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SUPREME COURT  
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SO53228

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DEPUTY

IN THE  
Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA

*Plaintiff and Respondent,*

v.

ANDRE STEPHEN ALEXANDER

*Defendant and Appellant.*

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

LOS ANGELES SUPERIOR COURT NO. BA06S313

APPELLANT'S OPENING BRIEF  
[Volume 3 of 5; Pages 106-181]

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*Attorney for Appellant  
Under Appointment by the California Supreme Court*

DEATH PENALTY

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## **10. The Search of the Home of Appellant's Parents (November 1990)**

On November 12, 1990, Detective Henry was involved in the execution of a search warrant on the residence of appellant's parents. The search was for evidence related to the murder of Julie Cross. (RT 5903.)

Present at the location when the warrant was served were Mrs. Alexander, appellant's mother, and other relatives who arrived during the search. (RT 5904.) After knocking, Henry stated that the search warrant was related to a murder investigation, without specifying the murder. While in the home conducting the search, Henry told Eileen Smith that the investigation was related to the murder of Special Agent Julie Cross. (RT 5904.)

Henry asked Mrs. Alexander where appellant's personal effects were and she directed him to the southeast bedroom of the residence. She pointed out a closet area where some clothes were hanging and showed Henry where appellant's personal effects were located. Henry recovered these items and booked them. Exhibit F, the leather jacket, was among these items. It was hanging in the closet of the bedroom area in the eastern portion of the closet. (RT 5905.) Henry found no other leather jackets in the search of the closet. (RT 5938.)

Exhibit 9, the black knit cap, was in a tote bag on the closet shelf. There were other hats in the tote bag but no other knit caps. (RT 5906.)

The search of a bedroom also produced bankruptcy papers, i.e., an order of discharge dated September 18, 1980 with appellant's name and that of Sherol Yvonne Alexander together with their Social Security numbers. (RT 5907.) The bankruptcy petition was filed on April 15, 1980. (RT 5908.)

There was also a post card addressed to appellant, reminding appellant to pick up some eyeglasses at an optometrist's office in the Torrance Mall. (RT 5908-5909.) The address portion of the post card is 296

Del Amo Fashion Center, Torrance, California. It is postmarked either April or August 1987 and states that the patient has not yet picked up his glasses and would he do so. (RT 5909.)

### **11. Testimony on Blood Spattering**

Rod Englert is a retired Deputy Chief from the Sheriff's Office of Multnomah County in Oregon. (RT 5431.) He has been the President of Rod Englert Forensic Consultants Incorporated for about 25 years. He reconstructs crime scenes and deals with matters like blood stain interpretation, body momentum, trajectories, and the like. (RT 5432.) Englert has testified about 200 times as an expert. One of those times he testified for the defense. (RT 5470-5471.)

Englert testified that there are three separate categories in which blood can spatter, i.e., low, medium and high velocity. Firearms create high velocity impact spatter. (RT 5436.) The higher the velocity, the finer the droplets and the less distance they travel, i.e., only a distance of about four feet. Bigger droplets will go farther.

In high velocity impact, there is fine spray composed of millions of droplets near the wound. (RT 5438.) There is back spatter since liquid cannot compress. The back spatter is in a 360 degree cone shape. Anything that is in that cone will receive some of the spatter. (RT 5439.)

Medium velocity spatter is inflicted with a blow, as with a baseball bat. (RT 5438.) There is no back spatter in such situations. (RT 5440.)

Category one is low velocity spatter, as when someone walks along and some blood drips from the finger. (RT 5440.) Such drops are perfectly round. (RT 5440.)

Gunshots wounds can also cause bigger drops of blood than mist. (RT 5442.) These drops will travel further than the mist. (RT 5443.)

Exhibit 68 is a chart with nine photos labeled A through I. (RT 5445.)

A is the front of the sweater that shows the bullet hole (RT 5445-5446); B is a close-up of the same; C is the back of the sweater; D is a close-up of the right sleeve of the sweater; E is the left sleeve; G is the right sleeve; H is the left sleeve; I is a high velocity gunshot pattern on a poster where it was shot into a source of blood. (RT 5446.)

Englert conceded that it would have been useful to look at Cross' sweater but he looked only at photographs and never the actual sweater. (RT 5489.)

"I" shows that the closer to the source of blood, the denser the pattern of droplets. (RT 5448.)

Photos D, E, G and H show very fine specks of blood that have impregnated into the weave which is what high velocity mist will do. (RT 5449-5451.) What is shown on D, E, G and F is consistent with high velocity blow-back caused to Cross' chest area. (RT 5450.)

If the shooter had the muzzle of an 870 Remington about two feet away from her chest when he inflicted the wound shown in photo F, and the shot was fired in a vehicle when the shooter's upper body was over the back of the front seat and the shot was fired at a downward angle into the back seat, there would be blow-back on the shooter. (RT 4550-4551.) This is especially so because the shot was fired into an area where there was a lot of blood. (RT 5451.) If the shooter wore a jacket, that would leave a "V" shape pattern on the shirt underneath the jacket. (RT 5451.) What is beyond the "V" shape pattern on the shirt is called a "void." (RT 5451.)

If the barrel of the 870 Remington was 2 feet from the body, there would be blow-back on the barrel and the shooter's sleeve. (RT 5452.)

Englert was shown Exhibit 32, a photo of the back seat of the car. (RT 5457.) In Englert's opinion, Cross was shot in the back as she was going over the back seat, rolled and was now in the back seat looking at the back of the front seat. Blood from the first wound was already on the back

seat and therefore the buffering agent from the second shot landed on top of the blood on the seat, which is what is shown in Exhibit 32. (RT 5458-5460.)

Based on Exhibit 34 which shows the trajectory of the bullet, Englert testified that the shooter would have to be up and over the seat into the back seat area because the angle was very acute and inconsistent with shooting over the front seat. (RT 5463.) When shot the second time, Cross must have been crunched up against the right rear door. (RT 5465.)

With a small caliber weapon like a .22 and multiple layers of clothing there would not be much blow-back. This is similar with shots to the hair that impedes blood from going back or forward. (RT 5491.)

A shotgun exaggerates a wound as opposed to a .22. (RT 5493.) One would expect to see a large amount of blow-back on the back side of the front seat of the vehicle in this case. (RT 5494.) Englert did not see any evidence of blow-back on the back side of the front seat but such has been described by Engquist, as Henry and Kuriyama have related to Englert. (RT 5494.) The large majority of the blow-back would be near the headrest or a little below it and there possibly was blow-back on the roof of the car. (RT 5495.)

If an officer testified that the only area in which he saw light mist of blood was in the upper right portion of the front right head rest, this would not change Englert's opinion. It would be consistent with Englert's opinion. (RT 5513.) Detective Engquist's description of where he saw the mist of blood on the back side of the front seat supports Englert's conclusions. (RT 5526.)

If the person who shot Cross used the Remington 870 at the described angle two feet from the wound, the face would receive blow-back, as would the barrel and the person who fired the gun. (RT 5534.)

## **12. Evidence Of Blood on Clothing**

### **(a) Outside the Jury's Presence**

Thomas A. Wahl was called by the defense outside the presence of the jury. (RT 5630.)

A phenolphthalein test is a presumptive test used to detect the presence of blood. Besides human blood, phenolphthalein will test positive for plant peroxidase, an enzyme found in vegetable matters such as horseradish, turnips, cabbage. Some copper salts can yield positive phenolphthalein results as well. (RT 5631.) A phenolphthalein test will react positively to animal blood. (RT 5631.)

A luminol test is another presumptive test for the presence of blood. (RT 5631-5632.)

Luminol testing is based on the same principle as phenolphthalein, i.e., an oxidation reaction that takes place due to the presence of heme instead of a color reaction. It produces a luminescence in certain wavelengths. (RT 5631-5632.) The only other thing luminol will test positive for is copper salts. It will not react with plant substances but will react with animal blood. (RT 5632.) Any blood, including animal blood, that contains hemoglobin will react with luminol. (RT 5632.)

Copper ions will react with both tests. (RT 5633-5634.)

There is a very high probability of blood if both tests provide a reaction. (RT 5634.)

The defense argued that evidence about blood on the jacket should be excluded because there were only two presumptive tests, no one knew what happened to the jacket over a period of 10 years and the blood found on the jacket could be animal blood. (RT 5635; 5639-5640.) The court ruled that the evidence of blood and testing for blood would be admitted. (RT 5640-5646.)

**(b) Evidence Presented to the Jury**

Gregory Matheson was called by the People to testify in the presence of the jury. (RT 5647.)

Matheson is an Assistant Laboratory Director of the Los Angeles Police Department's Crime Lab, Scientific Investigation Division. (RT 5647.)

According to Matheson, the phenolphthalein test is generally accepted in the scientific community. (RT 5661.) The luminol test is generally accepted in the scientific community as a presumptive test. (RT 5656.)

A presumptive test tells one whether one is headed in the right direction. (RT 5668.) The confirmatory test provides the confirmation of the presence of blood. (RT 5668.)

Luminol is not specific for blood and will react to other substances. (RT 5658.) Phenolphthalein will react to some plants like cabbage. (RT 5673.) Both tests will react to any type of blood, human or animal. (RT 5671-5672.) Only blood will react to both reagents. (RT 5659.)

On November 1, 1991, Matheson tested a knit sweater (Exhibit 68), a knit watch cap (Exhibit 9) and a brown leather jacket (Exhibit F). (RT 5649-5652.) Matheson received these three items from Detective Henry on October 10, 1991. (RT 5666.) The request was to examine these items for the possible presence of blood. (RT 5651.) Matheson looked, in order, at the sweater, the watch cap and the jacket. (RT 5653.)

Matheson started with a visual examination. He could see blood on quite a few places on the sweater. (RT 5651.) The back of the sweater was very heavily stained with what appeared to be blood. (RT 5652.) The front had some visibly stained areas and there were some flecks of blood on the arms of the sweater. There was also blood on the chest area. (RT 5652.)

Matheson could not see any blood on the knit cap. (RT 5652.)



Matheson could not see any overt blood stains on the leather jacket. He did see a darkened kind of stained area on the inside of the left cuff that warranted further examination. (RT 5652.) That was the lining area. (RT 5653.)

Matheson ran both tests and did not find any blood on the cap. (RT 5660.)

On the leather jacket, Matheson did not see any staining on the front or in the inside that was worth testing. (RT 5661-5662.) On the inside of the left sleeve on the lining he saw a darker area or stained area that warranted further work. (RT 5662.) He took a cotton swab, applied a little bit of water to it and rubbed it on the stain and then applied the phenolphthalein test and got a positive result, indicating that the stain was blood or had blood in it. (RT 5662.)

The swabs were discarded. (RT 5676.) Matheson did not have photos taken of the swabs; this was not common practice. (RT 5677.)

Luminol was sprayed on the jacket. There was a reaction on the inside of the left cuff where the previous test had been run. Matheson also saw very small pinpoints of light in the general chest area or upper body front of the jacket. (RT 5663.) The photo of the luminol test on the jacket did not come out. (RT 5671.) The photographer, Steven Ohanesian, testified that he saw a very faint reaction on the jacket after it had been sprayed with luminol. (RT 5686.)

There is no way to tell when the blood was deposited on the jacket. The blood on the jacket could have been animal blood. (RT 5676.)

The reaction on the jacket was significantly less than on the sweater. (RT 5665.) Matheson has never gotten a reaction to anything other than blood when both tests were used. (RT 5665.)

A confirmatory test for human blood is ouchterlony. This test will show whether the substance is human blood. (RT 5668-5669.) A DNA test

will do the same. (RT 5669.) More blood is needed for a confirmatory test than a presumptive test. (RT 5678.)

No confirmatory tests were requested or performed by Matheson on the sweater or the jacket. (RT 5669-5670.)

*It was stipulated at the conclusion of the guilt phase trial that in December 1991 Senior Forensic Geneticist Tom Wahl of the Analytical Genetic Testing Center in Denver, Colorado analyzed the brown leather jacket, Exhibit F, and the sweater removed from Julie Cross. The presence of blood on the jacket could not be confirmed. Human blood was confirmed on the sweater. Visual examination of the inside left arm cuff area of Exhibit F exhibited some discolorations. Presumptive tests for the presence of blood were conducted on several swabbings of this area. The results were negative. A vigorous swabbing of this area yielded one positive result. A cutting of the lining was removed from the area cited above and extracted. The extract was concentrated and confirmatory tests for the presence of blood were conducted on the extract. Confirmatory tests for blood were negative. Human species origin tests were conducted on the concentrated extract. The results were negative. ABO blood typing of the extract was inconclusive. According to Mr. Wahl, confirmatory blood tests are not as sensitive as presumptive tests and require more blood to yield a result. Negative results on confirmatory blood tests could mean: 1. There was only a trace amount of blood which was insufficient to yield a confirmatory result; 2. There was blood, but it was not of human origin; or 3. There was no blood. (RT 7132-7133.)*

Matheson testified that in 1991 the police lab was not running DNA analyses. (RT 5677.) If one gets a DNA result, that confirms the blood is human. Matheson stated that it would have been possible in 1991 to determine that the blood was human through a technique called PCR. (RT 5679.)

There are two types of DNA tests, RFLP and PCR. For RFLP one needs quite a bit of blood. RFLP was being used in 1991. (RT 5680.) They were not using PCR in the laboratory in 1991. (RT 5680-5681.) According to Matheson, there was not enough blood on the jacket to do an RFLP test. (RT 5681.)

It was stipulated at the conclusion of the guilt phase trial that on October 10, 1995, Melisa Smrz, a DNA analyst with the FBI laboratory in Washington, D.C. examined Exhibit F for possible DNA analysis by using the PCR process. Ms. Smrz determined that there was insufficient DNA for PCR analysis on the brown leather jacket, Exhibit F., and she returned the jacket along with a sample of Julie Cross' blood to the Los Angeles Police Department Evidence Division. (RT 7133-7134.)

### **13. Refusal to Stand in the Lineup (April 3, 1990)**

#### **(a) Deputy Sheriff Hartwell**

On April 3, 1990, Deputy Sheriff Hartwell was assigned to the lineup detail of the County Jail. At the time, he had been with the Sheriff's Department for 10 years and with the line-up detail for 2 years. (RT 5727.)

Lineups were composed of the suspect and of members of the inmate population. (RT 5727.)

Appellant was brought down to the Sheriff's Office and told that he would be in a live lineup. Appellant became quite agitated and said that he was not going to stand in a lineup. (RT 5728.) Hartwell spoke with appellant for about 15 minutes, reasoning with him to persuade him to stand in the lineup. Appellant refused. (RT 5729.)

Exhibit 73 is a lineup refusal form. (RT 5729.) Among other things, the form states that the suspect has been advised that he did not have the right to refuse to stand in the lineup and that his refusal to do so can be used in court to indicate guilty knowledge. (RT 5730.)

Hartwell told appellant that his refusal to stand in the lineup could be used in court. Appellant told Hartwell that he was not standing in the lineup on the advice of his attorney. (RT 5732.) Hartwell told appellant to put his reasons down on the form and to sign his name. Appellant did so. (RT 5733.)

