

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

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S.C. SUP. CT. 13-01

SANTIAGO RIOS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213256

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 28, 2008	1
FINAL BRIEF OF APPELLANT	685
FINAL BRIEF OF RESPONDENT	699
FINAL REPLY BRIEF	747
<u>STATE V. SANTIAGO RIOS</u> , OPINION NO. 4710, (CT. APP. FILED JULY 14, 2010)	753
REMITTITUR	760
APPLICATION FOR POST-CONVICTION RELIEF	762
MOTION FOR TARASCAN INTERPRETER	775
RETURN	776
POST-CONVICTION TRANSCRIPT DATED SEPTEMBER 19, 2011	781
APPLICANT'S EXHIBIT #1 (OUTLINE)	896
APPLICANT'S EXHIBIT# 2 (SLED REPORT)	909
ORDER OF DISMISSAL	913
MOTION TO ALTER OR AMEND THE JUDGMENT	923
RETURN TO APPLICANT'S MOTION TO ALTER OR AMEND ORDER DENYING PCR	925
ORDER FOR ORAL ARGUMENT ON MOTION TO ALTER OR AMEND	929
MOTION TO ALTER OR AMEND HEARING TRANSCRIPT DATED JUNE 14, 2012	931
FORM 4 ORDER DENYING MOTION TO ALTER OR AMEND DATED JULY 2, 2012	952
ORDER DENYING MOTION TO ALTER OR AMEND DATED JULY 2, 2012	950

INDICTMENT AND SENTENCING SHEET	954

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 vs.

7 SANTIAGO PASQUAL RIOS,

8 DEFENDANT.

TRANSCRIPT

OF

RECORD

08-GS-42-0170

10 April 28th, 2008
11 Spartanburg, South Carolina

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, JUDGE; and a jury.

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

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17 SOLICITOR AND ASSISTANT SOLICITOR
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21 Attorneys for the Defendant

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23
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Seventh Judicial Circuit

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3		
4	Motions	15
5	Jury Selection	37
6		
7	Motions Continued	
8	GEORGE BALDARAMA	
9	Direct examination by Sol. Crick	59
10	Cross-examination by Mr. Brannon	69
11	Redirect examination by Sol. Crick	89
12	Recross examination by Mr. Brannon	92
13	ANGEL DIAZ	
14	Direct examination by Sol. Gowdy	94
15	Cross-examination by Mr. Brannon	104
16	ROBERT REEDER	
17	Direct examination by Sol. Gowdy	109
18	Cross-examination by Mr. Brannon	112
19	JOAQUIN MARQUEZ	
20	Direct examination by Mr. Brannon	116
21		
22	Motions Continued	121
23		
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	Opening by The Court	138
4	Opening by Solicitor Gowdy	150
5	Opening by Mr. Collins	158
6		
7	CURTIS KESLER	
8	Direct examination by Sol. Gowdy	169
9	Cross-examination by Mr. Brannon	178
10	Redirect examination by Sol. Gowdy	184
11	FREDDIE THOMPSON	
12	Direct examination by Sol. Crick	186
13	Cross-examination by Mr. Brannon	188
14	TERESA SAMPSON	
15	Direct examination by Sol. Gowdy	189
16	Cross-examination by Mr. Collins	194
17	Direct examination by Sol. Gowdy	198
18	Cross-examination by Mr. Collins	201
19	Redirect examination by Sol. Gowdy	208
20	JOAQUIN MARQUEZ	
21	Direct examination by Sol. Gowdy	213
22	Cross-examination by Mr. Brannon	220
23	Redirect examination by Sol. Gowdy	229
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	REID LINDSAY	
4	Direct examination by Sol. Crick	231
5	Cross-examination by Mr. Brannon	244
6	Redirect examination by Sol. Crick	251
7	Recross examination by Mr. Brannon	252
8	ALEX PASQUAL	
9	Direct examination by Sol. Crick	255
10	REID LINDSAY	
11	Direct examination by Sol. Crick	273
12	Cross-examination by Mr. Brannon	277
13	ISABEL RIOS	
14	Direct examination by Sol. Gowdy	280
15	Cross-examination by Mr. Collins	306
16	Redirect examination by Sol. Gowdy	312
17	ROBERT REEDER	
18	Direct examination by Sol. Gowdy	315
19	Cross-examination by Mr. Collins	330
20		
21		
22		
23		
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	WILLIAM GARY	
4	Direct examination by Sol. Gowdy	334
5	Cross-examination by Mr. Brannon	348
6	Redirect examination by Sol. Gowdy	355
7	Recross examination by Mr. Brannon	357
8	Redirect examination by Sol. Gowdy	359
9	Recross examination by Mr. Brannon	361
10	GEORGE BALDARAMA	
11	Direct examination by Sol. Crick	365
12	Cross-examination by Mr. Brannon	387
13	Redirect examination by Sol. Crick	403
14	Recross examination by Mr. Brannon	405
15	ANGEL DIAZ	
16	Direct examination by Sol. Gowdy	409
17	Cross-examination by Mr. Brannon	420
18	Redirect examination by Sol. Gowdy	433
19	Recross examination by Mr. Brannon	437
20	TIM DAVIS	
21	Direct examination by Sol. Crick	451
22	Cross-examination by Mr. Brannon	465
23	Redirect examination by Sol. Crick	474
24	Recross examination by Mr. Brannon	475
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	DAVID HOGSHED	
4	Direct examination by Sol. Gowdy	478
5	Cross-examination by Mr. Brannon	484
6	Redirect examination by Sol. Gowdy	488
7	Recross examination by Mr. Brannon	491
8	DOMINIC BAIRD	
9	Direct examination by Sol. Gowdy	492
10	Cross-examination by Mr. Brannon	500
11	Redirect examination by Sol. Gowdy	502
12	SUZANNE CROMER	
13	Direct examination by Sol. Crick	503
14	Cross-examination by Mr. Collins	514
15	Redirect examination by Sol. Crick	517
16	LAURIE SHACKER	
17	Direct examination by Sol. Crick	520
18	Cross-examination by Mr. Collins	522
19	MATT FITTS	
20	Direct examination by Sol. Crick	524
21	Cross-examination by Mr. Collins	533
22	ILA SIMMONS	
23	Direct examination by Sol. Gowdy	542
24	Cross-examination by Mr. Collins	554
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	DOCTOR DAVID WREN	
4	Direct examination by Sol. Gowdy	559
5	Cross-examination by Mr. Brannon	569
6	Redirect examination by Sol. Gowdy	572
7		
8	Motions	574
9	Closing by Mr. Brannon	619
10	Closing by Solicitor Crick	626
11	Charge by the Court	644
12	Verdict	674
13	Motions	675
14	Sentence	682
15	Certificate	684
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	<u>State's Exhibits</u>			
4				
5	S-1	Miranda Warning Form	63, 370	371
6	S-2	Pre-interrogation Waiver Form	63, 370	371
7				
8	S-3	Statement	63, 373	375
9	S-4	Statement	63, 373	414
10	S-5	Photograph	172	173
11	S-6	Photograph	172	173
12	S-7	Photograph	172	173
13	S-8	Photograph	172	173
14	S-9	Photograph	172	173
15	S-10	Photograph	172	173
16	S-11	Photograph	172	173
17	S-12	Photograph	172	173
18	S-13	Photograph	172	173
19	S-14	Photograph	172	173
20	S-15	9-1-1 Tape	185	187
21	S-16	Diagram	234	235
22	S-17	Statement	286	
23	S-18	Permission to Search Form	375	376
24				
25	S-19	Statement	383	

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	S-20	Statement	383	
4	S-21	Statement	383	
5	S-22	Statement	383	
6	S-23	Photograph	447	450
7	S-24	Photograph	447	450
8	S-25	Photograph	447	450
9	S-26	Photograph	447	450
10	S-27	No Exhibit	447	
11	S-28	Photograph	447	450
12	S-29	No Exhibit	447	
13	S-30	Photograph	447	450
14	S-31	Photograph	447	450
15	S-32	Photograph	447	450
16	S-33	Photograph	478	480
17	S-34	Photograph	478	480
18	S-35	Photograph	478	480
19	S-36	Photograph	478	480
20	S-37	Photograph	478	480
21	S-38	Photograph	478	480
22	S-39	Photograph	492	
23	S-40	Bullet	506	507
24	S-41	Photograph	559	566
25	S-42	Photograph	559	566

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	S-43	Photograph	559	560
4	S-44	Photograph	559	560
5	S-45	Photograph	559	616
6				
7				
8				
9				
10				
11				
12				
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14				
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20				
21				
22				
23				
24				
25				

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Defendant's Exhibits</u>		
3				
4	D-1	Photograph		450
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-1	Miranda Warning Form		65
5	C-2	Pre-interrogation Waiver Form		65
6				
7	C-3	Statement		67
8	C-4	Statement		102
9	C-5	9-1-1 Tape		115
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

1
2
3
4
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THE COURT: All right. I briefly saw Mr. Brannon, but then I, he disappeared. So --.

MR. COLLINS: Oh, Mr. Brannon had stepped outside to get Mr. Rios, the defendant.

THE COURT: All right. Thank you.

(Pause.)

THE COURT: All right. Is, is the defendant situated as far as his interpreters at this point in time?

Mr. Collins, are we, are we using two interpreters again for this, this case?

MR. COLLINS: Yes, Your Honor.

THE COURT: All right. It's gonna be necessary for the two interpreters to come forward and be sworn before we start the hearings.

MR. COLLINS: Yes, sir.

THE COURT: So, whoever's going to be serving as the interpreters, they need to approach the bar please.

MR. COLLINS: Your Honor, we actually have three interpreters that are coming up. Two that are Spanish interpreters. One is the Tarascan interpreter. Mrs. Wok is the lady that, the interpreter has been assisting the defense. The other two will be the interpreters for the Court itself.

1 THE COURT: All right. Let me get, first of all,
2 ma'am, can you identify yourself for me please?

3 INTERPRETER GALLIGOS: My name is Sandra Galligos.

4 THE COURT: And you're interpreting into Spanish?

5 INTERPRETER GALLIGOS: Yes, I am.

6 THE COURT: All right. And sir, your name is?

7 INTERPRETER MARQUEZ: My name is Joaquin Marquez. I'm

8 a, a P'urhepechas Tarascan Interpreter.

9 THE COURT: Okay. And ma'am, your name and---

10 INTERPRETER: Sequora Wok, Spanish interpreter.

11 THE COURT: All right. Madam Clerk, if you would swear
12 the three individuals for me.

13 (Whereupon, the interpreters were placed under oath at
14 this time.)

15 THE COURT: And also I would add to the oath that you,
16 your responsibility for interpreting goes not only to the
17 witnesses, but also to the procedural matters that we're
18 about to enter into.

19 Ma'am, would that be included in your oath as well?

20 INTERPRETER GALLIGOS: Yes.

21 THE COURT: And sir?

22 INTERPRETER MARQUEZ: Yes.

23 THE COURT: And ma'am?

24 INTERPRETER WOK: Yes, Your Honor.

25 THE COURT: All right. Thank you. If you'll be

1 seated. And once you're ready to start with him, let me
2 know and we'll begin the proceedings.

3 INTERPRETER GALLIGOS: Thank you.

4 THE COURT: I don't know what you have to do as far as
5 the machinery you're using or electronic gear.

6 (Pause.)

7 MR. COLLINS: Your Honor?

8 THE COURT: Are they ready, Mr. Collins?

9 MR. COLLINS: Yes, Your Honor. The interpreters tell
10 me they are ready.

11 THE COURT: All right. Mr. Collins, I understood that,
12 that you might have some pretrial motions that you'd like to
13 make.

14 MR. COLLINS: Yes, sir. The first one that we would
15 ask the Court to address, we had filed a motion asking the
16 Court to declare Mr. Rios indigent and to also address the
17 issues with the appointment of the interpreters for
18 assisting Mr. Rios as well as assisting the Court with the
19 trial of this matter. The payment where those funds would
20 come from for the three interpreters was an issue that also
21 needed to be addressed as well as access to those
22 interpreters outside of the courtroom during the
23 proceedings.

24 The -- essentially Mr. Rios has been unemployed since
25 November of 2006. His family initially retained myself and

1 I associated Mr. Brannon shortly after his arrest. Since
2 that time, Mr. Rios has been unable to work. He has been
3 on -- he's been released on bond, but is on house arrest
4 with an electronic, an electronic monitoring service. That
5 initial retainer carried us through the first trial of this
6 matter which Your Honor presided over in January of this
7 year.

8 ~~Since that time Mr. Rios and his family do not have the~~
9 funds available to pay a second retainer or to pay the
10 necessary interpreters or private investigator expenses that
11 are incurred in this case. And essentially since we are
12 back here three months after the first trial, Mr. Brannon
13 and I took the position that it was not fair to Mr. Rios,
14 the Solicitor's Office, or this Court to ask the Court to
15 appoint someone separately or independently such as the
16 local Public Defender's Office to represent Mr. Rios. So,
17 we have continued in his, in the capacity as his attorneys
18 for the last three months in preparing for trial.

19 THE COURT: Well, now your, your motion does not go to
20 your preparedness for trial---

21 MR. COLLINS: No.

22 THE COURT: ---but as to who would be responsible for
23 the financial, for the financial obligations that might be
24 created by the problem?

25 MR. COLLINS: That is, that is correct, Your Honor.

1 THE COURT: All right. Now, in that regard, do you
2 have any information concerning who is living in his
3 household?

4 MR. COLLINS: My understanding is that he currently
5 resides with his parents who also have two other small
6 children in the home with them.

7 THE COURT: And can you tell me their net family income
8 and net income means gross income minus any deductions that
9 are required by law?

10 INTERPRETER GALLIGOS: Judge, the interpreter needs
11 repetition please.

12 THE COURT: All right. My question was to Mr. Collins
13 if he could tell me the family net income. That's the
14 people that reside in the home where Mr. Rios is living.
15 Net family income means gross, their gross income minus
16 deductions required by law, which would be such things as
17 income taxes, Social Security deductions. So, I'm looking
18 for the net family income in the family unit.

19 MR. COLLINS: Your Honor, my understanding from Mr.
20 Rios as well as his father and his mother is that no one in
21 the family at this point is working. They had accumulated
22 some savings prior to this incident and that's what they've
23 been living off of. Apparently the father in the home has
24 some medical issues that have been in existence for some
25 time. The mother was working at Mrs. Smith's Bakery here in

1 town. And apparently she is -- my understanding is that
2 factory has closed and she is no longer employed there.

3 So, Your Honor, we have five individuals living in that
4 residence with, at this point, no income coming in.

5 THE COURT: And do you have any idea whether they
6 receive any governmental assistance at this time?

7 MR. COLLINS: My understanding is they do not, Your
8 Honor.

9 THE COURT: All right. Maybe I should hear from the
10 State's position if you have one in regards to the motion.

11 SOLICITOR GOWDY: I don't with respect to the motion,
12 Your Honor. If the Court would be good enough, at the
13 appropriate time, to, and it may not be necessary, the State
14 paid for Mr. Marquez's services the last trial, and, and at
15 the appropriate time I wanted to ask the Court to consider
16 not the Court reimbursing us, but somebody reimbursing us.
17 It's a very unusual case because there are so few people who
18 speak Tarascan. And despite the best efforts of the Clerk's
19 Office and the defense attorneys, they weren't able to find
20 anybody.

21 We found them, which meant we had to sign a contract.
22 But that may be on down the road. I have nothing with
23 respect---

24 THE COURT: Well, where, where I am, at this point in
25 time, Rule 602 states, and this is the rules that were

1 promulgated under the Defense of Indigents Acts, it states
2 that, for purposes of the rule, a person is indigent,
3 indigent if that person is financially unable to employ
4 counsel. In making the decision of whether a person is
5 indigent, all factors concerning the person's financial
6 condition should be considered including income, debts,
7 assets, and family situation.

8 The reason I was asking about the presumptions, the
9 presumptions is that if someone is under the federal poverty
10 guidelines as established by the Department of Health and
11 Human Services as published in the Federal Register, that's
12 a, that is a presumptive factor for, for poverty. And, of
13 course, all of the presumptions have to do with someone at
14 least earning some income. I've been informed this
15 defendant now -- no one in the family unit is earning any
16 income, and, of course, it would appear to me that there is
17 a presumption of an indigency.

18 Now, of course, as you're aware, Mr. Collins, the South
19 Carolina Indigent Defense Commission makes their own
20 determinations these days as to the indigency status of
21 someone. I, I have no problem of making a preliminary
22 finding at this time that the gentlemen is indigent.

23 MR. COLLINS: Yes, sir.

24 THE COURT: We can make application as you have in the
25 past made to that agency. I believe their previous refusal

1 was that they were informed he was employed, and, therefore,
2 was not indigent.

3 MR. COLLINS: That's correct, Your Honor.

4 THE COURT: And so -- and I have no problem in
5 conducting a hearing, should they request one on my order,
6 and have them present and let them inquire into the facts
7 and circumstances.

8 MR. COLLINS: Your Honor?

9 THE COURT: I see someone standing behind you.

10 MR. RYAN: Judge Couch, I'm, I'm Hugh Ryan. I am the
11 general counsel for the Indigent Defense.

12 THE COURT: Oh, well, good. I'm glad to have you here.

13 MR. RYAN: But there are a few issues I'd like to
14 address when appropriate whenever---

15 THE COURT: Okay. Now, now would be a great time.

16 MR. RYAN: Okay. Your Honor, basically, you've
17 addressed the correct, you know 602, as far as the indigency
18 issue. The only question we had before was, you know, he
19 had private counsel. I think that based on your questions
20 today, it'd be hard to say he's not indigent at this point.

21 THE COURT: Yes, sir.

22 MR. RYAN: I don't have his -- I haven't looked at all
23 the financial paperwork they may have or something, but
24 based on what I'm hearing here.

25 THE COURT: Right.

1 MR. RYAN: The only other issue is I know, I don't know
2 the exact procedural history where y'all are. I know there
3 was a trial in January.

4 THE COURT: There was a trial that was mistried because
5 of evidence that appeared during the trial.

6 MR. RYAN: Yes, sir.

7 THE COURT: And so, we are -- this is, this would be
8 the retrial of that previous case that did not go to the
9 jury.

10 MR. RYAN: Right. And Mr. Adams, our director, we
11 discussed this somewhat. And I understand, having been a
12 public defender and assistant solicitor, how logistics work
13 of it. You know, typically once they became not indigent
14 anymore, we would normally look first at the public defender
15 to fill that. There is a lot of pressure on this conflict.
16 Every year we kind of skate by. It's getting worse with the
17 budget situation in Columbia. But I understand, you know---

18 THE COURT: It will be very difficult at this point in
19 time---

20 MR. RYAN: Right.

21 THE COURT: ---for this trial to go to the Public
22 Defender's Office.

23 MR. RYAN: Right. That would be the normal procedure.
24 But hearing what you're saying here, I can understand that
25 position. Like I said, having no further information, I see

1 where, you know, you can find him to be indigent.

2 The other issue I would like to address at the
3 appropriate time is the whole who pays, what pot of money it
4 comes from. And I have spoken with Mrs. Frierson from Court
5 Administration and shared some information about that.

6 THE COURT: Well, why don't we just, at some point in
7 time when that's determined, will you be letting us know
8 what the that determination is?

9 If I issue an order of preliminary finding of
10 indigency, then obviously somebody needs to pick it up.

11 MR. RYAN: Right.

12 THE COURT: I would imagine counsel would have to make
13 application to your, your agency, which would, in turn,
14 cause you to call those people and discuss who's gonna pay
15 for this, is that correct?

16 MR. RYAN: No, I, I -- yes, sir, I called.

17 THE COURT: Okay.

18 MR. RYAN: I think it probably would help if we can go
19 ahead -- and you know, it's gonna help if we can make some
20 determination maybe, maybe now as to what -- I don't know if
21 they were noticed. I think Court Administration might of
22 been noticed or not.

23 MR. BRANNON: Yes, they were, Your Honor.

24 THE COURT: Okay.

25 MR. RYAN: Unfortunately those pots of money we do

1 argue about that. I'm not trying to be, you know, tight
2 about anything. But that's kind of the way it is.

3 THE COURT: Well, I understand that. But, you know,
4 they're not present. I guess we need to find out if they
5 intend to contest the issue or not.

6 Why don't we do this, we've got some other issues to
7 take up. I'm gonna have my law clerk call down to Mrs.
8 Frierson's office and see if they intend to contest anything
9 or if they got somebody on the way or they may not be
10 present. I don't know what the situation is.

11 MR. RYAN: Judge Couch, if I may just briefly kind of
12 so you may know what to discuss with Mrs. Frierson, when I
13 talked to her, 17-1-50 was the rule I was, I was looking at
14 with the code. Essentially when I talked to her, for the
15 in-court proceedings themselves, in a sense the interpreters
16 are like the court reporter, which is a function of, of what
17 we would say Court Administration pays. She informed me if
18 that was the scenario, the courtroom setting, she thought
19 that was probably -- this, that, that Court Administration
20 would, would pay that part.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. RYAN: Now, I think we get on the hook when we're
23 talking about meeting with lawyers and other things when
24 it's not a function of the Court.

25 THE COURT: I understand.

1 MR. RYAN: That is where I see it. I think

2 Mrs. Frierson would probably agree with that.

3 THE COURT: Well now we need to call and make sure they
4 didn't intend to contest.

5 MR. RYAN: Right.

6 THE COURT: And we'll get back to you just as soon as
7 we've talked with her.

8 Okay

9 MR. RYAN: Thank you, sir.

10 THE COURT: You want, you want to check on that for me.

11 MR. COLLINS: Your Honor, if I may---

12 THE COURT: So, I'm -- I will, at least at this time,
13 make a preliminary ruling that I do find the defendant to be
14 indigent. Obviously we're gonna have to gather a little
15 more information as to determining who make the payments
16 from what fund.

17 Now, the next -- what's next, Mr. Collins?

18 MR. COLLINS: Well, and I wanted to advise the Court
19 we -- Mr. Brannon was talking with the family and learned
20 that there is a severance package for the mother in the
21 family. She receives \$270 per week. I think that comes out
22 to a grand total of \$1,161 a month for a total, for a family
23 of five. So --.

24 THE COURT: That would not -- as far as the guidelines
25 are concerned, they would still be below the poverty level.

1 MR. COLLINS: Yes, sir.

2 THE COURT: Yes, sir.

3 MR. COLLINS: The other issues that we had with regard
4 to this motion were the allocation of the fund or the
5 payment of the interpreters between OID and Court
6 Administration and you'd addressed how you would like to do
7 that. The only administrative detail with the interpreters
8 was access for ourselves and the Solicitor's Office to I
9 think the Tarascan interpreter during court breaks.

10 Essentially we've got a 9-1-1 tape that I think
11 everybody wants a written translation of. The question is
12 how do we get that done and how do we, how do we, what are
13 the, the details of the administrative function of getting
14 that done.

15 THE COURT: Mr. Solicitor, did -- it seemed like to me
16 during the break it was interpreted during the last trial.
17 Maybe I missed something. So, I don't know.

18 Bring me up-to-date where we are on that.

19 SOLICITOR GOWDY: Your Honor, to the best of my
20 recollection, Mr. Marquez actually testified during the last
21 trial.

22 THE COURT: I think he did.

23 SOLICITOR GOWDY: I don't remember whether the jury was
24 present or not. But he certainly listened to the 9-1-1 tape
25 and testified.

1 THE COURT: As I recall, as I recall the testimony,
2 there would be breaks taken and he would say he said, he
3 just said this and then there would be another break he just
4 said this.

5 SOLICITOR GOWDY: Yes, sir.

6 THE COURT: So, it was interpreted on the fly to the
7 jury is the way I remember it.

8 SOLICITOR GOWDY: Yes, sir.

9 THE COURT: ---so to speak.

10 SOLICITOR GOWDY: The Tarascan aspect of it.

11 THE COURT: Yes.

12 SOLICITOR GOWDY: I don't know whether he speaks
13 Spanish. But I don't think he tried to the, interpret the
14 Spanish. I think just the Tarascan.

15 THE COURT: Well, at, at any rate, you're interested in
16 getting a written transcript of that?

17 MR. COLLINS: Yes, sir.

18 THE COURT: Okay. Well, I mean obviously he's gonna be
19 made available to you.

20 Mr. Solicitor, I don't guess, guess you mind if he, he
21 does that in some form of writing---

22 SOLICITOR GOWDY: No, sir.

23 THE COURT: ---and share with both sides---

24 MR. COLLINS: Yes, sir.

25 THE COURT: ---is what I would say?

1 So, I mean we can, we can handle that during the breaks
2 of the trial I would think. In fact, during, during jury
3 selection, he could be taken somewhere and be working on
4 that while we're doing jury selection.

5 SOLICITOR GOWDY: Yes, sir.

6 THE COURT: Well, I don't know. He may have to be
7 present to, for the voir dire. So, anyway we'll, we'll take
8 a break if we need to for him to do that.

9 MR. BRANNON: Your Honor, he, he can do that during
10 general qualification. I mean we're only talking about a---

11 THE COURT: Yes, sir.

12 MR. BRANNON: ---few minute audiotape.

13 THE COURT: Right.

14 MR. COLLINS: And hopefully he has his notes from the
15 last time.

16 THE COURT: Okay.

17 MR. COLLINS: And Your Honor, just to clarify, would
18 the, the order determining Mr. Rios to be indigent also
19 include the appointment of Mr. Brannon and myself and I
20 guess the authority for us to---

21 THE COURT: Yes, sir, I would appoint you because I
22 don't think at this point in time it would be possible for
23 him to go to trial with any other attorneys. You, you only
24 have been involved in it since the beginning.

25 MR. RYAN: Your Honor, if I could address the Court

1 briefly?

2 THE COURT: Yes, sir.

3 MR. RYAN: The only thing we -- the Death Penalty
4 Statutes are the only statute that statutorily provides for
5 two lawyers, and that's a big issue we can address. I mean
6 there's very few cases we have, and obviously the Court has
7 discretion, that we have two lawyers billing at the same
8 time. That's, that's a --

9 MR. BRANNON: Appoint only Mr. Collins. Appoint only
10 Mr. Collins.

11 THE COURT: That solves the problem. I'll only
12 appoint, appoint Mr. Collins and consider his hours on the
13 indigency.

14 MR. RYAN: Yes, sir.

15 THE COURT: All right. From the bench, I appoint you,
16 Mr. Collins.

17 MR. COLLINS: Yes, Your Honor.

18 THE COURT: And then, of course, you have the right to
19 consult with any other attorney you wish to consult with.

20 MR. COLLINS: Thank you, Your Honor. As far as
21 indigency and the interpreter issues, I believe those are
22 all that we have at this time, Your Honor.

23 THE COURT: All right. Anything further as far as
24 procedure is concerned from the State?

25 SOLICITOR GOWDY: No, sir, Your Honor.

1 THE COURT: All right. Now, were there some matters,
2 pretrial matters concerning the trial?

3 We've got, we've got about an hour here that we can
4 deal with that if you'd like.

5 MR. COLLINS: Your Honor, we have a, a Jackson v. Denno
6 hearing that we would ask the Court to, to conduct. That,
7 however, I think is going to take considerably longer than
8 one hour.

9 There was one discovery issue. We had sent two
10 subpoenas to the Spartanburg County Sheriff's Office
11 requesting information about shootings the day of and the
12 few days following this particular incident.

13 THE COURT: Now, there was only one shooting, right, as
14 I recall?

15 MR. COLLINS: Yes, sir, just one shooting.

16 THE COURT: All right. Excuse me.

17 MR. COLLINS: The, the Sheriff's Office -- the first
18 subpoena was a request for any reports related to Latino
19 women who had reported to one of the local hospitals with
20 gunshot wounds. We were told that that subpoena was too
21 broad and the Sheriff's Office did not respond to that.

22 We narrowed the subpoena down and asked simply for
23 reports of shootings in the three days from Thanksgiving Day
24 of 2006 for the three days following that. We received a
25 page and a half long printout of telephone calls to 9-1-1,

1 but do not, at this point, have any of the incident reports
2 that may of been generated from those, the response to those
3 calls. If the Sheriff's Office would be able to provide us
4 with the response to either one of those subpoenas today
5 through the Solicitor's Office, I believe we would have
6 sufficient time this afternoon and this evening to review
7 those before tomorrow morning.

8 THE COURT: Mrs. Crick.

9 SOLICITOR CRICK: Yes, Your Honor.

10 I did see a copy of the subpoena that they gave to the
11 Sheriff's Office. The problem the Sheriff's Office was
12 having is the way they pull up their reports. If it's shots
13 fired, they actually don't even generate a report. If there
14 is an actual shooting they probably would. But they have no
15 way to look it up by race or I don't even think gender.

16 So, if there was -- we sent them a list that we got
17 from the Sheriff's Office of shots fired, shootings, and
18 drive-by. And if they're able to see if one of those might
19 match up with the address, date, or time that you're looking
20 for, be happy to see if they can maybe pull those reports.

21 THE COURT: Yes, sir.

22 MR. COLLINS: To be quite honest, we don't know -- I --
23 without giving away some trial strategy, I don't know that I
24 could explain the, the basis behind the subpoena. But we
25 don't have a particular individual or address that we're

1 looking for. We were -- the purpose of the subpoenas was to
2 determine whether or not a Latino female was the victim, was
3 a reported victim of a gunshot wound some time at or near
4 the time of the incident on Thanksgiving Day 2006.

5 THE COURT: Well, if I understood Mrs. Crick to say
6 they don't keep static, you know, the, the racial status of
7 the victims of the -- so, I don't know how they can generate
8 that information---

9 MR. COLLINS: Yeah.

10 THE COURT: ---other than tell you what reports they've
11 got.

12 MR. COLLINS: If, if they would just simply give us the
13 reports for any gunshot victims from Thanksgiving Day.

14 THE COURT: Someone actually who was shot?

15 MR. BRANNON: Yes.

16 MR. COLLINS: Someone who was actually shot from
17 Thanksgiving Day through the, the three or four days after
18 that.

19 THE COURT: How many were you talking about,
20 Mrs. Crick?

21 Can you tell?

22 SOLICITOR CRICK: Well, if I'm looking at that---

23 THE COURT: Somebody who actually received a wound from
24 a shooting.

25 SOLICITOR CRICK: And I don't know that there was a

1 wound or not from this report.

2 THE COURT: Oh, okay.

3 SOLICITOR CRICK: All I know is there was a shooting.
4 And I'm assuming that someone was shot cause the other ones
5 were fired. But the only one I see on here that would fall
6 in your date range is November 28th, 2006.

7 Is that -- but that was -- yeah, it was after this
8 incident. I don't know that that's near enough to the
9 23rd. The other ones, the other ones would be like---

10 THE COURT: That would be five days later.

11 MR. COLLINS: If they could produce that report for us.

12 THE COURT: All right. I'll just ask you, Mrs. Crick,
13 to produce that incident report, and make it available to
14 them---

15 SOLICITOR CRICK: Okay.

16 THE COURT: ---today some time.

17 SOLICITOR CRICK: Okay.

18 THE COURT: Yes, sir.

19 MR. COLLINS: And Your Honor, I believe that takes care
20 of the discovery issues that we had. The only other
21 pretrial motion would be the Jackson v. Denno hearing.

22 THE COURT: All right. Well, that's gonna, that's
23 gonna take a while.

24 MR. COLLINS: Yes, sir.

25 THE COURT: So, I'm gonna wait on that. Let me talk to

1 my clerk here.

2 (Pause.)

3 THE COURT: All right, sir. Let me address the
4 situation again. I -- the -- Court Administration
5 apparently does not intend to have someone present, but they
6 do intend to pay what they would normally pay, and I think
7 you related that to, to in-court proceedings---

8 MR. RYAN: Yes, sir.

9 THE COURT: ---as opposed to out-of-court preparation?

10 MR. RYAN: Yes, sir, that's how Mrs. Frierson and I
11 kind of left it in our last conversation.

12 THE COURT: All right. Well, then I, I have no problem
13 with issuing an order, an order to that effect, and, of
14 course, either side can ask me to reconsider it if there's
15 something that comes up.

16 MR. RYAN: Yes, sir.

17 THE COURT: But I'll be, I'll be glad to place it in
18 the frame, framework. So, I'll -- I'm gonna ask Mr. Collins
19 to get with you and propose an order to me.

20 MR. RYAN: Yes, sir.

21 THE COURT: And then run it by the State before it is
22 signed, and, of course, then we'll -- and also send a copy
23 to Court Administration so that they have a chance to look
24 at it.

25 MR. RYAN: Judge Couch, maybe one last thing as far as

1 the fees that have already been incurred?

2 THE COURT: Yes, sir.

3 MR. RYAN: If I could address that.

4 It was, it was a little unusual. We first got the
5 first bill from the Solicitor's Office, which was, when we
6 first started asking some questions, and then that was about
7 the 1,500, 1,500---

8 THE COURT: Well, it is an unusual situation.

9 MR. RYAN: Right. It was \$1,580.36. Then we got
10 another one for \$2,968.70. Our initial concern was, was, at
11 that time, was the defendant actually indigent, question
12 number one. I guess number two was, and again we don't know
13 all the facts as y'all know them, the lawyer's were
14 communicating with a Spanish interpreter, who, you know, why
15 do we get the special dialect interpreter I guess.

16 THE COURT: The situation is, on the Tarascan, there
17 are some words apparently that do not translate between
18 Spanish and Tarascan speakers. In fact, the Tarascan
19 culture does not have a court system and they have no words
20 for things like judges and juries and lawyers and things of
21 that nature. And so, for that reason, he does understand
22 some Spanish as well. We felt it best that they both be
23 present because legal phrases do not translate into Tarascan
24 since there's no legal system that the Tarascan's operate,
25 operate.

1 So, it's a little bit of an -- again, an unusual
2 situation, and the, and the lack of availability of Tarascan
3 interpreters, we felt it best to proceed with both Spanish
4 and Tarascan since some phrases there would of been no
5 translation for.

6 MR. RYAN: And I guess when we saw that first bill, the
7 issue, number one, if he wasn't indigent, then we would say
8 we wouldn't be responsible for that.

9 THE COURT: And why were there two interpreters.

10 MR. RYAN: Yes, sir. And secondly, if you do find that
11 the bill should, those bills should be paid or, or whatever,
12 then maybe we can work with Mr. Collins and the Solicitor's
13 Office to work out what was in-court time versus that type
14 of time.

15 THE COURT: I would urge you to get with Mr. Collins
16 and, and someone from the Solicitor's Office. And again, if
17 you can't work out an arrangement, I'll be glad to hold a
18 hearing on that so we can work that out.

19 Okay, sir?

20 MR. RYAN: Yes, sir.

21 THE COURT: All right.

22 MR. RYAN: No other questions. I'll head back to
23 Columbia.

24 THE COURT: Thank you very much for coming this
25 morning. We appreciate your presence.

1 MR. RYAN: Thank y'all.

2 THE COURT: All right. Now, what I'll do at this time
3 then -- did you have something, Mr. Brannon?

4 MR. BRANNON: Yes, Your Honor, and I'm just gonna put
5 it before the Court and you decide whether you want to hear
6 this. It's my understanding that the State intends to call
7 a Mr. Robert Reeder, who is an employee of the Milliken
8 Corporation.

9 THE COURT: I suppose. I haven't seen a witness list,
10 list yet. But I've heard his name mentioned in pretrial
11 discussion.

12 MR. BRANNON: Okay. Your Honor, we're gonna argue
13 that, that his testimony would be irrelevant.

14 Would you want to hear that now or you want to hear
15 that kind of contemporaneously?

16 THE COURT: We'll hear that when we do the other
17 pretrial motions along with Jackson v. Denno.

18 MR. BRANNON: Okay. All right. Thank you, Your Honor.

19 THE COURT: All right. At this point in time we'll put
20 the, have this case placed in recess until after we've
21 selected a jury, and then we'll proceed.

22 Thank you very much.

23 (Whereupon, this case was in recess at this time.)

24 THE COURT: Can I ask the attorneys in the first case
25 to approach the bench please?

1 (Whereupon, a bench conference was held at this time.)

2 THE COURT: All right. Ladies and gentlemen, ladies
3 and gentlemen of the jury panel, we're about to begin the
4 trial of the State of South Carolina versus Santiago Pasqual
5 Rios. The case is before this Court on an indictment.

6 An indictment is a document which is issued by the
7 Grand Jury. It described the offense that is alleged
8 against the defendant. It also informs this Court of the
9 charges that are to be tried in the trials that we conduct.
10 I will tell you now that an indictment can not be used by a
11 jury in any fashion whatsoever to determine the guilt or the
12 innocence of a defendant.

13 I am going to read the indictment to you so that you
14 will know when the alleged events occurred and what is
15 alleged that occurred so that you can more properly answer
16 some questions that I'm going to ask you about this
17 particular case in just a few minutes.

18 The indictment in this case is in Case Number
19 08-GS-42-0170. The indictment is for the offense of murder.
20 The indictment states that Santiago, Santiago Pasqual Rios,
21 did, in Spartanburg County, on or about, on or about
22 November the 23rd of 2006, feloniously, willfully, and
23 with malice aforethought cause the death of one Eliza
24 Hernandez by shooting her with a gun and that the victim
25 died as a proximate result thereof all in violation of Code

1 Section 16-3-10 and 16-3-20 of the South Carolina Code of
2 Laws, 1976 as amended, against the peace and dignity of the
3 State and contrary to the statute in such case made and
4 provided.

5 Now, ladies and gentlemen, that is the indictment that
6 is before the Court. And again, I read it to you so that
7 you will understand the allegations that are before the
8 Court and when they occurred and who they involved.

9 Now, I realize that you were sworn earlier and the
10 purpose of that oath was to answer my questions during the
11 jury qualification process. At this point in time I'm going
12 to ask some questions that would apply to this case, and
13 it's necessary that you take an oath again that, that
14 applies to this matter.

15 Madam Clerk, please swear the prospective jury panel.

16 (Whereupon, the jury panel was placed under oath at
17 this time.)

18 MR. BRANNON: May we approach, Your Honor?

19 THE COURT: You may.

20 (Whereupon, a bench conference was held out of the
21 hearing of the jury at this time.)

22 THE COURT: Now, if there was any member of the
23 prospective jury panel who either failed or refused to take
24 the oath just administered by the clerk, I'd ask that you
25 now please stand.

1 (No response.)

2 THE COURT: The record will reflect that all
3 prospective jurors have been sworn for purposes of my
4 questioning this morning or I should say this afternoon,
5 shouldn't I?

6 All right. Now, before I begin my questioning, I also
7 would like for the attorneys who are going to be involved in
8 the trial of this case to introduce themselves. And in the
9 case of the defense, I'd ask that they introduce the
10 defendant.

11 First of all, for the State.

12 SOLICITOR GOWDY: May it please the Court, Your Honor?

13 THE COURT: Yes, sir.

14 SOLICITOR GOWDY: My name is Tray Gowdy and I'm with
15 the Solicitor's Office, which is Spartanburg and Cherokee
16 Counties.

17 SOLICITOR CRICK: And I'm Cindy Crick. I'm assistant
18 solicitor here in Spartanburg.

19 THE COURT: Thank you very much.

20 And for the defense?

21 MR. COLLINS: Good afternoon. My name is David
22 Collins. I practice here in Spartanburg. My partner is
23 Phil Sinclair. With me today is Mr. Doug Brannon who also
24 practices here in Spartanburg. Together we represent
25 Santiago Rios.

1 Thank you.

2 THE COURT: Now, ladies and gentlemen, I will make you
3 aware of one other thing. Mr. Rios' native language is not
4 English and he has interpreters present and you'll hear them
5 talking to him and interpreting. That's just something that
6 I, I know it makes a little bit of noise. I'm trying to

7 talk above that. If you have any problems in hearing me,

8 let me know and I'll be glad to try to speak up or, or

9 rearrange your location so maybe you can hear a little
10 better as we go through this process.

11 All right. And I'm gonna go through the same process
12 that I went through with you during the qualification. If
13 you have a response to any of my questions, I'm going to ask
14 that you stand and we'll take those responses on an
15 individual basis once I have identified who's standing. So,
16 I'll ask you for your name and number first so that that
17 will be on the record and then we'll get the responses to my
18 questions should you have any.

19 My first question, has any member of the jury panel
20 ever been related by marriage or are you related by blood to
21 the defendant, Santiago Pasqual Rios, or the alleged victim,
22 Eliza Hernandez, if that's true, please stand.

23 (No response.)

24 THE COURT: Has any member of the jury panel ever had a
25 close personal or a social relationship with either the

1 defendant, Santiago Pasqual Rios, or the alleged victim,
2 Eliza Hernandez, if that's true, please stand.

3 (No response.)

4 THE COURT: Now, ladies and gentlemen of the jury, I'm
5 going to go over with you a list of individuals who have
6 been identified to me as potential witnesses. Now that
7 means that they are possibly, that it's possible that they
8 will be called as witnesses in this trial. And so, I'm
9 going to go over the list with you and I'll try to identify
10 who they are with so that maybe you'll know a little more
11 about them as far as where they're employed and what they
12 do.

13 First of all, Officer Curtis Kesler with the
14 Spartanburg County Sheriff's Office.

15 Mr. Freddie Thompson who is with the county
16 communications office in Spartanburg.

17 Investigator Reid Lindsay with the Sheriff's
18 Department.

19 And when I say Sheriff's Department, these are all
20 Spartanburg County unless I identify them otherwise.

21 Cynthia P.

22 Alex P.

23 Isabel Rios.

24 Eugenia Hernandez.

25 Jesus Huipe.

1 Investigator Gary, William Gary with the Sheriff's
2 Office.

3 Sergeant George Baldarama with the Sheriff's Office.

4 Deputy Angel Diaz with the Sheriff's Office.

5 Deputy Tim Davis with the Sheriff's Office.

6 Investigator David Hogshed of the Sheriff's Office.

7 ~~Deputy Dominic Baird with the Sheriff's Office.~~

8 ~~Deputy David Evett with the Sheriff's Office.~~

9 Investigator Randy Bogan with the Sheriff's Office.

10 Deputy Robert Rosenberg with the Sheriff's Office.

11 Deputy Jack Westmoreland with the Sheriff's Office.

12 Deborah Foster, a victim advocate with the Sheriff's
13 Office.

14 Amy Stevens with the State Law Enforcement Division or
15 SLED.

16 Karonda Williams with SLED.

17 Matthew Fitts with SLED.

18 Suzanne Cromer, SLED.

19 Tammy Bannister with SLED.

20 Nikki Perry, SLED.

21 Laurie Shacker, SLED.

22 Joseph Powell, SLED.

23 Lisa McRaynolds, SLED.

24 Ila Simmons, SLED.

25 Doctor David Wren with the Spartanburg Regional Medical

1 Center.

2 Teresa Sampson, an interpreter.

3 Joaquin Marquez, an interpreter.

4 Robert Reeder with Milliken Corporation.

5 Becky Sanders with Milliken Corporation.

6 Alonzo Recendez with -- he's not, he's not, not

7 identified as who he's with.

8 Jeff Lawrence with the Blessed Trinity Catholic Church.

9 Now, ladies and gentlemen, as to the people I just
10 identified as potential witnesses, has any member of the
11 jury panel ever been related by marriage, or are you related
12 by blood, or have you had a close personal or a social
13 relationship with any individual I just identified as a
14 potential witness in this case, if that's true, please
15 stand.

16 (Juror responds.)

17 THE COURT: Yes, ma'am, I need your name and number.

18 JUROR: I'm Emily Penland. I'm 122.

19 THE COURT: Yes, ma'am.

20 JUROR: I'm not really sure about this. But the
21 Elizabeth lady, I, I don't know her last name, I'm not sure
22 if that's her or not. But I saw two ladies out in the front
23 waiting. The last name sounded a little familiar to me.
24 Elizabeth.

25 THE COURT: Just one second and let me see if I can get

1 that name.

2 (Pause.)

3 THE COURT: Do you see Elizabeth on the list?

4 And Elizabeth's on---

5 SOLICITOR GOWDY: There's an Alissa whose name I
6 believe was called out, Your Honor.

7 THE COURT: I see an Isabel and I---

8 JUROR: Well, I'm sorry. Isabel.

9 THE COURT: Isabel.

10 JUROR: That possibly hit me. Her last name, that
11 sounds a little familiar to me. Like I said earlier, the
12 two ladies that I saw in the front area, I work at
13 Employment Unlimited and I use a lot of temporary agencies
14 during our busy season. And I'm an administrative
15 assistance. So, I sit up front. I know these two ladies
16 that I saw---

17 THE COURT: Let me, let me ask you just a couple of
18 questions---

19 JUROR: Okay.

20 THE COURT: Before we go into the details of the
21 conversation, ma'am.

22 So, you may have met this lady at some other time?

23 JUROR: Right.

24 THE COURT: All right. Would that relationship that
25 you have with her cause you to be, not be impartial in this

1 case?

2 Could you be impartial in this case?

3 THE COURT: Would that relationship influence you in
4 any, anyway in, in serving on a jury?

5 JUROR: No.

6 THE COURT: Okay. So, it would not affect your service
7 on the jury?

8 JUROR: No.

9 THE COURT: Okay, ma'am. Then you can be seated.
10 Thank you. That's what I need to know.

11 Anyone else?

12 (Juror responds.)

13 THE COURT: Yes, sir, I need your name and number.

14 JUROR: Jeff Thompson, 154.

15 THE COURT: Yes, sir.

16 JUROR: Freddie Thompson, does he work with the 9-1-1
17 here in Spartanburg?

18 THE COURT: That's right. Spartanburg County
19 Communications.

20 JUROR: Yes, sir, he is my dad's cousin.

21 THE COURT: So, you are related to him in some manner?

22 JUROR: Yeah, in some manner.

23 THE COURT: Well, sir, I'm gonna have to exclude you
24 then from service on the jury. Keep your seat then. You're
25 with us for a little while longer, but you're excluded from

1 this case. We're gonna be picking another jury later this
2 afternoon.

3 Anyone else?

4 (No response.)

5 THE COURT: Now, the attorneys in this matter have
6 identified themselves to you.

7 Has any member of the prospective jury panel ever been
8 represented by any of the attorneys who are involved in the
9 trial of this case or have they appeared on the other side
10 of some legal matter from you, if that's true, please stand.

11 (Juror responds.)

12 THE COURT: Yes, sir, I need your name and number.

13 JUROR: John Lee, Juror 85.

14 THE COURT: Yes, sir.

15 JUROR: Mr. Gowdy represented my mother in a, a robbery
16 three or four years ago.

17 THE COURT: Okay. So, he was the prosecutor in a case
18 that involved your mother?

19 JUROR: Yes, sir, he sure was.

20 THE COURT: Is that case now been concluded?

21 JUROR: It has.

22 THE COURT: All right. Would that fact affect your
23 ability to be fair and impartial to either the State or the
24 defense?

25 JUROR: No, sir, it would not.

1 THE COURT: All right. Thank you, sir. You can be
2 seated.

3 (Juror raises their hand at this time.)

4 THE COURT: I see a hand up, but I don't see somebody
5 standing.

6 JUROR: I'm Juror Number 166. I'm not for sure this
7 would have any bearing on this case. But I think I worked
8 for David Collins one time when I worked at the Case Law
9 Firm years ago.

10 THE COURT: Okay. So, would that fact affect your
11 ability to be fair and impartial in this case?

12 JUROR: No, sir.

13 THE COURT: Thank you, ma'am, for responding. You can
14 be seated.

15 I need your name and number please, ma'am.

16 JUROR: My name is Rosa Martin. My Number is 92. Tray
17 Gowdy was with me for my grandson I think it was in 2005 if
18 I'm not mistaken.

19 THE COURT: All right, ma'am. Did he represent you in
20 some fashion?

21 JUROR: No.

22 THE COURT: All right. So, he, he -- so, you just know
23 him, is that correct?

24 JUROR: Well, no.

25 THE COURT: Was he an acquaintance of yours or have you

1 worked or have you worked with him somehow?

2 JUROR: Let me do that. He -- my daughter's son, he
3 was killed in a, you know, and he handled the case.

4 THE COURT: So, he may of been the prosecutor in that
5 case as well, is that correct?

6 JUROR: Yeah.

7 THE COURT: Would that fact affect your ability to be
8 fair and impartial in the trial of this case?

9 JUROR: No, it would not.

10 THE COURT: Thank you, ma'am. You can be seated.

11 Anyone else?

12 (No response.)

13 THE COURT: Now, I asked you about representation, but
14 I will ask you is any member of the jury panel ever been
15 related by blood or marriage or do you have a close personal
16 or a social relationship with any of the attorneys involved
17 in this trial, if that's true, please stand.

18 (Juror responds.)

19 THE COURT: Yes, sir, I need your name and number.

20 JUROR: Ryan McGentry, Number 96.

21 THE COURT: Yes, sir.

22 JUROR: Not personal or social relationship. But my
23 wife was formerly employed by the Solicitor's Office.

24 THE COURT: Okay. She no longer is employed at that
25 location?

1 JUROR: No, sir.

2 THE COURT: All right, sir. Would that fact affect
3 your ability to be fair and impartial in the trial of this
4 matter?

5 JUROR: No, it would not.

6 THE COURT: Thank you. You can be seated.

7 All right. Has any member of the jury panel gathered
8 any information concerning this case outside of the
9 courtroom or have you ever formed or expressed an opinion
10 about any issue that might be involved in the trial of this
11 case, if that's true, please stand.

12 (No response.)

13 THE COURT: Does any member of the jury panel, are you
14 aware of any bias or prejudice that you might have either
15 for or against the State or the defendant in this case, if
16 that's true, I'd ask that you now please stand.

17 (No response.)

18 THE COURT: Is there any member of the jury panel who
19 was a member of the Grand Jury who may have issued the
20 indictment that I just published before this Court, if
21 that's true, please stand.

22 (No response.)

23 THE COURT: Is there any member of this jury panel who
24 is a member of or a contributor to any group that has as its
25 primary concern the promotion of law enforcement or the

1 promotion of victim's rights?

2 These cases, these groups would include, but not be
3 limited to, such groups as Mothers Against Drunk Driving,
4 Students Against Drunk Driving, Citizens Against Violent
5 Crime, or other similarly situated organizations, if that's
6 true, please stand.

7 (No response.)

8 THE COURT: Is there any member of the jury panel who
9 is aware of any reason whatsoever why he or she should not
10 serve as a juror in this case with particular emphasis being
11 placed on your ability to be both fair and impartial to the
12 State and to the defense, if that's true, please stand.

13 (No response.)

14 THE COURT: Any further questions to be proposed by the
15 State?

16 SOLICITOR GOWDY: Not from the State, Your Honor.

17 THE COURT: Any further questions to be proposed by the
18 defense?

19 MR. COLLINS: Nothing else, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, what
21 we're going to do at this point in time is proceed with
22 selecting a jury. We have a computer program down here
23 that's going to, at random, pick names from the jury panel.
24 It's gonna take a few minutes for us to generate that list.

25 Mr. Collins.

1 MR. COLLINS: Your Honor, may we approach very briefly?

2 THE COURT: Yes, sir.

3 (Whereupon, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: All right. Ladies and gentlemen of the
6 jury panel, what's gonna happen is the clerk is going to, in
7 just a moment, begin to call your names. When your name is
8 called I'm going to ask you to pick up your personal
9 belongings, come forward. They'll be a bailiff standing in
10 the front of the courtroom. Come down to where the bailiff
11 is, turn, face back toward the back of the courtroom. At
12 that point in time the State and the defense will be in a
13 position to exercise their strikes in the case.

14 In this particular case the State has five strikes, the
15 defense has ten strikes.

16 We're going to select two alternates on the jury. So,
17 once the jury panel is finished, we'll select two alternates
18 with the State having one strike for each alternate, and the
19 defense having two.

20 So, at this point in time, Madam Clerk, you can begin
21 to call the role of the jurors who have been selected.

22 (Whereupon, a jury panel was selected at this time.)

23 THE COURT: All right. We'll begin the selection of
24 the alternates.

25 Again, the State will have one strike for each

1 alternate. We're gonna select two. So, that means the
2 State will have two strikes. The defense will have four
3 strikes.

4 (Whereupon, two alternate jurors were selected at this
5 time.)

6 THE COURT: Any objection from the State to the jury
7 selection process?

8 SOLICITOR GOWDY: No, sir, Your Honor.

9 THE COURT: Any objection from the defense as to the
10 jury selection process?

11 MR. COLLINS: No, Your Honor.

12 THE COURT: All right.

13 (Pause.)

14 THE COURT: All right. Ladies and gentlemen, you have
15 been selected as members of the jury in this particular
16 case. Now, there are some matters that I am going to be
17 taking up with the attorneys this, this afternoon,
18 preliminary matters, pretrial, trial matters hopefully that,
19 as a result of our discussions and our hearings, we'll be
20 able to somewhat shorten the length of the trial or the
21 issues that we may have to take up during the trial. So,
22 we'll be doing those things this afternoon.

23 So, we won't need you to be present until we actually
24 start the trial of the case and that's gonna be at nine
25 o'clock in the morning. So, you're gonna be free to go for

1 the rest of the afternoon.

2 But before you leave the courthouse, let me go over
3 just a couple of things with you so that I'm sure we have an
4 understanding concerning these matters and you'll understand
5 how you are to approach your service on this jury. You've
6 been selected as fair and impartial jurors. When you return
7 to the courtroom in the morning you will be asked to take an
8 oath. The oath is -- I know you've been sworn a couple of
9 times already. But this oath has to do with your service
10 and your duties as jurors in this case. And at that point
11 in time your oath will ask you to decide the case solely
12 upon the evidence presented during the trial and on the law
13 as given to you by this Court.

14 Therefore, it would be highly improper for you to try
15 to gather any information concerning this case outside of
16 this courtroom because, from the Internet, from friends,
17 acquaintances, media reports, things of that nature because
18 those particular forms of, of information, quite often,
19 contain information which is not admissible under the rules
20 of evidence used by this Court, and your job is to decide
21 the case solely upon the evidence presented during the
22 trial.

23 And the only evidence you're going to hear concerning
24 this case will be witnesses who appear in this courtroom who
25 are sworn to tell the truth and who testify from this

1 witness stand, and such documents or other evidence that
2 comes into the record through that testimony.

3 So, again, don't try to gather any information outside
4 of the courtroom. Don't try to learn anything about this
5 case on your own because, again, it would be highly improper
6 and it would be a violation of your oath you take, you will
7 take as jurors concerning the case that you're about to be
8 involved in the trial of.

9 Also, I'm going to ask you not to begin any discussions
10 concerning this, concerning this case with anyone even among
11 yourselves as you're leaving the courthouse or when you
12 gather in the morning. Please don't discuss the case
13 because again you've been selected because you have an open
14 mind concerning this case. If you even begin to discuss,
15 and I know you know very little about the case, but if you
16 even begin to discuss the nature of the charges, the matters
17 that are involved, you might begin to formulate opinions
18 that will ultimately cloud your decision in this case. And
19 again, I want you to keep an open mind until you've heard
20 all the evidence and I've charged you concerning the law and
21 at that time I'll tell you to begin your deliberations and
22 begin to discuss it.

23 It's okay to tell family or friends you've been
24 selected to serve on a jury. But that's about all you need
25 to tell them and that you'll be reporting in the morning and

1 I do expect the trial to take several days. So, this case
2 will go on for a couple of days into this week.

3 So, please, again, don't discuss the case with anyone.
4 Don't allow anyone to discuss it with you. And I think
5 there's a good chance this case will be reported in the
6 media.

7 So, if you happen to see, hear, read, or watch any
8 media report concerning this, don't watch it. Don't listen
9 it to, don't consider it, turn it off, walk away, whatever
10 you have to do because, again, those reports contain
11 information quite often that's not admissible under the
12 rules of evidence used by the Court, should not be
13 considered by you in any fashion in reaching a decision in
14 this case.

15 So, again, it would be a violation of our oath to
16 consider matters not admissible under the rules. So, I'm
17 gonna ask you to do that for me as well.

18 I'm going to ask you to be back in the jury room and
19 the bailiffs are gonna show you the jury room that you're
20 gonna use during this trial. Be there at nine o'clock in
21 the morning. We should be in a position to start shortly
22 thereafter. So, please be there so we be sure everyone's
23 present at that time.

24 Again, I want to thank you very much for your
25 willingness to serve. I will ask you, that upon reporting

1 in the morning, should anyone attempt to contact you
2 concerning your service on this jury or anyway try to
3 discuss your participation in this trial with you, with you,
4 please report that fact to me upon your return. I can
5 assure you I take jury tampering very seriously, and I'll
6 see that the appropriate authorities are notified and the
7 proper investigation is begun.

8 So, again, don't allow anyone to contact you or discuss
9 the case with you at this point in time. Again, I want you
10 to keep that open mind and have the open mind throughout the
11 trial until you've heard all the evidence and I've charged
12 you with the law and told you to begin your deliberations at
13 that point in time.

14 Be back in the jury room, nine o'clock in the morning.

15 Thank you very much.

16 You're free to go at this time.

17 (Whereupon, the following takes place outside the
18 presence of the jury.)

19 THE COURT: All right. Any objection to my
20 preliminary, preliminary instructions to the jury from the
21 State?

22 SOLICITOR GOWDY: No, sir, Your Honor.

23 THE COURT: Any from the defense?

24 MR. COLLINS: No, Your Honor.

25 THE COURT: All right. A couple things I want to go

1 over with on the, on the record. I do note, note that there
2 is a duplicate indictment that's been handed up because
3 apparently we've been unable to locate the original.

4 I understand there's no objection from the defense to
5 that being presented, is that correct?

6 MR. COLLINS: That is correct, Your Honor.

7 THE COURT: Also I understand that we will be taking
8 up -- well also I want to go over the fact your client was
9 previously arraigned on the original indictment.

10 I assume at this time he is waiving arraignment and
11 still demanding a jury trial, is that correct?

12 MR. COLLINS: That is correct, Your Honor.

13 THE COURT: All right, sir. Now, we'll begin with the
14 hearings on the pretrial motions. We'll start that -- let's
15 say we start about 2:15 this afternoon, and the defendant
16 will remain in custody from this point forward. So, he's,
17 he's, should be prepared to stay with us.

18 Anything further from the State before we break for
19 lunch?

20 SOLICITOR GOWDY: No, sir, Your Honor.

21 THE COURT: Anything further from the defense?

22 MR. COLLINS: No, Your Honor.

23 THE COURT: All right. Thank you very much.

24 We'll be back in the courtroom at 2:15.

25 (Whereupon, Court was in recess for the lunch hour.)

1 THE COURT: All right. Mr. Collins, you had indicated
2 that you had a motion you'd like to make in connection with
3 the case or Mr. Brannon. I don't know who's going to
4 proceed.

5 MR. BRANNON: Your Honor, we would first like to start
6 with the Jackson v. Denno hearing.

7 THE COURT: All right. And the statement that you are
8 seeking to exclude?

9 MR. BRANNON: Your Honor, there are actually two
10 statements, two written statements taken by Officer
11 Baldarama and Officer Diaz from Santiago Rios at the
12 Sheriff's Department.

13 THE COURT: And is the State ready to proceed?

14 SOLICITOR GOWDY: Yes, sir, Your Honor.

15 THE COURT: You may do so.

16 SOLICITOR CRICK: Thank you, Your Honor.

17 The State calls Sergeant George Baldarama.

18 THE COURT: Come forward, sir, to be sworn.

19 GEORGE BALDARAMA, being first duly
20 sworn, testified as follows:

21 THE COURT: Sir, have a seat in the witness stand.
22 Move forward to the microphone. State your full name for
23 the record please.

24 WITNESS: My name is George Baldarama, Senior.

25 THE COURT: All right. Your witness, Mrs. Crick.

George Baldarama - Direct examination
By Solicitor Crick

1 SOLICITOR CRICK: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR CRICK:

4 Q Where do you work, Sergeant Baldarama?

5 A I work for the Spartanburg County Sheriff's Office.

6 Q How long have you been with the Sheriff's Office?

7 A It's about 17 years.

8 Q What are your duties at the Sheriff's Office?

9 A Right now currently I am the second shift desk
10 sergeant, and I'm also an interpreter and translator for the
11 Hispanic community for the Sheriff's Department.

12 Q And when you say you're an interpreter or translator,
13 what -- how would you get involved on a case?

14 A Usually when there's a Hispanic case or somebody that
15 doesn't speak English, they'll call me to serve as an
16 interpreter.

17 Q How many languages do you speak?

18 A I speak English and Spanish.

19 Q Okay.

20 A Fluently.

21 Q Fluent.

22 A And I'm learning sign language.

23 Q Okay. And have you had any special training in
24 interpreting or translating?

25 A I have gone to -- I went to college. When I was in

George Baldarama - Direct examination
By Solicitor Crick

1 college I took Spanish in college. I am Hispanic by my
2 birth. My family spoke it. I didn't speak it till I got
3 into college and started learning it, and then I've been to
4 different seminars and I have taught some classes also.

5 Q All right. On November 23rd, 2006, were you called
6 out for the Santiago Rios case?

7 A Yes, ma'am, I was.

8 Q Do you remember who notified you or why?

9 A I think it was the sergeant on shift, Curtis Kesler,
10 that requested that I join them over at the, on
11 Taylor-Colquitt.

12 Q And your reason for going out there was what?

13 A Just to serve as an interpreter/translator.

14 Q And you went out to the home?

15 A Yes, ma'am, I did.

16 Q What did you do after you got out to the home?

17 A When I got to the house I met with the officers that
18 were already on the scene. I think Investigator William
19 Gary was already there when I got there, and he just told me
20 to collect the family members, and, you know, hold them to
21 one side until he could talk to them.

22 Q And at some point did you take them back to the
23 Sheriff's Office?

24 A Yes, I did.

25 Q And when you say family members, does that include the

George Baldarama - Direct examination
By Solicitor Crick

1 defendant?

2 A Yes, ma'am, it was.

3 Q And you transported everyone back to the Sheriff's
4 Office?

5 A Everyone in the immediate family, yes, ma'am.

6 Q What did you do when you got back to the Sheriff's
7 Office?

8 A We went up to the investigative division and waited.

9 I, I think that, if I'm not mistake, I think Investigator
10 Gary was there or Investigator Lindsay. Somebody was
11 already there when we got there.

12 Q Add at any point did you speak alone with the
13 defendant---

14 A Not, not---

15 Q ---or---

16 A ---pertaining to the case or anything.

17 Q Who was with you when you spoke to the defendant?

18 A It was one of the investigators that was with me.

19 Q You and another investigator?

20 A Yes, ma'am.

21 Q And what, what did you do?

22 What was your purpose in going there, in there to speak
23 with the defendant?

24 A I was just gonna serve as a translator for the
25 investigator and for the defendant.

George Baldarama - Direct examination
By Solicitor Crick

1 Q Did you -- are you aware of whether or not he was
2 advised of his Miranda rights?

3 A Yes, ma'am, he was.

4 Q How do you know that?

5 A I had gave them to him.

6 Q And when you say you gave them to him, did you give it
7 to him in English or Spanish or both?

8 A I gave it to him in Spanish.

9 Q And when you give someone their Miranda warnings or
10 inform them of their rights, do you normally do it from
11 memory or do you have a card?

12 A No, ma'am, I, I carry a card with me that, whenever I
13 deal with Hispanics or Americans. This is the one that's in
14 Spanish. And what I do is I go ahead and read them the
15 card. This card was put together by the Command Spanish out
16 of Mississippi.

17 Q Okay. And let me ask you, at this point, when you
18 initially went in to speak with him, did he have any trouble
19 understanding you at all?

20 A No, ma'am.

21 Q And you were speaking which language?

22 A We're speaking in Spanish.

23 Q Did he, at any point, speak any other language or other
24 dialect with you?

25 A Not, not with me. I know that he spoke another dialect

George Baldarama - Direct examination
By Solicitor Crick

1 or the family did, and -- but they didn't speak it with me.

2 Q And when you spoke with him, did he seem to be heavily
3 intoxicated?

4 Did he have any problems understanding you?

5 A Not to my knowledge.

6 Q Where were you when you spoke with him initially?

7 A Well, when I first met -- the family was out on the
8 scene and then the next time was in the interview room at
9 the Sheriff's Office.

10 (Whereupon, a Miranda warning form and a
11 pre-interrogation waiver form were marked as State's Exhibit
12 Nos. 1 and 2. Two statements were marked as State's Exhibit
13 Nos. 3 and 4. The above exhibits were for identification
14 purposes only at this time.)

15 Q Okay. I'm gonna show you what has been marked as
16 State's Exhibits 1 and 2.

17 If you can, take a look at those and tell us if you
18 recognize what those are.

19 A The first one is the Miranda warnings in Spanish, and
20 the second one is an interrogation waiver form.

21 Q And are each of his rights listed out on each of those
22 forms?

23 A Yes, ma'am.

24 Q In English on one form?

25 A Yes, ma'am.

George Baldarama - Direct examination
By Solicitor Crick

1 Q And Spanish on the other form?

2 A Yes, ma'am.

3 Q Do you have him acknowledge that he's read or
4 understands each of those rights?

5 A Yes, ma'am, on the Spanish one, he initialed it all the
6 way down after I had got done with each and every Miranda
7 right.

8 Q And who signs that form when you're done?

9 A It -- he signed it, Investigator William Gary signed
10 it, and I signed it.

11 Q And after that, you proceeded to get a statement from
12 him?

13 A Yes, ma'am, we did.

14 Q After he signed these.

15 All right. Your Honor, at this time, at this time I'd
16 like to make these Court's Exhibits.

17 MR. BRANNON: No objection.

18 THE COURT: Without objection, they'll be made exhibits
19 for the Court.

20 Q At any point---

21 THE COURT: Just one second while she takes care of
22 that.

23 Are you ready?

24 COURT REPORTER: No, sir.

25 THE COURT: Okay. Give her a chance to mark it.

George Baldarama - Direct examination
By Solicitor Crick

1 (Whereupon, State's Exhibit Nos. 1 and 2 were now
2 changed to Court's Exhibit Nos. 1 and 2 and received into
3 evidence for purposes of this hearing only at this time.)

