

GO46081

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION III

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF/RESPONDENT,

VS.

TIEN DUC NGUYEN,

DEFENDANT/APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE DAPHNE SYKES SCOTT, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

MARCH 30, 2011
APRIL 4 AND 5, 2011

A P P E A R A N C E S

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OFFICIAL COURT REPORTER

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LORI L. PARNES, CSR #9117
REPORTER PRO TEMPORE

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, WESTMINSTER JUDICIAL DISTRICT
BEFORE THE HONORABLE DAPHNE SYKES SCOTT, JUDGE
DEPARTMENT W-2

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF, CASE NO.
VS. 10WF0918
NGUYEN, TIEN DUC
DEFENDANT.

REPORTER'S TRANSCRIPT OF COURT PROCEEDINGS
MARCH 30, 2011

A P P E A R A N C E S:
FOR THE PEOPLE: RENEE JONES
DEPUTY DISTRICT ATTORNEY
FOR THE DEFENDANT: CHRISTOPHER HENNES
ATTORNEY AT LAW

REPORTED BY: MARGARET M. CARABINE, CSR NO. 4959
OFFICIAL COURT REPORTER

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I N D E X

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WESTMINSTER, CALIFORNIA

MARCH 30, 2011

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AFTERNOON SESSION

(WHEREUPON THE FOLLOWING PROCEEDINGS WERE HELD
IN OPEN COURT:)

THE COURT: CALLING THE MATTER OF THE PEOPLE
VERSUS TIEN DOC NGUYEN. CASE NUMBER 10WF0918. THIS CASE
IS ON FOR JURY TRIAL TODAY.

APPEARANCES, PLEASE.

MS. JONES: RENAE JONES FOR THE PEOPLE.

MR. HENNES: CHRIS HENNES FOR THE DEFENDANT WHO IS
PRESENT OUT OF CUSTODY.

THE COURT: GOOD AFTERNOON, MR. NGUYEN.

COUNSEL AND I HAVE BEEN IN CHAMBERS
DISCUSSING SOME OF THE MATTERS IN THIS CASE, AND THERE
ARE A COUPLE OF LEGAL ISSUES THAT THE COURT IS GOING TO
RULE UPON BEFORE THE TRIAL GETS STARTED. THE COURT HAS
ALSO INVITED COUNSEL TO SUBMIT ANY AUTHORITY THAT THEY
HAVE RELATIVE TO THE 402 ISSUES THAT WE DISCUSSED IN
CHAMBERS. TOMORROW IS A COURT HOLIDAY, FRIDAY THE COURT
HEARS PUBLIC DEFENDER PRE TRIALS, SO THE JURY TRIAL WILL
BE TRAELED UNTIL MONDAY. AND ON MONDAY, THE COURT WILL
FIRST DECIDE THE 402 OR THE PRELIMINARY LEGAL ISSUES
BEFORE WE'RE GOING TO PICK A JURY, AND THEN WE EXPECT TO

1 SELECT THE JURY ON MONDAY, AND HOPEFULLY START WITH
2 TESTIMONY, OPENING STATEMENTS, ON TUESDAY. THAT IS THE
3 PLAN.

4 IS THERE ANYTHING THAT COUNSEL WANTS TO PUT
5 ON THE RECORD AT THIS TIME?

6 MR. HENNES: YOUR HONOR, I HAD A QUESTION
7 REGARDING THE POINTS AND AUTHORITIES THAT THE COURT HAS
8 REQUESTED. IS IT POSSIBLE TO E-MAIL THEM ANY WHERE TO
9 THE COURT AND TO COUNSEL?

10 THE COURT: ABSOLUTELY.

11 MR. HENNES: THAT MIGHT BE MORE--

12 THE COURT: ABSOLUTELY, COUNSEL. LET'S SEE.
13 BEFORE--

14 MR. HENNES: IF CONVENIENT WITH THE COURT AND
15 COUNSEL. I DON'T KNOW, JUST A SUGGESTION.

16 THE COURT: PLEASE DO. BEFORE YOU LEAVE IF YOU
17 COULD JUST GET THE CLERK'S E-MAIL ADDRESS YOU CAN E-MAIL
18 IT TO HER, AND THEN OF COURSE COPY TO OPPOSING COUNSEL.

19 MR. HENNES: RIGHT.

20 THE COURT: COUNSEL, IF YOU COULD, BEFORE YOU
21 LEAVE HERE TODAY, LEAVE YOUR E-MAIL AND YOUR CELLPHONE
22 NUMBER FOR MY CLERK. THAT WOULD BE GREAT.

23 MR. HENNES: ABSOLUTELY.

24 THE COURT: DO COUNSEL WANT TO STIPULATE WHEN THE
25 E-MAIL IS RECEIVED BY MY CLERK IT IS DEEMED FILED AND
26 SHE CAN MAKE A COPY OF IT AND FILE STAMP IT?

1 MS. JONES: YES.

2 MR. HENNES: SO STIPULATED.

3 THE COURT: OKAY.

4 LET ME JUST MAKE SURE I'M CLEAR WITH RESPECT
5 TO THE PROPOSED 402 ISSUES. ONE OF THE ISSUES WAS IF
6 MR. NGUYEN WERE TO PLEAD GUILTY TO COUNTS 3 AND 4,
7 WHETHER EVIDENCE OF THOSE COUNTS CAN BE USED BY THE
8 PEOPLE IF IT'S ATTEMPT IS TO PROVE THE COUNTS 1 AND 2.
9 IS THAT CORRECT?

10 MR. HENNES: THAT STATES IT, I BELIEVE.

11 MS. JONES: WHETHER THEY COULD BE SEVERED AT THIS
12 POINT.

13 THE COURT: WHETHER THEY CAN BE SEVERED AT THIS
14 POINT, AN ISSUE OF TIMELINESS. THAT IS ONE ISSUE. TWO
15 ISSUES. ONE REQUEST WAS THAT. ANOTHER REQUEST RATHER
16 WAS THAT THE COURT PRECLUDE THE OFFICER WITNESS, OR ANY
17 WITNESS RATHER, FROM OPINING WHETHER IT IS LEGAL TO
18 POSSESS ANY OF THESE GUNS AND OR AMMUNITION. SO THAT
19 WAS ANOTHER ISSUE. THAT IS NUMBER THREE.

20 MS. JONES: ACTUALLY, QUESTIONING TO THAT EFFECT
21 OF THE WITNESSES.

22 THE COURT: WHETHER YOU CAN QUESTION THE WITNESS
23 TO ELICIT FROM THE WITNESS WHETHER IT WAS LEGAL TO
24 POSSESS ANY OF THE GUNS AND/OR AMMUNITION. WHETHER IT IS
25 PROPER FOR THE WITNESS TO GIVE AN OPINION IF RELATIVE TO
26 THE DEFENDANT'S INTENT.

1 THAT MOTION IS OF COURSE GRANTED. THAT WAS
2 AN ISSUE THAT WAS BROUGHT UP IN CHAMBERS. THE DEFENSE
3 HAD A DOCUMENT WHICH APPEARED TO BE SOME SORT OF FLOAT
4 CHART. IT'S A SUMMARY OF ASSAULT WEAPONS LAW, PORPORTED
5 TO BE A SUMMARY OF ASSAULT WEAPONS LAW IN THE STATE OF
6 CALIFORNIA. AND THE COURT'S TENTATIVE IS TO PRECLUDE
7 IT'S ADMISSION. IF AT SOME POINT THE DEFENSE FEELS AS
8 THOUGH IT SHOULD BE OR COULD BE ADMITTED, THE COURT
9 WOULD REQUEST THAT OF COURSE THAT IT SHOULD BE MADE
10 OUTSIDE THE PRESENCE OF THE JURY BEFORE SHOWING THE
11 DOCUMENT TO THE WITNESS.

12 MR. HENNES: YOUR HONOR, MAY I INTERPOSE A
13 QUESTION?

14 THE COURT: YES.

15 MR. HENNES: WOULD THE COURT LIKE A COPY OF THIS
16 IN ORDER TO UNDERSTAND WHAT WE'RE -- WHAT IT'S ALL
17 ABOUT, RATHER THAN JUST PRECLUDING IT WITHOUT LOOKING AT
18 IT? I'VE GIVEN IT TO COUNSEL. I'D BE GLAD TO PROVIDE
19 THIS COPY FOR THE COURT.

20 THE COURT: I'LL TAKE A LOOK SINCE I HAVE NOT
21 LOOKED AT IT. I HAVE NOT READ IT.

22 MS. JONES: I DON'T HAVE A COPY. IF YOU HAVE AN
23 EXTRA ONE. YOU GAVE IT TO THE COURT AT THE PRELIMINARY.
24 YOU DIDN'T--

25 THE COURT: WE'LL MAKE A COPY. WE'LL MAKE TWO.

26 MR. HENNES: I'LL JUST PRINT ANOTHER ONE. I DON'T

1 NEED ONE.

2 MS. JONES: FOR THE RECORD, THE PEOPLE'S POSITION
3 IS THAT IT'S IRRELEVANT AND WITHOUT FOUNDATION TO THESE
4 PROCEEDINGS. WE DON'T KNOW WHO CREATED IT OR THE
5 VALIDITY OF IT.

6 THE COURT: THERE WAS A REQUEST ALSO THAT -- THE
7 DEFENSE MUST HAVE MADE THIS REQUEST -- THAT THE PEOPLE'S
8 EXPERT BE LIMITED TO THAT PERSON'S EXPERTISE.

9 MS. JONES: THAT WAS ACTUALLY MINE BECAUSE I DON'T
10 WANT THE DEFENSE TO BE INQUIRING AS TO HIS OPINION OF
11 WHAT THE LAW IS.

12 THE COURT: NO OPINIONS ABOUT LEGALITY. I DID
13 WRITE THAT RATHER.

14 SO THE WITNESS WILL NOT BE ASKED WHAT IS
15 LEGAL AND NOT RENDER ANY OPINION AS TO THE LEGALITY IN
16 THAT PARTICULAR AREA OF EXPERTISE. THAT WAS THE ISSUE.
17 I WILL TAKE ANOTHER LOOK AT THAT.

18 MR. HENNES: FOR THE RECORD, I DON'T JOIN IN THAT
19 MOTION. I DON'T CARE IF SHE ASKS THE WITNESS ABOUT
20 LEGALITIES.

21 THE COURT: SEEMS TO BE ALL I HAVE. IS THERE
22 ANYTHING ADDITIONAL?

23 MS. JONES: I THINK THAT IS IT.

24 THE COURT: ALL RIGHT WITH THAT. TODAY WAS THE
25 DAY ZERO OF TEN, WAS IT?

26 MR. HENNES: YES.

1 THE COURT: DAY FIVE ON MONDAY.

2 MR. NGUYEN, YOU ARE ORDERED BACK HERE TO THIS
3 COURT ON MONDAY. THAT WILL BE APRIL THE 4TH, AT 9:00
4 O'CLOCK IN THE MORNING. SEE EVERYBODY AT 9:00 O'CLOCK.

5 THANK YOU VERY MUCH.

6 LOOKS LIKE DAY FOUR OF TEN BECAUSE TOMORROW
7 IS A HOLIDAY.

8 MR. HENNES: I DON'T THINK THEY COUNT HOLIDAYS ON
9 A TEN-DAY TRIAL.

10 MS. JONES: OR WEEKENDS.

11 MR. HENNES: STRAIGHT CALENDAR DAYS.

12 MS. JONES: TWO OF TEN, RIGHT?

13 MR. HENNES: YFS. WE'LL GET STARTED. IT'S A MOOT
14 POINT.

15 THE COURT: I'LL KNOW BY THEN FOR SURE WHAT DAY IT
16 IS.

17 (WHEREUPON THE PROCEEDINGS ENDED.)

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER
3 DEPARTMENT W8
4

5 THE PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,)
7 VS.)
8 TIEN DUC NGUYEN,)
9 DEFENDANT.)

NO. 10WF0918
0046081

10
11
12 HONORABLE DAPHNE SYKES SCOTT, JUDGE PRESIDING

13 REPORTER'S TRANSCRIPT

14 MONDAY, APRIL 4, 2011
15

16 APPEARANCES OF COUNSEL:

17 FOR THE PEOPLE:

18 TONY RACKAUCKAS, DISTRICT ATTORNEY
19 BY: RENE GONES, DEPUTY DISTRICT ATTORNEY

20 FOR THE DEFENDANT:

21 BY: CHRISTOPHER J. HENNES, RETAINED ATTORNEY

22 LORI J. PARNES, C.S.R. #9177,
23 PRO TEMPORE COURT REPORTER
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WESTMINSTER, CALIFORNIA -- MONDAY, APRIL 4, 2011

MORNING SESSION

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT
OUTSIDE THE PRESENCE OF THE JURY:)

THE COURT: CALLING THE CASE OF PEOPLE VERSUS
TTEN DUC NGUYEN, CASE NUMBER 10WF0918.

APPEARANCES, PLEASE.

MS. JONES: RENEE JONES FOR THE PEOPLE.

MR. HENNES: CHRISTOPHER HENNES FOR DEFENDANT,
WHO IS PRESENT OUT OF CUSTODY.

THE COURT: OKAY. THIS IS THE TIME AND DAY FOR
THE JURY TRIAL IN THIS MATTER. HOWEVER, THE COURT HAS
RECEIVED A TAHL FORM. AND THE COURT UNDERSTANDS THAT
MR. NGUYEN WILL BE PLEADING GUILTY TO COUNTS 3 AND 4 OF
THE INFORMATION.

AND COUNTS 1 AND 2 ARE STILL ON FOR JURY TRIAL;
IS THAT CORRECT?

MR. HENNES: THAT IS CORRECT, YOUR HONOR.

THE COURT: OKAY. MR. NGUYEN, IS THAT YOUR
UNDERSTANDING? YOU'RE GOING TO BE PLEADING GUILTY TO
TWO COUNTS?

THE DEFENDANT: YES.

THE COURT: DO YOU SEE THIS FORM THAT I HAVE IN
MY HAND?

THE DEFENDANT: YES.

THE COURT: OKAY. THE COURT ALSO UNDERSTANDS

1 THAT YOU'RE GOING TO BE ADMITTING A PRIOR STRIKE
2 ALLEGATION; IS THAT TRUE?

3 THE DEFENDANT: YES.

4 THE COURT: ALL RIGHT. DID YOU DISCUSS YOUR
5 CHARGES AND YOUR CASE THOROUGHLY WITH YOUR ATTORNEY?

6 THE DEFENDANT: YES.

7 MR. HENNES: YOUR HONOR, MAY I INTERJECT?

8 THE COURT: YES.

9 MR. HENNES: WE ARE NOT NECESSARILY CONCEDED
10 THAT THE EVENT IS A STRIKE, BUT FOR PURPOSES OF THE PLEA
11 OF GUILTY, WE ACKNOWLEDGE THAT THERE WAS A CONVICTION
12 FOR THAT OFFENSE.

13 AND I WOULD LIKE TO RESERVE ANY ARGUMENT THAT I
14 MAY OR MAY NOT MAKE CONCERNING ITS QUALITY AS A STRIKE.
15 IT APPEARS IT IS, BUT I WOULD LIKE TO —

16 THE COURT: I SEE. YOU WILL BE ADMITTING A
17 PRIOR CONVICTION WITH A VIOLATION DATE OF AUGUST 11TH,
18 1999 IN CASE NUMBER 99WF1808; IS THAT CORRECT?

19 MR. HENNES: THAT IS CORRECT, YOUR HONOR.

20 THE COURT: OKAY. ALL RIGHT.

21 DID YOU READ ALL OF THE TERMS IN THIS DOCUMENT
22 CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY,
23 MR. NGUYEN?

24 THE DEFENDANT: YES.

25 THE COURT: AFTER READING THE FORM, DID YOU
26 PLACE YOUR INITIALS IN THE BOXES DOWN THE LEFT-HAND

1 SIDE? AND DID YOU SIGN THIS DOCUMENT?

2 THE DEFENDANT: YES.

3 THE COURT: OKAY. DO YOU UNDERSTAND THAT WHEN
4 YOU PLEAD GUILTY YOU GIVE UP THE RIGHTS SET FORTH IN
5 THIS DOCUMENT?

6 THE DEFENDANT: YES.

7 THE COURT: YOU UNDERSTAND THAT THE MAXIMUM
8 PENALTY FOR THESE TWO CHARGES IS SEVEN YEARS AND FOUR
9 MONTHS IN STATE PRISON? DO YOU UNDERSTAND THAT?

10 THE DEFENDANT: YES.

11 THE COURT: OKAY. AND IF YOU ARE ULTIMATELY --
12 AND WE'RE NOT SENTENCING YOU TODAY, OBVIOUSLY; IS THAT
13 CORRECT?

14 MR. HENNES: THAT IS CORRECT.

15 THE COURT: ALL RIGHT. WHEN YOU ARE SENTENCED,
16 IF YOU GO TO STATE PRISON, WHEN YOU ARE RELEASED, YOU
17 WILL BE PLACED ON PAROLE FOR THREE YEARS. IF YOU
18 VIOLATE THE TERMS OF PAROLE, YOU COULD BE SENTENCED TO
19 AN ADDITIONAL YEAR IN PRISON FOR EACH VIOLATION.

20 DO YOU UNDERSTAND THAT?

21 THE DEFENDANT: YES.

22 THE COURT: ALL RIGHT. DO YOU UNDERSTAND
23 THAT -- AND I'M GOING TO GO AHEAD AND GIVE YOU THIS
24 ADMONITION AS WELL:

25 IF YOU ARE GRANTED PROBATION, HOWEVER, AND
26 LATER VIOLATE A TERM OF PROBATION, YOU COULD BE

1 SENTENCED TO THE MAXIMUM TIME IN PRISON.

2 DO YOU UNDERSTAND THAT?

3 THE DEFENDANT: YES.

4 THE COURT: OKAY. DO YOU UNDERSTAND THAT IF
5 YOU ARE NOT A CITIZEN, THIS FELONY CONVICTION COULD
6 RESULT IN YOUR DEPORTATION, DENIAL OF NATURALIZATION OR
7 CITIZENSHIP OR EXCLUSION FROM ADMISSION TO THE
8 UNITED STATES?

9 DO YOU UNDERSTAND THAT?

10 THE DEFENDANT: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. OKAY. ON PAGE THREE,
12 LINE 21, THERE IS A STATEMENT OF THE FACTS OF THIS CASE.
13 IS THAT STATEMENT TRUE AND CORRECT?

14 THE DEFENDANT: YES, MA'AM.

15 THE COURT: OTHER THAN WHAT IS SET FORTH IN
16 THIS DOCUMENT, HAS ANYONE MADE ANY PROMISES TO YOU TO
17 GET YOU TO PLEAD GUILTY TODAY?

18 THE DEFENDANT: NO.

19 THE COURT: OKAY. DO YOU UNDERSTAND EVERYTHING
20 THAT IS GOING ON HERE TODAY?

21 THE DEFENDANT: YES, YES.

22 THE COURT: OKAY. ARE YOU PLEADING GUILTY
23 FREELY AND VOLUNTARILY AND BECAUSE YOU ARE GUILTY?

24 THE DEFENDANT: YES.

25 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT
26 ANYTHING THAT YOU WANT TO ASK YOUR ATTORNEY AT THIS

1 TIME?

2 THE DEFENDANT: NO, MA'AM.

3 THE COURT: OKAY. THE COURT FINDS A KNOWING,
4 VOLUNTARY AND INTELLIGENT WAIVER OF YOUR CONSTITUTIONAL
5 RIGHTS. I FIND THAT YOU UNDERSTAND THE CONSEQUENCES OF
6 YOUR GUILTY PLEA. AND I FIND THERE IS A FACTUAL BASIS
7 FOR THE GUILTY PLEA.

8 AS TO COUNT 3 OF THE INFORMATION, FELONY
9 POSSESSION OF A FIREARM BY A FELON ON MARCH 17TH, 2010,
10 HOW DO YOU PLEAD?

11 THE DEFENDANT: GUILTY.

12 MR. HENNES: COUNSEL JOINS.

13 THE COURT: THANK YOU.

14 AND DO YOU ADMIT THAT ON AUGUST 13TH, 1999 IN
15 CASE NUMBER 99WF1808 YOU SUFFERED A PREVIOUS CONVICTION?

16 THE DEFENDANT: YES.

17 THE COURT: DO YOU ADMIT THAT?

18 THE DEFENDANT: YES.

19 THE COURT: ALL RIGHT. HOW DO YOU PLEAD TO IN
20 COUNT 4, FELONY POSSESSION OF AMMUNITION BY A PROHIBITED
21 PERSON ON MARCH 17TH, 2010?

22 MR. HENNES: YOUR HONOR, I BELIEVE THAT'S A
23 WOBBLER. AND WOULD THAT BE -- WE'RE NOT -- WE'RE JUST
24 PLEADING TO THE CONVICTION. AND I THINK IT WOULD BE UP
25 TO THE COURT WHETHER TO SENTENCE IT AS A FELONY OR A
26 MISDEMEANOR.

1 THE COURT: WELL, AT THIS TIME IF HE'S PLEADING
2 TO THE COUNT AS CHARGED, HE WOULD BE PLEADING TO IT AS A
3 FELONY. IF DEFENSE WISHES TO MAKE A 17(B) MOTION LATER
4 ON, YOU'RE FREE TO DO THAT.

5 MR. HENNES: OKAY. THE MATTER MAY BE UP FOR
6 SENTENCING.

7 THE COURT: YES, THAT WOULD BE.

8 MR. HENNES: THANK YOU.

9 THE COURT: HOW DO YOU PLEAD, MR. NGUYEN, TO
10 FELONY POSSESSION OF AMMUNITION BY A PROHIBITED PERSON
11 ON MARCH 17TH, 2010?

12 THE DEFENDANT: GUILTY.

13 THE COURT: OKAY. LET'S SEE HERE. OKAY.

14 COUNSEL JOIN IN THE PLEADING, WAIVERS AND
15 FACTUAL BASIS?

16 MR. HENNES: I DO, YOUR HONOR.

17 MS. JONES: YOUR HONOR, COULD THE COURT CLARIFY
18 WITH THE DEFENDANT THAT THE CRIME HE WAS CONVICTED OF IN
19 THE '99 CASE WAS 12025(A)(1)(B)(3)?

20 THE COURT: ABSOLUTELY. ONE MOMENT.

21 AND THAT 12025(A)(1)(B)(3) WAS APPARENTLY
22 CARRYING A CONCEALED WEAPON BY A PERSON WHO IS AN ACTIVE
23 PARTICIPANT IN A CRIMINAL STREET GANG; IS THAT CORRECT,
24 MS. JONES?

25 MS. JONES: CORRECT.

26 THE COURT: AND YOU'RE ADVISING THAT WAS THE

1 VIOLATION.

2 AND DO YOU AGREE THAT THAT WAS THE SUBSTANCE OF
3 THE PRIOR CONVICTION?

4 THE DEFENDANT: YES.

5 THE COURT: ALL RIGHT.

6 MS. JONES: AND ALSO WE WOULD REQUEST THAT HE
7 UNDERSTAND HE'S WAIVING HIS RIGHT TO APPEAL AND HIS
8 FOURTH AMENDMENT RIGHTS DURING THE TIME HE'S ON
9 PROBATION OR PAROLE.

10 THE COURT: I'M SORRY? WHAT WAS THE LAST PART
11 OF THAT? "DURING THE"

12 MS. JONES: DURING THE TERM OF PROBATION OR
13 PAROLE.

14 THE COURT: OKAY. MR. NGUYEN, DO YOU
15 UNDERSTAND YOU'RE ALSO WAIVING YOUR FOURTH AMENDMENT
16 RIGHTS, MEANING HE'LL BE SUBJECT TO SEARCH AND SEIZURE
17 --

18 MS. JONES: RIGHT.

19 THE DEFENDANT: YES.

20 THE COURT: DURING THE TIME THAT YOU ARE ON
21 PAROLE. AND THAT YOU ARE SUBJECT TO SEARCH AND SEIZURE
22 ANYTIME OF DAY OR NIGHT WITH OR WITHOUT PROBABLE CAUSE?

23 THE DEFENDANT: YES.

24 THE COURT: AND THAT YOUR HOUSE AND EFFECTS ARE
25 ALSO SUBJECT TO SEARCH AND SEIZURE WITH OR WITHOUT A
26 WARRANT?

1 THE DEFENDANT: YES.

2 THE COURT: OKAY.

3 MS. JONES: HE'S FURTHER WAIVING HIS RIGHT TO
4 APPEAL?

5 THE COURT: YES. YOU ARE FURTHER WAIVING YOUR
6 APPEAL RIGHTS. DO YOU UNDERSTAND THAT?

7 THE DEFENDANT: YES.

8 THE COURT: ALL RIGHT. THANK YOU, COUNSEL.

9 MS. JONES: THANK YOU.

10 THE COURT: IS MR. NGUYEN ALSO WAIVING FORMAL
11 PROBATION REPORT OR NOT?

12 MR. HENNES: NO.

13 THE COURT: OKAY. SO WE'LL JUST SET HIS
14 SENTENCING DATE OUT AT THIS TIME.

15 DO WE NEED TO SET A SENTENCING DATE NOW? HE'S
16 ENTITLED TO BE SENTENCED WITHIN 20 DAYS OF TODAY'S DATE.

17 MR. HENNES: WE'LL WAIVE TIME FOR SENTENCING,
18 YOUR HONOR. I WOULD REQUEST THAT IF THERE IS ANY
19 SENTENCE ON THE CASE THAT WE'RE GOING TO BE OR THE
20 REMAINING COUNTS THAT, I GUESS, WE COULD JUST SET A
21 SENTENCING DATE WITH ENOUGH TIME TO DO A PROBATION
22 REPORT.

23 THE COURT: YES. LET'S GO AHEAD AND SET IT.
24 AND THEN WE CAN CERTAINLY ADJUST IT DEPENDING UPON WHAT
25 HAPPENS IN THE TRIAL.

26 MR. HENNES: YES.

1 MS. JONES: I DON'T THINK IT WOULD CHANGE THE
2 SENTENCING DATE ANYWAY BECAUSE YOU JUST SET IT OUT EIGHT
3 WEEKS EITHER WAY.

4 THE COURT: YOU DO EIGHT WEEKS? OKAY.

5 SO IF THAT'S BEYOND THE 20 DAYS, YOU WAIVE TIME
6 TO BE SENTENCED WITHIN 20 DAYS?

7 MR. HENNES: YES, YOUR HONOR.

8 THE COURT: OKAY. LET'S GO AHEAD AND SET IT
9 OUT THEN ON MAY 31. JUNE 1ST? MAY 31?

10 MS. JONES: THAT'S FINE.

11 THE COURT: LET'S GO AHEAD AND SET IT FOR
12 MAY 31ST. I THINK THAT'S ALL FOR NOW.

13 ANYTHING ADDITIONAL THAT I HAVE MISSED,
14 COUNSEL?

15 MS. JONES: NO, YOUR HONOR.

16 THE COURT: OKAY. NOW, LET'S MOVE ON TO THE
17 TRIAL ISSUES. THERE WERE A FEW 402 ISSUES THAT WE
18 INITIALLY SPOKE ABOUT BACK ON MARCH THE 30TH.

19 AND SINCE THEN THE COURT HAS RECEIVED BRIEFS
20 FROM THE DISTRICT ATTORNEY FILED TODAY. I HAVE RECEIVED
21 A TRIAL BRIEF. I HAVE READ AND CONSIDERED THAT.

22 I RECEIVED -- IN ADDITION TO DEFENDANT'S TRIAL
23 BRIEF FILED ON APRIL 1ST, I RECEIVED A SUPPLEMENTAL
24 MEMORANDUM OF POINTS AND AUTHORITIES. AND WE'LL GO
25 AHEAD.

26 IS COUNSEL READY TO MOVE FORWARD ON THE 402

1 ISSUES?

2 MR. HENNES: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MS. JONES: AND A POINT OF CLARIFICATION AS TO
5 THE ISSUES.

6 THE COURT: YES.

7 MS. JONES: THERE WAS AN ISSUE BROUGHT UP AS TO
8 THE PURPOSE OF THE OFFICERS IN SEARCHING THE DEFENDANT'S
9 SHOP THAT DATE. AND THE PARTIES HAVE DISCUSSED THAT
10 ISSUE AND AGREED THAT WE WILL STATE THAT THEY WERE THERE
11 FOR AN UNRELATED PURPOSE.

12 AND THEY'RE NOT TO SPECULATE AS TO THE PURPOSE
13 THAT THEY WERE THERE, WHETHER IT WAS WHATEVER KIND OF
14 INVESTIGATION, THEY WERE THERE. BOTH OF US HAVE AGREED
15 WE WILL NOT APPROACH THAT SUBJECT.

16 THE COURT: ALL RIGHT. SO YOU CAN ADVISE YOUR
17 WITNESSES NOT TO EVEN INADVERTENTLY COME OUT WITH THAT
18 PARTICULAR INFORMATION. ALL RIGHT.

19 I GUESS ONE ISSUE IS WHETHER NOW THAT THE
20 PLEA HAS BEEN TAKEN -- EVIDENCE OF THE EVIDENCE OF
21 THE COUNTS 3 AND 4 WILL BE ABLE TO BE USED IN THE
22 PROSECUTION'S CASE IN CHIEF.

23 IS THERE ANY ADDITIONAL ARGUMENT IN ADDITION TO
24 WHAT WAS SET FORTH IN THE BRIEFS, COUNSEL, THAT YOU WANT
25 TO SAY AT THIS TIME BEFORE I MAKE MY RULING?

26 MS. JONES: NO! AT THIS POINT, YOUR HONOR.

1 MR. HENNES: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT. WHOSE MOTION WAS THAT?

3 MR. HENNES: DEFENSE MOTION.

4 THE COURT: THAT WAS THE DEFENSE MOTION TO
5 PRECLUDE. THAT MOTION IS DENIED.

6 I FIND THAT THE PROSECUTION'S ARGUMENT IS MORE
7 PERSUASIVE. AND THAT EVIDENCE OF THAT WOULD BE ELICITED
8 RELATIVE TO COUNTS 3 AND 4 WILL BE ADMITTED.

9 THE JURY WILL BE ABLE TO HEAR EVIDENCE THAT THE
10 DEFENDANT DID POSSESS THOSE OTHER ITEMS. IT DOES GO TO
11 KNOWLEDGE, DOMINION AND CONTROL, POSSIBLY AS TO COUNTS 1
12 AND 2.

13 OF COURSE, THERE WILL NOT BE ABLE TO BE ANY
14 TESTIMONY ABOUT THE UNDERLYING OFFENSE FOR WHICH
15 DEFENDANT IS A FELON. HOWEVER, THE FACT THAT HE WAS A
16 FELON IN POSSESSION OF A FIREARM CAN BE ELICITED AND IS
17 RELEVANT.

18 COUNSEL, DID YOU HAVE A RESPONSE?

19 MR. HENNES: IS THE COURT RULING THAT THE JURY
20 MAY HEAR EVIDENCE THAT MY CLIENT IS A CONVICTED FELON?

21 THE COURT: WELL, YES. OTHERWISE, JUST LIKE
22 YOU POINT OUT ON YOUR PAPERS, IF THE AMMUNITION CAN BE
23 POSSESSED BY ANYONE AND IT'S LEGAL TO POSSESS THAT
24 AMMUNITION AS SET FORTH IN COUNT 4, THE JURY WOULD BE
25 LEFT TO SPECULATE, "WELL, IT'S LEGAL. WHY IS IT THEN
26 ILLEGAL?"

1 MR. HENNES: YOUR HONOR, WHY IS THERE A
2 REFERENCE TO THE AMMUNITION OR THE OTHER RIFLE THAT IS
3 NOT AN ASSAULT WEAPON AT ALL? HOW ARE THOSE RELEVANT TO
4 THE ISSUES OF WHETHER MR. NGUYEN ATTEMPTED TO POSSESS AN
5 ASSAULT WEAPON, BECAUSE THE RIFLE, THE COMPLETED RIFLE
6 DIC IS NOT AN ASSAULT WEAPON.

7 IT DOES NOT COME UNDER THE DEFINITION OF
8 ASSAULT WEAPONS. IT'S LEGAL AS A MATTER OF FACT, BUT IT
9 IS NOT UNDER THE IT IS NOT A TYPE OF ASSAULT WEAPON.
10 IT'S, YOU KNOW, IT'S SIMPLY AN ILLEGAL FIREARM.

11 AND I'M HAVING TROUBLE UNDERSTANDING WHY THE
12 COURT WOULD RULE THAT ANY OF THE AMMUNITION FOR THAT
13 LEGAL RIFLE WOULD BE ADMITTED TO THE -- IN FRONT OF THE
14 JURY BECAUSE IT'S NOT AN ISSUE BEFORE THEM. WHAT IS AN
15 ISSUE IS THE ASSAULT WEAPON, WHICH IS THE AK-47 PART
16 KIT.

17 THE COURT: ONE OF THE COMPONENTS THAT THE
18 PEOPLE HAVE TO PROVE IS DEFENDANT'S KNOWLEDGE THAT HE
19 KNEW OR REASONABLY SHOULD HAVE KNOWN THAT IT HAD
20 CHARACTERISTICS OF AN ASSAULT WEAPON.

21 HE'S GOT TO KNOW THE NATURE OF WHAT HE'S
22 POSSESSING AND AS OPPOSED TO HAVING AN INNOCENT, SORT
23 OF -- HE'S GOT AN INNOCENT POSSESSION OF IT.

24 IN OTHER WORDS, "I DIDN'T REALLY KNOW THAT THIS
25 WAS SOMETHING THAT WAS ILLEGAL. THIS IS JUST A HOBBY OF
26 MINE. I'M JUST FIDDLING AROUND WITH THESE THINGS,"

1 VERSUS IF HE HAD ELEVATED KNOWLEDGE, IF YOU WILL, OR
2 SPECIFIC KNOWLEDGE ABOUT THESE TYPES OF WEAPONS.

3 AND THE COURT FINDS THAT HIS HAVING ALREADY
4 ASSEMBLED ONE OF THESE VERY SIMILAR WEAPONS WOULD HAVE
5 SOME TENDENCY AND REASON TO SHOW THOSE PARTICULAR
6 ELEMENTS. SO THAT IS THE CONNECTION THAT THE COURT
7 MADE.

8 MR. HENNES: I WOULD JUST POINT OUT FOR THE
9 RECORD, YOUR HONOR, THAT THE DEFENDANT WAS ARRESTED FOR
10 HAVING .50 CALIBER BMG, WHICH WAS THE RIFLE IN QUESTION.

11 THAT IS NOT -- THE INFORMATION CHARGES
12 MR. NGUYEN WITH VIOLATING THE CODE BY POSSESSING A
13 WEAPON THAT WAS IN VIOLATION OR THAT IS DESCRIBED BY
14 PENAL CODE 12276 AND 12276.1.

15 THOSE -- NEITHER OF THOSE SECTIONS HAS ANYTHING
16 TO DO WITH THE BMG/DTC WEAPON. I MEAN, THEY'RE NOT --
17 IT'S JUST ANOTHER ILLEGAL WEAPON TO HAVE. AND THEY'RE
18 NOT EVEN --- THEY ARE NOT SIMILAR AT ALL.

19 AND MERELY BECAUSE HE WAS ABLE TO BUY THE
20 PARTS, YOU KNOW, TO MAKE A LEGAL DTC HAS NO BEARING ON
21 HIS KNOWLEDGE TO MAKE AN ASSAULT RIFLE AS DESCRIBED IN
22 12276 AND 12276.1.

23 I MEAN, TO THE UNINITIATED, I GUESS, FOR THE ---
24 A BIG GUN IS A BIG GUN, OR IT'S IN THE SAME PORTION OF
25 THE PENAL CODE UNDER THE ASSAULT WEAPONS ACT, BUT IT IS
26 NOT BY DEFINITION AN "ASSAULT WEAPON." I'M TALKING

1 ABOUT THE DTC.

2 AND FURTHERMORE THAT, YOU KNOW, BECAUSE THAT
3 DTC WAS OTHERWISE, IT WAS LEGAL TO OWN, WOULD HAVE NO
4 TENDENCY AND LOGIC OR REASON TO PROVE THAT MR. NGUYEN
5 INTENDED TO MAKE AN ILLEGAL WEAPON.

6 I MEAN, IF HE MADE A LEGAL ONE, YOU KNOW, I DO
7 NOT BELIEVE THAT, YOU KNOW, THAT TYPE OF EVIDENCE WOULD
8 PROVE THAT HE INTENDED TO MAKE AN ILLEGAL ONE.

9 AND FURTHERMORE, THESE WEAPONS CAN BE MADE
10 LEGALLY AND THEY ARE ALL THE TIME, WHICH I THINK IS
11 GOING TO BE MORE SO FOR THE PROSECUTION. BUT I ALSO, AS
12 I SAID IN MY PAPER, I JUST THINK IT'S PREJUDICIAL TO BE
13 WAVING THESE GUNS AROUND.

14 AND FURTHERMORE, THE AMMUNITION WOULD NOT SHOW
15 ANY KNOWLEDGE WHATSOEVER OF HOW TO CONSTRUCT ANY KIND OF
16 A WEAPON, SO I WOULD ASK THE COURT CERTAINLY TO EXCLUDE
17 THAT. IT HAS NO BEARING ON ANY ISSUE OF THIS CASE THAT
18 REMAINS.

19 THE COURT: DO YOU HAVE A RESPONSE, MADAM
20 PROSECUTOR?

21 MS. JONES: YOUR HONOR, AS SET FORTH IN MY
22 MOTION, IT GOES TO THE DEFENDANT'S INTENT, HIS MOTIVE
23 AND HIS SPECIFIC ELEVATED AND EXTENSIVE KNOWLEDGE OF HOW
24 TO COMPLETE, MANUFACTURE AND COMPLETE FIREARMS AND THAT
25 HE'S ALREADY DONE SO AND DID SO IN SUBSTANTIALLY THE
26 SAME MANNER BY GATHERING TOGETHER THE LOWER AND ADDING

1 TO IT. AND HE HAS SUCCESSFULLY COMPLETED A RATHER
2 DETAILED PROCESS OF MANUFACTURING OF AN ASSAULT WEAPON
3 ONCE ALREADY.