**(b) Attorney Rosen<sup>63</sup>**

Rosen, an attorney, was informed on March 29, 1990, that appellant was being asked to stand in a lineup. (RT 5804-5805.) He testified, based on his notes that were before him, that the request came from the L.A.P.D. for appellant to stand in a lineup in a murder case involving Julie Cross. (RT 5805.) Rosen spoke to other attorneys and then called L.A.P.D. Detective Kwoch. (RT 5805.)

Rosen asked Detective Kwoch whether the witness or witnesses who might be asked to attend the lineup had been shown any photo spreads. Kwoch said no. (RT 5805.) Rosen asked this question because having seen a photo before the lineup would influence the witness to make an identification. (RT 5824.)

Rosen met with appellant on April 2, 1990. (RT 5806.) The meeting was one hour fifteen minutes long. (RT 5808.)

Rosen advised appellant that he should not stand in the lineup and discussed the consequences of this with appellant. (RT 5811.) There was no advantage to standing in the lineup. (RT 5812.) Asking witnesses ten years after the fact to make an identification does not serve any purpose, in Rosen's opinion. (RT 5812.) If appellant had said that he wanted to stand in the lineup to clear his name, Rosen would have said that appellant was

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<sup>63</sup> Rosen was associate counsel for appellant in the triple murder case. (RT 5785.)

being crazy but if he wanted to do it, he should stand in the lineup. (RT 5814.)

Rosen testified that he must have told appellant that if his refusal to stand in a lineup came up later, he should say he did so on his lawyer's advice. Once appellant said that he refused to stand in the lineup because of his lawyer's advice, appellant's refusal would not be admitted into evidence. (RT 5815.)

In Rosen's opinion, if appellant refused to stand in the lineup as a result of the advice he got from Rosen, it could not be used to show consciousness of guilt. Rosen also told appellant not to refuse to obey a court order and if he did disobey, it could be used to show consciousness of guilt. (RT 5820.)

Rosen supposed he told appellant that if he disobeyed a court order, he could be held in contempt as well. (RT 5821.)

Rosen was called by a deputy district attorney and asked to be present during a lineup in County Jail. (RT 5808.) But there was no lineup held on April 3, 1990. Rosen knew that appellant had signed the document regarding the lineup. (RT 5809.)

Rosen was present at a lineup conducted on April 19, 1990 in which appellant participated. (RT 5818.) This lineup was conducted pursuant to a court order. (RT 5894-5895.)

#### **14. Appellant and Terry Brock**

As noted, in 1978 or 1979 appellant and Yvette Curtis took a trip to San Francisco. (RT 5241.) Curtis had a brief affair with appellant at the same time that she was seeing Terry Brock. (*Id.*)

After this trip, Terry Brock and appellant had a fight.<sup>64</sup> Curtis was still seeing appellant when this fight occurred. (RT 5305.) The fight was

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<sup>64</sup> According to appellant, the fight took place in October or November 1979. (RT 8231.)

over Curtis. (RT 5305-5306.) Terry Brock hurt appellant pretty badly. He beat appellant over the head a bunch of times with the butt of the gun. (RT 5306.) Appellant was bleeding. (RT 5306-5307.) Curtis felt bad about what happened to appellant. (RT 5307.) She didn't stop seeing appellant after the fight. (RT 5307.) Curtis saw appellant once or twice after the fight took place. (RT 5305.)

Jessica Brock confirmed that Terry Brock and appellant had a fight in 1978 or 1979 over Yvette Curtis. (RT 6095-6096.)

### **15. Appellant, April Watson and Darcel Taylor**

#### **(a) April Watson**

April Watson, formerly known as April Jones, met Terry Brock in 1986. She dated Terry Brock for six years between 1986 and 1993, with the exception of 1990 when they weren't dating. (RT 5848.)

Watson became familiar with Brock's family and knew his sister Jessica Brock. (RT 5845.) Watson met appellant through Jessica Brock. (RT 5846.) Watson identified appellant in court. (RT 5845-5846.)

Watson was interviewed by Detective Henry at the Wilshire Division Police Station. She gave a statement. (RT 5849.) She knew that Henry was investigating a murder. (RT 5851.) A little later in Watson's testimony, the prosecutor managed to convey to the jury that appellant had been investigated for more than one murder. (RT 5854.)<sup>65</sup>

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<sup>65</sup> "Q And you [A. Watson] remember going to Wilshire Division of L.A.P.D. and speaking to Detective Henry and Kwoch who were investigating the murder of Julie Cross. Is that correct? A. The murder of who? Q Julie Cross. A murder case. THE COURT: Secret Service Agent. THE WITNESS: I don't know if that is what they were working on at the time. BY MR. KURIYAMA: Q They didn't tell you what murder case it was? A I don't remember that." (RT 5854.) Appellant contends that reference by Jessica Brock to the triple murder in her testimony before the jury (RT 6288) was prejudicial and that a mistrial should have been granted for this reason. (Argument XVI.) The prosecutor's question and Watson's testimony shows that Jessica Brock's statement was not an isolated incident

Watson remembered receiving a call from appellant. (RT 5850.) She testified that it was possible that appellant wanted to know what was going on with Terry Brock. (RT 5851.) It was possible that she told the police that Terry Brock was seen being taken out of County Jail by Detective Henry and guys with suits and appellant was asking what was going on with Terry Brock. (RT 5851-5852.)<sup>66</sup> It was also possible that appellant stated, "Tell Terry to stay strong. Tell him to stay strong. I heard some things that weren't right." (RT 5852.)

Detective Henry testified that he interviewed Watson, then known as April Jones, on September 27, 1990. (RT 5897-5898.) Watson told Henry that she had received telephone calls from appellant, and his wife Eileen (RT 5898), in August 1990. (RT 5900.) Watson told Henry that appellant wanted to know what was going on with Terry Brock and that Terry Brock had been seen taken out of jail by Henry and men in suits; appellant wanted to know from Jones what was going on with Terry Brock. (RT 5901.)<sup>67</sup> Appellant told Watson to tell Terry Brock to stay strong, that he had heard some things that weren't right. (RT 5901.) Jones told Henry that she didn't understand what appellant was talking about. (RT 5901.)

Henry received a telephone call came from Watson on November 1, 1990. (RT 5902.) Watson told Henry that she had received another call

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and that the jury had been made aware, however subtly, of the fact that appellant was suspected of more than one murder.

<sup>66</sup> Detective Henry testified that he removed Terry Brock from the Los Angeles County Jail on August 17, September 6, September 13 and September 14, 1990. (RT 5902.) On three occasions Henry was with his partner Roger Niles and on one occasion with Special Agent Beeson. He and Beeson were both wearing suits. (RT 5902-5903.)

<sup>67</sup> It is clear from the context of Watson's testimony that appellant, if he showed interest in Terry Brock, was interested in Brock's *case* since appellant and Brock were codefendants in the triple murder case. (CT 2517.)

from appellant on October 22, 1990. Appellant still wanted to know where Terry Brock was housed. Jones told appellant she didn't know anything. (RT 5902.)

**(b) Darcel Taylor**

Darcel Taylor is appellant's sister. (RT 5861.) Taylor is very close to appellant; she loves him. They have corresponded and talked on the phone. (RT 5867.)

Taylor visited with appellant many times. (RT 5878.) Appellant told her that he was concerned about Terry Brock talking to the police about him. (RT 5878-5879.)

Taylor has known Terry Brock since she was seven or eight years old; his family lived across the street from her family. (RT 5864.) Appellant had a child with Jessica Brock, Terry Brock's sister. Appellant and Terry Brock became associates. Taylor was not very close to Terry Brock. (RT 5865.)

Taylor wrote a letter, Exhibit 75, to Terry Brock on February 1, 1991. (RT 5866.) Before she wrote this letter, she had a conversation with appellant (RT 5867) but appellant did not ask her to write Exhibit 75. (RT 5879, 5885.)<sup>68</sup>

Taylor wrote the letter because she was concerned, having heard that Terry Brock was making statements to people and to attorneys. She wanted some kind of feedback. (RT 5869.)

Before writing the letter, Taylor had made efforts to locate Terry Brock for about a month. Finally, someone told her where Terry Brock was located. (RT 5870.)

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<sup>68</sup> Terry Brock gave Henry this letter, dated February 1, 1991, on April 15, 1991. (RT 5910-5911.)



The letter began by asking what was happening with those dogs, i.e. the L.A.P.D., and stated that Taylor had heard that Terry Brock had taken a deal on another case. Taylor had heard this from attorneys. (RT 5872-5873.) She also heard that Terry Brock had gotten married and she congratulated him. (RT 5873-5874.)

The letter went on to state, “So, man, listen. Check this. I want you to write me and tell me what’s up with those assholes,” the L.A.P.D. (RT 5877.) Taylor was concerned that Terry Brock was making statements about appellant to the police. It was other people, not appellant, who were telling her that, i.e., Joy Wilensky, appellant’s counsel in the triple murder case. (RT 5878.)

At the time Taylor wrote Exhibit 75, she did not know that appellant was a suspect in the Cross murder. She was told that Terry Brock was talking and implicating her brother. (RT 5886.)

The letter went on: “I know you didn’t sale [sic] out, you know, if that is how it went, let me know what to look for.” (RT 5887.) Taylor wanted to know if Terry Brock had in fact given information to the police. (RT 5888.) The letter continued: “So if there anything to be concerned about, let me know.” (RT 5888.) This meant Taylor was concerned if he had made any statements about appellant. (RT 5889.) “I know you can’t call so take some time out and write me.” (RT 5889.)

## **16. Jessica Brock**

Jessica Brock has been convicted of the sale of marijuana, a felony, in 1982 and of the sale of heroin, a felony, in 1992. (RT 6071.) She was also convicted of selling cocaine in 1989. (RT 6097.)

### **(a) Jessica Brock and Appellant**

Jessica Brock had known appellant for many years before she started to have a relationship with him. (RT 6052.) She has known appellant’s

parents since she was five or six. (RT 6175-6176.) Appellant was a former neighbor. (RT 6051-6052.)

In May 1978, Jessica Brock gave birth to a child fathered by appellant. (RT 6051.) She had been with appellant prior to that time off and on for a year. (RT 6051.) (The boy was 17 at the time of trial. [RT 6071.]) She also had a daughter age 6 at the time of her testimony. (RT 6072.) Jessica Brock and appellant never lived together. (RT 6094.)

Although Brock testified that her relationship with appellant lasted until about 1980 (RT 6051), she also testified that it came to an end in 1978 or 1979 when Terry Brock bashed appellant in the head over Yvette Curtis. (RT 6095.) Terry smashed appellant's head because he was sneaking around with Yvette. (RT 6095-6096.) Jessica Brock had just had the child by appellant. That was the end of their association.<sup>69</sup> Jessica's feelings were hurt because appellant lied. (RT 6096.)

Appellant was an associate of her brother Terry. (RT 6051.) After Terry bashed appellant's head in, Jessica did not see them together again. (RT 6097.)

Jessica Brock called appellant's parents from time to time and she took her son to see them even when appellant and she were no longer together. Appellant's father was there for the boy. (RT 6176.)

#### **(b) Jessica Brock's State of Mind about Testifying**

Brock stated she was nervous about testifying (RT 6065); that she hadn't really been pressured by appellant and his family about testifying but that she had been contacted by appellant and his family (RT 6066); and that her own family didn't want her to testify; and that it was difficult for her to be in court. (RT 6066.)

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<sup>69</sup> Eileen Smith, with whom appellant began to go out in 1978, testified to the same effect, i.e. that Terry Brock's and appellant's association ended after this. (RT 6616.)

Appellant's mother told her that they just wanted the truth, what really happened. They also talked about Jessica's son. That's all they talked about. (RT 6073-6074.) Appellant has also called her. (RT 6074.) Later, Brock testified that appellant's mother told her: "I don't care what they told you. You're their star witness. If you wouldn't have made the statement about the barrel and part of the gun and the bag, they wouldn't have a case. You are the star witness. If you don't give that statement, they wouldn't have a case." (RT 6156.) Jessica thought that appellant's mother was right. (RT 6157.)

Her own family, her brothers, Lamont and David (RT 6075), told her that they didn't want her to testify. (RT 6074.) Nobody in her family wanted Jessica Brock to testify. (RT 6130.) Her six brothers, her sisters and her mother were putting pressure on her. (RT 6131.) A couple of her family members were attempting to convince Jessica Brock to change her testimony and to get up there and say she didn't remember shit. (RT 6155-6156.) Her brother felt that she had no business dealing with officers of the law, the police and the courts. It wasn't just because appellant was her son's father. (RT 6074.) Her brother told her that if she testified, "Don't ever ask me for nothing else." (RT 6075.) It made it difficult for them that she was testifying in a case like this. They preferred that she not get involved. (RT 6075.)

She and appellant talked not exactly about the case but about her being stressed, that she would be glad when it would all be over, that she wished she'd never gotten involved, and they spoke of her coming to court and just telling the truth. They mostly talked about their son. Appellant never told her to come to court and lie, never put pressure on her, nor did his parents. (RT 6103.)

Her life was difficult because she was a witness in this case, it was very stressful and she cried about it. (RT 6071.) She felt bad about being a witness in this case. (RT 6072.)

In December 1995, Jessica Brock was very stressed about her upcoming testimony. She said so to Detective Henry and deputy district attorney Kuriyama. (RT 6092.) Jessica Brock told Henry: “This shit is stressing me out. My family and Andre’s family is fucking with me. I’ve been harassed on the phone. This shit is really getting to me. I can’t handle it.” (RT 6155.) She asked to be placed in the witness relocation program because of the pressure being placed on her by appellant’s, and her own, family. Steps have been taken to relocate her. (RT 6092.)<sup>70</sup>

Jessica Brock owed rent where she was living while she was testifying and stated that she intended to move in with her mother. (RT 6101.) The district attorney would pay her rent if she was relocated. (RT 6102.) She was not working and was on AFDC, i.e., welfare. (RT 6102.)

#### **17. Jessica Brock’s Contacts with the Police in 1980<sup>71</sup>**

In 1980, Jessica Brock did not give information to the police about appellant because the police never asked; they were arresting her brothers. (RT 6072.)

The police showed Jessica some composites in 1980. Jessica told them they did not look like her brothers. (RT 6105.)

Jessica Brock talked to the police in July 1980. They asked her about her brothers. She told the police that on the day of the murder she saw her brother Terry at 3:00. She told the police that on the same day her brother Chino [Charles] came by and watched Channel 2 news at 11:00 and learned

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<sup>70</sup> It appears that Jessica Brock gave contradictory testimony about whether she was pressured. As shown in the text below, she gave contradictory testimony on several subjects.

<sup>71</sup> The bulk of the testimony in this section was given on cross-examination.

of the shooting of the Secret Service agent. (RT 6107.) She told the police that she knew Terry was suspected of the shooting but that Terry was at Yvette's that evening because Jessica talked to Yvette and heard Terry's voice in the background. (RT 6107-6108.)

Jessica Brock told the police that Chino [Charles] came by that evening at 10:00 with some Leo's barbecue; she could have told the police that Chino left around 10:30 because he was going to pick up Nina. (RT 6108.)

The police questioned Jessica Brock about Terry and Charles Brock doing the robbery and murder of the Secret Service agent. The police did not mention anything about appellant; they were harassing her brothers. (RT 6109.) Jessica understood that the police wanted to know what she knew about the night the Secret Service lady was killed. (RT 6109.)

