

1 VAN NUYS, CALIFORNIA; TUESDAY, NOVEMBER 28, 1995

2 9:50 A.M.

3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED.)

5

6 (PAGES 42077 THROUGH 42080

7 WERE SEALED BY ORDER OF

8 THE COURT.)

9

10 (THE FOLLOWING PROCEEDINGS WERE

11 HELD IN OPEN COURT OUT OF THE

12 PRESENCE OF THE JURY:)

13

14 THE COURT: OKAY. LET'S PROCEED HERE. LET'S

15 GO BACK. THIS IS A HEARING THAT IS CONTINUING FROM

16 YESTERDAY, AND WE HAD SOME MATTERS THAT THE COURT

17 WAS CONSIDERING IN REGARD TO THE EXHIBITS RELATING

18 TO MS. PISARCIK. SO LET'S GO TO THOSE. I'VE LOOKED

19 AT THEM.

20 ON EXHIBIT 153 THE ONLY PORTION OF THAT

21 DOCUMENT WHICH WOULD BE ADMISSIBLE AS IMPEACHMENT

22 WOULD BE THE PORTION THAT WAS QUOTED BY COUNSEL ON

23 PAGE 39299, LINES 20 THROUGH 22. SO THE COURT'S

24 RULING IS THAT THE BALANCE OF IT IS HEARSAY AND NOT

25 IMPEACHING AND COULD ONLY BE RECEIVED IF OFFERED BY

26 THE PROSECUTION, OR THE OPPONENT OF THE EVIDENCE, TO

27 PUT IN THE BALANCE OF THE COMMUNICATION.

28 THE DOCUMENT CAN BE REDACTED TO INCLUDE

1 THE DATE AND THE SALUTATION AND EVERYTHING ELSE
2 REMOVED EXCEPT FOR THAT PARTICULAR QUOTATION. AND
3 I'LL LEAVE IT TO COUNSEL TO DO THAT. MY SUGGESTION
4 IS YOU DO IT TODAY SO IT GETS ACCOMPLISHED RATHER
5 THAN BE REFERRED TO SOME OTHER TIME WHEN WE'LL HAVE
6 FORGOTTEN WHAT WE DID TODAY. AND THEN THE DOCUMENT
7 CAN BE MARKED AS A RE -- REDACTED DOCUMENT CAN BE
8 MARKED AS A NEW EXHIBIT OR AS A -- 153-A.

9 MS. TOWERY: THAT'S PROBABLY EASIER.

10 THE COURT: SO THE COURT'S RULING THAT THE
11 REDACTED VERSION, 153-A, WILL BE RECEIVED; 153 IS
12 NOT.

13 AND AS TO 156 -- LET ME SEE 156,
14 PLEASE.

15 AND AS FAR AS 156, THE BULK OF THIS
16 DOCUMENT WAS COVERED DURING THE EXAMINATION OF THE
17 WITNESS AND DOES TEND TO IMPEACH HER TESTIMONY.
18 THERE ARE SOME VERY BRIEF PORTIONS AT THE BEGINNING
19 AND THE END THAT ARE SURPLUSAGE AND NOT IMPEACHING
20 AND IRRELEVANT, ALTHOUGH IT MIGHT MAKE IT MORE -- IT
21 MIGHT BE MORE DIFFICULT TO REDACT IT THAN JUST LEAVE
22 IT AS IT IS, QUITE FRANKLY. THERE'S NOTHING
23 UNUSUALLY PREJUDICIAL, OR IN ANY WAY PREJUDICIAL, IN

24 THE PORTIONS THAT ARE NOT IMPEACHING. THE FIRST
25 PARAGRAPH AND THE LAST TWO PHOTOGRAPHS ARE NOT
26 IMPEACHING. BUT IT JUST SEEMS TO ME THAT IT WOULD
27 BE RATHER DIFFICULT TO REDACT THIS DOCUMENT AS IT
28 IS, AND A MORE APPROPRIATE WAY TO DO IT WOULD BE TO

42083

1 GIVE IT TO THE JURY AS IS.

2 SO THE PEOPLE'S OBJECTION TO 156 IS
3 OVERRULED. THE OVERWHELMING AMOUNT OF THAT DOCUMENT
4 IS IMPEACHING OF THE WITNESS.

