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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

No. _____

APPEAL FROM
SC Court of Appeals, No. 2009147487
and the SC Workers' Compensation Commission WCC No. 0813616

Ramon Zepeda Cepeda.....Petitioner

v.

Priority Landscaping and Lawn Care, LLC.....Employer/Respondent

and

Accident Fund Insurance Company of America.....Carrier/Respondent

APPENDIX **3**

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from the South Carolina Workers' Compensation Commission

W.C.C. File No. 0813616

Ramone Zepeda-Cepeda,..... Employee/Appellant

v.

**Priority Landscaping and Lawn Care, LLC,
AND**

Accident Fund Insurance Company of America, ...Carrier/Respondent

**RECORD ON APPEAL
VOLUME 2 OF 2**

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0813616

COPY

EMPLOYEE/CLAIMANT: RAMON RAMOS ZEPEDA

EMPLOYER: PRIORITY LANDSCAPING AND LAWN CARE, LLC

CARRIER: ACCIDENT FUND INSURANCE COMPANY OF AMERICA

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 22ND DAY
OF JANUARY, 2009, COMMENCING AT THE HOUR OF 10:10 A.M.,
IN NORTH CHARLESTON, SOUTH CAROLINA, BEFORE THE
HONORABLE G. BRYAN LYNDON, ATTENDED BY COUNSEL AS
FOLLOWS:

TIMMI A. PARRISH
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ATTORNEY FOR THE EMPLOYER/CARRIER.

INTERPRETER: MS. CYNTHIA HERNANDEZ

ALSO ATTENDING: MR. WILLIAM HAMPTON
MS. CHARLENE LARA

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN NORTH
4 CHARLESTON, SOUTH CAROLINA.

5 * * * * * * * * * * * * * * *

6 (PRIOR TO HEARING, COURT REPORTER MARKS PHOTOGRAPHS
7 CLAIMANT'S EXHIBITS ONE, TWO, AND THREE.)

8 * * * * * * * * * * * * * * *

9 BY COMMISSIONER LYNDON:

10 TODAY'S DATE IS JANUARY 22ND, 2009. THIS IS
11 SOUTH CAROLINA WORKERS' COMPENSATION CASE FILE
12 NUMBER 0813616. THE CLAIMANT IS RAMON ZEPEDA, DON
13 GIBSON IS THE ATTORNEY, VERSUS EMPLOYER PRIORITY
14 LANDSCAPING AND LAWN CARE. ACCIDENT FUND INSURANCE
15 COMPANY IS THE CARRIER. MIKELL WYMAN IS THE
16 ATTORNEY FOR THE DEFENDANT. THE PURPOSE OF THIS
17 HEARING IS TO DETERMINE ISSUES RAISED ON FORMS 50
18 AND 51. THE CLAIMANT'S AVERAGE WEEKLY WAGE IS
19 463.32, COMP RATE 308.89, AND THE DATE OF ACCIDENT
20 IS 9/4/08. ARE THERE ANY OBJECTIONS TO APAs,
21 JURISDICTION, VENUE OR ANY OTHER ITEMS?

22 BY MR. GIBSON:

23 NONE.

24 BY MR. WYMAN:

25 NONE FROM THE DEFENDANTS, COMMISSIONER.

1 BY THE COMMISSIONER:

2 WITHOUT OBJECTION THE COMMISSION FILE BECOMES A
3 PART OF THE RECORD WITH THE EXCEPTION OF SELF-
4 SERVING DECLARATIONS AND UNSTIPULATED MEDICAL
5 REPORTS. PRIOR TO GOING ON THE RECORD, WE HAD
6 FAIRLY LENGTHY PREHEARING CONFERENCE.

7 ~~THERE'S NO FACT DISPUTE THAT THE CLAIMANT DID~~
8 FALL OUT OF A TREE. THE PROBLEM WITH THIS CASE --
9 AND WHAT THE CLAIMANT SEEKS IS COMPENSABILITY,
10 STATING THAT HIS FALL AROSE OUT OF AND IN THE COURSE
11 AND SCOPE OF HIS EMPLOYMENT WITH THE DEFENDANT. HE
12 DENIES THAT HORSEPLAY IS ANY PART OF THIS. HE SEEKS
13 COMPENSABILITY UNDER THE ACT, SEEKS PAYMENT OF ALL
14 CAUSALLY-RELATED MEDICALS, AND HE SEEKS TEMPORARY
15 TOTAL DISABILITY BENEFITS FROM 9/4/08 TO THE PRESENT
16 AND CONTINUING. HE HAS NOT YET REACHED M.M.I. JUST
17 SOME OF THE POINTS THAT WE BROUGHT UP IN OUR
18 PREHEARING CONFERENCE WAS THAT THE CLAIMANT WILL
19 DENY EVER HAVING A BET THAT HE WOULD JUMP OFF THE
20 LIMB OF A TREE. THERE WERE WITNESSES THERE. SOME
21 SPOKE SPANISH, LITTLE SPANISH, OR NO SPANISH. THE
22 FACTS WILL INDICATE THAT THE CLAIMANT DID GET UP
23 INTO THE TREE -- THAT WAS PART OF HIS JOB. IT WAS
24 IN THE LANDSCAPING BUSINESS -- BY WAY OF A TRACTOR,
25 NOT A LADDER, CRAWLED OUT ON A LIMB, AND COUNSEL

1 STATES THAT THE CLAIMANT -- THE LIMB WAS SHAKY OR HE
2 WAS TOO FAR OUT ON THE LIMB, AND THERE ARE PICTURES
3 TO INDICATE WHERE HE WAS. HE WILL TESTIFY, I
4 BELIEVE, THAT HE HELD ON TO THE LIMB AND THEN
5 DROPPED. AS A RESULT OF DROPPING, HE INJURED HIS
6 RIGHT LEG. HE HAS HARDWARE IN IT. HE IS WEARING A
7 CAST HERE AT THE HEARING. COUNSEL STATES THAT THE
8 CLAIMANT WAS SENT TO DOCTORS CARE. THERE WAS NO
9 ONE, APPARENTLY, WHO COULD SPEAK SPANISH THERE.
10 THEREFORE, THE REPORT INDICATES HE STEPPED IN A
11 HOLE. HE WENT TO THE E.R. THERE WAS ANOTHER STORY
12 -- THERE WAS A PERSON WHO MAY OR MAY NOT HAVE BEEN
13 ABLE TO SPEAK FLUENT SPANISH -- DESCRIBING A
14 DIFFERENT SEQUENCE OF EVENTS. BUT COUNSEL STATES
15 IT'S AN EVOLVING STORY AND AT LEAST IN THEORY
16 EVOLVING TO THE EXTENT TO DENY THE REALITY OF
17 EXACTLY WHAT MAY HAVE HAPPENED. THERE ARE WITNESSES
18 WHO WILL TESTIFY THEY SAW WHAT HAPPENED, AND IT IS
19 DENIED THAT WHAT HAPPENED WAS A RESULT OF HORSEPLAY.

20 THE POSITION OF THE DEFENDANT IS THAT THE
21 CLAIMANT WORKED IN LANDSCAPING, THAT HE WAS UP IN
22 THE TREE, BUT THAT THE REASON HE INJURED HIMSELF WAS
23 A RESULT OF, I BELIEVE, A \$50 BET. NONETHELESS, A
24 BET THAT HE WOULDN'T JUMP OUT OF THE TREE. THE
25 CLAIMANT, ACCORDING TO COUNSEL, TOOK THAT BET AND

1 INJURED HIS LEG. ALSO, COUNSEL STATES THE
2 CLAIMANT'S DISCOVERY DEPOSITION INDICATES THAT HE
3 TESTIFIED, AT THAT POINT AT LEAST, THAT HE HAD
4 STEPPED IN A HOLE.

5 AND IT WAS ASKED BY BOTH PARTIES THAT
6 CREDIBILITY BE WEIGHED HEAVILY WITH THIS IN MY
7 ~~DECISION. -- THERE WERE A NUMBER OF --~~ WE'VE ALREADY
8 MARKED SOME EXHIBITS OF THE TREE AND OF THE SCENE OF
9 THE ACCIDENT. THEY'RE IN BOTH PARTIES' APAs, AND
10 THEY WILL BE A KEY PART IN UNDERSTANDING THE
11 MECHANICS OF THIS INCIDENT, AND ALSO THERE WILL BE
12 WITNESSES TO TESTIFY ON BEHALF OF BOTH PARTIES. AND
13 YOU ALL CAN ADD TO THAT AS YOU SEE FIT.

14 BY MR. GIBSON:

15 I DON'T HAVE ANYTHING TO ADD TO IT.

16 BY MR. WYMAN:

17 I WOULD NOTE, COMMISSIONER, YOU DID MAKE
18 MENTION -- AND I MAY HAVE JUST MISUNDERSTOOD -- THAT
19 THERE WAS A -- DID YOU SAY THERE WAS AN ASSERTION
20 THAT THIS WAS A NORMAL -- THAT CLIMBING INTO A TREE
21 THIS SIZE WAS A NORMAL PART OF THE LANDSCAPING
22 BUSINESS?

23 BY THE COMMISSIONER:

24 I MAY NOT HAVE USED THE WORD ASSERTION. THAT
25 THERE WAS LANDSCAPING AND PART OF THE LANDSCAPING

1 WOULD BE, AMONG OTHER THINGS, TO TRIM TREES.

2 BY MR. WYMAN:

3 OKAY. I WOULD JUST NOTE THAT THE TESTIMONY --
4 THE DEFENDANTS' POSITION AND THE TESTIMONY WILL SHOW
5 THAT THIS LANDSCAPING COMPANY DOES NOT NORMALLY TRIM
6 GREAT OAK TREES THE SIZE OF WHICH ARE SHOWN IN OUR
7 EXHIBIT "C." THAT'S JUST OUR POSITION, AND
8 CERTAINLY THE TESTIMONY WILL SUPPORT THAT. I JUST
9 WANTED TO MAKE SURE THAT OUR POSITION WAS CLEAR.

10 BY THE COMMISSIONER:

11 WELL, WHEN YOU SAY NOT NORMALLY, IT DOESN'T
12 MEAN THAT THEY NEVER DO IT; IT'S JUST THAT
13 ORDINARILY THEY DON'T TRIM LARGE TREES?

14 BY MR. WYMAN:

15 THEY TRIM SMALL TREES, AND YOU'LL FIND
16 TESTIMONY WILL COME OUT ABOUT THE SIZE OF TREES THAT
17 ARE TRIMMED, AND THERE ARE PICTURES OF THE SIZE OF
18 TREES THAT THEY TRIM IN THE EXHIBITS. BUT I JUST
19 DIDN'T WANT THERE TO BE A BLANKET STATEMENT THAT
20 CLIMBING INTO TREES WAS A NORMAL PART. WE DO
21 CONTEST THAT, AND WE'LL HAVE TESTIMONY ON THE SAME.

22 BY THE COMMISSIONER:

23 ALL RIGHT. FIRST, I WANT TO SWEAR IN THE
24 INTERPRETER. MA'AM, IF YOU WOULD STATE YOUR FULL
25 NAME FOR THE RECORD.

1 BY THE INTERPRETER:

2 CYNTHIA SMITH HERNANDEZ.

3 BY THE COMMISSIONER:

4 MS. HERNANDEZ, DO YOU AFFIRM THE TESTIMONY YOU
5 ARE ABOUT TO INTERPRET OR TRANSLATE FOR THIS
6 COMMISSION WILL BE THE LITERAL, FACTUAL, WHOLE
7 TRUTH?

8 BY THE INTERPRETER:

9 YES.

10 BY THE COMMISSIONER:

11 AND WOULD YOU ASK THE CLAIMANT TO STATE HIS
12 FULL NAME FOR THE RECORD.

13 BY THE WITNESS:

14 RAMON RAMOS ZEPEDA.

15 * * * * *

16 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
17 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
18 MATTER HEREIN:

19 RAMON RAMOS ZEPEDA,

20 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
21 FOLLOWS:

22 BY THE COMMISSIONER:

23 ASK HIM TO ANSWER ANY QUESTIONS HIS LAWYER MAY
24 HAVE.

25 BY THE WITNESS:

1 YES, SIR.

2 DIRECT EXAMINATION BY MR. GIBSON (THROUGH INTERPRETER):

3 Q. WHERE WERE YOU BORN?

4 A. MEXICO, IN THE STATE OF VERACRUZ.

5 Q. AND DID YOU GO TO SCHOOL?

6 A. YES, SIR..

7 Q. HOW OLD WERE YOU WHEN YOU STARTED SCHOOL?

8 A. ABOUT NINE YEARS OLD, SIR.

9 Q. AND HOW OLD WERE YOU WHEN YOU LEFT SCHOOL?

10 A. ABOUT 16, SIR.

11 Q. AND HOW MANY GRADES DID YOU COMPLETE?

12 A. FIVE YEARS.

13 Q. DID YOU HAVE TO REPEAT ANY GRADES?

14 A. YES, SIR.

15 Q. AFTER YOU LEFT SCHOOL, DID YOU WORK IN MEXICO UNTIL
16 YOU CAME TO THE UNITED STATES?

17 A. YES, SIR.

18 Q. IS IT SAFE TO SAY YOU DID PHYSICAL LABOR?

19 A. YES, I WOULD PLANT CORN AND BEANS AND WATERMELON,
20 AND THEN I WORKED IN A PAPER FACTORY.

21 Q. DID YOU EVER WORK AS A CARPENTER?

22 A. YES, SIR.

23 Q. AND WHEN DID YOU ARRIVE IN THE UNITED STATES?

24 A. JUST BEFORE MARCH.

25 Q. OF WHAT YEAR?

1 A. 2007.

2 Q. IS YOUR WIFE LIVING HERE WITH YOU?

3 A. MY WIFE? YES, SIR.

4 Q. DO YOU HAVE CHILDREN?

5 A. YES.

6 Q. WHERE ARE THEY LIVING?

7 A. IN MEXICO.

8 Q. RIGHT NOW WE'LL MOVE DIRECTLY INTO THE TESTIMONY
9 NOW. WHEN DID YOU BEGIN WORKING WITH PRIORITY
10 LANDSCAPING MORE OR LESS?

11 A. MARCH.

12 Q. OF WHAT YEAR?

13 A. 2007.

14 Q. AND HOW LONG HAD YOU WORKED WITH THEM BEFORE THE
15 ACCIDENT?

16 A. ABOUT TWO YEARS.

17 Q. AND WHAT KIND OF WORK -- WHEN YOU FIRST GOT THE JOB,
18 HOW DID YOU GET THAT JOB?

19 A. I GOT IT THROUGH A FRIEND WHO'S NOW GONE BACK TO
20 MEXICO.

21 Q. OKAY. AND DID HE TELL YOU WHERE TO GO TO GET THE
22 JOB?

23 A. YES.

24 Q. AND WHERE DID YOU GO TO GET THE JOB?

25 A. TO THE SHOP.

- 1 Q. DID YOU MEET WITH MR. WILLIAM THERE AT THE SHOP?
- 2 A. YES, SIR.
- 3 Q. I'LL ASK YOU TO LOOK AT CLAIMANT'S EXHIBITS ONE,
- 4 TWO, AND THREE, AND ASK YOU IF THAT IS THE SHOP?
- 5 A. YES.
- 6 Q. IS THAT ALSO A HOUSE FOR MR. WILLIAM?
- 7 A. YES, SIR.
- 8 Q. AND WHEN YOU FIRST TALKED WITH HIM, DID YOU TALK
- 9 WITH HIM WITH AN INTERPRETER PRESENT?
- 10 A. YES, SIR.
- 11 Q. AND WHEN YOU GOT THERE THAT DAY, DID HE GIVE YOU ANY
- 12 INFORMATION AS TO HOW MUCH MONEY YOU WOULD BE
- 13 EARNING?
- 14 A. YES, SIR.
- 15 Q. AND HOW MUCH DID HE TELL YOU?
- 16 A. HE SAID \$9.00.
- 17 Q. OKAY. AND HOW MANY HOURS A WEEK WOULD YOU BE
- 18 WORKING?
- 19 A. FORTY OR FIFTY WOULD BE THE HOURS.
- 20 Q. AND FROM THAT DATE, DID YOU GO TO WORK THAT DAY?
- 21 A. YES, SIR.
- 22 Q. WERE YOU TOLD THE TYPE OF WORK YOU WOULD BE DOING?
- 23 A. NO, SIR.
- 24 Q. DID YOU GO WITH A GROUP TO WORK THAT DAY?
- 25 A. YES.

1 Q. AND DID YOU CONTINUE TO WORK FOR MR. WILLIAM,
2 PRIORITY LANDSCAPING, UNTIL YOUR ACCIDENT?

3 A. YES.

4 Q. DID YOU EVER MISS ANY TIME FROM WORK?

5 A. NO, SIR.

6 Q. DID MR. WILLIAM OR ANY SUPERVISOR HE HAD EVER HAVE
7 TO FUSS AT YOU ABOUT BETTING OR DRINKING ON THE JOB?

8 A. NO, SIR.

9 Q. DURING THE TIME THAT YOU WERE WORKING WITH PRIORITY
10 LANDSCAPING, DID YOU EVER HAVE ANY SAFETY MEETINGS?

11 A. YES, BUT I DIDN'T UNDERSTAND BECAUSE IT WAS ENGLISH,
12 AND THE ONES WHO SPOKE BOTH LANGUAGES DIDN'T EXPLAIN
13 IT TO ME.

14 Q. OKAY. AND HOW OFTEN DID YOU HAVE THESE SAFETY
15 MEETINGS?

16 A. EVERY TWO WEEKS OR EVERY MONTH.

17 Q. DURING THE YEAR AND A HALF OR SO THAT YOU WORKED
18 THERE, DID YOU EVER HAVE ANYONE TELL YOU NOT TO
19 CLIMB IN A TREE?

20 A. NO, SIR.

21 Q. DURING THE TIME THAT YOU WORKED WITH HIM, FROM THE
22 DATE YOU STARTED IN 2007 UNTIL YOUR ACCIDENT, DID
23 YOU CLIMB IN TREES?

24 A. YES, SIR.

25 Q. DID YOU CUT AND TRIM SMALL TREES?

1 A. YES, SIR.

2 Q. DID YOU CUT AND TRIM MEDIUM-SIZED TREES?

3 A. YES, SIR.

4 Q. DID YOU CLIMB UP IN AND CUT AND TRIM LARGE TREES?

5 A. YES, SIR.

6 Q. DID YOU EVER CLIMB UP ANY TREES THAT WERE BIGGER
7 THAN THE ONE THAT YOU WERE IN THE DAY THE ACCIDENT
8 OCCURRED?

9 A. ABOUT THE SAME.

10 Q. DID YOU EVER PARTICIPATE IN CUTTING ANY TREES DOWN?

11 A. NO.

12 Q. DID YOU EVER CUT GRASS ON A RIDING LAWNMOWER?

13 A. YES, SIR.

14 Q. DID YOU USE BLOWERS AT THE JOB SITES?

15 A. YES.

16 Q. DID YOU USE HATCHETS AND MACHETES AT THE JOB SITES?

17 A. JUST MACHETES.

18 Q. OKAY. AND WHEN YOU WENT IN THE LARGER TREES TO TRIM
19 THE BRANCHES, WHAT TYPE OF EQUIPMENT WOULD YOU USE?

20 A. MACHETE.

21 BY THE INTERPRETER:

22 AND THE INTERPRETER NEEDS A CLARIFICATION.

23 WITNESS RESUMES:

24 A. IT'S A THING WITH A BIG BLADE, LIKE A SAW WITH A
25 LONG HANDLE.

1 BY MR. GIBSON:

2 COULD WE GO OFF THE RECORD JUST A MOMENT?

3 BY THE COMMISSIONER:

4 LET ME JUST ASK YOU, IS IT AN EXTENSION SAW
5 THAT YOU GO UP AND YOU PULL THE ---

6 BY MR. WYMAN:

7 I COULD TELL YOU WHAT IT IS.

8 WITNESS ANSWERS:

9 A. YES. THERE'S TWO KINDS. THERE'S ONE SMALL AND ONE
10 BIG.

11 BY THE COMMISSIONER:

12 IT'S GOT A HALF MOON OR CRESCENT BLADE AND IT'S
13 GOT A PIECE OF ROPE ON IT? LET'S GO OFF THE RECORD.

14 (OFF-THE-RECORD DISCUSSION)

15 BY THE COMMISSIONER:

16 WE'RE BACK ON THE RECORD.

17 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

18 Q. AND DID YOU EVER USE A LADDER TO CLIMB UP IN THE
19 LARGER TREES?

20 A. YES, SIR.

21 Q. DID ANYONE EVER TELL YOU TO GET OUT OF THESE LARGE
22 TREES WHEN YOU WENT UP INTO THEM?

23 A. NO. ONE TIME, YES, JUVENAL. HE TOLD ME TO GET OUT,
24 THAT HE WAS GONNA DO IT.

25 Q. OKAY. THIS WAS IN A LARGE TREE, OR MEDIUM, OR SMALL

1 TREE?

2 A. AS BIG AS THIS ONE HERE.

3 Q. AND WHEN YOU WENT IN THE TREES TO TRIM THEM AND CUT
4 THEM, DID YOU USE VARIOUS SIZE CLIPPERS?

5 A. YES, SIR.

6 Q. AND IF YOU HAD TO CLIMB THE TREES, DID YOU TAKE THE
7 EQUIPMENT UP WITH YOU?

8 A. NO.

9 Q. AND WHY WOULDN'T YOU?

10 A. BECAUSE IT WASN'T VERY POSSIBLE. IT MIGHT MAKE ME
11 FALL.

12 Q. AND HOW WOULD YOU GET THE EQUIPMENT NECESSARY TO CUT
13 AND TRIM THE TREES?

14 A. THEY WOULD PASS IT TO ME. SOMEBODY WOULD PASS IT TO
15 ME.

16 Q. AND HOW WOULD THEY PASS IT TO YOU?

17 A. SO THE TIME THAT JUVENAL TOLD ME TO COME DOWN AND HE
18 WENT UP AND THEN I PASSED HIM THE POWER SAW.

19 Q. DID YOU JUST HAND THEM UP WITH YOUR HANDS, OR DID
20 YOU USE ANY OTHER METHOD?

21 A. NO, I HAD TO GO UP THE TREE TO GIVE HIM THE
22 EQUIPMENT.

23 Q. ON THIS PARTICULAR DAY, THE DAY OF THE ACCIDENT,
24 WHEN DID YOU ARRIVE AT WORK?

25 A. LIKE AROUND 12:45.

1 Q. LET ME BACK UP. WHAT TIME THAT MORNING DID YOU
2 ARRIVE AT WORK?

3 A. EIGHT O'CLOCK, SIR.

4 BY MR. GIBSON:

5 DID HE SAY AT THE SHOP?

6 WITNESS ANSWERS:

7 A. YES.

8 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

9 Q. AND THE SHOP IS MR. WILLIAM'S HOME?

10 A. YES.

11 Q. AND WHAT TIME DID YOU ARRIVE THERE?

12 A. EIGHT O'CLOCK.

13 Q. AND ON THAT PARTICULAR DAY, WHO WAS IN YOUR GROUP
14 THAT WENT OUT?

15 A. CESAR, FRANK, LEONARDO, AND ME.

16 Q. AND DID YOU GO OUT IN THE TRUCK THAT'S DEPICTED HERE
17 IN CLAIMANT'S EXHIBIT NUMBER ONE?

18 A. YES.

19 Q. AND WHAT KIND OF THINGS DID YOU PUT ON THAT TRUCK
20 THAT MORNING BEFORE YOU LEFT?

21 A. WEED EATERS, BLOWERS, THE ONES YOU CARRY ON YOUR
22 BACK, AND THEN THERE WAS A PUSH BLOWER, TRACTOR.

23 Q. IS THAT A LAWNMOWER?

24 A. YES.

25 Q. IS IT A RIDING LAWNMOWER?

1 A. YES.

2 Q. AND WHAT ELSE?

3 A. AND THEN THERE'S A BOX UNDERNEATH WHERE WE WOULD PUT
4 THE SCISSORS AND THE PRUNERS AND THE BAGS AND WEED
5 EATERS AND THINGS LIKE THAT.