Jessica did not tell the police that appellant came over to her house after Chino had left. (RT 6109-6110.) That did not happen on the night that the Secret Service agent was killed. (RT 6110.)

A few day afterwards, Jessica made a statement to the police that Terry was at her apartment the evening of June 4, 1980 at about 7:30 and that Terry had walked over from Yvette Curtis' and stayed about 30 minutes and then said he was going to take Yvette and get something to eat. (RT 6110.) At trial, Jessica did not remember making this statement. (RT 6110.) She testified that she did not lie when she made the statement, that she had no reason to lie, but that she did not remember Terry Brock coming over. (RT 6110-6111.)

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**18. Jessica Brock, Attorney Morrissey and Jessica Brock's  
September 1990 Statement to the Prosecution** <sup>72</sup>

Attorney Marcia Morrissey began to represent Terry Brock “on a serious matter” (RT 6305) in 1987. (RT 6324.)<sup>73</sup> There were negotiations in this serious matter that occurred in 1987, when Morrissey began representing Terry Brock, that didn’t contemplate any testimony at all from Terry Brock. (RT 6324.) Beginning in 1989, there were discussions with the District Attorney wherein the prosecution wanted Terry Brock to provide information about appellant’s involvement in the Julie Cross case. (RT 6319-6320.) Morrissey characterized these as “rather one sided discussion[s]” until Terry Brock made statements in August 1990 (RT 6319) to Mr. Kuriyama and Detective Henry about the Secret Service matter. (RT 6317.)

There were three interviews with Terry Brock in late August and early September 1990 regarding the Secret Service matter; Morrissey was present during these interviews. (RT 6313-6314.) An agreement was entered into under which Terry Brock would make a proffer of information to the District Attorney without any promises as to what might happen. The final terms of the plea agreement were not worked out until after the interview with Jessica Brock. (RT 6317-6318.)

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<sup>72</sup> This section summarizes the testimony of Ms. Morrissey and Jessica Brock. Testimony given by Brock is identified with a “B.” All other testimony is by Ms. Morrissey.

<sup>73</sup> At the sidebar, Mr. Kuriyama stated that the matter was the triple homicide case wherein Terry Brock was represented by Ms. Morrissey and appellant was represented by attorneys Wilensky and Rosen. (RT 6320.) Terry Brock’s prosecution for these crimes was trailing appellant’s. (RT 6322.) The verdict convicting appellant was returned on July 19, 1990. (RT 6321.) Mr. Kuriyama stated at sidebar that appellant’s conviction for the triple murder was what motivated Terry Brock to “settle” his own case. (RT 6321-6322.)

As a result of the information provided by Terry Brock to Detective Henry and Mr. Kuriyama, Morrissey was asked to contact Jessica Brock. (RT 6317.)

Morrissey drove out to Jessica Brock's house on September 20, 1990 (RT 6298) because the phone was disconnected. When she got there, there were a lot of people there and so they went to a restaurant in the area because Morrissey did not feel it appropriate to talk in front of other people. (RT 6306.) Morrissey asked Jessica if she knew anything about the Secret Service matter and if she wanted to talk to the police. (RT 6307.)

Jessica Brock said that late in the evening of the night Cross was murdered appellant came to her residence carrying a bag that contained some items connected with the agent's murder. (RT 6299.)<sup>74</sup> There was some uncertainty on Brock's part whether the visit took place before or after the broadcast. She finally decided that it was after the broadcast on Channel 2 at 11:00. (RT 6301.) Brock said that she saw blood spatters on appellant's shirt, his chest and the sleeve on his shirt. There was a metal bar that protruded from the duffel bag; she could not say what it was. At one point appellant pulled out the metal bar and started to rinse blood from it. Brock also related that appellant had said that he had "to take somebody out. It was either them or me" and "It was out by the airport." (RT 6301.)

Brock confirmed at trial that she met with Morrissey in September 1990 about the Secret Service matter. (BRT 6052-6053.) Brock testified that she gave information to Morrissey about appellant. (BRT 6053.) This included information about appellant coming to her house on the night that the Secret Service agent was killed. (BRT 6053.)

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<sup>74</sup> Morrissey testified that she knew in September 1990 who appellant was. (RT 6311.)



Jessica Brock testified that she was convicted of selling cocaine in 1989. (BRT 6097.) She overslept and missed her court date. (BRT 6097-6098.) She knew that there was also a warrant for her arrest. That's when she started meeting with Marcia Morrissey. When she started talking to Detective Henry and Mr. Kuriyama in September 1990, she wanted them to help with her case. That is why she told them what she did tell them in September 1990. (BRT 6098.)

Morrissey confirmed that on September 20, 1990, Jessica Brock mentioned to her that she had a case pending against her and that she was worried because there was a warrant out for her. Jessica wanted to know if she could get help with her situation. Morrissey told her she didn't know, but that if the police became aware of the warrant, they could arrest her. (RT 6303.)

Later on September 20, 1990, Morrissey contacted Detective Henry by telephone later and set up a meeting for Henry to interview Jessica Brock the next day. (RT 6299.)

Jessica Brock had no transportation and she was reluctant for a police officer to come to her house or for her to go to a police station. (RT 6299.) Morrissey picked her up and took her to Morrissey's office. (RT 6300.) Detective Henry and Mr. Kuriyama were there and Morrissey introduced them to Jessica Brock. Morrissey was present when Jessica Brock made her first statement in September 21, 1990. Jessica related the observation that she made of appellant on the night of the Secret Service murder. (RT 6300.) This interview was not tape-recorded. (RT 6308.)

Jessica Brock had not spoken to Detective Henry before September 21, 1990. Morrissey was the first person to whom Jessica gave information about the Secret Service murder and information about appellant. (BRT 6054.)

About five days later, there was another interview that was taped at Morrissey's office. Other than leaving once to get water for Brock's baby Chelsey, Morrissey was present during the entire interview. (RT 6302.) According to Morrissey, there do not seem to be any major discrepancies between the two reports prepared by Detective Henry reflecting the interviews given on September 21 and September 26, 1990, but she stated that she would have to go through the statements line by line to make a comparison. (RT 6309-6310.)

On September 21 and 26, nothing was said about Jessica Brock's pending cases. (RT 6304.) She never asked for help from Detective Henry or Mr. Kuriyama. (RT 6304-6305.)

Jessica Brock testified that she was relieved in September 1990 when the information finally came out about what she knew about appellant. She was ambivalent about it because she has a son with appellant. (BRT 6070.)

Terry Brock's case was settled in October 1990. (RT 6314.) Jessica Brock was not involved in the settlement. (RT 6313-6314.) According to Morrissey, there was nothing in the plea agreement with Terry Brock that bound Jessica to do anything. (RT 6316.)

Jessica Brock had contact with Terry Brock before she met with Mr. Kuriyama and Detective Henry in 1990. (BRT 6099.) She visited Terry a couple of times in 1990 because she wanted him to see her daughter Chelsey who was born December 29, 1989. (BRT 6099.) Jessica testified that she did not talk with Terry Brock about the Secret Service murder. (BRT 6100.) However, she might have told somebody that Terry Brock told her what to tell Detective Henry and Mr. Kuriyama. (BRT 6101.)

**19. Jessica Brock's Equivocations about  
Appellant Visiting her on the Night of the Cross Murder**

**(a) Brock's Equivocations about the Timing of Appellant's Visit  
in Relationship to the Newscast of the Murder**

In June 1980, Jessica Brock lived on Montclair near Adams. (RT 6052.)

Brock remembered a news broadcast about the murder of a Secret Service agent. Sometime after the broadcast, she saw appellant in her apartment. (RT 6054-6055.) Jessica Brock gave contradictory testimony about when she saw appellant after this newscast.

She testified at first that the time between the newscast and when she appellant was not a matter of hours. "It might have been a day or so afterwards." (RT 6055.) However, Brock remembered telling Henry in the presence of attorney Morrissey that it was on the night of the broadcast that appellant came over to her house sometime after midnight. (RT 6055-6056.)

Then again Brock testified that she saw appellant at night but she did not recall if it was on the same night that the Secret Service agent was killed. (RT 6055-6056.) "I don't think I seen him that same night." [the agent was killed] (RT 6056.)

Jessica Brock repeated her testimony that she did not think she saw appellant the same night of the newscast about the Secret Service murder. (RT 6077-6078.) She saw her brother Chino [Charles Brock] that night. He was there when the broadcast came on or he was on his way out the door. (RT 6078.) He had on slacks, sweater and a shirt and was relaxed. Chino was sitting there eating Leo's barbecue with her. (RT 6078.) He was eating it all by himself. (RT 6079.)

Mr. Kuriyama read what appears to be a transcript of Jessica Brock's September 26, 1990 statement in which she implies that appellant came

over the night of the newscast. (RT 6080-6082.) Jessica remembered making that statement, but after thinking about it, she did not think that she saw anyone but Chino. (RT 6082.)

**(b) Brock's Equivocations about When Appellant Came to her House With a Bag And Rinsed Off an Object**

*Introductory Note regarding Jessica Brock's testimony. The undersigned is aware of the convention of briefing facts that calls for counsel to distill the testimony and to present it in a chronological manner, even though it was not related chronologically at trial. Following this convention in the instance of Jessica's Brock's testimony on the subject here captioned would not give an accurate portrayal of her testimony. Brock changed her testimony very frequently on this subject, often in response to whether the questions were asked by the prosecution or the defense. It would be misleading to conceal, by following the usual convention, these changes in her testimony. Thus, Brock's testimony on this subject is rendered in the order in which she gave it.*

The first time that the captioned subject came up during trial was on cross-examination by the defense.<sup>75</sup> Brock testified that she lived at one point in Santa Monica in a house with a porch and grass. (RT 6113.) The house was at 19<sup>th</sup> and Santa Monica Boulevard. (RT 6120.)

The questioning then turned to a description of Brock's apartment on Montclair. In the Montclair apartment, there was a light and some steps and bushes. (RT 6113.) When Brock lived there, there was grass and no fence. There was a strobe light for the front. (RT 6116.) When you looked out from the apartment, you could see the street; the tree didn't block it. It was like a little bush. There was a light "stuck" down in the grass. (RT 6117.)

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<sup>75</sup> Terry Brock's statement to Detective Henry, given on September 13, 1990, also covers this subject. (CT 2512- 2513.)

There was a faucet on the side of the apartment with a hose they used to wash the cars. (RT 6117.)<sup>76</sup>

In Santa Monica, there was a grassy area and there was a hose one could use for the grassy area. (RT 6118.)

When asked by defense counsel whether she ever told anybody that when she was living in Santa Monica, appellant and her brother [Terry] came over and washed something off, Brock stated: "I don't remember. It could be. I don't remember." (RT 6118.)

Defense counsel then asked Brock whether she remembered when he and his investigator came over "last year," i.e. in 1995, and asked whether they could tape-record an interview. Jessica Brock remembered that she agreed to this. (RT 6119.) Defense counsel then read from a transcript of this interview. (RT 6119.) This interview is referred to hereafter as the 1995 Defense Interview.

In the 1995 Defense Interview, Jessica Brock stated that the night appellant came over with a bag was on a different night than the "Julie Cross incident"; that this was before the Cross incident was on television; that Jessica lived at 19<sup>th</sup> and Santa Monica Boulevard at this time; that Terry Brock and appellant came by; that appellant, who seemed upset, had a white bag with something black in it and asked Jessica to help him rinse it off. (RT 6121.) Nothing was said about anybody being killed. (RT 6121-6122.) Jessica testified that she was being truthful in this interview. (RT 6121-6122.)

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<sup>76</sup> Detective Henry took Jessica back to Montclair apartment in 1993; it had changed. She was not sure where the water was located but she is sure there was water; and there was water outside her Santa Monica house. (RT 6140.)

The 1995 Defense Interview went on. Jessica Brock stated therein that she gave a statement to the police and the District Attorney's Office in Marcia Morrissey's office in 1990. Some days before Terry Brock called her and told her that he needed her to go talk to Morrissey and tell her about this particular evening; and he more or less stated what he wanted Jessica Brock to say. (RT 6122.) At trial, Jessica testified that she didn't recall Terry Brock telling her what to say but he did want her to tell Morrissey about this particular evening. (RT 6122-6123.) Terry told her that he wanted her to tell Morrissey about when appellant came over and asked her to wash something. Jessica agreed to do this. (RT 6123.) Jessica Brock testified that this was truthful. (RT 6123.)

The 1995 Defense Interview continued. A few days after she spoke with Terry Brock, Jessica related that she met with Detective Henry and Mr. Kuriyama. (RT 6123.) Henry and Kuriyama told Jessica Brock that she had told the truth but that the dates were wrong. (RT 6124.) In the 1995 Defense Interview, Brock stated that appellant did not tell her that he had to take somebody out; and that it wasn't the truth that appellant came over the night of the Julie Cross murder. (RT 6124.) He came over a couple of years before the Julie Cross murder. Jessica Brock was on the run from the police and her daughter was a baby. They (presumably Detective Henry and Mr. Kuriyama) told her to say that appellant had given her a gun to throw away but she couldn't do that since appellant had never given her a gun to throw away. (RT 6125-6126.) Jessica Brock testified at trial that this was truthful. (RT 6125-6126.)

Jessica Brock testified that she spoke with Detective Henry and Mr. Kuriyama because she did not want to go to prison. (RT 6127-6128.) She thought that they might tell the State that she was in jail and that she was an unfit mother. (RT 6129.) However, she testified that she did not mention

the pending charge against her or the bench warrant. She never asked for a deal. (RT 6145.)

Still on cross-examination, Jessica Brock testified that she contacted Detective Henry “last year” [1995] and told him that she didn’t see appellant on the night of the Secret Service murder. She then went downtown to talk to Mr. Kuriyama and told him and Henry that the dates were wrong when she saw appellant and that she did not see appellant on the night the Secret Service agent was killed. (RT 6142.) She told Detective Henry and Mr. Kuriyama that Terry Brock had told her to talk to the police. (RT 6143.) She told them that Chino [Charles Brock] might have been over that night. (RT 6143.)

On re-direct, Jessica testified that she did tell the police that appellant came over the night the Secret Service agent was killed but now she was saying that she wasn’t sure. (RT 6147-6148.) She stated that on the night of the Secret Service murder she did not see anybody but Chino [Charles Brock]. (RT 6153.) Then she testified that she was not sure whether she saw appellant on the night of the Secret Service murder or the next night. (RT 6151.)

Jessica Brock admitted on re-direct that in 1990 she told the police that appellant came to her house after the newscast about the Cross murder. (RT 6160.) She testified, still on re-direct, that she thought about it and did not see appellant on the night of the newscast of the Secret Service murder. (RT 6160.) She was sure she did not see appellant that night. (RT 6161-6162.)

On re-cross Brock again stated that the night appellant came over with the bag was before the Secret Service murder. (RT 6181.)

The story changed yet one more time on re-opened re-direct. Jessica testified that there was one incident when Terry Brock and appellant came to the Santa Monica apartment. And there was another incident near the

time the Secret Service agent was murdered when she saw Only appellant and not in the company of Terry Brock. (RT 6183.) Appellant and Terry came to her house about September 1978. (RT 6185) This was not to be confused with the time that appellant came over by himself with a blood-spattered shirt. (RT 6185-6186.)

