

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 128

HON. DENNIS J. LANDIN, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. BA366849

01 JOSE TAJEDA,)

02 GERARDO ALFARO,)

03 RODRIGO CASTELLON,)

DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, AUGUST 11, 2010

PAGE 1 THROUGH 41, INCLUSIVE

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

FOR THE PEOPLE: STEVE COOLEY,
DISTRICT ATTORNEY
BY: TRACY SIMS, DEPUTY
210 WEST TEMPLE STREET
18TH FLOOR
LOS ANGELES, CA 90012

FOR THE DEFENDANT STUART DUMAS,
(01) TAJEDA PRIVATELY RETAINED

FOR THE DEFENDANT RONALD N. RICHARDS,
(02) ALFARO PRIVATELY RETAINED

FOR THE DEFENDANT BRADLEY S. SANDLER,
(03) CASTELLON PRIVATELY RETAINED

COPY

MARTHA EMERICH, CSR. NO. 6864
OFFICIAL REPORTER

1 CASE NUMBER: BA366849
2 CASE NAME: PEOPLE VS. JOSE TAJEDA (01),
3 GERARDO ALFARO (02),
4 RODRIGO CASTELLON (03)
5 LOS ANGELES, CALIFORNIA WEDNESDAY, AUGUST 11, 2010
6 DEPARTMENT 128 HON. DENNIS J. LANDIN, JUDGE
7 REPORTER: MARTHA EMERICH, CSR NO. 6864
8 TIME: A.M. SESSION

9 APPEARANCES:

10 DEFENDANT TAJEDA, PRESENT, REPRESENTED BY
11 STUART DUMAS, PRIVATELY RETAINED; DEFENDANT
12 ALFARO, PRESENT, REPRESENTED BY RONALD N.
13 RICHARDS, PRIVATELY RETAINED; DEFENDANT
14 CASTELLON, PRESENT, REPRESENTED BY BRADLEY S.
15 SANDLER, PRIVATELY RETAINED; TRACY SIMS,
16 DEPUTY DISTRICT ATTORNEY, REPRESENTING THE
17 PEOPLE OF THE STATE OF CALIFORNIA.

18 --000--

19
20 (A CERTIFIED SPANISH LANGUAGE
21 INTERPRETER, INTERPRETING ENGLISH
22 FOR DEFENDANT CASTELLON AND
23 DEFENDANT ALFARO.)
24

25 THE COURT: ITEMS 2, 9, 10, AS WELL AS 11 AND 12,
26 PEOPLE VERSUS JOSE TAJEDA, GERARDO ALFARO AND RODRIGO
27 CASTELLON.

28 MR. RICHARDS: RONALD RICHARDS AND PATRICK SANTOS

1 FOR THE LAW OFFICES OF RONALD RICHARDS AND ASSOCIATES
2 REPRESENTING MR. ALFARO.

3 MR. SANDLER: GOOD MORNING, YOUR HONOR.

4 BRAD SANDLER ON BEHALF OF MR. CASTELLON.

5 HE IS BEFORE THE COURT.

6 MR. DUMAS: STEWART DUMAS, APPEARING FOR SAMMY
7 WEISS ON BEHALF OF MR. TAJEDA, WHO IS PRESENT IN COURT IN
8 CUSTODY.

9 MR. SIMS: DEPUTY DISTRICT ATTORNEY TRACY SIMS FOR
10 THE PEOPLE.

11 THE COURT: GOOD MORNING, EVERYONE.

12 ON CALENDAR TODAY IS A MOTION TO SET ASIDE
13 THE INFORMATION, AS WELL AS A MOTION TO DISCLOSE THE
14 INFORMANT.

15 LET'S START WITH THE MOTION TO SET ASIDE
16 THE INFORMATION.

17 COUNSEL FOR MR. CASTELLON, DID YOU WANT TO
18 BE HEARD?

19 MR. SANDLER: WELL, YOUR HONOR, JUST IN AN
20 ABUNDANCE OF CAUTION, MAYBE WE SHOULD TAKE A WAIVER FROM
21 THE DEFENDANTS THAT THEY ARE BOTH BEING SIMULTANEOUSLY
22 ASSISTED BY THE SAME SPANISH INTERPRETER.

23 SO ON BEHALF OF MR. CASTELLON,
24 MR. CASTELLON, YOU ARE SHARING AN INTERPRETER THIS MORNING
25 WITH MR. ALFARO. DO YOU AGREE TO THAT?

26 DEFENDANT CASTELLON: YES.

27 THE COURT: ALL RIGHT.

28 MR. ALFARO, DO YOU AGREE TO SHARE AN

1 INTERPRETER WITH MR. CASTELLON?

2 DEFENDANT ALFARO: YES.

3 MR. SANDLER: THANK YOU, JUDGE.

4 MAY I PROCEED?

5 THE COURT: YOU MAY.

6 MR. SANDLER: THANK YOU, YOUR HONOR.

7 YOUR HONOR, I REPRESENT MR. CASTELLON IN
8 THIS MATTER. I FILED A MOTION. I THINK IT'S REAL CLEAR
9 FACTUALLY WHAT WAS TESTIFIED TO AT THE PRELIM. I DON'T
10 KNOW OF ANY DISCREPANCY WITH OUR REPRESENTATION OF WHAT
11 THOSE FACTS WERE AT THE PRELIMINARY HEARING EXISTS BY THE
12 PEOPLE, BUT -- BUT MY READING OF THE TESTIMONY AND WHAT I
13 REMEMBER FROM THE HEARING WAS THAT THERE WAS REALLY NO
14 EVIDENCE ATTRIBUTED TO MR. CASTELLON OTHER THAN HE GOT
15 INTO A VEHICLE WITH ONE OF THE TWO UNDERCOVERS THAT WAS
16 WORKING ON THIS CASE AND WENT FROM ONE LOCATION TO ANOTHER
17 LOCATION.

18 THERE WAS NO DRUGS ON HIS PERSON OR ON THE
19 INFORMANT IN THAT DRIVE. THERE WAS NO DRUGS EVER
20 RECOVERED FROM MY CLIENT. NONE OF THE PARAPHERNALIA OR
21 ITEMS SEIZED HAVE EVER BEEN FOUND ON MY CLIENT'S PERSON,
22 IN HIS VEHICLE, IN HIS COMMAND. THERE'S NO STATEMENTS
23 ATTRIBUTED TO HIM. HE'S SUPPOSEDLY AT ONE LOCATION.

24 THERE'S NO STATEMENTS FROM A CONVERSATION
25 HE TOOK PART IN. NO EVIDENCE THAT HE PLANNED ANY CRIME.
26 NO EVIDENCE THAT HE BROUGHT THE MONEY, THAT HE BROUGHT THE
27 DRUGS. ALL WE HAVE IS HIM GETTING IN A CAR AND GOING TO
28 ANOTHER LOCATION.

1 HE DID OFFER ONE EXPLANATION TO OFFICERS
2 WHEN THEY INTERVIEWED HIM THAT DAY OF WHAT HE WAS DOING AT
3 THE SECOND LOCATION AND THAT'S THAT HE WAS HAVING HIS CAR
4 JUMPED OR ASSISTING SOMEONE WHO WAS JUMPING THEIR CAR.
5 AND THAT WAS CONSISTENT NOT ONLY WITH THE CARS AND THE WAY
6 THEY WERE SITUATED, A PICTURE THAT WAS ADMITTED INTO
7 EVIDENCE WHICH SHOWED JUMPER CABLES HANGING FROM THE
8 GRILLE OF THE TOYOTA TUNDRA IN THIS MATTER. THE TOYOTA
9 TUNDRA DID NOT BELONG TO MY CLIENT. THAT IS WHERE DRUGS
10 WERE FOUND.

11 SUPPOSEDLY MY CLIENT WALKED ONTO A DRIVEWAY
12 AND STOOD WITH ONE OF THE INFORMANTS AND WITH ONE OF THE
13 OTHER DEFENDANTS. THE INFORMANT REPORTS THAT HE WAS
14 LOOKING AT THE DRUGS, MEANING THE INFORMANT WAS LOOKING AT
15 THE DRUGS THAT WERE SITUATED IN THE CAR.

16 THERE'S NO COMMENTS BY MY CLIENT. THERE'S
17 NO ACTIONS BY MY CLIENT. THERE'S NO CONDUCT ATTRIBUTED TO
18 HIM THAT SAYS HE WAS IN POSSESSION OF THESE DRUGS, THAT HE
19 HAD ANYTHING TO DO WITH THESE DRUGS. AND WE CAN'T JUST
20 BASE A HOLDING TO ANSWER ON AN ASSUMPTION OR A
21 PRESUMPTION. THERE IS NO EVIDENCE OF HIS BEHAVIOR THAT
22 LINKS HIM TO TRANSPORTING DRUGS OR BEING IN POSSESSION OF
23 ANY DRUGS FOR SALE. IT'S VERY CLEAR.

24 THE EVIDENCE IS VERY DIFFERENT AS TO THE
25 OTHER DEFENDANTS AND THEIR CONDUCT, BUT AS TO
26 MR. CASTELLON, IT'S VERY CLEAR. HE GOT INTO A CAR WITH AN
27 INDIVIDUAL, AND THAT IS THE REASON WE MADE A REQUEST FOR
28 THE CONFIDENTIAL INFORMANT BECAUSE AT THE PRELIMINARY

1 HEARING WE WOULD HAVE HAD THE BENEFIT TO QUESTION
2 REGARDING THOSE ISSUES; WAS THERE A DISCUSSION THAT MY
3 CLIENT PARTICIPATED IN IN THE VEHICLE, ON THE DRIVEWAY.

4 WE DON'T HAVE THAT BENEFIT, AND NONE OF
5 THAT EVIDENCE WAS PRESENTED. SO I THINK BASED ON THE
6 EVIDENCE THAT THIS COURT HAS BEFORE IT, THE CHARGES AS TO
7 MR. CASTELLON SHOULD BE SET ASIDE, YOUR HONOR.

8 MR. RICHARDS: DO YOU WANT ME TO ARGUE MINE? WE
9 HAVE DIFFERENT ISSUES.

10 THE COURT: YOURS IS NOT A SUFFICIENCY OF THE
11 EVIDENCE.

12 MR. RICHARDS: ON COUNT 2 IT IS.

13 THE COURT: GO AHEAD.

14 MR. RICHARDS: DO YOU WANT ME TO ARGUE BOTH FACETS
15 OF MY 995 OR JUST THE SUFFICIENCY FIRST?

16 THE COURT: JUST THE SUFFICIENCY FIRST.

17 MR. RICHARDS: ON COUNT 2, YOUR HONOR, WE FILED A
18 SUFFICIENCY ARGUMENT BECAUSE COUNT 2 WAS AN OFFERING FOR
19 SALE, AND THERE WAS ZERO EVIDENCE THAT MR. ALFARO OFFERED
20 THESE DRUGS TO ANYBODY. WE MADE A PRO FORMA MOTION ON
21 COUNT 1 FOR THE POSSESSION, BUT THERE ARE TWO SEPARATE
22 ELEMENTS, SEPARATE CRIMES.

23 AND IN THIS CASE, THERE'S NO DISPUTE THAT
24 IN THE RECORD THAT WAS PRESENTED AT THE -- AT THE LOWER
25 COURT MR. ALFARO DIDN'T OFFER ANY NARCOTICS TO ANYBODY.
26 THAT'S A SEPARATE OFFENSE WHEN YOU'RE ACTUALLY TRYING TO
27 MAKE A DEAL.

28 THE EVIDENCE WAS UNDISPUTED. I DON'T THINK

1 THE PEOPLE DISPUTE THAT SOMEONE NAMED OSCAR WAS THE PERSON
2 THAT WAS ORGANIZING AND OFFERING THE NARCOTICS FOR SALE.
3 AND SO THE DEFENDANT HAS TO HAVE INDIVIDUAL CONDUCT FOR
4 THE OFFENSE, AND THERE WAS -- IT WAS -- THERE'S NOT MUCH I
5 CAN ARGUE BECAUSE NO EVIDENCE WAS ELICITED RELATED TO THAT
6 SPECIFIC COUNT.

