

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 106

HON. RAYMOND CHOATE, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

BRUCE MCGREGOR DAVIS,

Defendant.

NO. A-267861

243

REPORTERS' DAILY TRANSCRIPT

Monday, February 14, 1972

VOLUME 43APPEARANCES:

For the People:

JOSEPH P. BUSCH, JR., District Attorney,

BY: ANTHONY MANZELLA

and

STEPHEN R. KAY, Deputies District
Attorney

For Defendant Davis:

GEORGE V. DENNY, III

COPY

MARY LOU BRIANDI, CSR
ROGER K. WILLIAMS, CSR
Official Court
Reporters

I N D E XE X H I B I T SPEOPLE'S FOR IDENTIFICATION IN EVIDENCE

3 - (previously identified)	6756
13 - (previously identified)	6756
18 and 18-A - (previously identified)	6757
19 - (previously identified)	6757
20 - (previously identified)	6757
21-A, B, and C - (previously identified)	6757
30 - (previously identified)	6764
38 - (previously identified)	6765
39 - (previously identified)	6765
41 - (previously identified)	6765
37 - (previously identified)	6764
43 - (previously identified)	6766
44 - (previously identified)	6766
45 - (previously identified)	6766
48-A and 48-B - (previously identified)	6767
49 - (previously identified)	6767
53-A and 53-B - (previously identified)	6767
54 - (previously identified)	6768
55-A, B, and C - (previously identified)	6768
56-A, B, and C - (previously identified)	6768
57-A, B, C, and D - (previously identified)	6768
60-A and B - (previously identified)	6770
61a through J - (previously identified)	6770
62 - (previously identified)	6771
65-A through E - (previously identified)	6771
65-F and G - (previously identified)	6771
65-H - (previously identified)	6772
68 - (previously identified)	6772
70 - (previously identified)	6773
72 - (previously identified)	6774
74 and 74-A - (previously identified)	6774
73 - (previously identified)	6777
77-A through AA - (previously identified)	6775
78 - (previously identified)	6776
79 - (previously identified)	6776
80-A through I - (previously identified)	6776
81-A and B - (previously identified)	6777
82-A through F - (previously identified)	6777
84 - (previously identified)	6777
85 - (previously identified)	6777
86-A, B, C, and D - (previously identified)	6778
87 - (previously identified)	6779
89 - (previously identified)	6780
95-A, B and C - (previously identified)	6781
98 - (previously identified)	6782
99 - (previously identified)	6782
101 - (previously identified)	6782

	<u>E X H I B I T S</u> (Continued)	<u>IN EVIDENCE</u>
1		
2	102 - (previously identified)	6782
	105 - (previously identified)	6784
3	106-A through 106-F - (previously identified)	6785
	91 - (withdrawn)	6786
4	108 - (previously identified)	6786
	109 - (previously identified)	6786
5	110 - (previously identified)	6793

6

7

8

9

10

11 DEFENDANT'S:

12	A - (previously identified)	6794
	B - (previously identified)	6794
13	C-1 through C-12 - (previously identified)	6794
	D - (previously identified)	6800
14	G - (previously identified)	6803
	H - (previously identified)	6803
15	M - (previously identified)	6803
	N - (previously identified)	6806
16	V - (previously identified)	6811

17

18

19

20

21

22

23

24

25

26

27

28

1 LOS ANGELES, CALIFORNIA, MONDAY, FEBRUARY 14, 1972 10:00 AM

2 - - -

3
4 THE COURT: Mr. Denny, did you meet Mr. Johnson?

5 MR. DENNY: Oh, yes, I did.

6 THE COURT: Mr. Kay?

7 MR. DENNY: Mr. Kay has also met Mr. Johnson.

8 MR. KAY: We have agreed that Mr. Johnson may take
9 the stuff and go over and examine it, but Mr. Denny reminded
10 me supposedly a clerk is supposed to accompany the
11 exhibits or something.

12 (Whereupon, Mr. Denny conferred with the clerk.)

13 MR. DENNY: Joyce said she will get one just as
14 quickly as possible. I believe that's standard operating
15 procedure now.

16 THE COURT: I believe that would have to be the case.

17 You gentlemen can accompany him, if you wish,
18 and arrange the time. Let's see what we can do about that.
19 You may talk to him and if you wish to --

20 MR. KAY: We've already talked to him for quite a
21 period of time.

22 MR. DENNY: I would like, if possible, to do it this
23 way, I know it sometimes takes a good deal of time to
24 determine whether there is anything significant, but if Mr.
25 Johnson does find anything that appears to him to be a
26 land impression or a land and two groove impressions on that
27 bullet, I would appreciate the opportunity to be called here
28 in court, and then have the opportunity to go and see it

1 over at the lab myself, personally. I think it would be a
2 better expenditure of time that we don't all traipse over
3 there and wait around, because there are some matters that
4 we can take care of now by way of taking care of the receipt
5 into evidence, et cetera --

6 THE COURT: Well, the Court will not say that it will
7 do that, because it will depend largely upon what the progress
8 of the case is today, and whether, in the Court's discretion
9 it should be to allow that.

10 But if Mr. Johnson would communicate with the
11 Court after he's had an opportunity to examine the bullets,
12 and if he lets the Court know via telephone that he's
13 ready to have counsel view any of the -- either of the exhi-
14 bits, then, perhaps, I can arrange it.

15 (Whereupon, unrelated matters were called and
16 heard before the Court.)
17
18
19
20
21
22
23
24
25
26
27
28

2 fls.

2-1

1 THE COURT: The record will show the defendant to be
2 present with his counsel.

3 Where is everybody?

4 (Pause in the proceedings while a discussion
5 off the record ensued at the bench between the Court
6 and the clerk.)

7 THE COURT: Mr. Kay, do the People have any further
8 witnesses?

9 MR. KAY: No further witnesses, although I assume that
10 if Mr. Johnson's opinion is favorable, that the Court will
11 let us put him on -- reopen our case and put him on as a --

12 THE COURT: Either side may put Mr. Johnson on,
13 depending on --

14 MR. KAY: All right.

15 THE COURT: -- what his view may be.

16 And --

17 MR. KAY: Well, he would be the only --

18 THE COURT: -- after he has --

19 MR. KAY: -- other possible witness. Other than that,
20 we have no witness.

21 THE COURT: After Mr. Johnson has examined the bullets,
22 either side may use him.

23 Very well, is there an offer to receive those
24 items which have heretofore been marked for identification?

25 MR. KAY: Yes, there is, your Honor. Mr. Manzella has
26 the exhibit list. If I --

27 THE COURT: Very well.

28 MR. KAY: -- can just --

1 THE COURT: I will excuse you to find him.

2 MR. KAY: Okay. He's right outside, talking to a
3 witness. I will have to get that. Thank you.

4 (Pause in the proceedings.)

5 THE COURT: The People are offering into evidence
6 exhibits heretofore marked and yet unreceived?

7 MR. MANZELLA: Yes, your Honor.

8 I think the first exhibit that hasn't been
9 received in evidence is 3-A,

10 THE COURT: I think that's true. That's a copy of
11 the driver's license.

12 MR. MANZELLA: Right. The People would offer that
13 into evidence.

14 THE COURT: That's admitted.

15 MR. DENNY: Yes, no objection.

16 MR. MANZELLA: I believe the next exhibit is People's
17 13 for identification.

18 The People would offer that into evidence.

19 THE COURT: The checkbook?

20 MR. MANZELLA: Yes, your Honor.

21 MR. DENNY: No objection.

22 THE COURT: So ordered.

23 MR. MANZELLA: The next exhibit is People's 18, the
24 knife.

25 The People would offer that into evidence.

26 MR. DENNY: Which?

27 THE COURT: Is that the knife with a sheath?

28 MR. KAY: Right.

3a ev.

13 ev.

1 MR. DENNY: Well, the sheath is 18-A.

2 THE COURT: 18-A?

3 MR. MANZELLA: Right.

4 MR. DENNY: Yes. I have no objection.

18&18-A Ev. 5 THE COURT: All right. Received.

6 MR. MANZELLA: The next exhibit is 19. It's the
7 mannequin.

19 Ev. 8 MR. DENNY: No objection.

9 MR. MANZELLA: 20. People's 20 for identification is
10 the sword in two pieces.

11 MR. DENNY: I have no objection to that.

20 Ev. 12 THE COURT: All right. Received.

13 MR. MANZELLA: People's 21-A, -B and -C are three
14 photographs of the kitchen of the Hinman home.

15 MR. DENNY: Could I see those, Mr. Kay, just a moment?

16 (Pause in the proceedings while Mr. Denny
17 examined the exhibits.)

21ABC ev. 18 THE COURT: 21-A, -B and -C.

19 MR. KAY: Excuse me, your Honor. I don't believe I
20 heard the Court's ruling on 18 and 18-A, the knife and the
21 sheath.

22 MR. MANZELLA: They were admitted.

23 THE COURT: If I haven't heretofore mentioned it, they
24 are admitted into evidence.

25 MR. KAY: Okay. Thank you.

26 MR. DENNY: Yeah. No objection on 21A, -B, and -C.

27 MR. MANZELLA: 22 and 23 are the black T-shirt and
28 Levis. 22 is the black T-shirt; 23 is the Levis.

1 MR. DENNY: Were those identified at all? I don't
2 think they have been, by any witness.

3 No, they have not.

4 MR. MANZELLA: They may not have been.

5 MR. DENNY: I'd object to their introduction. There
6 has been no testimony concerning them at all.

7 THE COURT: Well, they were talked about --

8 MR. DENNY: I don't think there was any identification
9 of them.

10 THE COURT: Sergeant Whiteley was questioned about them
11 on --

12 MR. DENNY: There was no foundation established for
13 them, your Honor.

14 THE COURT: -- on cross-examination.

15 MR. MANZELLA: The People will withdraw the offer as
16 to 22 and 23. I believe that's correct. I think we --

17 THE COURT: Very well. The other items have thus far
18 been admitted, but 22 and 23 are withdrawn.

19 All right. Proceed.

20 MR. MANZELLA: I believe the next exhibit is People's
21 30 for identification, the pistol, the Radom pistol.

22 MR. DENNY: Your Honor, I'd object to the introduction
23 of that, in that there's insufficient evidence to establish
24 that this was in fact the pistol that was used; and it's
25 highly prejudicial to have that pistol received into evidence
26 now.

27 And I'd cite to the Court People vs. Lo Cigno,
28 L-o C-i-g-n-o, a case not too dissimilar on its facts, where

1 although there was evidence to show that one of the parties--
2 this was the famous, "Now, Sam, now!" case tried in Judge
3 Drucker's court some years back, in which Mickey Cohen and
4 a group were at a restaurant, and supposedly Sam Lo Cigno
5 was the hit man to hit the victim, who was called The
6 Enforcer, Jack Whalen.

7 And after the crime had been committed, Whalen
8 had been killed, they discovered three guns found in the
9 trash can, wrapped in a plastic container, the trash can
10 behind the restaurant.

11 And those guns were introduced into evidence,
12 although there was no showing that any one of those guns
13 was actually the gun that fired the fatal bullet.

14 And the guns were used by the prosecution, in
15 effect, simply to show that these were men who had guns,
16 because there was some evidence to show that the guns did
17 belong to one of the parties sitting at the table, and that
18 he had had them -- although he said, on examination, that he
19 had sold them sometime earlier.

20 And then they sought to show the presence of
21 these guns, in a way to impeach him. And the Court said,
22 "You may not do that; that it was prejudicial in the
23 extreme to do so," and that --
24
25
26
27
28

3 fls.

3
1 THE COURT: What's the analogy here?

2 MR. DENNY: Unless there is some showing that this gun
3 was in any way connected with the offense in this case, the
4 Hinman offense, then it is extremely prejudicial and its
5 prejudicial effects certainly outweigh any of its probative
6 value in attempting to use it to connect Mr. Davis with the
7 crime.

8 And thus far, the most evidence that we have on
9 that subject is the ballistics evidence which simply says
10 from Sergeant Christansen, well, that gun as well as any
11 number of guns, up to some 60 nine-millimeter guns with six
12 land and groove impressions with right-hand twists might have
13 fired that bullet that was recovered in the house.

14 THE COURT: Aside from that expert opinion, however,
15 you're saying that it makes no difference that Mr. Davis may
16 have had the Radom in his possession and it is prejudicial to
17 show that he did have?

18 MR. DENNY: That's correct.

19 THE COURT: People.

20 MR. MANZELLA: Your Honor, the People have -- I believe
21 there's four pieces of evidence that tend to establish that
22 this weapon was the weapon that was at the Hinman home in the
23 possession of Mr. Davis and others.

24 THE COURT: Aside from that.

25 MR. MANZELLA: If we assume --

26 THE COURT: All right, go ahead.

27 MR. MANZELLA: Nat Stanoff's testimony that on July
28

1 MR. DENNY: We stipulate for the purpose of this
2 argument that that is so testified to.

3 MR. MANZELLA: The testimony of Ella Bailey that she
4 saw Mr. Davis with this gun or a gun that looked identical to
5 it on Friday, July 25, before Beausoleil, Atkins and Brunner
6 and a fourth person left for the Hinman residence;

7 And on Monday, July 28th, the day after -- well,
8 the day after the weekend that Hinman was killed, Davis
9 admitting -- admitted holding a gun on Hinman at the time that
10 Manson slashed him with the sword;

11 And that -- and Sergeant Christansen's testimony
12 that the bullet found at the Hinman home was a 9-millimeter
13 bullet which fits -- which is the caliber of bullet used by
14 the -- this pistol;

15 All that evidence would tend to establish, would
16 make it reasonable for the jury to believe this, indeed, was
17 the gun.

18 And if it would be reasonable for the jury to
19 believe, as one of the reasonable inferences, then it is
20 admissible.

21 THE COURT: Mr. Denny argues that even though that may
22 be the case, it can be traced to Mr. Davis's hand by the
23 evidence, that it is immaterial and prejudicial.

24 MR. MANZELLA: Well, it is not immaterial because a
25 person -- if a person could -- if Mr. Davis got up on the
26 witness stand and admitted that the gun -- that was the gun that
27 was at the Hinman house, it certainly would be relevant.

28 I mean, an objection on the grounds of irrelevancy

1 would not be well taken. So the fact the weapon was at the
2 Hinman home would be relevant. It is evidence that tends to
3 prove -- what distinguishes this case from the case Mr. Denny
4 cites, if I am not incorrect, is that there was no evidence
5 that these guns were used in the perpetration of the offense.
6 And here we've got the testimony of the ballistic's expert and
7 the testimony of Ella Jo Bailey and the admission by Mr. Davis
8 that the gun was used in the offense.

9 MR. DENNY: Your Honor, let me clarify that.

10 One, we do not have any admission by Mr. Davis that
11 the gun was used in the offense.

12 If the Court recalls the testimony of Ella Bailey,
13 all she said was that Bruce said he held a gun on Hinman when
14 Manson slashed him. He in no way identified this gun, the
15 Radom, the 9-millimeter Radom as the gun which he held. First
16 point.

17 Second point, her testimony was that Davis had a
18 gun at the time she says she saw him, Manson, and Beausoleil
19 standing together. And she says it appeared to be the gun,
20 People's 30 or 31 -- which is it here?

21 MR. MANZELLA: 30.

22 MR. DENNY: People's 30, all right.

23 Now, whether she's impeached by showing that she
24 couldn't see that distance or not, is irrelevant. She did not
25 say that she saw that gun go anywhere with Beausoleil in her
26 testimony. All she says was she saw him with this gun at about
27 the time when they were talking.
28

1 Now, we go to Sergeant Christansen's testimony and
2 Sergeant Whiteley's testimony.

3 They don't even know when the bullet that they
4 recovered in January was fired. And, in fact, Sergeant
5 Whiteley's testimony is the only testimony we have on that
6 subject at all. And certainly the People are bound by that
7 testimony, and that is at the time he made out his report
8 concerning his observations on August 1st, 1969, he said that
9 the bullet hole did not appear to be of recent origin.

10 Therefore, even assuming Christansen's testimony
11 that this bullet could have been fired from the Radom, among
12 any number of a million guns, the only testimony that there is
13 before this court as to when it could have been fired, because
14 there was no -- there has been no testimony that a gun was
15 fired in this case.

16 Now, the Court, I'm sure, is not going to harken
17 back to the Manson case where there was such testimony. But in
18 this case there was no evidence from any person that a gun,
19 this gun, any gun was fired at the Hinman home on the weekend
20 of July 25th through the 27th.

21 Under the circumstances, then, I will advert again
22 to the Lo Cigno case and state, all of these factors being
23 taken into account, the mere fact that Bruce Davis bought a
24 gun on July 14th, the mere fact that he may have been seen with
25 a gun at the time or shortly around the time that this crime
26 occurred, in and of itself is insufficient to admit that gun
27 and it would be prejudicial to do so. The prejudicial
28 aspect clearly outweighs the probative value of admitting that

1 gun under the Lo Cigno doctrine.

2 THE COURT: The Court believes that the evidence is such
3 that the jury may take the inference that Mr. Davis had that gun
4 at the Hinman home and that he did utilize it in the course of
5 the events there at the Hinman home. It is a matter, the Court
6 believes, that the jury will determine, may determine, and the
7 Court believes that the probative value of this piece of
8 evidence outweighs the prejudicial effect it may have upon the
9 jury.

30 rec'd

10 The Court will admit People's 30.

11 MR. MANZELLA: People's 36 for identification is offered
12 into evidence, your Honor. It consists of eight photographs
13 of Spahn Ranch.

14 THE COURT: All right, they're admitted.

15 MR. MANZELLA: People's 37 is offered into evidence, which
16 consists of five black-and-white photographs of Manson, Davis,
17 Beausoleil, Brunner and Atkins.

18 MR. DENNY: Your Honor, I have objected to the use of
19 those previously, I think, at the beginning of this case, based
20 on the prejudicial aspect of having all five photographs on
21 one board. I still object to the use. It is a little late
22 since they've been used time and again, so I just restate my
23 objection for the record that it has, I believe, had a
24 prejudicial affect on the jury, them seeing that.

25 THE COURT: The Court notes both sides have used 37 be-
26 fore the jury. The Court doesn't find that it is prejudicial
27 to the defendant. The Court admits 37.

28 MR. DENNY: Well, may the record reflect that after it

37 rec

1 has once been shown to the jury two or three times by the
2 prosecution, I am powerless to change the affect that it has,
3 obviously. Then, I am in a position having to use those
4 pictures, which I sought to have them severed one from the
5 other so I could use them separately.

6 MR. MANZELLA: People's 38 for identification is offered
7 into evidence. That's the firearms transaction record.

8 THE COURT: Mr. Stanoff's record?

9 MR. MANZELLA: That is correct, your Honor.

10 THE COURT: All right, 38 is admitted.

11 MR. MANZELLA: People's 39 is a certified copy of -- no,
12 I believe that's a photocopy of a temporary driver's license
13 in the name of Jack McMillian, which was identified as --
14 appeared to be a copy of the license which was presented to
15 Mr. Stanoff. That's offered.

16 THE COURT: All right, it is admitted.

17 MR. MANZELLA: People's 40 was not offered by the People
18 -- I'm sorry, an exhibit previously marked People's 40 has --
19 was not offered or marked for identification at this time, so
20 there will be a gap there.

21 People's 41 for identification was a photograph of
22 the defendant.

23 THE COURT: It is received.

24 MR. DENNY: Well, could we see that particular photo-
25 graph, your Honor, I'm not --

26 Oh, yes, fine.
27
28

38 rec

39 rec

41 rec

3b fol

3b-1

(Whereupon, unrelated matters were called and heard before the Court.)

41 ev.

THE COURT: All right, 41 is admitted. 42.

MR. MANZELLA: 42, I believe, was admitted on 1-14.

THE COURT: Yes, it was previously admitted.

MR. MANZELLA: People's 43 is offered into evidence, two photographs of the trunk of the Fiat stationwagon.

43 ev.

THE COURT: That's admitted.

MR. MANZELLA: People's 44 for identification is a certified copy of a certificate of ownership of one of the vehicles. I'm not sure which.