6 BY MR. GIBSON:

7 OKAY. DID HE SAY HATCHETS AND MACHETES?

8 WITNESS ANSWERS:

9 A. JUST THE POWER SAW.

10 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

11 Q. DID YOU HAVE A CHAINSAW?

12 A. YES, A SMALL ONE.

13 Q. AND WERE THOSE KEPT IN THE TRUCK ON THE SIDE DOORS,
14 IN THE SIDE POCKET?

15 A. THERE'S SOME BOXES, A COMPARTMENT UNDERNEATH.

16 Q. DID ALL OF THAT EQUIPMENT CUSTOMARILY STAY IN THE
17 TRUCK?

18 A. NORMALLY, YES.

19 Q. AND THAT MORNING WHO WAS DRIVING THE TRUCK WHEN YOU
20 LEFT?

21 A. FRANK.

22 Q. AND WHO WAS SITTING IN THE PASSENGER SEAT BESIDE HIM
23 IN THE FRONT?

24 A. FRANK. CESAR.

25

1 Q. AND WERE YOU AND LEONARDO IN THE BACK SEAT?

2 A. YES, SIR.

3 Q. AND WHERE DID YOU GO TO WORK THAT MORNING?

4 A. BEFORE WE WENT TO THE CHURCH, WE WENT TO SOME OTHER
5 HOUSES.

6 Q. DO YOU REMEMBER HOW MANY JOBS YOU DID?

7 A. ~~THREE, FOUR HOUSES BEFORE.~~

8 Q. OKAY. WHO WAS YOUR SUPERVISOR ON THE JOB THAT
9 MORNING IN THE GROUP?

10 A. FRANK.

11 Q. AND WHO TOLD YOU FOLKS WHAT TO DO IN SPANISH?

12 A. CESAR.

13 Q. AND HOW LONG HAS CESAR BEEN WORKING WITH PRIORITY
14 LANDSCAPING?

15 A. I DON'T KNOW.

16 BY THE COMMISSIONER:

17 CAN YOU SPELL THAT NAME FOR THE COURT REPORTER?

18 BY MR. GIBSON:

19 C-E-S-A-R.

20 BY THE COMMISSIONER:

21 OKAY. GO AHEAD.

22 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

23 Q. AND WAS HE THERE BEFORE YOU ARRIVED AND BEGAN
24 WORKING THERE?

25 A. YES.

1 Q. AND IF FRANK HAD ANY INSTRUCTIONS, HE WOULD TELL
2 CESAR; IS THAT CORRECT?

3 A. YES, SIR.

4 Q. AND CESAR WOULD TELL YOU AND LEONARDO?

5 A. YES.

6 Q. WHAT TIME DID YOU ARRIVE AT THE CHURCH?

7 A. ABOUT 12:45, SIR.

8 Q. HAD YOU EATEN LUNCH THAT DAY?

9 A. LIKE AROUND 10:00.

10 Q. AND WHAT DID YOU EAT FOR LUNCH?

11 A. SOME TACOS.

12 Q. DID YOU BUY THEM WHILE YOU WERE WORKING, OR DID YOU
13 TAKE THEM TO WORK WITH YOU?

14 A. I FIXED THEM AT HOME.

15 Q. DID YOU TAKE TIME OFF TO EAT THESE, AND WHEN DID YOU
16 EAT THEM?

17 A. IN THE TRUCK I WAS EATING.

18 Q. WAS THAT WHILE YOU WERE GOING BETWEEN JOBS OR WHILE
19 YOU WERE TAKING A LUNCH BREAK?

20 A. ON THE WAY. I DIDN'T HAVE A LUNCH BREAK.

21 Q. DID LEONARDO HAVE HIS LUNCH IN THE SAME MANNER?

22 A. THAT'S WHAT I DON'T REMEMBER.

23 Q. DO YOU REMEMBER IF FRANK AND CESAR HAD LUNCH BEFORE
24 THEY GOT TO THE CHURCH?

25 A. I DON'T REMEMBER.

1 Q. WHEN YOU FIRST GOT TO THE CHURCH, WHAT DID FRANK DO?

2 A. HE DROVE AROUND THE CHURCH.

3 Q. AND IS THAT CUSTOMARY WHEN YOU COME TO A JOB SITE?

4 A. IN THE CHURCH, YES.

5 Q. AND WHERE DID HE PARK?

6 A. UNDER A TREE.

7 Q. ~~OKAY. I'M GOING TO SHOW YOU A PICTURE WHICH IS PART~~
8 OF THE DEFENDANTS' PHOTOGRAPHS THAT THEY'VE
9 SUBMITTED.

10 BY MR. GIBSON:

11 DO YOU HAVE A NUMBER?

12 BY MR. WYMAN:

13 I DO. FOR THE RECORD, THAT IS DEFENDANTS'
14 EXHIBIT "C" PICTURE NUMBER ONE, AS LABELED IN THE
15 BOTTOM LEFTHAND CORNER OF THE PICTURE.

16 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

17 Q. IS THAT THE TREE -- WHERE DID YOUR TRUCK PARK?

18 A. THERE WHERE THOSE PEOPLE ARE.

19 Q. IN THAT GENERAL AREA WHERE THE PEOPLE ARE STANDING?

20 A. YEAH, RIGHT AROUND THERE.

21 Q. OKAY. AND HOW LONG WAS IT BEFORE YOU GOT -- WHAT
22 HAPPENED ONCE YOU STOPPED? WHAT DID THEY DO?

23 A. WE WAITED THERE A WHILE HAVING OUR BREAK LIKE WE
24 WOULD -- WE USED TO.

25 Q. OKAY. AND WHAT WERE YOU DOING IN THE BACK?

1 A. I WAS SITTING THERE RESTING.

2 Q. AND WHAT WAS LEONARDO DOING?

3 A. ALSO.

4 Q. AND WHAT WERE FRANK AND CESAR DOING?

5 A. THEY WERE PLAYING CARDS.

6 Q. DID THEY ASK YOU TO PLAY WITH THEM?

7 A. NO.

8 Q. WERE THEY EXCHANGING MONEY WHEN THEY WERE PLAYING?

9 A. SOMETIMES.

10 Q. DO YOU KNOW WHETHER THEY WERE PLAYING CARDS FOR
11 MONEY THAT DAY?

12 A. NO, I DIDN'T NOTICE.

13 Q. HAD YOU SEEN THEM PLAY DURING WORK HOURS ON OTHER
14 OCCASIONS?

15 A. YES.

16 Q. ON THIS PARTICULAR DAY, WERE EITHER ONE OF THEM
17 DRINKING WHILE WORKING?

18 BY MR. WYMAN:

19 OBJECTION, COMMISSIONER; FOUNDATION.

20 BY THE COMMISSIONER:

21 WELL, I'LL NOTE YOUR OBJECTION. IF HE SAW THEM
22 DRINK -- THERE ARE GOING TO BE WITNESSES, RIGHT?

23 BY MR. WYMAN:

24 THERE ARE.

25 WITNESS ANSWERS:

1 A. NO.

2 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

3 Q. THEY WERE NOT?

4 A. I DIDN'T NOTICE THEM DRINKING. I DON'T THINK THEY
5 WERE DRINKING.

6 Q. OKAY. WERE YOU AND LEONARDO DRINKING?

7 A. NO.

8 Q. WERE YOU TAKING ANY DRUGS, EITHER ONE OF YOU, OR
9 ANYBODY?

10 A. NO.

11 Q. YOU HAD A CLEAR HEAD, AS FAR AS YOU REMEMBER?

12 A. YES.

13 Q. AFTER YOU SAT THERE FOR A BIT, WHO GOT OUT OF THE
14 TRUCK FIRST?

15 A. MYSELF.

16 Q. AND WHAT DID YOU DO?

17 A. I OPENED THE DOORS OF THE TRUCK IN THE BACK.

18 Q. AND WHAT DID YOU DO?

19 A. I GOT THE TRACTOR OUT.

20 Q. DID YOU CRANK IT UP?

21 A. YES.

22 Q. AND WHAT DID YOU GO DO?

23 A. I WAS GONNA START CUTTING.

24 Q. AND THEN WHAT HAPPENED NEXT?

25 A. I CAME BACK TO THE TRUCK BECAUSE THEY HADN'T STARTED

1 WORKING YET.

2 Q. WHILE YOU WERE IN THE TRUCK, WAS THERE ANY
3 DISCUSSION BETWEEN FRANK AND CESAR OR LEONARDO ABOUT
4 A BET TO GET SOMEONE TO GO UP IN THE TREE AND JUMP?

5 A. NO, SIR.

6 Q. WHAT CHURCH DO YOU GO TO, SIR?

7 A. JEHOVAH'S WITNESS.

8 Q. DO YOU DRINK?

9 A. NO.

10 Q. DO YOU GAMBLE?

11 A. NO.

12 Q. HAVE YOU EVER GAMBLLED ON THE JOB OR MADE ANY BETS ON
13 YOUR JOB?

14 A. NO, SIR.

15 Q. AFTER YOU WERE CUTTING GRASS, DID YOU COME BACK TO
16 THE TRUCK?

17 A. YES, SIR.

18 Q. DID YOU TURN THE ENGINE OFF OF THE TRACTOR?

19 A. NO.

20 Q. DID SOMEONE GIVE YOU INSTRUCTIONS ON WHAT TO DO?

21 A. NO.

22 Q. WHEN YOU GOT BACK TO THE TRUCK, WHO WAS STANDING
23 THERE?

24 A. CESAR AND FRANK AND LEONARDO.

25 Q. AND DID CESAR OR FRANK GIVE YOU ANY INSTRUCTIONS AS

1 TO WHAT THEY WANTED YOU TO DO?

2 A. CESAR.

3 Q. WHAT DID CESAR SAY TO YOU?

4 A. HE SAID THAT FRANK SAID I SHOULD GO UP THE TREE.

5 Q. WAS FRANK STANDING RIGHT THERE WHEN HE TOLD YOU
6 THAT?

7 A. YES, SIR.

8 Q. DID THEY HAVE A SMILE ON THEIR FACE?

9 A. NO.

10 Q. WERE THEY WAVING DOLLAR BILLS OR ANYTHING OUT OF
11 THEIR POCKETS?

12 A. NO.

13 Q. AND WHAT DID YOU DO NEXT?

14 A. I WENT UP THE TREE.

15 Q. AND HOW DID YOU GET UP THE TREE?

16 A. I TOOK THE TRACTOR TO THE TREE, RIGHT UP NEXT TO THE
17 TRUNK.

18 Q. DID YOU STAND UP ON THE TRACTOR?

19 A. YES, SIR.

20 Q. WHILE YOU WERE DOING THIS, WERE FRANK AND CESAR
21 WATCHING YOU?

22 A. YES, SIR.

23 Q. DID ANY OR EITHER ONE OF THEM EVER SAY TO YOU, "YOU
24 BETTER NOT GO UP THE TREE"?

25 A. NO, SIR.

1 Q. DID YOU HOLLER AT THEM AND SAY, "ARE YOU SURE YOU
2 WANT ME TO GO UP IN THE TREE?"

3 A. NO, SIR.

4 Q. WAS THIS A CUSTOMARY PART OF YOUR JOB?

5 A. YES.

6 Q. AND DID YOU GO UP IN THE TREE?

7 A. YES, SIR.

8 Q. AND DID YOU ARRIVE AT THE LIMB?

9 A. YES, SIR.

10 Q. BEFORE YOU HAD MOVED THE TRACTOR, DID THEY SHOW YOU
11 WHAT LIMB THEY WANTED YOU TO GO ON?

12 A. YES, SIR.

13 Q. AND WHEN YOU BEGAN WALKING OUT THE LIMB, DID YOU SEE
14 THEM STANDING BELOW?

15 A. YES.

16 Q. AND FRANK, YOUR SUPERVISOR, WAS STANDING BELOW?

17 A. YES.

18 Q. DID HE YELL AT YOU OR SAY TO YOU, "COME OUT OF THE
19 TREE"?

20 A. NO.

21 Q. DID HE YELL AT YOU, "WE'LL GIVE YOU MONEY IF YOU'LL
22 JUMP OUT OF THE TREE"?

23 A. NO.

24 Q. DID CESAR COMMUNICATE IN ANY WAY WITH YOU AS YOU
25 WERE GOING OUT ON THE LIMB?

1 A. NO.

2 Q. TELL THE COMMISSIONER WHAT HAPPENED NEXT.

3 A. I LOST MY BALANCE AND FELL.

4 Q. AND WHEN YOU FELL, HOW DID YOU FALL?

5 A. STANDING.

6 Q. BUT WHEN YOU FELL OUT OF THE TREE, WERE YOU ABLE TO
7 ~~GRAB ONTO ANYTHING?~~

8 A. NO.

9 Q. AND DID YOU FALL TO THE GROUND AFTER YOU LANDED?

10 A. NOT COMPLETELY.

11 Q. DID YOU FEEL ANY PAIN WHEN YOU FIRST LANDED?

12 A. NO.

13 Q. AND DID EITHER ONE OF THE GENTLEMEN, YOUR
14 SUPERVISOR, FRANK, OR HIS SPANISH-SPEAKING
15 INTERPRETER, CESAR, COME OVER AND OFFER TO HELP YOU?

16 A. NO.

17 Q. DID THEY EVER GIVE YOU A \$50 OR \$20 BILL AND PUT IT
18 IN YOUR POCKET?

19 A. NO, SIR.

20 Q. WHAT DID YOU DO NEXT?

21 A. I WENT AS WELL AS I COULD LIMP OVER TO THE TRUCK AND
22 I SAT DOWN.

23 Q. WHEN YOU GOT TO THE TRUCK, WERE YOU IN ANY PAIN?

24 A. THAT'S WHEN IT STARTED, THE PAIN.

25 Q. ON A SCALE OF ZERO TO TEN, ZERO BEING NO PAIN AND

1 TEN BEING THE WORST, WHAT LEVEL OF PAIN WERE YOU
2 HAVING WHEN YOU WENT AND GOT INTO THE CAB OF THE
3 TRUCK?

4 A. LIKE SEVEN.

5 Q. DID ANYBODY COME TO THE TRUCK AND TALK WITH YOU
6 AFTER YOU GOT IN THE CAB?

7 A. CESAR.

8 Q. WHAT DID CESAR HAVE TO SAY TO YOU WHILE YOU WERE IN
9 THE TRUCK?

10 A. FRANK WAS CALLING WILLIAM. HE TOLD ME FRANK WAS
11 CALLING WILLIAM SO THAT THEY WOULD COME GET ME.

12 Q. DID HE SAY ANYTHING TO YOU ABOUT WHAT YOU WERE TO
13 SAY HAPPENED?

14 A. YES.

15 Q. WHAT DID HE TELL YOU TO SAY?

16 A. THAT I SHOULD SAY I FELL IN A DITCH.

17 Q. AND DID HE TELL YOU WHY HE WANTED YOU TO SAY THAT?

18 A. THEY SAID PROBABLY WE WERE GONNA LOSE THIS JOB.

19 Q. AND DID HE INDICATE THAT HE HAD GOTTEN ANY
20 INSTRUCTIONS FROM WILLIAM ABOUT THIS?

21 BY MR. WYMAN:

22 OBJECTION, COMMISSIONER. THAT CALLS FOR
23 HEARSAY.

24 BY MR. GIBSON:

25 WILLIAM IS HERE. I DON'T THINK WE'RE GOING TO

1 ---
2 BY THE COMMISSIONER:

3 THE INDIVIDUAL IS HERE AS A WITNESS?

4 BY MR. GIBSON:

5 YES, WILLIAM.

6 BY MR. WYMAN:

7 ~~HE'S HERE TO TESTIFY, BUT I'M NOT SURE THE~~
8 CLAIMANT CAN TESTIFY TO THE CONVERSATION BETWEEN
9 FRANK AND WILLIAM.

10 BY MR. GIBSON:

11 I'M NOT GOING FAR WITH THIS. I THINK I'M GOING
12 TO GET A NO.

13 BY THE COMMISSIONER:

14 OKAY. I'LL NOTE YOUR OBJECTION. GO AHEAD.
15 ASK THE QUESTION AGAIN.

16 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

17 Q. DID MR. WILLIAM EVER TALK TO YOU DURING THIS TIME,
18 FROM THE TIME OF THE ACCIDENT UNTIL YOU GOT IN THE
19 TRUCK?

20 A. NO, SIR.

21 Q. AND SO YOUR ONLY COMMUNICATION, DID YOU TALK WITH
22 FRANK THROUGH CESAR?

23 A. YES, SIR.

24 Q. WAS FRANK STANDING WITH CESAR WHEN YOU WERE BEING
25 TOLD THAT YOU SHOULD SAY YOU FELL IN A DITCH?

- 1 A. YES, SIR.
- 2 Q. WHO LIVES IN YOUR HOUSE THAT YOU AND YOUR WIFE RENT,
3 WITH YOU?
- 4 A. WE'RE SIX.
- 5 Q. WHO ARE THEY?
- 6 A. CESAR, MR. EMILIO, CHELO, JUVENAL, MY WIFE AND I.
- 7 Q. DO YOU AND CESAR TALK OFTEN?
- 8 A. NO, SIR.
- 9 Q. HAS CESAR COMMUNICATED WITH YOU ANYTHING ABOUT THIS
10 ACCIDENT IN THE LAST 30 DAYS?
- 11 A. NO, SIR.
- 12 Q. HAS HE COMMUNICATED ANYTHING TO YOU SINCE THIS
13 ACCIDENT?
- 14 A. YES.
- 15 Q. WHAT HAS HE TOLD YOU?
- 16 A. WHEN IT FIRST HAPPENED, IT WAS RECENT, HE SAID DON'T
17 TALK TO ANY LAWYERS OR THERE WILL BE A PROBLEM.
- 18 Q. DID HE INDICATE WHAT THAT PROBLEM WOULD BE?
- 19 A. NO, SIR.
- 20 Q. DID HE EVER SAY ANYTHING TO YOU ABOUT IMMIGRATION?
- 21 A. NO, SIR.
- 22 Q. DID HE EVER TELL YOU, YOU WOULD BE ARRESTED IF YOU
23 HAD THIS HEARING?
- 24 A. NO, HE JUST SAID I WOULD HAVE PROBLEMS.
- 25 Q. OKAY. WHEN YOU WERE IN THE TRUCK AFTER YOU'D BEEN

1 TOLD WHAT THE STORY WOULD BE, WHO CAME ---

2 BY MR. WYMAN:

3 OBJECTION, COMMISSIONER. THAT'S SUGGESTIVE.

4 BY MR. GIBSON:

5 LET ME REPHRASE IT.

6 BY THE COMMISSIONER:

7 ALL RIGHT.

8 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

9 Q. WHEN YOU WERE IN THE TRUCK, WHO CAME TO PICK YOU UP?

10 A. THE SECRETARY.

11 Q. IS THAT MARY?

12 A. YES.

13 Q. AND DID MARY ARRIVE IN A TRUCK OR A CAR?

14 A. A CAR.

15 Q. AND DOES MARY SPEAK ANY SPANISH?

16 A. NO.

17 Q. AND DID SHE PICK YOU UP AND TAKE YOU SOMEWHERE?

18 A. YES.

19 Q. AND WHERE DID SHE TAKE YOU?

20 A. WITH A DOCTOR.

21 Q. IS THAT DOCTORS CARE?

22 A. YES.

23 Q. AND WHEN YOU ARRIVED AT DOCTORS CARE, WERE YOU

24 SITTING IN THE FRONT SEAT WITH MARY?

25 A. YES.

- 1 Q. AND HOW DID YOU GET INTO THE OFFICE AT DOCTORS CARE?
- 2 A. THEY TOOK ME IN A WHEELCHAIR.
- 3 Q. WAS IT A MAN OR WOMAN THAT PUSHED YOU IN?
- 4 A. A MAN.
- 5 Q. DID THIS MAN SPEAK ANY SPANISH TO YOU?
- 6 A. NO.
- 7 Q. AND WHEN YOU GOT INSIDE THE OFFICES, DID YOU SIT
- 8 DOWN IN THE WAITING ROOM?
- 9 A. YES, SIR.
- 10 Q. AND DID ANYONE BRING YOU A PIECE OF PAPER AND SAY,
- 11 "FILL THIS INFORMATION OUT"?
- 12 A. THE SECRETARY GAVE IT TO ME.
- 13 Q. WAS IT ALREADY FILLED OUT WHEN SHE GAVE IT TO YOU?
- 14 A. I DON'T REMEMBER. I JUST REMEMBER THAT I WAS ASKED
- 15 TO SIGN.
- 16 Q. DID YOU SIGN IT?
- 17 A. YES, SIR.
- 18 Q. WAS IT IN ENGLISH OR IN SPANISH?
- 19 A. I DON'T REMEMBER.
- 20 Q. WERE YOU IN PAIN AT THIS TIME?
- 21 A. THEN I HAD A LOT OF PAIN.
- 22 Q. ON THE SAME SCALE WE TALKED ABOUT EARLIER FROM ZERO
- 23 TO TEN, AT THAT TIME WHAT LEVEL OF PAIN WERE YOU AT?
- 24 A. THEN IT WAS TEN.
- 25 Q. DO YOU REMEMBER SPEAKING TO ANYONE IN SPANISH AT THE

1 DOCTOR'S OFFICES?

2 A. I REMEMBER VERY LITTLE ABOUT IT.

3 Q. DO YOU REMEMBER THERE WAS A SPANISH LADY OR MAN
4 THERE?

5 A. YES.

6 Q. DID THEY TRY TO TALK WITH YOU?

7 ~~A. I JUST TOLD THEM THAT THEY NEEDED TO HELP ME WITH~~
8 THE PAIN, THAT IT WAS UNBEARABLE PAIN.

9 Q. DID THE DOCTOR X-RAY YOU?

10 A. YES, SIR.

11 Q. AND THEN AFTER THAT YOU LEFT?

12 A. YES.

13 Q. DID MARY TAKE YOU AWAY IN HER CAR?

14 A. YES, SIR.

15 Q. AND WHERE DID SHE TAKE YOU?

16 A. BACK TO THE SHOP.

17 Q. IS THAT WHERE MR. WILLIAM LIVES?

18 A. YES, AT HIS HOUSE.

19 Q. WAS HE THERE WHEN YOU ARRIVED, MR. WILLIAM?

20 A. YES.

21 Q. OKAY. AND WHEN YOU ARRIVED THERE, WERE THERE ANY
22 OTHER MEN THERE?

23 A. NO, SIR.

24 Q. DID MR. WILLIAM TALK TO YOU OR TRY TO TALK TO YOU IN
25 ANY WAY?

- 1 A. HE INVITED ME IN, AND HE TOLD ME TO HAVE A SEAT, AND
2 HE TURNED ON THE TELEVISION SET.
- 3 Q. AND AFTER THAT, DID OTHER MEN COME TO THE OFFICE?
- 4 A. YEAH, ABOUT FIVE OR TEN MINUTES LATER.
- 5 Q. WHO CAME?
- 6 A. JUVENAL, CESAR, FRANK, AND LEONARDO.
- 7 Q. AND WHAT DID THEY WANT WITH YOU?
- 8 A. JUVENAL SAID THAT WILLIAM SAID WE NEEDED TO HAVE A
9 TALK THERE AT HIS HOUSE.
- 10 Q. AND DID HE TELL YOU WHAT THE TALK WAS ABOUT?
- 11 A. NO, THEY DIDN'T.
- 12 Q. WAS WILLIAM AROUND WHEN YOU WERE TALKING TO JUVENAL
13 AND THEM?
- 14 A. YES, SIR.
- 15 Q. AND WHAT HAPPENED NEXT? HOW DID YOU END UP LEAVING
16 THERE?
- 17 A. I TOLD JUVENAL TO TELL WILLIAM THAT MY PAIN WAS VERY
18 INTENSE AND I HAD TO GO TO MY HOUSE TO REST.
- 19 Q. AND DID SOMEONE TAKE YOU IN THE DIRECTION OF YOUR
20 HOME?
- 21 A. YES.
- 22 Q. AND WHO WAS DRIVING YOU?
- 23 A. JUVENAL.
- 24 Q. DOES HE SPEAK SPANISH?
- 25 A. YES, SIR.