7 WE DID PROVIDE THE COURT ON PAGE 10 OF OUR
8 BRIEF THAT -- WE PROVIDED THE JURY INSTRUCTION 12.02 WHICH
9 REQUIRES THE PERSON TO BE GIVING THE NARCOTICS AWAY OR
10 SELLING IT, AND THAT'S VERY IMPORTANT BECAUSE IN THIS CASE
11 HE WAS ALSO CHARGED WITH A POSSESSION COUNT.

12 SO POSSESSION IS TOTALLY DIFFERENT THAN
13 ENGAGING IN THE ACT OF SALES, AND HE STILL -- WOULD STILL
14 FACTUALLY, NOTWITHSTANDING WE'RE GOING TO GET TO OUR LEGAL
15 ISSUES ON THE DENIAL OF THE SUBSTANTIAL RIGHT, BUT
16 FACTUALLY, THERE WAS JUST NO FACTS TO SUPPORT THAT COUNT,
17 BUT HE STILL HAS FACTS WHICH SUPPORTED THE POSSESSION
18 COUNT, BUT THEY CAN'T BE IGNORED SIMPLY BECAUSE THEY ARE
19 TRIED TOGETHER -- OR FILED TOGETHER.

20 THE COURT: ALL RIGHT. THANK YOU.

21 MR. SIMS, DO YOU WANT TO RESPOND, THEN, TO
22 THESE FACTUAL ARGUMENTS?

23 MR. SIMS: WITH REGARDS TO MR. CASTELLON --

24 THE COURT: JUST ONE MOMENT.

25 MR. DUMAS: YOUR HONOR, MR. WEISS IS JUST JOINING
26 IN THE MOTION. WE'RE NOT ADDING ANY ADDITIONAL ARGUMENT
27 OTHER THAN WHAT WAS PRESENTED AT THE PRELIMINARY HEARING.

28 THE COURT: ALL RIGHT. THANK YOU.

1 GO AHEAD.

2 MR. SIMS: THANK YOU.

3 WITH REGARDS TO MR. CASTELLON, YOUR HONOR,
4 IT'S MORE THAN MERE PRESENCE FOR MR. CASTELLON.
5 MR. CASTELLON IS, ACCORDING TO THE INFORMATION PROVIDED BY
6 THE INFORMANT, PRESENT AT THE HOUSE WHEN THE NEGOTIATION
7 FOR THE KILOS OF COCAINE IS MADE. HE IS INSIDE OF THE
8 HOUSE AT THAT POINT IN TIME.

9 THERE'S A DISCUSSION WITH REGARDS TO
10 A VIEWING OF ONE KILOGRAM OF COCAINE INSIDE THE HOUSE
11 WHILE MR. CASTELLON IS PRESENT. THEN THE AGREEMENT IS
12 THAT THE REMAINING EIGHT OR NINE KILOS OR SO WOULD BE SEEN
13 AT A SEPARATE LOCATION.

14 MR. CASTELLON AND THE INFORMANT THEN GET
15 INTO A CAR TOGETHER WHERE -- WELL, AS THEY WERE DRIVING TO
16 THE SEPARATE LOCATION, THE SECOND LOCATION, THE INFORMANT
17 THEN CALLS THE INVESTIGATOR, HIS HANDLING I.O. AND SAYS,
18 "I SAW THE ONE, THE ONE KILO," AND MR. CASTELLON IS THEN
19 DRIVING -- IS DRIVING AT THAT POINT.

20 THEY GO TO THE SECOND LOCATION WHERE THE
21 ADDITIONAL KILOS ARE FOUND. THEY GO DIRECTLY TO THE
22 TOYOTA TUNDRA WHERE THE ADDITIONAL KILOS ARE LOCATED.
23 THEY ALL PEER IN, LOOK TO THE KILOS, AND THEN THE
24 DETECTIVES ARRIVE.

25 SO THIS IS MORE THAN MERE PRESENCE ON THE
26 PART OF MR. CASTELLON. IT IS EQUALLY AS LIKELY, AND THE
27 MAGISTRATE APPEARS TO HAVE FOUND IT LIKELY, THAT
28 MR. CASTELLON IS PART AND PARCEL OF THE DELIVERY PROCESS

1 AND THE MECHANISM OF ENGAGING IN THIS TRANSACTION. HE'S
2 PART OF THE MECHANISM. HE DELIVERS THE INFORMANT FROM ONE
3 LOCATION TO THE OTHER WHERE HE WAS PRESENT WHEN THERE IS A
4 DISCUSSION WITH REGARDS TO THE VIEWING OF COCAINE.

5 SO IF IT IS MR. CASTELLON'S POSITION THAT
6 HE WAS SIMPLY TRYING TO GET A JUMP OF HIS CAR, AT THAT
7 POINT IT WOULD BE INCUMBENT UPON HIM TO SAY, "WHOA, WHOA,
8 WHOA, I'M NOT INVOLVED IN THIS COCAINE TRANSACTION. I WAS
9 JUST HERE TO GET MY CAR JUMPED. I'M NOT GOING TO TAKE A
10 POTENTIAL PURCHASER OF COCAINE TO A SECOND LOCATION. I
11 JUST WANT TO GET A JUMP. I AM OUT OF THIS. I'M GOING TO
12 BACK AWAY, AND WHEN YOU GUYS ARE DONE WITH YOUR
13 TRANSACTION, THEN I WILL GO TAKE CARE OF MY CAR."

14 SO IT APPEARS TO BE MORE THAN SIMPLE
15 PROXIMITY TO THE COCAINE DEAL FOR MR. CASTELLON. IT IS
16 FULL-ON ENGAGEMENT AND INVOLVEMENT IN THE PROCESS OF
17 CREATING THIS TRANSACTION WHICH APPEARS TO HAVE BEEN A
18 TWO-PART TRANSACTION WHICH IS SORT OF STANDARD FOR THESE
19 TYPES OF LARGE-SCALE COCAINE TRANSACTIONS.

20 THERE'S A VIEWING. THERE'S A VIEWING OF
21 MONEY. THEY NEVER KEEP THE MONEY AND THE COCAINE AT THE
22 SAME LOCATION. SO YOU HAVE TO SEE THE COCAINE TO ENSURE
23 THAT THERE IS, IN FACT, PRODUCT TO BE PURCHASED. ONCE YOU
24 HAVE SEEN ENOUGH TO ENSURE THAT THERE IS PRODUCT TO BE
25 PURCHASED, THE GRAVAMEN OR THE BULK OF THE PRODUCT IS AT A
26 SECOND LOCATION. AND IT APPEARS THAT THAT WAS
27 MR. CASTELLON'S JOB, WAS TO DRIVE THE INFORMANT FROM ONE
28 LOCATION TO THE OTHER LOCATION TO VIEW THE BULK OF THE

1 COCAINE.

2 SO AS IT RELATES TO MR. CASTELLON, I
3 BELIEVE HE IS INTRINSICALLY INVOLVED IN THIS TRANSACTION.

4 AS FOR COUNSEL'S ARGUMENT AS TO COUNT 2, IT
5 APPEARS THAT COUNT 2, AS I SEE IT REFLECTED, IS POSSESSION
6 FOR SALE OF A CONTROLLED SUBSTANCE IN THE INFORMATION. I
7 WILL JUST CHECK THE COMPLAINT TO SEE IF THEY ARE THE SAME
8 COUNT.

9 MR. RICHARDS: I MAY HAVE MISSPOKE. I MEANT
10 COUNT 1, THE FURNISHING.

11 MR. SIMS: VERY WELL.

12 IF WE'RE MAKING AN ARGUMENT AS TO THE
13 ASPECT OF SALES FOR MR. ALFARO, THAT'S EXACTLY WHAT THIS
14 IS. THIS IS A TRANSACTION. IT APPEARS THAT MR. ALFARO,
15 IN CONJUNCTION WITH THE OTHER PERSON WHO SORT OF ACTED AS
16 MIDDLEMAN TO GET THE INFORMANTS, WHO ARE POSING AS
17 PURCHASERS, TOGETHER WITH MR. ALFARO AND MR. CASTELLON,
18 WHO ARE ENGAGING IN THE SALES PROCESS OF THIS COCAINE,
19 THERE'S A DISCUSSION OF MONEY, OF HOW MUCH IS GOING TO BE
20 PAID FOR THIS TRANSACTION. THERE IS THE COCAINE WHICH,
21 APPARENTLY, IS FOUND IN THE TOYOTA TUNDRA TRUCK BELONGING
22 TO MR. ALFARO, A CONSIDERABLE AMOUNT.

23 SO THIS IS QUITE A BIT MORE THAN JUST
24 SIMPLE POSSESSION OR POSSESSION FOR THE PURPOSE OF SALES.
25 THERE IS A NEGOTIATION. THERE IS A CONSIDERABLE STEP
26 TAKEN TOWARDS MAKING A SALE. BUT FOR THE INVOLVEMENT OF
27 THE POLICE OFFICERS IN THIS CASE, THERE WOULD HAVE BEEN A
28 SALE.

1 SUBMITTED.

2 THE COURT: ALL RIGHT. THANK YOU.

3 DO YOU WANT TO BRIEFLY RESPOND?

4 MR. SANDLER: YES, IF I MAY, YOUR HONOR.

5 I THINK THE -- IN LISTENING TO THE PEOPLE'S
6 ARGUMENT, THEY CONCEDE OUR POINT. OUR POINT IS PRESENCE
7 AT A LOCATION DOESN'T MEAN YOU PARTICIPATE IN THE
8 ACTIVITIES. AND I THINK THE PEOPLE WOULD AGREE OFTENTIMES
9 IN A ROBBERY CASE YOU'LL HAVE A CAR FULL OF PEOPLE GO TO A
10 LOCATION, SOMEONE GOES INTO AN AM-PM, FOR LACK OF A BETTER
11 EXAMPLE, COMMITS A ROBBERY, GETS BACK IN THE CAR AND NOT
12 EVERYONE IN THE CAR IS CHARGED BECAUSE NOT EVERYONE
13 PARTICIPATED IN THAT ROBBERY.

14 THAT'S THE SITUATION WE HAVE HERE. WE
15 CAN'T HOLD SOMEONE TO ANSWER ON THE ASSUMPTION WE KIND OF
16 HAVE A HUNCH OF WHAT WE THINK THEY ARE DOING. THAT'S NOT
17 GOOD ENOUGH. THERE HAS TO BE PROBABLE CAUSE. THERE HAS
18 TO BE TESTIMONY FROM THE OFFICER, WHO IS RELAYING HEARSAY
19 TO BEGIN WITH, BUT THERE HAS TO BE EVEN HEARSAY TESTIMONY
20 SAYING THE INFORMANT HAD A DISCUSSION WITH MR. CASTELLON
21 ABOUT THIS PROCESS, THAT MY CLIENT WAS AT THE FIRST
22 LOCATION INVOLVED IN THE DISCUSSION.

23 AND THE TESTIMONY IS THAT OSCAR
24 MASTERMINDED THIS DRUG DEAL AND THAT OSCAR SET UP THE VIEW
25 OF THE ONE KI' AND THEN THE EVENTUAL EIGHT OR NINE THAT
26 WERE SUPPOSED TO BE PICKED UP.

27 MY CLIENT CAN'T BE HELD TO ANSWER OR HAVE
28 TO GO TO TRIAL WITH NO EVIDENCE PRESENTED AT THE

1 PRELIMINARY HEARING OTHER THAN HE GETS IN A CAR, AND THAT
2 IS THE EVIDENCE. THEY COULD HAVE BROUGHT THE INFORMANT,
3 PUT HIM ON THE STAND. HE COULD HAVE TESTIFIED TO A
4 CONVERSATION MY CLIENT PARTICIPATED IN, TO A PHONE CALL HE
5 MADE IN THE CAR. THAT DIDN'T HAPPEN.

6 MY CLIENT DIDN'T GET INTO HIS OWN VEHICLE
7 AND DRIVE TO THE OTHER LOCATION. THE INFORMANT DROVE A
8 CAR. MY CLIENT WENT IN A CAR TO A LOCATION WHERE -- WHERE
9 HE WAS RETURNING TO, AS BASED ON HIS STATEMENT.