44 ev.

THE COURT: The VW microbus. That's admitted.

MR. MANZELLA: People's 45 for identification is -- consists of two photographs of a dune buggy. People would offer People's 45 for identification into evidence.

MR. DENNY: No objection.

45 ev.

THE COURT: So ordered.

MR. MANZELLA: People's 46 and 47 were received.

THE COURT: Yes.

MR. MANZELLA: People's 48 for identification was a certified copy of a marriage certificate.

MR. DENNY: No objection.

THE COURT: All right, 48-A and -B, that is, certain photos --

MR. MANZELLA: 48-A is a black and white photograph of two persons, 48-B is a black and white of four persons.

The wedding photographs of Shea and Magdalene.

MR. DENNY: No objection.

3b-2

48A&B ev.

1 THE COURT: Those heretofore mentioned are admitted
2 into evidence.

3 MR. MANZELLA: 49 is another photograph of Shea, I
4 believe.

5 THE COURT: Well, it is a picture of Mr. Manson,
6 according to what I have.

7 MR. DENNY: Can we hold on a moment, your Honor? We
8 don't seem to have that here in order.

9 THE COURT: What do you have listed for that, Mrs. Holt?

10 THE CLERK: It is a picture of Charles Manson.

11 THE COURT: A picture of Charles Manson. I think I
12 recall it.

13 Is there any objection to that?

14 MR. DENNY: No, no objection.

15 THE COURT: It is admitted.

16 50.

17 MR. MANZELLA: People's 50 has not been offered by the
18 People.

19 THE COURT: That's the way my record looks, too.

20 51.

21 MR. MANZELLA: 51 and 52 were received on January 17th.

22 THE COURT: Yes.

23 MR. MANZELLA: People's 53-A and 53-B are the two --
24 the matched revolvers.

25 MR. DENNY: No objection.

26 THE COURT: All right.

27 51 through 53-B are received, then.

28 MR. MANZELLA: People's 54 is the brown attache case and

49 ev.

53A&B ev.

1 its contents.

2 MR. DENNY: No objection.

54 ev.

3 THE COURT: All right, received.

4 MR. MANZELLA: People's 55-A, -B and -C are pawn
5 tickets.

6 THE COURT: Pawn tickets.

7 MR. DENNY: No objection.

55ABC ev.

8 THE COURT: I believe they have heretofore been received.
9 If not, they are now.

10 56.

11 MR. MANZELLA: 56-A, -B and -C were also pawn tickets.

12 MR. DENNY: No objection.

56-ABC ev.

13 THE COURT: Received.

14 57, pawn tickets.

15 MR. MANZELLA: 57-A, -B, -C and -D are all offered.

57-ABCD ev.

16 They're pawn tickets.

17 THE COURT: I think they have heretofore been received.
18 If they aren't, they are now received.

19 MR. DENNY: No objection.

20 MR. MANZELLA: People's 58 was already received.

21 THE COURT: I think so, a birth certificate.

22 MR. MANZELLA: Right.

23 People's 69 for identification --

24 THE COURT: Which heretofore has been received, the
25 pawn tickets.

26 MR. MANZELLA: Right.

27 THE COURT: If not, the record does not so show,
28 they are received now.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

60-A and -B are pawn tickets.

MR. KAY: We didn't offer 60-A and -B.

THE COURT: Didn't you?

MR. KAY: No. No, I don't think so. I think this
was with the witness we didn't call.

THE CLERK: I have them 60-A and -B on January 20.

THE COURT: I have them received in evidence, 60-A and
-B.

3c fls.

3c-1

1 MR. KAY: No, I don't think so. No, we didn't offer
2 60-A and B.

3 MR. DENNY: They were marked for identification, I think,
4 your Honor, as far as the testimony of Magdalene Shea.

5 MR. KAY: Just that she could identify the signature, but
6 we didn't offer them and we don't offer them.

7 THE COURT: You do not offer them, all right. The Court
8 is incorrect, then. Apparently they had been received, but if
9 they're not offered --

10 MR. KAY: No, they're not offered.

11 THE COURT: Then, the Court will retract its order
12 receiving them into evidence.

13 MR. DENNY: Well, may I have just a moment, your Honor?

14 THE COURT: Yes.

15 MR. DENNY: Well, your Honor, I will move they be received
16 into evidence either as a defense exhibit or under the same
17 number, as these were a part of the --

18 THE COURT: They were referred to and identified.

19 MR. DENNY: That's right.

20 THE COURT: All right, the Court will receive them as
21 60-A and B respectively.

22 61, photos of an automobile, A through J.

23 MR. MANZELLA: That's --

24 THE COURT: Any objection?

25 MR. DENNY: No objection, your Honor.

26 THE COURT: Received.

27 62, six keys and a key ring.

28 MR. DENNY: No objection.

60a, b

61-a
through J

62

1 THE COURT: Received.

2 63, what is that?

3 MR. MANZELLA: 63, I don't believe was offered, your
4 Honor.

5 MR. DENNY: I don't think there is any.

6 MR. MANZELLA: I don't think it was marked either.

7 THE COURT: I don't either.

8 MR. MANZELLA: People's 64.

9 THE COURT: A yellow paper with writing found in the
10 automobile.

11 MR. MANZELLA: People's 64 was received.

12 THE COURT: Yes, it was received. If the record does not
13 so show, it is received now.

14 65 is --

15 MR. MANZELLA: 65 --

16 THE COURT: -- the footlockers?

17 MR. MANZELLA: People's 65-A through E are five photo-
18 graphs. They're offered into evidence.

19 THE COURT: All right, they're received, pictures of
20 footlockers and clothing.

21 66.

22 MR. MANZELLA: People's 65-F and 65-G are the foot-
23 lockers. Did you already receive them?

24 THE COURT: I believe they have been. If they are not,
25 they are received now.

26 MR. DENNY: I don't believe they were, but there is no
27 objection.

28 MR. MANZELLA: 65-H is a blue suitcase found by the

65a-e

65f,g

1 young boy up in the desert.

2 MR. DENNY: No objection.

3 THE COURT: 65-F and I have -- is it G and H?

4 MR. DENNY: H.

5 THE COURT: All right, that's received.

6 MR. MANZELLA: People's 66. I don't believe we
7 identified an exhibit as 66, your Honor.

8 THE COURT: I don't think so, either.

9 MR. MANZELLA: People's 67-A through N are black-and-
10 white photographs of documentaries testified to by --

11 THE COURT: Bickston.

12 MR. MANZELLA: -- Bickston.

13 MR. KAY: And Lance Victor.

14 MR. MANZELLA: And I believe they were received on
15 January 24.

16 THE COURT: If not, they are received now.

17 MR. MANZELLA: People's 68 is the large photograph of
18 Shea.

19 MR. DENNY: No objection.

20 THE COURT: All right, received.

21 MR. MANZELLA: I don't believe we marked an exhibit as
22 People's 69.

23 THE COURT: That's the Court's records.

24 MR. MANZELLA: People's 70 for identification is a
25 photograph of Stephanie Schram, used by the Deputy Wachsmuth
26 to identify her as the person arrested on August 24th. That
27 would be offered in evidence.

28 MR. DENNY: No objection.

1 THE COURT: Received.

2 MR. MANZELLA: People's 71 was received on February 7.

3 THE COURT: That was a check dated July 10?

4 MR. MANZELLA: Yes, your Honor.

5 THE COURT: All right, received.

6 MR. MANZELLA: People's 72 is offered into evidence. It

7 is a -- People's 72 is a gun purchase record.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 THE COURT: Buy book, a page from a buy book of
2 Mr. Baker?

3 MR. MANZELLA: Right.

4 THE COURT: I think it's been heretofore received. If
5 not, it is received now.

6 MR. MANZELLA: Is that People's 72?

7 THE COURT: 72.

8 73 is the picture of Danny DeCarlo.

9 MR. MANZELLA: That was received on January 17, I
10 believe.

11 THE COURT: So my sheet shows, and if the record
12 doesn't show that, it is received now.

13 74-A was a -- 74, a booking slip of Danny DeCarlo?

14 MR. KAY: Yes.

15 MR. MANZELLA: Right. That's right, your Honor.

16 MR. KAY: We'd offer that.

17 THE COURT: People offering that?

18 MR. MANZELLA: Yes, your Honor.

19 THE COURT: Any objection?

20 MR. DENNY: No objection on 74. There is an objection
21 to 74-A in that there's -- well, let me see just a minute
22 about 74-A.

23 No, I am not going to object to 74-A either.

24 THE COURT: Are the People offering 74-A?

25 MR. MANZELLA: We'll offer both of them, your Honor.

26 THE COURT: What is that?

27 MR. KAY: Another booking slip.

28 THE COURT: All right, received.

1 MR. MANZELLA: I don't believe People's 75 -- we haven't
2 marked an exhibit as People's 75, your Honor.

3 THE COURT: 76.

4 MR. MANZELLA: 76 is a --

5 THE COURT: A contour map of the Barker-Meyers Ranches?

6 MR. MANZELLA: That's correct. People offer that.

7 THE COURT: It is received. If not before, it is
8 received now.

9 77-A through AA, the photographs.

10 MR. MANZELLA: Yes, your Honor. The People would offer
11 those into evidence.

12 THE COURT: Any objection?

13 MR. DENNY: No objection.

14 THE COURT: All right, received.

15 MR. MANZELLA: 78.

16 THE COURT: 78, two slips of negatives.

17 MR. MANZELLA: May I inquire of Mrs. Holt, your Honor,
18 some of the 77 series of photographs were not marked with a
19 date in the evidence column in the Superior Court exhibit list.
20 Were they all admitted on January 17?

21 THE CLERK: No, this is when they were identified.

22 MR. MANZELLA: In other words, some of them were already
23 admitted in evidence?

24 THE CLERK: And some are not.

25 MR. MANZELLA: Oh, all right.

26 Thank you.

27 THE COURT: 78, gentlemen?

28 MR. MANZELLA: People's 78 was negatives found in the --

76

77a-aa

1 either in the vehicle some place or perhaps in one of the foot-
2 lockers, perhaps. I don't recall, at the time that Shea's
3 car was found.

4 MR. KAY: I think it was in the trunk in a white envelope,
5 Sergeant Whiteley testified.

6 THE COURT: Objection?

7 MR. DENNY: No objection, your Honor.

8 THE COURT: Received.

9 79, a knife case --

10 MR. MANZELLA: 79 is a knife and a handle. They're in
11 two separate pieces. I don't recall that that was used during
12 the course of the trial at all.

13 MR. DENNY: Well, it was, your Honor. I used it one time
14 with Dr. Katsuyama indicating what weapon might have caused
15 the stab wounds, and I think it should be received in evidence
16 for that purpose.

17 THE COURT: All right, I'll receive it as 79, then.

18 MR. MANZELLA: People's 80-A through H, 8 colored
19 photographs. I believe they're at Spahn Ranch.

20 MR. KAY: Yes, they are.

21 MR. MANZELLA: No, I'm sorry, People's 80-A through I.

22 MR. DENNY: That's with the additional one we added to
23 it. It is A through I.

24 THE COURT: So the Court's record shows, and they are
25 received.

26 MR. MANZELLA: All right.

27 THE COURT: 81-A, B, two photos, a black-and-white aerial
28 photograph.

80-A
the I

1 MR. MANZELLA: People offer those in -- they're photo-
2 graphs of the area -- aerial photographs of the area I believe
3 in which Shea's car was found.

4 THE COURT: Yes, they are received.

5 MR. MANZELLA: People's 82.

6 THE COURT: A through F.

7 MR. MANZELLA: A through F are colored photographs
8 taken from ground level, the same level the car was found.

9 THE COURT: That's received.

10 MR. MANZELLA: People's 73 for identification is a
11 diagram showing the relative positions of the location where
12 the car was found at Spahn Ranch and the streets and roads
13 in between.

14 THE COURT: All right, it is received, if it has not
15 heretofore been received.

16 84 is seven magazines.

17 MR. MANZELLA: Both were vehicles -- those were
18 magazines found in the vehicle at the time the vehicle was
19 found by Sergeant Whiteley.

20 THE COURT: Any objection?

21 MR. DENNY: I have no objection to that, your Honor.

22 THE COURT: 85, latent fingerprint.

23 MR. KAY: That was the one on the trunk that Deputy
24 Chamousis testified to.

25 THE COURT: All right, admitted.

26
27
28

81-A, b

82-A, f

73

85

4 fol

4-1

1 THE COURT: All right. That would be 86-A, -B and -C and
2 -D, exemplar cards.

3 MR. DENNY: Your Honor?

4 THE COURT: Yes?

5 MR. DENNY: Just a minute. I'm going to object to the
6 introduction of -A and -D on the grounds that there was no
7 foundation established that this was a business record.

8 Chamousis testified that he rolled 86-B, and -C
9 being the top part of that. But there was no testimony what-
10 soever as to the preparation -- the manner of preparation, or
11 anything else, concerning -A and -D.

12 MR. MANZELLA: We weren't seeking to offer it, I don't
13 believe, as a business record; but rather, as an inked
14 impression of the defendant in this case -- not as business
15 records. They don't contain any information which we are
16 seeking to get into evidence.

17 What we are seeking to get into evidence are the
18 prints, the fingerprints, not the writing contained on the
19 exhibits.

20 So it's not hearsay, and we are not offering them
21 as business records.

22 THE COURT: All right. They will be received.

23 87 was a blowup of two prints.

24 MR. KAY: Yes. We'll offer that. Deputy Chamousis
25 testified from that.

26 MR. DENNY: Well, again, I'll object to that, your
27 Honor, on the basis of the fact that it uses, as the exemplar on
28 the right-hand side, a blowup of --

86a,b,c
and d
rec'd

4-2

1 THE COURT: 86?

2 MR. DENNY: 86 --

3 MR. KAY: -A.

4 MR. DENNY: -- 86-A and -D.

5 MR. KAY: No. Just 86-A.

6 THE COURT: -A, the print.

7 MR. DENNY: Yes, the foundation for which was not
8 established.

9 MR. KAY: Deputy Chamousis testified that he compared the
10 two fingerprint cards, and you'll remember that he said that in
11 his opinion the same person made both of them.

12 But the exhibit board, 87, which he helped prepare,
13 was prepared before Mr. Davis's arrest, and that was why the
14 other one was used.

15 But I think there has been sufficient foundation for
16 the use of that exhibit board.

17 And he did testify to it in front of the jury and
18 pointed out points of comparison and everything. So it's
19 pretty -- it's a pretty essential piece of evidence.

20 THE COURT: The Court thinks that there is sufficient in
21 the record to permit the utilization of the exhibit.

22 It was talked about by both sides, on direct and
23 cross.

24 MR. KAY: Right.

25 MR. MANZELLA: People's 88 --

26 THE COURT: The Court will admit 87.

27 MR. MANZELLA: People's 88-A through -I, your Honor, are
28 nine -- I believe they have already been received.

4-3
1 THE COURT: Black-and-white photographs of the desert
2 area. Yes, I believe they have been received. If they have
3 not, they will now be admitted.

4 Now, People's 89?

5 MR. MANZELLA: People's 89 is a contour map. That's
6 another larger contour map of the Death Valley area.

7 The People would offer that into evidence.

89 rec'd 8 THE COURT: So ordered.

9 MR. MANZELLA: I believe People's 90, four black-and-white
10 photographs, eight-by-ten, have already been received.

11 THE COURT: The Court's -- my record shows 90 through 94
12 having been received, 90 being the photographs of the Barker
13 Ranch; 91-A and B would be the Leslie Salt Company records;
14 92 would be an aerial photograph, four foot by four foot,
15 approximately; 93, another aerial photograph, four foot by
16 four foot; 94, a photograph of a driver's license.

17 MR. MANZELLA: Has that been received, your Honor?

18 THE COURT: That has not been received.

19 MR. MANZELLA: All right. The People would offer
20 People's 94 into evidence, your Honor.

21 THE COURT: All right. It's received.

22 95-A, -B and -C are --

23 MR. MANZELLA: Those are certified copies of driver's
24 licenses, all containing the photograph of Bill Vance, --

25 THE COURT: Bill Vance, yes.

26 MR. MANZELLA: -- with three different names.

27 We would offer those into evidence.

28 MR. DENNY: No objection.

4-4

1 THE COURT: All right. Received.

2 96-A, -B, photographs?

95a-b-c
rec'd

3 MR. MANZELLA: Those were two photographs of some of the
4 girls arrested on October 10th of 1969 by James Pursell and
5 other Highway Patrol officers at Barker Ranch.

96a,-b

6 THE COURT: All right. They're received.

4a fol

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

4a-1

97?

MR. MANZELLA: I don't believe we marked any exhibits as 97-A, -B or -C, your Honor.

THE COURT: I didn't have them marked, either.

98, the driver's license?

MR. MANZELLA: The People would offer that into evidence, your Honor.

98 ev.

THE COURT: All right. It's received.

99?

MR. MANZELLA: I believe 99 was received.

THE COURT: It's the test fired bullet.

MR. DENNY: Right.

MR. MANZELLA: Right.

THE COURT: Yes, it has, I believe, been received. If not, the Court receives it.

99 ev.

100-A through -G are the photomicrographs.

MR. DENNY: They have been received, your Honor.

THE COURT: And they're received.

And 101?

MR. MANZELLA: 101 is the -- shows the August 24th arrest of Charles Manson. They're documents from the Sheriff's Office.

I believe 101 and 102 have already been received. They're both certified documents of two of Manson's arrests.

MR. DENNY: That's correct, your Honor.

THE COURT: All right. My record so shows.

If the record does not otherwise show, they are received. Regardless of what the record may show,

101 & 102 Ev.

4a-2

1 they are received.

2 MR. MANZELLA: People's 103 --

3 THE COURT: 103.

4 MR. MANZELLA: -- and 104 for identification, your
5 Honor, are both diagrams drawn by Dr. Kaufmann.

6 THE COURT: Moon diagrams.

7 MR. MANZELLA: Right.

8 MR. KAY: We'd offer those.

103&104 ev. 9 THE COURT: All right. They're received.

10 MR. DENNY: Well, your Honor, I -- may we look at
11 those just a moment?

12 I think they are merely illustrative of his
13 testimony.

14 THE COURT: I think so.

15 He used them before the jury to illustrate his
16 testimony.

17 MR. DENNY: And should not be received in evidence.
18 They merely substitute testimony.

19 103 shows the phases of the moon, full moon,
20 first quarter, second quarter, et cetera.

21 And 104 shows why the moon may look a little
22 bigger on the horizon, or may look like the harvest moon
23 on the horizon.

24 I don't think they're relevant or pertinent or
25 constitute proper exhibits. They're just illustrative of
26 the testimony.

27 I would object to their receipt in evidence.

28 THE COURT: They're rather informal scratchings by the

4a-3

1 expert.

2 MR. MANZELLA: We would ask that at least the diagram
3 showing the positions of the moon and the phases of the moon
4 be in evidence, since --

5 THE COURT: Which one is that?

6 MR. DENNY: Well , that's 103, your Honor. But again,
7 it simply constitutes testimony. It's a form of testimony.
8 And you can't take testimony into the jury room.

9 And that's all that 103 is. It's illustrative
10 of its testimony, explaining to them how the phases of the
11 moon operate.

12 It's just as if you permitted the jury to take
13 in a transcript of its testimony.

14 THE COURT: Let me see 103.

15 (Whereupon the exhibit was displayed to the
16 Court.)

17 THE COURT: All right. The Court agrees with the
18 defendant. They will remain marked for identification.
19 103 and 104 are not admitted.

20 105 was an aerial photograph.

21 MR. MANZELLA: Yes, your Honor.

22 THE COURT: Any objection? A Spahn Ranch aerial
23 photograph?

24 (No response.)

25 THE COURT: It's admitted.

26 106-A through -F?

27 MR. KAY: That's Meyers Ranch, the photos of Meyers
28 Ranch, and the inside --

105 ev.

4a-4

1 MR. DENNY: I think they've already been admitted,
2 your Honor.

106A-F ev.

3 THE COURT: They're received.

4 107? Moonrise chart.