5 AS TO 159 -- LET ME SEE 159, PLEASE.

6 AS WE WAIT FOR 159, I'VE LOOKED AT 160
7 AND THE COURT FINDS THAT THE ENTIRETY OF THE
8 DOCUMENT IS IRRELEVANT AND ALSO NON-IMPEACHING.
9 THEREFORE, THE PEOPLE'S OBJECTIONS TO IT ARE
10 SUSTAINED AND 160 WILL NOT BE RECEIVED.

11 AND 159 IS IMPEACHING AND THE ENTIRETY
12 OF THE DOCUMENT IS RECEIVED OVER OBJECTION AND WAS
13 THE SUBJECT OF CROSS-EXAMINATION. THOSE ARE THE
14 ONES THAT WE HELD OFF ON.

15 ALL RIGHT. NOW MOVING ON TO OTHER
16 EXHIBITS AND THINGS THAT WE HAVEN'T RESOLVED YET.

17 MS. ABRAMSON: THERE'S ONLY TWO, YOUR HONOR.

18 MS. NAJERA: 308 AND 309.

19 MS. ABRAMSON: 308 WAS -- I OBJECT TO IT
20 BECAUSE I THINK IT'S INCOMPREHENSIBLE WHAT THE POINT
21 OF IT WAS SUPPOSED TO BE. THIS IS DR. MC CARTHY
22 DRAWING RODS AND CUBES. I JUST DIDN'T THINK -- IT'S
23 AN INCOMPREHENSIBLE DRAWING AND DOESN'T TELL THE
24 JURY ANYTHING.
25 THE COURT: IT WAS A RATHER POOR EFFORT TO
26 DEMONSTRATE WHAT IT WAS HE WAS TRYING TO
27 DEMONSTRATE.
28 MS. ABRAMSON: YEAH, VERY STRANGE.

42084

1 THE COURT: I DON'T KNOW ABOUT BEING
2 STRANGE. I ASSUME HE HAD SOMETHING IN MIND AND HIS
3 ARTISTIC ABILITY DIDN'T FOLLOW ALONG WITH HIS
4 INTENT.
5 MS. ABRAMSON: I JUST DON'T THINK IT
6 ILLUSTRATES WHATEVER IT IS HE WAS TRYING TO
7 ILLUSTRATE.
8 THE COURT: WELL, I DON'T KNOW IF THAT'S THE
9 ISSUE HERE. THE ISSUE IS WHETHER OR NOT HE THOUGHT
10 IT ILLUSTRATED IT AND HE DREW IT AND IT'S FOR THE
11 JURY TO EVALUATE. I CERTAINLY DIDN'T GET FROM IT
12 WHAT HE WAS TRYING TO IMPART WHEN HE DREW IT; BUT,
13 AGAIN, THAT'S NOT MY ROLE HERE. THAT'S FOR THE

14 JURY.

15 SO THE OBJECTION'S OVERRULED.

16 MS. ABRAMSON: AND 309, YOUR HONOR, WAS A
17 SMALL PHOTOGRAPH THAT WAS MEANT TO ILLUSTRATE SOME
18 DROPS OF BLOOD NEXT TO THE BODY OF MR. MENENDEZ
19 WHILE HE'S ON A PLASTIC SHEET, ASSUMEDLY PUT THERE
20 BY THE CORONER'S INVESTIGATORS. BUT THAT PARTICULAR
21 PHOTOGRAPH ALSO SHOWS AN ENTIRE BRAIN NEXT TO HIS
22 HEAD ON THAT SHEETING, AND THAT IS UNNECESSARILY
23 GRUESOME AND DOES NOT ILLUSTRATE WHAT THE PHOTO IS
24 MEANT TO ILLUSTRATE. SO WE WOULD LIKE TO HAVE IT
25 CROPPED TO ELIMINATE THAT PARTICULARLY GRUESOME
26 ASPECT OF IT.

