

CO46081

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

APRIL 7, 2011  
OCTOBER 14, 2011  
NOVEMBER 14, 2011

A P P E A R A N C E S

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VOLUME 3 OF 3  
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER  
3 DEPARTMENT WB  
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 THURSDAY, APRIL 7, 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. FARNES, C.S.R. #9117,  
23 PRO TEMPORE COURT REPORTER  
24  
25  
26

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WITNESS INDEX

FOR THE PROSECUTION:    DIRECT    CROSS    REDIRECT    RECROSS  
(NONE)

FOR THE DEFENSE:        DIRECT    CROSS    REDIRECT    RECROSS  
(NONE)

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EXHIBITS

EXHIBITS FOR  
THE PROSECUTION:

IDENTIFIED

RECEIVED

(NONE)

EXHIBITS FOR  
THE DEFENSE:

IDENTIFIED

RECEIVED

(NONE)

1 WESTMINSTER, CALIFORNIA - THURSDAY, APRIL 7, 2011

2 MORNING 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 CASE OF  
6 PEOPLE VERSUS TIEN DUC NGUYEN HERE FOR TRIAL. BOTH  
7 COUNSEL AND MR. NGUYEN ARE PRESENT.

8 THE COURT HAS RECEIVED A NEW AND IMPROVED  
9 VERSION OF CALCRIM 2560 AS TO COUNT 1, AND THEN AS TO  
10 COUNT 2.

11 I WOULD POINT OUT TO COUNSEL THAT I PUT THE  
12 "CONSTRUCTIVE POSSESSION" LANGUAGE IN COUNT 2 ONLY.

13 IS THERE ANYTHING ELSE WE NEED TO PUT ON THE  
14 RECORD BEFORE WE BRING THE JURY IN? I THINK THAT'S IT.

15 MR. HENNES: NO.

16 THE COURT: OKAY.

17 (THE FOLLOWING PROCEEDINGS WERE IN THE PRESENCE OF THE  
18 JURY:)

19 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN  
20 OF THE JURY. YOU HAVE HEARD ALL THE EVIDENCE. NOW IT  
21 IS TIME FOR THE CLOSING ARGUMENTS OF COUNSEL. YOU WILL  
22 RECALL THAT WHAT AN ATTORNEY SAYS IS NOT EVIDENCE. EACH  
23 COUNSEL WILL OUTLINE FOR YOU THEIR INTERPRETATION AS TO  
24 WHAT THE EVIDENCE SHOWS.

25 FIRST THE PEOPLE WILL GIVE OPENING ARGUMENT,  
26 THEN THE DEFENSE WILL GIVE ARGUMENT, THEN THE PEOPLE

1 WILL GIVE THEIR FINAL REBUTTAL ARGUMENT. I WILL THEN  
2 GIVE YOU THE CONCLUDING INSTRUCTIONS ON THE LAW.

3 DURING ARGUMENT I ASK THE ATTORNEYS TO AVOID  
4 INTERRUPTING EACH OTHER, IF POSSIBLE. IF EITHER  
5 ATTORNEY MISSTATES THE EVIDENCE OR LAW, YOU WILL RELY ON  
6 THE EVIDENCE AS PRESENTED IN THE TRIAL AND THE LAW AS  
7 STATED BY THE COURT.

8 MS. JONES?

9 MS. JONES: THANK YOU.

10 GOOD MORNING, LADIES AND GENTLEMEN. SEEMS LIKE  
11 WE'VE BEEN HERE MORE THAN A COUPLE DAYS, DOESN'T IT.  
12 I'D LIKE TO START BY THANKING YOU FOR YOUR ATTENTION AND  
13 PATIENCE WITH US. I KNOW WE TOOK A LOT OF BREAKS, WE  
14 NEVER STARTED ON TIME FOR ANY OF THE SESSIONS, BUT WE  
15 HAVE TRIED TO MOVE THE CASE ALONG.

16 AND WE UNDERSTAND THAT IT'S A SACRIFICE FOR YOU  
17 TO BE HERE AND DO YOUR DUTIES AS JURORS AND LISTEN US  
18 TO. AND THIS COULDN'T HAPPEN WITHOUT YOUR COOPERATION.  
19 WE THANK YOU FOR THAT.

20 THIS IS MY OPPORTUNITY TO TELL YOU WHY I  
21 BELIEVE THE EVIDENCE HAS SHOWN BEYOND ANY REASONABLE  
22 DOUBT THAT THE DEFENDANT IS GUILTY OF THE TWO CRIMES  
23 HE'S CHARGED WITH.

24 IN VOIR DIRE I TOLD YOU THAT YOU CONSIDER THE  
25 CRIMES SEPARATELY; THAT THEY'RE TWO SEPARATE CHARGES.  
26 AND YOU CAN FIND THEM GUILTY EITHER/OR. THAT'S TRUE.

1 HOWEVER, IN THIS CASE IT'S AN ALL-OR-NOTHING, BECAUSE IF  
2 HE INTENDS TO MANUFACTURE, HE OBVIOUSLY INTENDED TO  
3 POSSESS.

4 SO THE ISSUE IS HIS INTENT. AND IF HE HAD  
5 THE INTENT TO MANUFACTURE, HE HAD THE INTENT TO POSSESS.  
6 YOU'RE GOING TO GET A PACKET WHEN YOU GO BACK IN THE  
7 JURY ROOM. AND THE JUDGE IS GOING TO READ YOU EVERY  
8 SINGLE RULE OF LAW THAT YOU ARE ORDERED TO FOLLOW AND  
9 THAT YOU HAVE SWORN TO FOLLOW IN THIS CASE.

10 AND WITH THAT IN MIND, I WANT TO GO THROUGH THE  
11 ELEMENTS OF THE CRIME. AND I'VE KIND OF PRINTED OUT AS  
12 THAT MANUFACTURING ONLY, BUT WHEN YOU CONSIDER  
13 POSSESSION, YOU JUST REPLACE THE WORD "MANUFACTURE" WITH  
14 "POSSESSION" OR "PURPOSES" OF THE ELEMENTS THAT NEED TO  
15 BE PROVED.

16 AND I'LL GO THROUGH THAT NOW. I TOLD YOU  
17 THAT -- I HOPE THIS IS BIG ENOUGH. WE NEED TO SEE. I  
18 TOLD YOU THERE WERE THREE ELEMENTS TO MANUFACTURE OR, IN  
19 THIS CASE, ATTEMPT AND MANUFACTURE OF AN ASSAULT WEAPON  
20 THAT'S HIS COUNT IN CHARGE 1.

21 I HAVE TO PROVE THESE THREE THINGS. THIS IS  
22 THE RECIPE FOR IT. THIS IS THE GROCERY LIST YOU'RE  
23 LOOKING FOR THE DEFENDANT ATTEMPTED TO MANUFACTURE AN  
24 ASSAULT WEAPON.

25 "MANUFACTURE" ISN'T DEFINED IN THE LAW.  
26 "MANUFACTURE" IS THE COMMON MEANING OF THE WORD

1 "MANUFACTURE" MEANS TO MAKE. MANUFACTURE MEANS TO  
2 BUILD. MANUFACTURE MEANS WHAT YOU BELIEVE MANUFACTURE  
3 MEANS. AND AN ATTEMPT IS JUST THAT. IT'S AN ATTEMPT.  
4 AND THERE'S SOME LEGAL EASE ABOUT IT.

5 AND I DON'T THINK IT'S GOING TO BE CONTENDED  
6 THAT HE WAS DRIVING TO BUILD A WEAPON. THE TOOL SENT IS  
7 THERE. AND WHAT YOU'RE GOING TO READ IN CALCRIM 460 IS  
8 THAT HE HAS TO HAVE MADE A DIRECT BUT INEFFECTUAL STEP.

9 IN OTHER WORDS, HE MADE A DIRECT STEP, BUT  
10 DIDN'T FINISH THE STEP. AND HE -- OR THE DEFENDANT  
11 SHOULD FINISH THE ENTIRE PROCESS, BUT HE HAD TO HAVE  
12 GONE BEYOND PLANNING OR PREPARATION AND HAVE SHOWN  
13 SOMEHOW THAT HE'S PUTTING HIS PLAN INTO ACTION.

14 HOW DID HE DO THAT? HE GOT TOGETHER EVERY  
15 SINGLE THING HE NEEDED TO MAKE THAT ASSAULT WEAPON,  
16 DIDN'T HE? HE JUST DIDN'T PLAN ABOUT IT DOING TALK  
17 ABOUT IT. HE DIDN'T JUST THINK ABOUT IT, DOING IT. HE  
18 ORDERED A KIT. HE GOT THE PLAT. HE PURCHASED A DYER.  
19 HE GOT THE MOLDING MACHINE THAT HE NEEDED TO DO IT. HE  
20 HAD ALL THE TOOLS THAT NEEDED TO DO IT. AND NOT ONLY  
21 THAT, THEN HE STARTED TO DO IT. ABSOLUTELY DIRECT  
22 ATTEMPTS.

23 IT WAS DEFINITE. THIS WAS UNAMBIGUOUS. THERE  
24 WAS NO OTHER REASON THAT HE SHAPED THAT PLAT EXCEPT THAT  
25 HE WAS ATTEMPTING TO MAKE THAT WEAPON. HE PUT HIS PLAN  
26 IN MOTION. AND IT WOULD HAVE BEEN COMPLETED BY FOR AN



1 OUTSIDE SOURCE OR INFLUENCE. AND THAT SOURCE OR  
2 INFLUENCE WAS DETECTIVE CHAPMAN, WHO TOOK THE THING AWAY  
3 FROM HIM, CAUGHT HIM. BUT FOR THAT HE WOULD HAVE KEPT  
4 TRYING.

5 NOW THERE'S A PART ABOUT ABANDONMENT. AND IT  
6 SAYS, "A PERSON WHO ATTEMPTS TO COMMIT THE ATTEMPTED  
7 CRIME EVEN IF AFTER TAKING THE DIRECT STEP TOWARD  
8 COMPLETING THE CRIME HE ABANDONED FURTHER EFFORTS TO  
9 COMPLETE THE CRIME, OR IF HIS ATTEMPT" -- I'M SORRY --  
10 "A PERSON WHO ATTEMPTS TO COMMIT IS GUILTY IF AFTER  
11 TAKING A DIRECT STEP TOWARD COMMITTING THE CRIME HE OR  
12 SHE ABANDONED FURTHER EFFORTS TO COMPLETE THE CRIME,  
13 HE'S GUILTY EVEN IF, EVEN IF, HE DECIDED THAT HE WASN'T  
14 GOING TO DO IT."

15 THE ONLY WAY, IF HE'S INTERRUPTED AND THAT'S  
16 WHY HE STOPS DOING IT BY SOMETHING BEYOND HIS CONTROL,  
17 T.E. LAW ENFORCEMENT, THEN HE'S STILL GUILTY. AND I  
18 KNOW I REALLY MESSED THIS UP A LITTLE BIT. BUT ON THE  
19 OTHER HAND, IF HE FREELY AND VOLUNTARILY ABANDONS HIS  
20 PLAN, THEN HE'S NOT GUILTY.

21 WELL, THERE'S NO EVIDENCE THAT HE FREELY AND  
22 VOLUNTARILY ABANDONED THE PLAN. HE STILL HAS THAT KIT  
23 IN HIS GARAGE. HE DOESN'T HAVE IT UPSTAIRS WITH HIS  
24 COMPLETED WEAPON. WHY? BECAUSE HE'S STILL WORKING ON  
25 IT. HE'S GOT IT DOWNSTAIRS WHERE HE'S GOT ALL HIS  
26 EQUIPMENT AND HIS TOOLS AND HIS PRESS AND HIS DYE

1 BECAUSE HE'S WORKING ON IT.

2 AND WHAT DOES HE SAY IN THE REPORT, IN HIS  
3 TAPED CONVERSATION? "OH, I NEVER GOT AROUND TO IT."  
4 BUT I WOULD SUBMIT TO YOU THAT HE WAS IN THE PROCESS OF  
5 IT. AND ONCE YOU CAREFULLY ANALYZE HIS STATEMENTS IN  
6 THE TRANSCRIPT, ALMOST EVERYTHING HE SAYS IS SKERTING  
7 THE ISSUE, TALKING IN CIRCLES AND TRYING TO GET OUT OF  
8 THIS BIG HOLE HE'S DUG HIMSELF.

9 THE FACTS AND THE CIRCUMSTANCES SHOW THERE WAS  
10 NO ABANDONMENT OF HIS INTENT - OF HIS ATTEMPT TO CREATE  
11 THIS WEAPON. WHAT THERE WAS WAS AN INTERRUPTION BY LAW  
12 ENFORCEMENT THAT TOOK HIS ABILITY AWAY.

13 SO WE HAVE AN ATTEMPT TO MANUFACTURE. WE ALSO  
14 HAVE AN ATTEMPT TO POSSESS. BECAUSE IF HE MANUFACTURED  
15 IT, THEN HE'S NECESSARILY MANUFACTURING IT, SO HE  
16 POSSESSES IT, SO HE HAS IT, SO IT'S HIS.

17 HE HAD TO HAVE KNOWN THAT HE WAS ATTEMPTING TO  
18 MANUFACTURE IT. THE KNOWLEDGE IS AS TO WHAT HE'S DOING.  
19 HE DOESN'T THINK HE'S BUILDING A TRACTOR. HE THINKS  
20 HE'S BUILDING A WEAPON. HE KNOWS THE NATURE OF WHAT  
21 HE'S BUILDING.

22 IN OTHER WORDS, HE'S NOT DOING IT BY ACCIDENT.  
23 AND FINALLY, HE KNEW OR REASONABLY SHOULD HAVE KNOWN  
24 THAT IT HAD THE CHARACTERISTICS THAT MADE IT AN ASSAULT  
25 WEAPON.

26 NOW, THAT'S IMPORTANT BECAUSE HE DOESN'T HAVE

1 TO KNOW THAT IT'S ILLEGAL. HE DOESN'T HAVE TO KNOW THAT  
2 IT'S AN ASSAULT WEAPON UNDER THE LAW. AND YOU'LL NOTICE  
3 THAT DURING THE TRIAL, WE DIDN'T USE THE WORD "ASSAULT  
4 WEAPON." WE KEPT TALKING ABOUT AN AK 47-TYPE WEAPON.

5 AND THE REASON IS IS BECAUSE YOU'RE THE ONE WHO  
6 DECIDES THE ULTIMATE ISSUE OF WHETHER THAT'S AN ASSAULT  
7 WEAPON. AND, LADIES AND GENTLEMEN, I WOULD SUBMIT TO  
8 YOU NOW, WE CAN CALL IT AN ASSAULT WEAPON. WE CAN CALL  
9 IT WHAT IT IS. IT'S AN ASSAULT WEAPON.

10 HE KNEW THE CHARACTERISTICS THAT MADE IT AN  
11 ASSAULT WEAPON. HE KNEW THAT IT HAD THOSE ITEMS. AND  
12 I'LL GO DOWN -- I'LL FINISH UP THE INSTRUCTIONS FIRST,  
13 AND THEN I'LL EXPLAIN TO YOU WHY IT HAS THOSE  
14 CHARACTERISTICS.

15 THE LAW DEFINES AN "ASSAULT WEAPON" AS A  
16 "SEMI-AUTOMATIC CENTERFIRE RIFLE THAT HAS THE CAPACITY TO  
17 ACCEPT A DETACHABLE MAGAZINE AND IT HAS ONE OF THE  
18 FOLLOWING": SO IT HAS TO HAVE THE CAPACITY TO ACCEPT A  
19 DETACHABLE MAGAZINE.

20 AND THAT'S WHY I TOLD YOU AT THE BEGINNING OF  
21 THE TRIAL THAT PEOPLE'S G, THE CAPACITY TO ACCEPT A  
22 DETACHABLE MAGAZINE, WAS WHAT THIS CASE CAME DOWN TO,  
23 BECAUSE IT ABSOLUTELY NEEDS THIS, AND IT HAS THIS.

24 AND IT ALSO HAS TO HAVE ANY ONE OF THE  
25 FOLLOWING: IT ONLY NEEDS ONE OF A THROUGH F TO BE AN  
26 ASSAULT WEAPON, BUT IT'S GOT THREE OF THEM. IT'S GOT A

1 PISTOL GRIP THAT PROTRUDES CONSPICUOUSLY BENEATH THE  
2 ACTION OF THE WEAPON. IT'S GOT A HOLDING STOCK. AND  
3 IT'S GOT A FORWARD PISTOL GRIP.

4 AND THAT'S WHY WE WENT THROUGH THE TEDIOUS  
5 PROCESS OF HAVING THE EXPERT DESCRIBE TO YOU WHAT UNDER  
6 THE LAW A DETACHABLE MAGAZINE WAS, WHAT A FORWARD PISTOL  
7 GRIP WAS, AND WHAT A PISTOL GRIP WAS THAT PROTRUDES  
8 CONSPICUOUSLY BENEATH THE ACTION OF THE WEAPON.

9 AND NOW WHEN YOU THINK ABOUT IT, THERE'S EVERY  
10 REASON TO KEEP PEOPLE FROM HAVING THIS TYPE OF WEAPON.  
11 AND THERE'S A GOOD REASON WHY THE LAW AND LAW  
12 ENFORCEMENT DOESN'T WANT YOU TO BE ABLE TO CRANK OFF A  
13 BUNCH OF ROUNDS BY POPPING IT IN THERE AND SHOOTING IT  
14 AT 700 ROUNDS A MINUTE, AND THEN PUSING IT OUT,  
15 STICKING ANOTHER ONE IN AND DOING IT AGAIN.

16 IT MAKES SENSE. THERE'S A REASON WHY THE LAW  
17 DOESN'T WANT YOU TO STAND THERE AND FIRE OFF ROUNDS AT  
18 SOMEBODY AT 700 MILES A MINUTE -- OR SEVEN HUNDRED  
19 ROUNDS A MINUTE. AND THAT'S WHY THEY DON'T LIKE THESE  
20 TWO PIECES OF BUSINESS.

21 THERE'S A REASON WHY THEY DON'T WANT SOMEONE  
22 WITH A WEAPON LIKE THIS THAT COULD GO UNDERNEATH  
23 DETECTIVE CHAPMAN'S JACKET THERE AND WALKING AROUND WITH  
24 THAT. AND, YOU NOW, IT'S A SCARY THING.

25 THE LAWS AREN'T MADE FOR ARBITRARY REASONS.  
26 THE LAWS ARE MADE BECAUSE SOCIETY DOESN'T WANT PEOPLE TO

1 HAVE THESE KIND OF WEAPONS. THEY DON'T WANT PEOPLE  
2 MAKING THIS STUFF. AND THAT'S EXACTLY WHAT THE  
3 DEFENDANT WAS MAKING.

4 NOW THIS IS COMMON SENSE THAT I TALKED TO YOU A  
5 LITTLE BIT ABOUT IN YOUR DIRECTION. IT GOES A LONG WAY IN  
6 EXPLAINING THE DEFENDANT'S RESPONSES TO INVESTIGATORS THE  
7 FIRST AND SECOND TIME HE WAS CONTACTED REGARDING THIS  
8 ASSAULT WEAPON.

9 AND WHAT IT TELLS YOU IS IT TELLS YOU HE KNOWS  
10 IT'S WRONG. HE KNOWS WHAT HE'S DOING IS WRONG. HE  
11 KNOWS WHAT HE'S DOING IS ILLEGAL. AND HE DOESN'T HAVE  
12 ANY INTENT TO MAKE THIS THING LEGAL. THERE'S NOT ONE  
13 SPEC OF EVIDENCE ON THE RECORD THAT HE EVER INTENDED TO  
14 MODIFY WHAT HE HAD IN THAT KIT TO MAKE THIS THING LEGAL.

15 HE DIDN'T TALK ABOUT IT. HE DIDN'T BUY IT. HE  
16 DIDN'T ORDER IT. HE DIDN'T DO ANYTHING EXCEPT ASK YOU  
17 TO SPECULATE WHEN HE'S BEFORE 12 PEERS THAT, "WELL,  
18 SOMETIME IN THE FUTURE I WAS GOING TO DO IT."

19 THAT'S NOT GOOD ENOUGH, LADIES AND GENTLEMEN.  
20 IN FACT, IT'S CONTRARY TO AN INSTRUCTION YOU'RE GOING TO  
21 GET IN THE PACKET. AND WHAT THAT INSTRUCTION SAYS IS  
22 YOU MAY NOT SPECULATE. YOU'VE SWORN TO FOLLOW THE LAW.  
23 AND THE LAW SAYS YOU MUST LIMIT YOUR VERDICT TO THE  
24 EVIDENCE PRESENTED, PERIOD.

25 AND YOU CANNOT SPECULATE ON WHAT'S NOT  
26 PRESENTED. THEY DON'T HAVE A CASE. AND SO THEY'RE

1 GOTNG TO ASK YOU TO SPECULATE BECAUSE THAT'S THE ONLY  
2 WAY THAT I CAN SEE THE VERDICT OF NOT GUILTY. AND IT'S  
3 NOT FAIR. AND IT'S NOT JUST IN THIS CASE.

4 SO CONSCIOUSNESS OF GUILT. LADIES AND  
5 GENTLEMEN, DID HE KNOW WHAT HE WAS DOING WAS WRONG? DID  
6 HE KNOW THAT THE ITEM THAT HE WAS MAKING HAD THE  
7 CHARACTERISTICS OF AN ASSAULT WEAPON? WELL, I DON'T  
8 KNOW. HOW DID HE ACT? ACTIONS SPEAK LOUDER THAN WORDS.  
9 AND WHAT DID HE SAY, FOR THAT MATTER.

10 CALCRIM 362 SAYS, "IF THE DEFENDANT MADE A  
11 FALSE OR MISLEADING STATEMENT BEFORE THIS TRIAL RELATING  
12 TO THE CHARGED CRIME KNOWING THE STATEMENT WAS FALSE OR  
13 INTENDING TO MISLEAD, THAT CONDUCT MAY SHOW, THAT  
14 CONDUCT OF THE STATEMENT MAY SHOW, HE WAS AWARE OF HIS  
15 GUILT OF THE CRIME. AND YOU MAY CONSIDER THAT IN  
16 DETERMNING HIS GUILT. THAT CAN'T BE THE ONLY BASIS FOR  
17 IT, BUT IT SURE IS POWERFUL EVIDENCE, ISN'T IT?

18 SO THE POLICE COME TO HIS SHOP AND THEY HAVE NO  
19 IDEA THAT THERE'S AN ASSAULT WEAPON BEING MADE IN THERE.  
20 THEY'RE LOOKING FOR SOMETHING ELSE UNRELATED TO THIS.  
21 AND THEY TELL HIM, "HEY, WE'RE GOING TO SEARCH YOUR  
22 SHOP. DO YOU HAVE ANYTHING ILLEGAL?"

23 AND WHAT'S IN HIS MIND? I'LL TELL YOU WHAT'S  
24 IN HIS MIND, THAT BIG OLD THING ON THE TABLE IS IN HIS  
25 MIND, BECAUSE, HOLY COW, THEY'RE GOING TO SEARCH THE  
26 SHOP AND THEY'RE GOING TO FIND IT.

1           SO HE'S NOT BEING HONEST. HE'S NOT BEING THIS  
2 FORTHCOMING, WHO IS NOT DOING IS I DON'T KNOW HE'S  
3 TELLING HIM BECAUSE HE HATE TO TELL HIM BECAUSE HE HAS  
4 TO FEDERAL THEM ANY WHAT I IT'S FOUR FEET LONG.

5           WHETHER THEY TOLD HIM HE WAS GOING SEARCHED AND  
6 DID IF HE HAD A GUN HE SAID I HAVE A GUN LET ME SHOW YOU  
7 THESE PIG HUNTING GUN WAS USED FOR PIG HUNTING AND TOOK  
8 THEM UPSTAIRS AND SHOWED HIM THAT GUN A AFTER HE TOLD  
9 THEM THAT THAT WAS HIS PIG HUNTING GUN HOW HE TOLD THE  
10 AK-47 RECEIVER HE SAID "I USED A VICE."

11           HE DIDN'T TELL HIM HE USE AD DYE HE NEVER TOLD  
12 HIM HE PURCHASED A DYE HE DIDN'T TELL HIM HE HAD A DYE  
13 IN THE SHOP I MIGHT FROM A DYE IT MIGHT BE THAT I HAVE A  
14 DYE IT MIGHT BE AT THE SHOP IT MIGHT BE AT HOME I CAN'T  
15 I'LL GET IT FOR YOU NEVER CAUSE. THE .50 CALIBER  
16 BEOWULF AMMUNITION WHY DO YOU HAVE THAT, WELL, I USE IT  
17 FOR PIG HUNTING. SAYS WHERE IS THE GUN IT GOES TO, I  
18 RENTED THE GUN. CAN YOU PICTURE A GUN DEALER HANDING  
19 SOMEBODY THAT .50 CALIBER AND TELLING THEM TO GO PIG  
20 HUNTING WHEN DID YOU DO A RANGE AND THEY GIVE YOU A GUN  
21 TO THEY WATCH YOU USE THE GUN THEY DON'T LET YOU TAKE IT  
22 OUTSIDE YOU WILL HAVE TO DO SOME STUFF TO GET A GUN  
23 OUTSIDE OF A DEALER.

24           I THINK LIKE PURCHASE IT I DON'T KNOW WAIT A  
25 WHILE DO A BACKGROUND CHECK MAYBE WHOLE A BUNCH OF STUFF  
26 HE CLAIMS AT THE RENTED IT OF COURSE THAT EXPLANATION

1 MEANS HE NEVER HAS TO GIVE THE OFFICERS HIS GUN, GUN DOES  
2 IT. "DO YOU HAVE ANY OTHER GUNS?"

3 "WELL, MY WIFE MASS RUN SUECK CERTIFIED HAD OS  
4 NAME BUT I OWN IT OUT AND BELOW PAN BEE MILD THEY LET  
5 HIM USE THE CELL PHONE OUT IN THE ALLEY AND THIS A  
6 COUPLE THE HOURS LATE ARE THIS GO OVER TO HIS HOUSE AND  
7 THEY LOOK IN THE CLOSET AND THERE'S A WIDE OPEN GUN CASE  
8 WITH NO GUN IN IT.

9 AND HE SAYS, "I ALWAYS LEAVE IT LIKE THAT AND  
10 THE NEXT DAY CHAPMAN ELSE DID HIM I WENT TO THE WEAPON  
11 SHOP THAT HE SAYS HE BOUGHT THIS STUFF FROM AND HE SAYS  
12 AGAIN NOW HOW DID YOU STORE THAT RECEIVER I USE A  
13 REGULAR SHOP PRESS YOU DONT' BY A PRESS ORGANIZATION  
14 KNOW THEY AT THE FOR \$400 CAN DEPRECIATE CHAPMAN DIRECTS  
15 THEY SELL FOR A HUNDRED. AND "OH, THE GUY, OH, YEAH, DO  
16 YOU HAVE THAT?"

17 I THINK IS STOW SOMEWHERE I GOT TO LOCK IT  
18 MIGHT BE DID HE SHOP IT MIGHT BE AT THIS HOUSE I CAN  
19 TURN IT INTO O TO YOU HE PROBLEMS LISTEN HE PROMISES  
20 THAT DYE ON AT LEAST TWO OCCASIONS IN THAT TAPE HE NEVER  
21 GIVES IT UP. WHAT OTHER EQUIPMENT DO YOU HAVE FOR  
22 MAKING THOSE I HAVE A BIG DRILL, PRESS AND A BUNCH OF  
23 DRILLS THAT WE HAVE AT THE SHOP, SO, UM, LET ME KNOW.  
24 I'LL BRING IT TO YOU."

25 AND ARE THOSE OVER AT THE SHOP RIGHT NOW?"

26 "IT MIGHT BE."



1 IS IT WHERE YOU THINK WHERE THE OTHER STUFF  
2 WAS, THE AK-47?"

3 "IT MIGHT BE."

4 "ARE ALL THE PARTS THERE TO PUT TOGETHER THE  
5 AK-47?" AND HE LIES AGAIN. "NO. THAT'S WHY IT'S NOT  
6 TOGETHER. I DON'T KNOW. I NEVER GOT AROUND TO IT."  
7 WELL, WHICH ONE DID? FEW LINES LATER HE CHANGES HIS  
8 STORY AGAIN. HE ADMITS HE PURCHASED IT AS A KIT.

9 AND WHEN CONFRONTED WITH THE FACT THAT IT SEEMS  
10 TO HAVE EVERYTHING, HE SAYS, "WELL, I HAVE ALL THESE  
11 LITTLE NUTS AND MEANS, LIKE WHATEVER AND THEY GET" --  
12 "THEY'RE ALL CHOPPED UP." THAT'S NOT REALLY TRUE.

13 IF YOU LOOK AT HIS KIT, IT'S NOT REALLY ALL  
14 CHOPPED UP. IT'S PRETTY CLEAN. IT'S NOT LIKE THERE'S A  
15 WHOLE BUNCH OF STUFF HE HAS TO CLEAN UP AND START OVER  
16 WITH. YOU CAN LOOK AT THE DEFENSE EXPERT'S KIT. HE  
17 BROUGHT IN A MESS OF A KIT THAT'S GOT THINGS CHOPPED  
18 OFF. IT LOOKS A LOT DIFFERENT THAN THE KIT THAT THE  
19 DEFENDANT HAD.

20 AND, FURTHERMORE, HE JUST CAN'T HELP BRAGGING A  
21 LITTLE BIT ABOUT HOW GOOD HE IS AT STUFF. FIRST HE SAYS  
22 YOU GOT TO GET ALL THE RIVETS OUT AND WHATNOT AND KIND  
23 OF LIKE REFURBISH THE WHOLE THING." REALLY? TAKE A  
24 LOOK AT THAT KIT. IS THAT TRUE?

25 OKAY. CHAIRMAN SAYS, "IF I UNDERSTAND  
26 CORRECTLY, THE PARTS YOU BOUGHT IN THAT KIT MINUS THE

1 RECEIVER THAT YOU BOUGHT?"

2 "YEAH, YEAH, EVERYTHING IS IN THAT. EVERYTHING  
3 IS THERE." WHERE IS THE PART ABOUT, "OH, I'M BISSING  
4 THAT COVER THAT'S GOING TO MAKE IT LEGAL."? EVERYTHING  
5 IS THERE. LATER HE SAYS ON THE TAPE THAT HE DOWNLOADED  
6 THE DIMENSIONS TO AVOID PAYING FOR A TEMPLATE ON A .50  
7 CALIBER.

8 "I JUST WENT ONLINE, GOT ALL THE DIMENSIONS ON  
9 WHAT'S IT'S SUPPOSED TO BE, YOU KNOW, I MAKE ALL KINDS  
10 OF STUFF. IF I HAD THE DIMENSIONS, I COULD MAKE IT.  
11 IT'S AS SIMPLE AS A DRILL BIT."

12 WE'RE NOT DEALING WITH SOMEBODY THAT DOESN'T  
13 KNOW HOW TO MAKE IT. WE'RE NOT DEALING WITH SOMEBODY  
14 THAT CAN'T MAKE IT. DOESN'T WANT TO MAKE IT. WHAT  
15 WE'RE DEALING WITH IS SOMEBODY THAT HAS ALL THE TOOLS TO  
16 MAKE IT AND HAS ALL THE INTENT TO MAKE IT. AND HE'S  
17 MAKING WHAT THE EVIDENCE SAYS HE'S MAKING.

18 AND WHY DOES HE SAY TO THE OFFICER, WHY DOES HE  
19 KEEP TELLING HIM, HE TELLS HIM A COUPLE TIMES IN THIS  
20 TAPE, LADIES AND GENTLEMEN, I'M REALLY URGING YOU TO  
21 LISTEN TO THIS TAPE IF YOU HAVE ANY DOUBT, BECAUSE YOU  
22 CAN HAVE IT PLAYED BACK IN THE JURY ROOM.

23 AND WHAT DETECTIVE CHAPMAN DESCRIBED ON THE CAN  
24 IS HIM DOING THE SECOND DAY WHEN HE CONTACTED HIM WAS  
25 TALKING IN CIRCLES. AND THIS IS ALL A BUNCH OF TALKING  
26 IN CIRCLES. HE KNOWS HE'S CAUGHT. HE'LL TELL THEM

1 HE'LL GIVE HIM ANYTHING THEY WANT. HE JUST WANTS TO  
2 MAKE IT GO AWAY. WHY? BECAUSE HE IS GUILTY, NOT  
3 BECAUSE HE THINKS HE ISN'T DOING SOMETHING WRONG.

4 HE SAYS OUT OF HIS MOUTH NOT YOU NO HE WHAT YOU  
5 WERE DOING IS WRONG YOU KNOW YOU COME BE MAKING THIS  
6 STOPP YOU KNOW YOU CAN'T BE POSSESSING THIS STUFF  
7 ENLISTERS I KNOW IT WAS WRONG. HE JUST WANTS IT TO GO  
8 AWAY IT'S NOT GOING TO GO A WAY. WE CAN OATH I AM  
9 PROVEN THAT BY CIRCUMSTANTIAL EVIDENCE PRESENTED AT  
10 TRIAL AND THAT'S WHY WE TALKED ABOUT IT SO MUCH IN VOIR  
11 DIRE AND WHEN YOU PUT ALL THE CIRCUMSTANCES TOGETHER YOU  
12 CAN'T COME TO AN INNOCENT INTERPRETATION OF THE FACTS  
13 IN THIS CASE. THE FACT IS HE WOULD AS SOON AS THE  
14 POLICE MADE CONTACT WITH HIM BECAUSE HE KNEW WHAT WAS IN  
15 HIS MIND. HE'S TOLD PIG STORIES HUNTING, PIG HUNTING  
16 STORIES. HE KIND OF PROMPTED HE DIDN'T REALLY NO  
17 DECEMBER IT'S ALL JUMP BED UP I HAVEN'T GOT EDGE THE  
18 TIME TO PUT TOGETHER BUT REALLY REALLY I'M PRETTY GOOD  
19 AT IT REALLY I CAN MAKE ANY REALLY ALL I NEED IS DIAGRAM  
20 I DON'T NEED TO EVEN PAY FOR THE THING THE JIG THAT THEY  
21 SELL BECAUSE I CAN DO IT MYSELF LOOK AT WHAT I'VE DONE  
22 ALREADY I'VE GOT A .50 CALIBER IN FROM THAT'S DONE. WHY  
23 ARE THE SERIAL NUMBERS SHAVED OFF THAT'S THE DEFENSE  
24 EXPERT WHO TOLD US HOW SOMEBODY HAD SHAVED OFF THE  
25 SERIAL NUMBERS ON THE PLAT WELL, MAYBE THEY WERE SHAVED  
26 OFF BEFORE HE GOT IT BUT ISN'T IT INTERESTING THAT THE

1 .50 CALIBER ALSO ALSO HAS A SERIAL NUMBER SHAVED OFF.  
2 IT'S NOT A -- IT'S IS A REASONABLE HONEST AND HOW REASON  
3 IS IT THAT TAN WHO REPORT LAW-ABIDING CITIZEN HAS TWO  
4 SERIOUS DANGEROUS WEAPONS AND ONE COULD BELOW AWAY  
5 REALLY BIG THING AND BASKET THEM HEAVEN'T WILL. A THE  
6 HAPPENED TO HAVE THE STEER YEAR NUMBERS REMOVED WHY  
7 WOULD YOU DO THAT ACCEPT THAT YOU DON'T WANT THAT ITEM  
8 FOR THE ITEM THAT HE'S MAKING TO BE IDENTIFIED. CAN YOU  
9 THINK OF ANOTHER REASON? THERE'S NO GOOD REASON AT ALL  
10 ACK SAID WHAT HE DIDN'T SAY IS JUST AS IMPORTANT AS WHAT  
11 HE DID SAY IN THIS CASE. HE EVER CLAIMED HE HAD MORE  
12 PIECES TO PURCHASE AND THINK ABOUT IT THE NEXT DAY THEY  
13 ALREADY COME TO THE SHOP THEY ALREADY FOUND THE WEAPONS  
14 AND THEN THEY CALL HIM UP AND THEY SAY HEY CAN WE MEET  
15 WITH YOU. YEAH, I'LL MEET WITH YOU, HOLY COW, HE'S IN  
16 TROUBLE. HE KNOWS HE'S IN TROUBLE RIGHT ABOUT THEN.  
17 AND THERE'S TWO INTERPRETATIONS OF WHETHER HE KNEW ABOUT  
18 THE BUTTON WHOLE THING. WHATEVER THAT MECHANISM IS,  
19 THAT'S GOTNG TO MAKE IT SOMETHING THAT IT'S NOT RIGHT  
20 NOW, SO IT CAN'T TAKE A DETACHABLE MAGAZINE EITHER. HE  
21 KNEW THAT THAT WOULD SAVE HIM. AND IN THAT CASE WHY  
22 DIDN'T HE TELL THE OFFICERS THEN AND THERE, "I WAS GOING  
23 TO DO IT"? WHY? BECAUSE HE DIDN'T KNOW IT WOULD SAVE  
24 HIM. HE WOULD HAVE SAID ANYTHING.  
25 AND NUMBER TWO: IF HE DIDN'T KNOW THAT IT WAS MAKING IT  
26 LEGAL, THEN IN THE EVJORNCK WERE TS THERE EVIDENCE THAT HE

1 HAS ANY MOTIVATIONS OR ANY NEED OR ANY DESIRE TO BY ONE OF  
2 THOSE? IF HE WOULD HAVE WANTED TO GET ONE AND ADD IT TO  
3 THIS WEAPON, HE WOULD HAVE. BUT HE DIDN'T.