4 HE ALSO TALKS ABOUT HOW HE KNOWS THAT THE --
5 WHEN HE'S TALKING ABOUT THAT OTHER WEAPON, HE'S TALKING
6 ABOUT HOW HE PULLED THINGS UP ON THE INTERNET. HE KNOWS
7 THE DIFFERENCE BETWEEN LEGAL AND ILLEGAL. HE KNOWS HOW
8 TO CIRCUMVENT OBTAINING THE PIECES THAT HE CAN'T GET
9 THAT ARE ILLEGAL.

10 AND HE'S DONE THAT BECAUSE HE SUCCESSFULLY
11 CONSTRUCTED ANOTHER VERY SIMILAR WEAPON. IT'S HIGHLY
12 PROBATIVE. AND THE AMMUNITION GOES TO THE FACT THAT
13 HE'S IN THE BUSINESS OF CREATING WEAPONS, NOT TINKERING.

14 I WOULD SUBMIT.

15 THE COURT: FINAL, COUNSEL?

16 MR. HENNES: YEAH. THE FACT THAT HE WAS ABLE,
17 THAT HE BUILT ONE LEGAL WEAPON HAS NO BEARING OR IT IS
18 OF NO VALUE TO PROVE THAT HE KNEW THAT HE WAS GOING TO
19 BUILD AN ILLEGAL ONE.

20 THERE IS JUST SIMPLY NO LOGICAL CONNECTION
21 BETWEEN THE TWO. MERELY JUST BECAUSE HE KNEW THAT HE
22 COULD FOLLOW DIRECTIONS AND BUILD A WEAPON IN NO WAY
23 PROVES AN ILLEGAL INTENT. IN FACT, IT PROVES THE
24 OPPOSITE.

25 IF HE BUILT A LEGAL ONE, WHICH, YOU KNOW, AS
26 COUNSEL SAID PREVIOUSLY, HE WAS JUST SKIRTING THE LAW OR

1 HOWEVER SHE WANTS TO PUT IT, THE FACT THAT HE BUILT A
2 LEGAL ONE MEANS THAT HE WAS GOING TO BUILD A LEGAL AKA.
3 AND TO SHOW CRIMINAL INTENT IT HAS NO VALUE IN MY
4 OPINION, BUT --

5 THE COURT: SUBMITTED?

6 MS. JONES: SUBMITTED.

7 THE COURT: OKAY. THAT MOTION IS DENIED.

8 THERE WAS ALSO ON MR. HENNES'S MEMORANDUM A
9 MOTION TO EXCLUDE ALL EVIDENCE AND TESTIMONY CONCERNING
10 THE ALLEGED INSURANCE FRAUD INVESTIGATION. THAT IS
11 POINT NUMBER ONE ON HIS SUPPLEMENTAL MEMORANDUM. THAT
12 MOTION IS GRANTED.

13 POINT NUMBER TWO ON HIS SUPPLEMENTAL MEMORANDUM
14 IS MOVING THE COURT TO EXCLUDE THE DEFENDANT'S RECORDED
15 STATEMENTS THAT WERE NOT PROVIDED TO DEFENDANT'S
16 ATTORNEY BEFORE TRIAL.

17 I'M NOT AWARE OF WHAT YOU'RE TALKING ABOUT,
18 COUNSEL. PERHAPS YOU COULD EXPLAIN. OR PERHAPS
19 MADAM PROSECUTOR MIGHT KNOW AND MIGHT BE ABLE TO ADDRESS
20 IT.

21 MS. JONES: THERE'S A TAPED RECORDING
22 REFERENCED IN THE POLICE REPORT. THE SUBSTANCE OF THE
23 TAPE-RECORDING IS WITHIN THE NARRATIVE OF THE POLICE
24 REPORT.

25 I BELIEVE I DID PROVIDE THE DISK. I DON'T HAVE
26 A RECEIPT FOR IT AT THIS POINT, BUT I GAVE IT TO DEFENSE

1 IN PRETRIALS. HOWEVER, I'VE HAD THE OPPORTUNITY TO TALK
2 ABOUT IT. HE'S AGREED THAT THE SUBSTANCE OF IT HAS BEEN
3 DISCOVERED.

4 I WILL COPY ANOTHER DISK OF THE ACTUAL TAPE.
5 AND WE ARE WORKING ON REDACTING THE PARTS THAT ARE
6 IRRELEVANT. AND I HAVE PROPOSED THE PLACE WHERE I WILL
7 STOP IN THE TAPE BASED ON THE COURT'S RULINGS.

8 AND I GUESS WE'LL NEED TO COME TO AN AGREEMENT
9 ON THAT OR IF THERE'S SOME PART IN OR IN ADDITION THE
10 DEFENSE COUNSEL WANTS REDACTED, THEN WE WOULD NEED TO
11 ADDRESS THAT WITH THE COURT, BUT I THINK WE ARE AT AN
12 AGREEMENT.

13 THE COURT: IS THAT TRUE, MR. HENNES?

14 MR. HENNES: YES. I CONCUR WITH THAT.

15 THE COURT: ALL RIGHT. THAT MOTION WILL BE
16 DENIED.

17 WITH RESPECT TO NUMBER THREE, THE COURT SHOULD
18 EXCLUDE ALL REFERENCES TO ALLEGED FIREARM AND FIREARM
19 PARTS IN DEFENDANT'S POSSESSION AS QUOTE, "ASSAULT
20 WEAPONS" OR "ASSAULT RIFLES."

21 MR. HENNES: THE BASIS -- IF I MAY, YOUR HONOR?

22 THE COURT: YES, PLEASE.

23 MR. HENNES: I DIDN'T HAVE THAT MUCH TIME, SO I
24 JUST THREW THAT IN.

25 THE BASIS FOR MY MOTION IN THAT REGARD IS IN
26 THE INSTRUCTION DEFINING AN UNLAWFUL RIFLE THE

1 INSTRUCTION TO THE COURT IS TO REFRAIN FROM REFERRING TO
2 THE PARTICULAR WEAPON AT ISSUE AS AN "ASSAULT RIFLE," I
3 THINK, OR AS AN "ASSAULT WEAPON," OR A "BMG" BECAUSE
4 THAT'S THE ULTIMATE FACT TO BE DETERMINED. IF YOU CALL
5 SOMETHING AN ASSAULT WEAPON, IT'S ILLEGAL.

6 SO I JUST WAS LOOKING THROUGH THE POLICE
7 REPORT. AND IT'S RIFE WITH, I THINK, LOOSE TERMINOLOGY
8 BY THE POLICE. AND, YOU KNOW, UNDERSTANDABLE THAT
9 EVERYONE THINKS THAT AN ASSAULT WEAPON IS - THAT
10 EVERYTHING IS AN ASSAULT WEAPON, YOU KNOW, EVERY AK-47
11 IS AN ASSAULT WEAPON, WHEN THAT IS NOT AT ALL TRUE.

12 IT'S JUST GOING TO BE A CENTERFIRE RIFLE AS
13 LONG AS IT'S WITHIN THE RESTRICTIONS OF CALIFORNIA LAW,
14 SO THEREBY SAYING "ASSAULT RIFLE" OR "ASSAULT WEAPON,"
15 THAT'S ALREADY ASSUMING.

16 IT'S MAKING THE LEAP FOR THE JURY, I THINK,
17 BECAUSE IT'S ALREADY ILLEGAL WITHOUT LOOKING AT THE
18 DEFINING CHARACTERISTICS OF THE PARTICULAR, YOU KNOW,
19 PIECE OF PROPERTY, THE PARTICULAR RIFLE TO DETERMINE
20 WHETHER IT IS OR ISN'T AN ASSAULT WEAPON.

21 THE COURT: I UNDERSTAND YOUR POINT. I TEND TO
22 AGREE.

23 MADAM PROSECUTOR, DO YOU HAVE A RESPONSE TO
24 THAT?

25 MS. JONES: YEAH. I THINK THAT THE .50 CALIBER
26 DTIC SHOULD BE REFERRED TO AS JUST THAT. I'M NOT --

1 THE COURT: SO THE COURT WILL PRECLUDE THEN
2 REFERENCES TO THE FIREARM OR PARTS AS "ASSAULT WEAPONS"
3 OR "ASSAULT RIFLES." AND COUNSEL IS ADVISED TO -- OR
4 ORDERED, RATHER, TO ADVISE THE WITNESSES THAT THEY NEED
5 TO QUALIFY THEIR LANGUAGE OR TEMPER THEIR LANGUAGE
6 ACCORDINGLY. SO THAT MOTION IS GRANTED.

7 AND THE ISSUE RAISED IN DEFENDANT'S INITIAL
8 TRIAL BRIEF, THE ONE ISSUE RAISED, WHICH IS WHETHER
9 EVIDENCE UNDERLYING COUNT 3 AND 4 WILL BE ABLE TO BE
10 ELICITED IN THE PROSECUTION'S CASE.

11 THAT MOTION -- THE MOTION IS TO PRECLUDE. AND
12 THE COURT IS DENYING THAT MOTION.

13 MR. HENNES: IS THAT WITHOUT PREJUDICE, YOUR
14 HONOR? IF I FIND SOME OTHER AUTHORITY, WILL YOU REVISIT
15 THAT RULING?

16 THE COURT: SURE. ABSOLUTELY.

17 MR. HENNES: THANK YOU.

18 THE COURT: THE ISSUES IN THE PROSECUTION'S
19 TRIAL BRIEF -- THERE ARE TWO OF THEM. ONE OF THEM IS
20 WHETHER DEFENDANT IS ENTITLED TO AN ADVISORY OPINION.
21 THAT ISSUE IS MOOT.

22 AND THE SECOND ISSUE ASKS THAT TALKS ABOUT,
23 RATHER -- OH, THAT ISSUE IT'S NOT PHRASED IN TERMS OF
24 ISSUE, BUT IT IS GRANTED BECAUSE THE COURT ALREADY RULED
25 ON IT WHETHER IF DEFENDANT PLEADS TO COUNTS 3 AND 4 THAT
26 EVIDENCE CAN BE ADMITTED ON HIS INTENT AND KNOWLEDGE.

1 AND I ALREADY SAID THAT IT COULD.

2 OKAY. THE DEFENDANT ALSO PRESENTED TO THE
3 COURT AND I ASKED TO SEE WHAT APPEARS TO BE A FLOW
4 CHART. AND WITHOUT A FOUNDATION OR OTHER EVIDENCE
5 SHOWING ITS RELEVANCE, THAT WILL BE NOT ADMITTED UNLESS
6 SOMETHING ELSE -- UNLESS DEFENDANT PRESENTED SOMETHING
7 ELSE. AND I'M RETURNING THESE TWO COPIES TO THE DEFENSE
8 RIGHT NOW.

9 THERE WAS ALSO A COPY OF A LETTER TO THE -- OR
10 FROM THE ATTORNEY GENERAL DATED MAY 1ST, 2003 THAT
11 DEFENSE COUNSEL HAD REFERENCED. AND THE COURT IS NOT
12 RELYING ON ANYTHING CONTAINED IN THIS LETTER, SO I WILL
13 KEEP A COPY OF IT IN THE FILE.

14 BUT IS THERE ANYTHING ELSE BEFORE WE GO THROUGH
15 THE JURY INSTRUCTIONS?

16 MS. JONES: THERE IS, YOUR HONOR. A NEW ISSUE
17 CAME UP THIS MORNING. DEFENSE VERBALLY ADVISED ME THAT
18 THERE IS NOW A DEFENSE EXPERT BY THE NAME OF
19 MICHAEL PENHALL.

20 I AM REQUESTING COMPLIANCE WITH DISCOVERY AND
21 THAT I RECEIVE A SUMMARY OF HIS OPINIONS, SPECIFICALLY
22 WHAT HE IS BASING HIS OPINIONS ON AND AN OFFER OF PROOF
23 AS TO THE RELEVANCE OF THIS PERSON'S TESTIMONY.

24 THE COURT: FIRST OFFER OF PROOF, COUNSEL?

25 MR. HENNES: WELL, THE OFFER OF PROOF IS THAT
26 HE'S EXPERIENCED IN THE PARTICULAR RIFLE, THE AK-47 AND

1 THE AR-15. HE HAS A FEDERAL LICENSE TO DEAL IN
2 FIREARMS. HE RECEIVES GUN KITS SUCH AS THE ONE AT ISSUE
3 HERE AND ALSO COMPLETED RIFLES FREQUENTLY FOR RESALE.

4 I HAVE ONLY HAD A RATHER BRIEF CONVERSATION
5 WITH MR. PENHALL SINCE I ONLY SPOKE WITH HTM FOR THE
6 FIRST TIME YESTERDAY. I EXPECT TO HAVE MORE INFORMATION
7 BY THIS EVENING, SO I WILL BE ABLE TO PRESENT A MUCH
8 MORE DETAILED OFFER OF PROOF BY TOMORROW MORNING.

9 BUT HE IS AN EXPERT IN THE FIELD OF WHAT IS NOT
10 AN ASSAULT WEAPON BECAUSE HE HAS TO COMPLY WITH THE LAW
11 IN, YOU KNOW, HIS TRANSACTIONS WITH THE PUBLIC.

12 HE'S ALSO FAMILIAR WITH THE DEVICES KNOWN AS A
13 BULLET BUTTON OR MAGAZINE LOCK THAT WOULD MAKE AN
14 OTHERWISE ILLEGAL WEAPON LEGAL, PERFECTLY LEGAL AND HOW
15 SUCH A DEVICE IS INSTALLED, WHEN IT'S INSTALLED.

16 ALSO WHAT HE WOULD -- WILL LIKELY TESTIFY AS TO
17 HOW FAR ALONG IN THE BUILD OF THIS PARTICULAR AK THE
18 DEFENDANT WAS WHEN HE WAS ARRESTED, HOW MUCH MORE HE HAD
19 LEFT TO DO, WHETHER IT WAS A -- WHETHER THE DEFENDANT
20 HAD A RECEIVER THAT WAS CAPABLE OF ACCEPTING A
21 DETACHABLE MAGAZINE AND WHAT STEPS WOULD BE REQUIRED TO
22 COMPLETE THE PROCESS OF MAKING IT A FUNCTIONAL AK-47
23 LEGAL OR NOT.

24 SO THOSE ARE THE GENERAL AREAS.

25 THE COURT: DO YOU HAVE A RESPONSE,
26 MADAM PROSECUTOR? I KNOW YOU DO.

1 MS. JONES: YES. FIRST OF ALL, WHAT IS AN
2 ASSAULT WEAPON CAN'T BE TESTIFIED TO BECAUSE THAT'S THE
3 ULTIMATE FACT. HE CAN'T RENDER A LEGAL OPINION.

4 WHETHER THERE'S A BULLET BUTTON OR NOT IS
5 IRRELEVANT BECAUSE THE DEFENSE -- THE DEFENDANT DIDN'T
6 HAVE A BULLET BUTTON WHICH MIGHT MAKE IT LEGAL IF THAT
7 WERE THE FACT.

8 HE HAS PROVIDED -- IT'S A HUGE BREACH OF
9 DISCOVERY IN THAT I'VE RECEIVED NOTHING. I DON'T KNOW
10 WHAT HE'S GOING TO TESTIFY TO. I CAN'T REVIEW IT. I'D
11 ASK THAT IT BE EXCLUDED AT THIS POINT.

12 MR. HENNES: WELL,

13 THE COURT: OR, IN THE ALTERNATIVE, AN
14 ADMONITION THROUGH THE JURY INSTRUCTION?

15 MS. JONES: CORRECT.

16 THE COURT: WHAT'S YOUR RESPONSE, COUNSEL,
17 FINAL?

18 MR. HENNES: WELL, YEAP. I DON'T -- I COULDN'T
19 PRODUCE THE INFORMATION THAT I DIDN'T POSSESS. AND
20 BELIEVE ME, I WASN'T WAITING UNTIL SUNDAY BEFORE TRIAL
21 TO TRY TO FIND SOMEONE THAT WOULD BE ABLE TO TESTIFY AS
22 AN EXPERT.

23 I DON'T HAVE ANY MORE NOTICE THAN THE PEOPLE
24 WILL, YOU KNOW, EXCEPT FOR MAYBE A FEW HOURS. I BELIEVE
25 IT WILL BE HIGHLY RELEVANT TESTIMONY. THE PROSECUTION
26 IS GOING TO BE PRESENTING A WITNESS WHO IS GOING TO BE

1 AN EXPERT.

2 I KNOW THAT I READ REPORTED APPELLATE CASES IN
3 WHICH -- THEY CALL IT AN FBI. IT'S A PERSON WITH A
4 FEDERAL FIREARM LICENSE TO DEAL WITH GUNS HAS TESTIFIED,
5 ACTUALLY FOR THE PROSECUTION AS AN EXPERT WITNESS IN THE
6 SAME AREA OF ASSAULT WEAPONS.

7 SO CERTAINLY COUNSEL SAYS HE WANTS TO ARRIVE AT
8 THE TRUTH. I MEAN, THIS IS WHEN THIS IS CALL HE ALL,
9 BUT, I MEAN, THERE'S NOT GOING TO BE ANY SURPRISES. AND
10 I WILL TRY TO PROVIDE ANY INFORMATION I CAN BEFORE THE
11 EXPERT WOULD TESTIFY, WHICH I DON'T THINK WOULD BE
12 BEFORE WITNESS ANYWAY AT THIS RATE.

13 THE COURT: NOW THIS CASE HAS BEEN GOING ON FOR
14 A WHILE. ARE YOU SAYING THAT YOU JUST GOT AHEAD OF AN
15 EXPERT?

16 MR. HENNES: WELL, I DID HAVE ONE WHO HAD
17 EXPRESSED WILLINGNESS TO TESTIFY AND THAT WAS SOME WEEKS
18 AGO.

19 UNFORTUNATELY, FOR SOME REASON I THINK IT
20 WAS FAMILY OR PERSONAL REASONS HE OPTED OUT. HE
21 INFORMED ME -- THIS WAS ABOUT A WEEK AGO -- THAT HE
22 WOULD NOT BE ABLE TO ASSIST US IN THE CASE. SO I HAD TO
23 SCRAMBLE AND TRY TO FIND SOMEBODY ELSE, WHICH I DID.

24 MS. JONES: YOUR HONOR, WE MADE AN APPOINTMENT
25 AT THE DEFENSE REQUEST TO MAKE ALL OF THE EVIDENCE
26 AVAILABLE AT THE SHERIFF'S DEPARTMENT SHOOTING RANGE AND

1 THE DEFENSE WILL APPEAR WITH ANOTHER INDIVIDUAL AND
2 REVIEWED ALL OF THE EVIDENCE.

3 THAT'S AN INDIVIDUAL. AND HE REPRESENTED AT
4 THAT TIME HE WAS WASN'T GOING TO HAVE AN EXPERT. AND
5 THAT INDIVIDUAL IS DIFFERENT FROM THE ONE WE'RE BEING
6 ADVISED OF TODAY.

7 MR. HENNES: I DID NOT SAY I WAS NOT GOING TO
8 HAVE AN EXPERT. I SAID I DID NOT HAVE ONE. I DID NOT
9 SAY I WAS NOT GOING TO HAVE ONE.

10 MS. JONES: I'D REQUEST WHATEVER DISCOVERY
11 THERE IS BY TOMORROW MORNING SO WE HAVE THE OPPORTUNITY
12 TO REVIEW IT.

13 MR. HENNES: I CERTAINLY MAKE EVERY EFFORT TO
14 COMPLY WITH THAT.

15 THE COURT: ALL RIGHT. IS THERE ANYTHING
16 ADDITIONAL ON THE 402'S, COUNSEL?

17 MS. JONES: NO. I JUST RESERVED THE
18 OPPORTUNITY TO ADDRESS THE EXPERT AGAIN.

19 THE COURT: CERTAINLY. OKAY. LET'S GO TO THE
20 PROPOSED JURY INSTRUCTIONS STARTING WITH NUMBER 200
21 BECAUSE I WILL PREINSTRUCT ON THE 100 SERIES. OKAY.

22 200, DUTIES OF JUDGE AND JURY: I'LL GET THAT.
23 201, DO NOT INVESTIGATE. YES. 202, NOTE-TAKING. YES.

24 220, REASONABLE DOUBT: I'LL GIVE THAT ONE.

25 222, EVIDENCE. YES. 223, DIRECT AND CIRCUMSTANTIAL
26 EVIDENCE. YES. 224, CIRCUMSTANTIAL EVIDENCE,

1 SUFFICIENCY OF EVIDENCE. YES.

2 225, CIRCUMSTANTIAL EVIDENCE, INTENT OR MENTAL
3 STATE. YES. 226, WITNESSES. YES.

4 250? 250? LET ME SEE THAT. AREN'T THESE BOTH
5 ATTEMPTS?

6 MS. JONES: OH, BECAUSE WE HAD COUNT 3 AND 4.

7 THE COURT: ALL RIGHT. SO THAT IS WITHDRAWN.

8 MR. HENNES: STRIKE THEM.

9 THE COURT: 251, YES. UNION OF ACT,
10 SPECIFICALLY ACT OF INTENT, THAT WILL BE GIVEN.

11 I THINK 252 WILL BE -- DO WE NEED 252?

12 MS. JONES: NO.

13 THE COURT: WITHDRAWN. THAT IS UNION OF ACT
14 AND INTENT, GENERAL AND SPECIFIC INTENT TOGETHER. WELL,
15 ACTUALLY, YES, LET ME REVISIT. I'M GOING TO PUT A
16 QUESTION MARK THERE.

17 MS. JONES: OKAY.

18 THE COURT: COUNSEL HAVE ANY INPUT?

19 MR. HENNES: NO. I'M STILL READING IT.

20 THE COURT: OH, OKAY. LET ME HOLD ON ONE
21 MOMENT. 252?

22 MR. HENNES: I WOULD SAY REVISIT IT. I DON'T
23 KNOW. IT MIGHT BE CUMULATIVE.

24 THE COURT: YEAH. I HAVE A QUESTION MARK
25 THERE. SO LET'S MOVE ON TO 300, YES, ALL AVAILABLE
26 EVIDENCE.

1 301, SINGLE WITNESS'S TESTIMONY. YES.

2 302, EVALUATING CONFLICTING EVIDENCE. YES.

3 POSSIBLY 306. 306 IS UNTIMELY DISCLOSURE OF
4 EVIDENCE. I'M GOING TO PUT IT IN THERE WITH A QUESTION
5 MARK. I WILL RESERVE MY RULING ON IT.

6 ON TO 332, EXPERT WITNESS TESTIMONY. YES.

7 333, OPINION TESTIMONY OF LAY WITNESS. YES.

8 355 AND 358. I'M GOING TO PUT A QUESTION MARK
9 NEXT TO BOTH DEPENDING ON THE STATE OF THE CASE, WHETHER
10 DEFENDANT TESTIFIES OR NOT. EVIDENCE OF THE --

11 MS. JONES: OH, WAIT A MINUTE. ON 358, I THINK
12 THAT WOULD BE.

13 THE COURT: ABSOLUTELY. 358 IS IN. AND 355
14 HAS A QUESTION MARK DEPENDING UPON WHETHER MR. NGUYEN
15 TESTIFIES OR NOT. 359, CORPUS DELICTI: I WILL GIVE
16 THAT IF MR. NGUYEN TESTIFIES.

17 MR. HENNES: DO YOU WANT 362, YOUR HONOR?

18 THE COURT: I WAS ON 361, ACTUALLY, BUT I'M
19 GOING ON TO 362 NOW.

20 MR. HENNES: I WOULD THINK THE COURT -- ON
21 362 --- THE COURT WOULD HAVE TO RESERVE RULING ON THAT
22 ONE.

23 THE COURT: YES, 362 -- 361 AND 362. 361, I'LL
24 REVISIT THAT BASED ON THE EVIDENCE IF MR. NGUYEN
25 TESTIFIES, AS WELL AS 362, "CONSCIOUSNESS OF GUILT."

26 WHAT'S YOUR RESPONSE, MADAM PROSECUTOR?

1 MS. JONES: I THINK THAT THERE ARE STATEMENTS
2 BY THE DEFENDANT THAT SHOW CONSCIOUSNESS OF GUILT AND IN
3 HIS EXPLANATIONS FOR HAVING THE WEAPONS.

4 THE COURT: AND I WOULD AGREE THAT THAT COULD
5 BE TRUE. AND SO I WILL GIVE THAT.

6 MR. HENNES: YOUR HONOR --

7 THE COURT: YES, COUNSEL.

8 MR. HENNES: -- ON 362, YEAH, WELL, THE
9 INSTRUCTION SAYS, "HE MADE A FALSE OR MISLEADING
10 STATEMENT BEFORE THE TRIAL." AND I WOULD SUBMIT THAT
11 THAT ISN'T NECESSARILY GOING TO BE THE EVIDENCE.

12 THE COURT: OKAY.

13 MR. HENNES: SO I'M NOT AWARE OF ANY FALSE OR
14 MISLEADING STATEMENT THAT DEFENDANT GAVE TO THE POLICE.
15 I THINK HE PRETTY MUCH TOLD THEM EVERYTHING. SO I WOULD
16 ASK THAT THE COURT RESERVE THE RULING ON THAT ONE
17 BECAUSE I DON'T KNOW WHAT HE TOLD THEM.

18 I MEAN, HE MAY HAVE SAID SOMETHING THAT
19 EVIDENCED CONSCIOUSNESS OF GUILT, BUT IT SAYS "A FALSE
20 OR MISLEADING STATEMENT" ON 362.

21 THE COURT: WELL, IF THE PROSECUTION'S EVIDENCE
22 IS THAT THE DEFENDANT MADE SEVERAL STATEMENTS TO THE
23 OFFICERS, AND IF THE PROSECUTION THEN ARGUES THAT SOME
24 OF THOSE STATEMENTS WERE EITHER MISLEADING OR NOT
25 CORRECT, OR INACCURATE, THEY CAN STILL ARGUE THAT IT WAS
26 A CONSCIOUSNESS OF GUILT.

1 MR. HENNES: I AGREE.

2 THE COURT: SO I WOULD GO AHEAD AND GIVE THAT.

3 MR. HENNES: OKAY.

4 THE COURT: AND THAT'S WHAT THE ARGUMENT IS.

5 OKAY. 370 IS MOTIVE: I WILL GIVE THAT. DOWN TO 460,

6 ATTEMPT: I WILL GIVE THAT.

7 AND THEN I THINK WE MOVE ON DOWN TO THE ACTUAL

8 SUBSTANCE OF THE OFFENSE IN 2511.

9 MS. JONES: THAT'S AS TO COUNT 3, WHICH HAS
10 BEEN REMOVED.

11 THE COURT: OKAY. THAT WILL BE WITHDRAWN.

12 2560 WILL BE GIVEN. THAT IS THE ACTUAL CHARGE ITSELF IN
13 COUNT 1 AND --

14 MR. HENNES: AND THE COURT'S GOING TO NOT USE
15 THE ".50 CALIBER BMG RIFLE" PORTION OF THAT INSTRUCTION,
16 I ASSUME?

17 THE COURT: ONE MOMENT, COUNSEL. HOLD THAT
18 THOUGHT.

19 MR. HENNES: OKAY.

20 MS. JONES: THE PEOPLE ARE PROCEEDING ON
21 12602.1, SO WE WOULD AGREE THAT THE LANGUAGE REGARDING
22 THE ".50 BMG RIFLE" WILL BE OMITTED.

23 THE COURT: YOU KNOW WHAT, MY QUESTION IS THIS:
24 CALCRIM 2560 ADDRESS COUNT 2, CORRECT?

25 MR. HENNES: COUNT 1 ALSO.

26 MS. JONES: COUNT 1.

1 THE COURT: COUNTS 1 AND 2?

2 MS. JONES: YES.

3 THE COURT: OH, I SEE. THE TITLE JUST DOESN'T
4 MERELY CONFORM.

5 MS. JONES: YES.

6 THE COURT: OKAY. SO THAT INSTRUCTION COVERS
7 BOTH COUNTS. 2592 IS WITHDRAWN, CORRECT?

8 MR. HENNES: CORRECT.

9 MS. JONES: YES.

10 THE COURT: AND THEN WE'RE DOWN TO 3515. THAT
11 WILL BE GIVEN. AND THEN THE GENERAL PREDELIBERATION
12 INSTRUCTIONS AND 3550 AND WHATEVER INSTRUCTIONS APPLY TO
13 THE ALTERNATE INSTRUCTIONS. OKAY.

14 NOW, WHAT I WANT TO DO NOW IS TURN TO THE
15 ACTUAL TEXT OF THE INSTRUCTION. I WANTED TO MAKE SURE I
16 HAVE THIS LANGUAGE EXACTLY CORRECT. SO, LET'S SEE,
17 COUNSEL, TURN TO PAGE, CALCRIM 2560. OKAY. SO THAT
18 WILL READ, "THE DEFENDANT IS CHARGED IN COUNTS 1 AND 2"
19 --

20 MS. JONES: WELL, WE NEED TWO SEPARATE
21 INSTRUCTIONS: ONE FOR COUNT 1. AND ONE --

22 THE COURT: AND ONE FOR COUNT 2. SO WE NEED TO
23 COPY THIS.

24 MS. JONES: YEAH.

25 MR. HENNES: YEAH.

26 THE COURT: OKAY. AND YOUR THEORY - WELL,

1 LET'S DO THIS:

2 "THE DEFENDANT IS CHARGED IN COUNT 1 THEN WITH
3 UNLAWFULLY ATTEMPTING TO" -- I GUESS I CAN READ ALL THE
4 LANGUAGE. I GUESS I CAN TAILOR IT, RATHER, BECAUSE WE
5 DON'T HAVE AN OFFERING OR SALE OR ANYTHING LIKE THAT, SO
6 I CAN REDACT ALL OF THAT.

7 MS. JONES: YES. I JUST REQUEST "UNLAWFULLY
8 ATTEMPTING TO MANUFACTURE."

9 THE COURT: PERIOD. THAT'S ALL?

10 MS. JONES: AND THEN "ASSAULT WEAPON." YES.

11 THE COURT: OKAY. AND "ASSAULT WEAPON."

12 MR. HENNES: YOUR HONOR, I DON'T SEE WHERE THE
13 (B) SUBSECTION IS COVERED BY THIS INSTRUCTION. I THINK
14 POSSESSION IS USED IN BOTH (A) AND (B) OF 12280, I
15 BELIEVE, UNLESS TWO IS THE POSSESSION. I'M NOT SURE.
16 PERHAPS THAT'S WHAT IT IS.

17 MS. JONES: 12280 (B) IS THE POSSESSION OF THE
18 ASSAULT WEAPON.

19 THE COURT: I SEPARATED THAT OUT.

20 MR. HENNES: WELL, I UNDERSTAND, BUT I DON'T
21 KNOW WHETHER -- IS IT THE SAME INSTRUCTION? I GUESS
22 IT'S JUST ODD THAT THE INSTRUCTION TITLE WOULD BE
23 12280 (A) (1) AND (A) (2).

24 THE COURT: INSTEAD OF (B), YEAH. THAT'S WHAT
25 THREW ME OFF. THAT'S WHY I WAS LOOKING FOR ANOTHER
26 INSTRUCTION.

1 MR. HENNES: WE'RE OF SIMILAR MIND THEN.

2 THE COURT: I'M LOOKING FOR IT TO MATCH UP.
3 FOUND IT.

4 MR. HENNES: YEAH.

5 THE COURT: SO WHAT? I'M GOING TO DO IS, I'M
6 GOING TO HAVE TWO COPIES OF THE SAME INSTRUCTION, BUT
7 WE'LL REDACT IT DIFFERENTLY.

8 AS TO COUNT 1, THE ONE WE'RE LOOKING AT NOW,
9 "THE DEFENDANT IS CHARGED IN COUNT 1 WITH UNLAWFULLY
10 ATTEMPTING TO MANUFACTURE AN ASSAULT WEAPON IN VIOLATION
11 OF 12280(A)."

12 "TO PROVE THE DEFENDANT GUILTY OF THIS CRIME
13 THE PEOPLE MUST PROVE THAT, NUMBER ONE, "THE DEFENDANT
14 ATTEMPTED TO MANUFACTURE AN ASSAULT WEAPON."

15 DO COUNSEL AGREE WITH THAT?

16 MR. HENNES: I AGREE, YOUR HONOR.

17 THE COURT: IS THAT ALL RIGHT?

18 MS. JONES: OH, I'M SORRY. YES.

19 THE COURT: AND NUMBER 2, "THE DEFENDANT KNEW
20 THAT HE MANUFACTURED IT."

21 AND NUMBER 3, "THE DEFENDANT KNEW OR REASONABLY
22 SHOULD HAVE KNOWN THAT IT HAD CHARACTERISTICS THAT MADE
23 IT AN ASSAULT WEAPON."

24 MR. HENNES: IN --

25 MS. JONES: AND THEN WE'RE GOING TO HAVE TO
26 DEFINE AN "ASSAULT WEAPON" BECAUSE -- AND I THINK THAT'S

1 WHY THEY PUT IN THE PART ABOUT SPECIFICALLY "A." AND
2 THEN YOU GET RID OF THE ".50 BMG" BECAUSE THAT'S NOT A
3 TYPE OF ASSAULT WEAPON WE HAVE.

4 AND I LOOKED AT THIS INSTRUCTION AND BEFORE --
5 DOWN BELOW IT GOES ON TO DEFINE THE .50 BMG. AND I
6 THINK THAT WE HAVE TO TAKE THAT OUT AND INSTEAD DEFINE
7 --

8 THE COURT: YES.

9 MS. JONES: -- THE ASSAULT WEAPON PURSUANT TO
10 12276.1.

11 THE COURT: WHICH IS -- WHAT IS THAT, AK-47?
12 NO.

13 MS. JONES: WELL, THAT'S AN AK-47. ASSAULT
14 WEAPONS ARE DEFINED IN 12276.

15 THE COURT: YES.

16 MS. JONES: AND THEN IT'S A SUPPLEMENTAL
17 DEFINITION. AND THAT'S THE ONE WE'RE GOING UNDER.

18 MR. HENNES: WELL, YOUR HONOR, IF I MAY, THE
19 INSTRUCTIONS THAT I'M READING SAYS THAT "IN THE CASE OF
20 AN ASSAULT WEAPON WHERE INDICATED IN THE INSTRUCTION THE
21 COURT MAY INSERT A WEAPON LISTED IN PENAL CODE SECTION
22 12276 OR A DESCRIPTION OF A WEAPON FROM SECTION
23 12276.1."

24 BECAUSE THIS IS -- WHAT DEFENDANT'S CHARGED
25 WITH IS NOT ANYTHING DESCRIBED IN 12276, SO I DON'T
26 THINK YOU CAN LEAVE THAT OUT.

1 MS. JONES: RIGHT.

2 MR. HENNES: BECAUSE THERE'S ABOUT FIVE
3 CHARACTERISTICS IN 12276.1 THAT I BELIEVE PROBABLY NEED
4 TO BE FILLED IN IN THE INSTRUCTION.

5 MS. JONES: AND THAT DOES LAY THAT OUT. IT
6 LAYS OUT THE DEFINITION THAT WE'RE PROCEEDING UNDER.

7 MR. HENNES: YOU DIDN'T SAY ANYTHING ABOUT AN
8 AK-47. I MEAN, THERE ARE ADDITIONAL INSTRUCTIONS THAT
9 ARE GOING TO HAVE TO BE NECESSARY, LIKE THE CENTERFIRE
10 RIFLE. AND I DON'T KNOW THAT -- I DON'T KNOW THAT ALL
11 THE INSTRUCTIONS ARE

12 THE COURT: COVER ALL OF THOSE DEFINITIONS.

13 MR. HENNES: I THINK WE MAY HAVE TO --

14 THE COURT: WHICH IS WHY WE'RE STARTING NOW.

15 MS. JONES: YEAH.

16 THE COURT: ALL RIGHT. SO, LET'S SEE. IN
17 NUMBER 3 IT SAYS, "THE DEFENDANT KNEW OR REASONABLY
18 SHOULD HAVE KNOWN IT HAD CHARACTERISTICS IS MADE AN
19 ASSAULT" -- WHAT? "WEAPON"?

20 MS. JONES: YES.

21 MR. HENNES: YES.

22 THE COURT: OKAY.

23 MS. JONES: AND I WOULD PROPOSE THAT IT THEN
24 STATES, "SPECIFICALLY A SEMIAUTOMATIC CENTERFIRE RIFLE
25 THAT HAS THE CAPACITY TO ACCEPT DETACHABLE MAGAZINE AND
26 ANY OF THE FOLLOWING," AND THEN LISTS A THROUGH F, THE

1 DISTINGUISHING CHARACTERISTICS OF AN ASSAULT WEAPON
2 UNDER THAT DEFINITION.

3 MR. HENNES: YOUR HONOR, IF I MAY?

4 THE COURT: ABSOLUTELY.

5 MR. HENNES: I'D THINK THAT WE'RE GOING TO
6 HAVE TO DEFINE ALL OF THESE TERMS IN THE INSTRUCTIONS,
7 "SEMI-AUTOMATIC CENTERFIRE RIFLE, DETACHABLE MAGAZINE."
8 AND THERE ARE REGULATIONS THAT COVER A LOT OF IT, BUT
9 THEY'RE NOT IN THE STATUTE ITSELF. I THINK THOSE WILL
10 HAVE TO BE PROBABLY INCLUDED.

11 MS. JONES: I THINK AN EXPERT CAN TESTIFY AS TO
12 WHAT THOSE ARE.

13 THE COURT: THEY CERTAINLY WILL BE TESTIFYING
14 WITH RESPECT TO WHAT THEY ARE, BUT THE QUESTION IS IF
15 THERE ARE TWO EXPERTS WHOSE DEFINITIONS DIFFER, THEN WE
16 HAVE A PROBLEM.

17 MR. HENNES: I THINK IF THERE ARE THE STATUTORY
18 OR REGULATORY DEFINITIONS, I WOULD THINK THAT THOSE
19 WOULD BE INCLUDED, YOU KNOW, IN THE INSTRUCTION. I
20 DON'T KNOW THAT IT'S, YOU KNOW, A TREMENDOUS ISSUE, BUT

21
22 MS. JONES: YEAH. I DON'T THINK THAT THAT'S
23 GOING TO BE CONTESTED.