1 Q. DID HE WORK WITH ANOTHER GROUP?

2 A. YES, SIR.

3 Q. AND WAS ANYBODY ELSE IN THE CAR WITH YOU AND
4 JUVENAL?

5 A. NO.

6 Q. AND DID YOU AND HE TALK ANY ON THE WAY TO YOUR HOME?

7 A. NO, SIR.

8 Q. AND WHAT HAPPENED NEXT?

9 A. WE WERE ARRIVING TO MY HOUSE WHEN HE SAID THEY HAD
10 CHANGED THE PAPERS.

11 Q. OKAY. AND WHAT DID HE SAY WAS TO BE DONE NEXT?

12 A. THAT'S WHEN HE SAID WE HAVE TO GO TO THE HOSPITAL,
13 AND HE TOOK ME TO THE HOSPITAL.

14 Q. DID HE RECEIVE A TELEPHONE CALL?

15 A. YES.

16 Q. YOU DID NOT HEAR THE OTHER SIDE OF THAT CALL, DID
17 YOU?

18 A. NO, SIR.

19 Q. AFTER THE CALL HE SAID THERE'S A CHANGE OF PLANS?

20 BY MR. WYMAN:

21 OBJECTION, COMMISSIONER. THAT'S LEADING.

22 BY THE COMMISSIONER:

23 WELL, I THINK HE'S ALREADY SAID IT.

24 BY MR. GIBSON:

25 THAT'S RIGHT. OKAY.

1 BY THE COMMISSIONER:

2 IF HE'S ALREADY SAID IT ---

3 BY MR. WYMAN:

4 I'LL WITHDRAW THAT.

5 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

6 Q. DID HE THEN TAKE YOU -- WHERE DID HE TAKE YOU NEXT?

7 A. TO THE HOSPITAL.

8 Q. DID HE HAVE ANYONE ELSE IN THE CAR WITH YOU ALL ON
9 THE WAY TO THE EMERGENCY ROOM?

10 A. NO, SIR.

11 Q. WHEN YOU ARRIVED AT THE EMERGENCY ROOM, WAS HE YOUR
12 INTERPRETER?

13 A. YES, SIR.

14 Q. DID ANYONE COME TO YOU FROM THE HOSPITAL AND SAY, "I
15 SPEAK SPANISH. I WILL NOW BE YOUR INTERPRETER"?

16 A. NO, SIR.

17 Q. WHEN YOU FIRST TALKED TO SOMEONE AT THE HOSPITAL,
18 WAS IT JUVENAL THAT TALKED TO THEM?

19 A. YES, SIR.

20 Q. DID YOU FILL OUT ANY PAPERS YOURSELF THAT DAY?

21 A. I DON'T REMEMBER.

22 Q. WAS THERE SOMEONE ASKING QUESTIONS OF YOU THROUGH
23 JUVENAL?

24 A. I DON'T REMEMBER.

25 Q. WHEN YOU MET WITH THE DOCTOR IN THE EMERGENCY ROOM,

1 WAS JUVENAL WITH YOU?

2 A. YES, SIR.

3 Q. AND WAS IT JUVENAL THAT WAS COMMUNICATING WHAT YOU
4 WERE SAYING TO THE DOCTOR?

5 A. YES, SIR.

6 Q. AND SUBSEQUENTLY TO ALL OF THIS, YOU'VE HAD SURGERY
7 ON YOUR LEGS; IS THAT CORRECT?

8 A. NO, SIR.

9 Q. AFTER THE EMERGENCY ROOM, WHAT HAPPENED NEXT?

10 A. THEY GAVE ME AN INJECTION.

11 Q. WHAT ELSE?

12 A. I WAS PUT TO SLEEP AND THEN NEXT THING I KNEW I HAD
13 SOME HARDWARE OUTSIDE OF MY LEG.

14 BY MR. GIBSON:

15 WE DON'T NEED TO GET INTO ALL THE MEDICALS.

16 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

17 Q. DID YOU SPEND THE NIGHT IN THE HOSPITAL?

18 A. NO, SIR.

19 Q. WHO TOOK YOU HOME?

20 A. JUVENAL.

21 Q. HAD YOUR WIFE OR ANYONE ELSE ARRIVED AT THE
22 HOSPITAL?

23 A. YES.

24 Q. AFTER YOU WENT BACK HOME, DID MR. WILLIAM OR ANYONE,
25 FRANK OR ANYONE, COME TO THE HOUSE TO TALK WITH YOU?

- 1 A. NO, SIR.
- 2 Q. WHEN DID YOU NEXT SEE MR. WILLIAM?
- 3 A. ABOUT TEN DAYS LATER.
- 4 Q. AND DID HE COME TO YOU OR DID YOU GO TO HIS OFFICE?
- 5 A. I WENT.
- 6 Q. AND DID YOU HAVE AN INTERPRETER WITH YOU?
- 7 A. YES, WITH A FRIEND.
- 8 Q. WHO WAS IT?
- 9 A. CHELO.
- 10 Q. AND DID YOU GET AN OPPORTUNITY TO SPEAK WITH MR.
- 11 WILLIAM?
- 12 A. YES, SIR.
- 13 Q. AND WHAT DID YOU TELL HIM?
- 14 A. I TOLD HIM I NEEDED HELP FOR THE MEDICINE.
- 15 Q. AND WHAT WAS HIS RESPONSE?
- 16 A. I DON'T REMEMBER; JUST THAT EVERYTHING WAS GONNA BE
- 17 OKAY.
- 18 Q. DID HE OFFER YOU ANY MONEY?
- 19 A. NO, SIR.
- 20 Q. DID HE OFFER TO TAKE YOU TO THE DRUGSTORE?
- 21 A. NO, SIR.
- 22 Q. DID HE OFFER TO TAKE CARE OF YOU IN ANY WAY
- 23 FINANCIALLY?
- 24 A. NO, SIR.
- 25 Q. HAVE YOU WORKED SINCE THIS ACCIDENT OCCURRED?

1 A. NO, SIR.

2 Q. HAVE YOU EARNED ANY MONEY WHATSOEVER DOING ANYTHING
3 SINCE THIS ACCIDENT OCCURRED?

4 A. NO, SIR.

5 Q. AND HAVE YOU TRIED TO SELL ANYTHING THAT YOU MIGHT
6 HAVE IN YOUR POSSESSION SINCE THIS ACCIDENT
7 OCCURRED?

8 A. YES, SIR.

9 Q. WHAT DID YOU TRY TO SELL?

10 A. I HAVE SOME LIKE SCRAP METAL, COPPER, AND A BATTERY.

11 Q. DID YOU GET THOSE THINGS BEFORE YOUR ACCIDENT OR
12 AFTER YOUR ACCIDENT?

13 A. FROM BEFORE, AND A LITTLE BIT THAT JUVENAL HAS BEEN
14 BRINGING ME, TOO.

15 Q. HOW MUCH HAS HE BEEN BRINGING YOU?

16 A. THREE PIECES OF PIPE.

17 Q. OKAY. AND WHAT IS ALL THIS STUFF WORTH IF YOU COULD
18 HAVE SOLD IT?

19 A. A HUNDRED AND FIFTY TO TWO HUNDRED DOLLARS.

20 Q. DOES YOUR WIFE WORK?

21 A. YES, SIR.

22 Q. WHERE DOES SHE WORK?

23 A. IN A HOUSE.

24 Q. ARE YOU STILL UNDER THE CARE OF A DOCTOR?

25 A. YES, SIR.

1 Q. AND HAS HE RELEASED YOU TO GO BACK TO WORK YET?

2 A. NO, SIR.

3 Q. AND WHEN IS YOUR NEXT APPOINTMENT WITH HIM?

4 A. IN APRIL.

5 BY MR. GIBSON:

6 BEAR WITH ME JUST A MOMENT, COMMISSIONER.

7 BY THE COMMISSIONER:

8 ALL RIGHT.

9 BY MR. GIBSON:

10 I THINK I'M ABOUT FINISHED.

11 BY MR. WYMAN:

12 COMMISSIONER, IF HE'S GOING TO TAKE A LOOK AT
13 HIS FILE, I WONDER IF WE MIGHT TAKE A BRIEF RECESS.

14 BY THE COMMISSIONER:

15 YES.

16 (OFF-THE-RECORD DISCUSSION)

17 BY THE COMMISSIONER:

18 WE'RE BACK ON THE RECORD.

19 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

20 Q. FROM THE TIME YOU BEGAN WORK WITH PRIORITY
21 LANDSCAPING UNTIL YOUR ACCIDENT, DID YOUR OTHER
22 FELLOW WORKERS TRIM AND CUT TREES?

23 A. YES, SIR.

24 Q. DID THEY CLIMB IN BIG, MEDIUM, AND SMALL TREES?

25 A. YES, SIR.

1 Q. HAVE YOU EVER FILED A WORKERS' COMPENSATION CLAIM AT
2 ANY TIME IN YOUR LIFE?

3 A. NO, SIR.

4 Q. HAVE YOU EVER HAD A LAWSUIT OF ANY SORT IN MEXICO OR
5 IN THE UNITED STATES OVER AUTOMOBILE ACCIDENTS OR
6 ANY OTHER THING?

7 A. HERE, SIR.

8 Q. IS THIS THE ONLY ONE?

9 A. THIS IS THE ONLY ONE.

10 Q. AND AS PART OF YOUR WORK, YOU WORKED AT HOMES DOING
11 TREE WORK, GRASS WORK, AND YARD WORK, CORRECT?

12 A. YES, SIR.

13 Q. DID YOU WORK AT APARTMENTS?

14 A. NO, AT A HOUSE.

15 Q. DID YOU DO COMMERCIAL BUILDINGS?

16 A. JUST A HOUSE. TWO HOUSES.

17 Q. HOW MANY CHURCHES DID YOU WORK ON OTHER THAN THIS
18 ONE?

19 A. THAT'S THE ONLY ONE. NO, TWO.

20 Q. OKAY. DO YOU REMEMBER THE NAME OF THE OTHER CHURCH?

21 A. NO, BUT I REMEMBER IT WAS RIGHT NEXT DOOR TO A
22 RESTAURANT CALLED EL DORADO.

23 BY MR. WYMAN:

24 COMMISSIONER, IF I MAY, I MIGHT BE ABLE TO SAVE
25 SOME TIME. I WOULD JUST ASK FOR SOME CLARIFICATION

1 FROM MR. GIBSON IF THE ANSWERS TO THOSE QUESTIONS
2 ABOUT WHERE HE'S DONE YARD WORK ARE PERTAINING TO
3 HIS EMPLOYMENT OR HIS SEPARATE WORK. WOULD YOU
4 MIND? I'M SORRY; I JUST ---

5 BY THE COMMISSIONER:

6 THAT'S FINE.

7 BY MR. GIBSON:

8 I'LL ASK THE QUESTION.

9 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

10 Q. HAVE YOU WORKED EXCLUSIVELY FOR PRIORITY LANDSCAPING
11 SINCE YOU BEGAN WORK FOR THEM?

12 A. BEFORE I WORKED FOR ANOTHER PERSON.

13 Q. BEFORE YOU BEGAN WORKING WITH THEM. I'M ASKING ---

14 A. YES.

15 Q. DURING THE TIME AFTER YOU BEGAN TO WORK WITH MR.
16 WILLIAM UNTIL TODAY, HAVE YOU HAD ANY OTHER SIDE
17 JOBS ON LANDSCAPING?

18 A. NO, SIR.

19 Q. DID YOU EVER RECEIVE ANY WRITTEN INSTRUCTIONS IN
20 ENGLISH OR SPANISH TELLING YOU NOT TO CLIMB IN TREES
21 AND NOT TO DO CUTTING AND TRIMMING IN BIG TREES?

22 A. NO, SIR.

23 BY MR. GIBSON:

24 I DON'T THINK I HAVE ANY OTHER QUESTIONS.
25 YOU'LL NEED TO ANSWER ANY QUESTIONS OPPOSING COUNSEL

1 HAS.

2 BY THE COMMISSIONER:

3 OKAY. I'M GOING TO GO OFF THE RECORD.

4 (OFF THE RECORD)

5 BY THE COMMISSIONER:

6 WE'RE BACK ON THE RECORD, AND ASK THE CLAIMANT
7 IF HE WOULD ANSWER ANY QUESTIONS THAT MR. WYMAN MAY
8 HAVE, PLEASE.

9 BY MR. WYMAN:

10 THANK YOU, COMMISSIONER.

11 CROSS EXAMINATION BY MR. WYMAN (THROUGH INTERPRETER):

12 Q. WHAT IS CESAR'S LAST NAME?

13 A. RODRIGUEZ.

14 Q. AND CESAR LIVED WITH YOU WHEN YOU FELL OUT OF THIS
15 TREE, CORRECT?

16 A. YES, SIR.

17 Q. HE STILL LIVES WITH YOU NOW?

18 BY MR. GIBSON:

19 I'M GOING TO OBJECT TO SOMETHING, YOUR HONOR.

20 I OBJECT TO THE LIVING WITH YOU ROUTINE WHEN THEY
21 ALL SIMPLY RENT ROOMS AND ALL INDIVIDUALLY PAY A
22 LANDLORD. THERE IS NO LIVING-WITH-YOU KIND OF A
23 DEAL.

24 BY MR. WYMAN:

25 I'M HAPPY TO REPHRASE, COMMISSIONER.

1 BY THE COMMISSIONER:

2 RIGHT. IT WAS MY UNDERSTANDING ON DIRECT THAT
3 HE SAID, I BELIEVE, HE, CESAR, AND SIX OTHER PEOPLE
4 LIVE TOGETHER. IS THAT RIGHT?

5 BY MR. GIBSON:

6 THAT'S CORRECT, IN RENTAL QUARTERS.

7 BY THE COMMISSIONER:

8 RIGHT. SO HE DOESN'T LIVE WITH HIM AS A
9 ROOMMATE?

10 BY MR. WYMAN:

11 WOULD IT BE OBJECTIONABLE IF I REFERRED TO LIVE
12 IN THE SAME HOUSE?

13 BY MR. GIBSON:

14 OH, YES, THAT'S FINE.

15 BY MR. WYMAN:

16 OKAY. NO PROBLEM REPHRASING.

17 CROSS EXAMINATION RESUMED BY MR. WYMAN:

18 Q. YOU AND CESAR STILL LIVE IN THE SAME HOUSE TODAY?

19 A. YES, SIR.

20 Q. WHO DROVE THE WORK TRUCK WHEN YOU CAME TO THE CHURCH
21 THAT DAY? DO YOU EVER DRIVE THE WORK TRUCK?

22 A. NO.

23 Q. YOU DON'T HAVE A DRIVER'S LICENSE?

24 A. NO, I DON'T HAVE A LICENSE.

25 BY MR. WYMAN:

1 I'M GOING TO SHOW THE CLAIMANT WHAT'S MARKED AS
2 EXHIBIT "C" PICTURE NUMBER THREE.

3 CROSS EXAMINATION RESUMED BY MR. WYMAN:

4 Q. IS THAT A PICTURE OF THE TREE YOU FELL OUT OF?

5 A. I DON'T -- I'M NOT ABSOLUTELY SURE, BUT I THINK SO.

6 BY MR. WYMAN:

7 I'M GOING TO SHOW THE CLAIMANT PICTURE NUMBER
8 ONE.

9 CROSS EXAMINATION RESUMED BY MR. WYMAN:

10 Q. THAT'S THE CHURCH WHERE YOU WORKING WHEN YOU FELL
11 OUT OF THE TREE?

12 A. YES, SIR.

13 Q. DO YOU RECOGNIZE THE BIG LIMB SHOWN AT THE TOP OF
14 THAT TREE?

15 A. YES, SIR.

16 Q. IS THAT THE LIMB YOU FELL OUT OF?

17 A. YES, SIR.

18 Q. I'M GOING TO SHOW YOU PICTURE NUMBER ONE AGAIN, AND
19 I'M GOING TO HAND YOU A PEN, AND I WOULD ASK YOU TO
20 CIRCLE WHERE THE WORK TRUCK WAS PARKED ON THE DAY
21 THAT YOU FELL.

22 A. MORE OR LESS RIGHT HERE, SIR.

23 BY MR. WYMAN:

24 THAT'S WHERE HE CIRCLED.

25 BY THE COMMISSIONER:

1 I SEE. AND THAT'S CONSISTENT WITH WHAT HE SAID
2 ON DIRECT, RIGHT?

3 BY MR. WYMAN:

4 IT IS.

5 CROSS EXAMINATION RESUMED BY MR. WYMAN:

6 Q. IS IT YOUR TESTIMONY THAT YOU PULLED THE LAWNMOWER
7 TO THE TRUNK OF THE TREE?

8 A. YES, SIR.

9 Q. THEN YOU CLIMBED UP IT?

10 A. YES, SIR.

11 Q. AND YOU HAD NO TOOLS IN YOUR HANDS?

12 A. NO, SIR.

13 Q. AND YOU DIDN'T SEE ANY OF THE OTHER THREE ON THE
14 CREW BELOW YOU WITH TOOLS IN THEIR HANDS?

15 A. LEONARDO HAD A WEED EATER IN HIS HANDS.

16 Q. LEONARDO WASN'T GOING TO GIVE YOU THAT WEED EATER TO
17 CUT A BRANCH OF THE TREE?

18 A. NO, SIR.

19 Q. I'LL SHOW YOU PICTURE NUMBER ONE AGAIN. WHERE WAS
20 THE LIMB YOU WERE SUPPOSED TO CUT WHEN YOU GOT IN
21 THE TREE? AND I'LL ASK YOU TO CIRCLE IT.

22 A. IT WAS A SMALL ONE OVER HERE.

23 Q. MAKE A GOOD CIRCLE.

24 BY MR. GIBSON:

25 I OBJECT TO THIS. HE IS INDICATING THERE'S

1 ADDITIONAL BRANCHES THAT ARE NOT SHOWN ON THAT
2 PICTURE, AND HE HAS INDICATED IN THAT APPROXIMATE
3 AREA. I DON'T KNOW THAT HE COULD CIRCLE WHERE THE
4 BRANCH WAS.

5 BY MR. WYMAN:

6 BASICALLY, COMMISSIONER, THAT'S TESTIFYING ON
7 BEHALF OF HIS CLIENT MAKING THAT OBJECTION.

8 BY THE COMMISSIONER:

9 WELL, LET ME ASK YOU THIS: YOU ARE ASKING FOR
10 THE GENERAL AREA, RIGHT? I MEAN, HAVE THE BRANCHES
11 BEEN CUT?

12 BY MR. WYMAN:

13 THE QUESTION IS GEARED AT IF HE SEES THE BRANCH
14 ON THIS PICTURE HE'S CERTAINLY ALLOWED TO CIRCLE IT,
15 AND I DON'T THINK ---

16 BY THE COMMISSIONER:

17 I'LL NOTE YOUR OBJECTION. ASK HIM TO CIRCLE
18 THE AREA THAT HE WAS SUPPOSED TO.

19 BY THE INTERPRETER:

20 CAN WE REDO THE QUESTION?

21 BY MR. WYMAN:

22 OKAY.

23 CROSS EXAMINATION RESUMED BY MR. WYMAN:

24 Q. PLEASE PLACE A CIRCLE WHERE THE BRANCH WAS THAT YOU
25 WERE SUPPOSED TO CUT WHEN YOU GOT IN THIS TREE.

1 A. IT WAS MORE OR LESS AROUND HERE. I THINK IT WAS
2 AROUND HERE.

3 BY MR. GIBSON:

4 WHAT DID HE SAY AT THE END? HE SAID, "TALVEZ."

5 BY THE INTERPRETER:

6 HE SAID, "I THINK."

7 BY MR. GIBSON:

8 "PERHAPS."

9 WITNESS ANSWERS:

10 A. I THINK IT COULD HAVE BEEN THAT ONE. PERHAPS THAT
11 ONE.

12 BY MR. GIBSON:

13 OKAY.

14 BY MR. WYMAN:

15 COMMISSIONER, WOULD YOU LIKE TO TAKE THE MARKED
16 COPY OF THIS PICTURE WITH YOU WHEN YOU LEAVE HERE
17 TODAY?

18 BY THE COMMISSIONER:

19 IF YOU'LL BRING IT BACK HERE, I THINK I CAN --
20 AND I'LL LET YOU ALL MARK WHERE I ---

21 BY MR. WYMAN:

22 OKAY. OR WE CAN JUST TRADE. I DON'T NEED
23 THEM.

24 BY THE COMMISSIONER:

25 I HAD SOME QUESTIONS TO ASK ABOUT -- I CAN SEE

1 WHERE TWO LIMBS HAVE BEEN CUT ALREADY RIGHT HERE ON
2 THE TREE, AND THEN THERE'S ANOTHER ONE, IT LOOKS
3 LIKE. I WAS GOING TO USE MINE TO ASK QUESTIONS.
4 RIGHT THERE. I'M NOT SURE. DO YOU SEE THAT LIMB?

5 BY MR. WYMAN:

6 I'M JUST TALKING ABOUT PICTURE ONE.

7 BY THE COMMISSIONER:

8 I UNDERSTAND THAT. HE POINTED THAT HE WAS OUT
9 TOWARD THE END, RIGHT HERE, OUT HERE, RIGHT?

10 BY MR. WYMAN:

11 CORRECT.

12 BY THE COMMISSIONER:

13 THAT'S WHERE HE CIRCLED.

14 BY MR. GIBSON:

15 THE GENERAL AREA.

16 BY THE COMMISSIONER:

17 RIGHT, GENERAL AREA.

18 BY MR. GIBSON:

19 THERE'S OTHER LIMBS OUT THERE THAT ARE OFF THE
20 PICTURE.

21 CROSS EXAMINATION RESUMED BY MR. WYMAN:

22 Q. I'M GOING TO GIVE YOU A PEN. CIRCLE ON THIS PICTURE
23 NUMBER ONE WHERE YOU WERE STANDING ON THE LIMB WHEN
24 YOU FELL.

25 A. RIGHT AROUND HERE, SIR.

1 Q. PLEASE PUT A BIG CIRCLE THERE, OR A CIRCLE THAT YOU
2 CHOOSE. THANK YOU.

3 BY MR. WYMAN:

4 DON, HE CIRCLED RIGHT HERE.

5 CROSS EXAMINATION RESUMED BY MR. WYMAN:

6 Q. SIR, I'M LOOKING AT THE CIRCLE YOU MADE WHERE YOU
7 WERE STANDING WHEN YOU FELL AND I'M LOOKING AT THE
8 CIRCLE ON THE GROUND WHERE THE TRUCK WAS PARKED.
9 YOU LANDED ON THE GROUND AND NOT ON THE TRUCK?

10 A. I FELL ON THE GROUND.

11 Q. OKAY. NOT ON THE TRUCK?

12 A. NO.

13 Q. IS IT YOUR TESTIMONY YOU WERE NEAR THE TRUCK WHEN
14 YOU LANDED ON THE GROUND?

15 A. YES, SIR.

16 Q. AND YOU WERE IN THE TREE FOR FIVE MINUTES?

17 A. MAYBE EVEN LESS.

18 Q. WHAT WERE YOU DOING IN THE TREE FOR FIVE MINUTES OR
19 MAYBE LESS WITH NO TOOL?

20 A. I WAS MAKING MY WAY TO THE POINT WHERE I FELL.

21 Q. IS IT YOUR TESTIMONY THAT ONE OF YOUR CREW MEMBERS
22 WAS GOING TO HAND YOU A TOOL?

23 A. YES, SIR.

24 Q. WHICH ONE?

25 A. I DON'T KNOW, SOME PRUNER OR MACHETE.

1 Q. WHICH OF YOUR CREW MEMBERS WAS GOING TO HAND IT TO
2 YOU?

3 A. IT COULD HAVE BEEN ANY OF THEM, MAYBE CESAR.

4 Q. BUT YOU DON'T KNOW?

5 A. NO.

6 Q. BUT YOU WERE GOING UP THE TREE TO CUT A LIMB?

7 A. YES, SIR.

8 Q. I'M GOING TO SHOW YOU PICTURE FOUR. DOES THE LIMB
9 AT THE TOP OF PICTURE FOUR LOOK LIKE THE SAME LIMB I
10 SHOWED YOU IN PICTURE ONE?

11 A. YES, SIR.

12 Q. AND THAT'S THE LIMB YOU FELL OUT OF?

13 A. YES, SIR.

14 Q. DO YOU SEE A GENTLEMAN STANDING UNDERNEATH IT?

15 A. YES.

16 Q. DO YOU KNOW WHO THAT IS?

17 A. NO, SIR.

18 Q. HOW HIGH DO YOU THINK THIS LIMB IS OFF THE GROUND?

19 A. MAYBE SIX METERS.

20 Q. DO YOU KNOW HOW MANY FEET THAT IS?

21 A. NO.

22 BY THE INTERPRETER:

23 THE INTERPRETER CAN CLARIFY THAT A METER IS 39
24 INCHES.

25 BY MR. WYMAN:

1 WILL YOU TAKE JUDICIAL NOTICE OF THAT,
2 COMMISSIONER?

3 BY THE COMMISSIONER:

4 YES, SIR. LESS THAN 20 FEET, OR AROUND 20
5 FEET.

6 BY MR. WYMAN:

7 OKAY.

8 CROSS EXAMINATION RESUMED BY MR. WYMAN:

9 Q. SO, LET ME UNDERSTAND THIS CORRECTLY. YOU WERE
10 STANDING ON A LIMB APPROXIMATELY 20 FEET OFF THE
11 GROUND, AND A PERSON ON THE GROUND WAS SUPPOSED TO
12 PASS YOU A TOOL; IS THAT CORRECT?

13 A. YES, SIR.

14 Q. AND YOU DIDN'T USE ANY ROPES?

15 A. IN THAT MOMENT, NO, THERE WAS NO ROPE.

16 Q. DO YOU RECALL GIVING YOUR DEPOSITION JUST TWO DAYS
17 AGO?

18 A. YES, SIR.

19 Q. DO YOU RECALL STATING IN YOUR DEPOSITION THE LIMB
20 YOU WERE SUPPOSED TO CUT WAS TWO TO FOUR INCHES IN
21 DIAMETER?