4 THE COURT: All right. You may proceed.

5 SOLICITOR CRICK: Thank you, Your Honor.

6 Q At that point did he indicate to you that he wanted an
7 attorney?

8 A Not to my knowledge.

9 Q Okay. So, you proceeded on with the statement?

10 A Yes, ma'am.

11 Q Did he give you a statement as to what happened?

12 A Yes, ma'am, he gave William Gary a statement.

13 Q Did you write the statement for him?

14 A Yes, ma'am.

15 Q So, he was speaking to you in Spanish?

16 A Yes, ma'am.

17 Q And you wrote it down in what language?

18 A In English.

19 Q Based on what he was telling you?

20 A Yes, ma'am.

21 Q Before you got that statement, did you or the other
22 investigator ever threaten Mr. Rios?

23 A No, ma'am.

24 Q At any point was he -- well, was he allowed to go to
25 the restroom?

George Baldarama - Direct examination
By Solicitor Crick

1 A Yes, ma'am.

2 Q Was he allowed to have a drink of water?

3 A Yes, ma'am.

4 Q Something to eat?

5 A Yes, ma'am.

6 Q I'm gonna show you now what's gonna be marked as

7 State's Exhibit 3 and hopefully Court Exhibit 3, and tell me

8 if you recognize what that is.

9 A That's the statement of Mr. Rios in my hand, printing.

10 Q Now, if he did not understand a term, an English term
11 or a term didn't translate, what do you normally do?

12 A I ask him if he understood and then if he didn't I'll
13 explain it over to him or ask him to explain it over to me
14 so that I can understand it so it's clear in what I'm
15 translating.

16 Q And if there was something that didn't translate
17 exactly, would you try to explain it to him in a different
18 way?

19 A Most of the time whenever we translate or interpret
20 anything, we ask, you know, the word that we use is glout
21 meaning clear or do you understand it. And that's what I
22 would have said in there before I would of went on. I
23 usually, I usually prefer to have the subjects write their
24 statement themselves and then I just translate what they've,
25 they've written. But I think, on this night in question,

George Baldarama - Direct examination
By Solicitor Crick.

1 when we were doing the interview he asked that I write it
2 for him..

3 Q So, you did write it for him?

4 A Yes, ma'am.

5 SOLICITOR CRICK: Your Honor, at this time -- and is
6 this the statement that he wrote and signed?

7 A Yes, ma'am.

8 SOLICITOR CRICK: Your Honor, at this time I'd like to
9 enter this as a Court's Exhibit as well.

10 MR. BRANNON: No objection as to this hearing, Your
11 Honor.

12 THE COURT: All right. Be admitted as a Court's
13 Exhibit.

14 Is that No. 3?

15 COURT REPORTER: Yes, sir.

16 (Whereupon, State's Exhibit No. 3 was now marked as
17 Court's Exhibit No. 3 and received into evidence for
18 purposes of this hearing only at this time.)

19 THE COURT: Mrs. Crick, you may proceed.

20 SOLICITOR CRICK: Thank you, Your Honor.

21 Q After you got his statement, his initial oral
22 statement, was he allowed to go to the restroom?

23 A Yes, ma'am, he was.

24 Q And when he came back, you documented it in writing?

25 A Yes, ma'am.

George Baldarama - Direct examination
By Solicitor Crick

1 Q Did you take a second statement for him, from him or
2 was that a different officer?

3 A No, I didn't take a different statement from him.

4 After the original statement, then I think Deputy Angel Diaz
5 came in there and then they wanted me to go with the mother
6 and, and his brothers and sisters.

7 Q Okay. While you were speaking to him, did you make him
8 any promises, any offers if he would give you this
9 statement?

10 A No, ma'am.

11 Q Did you or anyone else who was there coerce him into
12 telling you what was in this statement?

13 A Not to my knowledge.

14 Q You don't feel like he had any trouble understanding
15 what you were saying?

16 A No, ma'am, I don't.

17 Q And to the best of your knowledge, was his statement
18 given freely and voluntarily?

19 A Yes, ma'am.

20 SOLICITOR CRICK: One moment, Your Honor.

21 THE COURT: Yes, ma'am.

22 (Pause.)

23 SOLICITOR CRICK: Nothing further at this time, Your
24 Honor.

25 THE COURT: Mr. Brannon, your witness.

George Baldarama - Cross-examination
By Mr. Brannon

1 CROSS-EXAMINATION

2 BY MR. BRANNON:

3 Q Officer Baldarama, you are employed at the Sheriff's
4 Department, correct?

5 A Yes, sir.

6 Q And you are the second shift desk officer, is that
7 correct?

8 A Desk sergeant, yes, sir.

9 Q Desk sergeant.

10 How long have you held that position?

11 A Seven years.

12 Q Okay. Now, you're the desk sergeant.

13 Does that mean what it says, you're sitting at the
14 front desk when you're there?

15 Is that---

16 A Yes, sir.

17 Q Okay. How long have you been a desk sergeant?

18 A Seven years.

19 Q Okay. What are, what are your primary duties as desk
20 sergeant?

21 A As desk sergeant for the Sheriff's Office, we deal with
22 all the community that comes in to the Sheriff's Office,
23 whether it's doing reports, whether it's, you know, helping
24 them out in some other way as far as directing them
25 somewhere, connecting them up with an investigator, finding

George Baldarama - Cross-examination
By Mr. Brannon

1 a, a vehicle that they may have had towed or something to
2 that effect.

3 Because I'm bilingual, I also deal extensively with the
4 Hispanic community. Hispanic community usually comes in
5 after that time and to talk to me and I do a lot of
6 statements and translating and helping them out, out.

7 So --.

8 Q Okay. Would it be fair to say that the majority of
9 the, your duties are, are addressing complaints and
10 assisting citizens?

11 A Yes, sir.

12 Q Okay. All right. Now, you said that, that because
13 you're bilingual you deal extensively with the Spanish
14 speaking population, correct?

15 A Yes, sir, I do.

16 Q Can you tell me what percentage of the people that you
17 deal with on a daily basis would be Spanish speaking?

18 A Well, just in the last couple years we started keeping
19 statistics on that, and I deal on an average from two to six
20 people a day with Hispanics.

21 Q Okay. Are there other cultures, are there other
22 languages that you deal with on a regular basis?

23 Forgive me. Poorly asked.

24 Obviously you deal with English speaking people?

25 A Yes, sir.

George Baldarama - Cross-examination
By Mr. Brannon

1 Q Your testimony is that you deal with Spanish speaking?

2 A Yes, sir.

3 Q Okay. Is there another language that you deal with on
4 a regular basis?

5 A We have -- we're having more and more of the Slavic
6 community that's coming in. And in that case there, I
7 usually call in an interpreter if, if I can't understand
8 them.

9 Q Okay. What percentage of the people that you deal with
10 on a daily basis are Spanish speaking?

11 A If say like, you know, 100 percent from there?

12 Q Yeah.

13 A I'd say about four percent.

14 Q Four percent?

15 A Yes, sir.

16 Q Okay. Is Spanish speaking the second largest
17 percentage of the, of the languages that you deal with?

18 A In the Sheriff's Office, yes, sir.

19 Q Okay. So, it's English, then a drastic drop to
20 Spanish?

21 A Yes, sir.

22 Q But that would be the second largest population?

23 A No, that's, that's -- when you say drastic drop, that's
24 the ones that come into the Sheriff's Office. If, if I'm
25 called by an officer to go out to a scene, then I go out

George Baldarama - Cross-examination
By Mr. Brannon

1 there also. So --.

2 Q Okay.

3 A And I do quite a bit on the phone. Officers will call
4 me on their cell phones and I'll deal with that too on the
5 cell phones. So then if you look at it that way, then it,
6 the percentage, the percentage goes up.

7 Q Okay. Sir, is there now or is, has there ever been any
8 type of a program within the Sheriff's Department where they
9 were attempting to get some or all of their forms translated
10 from English into Spanish?

11 A Yes, sir, there has been.

12 Q Okay. And what was the name of that push or that
13 program or whatever that was called?

14 A It wasn't a program. It's just that we were looking
15 into trying to get somebody to help us with our forms. I've
16 translated some of the forms from English and, to Spanish
17 and other officers have also done it, and I believe Deloris
18 that works with the Solicitor's Office has also---

19 Q Okay.

20 A ---helped us with that.

21 Q Right now what forms do you have readily available to
22 you at the Solicitor's Office that are translated preprinted
23 into Spanish?

24 A I think one of them that we got is the, the waiver form
25 that you are looking at. We have that one. Then they have

George Baldarama - Cross-examination
By Mr. Brannon

1 the form that they use for when they're dealing with DUI's
2 and stuff for the Data Master and stuff like that. That's
3 another one---

4 Q Okay.

5 A ---that we got.

6 Q So, the form---

7 A We have some pamphlets that are also in Spanish.

8 Q Okay. The one form that you were just talking about
9 though is this Miranda warning, is that correct?

10 A Yes, sir.

11 Q Okay. All right. But now, there's a form that goes
12 along with that I guess.

13 This is your waiver form here, correct?

14 A Yes, sir.

15 Q All right. Now, these two forms are not identical, are
16 they?

17 A Well, the Miranda warnings on top are the same.

18 Q Okay. All right. We'll get back to that.

19 But, but in here, in the English form, you have the
20 Miranda and then you have the, the consent form or the
21 waiver form, correct?

22 A Right.

23 Q And that's not included in the Spanish document, is
24 that correct.

25 A You when -- the bottom part---

George Baldarama - Cross-examination
By Mr. Brannon

1 Q That's correct?

2 A ---of this form is not here?

3 Yes, sir.

4 Q So, the forms are not identical, correct?

5 A As far as that's concerned, yes.

6 Q Okay. All right. I'm going to leave those there and

7 I'll come back to them.

8 All right. Are there any programs or does the

9 Sheriff's Office have a program to assist the Spanish
10 speaking citizens regarding their interaction with you as
11 law enforcement?

12 A We -- as far as -- I'm not understanding the question.

13 Q Okay. Is -- has, has the sheriff devised a committee
14 or is there a group of people within the Sheriff's
15 Department whose job it is to assist Spanish speaking
16 citizens who are interacting with law enforcement?

17 Is there, is there any type of organization or group
18 within the Sheriff's Department who is doing that?

19 A Okay. At one time we had the Hispanic liaison
20 committee that was working with the Hispanic community.

21 Q Okay. And at one time, does that---

22 A Yeah.

23 Q ---they're gone?

24 A No, the committee is still there. But they're not --
25 they're like on-call. They're not actively meeting.

George Baldarama - Cross-examination
By Mr. Brannon

1 Q Okay. Well, what, what happened to that program?

2 Why isn't it being used now like it was in the past?

3 A Well, the main thing is, is just that the people that
4 were involved in the committee had, because they were

5 citizens of the community, had their other jobs and other
6 things that they were doing. So, it was a little bit hard
7 for them to continue on with working with the committee.

8 Q All right. Sir, in your, in your experience with law
9 enforcement through the Sheriff's Department, do, do Spanish
10 speaking or Hispanic, Hispanic people typically trust law
11 enforcement?

12 A Not from their culture, no.

13 Q Not from their culture?

14 A Yeah.

15 Q Okay. Sir, you deal with Spanish speaking people
16 regularly, correct?

17 A Yes, sir.

18 Q All right. If, if you, in English, asked someone who
19 does not speak English, they speak Spanish, if you ask them
20 a question, how do they typically respond?

21 A The majority of the Hispanics that are here, some of
22 them can speak enough English to be understood.

23 Q Okay. Let's assume that the person doesn't speak
24 English, and you don't know that he doesn't, he or she
25 doesn't speak English.

George Baldarama - Cross-examination
By Mr. Brannon

1 If you say, sir or ma'am, have you had a nice day, how
2 would they typically respond?

3 A Well, most of the time when people come to the
4 Sheriff's Office that don't speak English, the first thing
5 they ask the officers at the desk is to, in an English,
6 broken English, they say do you have anybody speak Spanish.
7 And most of the time the officers, if I'm working, will say
8 it will be this sergeant here.

9 Q Okay. But my question was if you approach someone not
10 knowing that they don't speak English and they speak
11 Spanish, and you say have you had a nice day or just any
12 question, how do they typically respond after, if, if
13 afterwards, you understand, you realize that they don't
14 speak English?

15 How does that Spanish speaking person respond to your
16 first question?

17 A Most of the time they would say I speak a little bit of
18 English.

19 Q Okay. Isn't it, isn't it, isn't it true that they
20 typically respond si or they shake their head yes?

21 A There may be some like that, but not anybody that I've
22 dealt with.

23 Q Okay. All right. Okay. Sir, based on your experience
24 here in Spartanburg County, would you say that Hispanic
25 citizens are treated differently by the Sheriff's Department

George Baldarama - Cross-examination
By Mr. Brannon

1 or officials at the Sheriff's Department than, than whites
2 or Caucasians are?

3 A No.

4 Q No.

5 Okay.

6 A I think that our department tries to go the extra mile
7 for them.

8 Q Okay. They try to go the extra mile?

9 A In other words, that if an officer's dealing with a
10 Hispanic person and it's a pretty serious situation or
11 something like that, they -- there's four of us at the
12 Sheriff's Department that are bilingual, and they try to
13 contact one of the four.

14 Q All right. All right. Using your words, the Sheriff's
15 Department tries to go the extra mile?

16 A Yes, sir.

17 Q And yet you have one form translated from English into
18 Spanish?

19 A Okay. I can't tell you why the Sheriff's Department
20 hasn't done that. We've pushed in that direction. But I
21 can't tell you. It may -- finances or whatever. I can't
22 tell you that cause I don't know.

23 Q Okay. So, I'm gonna ask you again, sir, do you believe
24 that the Sheriff's Department treats Hispanics differently
25 than they do English speaking people based on the forms

George Baldarama - Cross-examination
By Mr. Brannon

1 alone?

2 A No.

3 Q Okay. All right. Now, let's go back to these two
4 forms here.

5 A Yes, sir.

6 Q You said that these two portions on these forms are
7 identical, correct?

8 A Yes, sir.

9 Q All right. Would you please read the English version
10 highlighted at number two?

11 A Anything, anything I say can and will be used against
12 me in a court of law.

13 Q Okay. Now, will you please translate, literally
14 translate item two on the next document?

15 A It says whatever thing that you say can be used against
16 you in a court of law.

17 Q Okay. So, sir, you said that the top portions of those
18 two documents were identical, correct?

19 A In the Miranda rights, yes.

20 Q They're not though, are they?

21 A They're not as far as -- you mean one's written in
22 English, one's written in Spanish?

23 Q Well, sir, this says anything you say can and will be
24 used against you in court. This says anything you say can
25 be used against you.

George Baldarama - Cross-examination
By Mr. Brannon

- 1 They are not identical, they're not literal
2 translations, are they?
- 3 A As far as word-for-word or just---
- 4 Q Yeah.
- 5 A Well, some things you can't translate word-for-word.
- 6 Q Okay. Anything I say can and will be used against me.
7 This says anything you say can be used.
- 8 Is there a translation for the word will?
- 9 Is there a translation, a Spanish translation for the
10 word will, must, shall?
- 11 A Buena.
- 12 Q So, there is?
- 13 A Buena.
- 14 Q So, there is a translation, is that correct?
- 15 A Yeah, that could be say buena.
- 16 Q Okay. This is the way it's suppose to be read in
17 English, correct?
- 18 A Uh-huh. (Affirmative).
- 19 Q This is the Spanish translation, correct?
- 20 A Okay.
- 21 Q Is it not a literal and exact translation, is it?
- 22 A Not if you're going word-for-word.
- 23 Q Okay. All right. You've read this form to Santiago
24 Rios, didn't you?
- 25 A Yes, I did.

George Baldarama - Cross-examination
By Mr. Brannon

1 Q Okay. He understands Spanish is what your testimony is
2 today, is that correct?

3 A Yes, sir.

4 Q Okay. Did you do -- did you make the markings on this
5 page here?

6 A Yes, sir.

7 Q Okay. Did you put can write in Spanish?

8 A Yeah, that he can write in Spanish.

9 Q Okay. Have you ever seen him write a word in Spanish?

10 A No, sir, but I asked him if he could and he told me he
11 could.

12 Q Okay. All right. Sir, do you believe that he
13 understood his right to remain silent?

14 A Yes, sir, I do.

15 Q Do you believe he understood that if he said something
16 not only that it could be used against him, but that it
17 would be used against him?

18 A Yes, sir, I do.

19 Q How could he have understood it if you didn't tell him
20 that?

21 A I'm -- I told -- I read him his rights according to
22 Miranda.

23 Q Did you read him his rights according to this form
24 right here?

25 A Yes, sir.

George Baldarama - Cross-examination
By Mr. Brannon

1 Q Okay. And this does not say can and will.

2 It says can, correct?

3 A Yes, sir.

4 Q Okay. I'm gonna ask you again, sir, are you absolutely

5 positive that he understood his rights as, as outlined in

6 Miranda?

7 A Yes, sir, cause I asked him if he understood and he

8 said yes and he initialed it.

9 Q Okay. All right. Now, you took the statement that's
10 been admitted into evidence here?

11 This statement, correct?

12 A Yes, sir.

13 Q And this is in your handwriting, is that correct?

14 A Yes, sir.

15 Q All right. Sir, will you please write the first
16 sentence of this statement in Spanish?

17 A (Witness complies.)

18 Q Okay. This is the translation of the first sentence on
19 this written statement?

20 A (Witness nods affirmatively.)

21 Q Sir, why didn't you write his statement in Spanish?

22 A Cause he asked me to write it for him and I just wrote
23 it in English.

24 Q Okay. But according to your own note, you crossed out
25 read and write in English and you wrote can write in

George Baldarama - Cross-examination
By Mr. Brannon

1 Spanish.

2 So, according to your own notes, the man can't read,
3 can't write English.

4 He can, however, write in Spanish. You have the
5 ability to write in Spanish, but you wrote his statement in
6 English.

7 Correct?

8 A Yes.

9 Q A language that you, you fully understood he didn't
10 understand, correct?

11 A Yes.

12 Q Okay. So, if he can't read it, and he can't write it,
13 is he then just to trust that you wrote what he said?

14 A After I wrote the statement I wrote it, I read it back
15 to him.

16 Q Okay. How does he know -- how, how come -- how would
17 he know that you didn't write the Braves lost two out of
18 three to the Marlins this weekend?

19 How does he know that you didn't write that?

20 A Because if I would of wrote that I would of translated
21 it to him that way.

22 Q Okay. But this man doesn't speak English. He doesn't
23 write English. Your own notes say he writes Spanish. You
24 have the capability of writing in Spanish, but you chose to
25 wrote his statement, write his statement in English.

George Baldarama - Cross-examination
By Mr. Brannon

1 Why?

2 A Sometimes when I write the statements for them in
3 English it's just easier just to write it in English and
4 then translate it back to them.

5 Q It's just easier.

6 Okay. All right. Sir, where were you born?

7 A Phoenix Arizona.

8 Q Okay. You're obviously of Hispanic descent.

9 Do you have relatives that were born in Mexico or Spain
10 or, or---

11 A Yes, sir.

12 Q Okay. Are you familiar with the Mexican culture or the
13 Spanish culture in general?

14 A Yes, sir.

15 Q Okay. Are you -- you, you know personally if there are
16 cultures within Mexico that do not have court systems?

17 A As far as there -- they do have, they do have a
18 judicial system. It may not be exactly like ours. But they
19 do have a judicial system.

20 Q Okay. And within those judicial systems, sir, can you,
21 can you speak definitively or can you tell this Court that
22 within those judicial systems that you are aware of if they
23 have Miranda rights?

24 Do the citizens within those cultures have Miranda
25 rights?

George Baldarama - Cross-examination
By Mr. Brannon

1 A I couldn't tell you that.

2 Q You don't know?

3 A No, sir.

4 MR. BRANNON: Okay. Your Honor, beg the Court's
5 indulgence for one minute.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q All right. Did you ask Mr. Rios how far he went in
9 school, how much education he had?

10 A I believe that's written on the form.

11 Q Okay. It says that he has four years of education, is
12 that correct?

13 A Yes, sir.

14 Q Okay. All right. How would you define or describe to
15 someone who is not from the United States what a Court is?

16 A As far as -- it's a houst, a houst, houstacio, houstio.

17 Q Where we're at right now?

18 A Yeah, that's what I would say.

19 Q Okay. And, and can you translate -- can you tell me in
20 English what you would say to someone who has no idea what
21 the Court is?

22 A I would -- it's a place of judgment.

23 Q A place of judgment?

24 A Where there's, there's judgment.

25 Q Okay. All right. Can you explain, like you just did,

George Baldarama - Cross-examination
By Mr. Brannon

1 self-incrimination?

2 A In English?

3 Q Yes, please.

4 A Okay. For me to translate in English, it's algo en su
5 contra, something against you.

6 Q Something against you.

7 A Yeah.

8 Q Okay. All right. And how do you define, speaking in
9 English, rights, someone's rights?

10 A Sus derechos, your rights.

11 Q Okay. But, but to tell them a word doesn't define the
12 word?

13 If someone is never had the right to remain silent, how
14 would you define it to them?

15 A Sus derechos a traves de la ley, your rights through
16 the law.

17 Q Okay. Okay. That tells them that they have rights
18 through the law.

19 I'm telling -- I'm asking how do you define what a,
20 what those rights are?

21 To someone who doesn't know they have them, who's never
22 understood that they have the right to remain silent, how do
23 you tell somebody you ain't got to, to talk to me?

24 A Okay. To ta laracio, de laracio par le se enselection,
25 you have the right to remain silent.

George Baldarama - Cross-examination
By Mr. Brannon

1 Q Okay. And when you say to someone you have the right
2 to remain silent, do you believe that that person
3 automatically -- just because they say yes, does that mean,
4 in your mind, that they understood the word right?

5 A No, I always ask them (witness speaks in Spanish).

6 Q Which is?

7 A Do you understand what I just said.

8 Q Okay. My question that, that -- we're, we're kind of
9 going around in circles here. I don't doubt that, that,
10 that my client may have heard the words you said.

11 How do you define to someone who doesn't know what a
12 right is what that right is?

13 A As you were saying, I asked him do you understand what
14 I'm saying. I, I, I don't know other way to tell you that
15 because when I tell them that, as I read them their rights,
16 I'm telling them what their rights are and I want them to
17 understand do they understand what it is. And most of the
18 time when I have translated to other subjects, and subjects
19 that I have talked to, Spanish with and have given them
20 their Miranda rights, they have told me, at the completion
21 of giving them the Miranda rights, I want a lawyer or I
22 don't want to talk to you or I don't want to talk to the
23 investigators and they tell me this regardless of, you know,
24 if they can read or write in Spanish because I try to make
25 it that clear to them to understand that they have those

George Baldarama - Cross-examination
By Mr. Brannon

1 rights.

2 Q Okay. All right. Do you believe that one Spanish
3 interpreter could interpret phrases differently than another
4 Spanish interpreter?

5 A Yes, in any language they can do that.

6 Q Okay. All right. And you began -- when did you really
7 start speaking Spanish?

8 When -- you started -- I know you when, you took
9 Spanish in college.

10 A Uh-huh. (Affirmative).

11 Q Did you speak Spanish as a youngster in your home?

12 A Yes, but not as fluently as I speak it now.

13 Q Okay. All right.

14 One, one more second, Your Honor. I believe --.

15 THE COURT: Yes, sir.

16 (Pause.)

17 Q Is there slang within the Spanish language?

18 A Yes, there's slang in the Spanish language.

19 Q Okay. All right.

20 A I don't use it. But it's there.

21 Q Do you talk to people in your, in your daily duties who
22 use Spanish slang?

23 A Yes. And if I don't understand it I ask them to
24 explain it to me what it is.

25 Q Okay. All right. Mr. Rios has a fourth grade

George Baldarama - Cross-examination
By Mr. Brannon

1 education, correct?

2 A That's what he stated.

3 Q Okay. He's been in America for how long, eight to ten
4 years?

5 A I, I believe so. I'm not really sure.

6 Q Okay. If you took someone -- a fourth grader born in
7 America, born in the, living in the United States in the
8 fourth grade would be nine to ten years old?

9 A I believe so.

10 Q Do you believe that you could say to that fourth grader
11 you have the right to remain silent, with your blue uniform
12 and your badge on, and that child would know what they had,
13 what right they have, what they had in their possession, and
14 feel that they didn't have to speak to you knowing that you
15 had on a blue uniform and a badge?

16 A I think, when it comes to children and adults, it's a
17 little bit different. Even though he only has a fourth
18 grade education -- I'm not a psychologist. So, I can't tell
19 you how he would react to, you know, as far as me telling
20 him. But whenever I interpret, I make sure that I tell the
21 people that I'm interpreting for that I am a law enforcement
22 officer. I do have a uniform. But my only reason for being
23 there is to be a mouth piece between you and whoever the
24 investigator or the other officer. That's just something
25 that I do of my own.

George Baldarama - Cross-examination
By Mr. Brannon

1 MR. BRANNON: Your Honor, I think I'm done. Thank you.

2 THE COURT: Any other questions, Mrs. Crick?

3 SOLICITOR CRICK: Just briefly, Your Honor.

4 THE COURT: Yes, ma'am.

5 REDIRECT EXAMINATION

6 BY SOLICITOR CRICK:

7 Q Could you -- Sergeant Baldarama, I'm gonna hand you
8 Court Exhibit 1, Miranda warnings in Spanish.

9 Could you translate the entirety of that for us in
10 English?

11 In other words, just give us an idea of the entire
12 block of rights?

13 A As far as---

14 Q I'll show you---

15 A You mean you want me to read the whole thing in English
16 from Spanish?

17 Q If you don't mind, yes.

18 A Okay. It says before I ask you any questions, I'm
19 gonna let you know what your rights are. You have the right
20 to remain silent. You have the, you have the right to
21 remain silent. Anything that you say can be used against
22 you in a court of law. You have the right to consult with a
23 lawyer and that, that lawyer can be present with you during
24 the time of this interrogation. If you can not pay for the
25 services of a lawyer, then one will be named for you free of

George Baldarama - Redirect examination
By Solicitor Crick

1 charge so that he can let you know before and after this
2 interrogation, he can let you know before and after this
3 interrogation if you desire it. You have the right to stop
4 this interrogation at any moment that you desire.

5 Q And when you read -- I'm gonna show what's marked as
6 Court's Exhibit 2.

7 As far as the portion on the bottom of that page, you
8 would read that aloud in Spanish to the defendant?

9 A Yes, I would.

10 Q Okay. Now, if at any point he did not understand a
11 term or a phrase or a word that you used, what would you
12 have done?

13 A I would have tried to make it more clear for him to
14 understand.

15 Q Would you maybe explain it in a different way?

16 A Yes, I would of.

17 Q If someone has a low level of education, and they can't
18 write, obviously they're not gonna write a statement,
19 correct?

20 A Yes, ma'am.

21 Q And what do you do in that case where somebody can not
22 read, let's just say it's English, they can't read English
23 and you write it in English, do you read it back to them?

24 A Yes, ma'am, I do.

25 Q And then they indicate that they understand by doing

George Baldarama - Redirect examination
By Solicitor Crick

1 what?

2 A I ask them if they understood what I said to sign the
3 form there and initial it.

4 Q Okay. And at any point he could ask you questions if
5 he had questions?

6 A Yes, ma'am.

7 Q When you go in, I think you said that you are generally
8 a mouth piece as the interpreter for the investigator or
9 other Sheriff's Office employees.

10 A Yes, ma'am.

11 Q In this case, that would of been William Gary?

12 A Yes, ma'am.

13 Q So, when you wrote that statement in English, was that
14 also for his benefit, William Gary's?

15 A Yes, ma'am.

16 Q And I'm assuming Mr. Gary or Investigator Gary doesn't
17 speak Spanish or read Spanish?

18 A Yes, ma'am.

19 SOLICITOR CRICK: Okay. One moment, Your Honor.

20 (Pause.)

21 Q Last question, sir, and I apologize.

22 Do you know if four years of education in his culture
23 or area of Mexico is the same equivalent as four years of
24 education here?

25 A No, ma'am, I don't.

George Baldarama - Redirect examination
By Solicitor Crick

1 Q You have no idea?

2 A No, I would assume that it would be about the same.

3 But I, I didn't, really couldn't tell you.

4 Q Could be different?

5 A Yeah, but it's not gonna be that much different.

6 MR. BRANNON: One question based on that.

7 THE COURT: Yes, sir.

8 RECROSS EXAMINATION

9 BY MR. BRANNON:

10 Q Officer Baldarama, you wrote Santiago Rios statement in
11 English for the convenience of Investigator Gary?

12 A No, sir, I just wrote it in English as he was telling
13 it to me.

14 Q Well, she just asked you and you said yes.

15 A Well, it would be convenient for him so he could read
16 it. But I just wrote it.

17 Q Okay. Who is the most important individual when it
18 comes to Miranda?

19 A The suspect.

20 Q And you wrote it in English for the convenience of the
21 investigator?

22 A I just wrote it in English. It would of been
23 convenient for him.

24 Q Thank you.

25 THE COURT: You may step down, sir.

1 State may call its next witness.

2 SOLICITOR GOWDY: Thank you, Your Honor.

3 Would, would the Court give us 30 seconds?

4 We have two more witnesses. I want to see if one is
5 here since he's not law enforcement.

6 THE COURT: Yes, sir, that will be fine.

7 (Pause.)

8 THE COURT: Come forward, sir, to be sworn.

9 MR. BRANNON: Your Honor, if I may, very briefly before
10 the next witness testifies?

11 THE COURT: Yes, sir.

12 MR. BRANNON: The interpreters have told me -- forgive
13 me, Cindy.

14 They said that I am going slow enough, but Cindy was
15 not. So, I would just ask, based on the---

16 THE COURT: We'll ask, we'll ask her to try to slow
17 down.

18 MR. BRANNON: Okay. Thank you.

19 INTERPRETER GALLIGOS: Thank you. I'm sorry.

20 THE COURT: And I don't know, is there anyway they can
21 sit a little closer and not talk quite so loud?

22 MR. BRANNON: I, I -- Your Honor?

23 THE COURT: So, while we're talking about this, let's
24 just try it and see if it works.

25 MR. BRANNON: Yes, sir, cause it's miserable sitting

1 right here.

2 THE COURT: I understand that. It's gonna be
3 disruptive in the Court as well. So --.

4 MR. BRANNON: Could we move them back?

5 THE COURT: It's up to you. I mean I -- I mean you
6 have the right to have him at your counsel table, wherever
7 you want to put him. I'm just trying to hold the noise down
8 a little bit. Maybe if they got a little, got their heads a
9 littler closer together or something. I don't know what we
10 need to do. It is somewhat disruptive.

11 Okay. Sir, come on and be sworn.

12 ANGEL DIAZ, being first duly sworn,
13 testified as follows:

14 THE COURT: Yes, sir. State your name for the record
15 please.

16 WITNESS: Angel Diaz.

17 THE COURT: You may proceed.

18 SOLICITOR GOWDY: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY SOLICITOR GOWDY:

21 Q Good afternoon, Deputy Diaz.

22 Can you tell the Court how long you have been in law
23 enforcement?

24 A A little over 11 years.

25 Q What division of the Spartanburg County Sheriff's

Angel Diaz - Direct examination
By Solicitor Gowdy

1 Department are you currently assigned to?

2 A Warrants office.

3 Q I'm gonna get you to speak up where they can hear over
4 the translator. You're very soft spoken.

5 Warrants office?

6 A Yes, sir.

7 Q All right. Are you proficient in any languages other
8 than English?

9 A Spanish.

10 Q And how did you acquire your proficiency in Spanish?

11 A I was born with it. I mean I grew up with it.

12 Q Grew up in the Spanish speaking culture?

13 A Yes, sir.

14 Q Did you take any formal Spanish classes in school or
15 were you already good enough that you didn't need to?

16 A I went to school all the way up to high school in
17 Spanish.

18 Q Okay. Are you called upon from time to time at the
19 Sheriff's Department to translate either on behalf of crime
20 victims, law enforcement officers, or suspects?

21 A Yes.

22 Q And how long has that been ongoing during your 11
23 years?

24 A I'd say nine or ten.

25 Q Okay. Deputy Diaz, let's go back to November 23rd,

Angel Diaz - Direct examination
By Solicitor Gowdy

1 2006.

2 Were you asked to assist in the investigation into the
3 death of Eliza Hernandez?

4 A I was.

5 Q What role did you play?

6 A I think this is off.

7 Q It comes and goes.

8 A Okay. I was asked to come in and help interview the
9 defendant.

10 Q Okay. Was the defendant already at the Sheriff's
11 Department when you got there?

12 A He was.

13 Q Okay. You were not the case agent?

14 A No.

15 Q That would be William Gary?

16 A Yes, sir.

17 Q Do you know whether or not the defendant was
18 handcuffed?

19 A I can't recall if he was or not. I don't, I don't
20 think he was.

21 Q Okay. Were you made aware that his Miranda warnings
22 had been given to him previously?

23 A Yes.

24 Q All right. Who was present in the interview room?

25 A I can't remember his name. One of the, one of the

Angel Diaz - Direct examination
By Solicitor Gowdy

- 1 investigators, myself, and the defendant.
- 2 Q All right. Was William Gary present?
- 3 A He was.
- 4 Q All right. Did you have any trouble communicating with
- 5 this suspect/defendant in Spanish?
- 6 A No.
- 7 Q Did you attempt to communicate with him in English?
- 8 A At the beginning when they told -- I came in and they
- 9 said he doesn't speak any English. I just spoke with him,
- 10 spoke with him in Spanish the whole time.
- 11 Q Okay. Did you have any trouble understanding his
- 12 Spanish?
- 13 A Never.
- 14 Q Did you tell him to alert you if he had any trouble
- 15 understanding your Spanish?
- 16 A At certain times, you know, I'd say, you know, I'd
- 17 keeping asking him did you understand, you know, do you
- 18 understand what I'm saying.
- 19 Q Without getting too deep into the substance of his
- 20 multiple statements because I believe there was more than
- 21 one, were you aware that he had given a version of events to
- 22 Deputy Baldarama?
- 23 A Yes.
- 24 Q All right. And you were aware generally of that
- 25 version or account of the death of Eliza Hernandez?

Angel Diaz - Direct examination
By Solicitor Gowdy

1 A Yes.

2 Q All right. And did you begin questioning this
3 suspect/defendant further?

4 A Yes.

5 Q All right. Did you make notes, Deputy Diaz, relevant
6 to your interrogation?

7 A Just what he told me he, what had happened.

8 Q All right. I'm, I'm gonna show you a two page document
9 and ask you whether or not that is your summary or
10 investigative report.

11 A It is.

12 Q Do you have a copy of that or would you like to look at
13 this?

14 A I'll look at yours.

15 Q Okay. All right. If I have the chronology right,
16 Deputy Baldarama has already talked to this
17 defendant/suspect?

18 A Correct.

19 Q And you're brought in because Deputy Baldarama is going
20 to talk to other family members?

21 A Correct.

22 Q All right. You're generally aware of his initial
23 version of what happened?

24 A Yes.

25 Q All right. Was there an enter, an exchange between you

Angel Diaz - Direct examination
By Solicitor Gowdy

1 and the defendant relevant to his anger?

2 A At, at that time -- at a certain point there was.

3 Q Okay. Did he tell you in Spanish that he was becoming
4 angry?

5 A Yes.

6 Q Did he tell you that when he became angry he could not
7 control himself?

8 A Yes.

9 Q Did he subsequently give you a second different version
10 of what happened in the home on November the 23rd?

11 A Yes.

12 MR. BRANNON: Object to relevance, Your Honor. This,
13 this hearing is as to the free and voluntary nature of the
14 statement and whether it was knowing and intelligently made.
15 Not as to the substance of the statement. I don't know that
16 this substantive question is relevant in this hearing.

17 THE COURT: Overruled. He's just describing it as a
18 different statement. I -- he, he didn't ask specifically
19 what he said. He said did he give you a subsequent later
20 different statement.

21 MR. BRANNON: Thank you, Your Honor.

22 THE COURT: And I think he can ask that question.

23 Overruled.

24 SOLICITOR GOWDY: Thank you, Your Honor.

25 THE COURT: You may proceed.

Angel Diaz - Direct examination
By Solicitor Gowdy

1 SOLICITOR GOWDY: If I, if I could lead him a little
2 bit I maybe can get him there. I'm trying not to lead him.
3 But I, I don't want to lead him. But---

4 THE COURT: Well, ask, ask the question and---

5 SOLICITOR GOWDY: Okay.

6 THE COURT: ---and we'll see if the defense objects.

7 Q Okay. Did a family member of this defendant or
8 suspects come into the interview room in between the two
9 versions that he gave?

10 A Yes.

11 Q And who was that?

12 A His mother.

13 Q Okay. At any point did you promise this defendant
14 anything?

15 A No.

16 Q Did you threaten him?

17 A No.

18 Q Did you coerce him?

19 A No.

20 Q Did you deprive him of food, water, or medicine?

21 A No.

22 Q Did you make any assurances with, with how this
23 investigation would come out?

24 A No.

25 Q All right. After he spoke with his mother, did he give

Angel Diaz - Direct examination
By Solicitor Gowdy

1 you another version of what happened at his home?

2 A Yes.

3 Q Okay. And did you reduce that version to writing?

4 A Yes.

5 Q Let me show you what has been marked as State's Exhibit

6 No. 4, and ask you whether or not you recognize that four

7 page document, and if so, how.

8 A Yes, I do.

9 Q What is that?

10 A That was his statement of what happened that night. I
11 wrote it down.

12 Q Did you write it down as close to verbatim given the
13 fact that it is in a different, different language as could,
14 as it could be written down from what he told you?

15 A Yes.

16 Q All right. Did you make any additions or material
17 deletions?

18 A No.

19 Q For the benefit of the Court, Deputy Diaz, do you get
20 suspects to go through what happened and then come back and
21 write it down subsequently or did he do it
22 contemporaneously?

23 A I heard his, what his, his version of what happened.
24 Then we came back and wrote this statement. Again I asked
25 him to tell me again, the second time when we wrote the

Angel Diaz - Direct examination
By Solicitor Gowdy

1 statement down, and I was writing it as he was telling it.

2 Q Okay. Do you read it back to him in Spanish and give
3 him the opportunity to make changes, additions, or
4 deletions?

5 A Yes.

6 Q And did you do that in this case?

7 A Yes.

8 Q And did you ask him to sign each of these four pages
9 after it's been read to him and he's had the chance to make
10 changes?

11 A Yes.

12 SOLICITOR GOWDY: Your Honor, we would move State's
13 Exhibit 4 in at this point I suppose as a Court's Exhibit
14 for this hearing.

15 MR. BRANNON: No objection for this hearing, Your
16 Honor.

17 THE COURT: Without objection it will be made a Court's
18 Exhibit.

19 Let's go ahead and get it marked.

20 It's been marked?

21 SOLICITOR GOWDY: Yes, sir.

22 THE COURT: That's, that's as a State's Exhibit.

23 (Whereupon, State's Exhibit No. 4 was changed to
24 Court's Exhibit No. 4 and received into evidence for
25 purposes of this hearing only at this time.)

Angel Diaz - Direct examination
By Solicitor Gowdy

- 1 SOLICITOR GOWDY: Thank you, Your Honor.
- 2 THE COURT: Now you may proceed.
- 3 SOLICITOR GOWDY: Thank you, Your Honor.
- 4 Q Deputy Diaz, that statement is in English.
- 5 A Yes, sir.
- 6 Q He gave it to you in Spanish?
- 7 A Yes.
- 8 Q Why did you opt to write it in English and not Spanish?
- 9 A I wrote it in English because the trial was gonna be in
- 10 English.
- 11 Q In other words, had you written it in Spanish, you
- 12 would then be having to translate---
- 13 A Translate it here.
- 14 Q Okay. So, you went ahead and translated it into
- 15 English?
- 16 A Correct.
- 17 Q All right. I ask you, again, to the best of your
- 18 ability given the fact that it's two different languages,
- 19 did you write down verbatim the account that he gave you?
- 20 A Yes.
- 21 Q All right. And did you read it back to him in Spanish?
- 22 A I did.
- 23 Q And give him the opportunity to change it?
- 24 A Yes.
- 25 Q All right. Deputy Diaz, please answer any questions

Angel Diaz - Direct examination
By Solicitor Gowdy

1 that Mr., the defense attorney may have for you.

2 THE COURT: Mr. Brannon, your witness.

3 MR. BRANNON: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BRANNON:

6 Q Deputy Diaz, how are you today?

7 A Fine.

8 Q Good.

9 Would you look at point number two on these two.

10 Obviously number two in English says anything I say can and
11 will be used against me in a court of law, right?

12 Right here.

13 A Yes.

14 Q Okay. Would you please translate literally the words
15 in item number two on the Spanish Miranda?

16 A Are you asking me to translate this?

17 Q Yes.

18 A In here it says anything that you say could be used
19 against you in a court of law.

20 Q Okay. So, these two are not actual translations, are
21 they?

22 A Not word-for-word. I mean it's not -- but it's implied
23 here that he's saying anything you say can be used against
24 you in a court of law as I'm talking to you. And then here
25 says anything that I would say can be used against me in a

Angel Diaz - Cross-examination
By Mr. Brannon

1 court of law.

2 Q It says can.

3 What about and will?

4 A And will, correct.

5 Q Okay. Is there any and will in number two on the
6 Spanish form?

7 A No.

8 Q No.

9 Okay. So, it's not an actual translation then is it?

10 A As you consider actual translation, I, I don't see why
11 he would understand that what he would say would be used
12 against him in a court of law.

13 Q I'm sorry.

14 What did, what did you just say?

15 A When you read that statement, anything that I say can
16 be used against me in a court of law, and you're asking me
17 that he would not understand that, or are you asking me is
18 it, is it translated accurately both the same way?

19 Q I'm asking you if the Spanish form says the same thing
20 as the English form.

21 A No, not the whole thing. But it says some of it.

22 Q Not the whole thing?

23 A Except and will is left out.

24 Q Okay. All right. Can a person, can a person with a
25 limited understanding of Spanish make an effort to get along

Angel Diaz - Cross-examination
By Mr. Brannon

1 in a Spanish speaking community?

2 A Sure.

3 Q Okay. And so, somebody with a, with a limited
4 knowledge of Spanish might be able to figure his way around,
5 but wouldn't get every single fact, correct?

6 A He might miss a few things if he's limited, yes.

7 Q Okay. All right. When you talk with Hispanics, if you
8 are not speaking Spanish to that person, if they do not
9 speak English, even though, even though they don't speak
10 English and you ask them a question, will they typically
11 respond to you?

12 A I don't understand your question. Say it again.

13 Q It was a stupid question. Forgive me.

14 If you approach someone and you don't know that that
15 person doesn't speak English --

16 A Uh-huh. (Affirmative).

17 Q -- and you say to that person have you had a good
18 day---

19 A In English?

20 Q In English.

21 A Uh-huh. (Affirmative).

22 Q That person speaks only Spanish.

23 You don't know -- that, that person will still respond
24 to you though, won't they?

25 A Sometimes they do, yes.

Angel Diaz - Cross-examination
By Mr. Brannon

1 Q And don't they typically respond in the affirmative?

2 A Sometimes, yes.

3 Q Okay. All right. Now, you said that you didn't
4 threaten Santiago Rios to get him to make, to make a
5 statement, correct?

6 A Correct.

7 Q Did you hear anyone interviewing Santiago or Isabel or
8 anyone else interviewed that night talk about the Department
9 of Social Services, Cynthia P. and Alex P.

10 A No, I did not.

11 Q Okay. When you got to the Sheriff's Department you had
12 been told that Santiago had already been Mirandized,
13 correct?

14 A Correct.

15 Q You never gave him his Miranda again, correct?

16 A Correct. He already had been Mirandized.

17 Q Okay. How do you know he understood it?

18 A I guess he signed. You're suppose to sign a paper when
19 you get Mirandized.

20 Q But Spanish speaking people, even when they don't
21 understand you, will affirm, will respond in the
22 affirmative, right?

23 A But the gentleman understood Spanish because I was
24 speaking to him like I'm speaking to you---

25 Q Okay.

Angel Diaz - Cross-examination
By Mr. Brannon

1 A ---in English. I understand what you're saying. You
2 understand what I'm saying.

3 Q All right. And where were you born?

4 A New York.

5 Q New York.

6 Okay. Do you understand Spanish culture?

7 A Yes.

8 Q Okay. Are you aware of the Puurhepechas language?

9 A That's a dialect I guess. I don't know the dialect.

10 Q Okay. Are you familiar with the culture from where it,
11 from which it comes?

12 A No.

13 Q You're not.

14 Okay. One second, Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 MR. BRANNON: Nothing further. Thank you.

18 THE COURT: Redirect?

19 SOLICITOR GOWDY: Nothing on redirect, Your Honor.

20 THE COURT: You may step down, sir.

21 WITNESS: Thank you.

22 THE COURT: Uh-huh. (Affirmative).

23 State may call its next witness.

24 MR. BRANNON: Your Honor, the State would call

25 Mr. Robert Reeder.

Robert Reeder - Direct examination
By Solicitor Gowdy

1 THE COURT: Sir, come forward to be sworn to my left.

2 ROBERT REEDER, being first duly
3 sworn, testified as follows:

4 THE COURT: Sir, have a seat in the witness stand
5 please. And once you are seated, move toward the
6 microphone, and state your name for the record.

7 WITNESS: My name is Robert Reeder.

8 THE COURT: Mr. Gowdy, your witness.

9 SOLICITOR GOWDY: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY SOLICITOR GOWDY:

12 Q Good afternoon, Mr. Reeder.

13 A Good afternoon, sir.

14 Q Thank you for coming on short notice.

15 A You're welcome.

16 Q Can you tell the Court where you work and how long
17 you've been there?

18 A I work at Milliken & Company, the Cotton Blossom plant,
19 which is on Broadcast Drive. It's the automotive division
20 and I've been with the company for 21 years.

21 Q What are your duties and responsibilities at Milliken?

22 A I'm the education and safety director there for the
23 automotive plant.

24 Q Do you know or did you know a gentleman by the name of
25 Santiago Rios or Santiago Pasqual?

Robert Reeder - Direct examination
By Solicitor Gowdy

1 A Yes, sir, I did.

2 Q Do you now see him in the courtroom?

3 A Yes, sir, I do.

4 Q How did you know him?

5 A I do orientation and all associates that come through
6 orientation come through me for a whole week, 40 hours of
7 orientation. And so, we spend 40 hours in my instructor
8 class and we go over numerous of criterias that they have to
9 complete. That is testing at the, what we you call modules
10 that we do for OSHA for the safety standards. And so, we
11 spend a whole week in, on our training class and I meet each
12 and every associate that comes through our facility.

13 Q Is your training done in English, Spanish, or Tarascan?

14 A No, sir, all of our training is in English.

15 Q It's in English?

16 A Yes, sir.

17 Q All 40 hours?

18 A All 40 hours.

19 Q Do you recall, Mr. Reeder, specifically having an
20 occasion to interact, either business wise or socially, with
21 the defendant, Mr. Rios?

22 A Business wise and social wise on breaks because it's my
23 job to put the associates at ease when they come into a new
24 facility. So that is striking up conversations, just
25 talking. And then also, during my orientation, there's

Robert Reeder - Direct examination
By Solicitor Gowdy

1 answers and questions rebutting back to me to get an
2 understanding that they understand the information that has
3 been instructed to them.

4 So, I ask questions because, like I say, after each
5 test I go over the questions individually and ask for
6 answers. If there's something wrong, then we will go over
7 it to make sure that the associates understand the process
8 before they even go out on the floor. And that's one of the
9 criterias with us because we want to make sure everyone is
10 safe. Safety is first and no one is injured. And that's my
11 job, to make sure that they understand.

12 Q And the questions and the instructions would of been in
13 English?

14 A They're in English. I have a Power Point presentation
15 where I, I talk and show at the same time. And then, like I
16 said, written test after each module. They will, the
17 associate would answer the questions and then I'll go over
18 the question individually with each and every one that's in
19 the class.

20 Q Does a punitive or prospective employee of Milliken
21 have to pass your 40 hour orientation to become an employee?

22 A Well, once they, they are hired, they are employee, but
23 this is to reinforce the concept. And of course, we want
24 them to make a, a, at least 80 percent on the tests and, and
25 most of them will do that. And if it's, like I say, any

Robert Reeder - Direct examination
By Solicitor Gowdy

1 wrong answers, we will go over to make sure they understand.

2 Q Do you recall interacting yourself personally with Mr.

3 Rios?

4 A Oh, yeah, we had conversations talking about sports,

5 talking about various things, a little bit about his

6 experience here in the United States. So, we, we held some

7 conversations. One is with my son. I had a Power Point

8 presentation. We was talking about football and things like

9 that. So, we have had some conversations as well.

10 Q And did you have any trouble understanding him when he

11 spoke English to you?

12 A No, no, not at all.

13 Q Thank you, Mr. Reeder. Please answer any questions the

14 defense attorney may have for you.

15 A All right.

16 THE COURT: Mr. Brannon, your witness.

17 CROSS-EXAMINATION

18 BY MR. BRANNON:

19 Q Did you ever ask Mr. Rios about the United States court

20 system?

21 A No, sir, I didn't because that didn't come up in our

22 orientation class.

23 Q Did you ever discuss with him his right to remain

24 silent?

25 A No, that's no remain silence in our class because we

Robert Reeder - Cross-examination
By Mr. Brannon

1 want to get feedback from the associates.

2 Q Got you.

3 Okay. Were you aware and are you aware today that

4 English was not his primary language?

5 A Yes, I did, sir, because anyone that comes from another

6 country that English is not their primary language, but

7 before they are hired we make sure that they understand and

8 can speak English before they're brought into Milliken &

9 Company.

10 Q Okay. All right. Sir, in your, in your 40 hours of

11 training, how many people are typically in that class?

12 A It depends. It varies on how many we're bringing in at

13 that time.

14 Q Okay. And, and are the people in that group, are they

15 allowed to work together on their, on their materials?

16 A Teamsmanship is that they can discuss. But when it

17 comes down to the test, each one works individually.

18 Q Okay. But, but they can work together?

19 I mean they can discuss the topics, correct?

20 A They can discuss the topics, yes.

21 Q Okay. And do you remember how many people were in the

22 group the week that Santiago came in?

23 A It might of been three or four. I'm not quite sure.

24 I'd have to look back on the number of persons we brought in

25 that day.

Robert Reeder - Cross-examination
By Mr. Brannon

1 Q Okay. And do you remember if any of the others spoke
2 Spanish?

3 A Might of been one more. The rest of them was Americans
4 that was in there because once they had conversations with
5 him as well even in the orientation and out on the floor on
6 their jobs.

7 Q But there was at least one more person in that group
8 that spoke Spanish?

9 A Yeah, I think it might of been.

10 Q Thank you. Nothing further.

11 SOLICITOR GOWDY: Nothing on redirect, Your Honor.

12 THE COURT: All right.

13 SOLICITOR GOWDY: Would ask that Mr. Reeder be allowed
14 to go back to Milliken.

15 THE COURT: All right. Any objection to him being
16 excused?

17 MR. BRANNON: No, Your Honor.

18 THE COURT: You may step down. Thank you for coming
19 today, sir.

20 WITNESS: Thank you.

21 THE COURT: State may call its next witness.

22 SOLICITOR GOWDY: Your Honor, that, those are all the
23 witnesses that we have. The Court, at previous proceeding,
24 there was a 9-1-1 tape played. We would, with the defense
25 attorney's assent, ask to have it marked and made available

1 for the Court if the Court would choose to listen to it.
2 Again, it goes or speaks to the issue of whether or not he's
3 able to speak English at all. It's speaks for itself.

4 THE COURT: I, I recall the playing of the tape, and
5 I'm aware of what's on it.

6 Any objection to it going in?

7 MR. BRANNON: No, Your Honor.

8 THE COURT: Without objection, it will be marked and
9 received as a Court's Exhibit for this hearing.

10 (Whereupon, the 9-1-1- tape was marked as Court's
11 Exhibit No. 5 and received into evidence for purposes of
12 this hearing only at this time.)

13 SOLICITOR GOWDY: And with that, Your Honor, that would
14 be all the factual showing that the State would have.

15 THE COURT: All right.

16 MR. BRANNON: Your Honor, we have---

17 THE COURT: Do you wish to call any witnesses?

18 MR. BRANNON: Your Honor, we have one witness for sure
19 and possibly two.

20 Your Honor, could, could we have a ten minute recess?

21 THE COURT: Certainly.

22 We'll take about a ten minute break.

23 Court's in recess for about ten minutes.

24 MR. BRANNON: Thank you.

25 (Whereupon, a short recess was taken at this time.)

Joaquin Marquez - Direct examination
By Mr. Brannon

1 THE COURT: Mr. Brannon, you want to call your first
2 witness?

3 MR. BRANNON: Yes, Your Honor.

4 Call Mr. Marquez.

5 THE COURT: Sir, come forward and be sworn.

6 JOAQUIN MARQUEZ, being first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat, sir, in the stand. State your
9 name for the record.

10 WITNESS: My name?

11 THE COURT: Yes, sir.

12 WITNESS: Okay. My name is Joaquin Marquez.

13 THE COURT: All right. Mr. Brannon---

14 MR. BRANNON: Please the Court.

15 THE COURT: ---it's your witness.

16 DIRECT EXAMINATION

17 BY MR. BRANNON:

18 Q Mr. Marquez, where do you currently live?

19 A Well, I right now live in Portland, Oregon.

20 Q Okay. How long have you been in the United States?

21 A For like six month.

22 Q Okay. Where did you come from?

23 A From Mexico.

24 Q Where in Mexico?

25 A Michoacan.

Joaquin Marquez - Direct examination
By Mr. Brannon

- 1 Q Michoacan.
2 Is that spelled M-I-C-H-O-A-C-A-N?
3 A Yes.
4 Q Okay. And is that a city?
5 Is this a state?
6 Is that a---
7 A It's a state.
8 Q It's a state.
9 And what is the language primarily spoken in, in that
10 state?
11 A Well, in Michoacan -- Michoacan has four different
12 indigenous language and Spanish.
13 Q Okay. What are those indigenous languages?
14 A Mistako. No, I'm sorry. It's P'urhepechas, Mazahua,
15 Huichol, Q'anjob'al.
16 Q All right. What is your primary language?
17 A It's P'urhepechas or Tarascan, or Tarascan.
18 Q Okay. P'urhepechas and Tarascan, are -- they're the
19 same thing, right?
20 A Yeah, they're the same thing.
21 Q Okay. What I want to talk to you about is culture.
22 A Okay.
23 Q In your language, what's, what's the word for Court?
24 A We don't -- I don't -- well, we don't have the, the
25 specific name. We don't have courts in our, in our

Joaquin Marquez - Direct examination
By Mr. Brannon

1 communities.

2 Q Do you have a judge?

3 A No.

4 Q Do you have a right to remain silent?

5 A No.

6 Q Do you know what the right to remain silent is?

7 A No.

8 Q Do you know what a lawyer is other than your experience
9 in this courtroom?

10 A Well, in our communities we don't have lawyers. Right
11 now we have some indigenous lawyers. But there are very few
12 in the community. But there was -- they need to take the,
13 the courses in Spanish.

14 Q Okay. What happens to somebody if they commit a crime
15 in Michoacan?

16 A Michoacan.

17 Q What happens?

18 A Well, we have -- we call them minnio statio publico.
19 But there is another, in another town. It's, it's not in
20 the same town. It's like a village. It's more, more bigger
21 than pueblo, and then they have like -- they have different
22 kind of -- I don't have the specific information about that.
23 But we have something like they call minnio statio publico.

24 Q Okay. What is that?

25 A It's a person who is in charge about the laws.

Joaquin Marquez - Direct examination
By Mr. Brannon

1 Q Okay. And if that person asks you a question, do you
2 have to answer it?

3 A Yes.

4 Q Don't have a right to say no?

5 A Yeah, because the law in Mexico is very very different
6 than United States. So---

7 Q Okay. So, that person in charge asks you a question,
8 you have to answer it?

9 A Yeah.

10 Q What happens if you don't?

11 A Well, they can kick you or something. They can punch
12 you if they want. Well, not the person. The, the polices,
13 the police officers.

14 Q Okay. All right. Do you know where my client is from?

15 A Yeah, I know where he's from.

16 Q Where?

17 A From O'odham.

18 Q Okay. How far is that from where you're from?

19 A It's, it's like, like maybe ten or fifteen kilometers.

20 Q Okay. In the city or the village where he comes from,
21 does he have a right to remain silent?

22 A Can you explain me what's that to, to mean silent?

23 Q Yeah.

24 A I think yes, if you can, if you say it in Spanish, you,
25 you can understand what silent means.

Joaquin Marquez - Direct examination
By Mr. Brannon

1 Q Okay. That person that you said handles people who are
2 convicted of or who are charged with crimes in your city --

3 A Uh-huh. (Affirmative).

4 Q -- he's in that other village?

5 A Yes.

6 Q Do they have those same people where Santiago came
7 from?

8 A Yeah.

9 Q And if that person asked Santiago a question, did
10 Santiago have to answer it?

11 A Yes.

12 Q And if he didn't, they could kick him or punch him,
13 correct?

14 A In Mexico, it's very common that --.

15 MR. BRANNON: One second, Your Honor.

16 (Pause.)

17 MR. BRANNON: Nothing further. Thank you.

18 THE COURT: Mr. Gowdy.

19 SOLICITOR GOWDY: I have no questions for him, Your
20 Honor.

21 THE COURT: You may step down, sir.

22 MR. BRANNON: Your Honor?

23 THE COURT: You may call your next witness.

24 MR. BRANNON: That is the defendant's showing, Your
25 Honor.

1 THE COURT: Anything in reply or rebuttal?

2 SOLICITOR GOWDY: No, sir, Your Honor.

3 THE COURT: All right. I'll be happy to hear from
4 the -- since it's your motion, I'll hear from the defense
5 first.

6 MR. BRANNON: Thank you, Your Honor.

7 I have two cases that I would like the Court to
8 consider, Your Honor. One is State versus -- excuse me.
9 Well, it actually is State versus Jiminez. Your Honor, it's
10 a, it's a case called, it's People versus Jiminez. Your
11 Honor, it, it's cite is 863 P.2d 981. It's the state --
12 it's a case from the State of Colorado.

13 Your Honor, it's an incredibly close case factually to
14 this one. In People versus Jiminez the defendant spoke a
15 language called Kickapoo, which is very closely related to
16 Spanish. The police department in this city had no Kickapoo
17 translator. They had someone who spoke Spanish. They got
18 the person who spoke Spanish to translate. It was a very
19 loose translation.

20 In this case -- and Your Honor, I understand this case
21 is not, is not controlling in this Court. But Your Honor,
22 it's a case that is factually very close, and I just ask the
23 Court to, to consider it.

24 It says I find that the defendant was fully advised of
25 his Miranda rights. He said he understood those rights and

1 he waived his rights. There was no police coercion or
2 misconduct. Nevertheless, I find that the defendant did
3 not, in fact, understand his rights because he did not, at
4 least at that time, have the capacity to understand.

5 Your Honor, in our case we had Officer, Deputy
6 Baldarama and Deputy Diaz. Both very talented fine officers
7 of the law. But they don't speak P'urhepechas. They don't
8 speak Tarascan. They speak Spanish. They did their job in
9 that they read him his Miranda warnings. They, they did.
10 They read them to him. But Your Honor, both Officer Diaz
11 and Officer Baldarama said that if you ask someone who
12 doesn't speak English, who speaks Spanish, a question, that
13 they will respond anyways and they will typically respond in
14 the affirmative.

15 Your Honor, the interpreter just testified there is no
16 translation for Court, there is no translation for judge,
17 and there is no right, right, right to remain silent in his
18 culture, in the Tarascan culture.

19 Your Honor, submit to this Court that Santiago Rios
20 didn't have the capacity to understand Miranda. Your Honor,
21 again, that is, is People versus Jiminez, 863 P.2d 981, and
22 I have copy of it for you.

23 I'll get you one, Tray.

24 SOLICITOR GOWDY: Thank you.

25 THE COURT: Thank you, sir.

1 MR. BRANNON: You welcome.

2 Your Honor, the other case that I would cite to the
3 Court is State versus Newell. It's 303 S.E.2d 471. Your
4 Honor, it's a DUI case. And Your Honor, in, in this DUI
5 case the Court upheld the, the conviction because there was
6 overwhelming evidence. However, the Court did say that the
7 defendant's statement should have been suppressed because it
8 was pre-Miranda.

9 Now, Your Honor, there's another case and that's why I
10 asked for the ten minute, ten minute break. There's a case
11 out of York. It's before the Court right now, Your Honor,
12 and it deals with incomplete Miranda in a DUI case.

13 Your Honor, in that case it's my understanding, and I,
14 I'm sorry I can't cite it for you, but the officer did not
15 read the fifth prong of Miranda. The officer read the first
16 four and didn't say you can stop this investigation at
17 anytime.

18 The Lower Court has held that that incomplete Miranda
19 equaled suppression of the evidence against him. And what
20 was suppressed was the field sobriety test, Your Honor. He,
21 he was given improper Miranda or incomplete Miranda and then
22 given the field sobriety tests and the Court excluded those,
23 those field sobriety tests.

24 In this case, Your Honor, we have incomplete Miranda.
25 Prong two on the Spanish translation form says anything you

1 say can be used against you. It does not say will be used
2 against you.

3 THE COURT: What about State versus Singleton?

4 MR. BRANNON: I'm, I'm sorry, Your Honor. I don't
5 have, I don't have that case in front of me.

6 THE COURT: State versus Singleton says the talismanic
7 incantation of Miranda rights is not required. The question
8 is whether or not the warnings actually given were adequate
9 to convey the idea. That's a South Carolina case that's
10 never been overturned.

11 MR. BRANNON: Yes, sir. Yes, Your Honor.

12 I, I, I think, Your Honor, that the difference between
13 can and will is -- Your Honor, if you tell somebody we might
14 use that against you, that's a whole lot different than
15 we're going to use that against you, and in this case the
16 State---

17 THE COURT: Well, now if you tell somebody, if you tell
18 somebody you're, what they're about to say can be used
19 against, against them, anything you say can be used against
20 you, I think is the way it was---

21 MR. BRANNON: That's---

22 THE COURT: Okay. I mean anything I say can be used
23 against me.

24 MR. BRANNON: Well, let's go to People versus Jiminez,
25 Your Honor.

1 THE COURT: All right. Well, I'll be glad to talk
2 about that one.

3 MR. BRANNON: Yeah.

4 THE COURT: But I'm to, I'm to -- and the case that
5 we're talking about, the Singleton case, is a very similar
6 omission made by a police officer that the Court said, you
7 know, you got the, got the idea across. As long as he gets
8 that idea across.

9 MR. BRANNON: Yeah.

10 THE COURT: So, if I know that anything I say could be
11 used against me, I think that's sufficient even though it
12 leaves out the word will.

13 MR. BRANNON: All right. Your Honor, that's one other
14 fact that I want to make absolutely clear to the Court and
15 that deals with the first statement given by my client to
16 Officer Baldarama. Your Honor, it was written in English.
17 This -- the, the interrogation waiver form, Your Honor, is
18 signed by my client. The waiver form was signed by Santiago
19 Rios at 23:11. So, that's like ten minutes to 12:00.

20 The statement that was taken by Officer Baldarama --
21 I'm sorry. That would of been ten minutes after 11:00. The
22 statement is written in English translated and signed at
23 11:20. In nine minutes Officer Baldarama was able to read
24 him his Miranda in English, fill out all of this form, read
25 him Miranda in Spanish, write a two page document in

1 English, translate it back to Spanish, which isn't even his
2 language, and we are to assume that he understood everything
3 that he said including Miranda for which he had no cultural
4 comprehension or the ability to comprehend. Your Honor, the
5 statement was completely done, written, signed, and
6 everything in nine minutes.

7 Your Honor, these statements -- I'm, I'm not, I'm not
8 telling this Court that they were coerced. I'm not telling
9 this Court that they weren't freely given. I'm telling this
10 Court that they were not knowingly and intelligently given.

11 Your Honor, he didn't knowingly and intelligent waive
12 his Miranda rights because he could not understand them.
13 The community of, the culture that he comes from, they don't
14 have the right to remain silent. If the police asked him a
15 question and you don't answer it, they kick you or punch
16 you.

17 He was in the Spartanburg County Sheriff's Department.
18 There were people with guns, uniforms, and badges
19 surrounding him. They were asking him questions, and he
20 answered those questions. He did not have the ability to
21 comprehend Miranda, and, therefore, his statement should be
22 suppressed.

23 Thank you, Your Honor.

24 THE COURT: Hear from the State.

25 SOLICITOR GOWDY: Your Honor, very briefly.

1 The Court's already cited Singleton. There is no
2 formulaic talismanic incantation that is required in the
3 State of South Carolina. I, I'm not even going to address
4 the second prong of Miranda, whether -- there's no question
5 there's an interrogation. I'm, I'm going to skip over
6 whether or not he was in custody.

7 I do think it's worth pointing out that initially the
8 family and Santiago Rios were taken down there to
9 investigate the home invasion story. So, at some point he
10 transferred out of witness status into suspect status. But
11 let's assume, for the sake of argument, that Miranda applies
12 to both statements.

13 He was Mirandized in English, which Councilman Reeder
14 testified he had no trouble communicating with him for a 40
15 hour work session at English, and you can hear English on
16 the 9-1-1 tape. He was Mirandized in English. He was
17 Mirandized in Spanish, which clearly he understands because
18 he was being spoken to in Spanish while his Tarascan
19 interpreter was testifying. So, clearly he understands
20 Spanish. He was Mirandized in both languages. He waived --
21 there is no talismanic incantation required, and he provided
22 a statement that is eerily similar to what he said on the
23 9-1-1 tape.