5 MR. KAY: I think that's been received already.

107 ev.

6 THE COURT: That may have been, yes. And that's -- if
7 not, it's received now.

8 108? Leslie Salt Company file.

9 MR. KAY: Your Honor, that's --

10 MR. DENNY: Your Honor, I think if I'm not mistaken,
11 that this is simply duplicative. It is the original --

12 MR. MANZELLA: Right.

13 MR. DENNY: -- of a prior exhibit. And I think either
14 the prior exhibit -- I think the prior exhibit should be
15 withdrawn.

16 MR. MANZELLA: That's agreeable with the People.

17 MR. KAY: Yeah, it is. This is the original file,
18 and there was a copy --

19 MR. MANZELLA: Right.

20 MR. KAY: -- in evidence. So, if the Court will admit
21 People's 108, we will withdraw 91 for this trial.

4b fls.

4b-1

91
withdrawn108
rec'd109
rec'd

1 THE COURT: 91?

2 MR. KAY: 91.

3 THE COURT: All right. So ordered.

4 108 is admitted, and 91 is withdrawn.

5 109 is a blowup of 57-A and 57-C.

6 MR. KAY: We'd offer that.

7 THE COURT: All right. So ordered.

8 MR. KAY: 110's been received.

9 MR. DENNY: Your Honor, at this point I would like to be
10 heard on 110 again.

11 THE COURT: 110 is --

12 MR. KAY: That's the photograph of Mr. Davis, that
13 Deputy Chamousis identified, and that we had seemingly hours of
14 discussion about.

15 MR. DENNY: Well, your Honor, I would just -- I would
16 like to take just a little further time to discuss that, be-
17 cause I was taken by surprise on Friday, and I have researched
18 the law a little more diligently than I obviously had time to
19 then, and I would like to cite to the Court several cases that
20 are, I believe, right on point.

21 The first is People versus Burns, B-u-r-n-s, 109
22 Cal Ap 2nd 524; and the second is People versus Cavanaugh,
23 C-a-v-a-n-a-u-g-h, 44 Cal 2nd 252; and the third is People
24 versus Cruz, C-r-u-z, 264 Cal Ap 2nd 350.

25 In each of those cases, your Honor, the issue was
26 whether it was proper to have admitted certain photographs
27 over the objection that they were irrelevant, in that their
28 prejudicial effect would outweigh their probative value.

4b-2

1 And the first case was a somewhat more horrendous
2 case than -- than we have here; but the language is instructive.
3 And just briefly, I can indicate --

4 THE COURT: Your problem with this photograph is that it
5 shows Mr. Davis with a full beard and --

6 MR. DENNY: No, your Honor. It shows him with an X on his
7 forehead.

8 THE COURT: -- and an X on his forehead?

9 MR. DENNY: There are photographs in evidence already,
10 which show him with a full beard. There were -- there are no
11 photographs which show him with an X on his forehead.

12 THE COURT: There's nothing in the testimony, that I can
13 recall, concerning the significance of an X on the forehead.

14 MR. DENNY: Well, your Honor --

15 THE COURT: How do you believe that it is prejudicial?

16 MR. DENNY: Because these jurors are not dummies. They
17 all have indicated that they have heard about the Tate and
18 LaBianca cases.

19 They all have indicated that they have read things
20 about the Manson Family, and the Tate and LaBianca cases.
21 And in connection therewith, although we did not specifically
22 voir dire them on it -- because I didn't know that this issue
23 would be coming up -- it is to be presumed and assumed that they
24 also were familiar with some of the publicity that occurred when
25 Mr. Manson and others of his followers -- including the girls --
26 cut X's in their foreheads, to ex themselves out of society.

27 And for that reason, I think -- and for that sole
28 and only reason -- the People are attempting to get this

4b-3

1 picture in, since there are plenty of other pictures of
2 Mr. Davis.

3 THE COURT: Well, this is the one, however, that Chamousis
4 -- what was it? Chamousis?

5 MR. KAY: Chamousis, yes, your Honor. This is the one
6 that he says he identifies as the person whose fingerprints
7 he took.

8 THE COURT: And he does not recognize Mr. Davis now.

9 MR. DENNY: All right. That's fine. Let's stipulate to
10 all those facts.

11 This is also the situation, your Honor, where,
12 as I attempted to get into evidence, the records which have now
13 been received into evidence as to the fingerprint exemplars
14 taken by Chamousis show that the booking number that appears
15 on those records is the same booking number -- and I'll represent
16 to the Court, as I am reading it, number 1358-518 -- that
17 Mr. Davis presently has now, showing that they are one and the
18 same person.

19 I have also further stipulated -- offered to
20 stipulate -- that the fingerprint exemplar card rolled by
21 Chamousis was indeed the card of the prints of Mr. Davis.

22 Now, if I may read briefly to the Court?

23 "Over defendant's objection --" this is in the
24 Burns case -- "three photographs of deceased were admitted
25 in evidence. They were pictures of the face, neck, and torso,
26 taken after the autopsy. They were particularly horrible
27 because the head was completely shaved.

28

4c fol

4c-1

1 "Bruises and abrasions appear on the
2 face, neck and arms. Most of them are quite faint.
3 No one disputed that the deceased received them.
4 Defendant contended that they came from the falls
5 and striking the objects on the beach. The prose-
6 cution claimed that they came from defendant's
7 fists and hands. How looking at the pictures would
8 help the jury understand what caused them or how
9 they would cause death, it is difficult to under-
10 stand.

11 "In view of the fact that no question
12 was raised as to these bruises and abrasions, and
13 the fact that a view of them was of no particular
14 value to the jury, it is obvious that the only
15 purpose of exhibiting them was to inflame the jury's
16 emotions against defendant."

17 And then they go on, citing the fact that the
18 horrible photographs are admissible in evidence, under
19 certain California laws, under certain circumstances. And
20 they say further:

21 "However, in every case in which they
22 were admitted (with the possible exception of the
23 Burkhardt, B-u-r-k-h-a-r-t case, supra, where the
24 evidence points positively and unmistakably to
25 the defendant as the perpetrator of the homicide',
26 there was some necessity for exhibiting the wound
27 or wounds to the jury. In People vs. Elmore,
28 E-l-m-o-r-e, the Court pointed out that photographs

4c-2

1 "should not be offered or admitted for any purpose
2 other than to help the jury.

3 "Surely, there is a line between admitting
4 a photograph which is of some help to the jury in
5 solving the facts of the case and one which is of
6 no value other than to inflame the minds of the
7 jurors. That line was crossed in this case.

8 "There was an abuse of discretion here."

9 Then, we go to People vs. Cavanaugh --

10 THE COURT: Well, just without belaboring it, the
11 Court doesn't wish to have you pursue it any farther. I
12 think I get your point. And the Court does not find that
13 that photograph referred to, 110, is prejudicial.

14 The Court feels that it's -- as I've stated
15 before, that it has probative value, and the People do not
16 have to stipulate. And accordingly, the Court will admit
17 it.

18 MR. DENNY: Well, your Honor, let me again, because I
19 have researched the law, and I think it's an attorney's job
20 to assist the Court, as well as to be an advocate for his
21 side -- and I don't believe the Court is familiar, possibly,
22 with some of the law on this particular subject, because I
23 was not familiar.

24 And I'm not -- I'm not saying it's purely on the
25 basis of the probative value, and the prejudicial value
26 being outweighed by the probative value of it.

27 But there are cases right on point, and I think
28 the Court should at least accept the value of my research on

4c-3

1 it, to enlighten the Court, because this, I submit, is going
2 to be prejudicial error, and reversible error, and it has so
3 been held in some cases.

4 THE COURT: You may cite your cases. Are there any
5 other citations that you --

6 MR. DENNY: Yes, your Honor. Specifically, let me
7 skip to People vs. Cruz.

8 "At the outset of the trial defendant
9 made a general --"

10 THE COURT: Well, without reading, just give me the
11 citation.

12 MR. DENNY: I have already, your Honor. 264 Cal. App.
13 2d, 350.

14 THE COURT: Cal. App. 2d 350?

15 MR. DENNY: All right. I have got about ten lines to
16 read, if I may, your Honor.

17 "At the outset of the trial defendant made a
18 general objection to the post-autopsy pictures, on which the
19 Court refused to rule at that time. In connection with his
20 objection defendant offered to stipulate 'that the cause
21 of death were two gunshot wounds which the Coroner has
22 referred to in his autopsy report as gunshot wound 1 and
23 gunshot wound 2.'"

24 Well, let me refer back to the Cavanaugh case,
25 which I think is more specifically in point here. 44 Cal.
26 2d, a Supreme Court case.

27 THE COURT: Mr. Kuczera, would you get the jury in?

28 MR. DENNY: Your Honor, I have some motions to make, if

4c-4

4d

1 the People have rested, outside the presence of the jury.

2 THE COURT: All right. Well, would you move it along,
3 please.

4 MR. MANZELLA: Excuse me, Mr. Denny. Can I interrupt
5 you for just a moment?

6 THE COURT: Yes.

7 MR. DENNY: Your Honor, I believe we have to deal with
8 some defense exhibits.

9 THE COURT: Well, you won't be offering those until
10 you're through, will you? Or do you want to offer them now?

11 MR. DENNY: I am going to offer them.

12 MR. MANZELLA: We want to deal with some defense
13 exhibits. And Mr. Denny will probably have an 1118.1 motion
14 to make.

15 Would the Court want to put the jury over until
16 1:30?

17 THE COURT: All right. Let's put the jury over until
18 1:30.

19 THE BAILIFF: Yes, sir.

20 THE COURT: Tell them they're excused until 1:30.

21 Your other citation, the Burns citation, did you
22 put that in the record? I didn't get that.

23 MR. DENNY: Yes, I did. People vs. Cavanaugh, 44 Cal.
24 2d, your Honor, 252. This was a case where --

25 THE COURT: Well, the Court will look at it. If I
26 change my mind, I'll strike the photo.

27 What is the other citation?

28 MR. DENNY: That's all, your Honor.

4d-2

1 THE COURT: The Burns citation?

2 MR. DENNY: 109 Cal. App. 2d, 524, at 541.

3 THE COURT: Thank you.

4 MR. DENNY: And Cavanaugh is --

5 THE COURT: I have that. 44 Cal. 2d 252.

6 MR. DENNY: Yes. The material portion of it is at
7 pages 266 through 268.

8 THE COURT: Do the People have anything more to say on
9 the subject?

10 MR. KAY: No, your Honor. I think we've covered it
11 pretty thoroughly, and -- on Friday. I think your Honor is
12 well aware of --

13 THE COURT: All right. I'll admit 110 into evidence.

14 MR. KAY: I think you already have.

15 THE COURT: Yes.

16 MR. DENNY: Well, your Honor, my records on the
17 defense exhibits, unfortunately, are not as complete as they
18 might be.

19 THE COURT: Do you want to withhold offering them --

20 MR. DENNY: No, I do not, your Honor.

21 THE COURT: -- until such time as you --

22 MR. DENNY: No, I do not. I want those offered into
23 evidence right now.

24 THE COURT: -- until your case is closed?

25 MR. DENNY: No, I do not. May we run down them?

26 THE COURT: Well, you have got A through X, as I see
27 it. There's a -- A is -- A is a bullet end casing.

28 MR. DENNY: We wish to have that admitted.

110 ev.

4d-3

1 THE COURT: Let's see. That's --

2 MR. DENNY: That's a bullet which was test fired for
3 Mr. Harper by the Sheriffs.

4 MR. KAY: We have no objection to that.

5 THE COURT: All right.

6 B was six negatives. Those were six negatives
7 that the --

8 MR. DENNY: Negatives of the photomicrographs.

9 MR. KAY: No objection.

10 THE COURT: All right. B is received.

11 C-2 through C-7 were photographs of --

12 MR. DENNY: Well, C-1 to -12, your Honor, are the
13 photographs that were shown to Ella Jo Bailey.

14 We wish to have those received.

15 THE COURT: C -- you're correct. C-1 through -12.

16 The People?

17 MR. KAY: No objection.

18 THE COURT: All right. They're received.

19 D is a photostat of a firearms sale. Nat
20 Stanoff testified to that,

21 MR. DENNY: I think that's the Danny DeCarlo -- yes,
22 would you get the defense exhibits out?

23 (Continuing) -- the Danny DeCarlo .45 caliber
24 purchase.

25 Move that that be received.

26 THE COURT: The People?

27 MR. MANZELLA: May we have just a moment, your Honor?

28 THE COURT: Yes, you may.

A ev.

B ev.

C-1-C-12 ev.

4d-4

1 (Pause in the proceedings while a discussion
2 off the record ensued at the counsel table between
3 Mr. Manzella and Mr. Kay.)

4 MR. MANZELLA: Your Honor, the People would object to
5 Defendant's D, on two grounds:

6 One, that it's irrelevant that DeCarlo bought a
7 weapon on the same date;

8 And No. 2, that the best evidence rule would
9 require the original, in the absence of some showing that the
10 original is not available.

11 MR. DENNY: Well, I --

4e fls.

12 THE COURT: It doesn't appear to be material, Mr. Denny.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4e-1

1 MR. DENNY: Well, your Honor, it is very material, in
2 that I also showed, by the testimony of Mr. Stanoff, that a
3 .45 caliber Colt looks almost identical with a 9-millimeter
4 Radom. And Ella Bailey was shown a picture of a .45 caliber
5 Colt and could not distinguish it from the Radom.

6 And I intend to argue that she could not tell which
7 gun was which.

8 Danny DeCarlo had the gun at the same time as --

9 THE COURT: What about the second objection?

10 MR. DENNY: I am taken completely by surprise by the
11 second objection, your Honor. This is an exhibit which had
12 heretofore been used by the People. It had been used in the
13 Grand Jury, and admitted in evidence before the Grand Jury.
14 And I think they are estopped, at this point, certainly, to
15 urge that as an objection.

16 They did not previously raise the objection at the
17 time -- at a time I could have done anything about it.

18 And this does show that on April 8, 1970 --

19 THE COURT: What is it, a photostat?

20 MR. DENNY: It is a photostat of a firearms transaction
21 record, and it does show that in -- in case No. A-057452,
22 it was marked as People's 20, and it was admitted into
23 evidence on April 6th, 1970.

24 And I think they're estopped to urge that as
25 an objection.

26 MR. MANZELLA: Your Honor, I think that it might be
27 relevant if the weapon was shown -- the weapon that DeCarlo
28 bought was shown to have fired 9-millimeter ammunition.

4e-2

1

Since that's not shown by the evidence, I don't see
that the fact that DeCarlo owned a gun that was similar
looking, outwardly, is relevant.

2

3

5 fol

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

5-1

1 MR. DENNY: Well, it is relevant in that, your Honor,
2 the People are contending that this bullet was fired at or
3 about the time of July 25 through the 27th, and I have
4 indicated to the Court earlier that the People's own
5 witnesses, Christansen for one, and Whiteley for the other,
6 can't say when that bullet was fired, can't say when the
7 bullet hole was made. And the only evidence that there is,
8 is that of Mr. Whiteley, that the bullet hole appeared not
9 to be of recent origin.

10 The People have one view of the case, their
11 theory of the case, and the defense has a right to put
12 forth their theory; and that is, if any gun was taken up
13 there, the gun that Ella Jo Bailey saw, based on the gun
14 she could see at this distance, could have been a .45
15 caliber gun and no bullet was fired through the weekend of
16 the 25th through the 26th of July, because there is no
17 evidence in this case that a bullet was so fired during
18 that time. So we certainly have a right to show that.

19 MR. MANZELLA: There's no testimony that the weapon
20 bought by DeCarlo fires 9 millimeter ammunition.

21 MR. DENNY: Doesn't have to.

22 MR. MANZELLA: And furthermore, there's no photograph
23 of an Argentine Colt available to show the jury. We just
24 have Stanoff's testimony that it is similar in appearance
25 to the 9 millimeter Radom. But there's no photograph of
26 an Argentine Colt which could be shown to the jury. So
27 I don't see the relevance of that exhibit.

28 MR. DENNY: There is such a photograph, your Honor, and

1 Mr. Stanoff identified it.

2 THE COURT: I think he did. And it was one of those
3 photographs -- let's see, one through 12.

4 MR. DENNY: That's correct, your Honor.

5 MR. KAY: I think he identified a photograph that he
6 said looked similar to the type of gun that DeCarlo bought,
7 but it wasn't the same, you know, the same make or anything.

8 MR. MANZELLA: Right. C-10, I believe, is a photograph.

9 THE COURT: Miss Gipson has an interview at 1:00
10 o'clock. I called the jury for 1:30.

11 She would like to have until 2:00 o'clock.

12 MR. KAY: Fine.

13 MR. MANZELLA: Fine.

14 MR. KENNY: No objection.

15 THE COURT: Sounds reasonable.

16 Tell them 2:00 o'clock.

17 THE BAILIFF: All right, sir.

18 THE COURT: And as to this photostat, over objection,
19 the Court would not admit it on behalf of the People, were they
20 to offer, but you have not yet rested and you could conceivably
21 cause Mr. Stanoff to return.

22 MR. MANZELLA: For what purpose?

23 THE COURT: And establish the background that would
24 be necessary to introduce this firearms' record.

25 MR. MANZELLA: What background? I'm not sure I
26 understand.

27 MR. DENNY: Your Honor --

28 THE COURT: As I understand, it is a copy, but it is not

1 a -- and it -- there has not been a sufficient background to
2 establish that it is a business record and that the original
3 is not available.

4 MR. MANZELLA: Our primary objection is on the grounds
5 that it is not relevant.

6 THE COURT: Well, I'll overrule the objection and permit
7 it to come into evidence.

8 MR. DENNY: I think --

9 THE COURT: E is an immunity agreement, Ella Jo Bailey.

10 MR. DENNY: I think that's already received, your Honor.

11 THE COURT: May have been, yes.

12 F is --

13 MR. DENNY: Six bullets that were found with the gun.
14 And I move that those be received.

15 MR. MANZELLA: Was that established they were found with
16 the gun?

17 MR. KAY: No.

18 MR. MANZELLA: I don't see how it could have been.
19 The witness that testified --

20 THE COURT: The only thing Sergeant Christansen
21 testified, he was given those bullets at the same time he
22 was given the gun, but not that they were in the gun or they
23 had any connection with the gun other than he was given those
24 bullets at the same time he was given the gun. So I think
25 there's an insufficient foundation.

26 The defendant?

27 MR. DENNY: Well, I think the foundation as to the
28 bullets is further established by the testimony of Ella Jo

1 Bailey to whom I presented the exhibits initially, who said
2 that these were bullets similar to the bullets that she
3 loaded as reloads with Danny DeCarlo and showed that they
4 did fit into the gun. And they would be admissible for
5 that purpose, also.

6 THE COURT: Let's see, they fitted into the clip,
7 didn't they?

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
5a fls.

5a-1

1 MR. DENNY: That is correct.

2 And they are shown to be 9-millimeter reloads, and
3 they were so testified as being by Sergeant Christansen. And
4 Sergeant Christansen did say that he was given these at the time
5 he was given the gun, and Ella Bailey has identified those as
6 being the kind of ammunition she reloaded with DeCarlo.

7 MR. MANZELLA: Well, the fact --

8 MR. DENNY: So on a number of grounds, I submit, they are
9 admissible, not simply on the grounds they may or may not have
10 been the bullets.

11 MR. MANZELLA: The fact that Sergeant Christansen was
12 given the bullets with the gun is irrelevant. The -- Ella
13 Bailey testified that the only bullets she loaded with DeCarlo
14 or observed DeCarlo load, were bullets for a machine-gun. And
15 I don't think --

16 THE COURT: Well, I recall Ella Bailey's testimony as
17 being about what Mr. Denny said.

18 MR. MANZELLA: Well, she --

19 THE COURT: I can't see the relevance of the bullets,
20 so without the necessary background to show that they were found
21 with the gun or in the gun -- so I'll sustain the objection to
22 F.