22 A. I DON'T KNOW MUCH ABOUT INCHES.

23 BY MR. GIBSON:

24 I OBJECT TO THE FORM OF THAT QUESTION.

25 BY THE COMMISSIONER:

1 I'LL NOTE THE OBJECTION. THE FACT IS, HE
2 APPARENTLY DOES DEAL IN METRICS. I'M NOT SO SURE HE
3 DOES KNOW WHAT AN INCH IS. MAYBE HE DOES.

4 BY MR. WYMAN:

5 IF IT'S NOT OBJECTIONABLE, COMMISSIONER, I
6 WOULD REFER YOU TO ---

7 BY THE COMMISSIONER:

8 JUST GIVE ME A PAGE.

9 BY MR. WYMAN:

10 THE DEPOSITION IS IN EVIDENCE. I'M NOT
11 INTENDING TO IMPEACH HIM ON THAT PARTICULAR
12 QUESTION. I JUST WANTED TO ESTABLISH ON CROSS THAT
13 HE TESTIFIED AND WE AGREED FOR THE RECORD, MR.
14 GIBSON AND I, THAT WHEN THE CLAIMANT PUT HIS INDEX
15 AND FINGERS AND THUMBS TOGETHER TO MAKE A CIRCLE, WE
16 AGREED THAT WAS A TWO TO FOUR INCH ESTIMATION OF THE
17 LIMB THAT HE WAS DESCRIBING.

18 BY THE COMMISSIONER:

19 PAGE 16?

20 BY MR. GIBSON:

21 THE WILD GUESS OF TWO LAWYERS.

22 BY THE COMMISSIONER:

23 IT WAS PAGE 16, AND I THINK THE NEXT QUESTION
24 WAS WHETHER IT WAS CIRCUMFERENCE OR DIAMETER, AND I
25 DON'T KNOW WHETHER THAT WAS CLEARED UP OR NOT. I'M

1 READING IT.

2 CROSS EXAMINATION RESUMED BY MR. WYMAN:

3 Q. IS THAT ABOUT HOW BIG THE LIMB YOU WERE SUPPOSED TO
4 CUT WAS?

5 A. MAYBE LESS.

6 BY MR. WYMAN:

7 COMMISSIONER, HOW WOULD YOU LIKE ME TO APPROACH
8 IMPEACHMENT WITH THE INTERPRETER? WOULD YOU LIKE ME
9 TO ALLOW HER TO READ TO THE CLAIMANT THE QUESTION IN
10 THE DEPOSITION TRANSCRIPT?

11 BY THE COMMISSIONER:

12 THAT MAY BE ACTUALLY QUICKER, BUT I THINK THE
13 PROPER WAY WOULD BE FOR YOU TO SAY -- AND SHE
14 DOESN'T HAVE A COPY OF IT, DOES SHE?

15 BY MR. WYMAN:

16 I CAN GIVE HER ONE.

17 BY THE COMMISSIONER:

18 RIGHT. IF SHE DOES, JUST SAY, "TURN TO PAGE
19 16," OR WHATEVER IT IS, "LINE 12," OR WHATEVER.

20 BY THE INTERPRETER:

21 HE WILL STATE IT AND THEN I WILL READ IT IN
22 SPANISH?

23 BY THE COMMISSIONER:

24 RIGHT. YOU READ IT AND THEN ---

25 BY MR. WYMAN:

1 OKAY.

2 BY THE INTERPRETER:

3 PAGE NUMBER?

4 BY MR. WYMAN:

5 PAGE 19.

6 BY THE INTERPRETER:

7 FROM THE TOP?

8 BY MR. WYMAN:

9 FROM LINE THREE.

10 CROSS EXAMINATION RESUMED BY MR. WYMAN:

11 Q. MY QUESTION TO YOU WAS, "WHEN YOU CLIMBED INTO THE
12 TREE, DID YOU GO UP SEVERAL MORE BRANCHES? DID YOU
13 CONTINUE TO CLIMB?"

14 BY MR. GIBSON:

15 I OBJECT TO THIS. HE HAS NOT ASKED HIM THE
16 QUESTIONS FIRST BEFORE HE'S GOING TO HIS DEPOSITION.
17 THERE IS NO IMPEACHMENT. HE'S TRYING TO USE
18 QUESTIONS DIRECTLY FROM THE DEPOSITION, AND HE
19 HASN'T ASKED HIM THE QUESTIONS ON DIRECT.

20 BY THE COMMISSIONER:

21 CAN YOU LEAD UP TO THEM, MIKELL?

22 BY MR. WYMAN:

23 I'LL LAY A FOUNDATION.

24 BY THE COMMISSIONER:

25 RIGHT, LAY A FOUNDATION.

1 BY MR. WYMAN:

2 SURE.

3 CROSS EXAMINATION RESUMED BY MR. WYMAN:

4 Q. YOU WERE STANDING ON THE BRANCH YOU WERE SUPPOSED TO
5 CUT; IS THAT YOUR TESTIMONY?

6 A. NO, SIR.

7 Q. PAGE 19, LINE SIX, MY QUESTION: "SO YOU WERE THERE
8 TO CUT THE BRANCH THAT YOU WERE STANDING ON?" AND
9 WHAT WAS YOUR ANSWER?

10 A. I DON'T UNDERSTAND.

11 Q. DO YOU RECALL GIVING YOUR DEPOSITION?

12 BY THE COMMISSIONER:

13 THIS MAY BE CONFUSING TO HIM. ORDINARILY ONE
14 WOULDN'T CUT THE BRANCH THEY'RE STANDING ON BECAUSE
15 THEY WOULD FALL. SO, I THINK ---

16 BY MR. WYMAN:

17 THAT'S MY POINT, COMMISSIONER.

18 BY THE COMMISSIONER:

19 WELL, I THINK THAT'S WHY HE SAID JUST THEN HE
20 DIDN'T UNDERSTAND. I SEE WHAT HE SAID, "YES." I
21 MEAN, HIS TESTIMONY, HE WAS OUT ON A LIMB AND
22 CUTTING A BRANCH OFF A LIMB. BUT GO AHEAD. HE CAN
23 GO AHEAD AND -- I CAN'T IMAGINE ANYBODY IN HIS RIGHT
24 MIND -- GO AHEAD.

25 CROSS EXAMINATION RESUMED BY MR. WYMAN:

1 Q. WERE YOU STANDING ON THE BRANCH YOU WERE SUPPOSED TO
2 CUT?

3 A. NO, SIR.

4 Q. NOBODY CAME UP AND TRIED TO CLIMB THE TREE BEHIND
5 YOU WHILE YOU WERE IN IT, DID THEY?

6 A. NO.

7 Q. BUT YOU TOLD US EARLIER THAT THAT'S HOW THEY WOULD
8 BRING YOU TOOLS WHEN YOU SAY YOU CLIMBED TREES TO
9 CUT LIMBS?

10 A. NOBODY FOLLOWED ME.

11 Q. OKAY. BUT YOU'VE CLIMBED OTHER TREES, WAS YOUR
12 TESTIMONY, RIGHT?

13 A. THAT'S HOW I DID IT WITH JUVENAL.

14 Q. YOU WOULD CLIMB THE TREE WITHOUT THE TOOL?

15 A. YES, SIR.

16 Q. AND THEN IT'S YOUR TESTIMONY JUVENAL WOULD CARRY THE
17 TOOL BY CLIMBING INTO THE SAME TREE?

18 A. BUT THAT DAY I WASN'T WITH JUVENAL.

19 Q. OKAY. BUT NONE OF THE PEOPLE WORKING WITH YOU THAT
20 DAY CLIMBED INTO THE TREE TO GIVE YOU A TOOL?

21 A. NO, SIR.

22 Q. DID YOU TELL A NURSE AT DOCTORS CARE THAT YOU
23 STEPPED IN A HOLE AND BROKE YOUR LEG?

24 A. I DON'T REMEMBER EXACTLY.

25 BY MR. WYMAN:

1 MADAM INTERPRETER, I'M GOING TO REFERENCE YOU
2 TO PAGE 22, LINE 14.

3 CROSS EXAMINATION RESUMED BY MR. WYMAN:

4 Q. MR. ZEPEDA, MY QUESTION OF YOU AT THE DEPOSITION
5 WAS, "DO YOU REMEMBER TELLING THE PEOPLE AT THE
6 DOCTOR'S OFFICE THAT YOU STEPPED IN A HOLE AND BROKE
7 YOUR LEG?" AND WHAT WAS YOUR ANSWER TO THAT
8 QUESTION?

9 A. I DON'T REMEMBER, BUT I REMEMBER I WAS SUPPOSED TO
10 SAY THAT.

11 BY MR. WYMAN:

12 I'D ASK THE TRANSLATOR TO REFER TO LINE 17,
13 FOLLOWING THE QUESTION THAT I JUST ASKED BETWEEN 14
14 AND 16, AND ASK THE WITNESS IF HIS ANSWER TO THAT
15 QUESTION WAS, "YES, SIR."

16 WITNESS ANSWERS:

17 A. I DON'T UNDERSTAND.

18 CROSS EXAMINATION RESUMED BY MR. WYMAN:

19 Q. LET ME UNDERSTAND YOUR ANSWER TODAY, IS THAT YOU
20 DON'T REMEMBER TELLING THE PEOPLE AT DOCTORS CARE
21 THAT YOU STEPPED IN A HOLE? IS THAT WHAT YOU'RE
22 SAYING TODAY?

23 A. I REMEMBER THAT THAT'S WHAT I WAS TOLD TO SAY, BUT I
24 DON'T REMEMBER EXACTLY HOW I SAID IT.

25 Q. BUT YOU TOLD THE NURSE THAT?

1 A. PROBABLY.

2 BY MR. WYMAN:

3 BEAR WITH ME ONE MOMENT, COMMISSIONER, IF YOU
4 DON'T MIND. THAT'S ALL I'VE GOT, COMMISSIONER.

5 BY THE COMMISSIONER:

6 SIR?

7 BY MR. WYMAN:

8 THAT'S ALL I'VE GOT.

9 BY THE COMMISSIONER:

10 REDIRECT?

11 REDIRECT EXAMINATION BY MR. GIBSON (THROUGH INTERPRETER):

12 Q. WHEN YOU WERE WALKING OUT ONTO THE LIMB, WERE YOU
13 EVER BALANCED AND IN A POSITION WHERE YOU COULD CUT
14 THE BRANCH AT THE END OF THAT LIMB YOU WERE ON?

15 A. I JUST HAD A LITTLE BIT FURTHER TO GO.

16 Q. AND DID YOU FALL BEFORE YOU REACHED THE POINT YOU
17 FELT YOU COULD CUT THE LIMB?

18 A. YES, SIR.

19 BY MR. GIBSON:

20 I DON'T HAVE ANY FURTHER QUESTIONS.

21 BY THE COMMISSIONER:

22 I MAY HAVE ONE OR TWO. IS MARY HERE, THE
23 SECRETARY?

24 BY MR. WYMAN:

25 NO, COMMISSIONER.

1 BY THE COMMISSIONER:

2 SHE'S THE ONE -- I'M JUST ASKING THE -- SHE
3 TOOK HIM TO DOCTORS CARE, RIGHT?

4 BY MR. WYMAN:

5 SHE PICKED HIM UP AND TOOK HIM TO DOCTORS CARE.

6 BY THE COMMISSIONER:

7 AND THIS MAY COME OUT LATER, BUT DID SHE FILL
8 OUT THE INTAKE FORM?

9 BY MR. WYMAN:

10 I CAN GET HER HERE.

11 BY MR. HAMPTON:

12 YEAH, WE CAN CONTACT HER.

13 BY THE COMMISSIONER:

14 IF IT'S IN EVIDENCE, FINE. IF IT'S NOT -- THE
15 QUESTION I HAD -- THIS CAME UP ON DIRECT -- IS WHEN
16 -- HE SAID HE SIGNED THE FORM. IT WAS FILLED OUT,
17 AND THE CLAIMANT'S TESTIMONY IS THAT HE WAS TOLD TO
18 SAY HE STEPPED IN A HOLE OR A DITCH OR WHATEVER, AND
19 HE HURT HIS FOOT/LEG. HE WASN'T REALLY SURE ABOUT
20 THE -- AND THAT WASN'T CLEARED UP TO MY
21 SATISFACTION. WE KNOW THERE WAS AN INTAKE FORM.
22 SOMEBODY HAD TO FILL IT OUT. MARY, AS I UNDERSTOOD
23 IT, THE SECRETARY, TOOK HIM THERE AND EVENTUALLY, I
24 BELIEVE, TOOK HIM TO THE HOSPITAL, AND I WAS TRYING
25 TO DETERMINE IF HE -- HE SAID HE SIGNED IT ON

1 DIRECT, I THINK, BUT I DID NOT -- I DON'T BELIEVE HE
2 READS ENGLISH. MAYBE HE DOES.

3 BY MR. GIBSON:

4 EITHER SHE OR THE PERSON IN THE HOSPITAL OR THE
5 DOCTORS CARE FILLED IT OUT.

6 BY THE COMMISSIONER:

7 RIGHT, BUT HE DID NOT.

8 BY MR. WYMAN:

9 SOMEBODY FILLED IT OUT. I DON'T KNOW THAT WE
10 CAN ASSUME SHE DID.

11 BY THE COMMISSIONER:

12 IT'S NOT IN EVIDENCE. IT IF WAS IN EVIDENCE,
13 WE WOULD KNOW. OKAY.

14 BY MR. WYMAN:

15 I DON'T KNOW THAT I'VE EVER SEEN IT.

16 BY THE COMMISSIONER:

17 THE OTHER QUESTION I HAD, AND IF WE COULD JUST
18 EXPAND ON THIS EITHER WAY ON REDIRECT AND THEN
19 RECROSS, IT WAS MY UNDERSTANDING THAT MR. WILLIAM
20 SAID HE WOULD HELP WITH THE EXPENSES AND SAID THAT
21 EVERYTHING WOULD BE OKAY. I THINK THAT WAS A DIRECT
22 QUOTE. I PUT QUOTATION MARKS AROUND IT.

23 BY MR. WYMAN:

24 CAN WE ASK THE COURT REPORTER TO READ THAT
25 BACK? IS THERE ANY WAY TO DO THAT?

1 BY THE COMMISSIONER:

2 IT COULD BE DONE, BUT ---

3 BY MR. GIBSON:

4 I'LL ASK IT.

5 BY THE COMMISSIONER:

6 WELL, I KNOW HE SAID EVERYTHING WOULD BE OKAY,
7 BUT RATHER THAN TAKE MY WORD FOR IT, I'D RATHER HIM
8 ASK THE QUESTION AGAIN.

9 REDIRECT EXAMINATION RESUMED BY MR. GIBSON:

10 Q. WHEN YOU WENT TO SEE MR. WILLIAM AFTER YOUR INJURIES
11 AND YOU ASKED HIM FOR HELP, WHAT DID HE SAY TO YOU
12 THROUGH YOUR INTERPRETER?

13 A. THAT WE SHOULD WAIT UNTIL THE OTHER PEOPLE GOT THERE
14 SO THAT WE COULD HAVE A CONVERSATION.

15 Q. WHO WERE THE OTHER PEOPLE?

16 A. FRANK, CESAR, AND LEONARDO.

17 Q. WELL, DID YOU WAIT FOR THEM TO COME THERE?

18 A. YES, SIR.

19 Q. AND DID THEY COME?

20 A. YES, SIR.

21 Q. AND WHAT WAS DISCUSSED AND WHAT WAS SAID TO YOU BY
22 THEM?

23 A. I JUST SAID, "I CANNOT TAKE THE PAIN ANYMORE AND I
24 NEED TO GO HOME TO REST."

25 Q. LET ME ASK THE QUESTION AGAIN. I AM NOT ASKING YOU

1 A QUESTION ABOUT WHAT HAPPENED AT MR. WILLIAM'S
2 HOUSE THE DAY OF THE ACCIDENT. SEVERAL DAYS
3 AFTERWARDS YOU TESTIFIED YOU WENT TO SEE MR.
4 WILLIAM, CORRECT?

5 A. YES.

6 Q. OKAY. DID YOU TALK WITH MR. WILLIAM THROUGH AN
7 INTERPRETER?

8 A. YES.

9 Q. AND WHAT DID YOU TELL HIM?

10 A. I ASKED HIM THROUGH THE INTERPRETER TO HELP ME
11 BECAUSE I DIDN'T HAVE MONEY TO PAY FOR MY MEDICINE,
12 MY PILLS.

13 Q. AND DID HE RESPOND TO YOU, AND WHAT DID HE SAY?

14 A. HE DIDN'T GIVE ME ANYTHING.

15 Q. DID HE SAY ANYTHING?

16 A. HE SAID HE DIDN'T UNDERSTAND WHY THE INSURANCE
17 COMPANY WASN'T COVERING IT, THAT HE PAID \$800 A
18 MONTH.

19 Q. AND DID THE INTERPRETER TELL YOU THAT'S WHAT HE
20 SAID?

21 A. THAT'S WHAT JUVENAL SAID.

22 Q. SO JUVENAL WAS THE INTERPRETER THERE?

23 A. NO, THAT DAY IT WAS CHELO.

24 Q. OKAY. DID YOU GO BACK TO SEE MR. WILLIAM AGAIN?

25 A. NO, JUST THAT TIME.

1 Q. AND DID HE SAY ANYTHING OTHER THAN INSURANCE SHOULD
2 BE PICKING THIS UP?

3 A. NO, SIR.

4 BY THE COMMISSIONER:

5 I THINK I KNOW THE QUESTION TO BE ASKED. ASK
6 HIM WHAT IMPRESSION HE HAD AS A RESULT OF THAT
7 CONVERSATION.

8 REDIRECT EXAMINATION RESUMED BY MR. GIBSON:

9 Q. AS A RESULT OF THAT CONVERSATION, WHAT WAS YOUR
10 IMPRESSION OF THE TYPE HELP YOU WERE GOING TO GET
11 FROM MR. WILLIAM?

12 A. I FELT NOT UPSET BUT SAD BECAUSE I NEEDED HELP.

13 Q. DID YOU HAVE AN IMPRESSION YOU WERE GOING TO GET ANY
14 HELP DIRECTLY FROM HIM?

15 A. NO, I DIDN'T, BUT HE DID SEND \$100 THROUGH CESAR.

16 Q. OKAY. SO YOU RECEIVED MONEY FROM CESAR AFTER THIS
17 VISIT?

18 A. YES, SIR.

19 Q. AND WHERE DID CESAR TELL YOU THAT MONEY CAME FROM?

20 A. HE SAID THAT IT CAME FROM WILLIAM TO HELP ME.

21 Q. AND HOW MANY DAYS AFTER YOUR MEETING WITH HIM DID HE
22 PAY THAT MONEY?

23 A. ABOUT 20 DAYS.

24 Q. DID YOU EVER RECEIVE ANY OTHER MONEY FROM CESAR OR
25 ANY OF THE OTHER MEN THEMSELVES? DID THEY PAY YOU

1 OR GIVE YOU ANY MONEY?

2 A. FROM WHOM?

3 Q. DID YOU RECEIVE ANY MONEY AFTER YOUR ACCIDENT FROM
4 CESAR OTHER THAN THE MONEY HE SAID HE GOT SENT TO
5 YOU FROM WILLIAM?

6 A. YES, SIR.

7 Q. WHO? WHO SENT YOU MONEY?

8 A. CESAR BROUGHT A BOX WHERE HE SAID EVERYBODY WAS
9 PUTTING IN THEIR DONATIONS, AND IT WAS ABOUT 120 OR
10 130.

11 Q. OKAY. WHEN DID THIS OCCUR?

12 A. AFTER THE ACCIDENT.

13 Q. DID THIS OCCUR AFTER YOU TALKED WITH MR. WILLIAM?

14 A. YES, SIR.

15 Q. DID THEY SAY ANYTHING TO YOU ABOUT WHERE THE MONEY
16 CAME FROM THAT WAS PUT IN THE BOX?

17 A. THAT IT WAS A COOPERATIVE EFFORT OF EVERYBODY.

18 Q. THE DAY YOU WENT TO DOCTORS CARE, WHEN MARY TOOK YOU
19 TO DOCTORS CARE, DID YOU SIT IN THE WAITING ROOM
20 WHEN YOU ENTERED?

21 A. YES, SIR.

22 Q. DID YOU GO INTO THE DOCTORS CARE WAITING ROOM IN A
23 WHEELCHAIR?

24 A. YES, SIR.

25 BY MR. WYMAN:

1 COMMISSIONER, I'M GOING TO OBJECT TO THIS LINE
2 OF QUESTIONING. IT'S ALREADY BEEN ANSWERED EARLIER
3 IN HIS TESTIMONY.

4 BY THE COMMISSIONER:

5 WELL, THE REASON HE'S ASKING THE QUESTION, I
6 HAD TWO QUESTIONS. THE FIRST WAS MARY TOOK HIM TO
7 DOCTORS CARE, IS MY UNDERSTANDING. EVENTUALLY SHE
8 TOOK HIM TO THE E.R., I THINK, RIGHT?

9 BY MR. GIBSON:

10 NO.

11 BY MR. WYMAN:

12 NO.

13 BY THE COMMISSIONER:

14 NO. THAT'S RIGHT; HE HAD A SPANISH-SPEAKING
15 BILINGUAL PERSON. AND IT WAS MY UNDERSTANDING THAT
16 HE SAID ON DIRECT, "I SIGNED THE FORM."

17 BY MR. GIBSON:

18 CORRECT.

19 BY MR. WYMAN:

20 THAT'S CORRECT.

21 BY THE COMMISSIONER:

22 WHICH WOULD INDICATE TO ME -- AND I'VE BEEN TO
23 A DOCTORS CARE. I THINK IT'S THE GREATEST INVENTION
24 IN THE WORLD. AND THERE'S A LOT TO FILL OUT, IS
25 WHAT I'M TRYING TO SAY, EVEN FOR ME, AND I JUST WAS

1 CURIOUS TO KNOW WHO DID THAT.

2 BY MR. WYMAN:

3 FAIR ENOUGH. I JUST DIDN'T WANT TO REHASH THE
4 ENTIRE TESTIMONY FROM DOCTORS CARE.

5 BY THE COMMISSIONER:

6 NO, I DON'T, AND I DON'T WANT TO DO IT EITHER
7 IN THE INTEREST OF TIME, IF NOTHING ELSE, AND IT'S
8 NOT FAIR TO DO IT. ON THE OTHER HAND, I THINK -- MY
9 CONCLUSION IS THAT HE WENT THERE AND THE INTAKE FORM
10 WAS COMPLETED BY SOMEBODY ELSE, WHETHER IT WAS MARY
11 OR SOMEBODY ELSE WHO TRIED -- THE MAIN THING, HE HAD
12 A BROKEN LEG, SO YOU COULD ASSUME IT WAS TRAUMA TO
13 THE LEG. AND WHETHER IT WAS A DITCH OR HOLE OR TREE
14 OR WHATEVER, SOMETHING APPEARED ON THE FORM, NOT
15 FALLING OUT OF A TREE. HE SAID HE WAS TOLD TO SAY
16 THAT, AND I'LL GIVE IT WHAT WEIGHT I CHOOSE TO GIVE
17 IT. I JUST WANT TO MAKE ABSOLUTELY CERTAIN THAT ALL
18 HE DID WAS SIGN IT, AND THAT'S WHAT HE STATED HE
19 DID.

20 BY MR. WYMAN:

21 OH, SURE. I HAVE NO OBJECTION TO THAT
22 QUESTION.

23 BY MR. GIBSON:

24 THAT'S WHAT I'M GETTING TO, TO CLARIFY THAT.

25 BY THE COMMISSIONER:

1 OKAY.

2 BY MR. WYMAN:

3 OKAY.

4 BY MR. GIBSON:

5 TRYING TO ANYWAY.

6 BY THE COMMISSIONER:

7 RIGHT.

8 REDIRECT EXAMINATION RESUMED BY MR. GIBSON:

9 Q. WHEN YOU ROLLED IN, IN YOUR WHEELCHAIR IN THE
10 WAITING ROOM, DID YOU SIT IN A CHAIR?

11 A. NO, I SAT IN ANOTHER CHAIR.

12 Q. AND ONCE YOU SAT DOWN, DID YOU EVER GET UP TO DO
13 ANYTHING OTHER THAN GO BACK TO THE DOCTOR'S OFFICES?

14 A. NO. I HAD A LOT OF PAIN, AND I NEEDED HELP.

15 Q. DID ANYONE EVER BRING A PIECE OF PAPER OR CLIPBOARD
16 OUT AND ASK YOU QUESTIONS AND FILL IT OUT?

17 A. NO, SIR.

18 Q. DID AT ANY TIME YOU REMEMBER TAKING A PEN AND
19 FILLING OUT INFORMATION ON A FORM?

20 BY MR. WYMAN:

21 OBJECTION. ASKED AND ANSWERED, COMMISSIONER.

22 BY THE COMMISSIONER:

23 I BELIEVE HE DID STATE HE DIDN'T.

24 BY MR. GIBSON:

25 OKAY.

REDIRECT EXAMINATION RESUMED BY MR. GIBSON:

Q. AND WHO PRESENTED THE PAPER TO YOU TO SIGN?

A. THE SECRETARY.

Q. IS THAT MARY?

A. YES, SIR.

Q. AND DID SHE BRING THE PAPER FROM THE COUNTER WHERE
SHE WAS DEALING WITH THE OTHER OFFICE PEOPLE?

BY MR. WYMAN:

OBJECTION. ASSUMES FACTS NOT IN EVIDENCE,
COMMISSIONER.