10 THAT'S THE EVIDENCE THAT WE HAVE BEFORE THE
11 COURT. IT'S NOT SUFFICIENT AS TO MR. CASTELLON ON EITHER
12 CHARGE, YOUR HONOR.

13 SUBMIT.

14 THE COURT: DID YOU WANT TO RESPOND?

15 MR. RICHARDS: YES, YOUR HONOR.

16 I THINK, REALLY, NOW IS A PERFECT TIME TO
17 DOVETAIL INTO, REALLY, THE MAIN ARGUMENT OF THE -- OF WHAT
18 WAS DENIED AT THE PRELIM BECAUSE THE PEOPLE --

19 THE COURT: WE'LL GET TO THAT IN A MOMENT.

20 MR. RICHARDS: MY SHORT RESPONSE ON COUNT 1 IS THAT
21 THE PEOPLE ARGUED, WELL, THEY WOULD HAVE MADE A SALE IF
22 THE POLICE DIDN'T INTERFERE. AND THAT MAY BE TRUE, BUT
23 ACCORDING TO THE FOCUS IN THE ACTUS REUS OF MR. ALFARO,
24 IT'S UNDISPUTED, AND I DIDN'T HEAR ANYTHING DIFFERENT,
25 THAT MR. ALFARO WAS NOT ENGAGED IN OFFERING OR OFFERING TO
26 GIVE AWAY THE DRUGS THAT MAKE UP THE COUNT FOR COUNT 1.

27 JUST BECAUSE YOU POSSESS DRUGS, THAT
28 DOESN'T MEAN THE PEOPLE ALSO GET A FREEBIE THAT THEN YOU

1 ALSO ARE OFFERING THEM TO GIVE AWAY. THAT'S A SEPARATE
2 OFFENSE BECAUSE YOU DON'T EVEN HAVE TO HAVE DRUGS IN YOUR
3 POSSESSION TO BE GUILTY OF OFFERING TO SELL DRUGS.

4 THAT CRIME, THE -- WHERE THAT CRIME STARTS
5 IS AT THE MOMENT THE DEFENDANT GOES TO OFFER TO GIVE THE
6 DRUGS AWAY. THAT'S THE CONDUCT THAT IS ILLEGAL. DRUGS
7 ARE NOT RELEVANT. YOU DON'T EVEN HAVE TO HAVE DRUGS. YOU
8 COULD JUST SAY, "WOULD YOU LIKE TO BUY SOME COKE." THAT'S
9 THE CRIME.

10 IN THIS CASE, HIM JUST SITTING THERE WITHIN
11 A VEHICLE THAT IS OWNED BY HIM -- AND THERE'S NO EVIDENCE
12 THAT THE INFORMANT SPOKE TO HIM. THERE'S NO EVIDENCE HE
13 ORGANIZED THE SALE. THE FACT THAT THERE'S DRUGS FOUND IN
14 A VEHICLE OWNED BY HIM MAY GET THE PEOPLE, FOR PRELIM
15 PURPOSES ONLY, PAST A MOTION TO DISMISS FOR POSSESSION,
16 BUT THERE STILL HAS TO BE SOME OTHER INVOLVEMENT THAT HE'S
17 INVOLVED IN THE SALE BECAUSE SOMETIMES PEOPLE LEAVE DRUGS
18 IN OTHER PEOPLE'S CUSTODY FOR SAFEKEEPING. SOMETIMES THEY
19 ARE IN SOMEONE'S HOUSE, AND THAT'S WHY THERE'S THE
20 POSSESSION CHARGE.

21 BUT THERE'S A SEPARATE CLASS OF CRIME HERE,
22 AND IT STILL HAS TO BE SUPPORTED BY EVIDENCE. IT DOES NOT
23 MEAN MR. ALFARO GETS OFF SCOT-FREE FOR PRELIM, BUT THERE'S
24 GOT TO BE FACTS THAT HE'S COMMITTED THIS CRIME, AND
25 THERE'S NONE PRESENT.

26 THE COURT: WELL, THERE MAY NOT BE DIRECT EVIDENCE,
27 BUT ISN'T THERE CIRCUMSTANTIAL EVIDENCE?

28 MR. RICHARDS: THERE IS NO CIRCUMSTANTIAL EVIDENCE

1 FROM EITHER THE INFORMANT OR IN THE RECORD THAT SAYS
2 MR. ALFARO PARTICIPATED IN OFFERING THE DRUGS FOR SALE.
3 THERE -- CIRCUMSTANTIAL EVIDENCE STILL HAS TO BE BASED
4 UPON A FACT.

5 IF THE FACTS THAT CAME IN THE PRELIM WERE
6 OSCAR WAS -- OSCAR WAS THE ONE ARRANGING THE SALE OF
7 METHAMPHETAMINE OR COCAINE TO THE POLICE, TO THE
8 UNDERCOVER, THAT'S THE FACTS. IT -- THERE HAS TO BE SOME
9 OTHER FACT TO DRAW AN INFERENCE THAT THESE TWO DEFENDANTS
10 WERE SOMEHOW INVOLVED IN THE SALE OF THOSE DRUGS. LIKE,
11 OSCAR MADE A REFERENCE THAT HE'S WORKING FOR THEM OR
12 THERE'S EVIDENCE THAT THEY ARE ALL WORKING TOGETHER.

13 JUST HAVING TWO PEOPLE NAIVELY HOLD DRUGS
14 FOR A GUY THAT IS ACTUALLY SELLING THEM DOESN'T ESCALATE
15 THEIR CONDUCT TO FELONIOUS CONDUCT ON THE OFFERING FOR
16 SALE. THERE HAS TO BE SOME FACT THAT THE COURT CAN LOOK
17 AT TO DRAW AN INFERENCE. JUST THE FACT THAT HE HAD
18 POSSESSION DOESN'T, LIKE I SAID, GIVE THE PEOPLE A FREE
19 RIDE ON THE OFFERING. THEY NEED TO BE ABLE TO CONNECT
20 THAT CONDUCT TO EACH INDIVIDUAL DEFENDANT.

21 IN THIS CASE, IT IS WHAT IT IS. OSCAR WAS
22 SELLING DRUGS TO AN INFORMANT, AND, MIRACULOUSLY, OSCAR IS
23 THE ONE THAT GOT AWAY AND LEFT THE SCENE WITH ALL OF THESE
24 POLICE SURROUNDING IT. SOMEHOW OSCAR, WITH HELICOPTERS
25 AND ALL OF THESE POLICE, GOT OUT OF THE LOCATION, AND HE
26 GOT AWAY.

27 BUT ALL THE COURT IS CABINED WITH IN THIS
28 RECORD IS THAT OSCAR DID EVERYTHING AND THESE GUYS WERE

1 JUST THERE. AND SO IF THE DRUGS WERE NOT IN MR. ALFARO'S
2 CAR, HE WOULDN'T EVEN BE HERE. IT WOULD BE VERY HARD TO
3 MAKE A POSSESSION CASE AGAINST HIM, BUT THE FACT THAT THEY
4 WERE IN HIS CAR, YOU KNOW, THAT'S WHAT WE HAVE, AND THAT'S
5 WHY HE'S HERE FOR POSSESSION.

6 BUT YOU JUST CAN'T BUILD -- IF YOU'RE GOING
7 TO BUILD AN INFERENCE UPON AN INFERENCE, IT STILL HAS TO
8 BE BASED UPON A FACT OF EVIDENCE, AND THERE JUST WAS
9 SIMPLY A LACUNA OF EVIDENCE AS TO ALFARO. IT JUST WAS NOT
10 THERE AT THIS -- AT THIS PRELIM.

11 WE WERE VERY CAREFUL, MR. SANDLER AND I,
12 WHEN WE LISTENED TO THE TESTIMONY OF THE POLICE OFFICER,
13 NOT TO ASK A LOT OF QUESTIONS THAT WOULD SORT OF IMPLICATE
14 INVOLVEMENT OTHER THAN MERE PRESENCE. AND IF MERE -- IF
15 THE LAW IS THAT MERE PRESENCE IS NOT ENOUGH FOR CERTAIN
16 CHARGES IN THIS PARTICULAR CASE, THAT'S ALL YOU HAD AS TO
17 MR. ALFARO. YOU DON'T HAVE HIM DOING ANYTHING THERE.

18 THERE'S NO FACTS IN THE RECORD THAT HE'S
19 DONE ANYTHING, BUT THERE WAS DRUGS FOUND IN A CAR THAT HE
20 OWNS, AND THAT'S WHY HE'S HERE FOR POSSESSION. BUT YOU
21 REALLY HAVE GOT TO HAVE HIM DOING SOMETHING FOR COUNT 1,
22 AND THAT'S WHY COUNT 1 HAS A DIFFERENT PENALTY, A
23 DIFFERENT CHARGING NUMBER. THEY ARE NOT THE SAME.

24 AND I KNOW IT SOUNDS LIKE A TECHNICAL
25 POSSIBLE DISTINCTION, BUT IT'S VERY IMPORTANT THAT HE BE
26 HELD TO ANSWER PROPERLY ON EACH CHARGED COUNT, AND YOU'VE
27 GOT TO HAVE SOME FACT. AND LIKE I SAID, YOU DON'T NEED
28 DRUGS FOR THAT FACT.

1 THERE'S -- LOOK THROUGH THE WHOLE RECORD,
2 YOUR HONOR. WHAT WAS MR. ALFARO OFFERING TO SELL? WAS HE
3 EVER INVOLVED IN SETTING UP THIS MEETING? WAS HE EVER
4 INVOLVED IN THE NEGOTIATIONS? WAS HE EVER INVOLVED IN
5 COLLECTING ANY MONEY? NO, NO, NO AND NO. THERE'S JUST NO
6 EVIDENCE THERE.

7 SO IF THE COURT GRANTS THE MOTION, IT
8 DOESN'T LEAVE THE PEOPLE WITHOUT A REMEDY. THEY CAN
9 REFILE ON THAT COUNT AND TRY TO FIX THAT, BUT THE COUNTS
10 HAVE GOT TO STAND ON THE RECORD THAT IS PRESENTED TO THE
11 COURT. THE COURT CAN'T AUGMENT FACTS IN DRAWING AN
12 INFERENCE IN FAVOR OF THE PEOPLE. THERE HAS TO BE A FACT
13 THAT THE COURT CAN BASE ITS RULING ON, AND IN THIS CASE
14 IT'S VERY OBVIOUS THAT THERE WAS JUST AN ABSENCE OF PROOF
15 AS TO COUNT 1 BECAUSE THERE WAS NO EVIDENCE SOLICITED
16 BECAUSE THE PEOPLE WISELY WERE FOCUSED ON GETTING THEM
17 HELD TO ANSWER ON THE POSSESSION COUNT, NOT ON OFFERING
18 BECAUSE THEY HAD NO FACTS BECAUSE THE INFORMANT ONLY DEALT
19 WITH OSCAR, AND SO THAT'S THE FACTS.

20 I MEAN, THE FACT THAT THE PEOPLE CHARGED IT
21 DOESN'T MEAN THE COUNT HAS ANY VALIDITY. WE STILL HAVE TO
22 SEE WHAT EVIDENCE COMES OUT, AND THAT'S WHAT CAME OUT, AND
23 WE WERE THERE.

24 THE COURT: I'LL LET MR. SIMS BRIEFLY RESPOND TO
25 THE ARGUMENT THAT THERE IS NO OTHER FACT THAT WAS
26 MENTIONED AT THE PRELIM OTHER THAN MERE PRESENCE.

27 MR. SIMS: THANK YOU, YOUR HONOR.

28 WITH REGARDS TO MR. ALFARO'S INVOLVEMENT IN

1 THE SALES ACTIVITY, THIS IS AN ACTING-IN-CONCERT ARGUMENT
2 WITH REGARDS TO ALL THREE OF THE PARTICIPANTS. THEY ALL
3 WERE ACTING TOGETHER, PERHAPS AT DIFFERENT STAGES OR HAD
4 DIFFERENT ROLES OR RESPONSIBILITIES IN THE ACTIVITY OF
5 SELLING THESE 10 KILOS OF COCAINE, BUT THEY WERE ALL
6 INTRINSICALLY INVOLVED. EACH HAD DIFFERENT
7 RESPONSIBILITIES, BUT THEY WERE ALL ACTING TOGETHER.

