

## 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

247

REPORTERS' DAILY TRANSCRIPT

Friday, February 18, 1972

VOLUME 47APPEARANCES:

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

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

COPY

I N D E XDEFENDANT'S WITNESSES:      DIRECT    CROSS    REDIRECT    RECROSS

WHITELEY, Paul J.                      7381

REBUTTAL WITNESSES:

CHAMOUSIS, Peter                      7398K      7402      7413K

E X H I B I T SPEOPLE'S:                      FOR IDENTIFICATION                      IN EVIDENCE

112 - Latent fingerprint                      7398

A-1

1 LOS ANGELES, CALIFORNIA, FRIDAY, FEBRUARY 18, 1972 9:40 A.M.

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3  
4 THE COURT: Mr. Denny and Mr. Kay, will you approach  
5 the bench?

6 (Whereupon, the following proceedings were had  
7 at the bench among Court and counsel, outside the  
8 hearing of the jury:)

9 THE COURT: All right. The record will show that the  
10 defendant is in court. Mr. Denny is present, and Mr. Kay is  
11 present for the People.

12 Have you had an opportunity to talk with Charles  
13 Manson and with Mr. Grogan?

14 MR. DENNY: Yes, your Honor. Yesterday afternoon, at  
15 about 1:00 o'clock, from 1:00 till almost 2:00 o'clock, Mr.  
16 Grogan and Mr. Davis and I spoke.

17 And then last night, from about 6:00 o'clock until  
18 8:00 o'clock, Mr. Manson, Mr. Davis and I spoke.

19 THE COURT: And are you ready to proceed today?

20 MR. DENNY: Yes.

21 THE COURT: And do you anticipate putting either of  
22 those gentlemen on?

23 MR. DENNY: I do not so anticipate, your Honor.

24 THE COURT: Well, let's see. You wanted to put on this  
25 morning --

26 MR. DENNY: Whiteley.

27 THE COURT: -- Whiteley. Is he here?

28 MR. KAY: Whiteley's here, and Mr. Denny has informed

1 me that he does not at this time wish to put on Deputy Chamou-  
2 sis, so I'll put on -- Deputy Chamousis is here, and I will  
3 ask the Court to be allowed to put Deputy Chamousis on.

4 THE COURT: All right.

5 MR. KAY: The fact that he found the --

6 THE COURT: All right. Do you want to call Whiteley  
7 now?

8 MR. DENNY: Yes, your Honor. I would like to get one  
9 exhibit, if we can get it from the Clerk here.

10 THE COURT: All right. Have we got it located?

11 MR. DENNY: The exhibit?

12 THE COURT: Yes. By that, I mean: Is it locked away  
13 in --

14 MR. DENNY: Well, it's locked --

15 THE COURT: -- Mrs. Holt's secret little place, or --

16 MR. DENNY: No, it's locked in the evidence locker,  
17 and --

18 MR. KAY: Does she have the key?

19 MR. DENNY: Yes, she said she did.

20 MR. KAY: Well, the Clerk yesterday didn't --

21 THE COURT: Yes. She had the little cupboard loaded  
22 with the stuff, and she didn't have the key yesterday.

23 MR. DENNY: But she's supposed to have it today.

24 THE COURT: All right.

25 (Whereupon the following proceedings were had  
26 in open court, within the presence and hearing of the  
27 jury:)

28 (Proceedings had on an unrelated matter.)

1 MR. DENNY: Your Honor, I am forced to say to the Court  
2 that, in attempting to assist the clerk in opening the --

3 THE COURT: I don't want to hear it.

4 MR. DENNY: -- cabinet, with a certain amount of brute  
5 strength -- which I did not previously know I possessed --  
6 I broke off the key in the lock.

7 THE COURT: I could have guessed it.

8 MR. DENNY: I understand that it really doesn't take all  
9 that much strength, since it was done yesterday by someone --

10 THE COURT: Yes. I think this is about the third or  
11 fourth key.

12 MR. DENNY: -- in a similar way.

13 They just don't build them the way they used to,  
14 Judge. But if we could, I understand that the bailiff is  
15 attempting diligently to obtain another key, because the  
16 exhibit is rather necessary to proceed with.

17 THE COURT: We'll either get a key or a cutting torch.

18 MR. KAY: Maybe we could get a good burglar down from  
19 upstairs, and he could pick the lock, or --

20 THE COURT: Yes, we might find some professional help  
21 upstairs.

22 All right. We're in recess, until somebody finds  
23 a key or makes one or breaks that lock.

24 We will remain in recess. Don't converse amongst  
25 yourselves nor with anyone else on any subject connected with  
26 the matter. Don't get very far away, though. We should be  
27 able to start fairly soon.

28 (Recess.)

1 The defendant is present with counsel, Mr. Kay  
2 for the People. All the jurors are present.

3 You may proceed.

4 Do you have the exhibit now?

5 MR. DENNY: I was just informed it was open, your Honor.  
6 I haven't had a chance to get it.

7 (Pause in the proceedings while Mr. Denny  
8 retrieves an exhibit from the exhibit room.)

9 MR. DENNY: I would like to call Sergeant Whiteley at  
10 this time.

11 THE CLERK: Please raise your right hand and be sworn.

12 Do you solemnly swear that the testimony you are  
13 about to give in the cause now pending before this court,  
14 shall be the truth, the whole truth, and nothing but the  
15 truth, so help you God?

16 THE WITNESS: I do.

17  
18 PAUL J. WHITELEY,  
19 called as a witness by and on behalf of the defendant,  
20 having been first duly sworn, was examined and testified  
21 as follows:

22 THE CLERK: Please take the stand.

23 State your name for the record.

24 THE WITNESS: Paul Whiteley; W-h-i-t-e-l-e-y.

25  
26 DIRECT EXAMINATION

27 BY MR. DENNY:

28 Q Sergeant Whiteley, I wonder if you could find the

1 pointer there on the blackboard? And, if you would -- I  
2 think we've got People's 93 here before the jury.

3 Can you all see that? Can everyone see?

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Would you indicate to the jury, please, those areas referred to by Ella Bailey, in the course of her conversations with you, on May 15th or May 16th, 1970, as the dump?

A She was speaking of the dump located in this area here (indicating), by Spahn's Ranch.

Q Well, let me indicate for the jury. You have indicated on People's 93 an area to the right of and towards the bottom right corner of the corral; is that correct?

A That's correct.

Q All right. Outside the corral, not inside. Outside and to the right of?

A Yes.

Q All right. Now, there is another -- or other dump areas, to your knowledge, at the Spahn Ranch; is that correct?

A Yes.

Q And where is that?

A Well --

Q Or where are those?

A That's adjacent to the farmhouse (indicating).

Q And you are indicating an area that's -- that appears light in color, just above the blue taped marker "Farmhouse," and essentially between the red dot and the green circle; is that correct?

A Yes.

Q All right.

A She didn't speak of this one. I did.

Q Well, she spoke, did she, of a conversation at the dump area?



AA-2

1 A Yes.

2 Q And you assumed from her conversation to you, when  
3 she referred to a conversation between Mr. Manson and Mr. Vance  
4 having taken place at the dump area, that it was the dump area  
5 at the ranch house that she was referring to (indicating)?

6 A Where you are pointing, yes. That's where I assumed  
7 she was speaking of.

8 Q Or the farmhouse?

9 A Yes.

10 Q (Indicating); is that right?

11 A Yes.

12 Q All right. Fine. You may retake the stand, if you'd  
13 like, sir.

14 Well, then, when you wrote your report on May 18,  
15 1970, the last paragraph thereof, on the first page, that  
16 Miss Bailey told her boyfriend, Bill Vance, the following  
17 morning that she did not wish to go to the Hinman house, "A  
18 conversation took place at the ranch house (rear of Spahn  
19 ranch) between Bill Vance and Charles Manson."

20 That report was written, again, in your mistaken  
21 impression, was it, that she had referred to the dump by the  
22 ranch house, rather than the dump by the corral?

23 A Yes.

24 Q Well, did she refer, in her conversation with you,  
25 to the word "dump"? Or to the word "ranch house"?

26 A She used the word "dump."

27 Q Um-hmm. Was there some reason why you didn't, in  
28 writing your notes of May 15, use the word "dump"?

AA-3

1 A No.

2 Q Is there some reason why, in writing your report  
3 of May 18, you didn't use the word "dump" --

4 A No.

5 Q -- instead of "ranch house, rear of Spahn Ranch"?

6 A As I stated before, I thought she meant the dump  
7 adjacent to the -- what's labeled on this photograph here as  
8 the farmhouse. And she was actually meaning the dump out by  
9 the corral.

10 Q But in either case, when she spoke to you on May  
11 15, she said that this conversation had taken place between  
12 Bill Vance and Charles Manson alone; is that correct?

13 A I can't recall if she said that they were alone.

14 Q Well, do you recall that she did not say that she  
15 was present at the conversation?

16 A No, I can't.

17 Q All right. By the way, this particular conversa-  
18 tion of May 15, 1970, in Tacoma, between you and Miss Bailey  
19 and the others present, was that tape-recorded?

20 A Yes.

21 Q And would you tell the jury what happened to the  
22 tape recording?

23 MR. KAY: That's irrelevant.

24 THE COURT: Overruled. You may answer.

25 THE WITNESS: The County purchased a valise that  
26 accommodates a small cassette tape recorder inside of it. The  
27 valise had a defective microphone.

28 Q BY MR. DENNY: Had a defective microphone?

29 A That's correct.

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1 Q And, so, although you attempted to record the  
2 conversation, the recording cassette turned out to be blank  
3 for the May 15th meeting; is that correct?

4 A Yes.

5 Q And then --

6 A I think that there's some conversation on it. I  
7 can't remember. But a very small portion, I believe.

8 Q And you discovered this on the evening of May  
9 15th, when you --

10 A No.

11 Q -- attempted to play back the recording?

12 A I can't -- I can't remember when I discovered it.  
13 I think it was on the 16th.

14 Q Before the second conversation in the afternoon  
15 with --

16 A No, I believe that --

17 Q -- with Miss Bailey?

18 A No. I believe it was after it.

19 Q Well, there was a tape recording then attempted  
20 to be made at the 16th -- the May 16th conference?

21 A Yes.

22 Q And portions of that did come through on the tape;  
23 is that right?

24 A That's correct.

25 Q Kind of the very last portions of the conversation?  
26 Is that correct?

27 A I can't recall which portion.

28 Q All right. Now, in the conversation that you had

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1 with Miss Bailey on the 15th of May, 1970, in Tacoma, in  
2 the presence of yourself and the other persons we've mentioned  
3 yesterday, did she tell you that, "Squeaky and Mary were  
4 assigned to take care of George Spahn"?

5 A Yes, I believe so. I know she said Squeaky, but  
6 I can't recall about Mary.

7 Q Well, would it refresh your recollection to see  
8 your notes of that conversation?

9 A Yes.

10 (Witness perusing a document.)

11 Yes.

12 Q Yes, she did say that to you?

13 A Yes.

14 Q And when you made up -- I shouldn't use that  
15 word.

16 When you dictated the report of May 18 concerning  
17 the two conversations you had with Miss Bailey, did that report  
18 accurately reflect the conversation in which she stated to you,  
19 concerning Mary and Sadie, after they had come back in the  
20 Hinman microbus, "They stated they got \$27 from Hinman, and  
21 Susan showed her the money in her pocket"?

22 A No. If you notice above here, it's written  
23 "Mary."

24 Q I note that there is a writing there, "Mary,"  
25 and that then appears to be crossed out.

26 Is that your writing?

27 A No.

28 Q Or your line through "Mary"?

1 A No.

2 Q Well, do you recall -- when you made your report,  
3 did you make your report from your rough notes?

4 A Yes. I put in "Susan," but it was corrected  
5 later to "Mary."

6 Q Even though it appears crossed out on the report?  
7 "Mary"?

8 A Yes.

9 Q All right. So, then -- do you know who corrected  
10 it?

11 I'm sorry. I don't know whether I asked you that  
12 or not.

13 A It was done in Mr. Katz' office, between Ella  
14 Bailey and Mr. Katz.

15 And I can't remember if Deputy Gleason was there  
16 or not.

17 Q Well, to your knowledge, then, the correction was  
18 made by Ella Bailey, at her discretion?

19 A Yes, I believe so.

20 Q All right. And there were no other changes on  
21 that particular report, your report of May 18, made by her;  
22 is that correct?

23 A Yes, she made other corrections.

24 Q Not on the same report, apparently; is that right?

25 A Yes, she did.

26 Q Well, do you recall which report she made the  
27 correction "Mary" on? As well as other corrections, if she  
28 did?

1 A On this report.

2 Q Well, you say that that writing, "Mary," is hers;  
3 is that right?

4 A No, I did not say that.

5 Q I'm sorry. Made at her direction?

6 A Yes.

7 Q All right. And this report that I have, then, is  
8 a copy of the report that she directed the change to be made  
9 of; is that correct?

10 A Yes.

11 Q All right. Now, can you show me, on this report,  
12 any other changes in the body of the report, that were made  
13 after you caused the report to be typed up?

14 A Are you speaking of something penciled in, --

15 Q Yes.

16 A -- or do you want me to tell you other things she  
17 told us that were wrong?

18 In other words, things that were penciled in,  
19 such as this "Mary," that was penciled in?  
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1 Q Well, so I understand, at the May 15, 1970 meet-  
2 ing, in Tacoma, did she in fact tell you that they, that is  
3 Mary and Sadie, stated they got \$27 from Hinman and, did she  
4 say, also, Susan showed her the money in her pocket?

5 A Yes.

6 Q All right.

7 All right, now, Sergeant Whiteley, I would like to  
8 refer finally to the two trunks here beside the jury, the foot-  
9 lockers which have heretofore been received in evidence as  
10 65-G and 65-F.

11 Those footlockers, you recovered, and I think we've  
12 discussed before this jury, have we, the fact that you  
13 inventoried their contents; is that correct?

14 A Yes.

15 Q And the inventory that you made up, was made up on  
16 what sort of document?

17 A It was a piece of paper.

18 Q Plain white piece of paper?

19 A I can't remember the color.

20 Q And you noted therein everything that you found in  
21 both of the footlockers and one piece of paper or did you  
22 make a piece of paper up for each footlocker?