BY THE COMMISSIONER:

WELL, I CAN TAKE IT FROM THERE. I THINK YOU'VE
ASKED WHAT -- THERE'S ONE OTHER QUESTION I HAD NOW.
HE TESTIFIED HE WAS GIVEN \$100 BY CESAR AFTER THE
MEETING. WAS THE \$120 TAKEN UP IN ADDITION TO THAT
100?

REDIRECT EXAMINATION RESUMED BY MR. GIBSON:

Q. WAS THE \$120 YOU GOT IN A BOX LATER IN ADDITION TO
THE \$100 YOU HAD RECEIVED FROM MR. WILLIAM?

A. NO. NO, THEY SAID THAT THIS WAS A COOPERATION THAT
THEY HAD ALL GOTTEN TOGETHER FOR.

Q. DID YOU ---

BY THE INTERPRETER:

THE INTERPRETER THINKS THAT HE DID NOT
UNDERSTAND THE QUESTION.

1 REDIRECT EXAMINATION RESUMED BY MR. GIBSON:

2 Q. DID YOU RECEIVE \$100 SEPARATE FROM THE BOX OF MONEY
3 THAT YOU GOT?

4 A. FIRST I GOT THE HUNDRED, THEN I GOT THE 120 IN THE
5 BOX.

6 BY THE COMMISSIONER:

7 THAT'S WHAT I THOUGHT HE SAID.

8 WITNESS RESUMES:

9 A. AND THEN JUVE GAVE ME ANOTHER HUNDRED.

10 BY THE COMMISSIONER:

11 MA'AM?

12 BY THE INTERPRETER:

13 HE ADDED, "AND THEN JUVE," JUVENAL, "GAVE ME
14 ANOTHER HUNDRED."

15 BY THE COMMISSIONER:

16 SO IT WAS ABOUT \$320?

17 WITNESS ANSWERS:

18 A. YES.

19 BY MR. GIBSON:

20 I DON'T HAVE ANY FURTHER QUESTIONS.

21 BY THE COMMISSIONER:

22 ALL RIGHT. WE ACTUALLY HAD GONE BACK TO
23 REDIRECT, AND MR. GIBSON HAD ASKED A QUESTION OR
24 TWO, AND I BELIEVE HE SAID THAT WAS IT, AND THEN I
25 SAID I HAD SOME THINGS I WANTED TO CLEAR UP. THOSE

1 ARE THE QUESTIONS THAT I HAD. UNLESS THERE'S
2 ANYTHING ELSE?

3 BY MR. WYMAN:

4 UNLESS YOU HAVE ANY OTHER QUESTIONS?

5 BY THE COMMISSIONER:

6 NO, I DON'T.

7 BY MR. WYMAN:

8 I DON'T HAVE ANY OBJECTION TO YOU ASKING THE
9 CLAIMANT DIRECTLY. I DON'T KNOW YOUR THOUGHTS ON
10 THAT.

11 BY THE COMMISSIONER:

12 THAT WAS IT. I WAS CONFUSED A LITTLE BIT, BUT
13 IT'S CLEAR IN MY MIND.

14 BY MR. WYMAN:

15 THAT MAY SPEED US UP IN THE FUTURE. I DON'T
16 HAVE ANY OBJECTIONS IF YOU HAVE QUESTIONS OF
17 WITNESSES, OF MINE AT LEAST.

18 BY THE COMMISSIONER:

19 YOUR FIRST WITNESS IS WHO, DON?

20 BY MR. GIBSON:

21 THIS GENTLEMAN?

22 BY THE COMMISSIONER:

23 SIR, YOUR OTHER WITNESS?

24 BY MR. GIBSON:

25 THE OTHER WITNESS IS TOMAS ---

1 BY MR. WYMAN:

2 BETANCOURT.

3 BY MR. GIBSON:

4 YES, BETANCOURT.

5 BY MR. WYMAN:

6 AND I BELIEVE HE ALSO IS KNOWN AS TOMAS
7 MARTINEZ. MAYBE IF YOU DON'T MIND ASKING HIM THAT
8 JUST SO WE CAN BE CERTAIN.

9 BY MR. GIBSON:

10 IT WILL BE SHORT, YOUR HONOR.

11 BY THE COMMISSIONER:

12 I APPRECIATE IT. HE CAN COME ON IN.

13 (OFF THE RECORD)

14 BY THE COMMISSIONER:

15 AND YOUR FIRST WITNESS, MR. GIBSON, IS WHO,
16 SIR?

17 BY MR. GIBSON:

18 THIS IS MR. TOMAS MARTINEZ BETANCOURT.

19 BY THE COMMISSIONER:

20 OKAY. AND FOR THE INTERPRETER, MA'AM, WOULD
21 YOU ASK THE CLAIMANT TO STATE HIS FULL NAME FOR THE
22 RECORD?

23 BY THE WITNESS:

24 TOMAS MARTINEZ BETANCOURT.

25 * * * * *

1 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
2 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
3 MATTER HEREIN:

4 TOMAS MARTINEZ BETANCOURT,

5 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
6 FOLLOWS:

7 BY THE COMMISSIONER:

8 PROCEED.

9 DIRECT EXAMINATION BY MR. GIBSON (THROUGH INTERPRETER):

10 Q. DID YOU EVER WORK FOR PRIORITY LANDSCAPING?

11 A. YES.

12 Q. WHEN DID YOU BEGIN WORK WITH THEM, AND HOW LONG DID
13 YOU WORK WITH THEM?

14 A. ABOUT SEVEN OR EIGHT MONTHS.

15 Q. WHEN DID YOU?

16 A. IN MARCH, THE SAME YEAR -- THE SAME TIME THAT THE
17 CLAIMANT.

18 Q. AND HOW LONG DID YOU WORK THERE?

19 A. ABOUT SEVEN MONTHS MORE OR LESS.

20 Q. OKAY. AND WHO HIRED YOU? HOW DID YOU GET THE JOB?

21 A. IT WAS THROUGH THE SAME FRIEND THAT RAMON USED TO
22 GET THE JOB.

23 Q. DID YOU GO TO THE SHOP AND MEET MR. WILLIAM?

24 A. YES.

25 Q. AND DID YOU TALK WITH HIM?

1 A. NOT EXACTLY BECAUSE I DON'T SPEAK ENGLISH.

2 Q. DID YOU HAVE AN INTERPRETER WHEN YOU SPOKE WITH HIM
3 ABOUT THE JOB?

4 A. YES.

5 Q. AND DID HE EMPLOY YOU?

6 A. YES.

7 Q. AND WHAT DID HE TELL YOU, YOU WOULD BE DOING?

8 A. HE DIDN'T REALLY TELL US WHAT WE WERE GONNA DO.

9 Q. AND DID YOU GET ASSIGNED TO A GROUP THE DAY YOU
10 APPLIED FOR THE JOB?

11 A. ACTUALLY, SOMETIMES YOU GO WITH ONE GROUP AND
12 SOMETIMES WITH ANOTHER.

13 Q. SO THE GROUPS VARY?

14 A. YES.

15 Q. HOW MANY SUPERVISORS DOES HE HAVE?

16 A. NORMALLY THE ONE WHO DRIVES THE TRUCK IS THE ONE IN
17 CHARGE.

18 Q. DID YOU KNOW FRANK?

19 A. YES.

20 Q. WAS HE ONE OF THE SUPERVISORS?

21 A. YES.

22 Q. WHO WAS THE OTHER SUPERVISOR?

23 A. JUVE.

24 Q. OKAY. AND HOW MANY WORKERS WORK IN EACH GROUP?

25 A. FOUR USUALLY, BUT I DON'T REMEMBER EXACTLY.

1 Q. DID YOU KNOW CESAR?

2 A. YES.

3 Q. DID YOU KNOW LEONARDO?

4 A. LEONARDO?

5 Q. DID YOU KNOW HIM OR NOT?

6 A. THE NAME LEONARDO? WHAT DO YOU MEAN?

7 Q. OKAY. THAT NAME IS NOT FAMILIAR TO YOU?

8 A. NO, NOT LEONARDO.

9 Q. DURING THE SEVEN MONTHS OR SO THAT YOU WORKED WITH
10 PRIORITY LANDSCAPING, WHAT TYPE JOBS DID YOU DO?

11 A. WE WOULD TRIM; WE WOULD DO WEED EATING; SOMETIMES WE
12 HAD TO CUT LIMBS.

13 Q. DID YOU PERSONALLY HAVE TO CLIMB TREES AND CUT
14 LIMBS?

15 A. YES, EVEN CLOSE TO HIS HOUSE, AND WE HAD A POWER
16 SAW.

17 Q. DID YOU HAVE TO CLIMB LITTLE TREES?

18 A. SOMETIMES; YES.

19 Q. DID YOU CLIMB MEDIUM-SIZED TREES?

20 A. WHATEVER YOU COULDN'T GET FROM BELOW, YOU HAD TO GO
21 UP.

22 Q. AND LARGE TREES; DID YOU CLIMB LARGE TREES?

23 A. YEAH, WHATEVER WAS THERE.

24 Q. DID YOU SEE OTHER WORKERS, FELLOW WORKERS, DOING THE
25 SAME TYPE WORK INVOLVING CLIMBING TREES AND TRIMMING

1 LIMBS?

2 A. YES. YES, WE WOULD, SOMETIMES ONE, SOMETIMES
3 ANOTHER.

4 Q. WHEN YOU CLIMBED THE TREE, HOW DID YOU GET YOUR
5 TOOLS UP INTO THE TREE TO CUT THE LIMBS?

6 A. IF THERE WAS NO LADDER, THEN THEY WOULD PASS THE
7 TOOLS TO YOU. SOMETIMES WE HAD LADDERS AND
8 SOMETIMES WE DIDN'T.

9 Q. DID YOU EVER USE ROPES TO PASS THE TOOLS?

10 A. YES.

11 Q. AND WHEN WOULD YOU USE THE ROPES TO PASS THE TOOLS
12 UP INTO THE TREE?

13 A. WHEN YOU COULDN'T REACH SOMEBODY STANDING THERE.

14 Q. IS THAT A COMMON WAY TO DO IT?

15 A. YES.

16 Q. DID YOU EVER SEE CESAR CLIMBING THE TREES?

17 A. CESAR WAS MORE AROUND USING THE MOTOR.

18 Q. DID YOU EVER SEE RAMON CLIMBING TREES AND CUTTING
19 AND TRIMMING?

20 A. YES. SOMETIMES TOGETHER WE DID THAT.

21 Q. WAS THIS TYPE WORK JUST COMMON TO THE BUSINESS OF
22 LANDSCAPING THAT YOU WERE IN?

23 A. YES, IT WAS NORMAL.

24 Q. DID YOU EVER WORK AT THIS CHURCH AT JAMES ISLAND?

25 A. YES.

1 Q. AND WHEN YOU WENT TO THAT CHURCH, WHAT DID YOU DO
2 WHEN YOU WERE OUT THERE GENERALLY?

3 A. WEED EATING.

4 Q. DID YOU CUT THE GRASS?

5 A. WITH A WEED EATER, YES.

6 Q. DID YOU EVER CUT OR TRIM ANY TREES?

7 A. YEAH, WHEN IT WAS NEEDED, THAT'S WHAT I DID.

8 Q. DID YOU, AS A WORKER FOR PRIORITY, EVER RECEIVE ANY
9 SPECIFIC SAFETY INSTRUCTIONS IN SPANISH OR ENGLISH
10 WITH AN INTERPRETER TELLING YOU HOW TO GO ABOUT
11 CLIMBING INTO TREES AND CUTTING THEM?

12 A. NO.

13 Q. DID YOU EVER RECEIVE ANY INSTRUCTIONS IN WRITING,
14 SAFETY INSTRUCTIONS IN WRITING OR BY VERBAL
15 EXPLANATION, THAT YOU WERE NOT TO CLIMB BIG TREES?

16 A. NO, WE WERE NEVER TOLD THAT.

17 Q. DID YOU EVER SEE FRANK GAMBLING AT WORK DURING THE
18 BUSINESS DAY?

19 A. SOMETIMES IN THE TRUCK.

20 Q. WHAT WOULD THEY DO?

21 A. THEY WOULD PLAY CARDS.

22 Q. WOULD THEY BE EXCHANGING MONEY AND PLAYING FOR
23 MONEY?

24 A. I DON'T LIKE CARDS MYSELF.

25 Q. DID YOU EVER SEE RAMON DO SUCH THINGS?

1 A. NO, I DON'T THINK SO.

2 Q. WOULD THIS GO ON JUST AT LUNCH BREAKS OR WOULD IT GO
3 ON THROUGHOUT THE DAY?

4 A. IT WAS USUALLY IN THE BREAK TIME WHEN THEY WERE
5 PLAYING.

6 Q. DID YOU EVER SEE RAMON -- DID YOU EVER HEAR ANYONE
7 TELL RAMON HE WAS DOING A BAD JOB?

8 BY MR. WYMAN:

9 OBJECTION; CALLS FOR HEARSAY.

10 BY THE COMMISSIONER:

11 WELL, HE CAN ASK THE QUESTION A DIFFERENT WAY.

12 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

13 Q. DO YOU KNOW IF RAMON WAS EVER DISCIPLINED?

14 BY MR. WYMAN:

15 OBJECTION; STILL CALLS FOR HEARSAY. HE'S
16 ASKING WHAT HE MAY HAVE HEARD OUTSIDE THE HEARING.

17 BY MR. GIBSON:

18 I'M JUST ASKING IF HE KNOWS.

19 BY THE COMMISSIONER:

20 WELL, IT WAS MY UNDERSTANDING ON DIRECT, AND
21 I'M NOT SO SURE THE QUESTION ANSWERS ITSELF, BUT THE
22 CLAIMANT HAD WORKED THERE A YEAR AND A HALF AND
23 NEVER MISSED A DAY.

24 BY MR. GIBSON:

25 NEVER MISSED A DAY.

1 BY THE COMMISSIONER:

2 SO, WE CAN MOVE ON.

3 BY MR. GIBSON:

4 OKAY.

5 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

6 Q. I'M GOING TO SHOW YOU A PHOTOGRAPH. IS THAT A
7 PICTURE OF A TRUCK THAT WAS OWNED BY PRIORITY
8 LANDSCAPING?

9 A. YES.

10 BY MR. GIBSON:

11 AND I'M POINTING TO A PHOTOGRAPH WE'VE ALREADY
12 REFERRED TO IN EVIDENCE. THAT IS THE TRUCK THEY
13 WERE IN.

14 DIRECT EXAMINATION RESUMED BY MR. GIBSON:

15 Q. AND WERE ALL THE CUTTING TOOLS AND THE OTHER
16 MACHINERY NEEDED FOR JOBS ON THE TRUCK WHEN YOU WENT
17 OUT TO JOBS?

18 A. YEAH, THE TOOLS WOULD ALREADY BE THERE. WE HAD TO
19 PUT THE TRACTOR ON. SOMETIMES THE WEED EATERS WE
20 HAD TO ADD TO WHAT WAS ALREADY ON THE TRUCK.

21 BY MR. GIBSON:

22 I DON'T HAVE ANY FURTHER QUESTIONS. YOU MAY
23 ANSWER ANY QUESTIONS OPPOSING COUNSEL HAS.

24 BY THE COMMISSIONER:

25 OKAY. MR. WYMAN.

CROSS EXAMINATION BY MR. WYMAN (THROUGH INTERPRETER):

Q. MR. BETANCOURT, YOU GOT A JOB WITH PRIORITY
LANDSCAPING AT THE SAME TIME AS RAMON?

A. YES.

Q. YOU GOT THE JOB THROUGH THE SAME PERSON? DID I
UNDERSTAND THAT RIGHT?

A. YES.

Q. SO YOU KNEW RAMON PRIOR TO GETTING THE JOB AT
PRIORITY?

A. YES, BEFORE, YES.

Q. YOU ALL WERE PERSONAL FRIENDS BEFORE YOU WENT TO
WORK AT PRIORITY?

A. YES.

Q. ARE YOU ALL RELATED TO EACH OTHER?

A. YES.

Q. HOW?

A. THROUGH MY SISTER.

Q. DID HE MARRY YOUR SISTER?

A. YES.

Q. AND YOU HAVEN'T WORKED FOR PRIORITY SINCE MAY OF
2007?

A. I THINK IT WAS OCTOBER.

Q. OF 2007?

A. YES.

Q. I'M SORRY. I'LL MOVE ON. YOU WEREN'T PRESENT, YOU

1 WEREN'T THERE WHEN RAMON FELL OUT OF THE TREE?

2 A. NO.

3 Q. SO YOU DON'T KNOW WHAT HAPPENED?

4 A. NO.

5 Q. AND YOU DON'T KNOW WHAT TOOLS WERE ON THE TRUCK THAT
6 DAY?

7 A. NO. NO, I DON'T KNOW. I WASN'T THERE.

8 BY MR. WYMAN:

9 I DON'T HAVE ANYTHING FURTHER.

10 BY MR. GIBSON:

11 I DO.

12 BY THE COMMISSIONER:

13 ALL RIGHT, SIR.

14 REDIRECT EXAMINATION BY MR. GIBSON (THROUGH INTERPRETER):

15 Q. NOW THAT WE'VE BROUGHT UP RELATIVES, DOES CESAR HAVE
16 ANY RELATIVES THAT WORK FOR PRIORITY?

17 BY MR. WYMAN:

18 OBJECTION, COMMISSIONER. RELEVANCE WITH THIS
19 WITNESS.

20 BY THE COMMISSIONER:

21 WELL, YOU WERE, I THINK, TRYING TO, IF I
22 UNDERSTOOD IT, CONNECT HIS BROTHER-IN-LAW WITH HIS
23 TESTIMONY POSSIBLY BEING AFFECTED MAYBE BY KINSHIP,
24 AND I BELIEVE THAT COUNSEL IS TRYING TO DO THAT SAME
25 THING.

1 BY MR. WYMAN:

2 BUT AS TO ANOTHER WITNESS.

3 BY THE COMMISSIONER:

4 SIR?

5 BY MR. WYMAN:

6 AS TO ANOTHER WITNESS WHO'S ABOUT TO TESTIFY.

7 MY OBJECTION IS ---

8 BY THE COMMISSIONER:

9 WELL, WE CAN WAIT UNTIL THAT WITNESS COMES IN

10 AND THEN RECALL THIS MAN, OR WE CAN ASK IT ANYWAY.

11 I'LL NOTE YOUR OBJECTION, BUT GO AHEAD AND ANSWER

12 THE QUESTION. AND THE QUESTION WAS?

13 REDIRECT EXAMINATION RESUMED BY MR. GIBSON:

14 Q. IS CESAR RELATED TO ANY OF THE OTHER MEN THAT WORK
15 FOR PRIORITY?

16 A. JUVE, ANTONIO, AND HIS FATHER.

17 Q. JUVE, ANTONIO?

18 A. JUVE AND ANTONIO.

19 Q. AND WHO ELSE?

20 A. ANOTHER GUY THAT ALREADY LEFT FOR MEXICO.

21 Q. DO YOU KNOW OF ANY OTHER RELATIVES THAT ARE OVER
22 THERE WORKING TOGETHER OTHER THAN YOU AND RAMON?

23 A. YOU MEAN RELATIVES OF US?

24 Q. NO, RELATIVES OF OTHER FAMILIES.

25 A. NO.

1 BY MR. GIBSON:

2 I DON'T HAVE ANY FURTHER QUESTIONS.

3 BY THE COMMISSIONER:

4 LET ME JUST CLARIFY THIS. IS CESAR RELATED TO
5 THREE OTHER COWORKERS? I WAS JUST CURIOUS TO KNOW
6 IF CESAR IS RELATED TO ONE, TWO, OR THREE OTHER
7 COWORKERS.

8 BY THE WITNESS:

9 I THINK IT'S LIKE FOUR.

10 BY MR. WYMAN:

11 IF I MAY?

12 BY THE COMMISSIONER:

13 ALL RIGHT, SIR.

14 RE CROSS EXAMINATION BY MR. WYMAN (THROUGH INTERPRETER):

15 Q. CESAR IS NOT RELATED TO YOU OR RAMON?

16 A. NO.

17 BY MR. WYMAN:

18 NOTHING FURTHER.

19 BY THE COMMISSIONER:

20 ALL RIGHT.

21 BY MR. GIBSON:

22 OKAY. THAT'S ALL.

23 BY THE COMMISSIONER:

24 I BELIEVE HE CAN BE EXCUSED. DO YOU THINK HE'S
25 GOING TO BE RECALLED?

1 BY MR. GIBSON:

2 WELL, I WOULD LIKE TO HAVE HIM STAY HERE. WE
3 MAY NEED HIM.

4 BY THE COMMISSIONER:

5 OKAY, IF HE WOULD JUST WAIT. TELL HIM TO WAIT,
6 PLEASE.

7 BY MR. WYMAN:

8 IF HE'S SUBJECT TO BE RECALLED, I'D ASK THAT HE
9 BE SEQUESTERED AGAIN.

10 BY MR. GIBSON:

11 THAT'S FINE. AND EXPLAIN THAT HE'S NOT TO TALK
12 TO ANYBODY OUT THERE ABOUT HIS TESTIMONY, AND I NEED
13 TO GO OUT AND TELL THEM TO LEAVE HIM ALONE.

14 BY THE COMMISSIONER:

15 RIGHT. ABSOLUTELY MAKE CERTAIN THAT THEY DON'T
16 DISCUSS WHAT'S BEEN SAID. LET'S GO OFF THE RECORD.

17 (OFF THE RECORD)

18 BY THE COMMISSIONER:

19 WE'RE BACK ON THE RECORD, AND OUR FIRST WITNESS
20 IS WHO, SIR?

21 BY MR. WYMAN:

22 CESAR RODRIGUEZ.

23 BY THE COMMISSIONER:

24 AND MR. RODRIGUEZ, YOU WANT TO SPEAK IN
25 ENGLISH; IS THAT CORRECT, SIR?

1 BY THE WITNESS:

2 YES, SIR.

3 BY THE COMMISSIONER:

4 AND WOULD YOU STATE YOUR FULL NAME FOR THE
5 RECORD?

6 BY THE WITNESS:

7 EXCUSE ME?

8 BY THE COMMISSIONER:

9 WOULD YOU STATE YOUR FULL NAME FOR THE RECORD?
10 WE ARE RECORDING THIS.

11 BY THE WITNESS:

12 LUCIO CESAR RODRIGUEZ PAREDES.

13 BY MR. WYMAN:

14 ALL RIGHT. SLOW DOWN. WHAT WAS THE FIRST
15 NAME?

16 BY THE WITNESS:

17 LUCIO.

18 BY MR. WYMAN:

19 LUCIO?

20 BY THE COMMISSIONER:

21 SPELL THAT, PLEASE.

22 BY MR. WYMAN:

23 L-U-C-I-O?

24 BY THE WITNESS:

25 YES.

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BY MR. WYMAN:

OKAY. WHAT WAS THE SECOND NAME?

BY THE WITNESS:

CESAR.

BY MR. WYMAN:

C-E-S-A-R?

BY THE WITNESS:

C-E-S-A-R.

BY MR. WYMAN:

THE NEXT NAME?

BY THE WITNESS:

RODRIGUEZ.

* * * * *

THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
MATTER HEREIN:

LUCIO CESAR RODRIGUEZ PAREDES,

BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
FOLLOWS:

BY THE COMMISSIONER:

ANSWER ANY QUESTIONS THAT MR. WYMAN MAY HAVE.

DIRECT EXAMINATION BY MR. WYMAN:

Q. CESAR, I'M GOING TO REMIND YOU, PLEASE SPEAK THE
ANSWER. IF I ASK YOU A QUESTION AND YOU ANSWER,
PLEASE SPEAK IT INSTEAD OF SHAKING YOUR HEAD OR

1 NODDING YOUR HEAD, OKAY?

2 A. OKAY.

3 Q. THIS KIND LADY IS TAKING DOWN EVERYTHING WE SAY, AND
4 WHEN YOU SHAKE YOUR HEAD IT'S HARD FOR THAT TO PICK
5 UP. OKAY?