8 SO IF OSCAR IS DOING THE TALKING,
9 MR. ALFARO AND MR. CASTELLON ARE DOING THE ACTING. SO
10 WITH REGARDS TO THAT, THEY ARE ALL INTRINSICALLY INVOLVED
11 IN THE SALES.

12 WITH REGARDS TO MR. CASTELLON'S ARGUMENT
13 THAT BECAUSE THERE IS NO COMMENTS WITH -- MADE BY
14 MR. CASTELLON TO INDICATE THAT HE WAS INVOLVED IN THE
15 SALES, THAT DOESN'T NECESSARILY HOLD WATER EITHER.
16 OFTENTIMES THESE TRANSACTIONS ARE CONDUCTED IN SILENCE SO
17 YOU'RE NOT GOING TO HAVE COMMENTS. AND, IN FACT, HAD
18 THERE BEEN COMMENTS MADE BY MR. CASTELLON, I AM SURE THEY
19 WOULD HAVE BEEN REFLECTED IN THE POLICE REPORT.

20 SO THE ARGUMENT THAT WE COULD HAVE HAD THE
21 INFORMANT HERE TO TELL US WHETHER OR NOT THERE WERE
22 COMMENTS MADE BY MR. CASTELLON IS MOOT CONSIDERING THAT
23 THERE IS NO MENTION IN THE REPORT THAT THERE WERE
24 COMMENTS. SO THE COURT CAN INFER THAT THERE ACTUALLY WERE
25 NO COMMENTS WITH REGARDS TO SALES MADE BY MR. CASTELLON TO
26 THE INFORMANT.

27 I'LL SUBMIT.

28 THE COURT: ALL RIGHT. THANK YOU.

1 WELL, WITH RESPECT TO THE SUFFICIENCY OF
2 EVIDENCE ARGUMENT, I WILL DENY MOTIONS BY THE DEFENDANTS.

3 I DO THINK --

4 THE INTERPRETER: I'M SORRY, THE INTERPRETER IS
5 HAVING TROUBLE HEARING.

6 "I WILL DENY THE MOTIONS"?

7 THE COURT: YES.

8 I WILL DENY THE MOTIONS BECAUSE I DO THINK
9 THERE IS SUFFICIENT EVIDENCE TO WARRANT THE TRIAL. THE
10 DIRECT EVIDENCE, AS WELL AS THE CIRCUMSTANTIAL EVIDENCE
11 PRESENTED FOR THE MAGISTRATE IS SUFFICIENT. SO THE
12 MOTION, ON THAT BASIS, IS DENIED.

13 AND I'LL HEAR YOU, SIR, ON THE OTHER ASPECT
14 OF THE MOTION.

15 MR. RICHARDS: THANK YOU, YOUR HONOR.

16 SINCE THE PRELIMINARY HEARING WAS HELD, WE
17 WERE FORTUNATE ENOUGH -- SINCE JUNE 23RD, WE WERE
18 FORTUNATE ENOUGH TO HAVE THE CALIFORNIA SUPREME COURT COME
19 OUT WITH TWO VERY HELPFUL OPINIONS IN THIS AREA.

20 THE FIRST OPINION WAS THE DAVIS OPINION
21 WHICH MADE IT CLEAR THAT IT'S REVERSIBLE ERROR SUBJECT TO
22 A WRIT NOT TO HAVE A HEARING ON AN INFORMANT, THAT YOU
23 HAVE TO HAVE THE HEARING. AND WE CITED THE DAVIS CASE ON
24 PAGE 8 OF OUR BRIEF IN THAT -- THAT THAT CASE WAS A WRIT
25 GRANTED WHICH REQUIRED THE -- WHICH REQUIRED THE TRIAL
26 COURT TO HAVE A HEARING ON THE INFORMANT.

27 AND THEN WE HAD FILED A SUPPLEMENTAL BRIEF
28 ON AUGUST 9TH WHICH GAVE THE COURT THE GALINDO CASE WHICH

1 IS VERY HELPFUL IN DEFINING AND REASSERTING THE FACT THAT
2 PROP 115 DID NOT ABROGATE PRE-PRELIM RIGHTS OF DEFENDANTS
3 THAT ARE TIMELY EXERCISED, AND IN THIS CASE MR. SANDLER,
4 FROM DAY ONE, FILED A MOTION TO DISCLOSE THE INFORMANT.

5 AND THE FACTS, AS THEY ARE IN ALL CASES,
6 YOUR HONOR, ARE ALWAYS UNIQUE TO EVERY CASE. IN THIS CASE
7 WHAT WAS -- WHAT WAS REALLY BENEFICIAL FOR THE DEFENDANTS'
8 RECORD IS AS FOLLOWS.

9 WE FILED A MOTION TO DISCLOSE THE
10 INFORMANT. WE WERE FIRST IN FRONT OF JUDGE BIANCO. HE
11 DIDN'T RULE ON IT AND PUT IT OVER FOR A WEEK OR TWO, AND
12 THEN THE PEOPLE AFFIDAVITED HIM. WE WENT, THEN, TO
13 DEPARTMENT 33, AND WE SUPPLEMENTED OUR BRIEFS, AND THEN
14 DEPARTMENT 33 REFUSED TO HAVE THE HEARING AT ALL.

15 THAT'S WHERE THE BIG ERROR OCCURRED BECAUSE
16 THERE WASN'T AN ISSUE OF TIMELINESS. EVERYBODY AGREED
17 THAT WE HAD FILED THESE MOTIONS FROM DAY ONE. THE PEOPLE
18 CONCEDED ON THE RECORD THAT THEY WOULD PROVIDE THE
19 INFORMANT ONCE WE GOT TO THE NEXT COURT, THAT THAT WASN'T
20 AN ISSUE.

21 SO THIS WASN'T EVEN A SITUATION WHERE THE
22 PEOPLE -- WHERE THE HEARING WOULD HAVE BENEFITTED THE
23 PEOPLE. IT WAS CONCEDED BY THE PEOPLE THAT THEY WOULD
24 PROVIDE THE INFORMANT AND REPRESENTED THAT BOTH IN THE
25 MAGISTRATE'S COURT AND IN THIS COURT AT ARRAIGNMENT.

26 WHAT IS TROUBLING IS THAT NOW WHEN THE
27 COURT HEARS THE ARGUMENT OF THE PEOPLE ON THE SUFFICIENCY,
28 YOU KEEP HEARING THE WORDS "AND THE INFORMANT SAW THIS,"

1 "AND THE INFORMANT SAW THIS." WELL, THIS IS EXACTLY WHY
2 WE WANTED THE INFORMANT TO BE ABLE TO TESTIFY AS PART OF
3 OUR AFFIRMATIVE DEFENSE OF ENTRAPMENT, AS PART OF OUR
4 AFFIRMATIVE DEFENSE OF NEGATING THE ELEMENTS OF THE
5 OFFENSES. THIS IS WHY THE INFORMANT SHOULD HAVE BEEN
6 DISCLOSED.

7 IN THIS CASE WE HAD TWO SEPARATE ERRORS.
8 ONE ERROR BY DEPARTMENT 33 WAS THEY -- HE REFUSED TO HAVE
9 THE HEARING AT ALL. THAT'S A BIG ERROR.

10 THE SECOND ERROR IS THAT IT'S OBVIOUS FROM
11 THE RECORD THAT IF WE GOT THE INFORMANT IT'S REASONABLE
12 THE DEFENDANT WOULD HAVE BENEFITTED FROM BEING ABLE TO
13 PRESENT THAT EVIDENCE, AND WITHOUT THE INFORMANT, WE
14 CANNOT PRESENT THAT EVIDENCE. AND WE HAVE A RIGHT TO
15 SUBPOENA OUR OWN WITNESSES FOR PRELIMINARY HEARING TO PUT
16 ON AN AFFIRMATIVE DEFENSE, BUT WE WERE UNABLE TO BECAUSE
17 OF THE FACT THAT THE INFORMANT WAS NOT PROVIDED AND
18 SHIELDED UNTIL NOW.

19 THE GALINDO CASE IS VERY GOOD AUTHORITY FOR
20 THIS COURT BECAUSE IT MAKES IT CLEAR THAT PROP 115 ONLY
21 CHANGED WHAT IT CHANGED AND NOTHING ELSE. ALL COMMON LAW
22 MOTIONS AND ALL OTHER AVENUES AVAILABLE FOR THE DEFENDANT
23 ARE THERE AS LONG AS THEY WON'T UNREASONABLY DELAY THE
24 PROCEEDING OR THE MAGISTRATE IS NOT REQUIRED TO DELAY
25 CASES FOREVER FOR DEFENDANTS TO MAKE MOTIONS, BUT IN THIS
26 CASE, WE DIDN'T HAVE THAT PROBLEM. IT WAS SIMPLY THE
27 ARGUMENT WAS, "WE DON'T HAVE TO PROVIDE IT FOR THE
28 PRELIMINARY HEARING," AND THIS IS WHAT WE CALL AN OPEN

1 QUESTION.

2 THERE WAS AT THE TIME, THERE WAS DEBATE AS
3 TO WHETHER THIS IS SOMETHING THAT SHOULD BE ALLOWED. NOW
4 THE COURT HAS THE BENEFIT OF TWO SEPARATE DECISIONS,
5 DAVIS, AND IT'S AN ERROR NOT TO HAVE THE HEARING. SO THE
6 COURT CAN NOW COMFORTABLY CONCLUDE AND IS BOUND BY THE
7 DAVIS OPINION THAT IT WAS AN ERROR NOT TO HAVE THE
8 HEARING.

9 AND THEN THE QUESTION IS TIMING. YOU HAVE
10 THE GALINDO OPINION THAT SAYS THAT YOU CAN HAVE THESE TYPE
11 OF HEARINGS AS LONG AS THE -- THEY ARE NOT GOING TO PUSH
12 THE PROCEEDINGS OUT TO A POINT WHERE IT'S GOING TO BE SOME
13 SORT OF DELAY.

14 AND IN THIS CASE, THERE WAS NO ARGUMENT
15 THAT HAVING THE HEARING WAS GOING TO CAUSE A DELAY. IN
16 FACT, WE KEPT CONTINUING THE HEARING IN THE LOWER COURT TO
17 HAVE THE HEARING. IT WAS SURPRISING THE DAY OF THE PRELIM
18 WHEN THE JUDGE JUST SAID, "I AM NOT GOING TO HAVE THE
19 HEARING AT ALL." SO THAT TOOK ME BY SURPRISE BECAUSE MY
20 CLIENT SAT IN CUSTODY WHEN WE WERE DOING THE SHUFFLE OF
21 MAGISTRATES JUST SO WE CAN HAVE THE HEARING BECAUSE
22 MR. SANDLER AND I KNOW WE NEEDED THE INFORMANT.

23 SO NOW WHAT WE HAVE IS A SITUATION WHERE
24 THE WHOLE INFORMATION NEEDS TO BE DISMISSED BECAUSE IT'S
25 REASONABLE, BASED ON THE FACT THE INFORMANT'S PRESENCE
26 WOULD HAVE BENEFITTED HIM, AND IT'S A VERY LOW THRESHOLD
27 ONCE THE COURT FINDS THAT A SUBSTANTIAL RIGHT HAS BEEN
28 VIOLATED BECAUSE WE'RE ENTITLED -- IT'S NOT -- IT'S NOT

1 UNREASONABLE, AND THE COURT CAN'T RULE OUT BEYOND -- YOU
2 KNOW, THE STANDARD IS IT JUST HAS TO REASONABLY AFFECT THE
3 OUTCOME.