23 G, an envelope containing test-fired bullet and
24 casing, is that it?

25 MR. DENNY: Yes, your Honor.

26 THE COURT: I think that was an additional test-fired
27 bullet.

28 MR. DENNY: That is correct.

1 THE COURT: Was it one or two?

2 MR. MANZELLA: Says "bullet," your Honor. Must be one.

3 MR. DENNY: I believe just a single bullet and casing.

4 It may be one bullet and two cases. Let me see, I've got the
5 exhibit here.

6 THE COURT: In any event, you wish to have those --
7 People?

8 MR. KAY: I don't think there will be any objection, but
9 I want to see specifically what it is.

10 MR. DENNY: Yes, it is a bullet and a casing of another
11 test-fired bullet which was test-fired.

12 THE COURT: All right, received, H, photographs of the
13 bullet, one through six. They are received.

14 I. What was I.

15 MR. DENNY: Oh, these are the Kirschke exhibits, your
16 Honor, which were not used.

17 THE COURT: I, J, K.

18 MR. DENNY: I, J, K and L, they were not used.

19 THE COURT: Then, M was the picture from --

20 MR. DENNY: Yes, your Honor. I don't know whether
21 Mr. Kay and Mr. Manzella have seen the photograph that was
22 made of that page.

23 THE COURT: It was a rather bad one that I saw and left --

24 MR. DENNY: No, I've got a good one that is rather good,
25 if I do say so myself.

26 MR. DENNY: Looks better than it looks in the book.

27 THE COURT: All right, it is received.

28 MR. DENNY: That's my photomicrographic work, your Honor.

1 THE COURT: Well done.

2 N, two pages from a book concerning 9-millimeter
3 pistols.

4 MR. DENNY: The defendant moves to receive that.

5 MR. KAY: Well, I'm not familiar with what that is.

6 MR. DENNY: It is the stuff from Mathew's work.

7 THE COURT: A page from a source book used by --

8 MR. MANZELLA: Shouldn't that be read to the jury rather
9 than received in evidence?

10 MR. KAY: We're going to object to this receipt in
11 evidence.

12 MR. DENNY: Well, your Honor, I attempted to read that to
13 the jury and the Court stopped me from reading all of it to the
14 jury.

15 THE COURT: It is two pages of fine print.

16 MR. MANZELLA: If it is all relevant.

17 THE COURT: It is not all relevant.

18 MR. MANZELLA: Well, then, it shouldn't all go in.

19 THE COURT: But it was the subject of considerable
20 discussion on cross examination concerning measurements of land
21 groove ration, as I remember.

22 MR. DENNY: That is correct, your Honor.

23 And, in fact, all of the 9-millimeter six land and
24 groove right-hand twist guns which were counted out by Sergeant
25 Christansen as numbering 60 are represented on that particular
26 document along with the various specifications involved which
27 were discussed in some detail.

28 MR. KAY: Well, I think that this --

1 THE COURT: Not all of it, of course, is relevant as it
2 is laid out there. But it would be difficult because of its
3 composition to eliminate those parts that are not relevant
4 and are not referred to.

5 MR. DENNY: Well, again --

6 MR. MANZELLA: 1340 says that evidence of a statement in
7 a list is not made inadmissible by the hearsay rule. But it
8 would seem from the language of 1340 it couldn't contemplate
9 a whole list coming in because a part is relevant. Because
10 it says "Evidence of a statement tabulated in a list, direc-
11 tory" --

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

56 fol

1 MR. DENNY: They're talking about a statement. This is
2 not a statement, this is purely a tabulation.

3 THE COURT: I think it is a statement.

4 MR. MANZELLA: Sure.

5 THE COURT: The measurements or characteristics of
6 those various 9-millimeter guns.

7 Is there any way that the parts of it that were not
8 referred to could be eliminated effectively?

9 MR. DENNY: Well, your Honor, the only way that could be
10 done -- again, as I say, I tried to read into evidence all the
11 matters here and the Court stopped me.

12 THE COURT: It would have taken you a good half-hour.

13 MR. DENNY: No question about that. And I submit the
14 easier way to do it is this way, to have it admitted as I
15 thought the Court would do.

16 THE COURT: I'll admit it.

17 O is what?

18 MR. DENNY: O is the rough drawing of the gun barrel that
19 was used for illustrative purposes.

20 THE COURT: All right, I don't think that's admissible.
21 It is more like the moon picture presented by the astronomer.

22 MR. DENNY: I think that's true, your Honor.

23 THE COURT: Used in the course of a discussion before the
24 jury.

25 P, a chart with some figures on it.

26 I think it was your chart, wasn't it?

27 MR. DENNY: Yes, your Honor, but we did not use that.

28 THE COURT: You're not offering that?

1 MR. DENNY: No.

2 THE COURT: Q.

3 What is Q?

4 An order and a letter, I have down here.

5 MR. DENNY: Xerox copy of a -- oh, this was the order,
6 your Honor, it was made by the Court for the ballistics -- for
7 the photomicrographs from the Sheriff's ballistics lab.

8 And the second portion of it was their response
9 showing that they had complied with the order.

10 And I submit that this is relevant, pertinent and
11 material to show, again, that which I argued or set forth in
12 my opening statement that we will show -- I can almost quote
13 it by heart -- that the experts used by the People are sought
14 to be presented to you as experts, are not experts. That they
15 have done a slipshod, slap-dash job in preparing the evidence
16 to be presented to you until the defense sought to have them
17 prepare reasonable evidence for you. And that, even then, they
18 did not do a decent job of it.

19 And I think the response here signed by Christansen
20 and Montgomery showing that they complied with the order, and
21 then the evidence showing that they did not comply with the
22 order because there were only four photomicrographs, two of them
23 being -- two out of the six being duplicate of each other, and
24 no showing, even, that those four showed the full circumference
25 of the bullet, that this is, again, further evidence to support
26 the defendant's position here that the experts are not expert
27 and that their testimony is not credible or should be believed.

28 THE COURT: People?

1 MR. KAY: We would --

2 MR. MANZELLA: Under People versus Teale, 63 Cal. 2d,
3 178, at 199, the court held, the California Supreme Court held
4 compliance with an order by either side is not a jury question.
5 It is a question for the Court and not a jury question and,
6 therefore, we would say this is not relevant.

7 MR. DENNY: Well, your Honor, may I just say on that
8 point --

9 THE COURT: The Court believes it would be prejudicial
10 to bring into evidence and before the jury this court order. I
11 think that what the expert was attempting to do and what his
12 result was, is amply brought forth before the jury by you on
13 cross examination. And the order, it would appear to me, would
14 be irrelevant.

15 So Q, the Court would refuse to admit.

16 R, what is R?

17 MR. DENNY: R is the photograph of the pirate gun, your
18 Honor, that Barbara Hoyt said she -- appeared similar to the
19 gun that Danny DeCarlo had with the rounded barrel.

20 THE COURT: Are you offering that?

21 MR. DENNY: I'll withdraw the offer of that at this time.

22 THE COURT: Well, let's see, we have testimony by some-
23 body that Danny DeCarlo had a .45 automatic and there is a
24 picture of that, and now Ella Jo Bailey says that Danny
25 DeCarlo had something that looked like a pirate gun.

26 MR. KAY: No, it was Barbara Hoyt that testified --

27 MR. DENNY: Barbara Hoyt testified that he had a gun --

28 THE COURT: All right, that's not offered.

1 Z is a chart. I think that was one of the charts
2 we were using by way of illustration?

5c fol

3 MR. DENNY: Yes, it is, your Honor.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5c

1 THE COURT: You're not offering that, are you?

2 MR. DENNY: I don't think I can, actually. It is just
3 simply illustrative.

4 THE COURT: All right, very well.

5 T. A photograph. I can't recall of what. I can't
6 read my notes.

7 MR. DENNY: Oh, this is the photograph of Watkins, your
8 Honor, dressed in a cap holding a candle in his hand.

9 MR. MANZELLA: May I see that? I've never seen that.

10 MR. KAY: I think the Court already sustained an objection
11 to the admissibility of that exhibit. Mr. Denny offered it at
12 the time Mr. Watkins was on the stand and I objected and the
13 Court sustained the objection.

14 MR. DENNY: Again, I would like to re-introduce or move
15 to have it re-introduced. He did indicate that this was taken
16 at about the same time that the photographs were taken from the
17 magazine from which he received \$1100. The mere fact that it
18 did not appear in the magazine, I think --

19 THE COURT: I can't see its relevance, Mr. Denny. The
20 objection will be sustained on that.

21 U is a list of names.

22 MR. DENNY: Oh, these were the names of the people that
23 Whiteley interviewed that I did not get any notes from and,
24 obviously, that's still, I think, for identification, your
25 Honor.

26 THE COURT: V is what?

27 MR. DENNY: This is also --

28 THE COURT: I think the chart.

1 MR. DENNY: Oh, this is the diagram that appears on the
2 board, and is illustrative of Juan Flynn's testimony used to
3 show the area and used to show where people were sitting. And
4 I think that should be received in evidence.

5 MR. KAY: All right, no objection.

6 THE COURT: W is a chart of some dates. I think that was
7 another illustrative diagram that you were using during the
8 course of your examination.

9 MR. DENNY: Yes, that is correct, your Honor.

10 THE COURT: X, it is three pages of a police property
11 report, Los Angeles Police Department.

12 MR. DENNY: Yes, your Honor. At this time I would move to
13 introduce that. The Court, when I sought to do so, following
14 Sergeant Whiteley's testimony, sustained an objection on
15 business records' foundation and I thought that I knew what the
16 law was on establishing a business record, so I went back and
17 checked 1271, and as I read 1271, as I've got it here before
18 me, "Evidence of a writing made as a record, of an act, condi-
19 tion, or event is not made inadmissible by the hearsay rule when
20 offered to prove the act, condition, or event if:

21 "(A) The writing was made in the regular course of a busi-
22 ness;" so Whiteley testified.

23 "(B) The writing was made at or near the time of the act,
24 condition or event;" the record itself shows that that is so,
25 having been made up on the 20th and the report having been -- or
26 the matter having been received on the 14th, as discussed by the
27 report itself, and turned over to the parties making up the
28 record, Kamidoi and Brown on the 18th. Within two days the
29 report was made.

1 "(c) The custodian or other qualified witness
2 testifies to its identity and the mode of its preparation;"
3 Sergeant Whiteley is certainly a qualified witness and did
4 testify to what it was and as to how it was made up.

5 THE COURT: Well, he didn't testify as to how the
6 inventory list was made up, did he?

7 MR. DENNY: Yes, your Honor, he testified --

8 THE COURT: He wasn't there at the time the inventory
9 list was made.

10 MR. DENNY: You don't have to. The custodian of the
11 document can testify as to how it was made out or any other
12 qualified witness, to its identity or the mode of its prepara-
13 tion. And Whiteley testified that this is the same type of
14 inventory that is made out by the Sheriffs or L.A.P.D. What you
15 do is simply take what you find in the thing that you are
16 inventorying and set the numbers down, and so he testified.

5d fol 17 And "(d) The sources of information and method and
18 time of preparation were such as to indicate its
19 trustworthiness."
20
21
22
23
24
25
26
27
28

1 THE COURT: Well, the first page of that report is a
2 narration by somebody of some events that Mr. Whiteley could not
3 possibly have known about.

4 MR. DENNY: That doesn't matter, your Honor. That doesn't
5 matter. He can still testify to the mode of preparation. It is
6 the same thing on a hospital record, where you get the director
7 or the custodian of records of the hospital to testify as to the
8 method of and mode. She hasn't prepared it. She wasn't there
9 or knows how it was prepared. She doesn't know whether it is
10 true or false, the statements in the document, but the document
11 is admitted.--

12 MR. MANZELLA: It is 1271 (c). ~~Sergeant~~ Whiteley is not
13 qualified to testify how an L.A.P.D. property report is made
14 up, in that he cannot testify that this narrative at the top of
15 the form was placed on there in the ordinary course of business.

16 THE COURT: It seemed to have all the defects that most
17 police report offerings have, and it does not appear to the
18 Court to be reliable and the Court did exclude it on the basis
19 of 1271 (c) and (d).

20 MR. DENNY: Well, your Honor, again I am taken completely
21 by surprise by the People stating that their chief investigator
22 in the case doesn't know enough about police practices to know
23 how an inventory --

24 MR. MANZELLA: He's in the Sheriff's department and this
25 is a Los Angeles Police Department record.

26 MR. DENNY: But he said it was made up, your Honor, by
27 both parties, by the Sheriff that went up there with the L.A.P.D.
28 officers.

1 THE COURT: The Court doesn't believe you qualified it
2 and the Court would -- the Court would sustain the objection to
3 it.

4 MR. DENNY: Well, I've got the officers subpoenaed. I
5 will qualify it.

6 Again, I am taken completely aback by the People
7 saying their expert in the field of police work doesn't know
8 how to make out an inventory.

9 THE COURT: Anything further?

10 MR. DENNY: Yes, your Honor, I do have -- have the People
11 rested?

12 THE COURT: People rest at this point?

13 MR. MANZELLA: People rest, your Honor.

14 MR. DENNY: All right, I have motions to dismiss and it is
15 going to take some time to argue those motions.

16 THE COURT: All right, you have ten minutes.

17 MR. DENNY: All right.

18 Well, it is going to take longer than that.

19 THE COURT: I'll hear you for ten minutes.

20 MR. DENNY: Okay.

21 Your Honor, at this time I'm making a motion not to
22 dismiss but a motion for acquittal under 1118.1 of the Penal
23 Code as to all Counts, and I would like to take the Counts
24 separately.

25 MR. MANZELLA: Your Honor, could we do this at 2:00 o'clock?

26 THE COURT: Well, we have a few minutes.

27 MR. MANZELLA: Oh, my watch was fast. I'm sorry.

28 MR. DENNY: Possibly come back at 1:30 and hear it all,

1 because if I am interrupted, your Honor, it is going to make it
2 a little more difficult to present it to the Court. I'd be
3 happy to come back at 1:20 or whatever.

5e fol

4 THE COURT: Let's hear you right now. Go ahead.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5e

1 MR. DENNY: As to Count I, the Hinman murder Count, the
2 corpus delicti: No question. A finding of murder established
3 by finding of the body; wounds apparently not self-inflicted:
4 Death, therefore, by criminal means. And the evidence of who
5 was involved, assuming you believe her testimony and for the
6 purpose of this argument I'll have to present it on the basis
7 that her testimony is at least in some respects credible,
8 Ella Jo Bailey established all of the evidence on who was
9 involved. And all of the evidence including the prior testi-
10 mony at the Grand Jury hearing of Mary Brunner and prior
11 inconsistent statements, that is the Tacoma conference of May
12 15 and 16 are admissible for the truth of the facts stated now
13 under California versus Green.

14 So there is going to be some issue here on
15 credibility, perhaps, but even putting that aside for the
16 purpose of this argument, whether there is a question of
17 credibility or not, that evidence is before the Court to
18 consider.

19 Now, your Honor, the evidence that we have
20 establishes that Ella Bailey is an accomplice, was an accom-
21 plice as a matter of law and, hence, her testimony must have
22 independent corroboration connecting Davis to the murder.

23 And just briefly, I have certain cases to cite to
24 the Court as far as what constitutes: One, an accomplice.

25 Obviously, Section 31 of the Penal Code is the
26 starting point there.

27 But in this particular case, interesting enough,
28 although the People only charge the conspiracy involved with

1 great particularity in Count II between the 25th and the 28th of
2 July, 1969, it is clear from the testimony of Ella Bailey that
3 this conspiracy started before that time and that she was a
4 part of it. That she advised and encouraged and counseled the
5 commission of the offenses, both murder and conspiracy to
6 commit murder and robbery. In her own testimony under oath,
7 both before this Court and the Grand Jury, indicates that it
8 was she who suggested the name of Gary Hinman. That she was
9 present at the initial conversation in the Devil's Canyon
10 campground area when the killing or the kidnaping of Gary
11 Hinman and Terry Melcher was mentioned.

12 Then, we go to the aspect of the notes of Sergeant
13 Whiteley, showing that on May 15 she said that -- at least
14 according to Whiteley's notes -- excuse me, that Manson had
15 told her to go and see Hinman because she liked -- she knew him
16 best and he liked her best and Beausoleil and Mary go with her
17 and get what she could or what she could from him voluntarily
18 and if he did not voluntarily agree, to kill him.

19 Now, your Honor, this was obviously by way of
20 impeachment. She denied that she had made such statements.
21 There is no proof by Sergeant Whiteley yet to that effect. I
22 bring it up to the Court only insofar as its impeachment
23 value at this point goes or her credibility. But even
24 excluding that particular bit of testimony, the testimony
25 which she gives and which she does acknowledge certain things,
26 establishes that:

27 One, she was the one who suggested him;

28 Two, by virtue of her testimony at the Grand Jury

1 hearing in the Mary Brunner case she was present when killing
2 and murder were mentioned at that initial conversation.

3 We then go to the following period when, even
4 taking her testimony now before this Court, she says she got
5 cold feet. Manson came up to her in the presence of Bill Vance
6 and Vance said, "No, she's not going with Bobby Beausoleil and
7 Mary. She's got better things to do around here."

8 Now, assuming, your Honor, -- and I think we have
9 to assume, because it appears that the People are attempting
10 to establish Bruce Davis's complicity in the conspiracy based
11 on his presence at this Devil's Canyon campground, because they
12 spent a great deal of time trying to establish the fact that at
13 that particular campground meeting Bruce Davis was present.
14 The only purpose for so doing was to establish that he was
15 privy to and aware of the conspiracy which was then being
5f fol 16 hatched, to rob and perhaps murder Gary Hinman.

17

18

19

20

21

22

23

24

25

26

27

28

1 If, in fact, that was the purpose as it can only
2 be for the People's so diligently attempting to put Bruce Davis
3 present, the People have only established his presence, not even
4 any discussion by him, any statements by him at that time, any-
5 thing contributed, any advising, counseling, encouraging, et
6 cetera.

7 The only person who their evidence shows did that,
8 other than Charles Manson, was Ella Jo Bailey. Which obviously
9 starts her and establishes her as one of the prime members and
10 prime movers of this conspiracy to rob Gary Hinman.

11 And as the People will undoubtedly argue, if
12 indeed there was such a conspiracy to rob, then, she is equally
13 guilty for all the reasonable and foreseeable consequences
14 of that conspiracy, namely, the murder which followed.

15 And it appears from the evidence that there was not
16 just a conspiracy to rob, but to murder. And, of course, that
17 is what the People are contending by their Count II.

18 So, having been one of the initiators of the
19 conspiracy, one of the prime movers of the conspiracy, she then
20 backs off a little way, not wishing herself to be the one who
21 actually does the dirty deed, but willing enough to let Sadie
22 Atkins go in her place. She does not withdraw from the
23 conspiracy. She does not terminate her relationship. She does
24 not do anything possible to keep the conspiracy from going
25 forward. She knowingly permits the conspiracy to continue to
26 its bitter end, which she has foreseen and which is the reason
27 for her letting somebody go in her place.

28 The evidence shows that she kept in touch with the

1 goings on during that week, weekend, and was present when Bill
2 Vance and girls returned driving Gary Hinman's -- the now dead
3 Gary Hinman's microbus. But she was at once informed that they
4 had killed him, that they had robbed him and, indeed, she said
5 she went through the proceeds in the purse to determine the
6 exact amount they had taken from him down to the penny. And
7 that thereafter she then helped to wipe down the microbus of
8 the fingerprints.

9 Now, under the case of People versus Davis, which
10 case has frequently been cited by the People, where in a
11 robbery you have a question as to when the robbery ends, the
12 courts have held and the People have cited this case to the
13 Court in conjunction with the Grunewald hearing that we have
14 had, that the conspiracy continues, that the crime continues
15 through a division of the spoils of a robbery. And that is
16 exactly what occurred.

17 The robbers brought home, the conspirators brought
18 home the fruits of that crime and Ella Jo helped in the con-
19 cealment of those fruits. Testified that she had discussed with
20 the girls the possibility of driving the bus up to Santa
21 Barbara and thought better of it because she was advised by
22 Mary Brunner that the police were down the hill so that that was
23 not a good move. And so she hid the fruits of the crime, which
24 is as surely part of that conspiracy as anything that the People
25 have argued here about Mr. Manson attempting to hide the body
26 of Shorty Shea.

