOWNSTAIRS?

44830

1 Q AND THEN YOU WERE ABLE TO TALK A LITTLE
2 BIT MORE WITH YOUR BROTHER AFTER YOUR MOTHER LEFT?

3 A I WENT BACK OUTSIDE. I ASKED LYLE WHAT
4 HE THOUGHT THAT MEANT. I TOLD HIM I DIDN'T WANT TO
5 SLEEP IN THE MAIN HOUSE ANYMORE. WE DECIDED TO STAY
6 WITH OUR ORIGINAL IDEA OF HIM TRYING TO TALK TO MOM
7 AND DAD THE NEXT DAY, ON SUNDAY.

8 Q NOW, WHILE YOU WERE ON THE BOAT TRIP
9 WITH YOUR BROTHER THAT DAY, DID EITHER YOU OR YOUR
10 BROTHER SAY TO EACH OTHER, THE ONE THING WE HAVE TO
11 REMEMBER TO DO WHEN WE GO HOME IS TO TAKE THE
12 USELESS AMMUNITION OUT OF THE SHOTGUNS AND PUT IN
13 THE BUCKSHOT?

14 A NO.

15 Q WHY NOT?

16 MR. LEVIN: OBJECTION, YOUR HONOR. CALLS FOR
17 SPECULATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: I DON'T REMEMBER. I DON'T
20 REMEMBER THE THOUGHT OCCURRING TO ME. I DON'T THINK
21 IT DID. I CAN'T TELL YOU WHY THE THOUGHT DIDN'T
22 OCCUR TO ME. IT JUST DIDN'T. IT JUST DIDN'T.

23 Q BY MR. CONN: IT NEVER OCCURRED TO YOU,
24 ON ALL OF THOSE HOURS ON THE BOAT, THAT YOU HAD
25 USELESS AMMUNITION IN THE WEAPON THAT YOU WERE GOING
26 TO USE TO DEFEND YOUR LIFE; IS THAT CORRECT?

27 A MAYBE I SHOULD NOT HAVE USED THE WORD
28 "USELESS." THE MAN IN THE GUN STORE TOLD ME THIS

44831

1 AMMUNITION IS -- IS NOT GOING TO DEFEND ME FOR HOME
2 PROTECTION, AND SO I -- THAT'S BASICALLY HOW I FELT,
3 HOW I CHARACTERIZED IT. I DON'T KNOW. I JUST
4 DIDN'T THINK ABOUT IT ON THE FISHING TRIP. I WAS
5 CONCERNED ABOUT WHAT WAS HAPPENING ON THE FISHING
6 TRIP. WHEN I TOOK THE GUN UP TO MY ROOM, I REALIZED
7 IT THEN AND AT THAT POINT IT WAS TOO LATE.

8 Q DIDN'T YOU PREVIOUSLY TESTIFY THAT THE
9 MAN IN THE GUN STORE TOLD YOU THAT THE AMMUNITION
10 WAS ESSENTIALLY USELESS?

11 A WHAT I'M SAYING IS THAT'S WHAT I GOT OUT
12 OF IT.

13 Q ALL RIGHT.

14 A I DON'T THINK HE USED THE WORD
15 "USELESS." HE TOLD ME THAT THESE SHOTS WERE FOR
16 KILLING BIRDS AND SMALL ANIMALS LIKE THAT. AND
17 THAT'S WHY I JUST --

18 Q SO YOU KNEW THE AMMUNITION WAS

19 ESSENTIALLY USELESS; IS THAT CORRECT?

20 A RIGHT. THAT'S PRETTY MUCH HOW I FELT.

21 YES.

22 Q SO WHEN YOU WENT TO U.C.L.A. TO THE

23 TRACK FIELD AND YOU WERE SITTING THERE WITH YOUR

24 BROTHER -- LET ME ASK YOU THIS: WHAT CAR DID YOU USE

25 TO DRIVE OVER TO THE TRACK FIELD?

26 A WE ALWAYS USED MY CAR. HIS CAR WASN'T

27 WORKING WELL.

28 Q SO YOU HAD THE -- YOU STILL HAD THE

44832

1 BUCKSHOT INSIDE YOUR CAR.

2 A RIGHT.

3 Q AND YOU STILL HAD YOUR SHOTGUN INSIDE

4 YOUR CAR; IS THAT CORRECT?

5 A RIGHT.

6 Q AND YOU STILL BELIEVED YOUR PARENTS WERE

7 GOING TO KILL YOU; IS THAT CORRECT?

8 A I WASN'T SURE.

9 Q SO WHILE YOU WERE AT THE TRACK FIELD

10 WITH YOUR BROTHER, DID EITHER YOU TURN TO YOUR

11 BROTHER OR DID YOUR BROTHER TURN TO YOU AND SAY, THE

12 ONE THING WE HAVE TO REMEMBER IS TO LOAD UP THAT GUN

13 BEFORE WE GO TO BED TONIGHT?

14 A NO.

15 Q WHY NOT?

16 A I DON'T KNOW. IT WOULD HAVE BEEN A

17 GREAT IDEA. I WISH I WOULD HAVE THOUGHT OF IT.

18 IT'S WHAT I SHOULD HAVE DONE. I SHOULD HAVE DONE A

19 LOT OF DIFFERENT THINGS THAT I DIDN'T DO. I SHOULD

20 HAVE CAME UP WITH A LOT OF DIFFERENT THINGS THAT

21 WERE GOING THROUGH MY MIND. WHEN I'M IN THAT

22 SITUATION AND THOSE NIGHTS AND I'M SCARED, YOU JUST

23 THINK WHAT YOU THINK AND YOU DO WHAT YOU FEEL IS

24 BEST AT THE TIME. SIX YEARS LATER I CAN ANALYZE IT

25 AND SAY WHY DIDN'T YOU DO THAT AND WHY DIDN'T YOU DO

26 THAT. BUT AT THE TIME IT WAS WHAT I THOUGHT -- I

27 DID WHAT I THOUGHT I COULD DO BEST.

28 Q AND WHEN YOU'RE IN THAT KIND OF

44833

1 SITUATION IN WHICH YOU FEEL LIKE YOU MIGHT BE

2 KILLED, YOU DO THINGS TO PROTECT YOURSELF; IS THAT

3 CORRECT?

4 MR. LEVIN: OBJECTION. VAGUE.

5 THE COURT: OVERRULED.

6 THE WITNESS: I DON'T KNOW WHAT YOU MEAN BY

7 THAT.

8 Q BY MR. CONN: I'M SAYING, MR. MENENDEZ,
9 THAT WHEN YOU FEEL THAT YOU'RE IN DANGER, YOU TEND
10 TO THINK ABOUT THINGS AND DO THINGS THAT YOU COULD --
11 TO PROTECT YOURSELF; IS THAT CORRECT?

12 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

13 THE COURT: OVERRULED.

14 THE WITNESS: PHILOSOPHICALLY? YES.

15 Q BY MR. CONN: NO. I'M TALKING ABOUT IN
16 THE SITUATION THAT YOU WERE IN.

17 MR. LEVIN: OBJECTION. IT'S VAGUE.

18 THE WITNESS: WHAT I DID --

19 MR. LEVIN: JUST A MINUTE.

20 VAGUE WITH RESPECT TO WHAT TIME HE'S
21 REFERRING TO.

22 THE COURT: OKAY. YOU'RE TALKING ABOUT THAT
23 SATURDAY?

24 MR. CONN: YES, YOUR HONOR.

25 THE COURT: AND HIS THOUGHTS AT THAT TIME?

26 MR. CONN: YES.

27 THE COURT: OKAY.

28 THE WITNESS: WHEN ON SATURDAY?

44834

1 Q BY MR. CONN: I'M TALKING ABOUT ALL DAY
2 LONG SATURDAY. DID YOU HAVE THOUGHTS ABOUT

3 PROTECTING YOURSELF?

4 A RIGHT.

5 Q AND DID THOSE THOUGHTS ABOUT PROTECTING
6 YOURSELF HAVE ANYTHING TO DO WITH THE FACT THAT THE
7 GUN THAT YOU WERE GOING TO USE TO PROTECT YOURSELF
8 HAD ESSENTIALLY USELESS AMMUNITION IN IT?

9 A THOUGHTS THAT -- COULD YOU REPEAT IT,
10 PLEASE.

11 Q YES.

12 DID ANY OF YOUR THOUGHTS THAT DAY
13 INCLUDE A CONCERN ABOUT THE FACT THAT THE AMMUNITION
14 THAT WAS IN THE GUN THAT YOU WERE GOING TO USE TO
15 PROTECT YOURSELF WAS ESSENTIALLY USELESS
16 AMMUNITION?

17 A THE WHOLE DAY?

18 Q AT ANY TIME THAT DAY DID YOU THINK ABOUT
19 THAT?

20 A I SPECIFICALLY REMEMBER IT SATURDAY
21 NIGHT WHEN MY DAD WAS BANGING ON MY DOOR.

22 Q OKAY. SO UP UNTIL SATURDAY NIGHT IT
23 DIDN'T OCCUR TO YOU, RIGHT?

24 A NO.

25 Q SO WHEN YOU -- WHEN YOU FINISHED TALKING
26 TO LYLE ON SATURDAY NIGHT AFTER YOUR MOTHER HAD GONE
27 UPSTAIRS, YOU THEN TOOK YOUR GUN UPSTAIRS WITH YOU;
28 IS THAT CORRECT?

1 A YES.

2 Q NOW, DID YOU HAVE TO PUT IT BACK INSIDE

3 A BAG OR WAS IT ALREADY INSIDE A BAG?

4 A I DON'T REMEMBER. I JUST REMEMBER

5 CARRYING IT IN THE BAG UPSTAIRS.

6 Q OKAY. SO YOU TOOK THAT GUN WITH YOU

7 UPSTAIRS AND DID YOU BRING THE BOX OF AMMUNITION

8 WITH YOU UPSTAIRS?

9 A NO.

10 Q WHY NOT?

11 A I DON'T KNOW WHY NOT.

12 Q YOU DIDN'T THINK ABOUT IT?

13 A I DON'T KNOW WHETHER -- I DON'T THINK I

14 THOUGHT ABOUT IT. I DON'T KNOW WHY I DIDN'T THINK

15 ABOUT IT. I GUESS I WOULD HAVE. I WAS THINKING

16 ABOUT SO MANY THINGS, FEELING SO MANY THINGS, THAT I

17 JUST DIDN'T DO IT.

18 Q OKAY. AND DID LYLE MENENDEZ ASK YOU FOR

19 ANY AMMUNITION BEFORE YOU WENT UP TO YOUR ROOM?

20 A NO.

21 Q NOW, AFTER YOU WENT UPSTAIRS, YOUR

22 FATHER BEGAN TO BANG ON YOUR DOOR AT SOME POINT; IS

23 THAT CORRECT?

24 A YES.

25 Q AND THEN AT THAT POINT YOU SAID, I

26 FORGOT TO LOAD MY GUN; IS THAT CORRECT?

27 A WHEN HE FIRST STARTED BANGING ON MY
28 DOOR, MY FIRST -- THE FIRST THING I DID WAS JUMP UP,

44836

1 RUN TO MY GUN AND GET IT. IT WAS WHEN I WAS HOLDING
2 IT AND THINKING ABOUT WHAT WOULD HAPPEN, PICTURED
3 HIM BUSTING OPEN THE DOOR, YES, THEN I -- IT OCCURRED
4 TO ME.

5 Q IT OCCURRED TO YOU THAT YOU HADN'T
6 LOADED YOUR GUN?

7 A THAT I HADN'T REPLACED THE SHELLS THAT I
8 HAD ORIGINALLY PUT IN THERE WITH THE NEW ONES.

9 Q OKAY. AND DID YOU RESOLVE TO DO
10 SOMETHING AT THAT POINT IN TIME?

11 A I WASN'T THINKING ABOUT THE FUTURE. I
12 WAS THINKING ABOUT HOW I WAS GOING TO HANDLE THE
13 SITUATION IN FRONT OF ME AT THAT POINT.

14 Q SO YOU MADE NO RESOLUTION?

15 A WHEN HE WAS BANGING ON THE DOOR, NO.

16 Q AT ANY TIME THAT NIGHT DID YOU MAKE ANY
17 RESOLUTION CONCERNING WHAT YOU WERE GOING TO DO WITH
18 RESPECT TO THE USELESS AMMUNITION THAT WAS INSIDE
19 YOUR GUN?

20 A I'M SURE THAT I SAID I'M SURE THAT I
21 DID.

22 Q AND WHAT RESOLUTION DID YOU MAKE THAT
23 EVENING?

24 A I DON'T REMEMBER MAKING THE RESOLUTION,
25 BUT AFTER HE LEFT I'M SURE -- I WAS THINKING, WHY
26 DIDN'T I REPLACE THE AMMUNITION? THIS WAS STUPID.
27 AND I'M SURE THAT I WAS GOING TO THE NEXT DAY.

28 Q AND HOW WERE YOU SURE -- AS YOU SIT THERE

44837

1 TODAY, HOW ARE YOU SURE THAT YOU RESOLVED IN YOUR
2 MIND THAT YOU WERE GOING TO REPLACE THE AMMUNITION
3 THE NEXT DAY?

4 A I'M ONLY MAKING THE LOGICAL JUMP THAT I
5 DID BECAUSE I WAS SO CONCERNED ABOUT IT WHEN HE WAS
6 BANGING DOWN THE DOOR, THAT I DID. I DON'T
7 SPECIFICALLY REMEMBER SAYING IT TO MYSELF.

8 Q SO YOU'RE JUST SAYING YOU ASSUMED THAT
9 YOU DID; IS THAT CORRECT?

10 A YES.

11 Q I'M JUST ASKING ABOUT WHAT YOU
12 REMEMBER.

13 DO YOU RECALL MAKING A RESOLUTION IN
14 YOUR MIND THAT NIGHT THAT YOU WERE GOING TO LOAD
15 YOUR GUN THE FIRST THING SUNDAY MORNING?

16 A NO.

17 Q OKAY. AND WHEN YOUR FATHER WAS BANGING
18 ON THE DOOR, WHAT WAS HE SAYING?
19 A OPEN THE GODDAMN DOOR.
20 Q NOW, DID IT STRIKE YOU AS ODD THAT THE
21 LAST TIME YOU HAD SPOKEN TO YOUR FATHER HE WAS -- HE
22 WAS LUNGING AT YOU AND THEN THERE WAS THIS TIME
23 PERIOD ALL DAY FRIDAY AND ALL DAY SATURDAY WHEN HE
24 MADE NO VIOLENT GESTURES TOWARDS YOU AND NOW HE WAS
25 SUDDENLY MAKING ANOTHER VIOLENT GESTURE TOWARD YOU?
26 A THE WHOLE WEEKEND WAS THE STRANGEST
27 THING I HAD EVER EXPERIENCED. THE WHOLE WEEKEND WAS
28 ODD. THURSDAY NIGHT WAS ODD. IT WAS JUST ODD.

44838

1 Q SO THIS STRUCK YOU AS ODD?
2 A THAT HE WAS BANGING DOWN MY DOOR?
3 Q YES.
4 A AT THIS POINT I WASN'T THINKING THAT
5 THIS WAS ODD. I WAS THINKING HOW AM I GOING TO DEAL
6 WITH THIS SITUATION, SITTING ON MY BED WONDERING IF
7 I'M GOING TO BE ABLE TO SHOOT THIS GUN.
8 Q ARE YOU SAYING THE WHOLE WEEKEND STRUCK
9 YOU AS ODD EXCEPT THIS INCIDENT?
10 A I'M SAYING DURING THIS INCIDENT I WASN'T
11 THINKING ABOUT WHETHER THE WEEKEND WAS ODD, ONLY

12 WHETHER I WAS GOING TO BE ABLE TO FIRE THE GUN, NOT
13 WANTING TO FIRE THE GUN, NOT KNOWING IF I WAS GOING
14 TO FREEZE.

15 Q YOU REALIZED AT THAT POINT THAT THE
16 AMMUNITION YOU HAD AT THAT POINT WAS ESSENTIALLY
17 USELESS; IS THAT CORRECT?

18 A NO. I'LL TELL YOU WHAT I THOUGHT.

19 I THOUGHT THAT IF HE BUSTED OPEN THE
20 DOOR, THAT I WOULD FIRE THE TWO ROUNDS AT HIM, IF I
21 COULD, AND THAT I DIDN'T KNOW IF IT WOULD BE ABLE TO
22 STOP HIM. AND EVEN IF IT WAS ABLE TO, THAT MY
23 MOTHER WOULD BE RIGHT THERE.

24 Q AND WAS IT YOUR BELIEF AT THAT TIME THAT
25 YOUR FATHER WAS GOING TO COME INTO THE ROOM AND KILL
26 YOU?

27 A HE WAS CERTAINLY COMING IN MY ROOM FOR
28 SOMETHING. IT WAS MORE PRESENT IN MY MIND, I THINK,

44839

1 SEX. BUT IT EQUATED THE SAME THING TO ME BECAUSE I
2 WAS GOING TO BE SITTING THERE WITH A SHOTGUN IN MY
3 LAP.

4 Q SO YOU KNEW THAT YOUR --

5 A AND AT THAT POINT --

6 MR. LEVIN: OBJECTION.

7 Q BY MR. CONN: SO --

8 A AT THAT POINT IT WAS GOING TO BE

9 RESOLVED. SOMEBODY WAS GOING TO DIE.

10 Q BECAUSE YOU KNEW WHEN YOU USED THAT GUN

11 SOMEBODY WAS GOING TO DIE; IS THAT CORRECT?

12 A I KNEW THAT IF I WASN'T ABLE TO FIRE IT,

13 THAT I WOULD BE KILLED WITH IT, BECAUSE I WOULD BE

14 SITTING THERE IN FRONT OF MY FATHER WITH A SHOTGUN

15 ACROSS MY LAP.

16 Q SO THERE WAS NO DOUBT IN YOUR MIND THAT

17 YOUR FATHER WAS EITHER GOING TO COME IN THE ROOM FOR

18 ONE OF TWO PURPOSES, TO OUTRIGHT KILL YOU OR

19 SEXUALLY ASSAULT YOU; IS THAT CORRECT?

20 A NO. I DON'T EVEN -- I DON'T EVEN KNOW IF

21 THOSE TWO WERE THE SPECIFIC THOUGHTS THAT I

22 THOUGHT. I JUST SAW HIM COMING INTO MY ROOM AND

23 THAT TERRIFIED ME. I'M NOT SURE THAT I EVEN -- I

24 EVEN WAS THINKING SPECIFICALLY -- LOOKING BACK I CAN

25 TELL YOU WHAT I WAS PROBABLY THINKING. BUT I JUST

26 REMEMBER THE TERROR AND THE EMOTION, THE SWELLING OF

27 IT.

28 Q AND YOU ALSO REMEMBER THE THOUGHTS OF

44840

1 YOUR MOTHER BEING RIGHT BEHIND HIM; IS THAT

2 CORRECT?

3 A I THOUGHT OF THE SHOTS GOING OFF. MY
4 BROTHER BEING IN THE GUESTHOUSE. MY MOTHER BEING IN
5 HER BEDROOM WITH THE TWO RIFLES, AND WHAT WAS I
6 GOING TO DO AT THAT POINT.

7 Q AND DID YOU FEEL THAT YOUR FATHER WAS
8 CAPABLE OF BREAKING DOWN THE DOOR?

9 A YES.

10 Q SO YOU ANTICIPATED THAT PERHAPS AT ANY
11 MOMENT YOUR FATHER WOULD, IN FACT, BREAK DOWN THAT
12 DOOR AND YOU WOULD BE IN THE POSITION OF USING
13 USELESS -- ESSENTIALLY USELESS AMMUNITION AGAINST
14 HIM; IS THAT CORRECT?

15 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

16 THE COURT: OVERRULED.

17 THE WITNESS: AMMUNITION THAT I WASN'T SURE
18 WOULD BE ABLE TO STOP HIM.

19 Q BY MR. CONN: SO DID YOU CALL UP LYLE ON
20 THE PHONE TO GET SOME BACKUP?

21 A NO, I DID NOT.

22 Q WHY NOT?

23 A WHEN I WAS ON MY -- WHEN I WAS ON MY BED
24 I COULDN'T MOVE. I COULDN'T MOVE. AFTERWARDS, I
25 DIDN'T CALL HIM EITHER. BUT WHEN I WAS ON MY BED
26 AND HE WAS AT THAT DOOR, I COULDN'T MOVE.

27 Q AFTER YOUR FATHER LEFT, DID YOU CALL UP
28 LYLE ON THE PHONE?

1 A NO.

2 Q DID YOU THINK THAT IT MIGHT BE A GOOD
3 IDEA TO LET YOUR BROTHER KNOW THAT YOUR FATHER WAS
4 POSSIBLY ATTEMPTING TO COME INTO YOUR ROOM AND KILL
5 YOU THAT NIGHT?

6 A MY FATHER TOLD ME THAT I WOULD HAVE TO
7 COME OUT OF THAT ROOM TOMORROW, AND FIRST THING I
8 DID WAS TELL HIM ON SUNDAY MORNING. I JUST -- I
9 MADE -- I MADE THE CHOICE OF NOT CALLING HIM ON THE
10 PHONE BECAUSE IT WOULD RING THROUGHOUT THE HOUSE,
11 INCLUDING THEIR BEDROOM, AND I DIDN'T WANT TO DO
12 THAT.

13 Q DID YOU FEEL THAT YOUR BROTHER'S LIFE
14 WAS POSSIBLY IN DANGER THAT EVENING?

15 A I DON'T EVEN REMEMBER THINKING THAT. I
16 JUST REMEMBER THINKING THAT IF I CAME OUT OF THAT
17 ROOM I WAS IN TROUBLE.

18 Q I'M NOT TALKING ABOUT COMING OUT OF THE
19 ROOM.

20 I'M ASKING YOU: DID YOU FEEL THAT YOUR
21 BROTHER'S LIFE WAS POSSIBLY IN DANGER THAT EVENING?

22 A NO. THAT THOUGHT WAS NOT IN MY MIND
23 THAT I REMEMBER.

24 Q AND WHY DID YOU FEEL THAT YOUR BROTHER
25 WAS NOT IN DANGER THAT EVENING?

26 MR. LEVIN: OBJECTION. CALLS FOR
27 SPECULATION.
28 THE COURT: OVERRULED.

44842

1 THE WITNESS: I DIDN'T FEEL THAT HE -- THAT HE
2 WAS OR WASN'T. I WASN'T FOCUSED ON THAT. I WAS
3 FOCUSED ON ME. IT MIGHT HAVE BEEN VERY SELFISH, BUT
4 THAT'S WHAT I WAS UNDERSTANDING. I WAS LOOKING OUT
5 TOWARDS HIS GUESTHOUSE. I SPENT A LONG TIME LOOKING
6 TOWARDS HIS GUESTHOUSE. I SUPPOSE IF I SAW MY
7 FATHER WALKING PAST THE POOL TOWARDS THE GUESTHOUSE,
8 I WOULD HAVE CALLED OUT OR CALLED TO HIM. BUT I WAS
9 JUST FOCUSED ON WHAT WAS HAPPENING TO ME AND I
10 JUST -- I DIDN'T THINK ABOUT LYLE BEING IN DANGER.

11 Q BY MR. CONN: DID YOU REMAIN LOOKING OUT
12 THAT WINDOW TO SEE IF YOUR FATHER WAS GOING TO GO
13 TOWARD THE GUESTHOUSE TO GET LYLE THAT EVENING?

14 A I REMEMBER WALKING INTO THE BATHROOM. I
15 REMEMBER WALKING INTO MY ROOM. JUST WALKING AROUND
16 BEING -- NOT BEING ABLE TO SIT STILL, LOOKING OUT AT
17 THE GUESTHOUSE. I DIDN'T JUST STAY IN ONE PLACE.

18 Q SO YOU -- YOU WEREN'T CAREFULLY WATCHING
19 TO SEE IF YOUR FATHER WAS ON HIS WAY TO THE
20 GUESTHOUSE, WERE YOU?

21 A NO, I WAS NOT.

22 Q YOU LOVED YOUR BROTHER?

23 A VERY, VERY MUCH.

24 Q AND YOU WERE -- THOUGHT THAT YOU WERE IN

25 THE SAME SITUATION WITH YOUR BROTHER, THAT IS, THAT

26 BOTH OF YOUR LIVES WERE IN DANGER?

27 A YES.

28 Q AND YOU DIDN'T THINK IT'D BE A GOOD IDEA

44843

1 TO TIP YOUR BROTHER OFF AS TO WHAT JUST HAPPENED IN

2 YOUR ROOM?

3 A IT WOULD HAVE BEEN A GREAT IDEA IF I HAD

4 THOUGHT ABOUT A WAY TO DO IT. THERE WASN'T A WAY

5 THAT I COULD THINK OF TO DO IT. AND I WAS SO

6 FOCUSED ON WHAT WAS HAPPENING WITH ME THAT I JUST --

7 I COULDN'T THINK PAST THAT.

8 Q WELL, YOU COULD DO IT JUST BY PICKING UP

9 THE PHONE AND CALLING HIM, COULDN'T YOU?

10 A YES. AND I -- AND I COULD HAVE DONE THAT

11 AND IT WOULD HAVE RANG IN THEIR BEDROOM AND I DIDN'T

12 WANT TO DO THAT.

13 Q WELL, AT THAT POINT, MR. MENENDEZ, WHAT

14 DID YOU HAVE TO LOSE? YOU FELT THAT YOUR FATHER HAD

15 BEEN BANGING ON YOUR DOOR TO EITHER RAPE YOU OR KILL

16 YOU, WHICH YOU FELT WAS ESSENTIALLY THE SAME; IS

17 THAT CORRECT?

18 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 Q BY MR. CONN: YOU FELT THAT YOUR FATHER

21 HAD BEEN BANGING ON YOUR DOOR TO EITHER RAPE YOU OR

22 KILL YOU; IS THAT CORRECT?

23 A PRETTY MUCH THAT'S WHAT I THOUGHT.

24 Q OKAY. AND DID YOU FEEL THAT THERE WOULD

25 NOW BE SOME ADDITIONAL DANGER IF YOU WERE TO MAKE A

26 PHONE CALL TO YOUR BROTHER?

27 A NO, I DIDN'T EVEN TAKE IT THAT FAR.

28 Q WHY NOT?

44844

1 MR. LEVIN: OBJECTION. CALLS FOR HIM TO

2 SPECULATE.

3 THE COURT: OVERRULED.

4 THE WITNESS: I JUST THOUGHT ABOUT PICKING UP

5 THE PHONE AND THAT IT WOULD RING THROUGHOUT THE

6 HOUSE AND I WASN'T GOING TO DO THAT.

7 Q BY MR. CONN: AND IF IT RANG THROUGHOUT

8 THE HOUSE, THAT MEANS YOUR FATHER WOULD PICK IT UP,

9 RIGHT?

10 A THAT'S WHAT I THOUGHT, EITHER MY FATHER

11 OR MOTHER.

12 Q IF YOUR FATHER PICKED IT UP, THEN HE
13 WOULD LEARN SOMETHING THAT HE ALREADY KNEW, WHICH
14 WAS THAT HE WAS BANGING ON YOUR DOOR; IS THAT
15 CORRECT?

16 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 Q BY MR. CONN: SO YOU MADE NO MENTION OF
19 THIS UNTIL THE NEXT MORNING TO YOUR BROTHER; IS THAT
20 CORRECT?

21 MR. LEVIN: OBJECTION. VAGUE, WHAT "THIS"
22 REFERS TO.

23 THE COURT: SUSTAINED.

24 Q BY MR. CONN: DID YOU AT ANY POINT LET
25 YOUR BROTHER KNOW WHAT HAD HAPPENED TO YOU PRIOR TO
26 SEEING HIM THE NEXT MORNING?

27 A NO, I DID NOT.

28 MR. CONN: DOES THE COURT WISH TO STOP AT

44845

1 THIS TIME?

2 THE COURT: ALL RIGHT. WE'LL RESUME AT
3 1:30. DON'T DISCUSS THE MATTER WITH ANYONE. DON'T
4 FORM ANY FINAL OPINIONS ABOUT IT. WE'LL SEE YOU
5 BACK HERE AT 1:30.

6 (AT 12:00 P.M. THE NOON
7 RECESS WAS TAKEN UNTIL
8 1:30 P.M. OF THE SAME DAY.)

9 -20690

1 VAN NUYS, CALIFORNIA; THURSDAY, DECEMBER 21, 1995

2 1:40 P.M.

3 DEPARTMENT NW N HON. STANLEY WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (ANNAMARIE PAPA, OFFICIAL REPORTER)

7

8 THE COURT: LET'S GET THE JURY OUT, PLEASE.

9 (THE JURY ENTERS THE COURTROOM AND THE

10 FOLLOWING PROCEEDINGS WERE HELD:)

11

12 THE COURT: ALL RIGHT. EVERYBODY IS PRESENT

13 AND --

14 THE BAILIFF: WE ARE MISSING ONE.

15 THE COURT: YES. HE IS HERE NOW. WE WILL NOW

16 RESUME THE CROSS-EXAMINATION.

17

18 CROSS-EXAMINATION (CONTINUED)

19 BY MR. CONN:

20 Q. NOW, MR. MENENDEZ, SUNDAY MORNING YOU CAME

21 OUT OF YOUR ROOM AND WENT TO THE GUESTHOUSE TO SEE YOUR

22 BROTHER, LYLE MENENDEZ; IS THAT CORRECT?

23 A. YES.

24 Q. NOW, SATURDAY NIGHT YOUR FATHER HAD BEEN
25 BANGING ON YOUR DOOR VIOLENTLY; IS THAT CORRECT?
26 A. HE WAS.
27 Q. AND YOU WERE FEARFUL OF HIM AT THAT TIME?
28 A. YES.

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1 Q. AND DID YOU BELIEVE THAT PERHAPS HE WAS
2 GOING TO ENTER YOUR ROOM AND KILL YOU?
3 A. YES.
4 Q. SO, WHEN YOU LEFT YOUR ROOM SUNDAY MORNING,
5 DID YOU LEAVE ARMED WITH YOUR SHOTGUN?
6 A. NO.
7 Q. WERE YOU CONCERNED THAT YOUR FATHER MIGHT
8 STILL BE WAITING FOR YOU TO COME OUT OF YOUR ROOM?
9 A. WELL, HE TOLD ME THAT I WOULD HAVE TO COME
10 OUT OF THE ROOM THE NEXT DAY, BUT I DIDN'T THINK HE WAS
11 OUTSIDE MY DOOR.
12 Q. WELL, WHEN HE TOLD YOU THAT YOU'RE GOING TO
13 HAVE TO COME OUT OF YOUR ROOM SOMETIME TOMORROW, DID YOU
14 REGARD THAT AS AN OMINOUS THREAT?
15 A. YES.
16 Q. AND DID YOU REALIZE THAT PERHAPS WHEN YOU
17 WOKE UP THE NEXT MORNING, SUNDAY MORNING, YOUR FATHER IS
18 GOING TO BE DOWN THE HALLWAY WAITING FOR YOU TO COME
19 OUT?

20 A. BASICALLY.

21 Q. OKAY. SO, WHEN YOU -- IN ORDER FOR YOU TO
22 GET TO THE GUESTHOUSE -- DIRECTING YOUR ATTENTION TO
23 EXHIBIT 6, YOU HAVE TO COME OUT THIS DOOR HERE, WALK
24 DOWN THIS HALLWAY THERE, MAKE A RIGHT AND THEN GO DOWN
25 THE STAIRS; IS THAT CORRECT?

26 A. YES.

27 Q. AND IN ORDER TO SEE IF YOUR FATHER IS
28 STANDING OVER HERE BY THE LINEN CLOSET, OUTSIDE THE

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1 LINEN CLOSET, HOW FAR DOWN THIS HALLWAY DO YOU HAVE TO
2 GET?

3 A. IT'S NOT A HALLWAY. IT'S A BALCONY.

4 Q. OKAY. AND HOW FAR DOWN THAT BALCONY DO YOU
5 HAVE TO GET IN ORDER TO SEE IF YOUR FATHER IS STANDING
6 RIGHT OVER HERE BEHIND THE LINEN CLOSET?

7 A. IF THE MEASUREMENTS ARE CORRECT, THEN IT
8 LOOKS AS THOUGH THEN YOU WOULD HAVE TO GET PRETTY FAR
9 DOWN.

10 Q. AND SO WHEN YOU -- BEFORE YOU OPENED YOUR
11 DOOR, DID YOU LISTEN FOR NOISES?

12 A. I LISTENED, AND THEN I TRIED TO LOOK UNDER
13 THE DOOR. I THOUGHT ABOUT IT. I REALLY HAD NO CHOICE
14 BUT TO LEAVE THE ROOM. I WASN'T GOING TO MAKE A PHONE
15 CALL AT THAT POINT.

16 Q. SO YOU LOOKED UNDER THE DOOR AND YOU
17 LISTENED FOR NOISES BECAUSE THERE WAS A SUSPICION IN
18 YOUR MIND THAT YOUR FATHER MIGHT BE LURKING SOMEWHERE
19 OUTSIDE WAITING FOR YOU; IS THAT CORRECT?

20 A. I DIDN'T BELIEVE IT WAS A STRONG
21 POSSIBILITY. IT WAS EARLY THE NEXT MORNING, AND I JUST
22 THOUGHT HE WAS PROBABLY IN HIS BEDROOM.

23 Q. WELL, IT WAS A STRONG ENOUGH POSSIBILITY
24 FOR YOU TO ACTUALLY LISTEN FOR NOISES AND LOOK UNDER THE
25 DOOR; IS THAT CORRECT?

26 A. I WAS PRETTY PARANOID AT THIS POINT. IT
27 DIDN'T NEED TO BE A STRONG POSSIBILITY, IT WAS JUST
28 SOMETHING I WAS GOING TO DO AND SOMETHING I DID.

