

1 THE COURT: We are keeping all of the  
2 witnesses subject to recall as a technical matter,  
3 but --

4 THE WITNESS: Okay.

5 THE COURT: Okay.

6 THE WITNESS: Okay. Thank you.

7 MR. MOAWAD: Your Honor --

8 MR. MANOUKIAN: May we just approach  
9 quickly, your Honor?

10 THE COURT: Sure.

11

12 (DISCUSSION AT BENCH, NOT REPORTED)

13

14 THE COURT: Folks, again we are still --  
15 we are going to continue with a few additional  
16 defense witnesses because they are present and  
17 available.

18 So again, Mr. Manoukian is calling some  
19 ~~defense witness out of order~~. Technically we are  
20 in the defense case for these witnesses.

21 So, Mr. Manoukian.

22 MR. MANOUKIAN: Thank you, your Honor.

23 The defense would next call Leslie Munn.

24

25

~~LESLIE MUNN~~

26 called as a witness on behalf of the Defendant,  
27 having been duly sworn to tell the truth, testified  
28 as follows, to wit:

1 THE WITNESS: I do.

2 THE CLERK: Thank you.

3 Please be seated.

4 Please state your name and spell your full  
5 name, please.

6 THE WITNESS: Leslie Sue Munn.

7 Leslie, L-E-S-L-I-E.

8 Sue.

9 M-U-N-N.

10 THE CLERK: Thank you.

11

12 DIRECT EXAMINATION

13 BY MR. MANOUKIAN:

14 Q. Good afternoon, Ms. Munn.

15 Back in March -- or ~~March 20th of 2008,~~  
16 where were you living?

17 A. At ~~1161 Dewing Lane,~~ Walnut Creek,  
18 California.

19 Q. And did you know the residents of 1110  
20 Boulevard Way?

21 A. Yes.

22 Q. And who was that?

23 A. ~~Sam and her daughter, Brandy and her~~  
24 ~~partner, Jennifer.~~

25 Q. Okay. And did you also know Joshua  
26 Rhoads?

27 A. Yes, I did.

28 Q. And were you home the morning of March

1 20th, 2008?

2 A. I had -- I was not home early in the  
3 morning. ~~I got home about 10:00.~~

4 Q. And at some point did you end up  
5 outside?

6 A. Yes.

7 Q. And were you -- did you talk to anyone  
8 while you were outside?

9 A. Yes.

10 Q. Was -- did you initially talk to some  
11 workers that were outside?

12 A. Yes, I ~~talked to some phone men that~~  
13 ~~were at the corner.~~

14 Q. And while you were doing that did  
15 anyone else approach you?

16 A. Not while I was speaking with them, no.  
17 I had walked back to my home, which was about 100  
18 feet away, and was getting something out of my  
19 ~~truck when someone came up behind me and spoke with~~  
20 ~~me.~~

21 Q. And how close to the street were you,  
22 where you were when you got contacted by this  
23 person?

24 A. Oh, ten feet.

25 Q. And how did you first know someone was  
26 there?

27 A. They spoke to me from behind me.

28 Q. What did you do?

1 A. I turned around.

2 Q. And what happened after you turned  
3 around?

4 A. The person ~~said to me how long are they~~  
5 going to be there.

6 And I presumed he was speaking of the phone  
7 men.

8 And I said all of today, and as I said that  
9 I glanced over at the phone box, which was to my  
10 left, and then I ~~said all of today and the rest of~~  
11 ~~next week.~~

12 And by the ~~time I glanced back the person~~  
13 ~~was gone.~~

14 Q. Did you see where this person had come  
15 from?

16 A. No, I did not.

17 Q. Did you see where they went?

18 A. No, I did not.

19 Q. And can you, as you sit here today,  
20 describe what this person looked like?

21 A. No, I can only say ~~that he was~~ male and  
22 what he was wearing.

23 Q. Okay. Well, let's -- do you know what  
24 his race was?

25 A. No, I do not.

26 Q. Do you recall speaking to the police --  
27 do you recall speaking to the police back on  
28 another day, back on March 20th of '08?

1 A. Yes, sir, I do.

2 Q. At some point you became aware that  
3 something had happened at 1110 Boulevard Way?

4 A. Yes, that's correct.

5 Q. And following that you spoke with the  
6 police?

7 A. Yes.

8 Q. And would it be fair to say that the --  
9 your memory of the events that had transpired on  
10 that day were fresh in your mind at the time you  
11 spoke to the police?