4 AND I WANT TO ADD ANOTHER THING. THERE WAS SOMETHING  
5 ABOUT -- I DON'T KNOW IF YOU CALL IT THE PROPRIETARY NATURE  
6 OF THIS, BUT THIS TRIGGER THING, IT'S RIVETED IN THERE.  
7 ONCE IT'S IN THERE AND HE'S MADE THIS WEAPON, IT'S IN THERE.  
8 DOES HE ADD SOMETHING LATER?

9 I DON'T KNOW. IN FIVE YEARS DOES HE DECIDE THAT HE'S GOING  
10 TO MAKE LEGAL, IN FIVE DAYS, IN FIVE MINUTES, BUT AT THE  
11 TIME HE BUILDS WHAT HE HAS THE PARTS TO BUILD, IT'S ILLEGAL.  
12 AND IT'S PERMANENT UNTIL HE ALTERS IT.

13 AND THERE'S NO INDICATION IN THE FACTS THAT HE INTENDED TO  
14 ALTER IT. IT'S INTERESTING, TOO, THAT HE TALKED TO CHAPMAN  
15 ABOUT, YOU KNOW, THAT .50 CALIBER STUFF THAT'S LEGAL. IT'S  
16 JUST A LITTLE SHORTER. GOT AROUND THAT ONE, BUT CAN'T GET  
17 AROUND THE OTHER ONE.

18 SO HIS ACTS, HE MANUFACTURED THE .50 CALIBER. THAT SHOWS AN  
19 ABILITY. THAT SHOWS A KNOWLEDGE. THAT SHOWS A  
20 SOPHISTICATION. HE GATHERED EXACTLY WHAT HE NEEDED TO MAKE  
21 HIS ASSAULT WEAPON, NO MORE, NO LESS.

22 HE ORDERED AN ASSAULT WEAPON KIT WITH A DYE. HE SAYS HE HAS  
23 A BIG DRILL PRESS, A BUNCH OF DRILLS, HAD HIS SHOP IN THE  
24 TRANSCRIPT. HE MOLDED THE RECEIVER. HE INSERTED RIVETS,  
25 AND HE DID SOME OF THE WORK NECESSARY. THE ONLY PART  
26 MISSING ACCORDING TO THE DEFENSE EXPERT IS A 10-CENT HOME

1 DEPOT ITEM.

2 WHAT HE DID NOT DO WAS PURCHASE ANY MECHANISM OR PART THAT  
3 WOULD MAKE THE ASSAULT WEAPON ANYTHING BUT AN ASSAULT  
4 WEAPON. NO BULLET BUTTONS, NO INVOICES, NO STATEMENTS TO  
5 THE OFFICER, "I WAS GOING TO MAKE IT LEGAL," EVEN AS THEY'RE  
6 TAKING HIS PROPERTY AWAY.

7 AND HE'S PRETTY PARTICULAR ABOUT NOT SPENDING A LOT OF  
8 MONEY. IF DOESN'T WANT TO SPEND MONEY ON THE DIAGRAM THAT  
9 THEY WANTED \$450 FOR ON THE MECHANICS.

10 HE MENTIONS IN THE TRANSCRIPT THAT THEY WANT A BUNCH OF  
11 MONEY FOR, HE TELLS HOW MUCH THAT PART OF THE GUN COSTS  
12 \$1800. IT COST A GRIP. HE BRINGS UP A "GRIP" A COUPLE  
13 TIMES IN THE TRANSCRIPT, ABOUT HOW EXPENSIVE ALL THIS STUFF  
14 WAS.

15 AND HE'S INVESTED SOME MONEY IN THIS STUFF. I MEAN, HE'S  
16 GOT A FEW HUNDRED DOLLARS, \$300, MAYBE, FOR THAT ASSAULT  
17 WEAPON. HE'S GOT AT LEAST \$2800 FOR THE OTHER ONE. AND THE  
18 OFFICERS SAY WE'RE TAKING THIS RIGHT NOW. AND DOES HE SAY,  
19 "WAIT A MINUTE. HOLD ON. I DIDN'T MEAN TO DO SOMETHING.  
20 WHAT DID I DO WRONG?" HE SAYS, "OKAY. I'LL GIVE YOU THIS  
21 TOO. I'LL GIVE YOU ANYTHING YOU WANT," JUST MAKE IT GO  
22 AWAY. THAT'S NOT AN INNOCENT PERSON WITH A LEGAL INTENT.  
23 THE EVIDENCE IS OVERWHELMING THEY'RE DANGEROUS WEAPONS. AND  
24 THERE'S EVERY INDICATION HE KNEW HOW ILLEGAL THAT ASSAULT  
25 WEAPON WAS.

26 AND ONCE THE DEFENSE, LADIES AND GENTLEMEN, AND

1 I MENTIONED IT ALREADY, IT'S PRETTY UNUSUAL, BUT IN THIS  
2 CASE THERE ISN'T ONE UNDER THE EVIDENCE. AND IF YOU  
3 FOLLOW THE EVIDENCE AS YOU PROMISED TO DO, THERE'S NO  
4 DEFENSE.

5 IT'S NOT A CASE OF, "DID I BELIEVE THE DEFENSE  
6 EXPERT OR THE PEOPLE'S EXPERT?" BECAUSE THE DEFENSE  
7 EXPERT DIDN'T SAY MUCH DIFFERENT. IT WAS A LITTLE  
8 HARDER TO PUT TOGETHER, BUT WE KNOW HE'S CAPABLE OF  
9 THAT.

10 WHAT IT COMES DOWN TO IS THE INTENT. AND THE  
11 ONLY WAY YOU CAN CONSIDER THE INTENT IS BY THE  
12 CIRCUMSTANCES, WHAT HE DID AND WHAT HE SAID, HOW HE  
13 ACTED PERIOD.

14 THE DEFENSE EXPERT SAID ALL THE PARTS PRESENT  
15 ARE THERE TO MAKE AN AK-47 TYPE WEAPON EXCEPT FOR THAT  
16 10-CENT PART. HE THOUGHT MAYBE THE MANUFACTURING  
17 PROCESS WASN'T QUITE AS FAR ALONG AS SERGEANT SCHUCH.  
18 AND HE DIDN'T LIKE THE WAY IT WAS BEING PUT TOGETHER.

19 AND THERE'S NO INSTRUCTION. THERE'S NO  
20 REQUIREMENT, LUCKILY, FOR THE COURT AND SOCIETY THAT  
21 PEOPLE WHO PUT TOGETHER ILLEGAL WEAPONS HAVE TO DO IT  
22 WELL. THEY'RE TRYING TO DO IT, THAT'S THE POINT.

23 AND IT MAKES KIND OF SENSE THAT THE  
24 SERGEANT SCHUCH MAY HAVE SEEN WEAPONS THAT ARE PUT  
25 TOGETHER IN A MORE RUDIMENTARY MANNER BECAUSE HE'S  
26 CONFISCATING WEAPONS FROM CROOKS.

1           AND THE DEFENSE EXPERT WORKS IN AN ARMORY,  
2       REPAIRS AND MODIFIES A WEAPON. HE'S A PROFESSIONAL.  
3       AND HE DOESN'T REALLY WANT TO MAKE A WEAPON TO SLAP  
4       TOGETHER AND GO DOWN THE STREET AND DO SOMETHING BAD  
5       WITH. HE'S WORRIED ABOUT THE DUTY OF IT, RIGHT? HE  
6       WANTS TO MAKE SURE IT'S PAINTED. HE WANTS TO MAKE SURE  
7       THAT IT'S BUFFED. HE WANTS TO DO ALL OF THE THINGS THAT  
8       PERHAPS IF YOU'RE TRYING TO DO SOMETHING ILLEGAL, YOU  
9       MIGHT NOT CARE ABOUT.

10           IN GOING BACK TO THE DEFENDANT'S WORDS, "YOU  
11       KNOW, I MAKE ALL KINDS OF STUFF. IF I HAD THE  
12       DIMENSIONS, I COULD MAKE IT. IT'S AS SIMPLE AS A DRILL  
13       BIT."

14           IN FACT, HE DESCRIBES IT FOR ME, THAT RECEIVER.  
15       "IT'S A LITTLE TRICKY," BUT, HE SAYS "SCREW IT DOWN, USE  
16       A PRESS AND JUST (WILLSTIE) TWO SECONDS IT'S DONE." AND  
17       HE HAD ALL THE STUFF THAT HE NEEDED.

18           AND THE DEFENSE ADDRESSES YOU I WOULD ASK THAT  
19       YOU ASK YOURSELF WHERE IS THE EVIDENCE IN THE RECORD TO  
20       SUPPORT THEIR THEORY? AND HE'S GOING TO CLAIM, "WELL,  
21       HE JUST WASN'T FAR ENOUGH ALONG IN THE PROCEDURE. WE  
22       JUST CAN'T KNOW YET." OH, YES, WE CAN. WE CAN KNOW BY  
23       HIS WORDS. WE CAN KNOW BY HIS PURCHASES AND LACK  
24       THEREOF.

25           AT WHAT POINT IS HE GOING TO BUY THIS BULLET  
26       BUTTON THAT HE NEVER MENTIONED HAVING ANY INTENT TO BUY?



1 IT'S OUT THERE. IT'S PUT OUT THERE FOR SPECULATION,  
2 BECAUSE, QUITE FRANKLY, THEY HAVE TO COME UP WITH  
3 SOMETHING. THERE'S NO -- I MEAN, IT'S SUCH A DEAD-SOILED  
4 CASE THAT WHAT ELSE ARE THEY GOING TO COME UP WITH?

5 THEY HAVE TO SAY "INTENT," BECAUSE YOU CAN  
6 ALWAYS SAY, "OH, HE DIDN'T MEAN IT." BUT THAT'S NOT  
7 FAIR AND IT'S NOT JUST AND IT'S NOT THE LAW.

8 HE PROACTIVELY GATHERED WHAT HE WANTED AND HE  
9 NEEDED. AND THE FACTS SHOW HE WAS CREATING WHAT HE  
10 INTENDED. AND HOW DOES HE EXPLAIN -- ASK YOURSELF THESE  
11 QUESTIONS WHEN HE ADDRESSES YOU. HOW DOES HE EXPLAIN  
12 THAT ON THE TAPE?

13 AFTER STANDING AROUND THE ISSUE AND  
14 DOUBLE-TALKING, HE ACKNOWLEDGES HE HAS EVERYTHING FOR  
15 THE AK-47. AND HE NEVER MAKES A MENTION OF BUYING ANY  
16 OTHER PRODUCT. HE GOES ON TO ADD, "THERE'S MORE TO  
17 PURCHASE."

18 IF THERE'S MORE TO PURCHASE -- AND HOW DOES HE  
19 EXPLAIN THAT WHEN DETECTIVE CHAPMAN IS ASKING HIM IF HE  
20 HAS ANYTHING ELSE. AND HE SAYS, "WELL, YOU KNOW, YOU  
21 CAN'T HAVE THIS STUFF. THERE IT IS ON THE TAPE. HE  
22 SAYS, "MY WIFE IS FLIPPING OUT." AND HE SAYS, "I'LL  
23 BRING YOU THE STUFF," AND HE NEVER DOES. HE JUST WANTS  
24 IT TO GO AWAY.

25 LADIES AND GENTLEMEN, HE DOESN'T CARE IF THEY  
26 TAKE HIS STUFF BECAUSE HE'S GUILTY AND HE'S CAUGHT.

1 AND, AGAIN, LISTEN TO THE TAPE. HE'S SHOWED AS FAR AS  
2 HE CAN. AND HE'S DIGGING HIMSELF DEEPER. AND IT'S  
3 DOUBLE-DATK. IF HE HAD TRUTHFUL AND HONEST INTENT TO  
4 MAKE A LEGAL WEAPON, HE WOULD HAVE SAID IT.

5 HE ADMITTED HE HAD EVERYTHING HE NEEDED, BUT  
6 THIS IS NOW "COULD HAVE, WOULD HAVE, SHOULD HAVE" IS  
7 WHAT THEY'RE GOING TO ASK YOU. AND IF THAT WAS THE LAW,  
8 WE'D NEVER BE ABLE TO PROSECUTE ON AN INTENT CASE,  
9 BECAUSE THEY COULD ALWAYS COME IN HERE LATER AND SAY, "I  
10 DIDN'T MEAN IT." THERE HAS TO BE SOME EVIDENCE TO  
11 SUPPORT THAT HE DIDN'T MEAN IT. AND IT'S JUST NOT  
12 THERE.

13 DON'T SPECULATE, LADIES AND GENTLEMEN. IT'S  
14 IMPROPER AND UNJUST. THE DEFENDANT TRIED TO MAKE AN  
15 ILLEGAL ASSAULT WEAPON. AND THAT'S ALL THIS EVIDENCE  
16 SHOWS. AND HE'S GUILTY ON BOTH COUNTS.

17 THANK YOU.

18 THE COURT: WE'RE GOING TO TAKE ABOUT A  
19 SEVEN-OR-EIGHT-MINUTE BREAK RIGHT NOW. IF YOU CAN  
20 CONGREGATE AROUND THE -- OUTSIDE THE HALLWAY THERE,  
21 WE'LL BE BACK IN A MINUTE.

22 (THE FOLLOWING PROCEEDINGS WERE HELD OUTSIDE THE  
23 PRESENCE OF THE JURY:)

24 THE COURT: WE'RE OUTSIDE OF THE PRESENCE OF  
25 THE JURY. THAT AS TO COUNT 1 SHOULD READ, "ATTEMPTED  
26 MANUFACTURE OF AN ASSAULT WEAPON," CORRECT?

1 MS. JONES: YES.

2 THE COURT: AND SO WE'RE JUST GOING TO PLUG IN  
3 THAT LANGUAGE IN THE BLANK. AND THEN THAT SHOULD DO IT.  
4 IT APPEARS AS THOUGH THE VERBIAGE AS TO COUNT 2 IN  
5 CALCRIM 460 IS CORRECT.

6 (PROCESS)

7 (THE FOLLOWING PROCEEDINGS WERE IN THE PRESENCE OF THE  
8 JURY:)

9 THE COURT: ALL RIGHT. WE'RE BACK ON THE  
10 RECORD ON THE TRIAL MATTER. ALL PARTIES AND MR. NGUYEN  
11 ARE PRESENT. AND, MR. HENNES, IT'S TIME FOR YOUR  
12 CLOSING ARGUMENT.

13 MR. HENNES: THANK YOU.

14 GOOD MORNING, LADIES AND GENTLEMEN. I WILL TRY  
15 TO, BUT THIS IS SOMEWHAT COMPLICATED, BUT SOMEWHAT  
16 SIMPLE CASE INTO PROPER CONTEXT SO THAT WE'RE CLEAR ON  
17 WHAT THE ISSUES ARE BEFORE THE JURY TO DECIDE AND WHAT  
18 ISSUES ARE NOT BEFORE THE JURY.

19 BECAUSE THERE ARE A LOT OF RED HERRINGS IN THIS  
20 CASE THAT WE WILL NEED TO ELIMINATE FROM CONSIDERATION  
21 IN ORDER TO REALY DECIDE THE ISSUES OF WHETHER MY  
22 CLIENT IS GUILTY OF ATTEMPTING TO MANUFACTURE AN ASSAULT  
23 WEAPON AND POSSESS.

24 THE COURT: I'M SORRY, COUNSEL. I NEED TO  
25 APPROACH ON THE SIDE FOR ONE MOMENT.

26 (SIDEBAR CONFERENCE WITHOUT THE REPORTER)

1 MR. HENNES: NO MORE FALSE STARTS. FIRST STEP  
2 IS ANY THINK OF MY SUMMARY IN THE EVIDENCE AND WHAT I  
3 THINK IS PROVED, WHAT ISN'T PROVED. I THINK IT'S  
4 HELPFUL TO GO OVER THE SPECIFIC CHARGES, WHAT ARE THE  
5 ELEMENTS OF EACH, WHAT THE PROSECUTION MUST PROVE BEYOND  
6 A REASONABLE DOUBT, AND DISCUSS WHAT EVIDENCE HAS BEEN  
7 OFFERED BY THE PROSECUTION IN ORDER TO PROVE THAT MY  
8 CLIENT IS GUILTY BEYOND A REASONABLE DOUBT.

9 THERE ARE TWO COUNTS. EACH ONE, OF COURSE,  
10 MUST BE DECIDED SEPARATELY. AND THERE MUST BE PROOF ON  
11 EACH ONE. ALTHOUGH PROOF MAY OVERLAP, AND IT WILL  
12 CONSIDERABLY, BUT THEY ARE TWO DIFFERENT COUNTS.  
13 MANUFACTURING IS DIFFERENT FROM POSSESSION. AND SO WE  
14 ARE ENTITLED TO VERDICTS ON EACH ONE OF THOSE COUNTS.

15 NOW LET'S DISCUSS COUNT 1 IS ATTEMPTED  
16 MANUFACTURE OF AN ASSAULT WEAPON. FIRST OF ALL, THIS IS  
17 NOT AN ASSAULT WEAPON. IT IS NOT PROOF OF ANY FORM OF  
18 ASSAULT WEAPON. IT IS NOT - IT PROVES NOTHING. THIS  
19 IS HERE FOR SHOW. AND I'LL DISCUSS THE REASONS WHY THE  
20 PROSECUTION PURPORTEDLY WANTED TO DISPLAY THIS FOR YOU  
21 SHORTLY.

22 THIS IS NOT WHAT MY CLIENT IS CHARGED WITH,  
23 POSSESSING OR ATTEMPTING TO POSSESS. THAT'S JUST A  
24 DEMONSTRATION RIFLE, AGAIN, FOR SHOW. THESE ARE NOT  
25 PART OF ANY OFFENSE THAT MY CLIENT IS CHARGED WITH.  
26 THIS IS ALL LEGAL STUFF.

1           AND FINALLY THESE BULLETS, THEY'RE NOT PART OF  
2 ANY OFFENSE THAT MY CLIENT IS CHARGED WITH. WHAT HE IS  
3 CHARGED WITH IS ATTEMPTING TO BUILD AN ASSAULT RIFLE  
4 THAT IS ILLEGAL JUST BY CALLING IT ASSAULT. AND IN  
5 ORDER TO BE AN ILLEGAL ASSAULT RIFLE, YOU HAVE TO HAVE  
6 CERTAIN CHARACTERISTICS.

7           NOW, THERE IS NO RIFLE THAT IS EVIDENCE. THIS  
8 IS THE RIFLE. AND I USED THAT, OF COURSE, NOT SERIOUSLY  
9 BECAUSE IT'S NOTHING. THIS IS A PIECE OF METAL LEFT  
10 UNBENT. SOME DAY IT MIGHT HAVE GROWN INTO A RIFLE;  
11 MAYBE NOT. BUT EVEN IF IT WAS EVENTUALLY MADE INTO A  
12 RIFLE, THAT DOESN'T MAKE MY CLIENT GUILTY. IT HAS TO BE  
13 A RIFLE THAT IS BANNED BY THE LAW IN ORDER FOR HIM TO BE  
14 GUILTY.

15           AND HOW ARE WE GOING TO UNDERSTAND OR HOW ARE  
16 WE GOING TO BE PERSUADED THAT MR. NGUYEN INTENDED TO PUT  
17 ON CHARACTERISTICS THAT WOULD MAKE THAT BENT PIECE OF  
18 METAL INTO AN ASSAULT RIFLE THAT'S GOING TO END UP IN  
19 THIS IMAGINARY ARMAGEDDON THAT WAS PORTRAYED BY THE  
20 PROSECUTOR THAT DETECTIVE CHAPMAN INTERRUPTED?

21           THE STATE OF THE EVIDENCE IS THIS: MR. NGUYEN  
22 WAS OPERATING HIS AUTOMOBILE REPAIR SHOP, HIS BUSINESS,  
23 WHEN THE OFFICERS FROM THE ORANGE COUNTY AUTO THEFT TASK  
24 FORCE ARRIVED AT HIS BUSINESS AND BASICALLY TOOK OVER  
25 HIS BUSINESS FOR SEVERAL HOURS AND ENDED UP WITH THE BOX  
26 OF RIFLE PARTS, WHICH IS THIS COLLECTION. AND THEY TOOK

1 THE .50 CALIBER DPC.

2 NOW, THE PROSECUTION, AS I PUT UP ON THE SCREEN  
3 THERE AND WHAT I HAVE HIGHLIGHTED, QUOTED SOMEWHAT FROM  
4 THE INSTRUCTION. THIS IS THE IMPORTANT ONE TO ME. I  
5 MEAN, THE CRIME ITSELF OF MANUFACTURING AN ASSAULT  
6 WEAPON YOU'VE HEARD THE CHARACTERISTICS THAT IT WOULD  
7 HAVE TO HAVE THE DETACHABLE MAGAZINE CAPABLE, PLUS SOME  
8 OF THE OTHER FEATURES.

9 HOWEVER, THE KEY FEATURE IN THIS CASE IS  
10 WHETHER MR. NGUYEN INTENDED TO MAKE OR ASSEMBLE A RIFLE,  
11 A SEMIAUTOMATIC CENTERFIRE RIFLE WITH A DETACHABLE  
12 MAGAZINE.

13 NOW, THIS PARTICULAR PIECE HERE, AS YOU SAW IT  
14 IN THE EVIDENCE, THE RECEIVER IS BEGINNING OF THE  
15 RECEIVER. AND YOU WOULD CALL IT A RECEIVER JUST AS IT'S  
16 NOT COMPLETE. YOU CAN'T ATTACH ANYTHING TO THIS. YOU  
17 CAN'T ATTACH A BARREL SAW, A BARREL, A STOCK, A GRIP.  
18 CERTAINLY CAN'T ATTACH A MAGAZINE TO THIS. YOU CAN'T  
19 ATTACH A SINGLE ONE OF THESE PARTS.

20 THE SERGEANT SCHOCH TRIED TO, BUT HE WAS UNABLE  
21 TO. AND THAT'S BECAUSE THAT THE CONSTRUCTION OF THAT  
22 PERHAPS THIS MIGHT HAVE BEEN A RIFLE WAS SO IN ITS  
23 INFANCY THAT THIS WAS NOT CAPABLE OF BEING PUT INTO ANY  
24 FORM OF FUNCTIONING STREAM AT THE TIME THAT MR. NGUYEN  
25 WAS ARRESTED. AND THERE'S NO EVIDENCE THAT IT EVER  
26 WOULD HAVE BEEN. THERE'S NO EVIDENCE THAT IT EVER WOULD

1 HAVE BEEN A RIFLE LET ALONG AN ASSAULT RIFLE.

2 NOW, THE PROSECUTION HAS TREMENDOUS BURDEN TO  
3 PROVE MR. NGUYEN'S STATE OF MIND AT THE TIME THAT HE WAS  
4 ARRESTED AND FOUND IN POSSESSION OF THE RIFLE PARTS.

5 NOW AN ATTEMPT REQUIRES, IT SAYS, THE "DIRECT  
6 STEP," WHICH IS ITALICIZED, HE HAS TO ATTEMPT  
7 MANUFACTURE OF AN ASSAULT WEAPON AND HE HAS TO HAVE  
8 TAKEN A DIRECT OR INEFFECTIVE STEP TOWARDS THE  
9 MANUFACTURING OF THE ASSAULT WEAPON. NOT A DIRECT OR  
10 INEFFECTIVE ATTEMPT TO MANUFACTURE A RIFLE. HE HAS TO  
11 HAVE AN ILLEGAL INTENT FROM THE VERY, VERY BEGINNING.

12 AND, OF COURSE, MR. PENNALL CAME IN HERE WITH A  
13 VERY SIMILAR KIT, SAME THING. HE HADN'T BENT HIS  
14 RECEIVER YET. NOW, CAN WE SAY THAT MR. PENNALL HAS AN  
15 INTENT TO CONSTRUCT AN ILLEGAL ASSAULT RIFE FROM HIS KIT  
16 IF HE BENDS THE RECEIVER? OF COURSE NOT. IT IS JUST  
17 WAY TOO EARLY FOR ANYBODY TO MAKE OR DRAW ANY  
18 CONCLUSIONS ABOUT MR. NGUYEN'S INTENT TO DO SOMETHING  
19 ILLEGAL BASED UPON THE STATE OF THAT EVIDENCE.

20 IN FACT, THE EVIDENCE POINTS TO THE CONTRARY  
21 INTENT. THE HIGHLIGHTED PORTION OF THAT INSTRUCTION  
22 DEFINES "ATTEMPT" IS JUST "A DIRECT STEP INDICATES A  
23 DEFINITE AND UNAMBIGUOUS INTENT TO COMMIT THE OFFENSE OF  
24 MANUFACTURING AN ASSAULT WEAPON."

25 SO LET'S SAY THAT I WILL AGREE THAT ORDERING  
26 THE PARTS KIT IS -- THAT'S PREPARATION. GETTING

1     WHATEVER MACHINE THAT HE USED TO BEND THE RECEIVER, YOU  
2     KNOW, THAT PROBABLY COMES UNDER "PREPARATION" AS  
3     DESCRIBED, YOU KNOW, IN THE INSTRUCTION.

4             THERE'S MORE THAN -- A "DIRECT STEP" IS MORE  
5     THAN, AS IT SAYS, "OBTAINING OR ARRANGING FOR SOMETHING  
6     NEEDED TO COMMIT THE ATTEMPTED MANUFACTURE OF AN ASSAULT  
7     WEAPON."

8             THE FIRST STEP, OBVIOUSLY, YOU GOT TO GET THE  
9     PARTS TOGETHER TO MAKE A RIFLE, WHICH HE DID, AND IS  
10    BUILDING THE RECEIVER AS HE DID. IS THAT A DIRECT STEP  
11    TOWARDS MAKING A RIFLE? ARGUABLY, YES. IS THAT A  
12    DIRECT STEP TOWARDS COMMITTING THE OFFENSE OF  
13    MANUFACTURING AN ASSAULT RIFLE? HARDLY.

14            THAT ACT IN AND OF ITSELF IS PERFECTLY  
15    INNOCENT. THERE IS NOTHING THAT WOULD POINT TO ANYBODY  
16    WHO DID THE SAME THING WITH A RECEIVER IS BEING HELD  
17    GUILTY OF INTENDING TO MAKE AN ASSAULT RIFLE.

18            IT IS PERFECTLY LEGAL, TO HAVE THOSE PARTS  
19    PROVIDED THEY'RE ASSEMBLED IN A FASHION THAT DOES NOT  
20    VIOLATE THE PENAL CODE. AND HOW IS THAT DONE? THERE  
21    ARE TWO ALTERNATIVES: IT CAN HAVE A FIXED MAGAZINE,  
22    AND AS LONG AS IT HAS A FIXED MAGAZINE -- AND THAT'S  
23    WHERE WE GET INTO THE MAGAZINE LOCK, WHICH IS A FIXED  
24    MAGAZINE, THEN THEY CAN HAVE A FOLDING OR TELESCOPING  
25    STOCK. IT CAN HAVE A PISTOL GRIP THAT HOLDS  
26    CONSPICUOUSLY. I DON'T THINK IT CAN HAVE A FORWARD



1 PISTOL GRIP. THAT'S ALL. PERFECTLY LEGAL. PROVIDING THE  
2 MAGAZINE IS FIXED.

3 UNDER THE LAW, ACCORDING TO THE DEFINITIONS  
4 PROVIDED BY THE LAW. AND ALL THAT REQUIRES IS THE  
5 ADDITION OF THE MAGAZINE LOCK BULLET BUTTON, WHAT HAVE  
6 YOU, WHICH CAN BE ATTACHED AT THE TIME OF FINAL  
7 ASSEMBLY.

8 THE PROSECUTION PLACES UNDUE WEIGHT ON THE FACT  
9 THAT MR. NGUYEN NEVER SAID TO POLACE, "WELL, I'M GOING  
10 TO GET A BULLET BUTTON. I'M NOT GOING TO GET A MAGAZINE  
11 LOCK." WELL, SO WHAT. THAT DOESN'T SAY - THAT PROVES  
12 NOTHING. BECAUSE HE WAS NOT AT THAT STAGE WHERE HE  
13 WOULD EVEN NEED IT, WHERE HE WAS EVEN GETTING CLOSE TO  
14 BEING DONE WITH THAT, WITH EVEN THE RECEIVER.

15 IN HIS OWN WORDS, AS QUOTED BY THE PROSECUTOR,  
16 MR. NGUYEN SAID IT TOOK HIM ABOUT TWO SECONDS WITH THE  
17 MACHINE TO BEND THE RECEIVER. AND YOU HEARD MR. DENHALL  
18 SAY THAT IT WOULD TAKE HIM -- AND HE'S THE SKILLED  
19 CUNSMITH -- IT WOULD TAKE HIM EIGHT HOURS.

20 NOW THAT RAISES A REAL QUESTION OF WHETHER  
21 THERE WAS EVEN A DIRECT STEP TOWARD THE COMPLETION OF A  
22 RIFLE, LET ALONE AN ASSAULT RIFLE.

23 NOW, THE PROSECUTION IS GOING TO TRY TO  
24 PROVE -- THEY CLAIM THEY HAVE PROVED -- THAT MR. NGUYEN  
25 MANIFESTED HIS INTENT TO MAKE AN UNLAWFUL WEAPON BY  
26 SEVERAL FACTORS THEY CLAIM.

1           ONE IS THE FACT THAT THEY HAD AND COMPLETED THE  
2 TASK OF THAT DTC. AND THAT SHOWS - I THINK THEY SAID  
3 IT SHOWS KNOWLEDGE AND SOPHISTICATION, WHATEVER OTHER  
4 MENTAL STATE THAT THEY THINK IT PROVES. I DON'T THINK  
5 IT PROVES ANY OF THAT.

6           NUMBER ONE, IT'S PRETTY CLEAR THAT THAT DTC,  
7 BESIDES BEING LEGAL, IS ABSOLUTELY NOTHING LIKE A  
8 SEMIAUTOMATIC CENTERFIRE RIFLE. THE AS YOU WELL ARE THE  
9 TESTIMONY MR. NGUYEN SAID HE PURCHASED AN 80 PERCENT  
10 LOWER RECEIVER -- I KNOW, ALL THIS TECHNICAL JARGON IS  
11 LEARNING EXPERIENCE FOR MOST OF US IN HERE, I'M SURE,  
12 BUT THAT CAME IN A BLOCK. AND HE TOOK A DRILL AND  
13 FOLLOWED IT OUT IN ORDER TO PUT THE PIECES IN.

14           NOW THE AK, AS WE KNOW, CAME IN A FLAT PIECE OF  
15 METAL THAT WAS THE RECEIVER. AND THE ACTION REQUIRED  
16 FOR THAT WAS TO BEND IT. THERE WAS NOTHING THAT YOU CAN  
17 LEARN FROM BUILDING A RELATIVELY SIMPLE FIREARM FROM A  
18 KIT SUCH AS THE DTC THAT CAN BE APPLIED TO MAKING A  
19 FUNCTIONING AK.

20           IT'S NOT EVEN APPLES AND ORANGES. IT'S APPLES  
21 AND ONIONS, BECAUSE THERE'S NOTHING SIMILAR BETWEEN THE  
22 TWO, OTHER THAN THEY BOTH SHOOT BULLETS. YOU KNOW THE  
23 REASON, OF COURSE, THAT THAT DTC HAS BEEN DISPLAYED  
24 PROMINENTLY IS THAT, YOU KNOW, IT'S INTENDED TO SHOCK  
25 PEOPLE WHO ARE NOT FAMILIAR WITH WEAPONS, WITH  
26 FIREARMS, LIKE MOST OF US.

1           AND TO TRY TO PAINT MR. NGUYEN AS SOME KIND OF  
2 A MANTAC WHO IS GOING TO GET ON HIS ROOF AND SUCK DOWN  
3 AIR FORCE ONE WHEN, IN FACT, HE'S OBVIOUSLY TINKERING.  
4 HE'S AN AUTO MECHANIC AND HE TINKERS. STUFF LIKE THAT  
5 IS A CHALLENGE FOR HIM.

6           I'M SURE THAT HE HAS HAD HIS FILL OF TINKERING  
7 WITH FIREARMS AFTER THIS EXPERIENCE; BUT, NONETHELESS,  
8 THAT IN AND OF ITSELF IS FAR FROM BEING CRIMINAL  
9 BEHAVIOR BY BUYING A DTC KIT LIKE THAT AND PUTTING IT IN  
10 YOUR SHOP WHERE NO ONE SEES IT AND HAS ACCESS TO IT.

11           HE NEVER HAD ANY INTENTION TO FIRE IT.  
12 OBVIOUSLY THAT'S QUITE CLEAR FROM THE STATEMENT THAT WE  
13 HEARD, THE RECORDED STATEMENT WHERE, YOU KNOW, CHAPMAN  
14 ASKED IF HE WAS GOING TO FIRE IT. AND MR. NGUYEN SAID,  
15 "HELL, NO," THAT HE HAD SEEN THE YOUTUBE VIDEOS BLOWING  
16 UP IN HIS FACE.

17           NOW IT'S ALSO INTERESTING THAT MR. NGUYEN IS  
18 SUPPOSEDLY SUCH AN UNTRUSTFUL PERSON ACCORDING TO THE  
19 POLICE. WELL, DETECTIVE CHAPMAN, HE DIDN'T PUT A ROUND  
20 IN THAT DTC WHEN HE SAID HE TEST FIRED IT. WHY NOT?  
21 WELL, BECAUSE OF AFTER WHAT MR. NGUYEN TOLD ME ABOUT THE  
22 VIDEOS AND SUCH.

23           SO I THINK THAT THEIR CHARACTERIZATION OF MY  
24 CLIENT IS UNTRUSTFUL. IT'S A FANTASY, REALLY. SO, IN  
25 ANY EVENT, THERE IS NOTHING ILLEGAL ABOUT THAT WEAPON,  
26 THAT DTC. IT'S GOT NOTHING TO DO WITH THE AK. IT'S

1 THERE FOR SHOW. IT'S A DOG-AND-PONY SHOW BECAUSE THEY  
2 DON'T WANT TO HAVE TO TRY TO CONVICT MY CLIENT OF  
3 POSSESSION OF A BUNCH OF, YOU KNOW, A BUNCH OF DIRECTOR  
4 SET PARTS. AND THAT'S ALL, REALLY, IT IS. YOU KNOW,  
5 THEY WANT TO HAVE THE BIG STUFF TO MAKE IT LOOK LIKE  
6 HE'S SOME KIND OF A MANTAC.

7 NOW THERE ARE DIFFERENT OPINIONS AS TO  
8 FIREARMS, YOU KNOW, IN THIS JURY, IN THIS ROOM, IN THE  
9 COUNTRY, EVERYWHERE. AND THAT'S ALL, WELL, AND GOOD,  
10 BECAUSE PEOPLE CAN HAVE THEIR OWN OPINIONS, BUT, YOU  
11 KNOW, NO MATTER WHAT ONE'S OPINION WHAT THEY SHOULD BE,  
12 THE LAW IS PRETTY CLEAR IN THIS AREA. IT DESCRIBES WHAT  
13 IS LEGAL, WHAT ISN'T.

14 AND BRINGING IN A COMPLETELY LEGAL WEAPON AND  
15 TRYING TO MAKE IT SEEM LIKE IT'S UNLAWFUL, BECAUSE IT  
16 SHOOTS BIG BULLETS IS REALLY, I THINK, INSULTING TO THE  
17 JURY'S INTELLIGENCE. BECAUSE I THINK THAT THE REAL  
18 ISSUE IS THAT THAT COLLECTION OF PARTS, EVIDENCE THAT  
19 MR. NGUYEN INTENDED TO VIOLATE THE ASSAULT WEAPONS LAW.  
20 AND THERE'RE JUST ISN'T ANY, YOU KNOW. IF THEY COULD  
21 HAVE WAITED, FOR EXAMPLE, IF THEY COULD HAVE WAITED  
22 UNTIL THE -- IF HE HAD CONSTRUCTED THE AK, IF HE EVER  
23 DID, WHICH IT DIDN'T SOUND TO ME AS IF HE EVER WAS GOING  
24 TO BECAUSE HE WAS DISCOURAGED JUST BECAUSE IT WAS TOO  
25 DIFFICULT.

26 BUT IF THEY HAD LET HIM COMPLETE IT AND THEN

1     WAIT AND SEE, DO YOU INSTALL A MAG LOCK? OR DO YOU GET  
2     RID OF ALL THE OTHER FEATURES THAT WOULD HAVE MADE IT  
3     ILLEGAL? NO, THEY DIDN'T. SO, YOU KNOW, THE IRONY IS  
4     HE'S NOT BEING CHARGED WITH THAT HUGE GUN --

5             MS. JONES: YOUR HONOR, I'M GOING TO NEED TO  
6     OBJECT AT THIS POINT.

7             THE COURT: OKAY.

8             (THE FOLLOWING PROCEEDINGS WERE HELD OUTSIDE THE  
9             PRESENCE OF THE JURY:)

10            THE COURT: AND YOUR OBJECTION IS?

11            MS. JONES: I THINK HE'S OVERSTEPPING. AND  
12     IT'S UNETHICAL TO SAY THAT HE IS NOT BEING CHARGED WITH  
13     THAT BIG GUN. HE CAN'T GO THERE. HE HAS BEEN CHARGED  
14     WITH THAT BIG GUN.