-20687

1 Q. WHAT DO YOU MEAN PARANOID? DO YOU MEAN YOU
2 WERE FEARFUL AT THAT POINT?

3 A. I HADN'T BEEN OUT OF MY ROOM SINCE MY
4 FATHER HAD BEEN BANGING ON THE DOOR. OF COURSE I WAS
5 FEARFUL.

6 Q. I AM ASKING YOU ABOUT THE USE OF THE WORD
7 PARANOID.

8 ARE YOU SAYING YOU WERE FEARFUL AT THAT
9 POINT? IS THAT WHAT YOU MEAN BY THE USE OF THAT TERM?

10 A. YES.

11 Q. AND YOU WERE FEARFUL ENOUGH TO LOOK UNDER

12 THE DOOR AND LISTEN FOR NOISES; IS THAT CORRECT?

13 A. RIGHT.

14 Q. BECAUSE THERE WAS A POSSIBILITY THAT YOUR

15 FATHER WAS WAITING FOR YOU OUTSIDE THE ROOM; IS THAT

16 CORRECT?

17 A. YES.

18 Q. IN LIGHT OF THAT POSSIBILITY, MR. MENENDEZ,

19 DID YOU LEAVE YOUR ROOM WITH YOUR LOADED GUN JUST IN

20 CASE YOUR FATHER WAS LURKING BEHIND THE LINEN CLOSET?

21 A. I DID NOT.

22 Q. WHY NOT?

23 A. I HAD TO LEAVE THE ROOM. I COULDN'T STAY

24 IN THE ROOM ALL DAY, AND I NEEDED TO GET OVER TO MY

25 BROTHER.

26 Q. YOU COULD HAVE LEFT THE ROOM WITH YOUR GUN,

27 COULDN'T YOU?

28 A. OH, ARE YOU SUGGESTING LEAVE THE ROOM AND

-20686

1 HAVE THE GUN JUST IN CASE HE'S HIDING BEHIND THE LINEN

2 CLOSET?

3 Q. THAT'S THE SUGGESTION.

4 A. THAT'S NOT SOMETHING THAT I WOULD HAVE BEEN

5 ABLE TO DO.

6 Q. AND WHY IS THAT SOMETHING THAT YOU WOULD

7 NOT HAVE BEEN ABLE TO DO?

8 A. I WOULD NOT HAVE BEEN ABLE TO FIRE AT HIM
9 AS HE WAS COMING AT ME THE NEXT MORNING. I JUST WOULD
10 NOT HAVE DONE THAT.

11 Q. WELL, YOU HAD IT IN YOUR MIND THE PREVIOUS
12 NIGHT THAT IF HE WAS GOING TO COME IN THROUGH YOUR DOOR
13 YOU WERE GOING TO FIRE AT HIM; IS THAT CORRECT?

14 A. I WAS GOING TO TRY MY BEST TO FIRE.

15 Q. AND WHY ARE YOU SAYING THAT THE PREVIOUS
16 NIGHT YOU COULD HAVE FIRED AT HIM IF IT WAS NECESSARY
17 AND NOW SUNDAY MORNING YOU COULD NOT HAVE FIRED AT HIM
18 IF IT WAS NECESSARY?

19 A. MY FATHER WOULD HAVE CONFRONTED ME IN THE
20 HALLWAY. I DON'T BELIEVE I WOULD HAVE BEEN ABLE TO
21 SHOOT HIM. IT'S JUST NOT SOMETHING -- IT'S NOT THE WAY
22 I REACTED WHEN I WAS CONFRONTED BY HIM.

23 Q. YOU WERE ABLE TO SHOOT HIM THURSDAY -- THAT
24 NIGHT, SUNDAY NIGHT, WEREN'T YOU?

25 A. I DID.

26 Q. BUT YOU'RE SAYING SUNDAY MORNING YOU LACKED
27 THE ABILITY TO DO THAT; IS THAT WHAT YOU'RE SAYING?

28 A. I BELIEVE I LACKED THE ABILITY. I'M NOT

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1 SURE WHERE ALL THE QUESTIONS -- WHAT EXACTLY YOU'RE
2 ASKING. ARE YOU ASKING --
3 MR. LEVIN: OBJECTION. IT'S VAGUE, ASK IT BE

4 RESTATED.

5 THE COURT: RE-ASK THE QUESTION.

6 Q. BY MR. CONN: YES.

7 CAN YOU TELL US, MR. MENENDEZ, WHY YOU FELT
8 SUNDAY MORNING YOU WOULD NOT BE ABLE TO SHOOT YOUR
9 FATHER?

10 A. TRULY I DIDN'T THINK ABOUT IT.

11 Q. YOU DIDN'T THINK ABOUT WHAT?

12 A. I DIDN'T THINK ABOUT ALL THIS. THIS IS
13 SOMETHING THAT I KNOW AND THAT I KNEW THEN AND I KNOW
14 NOW, BUT AT THE TIME WHEN I LEFT THE ROOM, I DID NOT
15 THINK ABOUT BRINGING THE GUN OUT.

16 Q. AND YOU DIDN'T THINK ABOUT IT BECAUSE YOUR
17 FATHER WAS NOT A THREAT TO YOU; IS THAT CORRECT?

18 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

19 THE COURT: OVERRULED.

20 THE WITNESS: HE WAS CERTAINLY A THREAT.

21 Q. BY MR. CONN: THEN WHY DIDN'T YOU THINK
22 ABOUT IT, MR. MENENDEZ?

23 A. BECAUSE I DIDN'T BELIEVE HE WAS OUTSIDE
24 WAITING BEHIND THE LINEN CLOSET. I JUST DID NOT BELIEVE
25 THAT.

26 Q. WHY DID YOU DISMISS THAT POSSIBILITY?

27 MR. LEVIN: OBJECTION. ASKING HIM TO SPECULATE.

28 THE COURT: OVERRULED.

1 THE WITNESS: I DON'T KNOW.

2 Q. BY MR. CONN: YOU CAN'T GIVE THIS JURY A
3 REASON?

4 MR. LEVIN: OBJECTION. IT ASSUMES THAT HE HAD
5 THIS BELIEF.

6 THE COURT: REPHRASE THE QUESTION.

7 Q. BY MR. CONN: YOU CAN'T GIVE ANY REASON WHY
8 YOU DISMISSED THE POSSIBILITY OF YOUR FATHER BEING
9 BEHIND THE LINEN CLOSET?

10 MR. LEVIN: OBJECTION. ASSUMES FACTS NOT IN
11 EVIDENCE, THAT HE EVER HAD ANYTHING TO DISMISS.

12 THE COURT: WHY DON'T YOU REPHRASE THE QUESTION.

13 Q. BY MR. CONN: CAN YOU TELL US,
14 MR. MENENDEZ, WHY YOU DID NOT BELIEVE THAT YOUR FATHER
15 WAS BEHIND THE LINEN CLOSET WAITING FOR YOU TO COME OUT?

16 A. NO.

17 Q. OKAY. ALL RIGHT.

18 SO YOU COME OUT UNARMED, CORRECT?

19 A. YES.

20 Q. AND THEN YOU GO DOWN TO THE GUESTHOUSE TO
21 SEE YOUR BROTHER LYLE MENENDEZ; IS THAT CORRECT?

22 A. RIGHT.

23 Q. AND APPROXIMATELY WHAT TIME OF THE DAY WAS
24 THIS?

25 A. I REMEMBER IT WAS FAIRLY EARLY, BECAUSE I
26 REMEMBER I DIDN'T GET MUCH SLEEP. 7:30, 8:00 O'CLOCK.
27 SOMETHING ALONG THOSE LINES.

28 Q. NOW, WHEN YOU GOT TO THE GUESTHOUSE HOW WAS

1 THE -- WAS THE OUTSIDE DOOR TO THE GUESTHOUSE LOCKED OR
2 UNLOCKED?

3 A. THE OUTSIDE DOOR ON THE FIRST FLOOR WAS
4 UNLOCKED.

5 Q. IT HAD A LOCK, DIDN'T IT?

6 A. I HAD NEVER KNOWN IT TO BE LOCKED.

7 Q. DID IT HAVE A LOCK?

8 A. I DON'T KNOW.

9 Q. BUT IT WAS NOT LOCKED; IS THAT CORRECT?

10 A. YES.

11 Q. AND YOU WENT IN THROUGH THE OUTSIDE DOOR
12 AND YOU WENT UPSTAIRS TO THE SECOND FLOOR AND THEN YOU
13 KNOCKED ON THE DOOR TO GET IN TO SPEAK TO LYLE; IS THAT
14 CORRECT?

15 A. RIGHT.

16 Q. AND DID YOU TELL HIM AT THAT TIME WHAT HAD
17 HAPPENED TO YOU THE PREVIOUS NIGHT WHEN YOUR FATHER WAS
18 BANGING ON THE DOOR?

19 A. YES.

20 Q. AND DID YOU TELL HIM HOW FEARFUL YOU WERE
21 OF YOUR FATHER THE PREVIOUS NIGHT?

22 A. YES.

23 Q. AND DID EITHER YOU OR YOUR BROTHER SAY AT
24 THAT TIME, "MAYBE WE SHOULD GET THAT BUCKSHOT OUT OF THE
25 CAR AND LOAD OUR GUNS"?

26 A. NO.
27 Q. WHY NOT?
28 MR. LEVIN: OBJECTION. IT'S ASKING HIM TO

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1 SPECULATE.
2 THE COURT: OVERRULED.
3 THE WITNESS: I DON'T KNOW WHY NOT. I CAN GIVE
4 DIFFERENT REASONS WHY IT -- I THINK IT MAY HAVE BEEN.
5 AT THE TIME I -- I JUST DIDN'T.
6 Q. BY MR. CONN: YOU DO NOT RECALL AS YOU ARE
7 SITTING HERE TODAY WHY YOU DID NOT HAVE THAT
8 CONVERSATION WITH YOUR BROTHER?
9 A. I KNOW THAT I -- I DID NOT HAVE THAT
10 CONVERSATION WITH MY BROTHER. I TOLD LYLE THAT I WAS
11 LEAVING THE HOUSE AT THAT TIME. HE WANTED TO COME WITH
12 ME. WE TALKED ABOUT OTHER THINGS. WHY I DIDN'T SAY
13 THAT, I CAN -- I CAN ONLY SPECULATE AND THINK ABOUT IT
14 NOW, BUT AT THE TIME I SIMPLY DIDN'T DO IT.
15 Q. WERE YOU FEARFUL OF YOUR FATHER THAT
16 MORNING?
17 A. YES.
18 Q. AND YOU WERE AWARE THAT MORNING THAT YOUR
19 GUN STILL HAD AMMUNITION IN IT THAT WAS ESSENTIALLY
20 USELESS?
21 A. I DON'T KNOW IF I WAS -- I DIDN'T THINK

22 ABOUT IT. I MEAN, I -- I OBVIOUSLY WAS AWARE. IT
23 WASN'T PRESENT IN THE FRONT OF MY MIND AT THAT TIME.
24 Q. WOULD YOU SAY BECAUSE IT SIMPLY WASN'T VERY
25 IMPORTANT TO YOU?
26 MR. LEVIN: OBJECTION. ARGUMENTATIVE.
27 THE COURT: OVERRULED.
28 THE WITNESS: I DON'T KNOW. I MEAN, I DON'T KNOW

-20681

1 IF EMOTIONALLY I WANTED TO DO THAT, IF I WANTED TO LOAD
2 THE GUN. I DON'T KNOW WHY I DIDN'T DO IT. I -- I
3 DIDN'T. WHEN I WAS FACED WITH IMMEDIATE DANGER, I
4 THOUGHT ABOUT IT. AT THAT TIME THE NEXT MORNING WHEN I
5 WAS AT LYLE'S GUEST HOUSE, I DIDN'T DO IT.

6 Q. SO, AFTER YOU LEFT THE -- THE GUESTHOUSE OF
7 LYLE MENENDEZ, DID YOU GO TO THE CAR AND TAKE OUT THE
8 BUCKSHOT?

9 A. NO.

10 Q. DID YOU BRING ANY BUCKSHOT INTO YOUR
11 BROTHER'S GUESTHOUSE SO THAT AT LEAST HE COULD LOAD HIS
12 GUN WHILE YOU WERE GONE?

13 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

14 THE COURT: REPHRASE THE QUESTION.

15 Q. BY MR. CONN: DID YOU BRING ANY BUCKSHOT TO
16 YOUR BROTHER BEFORE YOU LEFT?

17 A. I HAD NO IDEA WHETHER LYLE HAD LOADED

18 BUCKSHOT IN HIS GUN OR NOT.

19 Q. YOU DIDN'T SEE YOUR BROTHER LOAD BUCKSHOT
20 AT ANY TIME, DID YOU?

21 A. THAT'S RIGHT.

22 Q. DID YOU HAVE ANY REASON TO BELIEVE THAT
23 YOUR BROTHER HAD LOADED BUCKSHOT INTO HIS GUN?

24 A. I DIDN'T THINK ABOUT IT.

25 Q. AND THEN YOU DID NOT ASK YOUR BROTHER IF HE
26 LOADED BUCKSHOT INTO HIS GUN AT ANY TIME, DID YOU?

27 A. NO, I DID NOT.

28 Q. AS FAR AS YOU KNEW, THE BUCKSHOT WAS STILL

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1 WHERE YOU HAD LEFT IT AFTER PURCHASING IT IN THE STORE;
2 AND THAT IS IN THE FORD ESCORT UNOPENED; IS THAT
3 CORRECT?

4 A. RIGHT.

5 Q. AND DID YOU LEAVE YOUR GUN IN YOUR HOME AS
6 YOU WENT OUT THAT DAY?

7 A. YES, I DID.

8 Q. AND DID YOU LEAVE IT ONCE AGAIN IN YOUR
9 CLOSET?

10 A. YES.

11 Q. WAS IT COVERED UP IN SOME WAY?

12 A. YES.

13 Q. WAS IT INSIDE THE TENNIS BAG?

14 A. I DON'T REMEMBER. PROBABLY.

15 Q. WHY DO YOU SAY IT WAS PROBABLY IN THE
16 TENNIS BAG?

17 A. WELL, I HAD BROUGHT IT UP THE NIGHT BEFORE.

18 IT'S HOW I CARRIED IT, IN THE TENNIS BAG. I KNOW THAT I

19 HAD TAKEN IT OUT OF THE TENNIS BAG BEFORE I PUT IT

20 BESIDE MY BED. I CAN -- I MEAN, I AM ONLY GUESSING

21 WHETHER OR NOT I PUT IT BACK IN THE TENNIS BAG THE NEXT

22 MORNING.

23 Q. A MOMENT AGO YOU SAID PROBABLY. I AM

24 ASKING YOU WHY YOU SAID IT WAS PROBABLY IN THE TENNIS

25 BAG.

26 A. BECAUSE IT WOULD HAVE BEEN THE LOGICAL

27 THING FOR ME TO DO, BUT I DON'T REMEMBER DOING IT. SO I

28 REALLY AM GUESSING.

-20679

1 Q. AND WHY DID YOU GO OUT THAT DAY?

2 A. BECAUSE LYLE AND I HAD DISCUSSED THE NIGHT

3 BEFORE THAT HE WOULD STAY IN AND TRY TO TALK TO MOM AND

4 DAD, OR FEEL OUT WHAT THE SITUATION WAS.

5 Q. AND WHY DIDN'T YOU WANT TO BE AROUND FOR

6 THAT?

7 A. WE JUST DECIDED -- I ENCOURAGED THAT. I

8 DIDN'T WANT TO BE THERE.

9 Q. WHY DIDN'T YOU WANT TO BE THERE?

10 A. I FELT THAT IT WAS BEST, SAFEST FOR ME NOT
11 TO BE THERE. I DIDN'T SEE ANY NEED FOR ME TO BE THERE.
12 LYLE WAS GOING TO TRY TO TALK TO DAD OR MOM. I DIDN'T
13 WANT TO BE THERE WITH DAD, AND SO WE JUST DECIDED THAT I
14 WOULD NOT BE AT THE HOME THAT DAY.

15 Q. YOU FELT IT WAS SAFEST WHEN YOU TWO WERE
16 APART; IS THAT CORRECT?

17 A. YES.

18 Q. SO DID YOU MAKE A RESOLUTION AT THAT TIME
19 THAT FROM NOW ON UNTIL THIS IS RESOLVED, YOU AND YOUR
20 BROTHER WERE NOT GOING TO APPEAR TOGETHER IN FRONT OF
21 YOUR PARENTS AT THE SAME TIME?

22 A. NO.

23 Q. WHY NOT?

24 A. I CAN'T TELL YOU WHY. I DIDN'T THINK ABOUT
25 THESE THINGS. I JUST DID WHAT I FELT WAS BEST AT THE
26 TIME. I DON'T KNOW WHY.

27 Q. BUT IF YOU THOUGHT THAT BEING TOGETHER
28 WOULD INCREASE THE LIKELIHOOD THAT YOUR PARENTS WOULD

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1 USE THAT OPPORTUNITY TO HARM YOU, DID YOU DISCUSS WITH
2 YOUR BROTHER WHETHER FROM NOW ON UNTIL THIS CONTROVERSY
3 IS RESOLVED YOU WOULD NOT APPEAR TOGETHER IN FRONT OF
4 YOUR PARENTS?

5 A. I DON'T BELIEVE SO.

6 Q. WERE YOU TRYING TO PRESERVE YOUR LIFE AND
7 THE LIFE OF YOUR BROTHER, MR. MENENDEZ?

8 MR. LEVIN: OBJECTION. ARGUMENTATIVE. VAGUE.

9 THE COURT: ALL RIGHT. REPHRASE IT AS FAR AS THE
10 TIME FRAME YOU'RE TALKING ABOUT.

11 Q. BY MR. CONN: YES.

12 THAT SUNDAY MORNING, WERE YOU INTERESTED IN
13 PRESERVING YOUR LIFE AND THE LIFE OF YOUR BROTHER,
14 MR. MENENDEZ?

15 A. YES.

16 Q. AND WERE YOU LOOKING FOR WAYS TO INSURE
17 THAT YOUR PARENTS WOULD NOT KILL YOU?

18 A. I WAS MORE LOOKING FOR WAYS TO FIND OUT
19 WHAT WAS IN THEIR MINDS AND WHAT THEY WERE THINKING.
20 WHAT THE SITUATION REALLY WAS.

21 Q. WERE YOU INTERESTED IN TAKING PRECAUTIONS
22 THAT WOULD MINIMIZE THE LIKELIHOOD THAT YOUR PARENTS
23 WOULD SHOOT YOU?

24 MR. LEVIN: OBJECTION. VAGUE.

25 THE COURT: OVERRULED.

26 THE WITNESS: WE WERE BASICALLY.

27 Q. BY MR. CONN: AND IF YOU FELT THAT THE
28 DANGER WAS MORE LIKELY WHEN THE TWO OF YOU WERE

1 TOGETHER, CAN YOU TELL US WHY YOU DID NOT DISCUSS WITH

2 YOUR BROTHER THE POSSIBILITY OF NOT APPEARING TOGETHER

3 BEFORE YOUR PARENTS AT THE SAME TIME UNTIL --?

4 MR. LEVIN: ASKED AND ANSWERED.

5 MR. CONN: -- UNTIL THIS IS RESOLVED?

6 THE COURT: OVERRULED.

7 THE WITNESS: WE TALKED ABOUT U.C.L.A. AND BEING

8 AWAY FROM EACH OTHER THE ENTIRE DAY. IT'S WHAT I

9 WANTED. IT'S WHAT WE THOUGHT WAS BEST. IT'S WHAT WE

10 DID. I DON'T SPECIFICALLY REMEMBER SAYING OR HIM SAYING

11 TO ME WE WILL NEVER APPEAR IN FRONT OF MOM AND DAD

12 TOGETHER AGAIN. I JUST DON'T REMEMBER THAT.

13 BUT I REMEMBER THINKING THAT -- WE CAME TO

14 THE CONCLUSION THAT IT WAS BEST IF WE JUST STAYED APART.

15 IT'S WHAT I WANTED.

16 Q. BY MR. CONN: DID IT OCCUR TO YOU THAT IT

17 WOULD BE THE WISER THING TO DO NOT TO APPEAR TOGETHER IN

18 FRONT OF YOUR PARENTS UNTIL THIS CONTROVERSY WAS

19 RESOLVED?

20 MR. LEVIN: OBJECTION. VAGUE AS TO TIME, AND

21 IT'S ARGUMENTATIVE.

22 THE COURT: AS TO THE TIME FRAME, WHY DON'T YOU

23 CLARIFY THAT.

24 Q. BY MR. CONN: ON SUNDAY MORNING, AT ANY

25 TIME ON SUNDAY MORNING DID IT OCCUR TO YOU THAT IT WOULD

26 BE WISER NOT TO APPEAR TOGETHER IN FRONT OF YOUR PARENTS

27 UNTIL THIS CONTROVERSY WAS RESOLVED?

28 A. NO.

1 MR. LEVIN: ASKED AND ANSWERED.

2 THE COURT: OVERRULED. YOUR ANSWER, PLEASE.

3 THE WITNESS: NO.

4 Q. BY MR. CONN: NOW, WOULD YOU SAY THAT IN
5 LIGHT OF WHAT HAD HAPPENED TO YOU SATURDAY NIGHT WITH
6 YOUR FATHER BANGING ON YOUR DOOR THAT YOU BECAME EVEN
7 MORE FEARFUL THAT YOUR PARENTS WERE GOING TO KILL YOU?

8 MR. LEVIN: OBJECTION. VAGUE AS TO MORE THAN
9 WHAT.

10 THE COURT: OVERRULED.

11 THE WITNESS: I CERTAINLY WAS MUCH MORE FEARFUL
12 THAT THE SITUATION BETWEEN MY FATHER AND MYSELF WAS
13 COMING TO A HEAD.

14 Q. BY MR. CONN: AND DID YOU FEEL THAT
15 SATURDAY NIGHT WAS AT LEAST UP TO THAT POINT IN TIME, UP
16 TO SUNDAY MORNING, SATURDAY NIGHT WAS THE MOST FEARFUL
17 TIME -- HAD BEEN THE MOST FEARFUL TIME IN YOUR HOME?

18 A. OTHER THAN MAYBE THURSDAY WHEN MY DAD WAS
19 ACTUALLY IN MY ROOM AND WHEN HE THREW ME ON THE BED.
20 MAYBE EVEN MORE THAN THAT, YES.

21 Q. AND SO DID YOU RESOLVE SUNDAY MORNING THAT
22 PERHAPS IT WAS TIME TO START THINKING ABOUT MOVING OUT
23 OF YOUR HOME AND FINDING SOMEPLACE WHERE YOU COULD BE
24 SAFE?

25 A. NO.

26 Q. DID YOU DISCUSS AT ALL WITH YOUR BROTHER

27 SUNDAY MORNING THE POSSIBILITY OF LEAVING YOUR HOME AND
28 GOING SOMEWHERE?

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1 A. YOU MEAN BOTH OF US TOGETHER PERMENANTLY?

2 Q. TOGETHER OR SEPARATELY?

3 A. RUNNING AWAY?

4 Q. TOGETHER OR SEPARATELY LEAVING YOUR HOME
5 AND STAYING AWAY FROM YOUR HOME?

6 A. NO.

7 Q. AND YOU FELT THAT THINGS WERE COMING TO A
8 HEAD WITH YOUR FATHER?

9 MR. LEVIN: OBJECTION. IT'S VAGUE. IT'S
10 ARGUMENTATIVE.

11 THE COURT: OVERRULED.

12 THE WITNESS: THE NIGHT BEFORE SEEMED A VERY
13 OMINOUS SIGN.

14 Q. BY MR. CONN: SUNDAY MORNING YOU FELT THAT
15 THINGS WERE PERHAPS COMING TO A HEAD?

16 MR. LEVIN: OBJECTION AS TO WHAT THAT MEANS.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES.

19 Q. BY MR. CONN: AND WHAT DO YOU MEAN BY
20 THINGS COMING TO A HEAD?

21 A. THAT THERE WAS GOING TO BE A CRISIS BETWEEN
22 MY FATHER AND I, AND IT'S ONE OF THE THINGS I -- I TOLD

23 AGAIN TO LYLE THE NEXT MORNING. IT'S ONE OF THE REASONS
24 HE WANTED TO LEAVE THE HOUSE THE NEXT MORNING, AND I
25 REALLY WANTED LYLE TO TALK TO MOM AND DAD SO WE COULD
26 GET A FEELING OF WHAT WAS GOING ON. WHY -- WHY MAYBE
27 DAD HAD TRIED TO CONFRONT ME, OR JUST WHAT WAS
28 HAPPENING, AND I DID NOT WANT TO BE AROUND WHEN THIS

-20674

1 HAPPENED.

2 Q. WHAT TYPE OF CRISIS DID YOU THINK WAS
3 COMING?

4 A. I DIDN'T KNOW.

5 Q. YOU WERE SPEAKING ABOUT SOME SORT OF A
6 VIOLENT ATTACK, AREN'T YOU?

7 A. YES.

8 Q. AND YOU WERE WILLING TO KEEP HANGING AROUND
9 YOUR HOME WAITING FOR THAT TO HAPPEN RATHER THAN GOING
10 SOMEPLACE AWAY FROM HOME?

11 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

12 THE COURT: REPHRASE THE QUESTION.

13 Q. BY MR. CONN: WERE YOU WILLING, AS OF
14 SUNDAY MORNING, IN LIGHT OF THE NEW DEVELOPMENTS OF
15 THURSDAY NIGHT AND SATURDAY NIGHT, STILL WILLING TO KEEP
16 COMING BACK TO 722 ELM STREET, EVEN THOUGH YOU
17 ANTICIPATED THAT THERE WAS SOME TYPE OF CRISIS THAT WAS
18 ABOUT TO OCCUR?

19 A. I DON'T THINK IT HAS ANYTHING TO DO WITH
20 WILLING. I DIDN'T WANT TO BE THERE. I DID NOT WANT TO
21 BE AT MY HOME. IT -- I WOULDN'T CALL IT WILLING.
22 Q. WELL, WHETHER YOU WANTED TO BE THERE OR
23 NOT, YOU MADE A DECISION THAT YOU WERE GOING TO KEEP
24 COMING BACK TO 722 ELM STREET UNTIL THIS WAS RESOLVED;
25 IS THAT CORRECT?
26 MR. LEVIN: OBJECTION. ARGUMENTATIVE.
27 THE COURT: OVERRULED.
28 THE WITNESS: YES. I JUST DIDN'T THINK ANY OTHER

-20673

1 WAY.
2 Q. BY MR. CONN: AND YOU SUSPECTED AT THAT
3 TIME THAT PERHAPS IT WAS GOING TO COME TO AN END WITH
4 EITHER YOUR FATHER SHOOTING YOU OR YOU SHOOTING YOUR
5 FATHER; IS THAT CORRECT?
6 MR. LEVIN: OBJECTION. VAGUE AS TO TIME.
7 THE COURT: OVERRULED.
8 THE WITNESS: I WASN'T SURE IF THAT WAS GOING TO
9 HAPPEN, NO.
10 Q. YOU WEREN'T SURE, BUT YOU RECOGNIZED THAT
11 AS A POSSIBILITY; IS THAT CORRECT?
12 A. YES.
13 Q. AND KNOWING -- RECOGNIZING THAT AS A
14 POSSIBILITY, YOU DECIDED THAT YOU WERE GOING TO KEEP

15 COMING BACK TO 722 NORTH ELM UNTIL THIS RESOLVED ITSELF;

16 IS THAT CORRECT?

17 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

18 THE COURT: OVERRULED.

19 THE WITNESS: I DIDN'T -- I DIDN'T -- I KNOW

20 LONGER CONSIDERED -- NO LONGER THOUGHT ABOUT IT.

21 Q. BY MR. CONN: YOU LEFT FOR A WHILE AND YOU

22 CAME BACK AT NOON; IS THAT CORRECT?

23 A. YES.

24 Q. WHEN YOU CAME BACK AT ABOUT NOON, WHERE DID

25 YOU PARK?

26 A. IN THE BACK ALLEY.

27 Q. AND CAN YOU TELL US WHY YOU PARKED IN THE

28 BACK ALLEY?

-20672

1 A. JUST I THOUGHT IT WAS JUST THE THING THAT I

2 THOUGHT TO DO.

3 Q. I'M SORRY?

4 A. IT'S JUST WHAT I THOUGHT TO DO.

5 Q. WHERE DID YOU NORMALLY PARK?

6 A. I NORMALLY PARKED IN FRONT OF THE HOUSE.

7 Q. DID YOU PARK IN THE BACK ALLEY BECAUSE YOU

8 DID NOT WANT YOUR PARENTS TO SEE YOU?

9 A. I THINK THAT WAS PART OF IT.

10 Q. AND WHY DID YOU NOT WANT YOUR PARENTS TO

11 SEE YOU?

12 A. BECAUSE I WANTED TO -- I WANTED TO TALK TO
13 MY BROTHER. NORMALLY I DIDN'T PARK IN THE BACK ALLEY.
14 IT WAS RARE THAT I EVER PARKED IN THE BACK ALLEY. WHY I
15 MADE THE CHOICE TO PARK IN THE BACK VERSUS PARKING IN
16 THE FRONT AND WALKING AROUND THE HOUSE, I DON'T KNOW.

17 Q. BUT ONE OF THE REASONS WHY YOU PARKED IN
18 THE BACK ALLEY WAS BECAUSE YOU DIDN'T WANT YOUR PARENTS
19 TO SEE YOU; IS THAT CORRECT?

20 A. I BELIEVE SO.

21 Q. AND MY QUESTION TO YOU IS WHY DID YOU NOT
22 WANT YOUR PARENTS TO SEE YOU SUNDAY AT ABOUT NOON WHEN
23 YOU WENT TO THE GUESTHOUSE?

24 A. I CAN TELL YOU THAT I KNOW THAT I WANTED TO
25 SPEAK TO MY BROTHER FIRST, BUT -- AND THAT'S THE ONLY
26 WAY I CAN ANSWER THE QUESTION.

27 Q. WHY DID YOU WANT TO SPEAK TO YOUR BROTHER
28 FIRST WITHOUT YOUR PARENTS SEEING YOU?

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1 A. BECAUSE I DIDN'T WANT TO BE CONFRONTED WITH
2 MY MOTHER OR MY FATHER BEFORE I FOUND OUT FROM MY
3 BROTHER WHAT WAS THE SITUATION.

4 MR. CONN: I HAVE IN MY HAND TWO PHOTOGRAPHS THAT
5 HAVE NOT BEEN PREVIOUSLY MARKED DEPICTING THE BACK
6 ALLEY. MAY THESE BE MARKED AS --

7 THE COURT: 377.

8 MR. CONN: YES, 377 AND 378.

9 Q. 377 IS THE PHOTOGRAPH ON THE LEFT. 378 IS

10 THE PHOTOGRAPH ON THE RIGHT, AND CAN YOU TELL US -- CAN

11 YOU TELL US WHAT WE ARE LOOKING AT IN 377 THERE?

12 A. - 77 IS ON THE LEFT?

13 Q. YES.

14 A. A PICTURE OF MY TENNIS COURT WITH THE

15 SCREEN -- THE SCREEN IS ON THE TENNIS COURT, AND THAT IS

16 THE BACK OF THE GUESTHOUSE WITH THE GARBAGE CANS IN THE

17 BACK. IT'S THE BACK ALLEY BEHIND MY HOUSE.

18 Q. NOW, IN BETWEEN THE GUESTHOUSE HERE AND THE

19 TENNIS COURT HERE IS THERE A GATE RIGHT THERE

20 (POINTING)?

21 A. YES.

22 Q. IS THAT A WOODEN GATE?

23 A. YES.

24 Q. AND IS THAT WOODEN GATE SHOWN HERE IN 378?

25 A. YES.

26 Q. AND IS THAT YOUR TENNIS COURT THERE WHICH I

27 AM NOW POINTING TO?

28 A. YES.

-20670

1 Q. AND THE GUESTHOUSE IS OVER HERE; IS THAT

2 CORRECT?

3 A. YES.

4 Q. AND WHERE WOULD YOU NORMALLY PARK YOUR CAR?

5 A. WELL, I WOULDN'T NORMALLY PARK IT BACK
6 THERE, BUT I BELIEVE I PARKED IT RIGHT BEHIND THE
7 GUESTHOUSE.

8 Q. YOU NORMALLY PARKED IN FRONT?

9 A. I NORMALLY PARKED IN FRONT OF THE HOUSE.

10 Q. OKAY. AND THIS DAY YOU PARKED IT NEXT TO
11 THE GUESTHOUSE?

12 A. YES.

13 Q. AND WHAT WAS YOUR REASON FOR RETURNING AT
14 ABOUT NOON TO TALK TO YOUR BROTHER?

15 A. I HAD TOLD LYLE THAT I WOULD RETURN ABOUT
16 NOON BEFORE I LEFT THE HOUSE TO FIND OUT WHAT THE
17 SITUATION WAS, IF ANYTHING HAD DEVELOPED.

18 Q. NOW, WHILE YOU WERE DRIVING AROUND FROM
19 EARLY THAT MORNING UNTIL ABOUT NOON, DID IT OCCUR TO YOU
20 THAT YOUR BROTHER MAY HAVE BEEN LEFT AT THE HOME WITH
21 ESSENTIALLY USELESS AMMUNITION?

22 A. I DON'T KNOW IF IT OCCURRED TO ME.

23 Q. NOW, WHEN YOU GOT HOME, DID YOU ASK YOUR
24 BROTHER -- YOU WERE THEN GOING TO LEAVE AFTER YOU
25 STOPPED AT YOUR HOME; IS THAT CORRECT?

26 A. RIGHT.

27 Q. AND BEFORE YOU LEFT, DID YOU ASK YOUR
28 BROTHER IF HE MIGHT WANT SOME AMMUNITION THAT WOULDN'T

1 BE USELESS?

2 A. I HAD NO IDEA WHETHER LYLE HAD OPENED IT UP
3 AND TAKEN THE BUCKSHOT BY THEN OR NOT. IT DIDN'T ENTER
4 MY MIND.

5 Q. AND YOU HAD NO CONVERSATIONS WITH HIM AT
6 THAT TIME; IS THAT CORRECT?

7 A. I TALKED TO HIM FOR LESS THAN AN HOUR, BUT
8 I WAS IN THERE FOR A WHILE.

9 Q. AND DURING THAT HOUR OR SO THAT YOU TALKED
10 TO HIM, THE ISSUE OF WHETHER OR NOT THE GUNS HAD
11 AMMUNITION -- PROPER AMMUNITION IN THEM NEVER CAME UP;
12 IS THAT CORRECT?

13 A. IF IT DID, I DON'T REMEMBER IT.

14 Q. AND YOU DID NOT RELOAD YOUR GUN AT THAT
15 THIME; IS THAT CORRECT?

16 A. THAT'S RIGHT.

17 Q. SO, YOU JUST STAYED IN THE GUESTHOUSE AND
18 YOU DIDN'T GO TO THE MAIN HOUSE, CORRECT?

19 A. RIGHT.

20 Q. NOW, AS YOU WERE DRIVING AROUND ON SUNDAY,
21 WERE YOU CONCERNED THAT IN LIGHT OF THE CONFRONTATION OR
22 IN LIGHT OF THE INCIDENTS WHICH HAD OCCURRED THE
23 PREVIOUS NIGHT, SATURDAY NIGHT, WITH YOUR FATHER BANGING
24 ON THE DOOR, THAT PERHAPS YOUR PARENTS WOULD LOOK IN
25 YOUR CLOSET AND DISCOVER YOUR GUN?