12 A. Yes.

13 Q. And certainly fresher in your mind back  
14 then than they are here today?

15 A. Yes.

16 Q. When you spoke to the police you were  
17 as complete and truthful and as accurate as you  
18 could be with them?

19 A. Absolutely.

20 Q. And now as you sit here right now do  
21 you recall that it was a male?

22 A. Yes.

23 Q. All right. Do you recall what -- you  
24 said you could recall what the person was  
25 wearing --

26 A. Yes.

27 Q. -- can you tell us that?

28 A. Yes, a ~~black~~ or very dark brown leather

1 ~~coat.~~

2 A ~~hoodie over the head.~~

3 A ~~beanie or some sort of hat underneath~~  
4 ~~that covering the hair.~~

5 And very large sunglasses.

6 Q. And do you recall anything about say  
7 the person's age?

8 A. No.

9 Q. And what about their height?

10 A. That -- no, they were standing, the  
11 person was standing down from my driveway which is  
12 about a 30 percent elevation up.

13 So he was lower than me, so I couldn't  
14 exactly say.

15 Q. Okay. And anything about his -- the  
16 person's build?

17 A. No, no, I saw him for two seconds.

18 Q. Okay. May I -- if you reviewed the  
19 statement you gave to the police do you think  
20 that may refresh your recollection as to what you  
21 said?

22 A. Yeah.

23 MR. MANOUKIAN: Your Honor, may I approach?

24 THE COURT: Yes.

25 BY MR. MANOUKIAN:

26 Q. Ms. Munn, this is your statement right  
27 here.

28 A. Okay.

1 Q. I think the description is in the top  
2 part, and if you just want to review that to  
3 yourself, and then when you are finished you can  
4 look up and I'll ask you a couple more questions if  
5 I may.

6 A. Okay. So you are referring to the  
7 description I give here?

8 Q. Yes, ma'am.

9 Now, in looking at that do you recall what,  
10 first of all, do you recall what race the person  
11 was?

12 A. No, I do not.

13 Q. Okay. Fair enough.

14 But again, when you ~~told the police~~, do you  
15 see there that you told the police that --

16 A. Yeah, it says ~~white male~~ adult, right.

17 Q. Okay. That's not inconsistent with any  
18 memory you have?

19 A. Correct.

20 Q. Okay. And you told the police that you  
21 believed that the person was ~~20 to 25 years old~~?

22 A. Yeah, once again, I ~~saw him for two~~  
23 ~~seconds~~.

24 Q. Okay.

25 A. So --

26 Q. But at that time you were talking to  
27 the police you understood --

28 A. Right.

1 Q. -- it was a very important conversation  
2 you were having with them, correct?

3 A. Yes, and I, you know, I prefaced  
4 everything I said as I think he was about this  
5 tall, I think this, I think that, but I had only  
6 saw him for a moment.

7 Q. Okay. And what you told them was that  
8 in your estimation it was -- the person was between  
9 25 and 25 years old?

10 A. Apparently so, that's what it says  
11 here, sir.

12 Q. ~~And 5'8" to 5'9";~~ is that correct?

13 A. That's what it says, yes.

14 Q. ~~And skinny~~ build?

15 A. Yeah.

16 Q. Okay. And after you have -- you speak  
17 with this person, they turn and walk away, what do  
18 you recall happening next?

19 A. I did not see them turn and walk  
20 away.

21 Q. I just meant they turned and walked  
22 away, but you are right, the person left where you  
23 were, correct?

24 A. Yes.

25 Q. Okay. At some point after that did you  
26 hear anything unusual?

27 A. Well, ~~I went back into the house and~~  
28 ~~later I heard a noise that~~ ~~in the backyard next~~

1 door, but I was in my house with the windows closed  
2 and ~~I heard a pop~~, and I ~~heard Sean cry out~~, but I  
3 didn't realize at that time it was a gunshot.

4 Q. Okay. Do you recall how long after  
5 your conversation with the person in front of your  
6 house there that you heard the sound -- this  
7 sound?

8 A. I was in my bedroom and there is a  
9 clock on the dresser right as you look out the  
10 window, which is what I glanced up, because that is  
11 where the sound came from, and it was approximately  
12 ~~20 minutes after 10:00~~, I think.

13 Q. And do you recall how long it was from  
14 when you talked to the person out in front of your  
15 house to when you heard that sound?