24 So, I understand they're not arguing that this is a, a
25 coercive made up statement. I can't help where he's from.

1 But under their theory, anyone from a culture other than
2 ours can never be Mirandized because we can't explain to
3 them what it means that, that you have the right to remain
4 silent. He worked at Milliken. He's been in the United
5 States I think for ten years. At some point the old
6 culture, culture leaves you and you're held accountable to
7 the one you live in, and I think that's where we are in this
8 case.

9 MR. BRANNON: Very brief rebuttal.

10 THE COURT: Yes, sir.

11 MR. BRANNON: Civil Rights Act of 1964 says any state
12 or local agency accepting federal funds has an obligation to
13 provide an interpreter for any person within that community
14 who is taken into custody. The Sheriff's Department stands
15 the chance or the opportunity of losing it's federal funding
16 for not providing a Tarascan interpreter for my client.

17 Your Honor, they---

18 THE COURT: Well, now I don't, I don't -- you took a
19 little leap right there now.

20 MR. BRANNON: Well, Your Honor, he's saying, what Tray
21 just said, excuse me, what Mr. Gowdy just said was that
22 under my supposition or under the defendant's position,
23 somebody from another culture could never be tried. Well,
24 Your Honor, that's not my position at all.

25 What my position is that if you have a cultural change

1 or a cultural, cultural diversion, you have to meet the
2 needs of that culture. You have to be able to train that
3 person or make them aware of what the United States
4 Constitution provides to them just as being, just for being
5 here.

6 Your Honor, the---

7 THE COURT: I, I, I took his argument to be that the
8 gentleman who operated in our society for ten years, the
9 defendant has, from what I heard from the testimony. And
10 then I also heard that, at his employment, he has functioned
11 in at least two languages. And the testimony was that he
12 took a test in the language. He took a course in English
13 that I believe Mr. Reeder said he was aware that he spoke
14 Spanish as well, that they had many discussions concerning
15 sports and other things in English.

16 So -- and, and I think -- I, I hear your argument from
17 this prospective that in, in his native culture there is no
18 Court system that mimics ours. But I think Mr. Gowdy's
19 position was he's been here for ten years. I'm not sure how
20 you can watch television and not know about Miranda and
21 other things in ten, in America for ten years. Perhaps you
22 could. I don't know. I guess that's possible.

23 But then to have someone in this situation read your,
24 your rights twice in a language, which, quite frankly, on
25 the tape I believe he has spoken in all three languages.

1 So, I know that in an emergency situation he has the ability
2 to move from one language to the other.

3 So, I mean -- and I think that's the argument. And
4 what he's saying is that if you go back and go to his
5 original culture and say there's no system, how do you ever
6 effectively determine that he understands our system here?

7 I don't -- I'm not gonna -- you'd have to be inside of
8 his head. It's almost like the difference between, to
9 determine intent. You got to look at the facts and
10 circumstances surrounding this situation because you can't
11 look in his head and see what, in fact, he does understand
12 and what he doesn't understand.

13 Do you follow what -- I think that's the argument
14 that's being made here. And so, yeah, again, it goes back
15 to how our Courts envisioned how you determine what anybody
16 knows or how they act. You look at how, I mean, understands
17 or comprehends. You look at how they act, you look at the
18 facts and circumstances, and you make a determination. You
19 infer it through circumstantial evidence, which I think is
20 something we're talking about now.

21 From the circumstances in this case, what would be the
22 inferences?

23 He didn't testify. I don't know what he says he
24 understood or didn't understand.

25 MR. BRANNON: What we do know is he had been in

1 America, at that point, for about eight years, and he had
2 never been arrested before.

3 THE COURT: I, I would agree with that statement---

4 MR. BRANNON: Yeah.

5 THE COURT: ---that I know of. Not --- it's not in the
6 record right now.

7 MR. BRANNON: He had no, he had no history with this
8 Court or with the attorneys or with the prosecutors. He did
9 not have the cultural ability to understand Miranda, Your
10 Honor.

11 THE COURT: I'm gonna read your Jiminez case.

12 Anything else that you want me to consider before I
13 take a moment and read through that?

14 SOLICITOR GOWDY: No, sir, Your Honor. The only -- I
15 don't, I don't have Jiminez, but I don't need Jiminez. I, I
16 wonder in Jiminez if Jiminez did not testify to what -- I
17 mean, I mean---

18 THE COURT: That's, that's what I want---

19 SOLICITOR GOWDY: With all due respect to the
20 interpreter, he doesn't know what Santiago Rios thinks or
21 feels or knows.

22 THE COURT: Well, I just indicated he did not testify.
23 So, again, I think I am, as having to determine the facts in
24 this case, I am left with circumstantial evidence because
25 there is no direct evidence from him as to what he knew or

1 didn't know or understood or didn't understand. So, it's
2 not---

3 SOLICITOR GOWDY: Yes, sir.

4 THE COURT: ---in the record at this point in time.

5 SOLICITOR GOWDY: Yes, sir.

6 THE COURT: So, I am in a position of having to look at
7 the facts and circumstances as they existed at that time and
8 determine what inferences can reasonably be drawn from the
9 facts and circumstances.

10 SOLICITOR GOWDY: Yes, sir.

11 THE COURT: I think that's where we are, and I'm going
12 to try to -- I'm going to look at your Jiminez case, and I
13 realize I'm not bound by it. But I certainly would like
14 to -- I always like to gather as much wisdom on the subject
15 as I can. So, I'm going to take a look at that for you.

16 Anything else you want me to consider?

17 MR. BRANNON: No, Your Honor. There were, there were
18 two other motions. Very brief. No testimony motions if the
19 Court---

20 THE COURT: Well, I'm gonna take about five to ten
21 minutes. I'm going to go ahead and get this out of the way
22 and then we'll move to the next one.

23 So, we'll be in recess about ten minutes.

24 MR. BRANNON: Thank you, Your Honor.

25 (Whereupon, a short recess was taken at this time.)

1 THE COURT: All right. I have had an opportunity to
2 review the Jiminez case, and I, in my review of that case,
3 it indicates that Mr. Jiminez, in his case, there were two
4 individuals who testified concerning his capacity to
5 understand the warnings that were given under Miranda. One
6 was a psychologist I believe and another was an expert on
7 Spanish language and culture.

8 I found it particularly interesting that the
9 psychologist that talked, that testified found that the
10 defendant in that case functioned on about the level of a
11 six year old, that he possessed a very limited vocabulary
12 even in his native Kickapoo. She said that he did not
13 understand concepts because of his limited mental abilities,
14 and I didn't hear any testimony in this case concerning the
15 defendant's mental capacities or abilities.

16 No testimony concerning his inability to function. In
17 fact, the only testified, testimony I heard was from Mr.
18 Reeder who worked with him at a job at, at a plant in
19 Milliken, the Cotton Blossom plant I believe, and indicated
20 that he functioned very well on his job. In fact, did well
21 on the test that he was given, and again, spoke both in, in
22 English fluently at the job and spoke Spanish fluently. So,
23 I don't find that he would of had a limited vocabulary in
24 any of the languages he may have used from the testimony
25 that's before the Court thus far.

1 Therefore, I find a distinguishing factor for the
2 Jiminez case and I also find, that based on the facts and
3 circumstances, the circumstantial evidence that's been
4 introduced, I find that the statement was freely,
5 voluntarily, and knowingly taken. There was no coercion and
6 I find that the Miranda warnings that were given were
7 sufficient.

8 So, I'm gonna allow the admission of the statements.

9 Of course, you have the right to introduce any evidence and
10 argue during trial the weight, the weight that the jury can
11 assign to those statements, that, that controversy or issue
12 remains alive for you to, to explore during trial.

13 Other motions?

14 MR. COLLINS: Your Honor, there was one or two other
15 housekeeping matters. One is the Solicitor's Office had
16 indicated at this point that they intend to call certain
17 witnesses to prove character traits or previous bad acts or
18 crimes by Mr. Rios. We would ask the Court to address those
19 particular issues under Rule 404 and make a, a preliminary
20 ruling. What we are concerned about is those items being
21 mentioned during an opening statement and then later being
22 excluded during testimony.

23 So, if we could ask the Solicitor's Office to apprise
24 us of what it is that they intend to present and ask the
25 Court to, at least, provide us a preliminary ruling on those

1 issues.

2 THE COURT: Be happy to hear from the State as to what
3 they intend to use or not use or discuss.

4 SOLICITOR CRICK: Your Honor, I didn't understand his
5 point. We obviously are not gonna know until we get a feel
6 for the, how the cross is going, what the defense will be in
7 this case, as to whether these would come in under Lyle.
8 So, we didn't have any intention of mentioning those in
9 opening. And if we get to a point where we think that that
10 might be coming, we can certainly stop and approach and let
11 you know.

12 THE COURT: All right. I would, I would ask that you
13 not mention them during opening statements, and also, as you
14 stated, when you get to a point if you think that you do,
15 are intending to introduce those, please inform the Court.
16 We can take a proffer at that time and find it necessary.
17 So, I'll allow it to be discussed in opening, and, of
18 course, we'll rule on them as they arise during the trial.

19 MR. COLLINS: Yes, Your Honor.

20 MR. BRANNON: Your Honor, I, I apologize. The Court
21 asked me earlier if we could start today, and I'm sorry
22 we're done. But---

23 THE COURT: Well, I don't mind having a few minutes off
24 this afternoon. There's plenty of things on my table back
25 there to talk about.

1 Anything the State wishes to discuss before we break
2 for the evening?

3 SOLICITOR GOWDY: Your Honor, I can't think of
4 anything.

5 THE COURT: All right. Then we'll be adjourned until
6 nine o'clock in the morning. We should be in a position to
7 begin the trial at that point in time.

8 ~~The defendant remains in custody.~~

9 Thank you very much.

10 SOLICITOR GOWDY: Thank you, judge.

11 MR. COLLINS: Thank you, Your Honor.

12

13 (Whereupon, Court was in recess for the evening.)

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1 Tuesday, April 29th, 2008

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3 THE COURT: State ready to proceed?

4 SOLICITOR GOWDY: Yes, sir, Your Honor.

5 THE COURT: Defense ready to proceed?

6 MR. COLLINS: Yes, Your Honor.

7 THE COURT: All right. You can bring the jury in.

8 (Whereupon, the following takes place within the
9 presence of the jury.)

10 THE COURT: Good morning, ladies and gentlemen. I
11 trust everyone's had a good evening, and is returned this
12 morning ready to begin our trial.

13 I told you that, upon your return to the courthouse
14 this morning, that we would ask that you take an oath
15 concerning your duties as jurors in this case.

16 And at this time, Madam Clerk, I'd ask that you please
17 swear the jury panel.

18 (Whereupon, the jury panel was placed under oath at
19 this time.)

20 THE COURT: Now, if there was any member of the jury
21 panel who failed or refused to take the oath just
22 administered by the clerk, I'd ask that you now please
23 stand.

24 (No response.)

25 THE COURT: And the record will reflect that all jurors

1 have been sworn for purposes of the trial.

2 Ladies and gentlemen, first of all, let me tell you
3 that we're aware it's very cool in the courtroom. Ours is a
4 very -- it's somewhat older building. This building was
5 built in the 1950's and they switch it over to air
6 conditioning. And when the weather fools us, it ends up
7 being pretty cool in here. So, the weather's fooled us this
8 morning. Maintenance is aware and maybe we'll get it a
9 little warmer later on.

10 But I do apologize for the, the temperature. It's not
11 my intention to make you uncomfortable. But this is just
12 the nature of this place where we conduct Court. So, if
13 you'll bear with us, I'd appreciate it.

14 Before we begin the trial I'm going to go over some
15 things with you that I think that you should be aware of
16 concerning your service as jurors, jurors. Also to explain
17 a little bit about the procedure that we're going to follow
18 and the roles of the various people that are gonna proceed,
19 appear before you in the case during this, as this case
20 proceeds.

21 Now, it's not my purpose, at this point in time, to
22 charge you concerning the law that you're to use in this
23 case. As I indicated earlier, once all the evidence has
24 been presented, I will charge you concerning the law that
25 you're to apply to the facts that you find in the case.

1 I'm gonna do this because probably, for more of you,
2 this is your first experience in serving actually on a jury
3 in an actual trial of a case. Probably, up to this point in
4 time, most of what you know about our system of justice and
5 how it functions you would of learned either while you were
6 in school or learned from books that you've read or movies
7 that you've seen or television shows that you've watched,
8 things of that nature.

9 And while, in the case of the movies and television,
10 those particular forms of information are full of
11 interesting facts and, and interesting story lines, good
12 plots, good acting, things of that nature, and they hold
13 your attention, those particular forms of information are
14 intended for your entertainment. I hope you understand
15 that.

16 This particular trial that you're engaged in at this
17 time is intended for anything but your entertainment. What
18 you're engaged in is a search for the truth. It's an effort
19 to see that justice is done between the parties that are
20 before this Court. In this case, the defendant, whose been
21 charged with a crime, Mr. Rios, and the State of South
22 Carolina, who have brought the charges against him.

23 Now, a search for the truth and, and making sure that
24 justice is done is sometimes, as you have learned, a slow
25 and a deliberate process as you would think it would be. It

1 doesn't start on time and it doesn't end on time like the TV
2 shows that you've seen and the movies you've watched and
3 certainly we don't take time for commercials here because
4 this is a very serious matter.

5 This is a fundamental part of your democracy. I hope
6 you understand that most justice systems around the world do
7 not allow direct participation by citizens in important
8 decisions that are made in, in the courts of those
9 countries. If you watch what goes on around the world, this
10 system is somewhat in the minority around the world, and I,
11 and I hope we never change the system that we use that does
12 allow direct participation by citizens in the decision
13 making process.

14 This courtroom is a place of honor. It's dedicated to
15 the preservation of citizen's rights through what many
16 people believe, as I've indicated, is one of the best
17 justice systems ever devised on the face of the earth. Not
18 a perfect justice system cause nothing devised by man is
19 perfect. But as I indicated, it's an effort to see that
20 justice is done between the parties before this Court.

21 Now, the attorneys that have, are appearing before you
22 are here to represent their clients, and I'm sure that
23 they'll do a very adequate and admirable job in doing so.
24 You can expect from them that they act in a professional,
25 reasonable, and ethical manner because they have, have, at

1 another time and in another place, appeared before this
2 Court and taken an oath to assist you in your search for the
3 truth in this case.

4 I'll remind you too now that you've also come before
5 this Court. You've taken an oath to act in a professional,
6 reasonable, and ethical manner and decide this case solely
7 upon the law as I give it to you and the facts, the evidence
8 as you find them to be.

9 Again, I want to thank you, as I have previously, for
10 your willingness to come forward and serve. Because without
11 citizens who are willing to come forward and serve in our
12 system, it could not function as it was designed by our
13 forefathers. So, again, thank you very much for your
14 willingness to appear and serve as jurors in this case.

15 Now, as I indicated to you earlier, there is an
16 indictment before this Court. The indictment is a document
17 which is issued by the Grand Jury. Now, an indictment is
18 simply the paper that brings this case before this Court.
19 It informs the defendant of the charge that is been lodged
20 against him. It informs this Court of the charge that is to
21 be tried.

22 Now, an indictment is no evidence of guilt in the case,
23 and can't be used by you in any fashion in determining the
24 guilt or the innocence of a defendant. But it is, is the
25 charge that brought this case into this Court. That's the

1 reason I refer to it and have explained it and read it to
2 you in the past.

3 Now, to that indictment the defendant has pled not
4 guilty, and requested a trial by jury, which he has the
5 Constitutional right to request. That plea places the
6 burden upon the State in this case and our laws and
7 Constitution places the burden upon the State in this case
8 to prove then the defendant's guilt by proof beyond a
9 reasonable doubt, and I will explain that concept to you in
10 detail at the close of the trial when I charge you
11 concerning the law in this case.

12 It's your purpose in this trial, as jurors, to find and
13 determine the facts of this case. You are to determine the
14 facts and it's up to you to determine what inferences can be
15 properly drawn from the evidence that's presented before
16 this Court. So, therefore, it's especially important that
17 you pay close attention to what goes on in this courtroom,
18 the evidence as it's presented, what is said, and what is
19 done, and how it's said, and how it's done because, at the
20 end of the trial, it will be necessary for you to make a
21 determination and it will be your solemn responsibility to
22 determine the guilt or the innocence of a defendant of the
23 charge that is before this Court.

24 It's especially important that you perform your duties
25 as the finders of the facts in this case conscientiously and

1 diligently because, under our system of justice, ordinarily
2 there's no means whatsoever by which an erroneous
3 determination of facts made by a jury can be corrected or
4 changed.

5 Now, the same law that makes you the sole judges of the
6 facts makes me the sole judge of the law in this case. The
7 law doesn't allow me to have an opinion or disagree with you
8 concerning your determination of the facts. That same law
9 says that you have the, you have to take the law as I give
10 it to you, exactly as I give it to you, and apply it to the
11 facts as you find them to be, and, thereby, reach a just and
12 a true verdict.

13 So the law doesn't allow me to disagree with you
14 concerning the facts. It doesn't allow you to disagree with
15 me concerning the law to be applied to those facts.

16 For that reason, if you came into the courtroom
17 yesterday or this morning with any notion as to what the law
18 is or what the law ought to be, you need to leave that
19 notion outside of the jury room before you begin your
20 deliberations because you're bound to take the law as I give
21 it to you, apply it to the facts as you find them to be, and
22 thereby be in a position, at the close of the trial, to
23 reach a just and a true verdict in this case.

24 As I told you yesterday, and I'll tell you every time
25 you leave the courtroom, please don't begin any discussions

1 concerning this case, even among yourselves, until you've
2 heard all the facts and I've charged you concerning the law.
3 Again, it's important that you keep an open mind on this
4 case until you've heard everything, all the information that
5 you need in order to reach a verdict in this case. And
6 again, even the most innocent conversation between
7 yourselves concerning partial information that you may have
8 received during this trial might color your ultimate
9 decision.

10 And again, you've been selected as fair and impartial
11 jurors with open minds on the subject. Keep the open mind
12 until you've heard all the evidence and I've charged you
13 concerning the law, and then and only then begin to
14 formulate opinions during your deliberations.

15 Now, in a few minutes I'm going to call on the
16 attorneys to make what is called an opening statement.
17 Statements at the beginning of the trial, the statement will
18 be to explain a little bit about what the trial is about and
19 what they expect the evidence to show.

20 At the close of the trial, again I'll call on the
21 attorneys to make a closing argument or statement. At that
22 time they'll sum up the evidence that they've heard from
23 their client's prospective. Statements made by the
24 attorneys during trial are not evidence and I will explain
25 to you the only evidence that you will hear in this case

1 will be the testimony given by witnesses who've been sworn
2 to tell the truth and who are gonna testify from this
3 witness stand and any evidence that comes in through that
4 testimony or any evidence that's agreed upon or stipulated
5 to by both sides in the case.

6 So, that will be the evidence that you will be
7 considering. The statements made by attorneys are not
8 evidence in the case and will not be -- you can't use that,
9 that directly to determine the guilt or the innocence of a
10 defendant in the case.

11 Also, from time to time there may be a situation that
12 will arise where the attorneys are, are presenting a, or
13 trying to present a piece of evidence and a discussion may
14 arise as to its admissibility, whether it is allowed into
15 evidence under the rules of evidence that govern what goes
16 on in this courtroom. If it's my belief that, during those
17 discussions, we may discuss some matter that might not be
18 admissible and should not be considered by you in, in
19 reaching your decision, at that time I will ask you to leave
20 the courtroom during that discussion.

21 Please don't take from the fact that I have asked you
22 to step outside of the courtroom that again that I have any
23 opinion as to how you determine the facts in this case.
24 It's simply me doing my job to see to it that you consider
25 only properly admitted evidence under the rules of this

1 Court.

2 Once we've completed the discussion where that matter
3 might be discussed, you'll be asked to step back into the
4 courtroom. At that time I'll make a ruling on the issue
5 that was before the Court and we'll proceed with the trial.
6 But again, it's not an effort by me to try to influence your
7 decision on the facts. It's simply me doing my job to try
8 to see to that, it that you only consider the properly
9 admissible evidence that you should consider in reaching
10 your verdict.

11 Now, I've told you that you are the sole judges of the
12 facts in this case, and, and as the sole judges of the facts
13 in this case it will be necessary for you to determine the
14 believability or the credibility of the witnesses who are
15 going to testify during this trial. Credibility simply
16 means that, believability. You make decisions concerning
17 believability everyday in your ordinary lives, and I will
18 tell you now to use your own good common sense in
19 determining the questions of the believability or the
20 credibility of the witnesses who testify before this Court.

21 You have the right, as the sole judges of the facts, to
22 believe one witness against every other witness who
23 testifies or the right to believe all the witnesses against
24 one. You have the right to believe all of what a witness
25 tells you, part of what a witness tells you, or none of what

1 a witness tells you. You're the sole judges of the facts.
2 Therefore, you're the sole judges of the credibility or the
3 believability of the witnesses who will testify in this
4 case.

5 In using your own good common sense, I will tell you
6 that you, you could and can consider such factors as whether
7 or not the witness has a stake in the outcome of the trial,
8 whether or not the witness has a bias or a prejudice either
9 in favor of or against one side or the other, whether or not
10 the witness actually had the ability to know or experience
11 the things about which the witness testifies, and you have
12 the opportunity, with the witness stand right here in front
13 of the, the jury box, to observe the witness as they
14 testify, the way they speak, the manner in which they
15 deliver their testimony. Take all of those factors into
16 consideration. Again, use your own good common sense to
17 determine the credibility or the believability of each and
18 every witness who testifies in this case.

19 So, it's important, again, pay close attention to what
20 goes on, what's said, how it's said, the way things are done
21 in the courtroom because at the close of the trial it will
22 be necessary for the 12 jurors who are then sitting to enter
23 into deliberations and recall what went on during the trial,
24 what was said by what witness, and how it was said. So,
25 again, pay close attention.

1 I've told you already, we'll try to take breaks from
2 time to time to keep you fresh so that you're able to pay
3 attention. We realize that people can't pay attention
4 forever. And so, we'll take breaks from time to time and
5 allow you to refresh yourself. But when you're in the
6 courtroom, pay attention to what the witnesses are saying
7 and how they're delivering their testimony as we go through
8 the trial.

9 Now, you may think that I have forgotten the
10 appointment of a foreperson on your jury. I know you've
11 seen the judge at the beginning of the trial always appoint
12 a foreperson. I'm a little different from some other
13 judges. Some do it my way as well. I appoint the
14 foreperson at the close of the trial once all the evidence
15 has been presented, and then I will make that appointment
16 because really the foreperson has no function until such
17 time as the jury begins its deliberations.

18 At that time the foreperson will be the person who will
19 preside over your deliberations. It will also be the person
20 that will record any questions that you may have that you
21 submit to the Court for consideration during your
22 deliberations, and that person also will be the person who
23 will record the verdict once the verdict has been reached on
24 the form that we present to the jury for that purpose.

25 So, again, I'll make that appointment at the close of

1 the trial and at that time that person will be responsible
2 to take care of the deliberations and recording of those
3 documents.

4 Now, the foreperson has no greater say in the outcome
5 of this trial than any other juror because, at the close of
6 the trial, you'll find that I will tell you again that your
7 verdict must be unanimous. That means each and every one of
8 you must agree upon the verdict before it becomes the
9 verdict of the jury.

10 So, again, it's important that each of you pay
11 attention to the trial. Pay close attention to what goes on
12 and be able to enter into the deliberations of the jury with
13 a knowledge of what's gone on during the trial and the
14 testimony that has been presented.

15 Now, in order to be sure that I haven't violated either
16 side's rights during my opening statement, is there an
17 objection from the State to my opening statement?

18 SOLICITOR GOWDY: No, sir, Your Honor.

19 THE COURT: Is there an objection from the defense?

20 MR. COLLINS: No, Your Honor.

21 THE COURT: Now, I indicated to you, ladies and
22 gentlemen, that the plea of not guilty and our laws place
23 the burden upon the State to prove its case, and, therefore,
24 since the State has the burden of proof, we allow the State
25 to go first in making the opening argument or statement

1 followed by the defense. And then in the presentation of
2 evidence, the State will go first with its evidence followed
3 by any evidence the defense chooses to place on the record,
4 and then we'll close with the final closing arguments by
5 counsel. Once that's been done I'll charge you concerning
6 the law in the case. And once the, my charge has been
7 completed, the case will be submitted to you for your
8 deliberations.

9 That's the procedure that we'll follow during the,
10 during the trial. So, you can kind of keep up with how
11 we're moving along during the progress of the trial.

12 So, at this point in time, the State may make its
13 opening statement.

14 SOLICITOR GOWDY: May it please the Court?

15 THE COURT: Yes, Mr. Gowdy, you may proceed.

16 SOLICITOR GOWDY: November 23rd, 2006, it's about
17 9:30 at night. The defendant, Santiago Rios, calls 9-1-1.
18 And in a mixture of three languages, English, Spanish, and a
19 dialect called Tarascan, he describes for the 9-1-1 operator
20 how four or five masked gunmen had entered his home, kicked
21 in the door. He tells the 9-1-1 operator we've been robbed.
22 He tells the 9-1-1 operator my wife, Eliza, has been shot
23 in the face. Please come, please come, we've been robbed,
24 masked intruders have come into our home on Thanksgiving.

25 The police come. They take Santiago Rios and other

1 members of his family down to the Sheriff's Department.
2 Some of his family members don't speak English. So
3 bilingual sheriff's deputies are called in so they can
4 investigate and find out what's happened.

5 And Santiago Rios tells his story again, but with
6 slight changes. This time, instead of just masked
7 intruders, it's masked black intruders. It's masked black
8 intruders with guns that kick in the front door of his home.

9 THE COURT: Just one second, Mr. Gowdy.

10 INTERPRETER GALLIGOS: Sorry, Your Honor, he's speaking
11 so, I mean so fast and very very low. So, we, we can't---

12 THE COURT: All right. I'm gonna ask you to speak up,
13 Mr. Gowdy, and I understand that it's, it's somewhat
14 difficult to change your mode of speak, but if you could
15 slow down just a little bit for us.

16 SOLICITOR GOWDY: Yes, sir.

17 THE COURT: Thank you, sir.

18 SOLICITOR GOWDY: I'm sorry.

19 THE COURT: You may proceed again.

20 SOLICITOR GOWDY: Thank you, Your Honor.

21 THE COURT: He's at the Sheriff's Department. He's
22 being interviewed by sheriff's deputies. The version he
23 told 9-1-1 he repeats, but with changes.

24 Instead of masked intruders, it's now masked black
25 intruders. They kick in the front door, armed, try to rob

1 his family, and shoot his wife in the face.

2 It's everyone's worst nightmare. A home invasion, a
3 loved one shot and killed by masked intruders. It's an
4 unspeakable tragedy, an unfathomable thing to have happen to
5 your family accept every bit of that is a lie.

6 There were no masked intruders. There were no masked
7 black intruders. There was no attempted robbery. There was
8 no home invasion. Eliza Hernandez is shot and killed, but
9 not by masked intruders, not during a home invasion, and not
10 during a robbery. She's shot and killed by Santiago Rios.

11 Ladies and gentlemen, the police begin to investigate
12 at the home, [REDACTED] And when they get
13 there, they notice there's no signs of struggle at the front
14 door. There's a, a shrine, if you will. There's a, there's
15 a table with candles and money and other things on the table
16 when you walk in the front door. It's undisturbed. The
17 money's not missing. The candles aren't knocked over.
18 They're bicycles in that front room that are still upright.
19 There's no sign of a gunshot in the front room. There's no
20 blood on the floor. There's no blood leading from the front
21 room to where Eliza Hernandez's body is found in the back
22 bedroom.

23 So, with part of his family in one portion of the
24 Sheriff's Department and Santiago Rios telling investigators
25 a story of masked gunmen, slowly the truth begins to emerge.

1 Members of Santiago Rios' family tell law enforcement there
2 was no home invasion. Santiago Rios came home late on
3 Thanksgiving Day, wanted supper, wanted his wife to go heat
4 up his meal. She said no. He shoved her. She says I'm
5 leaving. I'm gonna call my mom. She goes into a back
6 bedroom, he follows her, the door is locked, a single
7 gunshot rings out, and she is dead on the wooden floor shot
8 through the face.

9 So, at first we have the story of masked intruders.
10 Then we have the story of masked black intruders. And the
11 third version that Santiago Rios tells is that his wife
12 started the fight, hit him in the face with a 3-pound bar
13 bell weight. You'll see a picture of his face taken that
14 night. You be the judge of whether or not you think he was
15 hit in the face with a 3-pound bar bell weight.

16 But that's his version. This is his third version.
17 Hit in the face with a bar bell weight.

18 She goes and gets a gun, her fingers are on the
19 trigger, this is his third version, his, his fingers were on
20 the trigger, her fingers are on the trigger, the gun is
21 pointed at him, but somehow or another she winds up getting
22 shot.

23 Those are the three versions of Santiago, that Santiago
24 Rios has told in this case. There's another version.
25 There's another version. It's a version by the forensic

1 evidence.

2 You will hear from a forensic pathologist that will
3 tell you how close the barrel of that gun was to Eliza
4 Hernandez's face when she was shot. You will hear about
5 burn marks. You will hear about stippling. You will hear
6 from a forensic pathologist about the angle of the bullet,
7 how it went in here, and came out the top of her head.

8 You will hear from ballistics experts. You will hear
9 from DNA experts. You will hear from gunshot residue
10 experts. Gunshot residue is a test that's done by law
11 enforcement and is analyzed in Columbia at SLED. And the
12 purpose of gunshot residue is to swab the back, the palm,
13 the back and the palms of the hands to see if it detects the
14 presence of gun metals, whether or not someone has fired a
15 gun or been around a fired gun.

16 You will hear from a gunshot residue expert that Eliza
17 Hernandez's hand were tested for the presence of gun metals
18 or gun powder. And keep in mind, when she was shot, she
19 didn't go wash her hands. She didn't do anything with her
20 hands. She laid on the wooden floor dead. There's no gun
21 metals, no gun powder found on her hands. You will hear
22 that from the SLED expert in Columbia.

23 You'll also hear that they tested Santiago Rios' hands
24 about three hours after the shooting, after he had used the
25 bathroom, after he had used, he had a, used the telephone,

1 after he had ridden to the Sheriff's Department.

2 You will not see the gun that was used to kill Eliza
3 Hernandez. You will not see it. I can't bring it to you.

4 What I can bring you and what I will play for you is
5 the 9-1-1 tape where Santiago Rios is calling the 9-1-1
6 operator and you can hear him make reference to the gun.
7 Despite searching that night, despite searching diligently
8 the next day, law enforcement never was able to find the gun
9 that killed Eliza Hernandez.

10 You'll hear it referenced on the 9-1-1 tape. But it
11 was never found, and you'll hear something else on the 9-1-1
12 tape. You will hear the phrase no digus nada, no digus
13 nada, don't say anything. The defendant talking to his
14 family members as the police are on their way to the home
15 while Eliza Hernandez lays shot through the face on a wooden
16 floor, don't say anything.

17 Ladies and gentlemen, Santiago Rios is charged with
18 murder. In South Carolina, murder is the unlawful killing
19 of another person with malice aforethought. Malice is a
20 legal term of art. It simply means bad intentions, a wicked
21 heart, a heart fatally bent on mischief. Malice can also be
22 the conscious doing of a wrongful act. Malice, in layman's
23 terms, simply put, is bad intentions, wicked intentions.

24 Malice can be express or, or inferred. It can actually
25 be inferred simply from the use of a deadly weapon. Merely

1 using a deadly weapon can, can meet the malice requirement.

2 The other word is aforethought. Aforethought does not
3 mean premeditation.

4 THE COURT: Just one second, Mr. Gowdy.

5 INTERPRETER GALLIGOS: Again, you're going too low.

6 We---

7 THE COURT: She's going to have to --- she's going to
8 need to speak through the attorneys.

9 Mr. Collins, would you find what the problem is, Mr.
10 Brannon?

11 MR. COLLINS: Your Honor, my understanding from the
12 interpreters is that they are unable to hear completely
13 Mr. Gowdy's opening statement and are having some problems
14 hearing the statement, and, therefore, then translating it
15 and keeping up with him at this point.

16 THE COURT: All right. Mr. Gowdy, I'm gonna ask you to
17 speak up again if you don't mind please.

18 SOLICITOR GOWDY: Yes, sir.

19 THE COURT: Thank you very much.

20 SOLICITOR GOWDY: Malice aforethought. Malice is the
21 conscious doing of a wrongful act, bad intentions, a wicked
22 heart. Aforethought does not mean premeditation. It does
23 not mean preplanning. Doesn't mean I decided to do
24 something a long time ago and just carried it out.

25 In fact, I believe what Judge Couch will tell you at

1 the end of the case is malice aforethought can arise just an
2 instant before the fatal blow is struck. Aforethought can
3 arise like that. That's what's required for murder in South
4 Carolina, malice aforethought, and that's what the defendant
5 is charged with.

6 Ladies and gentlemen, in just a few minutes, after the,
7 the defense attorney is through speaking to you, this trial
8 will begin in earnest with the calling of witnesses, the
9 introduction of exhibits. You'll hear the 9-1-1 tape.
10 You'll see the photographs from the crime scene.

11 I'm gonna ask you to do the only thing I have ever
12 asked a jury to do in 15 years of being a prosecutor, which
13 is simply to be fair to the defendant, be fair to the State
14 of South Carolina, scrutinize the testimony, examine the
15 exhibits. And most of all, use the same common sense that
16 served you so well in your every day lives. It's the only
17 requirement you need to be a good effective juror.

18 You know, I told you a few moments ago that you will
19 hear on the 9-1-1 tape and you will hear from a translator.
20 No digus nada. Don't say anything. His words to his family
21 when the police were on the way.

22 Your job is different. You're judges and ultimately,
23 ultimately you will retire to a room, brought together for
24 the purpose of deciding this case, from different
25 background, from different life experiences, you are brought

1 together to render a verdict. That's a bold strong word
2 that we borrowed from the Latin. Verdict. It means to
3 speak the truth.

4 So, we have no digus nada on the one hand, and we have
5 you speaking the truth on the other. When you come back
6 into this courtroom, whether it be Wednesday, Thursday,
7 Friday, no matter when it is, may your verdict speak the
8 truth for Eliza Hernandez.

9 Thank you.

10 THE COURT: Mr. Collins.

11 MR. COLLINS: Thank you, Your Honor.

12 THE COURT: Yes, sir, you may proceed.

13 MR. COLLINS: Good morning.

14 Mr. Gowdy this morning has told you a story. He's
15 painted a picture. He's tried to paint a picture of
16 Mr. Santiago Rios as a cold blooded killer. Mr. Rios is not
17 a cold blooded killer. Mr. Rios is a grieving husband.

18 Mr. Rios, on November the 23rd, 2006, on Thanksgiving
19 Day, was a 23 year old young man. He'd been married to his
20 wife, Eliza, for seven years now. He had no children. But
21 around them they had a very large family. Matter of fact,
22 living in that household with them, they lived with
23 Santiago's father, Santiago's mother, Santiago's two younger
24 children, Alex P. and Cynthia P. and then the numbers five and
25 six in that home were Santiago and his wife, Eliza.

1 Now, Santiago was not born here. Santiago and his
2 family are not from here. They are not native residents of
3 Spartanburg County, South Carolina. And that's, that's
4 probably a, a very big statement of the obvious given the
5 fact that Santiago is sitting over there and behind him are
6 two interpreters. One of them speaks Spanish and she is
7 taking what we say in English and giving it to the man
8 sitting beside her who speaks P'urhepechas or Tarascan.

9 Now, P'urhepechas or Tarascan, they're two words from
10 the same language, are a dialect, a dialect of Spanish from
11 a province of Mexico. It's near Acapulco. It's up in the
12 mountains. It's a very small village, and this is a place
13 that Santiago and his family come from. This is the culture
14 that they come from. This is what they're use to. This is
15 what they've grown-up knowing.

16 I'm not going to attempt to tell you the name of the
17 province because I will butcher it. But it is a small
18 province basically like a state in Mexico. And in that
19 province they have a completely different culture from what
20 we have. They have a completely different justice system.
21 There are no courts like this. There are no juries.
22 There's no right to remain silent. It's a much different
23 environment, much different culture.

24 Now, Santiago and his wife have been married for about
25 seven years, and Santiago has been in the U.S. for about

1 that same amount of time. Santiago and his family are here.
2 He is here legally. He is a legal resident. He had a job.
3 He worked at the Cotton Blossom plant for Milliken here in
4 Spartanburg.

5 You will hear his limited amount of English on the
6 9-1-1 tape. You will hear probably that he spoke a limited
7 amount of English at work. At least enough to be able to
8 function.

9 But Santiago's primary language is Tarascan or
10 P'urhepechas. He speaks three languages. A very minimal
11 amount of English. He can get by some in Spanish. But
12 P'urhepechas or Tarascan is what he normally speaks. It's
13 his native tongue. It's what he functions in.

14 Now, Santiago, like I said, had a regular job, was a
15 legal resident, paid taxes, was here. On November the
16 23rd, 2006, early afternoon, he had just gotten home from
17 work on Thanksgiving Day. He was looking forward to a good
18 Thanksgiving with his family. You see, the last 24 hours or
19 so for Santiago had not been very good. He was hoping for a
20 better coming 24 hours. Unfortunately, for Santiago, those
21 next 24 hours were the worst of his young life.

22 The day before Santiago had gotten off of work at
23 Milliken like he normally did, came home, got cleaned up,
24 got a shower, and he went over to visit his sister, who
25 lives here in Spartanburg County also. Now, Santiago did

1 what some husbands do, and he stayed out a little too late
2 at his sister's house, and he probably had a little bit too
3 much to drink that night. So, when he got home, Eliza was
4 less than happy with him. They got into an argument.

5 The night before Thanksgiving, Santiago wound up
6 spending the night in his car. He didn't get to stay in the
7 house with his wife. He didn't get to stay in the house
8 with his dad and his mom and his brother and sister. He
9 slept in the car.

10 Thanksgiving morning his dad got him up, came out to
11 the car, knocked on the window, got him up, told him to go
12 inside, get ready, it's time to go to work. Eliza had
13 gotten up that morning and she had made him lunch.

14 THE COURT: Just one second, Mr. Collins.

15 MR. BRANNON: One second, Your Honor.

16 (Pause.)

17 MR. BRANNON: We just ask the Court to, to direct Mr.
18 Collins to, to speak up like he did---

19 THE COURT: Mr. Collins, apparently, when you're facing
20 the jury, apparently it's difficult for them to hear. So,
21 as with Mr. Gowdy, I will ask you to speak a little louder
22 so that we can get it translated.

23 MR. COLLINS: Yes, Your Honor.

24 THE COURT: Thank you, sir.

25 MR. COLLINS: Mr. Gowdy and I, as you can tell, both of

1 us normally talk at the jury box like we would at a, at a
2 normal conversation. And so, both of us are having some
3 problems this morning. But we'll -- so, if I slow down and
4 speak up, it's so that Mr. Rios, through his interpreters,
5 can hear and understand everything that we're talking about.

6 Now, back to Thanksgiving morning 2006. Santiago's dad
7 came out, knocked on the window, got him up, he came inside,
8 he gets ready for work. Eliza had gotten up, made breakfast
9 or made lunch for him so he could take it with him to the
10 plant. Santiago gets his things together, gets in the car,
11 goes to work.

12 Santiago and his team at the plant that day, it's
13 Thanksgiving, they want to get home, they want to see their
14 families. So they work hard, they work fast, and they work
15 right through lunch on Thanksgiving Day. Santiago gets home
16 early afternoon Thanksgiving Day. They finish their work.
17 They been able to leave and go home and spend the afternoon
18 with their families.

19 Santiago knows that Thanksgiving dinner is coming
20 later. So, instead of sitting down and having dinner at
21 home or lunch at home, he gets home, gets a shower, gets
22 cleaned up, he and his dad get in the car, they drive over
23 to see his sister again this time for Thanksgiving Day to
24 say hello, spend about 20 minutes. Santiago and his dad
25 then come home, get back to the house. And while they're

1 there, Santiago sees Eliza, his wife, and his mother,
2 Isabel, cooking Thanksgiving dinner. They're getting
3 Thanksgiving ready for the family.

4 So, Santiago goes out and runs some errands, and one of
5 the things he does is he goes to the store to get little
6 candles. You'll see, as Mr. Gowdy told you, most likely up
7 on that screen, pictures of the front of their home. And
8 the front of their home is a shrine. It looks like a
9 Catholic shrine. It's got some little statutes and candles.
10 So, he's gone to the store and he gets the candles to bring
11 back for them to light for Thanksgiving Day.

12 When he gets back home he asked for Thanksgiving
13 dinner. Eliza tells him no. Tells him that -- she's still
14 mad at him. She tells him you're gonna eat the lunch I made
15 for you. You should of eaten it at work. You're gonna eat
16 it now. It's a petty argument. But it gets out of hand.

17 Eliza begins to get vocal. She becomes more
18 aggressive. Eliza eventually attacks Santiago Thanksgiving
19 afternoon, Thanksgiving evening. By now we're into the
20 nighttime. I'm sorry. We're now into the nighttime.

21 Eliza attacks Santiago. In the living room she attacks
22 him, she pulls his hair, scratches across his neck, yanks
23 off his medallion. He's got a chain with a, some type of
24 medallion on it. And this fight takes place in the living
25 room. The DNA expert that Mr. Gowdy mentioned will come in,

1 and he'll tell you that there are DNA samples in that living
2 room that are Santiago's hair from this fight.

3 The fight is started in the kitchen. It starts off
4 vocal and becomes more and more aggressive. It moves to the
5 living room where Eliza attacks Santiago. After the
6 physical altercation into the living room, Santiago, Eliza
7 then goes to the bedroom. Santiago follows. Eliza then --
8 once they're in the room, turns around, shuts the door, and
9 locks it. The fight continues.

10 Eliza reaches down and picks up the, a bar bell, two or
11 three pound bell and tries to hit Santiago with it.
12 Eventually she pushes Santiago down on to the bed and she
13 turns around and she reaches and she goes and gets a
14 handgun. She gets a pistol. Eliza introduces this pistol
15 into this family fight.

16 Santiago was afraid. His wife, who's already been mad
17 at him, who's already been yelling at him, who's already
18 attacked him physically, she's pulled out his hair, she's
19 scratched him, she's yanked his necklace off, she's tried to
20 hit him with a 3-pound dumbbell, she's pushed him down on
21 the bed, and now she has a gun.

22 Santiago's not only afraid for his life, but he's also
23 afraid for his mother, who's in the home, and his two, his
24 two younger siblings, his brother, ^{Alex P.} and his sister,
25 Cynthia P. who are also there.

1 What is she gonna do with this gun?

2 They struggle over the gun and Eliza dies. Eliza gets
3 shot in the face and Eliza falls to the floor dead.

4 Santiago, at 23, is just lost his wife. Santiago, who
5 is not from here, Santiago, who knows nothing of our
6 culture, who's a stranger here, who knows nothing of our
7 justice system, knows nothing of courtrooms and juries and
8 deliberate processes and deliberate searches for the truth,
9 gets nervous.

10 Santiago picks up the phone and calls 9-1-1. Santiago,
11 in the best English that he can, calls frantically for help.
12 He wants the police. He wants an ambulance. Santiago is
13 afraid. He's just lost his wife, he's young, limited in his
14 language skills, and he knows the police and the ambulance
15 are on their way.

16 A short time later the police arrive, and Santiago's
17 worst fears come to light. The police show up at his house
18 and Santiago doesn't get treated like a victim. Santiago
19 doesn't get treated like a witness. Santiago and his family
20 are rounded up by law enforcement officers, segregated
21 outside their house. Santiago and his family are then
22 transported by law enforcement officers. They're taken from
23 their home and taken to the Sheriff's Office in squad cars
24 by uniform deputies with badges and guns.

25 They get to the Sheriff's Office and the nightmare

1 continues. At the Sheriff's Office, they're separated. The
2 one thing Santiago has had to rely on while in this country
3 has been his family. The one cohesive unit he can count on
4 is his family. Santiago was over here being interrogated.
5 His family is over here in a different room being
6 interrogated.

7 ~~Santiago is afraid, frightened, confused, unsure of~~
8 ~~what happens next, tells a story he thinks will best protect~~
9 his family. The second time that night he tries to protect
10 himself and his family. The first time was when Eliza
11 brought the gun into the fight. The second time is when
12 strange men speaking strange languages carrying badges and
13 guns take him to the Sheriff's Office.

14 Eventually Santiago decides to tell these men what
15 happened. The story I told you just a moment ago, Eliza
16 angry, the fight in the living room, having his hair
17 literally yanked out to the point where's there DNA samples
18 that can be tested, the fight with yanking his chain and
19 taking it off, the bedroom where she locks the door, pushes
20 him down on the bed, and hits him with the dumbbell, and
21 introduces the gun. He tells them that story, and that's
22 what gets us to here.

23 In retrospect, he didn't handle it well. But here in a
24 deliberate courtroom, the judges, and juries, prepared
25 statements, notebooks, notes, is a much different

1 environment than a 23 year old young man who just lost his
2 wife faced on Thanksgiving 2006 when his wife introduced a
3 gun, and then she lays dead on the floor.

4 Now, you have heard already about the presumption of
5 innocence. You've heard about the State's requirement to
6 prove that he committed, that Santiago committed murder
7 beyond a reasonable doubt.

8 What you will see in all of this is that there is no
9 blood stain on Santiago. There's no gunshot residue on his
10 hands. The things that would normally be there if he did
11 what he's accused of doing are absent.

12 What you will see are DNA evidence of the fight in the
13 living room. You will see injuries on Santiago.

14 What Santiago asked of you, what I ask of you, and what
15 Mr. Brannon will ask of you is that you listen very
16 carefully to what you hear. You treat him fairly, and that
17 you hold the State to their burden of proof. They have got
18 to prove to you beyond a reasonable doubt that Santiago Rios
19 committed murder and killed his wife, Eliza.

20 There's no evidence that he ever had a gun in his hand.
21 There's no evidence that he ever pulled a trigger. The only
22 evidence of a gunshot is Eliza. The strippling (phonetic)
23 and the other things you will hear about indicate a very
24 close contact wound. You will see none of the evidence from
25 a close contact, contact wound on Santiago. Nothing that

1 puts him close to Eliza when the gun goes off.

2 Now, Judge Couch has already talked to you in great
3 detail about the jobs that we have and what we have to do
4 today. He's talked to you about the process that we will go
5 through to get there. When all is said and done, whether
6 it's tomorrow, Thursday, or Friday, at some point Mr.

7 Brannon, who's sitted over, seated over there at the table

8 with me, he will get up and Mr. Brannon will come back to

9 this same spot and Mr. Brannon, on behalf of Santiago, will
10 summarize the evidence that is come from the witness stand.

11 He will summarize the testimony. He will summarize the
12 documents that you've seen, the photographs, and he will try
13 to piece those together applying the facts to the law, and
14 then Mr. Brannon will stand here and he will ask you to
15 render a verdict in favor of Mr. Santiago Rios. He will ask
16 you to come back with a verdict of not guilty.

17 He's not asking you to find Santiago innocent. What
18 he's asking is that you hold the State to their burden of
19 proof. He's asking that you make them prove, beyond a
20 reasonable doubt, what they're required to prove to you.
21 And if they do not, beyond a reasonable doubt, prove that to
22 you, he's asking you to come back with a verdict of not
23 guilty.

24 Thank you.

25 THE COURT: The State may call its first witness.

Curtis Kesler - Direct examination
By Solicitor Gowdy

1 SOLICITOR GOWDY: May it please the Court.

2 The State would call Deputy Curtis Kesler.

3 THE COURT: Sir, come forward to my left and be sworn.

4 CURTIS KESLER, being first duly
5 sworn, testified as follows:

6 THE COURT: Sir, have a seat in the witness stand.
7 Once you're seated, please state your full name for the
8 record.

9 WITNESS: Curtis Kesler.

10 THE COURT: Mr. Gowdy, it's your witness.

11 SOLICITOR GOWDY: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY SOLICITOR GOWDY:

14 Q Deputy Kesler, I'm gonna get you to keep your voice up
15 good and strong where the last lady and gentleman in the
16 jury box can hear you.

17 Okay?

18 A Yes, sir.

19 Q All right. Tell them where you work and how long
20 you've been there.

21 A I work with the Spartanburg County Sheriff's Office.
22 Been here for 15 years.

23 Q I can tell by your uniform that you are assigned to the
24 uniform patrol division, is that correct?

25 A That's correct.

Curtis Kesler - Direct examination
By Solicitor Gowdy

1 Q And how long have you been in the patrol division?

2 A Fifteen years.

3 Q All right. Is one of the duties and responsibilities
4 of a uniform patrol deputy to respond to 9-1-1 calls?

5 A That's our primary function.

6 Q Okay. Somebody calls 9-1-1, there's a dispatch sent
7 out, and you respond?

8 A Yes, sir.

9 Q Okay.

10 A You'll get me.

11 Q When you get to a crime scene, are you an investigator
12 or what, what are your duties and functions when you get to
13 a crime scene?

14 A Our, our duties, when we initially respond to the crime
15 scene, is to observe and to see what's taken place there.
16 Once we determine that a crime has been committed of, of a
17 violent nature is to secure the scene.

18 Q So, is it fair to say that there's a separate unit
19 within the Sheriff's Department that investigates major
20 crimes?

21 A That's correct.

22 Q And, and, and is it fair to say that there's a separate
23 forensic unit that would process the crime scenes?

24 A That's also correct.

25 Q But you would not do either of those?

Curtis Kesler - Direct examination
By Solicitor Gowdy

1 A No, sir.

2 Q All right. Do you secure the crime scene?

3 A Yes, sir, we secure the crime scene and then, and, and
4 start a crime scene log.

5 Q Do you walk through a crime scene or the curtilage of a
6 crime scene and, and observe initially what may of happened?

7 A No, sir, once, once we determine that the, the, that a
8 crime has occurred, we back everybody out and we secure that
9 scene.

10 Q All right. Let's go specifically to November 23rd,
11 2006.

12 A Okay.

13 Q All right. Thanksgiving.

14 Did you respond to a 9-1-1 call at [REDACTED]
15 [REDACTED]?

16 A Yes, sir, I did.

17 Q And, and in what county is that?

18 A That's in Spartanburg County.

19 Q Okay. Do you recall what the initial 9-1-1 call was
20 for?

21 A The initial 9-1-1 call was a home invasion, which
22 involved a shooting.

23 Q All right. And what did you do when you got to the
24 crime scene?

25 A When I got to the crime scene I walked up to the, to

Curtis Kesler - Direct examination
By Solicitor Gowdy

1 the residence, of course, being aware of everything around
2 me. Walked up to the front door. I was met by people
3 inside the door that led me to a back bedroom of the house
4 where the victim was.

5 Q Did you walk through the front door of the house or
6 what seemed to be the front door?

7 A Yes, sir. I did. Walked through the front door, into a
8 little galley way to the left, through a, a, I guess what
9 would be a living area into a back room that was also kind
10 of off to my left.

11 Q And when you got to that back room, tell the ladies and
12 gentlemen of the jury what you saw.

13 A There was a female there lying on her back with an
14 apparent wound to her face area, and there was also a puddle
15 of blood laying by her head.

16 Q Okay. EMS would have been called?

17 A Yes, sir.

18 Q Did you arrive first or did EMS arrive first?

19 A I, I arrived first. EMS come in shortly after that.

20 Q Okay. And, of course, you would turn over -- a, a, a
21 victim of a violent crime, you would turn them over to EMS?

22 A That's correct.

23 Q Okay. All right. Let me show you -- well, let me get
24 some, let me get it marked first before I show it to you.

25 (Whereupon, ten photographs were marked as State's

Curtis Kesler - Direct examination
By Solicitor Gowdy

1 Exhibit Nos. 5 through 14 for identification purposes only
2 at this time.)

3 Q Let me show you what's been marked as State's Exhibit 5
4 through 14 inclusive, and ask you whether or not those
5 photographs fairly and accurately depict what you saw on
6 November 23rd, 2006, at [REDACTED], [REDACTED].

7 A Yes, sir.

8 SOLICITOR GOWDY: Your Honor, we would move State's 5
9 through 14 inclusive in evidence at this point.

10 THE COURT: Any objection?

11 MR. BRANNON: None.

12 THE COURT: Without objection, they'll be admitted into
13 evidence.

14 (Whereupon, State's Exhibit Nos. 5 through 14 were
15 received into evidence at this time.)

16 THE COURT: You may proceed.

17 SOLICITOR GOWDY: Your Honor, permission to publish to
18 the jury?

19 THE COURT: Yes, sir.

20 Ladies and gentlemen, the solicitor is asking for an
21 opportunity to publish an exhibit. What that means is we'll
22 allow you to either read the document or see the document.
23 I got a feeling he's gonna use the overhead projector for
24 that purpose. But that means that -- publishing simply
25 means we show you the exhibit at this time during the trial.

Curtis Kesler - Direct examination
By Solicitor Gowdy

1 You may proceed.

2 SOLICITOR GOWDY: Thank you, Your Honor.

3 THE COURT: Can you lower the lights for us please,
4 sir?

5 (Bailiff complies.)

6 THE COURT: Thank you.

7 SOLICITOR GOWDY: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 Q Now, Deputy Kesler, I'm gonna put a series of
10 photographs up and I'm gonna ask you to explain to the jury
11 what they're looking at.

12 Okay?

13 A Yes, sir.

14 Q We'll start with State's Exhibit No. 5.

15 A That would be the front approach to the residence as I
16 was getting out of the car.

17 Q Okay. Let me show you State's Exhibit 6.

18 A That's the address posted on the left corner of the
19 house as you approach.

20 Q [REDACTED]

21 A That's correct.

22 Q All right. Let me show you State's 7.

23 A That would actually be the open front screen door as
24 you're walking in the front door.

25 Q And let me show you State's 8.

Curtis Kesler - Direct examination
By Solicitor Gowdy

1 A That is the ramp approach into the front door itself.

2 Q And is that the door you would of walked through,

3 Deputy Kesler?

4 A Yes, sir.

5 Q Can you tell the jury what is on the far wall as they

6 are looking at this shot?

7 A It's, it's some sort of table with candles on it. Kind

8 of like a little shrine I guess as you, on the far side of

9 the room over there.

10 Q And is that how it appeared when you arrived at the

11 scene?

12 A Yes, sir, it is.

13 Q Let me show you State's Exhibit 9.

14 A That would be just right at the entrance into the front

15 door, that same shrine with the candles on it.

16 Q All right. Now, I notice to the right, to the jury's

17 right on that picture, can you see that deputy?

18 A There's a bicycle standing there.

19 Q A bicycle.

20 Let me show you State's 11.

21 A That would be that bicycle that, that we just saw.

22 Q And that is in the front?

23 A Right in the front door on the right as you go in.

24 Q Okay. Let me show you State's 10.

25 A That is a little scooter, I guess you call it, just

Curtis Kesler - Direct examination
By Solicitor Gowdy

1 before that bicycle.

2 Q All right. And let me show you State's 12.

3 A That is actually just inside the front door, the, the
4 table with the candles, the shrine, and the top part of the
5 bicycle.

6 Q Okay. And that's how it appeared when you got there
7 after the 9-1-1 call?

8 A That's correct.

9 Q All right. And you walked where once you got into the
10 home?

11 A The opening to the left there goes into like a family
12 area of the residence. I went there and then just off to
13 the left to the back bedroom on the left.

14 Q All right. And, finally, let me show you State's
15 Exhibit 14.

16 Tell the jury what they're looking at.

17 A That would be the bedroom itself where the victim was
18 laying, the, the doorway into that bedroom.

19 Q Okay. And is that how her body appeared when you
20 arrived in response to the 9-1-1 call?

21 A Yes, sir.

22 Q Do you attempt to render aid, Deputy Kesler, or do you
23 wait for EMS to do that?

24 A If it's something minor and superficial I would attempt
25 to render aid. The med unit was just real shortly behind

1 me. I mean they walked in just a few seconds behind me.

2 Q Let me ask you one final question, deputy.

3 This jury is gonna hear a 9-1-1 tape, and towards the
4 end of that tape is a male voice directing people to go
5 outside.

6 A Yes, sir.

7 Q Okay. Whose voice is that?

8 A That would be me.

9 Q All right. Is that standard protocol anytime you get
10 to a crime scene?

11 A Yes, sir, it's part of securing the scene to make sure
12 no evidence is destroyed or anything like that.

13 Q Were you, in any way, shape, or form, unprofessional,
14 onerous, mean spirited in your dealing with this family?

15 A No, sir, not at anytime.

16 Q Did you have any idea what had happened?

17 A No, sir, I mean, I mean -- I knew we had a deceased
18 victim there, and at that point it's my job just to secure
19 the scene.

20 Q So, you followed office protocol in the way you treated
21 the crime scene and the people that were inside the house?

22 A That's correct.

23 Q Thank you, deputy. Please answer any questions the
24 defense attorney may have for you.

25 THE COURT: Mr. Brannon.

Curtis Kesler - Cross-examination
by Mr. Brannon

1 MR. BRANNON: Your Honor, can we bring the lights back
2 up?

3 THE COURT: Yes, sir, bring the lights back up please,
4 sir.

5 (Bailiff complies.)

6 THE COURT: You may proceed, Mr. Brannon.

7 MR. BRANNON: Thank you, Your Honor.
8 May it please the Court?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. BRANNON:

12 Q Deputy Kesler, how are you doing today?

13 A I'm good, sir.

14 Q Good.

15 You said that your job as the initial or the, the first
16 responding officer was to secure the scene, correct?

17 A Yes, sir.

18 Q All right. And, and then I believe Mr. Gowdy asked you
19 if you had scanned the scene or done any, if, if you had
20 made sure that there was no evidence destroyed or something
21 to that effect. And you said no, we back everyone out and
22 secure the scene.

23 A Yes, sir.

24 Q That was your response.

25 A Yes, sir.

1 Q Okay. But isn't it true that you actually did walk
2 through the house room to room to make sure that there
3 wasn't anything that could be destroyed, right?

4 A We actually, actually tried to determine that there was
5 nobody else in the house --

6 Q All right.

7 A -- once we back everybody out.

8 Q Okay.

9 A That's for our safety.

10 MR. BRANNON: Can I approach the witness, Your Honor?

11 THE COURT: Yes, you may.

12 Q Deputy Kesler, do you remember preparing that document?

13 A Yes, sir.

14 Q Okay. Doesn't say in there that you went into the
15 rooms or into, specifically into that bedroom to see if you
16 could find a weapon or a bullet or anything like that?

17 A Let me take a minute to read it.

18 Q Okay.

19 (Pause.)

20 A Yes, sir, it does.

21 Q So, you didn't really just back everyone out to secure
22 the scene, right?

23 A Well, this says I quickly scanned the area.

24 Q Right.

25 But, but you did more than back everybody out and

Curtis Kesler - Cross-examination
by Mr. Brannon

1 secure the scene, correct?

2 A Well, I secured, I secured the scene. I did my job.

3 Q I understand. I understand. I'm just -- I want the
4 jury to understand completely what you did, and, and, quite
5 frankly, you did more than back everybody out.

6 A Oh, yes, sir, I visually scanned the area.

7 Q Thank you.

8 Okay. How long have you been on the force?

9 A I been here 15 years. I been doing it 22.

10 Q How, how often, on a daily or weekly basis, do you deal
11 with Hispanics, people who speak Spanish?

12 A How often?

13 Q Yes, sir.

14 A On a daily basis.

15 Q All right. Sir, based on your experience of 15 years
16 here in Spartanburg County and, and maybe another seven or
17 eight elsewhere, do Hispanics trust law enforcement?

18 SOLICITOR GOWDY: Your Honor?

19 A Generally not.

20 SOLICITOR GOWDY: Your, Your Honor?

21 THE COURT: Just one minute.

22 SOLICITOR GOWDY: I'm gonna object. That, the --
23 they're not a monolithic group.

24 I mean how can you ask a question about an entire
25 racial group?

Curtis Kesler - Cross-examination
by Mr. Brannon

1 I would object to the question.

2 THE COURT: Mr. Brannon.

3 MR. BRANNON: Your Honor, first off, it's
4 cross-examination. I believe I have significant latitude.

5 THE COURT: Yes, sir, let's, let's address the issue
6 though.

7 MR. BRANNON: I will, Your Honor. In his opening
8 statement, Solicitor General Gowdy told this jury that my client
9 told a lie. I am trying to explain to the jury that people
10 of Hispanic origin do not necessarily trust American law
11 enforcement officers. This is an American law enforcement
12 officer. I think, based on his experience, he has the
13 ability to answer that question.

14 THE COURT: I, I am going to try to make this as case
15 specific as we can. So, I'm gonna ask you to lay a
16 foundation for any evidence of trust or mistrust that may
17 have existed at this particular location.

18 I'm gonna sustain the objection as to a racial group or
19 how they act.

20 So, I'm gonna ask you to lay a better foundation as to
21 how he might of been approached or handled or that might,
22 the case was handled with him at that location by these
23 individuals that were present, and I'm not sure who all was
24 there.

25 But at any rate, I'll sustain the objection as to the

Curtis Kesler - Cross-examination
by Mr. Brannon

1 form of the question at this time.

2 Q All right. Deputy Kesler, how many people were at this
3 home when you arrived?

4 A I think I recall four. I'm not exactly sure. I think
5 there were four.

6 Q Okay. Did any of those four people speak English?

7 A Broken.

8 Q Did any of them

9 A Broken English.

10 Q Did any of them communicate with you?

11 A I believe Mr. Rios communicated with me the fact that
12 there were three black males supposedly that had come into
13 their home and done this.

14 Q Okay. But you don't, you don't put any of that in
15 your, in your incident report?

16 A No, sir.

17 Q Do you?

18 A No, sir.

19 Q No.

20 Okay. So, none of that was important enough to make
21 your written document, right?

22 A No, sir.

23 Q Okay. Did you get the impression that any of the four
24 individuals at the Rios home on November the 23rd trusted
25 you?

1 A Did I get what now?

2 Q Did you get the impression -- did you feel like those
3 four people that were at the Rios home when you responded
4 trusted you?

5 A Oh, yes, sir.

6 Q You did?

7 A Yes, sir.

8 Q And how did they make you feel that way?

9 A Cause they led me straight to where the victim was at.

10 Q They did or he did?

11 A He did. Well, he did.

12 Q He did.

13 Okay. All right. Did you, by any chance -- never --
14 withdraw that question.

15 You talked about the, you spoke of the shrine that was
16 just inside the front door.

17 Had you ever seen anything like that before in your
18 experience?

19 A No, sir.

20 Q Do you have any idea what type of shrine that was?

21 A I do not.

22 Q Could you relate it to any specific religion?

23 A No.

24 Q Okay. All right. Did you search any of the four
25 people that were there when you responded?

Curtis Kesler - Cross-examination
by Mr. Brannon

1 A No, sir.

2 Q Okay. You didn't search anybody before you removed
3 them from the home?

4 A No, sir.

5 Q Okay. Deputy Kesler, you don't know how the woman that
6 you saw lying dead in that bedroom died; do you?

7 A No, sir.

8 Q You don't know what weapon shot her; do you?

9 A No, sir.

10 MR. BRANNON: I don't have anything further, Your
11 Honor.

12 THE COURT: Redirect?

13 SOLICITOR GOWDY: Very briefly, Your Honor.

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION

16 BY SOLICITOR GOWDY:

17 Q Deputy Kesler, when you went into the room that this
18 jury just saw a picture of with a, the deceased female
19 laying there, did you notice a gun anywhere near her hand?

20 A No, sir.

21 Q Mr. Brannon asked you a question about who led you or
22 which led to, to you to answer that, that the defendant
23 himself led you back to that bedroom.

24 A Yes, sir.

25 Q And then you, in response to a question about trust,

Curtis Kesler - Redirect examination
by Solicitor Gowdy

1 that he gave you a version of what happened---

2 A Yes, sir.

3 Q ---involving intruders.

4 Did he ever say one word about Eliza Hernandez shooting
5 herself?

6 A At no time.

7 ~~SOLICITOR GOWDY: Thank you, Your Honor. No further~~
8 ~~questions.~~

9 THE COURT: Recross?

10 MR. BRANNON: No, no.

11 THE COURT: You may step down, sir.

12 State may call its next witness.

13 SOLICITOR CRICK: Thank you, Your Honor.

14 The State's gonna call Freddie Thompson.

15 THE COURT: Thank you.

16 SOLICITOR GOWDY: Your Honor, can, can Deputy Kesler be
17 excused?

18 MR. BRANNON: No objection.

19 THE COURT: Without objection, you're free to go, sir.
20 Thank you for coming today.

21 WITNESS: Thank you.

22 THE COURT: Mr. Thompson, come forward to my left to be
23 sworn please.

24 (Whereupon, the 9-1-1 tape was marked as State's
25 Exhibit No. 15 for identification purposes only at this

Freddie Thompson - Direct examination
by Solicitor Crick

1 time.)

2 FREDDIE THOMPSON, being first duly
3 sworn, testified as follows:

4 THE COURT: Sir, have a seat in the witness stand. And
5 once you're seated, please state your name for the record.

6 WITNESS: Freddie Thompson.

7 ~~THE COURT: Mrs. Crick, your witness.~~

8 ~~SOLICITOR CRICK: Thank you, Your Honor.~~

9 DIRECT EXAMINATION

10 BY SOLICITOR CRICK:

11 Q Mr. Thompson, can you tell the jury where you work?

12 A Spartanburg County Communications 9-1-1 Department.

13 Q What do you do at communications?

14 A I have varied responsibilities. One of which being
15 custodian of records.

16 Q And when you say custodian of records -- let me back up
17 for one second.

18 9-1-1 calls that come in, do you record all of those?

19 A Any and all calls coming to the 9-1-1 system are
20 automatically recorded. The person taking the call does not
21 have a choice of whether to record or not. It's done
22 automatically, radio and telephone both.

23 Q And when they are recorded, are they kept somewhere in
24 a system?

25 A The calls are, are stored on something what is very

Freddie Thompson - Direct examination
by Solicitor Crick

1 similar to a computer hard drive. They remain there and
2 then we extract the entire segments to come in Court with
3 cases such as this.