4 AND THE COURT HEARD MR. SIMS ELOQUENTLY
5 ARGUE ALL OF THESE CONNECTIONS THAT THE INFORMANT HAD.
6 HOW COULD THE COURT FIND THAT US NOT BEING ABLE TO
7 QUESTION HIM WOULD NOT HAVE REASONABLY AFFECTED THE
8 OUTCOME WITHOUT HEARING THE TESTIMONY. IT'S A LOW
9 STANDARD FOR THE DEFENDANT TO MEET. WE CLEARLY MET IT.

10 HAD WE HAD THIS INFORMANT, WE CLEARLY COULD
11 HAVE QUESTIONED HIM. I COULD HAVE ASKED HIM, "DID YOU
12 EVER TALK TO MR. ALFARO? WAS MR. ALFARO EVER INVOLVED IN
13 THE NEGOTIATIONS? DO YOU KNOW HOW THE DRUGS GOT INTO
14 MR. ALFARO'S CAR BECAUSE THE CAR WAS ALREADY THERE? DID
15 YOU PUT THEM IN THE CAR? DID OSCAR PUT THEM IN THE CAR?
16 DID MR. ALFARO SEE THE DRUGS PUT INTO THE CAR?"

17 THAT WOULD HAVE BEEN A FERTILE AREA FOR ME
18 TO EXTRAPOLATE EVIDENCE TO SHOW HIS INNOCENCE AT THAT
19 HEARING, BUT THE COURTHOUSE DOOR WAS CLOSED TO ME THAT DAY
20 BY COMPLETE SURPRISE, AND WE OBJECTED, AND THERE'S NOTHING
21 MORE WE CAN DO ABOUT IT.

22 BUT I THINK BECAUSE THAT SUBSTANTIAL RIGHT
23 WAS VIOLATED, YOUR HONOR -- AND ABOUT THREE YEARS AGO I
24 HAD A CASE, OR MAYBE FOUR YEARS AGO, IN FRONT OF JUDGE
25 KENNEDY POWELL WHERE THE INFORMANT WAS NOT DISCLOSED ON AN
26 M.D.M.A. CASE THAT THE INFORMANT WAS INVOLVED IN THE
27 TRANSACTION. IT WAS THE EXACT SAME ARGUMENT, AND WE DID
28 NOT GET THE -- THE INFORMANT WAS NOT DISCLOSED, AND IN

1 THAT CASE THE COURT DID HAVE A HEARING, BUT JUDGE POWELL
2 FOUND THAT THE INFORMANT WAS RELEVANT FOR US TO QUESTION
3 ABOUT WHETHER OR NOT THE DEFENDANTS HAD SPECIFIC
4 INVOLVEMENT DUE TO THE ENHANCEMENTS AND EVERYTHING ELSE.

5 AND IN THIS CASE YOU HAVE VARIOUS
6 ENHANCEMENTS THAT MAY REQUIRE THEIR SUBSTANTIAL
7 INVOLVEMENT IN THIS, AND IT IS RELEVANT TO DETERMINE THEIR
8 LEVEL OF CULPABILITY AND, ALSO, THEIR LACK OF CULPABILITY.
9 AND I JUST THINK THAT YOU CANNOT HAVE A RECORD LIKE THIS
10 WHERE THE DEFENSE WAS DEPRIVED ANY ACCESS TO THE INFORMANT
11 WHEN YOU'RE FACED WITH A CONCESSION BY THE PEOPLE THAT
12 THIS INFORMANT MUST BE DISCLOSED.

13 THAT'S REALLY WHY THESE FACTS ARE THE BEST
14 TYPE OF FACTS WE COULD EVER HAVE. BECAUSE IF THE PEOPLE
15 SAID, "YOUR HONOR, LET ME GO IN CAMERA WITH THE INFORMANT
16 TODAY AND WE'RE GOING TO SHOW YOU WE NEVER HAVE TO
17 DISCLOSE HIM BECAUSE THEY DON'T MEET THE REQUIREMENTS
18 UNDER 1042," THEN IT MAY BE A FOUL, BUT THERE'S NO HARM,
19 NO FOUL BECAUSE WE'RE NOT PREJUDICED BECAUSE THE JUDGE
20 WOULD HAVE RULED, AS THE COURT COULD THEN SIT IN THE SHOES
21 OF THE MAGISTRATE, AND SAY, "HEY, THERE'S NO CHANCE YOU
22 GUYS ARE GETTING THIS INFORMANT SO WHAT IS THE PREJUDICE?"

23 BUT IN THIS CASE YOU HAVE THE ADMISSION BY
24 THE PEOPLE THAT WE DO GET THE INFORMANT. IN FACT, THE
25 PEOPLE HAVE REPRESENTED THAT OUR MOTION IS MERITORIOUS,
26 THAT WE'RE GOING TO GET IT. SO THAT'S THE PREJUDICE.

27 SO I CANNOT PRESENT TO YOU A BETTER RECORD
28 THAN I HAVE DONE IN THIS CASE AS TO WHY THE DENIAL OF

1 THEIR SUBSTANTIAL RIGHT AT THE PRELIMINARY HEARING CAUSED
2 ACTUAL PREJUDICE TO OUR ABILITY TO DEFEND THEM.

3 THE COURT: ALL RIGHT. STAND BY.

4 DOES THE INTERPRETER NEED A BREAK?

5 THE INTERPRETER: YES.

6 THE COURT: OKAY.

7 WE'LL TAKE A TWO-MINUTE BREAK.

8

9 (BRIEF RECESS.)

10

11 MR. RICHARDS: YOUR HONOR, CAN WE APPROACH ON A
12 SECOND ISSUE?

13 THE COURT: SURE.

14

15 (A DISCUSSION WAS HELD AT THE BENCH
16 AND WAS NOT REPORTED.)

17

18 THE COURT: LET'S GO BACK ON THE RECORD, THEN.

19 COUNSEL FOR MR. CASTELLON, DID YOU WANT TO
20 ADD ANYTHING?

21 MR. SANDLER: I DID, YOUR HONOR, JUST VERY BRIEFLY.

22 OBVIOUSLY I JOIN IN ALL OF THE LEGAL
23 ARGUMENTS OF MR. RICHARDS, BUT I MIRROR THE ARGUMENT,
24 ALSO, BY MR. RICHARDS THAT AT THE PRELIMINARY HEARING,
25 YOUR HONOR, MY CLIENT WOULD HAVE HAD THE OPPORTUNITY TO
26 INVESTIGATE THESE SO-CALLED DISCUSSIONS THAT TOOK PLACE IN
27 THE FIRST RESIDENCE.

28 THERE WAS SUPPOSEDLY A CONVERSATION THAT

1 TOOK PLACE. IT WASN'T MEMORIALIZED IN THE POLICE REPORT.
2 CERTAINLY, THOSE STATEMENTS WOULDN'T COME IN AT TRIAL
3 IF -- IF THEY DIDN'T PRODUCE THE INFORMANT AT TRIAL. NONE
4 OF THAT EVIDENCE WOULD MAKE IT TO A TRIAL COURT BEFORE A
5 JURY WHERE WE WOULD PROCEED WITH TRIAL ABSENT THEM PUTTING
6 THE INFORMANT ON THE STAND BECAUSE THEY ARE ALL HEARSAY.
7 AND THERE'S NO MEMORIALIZATION OF ANY CONVERSATION MY
8 CLIENT PARTICIPATED IN.

9 IT'S NOT THAT MY CLIENT DID OR DIDN'T SAY
10 ANYTHING. IT'S THAT THE INFORMANT HAS ATTRIBUTED CONDUCT
11 TO MY CLIENT IN A VERY VAGUE AND SHALLOW WAY WHERE HE'S
12 JUST BEING LUMPED INTO THE OVERALL CONDUCT.

13 I COULD HAVE ASKED THE INFORMANT ON THE
14 STAND ABOUT ANY CONVERSATIONS, ABOUT ANY PHONE CALLS,
15 WHERE THE PHONE CALL RECORDS ARE, IF THEY EXIST, IF
16 THERE'S ANY NOTES THAT HE KEPT, THE SPECIFICS OF WHAT MY
17 CLIENT SAID, WHAT WAS MY CLIENT'S TAKE SUPPOSED TO BE IN
18 THIS DEAL HE PARTICIPATED IN, WHAT WAS HIS ROLE, HOW DID
19 THEY KNOW ONE ANOTHER, WERE THEY FRIENDS PREVIOUS TO THIS.

20 I WASN'T ABLE TO INVESTIGATE ANY OF THESE
21 FACTS. THAT'S WHAT THIS CASE IS ALL ABOUT, AND THE PEOPLE
22 COULD NOT PROCEED WITHOUT THAT EVIDENCE AT TRIAL. THAT'S
23 WHY THERE'S BEEN A CONCESSION SINCE THE BEGINNING.

24 AND THIS CASE AT PRELIM SHOULD HAVE --
25 SHOULD HAVE CAUSED THE -- THE COURT SHOULD HAVE CAUSED THE
26 INFORMANT TO BE PRODUCED AT PRELIM SO WE COULD HAVE
27 QUESTIONED THIS PERSON.

28 IT'S GOT TO BE ONE OR THE OTHER. THEY

1 CAN'T USE ALL OF THE ARGUMENTS OF THE EVIDENCE OF THIS
2 INDIVIDUAL, BUT WE CAN'T TALK TO THIS PERSON. THAT'S NOT
3 THE WAY THE LAW IS DESIGNED AS IT RELATES TO INFORMANTS.

4 YOU HAVE TWO TYPES OF SITUATIONS WITH
5 INFORMANTS, THE ONE WHERE THEY GIVE INFORMATION THAT LEADS
6 TO A BUST AND THEN ONE WHERE THEY PARTICIPATE.

7 THIS IS ONE WHERE THEY PARTICIPATE. THIS
8 IS THE KIND OF CASE WHERE WE NEED TO KNOW WHO IT IS. THIS
9 IS THE KIND OF CASE WHERE THE PEOPLE CONCEDE THEY HAVE TO
10 TELL US. SO WHY SHOULDN'T WE HAVE BEEN ABLE TO
11 CROSS-EXAMINE THIS PERSON ON ALL OF THE ALLEGATIONS THAT
12 AREN'T EVEN RECORDED IN THE POLICE REPORTS BUT PRESUMED
13 AND ASSUMED BY ARGUMENTS THAT ARE BEING MADE BEFORE THE
14 COURT?

15 WE DON'T KNOW WHAT THE INFORMANT WOULD HAVE
16 SAID. THESE ARE ARGUMENTS, AND THEY ARE NOT BASED ON THE
17 CONDUCT. AND WHILE I RESPECTFULLY DISAGREE WITH THE
18 RULING ON THE SUFFICIENCY OF THE EVIDENCE AS TO
19 MR. CASTELLON, I THINK THE COURT WOULD HAVE HAD THE
20 ADVANTAGE OF SEEING WHETHER THAT EVIDENCE WAS MORE TILTED
21 IN FAVOR OF THE PEOPLE OR THE DEFENSE WERE THIS PERSON TO
22 HAVE BEEN PUT ON THE STAND.

23 AND THAT DENIAL OF THE ABILITY ON THE PART
24 OF MY OFFICE TO REPRESENT MR. CASTELLON PROPERLY AND
25 DEFEND HIM PROPERLY BY INVESTIGATING ALL OF THE FACTS OF
26 THIS CASE WAS PREVENTED, AND THE COURT IN 33 DENIED MY
27 CLIENT OF THAT RIGHT. I THINK IT'S CLEAR, AND I THINK
28 GALINDO, AS I READ IT, IS COMPLETELY ON POINT, YOUR HONOR.

1 THE COURT: MR. DUMAS, DO YOU HAVE ANYTHING TO ADD?

2 MR. DUMAS: NOTHING ADDITIONAL TO ADD, BUT I WOULD,
3 OBVIOUSLY, JOIN IN MY ESTEEMED COLLEAGUES' ARGUMENT.

4 THE COURT: MR. SIMS, WHAT ABOUT FOR THE ARGUMENT
5 THAT THEY MAY HAVE BEEN ABLE TO RETRIEVE SOME INFORMATION
6 THAT MIGHT CHIP AWAY AT THE PEOPLE'S CASE, THE
7 CIRCUMSTANTIAL EVIDENCE THAT WE JUST REFERENCED EARLIER?