*The flow of Brock's testimony on this issue was interrupted by a hearing outside the presence of the jury on the issue whether the prosecution should be allowed to get into the facts of the triple murder case. (RT 6192-6230.) The court ruled ultimately that the prosecution could show that Jessica Brock was aware that an offense had been committed by appellant and Terry Brock in October 1978 but the prosecution could not show that it was a murder conviction. (RT 6270-6272.)*

Brock resumed her testimony before the jury and stated that when she was living in Santa Monica in October 1978, both appellant and Terry Brock came to her house that night. (RT 6287.) When asked by the district attorney whether she connected that particular incident in Santa Monica "...with an offense that had been committed by both your brother Terry Brock and Andre Alexander in 1978," Jessica stated: "What are you referring to? The triple murder?" (RT 6288.) A motion for mistrial was denied. (RT 6289.)

Yet again, under questioning by the prosecution, Jessica Brock testified that appellant visited her in June 1980 after the Cross murder. The visit in Santa Monica that she told Mr. Klein about in the 1995 Defense Interview was two years earlier, in 1978. These were two separate incidents. (RT 6351.)

When appellant came over to her Santa Monica house, he was accompanied by Terry Brock. (RT 6351.) Sometime after this visit, Jessica became aware of an offense that was committed by appellant and Terry



Brock. Due to the nature of the offense, the visit by appellant and Terry made a strong impression on her. (RT 6352-6353.)

On cross-examination, Jessica Brock elaborated that the night appellant came over with a bag (RT 6359) was at a time different from the night of the Cross incident. (RT 6360.) It was before the Cross murder was on television. (RT 6361.) Jessica was living in Santa Monica on 19<sup>th</sup> and Santa Monica Boulevard and appellant and Terry Brock came over. (RT 6361-6362.) Appellant had a white bag. He seemed kind of upset and handed her the bag that had something black inside it. Appellant asked her to rinse something off. She couldn't recall whether she saw blood. (RT 6362.) Nothing was said about somebody being killed that night. (RT 6362.)

Brock testified that there were two separate incidents but only one night when they came over with a bag and black object and washed it off. (RT 6368-6369.) Brock flatly contradicted herself where this happened. She first testified that it happened in Santa Monica (6368:16-18) and shortly afterwards stated that it happened on Montclair and that she didn't remember appellant washing anything off during his Santa Monica visit. (RT 6370-6371.)

#### **20. Jessica Brock's Account of Appellant at her House**

Appellant knocked on the door. He looked upset "or something." (RT 6057.) In her statement of September 1990, Brock stated that appellant looked like he had been in a fight. (RT 6057.) Appellant was kind of nervous and asked Brock to look out to see if somebody was out there, if Brock saw any police. (RT 6067.) Jessica remembers getting mad and opening the door and saying, "Damn it. There ain't no – there ain't no mother fucking police out there" and she got upset and went and laid down. (RT 6085-6086.)

Appellant was carrying a laundry bag. (RT 6057.) Brock saw a dark object in the bag. (RT 6057-6058.) It was like a crowbar “Or something.” (RT 6058.) The crowbar was about a foot or so long. (RT 6060.) She saw blood on the bar. (RT 6064.) Exhibit F looks like the bar. (RT 6062.) Appellant knelt down and washed blood off the bar. (RT 6060, 6062, 6063.) Brock did not see appellant wash anything else off that night. (RT 6064.)

In 1990, Brock stated that she saw the handle of a handgun in the bag. (RT 6065.)

Brock did not recall if appellant’s clothing had blood on it. (RT 6058.) The prosecutor thereupon read from what seems to be Brock’s statement made in 1990 that there were specks of blood on appellant’s chest and left arm and that there was blood right across the front of his shirt. (RT 6058-6059.) Brock now testified that she remembered that there were blood spatters, little specks of blood. (RT 6059.)

Mr. Kuriyama read from what appears to be Jessica Brock’s September 26, 1990 statement. (RT 6086-6088.) Jessica testified that she didn’t remember about the tiny spatters of blood on appellant’s shirt but she did remember making the quoted statement. (RT 6088.) She was being truthful when she told the police about the blood spatters. (RT 6088.) In the September 26, 1990 statement, Jessica stated that appellant was wearing dark, like olive green slacks and a lighter colored shirt. (RT 6137.)

In her 1990 statement, Brock said that appellant had said that he had to take somebody out, that it was either him or them. He said it happened near the airport. He asked her to help him wash an item off and she refused. (RT 6063.) Appellant never told her that he had killed Cross. (RT 6183.)

## 21. Jessica Brock is Shown a Secret Service Shotgun

Michael Zeffiro is a supervisor equipment specialist with the United States Secret Service. (RT 5597.) He has a shop that maintains all the weapons, ammunition and ballistic data for the Secret Service. He has been with the Secret Service since 1985. (RT 5598.)

According to Zeffiro, Exhibit 7 was the type of shotgun used by the Secret Service in 1980. (RT 5598-5599.) The modifications to the weapon are that a folding stock and a pistol grip were added and a safety forearm stop was added. (RT 5599.) The safety stop ensures that the user's hand doesn't get in front of the short barrel. (RT 5599.) The safety stop is drilled and tapped into the barrel collar so when the barrel is taken off, the safety stop comes with it. (RT 5599-5560.) This modification was first made in 1972 and continues to be made. (RT 5600-5601.) The safety stop stays on the barrel; this is unique to the Secret Service modification. (RT 5601-5602.)

Detective Ewing Kwock was assigned to the Robbery/Homicide Division and was working with Detective Henry on November 5, 1990. (RT 6328.) Kwock and Henry interviewed Jessica Brock that day in her mother's house. (RT 6328-6329.) They took a Secret Service shotgun, Exhibit 7, with them in a canvass bag. (RT 6329-6330.)

Henry removed the barrel portion of the gun and showed it to Jessica Brock. Kwock testified that Jessica said, "'That's exactly what I saw. It is the same length' and 'that Andre was bent over or kneeling down cleaning blood off of it,' referring to the night of the murders.'" (RT 6330.)<sup>77</sup>

Detective Kwock interpreted Brock's statement as referring to the night of the murder of the Secret Service agent. (RT 6332.) Detective

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<sup>77</sup> This is yet another occasion when a witness testified about more than one murder. See fn. 65, p. 117, *supra*, and accompanying text.

Kwock admitted that Jessica did not specifically say that. (RT 6332.) Detective Henry showed Jessica Brock the wood stock but she couldn't recognize it. (RT 6331.) When Henry showed Brock the wooden portion of the shotgun, she said, "No, it was a different shape," and she drew a diagram of a three-sided box. (RT 6333.)

## **B. THE DEFENSE CASE**

### **1. Appellant's Use of Glasses**

Beverly Perry, a bookkeeper, and appellant worked together at Swift Food Distributors in the late 1970's and early 1980's. (RT 6388.) Appellant drove a truck to the San Francisco warehouse. (RT 6389.) During this time, Perry never saw appellant wear prescription glasses. (RT 6389.) Perry did not see appellant on a daily basis. (RT 6392.) She was never with him in the nighttime and did not drive with him. (RT 6392.)

Louis A. Jimenez met appellant at Swift Foods where Jimenez started in November 1976. (RT 6394.) He knew appellant until 1980. Jimenez drove a truck. He drove with appellant about two or three times. They would leave at night. (RT 6395.) During the time that Jimenez worked with appellant, he never saw appellant wear prescription glasses. (RT 6395-6396.)

Carlos Jimenez worked at Swift Foods between 1976 and 1980 and did not remember seeing appellant wearing glasses. (RT 6402-6403.)

Eileen Smith, who started living with appellant in 1980 (RT 6516), and who went on truck trips with appellant beginning in 1980 (RT 6538), testified that appellant acquired prescription glasses in 1981. (RT 6518.) Smith went with appellant to the eye doctor in Van Nuys who prescribed glasses for appellant. (RT 6519.) Photos J1 and J2 are of the glasses that were prescribed for appellant; they show him wearing the glasses at a party. (RT 6519-6520.) Appellant and Smith selected the glasses shown in J1 and

J2. (RT 6547.) Smith never saw appellant wearing prescription glasses prior to the time appellant got the glasses that he ordered in 1981. (RT 6521.)

## **2. Eileen Smith's Testimony**

Eileen Smith testified about a number of disparate matters.

### **(a) Smith's Relationship with Appellant**

Eileen Smith, 38 years old at the time of her testimony, first met appellant 23 years ago. (RT 6516.) Smith knew appellant quite well before 1980; he was a friend of her brother, Albert Smith. (RT 6541.) She started living with appellant in July or August 1980. (RT 6516, 6536.) They lived together until 1987. (RT 6517.) Smith was convicted in 1987 of a conspiracy to possess drugs. (RT 6517.)

Beginning in July 1980, Smith saw appellant on a daily basis. He was providing for her. (RT 6542.) He paid for her apartment in 1980, food for her daughter and herself and for clothes. Smith had a daughter in 1978. (RT 6543.)

Smith first started going out with appellant at the end of 1978. Appellant was working for Swift Foods and Roadrunner. When she drove with him to San Francisco, he was working for Swift Foods. She would go with him a lot. This was when he was living with Sherol Alexander. (RT 6539.)

Smith knew Sherol Alexander and that appellant had a child with Sherol. Smith knew Jessica Brock and knew that in 1977 and 1978 he had a relationship with Jessica Brock. Jessica had a child with appellant in 1978. Smith had a boy with appellant in 1985. (RT 6540.)

Appellant was with Sherol Alexander and Jessica Brock while he was seeing Smith. (RT 6541.)

### **(b) Appellant's Car in 1980**

During the time Smith and appellant lived together, appellant had a black Park Avenue Buick. (RT 6517.)

### **(c) Appellant's Work Schedule in 1980**

Smith knew appellant's work schedule. He would work sometimes on Sundays, sometimes in the middle of the week on Wednesday. Then he would be back on Thursday or Friday. (RT 6522.) Smith accompanied appellant lots of times; she helped him to drive. (RT 6517.)

### **(d) The Search of the Home of Appellant's Parents**

Smith was at appellant's parents' home when the police arrived in 1990 to conduct the search. (RT 6532.) Smith knows Detective Henry and saw him in 1990 at appellant's parents' house. (RT 6523.) Appellant's mother showed Henry where he could find appellant's clothing. (RT 6532-6533.) Henry was looking in the closet that Smith, appellant and their son shared.<sup>78</sup> The closet contained Smith's, appellant's, Princeton's and some of appellant's brother's clothes. (RT 6523.)

Exhibit F was a brown leather jacket (RT 6535:7) appellant had but it looked a little different. (RT 6523-6524.) Smith testified inconsistently about Exhibit F. At one point she said that Exhibit F did not look like the jacket that was in the closet (RT 6524:8-9) and a little later she stated that Exhibit F looked like the jacket that Henry took that day but it looked torn up and different. (RT 6527-6528.) Later yet she stated that Exhibit F was "messed up" and that appellant was wearing this type of jacket in 1980. (RT 6534-6535.)<sup>79</sup>

Exhibit L is Smith's black jacket. (RT 6524-6525.) It was in the closet Henry searched and he looked at it. (RT 6525.)

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<sup>78</sup> In 1990, Smith sometimes lived at appellant's parents' apartment. Smith was still appellant's girlfriend in 1992. (RT 6573.)

<sup>79</sup> The apparent inconsistency may be nothing more than Smith's observation that Exhibit F was in damaged condition while this was not true of this jacket as she remembered it.

A brown, "Suburban Heritage" jacket was marked Exhibit M. (RT 6525.) This was Smith's jacket, it hung in the closet and Henry looked at it. (RT 6525.) Henry said he was taking all the jackets but Smith said that was her jacket and Henry told another detective to give it to her. (RT 6526.)

A suede jacket was marked Exhibit N. (RT 6526.) It was also in the closet and it was appellant's jacket. (RT 6526.)

A reddish jacket with the label "Fantastic International" was marked Exhibit O. (RT 6526.) It was in the closet and it was appellant's. (RT 6526-6527.)

A suede jacket without a label was marked Exhibit P. It was in the closet and it belonged to appellant. (RT 6527.)

Occasionally, Smith would see appellant wear black beanies when it was cold. Exhibit 9 does not look like the kind of beanie he would wear. His beanie were larger with gray in it. (RT 6545.)

### **3. Mr. Alexander's Testimony**

Clifford Alexander (Mr. Alexander), appellant's father, is an insurance agent who is a home service agent. (RT 6687-6688.) He has known Jessica Brock since 1962. Her mother and father were his neighbors and he saw Jessica grow up. (RT 6688.) Jessica's and appellant's son Andre was 17 years old [at the time of trial]. Mr. Alexander has had a lot of contact with young Andre who has been at his house quite a bit. (RT 6689.)

In 1994 or at the preliminary hearing, Mr. Alexander became aware that Jessica Brock would be a witness against appellant. (RT 6689.) Mr. Alexander received a phone call from Jessica Brock on December 13, 1994. (RT 6690.) Jessica said that Detective Henry had lied to her and that he threatened to take her children away if she did not testify. (RT 6697.) Jessica told Mr. Alexander that she was going to tell the truth, that she had lied and that she did not care if she went to jail for perjury. (RT 6698.)

Cleotis Soil told Mr. Alexander at the end of 1994 that he was a witness in the case. (RT 6700.) Mr. Kuriyama read from a transcript of a recording of a conversation between Mr. Alexander and appellant on January 10, 1996. (RT 6703-6704.) There is a discussion about whether it would be a good idea for Mr. Alexander to talk to Soil's family. Mr. Alexander testified that it was a thought to talk to the Soil family but he did not do so. (RT 6706.)

Mr. Kuriyama read from a transcript of a recording of a conversation between Mr. Alexander and appellant on January 11, 1996. (RT 6706-6708.) Mr. Alexander testified he did not know what the subject of the discussion was. (RT 6708-6709.) Mr. Alexander had no idea whether this conversation was referring to Jessica Brock. (RT 6710.) Mr. Alexander denied that the transcript meant anything. (RT 6716.) He has had many conversations, this was just one, and he could not remember one specific conversation. (RT 6717.)

Mr. Alexander has patched appellant and Jessica Brock together on the telephone many times. (RT 6711.) However, he testified that he did not know what Jessica was going to testify to and he did not discuss her testimony with appellant. (RT 6712.) Mr. Alexander denied having a "program" to benefit his son. (RT 6710.)

Mr. Alexander has had conversations with his son about the case and about various witnesses. But he never contacted any witnesses. (RT 6723.) Jessica Brock and Cleotis Soil talked to him about their testimony; they just spilled it out. (RT 6724.) Soil and Brock had already indicated they had lied in the case; they were going to lie according to what Detective Henry told them. (RT 6725.)



#### **4. Bulman's Statements to Detective Thies on June 4-5, 1980**

In 1980, Michael J. Thies was a detective for the L.A. P.D. assigned to the Robbery/Homicide Division. He was the lead (RT 6859) investigating officer in the Cross case. (RT 6845.)

Thies arrived at the crime scene about 11:20 p.m. (RT 6845-6846.) Thies interviewed Bulman at the Venice (Pacific) Division, starting shortly after midnight. The interview lasted an hour and a half to two hours. (RT 6846.) Frank Renzi, the Assistant Agent in charge of the Los Angeles field office, was there during the interview. (RT 6847.) In the initial interview, Bulman said that the man with the shotgun had a moustache. (RT 6863-6864.)