16 A. Some time between around 10:00 and  
17 10:20.

18 Q. Okay.

19 A. I -- I can't say, I don't wear a watch,  
20 so I can't tell you I talked to this person at  
21 10:10, no.

22 Q. You told the police back on the date  
23 that this happened you thought it was approximately  
24 two minutes after you had that conversation?

25 A. I don't recall that, sorry.

26 Q. And then you said you heard someone  
27 yelling and you recognized that voice as Sean's,  
28 Mr. Mendell's?

1 A. Yes.

2 Q. And do you recall what you heard him  
3 yell?

4 A. Just whoa.

5 Q. Did you hear anything else?

6 A. No, sir, I did not.

7 Q. And at the time you heard the sound you  
8 didn't associate it with a gunshot, but it was a  
9 loud sound; is that correct?

10 A. Correct.

11 Q. Now, at some point you were asked a few  
12 days later to look ~~at some photographs~~ by the  
13 police, correct?

14 A. Correct.

15 Q. And do you recall when that was, how  
16 many days afterwards it was?

17 A. Well, it happened on a Thursday. It  
18 was ~~early the next week~~ that the detective came to  
19 my home.

20 Q. And prior to showing you the  
21 photographs do you remember them handing you  
22 anything and asking you to read that?

23 A. No, I don't.

24 Q. Okay. Do you remember also them saying  
25 that you are going to look at some photographs and  
26 telling you that it's, you know, the person you are  
27 looking at the -- or the -- the photographs you  
28 were being shown shouldn't influence your judgment,

1 not to guess, the person may be there, may not be  
2 there, anything like that?

3 A. Are you asking me if the detective came  
4 to my door and asked me those questions?

5 Q. Yeah, yes, ma'am.

6 A. He came in and asked me if he could  
7 speak with me and asked me to look at those  
8 pictures, yes.

9 Q. Okay. And do you recall something  
10 going on right before you looked at those pictures  
11 and him reading you a document or you reading that  
12 document?

13 A. No, sir, I don't.

14 Q. Okay. And you looked at the -- you  
15 looked at the photographs, and was there one  
16 photograph or a ~~group of photographs?~~

17 A. It was a group.

18 Q. Do you recall after looking at  
19 that group of photographs what you said to the  
20 officer?

21 A. ~~I said I can't identify the person, but~~  
22 ~~I knew this one person is Medina because I saw it~~  
23 ~~in the paper.~~

24 Q. Okay. And in all fairness back on the  
25 20th when you were speaking to the police officer  
26 you told them then that ~~you didn't think you would~~  
27 ~~be able to identify the person;~~ is that correct?

28 A. That's correct.

1 MR. MANOUKIAN: And, your Honor, would ask  
2 if I could to have this document marked defense  
3 next in order.

4 THE COURT: Sure.

5  
6 (DEFENDANT'S EXHIBIT NO. C  
7 MARKED FOR IDENTIFICATION)

8  
9 BY MR. MANOUKIAN:

10 Q. Ms. Munn, if I could just show you what  
11 has been marked Defense Exhibit C, do you recognize  
12 that document at all?

13 A. Oh, well, that's my signature.

14 Q. Okay. Do you -- as you sit here today  
15 do you recognize it?

16 A. Well, it's my signature.

17 Q. Okay. And if the officer handed you  
18 something to read you would have read it?

19 A. Yes.

20 Q. Okay.

21 A. I'm sorry, I don't remember this, but I  
22 have obviously seen this.

23 Q. Okay. And what -- there is a notation  
24 at the bottom there. Can you read that for us what  
25 it says, the handwriting?

26 ~~As I don't recognize any of the pictures.~~

27 Q. Okay. And is that an -- is that  
28 consistent with what your memory was?

1 A. Yes.

2 Q. And then that's your signature there  
3 below it?

4 A. Yes, it is.

5 Q. All right. And by that you meant you  
6 didn't recognize any of the pictures as the person  
7 that you had seen on the 20th; is that correct?

8 A. That's correct.

9 Q. But you do recall telling the officer  
10 that you recognize one of the photos you saw in the  
11 lineup as Nathan Medina from having seen him on the  
12 news?