27 THE COURT: AND THE PEOPLE'S RESPONSE, IF
28 ANY?

42085

1 MS. NAJERA: YOUR HONOR, MY UNDERSTANDING IS
2 THIS IS A SMALL PHOTO. MY CONCERN ABOUT CROPPING IS
3 IT WAS USED -- MY UNDERSTANDING OF HOW IT WAS USED IS
4 TO SHOW THAT THE BODY WAS POSITIONED A CERTAIN WAY
5 SO THAT YOU COULD HAVE BLOOD DROPPINGS IF THE BODY
6 WAS MOVED AND THAT IS AN IMPORTANT POINT THAT THE
7 DEFENSE IS DISPUTING. I THINK YOU NEED TO SHOW SOME
8 PART OF THE BODY SO YOU CAN SEE WHAT IT IS.

9 MS. ABRAMSON: I DON'T WANT TO CROP THE BODY,
10 JUST THE BRAIN.

11 MS. NAJERA: LET'S SEE HOW MUCH OF THAT WE
12 CAN OR CAN'T CROP. IT IS A SMALL PHOTO, WHICH IS
13 PART OF THE PROBLEM.

14 THE COURT: RIGHT. I HAVEN'T SEEN IT.

15 MS. TOWERY: YOUR HONOR, WITH RESPECT TO 160,
16 JUST TO MAKE SURE THAT THE COURT DID CONSIDER WHAT
17 WAS SAID YESTERDAY, THE COURT CONSIDERED THE PORTION
18 OF THAT LETTER THAT RELATED TO THE SKI TRIP,
19 INDICATING THAT SHE WISHED THAT SHE COULD HAVE
20 GONE?

21 THE COURT: YES, I DID.

22 (PAUSE IN PROCEEDINGS.)

23

24 THE COURT: I HAVE EXHIBIT 309 AND THERE'S
25 SOMETHING CIRCLED ON THE PHOTOGRAPH, I BELIEVE BY
26 DETECTIVE ZOELLER, WITH THE INTENT TO SHOW CERTAIN
27 BLOOD SPOTS ON THE PLASTIC. AS FAR AS I RECALL,
28 THERE WAS NO REFERENCE TO THE BRAIN LYING ON THE

42086

1 PLASTIC. THIS IS NOT REALLY A CRIME-SCENE
2 PHOTOGRAPH AS THE VICTIMS WERE FOUND, BUT AFTER
3 THEY'VE BEEN MOVED, AND IS USED FOR A PARTICULAR

4 PURPOSE, NOT TO SHOW THE BRAIN; ALTHOUGH IF THERE
5 WAS SOME REASON TO SHOW THE BRAIN IN SOME FASHION, I
6 SUPPOSE THAT WOULD BE A DIFFERENT MATTER. BUT
7 THAT'S CURRENTLY BEFORE THE COURT. THIS COULD BE
8 EASILY REMOVED BY CUTTING AROUND THAT PORTION OF THE
9 PHOTOGRAPH. IT'LL MAKE A LITTLE BIT OF AN UNUSUAL
10 SHAPE, BUT I THINK IT CAN BE DONE, JUST CUTTING
11 AROUND THE FACE AND THE HEAD OF THE DECEDENT AND
12 REMOVING THE PORTION THAT SHOWS THE BRAIN. AND,
13 OBVIOUSLY, IF THERE'S SOME ISSUE RELATING TO THE
14 BRAIN THAT BECOMES RELEVANT, THEN I ASSUME THERE'S
15 ANOTHER PHOTOGRAPH THAT CAN BE USED.

16 MS. ABRAMSON: YES. WE HAVE DUPLICATES OF
17 THAT, YOUR HONOR, AND I CAN ASSURE THE COURT THERE
18 WILL BE INTACT DUPLICATES REMAINING.