There was a break in the middle when they went to the crime scene; the break came after an hour and fifteen minutes. (RT 6846-6847.) Bulman described generally what happened; he did not do a classic walk-through. (RT 6861.) Bulman said that as he was grappling with the suspect as he got out of the car, he grabbed the suspect's gun that went off, making a hole in the windshield. (RT 6861-6862.) One of the suspects said, "Shoot him, shoot him," and Bulman grappled with the suspect, trying to keep him between himself and the man with the shotgun. They moved eastward toward the rear of the car and Belford. Bulman fell down and the suspect with the shotgun came up and fired adjacent to his head. (RT 6863.)

Thies took notes. Later in the day, he dictated the notes to a secretary and it was typed up into a follow-up report. Thies reviewed it and it was accurate. It included all the details from his notes. (RT 6847.) He did not go over the report with Bulman; the notes were destroyed. (RT 6848.)

Exhibit Q, a three-page report, is the typed version of the statement that was prepared from the handwritten notes. (RT 6848.)

After the shotgun blasts were fired on the other side of the car, the shooter came over the Bulman's side of the vehicle. (RT 6849-6850.) There

is no reference in the statement whether the shooter came around the rear or the front of the car. (RT 6850.)

As the two men grappled, they moved in an easterly direction, which was to the rear of the car. (RT 6851.) This was toward Belford Avenue. (RT 6851.) Bulman never told Thies that the fight went some 55 feet in a westerly direction from the vehicle. (RT 6851.)

The shooter was labeled suspect No. 1. The description was: "Described as a male negro. 30 to 35. 5'11" to six foot. [Black hair brown eyes]. Wearing a dark stocking cap. Not rolled up. Possible dark clothes." (RT 6852.)<sup>80</sup>

Thies looked at the report prepared by Frank Renzi and did not notice any inaccuracies. (RT 6867.) The difference between his and Renzi's report is that the numbering of suspects is reversed. (RT 6868.)

An all-points bulletin was prepared by Thies. (RT 6853-6854.) Exhibit R is the all-points bulletin. (RT 6854.) Bulman's description of the suspects and the vehicle was put in the all-points bulletin. (RT 6854-6855.)

Before the hypnosis session on June 6, Bulman told Thies that the shooter with the shotgun had a moustache. Bulman also said so in the interview during the early morning hours of June 5. But Thies did not put it in his notes. It is not in his report and it is not in the all-points bulletin. (RT 6858.) The moustache was an important point that Thies would normally note in his report. (RT 6859.) However, the first time it was written down that the suspect with the shotgun had a moustache was on the document created after the composites of June 6. (RT 6869.)

### **5. The Composites and the Hypnosis Session**

Thies was present when Bulman worked with composite artist Fernando Ponce. (RT 6855.) According to Thies, Exhibit 28, a photograph,

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<sup>80</sup> Appellant is 5'10" (RT 6941 [Detective Henry testifying].)

shows the composite drawings that were prepared by Ponce prior to the hypnosis session. (RT 6864.)<sup>81</sup>

Exhibits B and C are Xerox copies of the composites. (RT 6865.) They were prepared prior to the hypnosis session. (RT 6855-6856.)<sup>82</sup> After the hypnosis, the composites were finalized and were sent out with the A.P.B. (RT 6856.)

Exhibit 12 is an enlarged copy of the composites that were distributed to the various sources. The information written below the photographs was prepared by Thies and given to Ponce who prepared them and caused copies to be made. (RT 6857.) Exhibits D and E are smaller photos of the finalized composites. The information on Exhibit 12 came from Thies' interview of Bulman. (RT 6857.)

Thies talked to Bulman after the hypnosis session. Bulman did not change the statement that he had given on the early morning hours of June 5. This was reflected in the report. There was no changes made in the composites after the hypnosis session. (RT 6866.)

#### **6. Bulman's Statements to Agent Renzi on June 4-5, 1980**

Frank A. Renzi is the Assistant Special Agent in charge of the U.S. Secret Service field office in Los Angeles. (RT 6875.) In 1980, he was assistant to the special agent in charge of the protective intelligence squad of the Los Angeles field office. He was assigned to stick with Bulman to make sure that he was alright. (RT 6875.) Renzi sat in on the interview conducted by Thies. (RT 6875-6876.) Renzi took some notes during the interview. (RT 6876.) He did not go back to the crime scene with Thies and Bulman. (RT 6876.)

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<sup>81</sup> The numbering of this Exhibit is that used in the preliminary hearing. (CT 428 [Ponce's testimony regarding Exhibit 28].) *Trial* Exhibit 28 is a photograph of the gunshot holes in the windshield. (RT 5064.)

<sup>82</sup> Bulman had testified on cross-examination by the defense that there was no moustache on Exhibit C. (RT 4882, see pp. 94-95, *supra*.)

Renzi had his notes transcribed and submitted to the agents who were assigned to the liaison with the L.A.P.D. It was then procedure to have handwritten notes destroyed once they were transcribed. He looked the report over and it appeared it had most of what was said that night. (RT 6877.) He did not go over the report with Bulman. (RT 6877.)

Person No. 2 was the person with the shotgun. The description was: "Early 30's. 5'11" to six foot. 185 pounds. Black hair. Brown eyes. Suspect was wearing a dark jacket. Stocking/black watch cap." (RT 6878.)

Bulman may have told Thies and Renzi that this suspect had a moustache and Renzi may not have heard it. Renzi may have written it down for the transcribed section of his notes. (RT 6878-6879.) The description of the other suspect included "a neatly trimmed mustache." (RT 6879.)

The composites that Renzi saw showed both suspects with a mustache. (RT 6879.) Renzi was not present when the composites were drawn. (RT 6879.)

Bulman related that he and the suspect were scuffling to approximately 15 to 20 feet away from the vehicle toward the intersection of Interceptor and Belford. (RT 6882.)

Renzi's report states that it should be noted that when the car drove by the suspect in the front right seat was wearing stocking/watch cap and that suspect No. 2 was responsible for fatally wounding Cross. This had been omitted from the original notes and was not put into the typed written notes. (RT 6884-6885.) The handwritten notes could have contained an entry showing the suspect with the shotgun had a mustache and this may have not been transcribed into the typed notes. (RT 6885.)

It stuck in Renzi's mind after all these years that he wondered how Bulman had the presence of mind to keep one of the suspects as a shield

between him and the other suspect and that one of the suspects had a black leather jacket; Renzi could not afford such a jacket. (RT 6887.)

### **7. The Night of June 5, 1980**

Nina Miller testified to certain events that took place after midnight on June 5, 1980. Officer William H. Williams of the L.A.P.D.'s Robbery/Homicide Division interviewed Miller about these and other events in 1980. Both Miller and Williams testified. Since it may be of interest who the source is of testimony summarized in this subsection, Williams' testimony is marked with a "W." All other testimony was given by Miller.

In 1980, Nina Miller was Charles Brock's, Chino's, girlfriend. (RT 6406.) Charles Brock died in 1982. (RT 6430.) Miller has a child, age 14 [at the time of trial], by him. (RT 6431.) Miller knew Terry Brock, Steve Faulkner, Kathy Boyce, Steve's girlfriend (RT 6415), and Janet Reed. (RT 6405-6406.)

Officer Williams conducted a series of interviews with Nina Miller. She related events that happened on June 4 [sic], 1980, an incident concerning Steve Faulkner, Terry and Charles Brock, and a shotgun. In another interview she talked about another conversation she had with Charles Brock in her bedroom when Terry Shelton was present. (WRT 7084-7085.)

She related that Charles told Terry Shelton that the Secret Service agent must have played dead because when Charles was at the lineup, the surviving Secret Service agent didn't identify Charles. (WRT 7085.) Charles Brock described the shotgun to Shelton as being the same type that Secret Service agents carry. (RT 7085.)

Miller remembered something happening with a shotgun in Faulkner's apartment in Venice on June 5, 1980, after midnight. (RT 6407.) They got to Steve Faulkner's house after midnight, after they got Faulkner

out of jail (RT 6414) ten minutes past midnight on June 5, 1980. (RT 7130 [date and time of release is a stipulated fact].) He was in jail for drunk driving. (RT 6414.) Terry Brock was waiting at Steve's house in his car. (RT 6417.)

At Steve's house, Steve Faulkner and Terry Brock sawed off a shotgun. Miller didn't remember where the shotgun came from. (RT 6409.)

In her statement to Williams, Miller said that Steve produced a shotgun from a convertible couch and Terry Brock and Steve sawed off the shotgun. Terry Brock said he would have to get used to shooting this kind of shotgun because he was used to shooting an automatic shotgun. He held it at one point and said, "This is how I shot it." (WRT 7088.) Nina Miller gave conflicting stories but she felt "it" was referring to the female agent as garbage and showed no respect for her. Williams asked Miller a number of times whether Terry Brock had said "I shot her" and she said, "No. I heard him say I shot it." (WRT 7089.) Miller never said that Terry Brock had said he had shot the Secret Service agent or that he had shot her. (WRT 7090.) Charles Brock asked who got shot in Venice and Terry Brock replied, "I believe it was a female agent" or "police agent" or words to that effect. (WRT 7091.)

Miller testified that Terry Brock demonstrated shooting a gun. If he was to shoot it, he would "fly back" from shooting the gun. (RT 6410.) She confirmed that Terry Brock did not say that he had killed a Secret Service agent. (RT 6410.)

Miller did not remember whether she told the police that there was no doubt in her mind that Terry killed the Secret Service agent. (RT 6412.)

At one point Miller told Williams that she was whacked out on drugs, that the whole evening was a blur to her. (WRT 7095.)

## **C. REBUTTAL**

### **1. Kevin McHugh – Appellant’s Glasses**

Kevin McHugh is a general manager for a food distribution company. (RT 6914.) He worked for Swift Foods between 1977 and 1980. (RT 6915.) He started there in October 1977 in South San Francisco. (RT 6915.) He knows appellant. (RT 6915.) Between October 1977 and October 1980, he saw appellant wear glasses on two occasions. The glasses were clear glass with wire, silver rims. (RT 6916-6917.)

McHugh saw appellant wear glasses when he checked in after making the delivery. He had glasses on when he came into the office. He would use them for reading. This was in 1979 or 1980. (RT 6917.) McHugh thought they were prescription glasses because appellant used them to read. (RT 6918.)

### **2. Detective Henry – Various Matters**

Detective Henry testified that the first time he came in contact with Eileen Smith was around 1989. (RT 6921.) He could recognize her voice as well as Mrs. Alexander’s. (RT 6921.)

Detective Henry conducted a wiretap in this case pursuant to a court order. Exhibit 84, a cassette tape, was part of the wiretap and it took place on January 12, 1996. (RT 6922-6923.) The People played Exhibit 84. (RT 6921-6922.) According to Henry, the voices on this tape were those of Smith and Mrs. Alexander. (RT 6922.)

This call came in 12:39 in the afternoon. (RT 6923.) At the time this call was made, the court had under consideration a motion regarding the admissibility of evidence regarding appellant’s drug usage. (RT 6923.) This call took place while the court’s ruling was pending. (RT 6923-6924.)

During this conversation, Mrs. Alexander asked Smith to remember back to certain things that would help defeat this motion. Mrs. Alexander listed things for Smith to remember. (RT 6924.) Smith agreed. Mrs.

Alexander told Smith that Mr. Klein would be subpoenaing her to come to court to testify as a witness. She told Smith that she wanted to make sure that she is aware what she will be asked about in court. (RT 6924.) Mrs. Alexander and Smith then decided to get together in person to discuss this further because they didn't want to discuss this further on the phone. (RT 6924-6925.) Later, there was a report that Smith had arrived at the Alexander home. (RT 6925.)

Detective Henry served a search warrant on the Alexander home on November 12, 1990. During the search, he recovered Exhibit F, the jacket, and Exhibit 9, the beanie. (RT 6926.) He recovered the jacket from a closet in a bedroom to which Mrs. Alexander had directed him. (RT 6926-6927.) There were no other leather jackets in the closet. (RT 6927.)

Henry searched only appellant's bedroom and left the rest of the house undisturbed. (RT 6928.)

On September 26, 1990, Jessica Brock described certain items that were in the bag that appellant had the night the Secret Service agent was killed. (RT 6030.)

On November 5, 1990 Detective Henry went to see Jessica Brock and showed her part of the Secret Service shotgun. (RT 6930-6931.) He showed her the barrel and Jessica identified it as the object she had observed seeing appellant washing the blood off. (RT 6931.) He then showed her the wooden pump handle and she said it did not appear to be the object she saw in the bag that night. She described it as a brown wood handle part of a gun. (RT 6931.) She said the object was square; an automatic is very square. (RT 6932:19.) However, the description she gave on September 26, 1990 was more consistent with a revolver than an automatic. (RT 6932.)

Henry interviewed Jessica Brock on October 11, 1995. She told Henry that Mrs. Alexander had contacted her house previous to that date



and had spoken with her grandson on the telephone, who then called Jessica Brock to the phone because Mrs. Alexander wanted to talk to her. (RT 6934-6835.)

Mrs. Alexander asked Jessica Brock if she had seen Detective Henry and Jessica acknowledged that she had. Mrs. Alexander asked her if she had changed her statement. Jessica said she didn't want to discuss the case and discontinued the conversation. (RT 6935.)

On December 13, 1995, Henry had another conversation with Jessica Brock. (RT 6935-6936.) Jessica related that Mrs. Alexander called Andre Jr. and asked him to bring Jessica to the phone. (RT 6936.) Jessica said she was only a witness. Mrs. Alexander said she was their star witness; that if she hadn't given them the statement about the barrel and part of a gun in the bag, they wouldn't have a case on appellant. (RT 6937.) When Jessica was relating this to Henry, she was very emotional, stressed out and depressed and crying at some points. (RT 6938.)

In 1991, Henry contacted Ron Englert about high velocity blood spatter evidence based upon information provided by Jessica Brock in 1990. He then had the jacket tested. (RT 6939.) The jacket was also looked at by Tom Wahl of the Analytical Genetic Testing Center in Denver. (RT 6939.)

The court order on the wiretap was signed on December 29, 1995. The wiretap ran from January 5 to January 17, 1996. The tap was on two phones in the Emma and Clifton Alexander house, three phones at Darcel Taylor's residence and Jessica Brock's telephone. (RT 6948.)

Transcripts were prepared for all 75 tapes. (RT 6949.) The individuals whose phones were tapped did not know about the taps. (RT 6949.)

Henry called Jessica Brock on the telephone on December 13, 1995. (RT 6954.) Jessica Brock said that a couple of her family members were putting pressure on her and it was stressing her out. (RT 6955 .)

Henry testified that three or four weeks prior to December 13, 1995, Jessica Brock had had a conversation with Mrs. Alexander. She did not report this to Henry when it happened but she did tell him about it on December 13, 1995. (RT 6955.) Jessica Brock said that defense investigators had called her once or twice a week before her phone number was changed and wanted to get in touch with her. Henry asked what she had discussed with the defense investigators. She said, "I told them that I made the statement. That it wasn't the night that the Secret Service agent was killed." (RT 6956.)

### **3. Dorothy Tyre – a Robbery In 1972**

On December 17, 1972, cans that contained quarters, dimes and nickels and some checks were taken from Ms. Dorothy Tyre's residence at 5730 Third Avenue in Los Angeles. (RT 7108-7109.) The Tyres were in the business of independent milk distribution. (RT 7109.) Her purse and her husband's wallet were also taken. (RT 7109.)