27 THE COURT: Let's stop until 1:30.

28 MR. DENNY: That's fine, your Honor.

1 THE COURT: I'll hear you at 1:30.

2 MR. KAY: I might remind your Honor today was the day that
3 Mrs. Obradovich wanted to leave early.

4 THE COURT: She wanted to leave early.

5 The Court will recess at 4:00, then. Thank you,
6 Mr. Kay.

7 (Whereupon, the noon recess was taken at 12:05

8 P. M.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6 fol

6-1

1 LOS ANGELES, CALIFORNIA, MONDAY, FEBRUARY 14, 1972 1:37 P.M.

2 - - - -

3
4 THE COURT: The record will show Mr. Denny to be
5 present, with his client; Mr. Manzella and Mr. Kay for the
6 People.

7 Mr. Denny, you were arguing the position of
8 Ella Jo Bailey as an accomplice, as a matter of law.

9 MR. DENNY: That is correct, your Honor.

10 And for that proposition, I would cite to the
11 Court as I had -- not by specific citation -- the case of
12 People vs. Davis, 210 Cal. App. 2d 721; also for the proposi-
13 tion that if there is withdrawal from the conspiracy, it
14 must be effectively communicated to all other known members
15 of the conspiracy, and steps taken to effectively thwart the
16 object of the conspiracy.

17 And I will cite to the Court Loser, L-o-s-e-r,
18 vs. Superior Court, 78 Cal. 2d 30 at page 32;

19 And People vs. Crosby, 58 Cal. 2d 713 at 731.

20 Now, your Honor, there's a good deal of law on
21 the subject that can be cited. But unless the Court is of
22 a mind that, for some reason which I could not fathom, she
23 would not be considered an accomplice as a matter of law,
24 I will forego the citation of those authorities.

25 If the Court is of the opinion that she may not
26 be an accomplice as a matter of law, then I would cite,
27 with some particularity, the authorities to the Court that
28 there are on the subject, which I would submit establish

6-2

1 without any question -- based on her own testimony, and not
2 on any inconsistent statements, but her sworn testimony
3 before this court and before the Grand Jury -- that she is,
4 was, continues to be an accomplice as a matter of law.

5 THE COURT: The People? Do you wish to be heard on
6 that point?

7 MR. MANZELLA: Just briefly, your Honor. Miss --
8 according to Miss Bailey's testimony, she -- she suggested
9 the name Gary Hinman; and at that conversation, there was no
10 talk about killing or kidnapping; that the talk about killing
11 and kidnapping came when other names were mentioned -- I
12 believe Terry Melcher's name was one of them -- but that there
13 were several conversations in Devil's Canyon.

14 In any event, in those conversations, there was
15 no specific threat to do anything to any specific person, and
16 it wasn't until later that Manson decided to -- that Hinman
17 would be the one selected to try to get money from.

18 And Miss Bailey, other than mentioning Hinman's
19 name at the first conversation, in no way participated in
20 the later plans to actually go out and get money from any
21 one of the people mentioned.

22 Now, the fact that she -- for the purposes of this
23 argument, the fact that she may have been an acc- -- an
24 accessory after the fact does not make her an accomplice.

25 Under the law of the State of California, an
26 accomplice or, -- or, an accessory after the fact is not an
27 accomplice.

28 If I may have just a moment?

6-3

(Pause in the proceedings.)

MR. DENNY: Well, your Honor, I don't think Mr. Manzella need cite authority for that. There is authority for that. And I will agree that there is authority that an accessory after the fact is not necessarily an accomplice.

MR. MANZELLA: Well, an accessory after the fact is not an accomplice, under People vs. Viets, 79 Cal. App. 576, at page 591.

And that case has been cited to your Honor through the years for that proposition, that in the State of California, an accessory after the fact is not an accomplice.

In this case, the reason I argue that is because, from the facts brought out, that she did help Brunner wipe the bus down -- for fingerprints off the bus -- that she might be considered an accessory after the fact.

But even if that were true, she might not be considered an accomplice.

And it is the People's position that she at no time participated in the conspiracy. At the time she mentioned Gary Hinman's name, there was talk about people who might come with the Family, and it wasn't until later, after she had mentioned the name, in later conversations that there was talk about killing and kidnapping, in those conversations in which other people were mentioned.

6a fls.

6a-1

1 And I think the clear evidence of that is that the
2 first time she was asked to go to Gary Hinman's house, or the
3 first time she was asked specifically to become involved in
4 this plan to get money, she refused to go.

5 Now, she did not keep abreast of what was
6 happening through her own participation in the conspiracy,
7 but rather, the -- the events at the Hinman home that weekend
8 were a topic of conversation on the ranch.

9 The evidence in this case doesn't show how the
10 information was transmitted from the Hinman home to the ranch,
11 but in any event, the evidence does show that on that weekend,
12 July 25th, 26th and 27th of 1969, that the Hinman killing was
13 the topic of conversation.

14 And being a member of the Family, and living in
15 close proximity with the Family, she could not help but know
16 what was going on.

17 I imagine there were many people on the ranch,
18 many members of the Family that knew what was going on, that
19 were not members of the conspiracy, or not in any way involved
20 in the murder.

21 Now, the definition in Penal Code 1111 -- or Penal
22 Code Section 1111 says that:

23 "An accomplice is --" I quote:

24 "An accomplice is hereby defined as one who is
25 liable to prosecution for the identical offense charged against
26 the defendant on trial in the cause in which the testimony of
27 the accomplice is given."

28 In this case, Ella Bailey would not be liable for

6a-2

1 prosecution on the charges, because she in no way participated
2 in the conspiracy, or in the murder. She in no way participated
3 in the planning -- and, as a matter of fact, she was not able
4 to testify as to when the plans to go to Hinman's home were
5 made.

6 She was not present at any conversations in which
7 the plans to go to the Hinman home were made. She -- she knows
8 that she saw Manson, Davis and Beausoleil outside the -- in the
9 parking lot of the Spahn Ranch, that Friday evening, July
10 25th; but she couldn't hear what they were talking about; and
11 therefore, she was not -- had she been an accomplice, she would
12 have been able to testify as to when the plans specifically were
13 made to go to Hinman's home.

14 But not being an accomplice, not being involved
15 in the planning of the crime, or in the crime itself, she had
16 no knowledge of these things.

17 Furthermore, she -- this would be our second
18 point, more or less in the alternative.

19 She denied complicity in the commission of this
20 offense, and in -- if I may refer to the case of People versus
21 Santo, 43 Cal 2d 319, at Page 326, and People versus Griffin,
22 98 Cal Ap 2d 1, at Page 22, the Court in Griffin -- and it was
23 later quoted with approval in Santo by the California Supreme
24 Court -- said that:

25 "It is settled law --" and I quote -- "that if
26 there is a disputed question of fact as to whether a witness
27 was or was not an accomplice, the jury must decide."
28

7 fol

1 As pointed out in People vs. Gibbs, 81 Cal. App.
2 615, "An accomplice usually comes upon the stand admitting
3 his complicity in the admission of the offense, but where
4 complicity is denied it becomes a question of the jury where
5 facts are disputed or susceptible to different inferences."

6 And in People vs. King, 30 Cal. App. 2d 185,
7 at page 197, the Court says:

8 "Where the acts and conduct of the witness
9 are admitted, it becomes a question of law for the
10 Court to say whether or not those acts and facts make
11 the witness an accomplice. Whenever there is any
12 dispute about what a witness did or did not do,
13 which if he did do would make him an accomplice,
14 this issue of fact should be submitted to the jury
15 under proper instructions, and the finding of the
16 jury upon such an issue will not be disturbed on
17 appeal."

18 And we submit to the Court that Ella Bailey's
19 involvement in the case, that is her only involvement was
20 a suggestion of Gary Hinman's name of somebody who might come
21 to the Family and give his money to the Family and that
22 thereafter all the conversations which took place and planning
23 were done by other members of the Family and she had no part
24 in those, and, therefore, could not be considered an
25 accomplice to either the conspiracy or to the murder.

26 MR. KAY: If I might add one thing along that line,
27 Miss Bailey also testified that ever since the Family was
28 living at the Gresham Street house that it was a common

1 topic of conversation among members of the Family about how
2 they could get money to go to the desert. This wasn't the
3 first time it was brought up. It was kind of a running
4 conversation in the Family and I think based on the evidence
5 she had no way of knowing that Mr. Manson was going to turn
6 to robbery and murder at this time.

7 THE COURT: Should the fact that she knew about it and
8 did nothing to stop it prior to the time that Mr. Manson and
9 the defendant left for Hinman's house enter into the judgment
10 as to whether or not she is an accomplice as a matter of law?

11 MR. MANZELLA: I don't believe it should, your Honor.

12 THE COURT: What obligation at that point --

13 MR. MANZELLA: She may have committed a crime by not
14 advising the police about her knowledge of a felony at the
15 time that Manson asked her to go to the Hinman home, and what
16 that section would be, I'm not sure, but she may have --
17 there may be a Penal Code section which makes it a crime
18 not to report knowledge of a -- of someone's plan to commit
19 a crime.

20 But, in any event, as under Penal Code Section
21 1111, an accomplice is one who is charged with the identical
22 offense, and her failure to go to the police immediately when
23 Mr. Manson asked her to go to Hinman's home would not make
24 her an accomplice of murder because she is not charged,
25 she could not be charged with the identical offense based
26 on that evidence.

27 THE COURT: Mr. Denny.

28 MR. DENNY: Well, your Honor, in the first place, we're

1 talking about two crimes here.

2 The People have proceeded against the defendant
3 on the Shorty Shea case based on the proposition that he is
4 involved not only as a participant, but as a member of an
5 alleged conspiracy.

6 Now, in this particular case -- and obviously
7 conspiracy is a separate, distinct and separate crime than
8 the murder itself.

9 Now, in this case, although I'm taking Count I
10 first, let's look at Count II, the conspiracy.

11 All that is necessary to establish a conspiracy
12 is an agreement to do the unlawful act, some unlawful act
13 and one overt act toward that.

14 Now, in this particular case, if ever there was
15 a documented beginning of a conspiracy, -- generally they
16 say, you know, a conspiracy can only be established by
17 circumstantial evidence. And you can only show a meeting of
18 the group, et cetera.

19 Here, Ella Jo Bailey herself spent, at the behest
20 of the prosecution, a good half hour outlining the commence-
21 ment of this conspiracy. The meeting at the Devil's Canyon
22 campground, the people who were there, the circumstances,
23 what was discussed. And if ever there was a documented case
24 of the beginning of a conspiracy by agreement by mutual
25 understanding, this was it.

7a fls.

7a-1

1 And the People's own evidence established that.

2 And they established that she was part and
3 parcel of that conspiracy. That she was not just sitting
4 idly by as the evidence shows Bruce Davis was, if indeed
5 he was there. But even assuming he was there and, therefore,
6 by association guilty, there is no evidence that he did
7 anything.

8 THE COURT: Then, you don't agree with the People's
9 view of the evidence that at the time killing -- or kidnapping
10 was mentioned, she was not participating in the conversation?

11 MR. DENNY: No, your Honor, because her own testimony
12 in the Mary Brunner case, before the Mary Brunner Grand Jury,
13 which she gave under oath, and I think could certainly be
14 considered in this case, and I can recite that testimony
15 to the Court, but her own testimony showed in response
16 to Mr. Goldsobel's question, "Was killing mentioned?"

17 "Yes.

18 "Was kidnapping mentioned?

19 "Yes.

20 "Was Mary Brunner there?

21 "Yes."

22 THE COURT: And they're talking about this particular
23 meeting, this initial meeting?

24 MR. KAY: I disagree.

25 THE COURT: Wasn't that in dispute or wasn't there a
26 response to what the People said or what questions were
27 asked her after you brought that Grand Jury testimony to
28 her attention; didn't she respond it was in a later meeting?

1 MR. KAY: That's right. It is in dispute.

2 THE COURT: I'm not sure, but that's the way it
3 strikes me. I have some notes on it.

4 MR. DENNY: Well, the People, then, on redirect
5 sought to bring out -- interestingly enough, their evidence
6 showed that there was, on direct, and they were very
7 specific about that on direct examination her attention was
8 directed to a meeting that happened at the Devil's Canyon
9 campground a few days before Friday, July 25.

10 "Who was present?"

11 She runs down the people who were present.

12 "All right, what was said?"

13 And she runs down it was -- well, I think in
14 this case she finally said, "I suggested after there had
15 been some talk about some other things, I suggested Gary
16 Hinman."

17 THE COURT: There seems to be no doubt that she
18 suggested Gary Hinman's name.

19 MR. DENNY: All right.

20 And then, she was asked:

21 "When was the next time that there was any
22 conversation between you and Mr. Manson about Mr.
23 Hinman?"

24 "On Friday, down by the dump with Bill Vance
25 and me."

26 So we went from some place earlier in the
27 week to Friday. And Bill Vance said, "No, she's got better
28 things to do," et cetera.

1 And then, we go to afterwards she saw Bruce and
2 Bobby Beausoleil, et cetera, with the girls and the car
3 leaving and all the rest of that.

4 Then, when I brought out what she testified to
5 under oath at the Grand Jury hearing, as well as the other
6 things, but specifically that, then we come to the fact,
7 oh, well, it was mentioned a number of different times over
8 that period of time, and that's what I was referring to
9 there.

10 Well, as I say, the Court can look at the
11 testimony itself.

12 THE COURT: Now, would everybody who would have
13 participated at those campfires and around the campfire be
14 a part of the conspiracy in your view?

15 MR. DENNY: No, your Honor, that would not be my view
16 at all.

17 THE COURT: Then, how do you distinguish Ella Jo
18 Bailey, say, from Squeaky or somebody who --

19 MR. DENNY: Because she was the one who fingered the
20 victim.

21 Now, even if you don't look at any of the
22 reports that we used to impeach her, and I'm looking right
23 now at Sergeant Whiteley's report and I can't recall --
24 and I should have it, but I got two hours sleep last night
25 preparing this and I just didn't have time to look at
26 everything.

27 But looking at page 288 of the homicide manual
28 and his report, and this is one that I used to impeach her,

1 the report itself which doesn't say anything nearly as much
2 as the notes of the May 15th conference say, says "Charles
3 Manson at this time told Ella Bailey, Mary Brunner and
4 Robert Beausoleil to go to the Hinman house the following
5 day and get anything of value, the deed to the house,
6 car titles, stocks, money, et cetera, by any force
7 necessary. Miss Bailey stated she was picked, as
8 victim. Hinman liked her better than anyone else in the
9 Family."

7b fls.

1 All right, now, again, I'm sorry I can't cite by
2 chapter and verse the volume and page where I questioned her on
3 that, and what her response to it was. If her response was
4 negative, so be it, and obviously we have to prove that testi-
5 mony by Mr. Whiteley or Mr. Katz, one or the other. It is
6 Whiteley's report, so it would be by Whiteley to absolutely
7 establish that as contrary evidence.

8 THE COURT: In substantive evidence.

9 MR. DENNY: In substantive evidence under California
10 versus Green.

11 Going to -- going to the evidence at the Grand Jury
12 which she did give, which I did question her on, and I had to
13 read it back as the Court will recall quite a bit later in the
14 testimony -- I don't want to burden the Court too much with it,
15 but starting on Page 57:

16 "We were in Devil's Canyon and there was some
17 talk about raising money so that we could go to the
18 desert. Gary Hinman was mentioned as someone who
19 possibly had some money, and there was a discussion
20 relating to that.

21 "Was that discussion relating to the
22 legitimate or illegitimate obtaining of money from
23 Mr. Hinman?

24 "A Yes, it was.

25 "Q Now, with relation to Mr. Hinman, did
26 you have any particular discussion or did you hear
27 any particular discussion regarding him?

28 "A Yes. Later on, Charlie Manson came

1 "up to me -- Charles Manson came up to me and
2 asked me to go to Mr. Hinman's house.

3 "Q So that we have some point in time,
4 when was the original mention of the name Hinman
5 made?

6 "A It was within a week of the time when
7 Mr. Hinman was killed.

8 "Q This, of course, would be prior to his
9 death?

10 "A Yes.

11 "Q Do you recall where the conversation
12 had taken place?

13 "A One took place at Devil's Canyon at the
14 camp site; and the other was at the Spahn Ranch."

15 Two conversations.

16 "Q Where is Devil's Canyon with relation-
17 ship to Spahn Ranch?"

18 Then she goes on there.

19 All right.

20 "Q Was there any discussion of the manner
21 of obtaining money from Gary Hinman? Was that
22 discussed in these two conversations that you
23 mentioned?

24 "A Yes. First of all, it was suggested
25 that perhaps he just be approached and he might
26 willingly give his money to the Family and perhaps
27 come with us.

28 "Q Who was it, if you know, who made that

1 "particular suggestion?

2 "A Well, I know Charles Manson mentioned
3 it.

4 "Q Was that at the first conversation?

5 "A Yes.

6 "Q And was that in Devil's Canyon; is that
7 right?

8 "A Yes.

9 "Q Was that after his name had first been
10 brought up as a person who had money?

11 "A Yes.

12 "Q Was there some subsequent conversa-
13 tion about getting money from him in some other
14 way?

15 "A Yes.

16 "Q Was that conversation strictly about
17 Mr. Hinman or were there other names mentioned?

18 "A There were other names mentioned, too.

19 "Q You told us about a continuation of the
20 first conversation?

21 "A Yes.

22 "Q Was this still in Devil's Canyon?

23 "A Yes.

24 "Q Can you tell us what the conversation
25 was and who the speakers were?

26 "A Well, Charles Manson did most of the --
27 although there were several other people who also
28 talked at the time. I don't remember exactly who said

1 "what after the conversation, but both kidnaping,
2 and then later on killing was mentioned at that
3 conversation.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 "Q Was it Mr. Manson who made the mention
2 of kidnaping and killing?

3 "A Yes, he did."

4 This is all at Page 59 now of the transcript.

5 "Q Was Mary Brunner present at that
6 particular conversation?

7 "A Yes, she was.

8 "Q You have a specific recollection of that?

9 "A Yes, I do.

10 "Q And who were some of the others that
11 were talked about that might have money by Mr. Manson
12 and Miss Brunner?

13 "A Terry Melcher.

14 "Q Was there any subsequent conversation on
15 another day about going to Hinman's house?

16 "A Before that day?

17 "Q After that day.

18 "A Yes.

19 "Q When was that?

20 "A That was on the Spahn Ranch. It was
21 later that week. It was the night of -- the date
22 slips my mind right now.

23 "Q Can you tell us when it was in relation
24 to the last week in July?

25 "A It was the night the other people went
26 to Mr. Hinman's house.

27 "Q Do you remember the day of the week?

28 "A It was on the weekend. It was Friday."

1 All right.

2 So there's no question, whatsoever, as to what her
3 testimony was under oath before the Grand Jury, and it was
4 stipulated that that was her testimony before the Grand Jury.

5 That at the conversation in Devil's Canyon, the
6 kidnaping and killing was mentioned, and she was privy to it
7 and she mentioned Gary Hinman.

8 Now, if ever a conversation stank of murder and
9 robbery and a knowledge of the people involved that this was
10 the likely result of fingering somebody to get money from, this
11 is that conversation. And this is the one that she reported
12 under oath before the Grand Jury.

13 So I don't think there's any question, your Honor,
14 but that no matter who else was there, who didn't say anything,
15 and who therefore might not be accomplices as a matter of law
16 because they did not participate in and only were associated
17 with, she did far more than that, she listened, she counseled,
18 she advised, she encouraged.

19 And even if we don't have a -- substantive evidence
20 at this point, other testimony that she was appointed, at that
21 time, by Manson to go because she knew Gary best and Gary
22 liked her best, and even if we don't have the evidence that the
23 matter was set for the following night, and even if we don't
24 have the other evidence that is in by virtue of the statements
25 of May 15 and Whiteley's report on May 18 that which we do
26 have out of her own lips which she acknowledges and has to
27 acknowledge, and which was testified to under oath, is
28 sufficient to show that she was an accomplice as a matter of

1 THE COURT: All right, for the purpose of your argument,
2 then, what does that mean, then? What should that mean to the
3 Court?