23 MR. KAY: Your Honor, I think this has been gone into  
24 already. It has been asked and answered a previous time.

25 MR. DENNY: Not before the jury.

26 THE COURT: I'm not sure. Overruled.

27 THE WITNESS: I inventoried them on one piece of paper  
28 for each footlocker. Each footlocker was listed on one piece

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1 of paper.

2 Q BY MR. DENNY: All right. What did you do with that  
3 piece of paper?

4 A I placed it inside one of the footlockers.

5 Q All right. Then, what did you do with the foot-  
6 lockers?

7 A I transported them ultimately to the sixth floor  
8 to Mr. Katz's office, the District Attorney.

9 Q Mr. Burton Katz, who was on the stand yesterday?

10 A I don't know whether he was on or not.

11 Q All right. The Deputy District Attorney who was  
12 in charge at one point of the prosecution of the combined  
13 Manson, Davis, Atkins, Grogan prosecution; was he not?

14 A Yes.

15 Q All right. And do you recall approximately when it  
16 was that you transported trunks to his office?

17 A No, sir.

18 Q Was it before the Grand Jury hearing, in December,  
19 the 14th, 15th and 16th?

20 A Yes.

21 Q Do you have any recollection as to about how long  
22 before?

23 A No.

24 Q Well, you had recovered these trunks in December of  
25 1969, is that correct?

26 A Yes.

27 Q And the Grand Jury hearing as far as the Shea matter  
28 was in December of 1970, is that right?



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1 A That's correct.

2 Q All right. Do you have any way of stating to the  
3 jury approximately when, within that year period those trunks  
4 were taken by you over to Mr. Katz's office?

5 A No, sir.

6 Q All right. How long were they -- well, did you  
7 recover them from Mr. Katz's office at any time?

8 A Later, yes.

9 Q Approximately how much later, do you know?

10 A I think a week to two weeks.

11 Q A week to two weeks later.

12 And at the time you recovered them, to your knowledge,  
13 was anything -- anything been taken out of the footlockers?

14 A I don't know.

15 Q Well, at the time you got the footlockers --

16 A Wait a minute, I have to say yes.

17 Q Yes.

18 Did you receive with them a box, a cardboard box,  
19 a carton of some sort?

20 A I had that already.

21 Q When did you get that in relationship to the time  
22 that you took these footlockers into Mr. Katz's office?

23 A December 10, I believe it was, of 1969.

24 Q Was this a separate container, then, containing  
25 things that had been recovered from inside the trunk of the  
26 car or other areas of the car?

27 A Yes.

28 Q Both the trunk and other areas?

1 A Yes.

2 Q These were documents, letters and things?

3 A Yes.

4 Q All right. Had you taken those over to Mr. Katz's  
5 office at the same time you took the trunks?

6 A No.

7 Q Before?

8 A Hmmm.

9 Q Or after?

10 A I can't remember whether it was before or after.  
11 But at some time I did take the box up. Also, the cardboard  
12 box.

13 Q All right.

14 The items in the cardboard box, were any of those  
15 items items that you had taken out of the footlockers and  
16 placed into the box?

17 A Yes.

18 Q And what items had you taken out of the footlockers  
19 and placed into the box?

20 A Uh, there were the photographs, which I believe have  
21 been put into evidence here, or the negatives. Some business  
22 cards and some receipts. That's all I can recall.

23 Q Do you recall what kind of receipts?

24 A No, sir, I can't. I remember something from Las  
25 Vegas.

26 Q All right. Now, directing your attention, then, to  
27 this blue suitcase which has heretofore been received in  
28 evidence.

1 MR. KAY: It is in the 65 series.

2 I think it is. Apparently the tag has somewhere  
3 disappeared.

4 Anyway, we've only got one blue suitcase.

5 THE COURT: 65-H.

6 Q BY MR. DENNY: 65-H.

7 Now, this is the suitcase which was delivered to  
8 you sometime after February 20 of 1970, is that correct?

9 A Yes.

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1 Q And do you recall approximately when you got it  
2 after February 20?

3 A About the 22nd.

4 Q All right. And did you take that suitcase over  
5 to Mr. Katz' office at any time?

6 A Yes.

7 Q Before, at the same time, or after you took the  
8 two footlockers over there?

9 A I can't recall whether it was there before or  
10 after, but they were all there together.

11 Q Do you recall for how long they were there together?

12 A No. A week, maybe. I can't recall.

13 Q All right. And they were out of your care, custody  
14 and control during that entire period of time; is that correct?

15 A Yes.

16 Q All right. Did you then pick them all up, the  
17 three of them together, and transport them back to Homicide?

18 A Yes.

19 Q Or back down -- at that time was it --

20 A Yes.

21 Q -- in this same building?

22 A Yes.

23 Q All right. And did you, Sergeant Whiteley, check  
24 any sort of inventory at that time to determine whether every-  
25 thing was in each of the containers, in each of the footlockers  
26 and the blue suitcase, the same as when you had brought it  
27 into Mr. Katz' office?

28 A I looked for my inventory slip in the lockers and

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1 I couldn't find it. But I did not check to see that every-  
2 thing was the way that I had taken it up there.

3 Q All right. You just then took --

4 A In fact, I knew that everything wasn't the same  
5 as while they were on the sixth floor. Everything was taken  
6 out of the footlockers and photographed.

7 Q Were you present when those things were photographed?

8 A I don't believe so.

9 Q Those photographs, to your knowledge, however,  
10 were photographs which were introduced before the Grand Jury  
11 in lieu of the footlockers and the contents themselves; is  
12 that correct?

13 A I don't know, but I saw some photographs of the  
14 footlockers and the contents hanging on the sides of it.

15 Q And it was after these photographs had been taken  
16 that you took the footlockers back down to Homicide on the  
17 third floor here, Sheriff's Homicide; is that right?

18 A Yes.

19 Q From that time until they were introduced in  
20 evidence in one of the companion cases to this case, did you  
21 in any way attempt to inventory the contents of either of the  
22 two footlockers or the blue suitcase?

23 A No. I took them directly to the Grand Jury or to  
24 whatever court proceedings was the next one, where they were  
25 required.

26 Q Fine.

27 All right. Thank you very much. I have no  
28 further questions.

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1 MR. KAY: I have no questions.

2 THE COURT: You may step down.

3 MR. KAY: May Sergeant Whiteley be excused?

4 THE COURT: Yes, he may be.

5 MR. DENNY: Yes, he may be. Thank you, Sergeant  
6 Whiteley.

7 Your Honor, I have spoken to Mr. Kay, and I  
8 believe he will agree to stipulate that insofar as the  
9 testimony that has been read by either side of any prior  
10 proceeding, trial, Grand Jury hearing, that the matters  
11 read by either the prosecutors or myself have been from the  
12 official transcripts of those proceedings.

13 MR. KAY: So stipulated.

14 THE COURT: Accurately reflects the record of those  
15 proceedings?

16 MR. DENNY: So stipulated.

17 MR. KAY: Yes, so stipulated.

18 MR. DENNY: Your Honor, at this time, the defense  
19 rests.

20 THE COURT: People?

21 MR. KAY: We call Deputy Chamousis.

22 MR. DENNY: Your Honor, may I have one moment before  
23 the deputy takes the stand? I have to go outside with the  
24 witness.

25 THE COURT: Yes, you may.

26 (Whereupon, Mr. Denny retired from the courtroom,  
27 returning shortly, and the following proceedings were  
28 had:)

1 THE CLERK: Please raise your right hand and be sworn.

2 You do solemnly swear the testimony you may give  
3 in the cause now pending before this court shall be the  
4 truth, the whole truth, and nothing but the truth, so help  
5 you God?

6 THE WITNESS: I do.

7 THE CLERK: Please take the stand.

8 Please state your name for the record and spell  
9 your name.

10 THE WITNESS: Peter Chamousis, C-h-a-m-o-u-s-i-s.

11  
12 PETER CHAMOUSIS,  
13 called as a witness in rebuttal by the People, having been  
14 first duly sworn, was examined and testified as follows:

15  
16 DIRECT EXAMINATION

17 BY MR. KAY:

18 Q Deputy Chamousis, did you find the second latent  
19 print that Mr. Denny asked you to find?

20 A Yes, I did.

21 Q All right. And do you have that?

22 MR. KAY: Your Honor, I'd ask that this latent print  
23 be marked as People's next in order.

24 MR. DENNY: Well, might I see it?

25 MR. KAY: Certainly.

26 THE COURT: It would be 112 for identification.

27 MR. KAY: 112.

28 Q Deputy Chamousis, could you pull that microphone

112 id.

1 just a little closer?

2 A (Witness complied.)

3 Q Thank you.

4 THE COURT: Did you determine, Deputy Chamousis, whether  
5 this was a second lift from the same latent print or was this  
6 a separate lift from a second print?

7 THE WITNESS: It was a second -- I mean, it was a  
8 separate lift, your Honor.

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1 THE COURT: On a second print?

2 THE WITNESS: Yes, sir.

3 Q BY MR. KAY: And in relation to where you got the  
4 first lift from, Deputy Chamousis, where did you get this  
5 second lift, People's 112?

6 A It was right adjacent of the other lift, within  
7 maybe six inches.

8 Q Okay. Now, other than the two lifts, the one you  
9 first testified to, which I believe was People's 85, and this  
10 lift, People's 112, did you find any other latent fingerprints  
11 or palm prints on either one of the two footlockers?

12 A No, sir.

13 Q All right. Now, did you have a chance to compare  
14 this lift, People's 112, with the fingerprint exemplar card  
15 marked -- well --

16 THE COURT: 86-A.

17 Q BY MR. KAY: -- the prints of the person referred  
18 to as Bruce Davis on those cards? Did you have an occasion to  
19 compare those prints with this lift?

20 A Yes, I did.

21 Q Did you form an opinion as to whether or not this  
22 print was made by the same person that made those exemplar cards  
23 and made the other latent print?

24 A Yes, I did.

25 Q What's that opinion?

26 A In my opinion, this latent fingerprint is also the  
27 same portion of the palm as the other print that I lifted off  
28 the trunk.

1b-2

1 Q And is it made by the same person?

2 A Also made by Bruce Davis.

3 Q Did you remove this latent -- well, how did you  
4 remove this latent print, People's 112?

5 A I applied powder, fingerprint powder to the same  
6 part of the footlocker, applied tape to the footlocker and lifted  
7 it off the footlocker and placed it on this card.

8 Q Is this the actual lift?

9 A That is the actual lift.

10 Q In other words, I notice tape on this card.

11 Did you take the actual lift and put it on this  
12 card?

13 A I did.

14 Q Then, you filled out the top part of the card?

15 A I did.

16 MR. KAY: Your Honor, I ask at this time that People's  
17 112 be admitted into evidence.

18 MR. DENNY: Well, may we reserve ruling on that until I've  
19 had a chance to cross examine?

20 THE COURT: Yes.

21 MR. KAY: All right, I have no further questions.

22  
23 CROSS EXAMINATION

24 BY MR. DENNY:

25 Q Now, Deputy Chamousis -- excuse me just a moment.

26 MR. KAY: Well, excuse me, I do have one question that I  
27 forgot.

28 DIRECT EXAMINATION (Continued)

CROSS

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1b-3

1 BY MR. KAY:

2 Q Deputy Chamousis, how many points of comparison did  
3 you find between that latent lift, People's 112, and the  
4 fingerprint exemplar used in court here as the exhibit?

5 A I counted 16 points on this one.

6 MR. KAY: Thank you, I have no further questions.

7 THE COURT: Cross examination.

8 MR. DENNY: Yes.

CROSS

## CROSS EXAMINATION

10  
11 BY MR. DENNY:

12 Q Deputy Chamousis, is there some particular reason  
13 why, if there were 16 points of identification on this  
14 particular print, you didn't make up the same type of exhibit  
15 showing the comparison of that print with an exemplar as you  
16 made with People's 85, the latent lift, comparing it with the  
17 exemplar?

18 A To the best of my recollection, Counsel, we felt  
19 that one print of the same palm was enough to make an exhibit  
20 rather than two. Two would prove no more than one.

21 Q Well, the prints were rather different, weren't  
22 they?

23 A No, they were the same portion of the same palm,  
24 sir.

25 Q All right. Now, when you say they were the same  
26 portion of the same palm, what portion of the palm were they?

27 A The portion just below the right little finger. I  
28 think it is called the hypothenar portion of the palm.

1 Q Well, now, when you say just below, there's a  
2 portion on a hand of about three to four inches below.

3 What portion within that three to four inches are  
4 you talking about that you say is the same palm print on each  
5 of these prints?

6 A It would be the portion just above the wrist,  
7 within two inches.

8 Q Within two inches of the wrist here (indicating)?

9 A Yes, sir.

10 Q On the right hand outer portion of the hand, is  
11 that right?

12 A Yes, sir.

13 Q All right.

14 Now, on these lifts I note there appears to be --  
15 taking People's 85 first, a marked line, demarcation of about,  
16 oh, a sixteenth of an inch where there is nothing, a very  
17 distinct definite line; is that correct?

18 A Yes, sir.

19 Q What is that from?

20 A To me, I would say, it could be a portion of the  
21 footlocker that didn't appear on the tape. It was a crevice  
22 or ridge. I assume it was a crevice.

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1 Q Well, showing you the footlockers. There is  
2 obviously a top and a bottom, and where there's the demarca-  
3 tion between the two.

4 A That's probably what it is, is where the lid joins  
5 the side of the trunk or the other part of the trunk or the  
6 footlocker.

7 Q All right.

8 THE COURT: You're speaking now of the latent lift?

9 THE WITNESS: They both have them, your Honor.

10 MR. DENNY: We're speaking specifically of 85.

11 THE COURT: Of 85, the one that's been admitted into  
12 evidence as 85.

13 Q BY MR. DENNY: Now, again, that which has been  
14 marked for identification as People's 112 has the same type  
15 of line going through it, is that correct?

16 A Yes, sir.

17 Q And in your opinion, that means, then, that it  
18 was placed somewhere also along that area?

19 A Yes, sir, that's what I assume.

20 Q All right. Now, insofar as the fact that you  
21 say -- or your statement that these are of the identical  
22 portion of the right hand, is there some way that you can  
23 show, mark in any way, exactly which direction and where  
24 People's 112 would fit to match up with People's 85?