13 A. That's correct, in the paper.

14 Q. In the paper?

15 A. Yeah.

16 MR. MANOUKIAN: Okay. Thank you very much.

17 THE COURT: Cross-examination?

18

19 ~~CROSS~~-EXAMINATION

20 BY MR. MOAWAD:

21 Q. Thank you.

22 Good afternoon, Ms. Munn.

23 A. Hello.

24 Q. I'm Steve Moawad, and I am the Deputy  
25 District Attorney assigned to this case.

26 Thank you for coming in.

27 If I can have just a moment.

28 You -- I'm hoping that is going to -- there

1 it is, slowly but surely.

2 I'm going to show you a group of photos  
3 here that looks like it is going so slowly fade  
4 into color. That is not at all better.

5 Can you see that?

6 A. Yes, sir, I can.

7 Q. There.

8 For the record, this is 32-B-2, a photo  
9 lineup.

10 Does that photo lineup look familiar as the  
11 photographic lineup that you looked at on that  
12 date?

13 A. I can't honestly say, sir.

14 Q. That is fair.

15 Okay. When you looked -- when you came  
16 home that day, you said that was about 10:00  
17 o'clock?

18 A. Uh-huh.

19 Q. And you were -- had gone over to talk  
20 to the AT&T --

21 A. Yes.

22 Q. -- repairmen?

23 A. Yes.

24 Q. I'll put up People's Exhibit 1 here,  
25 and if you don't mind, if I could have you approach  
26 that, People's Exhibit 1.

27 And why don't I have you grab a blue pen.

28 And if you can just put a large X where your house

1 is on that diagram if you recognize that area.

2 A. Right here.

3 Q. Okay. You put a large blue X on the  
4 top of your house.

5 Can you put -- just put a line from that X  
6 to the street in the direction where your  
7 driveway is.

8 Does it go on to Dewing Lane or on to  
9 Boulevard Way or --

10 A. Our house faces Dewing Lane and it  
11 comes out here on Dewing Lane, down on this corner  
12 here on Dewing and Nicholson.

13 Q. Okay. So you put another small X at  
14 the edge of your property on Dewing Lane, and  
15 that's where the driveway -- and where your  
16 driveway and Dewing Lane meet?

17 A. Yes.

18 Q. Okay. And if you could put an AT&T or  
19 just an A is fine for where the repairmen were.

20 A. Okay. The phone box is right on  
21 Nicholson Road just about halfway between Dewing  
22 and the entrance to Boulevard Way.

23 So I would say -- do you want me to put an  
24 A there?

25 Q. Sure.

26 A. About right there (indicating).

27 Q. Okay. That's great.

28 Thank you very much, and you can go ahead

1 and cap that and put it back.

2 Now, you said you went over across the  
3 street to talk to them at about 10:00 o'clock?

4 A. Correct.

5 Q. And you talked to them for a moment?

6 A. Yes.

7 Q. And then you came back and were trying  
8 to get something out of your truck, that's what you  
9 said?

10 A. Right, uh-huh.

11 Q. And was your truck parked in your  
12 driveway?

13 A. Yes.

14 Q. And while you were doing that somebody  
15 came along and said something to you?

16 A. Yeah, came up behind, yes.

17 Q. Did they come on to your property or  
18 were they down at the street?

19 A. Oh, our property is sort of odd, it  
20 really goes out into the very middle of the road.

21 Q. Okay.

22 A. Because it's a very rural road, and he  
23 was at the bottom of my driveway, which is only  
24 about 20 feet long, maybe.

25 Q. All right. So how far away from you  
26 was he when you realized that there was somebody  
27 there talking to you?

28 A. Oh, I don't know. Anywhere from five

1 to ten feet I guess.

2 Q. And he said to you how long are they  
3 going to be here?

4 A. How long are they going to be there.

5 Q. Be there?

6 A. Uh-huh.

7 Q. And you said you assumed he was talking  
8 about the AT&T repairmen?

9 A. Right.

10 Q. At which point you turned your head, I  
11 think you said to the left?

12 A. Yeah, I just glanced over, you know,  
13 somebody makes a reference and I glanced over at  
14 the AT&T guys and when I glanced back this man was  
15 gone.

16 Q. Okay. Is the -- and as to the amount  
17 of time you were looking at this man, was that --  
18 how long was that -- did you look at him the entire  
19 time he was speaking to you?

20 A. Literally two seconds. As long as it  
21 took me to say for the rest of today and all next  
22 week.

23 Q. So you -- did you turn back and say  
24 that to him?

25 A. No, I was saying it as I was turning  
26 and came back and before I finished my sentence,  
27 you know, I finished and glanced back and he was  
28 gone.