The next day, a group of people came over comprised of the mother, grandmother, a friend and girlfriend and asked that Ms. Tyre not press charges against the son. (RT 7110.) They asked her not to appear in court. Ms. Tyre said it was up to the district attorney. (RT 7110.)

The mother overstayed her welcome. Mr. Alexander came over later. (RT 7111.) He said that if they did not press charges, he would guarantee that they would get everything back. Ms. Tyre would not drop the charges. (RT 7112.) Mr. Alexander then said he would make it worth her while not to prosecute his son. She refused to drop charges. Mr. Alexander finally left the Tyre residence. (RT 7112.) The next day Mr. Alexander called and

wanted to talk to Ms. Tyre when her husband wasn't home. She refused. (RT 7112-7113.)

*Note*

Prior to Mrs. Tyre's testimony, Mr. Alexander testified while under cross-examination by the People that he knew Mrs. Tyre, that he never tried to pay a witness not to testify and that he never asked a witness not to come to court. However, he offered to pay restitution, but not in exchange for Mrs. Tyre not testifying. (RT 6727-6728.)

**D. Concluding Stipulations**

Exhibit 92 were two phone bills taken from J. Brock's apartment on June 10, 1980. (RT 7128.)

Appellant lived at 821 Osage from 1977 to approximately July 1980. (RT 7128-7129.)

Steve Faulkner was arrested for drunk driving on June 4, 1980 at 6:45 p.m. and released from jail 10 minutes past midnight on June 5, 1980. (RT 7129.) Steve Falkner's address at that time was 5725 Corbett, Los Angeles. (RT 7130.)

The court took judicial notice (per a stipulation) of the fact that the hearing re appellant's drug usage began on January 10, 1996 and the final ruling was rendered on February 6, 1996. (RT 7130.)

Where Jessica Brock lived in Santa Monica in 1978 was a vacant lot at the time of trial. (RT 7134.)

**IV. SPECIAL CIRCUMSTANCES TRIAL**

Detective Henry was the investigating officer in Case No. 959177, the triple murder case (fn. 1, p. 3, *supra*), and arrested appellant on a felony murder warrant issued in the case on November 6, 1987. (RT 7712.) Henry was present during the trial of that case wherein the jury found that appellant had committed murders in the first degree of Roberta Amer,

Garland Gilbert and James Howard Andrews; the murders took place on October 31, 1978 at 3450 Sawtelle in West Los Angeles. (RT 7713.)<sup>83</sup>

It was established based on witness interviews that the murders took place on October 31, 1978. The bodies were not discovered until November 2, 1978. (RT 7714.) Henry knew from the crime scene investigation that the murders occurred where the bodies were found. (RT 7715.)

Detective Henry concluded that the murders had taken place where the bodies were found in that the ligatures were will around the neck of victim Andrews, Garland and Armer. Blood from their injuries was on the wall and the floors. All three had been beaten and strangled. (RT 7720-7721.)

The defense declined to call witnesses or make a statement on the special circumstances. (RT 7723.)

The People presented a closing argument. (RT 7723-7733.) The defense declined to address the jury. (RT 7733.) At bench and outside the presence of the jury, the court stated that it wanted to apprise appellant of the right to address to the jury and to see if he wanted to waive that right. (RT 7733-7734.) Outside the presence of the jury, the court stated that appellant had the right to argue on the special circumstances and asked if appellant had any thoughts or comments about defense counsel's desire not to argue. Appellant had none. (RT 7735.)

The jury found the special circumstances of murder in the attempted commission of robbery and a prior murder conviction, entered in 1990, to

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<sup>83</sup> A seven-page document from the Department of Corrections was marked Exhibit 96. Four pages from Superior Court Case No. 959177 were marked as Exhibit 97. A fingerprint card was marked Exhibit 98. (RT 7706.) Wendy Smith, a forensic print specialist with the Los Angeles Police Department (RT 7708), compared the fingerprints contained in Exhibit 96 with those on Exhibit 98, fingerprints she took from appellant on March 5, 1996. (RT 7709-7710.) She concluded they were identical. (RT 7710-7711.)

be true. (RT 7764-7765.) The special circumstance allegation that Cross had been murdered while she was a federal law enforcement officer engaged in the performance of her duties had been dismissed earlier. (CT 3857; p. 16, *supra*.)

## **V. THE PENALTY PHASE TRIAL**

### **A. The People's Case**

#### **1. The Low Rider Incident (April 8, 1970)**

At 12:15 in the afternoon of April 8, 1970, Officer Norman Mikkelson and his partner were on patrol in the area of Crenshaw High School at 50<sup>th</sup> and 11<sup>th</sup> Avenue. (RT 7777-7778.) The officers made a traffic stop near Crenshaw Avenue and 11<sup>th</sup> Avenue of a vehicle that was too low to ride safely on the street. The driver, appellant (RT 7783), did not respond to the red light or the horn initially but when the horn was activated, appellant stopped. After the vehicle stopped, appellant got out of the car. (RT 7779.)

Appellant challenged Mikkelson to take off his gun. He said, "You're not going to give me a mother fucking ticket, you pig" and "You are not going to take me to jail." (RT 7780.) He said, "Take off your gun. I'll do you in." (RT 7781.) He went on to say, "Fuck you. I'm not signing the mother fucking ticket, you pig." Mikkelson tried to calm him down and to get him to sign the ticket. Appellant ran into a location (RT 7782) where he was arrested by Mikkelson and identified. (RT 7783.)

#### **2. The Griffith Park Incident (May 30, 1977)**

On May 30, 1977, Officer Dale Barraclough and his partner responded to a request by other officers for a back-up in the lower parking lot in the area of the Marry-Go-Round in Griffith Park. (RT 7787-7788.) When Barraclough and his partner drove up, there were several police cars and motorcycle officers on the scene. (RT 7788-7789.) Two individuals

were already handcuffed. Barraclough was in plain clothes and he and his partner took control of the two individuals. (RT 7789.)

Three individuals came up from a crowd that was forming. One of the three males said, "Why are you arresting these guys? They didn't do anything. Let them go, you fucking pigs." (RT 7790.)

The three individuals got between Barraclough and the suspects and an officer came and escorted them to the side. The three individuals were saying, "Fucking pigs," "I'm going to kick your ass" and "Let them go." (RT 7791.) About 500 people started gathering. (RT 7792.)

The three individuals got between the officers and the suspects again. The officers handcuffed the three individuals and got them into the black and whites along with the original two suspects. (RT 7792.)

One of the individuals was appellant. From the inside of the car he was yelling to the crowd to get him out of there and get him away from the police. Barraclough was assaulted by one person and another person went to the police car, opened the door and assaulted an officer. (RT 7794.)

### **3. The Loarie Incident (April 9, 1988)**

On April 9, 1988, Michael J. Loarie was a Deputy Sheriff assigned to the Central Jail of the City of Los Angeles. (RT 7801-7802.) Appellant asked Loarie for light bulbs for his cell. (RT 7802.) The cells were open at this time. Loarie said they didn't have any and that some would have to be ordered. Appellant said, "Fuck you, Deputy. If you're not going to get me any light bulbs, just tell me." (RT 7803.) The other inmates became curious and the deputies became concerned because there were only nine deputies to the module and there were 90 inmates. They decided to take appellant off the row and to move him to where he could not be heard. (RT 7804.)

Deputy Bennett and Loarie escorted appellant out of the module and into the hallway where he could not be heard by the other inmates. They had him face the wall with his hands in his pockets which was standard

procedure. (RT 7804.) He did not want to keep his hands in his pocket and Bennett told him to put his hands back in his pocket. (RT 7804-7805.) The deputies decided that they would handcuff appellant so they would not have a fight. (RT 7805.) Loarie told appellant to put his right hand behind his head. Appellant turned around and tried to hit Loarie in the face with his fist. Loarie deflected the blow with his arm and appellant stopped hitting. (RT 7805.)

Appellant brought his left arm around and put it to Loarie's neck in a coratid hold and started to tighten it. Appellant was to Loarie's side or his back. Loarie had difficulty breathing and started feeling slightly dizzy, pushed down on appellant's arm and told him to let go. Appellant did not let go and was still applying pressure. (RT 7806.) Bennett got appellant off Loarie by striking him in the torso and they all went down to the ground. They tried to handcuff appellant and a call for help to other deputies went out. Other deputies arrived and they were able to subdue appellant. Loarie never lost consciousness. (RT 7807.)

Bennett hit appellant after he was subdued. Appellant sustained injuries as a result of this and was taken to the clinic for lacerations. (RT 7809-7810.)

#### **4. The Williams Incident (July 1984)**

In July 1984, James Williams lived at 12535 Valerio, an apartment complex, in Van Nuys. (RT 7838-7839.) Williams had known appellant, who lived at the same apartment building, a few months. (RT 7839.) It was an apartment complex with pools and one would meet people at the pool. Williams would see appellant around in the complex and they occasionally visited each other's apartments. (RT 7841.) Williams and appellant smoked marijuana and inhaled cocaine. (RT 7847.)

At 4:30 in the morning of July 25, 1984,<sup>84</sup> appellant knocked at Williams' door. Williams looked out the window to see who it was and then told appellant to come in. Williams was packing his clothes because he had two job interviews to go to, one in Irvine at the Times Mirror Company and the other in northern California. Since Williams didn't have a car, he was taking the bus to Irvine. (RT 7840.) This was during a six months period when Williams, a musician, had not been working. (RT 7840-7841.) Appellant asked, "Where is it, James?" Williams answered, "Where is what?" (RT 7848.) Williams had no idea what appellant meant. (RT 7850.)

After appellant had come in and as Williams was packing his clothes, appellant sat in a recliner chair for a few minutes. He said would be back and ten minutes later he returned with his girlfriend Eileen Smith with whom appellant was living. Williams went back to his packing. Appellant said, "Come out of them" and pointed a small caliber gun at Williams. (RT 7842.) Williams had on shorts and a sweatshirt. He understood appellant's comment to mean to come out of his clothing. Appellant was about six feet away and Williams froze in his steps because he was looking down the barrel of a gun. (RT 7843.) Williams asked, "Come out of what." He didn't move. Appellant shot him in the left upper arm. It felt like a burning spear going through his arm. Williams fell to the floor to avoid being shot a second time. Appellant and Smith ran out the apartment. (RT 7844.)

Williams got up and tried to stop the bleeding. He went to the manager's apartment who called the police. The police and paramedics arrived and Williams was taken to a hospital. (RT 7845-7846.) Williams stayed at County U.S.C Medical Center for five days. The shot broke his

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<sup>84</sup> They had not had any cocaine for a month or so before July 25, 1984. (RT 7851.)



arm. (RT 7846.) He postponed the second job interview but eventually got that job at the Bank of America. (RT 7846.)

### **5. The Tyre Incident (December 1972)**

In 1972, Mrs. Tyre, her husband Byron and her fourteen year old son Howard were living at 5730 Third Avenue in Los Angeles. (RT 7853.) The Tyres had an independent milk distributorship. (RT 7856.)

At 11:30 on December 17, 1972, while Mrs. Tyre was talking on the telephone to a neighbor, there was a knock on the door that Howard answered. (RT 7853.) She was in the bedroom where her husband Byron was asleep. (RT 7855.) After a short period of time, Howard backed into the room. He was followed by two men in their late teens or early twenties with revolvers. Appellant was one of the two men. (RT 7854.) The first man, not appellant, pointed the gun at Mrs. Tyre and said to hang up, which she did. (RT 7855.) Mrs. Tyre and Howard were told to lie down on the floor. They complied. Byron remained sleeping. (RT 7855.)

The two men stayed in the bedroom for a couple of minutes and left. Appellant left carrying Byron's pants and his wallet in one hand and the gun in the other hand. They took Mrs. Tyre's purse that had several hundred dollars in it. (RT 7856.)

A filing cabinet sat behind the refrigerator. The two came back and the other man asked for the key to the filing cabinet. Mrs. Tyre had a ring with the key to the cabinet in her robe and she was directed to go to the kitchen area. (RT 7857.) She was told to open the cabinet, which she did, and then told to lie on the floor. There was silver and change in the cabinet for the business and an envelope that held the day's receipts, cash and checks and food coupons. Appellant's companion took these things from the cabinet. (RT 7858.) The two men took her purse and Byron's wallet from the house. They were in the house for about fifteen minutes. (RT 7859.)

Mrs. Tyre asked for her identification and driver's license back. They said she would get them back after they left and they heard a shot. They told Mrs. Tyre not to do anything for ten minutes. (RT 7860.) In less time than that, Mrs. Tyre crawled from the kitchen to the living room where her son was and she peeked out to see if she could see an automobile or which direction they went. They then called the police. (RT 7860.)

They never heard a shot and she did not get her I.D. back. (RT 7861.)

Mrs. Tyre felt scared for herself, her husband and her son. Her husband remained asleep throughout. (RT 7859.) No shots were fired and no one was hurt. (RT 7870.)

The next day they got a telephone call saying that some people were going to come and talk to the Tyres about the robbery. (RT 7861-7862.) There were two visits. One was from appellant's mother and later on appellant's father came over to persuade them not to testify against appellant and offered to pay the Tyres off. (RT 7862.) However, Mrs. Tyre testified against appellant on January 5, 1973 at the preliminary hearing and at the trial in July 1973. (RT 7862.)

It was stipulated that appellant was one of the two men. (RT 7869.)

## **6. The Triple Homicide**

Photographic evidence of the victims of the triple homicide was introduced by means of Detective Henry's testimony. (RT 7872-7873.) Armor and Gilbert had been shot in the head. (RT 7875.)

## **7. Testimony About Julie Cross**

Cheryl Myers met Julie Cross when the two of them joined the Police Academy in 1977. Myers was 22 and Cross was 23. They became very good friends at the Academy. Myers began to think of Cross as her older sister even though they were a year apart. They were at the Academy

for five months. (RT 7877.) Myers would spend time with Cross outside the Academy training. (RT 7878.)

They started working as police officers at the same time and were assigned to the same division. Their friendship continued. (RT 7878.)

Cross was a fresh, lively person and had much life in her, even though she had lost her parents early in life. She was full of enthusiasm. (RT 7878.) She did not seem to have enough time to accomplish everything she wanted to do. (RT 7878-7879.) She was a caring person, she had a warmth about her and people gravitated to her like a magnet. (RT 7879.) She performed outstandingly at the Academy and as a police officer. Their friendship continued to the time of Cross' death. Just prior to her death, Cross was hired by the Secret Service. (RT 7879.)

Cross was one of the best street cops. (RT 7881.) She saved several lives, arrested many suspects and dedicated a large personal part of her life to law enforcement. (RT 7882.)

Cross had an excellent and excited attitude about her new assignment in the Secret Service. She was killed ten days after she arrived on her new assignment. (RT 7881-7882.)

Peter Cross is the older and only brother of Julie Cross. Julie Cross was born February 17, 1954. Their father died in 1957, their mother in 1964, when Peter Cross was about 19. (RT 7884.) Peter Cross worked his way through college. During that time, an uncle in Chicago took care of Julie. (RT 7885.) After college, Peter got a job and moved to San Diego. He brought Julie out to live with him. (RT 7885.) Peter was married and had a child. He was a Reserve Officer with the San Diego Police from 1967 to 1990. Julie went to college in San Diego and became a Reserve Officer in 1976. (RT 7886.) She continued as a reserve Officer until 1979. (RT 7887.) Julie wanted to help other people. This is why she went into police work. (RT 7887.)