6 A. OKAY.

7 Q. ALL RIGHT. DO YOU WORK FOR PRIORITY LANDSCAPING?

8 A. YES, SIR.

9 Q. HOW LONG HAVE YOU WORKED THERE?

10 A. TWO YEARS.

11 Q. WHAT IS YOUR JOB AT PRIORITY LANDSCAPING?

12 A. MOW, MOW THE GRASS.

13 Q. DO YOU TRIM BUSHES?

14 A. YES, SIR.

15 Q. DO YOU WEED EAT?

16 A. YES, SIR.

17 Q. DO YOU USE A BLOWER?

18 A. YES, SIR.

19 Q. WERE YOU PRESENT, WERE YOU THERE WHEN RAMON FELL OUT
20 OF THE TREE?

21 A. YES, SIR.

22 Q. WHERE DID THAT HAPPEN?

23 A. WHERE?

24 Q. WHERE DID THAT HAPPEN?

25 A. THE CHURCH.

1 Q. AT THE CHURCH? IS THAT A CHURCH ON JAMES ISLAND?

2 A. YES, SIR.

3 Q. IS THAT FORT JOHNSON BAPTIST CHURCH?

4 A. YES, SIR.

5 Q. ALL RIGHT. AND YOU'D WORKED THERE BEFORE?

6 A. YES, SIR.

7 Q. WAS THAT ON YOUR REGULAR ROTATION OF WORK?

8 A. YEAH.

9 Q. I'M GOING TO SHOW YOU WHAT'S MARKED AS CLAIMANT'S
10 EXHIBIT ONE. I WANT TO SHOW YOU THIS PICTURE. IS
11 THAT THE TRUCK THAT YOU RODE IN ON THE DAY THAT
12 RAMON FELL OUT OF A TREE?

13 A. YES, SIR.

14 Q. WHO ELSE WAS WITH YOU ON THAT DAY?

15 A. FRANK, LEONARDO, AND RAMON, AND ME.

16 Q. FOUR OF YOU?

17 A. FOUR.

18 Q. AND YOU ALL RODE IN THAT TRUCK?

19 A. YES, SIR.

20 Q. WHO DROVE THE TRUCK?

21 A. FRANK.

22 Q. WHAT TIME DID YOU GET TO FORT JOHNSON CHURCH THAT
23 DAY? WAS IT MIDDAY?

24 A. YEAH, MIDDAY.

25 Q. WAS IT NEAR LUNCHTIME?

1 A. YEAH.

2 Q. DID YOU EAT LUNCH IN THE TRUCK?

3 A. YES, SIR.

4 Q. WHEN YOU GOT TO THE CHURCH AND FRANK WAS DRIVING THE

5 TRUCK, WHERE DID HE PARK IT?

6 A. UNDERNEATH THE TREE.

7 Q. UNDER THE TREE?

8 A. YEAH.

9 Q. OKAY. I'M GOING TO SHOW YOU A PICTURE. IT'S

10 DEFENDANTS' EXHIBIT "C" PICTURE NUMBER FIVE. IS

11 THAT THE TREE THAT RAMON FELL OUT OF?

12 A. YEAH.

13 Q. ALL RIGHT. DO YOU SEE A GENTLEMAN STANDING NEXT TO

14 THE TRUNK OF THAT TREE?

15 A. YES, SIR.

16 Q. WHO IS THAT?

17 A. FRANK.

18 Q. DO YOU SEE A WHITE PICKUP TRUCK NEXT TO THE TREE?

19 A. YEAH.

20 Q. IS THAT WHITE PICKUP TRUCK PARKED IN THE SAME PLACE

21 THE WORK TRUCK WAS PARKED ON THIS DAY?

22 A. YES, SIR.

23 Q. AND SO WAS IT JUST A FEW FEET FROM THE TRUNK OF THE

24 TREE?

25 A. YES, SIR.

1 Q. HOW LONG DID YOU SIT IN THE TRUCK WHEN YOU PARKED IT
2 UNDER THE TREE?

3 A. WE ATE LUNCH THERE. LIKE 30 MINUTES.

4 Q. WERE YOU PLAYING CARDS WITH FRANK?

5 A. NO.

6 Q. WHAT HAPPENED AFTER YOU ALL FINISHED LUNCH?

7 A. WE PLAY AROUND. WE GET OUT OF THE TRUCK FIRST AND
8 START PLAYING. WE STARTED WITH THE BETS.

9 Q. YOU SAID YOU GOT OUT AND STARTED PLAYING AROUND?

10 A. YES, SIR.

11 Q. WHAT DO YOU MEAN BY PLAYING AROUND?

12 A. LIKE I STARTED, YOU KNOW, TO DO THE BETS.

13 Q. THE BETS?

14 A. THE BETS.

15 Q. OKAY. WHAT BETS DID YOU MAKE?

16 A. FOR SOMEBODY TO GO IN THE TREE.

17 Q. WHAT DID YOU WANT THEM TO DO WHEN THEY GOT IN THE
18 TREE?

19 A. HOLD THE TREE AND GO DOWN.

20 Q. SO YOU WANTED THEM TO JUMP OUT OF THE TREE?

21 A. JUMP OUT.

22 Q. OKAY. WHO WAS THE FIRST PERSON YOU OFFERED THAT BET
23 TO?

24 A. FRANK.

25 Q. HOW MUCH MONEY DID YOU OFFER HIM TO CLIMB THAT TREE

1 AND JUMP OUT?

2 A. FIFTY DOLLARS.

3 Q. DID FRANK TAKE THAT BET?

4 A. NO.

5 Q. DID YOU OFFER THAT BET TO ANYONE ELSE?

6 A. YEAH.

7 Q. WHO?

8 A. LEONARDO.

9 Q. LEONARDO?

10 A. YEAH.

11 Q. HOW MUCH DID YOU OFFER LEONARDO TO DO IT?

12 A. TWENTY.

13 Q. TWENTY DOLLARS. DID LEONARDO TAKE THAT BET?

14 A. NO, SIR.

15 Q. IS THAT WHEN YOU -- DID YOU OFFER RAMON THAT BET?

16 A. YEAH.

17 Q. HOW MUCH DID YOU OFFER HIM?

18 A. TWENTY.

19 Q. AND YOU LIVE WITH RAMON? I'M SORRY. YOU LIVE IN

20 THE SAME HOUSE AS RAMON?

21 A. YES, SIR.

22 Q. AND YOU WERE LIVING IN THE SAME HOUSE AS RAMON AT

23 THE TIME OF THIS ACCIDENT, RIGHT?

24 A. YES, SIR.

25 Q. ARE YOU STILL LIVING IN THE SAME HOUSE WITH RAMON?

1 A. YES.

2 Q. HIS WIFE LIVES THERE?

3 A. YES.

4 Q. BUT YOU PAY RENT TO THE PERSON THAT OWNS THE HOUSE?

5 A. YES.

6 Q. DO YOU SEE RAMON IN THE HOUSE EVERY DAY?

7 A. YES.

8 Q. DO YOU TALK TO RAMON EVERY DAY?

9 A. YES.

10 Q. LET'S GO BACK TO THE TREE. AFTER YOU MADE THE BET,
11 AFTER YOU OFFERED THE BET TO RAMON, WHAT DID HE DO?

12 A. LEONARDO PULLED THE MOWER, YOU KNOW, CLOSE TO THE
13 TREE AND HE CLIMBED.

14 Q. LET ME MAKE SURE I UNDERSTAND. LEONARDO PULLED THE
15 MOWER NEXT TO THE TREE?

16 A. YES.

17 BY MR. WYMAN:

18 I'M GOING TO REFER THE WITNESS ---

19 BY MR. GIBSON:

20 LET ME OBJECT TO SOMETHING FOR JUST A MOMENT,
21 AND I LET IT GO IN THE EARLIER TESTIMONY. ON THIS
22 TERM YOU USE OF PULL, ARE YOU TALKING ABOUT DRIVING
23 IT TO THE TREE OR DRAGGING IT PHYSICALLY?

24 BY MR. WYMAN:

25 I'M NOT SURE THAT'S AN OBJECTION. I'M HAPPY TO

1 CLARIFY.

2 BY MR. GIBSON:

3 YOU'RE LEADING THE COURT TO BELIEVE THAT
4 SOMEONE PULLED IT OVER IN ONE SENSE.

5 BY MR. WYMAN:

6 OKAY. PERHAPS THAT'S JUST SOUTHERN DIALECT,
7 COMMISSIONER.

8 BY MR. GIBSON:

9 I THINK IT IS.

10 BY MR. WYMAN:

11 SURE. I CERTAINLY INTEND THAT NOBODY IS GOING
12 TO PULL A RIDING LAWNMOWER WITH THEIR HANDS INTO
13 POSITION, SO I CERTAINLY MEAN DRIVE, AND I WILL DO
14 MY BEST TO USE THE WORD DRIVE.

15 BY THE COMMISSIONER:

16 ALL RIGHT, SIR. THANK YOU.

17 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

18 Q. I'M GOING TO SHOW YOU THAT SAME PICTURE AGAIN.

19 BY MR. WYMAN:

20 AND FOR THE RECORD IT'S EXHIBIT "C" PICTURE
21 FIVE.

22 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

23 Q. YOU SAID THAT'S FRANK STANDING NEXT TO THE TREE. IS
24 FRANK STANDING WHERE THE LAWNMOWER WAS PARKED?

25 A. YES.

1 Q. IS FRANK STANDING WHERE THE LAWNMOWER WAS PARKED
2 WHEN RAMON USED IT TO CLIMB INTO THE TREE?

3 A. YES, SIR.

4 Q. WERE YOU ASKED BY FRANK TO TELL RAMON TO CLIMB THAT
5 TREE TO CUT A LIMB?

6 A. NO, SIR.

7 Q. WERE YOU STANDING UNDER THE LIMB WHILE RAMON WAS ON
8 IT?

9 A. UNDER IT?

10 Q. WERE YOU STANDING UNDER THE TREE WHILE RAMON WAS IN
11 IT?

12 A. I NEED A TRANSLATION.

13 Q. WELL, I'VE GOT YOU. WERE YOU STANDING ON THE GROUND
14 ON YOUR FEET WHILE RAMON WAS IN THE TREE?

15 A. YEAH.

16 Q. OKAY. DID YOU HAVE A TOOL IN YOUR HAND WHILE RAMON
17 WAS IN THE TREE?

18 A. NO, SIR.

19 Q. WERE YOU PLANNING TO HAND HIM A TOOL TO CUT A LIMB
20 IN THE TREE?

21 A. NO.

22 Q. ALL RIGHT. HOW HIGH UP DO YOU THINK THE TREE WAS --
23 OR, THE LIMB WAS? I'M SORRY.

24 A. LIKE 18, 20 FEET.

25 Q. OKAY. I'M GOING TO SHOW YOU EXHIBIT "C" PICTURE

1 NUMBER FOUR. HAVE YOU SEEN THIS PICTURE BEFORE?

2 A. (WITNESS NODS AFFIRMATIVE RESPONSE)

3 Q. SAY YES. IS THAT A YES?

4 A. YES.

5 BY MR. WYMAN:

6 SORRY. HE WAS NODDING HIS HEAD WHEN I SAID,

7 "Say YES."

8 BY THE COMMISSIONER:

9 I UNDERSTAND.

10 BY MR. WYMAN:

11 I'M CERTAINLY NOT COACHING HIM, COMMISSIONER.

12 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

13 Q. IS THAT FORT JOHNSON CHURCH IN THE BACKGROUND?

14 A. YES.

15 Q. AT THE TOP OF THAT PICTURE DO YOU SEE THE LIMB WHERE
16 RAMON FELL?

17 A. YES.

18 Q. IS THAT IT?

19 A. YES.

20 Q. ALL RIGHT. THERE'S A PERSON ON THE LEFT THERE
21 POINTING TOWARDS THAT LIMB. IS THAT YOU?

22 A. YES.

23 Q. ALL RIGHT. WHAT ARE YOU POINTING AT IN THIS
24 PICTURE?

25 A. THE LIMB.

1 Q. WAS THAT WHERE HE WAS STANDING ---

2 A. YES.

3 Q. --- WHEN HE FELL?

4 A. YES.

5 Q. THAT'S WHAT YOU'RE POINTING AT?

6 A. YES.

7 Q. WHERE WAS THE TRUCK? LOOKING AT THIS PICTURE, TELL
8 ME WHERE THE WORK TRUCK WAS WHEN HE FELL.

9 BY MR. WYMAN:

10 LET THE RECORD REFLECT ---

11 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

12 Q. WILL YOU SHOW THAT TO THE COMMISSIONER? POINT THERE
13 AGAIN FOR THE COMMISSIONER.

14 BY THE COMMISSIONER:

15 I'M LOOKING AT IT.

16 BY MR. WYMAN:

17 OKAY.

18 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

19 Q. WITHIN A FEW FEET FROM THE TREE?

20 A. YES.

21 Q. DID YOU SEE FRANK WITH A TOOL IN HIS HAND ---

22 A. NO.

23 Q. --- WHILE RAMON WAS IN THE TREE?

24 A. NO, SIR.

25 Q. DID YOU UNDERSTAND THAT FRANK WAS GOING TO HAND HIM

1 A TOOL TO CUT A LIMB?

2 A. NO, SIR.

3 Q. I'LL SHOW YOU THAT PICTURE AGAIN. IT'S EXHIBIT "C"
4 PICTURE NUMBER FOUR. STANDING WHERE YOU ARE AND
5 POINTING AT WHERE RAMON WAS, WHERE HE FELL, COULD
6 YOU HAVE HANDED HIM A TOOL FROM THE GROUND?

7 A. NO, SIR.

8 Q. DID YOU INTEND TO GET IN THIS TREE AND CLIMB UP AND
9 TAKE HIM A TOOL?

10 A. NO.

11 Q. WHEN YOU OFFERED THE BET TO RAMON, DID HE SAY
12 ANYTHING?

13 A. HE LOOKS PRETTY SURE. HE SAY YEAH.

14 Q. THEN WHAT DID HE DO?

15 A. CLIMBED INTO THE TREE.

16 Q. GOT ON THE LAWNMOWER?

17 A. THE LAWNMOWER.

18 Q. OKAY. ARE YOU RELATED TO RAMON IN ANY WAY? FAMILY?

19 A. NO.

20 Q. HAVE YOU EVER CLIMBED INTO THE TREE THAT RAMON FELL
21 OUT OF?

22 A. NO.

23 Q. HAVE YOU EVER SEEN ONE OF YOUR CREW MEMBERS OR
24 SOMEBODY ELSE THAT WORKS FOR PRIORITY CLIMB THAT
25 TREE?

1 A. NO, SIR.

2 Q. HAVE YOU EVER CLIMBED A TREE AS BIG AS THE ONE RAMON
3 FELL OUT OF TO DO WORK?

4 A. NO.

5 Q. HAVE YOU TRIMMED SMALLER TREES THAN THAT?

6 A. YES.

7 BY MR. WYMAN:

8 I'M GOING TO SHOW THE CLAIMANT (SIC) EXHIBIT
9 "C" PICTURE NUMBER TWO. I DON'T THINK WE'VE
10 DISCUSSED THIS ONE YET.

11 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

12 Q. IS THIS A PICTURE OF A TREE?

13 A. (WITNESS NODS AFFIRMATIVE RESPONSE)

14 Q. YES?

15 A. YES.

16 Q. WHO IS THAT STANDING NEXT TO THE TREE?

17 A. FRANK.

18 Q. ARE YOU TALLER THAN FRANK IS?

19 A. I'M MORE BIGGER.

20 Q. YOU'RE BIGGER?

21 A. YEAH.

22 Q. IS THIS PICTURE SHOWING THE SIZE TREE THAT YOU WOULD
23 TRIM FOR PRIORITY LANDSCAPING?

24 A. YES, SIR.

25 Q. OKAY. WOULD YOU TRIM TREES BIGGER THAN THIS?

1 A. NO, SIR.

2 Q. IF YOU TRIMMED THIS TREE SHOWN IN THIS PICTURE, WHAT

3 PART OF IT WOULD YOU TRIM?

4 A. DOWN HERE, YOU KNOW.

5 Q. ARE YOU POINTING AT THE BOTTOM OF THE TREE?

6 A. AT THE BOTTOM.

7 Q. ARE YOU POINTING AT THE LOWER LIMBS OF THE TREE?

8 A. YEAH, THESE LOWER LIMBS HERE, TRIM THOSE.

9 Q. DO YOU CARRY A LADDER ON THE TRUCK?

10 A. YEAH.

11 Q. HOW TALL IS THAT LADDER?

12 A. BIG. I MEAN, IT'S LIKE SEVEN FEET.

13 Q. OKAY. IS IT A LADDER THAT FOLDS OUT?

14 A. YES.

15 Q. AND STANDS ON ITS OWN?

16 A. YES.

17 Q. IF YOU NEEDED TO GET INTO A TREE LIKE THE ONE SHOWN

18 IN PICTURE TWO HERE AND YOU COULDN'T REACH FROM THE

19 GROUND, WOULD YOU GET THE LADDER OUT?

20 A. YES.

21 Q. DID ANYONE THAT WAS THERE WHEN RAMON FELL OUT OF THE

22 TREE GET THE LADDER OFF THE TRUCK FOR HIM TO CLIMB

23 INTO THIS OAK TREE?

24 A. NO, SIR.

25 Q. I'M GOING TO SHOW YOU PICTURE NUMBER SEVEN, STILL

1 EXHIBIT "C." IS THAT A PICTURE OF A TREE?

2 A. YES.

3 Q. IS IT A PICTURE OF A TREE RIGHT IN FRONT OF THE
4 CHURCH WHERE RAMON FELL OUT OF THE BIGGER TREE?

5 A. NO.

6 Q. IS THAT THE CHURCH?

7 A. YES.

8 Q. THAT'S THE CHURCH WHERE RAMON FELL OUT?

9 A. YEAH.

10 Q. OKAY. HAVE YOU SEEN THIS TREE BEFORE?

11 A. YES.

12 Q. OKAY. WHO'S THAT STANDING UNDER THE TREE?

13 A. FRANK.

14 Q. IS THIS TREE BIGGER THAN THE ONE I JUST SHOWED YOU
15 IN THE OTHER PICTURE?

16 A. NO.

17 Q. IS THIS AN EXAMPLE OF -- IS THIS A TREE THAT YOU
18 WOULD TRIM IN WORKING AT PRIORITY?

19 A. YES.

20 Q. WHAT PART OF THIS TREE WOULD YOU TRIM?

21 A. DOWN HERE.

22 Q. YOU'RE POINTING AT THE BOTTOM?

23 A. THE BOTTOM.

24 Q. OKAY. HAVE YOU EVER CLIMBED INTO THIS TREE WITHOUT
25 USING A LADDER?

1 A. NO.

2 BY MR. WYMAN:

3 DO YOU NEED TO SEE THAT?

4 BY MR. GIBSON:

5 NO.

6 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

7 Q. HAVE YOU TALKED TO RAMON ABOUT COMING HERE TODAY?

8 A. NO.

9 Q. HAVE YOU TALKED TO RAMON SINCE HE FELL OUT OF THE
10 TREE ABOUT HIS CLAIM, ABOUT HIS HEARING?

11 A. NO.

12 Q. HAVE YOU HAD ANY CONVERSATIONS WITH HIM ABOUT
13 GETTING MEDICAL TREATMENT?

14 A. YES.

15 Q. HAS HE TALKED TO YOU ABOUT THE FACT THAT PRIORITY IS
16 NOT GIVING HIM ANY MEDICAL TREATMENT?

17 A. NO.

18 Q. HAS HE ASKED YOU TO DO ANYTHING FOR HIM RELATED TO
19 THIS CASE?

20 A. SAY AGAIN.

21 Q. HAS HE ASKED YOU TO DO ANYTHING OR SAY ANYTHING
22 RELATED TO THIS CASE?

23 A. NO.

24 Q. HAS HE OFFERED YOU ANY MONEY RELATED TO THIS CASE?

25 A. YES.

1 Q. HE HAS?

2 A. YES.

3 Q. WAS THERE A CONVERSATION?

4 A. YES.

5 Q. WHO STARTED THAT CONVERSATION?

6 A. HE DID.

7 Q. HE DID?

8 A. YEAH, HE DID.

9 Q. ALL RIGHT. WHAT DID HE SAY?

10 A. HE SAID, "YOU KNOW, I DON'T GET NO MONEY FOR -- I

11 DON'T GET PAID THESE DAYS, SO IF I WIN MONEY, I GIVE

12 YOU SOME."

13 Q. I'M SORRY; DID YOU SAY ---

14 A. "IF I WIN MONEY..." ---

15 Q. AND I'M JUST REPEATING WHAT HE SAID. "IF I WIN

16 MONEY, I'LL GIVE YOU SOME"?

17 A. --- "I'LL GIVE YOU SOME."

18 Q. OKAY. DID HE SAY A SPECIFIC AMOUNT? DID HE SAY HOW

19 MUCH?

20 A. NO, JUST SOME.

21 Q. HOW LONG AGO DID YOU TALK TO HIM ABOUT THAT?

22 A. LIKE 15 MINUTES.

23 Q. NO. THE CONVERSATION WAS 15 MINUTES?

24 A. YEAH, 15 MINUTES.

25 Q. OKAY. WHEN WAS THAT CONVERSATION?

1 A. LIKE A MONTH.

2 Q. A MONTH PRIOR TO TODAY, A MONTH BEFORE TODAY?

3 A. NO, A MONTH -- WHEN THAT HAPPENED, YOU KNOW, LIKE A
4 MONTH.

5 Q. WHEN WHAT HAPPENED?

6 A. WHEN HE BROKE LEGS, LIKE A MONTH LATER HE TOLD ME
7 THAT.

8 BY MR. WYMAN:

9 I DON'T HAVE ANYTHING FURTHER.

10 BY THE COMMISSIONER:

11 ANSWER ANY QUESTIONS THAT MR. GIBSON MAY HAVE,
12 PLEASE.

13 CROSS EXAMINATION BY MR. GIBSON:

14 Q. DO YOU KNOW WHEN THESE PHOTOGRAPHS WERE TAKEN?

15 A. I'M SORRY. I NEED -- CAN YOU TELL ME ---

16 Q. ARE YOU GOING TO DO ENGLISH OR SPANISH? WHICH ONE
17 ARE YOU GOING TO DO?

18 BY THE COMMISSIONER:

19 WE'VE DECIDED IT'S GOING TO BE IN ENGLISH.

20 BY MR. GIBSON:

21 IN ENGLISH.

22 CROSS EXAMINATION RESUMED BY MR. GIBSON:

23 Q. WHEN WERE THESE PHOTOGRAPHS TAKEN?

24 A. CAN YOU TELL ME AGAIN?

25 BY MR. WYMAN:

1 COMMISSIONER, I ---

2 BY MR. GIBSON:

3 LISTEN, NO COACHING FROM THIS ---

4 BY MR. WYMAN:

5 I WOULD JUST ASK FOR THE WORD PICTURE,
6 COMMISSIONER.

7 BY THE COMMISSIONER:

8 I MEAN, HE HAS THE RIGHT TO ASK THE -- I
9 UNDERSTAND THE QUESTION.

10 BY MR. WYMAN:

11 THAT'S FINE.

12 BY THE COMMISSIONER:

13 IT'S A PRETTY SIMPLE QUESTION.

14 CROSS EXAMINATION RESUMED BY MR. GIBSON:

15 Q. WHEN WERE ALL THESE PHOTOGRAPHS TAKEN?

16 A. ALL THIS?

17 Q. ALL THESE PHOTOGRAPHS, WHEN WERE THEY TAKEN?

18 A. ALL THESE GRAPHS?

19 Q. WHEN WERE THEY TAKEN? WHEN WERE THESE PICTURES,
20 THESE PHOTOGRAPHS, TAKEN WITH A CAMERA?

21 A. LIKE I DON'T KNOW. I DON'T KNOW.

22 Q. WAS IT RECENTLY? WAS IT IN THE LAST 30 DAYS?

23 A. NO.

24 Q. YOU DON'T KNOW WHEN, OR ARE YOU SAYING NO?

25 A. I DON'T KNOW.

1 Q. YOU DON'T KNOW? WELL, YOU REMEMBER BACK WHEN THIS
2 ACCIDENT HAPPENED ALL THE DETAILS OF WHERE THE
3 TRUCKS WERE. WHEN WERE THESE SHOTS TAKEN HERE?
4 WERE THEY TAKEN LAST SUMMER?