4 Q And would you pull those segments from the computer and
5 put them on a disk?

6 A Yes, we do.

7 ~~SOLICITOR CRICK: Your Honor, at this time I'd like to~~
8 ~~show him what's been marked as State's Exhibit 15.~~

9 MR. BRANNON: No objection.

10 THE COURT: All right. Without objection, you may show
11 that to him.

12 Q And can you tell us, Mr. Thompson, if you recognize
13 what that is?

14 A Yes, ma'am, it's a copy of the call to [REDACTED]

15 [REDACTED]

16 SOLICITOR CRICK: Your Honor, at this time I'd like to
17 move that into evidence.

18 THE COURT: Any objection?

19 MR. BRANNON: None.

20 THE COURT: Without objection it will be admitted as
21 marked.

22 (Whereupon, State's Exhibit No. 15 was received into
23 evidence at this time.)

24 THE COURT: You may proceed, Mrs. Crick.

25 SOLICITOR CRICK: Your Honor, may I publish that to the

Freddie Thompson - Direct examination
by Solicitor Crick

1 jury?

2 THE COURT: You may do so.

3 (Whereupon, State's Exhibit No. 15 was published to the
4 jury at this time.)

5 SOLICITOR CRICK: And Your Honor, I have no further
6 questions at this time.

7 THE COURT: Mr. Brannon, your witness.

8 MR. BRANNON: Thank you, Your Honor.

9 Please the Court?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. BRANNON:

13 Q How are you, Mr. Thompson?

14 A Good, sir.

15 How are you?

16 Q You don't know who or what caused the death of Eliza
17 Hernandez, do you?

18 A No, sir.

19 MR. BRANNON: I have nothing further, Your Honor.

20 THE COURT: Anything on redirect?

21 SOLICITOR CRICK: No, sir, nothing on redirect. We
22 may, however, ask if Mr. Thompson will remain with his
23 computer for the next witness.

24 THE COURT: That will be fine.

25 Sir, you, you may step down. You should stay. Thank

Teresa Sampson - Direct examination
by Solicitor Gowdy

1 you very much.

2 You may call your next witness.

3 SOLICITOR GOWDY: Thank you, Your Honor.

4 May it please the Court.

5 The State would call Mrs. Teresa Sampson.

6 THE COURT: Ma'am, come forward please to the witness
7 stand to my left to be sworn.

8 ~~TERESA SAMPSON, being first duly~~
9 sworn, testified as follows:

10 THE COURT: Have a seat in the witness stand, please.
11 Ma'am, once you're seated, I'd ask you state your name for
12 the record.

13 WITNESS: Teresa Blanco Sampson.

14 THE COURT: Mr. Gowdy, your witness.

15 SOLICITOR GOWDY: Thank you, Your Honor.

16 THE COURT: Move that a little closer to---

17 SOLICITOR GOWDY: I'm going to grab this right here.

18 Excuse me, ma'am.

19 DIRECT EXAMINATION

20 BY SOLICITOR GOWDY:

21 Q Good morning.

22 A Good morning to you.

23 Q Can you tell the jury who you are and where you live?

24 A My name is Teresa Sampson. I live in Greenville, South
25 Carolina.

Teresa Sampson - Direct examination
by Solicitor Gowdy

1 Q Where do you work, Mrs. Sampson?

2 A I'm a freelance court certified interpreter and
3 translator.

4 Q I'm gonna do this.

5 A Sure.

6 Q Not cause I want it to get it your way, but just so
7 they can hear you.

8 A Okay.

9 Q I'm gonna move that a little bit.

10 Okay?

11 A Okay. I am a freelance court certified interpreter and
12 translator.

13 Q Which languages are you proficient in?

14 A Spanish, being my first language, and English. Both of
15 them.

16 Q Have you taken courses on translating or interpreting?

17 A Yes, many hours of courses, seven hours workshops, and
18 I also completed a certification program at the University
19 of Arizona.

20 Q Do you translate in both the public arena like, like a
21 criminal courtroom as well as the private sector?

22 A Correct.

23 Q Okay. Have you translated in court before?

24 A Yes, many times and many occasions.

25 Q Too many times to count?

Teresa Sampson - Direct examination
by Solicitor Gowdy

1 A Yeah, you can say that.

2 Q Can you give the jury a sense of, of what counties
3 maybe in South Carolina that you have given your
4 interpreting or translating skills to?

5 A Well, Greenville, of course. That's where I live,
6 Easley, Anderson, and sometimes they call me from Municipal
7 Court and Mauldin, and, you know, so.

8 Q Are you certified by any state or federal agency to
9 interpret or translate?

10 A Yes, I am a state certified interpreter.

11 Q Okay. Mrs. Sampson, the jury just listened to a 9-1-1
12 call, which is State's Exhibit 15.

13 A Okay.

14 Q At my request did you listen to this 9-1-1 call and
15 attempt to determine whether Spanish was spoken at any point
16 in that call?

17 A Yes, I did. I listened to it many times actually.

18 Q All right. Would you agree with me that some of that
19 9-1-1 call is in English?

20 A Yes, uh-huh. (Affirmative).

21 There is English spoken.

22 Q Is there Spanish spoken?

23 A Yes, also Spanish.

24 Q Is there a third language spoken that you are not
25 familiar with?

Teresa Sampson - Direct examination
by Solicitor Gowdy

1 A Yes, there is a dialect that I couldn't identify.

2 Q Okay. Did you prepare, to assist you in testifying
3 before the jury, did you prepare a chart where you listed
4 what was said on the 9-1-1 call and then translated in the
5 other column?

6 A Yes, I did that transcription and translation of it.

7 Q Do you have your chart with you?

8 A I do.

9 Q Would you like my -- would you like my copy?

10 A Mine is right there.

11 Okay. Can I grab it?

12 Q Sure.

13 Would it, would it assist you to testify in front of
14 the jury to have your chart with you?

15 A Yeah, that would be helpful.

16 Q Okay.

17 A Yes, sir.

18 Q All right. Let's do this. Let's start---

19 THE COURT: Just one second.

20 Yes, Mr. Collins.

21 MR. COLLINS: Your Honor, at this point I would object
22 prior to her being admitted as an expert as, in any inquiry
23 from the, from the defense and any ruling from the Court, to
24 her being allowed to interpret at this particular time. She
25 is not been sworn in as an interpreter, has not been

Teresa Sampson - Direct examination
by Solicitor Gowdy

1 recognized by this particular Court as an individual
2 qualified to interpret that, that tape and translate into
3 Spanish.

4 THE COURT: I don't know that he was offering her at
5 this point in time to interpret anything.

6 Mr. Gowdy.

7 SOLICITOR GOWDY: Well, Your Honor, she, she's a
8 State's witness as opposed to a Court's witness with respect
9 to the oath part of it. She just took an oath to tell the
10 truth. She's our witness who's proficient in both languages
11 who we're going to, has listened to this tape and is gonna
12 tell the jury what is said in Spanish.

13 THE COURT: Are you offering her as an expert in
14 translating matters?

15 SOLICITOR GOWDY: Yes, sir, I -- well, I'm offering her
16 as an interpreter. I'll be delighted to, to move her in as
17 an expert if the Court would, would rather me do so.

18 THE COURT: I'll accept that as a motion to move her in
19 as an expert.

20 You object?

21 MR. COLLINS: Your Honor, I would.

22 THE COURT: Do you have an objection as to her being
23 qualified as an expert in translating Spanish into English?

24 MR. COLLINS: If I may ask her a few questions about
25 her state certification, and that would be only---

Teresa Sampson - Cross-examination
by Mr. Collins

1 THE COURT: I'll allow you to do so at this time.

2 Excuse us, Mr. Gowdy.

3 You may proceed, Mr. Collins.

4 CROSS-EXAMINATION

5 BY MR. COLLINS:

6 Q Ma'am, you indicated that you were a, a state certified
7 interpreter, is that correct?

8 A Yes, correct.

9 Q All right. And there is a difference between an
10 interpreter and a translator, is that correct?

11 A Yes, there is -- I'm also translator, certified
12 translator.

13 Q All right.

14 A Both.

15 Q Now, how long have you been doing this?

16 A For about four years.

17 Q When you say you're a state certified translator, does
18 that mean you are currently on the list in certain counties
19 such as Anderson and Greenville Counties?

20 A Yes, I'm on the list, uh-huh, on the State of South
21 Carolina.

22 Q All right. Have you gone through the State
23 certification program?

24 A Well, I became certified in the State of Tennessee, and
25 I move here two years ago. So, automatically I became

Teresa Sampson - Cross-examination
by Mr. Collins

1 certified in the State of South Carolina---

2 Q You have not---

3 A ---in Spanish. There is reciprocity.

4 Q Okay. But in South Carolina you have not passed our
5 written and oral examination, is that correct?

6 A There is no need for that. I have already been

7 certified in Tennessee.

8 Q Please answer my question, ma'am. I asked you

9 SOLICITOR GOWDY: Your Honor, I, I think she did.

10 THE COURT: Your objection?

11 SOLICITOR GOWDY: I would object to the tone he's taken
12 with the witness. I think she just answered the question.

13 THE COURT: Well, I'm gonna allow -- he, he's kind of
14 on cross-examination on her qualifications at this time.
15 I'll allow him certain latitude.

16 Go ahead, Mr. Collins.

17 Overruled.

18 Q The, the question, ma'am, was have you passed the South
19 Carolina test, the written and oral examinations?

20 A I haven't never taken it in South Carolina. There was
21 no need for that.

22 Q Oh.

23 THE COURT: Now, sir, do you have an objection to her
24 being qualified as an expert interpreter I believe is what I
25 understood she was certified in?

Teresa Sampson - Cross-examination
by Mr. Collins

1 MR. COLLINS: Your Honor, we, we would object to her
2 simply because at this point she has not taken nor passed
3 the South Carolina examination though I understand that it,
4 her position that it is not required. Perhaps Mr. Gowdy
5 might lay a little, the foundation as to, if there's some
6 foundation as to how she's---

7 THE COURT: Well, sir, you're raising the objection.
8 If you have evidence to indicate that there is not
9 reciprocity in the State for people who have passed the
10 examination in Tennessee, I'll be happy to hear from you on
11 that. Mr. Gowdy has offered her. That's her sworn
12 testimony. You can, of course, put up testimony that would
13 refute that in some fashion.

14 MR. COLLINS: Your Honor, I, I have no evidence that
15 she's passed it in Tennessee nor here so that my objection
16 would be that there's a lack of, of evidence outside of her,
17 her simple statements under oath.

18 THE COURT: Well, now testimony -- evidence under oath
19 is evidence.

20 MR. COLLINS: I understand.

21 THE COURT: So, if you have something to refute that
22 evidence, now would be the time to present it.

23 MR. COLLINS: Your Honor, I have no -- I have nothing
24 to do that.

25 THE COURT: Okay. Objection's overruled. I'll qualify

Teresa Sampson - Cross-examination
by Mr. Collins

1 her as an expert.

2 Ladies and gentlemen of the jury, let me explain to you
3 what we're doing at this time so that you'll understand the
4 purpose of, of our discussion and what's going on at this
5 time. Under the Rules of Evidence in South Carolina,
6 generally lay witnesses are not allowed to state their

7 ~~opinions on subjects. They have the right to testify~~
8 ~~concerning facts that they may know about or observe or have~~
9 experienced and things of that nature, but are not allowed
10 to give their opinions or draw conclusions from those, those
11 particular facts.

12 Now, an exception to that general rule is made for
13 witnesses who are qualified to be an expert in some field,
14 calling, science, or profession. And for those witnesses
15 who are designated by the Court as an expert within some
16 field or profession or calling, they are allowed to state
17 their opinions as to matters within that field and also
18 state the reasons for giving their opinions or drawing
19 conclusions from evidence that they have observed or
20 experienced.

21 So, this witness is now been qualified as, as an expert
22 within the field that she is been presented on. That will
23 allow her to state her opinions about the matters she's
24 examined, state the reasons for her opinions. And so,
25 that's the purpose of our designation at this point in time.

Teresa Sampson - Direct examination
by Solicitor Gowdy

1 Mr. Gowdy, I'm going to allow you to proceed.

2 SOLICITOR GOWDY: Thank you, Your Honor.

3 CONTINUED DIRECT EXAMINATION

4 BY SOLICITOR GOWDY:

5 Q Mrs. Sampson, you testified that you moved here from
6 Tennessee?

7 A Correct.

8 Q How long have you been speaking Spanish?

9 A That's my first language since I was born.

10 Q Okay.

11 A Well, not born, but you know.

12 Q I won't ask you how long that's been.

13 Let me ask you this.

14 How long have you been speaking English?

15 A Sixteen years, sixteen years.

16 Q Okay.

17 A Approximately.

18 Q And you were certified by the State of Tennessee?

19 A Correct.

20 Q And the certification process in South Carolina is
21 actually a new process?

22 A That's correct.

23 Q Okay. And since you moved from Tennessee to South
24 Carolina, you have interpreted in Courts like this one?

25 A Yes.

Teresa Sampson - Direct examination
by Solicitor Gowdy

- 1 Q In Greenville?
- 2 A Yes, Easley.
- 3 Q Easley?
- 4 A Anderson.
- 5 Q Anderson?
- 6 A Yes.
- 7 Q And Circuit Court and Family Court?
- 8 A Yes, and weekends as well.
- 9 Q Okay. All right. With that, let's go to the chart
- 10 that you prepared.
- 11 You prepared a chart with the 9-1-1 tape that's in
- 12 front of you?
- 13 A Uh-huh. (Affirmative).
- 14 Q And then---
- 15 A Yes.
- 16 Q ---the portions that are spoken in Spanish you've
- 17 interpreted?
- 18 A Yes, correct.
- 19 Q Okay.
- 20 A That's correct.
- 21 Q All right. Let's go to the -- I have your chart too.
- 22 Let's go to the first one. I'm not going to attempt the,
- 23 the Spanish part of it, but it is on the first page just a
- 24 little bit down.
- 25 Can you tell them what was said in Spanish and can you

Teresa Sampson - Direct examination
by Solicitor Gowdy

1 translate it into English.

2 A Yes. The Spanish is estoy en Asheville Highway 83 la

3 [REDACTED] and the English translation will I'm on Asheville

4 Highway in 83, in [REDACTED]. Please come here. Please.

5 Q Okay. And then down a couple of lines.

6 You see como?

7 A Yes, como, which would be what.

8 Q All right. That's English for what?

9 A (Witness nods affirmatively.)

10 Q Okay.

11 A In that particular context, yes.

12 Q Okay. And then another como?

13 A Yes, that's another como, which is what.

14 Q All right. Let's flip to the second page.

15 A Do you want me to read it?

16 Q Yes, ma'am.

17 A Okay. Well, the Spanish is saying estos cabrones, and
18 the English words will be these bastards.

19 Q These bastards would be the English translation?

20 A Correct.

21 Q Okay. Let's flip to the third page.

22 A Okay. In Spanish will be y mi pistola, and then again
23 y mi pistola, and which the English translation will be and
24 my gun, and my gun. And then there's background -- there
25 were background voices saying in Spanish este cabron no se

Teresa Sampson - Direct examination
by Solicitor Gowdy

1 salve, which in English will be this bastard is not going to
2 get away, get away with it.

3 Q Okay.

4 A And then there is another speak in Spanish again. No
5 digus nada and English will be don't say anything, don't say
6 anything.

7 Q All right. And then on the last page, after we hear
8 the law enforcement voice, y'all go outside --

9 A Uh-huh. (Affirmative).

10 Q -- can you translate the next comment made on the 9-1-1
11 tape?

12 A Yes, it's Spanish, no digus nada, and English it will
13 be don't say anything.

14 Q Don't say anything?

15 A Anything.

16 Q Mrs. Sampson, thank you for your time. Please answer
17 any questions the defense attorney may have for you.

18 THE COURT: Mr. Collins, your witness.

19 MR. COLLINS: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. COLLINS:

22 Q Now, ma'am, this little chart that Mr. Gowdy was
23 referring to is about three and a half pages long, is that
24 correct?

25 A Yeah, I believe so, uh-huh. (Affirmative).

Teresa Sampson - Cross-examination
by Mr. Collins

1 Yes, three and a half pages.

2 Q And out of that three and a half pages I believe there
3 were nine Spanish phrases, is that correct?

4 A I didn't count them. But yes, somewhere between eight
5 and nine. I'm getting eight.

6 Q And so, out of that entire phone call, which covers in
7 your chart about three and a half, four pages, there was
8 just a very small portion in Spanish, is that correct?

9 A Yes, that's correct.

10 Q All right. So---

11 A I would say that.

12 Q And there was a, a -- in comparison to the Spanish, how
13 much P'urhepechas or Tarascan was there?

14 A In the background there was, is it Tarascan, spoken
15 more than the caller.

16 Q So, of, of the three languages, English, Tarascan, and
17 Spanish, Spanish was by far the smallest portion of that
18 phone call, is that correct?

19 A Yes, I would agree with that.

20 Q Okay. And when you were talking about the phrase what,
21 como?

22 A Yes.

23 Q Are -- you, you said that in this particular context
24 that's, that's what that phrase meant, correct?

25 A Yes, correct.

1 Q Does that have different meanings in a different
2 context?

3 A It depends. Yeah, he was -- when the dispatcher was
4 trying to communicate with the caller, he acted like he
5 couldn't hear or understand. So, he said como like you
6 would say in English what or I didn't want to put excuse me
7 because that would of been more polite. But he say como.
8 You know, what.

9 Q Okay. So, even something as simple as what could of
10 been translated a different way?

11 For example, what or excuse me or some other -- there's
12 another way to take that from Spanish and put it into
13 English and convey the same idea, is that correct?

14 A Well, when you do translation, you translate meaning,
15 not word-for-word because, you know, you, you're trying to
16 translate what they're saying.

17 Q Okay. So, is it fair to say that in going from one
18 language to the other there's some -- it's, it's not a
19 literal science?

20 There's some of your own personality or your own
21 personal feelings in, injected into the final product?

22 A No, there is not none of my personal feelings or
23 personal. You just try basically to convey meaning --

24 Q Okay.

25 A -- and translate, you know.

Teresa Sampson - Cross-examination
by Mr. Collins

1 Q But, but you personally had to make the decision to
2 call it, to, to translate it as what or excuse me or as some
3 other, some other word from Spanish in English, correct?

4 A Yes, I make that decision because I thought it was the
5 most accurate translation.

6 Q Okay. So, you had---

7 A To the best of my knowledge.

8 Q Okay. Now, the, the one word or the one phrase estos
9 cabrones, and I, I probably---

10 A Yes.

11 Q ---mispronounced that, is it fair to say that that
12 particular phrase has different -- let me ask, let me ask it
13 a different way.

14 Is that a slang or a -- is that a slang phrase?

15 Does that word have different meanings also, cabrones?

16 A Not -- no, not really. I mean it depends how you use
17 it, but not different meanings. I mean you get somebody can
18 use it as, you know, joking with something. But it's, it's
19 a bad word actually. I mean it's---

20 Q Well, is---

21 A ---bastard.

22 Q In different areas of the country or in Latin America
23 would that have a different connotation in different
24 cultures or different areas that speak Spanish?

25 A Probably so.

Teresa Sampson - Cross-examination
by Mr. Collins

1 Q Okay.

2 A It depends.

3 Q So, it may have a different meaning in one portion of
4 Mexico than it has in a different portion of Mexico?

5 A I would say Mexico -- not, not in Mexico. I think
6 pretty much in Mexico it means the same thing in the north
7 and the south cause --

8 Q Now, just to side-track a little bit, where, where were
9 you actually -- where were you born?

10 A I was born in Chihuahua, the State of Chihuahua,
11 Mexico.

12 Q Okay. And is that a, a metropolitan area of, of
13 Mexico?

14 A Chihuahua, si, which is the capital of the State of
15 Chihuahua. Yea, it's about a million people.

16 Q About a million people?

17 A Population, uh-huh. (Affirmative).

18 Q So, it's, it's not a small rural farming area?

19 It's a, a city.

20 A Yes, it is a city. It's a capital of the State.

21 Q All right. And how long were you in Chihuahua?

22 A I was -- I don't know, in college. Twenty-two years
23 old, twenty-three.

24 Q Okay. So, you actually immigrated from Chihuahua to
25 the U.S. when you were in your mid 20's?

Teresa Sampson - Cross-examination
by Mr. Collins

1 A Yes, that's correct.

2 Q And the majority of the time there, were you in that,
3 in that city, in that metropolitan area?

4 A Yes.

5 Q Okay. And talking about your, your college education,
6 that was done in Chihuahua also?

7 A Yes.

8 Q Okay. And then going back to your translation, the
9 last little bit, that, the one phrase, that's este cabron no
10 se salva. It's on Page 3.

11 A Yes.

12 Q About, about one-third of the way down.

13 A Yes.

14 Q Now, you've, you've given a, a translation of, of that
15 phrase. The, the translation you gave, this bastard is not
16 going to get away with it, that has -- it's a much longer
17 phrase than the Spanish version, is that correct?

18 The Spanish version---

19 A Yes, uh-huh. (Affirmative).

20 There was, yes.

21 Q Can you tell me literally what, what each one of those
22 five words in Spanish means?

23 A Word-for-word?

24 Q Yes, ma'am.

25 A Verbatim.

Teresa Sampson - Cross-examination
by Mr. Collins

1 Q Yes, ma'am.

2 A Este mean these. Cabron means bastard. No, of course,
3 is no. Se, it's a verb used here. It's a compound verb
4 meaning not gonna get away with it.

5 Q No se salva, does that not right literally mean will
6 not be saved?

7 A Yeah, I guess it can.

8 Q Okay. So, if this bastard will not be saved is the,
9 is the exact literal translation of those five words?

10 A Yeah, that, that was background, people speaking in the
11 background. So, that's to the best of my knowledge, and I
12 believe that's what I, I got.

13 Q And, and I don't, I don't mean to be difficult, but
14 the, the, the question was literally those five words mean
15 this bastard will not be saved, is that correct?

16 A Yeah, if it was this phrase by itself. Not a part of
17 the conversation, yeah, you can say that it, it means that,
18 that's literal---

19 Q Okay. So---

20 A ---meaning.

21 Q So, that's the literal translation for it.

22 What you gave us earlier was your version of how you
23 think it should have, have come across in English?

24 A Well, literal translations are not necessarily correct
25 translations. You can not translate something that is---

Teresa Sampson - Cross-examination
by Mr. Collins

1 MR. COLLINS: Your Honor, I have no further questions
2 for this witness.

3 THE COURT: Mr. Gowdy.

4 SOLICITOR GOWDY: Very, very briefly, Your Honor.

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 BY SOLICITOR GOWDY:

8 Q Mrs. Sampson, the, the comment about bastards was a
9 background voice, correct?

10 A Yes, that's correct. Background voice.

11 Q You separated out what the caller said from what was
12 said in the background?

13 A Yes, that's correct.

14 Q All right.

15 A That's correct.

16 Q Let, let's, let's focus for just a second on what the
17 caller said. This -- I'm gonna mess this up, but I'm gonna
18 try it. Well, I'm not even gonna try it.

19 What is that word?

20 A Y mi pistola.

21 Q Y mi pistola.

22 Are there any other possible translations of that?

23 A No, none.

24 Q Okay. And that translated into what?

25 A And my gun.

1 Q All right. And was that background or was that the
2 caller?

3 A That was the caller.

4 Q That was the caller.

5 Okay. And then right below that is y mi pistola?

6 A Y mi pistola.

7 Q Okay. And is there any other translation other than
8 and my gun?

9 A No, there is none.

10 Q Okay. And that would be the caller again, right?

11 A Yes, that's correct.

12 Q All right. Let's go down a couple of lines to what was
13 said no digus nada.

14 MR. COLLINS: Your, Your Honor, I would object to this.
15 This is simply a repeat of the direct examination. It's not
16 a, a direct response to the cross.

17 THE COURT: Your cross-examination was concerning
18 possible other translations for several of the phrases. I
19 think this is in response to a new issue that was raised
20 during cross.

21 I'll allow you to proceed.

22 Go ahead, Mr. Gowdy.

23 SOLICITOR GOWDY: Thank you, Your Honor.

24 Q A couple, couple lines down, Mrs. Sampson.

25 No digus nada?

Teresa Sampson - Redirect examination
by Solicitor Gowdy

1 A No digus nada.

2 Q Okay. And that would be the caller?

3 A Correct.

4 Q And how does that translate into English?

5 A Don't say anything.

6 Q Don't say anything.

7 All right. And then flip over on the last page,

8 speaking Spanish to the people in the background, and this

9 would be the caller?

10 A Correct, the caller.

11 Q No digus nada?

12 A Yes, don't say anything again.

13 Q All right. Any other translation possible for no digus
14 nada?

15 A No, there is none.

16 Q Thank you, Mrs. Sampson.

17 A You welcome.

18 THE COURT: Recross?

19 MR. COLLINS: Nothing else, Your Honor.

20 THE COURT: Ma'am, you may step down. Thank you very
21 much.

22 WITNESS: Thank you.

23 SOLICITOR GOWDY: Your Honor, we would ask that she
24 be---

25 THE COURT: Any objection to her being excused?

1 MR. COLLINS: No, Your Honor.

2 THE COURT: Ma'am, you're free to go if you'd like.

3 Thank you very much.

4 WITNESS: Thank you.

5 THE COURT: Ladies and gentlemen, this is an
6 opportunity we're gonna take to break for just a few
7 minutes. If any of you happen to enjoy smoking, we do allow
8 you to step outside and do that. A bailiff will have to
9 accompany you while that occurs. So, let us know if that's
10 necessary. Anything else you need, please let the bailiffs
11 know that.

12 I will caution you, as I do every time that you leave
13 the courtroom, not to begin any discussions concerning this
14 case. You've only heard part of the evidence. And as I've
15 told you at the beginning of the trial it would be improper
16 for you to conduct any discussions concerning any matter
17 until you've heard all the evidence and I've charged you
18 concerning the law.

19 So, we'll take about a ten to fifteen minute break.
20 You're free to retire to the jury room.

21 Thank you very much.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right. Court is in recess for about
25 ten to fifteen minutes.

1 Thank you very much.

2 (Whereupon, a short recess was taken at this time.)

3 THE COURT: State ready to proceed?

4 SOLICITOR GOWDY: Yes, sir, Your Honor.

5 THE COURT: Is the defense ready to proceed?

6 MR. COLLINS: Yes, Your Honor.

7 THE COURT: All right. Let's bring the jury in.

8 (Whereupon, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. The record will reflect that
11 all jurors have returned to the courtroom. And when we took
12 our break the State was in the process of presenting its
13 evidence.

14 You may call your next witness.

15 SOLICITOR GOWDY: Thank you, Your Honor.

16 May it please the Court.

17 The State would call Mr. Joaquin Marquez.

18 THE COURT: Sir, come forward and be sworn please.

19 JOAQUIN MARQUEZ, being first duly
20 sworn, testified as follows:

21 THE COURT: Sir, have a seat in the witness stand.
22 State your name for the record please.

23 WITNESS: Okay. My name, my name is Joaquin Marquez.

24 THE COURT: All right. Mr. Gowdy, it's your witness.

25 SOLICITOR GOWDY: Thank you, Your Honor.

Joaquin Marquez - Direct examination
by Solicitor Gowdy

1 DIRECT EXAMINATION

2 BY SOLICITOR GOWDY:

3 Q Mr. Marquez, can you tell the jury where you work and
4 where you live?

5 A Well, I'm a teacher, indigenous teacher from Mexico,
6 from Michoacan and right now I work for Reynolds School
7 District in the State of Oregon, Portland, Gracien, Gracien
8 is the specific, specific area.

9 Q Do you also -- are you also employed, on a part-time
10 basis, with a, with a company called About Languages or do
11 you do interpreting?

12 A Yes, but I didn't -- this is my first interpretation in
13 the Court. I usually work with the families and the
14 students from middle school and high school and elementary
15 school.

16 MR. BRANNON: Your Honor, excuse me.

17 May we approach briefly?

18 THE COURT: You may.

19 (Whereupon, a bench conference was held out of the
20 hearing of the jury at this time.)

21 MR. BRANNON: Forgive me, Your Honor.

22 THE COURT: You may proceed, Mr. Gowdy.

23 SOLICITOR GOWDY: Thank you, Your Honor.

24 Q Mr. Marquez, I'm sorry to, to have stopped you.

25 You work, on a part-time basis, with a company called

Joaquin Marquez - Direct examination
by Solicitor Gowdy

1 About Languages?

2 A Yes, I work like a liaison to help the indigenous
3 community from Mexico. I work for the Mistakos, Subaltakos,
4 Theekas, Myans, P'urhepechas or Tarascan.

5 Q What is your native language?

6 A My first language is Tarascan or P'urhepecahs.

7 Q Okay. Do you also speak Spanish?

8 A Yes.

9 Q Okay. In the ranking of the languages in, from your
10 standpoint in terms of your---

11 A Uh-huh. (Affirmative).

12 Q ---proficiency, is Tarascan first?

13 A Yes.

14 Q English and Spanish would be second?

15 A Yes, Spanish is my second language, and English is my
16 third language.

17 Q Okay. Have you listened -- were you in the Court this
18 morning when the 9-1-1 tape was played?

19 A Yeah.

20 Q Have you listened to that 9-1-1 tape previously?

21 A Yes, like maybe 25 times or more than that.

22 Q A lot?

23 A Yes.

24 Q Do you -- I'm gonna be asking you whether or not
25 anything is said in Tarascan on the 9-1-1 tape.

Joaquin Marquez - Direct examination
by Solicitor Gowdy

1 A Uh-huh. (Affirmative).

2 Q And if so, can it be translated into English.

3 So, before I ask you that, would you like to hear the
4 9-1-1 tape again?

5 A Yes.

6 Q Would that, would that benefit you?

7 A Yeah.

8 Your Honor, could I ask Mr. Thompson to play the 9-1-1
9 tape?

10 THE COURT: You may do.

11 Mr. Thompson, if you'll come forward and set that up.
12 Just set it on the bar there will be fine.

13 Q Do you need a pencil or something to write with, Mr.
14 Marquez?

15 A Yes, please.

16 THE COURT: Are you ready, sir?

17 WITNESS: Yes.

18 THE COURT: You may proceed, Mr. Thompson.

19 (Whereupon, a portion of State's Exhibit No. 15 was
20 played for the jury at this time.)

21 A Stop.

22 He says quanica pistola, and in English means, quanica
23 pistola. It's not in Spanish. It's Tarascan, P'urhepechas,
24 and it means throw the gun.

25 (Whereupon, another portion of State's Exhibit No. 15

Joaquin Marquez - Direct examination
by Solicitor Gowdy

1 was played for the jury at this time.)

2 Q Stop again.

3 I can not, I can not listen very well in this part
4 because it's no, no noisy in the, in the conversation. But
5 I can heard that says enden ched wolitas. She was her wife,
6 yeah.

7 (Whereupon, another portion of State's Exhibit No. 15
8 was played for the jury at this time.)

9 A Is she already died, and somebody is talking. It's
10 not, it's not Santiago, but somebody else. She says she
11 already die. She's, he's asking.

12 (Whereupon, another portion of State's Exhibit No. 15
13 was played for the jury at this time.)

14 A Anpusha de, anpusha de. It's -- well, I don't have a
15 specific translation, but this is a -- we use these kind of
16 phrases like, like something is happening. It's mean like
17 something is happening. Anpusha de, anpusha de.

18 (Whereupon, another portion of State's Exhibit No. 15
19 was played for the jury at this time)

20 A Did you already call the ambulance. Yes. Somebody is
21 asking to Santiago. It's a lady. She's asking did you
22 already call the ambulance, and he's answering yes, I
23 already did.

24 (Whereupon, another portion of State's Exhibit No. 15
25 was played for the jury at this time.)

Joaquin Marquez - Direct examination
by Solicitor Gowdy

1 A Benunde, benunde. It's mean in English, shut up, shut
2 up. Santiago is telling to somebody. I don't know who it
3 is.

4 (Whereupon, another portion of State's Exhibit No. 15
5 was played for the jury at this time.)

6 A Here is the police, here is the police.

~~7 (Whereupon, another portion of State's Exhibit No. 15
8 was played for the jury at this time.)~~

9 Q Oh, stop, stop it.

10 Can you -- just a little bit. Like five seconds. Just
11 a little bit. Maybe more, more, more. Yeah, more.

12 There you go. No, more more. Yeah, a little bit more.
13 There.

14 Here is the police, here is the police. Alecia polica,
15 alecia polica. Here is the police, here is the police, and
16 then quanica pistola, throw the gun, throw the gun. Said
17 quanica pistola, quanica pistola.

18 (Whereupon, another portion of State's Exhibit No. 15
19 was played for the jury at this time.)

20 Throw the gun, throw the gun. It says two times.

21 (Whereupon, another portion of State's Exhibit No. 15
22 was played for the jury at this time.)

23 A Asaaminango. It says asaaminango, asaaminango way.

24 Don't tell anything. Don't tell anything.

25 (Whereupon, another portion of State's Exhibit No. 15

Joaquin Marquez - Direct examination
by Solicitor Gowdy

1 was played for the jury at this time.)

2 A Asaamin alinga, asaamin -- it's only one time. Asaamin
3 alinga. Don't tell anything.

4 (Whereupon, the remaining portion of State's Exhibit
5 No. 15 was played for the jury at this time.)

6 A Yeah, I think that's all. But there is more
7 conversation in the back, the background and it's a lot of
8 noise. So, I can't hear it very well. But there is more
9 talking.

10 Q How many different languages are you able to hear on
11 that 9-1-1 call, Mr. Marquez?

12 A Three different languages.

13 Q And they are?

14 A Tarascan or P'urhepechas, it's the same, and Spanish
15 and English.

16 Q With specific reference to Tarascan, I was trying to
17 write as you were, as you were talking to the jury or
18 interpreting, throw the gun?

19 A Throw the gun, quanica pistola.

20 Q Is it -- she was your wife or she was her wife?

21 A It says chid walla dist, that's I heard. It says she
22 was your wife.

23 Q ... Okay. She was your wife.

24 And then she already die?

25 A Yeah, it's, it's a -- I think it's a person. I don't

Joaquin Marquez - Direct examination
by Solicitor Gowdy

1 know who it is. Somebody. But it's not a lady. It's a
2 person. It's a gentleman. He says wiesca, he's asking, is
3 she already die.

4 Q Okay. And then something is happening, which you said
5 was kind of a, a colloquialism?

6 A No, it says anpusha de, anpusha de. It's, it's like an
7 expression. It's not very -- it's not a specific, a, a
8 word. We use it like an expression when something is
9 happening.

10 Q Okay. Then I wrote down did you already call the
11 ambulance.

12 A Yes, somebody is asking to Santiago, to Mr. Rios,
13 benunde, benunde alecia polica, did you already call the
14 ambulance.

15 Q And then shut up, shut up.

16 A He says inundia, inundia. It's shut up, shut up.

17 Q And then here is the police, here is the police.

18 A Alecia polica, yes. It says -- I don't remember
19 exactly though. But it says alecia polica. Hunesta polica,
20 something like that, like hunesta polica, alecia polica, the
21 police is here, the police is here.

22 Q Okay. And then throw the gun, throw the gun.

23 A Quantica pistola, quantica pistola, yes, like two times.

24 Q All right. Don't tell anything, don't tell anything.

25 A Don't tell anything, don't tell anything.

Joaquin Marquez - Cross-examination
by Mr. Brannon

1 Q Thank you, Mr. Marquez. Please answer any questions
2 the defense may have for you.

3 THE COURT: Mr. Brannon.

4 MR. BRANNON: Please the Court?

5 THE COURT: Your witness.

6 MR. BRANNON: Your Honor, can I have one second?

7 THE COURT: Yes, sir.

8 (Pause.)

9 CROSS-EXAMINATION

10 BY MR. BRANNON:

11 Q Mr. Marquez, how are you?

12 A I'm fine.

13 Q All right. Now, you have been -- you're kind of
14 playing a double roll right?

15 You're a witness now?

16 A Yeah.

17 Q And a translator, right?

18 A Yeah, I think I had -- yes, yeah. It's part -- I don't
19 have a lot of knowledge about the, the Court cases. This is
20 my first time.

21 Q Okay.

22 A I have lived in Mexico for all my life. So, it's
23 something weird for me. So --.

24 Q Okay. But you've been in this trial the whole, since
25 it started, right?

1 A Yes.

2 Q And did you hear that police officer, that very first
3 police officer testify, the one that got there, he was the
4 first one there, did you hear him testify?

5 A Yeah.

6 Q Okay. And he said there were four people at the house
7 when he got there, right?

8 A Yes.

9 Q That was Santiago?

10 A Uh-huh. (Affirmative).

11 Q His mother, Isabel?

12 A Yeah.

13 Q Alex P. his younger brother?

14 A Yes.

15 Q Cynthia P. his younger sister, right?

16 A Yeah.

17 Q Now, unfortunately, his wife was dead.

18 There were four living people at the house, right?

19 A Uh-huh. (Affirmative).

20 Q In Tarascan on that tape it said throw the gun,
21 correct?

22 A Yes.

23 Q Who said that?

24 A I think it's a person who's calling the 9-1-1.

25 Q Would that be Santiago?

Joaquin Marquez - Cross-examination
by Mr. Brannon

1 He was on the phone, correct?

2 A Yes.

3 Q And it was the caller that said throw the gun, correct?

4 A Yeah.

5 Q Okay. If I have a gun in my possession and I want to
6 throw the gun, do I need to tell anybody to throw the gun?

7 A I don't know.

8 Q Okay. If, if you have a gun in your hand--

9 A Yes.

10 SOLICITOR GOWDY: Your Honor, I, I'm not sure anybody
11 can answer that question. I, I don't think Mr. Marquez
12 knows whether the defendant handed the gun to somebody and
13 said go throw it. I, I, I just don't see how he can answer
14 that question.

15 THE COURT: Mr. Brannon.

16 MR. BRANNON: I'll rephrase the question.

17 THE COURT: Well, again, if, if you're gonna ask a
18 hypothetical question, it has to be based upon evidence that
19 is in the record and correctly state the evidence that is in
20 the record. And, and so, I'm gonna caution you that
21 whatever question you ask, if it is asking this witness a
22 hypothetical question, it must be based on evidence that is
23 already on the record and use that evidence.

24 MR. BRANNON: All right.

25 THE COURT: You may proceed.

1 Q Mr. Marquez, in the, on the tape in Tarascan --

2 A Uh-huh. (Affirmative).

3 Q -- the caller says throw the gun. correct?

4 A Yeah.

5 Q Based on your interpretation and your listening to that
6 tape recording, do you believe the caller was telling
7 someone else to throw the gun?

8 A Yeah.

9 Q You do?

10 A Yes.

11 Q Okay. Did you hear the lady who testified just a
12 moment ago who was a translator.

13 Did you hear her testimony?

14 A Uh-huh. (Affirmative).

15 Q Did you hear her translation of Spanish wherein someone
16 said this bastard won't get away with it?

17 A Well, I didn't pay attention in the Spanish, in the
18 Spanish language. Just in indigenous language right now.

19 Q Okay. But you translated it, right?

20 A Yeah.

21 Q And she said this bastard won't get away with it,
22 right?

23 A Yeah.

24 Q Okay. And then later on, in Tarascan --

25 A Uh-huh. (Affirmative).

Joaquin Marquez - Cross-examination
by Mr. Brannon

1 Q -- did you hear a voice, a male voice in the
2 background?

3 A Uh-huh. (Affirmative).

4 Q What did that male voice say?

5 A It says she already die. She's asking---

6 Q Okay.

7 A Well, he's asking. Yeah, he's asking to somebody else.

8 I don't know who, who's he's asking. But he's asking she's
9 already die.

10 Q In your opinion, sir, was that male voice a young child
11 or an adult?

12 A Adult.

13 Q Okay. It wasn't Santiago, the caller?

14 A No.

15 Q Correct?

16 A No.

17 Q And we know that when the first officer got there there
18 were four people?

19 A Uh-huh. (Affirmative).

20 Q Santiago, Isabel, ^{Alex P.} and ^{Cynthia P.} correct?

21 A Yeah. Correct.

22 Q But the way you've translated the Tarascan, there was
23 another adult male in the house, correct?

24 A Yes.

25 Q Okay. All right. I'm gonna change the subject

Joaquin Marquez - Cross-examination
by Mr. Brannon

1 completely now.

2 Where did you, where did you move from?

3 Where in Mexico did you live?

4 A I live Michoacan.

5 Q Michoacan?

6 A Yes, it's a state.

7 Q Kind of like Michigan except different?

8 A Yeah, it's a little bit similar.

9 Q Okay. All right. In Michigan --

10 A Uh-huh. (Affirmative).

11 Q -- do you have a Court like this?

12 A No.

13 Q Do you have a judge like that one?

14 A No, we don't have judges.

15 Q Sir, in your country, do you have the right to remain
16 silent?

17 A I don't want to say about -- I think the Mexico is very
18 diversity. It depends where you live. If you live in the
19 big cities, you have a different kind of laws. Well, it's
20 the same law. But you have different kind of -- I don't
21 know how, I don't know how to say this. You have a
22 different kind of, of cases.

23 Q Okay.

24 A And then in the small towns we don't have judges. We
25 don't have courts.

Joaquín Marquez - Cross-examination
by Mr. Brannon

1 Q All right. What happens if someone breaks a law in
2 your small town?

3 SOLICITOR GOWDY: Your Honor, I would object on the
4 basis of relevance. If he's not from the same small town as
5 the defendant, it's interesting. It's just not relevant.

6 THE COURT: Yes, sir.

7 MR. BRANNON: Your Honor, I will, if you give me the
8 opportunity, I'll lay a little better foundation.

9 THE COURT: I'm gonna require you do so.

10 Q Okay. Do you know where Santiago Rios is from?

11 A Yeah. Yes.

12 Q Okay. And how far from where you came from is the town
13 or the village where he came from?

14 A Like 12, 12 maybe, 12 or 15 kilometers.

15 Q Kilometers?

16 A Yeah.

17 Q Would you say that's relatively close?

18 A Yeah, it's very close.

19 Q Okay. Do you come from a small village?

20 A Yes.

21 Q Does he come from a small village?

22 A Yeah.

23 Q Would the, would, would the laws in your village be
24 similar to the laws in his village?

25 A Yeah, it's, it's very similar.

1 Q Okay. And would the enforcement of the laws in your
2 village be similar to the enforcement of the laws in his
3 village?

4 A Yes, it's very similar.

5 Q Okay. Now, if someone in a small village like yours or
6 like his breaks the law, what happens to them?

7 A Depends what kind of broke the law. If it's like
8 a domestic violence, we have different kind of rules. We
9 call mousa si costos dous like indigenous, indigenous laws,
10 indigenous -- we have different kind of laws. It's like
11 indigenous rules.

12 Q Okay. If someone breaks a law in your small village or
13 in his small village, do they get arrested?

14 A Depends what kind of broke the law. In the small towns
15 we have hefa denuncia. It's a person who is in charge about
16 the law in the community.

17 Q Okay. If that person who is in charge -- if, if you
18 were accused of a crime in your village, and that person who
19 was in charge asked you a question, do you have to answer
20 it?

21 A About the crime, we need to call another persons or to,
22 in different town, more biggest our towns. So, we need to
23 call another, big cities. They have specific polices. They
24 call policialis, and then there's like police department.
25 And then yeah.

Joaquin Marquez - Cross-examination
by Mr. Brannon

1 So, it's a different, different kind of law. So, you
2 need to know that in Mexico we have just one law about the
3 crimes of different kind. But indigenous, indigenous --
4 the, the ethnics in Mexico, the sas pis bodago in Mexico --
5 we have 63 different languages right now, and we have a big
6 diversity.

7 So, everybody indigenous grow up in different state.
8 We have a different law, indigenous law. But also we have
9 the, the Mexican rules call Mexican laws. So, it's
10 sometimes we move in -- depends what kind of, of, yeah, what
11 kind of --

12 Q Is the, is the Mexican system of justice anything like
13 the American system of justice?

14 A Well, I don't want to say all Mexico because in Mexico
15 we have big cities like Guatahaharo, Monte Ray, big cities,
16 a big population. And then we have the, the small towns,
17 very poor towns, very small villages we call pueblos and
18 then we have different kind of laws. So, it's, it's a
19 different kind of -- depends where you live in Mexico, what
20 state, and what village.

21 Q All right. In the village where he lived --

22 A Uh-huh. (Affirmative).

23 Q -- and in the village where you lived, was the justice
24 system anything like it is here in the United States?

25 A It's very very different.

1 MR. BRANNON: Okay. All right. One second, Your
2 Honor.

3 THE COURT: Yes, sir.

4 (Pause.)

5 MR. BRANNON: Nothing further. Thank you, Your Honor.

6 THE COURT: Mr. Gowdy.

7 MR. BRANNON: Very very very briefly, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY SOLICITOR GOWDY:

11 Q Mr. Marquez?

12 A Yes.

13 Q How long have you lived in the United States?

14 A Well, I was, I was in the State of Illinois for like
15 four, five, or six years. It was like ten years ago, maybe
16 eleven, eleven or twelve years ago. And then right now I
17 work for, I work since October to like six months in the
18 Reynolds School District like a liaison. But I was in
19 Mexico studying my college at the university, a training
20 teacher.

21 Q So, you've lived in the United States for a block of
22 time, went back to Mexico, and are now back in the United
23 States?

24 A Yes.

25 Q Okay. And pretty quickly, once you moved to the United

Joaquin Marquez - Redirect examination
By Solicitor Gowdy

1 States, were you able to figure out that it was a different
2 justice system than the one that you came from?

3 A Yeah.

4 Q Okay. Didn't take you very long, did it?

5 A Depends because I was in the high school.

6 Q Right.

7 A So, I have a lot of information about American history
8 and different kind of laws and the judges. I was in the ESL
9 program, bilingual program.

10 Q Sure.

11 Have you watched American television shows?

12 A Yeah.

13 Q Have you been to American movies?

14 A Yes, it's very common in my communities to.

15 Q Okay. Even back in Mexico they have American movies?

16 A Yes, we have a lot of, a lot of American movies and
17 also Mexican movies in, in the same area.

18 Q Okay. Thank you, Mr. Marquez.

19 A You welcome.

20 THE COURT: Recross?

21 MR. BRANNON: No. Thank you, Your Honor.

22 THE COURT: You may step down, sir. Thank you very
23 much.

24 THE COURT: Mr. Gowdy, you may call your next witness.

25 SOLICITOR CRICK: Thank you, Your Honor.

Reid Lindsay - Direct examination
by Solicitor Crick

1 The State calls Investigator Reid Lindsay.

2 THE COURT: I'm sorry, Mrs. Crick. I didn't know you
3 were calling anybody.

4 SOLICITOR CRICK: That's okay.

5 THE COURT: Okay. Sir, come forward to my left to be
6 sworn.

7 ~~REID LINDSAY, being first duly~~

8 ~~sworn, testifies as follows:~~

9 THE COURT: Have a seat in the witness stand please.
10 Once you're seated, if you would, please state your name for
11 the record.

12 WITNESS: William Reid Lindsay.

13 THE COURT: Mrs. Crick, it's your witness.

14 SOLICITOR CRICK: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY SOLICITOR CRICK:

17 Q Investigator Lindsay, could you tell the jury where you
18 work?

19 A Spartanburg County Sheriff's Office.

20 Q And how long have been with the Sheriff's Office?

21 A Ten years.

22 Q What is your job there at the Sheriff's Office?

23 A Currently assigned to the white collar sexual assault
24 division of criminal investigative division.

25 Q How long have you been in that division?

Reid Lindsay - Direct examination
by Solicitor Crick

1 A Been in CID, as we call it, for seven years.

2 Q How long have you been in law enforcement?

3 A Ten years.

4 Q Did you have to receive any special training, go to an
5 academy to become a law enforcement officer?

6 A Had to go to basic certification, which, at the time,
7 was eight weeks, and then, you know, once you're promoted to
8 detectives, they send you to a variety of schools, interview
9 schools, advance criminal domestic violence, courtroom
10 testimony, things like that.

11 Q At some point did you become involved in the
12 investigation of the case that happened November 23rd,
13 2006, involving Santiago Rios?

14 A Yes, I did.

15 Q How did you become involved in this case?

16 A I was contacted by Detective Gary who was the on call
17 homicide detective at the time and asked to respond to
18 assist him in his investigation. Specifically he wanted me
19 to go to the Sheriff's Office to get a search warrant for
20 the scene.

21 Q And I'm gonna remind him, just cause he hasn't been in
22 here, they have two interpreters. So, the slower and louder
23 we can talk the better it is for them to understand.

24 THE COURT: I, I was gonna mention that. You are
25 talking rather quickly, and I understand that may be the way

Reid Lindsay - Direct examination
by Solicitor Crick

1 you naturally talk. But you should, probably should slow
2 down some for us.

3 WITNESS: Yes, sir.

4 THE COURT: Thank you very much.

5 Q So, you were asked to get a search warrant for this
6 case?

7 A That's correct.

8 Q Now, to get a search warrant, did you have to get some
9 basic information from Investigator Gary?

10 A Yeah, he would of given me general details about what
11 had happened as he knew it.

12 Q What general details did you know at that point?

13 A It was my understanding that there was three masked
14 subjects that came to the door, and there was a
15 confrontation at the door between the victim and the
16 suspects, and she was shot in the process.

17 Q That's all you knew about the case at that point?

18 A That's correct.

19 Q Did you get a search warrant?

20 A Yes, I did. Well, he gave me additional information as
21 far as the description of the house, some things about the
22 house that you know you're going to the right place.

23 Q What did you do after you got the search warrant?

24 A I went to the scene.

25 Q When you got to the scene, did you execute the search

Reid Lindsay - Direct examination
by Solicitor Crick

1 warrant or did someone else?

2 A No, I gave the search warrant to one of the ID
3 officers, which I believe was ID Officer Bogan who would
4 then open it up and put any evidence that was taken off it
5 on the search warrant.

6 Q After you -- so, you didn't collect any evidence on the
7 scene?

8 A No.

9 Q What did you do when you got to the scene?

10 A After I gave the search warrant, it was pretty standard
11 for me to go into the house or the scene to take a look at
12 it so you know what you're dealing with. It's hard to
13 interview a person if you haven't seen, you know, what, what
14 was in the house, the physical evidence. So, I went through
15 and just did a walk through basically, what I described it
16 as, through the residence.

17 Q Had other officers already been there before you got
18 there?

19 A Yes, ma'am, the scene had been secured by the uniform
20 patrol officer that responded to the scene.

21 (Whereupon, a diagram was marked as State's Exhibit No.
22 16 for identification purposes only at this time.)

23 Q Okay. I'm gonna show you what's been marked as State's
24 Exhibit 16. See if this will help you as we kind of walk
25 through the crime scene.

Reid Lindsay - Direct examination
by Solicitor Crick

1 Do you recognize what that is?

2 A Yes.

3 Q What is it?

4 A This is a diagram of the house.

5 SOLICITOR CRICK: Okay. Your Honor, at this time I'd
6 like to enter this into evidence as State's 16.

7 MR. BRANNON: No objection.

8 THE COURT: Without objection it will be admitted as
9 marked.

10 (Whereupon, State's Exhibit No. 16 was received into
11 evidence at this time.)

12 THE COURT: You may proceed.

13 SOLICITOR CRICK: Can I publish it, Your Honor?

14 THE COURT: You may do so.

15 Q All right. Let's see. Is this the drawing I just
16 showed you or the diagram?

17 A Yes, it is.

18 Q When you got to the home that day, did you go in a
19 front door?

20 Is this the front entrance area?

21 A Yes, that's, that's the front door. The door is
22 perpendicular with the road. The door runs this way and the
23 road that way.

24 Q Tell us what it looked like when you came to the front
25 entrance of this area right here.

Reid Lindsay - Direct examination
by Solicitor Crick

1 What did you see in this area?

2 A Well, you see the porch and the door sits just behind
3 the porch. And when you go in, just to your right, there
4 was a bicycle and what I would describe like a scooter,
5 moped --

6 Q Uh-huh. (Affirmative).

7 A -- sitting to the right and then just like about five
8 foot over, I guess somewhere, you can see that table.

9 That's directly, when you walk through the door, you see the
10 table, and that's what I would describe as a shrine. It's
11 got a lot of candles, 30, 40 candles, candles that were lit.
12 Most of them were lit when we got there.

13 Q Did that seem unusual to you when you got there and saw
14 the candles lit for any reason?

15 A Not that they were lit, that was no disturbance that,
16 that the bikes were standing up, the candles were standing
17 up. There was -- I mean they would of been very easily
18 knocked over had there been a struggle.

19 Q Did you look in the area for any blood that may have
20 been on the floor?

21 A Yes, ma'am, I checked that area right there cause that
22 was my understanding of where the actual shot was fired.

23 Q Uh-huh. (Affirmative).

24 A And I also checked the path that led to where you see
25 the victim lying up there.

Reid Lindsay - Direct examination
by Solicitor Crick

1 Q Okay. Right here?

2 A Yes.

3 Q So, you, when you checked the area for any blood, you
4 were looking in the entrance area?

5 A Yeah, in the entrance to the door where it was my
6 understanding that the struggle took place.

7 Q And when you say the path to where her body was found,
8 tell me if I'm doing this right with that red dot.

9 Through the living room?

10 A Yes, ma'am.

11 Q Did you go through this den area?

12 A Yes, ma'am.

13 Q Did you come down this way?

14 A Yes, ma'am.

15 Q And into this bedroom?

16 A Yes, ma'am.

17 Q And in any of those areas did you see any blood
18 whatsoever?

19 A There's where I would describe as transfer footprints
20 like somebody had stepped on blood somewhere and, and moved
21 it through the house. You know, it could of been the
22 deputy. It could of been EMS.

23 Q Okay. But as far as any drops of blood---

24 A No, there was no droplets that, that would indicate
25 where a path where someone who had been shot would have

Reid Lindsay - Direct examination
by Solicitor Crick

1 trailed it.

2 Q When you went to the bedroom where the victim was, tell
3 us what you saw in there.

4 A She was on the, the floor with her face on the floor
5 with a puddle of blood around her face area.

6 Q Was she lying on her back?

7 A No, she was on her stomach I believe.

8 Q Do you recall?

9 A I can't remember or it could of been -- to me, it
10 seemed like the EMS had been in there. So, she may of been
11 on her stomach.

12 Q So you would of gotten there after EMS did?

13 A Yeah, I would, I would of been later on. They would of
14 been there for at least, you know, 15, 20 minutes before I
15 even got there based on the driving time from my house. I
16 had been awakened.

17 Q Okay. So, after you finished, after you finished
18 looking through the house, not collecting anything, what did
19 you do with that information?

20 A I left the house, the house and went back to the
21 Sheriff's Office where I found Investigator Gary and I
22 basically know what I saw that, based on my knowledge of
23 what the facts were, they were not fitting with what the
24 evidence was at the house. Particularly with the
25 disturbance in the front room with the candles and the, the

1 bike, the moped not being knocked over, as well as any
2 pattern there where the blood may have been trailed to where
3 the victim was.

4 Q So, in other words, it didn't look like intruders had
5 come into the home to you?

6 A No, it did not.

7 Q Okay. Did you relay that information to Investigator
8 Gary?

9 A Yes, I did.

10 Q What was he doing at the time?

11 A I believe he was speaking with the defendant.

12 Q Did you encounter any of the family members when you
13 got to the Sheriff's Office?

14 A Yes, I spoke with the defendant's mother and his, and
15 his brother and sister.

16 Q When you say his brother and sister, were they -- can
17 you give us an idea about what their ages were?

18 A They're, they're very young. I have it down. Eight
19 and nine I guess. I don't see it in here.

20 Q Okay.

21 A They were, they were very young.

22 Q Elementary school age children?

23 A Yes.

24 Q Okay. Did you speak with them?

25 A Yes, I did.

Reid Lindsay - Direct examination
by Solicitor Crick.

1 Q Let me stop you for a second.

2 Now, when you speak with a child, did you have anyone
3 else around you, with you, helping you?

4 A When, when I spoke with the children, I spoke with them
5 with Deborah Williams. Well, actually her name's changed.
6 Now she's married. But she's the victim assistance that we
7 have, one of the three that we have at the office, that
8 assist us anytime we have a, a violent type scene like this
9 where you have victim's families, potential witnesses, they
10 may be upset. They help calm them and provide, you know,
11 assistance with other things like they're hungry or
12 something. They go get them something to eat.

13 Q Now, this is Thanksgiving, correct, when you got called
14 to assist?

15 A This was the night of Thanksgiving.

16 Q Were you in a uniform?

17 Were you in street clothes?

18 A I was in street clothes. I don't remember exactly what
19 I was wearing. I think I was wearing blue jeans.

20 Q Do you normally wear a uniform?

21 A No, I don't. I don't. I do not wear a uniform in my
22 job duties except for like a part-time job or something.

23 Q Okay. Was Deborah Foster wearing a uniform, the victim
24 advocate?

25 A No, she, she doesn't wear a uniform. She wears suits,

Reid Lindsay - Direct examination
by Solicitor Crick

1 outfits similar to what you're wearing.

2 Q So, you talked with the children.

3 In talking to them, did you speak English or Spanish or
4 Tarascan?

5 A I spoke English.

6 Q Did you have any trouble understanding what they said
7 to you?

8 A No, none.

9 Q Did they seem to have any trouble understanding what
10 you were saying to them?

11 A No.

12 Q At any point did someone get them something to eat?

13 A Deborah went and got some food for them. I think it
14 was McDonald's.

15 Q Okay. Who did -- do you remember who you spoke with
16 first out of Alex P. and Cynthia P.

17 A I believe I spoke with Alex P. first.

18 Q And I don't want you to give us specifics about what he
19 said.

20 But did he give you some idea of what happened that
21 evening?

22 A At one point during the interview, yes, he did.

23 Q Okay. After you spoke with him, did you go speak with
24 Cynthia?

25 A Yes.

Reid Lindsay - Direct examination
by Solicitor Crick

1 Q Did she give you a version of what happened that
2 evening?

3 A Yes, she did.

4 Q At that point, was what she was telling you and what
5 Alex P. was telling you, were those the same?

6 A No, they were not.

7 Q After you talked to the kids, who did you go talk to?

8 A I went back up -- I had -- I think I believe I
9 initially talked to the defendant's mother and I went back
10 upstairs and talked to her again and basically related to
11 her what I had heard from the children.

12 Q So, you told their mother what the kids were saying?

13 A That's correct.

14 Q After you spoke with her, what did you do?

15 A On my first trip back up there I went back downstairs
16 after talking to her and interviewed the children again.

17 Q And you talked to Cynthia P. first?

18 A That's correct.

19 Q Did you ask her again what had happened that night?

20 A That's correct.

21 Q Was she able to tell you?

22 A Yes, she was.

23 Q Was she able to demonstrate?

24 A Yes, she was.

25 Q What did you do after you talked to her without

Reid Lindsay - Direct examination
by Solicitor Crick

1 specifically saying what they said?

2 A Spoke to ^{Alex P.} again.

3 Q And did he tell you what happened?

4 A Yes, he did.

5 Q Now, at this point was it different than what he told
6 you initially, initially?

7 A Yes.

8 Q Did what he was saying and what Cynthia was saying, did
9 those stories match up at that point in time?

10 A At that point, yes, they did.

11 Q Did you go back and speak with their mother?

12 A Yeah, I went back upstairs where Sergeant Baldarama I
13 believe was taking a statement from her, and then, you know,
14 gave her this new information.

15 Q And you, and your reason for going back to her was to
16 give her the new information you got from the kids?

17 A That's correct. I believed the children.

18 Q After you gave that information to her, what happened
19 next?

20 Did she give you another version?

21 A She gave a version that matched the children's.

22 Q Okay. And did she write that down in a statement?

23 A Yes, she did.

24 Q Where did you go after you spoke with her?

25 A I believe I went to the interview room with Mr. Gary.

Reid Lindsay - Direct examination
by Solicitor Crick

1 Q And was the defendant, Mr. Rios, in there as well?

2 A Yes, he was.

3 Q And at that point what happened?

4 A At some point we explained to him that his mother was
5 now telling us what had happened, and he had requested to
6 her, for her to come in there.

7 Q And at that point did he give a statement after she
8 came in there?

9 A Yes, she did. He did.

10 SOLICITOR CRICK: All right. Just bear with me one
11 second, Your Honor.

12 (Pause.)

13 SOLICITOR CRICK: I have no questions at this time.

14 THE COURT: Mr. Brannon.

15 MR. BRANNON: Thank you, Your Honor.

16 THE COURT: Your witness. Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. BRANNON:

19 Q Investigator Lindsay, how are you doing?

20 A Good.

21 How about yourself?

22 Q Good.

23 You said that when you got there you kind of took a

24 look through so you can familiarize yourself---

25 THE COURT: Do you, do you want us to lower the lights

1 so you can see?

2 MR. BRANNON: No, I don't think so, Your Honor.

3 THE COURT: Okay. You may proceed.

4 Q You, you wanted to familiarize yourself with the scene,
5 correct?

6 A Yes, sir.

7 Q Okay. And you had been told that intruders, struggle,
8 gunshot, correct?

9 A That was my understanding, yes, sir.

10 Q And then after your walk through, you said that things
11 weren't adding up, that, that what you saw didn't lead you
12 to the story you had heard, right?

13 A Yes, sir, based on the information that I had when I
14 was doing that, the physical evidence didn't match up with
15 what we were told.

16 Q Have you looked at the evidence list in this case and,
17 and, and the stuff that was collected from the crime scene?

18 A I have at some point. But I can't remember all of it.

19 Q Do you know what Item Number 1 and Item Number 3 were?

20 A I'm going to speculate they were hair.

21 Q Wads of hair?

22 Now, you reckon wads of hair equals struggle?

23 A Yes, sir.

24 Q So, there was a struggle?

25 A Yes, sir.

Reid Lindsay - Cross-examination
by Mr. Brannon

1 Q Okay. All right. I just wanted, wanted to make sure.

2 A Okay.

3 Q That table right up there, that's the one that had the
4 shrine on it?

5 A That's the way I describe it, yes, sir.

6 Q Okay. And it had candles on it, right?

7 A A lot of candles.

8 Q Okay. But the struggle's not in the same room as the
9 table, right?

10 A Based on the evidence with the hair, no, no, it's not
11 in the same room with the table.

12 Q Okay. So, if there was a struggle, the candles would
13 not necessarily have been knocked over, right?

14 A I'm, I'm not following what you're asking me.

15 Q Well, you said, I believe on your direct testimony, if
16 there was a struggle in here that the candles could have
17 easily been knocked over, correct?

18 A Yes, sir.

19 Q But the struggle doesn't appear to have occurred in
20 that room. It appears to have occurred in this room?

21 Correct?

22 A Oh, yes, sir.

23 Q So, the candles wouldn't have been knocked over, right?

24 A Correct.

25 Q And the bike wouldn't have been knocked over, right?

Reid Lindsay - Cross-examination
by Mr. Brannon

1 A Correct.

2 Q And the scooter?

3 A Correct.

4 Q Okay. All right. Any idea what religion that, that
5 shrine or -- was that a religious shrine, shrine?

6 A I think it was. I would guess Catholic.

7 Q Catholic. Okay. Thank you.

8 ~~All right. Now, you said that the crime scene had~~
9 already been secured by the, the patrol officers who arrived
10 on scene first, correct?

11 A Yes, sir, I based that in saying that there was a lot
12 of deputies there that had crime scene tape up.

13 Q Okay. But you said that when you walked through the
14 house there was already transfer. I think you said that it
15 could of been somebody stepped in it and then walked around.
16 Right?

17 A That's what it looked like to me, yes, sir.

18 Q Okay. Well, if the scene is secured, why would you
19 have blood transfer?

20 A Because you have a victim and EMS, and your first
21 priority is not necessarily evidence. It's someone could
22 still be there hurt that needs to, medical attention. So,
23 that's your first priority, make sure the victim -- you
24 know, she may be dying and not dead.

25 Q All right. When you walked into the bedroom in here,

Reid Lindsay - Cross-examination
by Mr. Brannon

1 did you, based on your experience, make an assumption as to
2 what had happened?

3 A I had an idea. Not necessarily what directly happened,
4 but I had, I -- my understanding was that the story that we
5 were given was inaccurate.

6 Q Okay. Now, there's only one entrance to this room,
7 correct?

8 A Yes, there's a door coming off that. It's like a short
9 hallway I would guess you would describe it.

10 Q But that's the only door into and out of that bedroom,
11 correct?

12 A Yes, sir.

13 Q Okay. All right. Based on what you saw in that
14 bedroom, could that have been a suicide?

15 A Did not appear to be a suicide to me.

16 Q Okay. My question was could it have been a suicide?

17 A I guess anything is possible. It did not appear that
18 way.

19 Q Okay. All right. Could it have been an accidental
20 shooting?

21 A Anything's possible. Did not appear to be.

22 Q Okay. All right. So, the truth of the matter is you
23 don't know what happened in that bedroom, do you?

24 A Now I do based off the test, what I, the information I
25 got from the witnesses.

Reid Lindsay - Cross-examination
by Mr. Brannon

1 Q Okay. When you walked in there that night, you didn't
2 know what happened, did you?

3 A No, sir.

4 Q And then you went to the police department and you took
5 statements, correct?

6 A Yes, sir.

7 Q And based on Santiago's own statement, that was an
8 accidental shooting, correct?

9 A I believe that's what he said in his statement.

10 Q Okay. So, the only thing you know is what my client
11 told you, right?

12 A No, sir.

13 Q Oh, okay. Now, I'm gonna change the subject a little
14 bit.

15 How familiar are you with handguns or pistols?

16 A I own a few.

17 Q Okay. And, and do you have specific training as a, as
18 a police officer or a sheriff's deputy?

19 A Yes, we qualify every year.

20 Q Okay. All right.

21 A Twice a year.

22 Q Have you ever known of an individual to cock a pistol
23 as a threatening gesture?

24 A Yes, sir.

25 Q All right. Have you ever known someone to ratchet a

Reid Lindsay - Cross-examination
by Mr. Brannon

1 shotgun as a threatening gesture?