15            THE COURT: OH, OH.

16            MR. HENNES: IN THIS TRIAL, I'D SAY, IN THAT  
17     IT DOESN'T --

18            THE COURT: I'M SORRY. WAIT. LET'S THINK  
19     ABOUT THAT FOR A SECOND. THAT BIG POSSESSION OF THAT  
20     BIG -- OKAY.

21            MR. HENNES: HE COULD HAVE A PWA SCOOTER AND  
22     HE'D BE IN VIOLATION.

23            THE COURT: THAT IS A LEGAL GUN, RIGHT?

24            MR. HENNES: YES.

25            THE COURT: SO YOU DON'T EVEN KNOW BY NOW, I  
26     MEAN, THAT'S MY POINT.

1 MR. HENNES: I MEAN, EVEN THE COURT IS CONFUSED  
2 WHETHER IT'S A LEGAL WEAPON.

3 THE COURT: NO, I'M NOT CONFUSED IF IT'S A  
4 LEGAL WEAPON. I'M JUST WONDERING IF THIS ARGUMENT IS  
5 OVERSTEPPING THAT BOUND IN LIGHT OF I CAN SEE BOTH  
6 SIDES OF IT.

7 MR. HENNES: WELL, I DIDN'T MEAN TO IMPLY --  
8 EXCUSE ME, BUT, I MEAN, I THINK IT'S WELL, BECAUSE THE  
9 EMPHASIS THAT'S BEEN PLACED ON THE PROSECUTION ON THAT  
10 DOC, I THINK THAT I ABSOLUTELY HAVE TO ASSURE AND  
11 REASSURE OVER AND OVER AGAIN THAT THAT IS NOT A CRIME IN  
12 AND OF ITSELF. AND TO SAY THAT, "WELL, HE'S A FELON  
13 THAT'S HIS WHOLE ATTITUDE."

14 MS. JONES: I THINK HE NEEDS TO REPHRASE IT.

15 THE COURT: I THINK HE CAN SAY THE GUN IS NOT  
16 ILLEGAL.

17 MR. HENNES: I --

18 THE COURT: WHAT DID YOU SAY? HE SAID HE'S NOT  
19 BEING CHARGED WITH THAT.

20 MR. HENNES: ALL RIGHT.

21 THE COURT: YOU CAN SAY, "THAT'S A LEGAL GUN.  
22 THAT GUN SITTING ON THE TABLE IS A LEGAL GUN."

23 MR. HENNES: OKAY.

24 THE COURT: DON'T TALK ABOUT WHAT HE'S CHARGED  
25 AND NOT CHARGED WITH, OKAY. GOT IT.

26 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE PRESENCE OF

1 THE JURY:)

2 THE COURT: REPEASE THAT, COUNSEL.

3 MR. BENNETT: YES. BACK TO THE IRONY. THE  
4 IRONY IS THAT YOU SEE A WEAPON HERE THAT IS A PERFECTLY  
5 LEGAL RIFLE, BUT IS THAT A PART OF THIS CASE?

6 THAT IS FOR DEMONSTRATIVE PURPOSES, AS HE SAID,  
7 "THE DOG-AND-PONY SHOW," WHEN WHAT HE'S ON TRIAL FOR IS  
8 THE POSSESSION OF A BUNCH OF JUMBLED PARTS THAT WE DON'T  
9 EVEN KNOW IF HE WAS EVER GOING TO ASSEMBLE IT.

10 IT CERTAINLY WASN'T AS IF HE WAS CAUGHT IN THE  
11 ACT OF WELDING A PART ON. HE HAD TO GO RETRIEVE THEM IN  
12 THE UPSTAIRS, IN THE BACK ROOM OF THE OFFICE WHERE THEY  
13 WERE STYLING, MOST OF THEM, AND THEIR BAGS. SO I  
14 BELIEVE THAT THEY MAY HAVE TO DIFFERENTIATE BETWEEN  
15 WHAT -- AGAIN, WHAT ARE THE ISSUES AND WHAT AREN'T.

16 SO NOW THE PROSECUTION ALSO SAYS THAT THE  
17 POSSESSION OF THE DTC SOMEHOW INDICATES A CRIMINAL STATE  
18 OF MIND THAT IS INTENT; THAT IT IS EVIDENCE OF AN INTENT  
19 TO COMMIT A CRIME.

20 POSSESSION OF A LEGAL WEAPON CAN NEVER BE  
21 CONSIDERED EVIDENCE OF AN INTENT TO CONSTRUCT, BUILD OR  
22 POSSESS AN UNLAWFUL WEAPON. IT IS NOT LOGICAL. IN  
23 FACT, AS YOU WILL RECALL IN A STATEMENT TO  
24 DETECTIVE CHAPMAN, OR THE STATEMENT THAT MY CLIENT GAVE  
25 TO DETECTIVE CHALMAN, HE WAS -- MR. NGUYEN WAS QUITE  
26 EXPLICIT ABOUT THE NATURE OF THAT WEAPON.

1           CHAPMAN KEPT SAYING HE WANTED TO KNOW WHETHER  
2 IT WAS A BMG. AND MR. NGUYEN CORRECTED HIM AND SAID,  
3 "NO. IT'S A DTC. THAT'S WHY THEY MAKE A CALIFORNIA  
4 LEGAL, BECAUSE CALIFORNIA DOESN'T ALLOW .50 CALIBER BMG,  
5 SO THEY GO DTC. WHAT IT IS IS IT'S A LITTLE SHORTER,  
6 IT'S A LITTLE SMALLER."

7           AND THEN DETECTIVE CHAPMAN SAYS, "IT USES THE  
8 SAME BULLET, THOUGH?" AND MR. NGUYEN SAYS, "NO." AND  
9 THEY GO ON TO SAY -- MR. NGUYEN GOES ON TO EXPLAIN THAT  
10 YOU CANNOT INTERCHANGE A DTC AND A BMG ROUND. THEY  
11 WON'T WORK IN EACH OTHER. SO, OBVIOUSLY, MR. NGUYEN IS  
12 EXPRESSING HIS INTENT AND DESIRE AND THE FACT THAT HE  
13 DID COMPLY WITH CALIFORNIA LAW IN HIS POSSESSION OF THAT  
14 DTC.

15           SO SOMEHOW THE PROSECUTION WANTS YOU TO TWIST  
16 THAT LAWFUL INTENT 180 DEGREES SO NOW HIS INTENT TO  
17 POSSESS A CALIFORNIA LEGAL RIFLE TURNS INTO AN UNLAWFUL  
18 INTENT TO MANUFACTURE AN ASSAULT RIFLE.

19           THERE IS SIMPLY NOTHING IN HIS POSSESSION OF  
20 THE LEGAL DTC TO GIVE RISE TO ANY INFERENCE AT ALL THAT  
21 HE WAS INTENDING TO MAKE AN UNLAWFUL ASSAULT WEAPON  
22 BECAUSE HE OWNED THAT GUN. SO HE LEARNED NOTHING FOR  
23 THE MANUFACTURING OR WHATEVER HE WAS PUTTING TOGETHER OF  
24 THAT GUN. IT WAS A VERY SIMPLE PROCESS. AND THAT WOULD  
25 ENABLE HIM TO CONSTRUCT IT.

26           IF HE HAD THOSE PARTS, WHY DIDN'T HE JUST PUT



1 IT TOGETHER IF IT WAS SO SIMPLE AS THE PROSECUTOR SAID  
2 IN THE OPENING THAT THE EVIDENCE WAS GOING TO SHOW THAT  
3 THE HARDEST PART WAS DONE ON THE AK, THAT THE RECEIVER  
4 WAS DONE.

5 ALL HE HAD TO DO WAS DRILL OR A HOLE OR TWO AND  
6 IT WAS GOING TO BE DONE. WELL, WE'VE SEEN OUR  
7 MR. PENHALL PUT THE LIGHT TO THAT THE HARDEST PART WAS  
8 YET THE HARDEST PART WAS YET TO COME AND THE MAIN TIE OF  
9 THE WORK WAS YET TO BE DONE.

10 YOU HEARD HIM DID HE HAVE HOW IT WAS GOING TO  
11 HAVE TO BE DONE IN RE SIGNIFICANCE IN ORDER TO WELD  
12 THOSE PARTS ON JUST PRIVATE THAT THE PTECES WERE GOING  
13 TO BE SPECIAL TOOLS REQUIRE TODAY COMPLETED THAT  
14 PROCESS. WHAT IT IS IS I THINK THESE AK KIT SELLERS ARE  
15 YOU KNOW BASICALLY RIPPING OFF GUN, YOU KNOW, COLLECT TO  
16 BY REALLY MISLEADING THEM INTO THINKING HOW IT'S GOING  
17 TO BE SIMPLE. I MEAN, BECAUSE IT'S OBVIOUSLY IS NOT A  
18 SIMPLE PROCESS.

19 AND I DON'T THINK THAT THE EVIDENCE SPORTS A  
20 CONCLUSION THAT MR. NGUYEN IS GOING COMPLETE THE  
21 PROJECTS I PLAN HE HAD IT AND IT WAS SITTING IN A BOX.  
22 SO ANYWAY SO THAT'S THAT EVIDENCE. NOW, AGAIN I'VE  
23 MENTION THE THE AMMO THAT THAT IS THE SAME CHANGE IS AS  
24 THE ETC.

25 IT'S SHOCKING TO SEE MARIJUANA ROUNDS LIKE THAT  
26 OF COURSE BUT HOW DOES THAT GIVE RISE TO AND INFERENCE

1 THAT BECAUSE OF MR. ONES POSSESSION OF THOSE ROUNDS FOR  
2 THE DTC THAT HE WAS GOING TO MAKE AN ASSAULT RIFLE THAT  
3 WAS BANNED BY LAW IT SIMPLY IS NOT LOGICAL.

4 AND, I MEAN, IF YOU'RE GOING TO ARREST AND  
5 CONVICT MR. NGUYEN OF ATTEMPTING TO BUILD AN ASSAULT  
6 RIFLE, WELL, APPARENTLY THESE KITS ARE SOLD ALL THE TIME  
7 IN CALIFORNIA. AND THEY'RE GOING TO BE ARRESTING A LOT  
8 OF PEOPLE FOR ATTEMPTED MANUFACTURE OF AN ASSAULT RIFLE  
9 IF YOU PERMIT THIS TO HAPPEN.

10 NOW WHETHER THAT ACTUALLY HAPPENS, I REALLY  
11 DOUBT IT, BUT IT'S A DIFFICULT AREA FOR EVEN THE POLICE  
12 TO UNDERSTAND WHAT IS LEGAL AND WHAT ISN'T.

13 AND THAT GOES TO THE ELEMENT OF WHETHER  
14 MR. NGUYEN KNEW OR SHOULD HAVE KNOWN THAT HE WAS  
15 ATTEMPTING TO BUILD OR MANUFACTURE AN ASSAULT RIFLE.  
16 THE LAW REQUIRED IN THE INSTRUCTION THAT YOU WILL BE  
17 READ REQUIRES THAT ONE OF THE ELEMENTS IS THAT DEFENDANT  
18 THOUGHT OR REASONABLY SHOULD HAVE KNOWN THAT THE -- THAT  
19 IT PRESUMABLY THE RIFLE, THE PROJECTED RIFLE HAD  
20 CHARACTERISTICS THAT MADE IT AN ASSAULT WEAPON.

21 NOW THAT IS A VERY DIFFICULT CONCEPT TO GET  
22 YOUR UNDERSTANDING OF BECAUSE HE'S NOT CHARGED WITH  
23 POSSESSION OF A RIFLE THAT HE SHOULD HAVE KNOWN THE  
24 CHARACTERISTICS OF. THAT'S KIND OF EASY TO GRASP. BUT,  
25 NO, THIS IS EVEN GOING BEFORE. THIS IS IN THE VERY, YOU  
26 KNOW, ZYGOTE STAGE OF THE CONSTRUCTION OF THE RIFLE

1       WHERE HE IS SUPPOSED TO KNOW IN ADVANCE THAT IT'S GOING  
2       TO HAVE THE CHARACTERISTICS OF AN ILLICAL WEAPON WHEN  
3       IT'S NOT EVEN HARDLY BEGUN. THAT IS JUST IMPOSSIBLE AND  
4       IT IS THE STATE OF MIND THAT CAN ONLY BE SPECULATED AT  
5       ITS BEST.

6               NOW, YOU KNOW, THE PROSECUTION WOULD HAVE YOU  
7       TAKE EVERY SINGLE LITTLE DETAIL IN THEIR ATTEMPT TO  
8       PROVE CIRCUMSTANTIALLY THAT MR. NGUYEN INTENDED TO BE A  
9       CRIMINAL. AND THEY TRY TO TAKE THAT EVERY LITTLE DETAIL  
10      AND PROJECT IT INTO SOMETHING, BUT DON'T HAVE ANY  
11      EVIDENCE TO SUPPORT IT.

12             FOR EXAMPLE, AFTER THE POLICE TOOK OVER HIS  
13      BUSINESS FOR HOURS MR. NGUYEN WAS TRYING TO MAKE SOME  
14      PHONE CALLS AND IS MAKING PHONE CALLS IN THE ALLEY BEHIND  
15      THE BUSINESS. NO ONE HEARD HIM TALK, YOU KNOW. THE  
16      PROSECUTOR SEEMS TO THINK THAT THAT WAS VERY GENEROUS OF  
17      THE POLICE TO ALLOW MR. NGUYEN TO USE HIS PHONE. AND  
18      HOW DOES HE REPAY THAT KINDNESS, ACCORDING TO THE  
19      PROSECUTOR, HE MUST HAVE CALLED HOME AND TOLD EVERYBODY,  
20      "HEY, YOU KNOW, CLEAR OUT MY ARSON, A.I., BECAUSE THE  
21      POLICE ARE GOING TO COME THERE," YOU KNOW.

22             AND REALLY THERE IS NO EVIDENCE THAT THE POLICE  
23      EVER SAID THEY INTENDED TO GO TO HIS HOUSE. THAT WAS  
24      LATER, BUT LEAVING THAT ASIDE, TO MAKE THAT KIND OF A  
25      LEAP THAT FROM A GUY IN THE MIDDLE OF A BUSINESS DAY IN  
26      HIS BUSINESS IS MAKING TELEPHONE CALLS WHILE THE POLICE

1 RUMMAGING THROUGH HIS PARTS. AND HE MUST BEING CALISTING  
2 HOME TO HIDE HIS IMAGINARY .50 CALIBER WEAPON THAT THOSE  
3 BULLETS GO TO, BECAUSE HE COULDN'T HAVE POSSIBLY BEEN  
4 PIG HUNTING WITH THEM BECAUSE THOSE PICTURES ARE  
5 PROBABLY FAKE.

6 AND BY THE WAY, WE DON'T -- HE COULDN'T  
7 POSSIBLY RENT A RIFLE, EVEN THOUGH, OF COURSE,  
8 SERGEANT SCHUCH SAID, "WELL, THOSE CAN GO FOR PIG  
9 HUNTING." WELL, I MEAN, SERGEANT SCUCH IS A FIREARMS  
10 INSTRUCTOR. I NEVER KNEW IF HE WAS A HUNTER. I NEVER  
11 KNEW HE IS QUALIFIED AS A HUNTER OR KNEW ANYTHING ABOUT  
12 FIREARMS CONTROL, OR WHETHER ANYONE CAN PRESENT A RIFLE  
13 TO GO PIG HUNTING IN A -- FROM AN OUTFITTER.

14 THEIR INVESTIGATION, THEIR SPECULATION, THEIR  
15 SPECULATIVE SCENARIO IS SO OUT THERE THAT MR. NGUYEN'S  
16 SOUNDS LOGICAL, NOT PLAUSIBLE, BUT PLAUSIBLE, BUT  
17 PROBABLY TRUE AND RINGS FAR MORE TRUE THAN THIS  
18 SPECULATION THAT HE NEVER WENT PIG HUNTING THAT HE WAS  
19 OUT IN THE ALLEY MAKING PHONE CALLS HOME TO CLEAR OUT  
20 HIS ARSENAL, BECAUSE THAT GUN CLOSET DOOR WAS OPEN.

21 NOW IF THEY REALLY WANTED TO DETERMINE WHETHER  
22 THERE HAD BEEN WEAPONS IN THAT GUN CLOSET, IF IT WAS  
23 THAT IMPORTANT AT THE TIME, I THINK THAT THEY HAVE  
24 PEOPLE WHO CAN INSPECT FOR GUNSHOT OR GUN POWDER RESIDUE  
25 INSIDE, FOR GUN, PERHAPS A DRIP FROM THE WEAPONS, FROM  
26 ANYTHING THAT WOULD INDICATE ANY THAT THERE WERE RIFLES

1 OR WEAPONS, FIREARMS IN THAT GUN CLOSET. IT WAS SO  
2 IMPORTANT, BUT, NO, THEY WOULD RATHER NOT DO ANYTHING.  
3 WAIT UNTIL WE GET TO TRIAL. AND THEN THEY START MAKING  
4 THESE ACCUSATIONS WITHOUT ANY PROOF BEHIND THEM FROM AN  
5 OPEN GUN CLOSET DOOR. IT'S SILLY, YOU KNOW. AND IT'S  
6 UNFORTUNATE, REALLY.

7 SO THAT'S THE KIND OF THING THAT THAT'S THE  
8 STATE OF THERE EVIDENCE. NOW AND THEN TILLS THE TOOL, THE  
9 DTE WHATEVER IT WAS THAT MR. NGUYEN PURCHASED FROM AK  
10 AND HE PROMISED AND PROMISED HE WAS GOING TO BRING IT TO  
11 DETECTIVE CHAPMAN. WELL, YOU KNOW THIS IS ON THE SECOND  
12 DAY OF THE INTERVIEW, THE DAY AFTER THE VISIT TO THE  
13 SHOP.

14 AND I THINK WHEN YOU LISTEN TO THE TAPE I KEEP  
15 HEARING THESE CHARGES OF MY CLIENT GOING ARMED AND  
16 AROUND IN CIRCLES BUT IT'S NOT BORN OUT EITHER BY THE  
17 CONTEMPT OR THE DEMMANOR THE ONLY EVER VOICE. IT  
18 SOUNDED AS IF MR. NGUYEN WAS JUST SIMPLY TRYING TO BE  
19 COOPERATIVE AND CAN YOU BLAME HIM?

20 I MEAN, CAN YOU BLAME HIM FOR, YOU KNOW, I HAVE  
21 A BUNCI OF POLICE SEARCHING YOUR BUSINESS AND THEN HE'S  
22 SUPPOSED TO SAY, "HEY, DON'T TAKE MY PROPERTY." YOU  
23 KNOW, THAT'S NOT REALISTIC. AND, YOU KNOW, BY THE SAME  
24 TOKEN IF WE'RE JUMPING A LITTLE BIT, BUT IF THEY ARE  
25 RELATED TOPICS IN THE INTERVIEW WITH POLICE WITH  
26 DETECTIVE CHAPMAN, I DON'T SEE ANY RUNNING AROUND IN

1 CIRCLES.

2 IT SOUNDS AS IF HE'S TRYING TO ANSWER QUESTIONS  
3 AND THEY'RE TALKING OVER EACH OTHER QUITE A BIT. IT  
4 DOESN'T SOUND LIKE MR. NGUYEN IS TRYING TO HIDE  
5 ANYTHING. THERE ARE NOT LONG PAUSES THERE WHERE HE'S  
6 TRYING TO FABRICATE SOME RESPONSE. HE'S JUST TRYING TO  
7 ANSWER THE QUESTION. I THINK A LOT OF IT IS THEY DON'T  
8 HAVE THE SAME UNDERSTANDING OF WHATEVER TERMINOLOGY  
9 THEY'RE USING.

10 BUT AGAIN, THIS TOOL THAT WAS PURCHASED,  
11 MR. NGUYEN TS, I GUESS, WHAT BROKEN HIS PROMISE AFTER HE  
12 GETS ARRESTED, I SUPPOSE, TO GO RECOVER IT. AND, YOU  
13 KNOW, GO GET THE EVIDENCE, GO DIG UP THE EVIDENCE THAT  
14 THEY'RE GOING TO USE AGAINST YOU IN SOME MANNER.

15 IF IT WAS THAT IMPORTANT? THEY HAVE SOMETHING  
16 CALLED A SEARCH WARRANT THAT IF IT WAS REALLY IMPORTANT  
17 THEY COULD HAVE GOTTEN. AND, IN FACT, THEY HAD ALREADY  
18 CONDUCTED A THOROUGH SEARCH NOT ONLY OF HIS BUSINESS,  
19 BUT HIS HOME. IF IT LOOKED LIKE IT WAS GOING TO BE  
20 EVIDENCE, THEN IT SEEMS LIKE THEY COULD HAVE GRABBED IT  
21 THEN, WOULD HAVE SEEN IT, IF IT WAS THERE.

22 WHO KNOWS IT WASN'T A POWER TOOL FOR CRYING OUT  
23 LOUD. I MEAN, WHY WOULD MR. NGUYEN NEED TO HIDE THAT?  
24 HE PROBABLY -- HE DOESN'T KNOW WHERE IT IS. AND AFTER  
25 HE GETS ARRESTED, WHY THE HECK WOULD HE -- SHOULD HE  
26 TURN IN ANYTHING FOR THE POLICE? THAT WOULD BE STUPID.

1 SO TO FAULT HIM FOR THAT IS A LITTLE BIT OF A  
2 STRETCH. AND IT'S ALSO INTERESTING THAT IF MR. NGUYEN  
3 IS PRESENTING SUCH A DANGER TO THE PUBLIC BY HIS WEAPONS  
4 AND HIS WEAPONS' PARTS THERE DIDN'T SEEM TO BE THE NEED  
5 TO TAKE HIM INTO CUSTODY ON THE DAY OF THE SEARCH. SO  
6 THERE IS SOMETHING MORE THAN THAT I CAN UNDERSTAND OUT  
7 OF THIS ANYWAY.

8 NOW, THE PROSECUTOR IN HER CLOSING REPEATEDLY  
9 REFERRED TO THE RECEIVER AND THE PARTS, YOU KNOW, AS A  
10 WEAPON OR RIFLE, AN ASSAULT WEAPON, CALLING IT AN  
11 ASSAULT WEAPON. THAT IS ASSUREDLY NOT, IT IS NOT A  
12 RIFLE. IT IS NOT CAPABLE OF ANY KIND OF FUNCTION. IT'S  
13 A PIECE OF METAL.

14 AND THAT IS THE BASIC FLAW IN THE ENTIRE CASE  
15 OF THE PROSECUTION BECAUSE THEY ARE IMAGINING ONE  
16 SCENARIO, YOU KNOW, BUILT ON SUSPICION, BUILT ON A FEW  
17 PARTS, BUILT ON LAWFUL POSSESSION OF ANOTHER WEAPON,  
18 BASED ON AMMUNITION THAT ISN'T ILLEGAL, A DTC THAT ISN'T  
19 ILLEGAL AND TRYING TO USE THAT IMAGINARY EVIDENCE TO  
20 PROVIDE WHAT IS UTTERLY LACKING IN PROOF OF A CRIMINAL  
21 INTENT.

22 AND THERE IS NO WAY THEY CAN GET PAST THAT  
23 BARRIER BECAUSE THERE IS NO EVIDENCE THAT MR. NGUYEN HAD  
24 A CRIMINAL INTENT WHEN HE BOUGHT THAT RECEIVER. AND  
25 THAT'S THE OPERATIVE TIME. THAT'S THE DIRECT STEP THAT  
26 THEY'RE TALKING ABOUT. NOW THAT'S THE DIRECT STEP, I

1 AGREE, IN MAKING A RIFLE.

2 BUT THE DIRECT STEP THAT THE INSTRUCTIONS ARE  
3 TALKING ABOUT IS THE DIRECT STEP TOWARDS -- IS REFLECTED  
4 AND IT SHOWS AN UNAMBIGUOUS INTENT TO COMMIT THE CRIME,  
5 WHICH IS MANUFACTURING AN ASSAULT WEAPON.

6 SO THE DIRECT STEP IN ATTEMPTING TO COMMIT THE  
7 CRIME IS NOT BENDING THAT RECEIVER. IT IS THE DIRECT  
8 STEP IN THIS CASE WOULD HAVE TO BE THE FINAL ASSEMBLY OF  
9 THAT AK IF IT EVER HAPPENED, THE FINAL ASSEMBLY WITHOUT  
10 A FIXED MAGAZINE.

11 AND UNTIL THEY HAVE THAT EVIDENCE IT IS  
12 IMPOSSIBLE TO GUESS AT WHAT WAS IN MR. NGUYEN'S MIND  
13 SIMPLY FROM POSSESSION OF THE PARTS AND THE MINIMAL  
14 ACTIVITY HE DID. THE REST OF THE DETAILS THAT ARE  
15 REQUIRED, THE REST OF THE CIRCUMSTANTIAL, THE REST OF  
16 ANY EVIDENCE OF A CRIMINAL INTENT VANISHES WHEN YOU LOOK  
17 AT IT. IS THERE ISN'T IN.

18 WE HAVE A GUY IN A BUSINESS WHO IS A MECHANIC.  
19 HE MADE A RIFLE THAT IS LEGAL TO HAVE. HE HAS  
20 AMMUNITION THAT IS LEGAL IN CALIFORNIA. AND HE HAS SOME  
21 PARTS THAT WERE NOT EVEN AS CLOSE TO BEING ASSEMBLED.  
22 AND THEY'RE ASSUMING THAT HE'S GOING TO MAKE IT, NUMBER  
23 ONE, WITH A DETACHABLE MAGAZINE, WHICH HE DIDN'T HAVE TO  
24 DO THAT EITHER.

25 NOW, FOR EXAMPLE, THE TRIGGER GUARDS, THE  
26 MAGAZINE, WHATEVER PART THAT IS THERE. SURE, IF ONE



1 GOES ON THERE, BUT HE DIDN'T INSTALL IT. THE PROSECUTOR  
2 HAD YOU BELIEVE IT -- IT'S A DONE DEAL, THAT EVERYTHING  
3 IS ALL THERE. I MEAN, JUST BECAUSE THOSE PARTS ARE  
4 THERE DOESN'T -- I MEAN, YOU STILL GOTTA PUT IT ON AND  
5 MAKE SURE THAT IT WAS AN ASSAULT RIFLE BECAUSE, YOU  
6 KNOW, HE'S SHOWN THAT HE DOESN'T WANT TO COMPLY WITH THE  
7 LAWS REGARDING FIREARMS, YOU KNOW, I GUESS IS WHAT  
8 THEY'RE POINTING IS, WHICH IS, OF COURSE, DRASTICALLY  
9 OPPOSED TO THE EVENT.

10 BUT YOU CAN'T SAY THAT THERE'S A PART THERE  
11 THAT'S GOING TO BE INSTALLED AND IT'S GOING MAKE IT  
12 LEGAL AND IT'S GOING TO BE PERMANENT AND SOMEONE'S GOING  
13 TO HAVE TO REMOVE, A LEVER OR WHATEVER PENNALT,  
14 DESCRIBED, TO PUT ON A BULLET BUTTON OR A MAGAZINE LOCK.

15 IT'S JUST -- IT'S IT'S IMAGINING WHAT'S GOING  
16 TO HAPPEN IN THE FUTURE, BUT THEY'RE TRYING TO PORTRAY  
17 IT AS REALITY LIKE IT ALREADY HAPPENED, AND IT HASN'T.  
18 AND IT NEVER WOULD HAVE IF THE EVIDENCE THAT  
19 MR. NGUYEN'S INTENT TO COMPLY WITH CALIFORNIA LAW IS THE  
20 STANDARD BY WHICH HE WOULD GUESS HIS FUTURE CONDUCT.

21 HE DID EVERYTHING LEGAL WITH REGARD TO THE  
22 OTHER WEAPON, WHETHER YOU LIKE IT, YOU KNOW, MOST PEOPLE  
23 WOULDN'T WANT IT. YOU KNOW, HE WAS NEVER GOING TO FIRE  
24 IT. IT WAS JUST SOMETHING THAT I DON'T THINK THAT  
25 ANYONE IS IN A POSITION TO JUST FOR PURPOSES OF OUR  
26 TRIAL THAT'S IT'S A DISGUSTING THING TO HAVE OR IT'S A

1 REALLY COOL THING TO HAVE. IT JUST IS.

2 AND IT DOESN'T SHOW CRIMINOLOGY. AND THAT'S  
3 THE IMPORTANT PART OF THE NOW JUST A LAST COUPLE OF  
4 THINGS, FOLKS, AND THE PROSECUTOR WILL GET HER LAST  
5 CRACK TO SAY WHAT SHE CAN.

6 THIS BUSINESS ABOUT MR. NGUYEN BRAGGING IS  
7 RATHER BASELESS IN MY VIEW. I DON'T KNOW WHAT HE WAS  
8 BRAGGING, BUT I MEAN, SAYING THAT HE CAN FIX THINGS. I  
9 MEAN, HE ENJOYS THAT SORT OF THING. YOU KNOW, HE'S  
10 PROBABLY AN AUTO SHOP, THAT KIND OF INTEREST. I MEAN,  
11 THERE'S NOTHING OTHER THAN, YOU KNOW, BUILDING A WEAPON  
12 LIKE THAT IS A LOT DIFFERENT FROM FIRING IT.

13 THE EXPERTS THAT THE PROSECUTION CALLED,  
14 YOU KNOW, POLICE OFFICERS. AND THEY KNOW A LOT  
15 ABOUT SHOOTING WEAPONS AND CARRYING FOR THE  
16 MAINTENANCE, SAFETY, ALL OF THAT KIND OF THING, BUT  
17 NEITHER ONE OF THE OFFICERS, NOT SERGEANT SCHUCH,  
18 NOT DETECTIVE CHAPMAN HERE EVER ACTUALLY BUILT A  
19 WEAPON AND CERTAINLY NOT AN AK. SO THEIR TESTIMONY  
20 AS TO WHAT WAS GOING TO BE NECESSARY, THAT IT WAS  
21 ALMOST DONE, THAT HE WAS REALLY GETTING CLOSE, THEY  
22 HAVE NO EXPERIENCE TO BASE THAT UPON.

23 THEY DON'T KNOW THAT. IN FACT, IT'S THE  
24 OPPOSITE IS TRUE. ACCORDING TO PENHALL, IT'S GOING TO  
25 BE A VERY DIFFICULT TASK TO COMPLETE EVERYTHING YOU HAD  
26 TO DO AND IN THE POSITION. YOU KNOW, SCHUCH AND CHAPMAN

1 THEY'RE SIMPLY NOT QUALIFIED TO GIVE A VALUED OPINION AS  
2 TO WHAT, HOW DIFFICULT THE WORK WOULD HAVE BEEN TO  
3 COMPLETE THE WEAPON. IT'S JUST NOT THEIR TRAINING.

4 AND SERGEANT SCIEUCH'S FIRED AN AK, I THINK HE  
5 SAID. AND, YOU KNOW, I MEAN FIRING IS ONE THING, MAKING  
6 ONE IS ANOTHER. SO JUST SIMPLY FIRING IT OR, YOU KNOW,  
7 TAKING IT APART, THAT DOESN'T PROVE THAT YOU KNOW HOW TO  
8 MAKE IT OR HOW HARD IT'S GOING TO BE. I MEAN, IT SIMPLY  
9 DOESN'T PROVIDE ANY KNOWLEDGE OF CONSTRUCTION. IT'S  
10 LIKE DRIVING A CAR AND MAKING ONE. YOU KNOW, ONE'S  
11 PRETTY EASY. THE OTHER NOT SO EASY.

12 SO THE FACT THAT MR. NGUYEN OBVIOUSLY HAS AN  
13 INTEREST IN FIREARMS AND GUNS. AND I WOULD HOPE THAT  
14 EVERYONE WHO MIGHT DISAGREE WITH THE POSITION WOULD JUST  
15 SET THAT ASIDE FOR PURPOSES OF OUR TRIAL. I MEAN, YOU  
16 LOOK AT IT, ALL OF THE WITNESSES, OBVIOUSLY LIKE GUNS  
17 AND LIKE SHOOTING, YOU KNOW, AND WHY NOT.

18 I MEAN, SERGEANT SCIEUCH, HE OBVIOUSLY ENJOYED  
19 GOING TO -- WELL, HE WORKS AT THE RANGE IN THE ARMORY  
20 AND TRAINS IN FIREARMS SO, OF COURSE, HE LIKES GUNS. HE  
21 LIKES THEM PROBABLY MORE THAN MR. NGUYEN. AND I'M SURE  
22 DETECTIVE CHAPMAN HERE DOESN'T, YOU KNOW, SAY "OH, GEE,  
23 DARN IT. I HAVE TO GO TO THE RANGE AND PRACTICE MY  
24 SHOOTING." WHAT'S NOT TO LIKE ABOUT IT?

25 SO, I MEAN, POLICE OFFICERS LIKE GUNS. THAT'S  
26 ONE OF THE REASONS THEY'RE POLICE OFFICERS. AND

1 PENNELL, OBVIOUSLY, IS REALLY INTO GUNS. YOU KNOW, HE'S  
2 BEEN SHOOTING SINCE HE WAS A KID, LIKE I THINK ALL OF  
3 THEM SAID THEY WERE, THEY HAD. AND NOW HE AN ENTIRE  
4 BUSINESSMAN. HE RUNS A GUN BUSINESS, YOU KNOW.

5 THERE'S LOTS OF PEOPLE ARE REALLY INTO  
6 FIREARMS. AND WHETHER YOU KNOW EACH OF US IS OR ISN'T  
7 REALLY IS IRRELEVANT BECAUSE, AS I SAID IN THE  
8 BEGINNING, THE INSTRUCTIONS AND THE LAW IS PRETTY CLEAR  
9 IN THIS, SO WE DON'T HAVE TO WORRY ABOUT THE BAILS AND  
10 THE RECEIVER, NONE OF THAT STUFF.

11 REALLY IT GETS DOWN TO WHETHER MR. NGUYEN  
12 EVIDENCED BY ANYTHING HE DID OR SAID THAT HE WAS OF A  
13 CRIMINAL MIND IN SIMPLY POSSESSING THOSE PARTS. AND  
14 THAT'S REALLY THE ISSUE. AND THE REST IS HIGH TECH  
15 STUFF THAT WAS KIND OF INTERESTING AND A LEARNING  
16 EXPERIENCE, BUT AT LEAST FOR ME.

17 AND I'M SURE THAT A LOT, BUT, YOU KNOW, IT'S  
18 NOT IMPORTANT TO DETERMINATION OF THE ISSUE. IT JUST  
19 WAS GUY GOING TO BE A CROOK OR NOT. SO IN THE LAST  
20 THING IS, AS I MENTIONED, THE KNOWLEDGE OF THE CRIMINAL  
21 ATTRIBUTES OF THE WEAPON HAS TO BE DEMONSTRATED, THE  
22 KNOWLEDGE OR THE, QUOTE, "CONSTRUCTIVE KNOWLEDGE" BY THE  
23 DEFENDANT THAT WHATEVER HE INTENDED TO BUILD WAY OFF IN  
24 THE FUTURE, WHATEVER, WHENEVER THAT MIGHT BE WAS GOING  
25 TO HAVE A DETACHABLE MAGAZINE OR THE OTHER ATTRIBUTES  
26 THAT MADE IT ILLEGAL.

1           AND I DON'T THINK THAT FROM THAT COLLECTION OF  
2 PARTS IN LIGHT OF MR. NGUYEN'S KNOWLEDGE OF -- LIMITED  
3 KNOWLEDGE TO THAT YOU CAN MAKE THAT LOGICAL LEAP. SO  
4 THAT'S THE FAILURE OF PROOF IN THAT ON THAT ISSUE ALSO.

5           BUT ANYWAY, THANK YOU VERY MUCH FOR YOUR WRAP  
6 ATTENTION AND YOUR SERVICE IN THIS JURY. THANK YOU.

7           THE COURT: MS. JONES, REVERTAL.

8           MS. JONES: THIS PART OF SORT OF A DOUBLE-ENDED  
9 SWORD BECAUSE I FEEL LIKE WE HAVE TO CLARIFY SOME OTHER  
10 MISSTATEMENTS. AND ON THE OTHER HAND I HAVE A SENSE  
11 THAT THE JURY MAYBE HAS HAD KNOWLEDGE US BY NOW, SO I'M  
12 GOING TO KEEP IT AS BRIEF AS I CAN.

13           YOU KNOW THE PEOPLE'S POSITION. YOU KNOW THE  
14 DEFENSE POSITION. YOU KNOW THE ISSUE. THE ISSUE'S  
15 INTENT. I ASKED YOU TO LISTEN TO HIS ARGUMENT AND  
16 DETERMINE WHERE THE EVIDENCE WAS TO SUPPORT IT.