24 THE COURT: OKAY. WHY DON'T I DO THIS THEN:
25 COUNSEL, IF YOU ALL COULD -- ONE OR BOTH OF
26 YOU -- PROPOSE, PUT THAT VERBIAGE IN THERE, IF YOU

1 WOULD, MADAM PROSECUTOR, AND SUBMIT TO THE COURT YOUR
2 PROPOSED INSTRUCTION REDACTED AND CLEANED UP --

3 MS. JONES: OKAY.

4 THE COURT: -- THAT WOULD BE HELPFUL WITH
5 RESPECT TO 2560.

6 MR. HENNES: ONE OTHER THING, YOUR HONOR, WAS
7 --

8 THE COURT: YES.

9 MR. HENNES: -- SUBSECTION 11 THERE, SECOND
10 PARAGRAPH, SAYS, "THE DEFENDANT" -- I THINK IT NEEDS TO
11 SAY THAT HE KNEW THAT HE ATTEMPTED TO MANUFACTURE IT,
12 RIGHT --

13 MS. JONES: RIGHT.

14 MR. HENNES: -- INSTEAD OF "MANUFACTURED IT."

15 THE COURT: ALL RIGHT, YES. WE'LL ADD THAT
16 LANGUAGE IN PARAGRAPH NUMBER TWO ON CALCRIM 2560,
17 "ATTEMPTED TO MANUFACTURE."

18 MS. JONES: AND AS TO ELEMENT ONE, TOO, AS
19 WELL, "THE DEFENDANT."

20 THE COURT: OH, I DID "ATTEMPT TO MANUFACTURE"
21 IN PARAGRAPH ONE.

22 AND THE PARAGRAPH STARTING WITH "A BMG RIFLE,"
23 THAT WILL BE REDACTED. AS A MATTER OF FACT, ALL THE WAY
24 DOWN TO NUMBER THREE -- BECAUSE THAT DEFINITION HAS
25 THREE PARTS -- THAT WILL BE REDACTED.

26 I WILL REDACT ALSO "TWO OR THREE PEOPLE MAY

1 POSSESS SOMETHING AT THE SAME TIME" ON THE UNDERSTANDING
2 THERE DOESN'T SEEM TO BE ANY FACTS TO SUPPORT THAT OR NO
3 THEORY TO SUPPORT THAT.

4 I WILL LEAVE IN THE LANGUAGE "A PERSON DOES NOT
5 HAVE TO ACTUALLY OWN THEIR TRUST COMPANY TO POSSESS IT.
6 IT'S ENOUGH IF HE HAS THE CONTROL OVER IT OR A RIGHT TO
7 CONTROL IT."

8 I DON'T THINK THE LANGUAGE RELATIVE TO THE NEXT
9 PARAGRAPH IS NECESSARY. I THINK LET'S SEE.

10 MS. JONES: I WOULD AGREE.

11 THE COURT: YOU SEE THAT, COUNSEL?

12 MR. HENNES: YES, I DO -

13 THE COURT: I'M GOING TO DELETE THAT.

14 MS. JONES: AND YOU'RE TALKING ABOUT THE
15 PARAGRAPH RIGHT UNDER THE "CONSTRUCTIVE POSSESSIONS"
16 PARAGRAPH; IS THAT RIGHT?

17 THE COURT: CORRECT.

18 MS. JONES: OKAY. AND THEN THE ONE BELOW THAT,
19 I DON'T THINK THAT IS PERTINENT.

20 THE COURT: NO, BECAUSE IT TALKS ABOUT HAVING A
21 REGISTERED WEAPON OR A VALID PERMIT.

22 MS. JONES: AND THAT WOULD BE A DEFENSE.

23 THE COURT: THAT'S A DEFENSE, YEAH.

24 IT DOESN'T SOUND LIKE THAT'S YOUR DEFENSE; IS
25 THAT CORRECT, COUNSEL?

26 MR. HENNES: IT SEEMS TO ME I READ A CASE THAT

1 INDICATED THAT THE BURDEN IS ON THE PEOPLE TO PROVE THAT
2 IT WAS NOT REGISTERED.

3 BECAUSE IF THEIR THEORY IS THAT THE WEAPON WAS
4 AN ASSAULT WEAPON, I THINK THEY HAVE TO PROVE THAT IT
5 WASN'T REGISTERED, I BELIEVE. BUT, I MEAN, I'LL PROVIDE
6 THE COURT WITH AN AUTHORITY ON THAT, BUT I WOULD REQUEST
7 THAT THAT QUESTION BE --

8 THE COURT: I'LL PUT A QUESTION MARK NEXT TO
9 IT. IT DOESN'T APPEAR TO BE ONE OF THE ELEMENTS.

10 IT WOULD BE AN ELEMENT, WOULDN'T IT?

11 MS. JONES: THERE'S A DEFENSE. AND ONE OF THE
12 DEFENSES IS WHETHER IT'S A REGISTERED -- IT'S LEGALLY
13 REGISTERED. THESE ITEMS DON'T EVEN HAVE MANUFACTURER
14 MARKINGS OR NUMBERS, SO THERE'S NO WAY IT COULD BE
15 REGISTERED. AND I DON'T THINK THAT'S THE DEFENSE.

16 MR. HENNES: I DON'T KNOW THAT YOU NECESSARILY
17 HAVE TO HAVE ANY MARKINGS ON IT TO REGISTER IT. IT CAN
18 GO BY THE PERSON'S NAME THAT HE HAS A CERTAIN WEAPON,
19 BUT PROBABLY NEEDS TO BE EXPLORED.

20 THE COURT: I'LL PUT A QUESTION MARK THERE FOR
21 NOW. OKAY. LET'S GO BACK THROUGH 2506 RELATIVE TO
22 COUNT 2. "THE DEFENDANT IS CHARGED IN COUNT 2 WITH
23 UNLAWFULLY ATTEMPTING TO POSSESS" --

24 MS. JONES: I WOULD SUGGEST THAT ANYWHERE WE
25 PUT "ATTEMPTED TO MANUFACTURE," WE JUST CHANGE IT TO
26 "POSSESS."

1 THE COURT: AND THAT'S --

2 MS. JONES: YEAH. AND THEN WHEN I WAS THINKING
3 ABOUT POSSESSION, MAYBE WE DO NEED -- I'M NOT SURE IF
4 YOU NEED THE DEFINITION OF "POSSESSION," BUT I THINK
5 WE'VE GOT THE STUFF ABOUT -- I THINK WE NEED A
6 DEFINITION OF "POSSESSION."

7 THE COURT: IT WON'T HURT.

8 MS. JONES: IF WE CAN JUST PULL THOSE FROM THE
9 2511.

10 THE COURT: THERE SHOULD BE A GENERAL ONE IN
11 THE CODE. LET'S SEE. "POSSESSION."

12 MS. JONES: OKAY.

13 THE COURT: WELL, I THINK ISN'T THAT COVERED
14 UNDER "CONSTRUCTIVE"?

15 MS. JONES: YEAH.

16 THE COURT: WHAT ELSE WOULD CONSTRUCTIVE
17 POSSESSION ADD? THERE IS A CONTROL SUBSTANCE
18 INSTRUCTIONS, BUT I THINK THAT THE ONE WE HAVE MIGHT
19 SUFFICE. LET'S SEE.

20 MS. JONES: YEAH. IT HAS THE SAME LANGUAGE
21 UNDER 12021(A)(1).

22 THE COURT: OKAY. YES. I'M LOOKING UNDER
23 "SIMPLE POSSESSION OF A CONTROLLED SUBSTANCE," AND IT
24 DOES HAVE THE SAME LANGUAGE AS WELL.

25 MS. JONES: FOR SOME REASON I THOUGHT THERE WAS
26 SOME KIND OF "DOMINION AND CONTROL" LANGUAGE.

1 THE COURT: I THINK THEY MAY HAVE SIMPLIFIED
2 THE LANGUAGE IN THE CALCRIM.

3 MS. JONES: YES.

4 THE COURT: THAT'S PROBABLY CALJIC. OKAY. SO
5 I'LL ABOUT A HEAD AN THEN MOD EIGHT 2560 TO COME PORT
6 WITH COUNT 26789 IT SEEMS LIKE IT'S THE SAME IN ALL THE
7 OTHER RESPECTS. WHERE IT SAYS A BLANK IS AN ASSAULT
8 WEAPON, WILL THAT HAVE A SAME HAPPENING WELL.

9 MR. HENNES: I THINK YOU HAVE TO GO BACK TO THE
10 DEFINITION WITH ALL THE ELEMENTS, BECAUSE IT'S NOT A
11 BRAND, YOU KNOW. IT'S USED LOOSELY AS AN AK, BUT THAT'S
12 NOT THE DESCRIPTION WELL IN THE STATUTE.

13 IT'S WHAT IT IS. IT'S KNOW WHAT THE DEFINITION
14 SAYS IT IS. IT'S CENTERFIRE SEMIAUTOMATIC AND ALL OF
15 THAT.

16 MS. JONES: I THINK YOU HAVE TO CHANGE IT TO
17 "AN ASSAULT WEAPON IS DEFINED AS" --

18 MR. HENNES: THAT WOULD BE FINE WITH ME.

19 THE COURT: OKAY. COUNSEL LEFT IT TO YOU TO
20 GET VERB A COUPLED LIKE COLLOQUALLY, BUT IT'S A
21 TECHNICAL THING HERE.

22 MR. HENNES: YES.

23 THE COURT: SO WE HAVE TO MAKE SURE THAT WE
24 HAVE PRESCRIBED IT CORRECTLY AND DON'T LABEL IT.

25 MR. HENNES: YEAH. OKAY.

26 THE COURT: OKAY. SO IN WRAPPING UP, WHAT'S

1 OUTSTANDING IS I WOULD LIKE FOR THESE INSTRUCTIONS IN
2 2560 FOR COUNT 1 AND COUNT 2 IF YOU COULD SEND ME A
3 CLEAN COPY OF THAT PAYING CLOSE ATTENTION TO THAT
4 DEFINITION OF ASSAULT WEAPON.

5 IS THERE ANYTHING ELSE THAT COUNSEL IS GOING TO
6 GIVE ME?

7 MR. HENNES: YOUR HONOR, I WAS GOING TO LOOK TO
8 SEE WHETHER THERE WAS OTHER DEFINITIONS OF THE VARIOUS,
9 I GUESS, CRITERIA IN THE .1, YOU KNOW, DESCRIBING RIFLE,
10 CENTERFIRE, AND WHETHER THAT'S APPROPRIATE FOR THE JURY
11 INSTRUCTION.

12 THE COURT: WELL, THERE ARE SOME DEFINITIONS
13 THAT ARE IN THE PENAL CODE ITSELF, SO WE SHOULD PROBABLY
14 LOOK FIRST TO THE PENAL CODE.

15 AND IF THERE ARE TERMS THAT COME OUT DURING
16 TESTIMONY, I WOULD ANTICIPATE THE EXPERT CAN ANSWER
17 THOSE QUESTIONS, LIKE, WHAT IS A RIFLE? YOU KNOW, WHAT
18 IS A RECEIVER? THAT SORT OF THING.

19 WELL, THERE IS ONE ADDITION THAT I THINK NEEDS
20 TO BE IN THE INSTRUCTION IN THE DESCRIPTION OF AN
21 ASSAULT RIFLE BECAUSE THERE IS A REGULATION THAT SPEAKS
22 TO THE MAGAZINE AND AS TO WHETHER IT'S DETACHABLE OR
23 NOT.

24 AND ONE OF THE REQUIREMENTS IS THAT IT --
25 DETACHABLE MEANS THAT IT CAN'T BE REMOVED WITHOUT THE
26 USE OF A TOOL AND THAT A BULLET IS A TOOL FOR PURPOSES

1 OF DESCRIPTION OF WHETHER OR NOT THERE IS A DETACHABLE
2 MAGAZINE.

3 IN OTHER WORDS, IF YOU USE A BULLET AND YOU
4 PUSH A BUTTON AND THAT RELEASES THE MAGAZINE, THAT MAKES
5 IT NONDETACHABLE FOR PURPOSES OF THE ASSAULT WEAPON TO
6 GO OFF.

7 MS. JONES: WELL, I DON'T KNOW. I MISSED --

8 THE COURT: A BULLET IS A TOOL.

9 MR. HENNES: YES. IT'S CONSIDERED -- WELL, THE
10 IT'S A TOOL BECAUSE A TOOL. A DEFINITION OF A
11 NONDETACHABLE MAGAZINE IS "ONE THAT REQUIRES A TOOL TO
12 BE USED TO DETACH THE MAGAZINE FROM THE RECEIVER."

13 AND IT'S SPECIFIC REGULATION, I THINK, IN
14 RESPONSE TO, YOU KNOW, QUESTIONS PROBABLY GO TO THE GUN
15 COMMUNITY, SPECIFICALLY STATES THAT A BULLET IS A TOOL.

16 AND THAT'S WITH REFERENCE TO WHAT'S CALLED A
17 BULLET BUTTON ONTO THE WEAPON THAT MAKES IT LEGAL AND
18 NOT AN ASSAULT RIFLE, SO -- AND THE REGULATION HAVE THE
19 EFFECT FOR THE LAW, OF COURSE, SO I THINK IT HAS TO BE
20 VERY CLEAR.

21 THE COURT: A REGULATION AS A FORCE OF LAW?

22 MR. HENNES: REGULATION.

23 THE COURT: SO -- I'M SORRY, COUNSEL. SO WHAT
24 IS YOUR POINT RELATIVE TO THAT?

25 MR. HENNES: MY POINT IS THAT THERE'S AT LAST
26 ONE OTHER DEFINITION THAT I BELIEVE SHOULD BE IN THE

1 INSTRUCTION. AND THAT'S REPORTING THE ISSUES OF WHAT
2 CONSTITUTES AN ASSAULT RIFLE.

3 AND GOING TO 176.1 OR 176.2, WHERE IT SAYS, "AN
4 ASSAULT WEAPON SHALL BE SEMIAUTOMATIC CENTERFIRE RIFLE
5 THAT HAS THE CAPACITY TO ACCEPT A DETACHABLE MAGAZINE."

6 AND THEN "DETACHABLE" IS SOMEWHERE DEFINED, BUT
7 I MEAN, THE JURY NEEDS TO KNOW WHAT IS A DETACHABLE
8 MAGAZINE. AND THERE ARE SPECIFIC DESCRIPTIONS OF WHAT
9 MAKES A MAGAZINE DETACHABLE OR NOT DETACHABLE.

10 THE COURT: AND WHERE ARE THOSE DESCRIPTIONS?

11 MR. HENNES: IN THE CODE OF REGULATIONS, IN THE
12 REGULATIONS THAT ARE --

13 THE COURT: SO IF YOU HAVE SOMETHING SPECIFIC
14 THAT YOU WANT ME TO INSTRUCT THE JURY, IF YOU CAN DRAFT
15 THAT AND GIVE ME THE AUTHORITY FOR THAT, I'LL TAKE A
16 LOOK AT THAT.

17 MR. HENNES: I WILL.

18 THE COURT: ANYTHING ADDITIONAL?

19 MS. JONES: JUST AS TO THE TRANSCRIPTS, I'VE
20 OFFERED A PLACE WHERE I THINK IT NEEDS TO STOP WITHOUT
21 INADMISSIBLE EVIDENCE TO THE COURT AT PAGE SEVEN ABOUT
22 HALFWAY DOWN.

23 AND I'VE INDICATED TO DEFENSE WHERE I INTEND TO
24 STOP WITH THE RECORDING AND WITH THE TRANSCRIPT. AND
25 I'D ASK IF THAT'S -- IF HE HAS NO OBJECTIONS TO ANYTHING
26 PRIOR TO THAT?

1 MR. HENNES: I REALLY HAVEN'T HAD AN
2 OPPORTUNITY TO GO OVER THE REST OF IT.

3 THE COURT: OKAY. WELL, TAKE YOUR TIME. AND
4 WE CAN TALK ABOUT THAT WHEN WE COME BACK. MAYBE WE'LL
5 HAVE THE JURY COME BACK AT 2:00. CAN WE DO THAT?

6 ALL RIGHT. COUNSEL, IT IS THE NOON HOUR. IS
7 THERE ANYTHING ELSE YOU WANT TO RECORD? OTHERWISE, WE
8 WILL COME BACK AT 1:30.

9 MR. HENNES: VERY GOOD, YOUR HONOR.

10 THE COURT: OKAY. 1:30, MR. NGUYEN.

11 (LUNCH RECESS)

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1 WESTMINSTER, CALIFORNIA - APRIL 4, 2011

2 (AFTERNOON SESSION)

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT

4 OUTSIDE THE PRESENCE OF THE JURY:)

5 THE COURT: WE ARE ON THE RECORD IN THE TRIAL
6 MATTER OF PEOPLE VS. THIN DUC NGUYEN, J0WF0918. BOTH
7 COUNSEL AND MR. NGUYEN ARE PRESENT.

8 I HAVE IN MY HAND WHAT APPEARS TO BE A COPY OF
9 THE CALIFORNIA CODE OF REGULATIONS. UNDER SECTION
10 11:5169, "DEFINITIONS," THERE ARE FIVE DEFINITIONS HERE.

11 AND I TAKE IT, MR. HENNES, THAT YOU'RE GOING TO
12 PROPOSE THAT THIS BE FORMATTED INTO A JURY INSTRUCTION
13 THAT THE JURORS -- THAT I READ THIS TO THE JURORS?

14 MR. HENNES: YES, YES. I --

15 THE COURT: ALL FIVE DEFINITIONS?

16 MR. HENNES: YES. PARTICULARLY THE DETACHABLE
17 MAGAZINE ONE. I DIDN'T REALLY REVIEW CLOSELY THE OTHER
18 SECTION, BUT THAT'S KIND OF THE KEY ISSUE.

19 THE COURT: OKAY. WELL, WE CAN TAKE A LOOK AT
20 THIS WHEN MADAM PROSECUTOR GETS A CHANCE TO LOOK AT IT
21 AS WELL.

22 I DID WANT TO PUT ONE CASE ON THE RECORD WITH
23 RESPECT TO MY RULING TO ALLOW THE JURY TO HEAR
24 MR. NGUYEN'S FELON STATUS AS A PART OF HIS -- IF THAT
25 EVIDENCE IS USED BY THE PROSECUTION IN COUNT 1.

26 AND I WILL CITE TO THE CASE OF *PEOPLE VS.*

1 VALENTINE (1986), 42 CAL.3D 170 AT PAGE 184.

2 IN ADDITION, WITH RESPECT TO THE DISCOVERY
3 ISSUE -- MR. HENNES, DID YOU GET ANY DOCUMENTS OR
4 INFORMATION FOR THE PROSECUTION?

5 MR. HENNES: I DIDN'T HAVE TIME OVER THE LUNCH
6 HOUR. I WAS BUSY RUNNING THIS OTHER STUFF.

7 THE COURT: SO YOU THINK YOU MIGHT HAVE THEM BY
8 TOMORROW MORNING?

9 MR. HENNES: FOR SURE WILL.

10 THE COURT: OKAY.

11 MR. HENNES: AND I WILL E-MAIL THEM TO COUNSEL
12 AS SOON AS I GET THEM AFTER COURT TODAY. I'M ASSUMING
13 I'M GOING TO GET SOMETHING FROM THEM. I WILL GET
14 SOMETHING.

15 THE COURT: SO YOU'RE DEFINITELY GOING TO CALL
16 THIS PERSON?

17 MR. HENNES: YES.

18 THE COURT: ALL RIGHT. THERE'S A QUESTION
19 RELATIVE TO CALCRIM NUMBER 306, WHETHER THE COURT WOULD
20 GIVE AN ADMONITION TO THE JURY BASED ON NONCOMPLIANCE
21 WITH PENAL CODE SECTION 1054.3.

22 THE COURT DECLINES TO GIVE CALCRIM NUMBER 306.
23 THE COURT IS FINDING GOOD CAUSE UNDER PENAL CODE 1054.7
24 FOR THE DEFENDANT'S LATE DISCOVERY OF HIS GUN EXPERT TO
25 THE PEOPLE.

26 AND YOU CAN CORRECT ME IF I'M WRONG, EITHER

1 PARTY, BUT DEFENSE COUNSEL HAD REPRESENTED TO THE COURT
2 THAT HE HAD, IN FACT, PROCURED AN EXPERT THAT HAD
3 REVIEWED THIS CASE, OR AT LEAST COME OVER SOME OF THIS
4 CASE, IN THE PRESENCE OF THE PEOPLE; IS THAT CORRECT?

5 MR. HENNES: NO, NO. THE EXPERT THAT I HAD
6 THOUGHT I HAD RETAINED JUST HAD DISCUSSIONS WITH ME.

7 THE COURT: OKAY. ALL RIGHT. BUT HE'S EITHER
8 WITHDRAWN OR HE'S NO LONGER ON THE CASE?

9 MR. HENNES: THAT IS CORRECT.

10 THE COURT: OKAY. DURING OUR PRETRIAL
11 CONFERENCE IN CHAMBERS LAST WEEK ON MARCH 30TH DEFENSE
12 COUNSEL INDICATED THAT HE MIGHT BE CALLING AN EXPERT.
13 AT THAT TIME THE PEOPLE REGISTERED AN OBJECTION AS
14 VIOLATIVE OF THE DISCOVERY RULES OF SECTION 1054.3.

15 DEFENSE COUNSEL ADVISED THE COURT THAT YOU HAD
16 MET WITH AND SPOKE TO YOUR CURRENT PROPOSED EXPERT
17 YESTERDAY; IS THAT CORRECT? OR YOU JUST SPOKE WITH HIM
18 OVER THE PHONE?

19 MR. HENNES: OVER THE PHONE AND E-MAIL.

20 THE COURT: OKAY. AND THAT PERSON IS A
21 DIFFERENT ONE FROM THE ONE THAT YOU HAD --

22 MR. HENNES: THAT IS -- YES.

23 THE COURT: -- IN THE PAST?

24 MR. HENNES: CORRECT.

25 THE COURT: YOU HAVE CONFIRMED THAT EXPERT'S
26 AGREEMENT TO APPEAR AS A WITNESS IN THIS TRIAL; IS THAT

1 CORRECT?

2 MR. HENNES: THAT IS CORRECT, YES.

3 THE COURT: OKAY. AS OF THIS MORNING YOU MADE
4 AN OFFER TO THE COURT RELATIVE TO THE ANTICIPATED EXPERT
5 TESTIMONY.

6 YOU AT THAT TIME ALSO INFORMED THE COURT THAT
7 AS SOON AS YOU YOURSELF RECEIVED THE DOCUMENTS FROM THE
8 EXPERT, THAT YOU WOULD DISCOVER THAT INFORMATION TO THE
9 PEOPLE; IS THAT CORRECT?

10 MR. HENNES: THAT IS CORRECT.

11 THE COURT: OKAY. SO I FIND THAT THE PROPER
12 TESTIMONY IS NOT ONLY RELEVANT, BUT OVER THE PEOPLE'S
13 OBJECTION, I'M GOING TO ALLOW THE DEFENSE TO CALL THE
14 EXPERT IN ITS CASE AND DECLINE TO GIVE AN ADMONISHMENT
15 AND INSTRUCTION BECAUSE I FIND GOOD CAUSE.

16 MR. HENNES: YOUR HONOR, I MAY ADD ONE MORE
17 ITEM THAT THE EXPERT MAY TESTIFY ON IN LIGHT OF THE
18 COURT'S RULING THAT EVIDENCE OF THE OTHER FIREARM IS
19 GOING TO BE ADMITTED AS EVIDENCE.

20 I MAY HAVE THE EXPERT COVER THAT TOPIC TOO
21 BECAUSE I BELIEVE HE WILL BE COMPETENT TO COVER THE
22 .50 CALIBER RIFLES FOR WHATEVER RELEVANCE THAT MAY HAVE.

23 THE COURT: OKAY. WELL, YOU WILL BE CALLING
24 THE EXPERT IN YOUR CASE IN CHIEF. AND SO WE'LL SEE AT
25 THAT TIME, ASSUMING THE FOUNDATION IS Laid, THEN SOUNDS
26 LIKE IT MAY BE RELEVANT.

1 DO YOU HAVE ANYTHING TO ADD TO THAT, MADAM
2 PROSECUTOR?

3 MS. JONKS: JUST THAT WE HAVEN'T ADDRESSED THE
4 RELEVANCY OF HIS EXPERT AND WHAT HE'S PURPORTING TO
5 TESTIFY TO BECAUSE WE HAVEN'T GOTTEN DISCOVERY ON THAT
6 YET. WE HAVE GOTTEN GENERALIZED TOPICS.

7 I THINK THAT'S SOMETHING THAT WE'RE GOING TO
8 HAVE TO ADDRESS IN THE MORNING ONCE THE PEOPLE HAVE BEEN
9 ADVISED SPECIFICALLY OF WHAT THE TESTIMONY WILL BE.

10 THE COURT: OKAY.

11 MR. HENNES: I WILL SAY THAT IN MY ONE
12 CONVERSATION WITH THE EXPERT HE INDICATED THAT FROM WHAT
13 HE COULD TELL, THE RECEIVER -- THIS IS PART OF THE -- ONE
14 OF THE PARTS OF THE GUN -- THE IMPORTANT PARTS WAS NOT
15 NEARLY COMPLETE.

16 THERE WAS A LOT OF WORK LEFT TO BE DONE ON IT
17 AND THAT IT WAS HIS UNDERSTANDING THAT A COLLECTION OF
18 UNASSEMBLED PARTS DOES NOT CONSTITUTE AN OFFENSE.

19 THE COURT: WELL, HE'S NOT GOING TO BE ABLE TO
20 TESTIFY RELATIVE TO WHETHER IT'S LEGAL OR NOT.

21 MR. HENNES: WHETHER HE BUYS AND SELLS SUCH
22 SIMILAR ITEMS SUCH AS GUN KITS OR ASSEMBLED RIFLES THAT
23 ARE AK TYPES.

24 SO I KNOW THAT THE PEOPLE INTEND TO BRING IN AN
25 ACTUAL AK-47 HERE, I THINK, BY THIS EXPERT. AND I DON'T
26 KNOW WHAT HE'S GOING TO DISASSEMBLE OR SOMETHING WITH

1 IT.

2 AND SO I THINK I SHOULD BE ALLOWED TO -- THE
3 DEFENSE SHOULD BE ALLOWED TO HAVE SIMILAR EVIDENCE WHAT
4 CONSTITUTES THE RIFLE. AND I'M NOT SAYING THAT I'M
5 GOING TO NECESSARILY AGREE WITH THAT OR NOT OBJECT TO
6 THE DEMONSTRATION THAT I BELIEVE WILL BE OFFERED BY THE
7 PEOPLE REGARDING THIS AK-47 THAT IS SUPPOSEDLY INTACT,
8 BUT IN ANY EVENT, THAT'S SORT OF THE CORE OF THE CASE, I
9 THINK.

10 THE COURT: WHAT I WANT TO ASK THE PEOPLE,
11 EVEN -- WE WILL CERTAINLY REVISIT THE ISSUE ONCE WE GET
12 THE DETAILS, SO I GUESS IT'S A LITTLE BIT PREMATURE NOW,
13 BUT I GUESS I'M WONDERING HOW IT COULD NOT BE RELEVANT
14 IF HE'S COVERING THE SAME TOPICS.

15 IT SOUNDS LIKE IT'S ON POINT WHETHER DISAGREES,
16 I ASSUME HE WILL DISAGREE, BUT WHAT WILL BE YOUR
17 HESITATION?

18 MS. JONES: WELL, HE'S SAID SEVERAL DIFFERENT
19 THINGS IN THAT STATEMENT. HE SAID THAT HE WAS GOING TO
20 PROFFER THE OPINION THAT THE COLLECTION OF UNASSEMBLED
21 PARTS IS NOT OFFENSE, AND HE CAN'T TESTIFY TO THAT.

22 THE COURT: THAT'S TRUE.

23 MS. JONES: THEN IT'S NOT NEARLY COMPLETED,
24 SURE HE CAN TESTIFY TO THE STATUS OF IT. HE CAN TESTIFY
25 TO WHAT'S THERE AND WHAT'S NOT. HE CAN LOOK AT IT
26 AND -- AND THE PEOPLE DO INTEND TO BRING IN A COMPLETED

1 AK-47 THAT'S OPERABLE AND SHOW THE JURY WHAT IT LOOKS
2 LIKE COMPLETED.

3 AND THEN THE EXPERT WILL GO THROUGH EACH OF THE
4 PIECES THAT IS REQUIRED TO COMPLETE THAT GUN AND SHOW
5 WHAT THE DEFENDANT HAD CORRESPONDING TO THAT GUN. SO,
6 OBVIOUSLY, HE CAN CROSS-EXAMINE AND BRING IN HIS OWN
7 EXPERT TO SAY NO PIECES ARE MISSING.

8 THE COURT: YES.

9 MS. JONES: SO I DON'T HAVE A PROBLEM WITH
10 THAT.

11 THE COURT: OKAY. ALL RIGHT. WELL, THAT WILL
12 BE MY RULING TENTATIVELY.

13 IS THERE ANYTHING ADDITIONAL WE NEED TO COVER
14 BEFORE WE BRING THE JURORS UP?

15 MS. JONES: NO.

16 MR. HENNES: YOUR HONOR, I WAS STILL CONCERNED
17 ABOUT THE COURT'S INDICATION THAT THEY'RE GOING TO ALLOW
18 EVIDENCE OF A PRIOR CONVICTION IN AS FAR AS THEIR CASE
19 IN CHIEF AND NOT MERELY TO IMPFACH MY CLIENT IF HE
20 SHOULD DECIDE TO TESTIFY.

21 AND I BELIEVE THERE'S SOME CASE LAW ON THAT. I
22 WOULD CITE THE COURT TO *PEOPLE V. KRONMYER*,
23 K-R-O-N-K-M-Y-E-R. IT'S AN OLDER CASE, BUT IT'S STILL
24 PRECEDENT OF 189 CAL. APP. 3D 314 THAT DISCUSSES THE ISSUE
25 OF A SIMILAR INTENT OR SOME OTHER SIMILARITY BETWEEN THE
26 PRIOR -- WELL, THE PRIOR ACT AND THE CURRENT CHARGE.

1 AND I BELIEVE ALSO UNDER 11 -- EVIDENCE CODE
2 1101, I DON'T BELIEVE A FELONY CONVICTION WOULD BE
3 PROPERLY ADMITTED UNLESS DEFENDANT TESTIFIES.

4 IT WOULD BE IMPROPER CHARACTER EVIDENCE UNLESS
5 THERE IS SOME OTHER ADMISSIBLE REASON FOR THE PRIOR ACT
6 FOR THE PRIOR CONVICTION TO BE ADMITTED AND THAT COVER
7 BOTH -- APPARENTLY, BOTH THE POSSESSION OF THE HANDGUN
8 IN THE CAR, THE 1999 CONVICTION, OR EIGHT CONVICTION,
9 WHATEVER IT WAS, AND ALSO THE COURT'S INTENTION TO
10 PERMIT THE EVIDENCE OF THE .50 CALIBER WEAPON AND THE
11 AMMUNITION TO PROVE INTENT, APPARENTLY TO PROVE INTENT
12 OR KNOWLEDGE ON THE PART OF MY CLIENT. I DON'T THINK
13 THAT'S A NEXUS. I BELIEVE THAT KRONMYER DISCUSSES THAT
14 ISSUE.

15 THE COURT: OKAY. MY RULING REMAINS THAT THE
16 EVIDENCE IS RELEVANT TO INTENT AS WELL AS OTHER ISSUES.
17 AND SO, THEREFORE, THE EVIDENCE UNDERLYING COUNTS 3 AND
18 4 CAN BE USED BY THE PEOPLE.

19 I'LL TAKE -- ALSO AT ONE OF THE BREAKS I'LL
20 TAKE A LOOK AT THE KRONMYER CASE.

21 MR. HENNES: THANK YOU.

22 THE COURT: ALSO WITH RESPECT TO VOIR DRE,
23 PLEASE, COUNSEL, DO NOT PRE-TRY THE CASE, YOU KNOW,
24 USING, SORT OF, THE HYPOTHETICAL FACTS OF THIS CASE TO
25 GET A FEEL FOR THE JURORS.

26 PLEASE TO NOT ASK THEM TO EXPLAIN OR DEFINE ANY

1 LEGAL DOCTRINES. WHAT DOES THE PRESUMPTION MEAN TO
2 THEM? PLEASE STICK TO THOSE QUESTIONS. IT WILL ASSIST
3 IN A STRICTLY-FOR-CAUSE DETERMINATION.

4 I WOULD ASK THAT YOU NOT REPEAT ANY QUESTIONS
5 THE COURT HAS ASKED UNLESS YOU NEED TO FOLLOW UP OR USE
6 YOUR TIME, I GUESS, HOWEVER YOU WOULD LIKE OTHERWISE. I
7 THINK THAT WOULD BE IT FOR NOW.

8 MR. HENNES: OKAY.

9 (RECESS)

10 THE COURT: WE'RE BACK THE RECORD.

11 COUNSEL, I'M GOING TO AMEND ONE OF MY RULINGS.
12 AND THAT IS THE DEFENDANT'S FELONY STATUS DOES NOT COME
13 IN IN THE PEOPLE'S CASE IN CHIEF. THAT PART IT IS NOT
14 RELEVANT, BUT CERTAINLY THE UNDERLYING CONDUCT I FIND IS
15 RELEVANT, THE POSSESSION OF THIS OTHER SIMILAR FIREARM
16 AS WELL AS AMMUNITION.

17 BUT SO I WOULD ADMONISH THE D.A. OR INSTRUCT
18 THE D.A. TO ADMONISH THE WITNESS NOT TO --- AND YOU
19 PROBABLY WOULD HAVE NO REASON TO DO THIS --- BUT NOT TO
20 TALK ABOUT THE DEFENDANT'S FELONY STATUS. AS A MATTER
21 OF FACT, YOU CAN EVEN LEAD THE WITNESS A LITTLE BIT
22 AROUND THAT AREA TO MAKE SURE THAT THAT DOES NOT COME
23 OUT. AND, YEAH, SO --

24 MS. JONKS: OKAY.

25 MR. HENNES: SO THE "UNDERLYING CONDUCT" BEING
26 THE .50 CALIBER?

1 THE COURT: .50 CALIBER.

2 MR. HENNES: AND WHAT ABOUT THE AMMUNITION? IS
3 THAT -- THAT STAYS?

4 THE COURT: YES.

5 MR. HENNES: OKAY. BUT HIS PRIOR FELONY IN THE
6 90S IS NOT COMING IN AND --

7 THE COURT: CORRECT, THE FACT OF THE
8 CONVICTION -- I THINK HE WAS CONVICTED FOR FELONY
9 POSSESSION -- DOES NOT COME IN, OF COURSE.

10 IF AND WHEN THE DEFENDANT SHOULD TAKE THE
11 STAND, THAT CAN PROBABLY BE REVISITED, BUT AT THIS
12 JUNCTURE THAT WILL BE MY NEW AND IMPROVED RULING,
13 HOPEFULLY.

14 BECAUSE THE CASE OF *PEOPLE VS. VALENTINE* WAS A
15 CASE THAT WAS TALKING ABOUT WHEN THE STATUS OF THE
16 DEFENDANT IS AN ELEMENT THAT THE PEOPLE HAVE TO PROVE,
17 OF COURSE, THEN IT'S RELEVANT TO COME IN, ALTHOUGH IT
18 MIGHT BE SANITIZED, BUT IT'S RELEVANT TO COME IN, SO
19 THAT CASE IS INADEQUATE REALLY.

20 OKAY. IS THERE ANYTHING ADDITIONAL BEFORE WE
21 CALL IN THE JURY?

22 MS. JONES: NO.

23 MR. HENNES: NO.

24 THE COURT: OKAY. LET'S GO AHEAD AND GET THEM
25 IN HERE.

26 (JURY VOIR DIRE PROCEEDINGS REPORTED AND NOT

1 TRANSCRIBED)

2 (RECESS)

3 (THE FOLLOWING PROCEEDINGS WERE HELD OUTSIDE THE
4 PRESENCE OF THE JURY:)

5 THE COURT: OKAY. WE ARE OUTSIDE OF THE
6 PRESENCE OF THE JURY.

7 WE WILL RESUME TOMORROW WITH --

8 MS. JONES: CHALLENGING FOR CAUSE?

9 THE COURT: -- YEAH, CHALLENGING FOR CAUSE.

10 AND THEN WE'LL BEGIN THE SELECTION PROCESS, CONTINUE THE
11 SELECTION PROCESS.

12 IS THERE ANYTHING THAT NEEDS TO BE DISCUSSED
13 BEFORE WE BREAK?

14 MR. HENNES: I DON'T THINK SO.

15 THE COURT: THE PROSECUTOR, MS. JONES,
16 SUBMITTED TO ME THIS -- DID YOU SHOW THAT TO DEFENSE
17 COUNSEL?

18 MS. JONES: YES.

19 THE COURT: OKAY.

20 MR. HENNES: WHAT IS THIS? IS THAT THE
21 ADDENDUM OR THE --

22 MS. JONES: IT'S THE ONE I TYPED UP.

23 MR. HENNES: THE MODIFIED INSTRUCTION.

24 THE COURT: ON THE CHARGE, CORRECT. AND IT
25 ADDS THE DEFINITION "ASSAULT WEAPON."

26 MR. HENNES: RIGHT. WELL, THERE WAS THE

1 ADDITION THAT I WAS ASKING FROM THE REGULATION.

2 THE COURT: YES. AND YOU KNOW WHAT, I'M
3 INCLINED TO GIVE THAT, BECAUSE IN THE PENAL CODE IT
4 REFERENCES THE FACT THAT THE ATTORNEY GENERAL, I THINK
5 IT WAS, HAS BEEN CHARGED WITH DRAFTING VERBIAGE FOR THE
6 CODE OF REGULATIONS WITH RESPECT TO THE DEFINITIONS, IF
7 I READ THAT CORRECTLY.

8 ONE MOMENT.

9 MR. HENNES: I THINK THAT'S ACCURATE WITH
10 RESPECT TO THE 12276.1, IN PARTICULAR.

11 THE COURT: I THINK YOU'RE RIGHT, COUNSEL.
12 YES. 12276.5, ACTUALLY, OF THE PENAL CODE SAYS THAT
13 "PREPARATION AND DISTRIBUTION OF DESCRIPTION OF ASSAULT
14 WEAPONS, LIST OF FIREARMS DESIGNATED AS ASSAULT
15 WEAPONS."