2 A Yes, sir.

3 Q Okay. Once the handle, once the -- excuse me.

4 Once the hammer of a pistol is cocked, is it easier or
5 harder to discharge that pistol?

6 A You're asking about going from, well, I'm not no
7 expert, going from double action to single action on a
8 revolver or single action it would be less of a trigger
9 pull.

10 Q Right.

11 So, in, in other words, if, if you take the, the pistol
12 and you pull the hammer back and you cock the pistol, it
13 would take less effort to pull the trigger than if you had
14 to pull the trigger to get the hammer to come back and then
15 fire, correct?

16 A That's correct.

17 Q Okay. All right. If someone has a pistol and they're
18 pointing it at you, can you tell me the easiest way to stop
19 that pistol?

20 If you're close, what is the easiest way to stop that
21 pistol from firing is --?

22 A I guess grab the hammer to keep it from going forward.

23 Q Grab the hammer.

24 I don't have anything further, Your Honor. Thank you.

25 THE COURT: Mr. Gowdy.

1 Mrs. Crick.

2 SOLICITOR CRICK: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY SOLICITOR CRICK:

5 Q When you first got to the scene, I know Mr. Brannon was
6 asking you about where this struggle took place.

7 Now, you didn't have the benefit of the defendant's
8 second story at this point, did you?

9 A I didn't have the benefit of anybody's story except
10 what Detective Gary had told me.

11 Q So, what you know was initially what 9-1-1 knew?

12 A Basically three intruders at the front door.

13 Q Three intruders at the front door, and that's where you
14 looked for a struggle?

15 A That's where I was advised the struggle was.

16 Q And you didn't see any struggle, evidence---

17 A There was no struggle at the front door.

18 Q Okay. As far as blood transfer being on the floor, now
19 you can't tell us whether EMS or a family member's going
20 into the bedroom could of caused that transfer, can you?

21 A It could of been anyone. There was people in the house
22 before we got there.

23 Q Okay. Including EMS, including family?

24 A Absolutely.

25 Q Normally when you have a suicide involving a gun, do

Reid Lindsay - Redirect examination
by Solicitor Gowdy

1 you find the gun near the dead body?

2 A If you don't find the gun near the body, you got a real
3 problem.

4 Q Okay. And in this case we did not find the gun by the
5 body, did we?

6 A I don't believe we found the gun at all.

7 Q If we had the gun, could you then tell us exactly how
8 many pounds of pressure it would take to pull the trigger?

9 A I couldn't cause I'm not an expert, but yes, there are
10 experts at SLED specifically that can tell you exactly that.

11 Q And could you also have fingerprinted that gun to tell
12 us who handled it?

13 A Absolutely. We would of done that had we recovered the
14 gun.

15 Q Thank you. I have nothing further.

16 MR. BRANNON: One, Your Honor.

17 THE COURT: Yes, sir.

18 RE CROSS EXAMINATION

19 BY MR. BRANNON:

20 Q No struggle inside the front door, right?

21 A No, sir.

22 Q Signs of struggle in the living room?

23 A Yes, sir.

24 Q Hair?

25 A Yes, sir.

Reid Lindsay - Recross examination
by Mr. Brannon

1 Q Do you know whose hair it was?

2 A I do now.

3 Q Whose was it?

4 A I believe it was the defendant's.

5 Q Santiago Rios' hair, right?

6 A Yes, sir.

7 Q Thank you. Nothing further.

8 THE COURT: You may step down, sir.

9 All right. Ladies and gentlemen of the jury, we have
10 reached a point -- it's between 12:00 and 12:30. I told you
11 we'd try to break around 12:30 for lunch. So, we're gonna
12 do that at this time. I'm gonna give you the same cautions
13 that I gave you when you left yesterday. That is not to
14 discuss the case with anyone. Don't attempt to gather any
15 information outside of the courtroom. Don't listen to,
16 watch, read any media reports concerning the case. Don't
17 allow anyone to discuss the case with you. And if they do,
18 please report that upon your return to the courthouse.

19 There's a few eating establishments around the
20 courthouse. So, there might be some participants in this
21 trial at those establishments. If you, if you happen to be
22 at one, please don't engage in a conversation with those
23 people and don't place yourself in such a location that
24 you'll overhear their conversations. Because again, your
25 job is to decide the case solely upon the evidence presented

1 in this case and that's the testimony that you're hearing
2 from the witness stand and what comes in through that
3 testimony.

4 I'm going to ask that you be back in the courtroom,
5 let's say about a quarter till 2:00, 1:45. That will give
6 you a little more than an hour. That should give you time
7 to get something and to be back here.

8 So, 1:45, quarter till 2:00, be back in the jury room.

9 Thank you very much.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. This Court is in recess until
13 1:45.

14 The defendant remains in custody.

15 Thank you very much.

16 MR. BRANNON: Thank you, Your Honor.

17 (Whereupon, Court was in recess for the lunch hour.)

18 THE COURT: All right. Is the State ready to proceed?

19 SOLICITOR CRICK: Yes, sir.

20 THE COURT: Defense ready?

21 MR. COLLINS: Yes, Your Honor.

22 THE COURT: Bring the jury in.

23 (Whereupon, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. The record will reflect that

Alex P. - Direct examination
by Solicitor Crick

1 all jurors have returned to the courtroom. I trust everyone
2 had a good lunch and we're ready to continue with the
3 presentation of the State's case in this matter.

4 The State may call its next witness.

5 SOLICITOR CRICK: Thank you, Your Honor.

6 The State calls Alex P.

7 (Pause.)

8 THE COURT: Would you check on that for me, Mr.

9 Bailiff?

10 Thank you, sir.

11 (Pause.)

12 THE COURT: Sir, come forward.

13 Alex P. , being first duly

14 sworn, testified as follows:

15 THE COURT: Have a seat in the witness stand. Please
16 tell us your name.

17 WITNESS: Alex P.

18 THE COURT: You may proceed, Mrs. Crick.

19 DIRECT EXAMINATION

20 BY SOLICITOR CRICK:

21 Q Alex P. can you tell the jury what your whole name is?

22 A Alex P.

23 Q Okay. How old are you, Alex P.

24 A Ten.

25 Q Ten years old.

Alex P. - Direct examination
by Solicitor Crick

1 So, what grade are you in in school?

2 A Third.

3 Q Who is your teacher in third grade?

4 A Mrs. Brown.

5 Q Do you just have one teacher or you have a couple of
6 teachers?

7 A Just one.

8 Q Mrs. Brown is.

9 Do you like Mrs. Brown?

10 A Yes.

11 Q Okay. What school do you go to?

12 A Arcadia Elementary School.

13 Q Okay. Do you play any sports at school?

14 A Yes.

15 Q What do you play?

16 A Just basketball.

17 Q Just basketball.

18 Do you have any brothers or sisters?

19 A Yes.

20 Q How many brothers and sisters do you have?

21 A One brother and five sisters.

22 Q Can you tell the jury, if you can remember, what their
23 names are?

24 A Yes.

25 Q Okay. Go ahead.

Alex P.

- Direct examination

by Solicitor Crick

- 1 A Carmen, Rosa, Cynthia, and Compliasion.
- 2 Q And then -- is that it?
- 3 A No, there's one more.
- 4 Q Oh, one more.
- 5 Go ahead.
- 6 A Tucha.
- 7 Q Okay. Do they all live with you?
- 8 A No.
- 9 Q Okay. Do you have any brothers?
- 10 A Yes.
- 11 Q How many brothers?
- 12 A One.
- 13 Q What's your brother's name?
- 14 A Santiago.
- 15 Q Is that Santiago who's sitting right there?
- 16 That's your brother?
- 17 A Yes.
- 18 Q Okay. Are your brothers and sisters older than you or
- 19 are they younger than you?
- 20 A Older than me.
- 21 Q All of them are?
- 22 A (Witness nods affirmatively.)
- 23 Q So, are you the youngest one?
- 24 A Yes.
- 25 Q Okay. Tell us who lives with you in your house.

Alex P. - Direct examination
by Solicitor Crick

1 A My mom, my dad, and me and my, and two sisters, and my
2 brother..

3 Q Okay. So, two sisters and Santiago and your mom and
4 dad live in the house together?

5 A (Witness nods affirmatively.)

6 Q I'm gonna ask you some kind of weird questions.

7 But do you know what it means to tell the truth?

8 A (Witness nods negatively.)

9 Q Do you know what it means to tell a lie?

10 A No.

11 Q What, what does it mean if I'm telling a lie?
12 What does that mean?

13 A You're not telling the truth.

14 Q Okay. And if I'm telling a lie, am I telling something
15 that's right or something that's wrong?

16 A Something that's wrong.

17 Q Okay. If I tell something that's wrong or if I tell a
18 lie, what happens to somebody who lies?

19 A Get in trouble.

20 Q You get in trouble.

21 Okay. Your Honor, at this time I'd like to qualify
22 him, and I'm not sure if Mr. Collins has any objection.

23 THE COURT: Mr. Collins, Mr. Collins, any objection to
24 proceeding with this witness?

25 MR. COLLINS: No, Your Honor.

- 1 THE COURT: All right. You may proceed, Mrs. Crick.
- 2 SOLICITOR CRICK: Thank you.
- 3 Q I'm gonna ask you some questions about Thanksgiving.
- 4 Did you have an Aunt Eliza?
- 5 A Yes.
- 6 Q You did.
- 7 Who was her husband?
- 8 A Santiago.
- 9 Q Your brother?
- 10 A (Witness nods affirmatively.)
- 11 Q So, it was your Aunt Eliza?
- 12 A (Witness nods affirmatively.)
- 13 Q Do you remember a day when the police came out to your
- 14 house because she was shot?
- 15 A No.
- 16 Q You don't remember that day?
- 17 A No.
- 18 Q Okay. Let me, let me see if I can say it a different
- 19 way.
- 20 Who usually cooks for you on Thanksgiving?
- 21 A Eliza.
- 22 Q Eliza use to cook?
- 23 A (Witness nods affirmatively.)
- 24 Q Did she cook for you this Thanksgiving?
- 25 Do you remember?

Alex P. - Direct examination
by Solicitor Crick

1 A Yes.

2 Q I want you to think about the last time you saw your
3 Aunt Eliza.

4 Okay. Was that on Thanksgiving?

5 A Yes.

6 Q Did she cook turkey that day?

7 A Yes.

8 Q Who was she cooking that turkey with?

9 A Me.

10 Q Were you helping her?

11 A (Witness nods affirmatively.)

12 Q Was your mom in there helping?

13 A Yes.

14 Q Okay. So, they were cooking Thanksgiving?

15 A Yes.

16 Q That's the day that I want to talk to you about.

17 Okay. Tell me who all was there when you ate
18 Thanksgiving dinner that day.

19 Do you remember?

20 A Yes.

21 Q Tell me who was there.

22 A It was me, Aunt Eliza, and my mom, and my sister.

23 Q Just the four of you were there eating Thanksgiving
24 dinner?

25 A (Witness nods affirmatively.)

Alex P.

- Direct examination
by Solicitor Crick

- 1 Q Did you eat turkey?
- 2 A Yes.
- 3 Q Anything else?
- 4 A That's all.
- 5 Q That's all you can remember.
- 6 Was Santiago there when you ate turkey?
- 7 A No.
- 8 Q Do you know where he was?
- 9 A No.
- 10 Q Okay. After you finished eating turkey, did, what did
- 11 you do after you ate that day?
- 12 A We went in her room and watched TV.
- 13 Q And when you say we, was it just you or everybody?
- 14 Who all went in the room to watch TV?
- 15 A Just -- no, me, Eliza, and my mom.
- 16 Q Okay. And you were in the bedroom or in the living
- 17 room?
- 18 A Inside the room.
- 19 Q Inside the room.
- 20 Do you remember which room it was?
- 21 A Her room.
- 22 Q In, in her room watching TV?
- 23 A (Witness nods affirmatively.)
- 24 Q Where were, where was your sister at when you were
- 25 watching TV?

Alex P. - Direct examination
by Solicitor Crick

1 A She was there, but she was sleeping.

2 Q Was that Cynthia P.

3 A Yes.

4 Q She was asleep.

5 Okay. So, so, you were watching TV and was it bedtime
6 yet or was it getting close to bedtime?

7 A It was getting close to bedtime. So, I went to sleep.

8 Q You did.

9 What time do you usually go to sleep?

10 Do you know?

11 Is it the same every time or is it different sometimes?

12 A Different sometimes.

13 Q All right. So, you got tired of watching TV and went
14 to sleep.

15 Now, who went in there with you to go to sleep?

16 A My mom, my dad. No, my mom, me, and my sister.

17 Q Okay. And you were all in the room together?

18 A Yes.

19 Q And when you say your sister, you mean you and Cynthia P.
20 and your mom?

21 A (Witness nods affirmatively.)

22 Q Okay. And do you know where Eliza was?

23 A Yes, she was in the other room.

24 Q Do you know what she was doing in the other room?

25 A No.

- 1 Q You're not sure.
- 2 Okay. Now, did you see Santiago when he came home?
- 3 A No.
- 4 Q You didn't?
- 5 A I was already sleeping.
- 6 Q You was asleep. You were asleep. I'm sorry.
- 7 What made you wake up?
- 8 A I just heard. I just -- the police was already there
- 9 and I started crying and I went outside.
- 10 Q So, the thing that woke you up was when you heard the
- 11 police?
- 12 A (Witness nods affirmatively.)
- 13 Q And you woke up?
- 14 A (Witness nods affirmatively.)
- 15 Q What did you do after you woke up?
- 16 A I started crying. I saw my mom crying.
- 17 Q Okay.
- 18 A I started crying and I went outside.
- 19 Q Were you scared?
- 20 A Yes.
- 21 Q Why were you scared?
- 22 A I saw Eliza dead.
- 23 Q You did see her.
- 24 Was she in her bedroom?
- 25 A Yes. But I didn't went inside and see her.

Alex P. - Direct examination
by Solicitor Crick

1 Q You didn't?

2 A No.

3 Q Do you know if anybody else was in there with her?

4 A No.

5 Q You don't know.

6 Did you see Santiago then after you woke up?

7 A Yes.

8 Q You did.

9 And where was he?

10 A He was outside.

11 Q He was outside.

12 And did you know why your mom was crying at that time?

13 MR. COLLINS: Your Honor, I would object. This child
14 can't testify as to what the mother was thinking or why she
15 might of been crying.

16 THE COURT: I think the -- I'll sustain the objection
17 to the extent -- he can testify as to what his belief was.

18 SOLICITOR CRICK: Right.

19 THE COURT: He can't state what her state of mind might
20 of been.

21 So, if you'll rephrase the question.

22 Q Okay. Did you know what was going on at the time?

23 A No.

24 Q You didn't know why everybody was upset or crying?

25 A Yes.

Alex P.

- Direct examination

by Solicitor Crick

1 Q What, what was the reason that they were upset or
2 crying?

3 A That Eliza was dead.

4 Q That's why.

5 Were they talking about it?

6 A No.

7 Q They -- how did you know that she was dead?

8 A I saw the blood.

9 Q You did see it.

10 Okay. After your mom was upset and crying, what did
11 she do?

12 What did your mom do?

13 A She was just crying.

14 Q She was just crying.

15 What did Santiago do?

16 A I don't remember.

17 Q You don't remember what he did.

18 What did you do?

19 A I was just crying too.

20 Q You were upset too.

21 Now, did the police officer come to your house?

22 A Yes.

23 Q Did you talk to a police officer about what happened?

24 A No.

25 Q You never did?

Alex P. - Direct examination
by Solicitor Crick

1 A No.

2 Q Did they ever take you to the police office where the
3 police officers are?

4 A Yes.

5 Q Okay. When they took you, who else rode with you when
6 you went up there to talk to them?

7 A My mom, my dad.

8 Q Okay.

9 A And my brother and me and my sister.

10 Q And when you say your sister, are you talking Cynthia P.
11 went?

12 A (Witness nods affirmatively.)

13 Q Did you ride in a police car?

14 A Yes.

15 Q And once you got up to the police office, did you talk
16 to some people there about what happened?

17 A Yes.

18 Q Okay. You talked to a police officer?

19 A Yes.

20 Q And do you remember somebody taking you to McDonald's
21 to get a hamburger?

22 A Yes.

23 Q A, a lady?

24 A Yes.

25 Q When you talked to the officer, do you remember what

Alex P.

- Direct examination

by Solicitor Crick

1 you told the officer about what happened?

2 A No, I don't remember.

3 Q You don't remember talking to him?

4 A No.

5 Q Do you remember him asking you questions about what
6 happened to Eliza?

7 A No.

8 Q You don't?

9 Do you remember talking to the police officer about
10 peeking out your bedroom door?

11 MR. COLLINS: Objection, Your Honor. Asked and
12 answered. At this point she's already asked if she
13 remembered any questions or, or any conversation he had with
14 the officer. He stated no.

15 THE COURT: Well, she's asked a more specific question.
16 And under the rule, as I understand it, she has the right to
17 ask concerning the, the substance of the statement. Not
18 necessarily the exact wording, but the substance to see if
19 the witness admits or denies having made that statement.
20 I'll allow her to ask that question.

21 You may rephrase the question, restate it and proceed.

22 SOLICITOR CRICK: Thank you, Your Honor.

23 Q Alex P. do you remember telling a police officer, officer
24 that you and Cynthia P. were peeking out the door, the bedroom
25 door?

Alex P. - Direct examination
by Solicitor Crick.

1 A No.

2 Q You don't remember that?

3 Do you remember telling the officer that you saw Eliza
4 and Santiago arguing or fighting?

5 A No.

6 Q You don't remember telling the officer that?

7 A No.

8 Q Do you remember telling the officer that you saw
9 Santiago hitting Eliza?

10 A No.

11 Q And that your mom shut the door?

12 A No.

13 Q You don't?

14 Do you remember telling the officer that Santiago and
15 Eliza went into the bedroom?

16 MR. COLLINS: Again, Your Honor, I would object at this
17 point. She is, she is essentially making a statement for
18 him as if it is a, a, a statement of fact.

19 THE COURT: She's asking if he remembers having said
20 these statements, and, and again, I'm, I'm looking at Rule
21 613.

22 MR. COLLINS: Yes, sir.

23 THE COURT: And the witness has to be advised of the
24 substance of the statement is the way I understand it. And
25 she is asking him, I believe, if she, the substance of the

1 statement. She's not reading the statement verbatim. And
2 so, the witness has to be advised of the substance of a
3 prior statement, and I'm gonna allow her to continue to ask
4 questions along those lines. I'm not going to allow her to
5 read the statement into the record at this point in time.
6 But I do think the witness has the right to be advised of
7 the substance of the statement at this point in time.

8 MR. COLLINS: Yes, Your Honor.

9 THE COURT: So, I'm going to allow you to proceed, Mrs.
10 Crick. Again, the purpose here is not to put the entire
11 statement into the record if one exists. It is to advise
12 the witness of what you believe to be a substance of the
13 prior statement.

14 SOLICITOR CRICK: Thank you, Your Honor.

15 Q Do you remember talking to the officer about Santiago
16 telling you what to say about three men breaking in?

17 A No.

18 Q Do you remember telling the officer that you were
19 scared to tell the truth cause you didn't know what would
20 happen to Santiago?

21 A No.

22 Q You don't remember talking to the officer about any of
23 that?

24 A No.

25 Q Okay. Did you tell the officer the truth that night

Alex P. - Direct examination
by Solicitor Crick

1 when you talked to the officer?

2 A I don't know because I was scared at that time.

3 Q You were scared.

4 Well, that may of been true, but did you tell the
5 officer the truth that day when you talked to the officer at
6 the police office?

7 A No, I'm, I'm not sure. I, I, I just said it.

8 Q You just said it?

9 A Yes.

10 Q Well, I'm gonna ask you another question because do you
11 ever remember telling the Court before that you did tell the
12 officer the truth that night when we were in Court before?

13 A Yes.

14 Q You did.

15 So, did you tell the officer the truth that night?

16 A Yes.

17 Q Okay. Now, who have you been living with since Eliza
18 was shot?

19 A My brother, and me, and my two sisters, and my dad, and
20 my mom.

21 Q Living in your same house?

22 A No.

23 Q Different house?

24 A Yes.

25 Q Okay. How did you get here today?

Alex P.

- Direct examination
by Solicitor Crick

1 Who drove you here today?

2 A My dad.

3 Q Who else was riding in the car with you when you came
4 up here?

5 A My mom, me, and my sisters, and my little brother.

6 Q And Santiago?

7 A (Witness nods affirmatively.)

8 Q And is that how you're gonna get home today, too?

9 A No.

10 Q Are -- is, is your dad gonna drive you home?

11 A Yes.

12 Q Okay. Have you talked to these two gentlemen over
13 here, the attorneys for your brother?

14 Have you met with them before?

15 A Yes.

16 Q Did you meet with them in their office?

17 A Yes.

18 Q Okay. Do you remember what you talked about?

19 A No.

20 Q You don't remember?

21 A No.

22 Q Did you talk to anybody in your family about Court or
23 coming to Court?

24 A No.

25 Q Did you talk to them about what happened to Eliza?

Alex P. - Direct examination
by Solicitor Crick

1 A No.

2 Q And I'm gonna ask you again cause one time before when
3 we talked you had said that you talked about it a little
4 bit.

5 Do you remember that?

6 A No, I'm wrong. I don't remember that.

7 Q You don't remember that.

8 Okay. Did you hear Santiago on the telephone when he
9 was calling for the ambulance?

10 A No.

11 Q You didn't?

12 Did you see him at that time?

13 A No.

14 Q Alex P. do you know where the gun is that was used to
15 shoot Eliza?

16 A No.

17 Q You don't.

18 Just one moment, Your Honor.

19 (Pause.)

20 SOLICITOR CRICK: I think there's nothing further at
21 this time.

22 MR. COLLINS: Your Honor, if I may have just a moment.

23 THE COURT: Yes, sir.

24 (Pause.)

25 THE COURT: Any questions from the defense?

Alex P.
- Direct examination
by Solicitor Crick

1 MR. COLLINS: Your Honor, we have no questions for Alex P.
2 at this time.

3 THE COURT: All right. Alex P. you may step down. Thank
4 you very much.

5 Does he need to be escorted by someone somewhere?

6 I don't know where he needs to go.

7 SOLICITOR CRICK: His mom is right outside.

8 THE COURT: Thank you.

9 State may call its next witness.

10 SOLICITOR CRICK: Your Honor, the State recalls Reid,
11 Investigator Reid Lindsay.

12 THE COURT: All right. Officer Lindsay, come forward.
13 You've already been sworn for the purposes of this trial.
14 So, if you'll take the witness stand please, sir.

15 WITNESS: Yes, sir.

16 REID LINDSAY, having been
17 previously sworn, testified as follows:

18 THE COURT: I'll remind you that you have been placed
19 under oath and you remain under oath during this time as
20 well, sir.

21 WITNESS: Yes, sir.

22 THE COURT: You may proceed, Mrs. Crick.

23 SOLICITOR CRICK: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY SOLICITOR CRICK:

Reid Lindsay - Direct examination
by Solicitor Crick

1 Q Investigator Lindsay, I know you've already testified.
2 But I'm gonna go back and ask you a few more specific
3 questions.

4 A Yes, ma'am.

5 Q Specifically I want to ask you about your conversations
6 with Alex P.

7 A Yes, ma'am.

8 Q When you talked to Alex P. the first time -

9 A Yes, ma'am.

10 Q -- when you first got to the Sheriff's Office, what did
11 he tell you?

12 A Let me review my notes real quickly.

13 Q That's fine.

14 A He initially told me that he was asleep with his mother
15 in his room when the gun went off.

16 Q Did he seem very willing to speak with you about what
17 happened at that point?

18 A No, I noted in my report that he seemed reluctant to
19 talk. He was hesitant with his responses.

20 Q Okay. And at that point -- and again, I don't want you
21 to give any specifics about what Cynthia P. said.

22 But then at that point you talked to his sister?

23 A That's correct.

24 Q You came back and talked to Alex P. again, correct?

25 A That's correct.

Reid Lindsay - Direct examination
by Solicitor Crick

1 Q At that point, what did you, what did he say to you
2 about what happened?

3 A Let me read here. Well, I explained to him that it was
4 important, that he needed to tell the truth, and that it was
5 okay to tell the truth. After I talked to the, then two the
6 first time, I actually had gone upstairs and talked to the
7 mother because I'm reading right here.

8 Q Okay.

9 A And then he came back downstairs and talked to Cynthia P.
10 and then Alex P. again.

11 Q And when you're doing that, are you essentially asking
12 them questions based on your conversations with other
13 people?

14 A Comparing interviews.

15 Q Okay. So, when you came back and talked to Alex P. again,
16 did he give you any additional information?

17 A Yes, he did.

18 Q What did he say?

19 A He confirmed what---

20 Q Just tell me.

21 A ---the other information, and he, he said that he was
22 peeking through the door, which would of been the bedroom
23 that he was in which is adjacent, it's not up there, but
24 it's adjacent to the room that the victim was in. You have
25 door-to-door in here, and you can look through this door

Reid Lindsay - Direct examination
by Solicitor Crick

1 into the kitchen and living room area.

2 Q So, he confirmed that he and his sister were looking
3 through that door at that time?

4 A They were actually up, yes.

5 Q And did he say that he saw anything?

6 A He told me that he saw his brother and his brother's
7 wife, which would be the victim--

8 Q Uh-huh. (Affirmative).

9 A ---fighting in the kitchen.

10 Q Did he say anything else that he saw or heard?

11 A After he saw the fight in the kitchen he told me that
12 his mother shut the door. He didn't see anything else.

13 Q Did he say anything about why he woke up or, or
14 anything of that nature?

15 A I don't remember.

16 Q Okay. Did he ever speak to you about who had come in
17 the house?

18 A Yes.

19 Q What did he say?

20 A He basically gave me the version that I already knew.

21 Q Which was?

22 A Intruders.

23 Q So, what did he say?

24 And you can take your time if you need to look at that.

25 A I'm sorry.

Reid Lindsay - Direct examination
by Solicitor Crick

1 Q No, don't feel rushed.

2 A He told me that his brother had told him to tell this,
3 give the story about the three men that had come to the
4 house. I asked him why. He was scared to tell me
5 initially, and he told me that he was worried about what
6 would happen to his brother.

7 Q So, he said that his brother told him to say three men
8 came into the home?

9 A That's correct.

10 Q And the reason he hadn't told the truth cause he was
11 afraid of what would happen to his brother?

12 A That's correct.

13 SOLICITOR CRICK: Your Honor, I think that's all I have
14 at this point. Let me double-check.

15 (Pause.)

16 SOLICITOR CRICK: That's it, Your Honor.

17 MR. BRANNON: Please the Court, Your Honor.

18 THE COURT: Cross examination, yes, sir, Mr. Brannon.

19 MR. BRANNON: Thank you, Your Honor.

20 THE COURT: You may proceed.

21 CROSS-EXAMINATION

22 BY MR. BRANNON:

23 Q Investigator, you said that ^{Alex P.} told you that he was
24 in, oh, turn it around, that bedroom right there, right?

25 A Yes, sir.

Reid Lindsay - Cross-examination
by Mr. Brannon

1 Q And he was looking through that door right there?

2 A That's correct.

3 Q How did he see what was going on in the kitchen?

4 A I don't know that that's drawing perfect. I'm not
5 sure. It says not to scale on it. I assume that he---

6 Q So, you think the Sheriff's Office added walls or
7 something like that?

8 A No, I don't know that the portions are correct.

9 Q Okay.

10 A It could be a line of sight, what I'm saying, you can
11 see through, you can see diagonally that you can see.

12 Q It's probably more truthful than ^{Alex P.} can't remember
13 what he, what he saw or if he saw anything, right?

14 A No.

15 Q Okay. What, what are your department policies about
16 speaking to minor children?

17 Do you have to get consent from their adult or from
18 their guardian or their parent?

19 A No, sir.

20 Q You don't?

21 A No, there is---

22 Q You can talk to an eight year old without, without
23 parental consent?

24 A Yes, sir.

25 Q ^{Alex P.} was eight years old or may even have been seven.

1 years old when you talked to him that night, right?

2 A I don't know. I know he was very young.

3 Q And he told you that he was in that back bedroom and he
4 could see into the kitchen, right?

5 A Yes, sir.

6 Q But he also told you he didn't see what happened in
7 that bedroom, didn't he?

8 A That's correct.

9 Q Nothing further.

10 Thank you, Your Honor.

11 THE COURT: Redirect?

12 SOLICITOR CRICK: No, sir.

13 THE COURT: You may step down, sir. Thank you very
14 much.

15 State may call its next witness.

16 SOLICITOR GOWDY: May it please the Court.

17 The State would call Mrs. Isabel Rios.

18 THE COURT: Ma'am, come forward to my left to be sworn.

19 ISABEL RIOS, being first duly

20 sworn, testified as follows:

21 THE COURT: Have a seat in the witness stand, please.

22 (Witness complies.)

23 SOLICITOR GOWDY: Your Honor, could I, co-counsel,
24 defense counsel and I approach for one moment?

25 THE COURT: You may.

Isabel Rios - Direct examination
by Solicitor Gowdy

1 (Whereupon, a bench conference was held out of the
2 hearing of the jury at this time.)

3 DIRECT EXAMINATION

4 BY SOLICITOR GOWDY:

5 Q Good afternoon, ma'am.

6 Ma'am, do you speak, do you speak English?

7 A No.

8 Q Okay.

9 THE COURT: I'd ask the Court's interpreter to come
10 forward.

11 Ma'am, come forward please.

12 Could you let her have a seat there beside the witness?

13 MR. BRANNON: Your Honor?

14 Ma'am, you've already been sworn---

15 MR. BRANNON: Your Honor, may we approach again?

16 I'm sorry.

17 THE COURT: You certainly may.

18 (Whereupon, a bench conference was held out of the
19 hearing of the jury at this time.)

20 SOLICITOR GOWDY: Ask her if she understands Spanish
21 well enough for me to ask her questions in Spanish?

22 WITNESS: No.

23 (Whereupon, a bench conference was held out of the
24 hearing of the jury at this time.)

25 THE COURT: Ladies and gentlemen of the jury, this is

Isabel Rios - Direct examination
by Solicitor Gowdy

1 one of those times I need to take up something with the
2 attorneys outside of your hearing. So, I'm gonna ask you to
3 step back to the jury room. Don't begin any discussions
4 until I've advised you to do so.

5 You may retire.

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: Apparently this witness' native tongue is
9 Tarascan. I was -- by process of elimination, I think we're
10 probably there and obviously there's only one translator in
11 the courtroom who's capable of translating Tarascan.

12 I guess the question to the defense is would it be
13 sufficient -- I know the Tarascan interpreter is already
14 testified. So, obviously he wasn't present previously
15 during, during testimony on this subject. But I was
16 wondering if there was any problem with an opportunity to
17 pause or stop if the interpreter says that there's forward,
18 some problem so that we can straighten that out.

19 MR. COLLINS: There should not be a problem. If she is
20 speaking Tarascan, he will---

21 THE COURT: He should be able to hear.

22 MR. COLLINS: He will be able to understand it. As
23 long as the, as long as the interpretation at the witness
24 stand to Mrs. Pasqual is loud enough that my client can hear
25 it, then, then we've accomplished what we need to do.

Isabel Rios - Direct examination
by Solicitor Gowdy

1 THE COURT: Okay. Any problem proceeding in that
2 fashion?

3 We'll have to go very slowly obviously---

4 SOLICITOR GOWDY: Yes, sir.

5 THE COURT: ---during this period of time.

6 All right. I'm going to ask them -- I'm sorry. I
7 can't remember the Tarascan---

8 MR. BRANNON: Marquez.

9 THE COURT: Mr. Marquez, I'm gonna ask you to come
10 forward and do the translation for this witness.

11 MR. BRANNON: Your Honor, could we have two minutes?

12 THE COURT: Yes, sir, we've got two minutes.

13 (Pause.)

14 MR. COLLINS: Your Honor, I was -- we've been having
15 some conversations with Mr. Gowdy and myself and again with
16 the interpreters. With the Court's permission, I think our
17 plan is to put -- we got two chairs beside the witness. The
18 one closest to the witness will be Mr. Marquez who will do
19 most of the translation from English directly to Tarascan.
20 Our other, the Court's Spanish interpreter will be beside
21 him. Excuse me. And if he is in need of technical
22 assistance with regard to technical terms, he will then turn
23 to the Spanish interpreter to get some assistance and then
24 do from there into Tarascan.

25 So, hopefully we'll be able to cut down one leg of the

Isabel Rios - Direct examination
by Solicitor Gowdy

1 relay from most of the testimony.

2 THE COURT: Now as far as Mr. Gowdy's questions being
3 translated for your client, I suppose -- again, the Tarascan
4 interpreter needs to be aware he needs to speak loud
5 enough---

6 MR. COLLINS: Yes, sir.

7 THE COURT: ---in Tarascan so that your client will be
8 able to hear.

9 MR. COLLINS: So that both the witness and Mr. Rios can
10 hear.

11 THE COURT: Okay. All right. We're ready to proceed
12 then, Mr. Gowdy?

13 SOLICITOR GOWDY: Yes, sir, Your Honor.

14 THE COURT: I'd ask the interpreters to come forward,
15 and I don't believe we should attempt simultaneous
16 translation. Maybe you ask a question and wait till it's
17 translated and get an answer and then proceed.

18 SOLICITOR GOWDY: Yes, sir.

19 THE COURT: Be a little choppy, but I think it's the
20 only way to work.

21 SOLICITOR GOWDY: Yes, sir.

22 THE COURT: Bring the jury in.

23 (Whereupon, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. The record will reflect that

Isabel Rios - Direct examination
by Solicitor Gowdy

1 the jury has returned to the courtroom.

2 Madam Clerk, I'm going to ask that you administer the
3 oath to this witness again please so it can be translated to
4 her.

5 CLERK: Okay.

6 THE COURT: Just ask her to raise her right-hand.

7 ~~ISABEL RIOS, being first duly~~
8 ~~sworn, testified as follows:~~

9 THE COURT: And I'll ask the translator, please speak
10 up so the defendant can hear you. You got to speak loud
11 enough where you can be heard over there.

12 INTERPRETER MARQUEZ: Okay.

13 THE COURT: In Tarascan.

14 INTERPRETER MARQUEZ: Okay.

15 THE COURT: You may proceed.

16 SOLICITOR GOWDY: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY SOLICITOR GOWDY:

19 Q Where do you work?

20 A Mr. Smith. Mr. Smith. I was working Mr. Smith.

21 Q Mrs. Smith's Bakery?

22 A Chawang, it's a company Chawang. But now it's closed.

23 Q Did I understand her to say Mrs. Smith Bakery or
24 Mr. Smith's Bakery?

25 A Yes.

Isabel Rios - Direct examination
by Solicitor Gowdy

1 Q Okay.

2 A It's a bakery.

3 Q In what language are her instructions given to her at
4 work?

5 A They uses Spanish interpreters for Spanish trainings.

6 Q So, she does speak Spanish?

7 A Yes, Spanish is my second language, but I have a
8 trouble in Spanish.

9 Q What language did she use when she applied for her job
10 at Mrs. Smith's Bakery?

11 A They have a person who help us to fill out the papers,
12 the application forms.

13 Q Right.

14 And that person would speak Spanish?

15 A Yes, he speaks, he speaks Spanish. He speaks Spanish.

16 Q So, she does speak Spanish enough to know what's being
17 said?

18 A Yes, yes, basic words.

19 Q Okay. Where is the gun that killed Eliza?

20 A I don't know because I didn't see the gun.

21 Q Did she go into the room after Eliza was shot?

22 A Yes, I went to the room because my son was, he was
23 crying. But I didn't see any gun in the room.

24 Q So, the gun had already been moved when she went into
25 the room?

Isabel Rios - Direct examination
by Solicitor Gowdy

1 A I didn't see the gun. So, I don't know.

2 Q Did she hear her son say throw the gun, throw the gun?

3 A No, I don't remember because I was shock and I was
4 screaming. So, I didn't remember exactly about if he says
5 throw the gun.

6 Q Does she remember hearing the story of masked black
7 intruders coming into the home?

8 A I don't remember because I was crying. So I was very
9 nervous and I don't remember that.

10 Q Does she admit or deny telling the police that masked
11 intruders came into her home?

12 A I don't remember about if I tell the history about the
13 men, the masked, the person with the masks.

14 (Whereupon, a statement was marked as State's Exhibit
15 No. 17 for identification purposes only at this time.)

16 Q I want to show her what's marked as State's Exhibit 17
17 and ask her whether or not that is her signature at the
18 bottom of those three pages.

19 A I don't remember anything because I was very nervous.
20 So, I don't remember if I signed any paper or not.

21 Q She doesn't remember anything?

22 A No, I don't remember nothing.

23 Q Well, do you remember seeing Santiago shove your former
24 daughter-in-law?

25 A No, I don't remember.

1 Q Do you remember seeing your son follow your former
2 daughter-in-law into the bedroom?

3 A I, I was sleeping when I heard Eliza and Santiago.
4 Santiago was asking for food and she, she didn't want to
5 give food to Santiago.

6 Q So, she does remember something?

7 A Yeah; that part I remember.

8 Q Okay. So, she remembers Santiago coming home late on
9 Thanksgiving?

10 A I was sleeping. But when I heard the screaming of
11 Eliza, that's when I wake up.

12 Q Had they already eaten Thanksgiving at this point?

13 A Yeah, I -- we ate early.

14 Q Right.

15 And Santiago was not there?

16 A No.

17 Q All right. So, he came home after Thanksgiving dinner?

18 A Yes, he came late at night.

19 Q Okay. And he wanted his wife to get in the kitchen and
20 heat him up something to eat?

21 A Yeah, I didn't, I didn't remember that, but, but when I
22 wake up it's about when Eliza was screaming and Santiago,
23 and Santiago was asking for food for, for dinner and then
24 Eliza told him that he can eat the lunch she gave it in the
25 morning, the, the lunch.

Isabel Rios - Direct examination
by Solicitor Gowdy

1 Q Right.

2 She made a lunch for him at work and he hadn't eaten
3 that, right?

4 A Yeah, Eliza told Santiago that he can eat the lunch.

5 Q Right.

6 And he shoved Eliza?

7 INTERPRETER GALLIGOS: Would you repeat, please, the,
8 the question?

9 SOLICITOR GOWDY: He shoved Eliza.

10 INTERPRETER GALLIGOS: He shoved?

11 SOLICITOR GOWDY: Shoved, pushed, shoved.

12 A Eliza started to push to my son. Not Santiago to
13 Eliza.

14 Q So, she does remember something?

15 A Yeah, I -- yeah, I remember that part. But I told them
16 that don't fight and then they go to the room and they lock
17 the room.

18 Q Right.

19 Does she remember telling the police that Eliza and
20 Santiago had gotten each other's hair?

21 A I don't remember.

22 Q Okay. Does she remember Eliza saying that she was
23 going to call her mother to come get her?

24 A No, I don't remember that.

25 Q Does she remember Eliza telling Santiago that she was

Isabel Rios - Direct examination
by Solicitor Gowdy

1 going to leave him?

2 A I don't remember that, no.

3 Q So, she's not saying she didn't tell the police that.

4 She's just saying she doesn't remember today.

5 A The police told me that he didn't, he has a problem to
6 write in Spanish. So, I don't know if that was information
7 he add or the police add or, or not.

8 Q Well, does she remember, does she remember the police
9 telling her that they can't write in Spanish?

10 A Yeah, I remembered that.

11 Q Okay. She remembers the fight.

12 A Yeah, I remember when they start to fighting that. And
13 then after that they go to the room, and then they lock the
14 room.

15 Q Okay. And she remembers something a police officer
16 told her at the Sheriff's Department a couple hours later?

17 A Yes, I told the police.

18 Q Well, let's see how much of it we remember, we remember
19 of what happened in-between.

20 Eliza went into the bedroom first, correct?

21 A Yes.

22 Q And then Santiago went in there?

23 A Yes.

24 Q And she---

25 MR. COLLINS: Your Honor, I would object at this point.

Isabel Rios - Direct examination
by Solicitor Gowdy

1 I, I understand the difficult situation that Mr. Gowdy is in
2 with the translators. But this is his direct examination,
3 and I would ask that he not lead Mrs. Rios, but that he ask
4 the open ended questions and actually phrase his questions
5 as such instead of the statements to the interpreter.

6 THE COURT: Phrase it in the form of a question,

7 Mr. Gowdy.

8 You may proceed.

9 Q Does she remember -- do you remember telling law
10 enforcement that you tried to open the door but it was
11 locked?

12 A Yes, I remember and then I asked them that open the
13 door, but it was locked. So, I remember hearing or I hear
14 when Eliza was hitting my son.

15 Q She remembers hearing through a closed door someone
16 hitting someone else?

17 INTERPRETER GALLIGOS: He says -- he is that Eliza was
18 hearing hitting.

19 SOLICITOR GOWDY: Right.

20 INTERPRETER MARQUEZ: Punching, hitting, kicking and---

21 Q Right.

22 And my question is you can hear that through a closed
23 door, who is hitting whom.

24 A Yeah, I, I heard when Eliza told my son doma carone,
25 doma carone and then I heard that.

1 INTERPRETER GALLIGOS: Like here you go, bastard, here
2 you go, bastard.

3 Q Well, do you agree with me that, that you didn't tell
4 the police that that night?

5 A Yeah, I did and I told all, all the information to the
6 police. Maybe they put something else in the, the
7 statement.

8 Q Okay. Well, let's try this again then.

9 Who came up with the story of masked intruders?

10 A I don't remember because I was crying. So, I was very
11 nervous.

12 Q Do you agree with me that you repeated the story to the
13 police?

14 INTERPRETER MARQUEZ: Can you -- he wants -- can you
15 repeat the question?

16 Q Sure.

17 Do you remember telling the police, repeating that
18 story to the police?

19 INTERPRETER MARQUEZ: About the masks?

20 SOLICITOR GOWDY: Yes.

21 A I didn't told the police that.

22 Q Do you remember Santiago running from the room telling
23 you that he had either shot Eliza or Eliza was shot?

24 A Yes, he came to the, to my room and then he told me
25 that Eliza shot herself or killed herself, yeah.

Isabel Rios - Direct examination
by Solicitor Gowdy

1 Q Is that her signature?

2 A Yes, this is my signature. But I didn't remember
3 because I was shock and then---

4 INTERPRETER GALLIGOS: Can you help me, Sequora?

5 MR. COLLINS: Your Honor, the---

6 THE COURT: Just one second please.

7 MR. COLLINS: The Spanish interpreter, the Court's
8 Spanish interpreter is asking for some assistance I believe
9 with---

10 INTERPRETER GALLIGOS: Just for one word.

11 MR. COLLINS: With one word.

12 Do you need the dictionary?

13 THE COURT: If she, if she can identify the word,
14 perhaps we can use a different word.

15 What is the word you're having trouble with, ma'am?

16 INTERPRETER GALLIGOS: In Spanish, in Spanish, I
17 mean -- it's a word in Spanish. I would like to have a, I
18 mean the word in English.

19 Threaten?

20 MR. BRANNON: When someone threatens.

21 THE COURT: Okay.

22 A Yeah, the police was threatened to her -- yeah, the
23 police told me that and then the police also told me that
24 if -- the police told me if---

25 INTERPRETER GALLIGOS: The police told me if you don't

1 tell that---

2 INTERPRETER MARQUEZ: The truth.

3 INTERPRETER GALLIGOS: The truth, you and your, your
4 sons and your, your children are gonna go to, to jail. And
5 they pulled her hair.

6 A Yeah, I'm going to tell who's, who's---

7 INTERPRETER GALLIGOS: I'm gonna tell you who pulled my
8 hair.

9 Q The police pulled her hair?

10 A Yeah, he has a jacket. I don't remember if it's, it's
11 a police or he's a detective. But he is -- he, he wore a
12 jacket.

13 Q Well, you gave the police four different versions of
14 what happened.

15 MR. COLLINS: I would object, Your Honor, to---

16 THE COURT: Just one -- excuse me, sir. Just, just one
17 second.

18 INTERPRETER MARQUEZ: I'm sorry.

19 MR. COLLINS: I would object on two basis. One, his
20 characterization of the testimony to this point, and number
21 two, that was not a question. It was a, a statement.

22 SOLICITOR GOWDY: I'll be happy to rephrase it, Your
23 Honor.

24 THE COURT: All right. You just want to withdraw the
25 question.

Isabel Rios - Direct examination
by Solicitor Gowdy

1 You may rephrase it.

2 Q How many different versions of what happened did you
3 give the police?

4 A I told, I told the police that I didn't see anything.

5 INTERPRETER GALLIGOS: The police wanted to know by any
6 way. They wanted to know by any way that Santiago was, and
7 killed Eliza. But she didn't know because she wasn't in the
8 bedroom when the accident, it happened.

9 Q Okay. My, my question probably wasn't very clear.
10 How many different versions did you give the police?

11 INTERPRETER GALLIGOS: The police forced her to say,
12 to, to give a statement or to give a version. But she
13 didn't see anything.

14 Q Okay. Let, let me start over.

15 Did you see what happened at [REDACTED]
16 or not?

17 INTERPRETER MARQUEZ: What's the address?

18 SOLICITOR GOWDY: [REDACTED].

19 INTERPRETER MARQUEZ: Address?

20 SOLICITOR GOWDY: Yeah.

21 A I didn't see anything. But I hear about the, the
22 conversation that he was asking for full, for dinner.

23 Q Well, you, you knew that there were no intruders,
24 right?

25 You knew that there were no masked intruders?

1 A I don't remember that and I don't know who tell the
2 police that the, the person with the masked because I was
3 shock and was worried.

4 Q This police officer that threatened to put her in jail,
5 what language did he speak?

6 A Spanish.

7 Q So, she does understand Spanish?

8 A Yeah, my Spanish is very limit. So, sometimes I
9 understand really basic, basic words.

10 Q Did you understand Sergeant George Baldarama when he
11 talked to you?

12 A Yes, I understand, I understood him. But only basic
13 basic Spanish. Not very technical Spanish, or very high,
14 high Spanish, or long terms.

15 Q Did Detective Baldarama read your statement back to
16 you?

17 A Yeah, I don't remember if he---

18 INTERPRETER GALLIGOS: If he reads, if he read the
19 statement to me.

20 A Yeah, because I was shock and then I was very nervous.

21 Q Do you remember your son, Santiago Rios, saying no
22 digus nada?

23 A No, I don't remember that.

24 Q Is that your voice on the 9-1-1 tape we hear in the
25 background?

Isabel Rios - Direct examination
by Solicitor Gowdy

1 MR. COLLINS: Your Honor, I would object. She has no
2 knowledge---

3 THE COURT: Just one second. Don't, don't let her
4 answer.

5 MR. COLLINS: She would have no knowledge of what's,
6 what was in that 9-1-1 tape.

7 THE COURT: She has the right to give that answer.

8 He's, he's asking if that's her voice. If she doesn't know,
9 I don't know is an answer. So, she can answer in that
10 fashion.

11 So, ask the question again and let's, whatever,
12 whatever response she gives she gives.

13 Q Is that your voice in the background on the 9-1-1 tape
14 when Santiago Rios called 9-1-1?

15 A Yeah, it's me and my daughter and well, yeah, I was
16 crying.

17 Q In fact, you handed the phone to Santiago Rios and told
18 him to call 9-1-1, didn't you?

19 INTERPRETER GALLIGOS: Yeah, I gave, gave him to the,
20 telephone because Santiago just left crying, crying to the
21 living room. And he told me, and he told me that his wife,
22 that she was killed herself.

23 Q How soon after Eliza was shot did your son call 9-1-1?

24 INTERPRETER GALLIGOS: When I, when I heard the, the
25 shot, the shot, the shotgun, I just gave him the phone and

1 asked him to call 9-1-1 because I didn't know how to use the
2 phone or I, I don't know how to because I didn't know what
3 was the number to call the ambulance or the police.

4 Q Okay. My question is actually simpler than that.

5 How long, from the time Eliza was shot in the bedroom,
6 until your son called 9-1-1?

7 INTERPRETER GALLIGOS: When I, when I heard that
8 Santiago crying, I don't remember how long was passed,
9 passed. But it was just right away, and I asked Santiago to
10 call the ambulance. 9-1-1.

11 Q So, you're telling the jury it was very fast?

12 INTERPRETER GALLIGOS: Yes, once Santiago came out from
13 the bedroom and he was crying very loud is when I gave him
14 the phone and I asked him to call the 9-1-1 --

15 Q Okay.

16 INTERPRETER GALLIGOS: To call the ambulance.

17 Q Okay. So, and again, I'm, I'm not trying to be
18 hyper-technical, but handing him the phone and him calling
19 9-1-1 are two different things.

20 How quickly did he call 9-1-1?

21 A I don't know if, I don't know the times. So, I don't
22 know if -- I don't know about your question.

23 Q A matter of seconds?

24 INTERPRETER GALLIGOS: Between the, the time that I
25 heard Santiago cry very loud, and then I didn't know what to

Isabel Rios - Direct examination
by Solicitor Gowdy

1 do, and then I just grabbed the, the phone and I just gave
2 it to him.

3 Q Okay. I guess what I'm getting at is did you---

4 MR. COLLINS: Objection, Your Honor.

5 THE COURT: Just one second.

6 MR. COLLINS: Asked and answered several times at this
7 point. I think she's stated more than once that she does
8 not know the length of time between.

9 THE COURT: I didn't hear that whole question just
10 then. So, I'm not exactly sure what the question was.

11 SOLICITOR GOWDY: I wasn't gonna ask that, Your Honor.

12 THE COURT: Okay. I'll allow him to proceed. When he
13 finishes the question, if you still find it objectionable,
14 you may do so, Mr. Collins.

15 MR. COLLINS: Yes, sir.

16 THE COURT: You may proceed, Mr. Gowdy.

17 SOLICITOR GOWDY: Thank you, Your Honor.

18 Q What I'm getting at is did you and Santiago and the
19 other members of the family discuss the masked intruder
20 story before he called 9-1-1?

21 INTERPRETER GALLIGOS: No, nobody discussed that
22 matters. We didn't talk about that.

23 Q Well then how did you know to tell the police the
24 masked intruders story when you got to the Sheriff's
25 Department?

Isabel Rios - Direct examination
by Solicitor Gowdy

1 INTERPRETER GALLIGOS: I don't remember telling that
2 story to any policeman. I didn't say that.

3 Q Well, did she listen to Santiago's 9-1-1 call?

4 A Yes, I was there. I don't, I don't know about the
5 history. I don't know, know about what the history. He's
6 going, he was explaining by the phone because I don't speak
7 English. So, I don't know what they were talking about with
8 the 9-1-1 call.

9 Q Is it, is it your voice that's saying she's dead, she
10 was your wife?

11 A Yes.

12 Q And did you know she was dead because you had been in
13 the bedroom and checked on her?

14 INTERPRETER GALLIGOS: Yes, because I went there and I
15 checked that she was dead.

16 Q Okay. And where was the gun when you went to check on
17 her?

18 A I didn't see the gun inside the room.

19 Q Did you hear your son say throw the gun?

20 A I don't remember that.

21 Q Do you remember getting your daughter on the phone to
22 talk to Santiago to calm him down?

23 INTERPRETER GALLIGOS: Would you please repeat the
24 question?

25 Q Do you remember getting your daughter on the phone to

Isabel Rios - Direct examination
by Solicitor Gowdy

1 talk to Santiago to calm him down?

2 A No, I don't remember that because I was crying. She
3 says I don't remember that because I was crying.

4 Q You don't remember calling one of your other children
5 while Santiago and Eliza were behind a door arguing?

6 MR. COLLINS: Objection, Your Honor. Asked and
7 answered. That's ---

8 THE COURT: I'm going to allow him to ask the question.

9 INTERPRETER GALLIGOS: Yes, I, I -- yes, I told my
10 daughter to tell them, to tell -- I called one of my
11 daughters by phone to tell Santiago, okay, to tell Santiago
12 to open the door, okay, for my daughter to talk to them
13 okay. I called one of my daughters to, to talk to Santiago
14 and Eliza, I mean for them to open the door and talk to
15 them.

16 INTERPRETER MARQUEZ: I knocked the door and then I
17 told Eliza Carmen wants to talk to you by phone, but they
18 didn't, but they didn't open the door, and then I, I called
19 to Santiago to open the door, that my, that I told Santiago
20 that Carmen wants to, to talk with Santiago by phone, and
21 then Santiago told me please tell to Carmen, please tell to
22 Carmen that she, that she can call me tomorrow because we
23 already, we already seen her.

24 Q You remember that, but you don't remember your
25 daughter-in-law saying that she was calling her mom to come

Isabel Rios - Direct examination
by Solicitor Gowdy

1 get her?

2 INTERPRETER MARQUEZ: I lost, I lost the information.

3 Can you repeat the---

4 Q She remembers a conversation with a daughter in some
5 detail, but she doesn't remember her daughter-in-law saying
6 she was calling her mother to come get her.

7 INTERPRETER GALLIGOS: That happened before that this,

8 that -- okay. -- I called my daughter before that happened.

9 and I -- okay. They said like arguing in the kitchen. My
10 son wanted to eat. Then she got upset. She didn't want to
11 give him something to eat, and she asked him to eat what he
12 got to work for lunch.

13 Q Okay. I, I, I hate to interrupt that, but that's not,
14 not, actually not the question I asked.

15 MR. COLLINS: Your Honor.

16 THE COURT: Just one second.

17 Mr. Collins.

18 MR. COLLINS: If she could be permitted to finish her
19 answer.

20 SOLICITOR GOWDY: Your Honor, if it were remotely
21 responsive to the question I asked.

22 THE COURT: I'll let her go ahead and finish. I agree
23 with Mr. Gowdy. At this point in time it does not appear to
24 be responsive to the question that was asked. But if -- she
25 needs to become responsive.

Isabel Rios - Direct examination
by Solicitor Gowdy

1 Would you instruct the witness to answer the question
2 that's been asked please?

3 INTERPRETER GALLIGOS: Would you please repeat---

4 SOLICITOR GOWDY: I'll be happy to.

5 INTERPRETER GALLIGOS: ---the, the question?

6 Q You remember the details of the conversation that you
7 had with your own daughter, but you don't remember your
8 daughter-in-law telling Santiago her mother was coming to
9 get her because she was leaving him?

10 A I don't remember that.

11 Q All right. Let me ask you one more question.

12 Did Santiago have the gun in his hand when he came out
13 of the bedroom?

14 INTERPRETER GALLIGOS: I didn't see that because when
15 Santiago came out of the bedroom he was crying and
16 screaming.

17 Q I've got the crying and screaming part down.

18 My, my question is whether or not he had the gun in his
19 hand?

20 INTERPRETER GALLIGOS: When I saw him he didn't have
21 the gun.

22 Q But when you went into the bedroom to check on Eliza
23 seconds later, there was no gun on the floor, correct?

24 INTERPRETER GALLIGOS: I didn't see anything.

25 Q Santiago has lived with you up until today, right?

Isabel Rios - Direct examination
by Solicitor Gowdy

1 A Yes.

2 Q Have you discussed this case?

3 INTERPRETER GALLIGOS: When?

4 Q At all.

5 A No.

6 Q You have not discussed this matter at all with your
7 son, Santiago Rios?

8 A Like talking like, like what?

9 Q Like about what to testify to, what to remember, and
10 what not to remember.

11 INTERPRETER GALLIGOS: May I ask a question?

12 SOLICITOR GOWDY: It's up to the judge. I don't care.

13 THE COURT: Just what was the question?

14 SOLICITOR GOWDY: He wants to ask a question.

15 INTERPRETER GALLIGOS: She wants you to---

16 INTERPRETER MARQUEZ: She wants you to repeat the
17 question.

18 SOLICITOR GOWDY: Oh, you want me to repeat the
19 question?

20 THE COURT: Yes, sir.

21 Q Has there been any discussion in the home about what
22 she should and should not say in Court?

23 A No.

24 Q Did y'all ever find the gun?

25 INTERPRETER GALLIGOS: Excuse me?

Isabel Rios - Direct examination
by Solicitor Gowdy

1 Q Did you ever find the gun, the pistola?

2 A No.

3 Q That's all.

4 THE COURT: Mr. Collins, I don't want to limit you.

5 Do you have any opinion as to how long your

6 cross-examination may take?

7 MR. COLLINS: To be honest, Your Honor, I don't know.

8 This may be a good time to take a break if that's --

9 THE COURT: That's what I'm thinking.

10 All right. Ladies and gentlemen of the jury, I am

11 going to take a break at this point in time. As always, I'm

12 gonna tell you not to discuss the case at all until such

13 time as I've advised you to do so. You may retire to the

14 jury room.

15 Thank you very much.

16 (Whereupon, the following takes place outside the

17 presence of the jury.)

18 THE COURT: I would ask that the witness be advised

19 that she is not to discuss her testimony with anyone during

20 the break.

21 WITNESS: Yes.

22 THE COURT: Court will be in recess for ten minutes.

23 Thank you very much.

24 She may step down and move around.

25 (Whereupon, a short recess was taken at this time.)

1 SOLICITOR GOWDY: Your Honor, I had assented to kind of
2 a gentleman's sequestration order because I think they, we
3 just, we just didn't put it on the record.

4 Is there an objection to my designation of William Gary
5 as my case agent?

6 MR. COLLINS: No.

7 SOLICITOR GOWDY: He was the case agent the last time.

8 THE COURT: Any objection?

9 MR. COLLINS: None.

10 MR. BRANNON: No, Your Honor.

11 THE COURT: All right. He will be allowed to stay in
12 the courtroom.

13 And the witness, where is she?

14 Step outside and ask her to step in please.

15 And I'll ask the interpreter to step back up please.

16 (Witness returns to the stand.)

17 THE COURT: All right. Is the State ready to proceed?

18 SOLICITOR GOWDY: Yes, sir, Your Honor.

19 THE COURT: Defense ready to proceed.

20 MR. COLLINS: Yes, Your Honor.

21 THE COURT: All right. Bring the jury in please.

22 (Whereupon, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. The jury has returned to the
25 courtroom and when we took our break the State had completed

Isabel Rios - Cross-examination
by Mr. Collins

1 its examination of the witness.

2 Defense may cross-examine, Mr. Collins.

3 MR. COLLINS: Please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. COLLINS:

7 Q Ma'am, do you go by Isabel Rios or Isabel Pasqual?

8 INTERPRETER GALLIGOS: Did you say Pasqual?

9 MR. COLLINS: Pasqual.

10 A My name is Isabel Rios, but for my husband, my, my name
11 is Isabel Pasqual.

12 Q Which would she prefer to be called this afternoon?

13 A It's the same thing. The same.

14 Q Well, I will call you Mrs. Rios if that's okay.

15 A Yes.

16 Q Ma'am, when this young lady up here had you put your
17 hand on the Bible and spoke to you in English earlier today,
18 did you understand her?

19 A I don't understand her. But that me, I explain to her
20 that she needs to tell the truth.

21 Q Okay. But---

22 A By, by interpreting, the interpreter.

23 Q So, she understand the interpretation when you did it,
24 but she didn't -- did you understand the English when it was
25 spoken to you in English?

- 1 A No.
- 2 Q How many different languages do you speak?
- 3 A I spoke the dialect and Spanish. But not very well.
- 4 Q So, no English?
- 5 A No.
- 6 Q How long have you been in the United States?
- 7 A Like 12 years.
- 8 Q And before coming to the U.S., how long were you in
- 9 Mexico?
- 10 A Like 15 years old or I don't remember exactly how many
- 11 years.
- 12 Q But when you came to the U.S. she was in her teens?
- 13 She was a teenager?
- 14 A When I came to United States I was 34 years old.
- 15 Q In the 12 years you've been in the U.S. have you had
- 16 any dealings with law enforcement?
- 17 A No.
- 18 Q When the police came to your house on Thanksgiving,
- 19 2006, what did -- what were you and your family told to do
- 20 as soon as the police arrived?
- 21 A She's asking the police told us or that we told the
- 22 police?
- 23 Q What did, what did the police make her and her family
- 24 do when they arrived?
- 25 A Yeah, they told us go outside.

Isabel Rios - Cross-examination
by Mr. Collins

1 Q And after they were told to go outside, were they then
2 placed, were you then placed in police cars?

3 INTERPRETER GALLIGOS: We were standing outside. It
4 was cold and I was just wearing a long, long sleeve blouse
5 and I wanted to go in just to put on a jacket or something.
6 But they didn't let me.

7 Q After standing outside for a little while, did the
8 police officers put you in police cars?

9 INTERPRETER GALLIGOS: The police -- one of the police
10 officers let me use one, a jacket, let me, let me wear one
11 of his jackets, and he told us that he was going to take us
12 to the police department, to the police office.

13 Q How did you get from your house to the police
14 department?

15 INTERPRETER GALLIGOS: We were -- we went in the
16 police -- we went in a police car, in the back, in the back
17 seat of the police, and my husband was in the front seat in
18 the same police car.

19 Q Who all was in that police car, you, your husband, and
20 who else?

21 A Cynthia P. Alex P. and Santiago.

22 Q So, five people in the police car plus the driver?

23 A Yes. Yeah, we sat four in the back of the, the, the
24 car and then my husband sit in front of the, with the
25 policeman, the police officer.

Isabel Rios - Cross-examination
by Mr. Collins

1 Q When you got to the police station, were you allowed to
2 stay together?

3 INTERPRETER GALLIGOS: They didn't let us stay
4 together. After he -- okay. Then an officer, officer lady
5 came. She wasn't a police officer. She was -- it was just
6 a lady and she took Alex P. and Cynthia P. to another place.

7 Q So, your children were taken away from you at the
8 police department?

9 INTERPRETER GALLIGOS: When we just going in the police
10 department right there was when this lady came and took the
11 children with her.

12 Q Was Santiago allowed to stay with you and your husband?

13 INTERPRETER GALLIGOS: Santiago was in another place
14 before we, we got there. I mean he was taken to another
15 place before.

16 Q Were you allowed to stay with your husband?

17 A Just for a while and then they took my husband to
18 another place.

19 Q When you talked to the police officer that night, were
20 you by yourself?

21 A Yeah, I was with myself.

22 Q Which police officers were with you?

23 A The police officers, Baldarama, Baldarama.

24 Q Was it just Officer Baldarama?

25 INTERPRETER GALLIGOS: Also, also it was sitted that

Isabel Rios - Cross-examination
by Mr. Collins

1 man. He wasn't standing. He was walking back and forth.

2 Okay. The police, the police officer kept going

3 outside to see where my children were, and then the police

4 officer came back and he told me, and he told me if you

5 don't say the truth -- the police officer tell me if you

6 don't say, if you don't tell the truth, you are a stupid,

7 you are stupid and he pulled my hair and he told me that

8 they could take away my children, Cynthia and Alex, and you

9 also are gonna be in jail.

10 Q Do you know that police officer's name?

11 A I don't know his name. But he's sitting over there.

12 Q Can you please describe him for me?

13 INTERPRETER MARQUEZ: I'm sorry?

14 Q Can you describe him for me?

15 A The, the person who is sitting over there.

16 Q What color hair does he have?

17 A Like blonde.

18 Q Short or long?

19 A He's tall.

20 Q Is his hair short or long?

21 A It's short.

22 Q All right. Is he wearing a tie and a coat?

23 A Yes.

24 Q That night at the Sheriff's Office, were you, were you

25 ever shown anything in writing in Spanish?

1 A No.

2 Q Were you ever shown anything in writing in your native
3 dialect?

4 A No.

5 Q Were the only things you saw in writing that night in
6 English?

7 INTERPRETER GALLIGOS: Yes, yes. I don't know how he
8 could write in Spanish because he told me that he couldn't
9 speak, he couldn't write in Spanish.

10 Q And that was Officer Baldarama?

11 A Yes, it was him.

12 Q Did Officer Baldarama tell you what documents said in
13 Spanish when they were written in English?

14 A I don't remember when he was reading, reading to me. I
15 don't remember when I sign it.

16 Q Are you able to read English?

17 A No.

18 Q Were you afraid of the police that night?

19 A Yes.

20 Q Are you still afraid of the police because of that
21 night?

22 INTERPRETER MARQUEZ: Can you repeat that?

23 Q Are you still afraid of the police because of that
24 night?

25 INTERPRETER MARQUEZ: That night?

Isabel Rios - Cross-examination
by Mr. Collins

1 MR. COLLINS: Yes.

2 INTERPRETER GALLIGOS: Yes, because, because we were,
3 we haven't been in this situation before. So, now I am
4 nervous.

5 MR. COLLINS: Your Honor, those are all the questions I
6 have for Mrs. Rios.

7 THE COURT: Redirect?

8 SOLICITOR GOWDY: Yes, sir, Your Honor.

9 REDIRECT EXAMINATION

10 BY SOLICITOR GOWDY:

11 Q Mrs. Rios, I wrote down 16 things that you remembered
12 after the time. Go ahead.

13 INTERPRETER MARQUEZ: Sixteen.

14 Q I wrote down sixteen things that you remembered after
15 the time Eliza was shot until you got to the police
16 department.

17 Do you now remember where the masked intruder story
18 came from?

19 MR. COLLINS: Your Honor, I would object that that is
20 not in response to our cross-examination. But that is
21 simply a, a repeat of his direct examination at this point.

22 SOLICITOR GOWDY: Your Honor, I, for about an hour on
23 direct, got a steady stream of I don't remembers. I didn't
24 hear a single one on, on cross, I don't remember. I wrote
25 down 16 things including that an officer gave her a jacket,

1 and I want to test whether or not, how you can remember an
2 officer giving you a jacket, but you can't remember the
3 story that you gave to the police.