26 A. YES.

27 Q. IT DID OCCUR TO YOU?

28 A. YES.

-20668

1 Q. WERE YOU CONCERNED ABOUT THAT?

2 A. I KNEW IF THEY DID I WAS IN EXTREME

3 TROUBLE.

4 Q. OKAY. SO WHAT DID YOU DO?

5 A. WHAT DO YOU MEAN?

6 Q. WELL, IF YOU WERE CONCERNED THAT YOUR

7 PARENTS MIGHT FIND YOUR GUN IN YOUR CLOSET, DID YOU TAKE

8 ANY ACTION TO AVOID THAT FROM HAPPENING?

9 A. NO.

10 Q. WHY NOT?

11 A. I WAS OUT OF THE HOUSE. I THOUGHT THAT IF

12 THEY FOUND THE GUN THAT I WOULD BE IN TROUBLE. I DIDN'T

13 THINK THEY WOULD RANSACK MY CLOSET. I DIDN'T KNOW OF A

14 REASON WHY THEY WOULD, BUT I WASN'T GOING BACK INTO THE

15 HOUSE.

16 Q. WELL, YOU WANTED YOUR BROTHER, LYLE

17 MENENDEZ, TO GO BACK INTO THE HOUSE, DIDN'T YOU?

18 A. I DID.

19 Q. IN FACT, YOU ENCOURAGED HIM TO GO BACK INTO

20 THE HOUSE, DIDN'T YOU?

21 A. I WOULD SAY MORE THAN ENCOURAGED.

22 Q. SO DIDN'T YOU FEEL THAT YOU COULD JUST GO

23 UP TO YOUR BEDROOM AND COME OUT CARRYING A TENNIS BAG?

24 A. I PROBABLY COULD. I DIDN'T WANT TO. I
25 DIDN'T THINK I HAD TO, AND I DIDN'T.
26 Q. EVEN IN LIGHT OF THE POSSIBILITY THAT --
27 WHICH YOU CONSIDERED, THAT YOUR PARENTS MIGHT FIND YOUR
28 GUN, YOU DECIDED NOT TO RETRIEVE YOUR GUN?

-20667

1 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.
2 THE COURT: OVERRULED.
3 THE WITNESS: WHEN YOU SAY CONSIDERED, IT GIVES
4 ME THE IMPRESSION THAT YOU MEAN I THOUGHT ABOUT IT FOR A
5 LONG TIME; I WORRIED ABOUT IT, IT WAS A BIG CONCERN OF
6 MINE, AND I WAS ANXIOUS ABOUT IT.
7 IT WAS SOMETHING THAT WENT IN MY MIND. I
8 THOUGHT, AND I DIDN'T -- IT DIDN'T STAY IN MY MIND. I
9 DIDN'T BELIEVE THAT THAT WAS GOING TO HAPPEN.
10 Q. WELL, THAT'S WHAT CONSIDERED MEANS, THAT
11 YOU THOUGHT ABOUT IT AND DECIDED NOT TO DO IT; IS THAT
12 CORRECT?
13 A. I SUPPOSE.
14 Q. NOW, YOU THEN LEFT AGAIN AT ABOUT 1:00
15 O'CLOCK OR SO AND YOU STAYED OUT UNTIL ABOUT 9:30 THAT
16 EVENING; IS THAT CORRECT?
17 A. RIGHT.
18 Q. NOW, WHEN YOU LEFT AT 1:00 O'CLOCK, DID YOU
19 FEEL THAT YOUR PARENTS WERE GOING TO KILL YOU?

20 MR. LEVIN: OBJECTION. ASSUMES FACTS NOT IN

21 EVIDENCE.

22 THE COURT: REPHRASE THE QUESTION.

23 Q. BY MR. CONN: WHEN YOU LEFT YOUR HOME AT

24 APPROXIMATELY 1:00 O'CLOCK, DID YOU FEEL THAT YOUR

25 PARENTS WERE GOING TO KILL YOU?

26 A. I DIDN'T KNOW. I CERTAINLY DIDN'T LIKE

27 WHAT WAS BREWING IN THE HOUSE. I DIDN'T KNOW WHAT WAS

28 GOING TO HAPPEN.

-20666

1 Q. WELL, HOW DID YOU ASSESS THE LIKELIHOOD,

2 MR. MENENDEZ, THAT WHEN YOU CAME HOME THAT EVENING IN

3 LIGHT OF EVERYTHING THAT HAD BEEN GOING ON, HOW DID YOU

4 ASSESS THE LIKELIHOOD SUNDAY AT ABOUT 1:00 O'CLOCK THAT

5 YOUR PARENTS WERE GOING TO KILL YOU SUNDAY NIGHT?

6 A. IT WASN'T JUST WHAT HAD HAPPENED ON SUNDAY.

7 IT WAS THE FACT THAT MY DAD HAD TRIED TO ENTER MY ROOM

8 ON SATURDAY NIGHT AND HAD BEEN FURIOUS. IT'S THE FACT

9 THAT THERE HAD BEEN AN ENORMOUS BLOW-UP ON THURSDAY, AND

10 THAT MOM HAD KNOWN ABOUT THESE THINGS, WHICH I FOUND

11 INCONCEIVABLE THAT SHE COULD KNOW ABOUT.

12 ALL OF THESE THINGS I WAS THINKING ABOUT AT

13 THAT TIME, AND THEY WERE ALL -- THE -- WHAT IS GOING ON

14 WAS BIG IN MY MIND. THINKING ABOUT MOM AND HOW SHE

15 COULD HAVE KNOWN, AND THINKING BACK OVER MY LIFE, AND

16 SIGNS THAT SHE KNEW.

17 I THOUGHT ABOUT ALL THAT THAT WEEKEND AT
18 THE SAME TIME, AND IT -- IT WASN'T JUST -- ALL OF THESE
19 THINGS WEIGHED INTO IT, AND I THOUGHT THAT SOMETHING BAD
20 MIGHT HAPPEN. I WAS HOPING THAT LYLE COULD FIND OUT
21 WHAT WAS GOING ON. I WAS HOPING THAT IT -- THAT NOTHING
22 BAD WOULD HAPPEN. I DIDN'T KNOW.

23 Q. LET ME REPEAT THE QUESTION.

24 HOW DID YOU ASSESS THE LIKELIHOOD AT ABOUT
25 1:00 O'CLOCK ON SUNDAY THAT YOUR PARENTS WERE GOING TO
26 KILL YOU THAT NIGHT?

27 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE, THAT
28 HE DID.

-20665

1 THE COURT: OVERRULED.

2 THE WITNESS: I DIDN'T KNOW MY PARENTS WERE GOING
3 TO KILL ME THAT NIGHT. HOW I ASSESSED THE LIKELIHOOD IS
4 WHAT I JUST SAID; OVER THE PAST THREE DAYS WHAT HAD BEEN
5 GOING ON, AND ALL THE EVENTS WEIGHED IN -- WEIGHED INTO
6 IT.

7 Q. BY MR. CONN: WELL, WOULD YOU SAY THAT
8 THERE WAS A GREAT LIKELIHOOD YOU WOULD BE KILLED THAT
9 NIGHT, A SMALL LIKELIHOOD THAT YOU WOULD BE KILLED THAT
10 NIGHT, OR WOULD YOU SAY THAT IT WAS PRETTY MUCH THE SAME
11 DANGER THAT YOU HAD SENSED FROM THURSDAY THROUGH SUNDAY

12 MORNING?

13 A. THE DANGER DIDN'T STAY AT A PLATEAU, IT
14 SPIKED UP, LIKE ON SATURDAY NIGHT. IT SPIKED UP ON
15 FRIDAY NIGHT. IT WAS AT ONE OF ITS HIGHEST POINTS ON
16 THURSDAY. THEN I RELAXED FRIDAY MORNING. IT CHANGED.

17 ON SUNDAY I THOUGHT SOMETHING BAD MIGHT
18 HAPPEN. I DIDN'T -- I DIDN'T THINK MY PARENTS ARE
19 DEFINITELY GOING TO KILL ME. IN SOME WAYS, I DIDN'T
20 WANT TO THINK ABOUT IT. IN SOME WAYS I DIDN'T WANT TO
21 LOAD MY GUN. I JUST DIDN'T WANT THESE EVENTS TO
22 ACTUALLY BE HAPPENING, AND SO IT -- IT -- IT'S SO
23 DIFFICULT TO DESCRIBE.

24 Q. WELL, MR. MENENDEZ, WHAT I AM ASKING YOU IS
25 THIS:

26 YOU SAID THAT IT DIDN'T STAY AT A PLATEAU,
27 IT WOULD GO UP AND DOWN; IS THAT CORRECT?

28 A. YES.

-20664

1 Q. AND THAT'S WHAT I AM ASKING YOU. ON SUNDAY
2 AT ABOUT 1:00 O'CLOCK, HOW DID YOU RATE THE THREAT LEVEL
3 AT THAT POINT?

4 A. HIGH, BUT WITH HOPE.

5 Q. HOPE THAT WHAT?

6 A. HOPE THAT MY FEARS WERE NOT FOUNDED. HOPE
7 THAT THINGS WOULD COME TO LIGHT WHEN LYLE TALKED TO MOM

8 OR DAD. HOPE THAT SOMETHING WOULD HAPPEN. LYLE WAS
9 GOING TO GO INSIDE THE HOUSE AND TRY TO MINGLE, IN A
10 SENSE, OR SPARK UP CONVERSATIONS. THEN I WAS GOING TO
11 GET A DEFINITE SENSE, AND SO I WAS VERY ANXIOUS TO
12 ARRIVE BACK HOME, AND IN A WAY I DIDN'T WANT TO GO BACK
13 HOME.

14 Q. WOULD YOU SAY THAT YOUR SENSE OF DANGER AT
15 SUNDAY AT ABOUT 1:00 O'CLOCK WAS NOT AS GREAT AS IT HAD
16 BEEN EITHER THURSDAY NIGHT OR ON SATURDAY NIGHT AFTER
17 YOUR FATHER HAD BANGED ON YOUR DOOR?

18 A. I WASN'T PANICKED, IF THAT'S WHAT YOU MEAN,
19 LIKE I WAS ON SUNDAY NIGHT -- I MEAN ON SATURDAY NIGHT.
20 I WAS -- I DIDN'T THINK THAT THE DANGER WAS IMMEDIATE.

21 Q. AND WHY DID YOU FEEL THAT THE DANGER WAS
22 NOT IMMEDIATE SUNDAY AT ABOUT 1:00 P.M.?

23 A. BECAUSE I WAS AWAY FROM MY BROTHER. IT WAS
24 DAYTIME. IT WAS JUST -- I DIDN'T KNOW WHAT WAS GOING TO
25 HAPPEN, BUT I DIDN'T THINK THE DANGER WAS IMMEDIATE.

26 Q. AND WHAT WOULD MAKE THAT DANGER IMMEDIATE
27 IN YOUR MIND?

28 MR. LEVIN: OBJECTION. CALLS FOR SPECULATION.

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1 THE COURT: YOU'RE ASKING HIS CURRENT STATE OF
2 MIND OR HIS VIEW AT THAT TIME?

3 MR. CONN: AT THAT TIME, SUNDAY AT ABOUT 1:00

4 P.M.

5 THE WITNESS: WHAT WOULD MAKE THAT DANGER

6 IMMEDIATE?

7 MR. LEVIN: OBJECTION, YOUR HONOR. IT'S

8 ARGUMENTATIVE.

9 THE WITNESS: MY FATHER TELLING ME HE WAS GOING

10 TO KILL ME, THAT WOULD MAKE IT IMMEDIATE. MY FATHER

11 BANGING ON MY DOOR, THAT WOULD MAKE IT IMMEDIATE. MY

12 FATHER TELLING ME THAT THERE WAS GOING TO BE SEX. THAT

13 WOULD MAKE IT IMMEDIATE. ANY NUMBER OF THINGS COULD

14 HAVE MADE IT IMMEDIATE.

15 THE COURT: THE OBJECTION IS OVERRULED.

16 Q. BY MR. CONN: WHERE DID YOU GO FROM ABOUT

17 NOON UNTIL 9:30?

18 MR. LEVIN: OBJECTION. IT MISSTATES HIS

19 TESTIMONY.

20 THE COURT: REPHRASE THE QUESTION.

21 Q. BY MR. CONN: I'M SORRY. FROM ABOUT 1:00

22 O'CLOCK UNTIL ABOUT 9:30?

23 A. I -- I WAS -- I KNOW I DROVE -- I DROVE

24 AROUND FOR A LONG TIME. I WENT INTO THE VALLEY. I KNOW

25 THAT I WAS ON PACIFIC COAST HIGHWAY. AT ONE POINT I

26 PULLED OVER ON PACIFIC COAST HIGHWAY AND WAS SITTING ON

27 MY HOOD.

28 Q. WHEN -- DID YOU CALL YOUR BROTHER

1 THROUGHOUT THE DAY?

2 A. NO.

3 Q. DID YOU CALL HIM AT ALL?

4 A. NOT ONCE.

5 Q. DIDN'T YOU WANT TO KNOW -- DIDN'T YOU WANT

6 AN UPDATE AS TO WHETHER OR NOT HE WAS SPEAKING TO YOUR

7 PARENTS AS YOU WANTED HIM TO DO?

8 A. I WAS VERY ANXIOUS FOR AN UPDATE, BUT YES

9 AND NO.

10 Q. TELL ME ABOUT THE NO PART?

11 A. I HAD A VERY STRONG FEELING OF NOT WANTING

12 TO GO BACK TO THE HOUSE. I HAD A VERY STRONG FEELING

13 THAT ALL OF THIS WAS MY FAULT, THAT I DEEPLY REGRETTED

14 TELLING MY BROTHER AND GETTING HIM INVOLVED IN THIS, AND

15 I DIDN'T WANT TO GO BACK TO THE HOUSE AND FIND OUT WHAT

16 WAS GOING TO HAPPEN.

17 I REALLY DID NOT -- A STRONG PART OF ME DID

18 NOT WANT TO DO THAT.

19 Q. I AM NOT TALKING ABOUT GOING BACK TO THE

20 HOUSE. I AM TALKING ABOUT CALLING YOUR BROTHER, LYLE

21 MENENDEZ, DURING THAT TIME PERIOD TO ASK FOR AN UPDATE

22 AS TO HOW THINGS WERE GOING.

23 A. NO. I DID NOT DO THAT.

24 Q. WHY NOT?

25 A. I AM SURE THERE WERE REASONS AT THE TIME.

26 I WOULD ONLY BE GUESSING AT THIS POINT.

27 Q. SO YOU WENT BACK TO YOUR HOME AT ABOUT

28 9:30; IS THAT CORRECT?

1 A. YES.

2 Q. AND AT THAT TIME YOU HAD NO REASON TO
3 BELIEVE THAT YOU WERE IN ANY MORE DANGER THAN YOU HAD
4 BEEN AT 1:00 O'CLOCK THAT DAY; IS THAT CORRECT?

5 A. I DON'T KNOW THAT'S YES OR NO. I HAD BEEN
6 THINKING ABOUT IT FOR EIGHT HOURS AND WORRYING ABOUT IT
7 FOR EIGHT HOURS. I WAS IN A VERY JUMPY STATE WHEN I GOT
8 BACK TO MY HOME, BUT I DIDN'T KNOW ANYTHING DIFFERENT
9 THAN WHEN I LEFT AT 1:00.

10 Q. RIGHT. AND YOU SAID THAT ABOUT
11 1:00 O'CLOCK ON SUNDAY, YOU SAID THERE WAS NO IMMEDIATE
12 DANGER; IS THAT CORRECT?

13 A. YES.

14 Q. AND SO WHEN YOU GOT HOME AT 9:30 BEFORE YOU
15 SPOKE TO YOUR BROTHER, LYLE MENENDEZ, THERE WAS STILL NO
16 IMMEDIATE DANGER; IS THAT CORRECT?

17 A. WELL, THERE WAS MORE DANGER THAN THERE WAS
18 AT 1:00, BUT THERE WAS NO IMMEDIATE DANGER, NO.

19 Q. AND THEN YOU BEGAN SPEAKING TO YOUR
20 BROTHER, LYLE MENENDEZ; IS THAT CORRECT?

21 A. YES.

22 Q. AND WHAT HAPPENED AT THAT TIME?

23 A. HE TOLD ME ABOUT CONVERSATIONS HE HAD HAD
24 DURING THE DAY. I SPECIFICALLY REMEMBER A V.J.
25 ARMITRAGE CAMP AND TALKING ABOUT PERRY.

26 Q. PERRY AND WHAT ELSE?

27 A. V.J. ARMITRAGE CAMP THAT MY DAD HAD WANTED
28 HIM TO GO TO.

-20660

1 Q. SO YOUR BROTHER, LYLE MENENDEZ, TOLD YOU
2 THAT HE HAD A CONVERSATION WITH YOUR FATHER ABOUT GOING
3 TO A TENNIS CAMP; IS THAT CORRECT?

4 A. I DON'T KNOW IF IT WAS A CONVERSATION. HE
5 HAD ASKED MY DAD IF HE SHOULD STILL APPLY AND IF HE
6 SHOULD STILL GO, AND MY DAD SAID, "WHAT DOES IT MATTER
7 ANYMORE," AND HE DESCRIBED IT AS A VERY EERY, OMINOUS
8 THING.

9 Q. "WHAT DOES IT MATTER ANY MORE"; IS THAT
10 CORRECT?

11 A. THOSE ARE THE WORDS I REMEMBER.

12 Q. AND DID THAT SOUND OMINOUS TO YOU?

13 A. THE WAY MY BROTHER WAS DESCRIBING IT, YES.
14 THAT PARTICULAR COMMENT SOUNDED VERY OMINOUS TO ME, AND
15 IT WAS -- IT WAS EVERYTHING HE SAID AROUND IT.

16 Q. TELL US WHY THAT SOUNDED SO OMINOUS TO YOU.

17 A. BECAUSE MY FATHER HAD BEEN PUSHING MY
18 BROTHER TO GO TO THIS CAMP, AND SIMPLY DISMISSING IT
19 WITH "WHAT DOES IT MATTER ANYMORE" WAS SIGNIFICANT TO
20 ME.

21 Q. AND YOU SAID, "THAT'S IT, LYLE MENENDEZ.

22 OUR FATHER IS GOING TO KILL US TONIGHT"; IS THAT
23 CORRECT?
24 MR. LEVIN: OBJECTION. ARGUMENTATIVE.
25 THE COURT: SUSTAINED.
26 Q. BY MR. CONN: DID YOU SAY AT THAT POINT TO
27 YOUR BROTHER, "WELL, THERE'S THE PROOF WE'VE BEEN
28 WAITING FOR. OUR FATHER IS GOING TO KILL US TONIGHT."

-20659

1 A. NO.
2 Q. WHY NOT?
3 MR. LEVIN: OBJECTION. CALLS FOR SPECULATION.
4 THE COURT: AS TO WHETHER HE SAID THOSE EXACT
5 WORDS, SUSTAINED.
6 Q. BY MR. CONN: YES.
7 WHY DID YOU NOT HAVE SOME CONVERSATION WITH
8 YOUR BROTHER AT THAT POINT TO THE EFFECT THAT YOU
9 THOUGHT YOUR FATHER WAS GOING TO KILL YOU THAT NIGHT?
10 A. AFTER HE TOLD ME ABOUT THE V.J. ARMITRAGE
11 CAMP?
12 Q. YES.
13 A. BECAUSE I WASN'T ABSOLUTELY CERTAIN MY
14 FATHER WAS GOING TO KILL ME THAT NIGHT.
15 Q. BECAUSE THAT IS A REMARK THAT CAN BE
16 INTERPRETED DIFFERENT WAYS; IS THAT NOT RIGHT?
17 A. YOU MEAN --

18 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: OVERRULED.

20 THE WITNESS: IT CAN BE INTERPRETED DIFFERENT

21 WAYS DEPENDING ON WHAT'S GOING ON INSIDE THE HOUSE THAT

22 WEEKEND. I INTERPRETED IT ONE WAY.

23 Q. HOW DID YOU INTERPRET IT?

24 A. I INTERPRETED IT THAT DAD NO LONGER CARED

25 WHETHER LYLE WENT TO THIS CAMP; THAT HE -- THAT MY DAD

26 HAD BEEN PUSHING FOR A VERY LONG TIME, AS IF WHAT DOES

27 IT MATTER ANYMORE, WHAT DOES YOUR LIFE MATTER ANYMORE.

28 THAT'S HOW I SAW IT.

-20658

1 Q. SO YOU INTERPRETED THAT TO MEAN THAT YOUR

2 FATHER WAS GOING TO KILL YOU THAT NIGHT; IS THAT

3 CORRECT?

4 A. NO.

5 Q. ISN'T THAT WHAT YOU'RE TELLING US BY YOUR

6 INTERPRETATION OF THAT REMARK?

7 A. I INTERPRETED IT AS A BAD SIGN. I DIDN'T

8 INTERPRET IT AS THE END ALL OF NOW I KNOW WHAT'S

9 HAPPENED. IT WAS A SHORT, 10-MINUTE, 15-MINUTE

10 CONVERSATION. LYLE DID NOT WANT TO BE AT THE HOUSE

11 ANYMORE. HE WAS ANGRY THAT I HAD NOT GOTTEN BACK UNTIL

12 9:30. HE WAS ASKING ME WHY I HAD GOTTEN BACK AT 9:30

13 WHEN HE HAD ASKED ME TO BE BACK AT --

14 MR. CONN: OBJECTION. NONRESPONSIVE.

15 THE COURT: YOUR NEXT QUESTION, PLEASE.

16 Q. BY MR. CONN: SO DID YOU FEEL AT THAT POINT

17 WHEN YOUR BROTHER, LYLE MENENDEZ, TOLD YOU THAT YOUR

18 FATHER MADE THIS REMARK ABOUT A TENNIS CAMP THAT YOU

19 WERE CLOSER TO THE CRISIS SITUATION?

20 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE AS

21 PHRASED.

22 THE COURT: REPHRASE THE QUESTION.

23 Q. BY MR. CONN: DID YOU FEEL THAT AFTER YOUR

24 BROTHER TOLD YOU THAT HIS FATHER SAID, "WHAT DOES IT

25 MATTER ANYMORE," THAT YOU WERE THEN CLOSER TO THIS

26 CRISIS SITUATION IN WHICH YOU MIGHT HAVE TO SHOOT YOUR

27 FATHER?

28 A. I DIDN'T TAKE IT TO THAT STEP. ALL I KNOW

-20657

1 IS THAT LYLE WANTED TO LEAVE THE HOUSE. HE WAS

2 FRUSTRATED THAT I HAD GOTTEN IN AN HOUR AND A HALF LATE,

3 AND I DIDN'T WANT TO BE AT THE HOUSE ANYMORE EITHER. HE

4 TOLD ME ABOUT SOMETHING ELSE, AND WE JUST DECIDED TO GET

5 OUT OF THERE.

6 Q. SO YOU DIDN'T FEEL YOU WERE CLOSER TO THE

7 CRISIS SITUATION; IS THAT CORRECT?

8 A. THE ANSWER TO THAT QUESTION IS YES, I DID.

9 Q. AND SINCE YOU WERE CLOSER TO THE CRISIS

10 SITUATION, DID YOU DECIDE AT THAT POINT IT IS TIME TO
11 LEAVE THE HOUSE WITHOUT TALKING TO YOUR PARENTS TO AVOID
12 A VIOLENT CONFRONTATION?

13 A. THE CONVERSATION HADN'T ENDED YET. HE TOLD
14 ME MORE THINGS AND THERE WAS MORE TO IT.

15 Q. OKAY. BEFORE HE TOLD YOU THE REST, DID YOU
16 DECIDE AT THAT POINT IT WAS TIME TO LEAVE THE HOUSE AND
17 AVOID A VIOLENT CONFRONTATION WITH YOUR PARENTS?

18 A. NO.

19 Q. WHY NOT?

20 A. BECAUSE HE HADN'T FINISHED TALKING. HAD HE
21 FINISHED TALKING, I WOULD HAVE SAID YES.

22 Q. OKAY. SO THEN HE FINISHED TALKING?

23 A. YES.

24 Q. AND WHAT ELSE DID HE TELL YOU AT THAT TIME?

25 A. HE TOLD ME THAT MY FATHER HAD LIED TO PERRY
26 AND TOLD PERRY THAT WE WERE OUT WHEN WE WEREN'T OUT --
27 AT LEAST THAT LYLE WASN'T OUT, AND WE TALKED ABOUT THAT.
28 WE TALKED ABOUT THE GENERAL MOOD OF MY

-20656

1 MOTHER AND FATHER. WE DECIDED THAT -- TO LEAVE.

2 Q. SO IT WAS YOUR BELIEF THAT YOUR FATHER HAD
3 LIED TO PERRY BERMAN; IS THAT CORRECT?

4 A. HE HAD TOLD PERRY THAT WE WERE BOTH OUT,
5 AND THAT WASN'T TRUE.

6 Q. YES. AND YOU HEARD THE TESTIMONY OF PERRY
7 BERMAN IN THIS COURTROOM SAYING THAT LYLE MENENDEZ TOLD
8 HIM THAT HE HAD BEEN OUT?

9 A. NO, THAT'S NOT WHAT PERRY SAID. PERRY SAID
10 THAT LYLE DID NOT DENY THAT HE HAD BEEN OUT.

11 Q. WELL, YOU'RE SAYING THAT YOU WERE NOT OUT
12 WITH YOUR BROTHER LYLE MENENDEZ THAT DAY; IS THAT
13 CORRECT?

14 A. WITHOUT A QUESTION I WAS NOT OUT WITH LYLE.
15 I WAS OUT BY MYSELF.

16 Q. SO AFTER YOU LEARNED TWO THINGS FROM YOUR
17 BROTHER; NUMBER ONE, THAT YOUR FATHER HAD SAID, "WHAT
18 DOES IT MATTER ANYMORE," IN REFERENCE TO THE TENNIS
19 CAMP; AND NUMBER TWO, THAT HE HAD LIED TO PERRY BERMAN,
20 YOU THEN FELT THAT YOU WERE IN A CRISIS SITUATION?

21 A. WITH EVERYTHING ELSE THAT WENT ALONG WITH
22 IT, I DIDN'T WANT TO BE IN THE HOUSE ANYMORE. LYLE WAS
23 TELLING ME THAT HE DIDN'T WANT TO BE IN THE HOUSE
24 ANYMORE. I AGREED, AND WE DECIDED TO LEAVE.

25 Q. WELL, DID YOU FEEL THAT THIS WAS A CRISIS
26 SITUATION IN WHICH YOUR FATHER WAS PROBABLY GOING TO
27 KILL YOU AT THAT POINT?

28 A. WE FELT IT WAS A VERY OMINOUS SIGN. WE

1 FELT THAT IT WAS -- THEY WERE BAD SIGNS. I DIDN'T WANT

2 TO BE THERE ANYMORE. I DIDN'T WANT TO STAY ALONE WITH

3 LYLE IN THE HOUSE ANYMORE, ABSOLUTELY.

4 Q. DID YOU FEEL THAT YOUR FATHER WAS GOING TO
5 KILL YOU AT THAT POINT?

6 A. I WASN'T SURE, BUT I WAS CONCERNED ABOUT
7 THE SITUATION.

8 Q. WOULD YOU SAY THAT YOUR -- YOUR ASSESSMENT
9 OF THE THREAT AT THAT POINT WAS AS GREAT AS SUNDAY -- AS
10 THURSDAY NIGHT WHEN YOUR FATHER WAS BANGING ON YOUR
11 DOOR, OR AS GREAT AS SATURDAY NIGHT WHEN YOUR FATHER WAS
12 BANGING ON YOUR DOOR?

13 A. I DON'T KNOW WHAT YOU MEAN BY THAT
14 QUESTION.

15 Q. WELL, YOU FELT -- THE NIGHTS WHEN YOU FELT
16 IN GREATEST DANGER BETWEEN THURSDAY AND SUNDAY AFTERNOON
17 WERE THURSDAY NIGHT WHEN YOUR FATHER WAS BANGING ON YOUR
18 DOOR, AND SATURDAY NIGHT WHEN YOUR FATHER WAS BANGING ON
19 THE DOOR; IS THAT CORRECT?

20 A. YES.

21 Q. AND THOSE WERE YOUR TWO MOST FEARFUL
22 MOMENTS THAT WEEK; IS THAT CORRECT, UP UNTIL SUNDAY
23 AFTERNOON?

24 A. I WOULD SAY THURSDAY NIGHT IN GENERAL. NOT
25 JUST WHEN HE WAS BANGING ON MY DOOR.

26 I WOULD SAY RIGHT BEFORE WE WERE GOING ON
27 THE FISHING TRIP, AND -- YES.

28 Q. AND SO HOW WOULD YOU RATE THIS -- YOUR

1 EVALUATION OF THE THREAT AT THAT POINT IN TIME BEFORE
2 YOU WENT OVER TO THE MAIN HOUSE ON SUNDAY NIGHT IN
3 REFERENCE TO THURSDAY NIGHT AND SATURDAY NIGHT?

4 MR. LEVIN: OBJECTION. IT ASSUMES HE CAN RATE
5 IT.

6 THE COURT: IF YOU CAN ANSWER THE QUESTION.

7 THE WITNESS: I MEAN, YOU'RE ASKING ME TO RATE
8 WITH PERCENTAGES, AND I CAN ONLY RATE IT WITH EMOTION.

9 Q. BY MR. CONN: I AM NOT ASKING YOU TO RATE
10 WITH PERCENTAGES. I AM ASKING YOU TO RATE IT IN TERMS
11 OF HOW FEARFUL YOU WERE, HOW MANY -- HOW MUCH YOU
12 BELIEVED AT THAT POINT THAT YOUR FATHER WAS ACTUALLY
13 GOING TO KILL YOU THAT NIGHT.

14 A. I DIDN'T KNOW THAT HE WAS ABSOLUTELY GOING
15 TO KILL ME. I DID NOT KNOW THAT. I DIDN'T KNOW THAT MY
16 MOTHER HAD DECIDED TO TAKE OUR LIVES. I DID NOT MAKE
17 THAT DECISION.

18 I THOUGHT THAT THESE WERE BAD SIGNS.
19 EMOTIONALLY I DID NOT LIKE THE SITUATION. I FELT FEAR.
20 I DID NOT WANT TO BE IN THE HOUSE ANYMORE. I TOLD LYLE
21 THAT WE SHOULD JUST GET OUT OF THERE AND STAY AWAY,
22 AND --

23 Q. WHAT I AM ASKING YOU IS WHAT DID YOU THINK
24 WAS THE LIKELIHOOD THAT YOUR FATHER WAS GOING TO KILL
25 YOU BEFORE YOU WENT OVER TO THE MAIN HOUSE?

26 A. EMOTIONALLY I FELT THAT WAS A BAD SIGN.

27 Q. DID YOU FEEL THAT YOU WERE IN AS MUCH
28 DANGER AS YOU WERE GOING OVER TO THE MAIN HOUSE AS YOU

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1 HAD BEEN ON THURSDAY NIGHT WHEN YOUR FATHER WAS BANGING
2 ON YOUR DOOR?

3 A. NO.

4 Q. DID YOU FEEL THAT YOU WERE IN AS MUCH
5 DANGER AS YOU HAD BEEN SATURDAY NIGHT WHEN YOUR FATHER
6 WAS BANGING ON YOUR DOOR?

7 A. CLEARLY I WAS NOT IN AS MUCH DANGER ON
8 SATURDAY NIGHT.

9 Q. DID YOU FEEL THAT YOU WERE IN AS MUCH
10 DANGER AS WHEN YOU WERE ABOUT TO GO ON THE FISHING TRIP?

11 A. THAT'S DIFFICULT TO ANSWER. CERTAINLY I
12 WAS IN MORE DANGER SATURDAY NIGHT.

13 Q. SO, IT'S -- YOU FELT SOMEWHAT SIMILAR TO
14 THE SITUATION ON SATURDAY BEFORE YOU WENT ON THE FISHING
15 TRIP; IS THAT CORRECT?

16 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 Q. BY MR. CONN: DID YOU FEEL THAT THE
19 DANGEROUS SITUATION WAS SOMEWHAT SIMILAR TO THE WAY IT
20 WAS ON SATURDAY JUST BEFORE YOU WENT ON THE FISHING
21 TRIP?

22 A. I DON'T KNOW IF I CAN ANSWER THE QUESTION.

23 I MEAN, I HAVEN'T -- I HAVE NEVER BEEN ASKED THAT
24 QUESTION BEFORE IN THE SIX AND A HALF YEARS, AND LOOKING
25 BACK ON IT, FOR ME TO TELL YOU IF MY FEAR WAS HIGHER AT
26 THIS TIME VERSUS JUST BEFORE WHEN I WAS ON THE FISHING
27 TRIP WHEN I WAS AFRAID AS WELL, IT'S IMPOSSIBLE FOR ME
28 TO GIVE YOU A COMPARISON AND PERCENTAGES.

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1 I WAS AFRAID. I THOUGHT HE DEFINITELY
2 MIGHT DO SOMETHING. IT WAS A BAD SITUATION. I DIDN'T
3 WANT TO BE AT HOME ANYMORE. THAT'S THE MOST I CAN TELL
4 YOU.

5 Q. OKAY. NOW, YOU FELT THAT THE DANGER WAS
6 GREATEST WHEN THE TWO OF YOU WERE TOGETHER; IS THAT
7 CORRECT?

8 A. YES.

9 Q. NOW, SO DID YOU TELL YOUR BROTHER AT THAT
10 POINT THAT IT WOULD NOT BE A GOOD IDEA FOR BOTH YOU AND
11 HE TO GO TO THE MAIN HOUSE AT THIS PARTICULAR POINT IN
12 TIME IN LIGHT OF THE LEVEL OF THE DANGER?

13 A. YES. WE WANTED TO LEAVE THE HOUSE. HE
14 WANTED TO TELL MOM AND DAD THAT WE WERE GOING OUT. HE
15 FELT THAT WE COULD NOT NOT SAY ANYTHING AND JUST LEAVE;
16 THAT THAT WAS THE WRONG THING TO DO. I FELT THAT WE
17 SHOULD JUST LEAVE. WE WENT WITH LYLE'S DECISION, AND I
18 UNDERSTOOD.

19 Q. WHAT I AM ASKING YOU, MR. MENENDEZ, IS THE
20 DECISION FOR YOU AND YOUR BROTHER TO BOTH APPEAR IN
21 FRONT OF YOUR PARENTS IN THE MAIN HOUSE AT THE TIME WHEN
22 YOU FELT THAT THERE WAS SOME DANGER, WHOSE IDEA WAS
23 THAT?