16 IT APPEARS AS THOUGH THE ATTORNEY GENERAL WAS
17 TASKED WITH PREPARING A DESCRIPTION AND A LIST FOR
18 DISTRIBUTION OF ASSAULT WEAPONS AND THE DEFINITION,
19 ACTUALLY, OF TERMS AND THAT THAT SHALL BE FILED WITH THE
20 SECRETARY OF STATE FOR A PUBLICATION IN THE CALIFORNIA
21 CODE OF REGULATIONS.

22 AND I THINK WHAT COUNSEL COPIED WAS AT LEAST
23 ONE SET OF DEFINITIONS THAT IS IN THE CODE OF
24 REGULATIONS PURSUANT TO THAT SUBJECT, IF I'M READING
25 THAT CORRECTLY?

26 MR. HENNES: MY UNDERSTANDING, YES, OF THE

1 SO CALLED "CATEGORY III ASSAULT WEAPONS." AND BECAUSE
2 IT'S NOT LISTED IN 12276, THAT'S THE GENERIC DESCRIPTION
3 OF AN ASSAULT WEAPON.

4 YOUR HONOR, IT'S ALSO MY UNDERSTANDING THAT
5 A.G. WAS SUPPOSED TO COORDINATE WITH VARIOUS DISTRICT
6 ATTORNEYS OF THE STATE TOO --

7 MS. JONES: ALL OF THEM.

8 MR. HENNES: -- TO GET AT SOME UNIFORMITY
9 ANYWAY; HENCE, THAT THAT'S WHY I THINK THAT LETTER MIGHT
10 BE.

11 THE COURT: NOT OKAY. OKAY. SO WHAT I WILL DO
12 IS I WILL ANTICIPATE GIVING THOSE FIVE DEFINITIONS. I'M
13 INCLINED TO GIVE A DEFINITION FROM THE CALIFORNIA CODE
14 OF REGULATIONS BECAUSE I THINK IT'S JUSTIFIED FROM THE
15 CODE.

16 I THINK THERE'S SOME DEFINITIONS THAT ARE NOT
17 IN THE CODE THAT WOULD ASSIST THE JURY AND -- BUT I'LL
18 MAKE THE FINAL DECISION AFTER WE HEAR THE TESTIMONY,
19 BECAUSE PERHAPS ALL OF THOSE DEFINITIONS WILL NOT BE
20 NECESSARY. I DON'T KNOW. THE DETACHABLE MAGAZINE
21 SOUNDS LIKE IT WILL BE, BUT I DON'T KNOW ABOUT THE REST
22 OF THEM.

23 SO THAT'S MY TENTATIVE.

24 MR. HENNES: THANK YOU.

25 MS. JONES: THANK YOU.

26 THE COURT: TOMORROW 9:00 O'CLOCK. GET HERE A

1 FEW MINUTES EARLY SO WE CAN GET GOTNG.

2 MS. JONES: WE CAN DO IT OFF THE RECORD.

3 (END OF PROCEEDINGS)

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER
3 DEPARTMENT W8
4

5 THE PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,)
7 VS.) NO. 10WF0918
8 TIEN DUC NGUYEN,)
9 DEFENDANT.)
10 -----)

11
12 HONORABLE DAPHNE SYKES SCOTT, JUDGE PRESIDING
13 REPORTER'S TRANSCRIPT
14 TUESDAY, APRIL 5, 2011
15

16 APPEARANCES OF COUNSEL:
17 FOR THE PEOPLE:
18 TONY RACKAUCKAS, DISTRICT ATTORNEY
19 BY: RENEE JONES, DEPUTY DISTRICT ATTORNEY
20 FOR THE DEFENDANT:
21 BY: CHRISTOPHER J. HENNES, RETAINED ATTORNEY
22 LORI L. PARNESS, C.S.R. #9117,
23 PRO TEMPORE COURT REPORTER
24
25
26

1 WESTMINSTER, CALIFORNIA TUESDAY, APRIL 5, 2011

2 MORNING SESSION

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT
4 OUTSIDE THE PRESENCE OF THE JURY:)

5 THE COURT: IN THE CASE OF PEOPLE VERSUS
6 TIEN DUC NGUYEN, CASE NUMBER 10WF0918, HERE FOR TRIAL,
7 BOTH ATTORNEYS ARE PRESENT. AND MR. NGUYEN IS PRESENT
8 OUT OF CUSTODY.

9 MR. NGUYEN, YOUR ATTORNEY AND THE PROSECUTOR
10 AND I HAD A DISCUSSION IN CHAMBERS. AND I'M GOING TO
11 PUT ON THE RECORD RIGHT NOW WHAT ESSENTIALLY WAS SAID.

12 THE COURT IS ORDERING THAT DEFENSE EXPERT
13 WITNESS, AND ACTUALLY ANY EXPERT WITNESS FOR THAT
14 MATTER, NOT BE ALLOWED TO SPEAK ABOUT IN ANY WAY OR TO
15 OPINE IN ANY WAY WHETHER ANY OF THESE WEAPONS WERE LEGAL
16 OR ILLEGAL.

17 I UNDERSTAND THAT THE DEFENSE EXPERT OWNS SOME
18 SORT OF DEALERSHIP; IS THAT CORRECT?

19 MR. HENNES: CORRECT.

20 THE COURT: OWNS A FIREARMS DEALERSHIP. AND HE
21 IS ALLOWED TO TESTIFY THAT, IN LAYING HIS FOUNDATION,
22 THAT HE DOES OWN THAT DEALERSHIP. HE'S ALLOWED TO
23 TESTIFY TO HIS EXPERTISE IN GUN ASSEMBLY, GUN PARTS AND
24 THAT SORT OF THING. HOWEVER, HE WILL NOT BE ALLOWED TO
25 TESTIFY THAT A PARTICULAR WEAPON IS LEGAL OR NOT LEGAL.

26 AND I HAVE INSTRUCTED COUNSEL, MR. HENNES, THAT

1 IF NEED BE, YOU CAN WALK HIM THROUGH OR ASK -- TIGHTEN
2 UP AND ASK CLOSE-KNIT QUESTIONS IN ORDER THAT HE NOT
3 INADVERTENTLY TALK ABOUT WHETHER A PARTICULAR GUN IS
4 LEGAL.

5 AND THAT I WOULD IMAGINE WOULD BE JUST A SMALL
6 PART OF THE -- A FEW QUESTIONS IN HIS TESTIMONY, SO I
7 DON'T WANT HIM TO BLURT OUT THAT TYPE OF THING. AND I
8 DON'T WANT COUNSEL TO ELICIT A QUESTION WHICH WOULD
9 REASONABLY TEND TO ELICIT THAT SORT OF TESTIMONY FROM
10 THE EXPERT, SO PLEASE ADVISE YOUR EXPERT TO NOT DO THAT.

11 MR. HENNES: WILL DO, YOUR HONOR.

12 THE COURT: THANK YOU. I THINK THAT'S ALL FOR
13 NOW.

14 WE'RE GOING TO CALL IN THE JURY. AND THEN WE
15 WILL, AFTER THE JURY IS SELECTED, TAKE A -- WHEN THE
16 ALTERNATES AND THE JURY HAVE BEEN SWORN -- TAKE A
17 10-MINUTE BREAK IN ORDER FOR THE PROSECUTION TO SET UP
18 WHATEVER THEY NEED TO SET UP WHATEVER IT IS THEY NEED
19 FOR THE TRIAL.

20 IS THAT ALL?

21 MR. HENNES: THAT IS ALL.

22 THE COURT: OKAY.

23 (RECESS)

24 (JURY VOIR DIRE REPORTED AND NOT TRANSCRIBED)

25 (JURY SWORN)

26 (ALTERNATES SWORN) |

1 THE COURT: ALL RIGHT. TO EVERYONE IN THE
2 AUDIENCE, THANK YOU SO VERY MUCH FOR YOUR ATTENTION. WE
3 HAVE OUR JURY AND OUR ALTERNATES. AND YOU MAY RETURN TO
4 THE JURY ROOM. THANK YOU, AGAIN.

5 OKAY. ALL AUDIENCE MEMBERS HAVE BEEN EXCUSED.
6 AND AT THIS TIME WE ARE GOING TO ACTUALLY TAKE A
7 10-MINUTE BREAK BECAUSE WE NEED TO SETTLE SOME THINGS
8 BEFORE WE GET STARTED, SO YOU CAN JUST -- IF YOU WANT TO
9 GRAB A CUP OF COFFEE OR SOMETHING, THAT'S FINE, TO BRING
10 BACK INTO THE JURY BOX.

11 IF YOU COULD JUST TAKE YOUR BREAK, AND THEN
12 CONGREGATE RIGHT OUTSIDE THE DOOR RIGHT THERE. AND
13 WE'LL BRING YOU IN IN 10 MINUTES. JURY IS EXCUSED.

14 (PROCEEDINGS OUTSIDE THE PRESENCE OF THE JURY:)

15 THE COURT: OKAY. THE JURORS HAVE ALL LEFT THE
16 ROOM. AND WE'LL JUST TAKE OUR 10 MINUTES.

17 IS THERE ANYTHING THAT WE NEED TO BRING UP,
18 COUNSEL, FOR ME BEFORE I LEAVE?

19 MS. JONES: I WILL HAVE AN INVESTIGATING
20 OFFICER AT THE TABLE WITH ME.

21 THE COURT: THAT'S FINE. OKAY. VERY WELL.
22 SEE YOU IN 10.

23 (RECESS)

24 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE PRESENCE OF
25 THE JURY:)

26 THE COURT: BEFORE WE BEGIN, I'M GOING TO

1 DESCRIBE FOR YOU HOW THE TRIAL WILL BE CONDUCTED. AND
2 EXPLAIN WHAT YOU AND THE LAWYERS AND I WILL BE DOING.

3 AND MAY THE RECORD REFLECT THAT BOTH COUNSEL
4 AND MR. NGUYEN ARE PRESENT, AS WELL AS ALL JURORS AND
5 THE ALTERNATES.

6 WHEN I REFER TO "THE PEOPLE," I MEAN THE
7 ATTORNEY FROM THE DISTRICT ATTORNEY'S OFFICE WHO IS
8 TRYING THIS CASE ON BEHALF OF THE PEOPLE OF THE STATE OF
9 CALIFORNIA. WHEN I REFER TO "DEFENSE COUNSEL," I MEAN
10 THE ATTORNEY WHO IS REPRESENTING THE DEFENDANT
11 THOM DUC NGUYEN.

12 THE TRIAL WILL PROCEED AS FOLLOWS: THE PEOPLE
13 MAY PRESENT AN OPENING STATEMENT. THE DEFENSE IS NOT
14 REQUIRED TO PRESENT AN OPENING STATEMENT, BUT IF IT
15 CHOOSES TO DO SO, IT MAY GIVE IT EITHER AFTER THE
16 PEOPLE'S OPENING STATEMENT OR AT THE BEGINNING OF THE
17 DEFENSE CASE.

18 THE PURPOSE OF AN OPENING STATEMENT IS TO GIVE
19 YOU AN OVERVIEW OF WHAT THE ATTORNEYS EXPECT THE
20 EVIDENCE WILL SHOW.

21 NEXT THE PEOPLE WILL OFFER THEIR EVIDENCE.
22 EVIDENCE USUALLY INCLUDES WITNESS TESTIMONY AND
23 EXHIBITS. AFTER THE PEOPLE PRESENT THEIR EVIDENCE, THE
24 DEFENSE MAY ALSO PRESENT EVIDENCE, BUT IS NOT REQUIRED
25 TO DO SO.

26 BECAUSE HE IS PRESUMED INNOCENT, THE DEFENDANT

1 DOES NOT HAVE TO PROVE HE IS NOT GUILTY. AFTER YOU HAVE
2 HEARD ALL THE EVIDENCE AND BEFORE THE JURY IS GIVEN
3 THEIR FINAL ARGUMENTS, I WILL INSTRUCT ON THE LAW THAT
4 APPLIES TO THE CASE. AFTER YOU HAVE HEARD THE ARGUMENTS
5 AND INSTRUCTIONS YOU WILL GO TO THE JURY ROOM TO
6 DELIBERATE.

7 I WILL NOW EXPLAIN SOME BASIC RULES OF LAW AND
8 PROCEDURE. THESE RULES ENSURE THAT BOTH SIDES RECEIVE A
9 FAIR TRIAL:

10 DURING THE TRIAL DO NOT TALK ABOUT THE CASE OR
11 ABOUT ANY OF THE PEOPLE OR ANY SUBJECT INVOLVED IN THIS
12 WITH ANYONE, NOT EVEN YOUR FAMILY, FRIENDS, SPIRITUAL
13 ADVISORS OR THERAPISTS. DO NOT SHARE INFORMATION ABOUT
14 THE CASE IN WRITING, BY E-MAIL, BY TELEPHONE, ON THE
15 INTERNET, OR BY ANY OTHER MEANS OF COMMUNICATION.

16 YOU MUST NOT TALK ABOUT THESE THINGS WITH THE
17 OTHER JURORS EITHER UNTIL THE TIME COMES FOR YOU TO
18 BEGIN YOUR DELIBERATIONS. AS JURORS YOU MAY DISCUSS THE
19 CASE TOGETHER ONLY AFTER ALL OF THE EVIDENCE HAS BEEN
20 PRESENTED, THE ATTORNEYS HAVE COMPLETED THEIR ARGUMENTS
21 AND I HAVE INSTRUCTED ON THE LAW.

22 AFTER I TELL YOU TO BEGIN YOUR DELIBERATIONS
23 YOU MAY DISCUSS THE CASE ONLY IN THE JURY ROOM AND ONLY
24 WHEN ALL JURORS ARE PRESENT. YOU MUST NOT ALLOW
25 ANYTHING THAT HAPPENS OUTSIDE OF THE COURTROOM TO AFFECT
26 YOUR DECISION UNLESS I TELL YOU OTHERWISE.

1 DURING THE TRIAL DO NOT READ, LISTEN TO OR
2 WATCH ANY NEWS REPORT OR COMMENTARY ABOUT THE CASE FROM
3 ANY SOURCE. DO NOT DO ANY RESEARCH ON YOUR OWN OR AS A
4 GROUP REGARDING THIS CASE. DO NOT USE A DICTIONARY OR
5 THE INTERNET OR CELL PHONE OR ANY OTHER ELECTRONIC
6 DEVICE. DO NOT INVESTIGATE THE FACTS OR LAW. DO NOT
7 CONDUCT ANY TESTS OR EXPERIMENTS OR VISIT THE SCENE OF
8 ANY EVENT INVOLVED IN THIS CASE.

9 IF YOU HAPPEN TO PASS BY THE SCENE, DO NOT STOP
10 TO INVESTIGATE. IF YOU HAVE A CELL PHONE OR OTHER
11 ELECTRONIC DEVICE, KEEP IT TURNED OFF WHILE YOU'RE IN
12 THE COURTROOM AND DURING JURY DELIBERATIONS INCLUDING
13 ANY STORAGE DATA DEVICE. IF ANYONE NEEDS TO CONTACT YOU
14 IN AN EMERGENCY THE COURT CAN GIVE MESSAGES, CAN RECEIVE
15 MESSAGES THAT IT WILL DELIVER TO YOU WITHOUT DELAY.

16 DURING THE TRIAL DO NOT SPEAK TO ANY PARTY,
17 WITNESS OR LAWYER INVOLVED IN THE TRIAL. DO NOT LISTEN
18 TO ANYONE WHO TRIES TO TALK TO YOU ABOUT THE CASE OR
19 ABOUT ANY OF THE PEOPLE OR SUBJECTS INVOLVED IN IT.

20 IF SOMEONE ASKS ABOUT THE CASE, TELL HIM OR HER
21 YOU CANNOT DISCUSS IT. IF THAT PERSON KEEPS TALKING TO
22 YOU ABOUT THE CASE, YOU MUST END THE CONVERSATION. WHEN
23 THE TRIAL HAS ENDED AND YOU HAVE BEEN RELEASED AS A
24 JUROR YOU MAY DISCUSS THE CASE WITH ANYONE, BUT UNDER
25 CALIFORNIA LAW MUST WAIT AT LEAST 90 DAYS BEFORE
26 NEGOTIATING OR AGREING TO ACCEPT ANY PAYMENT FOR

1 INFORMATION ABOUT THE CASE.

2 IF YOU RECEIVE ANY INFORMATION ABOUT THIS CASE
3 FROM ANY SOURCE OUTSIDE OF THE TRIAL, EVEN
4 UNINTENTIONALLY, DO NOT SHARE THAT INFORMATION WITH ANY
5 OTHER JUROR. IF YOU DO RECEIVE SUCH INFORMATION OR IF
6 ANYONE TRIES TO INFLUENCE YOU OR ANY JUROR, YOU MUST
7 IMMEDIATELY TELL THE BAILIFF.

8 SOME WORDS OR PHRASES THAT MAY BE USED DURING
9 TRIAL HAVE LEGAL MEANINGS THAT ARE DIFFERENT FROM THEIR
10 MEANINGS IN EVERYDAY USE. THESE WORDS AND PHRASES WILL
11 BE SPECIFICALLY DEFINED IN THE INSTRUCTIONS.

12 PLEASE BE SURE TO LISTEN CAREFULLY AND FOLLOW
13 THE DEFINITIONS THAT I GIVE YOU. WORDS AND PHRASES NOT
14 SPECIFICALLY DEFINED IN THE INSTRUCTIONS ARE TO BE
15 APPLIED USING THEIR ORDINARY AND EVERYDAY MEANING.

16 KEEP AN OPEN MIND THROUGHOUT THE TRIAL. DO NOT
17 MAKE UP YOUR MIND ABOUT THE INDIVIDUAL OR ANY ISSUE
18 UNTIL AFTER YOU HAVE DISCUSSED THE CASE WITH THE OTHER
19 JURORS AFTER DELIBERATION. DO NOT TAKE ANYTHING I SAY
20 AS AN INDICATION OF WHAT I THINK ABOUT THE FACTS, THE
21 WITNESSES, OR WHAT YOUR VERDICT SHOULD BE. DO NOT LET
22 BIAS, SYMPATHY, PREJUDICE OR PUBLIC OPINION INFLUENCE
23 YOUR DECISION.

24 YOU MUST REACH YOUR VERDICT WITHOUT ANY
25 CONSIDERATION OF PUNISHMENT. YOU HAVE BEEN GIVEN
26 NOTEBOOKS AND MAY TAKE NOTES DURING THE TRIAL. DO NOT

1 REMOVE THEM FROM THE COURTROOM. YOU MAY TAKE NOTES INTO
2 THE JURY ROOM DURING DELIBERATION.

3 I DO NOT MEAN TO DISCOURAGE YOU FROM TAKING
4 NOTES, BUT HERE IS SOME INFORMATION TO CONSIDER IF YOU
5 DO TAKE NOTES:

6 NUMBER ONE: NOTE-TAKING MAY TEND TO DISTRACT
7 YOU. IT MAY AFFECT YOUR ABILITY TO LISTEN CAREFULLY TO
8 ALL THE TESTIMONY AND TO WATCH THE WITNESS AS THEY
9 TESTIFY.

10 AND, NUMBER TWO, THE NOTES ARE FOR YOUR OWN
11 INDIVIDUAL USE TO HELP YOU REMEMBER WHAT HAPPENED DURING
12 THE TRIAL. PLEASE KEEP IN MIND THAT YOUR NOTES MAY BE
13 INACCURATE OR INCOMPLETE. AT THE END OF TRIAL YOUR
14 NOTES WILL BE COLLECTED AND DESTROYED.

15 I WILL NOW EXPLAIN THE PRESUMPTION OF INNOCENCE
16 AND THE PEOPLE'S BURDEN OF PROOF: THE DEFENDANT HAS
17 PLEADED NOT GUILTY TO THE CHARGES. THE FACT THAT A
18 CRIMINAL CHARGE HAS BEEN FILED AGAINST THE DEFENDANT IS
19 NOT EVIDENCE THAT THE CHARGE IS TRUE.

20 YOU MUST NOT BE BIASED AGAINST THE DEFENDANT
21 JUST BECAUSE HE HAS BEEN ARRESTED, CHARGED WITH A CRIME
22 OR BROUGHT TO TRIAL. A DEFENDANT IN A CRIMINAL CASE IS
23 PRESUMED TO BE INNOCENT. THIS PRESUMPTION REQUIRES THAT
24 THE PEOPLE PROVE A DEFENDANT GUILTY BEYOND A REASONABLE
25 DOUBT.

26 WHEN I TELL THE PEOPLE MUST PROVE SOMETHING, I

1 MEAN, THEY MUST PROVE IT BEYOND A REASONABLE DOUBT,
2 UNLESS I SPECIFICALLY TELL YOU, OTHERWISE, PROOF BEYOND
3 A REASONABLE DOUBT IS PROOF THAT LEAVES YOU WITH AN
4 ABIDING CONVICTION THAT THE CHARGE IS TRUE.

5 THE EVIDENCE NEEDED TO ELIMINATE ALL POSSIBLE
6 DOUBT, BECAUSE EVERYTHING IN LIFE IS OPEN TO SOME
7 POSSIBLE OR IMAGINARY DOUBT. AND IN DECIDING WHETHER
8 THE PEOPLE HAVE PROVED THEIR CASE BEYOND A REASONABLE
9 DOUBT YOU MUST IMPARTIALLY COMPARE AND CONSIDER ALL THE
10 EVIDENCE THAT WAS RECEIVED THROUGHOUT THE ENTIRE TRIAL.
11 UNLESS THE EVIDENCE PROVES THE DEFENDANT GUILTY BEYOND A
12 REASONABLE DOUBT HE IS ENTITLED TO AN ACQUITTAL, AND YOU
13 MUST FIND HIM NOT GUILTY.

14 YOU MUST DECIDE WHAT THE FACTS ARE IN THIS
15 CASE. YOU MUST USE ONLY THE EVIDENCE THAT IS PRESENTED
16 IN THE COURTROOM OR DURING A JURY VIEW. EVIDENCE IS THE
17 SWORN TESTIMONY OF WITNESSES, THE EXHIBITS ADMITTED INTO
18 EVIDENCE, AND ANYTHING ELSE I TELL YOU TO CONSIDER AS
19 EVIDENCE.

20 THE FACT THAT THE DEFENDANT WAS ARRESTED AND
21 CHARGED WITH THE CRIME OR BROUGHT TO TRIAL IS NOT
22 EVIDENCE OF GUILT.

23 NOTHING THAT THE ATTORNEYS SAY IS EVIDENCE. IN
24 THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS THE
25 ATTORNEYS WILL DISCUSS THE CASE, BUT THEIR REMARKS ARE
26 NOT EVIDENCE. THEIR QUESTIONS ARE NOT EVIDENCE. ONLY

1 THE WITNESSES' ANSWERS ARE EVIDENCE. THE ATTORNEYS'
2 QUESTIONS ARE SIGNIFICANT ONLY IF THEY HELP YOU
3 UNDERSTAND THE WITNESSES' ANSWERS. DO NOT ASSUME THAT
4 SOMETHING IS TRUE JUST BECAUSE ONE OF THE ATTORNEYS ASKS
5 A QUESTION THAT SUGGESTS IT IS TRUE.

6 DURING THE TRIAL, THE ATTORNEYS MAY OBJECT TO
7 QUESTIONS ASKED OF A WITNESS. I WILL RULE ON THE
8 OBJECTIONS ACCORDING TO THE LAW. IF I SUSTAIN AN
9 OBJECTION, THE WITNESS WILL NOT BE PERMITTED TO ANSWER.
10 YOU MUST IGNORE THE QUESTION. IF THE WITNESS DOES NOT
11 ANSWER, DO NOT GUESS WHAT THE ANSWER MIGHT HAVE BEEN OR
12 WHY I RULED AS I DID.

13 IF I ORDER TESTIMONY STRICKEN FROM THE RECORD,
14 YOU MUST DISREGARD IT AND NOT CONSIDER THAT TESTIMONY
15 FOR ANY PURPOSE. YOU MUST DISREGARD ANYTHING YOU SEE OR
16 HEAR WHEN THE COURT IS NOT IN SESSION, EVEN IF IT IS
17 DONE OR SAID BY ONE OF THE PARTIES OR WITNESSES.

18 THE COURT REPORTER IS MAKING A RECORD OF
19 EVERYTHING THAT IS SAID BEING SAID DURING THE TRIAL.
20 IF YOU DECIDE THAT IT IS NECESSARY, YOU MAY ASK THAT THE
21 COURT REPORTER'S RECORD BE READ TO YOU. YOU MUST ACCEPT
22 THE COURT REPORTER'S RECORD AS ACCURATE.

23 YOU ALONE MUST JUDGE THE CREDIBILITY OR
24 BELIEVABILITY OF THE WITNESSES. IN DETERMINING WHETHER
25 TESTIMONY IS TRUE AND ACCURATE USE YOUR COMMON SENSE AND
26 EXPERIENCE. YOU MUST JUDGE THE TESTIMONY OF EACH

1 WITNESS BY THE SAME STANDARDS, SETTING ASIDE ANY BIAS OR
2 PREJUDICE YOU MAY HAVE.

3 YOU MAY BELIEVE ALL, PART OR NONE OF ANY
4 WITNESS'S TESTIMONY. CONSIDER THE TESTIMONY OF EACH
5 WITNESS AND DECIDE HOW MUCH OF IT YOU BELIEVE. IN
6 EVALUATING A WITNESS'S TESTIMONY YOU MAY CONSIDER
7 ANYTHING THAT REASONABLY TENDS TO PROVE OR DISPROVE THE
8 TRUTH OR ACCURACY OF THAT TESTIMONY.

9 AMONG THE FACTORS THAT YOU MAY CONSIDER ARE HOW
10 WELL COULD THE WITNESS SEE, HEAR OR OTHERWISE PERCEIVE
11 THE THINGS ABOUT WHICH THE WITNESS TESTIFIED, HOW WELL
12 WAS THE WITNESS ABLE TO REMEMBER AND DESCRIBE WHAT
13 HAPPENED, WHAT WAS THE WITNESS'S BEHAVIOR WHILE
14 TESTIFYING? DID THE WITNESS UNDERSTAND THE QUESTIONS
15 AND ANSWER THEM DIRECTLY? WAS THE WITNESS'S TESTIMONY
16 INFLUENCED BY A FACTOR SUCH AS A BIAS OR PREJUDICE, A
17 PERSONAL RELATIONSHIP WITH SOMEONE INVOLVED IN THE CASE,
18 OR A PERSONAL INTEREST IN HOW THE CASE IS DECIDED?

19 WHAT WAS THE WITNESS'S ATTITUDE ABOUT THE CASE
20 OR ABOUT TESTIFYING? DID THE WITNESS MAKE A STATEMENT
21 IN THE PAST THAT IS CONSISTENT OR INCONSISTENT WITH HIS
22 OR HER TESTIMONY? HOW REASONABLE IS THE TESTIMONY WHEN
23 YOU CONSIDER ALL OF THE OTHER EVIDENCE IN THE CASE? DID
24 OTHER EVIDENCE PROVE OR DISPROVE ANY FACT ABOUT WHICH
25 THE WITNESS TESTIFIED? DID THE WITNESS ADMIT TO BEING
26 UNTRUTHFUL?

1 DO NOT AUTOMATICALLY REJECT TESTIMONY JUST
2 BECAUSE OF INCONSISTENCIES OR CONFLICTS. CONSIDER
3 WHETHER THE DIFFERENCES ARE IMPORTANT OR NOT. PEOPLE
4 SOMETIMES HONESTLY FORGET THINGS OR MAKE MISTAKES ABOUT
5 WHAT THEY REMEMBER. ALSO, TWO PEOPLE MAY WITNESS THE
6 SAME EVENT, YET SEE IT OR HEAR IT DIFFERENTLY.

7 IF THE EVIDENCE ESTABLISHES THAT A -- EXCUSE ME
8 I WITHDRAW THAT. IF YOU DO NOT BELIEVE A WITNESS'S
9 TESTIMONY THAT HE OR SHE NO LONGER REMEMBERS SOMETHING,
10 THAT TESTIMONY IS INCONSISTENT WITNESS'S EARLIER
11 STATEMENT ON THAT SUBJECT.

12 IF YOU DECIDE THAT A WITNESS DELIBERATELY LIED
13 ABOUT SOMETHING SIGNIFICANT IN THIS CASE, YOU SHOULD
14 CONSIDER NOT BELIEVING ANYTHING THAT WITNESS SAID. OR
15 IF YOU THINK THE WITNESS LIED ABOUT SOME THINGS BUT TOLD
16 THE TRUTH ABOUT OTHERS, YOU MAY SIMPLY ACCEPT THE PART
17 YOU THINK IS TRUE AND IGNORE THE REST.

18 IF DURING THE TRIAL YOU HAVE A QUESTION THAT
19 YOU BELIEVE SHOULD BE ASKED OF A WITNESS, YOU MAY WRITE
20 OUT THE QUESTION AND SEND IT TO ME THROUGH THE BAILIFF.
21 I WILL DISCUSS THE QUESTION WITH THE ATTORNEYS AND
22 DECIDE WHETHER IT MAY BE ASKED.

23 DO NOT FEEL SLEIGHTED OR DISAPPOINTMENT IF YOUR
24 QUESTION IS NOT ASKED. YOUR QUESTION MAY NOT BE ASKED
25 FOR A VARIETY OF REASONS INCLUDING THE REASON THAT THE
26 QUESTION MAY CALL FOR AN ANSWER THAT INADMISSIBLE FOR

1 LEGAL RELATION.

2 ALSO, DO NOT GUESS THE REASON YOUR QUESTION WAS
3 NOT ASKED OR SPECULATE ABOUT WHAT THE ANSWER MIGHT HAVE
4 BEEN. ALWAYS REMEMBER THAT YOU ARE NOT ADVOCATES FOR
5 ONE SIDE OR THE OTHER IN THIS CASE. YOU ARE IMPARTIAL
6 JUDGES OF THE FACTS.

7 YOU MAY BE PERMITTED TO SEPARATE DURING
8 RECESSES AND AT THE END OF THE DAY. I WILL TELL YOU
9 WHEN TO RETURN. PLEASE REMEMBER WE CANNOT BEGIN THE
10 TRIAL UNTIL ALL OF YOU ARE IN PLACE, SO IT IS IMPORTANT
11 TO BE ON TIME.

12 REMEMBER DO NOT TALK ABOUT THE CASE OR ABOUT
13 ANY OF THE PEOPLE OR ANY SUBJECT INVOLVED IN IT WITH
14 ANYONE INCLUDING THE OTHER JURORS. DO NOT MAKE UP YOUR
15 MIND AT ALL ABOUT THE VERDICT OR ANY ISSUE UNTIL AFTER
16 YOU HAVE DISCUSSED THE CASE WITH THE OTHER JURORS DURING
17 DELIBERATIONS.

18 COUNSEL MAY BE STIPULATING THAT THE JURORS MAY
19 BE DEEMED TO HAVE BEEN SO ADMONISHED AT EACH ADJOURNMENT
20 WHETHER OR NOT THE ADMONITION IS REPEATED IN FULL; AND
21 THAT THE DEFENDANT WILL BE DEEMED TO BE PRESENT WITH
22 COUNSEL; AND EACH OF THE JURORS WILL BE DEEMED IN THE
23 BOX AT THE BEGINNING AND END OF EACH SESSION UNLESS THE
24 CONTRARY IS SHOWN ON THE RECORD.

25 DO YOU STIPULATE?

26 MS. JONES: STIPULATE.

1 MR. HENNES: STIPULATE.

2 THE COURT: THANK YOU. OKAY. COUNSEL, WOULD
3 YOU APPROACH BRIEFLY, ADMINISTRATIVE SIDEBAR?

4 (SIDEBAR PROCEEDINGS WITHOUT THE REPORTER)

5 (PROCEEDINGS IN THE PRESENCE OF THE JURY:)

6 THE COURT: ALL RIGHT. A COUPLE OF THINGS:

7 FIRST OF ALL, FROM THIS POINT FORWARD WHEN
8 COUNSEL AND I LEAVE THE COURTROOM TO HAVE A SIDEBAR, YOU
9 ALL FEEL FREE TO STAND UP AND STRETCH AND TURN AROUND TO
10 DO A JUMPING JACK, WHATEVER YOU NEED TO DO TO STAY
11 AWAKE.

12 NUMBER TWO: THE SCHEDULE WILL BE THAT WE WILL
13 HAVE USUALLY A MORNING BREAK AROUND 10:00, 10:15 OR SO.
14 WE'LL HAVE AN AFTERNOON BREAK AROUND 3:15 OR SO. WE'LL
15 BREAK FOR LUNCH FROM NOON TO 1:30, BECAUSE THE COURTS
16 ARE DARK DURING THAT PERIOD OF TIME, AND IT HELPS US
17 DEAL WITH RELEVANT ISSUES DURING THAT PERIOD OF TIME AS
18 WELL.

19 BUT TODAY, BECAUSE OF LOGISTICS, WE'RE GOING TO
20 LET YOU OUT A FEW MINUTES EARLY. AND I NORMALLY LIKE TO
21 TAKE UP AS MUCH COURT TIME AS POSSIBLE SO AS NOT TO
22 WASTE YOUR TIME AND TO MAKE THE BEST USE OF YOUR TIME.

23 BUT WE'RE GOING TO NEED TO BREAK FOR 10 MINUTES
24 BECAUSE WHILE YOU ARE BREAKING, WE'RE DISCUSSING ANOTHER
25 LEGAL ISSUE THAT HAS COME UP. SO WE'RE NOT JUST LYING
26 BY THE POOL. I WANTED TO LET YOU KNOW THAT.

1 SO YOU'RE ORDERED TO COME BACK AT 1:30. PLEASE
2 CONGREGATE RIGHT OUTSIDE THOSE DOORS THERE. AND ENJOY
3 YOUR LUNCH.

4 (PROCEEDINGS OUTSIDE THE PRESENCE OF THE JURY:)

5 THE COURT: WE'RE OUTSIDE OF THE PRESENCE OF
6 THE JURY. AND OFF THE RECORD FOR A MOMENT.

7 (DISCUSSION OFF THE RECORD)

8 THE COURT: THERE IS AN ISSUE THAT HAS COME UP.
9 AND I DO WANT TO HEAR THAT NOW BEFORE THE LUNCH HOUR.

10 COUNSEL, GO AHEAD AND EXPLAIN ON THE RECORD
11 WHAT THAT IS.

12 MR. HENNES: YES, YOUR HONOR. I AM
13 ANTICIPATING WHAT TESTIMONY MAY BE FORTHCOMING FROM
14 DETECTIVE CHAPMAN HERE. I'M READING FROM THE POLICE
15 REPORT. AND IN LIGHT OF THE COURT'S EARLIER RULINGS,
16 I'LL JUST READ ONE SENTENCE FROM IT. AND THIS IS WHAT
17 I'M CONCERNED ABOUT:

18 IN THE REPORT DETECTIVE CHAPMAN STATES IN THE
19 INITIAL INTERVIEW ON THE DAY BEFORE THE ARREST,
20 ACTUALLY, YOU KNOW, AT THE BUSINESS, AT MR. NGUYEN'S
21 BUSINESS, WHERE THEY HAD ALREADY FOUND THE FIREARMS IN
22 THE BOX, DETECTIVE CHAPMAN WRITES, "WHEN ASKED ABOUT THE
23 LEGALITIES OF TIEN NGUYEN MAKING AND HAVING HIS OWN
24 ASSAULT WEAPONS WITHOUT REGISTERING THEM, TIEN IMPLIED
25 HE KNEW WHAT HE WAS DOING WAS WRONG AND LATER ADMITTED
26 THAT HE HAD A FELONY, PREVIOUS FELONY CONVICTION, FOR

1 POSSESSING A FIREARM AND GANG MEMBER AND, AGAIN, WAS NOT
2 SUPPOSED TO HAVE ANY FIREARMS WHATSOEVER."

3 I THINK THE COURT HAS RULED, NUMBER ONE, THAT,
4 YOU KNOW, ILLEGALITIES IS NOT SOMETHING THAT ANY WITNESS
5 CAN DISCUSS. "ASSAULT WEAPONS," I THINK THE COURT HAS
6 RULED THAT WE'RE NOT GOING TO USE THAT TERM.

7 AND FURTHERMORE, "TIEN IMPLIED" IS SIMPLY
8 SPECULATION. HE DOESN'T SAY - YOU KNOW, I DON'T KNOW
9 WHAT THE YOU KNOW, WHAT THE OFFICER IS BASING THAT
10 IMPRESSION ON THAT TIEN IMPLIED HE KNEW WHAT HE WAS
11 DOING WAS WRONG. THAT COULD MEAN ANYTHING. AND I WOULD
12 OBJECT TO ANY KIND OF TESTIMONY OF ALL OF THAT STUFF.

13 THE COURT: MADAM PROSECUTOR?

14 MS. JONES: THANK YOU. I THINK THAT THAT'S AN
15 AREA WHERE THE DEFENSE CAN CROSS-EXAMINE HIM AS TO WHAT
16 HE MEANT WHEN HE WROTE THE WORD "IMPLIED."

17 THE PROFFERED EVIDENCE IS THAT
18 DETECTIVE CHAPMAN ASKED HIM ABOUT THE ILLEGALITY. IN
19 OTHER WORDS, "DO YOU KNOW THAT IT'S ILLEGAL FOR YOU TO
20 HAVE AND MAKE YOUR OWN" -- AND HE DOESN'T REMEMBER
21 WHETHER HE SAID "AK-47" OR "ASSAULT WEAPON" BECAUSE HE
22 USES THOSE TERMS INTERCHANGEABLY -- "ASSAULT WEAPONS
23 WITHOUT REGISTERING THEM?"

24 AND HE ADMITTED HE KNEW WHAT HE WAS DOING WAS
25 WRONG. LATER HE ADMITTED HE'S NOT SUPPOSED TO HAVE ANY
26 WEAPONS BECAUSE HE'S A FELON, SO THAT CONVERSATION THAT

1 HE HAD RIGHT THERE IS AN ADMISSION. AND I THINK THAT WE
2 CAN FIX IT BY JUST REFERRING TO IT HE KNOWS HE USED
3 EITHER AN "AK-47" OR AN "ASSAULT WEAPON."