8 MR. SIMS: I THINK WHAT OFTENTIMES HAPPENS WITH
9 REGARDS TO DEFENSE COUNSEL IS THEY CONFUSE THE PRELIMINARY
10 HEARING WITH THE TRIAL. THERE'S NO RIGHT, NO AUTHORITY
11 FOR A RIGHT TO DISCOVERY OF AN INFORMANT AT THE
12 PRELIMINARY HEARING STATE. THEIR ARGUMENT IS THAT, WELL,
13 WE COULD HAVE POSSIBLY MADE INROADS INTO ARGUMENTS WHERE
14 THERE'S NO SUPPORT -- FACTUAL SUPPORT THAT THOSE FACTS
15 THAT THEY WANTED TO ENGAGE IN ACTUALLY EVEN EXISTED.

16 THE PURPOSE OF THE PRELIMINARY HEARING IS
17 TO JUST PROVIDE ENOUGH EVIDENCE TO SUPPORT THE ARGUMENTS
18 THAT A CRIME HAS BEEN COMMITTED AND THAT THESE DEFENDANTS
19 ARE THE LIKELY PERPETRATORS OF THOSE CRIMES. THE FACT
20 THAT THEY WANT TO GET INVOLVED INTO THE MINUTIA OF WHAT
21 PERHAPS MAY HAVE TAKEN PLACE IS MORE SUITED FOR THE TRIAL
22 CROSS-EXAMINATION THAN IT IS FOR THE PRELIMINARY HEARING
23 CROSS-EXAMINATION.

24 SO WITH REGARDS TO "WE COULD HAVE, WE
25 SHOULD HAVE, WE MAY HAVE, WE COULD POSSIBLY MIGHT HAVE,"
26 THERE'S NO FACTUAL BASIS FOR THE ARGUMENTS THAT THEY ARE
27 ACTUALLY EVEN MAKING. THIS IS ALL PURE SPECULATION AND
28 CONJECTURE ON WHAT MAY HAVE BEEN OR WHAT MIGHT HAVE BEEN.

1 AND WHAT WAS PRESENTED TO THE COURT IS WHAT WAS THE FACTS
2 THAT WERE PRESENT AND WHAT WAS THERE. AND THE DEFENDANTS
3 HAVE NOT HAD ANY VIOLATION OF THEIR SIXTH AMENDMENT RIGHT
4 TO CONFRONTATION, AND THAT IS SUPPORTED BY PROPOSITION
5 115.

6 THESE DEFENDANTS HAD THE OPPORTUNITY TO
7 CROSS-EXAMINE ON THE FACTS THAT THE PEOPLE PRESENTED
8 BECAUSE IT IS OUR BURDEN AT THE PRELIMINARY HEARING. IT
9 IS OUR BURDEN TO PRODUCE FACTS, AND WE PRODUCED,
10 OBVIOUSLY, ACCORDING TO THE MAGISTRATE AT THE PRELIMINARY
11 HEARING, A SUFFICIENT AMOUNT OF FACTS TO MEET OUR BURDEN.

12 SO THESE ARGUMENTS OF WHAT MAY HAVE BEEN
13 OUT THERE DO NOT FALL WITHIN THE CONTEXT OF THE
14 PRELIMINARY HEARING BECAUSE WE DON'T HAVE TO PRODUCE EVERY
15 SCINTILLA OF EVIDENCE THAT WE MAY HAVE. WE PRODUCED WHAT
16 WE FELT WAS SUFFICIENT. AND SO WITH REGARDS TO THE
17 CROSS-EXAMINATION ASPECTS, THERE MAY BE ANYTHING OUT
18 THERE. THE ARGUMENTS THAT THEY ARE MAKING ARE NOT
19 SUPPORTED BY ANY FACTS. THEY DON'T HAVE ANY FACTS TO
20 ESTABLISH THAT, "YES, WE KNOW THESE THINGS EXIST AND WE
21 WANTED TO CROSS-EXAMINE THEM ON THEM."

22 THEY ARE SAYING, WELL, MAYBE IT MIGHT HAVE
23 BEEN THIS AND MAYBE IT MIGHT HAVE BEEN THAT, THAT THESE
24 THINGS WERE PRESENT. NO, NO, NO, YOU DON'T GET TO
25 CROSS-EXAMINE ON WHAT MIGHT HAVE BEEN. YOU GET TO
26 CROSS-EXAMINE ON WHAT IS AND WHAT HAS BEEN PRESENTED. SO
27 WITH THAT REGARD, THERE IS NO ARGUMENT AS TO WHETHER OR
28 NOT THEY COULD HAVE CROSS-EXAMINED ON FICTITIOUS FACTS.

1 NOW, WITH REGARDS TO THIS -- THIS MOTION IN
2 GENERAL, THE PEOPLE ARE OF THE OPINION THAT THIS IS AN
3 ATTEMPT AT DE NOVO REVIEW OF AN ISSUE THAT HAS BEEN
4 LITIGATED ALREADY. THE ISSUE WITH REGARDS TO THE
5 NECESSITY OF THE PRODUCTION OF THE INFORMANT WAS
6 PRESENTED. IT WAS BRIEFED AND REVIEWED BY THE MAGISTRATE.
7 THERE WERE MOVING PAPERS BY ALL PARTIES AND REVIEWED BY
8 THE MAGISTRATE, AND THE MAGISTRATE SAW FIT TO DENY THEIR
9 ATTEMPT TO DISCLOSE THE INFORMANT AT THE PRELIMINARY
10 HEARING STAGE.

11 AND I THINK THAT THAT'S KEY BECAUSE THE
12 ARGUMENTS THAT ARE BEING MADE WITH REGARDS TO THE DAVIS
13 CASE AND THE GALINDO CASE, WHICH I THINK IS BEING
14 MISAPPLIED IN THIS PARTICULAR SITUATION, DO NOT SUPPORT
15 THE FACT THAT THE DEFENDANTS HAVE A RIGHT TO THIS
16 INFORMATION AT THE PRELIMINARY HEARING STAGE. CERTAINLY
17 THEY HAVE A RIGHT TO THE DISCOVERY OF THIS INFORMANT AT
18 THE TRIAL STAGE, AND THAT IS THE EVALUATION THAT THE COURT
19 MADE.

20 IN REVIEW OF THE TRANSCRIPT, YOU WILL BE
21 AWARE THAT THE MAGISTRATE AT THAT POINT IN TIME WAS
22 ENGAGING IN ARGUMENTS AND THEN HEARD THE PEOPLE INDICATE
23 THAT ABSOLUTELY THE DEFENDANTS ARE ENTITLED TO THESE
24 INFORMANTS AT THE TRIAL STAGE, JUST NOT AT THE PRELIMINARY
25 HEARING STAGE. AND IT'S AT THAT POINT THAT THE COURT MADE
26 ITS REVIEW, SAYING YOU DON'T HAVE -- OR IT APPEARS THAT
27 HIS OPINION WAS THAT YOU DON'T HAVE A RIGHT TO THIS
28 INFORMANT AT THE PRELIMINARY HEARING STAGE AND WE CAN GO

1 FORWARD.

2 NOW, WITH REGARDS TO THE ASPECT OF WHETHER
3 OR NOT THERE NEEDS TO BE AN IN CAMERA HEARING, YOU ONLY
4 HAVE TO HAVE AN IN CAMERA HEARING WHEN IT HAS RISEN TO THE
5 POINT OF REVIEW. AND WHAT I MEAN BY THAT IS THAT THE
6 DEFENDANTS HAVE PROPOSED NO FACTS SUFFICIENT TO THE COURT
7 TO CAUSE THE COURT TO HAVE A NECESSITY FOR REVIEWING THE
8 NEED FOR THE INFORMANT.

9 NOW, AS IT RELATES TO INFORMANTS, IN ORDER
10 TO HAVE A MOTION TO DISCLOSE THOSE INFORMANTS -- AND THAT
11 WAS PART OF THE ORIGINAL MOVING PAPERS -- YOU HAVE TO HAVE
12 SOME ARTICULABLE FACTS THAT THESE INFORMANTS MAY POSSIBLY
13 PRESENT SOME EXCULPATORY EVIDENCE. AND IN NO MOVING
14 PAPERS HAVE I SEEN ANY ARGUMENTS WITH ANY ARTICULABLE
15 FACTS THAT REPRESENT THAT THERE MAY BE SOME INFORMATION
16 THAT PERHAPS MIGHT BE EXCULPATORY TO THESE DEFENDANTS
17 WHICH WOULD CAUSE A NECESSITY FOR THEM TO BE REVEALED.

18 I HEARD RECENTLY AND IN RECENT MOVING
19 PAPERS THE ARGUMENT THAT THERE MAY BE SOME FORM OF
20 ENTRAPMENT, AND THAT FLIES IN THE FACE OF THE -- OF THE
21 EVIDENCE HERE. THERE IS ABSOLUTELY NOT ONE IOTA OF
22 EVIDENCE OR FACT TO SUGGEST THAT THERE MAY BE SOME
23 ENTRAPMENT TAKING PLACE HERE.

24 WHAT YOU HAVE ARE INFORMANTS WHO HAVE BEEN
25 RELIABLE FOR THIS PARTICULAR INVESTIGATING OFFICER. THEY
26 HAVE BEEN PAID CONSIDERABLY OVER TIME. SO THAT UNDERMINES
27 ANY ARGUMENT THAT PERHAPS THERE MAY BE SOME ENTRAPMENT
28 WHICH IS REFLECTED IN THE MOVING PAPERS, THAT THEY MAY

1 HAVE BEEN COERCED INTO BECOMING INFORMANTS.

2 THE IDEA OF COERCION IS UNDERMINED
3 COMPLETELY BY THE FACT THAT THEY HAVE BEEN PAID AND PAID
4 WELL TO BE INFORMANTS AND OVER A SIGNIFICANT PERIOD OF
5 TIME. SO THAT ARGUMENT IS -- DOESN'T HOLD ANY WATER. SO
6 THERE HAVE BEEN NO ARTICULABLE FACTS WHICH WOULD
7 SUGGEST -- AND BY THE WAY, THE ENTRAPMENT ARGUMENT IS A
8 NEW ARGUMENT IN RECENT MOVING PAPERS. IT WAS NOT
9 PRESENTED TO THE PRIOR MAGISTRATE.

10 SO AT NO POINT HAD THERE BEEN ANY
11 ARTICULABLE FACTS WHICH WOULD SUGGEST THAT THERE WOULD BE
12 EXCULPATORY EVIDENCE SUCH THAT THE COURT NEEDED TO MAKE A
13 REVIEW. SO THE DEFENDANTS NEVER MET THEIR BURDEN WHICH
14 WOULD HAVE REQUIRED THE MAGISTRATE AT THE PRELIMINARY
15 HEARING STAGE TO MAKE A REVIEW AND THEN CONSIDER AN IN
16 CAMERA HEARING.

17 AGAIN, THE PEOPLE WOULD ARGUE THAT NO
18 DISCLOSURE WAS REQUIRED. 1042 REQUIRES THE DISCLOSURE TO
19 BE FOR THE PURPOSES OF TRIAL, NOT FOR THE PURPOSES OF
20 PRELIMINARY HEARING. THERE IS NO AUTHORITY THAT SUGGESTS
21 THAT THERE IS A REQUIREMENT OF DISCLOSURE FOR INFORMANTS
22 AT THE PRELIMINARY HEARING STAGE.

23 AND, IN FACT, THAT IS THE VERY PURPOSE OF
24 PROP 115, WHEREBY THE OFFICERS CAN TESTIFY FOR INDIVIDUALS
25 WHO SIMPLY CANNOT MAKE IT TO COURT FOR WHATEVER REASON.
26 THEY ARE NO DIFFERENT THAN ANY OTHER EITHER CIVILIAN OR
27 TESTIFYING OFFICER WHO PERHAPS HAD AN OCCASION NOT TO BE
28 IN COURT. SO WITH THAT REGARD, THEY HAVE NOT PROVIDED ANY

1 AUTHORITY THAT REQUIRES THAT THE INFORMANTS BE PRESENTED.
2 AND WITH REGARDS TO 115, THEIR SIXTH AMENDMENT RIGHTS HAVE
3 NOT BEEN VIOLATED.