5 A. NO.

6 Q. WERE THEY TAKEN RECENTLY?

7 BY MR. GIBSON:

8 I'D ASK THE COMMISSIONER TO PLEASE ORDER HIM TO
9 RESPOND.

10 BY THE COMMISSIONER:

11 RIGHT. YOU WERE IN THE PICTURE, AND THE
12 QUESTION IS VERY SIMPLE. WHEN WAS THE PICTURE
13 TAKEN? YOU'RE ACTUALLY IN THE PICTURE, AND COUNSEL
14 HAS SAID WAS IT THIS SUMMER? CAN YOU GIVE HIM SOME
15 IDEA OF WHEN THAT PICTURE WAS TAKEN, THOSE PICTURES
16 WERE TAKEN? SPECIFICALLY SINCE YOU'RE IN ONE OR
17 MORE OF THEM. DO YOU SEE WHAT I'M SAYING?

18 BY THE WITNESS:

19 YEAH.

20 BY THE COMMISSIONER:

21 AND THAT'S HIS QUESTION. SO, IF YOU WOULD
22 RESPOND, AND IF YOU SAY YOU DON'T KNOW, THEN YOU
23 DON'T KNOW.

24 BY THE WITNESS:

25 OKAY. LAST 30 DAYS. WHEN THESE PICTURES

1 TAKEN?

2 BY THE COMMISSIONER:

3 YES, SIR.

4 BY THE WITNESS:

5 YESTERDAY.

6 BY THE COMMISSIONER:

7 YESTERDAY?

8 BY THE WITNESS:

9 WEDNESDAY.

10 BY MR. GIBSON:

11 OKAY.

12 BY THE COMMISSIONER:

13 I DIDN'T HEAR. DID HE SAY WEDNESDAY?

14 CROSS EXAMINATION RESUMED BY MR. GIBSON:

15 Q. WEDNESDAY OR MONDAY?

16 A. WEDNESDAY.

17 Q. THIS PAST WEDNESDAY?

18 A. YEAH.

19 Q. OH, OKAY. SO YOU AND FRANK WENT OUT TO THIS
20 ACCIDENT SCENE FINALLY, CORRECT?

21 BY MR. WYMAN:

22 OBJECTION. FINALLY IS INTERJECTED SIMPLY FOR
23 HARASSMENT.

24 BY THE COMMISSIONER:

25 WELL, LET'S JUST TAKE THE FINALLY OUT.

CROSS EXAMINATION RESUMED BY MR. GIBSON:

Q. YOU, FRANK, AND -- WHO WAS THE OTHER GENTLEMAN WITH YOU?

A. LEONARDO.

Q. LEONARDO. THE THREE OF YOU WENT OUT TO THE ACCIDENT SCENE THIS WEEK AND TOOK THESE PICTURES?

A. NO.

Q. WHEN DID YOU GO?

A. WEDNESDAY.

Q. WEDNESDAY OF THIS WEEK?

A. YEAH.

Q. YESTERDAY?

A. YES, SIR.

Q. YESTERDAY. WAS THE LAWYER WITH YOU? WAS YOUR LAWYER WITH YOU?

A. NO.

Q. WAS THERE ANOTHER LAWYER WITH YOU?

A. NO.

Q. WAS WILLIAM WITH YOU?

A. YES.

Q. OKAY. WHERE IS WILLIAM'S PICTURE IN ALL THIS? WHERE WAS HE STANDING?

A. I DON'T KNOW.

Q. SO YOU WENT OUT AND POSITIONED ALL THESE VEHICLES YESTERDAY?

1 A. YES.

2 Q. TO HELP THE COURT UNDERSTAND? OKAY. WHY DID YOU

3 SAY EARLIER YOU DIDN'T KNOW WHEN THESE WERE DONE?

4 A. 'CAUSE I DON'T UNDERSTAND YOUR QUESTION.

5 Q. OKAY. DID YOU GIVE HIM THE \$20?

6 A. I GAVE 50.

7 Q. FIFTY. WHEN DID YOU GIVE IT TO HIM?

8 A. LIKE WHEN HE GET OUT OF THE HOSPITAL.

9 Q. SO DID YOU TAKE HIM \$100?

10 A. NO.

11 Q. DID WILLIAM EVER GIVE YOU \$100 TO TAKE TO HIM?

12 A. YEAH, TWICE.

13 Q. TWICE?

14 A. TWO HUNDRED.

15 Q. OKAY. SO WILLIAM GAVE YOU \$200 TO TAKE TO HIM?

16 A. YEAH.

17 Q. OKAY. AND THIS WAS AFTER THE ACCIDENT?

18 A. NO, BEFORE. NO, AFTER. YEAH.

19 Q. AFTER THE ACCIDENT? OKAY. DID HE EVER TALK TO YOU,

20 RAMON, ABOUT BORROWING MONEY FROM YOU?

21 A. NO.

22 Q. DID HE EVER ASK YOU TO LEND HIM ANY MONEY?

23 A. YES.

24 Q. HOW MUCH DID HE WANT TO BORROW FROM YOU?

25 A. HE DON'T WANT BORROW. HE WANT ME TO HELP HIM, YOU

1 KNOW, GIVE HIM SOME MONEY.

2 Q. WELL, DID YOU HELP HIM? DID YOU GIVE HIM SOME
3 MONEY?

4 A. YEAH.

5 Q. DID HE TELL YOU HE WOULD PAY YOU BACK IF HE GOT HIS
6 MONEY OUT OF THE CASE?

7 A. NO.

8 Q. OKAY.

9 A. I TRY TO HELP HIM, YOU KNOW, GIVE WHATEVER I CAN,
10 YOU KNOW, 50. I'M NOT GONNA GIVE, YOU KNOW, 500. I
11 DON'T HAVE THAT MUCH.

12 Q. OKAY. SO YOU LOANED HIM SOME MONEY OR GAVE HIM SOME
13 MONEY?

14 A. GAVE SOME MONEY.

15 Q. HOW MUCH TOTAL HAVE YOU GIVEN HIM?

16 A. FIRST I GAVE 50 WHEN I GAVE, YOU KNOW, THE BOX.
17 EVERYBODY HAS GIVE HIM MONEY, YOU KNOW. FRANK GAVE
18 \$30, LEONARDO GAVE 20, YOU KNOW, AND THE OTHER GUYS
19 THROW SOME MONEY IN ONE BOX AND I GAVE TO HIM.
20 PLUS, I PULL \$50 IN MY WALLET AND I GAVE \$50.

21 Q. DO YOU REMEMBER SHORTLY AFTER THIS ACCIDENT HIM
22 HIRING AN ATTORNEY?

23 A. SAY THE QUESTION AGAIN.

24 Q. DO YOU REMEMBER WHEN RAMON TOLD YOU HE WAS HIRING A
25 LAWYER?

1 A. DO I REMEMBER?

2 Q. YES.

3 A. LAWYER?

4 Q. DID HE TELL YOU HE WAS COMING TO HIRE A LAWYER, DON
5 GIBSON?

6 A. YEAH.

7 Q. OKAY. WHEN DID HE TELL YOU THAT?

8 A. WHEN HE GET OUT OF THE HOSPITAL, LIKE A MONTH LATER
9 HE TELL ME HE'S GONNA CALL DON GIBSON.

10 Q. AND DID YOU COME WITH HIM TO MY OFFICE?

11 A. NO.

12 Q. DID YOU EVER TALK TO ANYONE IN MY OFFICE ABOUT THIS
13 CASE?

14 A. NO, SIR.

15 Q. YOU NEVER TALKED TO ANYONE IN MY OFFICE ABOUT THIS
16 CASE?

17 A. NO, SIR.

18 Q. ISN'T IT TRUE THAT YOU TALKED TO SOMEONE IN MY
19 OFFICE AND TOLD US THAT HE HAD FALLEN OUT OF A TREE?

20 BY MR. WYMAN:

21 OBJECTION. THAT'S JUST SUGGESTING ---

22 BY MR. GIBSON:

23 I'M CROSS EXAMINING THIS ---

24 BY THE COMMISSIONER:

25 I'LL NOTE YOUR OBJECTION. ANSWER THE QUESTION.

WITNESS ANSWERS:

A. I DON'T TALK IN THE OFFICE. SOMEBODY CALL MY PHONE.

CROSS EXAMINATION RESUMED BY MR. GIBSON:

Q. OKAY. SOMEONE FROM MY OFFICE CALLED YOUR PHONE?

A. YES.

Q. DID YOU TALK TO WHOEVER WAS ON THE OTHER END OF THE PHONE?

A. YES.

Q. DID YOU TELL THEM THAT HE FELL OUT OF A TREE?

A. YES.

Q. DID YOU TELL THEM ANYTHING ABOUT A BETTING SITUATION?

A. NO.

Q. WHY NOT?

A. BECAUSE TRY TO HELP HIM.

Q. WHEN DID YOU COME UP WITH THE BETTING STORY?

A. 'CAUSE THE REASON IS I DON'T -- I LIKE MY JOB. I LOVE MY JOB, AND I DON'T WANT TO LOSE MY JOB.

Q. YOU'D DO ANYTHING TO PROTECT YOUR JOB, CORRECT?

A. PROTECT HIM, TOO.

Q. PROTECT YOUR JOB, CORRECT?

A. (WITNESS NODS AFFIRMATIVE RESPONSE)

Q. ARE YOU ANSWERING YES?

A. YES.

Q. OKAY. HAVE YOU EVER BEEN ARRESTED FOR ANYTHING?

1 A. YES.

2 Q. WHAT?

3 A. FOR NO DRIVER'S LICENSE.

4 Q. ANYTHING ELSE?

5 A. THAT'S IT.

6 Q. SO YOU'RE TESTIFYING THAT WHEN THESE PHOTOGRAPHS
7 WERE TAKEN -- TELL ME ONE MORE TIME WHO ALL WAS
8 PRESENT YESTERDAY WHEN YOU WERE TAKING THESE
9 PHOTOGRAPHS.

10 A. FRANK, LEONARDO, ME, WILLIAM.

11 Q. OKAY. NOW, YOU WERE AN INTERPRETER FOR FRANK WITH
12 HIS CREW, CORRECT?

13 A. YES.

14 Q. AND YOU WERE THE ONE THAT SPOKE THE WORDS FRANK GAVE
15 TO YOU AND WHAT THE WORKERS WOULD RESPOND BACK? YOU
16 WERE THEIR MODE OF COMMUNICATION, CORRECT?

17 A. YES.

18 Q. AND YOUR JOB WAS TO CAREFULLY GIVE INSTRUCTIONS TO
19 THESE WORKERS BASED ON WHAT FRANK TOLD YOU TO DO,
20 CORRECT?

21 A. YES.

22 Q. OKAY. AND YOU DID THAT?

23 A. NO.

24 Q. WHAT DID YOU DO? DID YOU COMMUNICATE AND INTERPRET
25 FOR FRANK AND INTERPRET FOR THE WORKERS WHEN THEY

1 NEEDED TO TALK WITH HIM?

2 A. YES.

3 Q. DID YOU EVER TELL ANY OF THESE WORKERS THEY
4 SHOULDN'T BE CLIMBING IN BIG TREES?

5 A. NO, SIR.

6 Q. DID FRANK EVER TELL YOU THAT THEY SHOULDN'T BE
7 CLIMBING IN BIG TREES?

8 A. WELL, FRANK -- ONLY ME AND FRANK DO THOSE THINGS.
9 WE DON'T -- PEOPLE GOT EXPERIENCE, YOU KNOW. THIS
10 TIME, IF HE WANT TO CUT ONE LIMB, HE TELL ME. HE
11 DON'T TELL NOBODY ELSE. HE TELL ME OR HE DO IT.

12 Q. SO YOU AND FRANK WOULD BE THE ONE TO CLIMB TREES?

13 A. NO CLIMB TREES.

14 Q. NO CLIMB TREES?

15 A. NO, WE DON'T CLIMB TREES. WE TRIM THE LIMBS.

16 Q. OKAY. DID THE OTHER WORKERS CLIMB TREES?

17 A. NO.

18 Q. ISN'T IT TRUE THAT YOU FELL OUT OF A TREE?

19 A. NO, SIR.

20 Q. YOU DID NOT FALL OUT OF A TREE AND INJURE YOURSELF?

21 A. NO, SIR.

22 Q. ARE YOU SURE YOU WEREN'T UP IN A TREE AND YOU MAY
23 HAVE JUST FORGOTTEN ABOUT IT IN ENGLISH?

24 BY MR. WYMAN:

25 OBJECTION, COMMISSIONER. THAT'S ARGUMENTATIVE.

1 BY THE COMMISSIONER:

2 WELL, HE'S STATED HE NEVER FELL OUT OF A TREE.

3 BY MR. WYMAN:

4 I'D ASK THAT BE STRICKEN FROM THE RECORD.

5 BY THE COMMISSIONER:

6 WELL, I'LL ---

7 CROSS EXAMINATION RESUMED BY MR. GIBSON:

8 Q. DID YOU EVER TELL HIM BAD THINGS WERE GOING TO
9 HAPPEN -- RAMON -- DID YOU EVER TELL RAMON BAD
10 THINGS WERE GOING TO HAPPEN TO HIM IF HE KEPT UP
11 WITH THIS LAWSUIT?

12 A. NO.

13 Q. DID YOU EVER TELL HIM THAT IMMIGRATION WAS GOING TO
14 COME AND ARREST HIM IF HE PROCEEDED WITH IT?

15 A. NO, SIR.

16 Q. YOU NEVER TALKED TO HIM ABOUT THAT?

17 A. NO, SIR.

18 Q. AND IS THAT BECAUSE YOU CONSIDER HIM YOUR FRIEND?

19 A. YES.

20 Q. DO YOU CONSIDER HIM A FRIEND?

21 A. WELL, YOU KNOW, HE -- I CAN SCARE HIM, YOU KNOW,
22 TELL, YOU KNOW, BAD THINGS.

23 Q. YOU DID SCARE HIM?

24 A. NO.

25 Q. OH, YOU DIDN'T SCARE HIM?

1 A. NO.

2 Q. OKAY. AND SO YOU BROUGHT AND GAVE HIM MONEY BECAUSE
3 YOU'RE A FRIEND OF HIS?

4 A. YEAH.

5 Q. AND YOU GET THE OTHER MONEY FROM WILLIAM AND THE
6 OTHER WORKERS AND GAVE HIM SOME MONEY BECAUSE YOU'RE
7 HIS FRIEND?

8 A. YES. I'M THE ONE THAT PUT THE BOX THERE.

9 Q. WELL, LET ME ASK YOU THIS: DID YOU WORK CLOSELY
10 WITH FRANK TO HELP SUPERVISE THESE MEN?

11 A. YES.

12 Q. WERE YOU KIND OF A CO-SUPERVISOR WITH FRANK?

13 A. YES.

14 Q. AND YOU SAY YOU WERE HIS PERSONAL FRIEND, RAMON'S,
15 CORRECT? WERE YOU ALSO HIS FRIEND?

16 A. SAY AGAIN.

17 Q. WERE YOU ALSO, YOU'VE TESTIFIED, RAMON'S FRIEND?

18 A. YES.

19 Q. THAT'S WHY YOU HELPED HIM?

20 A. YES.

21 Q. WHY WOULD YOU WANT TO GIVE YOUR FRIEND A BET OF \$50
22 TO CLIMB 18 FEET IN THE TOP OF A TREE AND JUMP?

23 A. WELL, YOU KNOW, WE PLAY. I DIDN'T KNOW IF ONE
24 PERSON -- HE GOT 45 YEARS AND YOU DON'T KNOW IF HE'S
25 GONNA DO IT. I MEAN, IT'S A MINUTE. TAKE A MINUTE.

1 I TELL, "I'M GONNA GIVE YOU \$20." HE TAKE QUICKLY.
2 HE LOOKS PRETTY SURE. HE GO FASTER. I SAID, "YOU
3 SURE?" "YEAH."

4 Q. WELL, YOU'RE WORKING WITH FRANK. WAS FRANK STANDING
5 THERE WITH YOU?

6 A. YES.

7 Q. OKAY. DID YOU WATCH HIM DRIVE THE LITTLE TRACTOR
8 OVER TO THE TRUCK?

9 BY MR. WYMAN:

10 OBJECTION. THAT'S NOT THE TESTIMONY.

11 CROSS EXAMINATION RESUMED BY MR. GIBSON:

12 Q. I MEAN, OVER TO THE TREE?

13 BY MR. WYMAN:

14 OBJECTION. THAT'S NOT THE TESTIMONY,
15 COMMISSIONER.

16 BY MR. GIBSON:

17 OKAY. THERE'S A CONFLICT IN THERE. LET ME ASK
18 IT THIS WAY.

19 BY THE COMMISSIONER:

20 ALL RIGHT.

21 CROSS EXAMINATION RESUMED BY MR. GIBSON:

22 Q. DID YOU SEE RAMON CLIMB UP ON THE TRACTOR AND CLIMB
23 UP IN THE TREE?

24 A. NO.

25 Q. WELL, WHAT WERE YOU DOING STANDING THERE; TWIDDLING

1 YOUR THUMBS?

2 BY MR. WYMAN:

3 OBJECTION, COMMISSIONER.

4 CROSS EXAMINATION RESUMED BY MR. GIBSON:

5 Q. I MEAN, WHAT WERE YOU DOING WHILE THIS WAS GOING ON?

6 A. I STAND THERE. CAN I SHOW ONE PICTURE? HERE.

7 Q. OKAY. WELL, WHAT WERE YOU DOING? IF YOU WERE NOT
8 WATCHING HIM GO INTO THE TREE, WHAT WERE YOU DOING?

9 A. WATCHING HIM.

10 Q. OKAY. SO YOU WERE WATCHING HIM GO UP IN THE TREE?

11 A. YEAH.

12 Q. WAS FRANK WATCHING HIM GO UP IN THE TREE?

13 A. YES.

14 Q. DID YOU EVER YELL AT HIM AND SAY, "YOU BETTER NOT GO
15 UP 20 FEET IN THE AIR"? DID YOU EVER DO THAT?

16 A. NO.

17 Q. WHY NOT? YOU WERE HIS MANAGER, SUPERVISOR, CO-
18 SUPERVISOR.

19 A. HE LOOKS PRETTY SURE, SIR.

20 Q. WHY WOULD A SUPERVISOR, A CO-SUPERVISOR WITH FRANK,
21 YOUR BOSS, STANDING RIGHT THERE, TELL A WORKER TO GO
22 20 FEET UP IN THE AIR?

23 A. BECAUSE I DON'T TAKE HIS DECISIONS. HE'S THE OWNER
24 OF HIS DECISION. HE KNOWS WHAT HE'S DOING. HE'S
25 OLDER THAN ME.

- 1 Q. WHO IS IN CHARGE OF THE JOB SITE AND DIRECTING THE
2 MEN AND TELLING THEM WHAT TO DO?
- 3 A. FRANK.
- 4 Q. AND WHO DOES FRANK USE TO HELP HIM DO THAT?
- 5 A. EXCUSE ME? SAY AGAIN.
- 6 Q. WHO DOES FRANK USE TO HELP COMMUNICATE HIS WISHES TO
7 THESE WORKERS?
- 8 A. SOMETIMES HE DON'T UNDERSTAND.
- 9 Q. WHO DOES YOUR BOSS, WHO DOES FRANK, THE SUPERVISOR
10 ON THE JOB, YOUR CO-SUPERVISOR, WHO DOES HE USE TO
11 COMMUNICATE IN SPANISH WITH THESE WORKERS?
- 12 A. WHEN HE NEED ANYTHING? WHAT YOU MEAN?
- 13 Q. I'M ASKING YOU, AS A WORKER AND CO-SUPERVISOR WITH
14 FRANK ON THE JOB, WHO COMMUNICATES WITH THESE
15 WORKERS UNDER YOU WHAT THEY ARE TO DO EACH DAY?
- 16 A. ME.
- 17 Q. OKAY. YOU, OKAY. ARE YOU A CO-SUPERVISOR AND
18 MANAGER WITH FRANK?
- 19 A. YES.
- 20 Q. OKAY. DID FRANK TELL YOU TO OFFER HIM THE BET?
- 21 A. NO.
- 22 Q. WELL, WHAT BROUGHT THE CONVERSATION OF A BET UP?
23 WAS THAT WHILE YOU AND FRANK WERE PLAYING CARDS IN
24 THE CAB?
- 25 A. NO.

1 Q. HAVE YOU AND FRANK EVER PLAYED CARDS DURING YOUR
2 LUNCH BREAK AT WORK?

3 A. YEAH.

4 Q. DID YOU PLAY CARDS THAT DAY?

5 A. NO.

6 Q. DO YOU UNDERSTAND YOU'RE UNDER OATH? DO YOU
7 UNDERSTAND YOU'RE UNDER OATH TODAY?

8 A. YES.

9 Q. IS THAT YES? AND YOU'RE TESTIFYING THAT YOU DID NOT
10 PLAY CARDS WITH FRANK; IS THAT CORRECT?

11 A. SAY AGAIN. SORRY ABOUT THAT.

12 Q. I'LL ASK ONE MORE TIME. WERE YOU AND FRANK PLAYING
13 CARDS IN THE CAB OF THE TRUCK THAT DAY WHILE YOU
14 WERE EATING LUNCH?

15 A. YES.

16 Q. WHY DID YOU TESTIFY EARLIER NO?

17 A. IT'S HARD, YOU KNOW. IT'S HARD TO UNDERSTAND YOUR
18 ENGLISH. I MEAN, IT'S HARD TO ME.

19 Q. DID YOU MAKE A DECISION TO SPEAK IN ENGLISH?

20 A. YES.

21 Q. OKAY. WHO CAME UP WITH THE IDEA OF THE BET?

22 A. WHO CAME UP?

23 Q. YES, WHO CREATED THE IDEA IN THEIR BRAIN TO OFFER A
24 BET?

25 A. ME.

1 Q. YOU. DID YOU TALK TO FRANK ABOUT IT?

2 A. NO.

3 Q. YOU DIDN'T TALK TO FRANK ABOUT IT?

4 A. NO. I JUST TELL -- I START TO DO THE BET. I DON'T
5 TALK ABOUT HIM. I TALK WHEN HE, YOU KNOW -- WHEN HE
6 SAY YES. WHEN HE ANSWER ME YES, I SAY, "FRANK, HE'S
7 GONNA JUMP FROM THE TREE."

8 Q. WHAT DID FRANK SAY?

9 A. OKAY.

10 Q. DID HE LAUGH?

11 A. NO. HE SAY, "YOU SURE?" I SAY, "YEAH, HE WANT TO
12 DO IT."

13 Q. DID FRANK SAY, "YOU SHOULDN'T DO THAT"? DID FRANK
14 TELL YOU HE SHOULD NOT DO THAT?

15 A. YEAH. LIKE I SAID, HE TAKE THE DECISION.

16 Q. DID FRANK STAND THERE AND WATCH HIM GO UP IN THE
17 TREE?

18 A. YES.

19 Q. AND YOU WATCHED HIM GO UP IN THE TREE?

20 A. YES.

21 Q. DID FRANK EVER YELL, "COME DOWN. IT'S DANGEROUS"?

22 A. HE TELL ME TO TELL, "YOU SURE?" IF HE SURE HE'S
23 GONNA DO IT. SO I JUST TELL, "YOU SURE?" HE SAID,
24 "YES."

25 Q. HAS ANYBODY TOLD YOU WHAT TO TESTIFY TO TODAY?

- 1 A. NO.
- 2 Q. HOW HIGH WAS THAT TREE LIMB?
- 3 A. LIKE 18, 20 FEET.
- 4 Q. ARE YOU FAMILIAR WITH THE GAME OF BASKETBALL?
- 5 A. NO.
- 6 Q. BASKETBALL?
- 7 A. DO I PLAY BASKETBALL?
- 8 Q. DO YOU KNOW ABOUT THE GAME BASKETBALL?
- 9 A. YES.
- 10 Q. DO YOU KNOW ABOUT THE GOAL YOU HAVE TO SHOOT THE
- 11 BALL AND IT GOES THROUGH?
- 12 A. YES.
- 13 Q. DO YOU KNOW HOW TALL THAT IS?
- 14 A. NO.
- 15 Q. WOULD YOU BELIEVE TEN FEET? DOES THAT SOUND ABOUT
- 16 RIGHT?
- 17 A. NO.
- 18 Q. HAVE YOU EVER SEEN A BASKETBALL GOAL WITH A NET?
- 19 A. YES.
- 20 Q. WAS THIS TREE LIMB TWICE THAT HIGH?
- 21 A. YES.
- 22 Q. AND YOU WANTED YOUR FRIEND TO GO UP AND JUMP, 40-
- 23 SOMETHING YEARS OLD; IS THAT CORRECT?
- 24 A. I DON'T KNOW.
- 25 Q. WHY DID YOU OFFER HIM THE MONEY?