17           AND HE SAID A LOT OF STUFF, BUT HE DIDN'T GIVE  
18 YOU ANY EVIDENCE. HE DIDN'T GIVE YOU -- IF THERE'S TWO  
19 REASONABLE INFERENCES, ONE IN FAVOR OF GUILT, ONE IN  
20 FAVOR OF INNOCENCE, THEN YOU MUST ADOPT THE  
21 INTERPRETATION IN FAVOR OF INNOCENCE.

22           THE PROBLEM FOR THE DEFENSE IS THERE ISN'T IS A  
23 REAL DOUBT BASED ON THE EVIDENCE IN THIS CASE. YOU MUST  
24 DECIDE WHAT THE FACTS ARE AND YOU MUST USE ONLY THE  
25 EVIDENCE THAT WAS PRESENTED IN THE COURTROOM OR JURY  
26 DURING A JURY VIEW. EVIDENCE IS THE SWORN TESTIMONY OF

1 WITNESSES, THE EXHIBITS ADMITTED INTO EVIDENCE AND  
2 ANYTHING ELSE THAT THE COURT TOLD YOU TO CONSIDER AS  
3 EVIDENCE.

4 THERE'S A SAYING THAT IF THE FACTS ARE AGAINST  
5 YOU, A FACT OF THE LAW, IF THE LAW IS AGAINST YOU,  
6 ATTACK THE COPS. HAPPENS IN ALMOST EVERY JURY TRIAL.  
7 NO MATTER HOW WELL THEY DO THE JOB, THEY DON'T DO IT  
8 GOOD ENOUGH.

9 SO WE FTND A LOOSE AND FAST RENDITION OF THE  
10 FACTS IN THIS CASE AND SOME STUFF THAT JUST DIDN'T  
11 HAPPEN. THEY NEVER DO IT RIGHT. HE CLAIMS THEY TOOK  
12 OVER HIS BUSINESS. THERE WAS NO EVIDENCE TO THAT  
13 EFFECT. THEY CAME IN AND SEARCHED THE BUSINESS. THEY  
14 DIDN'T DETAIN HIM. HE WALKED AROUND FREELY. HE WENT TO  
15 THE BACK ALLEY. HE MADE PHONE CALLS. THEY'RE THERE TWO  
16 HOUR WITHN HE'S MAKING PHONE CALLS.

17 THEY KNOW HE KNOWS THAT THEY KNOW THAT HE'S GOT  
18 THESE WEAPONS AND THEY'RE NOT GOING TO STAY THERE WITH  
19 HIM WHEN THOSE OFFICERS BELIEVE THERE'S A LIKELIHOOD  
20 THEY'RE GOING TO COME CHECK OUT AND SEE IF HE HAS  
21 ANYMORE AT HIS HOUSE, PRETTY SAFE TO SAY.

22 SO ISN'T THAT A REASONABLE INTERPRSTATION OF  
23 THE FACTS THAT HE'S ON THE PHONE, AND THEN  
24 CIRCUMSTANTIALLY THEY FTND AN EMPTY LOCKER WHERE A GUN  
25 WOULD HAVE BEEN. AND, OF COURSE, THEY DIDN'T DO IT  
26 RIGHT BECAUSE THEY DIDN'T GET A SEARCH WARRANT THEN.

1 WELL, WHAT, I ASK YOU, WOULD A SEARCH WARRANT HAVE  
2 PROVED IN THIS CASE?

3 HE'S ALREADY GOT THE NOTICE THAT THEY'VE GOT  
4 HIS WEAPONS, SO HE GOES -- THEY TAKE HIS WEAPONS. THEY  
5 LEAVE THE FIRST DAY. AND THE SECOND DAY THEY CALL AND  
6 CONTACT HIM. IF THEY GO GET A SEARCH WARRANT, HE  
7 ALREADY KNOWS THAT THEY'VE TAKEN HIS WEAPONS. AND  
8 THAT'S TROUBLE. SO IF HE'S A CROOK AND HE HAS A BAD  
9 INTENT, A SEARCH WARRANT ISN'T GOING TO DO HIM A TICK OF  
10 GOOD BECAUSE HE'S ALREADY TAKEN THE STUFF.

11 AND DOING TESTS ON THE GUN CLOSURE, WHAT'S THAT  
12 GOING TO PROVE, THAT THERE WAS A GUN. IF WE KNOW THERE  
13 WAS A GUN IN, WHERE IS THE GUN? WE NEVER GOT THE GUN.  
14 WE WANT THE GUN. HOW ABOUT THE STATEMENT THAT, "WELL,  
15 HE'S JUST GOING TO BUILD IT SO THAT HE CAN ADMIRE  
16 BECAUSE HE'S TINKERING. WELL, NOBODY WAS EVER GOING TO  
17 SEE IT."

18 AGAIN, THAT'S TOTAL SPECULATION THAT HE WAS  
19 GOING TO KEEP IT IN THE SHOP AND NEVER SHOW IT TO  
20 ANYBODY. WELL, THAT'S NOT WHAT HE SAID IN HIS  
21 INTERVIEW. WHAT HE SAID WAS THAT HE HAD THIS RIFLE WHEN  
22 THEY FIRST GOT THERE AND HE USED IT FOR PIG HUNTING AND  
23 THAT HE BROUGHT THEM UPSTAIRS AN HE SHOWED THEM HIS BIG  
24 OLD PIG HUNTING GUN.

25 SO HOW ARE WE SUPPOSED TO FIND THE TRUTH WHEN  
26 HE WON'T GIVE US THE TRUTH? WE'RE SUPPOSED TO CONSIDER

1 THE CIRCUMSTANCES AND THE TOTALITY OF THE CIRCUMSTANCES  
2 IN THIS CASE, WHAT THE DEFENDANT WANTS YOU TO DISREGARD  
3 AS DETAILS. THOSE ARE THE CIRCUMSTANTIAL EVIDENCE.  
4 THOSE ARE THE TRUTH BEHIND THE FACTS.

5 AND THE EXPERT'S POSSESSION OF THE KIT, NOW  
6 THAT'S A RED HERRING, ISN'T IT? IF HE BROUGHT IT A KIT,  
7 WHY ISN'T THAT ILLEGAL. ISN'T THAT KIND OF AN  
8 INTERESTING LITTLE TWIST THAT HE DID THAT. WELL,  
9 THERE'S A COUPLE OF REASONS IT'S NOT ILLEGAL. BECAUSE  
10 IF YOU LOOK AT THE JURY INSTRUCTIONS, HE HAS TO ATTEMPT  
11 TO MANUFACTURE AND HE HASN'T STARTED TO ATTEMPT TO MAKE  
12 IT, NUMBER ONE.

13 HE HASN'T DONE WHAT THE DEFENSE WOULD HAVE YOU  
14 BELIEVE IS JUST SHAPING UP WILLY-NILLY THIS SIMPLE PIECE  
15 OF METAL. HE HASN'T DONE THAT. THE EXPERT HASN'T BEGUN  
16 TO MANUFACTURE WHAT'S IN HIS KIT.

17 SECONDLY, HE ALREADY HAS THE DEVICE THAT THE  
18 DEFENDANT DIDN'T HAVE. HE HAS THE PART THAT'S GOING TO  
19 MAKE IT LEGAL. THAT'S WHY THE EXPERT'S NOT GETTING  
20 PROSECUTED BECAUSE HE HASN'T YET COMMITTED A CRIME.

21 AND HE ASKED, "WELL, IF HE WAS GOING FINISH IT,  
22 HE WOULD HAVE FINISHED IT." WELL, IF HE FINISHED IT,  
23 THEN IT WOULDN'T BE AN ATTEMPT. IF HE FINISHED IT, IT  
24 WOULD BE AN ACTUAL MANUFACTURE. AND WE WOULD BE HERE  
25 UNDER A MANUFACTURING CASE.

26 BUT HE DIDN'T GET A CHANCE TO FINISH IT, SO WE



1 HAVE ANOTHER LAW THAT COVERS THAT. AND THAT'S ATTEMPT.  
2 AND THAT'S WHAT HE'S GUILTY OF IN THIS CASE. AND "THIS  
3 BOX IS JUST A COUPLE OF PARTS," IT KIND OF SOUNDS LIKE  
4 THE DEFENDANT'S STATEMENT ON PAGE THREE OF THE  
5 TRANSCRIPT, "WELL, IT'S -- IT'S SO TECHNICAL, ALL THESE  
6 LITTLE NUTS AND PIECES. LIKE WHATEVER THEY GET THEY  
7 CHOP IT UP. AND YOU GOTTA GET ALL OF THE RIVETS OUT AND  
8 WHATEVER AND KIND OF REFURBISH THE WHOLE THING BEFORE IT  
9 COMES BACK TOGETHER. YOU CAN'T JUST REFRRECT IT."

10 "OKAY. I UNDERSTAND CORRECTLY, THOUGH, IS THAT  
11 YOU SHOULD HAVE ALL THE PARTS YOU BOUGHT IN THE KIT,  
12 MINUS THE RECEIVER THAT YOU BOUGHT?"

13 "YEAH, YEAH. EVERYTHING IS IN THAT," TRYING TO  
14 MAKE IT SOUND HARD. HE KNOWS EXACTLY WHAT HE'S DOING.  
15 HE'S NOT -- HE'S NOT A DUMB BLONDE. SOLD ALL THE TIME  
16 IN CALIFORNIA. WE DIDN'T GET THAT. WE ORDER IT OFF THE  
17 INTERNET. AND NO OFFENSE TO ANYBODY THAT'S BLONDE. I  
18 JUST AT TIMES, BUT I PROBABLY MISSPOKE.

19 THE ILLEGALITY OF HIS ACT, THE ILLEGAL INTENT,  
20 LADIES AND GENTLEMEN, LOOK AT THE JURY INSTRUCTION. HE  
21 DOESN'T -- THAT'S WHY I EMPHASIZED IN MY FIRST STATEMENT  
22 TO YOU HE DOESN'T HAVE TO KNOW IT'S ILLEGAL. HE DOES,  
23 BUT HE DOESN'T HAVE TO. WHAT HE HAS TO KNOW IS THE  
24 CHARACTER OF WHAT HE'S MAKING. WHAT HE HAS TO KNOW IS  
25 THAT WHAT HE'S MAKING IS AN ASSAULT WEAPON. WHAT HE  
26 SAYS AND EVERYTHING HE DOES AND EVERY WAY HE ACTS AND

1 EVERYTHING HE SAYS PROVES IT.

2 AND THE OFFICER'S QUALIFICATIONS, WELL,  
3 SERGEANT SCHUCH WAS BUILT AN AR. THEY'VE GOT PLENTY OF  
4 EXPERIENCE. THEY DON'T HAVE TO EXPERIENCE EVERYTHING  
5 THAT THEY PROSECUTE SOMEONE FOR. YOU KNOW, IF LOOKS  
6 LIKE A DUCK, WALKS LIKE A DUCK, IT'S A DUCK. THEY KNOW  
7 IT'S A DUCK AND THEY KNOW IT'S AN ASSAULT WEAPON.

8 YOU CAN'T RELY ON THE COULD HAVE, WOULD HAVE,  
9 SHOULD HAVE. YOU HAVE TO RELY ON THE EVIDENCE. I'M  
10 GOING TO GIVE YOU AN ANALOGY THAT'S SIMPLY UNRELATED TO  
11 THIS CASE.

12 SUPPOSE WE HAVE SOMEBODY THAT COMES UP,  
13 SOMEONE -- A COUPLE BREAK UP. AND ONE OF THEM IS HURT  
14 OVER IT. WAITS FOR THE OTHER EX. LAYS IN WAIT FOR  
15 THEM. COMES OUT WITH A GUN, POINTS THE GUN AT THE  
16 PERSON, SAYS, "I'M GOING TO SHOOT YOU." AND THEN SOME  
17 SAINT OR ANGEL PUSHES THE GUN ASTOR. AND HE DOESN'T  
18 COMPLETE WHAT HE ATTEMPTED TO DO. AND THAT PERSON IS UP  
19 HERE AND IS CHARGED WITH ATTEMPT MURDER, ATTEMPT  
20 ASSAULT WITH A DEADLY WEAPON.

21 HE SAYS AT TRIAL, HAVING NEVER SAID THAT TO  
22 ANYONE BEFORE TRIAL, "IT'S NOT WHAT I MEANT TO DO. I  
23 ONLY MEANT TO SCARE HER." WE GOT THE SAME THING HERE,  
24 LADIES AND GENTLEMEN. THERE'S NOT ONE OUNCE OF EVIDENCE  
25 OF AN INTENT OTHER THAN HIS ILLEGAL INTENT. AND HIS  
26 ILLEGAL INTENT WAS TO POSSESS WEAP" AMOUNTED TO AN

1 ASSAULT WEAPON.

2 IF YOU BUY IT IN THIS CASE, THEN WE CAN NEVER  
3 PROVE AN INTENT CASE. THE LAW SAYS FOLLOW THE FACTS.  
4 THE LAW SAYS FOLLOW THE EVIDENCE. I ASK YOU TO COME  
5 BACK WITH A JUST VERDICT NOW AND FIND HIM GUILTY ON BOTH  
6 COUNTS. THANK YOU.

7 THE COURT: MEMBERS OF THE JURY, I WILL NOW  
8 INSTRUCT YOU ON THE LAW THAT APPLIES TO THIS CASE. I  
9 WILL GIVE YOU A COPY OF THE INSTRUCTIONS TO USE IN THE  
10 JURY ROOM.

11 THE INSTRUCTIONS THAT YOU RECEIVE MAY BE  
12 PRINTED, TYPED OR WRITTEN BY HAND. CERTAIN SECTIONS MAY  
13 BE CROSSED OUT OR ADDED. DISREGARD ANY DELETED SECTIONS  
14 AND DO NOT TRY TO GUESS WHAT THEY MIGHT HAVE BEEN.

15 ONLY CONSIDER THE FINAL VERSION OF THE  
16 INSTRUCTIONS IN YOUR DELIBERATIONS. YOU MUST DECIDE  
17 WHAT THE FACTS ARE. IT IS UP TO ALL OF YOU AND YOU  
18 ALONE TO DECIDE WHAT HAPPENED BASED ONLY ON THE EVIDENCE  
19 THAT HAS BEEN PRESENTED TO YOU IN THIS TRIAL.

20 DO NOT LET BIAS, SYMPATHY PREJUDICE OR PUBLIC  
21 OPINION INFLUENCE YOUR DECISION. BIAS INCLUDES BUT IS  
22 NOT LIMITED TO, BIAS FOR OR AGAINST THE WITNESSES,  
23 ATTORNEYS, DEFENDANT OR ALLEGED VICTIM BASED ON  
24 DISABILITY, GENDER, NATIONALITY, NATIONAL ORIGIN, RACE  
25 OR ETHNICITY, RELIGION, GENDER IDENTITY, AGE OR  
26 SOCIOECONOMIC STATUS.

1           YOU MUST FOLLOW THE LAW AS I EXPLAIN IT TO YOU,  
2           EVEN IF YOU DISAGREE WITH IT. IF YOU BELIEVE THAT THE  
3           ATTORNEYS' COMMENTS ON THE LAW CONFLICT WITH MY  
4           INSTRUCTIONS, YOU MUST FOLLOW MY INSTRUCTIONS.

5           PAY CAREFUL ATTENTION TO ALL THESE INSTRUCTIONS  
6           AND CONSIDER THEM TOGETHER. IF I REPEAT ANY INSTRUCTION  
7           OR IDEA, DO NOT CONCLUDE THAT IT IS MORE IMPORTANT THAN  
8           ANY OTHER INSTRUCTION OR IDEA JUST BECAUSE I REPEATED  
9           IT.

10           SOME WORDS OR PHRASES USED DURING THIS TRIAL  
11           HAVE LEGAL MEANINGS THAT ARE DIFFERENT FROM THEIR  
12           MEANING IN EVERYDAY USE. THESE WORDS AND PHRASES WILL  
13           BE SPECIFICALLY DEFINED IN THESE INSTRUCTIONS. PLEASE  
14           BE SURE THAT TO LISTEN CAREFULLY AND FOLLOW THE  
15           DEFINITIONS THAT I GIVE YOU.

16           WORDS AND PHRASES NOT SPECIFICALLY DEFINED IN  
17           THESE INSTRUCTIONS ARE TO BE APPLIED USING THEIR  
18           ORDINARY, EVERYDAY MEANING. SOME OF THESE INSTRUCTIONS  
19           MAY NOT APPLY DEPENDING ON YOUR FINDINGS ABOUT THE FACTS  
20           OF THE CASE. DO NOT ASSUME JUST BECAUSE I GIVE A  
21           PARTICULAR INSTRUCTION THAT I AM SUGGESTING ANYTHING  
22           ABOUT THE FACTS.

23           AFTER YOU HAVE DECIDED WHAT THE FACTS ARE,  
24           FOLLOW THE INSTRUCTIONS THAT DO APPLY TO THE FACTS AS  
25           YOU FIND THEM. DO NOT DO ANY RESEARCH REGARDING THIS  
26           CASE ON YOUR OWN OR AS A GROUP. DO NOT USE A

1       DICTIONARY, THE INTERNET OR OTHER REFERENCE MATERIALS.  
2       DO NOT INVESTIGATE THE FACTS OR LAW. DO NOT CONDUCT ANY  
3       EXPERIMENTS OR VISIT THE SCENE OF ANY EVENT INVOLVED IN  
4       THIS CASE. IF YOU HAPPEN TO PASS BY THE SCENE DO NOT  
5       STOP OR INVESTIGATE.

6                YOU HAVE BEEN GIVEN A NOTEBOOK AND MAY HAVE  
7       TAKEN NOTES DURING THE TRIAL. YOU MAY USE YOUR NOTES  
8       DURING DELIBERATIONS. THESE NOTES ARE FOR YOUR OWN  
9       INDIVIDUAL USE TO HELP YOU REMEMBER WHAT HAPPENED DURING  
10      THE TRIAL.

11               PLEASE KEEP IN MIND THAT YOUR NOTES MAY BE  
12      INACCURATE OR INCOMPLETE. IF THERE IS A DISAGREEMENT  
13      ABOUT THE TESTIMONY AND STIPULATIONS AT TRIAL, YOU MAY  
14      ASK THAT THE COURT REPORTER'S BE READ TO YOU. IT IS THE  
15      RECORD THAT MUST GUIDE YOUR DELIBERATIONS, NOT YOUR  
16      NOTES.

17               YOU MUST ACCEPT THE COURT REPORTER'S RECORD AS  
18      ACCURATE. PLEASE DO NOT REMOVE YOUR NOTES FROM THE JURY  
19      ROOM. AT THE END OF THE TRIAL YOUR NOTES WILL BE  
20      COLLECTED AND DESTROYED.

21               THE FACT THAT A CRIMINAL CHARGE HAS BEEN FILED  
22      AGAINST THE DEFENDANT IS NOT EVIDENCE THAT THE CHARGE IS  
23      TRUE. YOU MUST NOT BE BIASED AGAINST THE DEFENDANT JUST  
24      BECAUSE HE HAS BEEN ARRESTED, CHARGED WITH A CRIME OR  
25      BROUGHT TO TRIAL.

26               A DEFENDANT IN A CRIMINAL CASE IS PRESUMED

1 TO BE INNOCENT. THIS PRESUMPTION REQUIRES THAT THE  
2 PEOPLE PROVE A DEFENDANT GUILTY BEYOND A REASONABLE  
3 DOUBT. WHENEVER I TELL YOU THAT THE PEOPLE MUST PROVE  
4 SOMETHING, I MEAN THEY MUST PROVE IT BEYOND A REASONABLE  
5 DOUBT, UNLESS I SPECIFICALLY TELL YOU OTHERWISE.

6 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT  
7 LEAVES WITH YOU AN ABIDING CONVICTION THAT THE CHARGE IS  
8 TRUE. THE EVIDENCE NEED NOT ELIMINATE ALL POSSIBLE  
9 DOUBT BECAUSE EVERYTHING IN LIFE IS OPEN TO SOME  
10 POSSIBLE OR IMAGINARY DOUBT.

11 IN DECIDING WHETHER THE PEOPLE HAVE PROVED THIS  
12 CASE BEYOND A REASONABLE DOUBT YOU MUST IMPARTIALLY  
13 COMPARE AND CONSIDER ALL THE EVIDENCE THAT WAS RECEIVED  
14 THROUGHOUT THE ENTIRE TRIAL. UNLESS THE EVIDENCE PROVES  
15 THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, HE IS  
16 ENTITLED TO AN ACQUITTAL AND YOU MUST FIND HIM NOT  
17 GUILTY.

18 YOU MUST DECIDE WHAT THE FACTS ARE IN THIS  
19 CASE. YOU MUST USE ONLY THE EVIDENCE THAT WAS PRESENTED  
20 IN THIS COURTROOM OR DURING YOUR JURY VIEW. EVIDENCE IS  
21 THE SWORN TESTIMONY OF WITNESSES, THE EXHIBITS ADMITTED  
22 INTO EVIDENCE, AND ANYTHING ELSE I TOLD YOU TO CONSIDER  
23 AS EVIDENCE.

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

1 EVIDENCE. THEIR QUESTIONS ARE NOT EVIDENCE. ONLY THE  
2 WITNESSES' ANSWERS ARE EVIDENCE. THE ATTORNEYS'  
3 QUESTIONS ARE SIGNIFICANT ONLY IF THEY HELPED YOU TO  
4 UNDERSTAND THE WITNESSES' ANSWERS. DO NOT ASSUME THAT  
5 SOMETHING IS TRUE JUST BECAUSE ONE OF THE ATTORNEYS  
6 ASKED A QUESTION THAT'S SUGGESTED IT WAS TRUE.

7 DURING THE TRIAL THE ATTORNEYS OBJECTED TO  
8 QUESTIONS OR MOVED TO STRIKE ANSWERS GIVEN BY THE  
9 WITNESSES. I RULED ON THE OBJECTIONS ACCORDING TO THE  
10 LAW. IF I SUSTAINED AN OBJECTION, YOU MUST IGNORE THE  
11 QUESTION. IF THE WITNESS WAS NOT PERMITTED TO ANSWER DO  
12 NOT GUESS WHAT THE ANSWER MIGHT HAVE BEEN OR WHY I RULED  
13 AS I DID.

14 IF I ORDERED TESTIMONY STRICKEN FROM THE RECORD  
15 YOU MUST DISREGARD IT AND MUST NOT CONSIDER THAT  
16 TESTIMONY FOR ANY PURPOSE. YOU MUST DISREGARD ANYTHING  
17 YOU SAW OR HEARD WHEN THE COURT WAS NOT IN SESSION, EVEN  
18 IF IT WAS DONE OR SAID BY ONE OF THE PARTIES OR  
19 WITNESSES.

20 THERE ARE NO STIPULATIONS; IS THAT CORRECT,  
21 COUNSEL?

22 MR. HENNES: THAT'S CORRECT.

23 MS. JONES: CORRECT.

24 THE COURT: THE COURT REPORTER HAS MADE A  
25 RECORD OF EVERYTHING THAT WAS SAID DURING THE TRIAL. IF  
26 YOU DECIDE THAT IT IS NECESSARY, YOU MAY ASK THAT THE

1 COURT REPORTER'S RECORD BE READ TO YOU. YOU MUST ACCEPT  
2 THE COURT REPORTER'S RECORDS AS ACCURATE.

3           FACTS MAY BE PROVED BY DIRECT OR CIRCUMSTANTIAL  
4 EVIDENCE OR BY A COMBINATION OF BOTH. DIRECT EVIDENCE  
5 CAN PROVE A FACT BY ITSELF. FOR EXAMPLE, IF A WITNESS  
6 TESTIFIED THAT HE SAW IT RAINING OUTSIDE BEFORE HE CAME  
7 INTO THE COURTHOUSE, THAT TESTIMONY IS DIRECT EVIDENCE  
8 THAT IT WAS RAINING.

9           CIRCUMSTANTIAL EVIDENCE ALSO MAY BE CALLED  
10 INDIRECT EVIDENCE. CIRCUMSTANTIAL EVIDENCE DOES NOT  
11 DIRECTLY PROVE THE FACT TO BE DECIDED, BUT IS EVIDENCE  
12 OF ANOTHER FACT OR GROUP OF FACTS FROM WHICH YOU MAY  
13 LOGICALLY AND REASONABLY CONCLUDE THAT THE TRUTH OF THE  
14 FACT IN QUESTION.

15           FOR EXAMPLE, IF A WITNESS TESTIFIES THAT HE SAW  
16 SOMEONE COME INSIDE WEARING A RAIN COAT COVERED WITH  
17 DROPS OF WATER, THAT TESTIMONY IS CIRCUMSTANTIAL  
18 EVIDENCE BECAUSE IT MAY SUPPORT A CONCLUSION THAT IT WAS  
19 RAINING OUTSIDE. BOTH DIRECT AND CIRCUMSTANTIAL  
20 EVIDENCE ARE ACCEPTABLE TYPES OF EVIDENCE TO PROVE OR  
21 DISPROVE THE ELEMENTS OF A CHARGE, INCLUDING INTENT AND  
22 MENTAL STATE AND ACTS NECESSARY TO A CONVICTION AND  
23 NEITHER IS NECESSARILY MORE RELIABLE THAN THE OTHER.  
24 NEITHER IS ENTITLED TO ANY GREATER WEIGHT THAN THE  
25 OTHER. YOU MUST DECIDE WHETHER A FACT IN ISSUE HAS BEEN  
26 PROVED BASED ON ALL THE EVIDENCE.



1           BEFORE YOU MAY RELY UPON CIRCUMSTANTIAL  
2 EVIDENCE TO CONCLUDE THAT A FACT NECESSARY TO FINDS THE  
3 DEFENDANT GUILTY HAS BEEN PROVED YOU MUST BE CONVINCED  
4 THAT THE PEOPLE HAVE PROVED EACH FACT ESSENTIAL TO THAT  
5 CONCLUSION BEYOND A REASONABLE DOUBT.

6           ALSO BEFORE YOU MAY RELY ON CTRCUMSTANTIAL  
7 EVIDENCE TO FTND THE DEFENDANT GUILTY YOU MUST BE  
8 CONVINCED THAT THE ONLY REASONABLE CONCLUSION SUPPORTED  
9 BY THE CIRCUMSTANTIAL EVIDENCE IS THAT THE DEFENDANT IS  
10 GUILTY. IF YOU CAN DRAW TWO OR MORE REASONABLE  
11 CONCLUSIONS FROM THE CIRCUMSTANTIAL EVIDENCE AND ONE OF  
12 THOSE REASONABLE CONCLUSIONS POINTS TO INNOCENCE AND  
13 ANOTHER TO GUILT, YOU MUST ACCEPT THE ONE THAT POINTS TO  
14 INNOCENCE.

15           HOWEVER, WHEN CONSIDERING CIRCUMSTANTIAL  
16 EVIDENCE YOU MUST ACCEPT ONLY REASONABLE CONCLUSIONS AND  
17 REJECT ANY THAT ARE UNREASONABLE. THE PEOPLE MUST PROVE  
18 NOT ONLY THAT THE DEFENDANT DID THE ACTS CHARGED, BUT  
19 ALSO THAT HE ACTED WITH A PARTICULAR INTENT. THE  
20 INSTRUCTION FOR EACH OF CRIME AND ALLEGATION EXPLATNS  
21 THE INTENT REQUIRED. AND INTENT MAY BE PROVED BY  
22 CIRCUMSTANTIAL EVIDENCE. BEFORE YOU MAY RELY ON  
23 CIRCUMSTANTIAL EVIDENCE TO CONCLUDE THAT A FACT  
24 NECESSARY TO FIND THE DEFENDANT GUILTY HAS BEEN PROVED  
25 YOU MUST BE CONVINCED THAT THE PEOPLE HAVE PROVED EACH  
26 FACT ESSENTIAL TO THAT CONCLUSION BEYOND A REASONABLE

1 DOUBT.

2 ALSO, BEFORE YOU MAY RELY ON CIRCUMSTANTIAL  
3 EVIDENCE TO CONCLUDE THAT THE DEFENDANT HAD THE REQUIRED  
4 INTENT, YOU MUST BE CONVINCED THAT THE ONLY REASONABLE  
5 CONCLUSION SUPPORTED BY THE CIRCUMSTANTIAL EVIDENCE IS  
6 THAT THE DEFENDANT HAD THE REQUIRED INTENT.

7 IF YOU CAN DRAW TWO OR MORE REASONABLE  
8 CONCLUSIONS FROM THE CIRCUMSTANTIAL EVIDENCE AND ONE OF  
9 THOSE REASONABLE CONCLUSIONS SUPPORTS A FINDING THAT THE  
10 DEFENDANT DID HAVE THE ENTIRE REQUIRED INTENT AND  
11 ANOTHER REASONABLE CONCLUSION SUPPORTS A FINDING THAT  
12 THE DEFENDANT DID NOT, YOU MUST CONCLUDE THAT THE  
13 REQUIRED INTENT WAS NOT PROVED BY THE CIRCUMSTANTIAL  
14 EVIDENCE. HOWEVER, WHEN CONSIDERING CIRCUMSTANTIAL  
15 EVIDENCE YOU MUST ACCEPT ONLY REASONABLE CONCLUSIONS AND  
16 REJECT ANY THAT IS UNREASONABLE.

17 YOU ALONE MUST JUDGE THE CREDIBILITY OR  
18 BELIEVABILITY OF THE WITNESSES. IN DECIDING WHETHER  
19 TESTIMONY IS TRUE AND ACCURATE USE YOUR COMMON SENSE AND  
20 EXPERIENCE. YOU MUST JUDGE THE TESTIMONY OF EACH  
21 WITNESS BY THE SAME STANDARDS SETTING ASIDE ANY BIAS OR  
22 PREJUDICE YOU MAY HAVE. YOU MAY BELIEVE ALL, PART OR  
23 NONE OF ANY WITNESS'S TESTIMONY. CONSIDER THE TESTIMONY  
24 OF EACH WITNESS AND DECIDE HOW MUCH OF IT YOU BELIEVE.

25 IN EVALUATING A WITNESS'S TESTIMONY YOU MAY  
26 CONSIDER ANYTHING THAT REASONABLY TENDS TO PROVE OR

1 DISPROVE THE TRUTH OR ACCURACY OF THAT TESTIMONY. AMONG  
2 THE FACTORS THAT YOU MAY CONSIDER ARE HOW WELL COULD THE  
3 WITNESS SEE, HEAR OR OTHERWISE PERCEIVE THE THINGS ABOUT  
4 WHICH THE WITNESS TESTIFIED, HOW WELL WAS THE WITNESS  
5 ABLE TO REMEMBER AND DESCRIBE WHAT HAPPENED, WATCHING  
6 THE WITNESS'S BEHAVIOR WHILE TESTIFYING, DID THE WITNESS  
7 UNDERSTAND THE QUESTIONS AND ANSWER THEM DIRECTLY?

8 WAS THE WITNESS'S TESTIMONY INFLUENCED BY A  
9 FACTOR SUCH AS BIAS OR PREJUDICE, A PERSONAL  
10 RELATIONSHIP WITH SOMEONE INVOLVED WITH THE CASE, OR A  
11 PERSONAL INTEREST IN HOW THE CASE IS DECIDED. WHAT WAS  
12 THE WITNESS'S ATTITUDE ABOUT THE CASE OR ABOUT  
13 TESTIFYING? DID THE WITNESS MAKE A STATEMENT IN THE  
14 PAST THAT IS CONSISTENT OR INCONSISTENT WITH HIS  
15 TESTIMONY? HOW REASONABLE IS THE TESTIMONY WHEN YOU  
16 CONSIDER ALL OF THE OTHER EVIDENCE IN THE CASE? DID  
17 OTHER EVIDENCE PROVE OR DISPROVE ANY FACT ABOUT WHICH  
18 THE WITNESS TESTIFIED. DID THE WITNESS ADMIT TO BEING  
19 UNTRUTHFUL? HAS THE WITNESS ENGAGED IN OTHER CONDUCT  
20 THAT REFLECTS ON HIS OR HER BELIEVABILITY.

21 DO NOT AUTOMATICALLY REJECT TESTIMONY JUST  
22 BECAUSE OF INCONSISTENCIES OR CONFLICTS. CONSIDER  
23 WHETHER THE DIFFERENCES ARE IMPORTANT OR NOT. SOMETIMES  
24 PEOPLE HONESTLY MAKE MISTAKES ABOUT WHAT THEY REMEMBER.  
25 ALSO, TWO PEOPLE MAY WITNESS THE SAME EVENT, YET SEE OR  
26 HEAR IT DIFFERENTLY.

1 IF YOU DO NOT BELIEVE A WITNESS'S TESTIMONY  
2 THAT NO LONGER REMEMBERS SOMETHING, THAT TESTIMONY IS  
3 INCONSTANT WITH THE WITNESS'S EARLIER STATEMENT ON  
4 THAT SUBJECT. IF YOU DECIDE THAT A WITNESS DELIBERATELY  
5 LIED ABOUT SOMETHING SIGNIFICANT IN THIS CASE, YOU MUST  
6 CONSIDER NOT BELIEVING ANYTHING THAT WITNESS SAID, OR IF  
7 YOU THINK THE WITNESS LIED ABOUT SOME OF THE THINGS BUT  
8 TOLD THE TRUTH ABOUT OTHERS, YOU MAY SIMPLY ACCEPT THE  
9 PART YOU THINK IS TRUE AND IGNORE THE REST.

10 THE CRIMES CHARGED IN THIS CASE REQUIRE PROOF  
11 OF THE UNION OR JOINT OPERATION OF ACT AND WRONGFUL  
12 INTENT. FOR YOU TO FIND THE PERSON GUILTY OF THESE  
13 CRIMES IN THIS CASE IN COUNTS 1 AND 2, THAT PERSON MUST  
14 NOT ONLY INTENTIONALLY COMMIT THE PROHIBITIVE ACT OR  
15 INTENTIONALLY FAIL TO DO THE REQUIRED ACT, BUT MUST DO  
16 SO WITH A SPECIFIC INTENT. THE ACT AND THE SPECIFIC  
17 INTENT REQUIRED ARE EXPLAINED IN THE INSTRUCTION FOR  
18 THAT CRIME.

19 NEITHER SIDE IS REQUIRED TO CALL ALL WITNESSES  
20 WHO MAY HAVE INFORMATION ABOUT THE CASE OR TO PRODUCE  
21 ALL PHYSICAL EVIDENCE THAT MIGHT BE RELEVANT. THE  
22 TESTIMONY OF ONLY ONE WITNESS CAN PROVE ANY FACT.  
23 BEFORE YOU CONCLUDE THAT THE TESTIMONY OF ONE WITNESS  
24 PROVES A FACT, YOU SHOULD CAREFULLY REVIEW ALL THE  
25 EVIDENCE.

26 IF YOU DETERMINE THERE IS A CONFLICT IN THE

1 EVIDENCE, YOU MUST DECIDE WHAT EVIDENCE IF ANY TO  
2 BELIEVE. DO NOT SIMPLY COUNT THE NUMBER OF WITNESSES  
3 WHO AGREE OR DISAGREE ON A POINT AND ACCEPT THE  
4 TESTIMONY OF THE GREATER NUMBER OF WITNESSES.

5 ON THE OTHER HAND, DO NOT DISREGARD THE  
6 TESTIMONY OF ANY WITNESS WITHOUT A REASON OR BECAUSE OF  
7 A PREJUDICE OR DESIRE TO FAVOR ONE SIDE OVER THE OTHER.  
8 WHAT IS IMPORTANT IS WHETHER THE TESTIMONY OR ANY OTHER  
9 EVIDENCE CONVINCES YOU, NOT JUST THE NUMBER OF WITNESSES  
10 WHO TESTIFY ABOUT A CERTAIN POINT.

11 WITNESSES WHO ARE ALLOWED TO TESTIFY AS EXPERTS  
12 AND TO GIVE OPINIONS. YOU MUST CONSIDER THE OPINIONS  
13 BUT YOU ARE NOT REQUIRED TO ACCEPT THEM AS TRUE OR  
14 CORRECT. THE MEANING AND IMPORTANCE OF ANY OPINION ARE  
15 FOR YOU TO DECIDE.

16 IN EVALUATING THE BELIEVABILITY OF AN EXPERT  
17 WITNESS, FOLLOW THE INSTRUCTIONS ABOUT THE  
18 BELIEVABILITIES OF WITNESSES GENERALLY. IN ADDITION  
19 CONSIDER THE EXPERT'S KNOWLEDGE, SKILL, EXPERIENCE,  
20 TRAINING AND EDUCATION, THE REASONS THE EXPERT GAVE FOR  
21 ANY OPINION, AND THE FACTS OR INFORMATION ON WHICH THE  
22 EXPERT RELIED IN REACHING THAT OPINION.

23 YOU MUST DECIDE WHETHER INFORMATION ON WHICH  
24 THE EXPERT RELIED WAS TRUE AND ACCURATE. YOU MUST  
25 DISREGARD ANY OPINION THAT YOU FIND UNBELIEVABLE,  
26 UNREASONABLE OR UNSUPPORTED BY THE EVIDENCE.