4 AND IT'S THE PEOPLE'S POSITION ALSO THAT
5 THIS -- THIS ATTEMPT IS TO ATTACK THE PROBABLE CAUSE FOR
6 ARREST. THE ATTEMPT TO DISCLOSE THE INFORMANTS IS AN
7 ATTEMPT TO ATTACK THE PROBABLE CAUSE, AND GUTENBERG
8 CERTAINLY STANDS FOR THE PROPOSITION THAT YOU CANNOT SEEK
9 THE DISCLOSURE OF THE INFORMANTS STRICTLY FOR THE PURPOSE
10 OF UNDERMINING THE PROBABLE CAUSE FOR THE ARREST IN THIS
11 CASE.

12 SO WITH ALL OF THESE ARGUMENTS, I THINK
13 IT'S INCUMBENT UPON THE COURT TO REVIEW IT IN A LINEAR
14 FASHION AND RECOGNIZE THAT THERE WAS NO OBLIGATION ON THE
15 PART OF THE MAGISTRATE AT THE PRELIMINARY HEARING TO ORDER
16 DISCLOSURE OF THE INFORMANTS, PARTICULARLY IN LIGHT OF HIS
17 AWARENESS THAT AT TRIAL, WHEN THEY -- WHEN, CERTAINLY, THE
18 DEFENDANTS WOULD HAVE A RIGHT TO THEM, THEY WOULD BE
19 DISCLOSED.

20 SO WITH THAT, AT THIS POINT THE PEOPLE
21 WOULD SUBMIT.

22 MR. RICHARDS: YOUR HONOR, I HAVE FOUR POINTS I
23 HAVE GOT TO TELL THE COURT.

24 FIRST OF ALL, THE FIRST POINT IS THESE WERE
25 NAMELESS WITNESSES AT THE PRELIMINARY HEARING. THIS
26 WASN'T A SITUATION WHERE THE OFFICER WAS SAYING, "I
27 INTERVIEWED INFORMANT JOHN DOE AND THIS IS WHAT HE SAID."
28 SO YOU CAN'T HAVE THE BENEFIT OF A NAMELESS WITNESS

1 THROUGH AN INFORMANT AND THEN COME INTO COURT AND SAY
2 THERE'S NO -- "THAT'S SOMETHING WE'RE ALLOWED TO DO"
3 BECAUSE THIS WASN'T A CASE -- COUNSEL IS CONFUSING THIS
4 TYPE OF INFORMANT.

5 THIS IS NOT A CASE WHERE THE INFORMANT
6 PROVIDED PROBABLE CAUSE TO GET A SEARCH WARRANT AND THEN
7 THEY SERVED A WARRANT ON THE LOCATION AND THAT P.C. TO GET
8 THE WARRANT WAS UNRELATED TO THE CRIME THAT THEY ARE BEING
9 CHARGED WITH, NAMELY THE POSSESSION OF THE DRUGS THAT THEY
10 HAD AT THE TIME OF THE SEARCH WARRANT.

11 SO THAT'S -- THIS IS PART OF THEIR CASE IN
12 CHIEF TO PROVE THAT MY CLIENT WAS GUILTY OF OFFERING FOR
13 SALE AND GUILTY OF POSSESSION. SO THE INFORMANT WAS A
14 MATERIAL WITNESS.

15 ALL THIS GOBBLEDYGOOK THAT SOMEHOW WE
16 DIDN'T HAVE A SHOWING, OF COURSE WE DIDN'T ARGUE THAT HE
17 WAS A NECESSARY WITNESS BECAUSE THE PEOPLE REPRESENTED AS
18 AN OFFICER OF THE COURT THEY WERE GOING TO GIVE US THE
19 INFORMANT AT TRIAL BECAUSE THE INFORMANT WAS AN INTEGRAL
20 PART OF THEIR CASE. SO OF COURSE WE DIDN'T SAY TO THE
21 JUDGE, "HEY, WE NEED TO HAVE A HEARING TO SHOW THAT THE
22 INFORMANT'S DISCLOSURE MAY REASONABLY AFFECT THE OUTCOME"
23 AND GO THROUGH THE WHOLE 1042 ANALYSIS BECAUSE IT WAS
24 ALREADY CONCEDED THAT IT WAS PART OF THEIR CASE IN CHIEF.

25 SO I WANT THE COURT TO UNDERSTAND THAT ALL
26 OF THIS ARGUMENT THAT THE JUDGE WAS JUSTIFIED IN NOT
27 HAVING THE HEARING AT ALL BECAUSE WE DIDN'T MAKE A SHOWING
28 IS INCONSISTENT WITH WHAT REALLY HAPPENED, AND I CAN

1 REPRESENT TO THE COURT THAT YOU CAN'T -- YOU CAN'T TAKE
2 THE ADVANTAGE OF HAVING AN ANONYMOUS WITNESS TESTIMONY IN
3 YOUR CASE IN CHIEF EITHER AT TRIAL OR THE PRELIMINARY
4 HEARING. THIS IS A TOTALLY SEPARATE ISSUE.

5 THIRD -- OR FOURTH, IN THE CASE OF GALINDO,
6 THE -- ON PAGE 2 OF THE OPINION WE GAVE YOU, THE COURT
7 MADE IT VERY CLEAR THAT THERE'S NO STATUTE THAT PREVENTS A
8 DEFENDANT FROM FILING A MOTION -- A PITCHESS MOTION BEFORE
9 PRELIMINARY HEARING, NEITHER DOES ANY STATUTE EXPRESSLY
10 GRANT IT.

11 AND THEN WHAT THE COURT BASICALLY SAID AT
12 THE END OF THE OPINION IS ABSENCE -- THE DEFENSE IS NOT
13 ENTITLED TO A CONTINUANCE TO MAKE THESE MOTIONS. SO IF
14 THE DEFENDANT SAID "I NEED A TWO-MONTH CONTINUANCE" AND
15 DIDN'T HAVE ANY OTHER CAUSE TO GET IT AND THE PROSECUTION
16 OBJECTED, THEN YOU WOULDN'T BE ENTITLED TO A PITCHESS
17 BEFORE PRELIM. BUT THE COURT USED THE SAME EXACT ANALYSIS
18 AS WE HAVE HERE, THAT THESE STATUTES -- THERE IS NO --
19 THERE'S NO SUBSEQUENT LEGISLATIVE AMENDMENT OR
20 CONSTITUTIONAL AMENDMENT STATING THAT BEFORE A PRELIM
21 YOU'RE NOT ENTITLED TO AN INFORMANT.

22 COUNSEL -- I LISTENED VERY CAREFULLY TO HIS
23 ARGUMENT. HE SAYS IT'S A TRIAL RIGHT. WHAT CASE IS HE
24 BASING THAT ON? THERE IS NO CASE THAT THE RIGHT TO AN
25 INFORMANT IS EXCLUSIVELY A TRIAL RIGHT. THAT IS JUST AN
26 ARGUMENT.

27 IN FACT, I WILL REPRESENT TO THE COURT IT
28 IS AN OPEN QUESTION. THAT'S THE TRUTH. SO THE ISSUE IS

1 WE'VE GOT TO LOOK AT THE FACTS OF THE CASE.

2 IF THIS WAS A CASE WHERE MR. SIMS AND I
3 WERE ARGUING ABOUT THIS INFORMANT WAS GOING TO BE
4 DISCLOSED BUT IT'S -- THIS INFORMANT WAS JUST USED TO
5 DEVELOP PROBABLE CAUSE TO GET THE EVIDENCE IN OUR PRELIM
6 BUT NO TESTIMONY OF THE INFORMANT WAS EVER USED AT THE
7 PRELIM AS PART OF THEIR CASE IN CHIEF, I PROBABLY WOULDN'T
8 BE ARGUING SO VIGOROUSLY FOR THIS POSITION BECAUSE THERE
9 WAS NOTHING ADMITTED IN THE CASE IN CHIEF AT THE
10 PRELIMINARY HEARING.

11 BUT MR. SIMS HAS TAKEN ADVANTAGE OF THIS
12 PROCEDURE AND TURNED IT UPSIDE DOWN. HE HAD AN ENTIRE
13 PRELIM WITH AN ANONYMOUS STAR CHAMBER WITNESS THAT WE
14 COULD NOT CROSS-EXAMINE THAT HE CONCEDED HE WOULD GIVE US
15 THAT WITNESS AT TRIAL.

16 HE USED THE 1042 PROTECTIONS TO SHIELD HIS
17 INFORMANT AND NOT PROVIDE HIM BEFORE THE PRELIM BASED ON
18 NO AUTHORITY AND SIMPLY JUST SAID, "I WILL GIVE IT TO THEM
19 AT TRIAL" AND THEN ENDED UP POURING THE RECORD WITH
20 TESTIMONY UNDER PROP 115 WITHOUT A NAMED DECLARANT, WHICH
21 IS PATENTLY ILLEGAL.

22 SO THIS IS NOT A CASE WHERE WE'RE
23 COMPLAINING ABOUT HOW THEY FOUND MR. ALFARO'S RESIDENCE.
24 THIS ANONYMOUS WITNESS WAS PART AND PARCEL OF THE REASON
25 WHY HE WAS HELD TO ANSWER. AND SINCE WE COULD NEVER GET
26 HIM BECAUSE WE WERE REFUSED TO GET HIM AT THAT STAGE OF
27 THE PROCEEDING -- AND THE GALINDO OPINION ON PAGE 7 CITES
28 COLEMAN VS. ALABAMA AND PEOPLE VS. CUDJO, THAT IT'S A

1 CRITICAL STAGE OF THE PROCEEDING FOR EFFECTIVENESS OF
2 COUNSEL, AND WE WERE ENTITLED UNDER THE SIXTH AMENDMENT TO
3 GET THAT INFORMATION TO EFFECTIVELY REPRESENT HIM.

4 WE DIDN'T GET IT SO HE'S DENIED A
5 SUBSTANTIAL RIGHT WHICH HAD ACTUAL PREJUDICE, AND THE TEST
6 IS WOULD IT REASONABLY AFFECT THE OUTCOME.

7 IS IT UNREASONABLE THAT IF YOU HEARD ALL OF
8 THE QUESTIONS MR. SANDLER POSITED TO THE COURT WE COULD
9 HAVE ASKED, IS IT -- CAN YOU MAKE A FINDING THAT AS A
10 MATTER OF FACT THERE IS NO WAY IT WOULD HAVE AFFECTED THE
11 OUTCOME?

12 OF COURSE WE CONCEDE NOW THAT IT WOULD HAVE
13 AFFECTED THE OUTCOME BECAUSE HE IS THE CASE IN CHIEF. HE
14 IS THE ONLY GUY, THE ONLY WITNESS IN THE PEOPLE'S ENTIRE
15 CASE THAT DEALT WITH OSCAR, THE GUY THAT ORGANIZED THE
16 SALE. SO OF COURSE HE'S ESSENTIAL. AND YOU CAN'T KEEP
17 HAVING HIM PULL YOU INTO THE TRAP OF, WELL, THIS INFORMANT
18 IS AN INFORMANT. HE'S NOT AN INFORMANT. HE -- JUST
19 BECAUSE THEY CALL HIM AN INFORMANT IN THIS CASE, HE'S A
20 MATERIAL WITNESS. HE'S PART OF THE PEOPLE'S CASE. THEY
21 WOULD ADMIT TO YOU THAT IF THIS INFORMANT DOES NOT COME TO
22 TRIAL THEY HAVE NO CASE. THEY CANNOT PIN THIS CASE
23 WITHOUT THE INFORMANT. THEY NEED THIS INFORMANT, AS HE'S
24 AN ESSENTIAL WITNESS.