Julie saved a life when she was a police officer in San Diego. She was ecstatic about her job with the Secret Service. (RT 7888.) The experience of losing Julie was crushing to Peter Cross. (RT 7889.) Julie was 26 when she was killed. (RT 7889.)

Bulman had known Julie Cross a few weeks before June 1980. (RT 7904.) She was a very conscientious and skilled individual; she was a very fine agent. (RT 7904-7905.)

Bulman again described the approach of the two individuals. When the man on his side of the car stuck the pistol in Bulman's face, he became concerned about Julie Cross on the other side of the vehicle. (RT 7905.)

Prior to joining the Secret Service, Bulman was on the Laramie, Wyoming Police Department for 10 years. He had some street experience as a police officer. He had had guns leveled at him before and knew that he had to talk his way out of the vehicle. He was scared about what was going on on the other side of the vehicle. (RT 7906.)

When he heard the two shots from the other side of the car, he realized that Julie Cross had been probably shot and killed. He knew that if he didn't fight the man down, he would be killed too. When he was down on the ground and the man came up and shot at him, Bulman thought he was dead and that he wouldn't see his two-year old child ever again. (RT 7907.)

Bulman thought for years that Julie's death was his fault. (RT 7908.) He could have done more to help Julie Cross. He had been in a lot of gun battles and gun fights where he came out as the winner but here he had no control over the situation and consequently somebody got killed. It had an emotional impact on him. (RT 7908.) He was deeply depressed, he would break down and cry and had lots of flashbacks over a long period of time. (RT 7909.)

Bulman never really talked about it and he should have. He withdrew and this may have caused his divorce. (RT 7909.) Bulman no longer wants to work his way up in the Secret Service; he just wants to find someplace to do his job and to be left alone. (RT 7910.)

## **8. Stipulations**

In the presence of the jury, it was stipulated that appellant was found guilty in 1973 of first degree robbery and burglary and that he was armed with a firearm. (RT 7901-7902.) It was also stipulated that appellant was born on February 11, 1952, that his residence address from 1977 to 1980 was 821 Osage, apartment 1, Inglewood and that his driver's license number was S0915034. (RT 7902.)

### **B. The Defense Case**

#### **1. Deputy Sheriff Sher**

Deputy Sheriff Dave Sher was assigned for eight months to the "High Power Module" of the County Jail which is reserved for prisoners who are either dangerous or whose cases are notorious. These prisoners are not allowed to have contact with other prisoners, are separated and are chained everywhere they go. (RT 7955.) Sher had daily contact with appellant during this time and spoke to him on a daily basis. Appellant was quiet and did not cause any problems. He was the spokesperson for the row which meant that he had the cell closest to the front and if the inmates wanted something that needed to be talked about, he would bring it to the deputies' attention. (RT 7956.)

On cross-examination, Sher stated that he did not know that appellant had attacked Deputy Loarie on April 9, 1988 on the 3000 Floor of the Men's Central Jail. He did not know that appellant was found hiding a handcuff key on January 12, 1995. (RT 7958.) Sher was probably aware of the fact that on September 5, 1995 appellant was found to have on his person or in his cell a razor blade and three handcuff keys. Sher knew that

appellant had been taken to the hole two or three times for disciplinary reasons. (RT 7959-7960.)

Sher did not know that in January 16, 1996 appellant was found with another handcuff key secreted on his person. (RT 7960-7961 .)

## **2. Mrs. Alexander**

Mrs. Alexander is appellant's mother. (RT 7969.) She also has a daughter and a younger son. (RT 7969-7970.)

When appellant was a baby, they lived in Santa Monica until he was two. They then moved to Venice where they lived until 1968. (RT 7970.) Appellant went to grammar school at St. Clement Church. He graduated there in 1966. Appellant went to church almost every Sunday. (RT 7971.)

Appellant's first year in high school was at St. Monica's, a Catholic school. In his second year he spent six months at Venice High School and then went back at St. Monica's, when they moved to Los Angeles. He then attended Crenshaw High School. (RT 7970.) Appellant was a good student. (RT 7972.)

Appellant has four children. (RT 7973-7974.)

Mrs. Alexander never saw appellant use drugs. However, she heard that he used drugs. (RT 7972.) She became aware of the fact that appellant wanted to take care of his drug problem. She had a girlfriend who was running a place with her brother for women with drug problems. They got together with the brother and appellant was admitted into the program in 1984. (RT 7975.)

Appellant was 18 or 19 at the time of the Tyre incident. He left that evening, saying he would be back later, but he never returned that night. The next day, a friend came by and said that appellant had been arrested. (RT 7980.) This surprised Mrs. Alexander. She asked her friend to introduce her to Mrs. Tyre so she could make sure that it was her son who

had done it. She did not ask Mrs. Tyre not to testify against appellant. She was not there when her husband went to see Mrs. Tyre. (RT 7 981-7982.)

Appellant went to prison over the Tyre matter from 1973 to 1976. (RT 7983.) Appellant finished high school while he was doing his time. (RT 7972.)

After appellant got out of prison, he got a job with Teen Post. He quit there and went to work for Swift Foods. He has always worked, unless he got sick or was laid off. (RT 7973.)

Mrs. Alexander knew that appellant was arrested in 1984 for shooting James Williams. (RT 7983.) Appellant was on probation but he went in and did the time, something Mrs. Alexander did not understand. (RT 7975.) Appellant was incarcerated in 1985 and 1986 for the Williams shooting (RT 7987.) After he got out of prison, he went to work as a truck driver. (RT 7975.)

Appellant was arrested when he was living with his parents in Inglewood in November 1987 and he has been in jail ever since then. (RT 7977, 7987.)

Mrs. Alexander has a good relationship with appellant and loves him dearly. All she wants is for the jury to let him live. (RT 7978.) She loves appellant and he has been a good son. She does not think he did these things. But since he has been convicted, she would like for him to live so that she can take the grand kids to see him and so that she can see him. (RT 7991.)

### **3. Mr. Alexander**

Mr. Alexander has always had a good relationship with appellant. He has been a good son and he loves him. Appellant has done some good things in the driving industry and has won some awards. (RT 7994.)

Appellant was with Safeway Markets as a clerk in 1973 and 1974 and they still wanted him to come back. Appellant worked for Roadrunners

and he apprenticed there as a cross-country driver. He was with Roadrunners when he was arrested and they also wanted him to come back. (RT 7994.) He was very good as a long distance driver. (RT 7994-7995.)

Appellant has been in trouble and Mr. Alexander did not want to paint him as an angel. Appellant went wrong because of the people he was associating with and because of the peer pressure. (RT 7996-7997.)

Mr. Alexander was aware of the Tyre robbery and burglary. (RT 7999.) He requested Dorothy Tyre not to testify against appellant. (RT 8000.)

At some point, Mr. Alexander became aware that appellant had a drug problem. Mr. Alexander was successful in getting appellant into a drug rehab program. (RT 7995.)

After he came out of the program, there was a big change in appellant. Appellant did not do drugs and he wanted to get his job back. (RT 7995.)

Mr. Alexander has had constant contact with appellant since he was arrested. He does not believe that appellant did what he was arrested for. (RT 7996.)

Appellant has had a big change in his life. He is a good person and he comes from a good family. This is what makes Mr. Alexander think that appellant is on the right road and that he can do good. He would miss his son. (RT 7998.)

#### **4. Darcel Taylor**

Darcel Taylor is five years younger than appellant and has always had a close relationship with him. (RT 8004.)

Appellant is a good and kindhearted person. He should not die. He has always carried his own weight and has taken care of his family and his kids. He has given Darcel Taylor guidance and advice. (RT 8005.)



## **5. Corbin Alexander**

Corbin Alexander is eleven years younger than his brother, appellant. Corbin is a sales representative for American General Life and Accident Insurance Company, following in his father's footsteps. He has had a fairly close relationship with appellant. (RT 8008.) Appellant has urged him to be successful and follow the example set by his father. (RT 8009.)

Appellant wanted to start his own trucking business. Corbin was going to run the computer system. The advice that Corbin has received from appellant, that you can't do anything in this world without hard work, has helped him a lot. (RT 8009.)

Corbin Alexander wanted the jury to spare appellant's life because appellant has a lot of good to give to his family and those around him and because appellant has a family that needs and cares for him. (RT 8009.) Appellant has children who care for him deeply and they need his guidance and drive behind them so that they can succeed in their lives. (RT 8010.) When incarcerated, appellant kept in touch with his children by talking to them on the telephone. (RT 8011.)

## **6. Ronald B. Nissenson**

Ronald B. Nissenson was an officer of Swift Foods Corporation for eight or nine years that ended in 1984. (RT 8018.) He knows appellant who he recalled drove a large truck from Los Angeles to San Francisco and back. (RT 8018-8019.) Appellant's assignment was to take merchandise in a 40-foot truck once or twice a week to and from the bay Area. (RT 8019.)

Mr. Nissenson spoke to appellant several times a week. Appellant was a very good, conscientious employee. (RT 8019.) Appellant stood out as an employee who was concerned about what was going on and how to make things go better. Appellant would come in earlier and talk to Mr.

Nissenson about the things he was concerned with. He certainly stood out as a very dependable employee. (RT 8020.)

Mr. Nissenson testified for appellant twice before in 1990. (RT 8026.)

#### **7. Debra Edwards**

Edwards met appellant in 1976 and had a son who was born in 1978. (RT 8030.)

Appellant encourages his son who listens to him when he would not listen to his mother. (RT 8030.) Father and son have bonded. (RT 8030-8031.) They talk on the phone and write letters. (RT 8031.) The boy's grades have improved and he wants his father to know when he gets good grades. (RT 8031.) Her son needs his father in his life. He needs to be able to talk to him and to know what is going on with him and his father needs to know what is going on with his son. (RT 8032.)

Appellant helped out whenever he could. If she needed money, appellant had it and would give it to her. (RT 8033-8034.)

#### **8. Anna Charles**

Ann Charles and Emma and Clifton Alexander grew up and went to school together and have been friends since the 1940's. (RT 8037.) Charles has known appellant from the day he was born. (RT 8037.) She loves him and feels that he is part of her family. As appellant was growing up, Charles would have weekly or monthly contact with him. (RT 3087.)

Charles' brother ran a rehabilitation program in the 1980's. He passed away in 1991. (RT 8037.) Charles discussed with appellant's parents whether appellant should come into the program. (RT 8038.) This was a live-in program. Charles did not remember how long appellant stayed in it but she knows he stayed until her brother thought him ready to leave. (RT 8038-8039.) Appellant was always sweet and kind to Charles. (RT 8041.)

## **9. Lazaro Simone**

Over defense objections, the court ruled that County Jail inmate Lazaro Simone would testify while shackled. (RT 8053-8055.) The court instructed the jury that this did go to the witness' credibility or affect appellant. (RT 8060.)

Simone has known appellant for about eight or nine years during their stay at the County Jail. (RT 8061.) He volunteered to come and testify for appellant. (RT 8061.)

Appellant is kind and generous in helping everyone. That is how they came in contact. Very seldom do you find people in the jail environment who are helpful. Appellant, however, had helped Simone as well as others. (RT 8062.) They were in the same library group and that is how their relationship got closer. They had time to communicate. (RT 8063.) Appellant has helped new people who came into the jail so that they did not get into trouble. (RT 8064.) Appellant is able to relate to people across racial lines. He is very respectful towards the staff and they toward him because of the way that he conducts himself. (RT 8064.)

One has to have handcuff keys for one's own protection in case someone attacks. (RT 8072.) .) Almost every inmate has a house-made handcuff key, especially in the High Power module. (RT 8069.)

Simone has been convicted of assault with a deadly weapon and attempted burglary in 1972; of the possession of a machine gun and the sale of narcotics in 1987. (RT 8065.) Simone was found guilty of escaping. (RT 8071.) Simone did not see appellant attack Deputy Loarie in 1988. (RT 8068)

## **10. Eileen Smith**

Smith has a son by appellant. (RT 8076.) The baby, born in 1985, was premature and spent four and a half to five months in intensive care. (RT 8076.) Appellant was very supportive and was there every day. (RT

8077.) The boy communicates with his father but he is going through an emotional problem in dealing with his father being in this predicament. He does not understand why his father is in this situation. (RT 8077.)

Appellant talks to his son about his schoolwork, about keeping his grades up, behaving well and playing ball. He talks to the boy about driving trucks. (RT 8077.) Appellant tries to keep his son doing the right things. (RT 8078.) The boy is a good kid and he is an A student. (RT 8078.)

Appellant is a very good and nice person. He has been that all of his life. He cares about people. There are so many people he has helped. He does not deserve the death penalty. (RT 8078.)

Smith was with appellant when they went to Williams' apartment. (RT 8082.) Williams pulled a gun out of a pouch. Appellant started wrestling and fighting with him. The gun went off. Both men had a hold of the gun. (RT 8083.) Even though appellant did not plead self-defense, it was self-defense. (RT 8084.)

Smith has been convicted of possession of conspiracy to distribute PCP. (RT 8079.)

## **11. Testimony by Others**

Appellant's four children testified in their father's support. (RT 8086-8096.)

## **15. Appellant**

### **(a) Personal History**

Appellant graduated from high school in 1974 from the Dueul Vocational Institution which is in the Department of Corrections. His grades were fair. (RT 8111.)

Appellant started a relationship with Sherol Smalley [Alexander] (RT 8116) in 1971 when he was 19; he started living with her. Appellant committed the Tyre robbery in late 1972, and Detective Henry arrested him for that crime. Appellant bailed out. (RT 8114.) He went to trial and was

convicted in June or July 1973. That's when he went to Tracy. He got his diploma and then went to work, first as a cook in the kitchen. He was then transferred to Tehachapi. (RT 8115.) He spent a year there, training to be a butcher. He was released from there, went to live with his parents and then moved in with Sherol again. (RT 8116.)

Appellant then went to work with Teen Post Incorporated. (RT 8116.)

After the Teen Post, appellant went to work for Swift Foods. (RT 8117.) He worked for Swift Foods from 1976 to 1980 with the exception of about four months. (RT 8118.)

In 1978, appellant had a 1973 Buick Electra 225. In the same year, he got a 1978 Buick Park Avenue. (RT 8121.)

Terry Brock hit appellant with a pistol around October or November 1979. After that, there was no relationship between them. (RT 8231.)

At Swift Foods, he obtained his class I license. He enjoyed his work at Swift Foods. (RT 8118.)

Appellant was supposed to leave on Monday and Thursday nights for San Francisco but the schedule was not in concrete. He could leave on Sunday night or Wednesday. (RT 8125.)

Appellant worked for Swift Foods from September 1976 to September 1980 with the exception of the period between January and March or April of 1979. He worked for Swift Foods in June 1980. (RT 8126.) His schedule in June 1980 was the same as before. (RT 8126.)

Swift closed down the San Francisco plant in September [1980]. Appellant stopped working for Swift. He played the horses for a while and after Thanksgiving decided to get back to work. He couldn't because of an outstanding traffic warrant and so he turned himself in and did about 30 days. The next job he had was driving a truck for Southland Masters. At the time, he and Eileen Smith were living in Van Nuys. (RT 8137.)