1 AN EXPERT WITNESS MAY BE ASKED A HYPOTHETICAL  
2 QUESTION. A HYPOTHETICAL QUESTION ASKS THE WITNESS TO  
3 ASSUME CERTAIN FACTS ARE TRUE AND TO GIVE AN OPINION  
4 BASED ON THE ASSUMED FACTS. IT IS UP TO YOU TO DECIDE  
5 WHETHER AN ASSUMED FACT HAS BEEN PROVED. IF YOU CAN  
6 CONCLUDE AN ASSUMED FACT IS NOT TRUE, EXAMINE THE EFFECT  
7 OF THE EXPERT'S RELIANCE ON THAT FACT IN EVALUATION OF  
8 THE EXPERT'S OPINION. IF THE EXPERT WITNESSES DISAGREE  
9 WITH ONE ANOTHER, YOU SHOULD WEIGH EACH OPINION AGAINST  
10 THE OTHERS. YOU SHOULD EXAMINE THE REASONS GIVEN FOR  
11 EACH OPINION AND THE FACTS OR OTHER MATTERS ON WHICH  
12 EACH WITNESS RELIED. YOU MUST ALSO COMPARE THE  
13 WITNESS'S QUALIFICATIONS.

14 WITNESSES WHO ARE NOT TESTIFYING AS EXPERTS  
15 GAVE THEIR OPINIONS DURING THE TRIAL. YOU MAY, BUT ARE  
16 NOT REQUIRED TO, ACCEPT THOSE OPINIONS AS TRUE OR  
17 CORRECT. YOU MAY GIVE THEM OPINIONS WHETHER WHATEVER  
18 WEIGHT YOU THINK APPROPRIATE. CONSIDER THE EXTENT OF  
19 THE WITNESS'S OPPORTUNITY TO PERCEIVE THE MATTERS ON  
20 WHICH HIS OR HER OPINION IS BASED, THEIR REASONS THE  
21 WITNESS GAVE FOR THE OPINION AND FACTS OR INFORMATION ON  
22 WHICH THE WITNESS RELIED IN FORMING THAT OPINION.

23 YOU MUST DECIDE WHETHER INFORMATION ON WHICH  
24 THE WITNESS RELIED WAS TRUE AND ACCURATE. YOU MAY  
25 DISREGARD ANY OR ANY PARTS OF AN OPINION THAT YOU FIND  
26 UNBELIEVABLE, UNREASONABLE OR UNSUPPORTED BY THE

1 EVIDENCE.

2 A DEFENDANT HAS AN ABSOLUTE CONSTITUTIONAL  
3 RIGHT NOT TO TESTIFY. HE MAY RELY ON THE STATE OF THE  
4 EVIDENCE AND ARGUE THAT THE PEOPLE HAVE FAILED TO PROVE  
5 THE CHARGES BEYOND A REASONABLE DOUBT.

6 DO NOT CONSIDER FOR ANY REASON AT ALL THE FACT  
7 THAT THE DEFENDANT DID NOT TESTIFY. DO NOT DISCUSS THAT  
8 FACT DURING YOUR DELIBERATIONS OR LET IT INFLUENCE YOUR  
9 DECISION IN ANY WAY.

10 YOU HAVE HEARD EVIDENCE THAT THE DEFENDANT MADE  
11 AN ORAL STATEMENT BEFORE TRIAL. YOU MUST DECIDE WHETHER  
12 THE DEFENDANT MADE ANY OF THESE STATEMENTS IN WHOLE OR  
13 IN PART. IF YOU DECIDE THAT THE DEFENDANT MADE SUCH A  
14 STATEMENT, CONSIDER THE STATEMENTS ALONG WITH ALL THE  
15 OTHER EVIDENCE IN REACHING YOUR VERDICT.

16 IT IS UP TO YOU TO DECIDE HOW MUCH IMPORTANCE  
17 TO GIVE TO THE STATEMENTS. CONSIDER WITH CAUTION ANY  
18 STATEMENT MADE BY THE DEFENDANT TENDING TO SHOW HIS  
19 GUILT UNLESS THE STATEMENT WAS WRITTEN OR OTHERWISE  
20 RECORDED.

21 THE DEFENDANT MAY NOT BE CONVICTED OF ANY CRIME  
22 BASED ON HIS OUT OF COURT STATEMENTS ALONE. YOU MAY  
23 ONLY RELY ON THE DEFENDANT'S OUT OF COURT STATEMENTS TO  
24 CONVICT HIM IF YOU CONCLUDE THAT OTHER EVIDENCE SHOWS  
25 THAT THE CRIME CHARGED WAS COMMITTED. THAT OTHER  
26 EVIDENCE MAY BE SLIGHT AND NEED ONLY BE ENOUGH TO

1 SUPPORT A REASONABLE INFERENCE THAT A CRIME WAS  
2 COMMITTED. THE IDENTITY OF THE PERSON WHO COMMITTED THE  
3 CRIME AND THE DEGREE OF THE CRIME MAY BE PROVED BY THE  
4 DEFENDANT'S STATEMENT ALONE.

5 YOU MAY NOT CONVICT THE DEFENDANT UNLESS THE  
6 PEOPLE HAVE PROVED HIS GUILT BEYOND A REASONABLE DOUBT.  
7 IF THE DEFENDANT MADE A FALSE OR MISLEADING STATEMENT  
8 BEFORE THIS TRIAL RELATING TO THE CHARGED CRIME KNOWING  
9 THE STATEMENT WAS FALSE OR INTENDED TO MISLEAD, THAT  
10 CONDUCT MAY SHOW HE WAS AWARE OF HIS GUILT OF THE CRIME  
11 AND YOU MAY CONSIDER IT IN DETERMINING HIS GUILT. YOU  
12 MAY NOT CONSIDER THE STATEMENT IN DECIDING -- IF YOU  
13 CONCLUDE THAT THE DEFENDANT MADE THE STATEMENT, IT IS UP  
14 TO YOU TO DECIDE ITS MEANING AND IMPORTANCE. HOWEVER,  
15 EVIDENCE THAT THE DEFENDANT MADE SUCH A STATEMENT CANNOT  
16 PROVE GUILT BY ITSELF.

17 THE PEOPLE ARE NOT REQUIRED TO PROVE THAT THE  
18 DEFENDANT HAD A MOTIVE TO COMMIT ANY CHARGES CHARGED IN  
19 REACHING A VERDICT. YOU MAY, HOWEVER, CONSIDER WHETHER  
20 THE DEFENDANT HAD A MOTIVE. HAVING A MOTIVE MAY BE A  
21 FACTOR TENDING TO SHOW THAT THE DEFENDANT IS GUILTY.  
22 NOT HAVING A MOTIVE MAY BE A FACTOR TENDING TO SHOW THAT  
23 THE DEFENDANT IS NOT GUILTY.

24 THE DEFENDANT IS CHARGED IN COUNTS 1 WITH  
25 ATTEMPTED MANUFACTURE OF AN ASSAULT WEAPON. TO PROVE  
26 THAT THE DEFENDANT IS GUILTY OF THIS CRIME THE PEOPLE



1 MUST PROVE THAT, NUMBER ONE, THE DEFENDANT TOOK A DIRECT  
2 BUT INEFFECTIVE STEP FORWARD MANUFACTURING AN ASSAULT  
3 WEAPON. AND, NUMBER TWO, THE DEFENDANT INTENDED TO  
4 MANUFACTURE AN ASSAULT WEAPON.

5 A DIRECT STEP REQUIRES MORE THAN MERELY  
6 PLANNING OR PREPARING TO MANUFACTURE AN ASSAULT WEAPON  
7 OR OBTAINING OR ARRANGING FOR SOMETHING NEEDED TO  
8 MANUFACTURE AN ASSAULT WEAPON. A DIRECT STEP IS ONE  
9 THAT GOES BEYOND PLANNING OR PREPARATION AND SHOWS THAT  
10 A PERSON IS PUTTING HIS OR HER PLAN INTO ACTION. A  
11 DIRECT STEP INDICATES A DEFINITE AND UNAMBIGUOUS INTENT  
12 TO MANUFACTURE AN ASSAULT WEAPON. IT IS A DIRECT  
13 MOVEMENT TOWARD THE COMMISSION OF THE CRIME AFTER  
14 PREPARATIONS ARE MADE. IT IS AN IMMEDIATE STEP THAT  
15 MUST PUT THE PLAN IN ACTION SO THAT THE PLAN WOULD HAVE  
16 BEEN COMPLETED IF SOME CIRCUMSTANCES OUTSIDE THE PLAN  
17 HAD NOT INTERRUPTED THE ATTEMPTS.

18 A PERSON WHO ATTEMPTS TO MANUFACTURE AN ASSAULT  
19 WEAPON IS GUILTY OF ATTEMPTED MANUFACTURING OF ASSAULT  
20 WEAPON IF AFTER TAKING A DIRECT STEP TOWARD COMMITTING  
21 THE CRIME HE OR SHE - I'M GOING TO START THAT PARAGRAPH  
22 OVER.

23 A PERSON WHO ATTEMPTS TO MANUFACTURE AN ASSAULT  
24 WEAPON IS GUILTY OF ATTEMPTED MANUFACTURE OF AN ASSAULT  
25 WEAPON IF AFTER --

26 MS. JONES: YOUR HONOR, I'M SORRY. CAN WE

1 APPROACH A SECOND?

2 THE COURT: YES.

3 (SIDEBAR WITHOUT REPORTER)

4 THE COURT: START THAT PARAGRAPH OVER.

5 A PERSON WHO ATTEMPTS TO MANUFACTURE AN ASSAULT  
6 WEAPON IS GUILTY OF ATTEMPTED MANUFACTURE OF AN ASSAULT  
7 WEAPON EVEN IF AFTER TAKING A DIRECT STEP TOWARD  
8 COMMITTING A CRIME HE OR SHE ABANDONS CERTAIN EFFORTS TO  
9 COMMIT THE CRIME OR LESS OR HER ATTEMPT FAILED OR WAS  
10 INTERRUPTED OR SOMEONE OR SOMETHING BEYOND HIS OR HER  
11 CONTROL.

12 I'M GOING TO SAY THAT ONE MORE TIME. A PERSON  
13 WHO ATTEMPTS TO MANUFACTURE AN ASSAULT WEAPON IS GUILTY  
14 OF ATTEMPTED MANUFACTURE OF AN ASSAULT WEAPON EVEN IF  
15 AFTER TAKING A DIRECT STEP FORWARD COMMITTING THE CRIME  
16 HE OR SHE ABANDONED FURTHER EFFORTS TO COMMIT THE CRIME  
17 OR IF HIS OR HER ATTEMPT FAILED OR WAS INTERRUPTED BY  
18 SOMEONE OR SOMETHING BEYOND HIS OR HER CONTROL.

19 ON THE OTHER HAND, IF A PERSON FREELY AND  
20 VOLUNTARILY ABANDONS HIS OR HER PLANS BEFORE TAKING A  
21 DIRECT STEP TOWARD MANUFACTURING AN ASSAULT WEAPON, THEN  
22 THAT PERSON IS NOT GUILTY OF ATTEMPTING MANUFACTURE OF  
23 AN ASSAULT WEAPON.

24 TO DECIDE TO WHETHER THE DEFENDANT IS ENTITLED  
25 TO MANUFACTURE OF AN ASSAULT WEAPON, PLEASE REFER TO THE  
26 SEPARATE INSTRUCTIONS THAT I WILL GIVE YOU ON THAT

1 CRIME. THE DEFENDANT MAY BE GUILTY OF ATTEMPT EVEN IF  
2 YOU CONCLUDE THAT MANUFACTURE OF ASSAULT WEAPON WAS  
3 COMPLETED.

4 THE DEFENDANT IS CHARGED IN COUNT 2 WITH  
5 ATTEMPTED POSSESSION OF AN ASSAULT WEAPON. TO PROVE  
6 THAT THE DEFENDANT IS GUILTY OF THIS CRIME, THE PEOPLE  
7 MUST PROVE THAT THE DEFENDANT TOOK A DIRECT BUT  
8 INEFFECTIVE STEP TOWARD POSSESSION OF AN ASSAULT WEAPON  
9 AND, NUMBER TWO, THE DEFENDANT INTENDED TO POSSESS AN  
10 ASSAULT WEAPON.

11 A DIRECT STEP REQUIRES MORE THAN MERELY  
12 PLANNING OR PREPARING TO POSSESS AN ASSAULT WEAPON OR  
13 OBTAINING OR ARRANGING FOR SOMETHING NEEDED TO POSSESS  
14 AN ASSAULT WEAPON. A DIRECT STEP IS ONE THAT GOES  
15 BEYOND PLANNING OR PREPARATION AND SHOWS THAT A PERSON  
16 IS PUTTING HIS OR HER PLAN INTO ACTION.

17 IT IS A DIRECT STEP INDICATES A DEFINITE AND  
18 UNAMBIGUOUS INTENT TO POSSESS AN ASSAULT WEAPON. IT IS  
19 A DIRECT MOVEMENT TOWARD THE COMMISSION OF THE CRIME  
20 AFTER PREPARATIONS ARE MADE. IT IS AN IMMEDIATE STEP  
21 THAT PUTS THE PLAN IN MOTION SO THAT THE PLAN WOULD HAVE  
22 BEEN COMPLETED IF SOME CIRCUMSTANCES OUTSIDE THE PLAN  
23 HAD NOT INTERRUPTED THE ATTEMPT.

24 A PERSON WHO ATTEMPTS TO POSSESS AN ASSAULT  
25 WEAPON IS GUILTY OF ATTEMPT POSSESSION OF AN ASSAULT  
26 WEAPON EVEN IF AFTER TAKING A DIRECT STEP TOWARDS

1 COMMITTING A CRIME HE OR SHE ABANDONED FURTHER EFFORTS  
2 TO COMPLETE THE CRIME OR IF HIS OR HER ATTEMPT FAILED OR  
3 WAS INTERRUPTED BY SOMEONE OR SOMETHING BEYOND HIS OR  
4 HER CONTROL.

5 ON THE OTHER HAND IF A PERSON FREELY AND  
6 VOLUNTARY ABANDONS HIS OR HER PLANS BEFORE TAKING A  
7 DIRECT STEP FORWARD POSSESSING AN ASSAULT WEAPON THEN  
8 THAT PERSON IS NOT GUILTY OF ATTEMPTED POSSESSION OF AN  
9 ASSAULT WEAPON.

10 TO DECIDE WHETHER THE DEFENDANT INTENDED TO  
11 POSSESS AN ASSAULT WEAPON, PLEASE REFER TO THE SEPARATE  
12 INSTRUCTION THAT'S GIVEN YOU ON THAT CRIME. THE  
13 DEFENDANT MAY BE GUILTY OF ATTEMPT EVEN IF YOU CONCLUDE  
14 THE POSSESSION OF AN ASSAULT WEAPON WAS ACTUALLY  
15 COMPLETED.

16 THE DEFENDANT IS CHARGED IN COUNTS ONE WITH  
17 ATTEMPTING TO MANUFACTURE AN ASSAULT WEAPON IN VIOLATION  
18 EVER PENAL CODE SECTION 12280(A). TO PROVE THE  
19 DEFENDANT IS GUILTY OF THIS CRIME THE PEOPLE MUST PROVE  
20 THAT, NUMBER ONE, THE DEFENDANT ATTEMPTED TO MANUFACTURE  
21 AN ASSAULT WEAPON. NUMBER TWO, THE DEFENDANT KNEW THAT  
22 HE WAS ATTEMPTING TO MANUFACTURE IT. NUMBER THREE, THE  
23 DEFENDANT KNEW OR REASONABLY SHOULD HAVE KNOWN THAT IT  
24 HAD CHARACTERISTICS THAT MADE IT AN ASSAULT WEAPON.

25 AN ASSAULT WEAPON IS DEFINED AS A SEMIAUTOMATIC  
26 CENTERFIRE RIFLE THAT HAS THE CAPACITY TO ACCEPT A

1 DETACHABLE MAGAZINE AND ANY ONE OF THE FOLLOWING: A: A  
2 PISTOL GRIP THAT PROTRUDES CONSPICUOUSLY BENEATH THE  
3 ACTION OF THE WEAPON. B: A THUMB HOLD STOCK. C: A  
4 FOLDING OR A TELESCOPING STOCK. D: A GRENADE LAUNCHER  
5 OR PARALAUNCHER. E: A FLASH SUPPRESSOR. F: A FORWARD  
6 PISTOL GRIP.

7 A DETACHABLE MAGAZINE MAY BE ANY MAGAZINE  
8 FEEDING DEVICE THAT CAN BE REMOVED READILY FROM THE  
9 FIREARM WITH NEITHER DISASSEMBLY OF A FIREARM ACTION NOR  
10 USE OF A TOOL BEING REQUIRED. A BULLET OR AMMUNITION  
11 CARTRIDGE IS CONSIDERED TO BE A TOOL. A FORWARD PISTOL  
12 GRIP MEANS A GRIP THAT ALLOWS FOR A PISTOL-STYLE GRASP  
13 FORWARD OF THE TRIGGER.

14 A PISTOL GRIP THAT PROTRUDES CONSPICUOUSLY  
15 ABOUT NECK THE ACTION OF THE WEAPON MEANS A GRIP THAT  
16 ALLOWS FOR A PISTOL-STYLE GRASP IN WHICH THE WEB OF THE  
17 TRIGGER HAND BETWEEN THE THUMB AND INDEX FINGER IS  
18 PLACED BELOW THE TOP OF THE EXPOSED PORTION OF THE  
19 TRIGGER WHILE FIRING.

20 THE DEFENDANT IS CHARGED IN COUNT TWO WITH  
21 ATTEMPTING TO POSSESS AN ASSAULT WEAPON IN VIOLATION OF  
22 PENAL CODE SECTION 12280(B). TO PROVE THE DEFENDANT IS  
23 GUILTY OF THIS CRIME THE PEOPLE MUST PROVE THAT NUMBER  
24 ONE THE DEFENDANT ATTEMPTED TO POSSESS AN ASSAULT  
25 WEAPON, NUMBER TWO THE DEFENDANT KNEW THAT HE WAS  
26 ATTEMPTING TO POSSESS IT NUMBER THREE THE DEFENDANT KNEW

1 OR REASONABLE SHOULD HAVE KNOWN THAT IT HAD  
2 CHARACTERISTICS THAT MADE IT AN ASSAULT WEAPON.

3 A PERSON DOES NOT HAVE TO HOLD OR TOUCH SOMETHING TO POSSESS  
4 IT. IT IS ENOUGH IF THE PERSON HAS CONTROL OVER IT OR THE  
5 RIGHT TO CONTROL IT EITHER PERSONALLY OR THROUGH ANOTHER  
6 PERSON. EACH OF THE COUNTS CHARGED IN THIS CASE IS A

7 SEPARATE CRIME YOU MUST CONSIDER EACH OF COUNT SEPARATELY  
8 AND RETURN A SEPARATE VERDICT FOR EACH ONE OF THE WHEN YOU

9 GO INTO THE JURY ROOM THE FIRST THING YOU SHOULD DO IS TO  
10 CHOOSE A FOREPERSON THE FOR PERSON SHOULD SEE DO IT YOUR

11 DISCUSSIONS READ OFFERING RECOGNIZED WAY THAT EVERY ONE HAS  
12 A FAIR CHANCE TO BE HEARD IT IS YOUR DUTY TO TALK WITH ONE

13 ANOTHER AND TO DELIBERATE IN THE JURY ROOM YOU SHOULD TRY TO  
14 AGREE STOP A VERDICT IF YOU CAN SEE OF YOU MUST DECIDE THE

15 CASE FOR YOURSELF BUT ONLY AFTER YOU HAVE DISCUSSED THE  
16 EVIDENCE WITH THE OTHER JURORS DO NOT HESITATE TO CHANGE

17 YOUR MIND IF YOU BECOME CONVINCED THAT ARE WRONG BUT DO NOT  
18 CHANGE YOUR MIND JUST BECAUSE POTS JURORS DISAGREE WITH YOU.

19 KEEP AN OPEN MIND AND OPENLY EXCEL CLAIM YOUR THOUGHTS  
20 FAMILIAR IDENTIFIED AS ABOUT THIS CASE. STATING YOUR

21 OPINIONS TOO STRONGLY AT THE BEGINNING OR IMMEDIATELY  
22 ANNOUNCING HOW YOU PLAN TO VOTE MAY END FOR WITH AN OPEN

23 DISCUSSION PLEASE TREAT ONE ANOTHER COURTEOUS WE YOUR ROLL  
24 IS TO BE AND IMPARTIAL JUDGE. FACTS NOT TO PACT AS IT AND

25 ADVOCATE FOR ONE SIDE OR THE OTHER. AS I TOLD YOU AT THE  
26 BEGINNING THE TRIAL DO NOT TALK ABOUT THE CASE OR ANY OF THE

1 PEOPLE OR ANY SUBJECT INVOLVED IN IT WITH ANYONE INCLUDING  
2 BUT IT IS LIMITED TO HIS SPOUSE OR OTHER FAMILY OR FRIENDS  
3 SPIRITUAL ADVISER LEAD OR THERAPISTS. YOU MUST DISCUSS THE  
4 CASE ONLY IN THE JURY ROOM AND ONLY WHEN ALL JURORS ARE  
5 PRESENT. DO NOT DISCUSS YOUR DELIBERATIONS WITH ANYONE.

6 DURING THE TRIAL SEVERAL ITEMS WERE RECEIVED  
7 INTO EVIDENCE AS EXHIBITS. YOU MAY EXAMINE WHATEVER  
8 EXHIBITS YOU THINK WILL HELP YOU IN YOUR DELIBERATIONS  
9 OF THEM THESE EXHIBITS WILL BE SENT INTO THE JURY ROOM  
10 WITH YOU WHEN YOU BEGIN TO DELIBERATE. IF YOU NEED  
11 TO COMMUNICATE WITH ME WHILE YOU ARE DELIBERATING SEND A  
12 NOTE THROUGH THE BALLET SIGNED BY THE FOREPERSON OR BY  
13 ONE OR MORE MEMBERS THE JURY TO HAVE A COMPLETE RECORD  
14 OF THIS TRIAL IT IS IMPORTANT THAT YOU NOT COMMUNICATED  
15 WITH ME EXCEPT BY WRITTEN NOTE. IF YOU HAVE QUESTIONS I  
16 WILL TALK WITH THE OTHERS BEFORE I ANSWER IT SO IS IT  
17 MAY TAKE SOMETIME YOU SHOULD CONTINUE YOUR DELIBERATIONS  
18 WHILE YOU WAIT FOR MY ANSWER. I WILL ANSWER ANY  
19 QUESTIONS IN THE WRITING OR ORALLY HERE IN OPEN COURT.  
20 DO NOT REVEAL TO ME OR ANYONE HOW THE VOTE STANCE ON THE  
21 QUESTION OF GUILT OR THE ISSUES IN THIS CASE UNLESS I  
22 ASK YOU TO DO SO. YOUR INDIVIDUAL OR EACH COUNT MUST BE  
23 UNANIMOUS. THIS MEANS THAT TO RETURN A VERDICT YOU ALL  
24 OF YOU MUST AGREE TO IT. DO NOT REACH A DECISION BY THE  
25 NAME I COULD OR BY ANY SIMILAR ACT IT IS NOT MY ROLE TO  
26 TELL YOU WHAT YOUR VERDICT SHOULD BE DO NOT TAKE

1 ANYTHING I SAID SORE DID DURING THE TRIAL, PASS AND  
2 INDICATION OF WHAT I THINK ABOUT THE FACTS THE WITNESSES  
3 OR WHAT YOUR VERDICT SHOULD BE. YOU MUST REACH YOUR  
4 VERDICT WITHOUT ANY CONSIDERATION OF PUNISHMENT. YOU  
5 WILL BE GIVEN VERDICT FORMS AS SOON AS ALL JURORS HAVE  
6 AGREED ON A VERDICT THE FOREPERSON MUST DATE AND SIGN  
7 THE APPROPRIATE VERDICT FORMS AND NOTE "RIGHT BAILIFF" IF  
8 YOU ARE ABLE TO REACH A UNANIMOUS DECISION OR ONLY ONE  
9 OF THE CHARGES FILE IN THAT VERDICT FORM ONLY AND NOTIFY  
10 THE BAILIFF. RETURN ANY UNSIGNED VERDICT FORM. AT THIS  
11 TIME SWEAR THE BAILIFF.

12 (BAILIFF SWORN)

13 THE COURT: ALTERNATE JURORS THEY ARE BOUND BY  
14 MY EARLIER INSTRUCTIONS ABOUT JURY CONDUCT? NO NOT TALK  
15 ABOUT THE CASE OR ABOUT ANY OF THE PENAL OR SUBJECT  
16 INVOLVED IN IT WITH ANYONE NOT EVEN FAMILY OR FRIENDS DO  
17 NOT HAVE FULLY CONTACT WITH DELIBERATING JURORS DO NOT  
18 DECIDE TO HOW YOU WOULD VOTE IF YOU WERE DELIBERATING DO  
19 NOT FORM NEVER EXPRESS AN OPINION ABOUT THE ISSUES IN  
20 THIS CASE UNLESS YOU ARE SUBSTITUTED IN FOR ONE OF THE  
21 DELIBERATING JURORS. AND IF YOU CAN, IF YOU CAN JUST  
22 HOLD ON MOMENT, WAIT. I WILL RETURN AND SHE WILL GET  
23 SOME CONTACT INFORMATION FROM YOU.

24 MS. JONES: MAY WE APPROACH, YOUR HONOR?

25 THE COURT: SURE.

26 (SIDEBAR WITHOUT THE REPORTER.)



1 THE COURT: WE'RE OUTSIDE OF THE PRESENCE OF THE  
2 JURY. DO COUNSEL STIPULATE THAT THE JURY CAN COME AND  
3 GO I GUESS FOR LUNCH AND FOR THE BREAKS WITHOUT COUNSEL  
4 BEING HERE?

5 MR. HENNES: YES.

6 MS. JONES: YES.

7 THE COURT: OKAY. AND NUMBER TWO, WE JUST NEED  
8 SOME AMENDED VERDICT FORMS TO ALLEGE THE PROPER TITLE.  
9 DID YOU SEE THESE?

10 MS. JONES: I REALLY DIDN'T. I PULLED THEM OFF  
11 AS SOON AS I GOT HERE, SO I'LL TAKE CARE OF THAT. OKAY.  
12 GOOD. SO THEY'RE GOING BREAK FOR LUNCH IN A MATTER OF  
13 SECONDS. IF AFTERNOON IF YOU HAVE YOUR CONTACT  
14 INFORMATION.

15 MR. HENNES: REMAIN WITHIN FIVE TO MINUTES OR  
16 SO.

17 THE COURT: SURE.

18 (LUNCH RECESS)

19 (PROCEEDINGS IN THE PRESENCE OF THE JURY:)

20 THE COURT: WHO IS THE FORPERSON.

21 THE WITNESS: I'LL.

22 THE COURT: HAS THE JURY REACHED A VERDICT?

23 THE WITNESS: YES, WE HAVE.

24 THE COURT: PLEASE GIVE THE VERDICT TO THE  
25 BAILIFF.

26 (PAUSE IN THE PROCEEDINGS)

1 (PROCEEDINGS IN THE PRESENCE OF THE JURY)

2 THE COURT: SORRY FOR THAT DELAY, LADIES AND  
3 GENTLEMEN. WHAT I'M GOING TO HAVE YOU BACK INTO THE  
4 JURY ROOM ONE LAST TIME FOR A FEW MINUTES IF YOU COULD  
5 TAKE THEM BACK INTO THE JURY ROOM.

6 (PROCEEDINGS IN THE PRESENCE OF THE JURY)

7 THE COURT: WE'RE OUTSIDE OF THE PRESENCE OF  
8 THE JURY. THE JURY HAS REACHED A VERDICT HOWEVER, THEY  
9 FILLED OUT THE JURY FORMS CORRECTLY AS TO THE VERDICT  
10 THEY WANTED. AS TO THE VERDICT THEY DIDN'T WANT THEY  
11 DID LEAVE THE FORMS BLANK AND THEY WERE SUPPOSED TO BUT  
12 THEY RIPPED EACH ONE IN HALF.

13 SO WHAT I WOULD LIKE WHOLE NEW SET OF VERDICT  
14 FORMS, WOULD YOU AND THEN I'M GOING TO SENDS A PROBABLY A  
15 WHAT I WILL DO IS I POLITE. I'M GOING TO INSTRUCT THEM  
16 AGAIN TO JUST -- YOU KNOW, WE NEED YOU NOT TO RIP THE  
17 ONES IN HALF. SO IF YOU COULD JUST DO THAT, MADAM  
18 PROSECUTOR.

19 MS. JONES: IF I COULD FROM MY SECRETARY E-MATT.  
20 THEM.

21 THE COURT: SURE THAT WOULD BE GREAT.

22 (RECESS).

23 THE COURT: WHO WAS THE FOR PEN.

24 MR. HENNES: RAISED HANDS.

25 THE COURT: YOU MAY HAND THE VERDICT TO THE  
26 CLERK EXCUSE ME THE BALLIFF.

1 THE CLERK: WE THE JURY IN THE ABOVE ENTITLED  
2 SAX FINDS THE DEFENDANT TEEN DUKE NGUYEN GUILTY OF THE  
3 CRIME OF ATTEMPTED MANUFACTURE OF AN ASSAULT WEAPON A  
4 FELONY IN VIOLATION OF SECTION 664(A) - 12280(A)(1) OF  
5 THE PENAL CODE OF THE STATE OF CALIFORNIA AS CHARGED IN  
6 COUNT ONE OF THE INFORMATION.

7 WE THE JURY IN THE ABOVE-ENTITLED ACTION FIND  
8 THE DEFENDANT TIEN DUC NGUYEN GUILTY OF THE CRIME OF  
9 ATTEMPTED POSSESSION OF ASSAULT WEAPON, A FELONY IN  
10 VIOLATION OF SECTION 664(A) -- 12280(B) OF THE PENAL  
11 CODE OF THE STATE OF CALIFORNIA AS CHARGED IN COUNT TWO.  
12 INFORMATION.

13 THE COURT: LADIES AND GENTLEMEN, IS THIS THE  
14 JURORS VERDICT, SO SAY YOU ONE SO SAY YOU ALL?

15 (JURY RESPONDS IN THE AFFIRMATIVE)

16 THE COURT: DOES EITHER SIDE WISH TO POLL THE  
17 JURY?

18 MR. HENNES: YES, YOUR HONOR.

19 THE COURT: OKAY.

20 THE CLERK: LADIES AND GENTLEMEN, AS I CALL,  
21 YOUR NAME, PLEASE ANSWER "YES" OR "NO" IF THE VERDICT AS  
22 READ IS YOUR TRUE AND INDIVIDUAL VERDICT.

23 JUROR NO. 1?

24 JUROR NO. 1: YES.

25 THE CLERK: NO. 2?

26 JUROR NO. 2: YES.

1 THE CLERK: NO. 3?

2 JUROR NO. 3: YES.

3 THE CLERK: NO. 4?

4 JUROR NO. 4: YES.

5 THE CLERK: NUMBER FIVE?

6 JUROR NO. 5: YES.

7 THE CLERK: NUMBER SIX?

8 JUROR NO. 6: YES.

9 THE CLERK: NUMBER SEVEN?

10 THE WITNESS: YES.

11 THE CLERK: NUMBER EIGHT?

12 THE WITNESS: YES.

13 THE CLERK: NUMBER NINE?

14 THE WITNESS: YES.

15 THE CLERK: NUMBER 10?

16 THE WITNESS: YES.

17 THE CLERK: NUMBER 11?

18 THE WITNESS: YES.

19 THE CLERK: NUMBER ONE?

20 THE WITNESS: YES.

21 THE COURT: OKAY. THE CLERK WILL RECORD THE  
22 VERDICT.

23 LADIES AND GENTLEMEN, YOU HAVE NOW COMPLETED  
24 YOUR JURY SERVICE IN THIS CASE. ON BEHALF OF ALL THE  
25 JUDGES OF THIS COURT, PLEASE ACCEPT OUR THANKS FOR YOUR  
26 TIME AND EFFORT.

1           NOW THAT THE CASE IS OVER YOU MAY, IF YOU  
2 CHOOSE, DISCUSS THE CASE AND YOUR DELIBERATION WITH  
3 OTHERS. IF YOU HAVE SOMETHING YOU WOULD LIKE TO SAY TO  
4 THE LAWYERS, THEY WILL BE OUTSIDE TO ANSWER YOUR  
5 QUESTIONS.

6           THERE WAS SOME LEGAL RULES PUT IN PLACE FOR  
7 YOUR CONVENIENCE AND PROTECTION. THE LAWYERS AND THE  
8 PARTIES IN THIS CASE MAY TALK TO YOU ABOUT THE CASE,  
9 INCLUDING YOUR DELIBERATIONS OR VERDICT, BUT MAY DO SO  
10 ONLY WITH YOUR PERMISSION AND AT YOUR CONVENIENCE.

11           PLEASE REPORT IMMEDIATELY TO THE COURT ANY  
12 CONTACT MADE WITHOUT JUROR CONSENT. A LAWYER,  
13 REPRESENTATIVE OR A DEFENDANT WHO VIOLATE THESE RULES  
14 VIOLATES A COURT ORDER AND IS SUBJECT TO SEVERE  
15 SANCTIONS.

16           THE COURT NOW ORDERS THAT THE COURT'S RECORD OF PERSONAL  
17 JURY IDENTIFYING INFORMATION, INCLUDING NAMES, ADDRESSES AND  
18 TELEPHONE NUMBERS, BE SEALED UNTIL FURTHER ORDER OF THIS  
19 COURT.

20           IF IN THE FUTURE THE COURT IS ASKED TO DECIDE WHETHER THIS  
21 INFORMATION WILL BE RELEASED, NOTICE WILL BE SENT TO ANY  
22 JURY WHOSE INFORMATION IS INVOLVED. YOU MAY OPPOSE THE  
23 RELEASE OF THIS INFORMATION AND ASK THAT ANY HEARING ON THE  
24 RELEASE BE CLOSED TO THE PUBLIC. THE COURT WOULD THEN  
25 DECIDE WHETHER AND UNDER WHAT CONDITIONS ANY INFORMATION MAY  
26 BE DISCLOSED.

1 ONCE AGATN, THANK YOU FOR YOUR SERVICE. YOU ARE NOW  
2 DISCHARGED.

3 (JURORS EXCUSED)

4 THE COURT: DID YOU WANT TO JUST TALK TO THE  
5 JURY?

6 MS. JONES: I DO.

7 (PAUSE IN THE PROCEEDINGS)

8 THE COURT: OKAY. WE HAVE A SENTENCING DATE ON  
9 MAY 31ST, 2011.

10 DO YOU WANT TO KEEP THAT DATE?

11 MR. HENNES: YES. FINE WITH ME.

12 MS. JONES: THAT'S FINE.

13 MR. HENNES: IF THERE'S TIME.

14 THE COURT: MR. NGUYEN, YOU ARE ORDERED TO  
15 RETURN ON MAY 31ST, 2011.

16 THE COURT: MR. NGUYEN, YOU HAVE A RIGHT TO BE  
17 SENTENCED NO EARLIER THAN SIX HOURS AND NO MORE THAN  
18 FIVE DAYS FROM TODAY'S DATE. IF WE SET YOUR SENTENCING  
19 OUT FOR MAY THE 31ST, THAT'S BEYOND FIVE DAYS.

20 SO DO YOU WAIVE YOUR RIGHT TO BE SENTENCED  
21 WITHIN SIX HOURS UP TO FIVE DAYS SO THAT WE CAN PUT IT  
22 OUT FOR MAY 31?

23 THE DEFENDANT: YES, MA'AM.

24 MR. HENNES: COUNSEL JOINS.

25 THE COURT: COUNSEL JOINS?

26 MS. JONES: YES.

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THE COURT: PROBATION REPORT IS ORDERED. WE'LL  
ORDER ONE. APPARENTLY, YOU NEED TO WAIT FOR PAPERWORK.

MR. HENNES: IS THAT GOING TO BE ENOUGH TIME  
FOR THE REPORT? VERY WELL. SEE YOU, TERN, 8:30 ON  
MAY 31ST.

(END OF PROCEEDINGS)

\* \* \* \* \*  
\* \* \* \* \*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER  
DEPARTMENT 52

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

PLAINTIFF,

VS.

TIEN DUC NGUYEN,

DEFENDANT.

CASE NO. 10R19918

HONORABLE RAPHELE SYKES SCOTT, JUDGE PRESIDING  
REPORTER'S TRANSCRIPT OF MOTION FOR NEW TRIAL

OCTOBER 14, 2011

APPEARANCES OF COUNSEL:

FOR THE PEOPLE:

TONY RACKABUCKAS, DISTRICT ATTORNEY

BY: RENE JONES, DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT:

CHRISTOPHER C. BENNES, ATTORNEY AT LAW

JANICE ARNOLD, RFR, CLR, CSR 3307  
REPORTER PRO TEMPORE



1 WESTMINSTER, CALIFORNIA, FRIDAY, OCTOBER 14, 2011  
2 DEPARTMENT W2 HONORABLE DARRIN SYKES SCOTT, JUDGE  
3 3:48 P.M.

4 \*\*\*\*\*

5  
6 THE COURT: CALLING THE MATTER OF PEOPLE VS.  
7 TIEN DUC NGUYEN, CASE 10WFC918. APPEARANCES, PLEASE.