4 AND IF THE PREJUDICE THAT THE DEFENSE IS
5 CONCERNED ABOUT IS REFERRING TO IT AS AN "ASSAULT
6 WEAPON," I'M FINE WITH HAVING HIM REFER TO IT IN THE
7 QUESTIONS AS AN "AK-47."

8 THE COURT: A COUPLE OF THINGS: NOT SO MUCH
9 THAT ISSUE ABOUT THE TERMINOLOGY, BUT HOW IS IT RELEVANT
10 THAT YOU'RE ELICITING FROM YOUR WITNESS THE DEFENDANT'S
11 KNOWLEDGE OF WHETHER THE GUN WAS LEGAL OR NOT LEGAL?

12 HOW IS THAT RELEVANT?

13 MS. JONES: BECAUSE IT'S -- THE WHOLE THEORY OF
14 THE CASE IS THAT THE WAY HE'S -- HE'S TRYING TO POSSESS
15 ILLEGAL WEAPONS. THAT'S IN THE BROAD SCHEME OF THINGS,
16 THAT'S WHAT HE'S DOING. AND HE'S DOING IT BY MAKING HIS
17 OWN.

18 THAT'S AN ADMISSION THAT HE KNOWS HE'S NOT
19 SUPPOSED TO MAKE THEM, BECAUSE HE SAYS, "I'M NOT
20 SUPPOSED TO BE MAKING THESE." HE KNOWS THEY'RE ILLEGAL.

21 THE COURT: IS THAT, THOUGH, IS HIS KNOWLEDGE
22 OF WHETHER IT'S LEGAL OR NOT RELEVANT?

23 MS. JONES: IT'S CONSCIOUSNESS OF GUILT. IT'S
24 CONSCIOUSNESS OF GUILT THAT HE KNOWS THAT THESE HAVE THE
25 CHARACTERISTICS OF AN ASSAULT WEAPON. AND HE KNOWS HE'S
26 MAKING IT. I MEAN, THAT'S --

1 THE COURT: WELL, THAT'S TRUE. I MEAN, THAT
2 CAN BE ELICITED. HE KNOWS THEY HAVE -- BECAUSE THAT'S
3 ONE OF THE ELEMENTS. HE'S GOT TO KNOW THAT HE'S PUTTING
4 TOGETHER THIS THING THAT HAS THE CHARACTERISTICS OF AN
5 ASSAULT RIFLE. PERIOD.

6 MS. JONES: RIGHT. WELL. --

7 THE COURT: DOES IT MATTER IF HE KNOWS IF IT'S
8 LEGAL, OR NOT LEGAL?

9 MS. JONES: WELL, HE KNOWS HE'S NOT SUPPOSED TO
10 BE MAKING -- I MEAN, I DON'T MIND YOU SANITIZING IT TO
11 GET AWAY FROM THE IN PLAIN LANGUAGE, YEAH, IT IS. HE
12 KNOWS HE'S BREAKING THE LAW.

13 THE COURT: BUT IS THAT RELEVANT TO ANYTHING?

14 MS. JONES: IT'S RELEVANT TO HIS KNOWLEDGE THAT
15 HE'S MANUFACTURING SOMETHING THAT HAS THE
16 CHARACTERISTICS OF AN ASSAULT WEAPON. THE REASON IT'S
17 AGAINST THE LAW IS BECAUSE HE'S MAKING SOMETHING THAT
18 HAS THE CHARACTERISTICS OF AN ASSAULT WEAPON.

19 THE COURT: DOES HE HAVE TO KNOW IT'S AGAINST
20 THE LAW?

21 MS. JONES: HE HAS TO KNOW WHAT HE'S DOING IS
22 WRONG.

23 MR. HENNES: NO.

24 THE COURT: DOES HE?

25 MS. JONES: YEAH. HE NEEDS TO KNOW -- HE NEEDS
26 TO KNOW THAT -- WELL, I'M SORRY. HE DOESN'T NEED TO

1 HAVE A KNOWLEDGE THAT IT'S ILLEGAL. WHAT HE NEEDS TO
2 KNOW IS THAT WHAT HE'S DOING HAS THESE CHARACTERISTICS
3 OF AN ASSAULT WEAPON.

4 THE COURT: YES. THAT'S PERFECT. I MEAN,
5 THAT'S EXACTLY -- I AGREE, THAT'S WHAT YOU HAVE TO
6 PROVE. BUT THAT FIRST PART, HE DOESN'T HAVE TO KNOW
7 IT'S LEGAL, OR NOT. SO THIS STATEMENT DOESN'T SEEM TO BE
8 APPROPRIATE TO BE ELICITED, PARTICULARLY IN LIGHT OF THE
9 FACT THAT I AM TRYING TO KEEP OUT ALL OF THESE OPINIONS
10 ABOUT WHAT'S LEGAL, AND WHAT'S NOT LEGAL.

11 MR. HENNES: YOUR HONOR, MAY I JUST

12 THE COURT: HOLD ON ONE SECOND.

13 MR. HENNES: ALL RIGHT.

14 THE COURT: LET MR. JUST HAVE THE PROSECUTOR SIT
15 WITH THAT FOR A MINUTE IN CASE SHE HAS SOMETHING ELSE TO
16 ADD.

17 MR. HENNES: OKAY.

18 THE COURT: AND WHAT WE'LL DO IS WE'RE ACTUALLY
19 GOING TO CONTINUE THIS AT 1:30 SO THAT DEPUTY VAN CAN
20 HAVE THE TIME THAT SHE NEEDS OR A LITTLE BIT OF TIME.

21 SO I'LL SEE YOU ALL AT 1:30. AND WE'RE GOING
22 TO RESUME THIS DISCUSSION. OKAY.

23 MR. HENNES: OKAY. THANK YOU, YOUR HONOR.

24 (LUNCH RECESS)

25 * * * * *

26 * * * * *

1 WESTMINSTER, CALIFORNIA - APRIL 5, 2011

2 AFTERNOON SESSION

3 (THE FOLLOWING PROCEEDINGS WERE HELD OUTSIDE THE
4 PRESENCE OF THE JURY:)

5 THE COURT: WE'RE ON THE RECORD ON THE TRIAL.
6 ALL COUNSEL AND MR. NGUYEN ARE PRESENT. AND I BELIEVE
7 THERE WAS JUST GOING TO BE A WRAP-UP OF AN ADDITIONAL
8 402 ISSUE.

9 MR. HENNES?

10 MR. HENNES: YES. REGARDING THE STATEMENT THAT
11 I READ FROM THE POLICE REPORT, DETECTIVE CHAPMAN'S
12 REPORT, I THINK THAT THERE ARE SEVERAL REASONS WHY THAT
13 SHOULD NOT BE ADMITTED:

14 FIRST REASON IS BECAUSE THE COURT'S PREVIOUS
15 RULING ABOUT WITNESSES GIVING OPINIONS AS TO WHETHER
16 SOMETHING IS LEGAL OR NOT AND REFERENCE TO "ASSAULT
17 WEAPONS."

18 SECONDLY, THIS IS NOT AN ADMISSION BECAUSE
19 THERE IS NO ACTUAL STATEMENT BY THE DEFENDANT THAT'S
20 DESCRIBED IN THIS REPORT.

21 OTHER QUESTION IS WHEN, APPARENTLY,
22 DETECTIVE CHAPMAN ASKED MY CLIENT ABOUT THE, QUOTE,
23 "LEGALITIES" OF MAKING AND HAVING HIS OWN ASSAULT
24 WEAPONS WITHOUT REGISTERING THEM, THE REPORT SAYS THAT
25 "ITEN IMPLIED HE KNEW WHAT HE WAS DOING WAS WRONG."

26 I MEAN, THAT'S COMPLETE SPECULATION. I MEAN,

1 THERE'S NO BASIS, AT LEAST IN THE REPORT, FOR THINKING,
2 FOR ASSUMING THAT THAT WAS ANY KIND OF ADMISSIBLE
3 STATEMENT.

4 I MEAN, I DON'T KNOW WHAT THE IMPLICATION IS.
5 I DON'T THINK THAT WOULD BE PROPER TESTIMONY.
6 CERTAINLY, HE COULDN'T GET UP ON THE STAND AND SAY THAT
7 THE DEFENDANT IMPLIED THAT WHAT HE WAS DOING IS WRONG.

8 SECONDLY, THERE ARE A NUMBER OF REASONS WHY,
9 EVEN ASSUMING THAT MR. NGUYEN DID STATE THAT HE KNEW
10 WHAT HE WAS DOING IS WRONG. AND THE MOST OBVIOUS REASON
11 COMES TO MIND IS THAT HE WAS A FELON IN POSSESSION OF A
12 FIREARM.

13 SO LET'S SAY THAT THE OFFICER GETS UP AND SAYS
14 HE SAID HE KNEW WHAT HE WAS DOING WAS WRONG BECAUSE HE
15 WAS BUILDING AN ILLEGAL WEAPON. AND THEN, OF COURSE,
16 WE'RE NOT GOING TO BE ABLE TO REBUT THAT WITH TESTIMONY
17 FROM MR. NGUYEN. I MEAN, WHICH IS ALL FAIR GAME.

18 I MEAN, IF HE GETS UP HERE, HE'S GOING TO HAVE
19 TO ADMIT, NUMBER ONE, THAT "I WAS -- I SAID I WAS WRONG
20 FOR DOING THIS BECAUSE I'M A FELON, AND I CAN'T HAVE ANY
21 WEAPONS." OR HE GETS UP AND HE GETS TO IMPEACH HIS
22 FELONY CONVICTION. AND FINALLY -- AND I THINK THE MOST
23 IMPORTANT REASON -- IS BECAUSE IT'S IRRELEVANT.

24 AS THE COURT INDICATED BEFORE THE BREAK,
25 THERE'S NO REQUIRE -- THEY DON'T -- THE PROSECUTION DOES
26 NOT HAVE TO PROVE THAT MR. NGUYEN KNEW WHAT HE WAS DOING

1 WAS WRONG. WHATEVER THAT MEANS. THAT WOULD MEAN
2 MORALLY WRONG, LEGALLY WRONG, JUST ANY DIFFERENT WAY.

3 IT COULD BE NOT A GOOD THING TO DO. IT DOESN'T
4 HAVE TO BE AGAINST THE ASSAULT WEAPON BAN LAWS. AND
5 IT'S IRRELEVANT AS TO HIS KNOWLEDGE OF WHETHER A
6 PARTICULAR ACT IS ILLEGAL OR NOT IS IRRELEVANT BECAUSE
7 HE DOESN'T SAY, YOU KNOW, "I KNEW I WAS WRONG BECAUSE I
8 WAS MAKING A CENTER-FIRE SEMIAUTOMATIC RIFLE TO FIX OR
9 WITH A DETACHABLE MAGAZINE."

10 I MEAN, THAT'S WHAT THEY HAVE TO PROVE IS THE
11 ELEMENTS, JUST HIS KNOWLEDGE OF WHETHER WHAT HE WAS
12 DOING IS WRONG OR RIGHT.

13 THE COURT: OKAY. AND YOUR OPINION,
14 MADAM PROSECUTOR?

15 MS. JONES: THANK YOU. THE PROPER STATEMENT IS
16 THAT INVESTIGATOR CHAPMAN ASKED IF HE KNEW THAT MAKING
17 AND HAVING AN UNREGISTERED AK-47 WAS ILLEGAL. HE
18 ADMITTED HE KNEW WHAT HE WAS DOING WAS WRONG.

19 THIS COMES IN UNDER SEVERAL THEORIES: FIRST OF
20 ALL, IT'S NOT OFFERED FOR THE TRUTH OF THE MATTER AS TO
21 WHETHER REGISTERING IT OR NOT REGISTERING IT IS ILLEGAL.
22 IT GOES TO HIS STATE OF MIND. IT GOES TO HIS
23 CONSCIOUSNESS OF GUILT. IT GOES TO HIS MOTIVE FOR
24 MANUFACTURING IT.

25 RESPECTFULLY, HE KNOWS THAT HE'S MANUFACTURING
26 SOMETHING THAT HAS BAD CHARACTERISTICS, IF YOU WILL.

1 AND IT'S SOME EVIDENCE OF WHY HE'S CREATING IT. AND
2 HE'S ADMITTING, IN FACT, THAT HE IS CREATING IT IN HIS
3 RESPONSE. HE SAYS, "I KNOW IT'S WRONG." HE DOESN'T
4 SAY, "I'M NOT MAKING IT." HE SAYS, "I KNOW IT'S WRONG."
5 SO IT'S HIGHLY PROBATIVE TO THE ELEMENTS THAT I HAVE TO
6 PROVE.

7 I HAVE TO PROVE THAT HE INTENDS TO MAKE IT. HE
8 SAYS HE'S MAKING IT. HE SAYS HE'S POSSESSING IT. HE
9 SAYS, "I KNOW IT'S WRONG." THAT'S WHY HE'S POSSESSING
10 IT, SO IT COMES IN UNDER SEVERAL -- FOR SEVERAL
11 PURPOSES.

12 MR. HENNES: YOUR HONOR, IF I MAY RESPOND.

13 IF THEY DO BRING THIS, OR IF THE COURT DOES
14 ALLOW SUCH EVIDENCE ABOUT THE LEGALITIES AND WHETHER
15 SOMEBODY IS RIGHT OR WRONG, THEN I THINK THAT OPENS UP
16 THE DOOR FOR MY EXPERTS TO TESTIFY AS TO WHETHER THAT
17 COLLECTION OF PARTS IS LEGAL OR NOT.

18 THE COURT: OKAY. STOP RIGHT HERE.

19 LET'S TAKE, MADAM PROSECUTOR, YOUR RATIONALES
20 ONE AT A TIME, BECAUSE YOU NAMED ABOUT FOUR THEORIES
21 UPON WHICH YOU WERE BASING YOUR -- FIVE THEORIES, I
22 THINK -- UPON WHICH YOU WERE BASING YOUR ARGUMENT.

23 FIRST OF ALL, LET ME GET CLEAR WHAT THE
24 STATEMENT IS. THE STATEMENT SAYS SEVERAL THINGS IN IT.
25 YOUR STATEMENT SAYS -- IT'S MULTI -- IT'S MULTI -- IT'S
26 SEVERAL SENTENCES, ISN'T IT?

1 MR. HENNES: NO. IT'S THE OFFICER'S SUMMARY OF
2 WHAT HE WAS ASKING TIEN NGUYEN IS THE OFFICER WHO
3 APPARENTLY, FROM READING THE REPORT, USED THE TERMS
4 "ASSAULT WEAPONS" AND ILLEGALITY MAKING. AND I -- I'D
5 READ IT EXACTLY WHAT I HAVE IN THE POLICE REPORT.

6 MS. JONES: WHAT THE PROFFERED EVIDENCE IS,
7 THOUGH.

8 THE COURT: WHAT IS THE PROFFERED EVIDENCE?

9 MS. JONES: THE PROFFERED EVIDENCE IS THAT HE
10 ASKED HIM IF HE KNEW WHAT HE WAS MAKING AND WHAT HE
11 HAD -- I'M SORRY -- IF HE KNEW THAT MAKING AND HAVING
12 UNREGISTERED -- AND HE'S NOT SURE WHETHER HE SAID
13 "ASSAULT WEAPONS" OR "AK-47'S," BECAUSE THEY'RE
14 INTERCHANGEABLE IN THE OFFICER'S MIND -- WAS ILLEGAL.

15 THE COURT: HOLD ON. STOP RIGHT THERE. THE
16 OFFICER ASKED IF MR. NGUYEN, WHO KNEW THAT WHAT HE WAS
17 MAKING, MEANING THE UNREGISTERED

18 MS. JONES: MAKING.

19 THE COURT: GUN WAS ILLEGAL; IS THAT WHAT
20 YOU JUST SAID?

21 MS. JONES: NO.

22 THE COURT: OH ---

23 MS. JONES: THAT IF HE KNEW THAT MAKING AND
24 HAVING IT WAS ILLEGAL.

25 MR. HENNES: HAVING WHAT, YOUR HONOR?

26 MS. JONES: HAVING THE UNREGISTERED AK-47 OR

1 ASSAULT WEAPON. HE DOESN'T REMEMBER WHICH ONES HE USED.

2 THE COURT: OKAY.

3 MS. JONES: HE SAYS, "HEY, DO YOU KNOW THAT
4 IT'S ILLEGAL FOR YOU TO MAKE AND HAVE THIS?"

5 THE COURT: YES.

6 MS. JONES: THAT'S WHAT HE ASKED HIM.

7 THE COURT: ONE MOMENT.

8 MR. HENNES: ALL RIGHT.

9 THE COURT: IS THAT CORRECT, COUNSEL, THAT ONE
10 STATEMENT?

11 MR. HENNES: WELL, I DON'T KNOW IF THAT'S WHAT
12 HE'S SAYING, BUT IF HE IS, THEN HE'S STATING HIS
13 OPINIONS OF THE LAW. AND HE'S INCORRECT.

14 THE COURT: HOLD ON. HOLD ON. AND,
15 MADAM PROSECUTOR, YOU'RE SAYING THAT IT'S NOT OFFERED
16 FOR THE TRUTH OF THE DEFENDANT'S RESPONSE AS TO WHETHER
17 IT'S ILLEGAL, CORRECT?

18 I'M SORRY. LET ME ASK YOU THIS THEN: WHAT WAS
19 THE DEFENDANT'S RESPONSE AGAIN, BECAUSE THAT'S WHAT'S
20 GOING TO BE ELICITED?

21 MS. JONES: HE SAID HE KNEW WHAT HE WAS DOING
22 WAS WRONG.

23 MR. HENNES: IS THAT THE PROFFERED EVIDENCE,
24 BECAUSE IT'S NOT -- IN THE POLICE REPORT IT SAYS "HE
25 IMPLIED HE KNEW WHAT HE" -- WE CAN 402 THE OFFICER.
26 WHAT HE SAID WAS HE KNEW WHAT HE WAS DOING WAS WRONG.

1 THE COURT: OKAY. AND YOU SAID, FIRST OF ALL,
2 MADAM PROSECUTOR, THAT'S IT'S NOT OFFERED FOR ITS TRUTH
3 THAT THE DEFENDANT KNEW?

4 MS. JONES: NO, NOT THAT IT WAS, QUOTE,
5 "ILLEGAL." WHAT IT'S OFFERED FOR IS THAT HE KNOWS IT
6 WAS WRONG TO HAVE IT. HE ADMITTED THAT HE KNEW IT WAS
7 WRONG.

8 THE COURT: ALL RIGHT. AND HOW IS IT RELEVANT
9 THAT WHETHER HE KNOWS IT'S WRONG OR NOT?

10 MS. JONES: BECAUSE IT GOES TO THE REASON WHY
11 HE'S MANUFACTURING THE GUN. HE KNOWS THAT IT'S WRONG
12 FOR HIM TO HAVE THE GUN. IT ALSO GOES TO THE FACT THAT
13 HE IS MANUFACTURING THE GUN BECAUSE IT'S AN ADMISSION
14 THAT HE'S MANUFACTURING THE GUN. IT GOES TO HIS
15 CONSCIOUSNESS OF GUILT. AND IT GOES TO HIS STATE OF
16 MIND. "YEAH, I KNOW THAT I'M NOT SUPPOSED TO BE DOING
17 THIS."

18 THE COURT: SEE, THE PROBLEM I HAVE IS IT IS IN
19 A SENSE OVERLAPPING WITH WHAT I'VE BEEN PRECLUDING THE
20 PARTIES FROM ELICITING FROM A WITNESS. I WANT TO MAKE
21 SURE THAT THAT DOESN'T OPEN THE DOOR TO DIFFERENT PEOPLE
22 OPINING WHETHER IT'S WRONG OR NOT TO CARRY A PARTICULAR
23 TYPE OF GUN. THAT'S MY PROBLEM.

24 WELL, IT'S HIGHLY PROBABIVE OF THE FACT THAT HE
25 IS MANUFACTURING THAT GUN AND THAT HE IS ATTEMPTING TO
26 POSSESS THAT GUN.

1 SUBMITTED? OR DO YOU HAVE ANOTHER ARGUMENT?

2 MR. HENNES: I DON'T KNOW. I GUESS I'M JUST
3 REPEATING MYSELF, BUT, I MEAN, ADMITTING THAT HE'S
4 MANUFACTURING A WEAPON IS NOT IN AND OF ITSELF EVIDENCE
5 OF ANYTHING BECAUSE IT HAS TO BE -- IT HAS TO FIT THE
6 DEFINITION OF AN ASSAULT RIFLE. AND HE WASN'T ASKED
7 THAT.

8 I THINK THE OFFICER, LIKE PROBABLY EVERYBODY
9 AND MANY OFFICERS AND PROBABLY EVERYONE IN THE PUBLIC,
10 JUST ASSUMES THAT IF YOU SEE ONE OF THESE GUNS, AND
11 AUTOMATICALLY IT'S ILLEGAL TO HAVE, WHEN IN FACT IT
12 ISN'T.

13 SO IF THE OFFICER IS ALLOWED TO TESTIFY THAT HE
14 ASKED MY CLIENT, YOU KNOW, IF HE KNEW THAT THIS WAS
15 WRONG, AND MY CLIENT SAYS, YEAH, FOR WHATEVER REASON,
16 OBVIOUSLY, WE CAN'T PUT HIM ON THE STAND BECAUSE HE'S
17 GOING TO BE IMPEACHED. BUT I SHOULD BE ABLE TO ALLOW MY
18 EXPERT TO SAY THAT THE OFFICER --

19 THE COURT: WHETHER THAT'S LEGAL? OR WHETHER
20 THAT'S ILLEGAL?

21 MR. HENNES: YES, IT WAS LEGAL. AND SO
22 THEY'RE -- BOTH THE DEFENDANT AND THE OFFICER WERE WRONG
23 IF THAT THEY DID THINK THAT IT WAS ILLEGAL BECAUSE THEY
24 WEREN'T.

25 THE COURT: YOU DON'T THINK THAT IF THE OFFICER
26 WERE TO TESTIFY TO DEFENDANT'S STATEMENT, "YEAH, I KNEW

1 IT WAS WRONG," THAT THE EXPERT WITNESS BY THE DEFENSE
2 SHOULDN'T BE ABLE TO OPINE WITH RESPECT TO WHETHER IT'S
3 WRONG OR NOT TO POSSESS THAT WEAPON?

4 MS. JONES: NO. I DON'T THINK THAT HE GETS TO
5 GO INTO THE LEGALITIES OF -- WHAT'S ILLEGAL IS TO
6 MANUFACTURE THAT WEAPON. AND THAT'S THE ULTIMATE
7 QUESTION FOR THE JURY. BUT THERE'S CONSCIOUSNESS OF
8 GUILT BY THE DEFENDANT THAT WHAT HE IS DOING IS WRONG.
9 I STILL THINK THAT COMES IN.

10 THE COURT: AND YOU THINK THAT DOES NOT OPEN
11 THE DOOR?

12 MS. JONES: NO.

13 MR. HENNES: WELL, YOUR HONOR, AND FURTHERMORE,
14 THERE ARE TWO WEAPONS WE'RE TALKING ABOUT. WELL, I
15 MEAN, ONE WEAPON PARTS. AND SECONDLY, A WEAPON.

16 WE CAN 402 THE OFFICER, BUT I THINK IT'S PRETTY
17 CLEAR THAT HE BELIEVED THAT THAT BTG ONE THERE WAS
18 ILLEGAL TO HAVE BY ANYBODY. AND THEREFORE --

19 THE COURT: YOU MEAN THE ONE THAT WAS THE
20 SUBJECT TO COUNT 3, SPECIFIC TO COUNT 3?

21 MR. HENNES: NO, NO. IT WAS JUST -- NO. THE
22 DTC RIFLE, THAT GUN RIGHT THERE, WHICH IS CALIFORNIA
23 LEGAL.

24 MS. JONES: THREE.

25 MR. HENNES: OH, THEY'RE COUNT 3? WELL, --

26 THE COURT: I DON'T KNOW WHAT AT THIS POINT --

1 MR. HENNES: WELL, YEAA. OKAY, YES. I'M
2 SORRY. YES, IT WAS COUNT 3.

3 THE COURT: WE HAVE TO STOP TALKING OVER EACH
4 OTHER.

5 MR. HENNES: I'M SORRY.

6 THE COURT: ALL RIGHT.

7 MR. HENNES: SO I THINK THERE WAS A
8 MISINTERPRETATION OF THE LAW BY THE OFFICERS. AND
9 THAT'S FINE. I MEAN, IT'S EASY TO DO. BUT IF WE'RE
10 GOING TO GET INTO TECHNICAL DIFFERENCES BETWEEN LEGAL AND
11 ILLEGAL RIFLES, I THINK IT'S NOT -- YOU KNOW, IT'S NOT
12 PROVIDING JUSTICE FOR DEFENDANT TO BE HANDCUFFED IN THE
13 OFFERING OF EXPERT TESTIMONY.

14 THE COURT: LET ME STOP YOU THERE. WE NEED TO
15 402 THIS ISSUE. I NEED TO KNOW EXACTLY WHAT THE OFFICER
16 IS GOING TO TESTIFY TO BECAUSE I'M NOT EXACTLY SURE
17 RELATIVE TO THE DEFENDANT'S STATEMENT.

18 THE CLERK: DO YOU SOLEMNLY STATE THAT THE
19 EVIDENCE YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING
20 BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH,
21 AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

22 THE WITNESS: I DO.

23 THE CLERK: WOULD YOU PLEASE STATE YOUR FULL
24 NAME FOR THE RECORD AND SPELL YOUR LAST AND INCLUDE YOUR
25 TITLE, IF ANY?

26 THE WITNESS: BRIAN LEE CHAPMAN, C-H-A-P-M-A-N.

1 I'M A DETECTIVE WITH THE ORANGE COUNTY AUTO THEFT TASK
2 FORCE.

3 THE CLERK: AND IS THAT BRIAN, B-R-I-A-N?

4 THE WITNESS: B-R-I, YES.

5 THE CLERK: THANK YOU VERY MUCH. PLEASE BE
6 SEATED.

7 THE COURT: WHEN YOU ARE READY, COUNSEL.

8 MS. JONES: THANK YOU.

9 BRIAN CHAPMAN,

10 CALLED AS A WITNESS REGARDING 402 ISSUES, HAVING BEEN FIRST
11 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

12

13 DIRECT EXAMINATION

14 BY MS. JONES: Q. OFFICER CHAPMAN, IN YOUR CONTACT
15 WITH THE DEFENDANT ON MARCH 17TH, 2010, THERE'S -- IN
16 THE REPORT THAT YOU PROVIDED REGARDING THAT CONTACT YOU
17 STATED THAT WHEN ASKED ABOUT THE LEGALITIES OF
18 TIEN NGUYEN MAKING AND HAVING HIS OWN ASSAULT WEAPONS
19 WITHOUT REGISTERING THEM, "TIEN IMPLIED HE KNEW WHAT HE
20 WAS DOING WAS WRONG."

21 CAN YOU EXPLAIN TO THE COURT SPECIFICALLY WHAT
22 YOU ASKED HIM ABOUT THE WEAPONS, HOW YOU PHRASED IT AND
23 WHAT HIS RESPONSE WAS?

24 A. WELL, AS YOU CAN SEE IN MY REPORT, I DIDN'T
25 PUT ANYTHING IN QUOTES. AND I DON'T REMEMBER THE EXACT
26 SPECIFIC WORD-FOR-WORD PHRASE THAT WE USED AS FAR AS

1 TIEN NGUYEN ACKNOWLEDGING THAT WHAT HE WAS DOING WAS
2 WRONG.

3 HOWEVER, I BELIEVE THAT I ASKED HIM THAT I
4 AGAIN NOTICED THAT THERE WAS NO SERIAL NUMBER OR
5 MANUFACTURER'S NAME ON THE RECEIVER. HE HAD ADMITTED
6 THAT HE WAS MAKING THAT RECEIVER. AND, YOU KNOW, IN MY
7 OPINION THAT IS ILLEGAL AND WRONG.

8 AND I ASKED HIM, "DO YOU REALIZE THAT WHAT
9 YOU'RE DOING HERE IS WRONG?" AND HE ACKNOWLEDGED THAT,
10 YES, THAT WHAT HE WAS DOING WAS WRONG.

11 Q. SO YOU WERE SPEAKING SPECIFICALLY ABOUT THE
12 AK-47-TYPE WEAPON WHEN YOU ASKED HIM ABOUT THAT?

13 A. WELL, ACTUALLY, IT WAS BOTH THE WEAPONS.
14 NEITHER OF THE WEAPONS HAD SERIAL NUMBERS ON THEM OR THE
15 MANUFACTURER'S NAMES.

16 Q. SO HE ACKNOWLEDGED THAT HE WAS MAKING THEM?

17 A. YES.

18 Q. AND THEN YOU ASKED HIM IF HE KNEW THAT WAS
19 WRONG. AND HE ADMITTED THAT HE KNEW IT WAS WRONG?

20 A. YES.

21 MS. JONES: NOTHING FURTHER.

22 THE COURT: CROSS?

23
24 CROSS-EXAMINATION

25 BY MR. HENNES: Q. IS ACKNOWLEDGED THE SAME AS
26 IMPLIED TO YOU, DETECTIVE? AND WHAT DID HE SAY?

1 A. AGAIN, I DON'T KNOW THE EXACT WORDS THAT WE
2 USED. IT'S BEEN SOME TIME AND BUT I DID ASK HIM, YOU
3 KNOW, "HEY, YOU'RE MAKING THESE THINGS."

4 AND HE DESCRIBED THAT TO ME, HOW HE WAS MAKING
5 THE LOWER RECEIVERS ON BOTH OF THESE WEAPONS, THAT HE
6 HAD ALREADY COMPLETED THE ONE ON THE .50 DTC. AND, YOU
7 KNOW, HE ADMITTED THAT IN DOING SO THAT WHAT HE WAS
8 DOING WAS WRONG. AND HE LATER OR MAYBE --

9 MS. JONES: OKAY. LET'S STOP THERE BECAUSE
10 THIS IS A LATER COMMENT.

11 THE COURT: I'M SORRY?

12 MS. JONES: OBJECTION. NONRESPONSIVE AS TO
13 WHAT HAPPENED LATER.

14 THE COURT: HOLD ON. THE ANSWER WILL STAY.
15 YOU CAN ASK YOUR NEXT QUESTION OR FOLLOW UP.

16 BY MR. HENNES: Q. SO YOU DON'T KNOW WHEN
17 MR. NGUYEN, AS YOU PUT IT, ACKNOWLEDGED THAT HE WAS
18 WRONG? YOU DON'T KNOW WHY HE ACKNOWLEDGED HE WAS WRONG;
19 IS THAT RIGHT?

20 THE COURT: THAT WOULD BE CORRECT, BUT IT WOULD
21 CALL FOR SPECULATION, WOULDN'T IT?

22 MR. HENNES: WELL, HE DIDN'T SAY WHY HE WAS
23 WRONG. HE JUST SAID I WAS -- WELL, HE DON'T KNOW WHAT
24 HE SAID. BUT IT --

25 THE COURT: YOU CAN ASK A QUESTION AND PHRASE
26 IT IN ONE QUESTION, COUNSEL. I KNOW YOU'RE KIND OF

1 THINKING OUT LOUD, BUT --

2 MR. HENNES: YES, YOUR HONOR. I DON'T HAVE ANY
3 FURTHER QUESTIONS.

4 THE COURT: ANYTHING FURTHER?

5 MS. JONES: NOTHING FURTHER.

6 THE COURT: YOU'RE EXCUSED. THANK YOU.

7 COUNSEL, DO I KNOW ANY MORE THAN BEFORE THE
8 OFFICER TOOK THE STAND? PERHAPS, YOU KNOW, IS THERE ANY
9 DIFFERENT ARGUMENT ON THIS POINT?

10 MR. HENNES: THE OFFICER CAN'T EVEN REMEMBER
11 WHAT WAS SAID. ALL HE HAS IS HIS GENERAL, VAGUE
12 RECOLLECTION THAT MR. NGUYEN SEEMED TO BELIEVE THAT WHAT
13 HE WAS DOING WAS WRONG AND FOR REASONS NOBODY KNOWS, BUT
14 WE KNOW VERY WELL THAT HE WAS A FELON IN POSSESSION.

15 THE COURT: OKAY.

16 MR. HENNES: AND IF THE PROSECUTION INTENDS TO
17 USE THAT TESTIMONY TO SHOW KNOWLEDGE OF VIOLATING THE
18 ASSAULT WEAPON LAW, THEN I THINK THAT THE DEFENSE OUGHT
19 TO BE ABLE TO REBUT THAT.

20 THE COURT: FINAL WORD, MS. PROSECUTOR?

21 MS. JONES: YOUR HONOR, I DON'T THINK IT'S THAT
22 HE DOESN'T KNOW WHAT WAS SAID. I THINK IT'S HE DOESN'T
23 REMEMBER THE SPECIFIC LANGUAGE WHAT WAS SAID. BUT WHAT
24 WAS CONVEYED OVER AND OVER IS THAT THE DEFENDANT
25 ADMITTED HE WAS MAKING THE WEAPON, WHICH I THINK IS
26 ADMISSTBLE. AND HE ADMITTED THAT HE KNEW IT WAS WRONG.

1 MR. HENNES: YOU CAN - YOU KNOW

2 MS. JONES: AND THE DEFENSE IS THE ONE WHO
3 DOESN'T WANT TO BRING UP THE FELONY BUSINESS. HE WANTS
4 TO HAVE HIS CAKE AND EAT IT TOO.

5 HE WANTS TO BAR US FROM A LOGICAL, AND RATIONAL,
6 INTERPRETATION OF THAT IF HE'S KNOWS HE'S NOT SUPPOSED
7 TO MAKE ASSAULT WEAPONS AND SAY, WELL, IT COULD HAVE
8 BEEN THAT HE DIDN'T THINK HE THOUGHT IT WAS WRONG
9 BECAUSE MAKING THESE THINGS, HE SHOULDN'T MAKE ANY GUNS
10 BECAUSE HE'S A FELON.

11 WELL, YOU KNOW, I THINK THAT THAT'S KIND OF
12 UNREASONABLE TO SAY, WELL, WE DON'T WANT THEM TO KNOW
13 ABOUT THIS, BUT WE ONLY WANT THE INTERPRETATION THAT THE
14 PROSECUTION WANTS IN, SO, I MEAN, YOU CAN GO EITHER WAY
15 ON IT, BUT IT SHOULDN'T PREVENT THE JURY FROM HEARING
16 THE TRUTH ABOUT THE ADMISSION BECAUSE HE MADE AN
17 ADMISSION.

18 MR. HENNES: ADMISSION OF WHAT, THOUGH? WE ALL
19 KNOW THAT THAT DTC RIFLE THERE IS LEGAL TO HAVE. AND SO
20 IF THE OFFICER WAS TALKING ABOUT THAT ONE AS WELL AS A
21 COLLECTION OF PARTS, MORE THAN LIKELY, YOU KNOW, HE WAS
22 LOOKING AT THAT ONE.

23 THE COURT: OKAY. I NEED TO STEP AWAY FROM
24 THIS FOR JUST A FEW MINUTES. WE'RE GOING TO BE IN A
25 BRIEF RECESS, MAYBE ABOUT FIVE MINUTES.

26 MR. HENNES: ALL RIGHT.

1 MS. JONES: YOUR HONOR, I HATE TO BOX DOWN THE
2 COURT, BUT PRIOR TO THE DEFENSE OPENING, I'D REQUEST
3 THAT HE BE BARRED FROM MENTIONING THIS BUSINESS ABOUT
4 THE BUTTON MECHANISM THAT HE'S BEEN TALKING ABOUT IN
5 402'S BECAUSE THERE IS NO EVIDENCE PROFFERED OF ANY
6 INTENT TO PURCHASE SUCH A MECHANISM.

7 AND I THINK THAT UNLESS THE DEFENDANT AT SOME
8 POINT TESTIFIES, THERE'S NOT GOING TO BE, BECAUSE HE'S
9 TALKING ABOUT A FUTURE INTENT THAT WAS NEVER ACTED UPON.
10 AND HE'S INVITING THE JURY TO SPECULATE. AND THEN HE'S
11 GOING TO ASK HIS EXPERT TO RENDER AN OPINION BASED ON AN
12 IRRELEVANT AND IMPROPER HYPOTHETICAL.

13 THE COURT: OKAY. THAT MAY BE TRUE. I'M NOT
14 GOING TO BAR HIM AT THIS TIME BECAUSE THE JURY WILL BE
15 INSTRUCTED THAT COUNSEL'S ARGUMENTS AND COMMENTS ARE NOT
16 EVIDENCE.

17 IF HE PUTS SOMETHING OUT THERE THAT LATER DOES
18 NOT COME TO FRUITION OR DOES NOT COME OUT FROM THE
19 WITNESS STAND, THEN THAT WILL BE ABLE TO BE ARGUED.

20 MR. HENNES: OKAY.

21 MS. JONES: OKAY.

22 (RECESS)

23 (PROCEEDINGS OUTSIDE THE PRESENCE OF THE JURY:)

24 THE COURT: BACK ON THE RECORD. ALL COUNSEL,
25 AND THE DEFENDANT ARE PRESENT.

26 MY RULING IS THIS: I'M GOING TO ALLOW THE

1 STATEMENT TO COME IN. HOWEVER, I FIND THAT IT IS --
2 DOES NOT OPEN THE DOOR TO CHANGE MY EARLIER RULING
3 RELATIVE TO WHETHER THE EXPERTS CAN OPINE AS TO THE
4 LEGAL NATURE OF THESE WEAPONS.

5 THE DEFENDANT'S STATEMENT I FIND IS WHETHER THE
6 DEFENDANT USED THE WORD OR NOT "LEGAL" OR "NOT LEGAL" IN
7 THIS STATEMENT. THAT IS NOT DISPOSITIVE OF THE ISSUE.
8 THAT IS REALLY NOT THE ISSUES.

9 THE ISSUE IS THAT THE STATEMENT IS MADE. IT IS
10 AN ADMISSION. IT GOES TO HIS CONSCIOUSNESS OF GUILT AND
11 MOTIVE OR OTHER THINGS.