25 A I'm not sure that the two palms would exactly  
26 match. I wouldn't know how to describe this, but to me this  
27 is approximately how the two would look (indicating).

28 MR. DENNY: Well, your Honor, I wonder if we could get

1c-2

1 a folder to put People's 112 in, and perhaps we could have  
2 him mark a point, at least one point of identification which  
3 he says he can make from the latent out to the folder?

4 THE COURT: All right, Estelle, would you arrange this,  
5 People's 112, similarly as this is arranged (indicating).  
6 Just -- you needn't have the identifying marks, just hurriedly  
7 tape it to the folder.

8 THE WITNESS: Could I have a couple of paper clips?

9 MR. DENNY: Surely.

10 Q By the way, while you're getting ready to work on  
11 this, I note that on 112 there appears to be a particularly  
12 smudged area on the left-hand portion of the lift; is that  
13 correct?

14 A Yes, sir.

15 Q And looking at the particular smudge, can you  
16 tell what caused that smudge that way?

17 A No, sir.

18 Q Can you tell from looking at that whether that  
19 smudge was made by the hand itself, at the time the print  
20 was laid down or whether it was made by some other hand at  
21 some other time?

22 A There doesn't appear to be any other print on  
23 there at that -- at this point. It could be either the  
24 palm smearing across or some foreign substance in there that  
25 kept the palm from leaving a latent impression on the trunk,  
26 on the footlocker.

27 THE COURT: Again, you're speaking -- you were looking  
28 at 112 for identification?

1c-3

1 MR. DENNY: Yes, sir.

2 THE WITNESS: Yes.

3 Q BY MR. DENNY: Now, you say some foreign  
4 substance prohibiting the print from being laid down, you  
5 mean that there would have been either some substance on the  
6 footlocker itself that inhibited the impression being made  
7 by the palm or some foreign substance on the hand?

8 A I would say on the trunk rather than on the  
9 hand.

10 Q It is your opinion, then, looking at that, that  
11 that smudge did not occur after the print was laid down there?

12 A I have no way of knowing that, sir.

13 Q Well, that's what I was trying to get at.

14 You're hypothesizing several hypotheses, but you  
15 have no way of knowing which hypothesis is correct?

16 A No, I don't.

17 Q All right. So it might have been something on  
18 the hand or something on the trunk inhibiting a print from  
19 being properly laid down or it might have been some other  
20 hand or some other thing rubbing the print; is that right?

21 A Yes, sir.

22 Q After it had been laid down, is that right?

23 A After or before, I have no way of knowing.  
24 There's no way of definitely making a statement as to when or  
25 how.

26 Q All right. And as far as the type of substance  
27 which may have been on the hand at the time the print was  
28 laid down, is it true that you don't have any way of determining

1 merely from looking at the latent that you got, whether that  
2 hand or whether that print was made solely by the impression  
3 made from the amino acids, et cetera, from the pores of the  
4 skin or whether the print was laid down, say, by some oil  
5 of the face or hair or even motor oil or grease or something  
6 like that on the hand?

2 fls.

7 A I have no way of telling what the substance was.  
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1 Q All right. Would you, if you can, indicate for the  
2 help of the jury, just in lining them up, perhaps two points  
3 of identification that you could say correspond on the two?

4 (Pause in the proceedings while the witness  
5 perused various portions of the exhibit.)

6 THE WITNESS: Can I remove this?

7 THE COURT: Yes. You can do whatever you wish to with  
8 it.

9 You can take 85 off the sheet, if you need to, in  
10 order to accomplish it.

11 (Further pause in the proceedings while the witness  
12 perused the exhibits.)

13 THE WITNESS: Well, one is clear in one spot, and one is  
14 clear in another spot.

15 (Further pause in the proceedings.)

16 THE COURT: We'll give you a break, ladies and  
17 gentlemen.

18 During the next few minutes, perhaps, Officer  
19 Chamousis, you can work with those two exhibits.

20 THE WITNESS: Yes, sir.

21 THE COURT: And we'll take a recess now for approximately  
22 15 minutes.

23 During the recess, you are obliged not to converse  
24 amongst yourselves nor with anyone else, nor permit anyone to  
25 converse with you on any subject connected with this matter, nor  
26 to form or express any opinion on it until it is finally  
27 submitted to you.

28 You can thank Mr. Kuczera for this recess. I had

1 kind of forgotten that you had been sitting there for so long.

2 (Whereupon, the members of the jury exited the  
3 courtroom, and the following proceedings were had:)

4 \* THE COURT: Mr. Denny, the jury's left now. The Court  
5 has ordered Mr. Grogan and Mr. Manson --

6 MR. DENNY: Yes.

7 THE COURT: -- back to their respective locations,  
8 Tracy and San Quentin.

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

10 THE COURT: And they're being transported right now.

11 MR. DENNY: That's fine.

12 (Mid-morning recess.)

13 THE COURT: All right. People versus Davis? The jurors  
14 are all present. The defendant is present.

15 Mr. Chamousis, have you accomplished the marking of  
16 the two --

17 THE WITNESS: Yes, sir. Fortunately, we have photo-  
18 graphs of these latents, so we won't have to -- these holes I  
19 am putting in them don't do them any good.

20 But we can always make another exhibit with the  
21 photographs.

22 THE COURT: I don't understand. You have some photo-  
23 graphs of the latents, 112 for identification and 85?

24 THE WITNESS: Yes, sir, I do.

25 THE COURT: And you have utilized the photographs to  
26 mark --

27 THE WITNESS: Make the points?

28 THE COURT: -- the points of -- the identical points on

1 85 and 112?

2 THE WITNESS: No, your Honor, I used the actual latent.

3 THE COURT: Oh, I see.

4 THE WITNESS: I used the actual latent (indicating).

5 THE COURT: What did you do, make a hole in the latent --

6 THE WITNESS: Well --

7 THE COURT: -- in each case?

8 THE WITNESS: -- I put small holes in it. See, you can  
9 see by the -- on the back of the latent the tiny pinholes.

10 THE COURT: All right.

11 MR. KAY: Courtesy of Miss Briandi, her pins.

12 THE WITNESS: I'm afraid I've dismantled all --

13 THE COURT: State your name again, please, for the  
14 record.

15 THE WITNESS: Peter Chamousis; C-h-a-m-o-u-s-i-s.

16 THE COURT: You have put what, two points on each one?

17 THE WITNESS: Three points of identification on each  
18 one.

19 THE COURT: All right. Mr. Denny, you may proceed.

20 MR. DENNY: May I, your Honor?

21 I'm beginning to feel like Hawkshaw.

22 THE WITNESS: If you hold it up to the light, you can  
23 see the --

24 Q BY MR. DENNY: Now, are the points that you have  
25 marked, Mr. Chamousis, by placement of pinholes, are they what  
26 you would call Points of identification, or points of similar-  
27 ity?

28 A Yes, they are.

1 Q All right. Now, unfortunately, we don't have  
2 blowups here of --

3 A Yeah, we do, of one of them.

4 Q -- of 112, in particular.

5 A Yeah.

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1 Q But taking the top point, it appears to be sort  
2 of a triangle, with one point at the top, and two smaller  
3 points at what you might call the base of an isosceles  
4 triangle; is that right?

5 A The top point I marked is a bifurcation to the  
6 left, and I think it -- it has a small ridge right adjacent  
7 to it.

8 And then five ridges down, there's a bifurcation  
9 to the right; and then two ridges down is an ending ridge  
10 to the left.

11 Just -- you just jig-jag all the way down the  
12 line.

13 Q All right. And so with those three points as  
14 points of reference, you indicated that having had a little  
15 more time, and a little better lighting conditions, perhaps,  
16 you were able to discern 16 points of identification between  
17 People's 112 and People's 85; is that correct?

18 A No, between -- the 15 points I confirmed were  
19 between the 112 and the exemplar; not this latent.

20 Q Oh. I see. And which exemplar? The one that  
21 you rolled, or the one --

22 A The other one --

23 Q -- that Deputy Sher- --

24 A Mr. Hearn's.

25 Q Or Mr. Hearn's.

26 And you can spell "Sher" any way you want.

27 (Laughter.)

28 All right, again, as far as this particular --

2a-2

1 the 112, you have no way of determining even whether that  
2 was laid down at the same time as 85, do you?

3 A No, sir.

4 Q And finally, you have no way of determining how  
5 old 112 is; is that right?

6 A That's right.

7 Q It could be as much as four, five or even six  
8 months old?

9 A I have no way of knowing, sir. That's all we can  
10 say.

11 Q Well, you can say, based on your experience,  
12 reading, et cetera, as an expert in the field, that prints  
13 have lasted, latent prints have lasted up to five, six or  
14 seven months, from the time they were placed down; is that  
15 right?

16 MR. KAY: Well, that's irrelevant, your Honor. We  
17 don't know the facts under which -- if this is true -- under  
18 which they might have lasted.

19 THE COURT: It's outside the scope of the direct.

20 MR. DENNY: Well, this again goes to his expertise,  
21 your Honor.

22 MR. KAY: I object, as outside the scope and irrelevant.

23 THE COURT: Sustained.

24 MR. DENNY: All right. I have no further questions.

25  
26 REDIRECT EXAMINATION

27 BY MR. KAY:

28 Q Mr. Chamousis, again, you testified that the two

2a-3

1 prints -- the two latents that you got off of the trunk,  
2 People's 85 and 112, were within six inches of each other.  
3 Do you know -- do you remember exactly where they were on the  
4 trunk, in relation to each other? Or, on the footlocker, in  
5 relation to each other?

6 A Just that they were next to the strap.

7 From looking at the trunk now, I would make an  
8 assumption, but -- but I don't remember --

9 Q Well, you just --

10 THE WITNESS: I just knew that they were next to the  
11 strap.

12 Q BY MR. KAY: All right. And they were within  
13 six inches of each other?

14 A Fairly close, yes, sir.

15 MR. KAY: All right. I have no further questions.

16 THE COURT: Anything more?

17 MR. DENNY: No, your Honor.

18 THE COURT: You may step down, and you are excused.

19 THE WITNESS: I have these all dismantled, your Honor,  
20 so --

21 THE COURT: All right. We'll put them back together.  
22 Thanks.

23 MR. KAY: The People rest, your Honor.

24 MR. DENNY: The defense also rests, your Honor.

25 THE COURT: The Court can excuse you now, ladies and  
26 gentlemen, until Tuesday morning.

27 And I wish you a happy holiday, the three days.  
28 And I will see you at 9:30 on Tuesday morning.

1 MR. KAY: Your Honor, excuse me. Could we approach  
2 the bench a minute?

3 THE COURT: Yes.

4 The Court orders you, in the meantime, to stay  
5 in good health.

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6 (Laughter.)  
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1 (Whereupon, proceedings were had at the bench  
2 among Court and counsel, outside the hearing of the jury, which  
3 were not reported.)

4 THE COURT: I should like to ask you, instead of 9:30,  
5 to be present at 9:00 o'clock. I will -- I have 16 matters on  
6 the calendar, other matters on for that morning, but what I will  
7 do is, those -- when lawyers are not present -- generally,  
8 what delays us, is that lawyers don't come in until 9:15, 9:20.  
9 The Deputy Public Defender has matters in other courts. Lawyers  
10 have other matters in other courts. So it's difficult to  
11 assemble everybody and get going.

12 What I will do is call this at 9:15, and anybody or  
13 anything that straggles in after we've commenced this case, I'll  
14 set over until the afternoon.

15 We will start at 9:15, and then hear argument from  
16 Mr. Manzella, and we will resume at 2:00 o'clock.

17 At 1:30, one of the members of the jury has an  
18 appointment, but I think that he can be back here by 2:00  
19 o'clock.

20 So, we can work it out that way. At any event,  
21 I'll see you at 9:15 on Tuesday morning.

22 During the recess, you are admonished not to converse  
23 amongst yourselves nor with anyone else, nor permit anyone to  
24 converse with you on any subject connected with the matter, nor  
25 form or express any opinion on it until it is finally submitted  
26 to you.

27 Remember your obligation not to expose yourselves  
28 to any publicity concerning this case, Mr. Manson or the Manson

1 Family.

2 See you on Tuesday.

3 (Whereupon, at 11:40 A. M., the members of the jury  
4 exited the courtroom, and the following proceedings were had:)

5 THE COURT: Well, gentlemen, I'll see you in chambers,  
6 and we will talk about instructions --

7 MR. DENNY: Your Honor, I have a couple of motions to make  
8 at this time.

9 THE COURT: -- to clear the way for Tuesday.

10 Off the record.

11 (Whereupon, proceedings were had among Court and  
12 counsel, in open court, which were not reported.)

13 THE COURT: All right. Back on the record.

14 MR. DENNY: Your Honor, I would like to make two motions  
15 at this time.

16 THE COURT: All right. The Court will hear you.

17 MR. DENNY: The first is to strike all of the overt  
18 acts alleged in Count II of the indictment, on the basis of the  
19 fact that there is no evidence to support them.

20 And if I can find my copies of the indictment,  
21 I can --

22 THE COURT: The first overt act alleged is that on July  
23 25th, Davis, Atkins and Beausoleil traveled to the vicinity  
24 of 964 Old Topanga Road, Malibu.

25 MR. DENNY: That is correct, your Honor. The only party  
26 who has testified for the People on the subject at all was  
27 rather specific and rather pointed, again, and rather direct,  
28 in that she did not see who was in the car with Beausoleil,

1 Atkins and Brunner when, as she says, she saw the car drive  
2 away -- even assuming you believe her testimony that -- and, for  
3 the sake of this argument, let's assume that -- that she was at  
4 the corral, and the car passed within ten to fifteen feet of  
5 her.

6 And assuming that, and assuming that she could not  
7 identify the party, I do not think that there's any -- either  
8 evidence or inference that can be drawn that it was Mr. Davis,  
9 since there were many other males around the ranch at the time.

10 THE COURT: The People?

11 MR. KAY: Excuse me. Could I see -- I don't have my  
12 copy with me.

13 THE COURT: It says that on or about July 25th, defendants  
14 Davis, Atkins and Beausoleil traveled to the vicinity of 964  
15 Old Topanga Canyon Road.