1 Q. And did you see which direction he  
2 went?

3 A. No, sir, I did not.

4 Q. And you said what, about 20 minutes  
5 later you heard this noise or, I am sorry, about  
6 10:20 you heard the noise?

7 A. Approximately, yes, sir.

8 Q. And you then heard Mr. Mendell, Sean,  
9 saying whoa?

10 A. Yeah, he cried out.

11 Q. And on the day that you talked -- on  
12 the day that this happened you talked to the  
13 police; is that right?

14 A. Yes.

15 Q. You gave them the statement we have  
16 just been talking about?

17 A. Yes, sir.

18 Q. And you told them on that date that you  
19 just looked at him for a second, or for a brief  
20 period of time?

21 You have to answer out loud.

22 A. Oh, I am sorry, yes, sir, I did.

23 Q. And you told them, the police officer,  
24 on that date that you would not be able to identify  
25 the subjects who confronted you in your driveway;  
26 is that true?

27 A. That's correct, sir.

28 Q. And then on -- sometime later that --

1 later the next week a ~~detective~~ came by. Was that  
2 that Detective McGolgin, do you know?

3 A. I don't remember the name, sir.

4 Q. Okay. Was it a --

5 Well, okay. And did he ~~ask you whether you~~  
6 ~~thought could identify somebody?~~

7 ~~A. Yes, and I said no.~~

8 Q. Okay. And that was before he showed  
9 you the lineup, you just said, hey, how do you feel  
10 about this, and you said I can't pick anybody out?

11 You are nodding --

12 A. That's right. I'm sorry, sir.

13 Yes, that's correct.

14 Q. That's okay.

15 ~~And you in fact told him specifically that~~  
16 ~~you didn't look at the person's face and didn't~~  
17 ~~feel that you could identify anybody?~~

18 A. That's correct.

19 Q. And with him having that in mind he  
20 said why don't you take a look at the lineup  
21 anyway?

22 A. Yes, sir, that's correct.

23 Q. And then there may have been some  
24 discussion of an admonishment form, this form that  
25 you said you signed?

26 A. Yes.

27 Q. Okay. But you don't remember --

28 A. I don't recall, I'm sorry.

1 Q. Okay. Upon looking at a photo lineup  
2 you said you didn't recognize anybody, that's  
3 correct?

4 A. That's correct, sir. I said I do not  
5 recognize anybody, but I know this is Medina from  
6 seeing the photo in the paper.

7 Q. ~~So that the fact that you had seen that~~  
8 ~~photo in the newspaper associated with this case~~  
9 ~~didn't make you say that's the guy?~~

10 A. Absolutely, that's correct, sir.

11 Q. And when in fact afterwards when you  
12 said that you didn't recognize any of the  
13 photographs you added to Detective McColgin that  
14 you didn't pay attention to the man's face; isn't  
15 that true?

16 A. Didn't pay attention -- I don't know if  
17 those are my exact words. I just didn't see -- his  
18 glasses were great big, so I didn't see much of his  
19 face.

20 Q. Okay. And you didn't look at him for  
21 very long?

22 A. Correct.

23 MR. MOAWAD: Nothing further.

24 THE COURT: Any redirect?

25

26 REDIRECT EXAMINATION

27 BY MR. MANOUKIAN:

28 Q. Just to clarify one thing.

1           So, Ms. Munn, you live on the corner then,  
2 right?

3           A. Yes, I do.

4           Q. ~~And then you made a mark on that~~  
5 ~~diagram where your driveway is?~~

6           A. Correct.

7           Q. And that -- that ~~is roughly where you~~  
8 ~~had this encounter with the person?~~

9           A. Yes.

10          MR. MANOUKIAN: Okay. Thank you, Ms. Munn.

11          THE WITNESS: Uh-huh.

12          THE COURT: Any further cross?

13          MR. MOAWAD: No, your Honor.

14          THE COURT: Ms. Munn, thank you very much  
15 for coming in.

16                 Technically you remain under subpoena once  
17 the trial is still going, but don't worry about it.  
18 If either party needs you to come back they will  
19 call you, but it's not likely to happen.

20          THE WITNESS: Okay.

21          THE COURT: Thank you.

22                 Do you have another witness?

23          MR. MANOUKIAN: I do.

24                 Thank you, your Honor.

25                 John Koeller. K-O-L-L-E-R.

26

27

28 /