8 MS. JONES: KENE JONES FOR THE PEOPLE.

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

11 THE COURT: THIS IS THE TIME AND PLACE FOR THE  
12 HEARING ON THE DEFENSE'S MOT ON FOR A NEW TRIAL, AND THE  
13 COURT HAS RECEIVED THAT MOTION - FILED AUGUST 12, 2011.  
14 THE COURT HAS ALSO RECEIVED THE PEOPLE'S RESPONSE AND  
15 OPPOSITION TO THE MOTION, FILED SEPTEMBER 2ND, 2011.

16 AND PEOPLE HAVE RECEIVED THE DEFENDANT'S REPLY  
17 TO THE PEOPLE'S OPPOSITION TO THE MOTION FOR NEW TRIAL  
18 THAT WAS FILED TODAY AND, ALSO, THE DEFENDANT'S  
19 SENTENCING BRIEF.

20 MR. HENNES: CORRECT.

21 THE COURT: ALSO NOTED TODAY. WITH RESPECT TO THE  
22 MOTION FOR A NEW TRIAL, IS THERE ANY ARGUMENT,  
23 MR. HENNES, AT THIS TIME?

24 MR. HENNES: YOUR HONOR, I WOULD LIKE TO JUST, YOU  
25 KNOW, EMPHASIZE THE MATTER THAT I DID BRIEFLY TOUCH ON IN  
26 MY POINTS AND AUTHORITIES AND MY REPLY BRIEF; AND THAT'S

1 THE MATTER OF LENITY, WHERE A DEFENDANT IS ENTITLED TO  
2 DUE NOTICE OF WHAT ACTS ARE CONSIDERED TO BE ILLEGAL AND  
3 WHAT ACTS ARE NOT, PARTICULARLY WITH RESPECT TO THE  
4 HARROTT CASE; AND IT'S CITED -- IN WHICH IT WAS A  
5 SLIGHTLY DIFFERENT ISSUE.

6 IN THAT CASE, IT INVOLVED A CASE WHERE THE  
7 TRIAL JUDGE ADDED A PARTICULAR WEAPON TO THE ASSAULT  
8 WEAPON BAN LIST THAT WASN'T IN THE STATUTORY LIST, BASED  
9 UPON GENERAL CHARACTERISTICS.

10 AS AN ASIDE, SUBSEQUENTLY, THE LEGISLATURE  
11 ADDED THE 22276.1, WHICH WAS THE BASIS FOR THE  
12 PROSECUTION, HERE; BUT AT THE TIME THE HARROTT CASE CAME  
13 OUT, THERE WASN'T SUCH A SECTION.

14 AND THE REASON I CITED IT IS BECAUSE THE  
15 SUPREME COURT WENT TO GREAT LENGTHS TO DISCUSS THE ISSUE  
16 OF LENITY, IN THE SENSE THAT IT DID NOT WANT THE  
17 SITUATION IN CALIFORNIA, WHERE A PERSON COULD LEGALLY  
18 POSSESS A PARTICULAR WEAPON IN ONE COUNTY, CROSS THE  
19 COUNTY LINE, AND, ALL OF A SUDDEN, IN THAT COUNTY, IT'S  
20 BEEN DETERMINED TO BE UNLAWFUL BY A COURT RULING.

21 AND I THINK THAT HAS PARTICULAR APPLICABILITY  
22 TO OUR CASE, WHICH IS WHY THE DEPARTMENT OF JUSTICE  
23 LETTER THAT I REFERRED TO, IN MY BRIEF -- AND I KNOW  
24 THERE IS A COPY OF THAT LETTER IN THE COURT FILE -- WHICH  
25 I REQUESTED TO BE ENTERED INTO EVIDENCE; THE COURT DENIED  
26 IT.

1           HOWEVER, FOR PURPOSES OF THIS HEARING, I THINK  
2 THAT THAT LETTER IS INDICATIVE OF THE PROBLEM THAT IS  
3 FACED WITH THESE PROSECUTIONS FOR ATTEMPTED MANUFACTURE  
4 OF A GENERIC ASSAULT RIFLE BECAUSE, AS YOU KNOW, IN THE  
5 LETTER, THE DEPARTMENT OF JUSTICE IS OF THE OPINION THAT  
6 A -- THAT A PERSON CAN POSSESS ALL OF THE PARTS NECESSARY  
7 TO THE ASSEMBLY OF A BANNED ASSAULT WEAPON, AS LONG AS  
8 IT'S NOT PUT TOGETHER.

9           AND I'M TALKING ABOUT NOT THE ONES THAT ARE ON  
10 THE PARTICULAR LIST, THE BANNED LIST, THAT ARE NAMED.  
11 ONLY THE RECEIVER IS REQUIRED, IN ORDER FOR THERE TO BE  
12 UNLAWFUL POSSESSION.

13           BUT IN A SO-CALLED CATEGORY 3, THE GENERIC  
14 ASSAULT WEAPON BAN, WHICH IS WHAT THIS PROSECUTION WAS,  
15 IT IS THE OPINION, WHEN THAT LETTER WAS WRITTEN TO THE  
16 DEPARTMENT OF JUSTICE, IT -- A PERSON CAN HAVE ALL THE  
17 COMPONENT PARTS, AS LONG AS IT IS NOT ASSEMBLED INTO A  
18 WEAPON, A FUNCTIONING WEAPON; AND THAT WOULD NOT BE A  
19 VIOLATION OF THE LAW.

20           ERGO, IT IS IMPOSSIBLE TO DETERMINE WHETHER A  
21 PERSON IS GOING TO INTEND TO ASSEMBLE A WEAPON, IN  
22 VIOLATION OF 12276.1, UNLESS IT'S ACTUALLY ASSEMBLED.  
23 AND, AS I INDICATE IN MY REPLY BRIEF, THE POINT WHERE ONE  
24 WOULD HAVE TO MAKE THAT DETERMINATION WHETHER YOU'RE  
25 GOING TO, YOU KNOW, CROSS THE RUBICON INTO UNLAWFULNESS,  
26 OR NOT, IS AT THE VERY END OF THE ASSEMBLY, WHICH IS WHEN

1 YOU INSTALL THE MAGAZINE LOCK OR NOT.

2 THE ONLY EVIDENCE THAT WOULD REMOTELY BE  
3 RELEVANT TO MR. NGUYEN'S INTENT WAS WHAT -- HE DIDN'T  
4 HAVE THAT PARTICULAR DEVICE IN HIS POSSESSION, WHEN HE  
5 WAS ARRESTED.

6 AND, I THINK, IN LIGHT OF THE -- THE PRINCIPLE  
7 OF LENITY, AS DISCUSSED IN HARROTT, AND IN LIGHT OF THE  
8 CLEAR POSITION OF THE DEPARTMENT OF JUSTICE, WHO IS  
9 CHARGED WITH THE DUTY TO EDUCATE THE PUBLIC AND COUNTY  
10 PROSECUTORS IN THE AREA OF ASSAULT WEAPONS -- IN LIGHT OF  
11 THOSE TWO ITEMS, I BELIEVE THAT IT IS IMPOSSIBLE FOR  
12 THIS -- FOR A CONVICTION ON THE EVIDENCE THAT WAS  
13 PRESENTED AT TRIAL -- TO SUSTAIN HIS CONVICTIONS FOR  
14 EITHER POSSESSION OR FOR MANUFACTURE.

15 SUBMITTED.

16 THE COURT: ANY RESPONSE?

17 MS. JONES: I WAS PREPARED TO SUBMIT ON THE --  
18 PEOPLE'S BRIEF TEAM -- I RECEIVED DEFENDANT'S REPLY THIS  
19 MORNING, AND I JUST WANT TO COMMENT BRIEFLY ON SOME NEW  
20 ISSUES THAT HE BROUGHT UP BECAUSE I THINK TERRY IS SOME  
21 MISSTATEMENTS IN HERE THAT I WANTED TO DRAW THE COURT'S  
22 ATTENTION TO.

23 HE ASSERTS, FIRST, THAT HIS EXPERT WAS THE  
24 ONLY WITNESS WITH EXPERTISE IN FIREARMS' MANUFACTURING  
25 WHO WAS PRESENT DURING THE TRIAL.

26 THE COURT: I'M SORRY, COUNSEL, WHAT DOCUMENT ARE

1 YOU LOOKING AT?

2 MS. JONES: I'M REFERRING TO THE DEFENDANT'S REPLY  
3 TO THE PEOPLE'S MOTION FOR NEW TRIAL.

4 THE COURT: ONE MOMENT. ALL RIGHT, GO AHEAD.

5 MS. JONES: ALL RIGHT. AND, IN HIS FIRST PARAGRAPH,  
6 LINE THREE, HE REFERS TO ONLY ONE EXPERT TESTIFYING.  
7 AND, OF COURSE, WE KNOW THAT THE PEOPLE'S EXPERT  
8 TESTIFIED AT LENGTH REGARDING FIREARMS' MANUFACTURING AND  
9 WAS CERTAINLY QUALIFIED TO DO SO. HE ALSO INDICATED THAT  
10 THE DEFENDANT HAD BEGUN AND, QUOTE, "ESSENTIALLY  
11 ABANDONED HIS EFFORT TO CREATE THE FIREARM."

12 AND, I WOULD POINT OUT, THERE WAS NO EVIDENCE,  
13 WHATSOEVER, PRESENTED AT TRIAL OF ANY ABANDONMENT OF HIS  
14 EFFORTS. HE JUST HADN'T COMPLETED THE TASK.

15 WE ARGUED AT LENGTH ABOUT WHAT CONSTITUTED A  
16 LEGAL FIREARM AND WHAT CONSTITUTED AN ILLEGAL FIREARM.  
17 AND IT WAS THE JURY'S PROVINCE -- AND THE JURY DID THEIR  
18 JOB -- IN DETERMINING THAT THEY BELIEVED, BASED ON WHAT  
19 HE HAD, THAT THE ONLY REASONABLE INFERENCE WAS THAT HE  
20 WAS ATTEMPTING TO CREATE A FIREARM THAT WAS INCAPABLE OF  
21 ACCEPTING A FIXED MAGAZINE. IN OTHER WORDS, TO FIT THE  
22 DESCRIPTION UNDER THE STATUTE -- WHICH MADE IT ILLEGAL --  
23 WHAT HE WAS ATTEMPTING TO MAKE.

24 VALIDITY ARGUMENT DOESN'T APPLY, HERE, BECAUSE  
25 THIS IS A STATEWIDE STATUTE. THERE IS NO VARIANCE FROM  
26 COUNTY TO COUNTY. THERE IS NO MORE STRENUOUS EXPOSITION

1 OF THE STATUTE IN THIS COUNTY AS TO ANOTHER.

2 AND, CLEARLY, THE LAW REQUIRES THAT YOU SHOULD  
3 BE -- YOU SHOULD KNOW WHAT IS ILLEGAL UNDER THE STATUTE.  
4 IF THAT WASN'T THE CASE, THEN WE COULD NEVER CONVICT  
5 ANYBODY FOR ANYTHING BECAUSE THEY WOULD CLAIM IGNORANCE  
6 OF THE STATUTE.

7 THE LETTER FROM THE -- THAT DEFENSE HAS  
8 REFERRED TO IS IRRELEVANT TO THESE PROCEEDINGS. THE  
9 COURT IS COMPELLED TO FOLLOW THE LAW, NOT ADVISORY  
10 OPINIONS.

11 AND I'M NOT GOING TO ARGUE DEFENDANT'S  
12 INTERPRETATION OF THE LETTER BECAUSE I DON'T THINK IT HAS  
13 ANY PLACE IN THESE PROCEEDINGS. BUT I THINK HE'S  
14 INCORRECT IN HIS ASSERTIONS AS TO WHAT THAT LETTER SAYS  
15 WITH RESPECT TO THE ADVISORY OPINION OF WHAT THE LAW IS.

16 WE ARGUED AT LENGTH ABOUT THE RELEVANCE OF THE  
17 OTHER COMPLETED FIREARM. THE COURT PROPERLY RULED THAT  
18 IT WAS ADMISSIBLE BECAUSE IT WENT TO HIS EXTENSIVE  
19 KNOWLEDGE AND INTENT TO, IN FACT, CREATE AND MANUFACTURE  
20 A FIREARM. WE KNOW HE COULD DO IT BECAUSE HE'S DONE IT  
21 BEFORE.

22 HE HAS THE REQUISITE KNOWLEDGE TO DO IT. HE  
23 HAS THE CAPABILITY TO DO IT. HE HAS THE INTENT TO DO IT.

24 THE DEFENSE WENT ON TO ASSERT THAT THE  
25 PROSECUTION HAD SOME SINISTER MOTIVE OR WAS IMPLYING A  
26 SINISTER MOTIVE WHEN, IN FACT, WE WERE BRINGING OUT THE

1 CIRCUMSTANTIAL EVIDENCE THAT THE DEFENDANT DID HAVE A BAD  
2 INTENT; AND, THAT WAS TO MANUFACTURE A WEAPON THAT IS  
3 ILLEGAL IN THE STATE OF CALIFORNIA.

4 THE ABSENCE OF THE SERIAL NUMBER WENT TO THAT.  
5 THE EXISTENCE OF THE OTHER RIFLES WENT TO THAT; AND THE  
6 EXISTENCE OF THE AMMUNITION AND VARIOUS TYPES OF  
7 AMMUNITION ALSO WENT TO THAT.

8 AND I'LL GET MORE INTO THE RELEVANCE OF THE  
9 AMMUNITION, IF THE COURT WOULD LIKE. BUT I THINK WE  
10 ARGUED THIS AT LENGTH, AND I THINK THAT THE COURT MADE  
11 PROPER FINDINGS AS TO THE EVIDENCE AND THAT THE JURY DID  
12 ITS JOB AND PROPERLY CONVICTED THE DEFENDANT.

13 THERE IS NO BASIS FOR A NEW TRIAL, IN THIS  
14 CASE, AND I SERMIT.

15 MR. HENNES: JUST BRIEFLY, YOUR HONOR.

16 ACTUALLY, THERE WAS EVIDENCE, I BELIEVE, THAT  
17 MR. NGUYEN HAD ABANDONED THE PROJECT WHEN DURING THE  
18 INTERVIEW WITH THE POLICE OFFICER AND WHEN HE WAS ASKED  
19 ABOUT WHETHER HE HAD ALL THE NECESSARY PARTS. AND  
20 MR. NGUYEN SAID HE NEEDED TO GET SOME OTHER PARTS, AND,  
21 OBVIOUSLY, HE DIDN'T HAVE THEM. AND --

22 THE COURT: DID THE FACT HE NEEDED TO GET SOME OTHER  
23 PARTS, KIND OF, SUGGEST THAT HE WAS GOING TO CONTINUE?

24 MR. HENNES: WELL, I DON'T KNOW THAT THERE WAS A --  
25 YOU KNOW, IF THAT'S AN EXACT QUOTE. I THINK THE INTENT  
26 WAS THAT ALL THE PARTS WEREN'T THERE.

1 AND THE FACT THAT THE -- THE IMPERFECTLY  
2 AMATEURISHLY DRILLED HOLES, REGARDING -- YOU KNOW, THAT  
3 WERE IN THE RECEIVER, AND NO FURTHER WORK WAS EVEN DONE  
4 ON IT IS ALSO INDICATIVE OF AN ABANDONMENT -- CERTAINLY  
5 CAPABLE OF DRAWING INFERENCE THAT THERE WAS AN ABANDONMENT  
6 OF THE PROJECT.

7 I DON'T THINK THAT THE TIMEFRAME IN WHICH HE  
8 POSSESSED THOSE PARTS WAS -- WAS SO SHORT THAT IT  
9 INDICATED THAT IT WAS AN ONGOING PROJECT. IN FACT, THE  
10 PARTS WERE STORED IN THE BOXES, AS I RECALL -- AND IN  
11 PACKAGING. SO --

12 THE COURT: WAS THERE TESTIMONY THAT THE HOLES WERE  
13 AMATEURISH?

14 MR. JENNES: I THINK THAT THEY WERE NOT -- I BELIEVE  
15 MR. PENHALL TESTIFIED THAT -- HE DIDN'T SAY "AMATEURISH,"  
16 BUT THEY WERE NOT DRILLED IN THE CORRECT SPOTS, I  
17 BELIEVE, IS WHAT THE TESTIMONY WAS.

18 AND, ALSO, THAT, YOU KNOW -- THAT THERE WOULD  
19 HAVE TO BE SOME MACHINE WORK DONE ON IT, IN ORDER TO FIT  
20 THAT BARREL IN PROPERLY. I MEAN, I KNOW THE OFFICER SAID  
21 HE COULD JUST SCREW IT IN.

22 BUT MR. PENHALL IS PRETTY -- WHO IS A  
23 GUNSMITH, YOU KNOW, REFERRED -- TO BE ACCURATE OR  
24 FUNCTIONING REALLY IT'S GOING TO HAVE TO BE MACHINED.  
25 BUT, I MEAN, THAT'S, TO ME, NOT AS IMPORTANT AS THE FACT  
26 THAT IT WAS SO EARLY IN THE ASSEMBLY PROCESS THAT IT'S



1 IMPOSSIBLE TO DISCERN SOMEONE'S INTENT TO MAKE AN ILLEGAL  
2 WEAPON, AT THAT STAGE. YOU KNOW, THE KIT DOES NOT COME  
3 WITH A MAGAZINE LOCK, A BULLET BUTTON.

4 SO, I MEAN, REALLY, THE COURT WOULD BE RULING  
5 THAT -- WHO KNOWS HOW MANY HUNDREDS OR THOUSANDS OF  
6 CALIFORNIANS ARE GOING TO BE GUILTY OF ATTEMPTED  
7 POSSESSION, OR NOT ATTEMPTED MANUFACTURE, SIMPLY BY  
8 ORDERING A GUN KIT OVER THE INTERNET, THAT VERY SAME GUN  
9 KIT, AND OPENING UP THE CELLOPHANE OR PLASTIC ENVELOPE  
10 AND PULLING OUT THE PARTS.

11 I MEAN, WE CAN'T -- I MEAN, COUNSEL CAN DECRY  
12 ALL SHE WANTS AS TO HOW THIS ATTORNEY GENERAL LETTER IS  
13 NOT EVIDENCE. AND IT'S NOT, IN THE STRICT SENSE OF  
14 ADMITTED EVIDENCE AT TRIAL.

15 BUT THAT WAS ANOTHER REASON WHY I THINK THE  
16 COURT'S RESTRICTION OF THE EXPERT'S TESTIMONY WAS -- IS A  
17 BASIS FOR ORDERING A NEW TRIAL BECAUSE I BELIEVE THAT  
18 THAT LETTER FROM THE ATTORNEY GENERAL, FROM THE  
19 DEPARTMENT OF JUSTICE, WOULD BE A PROPER AUTHORITY FOR A  
20 FIREARMS' EXPERT TO RELY UPON IN DETERMINING WHETHER  
21 POSSESSION OF GUN PARTS, IN A KIT SUCH AS MR. NGUYEN'S,  
22 IS PERMITTED IN CALIFORNIA.

23 I KNOW THE COURT REPEATEDLY SAID, "NO ONE IS  
24 GOING TO TESTIFY TO WHAT IS LEGAL AND WHAT ISN'T." BUT I  
25 THINK THE COURT WAS IN ERROR, WITH ALL DUE RESPECT,  
26 BECAUSE I CAN UNDERSTAND THE RESTRICTION ON AN EXPERT

1 EXPRESSING AN OPINION AS TO SOMEBODY'S GUILT OR  
2 INNOCENCE, BUT THAT'S NOT WHAT WE WERE TRYING TO ELICIT.  
3 WE WERE TRYING TO ELICIT WHAT IS PERMITTED IN CALIFORNIA.

4 AND A LICENSED GUNSMITH, GUN DEALER, WHO IS IN  
5 A BETTER POSITION TO KNOW WHAT CAN BE SOLD LEGALLY IN  
6 CALIFORNIA AND WHAT CAN'T?

7 I THINK THAT, IF THE COURT HAD PERMITTED THAT  
8 EXPERT TO TESTIFY THAT IS, YOU KNOW, COMMONPLACE AND  
9 NOT, IN HIS EXPERIENCE, A VIOLATION OF ANY CALIFORNIA LAW  
10 TO RECEIVE SUCH A GUN KIT, THAT IT MAY WELL HAVE CHANGED  
11 THE OUTCOME.

12 THE COURT: SOUNDS LIKE, IF THE COURT WERE TO HAVE  
13 PERMITTED THAT, IT WOULD HAVE BEEN, SORT OF, HIS  
14 INTERPRETATION OF WHAT THE LAW IS. AND IT SOUNDS LIKE  
15 THAT WOULD BE SOMETHING THAT WOULD BE SQUARELY WITHIN THE  
16 PROVINCE OF THE COURT'S INSTRUCTION AS OPPOSED TO A  
17 WITNESS' INSTRUCTION --

18 MR. HENNES: NOT NECESSARILY.

19 THE COURT: I'M SORRY, COUNSEL --

20 MR. HENNES: OH, I'M SORRY. I DIDN'T MEAN TO  
21 INTERRUPT YOU.

22 THE COURT: NO -- I, KIND OF, STOPPED.

23 AND IT'S AKIN, KIND OF, TO AN OFFICER,  
24 PERHAPS, TESTIFYING ABOUT THE LAW OF ROBBERY. I MEAN,  
25 ROBBERY, OR SOMETHING LIKE THAT, WOULDN'T IT BE AKIN TO  
26 THAT?

1 MR. HENNES: WELL, AS THE COURT, ALSO, WHAT RECALL,  
2 THE COURT WOULD NOT PERMIT THE EXPERT TO TESTIFY WHETHER  
3 HE, HIMSELF, SOLD SIMILAR KITS IN CALIFORNIA.

4 THE COURT: WHAT WOULD BE THE RELEVANCE OF WHETHER  
5 HE SOLD A KIT OR NOT?

6 MR. HENNES: WELL, THAT, PRESUMABLY, THE INFERENCE  
7 WOULD BE THAT HE'S NOT GOING TO MAKE AN ILLEGAL SALE.  
8 HE'S NOT GOING TO POSSESS THOSE KITS ILLEGALLY. HE'S NOT  
9 GOING TO SELL SUCH A KIT TO A CUSTOMER AND, THEREBY, MAKE  
10 THAT CUSTOMER CRIMINALLY RESPONSIBLE FOR POSSESSION OF AN  
11 ASSAULT WEAPON OR ATTEMPTED POSSESSION OR ATTEMPTED  
12 MANUFACTURE OF AN ASSAULT WEAPON.

13 YOU KNOW, I THINK THE EVIDENCE THAT THESE ARE  
14 COMMON COMMERCIAL TRANSACTIONS IS VERY PROBATIVE.  
15 CERTAINLY, IF JUST THE MERE POSSESSION -- BECAUSE I THINK  
16 THE JURY WAS -- CAME TO THE CONCLUSION THAT, JUST BY  
17 HAVING THESE PARTS, THAT MR. NGUYEN WAS GUILTY OF  
18 VIOLATING THE ASSAULT WEAPONS LAW.

19 AND THE FACT THAT, YOU KNOW, HE DIDN'T HAVE  
20 THE PARTICULAR MAGAZINE LOCK -- WHICH, AGAIN, AS THE  
21 EXPERT TESTIFIED, WAS READILY AVAILABLE ANYWHERE, GUN  
22 SHOWS OR GUN DEALERS -- THAT, TO ME, INDICATED CONFUSION  
23 ON THE PART OF THE JURY AS TO WHAT EXACTLY IS ILLEGAL. I  
24 THINK THEY THOUGHT JUST HAVING THOSE PARTS WAS AN ILLEGAL  
25 ACT JUST BY HAVING THEM.

26 HE WAS CONVICTED OF ATTEMPTED POSSESSION OF AN

1 ASSAULT WEAPON, AS WELL AS ATTEMPTED MANUFACTURE. SO,  
2 PRESUMABLY, EVEN IF HE HADN'T DRILLED THE HOLE OR TWO IN  
3 THAT FLAT RECEIVER PART, HE WAS GOING TO BE GUILTY OF  
4 ATTEMPTED POSSESSION JUST BY SIMPLY HAVING THE COMPONENT  
5 PARTS.

6 I MEAN, THERE'S NO OTHER WAY TO INTERPRET THAT  
7 FINDING BY THE JURY BECAUSE DRILLING A COUPLE OF HOLES  
8 DIDN'T MEAN THAT YOU'RE ANY FURTHER ALONG IN POSSESSING  
9 AN ASSAULT WEAPON THAN IF YOU HADN'T DRILLED A HOLE BUT  
10 STILL HAD THE PARTS.

11 SO, AGAIN, THAT'S WHY I THINK THE -- YOU KNOW,  
12 THAT KIND OF A -- THE EVIDENCE -- WELL, IT'S JUST SUCH A  
13 VAGUE AREA. AND THAT'S WHY -- AGAIN, I LOOKED AT THE  
14 LENTHY ISSUE. I MEAN, I DON'T THINK THAT ANY EVIDENCE  
15 THEY PUT ON WOULD BE SUFFICIENT, YOU KNOW -- AT LEAST,  
16 LET'S JUST KEEP IT TO THE EVIDENCE THAT WAS PRESENTED.

17 THE COURT: UH-HUH.

18 MR. HENNES: THERE WAS NO STATEMENTS BY MR. NGUYEN  
19 SAYING, "OH, YEAH, I WAS GOING TO MAKE AN AK, YOU KNOW,  
20 47, WITH -- YOU KNOW, WITHOUT A MAGAZINE LOCK. HE MADE  
21 NO -- MADE NO SUCH STATEMENTS TO INDICATE THAT.

22 THE COURT: TRUE. BUT, CERTAINLY, WITH THE  
23 CIRCUMSTANCES AND YOU CAN'T GET INTO ANYONE'S STATE OF  
24 MIND, OTHER THAN CIRCUMSTANTIALLY. SO I WOULDN'T  
25 NECESSARILY REQUIRE THAT KIND OF STATEMENT FROM THE  
26 DEFENDANT.

1 MR. HENNES: IT WOULD SEEM TO ME THAT, UNDER THE  
2 STATE OF THE LAW, THAT THERE SHOULD BE SOME KIND OF  
3 EVIDENCE, YOU KNOW, THAT IS RELIABLE, THAT WOULD SHOW AN  
4 INTENT TO MANUFACTURE OR PUT TOGETHER THAT GUN KIT  
5 WITHOUT A MAGAZINE LOCK; AND MERELY BECAUSE HE DIDN'T  
6 HAVE A PART, AT AN EARLY STAGE IN THE PROCESS, IS WEAK TO  
7 SHOW INTENT.

8 AS I SAID, I THINK WE CAN -- WELL, I'M NOT  
9 ASKING THE COURT TO ASSUME EVIDENCE THAT WASN'T  
10 PRESENTED. BUT WE COULD HAVE PRESENTED EVIDENCE, I  
11 BELIEVE, THAT THOSE KITS ARE COMMONLY SOLD OVER THE  
12 INTERNET AND SHIPPED INTO CALIFORNIA, AND THERE IS NO  
13 PROSECUTION FOR THEM BECAUSE -- OR, AT LEAST, EVIDENCE  
14 THAT THEY ARE COMMONLY RETAILED OR THAT THEY HAVE BEEN  
15 RETAILED BY A GUN EXPERT WHO IS LICENSED TO SELL  
16 FIREARMS.

17 THE COURT: SO YOUR POINT WOULD BE, THEN, THAT,  
18 GENERALLY, PEOPLE DON'T KNOW THAT IT'S ILLEGAL TO POSSESS  
19 IT; ERGO, IT SHOULDN'T BE -- "I CAN'T BE FOUND GUILTY OF  
20 IT BECAUSE OF IGNORANCE"?

21 MR. HENNES: RIGHT -- WELL, BECAUSE NO NOTICE,  
22 BECAUSE THEY ARE NOT PUT ON NOTICE BY ANY -- THIS IS AN  
23 ATTEMPT TO POSSESS. THIS IS NOT A POSSESSION OF A  
24 COMPLETED CATEGORY 3 ASSAULT RIFLE. THEN --

25 I MEAN, THAT'S WHY, IN THE HARROTT CASE, THE  
26 COURT ACTUALLY GOES TO GREAT LENGTH TO EXPLAIN THAT,

1 WHEN THE ASSAULT WEAPON BAN LAW CAME INTO EFFECT, THERE  
2 WAS A DIVIDE IN THE LEGISLATURE BETWEEN NAMING A --  
3 GENERIC CHARACTERISTICS OF AN ASSAULT WEAPON AS OPPOSED  
4 TO THIS LONG LIST OF SPECIFIC MODELS THAT WERE GOING TO  
5 BE ILLEGAL.

6 AND, IN THE END, THE WAY THAT IT WAS INITIALLY  
7 ENACTED, THERE WAS NO CATEGORY 3, THE 12276.1. THERE WAS  
8 ONLY THE LIST. AND THAT GAVE RISE TO THE HARROTT CASE.

9 AND, SUBSEQUENTLY, THEN, APPARENTLY, THERE WAS  
10 LEGISLATURE APPROVAL FOR THE GENERIC STYLE. BUT THAT WAS  
11 A HARD FOUGHT BATTLE, ACCORDING TO THE HARROTT CASE.

12 AND SO, NOW, WE ARE MOVING, IN THIS  
13 PROSECUTION, BEYOND PROSECUTION FOR THE GENERIC  
14 CATEGORY 3 ASSAULT WEAPON. THAT'S FINE. BUT TO MOVE  
15 BEYOND THAT, INTO THE AREA OF AN ATTEMPT TO MAKE A  
16 CATEGORY 3 WEAPON, BASED ON BASICALLY MERE POSSESSION OF  
17 THE PARTS, I THINK, IS NOT SOMETHING THAT CAN BE  
18 PROSECUTED WITHOUT DEFINITIVE OR -- MUCH MORE EVIDENCE OF  
19 AN INTENT TO MAKE AN ILLEGAL WEAPON THAN WAS PRESENT, IN  
20 THIS CASE.

21 EITHER WE ARE GOING TO PRESUME THAT THE PERSON  
22 HAS A GUILTY INTENT BY MERE POSSESSION OF THOSE PARTS OR  
23 THAT, YOU KNOW, WE ARE ELIMINATING THAT PART OF THE  
24 REQUIREMENT TO FIND SOMEBODY GUILTY, YOU KNOW, BECAUSE  
25 THEY'RE -- LIKE OTHER EVIDENCE THAT -- OF INTENT -- I  
26 MEAN, HE HAS THE RIFLE. THE DTC RIFLE, AGAIN, IS LEGAL,

1 PERFECTLY LEGAL TO POSSESS; AND, THEN, OF COURSE, THE  
2 AMMUNITION.

3 NOT ONLY DID I -- AS I ARGUE, THAT WAS  
4 INFLAMMATORY, BUT IT DOES NOT SHOW AN INTENT TO MAKE AN  
5 ILLEGAL WEAPON. IT JUST IS NOT LOGICAL. WHY WOULD  
6 MR. NGUYEN MAKE AN AK-SUYDE RIFLE THAT WAS NOT IN  
7 COMPLIANCE WITH CALIFORNIA LAW?

8 WHY WOULD HE BE MORE LIKELY TO DO THAT WHEN HE  
9 ALREADY MADE THIS DTC THAT WAS FULLY COMPLIANT WITH  
10 CALIFORNIA LAW?

11 ONE DOES NOT LEAD TO THE OTHER CONCLUSION. IN  
12 MY VIEW, THERE IS NO LOGICAL CONNECTION. I MEAN, IF  
13 COUNSEL IS TRYING TO COMPARE THESE TWO, THE DTC AND THE  
14 AK, CALLING THEM BOTH, YOU KNOW, "HIGH POWERED" WEAPONS,  
15 BUT THAT'S NOT TRUE.

16 THE AK IS A SMALL CALIBER WEAPON. IT'S NOT A  
17 50 CALIBER. JUST LIKE THIS IMAGINARY, YOU KNOW, 50  
18 CALIBER THAT'S MISSING; IT WAS A SHOTGUN.

19 SO, YOU KNOW, THERE IS NO LOGICAL CONNECTION  
20 BETWEEN THAT EVIDENCE OF AMMUNITION AND THE DTC RIFLE,  
21 BETWEEN THOSE ITEMS AND A CRIMINAL INTENT TO MAKE AN  
22 UNLAWFUL CENTER-FIRE ASSAULT WEAPON.

23 THE COURT: EVIDENCE CODE 210, I WAS LOOKING AT,  
24 JUST A SIMPLE DEFINITION OF RELEVANT EVIDENCE; EVIDENCE  
25 IS -- "EVIDENCE INCLUDING EVIDENCE RELEVANT TO THE  
26 CREDIBILITY OF A WITNESS OR HEARSAY DECLARANT WHICH HAS

1 ANY TENDENCY IN THE REASON TO PROVE OR DISPROVE A  
2 DISPUTED FACT THAT IS OF CONSEQUENCE TO THE DETERMINATION  
3 OF THE ACTION."

4 DID I REMEMBER THIS CORRECTLY? DID THE  
5 OFFICER, AT SOME POINT, SAY THAT THE -- IT WAS THE DTC  
6 WEAPON THAT WAS A VERY POWERFUL WEAPON THAT WOULD EVEN BE  
7 TOO POWERFUL OR AN OVERKILL -- NOT TO USE THAT TERM --  
8 FOR EVEN AN ELEPHANT?

9 WAS THAT THE WEAPON HE WAS TALKING ABOUT?

10 MS. JONES: YES.

11 THE COURT: THAT IT WAS EVEN OVERKILL FOR AN  
12 ELEPHANT SO MUCH LESS A HOG. AND IF THAT'S THE  
13 CASE -- AND I WOULD HAVE TO LOOK BACK TO MAKE SURE THAT  
14 THAT'S ACCURATE I THINK, ALSO, I REMEMBER THE  
15 TESTIMONY THAT THE DEFENDANT ALLEGEDLY MADE A STATEMENT  
16 THAT, "LOOK, I USE THIS FOR HOG HUNTING."

17 AND THE OFFICER'S OPINION, AT LEAST, WAS THAT  
18 THAT WASN'T -- THAT STATEMENT, SORT OF, LACKS SOME  
19 CREDIBILITY, IN HIS OPINION.

20 SO IT SOUNDS LIKE, PERHAPS, THAT WOULD BE  
21 RELEVANT RATHER TO THE CREDIBILITY OF THE DECLARANT; AND,  
22 THUS, WOULD HAVE SOME RELEVANCE. IT WOULD HAVE SOME  
23 RELEVANCE BECAUSE, IF DEFENDANT'S STATEMENTS WERE KIND OF  
24 SUSPECT, WITH RESPECT TO THAT WEAPON AND WHAT DO YOU USE  
25 THAT WEAPON FOR -- IT SOUNDS LIKE THERE WOULD BE SOME  
26 RELEVANCE THERE WITH RESPECT TO SPECIFIC INTENT WITH THE



1 OTHER WEAPON. NOT

2 MR. HENNES: I'M NOT FOLLOWING THE COURT'S -- I  
3 DON'T KNOW WHAT STATEMENTS MR. NGUYEN MADE THAT WOULD --  
4 MAKE AN ATTEMPT TO EXCULPATE HIM FROM --

5 THE COURT: WHY DID -- YOU SAID HE WAS JUST DOING  
6 THIS AS A HOBBY, SORT OF LIKE HE DIDN'T REALLY HAVE THE  
7 INTENT TO -- DIDN'T REALLY HAVE INTENT TO CREATE THIS  
8 ILLEGAL WEAPON.

9 MR. HENNES: THAT -- THAT'S NOT THE ISSUE, THOUGH.  
10 THE ISSUE IS WHETHER HE INTENDED TO MAKE AN AK THAT  
11 DIDN'T HAVE A FIXED MAGAZINE, YOU KNOW, UNDER THE  
12 CHARACTERISTICS REQUIRED BY THE LAW.

13 THE COURT: UR-HUH.

14 MR. HENNES: SO, HE WASN'T ASKED THAT, AT ALL. IN  
15 FACT, I THINK THE OFFICER WAS UNDER THE SAME  
16 MISIMPRESSION THAT ALL OF US, I THINK, WERE. CERTAINLY,  
17 I WAS -- SPEAKING FOR MYSELF -- BEFORE I GOT THIS CASE.

18 YOU KNOW, YOU JUST AUTOMATICALLY ASSUME THAT  
19 THEY WERE ALL ILLEGAL, WHICH ISN'T, YOU KNOW, THE CASE,  
20 AT ALL. SO HE DIDN'T -- THE OFFICER DIDN'T KNOW ENOUGH  
21 TO ASK ABOUT A MAGAZINE LOCK. SO, I MEAN, THAT NEVER  
22 EVEN CAME UP.

23 THE OFFICER ASSUMED THAT THAT DIC WAS AN  
24 ILLEGAL WEAPON. THAT'S WHEN -- HE ARRESTED MR. NGUYEN  
25 FOR THAT, ACTUALLY, AND THE "AMMO." AND I THINK THE  
26 PARTS ARE, BASICALLY, AN AFTERTHOUGHT.

1           BUT -- YOU KNOW, SO IT SEEMS TO ME THAT THE  
2 FACTS ARE WHAT THEY ARE. AND THE CREDIBILITY OF  
3 MR. NGUYEN REALLY DIDN'T ENTER INTO THE ISSUE OF WHETHER  
4 HE INTENDED TO MAKE A CATEGORY 3 ASSAULT RIFLE;  
5 CATEGORY 3 BEING ONE THAT DIDN'T HAVE THE MAGAZINE LOCK.