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1 MR. KAY: I think that certainly the inference can  
2 be drawn that Mr. -- well, No. 1, she saw Atkins and  
3 Beausoleil, so there is no problem there. She described  
4 that in her testimony, that they were in the car.

5 Now, as far as Mr. Davis is concerned, she said  
6 she didn't recognize the driver. However, shortly afterward  
7 she saw the car again, about 45 minutes later, and Mr. Davis  
8 was standing right by the car and there was nobody else and--

9 MR. DENNY: No, your Honor.

10 MR. KAY: -- in the area.

11 MR. DENNY: Excuse me, that was not her testimony.  
12 Her testimony was -- and it was very brief in that regard,  
13 again, very specific, that Mr. Davis was in the vicinity,  
14 in the parking area, but not that he was right by the car.  
15 Simply that he was in the vicinity, in the large parking  
16 there in front of the boardwalk of the Spahn Ranch. Again,  
17 which is occupied and was occupied and often occupied by  
18 many, many people.

19 MR. KAY: Well, again --

20 MR. DENNY: So that that is not evidence that he  
21 drove the car there. There is no evidence before this  
22 Court, and there is specifically a -- almost denial of any  
23 such evidence by her very specific statement that she did  
24 not see who that fourth person was, could not identify, would  
25 not identify the fourth person in the car. There is no  
26 evidence that it was Bruce Davis and the overt act is very  
27 specific, "Bruce McGregor Davis and Susan Denise Atkins  
28 and Robert Beausoleil did travel to the vicinity of 964 Old

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1 Topanga Canyon on July" --

2 THE COURT: I'll hear from the People after you've had  
3 a chance to review that evidence, Mr. Kay.

4 What is your comment in respect to overt act No.  
5 2?

6 MR. KAY: Excuse me, may I make a brief response?

7 Again, I think this is a matter for the jury to  
8 determine, the three overt acts.

9 THE COURT: This is, I think, in the form of a motion  
10 1118.1 in respect to the count.

11 MR. DENNY: Well, your Honor, that motion will follow.  
12 I'm trying to take it a step at a time.

13 THE COURT: This is part of the argument, I would  
14 suppose, in connection with that, because I would think that  
15 whole count should fall in the event none of the overt acts  
16 are shown.

17 MR. DENNY: That is correct, your Honor, obviously.

18 THE COURT: Go ahead.

19 MR. DENNY: All right.

20 As to overt act No. 2, that overt act again  
21 is very specific and it is joined in the conjunctive, not  
22 the disjunctive.

23 THE COURT: Is that on or about July 26th, Defendant  
24 Manson, Atkins and Bruce Davis did enter the residence at  
25 964 Old Topanga Road?

26 MR. KAY: I think that's -- no question that that one  
27 has been shown by Mr. Davis' own confession that when he and  
28 Manson went there, that Bobby --

1 THE COURT: Can you show an overt act by confession or  
2 admission?

3 MR. KAY: I am aware of no cases to the contrary. If  
4 Mr. Denny has any such cases --

5 THE COURT: Is it like the corpus delicti of a crime  
6 in that you can't show the corpus by the admission or confes-  
7 sion?

8 MR. KAY: I certainly wouldn't think so as far as overt  
9 acts are concerned.

10 MR. DENNY: I submit to the contrary, your Honor, and  
11 I have not been able to find any case on point either way  
12 that this has been brought up.

13 THE COURT: You have not?

14 MR. DENNY: I have not specifically been able to find  
15 any case that says that the overt act must be independently  
16 established.

17 I feel, however, that it is exactly like --

18 THE COURT: Well, you don't have -- you really don't  
19 have a corpus of a conspiracy.

20 MR. DENNY: The rule is -- that is correct.

21 THE COURT: Has to be established separate and apart  
22 from the confession or admission, and you don't have the  
23 corpus of the conspiracy unless you have at least one overt  
24 act.

25 MR. DENNY: That is correct.

26 THE COURT: It looks to me as if it would fall within  
27 that rule of law that would require it to be proved independently  
28 of an admission or confession. You might have to spend your

1 lunch hour looking at --

2 MR. KAY: Well, Mr. Denny says he's found no cases  
3 either way. I'm sure if that was the law, there would be  
4 some.

5 THE COURT: What's the matter with the Court's reason-  
6 ing with respect to the last statement?

7 MR. KAY: I think an overt act --

8 THE COURT: You can tell me when you resume argument.

9 All right, you concede there is no independent --  
10 aside from an admission or confession, there's no evidence  
11 of Davis having gotten on that residence on July 26th.  
12 He states he was there, puts himself there holding the gun  
13 on Manson --

14 MR. KAY: On Hinman.

15 THE COURT: -- on Hinman while Manson struck the blow.

16 MR. KAY: I think that's probably correct, but I'll  
17 think about it over the lunch hour.

3a fls.

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1 THE COURT: I don't recall any independent testimony with  
2 respect to that.

3 All right, as to overt act number three.

4 MR. DENNY: Finally, as to overt act number three, on or  
5 about July 26, the defendants Charles Manson and Bruce  
6 McGregor Davis did drive away from 964 Old Topanga Road in a  
7 Fiat automobile owned by Gary Hinman.

8 There is no evidence, whatsoever, on that. The only  
9 evidence is that Gary Hinman owned a Fiat automobile.

10 And there was evidence from Ella Bailey that on  
11 Monday, the 28th of July, in the morning, after she came down  
12 from the hills, she saw that Fiat automobile parked in the  
13 parking area in front of the boardwalk.

14 THE COURT: She didn't see it being driven in, did she?

15 MR. DENNY: She did not. And there is testimony --

16 THE COURT: I don't recall that she did in this trial.

17 MR. DENNY: There is no such testimony, your Honor.

18 THE COURT: All right, so the same thing existed. It  
19 can be put together by confessions or admissions --

20 MR. DENNY: No, there isn't even any confession or  
21 admission on that subject, whatsoever.

22 THE COURT: None here?

23 MR. DENNY: There is no statement.

24 THE COURT: Do you recall, Mr. Kay?

25 MR. DENNY: No statement at all concerning the driving  
26 of the automobile.

27 THE COURT: That may be true. There are some inferences  
28 that can be taken from statements.



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1 MR. DENNY: No, there is no inferences taken from  
2 statements by Ella Jo Bailey purporting to say from Mr. Davis.

3 THE COURT: Concerning the automobile?

4 MR. DENNY: That is correct. There is nothing. Nothing  
5 said about how they got there, nor how they got back.

6 THE COURT: All right, I'll hear from you on that.

7 Here's another point, assuming the Court should  
8 strike Count II, what does that do to statements that were  
9 admitted on the theory that a conspiracy existed, admitted  
10 against Davis on the theory that a conspiracy existed?

11 MR. KAY: It wouldn't do anything.

12 THE COURT: What's that do to your first Count?

13 MR. KAY: It does nothing, because we can proceed on a  
14 conspiracy theory on a murder Count without alleging it. And  
15 if we don't allege a conspiracy, obviously, we don't have to  
16 allege any overt acts.

17 THE COURT: If you do allege it and then can't establish  
18 it, where does that put you in respect --

19 MR. KAY: I don't think -- I say we have established  
20 at least one of those overt acts and, therefore, Count II should  
21 not be stricken. But even assuming that we haven't, that  
22 doesn't do anything to Count I, because we don't have to charge  
23 a conspiracy; whether we do or we don't, doesn't make any  
24 difference. It is up to the jury, I think, to decide whether or  
25 not there was a conspiracy.

26 THE COURT: Well, I'll hear from you on it.

27 Your 1118 motion -- do you want to be heard on that?

28 MR. DENNY: Well, I would like to put that over, if I can,

1 until the Court has ruled on this, because obviously I think it  
2 would have some bearing on that.

3 THE COURT: Well, aside from any points that might arise  
4 as a result of that decision one way or the other, I think the  
5 Court would utilize the next five minutes to hear from you in  
6 respect --

7 MR. DENNY: All right, your Honor, I think I can be  
8 reasonably brief on that.

9 The Court has already heard a good deal of argu-  
10 ment made previously, and the only additional that can be said  
11 at this time, and specifically as to Counts I and II, is the  
12 fact that now, in substantive evidence, are the statements  
13 attributed to Miss Bailey by Sergeant Whiteley who overheard  
14 them in the May 15th and 16th, 1970 conversations up in  
15 Tacoma. They are now in substantive evidence. And I think  
16 that based on that testimony, it does show that as a matter of  
17 law she was an accomplice. She advised, encouraged, instigated --  
18 And those are the words of the sections concerning accomplices  
19 -- the robbery, if not the murder of Gary Hinman and the  
20 conspiracy involved therein.

21 Now, the People are going to be in an interesting  
22 situation, it seems to me, if they say to me, well, we can get  
23 in statements, even though the Court might kick out the  
24 conspiracy Counts, we can get in the statements against  
25 Mr. Davis because there was a conspiracy and we don't even  
26 have to allege it. All we have to do is prove it.

27 If they then continue to proceed on the conspiracy  
28 theory, which apparently they want to do, then, they have to

1 take the bad with the good. And that is, is Miss Bailey one  
2 of the co-conspirators and, therefore, equally guilty of the  
3 murder that they allege Mr. Davis is guilty of.

3b fol

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1 If they're going to proceed that way -- and I  
2 submit, your Honor, that under all the conspiracy law, it is  
3 established by substantive evidence, no matter what she says  
4 to the contrary. The last time we argued this, Mr. Kay said,  
5 yes, but she's not guilty of being an accomplice because she  
6 said she wasn't guilty of being an accomplice. That's like  
7 any defendant saying, "I'm not guilty of the crime." If there's  
8 evidence to show this, this and this, no matter how much they  
9 protest to the contrary, they're guilty. And if there's evidence  
10 to disclose the necessary factors to establish the status of  
11 either a co-conspirator or accomplice or principal, no matter  
12 what the party says from the witness stand that I'm not, as  
13 a matter of law, the facts are that they are.

14 So in this case, I submit that as a matter of law  
15 the facts establish that she is a co-conspirator in any  
16 conspiracy that the People allege either formally or informally  
17 which there was, to rob Gary Hinman.

18 THE COURT: The Court can't see that. The Court believes  
19 that even though there are discrepancies in her testimony and  
20 inconsistencies, that depending on the view taken of -- I  
21 grant you that there is room for your argument, but even on the  
22 view -- even with your view, the Court believes that it is  
23 lacking the necessary elements to show that she's an accomplice  
24 as a matter of law.

25 MR. DENNY: Well, your Honor, --

26 THE COURT: I don't know, I can't interpret anything  
27 more to your view than what you've said.

28 MR. DENNY: Your Honor --

3b-2  
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1 THE COURT: Nevertheless, the Court has heard this  
2 evidence, has weighed it, and the Court believes and does  
3 find that she is not an accomplice as a matter of law.

4 MR. DENNY: Well, your Honor, let me, if I may, just  
5 briefly --

6 THE COURT: Well, the Court doesn't want to dwell on  
7 that point any longer. And I think you've made your record  
8 in connection with it. And if what you say is true, the Court  
9 can regard as substantive, and must regard it as substantive,  
10 if it believes it is true, the statements which are attributed  
11 to her as prior inconsistent statements.

12 Nevertheless, the Court finds she is not an  
13 accomplice as a matter of law.

14 Any other point?

4 fls.

15 That's the hinge of your 1118.1 motion?  
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1 MR. DENNY: That is the hinge of it, your Honor, insofar  
2 as Counts I and II are concerned.

3 I think that there's no further evidence that was  
4 presented insofar as Count III is concerned; and for that  
5 reason, obviously, the Court's ruling would necessarily be the  
6 same, but --

7 THE COURT: All right. We'll hear from Mr. Kay as to  
8 what his response is in respect to Count II, and as to -- it's  
9 difficult for me to think of the instances right now, but I'm  
10 sure there were many, wherein statements have been admitted in  
11 respect to Count I, which would come in as a result of the  
12 conspiracy theory.

13 What if this Court does dismiss Count II? What does  
14 that do to those statements? Should they not now be stricken?

15 MR. KAY: Well --

16 THE COURT: I don't want to hear from you right now. I'll  
17 hear from you after you have given some thought to it. And I  
18 will give you a chance to --

19 MR. KAY: All right. But just briefly, no statements of  
20 those types were admitted on Count I. In other words, there was  
21 never --

22 THE COURT: That may be true.

23 MR. DENNY: Oh, your Honor, they clearly were.

24 THE COURT: Pardon?

25 MR. DENNY: I said: They clearly were. All of the  
26 statements that -- at Devil's Canyon --

27 THE COURT: The Court was about to say that --

28 MR. DENNY: -- were admitted on that theory.

1 MR. KAY: Well, except there was never an objection from  
2 Mr. Denny, and then us stating that we were admitting them --  
3 or offering them on a conspiracy theory.

4 MR. DENNY: There certainly was.

5 THE COURT: I think there was, and both of those things  
6 occurred.

7 MR. KAY: No.

8 THE COURT: I think there might have been objections by  
9 Mr. Denny --

10 MR. DENNY: And lengthy argument, to boot --

11 THE COURT: Respecting that, and the Court ruled that these  
12 came in as part of the -- of the conspiracy; and therefore,  
13 Mr. Davis was bound by them, since he was a member of the  
14 conspiracy, once the corpus delicti had been established.

15 The Court did ultimately find that there was a  
16 corpus of conspiracy.

17 All right. I'll leave the problem to you to  
18 wrestle with over the lunch hour, and I'll see you at -- do you  
19 want 2:00 o'clock?

20 MR. KAY: 2:00 o'clock?

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

22 Your Honor, Mr. Davis has indicated a desire to --  
23 and I would think it quite proper -- to be able to be present  
24 when argument or anything of the kind is made on the instruc-  
25 tions.

26 There are a couple of issues particularly as to the  
27 murder instructions that I have discussed with him, and I have  
28 not been able to discuss it at the length that I think may be

1 necessitated by the facts of this case, and I think he should  
2 be present on that matter.

3 THE COURT: All right. Rather than holding them in  
4 chambers, we'll hold them out here in open court.

5 MR. DENNY: Fine, your Honor.

6 (Whereupon, at 12:02 P. M., an adjournment was  
7 taken in this matter until 2:00 o'clock P. M. of the same  
8 day.)