19 THE COURT: OKAY. I'LL LEAVE IT UP TO
20 COUNSEL TO DO THE ACTUAL REDACTING.

21 MS. ABRAMSON: IT'S YOUR PHOTO. YOU DO IT.

22 THE COURT: OKAY. ANYTHING ELSE THEN
23 REGARDING EXHIBITS AT THIS POINT?

24 MS. ABRAMSON: I THINK THAT'S IT FOR NOW,
25 YOUR HONOR.

26 THE COURT: OKAY.

27 THE CLERK: THERE'S ONE OTHER ONE, 150. THE
28 CHECK WAS RECEIVED, BUT IT WASN'T PART OF THE

1 EXHIBIT FOR SOME REASON.

2 THE COURT: IT WASN'T PART OF THE EXHIBIT?

3 THE CLERK: WE LOOKED AND COULDN'T FIND IT.

4 WE WERE GOING TO GET ANOTHER COPY.

5 THE COURT: THERE WERE A LOT OF DOCUMENTS

6 TOGETHER AND THEN THE CHECK WAS ONE OF THEM, A

7 PHOTOCOPY OF THE CHECK.

8 MS. NAJERA: THAT'S CORRECT, YOUR HONOR.

9 THE COURT: ALL RIGHT. I RECALL SEEING IT

10 WHEN THE DOCUMENTS WERE SHOWN TO THE WITNESS.

11 MS. NAJERA: I SHOWED IT TO THE WITNESS, YOUR

12 HONOR. I KNOW WE HAD IT. WE JUST CAN'T FIND A COPY

13 OF IT.

14 THE COURT: ALL RIGHT. IF YOU HAVE ANOTHER

15 COPY IT, YOU CAN SUBSTITUTE IT.

16 MS. NAJERA: THAT'S WHAT WE'VE BEEN LOOKING

17 FOR, YOUR HONOR. THERE MIGHT BE A PROBLEM. I'M

18 GOING TO SEE IF I CAN GET WHERE WE ORIGINALLY GOT

19 THE DOCUMENTS FROM AND SEE IF WE CAN GET SOME MORE.

20 THE COURT: OKAY. ANYTHING ELSE?

21 THE CLERK: WOULD THAT BE 150-A, THE NEW ONE?

22 MS. NAJERA: ONCE WE FIND IT.

23 THE COURT: IF THEY FIND IT.

24 MS. NAJERA: ONCE WE FIND IT, WE'LL SUBMIT IT

25 TO THE COURT.

26 THE COURT: OKAY. ANYTHING ELSE NOW BEFORE

27 WE RECESS FOR THE DAY?

42088

1 HONOR.

2 MS. NAJERA: I JUST HAVE TWO QUESTIONS,

3 ACTUALLY, OF COUNSEL.

4 THE 1118 MOTION, WHEN IS THAT SCHEDULED?

5 MR. GESSLER: NEXT TIME WE HAVE A CHANCE WHEN

6 OUR CLIENTS ARE BOTH HERE.

7 THE COURT: AT A TIME WHEN IT WON'T INTERFERE

8 WITH THE PROGRESS OF TESTIMONY BEFORE THE JURY. I

9 DON'T EXPECT IT TO BE A LENGTHY HEARING.

10 MR. GESSLER: NO, IT WON'T BE LENGTHY, YOUR

11 HONOR. IT'S BASICALLY, AS I SAID, WHAT WAS COVERED

12 WITH MICHAEL BURT, WITH THE EXCEPTION THAT I AM NOT

13 AS WILLING AS HIM TO CONCEDE THE LYING-IN-WAIT

14 DEFINITION AS GIVEN IN MORALES.

15 THE COURT: OKAY.

16 MR. GESSLER: BUT I DON'T THINK IT WILL TAKE

17 VERY LONG.

18 MS. NAJERA: THE ONLY REASON I ASK, YOUR

19 HONOR, IS I KNOW FRIDAY IS A HALF DAY AND I WONDER

20 IF WE WERE GOING TO DO IT FRIDAY AFTERNOON. I WAS

21 GOING TO SCHEDULE AN APPOINTMENT, WHICH I WON'T

22 SCHEDULE IF WE'RE GOING TO DO IT. THAT'S WHY I NEED

23 TO KNOW.

24 ARE YOU GUYS PLANNING ON DOING IT FRIDAY

25 AFTERNOON OR DO YOU WANT TO WAIT UNTIL THE FOLLOWING

26 WEEK?

27 MR. GESSLER: WE CAN WAIT UNTIL THE FOLLOWING

28 WEEK.

42089

1 THE COURT: IF IT'S NOT GOING TO BE LENGTHY,

2 WE CAN PROBABLY DO IT DURING TESTIMONY OF SOME OTHER

3 WITNESS.

4 MS. NAJERA: FOR SCHEDULING PURPOSES I NEED

5 TO KNOW.

6 MS. ABRAMSON: AFTER DR. WECHT.

7 THE COURT: WELL, DR. WECHT --

8 MR. LEVIN: CAN WE GET AN INDICATED RULING,