24 A. THERE WAS NEVER A DECISION TO BOTH APPEAR
25 IN THE MAIN HOUSE IN FRONT OF MY PARENTS THAT DIDN'T
26 HAPPEN. WE DIDN'T THINK ABOUT THESE THINGS.

27 Q. WELL, DID YOU GO TO THE MAIN HOUSE
28 TOGETHER?

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1 A. YES.

2 Q. AND DID YOU WALK IN THE DOOR RIGHT BEHIND
3 ONE ANOTHER?

4 A. YES.

5 Q. AND YOU WERE BOTH NOT MORE THAN A FEW FEET
6 AWAY WHEN YOUR -- WHEN YOUR BROTHER WAS TELLING YOUR
7 MOTHER THAT HE WAS GOING OUT?

8 A. I WAS IN THE FOYER. HE WAS IN THE DEN.

9 Q. OKAY. AND HOW FAR -- HOW FAR APART WERE
10 YOU AT THAT POINT IN TIME?

11 A. WE WERE IN TWO SEPARATE ROOMS.

12 Q. HOW FAR APART?

13 A. FIFTEEN, TWENTY FEET.

14 Q. NOW, IN LIGHT OF THE LEVEL OF DANGER, AS

15 YOU ASSESSED IT THAT EVENING, MR. MENENDEZ, DID YOU
16 THINK IT WAS A GOOD IDEA FOR BOTH OF YOU TO GO INTO THE
17 MAIN HOUSE AND APPEAR IN FRONT OF YOUR PARENTS NO MORE
18 THAN ABOUT 15 FEET APART?

19 A. I DIDN'T THINK IT WAS A GOOD IDEA TO GO
20 INTO THE MAIN HOUSE. I DIDN'T WANT TO GO INTO THE MAIN
21 HOUSE. LYLE SAID I HAD NOT BEEN HOME THE ENTIRE DAY,
22 MOM AND DAD HAD NOT SEEN ME THE ENTIRE DAY. TO GO OUT
23 NOW WOULD BE A BAD IDEA WITHOUT TELLING THEM THAT. THAT
24 WOULD CERTAINLY BRING THINGS TO A HEAD AND MAKE THE
25 SITUATION LETHAL.

26 AND SO HE SAID HE'S JUST GOING TO TELL THEM
27 THAT WE ARE GOING OUT TO THE MOVIES SO I CAN GET OUT,
28 AND I SAID, "FINE, WE'LL DO THAT."

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1 AND WHEN LYLE WENT INTO THE DEN, I
2 PURPOSELY AVOIDED THE DEN, BECAUSE I DID NOT WANT TO BE
3 IN THERE.

4 Q. DO YOU UNDERSTAND I AM ASKING YOU WHY YOU
5 WENT IN TOGETHER AND NOT WHY YOU WENT INTO THE HOUSE;
6 WHY EITHER ONE OF YOU WENT INTO THE HOUSE?

7 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

8 THE COURT: SUSTAINED.

9 Q. BY MR. CONN: CAN YOU TELL US,
10 MR. MENENDEZ, IF EITHER YOU TOLD YOUR BROTHER OR YOUR

11 BROTHER TOLD YOU AT ANY TIME BEFORE GOING IN THE HOUSE
12 THAT EVENING THAT IT PROBABLY WOULDN'T BE A GOOD IDEA TO
13 GO IN THE HOUSE TOGETHER IN LIGHT OF THE SITUATION AT
14 HAND?

15 A. I DON'T KNOW WHAT YOU'RE ASKING. I THOUGHT
16 I ANSWERED YOUR QUESTION.

17 Q. WAS THERE ANY CONVERSATION ABOUT WHETHER OR
18 NOT YOU AND YOUR BROTHER SHOULD GO IN THE HOUSE
19 TOGETHER?

20 A. YOU MEAN WHETHER OR NOT -- SO YOU'RE
21 SEPARATING OUT WHETHER OR NOT WE SHOULD GO INTO THE
22 HOUSE VERSUS WHETHER OR NOT WE SHOULD GO TOGETHER?

23 Q. THAT'S WHAT THE QUESTION IS.

24 A. I DIDN'T UNDERSTAND. NO.

25 Q. AND IS THAT BECAUSE YOU DIDN'T FEEL THAT
26 YOU WERE IN THE GREATEST DANGER WHEN YOU WERE TOGETHER?

27 A. IT'S BECAUSE I DIDN'T ANALYZE THE SITUATION
28 THAT WAY, AND THINK ABOUT ALL THESE LITTLE COMPONENTS TO

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1 THE FEAR AND DECIDE WHAT WAS -- WHAT WAS THE ABSOLUTE
2 GREATEST PERCENTAGE FOR THINGS NOT TO HAPPEN. I SIMPLY
3 WASN'T PROCESSING THE INFORMATION THAT WAY. I JUST WAS
4 GOING ON WHAT I THOUGHT BEST. LYLE WAS GOING IN THE
5 HOUSE. I WENT BEHIND HIM. I -- I AM TELLING YOU I JUST
6 DID NOT THINK ABOUT IT.

7 Q. NOW YOU DON'T NORMALLY -- YOU DIDN'T
8 NORMALLY DURING THIS PERIOD OF TIME TELL YOUR MOTHER
9 EVERYWHERE YOU WERE GOING, DID YOU?

10 MR. LEVIN: OBJECTION. VAGUE AS TO THIS PERIOD
11 OF TIME.

12 THE COURT: OVERRULED.

13 THE WITNESS: THIS WEEKEND WAS VERY DIFFERENT
14 THAN WHAT WOULD HAPPEN NORMALLY.

15 Q. BY MR. CONN: SO NORMALLY YOU WOULD JUST GO
16 TO THE MOVIES IF YOU WERE GOING TO GO TO THE MOVIES; IS
17 THAT CORRECT, WITHOUT TELLING YOUR PARENTS?

18 A. NO, I WOULDN'T SAY THAT'S TRUE.

19 Q. WELL, YOU WOULD OFTEN LEAVE THE HOME
20 WITHOUT TELLING YOUR PARENTS WHERE YOU WERE GOING; IS
21 THAT CORRECT?

22 A. I DID LEAVE THE HOME AT TIMES, BUT
23 GENERALLY I HAD SEEN THEM EARLIER IN THE DAY. IT WAS
24 NOT A TENSE SITUATION. THEY WEREN'T ANGRY AT ME.

25 Q. SO THEN IN THE NORMAL SITUATION DID YOU
26 TELL YOUR PARENTS WHEN YOU WERE COMING AND GOING?

27 A. USUALLY.

28 MR. LEVIN: OBJECTION. VAGUE AS TO NORMALLY,

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1 YOUR HONOR.

2 THE COURT: OVERRULED. YOUR ANSWER?

3 THE WITNESS: USUALLY.

4 Q. BY MR. CONN: OKAY. SO YOU WENT INTO THE
5 MAIN HOUSE AND YOU AND YOUR BROTHER HAD A CONVERSATION
6 WITH YOUR MOTHER; IS THAT CORRECT?

7 A. I JUST HEARD WHAT WAS SAID COMING OUT OF
8 THE DEN. I DIDN'T HEAR WHAT WAS SAID INSIDE THE DEN.

9 Q. AND YOU WERE STAYING IN THE FOYER AREA WHEN
10 YOU SAW YOUR BROTHER AND YOUR MOTHER COME OUT OF THE
11 DEN; IS THAT CORRECT?

12 A. IN THE -- IN THE DOORWAY BETWEEN THE ENTRY
13 ROOM AND THE LIVING ROOM.

14 Q. AND WHAT HAPPENED NEXT?

15 A. I HEARD MY MOTHER -- MY BROTHER WALKED OUT
16 OF THE DEN, AND I HEARD MY MOTHER FOLLOWING -- WELL, I
17 SAW MY MOTHER FOLLOWING HIM SAYING, "NO, YOU CAN'T GO
18 OUT TONIGHT."

19 Q. DID YOU AT ANY TIME TELL YOUR MOTHER THAT
20 YOU WERE GOING TO GO?

21 A. NO, I DIDN'T. I DIDN'T.

22 Q. DID YOU HEAR YOUR BROTHER TELL YOUR MOTHER
23 WHERE YOU WERE GOING TO GO?

24 A. I DIDN'T THINK ABOUT IT. I ASSUMED THAT HE
25 SAID THAT WE WERE GOING TO THE MOVIES.

26 Q. WERE YOU IN FACT GOING TO GO TO THE MOVIES
27 AT THAT TIME?

28 A. NO, WE WEREN'T.

1 Q. WHERE WERE YOU GOING TO GO?

2 A. TO THIS TASTE OF L.A. THING WITH PERRY.

3 Q. AND IF YOU WERE GOING TO GO TO THE TASTE OF

4 L.A. THING, CAN YOU TELL US WHY YOU ASSUMED THAT YOUR

5 BROTHER WAS TELLING YOUR MOTHER THAT YOU WERE GOING TO

6 GO TO THE MOVIES INSTEAD?

7 A. BECAUSE HE HAD TOLD ME THAT HE WAS GOING TO

8 SAY THAT WE WERE GOING TO THE MOVIES, BECAUSE THAT WOULD

9 BE A NORMAL THING THAT WE WOULD DO. IT WOULDN'T BE

10 ANYTHING OUT OF THE ORDINARY OR ANYTHING UNUSUAL. IT

11 WOULD BE THE EASIEST WAY TO GET OUT OF THE HOUSE.

12 Q. DIDN'T YOU FEEL THAT PERHAPS THE DANGER

13 WOULD BE -- THE DANGER FROM YOUR PARENTS WOULD BE LESS

14 IF YOU WERE TO TELL YOUR PARENTS THAT YOU WERE GOING TO

15 BE AMONG PEOPLE THAT EVENING AND FRIENDS THAT EVENING

16 RATHER THAN SIMPLY AT A MOVIE THEATER?

17 A. I NEVER CONSIDERED IT.

18 Q. AND YOU NEVER DISCUSSED THAT WITH YOUR

19 BROTHER; IS THAT CORRECT?

20 A. NO.

21 Q. NOW, YOU HEARD YOUR MOTHER TELL YOUR

22 BROTHER THAT YOU COULDN'T GO TO THE MOVIES; IS THAT

23 CORRECT?

24 A. NO. SHE TOLD LYLE THAT WE COULDN'T GO OUT

25 THAT NIGHT.

26 Q. THEN WHAT HAPPENED?

27 A. LYLE TOLD -- LYLE ASKED MOM WHY, WHY WE

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1 Q. THEN WHAT HAPPENED?

2 A. AND SHE WAS TRYING TO ANSWER HIM. SHE

3 COULDN'T ANSWER HIM, AND SHE SAID -- SHE STUTTERED

4 "BECAUSE I SAID SO."

5 Q. WHAT HAPPENED NEXT?

6 A. MY FATHER CAME OUT OF THE DEN, AND HE SAID

7 "SHUT UP, KITTY."

8 Q. WHAT HAPPENED NEXT?

9 A. HE TOLD LYLE THAT HE WASN'T GOING OUT

10 TONIGHT. HE SAW ME. HE TOLD ME TO GET UP TO MY ROOM,

11 AND HE WOULD BE THERE IN A MINUTE.

12 Q. WHAT HAPPENED NEXT?

13 A. MY BROTHER TOLD MY FATHER THAT HE WASN'T

14 GOING TO ME. HE SAID, "YOU'RE NOT GOING TO TOUCH ERIK.

15 YOU'RE NOT GOING TO TOUCH MY LITTLE BROTHER." HE TOLD

16 ME TO GET -- NOT TO GO UP THE STAIRS. I WAS LINGERING

17 ON THE STAIRS AT THAT POINT.

18 Q. AND WHAT HAPPENED NEXT?

19 A. MY FATHER WAS MOVING TOWARD MY BROTHER. HE

20 SAID, "DON'T TELL ME WHAT TO DO IN THIS FAMILY. HE'S

21 NOT YOUR LITTLE BROTHER. HE'S MY SON."

22 HE SAW ME LINGERING ON THE STAIRS, AND HE

23 TOLD ME TO GET UP THE STAIRS.

24 Q. THEN WHAT HAPPENED?

25 A. LYLE SAID, "NO, YOU'RE NOT GOING TO TOUCH
26 ERIK." HE WAS UP -- HE WAS RIGHT IN FRONT OF LYLE AT
27 THAT POINT, AND HE SAID, "I DO WHAT I WANT IN THIS
28 FAMILY," OR "I SAY WHAT I WANT IN THIS FAMILY," AND HE

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1 SAID, "YOU'RE NOT GOING OUT," AND HE WENT BACK INTO THE
2 DEN.

3 Q. THEN WHAT HAPPENED?

4 A. I WAS ON TOP OF THE BALCONY BY THAT POINT,
5 AND I REMEMBER LOOKING DOWN AT MY MOTHER AND MY BROTHER,
6 AND MY BROTHER SAID TO MY MOM SOMETHING ALONG THE LINES
7 OF, "ARE YOU GOING TO LET THIS HAPPEN," OR "DO YOU WANT
8 THIS TO HAPPEN," AND I DON'T REMEMBER EXACTLY WHAT SHE
9 SAID. SOMETHING ALONG THE LINES OF "YOU HAVE RUINED
10 THIS FAMILY."

11 Q. THEN WHAT HAPPENED?

12 A. MY DAD CAME OUT OF THE DEN AND GRABBED MY
13 MOM, TOLD HER TO GO BACK INTO THE DEN, AND THE DOOR
14 SHUT.

15 Q. OKAY. NOW I HAVE A PHOTOGRAPH HERE I HAVE
16 SHOWN TO COUNSEL OF THE FOYER AREA. THIS MAY BE MARKED
17 AS 379.

18 NOW, AT THIS PERIOD OF TIME THAT YOU'RE
19 REFERRING TO, YOU HAD ALREADY GONE UP TO -- GONE UP THE

20 STAIRS TO THE SECOND FLOOR OF YOUR HOME; IS THAT

21 CORRECT?

22 A. YES.

23 Q. AND CAN YOU TELL US WHAT -- CAN YOU TELL US

24 WHAT THAT PHOTOGRAPH DEPICTS?

25 A. THAT IS THE FOYER AND THE DEN IN THE BACK.

26 THE STAIRS, AND OVER TO THE RIGHT IS THE LIVING ROOM AND

27 THE ENTRYWAY -- THE DOORWAY IN BETWEEN THE FOYER AND THE

28 LIVING ROOM.

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1 Q. AND THAT'S THE FIRST FLIGHT OF STAIRS, AND

2 YOU MAKE A LEFT AND THERE IS ANOTHER FLIGHT OF STAIRS TO

3 GET TO THE SECOND FLOOR; IS THAT CORRECT?

4 A. RIGHT.

5 Q. NOW, WERE YOU UP AT THE TOP OF THE STAIRS

6 BY THE TIME YOUR FATHER CLOSED THE DOOR TO THE DEN?

7 A. YES, I WAS.

8 Q. AND DID YOUR BROTHER COME UP THE STAIRS

9 AFTER YOUR FATHER CLOSED THE DOOR TO THE DEN?

10 A. HE DID.

11 Q. DID YOU REMAIN STANDING AT THE TOP OF THE

12 STAIRS AFTER YOUR FATHER CLOSED THE DOOR TO THE DEN?

13 A. I RAN OVER TO THE TOP OF THE STAIRS WHERE

14 HE WAS COMING UP. AT THIS POINT I WAS -- I RAN OVER TO

15 THE STAIRS.

16 Q. YOU RAN FROM WHERE TO WHERE?
17 A. FROM THE BALCONY TO THE TOP OF THE STAIRS.
18 Q. OKAY. AND YOU MET YOUR BROTHER AT THE TOP
19 OF THE STAIRS; IS THAT CORRECT?
20 A. YES.
21 Q. AND DID YOU HAVE A CONVERSATION WITH YOUR
22 BROTHER AT THAT TIME?
23 A. YES.
24 Q. AND WHAT DID THAT CONVERSATION CONSIST OF?
25 A. I WAS -- I WAS JUST TELLING LYLE THAT I
26 COULDN'T LET DAD COME INTO MY ROOM, I COULDN'T LET HIM
27 COME INTO MY ROOM. I WAS JUST GUSHING OUT WORDS IN A
28 PANIC.

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1 Q. AND DID YOU DECIDE AT THAT POINT IT'S TIME
2 TO LEAVE THE HOME?
3 A. NO. MY BROTHER SAID TO ME, "DON'T WORRY
4 ABOUT THAT. IT'S HAPPENING NOW. DON'T YOU SEE IT'S
5 HAPPENING NOW." I JUST --
6 Q. DID YOU TELL YOUR BROTHER AT THAT POINT,
7 "IT'S TIME TO LEAVE THE HOME"?
8 A. NO, SIR.
9 Q. SO WHAT DID YOU TELL YOUR BROTHER AT THAT
10 POINT?
11 A. I TOLD HIM I NEEDED TO GET TO MY CAR.

12 Q. WAS THERE ANY FURTHER CONVERSATION AT THE
13 TOP OF THE STAIRS?

14 A. I DON'T REMEMBER IF MY BROTHER SAID,
15 "THEY'RE WAITING -- THEY WERE WAITING FOR YOU TO GET
16 HOME," OR I WAS THINKING IT. I DON'T SPECIFICALLY
17 REMEMBER ANY OTHER WORDS.

18 Q. BUT YOU SAID YOU NEEDED TO GET TO YOUR CAR.
19 DID YOUR BROTHER SAY ANYTHING ABOUT THE CAR?

20 A. I DON'T REMEMBER HIM SAYING ANYTHING ABOUT
21 THE CAR.

22 Q. DID YOUR -- THERE WAS NO CONVERSATION ABOUT
23 MEETING AT THE CAR?

24 A. THIS WASN'T A CONVERSATION. THIS WAS ME
25 GUSHING OUT, "I CAN'T LET DAD COME INTO MY ROOM. I
26 CAN'T LET THIS HAPPEN."

27 HE SAID, "DON'T YOU SEE, IT'S HAPPENING
28 NOW," AND I SAID, "I'VE GOT TO GET TO MY CAR," AND I

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1 TOOK OFF.

2 Q. IT WASN'T A CONVERSATION? HE DIDN'T SAY
3 ANYTHING TO YOU AT THE TOP OF THE STAIRS?

4 A. I JUST TOLD YOU WHAT HE SAID TO ME. HE
5 SAID, "IT'S HAPPENING NOW".

6 Q. IT WAS A CONVERSATION IN WHICH YOU BOTH
7 PARTICIPATED; IS THAT CORRECT?

8 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

9 THE COURT: OVERRULED.

10 THE WITNESS: IT'S WHAT I JUST DESCRIBED.

11 HOWEVER YOU DESCRIBE IT.

12 Q. BY MR. CONN: AND WHEN YOU SAID, "I NEED TO
13 GET TO THE CAR," WAS THERE ANY RESPONSE FROM YOUR
14 BROTHER, LYLE MENENDEZ?

15 A. I DON'T SPECIFICALLY REMEMBER A RESPONSE.
16 I JUST REMEMBER THAT I WAS LOSING CONTROL OF MY BODY AND
17 RUNNING TO MY ROOM.

18 Q. NOW, WHY DID YOU FEEL AT THAT POINT THAT
19 YOU NEEDED TO GET TO YOUR CAR?

20 A. BECAUSE THAT'S WHERE THE SHELLS WERE TO MY
21 GUN.

22 Q. BUT YOU DIDN'T GO TO YOUR CAR, YOU WENT TO
23 YOUR ROOM; IS THAT CORRECT?

24 A. THAT'S RIGHT.

25 Q. AND WHY IS IT THAT YOU WENT TO YOUR ROOM
26 INSTEAD OF GOING TO YOUR CAR?

27 A. BECAUSE MY GUN WAS IN MY ROOM.

28 Q. SO YOU REALIZED AT THAT POINT THAT FIRST

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1 YOU HAVE TO GO TO YOUR ROOM AND GET YOUR GUN, AND THEN
2 YOU HAVE TO TAKE YOUR GUN TO YOUR CAR, AND YOU HAVE TO
3 RELOAD IT IN YOUR CAR; IS THAT CORRECT?

4 A. I DIDN'T EVEN THINK ABOUT IT. IT WAS JUST
5 IN MY MIND, RUN TO MY ROOM. I KEPT SAYING TO MYSELF
6 "HURRY, HURRY." I WASN'T THINKING ABOUT THOSE STEPS.

7 Q. WELL, YOU THOUGHT ABOUT THE FACT THAT YOU
8 HAD USELESS AMMUNITION IN YOUR GUN AT THAT POINT; IS
9 THAT CORRECT?

10 A. I DIDN'T EVEN HAVE TO THINK ABOUT IT. I
11 JUST -- I KNEW I HAD TO GET THE OTHER SHELLS INTO MY
12 GUN.

13 Q. ARE YOU SAYING THAT IT DIDN'T OCCUR TO YOU
14 THAT YOU HAD USELESS AMMUNITION IN YOUR GUN?

15 A. I AM SAYING IT'S NOT SOMETHING THAT
16 OCCURRED TO ME. IT'S JUST SOMETHING THAT I KNEW.

17 Q. IT'S SOMETHING THAT YOU THOUGHT ABOUT,
18 WASN'T IT?

19 A. I DON'T KNOW THAT I WOULD DESCRIBE IT LIKE
20 THAT.

21 Q. IS IT BECAUSE YOU DON'T WANT TO TELL THIS
22 JURY, BECAUSE WERE YOU THINKING AT THE TIME?

23 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

24 THE WITNESS: NO.

25 MR. LEVIN: HE ANSWERED THE QUESTION.

26 THE COURT: OVERRULED.

27 Q. BY MR. CONN: SO DID YOU PICTURE IN YOUR
28 MIND THE GUN THAT YOU HAVE TO GO GET?

1 A. I DON'T -- I DON'T BELIEVE SO.

2 Q. MR. MENENDEZ, HOW WAS IT THAT YOU WERE ABLE
3 TO RECALL IN THIS STATE, WHICH YOU DESCRIBE AS A PANIC
4 STATE, RELOADING YOUR GUN WHEN YOU HAD NOT BEEN ABLE TO
5 REMEMBER DOING THAT SINCE YOU PURCHASED THE AMMUNITION
6 SUNDAY AFTERNOON?

7 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

8 THE COURT: SUSTAINED.

9 Q. BY MR. CONN: CAN YOU TELL US,
10 MR. MENENDEZ, WHY IT WAS THAT IT OCCURRED TO YOU AT THIS
11 PARTICULAR TIME THAT YOU HAD TO RELOAD YOUR GUN?

12 A. IT OCCURRED TO ME AT THIS POINT LIKE IT
13 OCCURRED TO ME ON SATURDAY NIGHT WHEN MY DAD WAS BANGING
14 ON THE DOOR. I CAN'T TELL YOU WHY. I DIDN'T THINK
15 ABOUT IT BEFORE, OR I DIDN'T DO IT BEFORE. IT'S JUST
16 SUDDENLY I WAS FACED WITH IMMEDIATE DANGER, AND I JUST
17 KNEW I HAD TO GET THE SHELLS IN THE GUN. I SHOULD HAVE
18 DONE IT BEFORE. I DON'T KNOW WHY IT OCCURRED TO ME.

19 Q. BUT IT DID OCCUR TO YOU; IS THAT CORRECT?

20 A. YES.

21 Q. OKAY. AND WHEN IT OCCURRED TO YOU, THEN
22 YOU PUT TWO AND TWO TOGETHER AND SAID, "FIRST I HAVE TO
23 GO UP TO THE ROOM AND GET THE GUN, THEN I HAVE TO GO OUT
24 TO THE CAR. I HAVE TO UNLOAD MY GUN. I HAVE TO RELOAD
25 MY GUN IN ORDER TO PROTECT MYSELF"; IS THAT CORRECT?

26 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

27 THE COURT: OVERRULED.

28 THE WITNESS: IT DIDN'T HAPPEN LIKE THAT,

1 MR. CONN. I THOUGHT I WAS GOING TO DIE IMMEDIATELY. IT
2 WAS SUCH A -- IT WAS SUCH A RUSH OF ADRENALINE AND FEAR
3 AND PANIC THAT I DIDN'T SAY, "I'VE GOT TO GET MY GUN AND
4 I'VE GOT TO GO OUT TO THE CAR, GOT TO MAKE SURE I GET
5 THE SHELLS OUT OF THE BOX AND LOAD THEM IN MY GUN."
6 THESE WERE JUST THINGS THAT I DID AND KNEW I HAD TO DO.

7 Q. I AM NOT SAYING WHETHER YOU SAID IT OR NOT.
8 I AM ASKING YOU WHETHER YOU MADE THOSE CONNECTIONS.

9 A. YES, I DID MAKE THOSE CONNECTIONS.

10 Q. WAS YOUR CAR LOCKED?

11 A. MY CAR WAS NEVER LOCKED. I LEFT THE KEYS
12 IN THE CAR.

13 Q. SO YOU WENT TO -- YOU RAN DOWN THE -- YOU
14 WENT ACROSS THAT BALCONY TO GET TO YOUR BEDROOM; IS THAT
15 CORRECT?

16 MR. LEVIN: OBJECTION WITH RESPECT TO "THAT
17 BALCONY". I THINK --

18 THE COURT: HE IS NOT REFERRING TO THE
19 PHOTOGRAPHS.

20 MR. CONN: I'M NOT REFERRING TO THE PHOTOGRAPHS.

21 Q. YOU HAD TO GO ACROSS THE BALCONY TO GET TO
22 THE SECOND FLOOR; IS THAT CORRECT?

23 A. YES.

24 Q. AND ONCE YOU WERE INSIDE YOUR BEDROOM, YOU
25 HAD TO GO TO THE CLOSET; IS THAT CORRECT?

26 A. YES.

27 Q. AND WHERE INSIDE YOUR BEDROOM IS YOUR
28 CLOSET?

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1 A. IT'S INSIDE THE ROOM --

2 Q. LET ME GET THE EXHIBIT.

3 OKAY. SO YOU WENT FROM -- YOU WENT FROM
4 THE TOP OF THE STAIRS OVER TOWARD BEDROOM NO. 2. YOU
5 WENT DOWN THIS BALCONY THERE AND YOU WENT INTO YOUR
6 BEDROOM; IS THAT CORRECT?

7 A. RIGHT. I WENT INTO MY BEDROOM. THE CLOSET
8 WAS OVER THERE.

9 Q. AND HERE IS YOUR CLOSET OVER HERE; IS THAT
10 CORRECT?

11 A. YES.

12 Q. AND WAS YOUR GUN INSIDE THE BAG IN THE
13 CLOSET?

14 A. I DON'T REMEMBER THE GUN BEING INSIDE THE
15 BAG.

16 Q. OKAY. WAS -- ARE YOU SAYING THAT THE GUN
17 WAS NOT INSIDE THE BAG AT THAT POINT?

18 A. I AM SAYING I DON'T REMEMBER REACHING INTO
19 A BAG FOR THE GUN. I JUST REMEMBER THE GUN BEING THERE.

20 Q. SO TO YOUR KNOWLEDGE YOU'RE SAYING IT WAS
21 NOT INSIDE THE BAG?

22 A. I CAN'T TELL YOU EITHER WAY. I CAN TELL
23 YOU THAT I DON'T REMEMBER IT BEING INSIDE THE BAG. WHY
24 THAT'S MY MEMORY, OR HOW IT LOGICALLY FITS, I HAVE NO
25 IDEA. I AM JUST TELLING YOU WHAT MY MEMORY IS.
26 Q. SO YOU GRABBED THE GUN OUT OF YOUR CLOSET
27 HERE AND YOU CAME BACK INTO YOUR BEDROOM AND THEN WENT
28 BACK ACROSS THE BALCONY; IS THAT CORRECT?

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1 A. YES.
2 Q. AND WHEN YOU WERE CARRYING YOUR GUN, AT
3 THAT POINT IN TIME THE GUN WAS NOT IN THE BAG, I TAKE
4 IT?
5 A. NO.
6 Q. AND WHAT WERE YOU THINKING ABOUT AT THAT
7 TIME?
8 A. I JUST -- I WAS -- I REMEMBER SPECIFICALLY
9 SAYING TO MYSELF, "HURRY, HURRY, HURRY. I JUST FELT
10 LIKE -- I JUST FELT LIKE JUST THIS CAVING IN SENSE OF
11 FEAR.
12 Q. DID YOU SAY TO YOURSELF AT THAT POINT IN
13 TIME, "MAYBE IT'S TIME TO RUN AWAY FROM HOME AFTER ALL"?
14 A. I DON'T REMEMBER IT FLASHING INTO MY MIND.
15 I WAS JUST THINKING ABOUT THE FACT THAT THEY WERE COMING
16 OUT OF THE DEN, AND IF THEY GOT OUT OF THE DEN BEFORE I
17 GOT THERE I WAS GOING TO DIE.

18 Q. WELL, DID YOU THINK ABOUT BARRICADING

19 YOURSELF INSIDE YOUR ROOM?

20 A. I THINK IT FLASHED THROUGH MY MIND, YES.

21 Q. SO THAT WAS ANOTHER OPTION THAT YOU

22 CONSIDERED; IS THAT CORRECT?

23 A. I WOULDN'T HAVE CONSIDERED -- I REMEMBER AS

24 I RAN INTO THE ROOM IT FLASHING INTO MY MIND TO LOCK THE

25 DOOR, CLOSE THE DOOR, AND I DIDN'T EVEN TAKE IT A STEP

26 FARTHER THAN THAT. I JUST CONTINUED RUNNING FOR MY GUN.

27 Q. AND CAN YOU TELL US WHY YOU REJECTED THE

28 BARRICADING OPTION AT THAT POINT IN TIME.

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1 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

2 THE COURT: OVERRULED.

3 THE WITNESS: I CAN'T TELL YOU WHY.

4 Q. BY MR. CONN: WELL, YOU HAD A LOCK ON YOUR

5 DOOR, DIDN'T YOU?

6 A. I DID.

7 Q. AND YOU HAD AMMUNITION INSIDE YOUR GUN; IS

8 THAT CORRECT?

9 A. YES.

10 Q. WHY DIDN'T YOU JUST LOCK THE DOOR?

11 A. I DON'T KNOW WHY. I JUST DIDN'T LOCK THE

12 DOOR. I DIDN'T LOCK THE DOOR.

13 Q. DID YOU DECIDE THAT YOU WERE GOING TO HAVE

14 TO SHOOT AND KILL YOUR PARENTS?

15 A. THAT WASN'T EVEN IN MY MIND. IT FLASHED IN
16 MY MIND TO LOCK THE DOOR; AND I DIDN'T EVEN THINK ABOUT
17 IT FURTHER THAN THAT. IT WAS JUST A FLASH AS I WAS
18 RUNNING.

19 Q. AND YOU WERE DETERMINED AT THAT POINT IN
20 TIME THAT YOU WERE GOING TO SHOOT AND KILL YOUR PARENTS?

21 A. I -- I DON'T EVEN -- I JUST REMEMBER SAYING
22 TO MYSELF, "HURRY, HURRY," AND DOING ONE THING AFTER
23 ANOTHER.

24 Q. SO, YOU WENT ACROSS THE BALCONY AND THEN
25 YOU RAN DOWN THE STAIRS TO THE FIRST FLOOR; IS THAT
26 CORRECT?

27 A. YES.

28 Q. NOW, AFTER YOU GOT DOWNSTAIRS, DOWN THIS

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1 FLIGHT OF STAIRS, TELL ME, DID YOU KNOW WHERE LYLE
2 MENENDEZ WAS AT THAT POINT IN TIME?

3 A. NO.

4 Q. WERE YOU THINKING ABOUT WHERE LYLE MENENDEZ
5 WAS AT THAT POINT IN TIME?

6 A. NO.

7 Q. AND DID YOU CARE WHERE LYLE MENENDEZ WAS AT
8 THAT POINT IN TIME?

9 A. NO.

10 Q. SO YOU CAME DOWN THE FLIGHT OF STAIRS, AND
11 WHERE DID YOU GO FROM THERE?
12 A. I REMEMBER RUNNING ACROSS THE FOYER,
13 BECAUSE I REMEMBER THE FEELING OF THE DOORS BEING
14 LOCKED, AND THEN BEING ABLE TO COME OUT OF THEM, AND I
15 RAN INTO THE STUDY.
16 Q. WHAT DO YOU MEAN THE FEELING OF THE DOORS
17 BEING LOCKED? ARE YOU REFERRING TO THE -- TO THE FRONT
18 ENTRY DOORS HERE INTO YOUR HOME?
19 A. NO. I AM REFERRING TO THE DEN DOORS.
20 Q. YOU'RE SAYING THESE -- THESE DEN DOORS WERE
21 LOCKED?
22 A. YEAH.
23 Q. OKAY. DID YOU GO OUT THE FRONT DOORS TO
24 YOUR HOME?
25 A. NO. I WENT OUT THE STUDY DOOR.
26 Q. AND CAN YOU TELL US WHY YOU DIDN'T GO OUT
27 THE FRONT DOORS TO YOUR HOME?
28 A. I CAN'T EVEN TELL YOU WHY.

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1 Q. DO THOSE DOORS MAKE NOISE WHEN YOU OPEN
2 THEM?
3 A. YES, I THINK THEY DO.
4 Q. AND IT'S BECAUSE YOU DIDN'T WANT TO DISTURB
5 YOUR PARENTS AND LET THEM KNOW THAT YOU AND YOUR BROTHER

6 WERE GOING TO COME IN THERE AND SHOOT THEM?

7 A. I THINK I JUST SAID THAT THE STUDY DOORS

8 MAKE NOISE.

9 Q. STUDY DOORS MAKE NOISE?

10 A. YES.

11 Q. DO THE FRONT DOORS TO YOUR HOME MAKE NOISE?

12 A. I SUPPOSE IF YOU WERE TO OPEN IT AND SHUT

13 IT, THE SHUTTING WOULD MAKE NOISE.

14 Q. THEY'RE VERY LARGE DOORS, AREN'T THEY?

15 A. YES.

16 Q. AND YOU DIDN'T WANT TO BANG THOSE DOORS AND

17 LET YOUR PARENTS KNOW THAT YOU WERE GETTING A GUN TO

18 SHOOT THEM?

19 A. NO.

20 MR. CONN: I HAVE ANOTHER PHOTOGRAPH THAT I WOULD

21 LIKE TO MARK AS 380, THE FRONT DOORS.

22 SO, WHAT YOU DID -- YOU'RE TELLING US IS

23 THAT INSTEAD OF GOING OUT THE FRONT DOORS TO YOUR HOME,

24 YOU DECIDED TO GO INTO THE STUDY; IS THAT CORRECT?

25 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

26 THE COURT: OVERRULED.

27 THE WITNESS: IT'S JUST WHERE I WENT.

28 Q. BY MR. CONN: AND YOU WENT THROUGH THE

1 WINDOWS -- LONG WINDOWS THAT YOU COULD WALK THROUGH,

2 LIKE A DOOR THROUGH THE STUDY; IS THAT CORRECT?

3 A. I CONSIDERED THEM DOORS.

4 Q. OKAY. AND WHY DID YOU NOT GO THROUGH THE
5 FRONT DOORS TO YOUR HOME?

6 A. I DON'T EVEN KNOW.

7 Q. CAN YOU TELL US WHAT THAT PHOTOGRAPH
8 DEPICTS?

9 A. IT DEPICTS THE FRONT DOOR BEING OPENED TO
10 THE HOUSE. I DON'T KNOW WHAT BAG THAT IS IN THE FOYER.
11 I DON'T BELIEVE THE BAG WAS THERE BEFORE. AND IT'S THE
12 ONE DOOR THAT ALWAYS STAYED CLOSED, AND THE OTHER DOOR
13 IS OPEN.