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1 LOS ANGELES, CALIFORNIA, FRIDAY, FEBRUARY 18, 1972 2:17 P.M.

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THE COURT: All right.

MR. DENNY: Your Honor, I --

THE COURT: The defendant is present. Mr. Denny is present.

Mr. Kay, what do you have to say about Mr. Denny's argument in respect to --

MR. DENNY: Your Honor, I wonder if, before we get into that --

THE COURT: Are you conceding, or what?

MR. DENNY: No, no.

THE COURT: Well, let's hear from Mr. Kay.

MR. DENNY: Well, I have another lawyer here, Mr. Shinn, in connection with another motion, and a brief amount of testimony.

And I wondered if it would be possible, before we got into this other, to --

THE COURT: Mr. Denny, you are indefatigable.

All right.

MR. DENNY: I am glad the Court believes so.

THE COURT: All right. What is the motion?

MR. DENNY: Well, your Honor, we had made a motion previously, in connection with the inventory. And Mr. Katz at the time made a statement to the effect that Mr. Shinn had looked at the trunk -- at the contents of the trunk -- when they were in his office, and the contents of the

4a-2

1 suitcase.

2 And I -- this is the first time that I have been  
3 able to get Mr. Shinn since that testimony, and I do want to  
4 place on the record his testimony concerning that allegation,  
5 because I think the record should be clear on that.

6 THE COURT: I can't see what that would add to it.

7 MR. DENNY: Well, it would add to it a rebuttal of that,  
8 your Honor, which I am -- which I feel required to do.

9 Because I intend to renew that motion at this  
10 time, because as yet --

11 THE COURT: Renew what motion?

12 MR. DENNY: Renew the motion for acquittal, on the  
13 third count, based on the fact that we have been denied due  
14 process of law, because of the withholding or concealing of  
15 vital and material evidence by the prosecution.

16 THE COURT: All right. The motion will be denied.  
17 The motion is denied.

18 The Court has heard from Mr. Katz yesterday,  
19 yesterday afternoon, and you remember that I directed him to  
20 find, if he could, that inventory that Sergeant Whiteley  
21 states he prepared, on a plain sheet of paper.

22 And he has informed me that he did make efforts  
23 to do so, and he has not found it. If you wish, we could put  
24 him on the stand -- you could put him on the stand with  
25 respect to that.

26 MR. DENNY: Well, your Honor, may I put Mr. Shinn on  
27 the stand in respect to --

28 THE COURT: Will it be stipulated to what -- what would

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1 he testify to?

2 MR. DENNY: My offer of proof would be that he would  
3 testify that he never looked into the -- either of the foot-  
4 lockers or the blue suitcase at any time while they were in  
5 Mr. Katz' office.

6 THE COURT: Katz' office. Is it stipulated that that  
7 testimony is --

8 MR. KAY: Is that what you'd testify to?

9 MR. SHINN: Yes.

10 MR. KAY: You never looked at the trunks, while you  
11 were in Katz' office?

12 MR. SHINN: No.

13 MR. DENNY: Were you in Katz' office when the trunks  
14 were there?

15 MR. SHINN: No, I never saw the trunks in my life.

16 MR. KAY: So stipulated, that he would so testify.

17 MR. DENNY: Thank you, Mr. Shinn.

18 MR. SHINN: Thank you so much.

19 THE COURT: Now, Mr. Katz has communicated with the  
20 Court and said that he cannot find that inventory.

21 MR. DENNY: Well, your Honor, I would stipulate that  
22 that would be his testimony, if he were called, sworn and  
23 testified.

24 MR. KAY: So stipulated.

25 MR. DENNY: I assume your stipulation is the same as  
26 to Mr. Shinn? If he were called, sworn and testified, that  
27 would be his testimony?

28 MR. KAY: So stipulated.

1 MR. DENNY: Very well. Now, I take it the Court's  
2 ruling is the same?

3 THE COURT: The Court's ruling is the same.

4 MR. DENNY: Well, I have nothing further on that  
5 particular motion, then, your Honor.

6 MR. KAY: Does the Court wish to hear from me now?

7 THE COURT: Yes, I'll hear from you.

8 MR. KAY: All right. First, citing CALJIC 2172, the  
9 first paragraph, it states that,

10 "No person may be convicted of a criminal  
11 offense unless there is some proof --" and I am  
12 underlining "some proof" -- "of each element of the  
13 crime, independent of any confession or admission  
14 made by him outside this trial."

15 On top of that, I would like to cite the case of  
16 People vs. Cullen at 37 Cal. 2d 6- --

17 THE COURT: Wait a minute. "Some proof"?

18 MR. KAY: "Some proof."

19 THE COURT: We are talking about one of the overt  
20 acts; right?

21 MR. KAY: Well, I --

22 THE COURT: Are you directing your --

23 MR. KAY: Well, I am first directing my argument to  
24 overt act No. 1, but you will see that I am going to bring--

25 THE COURT: Oh, are you? All right.

26 MR. KAY: Other overt --

27 THE COURT: Yes. Yes, go ahead.

28 MR. KAY: All right. But I am going to bring other

1 overt -- I am going to bring overt act No. 2 into my argument,  
2 and I think the Court will see how I am going to develop it.

3 But I am going to start off with No. 1 anyway.

4 Okay, the important part of that instruction,  
5 2.72, is the --

6 THE COURT: Excuse me just one moment.

7 MR. KAY: Yes.

8 THE COURT: You just get launched into it, and I have  
9 to leave the bench. I'm sorry.

10 (Short recess.)

5 fls.

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1 THE COURT: All right, Mr. Kay, I'm sorry I interrupted  
2 you.

3 Go ahead.

4 MR. KAY: All right, I was citing the case of People  
5 versus Cullen, 37 Cal. 2d 614 at 624. This uses --

6 THE COURT: 37 Cal. 2d --

7 MR. KAY: 37 Cal. 2d 614 at 624.

8 THE COURT: Do you have the volume there?

9 MR. KAY: No, I don't.

10 THE COURT: Go ahead.

11 MR. KAY: This uses the word "slight showing of the  
12 corpus is all that's required."

13 In other words, the instructions says some proof  
14 and this case says slight proof.

15 Now, going to overt act number one.

16 THE COURT: Well, there is a law to the effect that it  
17 need be only prima facie of a corpus which, as I take prima  
18 facie, doesn't mean preponderance of the evidence.

19 MR. KAY: That's right.

20 THE COURT: Or beyond a reasonable doubt.

21 MR. KAY: That's right.

22 THE COURT: So I don't think there would be any quarrel  
23 on that point.

24 MR. KAY: So with that point in mind, let's go to overt  
25 act number one.

26 Now, what do we have?

27 THE COURT: Which is -- sorry to interrupt -- which is on  
28 July 25, 1969, the defendants Davis, Atkins and Beausoleil

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1 traveled to the vicinity of 964 Old Topanga Canyon Road.

2 MR. KAY: Okay.

3 Now, what do we have there as far as some proof  
4 or slight proof?

5 Number one, we have the conversation at Devil's  
6 Canyon at which Davis, Atkins and Beausoleil were present when  
7 Hinman was talked about, and your Honor is certainly familiar  
8 with that conversation, so I won't go into the details of it.

9 Now, we have, shortly before the car leaves, we have  
10 the conversation that took place between Manson, Bill Vance and  
11 Ella Jo Bailey, where Vance told Manson that Ella wasn't going  
12 to Gary Hinman's house.

13 Then, Ella walks up by a trailer there in the main  
14 area, and she testifies that she sees Manson, Beausoleil and  
15 Davis apparently having a conversation with Beausoleil, having  
16 the Mexican knife which was later found in the trunk of Gary  
17 Hinman's car when Beausoleil was arrested on August 6, 1969,  
18 and she sees Mr. Davis with the Radom, People's 30 in his hand,  
19 and -- and they're apparently --

20 THE COURT: Did she?

21 MR. KAY: She testified to that.

22 THE COURT: Did she see Beausoleil?

23 MR. KAY: No, she testified in this trial on direct that  
24 she saw Mr. Davis with the Radom, People's 30, in his hand and  
25 that Mr. Beausoleil had the knife. That was her testimony on  
26 direct.

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1 THE COURT: And then on --

2 MR. KAY: Then --

3 THE COURT: Then Mr. Denny established, on part of his  
4 case, putting on Sergeant Whiteley --

5 MR. KAY: An inconsistent statement. It was Mr. Katz  
6 that established that.

7 THE COURT: Yeah, that's true.

8 MR. KAY: All right.

9 THE COURT: All right.

10 MR. KAY: Then, after observing these three -- Davis,  
11 Manson and Beausoleil -- together, Davis with the gun,  
12 Beausoleil with the knife, and Manson with his evil  
13 intentions, I guess, she has a conversation with Atkins  
14 and Brunner, in which they both relate that they're going to  
15 Gary Hinman's house with Beausoleil, and they're looking  
16 for gloves -- or at least one of the girls is looking for  
17 gloves -- and they're both wearing creepy-crawler clothes.

18 Now, the next thing, shortly after that, she  
19 sees the car leave. It passes within 15 feet of her. She  
20 sees Beausoleil, Atkins, Brunner, and she says that the  
21 driver, although she couldn't see who it was, she could see  
22 that it was a male. She did testify to that, that it was a  
23 male.

24 Now, the car leaves, obviously going to Hinman's  
25 house. It returns 45 minutes thereafter, and she states,  
26 at Volume 21, page 3081 and -82, that she saw -- observed  
27 Mr. Davis standing near the Ford, the car that was driven  
28 to Gary Hinman's house.



1 Also, that there had been testimony by two  
2 ballistics experts that the bullet recovered from the wall  
3 in Gary Hinman's house was a 9 millimeter bullet. The gun  
4 that Ella Jo Bailey testified she saw in Mr. Davis' hands,  
5 which we have proved by other evidence was his gun, that he  
6 purchased, was a 9 millimeter gun.

7 Both of the ballistics experts have testified  
8 that that -- that that gun could have fired the bullet that  
9 was taken out of the wall in the Hinman house.

10 Now, if you take all these facts together, I  
11 think that it certainly is of some proof, some slight  
12 proof, at least, of overt act No. 1.

13 Now, the cases of People vs. McMongle, M-c-M-o-n-g-l-e,  
14 29 Cal. 2d 730 at 738 --

15 THE COURT: I'm sorry. Give it to me once again.  
16 McMongle?

17 MR. KAY: People vs. McMongle.

18 THE COURT: I have got that.

19 MR. KAY: 29 Cal. 2d 730, at 738.

20 People vs. Duncan at 51 Cal. 2d 523, at 528;  
21 People vs. Scott, 274 Cal. 2d 905 at 910.

22 These cases state that if the jury is satisfied  
23 that there exists some proof of each element of the crime,  
24 then they may consider any confession or admission to  
25 strengthen and fortify that proof.

26 And this is -- is also an instruction that your  
27 Honor gave in the Manson case.

28 So, if there exists some proof, some slight

1 proof, then they can consider the confession, to fortify the  
2 proof of the element of the crime.

3 Now -- and also getting --

4 THE COURT: What does the McMongle case hold?

5 MR. KAY: I'm sorry, your Honor. It's been a while  
6 since --

7 THE COURT: Is that on the same point, or --

8 MR. KAY: Yes. All three cases are.

9 THE COURT: They deal with the quantum of proof?

10 MR. KAY: That's correct.

11 "If you are satisfied that there exists some  
12 proof of each element of the crime, then you may  
13 consider any confession or admission to strengthen  
14 and fortify that proof."

15 This -- this is an instruction that your Honor  
16 gave in the --

17 (Pause in the proceedings while the Court  
18 left the bench, returning shortly with several  
19 volumes.)

20 THE COURT: Off the record.

21 (Whereupon a discussion off the record ensued  
22 among Court and counsel, in open court, which was  
23 not reported.)

24 (Pause in the proceedings while the Court  
25 perused several volumes.)

26 MR. KAY: Did your Honor want me to continue, or --

27 THE COURT: No. Just hang on for a second.

28 MR. KAY: Okay.

1 THE COURT: McMongle, 29 --

2 MR. KAY: 29 Cal. 2d 730.

3 THE COURT: 730.

4 MR. KAY: At 738.

5 (Pause in the proceedings while the Court  
6 perused several volumes.)

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1 MR. KAY: I'm reading from an exact instruction that your  
2 Honor gave in the Manson trial.

3 THE COURT: Somehow that fails to impress me.

4 (Pause in the proceedings while the Court perused  
5 a volume.)

6 THE COURT: This is a situation which the Court was  
7 discussing a homicide case, and talking about prima facie  
8 proof of corpus delicti of a homicide.

9 And they use the phrase "prima facie proof."

10 (Pause in the proceedings while the Court  
11 perused a volume.)

12 THE COURT: Reading the McMongle case, it cites a case  
13 back at 17 Cal. 2d, just stating that upon prima facie proof,  
14 the confessions or admissions may be admitted. All right.

15 (Pause in the proceedings while the Court  
16 perused a volume.)

17 MR. KAY: Shall I continue?

18 THE COURT: Yes, go ahead.

19 MR. KAY: All right. So once there's some -- some  
20 proof, or some slight proof of the element of the crime, we  
21 can then consider the confession or admission to fortify  
22 that.

23 And I think that certainly, considering Mr. Davis's  
24 confession or admission, that it certainly does fortify and  
25 prove beyond any reasonable doubt overt act number one.

26 THE COURT: Well, you state that the -- the prima facie  
27 proof is the conversation in Devil's Canyon -- part of which,  
28 at least, included Mr. Davis; is that --

6a-2

1 MR. KAY: Yes, that's right. That's just one part,  
2 though. The main thing though is that just before the car  
3 leaves, these people were all associated together. Manson and  
4 Beausoleil and Davis are there. They're apparently having a  
5 conversation.

6 Davis has the gun in his hand. Beausoleil has the  
7 knife. Just before this conversation, Manson is -- has told  
8 Ella Jo Bailey to go to Gary Hinman's house, and Bill Vance  
9 has said, "No, Ella's not going."

10 And then Ella walks up, and when she sees this  
11 conversation, then she sees Mary Brunner and Susan Atkins,  
12 and there one of the girls is getting gloves. And they're  
13 both in creepy-crawler clothes. And they both say that they're  
14 going to Gary Hinman's house.