4 THE COURT: I'll allow the question.

5 INTERPRETER GALLIGOS: It's everything that I remember.
6 I don't know what else can I say.

7 Q Well, did your son tell you to tell the police that
8 intruders came into your home?

9 A No.

10 Q Did your husband tell you to tell the police that
11 intruders came into your home?

12 MR. COLLINS: Your Honor, I would object. At this
13 point I believe he's mischaracterizing his previous
14 testimony. My recollection of her testimony was that she
15 never told the police the masked intruder version of the
16 story.

17 THE COURT: Mr. Gowdy.

18 SOLICITOR GOWDY: Your Honor, I do remember getting a
19 steady stream of I don't recalls. I'm happy to with, I'm
20 happy to withdraw.

21 THE COURT: Let's, let's move from this line of
22 questioning. I think you've made whatever point that needs
23 to be made.

24 You may proceed.

25 SOLICITOR GOWDY: Yes, sir.

Isabel Rios - Redirect examination
by Solicitor Gowdy

1 Q Mrs. Rios, you testified for the defense attorney that
2 that deputy pulled your hair?

3 A Yeah, and that's the truth.

4 Q And Deputy Baldarama would of been in the room when
5 that happened?

6 A Yeah, he saw when he, saw when he pulled---

7 INTERPRETER GALLIGOS: When he was pulling.

8 INTERPRETER MARQUEZ: Yeah, when he was pulling,
9 pulling my hair.

10 Q Okay. Well, speaking of hair, do you now remember
11 telling Deputy Baldarama that your son and your
12 daughter-in-law were pulling each other's hair?

13 INTERPRETER GALLIGOS: She pushed my son. My son was
14 asking her for food. I don't know why she got mad and why
15 she pushed him.

16 Q So, it was all her fault?

17 INTERPRETER GALLIGOS: I don't know because of why -- I
18 mean I don't know because she was the one who got upset, and
19 I was only, and I was only in the, in a, in the bedroom, in
20 another, in another room.

21 Q Okay. You remember who was riding where in the police
22 car?

23 A The person who was asking me?

24 Q No, I'm asking -- she testified for that defense
25 attorney who was riding where in the police car from their

Isabel Rios - Redirect examination
by Solicitor Gowdy

1 home to the Sheriff's Office.

2 A He looks like a police and he's a very old man.

3 Q Okay. Do you now remember your daughter-in-law telling
4 you that she was leaving your son and to call her mother?

5 A I don't remember having heard that.

6 Q Thank you.

7 THE COURT: Recross?

8 MR. COLLINS: Nothing else, Your Honor.

9 THE COURT: You may step down, ma'am.

10 State may call its next witness.

11 SOLICITOR GOWDY: Your Honor, the State would call
12 Mr. Robert Reeder.

13 THE COURT: Sir, come forward to my left and be sworn.

14 ROBERT REEDER, being first duly
15 sworn, testified as follows:

16 THE COURT: Have a seat please. Once you're seated,
17 state your name for the record.

18 WITNESS: My name is Robert Reeder.

19 THE COURT: Mr. Gowdy, your witness.

20 SOLICITOR GOWDY: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY SOLICITOR GOWDY:

23 Q Good afternoon, Mr. Reeder.

24 A Good afternoon.

25 Q Could you tell the jury where you work and what your

Robert Reeder - Direct examination
by Solicitor Gowdy

1 duties and responsibilities there are?

2 A I work at Milliken Cotton Blossom, the automotive
3 division on Broadcast Drive. My job duties there is I'm the
4 trainer and the safety director for that, at the automotive
5 plant there on Broadcast Drive.

6 Q How long have you worked for Milliken, Mr. Reeder?

7 A Twenty-one years.

8 Q Twenty-one years and how many---

9 THE COURT: Mr. Collins,

10 MR. COLLINS: Your Honor, we would object at this point
11 to Mr. Reeder's testimony on the grounds of relevance.

12 Giving what we know, what has been provided in discovery---

13 THE COURT: Let, let me discuss that outside the
14 presence of the jury.

15 MR. COLLINS: Yes, sir.

16 THE COURT: Ladies and gentlemen of the jury, this is
17 one of those occasions I'm gonna ask you to step back to the
18 jury room and not begin any discussions.

19 Thank you very much.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Mr. Collins, I'd ask you to fully state
23 your objection at this time.

24 MR. COLLINS: Your Honor, Mr. Reeder's testimony
25 yesterday evolved around Mr. Rios' ability to or his

1 employment at Milliken and his ability to speak and
2 understand English. At this point there would be no
3 relevance for Mr. Reeder's testimony other than to attempt
4 to impeach my client for asking for an interpreter to
5 protect his Constitutional rights to be able to understand
6 and comprehend what is taking place in this courtroom.
7 He is not, at any point, taking the stand and indicated
8 that he can not speak any English. As, as a matter of fact,
9 we have introduced the 9-1-1 tape which does have him
10 speaking some English in that tape. The only thing that Mr.
11 Reeder would serve to do would, would essentially be, to be
12 a, a back-door impeachment of my client for asking for an
13 interpreter for his native language so that he can
14 understand these proceedings.

15 THE COURT: Mr. Gowdy.

16 SOLICITOR GOWDY: Your Honor, I can honestly represent
17 to the Court that that thought never entered my mind. What
18 did enter my mind is Mr. Brannon has already elicited
19 testimony of the cultural distinctions between that portion
20 of Mexico and Mr. Rios living in the United States, that he,
21 that he's never been exposed to Miranda warnings, that he
22 doesn't understand our Court system.

23 Here's a gentleman that knows how long he's worked for
24 Milliken, which is one of the prominent companies, companies
25 in the Upstate. The next two witnesses after Mr. Reeder are

Robert Reeder - Direct examination
by Solicitor Gowdy

1 the two Sheriff's Department investigators who spoke to Mr.
2 Rios, some in English, some in Spanish.

3 The notion that he can't speak English or Spanish is a
4 fraud. It is a fraud. I can't speak to, to his other
5 family members. But the notion that I have to wait until
6 two sheriff's deputies are attacked for writing something in
7 English that he couldn't understand when it was read back to
8 him or his failure to understand Spanish -- there is no

9 Tarascan spoken in Mr. Reeder's safety class. It is English
10 and he passed the class. And I do think that's relevant for
11 the jury to hear.

12 THE COURT: Mr. Collins.

13 MR. COLLINS: As far -- I'm assuming one of those is
14 Officer Baldarama. Officer Baldarama wrote in his own, in
15 his interrogation waiver form that my client could not write
16 in English, could not read or write English I believe it
17 was. So, how Mr. Reeder could somehow expand upon that I, I
18 don't see. He's -- Mr. Reeder apparently, from his
19 testimony yesterday, does not speak Spanish.

20 THE COURT: Mr. Collins, what, what concerns me at this
21 point in time, perhaps you can address this in your
22 argument, what has gone into the record thus far is the
23 9-1-1 tape in which your client speaks in various languages.
24 I think three were identified by the witnesses.

25 MR. COLLINS: Yes, sir.

Robert Reeder - Direct examination
by Solicitor Gowdy

1 THE COURT: That being Tarascan, Spanish, and English.

2 MR. COLLINS: Yes, sir.

3 THE COURT: Which he shifted from, from one language to
4 another language to another language saying various phrases
5 to various people in different languages. And quite
6 frankly, some of the information that's come in is somewhat
7 damaging to the, to his case and was spoken in a language
8 which obviously the person he was speaking to on the phone
9 did not understand because he was asking what language was
10 he speaking. He didn't even know what language it was.

11 MR. COLLINS: Yes, sir.

12 THE COURT: It would seem to me that his abilities to
13 speak any of the three languages and to switch between the
14 three might be of some relevance to the jury in this
15 situation. Maybe you can address that or would address that
16 for me because that is already in the record. That's
17 something that's there, that there was a switching of the
18 languages during that conversation, for various, for
19 whatever reason. I don't -- I'm not saying it was any
20 particular reason one way or the other. That's for the jury
21 to decide what, what that was all about, and maybe it was
22 who he was talking to and what they understood. I don't
23 know. That, that can be argued to the jury.

24 But certainly his ability to switch between the
25 languages and understand them, at a very critical time and

Robert Reeder - Direct examination
by Solicitor Gowdy

1 basically the res gestae of the event, his ability or
2 mastery of any one of those languages might be some
3 relevance to the jury it would seem to me.

4 MR. COLLINS: And I, I guess my response would be that
5 his ability to switch between those languages and to
6 communicate in each of the three, A, the English obviously
7 our jurors can understand. The Spanish and the Tarascan has
8 each been addressed by an independent interpreter who took
9 the witness stand.

10 Mr. Reeder, though he was the, I think the education
11 safety director at the Cotton Blossom plant, his involvement
12 with Mr. Rios was preceded by some period of time, I think
13 the period of a couple of years this event, and then has had
14 no interaction with him since that particular time. I can,
15 I can see a, a -- I can see your argument that there's, his
16 ability to speak English I guess tangentially has some
17 bearing. But I think the prejudicial effect that his, that
18 it would have on this particular juror, jury as well as my
19 client's I guess comfort level in being able to assert
20 his---

21 THE COURT: No, I have no problem with offering a
22 charge to the jury at the close of the trial, and I intend
23 to do so, that he is entitled to have that, the proceedings
24 translated into his native language if that's what's he
25 chooses.

Robert Reeder - Direct examination
by Solicitor Gowdy

1 MR. COLLINS: And that may---

2 THE COURT: That will be -- I'll be happy to take care
3 of that by way of charge. They're to give the fact that he
4 has someone testifying, translating into his native language
5 be given no consideration by them whatsoever and really
6 shouldn't be, that fact should -- the fact that he has
7 required a interpreter throughout the proceedings should not
8 even be considered by them in their deliberations, whether
9 or not he should have a translator or not, that's not an
10 issue. He's entitled to one if he wants one is my
11 understanding of the law and he has one.

12 And so, I don't, I don't intend for that to be an issue
13 in the case. And I can, I can be happy to give that
14 instruction now. But I think that may call more attention
15 to it if I do that now. So, I intended to do that at the
16 end of the case.

17 MR. COLLINS: Yes, sir.

18 THE COURT: But again, getting back to the question
19 though of what is already in the record, I try to go on
20 what's in the evidence already, and what's in evidence
21 already---

22 MR. COLLINS: Yes, sir.

23 THE COURT: ---is that there was a 9-1-1 tape. Your
24 client was identified as the caller on that tape by various
25 witnesses or at least one of the witnesses. The interpreter

Robert Reeder - Direct examination
by Solicitor Gowdy

1 identified him. And in that conversation he uses various
2 languages for various phrases directed, directed to various
3 people for whatever reasons. And again, those reasons are
4 for the jury to determine. Not for me to determine.

5 MR. COLLINS: Yes, sir.

6 THE COURT: But certainly I think would be of some
7 relevance as to what was going on at the time and why he may
8 of said what he said.

9 MR. COLLINS: Yes, sir.

10 THE COURT: So, I view this testimony as to his mastery
11 of any of those languages, it's, it's been put into
12 evidence. I mean it's in the record. It's in controversy
13 at this point in time. You can't listen to this trial
14 without understanding that language is not a problem.

15 MR. COLLINS: Yes, sir.

16 THE COURT: You've introduced it concerning the
17 statements that were made --

18 MR. COLLINS: Yes, sir.

19 THE COURT: -- that language is a problem. So, I find
20 it relevant to the jury to determine what level of
21 proficiency any of the witnesses may of had since there's
22 been statements written in English, statements read in
23 English, statements given in Spanish, but written in
24 English. The languages has been switched on various points
25 in this trial.

1 So, to that extent, I think the testimony is relevant.
2 I'm gonna allow him to testify. And again, I'll be happy,
3 at the close of trial and intend at the close of the trial,
4 concerning his use of an interpreter, that that's not an
5 issue before the Court. Shouldn't be considered by them as
6 to whether -- that shouldn't -- that's not a factor to be
7 considered in his guilt or innocence in this case because
8 he's entitled to an interpreter into his native language.

9 MR. COLLINS: And I think that will address our
10 concern. Thank you.

11 THE COURT: All right. Anything further before we call
12 the jury back?

13 SOLICITOR GOWDY: No, sir, Your Honor.

14 THE COURT: All right. Let's call the jury back.

15 (Whereupon, the following takes place within the
16 presence of the jury.)

17 MR. BRANNON: Approach?

18 THE COURT: Yes, sir.

19 (Whereupon, a bench conference was held out of the
20 hearing of the jury at this time.)

21 THE COURT: Ladies and gentlemen, perhaps I was
22 premature in calling you back. So, I'm going to ask you to
23 step into the, into the jury room one more time again with
24 the instructions don't begin to discuss this case until I
25 advise you to do so.

Robert Reeder - Direct examination
by Solicitor Gowdy

1 You may retire to the jury room.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. We'll take about a ten minute
5 break. I'll allow the interpreter to see if we can't solve
6 that problem. We're, we're in recess.

7 I will instruct, Mr. Reeder, you really haven't started
8 your testimony. But you have been sworn and I will advise
9 you at this time you should not discuss your testimony with
10 anyone during the break, but you can move about the
11 courtroom.

12 Thank you, sir.

13 WITNESS: All right.

14 (Whereupon, a short recess was taken at this time.)

15 THE COURT: I lost Mr. Reeder. There he is back there.
16 Mr. Reeder, if you'd resume the stand for me please.

17 (Witness returns to the stand.)

18 THE COURT: Thank you.

19 Is the defense ready?

20 MR. BRANNON: Yes, Your Honor.

21 THE COURT: Is the State ready?

22 SOLICITOR GOWDY: Yes, sir.

23 THE COURT: Bring the jury in.

24 (Whereupon, the following takes place within the
25 presence of the jury.)

Robert Reeder - Direct examination
by Solicitor Gowdy

1 THE COURT: All right. The record will reflect the
2 jurors have returned and thank you for your patience with
3 me.

4 And at this point in time I have ruled that this
5 witness may proceed.

6 Mr. Gowdy, you may proceed.

7 SOLICITOR GOWDY: Thank you, Your Honor.

8 ~~CONTINUED DIRECT EXAMINATION~~

9 BY SOLICITOR GOWDY:

10 Q Mr. Reeder, just to briefly summarize where we are,
11 where we were, you work for Milliken. You work at the
12 Cotton Blossom plant.

13 A Cotton Blossom Plant. The automotive division.

14 Q The director of safety and training?

15 A That's right.

16 Q And you have been with Milliken for 21 years?

17 A Yes, sir.

18 Q All right. I think that's how far we'd gotten, and my
19 next question to you was gonna be how many of those 21 years
20 have you spent in the capacity that you currently have as
21 the director of, of safety and training?

22 A Eighteen years.

23 Q Eighteen years.

24 Do you know the defendant, Santiago Rios?

25 A Yes, sir.

Robert Reeder - Direct examination
by Solicitor Gowdy

1 Q How do you know him?

2 A He was hired at our plant. He came through
3 orientation. When a person is coming through orientation,
4 they're, the whole week is with me, and I take them through
5 40 hours of training. This is OSHA training, quality, and
6 the learning of Milliken & Company itself. And my, one of
7 my responsibilities is to make sure that they understand all
8 safety procedures before they go out on the floor.

9 My 40 hour orientation is a Power Print presentation
10 consist of test after each module and to make sure that they
11 understand because Milliken goal is safety is first. And
12 everyone comes into the plant leaves the plant the way they
13 came in unhurt or harm come to them each and everyday.

14 Q Mr. Reeder, before we get into your 40 hour
15 orientation, can I ask you, if you see the defendant,
16 Santiago Rios, to identify him for the jury?

17 A Yes, sir, he's sitting there at the desk table with the
18 red shirt on with the phones in his ear.

19 Q Thank you, Mr. Reeder.

20 Now, you were describing for the jury the 40 hour
21 orientation that you preside over?.

22 A Yes.

23 Q There are -- what's a module?

24 A Module is, is, is subjects dealing with electrical
25 ergonomics, those, those standards, process hazards,

1 especially when we get in the lift truck training because
2 that was one of his criterias on the job duties that he was
3 doing, lift truck. And going through the standards that
4 OSHA has put upon us to make sure that the associates know
5 all procedures and also job procedures that's out on the
6 floor that they'll be going through some work instructions
7 that they will have to follow out on the floor as well.

8 Q Mr. Reeder, in what language is your 40 hour
9 orientation at Milliken?

10 A All of our materials, the orientation materials is, is
11 in English and also the work instructions out on the floor
12 that the job duties that they're doing on the floor is in
13 English was well.

14 Q So, the instructions on the floor and your 40 hour
15 orientation to work for Milliken is in English?

16 A Yes, sir.

17 Q Do you have to past certain test before Milliken will
18 allow you on the floor?

19 A They have -- yes, that's, that's my job requirement.
20 And when, when a person comes in, the culture is from
21 another diverse, I always find out the, the barrier between
22 me and that person and I always ask, start off do they
23 understand what we're getting ready to go through, do they
24 understand what I'm saying, do they understand the material
25 because that's one of my, that's my criteria. That's my job

Robert Reeder - Direct examination
by Solicitor Gowdy

1 and to make sure that they understand. And when they answer
2 me yes, and then they complete each test after each module
3 that I explain to you, and we go over those modules
4 together, that makes me know that they understand and
5 comprehending the process that's going on.

6 Q Mr. Reeder, did you have an occasion to have any
7 one-on-one or personal time with the defendant, Santiago
8 Rios?

9 A Oh, yes. When they come into orientation on Mondays,
10 one thing is to put them at ease. And so, I strike up a
11 conversation and that's the way they let me know they can
12 speak English and understand English, and then just get a, a
13 conversation going and we spoke about several different
14 things each day on, on break and things like that. So, a
15 little bit about sports and things. So -- and a little bit
16 where he came from. And so, we, we had some dialogues as
17 well.

18 Q Now, I believe that you had a, a son that was an
19 outstanding football player if I remember correctly.

20 A Yes, he played football. I have a Power Point and I
21 showed that a little bit to break the ice and some slides
22 that we went through. We talked about that as well, and,
23 and things about football. And so, we dialogued on that
24 when we was in orientation.

25 Q Do you have any specific recollections of any

1 conversations related to sports that you might of had with
2 the defendant, Santiago Rios?

3 A Sports is football. Of course, like soccer as well.

4 And so, we just kind of dialogue on, on that talk and talked
5 a little bit about the NFL from that standpoint and just
6 life in general.

7 Q All right. If I understand your testimony correctly,

8 do - - would someone like Mr. Rios or in his position have to
9 go through that full 40 hour orientation?

10 A Yes, everyone goes through the 40 hour orientation.

11 Q And every aspect of that 40 hour orientation is in
12 English?

13 A Yes, sir.

14 Q And there are modules periodically during those 40, 40
15 hours?

16 A Yes, sir.

17 Q All right. And there are tests that test your ability
18 to recall or grasp information?

19 A That's right.

20 Q And are the tests in English?

21 A All the tests is in English.

22 Q All right. And do you speak any languages other than
23 English?

24 A No, I, I sure don't.

25 Q Would you have been able to converse with Mr. Rios in

Robert Reeder - Direct examination
by Solicitor Gowdy

1 any language other than English?

2 A No, sir.

3 Q And you specifically recall having social interaction
4 with him during that 40 hours?

5 A Yes.

6 Q Did you ever bump into him on the floor when he was
7 actually working?

8 A Once they go on the floor I still have to follow them
9 once I put them with the on-the-job instructor. I still
10 have to follow them and then I also follow on my instructors
11 and persons out on the floor to see how their job is going
12 because that's what we call our brothers keeper program.
13 And for him to work out on the floor, he had to have
14 dialogue with the associates on the floor, and with the
15 safety subcommittee that they was put on as well.

16 So, it's, it's dialogues with the associates on the
17 floor as well and you have Spanish and you have English,
18 Americans out there. So, he had to have dialogue.

19 Q Thank you, Mr. Reeder. Please answer any questions the
20 defense attorney may have for you.

21 THE COURT: All right. Mr. Collins.

22 MR. COLLINS: Please the Court, Your Honor?

23 CROSS-EXAMINATION

24 BY MR. COLLINS:

25 Q Good afternoon, Mr. Reeder.

1 A Good afternoon.

2 Q Now, how many folks do you have working at the Cotton
3 Blossom Plant?

4 A As of right now, about 120.

5 Q 120. And of those 120 jobs at that plant, how many are
6 factory workers and plant workers?

7 Just---

8 A You mean production associates?

9 Q Production associates, that's the term I'm looking for.

10 A Okay. Production associates have probably, oh, about
11 105.

12 Q All right. So, about 20 in management and 105 in
13 production?

14 A That's correct.

15 Q Out of those 105, do you know how many are of Hispanic
16 origin?

17 A I don't know the percentage right off hand, but it's,
18 you know, we have maybe 30 percent.

19 Q So, out of that 105, about 30 to 35 folks would be
20 Hispanic?

21 A Maybe 25, somewhere along in there.

22 Q But Mr. Rios would not have been the only Hispanic
23 worker at the plant?

24 A No.

25 Q And so, there would have been other Hispanics at the

Robert Reeder - Cross-examination
by Mr. Collins

1 plant that he would have conversed with on a regular basis?

2 A Yes.

3 Q And I think even within your education group, the folks
4 that, that do the education, you've got somebody that speaks
5 Spanish, do you not?

6 A No, sir.

7 Q You don't have somebody that helps with the education
8 process in the intake that speaks Spanish?

9 A No, sir, because they have to do a pretest when they
10 come in, and they have to do a pretest, and that test is in
11 English, and that's to determine if the person, the status
12 that they gonna be on from that standpoint because H.R.
13 manager is not Hispanic. The secretary is not Hispanic.
14 All managers are Americans. So, when you have dialogue,
15 you, you're speaking English pretty much.

16 Q Okay. Has anybody ever failed your 40 hour class?

17 A No, it's, it's not such thing what you call a fail. If
18 it's questions that they don't understand, that's my job to
19 go over those questions and make sure that they do
20 understand a question they missed.

21 Q And out on the floor, it's fair to say that the safety
22 signs that you have out there are not only in English, but
23 they're at least visual symbols, correct?

24 Big yellow, big red circles with lines through them?

25 A You have some visual because that's a mandate from OSHA

1 that you have to have symbols dealing with certain
2 electrical. That's dealing with hot points, cold points.
3 So, that's, that's a sign that you have to have from OSHA
4 requirements that those signs and then stating in English as
5 well and, and maybe some in Spanish.

6 Q But you have some in Spanish too, don't you?

7 A Yes.

8 Q And as a matter of fact, the lift truck that he drove,
9 it has those visual symbols on it too, doesn't it?

10 A It has visual symbols on it, but no Spanish on it.

11 Q Now, in this 40 hour training program, you don't cover
12 things with him such as the Constitution or the Bill of
13 Rights or legal system or anything of that nature?

14 A No, sir, that's not in our orientation. That's not our
15 requirements to cover the Constitution or the, those items
16 that you just mentioned, sir.

17 Q Okay. Basically what you want to ensure is they have
18 enough working English or knowledge or working knowledge of
19 English to be able to operate safely within your plant and
20 produce a quality product?

21 A And also to be able to dialogue because, once again,
22 the work instructions that tells them how to do a job out on
23 the floor, it's in English as well.

24 Q But they also have other folks around them that speak
25 Spanish as well, correct?

Robert Reeder - Cross-examination
by Mr. Collins

1 A Also have other people around that do speak Spanish.
2 But when they're dialoguing with their manager on how their
3 job is progressing, that's, that's mainly in English, sir.

4 MR. COLLINS: Okay. Your Honor, I have no more
5 questions for Mr. Reeder.

6 Thank you, sir.

7 THE COURT: Redirect?

8 SOLICITOR GOWDY: No, sir, Your Honor.

9 THE COURT: All right, sir. You may step down.
10 Ask the attorneys to approach.

11 (Whereupon, a bench conference was held out of the
12 hearing of the jury at this time.)

13 THE COURT: You may call your next witness.

14 SOLICITOR GOWDY: Your Honor, the State would call
15 Detective William Gary.

16 THE COURT: Sir, come forward and be sworn.

17 WILLIAM GARY, being first duly
18 sworn, testified as follows:

19 THE COURT: Have a seat in the witness stand. And once
20 you're seated, please state your name for the record.

21 WITNESS: My name is William Gary.

22 THE COURT: Mr. Gowdy, it's your witness.

23 SOLICITOR GOWDY: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY SOLICITOR GOWDY:

1 Q Detective Gary, can you tell the jury where you work,
2 how long you've been there, and what department you are
3 currently assigned to?

4 A Yes, sir. I work at the Spartanburg County Sheriff's
5 Office. I've worked there since March the 6th of 1995.
6 I'm currently assigned as a senior investigator to the
7 violent crimes division, homicide division at the Sheriff's
8 Office. I been doing that job for approximately eight to
9 eight and a half years.

10 Q Eight to eight and a half years as a homicide
11 investigator?

12 A Yes, sir.

13 Q Were you the case agent investigating the death of
14 Eliza Hernandez on Thanksgiving Day 2006?

15 A Yes, I was.

16 Q Did you go to the crime scene?

17 A I did.

18 Q When you got to the crime scene, were any family
19 members still present?

20 A Yes, when I got there, I was advised by the officers on
21 the scene that the family members were outside or standing
22 in the yard. They had asked them to remove the house to
23 secure the crime scene, leave the house to remove, to secure
24 the crime scene. And they were still in the yard had been
25 roped off with crime scene tape. They were standing

William Gary - Direct examination
by Solicitor Gowdy

1 actually in the driveway inside the crime scene tape.

2 Q Detective, did you realize, at some point when you got
3 to [REDACTED], that there was a communication
4 issue or a language issue?

5 A Yes, once I got there, one of the persons I spoke with
6 was Sergeant Tony Woodward. He speaks Spanish. I'm not
7 sure how well. I believe his wife is Hispanic. And then he
8 had told me that he was told that they really just speak
9 Spanish, don't understand much English, and that Sergeant
10 Baldarama had already been called to come to the scene from
11 the desk to assist with translation there.

12 Q And Sergeant Baldarama is a bilingual sheriff's deputy
13 that is frequently used in situations such as this?

14 A Yes, he is. We only have, I don't know the exact
15 number, I would say four or five persons that are bilingual,
16 Spanish and English, that we use to help interpret or
17 translate.

18 Q Detective Gary, did Sergeant Baldarama respond to [REDACTED]
19 [REDACTED]?

20 A Yes, he did.

21 Q And were the persons who had been inside the home at
22 the time of the homicide transported to the Sheriff's
23 Department?

24 A Yes, it was a cold night. And I asked Sergeant
25 Baldarama if he would to speak to them and ask them if they

William Gary - Direct examination
by Solicitor Gowdy

1 would go to the Sheriff's Office so that we could speak to
2 them. The main reason is it was cold, and we're standing
3 outside. We can't go inside the house right now. So, we
4 can go to the office where we have an interview room,
5 conference room, other tables, and places where we can speak
6 and it's actually warm.

7 Q What information or understanding did you have at this
8 point as to the nature of the call that you were on?

9 A What I was told is that there was a call to the house
10 where a female was shot, and that would be Eliza Hernandez,
11 and that there were intruders, three masked men that knocked
12 on the door. When the door's opened, they attempted to
13 force entry into the home. And that, during the struggle,
14 is when she was shot.

15 Q So, you, when you arrived at the scene, you, the only
16 information you had was that this was a home invasion?

17 A Correct.

18 Q And the occupants of the home would have been treated
19 as what, witnesses?

20 A Correct.

21 Q Not suspects?

22 A No.

23 Q Witnesses?

24 A Correct.

25 Q All right. So, you go to the Sheriff's Department, and

William Gary - Direct examination
by Solicitor Gowdy

1 the witnesses are separated?

2 A Right.

3 Q Is that standard protocol in a homicide investigation?

4 A Yes, it is.

5 Q And why is that?

6 A We can't control what a person says, says to another
7 person before we get there. Part of securing the crime
8 scene, especially in a homicide, is to secure witnesses and
9 separate them so they can't discuss things amongst each
10 other. They may have different descriptions of suspects.
11 One may be correct, one may be wrong, or a combination of
12 the two may be accurate.

13 But when they're speaking to each other, it's been
14 found that, if I'm talking to someone about what I saw, they
15 may or may not remember something they heard. They may
16 remember something differently. But when they hear that I'm
17 saying something different, they may change their version,
18 think that they need to because maybe they were wrong. So,
19 once we separate them, we get their version of events and we
20 don't get a combination of their version and this person's
21 version and that person's version. That's why we separate
22 the witnesses.

23 Q And Detective Gary, that is standard operating
24 procedure for your department, correct?

25 A Yes. Well, that's -- every department should do it,

1 and it's something that we teach all of our uniform
2 officers, when they arrive on the scene is to attempt to do
3 that with witnesses once the scene is secure for their
4 safety as well as other people's safety, establish who your
5 witnesses are, and try to separate them as soon as you can.

6 Q So, was this family treated any differently than any
7 other family in Spartanburg would have been under the same
8 or circumstances?

9 A No, they were not. We even -- at, at the time, looking
10 at them as victims of a crime as well, we had a victim
11 advocate that came to the Sheriff's Office to assist them as
12 well as a Hispanic chaplain came to the Sheriff's Office.

13 Q All right. Were you aware of who had called 9-1-1?

14 A Let me check. At that time -- the phone was outside.
15 It was a cordless phone. It was sitting outside. And I
16 believe it was Sergeant Woodburn that told me that -- no,
17 it's Sergeant Kesler that told me that the call was made by
18 Santiago Rios---

19 Q Okay.

20 A ---is what he was told from dispatch.

21 Q All right. When you got to the scene, the family's
22 outside, it's roped off, it's secured, did you walk through
23 the crime scene?

24 A No, I did not.

25 Q Okay. Did you go back to the Sheriff's Department and

William Gary - Direct examination
by Solicitor Gowdy

1 participate in the investigation or questioning of the
2 witnesses?

3 A Yes, I did. I contacted two other investigators. One
4 was Detective Reid Lindsay. I asked him to obtain a search
5 warrant for the residence, which is protocol on a homicide
6 scene where we have residents or something like that. We
7 always establish a search warrant cause we don't know who
8 could be involved necessarily. So, we do that to cover our
9 bases and to secure any evidence on that.

10 Also contacted Detective Anthony, Anthony Lachica and
11 asked him if he would start a neighborhood canvas for the
12 surrounding homes while I was at the office in the, in the
13 unit.

14 THE COURT: Just one second.

15 INTERPRETER WOK: He's too fast.

16 THE COURT: Sir, I'd ask you to slow down just a little
17 bit so the interpreters can keep up please.

18 Could you repeat your last answer slowly please, sir?

19 WITNESS: Yes, sir.

20 I went to the office. Before I left, I contacted
21 Detective Reid Lindsay, asked him if, gave him a description
22 of the home and the version of events that I was given so
23 that he could complete a search warrant for the home. And
24 that is done to secure, make sure any evidence there will be
25 obtained legally in case the person has an expectation of

1 privacy for their home. That's standard protocol for the
2 Sheriff's Office on a homicide.

3 And I also contacted Detective Anthony Lachica and
4 asked him to do a neighborhood canvas of the surrounding
5 homes to see if we could locate any other witnesses to what
6 had occurred.

7 Q Detective Gary, did you, at the Sheriff's Office, sit
8 in, on, or participate in the questioning of Santiago Bros
9 through one George Baldarama?

10 A I did. When the interview started I would ask
11 questions and Sergeant Baldarama would repeat my question in
12 Spanish. I would say it in English and he would tell me in
13 English what was said in Spanish.

14 Q Are you bilingual yourself?

15 A Just enough to be dangerous.

16 Q You do not consider -- you don't consider yourself
17 proficient enough in Spanish to do the interrogation
18 yourself?

19 A I don't consider myself proficient in Spanish to do
20 anything important other than just minor words that I know.

21 Q All right. So, you called or you had Sergeant
22 Baldarama be the translator?

23 A Correct.

24 Q Okay. Or interpreter I should say.

25 All right. Were you giving the questions to Sergeant

William Gary - Direct examination
by Solicitor Gowdy

1 Baldarama to ask?

2 A I was.

3 Q In your capacity as the lead agent?

4 A Yes, sir.

5 Q All right. There were other family members up there.

6 I believe there were two children.

7 Do you know whether they required interpreting or
8 translation for their statements to be taken?

9 A I do not. I was not present during those.

10 Q Okay. At some point did you call Deputy Angel Diaz to
11 come up to the Sheriff's Department?

12 A I did.

13 Q Okay. And did Sergeant Baldarama go assist in another
14 interview?

15 A He did. Officer Diaz came, went back in the interview
16 room with me or with Santiago Rios and Sergeant Baldarama
17 went with Detective Lindsay to speak to his mother to, with
18 that interview.

19 Q All right. Detective Gary, without getting into the
20 substance of what was said, we will do that through Deputy
21 Baldarama and Diaz, do you recall, at some point during the
22 interview of this defendant, his mother coming into the
23 interview room?

24 A Yes.

25 Q Okay. Do you recall more than one statement being

1 taken from the defendant?

2 A Yes, they were two statements that were taken. One by
3 Sergeant Baldarama. The other by Officer Diaz.

4 Q Okay. Do you recall the defendant being permitted to
5 use the restroom?

6 A Yes, he was allowed to go to the restroom twice.

7 Q Do you recall whether that was before or after the
8 gunshot residue test was done on his hands?

9 A Let me double-check. I believe one was before and one
10 was after. Let me just double-check that.

11 (Pause.)

12 A Yes, sir. One, one trip to the restroom was done prior
13 to the gunshot residue test being performed. The other was
14 done after, the other trip was after.

15 Q And again, Detective Gary, is it fair to say that
16 initially your interaction with Santiago Rios and his family
17 you were told that it was a home invasion?

18 A Correct.

19 Q And they were being interviewed as witnesses?

20 A To begin with, yes, sir.

21 Q Okay. Did you ask someone to photograph the
22 defendant's face, clothes, body?

23 A Yes, I did.

24 Q All right. Did you go to the crime scene at any point?

25 A I went to, I went to the crime scene after the second

William Gary - Direct examination
by Solicitor Gowdy

1 statement was obtained.

2 Q All right. And if the 9-1 call is, 9-1-1 call was made
3 at the 9:30 p.m. on Thanksgiving Day, we're already after
4 midnight into the Friday after Thanksgiving, do you have a
5 sense of what time you would of gone to the crime scene?

6 A My guess would probably be somewhere between probably
7 3:00 to 4:30 in the morning.

8 Q Okay. Was there still a deputy standing guard over the
9 house?

10 A Yes, there was.

11 Q All right. So, to use law enforcement vernacular, was
12 the crime scene still secure?

13 A It was still secure and our forensics people were still
14 in the house as well.

15 Q Did you walk through the house?

16 A Yes, I did.

17 Q Did you notice any signs of disturbance in the front
18 room?

19 A No, not at all.

20 Q Did you notice any blood drops from the front room to
21 the bedroom?

22 A No, there were not.

23 Q How many homicides have you worked?

24 A Probably being the lead on and assisting I guess would
25 be somewhere between -- it's probably close to 80.

1 Q How many major crime scenes would you say that you had
2 walked through, analyzed, investigated?

3 A Well, if you include serious assaults, kidnappings,
4 sexual assaults, it's probably, what I consider serious, 150
5 plus.

6 Q Okay. Did you go into the bedroom where Eliza
7 Hernandez body was found?

8 A Yes, when I went in the body had already been removed,
9 but I went, I went in every room of the house.

10 Q Tell us what you did when you walked into that bedroom.

11 A When I went in, I did a, a general scan of the, the
12 entire house and in that room I, I looked over the room. It
13 had already been searched some by our forensic people. Some
14 things had been moved from -- it was different from what
15 they found originally. One of the specific things I did in
16 that room is especially was take a look at the walls and the
17 ceilings in the room to see if there was any evidence or any
18 sign of anything there.

19 Q When you say look at the walls and the ceilings,
20 Detective Gary, what are you looking for?

21 A Specifically I was looking for blood splatter and also
22 any bullet holes or bullet ricochet marks or anything like
23 that. It's pretty simple in that room -- the whole house
24 basically was painted white. The walls and ceilings were
25 all white. A lot of things would stand out if I'm in a

William Gary - Direct examination
by Solicitor Gowdy

1 house like that.

2 Q So, you would of looked at the ceiling and the walls to
3 see whether or not you had seen evidence of a projectile?

4 A Correct.

5 Q Okay. Did you see any?

6 A No, I did not.

7 Q Did you find a firearm?

8 Well, let me rephrase that.

9 Did you find a handgun in the bedroom?

10 A No, there was not one.

11 Q Did you find a .38 caliber handgun anywhere?

12 A No, we did not find one anywhere in the house. We also
13 went back a few days later and searched a, a vacant field
14 next to the house again, and did not find one there either.

15 Q Did you search the vehicles in the, on the curtilage or
16 outside the house for a .38 caliber firearm?

17 A We did. We looked -- there were -- if I remember
18 right, I think there were five vehicles outside, and we
19 found a number of keys inside, which we could only get into
20 one of the keys. So, we actually had Pop-A-Lock come out
21 and unlock the vehicles that were out there, and we looked
22 underneath and inside all of the vehicles there and we did
23 not find a .38 caliber handgun in any of the vehicles or
24 under the outside of the house.

25 Q You may of already testified to this, and if you have,

William Gary - Direct examination
by Solicitor Gowdy

1 then, then tell me you have and don't answer it again.

2 Did you go back more than once to look for a .38
3 caliber firearm?

4 A I, I discussed the second time we went back to search
5 the field and the house again.

6 Q Okay. Detective Gary, are you generally familiar with
7 what kinds of tests can be performed on firearms if they are
8 found?

9 A Yes.

10 Q Can you fingerprint firearms?

11 A Yes, you can.

12 Q Can you do trigger pull tests to see how many pounds of
13 pressure it takes to pull the trigger?

14 A Yes, you can.

15 Q Can you do that both single action and double action?

16 A Yes.

17 Q Can you determine whether or not it is a revolver or a
18 pistol?

19 A For that -- you, you can, from either. If you have a
20 shell casing present or from the projectile, you can tell
21 what type of gun it came from, and that would tell you if it
22 was a semiautomatic or a revolver.

23 Q If you locate a firearm, can you also tell whether
24 there are more bullets either in the magazine or in the
25 revolver?

William Gary - Direct examination
by Solicitor Gowdy

1 A Yes.

2 Q None of those tests were able to be performed, correct?

3 A No, they were not.

4 Q One moment, Detective Gary.

5 (Pause.)

6 Q Let me ask you this. I said I was gonna wait to do it
7 through Sergeant Baldarama and Deputy Diaz and I will. But
8 let me ask you this.

9 Were you present when Sergeant Baldarama either advised
10 this defendant of his Miranda warnings either in English,
11 Spanish, or both?

12 A Yes, I was there and he was provided his Miranda
13 warnings in both English and Spanish.

14 Q You were present -- that would of been done by George
15 Baldarama, but you were present?

16 A Yes, sir, I actually signed the form as well.

17 Q Thank you very much, Detective Gary. Please answer any
18 questions the defense attorneys may have for you.

19 THE COURT: Mr. Brannon, your witness.

20 MR. BRANNON: Please the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. BRANNON:

24 Q Investigator Gary, you doing okay today?

25 A I'm doing all right.

William Gary - Cross-examination
by Mr. Brannon

1 Q Good.

2 Now, you've testified earlier that Deputy Baldarama
3 took my client to the restroom a couple of times, right?

4 A Yes, sir.

5 Q Okay. And, and I imagine that the State wants to talk
6 about his trips to the bathroom because he may of washed his
7 hand and washed away any gunshot residue, right?

8 You reckon that's why he asked you that question?

9 A I'm not sure.

10 Q Okay. Did you do anything to prepare for your
11 testimony in this trial?

12 A Yes, sir.

13 Q Okay. Did you read over any of the other
14 investigator's notes?

15 A I've read all of them.

16 Q You did.

17 So, you read Baldarama's, correct?

18 A It's been a little while, but I've read it.

19 MR. BRANNON: Approach the witness, Your Honor?

20 THE COURT: You may.

21 Q Would you agree that this is Baldarama's here?

22 A It has his name on it, yes, sir.

23 Q Okay. All right. Would you agree that right there it
24 says officer---

25 SOLICITOR GOWDY: Your Honor, Your Honor, Your Honor,

William Gary - Cross-examination
by Mr. Brannon

1 that is impermissible impeachment. He can ask Sergeant
2 Baldarama about his statement, but that is not Deputy Gary's
3 statement. I don't -- how can you impeach him with somebody
4 else's statement?

5 THE COURT: I don't know if he's attempting to impeach
6 him.

7 MR. BRANNON: I'll withdraw that question and rephrase
8 it.

9 THE COURT: That will be fine.

10 Q Where, where did you come up with how many times
11 Officer Baldarama took Santiago Rios to the bathroom?

12 A It's in my investigation report.

13 Q Well, who took him to the bathroom?

14 A Sergeant Baldarama.

15 Q How come it's not in his?

16 A Ask him. I don't know.

17 Q Okay. But he's the one who did it, right?

18 A Yes, sir.

19 Q Okay. All right. I believe you testified earlier that
20 you had investigated maybe 150 plus serious crimes, correct?

21 A Been through the crime scenes or at, assisted or was
22 the lead on it. It's probably, probably pretty close.

23 Q All right. And maybe 80 of those might of been
24 homicides?

25 A We've been averaging anywhere from 15 to probably 25

William Gary - Cross-examination
by Mr. Brannon

1 homicides a year, and, you know, I've been doing it about
2 eight, eight and a half years. So, that's probably about
3 the right number.

4 Q Okay. Of those 80, how many of them would of been shot
5 in the face?

6 A Give me a moment. Right now I just -- I can't recall a
7 round number on that.

8 Q Is it ten?

9 A It's, it's possible. I can't say for sure.

10 Q You don't know.

11 Okay.

12 A I can't not say for sure.

13 Q Okay. All right. I want to talk to you about taking
14 the Rios family to the Sheriff's Department.

15 You, you pretty much always separate witnesses when
16 you're going to investigate them individually, correct?

17 How many times, in your history or your experience,
18 have you questioned a group of witnesses at the same time at
19 the Sheriff's Department?

20 A I can't think of a time right now that I've done that.

21 Q Okay. So, is it fair to say that you always separate
22 witnesses to get statements from them?

23 A Yes, sir.

24 Q Okay. During your investigation, during your
25 experience, have you ever said to a parent if you don't tell

William Gary - Cross-examination
by Mr. Brannon

1 me the truth your children could be taken way from you?

2 A I'm sure I've said someone's children can be taken away
3 from them in certain situations. As far as interviewing
4 someone, accusing them of lying to me, I would never use
5 that as a ploy to get something from them, no, sir.

6 Q Okay. But you have told people they could lose their
7 children?

8 A Yes, because of actions, home environments, or
9 whatever, yes, sir.

10 Q Okay. All right. You don't personally know who shot
11 Eliza Hernandez, do you?

12 A I wasn't present when it happened.

13 Q You don't have a gun to test for fingerprints, do you?

14 A No, sir, because it was removed from the scene.

15 Q And you know that simply because it wasn't there,
16 right?

17 A Absolutely.

18 Q Okay. But you don't know who carried that gun away, do
19 you?

20 A No, sir.

21 Q And you don't know that that gun was ever in the hands
22 of Santiago Rios, do you?

23 A Are we talking about a second statement?

24 Q Talking about a gun in his hands, do you know it was in
25 his hands?

William Gary - Cross-examination
by Mr. Brannon

1 A From his second statement, I believe it says so, yes,
2 sir.

3 Q All right. Do you have personal knowledge that the gun
4 was in his hand?

5 A I was not at the scene when the shooting happened.

6 Q Thank you.

7 One second, Your Honor.

8 (Pause.)

9 Q Did you take a statement from Santiago Rios?

10 A I was present when they were being completed. I did
11 not personally write them out for him.

12 MR. BRANNON: Approach the witness, Your Honor?

13 THE COURT: You may.

14 Q Are these your notes or is that a copy of your notes?

15 A Yes, sir.

16 Q Okay. All right. Now, the two statements that you're
17 talking about, the first one being masked men intruders,
18 somebody shot Eliza, is that correct?

19 A Yes, sir.

20 Q Second statement, if you're on the second page near the
21 very bottom -- and here's where I'm at, Officer Gary, right
22 there.

23 A Okay.

24 Q Would you agree your notes say he finally told Officer
25 Diaz that he would tell us what happened if we brought his

William Gary - Cross-examination
by Mr. Brannon

1 mother in the room?

2 A Yes, sir.

3 Q Farther down he said when Eliza fell, the gun fell also
4 and he did not know where the gun was?

5 A Yes, sir, that's what my notes say.

6 Q Okay. He never told you he had a gun in his hands, did
7 he?

8 A I'd have to look at his statement.

9 Q Okay. Did he tell you, based on your notes, that he
10 had a gun in his hand?

11 A Without looking at the statement, I'll tell you my
12 recollection of the statement, which is what is, these notes
13 are based off of cause this is not verbatim of his statement.
14 cause it can speak for itself. My recollection in doing
15 this was that he says she had the gun, and that he fought
16 her over the gun, and he had his hands on it. It got turned
17 because -- it got turned towards her. The gun went off and
18 she fired. It fired and went off and shot her in the face
19 as she was standing up and they were struggling over the
20 gun.

21 So, no, I can't say he had it in his hand, but also
22 can't say that Eliza had it in hers either cause we don't
23 have the gun.

24 MR. BRANNON: Nothing further, Your Honor.

25 THE COURT: Redirect?

1 SOLICITOR GOWDY: Very briefly.

2 REDIRECT EXAMINATION

3 BY SOLICITOR GOWDY:

4 Q Which is why you would be so interested in looking at
5 the walls and the windows, right?

6 A Correct.

7 Q The walls and the ceiling?

8 A Yes, sir, a head wound bleeds quite a bit. There's a
9 lot of arteries, veins, capillaries that is going to feed
10 the brain and other parts of your head. A head would bleed
11 pretty heavily. And in saying that, a shooting, especially
12 one that's described being close range, you---

13 THE COURT: Just one second.

14 MR. BRANNON: It's -- the interpreters. Please repeat
15 your last question. I'm sorry.

16 THE COURT: And, and I would ask that you speak a
17 little slower again. You're speeding up on us like you---

18 INTERPRETER GALLIGOS: I'm sorry, Your Honor.

19 THE COURT: Speak through the lawyer please, ma'am.

20 Thank you.

21 You may proceed.

22 SOLICITOR GOWDY: Thank you, Your Honor.

23 Q Detective Gary, I think I was following up on a
24 question that you, that Counselor Brannon had asked, and my
25 question to you I think was that's why it's so important to

William Gary - Redirect examination
by Solicitor Gowdy

1 check the walls and the ceiling.

2 A Correct. Like I was saying, with a head wound, it
3 bleeds quite heavily. And in saying so, with a gunshot
4 being described as being as close as it was, you will get a,
5 a decent amount of called blow back or blood spatter. And
6 at the time, not knowing if it was an exit wound or not, if
7 she was standing up, and if it was an exit wound, then it
8 should of hit one of the walls that she was standing in

9 front of. She was towards the middle of the room or a
10 little bit towards the door. But if it's traveling at a
11 velocity enough to penetrate the front of the skull, go out
12 the back top of the skull, it should of hit a ceiling or a
13 wall or something and at least left a mark or carried blood
14 when it hit would of splattered off, off of the projectile
15 and left marks on the wall.

16 That's what I was looking for. Not knowing at the time
17 whether it was an exit wound or not or if the bullet was
18 even still inside her head, on the chance, that's what I was
19 looking for.

20 Q So, law enforcement did not learn until the autopsy
21 that there was, in fact, an exit wound?

22 A Correct, it was the next day.

23 Q You were doing what you did out of a protocol?

24 A Correct.

25 Q All right. Secondly and finally, Counselor Brannon

1 asked you about questioning the defendant about a firearm.

2 A Correct.

3 Q Had you had the benefit of a Tarascan interpreter
4 telling you what was said in Tarascan on the 9-1-1 tape when
5 you were questioning Santiago Rios?

6 A I did not and that would of been helpful to know what
7 was being said on there, and then we may of known
8 instructions that were being given on there.

9 Q Okay. Thank you, Detective Gary.

10 THE COURT: Recross.

11 RECROSS EXAMINATION

12 BY MR. BRANNON:

13 Q Detective Gary, it wasn't until Doctor Wren did his
14 autopsy that the Sheriff's Department found out that this
15 bullet entered and exited, correct?

16 A Correct.

17 Q So, based on what you knew before the autopsy, there
18 wouldn't have been any blow back or blood splatter, right?

19 A Well, you're gonna have blow black from a gun.
20 Specifically if you have a close contact because you still
21 have a lot of the gases from the projectile causing injury,
22 and that's what the blow back is, the gases come in, they
23 have to escape. If you don't have an exit, they escape more
24 from the entrance because that's the open hole. They travel
25 the path of least resistance.

William Gary - Recross examination
by Mr. Brannon

1 So, that's where your blow back is gonna come from, and
2 you're gonna get back spatter, blow back from that. It can
3 also be inside of the gun. A lot of times you'll have meat
4 or pieces of skin or tissue or blood inside the barrel of a
5 gun. And so, you -- it could be on clothing. It could be
6 on, on the gun, on the hands. It could be on that. It --
7 and it, if it is an exit, then you could have, if you're
8 close to something, you could have a, see an actual pattern
9 of it. And -- but if you have a distance with anything
10 behind it, you may not see that pattern.

11 Q Blow back is what comes back towards the direction of
12 the gun, is that---

13 A Yes.

14 Q Okay. What did Santiago Rios have on the night of
15 November the 23rd, 2006?

16 A That -- we got, we got -- when we were speaking to him
17 I, I remember having a white T-shirt. I don't know if he
18 had jeans on or what kind of pants he had on.

19 Q Do you remember those pictures?

20 A Yes, sir.

21 Q Do those pictures accurately represent the way he
22 looked when you were, when you were talking with him?

23 A Yes, sir.

24 Q You have any idea who took these pictures?

25 A I believe it's Officer Tim Davis.

1 Q Okay. All right. So, sir, do you see any, any blow
2 black, blow back, and blood splatters, or anything on that
3 white T-shirt?

4 A None in these pictures, no, sir, and I don't remember
5 seeing any on him.

6 Q Okay. Did you -- are you aware of the gunshot residue
7 tests that were done on my client?

8 A Yes, sir.

9 Q The results were negative, weren't they?

10 A I believe so.

11 Q No blood, no blow black, blow back, no gunshot residue.
12 And what did you say, blow back is usually found when
13 you're talking about a close range shooting?

14 A Usually it is. It's something to look for. It's not a
15 hundred percent like anything.

16 Q All right. Didn't find it here, did you?

17 A No, sir.

18 MR. BRANNON: Your Honor, I don't have anything
19 further.

20 THE COURT: Mr. Gowdy.

21 SOLICITOR GOWDY: Yes, sir, Your Honor.

22 You mind?

23 MR. BRANNON: No, please do.

24 REDIRECT EXAMINATION

25 BY SOLICITOR GOWDY:

William Gary - Redirect examination
by Solicitor Gowdy

1 Q Do you see his face?

2 A Yes, sir.

3 Q Do you see any evidence that he was hit in the mouth
4 with a 3-pound weight?

5 MR. BRANNON: Objection. Outside the scope of my
6 recross.

7 SOLICITOR GOWDY: Your Honor, he just used those
8 pictures and asked him about it.

9 MR. BRANNON: I, I used the pictures to talk about blow
10 back that was what was derived from his redirect, Your
11 Honor. I didn't talk about my client's face. He's trying
12 to go down another avenue that he, he missed on direct.

13 SOLICITOR GOWDY: I didn't miss it. He's not the
14 proper witness to do it through.

15 THE COURT: You, you put the pictures in front of the
16 witness. I'll allow the witness to comment on the pictures.
17 That was in your recross. That was a new element. I have
18 not seen those pictures presented to this witness.

19 I'll allow you to proceed, Mr. Gowdy.

20 SOLICITOR GOWDY: Thank you, Your Honor.

21 Q Detective Gary, do you see evidence in that photograph
22 of being hit in the mouth with a 3-pound metal weight?

23 A No, sir, I do not.

24 Q Final question, Detective Gary.

25 Do you know or have any reason to know whether or not

1 this defendant changed shirts after he shot his wife or
2 after his wife was shot?

3 A No, I do not. That's why I, when I answered it, I said
4 when we got to him that's what he had on. I don't know what
5 he had on before he got there.

6 Q Thank you, Detective Gary.

7 THE COURT: Recross?

8 RECROSS EXAMINATION

9 BY MR. BRANNON:

10 Q Detective Gary, in your notes I believe you have that
11 one of the things that led you to not believe the intruder
12 story was signs of, of domestic struggle, correct?

13 A Yes, sir.

14 Q Was one of the things that led you to believe that,
15 that there was domestic struggle was the, the tearing of the
16 T-shirt?

17 A Yes, sir.

18 Q He clearly didn't change his T-shirt then, did he?

19 A But I don't know if he had another one over, over that
20 one.

21 Q Okay. Well, that one was on in the struggle, correct?

22 A Yes, sir.

23 Q He didn't change his shirt, right?

24 A He didn't change that shirt.

25 Q Thank you.

William Gary - Recross examination
by Mr. Brannon

1 Nothing further.

2 THE COURT: You may step down, sir. Thank you very
3 much. Officer, you can step down.

4 WITNESS: Thank you.

5 THE COURT: Thank you.

6 All right. Ladies and gentlemen of the jury, I told
7 you we would get through before 5:30 every afternoon, and
8 we're gonna make it. Again, I'm going to give you the same
9 instructions that I've given you each time you've left the
10 courthouse. Don't try to gather any information outside of
11 the court house. Don't listen to, watch, or read any media
12 reports, or any other discussions concerning the case.

13 Don't discuss the case with anyone and please don't
14 allow anyone to discuss the case with you. And if someone
15 attempts to do that, report it upon your return.

16 We're gonna begin again in the morning at nine o'clock.
17 I hope you have a good evening and you're free to go.

18 Everyone remain seated until the jury retires.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Court's in recess until 9:00 in the
22 morning.

23 Defendant remains in custody.

24 Thank you very much.

25 MR. BRANNON: Thank you.

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(Whereupon, Court was in recess for the evening.)

1 Wednesday, April 30th, 2008

2
3 THE COURT: All right. Is the State ready?

4 SOLICITOR GOWDY: Yes, sir, Your Honor.

5 THE COURT: Defense ready?

6 MR. COLLINS: Yes, Your Honor.

7 THE COURT: Bring the jury in.

8 (Whereupon, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. The record will reflect that
11 all jurors have returned to the courtroom. I trust that
12 everyone's had a good evening and you're ready to continue
13 with the trial this morning.

14 When we broke yesterday afternoon the State was still
15 in process of presenting its evidence.

16 And the State may call its next witness.

17 SOLICITOR CRICK: Thank you, Your Honor.

18 The State calls George Baldarama.

19 THE COURT: Sir, come forward to my left to be sworn
20 please.

21 Good morning.

22 GEORGE BALDARAMA, being first duly
23 sworn, testified as follows:

24 THE COURT: Sir, have a seat in the witness stand. And
25 once you're seated, I would ask that you please state your

George Baldarama - Direct examination
by Solicitor Crick

1 name for the record.

2 WITNESS: My name is George Baldarama, Senior.

3 THE COURT: Mrs. Crick, it's your witness.

4 SOLICITOR CRICK: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR CRICK:

7 Q Can you please tell the jury where you work?

8 A I work for the Spartanburg County Sheriff's Office.

9 Q How long have you been with the Sheriff's Office?

10 A Going on 17 years.

11 Q And how long have you been in law enforcement?

12 A About 20, 21.

13 Q What do you do at the Sheriff's Office right now?

14 A Currently I'm working as a second shift desk sergeant
15 for the Sheriff's Department, and I also have a secondary
16 duty of being one of the Spanish interpreters for the
17 department.

18 Q And when you say one of the Spanish interpreters, they
19 call upon you if they need someone to translate or
20 interpret?

21 A Yeah, if one of the other guys isn't available on shift
22 or something.

23 Q Do you have any special training -- well, let me back
24 up a second.

25 What languages do you speak?

George Baldarama - Direct examination
by Solicitor Crick

1 A I speak Spanish and English.

2 Q And how did you learn Spanish?

3 A Well, one, I'm Hispanic by birth, and, of course, it
4 was spoken in my home when I was little. I perfected my
5 Spanish when I was in college, and then, of course, using it
6 more and more everyday perfected it more and more.

7 Q Have you taken any special classes since college or
8 participate in any special programs?

9 A I've taken some classes that they've given like command
10 Spanish and stuff like that.

11 Q Were you working on November 23rd of 2006?

12 A Yes, ma'am, I was.

13 Q Did you become involved in a case involving the
14 defendant, Santiago Rios?

15 A Yes, ma'am, I did.

16 Q How did you become involved in that case?

17 A The sergeant of the shift, which was Sergeant Curtis
18 Kesler, called me to come.

19 THE COURT: Just one second, officer.

20 MR. BRANNON: Madam Prosecutor is going a little bit
21 too fast. There needs to be a break between the question
22 and the answer.

23 THE COURT: All right. Could you help us with that,
24 Mrs. Crick?

25 THE COURT: And officer, I interrupted your answer.

George Baldarama - Direct examination
by Solicitor Crick

1 You may continue and give your answer.

2 WITNESS: Yes, sir.

3 I was requested by Sergeant Curtis Kesler to come to
4 the scene of an incident on Taylor-Colquitt Road.

5 Q What was your purpose in going out to the scene?

6 Why did he need you?

7 A Because the situation involved Hispanic people,
8 speaking people. So, they called me out there to serve as
9 an interpreter.

10 Q And you went out to the scene?

11 A Yes, ma'am, I did.

12 Q What did you do once you got out to the scene?

13 A When I got on the scene Sergeant Curtis Kesler had me
14 to just gather the people and the, that were in the house or
15 the family members together and off to one side.

16 Q So, essentially, you were to do what with them, get
17 their information?

18 A Yeah, I was suppose to ask them their names and who,
19 who, who they were and what relation they had---

20 Q And did you?

21 A ---to the incident that occurred.

22 Q Did you do that?

23 A Yes, ma'am, I did.

24 Q What did you do after you got all of that information?

25 A I stayed to the side with them outside the tape, the

George Baldarama - Direct examination
by Solicitor Crick

1 lined tape, the scene tape, and then later on I was
2 requested I believe by Investigator William Gary to take the
3 family members to the Sheriff's Office.

4 Q Did you take them to the Sheriff's Office?

5 A Yes, ma'am, I did.

6 Q Do you recall -- well, were you in a patrol car when
7 you transported them?

8 A Yes, ma'am, I was.

9 Q Do you recall the people or how many people were with
10 you when, when you went to the Sheriff's Office?

11 A According to my notes that I have here, it says shortly
12 thereafter while at the incident location I spoke with
13 Rafico Pasqual, father-in-law of victim, his wife, Isabel
14 Rios, her children, Santiago, Cynthia P. and Alex P.
15 obtaining their names, ages, and date of birth as well as
16 their relationship to the victim.

17 Q Okay.

18 A After I completed this process I was advised by
19 Investigator William Gary to transport these subjects to the
20 Sheriff's Office.

21 Q So, those are the folks that you took to the Sheriff's
22 Office?

23 A Yes, ma'am.

24 Q What did you do after you got to the Sheriff's Office?

25 A I took them up to the investigation division.

1 Q Did they all stay together?

2 A No, ma'am.

3 Q Who went where?

4 A I -- the, the Santiago subject, the defendant, went to
5 an interview room. The mother, the father, and the two
6 children went to a, like a waiting type area right there in
7 the investigations to be spoken to also.

8 Q When you first got to the scene, did you have any
9 difficulty communicating with any of the family in Spanish?

10 A No, ma'am, I didn't.

11 Q And the children, Cynthia P. and Alex P. did they speak
12 English?

13 A Yes, ma'am, they do.

14 Q Once the defendant was separated into a different room,
15 did you encounter him again?

16 A Yes, ma'am, I was asked by Investigator William Gary to
17 come into the interview room and take a statement from
18 Mr. Santiago.

19 Q Well, what did you do when you first got into the
20 interview room?

21 A By -- what we normally do, by our policy, you know, we
22 read them their Miranda rights. Because he is Spanish
23 speaking, I not only read them to him in English, I read
24 them to him in Spanish.

25 Q So, you read them to him aloud?

George Baldarama - Direct examination
by Solicitor Crick

1 A Yes, ma'am, I did.

2 Q In English and Spanish?

3 A Yes, ma'am, I did.

4 Q When you do that, when you tell people about their
5 rights, do you do it from memory or do you have something
6 you use?

7 A I carry a card that is part of the course. The card
8 was given to us from Command Spanish and it has the Miranda
9 rights in Spanish.

10 Q And you used those to advise him?

11 A Yes, ma'am.

12 Q Do you also fill out paperwork to document that you
13 advised him of his rights?

14 A Yes, ma'am.

15 (Whereupon, the Miranda warning form and the
16 pre-interrogation waiver form were now marked as State's
17 Exhibit Nos. 1 and 2 for identification purposes only at
18 this time.)

19 Q I'm gonna show you now what have been marked as State's
20 Exhibits 1 and 2.

21 Tell me if you recognize those documents.

22 A One of them is the Command Spanish Miranda rights in
23 Spanish, and the other one is a pre-interrogation waiver
24 form.

25 Q Do you have him document on there that he understood

George Baldarama - Direct examination
by Solicitor Crick

1 these rights or has read or heard these rights?

2 A Yes, ma'am, we do.

3 Q How does he acknowledge that he understands that?

4 A By his signature.

5 Q And is your signature on these documents?

6 A Yes, ma'am.

7 Q And his signature is located where?

8 A Next to mine.

9 SOLICITOR CRICK: Your Honor, at this time I'd like to
10 offer State's 1 and 2 into evidence.

11 MR. BRANNON: No objection, Your Honor.

12 THE COURT: Without objection they'll be received as
13 exhibits for the State.

14 SOLICITOR CRICK: Thank you, Your Honor.

15 (Whereupon, State's Exhibit Nos. 1 and 2 were received
16 into evidence at this time.)

17 Q Do you have him initial each right as you read it to
18 him in Spanish?

19 A Yes, ma'am, we do that with everybody.

20 Q And you did that on that form?

21 A Yes, ma'am, he did.

22 Q Did he seem to have any trouble understanding you when
23 you spoke to him in Spanish?

24 A No, ma'am.

25 Q Did you have any trouble understanding him when he

George Baldarama - Direct examination
by Solicitor Crick

1 spoke to you in Spanish?

2 A No, ma'am.

3 Q Did he use any other language when you were talking to
4 him or getting a statement with you other than Spanish or
5 English?

6 A The only time that I heard them use another language,
7 which I believe is their native tongue from where they're
8 from, was when they were speaking to each other.

9 Q After you went over his rights with him, did he give
10 you an oral statement about what had happened?

11 A Yes, ma'am, he did.

12 Q And what did he tell you about what happened --

13 A I---

14 Q -- initially?

15 A Without looking at the statement, I can't, couldn't
16 tell you.

17 Q Okay. And if you need to refer to your report you can
18 do that as well, and I'll show you that in a second.

19 So, after he told you what happened, did you talk to
20 him about searching his person?

21 A I think that any search that was done was, was, was
22 done before we, you know, we started the statement or
23 anything like that.

24 Q Okay. After you got his oral statement, was he allowed
25 to go to the restroom?

George Baldarama - Direct examination
by Solicitor Crick

1 A Yes, ma'am, he was.

2 Q Did he go at that time?

3 A Yes, ma'am, he did.

4 Q Did you escort him to the restroom?

5 A Yes, ma'am, I did.

6 Q When you returned from the restroom, did you ask him to
7 do a written statement?

8 A I believe that's the time that we did a written
9 statement.

10 (Whereupon, two statements were marked as State's
11 Exhibit Nos. 3 and 4 for identification purposes only at
12 this time.)

13 SOLICITOR CRICK: Your Honor, I'm gonna show him what's
14 been marked as State's Exhibit 3.

15 If you can take a look at that and tell me if you
16 recognize what that is.

17 A That's the statement of Mr. Pasqual written in my
18 handwriting or printed in my writing.

19 Q And you signed that form?

20 A Yes, ma'am, I did.

21 Q And the defendant signed that form, a signature is on
22 that form?

23 A Yes, ma'am, he did.

24 Q Now, explain to the jury, this is written in what
25 language, the statement?

George Baldarama - Direct examination
by Solicitor Crick

1 A In English.

2 Q How did you communicate with Mr. Rios?

3 A In Spanish.

4 Q So, how did it get from Spanish to English?

5 A Well, as he told me and I wrote it in English.

6 Q Now, after you finished writing out the statement, did
7 you give him an opportunity to hear the statement again?

8 A Yes, ma'am. I did.

9 Q What did you do?

10 A I told him -- I read back to him what I had written in
11 English and Spanish.

12 Q Did you tell him he had the opportunity to correct any
13 mistakes?

14 A Yes, ma'am.

15 Q Did you ask him if he had any questions?

16 A I believe so.

17 Q Did he seem to agree with the statement that you had
18 written?

19 A Yes, ma'am.

20 Q And the way you said it back to him was exactly the way
21 you wrote it on the paper?

22 A Yes, ma'am.

23 SOLICITOR CRICK: Your Honor, at this time I'd like to
24 offer State's 3 into evidence.

25 MR. BRANNON: No objection.

1 THE COURT: No objection, it will come in.

2 (Whereupon, State's Exhibit No. 3 was received into
3 evidence at this time.)

4 Q I'm gonna show you one other form, which I need to get
5 marked.

6 (Whereupon, the permission to search form was marked as
7 State's Exhibit No. 18 for identification purposes only at
8 this time.)

9 Q I'm gonna show you what's been marked as State's
10 Exhibit 18 and ask you to take a look at that.

11 A It's a permission to search form from the Spartanburg
12 County Sheriff's Office.

13 Q What's the purpose of that form?

14 A That's for whenever we complete a search of a person,
15 their clothing or whatever, the, the person gives us
16 permission to do that.