14 Q. AND YOU DIDN'T GO THROUGH THAT DOOR WHEN
15 YOU LEFT YOUR HOME; IS THAT CORRECT?

16 MR. LEVIN: OBJECTION. ASKED AND ANSWERED.

17 THE COURT: OVERRULED.

18 THE WITNESS: NO, I DIDN'T.

19 Q. BY MR. CONN: LET ME SHOW YOU ANOTHER
20 PHOTOGRAPH WHICH I HAVE MARKED AS 381 DEPICTING THE
21 DOORS TO THE STUDY.

22 CAN YOU TELL US WHAT WE ARE LOOKING AT
23 HERE?

24 A. LOOKING AT THE DOORS TO THE STUDY. I CAN'T
25 SEE IF THEY'RE BOTH OPEN. I THINK BOTH OF THEM ARE
26 OPEN, BECAUSE ONE OF THEM IS OPEN. THE FOYER, AND THE
27 DEN IN THE BACKGROUND.

28 Q. SO THESE DOORS THAT WE ARE LOOKING AT OVER

1 HERE ARE THE SAME DOORS AS IN THE PREVIOUS PHOTOGRAPH ON
2 THE RIGHT HAND SIDE OF THE PHOTOGRAPH; IS THAT CORRECT?

3 A. RIGHT.

4 Q. I HAVE ANOTHER PHOTOGRAPH, 382 WHICH I WILL
5 SHOW YOU AT THIS TIME.

6 CAN YOU TELL US WHAT THIS PHOTOGRAPH
7 DEPICTS?

8 A. THOSE ARE THE DOORS THAT I WENT THROUGH.

9 Q. THAT IS THE STUDY, CORRECT?

10 A. RIGHT.

11 Q. AND IT DEPICTS THE DOORS RIGHT BEHIND THAT
12 SOFA THAT YOU WENT THROUGH; IS THAT CORRECT?

13 A. YES, THE ONES WITH THE OPEN BLINDS.

14 Q. NOW, WHAT TYPE OF A LATCH DOES THAT DOOR
15 HAVE ON IT?

16 A. I HAVE NO IDEA.

17 Q. YOU DON'T RECALL THE LATCH ON THAT DOOR?

18 A. I JUST RECALL THAT YOU TURN THE HANDLE AND
19 OPEN THE DOOR.

20 Q. YOU OPEN THE DOOR AND THEN TO GET -- DOES
21 THAT DOORWAY GIVE YOU FREE ACCESS TO THE OUTSIDE
22 DRIVEWAY AREA?

23 A. NO. IT OPENS UP INTO A CONCRETE TERRACE --
24 NOT BALCONY, BECAUSE IT'S ON THE FLOOR. IT OPENS UP
25 INTO A -- I'M SURE YOU'VE GOT A BETTER PICTURE OF IT --
26 A BALCONY-LIKE AREA THAT'S CONCRETE NEXT TO THE DOOR.

27 Q. SO IN OTHER WORDS, ONCE YOU STEP OUTSIDE
28 THAT DOOR RIGHT THERE AND WANT TO GO INTO THE DRIVEWAY

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1 AREA, YOU HAVE TO STEP OVER OR CLIMB OVER SOME TYPE OF
2 IMPEDIMENT; IS THAT CORRECT?

3 A. NO, NOT AT ALL.

4 Q. HOW DO YOU GET AROUND THAT IMPEDIMENT?

5 MR. LEVIN: OBJECTION. ASSUMES THAT THERE IS AN
6 IMPEDIMENT.

7 THE COURT: SUSTAINED.

8 Q. BY MR. CONN: HOW DO YOU GET -- IS THERE
9 ANYTHING IN YOUR WAY -- WHEN YOU STEP OUTSIDE YOUR DOOR,
10 IS THERE ANYTHING IN YOUR WAY THAT PREVENTS YOU FROM
11 GOING STRAIGHT TO THE FRONT GATE?

12 A. YES.

13 Q. WHAT IS IN YOUR WAY?

14 A. IT'S A CONCRETE BALCONY LIKE -- IT'S ABOUT
15 THREE FEET HIGH, AND IT HAS BUSHES ON IT, AND IT'S OPEN
16 TO ONE SIDE, WHICH WAS THE ENTRY SIDE.

17 Q. AND HOW -- TO CIRCUMVENT THAT BALCONY, AS
18 YOU CALL IT, DID YOU GO THROUGH THE OPEN SIDE?

19 A. IT'S THE ONLY WAY OUT.

20 Q. WELL, YOU CAN ALSO CLIMB OVER THIS LITTLE
21 BALCONY, CAN'T YOU?

22 A. YEAH, BUT THERE'S ALL KINDS OF BUSHES IN

23 FRONT OF IT, AND PALM TREE-TYPE THINGS.

24 Q. SO YOU WENT AROUND THE OPEN SIDE OF THIS
25 BALCONY; IS THAT CORRECT?

26 A. YES.

27 Q. AND IT WAS STILL YOUR INTENTION AS YOU
28 WERE -- AS YOU CAME DOWN THESE STAIRS AND AS YOU WENT

-20630

1 INTO THE STUDY DOOR, AND AS YOU WENT THROUGH THE STUDY
2 AND OUT THOSE FRONT DOORS, THAT YOU WERE GOING TO GO OUT
3 TO YOUR CAR, YOU WERE GOING TO RELOAD YOUR GUN, AND YOU
4 WERE GOING TO COME BACK IN AND SHOOT YOUR PARENTS TO
5 DEATH; IS THAT CORRECT?

6 MR. LEVIN: OBJECTION. ARGUMENTATIVE. ASSUMES
7 FACTS NOT IN EVIDENCE, AND MISSTATES HIS TESTIMONY.

8 THE COURT: SUSTAINED. SUSTAINED.

9 Q. BY MR. CONN: WAS IT YOUR INTENTION AT THAT
10 POINT IN TIME THAT YOU WERE GOING TO GET YOUR -- YOU
11 WERE GOING TO RELOAD YOUR GUN AND SHOOT YOUR PARENTS?

12 A. NO.

13 Q. WHAT WERE YOU RUNNING AROUND FOR THEN?

14 A. I WAS RUNNING TO GET TO MY CAR TO PUT
15 SHELLS IN MY CAR (SIC) AS FAST AS I COULD, AND THAT'S
16 WHAT I WAS THINKING ABOUT AT THAT EXACT TIME.

17 I REMEMBER RUNNING ACROSS THE FOYER,
18 LOOKING AT THE DEN DOORS, SEEING THEM CLOSED, KNOWING

19 THAT THEY WERE GOING TO COME OUT OF THEM AT ANY SECOND.

20 Q. SO YOUR ONLY PURPOSE WAS NOT TO SHOOT YOUR
21 PARENTS, YOUR ONLY PURPOSE AT THAT POINT IN TIME WAS TO
22 SIMPLY PUT SHELLS IN YOUR GUN; IS THAT CORRECT?

23 A. THAT'S WHAT I WAS -- I DON'T EVEN KNOW THAT
24 I WAS THINKING ABOUT THAT. I WAS JUST SAYING TO MYSELF,
25 "HURRY, HURRY, HURRY," AT THAT SECOND. THIS IS JUST
26 WHAT I DID --

27 Q. WAIT. ALL YOU'RE SAYING IS WHAT YOU WANTED
28 TO ACCOMPLISH AT THAT POINT IN TIME WAS TO PUT SHELLS IN

-20629

1 YOUR GUN; IS THAT CORRECT?

2 A. WELL, I MEAN THE FEELING WAS THAT I WAS
3 GOING TO DIE, AND I WANTED TO STOP MY PARENTS FROM
4 KILLING ME. THAT'S WHAT I WAS THINKING. THAT'S WHAT
5 WAS IN THE BACK OF MY MIND, I GUESS, BUT I WAS JUST
6 SAYING TO MYSELF, "HURRY, HURRY, HURRY".

7 Q. AND HOW WERE YOU PLANNING TO STOP YOUR
8 PARENTS FROM KILLING YOU?

9 A. ANY WAY I COULD.

10 Q. FIRST YOU WERE GOING TO PUT SHELLS IN YOUR
11 GUN; IS THAT CORRECT?

12 A. YES.

13 Q. AND THEN?

14 A. AND THEN I HAD TO GET TO THE DEN. IT WAS

15 JUST IN MY MIND TO GO THROUGH THE DEN AND START

16 SHOOTING.

17 Q. SO YOU WERE PLANNING, AS YOU WERE COMING

18 DOWN THOSE STAIRS, THAT YOU WERE GOING TO PUT SHELLS IN

19 YOUR GUN AND THEN GO BACK AND SHOOT YOUR PARENTS; IS

20 THAT CORRECT?

21 A. I WASN'T THINKING THESE THINGS AT THE TIME.

22 I CAN TELL YOU LOOKING BACK ON IT THAT'S WHAT I DID, AND

23 SO I'M TELLING YOU THAT THAT HAD TO HAVE BEEN WHAT WAS

24 IN MY MIND, I GUESS.

25 AT THE TIME YOU'RE JUST NOT THINKING ALL OF

26 THESE THINGS, YOU'RE JUST REACTING TO THE SITUATION, AND

27 YOU JUST FEEL YOUR LIFE SLIPPING AWAY, AND YOU'RE JUST

28 RUNNING AS FAST AS YOU CAN.

-20628

1 Q. YOU WERE MAKING DECISIONS DURING THIS TIME

2 PERIOD, WEREN'T YOU?

3 A. I DON'T KNOW WHAT YOU MEAN BY THAT.

4 Q. YOU MADE A DECISION TO GO TO YOUR ROOM AND

5 GET YOUR GUN, DIDN'T YOU, MR. MENENDEZ?

6 A. I GUESS SO.

7 Q. YOU MADE A DECISION NOT TO BARRICADE

8 YOURSELF; IS THAT CORRECT?

9 A. I WOULD NOT CALL IT A DECISION.

10 Q. YOU MADE A CHOICE?

11 A. I WOULDN'T EVEN CALL IT A CHOICE.
12 Q. WHAT WOULD YOU CALL IT?
13 A. I DIDN'T EVEN CONSIDER IT. IT JUST FLASHED
14 IN MY MIND, AND THAT'S THE ONLY THING THAT I REMEMBER
15 ABOUT THAT FEELING.
16 Q. YOU THOUGHT OF DOING IT AND YOU DECIDED NOT
17 TO; IS THAT CORRECT?
18 A. NO, THAT WOULD NOT BE CORRECT.
19 Q. DID YOU THINK ABOUT BARRICADING YOURSELF?
20 A. IT FLASHED INTO MY MIND.
21 Q. DID YOU DECIDE TO BARRICADE YOURSELF?
22 A. NO.
23 Q. WHY NOT?
24 A. I DON'T KNOW.
25 MR. LEVIN: OBJECTION. ASKED AND ANSWERED.
26 THE COURT: OVERRULED.
27 Q. BY MR. CONN: WHY NOT?
28 A. I DON'T KNOW.

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1 Q. BECAUSE YOU REJECTED THE OPTION, DIDN'T
2 YOU?
3 MR. LEVIN: OBJECTION. ARGUMENTATIVE.
4 THE WITNESS: TO REJECT AN OPTION YOU HAVE TO --
5 MR. LEVIN: MR. MENENDEZ.
6 THE COURT: OVERRULED.

7 THE WITNESS: YOU HAVE TO THINK ABOUT IT. YOU'RE
8 ON SURVIVAL MODE, AND YOU'RE RUNNING, AND BECAUSE
9 THOUGHTS POP INTO YOUR MIND, YOU DON'T THINK ABOUT THEM.

10 I JUST RAN INTO MY ROOM TO GET TO MY GUN.

11 I DIDN'T THINK CLOSE THE DOOR, LOCK IT. MAYBE I CAN
12 BARRICADE MYSELF. NO, THAT'S NOT A GOOD IDEA.

13 I REMEMBER IT FLASHING INTO MY MIND BECAUSE
14 I DO, AND THAT'S WHY I AM TELLING YOU I DO.

15 Q. BY MR. CONN: YOU CONSIDERED IT
16 MOMENTARILY; IS THAT CORRECT?

17 A. I'M TELLING YOU IT FLASHED INTO MY MIND.
18 WHETHER I CONSIDERED IT, I DON'T KNOW.

19 Q. AND YOU MADE A DECISION TO GO OUT TO YOUR
20 CAR AND PUT THE GOOD AMMUNITION IN YOUR GUN; IS THAT
21 CORRECT?

22 A. THAT'S WHAT I KNEW I HAD TO DO.

23 Q. AND YOU DECIDED TO DO THAT, DIDN'T YOU?

24 A. I NEVER THOUGHT OF ANYTHING ELSE.

25 Q. YOU MADE A DECISION NOT TO GO THROUGH THE
26 FRONT DOORS BUT TO GO THROUGH THE STUDY DOORS; IS THAT
27 CORRECT?

28 A. I CANNOT TELL YOU WHY I WENT INTO THE

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1 STUDY. LOOKING BACK ON IT, I CAN'T TELL YOU WHY. I
2 JUST DID IT.

3 Q. I AM NOT ASKING YOU WHY.

4 A. I DON'T REMEMBER MAKING A DECISION RUNNING
5 ACROSS THE FOYER WITH THIS GUN IN MY HANDS THINKING IF
6 THEY COME OUT INTO THE FOYER NOW THIS IS -- THIS -- I
7 JUST CAN'T TELL YOU WHY I WENT INTO THE STUDY.

8 Q. I AM NOT ASKING YOU WHY. I AM SAYING YOU
9 MADE A DECISION TO GO THROUGH THE STUDY RATHER THAN THE
10 FRONT DOORS OF YOUR HOME; IS THAT CORRECT?

11 MR. LEVIN: OBJECTION, YOUR HONOR. IT'S
12 ARGUMENTATIVE.

13 THE COURT: SUSTAINED.

14 Q. BY MR. CONN: AND AT SOME POINT AS YOU WERE
15 GOING THROUGH THE FOYER, DID YOU LOOK BACK TO SEE IF
16 YOUR PARENTS WERE CHASING YOU?

17 A. I DON'T KNOW.

18 Q. YOU DON'T KNOW?

19 A. I REMEMBER LOOKING TOWARD THE DEN AND
20 SEEING THE DOORS CLOSED. I DIDN'T -- I DON'T REMEMBER
21 LOOKING BEHIND ME. I WAS AWARE CLEARLY THAT NO ONE WAS
22 CHASING ME FROM BEHIND.

23 Q. IS THAT BECAUSE YOU LOOKED BACK TO SEE IF
24 YOUR PARENTS WERE CHASING YOU?

25 A. I DON'T REMEMBER SPECIFICALLY LOOKING BACK
26 AT THIS POINT.

27 MR. CONN: DIRECTING COUNSEL'S ATTENTION TO
28 VOLUME 99, PAGE 16,683, LINES 26 THROUGH 28.

1 MR. LEVIN: WHAT LINES, MR. CONN?

2 MR. CONN: 26 THROUGH 28.

3 MR. LEVIN: YOUR HONOR, THERE IS AN OBJECTION

4 WITH RESPECT TO THAT. IT'S NOT IMPEACHING.

5 THE COURT: OKAY. LET ME SEE IT. LINE 26

6 THROUGH 28.

7 MR. LEVIN: PLEASE FOCUS ON THE TIME THAT THE

8 ANSWER REFERS TO.

9 MS. ABRAMSON: WE WOULD OBJECT, YOUR HONOR, AND

10 ASK THE COURT TO READ FROM LINE 20 DOWN TO PUT IT IN

11 CONTEXT.

12 (BRIEF PAUSE)

13

14 THE COURT: OKAY. AND WHAT IS THE QUESTION YOU

15 WANT TO ASK?

16 MR. CONN: WHETHER ANYONE WAS -- WHETHER HE

17 LOOKED BACK TO SEE IF SOMEONE WAS CHASING HIM.

18 THE COURT: AT WHAT TIME? AT WHAT POINT?

19 MR. CONN: I'LL ASK HIM AT ANY TIME, AT ANY POINT

20 ON THE WAY OUT TO THE CAR.

21 THE COURT: OKAY. WHY DON'T YOU ASK THE QUESTION

22 THEN.

23 Q. BY MR. CONN: OKAY.

24 AT ANY TIME AFTER YOU ENTERED INTO THE

25 FOYER UNTIL THE TIME YOU GOT OUT OF THE HOUSE IN THE

26 PARKING AREA, DID YOU EVER LOOK BACK TO SEE IF SOMEONE

27 WAS CHASING YOU?

28 A. I KNOW I WAS AWARE THAT NO ONE WAS CHASING

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1 ME.

2 Q. THE QUESTION IS DID YOU EVER LOOK BACK TO
3 SEE IF ANYONE WAS CHASING YOU?

4 A. I DON'T SPECIFICALLY RECALL LOOKING BACK.

5 MR. CONN: I WOULD ASK TO READ LINES 26 THROUGH
6 28 AT THIS TIME.

7 THE COURT: OKAY. WHY DON'T YOU GO BACK TO LINE
8 20.

9 MR. CONN: OKAY.

10 Q. DO YOU REMEMBER BEING ASKED THE FOLLOWING
11 QUESTIONS AND GIVING THE FOLLOWING ANSWERS IN THE FIRST
12 TRIAL:

13 "Q. AND WHEN YOU WENT OUT
14 THAT DOOR, NO ONE WAS CHASING YOU?

15 "A. I -- I DIDN'T REMEMBER
16 ANYONE BEHIND ME, NO.

17 "Q. AND YOU GOT OUT TO THE
18 OUTSIDE, TO THE FRONT OF THE HOUSE?

19 "A. YES.

20 "Q. AND DID YOU LOOK BACK
21 AND NO ONE WAS CHASING YOU?

22 "A. I LOOKED BACK, AND NO
23 ONE WAS CHASING ME."

24 A. MAY I SEE IT?

25 ALL RIGHT. YES.

26 Q. OKAY. SO YOU DID LOOK BACK AT SOME POINT;
27 IS THAT CORRECT?

28 A. I WAS AWARE THAT NO ONE WAS BEHIND ME

-20623

1 CHASING ME. I -- RIGHT NOW DO I SPECIFICALLY RECALL
2 LOOKING BACK? NO. I'M SURE THAT I DID, I JUST --

3 Q. SO YOU DON'T REMEMBER AT WHAT POINT IN TIME
4 YOU LOOKED BACK; IS THAT CORRECT?

5 A. NO.

6 Q. AND YOU LOOKED BACK BECAUSE YOU CONSIDERED
7 THE POSSIBILITY THAT THERE MIGHT BE SOMEONE BEHIND YOU
8 AND YOU WANTED TO CHECK AND MAKE SURE THERE WAS NO ONE
9 BEHIND YOU; IS THAT CORRECT?

10 A. I HAVE NO IDEA.

11 Q. AND WHEN -- AFTER LOOKING BACK AND
12 REALIZING THAT NO ONE WAS CHASING YOU, YOU REALIZED THAT
13 YOUR PARENTS HAD NOT COME OUT OF THAT ROOM YET; IS THAT
14 CORRECT?

15 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

16 THE COURT: REPHRASE THE QUESTION.

17 Q. BY MR. CONN: DID YOU REALIZE AFTER YOU
18 LOOKED BACK AND SAW THAT NO ONE WAS CHASING YOU, DID YOU
19 REALIZE THAT YOUR PARENTS HAD NOT COME OUT OF THAT ROOM?

20 A. I REMEMBER KNOWING THAT MY PARENTS WERE
21 STILL ON THE OPPOSITE SIDE OF THE DEN WITH THE DOORS
22 CLOSED, AND THAT THEY WERE COMING OUT OF THAT DEN.
23 THAT'S WHAT I REMEMBER.

24 Q. YOU DIDN'T KNOW WHAT YOUR PARENTS WERE
25 DOING, DID YOU?

26 A. LOOKING BACK, THE ANSWER IS NO. LOOKING
27 BACK, I THOUGHT THEY WERE DOING SOMETHING DIFFERENT.

28 Q. AT THE TIME YOU DIDN'T KNOW WHAT YOUR

-20622

1 PARENTS WERE DOING, DID YOU?

2 A. WELL, I THOUGHT THERE WERE GUNS IN THE ROOM
3 AT THE TIME.

4 Q. AT THE TIME YOU DIDN'T KNOW WHAT YOUR
5 PARENTS WERE DOING, DID YOU?

6 MR. LEVIN: OBJECTION. VAGUE AS TO WHAT TIME.

7 Q. BY MR. CONN: BY THE TIME YOU GOT OUT TO
8 THE FRONT DRIVEWAY AREA, YOU DIDN'T KNOW WHAT YOUR
9 PARENTS WERE DOING, DID YOU?

10 A. I DIDN'T KNOW SPECIFICALLY WHAT THEY WERE
11 DOING WHEN I WAS IN THE DRIVEWAY AREA. I THOUGHT THEY
12 WERE COMING OUT. I THOUGHT I WAS GOING TO DIE. I WOULD
13 NEVER HAD RUN INTO THE ROOM HAD I NOT THOUGHT THAT.

14 Q. AND BECAUSE YOU DIDN'T KNOW WHAT YOUR
15 PARENTS WERE DOING, FOR ALL YOU KNOW THEY COULD HAVE

16 BEEN IN THERE EATING BLUEBERRIES AND WHIPPED CREAM,

17 CORRECT?

18 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 Q. BY MR. CONN: YOUR FATHER HAD NOT

21 THREATENED YOU ANY TIME THAT DAY; IS THAT CORRECT?

22 A. I TOOK HIM COMING AND SAYING THAT HE WAS

23 GOING TO BE IN MY ROOM IN A MINUTE AS WHAT IT WOULD BE.

24 Q. YOUR FATHER NEVER TOLD YOU THAT HE WAS

25 GOING TO KILL YOU THAT DAY, DID HE?

26 A. I THOUGHT THAT'S WHAT HE WAS SAYING. I

27 THOUGHT MY LIFE WAS ENDING. I THOUGHT THEY WERE GOING

28 TO COME AND KILL ME. I -- HE NEVER SAID THOSE PRECISE

-20621

1 WORDS.

2 Q. YOUR FATHER NEVER USED THOSE WORDS; IS THAT

3 CORRECT?

4 A. HE NEVER USED THOSE WORDS ON THAT DAY.

5 Q. AND YET WHEN YOU TOOK THE STAND IN THIS

6 TRIAL, WITHIN A FEW MINUTES OF YOUR DIRECT EXAMINATION

7 YOU TOLD THIS JURY THAT YOUR FATHER TOLD YOU THAT HE WAS

8 GOING TO KILL YOU.

9 DO YOU REMEMBER THAT TESTIMONY?

10 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

11 THE COURT: REPHRASE THE QUESTION.

12 Q. BY MR. CONN: WITHIN A FEW MINUTES OF
13 TAKING THE WITNESS STAND IN THIS CASE, DID YOU TESTIFY
14 THAT YOUR FATHER TOLD YOU THAT HE WAS GOING TO KILL YOU?

15 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE, AND I
16 REQUEST A PAGE AND LINE CITE.

17 THE COURT: OVERRULED. OVERRULED.

18 MR. LEVIN: WHAT DOES HE MEAN BY A FEW MINUTES,
19 YOUR HONOR?

20 THE COURT: THAT'S THE QUESTION, AND THE WITNESS
21 CAN ANSWER IT.

22 THE WITNESS: I REMEMBER MR. LEVIN ASKING ME WHY
23 I THOUGHT I WAS GOING TO DIE, AND I REMEMBER SAYING
24 BECAUSE I THOUGHT MY PARENTS WERE GOING TO KILL ME. I
25 REMEMBER -- I'D HAVE TO SEE IT EXACTLY.

26 Q. BY MR. CONN: ARE YOU SAYING THAT YOU
27 TESTIFIED ONLY THAT YOU THOUGHT YOUR PARENTS WERE GOING
28 TO KILL YOU?

-20620

1 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

2 THE WITNESS: IT'S VERY DIFFICULT --

3 MR. LEVIN: OBJECTION.

4 THE COURT: SUSTAINED.

5 Q. BY MR. CONN: ISN'T IT TRUE THAT YOU
6 TESTIFIED IN DIRECT EXAMINATION THAT --

7 THE COURT: PAGE AND LINE.

8 MR. CONN: YES. PAGE 43,073.
9 MR. LEVIN: WHICH VOLUME?
10 MR. CONN: VOLUME 257.
11 MS. ABRAMSON: PAGE, COUNSEL?
12 MR. CONN: 43,073.
13 MS. ABRAMSON: LINE, COUNSEL?
14 MR. CONN: LINE 18 THROUGH 22.
15 MR. LEVIN: OBJECTION, YOUR HONOR. IT'S NOT
16 IMPEACHING.
17 THE COURT: OKAY. WELL, I'LL HAVE TO SEE IT.
18 MR. LEVIN: THERE'S NO TIME SPECIFIED. THAT'S
19 THE BASIS OF THE OBJECTION.
20 THE COURT: SUSTAINED. OBJECTION IS SUSTAINED.
21 Q. BY MR. CONN: YOUR FATHER DID NOT THREATEN
22 YOU THAT DAY BY SAYING, "I'M GOING TO KILL YOU," DID HE?
23 A. HE DIDN'T USE THOSE WORDS. THAT'S WHAT HE
24 MEANT. THAT'S WHAT I THOUGHT HE MEANT.
25 Q. YOUR MOTHER DID NOT THREATEN YOU THAT DAY
26 BY USING ANY SUCH WORDS, DID YOU -- DID SHE?
27 A. NO.
28 Q. YOU SAW NO WEAPONS THAT DAY, DID YOU?

-20619

1 A. WHAT DO YOU MEAN?
2 Q. YOUR PARENTS NEVER HELD ANY WEAPONS AGAINST
3 YOU THAT DAY, DID THEY?

4 A. NO.

5 Q. YOU DIDN'T SEE ANY WEAPONS NEAR YOUR
6 PARENTS THAT DAY, DID YOU?

7 A. NO.

8 Q. THERE WAS A RIFLE OR TWO RIFLES PRODUCED IN
9 THIS COURTROOM.

10 DID YOU RECOGNIZE THEM?

11 A. YES.

12 Q. WHEN WAS THE LAST TIME YOU HAD SEEN THOSE
13 RIFLES PRIOR TO AUGUST THE 20TH OF 1989?

14 A. PHYSICALLY SAW THEM?

15 Q. YES.

16 A. I DON'T KNOW. I DON'T REMEMBER.

17 Q. WHAT IS YOUR BEST ESTIMATE OF WHEN WAS THE
18 LAST TIME YOU SAW THOSE WEAPONS PRIOR TO THE TIME THAT
19 YOU SHOT YOUR PARENTS TO DEATH?

20 A. I KNOW I SAW THEM WHEN SHE BOUGHT THEM AND
21 SHE SAID WHAT SHE SAID. I HAVE -- I KNOW THAT I SAW
22 THEM IN HER CLOSET, BECAUSE I KNOW EXACTLY WHERE THEY
23 WERE NEXT TO THE BOXES.

24 BUT WHEN I SAW THEM IN HER CLOSET EXACTLY,
25 I DON'T KNOW.

26 Q. AND WHILE ANY OF THESE EVENTS WERE
27 TRANSPIRING THAT WEEK, DID YOU EVER GO UP TO THAT CLOSET
28 TO SEE IF THOSE RIFLES WERE THERE?

1 A. NO.

2 THE COURT: LET'S TAKE OUR RECESS. WE'LL RESUME
3 AT 3:30.

4 (A RECESS WAS TAKEN FROM
5 3:15 P.M. TO 3:30 P.M.)

44919

1 THE COURT: WITHOUT THE JURY PRESENT.

2 MR. LEVIN: YES, YOUR HONOR. BEFORE THE LAST
3 BREAK I NOTICED THAT MY CLIENT APPEARED TO BE IN
4 SOME DISTRESS AND DISCOMFORT. HE IS, AT THIS TIME,
5 IN PAIN, BACK PAIN, AND IT IS RATHER SEVERE. HE
6 FEELS HE CAN CONTINUE, BUT WHAT I'M ASKING THE COURT
7 IS THAT WE BREAK PROMPTLY AT 4:30 AND NOT GO BEYOND
8 THEN. I DON'T WANT THAT TO BE AN ISSUE BEFORE THE
9 JURY.

10 THE COURT: WE'LL TRY TO BREAK AROUND THAT
11 TIME. I CAN'T SAY EXACTLY. LET'S HAVE THE JURY
12 OUT.

13 MS. ABRAMSON: WE MEAN GREENWICH MEANTIME,
14 EXACTLY 4:30.

15 (THE JURY ENTERED THE
16 COURTROOM AND THE FOLLOWING
17 PROCEEDINGS WERE HELD:)

18

19 THE COURT: THE JURY'S BACK AND WE'LL
20 CONTINUE WITH THE CROSS.

21 Q BY MR. CONN: MR. MENENDEZ, YOU WENT
22 THROUGH THE STUDY AND YOU WENT OUT THE DOORS TO THE
23 STUDY THAT GO TO THE DRIVEWAY AREA; IS THAT
24 CORRECT?

25 A YES.

26 Q AND WHERE WAS YOUR CAR PARKED IN THE
27 DRIVEWAY AREA?

28 A I REMEMBER IT BEING PARKED PARALLEL TO

44920

1 THE HOUSE -- I'M SORRY. JUST LIKE WHERE THAT GRAY
2 CAR IS EXCEPT A LITTLE BIT CLOSER TO THE STEPS.

3 Q SO WHEN YOU SAY CLOSER TO THE STEPS,
4 YOU'RE SAYING IT WOULD BE PARKED IN THE SAME
5 DIRECTION AS THIS CAR BUT CLOSER HERE WHERE THE
6 WRITING "FRONT ENTRANCE" APPEARS; IS THAT CORRECT?

7 A A LITTLE BIT FURTHER BACK, BUT IN THAT --
8 EXACTLY LIKE THAT BUT -- (POINTING) RIGHT HERE.

9 Q SO YOU'RE SAYING SOMEWHERE NEAR --
10 SOMEWHERE NEAR THE DOORS TO THE STUDY; IS THAT
11 CORRECT?

12 A WELL, THERE WAS THE BUSH AND THE
13 CONCRETE SLAB IN BETWEEN THE DOORS TO THE STUDY. I
14 HAD TO RUN AROUND IT.

15 Q AND WAS THERE LIGHT OUTSIDE IN THE

16 DRIVEWAY AREA?

17 A YOU KNOW, I DON'T EVEN KNOW.

18 Q DID YOU HAVE LIGHTS OUT THERE IN THE
19 DRIVEWAY AREA?

20 A THERE WERE LIGHTS IN THE DRIVEWAY AREA,
21 YES.

22 Q AND WAS YOUR -- THE FRONT OF YOUR CAR
23 FACED NORTH OR TO THE SOUTH?

24 A WHICH IS THE NORTH --

25 Q NORTH WOULD BE THE TOP OF THE DIAGRAM.

26 A IT WAS FACED -- THE BACK WAS FACED TO THE
27 NORTH. IT WAS FACED IN THE SAME DIRECTION AS THAT
28 CAR.

44921

1 Q OKAY. AND SO YOU RAN OUTSIDE TO YOUR
2 CAR AND YOU OPENED UP THE HATCHBACK; IS THAT
3 CORRECT?

4 A I DON'T EVEN REMEMBER OPENING THE
5 HATCHBACK.

6 Q ARE YOU SAYING THAT THE BACK OF THE CAR
7 WAS OPEN?

8 A NO. I MUST HAVE -- IT'S A PULL SPRING
9 THAT JUST OPENS IT. I DON'T REMEMBER DOING IT. I
10 MUST HAVE DONE IT.

11 Q WELL, WHAT DO YOU HAVE TO PULL TO OPEN
12 UP THE BACK OF THE CAR?

13 A IT'S A THING RIGHT NEXT TO THE DOOR OF
14 THE CAR. IT'S A LITTLE LEVER.

15 Q IS THAT IN THE BACK OF THE CAR OR IT'S
16 OVER BY THE DRIVER'S SIDE?

17 A BY THE DRIVER'S SIDE, YES.

18 Q AND THE AMMUNITION WAS IN THE BACK OF
19 THE CAR?

20 A YES.

21 Q SO YOU HAD TO GO OVER TO THE DRIVER'S
22 SIDE?

23 A I MUST HAVE. I DON'T REMEMBER THE HATCH
24 BEING OPEN WHEN I CAME HOME. I BELIEVE IT WAS
25 LOCKED. I DIDN'T OPEN IT. ALL YOU DO IS OPEN THE
26 DOOR, PULL IT AND THE DOOR POPS -- THE BACK HATCH
27 POPS OPEN.

28 Q AND I TAKE IT THAT THE DRIVER'S DOOR WAS

44922

1 CLOSED AT THE TIME TOO; IS THAT CORRECT?

2 A YES.

3 Q SO WHEN YOU FIRST OPENED THE DOOR TO THE
4 STUDY AND WENT OUTSIDE, YOU THEN HAVE TO OPEN UP THE
5 DOOR ON THE DRIVER'S SIDE OF THE CAR; IS THAT

6 CORRECT?

7 A I MUST HAVE DONE THAT.

8 Q AND IT WAS STILL YOUR INTENTION AT THIS
9 TIME JUST TO GET THE AMMUNITION AND NOT SHOOT YOUR
10 PARENTS; IS THAT WHAT YOU'RE SAYING?