12 AND I FIND THAT THAT STATEMENT ALONE CAN BE
13 CROSS-EXAMINED AT LENGTH, BUT IT DOES NOT OPEN THE DOOR
14 TO THE EXPERTS OPINING ON THE ULTIMATE ISSUE FOR THE
15 JURY TO DECIDE. THAT'S TWO DIFFERENT THINGS. AND SO,
16 THAT'S WHAT MY RULING IS.

17 ALL RIGHT. AT THIS TIME WE CAN BRING THE JURY
18 IN.

19 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE PRESENCE OF
20 THE JURY:)

21 THE COURT: WE'RE BACK BEFORE THE JURY.

22 LADIES AND GENTLEMEN OF THE JURY, DURING THE
23 COURT OF THE TRIAL, IT MAY BE NECESSARY FOR THE COURT AND
24 COUNSEL TO MEET OUTSIDE OF THE PRESENCE OF THE JURY, AS
25 YOU HAVE SEEN, EITHER IN CHAMBERS, AT SIDE BENCH, OR BY
26 ASKING YOU TO LEAVE THE COURTROOM.

1 DO NOT SPECULATE ON THESE PROCEEDINGS BECAUSE
2 THEY CONCERN LEGAL ISSUES UPON WHICH THE COURT MUST RULE
3 BEFORE THE TRIAL MAY PROCEED.

4 IT IS NOW TIME FOR THE ATTORNEYS TO GIVE AN
5 OPENING STATEMENT. AT THIS TIME THEY MAY OUTLINE WHAT
6 THEY INTEND TO PROVE IN TRIAL. PLEASE REMEMBER THAT
7 WHAT THE ATTORNEYS SAY IS NOT EVIDENCE.

8 MADAM PROSECUTOR.

9 MS. JONES: THANK YOU.

10 (OPENING STATEMENT REPORTED AND NOT TRANSCRIBED)

11 THE COURT: DO YOU WANT TO MAKE AN OPENING
12 STATEMENT NOW? OR WILL YOU RESERVE?

13 MR. HENNES: I WILL RESERVE. THANK YOU.

14 THE COURT: PEOPLE CALL YOUR FIRST WITNESS.

15 MS. JONES: PEOPLE CALL BRIAN CHAPMAN.

16 THE CLERK: DO YOU SOLEMNLY STATE THAT THE
17 EVIDENCE YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING
18 BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH,
19 AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

20 THE WITNESS: I DO.

21 THE CLERK: COULD I HAVE YOU PLEASE STATE YOUR
22 NAME FOR THE RECORD, SPELL YOUR LAST AND INCLUDE YOUR
23 TITLE, IF ANY.

24 THE WITNESS: BRIAN LEE CHAPMAN. LAST NAME IS
25 SPELLED C-H-A-P-M-A-N. AND I'M A POLICE OFFICER WITH
26 THE CITY OF BUENA PARK CURRENTLY ASSIGNED TO THE

1 ORANGE COUNTY AUTO THEFT TASK FORCE AS A DETECTIVE.

2 THE CLERK: THANK YOU. PLEASE BE SEATED IN THE
3 WITNESS BOX.

4 BRIAN CHAPMAN,

5 CALLED AS A WITNESS BY AND ON BEHALF OF THE PEOPLE,
6 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED
7 AS FOLLOWS:

8
9 DIRECT EXAMINATION

10 BY MS. JONES: Q. GOOD AFTERNOON, SIR.

11 A. GOOD AFTERNOON.

12 Q. I KNOW THIS IS REPETITIVE, BUT I'VE GOT TO GET
13 IT ON THE RECORD. HOW ARE YOU EMPLOYED?

14 A. I'M A POLICE OFFICER WITH THE CITY OF
15 BUENA PARK. AND I'M ON LOAN TO THE ORANGE COUNTY AUTO
16 THEFT TASK FORCE AS A DETECTIVE.

17 Q. AND HOW LONG HAVE YOU BEEN A SWORN PEACE
18 OFFICER?

19 A. FOR APPROXIMATELY 16 YEARS.

20 Q. AND HOW LONG HAVE YOU BEEN WITH THE AUTO THEFT
21 TASK FORCE IN PARTICULAR?

22 A. IT WAS A YEAR AGO IN JANUARY.

23 Q. WERE YOU ON DUTY ON MARCH 17TH OF 2010?

24 A. YES.

25 Q. OKAY. AND ON THAT DATE DID YOU RESPOND TO
26 13040 HOOVER STREET, IN WESTMINSTER IN THE COUNTY OF

1 ORANGE?

2 A. YES.

3 Q. AND DID YOU GO TO THAT LOCATION AS PART OF AN
4 ONGOING INVESTIGATION?

5 A. YES.

6 Q. WHAT TYPE OF BUSINESS IS THAT?

7 A. IT'S AN AUTO SHOP, AUTO REPAIR, I GUESS, FOR
8 LACK OF A BETTER TERM.

9 Q. AND WHEN YOU ARRIVED AT THAT LOCATION, DID YOU
10 SEE SOMEONE THAT YOU SEE IN THE COURTROOM HERE TODAY?

11 A. YES.

12 Q. AND CAN YOU POINT TO THAT PERSON AND TELL THE
13 COURT WHAT HE'S WEARING?

14 A. THAT WOULD BE TIEN NGUYEN, WEARING A GRAY
15 JACKET, LOOKS LIKE A -- I GUESS, A GRAY SHIRT AND LOOKS
16 LIKE GRAY PANTS AND BLACK SHOES.

17 MS. JONES: MAY THE RECORD REFLECT THAT THE
18 WITNESS HAS IDENTIFIED THE DEFENDANT?

19 THE COURT: YES.

20 BY MS. JONES: Q. DID MR. NGUYEN CONFIRM THAT HE
21 WAS THE OWNER OF THAT SHOP?

22 A. YES.

23 Q. AND DID YOU ADVISE HIM THAT YOU AND OTHER
24 DETECTIVES PRESENT INTENDED TO SEARCH THE PREMISES?

25 A. YES.

26 Q. IN CONNECTION WITH THAT, DID YOU ASK HIM IF

1 THERE WERE ANY WEAPONS OR ILLEGAL ITEMS ON THE PREMISES?

2 A. YES, I DID.

3 Q. AND IS THAT A STANDARD QUESTION THAT YOU ASK
4 WHEN YOU ARE ABOUT TO SEARCH A PREMISES?

5 A. YES.

6 Q. WHAT WAS HIS RESPONSE?

7 A. HE TOLD ME THAT HE HAD A RIFLE FOR HUNTING.

8 Q. AND WHEN HE TOLD YOU HE HAD A RIFLE FOR
9 HUNTING, DID HE DO ANYTHING AT THAT TIME?

10 A. HE BEGAN TO SHOW DETECTIVE WOOD AND I PICTURES
11 FROM HIS CELL PHONE FROM A PIG HUNTING TRIP AND SAID
12 THAT HE HAD GONE PIG HUNTING AND THAT HE, AGAIN, USES
13 HIS RIFLE FOR HUNTING.

14 Q. AND WHAT WAS THE CONDITION OF THE PIGS HE
15 SHOWED YOU ON HIS CELL PHONE?

16 A. THEY HAD BEEN SHOT AND KILLED.

17 Q. DID YOU ASK HIM WHERE HE KEPT HIS HUNTING
18 RIFLE?

19 A. YES, I DID.

20 Q. AND WHAT DID HE DO AT THAT POINT?

21 A. HE LED US TO A STORAGE AREA WHICH WAS ABOVE
22 HIS OFFICE.

23 Q. AND DID HE LEAD YOU TO A PARTICULAR AREA
24 THERE? OR DID YOU NOTICE ANYTHING WHEN YOU GOT THERE?

25 A. HE LED US TO THE .50 CALIBER DTC RIFLE, WHICH
26 IS THE LARGE ONE ASSEMBLED BEHIND ME.

1 Q. AND WHEN YOU SAY "THE LARGE DTC RIFLE," ARE
2 YOU IDENTIFYING WHAT I'D ASK TO BE MARKED AS PEOPLE'S 1
3 —

4 THE COURT: IT WILL BE SO MARKED AS PEOPLE'S 1
5 FOR IDENTIFICATION.

6 (EXHIBIT 7 MARKED)

7 BY MS. JONES: Q. — WHICH IS THIS LARGE BLACK
8 WEAPON?

9 A. YES.

10 Q. ARE YOU FAMILIAR WITH FIREARMS?

11 A. YES, I AM.

12 Q. AND CAN YOU TELL ME A LITTLE BIT ABOUT YOUR
13 TRAINING AND EXPERIENCE WITH RESPECT TO THE
14 IDENTIFICATION OF FIREARMS?

15 A. WELL, AGAIN, I'VE BEEN A POLICE OFFICER FOR
16 ABOUT 16 YEARS. I'M ALSO A FIREARMS INSTRUCTOR FOR THE
17 CITY OF BUENA PARK.

18 I'VE BEEN THROUGH RANGEMASTER SCHOOL, PATROL
19 RIFLE SCHOOL. AND I'M ALSO -- I ALSO WENT THROUGH AR-15
20 OR ALSO M16 ARMOR'S COURSE BACK IN 2005.

21 Q. DID MR. NGUYEN INDICATE TO YOU THAT THAT WAS
22 THE HUNTING RIFLE THAT HE WAS TALKING ABOUT?

23 A. YES.

24 Q. AND WHAT DID YOU NOTICE ABOUT WHAT TYPE OF
25 WEAPON THAT IS? AND IF YOU COULD TELL THE JURY WHAT YOU
26 KNOW ABOUT WHAT KIND OF WEAPON THAT IS.

1 A. I FORGOT TO MENTION THAT I WAS --
2 MR. HENNES: OBJECTION, YOUR HONOR.
3 NONRESPONSIVE.

4 THE COURT: SUSTAINED.

5 BY MS. JONES: Q. WAS THERE ADDITIONAL TRAINING
6 AND EXPERIENCE THAT YOU WANTED TO MENTION?

7 A. YES.

8 Q. WHAT WAS THAT?

9 A. I WAS A MEMBER OF OUR S.W.A.T. TEAM FOR MORE
10 THAN 10 YEARS.

11 Q. ANYTHING ELSE?

12 A. NO.

13 Q. AND IF YOU COULD JUST DESCRIBE WHAT TYPE OF
14 WEAPON THAT IS FOR THE JURY ON EXHIBIT 1.

15 A. WELL, IT'S A VERY LARGE, LARGE-CALIBER
16 BOLT-ACTION-TYPE RIFLE.

17 Q. AND IS IT FULLY ASSEMBLED THERE?

18 A. YES.

19 Q. IT WAS FULLY ASSEMBLED AT THE TIME YOU SAW IT?

20 A. YES.

21 Q. SO IT'S IN THE SUBSTANTIALLY THE SAME SHAPE IT
22 WAS THE FIRST TIME YOU SAW IT?

23 A. YES.

24 Q. TELL ME ABOUT THE UPPER PORTION OF THE RIFLE.

25 A. WELL, THE UPPER PORTION IS THE PORTION WHERE
26 THE BOLT IS AND THE BARREL.

1 THE COURT: YOU KNOW, IF YOU COULD STAND UP AND
2 KIND OF POINT TO THE JURY OF WHAT YOU'RE TALKING ABOUT.

3 THE WITNESS: THE UPPER PORTION OF THE RIFLE IS
4 BASICALLY THE BARREL. AND THIS BOLT HERE, THIS IS USED
5 FOR CHAMBERING THE BULLETS.

6 THE LOWER RECEIVER OR THE LOWER PORTION OF THE
7 RIFLE WOULD BE CONSIDERED THE -- THIS PORTION HERE, ALSO
8 WITH THE TRIGGER, THE TRIGGER ASSEMBLY, AND ALSO THE
9 STOCK.

10 SO THERE'S ACTUALLY -- THEY COME TOGETHER IN
11 BASICALLY TWO MAJOR PIECES: THE UPPER ASSEMBLY AND THE
12 LOWER ASSEMBLY. THE LOWER - I THINK WE'RE GOING TO
13 GET INTO IT.

14 BY MS. JONES: Q. GO AHEAD ABOUT THE LOWER.

15 A. SERIAL NUMBERS AND STUFF?

16 Q. YES. WHAT DID YOU NOTICE, IF ANYTHING, THAT
17 WAS UNUSUAL ABOUT THAT?

18 THE COURT: HOLD ON ONE MOMENT. WHAT THE
19 WITNESS HAS JUST DESCRIBED, WITH A LITTLE BIT MORE
20 CLARITY FOR THE RECORD, HE SAID THE BARREL PART IS CLEAR
21 ON THE TOP, BUT THE REST OF IT, I DON'T KNOW WHAT HE WAS
22 POINTING TO.

23 BY MS. JONES: Q. OKAY. IF YOU COULD --

24 THE COURT: OKAY. IF HE COULD, MAYBE, JUST
25 RESTATE THAT.

26 THE WITNESS: OKAY. FOR THIS TYPE OF RIFLE

1 THERE'S TWO MAJOR COMPONENT OR COMPONENT GROUPS: YOU
2 HAVE THE UPPER ASSEMBLY, WHICH WOULD BE THE BARREL
3 COMPENSATOR OR MUZZLE BRAKE.

4 THE COURT: YOU'RE TALKING ABOUT THE CYLINDER
5 THAT'S ON THE TOP OF THE WEAPON?

6 THE WITNESS: YES.

7 THE COURT: OKAY. GO AHEAD.

8 THE WITNESS: THIS PART OF THE STOCK, THE
9 FORWARD GRIP HERE --

10 THE COURT: AND YOU'RE JUST POINTING TO THAT
11 PLASTIC PORTION THAT IS RIGHT BELOW THAT CYLINDER THAT
12 WAS ON THE TOP? IT'S APPROXIMATELY IN THE MIDDLE OF THE
13 RIFLE; IS THAT CORRECT?

14 THE WITNESS: YES.

15 THE COURT: OKAY.

16 THE WITNESS: A BIPOD USED FOR STABILIZING THE
17 GUN.

18 THE COURT: AND IT APPEARS TO BE TWO FEET THAT
19 ARE JETTING OUT FROM THAT PLASTIC PIECE THAT'S IN THE
20 MIDDLE OF THAT; IS THAT CORRECT?

21 THE WITNESS: YES.

22 THE COURT: OKAY.

23 THE WITNESS: AGAIN, THE BOLT THAT'S USED TO
24 CHAMBER THE AMMUNITION.

25 THE COURT: THAT APPEARS TO BE A HANDLE, SORT
26 OF A TUBULAR HANDLE, THAT'S COMING OUT PERPENDICULAR

1 FROM THE MIDDLE OF THE RIFLE. AND YOU CAN HELP TO
2 EXPLAIN THAT IF I'M NOT QUITE -- BECAUSE THE RECORD
3 NEEDS TO BE CLEAR.

4 OKAY. CARRY ON, DETECTIVE.

5 THE WITNESS: AND THE LOWER ASSEMBLY WOULD BE
6 THE PISTOL GRIP, THIS PORTION HERE, WHICH IS BASICALLY
7 KIND OF LIKE A FRAME, THE TRIGGER ASSEMBLY AND THE
8 STOCK.

9 THE COURT: OKAY. SORRY. SO THE PISTOL GRIP
10 IS COMING OUT FROM THE TRIGGER AREA; IS THAT CORRECT?

11 THE WITNESS: YES.

12 THE COURT: THE TRIGGER AREA IS JUST A LITTLE
13 LOOP WHERE YOU WOULD PUT YOUR FINGER ON THE TRIGGER,
14 RIGHT?

15 THE WITNESS: RIGHT.

16 THE COURT: YOU ALSO POINTED TO SOME SORT OF
17 PLASTIC THING THAT'S ABOVE THAT TRIGGER AREA. YOU CALL
18 THAT THE -- THAT -- WHAT DID YOU CALL THAT?

19 THE WITNESS: THIS IS THE, AGAIN, THE LOWER
20 ASSEMBLY. THIS WOULD BE, YOU KNOW, I GUESS A BLOCK FOR
21 LACK OF A BETTER TERM WHERE THE TRIGGER ASSEMBLY IS
22 MOUNTED INSIDE.

23 THE COURT: OKAY.

24 THE WITNESS: THIS PORTION IS TYPICALLY
25 CONTROLLED. THIS IS THE CONTROLLED PART OF THE RIFLE.
26 WHEN YOU REGISTER A GUN OR WHEN YOU PURCHASE A GUN --

1 MR. HENNES: OBJECTION, YOUR HONOR.
2 NONRESPONSTVE.

3 THE COURT: THAT IS NONRESPONSIVE. DEFECTIVE,
4 I WAS JUST ASKING YOU TO -- YOU WERE DOING AS I WAS
5 ASKING YOU TO DO TO DESCRIBE FOR THE RECORD WHERE YOU
6 WERE POINTING TO ON THE GUN. THAT'S JUST WHAT I NEEDED
7 YOU TO DO NOW.

8 NOW, WAS THERE ANYTHING ELSE THAT YOU POINTED
9 TO AT THE TIME? COUNSEL, WAS THAT IT?

10 MS. JONES: I THINK THAT'S IT SO FAR.

11 THE COURT: OKAY. GO AHEAD. CARRY ON.

12 MS. JONES: THANK YOU.

13 BY MS. JONES: Q. TO YOUR KNOWLEDGE IS THIS WEAPON
14 A WEAPON THAT IS TYPICALLY USED FOR PIG HUNTING?

15 A. NO.

16 Q. WOULD THAT PRETTY MUCH DESTROY A PIG?

17 MR. HENNES: OBJECTION, YOUR HONOR. CALLS FOR
18 SPECULATION.

19 BY MS. JONES: Q. IF YOU KNOW.

20 THE COURT: OVERRULED. YOU MAY ANSWER.

21 THE WITNESS: I THINK EVEN CALLING IT AN
22 ELEPHANT GUN WOULD BE AN UNDERSTATEMENT.

23 BY MS. JONES: Q. NOW AS YOU WERE EXAMINING THE
24 GUN, DID YOU NOTICE ANYTHING UNUSUAL ABOUT THE LOWER
25 PORTION?

26 A. YES. AGAIN, RIFLES, PISTOLS, WHEN YOU

1 PURCHASE A FIREARM, YOU PURCHASE A PARTICULAR FIREARM
2 WITH A SERIAL NUMBER ON IT AND THE MANUFACTURER'S NAME.

3 THIS PORTION OF THE GUN WOULD TYPICALLY HAVE
4 THAT ON IT. SO IF I WERE TO GO DOWN TO A GUN STORE AND
5 PURCHASE A FIREARM, WHEN THEY GO TO REGISTER IT AND THEY
6 DO A BACKGROUND CHECK ON ME --

7 MR. HENNES: YOUR HONOR, OBJECTION TO THIS KIND
8 OF TESTIMONY. HE'S TESTIFYING AS AN EXPERT. THERE'S NO
9 FOUNDATION.

10 THE COURT: COUNSEL, APPROACH.

11 (PROCEEDINGS OUTSIDE THE PRESENCE OF THE JURY:)

12 THE COURT: WE'RE OUTSIDE THE PRESENCE OF THE
13 JURY. WAS THAT OBJECTION FOUNDATION?

14 MR. HENNES: YES. AND RELEVANCE ALSO. AND
15 FOUNDATION IS WHAT EXPERTISE DOES HE HAVE IN THE WATKINS
16 GOING DOWN AND BUYING A WEAPON AT A SPORTING GOODS STORE
17 AND WHAT RELEVANCE DOES THAT HAVE?

18 I MEAN, I BELIEVE THAT IN LIGHT OF THE COURT'S
19 RULING HE CAN TESTIFY THERE WERE NO NUMBERS ON IT,
20 PERIOD, NOT WHAT YOU USUALLY DO, BECAUSE IF HE GETS INTO
21 THAT, HE'S IMPLYING THAT THAT IS ILLEGAL TO HAVE A
22 WEAPON LIKE THAT WITHOUT NUMBERS ON IT.

23 AND I'VE GOT TO BE ABLE TO COUNTER THAT WITH
24 TESTIMONY THAT ONE DOES NOT NEED TO REGISTER AND DOESN'T
25 HAVE TO HAVE A SERIAL NUMBER AND ALL OF THAT BUSINESS.

26 MS. JONES: THE COURT RULED ON THIS YESTERDAY

1 AND THAT WE COULD GET INTO THE FACT THAT IT DOESN'T HAVE
2 SERIAL NUMBERS ON IT. THAT'S UNUSUAL. AND WHY IT'S
3 UNUSUAL, AND THE BASIS FOR THE COMMENTS ON WHY IT'S
4 UNUSUAL.

5 AND I THINK THAT WE CAN DELVE INTO THE
6 FOUNDATION THAT HE KNOWS THAT. I MEAN, YOU WOULD
7 TYPICALLY FIND A MANUFACTURER'S STAMP ON A WEAPON THAT
8 YOU WOULD BUY IS PROBABLY COMMON KNOWLEDGE ANYWAY, BUT I
9 CAN LAY THAT FOUNDATION.

10 BUT IF THERE'S NOTHING, I'M NOT GETTING INTO
11 THE LEGALITY OF OR ILLEGALITY OF IT. IT'S WHAT IS USUAL
12 OR UNUSUAL. AND IT DREW THAT OFFICER'S ATTENTION TO
13 THAT WEAPON. AND HE PROCEEDED TO ASK HIM QUESTIONS
14 ABOUT IT AND FOUND OUT THAT HE MADE IT.

15 THE COURT: FINAL WORD.

16 MR. HENNES: WELL, THEN IF THEY'RE GOING TO
17 BRING THAT KIND OF EVIDENCE IN, THEN I SHOULD BE ABLE TO
18 PRESENT EVIDENCE THAT MANY SALES ARE DONE INTERSTATE
19 LEGALLY WITHOUT ANY KIND OF NUMBERS, SERIAL NUMBERS,
20 WHATEVER ON IT.

21 HE'S MAKING IT SOUND LIKE IT'S SOMETHING THAT'S
22 NEFARIOUS AND ILLEGAL. AND HE'S WRONG.

23 THE COURT: HE JUST MADE THE STATEMENT. I
24 DON'T KNOW. PERHAPS I DIDN'T --

25 MR. HENNES: IT WAS HIS -- HIS MERE SUSPICION
26 THAT SOMETHING WAS WRONG, WHICH HE IS NOT AN EXPERT ON

1 THE LAW, OBVIOUSLY, AND -- BUT THAT'S THE WHOLE REASON
2 FOR HIS SUSPICION IS THAT THERE WERE NO NUMBERS ON IT
3 BECAUSE HE DOES NOT KNOW THE LAW.

4 AND MY -- IT CAN BE A SOURCE OF INQUIRY AT THE
5 SCENE, BUT TO PUT ON AS EVIDENCE THAT WHY DO HIS
6 QUESTIONS NEED EXPLANATION? HE ASKED HIM WHY THERE WERE
7 NO NUMBERS ON IT, PERIOD. AND THEN --

8 THE COURT: OKAY. LET ME GO AHEAD AND RULE.
9 FIRST OF ALL, I FIND THAT -- FIRST OF ALL, THE COURT
10 DOES HAVE WIDE LATITUDE IN DETERMINING WHETHER THE
11 FOUNDATION HAS BEEN SET AT QUESTIONED FOR THIS WITNESS,
12 OR OF ANY EXPERTS FOR THAT REASON, TO TESTIFY.

13 I FIND THAT THERE IS ADEQUATE FOUNDATION FOR
14 THIS PERSON TO TESTIFY AS AN EXPERT. I ALSO FIND THAT I
15 WILL ALLOW THE OFFICER TO SAY WHY HE HAPPENED TO LOOK AT
16 THE GUN, WHAT WAS UNUSUAL TO HIM ABOUT THE GUN. AND
17 THAT'S AN APPROPRIATE PLACE, COUNSEL, FOR YOU TO
18 CROSS-EXAMINE HIM.

19 I FIND THAT THAT, HOWEVER, DOES NOT OPEN THE
20 DOOR TO THIS OFFICER'S OPINING ON WHETHER IT'S LEGAL OR
21 ILLEGAL. AND THAT TESTIMONY HAS NOT BEEN ELICITED. AND
22 I ADVISE BOTH COUNSEL NOT TO ELICIT IT.

23 I HAVEN'T HEARD THAT TESTIMONY YET, SO I
24 BELIEVE AT THIS POINT THERE HAS BEEN NO VIOLATION OF
25 THAT ORDER.

26 MR. HENNEKS: ALL RIGHT.

1 THE COURT: OKAY.

2 (PROCEEDINGS IN THE PRESENCE OF THE JURY:)

3 THE COURT: OKAY. COUNSEL, YOU MAY PROCEED.

4 BY MS. JONES: Q. WE LEFT OFF WITH YOU, OFFICER,
5 THAT WHAT SEEMED UNUSUAL TO YOU WAS THAT YOU WOULD SEEM
6 EXPERT TO SEE A SERIAL OR MANUFACTURER NAME ON THE GUN,
7 CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND YOU HAVING NOT SEEN THAT, WHAT DID YOU DO?

10 A. I ASKED HIM, NGUYEN, ABOUT IT.

11 Q. AND WHAT DID HE TELL YOU?

12 A. HE TOLD ME THAT HE HAD PURCHASED THE LOWER
13 PORTION OF THE RIFLE THAT WOULD TYPICALLY HAVE THE
14 SERIAL NUMBERS AND MANUFACTURING NAME OFF THE INTERNET.

15 AND HE DESCRIBED AS AN 80 PERCENT LOWER. HE
16 EXPLAINED TO ME THAT WHAT HE PURCHASED THAT OFF THE
17 INTERNET WAS NOT COMPLETED.

18 Q. WHAT WAS NOT COMPLETED, THE LOWER?

19 A. THE LOWER PORTION WAS NOT COMPLETED. HE
20 DESCRIBED THAT HE HAD -- HE HAD TO HONE OUT THE TRIGGER
21 WELD OR THE AREA IN THE BOTTOM WHERE HE WOULD PUT THE
22 TRIGGER.

23 SO IN OTHER WORDS, HE HAD TO MILL IT OR DRILL
24 IT OR FINISH THE PRODUCT HIMSELF THAT IT WASN'T
25 COMPLETED WHEN HE PURCHASED IT, AND THEREFORE IT WAS NOT
26 CONSIDERED A COMPLETED RECEIVER WHEN HE BOUGHT IT AT THE

1 TIME.

2 Q. OKAY. LET ME STOP YOU THERE. AND SO, HE
3 INDICATED THAT HE HAD TO MACHINE IT OR DRILL HOLES IN IT
4 TO FINISH IT; IS THAT CORRECT?

5 A. YES.

6 Q. AND THAT WAS HIS EXPLANATION FOR NO
7 IDENTIFICATION OR MANUFACTURER MARKS ON IT?

8 A. YES.

9 Q. WHAT DID HE SAY HE DID AFTER HE RECEIVED THE
10 LOWER PORTION OF THE RIFLE?

11 A. AGAIN, HE SAID HE COMPLETED IT HIMSELF AND
12 THAT HE HAD PUT IT TOGETHER, COMPLETED THE DRILLING
13 PROCESS, PUT IT TOGETHER; THAT IT WAS -- SHOULD BE READY
14 TO FIRE.

15 Q. AND DID HE ACTUALLY TELL YOU THAT HE HIMSELF
16 PURCHASED THE UPPER PART OF THE GUN AS WELL?

17 A. YES, HE DID.

18 Q. AND HE ATTACHED THE PIECES TOGETHER?

19 A. YES.

20 Q. AND HE AFFIRMED THAT IT WAS NOW COMPLETE?

21 A. YES.

22 Q. DID YOU LATER TEST THAT RIFLE?

23 A. I DRY-FIRED IT.

24 Q. WHAT DOES THAT MEAN?

25 A. THAT MEANS YOU COCK IT AND SEE IF THE FIRING
26 PIN HITS. IT IS NOT PUSHING A ROUND IN THE CHAMBER AND

1 FIRING THE WEAPON.

2 TYPICALLY, IF YOU COCK THE GUN AND PULL THE
3 TRIGGER AND YOU HEAR IT, HEAR THE FIRING PIN RELEASE,
4 THEN IT SHOULD BE IN GOOD WORKING ORDER.

5 Q. AND WAS IT?

6 A. YES. IT IS MY OPINION THAT IT WAS IN GOOD
7 WORKING ORDER.

8 Q. DID YOU ASK HIM ABOUT THE AMMUNITION FOR THAT
9 GUN?

10 A. YES.

11 Q. AND DIRECTING YOUR ATTENTION TO PEOPLE'S 2,
12 WHICH IS A BOX WITH, I BELIEVE, 50 ROUNDS?

13 A. YES.

14 MS. JONES: AND I'M GOING TO -- 50 ROUNDS OF
15 AMMUNITION. AND I'M GOING TO HOLD UP ONE OF THOSE
16 ROUNDS AS PEOPLE'S 2A.

17 THE COURT: THAT WILL BE PEOPLE'S 2A FOR
18 IDENTIFICATION.

19 (EXHIBIT 2A MARKED)

20 BY MS. JONES: Q. WHEN YOU ASKED HIM ABOUT THE
21 AMMUNITION, IS THIS WHAT HE DIRECTED YOU TO?

22 A. YES.

23 Q. THIS ACTUAL BOX?

24 A. YES.

25 Q. AND YOU TOOK A LOOK AT THAT AMMUNITION?

26 A. YES, I DID.

1 Q. AND CAN YOU DESCRIBE WHAT TYPE OF AMMUNITION
2 THAT IS FOR THE JURY?

3 A. WELL, HE DESCRIBED IT AS AMMUNITION THAT GOES
4 TO HIS RIFLE. AND IT HAS A .50 DTC.

5 Q. AND WHAT IS A .50 DTC?

6 A. IT'S A CALIBER OF AMMUNITION. IT'S SIMILAR TO
7 THE .50 BMG.

8 MR. HENNES: OBJECTION, YOUR HONOR. THAT'S
9 VAGUE OR NONRESPONSIVE.

10 THE COURT: SUSTAINED ON NONRESPONSIVE. THE
11 ANSWER, "IT GOES TO HIS .50 DTC RIFLE" WILL REMAIN. THE
12 REST WILL BE STRICKEN.

13 BY MS. JONES: Q. AND WHERE DID HE SAY THAT HE GOT
14 THAT AMMUNITION?

15 A. HE SAID HE GOT IT FROM A RELOADER THROUGH THE
16 INTERNET OR -- I'M SORRY -- FROM THE MAIL. HE RECEIVED
17 IT FROM THE MAIL.

18 Q. DID HE INDICATE TO YOU THAT THAT AMMUNITION
19 FIT THE .50 CALIBER WEAPON?

20 A. YES.

21 Q. DID HE DID YOU LOCATE ADDITIONAL
22 AMMUNITION?

23 A. YES. I ASKED HIM IF HE HAD ANY OTHER
24 AMMUNITION. AND HE PRODUCED THE .50 BROWNF CALIBER
25 AMMUNITION.

26 Q. AND DIRECTING YOUR ATTENTION TO A BOX OF 120

1 ROUNDS OF BEOWULF AMMUNITION AND ASK THAT THAT BE MARKED
2 AS PEOPLE'S 2. AND I'LL TAKE ONE OF THOSE OUT.

3 THE COURT: WOULD THAT BE PEOPLE'S 2?

4 MS. JONES: I'M SORRY. IT'S PEOPLE'S 3.

5 THE COURT: PEOPLE'S 3 FOR IDENTIFICATION.

6 (EXHIBIT 3 MARKED)

7 MS. JONES: AND I'LL TAKE ONE OF THEM AS
8 PEOPLE'S 3A.

9 THE COURT: OKAY. THE ONE UNIT WILL BE
10 PEOPLE'S 3A FOR IDENTIFICATION.

11 (EXHIBIT 3A MARKED)

12 BY MS. JONES: Q. WHAT DID HE TELL YOU ABOUT THAT
13 AMMUNITION?

14 A. HE TOLD ME THAT THAT WAS AMMUNITION THAT HE
15 HAD PURCHASED FOR HIS PIG HUNTS. AND IT WAS LEFT OVER
16 FROM THE PIG HUNT.

17 Q. AND THAT AMMUNITION DOES GO TO EITHER THE .50
18 CALIBER OR THE AK 47?

19 A. NO.

20 Q. WHAT DOES IT GO TO? OR DID HE SAY?

21 A. DIFFERENT TYPE OF RIFLE. HE SAID THAT HE HAD
22 RENTED A RIFLE WHEN HE WENT PIG HUNTING.

23 Q. RENTED FROM A STORE? RENTED FROM A DEALER?
24 DID HE SAY?

25 A. I DON'T THINK HE WAS THAT SPECIFIC.

26 Q. HE JUST SAID SOMEBODY RENTED HIM A RIFLE.

1 MR. HENNES: OBJECTION, YOUR HONOR. MISSTATES
2 THE EVIDENCE.

3 THE COURT: SUSTAINED.

4 BY MS. JONES: Q. WHAT DID HE SAY?

5 A. HE SAID THAT IT WENT TO --

6 MR. HENNES: OBJECTION. ASKED AND ANSWERED,
7 YOUR HONOR.

8 THE COURT: OVERRULED.

9 THE WITNESS: HE SAID IT WENT TO A RIFLE THAT
10 HE RENTED WHEN HE WENT PIG HUNTING.

11 BY MS. JONES: Q. NOW, DID YOU ASK HIM IF HE HAD
12 ANY OTHER WEAPONS IN HIS POSSESSION?

13 A. YES.

14 Q. AND WHAT SPECIFICALLY DID HE TELL YOU?

15 A. HE LED ME TO A DIFFERENT PART OF THE SHOP.

16 Q. WELL, BEFORE HE LED YOU THERE, WHAT DID HE
17 TELL YOU?

18 A. HE SAID THAT HE WAS MAKING AN AK 47.

19 Q. AND WHEN HE -- AFTER HE TOLD YOU HE WAS MAKING
20 AN AK-47, DID YOU ASK HIM TO SHOW YOU IT? OR DID HE
21 DIRECT YOU TO IT?

22 A. YES. HE DIRECTED ME TO IT.

23 Q. AND WHERE WAS IT?

24 A. AT THE OTHER END OF THE SHOP.

25 Q. STILL UPSTAIRS?

26 A. NO, DOWNSTAIRS.

1 Q. AND CAN YOU DESCRIBE THE SHOP FOR US AND TELL
2 US A LITTLE BIT ABOUT IT?

3 A. WHEN YOU FIRST ENTER YOU WALK INTO THE OFFICE,
4 WELL, THE FRONT COUNTER AREA. ABOVE THAT WOULD BE A
5 STORAGE LOFT. AND THEN YOU HAVE BASICALLY AN OPEN SHOP
6 WHERE THEY DO THEIR AUTOMOTIVE REPAIR.

7 Q. AND IS THE LOFT WHERE YOU -- WHERE HE SHOWED
8 YOU THE .50 CALIBER AND THE AMMUNITION?

9 A. YES.

10 Q. AND SO WHEN YOU ASKED HIM IF THERE WAS ANOTHER
11 WEAPON WERE YOU STILL UP IN THE LOFT?

12 A. NO.

13 Q. WHERE WERE YOU?

14 A. AT THE OTHER END OF THE SHOP AT THE BACK
15 TOWARDS THE ALLEY. I GUESS THAT WOULD HAVE BEEN THE
16 NORTHWEST CORNER, I'M GUESSING.

17 Q. AND WHAT'S LOCATED IN THAT AREA SHOP? IS IT
18 LIKE A REPAIR SHOP? OR WHAT IS IT?

19 A. REPAIR TOOLS AND THINGS THAT YOU FIND IN AN
20 AUTO SHOP.

21 Q. AND AT THE BACK OF THE SHOP HE LED YOU TO
22 ANOTHER AREA THERE?

23 A. YES.

24 Q. AND WHAT SPECIFICALLY DID HE LEAD YOU TO?

25 A. A BOX OF PARTS FOR THE AK-47.

26 Q. AND WHEN YOU FIRST SAW THE PARTS, WERE THEY IN

1 THIS BOX THAT I WOULD ASK TO BE MARKED AS PEOPLE'S 4.

2 THE COURT: SO MARKED AS PEOPLE'S 4 FOR
3 IDENTIFICATION. IT'S A LARGE BOX.

4 THE WITNESS: YES.

5 (EXHIBIT 4 MARKED)

6 BY MS. JONES: Q. AND WERE THEY CONTAINED LOOSELY,
7 ALL OF THE PARTS WITHIN THAT BOX?

8 A. YES.

9 Q. DID YOU LATER LABEL AND PACKAGE EACH
10 INDIVIDUAL ITEM THAT WAS IN THAT BOX?

11 A. YES. MYSELF AND OUR SECRETARY DID.

12 Q. AND SO, THE BAGS THAT ARE OUT ON THE TABLE
13 THAT ARE LABELED AND LETTERED, ARE THOSE WHAT YOU AND
14 THE SECRETARY DID TOGETHER WITH RESPECT TO THE PARTS
15 THAT WERE IN THIS BOX?

16 A. YES.

17 Q. SO CLEARLY WHEN YOU FOUND THEM IN THE BOX THEY
18 DIDN'T HAVE ANY PLASTIC AROUND THEM? THEY WERE IN THERE
19 LOOSE?

20 A. NO.

21 Q. AND YOU'VE HAD A CHANCE TO LOOK AT ALL OF
22 THOSE ITEMS ON THE TABLE, CORRECT?

23 A. YES.

24 Q. AND THEY'RE MARKED PEOPLE'S A THROUGH W AT
25 THIS POINT WITH NO NUMBER. I GUESS I'D ASK THAT THAT BE
26 MARKED. THEY'LL BE 5, THEN -- SORRY. PEOPLE'S 5. ALL

1 RIGHT.

2 SO PEOPLE'S 5A THROUGH W ARE THE ITEMS THAT
3 WERE CONTAINED IN PEOPLE'S 4, CORRECT?

4 A. YES. ALL THE PARTS HERE ON THE TABLE.

5 Q. OKAY. DID HE TALK ABOUT THE RECEIVER PORTION
6 OF THE AK-47?

7 A. YES.

8 Q. AND IF YOU COULD PLEASE HOLD THAT PORTION UP
9 FOR THE JURY AND TELL US WHAT LETTER THAT IS AND WHAT
10 IT'S CALLED?