15 Then shortly after that, she sees the car leave  
16 with four people in it, and she sees the driver is a male.

17 Certainly, the most reasonable inference -- or  
18 at least, one inference to be drawn -- is that Mr. Davis is the  
19 driver.

20 And 45 minutes later, the same car is back again  
21 at the ranch, and Mr. Davis is standing right near there.

22 I think this would certainly qualify as some proof.

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1 THE COURT: You have Volume 21 there?

2 MR. KAY: No, I don't. My transcripts are at home. I  
3 called Mr. Manzella at home to get the cite from him.

4 MR. DENNY: I have Volume 21, your Honor, if the Court  
5 needs the specific quotation.

6 THE COURT: May I take a look at 21, please, Mr. Denny.

7 That testimony extends through 20, 21 and --

8 MR. DENNY: Well, 20 through 25, actually, your Honor,  
9 if the Court is interested in the specific language at 3081,  
10 starting at -- well, let me give the Court the --

11 THE COURT: Let me just take a glance at that transcript,  
12 if you would, please.

13 (Whereupon, there was a pause in the proceedings  
14 while the Court perused a transcript.)

15 THE COURT: Off the record.

16 (Whereupon, a discussion was had off the record.)

17 THE COURT: Back on the record.

18 MR. DENNY: Your Honor, my recollection of the only time  
19 that she mentioned the car leaving and returning, and I did not  
20 hit it up on cross examination, I have just checked thoroughly  
21 the cross examination because it was a state of mind that I  
22 was just as happy to have just where it was, was the evidence  
23 that's recorded at Page 3080, starting at Line 9 or there-  
24 abouts, and going over to Page 3082 -- all right, Line 12.

25 THE COURT: All right, that's direct, you mean?

26 MR. DENNY: That is correct. As I say, I did not cross  
27 examine her on that issue to bring out any more than was  
28 brought out because of the fact, as I say, I was just as happy

1 to have the state of the evidence as it was reflected there,  
2 that is the state of the evidence whatever we have on the  
3 record, whatever is in those essentially three pages on that  
4 subject, is what is before the jury.

5 MR. KAY: Well, I can't represent that. I don't have my  
6 transcript here.

7 MR. DENNY: Well, I can represent that, because I have  
8 just recently gone over her testimony with a fine tooth comb.  
9 And sitting here while the Court was perusing the cases, I  
10 re-reviewed the cross examination that I had in the later  
11 volumes, and there is nothing on that which confirms my own  
12 recollection of it. There is nothing in the later volumes.

13 THE COURT: She says, "So the person you saw driving was  
14 not Beausoleil, Brunner or Atkins, is that correct?"

15 "A That's correct."

16 This is in response to a question by Mr.  
17 Manzella.

18 "All right, was it a man?"

19 "A Yes."

20 MR. KAY: Okay, that's it.

21 THE COURT: So -- and then, significantly, that's  
22 why we missed it, I guess, that's on 3073, Page 3073,  
23 Volume 21. A couple lines later you have marked "Start," and  
24 that's apparently where you took off to cross examine.

25 MR. DENNY: Oh, your Honor, 3073, Line 10, specifically  
26 my notes reflect "Didn't see Bruce, saw a fourth person, a  
27 man driving."

28 THE COURT: Yes, "Did you see this defendant Bruce

1 "Davis?

2 "A No, I didn't see Bruce.

3 "Did you see who was driving?

4 "No, I did not.

5 "All right. So the person that you saw driving  
6 was not Beausoleil, Brunner or Atkins, is that correct?

7 "A That's correct.

8 "Well, was it a man?

9 "A Yes."

10 MR. DENNY: And I would submit, your Honor, that the  
11 state of the evidence there is not only inconsistent with  
12 Mr. Davis being the driver, but is consistent with someone  
13 else being the driver.

14 MR. KAY: Well, I don't think that is the testimony.  
15 I -- I --

16 THE COURT: It is argument.

17 MR. DENNY: No, it is not just simply an argument,  
18 because of the state of the record where she specifically  
19 disclaims seeing Bruce Davis.

20 MR. KAY: Well, in the proper context it is just that she  
21 didn't recognize who the driver was.

22 MR. DENNY: Well, I mean she specifically disclaims see-  
23 ing Bruce Davis by that testimony.

24 MR. KAY: Well --

25 MR. DENNY: And as Mr. Kay has said, Mr. Manson was  
26 standing there with Mr. Beausoleil and the girls.

27 And the more particular inference, and I think the  
28 one that has no disclaimer at all, is that Mr. Manson drove



1 rather than Mr. Davis, in this state of the record. There is  
2 a specific disclaimer that she saw Davis. There is no  
7a fol 3 disclaimer that she saw anyone else.

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1 MR. KAY: Well, I think Mr. Denny is pulling that out  
2 of context. It is obvious the way she said it that she just  
3 didn't recognize --

4 THE COURT: I don't think he is. He's an advocate  
5 and he's taking his view of it.

6 MR. KAY: Of course, he has his argument and, of course,  
7 I have mine.

8 THE COURT: All right, go ahead.

9 MR. KAY: Okay.

10 All right, so once we have some proof of each  
11 element -- of this element, then, we can bring in the  
12 confession to fortify and strengthen it, which we have done.

13 And one -- on just one of the overt acts, once  
14 we get the admission or confession in, there's nothing --  
15 there's no law that says that we can't use that admission  
16 or confession to prove another overt act because conspiracy  
17 only requires that one overt act be proved. So as an element  
18 of the crime, there is only one overt act. The fact that we  
19 have alleged other overt acts, does not mean that those  
20 are elements of the conspiracy. Those are just other overt  
21 acts. And as long as we prove one -- by some proof or  
22 slight proof, as long as we prove one overt act, then there's  
23 no law that says we can't use the admission or confession  
24 to prove other overt acts.

25 THE COURT: The Court would be inclined to disagree  
26 with you. The overt act or acts, if you allege multiple  
27 overt acts, I think must be established separate and apart  
28 from any admission or confession. And I don't think that

7a-2

1 you could, simply because you have by virtue of the Court's  
2 finding, if the Court does find that there was prima facie  
3 evidence of the commission of an overt act and a confession  
4 or admission in support of it, thereafter utilize -- there-  
5 after utilize the proof of conspiracy to establish a corpus  
6 delicti by means of admission or confession.

7 MR. KAY: Well --

8 THE COURT: Overt act, as I take it, is part of the  
9 corpus delicti of the conspiracy, at least it is so inter-  
10 woven with it, I think it must fall within that rule we  
11 are talking about before we recessed at -- before the noon  
12 recess.

13 MR. KAY: I might --

14 THE COURT: And so I would disagree with you there.

15 MR. KAY: I might state CALJIC 6.10 states in no  
16 uncertain terms that only one overt act may be proved.

17 THE COURT: It is true. That's true. But if you want  
18 to leave those overt acts in the information and not cause  
19 them to be stricken, I think you've got to show me that there's  
20 more than a confession or admission to establish them.

21 MR. KAY: Well, I've argued about overt act No. 1, and  
22 now I would like to go to overt act No. 2.

23 Again, keeping in mind that the law requires some  
24 proof or slight proof of the elements.

25 Now, on overt act No. 2, which is that on or  
26 about July 26th, 1969, the defendants, Charles Manson, Susan  
27 Denise Atkins, and Bruce McGregor Davis did enter the  
28 residence of 964 Old Topanga Canyon Road, Malibu, in the

1 County of Los Angeles.

2 Okay, what some proof or slight proof do we have,  
3 which is all that's required?

4 Okay, first, looking at Susan Atkins.

5 Susan Atkins was identified as having left in  
6 that car. She said she was going to Gary Hinman's house and  
7 to corroborate the fact that she entered the house, we have  
8 the testimony of Richard Siegel and Jay Hofstadter that they  
9 called up and a female -- uh, a female answered the phone and  
10 gave a phony story about Gary Hinman went to Colorado because  
11 his parents were in an accident.

12 Now, on Mr. Davis, we have Mr. Davis present at  
13 the Devil's Canyon campsite for at least part of the conversa-  
14 tion about Gary Hinman. We have all of the things that I have  
15 described about Mr. Davis being in the parking lot right after  
16 Manson had talked to Vance and Ella Jo Bailey about telling  
17 Ella to go to Gary Hinman's house and Vance saying no, she  
18 had better things to do, she wasn't going there.

19 And then, Davis and Beausoleil and Manson  
20 apparently having a conversation in the parking lot.

21 Beausoleil with the knife. Davis with the Radom,  
22 People's 30 for identification.

23 And at that same period of time, Mary Brunner and  
24 Susan Atkins, one of them looking for gloves and both of them  
25 in creepy-crawley clothes saying that they were going to  
26 Gary Hinman's.

27 And the important thing is the ballistics  
28 testimony. Both ballistics experts saying that the bullet

1 recovered from the wall in Gary Hinman's house could have  
2 been fired from People's 30, Mr. Davis' gun.

3 I think that certainly -- taking all of these  
4 circumstances together, certainly qualifies as some evidence  
5 or slight evidence that -- independent of the confession that  
6 Mr. Davis entered the residence. And, of course, once we  
7 establish that, then, we can admit the confession or admission  
8 to fortify the proof of the elements of the crime.

7b fls.

7b-1

1 And with Manson, we have Manson, of course, being  
2 the mastermind of the whole Hinman affair. The conversations  
3 about where he tells people to rob and murder Gary Hinman,  
4 kidnap Terry Melcher. The fact of his -- in a parking lot  
5 there, talking to Beausoleil and Davis and all the different  
6 statements. I won't go into all of those because I know your  
7 Honor is familiar with them.

8 But then, here we have the testimony about  
9 Mr. Hinman's sword and the fact that he carried it around on  
10 his dune buggy. That he was -- this was his favorite -- one of  
11 his favorite playthings,, that he threw into hay stacks and did  
12 other things with.

13 We have the testimony that the day after the Hinman  
14 murder Manson was seen by Ella Jo Bailey swinging the sword  
15 around in the saloon.

16 And we have Dr. Katsuyama's testimony that the  
17 wound to the left side of the face of Gary Hinman, which  
18 severed the ear and part of the cheek and behind the ear, was  
19 consistent as having been made with the sword. He said that  
20 specifically in relation to the sword.

21 So, again, I think that disqualifies --

22 THE COURT: It was consistent with any number of weapons.

23 MR. KAY: Well, that's right, but he said specifically  
24 it was consistent with the sword. And I think again that this  
25 is some slight, slight evidence on --

26 THE COURT: That Manson --

27 MR. KAY: That Manson was there.

28 Now, further, the 6.10 has an interesting phrase,

7b-2

1 that it is not necessary to the guilt of any particular  
2 defendant that he himself committed the overt act, if he was  
3 one of the conspirators when such overt act was committed.

4 So there's a question as to just how critical  
5 it is to have -- to prove the overt act as to each person  
6 mentioned in the overt act.

7 In other words, if you prove the overt act is done,  
8 is it essential that you prove that each specific person named  
9 in the overt act committed the overt act.

10 But I think that, basically, my argument is,  
11 is that at least as to overt acts number one and number two, that  
12 we have put forth some proof, however slight, that each of the  
13 overt acts were committed. And then once we've done that, then,  
14 the confession or admission can come in to fortify -- uh, to  
15 fortify that proof.

16 THE COURT: Well, I don't think there is any doubt about  
17 your last point, once you have the -- once you have the prima  
18 facie evidence of the overt act that you can utilize the  
19 admission or confession.

20 What the defendant is harking to, is the quantum  
21 of proof, proof, if any, to establish the acts that were done,  
22 as alleged.

23 MR. KAY: And that's why I cited the law just saying some  
24 proof or just slight proof was necessary. I think we have met  
25 that burden. Not proof beyond a reasonable doubt or absolute  
26 certainty, just some proof.

27 THE COURT: Apparently you concede there is no proof on  
28 number three, right?

1 MR. KAY: Yes.

2 THE COURT: All right, Mr. Denny.

3 MR. DENNY: Well, your Honor, I don't want to argue too  
4 long on this, but the only thing I would observe is that some  
5 of the basis, apparently, for Mr. Kay's feeling that he has  
6 established a prima facie case of conspiracy, are the conversa-  
7 tions which Sergeant Whiteley related which contradict the  
8 testimony of Ella Bailey, the testimony which the Court and  
9 Mr. Kay rely on to show that she's not a conspirator as a  
10 matter of law. So I'm a little nonplussed that Mr. Kay is  
11 arguing out of both sides of his mouth when it suits his  
12 purpose. He ignores the testimony of Sergeant Whiteley as  
13 to the killing, the robbery, the murder of -- espoused by  
14 Charlie Manson to establish the basis of the conspiracy.

15 THE COURT: Well, the Court doesn't believe that that is  
16 a justifiable conclusion on your part.

17 MR. DENNY: Well, perhaps --

18 THE COURT: This Court has said, the witness Ella  
19 Bailey did have an opportunity to explain some of those  
20 inconsistencies which appeared from the notes and from the  
21 inspector's report of Sergeant Whiteley.

22 MR. DENNY: Well, I don't want to press the point, your  
23 Honor. I don't think it is critical. I really don't think it  
24 is critical.

25 THE COURT: That's right. It is aside from the thrust  
26 of your argument directed toward the overt acts.

27 MR. DENNY: And I think the Court's observations are  
28 quite consistent with the law, frankly, that the overt acts are



1 part of the corpus. They can't be established by statements of  
2 any of the defendants, must less this defendant.

3 THE COURT: I think that's -- it is one of those things  
4 which seems so basic after just having read the Code. I don't  
5 think there's much argument with it.

6 But how about Mr. Kay's argument in respect to  
7 overt act number one, and number two, and in particular, what  
8 do you see in his argument that it is not necessary to  
9 establish that these --

10 MR. DENNY: Oh, I do want to answer that.

11 THE COURT: Conjunctively an overt -- as alleged in  
12 overt act number two?

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1 MR. DENNY: Yes.