11 A I THOUGHT THEY WERE COMING OUT OF THE
12 DEN. I JUST WANTED TO STOP THEM FROM KILLING ME. I
13 DON'T REMEMBER THINKING THESE THINGS. I JUST
14 REMEMBER THE MIND THUMPING --

15 MR. CONN: OBJECTION. NONRESPONSIVE.

16 THE COURT: WHY DON'T YOU REASK THE
17 QUESTION.

18 Q BY MR. CONN: MR. MENENDEZ, WAS YOUR
19 INTENTION AT THAT POINT IN TIME TO SHOOT YOUR
20 PARENTS OR JUST TO GET THE SHELLS AND PUT THEM IN
21 YOUR GUN?

22 A I DON'T KNOW WHAT MY INTENTION WAS AT
23 THAT TIME.

24 Q YOU DO NOT RECALL WHAT YOUR INTENTION
25 WAS AT THAT POINT IN TIME; IS THAT CORRECT?

26 A I RECALL WANTING TO GET THE SHELLS IN
27 THE BACK OF THE CAR.

28 Q SO DID YOU SEE YOUR BROTHER LYLE

1 MENENDEZ WHEN YOU GOT OUT THERE ALONGSIDE YOUR CAR?

2 A NO.

3 Q AND AFTER YOU OPENED THE FRONT DOOR TO

4 YOUR CAR, YOU PULLED THIS LEVER THAT WOULD ALLOW THE

5 HATCHBACK TO OPEN; IS THAT CORRECT?

6 A WHAT I'M SAYING IS I DON'T REMEMBER

7 DOING IT. I BELIEVE IT'S THE ONLY WAY, UNLESS YOU

8 UNLOCK IT WITH A KEY, WHICH I -- I'M SURE I DIDN'T

9 DO.

10 Q AND ONCE YOU PULLED THIS LEVER SOMEWHERE

11 NEAR THE DRIVER'S SIDE, DO YOU THEN HAVE TO GO TO

12 THE BACK OF THE CAR AND OPEN UP THE HATCHBACK OR

13 DOES THE HATCHBACK JUST SPRING UP AUTOMATICALLY?

14 A IT OPENS. I DON'T -- SOMETIMES IT OPENED

15 ALL THE WAY, BUT NORMALLY IT'S -- I DON'T THINK IT'S

16 DESIGNED TO DO THAT. I THINK IT JUST OPENS AND YOU

17 JUST THROW IT OPEN WHEN YOU GET THERE.

18 Q OKAY. NOW, DID YOU CLOSE THE DOOR ON

19 THE DRIVER'S SIDE BEFORE YOU WENT TO THE BACK OF THE

20 CAR AND OPENED UP THE HATCHBACK?

21 A I DON'T REMEMBER DOING THAT.

22 Q SO YOU WENT TO THE BACK DOOR OF YOUR CAR

23 AND YOU OPENED UP THE HATCHBACK AND YOU BEGAN TO

24 LOOK FOR THE SHELLS; IS THAT CORRECT?

25 A YES.

26 Q AND YOU STILL HADN'T SEEN YOUR PARENTS;

27 IS THAT CORRECT?

28 A NO.

1 Q YOU SAW NO GUNS AT THAT TIME; IS THAT
2 CORRECT?

3 A CORRECT.

4 Q AND YOU HEARD NO ONE THREATENING YOU AT
5 THAT TIME; IS THAT CORRECT?

6 A RIGHT.

7 Q AND BY THE TIME YOU STARTED TO GO
8 THROUGH THE BACK OF YOUR CAR TO LOOK FOR THE SHELLS,
9 HAD YOU SEEN YOUR BROTHER LYLE MENENDEZ AT THAT
10 POINT IN TIME?

11 A NO.

12 Q NOW, DID YOU UNLOAD YOUR GUN BEFORE YOU
13 BEGAN TO LOOK FOR THE SHELLS IN THE BACK OF YOUR CAR
14 OR DID YOU FIRST FIND THE SHELLS IN THE BACK OF YOUR
15 GUN AND THEN UNLOAD YOUR GUN?

16 A I'M NOT SURE WHICH CAME FIRST.

17 Q AND IS THERE A LIGHT IN THE BACK OF YOUR
18 CAR WHEN YOU OPEN UP THE HATCHBACK?

19 A YES, I BELIEVE SO.

20 Q SO YOU WERE ABLE TO SEE WHAT YOU WERE
21 DOING?

22 A YES.

23 Q NOW, YOU KEEP -- I BELIEVE YOU TESTIFIED
24 EARLIER THAT YOU KEEP A LOT OF CLOTHING AND OTHER

25 STUFF IN THE BACK OF YOUR CAR?

26 A YES.

27 Q AND DID YOU STILL HAVE THE BOX FROM THE
28 SHOTGUN IN THE BACK?

44925

1 A I BELIEVE SO.

2 Q AND DID YOU HAVE THE BOX FROM YOUR
3 BROTHER'S SHOTGUN IN THE BACK?

4 A I BELIEVE SO.

5 Q AND YOU HAD CLOTHING COVERING THE BOX?

6 A I DON'T REMEMBER SEEING THE BOX. I
7 BELIEVE IT WAS COVERED.

8 Q AND THE -- THE SHOTGUN -- THE BUCKSHOT
9 THAT YOU PURCHASED AT THE STORE THE DAY BEFORE, DID
10 YOU HAVE THAT OUT IN THE OPEN WHERE EVERYONE COULD
11 SEE IT OR DID YOU HAVE IT CONCEALED UNDER
12 SOMETHING?

13 A I REMEMBER SCRAMBLING AROUND FOR
14 SHELLS. I REMEMBER SCRAMBLING AROUND FOR IT AND
15 RIPPING OPEN THE BOX. I DON'T -- I DON'T REMEMBER
16 ANYTHING MORE THAN THAT OTHER THAN I WAS SCRAMBLING
17 AROUND FOR IT.

18 Q WELL, AS FAR AS YOU RECALL, THE LAST
19 TIME YOU HAD SEEN THOSE SHOTGUN SHELLS, DID YOU HAVE

20 THOSE SHOTGUN SHELLS OPEN SO THAT ANY -- IN A PLACE
21 WHERE ANYONE LOOKING IN THE CAR COULD SEE IT OR DID
22 YOU HAVE IT CONCEALED UNDER SOMETHING SO PEOPLE
23 COULD NOT SEE THE SHELLS?

24 A I CAN ONLY GIVE YOU AN ESTIMATE, A
25 GUESSTIMATE. PROBABLY IT WAS CONCEALED. I DON'T
26 SPECIFICALLY REMEMBER CONCEALING IT, BUT I REMEMBER
27 SCRAMBLING AROUND FOR THEM.

28 Q AND WHAT WOULD IT BE CONCEALED BY,

44926

1 CLOTHING?

2 A YES.

3 Q AND SO DO YOU RECALL REMOVING SOME
4 CLOTHING TO FIND THE BOX OF SHOTGUN SHELLS?

5 A NO, NOT SPECIFICALLY.

6 Q BUT YOU REMEMBER LOOKING FOR THE SHELLS;
7 IS THAT CORRECT?

8 A I REMEMBER THROWING THINGS AROUND IN THE
9 BACK.

10 Q AND THEY WEREN'T LOOSE AT THAT TIME;
11 THEY WERE INSIDE A BOX; IS THAT CORRECT?

12 A YES.

13 Q SO YOU HAD TO OPEN UP A BOX; IS THAT
14 CORRECT?

15 A YES.

16 Q NOW, AT THE TIME THAT YOU OPENED UP THE
17 BOX, HAD YOU SEEN YOUR BROTHER LYLE MENENDEZ?

18 A NO.

19 Q YOU STILL HADN'T SEEN YOUR PARENTS; IS
20 THAT CORRECT?

21 A SINCE I SAW THEM LAST, NO.

22 Q WHAT DID YOU DO AFTER YOU OPENED UP THE
23 BOX OF AMMUNITION?

24 A I'M NOT SURE IF I HAD ALREADY EJECTED
25 OUT THE SHELLS OR IF I DID IT AT THAT POINT. I KNOW
26 AS SOON AS I HAD THE SHELLS I STARTED LOADING THEM
27 INTO THE GUN.

28 Q NOW, WHAT DID YOU HAVE TO DO TO EJECT

44927

1 THESE SHELLS?

2 A ALL I REMEMBER THAT YOU HAD TO DO WAS
3 PUMP THE PUMP OF THE GUN.

4 Q DID YOU HAVE THE SAFETY ON OR OFF?

5 A NO IDEA.

6 Q DOES IT MATTER IF THE SAFETY IS ON OR
7 OFF?

8 A I REMEMBER SOMEBODY TESTIFYING THAT IT
9 DID. I REMEMBER FROM THE LAST TRIAL, DEPUTY

10 VAN HORN TESTIFYING ABOUT THE GUN IN PARTICULAR. I

11 ASSUME IT DOES.

12 Q SO WAS THE SAFETY ON OR OFF WHEN YOU

13 STARTED TO EJECT THE SHELLS?

14 A I DON'T KNOW.

15 Q DID YOU KEEP THE SAFETY ON OR OFF WHEN

16 IT WAS IN YOUR BEDROOM?

17 A I DON'T REMEMBER EVER PUTTING THE SAFETY

18 ON VERSUS OFF. I DON'T KNOW.

19 Q OKAY. SO YOU EJECTED THE SHELLS.

20 HOW MANY SHELLS DID YOU EJECT?

21 A BOTH SHELLS THAT I HAD IN THE GUN.

22 Q AND THOSE WERE THE BIRD SHOT SHELLS?

23 A RIGHT.

24 Q AND YOU EJECTED THEM INTO THE

25 HATCHBACK?

26 A I GUESS.

27 Q IS THAT WHAT YOU WERE TRYING TO DO,

28 EJECT THEM INTO THE HATCHBACK SO THAT THEY WOULDN'T

44928

1 FALL ON THE FLOOR WHERE PEOPLE COULD SEE THEM?

2 A I -- I JUST REMEMBER PULLING DOWN ON THE

3 PUMP. I DON'T REMEMBER IF THEY FLEW OUT INTO THE

4 BACK OF THE HATCHBACK OR IF THEY CAME OUT IN MY

5 HAND. I DON'T REMEMBER WHAT EXACTLY HAPPENED.

6 Q AND WHAT DID YOU DO AFTER YOU EJECTED
7 THE SHELLS?

8 A I STARTED LOADING THE OTHER ONES, ONE
9 AFTER ANOTHER.

10 Q HOW MANY DID YOU LOAD?

11 A I THINK FIVE. THAT'S THE FULL
12 CAPACITY.

13 Q WHAT DID YOU HAVE TO DO TO LOAD THE
14 SHELLS?

15 A YOU JUST HAD TO SLIDE THEM INTO THE
16 GUN.

17 Q AND YOU SLID IN ALL FIVE?

18 A YES.

19 Q AND THEN DID YOU GO THROUGH THAT PUMPING
20 ACTION?

21 A I DON'T REMEMBER DOING SO. I DON'T
22 REMEMBER DOING SO. I DON'T KNOW.

23 Q DID YOU SEE THE DEMONSTRATION HERE IN
24 COURT HOW YOU PUT IN A SIXTH SHELL INTO THE WEAPON?

25 A YOU PUT IN ALL THE SHELLS AND THEN YOU
26 PULL IT AND YOU PUT IN ANOTHER SHELL?

27 Q YES.

28 A NO, I DIDN'T DO THAT.

1 Q OKAY. SO YOU PUT IN, TO YOUR KNOWLEDGE,
2 NO MORE THAN FIVE SHELLS; IS THAT CORRECT?

3 A I LOADED IT AS FULL AS I COULD GET.

4 Q AND THEN BY THE TIME YOU FINISHED
5 LOADING YOUR GUN, HAD YOUR BROTHER LYLE MENENDEZ
6 ARRIVED AT THE DRIVEWAY YET?

7 A I REMEMBER THINKING THAT HE WASN'T
8 COMING; THAT I WAS GOING TO HAVE TO GO IN THE ROOM
9 ALONE. I DON'T REMEMBER EXACTLY AT WHAT POINT HE
10 SHOWED UP. I JUST REMEMBER THE FEELING THAT HE
11 WASN'T COMING, I'M GOING TO HAVE TO GO IN THE ROOM
12 ALONE, AND -- AND THE PANIC THAT THAT CAUSED ME. I --
13 I REMEMBER HIM BEING THERE AT SOME POINT AND SAYING
14 HURRY.

15 Q AT WHAT POINT IN TIME DO YOU RECALL YOUR
16 BROTHER ARRIVED?

17 A I DON'T KNOW IF I WAS IN THE PROCESS OF
18 LOADING IT OR HAD FINISHED AND I SAW HIM RUNNING IN
19 THE CARPORT. I DON'T REMEMBER.

20 Q WERE YOU EXPECTING YOUR BROTHER?

21 A YES, I BELIEVED THAT HE WOULD BE AT THE
22 CAR.

23 Q WHY?

24 A BECAUSE I TOLD HIM THAT I WAS GOING TO
25 GET TO THE CAR.

26 Q AND SO WHY DID YOU THINK THAT HE WOULD
27 GO TO THE CAR?

44930

1 Q IS THAT BECAUSE YOU KNEW THAT HE HAD NOT
2 LOADED THE BUCKSHOT INTO THE GUN?

3 A I JUST REMEMBER SAYING, I GOT TO GET TO
4 THE CAR. I DON'T REMEMBER IF HE SAID I'LL BE THERE
5 OR I'LL MEET YOU THERE. I DON'T REMEMBER THOSE
6 WORDS. I JUST REMEMBER KNOWING THAT HE WASN'T THERE
7 YET AND THAT I WAS GOING TO HAVE TO RUN INTO THE
8 ROOM WITHOUT HIM.

9 Q NOW, WHAT DID YOU DO AFTER YOU FULLY
10 LOADED YOUR SHOTGUN?

11 A I WAS TELLING LYLE TO HURRY.

12 Q WHAT DID YOU DO NEXT?

13 A I RAN INTO THE HOUSE.

14 Q TO DO WHAT?

15 A I JUST REMEMBER RUNNING IN THINKING THAT
16 THEY WERE GOING TO COME OUT OF THE DEN AND I HAD --

17 MR. CONN: MOTION TO STRIKE AS NONRESPONSIVE.

18 THE COURT: SUSTAINED. THE ANSWER IS
19 STRICKEN.

20 Q BY MR. CONN: TO DO WHAT?

21 A TO LIVE.

22 Q YOU RAN INTO THE -- YOU RAN IN TOWARD

23 DANGER TO LIVE?

24 A YES.

25 Q MR. MENENDEZ, YOU RAN IN THE ROOM TO
26 KILL YOUR PARENTS, DIDN'T YOU?

27 A I KNOW THAT'S WHAT I DID. THAT'S NOT
28 WHAT WAS GOING THROUGH MY MIND. I REMEMBER

44931

1 SPECIFICALLY AS I WAS -- BEFORE I RAN TO THE DOOR I
2 REMEMBER THINKING THAT DAD WAS GOING TO GRAB THIS
3 GUN. I DON'T REMEMBER EXACTLY WHAT WAS GOING
4 THROUGH MY MIND. I WAS IN THIS PANIC STATE AND I
5 DON'T KNOW WHAT I WAS THINKING.

6 Q MR. MENENDEZ --

7 YOUR HONOR, I HAVE TWO PHOTOGRAPHS.
8 THEY'VE NOT BEEN PREVIOUSLY MARKED. I'VE SHOWN THEM
9 TO COUNSEL.

10 I'D LIKE TO MARK THESE AS 382.

11 THE COURT: WE'RE AT 383.

12 MR. CONN: 383 AND 384.

13 Q SHOWING YOU 383, THE PHOTOGRAPH ON THE
14 LEFT, AND 384, THE PHOTOGRAPH ON THE RIGHT.

15 WHAT DO THOSE PHOTOGRAPHS DEPICT,
16 MR. MENENDEZ?

17 A ONE PHOTOGRAPH IS TAKEN FROM THE OUTSIDE

18 OF MY DRIVEWAY. THE OTHER ONE IS TAKEN FROM THE
19 OUTSIDE -- FROM THE INSIDE OF THE DRIVEWAY. BOTH OF
20 THEM SHOWING THE OPEN GATE. I BELIEVE IT'S MY
21 FATHER'S MERCEDES. I'M NOT SURE. AND -- YEAH, IT
22 IS. AND MY BROTHER'S ALFA-ROMERO.

23 Q AND IT ALSO SHOWS THE GATE, DOESN'T IT --
24 DON'T THEY?

25 A YEAH. THAT'S WHAT I JUST SAID.

26 Q AND THAT'S THE GATE THAT TAKES YOU TO
27 THE STREET; IS THAT CORRECT?

28 A YES.

44932

1 Q NOW, WAS THAT GATE OPEN OR CLOSED AT THE
2 TIME THAT YOU DECIDED TO GO INSIDE THE HOUSE AND
3 SHOOT YOUR PARENTS?

4 MR. LEVIN: OBJECTION. ASSUMES FACTS NOT IN
5 EVIDENCE AND MISSTATES HIS TESTIMONY.

6 THE COURT: REPHRASE THE QUESTION.

7 Q BY MR. CONN: WAS THAT GATE OPEN OR
8 CLOSED AT THE TIME THAT YOU DECIDED TO GO INTO YOUR
9 HOUSE?

10 MR. LEVIN: OBJECTION WITH RESPECT TO
11 DECIDE.

12 THE COURT: OVERRULED.

13 THE WITNESS: I DON'T KNOW.

14 Q BY MR. CONN: WELL, HOW -- IF YOU WERE

15 INSIDE THAT GATE, HOW WOULD YOU GO ABOUT OPENING UP

16 THAT GATE, MR. MENENDEZ?

17 A I THINK THERE'S ONLY ONE WAY TO DO IT

18 AND THAT'S WITH A CLICKER.

19 ACTUALLY, THERE'S A BUTTON ON THE INSIDE

20 CLOSET OF THE HOUSE. IT DOESN'T SHOW IT IN THE

21 ENTRY, BUT IT'S -- IT'S A CLOSET IN THE ENTRYWAY.

22 Q SO YOU COULD DO IT WITH A REMOTE; IS

23 THAT CORRECT?

24 A YES.

25 Q AND YOU HAD A REMOTE IN YOUR CAR; IS

26 THAT CORRECT?

27 A I BELIEVE SO.

28 Q AND IF YOU HAD GOTTEN INTO YOUR CAR AND

44933

1 PRESSED THE REMOTE, THE GATE WOULD OPEN IF IT WASN'T

2 OPENED ALREADY; IS THAT CORRECT?

3 A YES.

4 Q AND GOING THROUGH THAT GATE WOULD HAVE

5 TAKEN YOU TO SAFETY; IS THAT CORRECT, MR. MENENDEZ?

6 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

7 THE COURT: OVERRULED.

8 THE WITNESS: IT'S NOT HOW I VIEWED IT.

9 Q BY MR. CONN: DO YOU THINK IT'S SMARTER

10 TO RUN TOWARD DANGER, MR. MENENDEZ, OR RUN AWAY FROM

11 DANGER?

12 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

13 THE COURT: SUSTAINED TO THE FORM OF THE

14 QUESTION.

15 Q BY MR. CONN: YOU SENSED THAT THERE WAS

16 DANGER INSIDE THE HOUSE; IS THAT CORRECT,

17 MR. MENENDEZ?

18 A YES.

19 Q AND SO DID YOU DECIDE TO GO INTO THE

20 HOUSE OR AWAY FROM THE HOUSE?

21 A I RAN INTO THE HOUSE.

22 Q WHY?

23 A I DON'T KNOW. I -- I DON'T KNOW WHAT I

24 WAS THINKING WHEN I WAS SCRAMBLING FOR THOSE SHELLS

25 AND PANICKED. I KNEW THAT IF I DIDN'T GET TO THAT

26 DEN I WAS GOING TO DIE IF THEY HAD GOTTEN OUT OF THE

27 DEN BEFORE. I KNEW THAT I HAD TO GET TO THAT DEN.

28 THAT'S ALL THAT I THOUGHT. AND I -- I WISH I COULD

44934

1 SIT BACK AND TELL YOU WHAT I WAS THINKING AT THAT

2 TIME AND WHY I DIDN'T RUN OUT. BUT IT JUST NEVER,

3 NEVER CROSSED MY MIND.

4 Q DID YOU GO INSIDE THAT HOUSE BECAUSE YOU
5 WANTED TO KILL YOUR PARENTS, MR. MENENDEZ?

6 A IT'S SIMPLE TO -- FOR ME TO SAY THAT NOW,
7 BUT THAT'S NOT WHAT WAS IN MY MIND.

8 Q DID YOU GO INSIDE THAT HOUSE BECAUSE YOU
9 HAD PLANNED TO KILL YOUR PARENTS, MR. MENENDEZ?

10 A I DON'T KNOW WHAT YOU MEAN BY THAT.

11 Q THERE'S NOTHING STOPPING YOU FROM
12 LEAVING, WAS THERE?

13 A ONLY MY ACTIONS.

14 Q YOU DECIDED TO GO INSIDE THE HOUSE; IS
15 THAT CORRECT?

16 A IT'S WHAT I DID. I GUESS SO.

17 Q SO YOU DID MAKE A DECISION TO GO INSIDE
18 THE HOUSE, DIDN'T YOU?

19 A I CAN'T SAY YES. I CAN'T SAY NO. I
20 KNOW THAT'S WHAT I DID. IT WOULD BE EASY FOR ME TO
21 JUST SAY YES NOW, BUT WHEN YOU'RE SCRAMBLING, AT
22 THIS POINT, AND WHEN YOUR MIND IS THUMPING AND WHEN
23 YOU'RE PANICKED, YOU JUST DON'T THINK THOSE THINGS.

24 Q AND WHEN YOU WENT INSIDE THAT HOUSE, NO
25 ONE WAS POINTING A GUN AT YOU, WAS THERE?

26 A WHEN I RAN TO THE HOUSE?

27 Q YES.

28 A NO.

1 Q NO ONE WAS THREATENING, WAS THERE?

2 A I THOUGHT MY PARENTS WERE GOING TO KILL
3 ME AT THE TIME.

4 Q I'M NOT ASKING YOU WHAT YOU THOUGHT.

5 I'M SAYING WAS ANYONE THREATENING YOU AT THAT TIME?

6 A VERBALLY?

7 Q YES.

8 A NO.

9 Q AND YOU COULD NOT SEE ANYONE THREATENING
10 YOU, DID YOU?

11 A NO.

12 Q AND YOU DIDN'T WANT TO LEAVE BECAUSE YOU
13 FELT THAT IF YOU LEFT IT WOULD JUST BE A MATTER OF
14 TIME BEFORE YOUR FATHER FOUND YOU; ISN'T THAT
15 CORRECT?

16 A AT THIS TIME MY HEART IS PUMPING SUCH
17 AN -- I DON'T EVEN THINK THESE THINGS. YOU JUST --
18 YOU JUST ACT. I MEAN, EARLIER THAT DAY I BELIEVED
19 RUNNING AWAY WAS JUST THROWING YOUR LIFE AWAY, YES.

20 Q BUT NOW YOU WERE IN A DIFFERENT
21 SITUATION; IS THAT CORRECT?

22 A YES.

23 Q BECAUSE EARLIER THAT DAY YOU DIDN'T KNOW
24 FOR SURE THAT YOUR FATHER WAS GOING TO KILL YOU; IS
25 THAT CORRECT?

26 A I WAS IN A DIFFERENT SITUATION.

27 Q AND WHEN YOU DIDN'T KNOW FOR SURE, YOU
28 DECIDED TO WAIT IN THE HOUSE AND SEE WHAT HAPPENED;

44936

1 IS THAT CORRECT?

2 A I DIDN'T RUN AWAY.

3 Q BUT NOW YOU BELIEVED IT WAS A DIFFERENT
4 SITUATION; IS THAT CORRECT?

5 A IT WAS A DIFFERENT SITUATION.

6 Q AND DID YOU DECIDE AT THAT TIME IT WAS
7 TIME TO TALK TO YOUR BROTHER AND REEVALUATE WHETHER
8 IT JUST MIGHT BE BETTER TO MOVE AWAY AFTER ALL?

9 A TALK TO MY BROTHER WHEN I'M OUT AT THE
10 CAR?

11 Q TALK TO YOUR BROTHER WHILE YOU'RE OUT
12 THERE IN THE DRIVEWAY AND NOBODY IS POINTING A GUN
13 AT YOU.

14 A NO. I SAID ONLY ONE THING TO MY BROTHER
15 AND THAT WAS HURRY.

16 Q AND YOU DECIDED NOT TO TALK TO YOUR
17 BROTHER ABOUT THE POSSIBILITY OF RUNNING AWAY; IS
18 THAT CORRECT?

19 A DECISIONS LIKE THAT DIDN'T EVEN ENTER MY
20 MIND. I JUST FELT MY LIFE SLIPPING AWAY AND I JUST
21 WANTED TO GO FASTER THAN I WAS GOING. IT DIDN'T

22 EVEN CROSS MY MIND.

23 Q WHILE YOU WERE STANDING OUT THERE IN THE
24 DRIVEWAY, THERE WAS NO IMMEDIATE DANGER, WAS THERE?

25 A I FELT MORE THAN IMMEDIATE DANGER. I
26 FELT LIKE I WAS DYING.

27 Q WHERE WAS THE IMMEDIATE DANGER,
28 MR. MENENDEZ?

44937

1 A WHEREVER MY PARENTS WERE.

2 Q INSIDE THE HOUSE; IS THAT CORRECT?

3 A YES.

4 Q AND YOU WERE OUTSIDE THE HOUSE; IS THAT
5 CORRECT?

6 A RIGHT.

7 Q AND UNTIL YOUR FATHER OR SOMEONE CAME
8 OUT OF THAT HOUSE AND POINTED A GUN AT YOU, THERE
9 WAS NO IMMEDIATE DANGER; ISN'T THAT TRUE?

10 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

11 THE COURT: OVERRULED.

12 THE WITNESS: YOU'RE ASKING -- THERE WAS NO
13 IMMEDIATE DANGER UNTIL MY DAD EXITED THAT DEN?

14 Q BY MR. CONN: THAT'S CORRECT. ISN'T
15 THAT TRUE?

16 A I DON'T KNOW. IN LOOKING BACK ON IT,

17 NO, I WOULDN'T SAY THAT WAS TRUE.

18 Q WHY WAS THAT NOT TRUE, MR. MENENDEZ?

19 A BECAUSE AS SOON AS MY DAD AND MY MOM

20 EXITED THAT DEN, I WAS DEAD. LIFE WAS OVER.

21 Q MR. MENENDEZ, UNTIL SOMEONE POINTED A

22 GUN AT YOU, THERE WAS NO REASON FOR YOU TO SHOOT

23 ANYONE, WAS THERE?

24 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

25 THE COURT: OVERRULED.

26 THE WITNESS: YOU'RE RIGHT. SITTING IN THIS

27 CHAIR GOING BACK AND THINKING ABOUT IT, YOU'RE

28 ABSOLUTELY RIGHT. THESE ARE THOUGHTS THAT I'VE

44938

1 THOUGHT EVERY DAY IN THE LAST SIX YEARS. AT THAT

2 TIME, IT'S JUST -- IT JUST WASN'T IN MY MIND.

3 Q BY MR. CONN: AT THAT POINT WHAT WAS IN

4 YOUR MIND WAS TO SHOOT AND KILL YOUR PARENTS; IS

5 THAT CORRECT?

6 A NOT EVEN THAT WAS IN MY MIND. IT SOUNDS

7 RIDICULOUS AND -- BUT AT THE TIME IT JUST -- IT

8 WASN'T. I -- RUNNING IN THAT ROOM AND GETTING THERE

9 BEFORE THEY EXITED THE DEN WAS THE ONLY THING THAT

10 WAS IN MY MIND.

11 Q YOU KNEW, AS YOU WERE STANDING OUT THERE

12 IN THE DRIVEWAY, THAT YOU WERE IN A POSITION TO SEE

13 YOUR PARENTS COME OUT OF THE HOUSE; IS THAT

14 CORRECT?

15 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

16 THE COURT: OVERRULED.

17 THE WITNESS: THAT'S TRUE. IT DIDN'T OCCUR

18 TO ME.

19 Q BY MR. CONN: DID YOU SAY TO YOUR

20 BROTHER AT THAT POINT IN TIME: RATHER THAN KILL OUR

21 PARENTS, LET'S WAIT AND SEE IF THEY COME OUT OF THE

22 HOUSE?

23 A NO.

24 Q DID YOU TELL YOUR BROTHER AT THAT POINT

25 IN TIME, RATHER THAN KILL OUR PARENTS, LET'S JUST

26 DRIVE AWAY?

27 A NO.

28 Q YOU KNEW AS YOU WENT BACK INSIDE THAT

44939

1 HOUSE THAT YOU WERE GOING TO SHOOT AND KILL YOUR

2 PARENTS; IS THAT CORRECT?

3 A NO.

4 Q WHAT DID YOU PLAN TO DO WITH THIS LOADED

5 WEAPON AS YOU WALKED BACK THROUGH THE DOORS LEADING

6 INTO THE STUDY?

7 MR. LEVIN: OBJECTION. ASSUMES HE HAD A
8 PLAN.

9 THE COURT: OVERRULED.

10 THE WITNESS: I WAS -- I WAS -- I REMEMBER
11 RUSHING INTO THE HOUSE. I DIDN'T KNOW WHAT I WAS
12 GOING TO DO WHEN I ENTERED THAT STUDY. I REMEMBER
13 THINKING MY DAD'S GOING TO GRAB THIS GUN. THIS GUN
14 IS JUST HUGE AND -- AND THAT'S THE SPECIFIC FLASH
15 THAT WAS IN MY MIND, HOW BIG THE GUN WAS, JUST
16 BEFORE I ENTERED THAT DEN.

17 Q BY MR. CONN: IT WAS YOUR INTENTION, AS
18 YOU WERE GOING THROUGH THE STUDY DOORS, TO GO INTO
19 THE DEN; IS THAT CORRECT?

20 A YES.

21 Q AND YOU KNEW YOU HAD A GUN THAT WAS
22 LOADED; IS THAT CORRECT?

23 A YES.

24 Q AND YOUR PARENTS WERE IN THERE AND
25 YOU'RE TELLING US THAT YOU BELIEVE THAT THEY WERE A
26 DANGER TO YOU; IS THAT CORRECT?

27 A I WASN'T EVEN SURE THEY WERE INSIDE THE
28 DEN. I JUST KNEW THAT THEY WERE SOMEWHERE IN THE

1 BACK OF THE HOUSE.

2 Q AND YOU DIDN'T EVEN KNOW WHETHER THEY
3 HAD TOUCHED THE WEAPON IN THE LAST YEAR, DID YOU?

4 A I BELIEVE THAT THERE WERE GUNS IN THAT
5 ROOM AT THAT POINT.

6 Q WHY?

7 A BECAUSE I BELIEVE IT WITH -- I JUST KNEW
8 THAT THEY WERE COMING TO KILL ME. IT WASN'T EVEN --
9 I DIDN'T EVEN SECONDGUESS MYSELF.

10 Q WHERE WAS THE EVIDENCE OF THAT,
11 MR. MENENDEZ, THAT THEY HAD GUNS IN THAT ROOM?

12 A IN MY MIND.

13 Q AND YOU WERE GOING TO KILL YOUR
14 PARENTS -- YOU WERE GOING TO SHOOT YOUR PARENTS BASED
15 UPON NOTHING MORE THAN THE POSSIBILITY THAT MAYBE
16 THEY HAD GUNS IN THE ROOM?

17 MR. LEVIN: OBJECTION. ARGUMENTATIVE, YOUR
18 HONOR.

19 THE COURT: SUSTAINED.

20 Q BY MR. CONN: YOU FELT THAT THERE WAS A
21 POSSIBILITY THAT THEY HAD GUNS IN THE ROOM?

22 A NO.

23 Q YOU DIDN'T SEE THEM WITH GUNS IN THE
24 ROOM, DID YOU?

25 A I BELIEVED THAT THERE WERE.

26 Q WHAT WAS THAT BELIEF BASED UPON?

27 A KNOWING MY FATHER AND MY MOTHER.

28 Q BECAUSE YOUR MOTHER TOLD YOU YOU

1 COULDN'T GO TO THE MOVIES THAT NIGHT?

2 A NO.

3 Q BECAUSE YOUR FATHER TOLD YOU TO GO UP TO
4 YOUR BEDROOM?

5 A IT WAS ALL OF THESE THINGS TOGETHER.

6 Q AND AS YOU WERE GOING THROUGH THE ROOM --
7 AS YOU WERE GOING THROUGH THE STUDY, YOU KNEW THAT
8 ONCE YOU GOT INTO THAT DEN YOU WERE GOING TO START
9 FIRING AT YOUR PARENTS; IS THAT CORRECT?

10 A THAT WASN'T EVEN IN MY MIND.

11 Q WELL, THEN WHAT WERE YOU GOING TO DO AS
12 YOU WERE GOING THROUGH THE STUDY, MR. MENENDEZ?

13 A I JUST REMEMBER KNOWING THAT I HAD TO
14 GET TO THAT DEN BEFORE THEY GOT OUT. THE FACT THAT
15 I WAS GOING TO SHOOT THEM OR WASN'T GOING TO SHOOT
16 THEM JUST WASN'T IN MY MIND. I LOOK BACK ON IT NOW
17 AND I DON'T KNOW WHAT I WAS THINKING. I WAS
18 PANICKED AND I KNEW I HAD TO GET TO THE DEN BEFORE
19 THEY EXITED. IF THEY EXITED THE DEN, MY LIFE WAS
20 OVER. AND I JUST -- I FELT MY LIFE SLIPPING AWAY. I
21 CAN'T DESCRIBE THE ADRENALINE OR THE FEELINGS IN MY
22 MIND WHEN YOU'RE THAT PANICKED. I JUST CAN'T DO
23 IT.

24 Q YOU WANTED TO GET INTO THE DEN TO DO
25 SOMETHING TO THEM BEFORE THEY DID IT TO YOU; IS THAT

26 CORRECT?

27 A I WANTED TO STOP THEM FROM KILLING ME.

28 THAT'S EXACTLY WHAT WAS IN MY MIND.

44942

1 Q AND YOU WENT OUT THAT DAY AND YOU
2 PURCHASED THE KIND OF AMMUNITION THAT WOULD DO MORE
3 THAN STOP THEM, BUT WOULD KILL THEM; IS THAT
4 CORRECT?