11 A. IT'S MARKED W, AS IN "WHISKEY." AND IT'S THE
12 LOWER RECEIVER.

13 Q. AND AT THIS POINT HE HAD TOLD YOU THAT HE MADE
14 THE -- WELL, STRIKE THAT -- THAT HE WAS MAKING THE GUN
15 HIMSELF, CORRECT?

16 A. YES.

17 Q. AND WHEN YOU TOOK A LOOK AT THAT RECEIVER,
18 WERE THERE ANY MANUFACTURER NAME OR SERIAL NUMBER
19 AFFIXED TO IT?

20 A. NO.

21 Q. WHAT DID HE TELL YOU ABOUT THAT RECEIVER?

22 A. I ASKED HIM HOW HE DID IT. AND HE EXPLAINED
23 US TO AND ALSO WENT ON HIS COMPUTER AND WENT ON THE
24 WEBSITE AK-BUILDER.COM.

25 HE EXPLAINED THAT HE PURCHASED THE LOWER
26 RECEIVER, WHICH IS THE METAL -- WELL, THE TIN, METAL

1 PORTION OF THIS RECEIVER, THE OUTSIDE, AS AN AK 47
2 RECEIVER FLAT.

3 AND ON THE WEBSITE IT SHOWS THAT YOU CAN
4 PURCHASE THOSE. BASICALLY WHAT IT IS IS A FLAT PIECE OF
5 METAL AT THAT TIME WITH HOLES DRILLED IN IT WHICH HAS TO
6 BE MOLDED OR BENT INTO THE CORRECT POSITION IN ORDER TO
7 HOLD THE INTERNAL PARTS FOR THE AK-47.

8 SO AGAIN, HE SAID THAT HE PURCHASED AN AK-47
9 FLAT AND THAT HE HAD BENT IT INTO SHAPE AND HAD BEGAN
10 THE PROCESS OF ASSEMBLING IT.

11 Q. DID HE TELL YOU THAT BY DOING IT THAT WAY HE
12 COULD AVOID REGISTRATION?

13 A. I ASKED HIM ABOUT THAT. AND HE SAID THAT
14 BECAUSE, AGAIN, WHEN HE BOUGHT IT AS A FLAT PIECE OF
15 METAL, AND IT WASN'T BENT INTO THE PROPER SHAPE AND IT
16 WAS NOT A COMPLETED RECEIVER, THAT HE DIDN'T HAVE TO
17 REGISTER THE GUN OR REGISTER THAT PORTION OF THE RIFLE,
18 WHICH IS THE CONTROL PORTION.

19 Q. AND HE TOLD YOU THAT HE PERSONALLY ALTERED THE
20 RECEIVER AND BENT IT INTO THE PROPER SHAPE TO ASSEMBLE
21 HIS AK 47?

22 A. YES.

23 Q. WHAT DID HE TELL YOU WAS LEFT OF THE GUN?

24 A. I DON'T RECALL HIM BEING SPECIFIC AS TO WHAT
25 HE HAD LEFT TO DO.

26 Q. DID HE DESCRIBE THAT HE HAD LEFT TO ASSEMBLE

1 IT OR HE HAD NOT YET ASSEMBLED IT?

2 A. HE TOLD ME THAT HE HAD NOT YET ASSEMBLED IT.

3 Q. DID YOU ASK HIM IF HE KNEW IT WAS WRONG FOR
4 HIM TO HAVE AND MAKE HIS OWN AK-47 WEAPON?

5 A. YES.

6 Q. AND DID HE ADMIT THAT HE KNEW IT WAS WRONG?

7 A. YES.

8 Q. HOW LONG DID THE SEARCH OF DEFENDANT'S
9 BUSINESS TAKE APPROXIMATELY?

10 A. APPROXIMATELY TWO HOURS.

11 Q. AND AT SOME POINT DID YOU OBSERVE HIM TO BE IN
12 THE BACK ALLEY?

13 A. YES.

14 Q. DID YOU OBSERVE HIM TALKING ON A PHONE?

15 A. YES.

16 Q. AND THIS WAS DURING THE TWO HOURS THAT THE
17 SHOP WAS BEING SEARCHED?

18 A. YES.

19 Q. DID YOU ASK HIM IF HE HAD ANY MORE WEAPONS?

20 A. YES.

21 Q. WHAT DID HE TELL YOU?

22 A. HE TOLD ME THAT HE HAD HEARD THAT HIS WIFE HAD
23 A SHOT GUN REGISTERED TO HER, BUT THAT HE HAD LENT IT
24 OUT. AND HE STATED THAT HE DIDN'T HAVE ANY MORE
25 WEAPONS AT THE SHOP OR AT HIS HOME.

26 Q. DID YOU ASK HIM IF YOU COULD SEARCH HIS HOME?

1 A. YES.

2 Q. AND DID YOU AND OTHER OFFICERS -- DID HE AGREE
3 TO LET YOU DO THAT?

4 A. YES.

5 Q. AND DID YOU AND OTHER OFFICERS RESPOND TO HIS
6 HOME THAT SAME AFTERNOON?

7 A. YES.

8 Q. WHAT, IF ANYTHING, DID YOU FIND INSIDE THE
9 HOME OF SIGNIFICANCE?

10 A. WE DID NOT FIND ANY MORE WEAPONS. I FOUND THE
11 BOX THAT THE UPPER RECEIVER FOR THE .50 DTC WAS IN THE
12 HOUSE AND ALSO A RECEIPT THAT HE HAD PURCHASED THAT
13 PORTION OF THE .50 CALIBER RIFLE.

14 AND WE ALSO SAW THAT THERE WAS A GUN SAFE IN
15 THE HALL CLOSET AND THE DOOR WAS WIDE OPEN AND THERE WAS
16 NOTHING INSIDE.

17 Q. DID YOU ASK HIM WHY THE DOOR WAS AJAR?

18 A. YES.

19 Q. AND WHAT DID HE TELL YOU?

20 A. I DON'T REMEMBER THE SPECIFIC QUOTE, BUT HE
21 SAID THAT HE HAD LEFT IT OPEN BASICALLY BECAUSE HE
22 DIDN'T HAVE ANY GUNS IN IT OR DIDN'T HAVE ANYTHING IN
23 IT.

24 Q. SO LIKE A COAT CLOSET?

25 A. YES.

26 Q. AND HOW BIG WAS THE GUN SAFE?

1 A. I WOULD CALL A MODERATE SIZE GUN SAFE. I
2 DON'T KNOW. I'M JUST GUESSING --

3 Q. WELL, I DON'T WANT YOU TO GUESS. CAN YOU
4 ESTIMATE THE APPROXIMATE HEIGHT, WIDTH?

5 A. I WOULD GUESS IT'S ABOUT FOUR FEET TALL AND
6 PROBABLY TWO FEET WIDE, MAYBE TWO AND A HALF FEET WIDE,
7 SOMETHING LIKE THAT AND PROBABLY 18 INCHES DEEP, MAYBE
8 TWO FEET DEEP, APPROXIMATELY.

9 Q. THANK YOU. SHOW YOU A COUPLE OF MORE
10 EXHIBITS. SHOWING YOU WHAT I WOULD ASK TO BE MARKED AS
11 PEOPLE'S 6, I BELIEVE --

12 THE COURT: IT WILL BE SO MARKED AS PEOPLE'S 6
13 FOR IDENTIFICATION.

14 (EXHIBIT 6 MARKED)

15 BY MS. JONES: Q. -- WHICH APPEARS TO BE A SALES
16 RECEIPT FROM B.O.H.I.C.A. ARMS CORPORATION.

17 DO YOU RECOGNIZE THAT ITEM?

18 A. YES.

19 Q. WHAT IS IT?

20 A. IT LOOKS LIKE A RECEIPT TO MR. NGUYEN
21 REGARDING THE .50 DTC PURCHASE FOR \$1585.

22 Q. AND WHAT SPECIFICALLY ARE THE ITEMS THAT WERE
23 PURCHASED ACCORDING TO THAT SALES RECEIPT?

24 A. WELL, IT SAYS "30-INCH BARREL."

25 Q. AND DOES PEOPLE'S 1 HAVE A 30-INCH BARREL?

26 A. I DIDN'T MEASURE IT, BUT IT LOOKS PRETTY

1 CLOSURE.

2 Q. DOES THAT APPEAR TO BE THE INVOICE THAT WOULD
3 MATCH THAT GUN?

4 A. YES.

5 Q. OKAY. A WHAT IS THE SECOND ITEM?

6 A. IT SAYS ".510 DTC CHAMBER" OR ".510 DTC
7 CHAMBERING." THAT WOULD DESCRIBE THE CALIBER OF
8 AMMUNITION THAT IT USES.

9 Q. SO WHAT IS THAT ITEM THAT WAS \$50?

10 A. IT APPEARS THAT THEY CHARGED \$50 EXTRA FOR
11 THAT CALIBER OF AMMUNITION.

12 Q. AND THE NEXT ITEM THAT HE PURCHASED?

13 A. IT SAYS "FLUTED BARREL."

14 Q. WHAT IS THAT? AND YOU CAN USE THE PEOPLE'S 1.

15 A. IT APPEARS THAT THEY CHARGED HIM A HUNDRED
16 DOLLARS EXTRA FOR A FLUTED BARREL.

17 Q. WHAT'S A FLUTED BARREL?

18 A. THE FLUTED BARREL IS BASICALLY THIS MILLING ON
19 THE BARREL ITSELF. YOU CAN SEE WHERE THERE'S INSTEAD OF
20 HAVING A SOLID ROUND BARREL. FLUTED MEANS THAT THEY
21 REMOVE MATERIAL, WHICH I'VE BEEN TOLD STRENGTHENS THE
22 BARREL AND ALSO MAKES IT LIGHTER AT THE SAME TIME.

23 THE COURT: MAY THE RECORD REFLECT THAT THE
24 OFFICER WAS RUNNING HIS FINGERS UP AND DOWN THE
25 CYLINDRICAL BARREL WHICH -- TOWARD THE TOP OF THE
26 WEAPON.

1 BY MS. JONES: Q. AND I'M NOT SURE WHAT THAT LAST
2 ITEM IS. DO YOU KNOW? SHIPPING?

3 A. SAYS "S&H." I THINK THAT'S SHIPPING AND
4 HANDLING. IT SAYS "SHIPPING, C-O-N-U-S," SAYS "\$40."

5 Q. WHERE DID YOU FIND THIS SALES RECEIPT?

6 A. THIS RECEIPT WAS IN THIS BOX RIGHT HERE, WHICH
7 WAS AT MR. NGUYEN'S HOUSE.

8 MS. JONES: AND I'LL ASK THAT THE BOX THAT HE'S
9 REFERRED TO BE MARKED AS PEOPLE'S 7.

10 THE COURT: IT WILL BE SO MARKED AS PEOPLE'S 7
11 FOR IDENTIFICATION.

12 (EXHIBIT 7 MARKED)

13 THE WITNESS: IF YOU LOOK INSIDE THE BOX, IT
14 LOOKS LIKE IT'S BEEN CUT OUT FOR THAT BARREL FOR THE
15 UPPER -- THIS WOULD BE THE BARREL. THIS WOULD BE THE
16 BOLT.

17 THE COURT: AND WHAT'S HE POINTING TO -- I'M
18 SORRY. HE'S HOLDING THE BOX UP. AND YOU'RE POINTING TO
19 THE LEFT SIDE OF THE INDENTATION OF THE BOX.

20 MS. JONES: AND AS TO THE BARREL AT THE --
21 POINTING TO THE CENTER OF THE INDENTATION.

22 THE WITNESS: THAT'S WHAT IT LOOKS LIKE.

23 THE COURT: AND THE RECORD WILL SO REFLECT.

24 BY MS. JONES: Q. AND I THINK WE'RE UP TO
25 PEOPLE'S 8, IS A PACKAGING SLIP IN THE NAME OF THE
26 DEFENDANT.

1 DO YOU RECOGNIZE THIS ITEM?

2 A. YES, I DO.

3 Q. WHAT IS IT?

4 A. IT LOOKS LIKE A PACKAGING SLIP TO TIEN NGUYEN.

5 Q. AND WHERE DID YOU FIND THAT?

6 A. I FOUND THAT IN THE BOX OF AK-47 PARTS.

7 Q. OKAY. AND FINALLY PEOPLE'S 9, WHICH IS A
8 HALF-SLIP OF PAPER THAT SAYS "B.O.H.I.C.A. ARMS IMPROVED
9 BOLT HANDLE INSTALLATION INSTRUCTIONS."

10 DO YOU RECOGNIZE THAT ITEM?

11 A. YES.

12 Q. AND WHERE DID YOU FIND THAT?

13 A. I FOUND THAT IN THIS BOX ALSO.

14 Q. AND THE BOX YOU'RE REFERRING TO PEOPLE'S 7, I
15 BELIEVE?

16 THE COURT: SO PEOPLE'S 9 FOR IDENTIFICATION
17 WAS FOUND — EXCUSE ME — IN THE BOX THAT'S BEEN MARKED
18 AS PEOPLE'S 7 FOR IDENTIFICATION?

19 I'M SORRY. WHAT WAS PEOPLE'S 9?

20 MS. JONES: IT WAS THE B.O.H.I.C.A.
21 INSTRUCTIONS, INSTALLATION INSTRUCTIONS.

22 (EXHIBIT 9 MARKED)

23 BY MS. JONES: Q. NOW, ON THAT FIRST DATE THAT YOU
24 HAD CONTACT MARCH 17TH, 2010, SO DID YOU CONFISCATE THE
25 WEAPONS THAT YOU DISCOVERED FROM THE DEFENDANT?

26 A. YES.

1 Q. AND DID YOU MEET WITH HIM AGAIN ON MARCH 18TH,
2 THE VERY NEXT DAY?

3 A. YES.

4 Q. AND YOU MET WITH HIM AGAIN -- WELL, LET ME ASK
5 YOU THIS: WAS HE FAIRLY FORTHCOMING WITH YOU THE FIRST
6 DATE THAT YOU SPOKE WITH HIM?

7 MR. HENNES: OBJECTION, YOUR HONOR. CALLS FOR
8 SPECULATION.

9 THE COURT: SUSTAINED.

10 BY MS. JONES: Q. DID HE ANSWER YOUR QUESTIONS
11 DIRECTLY THE FIRST DATE THAT YOU CONTACTED HIM?

12 A. YES.

13 Q. AND THE SECOND DATE THAT YOU CONTACTED HIM DID
14 HIS DEemeanOR CHANGE IN ANY MANNER?

15 A. YES.

16 Q. HOW SO?

17 A. WELL, WHEN I ASKED HIM DIRECT QUESTIONS, HE
18 TYPICALLY TALKED IN CIRCLES AND

19 MR. HENNES: OBJECTION, YOUR HONOR.

20 THE COURT: SUSTAINED.

21 BY MS. JONES: Q. DID HE GIVE YOU DIRECT ANSWERS
22 TO DIRECT QUESTIONS THE SECOND DAY?

23 MR. HENNES: OBJECTION, YOUR HONOR. CALLS FOR
24 SPECULATION.

25 THE COURT: OVERRULED.

26 THE WITNESS: I'M SORRY. ASK THE QUESTION

1 AGAIN.

2 BY MS. JONES: Q. DID HE SEEM TO ANSWER -- DID HE
3 GIVE YOU DIRECT ANSWERS TO DIRECT QUESTIONS WHEN YOU
4 ASKED HIM REGARDING WEAPONS THE SECOND DAY?

5 A. TYPICALLY, NO.

6 Q. DID HE THE FIRST DAY WHEN HE TOLD YOU ABOUT
7 HOW HE MADE THE RECEIVER FOR THE AK-47, DID HE DESCRIBE
8 THE INSTRUMENT THAT HE USED TO DO THAT?

9 A. THE FIRST DAY?

10 Q. YEAH, ON THE 17TH.

11 A. ON THE 17TH HE TOLD ME THAT HE HAD BENT IT IN
12 A VISE.

13 Q. AND DID HIS STORY CHANGE THE SECOND DAY?

14 A. YEAH, SOMEWHAT.

15 Q. AND DID YOU QUESTION HIM OR CONFRONT HIM WITH
16 THE INFORMATION THAT YOU HAD THE SECOND DAY THAT YOU
17 DIDN'T HAVE THE FIRST DAY?

18 A. YES.

19 Q. WHAT WAS THAT?

20 A. BETWEEN THE 17TH AND THE 18TH I HAD -- WELL,
21 BETWEEN THE TWO DAYS I HAD SPOKE WITH HIM. I WENT ON
22 THE A-K -- I'M SORRY -- AK-BUILDER.COM WEBSITE. AND I
23 SAW THAT THEY SOLD AN AK-47 FLAT RECEIVER DYE SET, WHICH
24 IS A TOOL USED TO MOLD THE FLAT RECEIVER INTO THE PROPER
25 SHAPE TO ASSEMBLE AN AK-47.

26 Q. AND SO, WHAT DID YOU ASK HIM WHEN YOU TALKED

1 TO HIM THE SECOND DAY?

2 A. I ASKED HIM IF HE HAD USED THIS FLAT BENDING
3 DYE SET TO MOLD THE RECEIVER.

4 Q. AND WHAT DID HE TELL YOU ABOUT IT? WHAT DID
5 HE SAY?

6 A. WELL, I COULD READ THE DIALOGUE IF THAT WOULD
7 HELP. IN A ROUNDABOUT WAY, HE SAID, YES, HE USED IT AND
8 THAT HE HAD IT AND THAT HE WOULD GIVE IT US TO.

9 Q. DID HE EVER GIVE IT TO YOU?

10 A. NO.

11 Q. DID HE TELL YOU -- DID YOU ASK HIM WHERE IT
12 WAS?

13 A. YES.

14 Q. DID HE TELL YOU HE WASN'T SURE WHERE IT WAS?

15 A. YES. HE TOLD US THAT -- HE IMPLIED IT WAS
16 EITHER AT THE SHOP OR AT HIS HOUSE, OR HE THOUGHT IT WAS
17 AT THE SHOP OR AT HIS HOUSE.

18 THE COURT: THIS IS PROBABLY A GOOD TIME TO
19 BREAK FOR ABOUT, OH, FIVE MINUTES OR SO JUST TO KIND OF
20 GET UP, MAYBE GET A QUICK BATHROOM BREAK.

21 YOU ARE ORDERED NOT TO DISCUSS THE CASE WITH
22 EACH OTHER OR ANYONE ELSE.

23 (RECESS)

24 (PROCEEDINGS IN THE PRESENCE OF THE JURY)

25 THE COURT: OKAY. DETECTIVE CHAPMAN, DEPUTY
26 CHAPMAN, YOU'RE REMINDED THAT YOU'RE STILL UNDER OATH.

1 AND BACK ON THE RECORD WITH ALL JURORS, ALTERNATES AND
2 PARTIES AND DEFENDANT PRESENT.

3 YOU MAY RESUME, MADAM PROSECUTOR.

4 MS. JONES: THANK YOU.

5 BY MS. JONES: Q. OFFICER -- DETECTIVE, WE WERE
6 TALKING ABOUT THE 18TH WHEN YOU WENT BACK AND TALKED TO
7 MR. NGUYEN AGAIN.

8 WAS THAT CONVERSATION RECORDED?

9 A. YES.

10 Q. AND I'M GOING TO PLAY A PORTION OF THAT
11 CONVERSATION THAT WAS RECORDED RIGHT NOW.

12 AND YOU'VE HAD A CHANCE TO REVIEW THE
13 TRANSCRIPT ON THAT, HAVE YOU NOT?

14 A. YES.

15 Q. AND TO THE BEST YOUR KNOWLEDGE, IS THAT AN
16 ACCURATE REFLECTION OF WHAT WAS ON THE TAPE?

17 A. YES.

18 Q. AND IT'S NOT THE COMPLETE CONVERSATION WITH
19 MR. NGUYEN IS IT?

20 A. NO, IT'S NOT.

21 THE COURT: GET A COPY OF THE TRANSCRIPT,
22 COUNSEL? DO YOU HAVE AN EXTRA COPY? DID YOU MARK THE
23 TRANSCRIPT ALREADY?

24 MS. JONES: I'D ASK THAT IT BE MARKED 10. AND
25 I GUESS THE TAPE CAN BE 10-A.

26 THE COURT: OKAY. IT WILL BE 10 FOR

1 IDENTIFICATION, THE TRANSCRIPT. AND THE TAPE WILL BE
2 10A FOR IDENTIFICATION. ALL RIGHT. CARRY ON.

3 MS. JONES: WITH THE COURT'S PERMISSION?

4 THE COURT: YES.

5 (TAPE PLAYED) AT THIS TIME)

6 BY MS. JONES: Q. DETECTIVE CHAPMAN, WHAT IS "A
7 GRIP"?

8 A. I BELIEVE THAT'S SLANG FOR A LOT OF MONEY,
9 LIKE A FIST FULL OF CASH.

10 Q. AND WHEN YOU'RE TALKING ABOUT -- YOU HAVE A
11 CONVERSATION IN THERE ABOUT THE DTC AMMO VERSUS THE BMG
12 AMMO? WHAT IS THAT ABOUT, IF YOU CAN CLARIFY?

13 A. WELL, I LOOKED ONLINE. AND MY UNDERSTANDING
14 IS THAT THE .50 BMG, WHICH IS A MILITARY ROUND IS THAT
15 THE .50 -- WELL, IT'S NOT LEGAL IN CALIFORNIA. AND THE
16 LAW IS VERY SPECIFIC AS TO THE DIMENSIONS OF THE .50 BMG
17 ROUND.

18 SO THEY CAME UP WITH THIS .50 DTC. AND MY
19 UNDERSTANDING IS THAT IT USES THE SAME BULLET, THE SAME
20 TYPE OF CARTRIDGE, WHICH WOULD BE LIKE THE BRASS, BUT
21 THEY NECK IT DOWN EVER SO SLIGHTLY AND TAPER IT SO THE
22 DIMENSIONS AREN'T EXACTLY THE SAME.

23 I PUT A .50 BMG ROUND UP NEXT TO IT. AND THIS
24 ONE IS JUST VERY SLIGHTLY SHORTER, SO IT DOESN'T FIT THE
25 CRITERIA OF A .50 BMG.

26 Q. APPROXIMATELY TWO MILLIMETERS?

1 MR. HENNES: OBJECTION, YOUR HONOR. LEADING.

2 THE COURT: SUSTAINED.

3 BY MS. JONES: Q. ABOUT HOW MUCH MORE?

4 A. IF I WERE TO GUESS --

5 MR. HENNES: OBJECTION, YOUR HONOR. CALLS FOR
6 SPECULATION.

7 THE COURT: SUSTAINED.

8 BY MS. JONES: Q. IF YOU WERE TO ESTIMATE.

9 A. IF I WERE TO ESTIMATE, PROBABLY TWO
10 MILLIMETERS.

11 THE COURT: HOLD ONE MOMENT, PLEASE.

12 COUNSEL, WHAT WAS YOUR QUESTION RELATIVE TO THE
13 BMG AND THE DTC? WHAT WAS YOUR QUESTION TO THE
14 DEFECTIVE?

15 MS. JONES: WHAT THEY WERE -- I ASKED FOR
16 CLARIFICATION OF WHAT WAS ON THE TAPE AS TO WHAT THEY
17 MEANT BY THE BMG AND DTC, I DON'T KNOW WHAT THE EXACT
18 QUESTION WAS.

19 THE COURT: WOULD YOU READ THE LAST QUESTION,
20 PLEASE?

21 (RECORD READ)

22 THE COURT: I'M GOING TO STRIKE THAT ANSWER AND
23 THAT WILL BE STRICKEN FROM THE RECORD. AND YOU MAY
24 REPHRASE THE QUESTION, IF THAT --

25 MS. JONES: ACTUALLY, THAT PART OF IT, THE REST
26 OF THAT IS FINE.

1 THE COURT: OKAY. BUT THERE'S JUST A -- I WANT
2 TO STRIKE THE ANSWER AND THE QUESTION. YOU CAN REPHRASE
3 THE WHOLE THING.

4 MS. JONES: OKAY.

5 BY MS. JONES: Q. I GUESS WHEN YOU WERE TALKING ON
6 THE TAPE ABOUT THE BMC OR THE DTC, YOU WERE TALKING
7 ABOUT TWO DIFFERENT KINDS OF AMMUNITION; IS THAT RIGHT?

8 A. YES.

9 Q. AND THE DTC AMMUNITION IS THE KIND THAT THE
10 DEFENDANT HAD?

11 A. YES.

12 THE COURT: THANK YOU.

13 BY MS. JONES: Q. NOW, DID YOU LATER SEEK OUT
14 FIREARMS EXPERTS TO REVIEW THE EVIDENCE WHICH YOU HAD?

15 THE COURT: AND BEFORE HE ANSWERS THAT
16 QUESTION, I'M GOING TO ADVISE THE JURY TO DISREGARD. I
17 HAVE STRICKEN FROM THE RECORD THE WITNESS'S TESTIMONY
18 RELATIVE TO THE LEGALITY OR NOT OF THE BMC AMMUNITION.
19 YOU ARE NOT TO CONSIDER THAT FOR ANY PURPOSE. THAT
20 INFORMATION IS NOT IN THE RECORD. OKAY.

21 THE REPORTER: YOUR HONOR, COULD I ASK HER TO
22 REPEAT THE QUESTION?

23 THE COURT: REPEAT THE QUESTION?

24 THE REPORTER: YES.

25 BY MS. JONES: Q. DID YOU SEEK OUT FIREARMS
26 EXPERTS TO REVIEW THE EVIDENCE THAT YOU OBTAINED FROM

1 MR. NGUYEN?

2 A. YES.

3 Q. AND FIRST DID YOU SPEAK TO DAVID THAGUE?

4 A. YES, I DID.

5 Q. WHO IS HE?

6 A. HE'S A RANGEMASTER WITH THE ORANGE COUNTY
7 SHERIFF'S DEPARTMENT.

8 Q. AND HOW DID YOU COME TO CONTACT HIM?

9 A. A COWORKER RECOMMENDED -- I WAS SEEKING -- HE
10 HEARD THAT I WAS SEEKING AN EXPERT TO EXAMINE THE AK-47
11 AND RECOMMENDED THAT I GO SPEAK TO HIM.

12 Q. AND DID HE DO A THOROUGH EXAMINATION OF THE
13 AK-47 PARTS?

14 MR. HENNES: OBJECTION, YOUR HONOR. THEY --

15 MS. JONES: I'LL REPHRASE.

16 THE COURT: THANK YOU.

17 BY MS. JONES: Q. DID YOU DESCRIBE HOW THAT --
18 WELL, DID HE SUBSEQUENTLY TAKE A LOOK AT THE AK-47
19 PARTS?

20 A. YES.

21 Q. HOW DID THAT OCCUR?

22 A. HE STARTED OUT BY TELLING ME THAT ALL OF HIS
23 CERTIFICATES HAD EXPIRED AND IMPLIED THAT HE WASN'T
24 GOING TO BE A GOOD WITNESS. HE BRIEFLY LOOKED AT THE
25 BOX OF PARTS ON THE TAILGATE OF HIS TRUCK. AND AFTER A
26 QUICK LOOK AT THE PARTS, HE WAS OF THE OPINION THAT I'

1 WAS MISSING SEVERAL PARTS.

2 Q. AND SPECIFICALLY WHAT PARTS DID HE SAY WERE
3 MISSING?

4 A. THE HAMMER AND THE SEAR.

5 Q. SO TWO PARTS, CORRECT?

6 A. YES.

7 MR. HENKES: OBJECTION, YOUR HONOR. THIS IS
8 IRRELEVANT.

9 THE COURT: COUNSEL, APPROACH.

10 (PROCEEDINGS OUTSIDE THE PRESENCE OF THE JURY:)

11 THE COURT: WE'RE OUTSIDE OF THE PRESENCE OF
12 THE JURY. AND THE ANSWER THAT WAS JUST ELICITED WAS
13 THAT THE SEAR AND HAMMER WERE MISSING. COUNSEL HAS AN
14 OBJECTION OF RELEVANCE.

15 WHAT IS YOUR RESPONSE, MADAM PROSECUTOR?

16 MS. JONES: WELL, THESE ARE -- IS THAT -- WELL,
17 FIRST OF ALL, I THINK THE OBJECTION IS UNTIMELY AS TO
18 THAT PERSON VIEWING THE EVIDENCE.

19 HOWEVER, WE ANTICIPATED IT WAS GOING TO COME UP
20 THAT ONE EXPERT SAID THAT THERE WERE PARTS MISSING. AND
21 THOSE TWO PARTS HAVE BEEN IDENTIFIED.

22 AND I WAS GOING TO GO AHEAD AND ASK THE OFFICER
23 IF THOSE PARTS, IN FACT, ARE INCLUDED IN THE KIT, IN THE
24 BOX OF PARTS AND HAVE HIM IDENTIFY THOSE PARTS TO SHOW
25 THAT THEY'RE THERE.

26 MR. HENKES: I'M NOT GOING TO SAY THAT THEY

1 WEREN'T THERE. I'M NOT GOING TO - WE EXAMINED THE
2 PARTS BEFORE TRIAL. AND I WAS SATISFIED THAT TEAGUE WAS
3 PROBABLY WRONG, SO I'M NOT GOING TO MAKE AN ISSUE. I
4 THINK IT'S A WASTE OF TIME TO HAVE TEAGUE IMPEACHED.

5 MS. JONES: WELL, NOW --

6 MR. HENNES: SO IT'S NOT RELEVANT. I MEAN,
7 THERE'S NO -- NO ONE SAID THAT THE PARTS AREN'T THERE.
8 YOU'RE GOING TO HAVE SOMEONE COME THERE, AN EXPERT SHOW
9 UP AND SAY EVERY SINGLE PART IS THERE SO --

10 MS. JONES: MY NEXT QUESTION IS GOING TO JUST
11 BE TO IDENTIFY THOSE TWO PARTS, AND I'M DONE.

12 THE COURT: OKAY. OVERRULED. OBJECTION IS
13 OVERRULED. THE ANSWER WILL REMAIN. NEXT QUESTION.

14 BY MS. JONES: Q. THANK YOU. DETECTIVE, WHEN YOU
15 LOOKED AT THE PARTS DID YOU FIND THE HAMMER AND THE SEAR
16 WERE PRESENT?

17 A. YES.

18 Q. AND FOR -- COULD YOU STEP OVER AND HOLD UP
19 EACH OF THE ITEMS AND TELL ME WHAT THEY ARE MARKED AND
20 IDENTIFY THEM AS THE HAMMER AND THE SEAR?

21 A. NUMBER "S," AS IN SAM, IS THE HAMMER AND
22 HAMMER SPRING.

23 Q. AND THAT WOULD BE S-S. THANK YOU.

24 A. AND THE SEAR IS PART OF THE TRIGGER ASSEMBLY,
25 WHICH IS IN HERE.

26 Q. AND WHAT LETTER IS THAT?

1 A. THAT IS "T," TANGO.

2 MS. JONES: THAT WOULD BE 5-T.

3 THE COURT: THE RECORD WILL SO REFLECT.

4 MS. JONES: THANK YOU.

5 BY MS. JONES: Q. OKAY. DID YOU ALSO MEET WITH
6 ROCKY EDWARDS, A FIRE EXAMINER FROM THE
7 FORENSICS SERVICES DEPARTMENT OF THE SANTA ANA POLICE
8 DEPARTMENT?

9 A. YES, I DID.

10 Q. AND WITH HIM DID YOU GO THROUGH ALL OF THE
11 COMPONENTS OF THE AK 47 THAT WERE IN THE BOX?

12 A. YES.

13 Q. DID YOU USE A DIAGRAM THAT LISTED ALL OF THE
14 WORKING PARTS OF THE AK-47 AND CHECK THEM OFF AND MAKE
15 SURE ALL WERE PRESENT?

16 A. YES. THE DIAGRAM WAS -- THERE WAS MANY SLIGHT
17 VARIATION OF THE AK-47. AND THE DIAGRAM WAS SLIGHTLY
18 DIFFERENT.

19 FOR INSTANCE, IT DIDN'T HAVE A FOLDING STOCK.
20 IT HAD A FIXED STOCK. DIDN'T HAVE THE FORWARD PISTOL
21 GRIP, BUT AGAIN, THE WORKING PARTS OF THE AK-47 IT
22 SHOWS.

23 Q. THANK YOU. AND FINALLY, DID YOU MEET WITH
24 SERGEANT GREG SCHUCH, SERGEANT WITH THE ORANGE COUNTY
25 SHERIFF'S DEPARTMENT?

26 A. YES.

1 Q. AND DID YOU DO THAT BECAUSE YOU WERE SEEKING
2 HIS EXPERTISE IN THIS CASE?

3 A. YES.

4 MS. JONES: PEOPLE'S NEXT IN ORDER, 11.

5 BY MS. JONES: Q. SHOWING YOU WHAT I'D ASK TO BE
6 MARKED AS PEOPLE'S 11, WHICH APPEARS TO BE A PHOTOGRAPH
7 OF WEAPONS PARTS, CAN YOU TELL ME WHAT WE'RE LOOKING AT
8 THERE?

9 A. WHEN SERGEANT SCHUCH AND I WERE EXAMINING THE
10 PARTS THAT MR. NGUYEN HAD, WE COMPARED THEM TO THE PARTS
11 OF A WORKING AK-47. YOU SEE IN THE MIDDLE OF THE
12 PICTURE?

13 THE COURT: HOLD ONE MOMENT. WOULD YOU -- I
14 BELIEVE THERE'S A POINTER THAT MIGHT ASSIST, A LASER
15 POINTER. ALL RIGHT. SORRY. CARRY ON.

16 THE WITNESS: THE PICTURE DEPICTS -- WELL, LET
17 ME START BY SAYING RIGHT HERE IN THE CENTER OF THE
18 PICTURE, THIS IS WHAT'S CALLED A SLING TO SLING A RIFLE,
19 WHICH CAME FROM THIS RIFLE DOWN BELOW, WHICH IS A
20 WORKING AK-47-TYPE RIFLE THAT SERGEANT SCHUCH PROVIDED
21 THAT HE DESCRIBED THAT HE HAD FIRED BEFORE.

22 THE COURT: AND WHEN THE WITNESS FIRST
23 DESCRIBED THE SLING, IT APPEARS TO BE A HORIZONTAL GREEN
24 STRIP ACROSS THE MIDDLE OF THE PHOTO.

25 THE WITNESS: YES. I USE THAT AS A DIVIDER
26 POINT BASICALLY TO SHOW THE PARTS OF THE WORKING AK-47

1 THAT ARE FIRED BY SERGEANT SCIUCHI.

2 BELOW THESE PARTS HERE AND THEN THE PARTS ABOVE
3 THE SLING WERE THE PARTS THAT WERE IN THE BOX WHICH WAS
4 TAKEN FROM MR. NGUYEN AS A COMPARISON.

5 BY MS. JONES: Q. AND DID IT APPEAR TO YOU THAT
6 MR. NGUYEN'S PARTS HAD ALL THE PARTS THAT THE WORKING
7 AK-47 ON THE BOTTOM HALF OF THE PICTURE HAD?

8 A. YES. I'M OF THE OPINION THAT IT HAD ALL THE
9 PARTS PRESENT TO MAKE A WORKING AK 47 WHEN WE COMPARED
10 THE TWO.

11 Q. WERE THERE SLIGHT VARIATIONS?

12 A. YES.

13 Q. SUCH AS?

14 A. WE HAVE THE FORWARD PISTOL GRIP HERE AND THIS
15 ONE DOESN'T HAVE THAT.

16 THE COURT: OKAY. WHEN HE SAID "HERE," HE'S
17 TALKING ABOUT ONE ON THE TOP.

18 THE WITNESS: THE ONE ON THE TOP.

19 THE COURT: YES. TO THE LEFT OF THE DIAGRAM.
20 AND THEN ON THE BOTTOM, THE WOODEN ONE, HE JUST COMPARED
21 IT TO.

22 THE WITNESS: YES. ANOTHER VARIATION WAS WE
23 EXAMINED IT AGAIN. WE NOTICED THAT THE SEAR, WHICH IS
24 PART OF THE TRIGGER MECHANISM, WAS SHAPED SLIGHTLY
25 DIFFERENTLY.

26 AGAIN, IT'S MY UNDERSTANDING THAT THERE'S MANY

1 DIFFERENT COUNTRIES, MANY DIFFERENT MINOR VARIATIONS OF
2 AK 47-TYPE RIFLE.

3 BY MS. JONES: Q. AND, IN FACT, THE PARTS OF THESE
4 TWO RIFLES APPEAR TO COME FROM DIFFERENT COUNTRIES,
5 CORRECT?

6 A. YES.

7 Q. AND I'M JUST GOING TO ASK YOU IDENTIFY A
8 COUPLE OF MORE PHOTOGRAPHS. SHOWING YOU ONE I'D ASK TO
9 BE MARKED AS PEOPLE'S 12, IF YOU CAN TELL THE JURY WHAT
10 THEY'RE LOOKING AT THERE.

11 A. IT'S A PHOTOGRAPH OF THE LOWER RECEIVER WHICH
12 MR. NGUYEN HAD MADE.

13 THE COURT: ALL RIGHT. AND IT WILL BE MARKED
14 AS PEOPLE'S 12 FOR IDENTIFICATION.

15 (EXHIBIT 12 MARKED)

16 BY MS. JONES: Q. AND THAT'S THE ONE THE FIRST DAY
17 THAT HE REFERRED TO AS MAKING BY A VISE. THE SECOND DAY
18 HE SAID HE PURCHASED A DYE TO MAKE IT?

19 A. YES.

20 Q. AND PEOPLE'S 13, IF YOU COULD IDENTIFY WHAT
21 THAT IS?

22 THE COURT: IT WILL BE SO MARKED AS PEOPLE'S
23 13.

24 (EXHIBIT 13 MARKED)

25 THE WITNESS: IT'S A COMPARISON OF THE LOWER
26 RECEIVER, WHICH IS THIS SHINY ONE BELOW, THAT MR. NGUYEN

1 HAD MADE WITH THE LOWER RECEIVER OF THE WORKING AK-47.

2 BY MS. JONES: Q. AND FINALLY, SHOWING YOU
3 PEOPLE'S 14. WHAT'S DEPICTED IN THAT PHOTOGRAPH?

4 A. THIS IS A COMPARISON OF THE AMMUNITION THAT
5 MR. NGUYEN PROVIDED.

6 Q. STARTING WITH THE LEFT, WHAT IS THAT?

7 A. ON THE LEFT, THIS IS A PICTURE OF THE .50 D&C
8 AMMUNITION. IN THE CENTER IS A PICTURE OF THE .50
9 BEOWOLF AMMUNITION.