4 MR. DENNY: Well --

5 THE COURT: It means corroboration.

6 MR. DENNY: It must be corroborated.

7 THE COURT: All right.

8 MR. DENNY: All right, let us look, then, to see what
9 corroboration there is.

10 THE COURT: All right.

11 MR. DENNY: Other than her testimony and her rendition
12 of an alleged admission by Mr. Davis on July 28th, the only
13 other evidence in any way linking Davis to the crime is the
14 bullet which could have been fired from almost any 9-millimeter
15 gun.

16
17
18
19
20
21
22
23
24
25
26
27
28
8 fol

8-1

1 And the fact that Davis had purchased a 9-millimeter
2 Radom, two weeks earlier, hardly constitutes sufficient evidence
3 to connect Davis to the offense, for the following reasons:

4 One, the People's own ballistics expert cannot and
5 will not say that the Davis gun fired the bullet which was found
6 in the Hinman home;

7 Two, the only evidence on the time -- as I've
8 mentioned -- that the bullet may have been fired came from
9 Sergeant Whiteley, whose report and testimony said the bullet
10 hole does not appear to be recent, as of August 1st, when he
11 examined it;

12 And three, because there is no evidence to show that
13 Davis himself even had the gun, any time after its purchase,
14 other -- again, that by the testimony of the accomplice, Ella Jo
15 Bailey, who says she saw him with it on the evening that the other
16 three left with some fourth person, to go to the Hinman home.

17 And your Honor, the testimony of Nat Stanoff shows
18 that DeCarlo bought a gun the same day. And Ella Bailey said --
19 and I do have the quotation here at Volume 22, Pages 3233 to 3336
20 -- said that DeCarlo kept guns in the gun room and acted as the
21 Family's armorer; and also substantiated somewhat by John
22 Swartz's testimony in Volume 35, Page 5393, regarding the fact
23 that DeCarlo kept guns in the gun room.

24 So that the mere fact that Bruce Davis purchased a
25 gun is no evidence -- assuming, as you must, when you look to
26 corroborate the testimony of an accomplice, you must remove that
27 testimony from the case entirely and see if -- if what is left
28 will connect the defendant with the crime in any way.

8-2

1 Well, you remove Ella Bailey's testimony, and what
2 have you got? You've got evidence that Bruce Davis bought a
3 gun, a 9-millimeter Radom, from Nat Stanoff on July 14, 1969.
4 And you have evidence that sometime, somewhere, at an unknown
5 time -- the "where" is known: In Gary Hinman's home -- someone
6 fired a bullet from any 9-millimeter gun, period.

7 In sum, there is no independent evidence of
8 Davis's connection with the murder, so as to corroborate the
9 testimony of the accomplice, Ella Jo Bailey.

10 And the foregoing reasoning applies, actually, to
11 both Count I and Count II.

12 The causes to the instigation of the conspiracy
13 to rob and murder Gary Hinman, Ella Bailey's testimony
14 discloses far more definite participation in the initial
15 phases of the conspiracy than is shown as to Davis.

16 Well, we have gone down most of it here.

17 THE COURT: Yes. All right. What do the People have to
18 say about her status? And assuming that she is an accomplice,
19 what would be your argument as to what corroboration there is
20 in the record?

21 MR. MANZELLA: Well, your Honor, I think that that -- that
22 analysis ignores a third alternative, and that is that her
23 complicity is in dispute, the question of her complicity is
24 in dispute; and that therefore, it's a question for the jury to
25 decide, with proper instructions from the Court.

26 THE COURT: Well, at this point -- at this point, it's
27 put to the Court that the Court make a decision, and make a
28 finding acquitting the defendant.

8-3

1 And so presumably, at this point, the Court is --
2 has put to it the question which eventually will be put to the
3 jury, as to whether or not Miss Bailey is an accomplice. And,
4 if she is, what corroboration there exists in the record.

5 MR. MANZELLA: Well, your Honor, under Section 1118.1,
6 which I -- which I believe this was the section under which the
7 motion is brought, the Court is not to decide whether or not
8 the defendant is -- the Court believes the defendant is guilty
9 beyond a reasonable doubt.

10 It is only in that situation that the Court would
11 determine whether or not, as a matter of law, she is an
12 accomplice. Under 1118 -- 1118 provides that the -- that
13 determination; but that's in a court trial.

14 In a jury trial, under Section 11- -- a motion is
15 brought under Section 1118.1, and under that section, the
16 Court is to determine whether or not, were the jury to convict
17 the defendant, the conviction would be sufficient to sustain that
18 conviction on appeal.

19 That's entirely a different proposition, and it's
20 our position that that is the section under which this is
21 brought.

22 MR. DENNY: Your Honor, I was going to cite that to the
23 Court. That's quite so. And we get, then, to the point that
24 it becomes a matter of law, strictly a matter of law here.

25 It's not a question of credibility of witnesses,
26 et cetera, anything of the kind -- except insofar as the Court
27 has to make a decision at this time, as the appellate court
28 would make.

8-4

8a fol

1 Assume, under the basis of this evidence, the appel-
2 late court had before it a conviction on these two Counts, Counts
3 I and II.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8a-1

1 The Appellate Court would look at it and say,
2 "Can we say, as a matter of law, that the conviction may be
3 sustained, because there was corroboration of an accomplice?
4 Must we say, as a matter of fact, that Ella Jo Bailey was an
5 accomplice?"

6 Now, the Court is going to be faced with that at
7 some point here in this case. Either you are going to have
8 to make that determination now, based on the state of the
9 evidence -- which I say you can make and should make now,
10 just as the Appellate Court would make it, if we closed off
11 the case right now -- and if the Court makes a finding, it
12 would be the same finding that the Appellate Court would make,
13 looking at this evidence.

14 And the Appellate Court, in reviewing the evidence,
15 would have to make the decision as a matter of law: "Was
16 Ella Jo Bailey an accomplice?"

17 And I submit that, as a matter of law, it shows
18 that she is.

19 If, then, that is what the Appellate Court would
20 do, this is what this Court would have to do at this time.

21 THE COURT: I think you've both analyzed 1118.1
22 correctly.

23 MR. MANZELLA: Except that we analyzed it completely
24 differently, your Honor.

25 THE COURT: Well --

26 MR. MANZELLA: You see, it's my position that the
27 Appellate Court doesn't say that, as a matter of law, she
28 is an accomplice -- or not an accomplice. What the Appellate

8a-2

1 Court says -- and what I believe this Court should say,
2 what the issue is before this Court under 1118.1 -- and that
3 is: If the jury were to find that she was not an accomplice,
4 can this Court say, as a matter of law, that that finding
5 cannot be sustained on appeal?

6 In other words, the fact that this Court -- that
7 the jury could find reasonably that she was an accomplice
8 does not prevent the jury from finding reasonably that she
9 was not an accomplice.

10 In other words, there could be two reasonable
11 interpretations, and all the Appellate Court is saying, even
12 though -- we think, if the jury found that she was not
13 an accomplice, and there was evidence to sustain that finding, --

14 Since the jury finds that she was not an accomplice,
15 we look to see if there is evidence sufficient to sustain
16 that finding, or we have to say as a matter of law that that
17 finding is no good. So I disagree with what Mr. Denny says
18 about the finding of the Appellate Court. The Appellate
19 Court does not find for itself whether or not she is an
20 accomplice. What the Appellate Court does is to see whether
21 the evidence is sufficient to sustain the jury's finding,
22 even though the Appellate Court might disagree with the jury.

23 THE COURT: Assume, then, for the purpose of explaining
24 Mr. Denny's argument, that she is an accomplice. Do you see
25 that there is corroboration?

26 MR. KAY: Before Mr. Manzella responds to that, there's
27 one thing I would like to bring up, about Mr. Denny's
28 argument, and that is: I would remind the Court that Ella

8a-3

1 Bailey, on the witness stand, under oath, testified that at
2 the subsequent conversation, where murder and robbery were
3 discussed, that she took absolutely no part in that
4 discussion.

5 That's undisputed. She testified to that in this
6 court. She said there was a discussion. Mr. Manson was
7 present. He was doing most of the talking, although some of
8 the other people talked, too. But she specifically said that
9 she took no part in that discussion.

10 So the only thing that she did, was she mentioned
11 Gary Hinman's name at the first discussion.

12 Of course, not knowing what was going to
13 transpire because of her mentioning of that name.

14 And further, to be an accomplice, she has to have
15 criminal intent. And there's just no showing whatsoever
16 that when she mentioned his name, that she had criminal
17 intent.

18 MR. MANZELLA: That's the point I was trying to make,
19 by analysis of 1118.1, your Honor. And that is: If the
20 Court feels that the jury -- where complicity is denied,
21 the cases say that the question of accomplice goes to the
22 jury, with proper instructions from the Court.

23 So the Court, if there is evidence to sustain the
24 jury's findings, that she had no criminal intent when she
25 mentioned Hinman's name, then the question is up to the jury
26 to decide, if there is that evidence.

27 If the Court feels that the jury's finding that
28 she had no criminal intent would be supported by the evidence--

8a-4

1 even if the Court feels that the other finding would be
2 supported by the evidence -- if they could choose to believe
3 that at the time she mentioned the name, she had no criminal
4 intent, had no knowledge of what would happen later, then --
5 and up to now, that appears to be all the evidence there is
6 in the case. It's undisputed that she denies knowing what
7 would happen to Hinman.

8 Then, the question must go to the jury, with the
9 proper instructions from the Court.

10 That's the position of the People. I wanted
11 to make that clear to the Court.

8b fls.

8b-1

1 THE COURT: I understand that. The Court understands.

2 Do you think that if the Court decides that that
3 is the state of the evidence, then that basically is a question
4 for the jury to decide?

5 MR. MANZELLA: Yes, your Honor. Under the cases I
6 cited.

7 THE COURT: And the Court therefore -- at least, insofar
8 as this issue is concerned -- should deny the motion?

9 MR. MANZELLA: Yes, your Honor.

10 THE COURT: And you, Mr. Denny, would you concur in
11 that?

12 MR. DENNY: No, I don't, your Honor. I don't at all,
13 concur in that.

14 THE COURT: Do you concur that as to -- as to the method
15 of proceeding, under a motion under Section 1118.1 --

16 MR. DENNY: No, I do not, your Honor.

17 Because the Appellate Court does not simply look
18 and say, "Is there sufficient evidence to uphold the finding
19 of the jury here?"

20 The Appellate Court, in looking at a situation like
21 this, makes a determination, as a matter of law.

22 This is a question of a -- a mixed question of
23 law and fact on which the Appellate Court makes the decision.

24 And the Appellate Court, if a case comes up
25 where there isn't an issue involved as to the status of the
26 accomplice, and it has been raised in the lower court, as
27 to whether the party was an accomplice or not, and the
28 Appellate Court is called upon to review the conviction,

8b-2

1 because if the party were an accomplice, then there would be
2 insufficient corroboration, then the Appellate Court makes
3 the decision.

4 Not just whether the jury decision was correct
5 or incorrect. Because obviously, the jury, in convicting the
6 defendant, would have assumed the non-accomplice status.

7 But the Appellate Court says:

8 "Looking at it as a matter of law, we
9 say that there was insufficient --" strike that.
10 -- "that there was testimony showing that she was--
11 or he was -- an accomplice as a matter of law. And
12 that being the case, the corroborating evidence was
13 lacking, was insufficient."

14 That's what's raised in the issue before us now.

15 THE COURT: And therefore, the motion should have been
16 granted?

17 MR. DENNY: Therefore, the motion should have been
18 granted, and the judgment is reversed.

19 And that's the function of the Appellate Court.
20 And this is what 1118 -- 1118 --

21 THE COURT: 1118.1.

22 MR. DENNY: Yes.

23 THE COURT: Yes.

24 MR. DENNY: (Continuing) -- means precisely.

25 THE COURT: Oh, I think basically you are both saying
26 the same thing; that the Appellate Court, in reviewing it,
27 reviews it to determine whether, at the time that the motion
28 is made, there was sufficient evidence in the record to warrant

8b-3

1 the Court looking at it from the standpoint of Ella Jo
2 Bailey being an accomplice, as a matter of law, or not.

3 If she is not an accomplice, as a matter of law,
4 the requirement of corroboration is not there, and the
5 People's burden may be met more reasonably.

6 If, on the other hand, the evidence is such that
7 corroboration --

8 MR. MANZELLA: Your Honor, excuse me. Again, I think
9 we have ignored, in this last analysis, the third alternative.
10 And this is where the Court does not say that she is or is not
11 an accomplice as a matter of law.

12 In other words, the Court said that you could find
13 that there is an accomplice as a matter of law, or that she
14 was not an accomplice as a matter of law, just now in the
15 Court's analysis; and I think that the jury --

16 THE COURT: I think, for the purpose of the Court making
17 the decision under 1118.1, that it's necessary for the Court
18 to decide that.

19 MR. MANZELLA: But, your Honor, I don't understand why,
20 because Mr. Denny has cited no cases which say that.

21 And I've cited cases which say that where
22 complicity is denied, the question should be left to the jury.

23 THE COURT: Well, let me put this to you.

24 Let's assume that the People's evidence is such
25 that it does establish clearly, as a matter of law, that she
26 is an accomplice.

27 MR. MANZELLA: Um-hmm.

28 THE COURT: There's no question in your mind, at this

8b-4

1 point, that if there was not sufficient corroboration, that
2 the motion should be granted?

3 MR. MANZELLA: That's correct, your Honor.

4 THE COURT: Well, one way or the other, I have to
5 decide --

6 MR. MANZELLA: Except for this point, your Honor. She
7 has denied being an accomplice. That's -- I think there's
8 a crucial difference in this case. She has denied being an
9 accomplice.

8c fls.

8c-1

1 THE COURT: Well, that's another point, really, that I
2 am not asking you to argue at this -- well, yes. I am asking
3 you to argue, and you have argued that: That there is a dispute
4 from her as to the extent of her involvement in the conversa-
5 tions that took place at Spahn Ranch, and at Devil's Canyon.

6 MR. MANZELLA: Well, she denies knowing what was going to
7 happen to Hinman, and what I am saying is that that's what
8 makes it a question for the jury to decide.

9 THE COURT: She did make some denial of her knowledge
10 about what was going to happen, until Bill Vance spoke up, and
11 then she did, I think, admit that she suspected that something
12 of that nature, some violence, might --

13 MR. MANZELLA: Right. After Bill Vance told her what
14 Manson had said.

15 THE COURT: All right. I see your point, that -- that
16 the evidence is equivocal as to that.

17 MR. MANZELLA: Right. My point is that since she's
18 denied complicity, the Court cannot find, as a matter of fact,
19 that she is an accomplice. That's what the Santo case says,
20 and this is what the Griffin case says.

21 Because she's denied complicity, the Court cannot
22 find, as a matter of law, that she is an accomplice. The Court
23 has to let the jury decide that, with proper instructions.

24 MR. DENNY: Well, your Honor, I think that --

25 THE COURT: I think that ignores the power of the Court
26 at this time to make some judgment as to her credibility,
27 based on all that has been presented.

28 And I know the credibility is a question before the

8c-2

1 jury. Basically, it lies with the jury to make that determina-
2 tion.

3 But I think that at this stage, the legislature
4 meant to allow the Court some degree of discretion, to
5 determine the credibility.

6 Now, let me hear from you. What corroboration is
7 there, should the Court make a determination that she is an
8 accomplice as a matter of law?

9 MR. MANZELLA: For the purpose of this motion, your
10 Honor, the People will assume, for the sake of argument --

11 THE COURT: That's what I said.

12 MR. MANZELLA: -- that there is no corroboration.

13 THE COURT: There was an admission -- wasn't there an
14 admission in the record?

15 MR. DENNY: Yes, but this is --

16 MR. MANZELLA: That's from Ella Jo Bailey.

17 THE COURT: That's from Ella Jo Bailey, yes.

18 MR. MANZELLA: That's correct, your Honor.

19 MR. DENNY: That's correct.

20 THE COURT: All right. What do you have to say about
21 Count II, the motion regarding Count II -- or Count III,
22 rather?

23 MR. DENNY: Well, your Honor, as to Count III, it's
24 rather an extended consideration on that. And if I -- but if
25 I may be permitted?

26 THE COURT: Go ahead.

27 MR. DENNY: In my view of Count III, there has still been
28 no corpus delicti established. And if the Court feels

8c-3

1 otherwise, that there is still not sufficient evidence, either
2 of the death by criminal means of Shorty Shea, or the complicity
3 of this defendant in that death.

4 Now, the Court has permitted various hearsay state-
5 ments in evidence, out of order, on the basis that they would
6 be connected up by substantive evidence establishing a
7 conspiracy to kill Shea, and evidence of the alleged murder
8 itself.

9 Now, even assuming such statements made, arguendo,
10 have established a conspiracy to kill Shea, the law is clear
11 that the two crimes of conspiracy to murder and murder itself
12 are subject to much different proof to establish them.

13 As we just talked about in the Hinman Count, the
14 agreement and one overt act being required in the former;
15 whereas the latter required at least prima facie proof of
16 a death, a death by criminal means, as distinguished from
17 normal means.

18 And then finally, the relationship of the defendant,
19 causally, to that death.

20 Now, the evidence, excluding statements made by
21 Manson after the date alleged by the People as the time of
22 Shea's supposed death -- and admitted, as this Court has
23 admitted them, only by virtue of the unalleged conspiracy --
24 the evidence establishes only the following, before any
25 supposed admissions by Davis, or any admissions by one of the
26 other co-defendants, which would not be admissible against
27 him if the corpus had not been established.

28 First, Shea had disappeared from Spahn Ranch some-

8c-4

1 time between August 17 and September 15th, according to the
2 evidence. September 15, 1969.

3 Ruby Pearl's cross examination established that
4 she and Randy Starr and George Spahn had been questioned and
5 stated that the last they had seen him was about the middle of
6 September.

8d fol

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8d-1

1 Two, of course, his car, which was afflicted with
2 dangerous brakes and steering, was apparently abandoned
3 sometime between August 17 and December 8, 1969, at a location
4 between the house -- formerly occupied by Bill Vance and some
5 Manson Family members -- and another house, which had been
6 and was then being occupied by Lee Saunooke.

7 Three, Shea's guns were pawned by him in July,
8 1969.

9 Four, he loved his guns, but had told Arch
10 Hall, from whom he had gotten them, that he would either
11 shortly finish paying for them or return them to Hall.

12 Five, Shea thought he had a part in a Bickston
13 movie lined up, but was disenchanted with the prospect, because
14 it was delayed, and he hadn't heard from Bickston about it.

15 Six, Shea and his wife Magdalene were supposed to
16 get small parts in a forthcoming Maurice Kosloff movie, and he
17 seemed somewhat excited about this.

18 Seven, however, after having gone with his wife to
19 secure this part, on about August 11th or 12th, he split up
20 with her, and he was much upset and depressed over it, having
21 taken to drinking some and having written a never-sent note to
22 his wife, expressing his anguish and despondency.

23 Eight, Shea had expressed to Ruby Pearl a desire
24 to get away from the ranch -- from the Spahn Ranch, that is --
25 to which he had gone on or about August 16th or 17th,
26 because "funny things were happening." And he was -- he was
27 worried.

28 Nine, Shea had told Lance Victor that he was going

8d-2

1 back to work at the Salt mines in Vallejo, and planned to leave
2 soon.

3 Then, Shea had discussed with George Spahn a job
4 as watchman for Frank Retz.

5 Eleven, Shea called Retz on a Monday or Tuesday,
6 around 9:00 A. M., and said he would come to see him that
7 morning. And Retz waited until early afternoon for Shea, who
8 never arrived.

9 Twelve, Ruby Pearl, after talking with Shea between
10 11:00 P. M. and midnight on a full-moon night, saw Manson,
11 Davis, Grogan and Watson exit a car, and move in Shea's
12 direction.