17 Q Do they have to give you permission to do a swab to get
18 their DNA?

19 A Yes, ma'am.

20 Q Do they have to give you permission to get swabs to
21 check for gunshot residue on their hands?

22 A Yes, ma'am.

23 Q And this form would cover that?

24 A Yes, ma'am.

25 Q Did you sign that form?

George Baldarama - Direct examination
by Solicitor Crick

1 A Yes, ma'am, I did.

2 Q Did you witness Mr. Rios signing that form?

3 A Yes, ma'am.

4 SOLICITOR CRICK: Your Honor, at this time I'd like to
5 offer State's 18 into evidence.

6 MR. BRANNON: No objection, Your Honor.

7 THE COURT: Without objection, it will be received as
8 marked.

9 (Whereupon, State's Exhibit No. 18 was received into
10 evidence at this time.)

11 THE COURT: You may proceed, Mrs. Crick.

12 Q After you took his written statement, did someone come
13 in to test or collect evidence from his person?

14 A One of the ID officers.

15 Q Now, I think you testified a little bit earlier he had
16 been to the restroom already.

17 A Yes, ma'am.

18 Q Did he go to the restroom again?

19 A I believe he did go a second time.

20 Q And did you get any other statement other than this one
21 from him at that time?

22 A I, I don't remember if we did or didn't. We may have.

23 Q But you personally did not?

24 A No, I don't, I don't think I did.

25 SOLICITOR CRICK: Your Honor, at this time I'd like to

George Baldarama - Direct examination
by Solicitor Crick

1 publish State's 3 if I could.

2 THE COURT: You may do so.

3 Q Are you okay to read this aloud for the jury?

4 Is that okay with you?

5 A Yeah.

6 Q Okay. If you would, go ahead and read this statement

7 Mr. Rios gave you to the jury.

8 A Okay.

9 MR. BRANNON: Is State's 3 the statement, is that
10 correct?

11 THE COURT: Yes, it is.

12 MR. BRANNON: Thank you. That's all.

13 A This is a statement of Santiago Pasqual Rios, age 23,
14 date 11/23/06, address [REDACTED] in Spartanburg.
15 Phone number 578-0763.

16 MR. BRANNON: Your Honor?

17 THE COURT: Just one second, officer.

18 MR. BRANNON: If he could please read slower.

19 THE COURT: Yes, sir, if you could slow down just a
20 little so we can, for our translators.

21 Thank you, sir.

22 WITNESS: Yes, sir.

23 I and Eliza were watching TV in our room when someone
24 knocked at the door. I told Eliza that someone is knocking
25 at the door. She said to go and look. I said I would go.

George Baldarama - Direct examination
by Solicitor Crick

1 As I went toward the door, she followed behind me like
2 she always follows me. She was turning on the light as I
3 was opening the door. She then quickly turned off the light
4 and said don't open the door. I had already unlocked the
5 door and told her to turn the light back on. She said no,
6 they have on masks. She looked pale. We did not say
7 anything more.

8 The next thing I know is the door is being kicked open.
9 I don't remember if they used the knee or their foot. I
10 moved back startled, but Eliza said don't be afraid, they
11 won't shoot. I told her to get behind me. That's when I
12 told them to take what they wanted, but don't do anything to
13 us.

14 It was this time that they started coming at me and I
15 knew I had to defend myself. They started hitting me and
16 one of them hit me in the mouth with a solid object while
17 the others were trying to get around me. I think my wife,
18 Eliza, was trying to help me.

19 That is when I heard the gun discharge. Then I said
20 Eliza, are you okay. She said yes, yes. Then when I saw
21 her covered with blood, they, they, the suspects ran out of
22 the house. I grabbed her and asked her if she was okay, but
23 she did not respond. I thought she had a flesh wound on her
24 face.

25 When I saw all the blood I just laid on her, I just

George Baldarama - Direct examination
by Solicitor Crick

1 I laid her on the floor and got the phone to call 9-1-1. I
2 was still talking on the phone when the police arrived.

3 End of statement. Written for Santiago Pasqual by
4 Sergeant G. Baldarama.

5 Q And you read that back to him in Spanish?

6 A Yes, ma'am.

7 Q And he agreed with that statement and signed it?

8 A Yes, ma'am.

9 Q Before you got the statement from him, did you threaten
10 him in any way?

11 A No, ma'am.

12 Q Did you use force or hit him to try to get that
13 statement or pull his hair?

14 A No, ma'am.

15 Q Did anyone else in the room do any of that to Mr. Rios?

16 A Not to my knowledge.

17 Q Did anybody make him any promises about what would
18 happen if he told what happened?

19 A Not to my knowledge.

20 Q Did anybody try to coerce him into giving that
21 statement?

22 A Not to my knowledge.

23 Q He was allowed to have food and water?

24 A Yes, ma'am.

25 Q He was allowed to go to the restroom?

George Baldarama - Direct examination
by Solicitor Crick

1 A Yes, ma'am.

2 Q Okay. After you got the statement from the defendant,
3 where did you go next?

4 A I think it, that was when Officer William Gary asked me
5 to go speak with the, the mother and the children or to take
6 statements from them.

7 Q Did you go speak with the mother?

8 Is that Mrs. Isabel Rios?

9 A Yes, I did, ma'am.

10 Q When you went in with Mrs. Rios, who else was in the
11 room with you?

12 A When we first went in the room it was just myself and
13 Mrs. Rios.

14 Q Were you able to speak to her?

15 A Yes, ma'am.

16 Q How -- what language did you use when speaking to her?

17 A Spanish.

18 Q Was she able to understand you?

19 A Yes, ma'am.

20 Q Were you able to understand her?

21 A Yes, ma'am.

22 Q Did she give you an account of what happened?

23 A Yes, ma'am.

24 Q What did she tell you happened?

25 A Without reading her statement I don't remember.

1 Q Okay. Well, I'll go ahead and show you what's been
2 Marked as State's 17.

3 Tell me if you recognize that.

4 A That's the translated statement of Mrs. Isabel Rios in
5 my writing.

6 Q You wrote that statement based on what she told you in
7 Spanish?

8 A Yes, ma'am.

9 Q What did she tell you happened?

10 A According to her statement, Mrs. Isabel Rios stated I
11 was, I was laying in my bed and Cynthia P. my daughter, was
12 sleeping on the carpet next to my bed. Alex P. was watching TV
13 with Eliza. Alex P. came into my room and told me that
14 Santiago had arrived home and was asking Eliza to feed him
15 supper because he was hungry. Eliza was---

16 THE COURT: One second, officer.

17 MR. BRANNON: Again, Your Honor, he's reading too fast.

18 THE COURT: Could you slow down some please, sir?

19 Thank you.

20 WITNESS: Yes, sir.

21 Alex P. came into my room and told me that Santiago had
22 arrived home, and was asking Eliza to feed him supper
23 because he was hungry. Eliza responded to him angrily
24 telling him she was not going to feed him.

25 I went to the kitchen to keep Santiago and Eliza from

George Baldarama - Direct examination
by Solicitor Crick

1 arguing. They were arguing over Eliza not wanting to give
2 Santiago any of the Thanksgiving dinner they had made.

3 During that time Eliza and Santiago had gotten each,
4 each other's hair and Eliza grabbed a medallion from off
5 Santiago's neck scratching him on the chest area. She also
6 told him that her mother was coming to get her because she
7 was leaving him.

8 It was at this time I stepped between them to separate
9 them. Then they went to their room, Eliza going first, and
10 Santiago following behind.

11 They shut the room door. I tried knocking on the door,
12 but they would not open it. The door was locked. I could
13 hear them arguing. For a second it went quiet in the room.
14 I dialed the phone number of my other daughter and knocked
15 on the door again, and told Santiago his sister wanted to
16 talk to him. Then Eliza said wait a moment. But they still
17 did not open the door.

18 I went to my room talking to my daughter on the phone
19 when I heard a shot. I told my daughter on the phone that I
20 heard a shot. I immediately hung up the phone. Santiago
21 came out of the room running, telling me that he had shot
22 Eliza or Eliza was shot. I don't remember the exact
23 wording. Then I gave the phone to Santiago to call 9-1-1.

24 Finish. Translated by Sergeant Baldarama for Isabel
25 Rios.

George Baldarama - Direct examination
by Solicitor Crick

1 Q And that's her final written statement, correct?

2 A Yes, ma'am.

3 Q Now, prior to that, did you have to start and stop
4 several statements with Mrs. Rios?

5 A Yes, ma'am, I believe we did.

6 SOLICITOR CRICK: I'm gonna get these exhibits marked,
7 Your Honor.

8 (Whereupon, four statements were marked as State's
9 Exhibit Nos. 19 through 22 for identification purposes only
10 at this time.)

11 Q I'm gonna show you now what have been marked as
12 Exhibits 19, 20, 21 and 22, and ask you if you recognize
13 those.

14 A Those are statements that were begin, began by me where
15 I wrote her name down and started taking her statements.

16 Q Now, the first document there where you wrote her name
17 down, did you have anything else in the statement at that
18 time?

19 A No, ma'am.

20 Q Okay. How about this second document?

21 A We started out with my daughter prepared the turkey
22 around 5:00 p.m.

23 Q Is that all you got on that statement?

24 A Yes, ma'am.

25 Q Now, while you're talking to her and trying to get

George Baldarama - Direct examination
by Solicitor Crick

1 these statements, is Investigator Lindsay in the room or not
2 in the room?

3 A He's coming in and out of the room.

4 Q What is he doing while you're talking to Mrs. Rios?

5 A He comes in the room and he tells Mrs. Rios that he
6 wants the truth, to tell him the truth. At one point he was
7 adamant about it. He leaned on the table, and he told her I
8 want the truth.

9 Q Did you see him at any time pull her hair?

10 A I don't recall him pulling her hair.

11 Q Did you -- if, if you had seen that, would you have
12 supported that?

13 A When you mean supported, as far as what he did, I---

14 Q I guess what I'm asking is if he had pulled her hair,
15 would you tell the jury that now?

16 A Yes, ma'am, I would.

17 Q So, after the investigator comes back in, did she start
18 another statement?

19 A Yes, ma'am.

20 Q What was that statement?

21 A Each statement got a little bit more lengthier. In
22 this one she says I was laying in my bed and Cynthia P. was
23 sleeping on the carpet next to my bed. Alex P. was watching TV
24 with Eliza. When Santiago arrived home, he was asking Eliza
25 to feed him supper. Alex P. came into mother's room and then I

1 stopped.

2 MR. BRANNON: Your Honor?

3 THE COURT: Yes.

4 WITNESS: Too fast?

5 MR. BRANNON: I'm sorry. When he reads, he picks up
6 his speed.

7 WITNESS: I'm sorry.

8 THE COURT: All right. Thank you, officer.

9 A I was laying in my bed and ^{Cynthia P.} was sleeping on the
10 carpet next to my bed. ^{Alex P.} was watching TV with Eliza.
11 When Santiago arrived home, I was asking Eliza to feed him
12 supper. ^{Alex P.} came into his mother's room and then I
13 stopped.

14 Q You stopped.

15 Do you have any other statements from her?

16 A There's one that says today my daughter-in-law, Eliza,
17 was preparing the turkey around 5:00 p.m. The two of us
18 were making flour tortillas. She was also making a potato
19 salad. We sat down to eat, her and I with my son, ^{Alex P.} and
20 my daughter, ^{Cynthia P.} around 6:30 p.m. We ate for about 30
21 minutes.

22 After washing the dishes we went into my
23 daughter-in-law's room to watch a video. We watched the
24 middle, the movie for about 40 minutes. Then my
25 daughter-in-law told me she was getting sleepy and covered

George Baldarama - Direct examination
by Solicitor Crick

1 her face with a blanket and was falling asleep. I then told
2 my daughter-in-law that I was getting sleepy too, and I went
3 to my room with my other two children, Alex P. and Cynthia P.

4 I was laying on the bed and Alex P. and Cynthia were
5 laying on blankets on the carpet next to my bed. I fell
6 asleep. I did not hear when my son had arrived home, I was
7 sleepy. I heard what sounded like a gun discharging, but I
8 didn't wake up. Then I heard my son, Santiago, knocking at
9 my door. He was crying saying they had killed his wife. I
10 got up out of my bed and ran to my door.

11 Q And then you got the final statement, which is the one
12 you wrote?

13 A Yes, ma'am.

14 Q After you got that final statement from Mrs. Rios, did
15 you stay with her, did she leave the room, what happened?

16 A I believe that I, I stayed there.

17 Q At any point did you go back in the room with Mr. Rios?

18 A I -- I'm not sure if I did or didn't. I don't
19 remember.

20 Q Okay. And as for any other statements from the
21 defendant, that would of been another officer that took his
22 other statement, correct?

23 A I believe they did call another officer in.

24 Q All right. One second.

25 (Pause.)

1 Q I'm gonna ask you one last question just to clarify for
2 the jury.

3 At no point in your conversations with the defendant,
4 Mr. Rios, or his mother did they have any trouble
5 understanding what you were saying in Spanish?

6 A No, ma'am.

7 Q And at no point did you have any trouble understanding
8 what they were telling you in these detailed statements in
9 Spanish?

10 A No, ma'am.

11 THE COURT: You may proceed, Mr. Brannon.

12 MR. BRANNON: Please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. BRANNON:

16 Q Morning, Officer Baldarama.

17 A Morning, sir.

18 Q What time did you get called to respond to [REDACTED]

19 [REDACTED]?

20 Do you know?

21 A According to my notes from the investigative follow-up
22 it says 21:49 hours.

23 Q What time is that?

24 A 9:49.

25 Q Okay. What time did you -- that's, that's when you

George Baldarama - Cross-examination
by Mr. Brannon

1 were called, correct?

2 A Yes, sir.

3 Q What time did you get there?

4 A I left there around 10:15 and arrived at the incident
5 scene around 10:16, 10:17.

6 Q So, you were called to the scene and it took you 25
7 minutes to leave, is that correct?

8 A Yes, sir.

9 Q Okay. Were you on-duty or off-duty?

10 A I was on-duty at the desk.

11 Q Okay. All right. And then once you left the Sheriff's
12 Office it took you one minute to get there?

13 A Taylor-Colquitt is not that far from the Sheriff's
14 Office.

15 Q Got you.

16 Okay. All right. Now, you said that when you got
17 there you spoke with Detective Gary, is that correct?

18 A Yes, it says in my notes I met with Investigator Gary.

19 Q He asked you to gather the witnesses or the people that
20 were at the home, correct?

21 A Yes, sir.

22 Q And, and then to collect name, age, relationships, and
23 so on, so forth, correct?

24 A Yes, sir.

25 Q All right. Did you ever enter the home?

1 A Not until a day or so later I think I went back with
2 him.

3 Q Okay. So, that night you didn't go into the home?

4 A No, I never went in the house.

5 Q How long were you there?

6 A According to my notes, I called out at the Sheriff's
7 Office at, at 10:54. So, if I had arrived on the scene at
8 10:16, I guess about 20 minutes or so.

9 Q You were at the scene for approximately 20 minutes?

10 A Approximately, yes, sir.

11 Q Okay. All right. After you gathered the name and, and
12 the other information that you gathered at the direction of
13 Officer Gary, what were you -- what was your next
14 instruction?

15 A Then he asked me to take them to the, the family to the
16 Sheriff's Office.

17 Q All right. And you carried the father, the mother,
18 Santiago, and his two younger siblings.

19 So, there were six people in your patrol car?

20 A Yes, sir.

21 Q Did you search Santiago's father before he got into
22 your car?

23 A I don't remember if I searched him or not. I may have
24 asked him if they had anything that I needed to be concerned
25 about. But I didn't -- I don't remember searching them.

George Baldarama - Cross-examination
by Mr. Brannon

1 Q Did you -- if you had asked them if they had anything
2 to be concerned about, would, would you have put that in
3 your incident, in your notes?

4 A Maybe, possibly. But I don't think I did.

5 Q Okay. Did you search Santiago Rios before he got into
6 your car?

7 A I don't remember, sir.

8 Q And if you had, would you have put that in your notes?

9 A Yes, sir, I would of.

10 Q Okay. So, do you remember if you searched anybody?

11 A I know I wouldn't have searched the women.

12 Q You would not have searched the women?

13 A No, sir, I wouldn't have.

14 Q Why not?

15 Why not?

16 A I'm -- if I would of had a woman do it. I probably
17 wouldn't of done it.

18 Q Okay.

19 A I didn't, at the time when I was there, I didn't have a
20 reason to search them and I don't remember if the officers
21 on the scene, what they did or anything like that, cause I
22 was there serving as interpreter.

23 Q But you were then -- at that point though you were
24 serving not as an interpreter, but as a transporter from one
25 sight to another sight, location, correct?

George Baldarama - Cross-examination
by Mr. Brannon

1 A Yes, sir.

2 Q Do you typically -- did you know any of these people
3 prior to your arrival at their home?

4 A No, sir.

5 Q When you're on-duty driving a Sheriff's Department
6 automobile dealing with people that you don't know, do you
7 typically let them get into your vehicle without searching
8 them?

9 A If I'm -- they're not a suspect. I wasn't looking at
10 them as suspects.

11 Q Okay. Okay. Do you know if anyone that rode in your
12 car was ever searched by anyone else?

13 A No, sir, I can't tell you that.

14 Q All right. During the 20 minutes that you were there
15 at [REDACTED], did you ever -- excuse me.

16 While you were at [REDACTED], [REDACTED], how
17 many people did you see go in and out of the home?

18 A I couldn't tell you cause I wasn't really paying
19 attention to the house.

20 Q Okay. Now, you said at that point that they were not
21 suspects, correct?

22 A Yes, sir.

23 Q So, what were they?

24 A Witnesses.

25 Q All right. If they were witnesses, did they have --

George Baldarama - Cross-examination
by Mr. Brannon

1 could they have driven themselves to the Sheriff's
2 Department?

3 A I guess so.

4 Q Okay. But you were directed to take them, weren't you?

5 A Yes, sir.

6 Q Once you were directed to take them, did they still

7 have the ability or the authority to drive themselves?

8 A I would assume.

9 Q Okay. So, they weren't in custody?

10 A No, sir.

11 Q Okay. What would have been your response if any or all
12 of them had refused to get into your vehicle?

13 A I probably would of told Investigator Gary.

14 Q Okay. All right. When you were taking Mrs. Rios'
15 statement, you started and stopped a lot, didn't you?

16 A Several times, yes, sir.

17 Q Okay. Could that have been because there was a
18 difficulty in, in, in the language barrier?

19 A No, sir.

20 Q It's not?

21 A No, sir.

22 Q Why not?

23 A Cause she spoke Spanish.

24 Q Well then why didn't you continue on and write one
25 statement?

George Baldarama - Cross-examination
by Mr. Brannon

1 A Cause Investigator Lindsay kept coming in and talking
2 to her. And then he would, he told her that he wanted the
3 truth and nothing but the truth. And so, then they would,
4 we would start a statement over again.

5 Q And he got down on the table and got in her face and
6 said I want the truth, right?

7 A He was down on the table more than he was down in her
8 face. It wasn't -- the way the table's situated he was not
9 real close to her, but he was beside her.

10 Q All right. And you say you can't remember if he pulled
11 her hair or not?

12 A No, sir, I can't.

13 Q Okay. All right.

14 A If he would of I would of told you that.

15 MR. BRANNON: Okay. Approach, Your Honor, just to get
16 a document.

17 THE COURT: Yes, you may.

18 Q Now, this is the, this is State's Exhibit No. 1.

19 This is the pre-interrogation waiver form, correct?

20 A Yes, sir, it is.

21 Q All right. And then you went over this with him --
22 this is the Miranda rights in Spanish, correct?

23 A Yes, sir.

24 Q This document has the Miranda rights in English,
25 correct?

George Baldarama - Cross-examination
by Mr. Brannon

- 1 A Yes, sir.
- 2 Q What time did you complete this document right here?
- 3 A This document was probably filled out after we did
- 4 this.
- 5 Q Okay. But you have a time on there, don't you?
- 6 A Yes, sir.
- 7 Q And what time is that?
- 8 A It looks like 23:11.
- 9 Q Okay. And 23:11 is what time?
- 10 A 11:11.
- 11 Q Okay. And now would it be fair to say that you took no
- 12 statements from Santiago Rios before these documents were
- 13 taken care of, correct?
- 14 A Yes, sir.
- 15 Q Okay. And you also wrote on the bottom, in, in
- 16 preprinted ink, it says I am able to read and write the
- 17 English language, correct?
- 18 That's what the form says, correct?
- 19 A Yes, sir.
- 20 Q And you crossed that out, right?
- 21 A Yes, sir.
- 22 Q And it says I can write in Spanish, correct?
- 23 A Yes, sir.
- 24 Q Who, who were you saying could write in Spanish?
- 25 A Santiago Pasqual.

George Baldarama - Cross-examination
by Mr. Brannon

- 1 Q Okay. And, and how do you know that?
- 2 A Cause he told me.
- 3 Q Okay. Did you write anything in Spanish for him?
- 4 A No, sir.
- 5 Q Did you ask him to write anything in Spanish?
- 6 A I believe I asked him to write his statement, if he'd
- 7 write a statement for us.
- 8 Q Okay. But he didn't do that, did he?
- 9 A No, sir, he didn't.
- 10 Q Okay. All right. And you completed this form at
- 11 eleven minutes after 11:00, correct?
- 12 A According to that, sir.
- 13 Q Okay. All right. Now, sir, if you would refer back to
- 14 your notes, your, your preliminary investigative report.
- 15 You got that?
- 16 A Yes, sir.
- 17 Q Okay. All right. Down near the bottom it said I
- 18 assisted Santiago with his voluntary statement per his
- 19 request, and then in your notes you say he says that three
- 20 black males entering wearing masks, right?
- 21 A Yes, sir.
- 22 Q Okay. During the time I was working on the statement
- 23 with Santiago period. It says ID Officer Tim Davis entered
- 24 the room.
- 25 Correct?

George Baldarama - Cross-examination
by Mr. Brannon

1 A Yes, sir.

2 Q Okay.

3 A Wait a minute. Yeah, ID Officer Tim Davis entered the
4 room.

5 Q All right. And, and Officer Davis was there to check
6 for gunshot residue and DNA, correct?

7 A Yes, sir.

8 Q All right. So, you were working on that first written
9 statement when the ID officer came in the room, correct?

10 A Yes, sir. Yes, sir.

11 Q All right. This is a copy of the statement that you
12 took from Santiago Rios, isn't it?

13 A Yes, sir.

14 Q What time does it say it was completed?

15 A 11:20.

16 Q 11:20.

17 You were working on this statement when Officer Davis
18 came in the room, correct?

19 A Yes, sir.

20 Q You finished the interrogation or the, the
21 interrogation waiver form or the Miranda rights form at
22 11:11, correct?

23 A Yes, sir.

24 Q You completed the first written statement at 11:20,
25 correct?

1 A Yes, sir.

2 Q That's nine minutes?

3 A Okay.

4 Q And while you were -- would you agree that the
5 difference between 11:11 and 11:20---

6 A Okay.

7 Q ---is nine minutes?

8 A Okay. Yes, sir.

9 Q You wrote this statement, consisting of almost two full
10 pages, and filled in all of the other stuff and had him sign
11 it in nine minutes, right?

12 A (Witness nods affirmatively.)

13 Q And in the middle of this, you were interrupted by
14 Officer Davis to collect DNA and check for gunshot residue
15 and scrape under his fingernails, right?

16 A Yes, sir.

17 Q Okay. That's according to your own notes, right?

18 A Right. But I think the time, the 11:20, is not the
19 time that we finished. It's the time that we started cause
20 whenever I do statements I put on there the time.

21 Q This statement was completed at 11:20?

22 A Yes, sir, I understand that that says that. But when I
23 do that, even with, when people come into the desk, I
24 always -- well, I take the word completed meaning that
25 that's when we started it. That's what I take it as.

George Baldarama - Cross-examination
by Mr. Brannon

1 Q Well, okay. Now, sir, do you speak English?

2 A Yes, sir.

3 Q And you speak Spanish?

4 A Yes, sir.

5 Q But you're taking the English word completed to mean
6 started, correct?

7 A Yeah.

8 Q Have you ever looked up the word completed in a
9 dictionary?

10 SOLICITOR CRICK: Your Honor, I'm gonna have---

11 A I may have, sir. But that's just me. I always use the
12 time---

13 THE COURT: Just one second.

14 Is there an objection?

15 SOLICITOR CRICK: No, Your Honor. I'll let him get to
16 it.

17 THE COURT: You may proceed, Mr. Brannon.

18 Q My question was have you ever looked the word completed
19 up in an English dictionary?

20 A I probably have.

21 Q Does it -- does the definition contain the word start
22 anywhere?

23 A Well, completed means that we're doing the statement.
24 That's what it means. That's the way I look at it. I
25 mean---

- 1 Q Isn't it possible, sir, that the people that you are
2 translating for didn't understand anything that you said?
- 3 A I believe they did.
- 4 Q But you don't know what the word completed meant and
5 you say you speak English.
- 6 A I do speak English.
- 7 Q What does completed mean?
- 8 A Completed means to finish or to finish something.
- 9 Q Not start, right?
- 10 A But I always put down the times that we start---
- 11 Q Okay.
- 12 A ---even when I do statements with, at the desk.
- 13 Q Let's look at this again. This document right here
14 says I'm able to read and write in the English language, and
15 you crossed it out, right, and you wrote can write in
16 Spanish, right?
- 17 A Yes.
- 18 Q Okay. But on this document here that I've been showing
19 you, it says completed, but you didn't cross it out, did
20 you?
- 21 A No, sir, I didn't.
- 22 Q Okay. So, you know how to cross things out, right?
- 23 A Yes, sir, I do.
- 24 Q You finished this document in nine minutes, didn't you?
- 25 A Probably not.

George Baldarama - Cross-examination
by Mr. Brannon

1 Q Okay. If I wrote a document in Spanish -- excuse me.

2 Retract.

3 If I wrote a document in or a letter in French and I
4 read it to you and then asked you to sign it, would you sign
5 it?

6 A I would ask you to tell me what it said.

7 Q Okay. If I read it to you, would you then sign it?

8 A If you explained to me what it said in there.

9 Q Okay. Did you explain this statement to Isabel Rios?

10 A Yes, sir, I did.

11 Q You explained it.

12 How did you explain it to her?

13 Did you read it to her or did you explain the meaning
14 of each word?

15 A I read it to her from English to Spanish.

16 Q Okay. So, in other words, Isabel Rios was relying
17 completely on your reading of this statement when she signed
18 it, correct?

19 A Yes, sir.

20 Q This statement, as far as Isabel Rios knows, says the
21 score of the, of the last basketball game, right?

22 She doesn't -- she can't read a word on this paper, can
23 she?

24 A To my knowledge, she can't read it.

25 Q She can't.

1 So, she trusted you completely when she signed her
2 name, didn't she?

3 A Yes, sir.

4 Q You wrote this statement, right?

5 A Yes, sir.

6 Q Same thing goes for Santiago Rios, he can't read a word
7 of English, can he?

8 A To my knowledge.

9 Q So, he trusted you completely when you wrote this
10 statement and then he signed it, right?

11 A Yes, sir.

12 Q Okay. Those are your words on this written statement
13 right here?

14 You wrote them, correct?

15 A They're the statement of the people who gave me those
16 words.

17 Q You wrote these words, didn't you?

18 A I wrote what they told me.

19 Q Now, I need to know when Santiago Rios went to the
20 restroom for the first time after he got to the Sheriff's
21 Department.

22 A I don't remember exactly. It was just shortly after we
23 got there.

24 Q Okay. Well---

25 A I can't give you the exact time.

George Baldarama - Cross-examination
by Mr. Brannon

1 Q Did he go to the restroom before you wrote the
2 statement that you wrote or after you wrote the statement?

3 A I, I can't remember. I think it was after we started
4 the statement that he wanted to go to the bathroom.

5 Q Okay. During your taking of the statement you were
6 interrupted by Officer Davis, correct?

7 A Yes, sir.

8 Q Did he go to the bathroom before that or after that?

9 A I think he went to the bathroom before that. I'm not
10 sure.

11 Q But your notes don't say that, do they, sir?

12 A No, sir, they don't.

13 Q They don't.

14 Okay. The State wants this jury to believe he went to
15 the bathroom and washed gunshot residue off his hands.

16 You reckon you should of put that in your notes?

17 A Yes, sir, I should of.

18 Q But you didn't, right?

19 A No, sir, I didn't.

20 Q You were with Santiago Rios, correct?

21 A Yes, sir.

22 Q In your notes you say that you were taking his
23 statement and that Davis interrupted you, correct?

24 A Yes, sir.

25 Q You don't even put in there that he went to the

George Baldarama - Cross-examination
by Mr. Brannon

1 bathroom, do you?

2 A No, sir, I didn't.

3 Q All right. You don't remember that one of your police
4 officers pulled Isabel Rios' hair, do you?

5 A No, sir, I don't.

6 Q But you remember that he went to the bathroom before
7 Davis interrupted and not after?

8 A I think he went a couple times to the bathroom.

9 Q Okay. You didn't put either of them in your notes, do
10 you?

11 A No, sir, I didn't.

12 Q All right. It could have been after Davis interrupted,
13 couldn't it?

14 A What was that?

15 Q That he went to the restroom.

16 A Could of been, sir.

17 MR. BRANNON: All right. One second, Your Honor. I
18 need---

19 THE COURT: Yes, sir.

20 (Pause.)

21 MR. BRANNON: Nothing further, Your Honor. Thank you.

22 THE COURT: Redirect?

23 SOLICITOR CRICK: Thank you, Your Honor.

24 THE COURT: Yes, ma'am.

25 REDIRECT EXAMINATION

George Baldarama - Redirect examination
by Solicitor Crick

1 BY SOLICITOR CRICK:

2 Q Sergeant Baldarama, you were not acting in a capacity
3 as an investigator on this case at that time, were you?

4 A No, ma'am.

5 Q And Mr. Rios, to your knowledge at this point, was a
6 witness in this case?

7 A Yes, ma'am.

8 Q So, when he asked to go to the restroom, you took him?

9 A Yes, ma'am.

10 Q If any of that were documented -- well, can you say if
11 any of that is documented in another officer's report?

12 A No, ma'am, I can't.

13 Q He had already given you an oral statement?

14 A Yes, ma'am.

15 Q And your testimony was that he then went to the
16 restroom?

17 A Yes, ma'am, I believe he went to the restroom.

18 Q You started the statement when you got back?

19 A We continued I believe on the statement.

20 Q And it is your custom or your practice, when you fill
21 out a form such as the, a statement, to put the time you
22 started the interview?

23 A Yes, ma'am, I work at the front desk in the Sheriff's
24 Office, and we have people come in all the time. And when
25 we take statements from them, I just have them put down the

George Baldarama - Redirect examination
by Solicitor Crick

1 time that they signed in, and that's just something I do all
2 the time. I been doing it for the last seven years. So, I
3 mean it would of just been something I did out of, just out
4 of habit. I just -- just the way it is. Not so much
5 looking at completed, you know, doing the form and
6 finishing, or whatever. It's just something that---

7 Q You were in the process of completing?

8 A Yes, ma'am, I'm just doing a form.

9 SOLICITOR CRICK: Okay. Have nothing further, Your
10 Honor.

11 MR. BRANNON: Just briefly.

12 THE COURT: Yes, sir.

13 RE CROSS EXAMINATION

14 BY MR. BRANNON:

15 Q Deputy Baldarama?

16 A Yes, sir.

17 Q Were you at the front desk when you were questioning or
18 interpreting for Santiago Rios?

19 A No, sir, I wasn't.

20 Q Where were you?

21 A We were up in investigations.

22 Q All right. Now, you're aware that there's a 9-1-1 tape
23 in this case?

24 A Yes, sir.

25 Q Does the Sheriff's Department have tape recorders?

George Baldarama - Recross examination,
by Mr. Brannon

1 A I'm not sure if they do or don't, sir. I know they
2 record in the building and the lobby area. But I'm not -- I
3 don't know if the phones are recorded.

4 Q Okay. I don't, I don't care about the phones.

5 Do they have tape recorders?

6 Can you make a tape recording at the Sheriff's

7 Department?

8 A In the office or the lobby?

9 Q No, where you were with Santiago Rios, could you have
10 picked up a tape recorder and taken it with you?

11 A No, we don't have---

12 SOLICITOR CRICK: Your Honor, I'm going to object.

13 THE COURT: Just one second. There is an objection.

14 SOLICITOR CRICK: I think this is going a little
15 outside the scope of my redirect, which had nothing to do
16 with whether statements were recorded or not recorded.

17 MR. BRANNON: It went to his recollection and all I'm
18 trying to show is there, that this, this could have been
19 memorialized where there would be no speculation.

20 THE COURT: He's on cross-examination. I'll allow him
21 to proceed. But let's try to tie it to what was gone over
22 in redirect.

23 MR. BRANNON: Yes, Your Honor.

24 Q Officer, you were not at the front desk, correct?

25 A Yes, sir.

1 Q And, and typically, during your normal duties, you are
2 at the front desk?

3 A Yes, sir.

4 Q You reach over and you pick up a form and you write
5 down whatever the complaint or incident is, correct?

6 A Yes, sir.

7 Q That's not the way this was going that night, correct?

8 A As far as the statement is concerned?

9 Q That's correct.

10 A Yes.

11 Q Yes.

12 A The statement would be -- I'd always have them put the
13 time they came in.

14 Q Okay. On the night of November the 23rd, 2006, when
15 you were questioning Santiago Rios and Isabel Rios, you were
16 not at the front desk?

17 A No, sir.

18 Q You were in an interrogation room?

19 A Yes, sir.

20 Q Is it possible that you could of audio or videotaped
21 your interrogation?

22 A I don't have any kind of recording device or anything
23 like that. The recording device at the desk is stationary.
24 I mean it's, it's up in the, on the wall.

25 Q So---

George Baldarama - Recross examination
by Mr. Brannon

1 A I wouldn't have taken a tape player with me or recorder
2 with me.

3 Q So, it was impossible for you to have recorded this and
4 memorialized exactly what happened that night, right?

5 A It wasn't impossible. But I don't, I don't have the
6 facilities to do it.

7 MR. BRANNON: Nothing further, Your Honor. Thank you.

8 THE COURT: Sir, you may step down. Thank you very
9 much.

10 State may call its next witness.

11 SOLICITOR GOWDY: Thank you, Your Honor.

12 The State calls Deputy Angel Diaz.

13 May defense counsel and I take five seconds at the
14 Court at side bar?

15 THE COURT: Yes, sir.

16 (Whereupon, a bench conference was held out of the
17 hearing of the jury at this time.)

18 THE COURT: Mr. Gowdy, do you wish to speak with him?

19 (Pause.)

20 THE COURT: All right, sir. Come forward and be sworn,
21 please.

22 ANGEL DIAZ, being first duly sworn,
23 testified as follows:

24 THE COURT: Sir, have a seat in the witness stand. And
25 once you're seated, I'd ask that you please state your name

Angel Diaz - Direct examination
by Solicitor Gowdy

1 for the record.

2 WITNESS: Angel Diaz.

3 THE COURT: Mr. Gowdy, it's your witness.

4 SOLICITOR GOWDY: Thank you, Your Honor.

5 May it please the Court?

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY SOLICITOR GOWDY:

9 Q Good morning, Deputy Diaz.

10 A Good morning.

11 Q Can you tell the jury how long you've worked for the
12 Sheriff's Department and what capacity you currently work?

13 A I been working at the Sheriff's Office a little over 11
14 years and I work for the warrants division.

15 Q How long have you served warrants?

16 A Over nine years.

17 Q Nine years.

18 What is your native tongue?

19 A Spanish.

20 Q All right. Are you yourself Hispanic?

21 A Yes.

22 Q All right. Are you bilingual?

23 A Yes.

24 Q All right. Are you called upon from time to time to
25 interpret and translate when there are Hispanic victims,

Angel Diaz - Direct examination
by Solicitor Gowdy

1 witnesses, and suspects?

2 A Yes.

3 Q And, and are those three separate categories in, in, in
4 the eyes of a law enforcement officer, victims, witnesses,
5 suspects?

6 A Yes.

7 Q All right. Let's go to November 23rd 2006,
8 Thanksgiving night.

9 Were you asked by Detective William Gary to assist in
10 the investigation into the death of Eliza Hernandez?

11 A Yes.

12 Q How were you asked to participate?

13 A William Gary called me and asked me to come to the
14 Sheriff's Office because there had been a, a death and I was
15 called in to ask to come in to interpret for the, for the
16 defendant.

17 Q Was Sergeant George Baldarama already at the Sheriff's
18 Office when you got there?

19 A Yes.

20 Q Did you ever report to [REDACTED] or did
21 you go straight to the Sheriff's Department?

22 A I went straight to the Sheriff's Office.

23 Q All right. And when you got to the Sheriff's
24 Department, where did you go?

25 A I went up to the investigations area upstairs.

Angel Diaz - Direct examination
by Solicitor Gowdy

1 Q All right. And who was in the room with the defendant,
2 Santiago Rios, when you got there?

3 A William Gary.

4 Q All right. Detective Gary?

5 A Yes, sir.

6 Q All right. Can you tell the jury -- well, let me ask
7 you this.

8 Had you listened to a 9-1-1 tape before you got to the
9 Sheriff's Department?

10 A No.

11 Q Tell the jury generally the first version of events
12 that this defendant gave.

13 A The first version he gave me was that there were, I
14 believe it was three black males that had come to the house
15 with masks, came inside, or, you know, pushed themselves
16 inside, and he was trying to, to fend them off and somehow
17 his wife got shot in the process. One of the black males
18 had shot his wife.

19 Q Deputy Diaz, did you, at any point, have any trouble
20 communicating with this defendant in Spanish?

21 A No.

22 Q Do you consider yourself to be proficient in Spanish?

23 A Yes.

24 Q Fluent?

25 A Yes.

Angel Diaz - Direct examination
by Solicitor Gowdy

1 Q How would you characterize his Spanish?

2 A I understood what he was saying. He understood what I
3 was saying. We were communicating just like you and I are
4 communicating. Good. Very good.

5 Q Was there ever a moment that he said look, Deputy Diaz,
6 I don't understand what you're saying, you're gonna have to,
7 you're gonna have to find another word?

8 A No.

9 Q Did he ever speak a language other than English or
10 Spanish to you?

11 A No.

12 Q All right. He gives you a mask intruder version?

13 A Yes.

14 Q All right. Did you believe that version?

15 A Honestly, at the beginning, I didn't know.

16 Q You didn't know?

17 A No.

18 Q All right. Did the -- did his mother come into the
19 room at some point?

20 A Yes.

21 Q What language did he speak with his mother?

22 A Spanish. She said something about tell them the truth
23 or something like that.

24 Q Okay. Did his version or account of what happened
25 change after his mother came into the room?

Angel Diaz -- Direct examination
by Solicitor Gowdy

1 A Yes.

2 Q Let me show you what has been marked as State's Exhibit
3 4, and ask you whether or not you recognize that four page
4 document.

5 A Yes.

6 Q What is that?

7 A That's the statement that the defendant gave me that
8 day.

9 Q Okay. Did he memorialize or indicate in any way,
10 shape, or form that that was, in fact, his statement?

11 Did he sign it?

12 A He did.

13 Q Did he sign each of the four pages?

14 A He did.

15 Q All right. Deputy Diaz, you had a choice of either
16 writing this in English or writing it in Spanish, correct?

17 A Yes.

18 Q Why did you opt to write it in English?

19 A Because it was gonna be in English today or, or was --
20 everybody I was gonna speak to after that was gonna be in
21 English.

22 Q If you'd written it in Spanish, would you then have to
23 translate it today?

24 A Yes, sir.

25 Q So, you're gonna have to translate it at some point

Angel Diaz - Direct examination
by Solicitor Gowdy

1 either way?

2 A Back and forth.

3 Q All right. Did you read this back to him verbatim in
4 Spanish?

5 A I did.

6 Q All right. Did you give him an opportunity to make any
7 corrections?

8 A Yes.

9 Q Additions?

10 A Yes.

11 Q Deletions?

12 A Yes.

13 Q Is this, in fact, what he told you?

14 A It is.

15 Q Would you have any other way of knowing the facts that
16 are contained in this four page document?

17 A No.

18 SOLICITOR GOWDY: Your Honor, we would move State's
19 Exhibit 4 into evidence.

20 THE COURT: Mr. Brannon.

21 MR. BRANNON: Without objection.

22 THE COURT: Without objection, it will be admitted.

23 (Whereupon, State's Exhibit No. 4 was received into
24 evidence at this time.)

25 Q Deputy Diaz, before I ask permission of the Court to

Angel Diaz - Direct examination
by Solicitor Gowdy

1 publish this, did Santiago Rios' -- did he ever reference
2 his temper or anger at any point during your interview with
3 him?

4 MR. BRANNON: Object to relevance.

5 THE COURT: Mr. Gowdy.

6 SOLICITOR GOWDY: Your Honor, he made a specific
7 reference to what happens when he gets angry.

8 THE COURT: I'm gonna allow the question. He has the
9 right to testify concerning what he observed, and the
10 demeanor of the defendant, of the defendant may have some
11 relevance in the case.

12 You may proceed.

13 SOLICITOR GOWDY: Thank you, Your Honor.

14 Q Did he make reference to his anger?

15 A Yes, he did.

16 Q Tell the jury what he said.

17 A At some point we were questioning him he got angry, and
18 he stated that when he gets angry, I mean he's not
19 responsible, nobody can hold him back. He's, you know, he
20 can't be responsible what he does.

21 Q And he said that to you?

22 A Yes, sir.

23 SOLICITOR GOWDY: I'm going to ask the Court's
24 permission to publish State's Exhibit 4 to the jury.

25 THE COURT: You may proceed.

Angel Diaz - Direct examination
by Solicitor Gowdy

1 Q All right. Let me ask you, Deputy Diaz, to read slower
2 than you ordinarily would read so that folks on the other
3 side of the room can, can process it. So, read it slower
4 than you normally would.

5 And again, before you start, I'm going to ask you one
6 more time, where did every single word of that four page
7 document come from?

8 A It came from the defendant, Mr. Santiago.

9 Q That's his?

10 MR. BRANNON: Tray, I'm sorry. But they didn't hear
11 what you said. The last question, if you would, repeat it.

12 Q Okay. Where did every single word of that four page
13 document come from?

14 A It came from the defendant, Mr. Santiago.

15 Q Please publish it, publish it to the jury, Deputy Diaz.

16 A You're gonna have to excuse me. I have a cold and I,
17 when I talk a lot I'll start coughing.

18 THE COURT: If you need some more water or something
19 you let us know.

20 WITNESS: Thank you.

21 It says I got home. We did not argue about food. As I
22 read this, I'm -- I've wrote it as he was telling me.

23 I got home. We did not argue about food. My wife went
24 to the kitchen to warm my food. I followed her. I went to
25 get the plate of food that she was warming up. She was

Angel Diaz - Direct examination
by Solicitor Gowdy

1 angry. When she got, when she got angry she would not bring
2 me food. She was angry because of the last Wednesday I got
3 out at 6:00 p.m. from work and I got home at 6:25 at my
4 sister's house. I was drinking wine. I got, I got to my
5 house about 11:00 or 11:30. I did not bother my wife. I
6 slept in my car.

7 My dad came out and asked me to come inside. I got out
8 of my car and came inside. I went to bed. I fell asleep.

9 Thursday morning I went to work at 8:00 a.m. I got out
10 at 12:00 p.m. She, my wife, was at home when I got home. I
11 asked her to get my lunch out of my lunch box because I did
12 not eat it. I showered and went with my dad to my sister's
13 house. We stayed about 20 minutes. We went back home and
14 my wife and mom were cooking.

15 I went out to get some candles. That's what you people
16 saw inside my door. When I got home, I asked my wife for
17 food. But she was upset that I did not eat my lunch
18 yesterday. I told her that the reason I did not eat my
19 lunch was because I got off early from work. So, she heated
20 up my old lunch and gave it to me. I thought she was going
21 to give me turkey. She said no.

22 My mom went to the kitchen and asked her to give me
23 turkey. She said I'm, I'm going to eat my old lunch. I
24 shoved her and she pushed, and she pulled my hair and also
25 pulled my medallion. She went to the room. I followed her.

Angel Diaz - Direct examination
by Solicitor Gowdy

1 She locked the door. I told her not to lock the door.

2 We both were in the room. She had me by the neck. She
3 grabbed a two to three pound weight and hit me in the mouth
4 with it. She told me that her mom was on the way to pick
5 her up. I asked why. She said she did not want to be with
6 me no more. She pushed me on the bed. She went after the
7 gun. I was afraid. I wanted to get to, I wanted to get it
8 from her, but she was pointing, pointing it at me.

9 She turned. I wanted to open the door, but I could
10 not. She turned her face and I grabbed the gun. We
11 struggled. I told her to let go. She had her finger on the
12 trigger, and I had the barrel.

13 I told her you're going to kill me. She said yes, so
14 you won't belong to no one else. We struggled. I was
15 defending myself. I thought that a bullet might come out
16 and hit me or her or my mom. During the struggle, a shot
17 was fired. She fell. I thought she was playing, but she
18 was not.

19 When I saw the blood I called the ambulance, 9-1-1. It
20 was in self-defense and the officer showed, an officer
21 showed -- I asked for an ambulance. I don't want police. I
22 want an ambulance.

23 And then it says this statement was given to me by
24 Mr. Pasqual in Spanish. He can not read or speak English.
25 I took it for him. I took the statement for him. I also

Angel Diaz - Direct examination
by Solicitor Gowdy

1 read it, all four pages back to him in Spanish before he
2 signed it.

3 Q Deputy Diaz, when you wrote that he could not read or
4 speak English, did you get that from him?

5 A Yes, sir.

6 Q You did not, at that point, have the benefit of the
7 9-1-1 tape?

8 A No, I did not.

9 Q You had not talked to any of his co-workers at Milliken
10 or any of his supervisors at Milliken or anyone else?

11 A No.

12 Q He told you he couldn't read or speak English and you
13 just took him at his word?

14 A Yes.

15 Q And you communicated with him in Spanish?

16 A I did.

17 Q All right. Did he reconcile at any point or offer to
18 reconcile his statement that on the one hand she said she
19 was gonna leave me, and then in a matter of seconds later
20 I'm gonna shoot you so nobody else can have you?

21 Did he offer any reconciliation of those two ideas?

22 A No.

23 Q Okay. And again, the statement you just, just read for
24 this jury was after how long of persisting that it was a
25 black intruder that shot his wife?

Angel Diaz - Direct examination
by Solicitor Gowdy

1 A Hours, several hours. I, I can't tell you exactly how
2 many hours. I lost time. I know we were there for a pretty
3 good time, a pretty good while.

4 Q And what intervening act occurred between the black
5 intruder story and the my wife, I shot my wife in
6 self-defense or whatever version you just read?

7 A When his mother came in the room.

8 Q His mother came in the room, and something was said
9 about the truth?

10 A Correct.

11 Q Thank you, Deputy Diaz. Please answer any questions
12 the defense attorney may have for you.

13 THE COURT: Mr. Brannon, your witness.

14 MR. BRANNON: Please the Court.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. BRANNON:

18 Q Deputy Diaz, how you doing today?

19 A Fine.

20 Q Good.

21 You, you made some, some notes on an investigation
22 report where you talked about my client's anger, right?

23 A Yes.

24 Q Okay. And then don't you put in there at that point
25 began to tell me he could not understand me?

Angel Diaz - Cross-examination
by Mr. Brannon

1 You need to borrow these?

2 A Thank you.

3 Q And I'm talking about right there. He began to tell me
4 he could not understand me.

5 A Yes.

6 Q Okay. At some point during your discussions with my
7 client he told you he couldn't understand you, right?

8 A Yes.

9 Q The last part of his statement that you wrote for him
10 says he doesn't read or speak English and you wrote this for
11 him, correct?

12 A Correct.

13 Q He doesn't read English, correct?

14 A That's what I got from him.

15 Q Okay.

16 A Yes, sir.

17 Q But this is written in English, correct?

18 A Correct, yes, sir.

19 Q Can you write in Spanish?

20 A Yes.

21 Q Okay. Tell me again why you didn't write his statement
22 in Spanish.

23 A I would of had to translate it again into English here
24 or---

25 Q Okay.

Angel Diaz - Cross-examination
by Mr. Brannon

1 A ---whenever you need it.

2 Q All right. During the investigation of a criminal
3 case -- you need some more water?

4 A I'm fine.

5 Q Okay. During the investigation of a criminal case, who
6 is more important, whose rights are more important to
7 protect, the defendant, or a suspect, or your desire to
8 translate for your superiors or other investigations?

9 A The defendant's.

10 Q But in this case you chose to protect your supervisor's
11 or your investigator's as opposed to writing in a language
12 that my client may or may not have been able to read,
13 correct?

14 A I wasn't defending my supervisor or any other did you
15 say rights or --?

16 Q No, it was defending his rights---

17 A Uh-huh. (Affirmative).

18 Q ---versus providing for your supervisor's.

19 A Okay.

20 Q Which would be more important?

21 A His rights.

22 Q But you didn't do that, did you?

23 A Well yes.

24 Q You didn't write in Spanish, did you?

25 A No, I did not.

Angel Diaz - Cross-examination
by Mr. Brannon

- 1 Q Okay.
- 2 A But I read it back to him.
- 3 Q Okay.
- 4 A And he signed it.
- 5 Q All right. But as far as he knows, not being able to
- 6 read English, this could tell the story of last nights
- 7 basketball game, right?
- 8 A It doesn't.
- 9 Q But it could. He doesn't know what this says.
- 10 A If you can see -- if you see it that way, it's---
- 11 Q Well, you wrote on the back page doesn't read English,
- 12 right?
- 13 A Yes.
- 14 Q Okay. This is written in English, right?
- 15 A Yes.
- 16 Q That means he can't read it, right?
- 17 A Correct.
- 18 Q So, he doesn't know what this says?
- 19 A He didn't read it. I read it back to him.
- 20 Q And he trusted you to read this, right?
- 21 A Correct.
- 22 Q Do Hispanics typically, typically trust police officers
- 23 here in the United States?
- 24 A For the most part.
- 25 SOLICITOR GOWDY: Your Honor?

Angel Diaz - Cross-examination
by Mr. Brannon

1 THE COURT: That's been objected to previously and
2 ruled upon by the Court. You can talk about case specific
3 matters. But I've ruled that question to be improper.

4 MR. BRANNON: Thank you, Your Honor. Your Honor,
5 withdraw.

6 Q Now, Mr. Gowdy asked you earlier if you had had the
7 opportunity to hear the 9-1-1 tape before you began talking
8 with Mr. Rios or his mother or anyone else, correct?

9 A Correct.

10 Q And you had not, is that correct?

11 A Correct.

12 Q But you had talked to Investigator Gary before you met
13 with Santiago or Isabel, correct?

14 A Correct. Right outside the, the interrogation room.

15 Q Okay. So, you had some knowledge going into your
16 interviews, didn't you?

17 A Some, a little bit, yes.

18 Q Yeah, Gary told you home invasion, three masked men?
19 You knew something about it before you went in, right?

20 A Correct, I knew something about it before I went in.

21 Q Okay. All right. And you wrote this, right?

22 A I did.

23 Q Okay. Are you aware if the Spartanburg County
24 Sheriff's Department videotapes or audiotapes any interviews
25 with suspects or witnesses or anything like that?

Angel Diaz - Cross-examination
by Mr. Brannon

1 A I'm not aware, no.

2 Q You're not aware.

3 Does the Spartanburg County Sheriff's Department own a
4 tape recorder?

5 A Yes.

6 Q Could you have used that tape recorder when
7 interviewing Santiago Rios?

8 A Yes.

9 Q But you didn't, did you?

10 A No.

11 Q Okay. So, it's possible that we wouldn't have to have
12 this debate as to whether he, whether he fully understood
13 this or whether you read it back word-for-word?

14 We could have a tape recording memorializing all of
15 that conversation, correct?

16 A It's possible, yes.

17 Q Okay. Sir, do you have any idea what religion Santiago
18 Rios and Isabel Rios are?

19 A No.

20 Q Have you seen the pictures of the shrine in the front
21 door of their home?

22 A I did at one time, yes.

23 Q Okay. Does that appear to be a Catholic shrine?

24 A It does. It did.

25 Q You aren't Spanish, is that correct?

Angel Diaz - Cross-examination
by Mr. Brannon

1 A Correct.

2 Q In the Spanish Catholic religion, would it be fair to
3 say that suicide---

4 SOLICITOR GOWDY: Objection. Objection, Your Honor.
5 He's, he's a sheriff's deputy. He's a law enforcement
6 officer.

7 THE COURT: I'm gonna ask the jury at this point in
8 time to step back into the jury room. Again, don't begin
9 any discussions until I advise you to do so.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Mr. Brannon, can you give me
13 some idea where this line of questioning might be leading?

14 MR. BRANNON: Yes, Your Honor. It goes absent -- it
15 goes directly to a question that Mr. Gowdy asked where, in
16 fact, he was standing right here and he said how did we get
17 from I'm leaving you to I'm gonna shoot you so you won't
18 belong to anyone else.

19 All right. Your Honor, in the Catholic religion,
20 suicide is the most despicable sin. We're gonna have a
21 witness testify to that, Your Honor.

22 Another thing, Your Honor, is that a woman's inability
23 to bare children is -- they're chastised in the Spanish
24 community for their inability to have children. This couple
25 had been married for seven or eight years. She had no

Angel Diaz - Cross-examination
by Mr. Brannon

1 children. She didn't want him to belong to anyone else so
2 someone else would go seven or eight years without having
3 children.

4 Your Honor, all I want to ask him is, in the Spanish
5 community, is, is child birth looked on positively, and,
6 and, where I started first was, is suicide considered a
7 despicable sin or a most serious sin, sin.

8 SOLICITOR GOWDY: Your Honor, with respect to Deputy
9 Diaz, for whom I have great respect for, I don't believe he
10 is an expert on fertility, on the Spanish culture, on
11 Catholicism, on what unpardonable sins versus pardonable
12 sins are. There is no evidence whatsoever in the record
13 that Eliza Hernandez herself is Catholic. There is no
14 evidence that she's a devout Catholic. There's no evidence
15 that she follows the teachings this sect of Catholicism or
16 that.

17 There is no evidence frankly of suicide. There is no
18 evidence that she herself was infertile. In fact, if you
19 look at his Milliken employment record, he's the one taking
20 fertility drugs. Not her. This is a rues, this is a rues,
21 and I, I think the Court can see it.

22 And let me also say this. Mr. Brannon may well intend
23 to call a Catholic priest on all of those points, but we
24 will most assuredly object to his testimony on relevance on
25 a whole host of other things and ultimately it will be the

Angel Diaz - Cross-examination
by Mr. Brannon

1 Court's decision whether or not the jury needs to hear a
2 lesson on Catholicism about suicide. I don't think this is
3 the proper witness to do it, and I'm not sure he can do it
4 through the witness he wants to do it through.

5 MR. BRANNON: Your Honor, the State introduced the
6 pictures that have the, the shrine, the religious shrine in
7 them. Your Honor, I didn't put that before the Court. I
8 didn't put it before this jury. They did.

9 THE COURT: Mr. Brannon, where in the record does it
10 indicate that that is a Catholic shrine as opposed to a
11 Greek Orthodox shrine or as opposed to a Protestant
12 Christian shrine?

13 I have not heard that evidence. I have heard people
14 speculate. You've asked them what they thought it was.
15 Tell me, in the record, where it indicates what religion
16 that shrine represents.

17 MR. BRANNON: Your Honor, there have been witnesses
18 testify they believe it to be a Catholic---

19 THE COURT: They believed it to be.

20 MR. BRANNON: And that's the evidence I can rely on,
21 Your Honor.

22 THE COURT: I haven't heard anybody testify as they
23 said -- I think you asked a police officer what he thought
24 it to be.

25 MR. BRANNON: Yes, and then I asked Officer Diaz.

Angel Diaz - Cross-examination
by Mr. Brannon

1 THE COURT: That sounds like speculation. It wasn't
2 objected to. Probably should of been. But speculation.
3 Nobody created that shrine or used that shine has testified
4 as to what it was about or what it meant.

5 MR. BRANNON: Right.

6 THE COURT: It's gonna have to be a foundation for this
7 line of questioning. I don't know that it's been
8 sufficiently laid. You haven't started your case. You
9 certainly have the right to lay that foundation if you care
10 to.

11 MR. BRANNON: All right.

12 THE COURT: And we'll, we'll address that issue once
13 the foundation's laid and how it is determined. But this
14 gentleman's a police officer. I don't know that he's been
15 qualified as an expert within any religion or an expert on
16 any particular form of culture, and this case is all about
17 the fact that, that people from Hispanic origins come from
18 different cultures.

19 MR. BRANNON: Yes, sir.

20 THE COURT: You've based your case on that, to---

21 MR. BRANNON: Yes, sir.

22 THE COURT: ---a large degree, that this gentlemen is,
23 speaks a different language and comes from a different
24 culture even in people in the general population of Mexico.

25 MR. BRANNON: Yes, sir, I'll move on.

Angel Diaz - Cross-examination
by Mr. Brannon

1 THE COURT: Thank you. I'm gonna rule -- I'm gonna
2 sustain the objection to that line of questioning with this
3 witness without a better foundation being laid.

4 MR. BRANNON: Yes, sir.

5 THE COURT: Bring the jury back.

6 (Whereupon, the following takes place within the
7 presence of the jury.)

8 THE COURT: Yes, sir, Mr. Brannon, I have sustained the
9 objection.

10 You may proceed.

11 MR. BRANNON: Yes, Your Honor. Thank you.

12 CONTINUED CROSS-EXAMINATION

13 BY MR. BRANNON:

14 Q Officer Baldarama, you did take this written statement.
15 We went back and forth over that.

16 Correct?

17 A Correct.

18 Q Okay. All right. Who notarized that statement?

19 A I can't recognize that signature, but it appears to be
20 Baldarama's.

21 Q Okay. Now, sir, and, and I know the danger of asking
22 this question cause I don't know the answer to it, but was
23 he notarizing your signature or Santiago Rios' signature?

24 This is your signature, correct?

25 A Correct.

Angel Diaz - Cross-examination
by Mr. Brannon

- 1 Q And so, was he, was he, was he notarizing yours or his?
- 2 A I don't know.
- 3 Q You don't know.
- 4 A (Witness nods negatively.)
- 5 Q Would Baldarama have been there when Santiago Pasqual
- 6 Rios signed the document?
- 7 Would he have been present?
- 8 A I don't think he was present, no.
- 9 Q Okay. So, that would mean he should of been notarizing
- 10 yours then, right?
- 11 A Okay. Yes.
- 12 Q I mean a notary's suppose to be present when a person
- 13 signs it, right?
- 14 A Right.
- 15 Q You don't know whether he was there or not?
- 16 A No.
- 17 Q Did you sign---
- 18 A He, he was not.
- 19 Q Okay. Did you sign this in the presence of Santiago or
- 20 did you sign it in the presence of Baldarama?
- 21 A In the presence of Santiago.
- 22 Q So, your notary wasn't there when either of you signed
- 23 the document then?
- 24 A At that, at the, at the time it was signed, no.
- 25 Q Okay. Now, in here my client says I had the barrel,

Angel Diaz - Cross-examination
by Mr. Brannon

1 correct?

2 Does it say---

3 A Correct, that's what it says.

4 Q Yeah.

5 She had her finger on the trigger and I had the barrel,
6 correct?

7 A Correct.

8 Q As far as you know, is that the only place in this
9 statement that he says anything about having his hand on the
10 weapon?

11 A As far as I know, yes.

12 Q Okay. You wrote it, right?

13 A Correct.

14 Q And you heard version one, the three masked men, right?

15 A Yes.

16 Q According to version one, neither he or Eliza ever had
17 a gun, correct?

18 A Correct.

19 Q And his statement's been admitted into evidence,
20 correct?

21 A Yes.

22 Q Okay. And the only piece of evidence in this statement
23 about Santiago Rios and a gun is his hand on the barrel,
24 right?

25 A Yes.

Angel Diaz - Cross-examination
by Mr. Brannon

1 Q Can you fire a gun with, with one hand on a barrel?

2 A It's possible.

3 Q If my hand is on the barrel of a gun, can I pull the
4 trigger with the same hand?

5 A Not the same hand, no.

6 Q And whose finger was on the trigger?

7 A According to him, it was hers.

8 Q And this is the truth, right?

9 A That's what he told me, yes.

10 MR. BRANNON: Nothing further of this witness, Your
11 Honor.

12 THE COURT: Mr. Gowdy, your witness.

13 SOLICITOR GOWDY: Thank you, Your Honor.

14 Can I see that?

15 MR. BRANNON: Sure.

16 SOLICITOR GOWDY: No, never mind. Give that back to
17 you. I'll use the exhibit.

18 REDIRECT EXAMINATION

19 BY SOLICITOR GOWDY:

20 Q Mr. Brannon just asked you if that was the truth.

21 Is another way to characterize this is this is the
22 fifth version of what happened that this---

23 MR. BRANNON: Objection.

24 Q ---defendant gave you?

25 THE COURT: What's the objection?

Angel Diaz - Redirect examination
by Solicitor Gowdy

1 MR. BRANNON: Your Honor, I believe it may be the
2 second version. It's certainly not the fifth.

3 SOLICITOR GOWDY: Well---

4 THE COURT: I'll allow you -- if you'd address the
5 Court about that.

6 SOLICITOR GOWDY: Certainly, Your Honor.

7 THE COURT: Yes, sir.

8 SOLICITOR GOWDY: The 9-1-1 tape, he spoke to Deputy
9 Curtis Kesler, he gave a version to George Baldarama, he
10 gave a first version to Angel Diaz, and this will be five.
11 But I'm willing, out of a super abundance of caution, to say
12 it's the fourth version that he gave.

13 THE COURT: Objection to that question?

14 MR. BRANNON: I'll withdraw.

15 THE COURT: Thank you.

16 You may proceed, Mr. Gowdy.

17 SOLICITOR GOWDY: Thank you, Your Honor.

18 Q Mr. Brannon just asked you if this was the truth.

19 Is a better way of phrasing it this is the fourth
20 version that Santiago Rios gave you of what happened to his
21 wife?

22 A Yes.

23 Q All right. And speaking of what happened to his wife,
24 he had acute language failure at some point, according to a
25 question Mr. Brannon asked you, he said he didn't understand

Angel Diaz - Redirect examination
by Solicitor Gowdy

1 you anymore.

2 A Yes.

3 Q Okay. What immediately preceded his acute language
4 failure?

5 A He got very defensive, very upset, and angry.

6 Q And you said what?

7 Would you like to see your notes?

8 Would it help you to see your notes?

9 A Yes, sir.

10 Q On the second page, he became frustrated and at that
11 point began to tell me he could not understand me.

12 What immediately precedes his acute language failure?

13 What did you ask him?

14 A I asked him if that was the same anger he used to kill
15 his wife.

16 Q Exactly.

17 That was the question you asked him right before his
18 language skills went south, correct?

19 A Yes.

20 Q Is that the same anger you used when you killed your
21 wife?

22 A Correct.

23 Q And then he was no hoblo espanol at that point, right?

24 A Well, he spoke to me at that point, but we had a
25 problem. After that we spoke some more, but that's where

Angel Diaz - Redirect examination
by Solicitor Gowdy

1 he --.

2 Q Had acute language failure?

3 A Right.

4 Q Okay.

5 A Sure.

6 Q All right. Last question.

7 If you were going to make up a confession -- Mr.

8 Brannon asked you how do we know this isn't the score of a
9 basketball game.

10 If you were going to make up a confession for a
11 defendant that you wanted to railroad in a courtroom, would
12 this be what you wrote?

13 A No.

14 Q Would you write I got her down on her hands and knees
15 and I executed her?

16 A I would write something more like that, yes.

17 Q You wouldn't write this?

18 A No.

19 Q This is what he said?

20 A Yes.

21 Q And it's the fourth or fifth version he gave?

22 A Yes.

23 Q In what time period?

24 The 9-1-1 call came at 9:30.

25 When did you take this?

Angel Diaz - Redirect examination
by Solicitor Gowdy

1 A I know it was after 12:00. I know it was after
2 midnight, but I don't know exactly what time.

3 Q Was it before 3:00 a.m.?

4 A Yes.

5 Q So, in the course of six hours, four or five different
6 versions of what happened to Eliza Hernandez?

7 A Yes....

8 Q Thank you, Deputy Diaz.

9 MR. BRANNON: Very briefly, Your Honor.

10 RE CROSS EXAMINATION

11 BY MR. BRANNON:

12 Q Deputy Diaz, there have been two statements admitted
13 into evidence that were given by my client. One that you
14 took and one that Deputy Baldarama took.

15 Correct?

16 A Correct.

17 Q Okay. Those two right there, right?

18 A Yes, sir.

19 Q Now, he may have talked to Deputy Gary or, or any
20 number of other police officers, but there's two statements
21 in evidence, correct?

22 A Correct.

23 Q In one statement of the four or five versions or how
24 many ever versions there are, in one line, in one sentence,
25 in one statement, my client has his hand on the barrel of a

Angel Diaz - Recross examination
by Mr. Brannon

1 gun, correct?

2 A Correct.

3 Q No further questions.

4 THE COURT: All right. Officer, you may step down.

5 Ladies and gentlemen of the jury, at this point in time
6 we're gonna take a break and allow you to stretch your legs
7 or go outside and have a smoke. And as I always tell you
8 when you leave the courtroom, don't begin any discussions

9 concerning this case until I have advised you to begin your
10 deliberations.

11 You may retire to the jury room.

12 Thank you very much.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right. Court's in recess for about 10
16 to 15 minutes.

17 (Whereupon, a short recess was taken at this time.)