25 SO IF HE'S AN ESSENTIAL WITNESS, THE FACT
26 THAT THEY LABEL HIM AN INFORMANT DOESN'T MEAN ANYTHING FOR
27 THESE PURPOSES. YOU CAN'T USE THE INFORMANT STATUTE TO
28 HIDE ONE OF YOUR MAIN WITNESSES. HE MAY HAVE STARTED THE

1 DAY AS A PAID INFORMANT, BUT THE WAY THE FACTS UNFOLDED,
2 HE JUST BECAME PART OF THE LEGAL TEAM OF THE PROSECUTION.
3 HE BECAME A LAW ENFORCEMENT OFFICER. ONCE THEY DECIDED TO
4 FILE THE CASE WITH THESE FACTS, THEY MADE AN ELECTION THAT
5 THEY HAVE TO USE HIM AS A MATERIAL WITNESS.

6 SO THIS WHOLE INFORMANT THING IS REALLY
7 JUST A SUBTERFUGE FOR GETTING AWAY WITH HAVING AN
8 ANONYMOUS PRELIM WITH ANONYMOUS WITNESSES. THAT'S THE
9 FACTS OF THIS CASE, AND IT'S IMPORTANT NOT TO JUMP AND
10 FOLLOW HIM DOWN THE RABBIT HOLE AND LISTEN TO ALL OF THESE
11 ARGUMENTS ABOUT THE FACT THAT THIS IS A HEARING THAT
12 DIDN'T HAVE TO BE HELD BECAUSE WE DIDN'T SHOW THAT THE
13 INFORMANT WAS NECESSARY TO EXONERATE OUR CLIENT.

14 THAT'S ONLY IN A SEARCH WARRANT SITUATION.
15 WHEN THE PROSECUTOR REPRESENTS TO ME FROM DAY ONE "YOU'RE
16 GETTING THE INFORMANT AND THERE'S NO WIRETAP IN THIS
17 CASE," AND I LOOK AT THE REPORTS, AND ANYBODY WITH A
18 SECOND YEAR LEGAL EDUCATION COULD DETERMINE THEY'VE GOT TO
19 CALL THIS INFORMANT BECAUSE WITHOUT HIM THERE'S NO --
20 THERE'S A COMPLETE CONFRONTATION PROBLEM, YOU WOULD HAVE
21 NO CASE BECAUSE THE INFORMANT IS THE ONE THAT WAS THE
22 NUCLEUS OF ALL OF THESE TRANSACTIONS. WITHOUT THIS
23 INFORMANT, THERE IS NO CASE.

24 SO WE DON'T NEED TO BEAT A DEAD HORSE. WE
25 THOUGHT WE WERE GETTING THE INFORMANT EARLY. THE LEGAL
26 DISPUTE OCCURRED BECAUSE HE WANTED TO CAPITALIZE ON HIS
27 DECISION, HIS EXECUTIVE DECISION TO LABEL HIM AN
28 INFORMANT, AND THEN HE THINKS, "WELL, IF I CALL HIM AN

1 INFORMANT, I WILL HAVE ALL OF THE PROTECTIONS OF 1042, AND
2 BECAUSE I KNOW IT'S AN OPEN QUESTION, I WILL JUST GET SOME
3 JUDGE TO AGREE THAT IT COULD BE DELAYED UNTIL AFTER THE
4 PRELIMINARY HEARING."

5 BUT THAT'S WHY WE HAVE THE 995 REVIEWING
6 PROCEDURE. TO SUGGEST YOU CAN'T REVIEW THE DECISIONS IN
7 THE LOWER COURT, I MEAN, WE BRIEFED THAT THOROUGHLY.
8 OF COURSE, THAT'S WHAT A 995 IS BECAUSE THERE'S LEGAL
9 ERROR. THE MAGISTRATE IS BUSY. I HAVE MANY CASES. THE
10 MAGISTRATE DOESN'T KNOW THE LAW ON A PIECE OF EVIDENCE AND
11 HE ERRS ON THE SIDE OF THE PROSECUTION. SOMETIMES THEY
12 ERR ON THE SIDE OF THE DEFENSE. AND IF IT TURNS OUT THAT
13 THEY ARE WRONG, THAT'S WHY THERE'S A 995 REVIEWING
14 PROCEDURE.

15 YOU ARE SITTING AS THE REVIEWING COURT DE
16 NOVO OF ALL OF THE DECISIONS THAT WERE MADE IN THE LOWER
17 COURT. THAT'S EXACTLY WHY YOU'RE HERE. AND IN THIS CASE,
18 WHAT YOU WOULD BE SANCTIONING IS SOMETHING THAT GOES BACK
19 TO WHEN WE STARTED THE UNITED STATES. WE DON'T HAVE
20 ANONYMOUS WITNESSES FOR THEIR CASE IN CHIEF FOR
21 SUBSTANTIVE GUILT. THAT'S SOMETHING WE NEVER HAVE, AND
22 THAT'S EXACTLY WHAT OCCURRED IN JUNE OF THIS YEAR.

23 THE COURT: ALL RIGHT, COUNSEL.

24 DID YOU WANT TO RESPOND TO ANYTHING?

25 MR. SANDLER: NOTHING FURTHER.

26 THE COURT: ALL RIGHT.

27 WELL, I THINK THIS IS A CLOSE CASE, BUT I
28 DO THINK THAT UNDER THE FACTS OF THIS PARTICULAR CASE, THE

1 PRODUCTION OF THE CONFIDENTIAL INFORMANT OR INFORMANTS
2 COULD REASONABLY AFFECT THE OUTCOME AND THAT THE
3 DEFENDANTS WERE DENIED AN IMPORTANT RIGHT AT THE
4 PRELIMINARY HEARING, AND I WILL GRANT THE MOTION.

5 I AM ASSUMING THE PEOPLE MAY WANT TO TAKE
6 THIS UP.

7 MR. SIMS: ABSOLUTELY, YOUR HONOR.

8 THIS IS SOMETHING THAT HAPPENS PROBABLY DAY
9 IN AND DAY OUT IN THIS BUILDING, THAT INFORMANTS ARE NOT
10 REVEALED AT THE PRELIMINARY HEARING.

11 THE COURT: I UNDERSTAND, BUT UP UNTIL RECENTLY,
12 THE THIRD FLOOR JUDGES WERE DENYING ANY REQUESTS FOR
13 PITCHESS MOTIONS, AND WE SEE FROM THE GALINDO CASE THAT
14 SOME OF MY COLLEAGUES WERE WRONG ABOUT THAT.

15 SO I'M ASSUMING YOU'LL REFILE.

16 MR. SIMS: ABSOLUTELY.

17 THE COURT: ARE YOU, THEN, SUGGESTING I SEND THESE
18 GENTLEMEN TO DEPARTMENT 30?

19 MR. SIMS: WITH -- UNLESS WE CAN SIMPLY REFILE
20 UNDER THE SAME CASE NUMBER TO SAVE EVERYBODY A LOT OF
21 TIME. OTHER THAN THAT, YES, THEY CAN REMAIN IN CUSTODY,
22 AND THE DETECTIVE WILL COME OVER AND REFILE IT AGAIN
23 TODAY.

24 MR. RICHARDS: YOUR HONOR, JUST FOR THE RECORD,
25 YEAH, WE'RE NOT -- WE DON'T WANT THE SAME CASE NUMBER. IF
26 THE COURT IS GRANTING THE MOTION, THE CASE WILL BE
27 DISMISSED, AND THE PEOPLE WILL DO WHATEVER THEY NEED TO
28 DO. AND THEN IF THEY WANT TO E-MAIL ME OR CALL ME, WE'LL

1 DEAL WITH THAT ISSUE BECAUSE, OBVIOUSLY, IT'S A SEPARATE
2 CASE.

3 THE COURT: ALL RIGHT.

4 MR. SANDLER: LIKewise, YOUR HONOR, WE JOIN IN THAT
5 REQUEST ON BEHALF OF MR. CASTELLON.

6 THE COURT: MR. DUMAS, DO YOU WANT TO BE HEARD?

7 MR. DUMAS: YOUR HONOR, I AM ASKING IF THE COURT
8 WOULD O.R. MR. TAJEDA IF, IN FACT, THE CASE IS REFILED.

9 HE'S OUT ON A \$35,000 BOND. HE'S MADE ALL
10 OF HIS EXPERIENCES. I THINK THAT BASED ON THE
11 CIRCUMSTANCES, I THINK THE COURT SHOULD DO THAT.

12 THE COURT: JUST A MOMENT, PLEASE.

13 I WANT TO GET THE PEOPLE'S POSITION
14 REGARDING THAT.

15 THERE'S A REQUEST THAT MR. TAJEDA --

16 MR. SIMS: I'M SORRY, YOUR HONOR.

17 THE COURT: THERE'S A REQUEST THAT MR. TAJEDA BE
18 RELEASED ON HIS OWN RECOGNIZANCE. I AM ASSUMING THAT --

19 MR. DUMAS: IF THE PEOPLE REFILE --

20 THE COURT: WELL --

21 MR. DUMAS: I MEAN, IT'S A LITTLE --

22 THE COURT: I'M NOT SURE THAT WOULD BE BINDING ON
23 THIS COURT.

24 MR. RICHARDS: I WILL TELL YOU WHAT THE ISSUE IS.
25 I DON'T WANT TO CONFUSE COUNSEL.

26 THE COURT: YOU DON'T HAVE TO SAY ANYTHING. LET
27 HIM SPEAK FOR HIMSELF.
28

(COUNSEL CONFERRED, NOT REPORTED.)

MR. DUMAS: SO I AM ASKING THE COURT IF THEY WOULD
CHANGE HIS STATUS TO O.R. BEFORE THE COURT GRANTED HIS --
THE MOTION UNDER 1388, AND UNDER 1388 --

THE COURT: WELL, JUST A MOMENT.

IT'S MY UNDERSTANDING THAT THE BOND WOULD
NOT BE EXONERATED --

MR. DUMAS: NO, THAT'S NOT THE POINT, YOUR HONOR.

THE COURT: -- UNTIL 15 DAYS LATER.

MR. DUMAS: OH, I SEE.

THE COURT: SO IF THEY REFILE, IT CAN BE RELEASED
ON THE SAME BOND OR WOULD BE RELEASED ON THE SAME BOND.

MR. DUMAS: THANK YOU.

MR. SIMS: YOUR HONOR, CAN YOU ORDER ALL DEFENDANTS
TO DEPARTMENT 30, INCLUDING MR. TAJEDA, WHO APPEARS TO BE
OUT OF CUSTODY.

THE COURT: YES.

I WILL ORDER THE SHERIFFS TO TAKE THE
IN-CUSTODY DEFENDANTS TO DEPARTMENT 30.

MR. TAJEDA, YOU ARE ORDERED TO GO TO
DEPARTMENT 30 TODAY.

WE'LL TAKE A SHORT BREAK.

(PROCEEDINGS WERE CONCLUDED.)

--OOO--

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 128

HON. DENNIS J. LANDIN, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,) NO. BA366849

VS.)

REPORTER'S
CERTIFICATE

01 JOSE TAJEDA,)

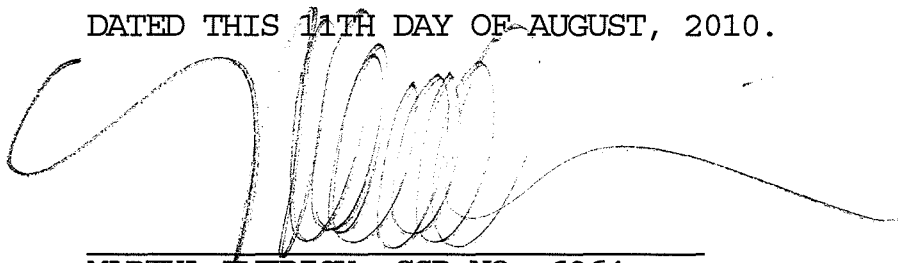
02 GERARDO ALFARO,)

03 RODRIGO CASTELLON,)

DEFENDANTS.)

I, MARTHA EMERICH, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY
OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES
1 THROUGH 41 COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT
OF THE PROCEEDINGS HELD IN DEPARTMENT 128 ON WEDNESDAY,
AUGUST 11, 2010, IN THE ABOVE-ENTITLED MATTER.

DATED THIS 11TH DAY OF AUGUST, 2010.



MARTHA EMERICH, CSR NO. 6864
OFFICIAL REPORTER