6           IT JUST NEVER EVEN CAME UP. HE PROBABLY  
7 DIDN'T EVEN KNOW ABOUT IT. THAT'S THE PROBLEM WE HAVE.

8           THAT'S WHY I SAY, UNTIL YOU'RE FACED WITH THAT  
9 DECISION, THE PERSON IS AT A CROSSROADS IN MAKING ONE OF  
10 THESE AK'S. EITHER YOU PUT ON THE MAGAZINE LOCK OR YOU  
11 DON'T. AND UNTIL THAT DECISION IS MADE, I THINK THAT  
12 IT'S NOT POSSIBLE TO SUSTAIN A CONVICTION FOR AN  
13 ATTEMPTED POSSESSION OR MANUFACTURE OF A GENERIC ASSAULT  
14 WEAPON.

15          THE COURT: OKAY. I THINK I UNDERSTAND ALL YOUR  
16 POINTS.

17          MR. HENNS: IT WOULD BE DIFFERENT IF HAD A RECEIVER  
18 THAT WAS ON THE BANNED LIST BECAUSE, UNDER THOSE  
19 CIRCUMSTANCES, THE RECEIVER, ALONE -- NOT THE BARREL OR  
20 ANYTHING ELSE -- JUST THE RECEIVER, ALONE, IS UNLAWFUL.  
21 THAT'S THE VIOLATION; THAT'S ILLEGAL POSSESSION.

22          BUT, I THINK, WHEN IT COMES TO THESE GENERIC  
23 WEAPONS, IT'S JUST NOT SO CLEAR-CUT. IT'S NOT CLEAR-CUT,  
24 AT ALL. IN FACT, I THINK IT'S -- IT'S SO VAGUE THAT I  
25 THINK THE WHOLE THING MAY BE UNCONSTITUTIONAL UNLESS AS  
26 APPLIED TO AN ATTEMPT.

1           YOU KNOW, I MEAN, I CAN SEE WHERE YOU COULD  
2 HAVE A GENERIC COMPLETED FUNCTIONING RIFLE THAT VIOLATES  
3 12276.1. BUT, YOU KNOW, ESPECIALLY AT THE EARLY STAGES,  
4 I JUST DON'T THINK THIS IS POSSIBLE.

5           THE COURT: OKAY. I THINK I UNDERSTAND YOUR POINTS,  
6 NOW, COUNSEL.

7           DID YOU WANT TO SAY ANYTHING --

8           MS. JONES: UNLESS THE COURT HAS ANY PARTICULAR  
9 ISSUE?

10          THE COURT: ALL RIGHT, SUBMITTED ON BOTH SIDES?

11          MR. BENNES: YES.

12          MS. JONES: (NO ADDIBLE RESPONSE.)

13          THE COURT: OKAY. I'M ACTUALLY GOING TO TAKE THIS  
14 MATTER UNDER SUBMISSION. I'D LIKE TO ISSUE A WRITTEN  
15 DECISION.

16          MR. BENNES: VERY WELL.

17          THE COURT: ALL RIGHT, SO ...

18          MS. JONES: YOU KNOW, YOUR HONOR --

19          THE COURT: YES?

20          MS. JONES: IF THE COURT COULD INDULGE, I THINK I  
21 SHOULD ADD --

22          THE COURT: GO RIGHT AHEAD.

23          MS. JONES: I THINK THAT THE CHARACTERIZATION OF  
24 THIS AS BEING WHETHER HE KNEW THIS GUN WAS ILLEGAL OR NOT  
25 ILLEGAL, IT'S BECOMING A VAGUE AND QUIBBLED ISSUE BECAUSE  
26 THAT'S NOT THE ISSUE.

1 THE ISSUE IS WHETHER HE INTENDED TO MAKE WHAT  
2 WOULD CONSTITUTE AN ILLEGAL WEAPON. THAT IS, DID IT  
3 MATCH THE ELEMENTS OF AN ILLEGAL WEAPON UNDER THE CODE?

4 CLEARLY, HE HAD EVERYTHING HE NEEDED TO CREATE  
5 AN ASSAULT-LIKE WEAPON WHICH IS ILLEGAL UNDER THE STATUTE  
6 IN CALIFORNIA; AND HE DID NOT HAVE WHAT IT WOULD TAKE TO  
7 MAKE A LEGAL ONE. AND IT ALL COMES DOWN TO THAT.

8 AND THAT'S WHY IT WAS SO EASY FOR THE JURY TO  
9 SAY, "GEE, I WONDER WHAT HE WAS TRYING TO DO? WELL, WHAT  
10 DID HE HAVE? HE HAD THE STUFF TO DO 'A,' BUT HE DIDN'T  
11 HAVE THE STUFF TO DO 'B'; SO HE MUST BE TRYING TO DO  
12 'A.'"

13 THAT, COUPLED WITH THE STATEMENTS THAT WERE  
14 COMPLETELY UNBELIEVABLE ABOUT WHY HE HAD THESE WEAPONS,  
15 WHAT HE WAS DOING WITH THEM, THAT HE WAS A MERE TINKER  
16 AND HOBBYIST, WHEN, IN FACT, HE HAD EXTENSIVE KNOWLEDGE.  
17 HE HAD LOTS OF FIREARMS.

18 AND TO CLARIFY THAT DTC THAT THE DEFENSE  
19 REFERS TO, THERE IS OTHER 50-CALIBER AMMUNITION THAT WAS  
20 PRESENT, WHICH LEADS US TO AN INFERENCE THAT THERE WAS  
21 ANOTHER 50-CALIBER GUN.

22 NOW, HE CLAIMS THAT HE RENTED THE GUN FROM A  
23 GUNSMITH; AND SOME GUNSMITH, IN CALIFORNIA, LET HIM WALK  
24 OUT THE DOOR WITH THIS HIGH-POWERED FIREARM -- WHICH, I  
25 THINK, DEFENSE COUNSEL WILL EVEN AGREE; 50 CALIBER IS  
26 PRETTY HIGH POWER -- AND LET HIM TAKE IT AND GO FIG

1 HUNTING WITH IT.

2 HIS STORY IS UNBELIEVABLE. THE REASONING FOR  
3 HAVING THE DTC AMMUNITION IS UNBELIEVABLE BECAUSE HE'S  
4 NOT GOING PIG HUNTING WITH IT. THE REASON HE HAS THAT  
5 OTHER AMMUNITION, BECAUSE SOMEBODY RENTED IT TO HIM, IS  
6 UNBELIEVABLE.

7 THE CONTENTION HE'S A TINKERING HOBBYIST WHO  
8 WAS JUST TRYING TO FIDDLE AROUND WITH THESE METAL PARTS  
9 AND TRYING TO MAKE A GUN IS UNBELIEVABLE. HE WAS MAKING  
10 A GUN THAT'S ILLEGAL TO OWN IN CALIFORNIA.

11 HE'S ILLEGALLY MANUFACTURING A FIREARM THAT  
12 CONSTITUTES AN ILLEGAL FIREARM IN CALIFORNIA. IT MET THE  
13 ELEMENTS, AND THE JURY SAW THAT.

14 IT'S CIRCUMSTANTIAL, LIKE EVERY INTENT CASE  
15 IS. BUT IT WAS A PRETTY POWERFUL CASE, AND I'D SUBMIT  
16 WITH THAT.

17 MR. HENNES: JUST A CORRECTION.

18 I DON'T THINK IT WAS A GUN DEALER. I BELIEVE  
19 AN OUTFITTER'S HUNTING TRIP -- PROVIDES FIREARMS. HE  
20 THAT AS IT MAY -- WELL, I'M NOT GOING TO REPEAT MYSELF.

21 I'LL SUBMIT.

22 THE COURT: I UNDERSTAND BOTH SIDES WELL NOW.

23 MR. HENNES: THANK YOU.

24 THE COURT: LET'S SEE. I'M GOING TO GO AHEAD AND,  
25 IN AN ABUNDANCE OF CAUTION, I'M GOING TO SET THIS FOR  
26 NOVEMBER 14TH. HOW IS THAT DATE?

1 MR. HENNES: THAT'S GOOD.

2 MS. JONES: NOVEMBER 14TH?

3 THE COURT: YES.

4 MS. JONES: THAT WOULD BE GREAT.

5 THE COURT: ALL RIGHT. MR. NGUYEN, YOU'RE ORDERED  
6 TO RETURN TO THIS COURTROOM NOVEMBER 14TH, 2011.

7 AND I DON'T THINK I NEED TO TAKE A TIME  
8 WAIVER. I THINK TIME HAS ALREADY BEEN WAIVED.

9 MR. HENNES: TIME HAS BEEN WAIVED.

10 MS. JONES: I THINK HE STILL NEEDS -- BECAUSE WE'RE  
11 PUTTING OVER SENTENCING, AGAIN.

12 THE COURT: YES. LET'S GO AHEAD AND TAKE A TIME  
13 WAIVER.

14 MR. HENNES: MR. NGUYEN, YOU'VE PREVIOUSLY WAIVED  
15 YOUR RIGHT TO A SPEEDY SENTENCING, UNDER THE CODE; AND BY  
16 SETTING THIS MATTER FOR NOVEMBER 14TH, YOU'LL BE FURTHER  
17 WAIVING YOUR TIME FOR SENTENCING UNTIL THAT DATE.

18 DO YOU AGREE AND GIVE UP YOUR RIGHT TO A  
19 SPEEDY SENTENCING?

20 THE DEFENDANT: YES.

21 MR. HENNES: I JOIN.

22 THE COURT: ALL RIGHT.

23 (PROCEEDINGS ADJOURNED.)

24

25

26

1 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 COUNTY OF ORANGE, WEST JUDICIAL DISTRICT  
3 BEFORE THE HONORABLE DAPHNE SYKES SCOTT, JUDGE  
4 DEPARTMENT W-2

5  
6 THE PEOPLE OF THE STATE OF CALIFORNIA,  
7 PLAINTIFF,

8 VS. CASE NO.  
9 NGUYEN, TIEN DUC, 10WF0918  
10 DEFENDANT.

11  
12 REPORTER'S TRANSCRIPT OF COURT PROCEEDINGS  
13 NOVEMBER 14, 2011

14  
15 A P P E A R A N C E S:

16 FOR THE PEOPLE: RENEE JONES  
17 DEPUTY DISTRICT ATTORNEY

18  
19 FOR THE DEFENDANT: CHRISTOPHER HENNES  
20 ATTORNEY AT LAW

21  
22 REPORTED BY: MARGARET M. CARABINE, CSR NO. 4859  
23 OFFICIAL COURT REPORTER  
24  
25  
26

1 WESTMINSTER, CALIFORNIA NOVEMBER 14, 2011

2  
3 MORNING SESSION

4  
5 (WHEREUPON THE FOLLOWING PROCEEDINGS WERE HELD  
6 IN OPEN COURT:)

7  
8 THE COURT: CALLING THE CASE OF PEOPLE VERSUS TIEN  
9 DUC NGUYEN, CASE NUMBER 10WF0918 ON FOR DECISION ON THE  
10 MOTION AND FOR THE MOTION FOR A NEW TRIAL AND FOR  
11 SENTENCING.

12 APPEARANCES, PLEASE.

13 MS. JONES: RENEW JONES FOR THE PEOPLE.

14 MR. HENNES: CHRISTOPHER HENNES FOR THE DEFENDANT  
15 WHO IS PRESENT OUT OF CUSTODY.

16 THE COURT: ALL RIGHT. WITH RESPECT TO THE  
17 COURT'S DECISION ON THE MOTION FOR NEW TRIAL, THE COURT  
18 HAD INITIALLY INTENDED TO RULE IN WRITING BUT HAS SINCE  
19 DECIDED TO SIMPLY RULE ORALLY. AND THAT MOTION IS  
20 DENIED AT THIS TIME.

21 MR. HENNES, DOES YOUR CLIENT WAIVE  
22 ARRATONMENT FOR JUDGMENT AND SENTENCING?

23 MR. HENNES: YES, YOUR HONOR.

24 YOUR HONOR, HE WOULD LIKE TO MAKE A STATEMENT  
25 TO THE COURT, AND THERE ARE FAMILY AND FRIENDS WHO WOULD  
26 LIKE TO MAKE A FEW BRIEF COMMENTS.



1 THE COURT: LET ME ASK: IS THERE ANY LEGAL CAUSE  
2 WHY JUDGMENT SHOULD NOT BE PRONOUNCED?

3 MR. HENNES: NO.

4 THE COURT: ALL RIGHT, TO BEGIN THEN. I HAVE READ  
5 AND CONSIDERED THE PROBATION PAGE, PROBATION AND  
6 SENTENCING REPORT AUTHORIZED BY THE DEPUTY PROBATION  
7 OFFICER, EDILMA MONTEZ, INCLUDING STATEMENTS ON  
8 MITIGATION AND AGGRAVATION, A LETTER FROM THE  
9 DEFENDANT -- MR. HENNES, YOUR CLIENT, WAS THE AUTHOR OF  
10 THAT LETTER PRESENTED IN HANDWRITING?

11 MR. HENNES: YES.

12 THE COURT: ALL RIGHT.

13 NUMEROUS LETTERS FROM FAMILY AND FRIENDS IN  
14 SUPPORT OF THE DEFENDANT, AS WELL AS TYPED COMMENTS FROM  
15 THE DISTRICT ATTORNEY'S OFFICE, THE DEFENDANT'S  
16 SENTENCING BRIEF AND THE PEOPLE'S SENTENCING BRIEF.

17 TO BEGIN WITH, THE COURT FINDS THAT  
18 MR. NGUYEN IS STATUTORILY INELIGIBLE FOR PROBATION  
19 BECAUSE MR. NGUYEN WAS CONVICTED OF POSSESSING A  
20 CONCEALED FIREARM WHILE BEING AN ACTIVE PARTICIPANT IN A  
21 CRIMINAL STREET GANG IN VIOLATION OF PENAL CODE SECTION  
22 12025 (A) (1) AND (B) (3).

23 THEREFORE, PROBATION IS DENIED.

24 MR. HENNES: MAY I BE HEARD ON THAT?

25 THE COURT: YES.

26 MR. HENNES: I THINK IN THE REQUEST FOR PROBATION

1 THERE IS THE REQUEST FOR THE COURT'S EXERCISE OF PENAL  
2 CODE SECTION 1385 TO STRIKE THE STRIKE FOR PURPOSES OF  
3 SENTENCING.

4 THE COURT: IS THERE A ROMERO MOTION?

5 MR. HENNES: YES.

6 THE COURT: ANYTHING FURTHER ON THAT POINT,  
7 COUNSEL?

8 MR. HENNES: NO, YOUR HONOR.

9 I THINK THE SAME REASON IS THAT I CITED IN MY  
10 SENTENCING BRIEF, I THINK IT APPLIES TO ROMERO.

11 THE COURT: THE TERM ROMERO WAS NOT USED, THE  
12 ROMERO ARGUMENT.

13 ANYTHING BY THE PEOPLE AT THIS TIME?

14 MS. JONES: YOUR HONOR, THE PEOPLE'S POSITION, OF  
15 COURSE, IS THAT EXERCISING THE COURT'S DISCRETION UNDER  
16 ROMERO WOULD BE IMPROPER IN THIS CASE. THE FACT THAT  
17 THE COURT SHOULD UPHOLD THE STRIKE PRIOR, PARTICULARLY  
18 FOR THIS DEFENDANT, IN THAT HE IS EXACTLY THE TYPE OF  
19 RECIDIVIST OFFENDER THAT THE THREE-STRIKES LAW WAS  
20 CREATED FOR. WE DIDN'T ADDRESS THE FACTORS PER SE IN  
21 ROMERO. I THINK THAT THEY ARE ADDRESSED IN OUR  
22 SENTENCING BRIEF. IF THE COURT HAS ANY ISSUES, I  
23 COULD--

24 THE COURT: BOTH SIDES HAVE THOROUGHLY LAID OUT  
25 THEIR ARGUMENTS FOR THEIR POSITIONS, AND AS I SAID, I  
26 THINK THAT IMPLICIT IN THE ARGUMENTS WERE A REQUEST BY

1 DEFENSE TO STRIKE THE PRIOR AND TO GRANT THE DEFENDANT A  
2 TERM OF PROBATION. AND AS I JUST SAID, I FIND THAT HE IS  
3 STATUTORILY INELIGIBLE. I FIND THAT BASED UPON THE  
4 FACTS AND CIRCUMSTANCES, IT IS NOT A CASE FOR PROBATION.

5 BUT WITH THAT BEING SAID, I WOULD ASK IF  
6 THERE IS ANYTHING THAT EITHER SIDE WISHES TO SAY. THE  
7 COURT'S TENTATIVE IS TO SENTENCE THE DEFENDANT TO STATE  
8 PRISON FOR AN AGGREGATE TERM OF SIX YEARS.

9 AT THIS TIME, COUNSEL, YOU MAY REQUEST TO  
10 HAVE YOUR CLIENT OR ANY MEMBERS OF THE DEFENDANT'S--

11 MR. HENNES: YES, YOUR HONOR. I THINK THAT --  
12 WHAT WOULD THE COURT PREFER AS FAR AS THE ORDER OF  
13 PEOPLE TO COME FORWARD?

14 THE COURT: THE PEOPLE MAY COME FORWARD FIRST AND  
15 YOUR CLIENT CAN SPEAK LAST.

16 MR. HENNES: OKAY.

17 MS. JONES: WE'LL, THE PEOPLE WANT TO RESPOND AT  
18 THE APPROPRIATE TIME.

19 THE COURT: ABSOLUTELY.

20 MR. HENNES: OKAY.

21 THE BAILIFF: STEP TO THE RAILING.

22 THE COURT: BEFORE EACH PERSON BEGINS, STATE YOUR  
23 NAME VERY CLEARLY AND SPELL IT FOR THE RECORD.

24 MR. SPENCER: STEVE, S T E V E, SPENCER, S P E N C  
25 E R.

26 THE COURT: GO AHEAD.

1 MR. SPENCER: I AM A TEACHER AND COACH. I'VE KNOWN  
2 MR. TIEN NGUYEN FOR TEN YEARS. AND THE PERSON I KNOW IS  
3 A GENTLEMAN OF THE HIGHEST MORAL AND ETHICAL STANDARDS,  
4 ONE OF TOP PEOPLE IN THAT WAY THAT I'VE EVER MET IN MY  
5 LIFE. UM, HE HAS GOT TWO KIDS THAT HAVE BEEN RAISED THE  
6 RIGHT WAY, OBVIOUSLY, A LOVING WIFE. I'VE NEVER SEEN  
7 HIM GIVE ANY VIOLENCE IN ANY WAY TOWARDS ANYONE IN TEN  
8 YEARS I'VE KNOWN HIM. THIS -- I DON'T KNOW THE  
9 PARAMETERS OF WHAT I CAN SAY AND CAN'T SAY HERE. I  
10 COULD SAY A LOT. UM, TRYING TO HOLD MY TONGUE RIGHT  
11 NOW.

12 WITH ALL DUE RESPECT, THIS PERSON THAT HAS  
13 BEEN DEPICTED HERE IS NOT THE PERSON THAT IS SITTING  
14 RIGHT HERE AT ALL.

15 AND THERE IS NO VICTIM IN THIS CRIME. WHAT IS  
16 GOING TO BE A VICTIM'S CRIME NOW IS HIM AND HIS TWO KIDS  
17 AND HIS WIFE AND FAMILY MEMBERS. THIS IS THE TYPE OF  
18 FAMILY THAT AMERICA SHOULD EMBRACE. AN IMMIGRANT THAT  
19 GOT HERE LEGALLY, HAVE MADE A COMPLETELY LEGAL AND  
20 UPSTANDING LIFE FOR THEMSELVES HERE IN AMERICA, AND THIS  
21 SENTENCE, WITH ALL DUE RESPECT, WILL PROVIDE VICTIMS  
22 THAT WERE NOT THERE BEFORE.

23 AND THIS PERSON IS AN INCREDIBLE PERSON THAT,  
24 IF I HAD KIDS, I WOULD ALLOW THEM TO HAVE THEM. IF I  
25 WAS NO LONGER ON THE PLANET, I WOULD FEEL THAT THEY  
26 WOULD BE COMPLETELY SAFE WITH HIM AND HIS FAMILY. SO--

1 THE COURT: THANK YOU, MR. SPENCER.

2 MS. TIJAI NGUYEN: TIJAI NGUYEN, T I C A I.

3 NGUYEN, N G U Y E N.

4 I'M HIS OLDER SISTER. AND I HAVE KNOWN HIM  
5 UM, TO BE A NONVIOLENT PERSON. I KNOW THE RECORDS SHOW  
6 DIFFERENTLY. SOI, UM, THERE WAS NOT ANY VICTIM AT ALL  
7 IN WHAT HE HAS DONE IN THE PAST, EVEN NOW.

8 UM, HE IS ALWAYS THE TYPE THAT LIKES TO FIX  
9 THINGS. LIKES TO PLAY WITH THINGS. BUT HE DOES NOT  
10 HAVE A HARSH BONE IN HIS BODY. HE IS A VERY  
11 HONORABLE -- HE IS AN HONORABLE MAN, HONORABLE HUSBAND,  
12 HONORABLE SON, BROTHER TO US ALL. WE ARE A FAMILY OF  
13 RIGHT KIDS. AND WE'RE CLOSE KNIT FAMILY, YOUR HONOR.  
14 WE'RE STAND-UP CITIZENS IN THE COMMUNITY. UM, OUR  
15 FAMILY DOES NOT HAVE A CRIME HISTORY IN OUR FAMILY.

16 UM, TIEN WAS ALWAYS, JUST ALWAYS -- JUST ONE  
17 IN FAMILY THAT WAS A LITTLE BIT MORE OF A --HE LIKES TO  
18 FIX CARS, HE IS THAT TYPE. HE IS NOT -- HE IS NOT THE  
19 TYPE THAT -- SCHOOL TYPE, BUT HE IS -- HE IS VERY  
20 TALENTED IN HIS FIELD, HIS CRAFT, LIKE THINGS.

21 BUT HE IS NOT A VIOLENT PERSON. SENDING HIM  
22 TO STATE PRISON DOES NOT PROTECT ANYONE BECAUSE NEVER A  
23 CRIME INVOLVED. THERE IS NO -- I MEAN, THERE WAS NOT  
24 HE -- NEVER -- HE HAS NEVER HARMED ANYONE. HIS PAST --  
25 IT WAS JUST HIM. SO SENDING HIM WOULD CREATE A HARDSHIP  
26 TO HIS FAMILY, TO OUR FAMILY, TO HIS TWO DAUGHTERS.

1           UM, HE WILL LOSE HIS BUSINESS. WHO IS GOING  
2 TO TAKE -- HE IS THE PRIMARY PROVIDER FOR HIS TWO  
3 CHILDREN. AND SENDING HIM AWAY TO STATE DOES NOT SERVE  
4 THE PEOPLE ANY PURPOSE. IT DOES NOT PROTECT ANYTHING.  
5 HE IS NOT HARMING ANYONE SO THAT YOU NEED TO TAKE HIM  
6 AWAY. YOU DON'T NEED TO TAKE HIM AWAY. THANK YOU.

7           MS. TRAN: JAN TRAN, T R A N, J A N. I AM HIS  
8 SPOUSE OF MR. NGUYEN. I HAVE KNOWN HIM SINCE WE WERE 17.  
9 SO WHILE HE WAS INVOLVED IN STREET GANGS I MET HIM  
10 AROUND THAT TIME.

11           AND SOMETIMES WHEN YOU HAVE A FRIEND AND YOU  
12 ARE IN A SITUATION WHERE YOU ARE YOUNG AND NAIVE, OF  
13 COURSE YOU GET YOURSELF IN SITUATIONS THAT YOU CAN'T  
14 HELP YOURSELF BECAUSE OF THE AGE YOU ARE IN.

15           UM, HE SERVED THAT.

16           FROM THEN ON, WE HAVE TWO CHILDREN, TWO  
17 DAUGHTERS THAT ARE IN CATHOLIC SCHOOL. UM, HE IS A  
18 BUSINESS OWNER. I TOO OWN MY DESK THAT IS VERY BUSY.  
19 UM, THAT IS WHAT WE STRIVE ON, YOUR HONOR. WE STRIVE ON  
20 A COMMITMENT TO OUR KIDS. UM, IF IT WASN'T A COMMITMENT  
21 TO OUR KIDS, THEN I DON'T THINK THAT WE WERE ABLE TO  
22 KEEP OUR MARRIAGE STRONG OR -- AND OUR KIDS AND OUR  
23 FAMILY STRONG.

24           I ASKED FOR LENIENCE. HE IS THE MAIN CORE.  
25 HE IS HANDS-ON FATHER. HE IS THERE WITH OUR CHILDREN,  
26 WITH OUR TWO DAUGHTERS. DROPS THEM OFF, PICKS THEM UP,

1 TAKES CARE OF THEIR HOMEWORK. TAKES CARE OF THEM. AND  
2 WHILE I WORK AN 8:00 TO 8:00 JOB. HE IS THE ONE THAT  
3 SUPPORTS US PHYSICALLY, MENTALLY, AND, UM, FINANCIALLY  
4 AS WELL. WITHOUT HIM THERE IS NO WAY THAT WE CAN BE  
5 ABLE TO CONTINUE TO DO WHAT WE DO. I DON'T KNOW WHAT  
6 ELSE TO SAY.

7 IT SHOULDN'T HAVE GOT TO THIS POINT BECAUSE  
8 WE FEEL TEN YEARS OF -- WE BUILT TEN YEARS OF OUR  
9 MARRIAGE TO PROVE TO THE COURT THAT WHAT HE DID IN THE  
10 PAST WAS OF NAIVE OF THE AGE THAT WHAT WE GO THROUGH  
11 WHEN WE ARE ADOLESCENT.

12 UM, I'LL END IT HERE. I DON'T KNOW WHAT ELSE  
13 TO SAY TO CHANGE YOUR MIND.

14 THANK YOU. I THANK THE COURTS FOR THEIR  
15 TIME. I APOLOGIZE FOR THE D.A. TIME AND FOR THE COURT'S  
16 AS WELL. THANK YOU.

17 MR. SPENCER: WITH ALL DUE RESPECT, THIS IS NOT  
18 WHAT THE FIRST STRIKE WAS ALL ABOUT AT ALL. NOT EVEN  
19 CLOSE. IT WAS NOT THIS TYPE OF PERSON THAT THE THIRD  
20 STRIKE LAW WAS DESIGNED FOR. IT WAS DESIGNED FOR PEOPLE  
21 WHO ARE TRULY VIOLENT CRIMINALS THAT ARE A THREAT TO  
22 SOCIETY. THIS PERSON IS IN NO WAY -- SO TO SAY THAT HE  
23 IS EXACTLY THE PERSON THAT THE THREE-STRIKE LAW WAS  
24 INTENDED TO IS COMPLETELY NOT TRUE. THAT IS NOT THE  
25 PERSON A THIRD STRIKE LAW WAS FOR, AND THAT OUTRAGES ME.

26 THE COURT: THANK YOU.

1 MR. NGUYEN MAY HAVE THE LAST WORD.

2 WE WILL HAVE THE PROSECUTOR GO FORWARD WITH  
3 HER ARGUMENT NOW.

4 MS. JONES: FIRST OF ALL, I WOULD ALSO NOTE THAT  
5 WHAT I HAVE TO SAY IS SET FORTH IN MY SENTENCING REPORT.  
6 I DO WANT TO TAKE ISSUE WITH THE PROBATION AND  
7 SENTENCING REPORT IN ONE ASPECT, AND THAT IS ON PAGE 26,  
8 LINE 9 THROUGH 11. THE PROBATION OFFICER INDICATES IT  
9 IS DOCUMENTED THAT THE DEFENDANT WAS ONCE DEEPLY  
10 ENTRENCHED IN THE GANG LIFESTYLE, ALTHOUGH HE MAY HAVE  
11 DISCONTINUED HIS INVOLVEMENT. IT'S UNKNOWN IF HE STILL  
12 ASSOCIATES WITH THE STREET GANG. THAT IS PATENTLY  
13 INCORRECT. BY HIS OWN ADMISSION, THIS DEFENDANT  
14 CONTINUES -- IN HIS TAPED INTERVIEW HE ADMITTED THAT HE  
15 HAS CONTINUED HIS ASSOCIATION WITH MR. HO, FULLY KNOWING  
16 THAT MR. HO IS A WEST TRACY GANG MEMBER.

17 MR. HENNES: OBJECTION. THERE IS NO EVIDENCE OR  
18 ANY EVIDENCE THAT I'VE BEEN PROVIDED OF ANY SUCH  
19 STATEMENT. IN FACT THAT SHE IS REFERRING TO A STATEMENT  
20 THAT WAS WITHHELD FROM THE DEFENSE BECAUSE SUPPOSEDLY IS  
21 PART OF AN INVESTIGATION THAT NEVER WENT ANYWHERE  
22 REGARDING SPECIFIC PARTS CONCERNING MY CLIENT.

23 I WOULD OBJECT TO COUNSEL REFERRING TO  
24 ANYTHING IN THAT SUPPOSED STATEMENT. I'VE NEVER SEEN  
25 IT. I ASKED FOR IT. I WAS NOT ALLOWED TO IT EARLY ON  
26 IN THIS PROSECUTION. SO--



1 MS. JONES: I CAN ADDRESS THIS.

2 YOUR HONOR, IF I COULD NOT BE INTERRUPTED.

3 THE COURT: ONE SECOND.

4 MR. HENNES: I'M OBJECTING TO--

5 THE COURT: THAT IS AN OBJECTION. I NOTE YOUR  
6 OBJECTION. LET COUNSEL RESPOND TO THAT OBJECTION.

7 MS. JONES: THANK YOU. THERE WAS A TAPED  
8 INTERVIEW OF THE DEFENDANT, WHICH THE DEFENSE RECEIVED  
9 THE TAPED INTERVIEW PLUS THE TRANSCRIPT PRIOR TO THE  
10 TRIAL. THAT IS WHERE THAT STATEMENT WAS MADE AND  
11 TRANSCRIBED. THE DEFENSE SAW IT. BY MUTUAL AGREEMENT IT  
12 WAS OMITTED FROM THE TESTIMONY AT TRIAL BECAUSE IT  
13 BROUGHT IN GANG ASPECTS.

14 WE AGREED THAT THAT WOULD BE OMITTED. HE  
15 RECEIVED IT. HE KNOWS IT'S THERE. AND WE CAN COMMENT  
16 ON THE SURROUNDING CIRCUMSTANCES EVEN THOUGH THEY WERE  
17 NOT ADMITTED AS EVIDENCE IN THE TRIAL BECAUSE WE HAVE A  
18 GOOD FAITH BELIEF THAT THEY ARE TRUE.

19 THE COURT: COUNSEL, DO YOU HAVE--

20 MR. HENNES: I DON'T RECALL SAYING THAT.

21 MS. JONES: THAT IS A DIFFERENT STORY.

22 MR. HENNES: I DON'T -- IN FACT, I KNOW I DIDN'T  
23 GET IT.

24 THE COURT: ARE YOU SAYING YOU DIDN'T GET THE TAPE  
25 RECORDING OF THAT STATEMENT?

26 MR. HENNES: YES. IF SHE'S TALKING ABOUT THE ONE

1 THAT WAS MADE AT THE POLICE DEPARTMENT, THAT WAS A CD I  
2 SUPPOSEDLY WAS SUPPOSED TO GET BUT I NEVER RECEIVED.

3 MS. JONES: THAT IS UNTRUE. AND WE RECEIVED -- WE  
4 WENT THROUGH THE TRANSCRIPT TRANSCRIPTION TOGETHER PRIOR  
5 TO THE TRIAL. THE PEOPLE AGREED TO LEAVE THAT OUT.  
6 THERE WAS NO GANG ALLEGATION IN THIS TRIAL.

7 THE COURT: COUNSEL, DO YOU REMEMBER RECEIVING  
8 THAT?

9 MR. HENNES: NO, I JUST DON'T REMEMBER IT. I MEAN,  
10 I SIMPLY DON'T RECALL THAT AT ALL. IT IS NOT ANYWHERE  
11 IN MY FILE.

12 MS. JONES: INTERESTING THAT DEFENSE COUNSEL HAS  
13 THAT POSITION. WE SET FORTH THAT STATEMENT IN OUR  
14 SENTENCING BRIEF. AND IT'S BEEN UNQUESTIONED UNTIL NOW.

15 HE ADMITTED ON THE TAPE THAT HE KNOWS THAT  
16 THEY CAN DO SOMETHING STUPID LIKE SHOOT HIS WIFE OR  
17 SOMETHING. HE ALSO TALKS ABOUT THE FACT THAT HE PAYS  
18 THE REPAIR BILLS OF MR. HO BUT CLAIMS THAT HE DOES IT IN  
19 ORDER TO TAX HIM, WHICH IS GANG LINGO FOR CHARGING  
20 SOMEONE FOR SOMETHING.

21 ADDITIONALLY, MR. HO WAS ORIGINALLY  
22 PROSECUTED BY MYSELF. HE WAS CHARGED WITH THE INSURANCE  
23 FRAUD AND WITH THE CHOP SHOP ACTIVITIES WHICH BROUGHT  
24 THIS DEFENDANT TO OUR ATTENTION.

25 THAT CASE WAS TAKEN FROM ME BY OUR TARGET  
26 GANG UNIT BECAUSE MR. HO IS A SHOT CALLER FOR WEST

1 TRACY, ACCORDING TO THE GANG INVESTIGATOR IN  
2 WESTMINSTER. THEY ARE PROSECUTING HIM AS SUCH. MR. HO  
3 KNEW FULL WELL, PREVIOUSLY AT LEAST, A PREVIOUS WEST  
4 TRACY GANG MEMBER HIMSELF, AND THAT HE WAS CONTINUING TO  
5 ENGAGE IN--

6 THE COURT: YOU MEAN THE DEFENDANT OR MR. HO?

7 MS. JONES: I'M SORRY. THE DEFENDANT KNEW FULL  
8 WELL THAT MR. HO WAS ASSOCIATED WITH THE WEST TRACY  
9 GANG. HE CONTINUED HIS AFFILIATION WITH HIM AND HE WAS  
10 INVOLVED IN SOME OF THE TRANSACTIONS THAT LAY THE BASIS  
11 FOR THE CRIMINAL ENTERPRISE THAT MR. HO IS BEING  
12 PROSECUTED FOR. SO THAT IS WHAT ORIGINALLY BROUGHT US  
13 TO HIS SHOP.

14 BY DAY HE MAY HAVE ALL OF THESE GOOD PEOPLE  
15 THAT SUPPORT HIM AND HAVE ONLY SEEN ONE SIDE OF HIM.  
16 BUT HE HAS CONFLICTING LOYALTIES. HE HAS CONFLICTING  
17 LIFESTYLES. HE HAS NEVER STOPPED IN HIS PURSUIT OF  
18 CRIMINAL ACTIVITY IN GANG ASSOCIATIONS AS EVIDENCED BY  
19 THIS CASE. I'M SORRY THAT HE HAS CHOSEN TO DISREGARD  
20 HIS RESPONSIBILITY TO HIS FAMILY AND TO HIS CHILDREN AND  
21 TO HIS FRIENDS BUT THAT IS WHAT HE HAS DONE IN THIS CASE  
22 AND HE BROUGHT THIS UPON HIMSELF.

23 MR. HENNES: NOW--

24 THE COURT: LET THE PROSECUTOR FINISH, THEN YOU'LL  
25 GET THE LAST WORD.

26 MS. JONES: I CAN'T EMPHASIZE ENOUGH THE

1 AGGRAVATION IN THIS CASE. THIS IS NOT AS IF WE'VE GOT A  
2 GUY WHO DECIDED TO BUILD A WEAPON ON ONE OCCASION. HE  
3 HAS A 50-CALIBER WEAPON. HE HAS AN AK-47 THAT HE IS IN  
4 THE PROCESS OF BUILDING. HE HAS RIVET KITS FOR THREE  
5 MORE AK-47'S. HE HAS ANOTHER FIREARM HE CLAIMED HE LENT  
6 OUT AT THE TIME, NEVER GOT IT BACK, AND HE HAS NEVER  
7 PROVIDED THAT TO THE PROSECUTION OR TO LAW ENFORCEMENT.

8 AND WHEN THEY WENT TO HIS HOUSE. HE HAD A  
9 WIDE-OPEN GUN CASE THAT APPEARED TO HAVE SOMETHING TAKEN  
10 OUT OF IT.

11 YOUR HONOR, HE IS UP TO HIS EARS IN THIS.  
12 AND HE IS THE TYPE OF RECIDIVIST OFFENDER WHOSE PRESENCE  
13 IS VERY, VERY DANGEROUS. THERE IS NO REASON TO HAVE  
14 WEAPONS THAT ARE SO POWERFUL THAT THEY COULD BE USED FOR  
15 ANTI-AIRCRAFT PURPOSES. NOT PIG HUNTING, AS HE CLAIMS.

16 BUT IT IS A PATTERN THAT HE HAS CREATED,  
17 STARTING LONG AGO. AT WHATEVER TIME HE IS CAUGHT, HE  
18 HAS AN UNBELIEVABLE EXCUSE FOR WHY HE IS POSSESSING  
19 WEAPONS. IT GOES BACK TO 1995, WHEN HE WAS IN A VEHICLE  
20 WITH A GUN, THAT HE CLAIMS HE DIDN'T KNOW WAS THERE.