He started working fulltime for Southland Masters around February 1981. (RT 8138.) He stopped working for Southland Masters in January 1983. He was living in Van Nuys at the time. (RT 8138.)

Appellant got glasses for nearsightedness on a union plan at Southland Masters in 1981 or 1982, probably in early 1982. (RT 8138.)

Appellant had a drug problem in 1983 and 1984. (RT 8138.) The drug problem got in the way of appellant wanting to work and he stopped working in 1983 and 1984. (RT 8139.) Appellant went into a drug program in 1984. He was burnt out and was ready to turn his life around. (RT 8141.)

### **(b) Evidence of Misconduct**

#### **(i) The Low Rider Incident**

Appellant explained the circumstances of his arrest when he was stopped about his car riding too low. Once he was stopped and told his car was riding too low, he hit the switch and the car rose up. He was trying to be smart. He then got into an altercation with the officers and went to jail for resisting arrest. (RT 8117.)

#### **(ii) The Griffith Park Incident**

Regarding the incident in Griffith Park, they were on a picnic. Someone came running and said that the police had Albert up in the parking lot. (RT 8120.) Appellant and two other went up the hill, one of the men said something to the police and things just got out of hand. (RT 8120-8121.)

#### **(iii) The Loarie Incident**

Appellant had asked Loarie for some light bulbs for his cell a couple of days before the incident. (RT 8150.) He was playing poker and heard that Loarie was putting lights in his cell. Appellant went and checked and found that no lights had been put in. Appellant went to the front gate and asked Loarie to put lights in his cell. (RT 8150.) Loarie said he did not have any lights, he just put lights in the cell that asked for one. (RT 8150-8151.)

Appellant said he had asked for lights two days before. Loarie said he did not have any lights. Appellant testified he said something he should not have, i.e., that Loarie should fuck himself and went back to play his game. (RT 8151.)

The next thing was a call on the mike for appellant to go back to the front. Appellant complied and Deputies Bennett and Loarie told him to come out and they took appellant out into the hallway. They told appellant to put his hands in his pockets. They stood there in appellant's "face" and asked him who he thought he was etc. Appellant kept his hands in his pocket. After they blew off some steam, the deputies said they wanted to do a "toes and nose" where the inmate puts his toes and nose on the edge of the wall and stands like that as long as the deputies want him to do that (RT 8151-8152.)

Appellant said he was not going to do a "toes and nose." The deputies got upset and told appellant to put his hands behind his head. (RT 8152.) As he did so, one of the deputies grabbed his hand as if they were going to twist it behind his back. Deputy Loarie came in low to pin appellant to the wall but he spun around and tried to keep Loarie between himself and Bennett because Bennett was trying to hit him with the flashlight. Bennett succeeded in hitting him. (RT 8152.)

Appellant was never sent to the hole for this. (RT 8153.)

#### **(iv) The Williams Incident**

The incident in 1984 with James Williams occurred when Williams buzzed appellant's front door and said that he wanted some drugs. Appellant went to Williams' with two or three package of drugs, gave Williams some drugs, and put the rest in his own waistband. When appellant got back to his apartment and got ready to go back to bed, the drugs were gone. Appellant went back to Williams' apartment. (RT 8139.) Appellant knocked on the door and it took Williams a long time to open the

door. When he finally opened the door, appellant went in and looked around and told Williams what he was looking for and asked him whether he had seen it. (RT 8140.) Williams said he had not seen it. Appellant said, "Come on, James. You know you seen it." Williams went for the bag and appellant knew that a gun was in the bag because he had seen it before; Williams carried it all the time. Both Williams and appellant went for the gun and appellant came up with it and shot. Appellant walked into a police station and turned himself in and was released on bail. (RT 8140-8141.)

#### **(v) The Triple Murder**

In 1978, appellant knew Charles Collins, Garland Gilbert, Howard Andrews and Roberta Armor. (RT 8121-8122.) Appellant first heard that Howard Andrews got killed and then found out a few days later (RT 8124) that Roberta Armor and Garland Gilbert were also killed along with Howard Andrews. (RT 8122.) Appellant was upset when he heard this. (RT 8122.)

Appellant was in his apartment on Osage when his cousin Patricia Ann called him and said, "What happened to Howard? Why did that happen to Howard?" Appellant asked what she was talking about and she said that Howard was dead. Appellant tried to question her but the phone went dead. Appellant told Sherol that Patricia Ann had said that Howard was dead. Appellant went to the funeral. (RT 8123.)

Appellant was mad because Howard was in the wrong place at the wrong time. He did not think it was meant for Howard. (RT 8123-8124.) Appellant was convicted of that crime in 1990. (RT 8124.) Appellant wanted to testify in the triple murder trial but his lawyer told him that she would quit if he would testify. (RT 8125.)

The first time he was contacted by police about either Howard's or Cross' murder was January 1979. (RT 8126.) He got a call from Patricia that there were some detectives who wanted to speak to him. The detectives



told appellant on the phone that they wanted to speak to him with reference to the incident with Howard. Appellant made an appointment and went down to the station with his father to talk to the police. There were warrants out in San Diego for appellant's arrest. He did not know if the police wanted to arrest him on those warrants. (RT 8127.)

At the station, appellant was interviewed by Detectives Wegman, Worthen, Ravens and another redheaded detectives whose name appellant has forgotten. (RT 8127.) Wegman read appellant his Miranda rights and asked him to sign a paper waiving his Miranda rights, which appellant refused to do. (RT 8127-8128.) Wegman said that he did not want to talk about this anyway, that he wanted to talk about some forgeries and counterfeiting. Wegman told appellant that Patricia had told Wegman about a note that Howard had left on appellant's door. Wegman said that his officers had been to Patricia house and that they had tried to find the note that had probably been thrown into the trash. They asked appellant to tell them what the note said. (RT 8128.) Appellant was not sure whether he told the police what the note said. (RT 8128.)

The note was in reference to Garland Gilbert being paid for some printing that he had done for Charles Collins. (RT 8128.)

The police asked appellant about Benny Andrews and George Glover and they may have asked about Terry Brock. Appellant said that if they wanted to ask about these men, they should ask them. Wegman got mad and made a statement. (RT 8129.) Appellant then terminated the interview. He was not arrested. (RT 8129.)

Appellant was arrested for Howard's murder on November 6, 1987. (RT 8147.) Appellant was taken to Pacific Division Police Station. Detective Henry was there. Appellant was interviewed about the triple murder. The subject of the Julie Cross murder came up. (RT 8147.)

Detectives Henry and Speling brought up the subject of Julie Cross' murder. (RT 8148.) Appellant had no knowledge of the murder of Cross and provided no information about it. (RT 8149.) A couple of days later, the subject of the Cross murder was brought up indirectly and Howard's murder was brought up. Appellant had no information to provide about Howard's murder. (RT 8149.)

Appellant was convicted of the murder of Andrews, Armor and Gilbert in July 1990. (RT 8149.)

Appellant went to prison on the triple murder on November 6, 1990. He was sent to Jamestown, a level three prison. (RT 8153.)

### **(c) The Cross Murder**

The first time appellant found out about Julie Cross was when he read about it in the newspapers. He came home, picked up the paper, went into the house, sat down and opened the paper and there it was. Sherol was in the house. (RT 8130.) This happened in the morning. (RT 8131.) It could have been June 5, 6 or 7. (RT 8131.)

In June 1980 appellant found a card on his door that had a police detective's name on it. Appellant called him and the man said he wanted to talk to appellant at Parker Center. (RT 8131.) Appellant said he had warrants for traffic violations up and down the State of California so he wasn't real enthusiastic about going to a police station. (RT 8131-8132.) The man said that he would come to appellant's house and that they wouldn't worry about the warrants. Appellant said okay. (RT 8132.)

Appellant testified that in July 1980 his driver logs at Swift Foods were available. The police asked appellant if he could show them the logs. (RT 8135.) Appellant called the office and told the girl that the police were there and that they wanted to ask about some specific dates, that appellant wanted her to pull his logs and he put the police on the phone with her. He

was not part of the conversation. After he made this information available to the police, appellant was not arrested for the Cross murder. (RT 8136.)

The same detective called appellant back and told him to take care of those warrants, which appellant proceeded to do. (RT 8136.) He turned himself in and served a period of time in jail. (RT 8137.)

In 1991, Detective Henry and Agent Beeson came to see appellant in Jamestown prison. They searched his cell. (RT 8154.) There was a conversation about the Julie Cross murder. (RT 8154-8155.) Appellant had no information to provide about the Cross murder. (RT 8155.) During this time, appellant was able to and did call his parents, Eileen and his children. He was then transferred to Corcoran. (RT 8155.)

Appellant was contacted at Corcoran by Henry and Beeson about the Cross murder but he had no information to provide. (RT 8156.) Appellant was brought down from Corcoran and charged with the Cross murder on September 28, 1992. (RT 8156.)

Appellant stated that he did not testify in the guilt phase of this case because he would have been impeached with the prior triple homicide. (RT 8161.)

He had nothing to do with the murder of Julie Cross. (RT 8161.) He never went to Jessica Brock's house to wash off blood from a shirt or a weapon. That never happened. He never did that with Terry Brock. (RT 8161.)

Terry Brock did not have information about appellant that could implicate him in the Cross murder. Appellant testified that he and Terry Brock did not commit the Cross murder and that he, appellant, did not commit the Cross murder. (RT 8232.)

At one point appellant became concerned about Terry Brock implicating him in the Secret Service case. (RT 8240.) The police had been through his mother's house, searching. His lawyers and sister were saying

that Terry Brock was implicating him in the Secret Service case. Appellant knew that Terry Brock had been under investigation for this case. (RT 8241.)

Appellant felt bad when he read about the murder of Julie Cross. She was a lady doing her job and she got killed. That was “pretty cold.” (RT 8161.)

Appellant described his relationship with his mother and father who are, respectively, 15 or 16 and 19 years older than he is, and his relationship with his siblings. (RT 8162-8163.) He spoke about his children. (RT 8163-8164.) He stated he was not mad at anybody for the trial having gone against him but he wanted to keep going and he did not want to give up. Maybe he will prove his innocence one day, maybe not, but he wants to live. (RT 8164-8165.)

#### **(d) Cross-Examination of Appellant**

Appellant’s testimony on his cross-examination by the People is summarized separately in order to permit the reader to see what evidence the defense presented in this phase of the trial.

Appellant felt bad about the killing of Julie Cross. (RT 8167.) He read about it in the paper. (RT 8168.)

Appellant testified that in 1976 and 1978 he was selling heroin. He did not make a lot of money selling drugs. (RT 8182.) He was not selling drugs in 1978. He had to pay for his apartment with Sherol. He had some other girlfriends on the side. He had expenses and made money selling drugs. (RT 8183.) He had apartments in 1978 and bought a new car in 1978. (RT 8183.)

Appellant was involved in a forgery scheme in 1978. (RT 8170.) A crew of people, i.e., Terry Brock and Sherol, passed the money orders that Garland had printed. (RT 8226.)

Appellant had a false driver's license with the name of Rozelle Robinson. At one time he used the name Gary Bruax. He has done forgeries so he has used names. (RT 8168.)

Appellant cashed the checks in the forgery scheme. (RT 8171.) In October 1978, Terry Brock was staying at appellant's apartment. He was a "walker," meaning that he cashed some money orders. Appellant was also a walker. (RT 8177.)

Charles Collins was part of the forgery operation. (RT 8175.) Collins was a friend and close associate of appellant's. (RT 8176.)

Charles Collins asked appellant to take him to Garland's, which he did. Garland and Collins then discussed how they were going to pay each other. This took place at Garland's apartment. (RT 8177.) Appellant had been there numerous times. (RT 8178.) Roberta Armor was living there; appellant knew who she was. Appellant had known James Howard Andrews probably for 15 years. Andrews was an associate of appellant's. (RT 8178.)

The note left on appellant's door was from Garland Gilbert to Charles Collins. Appellant was to deliver the note to Collins because Gilbert had no way to get to Collins. (RT 8170.) The note Garland left said he might go elsewhere if he wasn't paid. (RT 8224.) Appellant was not concerned about Garland going to the police. (RT 8225.)

Appellant was not upset about the note being left in his door. (RT 8176.) Appellant took the note to Charles Collins the next day. The note was not a threat to appellant. (RT 8176.)

Patricia Tyre, his mother's cousin (RT 8169), lied when she testified in the triple murder trial that when appellant got the note, appellant said, "I am going to fuck Garland Gilbert up." (RT 8171.)

Appellant denied telling Sherol that when the three people got killed Howard shit in his pants and begged for his life and that appellant could not

take a chance on Howard telling. (RT 8174.) Sherol lied about appellant in her testimony. (RT 8192.) Appellant was upset when Sherol testified against him. (RT 8183.)

Exhibit 109 is a letter addressed to appellant's sister. (RT 8184.) The letter is dated November 16, 1989 when the triple murder trial was pending. (RT 8186.) Appellant read the text of the letter into the record. (RT 8186-8188.)

In the letter, appellant wrote that his sister should keep her emotions under control. (RT 8186-8188.) Appellant stated that the letter was telling his sister what to do, if someone was asking what was happening to him. (RT 8191.)

Exhibit 110 is a three-part letter to three people. One part is to Nan, Sherol's mother (RT 8196), the second is to Sherol and the third is to appellant's sister. (RT 8198.)

Appellant read Sherol's statement and knew that she was lying about him and lying for a reason. (RT 8208-8209.) He asked her why. She then gave him an indication that they were threatening to take her kids away. Sherol would not talk to defense investigators. (RT 8209.)

The letter to appellant's sister states to take the letter to Sherol right away and make her read it twenty-three times and this had to be done right away before "those dogs get to her" and not to talk on the telephone about it. (RT 8195.) It also says to burn the letter and to force Sherol to read it. (RT 8196.)

Appellant also read into the record the note to Nan. (RT 8199.) The note said that Sherol had unknowingly done a lot of damage and that appellant knew that Nan would know how to put things together and that he needed her. (RT 8199.)

Appellant did not tell Charles Collins that when he shot Armor white stuff came out of her head, even though Collins testified to this at the triple

murder trial. (RT 8210.) Sherol, Patricia Tyre, Collins all lied when they testified at that trial. (RT 8210.) Appellant never told Collins that he shot Armor. (RT 8212.)

Appellant did not know whether he was working on June 4, 1980. (RT 8220.)

In his trial on the Williams shooting, appellant pleaded guilty to assault with a firearm. (RT 8223.)

Exhibit 112 is a letter dated November 13, 1973 to the Court of Appeal written by appellant. (RT 8227.) The letter looks like appellant's printing. The letter states that the Tyre robbery conviction was a case of mistaken identity. (RT 8228.) This was a lie. (RT 8227.)<sup>85</sup>

Appellant was first questioned by Henry about the Secret Service murder in 1987. (RT 8233.) Appellant knew what it was about when he was asked to stand in a lineup in April 1990. (RT 8233.)

Appellant denied telling anyone to tell Terry Brock to stay strong. (RT 8239-8240.)

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<sup>85</sup> On re-direct, appellant testified that when he appeared before the parole board, he told them that he had committed the Tyre robbery. He admitted that he shot Williams. (RT 8230.)