13 Thirteen, the full moon appeared on the night of
14 Wednesday, August 27th, and would have seemed full on the nights
15 of Tuesday and Thursday, on either of those dates.

9 fol

9-1

1 Fourteen, on the night of the full moon Barbara
2 Hoyt heard Shea screaming in pain and fear for what seemed like
3 a long time but, apparently, no one else on the ranch heard
4 them.

5 Fifteen, she didn't see Shorty again, but she,
6 Manson, Davis, Watson, and other members of the Manson Family
7 left Spahn Ranch early the following evening, following the
8 night of the full moon, and traveled through the Goler Wash,
9 Ballarat area to the Barker Ranch.

10 Sixteen, Shorty was short of money and had tried
11 to borrow some to go to the salt mines from Lance Victor who
12 said he would try to get him some later in the week. He was
13 not sure of the specific time.

14 Seventeen, Shea's pawned guns were redeemed by
15 Danny DeCarlo on December 2nd and 3rd, and sold on October
16 10 by him to the Baker Gun Shop in Culver City.

17 Eighteen, around that time John Swartz saw
18 DeCarlo and Bill Vance with the guns and the attache case.

19 Nineteen, friends and the mother of Shea who had
20 heard from him in person or by phone or telegram at intervals
21 ranging from three weeks to semi-annually hasn't seen or heard
22 from him since the night of the full moon to mid-September,
23 1969, ranging in that area, or some Monday or Tuesday.

24 Twenty, when Shea's abandoned car was found on
25 December 8, 1969, his two footlockers and some of his clothes
26 were found in it and Davis's palm print was found on one of
27 the footlockers. Parenthetically, the People's witnesses are
28 unable to say in point of time when that palm print might

1 have been placed there.

2 Also, parenthetically, and as a part of that,
3 both John Swartz and Barbara Hoyt testified -- John Swartz
4 particularly, Shea's footlockers he had seen in the storage
5 room where various items, including certain old wagons and
6 things were sorted at Spahn Ranch.

7 And Barbara Hoyt testified that she had also been
8 in that storage room and it was accessible to anyone by the
9 back door.

10 Twenty-one, Shea's attache case and a blue suitcase
11 as ever having belonged to him were found abandoned in the
12 Goler Wash area in mid-February and they contain documents
13 and things connected to Vance and DeCarlo.

14 Twenty-two, another suitcase and other clothes
15 owned by Shea have disappeared along with Shea.

16 Twenty-three, Shea was a drifter, who frequently
17 changed jobs and locations, generally without notifying any-
18 body until at least he had arrived there.

19 Now, without the statements which were admitted to
20 establish a conspiracy, the purported conspiracy which was
21 not even charged, but as to which if charged the statements
22 would only be admissible, and not admissible on the charge of
23 murder until a corpus delicti of prima facie had been shown --
24 without the statements, that's all the evidence that we have.
25 Those 23 items that I mentioned.

26 And I submit that they do not establish a corpus
27 delicti. They do not establish the death of Shorty Shea. They
28 do not establish that he died by criminal means. And that's

1 the corpus.

2 Now, your Honor, it requires a little bit of
3 arithmetic here, if I may have the Court's indulgence.

4 The dates are all important at this juncture. Thus
5 far we have heard from the People's witnesses -- this is their
6 evidence.

7 All right.

8 MR. KAY: Excuse me, your Honor, I think that Mr. Denny
9 has a couple of defense witnesses in the back of the court. I
10 would object to him going over dates if these witnesses are
11 present.

12 Are they?

13 MR. DENNY: No.

14 MR. KAY: They're not?

15 MR. DENNY: They're not my witnesses.

16 MR. KAY: Okay, I'm sorry.

17 THE COURT: Since you've been interrupted, let me interrupt
18 again.

19 (Whereupon, unrelated matters were called and
20 heard before the Court.).

21 THE COURT: All right, Mr. Denny, go ahead. Sorry to
22 interrupt.

23

24

25

26

27

28

9a fol

9a-1

1 MR. DENNY: Oh, it was all right, your Honor.

2 Again, your Honor, going back to the fact that
3 apart from the statements which were admitted under the
4 conspiracy theory, and statements which would not be
5 admissible because made after the alleged murder if, in fact,
6 a corpus delicti had been established, and I submit that at
7 this point the evidence shows no corpus, all that was shown
8 was a mysterious disappearance, the abandonment of some
9 property, the redemption of Shea's guns by DeCarlo, Davis'
10 palm print on a footlocker, a print which could have
11 innocently been placed there outside the car in a Spahn
12 Ranch storeroom, and the fact that Mr. Shea has not been
13 heard from by people who would normally have heard from him
14 over a period of time.

15 Now, the People may say, well, in addition to that,
16 we have some evidence of motive. There is evidence that
17 Charlie Manson didn't like Shea and wanted to get rid of
18 him because he threatened their position, that is the Manson
19 Family's position on the Spahn Ranch or that Shea is supposed
20 to have been ratting to the police.

21 First of all, that statement that he was ratting
22 to the police or whatever, and all of these other statements,
23 are statements that come in by way of these conspiracy
24 statements or admissions after a corpus has been established.

25 There was -- and so I submit at this point, at
26 least, when I'm arguing that there is no corpus, that those
27 can't be considered.

28 Now, there was, in addition, some testimony from

1 Dawn Quant that Manson threw a knife in front of Shea. And
2 I think the cross-examination disclosed that there was
3 apparently nothing so evil in that as originally portrayed
4 by the People.

5 There was evidence that Manson, as well as
6 everyone else on the ranch, knew of Retz' job offer to
7 Shorty. And if that is thought to be twisted into a motive
8 for killing, the contrary evidence is, to -- and this was
9 brought out by the People, witness after witness, starting
10 from Ella Jo Bailey, that there had been the plan, the
11 end and the goal, right from the end of early January,
12 1969, to move to the desert and, indeed, supposedly the
13 Hinman killing was in order to get money to move to the
14 desert. And that plans had been made to move to the desert
15 and, indeed, the final move to the desert followed a
16 succession of moves up there during the week or so
17 preceding the latter part of August, when they finally all
18 did move or a large number of them moved up to the Barker-
19 Meyers Ranch.

20 The testimony that Barbara Hoyt had gone up there,
21 that Bruce Davis had gone up there, that Tex Watson had gone
22 up there taking dune buggies, et cetera, et cetera.

23 So that, again, motive cannot establish the
24 corpus if there is no independent showing of a dead body, and
25 of a dead body killed by criminal means.

26 Now, we have, your Honor, the interesting picture
27 of the testimony of the People. And, again, these are the
28 People's witnesses testifying, leaving the matter in such a

1 contradicted state that it cannot be said that Shorty Shea's
2 death is shown by their evidence.

3 And I point to this chart that I made up as
4 Defendant's S in connection with Barbara Hoyt's testimony,
5 and I'm only using it now for the same illustrative purposes.

6 The People's evidence showed -- shows that Charles
7 Manson was arrested on Sunday, August the 24th, and that he
8 was released Tuesday night at approximately 11:50 August
9 26th.

10 The People's evidence also shows that approxi-
11 mately the night after the full moon, Manson, Davis, Watson,
12 Barbara Hoyt and others, left to go to the Barker-Meyers Ranch
13 and at least those people stayed there, although DeCarlo
14 stayed -- came back. But those people, all of whom are
15 charged except Clem Grogan did not go up there.

16 But Manson, Davis and Watson, along with DeCarlo
17 and Barbara Hoyt and others, went up the night following the
18 night of the full moon. Giving the benefit, as Dr. Kaufmann
19 said we must, to the human eye not knowing precisely which
20 night of those on either side of the full moon would appear
21 to be the night of the full moon, it could have been as early
22 as the 28th or as late as the 30th of August.

23 So that when Manson, Davis, Watson, Hoyt, et
24 cetera, left, and the testimony is that they remained at the
25 Barker-Meyers Ranch area for at least a period of up through
26 the 5th or so of September.

9b fls.

9b-1

1 The testimony of Frank Retz, again a People's
2 witness, showed that he had a phone call -- well, that he
3 spoke with George Spahn on Sunday, and he remembers it was a
4 Sunday because his wife was brought up there with him on Sunday
5 and they were talking about how they were going to feed Shorty.
6 She figured they'd feed him from the delicatessen. And the
7 only day his wife was up there with him was on a Sunday. And
8 he had a conversation with George Spahn on a Sunday and told
9 Spahn to have Shorty get in touch with him and Shorty called
10 him the following Monday or Tuesday. That was his testimony.

11 His memory was refreshed by me on cross examination
12 from what he had testified to at the Grand Jury hearing. And he
13 says yes, that's true, it was either Monday or Tuesday.

14 All right. And he spoke with Shorty Shea at about
15 9:00 o'clock in the morning on Monday or Tuesday.

16 Now, if it was Monday or Tuesday, the 25th or
17 26th of August, Charles Manson was in jail at that time.

18 He also said that Shorty didn't show up and he had
19 not seen Shorty since then.

20 If Manson was supposed to have killed him on a
21 Monday, he couldn't have. He was in jail.

22 And we have the documented certified records to
23 show that. He was supposed to have killed him Tuesday and he
24 disappeared Tuesday sometime in the morning. He couldn't.
25 Manson was in jail until 11:50 that night and the certified
26 records show it.

27 So it would appear, then, that the conversation
28 could not have been the Monday or Tuesday of August 25th and

9b-2

1 26th.

2 If, on the other hand, it was the Monday or
3 Tuesday, September 1st 2nd, September 1st -- and the Court
4 can take judicial notice of it, was Labor Day. So if Retz
5 recalls, and he seems to recall that he was going to go to the
6 bank and waited to go to the bank, then, it would have to be
7 September 2nd that he had the conversation with Shorty, because
8 he says it was Monday or Tuesday. And he waited to go to the
9 bank. And Shorty never called. And he called George Spahn
10 and George Spahn said, "Well, Shorty has left."

11 All right.

12 September 2nd, Manson, Davis, Watson, the People
13 supposedly charged, and certainly this defendant charged with
14 his murder were up at the Barker-Meyers Ranch.

15 Now, your Honor, what do we have? We have this
16 testimony in here that Barbara Hoyt heard screams and she was
17 perhaps impeached, perhaps not, perhaps the Court doesn't
18 look at that in determining whether a corpus has been
19 established, but I think the Court does in determining whether
20 a corpus has been established, whether she actually heard the
21 screams of Shorty Shea or not. And we have the reports of the
22 officers and the reports, too, of the conversation with Mr. Katz
23 in which all she stated was she heard male screams and,
24 strangely enough, no other evidence has been brought in by the
25 People of all the people that stayed at the ranch of anybody
26 that heard screams then.

27 We have the testimony of the -- I think, essentially
28 honest, but perhaps somewhat misguided and melodramatic, Ruby

9b-3

10 fol

1 Pearl, who puts on to what she sees as reasonably normal conduct,
2 that is people getting out of the car and going over toward the
3 bunkhouse where Danny DeCarlo has his digs, and it happens
4 that Shorty Shea is there and they're moving in his direction.
5 She makes a connotation of evil there, that they're about to do
6 him in. And she does not remember when -- oh, in seeing Shorty
7 thereafter.

10-1

1 She also admits, on cross-examination, that she
2 was pumped and pumped and pumped, in order to get her to
3 remember that it was the night of the full moon.

4 Prior thereto, she had never testified that it was
5 the night of the full moon, and her testimony is replete with
6 instances of failing to know what day it was, what week it was,
7 even.

8 So that all we have got is a series of circum-
9 stances here, which are mutually self-contradictory
10 (indicating).

11 Was he supposed to have been killed on a Monday
12 or Tuesday? During one period of which Manson's in jail and
13 couldn't have killed him; and during the other period of which,
14 Manson's up at the Barker-Meyers Ranch and couldn't have
15 killed him, when he disappeared after talking with Frank Retz
16 and George Spahn.

17 Was he supposed to have been killed on the night
18 of the full moon? How, then, did he disappear Monday, the
19 25th, or Tuesday, the 26th? That was not the night of the
20 full moon.

21 And if he was supposed to have been killed these
22 nights -- the 27th, 28th or 29th -- how, then, did he have
23 the conversation possibly on Monday or Tuesday (indicating)
24 with Frank Retz?

25 The People's own evidence is so self-contradictory
26 that I do not think this Court can say, looking at it, that
27 the Court is certain that he was killed on any of these dates,
28 without looking at the statements. And the Court can't look

10-2

1 at the statements to determine a corpus delicti.

2 All you have is a mysterious disappearance.

3 Now, your Honor, the evidence also shows -- and
4 I left this out, as Item 24 -- that the last time he went to
5 Vallejo salt mines, he went in Lance Victor's car, because
6 his old '59 Cadillac was in what apparently was the same
7 kind of shape as the '62 Comet, and that is: bad brakes
8 and bad steering -- although I think the Cadillac only
9 had bad brakes.

10 But there was testimony from Lance Victor that
11 they took Lance Victor's car, because Shorty's car at that
12 time had bad brakes.

13 The testimony here shows Shorty wanted to get
14 away from the Manson group. He told Pearl he was scared;
15 that things were going on -- the last time she had a
16 conversation with him -- that he didn't like what was going
17 on, and wanted to cut out.

18 He told Lance Victor that he wanted to go to the
19 salt mines in Vallejo.

20 And this is not even to say that the evidence is
21 equally as consistent with his disappearing, in a normal,
22 natural way, as criminally. It's simply to say: There is
23 no substantial, significant, even prima facie evidence that
24 this man was killed.

25 We don't even know, based on the evidence that is
26 admissible to establish the corpus -- and not by way of
27 statements thereafter -- we don't know whether he's alive or
28 dead.

10-3

1 So I submit, your Honor, that as to Count III,
2 the Court should make a finding at this time -- and this is
3 a matter of law -- that the People simply have not established
4 a corpus.

5 And I would move, then, to make a finding of
6 acquittal on that ground.

7 THE COURT: The People?

8 MR. KAY: Well, I am really not sure how much the
9 Court wants me to argue at this time, because the Court
10 already has made a finding that there is a corpus, and I
11 think that that finding of the Court is overwhelmingly
12 supported by the evidence in this case.

13 There's just no other reasonable inference to
14 take from the evidence.

15 So, unless the Court really wants to hear an
16 argument, I will just submit it, because I think the Court
17 already -- I think the Court's already made a finding on that
18 point.

19 THE COURT: All right. The Court doesn't particularly
20 need argument on that point.

21 Is there anything further in connection with your
22 motion under 1118.1 --

23 MR. DENNY: Yes, there is, your Honor.

24 THE COURT: -- on either count?

25 MR. DENNY: Yes, your Honor.

26 THE COURT: Or any of the counts?

27 MR. DENNY: Yes. Assuming the Court feels that there
28 has been no --

10-4

10a fls.

1 THE COURT: The Court believes, for your guidance,
2 that insofar as Count III is concerned, that the disappearance
3 of Mr. Shea, the screams that were heard by the witness
4 Barbara Hoyt, the confrontation observed by Ruby Pearl, the
5 motive that was established, the throwing of the knife, the
6 guns eventually coming to Mr. DeCarlo's possession, and the
7 leaving of Spahn Ranch by the Manson group shortly after
8 the night when the screams were heard, the failure of Mr. Shea
9 to contact friends -- there are a number of other elements --
10 all of which the Court believes serve to establish the corpus
11 delicti.

10a-1

1 And the Court sees no reason why its earlier
2 finding should be disturbed, after it's heard all of the
3 testimony on the part of the People.

4 The Court does believe that they have established
5 the corpus delicti of the crime of murder.

6 MR. DENNY: All right, your Honor. Then to go one
7 step further -- and it is a step by step process -- I submit
8 that, again, under 1118.1, even assuming the Court has found
9 that there is a corpus, that the evidence is insufficient
10 in and of itself to convict this defendant, and that if this
11 case were submitted to an Appellate Court, on the finding of
12 guilt by -- by a jury, that the Appellate Court would be
13 forced to reverse it, on the grounds of insufficiency of the
14 evidence.

15 If the evidence discloses anything, it disposes --
16 if it disposes a murder at all, the testimony points far
17 more convincingly toward murder by Danny DeCarlo and Bill
18 Vance than it does -- and possibly Clem Grogan -- than it
19 does to this defendant and Charles Manson.

20 Now, the Court has to, if it assumes the death
21 occurred here at this time of the full moon, then the Court
22 has to say, "Oh, all this evidence on either side, by Frank
23 Retz --" and he remembers specifically, because of his business
24 practice -- "all of that evidence (indicating) is just
25 excluded.

26 "If it happened on the 25th or 26th, well, I --
27 I don't know what I am going to do about that, if that
28 conversation happened.

10a-2

1 "If he disappeared on the 25th and didn't show
2 up, maybe he just disappeared for a while, and came back to
3 the Spahn Ranch, and then was murdered on the 27th or 28th
4 or 29th, on a moonlight night."

5 That's the only way you can possibly imagine that.
6 Frank Retz says he was there day in and day out, and he never
7 saw Shorty after that.

8 If, on the other hand, you look at Frank Retz'
9 testimony, and you say, "Well, this phone call with Shorty
10 must have happened on Monday or Tuesday, the 1st or 2nd of
11 September," then you have got to say, "Well, Shorty then
12 couldn't have been dead on September 28th or 29th."

13 So somehow, you are going to have to assume that
14 the testimony -- the conversation with Frank Retz took place
15 on maybe Monday the 25th, and Shorty just didn't show, and
16 stayed over until he could get killed by Manson, Davis,
17 Watson and Grogan here on the 27th (indicating), 28th or 29th
18 some time.

19 THE COURT: Let's see. Manson returned on the 26th to
20 the --

21 MR. DENNY: Tuesday the 26th, at approximately 11:50
22 p.m.

23 MR. MANZELLA: Excuse me, Mr. Denny.

24 Your Honor, Mr. Johnson's in the courtroom. We
25 have no objection if he remains.

26 MR. DENNY: I have no objection.

27 MR. MANZELLA: All right.

28 BY MR. DENNY: All right. Now, if you are going

10a-3

1 to -- if you are going to say that, if you are going to say
2 that Shorty just didn't show up, this was another one of his
3 unfortunate lapses in social graces, and he just failed to
4 show for an appointment that apparently he so desperately
5 wanted, and remained around in order to be killed, then you
6 have to assume that Ruby Pearl's sighting of Manson, Davis,
7 Watson and Grogan -- and of a shadow with a hat, or Bill
8 Vance, depending on when she talks about it -- is sufficient
9 evidence -- coupled with Barbara Hoyt's statement that she
10 heard screams, which statements were also impeached --
11 constitute sufficient evidence to connect this defendant
12 with the purported murder.

13 Because if not, then the only other thing you
14 have got are the following:

15 First of all, Mr. Davis is never seen with the
16 guns -- oh, one time, at dinner, when supposedly this bronze
17 or gold-barreled gun is passed around, which may or may not
18 have been Shorty's gun, according to Juan Flynn.

19 But other than that, even assuming that might
20 have been Shorty's gun, he's never seen with the guns; he's
21 never in any other way connected, except by statements --
22 Barbara Hoyt's statement that Charlie was making some state-
23 ments at this supposed Meyers Ranch dinner.

24 And we went through it at some length. Barbara's
25 recollection brought to light, in May of 1971, some almost
26 two years later, that during three points in Manson's
27 conversation, describing the killing of Shorty, Davis said,
28 "Yeah. Yeah." And something -- "That was far -- that was

10a-4

1 far --"

2 MR. MANZELLA: "Far out."

3 MR. DENNY: -- "far out,"

4 Thank you, Mr. Manzella.

5 "Yeah, yeah," and, "That was far out."

10b:fls. 6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

10b-1

1 And those hardly constitute admissions on his
2 part that he was involved in it, because she acknowledged
3 that the statements, "Yeah, that's far out," was a common
4 expression used among that group -- as well as others --
5 merely acknowledging, "Hey! That's really something!"

6 And by no means indicated his complicity.

7 And her statements purporting to alleged
8 conversation by Manson as to the death of Shorty Shea did
9 not in any way include any references by Manson to the fact
10 that Davis was involved.