5 A I DID THAT THE DAY BEFORE.

6 Q AND YOU WANTED TO BE ABLE TO NOT ONLY
7 STOP THEM, BUT TO KILL THEM; IS THAT CORRECT?

8 A NO.

9 Q YOU DIDN'T WANT TO KILL THEM?

10 A NO, I DIDN'T.

11 Q SO DID YOU SAY TO YOUR BROTHER AT THAT
12 POINT, LET'S DRIVE AWAY?

13 A NO.

14 Q DID YOU SAY TO YOUR BROTHER AT THAT
15 POINT, LET'S WAIT AND SEE IF THEY COME OUT AND LET'S
16 NOT KILL OUR PARENTS UNLESS WE'RE PUT INTO A
17 SITUATION WHERE WE REALLY HAVE TO?

18 A NO, I DIDN'T.

19 Q YOU DECIDED, INSTEAD, TO ATTACK YOUR
20 PARENTS; IS THAT CORRECT?

21 MR. LEVIN: OBJECTION. ARGUMENTATIVE.
22 THE COURT: OVERRULED.
23 THE WITNESS: NO. I DIDN'T THINK THAT. BUT
24 I DEFINITELY RAN THROUGH THOSE DOORS FIRST.
25 Q BY MR. CONN: THIS WAS AN ATTACK UPON
26 YOUR PARENTS, WASN'T IT, MR. MENENDEZ?
27 A I GUESS SO, IT WAS.
28 Q AND YOU KNEW AT THE TIME THAT IT WAS AN

44943

1 ATTACK UPON YOUR PARENTS, DIDN'T YOU?
2 A NO.
3 Q AND YOU KNEW, AS YOU WERE GOING THROUGH
4 THE STUDY, THAT THERE WAS NO IMMEDIATE DANGER
5 BECAUSE NOBODY WAS POINTING A GUN AT YOU, DIDN'T
6 YOU, MR. MENENDEZ?
7 MR. LEVIN: OBJECTION. ARGUMENTATIVE.
8 THE COURT: REPHRASE THE QUESTION.
9 Q BY MR. CONN: AS YOU WERE GOING THROUGH
10 THE STUDY, MR. MENENDEZ, WAS THERE AN IMMEDIATE
11 DANGER?
12 A I DIDN'T NEED A GUN TO BE POINTED AT ME
13 TO KNOW THAT THE DANGER WAS NOT ONLY IMMEDIATE, IT
14 WAS NOW.
15 Q DID -- THE DANGER WAS IN THE FUTURE WHEN

16 THEY CAME OUT OF THAT ROOM; ISN'T THAT CORRECT,

17 MR. MENENDEZ?

18 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: OVERRULED.

20 THE WITNESS: YES.

21 Q BY MR. CONN: AND YOU KNEW THEY COULDN'T

22 SHOOT THROUGH THE WALLS, DIDN'T YOU, MR. MENENDEZ?

23 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

24 THE COURT: OVERRULED.

25 THE WITNESS: I GUESS SO.

26 Q BY MR. CONN: AND YOU KNEW THAT THERE

27 WAS NO DANGER TO YOU UNTIL THEY CAME OUT OF THAT

28 ROOM AND POINTED THEIR GUN AT YOU; ISN'T THAT

44944

1 CORRECT?

2 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

3 THE COURT: OVERRULED.

4 THE WITNESS: ASK IT AGAIN, PLEASE.

5 Q BY MR. CONN: YOU KNEW THAT THERE WAS NO

6 DANGER TO YOU UNTIL THEY CAME OUT OF THAT ROOM AND

7 POINTED A GUN AT YOU; IS THAT CORRECT?

8 A THAT'S JUST NOT WHAT I WAS THINKING.

9 Q HOW WOULD THEY HURT YOU, MR. MENENDEZ,

10 IF THEY WERE STILL INSIDE THE DEN?

11 A YOU'RE RIGHT. THEY WOULD NOT KILL ME
12 UNTIL THEY EXITED THE DEN.
13 Q AND SO AT THAT POINT WHEN THEY CAME OUT
14 OF THE DEN, THEN PERHAPS THEY MIGHT BE A DANGER TO
15 YOU; IS THAT CORRECT?
16 A I BELIEVED THAT THEY WOULD BE.
17 Q AND THAT POINT WAS STILL IN THE FUTURE;
18 ISN'T THAT CORRECT?
19 A YES.
20 Q AND UNTIL THEY CAME OUT OF THAT ROOM,
21 THE DANGER TO YOU WAS A FUTURE DANGER; IS THAT
22 CORRECT?
23 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.
24 THE COURT: OVERRULED.
25 THE WITNESS: IT'S NOT HOW I SAW IT AT THE
26 TIME.
27 Q BY MR. CONN: YOU DIDN'T SEE THE DANGER
28 AS BEING IN THE FUTURE?

44945

1 A I SAW THE DANGER AS IMMEDIATE. RUSHING
2 INTO THAT ROOM WAS THRUSTING MYSELF INTO DANGER,
3 YES, BUT IT WAS THE ONLY WAY I SAW TO LIVE.
4 Q AND YOU KNEW THAT THEY COULDN'T SHOOT
5 THROUGH THE WALLS; IS THAT CORRECT?

6 MR. LEVIN: OBJECTION. ASKED AND ANSWERED.

7 THE COURT: SUSTAINED.

8 Q BY MR. CONN: HOW COULD THEY HURT YOU,
9 MR. MENENDEZ, IF THEY WERE INSIDE THE DEN?

10 A I JUST -- I THOUGHT THEY WERE EXITING.

11 Q I'M SORRY?

12 A I BELIEVED THAT THEY WERE GOING TO EXIT
13 AT ANY SECOND.

14 Q AND WHEN THEY EXITED, THEN PERHAPS THEY
15 MIGHT BE A DANGER; IS THAT CORRECT?

16 A NOT PERHAPS. AT THAT POINT IT WAS
17 OVER.

18 Q YOU DIDN'T KNOW THAT BECAUSE YOU DIDN'T
19 SEE ANY GUNS IN THEIR HANDS, DID YOU?

20 A I DIDN'T HAVE TO SEE GUNS TO KNOW THAT.

21 Q UNTIL THEY EXITED THAT ROOM, THEY WOULD
22 NOT BE ABLE TO HARM YOU; IS THAT CORRECT?

23 MR. LEVIN: OBJECTION. ARGUMENTATIVE AND
24 ALSO --

25 THE COURT: OVERRULED. OVERRULED.

26 THE WITNESS: I REALIZE THAT.

27 Q BY MR. CONN: AND EVEN THOUGH THEY WOULD
28 NOT BE ABLE TO HURT YOU, GIVEN THEIR PRESENT

1 LOCATION, YOU DECIDED THAT YOU WERE GOING TO GO INTO
2 THAT ROOM AND SHOOT THEM WITH YOUR GUN; IS THAT
3 CORRECT?

4 A NO. IT JUST -- THAT'S NOT HOW I
5 THOUGHT. THAT'S NOT HOW I WAS THINKING.

6 Q ARE YOU SAYING YOU JUST WENT INTO THE
7 ROOM AND THE GUN WENT OFF ACCIDENTALLY?

8 A NO. I PULLED THE TRIGGER.

9 Q AND YOU WENT INTO THAT ROOM TO PULL THE
10 TRIGGER; IS THAT CORRECT?

11 A I -- I KNOW THAT'S WHAT I DID, AND IT'D
12 BE EASY FOR ME TO SAY THAT THAT'S WHAT WAS GOING
13 THROUGH MY MIND, BUT IT JUST WASN'T. THAT WAS NOT
14 WHAT WAS IN MY MIND.

15 Q I'M ASKING YOU WHAT WAS IN YOUR MIND AT
16 THAT TIME.

17 DID YOU KNOW THAT YOU WERE GOING TO GO --
18 LET ME COMPLETE THE QUESTION.

19 DID YOU KNOW THAT YOU WERE GOING TO GO
20 INTO THAT ROOM AND PULL THE TRIGGER?

21 A NO.

22 Q SO YOU'RE TELLING US THAT AS YOU RAN
23 THROUGH THAT ENTRYWAY, AS YOU RAN THROUGH THE FOYER,
24 THERE WAS NO INTENTION IN YOUR MIND TO PULL THE
25 TRIGGER AFTER YOU GOT THROUGH THE DEN DOORS; IS THAT
26 CORRECT?

27 A NO. WHAT I --

28 MR. LEVIN: OBJECTION. ARGUMENTATIVE AS

1 PHRASED.

2 THE COURT: OVERRULED.

3 THE WITNESS: WHAT I'M SAYING IS HAD I
4 STOPPED AND THOUGHT AND ANALYZED AND PROCESSED THE
5 SITUATION, THEN CLEARLY IF I HAD ENTERED THE DEN, I
6 WOULD HAVE -- I WOULD HAVE BEEN THINKING THAT. BUT
7 AS I'M -- AS YOU'RE RUSHING INTO THE DEN, AND AS I
8 WAS RUSHING IN, THE ONLY THOUGHT THAT WAS IN MY
9 MIND, THE ONLY THING I COULD SEE, WAS HOW BIG THE
10 GUN WAS. IT DIDN'T -- IT DIDN'T COME INTO MY MIND
11 THAT I -- I WAS GOING TO PULL THE TRIGGER. I DIDN'T
12 KNOW WHAT WAS GOING TO HAPPEN. I JUST BELIEVED THAT
13 IF I DIDN'T GET TO THOSE DOORS BEFORE THEY EXITED, I
14 WAS GOING TO DIE.

15 Q BY MR. CONN: MR. MENENDEZ, WHEN YOU
16 WENT UPSTAIRS TO YOUR ROOM TO GET THE GUN, YOU HAD A
17 SPECIFIC PURPOSE IN YOUR MIND, DIDN'T YOU?

18 A TO LOAD IT.

19 Q TO GET THE GUN; IS THAT CORRECT?

20 A YES.

21 Q AND WHEN YOU CAME DOWN THE STAIRS AND
22 WENT OUT THE DOOR, YOU HAD A SPECIFIC PURPOSE IN
23 YOUR MIND; IS THAT CORRECT?

24 A YES.

25 Q AND THAT WAS TO LOAD UP YOUR GUN; IS
26 THAT CORRECT?

27 A I THINK SO.

28 Q AND MR. MENENDEZ, ISN'T IT TRUE THAT YOU

44948

1 JUST DON'T WANT TO ADMIT TO THIS JURY THAT WHEN YOU
2 WENT INTO THAT HOUSE YOU HAD THE SPECIFIC PURPOSE IN
3 YOUR MIND OF SHOOTING YOUR PARENTS?

4 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

5 THE WITNESS: NO.

6 THE COURT: OVERRULED. THE ANSWER WILL
7 STAND.

8 Q BY MR. CONN: SO ARE YOU SAYING THAT
9 ONCE YOUR GUN WAS LOADED UP, THEN YOU LOST YOUR
10 SENSE OF PURPOSE?

11 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

12 THE WITNESS: NO. MY --

13 MR. LEVIN: AND IT'S VAGUE.

14 THE COURT: SUSTAINED.

15 Q BY MR. CONN: ARE YOU SAYING THAT ONCE
16 YOUR GUN WAS LOADED YOU NO LONGER HAD A PURPOSE?

17 A NO, THAT'S NOT WHAT I WAS SAYING.

18 Q WHAT, THEN, WHEN YOUR GUN WAS LOADED AND

19 YOU WERE GOING THROUGH THE STUDY DOORS, WHAT WAS
20 YOUR PURPOSE?
21 A MY PURPOSE WAS THE SAME AS IT WAS WHEN I
22 SPRINTED AWAY FROM MY BROTHER AND I THOUGHT THEY
23 WERE GOING TO DIE, IS THAT IF I DIDN'T GET TO THOSE
24 DEN DOORS BEFORE THEY CAME THROUGH THEM, MY LIFE
25 WOULD BE OVER. WHEN I'M AT THE CAR AND I'M LOADING
26 AND I'M LOADING AND I'M WONDERING WHERE IS LYLE, WHY
27 ISN'T HE HERE, AM I GOING TO HAVE TO GO INTO THIS
28 HOUSE ALONE, AND I'M TELLING HIM TO HURRY WHEN HE'S

44949

1 AT MY SIDE AND WE'RE GOING TO GO INTO THE DEN --
2 MR. CONN: I'M GOING TO OBJECT AS
3 NONRESPONSIVE.
4 MR. LEVIN: HE SHOULD BE ENTITLED TO ANSWER.
5 THE COURT: LET'S HEAR THE QUESTION AGAIN.
6 (THE RECORD WAS READ AS FOLLOWS:
7 "QUESTION: WHAT, THEN, WHEN YOUR
8 GUN WAS LOADED AND YOU WERE GOING
9 THROUGH THE STUDY DOORS, WHAT WAS YOUR
10 PURPOSE?")
11
12 MR. LEVIN: THAT'S PRECISELY WHAT HE'S
13 ATTEMPTING TO ANSWER.

14 THE COURT: OKAY. WITHOUT COUNSEL'S
15 COMMENTS, HAD YOU COMPLETED YOUR ANSWER?
16 THE WITNESS: NO.
17 THE COURT: GO AHEAD.
18 THE WITNESS: THE PURPOSE WAS THE SAME AS IT
19 HAD BEEN THROUGHOUT THOSE SECONDS. IF I DIDN'T GET
20 TO THAT -- ALL I SAW IN MY MIND WAS THOSE DOORS.
21 BEYOND THEM, IF THEY EXITED, WAS DEATH, THAT THOSE
22 DOORS WAS A THRESHOLD. I DIDN'T EVEN THINK WHAT I
23 WAS GOING TO DO. I JUST -- I JUST DIDN'T. I
24 BELIEVED -- I JUST THOUGHT WE WERE GOING TO DIE IF WE
25 DIDN'T GET THROUGH THEM.
26 Q BY MR. CONN: MR. MENENDEZ, YOU SAID
27 YOUR PURPOSE WAS THE SAME. YOUR PREVIOUS PURPOSE
28 WAS JUST TO GET YOUR GUN AND LOAD IT. ISN'T THAT

44950

1 WHAT YOU TOLD US YOUR PURPOSE WAS AS YOU WENT UP TO
2 YOUR ROOM AND CAME DOWN AND WAS GOING OUT THROUGH
3 THE STUDY DOORS?
4 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE
5 AND IT'S ALSO VAGUE.
6 THE COURT: IT'S COMPOUND ALSO.
7 Q BY MR. CONN: WASN'T IT YOUR PURPOSE, UP
8 UNTIL THE TIME THAT YOU WENT OUT TO THE STUDY DOORS

9 INTO THE DRIVEWAY, JUST TO GET THE AMMUNITION AND

10 LOAD YOUR GUN?

11 A THAT'S WHAT I WANTED TO DO, BUT WHAT I

12 WANTED TO DO IN THE OVERALL SENSE, AS SOON AS I

13 SPRINTED AWAY FROM MY BROTHER, WAS GET TO THOSE

14 DOORS BEFORE THEY EXITED.

15 Q YOU JUST WANTED TO GET TO THE DOORS AND

16 LOOK AT THE DOORS?

17 A NO, SIR.

18 Q WHAT DID YOU WANT TO DO IN REFERENCE TO

19 THE DOORS?

20 A GET THROUGH THEM.

21 Q AND ONCE YOU GOT THROUGH THOSE DOORS,

22 WHAT WERE YOU GOING TO DO?

23 A IN ANY WAY POSSIBLE STOP MY PARENTS FROM

24 KILLING US.

25 Q YOU WERE GOING TO SHOOT THEM?

26 A I GUESS.

27 Q OKAY.

28 A BUT THAT JUST WASN'T IN MY MIND.

44951

1 Q YOU'RE TELLING US THAT YOU DIDN'T THINK

2 ABOUT SHOOTING YOUR PARENTS AS YOU'RE RUNNING AROUND

3 GETTING YOUR GUN AND GETTING YOUR AMMUNITION?

4 A THAT'S EXACTLY WHAT I'M TRYING TO SAY.

5 I JUST WAS SO RUSHED AND SO PANICKED THAT I DIDN'T

6 THINK ABOUT IT. THAT'S WHAT I'M TRYING TO SAY.

7 Q OKAY. AND DID YOU THINK THAT PERHAPS

8 ONCE YOU GOT YOUR GUN AND ONCE YOU GOT INTO THOSE

9 DOORS, THAT YOU MIGHT CHANGE YOUR MIND AND NOT

10 DECIDE TO SHOOT?

11 A I HADN'T DECIDED TO DO ANYTHING. I --

12 NO.

13 Q DID YOU THINK THAT YOU MIGHT JUST GO

14 INTO THOSE DOORS AND THEN JUST DECIDE TO STAND THERE

15 AND NOT USE THE WEAPON WHATSOEVER?

16 A NEVER THOUGHT ABOUT IT.

17 Q SO YOU WENT INTO THESE DOORS AND WHAT

18 DID YOU DO WHEN YOU GOT INTO THE DOORS,

19 MR. MENENDEZ?

20 A I REMEMBER BURSTING THROUGH THEM. I

21 REMEMBER SEEING MY FATHER. I REMEMBER FIRING.

22 Q SO THAT -- DID THAT COME AS A COMPLETE

23 SURPRISE TO YOU, MR. MENENDEZ, THAT WHEN YOU FINALLY

24 GOT THROUGH THE DOORS WHAT YOU DID WAS YOU SHOT YOUR

25 PARENTS?

26 A NOTHING CAME AS A SURPRISE TO ME.

27 Q BECAUSE THAT'S WHAT YOU SET OUT TO DO,

28 GET THE AMMUNITION AND SHOOT YOUR PARENTS; ISN'T

1 THAT CORRECT?

2 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

3 THE COURT: OVERRULED.

4 THE WITNESS: NO.

5 Q BY MR. CONN: SO YOU WERE SURPRISED BY
6 THE FACT THAT YOU SHOT YOUR PARENTS; IS THAT
7 CORRECT?

8 A TO BE SURPRISED, I ASSUME YOU HAVE TO BE
9 AWARE OF EVERYTHING THAT'S GOING ON. I HAD ONE GOAL
10 IN MIND.

11 Q TO SHOOT YOUR PARENTS?

12 A NO.

13 Q SO HOW MANY TIMES DID YOU SHOOT YOUR
14 PARENTS, MR. MENENDEZ?

15 A I LOADED FIVE. I SHOT FIVE.

16 Q AS QUICKLY AS YOU POSSIBLY COULD?

17 A YES.

18 Q AND YOU NEVER FIRED A SHOTGUN BEFORE?

19 A NEVER.

20 Q AND YOU WERE ABLE TO HIT THEM VERY
21 ACCURATELY, WEREN'T YOU?

22 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

23 THE COURT: OVERRULED.

24 THE WITNESS: I DON'T KNOW WHAT YOU MEAN BY
25 THAT.

26 Q BY MR. CONN: WELL, YOU SAW THE PHOTOS
27 OF YOUR DEAD PARENTS, HAVEN'T YOU, MR. MENENDEZ?

44953

1 Q AND THERE WEREN'T TOO MANY ROUNDS WASTED
2 IN THAT ROOM, WAS THERE, MR. MENENDEZ?

3 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

4 THE COURT: SUSTAINED AS TO THE FORM OF THE
5 QUESTION.

6 Q BY MR. CONN: MR. MENENDEZ, DID YOU MISS
7 WHEN YOU WERE SHOOTING AT YOUR PARENTS?

8 A I HAVE NO IDEA.

9 Q I'M SORRY?

10 A I HAVE NO IDEA.

11 Q ARE YOU TELLING US THAT IT WAS DARK WHEN
12 YOU WENT INTO THAT ROOM?

13 A THE LIGHTS WERE OUT.

14 Q THE LIGHTS TO THE FOYER WERE ON; IS THAT
15 CORRECT?

16 A YES.

17 Q AND THOSE DOORS, WHEN YOU OPEN THOSE
18 DOORS TO THE DEN, THOSE DOORS DON'T SHUT BACK BEHIND
19 YOU, DO THEY?

20 A I DON'T THINK SO.

21 Q ONCE YOU OPEN THOSE DOORS TO THE DEN,
22 UNLESS YOU CLOSE THEM AGAIN, THEY STAY OPEN, DON'T

23 THEY?

24 A RIGHT.

25 Q WHEN YOU AND YOUR BROTHER BURST INTO THE
26 ROOM, YOU DIDN'T CLOSE THE DOORS BEHIND YOU, DID
27 YOU?

28 A NO.

44954

1 Q AND THE -- AND THE LIGHT FROM THE FOYER
2 FLOODED THE ROOM, DIDN'T IT?

3 A ALL I REMEMBER IS SEEING THE -- IS THE
4 DARKNESS AND THE RED OF MY FIRE.

5 Q ARE YOU SAYING THAT THE LIGHTS FROM THE
6 FOYER DIDN'T FLOOD THAT ROOM?

7 A THIS HAPPENED SO QUICKLY, I HAVE NO
8 IDEA. IT MUST HAVE FLOODED THE ROOM. IT WENT -- IF
9 THE DOORS FLEW OPEN -- I JUST REMEMBER SEEING THIS
10 RED BLANK IN FRONT OF ME.

11 Q MR. MENENDEZ, YOU NEVER TURNED OFF -- YOU
12 NEVER TURNED THE FOYER LIGHTS ON OR OFF UP UNTIL --
13 PRIOR TO THE TIME THE POLICE ARRIVED, DID YOU?

14 A NO.

15 Q AND TO YOUR KNOWLEDGE YOUR BROTHER
16 DIDN'T DO SO EITHER, DID HE?

17 A TO MY KNOWLEDGE.

18 Q AND YOU SAW PHOTOGRAPHS OF THE -- OF THE
19 HOUSE LIT UP AT THE TIME THAT THE POLICE ARRIVED; IS
20 THAT CORRECT?

21 A MY MEMORY IS IT WAS. I DON'T REMEMBER
22 IT FROM THE PHOTOGRAPHS. MY MEMORY OF THAT NIGHT IS
23 THAT THE FOYER LIGHTS WERE ON.

24 Q IN FACT, ISN'T IT TRUE, MR. MENENDEZ,
25 THAT YOUR PARENTS WATCHED TELEVISION WITH THE LIGHTS
26 ON?

27 A NORMALLY THEY WATCHED TELEVISION WITH
28 THE LIGHTS ON.

44955

1 Q AND, IN FACT, DIDN'T YOUR PARENTS TELL
2 YOU THAT YOU SHOULD NOT WATCH TELEVISION WITH THE
3 LIGHTS OUT BECAUSE IT IS BAD FOR YOUR EYES?

4 A I REMEMBER AS A LITTLE CHILD THEM
5 TELLING ME THAT.

6 Q AND ARE YOU SAYING THAT THIS NIGHT THEY
7 BROKE THEIR OWN RULE AND WATCHED TELEVISION WITH THE
8 LIGHTS OFF?

9 MR. LEVIN: OBJECTION. ASSUMES FACTS NOT IN
10 EVIDENCE.

11 THE COURT: SUSTAINED.

12 Q BY MR. CONN: ISN'T IT TRUE, MR. MENENDEZ,

13 THAT WHEN YOU WENT INTO THAT ROOM THE LIGHTS WERE
14 ON?

15 A THE LIGHTS WERE OFF.

16 Q AND AT THE VERY LEAST THE LIGHTS FROM
17 THE FOYER FLOODED THAT ROOM; IS THAT CORRECT?

18 MR. LEVIN: ASKED AND ANSWERED.

19 THE COURT: OVERRULED.

20 THE WITNESS: THE LIGHTS FROM THE FOYER MUST
21 HAVE FLOODED THE ROOM. I NEVER THOUGHT ABOUT IT.

22 Q BY MR. CONN: AND YOU WERE ABLE TO SEE
23 YOUR PARENTS AS YOU GOT INTO THAT ROOM; IS THAT
24 CORRECT?

25 A I REMEMBER SEEING THEM BEFORE THEY
26 STARTED FIRING.

27 Q AND YOUR PARENTS WERE SITTING DOWN,
28 WEREN'T THEY?

44956

1 A NO. THEY DEFINITELY WEREN'T SITTING
2 DOWN.

3 Q WHERE WAS YOUR FATHER?

4 A MY FATHER WAS IN FRONT OF THE COFFEE
5 TABLE -- I'M SORRY -- THE COUCH, A LITTLE BIT TO THE
6 LEFT OF THE COFFEE TABLE.

7 Q AND WAS THE COFFEE TABLE IN THE SAME

8 PLACE IT IS IN THE PHOTOGRAPH THAT WE'VE BEEN

9 LOOKING AT OF YOUR DEAD PARENTS NEAR THE SOFA?

10 MR. LEVIN: OBJECTION. IT'S VAGUE WITH

11 RESPECT TO WHAT PHOTOGRAPH COUNSEL'S REFERRING TO.

12 THE COURT: SUSTAINED.

13 Q BY MR. CONN: PREVIOUSLY YOU'VE BEEN

14 SHOWN A PHOTOGRAPH BY DEFENSE COUNSEL AND HE ASKED

15 YOU IF THE COFFEE TABLE WAS IN THE SAME POSITION IT

16 IS IN THAT PHOTOGRAPH; IS THAT CORRECT?

17 MR. LEVIN: OBJECTION, YOUR HONOR. IT'S

18 VAGUE. I SHOWED HIM LOTS OF PICTURES.

19 THE COURT: REPHRASE THE QUESTION.

20 Q BY MR. CONN: DO YOU RECALL SEEING

21 PHOTOGRAPHS OF THE COFFEE TABLE?

22 MR. LEVIN: OBJECTION. IT'S IRRELEVANT.

23 THE COURT: OVERRULED.

24 THE WITNESS: YES.

25 Q BY MR. CONN: DID YOU SEE PHOTOGRAPHS OF

26 THE COFFEE TABLE IN DIFFERENT POSITIONS OR IN THE

27 SAME POSITION?

28 A I DON'T REMEMBER. MY MEMORY WAS THAT

44957

1 THE COFFEE TABLE WAS FURTHER ANGLED THAN IT WAS THAT

2 NIGHT WHEN I WENT BACK INTO THE ROOM WHEN I GOT BACK

3 HOME AFTER -- JUST BEFORE THE 911 CALL.

4 Q ARE YOU SAYING THAT WHEN YOU BURST INTO
5 THE ROOM, THE COFFEE TABLE WAS NOT IN THE SAME
6 POSITION IT IS IN SOME OF THOSE PHOTOGRAPHS?

7 A I HAVE NO IDEA WHAT POSITION IT WAS WHEN
8 I BURST INTO THE ROOM. I JUST KNOW WHAT POSITION IT
9 WAS WHEN I GOT BACK TO THE HOUSE LATER THAT NIGHT.

10 Q WAS IT YOUR TESTIMONY THAT YOU'RE
11 TELLING -- THAT YOUR PARENTS WERE NOT WATCHING
12 TELEVISION?

13 A I DIDN'T BELIEVE THEY WERE. I DON'T
14 BELIEVE THEY WERE TO THIS DAY.

15 Q YOU DON'T KNOW WHAT YOUR PARENTS WERE
16 DOING IN THERE, DO YOU?

17 A TODAY I DON'T. I KNOW THAT THEY WERE
18 STANDING WHEN I ENTERED THE ROOM. I SPECIFICALLY
19 REMEMBER MY FATHER.

20 Q YOU CAN'T SAY THAT YOUR PARENTS WEREN'T
21 WATCHING TELEVISION, CAN YOU?

22 A RIGHT. I MEANT SITTING DOWN ON THE
23 COUCH WATCHING TELEVISION.

24 Q YOU PREVIOUSLY TESTIFIED THAT YOUR
25 PARENTS WERE NOT WATCHING TELEVISION; IS THAT
26 CORRECT?

27 A THAT'S WHAT I THOUGHT.

28 Q AND WHEN YOU WENT INTO THAT ROOM, YOUR

1 FATHER SAID NO; IS THAT CORRECT?

2 A HE DIDN'T SAY IT LIKE THAT, BUT THAT'S
3 WHAT HE SAID.

4 Q AND YOU CONTINUED TO SHOOT ANYWAY; IS
5 THAT CORRECT?

6 A I DON'T --

7 MR. LEVIN: OBJECTION, YOUR HONOR. ASSUMES
8 FACTS NOT IN EVIDENCE.

9 THE WITNESS: I DON'T BELIEVE --

10 THE COURT: OVERRULED.

11 THE WITNESS: I DON'T -- I THINK I HAD ALREADY
12 STARTED FIRING WHEN HE SAID IT.

13 Q BY MR. CONN: NOW, MR. MENENDEZ, DID YOU
14 JUST SHOOT ONE TIME AND THEN GIVE YOUR PARENTS A
15 CHANCE AND SEE IF THEY WERE ARMED OR NOT?

16 A NO. ONCE I PULLED THAT TRIGGER IT WAS
17 OVER IN SECONDS. I JUST SHOT EVERYTHING THAT I HAD
18 AND MORE.

19 Q AND THEN WHAT HAPPENED AFTER YOU SHOT
20 YOUR PARENTS?

21 A I REMEMBER -- I REMEMBER THE RED BLANK
22 DISAPPEARING. I REMEMBER THE SHOTS BEING OVER. I
23 REMEMBER HEARING MORE FIRING. I REMEMBER A SOUND
24 FROM WHAT I KNOW NOW IS MY MOM. I REMEMBER FREAKING
25 OUT. I REMEMBER FEELING DEFENSELESS AND I REMEMBER

26 JUST RUNNING FROM THE ROOM.

27 Q YOUR MOTHER WAS MOANING; IS THAT

28 CORRECT?

44959

1 A YES.

2 Q YOUR MOTHER WAS MOANING BECAUSE SHE WAS
3 DYING; IS THAT CORRECT?

4 MR. LEVIN: OBJECTION. CALLS FOR
5 SPECULATION.

6 THE COURT: SUSTAINED.

7 Q BY MR. CONN: DID YOU PREVIOUSLY TESTIFY
8 THAT YOU HEARD YOUR MOTHER MOANING AND YOU KNEW THAT
9 SHE WAS DYING?

10 A IN -- IN ALL OF MY MEMORIES AFTER THAT
11 NIGHT, I REMEMBER THE SOUND, THE SOUND OF PAIN MOST
12 SPECIFICALLY.

13 Q DID YOU KNOW THAT YOUR MOTHER WAS DYING
14 BY THE TIME YOU FINISHED SHOOTING?

15 A NO.

16 Q AND AFTER YOU FINISHED FIRING ALL OF
17 YOUR SHOTS, DID YOU LEAVE THE ROOM?

18 A YES.

19 Q WHY?

20 A I JUST HEARD THE FIRE. I HEARD HER

21 NOISE. I JUST FREAKED OUT. I DON'T KNOW WHY.

22 Q YOU WENT OUTSIDE AND YOU WENT TO YOUR
23 CAR; IS THAT CORRECT?

24 A I RAN OUT THROUGH THE FOYER, THROUGH THE
25 FRONT DOOR, TO MY CAR.

26 Q AND YOU HAD ANOTHER PURPOSE AT THAT
27 TIME; IS THAT CORRECT?

28 MR. LEVIN: OBJECTION WITH RESPECT TO ANOTHER

44960

1 PURPOSE.

2 THE COURT: OVERRULED.

3 THE WITNESS: I DON'T KNOW WHAT PURPOSE I HAD
4 IN MY MIND.

5 Q BY MR. CONN: WHAT WAS YOUR PURPOSE TO
6 RUN OUT TO YOUR CAR AT THAT TIME?

7 A I RAN OUT OF THE ROOM AND I JUST KEPT
8 RUNNING. I WASN'T MAKING ASSESSMENTS. I WASN'T
9 MAKING ASSESSMENTS OF WHAT WAS HAPPENING.

10 Q WHY DID YOU RUN OUT OF THE ROOM?

11 A BECAUSE OF THE FIRE, BECAUSE OF THE
12 NOISE. IT JUST FREAKED ME OUT. I FELT --

13 Q YOU JUST DIDN'T FEEL LIKE HANGING AROUND
14 IN THE ROOM ANYMORE?

15 A NO. IT SCARED THE HELL OUT OF ME.

16 Q YOU WERE FRIGHTENED OF THE FACT THAT YOU
17 WERE KILLING YOUR PARENTS?

18 A I WAS FRIGHTENED OF THE NOISE. I WAS
19 FRIGHTENED OF THE FIRE OF THE GUN.

20 Q ARE YOU TRYING TO PORTRAY YOURSELF AS
21 THE VICTIM OF THIS SHOOTING, MR. MENENDEZ?

22 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

23 THE COURT: SUSTAINED.

24 Q BY MR. CONN: YOU WERE THE ONE DOING THE
25 SHOOTING; IS THAT CORRECT, MR. MENENDEZ?

26 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

27 THE COURT: OVERRULED.

28 THE WITNESS: YES.

44961

1 Q BY MR. CONN: WERE YOUR PARENTS SHOOTING
2 AT YOU OR WERE YOU SHOOTING AT YOUR PARENTS?

3 A I THOUGHT THEY WERE SHOOTING.

4 Q OH, YOU THOUGHT YOUR PARENTS WERE
5 SHOOTING AT YOU?

6 A I HEARD -- ALL I REMEMBER IN THE ROOM IS
7 FIRE ECHOING OFF THE WALLS, FIRE EVERYWHERE, THE
8 BOOMING, THE CRASHING, AND THE NOISE THAT WAS
9 MIND-BOGGLING. AND WHEN MY GUN WAS OVER, I REMEMBER
10 MORE FIRE. I KNOW NOW IT WAS FROM LYLE'S GUN. IT

11 JUST FREAKED ME OUT AND SCARED ME. I RAN OUT OF THE
12 ROOM.

13 Q OKAY. SO YOU WENT OUT AND WHEN YOU WENT
14 OUT TELL US WHERE YOU WENT.

15 A I WENT INTO THE FOYER. I RAN OUT THE
16 DOOR AND I RAN TO MY CAR.

17 Q AND TELL US WHAT YOU DID THERE.

18 A I BELIEVE MY BROTHER WAS BY MY SIDE. I
19 WAS -- I WAS SCRAMBLING FOR SHELLS.

20 Q DID YOUR BROTHER GET THERE BEFORE YOU
21 DID?

22 A NO.

23 Q YOU GOT THERE FIRST?

24 A I GOT THERE FIRST.

25 Q WHY DID YOU GO THERE?

26 A I DON'T KNOW WHY.

27 Q YOU JUST WENT THERE?

28 A YOU LAUGH AND YOU THINK IT'S FUNNY. IT

44962

1 JUST WASN'T IN MY MIND. IT'S NOT WHAT I WAS
2 THINKING. I RAN OUT. I WAS -- I WAS FREAKED OUT AND
3 I DID IT. I DON'T KNOW WHY. I WASN'T THINKING
4 WHY. I WASN'T THINKING AT THE TIME. THIS WAS --
5 THIS WAS HYPER -- I CANNOT DESCRIBE THE PANIC AT --

6 IT'S IMPOSSIBLE TO DESCRIBE.

7 Q WHAT WAS THAT, HYPER WHAT?

8 A I DON'T KNOW.

9 Q DID YOU LEARN A NEW WORD FROM

10 MR. WILSON?

11 MR. LEVIN: OBJECTION, YOUR HONOR.

12 THE COURT: REPHRASE THE QUESTION.

13 Q BY MR. CONN: TELL US WHAT YOU DID WHEN

14 YOU GOT TO THE CAR.

15 A I WAS SCRAMBLING FOR SHELLS, JUST

16 REACHING FOR THEM.

17 Q AND WHY DID YOU WANT SHELLS?

18 A I DON'T REMEMBER MAKING THE ASSESSMENT.

19 I KNOW THAT I GAVE IT TO LYLE. I WANTED TO GIVE

20 THEM TO LYLE, I GUESS.

21 Q YOU GUESS YOU WANTED TO GIVE SHELLS TO

22 LYLE?

23 A I DIDN'T HAVE TIME TO THINK ABOUT IT.

24 YOU JUST CAN'T STOP YOURSELF WHEN YOU'RE IN THIS

25 STATE AND I JUST --

26 Q SO YOU WEREN'T THINKING ABOUT ANYTHING

27 THAT EVENING; IS THAT CORRECT?

28 A THAT'S NOT WHAT I'M SAYING.

1 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

2 THE COURT: SUSTAINED. THE ANSWER'S

3 STRICKEN.

4 Q BY MR. CONN: ARE YOU TRYING TO AVOID
5 RESPONSIBILITY FOR YOUR ACTIONS, MR. MENENDEZ?

6 A I'M NOT TRYING TO AVOID RESPONSIBILITY.

7 Q SO THEN WHY DID YOU GIVE THE SHELLS TO
8 YOUR BROTHER?

9 A I DON'T KNOW WHY. I REMEMBER A FEELING
10 OF PANIC. I REMEMBER A FEELING OF DEFENSELESSNESS.
11 I GAVE HIM THE SHELL. I DON'T KNOW WHY.