2 THE COURT: Look it over, and see if --

3 MR. DENNY: Well, could I have the --

4 THE COURT: -- along with the evidence that he says

5 supports the People's case, to sustain overt act No. 1,

6 and thereby defeat your motion with respect to overt act

7 No. 1.

8 MR. DENNY: Well --

9 THE COURT: I'll hear from you in regard to that.

10 MR. DENNY: Well, your Honor, I did not --

11 THE COURT: Go ahead.

12 MR. DENNY: I didn't make a note of the CALJIC instruc-

13 tion, where he said -- he quoted the particular CALJIC

14 instruction that, in order to be bound by an overt act, the

15 person doesn't have to do the overt act himself.

16 Which is that, Mr. Kay?

17 THE COURT: Well, whatever it may be, the --

18 MR. DENNY: Well, the wording of that is particular

19 and specific, and that's why I'd like to have it, so I can

20 quote it to the Court.

21 THE COURT: There's no quarrel with it, is there?

22 MR. DENNY: Yes, yes.

23 THE COURT: So it does not --

24 MR. DENNY: Yes, yes.

25 THE COURT: It doesn't help or hinder. In this case,

26 I think it's beside the point.

27 MR. DENNY: Well, if the -- my recollection of it --

28 and I have got it in my list of instructions --

8-2

1 THE COURT: Well, there's no doubt about it, is there,  
2 that if -- if there is a -- if any of the overt acts are  
3 proven, assuming that the other elements of conspiracy are  
4 there, that they have got a corpus delicti?

5 MR. DENNY: Yes. But I don't think that's -- that's the  
6 point that he was making. And I --

7 THE COURT: And it doesn't matter who does the overt  
8 act.

9 MR. DENNY: That's right. That's right. However --

10 THE COURT: But they are bound by what they have  
11 alleged.

12 MR. DENNY: That's right. And if they have alleged  
13 that three people have done an act, they must have a showing,  
14 at least a prima facie showing, that the three people that they  
15 have alleged have done that act.

16 If they -- on the other hand -- and this is why  
17 the wording of that section is important -- or the instruction  
18 is important -- and I thought that's what the Court was  
19 asking me to direct my attention to.

20 THE COURT: No.

21 MR. DENNY: If, on the other hand --

22 THE COURT: No, I haven't directed your attention to  
23 that point, which I think we have agreed upon. But what  
24 Kay's saying -- or what Mr. Kay has said is that the evidence  
25 is such that the Court can find prima facie evidence of  
26 overt act No. 1.

27 MR. DENNY: All right.

28 THE COURT: And in view of -- and I wanted to hear your

8-3

1 argument on it, because frankly, when I walked out to the  
2 bench here, I had not thought about the evidence particularly  
3 that the People might be pointing to, to resist this motion.

4 And he's pointing up some thoughts to me that I  
5 hadn't considered before.

6 MR. DENNY: Well, I'm not sure what the Court --

7 THE COURT: Well, he --

8 MR. DENNY: -- feels is so particularly cogent in his --

9 THE COURT: Well, he states that the Court can arrive  
10 at -- and should arrive at the conclusion that there is prima  
11 facie evidence of the overt act No. 1, by reason of Ella Jo  
12 Bailey's testimony; and --

13 MR. DENNY: Well --

14 THE COURT: -- that's basically it.

15 All right. Let's look at Ella Jo Bailey's  
16 testimony --

17 MR. DENNY: I --

18 THE COURT: -- and -- I wanted to give you an opportunity  
19 to argue, because that somewhat appeals to me.

20 MR. DENNY: Well, your Honor, I am happy to respond,  
21 then.

22 I listed what appeared to be the six items that  
23 he relies on, to establish the conspiracy -- or, to establish  
24 the overt act No. 1; and as I made notes of them, they were  
25 as follows:

26 We have the conversation at Devil's Canyon --  
27 I won't go into it, because the Court recollects it all,  
28 as Mr. Kay said well.

1 But I think I have to go into it a little bit,  
2 because if that's what he's relying on, the conversation at  
3 Devil's Canyon, the conversation on the first date -- the  
4 only time that apparently Mr. Davis was supposed to be present,  
5 according to Miss Bailey -- nothing was mentioned about robbing  
6 or kidnapping or killing Gary Hinman. So --

7 THE COURT: Well, I think -- I thought he was referring  
8 generally to the ultimate agreement to approach Gary Hinman  
9 and, some way or other -- it's in the record that at some  
10 time Manson had stated that, if necessary, Gary Hinman should  
11 be killed;

12 MR. DENNY: Well, your Honor, this is what confuses  
13 me. And this is why I did bring up this point, which we  
14 had thought -- when we were talking about it just a few  
15 minutes ago -- perhaps was collateral. But now, it seems to  
16 be crucial.

17 THE COURT: No, I know what you are thinking about.  
18 You are thinking about the question of Ella Jo Bailey's  
19 credibility.

20 And again, I am telling you that I -- the Court  
21 believes that there was a period of days during which these  
22 conversations at Devil's Canyon went on; and that when she  
23 was on the witness stand, she accurately related, so far as  
24 she was able, that period of time and the conversations that  
25 occurred.

26 But --  
27  
28

9 fls.

Q-1

1 MR. DENNY: Well, your Honor, in other words --

2 THE COURT: Well, in any event, he pointed -- Mr. Kay  
3 pointed out the conversations in Devil's Canyon to show an  
4 agreement and to show that Manson had designated certain  
5 persons to go to Gary Hinman's home.

6 MR. DENNY: Well, assuming that's what he showed, then,  
7 he's taking the best of what she has testified to and the best  
8 of what Sergeant Whiteley has testified for his position.

9 THE COURT: He wouldn't take the worst, would he?

10 MR. KAY: (Laughing.)

11 MR. DENNY: He's going to have to fish or cut bait  
12 sometime before the jury, if he gets by this.

13 THE COURT: He may have to.

14 MR. DENNY: But be that as it may, let him, for this  
15 purpose, take the best of both possible worlds and wrap them  
16 into one.

17 All right, so let us assume, then, there is such  
18 a conversation which prima facie shows an agreement, I don't  
19 know. I'm not sure even from her statements that there is  
20 yet a conspiracy based on anything Mr. Manson said. Because  
21 from her testimony, taking even the best of what she said to  
22 Whiteley, if you want to look at it from that standpoint,  
23 all he's saying, "You do it, you go," but there's no showing  
24 of any agreement.

25 THE COURT: Well, within a short time they were putting  
26 on creepy-crawley clothes and one thing and another.

27 MR. DENNY: All right, all right.

28 THE COURT: And their statements later on shows

1       apparently there was agreement. He's saying, taking this and  
2       this and this.

3               MR. DENNY: All right, let's assume for the sake of this  
4       argument -- we'll grant him the best of all possible worlds,  
5       that is a prima facie showing of an agreement. We still have  
6       to show the overt act.

7               Now, he says in order to do that, let's look at  
8       the conversation at the boardwalk.

9               Well, there was nothing overheard by her among  
10      three men that she says were at the boardwalk, Beausoleil,  
11      Manson and Davis, so we don't know what was going on. But,  
12      again, giving him the best of both possible worlds, and that  
13      is that Davis had a gun, the Radom, and that Beausoleil had  
14      the knife, that does not establish overt act No. 1 that they  
15      traveled anywhere. We still have to establish that.

16              And so although we've got one, two and three, the  
17      two that I have left out that he mentioned was the conversation  
18      at the dump with Ella Bailey, Vance and Charlie, that just  
19      goes to enhance the agreement portion.

20              So of the three items that he mentioned, we still  
21      don't have anything specifically relating to the overt act.

22              All right, now, let's look at the fourth item  
23      that he mentioned. Ella's conversation with Mary and Sadie  
24      that they were going to Gary Hinman's.

25              Well, all right, that might help in a way to set  
26      the background that Mary and Sadie, Susan Denise Atkins were  
27      going. And, of course, Mary isn't even mentioned in overt  
28      act No. 1. And, so, that might help establish somewhat that

1 Susan Denise Atkins traveled to that vicinity as alleged in  
2 the overt act. Let's grant that.

3 Then, he says, the driver was a male. She testi-  
4 fied to three of them, Beausoleil, Atkins and Brunner going,  
5 and a fourth driver, a male.

6 Well, again, your Honor has my copy of the  
7 transcript --

8 THE COURT: I read it, and I think you know it,  
9 probably.

10 MR. DENNY: Yes. I think the Court has the Court's  
11 copy now.

12 THE COURT: It is 30 --

13 MR. DENNY: 3073 or -4.

14 THE COURT: 73, I think.

15 And we've already put that on the record. Go  
16 ahead.

17 MR. DENNY: All right.

18 THE COURT: I'm familiar with it.

19 MR. DENNY: All right. So that as I gather, there  
20 appears to be, and I don't think I am taking it out of context  
21 at all, a rather interesting thing from the standpoint of the  
22 prosecution asking the question, and that is the specific:  
23 question:

24 "Did you see Bruce Davis?

25 "No.

26 "Did you see who was driving the car?

27 "No."

28 So it would appear by the People's own evidence



1 that Miss Bailey has specifically disclaimed that Bruce was  
2 driving.

3 And I don't want to put it in context because Mr.  
4 Kay said I was taking it out of context and I think it is  
5 important to show that all of the questions here:

6 "Was it a Ford?

7 "Yes.

8 "Who was in it when you saw it?

9 "I saw Bob, Mary and Susan.

10 "Q Bob Beausoleil, Mary Brunner and Susan  
11 Atkins?

12 "A Right.

13 "Q Did you see this defendant Bruce Davis?

14 "A No, I didn't see Bruce.

15 "Q Did you see who was driving?

16 "A No, I did not.

17 "Q All right, so the person that you saw  
18 driving was not Beausoleil, Brunner or Atkins, is that  
19 correct?

20 "A Yes, that's correct.

21 "Q All right, was it a man?

22 "A Yes."

9a fls.

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9a-1

1 It is clear from the very context of the questions  
2 that were asked that Mr. Manzella was asking here who she saw  
3 in the car. She names the first three that are identified,  
4 and then: "Did you see this defendant, Bruce Davis?"

5 "No, I didn't see Bruce."

6 Obviously, the import of the question is, "Did  
7 you see him in the car?"

8 "No, I did not."

9 "Could you tell who was driving?"

10 "No, I could not."

11 Now, your Honor, that's the critical part here.

12 Now, even when you talked about inferences to be  
13 drawn, there's got to be some basis and reason for the  
14 inference.

15 When you talk about reasonable doubt, you're not  
16 talking about all possible or imaginary doubt. We assume  
17 you are talking about inferences. There has to be some  
18 reason based on the evidence that's before the Court. And  
19 Mr. Kay can say, well, the only possible inference is that  
20 Bruce Davis drove or a reasonable inference is that Bruce  
21 Davis drove or even a possible inference is that Bruce Davis  
22 drove, but how can you say that when right in the context  
23 on page 3073 it is negative by the very questions and answers  
24 given.

25 THE COURT: The Court remembers that she was standing on  
26 the -- as the car passed her, if her testimony is taken --

27 MR. DENNY: And I think we have to give him the best  
28 of that possible world, blind as a bat though she was, she said

1 she saw him 30 feet away with a gun and identified him 30 feet  
2 away with a gun.

3 THE COURT: She was standing on the passenger side of  
4 the car as it passed.

5 MR. DENNY: On the passenger side of the car as it  
6 passed within ten to fifteen feet of her. And that's her  
7 testimony, that it passed within ten to fifteen feet of her.

8 I'm not sure that it is specifically in the pages  
9 that we've referred to, but -- uh, yes.

10 "How far was the Ford from you?"

11 This is at page 3081, line 17.

12 "How far was the Ford from you at its  
13 closest point, the point you've indicated on People's  
14 29?

15 "A Ten feet, fifteen."

16 Ten feet, fifteen.

17 Now, your Honor, if she can recognize Mr. Davis  
18 with the gun at 30 feet, giving five feet for the width of  
19 the car, if he's supposed to be the driver of the car, he's  
20 maybe 15 to 20 feet away; clearly, she could recognize him  
21 if she recognized all the other people in the car.

22 Again, you're talking about inferences from the  
23 evidence here, not from anything else that this Court may  
24 have heard, seen, read any other time at any other proceedings,  
25 but what is in the written record before this Court on this  
26 motion. I think the Court is faced with the situation whereby  
27 her testimony, there is nothing to substantiate by her own  
28 testimony, and indeed, everything negatives by her own testimony

1 the fact that Bruce Davis was driving in that car.

2 If that is the fact, then, you've got, as far as  
3 over act No. 1 goes, the possibility, the reasonable inference  
4 that you might draw from the rest of the testimony that Susan  
5 Denise Atkins and Robert Beausoleil did travel in the vicinity  
6 but not that Bruce McGregor Davis did, and that's where we  
7 get into the CALJIC instructions that I am still asking to have  
8 cited so that I can get the specific words.

9 Do you remember it, Mr. Kay?

10 MR. KAY: Yes, I do, 6.10.

11 THE COURT: I don't think it is important. You may cite  
12 it if you wish.

13 MR. KAY: It is the sentence at bottom of page 168.

14 MR. DENNY: All right.

15 MR. KAY: It goes over to the next page.

16 MR. DENNY: All right. That sentence, "It is not  
17 necessary to the guilt of any particular defendant that he  
18 himself committed the overt act if he was one of the conspira-  
19 tors when such an act was committed."

20 Granted, and if they had only alleged as overt  
21 act No. 1 that on or about July 25, 1969, Susan Denise Atkins  
22 and Robert Beausoleil did travel to the vicinity of so and so  
23 and so and so, fine. I'd say they got the overt act that they  
24 alleged. But that's not what they alleged. They have alleged  
25 that Bruce McGregor Davis and Susan Denise Atkins and Robert  
26 Beausoleil went there and they have to prove that.

9b fls.

9b-1

1 THE COURT: Well, the Court is in agreement with you.  
2 I think when there is an allegation of this sort in a  
3 pleading that they're probably bound by the allegation.

4 MR. DENNY: All right. So, then, we come finally to  
5 the sixth point, your Honor, and that is that --

6 THE COURT: It certainly would leave it in the state of  
7 indecision and would be very confusing if the allegation was  
8 that Bruce McGregor Davis or Susan Denise Atkins or Robert  
9 Beausoleil --

10 MR. DENNY: That is correct.

11 THE COURT: -- did travel to the vicinity of 964 Old  
12 Topanga Canyon Road. It wouldn't give sufficient notice,  
13 if the Court were to interpret it that way, to a defendant  
14 of what he was accused of.