18 THE COURT: Yes, sir, Mr. Gowdy.

19 MR. BRANNON: Your Honor, out of an abundance of
20 caution, the next couple witnesses could, depending on the
21 Court's ruling, go into matters that I know defense counsel
22 wanted to be heard on before. We're gonna call one of the
23 ID officers who processed the crime scene. There was not a
24 .38 caliber firearm found. There were .38 caliber
25 cartridges found, and there were other firearms found. And

1 I know that defense counsel -- I, I think, during the last
2 time, they objected to the relevance of the other firearms,
3 and this witness would be the witness that it went in
4 through. So --.

5 MR. BRANNON: And Your Honor, I would raise that
6 objection to the relevance of any other firearms found in
7 the home. Your Honor, Doctor Wren's report, and I'm sure
8 Doctor Wren is going to testify, he believes that the, the
9 weapon or bullet that caused the death was a .38 caliber.

10 THE COURT: Well, let me, let me ask a question about
11 that briefly. The -- I have not heard and not aware whether
12 or not the bullet was actually ever recovered.

13 MR. BRANNON: Well, Your Honor, I don't know that, I
14 don't know that anybody can answer that question. There was
15 a bullet recovered that was a .38 caliber. It was tested
16 for DNA and the, the victim can not be excluded as the, the
17 contributor of the DNA that was found on the bullet. But
18 that doesn't necessarily mean that it was her.

19 THE COURT: But it was not a direct match?

20 MR. BRANNON: It was---

21 THE COURT: Is that what I'm hearing?

22 MR. BRANNON: Well, I think, I think---

23 THE COURT: I don't know if that's gonna be so. That's
24 why I'm asking.

25 SOLICITOR GOWDY: I think, I think there's-

1 insufficient -- there was insufficient serological material
2 on the projectile for them to say it was hers. It is not
3 inconsistent with hers, and Mrs. Crick, as she is on a host
4 of other issues, is more learned on DNA than I am, which is
5 why she's gonna handle the DNA. My understanding of the
6 alleles is that some of them matched, none of them excluded
7 her, which is significant. But there was not sufficient DNA
8 material for them to say this was her DNA.

9 THE COURT: That was the only projectile recovered?

10 SOLICITOR GOWDY: And it was found in the room and it
11 was found within a matter of hours of them realizing it was
12 a through-and-through shot. So, we do have a projectile.
13 There will be a ballistics expert that says it is consistent
14 with a .38 caliber slug. Correct me if I'm wrong at any
15 point. There were .38 caliber cartridges found. There were
16 other weapons found.

17 THE COURT: No other .38's?

18 SOLICITOR GOWDY: No other .38's.

19 THE COURT: So, the cartridges were unspent cartridges
20 we're talking about?

21 SOLICITOR GOWDY: It was a box of ammo.

22 THE COURT: A box of ammo, .38 ammo.

23 SOLICITOR GOWDY: All right. And there were other
24 boxes of ammo.

25 THE COURT: Let me ask this question of the defense.

1 I don't know whether or not you intend to make an issue
2 of the thoroughness of their search or the weapon because
3 obviously if there's an issue as to the thoroughness of
4 their search for a weapon, then the question would then I
5 it, think would be relevant that they did, in fact, find
6 other weapons, but did not find one that matched the one in
7 question.

8 Do you follow what I'm saying?

9 MR. BRANNON: I, I do, Your Honor, and I have to tell
10 you that I'm concerned that I may of already opened that
11 door---

12 THE COURT: I think you may have.

13 MR. BRANNON: ---with the questions to Baldarama about
14 searching them before they got in the car.

15 THE COURT: Yes, sir. So, I mean it seems to me that
16 that's going to be an issue in the case as to whether or not
17 the gun could of been secreted by someone else or taken
18 because it is a question as to what happened to the weapon
19 in the case. And the, of course, they did conduct a search
20 and I, I don't think we need to get into the detail of maybe
21 how many guns were found or what kind of guns other than to
22 say that the weapon that we think did it was not there.

23 Do you follow what I'm saying?

24 SOLICITOR GOWDY: Yes, sir.

25 THE COURT: I don't think a lot of detail needs to go

1 into well, we found two shotguns -- I don't know what they
2 found, two shotguns, four pistols, whatever they found.

3 SOLICITOR GOWDY: Would the---

4 THE COURT: But the fact that other guns were recovered
5 in the search, but none of them matched the gun that you
6 think that was used.

7 SOLICITOR GOWDY: So, the Court would, would permit us
8 to ask the ID officer, did you locate weapons. Yes, we
9 found weapons, but they were not consistent or not capable
10 of firing a .38 cartridge.

11 THE COURT: I would, I would allow you to do that
12 because, again, I think the thoroughness of, of the searches
13 and perhaps the question of what happened to the gun is an
14 issue in the case.

15 SOLICITOR GOWDY: Yes.

16 THE COURT: And it's something that, that would bare on
17 that at least a search was conducted and weapons were found,
18 but none consistent with the weapon that was used in this
19 particular case.

20 MR. BRANNON: All right. Your Honor, I understand
21 your, your position, your ruling, and I'm comfortable with
22 that because I think I did open the door. And quite
23 frankly, I want to talk about the .38 caliber box of shells.
24 So --.

25 THE COURT: I think that -- I just don't think we need

1 to get any, into great detail. I don't want to try to shock
2 the jury into thinking this place was an arsenal. Whether
3 it was or, you know, or not, or not, that's not issue. The
4 question is whether or not the gun in question was found.
5 If it wasn't found, perhaps what happened to it or where it
6 went or the officers did not conduct thorough searches.
7 That's already been questioned. So, I think we can go into
8 it to that extent.

9 MR. BRANNON: Thank you, Your Honor.

10 SOLICITOR GOWDY: Your Honor -- and I don't, I don't
11 want to guild the lily, and I don't want to push, I don't
12 want to push, but she went from Point A to Point B in the
13 house. I think it safe to say their position is she went
14 there to find a firearm. If she passed other firearms to go
15 from Point A to Point B, I think that would be relevant. If
16 there were other firearms in other portions of the house, I,
17 I think it would be fair to state if that were her intention
18 to do harm to Santiago Rios, she passed up other weapons to
19 go into the bedroom.

20 THE COURT: Well, again, I don't, I don't want to get
21 into details as to how many. I think you state you can -- I
22 would allow you to ask where were the weapons located, and
23 you can say in what rooms the weapons were, were located.

24 SOLICITOR GOWDY: Yes, sir.

25 THE COURT: I'll let you go to that extent.

1 SOLICITOR GOWDY: Thank you.

2 Would the Court give us---

3 THE COURT: Because again that, that also would go to
4 the thoroughness of the search. That would go to whether or
5 not the, that there, the police made an effort to try to
6 locate the gun that was used in this particular case, and
7 what they found when they made that effort.

8 SOLICITOR GOWDY: Would the Court give Mrs. Crick and I
9 ten seconds to advise the State's witness---

10 THE COURT: Certainly.

11 SOLICITOR GOWDY: ---of your ruling?

12 THE COURT: Yes. One other thing that, let me tell
13 you, is somewhat of a concern to me, Mr. Brannon, and I just
14 want to, an observation from the bench, and I just want to
15 make this, put it on the record because I think it probably
16 needs to be.

17 I consulted with the court reporter during our break,
18 and I know that from time to time the interpreters have
19 stopped the proceedings for purposes of people going too
20 fast, and that seems to have occurred more often during a
21 State's examination than a defense examination. And there's
22 a monitor or a meter on her machine that says how many words
23 per minute people are speaking. You've been speaking at
24 about three times or twice the rate. I'll characterize it
25 as twice the rate on occasion that the State was using when

1 those objections were raised.

2 I would urge them not to interrupt the Court
3 proceedings unless it's absolutely necessary is what I'm
4 going to state. And I'll just ask you to advise them of
5 that situation.

6 We do have a meter up here that counts the number of
7 words per minute and it seems to me that there have been
8 occasions when perhaps you should of been slowed, but
9 perhaps weren't or interrupted. So, I hope we can keep the
10 interruptions to a minimum.

11 Having said that, it's of utmost importance to this
12 Court that the defendant has a proper translation of what
13 goes on in the courtroom, and I want to be sure that he gets
14 that. But I also don't want the interpretation to interrupt
15 certain parts of the trial and it's beginning to appear to
16 me that there are certain parts being interrupted and other
17 parts that are not being interrupted.

18 MR. BRANNON: Your Honor, I will, I will relay that
19 message. But I want the Court to be aware that, that I have
20 never stood up and asked someone to slow down that I haven't
21 been asked---

22 THE COURT: Oh, I understand that.

23 MR. BRANNON: ---by the interpreters.

24 I understand. And I'm not accusing you of anything in
25 this case. It's just an observation that I'm making I said.

1 MR. BRANNON: All right.

2 THE COURT: And it's of some concern to me. And of
3 course, again, it's of utmost importance that the proper
4 translation occur. I want that to happen as well. But I'm
5 concerned about interruptions occurring at certain parts of
6 the trial when it appears to me there should of been a need
7 for interruptions to occur at other parts of a trial.

8 MR. BRANNON: I would.

9 THE COURT: And I do note on occasions they did
10 interrupt Mr. Collins during his opening statement I
11 believe. So, I'm not saying that's happened uniformly
12 throughout the trial. But it's -- as, as we go along, that
13 pattern seems to be developing and I hope that's not the
14 case.

15 MR. BRANNON: Thank you, Your Honor.

16 THE COURT: Okay. And I'll give you a moment to talk
17 to the witness, Mr. Gowdy. If you'll let me know---

18 SOLICITOR GOWDY: Yes, sir, Your Honor.

19 THE COURT: In fact, I would ask Mr. Brannon to be
20 present during that discussion because we do have a
21 sequestration order. So, if you're gonna discuss what his
22 testimony might be, it would be proper for Mr. Brannon to be
23 present during the trial.

24 MR. BRANNON: All right. Your Honor?

25 THE COURT: And that's the case that we had at the side

1 bar with the other witness, Officer---

2 SOLICITOR GOWDY: Diaz.

3 THE COURT: ---Diaz. I'd ask you to discuss with him
4 the fact that he was not to talk about the amount of remorse
5 that the defendant expressed during his statement.

6 SOLICITOR GOWDY: Yes, sir.

7 THE COURT: And both attorneys participated in that
8 discussion as well.

9 SOLICITOR GOWDY: Would the Court allow me to
10 substitute Counselor Collins so Counselor Brannon and
11 Mrs. Crick can address another issue with you---

12 THE COURT: That will be fine.

13 SOLICITOR GOWDY: ---in the interest of time?

14 THE COURT: Absolutely.

15 MR. BRANNON: And Your Honor, back to the point that
16 you raised, speaking with Sequora, it's not necessarily the
17 speed only. It's sometimes the volume, and she said that
18 they don't have a problem with my volume.

19 THE COURT: I, I would agree with that statement.

20 MR. BRANNON: Okay.

21 (Whereupon, ten photographs were marked as State's
22 Exhibit Nos. 23 through 32 for identification purposes only
23 at this time.)

24 THE COURT: Okay. All right. Is there another issue
25 we need to address before we bring the jury in?

1 SOLICITOR CRICK: Yes, sir, I have some photographs
2 that I intend to introduce. Actually I've given those to
3 the court reporter. Some of those may be objectionable
4 by---

5 THE COURT: Have you seen the photographs, Mr. Brannon?

6 MR. BRANNON: I have not.

7 THE COURT: Why don't you take a look at them please?

8 (Pause.)

9 THE COURT: Have we been able to reach an agreement on
10 the photographs, Mrs. Crick?

11 SOLICITOR CRICK: Yes, sir, we have.

12 THE COURT: Which photographs have we agreed upon?

13 Let's go ahead and put them in the record while we're
14 talking.

15 SOLICITOR CRICK: We have what's marked as State's---

16 THE COURT: If you'll identify the numbers for me,
17 please.

18 SOLICITOR CRICK: State's 28, which is a picture of a
19 floor with a scuff mark on it and some blood. And then
20 we've also agreed on No. 26, which is a picture actually of
21 Mrs. Hernandez after she was shot in relation to where that
22 mark was.

23 THE COURT: All right.

24 SOLICITOR GOWDY: We're withdrawing 27, Your Honor.

25 THE COURT: 27's withdrawn.

1 SOLICITOR CRICK: We didn't have any argument over No.
2 23, which is a picture of the kitchen, No. 24 and No. 25,
3 which are both pictures of a box of .38 caliber ammo. And
4 also he does have a problem with -- actually I don't
5 think -- I don't know if we marked that one. I think I
6 missed which one. No. 30 and No. 31 and then this will have
7 to be No. 32.

8 THE COURT: All right. Again, go through the numbers
9 that we think we have an agreement on.

10 Just tell, just tell me what the numbers are.

11 SOLICITOR CRICK: 23, 24, 25, 26, 28, 30, 31, and 32.

12 THE COURT: And Mr. Brannon, you agree that those can
13 come into evidence at this time?

14 MR. BRANNON: I do, Your Honor.

15 THE COURT: All right.

16 MR. BRANNON: And then I will be moving, I believe with
17 the consent of the State, into evidence what will be State's
18 Exhibit 29, but it would become Defense 1.

19 THE COURT: Any objection to this, Mrs. Crick?

20 SOLICITOR CRICK: No, sir.

21 THE COURT: All right. We'll mark it as Defense 1 at
22 this time. It will be a stipulation exhibit---

23 MR. BRANNON: Thank you, Your Honor.

24 THE COURT: Since you're not in your case.

25 (Whereupon, State's Exhibit Nos. 23 through 26 and 28

1 through 32 were received into evidence at this time. What
2 was previously marked as State's Exhibit No. 27 as now
3 marked as Defendant's Exhibit No. 1 and received into
4 evidence at this time.)

5 THE COURT: All right. Anything else from the State
6 before we bring the jury in?

7 SOLICITOR GOWDY: Ten seconds?

8 THE COURT: Yes, sir.

9 (Pause.)

10 SOLICITOR GOWDY: Yes, sir, Your Honor. We're, we're
11 ready. We just -- we wanted to alert the family as to the
12 nature of the photographs so if they wanted to leave now
13 they could.

14 THE COURT: Okay.

15 MR. BRANNON: We're ready.

16 THE COURT: All right. Let me let her finish talking
17 to the families before we bring the jury in.

18 And one other item concerning courtroom decorum.

19 I've noticed the people seated behind you, Mr. Gowdy,
20 on occasion have made gestures, and I'd ask you to caution
21 them. If they -- if you intend to call them as witnesses,
22 you will be given an opportunity to do so. Caution them not
23 to use gestures while testimony is being delivered.

24 SOLICITOR GOWDY: Yes, sir.

25 THE COURT: Thank you.

1 Let's bring the jury in.

2 (Whereupon, the following takes place within the
3 presence of the jury.)

4 THE COURT: All right. The record will reflect the
5 jury has returned to the courtroom.

6 And ladies and gentlemen, I know I took a little longer
7 than 15 minutes. But I've been working with the attorneys
8 on some evidence that's going to be coming in, and hopefully
9 we've been able to make things go a little smoother on down
10 the road. So, we've been trying to get those things ironed
11 out. And so, we're ready to begin again.

12 And at this time the State may call its next witness.

13 MR. BRANNON: Your Honor, may I take five seconds for a
14 question?

15 THE COURT: Yes, sir.

16 (Pause.)

17 MR. BRANNON: Thank you, Your Honor.

18 THE COURT: All right. You may proceed and call your
19 next witness, Mrs. Crick.

20 SOLICITOR CRICK: Thank you, Your Honor.

21 The State calls Deputy Tim Davis.

22 THE COURT: Sir, come forward to my left and be sworn,
23 please.

24 TIM DAVIS, being first duly sworn,
25 testified as follows:

Tim Davis - Direct examination
by Solicitor Crick

1 THE COURT: Have a seat in the witness stand please,
2 sir. And when you're seated, please state your full name
3 for the record.

4 WITNESS: Tim Davis.

5 THE COURT: Mrs. Crick, your witness.

6 SOLICITOR CRICK: Thank you, Your Honor.

7 ~~DIRECT EXAMINATION~~

8 ~~BY SOLICITOR CRICK:~~

9 Q Where do you work, Deputy Davis?

10 A Spartanburg County Sheriff's Office.

11 Q What do you do at the Sheriff's Office?

12 A I'm a crime scene investigator.

13 Q And when you say you're a crime scene investigator,
14 what kind of things would you do on a crime scene?

15 A We responded to various crime scenes at the location
16 and we'll process an area for prints or whatever the
17 scenario requires taking photos, things of this nature.

18 Q So, part of your duties are to take photographs of the
19 scene?

20 A Yes, ma'am.

21 Q How long have you been with the Sheriff's Office?

22 A Almost 15 years now.

23 Q I'm gonna ask you if were called out to assist by
24 Investigator Gary on November 23rd of 2006?

25 Did you get a call to go assist with collection of

1 evidence?

2 A Yes, ma'am.

3 Q Did you go out to the scene of the crime?

4 A Yes, ma'am.

5 Q When you got to the scene, what was your purpose there?

6 A I was there to assist with processing the scene.

7 Again, doing the photos and collection of evidence, things
8 of that nature.

9 Q And you were aware of what kind of investigation it
10 was?

11 A Yes, ma'am.

12 Q Did your, part of your duties include going through the
13 home and the, and the crime scene?

14 A Yes, ma'am.

15 Q I'm gonna show you what's been marked as State's 16,
16 and ask you if that is something that will assist you in
17 telling the jury where you searched.

18 A Yes, ma'am.

19 Q What is that?

20 A This is a crime scene sketch of the residence there
21 where we responded to that night.

22 Q So, this is a diagram of the crime scene?

23 A Yes, ma'am.

24 SOLICITOR CRICK: Your Honor, may I publish this?

25 THE COURT: You may.

Tim Davis - Direct examination
by Solicitor Crick

1 Do you wish to have the lights lowered?

2 Mrs. Crick, do you wish to have the lights lowered?

3 SOLICITOR CRICK: I'm sorry, Your Honor. I think we're
4 okay.

5 THE COURT: Okay.

6 SOLICITOR CRICK: I think we're okay.

7 Q Okay. When you first got out to the scene, where was
8 the first area you searched or what was the first area you
9 looked at?

10 A That would of been at the front of the house, at the
11 front of the residence.

12 Q Right here where this says front entrance?

13 A Yes, ma'am.

14 Q Okay. I'm gonna zoom it a little bit for you to see if
15 that helps.

16 When you walked into that front area of the home, did
17 you notice any signs of a struggle?

18 A No, ma'am, I did not.

19 Q Where did you go after you left that front entrance
20 area?

21 A From there we proceeded through the living room.

22 Q Is that this area here?

23 A Yes, ma'am.

24 Q Now, let me back up for just one quick second.

25 When you came into this front entryway and through

Tim Davis - Direct examination
by Solicitor Crick

1 here, did you see any blood, evidence that someone had been
2 shot in that area?

3 A No, ma'am.

4 Q What did you see once you got into the living room?

5 A In the living room there was just some hair and things
6 of that nature on the floor.

7 Q All right. And when -- I'm looking at some numbers
8 here.

9 Can you tell us if -- what does that represent?

10 A Those are item numbers and they relate to different
11 evidence or points of interest.

12 Q Could be in reference to the hair that you saw?

13 A Correct, ma'am.

14 Q Okay. Once you left the living room, where did you go?

15 A We were working our way toward the bedroom where the
16 victim was at. So we went into I guess the den area.

17 Q Uh-huh. (Affirmative).

18 A And, and then initially, of course, checking out the
19 primary area---

20 Q Uh-huh. (Affirmative).

21 A ---where the victim was at.

22 Q And then did you actually go to the room where she was
23 located?

24 A Yes, ma'am.

25 Q Is that what's represented right here?

Tim Davis - Direct examination
by Solicitor Crick

1 A Correct.

2 Q Okay. And these numbers are other items collected from
3 that area?

4 A Correct, ma'am.

5 Q When you got into the bedroom, other than seeing the
6 victim's body here, did you see any other evidence on the
7 ground or around the area?

8 A Mostly what we seen around the area, of course, was a,
9 the blood from the victim and some more hair, things of that
10 nature, around where the victim was.

11 Q Now, did you see a gun anywhere around where the victim
12 was?

13 A No, ma'am.

14 Q Did you see any ammunition around where the victim was?

15 A There was some in the, in the room.

16 Q Okay. And I'm gonna show you what has been marked as
17 State's 24 and 25, and ask you if you recognize those.

18 A Yes, ma'am.

19 Q What is that?

20 A That is ammunition that was located in the same room
21 around the bed.

22 SOLICITOR CRICK: Your Honor, at this time I'd like to
23 offer 24 and 25 into evidence.

24 MR. BRANNON: No objection.

25 THE COURT: They've been agreed to and are in the, in

Tim Davis - Direct examination
by Solicitor Crick

1 the record.

2 You may proceed.

3 SOLICITOR CRICK: May I publish them?

4 THE COURT: You may publish them, yes, ma'am.

5 Q I'm gonna take this down for a second.

6 Tell the jury -- now, this was found in the bedroom
7 where the victim was.

8 A Correct, ma'am.

9 Q Can you tell the jury what that is?

10 A That is a box of ammunition, .38 caliber.

11 Q Okay. And I'm gonna show you one other picture.

12 What is that?

13 A That's another box of ammunition.

14 Q Okay. And that represents a different angle of the .38
15 ammunition?

16 A Correct, ma'am.

17 Q Did you, at any point, participate in a search for the
18 gun that was used in this incident?

19 A Yes, ma'am.

20 Q Can you please tell the jury what areas you searched
21 when you were searching for the gun?

22 Did you search the home?

23 A Yes, ma'am.

24 Q What kind of gun were you looking for?

25 A We were looking for a .38 caliber revolver handgun.

Tim Davis - Direct examination
by Solicitor Crick

1 Q So, you searched the interior of the home?

2 A Correct, ma'am.

3 Q Did you search -- well, let me show you first what's
4 marked as State's 23.

5 Tell me if you recognize what that is.

6 A That's gonna be the kitchen area.

7 SOLICITOR CRICK: Your Honor, at this time I'd like to
8 officer State's 23 into evidence.

9 MR. BRANNON: No objection.

10 THE COURT: Without objection, it will come in.

11 Q Okay. Did you find any guns -- without being too
12 specific, did you find any weapons in the home at all?

13 A Yes, ma'am.

14 Q Where did you find weapons?

15 A In a couple of different areas. The back laundry room
16 area.

17 Q Okay. Let me stop you for a second right there, and
18 I'm gonna zoom this up a little bit.

19 Are you talking about this area here?

20 A Yes, ma'am.

21 Q And there were guns located -- were they in plain
22 sight?

23 Did you have to look?

24 Where were they?

25 A No, ma'am, they were not in plain sight. We did have

Tim Davis - Direct examination
by Solicitor Crick

1 to look for those. They were sort of hidden.

2 Q Okay. But they were right here in the laundry room?

3 A Yes, ma'am.

4 Q This area is what?

5 A That's gonna be the kitchen area.

6 Q Okay. Did you find any other ammunition in the house?

7 A Yes, ma'am.

8 Q Where was that found?

9 A Most of that was found in the laundry room.

10 Q Right here?

11 A Correct.

12 Q Did you search any other areas to see if you could find
13 a .38 caliber weapon?

14 A Yes, ma'am, besides the residence, there was also
15 vehicles at that residence which were also searched.

16 Q And I'm gonna show you now what has been marked as
17 State's 30, 31, and 32, and ask you if you recognize those.

18 A Yes, ma'am.

19 Q What are those?

20 A Those are the vehicles that were present at the
21 residence at the time.

22 Q Are these the vehicles you searched at the time?

23 A Yes, ma'am.

24 SOLICITOR CRICK: Your Honor, at this time the State
25 would offer 30, 31, and 32 into evidence.

Tim Davis - Direct examination
by Solicitor Crick

1 MR. BRANNON: No objection.

2 THE COURT: Without objection, they'll come into
3 evidence.

4 Q Okay. Tell us, tell the jury what they're looking at
5 here.

6 What is this?

7 A That's gonna be the different vehicles that was there
8 at the residence.

9 Q Did you search the interior of each of these vehicles?

10 A Yes, ma'am.

11 Q Did you search around each of these vehicles?

12 A Yes, ma'am.

13 Q Did you search the yard around for any weapons?

14 A Yes, ma'am.

15 Q I know these are kind of dark, but what are we looking
16 at here?

17 A That's gonna be the back of the van.

18 Q And that also was searched?

19 A Yes, ma'am.

20 Q Did you find any guns anywhere in any of these cars?

21 A No, ma'am.

22 Q Did you find a gun anywhere outside the home?

23 A No, ma'am, we did not.

24 Q Now, you said part of your duties too were to
25 photograph the scene and any potential evidence in the

Tim Davis - Direct examination
by Solicitor Crick

1 scene.

2 A Correct, ma'am.

3 Q I'm gonna show you now what has been marked as State's
4 26 and 28, and ask you if you could take a look at those for
5 me.

6 Do you recognize what those are?

7 A Yes, ma'am.

8 Q Can you tell the jury what these are?

9 A Those are photos inside of the victim and where the
10 victim was located at.

11 Q Is it in the bedroom, pictures of her?

12 A Yes, ma'am.

13 SOLICITOR CRICK: Your Honor, at this time the State
14 would offer 26 and 28 into evidence.

15 MR. BRANNON: No objection.

16 THE COURT: Without objection, they'll come in.

17 SOLICITOR CRICK: May I publish them, Your Honor?

18 THE COURT: Yes, you may.

19 Q Can you tell the jury what we're seeing right here?

20 A That's gonna be the victim on the floor in the bedroom.

21 Q Okay. And that was the position -- was that the
22 position she was in when you got to the residence?

23 A Yes, ma'am.

24 Q And then we see some things marked in different
25 locations, but this is also the same room you found the .38

Tim Davis - Direct examination
by Solicitor Crick

1 caliber ammo?

2 A Yes, ma'am.

3 Q I'm gonna show you State's 28, and ask you if you
4 recognize that.

5 A Yes, ma'am.

6 Q What is it?

7 A That's gonna be the photo of the area where the victim
8 was located. This appears to be after the victim had been
9 removed.

10 Q So, you took pictures of what it looked like with her
11 body still there?

12 A Yes, ma'am.

13 Q And then you took pictures of what it looked like after
14 she was removed by EMS or whomever?

15 A Correct, ma'am.

16 Q After you searched and took pictures and collected
17 evidence, did you ever have occasion to go back to the
18 Sheriff's Office?

19 A Yes, ma'am.

20 Q Do you remember when you went back to the Sheriff's
21 Office or for what purpose?

22 A I went back to the Sheriff's Office in reference to a,
23 collecting a GSR kit from the subject there that they were
24 already interviewing. That was actually going to be before
25 I really got to doing a whole lot of the processing of the

Tim Davis - Direct examination
by Solicitor Crick

1 crime scene. It was at the, toward the beginning.

2 Q Okay. Did you actually do a gunshot residue test and
3 collect DNA from the defendant?

4 A Yes, ma'am, I did.

5 Q Are you aware, and you can look at your report if you
6 need to, what time you collected the gunshot residue swabs
7 or tests?

8 A It would of been around midnight of the night. I would
9 have to look to give you a specific time.

10 Q You can look if you need to, and if you need an
11 evidence sheet, I can give you that too.

12 A Yes, ma'am.

13 SOLICITOR CRICK: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, you may.

16 Q See if that helps you be specific for us.

17 A A GSR was collected at 00:40, which would of actually
18 been 11/25 of '06.

19 Q Okay. On, on that -- you collected it on
20 November 25th and it was done at -- can you tell me what
21 that is?

22 A That's gonna be 40 minutes after midnight, 12:40.

23 Q Okay. 12:40 on that next morning.

24 Do you know how much -- well, let me ask you this.

25 At the time, did you know how much time had passed from

Tim Davis - Direct examination
by Solicitor Crick

1 the time of the incident and the time of the, you collecting
2 that GSR?

3 A I can not recall the specific time.

4 Q Okay.

5 A It was less than, you know, three or four hours I would
6 say.

7 Q So, several hours had passed?

8 A Yes, ma'am.

9 Q While you were there, did you also take any notice of
10 the defendant's face or body?

11 A No, ma'am.

12 Q Did you -- well, let me ask it a different way. I
13 confused you.

14 Did you notice any injury to his mouth, the defendant's
15 mouth as you were collecting your evidence?

16 A No, ma'am, not that I can recall right off hand.

17 Q Did he complain of any injury to his mouth or teeth or
18 anything while you were there with him?

19 A Not while I was present, no.

20 SOLICITOR CRICK: Your Honor, I beg the Court's
21 indulgence one second?

22 THE COURT: Yes, ma'am.

23 (Pause.)

24 Q I just want to clarify one last thing. You said you
25 found some weapons in the home.

Tim Davis - Direct examination
by Solicitor Crick

1 Did any of -- the weapons you actually did find, did
2 any of, are any of those capable of firing .38 caliber
3 ammunition?

4 A No, ma'am, they were not.

5 SOLICITOR CRICK: Okay. I think that's all I have at
6 this time, Your Honor.

7 THE COURT: Mr. Brannon, your witness.

8 MR. BRANNON: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. BRANNON:

11 Q Deputy Davis, how are you doing today?

12 A Good, sir.

13 Q Please tell me again, if you still have that document
14 in front of you, what time did you take that GSR test?

15 A It was collected at 12:40 on -- it will it, actually be
16 the 25th.

17 Q At 12:40.

18 Okay. I'm going to show you a statement. This is in
19 evidence. It's written by Deputy Baldarama.

20 You know him?

21 A Yes, sir..

22 Q And it's the statement of my client, Santiago Rios.

23 What time does this indicate that the statement was
24 concluded?

25 A It states at 11:20 p.m.

Tim Davis - Cross-examination
by Mr. Brannon

1 Q 11:30.

2 Okay. And you collected that GSR at, at 12:00, 12:40?

3 A 12:40.

4 Q 12:40.

5 Okay. Okay. All right. You been with the Sheriff's
6 Department for 15 years?

7 A Approximately, yes, sir.

8 Q How long have you been a CSI?

9 A Crime scene?

10 Q Yeah.

11 A Approximately three years now.

12 Q Okay. And have you had any special training or
13 anything like that to help you develop as a crime scene
14 investigator?

15 A Yes, sir.

16 Q Okay. Would you tell the jury what kind of training
17 you've had?

18 A General photographic training. I've also went through
19 Eagle Crime Scene, which is basically a, different
20 techniques as far as different chemicals and things of this
21 nature that you get to use in a crime scene. I've also been
22 through basic fingerprint down in Columbia.

23 Q Okay. Have you done any special testing to train you
24 to test for gunshot residue?

25 A No, sir.

Tim Davis - Cross-examination
by Mr. Brannon

1 Q You haven't done any special training.

2 Okay. GSR is gunshot residue, is that correct?

3 A That's correct.

4 Q Okay. All right. Do you know anything about how long
5 gunshot residue would last on someone's hands or, or how it
6 can be washed away or if it's necessarily there?

7 Do you know anything about that?

8 A I've been informed that we need to collect it within an
9 eight hour period on a live individual, and, of course, it
10 can -- it is something that can get washed off. The details
11 of that I am not familiar with.

12 Q Okay. All right. Get rid of this picture.

13 Sir, did you also take this photo?

14 A That is correct.

15 Q All right. And, and is this photo basically the same
16 shot as this just closer up?

17 A Yes, sir.

18 Q Okay. All right. So, this spot in this photograph is
19 the same as that spot in that photograph, correct?

20 A That is correct.

21 Q Okay. Did you take these photos?

22 A Yes, sir.

23 Q Do you recognize the, the photos now?

24 A Yes, sir.

25 Q And do they depict today or accurately depict what you

Tim Davis - Cross-examination
by Mr. Brannon

1 were attempting to photograph that night?

2 A Correct.

3 MR. BRANNON: Move this document, this photo into, into
4 evidence.

5 THE COURT: Any objection?

6 SOLICITOR CRICK: No objection.

7 THE COURT: Without objection, it will be received into
8 evidence.

9 MR. BRANNON: Okay. Your Honor, present to the jury
10 for review?

11 THE COURT: You may publish it.

12 Q You have any idea what caused that indent, indentation
13 in the floor?

14 A No, sir, I do not know exactly what caused that.

15 Q Do you have any positive evidence that links, links
16 this in, indentation in the floor to the death of Eliza
17 Hernandez?

18 A I, I did not connect it to, to the death at the scene.

19 Q Thank you. Thank you.

20 Do you, as a part of your, your regular work, collect
21 fingerprint evidence?

22 A That is correct, sir.

23 Q You photographed -- I want to clarify. There's two
24 pictures of .38 caliber ammunition that have been introduced
25 into evidence.

Tim Davis - Cross-examination
by Mr. Brannon

1 But those are two pictures of the same box, right?

2 It's not two boxes, correct?

3 A Correct.

4 Q Okay. Can you take a fingerprint off of a box?

5 A Yes, sir.

6 Q Did you take any fingerprints off of that box?

7 A They were, if I'm not mistaken, were processed at a
8 later time, but not at the scene.

9 Q Okay. Are you aware if there's any fingerprint
10 evidence in this case?

11 A I'm not aware of any.

12 Q Okay. Now, help me understand.

13 Your, your notes, your supplemental report says that
14 you were initially asked by Detective Gary to gather
15 personal evidence from Santiago Rios, correct?

16 A That is correct.

17 Q So, is it true that the first thing that you did
18 involved in this matter was collect GSR, DNA, and fingernail
19 scrapings from Santiago Rios?

20 A That -- yes, sir, that, that was the initial part
21 before I started operating the, the scene down there.

22 Q Okay. Did you go to the scene first and then go back
23 to the Sheriff's Department and then go back to the scene?

24 A I was, if I'm not mistaken, I was at the scene.

25 However, I didn't never enter the scene prior to going to

Tim Davis - Cross-examination
by Mr. Brannon

1 the Sheriff's Office and collecting those items.

2 Q Okay. All right. Was the box of .38 caliber
3 ammunition that you photographed, was it where you found it?

4 A Relatively so. It was in that same area. It was found
5 during the, the search of that area, and it was not visible
6 until we started searching and moving things around.

7 Q Okay. Were you -- when you were looking for the gun as
8 Mrs. Crick asked if you had, you were looking for a .38
9 caliber, correct?

10 A Correct.

11 Q Now, is a .38 caliber a handgun or a rifle?

12 A It is a handgun.

13 Q Could it be -- okay. And is there more than one kind
14 of handgun?

15 A That is correct.

16 Q What are those two types of or what types of handguns?

17 A The two main types is what we call a pistol and a
18 revolver.

19 Q Okay. Were you looking for a pistol or a revolver?

20 A A revolver.

21 Q And why was that?

22 A Because of the .38 ammunition.

23 Q Well, well, that ammunition only fit into a revolver?

24 A Yes.

25 Q It wouldn't fit into the other kind of handgun?

1 A No, sir.

2 Q Okay. All right. All right. I'm sorry. I don't know
3 how to use that stuff.

4 You said that you found other guns in the laundry room,
5 correct?

6 A That is correct.

7 Q Do you know -- do you remember if that room was locked
8 or unlocked?

9 A I can not recall if that particular room was, was
10 locked or not.

11 Q Okay. There was only -- there's only one interior
12 entrance into the laundry room, correct?

13 A Correct.

14 Q And that's off of this bedroom here, correct?

15 A Correct.

16 Q So, it's not possible to go from the kitchen directly
17 into the laundry room, correct?

18 A That is correct.

19 Q And to go from the kitchen into the room where the
20 victim was found, you, you don't go into this bedroom, do
21 you?

22 A No, sir.

23 Q So, if an argument ensued in the kitchen and wound up
24 in this room, they would not have, the people involved in
25 that argument would not have had to have gone through this

Tim Davis - Cross-examination
by Mr. Brannon

1 bedroom or into the laundry room, would they?

2 A No, sir, they wouldn't have.

3 Q They would -- they could have gone directly from the
4 kitchen into the bedroom, correct?

5 A Correct.

6 Q Without ever having gone into the laundry room,

7 correct?

8 A Correct.

9 Q All right. Now, sir, how much time did you spend at
10 the incident site?

11 A That I, that I couldn't recall.

12 Q Okay. All right. And I don't want to know to the
13 minute.

14 But were you there an hour or were you there three
15 hours?

16 A It would of been more than three hours.

17 Q Okay. So, it was, it was quite a long time then?

18 A Yes, sir.

19 Q All right. And while you were there for that long
20 time, and I know that we're talking about almost two years
21 ago, did you familiarize yourself with the interior of the
22 home?

23 A Somewhat, yes, sir.

24 Q All right. Do you believe that this drawing, and I
25 believe it's done by at the, at the time Deputy Bogan,

Tim Davis - Cross-examination
by Mr. Brannon

1 correct?

2 A That is correct.

3 Q Do you believe that he is accurate, I understand not to
4 scale, but accurate with the location of the rooms and
5 walls?

6 A Yes, sir.

7 Q So, if someone is in this bedroom here, they can't see
8 what's happening in the kitchen, can they?

9 A No, sir.

10 Q You never found a .38 caliber handgun, did you?

11 A No, sir.

12 Q You don't know what led to the shooting of Eliza
13 Hernandez, do you?

14 A No, sir.

15 MR. BRANNON: One second, Your Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 Q You said that there may of been some prints taken at a
19 later date about the, from the, the, the cartridge, the box
20 of ammunition?

21 A It's possible. I, I am not familiar with it one way or
22 the other.

23 Q If there were fingerprints taken from that box of
24 ammunition, there would of been a report, a report
25 generated, correct?

Tim Davis - Cross-examination
by Mr. Brannon

1 A That is correct.

2 Q Have you ever seen that report?

3 A No, sir.

4 Q Okay. So, you don't know that it even exists then
5 right?

6 A That is correct.

7 Q Okay. All right.

8 Thank you, Your Honor. I, I don't have anything

9 further.

10 THE COURT: Redirect?

11 SOLICITOR CRICK: Thank you, Your Honor.

12 Just very briefly.

13 THE COURT: Yes, ma'am.

14 REDIRECT EXAMINATION

15 BY SOLICITOR CRICK:

16 Q I'm gonna show you State's 14 and ask you if this is a
17 picture you took and you recognize.

18 A Yes, ma'am.

19 Q Is that a picture in the home of the crime scene that
20 you went to that day?

21 A Yes, ma'am.

22 SOLICITOR CRICK: Okay. Your Honor, at this time I'd
23 like to offer State's 14 into evidence.

24 MR. BRANNON: No objection, Your Honor.

25 THE COURT: Without objection, it's admitted.

Tim Davis - Redirect examination
by Solicitor Crick

1 SOLICITOR CRICK: May I publish it, Your Honor?

2 THE COURT: You may.

3 Q Okay. I know it's kind of -- try to get it as big as I
4 can. Thank you.

5 This is a doorway, is that correct?

6 A That is correct.

7 Q And if I'm looking through the doorway into this room
8 down here, is that the kitchen?

9 A Yes, ma'am. Yes, ma'am, I believe it's a --.

10 Q Okay. Let me show you -- see if we can put it into
11 prospective.

12 So, essentially the picture the jury just saw, is that
13 the same view from this bedroom through there to the
14 kitchen?

15 A That would be correct.

16 SOLICITOR CRICK: Okay. Your Honor, I have nothing
17 further at this time.

18 THE COURT: Recross?

19 MR. BRANNON: Yes, please.

20 THE COURT: Yes, sir.

21 RECROSS EXAMINATION

22 BY MR. BRANNON:

23 Q Deputy, you said that you believed that Officer Bogan
24 was accurate with his drawing, correct?

25 A Yes, sir, I do.

Tim Davis - Recross examination
by Mr. Brannon

1 Q If this is a photograph, State's 14 that was just
2 admitted into evidence that you just identified---

3 A Yes, sir.

4 Q ---this is a photograph of a picture taken from this
5 doorway here, you would be looking through this doorway
6 here, correct?

7 A Yes, sir.

8 Q They're looking into the den?

9 They're not looking into the kitchen, aren't they?

10 A You can probably see through most of the den and, and
11 possibly into the kitchen. It would be a---

12 Q All right. Now, how many rooms can you see in that
13 picture right there?

14 How many rooms can you see into?

15 A You can see through the hallway and definitely into the
16 I, at least one other room.

17 Q One other room.

18 And sir, if this drawing is right and you already
19 testified that it was---

20 A Yes.

21 Q ---that other room has to be the den, doesn't it?

22 A That is correct.

23 Q Okay. Now, last thing I want to look at is whether you
24 would be looking into the kitchen or the den.

25 What are we talking, 6-inches there?

Tim Davis - Recross examination.
by Mr. Brannon

1 A It's not a large -- I couldn't give you an estimate.

2 Q Okay. So, if anything is going on to the right of that
3 6-inches, can't see it, can you?

4 A Correct.

5 MR. BRANNON: Nothing further, Your Honor.

6 THE COURT: State have any other questions?

7 SOLICITOR CRICK: That's it, Your Honor.

8 THE COURT: All right. You may step down, sir. Thank
9 you very much.

10 WITNESS: Thank you, sir.

11 THE COURT: State may call its next witness.

12 SOLICITOR GOWDY: Thank you, Your Honor.

13 The State would call Deputy David Hogshed.

14 THE COURT: Sir, come forward to my left and be sworn
15 please.

16 DAVID HOGSHED, being first duly
17 sworn, testified as follows:

18 THE COURT: Have a seat in the witness stand please.

19 Sir, once you're seated, state your full name for the
20 record.

21 WITNESS: David Hogshed.

22 THE COURT: Mr. Gowdy, it's your witness.

23 SOLICITOR GOWDY: Thank you, Your Honor.

24 May it please the Court, Your Honor?

25 Might I give Madam Court Reporter a moment to mark some

David Hogshed - Direct examination
by Solicitor Gowdy

1 exhibits?

2 THE COURT: Certainly.

3 SOLICITOR GOWDY: Thank you, Your Honor.

4 (Whereupon, six photographs were marked as State's
5 Exhibit Nos. 33 through 38 for identification purposes only
6 at this time.)

7 DIRECT EXAMINATION

8 BY SOLICITOR GOWDY:

9 Q Good morning, sir.

10 A Good morning.

11 Q Can you reintroduce yourself to the jury, tell them
12 where you work, and how long you've been there?

13 A David Hogshed with the crime scene unit for the
14 Spartanburg County Sheriff's Office. Been with the
15 Sheriff's Office for right at three years. Prior to that I
16 was with the City of Spartanburg for almost 16 years.

17 Q You are with the crime scene unit?

18 A Yes, that's correct.

19 Q And when you worked for the Department of Public
20 Safety, what department were you assigned to?

21 A When I left I was assigned to the crime scene unit
22 there.

23 Q How many total years of experience in law enforcement
24 do you have with crime scene investigations?

25 A Nine years.

David Hogshed - Direct examination
by Solicitor Gowdy

1 Q Deputy Hogshed, did you, on November the 24th I
2 believe it would be or sometime after Thanksgiving of 2006,
3 have occasion to attend the autopsy of Eliza Hernandez?

4 A Yes, I went to the Spartanburg Regional Medical Center,
5 the morgue, where Investigator Dominic Baird was already
6 there. I went to see if I could assist him with the autopsy
7 with, if anything that needed to be done by the ID unit.

8 Q Is that standard protocol in homicide cases that one,
9 some representative from your division would attend an
10 autopsy?

11 A Yes, we -- there will be an ID unit -- on a homicide
12 case, there will be an ID officer at the autopsy.

13 Q All right. Can you explain to the jury, they may very
14 well already know, but can you explain what a
15 through-and-through, what, what does that mean in police
16 vernacular?

17 A Basically what it means is projectile, it could be a
18 knife or whatever, an object enters the body and also exits
19 the body. Enters at one point, exits the, from another
20 point.

21 Q During some homicide investigations, is it readily
22 apparent that the gunshot wound was a through-and-through?

23 A Yes, on some it is.

24 Q In this particular case, when did you learn that the
25 projectile that had struck and killed Eliza Hernandez was

David Hogshed - Direct examination
by Solicitor Gowdy

1 indeed a through-and-through shot?

2 A When I arrived at the morgue that morning.

3 Q Okay. So, it was during the autopsy that you realized
4 that it was a through-and-through gunshot wound?

5 A Yes, sir.

6 Q And based on that knowledge, what did you do?

7 A I went to the residence where the incident took place.

8 I entered the residence 11:51 a.m., worked my way back to
9 the bedroom where the incident took place, did a quick
10 overview, look around, noticed a mark on the floor beside
11 some blood, and then I started looking for the projectile
12 that would have penetrated through Mrs. Hernandez.

13 Q Let me show you what is been made, marked as State's
14 33, 34, 37, 36, 35, and 38, and ask you whether or not you
15 recognize what is depicted in those photographs, and is a
16 fair and accurate portrayal of what you found that day?

17 A Yes, sir, it is. These are actually photographs that I
18 took.

19 SOLICITOR GOWDY: All right. Your Honor, we would move
20 these exhibits into evidence.

21 MR. BRANNON: No objection.

22 THE COURT: Without objection, they'll be received as
23 marked.

24 (Whereupon, State's Exhibit Nos. 33 through 38 were
25 received into evidence at this time.)

David Hogshed - Direct examination
by Solicitor Gowdy

1 SOLICITOR GOWDY: Permission to publish to the jury,
2 Your Honor?

3 THE COURT: You may do is.

4 Q Deputy Hogshed, again, I was, I was not clear when I
5 asked you.

6 When did you go back to the crime scene relative to
7 when Eliza Hernandez was shot and killed?

8 A The only time I was at the crime scene is after I left
9 the autopsy. That was the first time I had been at the
10 crime scene whatsoever.

11 Q And that would be on what date?

12 A It was actually on November the 24th, 2006.

13 Q All right. So, if she was shot in the 9:30 range on
14 the 23rd, Thursday, you were there Friday morning?

15 A That's correct.

16 Q Okay. And you were there for what purpose?

17 A To look for the projectile.

18 Q Let me show you what has been marked as State's Exhibit
19 38.

20 What is the jury looking at?

21 A That is a weight bench. It sits against the back wall.
22 As you enter the bedroom door to the left, you'll see a
23 kerosene heater. That would be the far left-hand corner of
24 the room.

25 Q What is that right there?

David Hogshed - Direct examination
by Solicitor Gowdy

1 A That is a numbered placard that I sat down to show
2 where the projectile was found on the floor against the back
3 wall.

4 Q Let me show you State's Exhibit 36. Try to get it out
5 of that dark spot.

6 Is that a, a different viewpoint of your Number 19
7 placard?

8 A Yes, sir, I'm basically standing at the foot end or at
9 the end of the weight bench taking a photograph between the
10 weight bench and the wall showing where I placed the number
11 placard where the projectile is located.

12 Q All right. Let me show you State's Exhibit 37.

13 A That's actually taking a photograph of the placard and
14 the projectile from the front of the weight bench shooting
15 actually taking a photograph underneath the weight bench.

16 Q And is that the projectile right there?

17 A Yes, sir, it is.

18 Q All right. Let me show you State's Exhibit 34.

19 Did you have to move -- let me show you State's 35
20 first.

21 Is that an even closer shot of the projectile?

22 A Yes, that's basically standing in the same location I
23 took showing the back wall just using the zoom capabilities
24 of the lense to take a closer up picture of the projectile
25 against the wall.

1 Q Deputy Hogshed, at some point did you move the things
2 that were around the projectile?

3 A I just moved the number placard to get a better picture
4 of what the item number was in comparison to the projectile.

5 Q All right. And finally, let me show you State's
6 Exhibit 33.

7 A Here I moved the weight bench out of the way and took
8 an overall view of where the blood was found on the floor.
9 I found blood on the floor in comparison to where the
10 projectile is against the back wall.

11 Q What is that right there, right in front of the hat?

12 A That is a scuff mark that I observed on the floor that
13 I thought may be relevant in this case. To me, it appeared
14 to be fresh as if something had struck it recently, and the
15 reason why I say I thought it to be fresh because if you
16 look at the floor, you can tell that most of the floor is
17 not clean. However, that's clean wood.

18 So, something has struck that tearing off part of the
19 upper part of the wood leaving the wood underneath showing
20 the clean part of the wood or not varnished part of the
21 wood.

22 Q All right. And that is unvarnished wood and that is
23 the projectile right there?

24 A Yes, to the right of the placard.

25 Q Okay. To the right of the placard?

David Hogshed - Direct examination
by Solicitor Gowdy

1 A Yes.

2 Q Okay. Once you determined that it was a
3 through-and-through gunshot wound, and that you wanted to
4 search for a projectile, and after you saw the scuff mark in
5 the floorboard, how long did it take you to find that
6 projectile?

7 A I'd probably say within two to three minutes I located
8 the projectile.

9 Q Thank you, Deputy Hogshed. Please answer any questions
10 that the defense attorney may have for you.

11 THE COURT: Mr. Brannon, your witness.

12 MR. BRANNON: Thank you, Your Honor.

13 Just one second.

14 (Pause.)

15 THE COURT: You need the lights down or back up, Mr.
16 Brannon?

17 MR. BRANNON: Back up please, Your Honor.

18 THE COURT: Bring them up please.

19 CROSS-EXAMINATION

20 BY MR. BRANNON:

21 Q Deputy Hogshed, how are you today?

22 A Fine.

23 You, sir?

24 Q Good. Good.

25 You were there at some point on the 24th of November,

David Hogshed - Cross-examination
by Mr. Brannon

1 correct, at the incident location, correct?

2 A Yes, I actually entered the residence at 11:51 a.m.

3 Q Okay. When you got there, was the crime scene secured?

4 Was it protected?

5 A Yes, it -- the crime scene still had the, the barrier
6 tape up around it and we had a deputy positioned outside of
7 the home---

8 Q Okay.

9 A ---keeping the crime scene secure.

10 Q Do you guys keep logs as to who goes in and out of the
11 crime scene once the perimeter had been secured?

12 A Yes.

13 Q Do you have any idea how many people went into or out
14 of that crime scene between 9:30 on the 23rd and when you
15 got there?

16 A No, sir, none whatsoever.

17 Q Okay. Is it fair to say there were other investigators
18 and other CSI's in the home before you got there?

19 A Yes, there were.

20 Q In fact, Deputy Taylor, excuse me, Deputy Davis just
21 testified, right?

22 A Yes.

23 Q He's in the same unit you are, correct?

24 A That's correct.

25 Q And he took pictures of the same spot in the floor,

David Hogshed - Cross-examination
by Mr. Brannon

1 right?

2 A I guess he -- I haven't seen the pictures that he took.

3 Q Okay. But he took pictures, right?

4 A He did take pictures of the crime scene.

5 Q And clearly he saw the spot, right?

6 A I can't answer if he saw it or not, sir. I mean if, if
7 that's the photograph he took I would say yes.

8 Q Okay. Why didn't he find Number 19?

9 A I can't answer that. I wasn't there, sir.

10 Q Don't know.

11 Okay. It's fair to say though that several hours past
12 between the death of Eliza Hernandez and your finding Number
13 19, right?

14 A Yes, but it's my understanding that at the time that we
15 did not, the crime scene unit did not know it was a
16 through-and-through gunshot wound.

17 Q Okay. Well, when you go to a crime scene, are you
18 looking for all of the evidence at a crime scene?

19 A You should be but you're gonna concentrate on the type
20 of crime that, that occurred.

21 Q Okay. All right. So, maybe they weren't looking for
22 it, right?

23 A Again, I wasn't there. I can't answer that question.

24 Q Okay. But you have no idea how many people searched
25 that room before you found the bullet?

David Hogshed - Cross-examination
by Mr. Brannon

1 A No, I do not.

2 Q Do you have any idea, other than you and Davis, how
3 many other people from crime scene investigations were in
4 that home?

5 A Actually I don't know how many actually worked the
6 initial crime scene. I don't know.

7 Q Okay. Sir, based on your experience as a CSI, did that
8 bullet appear to be a lead bullet or some other composition?

9 A If I could look at a closer picture, picture of it I
10 could answer that. But I don't know if it's cooper jacketed
11 or, or lead. I don't recall.

12 Q Would any of the pictures that you took help you get to
13 that point?

14 A It may. It appears to be cooper jacketed bullet.

15 Q Okay. Can you say definitively that that bullet, that
16 projectile has ever even been fired?

17 A I'm not a ballistic's expert, no, sir.

18 Q So, you can't say that it's ever even been fired?

19 A No, I can't say that.

20 Q Okay. Is part of your job, as a CSI, to take
21 fingerprints?

22 A If I had worked the initial crime scene and knew what
23 type of crime. But I went there to look for a projectile
24 based on a through-and-through gunshot wound.

25 Q Okay. So, you went looking for a projectile?

David Hogshed - Cross-examination
by Mr. Brannon

1 A That's correct.

2 Q And you found this projectile?

3 A That's correct.

4 Q What testing -- do you know of -- what testing did you
5 do on this projectile?

6 A I did none. It was placed into an evidence envelope

7 and sealed.

8 Q Okay. Now, when you take photographs during your
9 investigations, do you use, do you use flashes?

10 A On some occasions, yes.

11 Q Okay. When you're taking a picture in a room and in
12 the interior of a home, would you be using a flash?

13 A It depends on the lighting of the room.

14 Q Okay. Well, when you took that photo, were you using a
15 flash?

16 A I don't recall.

17 Q Okay. Can you say that that scuff mark has anything to
18 do with the investigation in this matter?

19 A Not indefinitely, no.

20 MR. BRANNON: Okay. Thank you, Your Honor. I don't
21 have, have anything further.

22 THE COURT: Redirect?

23 SOLICITOR GOWDY: Very briefly.

24 THE COURT: Yes, sir.

25 REDIRECT EXAMINATION

David Hogshed - Redirect examination
by Solicitor Gowdy

1 BY SOLICITOR GOWDY:

2 Q Did you find any other marks in the room that were
3 consistent with being made by a projectile on the walls?

4 A No, sir, we did not.

5 Q On the ceiling?

6 A I did not.

7 Q On the ceiling?

8 A No.

9 Q Deputy Hogshed, in a non-through-and-through gunshot
10 wound, who recovers the projectile?

11 A On a non-through-and-through?

12 Q On a non-through-and-through?

13 A It would be recovered by Doctor Wren at the autopsy.

14 Q During the autopsy?

15 A During the autopsy, yes.

16 Q When -- I think I saw a picture with leads on the
17 victim's ankles which indicates EMS had been involved with
18 her at some point?

19 A Yes, if there were leads on her ankles they would be.

20 Q Okay. Law enforcement doesn't do that?

21 A No, that would be the EMS, the medical, the medical
22 personnel would do in.

23 Q Okay. Does law enforcement palpate the head to see if
24 they're holes in the head at the crime scene?

25 A No, we do not.

David Hogshed - Redirect examination
by Solicitor Gowdy

1 Q Okay. You take it to Doctor Wren to do an autopsy,
2 correct?

3 A That's correct.

4 Q And he either recovers the projectile or you then learn
5 it's a through-and-through, correct?

6 A Yes, that's correct.

7 Q All right. Are you the first person at the Spartanburg
8 County Sheriff's Department that would of had knowledge that
9 it was a through-and-through gunshot wound?

10 A No, I'm not.

11 Q Who would be?

12 A Doctor Wren would be.

13 Q No, with Spartanburg County Law Enforcement.

14 A Oh, law enforcement?

15 Q You and Dominic Baird?

16 A Dominic Baird and I were the first ones to know it as
17 far as the Sheriff's Office goes, yes.

18 Q Sheriff's Department.

19 Okay. And you did what immediately upon learning that
20 it was a through-and-through gunshot?

21 A I left the morgue. I didn't even stay for the autopsy.
22 I left the morgue and went straight to the residence to
23 locate the projectile.

24 Q And found that?

25 A That's correct.

David Hogshed - Recross examination
by Mr. Brannon

1 Q Thank you, Deputy Hogshed.

2 THE COURT: Mr. Brannon, anything further?

3 RECROSS EXAMINATION

4 BY MR. BRANNON:

5 Q EMS was involved in this matter, correct?

6 A If there were leads on her body, they would have been.
7 I, I mean I didn't see EMS. I was not at the initial crime
8 scene.

9 Q All right. But there were leads on her body which
10 tells you?

11 A That EMS had been at the scene.

12 Q Which means they carried in a---

13 A Equipment.

14 Q ---equipment and a stretcher, correct?

15 A That's correct.

16 Q That could of been caused by a, equipment or a
17 stretcher, couldn't it?

18 A It could have been, yes, sir.

19 Q Thank you. Nothing further.

20 THE COURT: Anything further from the State?

21 SOLICITOR GOWDY: No, sir, Your Honor.

22 THE COURT: You may step down, sir.

23 State may call its next witness.

24 SOLICITOR GOWDY: Your Honor, the State would call
25 Deputy Dominic Baird.

Dominic Baird - Direct examination
by Solicitor Gowdy

1 Your Honor, could we ask that Deputy Hogshed be
2 excused?

3 THE COURT: Any objection?

4 MR. BRANNON: None.

5 THE COURT: You're free to go. Thank you for coming,
6 sir.

7 Sir, come forward to be sworn over here on my left.

8 DOMINIC BAIRD, being first duly
9 sworn, testified as follows:

10 THE COURT: Have a seat in the witness stand please.

11 WITNESS: Thank you, sir.

12 THE COURT: And once you are seated, state your name
13 for the record please.

14 WITNESS: Dominic Baird.

15 THE COURT: And Mr. Gowdy, he's your witness.

16 MR. BRANNON: Thank you, Your Honor.

17 One moment for Madam Court Reporter to mark just one
18 exhibit.

19 THE COURT: Sure.

20 (Whereupon, a photograph was marked as State's Exhibit
21 No. 39 for identification purposes only at this time.)

22 DIRECT EXAMINATION

23 BY SOLICITOR GOWDY:

24 Q Deputy Baird, will you introduce yourself to the jury
25 and tell them where you work and how long you've been there?

Dominic Baird - Direct examination
by Solicitor Gowdy

1 A Yes, sir, I work for the Spartanburg County Sheriff's
2 Office. Been employed by the Sheriff's Office about 13
3 years.

4 Q What division or department are you assigned to?

5 A I'm currently assigned to the crime scene unit.

6 Q And how long have you been there?

7 A Three years.

8 Q Did you have an occasion to attend an autopsy on one
9 Eliza Hernandez?

10 A Yes, sir, I did.

11 Q Have you had any involvement with the case prior to
12 that?

13 A I went to the scene initially the night of the
14 incident, did a walk through at the scene with the officers
15 that were there and then left. I didn't do any processing
16 of the scene or anything like that.

17 Q Were Deputies Bogan and Davis principally in charge
18 with processing the crime scene?

19 A Yes, sir.

20 Q All right. So, let's move forward to Friday, the day
21 after Thanksgiving.

22 You go to an autopsy being performed by Doctor David
23 Wren?

24 A Yes, sir.

25 Q All right. Is it at that point that you learn that the

Dominic Baird - Direct examination
by Solicitor Gowdy

1 gunshot wound that killed Eliza Hernandez is a
2 through-and-through gunshot wound?

3 A Yes, sir, that was determined that day.

4 Q All right. Well, was Deputy Hogshed with you?

5 A He came up to see if I needed any help, and he was
6 there when we discovered that.

7 Q Okay. And did he leave to, you may not know what he
8 left to do, but did he leave at some point?

9 Did he go---

10 A Yes, sir, he did.

11 Q All right. Did you perform a gunshot residue test on
12 Eliza Hernandez?

13 A Yes, sir, I did.

14 Q Can you tell the ladies and gentlemen of the jury what
15 a gunshot residue test is and how it's performed?

16 A Gunshot residue test is basically what the name
17 implies. It's to check for any gunshot residue to see if
18 someone's fired a gun or if there's any residue from a
19 firearm on their hands. Basically it consists of daubers
20 and swabs. There's a dauber for doing the back of each
21 hand, and a little dauber for doing the palm area of each
22 hand. After you do that, you do a swab, the exact same, the
23 exact same, same way. The back of the hand and then the
24 palms of each hand. You also take a controlled sample from
25 the area of the body where there should not be any gunshot

1 residue.

2 Q Where do you typically take your control sample from?

3 A I typically take from the back side of the shoulder, if
4 possible.

5 Q Okay. You mentioned daubers and swabs.

6 A Yes, sir.

7 Q Do you perform -- well, who, who makes the, the GSR
8 kit?

9 Is it a Sheriff's Department kit or is it---

10 A No, sir, we pick them up from SLED.

11 Q SLED being the South Carolina Law Enforcement Division?

12 A Yes, sir.

13 Q All right. So, the GSR kits across the State of South
14 Carolina are uniform?

15 A They should be, yes, sir. They're all sealed and
16 everything when we get them.

17 Q All right. You unseal them, and you do what to the
18 back of the hands?

19 A There's, like I said, a little dauber in the container.
20 You just daub the back side of each hand and the palm area
21 of each hand---

22 Q Okay.

23 A ---prior, prior to doing the swabs.

24 Q Now, in one of the photographs it looked as if it might
25 have been blood on one of Eliza Hernandez's hands.

Dominic Baird - Direct examination
by Solicitor Gowdy

1 A Yes, sir.

2 Q Would you have made a conscious effort to avoid that
3 area or how would you have handled that?

4 A If it's dried. I'll still go over the area the best I
5 can. There's a area marked on the GSR paperwork that asked
6 if there's any blood or debris on the hands.

7 Q And why is it significant whether there's any blood or
8 debris?

9 A You probably need to---

10 Q Go---

11 A ---ask the SLED expert. I, I can tell you why my
12 reasoning would be or I would think it would be. But I
13 don't want to get into the technicalities of it. I'm not
14 specialized in that.

15 Q Let me do this then. Let me, let me ask the lady from
16 SLED.

17 How's that?

18 A That sounds good, sir.

19 Q Is there a window of time within which you are, you
20 will not do a GSR kit?

21 Is that your rule or SLED's rule?

22 A SLED's rule for a live person is six hours. No time
23 limit on a deceased person.

24 Q Do you know why that there would be no time limit for a
25 deceased person?

Dominic Baird - Direct examination
by Solicitor Gowdy

1 A My understanding is that basically the bodily functions
2 are shut down. So, I, I can't really -- be better to talk
3 to SLED about that.

4 Q I will. I will.

5 All right. You did both the backs and both palms on
6 Eliza Hernandez?

7 A Yes, sir.

8 Q All right. And you did it -- how many GSR kits have
9 you performed in your career?

10 A Numerous.

11 Q Too many to count?

12 A Yes, sir, I don't keep track of them.

13 Q Would you have done the exact same thing in her GSR you
14 would of done in all the others you've done?

15 A Yes, sir.

16 Q All right. In fact, you were so thorough in your GSR
17 that you saw something on her hand, didn't you?

18 Let me show you---

19 A Yes, sir.

20 Q ---State's 39.

21 A Yes, sir, that's a photo I took.

22 Q Okay. And why did you think to note that?

23 A It's just a curious mark we saw on her hand. We
24 weren't exactly sure what it was. So, we went ahead and get
25 a photograph of it and Doctor Wren took a cutting of it.

Dominic Baird - Direct examination
by Solicitor Gowdy

1 Q Doctor Wren being the forensic pathologist---

2 A Yes, sir.

3 Q ---took a cutting of that mark in State's 39?

4 A Yes, sir.

5 SOLICITOR GOWDY: Your Honor, we would move State's 39
6 into evidence.

7 MR. BRANNON: No objection.

8 THE COURT: Without objection, it will be received into
9 evidence and you may publish it, Mr. Gowdy.

10 SOLICITOR GOWDY: Thank you, Your Honor.

11 (Whereupon, State's Exhibit No. 39 was received into
12 evidence at this time.)

13 Q That -- we'll call it a mark for now.

14 That mark right there caught your attention while you
15 were doing the GSR?

16 A Yes, sir.

17 Q And you asked Doctor Wren to do a cutting?

18 A That is correct.

19 Q And it was processed or whether it was processed you
20 don't know?

21 You just noticed it and---

22 A That's, that's, that's correct. I photographed it and
23 Doctor Wren took a cutting of it and I left it with him.

24 Q Okay. Did you notice anything significant about the
25 gunshot injury to her face?

Dominic Baird - Direct examination
by Solicitor Gowdy

1 A It appeared to me to be close proximity, close
2 proximity gunshot. There was stippling around the wound,
3 and also some charring on the lip.

4 Q Tell me what stippling is cause I, I don't, I'm not
5 familiar with that.

6 A Basically it's where the unburnt powder goes into the
7 skin and leaves black spots around the wound, and---

8 Q Is that indicative of a contact or near contact?

9 A It's indicative of a very, of a close contact wound,
10 yes, sir.

11 Q Okay. Would you have done fingernail scraping
12 collection or would Doctor Wren have done that?

13 A Doctor Wren did the scrapings themself and I collected
14 them from him.

15 Q And what did you do with both the GSR kit and the
16 scrapings from Mrs. Hernandez's fingernails?

17 A They would of been secured in our crime scene evidence
18 room, and they would have ended up being determined, sent to
19 SLED.

20 Q Ultimately taken to SLED and processed?

21 A Yes, sir, that's correct.

22 Q Thank you, Deputy Baird. Please answer any questions
23 the defense attorney may have.

24 A Thank you, sir.

25 THE COURT: Mr. Brannon, your witness.

Dominic Baird - Cross-examination
by Mr. Brannon

1 MR. BRANNON: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BRANNON:

4 Q Deputy Baird?

5 A Yes sir.

6 Q You okay today?

7 A Yes, sir.

8 Q Good.

9 Is it common for crime scene investigation at
10 Spartanburg County to search a room over and over and over
11 and over again?

12 A I believe they search it until they're satisfied, yes,
13 sir.

14 Q Until they're done, right?

15 A Yes, sir.

16 Q Okay. Did they search rooms more, more closely or with
17 more, with great scrutiny when there is a weapon involved
18 or, or when there's been a death?

19 A There's been a death, yes, sir.

20 Q Okay. All right. And how many CSI's are there, are
21 employed by Spartanburg County?

22 A We currently have nine officers that actually work, go
23 out and run calls.

24 Q And how many of those nine do you think actually went
25 into this house?