9 SO WE CAN...

10 THE COURT: DR. WECHT WON'T BE IN UNTIL NEXT

11 WEEK.

12 MS. ABRAMSON: YOU WANT TO TRY TO HANDLE IT

13 BEFORE THEN?

14 THE COURT: YES.

15 MS. ABRAMSON: IF WE CAN EVER GET ANYTHING

16 BACK TOGETHER.

17 MS. NAJERA: CAN YOU TELL ME WHO TOMORROW?

18 MS. ABRAMSON: WELL, HOPEFULLY, IF THE CENTER
19 HOLDS, IT'S VAN HORN, LINHART AND MORTON.

20 MS. NAJERA: GREAT. THANK YOU. THAT'S ALL I
21 WANTED TO KNOW.

22 MS. ABRAMSON: AND THEN AFTER THAT WE'RE NOT
23 SURE IF SHE'S -- MAYBE LORD. WE CAN'T GET LORD PAST
24 WHEN?

25 MS. TOWERY: WELL, SHE LEFT ME A MESSAGE.
26 I'M GOING TO TRY TO RESCHEDULE HER FOR NEXT WEEK.

27 MS. NAJERA: TENTATIVELY LORD.

28 MS. ABRAMSON: THEN GASKILL, ANDERSEN.

42090

1 LET'S GO. THE JUDGE DOESN'T HAVE TO BE
2 BOTHERED BY THIS.

3 THE COURT: OKAY. WE'LL BE IN RECESS THEN
4 UNTIL TOMORROW AT 8:30.

5 MS. ABRAMSON: THANK YOU, YOUR HONOR.

6 YOUR HONOR, THERE IS SOME EVIDENCE,
7 RELEASED EVIDENCE, THAT MR. VAN HORN AND MR. MORTON
8 ARE GOING TO BRING BACK BEFORE 3:00. THERE IS A
9 PIECE OF EVIDENCE MISSING, AND I DON'T KNOW IF IT'S
10 MISSING FROM THE COURT. I DON'T KNOW IF IT EVER WAS
11 HERE. WE CAN'T TELL FROM THE RECORD OF THE FIRST
12 TRIAL, BUT DETECTIVE ZOELLER'S TRYING TO FIND IT,

13 ONE OF THE SCENE ITEMS.

14 THE COURT: OKAY.

15 (AT 10:05 A.M., AN ADJOURNMENT

16 WAS TAKEN UNTIL WEDNESDAY,

17 NOVEMBER 29, 1995, AT 8:30 A.M.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG JUDGE

4

THE PEOPLE OF THE STATE OF)

5 CALIFORNIA,)

)

6 PLAINTIFFS,)

)

7)

VS.) NO. BA 068880

8)

ERIK GALEN MENENDEZ, AND)

9 JOSEPH LYLE MENENDEZ,)

)

10 DEFENDANTS.)

)

11

12 REPORTERS' DAILY TRANSCRIPT OF PROCEEDINGS

13 TUESDAY, NOVEMBER 28, 1995

14 VOLUME 251

15 PAGES 42077 THROUGH 42090

16 (PAGES 42077 THROUGH 42080 WERE SEALED.)

17

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19

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APPEARANCES:

21 (SEE APPEARANCE PAGE)

22
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25
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1 APPEARANCES:

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23 CSR NO. 4547
OFFICIAL REPORTERS

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8	DISCUSSION RE EXHIBITS		42081	
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11		CHRONOLOGICAL INDEX OF WITNESSES		

12
WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.
13
(NONE THIS VOLUME.)

14

15

16

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18

19

20

21
LEGEND:
22 A = MS. ABRAMSON C = MR. CONN
G = MR. GESSLER L = MR. LEVIN
23 N = MS. NAJERA T = MS. TOWERY

24

25

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1 EXHIBITS INDEX

2 EXHIBITS: MARKED RECEIVED VOL.

3 (EXHIBIT 153-A WAS RECEIVED @ PAGE 42082.)
(EXHIBITS 156 AND 159 WERE RECEIVED @ PAGE 42083.)
4 (EXHIBIT 308 WAS RECEIVED @ PAGE 42084.)
(EXHIBIT 309 WAS RECEIVED @ PAGE 42085.)