11 The other evidence you've got connecting Davis
12 to the case is the statement of Alan Springer, supposedly
13 taken from -- or, secured from or gotten from Mr. Davis,
14 at 28 Clubhouse Drive, on November 26, 1969, which purports
15 to say -- to have Springer say, "I don't like the way
16 DeCarlo is testifying against the group."

17 And Davis saying, in effect, "I don't either.
18 But we have ways of taking care of guys like that. We took
19 care of a guy, and cut off his head."

20 And somebody says -- I think Mark Ross -- "Do
21 you mean Shorty?"

22 And Davis saying, "Yeah."

23 Now, what does that mean? At most, it's
24 equivocal. "We," the Family -- and this is testified to by
25 Ella Jo Bailey, by Barbara Hoyt, by other members of the
26 Family -- Paul Watkins -- they all referred to themselves
27 as "we." You say, "We, the Family." The collective was
28 constantly used in reference to the group.

10b-2

1 And the mere fact that you say "we" did such and
2 such does not in any way mean, "I personally took part."

3 Any more than when Bruce Davis would say, "Well,
4 we bought some dune buggies."

5 Did it necessarily mean, "I went out and bought
6 the dune buggies"? It means the Family is now possessed of
7 some dune buggies that someone bought -- "That we bought."

8 So that the only statements that you have got
9 in evidence now connecting Davis with the offense, are these
10 two statements, one by Barbara Hoyt -- which, again, I
11 submit to the Court, at this point, at this stage, under
12 a motion under 1118.1, the Court does have the prerogative
13 and the obligation to look somewhat at the credibility of a
14 witness.

15 I submit Barbara Hoyt's testimony there is
16 incredible. But even giving it credence, all you have simply
17 is two "Yeahs" and a "That was far out," which hardly
18 constitutes an admission.

19 And then, the testimony of Alan Springer --
20 again, which hardly constitutes an admission of complicity
21 in the crime itself.

22 I submit that at this posture, your Honor, even
23 assuming a death, that the greatest likelihood that the Court
24 has of -- or the jury has of convicting anyone, is convicting
25 the people who most nearly in point of time have the property
26 of Shorty Shea.

11 fls.

11-1

1 And again, to go back to this chart, let us presume,
2 arguendo, that Pearl did see Watson, Davis, and Grogan, Manson
3 and some shadow with a hat on on the night of the full moon
4 going towards Shorty, but that Shorty was not killed that night.
5 Let us assume that Frank Retz's testimony, specific testimony
6 that he heard from Shorty on Monday or Tuesday, shows that it was
7 the Tuesday, September 2nd, and Shorty was supposed to go to see
8 him on Tuesday, September 2nd and never made it.

9 Who was in the most immediate possession of anything
10 having to do with Shorty on September 2nd? Danny DeCarlo, who
11 has Shorty's pawn slip and redeems one of the guns on September
12 2nd, comes in the next day on the 3rd and redeems the other gun
13 and the briefcase, the attache case, and with Bill Vance is
14 seen shortly thereafter, perhaps on the same day by Johnny
15 Swartz in the gun room with the guns in the gun case, one saying
16 to the other, "Well, we finally got Shorty's ego."

17 And the evidence reflects that at that same time
18 Clem Grogan was still down with them on the Spahn Ranch.

19 Now, is it possible that they waylaid Shorty Shea
20 and killed him and got the pawn slips?

21 And is it possible that Clem Grogan did cut off his
22 head?

23 And is it possible that Manson, in talking about
24 it when he says "We killed him and Clem cut off his head," was
25 stating exactly what did occur, using the "we," that everybody
26 did use, referring to members of the Family? "We killed him
27 and Clem cut off his head."

28 And I submit, your Honor, that that is the most

11- 1 likely explanation for what has happened to Shorty Shea.

2 And if I were prosecuting the case, those are the
3 people I would look to, because that's where the evidence
4 points.

5 And the references thereafter to "We did," and
6 "We did," and "We did," are thoroughly reconcilable with that
7 view of the evidence and it is the evidence presented by the
8 People's case. The defense hasn't put on any evidence yet.

9 So that, your Honor, where the People discloses
10 the facts as we've shown them here, and where the connection
11 with the death of Shorty Shea, assuming such a death, is so
12 equivocal as to this defendant, I submit that if a jury came
13 in now on the state of the record, and that's where this Court
14 sits, as an appellate court reviewing a jury verdict, that the
15 appellate court has seen the infinite testable evidence
16 connecting Davis with any murder, would have to and would
17 reverse that conviction for insufficiency of evidence as a
18 matter of law and, therefore, I feel that this Court, at this
19 time, should do just exactly what the appellate court would
20 do, which would be -- which this Court is empowered to do under
21 1118.1 and acquit the defendant.

22 THE COURT: People.

23 MR. KAY: Well, of course, in looking at evidence you
24 can't take any one particular piece of evidence and look at it
25 apart from the other evidence.

26 The Court has to look at each fact in relation to
27 other facts, and I think if the Court does that, there's no
28 doubt that Mr. Davis is beyond any reasonable doubt tied into

1 the murder of Shorty Shea.

2 Number one, you have Ruby Pearl seeing Mr. Davis,
3 Mr. Manson, Mr. Watson and Mr. Grogan approaching Mr. Shea on --
4 towards the -- towards the boardwalk area, uh, the four of them
5 together.

6 That same evening Barbara Hoyt heard either Squeaky
7 or Brenda say that Shorty was -- that he would be taken care
8 of.

9 Barbara Hoyt on this night of the full moon heard
10 Shorty screaming.

11 She and Ruby Pearl agreed that the Manson Family
12 left the next day.

13 And, of course, the reason that Mr. Manson gave
14 was somewhat incredulous to Barbara Hoyt that the reason that
15 they were going to the desert at that time was because
16 Mr. Manson wanted to get the girls under 18 away from the
17 police.

18 Then, we have the statements made by Mr. Davis.

19 Now, at the Meyers Ranch dinner, the statement made
20 by Mr. Davis when Mr. Manson said, "When Shorty got to now,
21 Clem cut his head off," Mr. Davis said, "Yeah, that was far
22 out."

11a fol

11a-1

1 Now, the only inference you can take from that
2 statement was that Mr. Davis was present.

3 "Yeah, that was far out."

4 He didn't say, "Hey, that sounds like you guys
5 had a great time" or "Yeah, uh, boy, that must have been
6 neat" or something. He said, "Yeah, that was far out."

7 The only inference of being that he was present
8 when the act took place.

9 Then, during that same conversation Barbara
10 Hoyt overheard Mr. Davis say at a point where Mr. Manson was
11 saying that "We were stabbing him and stabbing him," and
12 Davis said, "Yeah," agreeing to that point.

13 Now, the next point Paul Watkins testified that
14 when he and Bill Vance and Mr. Davis were walking down Goler
15 Wash, he overheard Mr. Davis tell Mr. Vance -- he picked up
16 part of the conversation when Mr. Davis said, "That's why we
17 killed Shorty."

18 Now, obviously if Mr. Vance was involved in the
19 murder, Mr. Davis wouldn't make any statement to him, "Yeah,
20 that's why we killed Shorty," because if Mr. Vance was
21 involved there would be no reason for Davis to say that's
22 why Shorty was killed, because Mr. Vance would know.

23 And certainly "we" includes "I," and there's no
24 evidence in here that members of the Manson Family only said
25 "we" unless they had some reason to.

26 And certainly Mr. Davis had a reason to say,
27 "That's why we killed Shorty," at this point, because he
28 was one of the ones that killed Shorty.

1 Then, going down to Los Angeles from Barker
2 Ranch to Spahn Ranch, when Mr. Grogan ordered Juan Flynn
3 in a very commanding and threatening manner to say that if
4 anyone asked him where Shorty was, he said you tell them --
5 you tell them that he went to San Francisco, which Mr. Davis
6 said, "Yeah, yeah, you know."

7 Well, Mr. Flynn knew. That's why he kept a
8 shotgun by his side up at Barker's Ranch all the time.

9 And then, Mr. Springer's testimony, where Mr.
10 Davis and -- came and told him about what they did to infor-
11 mants. He said that he had a way of taking care of snitchers.
12 And he said, "We cut them up, their arms, their legs and
13 head off and buried them on the ranch some place."

14 And Mark Ross at that point said, "You mean
15 Shorty?"

16 And Davis said, "Yeah."

17 And then, on top of that, when Mr. Shea's
18 car was found abandoned and his property in the back in the
19 form of two footlockers, lo and behold, whose palm print is
20 on the footlocker, the only print in the whole car, Mr.
21 Bruce Davis, the defendant.

22 I think that certainly beyond any reasonable
23 doubt Mr. Davis has been tied in through all of these
24 different pieces of evidence to the murder of Donald Jerome
25 Shea.

26 MR. DENNY: Your Honor, if I may respond on the last
27 point.

28 There are two cases --

1 THE COURT: If you would, very quickly.

2 MR. DENNY: Yes.

3 There are two cases specifically on point on
4 fingerprints. One is People vs. Redmond, 71 Cal. 2d, that's
5 745.

6 THE COURT: 71 Cal. 2d --

7 MR. DENNY: 71 Cal. 2d 745.

8 And the language is there, it is very much
9 appropriate to this case, on page 755, "Evidence which
10 merely raises a strong suspicion of the defendant's guilt
11 is not sufficient to support a conviction. Suspicion is
12 not evidence. It merely raises a possibility. And this
13 is not a sufficient basis for an inference of fact."

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
11b fls.

11b

1 And then it goes on, "The appellate court is
2 required to determine whether a reasonable trier of fact could
3 have found that the prosecution sustained its burden of proving
4 the defendant guilty beyond a reasonable doubt."

5 And they go on further, "The prosecution's burden
6 is a heavy one: 'To justify a criminal conviction, the trier
7 of fact must be reasonably persuaded to a near certainty. The
8 trier must therefore have reasonably rejected all that under-
9 mines confidence.'"

10 And then, they go on to show that in this
11 particular case, the fingerprints that were found in a
12 burglarized home could have been placed there innocently as
13 well as by the alleged burglar, the person accused, having been
14 a TV repairman who admittedly had been there earlier the day
15 that the burglary occurred.

16 And they go on in that case to simply hold that
17 the evidence was insufficient as a matter of law because those
18 fingerprints which could have been placed there innocently as
19 well as in a guilty way, if there is that circumstantial
20 evidence, and there are the two reasonable interpretations,
21 one pointing to innocence and one guilt, you must take that
22 pointing to innocence.

23 Now, the same in People versus Robinson, 61 Cal.
24 2d 373. There were fingerprints found inside a car, a car
25 which was used in a robbery.

26 And as the Court points out there:

27 "The fingerprints showed no more than that
28 drivers had been present in or about the Ford on some recent

1 "date. The fingerprint expert produced by the prosecution
2 testified that he could not place the date on which the prints
3 were put on the car, but that he believed them to be relatively
4 recent because of the fact that the car was out-of-doors. He
5 was of the opinion that prints on such a surface disappear
6 sooner when exposed to the elements, but was still unable to
7 state that they had been placed on the car within the last day
8 or two prior to the date of the crime. As opposed to this, the
9 evidence" --

10 THE COURT: Were these cases involving a motion under
11 1118?

12 MR. DENNY: No, these were cases, your Honor, after a
13 conviction. And in this particular case, in the People versus
14 Robinson, the conviction of Mr. Drivers was reversed. The
15 appellate court holding as a matter of law that the evidence
16 was insufficient because of --

17 THE COURT: I see.

18 MR. DENNY: -- because the only thing connecting him were
19 these fingerprints --

20 THE COURT: I see.

21 MR. DENNY: -- and some evidence which had been admitted
22 as far as statements which were inadmissible.

23 He said, "Thus, driver's fingerprints on the
24 Ford are as equally susceptible to an inference that they came
25 there innocently, as they are to any inference that their
26 presence connects defendant with the commission of the crime.

27 "The important feature is that the explanation
28 (evidently accepted by the police) shows that driver's finger-

1 "prints could have been placed on the Ford in a manner entirely
2 unconnected with the crime. To hold that the presence of those
3 prints connects him with the commission of the crime is tanta-
4 mount to saying that the fingerprints of any relative of a
5 person known to have committed a crime, found on the automobile
6 of such person, tend to connect the relative with the crime,
7 even though it is known that the relative has had the
8 opportunity to be in and out of that car on various occasions
9 other than during the commission of the crime. Such a
10 theory is unsound. Certainly association with a criminal is
11 not to be equated with connection with the crime. Moreover,
12 such a contention asks the jury to speculate on how and why the
13 fingerprints appeared, with no evidence at all on that question.
14 Even if the fact of the fingerprints be deemed to cast
15 suspicion, even grave suspicion, on Drivers, such is
16 insufficient. It is necessary that the evidence corroborating
17 an accomplice shall connect or tend to connect the defendant
18 with the commission of the crime. Corroborative evidence is
19 insufficient where it merely casts a grave suspicion upon the
20 accused. It must not only show the commission of the offense
21 and the circumstances thereof, but must also implicate the
22 accused in it."

23 And it says, "At best, the fingerprints merely
24 placed Drivers in the car at some time prior to the time the
25 car was discovered. This merely proves association."
26
27
28

12-1

1 THE COURT: Thank you, Mr. Denny.

2 As to Count I, there are inconsistencies in Ella
3 Jo Bailey's testimony. It's certainly true, in her testimony
4 before this Court, there are a number of strong inconsistencies
5 -- and there certainly exist inconsistencies between her prior
6 testimony and her testimony here.

7 But this Court does not believe that -- and does
8 not find that she is an accomplice as a matter of law. And
9 in this state of the evidence, as the People have presented
10 it, the Court finds that there is sufficient evidence to
11 warrant the denial of the motion under 1118.1.

12 The same is true as to Count II, which rests
13 largely upon the testimony of Ella Jo Bailey.

14 As to Count III, the Court believes that a number
15 of the points that you have mentioned, Mr. Denny, are arguable
16 points. But in the Court's view of the evidence, there is
17 sufficient to withstand the motion under 1118.1, and the Court
18 denies the motion as to Count III.

19 I see Mr. Johnson is in the rear of the court.

20 Mr. Johnson, have you completed your work today?

21 MR. JOHNSON: Yes. I think I've done as much as can be
22 done on the examination of that.

23 THE COURT: It's 3:30 now. Do you have a witness that --
24 do you have a witness problem, Mr. Denny?

25 MR. DENNY: I don't know, your Honor, whether I have got
26 a witness problem or not. I -- I have placed calls to certain
27 of the officers who were to be here -- are they here?

28 MR. DENNY'S SECRETARY: They've been called. I don't

12-2

1 know if they're here yet.

2 Where do they come?

3 THE COURT: I did tell Mrs. Obradovich I would terminate
4 those proceedings at 4:00 o'clock, and I am inclined to do that,
5 so perhaps we can begin tomorrow morning with the presentation
6 of your evidence.

7 MR. KAY: At 9:30, your Honor?

8 THE COURT: 9:30. And I will try to begin promptly.

9 Our calendar is -- what is it tomorrow? Very long?

10 THE CLERK: Yes.

11 THE COURT: It's quite long. But I'll begin promptly at
12 9:00 o'clock. Perhaps you could tell the deputies, the Public
13 Defender and the District Attorney to be here, so that we can
14 start promptly at 9:00.

15 And gentlemen, the Court has appointed Mr. Johnson
16 under 730 to examine the test bullet and the evidence.

17 He has used, as I understand it, the facilities of
18 the Los Angeles Police Department to accomplish that today,
19 and he is available for -- for you to talk to.

20 So, I'll take a short recess, and you can talk to
21 Mr. Johnson.

22 (Short recess.)

23 MR. DENNY: Your Honor, we have some witnesses who,
24 perhaps, could identify themselves. I know one is Sergeant
25 Kienast.

26 Will the rest of you identify yourselves, please?

27 DEPUTY WINTER: Deputy Winter.

28 LIEUTENANT NIELSEN: Lieutenant Nielsen.

12-3

1 OFFICER ST. JOHN: Officer St. John.

2 THE COURT: I'm sorry, gentlemen, that we've spent the
3 entire day in listening to argument and handling other parts of
4 the case -- other than taking testimony, that is.

5 And consequently, we won't be able to proceed
6 today. I had promised one of the jurors who has a doctor's
7 appointment that we would terminate at 4:00 o'clock. Other-
8 wise, we would work you in today.

9 Would anyone be greatly inconvenienced at coming
10 back tomorrow?

11 OFFICER ST. JOHN: I have an extradition, your Honor,
12 that I have to go to Vegas and pick up a suspect, at about
13 9:00 o'clock in the morning.

14 THE COURT: How long would his testimony take? We
15 could put -- there's a half hour left. Perhaps we could put
16 the jury in the box and take the testimony.

17 MR. DENNY: Well, may I have just a moment, your Honor,
18 to check?

19 Is Hamm off tomorrow?

20 OFFICER ST. JOHN: He's off today.

21 THE COURT: Who's the lady?

22 SERGEANT KIENAST: I'm Sergeant Kienast, from the Sheriff's
23 department.

24 THE COURT: Oh, I see. When I said "gentlemen," I
25 didn't know that one of you gentlemen was a lady.

26 How about tomorrow, Sergeant Kienast, and you other
27 two gentlemen? Would that be --

28 SERGEANT KIENAST: No, we could come back tomorrow.

12-4

1 MR. DENNY: And you will be back Wednesday?

2 OFFICER ST. JOHN: Yeah, I will be gone most of tomorrow,
3 but I'm sure I will be back Wednesday, especially in the
4 afternoon.

5 MR. DENNY: Well, your Honor, let's let him go at this
6 point, then, with the understanding you are on call for
7 Wednesday.

12a fol

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

12d-1

1 MR. KAY: He said he would be back Wednesday. I heard
2 the conversation between Mr. Denny and the witness.

3 THE COURT: Very well. Then in that case, you may all be
4 excused until tomorrow morning, except for this gentleman, who
5 is Officer St. John.

6 And you keep yourself on call for Wednesday, please.

7 MR. DENNY: Your Honor, perhaps the others could be
8 ordered back for 10:00 o'clock, rather than 9:30, because I will
9 have another witness to put on at 9:30.

10 THE COURT: All right. That's --

11 MR. DENNY: So that apparently that wouldn't discommode
12 them too much.

13 THE COURT: Sergeant Kienast and you other two gentlemen,
14 10:00 o'clock.

15 SERGEANT KIENAST: Yes, sir.

16 LIEUTENANT NIELSEN: Yes, sir.

17 MR. DENNY: All right. I think we have our witnesses
18 squared away, your Honor.

19 THE COURT: All right. Fine. How long do you anticipate?

20 MR. DENNY: About three days.

21 THE COURT: Good. We will be through this week.

22 (Short recess.)

23 THE COURT: Mr. Jeffery, you may stand. And Mr. Timothy,
24 don't get comfortable in that seat. I'm going to let you go.

25 (Laughter.)

26 THE COURT: Good morning, everybody.

27 (Laughter.)

28 THE COURT: Well, I'm sorry. I couldn't put you to work

12d-2

1 today. We have been clearing up some matters outside of your
2 presence, all day. And because I told Mrs. Obradovich that I'd
3 let her go at 4:00 o'clock -- and we don't want to keep the
4 rest of you if she leaves -- therefore, I'll let you all go now.

5 Remember that you are still operating under the
6 admonition, that you are not to converse amongst yourselves nor
7 with anyone else, nor permit anyone to converse with you on any
8 subject connected with the matter, nor to form or express any
9 opinion on it until it is finally submitted to you.

10 I anticipate that tomorrow morning at 9:30, come
11 what may on my calendar or otherwise, I'll begin this matter.

12 So, I'll see you tomorrow morning at 9:30. Good
13 night.

14 (Whereupon, murmurs of "Good night" were heard
15 from members of the jury.)

16 (Whereupon, at 3:36 P. M., an adjournment was
17 taken in this matter until 9:30 A. M. the following morning,
18 Tuesday, February 15, 1972.)
19
20
21
22
23
24
25
26
27
28