21 IN '95, HE WAS AT A PARTY WHEN THE POLICE  
22 ARRIVED AND ORDERED EVERYONE DOWN. HE HAD THE  
23 MISFORTUNE TO LIE DOWN NEXT TO A GUN THAT HE CLAIMS WAS  
24 NOT HIS.

25 MR. HENNES: OBJECTION. WHERE IS SHE GETTING THIS  
26 INFORMATION? IT IS NOWHERE LOCATED--

1 MS. JONES: PROBATION AND SENTENCING REPORT.

2 THE COURT: COUNSEL, IT IS IN THE REPORT. AND  
3 COUNSEL, YOU DID HAVE A COPY OF THAT. LET THE  
4 PROSECUTOR FINISH. YOU'LL HAVE THE LAST WORD.

5 MS. JONES: IN '99 HE QUOTE, INNOCENTLY WAS IN A  
6 MOTEL ROOM WITH A FRIEND WHEN A GANG SUPPRESSION TEAM  
7 SHOWED UP. HE OFFERED TO HIDE THE GUN IN HIS CAR FOR  
8 HIS FRIEND, FAILING TO MENTION THAT HIS FRIENDS THAT HE  
9 HAPPENED TO BE WITH WHILE HIDING THE SEMI-AUTO HANDGUN  
10 WERE ALSO WEST TRACY GANG MEMBERS.

11 THIS IS A DEFENDANT WHO IS COMPLETELY  
12 DESERVING OF THE APPROPRIATE SENTENCE AS THE COURT HAS  
13 STATED SHE WILL IMPOSE. WE WOULD REITERATE WE REQUEST  
14 THAT THAT SENTENCE NOW BE IMPOSED.

15 MR. HENNES: FIRST OF ALL, THERE IS -- HE HAS ONE  
16 FELONY CONVICTION. THAT WAS IN '98, HAVING THE  
17 CONCEALED WEAPON ON HIS PERSON RIDING IN A CAR FOR THE  
18 BENEFIT OF A GANG. HE WAS NOT CHARGED WITH BEING AN  
19 ACTIVE GANG MEMBER THEN.

20 FURTHERMORE, ON THE ONE FELONY PROBATION HE  
21 WAS GIVEN, HE COMPLETED SUCCESSFULLY WITHOUT ANY  
22 VIOLATIONS. AND FOR THE ENTIRE DECADE OF 2000 TO THE  
23 PRESENT CASE, HE HAS NEVER BEEN ARRESTED.

24 THERE IS NO PROOF AT ALL, THAT EITHER THIS INDIVIDUAL  
25 WAS A GANG MEMBER OR SHOT CALLER IN WEST TRACY AS  
26 COUNSEL CLAIMS. NO EVIDENCE WHATSOEVER OF ANY

1 TRANSACTION BETWEEN HO AND MY CLIENT OTHER THAN A  
2 RECEIPT FOR SOME PARTS THAT HO PURCHASED LEGITIMATELY  
3 FROM MY CLIENT THAT THEY TRIED TO CLAIM, EVEN AT THE  
4 EARLIEST TIME IN THIS PROSECUTION, WITH SOME INFLATED  
5 PRICE.

6 WE THEN PROVIDED SEVERAL INTERNET  
7 ADVERTISEMENTS FOR THE SAME PARTS THAT WERE 150 PERCENT  
8 OR TWICE WHAT HO PAID TO MY CLIENT SHOWING THEY WERE NOT  
9 INFLATED.

10 FURTHERMORE, THIS SEARCH THAT THE TASK FORCE  
11 CONDUCTED WHEN MY CLIENT WAS ARRESTED, I THINK THEY WERE  
12 THERE FOR SOMETHING LIKE THREE HOURS. NOTHING WAS  
13 FOUND -- NOT A SCREW, NOT ANY SINGLE PART WAS FOUND THAT  
14 WAS IN ANY WAY LINKED TO ANY THEFT. NO STOLEN PARTS AT  
15 ALL WERE FOUND. THEY HAVE GOT ENGINES, MOTOR PARTS,  
16 NOTHING. THEY WENT THROUGH EVERYTHING WITH A FINE TOOTH  
17 COMB AND THEY COULDN'T COME UP WITH ANY PARTS THAT WERE  
18 STOLEN. THEY WEREN'T. IT'S A LEGITIMATE BUSINESS.

19 SO, THIS SUPPOSITION THAT SOMEHOW MY CLIENT  
20 HAS BEEN UNDER THE RADAR FOR 12 YEARS COMMITTING  
21 VIOLATIONS IS LUDICROUS. HIS CRIMINAL HISTORY ENDED IN  
22 1998, I BELIEVE IT WAS, SO THIS RECIDIVISM ALLEGATION IS  
23 SIMPLY NOT TRUE.

24 FURTHERMORE, I THINK THAT THE TASK FORCE, YOU  
25 KNOW, TRYING TO GET MY CLIENT TO HAVE SOME INFORMATION  
26 TO GET ON THIS HO FELLOW, AND HE WAS ARRESTED -- NOT THE

1 SAME DAY THAT THEY FOUND THESE FUNDS, ONLY LATER WHEN  
2 THERE WAS NO INFORMATION THAT HE COULD GIVE THEM -- HE  
3 WAS THE FELLOW WHO WAS A CUSTOMER. I DON'T KNOW THAT HO  
4 HAS BEEN CONVICTED OF ANYTHING YET.

5 YOU KNOW, COUNSEL PLACES GREAT WEIGHT ON ALL  
6 OF THESE INVESTIGATIONS AND SUSPICIONS OF ACTIVITY BUT  
7 NO CONVICTIONS.

8 THAT MERE SUSPICION AND INVESTIGATION, AS WE  
9 SAW IN THEIR SEARCH OF HIS PREMISES, HIS BUSINESS  
10 PREMISES AND HIS HOME, WHICH TURNED UP ABSOLUTELY  
11 NOTHING, IS NOT EVIDENCE OF SOME CONTINUING CRIMINAL  
12 ENTERPRISE AS THE PEOPLE WOULD HAVE THE COURT BELIEVE.

13 THIS BUSINESS ABOUT HIM, YOU KNOW, BY DAY  
14 LEGITIMATE BUSINESSMAN, BY NIGHT SOME KIND OF A GUN  
15 RUNNER, IS PREPOSTEROUS.

16 I THINK THAT THE COURT -- WELL, IN FACT, YOU  
17 KNOW, PRIOR TO TRIAL THERE WAS, YOU KNOW, THE OFFER WAS  
18 A YEAR, DROPPED THE MANUFACTURING AND ATTEMPTED  
19 POSSESSION OF ASSAULT WEAPONS CHARGES.

20 MS. JONES: OBJECTION AS IMPROPER ARGUMENT.

21 MR. HENNES: SHOWS HOW, YOU KNOW, THE VALUE THE  
22 PEOPLE PUT ON THIS CASE, BECAUSE THERE IS NOTHING THERE.  
23 YOU KNOW, HE HAD A COLLECTION OF GUN PARTS THAT, YOU  
24 KNOW, I BELIEVE THAT -- I RESPECTFULLY DISAGREE STRONGLY  
25 WITH THE COURT THAT THE EVIDENCE SUPPORTED A CONVICTION  
26 FOR THE INTENT AND 352 ISSUES.

1           SO WHATEVER SENTENCE THE COURT MEETS OUT, I  
2 WOULD REQUEST THAT BAIL ON APPEAL BE PERMITTED IN THE  
3 SAME AMOUNT THAT HE HAS ALREADY TENDERED. I BELIEVE  
4 THIS CASE IS GOING TO GO UP TO DCA REGARDLESS. I THINK  
5 THAT YOU KNOW THAT. EVERYBODY HAS TO AGREE THAT THERE  
6 IS A STRONG LEGAL ISSUE AS TO THE PROPRIETY OF  
7 CONVICTION FOR COLLECTION OF PARTS THAT WERE NOT  
8 ASSEMBLED AS IN THIS CASE. SUBMITTED.

9           THE COURT: ALL RIGHT. DO YOU WANT YOUR CLIENT?

10          MR. HENNES: YES, GO AHEAD.

11          MR. NGUYEN: A LOT OF THINGS WERE SAID IN THIS  
12 COURTROOM ABOUT ME FROM THE DISTRICT ATTORNEY. YES, I  
13 WAS A GANG MEMBER BACK IN THE DAYS. LIKE CHRIS SAID, IT  
14 ENDED IN 1999.

15                WHEN I WAS RELEASED MY FIRST DAUGHTER WAS  
16 BORN. THAT COMPLETELY CHANGED ME. I'M NOT A BAD  
17 PERSON. I SHOULDN'T HAVE BEEN MESSING WITH THE STUFF  
18 THAT I WAS DOING. I ADMIT THAT I WAS WRONG. I KNOW  
19 THAT, THAT I JUST SHOULD NOT HAVE BEEN MESSING WITH IT.  
20 I'M TRULY SORRY FOR THAT.

21                BUT I'M NOT A GANG MEMBER OUT RUNNING GUNS  
22 FOR ALL THESE GANG MEMBERS. I DIDN'T KNOW MR. HO'S REAL  
23 NAME UNTIL THE DETECTIVE TOLD ME WHAT HIS REAL NAME WAS.  
24 I HAVE ONLY KNOWN HIM AS BEN.

25                WHEN HE GRILLED ME I DID NOT KNOW WHO HE WAS.  
26 HE IS NOT FROM WEST. HE IS AN ASIAN GUY. WEST IS A



1 HISPANIC GANG. HE IS NOT FROM THERE. HE MIGHT BE A  
2 GANG MEMBER. I DON'T KNOW. BUT I DON'T ASSOCIATE WITH  
3 HIM. THE ONLY THING I DO WITH HIM IS BUY AND SELL  
4 PARTS. THAT IS THE ONLY COMMON INTEREST WE HAVE.  
5 THAT IS IT.

6 MY LIFE IS PRETTY MUCH BORING. I TAKE CARE  
7 OF MY FAMILY I RUN MY BUSINESS. THAT IS IT. I DON'T  
8 HAVE TIME TO RUN WITH THESE GUYS. I DON'T HAVE TIME TO  
9 DO THIS THING THAT I WAS DOING WHICH WAS, JUST LIKE I  
10 SAID, LIKE I TOLD THE DETECTIVE, I WAS TINKERING. I WAS  
11 MESSING WITH IT. I LIKE MAKING STUFF. EVERYTHING ON MY  
12 RACE CAR, THE TURBO, EVERYTHING. EVERYTHING. IF I CAN  
13 MAKE IT, I WILL MAKE IT. I LIKE DOING STUFF LIKE THAT,  
14 BUT I'M NOT-- MY INTENT WAS NOT TO BUILD A BIG CALIBER  
15 GUN, SHOOT DOWN THE HELICOPTER. THAT THING HAS NEVER  
16 BEEN FIRED. I WAS SCARED TO EVEN FIRE. IT'S JUST A  
17 DISPLAY.

18 I DON'T KNOW. SOMETHING THAT I MADE. THAT  
19 WAS IT.

20 I WAS NOT GOING TO ROB A GANG, NOT POINT IT  
21 AT ANYBODY. IT WAS AT MY SHOP. THAT IS WHY I KEPT IT  
22 UPSTAIRS, AWAY FROM ANYTHING. THAT WAS IT. MY  
23 INTENTIONS ARE NOT CRIMINAL AT ALL.

24 I AM TRULY SORRY FOR, YOU KNOW, FOR WHAT I'VE  
25 DONE. AND I JUST WANT TO LET THE COURT KNOW THAT I HAVE  
26 COMPLETELY TURNED MY LIFE AROUND FROM A NEGATIVE TO A

1 POSITIVE. IF YOU COULD SEE MY LITTLE GIRLS HOW I'VE  
2 RAISED THEM, HOW WE RAISED THEM, THEY ARE PHENOMENAL.  
3 I'M WITH THEM EVERY DAY, HOUR. EVERY DAY OF THE YEAR.  
4 I MEAN FROM WHEN THEY WAKE UP UNTIL THEY GO TO BED. I'M  
5 WITH THEM.

6 MY WIFE IS HAS BEEN REAL SUPPORTIVE, I MEAN,  
7 THE SHOP HAS BEEN PAYING OUR BILLS, OUR MORTGAGE. I  
8 MEAN, I WENT FROM NOTHING, FROM A LOW-LIFE GANG MEMBER,  
9 USING DRUGS EVERY DAY OF MY LIFE, AND NOW I HAVE A  
10 FAMILY. I MEAN WE STRIVE FOR IT. I MEAN, WHATEVER THE  
11 DISTRICT ATTORNEY SAYS IS NOT TRUE. I'M NOT THAT  
12 PERSON.

13 I CAN'T IMAGINE LOSING OUR HOUSE AND OUR  
14 BUSINESS AND MY GIRLS AND MY WIFE, MY FAMILY OVER -- I  
15 MEAN, I JUST CAN'T STRESS HOW DIFFICULT IT IS TO RUN A  
16 BUSINESS, LET ALONE WHEN I'M NOT THERE. IT WOULD  
17 DEVASTATE US GREATLY. I MEAN, OUR MORTGAGE AND THE  
18 GIRLS' TUITION, A CAR PAYMENT AND THE CREDIT. THEY ARE  
19 ALREADY GETTING TO US. IF ALONE, ME BEING AWAY, MY  
20 BUSINESS AND EVERYTHING WOULD GO. WOULD GO, WOULD BE  
21 GONE.

22 I JUST WANT TO GET THROUGH TO YOU THAT I'M  
23 NOT A BAD PERSON. I JUST WORK. I TAKE CARE OF MY KIDS.  
24 I HAVE NO CRIMINAL INTENT. MAYBE BACK IN THE PAST.  
25 THAT IS MY OLD. I'M 36 NOW. I DON'T HAVE TIME FOR  
26 THAT.

1 THE KIDS TAKE UP A LOT OF OUR TIME. JUST  
2 LIFE. I DON'T EVEN THINK ABOUT THAT STUFF ANYMORE. LET  
3 ALONE PARTICIPATE IN, BE ACTIVE IN IT. YOU CAN ASK  
4 ANYBODY THAT I'M NOT THAT PERSON.

5 I JUST WANT TO THANK THE COURT FOR LETTING ME  
6 SPEAK. AND I'M NOT THE SAME PERSON. I HAVE TRULY  
7 TURNED MY LIFE AROUND. STRAIGHT, NEGATIVE TO POSITIVE  
8 NOW. IF MY GIRLS COULD SPEAK TO YOU THEY WOULD SPEAK  
9 VERY HIGHLY, HANDS DOWN. I HAVE NO -- THEY DON'T EVEN  
10 KNOW ABOUT THIS. MY PARENTS DON'T EVEN KNOW ABOUT THIS.  
11 THEY ALWAYS ASK ME DADDY, WHY ARE YOU DRESSED UP? I  
12 ALWAYS TELL THEM -- I DON'T KNOW WHAT TO TELL. I TELL  
13 THEM I'M GOING TO A MEETING. YOU DON'T LIKE THESE  
14 MEETINGS, DO YOU, DAD. I GO NO. WE'LL PRAY FOR YOU.  
15 I'M, OKAY, THANKS.

16 EVERY TIME THEY SEE ME DRESSED UP THEY ALWAYS  
17 THINK DAD IS GOING TO A MEETING. SO, YOU KNOW, MY TWO  
18 GIRLS, THEY GET TOGETHER, THEY SAY A LITTLE PRAYER  
19 BEFORE I COME IN HERE. I WANT TO LET YOU KNOW THAT  
20 I'M NOT A BAD PERSON.

21 THE COURT: THANK YOU. ANYTHING FURTHER?

22 MR. HENNES: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. THE COURT IN DETERMINING  
24 THE APPROPRIATE SENTENCE HAS CONSIDERED THE FOLLOWING  
25 CRITERIA SET OUT IN RULES OF COURT. SPECIFICALLY,  
26 REGARDING THE CRIME ITSELF SECTION 4, RULE OF COURT,

1 RULE NUMBER 4.414 (A) (1), THE NATURE, SERIOUSNESS AND  
2 CIRCUMSTANCES OF THIS CRIME AS COMPARED TO OTHER  
3 INSTANCES OF THE SAME CRIME, ARE AGGRAVATED. THIS CASE  
4 INVOLVES AN INDIVIDUAL WITH FORMER GANG TIES TO  
5 MANUFACTURING SOPHISTICATED FIREARMS. THE DEFENDANT WAS  
6 ACTUALLY BEING INVESTIGATED FOR A SEPARATE CASE IN  
7 CONNECTION WITH AN INSURANCE FRAUD AND CHOP SHOP  
8 INVOLVING ANOTHER GANG MEMBER. THE DEFENDANT ADMITTED  
9 PADDING REPAIR BILLS OF THIS OTHER GANG MEMBER.

10 THE COURT NOTES THAT THERE WAS ALSO EVIDENCE  
11 THAT THE DEFENDANT POSSESSED ADDITIONAL AK 47-TYPE RIFLE  
12 KITS INDICATING ALSO THAT HE HAD ORDERED PARTS TO  
13 COMPLETE THREE ADDITIONAL ASSAULT RIFLES IN ADDITION TO  
14 THE ONES IN PROGRESS.

15 THESE CIRCUMSTANCES SUGGEST TO THE COURT A  
16 SERIOUS DANGEROUS AND ONGOING CRIMINAL VENTURE. RULE  
17 4.414 (A) (2), THE DEFENDANT WAS ARMED WHILE  
18 MANUFACTURING THE ASSAULT WEAPON BECAUSE HE HAD UNDER  
19 HIS CONTROL IN HIS SHOP A COMPLETED DTC FIREARM AND 50  
20 ROUNDS OF 50-CALIBER DTC AMMUNITION FOR THE RIFLE.

21 RULE 4.414 (A) (6), THE DEFENDANT WAS THE SOLE  
22 PARTICIPANT IN THIS INCIDENT, WAS ALONE, ACTIVELY  
23 PARTICIPATING IN THE MANUFACTURING AND POSSESSION OF  
24 THESE WEAPONS. RULE 4.414 (A) (7), THERE IS NO EVIDENCE  
25 THAT THE CRIME WAS COMMITTED DUE TO AN UNUSUAL  
26 CIRCUMSTANCES SUCH AS GREAT PROVOCATION, WHICH WOULD

1 MAKE THE CRIME RARE, AND THEREFORE UNLIKELY TO OCCUR  
2 AGAIN.

3 TO THE CONTRARY, THE DEFENDANT HAS MAINTAINED  
4 THAT HE BUILT THESE WEAPONS AS A HOBBY AND SPORT. SO  
5 THE CIRCUMSTANCES OR REASONS WHICH LED TO HIS CONDUCT  
6 WHICH ARE HIS PERSONAL DESIRES TO BUILD AND POSSESS  
7 THESE WEAPONS AS A DIVERSION ARE STILL PRESENT.

8 FACTORS WITH RESPECT TO THE DEFENDANT. RULE  
9 4.414 (B) (6), THE DEFENDANT'S PRIOR PERFORMANCE ON  
10 PROBATION WAS UNSATISFACTORY. AND THAT HE PREVIOUSLY  
11 VIOLATED HIS PROBATION IN A FIREARM POSSESSION CASE AND  
12 NOW POSSESSED AN ADDITIONAL FIREARM. ALSO HIS CURRENT  
13 OFFENSE FINDS HIM POSSESSING AN ADDITIONAL FIREARM, EVEN  
14 THOUGH HE IS A PROHIBITED PERSON.

15 RULE 421(A) (8), THE MATTER IN WHICH THIS  
16 CRIME WAS COMMITTED INDICATES PLANNING AND  
17 SOPHISTICATION BY THE DEFENDANT IN THIS CASE. HE BOUGHT  
18 A PARIS KIT THROUGH THE INTERNET, HAD ALREADY  
19 SUCCESSFULLY ASSEMBLED THE 30-CALIBER M16 RIFLE.  
20 FURTHERMORE, BOUGHT AND SHAPED THE RECEIVER OF AN AK  
21 47-TYPE RIFLE. TOLD THE INVESTIGATORS HE KNEW HOW TO  
22 AVOID REGISTRATION REQUIREMENTS. HE HAD ALREADY  
23 MANIPULATED AND MANUFACTURED THE RECEIVER WHICH WAS THE  
24 MOST CHALLENGING FEATURE OF THE MANUFACTURING.

25 THE DEFENDANT WAS ABLE TO EXPLAIN IN DETAIL  
26 HOW HE COULD ASSEMBLE THESE WEAPONS WHICH WOULD GET

1 AROUND THE REGISTRATION REQUIREMENTS. HE WELL KNEW THAT  
2 HE WAS A FELON THAT COULD NOT POSSESS WEAPONS. IT  
3 BECAME SIGNIFICANT AND IMPORTANT THAT HE CIRCUMVENT THE  
4 REGISTRATION REQUIREMENTS.

5 CIRCUMSTANCES IN AGGRAVATION REGARDING THE  
6 CRIME, RULE 4.421 (A) (1), AGAIN THE MANNER IN WHICH THE  
7 CRIME WAS CARRIED OUT INDICATES PLANNING AND  
8 SOPHISTICATION. HE BOUGHT A PARTS KIT FROM THE INTERNET  
9 AND HAD ALREADY ASSEMBLED A 50-CALIBER DTC RIFLE.  
10 BOUGHT IT ALREADY WITH A SHAVED RECEIVER FOR AN AK RIFLE  
11 AND ADMITTED THAT HE KNEW HOW TO AVOID REGISTRATION  
12 REQUIREMENTS.

13 REGARDING THE DEFENDANT IN RULE 4.421 (B) (1),  
14 THE DEFENDANT'S CONVICTIONS ARE NUMEROUS. HE HAS FOUR  
15 ADULT CONVICTIONS ARISING OUT OF FIVE SEPARATE INCIDENTS  
16 INCLUDING A COMMERCIAL BURGLARY, A SEPARATE PETTY THEFT  
17 AND THREE DIFFERENT GUN INCIDENTS. LAST ONE INCLUDING A  
18 GANG ASSOCIATION.

19 THE COURT ALSO NOTES THAT IN THE GUN  
20 CONVICTION OF MARCH 1995, HE WAS ALSO CONVICTED OF  
21 ALTERING A MANUFACTURER'S CERTIFICATE NUMBER OR  
22 IDENTIFICATION MARK WHICH WAS VERY SIMILAR AGAIN TO THE  
23 CONDUCT WE SEE HERE.

24 RULE 4.421 (B) (5), THE DEFENDANT'S  
25 PERFORMANCE ON PROBATION WAS UNSATISFACTORY, AND THAT  
26 WHILE ON PROBATION HE POSSESSED YET ANOTHER FIREARM.

1 THE COURT NOTES THAT THERE ARE NO CIRCUMSTANCES IN  
2 MITIGATION RESPECTING THE CRIME UNDER RULE 4.432 (A),  
3 NOR RESPECTING THE DEFENDANT UNDER (B).

4 I FIND THAT THE PEOPLE'S CALCULATION OF THE  
5 MAX POSSIBLE SENTENCE IS TEN YEARS, EIGHT MONTHS. I  
6 FIND THAT IT TO BE ACCURATE UNLESS THERE IS ANYTHING  
7 THAT I AM MISSING. THE TRIAD IS TWO YEARS, THREE YEARS,  
8 FOUR YEARS. CAN BE DOUBLE THE BASE TERM BECAUSE OF THE  
9 STRIKE. THAT TRIAD BECOMES FOUR, SIX, AND EIGHT YEARS.  
10 ANY OBJECTION TO THOSE CALCULATIONS?

11 MS. JONES: NO, YOUR HONOR.

12 MS. HENNES: NO.

13 THE COURT: COUNT 2 IS A SUBORDINATE TERM. THE  
14 TRIAD IS TWO, THREE, AND FOUR YEARS. ONE THIRD OF THAT  
15 MIDDLE TERM IS ONE YEAR. DOUBLE IT BECAUSE OF THE STRIKES  
16 IT BECOMES TWO YEARS.

17 THE COURT FINDS THAT ANY SENTENCE IN COUNT 2  
18 WOULD BE SUBJECT TO SECTION 654 OF THE PENAL CODE  
19 BECAUSE THE CONDUCT UNDERLYING THE CHARGE IN COUNT 2 IS  
20 THE SAME CONDUCT RELEVANT TO THE SAME GUN IN COUNT 1  
21 CHARGED AND PUNISHABLE IN DIFFERENT WAYS.

22 WITH RESPECT TO COUNT 3, COUNT 3 IS ALSO A  
23 SUBORDINATE TERM. HAS A TRIAD OF 16 MONTHS, TWO AND  
24 THREE YEARS. THIRD OF THAT MIDDLE TERM OF TWO YEARS IS  
25 EIGHT MONTHS. DOUBLE BECAUSE OF THE STRIKE, IS 16  
26 MONTHS OF STATE PRISON. ANY OBJECTION TO THAT

1 CALCULATION?

2 MR. HENNES: NO.

3 THE COURT: COUNT 4 ALSO IS A SUBORDINATE TERM.  
4 THE SAME TRIAD. AGAIN, 16 MONTHS OF STATE PRISON. I  
5 FIND, AS I SAID BEFORE, THAT MR. NGUYEN IS INELIGIBLE  
6 FOR PROBATION. BY STATUTE UNDER PENAL CODE SECTION  
7 667(C), BECAUSE HE HAS SUFFERED ONE SERIOUS OR VIOLENT  
8 FELONY CONVICTION.

9 THE LENGTH OF TIME BETWEEN THE PRIOR  
10 CONVICTION AND THE CURRENT SHALL NOT AFFECT THE  
11 IMPOSITION OF SENTENCE UNDER (C)(3).

12 IN DETERMINING THE APPROPRIATE SENTENCE IN  
13 THIS CASE THE COURT HAS CONSIDERED THE FOLLOWING  
14 CRITERIA SET OUT IN THE RULES OF COURT. I FIND COUNT 1  
15 TO BE THE PRINCIPAL TERM. I FIND NO MITIGATING FACTORS  
16 RELATING TO THE CRIME OF THE DEFENDANT.

17 ON COUNT 1, THEREFORE, THE COURT HAS SELECTED  
18 THE MIDDLE TERM OF THREE YEARS DOUBLED BECAUSE OF THE  
19 STRIKE. SO I FIND SIX YEARS ON COUNT 1.

20 ON COUNT 2, SUBORDINATE TERM, I SELECT THE  
21 MIDDLE TERM, DOUBLE IT, WHICH IS TWO YEARS. I WILL STAY  
22 THAT PURSUANT TO SECTION 654.

23 ON COUNT 3, SELECTING THE MIDDLE TERM OF TWO  
24 YEARS, TAKING A THIRD OF IT, DOUBLING THAT. THAT IS 16  
25 MONTHS. THAT WILL BE CONSECUTIVE TO COUNT 2 BASED UPON  
26 THE ABOVE REASONS.



1 THE COURT IS NOT FINDING IT SUBJECT TO 654.  
2 THAT IS CONCURRENT TO COUNT 2.

3 ON COUNT 4, THE COURT SENTENCES THE DEFENDANT  
4 TO 16 MONTHS, CONCURRENT TO COUNT 1. TOTAL SENTENCE,  
5 THEREFORE, IS SIX YEARS OF STATE PRISON.

6 MS. JONES: MAY WE APPROACH FOR A MOMENT?

7 THE COURT: YES.

8 (WHEREUPON COUNSEL APPROACHED THE BENCH AND  
9 HAD A DISCUSSION HELD OFF THE RECORD.)

10 THE COURT: THANK YOU, COUNSEL. LET ME REVIEW THE  
11 CALCULATIONS AS TO COUNTS 2, 3-- AS TO COUNTS 3 AND 4.

12 THE COURT WILL TAKE THE MIDDLE TERM AND DOUBLE  
13 THAT, WHICH IS FOUR YEARS. THAT WILL RUN CONCURRENT TO  
14 COUNT 1. THE SAME IN COUNT 4. THE COURT WILL SELECT THE  
15 MIDDLE TERM, TIMES TWO, FOR TOTAL OF FOUR YEARS,  
16 CONCURRENT TO COUNT 1.

17 ALL RIGHT. SO THE TOTAL TERM IS STILL SIX  
18 YEARS IN STATE PRISON. THE DEFENDANT IS ORDERED TO  
19 PROVIDE SWAB SAMPLES, HIS RIGHT THUMB PRINT AND FULL  
20 PALM IMPRESSIONS OF EACH HAND. ANY BLOOD SPECIMENS OR  
21 OTHER BIOLOGICAL SAMPLES FOR LAW ENFORCEMENT ANALYSIS  
22 PURSUANT TO PENAL CODE SECTION 296 (A).

23 YOU WILL BE INCLUDED IN THE STATE DNA AND  
24 FORENSIC IDENTIFICATION AND DATA BASE AND DATA BANK  
25 PROGRAM. THIS ORDER IS TO BE INCLUDED IN THE ABSTRACT  
26 PURSUANT TO PENAL CODE SECTION 296 (F), AS IN FRANK.

1           PURSUANT TO PENAL CODE SECTION 1202.4 (B)(1),  
2 THE DEFENDANT IS ORDERED TO PAY A RESTITUTION FINE TO  
3 THE STATE RESTITUTION FUND IN THE AMOUNT OF \$200.  
4 PURSUANT TO PENAL CODE SECTION 1202.45 / .44, THE COURT  
5 IS ORDERING AN ADDITIONAL PAROLE RESTITUTION FINE IN THE  
6 AMOUNT OF JUST IMPOSED, \$200. PAYMENT OF THIS FINE IS  
7 SUSPENDED, UNLESS THE DEFENDANT'S PAROLE IS REVOKED.

8           THE DEFENDANT IS ORDERED TO PAY A \$40  
9 SECURITY FEE FOR EACH CONVICTION PURSUANT TO SECTION  
10 1456.8 (A)(1) OF THE PENAL CODE. DEFENDANT IS ORDERED  
11 TO PAY A \$30 CONVICTION ASSESSMENT FOR EACH CONVICTION,  
12 TO BE DEPOSITED IN THE IMMEDIATE CRITICAL NEEDS ACCOUNT,  
13 STATE COURT'S FACILITY INSTRUCTIONS FUND, PURSUANT TO  
14 GOVERNMENT CODE SECTION 70773 (A)(1).

15           WITH RESPECT TO CREDITS, I BELIEVE THE  
16 DEFENDANT HAS ONE DAY OF CREDIT.

17           MR. HENNES: ONE.

18           THE COURT: MR. NGUYEN, YOU HAVE A RIGHT TO APPEAL  
19 FROM THIS SENTENCE. IF YOU WISH TO APPEAL YOU MUST FILE  
20 A WRITTEN NOTICE OF APPEAL WITH THE CLERK OF THIS COURT  
21 WITHIN 60 DAYS FROM TODAY.

22           IF YOU APPEAL AND YOU ARE UNABLE TO HIRE A  
23 LAWYER, THE APPELLATE COURT WILL APPOINT A LAWYER TO  
24 REPRESENT YOU ON APPEAL AT NO COST TO YOU.

25           YOU WILL ALSO HAVE A RIGHT TO A FREE  
26 TRANSCRIPT AND RECORD OF THE NECESSARY PROCEEDINGS IN

1 THIS COURT. THE WRITTEN NOTICE MUST BE TIMELY FILED.

2 DO YOU HAVE ANY QUESTIONS ABOUT HOW YOU  
3 APPEAL?

4 MR. HENNES: NO.

5 THE COURT: BAIL IS EXONERATED. YOU ARE REMANDED  
6 TO CUSTODY OF THE ORANGE COUNTY SHERIFF'S DEPARTMENT.  
7 THE SHERIFF IS ORDERED TO DELIVER YOU TO THE DEPARTMENT  
8 OF CORRECTIONS FORTHWITH.

9 MR. HENNES: YOUR HONOR, I DID RAISE THE MATTER OF  
10 BAIL ON APPEAL. WOULD THE COURT CONSIDER A STAY OF TIME  
11 TO SERVE?

12 THE COURT: THAT REQUEST IS DENIED, COUNSEL.

13 MR. HENNES: ARE YOU DENYING BAIL ON APPEAL, YOUR  
14 HONOR?

15 THE COURT: YES, COUNSEL.

16 ANYTHING ADDITIONAL BY EITHER COUNSEL?

17 MS. JONES: NO, YOUR HONOR.

18 THE COURT: THANK YOU.

19 (WHEREUPON THE PROCEEDINGS ENDED.)  
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STATE OF CALIFORNIA  
COUNTY OF ORANGE

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I, MARGARET M. CARABINE, CERTIFIED SHORTHAND  
REPORTER, HEREBY CERTIFY: THAT I WAS APPOINTED  
BY THE COURT TO ACT AS OFFICIAL COURT REPORTER  
IN THE ABOVE ENTITLED ACTION, THAT I REPORTED  
THE SAME INTO TYPEWRITING AS APPEARS BY THE  
FOREGOING TRANSCRIPTION. THAT SAID TRANSCRIPT  
IS A FULL, TRUE AND CORRECT STATEMENT OF THE  
PROCEEDINGS AND EVIDENCE IN THE MATTER HEREIN  
TO THE BEST OF MY ABILITY.

DATED 1/3 DAY OF APR

Margaret M. Carabine  
MARGARET M. CARABINE, CSR NO. 4859

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )  
                          ) SS  
COUNTY OF ORANGE   )

I, JANICE ARNOLD, RPR, CLR, CSR 3307, COURT  
REPORTER PRO TEMPORE IN AND FOR THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY  
THAT THE FOREGOING TRANSCRIPT, CONSISTING OF PAGES 422  
THROUGH 443, INCLUSIVE, IS A TRUE AND CORRECT TRANSCRIPT  
OF MY SHORTHAND NOTES AND IS A FULL, TRUE AND CORRECT  
STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED THIS 28TH DAY OF DECEMBER, 2011.

  
JANICE ARNOLD, RPR, CLR  
CSR 3307

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF ORANGE )

I, LORI L. PARNESS, C.S.R. NO. 9117, OFFICIAL COURT REPORTER, DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING REPORTER'S TRANSCRIPT, PAGES 7 THROUGH 417, IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES THEREOF, AND A FULL, TRUE, AND CORRECT STATEMENT OF THE TESTIMONY AND PROCEEDINGS HAD IN SAID CAUSE.

DATED: \_\_\_\_\_

1/5/12

A handwritten signature in cursive script, appearing to read 'Lori Parness', written over a horizontal line.

LORI L. PARNESS, CSR #9117  
REPORTER PRO TEMPORE

CASE NO. 10WFC918

APPELLATE CASE NO. G046081

THE PEOPLE OF THE STATE OF CALIFORNIA

VS.

TIEN DUC NGUYEN

---

I, ALAN CARLSON, EXECUTIVE OFFICER/CLERK, IN AND FOR THE COUNTY OF ORANGE, STATE OF CALIFORNIA, HEREBY CERTIFY: THAT I AM NOT A PARTY TO THE WITHIN ACTION OR PROCEEDING; THAT ON \_\_\_\_\_, I SERVED THE WITHIN REPORTER'S TRANSCRIPT ON APPEAL ON JASON DAVIS, ATTORNEY FOR APPELLANT IN SAID ACTION OR PROCEEDING, BY DEPOSITING A TRUE COPY THEREOF, ENCLOSED IN A SEALED ENVELOPE, WITH FEES THEREON FULLY PREPAID, WITH FEDERAL EXPRESS AT SANTA ANA, CALIFORNIA, ADDRESSED AS FOLLOWS:

JASON DAVIS  
27281 LAS RAMBLAS., STE. 200  
MISSION VIEJO, CA 92691

ALAN CARLSON, EXECUTIVE OFFICER/CLERK

BY: \_\_\_\_\_, DEPUTY

RECEIVED OF ALAN CARLSON, CHIEF EXECUTIVE OFFICER/CLERK, A COPY OF THE REPORTER'S TRANSCRIPT ON APPEAL, CONSISTING OF \_\_\_\_\_ VOLUMES IN THE ABOVE-ENTITLED MATTER, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

RECEIVED OF ALAN CARLSON, EXECUTIVE  
OFFICER/CLERK, A COPY OF THE REPORTER'S TRANSCRIPT  
ON APPEAL CONSISTING OF \_\_\_ VOLUMES IN THE  
ABOVE-ENTITLED MATTER THIS \_\_\_ DAY OF  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SIGNATURE OF RECIPIENT

I HEREBY CERTIFY THAT THE ATTORNEY GENERAL'S  
COPY WAS TRANSMITTED TO THE DISTRICT ATTORNEY FOR  
REVIEW ON \_\_\_\_\_, 20\_\_.

ALAN CARLSON, EXECUTIVE OFFICER/CLERK

BY: \_\_\_\_\_  
DEPUTY

I HEREBY CERTIFY THAT A COPY OF THE WITHIN  
REPORTER'S TRANSCRIPT WAS TRANSMITTED TO THE ATTORNEY  
GENERAL OF THE STATE OF CALIFORNIA ON THIS \_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_.

ALAN CARLSON, EXECUTIVE OFFICER/CLERK

BY: \_\_\_\_\_  
DEPUTY