15 MR. DENNY: All right, your Honor.

16 If the evidence is in that state, then, the fact  
17 that Bruce Davis, since there's no rational conclusion, I  
18 submit, that can be drawn that he left, the fact that the car  
19 was back some 30 to 45 -- or 30 to 40 minutes later, and that  
20 Bruce Davis was near it, has no relevancy, whatsoever. If  
21 he were in it, it might have some relevancy. But the fact that  
22 he is simply near it, not having established that he left in  
23 it in the first place, has no relevancy, whatsoever.

24 So I submit that as to overt act No. 1, they've  
25 not made out the required even prima facie showing.

26 Does the Court want me to go on to overt act No.

27 2?

28 THE COURT: I think not. I don't find sufficient evidence

1 to, aside from admissions, to put Mr. Manson in the residence.  
2 I think that's asking the Court to stretch too far the rather  
3 thin veneer that you've put down for me to find overt -- or  
4 to cover overt act No. 2. I just don't think that the Court  
5 can do so. I'm inclined to strike overt act No. 2 and overt  
6 No. 3, but I'm persuaded by the People's argument that there  
7 is sufficient in the record to permit the inferences which  
8 they ascribe to the various bits of conduct, and I do think  
9 that there is sufficient evidence, prima facie evidence of  
10 overt act No. 1 having been done.

11 I think this is a matter of the discretion of the  
12 Court as to whether or not to strike 2 and 3 with no proof  
13 having been -- with insufficient proof having been adduced,  
14 there is no reason for the jury to occupy its minds with  
15 overt act No. 2 and No. 3.

16 All right, what else do you have? Anything more  
17 before we begin the discussions --

18 MR. DENNY: Are the two then stricken, your Honor?

19 THE COURT: Yes.

20 MR. DENNY: All right.

21 Yes, I have one more motion, and this is perhaps  
22 a little esoteric. I was rather tired when it occurred to  
23 me, but I think quite frankly perhaps out of tired brain  
24 cells something good occasionally happens.

25 I am, again, your Honor, going to move to strike  
26 all the testimony relating to statements made by alleged  
27 co-conspirators. Those statements made in Count III after the  
28 time when the People allege Shorty Shea was killed on the

1 grounds that we were denied due process by being denied notice  
2 of what we were going to be required to meet, the type of  
3 conspiracy that we were going to be required to meet until  
4 we were faced with the People's allegation of what the type  
5 of conspiracy was at the time they sought to and, in fact, were  
6 permitted to introduce the statements.

7 And by this failure to give us notice, we were  
8 not permitted, because the conspiracy was never formally  
9 alleged, we were not permitted to do that which any other  
10 person charged with any other offense is permitted to do when  
11 they are formally charged with such an offense, and that is to  
12 move under 995 to show that there is insufficient evidence of  
13 the particular offense alleged.

14 Now, your Honor, in this particular case, the  
15 People have, in effect, based on the representations they made  
16 to the Court at the time we had the hearing in which the  
17 Grunewald and the Krulewitch cases and all of those were gone  
18 over, and People vs. Smith, et cetera, which I think the Court  
19 found controlling --

20 THE COURT: Well, I don't think People vs. Smith was  
21 entirely controlling.

22 MR. DENNY: Well, be that as it may, whatever it was --

23 THE COURT: There were a number of cases that figured  
24 into the Court's decision, starting with --

25 MR. DENNY: Well, all right.

26 THE COURT: -- starting with that Tinnin case.

27 MR. DENNY: All right.

28 THE COURT: In any event, you say that you were not put

1 on notice and that, therefore, all of those statements should  
2 be stricken. You've argued that before.

3 MR. DENNY: Well, your Honor, I want to cite one rather  
4 interesting case to the Court, and that is the case of People  
5 vs. Wallin, W-a-l-l-i-n, 32 Cal. 2d 803. And this was a rather  
6 interesting case in which a woman had apparently been  
7 attempting to rid herself of --

8 THE COURT: Have you got it there?

9 MR. DENNY: I don't have 32 Cal. 2d --

10 THE COURT: Excuse me.

11 MR. DENNY: Yes.

12 -- in my possession.  
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9c fls.



9c-1

1 (Whereupon, the Court left the bench, returning shortly,  
2 and the following proceedings were had:)

3 MR. DENNY: Your Honor, the specific language that has --  
4 the language that I would cite to the Court is that in headnote  
5 5, which appears in the note of the report at Pages 808 and 809.  
6 The case involved a woman who wanted to rid herself of a child  
7 and who apparently had had some conversations with a man friend  
8 of hers about getting rid of this child.

9 THE COURT: Headnote 5 deals with corroboration under  
10 Penal Code 1111; is that right?

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

12 THE COURT: And it just -- the headnote more or less  
13 paraphrases the cautionary instruction with respect to  
14 accomplices and testimony.

15 MR. DENNY: Well, that's --

16 THE COURT: Stating in addition, "care, caution and  
17 suspicion should be exercised because it comes from a tainted  
18 source and is often given in the hope or expectation of leniency  
19 or immunity."

20 MR. DENNY: Headnote 6 -- or 7, although I don't have them  
21 marked in red, they are the points I'm trying to raise here,  
22 specifically regarding the status of the man in this particular  
23 case who, after the woman had killed the child, helped her to  
24 dispose of the child, thereby leading the prosecution to charge  
25 him as an accessory after the fact or an accessory.

26 The woman who had previously been found guilty or  
27 pleaded guilty to murder, testified against him.

28 And the issue was: Was the woman then an

9c-2

1 accomplice? That is, could she have been charged as an  
2 accessory.

3 And the Court said -- the Supreme Court said yes,  
4 although it is unlikely because she actually committed the  
5 crime that she would ever have been so charged, because they  
6 would charge her normally with the higher offense, nevertheless,  
7 under headnote 6 and 7, simply because they wouldn't normally  
8 do it, does not mean she could not have been subjected to  
9 prosecution as an accessory. That is concealing of,  
10 disposing of, et cetera, the body and hiding the fruits of  
11 the crime or -- that is such a bad phraseology to use.

12 At any rate, because the man was charged as an  
13 accessory, he raised the issue could the woman who had actually  
14 done the killing be charged as an accessory, and the Court said  
15 yes. And if, yes, then her testimony must be corroborated.

16 Now, your Honor, we get into the interesting and  
17 unique situation of the testimony of Ella Jo Bailey specific-  
18 ally as to whether she was an accessory, as to whether she  
19 knowingly, as her testimony would seem to indicate, that  
20 Shorty Shea had met an untimely end by virtue of the screams  
21 that she heard, by virtue of the statements that she alleges  
22 Mr. Manson and Mr. DeCarlo exchanged down by the stream the  
23 afternoon following the evening of the screams, all the other  
24 information inferences that you draw therefrom, was she an  
25 accessory?

26 Did she hide, conceal, et cetera, the crime,  
27 knowing that the crime had been committed and conceal and help  
28 to conceal the crimes?

9c-3

1 THE COURT: Did you shephardize this on point 6?

2 MR. DENNY: This is the only specific case that I've  
3 had time to find. I have not shephardized the case. I don't  
4 know if there are any later points, although, your Honor, I  
5 have shephardized so many cases recently I really can't say.

6 THE COURT: "Mrs. Paz became liable to prosecution for  
7 the separate offense of being an accessory as a result of her  
8 additional acts in encouraging and aiding defendant to commit  
9 the offense charged against him."

10 Which was -- he was charged as an accessory.

11 MR. DENNY: That's right.

12 THE COURT: He was, therefore, an accomplice.

13 MR. DENNY: That's right.

14 THE COURT: As an accessory, correct?

15 MR. DENNY: She was his accomplice as an accessory,  
16 that's right.

17 THE COURT: And "the Court erred in refusing to instruct  
18 the jury that her testimony required corroboration."

19 So, you're stating to me that the Court in the  
20 motion under 1118.1 should view Ella Jo Bailey as an  
21 accomplice as a matter of law and not a matter for the jury?

22 MR. DENNY: No, not necessarily, your Honor.

23 THE COURT: And that, therefore, I should grant --

24 MR. DENNY: I'm not talking about Ella Jo Bailey.

25 THE COURT: Pardon?

26 MR. DENNY: I'm not talking about Ella Jo Bailey. I'm  
27 talking about Hoyt.

28 THE COURT: Hoyt, yes. Did I say Ella Jo?

9d fol

9d-1

1 MR.DENNY: I'm sure the Court misspoke itself.

2 No, all I am saying is at this point that we  
3 never had a chance to raise this on a motion under 995 because  
4 it was never presented formally, pre-trial, even though I  
5 had asked the People to file a specific count charging what  
6 kind of conspiracy, what the object of the conspiracy was,  
7 when the conspiracy started and when the conspiracy terminated.  
8 To which -- to which I felt I had the right, then, to file  
9 a motion under 995, if the evidence that had been produced  
10 at the Grand Jury hearing did not establish that conspiracy  
11 and did not establish it because -- based on the uncorroborated  
12 testimony of an accomplice.

13 THE COURT: Off the record.

14 (Whereupon, there was a discussion had off the  
15 record.)

16 THE COURT: On the record.

17 MR. DENNY: All right, your Honor, part of it I have  
18 argued before and I don't mean to belabor the point at all.

19 THE COURT: You have. Not that you meant to, but you  
20 have.

21 MR. DENNY: All right.

22 THE COURT: All right.

23 MR. DENNY: But I feel in the light of this case that's  
24 cited, which had not been previously cited, that it substan-  
25 tiates the points that I had previously made.

26 We have been denied due process by being denied  
27 the right to raise this point pre-trial, before she testified  
28 here, based on her testimony in the Grand Jury transcript.

9d-2

1 Now, whether or not this Court or an Appellate  
2 Court would have ruled for or against us on the point, to  
3 me, seems immaterial. A defendant should have the right  
4 to be notified of what he is faced with, the charge that he  
5 is faced with.

6 THE COURT: Well, you had two transcripts, at least two  
7 transcripts of trials to look at.

8 In addition to that, you had Grand Jury transcripts  
9 to look at.

10 The Court believes that the facts are so evident  
11 that you might very well have been apprised that the conspiracy  
12 was one which included disposition of the bus.

13 I think that the facts are so strong, the Court  
14 can take judicial knowledge of the content of those transcripts  
15 because the Court sat on one trial, the trial of Charles Manson,  
16 and is aware of it, of some of the proof that was produced in  
17 the Grogan case and the Court did read the Grand Jury transcript.

18 MR. DENNY: Your Honor, that's precisely why I asked the  
19 People after that, after those cases had been tried, and before  
20 this case was tried to make it definite.

21 THE COURT: To allege a conspiracy?

22 MR. DENNY: That's right. Because, your Honor --

23 THE COURT: I don't know of anything in the law that  
24 requires the People to allege a conspiracy if they don't want  
25 to charge a conspiracy count. They can rely on the status of  
26 the law which is to the effect if a conspiracy is established,  
27 a prima facie proof of a conspiracy is established, then 1223  
28 comes into effect and those statements can come in.

9d-3

1 MR. DENNY: Well --

2 THE COURT: As I was saying, the facts, themselves,  
3 the evidence as it was presented in those cases, and in this,  
4 as you knew that it was probably going to unfold, were such  
5 that you would have been put on notice, it seems to me, that  
6 that might very well occur, that the People might attempt to  
7 show that the conspiracy consisted not only of the killing  
8 of Mr. Shea, but the disposition of his body.

9 MR. DENNY: Well, I think the Court misses the point  
10 as to the notice and the opportunity to do something about it,  
11 that I am talking about. I'm talking about the opportunity  
12 that I feel a defendant should have and whether I'm flying  
13 in the face of established precedent, that any time the  
14 prosecution wants to charge a conspiracy or go on the basis  
15 of conspiracy they don't have to allege it, so they don't  
16 have to put the defendant on notice, that's fine, and that's  
17 the state of the law, if that is what the Court feels and the  
18 cases say is the state of the law, that the defendant has a  
19 right to be apprised before a trial of what he is going to  
20 be charged with, not only so that he knows what he is going to  
21 be required to meet in the prosecution's case during trial,  
22 but so that he has the opportunity to challenge the validity  
23 of that charge, whether it is charged or not, whether it is  
24 alleged or not, whether it's been put in writing or not  
25 before trial.

26 THE COURT: So the purpose of presenting the --

27 MR. DENNY: People --

28 THE COURT: -- confessions, admissions of co-conspirators

9d-4

1 to come in?

2 MR. DENNY: That's right.

3 9e fls.

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1 THE COURT: Well, the Court denies your motion.

2 Is there any other motion?

3 MR. DENNY: Your Honor, I think I've just about exhausted  
4 the motions that I have for today.

5 THE COURT: All right.

6 Can I see you both at 8:00 o'clock instead of  
7 going into the instructions which we intended to do this  
8 afternoon, but spent the entire afternoon arguing? Can I  
9 see you at 8:00 o'clock on Tuesday morning?

10 MR. DENNY: Yes.

11 THE COURT: I should have preferred doing it this  
12 afternoon, but -- I think --

13 MR. DENNY: Well, the Court has --

14 THE COURT: Have you submitted any?

15 MR. DENNY: I have submitted, yes, requested instruc-  
16 tions to the Court. The last two, 8 and 9 I will recopy  
17 on proper paper. I, unfortunately, do not have the proper  
18 paper.

19 THE COURT: I should have given these to our clerk to  
20 pull this afternoon.

21 But we can go over them, there's plenty of time.  
22 It is just --

23 MR. DENNY: Your Honor, I do have one question on that.  
24 I'm not sure whether some of the starred instructions in  
25 CALJIC are readily available. It used to be that the starred  
26 instructions were not printed.

27 THE COURT: They probably are not. Looking at your  
28 list here, I can see three or four that are not available



1 and will have to be typed. But let's be concerned with that  
2 later.

3 I'll see you at 8:00 o'clock on Tuesday morning.

4 MR. KAY: Have a nice weekend.

5 THE COURT: And where is that sheaf of instructions  
6 that the People submitted, do you know?

7 MR. KAY: I gave them directly to your Honor.

8 THE COURT: All right.

9 (Whereupon at 4:00 o'clock p.m. the evening  
10 adjournment was taken.)  
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