10 AND THIS ON THE RIGHT, THIS IS A PICTURE OF
11 THE, AS A COMPARISON, THE .40-CALIBER SMITH & WESSON
12 HANDGUN AMMUNITION THAT I CARRY ON DUTY WHEN I'M IN
13 PATROL, WHICH IS PROVIDED FOR ME BY THE CITY OF
14 BUENA PARK.

15 MS. JONES: I HAVE NOTHING FURTHER AT THIS
16 TIME.

17 THE COURT: CROSS-EXAMINE?

18 MR. HENNES: YES.

19
20 CROSS-EXAMINATION

21 BY MR. HENNES: Q. DETECTIVE CHAPMAN, WHEN YOU
22 WENT TO MR. NGUYEN'S BUSINESS ON MARCH 17TH OF LAST
23 YEAR, WHAT TIME OF DAY IT WAS?

24 A. I BELIEVE IT WAS LATE MORNING. I'M NOT SURE
25 OF THE EXACT TIME.

26 Q. AND YOU WERE THERE FOR AT LEAST TWO HOURS; IS

1 THAT TRUE?

2 A. APPROXIMATELY.

3 Q. OKAY. NOW, WHAT DAY OF THE WEEK WAS IT?

4 A. I DON'T REMEMBER.

5 Q. WAS IT A -- DURING THE WEEK? WAS IT ON THE
6 WEEKEND?

7 A. I DON'T REMEMBER.

8 Q. WAS THE BUSINESS OPEN?

9 A. YES. IT APPEARED TO BE OPEN FOR BUSINESS.

10 Q. AND DID YOU ACTUALLY HEAR WHAT MR. NGUYEN WAS
11 SAYING WHEN YOU SAID HE WAS ON HIS TELEPHONE IN THE
12 ALLEY BEHIND THE SHOP?

13 A. NO.

14 Q. OR YOU DON'T REALLY KNOW WHAT HE WAS TALKING
15 ABOUT ON THE TELEPHONE, RIGHT?

16 A. NO, I DON'T.

17 Q. AND REGARDING THAT DTC, COULD YOU TELL WHETHER
18 THAT WEAPON HAD EVER BEEN FIRED BEFORE?

19 MS. JONES: OBJECTION. RELEVANCE.

20 THE COURT: OVERRULED. EXCUSE ME. SUSTAINED.

21 BY MR. HENNES: Q. YOU SAID THAT YOU HAD FIRED THE
22 WEAPON. DID YOU USE A ROUND?

23 MS. JONES: OBJECTION. MISSTATES THE EVIDENCE.

24 THE COURT: OVERRULED.

25 THE WITNESS: I SAID THAT I DRY-FIRED THE
26 WEAPON.

1 BY MR. HENNES: Q. RIGHT. WHICH MEANS YOU DIDN'T
2 PUT ANY AMMUNITION INTO AND FIRE IT, RIGHT?

3 A. THAT'S CORRECT.

4 Q. AND WHY NOT?

5 MS. JONES: OBJECTION. RELEVANCE.

6 THE COURT: COUNSEL, APPROACH.

7 (PROCEEDINGS OUTSIDE THE PRESENCE OF THE JURY:)

8 THE COURT: WE'RE OUTSIDE THE PRESENCE OF THE
9 JURY. WHAT'S THE RELEVANCE?

10 MR. HENNES: WELL, MY CLIENT SUPPOSED TO BE
11 SUCH A HOTSHOT MANUFACTURER OF WEAPONS, I THINK THE
12 REASON HE DIDN'T FIRE THAT WEAPON WAS BECAUSE HE DIDN'T
13 WANT TO BECAUSE HE KNOWS IT WASN'T PROFESSIONALLY MADE.

14 AND JUST AS MY CLIENT TOLD HIM, HE WOULD NEVER
15 FIRE THAT GUN. SO I THINK IT'S RELEVANT. AND ALSO TO
16 DETERMINE WHETHER IT'S A WORKING FIREARM YOU GOT TO FIRE
17 IT, YOU KNOW.

18 IT'S NOT A DEFINITION, A FIREARM IS A, YOU
19 KNOW, A DEVICE THAT PROPELS A PROJECTILE OUT OF A BARREL.
20 AND WITHOUT, YOU KNOW, FIRING YOU CAN'T TELL, YOU COULD
21 NOT SAY THAT THIS IS A WORKING RIFLE.

22 THE COURT: NEED IT BE WORKING?

23 MR. HENNES: NO, NOT -- THAT IS NOT RELEVANT TO
24 THE ISSUES OF THIS CASE, BUT I DON'T THINK THAT ENTIRE
25 RIFLE IS RELEVANT TO THE ISSUES OF THIS CASE. HOWEVER,
26 SINCE THE PEOPLE HAVE BROUGHT IT INTO EVIDENCE --

1 THE COURT: YES.

2 MR. HENNES: - I THINK I HAVE A RIGHT TO
3 EXPLORE WHETHER MY CLIENT IS AN ARMS PURCHASER SUCH THAT
4 HE COULD MAKE A WORKING RIFLE.

5 THE COURT: I DON'T KNOW. THAT'S NOT AN
6 ELEMENT WHETHER IT'S A WORKING RIFLE. ISN'T THAT JUST
7 IRRELEVANT?

8 MR. HENNES: WELL, IT'S RELEVANT BECAUSE IT'S
9 BEEN BROUGHT INTO EVIDENCE. I BELIEVE IT IS RELEVANT
10 BECAUSE THEY'RE TRYING TO USE ASSEMBLY OF THAT .50
11 CALIBER TO SHOW THAT HE HAD THE ABILITY TO MAKE A
12 FUNCTIONING AK-47.

13 I MEAN, I THINK IT'S A STRETCH, BUT THAT'S
14 THEIR THEORY. AND IF THAT RIFLE IS NOT CAPABLE, YOU'RE
15 TESTIFYING THAT IT'S FUNCTIONAL.

16 THE COURT: YES.

17 MR. HENNES: YOU CAN'T TELL THAT IT'S
18 FUNCTIONAL UNLESS YOU'VE ACTUALLY FIRED A ROUND.

19 THE COURT: WELL, ACTUALLY, THE WITNESS DID
20 TESTIFY THAT HE THOUGHT IT WAS IN WORKING ORDER. AND SO
21 I GUESS FROM THAT STANDPOINT I GUESS COUNSEL CAN, NOW
22 THAT I THINK OF IT, INQUIRE RELATIVE TO, YOU KNOW, I
23 GUESS IF IT WAS REALLY IN WORKING ORDER SINCE IT'S BEEN
24 TESTIFIED TO. I GUESS I'LL ALLOW IT. OVERRULED.

25 (PROCEEDINGS IN THE PRESENCE OF THE JURY:)

26 THE COURT: THAT OBJECTION IS OVERRULED. YOU

1 MAY ANSWER. DO YOU REMEMBER THE QUESTION?

2 THE WITNESS: I THINK HE ASKED ME WHY I DIDN'T
3 FIRE THE .50 CALIBER.

4 THE COURT: YES. YOU MAY ANSWER.

5 THE WITNESS: WELL, I DIDN'T THINK IT WAS
6 NECESSARY. AND AFTER SPEAKING WITH MR. NGUYEN, I KNOW
7 THAT ROUND COULD MAKE -- DO A LOT OF DAMAGE. AND I WAS
8 CONCERNED FOR MY SAFETY, REALLY.

9 BY MR. HENNES: Q. SO YOU CAN'T TESTIFY HERE TODAY
10 THAT THAT WAS A FUNCTIONING FIREARM WITHOUT FIRING A
11 ROUND, THOUGH, CAN YOU?

12 A. WELL, IT SEEMED AS THOUGH IT WOULD WORK. WHEN
13 YOU PULL THE TRIGGER, THE FIRING PIN APPEARED TO GO OFF,
14 BUT, NO, I HAVEN'T FIRED A ROUND THROUGH IT.

15 Q. SO YOU CAN'T SAY THAT THAT DEFINITELY WAS A
16 FUNCTIONING FIREARM THEN WITHOUT HAVING TEST-FIRED IT;
17 IS THAT CORRECT?

18 A. I GUESS THAT'S FAIR TO SAY.

19 Q. AK-BUILDER WEBSITE, HAD YOU HEARD OF THAT
20 BEFORE MR. NGUYEN TOLD YOU ABOUT IT?

21 A. NO.

22 Q. YOU WENT ON IT AND DISCOVERED -- I MEAN, AFTER
23 YOUR CONVERSATION WITH MR. NGUYEN -- AND FOUND THAT
24 THERE WAS A DYE SET THAT ONE COULD PURCHASE TO BEND THE
25 FLAT PEECE OF METAL SHELL INTO A RECEIVER; IS THAT
26 RIGHT?

1 A. YES.

2 Q. AND IS THAT SIMILAR TO A VISE? IT WORKS LIKE A
3 VISE?

4 A. I WOULD CALL IT MORE LIKE A PRESS WHERE IT
5 PRESSES THE METAL INTO SHAPE.

6 Q. TO BEND METAL; IS THAT RIGHT?

7 A. YES.

8 Q. I MEAN, IF YOU WERE STRONG ENOUGH YOU COULD
9 PUT IT IN A VISE AND BEND IT YOURSELF; IS THAT FAIR TO
10 SAY?

11 A. I SUPPOSE THAT'S POSSIBLE.

12 Q. SO IT WORKS ON THE SAME PRINCIPLE. IT'S
13 BENDING METAL, SAME PRINCIPLE AS A VISE, IN A SENSE.
14 IT'S USED TO BEND SOME METAL?

15 A. YOU CAN BEND METAL IN A VISE.

16 Q. NOW, YOU TESTIFIED THAT YOU CONTACTED
17 ROCKY EDWARDS OF THE SANTA ANA POLICE DEPARTMENT AND
18 THAT MR. EDWARDS AND YOU EXAMINED THE BOX OF PARTS
19 THAT'S BEEN IDENTIFIED HERE -- I DON'T RECALL THE EXACT
20 EXHIBIT, BUT THE AKA PARTS; IS THAT CORRECT?

21 A. YES. WE EXAMINED THE PARTS.

22 Q. AND YOU ASKED MR. EDWARDS HE'S A FIREARMS
23 EXAMINER; IS THAT CORRECT?

24 A. I THINK THAT'S HIS TITLE.

25 Q. WHAT DOES THAT MEAN?

26 A. I GUESS THAT MEANS HE EXAMINES FIREARMS.

1 Q. DO YOU KNOW IF HE'S EVER BUILT AN AK TYPE OF
2 WEAPON FROM A KIT OR OTHERWISE?

3 A. I DON'T KNOW.

4 Q. HAVE YOU EVER --

5 A. HE, KIND OF LIKE SERGEANT SCHUCH, 'TOOK A WHAT
6 APPEARED TO BE A WORKING AK-47 AND 'TOOK IT APART'. AND
7 WE LOOKED AT THAT AND COMPARED THE PARTS, AND WE WENT
8 THROUGH THE LIST AS WELL.

9 Q. WELL, HAVE YOU EVER -- YOU DON'T KNOW WHETHER
10 HE'S EVER DONE ALL OF THE MACHINE WORK OR WHATEVER IT
11 TAKES TO ACTUALLY MAKE AN AK 47 FROM A KIT SIMILAR TO
12 THIS?

13 A. I DON'T KNOW IF HE'S EVER DONE THAT.

14 Q. HAVE YOU EVER DONE IT?

15 A. NO.

16 Q. HAVE YOU EVER MADE ANY KIND OF A FIREARM IN
17 WHICH YOU HAD THE MACHINE PARTS AND -- WELL, PARTS TO
18 MAKE A FUNCTIONAL FIREARM? HAVE YOU EVER DONE THAT
19 YOURSELF?

20 MS. JONES: OBJECTION. RELEVANCE.

21 THE COURT: OVERRULED.

22 BY MR. HENNES: Q. HAVE YOU?

23 A. HAVE I WELDED AN --

24 Q. NO. GO AHEAD.

25 A. I'M SORRY. CAN YOU ASK THE QUESTION AGAIN?

26 Q. YEAH. HAVE YOU EVER ASSEMBLED A WORKING

1 FIREARM FROM A COLLECTION OF UNFINISHED PARTS SUCH AS
2 THE ONE THAT YOU'VE TESTIFIED ABOUT THAT ARE IN THAT BOX
3 OR WERE IN THAT BOX?

4 A. I'VE TAKEN -- YOU KNOW, I TESTIFIED THAT I'VE
5 BEEN TO ARMOR SCHOOL. AND WE TOOK APART AND PUT
6 TOGETHER THOSE TYPE OF ASSAULT WEAPONS NUMEROUS TIMES.

7 Q. AND WHAT DID YOU DO TO TAKE IT APART? WHAT
8 DID YOU BREAK DOWN IN THE AR-15?

9 A. WELL, IT STARTS OUT WHEN YOU BEGIN THE CLASS,
10 IT'S A 24 HOUR TRAINING COURSE. AND THEY BASICALLY HAND
11 YOU A WORKING RIFLE. AND WE END UP TAKING THE PARTS
12 APART ON THE RIFLE.

13 THE SCHOOL IS DESIGNED TO NOT ONLY TEACH YOU TO
14 ASSEMBLE AND DISASSEMBLE A WORKING RIFLE, BUT ALSO TO
15 TROUBLESHOOT POSSIBLE PROBLEMS AND THINGS OF THAT NATURE
16 SO YOU CAN REPAIR OR TROUBLESHOOT PROBLEMS THAT A RIFLE
17 MAY HAVE.

18 Q. AND DO YOU THINK YOU CAN PUT TOGETHER AN AK-47
19 FROM THAT OR AN AK RIFLE, A FUNCTIONING FIREARM FROM
20 THAT BOX OF PARTS YOURSELF?

21 MS. JONES: OBJECTION. RELEVANCE.

22 THE COURT: OVERRULED.

23 THE WITNESS: I BELIEVE --

24 THE COURT: I'M GOING TO -- I'M SORRY. COUNSEL
25 APPROACH.

26 (PROCEEDINGS OUTSIDE THE PRESENCE OF THE JURY:)

1 THE COURT: WE ARE OUTSIDE OF THE PRESENCE OF
2 THE JURY.

3 WHAT IS THE RELEVANCE OF YOUR QUESTIONING IF
4 THE WITNESS HAS HIMSELF PUT TOGETHER AN AK-47 FOR PARTS?

5 MR. HENNES: BECAUSE HE'S TESTIFIED THAT THAT
6 WAS AN ALMOST COMPLETE RECEIVER. AND WE INTEND TO SHOW
7 THAT THAT WAS JUST A BENT PIECE OF METAL. AND IT'S A
8 SHELL IN WHICH THERE WAS 90 PERCENT AT LEAST OF THE WORK
9 HAD LEFT TO BE DONE ON IT AND ON THE RECEIVER PORTION
10 AND ALSO ON THE BARREL. YOU JUST CAN'T JUST THROW THESE
11 THINGS TOGETHER. OKAY.

12 THE COURT: OBJECTION.

13 MR. HENNES: SO THIS IS FAR FROM BEING
14 COMPLETE.

15 THE COURT: SOUNDS LIKE IT GOES TO THE WEIGHT
16 OR THE FOUNDATION THAT HAS BEEN Laid IN WHETHER HOW MUCH
17 KNOWLEDGE THIS OFFICER ACTUALLY HAS.

18 COUNSEL, DO YOU HAVE SOMETHING TO ADD TO THAT?

19 MS. JONES: I JUST DON'T THINK HE HAS TO
20 PERSONALLY BE ABLE TO MANUFACTURE A WEAPON TO KNOW WHAT
21 THE PARTS OF THE WEAPON ARE.

22 THE COURT: AND THAT IS TRUE AS WELL, BUT I
23 THINK HE CAN STILL QUESTION HIM ABOUT THAT. AND THE
24 JURY WILL DETERMINE HOW MUCH WEIGHT TO GIVE HIM.
25 OPINION OVERRULED.

26 MR. HENNES: OKAY.

1 THE COURT: OKAY. THE WITNESS MAY ANSWER THE
2 QUESTION, IF YOU REMEMBER THE QUESTION. IF NOT, COUNSEL
3 CAN RE-ASK.

4 THE WITNESS: I THINK I -- THE QUESTION WAS
5 COULD I PUT THAT BOX OF PARTS TOGETHER TO MAKE AN AK-47;
6 IS THAT CORRECT?

7 MR. HENNES: YES.

8 THE WITNESS: I WOULD SAY GIVEN THE TIME AND
9 THE INTEREST, YES.

10 BY MR. HENNES: Q. OKAY. AND IN YOUR OPINION WHAT
11 REMAINS TO BE DONE ON THE RECEIVER IN ORDER TO BE A
12 FUNCTIONING RECEIVER?

13 A. THE RECEIVER APPEARS TO BE MOSTLY COMPLETE,
14 BUT IT'S NOT ENTIRELY COMPLETED.

15 Q. EXPLAIN THAT, PLEASE.

16 A. IT LOOKS AS IF THERE NEEDS TO BE AT LEAST ONE
17 MORE HOLE DRILLED INTO THE RECEIVER IN ORDER TO PLACE
18 PINS INTO IT TO HOLD THE INTERNAL PARTS.

19 Q. OKAY. WELL, EXACTLY WHAT NEEDS TO BE DONE ON
20 THAT RECEIVER TO MAKE IT COMPLETE? WHAT HOLES, PLEASE?
21 YOU CAN REFER TO IT. PTCK IT UP.

22 A. WELL, IF YOU WANTED TO PUT THE PICTURE UP ON
23 THE BOARD WHICH DEPICTED COMPARISON TO THE WORKING
24 AK-47.

25 Q. JUST, CAN YOU EXPLAIN IN YOUR OWN WORDS?

26 A. ON THE SIDE OF THE RECEIVER HERE IT SHOWS

1 SEVERAL MARKINGS IT LOOKED LIKE.

2 MR. HENNES: YOUR HONOR, COULD WE REMOVE IT
3 FROM THE BAG?

4 THE COURT: IS THERE A PROBLEM WITH THAT?
5 OKAY. YES. HE CAN REMOVE IT FROM THE BAG.

6 THE WITNESS: IN THE PICTURE WHEN I COMPARED IT
7 TO THE OTHER WORKING AK-47 RECEIVER, WHAT YOU COULD SEE
8 WERE THE PINS OR THE RIVETS THAT HAVE BEEN PUT IN TO
9 HOLD THE INTERNAL PARTS.

10 BY MR. HENNES: Q. NOW WHAT ARE YOU HOLDING UP?
11 ARE YOU HOLDING UP THE ONE THAT YOU RECOVERED FROM
12 MR. NGUYEN?

13 A. YES.

14 Q. OKAY.

15 A. YOU CAN SEE HERE THAT SOME RIVETS FOR PINS
16 WILL BE INSTALLED.

17 Q. HOW ARE THEY INSTALLED?

18 A. LOOKS LIKE THEY ARE HAMMERED IN OR PRESSED IN.

19 Q. WITH A MACHINE; IS THAT RIGHT?

20 A. NOT NECESSARILY.

21 Q. BUT DO YOU KNOW HOW MR. NGUYEN PUT WHATEVER HE
22 PUT IN THERE?

23 A. HE DIDN'T TELL ME.

24 THE COURT: LOOKS LIKE WHEN THE WITNESS IS
25 REFERRING TO "PINS," ARE YOU TALKING ABOUT SOME METAL,
26 LOOKS LIKE A FLAT PART OF THE NAIL THAT'S BEEN PUSHED

1 INTO THE METAL, THE ROUND THINGS; IS THAT WHAT YOU'RE
2 TALKING ABOUT?

3 THE WITNESS: YES. YOU HAVE SOME THAT HAVE
4 BEEN FLATTENED OVER HERE. AND OTHERS THAT APPEAR THAT
5 THEY HAVE NOT YET BEEN FLATTENED OR CUT OFF AND
6 FLATTENED.

7 THE COURT: ALL RIGHT. THANK YOU.

8 THE WITNESS: AND WHAT I WAS SHOWING THE JUDGE
9 IS BASICALLY THESE PINS OR RIBBONS APPEARED TO HAVE BEEN
10 SAWED HERE, THIS PIECE.

11 THE COURT: "THIS PIECE," MEANING THE FLAT --
12 EXCUSE ME -- THE PLASTIC, BLACK PIECE THAT'S PROTRUDING
13 FROM THE METAL ON ONE END OF THE ITEM; IS THAT CORRECT?

14 THE WITNESS: IT'S ALL METAL.

15 THE COURT: OKAY. I CAN'T SEE FROM HERE. THE
16 DARKER METAL THAT'S PROTRUDING?

17 THE WITNESS: YES.

18 THE COURT: OKAY.

19 THE WITNESS: THESE PINS APPEAR TO HAVE BEEN
20 INSTALLED TO HOLD THIS PIECE HERE. THESE PINS OR RIVETS
21 LOOK LIKE THEY HAVE BEEN INSTALLED, BUT YET HAVE NOT YET
22 BEEN CUT OFF AND SMASHED SO THAT THEY CANNOT FALL OUT.

23 THE COURT: THEY APPEAR MORE CYLINDRICAL IN
24 SHAPE; IS THAT CORRECT?

25 THE WITNESS: I THINK THAT'S FAIR TO SAY.

26 THE COURT: OKAY. AND THEY'RE ON THE OPPOSITE

1 SIDE OF THE DARKER METAL THAT'S PROTRUDING ON THE OTHER
2 SIDE?

3 THE WITNESS: YES.

4 THE COURT: OKAY.

5 THE WITNESS: HERE IS THE SPOT RIGHT HERE WHERE
6 IT LOOKS LIKE A PILOT HOLE HAS BEEN MADE. AND WHEN WE
7 COMPARED THE TWO RECEIVERS, IT LOOKED LIKE THERE WAS
8 ANOTHER PIN THERE.

9 THAT HOLE IS NOT LARGE ENOUGH YET, AT LEAST TO
10 HOLD THIS SIZE PIN. AND IT APPEARS THAT HE WOULD HAVE
11 TO DRILL ANOTHER HOLE THERE TO HOLD THE PIN.

12 BY MR. HENNES: Q. DID YOU AND ROCKY EDWARDS
13 DISCUSS THAT ISSUE ABOUT DRILLING HOLES IN THE RECEIVER?

14 A. YES.

15 Q. AND DID NOT EDWARDS SAY THAT SEVERAL MORE
16 HOLES NEEDED TO BE DRILLED INTO THAT RECEIVER?

17 MS. JONES: OBJECT AS HEARSAY AT THIS POINT.

18 THE COURT: OVERRULED.

19 THE WITNESS: I DON'T REMEMBER IF HE SAID
20 SEVERAL OR ONE. WHEN I LOOK AT THE BACK, IT LOOKS LIKE
21 THERE'S A COUPLE MORE.

22 BY MR. HENNES: Q. EXCUSE ME, DETECTIVE, WOULD
23 LOOKING AT YOUR REPORT REFRESH YOUR RECOLLECTION AS TO
24 WHETHER EDWARDS SAID ONE OR SEVERAL?

25 A. PROBABLY.

26 Q. WOULD YOU LIKE TO --

1 MR. HENNES: MAY I, YOUR HONOR?

2 THE COURT: YES. AND YOU MAY REFRESH YOUR
3 RECOLLECTION. LET US KNOW WHEN IT HAS BEEN REFRESHED.

4 BY MR. HENNES: Q. DETECTIVE CHAPMAN, IS YOUR
5 RECOLLECTION REFRESHED AS TO HOW MANY HOLES NEEDED TO BE
6 DRILLED INTO THE AK-47 OF ROCKY EDWARDS?

7 A. YES, SIR.

8 Q. HOW MANY APPROXIMATELY? WAS IT SEVERAL?

9 A. SEVERAL.

10 Q. AND DID EDWARDS ALSO STATE THAT THERE WAS
11 NEEDED A DIFFERENT MODIFICATION TO THE COLLECTION OF
12 PARTS IN ORDER TO MAKE A FUNCTIONING FIREARM?

13 A. HE SAID THAT'S POSSIBLE.

14 Q. OKAY. DO YOU KNOW IF YOU HAD DISCUSSED WITH
15 WHAT MODIFICATIONS NEEDED TO BE MADE?

16 A. WELL, HE INDICATED THAT NOT ALL THE PARTS HAD
17 BEEN INSTALLED INTO THE RECEIVER, YET I BELIEVE IT WAS
18 THE RAILS SPECIFICALLY, BUT THERE'S OTHER PARTS AS WELL,
19 LIKE THE TRIGGER MECHANISM.

20 Q. WHAT PART IS THE RAIL? DO YOU HAVE THAT
21 BEHIND YOU THAT YOU COULD SHOW THE JURY?

22 A. YES. WOULD YOU LIKE ME TO TAKE IT OUT?

23 Q. YES, PLEASE.

24 A. THESE ARE THE BOLT CARRIER RAILS WHICH FIT
25 INSIDE THE RECEIVER, WHICH THE BOLT RIDES ON WHEN IT
26 MOVES BACK AND FORTH.

1 Q. THOSE NEED TO BE WELDED INTO; IS THAT CORRECT?

2 A. I DON'T BELIEVE THEY HAVE TO BE WELDED IN.

3 Q. IT WAS YOUR TESTIMONY THAT THEY DO OR DO NOT
4 NEED TO BE WELDED ONTO THE RECEIVER?

5 A. I DON'T THINK SO.

6 Q. HOW ARE THEY AFFIXED?

7 A. WELL, I'M CERTAINLY MORE FAMILIAR WITH THE
8 AR-15S, BUT I BELIEVE -- I GUESS I DON'T KNOW.

9 THE COURT: I'M SORRY. DID THAT ITEM COME OUT
10 OF 5-B, AS IN BOY?

11 THE WITNESS: YES.

12 BY MR. HENNES: Q. IS IT YOUR OPINION THAT THE
13 AR-15 LOWER RECEIVER IS DIFFERENT FROM AN AK-STYLE
14 RECEIVER?

15 A. THEY'RE SIMILAR, BUT, YES, THEY'RE NOT THE
16 SAME.

17 Q. IS IT FAIR TO SAY THAT YOU WERE FAR MORE
18 FAMILIAR WITH THE AR-15 RECEIVER THAN THE AK TYPE
19 RECEIVER?

20 A. YES.

21 Q. NOW IN YOUR INTERVIEW ON THE 18TH WITH
22 MR. NGUYEN YOU ASKED HIM WHETHER HE HAD ALL OF THE
23 PARTS. AND I DON'T WANT TO MISQUOTE IT, SO -- ALL THE
24 PARTS TO THE -- TO MAKE THE AK. AND I'LL SEE IF I CAN
25 FIND IT EXACT -- ON PAGE.

26 DO YOU HAVE A TRANSCRIPT?

1 A. YES, I DO.

2 Q. ON PAGE TWO, ABOUT TWO THIRDS OF THE WAY DOWN
3 YOU ASKED MR. NGUYEN, "DO YOU HAVE -- ARE ALL OF THE
4 PARTS THERE TO PUT THE AK TOGETHER?"

5 AND MR. NGUYEN SAYS, "NO. THAT'S WHY IT'S NOT
6 TOGETHER. I DON'T KNOW. I NEVER GOT AROUND TO IT."

7 IS THAT WHAT HE SAID?

8 A. I ASKED HIM SEVERAL TIMES IF ALL THE PARTS
9 WERE THERE. AND THAT'S WHAT HE SAID ON THAT PARTICULAR
10 MOMENT.

11 Q. DOES IT APPEAR IN THE TRANSCRIPTS ANYWHERE
12 ELSE WHERE YOU ASKED HIM WHETHER ALL THE PARTS ARE
13 THERE?

14 A. YES.

15 Q. OR WAS THERE ANOTHER INTERVIEW THAT WE DON'T
16 HAVE?

17 A. WELL, THERE WAS AN INTERVIEW ON THE 17TH,
18 WHICH WAS THE DAY BEFORE. AND I ASKED HIM AGAIN ON THE
19 18TH AS WELL.

20 MR. HENNES: OBJECTION. NONRESPONSIVE.

21 THE COURT: MAKE SURE YOU FINISH ANSWERING THE
22 QUESTIONS SO THE COURT REPORTER IS GETTING THEM BOTH
23 DOWN.

24 COUNSEL, YOUR OBJECTION IS SUSTAINED.

25 MS. JONES: YOUR HONOR, I DON'T BELIEVE HE
26 ALLOWED THE WITNESS TO ANSWER THE LAST QUESTION AS TO

1 WHERE IN THE TRANSCRIPT HE ASKED HIM. AGAIN, HE CUT HIM
2 OFF AND ASKED ANOTHER QUESTION.

3 MR. HENNES: THE WITNESS STARTED TO GO TO A
4 DIFFERENT DAY.

5 MS. JONES: NO.

6 THE COURT: WHY DON'T WE BACK UP, COUNSEL, AND
7 START ALL OVER AGAIN SO I CAN HEAR IT.

8 BY MR. HENNES: Q. ON YOUR INTERVIEW ON THE 18TH
9 OF - ON PAGE TWO, AS REFLECTED WITH THE QUESTION AND
10 THE ANSWER, WHICH IS BY MR. NGUYEN, SAID, "NO, IT'S --
11 THAT'S WHY IT'S NOT TOGETHER. I DON'T KNOW. I NEVER
12 GOT AROUND TO IT."

13 IS THAT WHAT HE SAID?

14 A. AT THAT PARTICULAR MOMENT.

15 Q. AND IS THERE ANYWHERE IN THE TRANSCRIPT ITSELF
16 THAT WE'VE BEEN GIVEN TODAY WHERE MR. NGUYEN SAYS THAT
17 HE DOES HAVE ALL THE PARTS?

18 A. IF YOU LOOK AT THE TOP OF PAGE THREE, AGAIN
19 WE'RE TALKING ABOUT THE PARTS IN THE KIT. AND I ASKED
20 HIM, "DID THEY SELL IT TO YOU AS A KIT?"

21 HE RESPONDED, "YEAH."

22 "SO THEY GAVE YOU PRETTY MUCH EVERYTHING OTHER
23 THAN THE RECEIVER?"

24 "RIGHT." THAT WAS MR. NGUYEN'S ANSWER.

25 "SO PROBABLY HE SHOULD HAVE EVERYTHING IN
26 THERE, RIGHT."

1 AND THEN HE RESPONDS, "WELL, IT'S SO TECHNICAL,
2 ALL THESE LITTLE NUTS AND PIECES. LIKE WHATEVER THEY
3 GET THEY CHOP IT UP AND YOU GOT TO GET ALL OF THE RIVETS
4 OUT AND NOT A KIND OF LIKE REFURBISH THE WHOLE THING
5 BEFORE IT COMES BACK TOGETHER. YOU CAN'T JUST RESURRECT
6 IT."

7 THEN MY NEXT QUESTION IS --

8 MR. HENNES: EXCUSE ME, YOUR HONOR. NO
9 QUESTION PENDING.

10 MS. JONES: YOUR HONOR, I DON'T THINK HE
11 FINISHED COMPLETELY. HE ASKED HIM WHERE IN THE
12 TRANSCRIPT IT WAS.

13 THE COURT: YES. ACTUALLY, THE QUESTION WAS
14 WHERE WAS IT IN THE TRANSCRIPT. AND THE WITNESS DID
15 POINT OUT THE TOP OF THREE. I GUESS IT'S VAGUE WITH
16 RESPECT TO WHETHER HE SHOULD READ IT OR NOT.

17 SO, COUNSEL, YOU CAN ASK YOUR NEXT QUESTION.
18 AND, MADAM PROSECUTOR, YOU CAN ELUCIDATE IT IF YOU WOULD
19 LIKE ON REDIRECT.

20 MR. HENNES: I DON'T THINK I HAVE ANY OTHER
21 QUESTIONS, YOUR HONOR.

22 THE COURT: OKAY. REDIRECT?

23 MS. JONES: OKAY. THANK YOU.

24 REDIRECT EXAMINATION

25 BY MS. JONES: Q. WHAT DID HE GO ON TO SAY ABOUT
26 WHETHER HE HAD ALL THE PARTS? AND YOU CAN GO AHEAD AND

1 READ IT IF IT --

2 A. ABOUT A THIRD OF THE WAY DOWN ON PAGE THREE
3 IT'S THE SAME CONVERSATION.

4 AND I ASKED. "OKAY. IF I UNDERSTAND
5 CORRECTLY, THE -- YOU SHOULD HAVE ALL THE PARTS THAT YOU
6 BOUGHT IN THAT KIT MINUS THE RECEIVER THAT YOU BOUGHT?"

7 AND HE RESPONDS BY SAYING, "YEAH. YEAH.
8 EVERYTHING IS IN THAT."

9 Q. THANK YOU. NOW WITH REGARD TO ROCKY EDWARDS'
10 STATEMENTS, DID HE GIVE YOU AN OPINION THAT THE
11 NECESSARY PARTS WERE THERE TO CREATE A WORKING RIFLE?

12 A. YES.

13 Q. AND WHEN HE SAID "POSSIBLY WITH SOME
14 MODIFICATION," HE WAS REFERRING TO THE RAILS AND THE
15 TRIGGER MECHANISM, CORRECT?

16 MR. HENNES: OBJECTION, YOUR HONOR. MISSTATES
17 THE EVIDENCE.

18 THE COURT: SUSTAINED.

19 BY MS. JONES: Q. IS THAT WHAT YOU TESTIFIED TO ON
20 CROSS?

21 A. THOSE WERE SOME OF THE THINGS THAT HE
22 MENTIONED.

23 Q. OKAY. AND THE RAILS AND THE TRIGGER
24 MECHANISMS WERE PRESENT, CORRECT? YOU JUST SHOWED THEM
25 TO THE JURY.

26 A. YES.

1 Q. AND DID HE FURTHER EXAMINE THE AKC RECEIVER
2 AND POINT OUT THAT IT HAD BEEN BENT INTO A SHAPE FOR
3 ASSEMBLY?

4 A. YOU MEAN AK-47 RECEIVER?

5 Q. YES.

6 A. YES.

7 Q. AND HOLES HAD BEEN DRILLED ACCORDING TO HIM?

8 A. I'M NOT SURE HOW TO ANSWER THAT BECAUSE WE
9 DON'T KNOW IF THOSE HOLES WERE DRILLED BEFORE OR AFTER
10 IT WAS BENT INTO POSITION.

11 Q. OKAY. LET ME REPHRASE THAT.

12 DID HE COMMENT TO YOU THAT THE RECEIVER HAD
13 HOLES DRILLED INTO IT, BUT IT NEEDED SEVERAL MORE?

14 A. YES.

15 Q. DID HE ALSO INDICATE TO YOU THAT A LOT OF THE
16 WORK THAT WAS REQUIRED HAD ALREADY BEEN COMPLETED ON IT?

17 A. YES.

18 Q. AND DID HE EVER INDICATE TO YOU THAT THERE WAS
19 ANYTHING NOT CONTAINED IN THAT BOX OF PARTS THAT WOULD
20 BE NEEDED TO FINISH THAT AK-47?

21 A. NO.

22 MS. JONES: NOTHING FURTHER.

23 THE COURT: OKAY. ANY ADDITIONAL BY
24 MR. HENNES?

25 MR. HENNES: NO, YOUR HONOR.

26 THE COURT: ALL RIGHT. MAY THIS WITNESS BE

1 EXCUSED?

2 MS. JONES: SUBJECT TO RECALL.

3 THE COURT: OKAY. YOU'RE EXCUSED SUBJECT TO
4 RECALL, DETECTIVE CHAPMAN.

5 THE WITNESS: WOULD YOU LIKE ME TO PACKAGE IT
6 UP?

7 THE COURT: THIS IS A GOOD TIME TO BREAK. WE
8 WILL SUBSEQUENTLY BREAK SOMETIME BETWEEN 4:30 AND
9 5:00 O'CLOCK OR WHERE THERE IS A NATURAL BREAK.

10 PLEASE REMEMBER THE ADMONISHMENT. DO NOT TALK
11 ABOUT THE CASE OR ABOUT ANY OF THE PEOPLE OR SUBJECTS
12 INVOLVED IN IT WITH ANYONE INCLUDING OTHER JURORS. DO
13 NOT MAKE UP YOUR MIND ABOUT THE VERDICT OR ANY ISSUE
14 UNTIL AFTER YOU HAVE DISCUSSED THE CASE WITH THE OTHER
15 JURORS DURING DELIBERATION.

16 THANK YOU. HAVE A GOOD EVENING.

17 (PROCEEDINGS OUTSIDE THE PRESENCE OF THE JURY:)

18 THE COURT: WE ARE OUTSIDE OF THE PRESENCE OF
19 THE JURY. IS THERE ANYTHING THAT YOU WOULD LIKE TO
20 BRING UP BEFORE WE BREAK?

21 MR. HENNES: NOT FROM THE DEFENSE, JUST TO
22 INFORM THE COURT THAT I BELIEVE THAT THEIR EXPERT IS
23 GOING TO BE ON IN THE MORNING. AND I'LL HAVE MY EXPERT
24 READY AT 10:00 A.M. TOMORROW. MAYBE THAT'S WISHFUL
25 THINKING.

26 THE COURT: HIGH HOPES.

1 MS. JONES: I THINK THAT'S FAIR.

2 THE COURT: LET'S HAVE BOTH EXPERTS HERE.
3 THAT'S A GOOD TIME PERIOD TO TRY TO MAKE SURE THAT
4 THERE'S NO GAPS.

5 ADDITIONALLY, I WOULD LIKE COUNSEL HERE IF YOU
6 CAN BY 8:45, JUST TO KIND OF GET IN HERE, GET SETTLED,
7 SET UP SO WE CAN HOPEFULLY HAVE THAT JURY COME IN.

8 MR. NGUYEN, YOU ARE ORDERED BACK TOMORROW FOR
9 8:45.

10 MR. HENNES: THANK YOU, YOUR HONOR.

11 THE COURT: YOU'RE WELCOME.

12 (END OF PROCEEDINGS)

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