12 Q AND YOU KNEW THAT HE WAS GOING TO FINISH
13 OFF YOUR DYING MOTHER; IS THAT CORRECT?

14 A I DIDN'T KNOW MY MOTHER WAS DYING AT THE
15 TIME. I REMEMBER A FEELING OF NOT BEING ABLE TO
16 STOP MYSELF. I KNOW THAT LYLE RAN IN THE ROOM AND
17 HE SHOT HER WHEN SHE WASN'T MOVING. I KNOW ALL
18 THESE THINGS NOW, AT THE TIME I DIDN'T KNOW.

19 Q YOU INSTINCTIVELY KNEW THAT YOUR BROTHER
20 WOULD RETURN TO FINISH KILLING YOUR MOTHER; IS THAT
21 CORRECT?

22 A IT WAS THE ONLY WORD I COULD DESCRIBE IN
23 DESCRIBING IT. IT WASN'T A KNOWLEDGE. IT WAS JUST
24 A REACTION, AN INSTINCT, WHATEVER I SAID THERE.

25 Q YOU KNEW THAT YOUR FATHER WAS DEAD;
26 ISN'T THAT CORRECT?

27 A I DIDN'T KNOW THAT.

28 Q DID YOU LOAD YOUR GUN AT THE TIME?

1 A NO, I DID NOT.

2 Q DID YOU GO BACK INTO THE HOUSE?

3 A I RAN BACK INTO THE FOYER. I DIDN'T RUN
4 INTO THE DEN.

5 Q YOU RAN INTO THE FOYER?

6 A YES.

7 Q WHY DID YOU RUN?

8 A I DON'T KNOW -- I DON'T KNOW WHY I RAN
9 IN. I DON'T KNOW WHY I COULDN'T STOP MYSELF. I
10 DON'T KNOW WHY LYLE COULDN'T STOP HIMSELF. I DON'T
11 KNOW WHY. THERE WAS NO REASON TO RUN BACK INTO THE
12 DEN. I DON'T KNOW WHY I DID IT. I KNOW LYLE HAD
13 SHELLS IN HIS POCKET. HE DIDN'T EVEN NEED TO RELOAD
14 AND GO OUT TO THE CAR. IT'S JUST WHAT HAPPENED.

15 Q MR. MENENDEZ, DO YOU SAY "I DON'T KNOW
16 WHY" EVERY TIME YOU DON'T HAVE A GOOD ANSWER TO THE
17 QUESTION?

18 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

19 THE COURT: SUSTAINED.

20 Q BY MR. CONN: YOU WENT BACK INTO THE
21 HOUSE WITH AN UNLOADED GUN; IS THAT CORRECT?

22 A YES.

23 Q WHY?

24 A I DON'T KNOW.

25 Q BECAUSE THERE WAS NO DANGER FROM YOUR
26 FATHER AT THAT POINT BECAUSE HE WAS DEAD; IS THAT
27 CORRECT?

28 A I DON'T KNOW IF I KNEW THAT. I KNOW NOW

44965

1 THAT I SAW HIM ON THE COUCH AND HE WASN'T MOVING. I
2 WASN'T MAKING THESE ASSESSMENTS AT THE TIME.

3 Q DID YOU FEEL THAT YOU WERE IN DANGER
4 FROM YOUR FATHER AS YOU WERE GOING BACK INTO YOUR
5 HOME WITH AN UNLOADED GUN?

6 A YES.

7 Q THEN WHY DIDN'T YOU LOAD IT BEFORE GOING
8 BACK INTO YOUR HOME?

9 A BECAUSE I HAD GIVEN LYLE THE SHELLS. HE
10 WAS RUNNING BACK INTO THE ROOM. I DON'T KNOW WHY WE
11 RAN BACK INTO THE ROOM. THERE WAS NO NEED TO. WE
12 JUST COULDN'T STOP OURSELVES. I DON'T KNOW WHY IT
13 HAPPENED.

14 Q YOU GAVE YOUR BROTHER ONE SHELL; IS THAT
15 CORRECT?

16 A I WOULD HAVE GIVEN HIM TEN IF HE
17 STAYED. HE JUST TOOK OFF.

18 Q YOU ONLY GAVE HIM ONE; IS THAT CORRECT?

19 A I BELIEVE SO.

20 Q AND AFTER YOU GAVE HIM JUST ONE SHELL,
21 YOU DECIDED TO GO BACK INTO THE HOUSE WITH AN
22 UNLOADED WEAPON; IS THAT CORRECT?

23 A AFTER I GAVE HIM THE SHELL HE STARTED
24 RUNNING AND I RAN TO HIM.

25 Q YOU WENT BACK INTO THE HOUSE WITH AN
26 UNLOADED WEAPON; IS THAT CORRECT?

27 A YES, SIR.

28 Q AND WHERE DID YOU GO AT THAT TIME?

44966

1 A I STOPPED IN THE FOYER.

2 Q AND YOU -- AND YOU DIDN'T TURN AROUND AND
3 GO OUT TO THE CAR AND RELOAD YOUR GUN, DID YOU?

4 A NO.

5 Q BECAUSE YOU REALIZED THERE WAS NO DANGER
6 FROM YOUR FATHER; IS THAT CORRECT?

7 A HOW CAN YOU POSSIBLY MAKE THESE
8 ASSESSMENTS? HOW COULD YOU POSSIBLY --

9 Q BECAUSE YOU KILLED YOUR FATHER --

10 MR. LEVIN: OBJECTION, YOUR HONOR. HE'S
11 ENTITLED TO ANSWER THE QUESTION.

12 THE COURT: WELL, IT'S NOT RESPONSIVE.

13 YOUR NEXT QUESTION, PLEASE.

14 Q BY MR. CONN: ISN'T IT TRUE,

15 MR. MENENDEZ, THAT YOU KNEW THAT YOUR FATHER WAS
16 DEAD AT THAT POINT?

17 A NO.

18 Q ISN'T IT TRUE THAT THE ONLY REASON WHY
19 YOU WENT INTO THE HOUSE WITH AN UNLOADED GUN IS
20 BECAUSE YOU KNEW THAT YOUR FATHER WAS NO LONGER A
21 THREAT?

22 A NO.

23 Q AND ISN'T IT TRUE THAT YOU KNEW YOUR
24 MOTHER WAS DYING AND ONE SHELL WOULD BE MORE THAN
25 ENOUGH TO FINISH HER OFF; IS THAT CORRECT?

26 A SIR, IF I KNEW THESE THINGS, I'D TELL
27 YOU. I DON'T HAVE TO ADMIT TO RELOADING THIS GUN.
28 I DON'T HAVE TO TELL YOU THE THINGS I AM. I'M

44967

1 TELLING YOU BECAUSE THAT'S WHAT HAPPENED. YOU
2 WOULDN'T KNOW. YOU WEREN'T THERE. I WAS THERE. I
3 SAW WHAT HAPPENED. I'M TELLING YOU WHAT HAPPENED.

4 Q AND YOU SHOULD BE TRUSTED; IS THAT
5 CORRECT, MR. MENENDEZ?

6 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

7 THE WITNESS: NO. WHAT I'M SAYING IS THAT
8 I'M -- I'M JUST TRYING TO TELL YOU EXACTLY HOW I FELT
9 AND WHAT I KNEW.

10 Q BY MR. CONN: YOU PREVIOUSLY USED THE
11 WORDS, YOU INSTINCTIVELY KNEW THAT YOUR BROTHER
12 WOULD RETURN TO FINISH KILLING YOUR MOTHER; IS THAT
13 CORRECT?

14 A I DON'T KNOW. I REMEMBER USING THE WORD
15 INSTINCT.

16 Q DID YOU --

17 A I REALIZED THAT THAT'S WHAT HE DID.
18 IT'S JUST WHAT I PUT TOGETHER. I DON'T KNOW.

19 Q YOU KNEW THAT HE WAS GOING TO FINISH
20 KILLING YOUR MOTHER; IS THAT CORRECT?

21 A NO, I DID NOT KNOW THAT.

22 Q DIDN'T YOU PREVIOUSLY TESTIFY THAT YOU
23 INSTINCTIVELY KNEW THAT YOUR BROTHER WOULD RETURN TO
24 FINISH KILLING YOUR MOTHER?

25 A I THINK THOSE ARE THE WORDS I USED,
26 YES.

27 Q OKAY. AND YOU USED THOSE WORDS,
28 MR. MENENDEZ, FINISH KILLING YOUR MOTHER, BECAUSE

44968

1 YOU KNEW YOUR MOTHER WAS ALREADY DYING; IS THAT
2 CORRECT?

3 A I KNOW THAT MY MOTHER WAS NO LONGER
4 MOVING WHEN MY BROTHER ENTERED THE ROOM; THAT THERE

5 WAS NO REASON TO -- AND I USED THOSE WORDS BECAUSE
6 LOOKING BACK IT WAS THE ONLY WORDS I COULD FIND TO
7 DESCRIBE IT. IT'S -- IT'S SO SIMPLE TO SAY THAT I
8 KNEW THAT THAT'S WHAT HE WAS GOING TO DO, BUT THAT'S
9 NOT WHAT I WAS THINKING.

10 Q WHAT DO YOU MEAN YOU KNEW YOUR MOTHER
11 WAS NO LONGER MOVING? HOW DID YOU KNOW THAT?

12 A I KNEW THAT BECAUSE THAT'S WHAT MY
13 BROTHER TOLD ME WHEN HE EXITED THE ROOM AFTERWARDS.

14 Q YOU'RE TALKING ABOUT SOMETIME LATER; IS
15 THAT CORRECT?

16 A YES.

17 Q I'M NOT TALKING ABOUT LATER. I'M
18 TALKING ABOUT AT THAT TIME.

19 YOU KNEW THAT YOUR MOTHER -- YOU KNEW
20 THAT YOUR BROTHER WAS GOING TO FINISH KILLING YOUR
21 MOTHER; IS THAT CORRECT?

22 MR. LEVIN: OBJECTION. ARGUMENTATIVE.

23 THE COURT: WHAT TIME ARE YOU REFERRING TO?

24 THE WITNESS: NO.

25 Q BY MR. CONN: I'M REFERRING TO THE TIME
26 WHEN YOU WERE OUTSIDE AT THE CAR AND YOU WERE GIVING
27 YOUR BROTHER ONE ADDITIONAL SHOTGUN SHELL.

28 A I DIDN'T INTEND TO GIVE HIM ONE SHOT.

1 HE JUST LEFT AFTER ONE.

2 Q YOU WERE GOING TO GIVE HIM MORE THAN
3 ONE?

4 A I WOULD HAVE GIVEN HIM ALL THAT I COULD
5 FIND.

6 Q SO THAT HE COULD KEEP SHOOTING YOUR
7 PARENTS?

8 A I DON'T KNOW. IT'S JUST -- THESE WEREN'T
9 ACTIONS -- I WOULD HAVE GIVEN HIM ANYTHING. I JUST
10 COULDN'T STOP MYSELF FROM MOVING. HE HAD SHELLS IN
11 HIS POCKET. I JUST WASN'T AWARE OF ALL THESE
12 THINGS.

13 Q WHY DID YOU USE THE WORDS FINISH KILLING
14 YOUR MOTHER?

15 A BECAUSE I KNOW THAT THAT'S WHAT HE DID
16 AND IT'S -- IT'S -- IT'S BECAUSE I KNOW THAT THAT'S
17 WHAT HE DID.

18 Q YOU'RE TALKING ABOUT NOW YOU KNOW THAT
19 THAT'S WHAT HE DID; IS THAT CORRECT?

20 A I KNEW IT -- YES.

21 Q I'M TALKING ABOUT AT THE TIME OF THE
22 INCIDENT.

23 DIDN'T YOU PREVIOUSLY TESTIFY THAT YOU
24 INSTINCTIVELY KNEW AT THAT TIME THAT YOUR BROTHER
25 WOULD RETURN TO FINISH KILLING YOUR MOTHER?

26 A I THINK I REMEMBER USING THE WORDS
27 INSTINCT. I DIDN'T REMEMBER SAYING THE REST, BUT I

44970

1 Q I'M -- MR. MENENDEZ, I'M ASKING YOU IF
2 THESE ARE YOUR WORDS.

3 DID YOU PREVIOUSLY TESTIFY THAT YOU
4 INSTINCTIVELY KNEW THAT YOUR BROTHER WOULD RETURN TO
5 FINISH KILLING YOUR MOTHER?

6 A YES.

7 Q AND WHY DID YOU TESTIFY TO THE FACT THAT
8 YOU KNEW HE WAS GOING TO FINISH KILLING YOUR
9 MOTHER?

10 A I WAS TRYING TO CONVEY THAT IT WAS -- IT
11 WAS JUST -- THESE WERE INSTINCTS; IN OTHER WORDS,
12 THAT THEY WERE -- THEY WERE THINGS THAT I COULDN'T
13 CONTROL. I JUST DID. AND THAT'S WHAT I WAS TRYING
14 TO --

15 Q YOUR INSTINCT AT THAT POINT IN TIME WAS
16 THAT YOUR MOTHER WAS DYING; IS THAT CORRECT?

17 A I DON'T -- I DON'T BELIEVE THAT I EVEN
18 KNEW THAT. I DIDN'T -- WHEN I RAN OUT OF THE ROOM, I
19 COULDN'T SEE MY MOTHER. SHE WAS BEHIND THE COFFEE
20 TABLE.

21 Q THEN WHY DID YOU PREVIOUSLY TESTIFY THAT
22 YOU INSTINCTIVELY KNEW THAT YOUR BROTHER WOULD

23 RETURN TO FINISH KILLING YOUR MOTHER?

24 MR. LEVIN: OBJECTION. ASKED AND ANSWERED.

25 THE COURT: OVERRULED.

26 THE WITNESS: I PUT THE TWO TOGETHER. WHAT I
27 WAS TRYING TO CONVEY WAS THAT IT WAS AN INSTINCT;
28 THAT IT WAS NOT SOMETHING THAT I THOUGHT ABOUT. IT

44971

1 WAS SOMETHING THAT I DID AND COULDN'T STOP MYSELF
2 FROM DOING. I KNOW THAT THAT'S WHAT HE DID AND I
3 JUST PUT THE TWO TOGETHER.

4 Q BY MR. CONN: BUT YOU DID KNOW THAT YOUR
5 BROTHER WAS GOING TO FINISH KILLING YOUR MOTHER; IS
6 THAT CORRECT?

7 A NO, I DID NOT KNOW THAT.

8 Q WHY DID YOU PREVIOUSLY TESTIFY THAT WAY?

9 A I DON'T KNOW, SIR. IT WAS THE SAME TYPE
10 OF EXCHANGE THAT WE'RE HAVING NOW.

11 Q WHAT TYPE OF EXCHANGE?

12 MR. LEVIN: OBJECTION. IT'S ARGUMENTATIVE.

13 THE COURT: OVERRULED.

14 THE WITNESS: JUST ANSWERING QUESTIONS AND
15 ANSWERING THEM; AND I DON'T KNOW WHY I PUT THE TWO
16 TOGETHER, BUT THAT'S NOT WHAT I WAS TRYING TO
17 CONVEY.

18 Q BY MR. CONN: MR. MENENDEZ, ARE YOU
19 SAYING THAT YOU DIDN'T MEAN THIS WHEN YOU TESTIFIED
20 TO THIS IN YOUR FIRST TRIAL?
21 A I MEANT EVERYTHING THAT I TESTIFIED TO.
22 Q AND ONE OF THE THINGS THAT YOU MEANT TO
23 TESTIFY TO AND DID TESTIFY TO WAS THAT WHEN YOUR --
24 WHEN YOU HANDED THAT SHELL TO YOUR BROTHER, YOU
25 INSTINCTIVELY KNEW THAT YOUR BROTHER WOULD RETURN TO
26 FINISH KILLING YOUR MOTHER; IS THAT CORRECT?
27 A YES.
28 THE COURT: ALL RIGHT. LET'S TAKE OUR

44972

1 RECESS.
2 WE'LL BE IN RECESS UNTIL 1996. IT'S
3 IMPORTANT THAT YOU NOT DISCUSS THE MATTER WITH
4 ANYONE DURING THE BREAK; THAT YOU NOT FORM ANY FINAL
5 OPINIONS ABOUT THE CASE, AND THAT YOU NOT PERMIT
6 YOURSELF TO BE EXPOSED TO ANYTHING ABOUT THE CASE,
7 WHETHER IT'S CONVERSATION OF OTHERS, NEWS COVERAGE,
8 OR ANY -- IN ANY FORM OF MENTION OF THIS CASE,
9 BECAUSE AS WE'VE DISCUSSED MANY TIMES, YOU MUST MAKE
10 YOUR DECISION BASED ONLY ON THE EVIDENCE PRESENTED
11 TO YOU HERE IN THE COURTROOM, AND IT'S VERY
12 IMPORTANT THAT YOU NOT BE EXPOSED TO ANYTHING

13 OUTSIDE OF THE COURTROOM.

14 UNFORTUNATELY, SOME OF YOU HAVE BEEN
15 EXPOSED TO A BUG OUTSIDE OF THE COURTROOM AND WE
16 HAVE HAD A LOT OF PEOPLE SICK DURING THE COURSE OF
17 THE TRIAL, AND I APPRECIATE THE EFFORT THAT YOU'VE
18 MADE TO BE HERE, EVEN THOUGH YOU'VE BEEN UNDER THE
19 WEATHER.

20 I WANT TO WISH YOU ALL A HAPPY HOLIDAY
21 SEASON AND A HAPPY NEW YEAR AND A HEALTHY NEW YEAR.
22 HOPEFULLY EVERYBODY'S HEALTHY NEXT YEAR.

23 WE'LL SEE YOU BACK HERE ON JANUARY THE
24 3RD AT 8:30 IN THE MORNING. OKAY? SEE YOU BACK
25 HERE JANUARY 3RD.

26 / / /

27 (THE JURY EXITED THE
28 COURTROOM AND THE FOLLOWING

44973

1 PROCEEDINGS WERE HELD:)

2

3 THE COURT: WHILE WE'RE WAITING FOR THE JURY
4 TO LEAVE, THE PEOPLE WERE TO FILE A RESPONSE TO THE
5 DEFENSE MOTION REGARDING FORMER TESTIMONY.

6 MR. CONN: YES. DID YOU --

7 THE COURT: YOU WERE TO FILE A RESPONSE TO

8 THE DEFENSE MOTION REGARDING FORMER TESTIMONY.

9 MR. CONN: I DON'T THINK IT'S BEEN COMPLETED

10 YET.

11 THE COURT: WHEN WILL IT BE COMPLETED?

12 MR. CONN: WE COULD FILE IT BY TOMORROW.

13 THE COURT: WHAT TIME TOMORROW?

14 MR. CONN: 4:30.

15 MS. ABRAMSON: WE'LL ARGUE IT, YOUR HONOR, AT

16 4:35.

17 THE COURT: ALL RIGHT. WELL, LET'S SEE IF WE

18 CAN GET IT TO COURT BY NOON TOMORROW. 12:00.

19 MS. ABRAMSON: SHOULD WE SCHEDULE A HEARING

20 ON IT, YOUR HONOR, FOR JANUARY 3RD?

21 THE COURT: WELL, WE'LL SCHEDULE A HEARING AT

22 SOME POINT.

23 ANYTHING ELSE HERE THAT COUNSEL WISH TO

24 DISCUSS BEFORE WE TAKE OUR RECESS?

25 MR. CONN: WE WERE ALSO GOING TO ASK THAT THE

26 COURT ORDER THE DEFENDANT TO SUBMIT TO THE MENTAL

27 EXAMINATION.

28 MS. ABRAMSON: WE OBJECT, YOUR HONOR.

44974

1 WE THINK IT'S NOT TIMELY. THE DEFENDANT

2 IS STILL ON THE WITNESS STAND. HE'S STILL SUBJECT

3 TO CROSS-EXAMINATION AND HE'S STILL SUBJECT TO

4 REDIRECT.

5 AND MORE IMPORTANTLY, WE HAVE NOT

6 TENDERED MENTAL STATE IN A WAY THAT WOULD ALLOW THE

7 PEOPLE TO HAVE A PSYCHIATRIC EXAMINATION UNTIL OUR

8 EXPERT TESTIFIES, AND THAT IS THREE WEEKS AWAY AT

9 THIS POINT.

10 THE COURT: WELL, I DEFINITELY THINK --

11 (JURY EXITING THE JURY ROOM.)

12

13 THE COURT: I DEFINITELY THINK THAT MENTAL

14 STATE HAS BEEN TENDERED, BASED UPON THE TESTIMONY OF

15 THE DEFENDANT PLUS THE OPENING STATEMENTS OF

16 COUNSEL, AN INDICATION OF WHAT IT IS THAT YOU INTEND

17 TO PROVE.

18 MS. ABRAMSON: THE ONLY MENTAL STATE THAT'S

19 BEEN TENDERED BY THE TESTIMONY OF THE DEFENDANT IS

20 FEAR, AND A DEFENDANT TESTIFYING TO FEAR DOES NOT

21 ENTITLE THE PROSECUTION TO AN EXAMINATION BY A

22 PSYCHIATRIC EXPERT.

23 MOREOVER, THE PEOPLE ARE NOT ENTITLED TO

24 THE DISCOVERY THAT THEY WOULD GET BY CONTACT BETWEEN

25 THEIR EXPERT AND OUR CLIENT WHILE OUR CLIENT IS

26 STILL SUBJECT TO CROSS-EXAMINATION.

27 THE COURT: THAT'S A SEPARATE ISSUE.

28 MS. ABRAMSON: BOTH OF THOSE --

1 THE COURT: YOU'RE COMBINING TWO DIFFERENT
2 THINGS HERE.

3 MS. ABRAMSON: THE ONLY MENTAL STATE --

4 THE COURT: AS FAR AS THE MENTAL STATE IS
5 CONCERNED, I AM PREPARED NOW TO RULE THAT YOU HAVE
6 TENDERED THE MENTAL STATE.

7 MS. ABRAMSON: WE DISAGREE, YOUR HONOR.

8 THE COURT: YOU CAN DISAGREE, BUT THAT'S MY
9 FEELING, THAT YOU HAVE TENDERED A MENTAL STATE.

10 THE ISSUE IS THE TIMING OF THE
11 EXAMINATION.

12 I'LL SAY THIS, THAT AS FAR AS THE
13 CONDITIONS OF THE EXAMINATION, THE DEFENSE REQUEST
14 TO BE PRESENT FOR THAT WILL NOT BE GRANTED. IT'S
15 JUST A QUESTION OF WHEN THE EXAMINATION WOULD TAKE
16 PLACE. WHEN I BROUGHT UP THIS SUBJECT LAST WEEK, I
17 HAD HOPED AND EXPECTED THAT WE WOULD HAVE GOTTEN TO
18 THE STAGE OF HAVING COMPLETED THE EXAMINATION OF THE
19 DEFENDANT. WE HAVE YET TO DO THAT. AND MY FEELING
20 IS THAT I AM RELUCTANT TO HAVE THE EXAMINATION TAKE
21 PLACE UNTIL HIS TESTIMONY HAS BEEN COMPLETED. BUT
22 I'M NOT GOING TO WAIT FOR EXPERTS FOR THE DEFENSE TO
23 TESTIFY BEFORE THE EXAMINATION IS CONDUCTED. I
24 DON'T THINK IT'S FAIR TO THE PROSECUTION TO PUT THEM
25 IN A POSITION OF HAVING THE DEFENSE EXPERTS TESTIFY
26 WITHOUT AN OPPORTUNITY FOR THEIR EXPERT TO EXAMINE

27 THE DEFENDANT AS WELL. I THINK THAT WOULD LIMIT
28 THEIR CAPACITY TO EFFECTIVELY CROSS-EXAMINE AND

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1 LIMIT THEIR ABILITY TO REBUT THE EVIDENCE OFFERED BY
2 THE DEFENSE.

3 SO IT'S JUST A QUESTION OF TIMING HERE
4 AS TO WHEN IT'S TO BE DONE. BUT IT WILL BE ORDERED
5 AND IT WILL BE ORDERED AS SOON AS THE DEFENDANT HAS
6 COMPLETED HIS TESTIMONY. AND IF THE -- WE'LL JUST
7 SCHEDULE IT SOME TIME THAT WON'T INTERFERE WITH THE
8 TRIAL IN PROGRESS FOR THAT TO BE ACCOMPLISHED.

9 ALL RIGHT. ANY OTHER MATTERS AT THIS
10 POINT?

11 MR. GESSLER: NO, YOUR HONOR.

12 MR. LEVIN: IS THAT A RULING WITH RESPECT TO
13 DEFENSE COUNSEL AND THE DEFENSE EXPERTS AS WELL?

14 THE COURT: WHAT DO YOU MEAN?

15 MR. LEVIN: THAT WE FEEL THAT, ONE, WE ARE
16 ENTITLED TO BE PRESENT TO HAVE SOME DEGREE OF
17 CONTROL WITH RESPECT TO THE PROSECUTION EXPERT.
18 THERE ARE SOME AREAS IN WHICH THE DEFENSE EXPERT --
19 OR PROSECUTION EXPERT CANNOT INQUIRE OF OUR CLIENT,
20 AND WE FEEL THAT WE HAVE A RIGHT TO BE THERE TO GIVE
21 HIM THAT LEGAL ADVICE.

22 AND ALSO WE FEEL WE HAVE A RIGHT TO HAVE
23 OUR EXPERT PRESENT WHILE THEIR EXPERT CONDUCTS IT.
24 THERE'S ISSUE OF CREDIBILITY. THERE'S ISSUE OF
25 VOICE INFLECTION, OF FACIAL EXPRESSIONS, THINGS THAT
26 THE PROSECUTION EXPERT COULD TESTIFY TO THAT THERE
27 WILL BE NO WITNESS PRESENT OTHER THAN THE DEFENDANT
28 AND THE EXPERT, AND THAT'S NOT FAIR.

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1 THE COURT: WELL, THE PROPOSAL WAS TO
2 VIDEOTAPE THIS EXAMINATION, AND THAT WOULD PRESERVE
3 THOSE THINGS.

4 MS. ABRAMSON: CAN'T VIDEOTAPE THE EXPERT'S
5 FACE, YOUR HONOR.

6 THE COURT: WELL, I AM NOT GOING TO PERMIT
7 COUNSEL TO BE PRESENT. I'M NOT GOING TO PERMIT THE
8 DEFENSE EXPERTS TO BE PRESENT.

9 MR. LEVIN: WOULD THE COURT ALLOW A SPECIAL
10 MASTER TO BE PRESENT?

11 THE COURT: NO. NO. THIS IS NOT SOMETHING
12 WHERE THE DEFENSE WOULD HAVE AN OPPORTUNITY TO
13 INTERFERE WITH THE EXAMINATION. THIS IS THE PURPOSE
14 OF ALLOWING THE PROSECUTION EXPERT TO DO AN
15 EXAMINATION; TO HAVE THESE OBSTACLES IN THE WAY OF
16 THE EXAMINATION WOULD DEFEAT THE WHOLE PURPOSE OF

17 THE EXAMINATION.

18 MR. LEVIN: I THINK THERE'S A DISTINCTION
19 BETWEEN AN EXAMINATION AND A PROPER EXAMINATION. I
20 CAN ENVISION ALL SORTS OF THINGS THAT THE
21 PROSECUTION EXPERT COULD DO THAT ARE IMPROPER, AREAS
22 THAT HE WOULD BE GOING INTO OR QUESTIONING OUR
23 CLIENT ABOUT THAT HE'S NOT ENTITLED TO QUESTION HIM
24 ABOUT, FOR WHATEVER NEFARIOUS PURPOSE HE WISHES AND
25 WE'LL HAVE NO CONTROL.

26 THE COURT: THERE WILL BE LIMITATIONS ON THE
27 USE OF ANY INFORMATION GATHERED BY THE EXPERT
28 CONSISTENT WITH THE CASE LAW. SO IT CAN'T BE USED

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1 BY THE PEOPLE IMPROPERLY. BUT OTHER THAN THAT, I
2 DON'T SEE THAT IT WOULD BE PROPER FOR THE COURT TO
3 PERMIT THE PRESENCE OF OTHERS.

4 MR. LEVIN: CONCERNING THE VIDEOGRAPHER, DOES
5 THE COURT HAVE ANY SUGGESTION WITH RESPECT TO HOW IT
6 SHOULD BE VIDEOTAPED?

7 THE COURT: SOMEONE HERE MENTIONED THAT THE
8 SHERIFF HAS THE CAPACITY TO DO THAT THE LAST TIME WE
9 DISCUSSED IT. I UNDERSTOOD THAT THAT WAS THE
10 SITUATION, THAT THERE WAS SOMEBODY FROM THE
11 SHERIFF'S DEPARTMENT WHO WAS ABLE TO DO THIS.

12 MR. LEVIN: I AM NOT UNDER THAT
13 UNDERSTANDING, BUT WE WOULD ASK TO BE ABLE -- IF IT --
14 SUCH AN EXAMINATION IS GOING TO TAKE PLACE WITH
15 VIDEO, WE ASK TO BE GIVEN THE OPPORTUNITY TO VIDEO
16 IT WITH OUR RESOURCES.

17 THE COURT: WELL, AGAIN, THE PURPOSE IS TO
18 CONDUCT AN EXAMINATION WITHOUT OBSTRUCTION OR
19 INTERFERENCE.

20 MS. ABRAMSON: WE JUST WANT OUR OWN PEOPLE TO
21 DO THE VIDEOTAPING. THAT DOESN'T MEAN US.

22 MR. LEVIN: I'LL DO THE VIDEO.

23 MS. ABRAMSON: NOW YOU'RE --

24 THE COURT: THE MECHANICS OF IT CAN BE WORKED
25 OUT. IT'S POSSIBLE, PERHAPS, THAT BOTH THE
26 PROSECUTION AND THE DEFENSE CAN AGREE UPON SOME
27 AGENCY OR PERSON TO DO IT SO IT DOESN'T NEED MORE
28 THAN ONE VIDEOTAPE OR ONE OPERATOR. THAT'S

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1 SOMETHING THAT YOU CERTAINLY CAN DISCUSS.

2 ANYWAY, THOSE ARE MY THOUGHTS AND MY
3 RULINGS ON MANY OF THESE ISSUES THAT YOU'RE TALKING
4 ABOUT.

5 AS FAR AS THE TIMING, I FEEL THAT IT IS
6 APPROPRIATE TO WAIT UNTIL THE DEFENDANT HAS

7 COMPLETED HIS EXAMINATION SO THAT THERE CAN BE NO
8 POSSIBILITY THAT SUCH AN EXAMINATION CONTRIBUTED IN
9 ANY WAY TO THE NATURE OF THE CROSS-EXAMINATION OF
10 THE DEFENDANT. BUT THAT'S -- THE PURPOSE OF IT IS
11 TO ASSIST THE PROSECUTION IN CROSS-EXAMINING THE
12 DEFENSE EXPERT. SO THEY'LL HAVE TO DO THAT
13 EXAMINATION BEFORE THE DEFENSE EXPERT TESTIFIES.

14 ALL RIGHT. ANYTHING ELSE AT THIS POINT?

15 MR. GESSLER: NO, YOUR HONOR.

16 MR. LEVIN: NO, YOUR HONOR.

17 THE COURT: OKAY. WE'LL BE IN RECESS THEN
18 UNTIL THE 3RD OF JANUARY AT 8:30 IN THE MORNING.

19 MS. ABRAMSON: HAVE A NICE CHRISTMAS AND
20 HAPPY NEW YEAR, YOUR HONOR.

21 THE COURT: SAME TO YOU. EVERYBODY HAVE A
22 HAPPY HOLIDAY.

23 (AT 4:45 P.M., AN ADJOURNMENT
24 WAS TAKEN UNTIL WEDNESDAY,
25 JANUARY 3, 1996, AT 8:30 A.M.)

26

27

28

2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG JUDGE
4
5 THE PEOPLE OF THE STATE OF)
6 CALIFORNIA,)
7)
8 PLAINTIFFS,)
9)
10 VS.) NO. BA 068880
11)
12 ERIK GALEN MENENDEZ, AND)
13 JOSEPH LYLE MENENDEZ,)
14)
15 DEFENDANTS.)
16)

17
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1 APPEARANCES:

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BY: DAVID CONN, DEPUTY

4

AND

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AND

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MARYLU MURPHY,

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CSR NO. 5178

OFFICIAL REPORTERS

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22 LEGEND:

A = MS. ABRAMSON C = MR. CONN

23 G = MR. GESSLER L = MR. LEVIN

N = MS. NAJERA T = MS. TOWERY

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