1 A. YOU NEVER KNOW WHAT PEOPLE'S GONNA DO.

2 Q. WELL, WEREN'T YOU TRYING TO ENCOURAGE HIM TO GO UP
3 THE TREE?

4 A. I JUST TELL -- I OFFER 20 BUCKS, OFFER, YOU KNOW. I
5 SAY, "IF SOMEBODY WANTS 20 BUCKS FOR..." -- AND HE
6 LOOKS PRETTY SURE.

7 Q. WAS FRANK STANDING WITH YOU WHEN YOU DID THIS?

8 A. I SAID, "YOU SURE?" HE SAID, "YEAH, I'M GOING. I
9 NEED THE MONEY."

10 Q. DID FRANK UNDERSTAND WHAT YOU WERE DOING?

11 A. YES.

12 Q. ANY DOUBT IN YOUR MIND ABOUT THAT?

13 A. YES.

14 Q. HE DID KNOW? FRANK DID KNOW?

15 A. DID KNOW?

16 Q. FRANK DID KNOW THAT YOU WERE OFFERING BETS FOR THE
17 WORKERS TO GO UP 20 FEET IN THE AIR?

18 A. YES.

19 Q. WHEN DID YOU GIVE HIM HIS \$50 FOR THE TREE -- FOR
20 THE BET?

21 **BY MR. WYMAN:**

22 OBJECTION; ASKED AND ANSWERED.

23 **WITNESS ANSWERS:**

24 A. WHEN HE GET OUT ---

25 **BY THE COMMISSIONER:**

1 THERE'S AN OBJECTION. HE ONCE SAID 20 AND THEN
2 I'VE HEARD THE WORD 50.

3 BY MR. GIBSON:

4 THAT'S CORRECT.

5 BY THE COMMISSIONER:

6 AND I THOUGHT IT WAS AFTER -- I THOUGHT HE SAID
7 EARLIER IT WAS AFTER HE GOT OUT OF THE HOSPITAL.

8 BY MR. WYMAN:

9 THAT'S MY UNDERSTANDING OF THE TESTIMONY. I
10 DON'T THINK THAT WE NEED TO HAVE A REHASHING OF ALL
11 THAT.

12 CROSS EXAMINATION RESUMED BY MR. GIBSON:

13 Q. HOW MANY RELATIVES DO YOU -- COUSINS DO YOU HAVE
14 WORKING WITH PRIORITY LANDSCAPING?

15 A. HOW MANY YEARS?

16 Q. HOW MANY COUSINS, PRIMOS, COUSINS, DO YOU HAVE
17 WORKING FOR THE LANDSCAPING COMPANY?

18 BY MR. WYMAN:

19 OBJECTION, COMMISSIONER. HE'S TELLING THE
20 CLAIMANT THAT HE'S GOT TO STICK TO ENGLISH, AND
21 APPARENTLY MR. GIBSON IS SOMEWHAT BILINGUAL AND ---

22 BY THE COMMISSIONER:

23 WELL, YOU JUST SAID LET'S FAST-FORWARD IT, AND
24 IF THAT DID IT, I'LL NOTE THAT. I DON'T THINK IT
25 WAS COACHING IN ANY WAY. I UNDERSTAND WHAT YOU'RE

1 SAYING. I JUST WANT -- I DO NEED TO KNOW HOW MANY
2 RELATIVES HE HAS WORKING THERE.

3 BY MR. WYMAN:

4 SURE. I'M JUST REGISTERING MY OBJECTION,
5 COMMISSIONER.

6 WITNESS ANSWERS:

7 A. TWO.

8 CROSS EXAMINATION RESUMED BY MR. GIBSON:

9 Q. WHO ARE THEY?

10 A. MY COUSINS.

11 Q. WHAT ARE THEIR NAMES?

12 A. JUVENAL.

13 Q. JUVENAL AND WHO ELSE?

14 A. ANTONIO.

15 Q. ANTONIO, OKAY. DOES JUVENAL DO THE SAME JOB YOU DO
16 WITH ANOTHER CREW?

17 A. YES.

18 Q. SO HE IS THE RIGHT ARM SPANISH INTERPRETER FOR THE
19 OTHER GROUP?

20 A. YES.

21 Q. WHO IS THE SUPERVISOR OF THAT OTHER GROUP?

22 A. THE OTHER GUYS SPEAK ENGLISH, TOO.

23 Q. THE OTHER GROUP -- THE DAY YOU HAD THIS ACCIDENT,
24 FRANK WAS IN CHARGE OF THIS GROUP AND YOU AS HIS CO-
25 SUPERVISOR, CORRECT?

1 A. YES.

2 Q. WHO WAS IN CHARGE OF THE OTHER GROUP THAT WAS OUT
3 WORKING?

4 A. JUVE.

5 Q. JUVE, OKAY. IS JUVE ALSO BILINGUAL?

6 A. BILINGUAL?

7 Q. DOES HE SPEAK SPANISH AND ENGLISH?

8 A. YES.

9 Q. OKAY. JUVE IS YOUR COUSIN?

10 A. YES.

11 Q. AND ANTONIO IS YOUR COUSIN?

12 A. YES.

13 Q. WHAT DOES ANTONIO DO FOR THE COMPANY?

14 A. SAME THING.

15 Q. OKAY. HOW LONG HAS ANTONIO BEEN WORKING FOR THE
16 COMPANY?

17 A. TWO YEARS.

18 Q. HOW LONG HAS JUVE BEEN WORKING FOR THE COMPANY?

19 A. TWO YEARS.

20 Q. AND DO YOU HAVE ANY OTHER RELATIVES WORKING OVER
21 THERE?

22 A. NO.

23 Q. DOES LEONARDO HAVE ANY RELATIVES WORKING OVER THERE?

24 A. NO.

25 BY MR. GIBSON:

1 I DON'T HAVE ANY FURTHER QUESTIONS OF THIS
2 WITNESS.

3 BY THE COMMISSIONER:

4 ALL RIGHT. MR. WYMAN?

5 BY MR. WYMAN:

6 AND I WOULD NOTE FOR THE COMMISSIONER THAT
7 THESE PICTURES WERE SUBMITTED BY SUPPLEMENTAL APA,
8 TO WHICH THERE WAS NO OBJECTION, ON JANUARY ---

9 BY MR. GIBSON:

10 NO, I DO NOT OBJECT TO THE PICTURES.

11 BY MR. WYMAN:

12 SURE. I'M JUST TRYING TO ESTABLISH A DATE,
13 COMMISSIONER.

14 BY THE COMMISSIONER:

15 I UNDERSTAND.

16 BY MR. WYMAN:

17 I SUBMITTED THEM, I BELIEVE -- THEY WERE
18 DELIVERED TO MR. GIBSON'S OFFICE WEDNESDAY MORNING
19 BY HAND DELIVERY, WHICH MEANS THEY WENT IN THE MAIL
20 TO THE COMMISSION TUESDAY, AND THESE PICTURES WERE
21 INCLUDED.

22 BY THE COMMISSIONER:

23 ALL RIGHT. THERE'S NO OBJECTION.

24 BY MR. WYMAN:

25 OKAY. ALL RIGHT.

REDIRECT EXAMINATION BY MR. WYMAN:

Q. DID I TAKE THESE PICTURES?

A. NO.

Q. WAS I OUT HERE THIS DAY TAKING PICTURES WITH YOU?

A. WILLIAM.

Q. AND WILLIAM?

A. YEAH.

Q. WILLIAM WAS THERE?

A. YES.

Q. AND FRANK WAS THERE?

A. YES.

Q. AND LEONARDO WAS THERE?

A. YES.

Q. AND I WAS THERE?

A. YES.

Q. OKAY. IN FACT, I'M GOING TO POINT YOU TO PICTURE
NUMBER ---

BY MR. GIBSON:-

LET ME ASK FOR A CLARIFICATION.

BY MR. WYMAN:

IS THERE AN OBJECTION?

BY MR. GIBSON:

ARE YOU SAYING YOU WERE OUT THERE?

BY MR. WYMAN:

I WAS THERE.

1 BY MR. GIBSON:

2 OKAY. SO YOU WERE THERE THAT DAY. OKAY.

3 THAT'S WHAT I THOUGHT.

4 BY MR. WYMAN:

5 SURE.

6 BY THE COMMISSIONER:

7 ALL RIGHT. THANK YOU.

8 BY MR. GIBSON:

9 OKAY, AND HE WAS SAYING OTHERWISE.

10 REDIRECT EXAMINATION RESUMED BY MR. WYMAN:

11 Q. I'M GOING TO SHOW YOU EXHIBIT "C" PICTURE ONE FOR
12 THE RECORD. IS THAT MY VEHICLE, THE WHITE EXPLORER,
13 FORD EXPLORER?

14 A. YES.

15 Q. WHOSE TRUCK IS THAT?

16 A. FRANK -- WILLIAM.

17 Q. THAT'S WILLIAM'S, OKAY. THERE'S ANOTHER WHITE TRUCK
18 SHOWN IN THE PICTURE. WILLIAM'S TRUCK IS PARKED
19 UNDER THE TREE, IS THAT RIGHT?

20 A. YES.

21 Q. OKAY. AND I'M ASKING YOU, IS THAT MY TRUCK PARKED
22 TO THE RIGHT OF WILLIAM'S TRUCK?

23 A. I DON'T KNOW.

24 Q. YOU DON'T KNOW WHOSE TRUCK THAT IS?

25 A. NO.

1 Q. OKAY. I JUST WANTED TO MAKE CLEAR I WAS THERE.
2 WHEN SOMEONE FROM MR. GIBSON'S OFFICE CALLED YOU --
3 DO YOU REMEMBER THAT?

4 A. YES.

5 Q. ALL RIGHT. YOU SAID YOU DIDN'T TELL THEM ANYTHING
6 ABOUT A BET, RIGHT?

7 A. YES.

8 Q. AND I WANT TO MAKE SURE I UNDERSTOOD YOUR TESTIMONY.
9 DID YOU DO THAT TO PROTECT YOUR FRIEND RAMON?

10 A. I DO IT FOR TWO REASONS: FOR PROTECT RAMON AND FOR
11 DON'T LOSE MY JOB.

12 Q. OKAY. WERE YOU SCARED YOU WERE GOING TO LOSE YOUR
13 JOB BECAUSE YOU MADE THE BET?

14 A. YES.

15 Q. WERE YOU TRYING TO KEEP THAT FROM GETTING OUT, FROM
16 PEOPLE HEARING THAT?

17 A. YES.

18 Q. DID YOU NOT WANT WILLIAM TO HEAR ABOUT THE BET?

19 A. YES.

20 Q. WERE YOU SCARED THAT WILLIAM WOULD GET UPSET IF HE
21 FOUND OUT YOU MADE A BET?

22 A. YES.

23 Q. OKAY. SO THE BET YOU OFFERED RAMON FOR \$20, YOU
24 DIDN'T MAKE THAT UP TO COME HERE TODAY?

25 A. NO.

1 Q. YOU DIDN'T MAKE THAT UP TO PROTECT WILLIAM OR THE
2 COMPANY?

3 A. NO.

4 Q. THAT HAPPENED?

5 A. NO.

6 Q. IT DID HAPPEN? DID THE BET HAPPEN? DID YOU MAKE
7 THE BET TO RAMON?

8 A. YES.

9 Q. OKAY. THAT'S WHAT I'M ASKING YOU. DID YOU MAKE
10 THAT UP AT ALL?

11 A. YES.

12 Q. THAT HAPPENED?

13 A. YES.

14 BY MR. GIBSON:

15 HE'S ANSWERED IT SO ---

16 BY THE COMMISSIONER:

17 HE GAVE CONFLICTING ANSWERS TWICE. I BELIEVE
18 IF YOU SLOW DOWN A LITTLE BIT -- HE SAID YES ONE
19 TIME, NO ONE TIME, AND THEN A SECOND TIME HE SAID
20 YES ONE TIME AND NO, OR VICE VERSA. THE TWO ANSWERS
21 CONFLICTED. THE MAIN THING, I BELIEVE I UNDERSTAND
22 THE GIST OF IT, BUT IF YOU WANT TO ASK THE QUESTION
23 AGAIN SLOWLY...

24 REDIRECT EXAMINATION RESUMED BY MR. WYMAN:

25 Q. DID YOU OFFER RAMON \$20 TO CLIMB THE TREE AND JUMP

1 OUT?

2 A. YES.

3 Q. WERE YOU WORRIED THAT YOU WOULD LOSE YOUR JOB IF
4 WILLIAM FOUND OUT ABOUT THAT?

5 A. YES.

6 Q. FAIR ENOUGH. DID YOU SEE RAMON DRIVE THE LAWNMOWER
7 THAT DAY WHEN HE FELL OUT OF THE TREE?

8 A. NO.

9 Q. WHO DROVE THE LAWNMOWER THAT DAY?

10 A. LEONARDO.

11 BY MR. WYMAN:

12 THAT'S ALL I'VE GOT.

13 BY THE COMMISSIONER:

14 ALL RIGHT. MR. GIBSON?

15 RE CROSS EXAMINATION BY MR. GIBSON:

16 Q. ARE YOU ALSO TESTIFYING HERE TODAY TO PROTECT YOUR
17 JOB?

18 A. YES.

19 BY MR. GIBSON:

20 I HAVE NO FURTHER QUESTIONS.

21 BY MR. WYMAN:

22 CAN I FOLLOW UP, COMMISSIONER?

23 BY THE COMMISSIONER:

24 YES, SIR.

25 REDIRECT EXAMINATION BY MR. WYMAN:

1 Q. DID WILLIAM TELL YOU THAT IF YOU DIDN'T COME HERE
2 TODAY YOU WOULD LOSE YOUR JOB?

3 A. NO.

4 BY MR. WYMAN:

5 OKAY.

6 BY MR. GIBSON:

7 WELL, LET ME ASK ANOTHER QUESTION.

8 RE CROSS EXAMINATION BY MR. GIBSON:

9 Q. HAVE YOU EVER HAD ANY DISCIPLINARY PROBLEMS WITH
10 WILLIAM BEFORE?

11 A. NO.

12 Q. NO?

13 A. NO.

14 Q. HAVE YOU EVER BEEN TALKED TO ABOUT DRINKING ON THE
15 JOB?

16 A. NO.

17 Q. YOU HAVEN'T?

18 BY MR. WYMAN:

19 OBJECTION; ASKED AND ANSWERED.

20 BY THE COMMISSIONER:

21 WELL, HE SAID HE HAD NOT, UNLESS YOU HAVE ANY
22 ---

23 BY MR. WYMAN:

24 THAT'S SIMPLY...

25 RE CROSS EXAMINATION RESUMED BY MR. GIBSON:

1 Q. HAVE YOU EVER BEEN TALKED TO OR REPRIMANDED BY
2 WILLIAM FOR GAMBLING ON THE JOB?

3 A. NO.

4 Q. DO YOU KNOW OF ANY OTHER WORKERS THAT HAVE BEEN
5 REPRIMANDED FOR BEING DRUNK ON THE JOB?

6 A. NO.

7 Q. YOU DO NOT KNOW OF ANY?

8 A. NO.

9 Q. THAT'S YOUR TESTIMONY?

10 BY MR. WYMAN:

11 OBJECTION, COMMISSIONER. IT'S ASKED AND
12 ANSWERED.

13 BY MR. GIBSON:

14 ALL RIGHT. THAT'S FINE. I HAVE NO FURTHER
15 QUESTIONS.

16 BY THE COMMISSIONER:

17 ALL RIGHT. ANYTHING ELSE?

18 BY MR. WYMAN:

19 I HAVE NOTHING FURTHER FOR THIS WITNESS.

20 BY THE COMMISSIONER:

21 AND I JUST WANT TO MAKE CERTAIN, YOU DO STILL
22 WORK FOR THE DEFENDANT, IS THAT RIGHT? YOU STILL
23 WORK FOR PRIORITY LANDSCAPING?

24 BY THE WITNESS:

25 YES.

1 BY THE COMMISSIONER:

2 Q. AND YOU'RE ON THEIR PAYROLL?

3 A. YES.

4 Q. IS EVERYBODY WHO WAS THERE THAT DAY STILL WORKING
5 THERE OTHER THAN THE CLAIMANT?

6 A. YES, SIR.

7 Q. THEY'RE STILL WORKING THERE?

8 A. YES, SIR.

9 BY THE COMMISSIONER:

10 OKAY. I DON'T HAVE ANY OTHER QUESTIONS.

11 BY MR. GIBSON:

12 AND PLEASE ADMONISH HIM NOT TO BE DISCUSSING
13 HIS TESTIMONY WITH ANYONE.

14 BY MR. WYMAN:

15 I WILL CERTAINLY DO THAT. I WILL CERTAINLY DO
16 THAT.

17 (OFF THE RECORD)

18 BY THE COMMISSIONER:

19 WE'RE BACK ON THE RECORD. SIR, IF YOU WOULD
20 STATE YOUR FULL NAME FOR THE RECORD.

21 BY THE WITNESS:

22 FRANK WILLIAM SHOPPEL.

23 BY THE COURT REPORTER:

24 LAST NAME?

25 BY THE WITNESS:

1 S-H-O-P-P-E-L.

2 * * * * *

3 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
4 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
5 MATTER HEREIN:

6 FRANK WILLIAM SHOPPEL,

7 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
8 FOLLOWS:

9 BY THE COMMISSIONER:

10 ANSWER ANY QUESTIONS THAT MR. WYMAN MAY HAVE,
11 PLEASE.

12 DIRECT EXAMINATION BY MR. WYMAN:

13 Q. FRANK, YOU STILL WORK FOR PRIORITY LANDSCAPING?

14 A. YES.

15 Q. HOW LONG HAVE YOU WORKED THERE?

16 A. OFF AND ON FROM 1997 'TIL NOW.

17 Q. ARE YOU A SUPERVISOR?

18 A. YES.

19 Q. WHAT DO YOU SUPERVISE?

20 A. THE WORK BEING DONE.

21 Q. IS THERE A SET GROUP OF PEOPLE THAT YOU SUPERVISE
22 EVERY DAY?

23 A. IT VARIES.

24 Q. WERE YOU PRESENT AT FORT JOHNSON BAPTIST CHURCH ---

25 A. YES.

- 1 Q. --- WHEN RAMON FELL OUT OF A TREE?
- 2 A. MM-HMM. (AFFIRMATIVE RESPONSE)
- 3 Q. YES?
- 4 A. YES.
- 5 Q. I NEED YOU TO SAY YES OR NO. DID YOU INSTRUCT CESAR
- 6 TO TRANSLATE INTO SPANISH TO TELL RAMON TO CLIMB THE
- 7 OAK TREE TO CUT A LIMB?
- 8 A. NO.
- 9 Q. ALL RIGHT. NOW THAT WE'VE GOTTEN THAT OUT, LET'S
- 10 START WITH WHAT TIME YOU ARRIVED AT THE CHURCH THAT
- 11 DAY.
- 12 A. APPROXIMATELY BETWEEN 11 AND 12, I'M ASSUMING.
- 13 Q. OKAY. FAIR TO SAY IT WAS LUNCHTIME?
- 14 A. YEAH, IT WAS DEFINITELY LUNCH.
- 15 Q. ALL RIGHT. WERE ALL FOUR OF -- I SAY ALL FOUR;
- 16 THAT'S ASSUMING. TELL ME WHO WAS IN THE TRUCK.
- 17 A. IT WAS ME, RAMON, CESAR, AND LEONARDO.
- 18 Q. ALL RIGHT. ALL FOUR OF YOU RIDING IN THIS TRUCK
- 19 THAT'S SHOWN IN CLAIMANT'S EXHIBIT ONE?
- 20 A. YES.
- 21 Q. WERE YOU DRIVING?
- 22 A. YES.
- 23 Q. WHEN YOU PULLED INTO THE CHURCH, WHAT DID YOU DO?
- 24 A. I PARKED UNDER A TREE THERE AND WE WERE -- WE HAD
- 25 JUST STOPPED AT TACO BELL, SO WE SAT AND ATE FOR A

1 LITTLE BIT.

2 Q. AND YOU WERE DRIVING, SO DID YOU ACTUALLY PARK THE
3 CAR ---

4 A. YEAH.

5 Q. --- WHERE IT SAT ---

6 A. YES.

7 Q. --- WHILE YOU WERE AT THE CHURCH?

8 A. YEAH.

9 Q. ALL RIGHT. AFTER YOU PARKED THAT CAR WHEN YOU FIRST
10 ARRIVED AT THE CHURCH, DID YOU MOVE IT ---

11 A. NO.

12 Q. --- AT ANY POINT?

13 A. MM-MM. (NEGATIVE RESPONSE)

14 Q. NO?

15 A. NO.

16 Q. I'M GOING TO SHOW YOU A PICTURE. IT'S PICTURE
17 NUMBER FIVE, "C" NUMBER FIVE. IS THAT AN OAK TREE
18 IN THAT PICTURE?

19 A. YES, IT IS.

20 Q. IS THAT THE OAK TREE THAT RAMON FELL OUT OF?

21 A. JUMPED OUT OF.

22 Q. OKAY. DO YOU SEE THE WHITE PICKUP TRUCK PARKED
23 THERE?

24 A. YEAH.

25 Q. ALL RIGHT. IS THAT WHITE PICKUP TRUCK IN THE SAME

1 PLACE THAT THE WORK TRUCK WAS IN THE DAY RAMON FELL
2 OUT OF THE TREE?

3 A. YES.

4 Q. ALL RIGHT. WAS I PRESENT WHEN THESE PICTURES WERE
5 TAKEN?

6 A. YES.

7 Q. DID I TAKE THESE PICTURES?

8 A. YEAH.

9 Q. IS THAT YOU IN THAT PICTURE NEXT TO THE TREE?

10 A. YES.

11 Q. DID I ASK YOU TO MOVE THE PICKUP TRUCK INTO THE SPOT
12 WHERE THE WORK TRUCK WAS ON THE DAY HE FELL OUT OF
13 THE TREE?

14 A. YES.

15 Q. SO YOU MOVED THE TRUCK TO WHERE IT IS SHOWN IN THIS
16 PICTURE?

17 A. YES, I DID.

18 Q. YOU'VE TOLD US ALREADY THAT IT'S YOUR TESTIMONY YOU
19 DIDN'T TELL CESAR TO TELL RAMON TO CLIMB THIS TREE?

20 A. NO, I DID NOT.

21 Q. WHY DID RAMON CLIMB THE TREE?

22 A. A BET.

23 Q. WHO MADE THE BET?

24 A. CESAR.

25 Q. WHEN I SAY MADE THE BET, DOES THAT MEAN THAT CESAR

- 1 OFFERED HIM THE BET?
- 2 A. FIRST IT WAS OFFERED TO ME, A BET, WHICH THEN WAS
- 3 OFFERED TO LEONARDO, WHICH NEITHER OF US WANTED TO
- 4 DO IT, AND THEN IT WAS OFFERED TO RAMON.
- 5 Q. ALL RIGHT. HOW MUCH MONEY DID HE OFFER YOU?
- 6 A. FIFTY DOLLARS.
- 7 Q. DID YOU -- WHAT DID YOU SAY TO CESAR?
- 8 A. I SAID NO.
- 9 Q. DO YOU KNOW HOW MUCH HE OFFERED LEONARDO?
- 10 A. TWENTY DOLLARS.
- 11 Q. DID LEONARDO CLIMB THE TREE?
- 12 A. NO.
- 13 Q. WERE YOU STANDING THERE WHEN THE OFFER WAS MADE TO
- 14 RAMON?
- 15 A. YES.
- 16 Q. HOW MUCH WAS THAT?
- 17 A. TWENTY DOLLARS.
- 18 Q. DID RAMON CLIMB THE TREE RIGHT AFTER THE OFFER WAS
- 19 MADE?
- 20 A. YES.
- 21 Q. HOW DID RAMON GET INTO THE TREE?
- 22 A. BY A LAWNMOWER. HE STOOD ON THE BACK OF A
- 23 LAWNMOWER.
- 24 Q. AND THIS IS A RIDING LAWNMOWER?
- 25 A. YES.

1 Q. AND THIS IS A RIDING -- IS THIS A RIDING LAWNMOWER
2 THAT YOU GUYS CART AROUND IN THIS WHITE WORK TRUCK?

3 A. YEAH.

4 Q. WHO GOT THE LAWNMOWER OUT OF THE BACK OF THE TRUCK
5 WHEN YOU GOT TO THE CHURCH?

6 A. I BELIEVE IT WAS LEONARDO.

7 Q. DO YOU KNOW HOW THE LAWNMOWER GOT FROM THE BACK OF
8 THE TRUCK NEXT TO THE TREE SO THAT RAMON COULD CLIMB
9 ON IT?

10 A. ONE OF US HAD PUT IT THERE.

11 Q. DO YOU KNOW WHO THAT WAS THAT PUT IT THERE?

12 A. I'M NOT COMPLETELY SURE.

13 Q. OKAY.

14 A. I BELIEVE IT WAS CESAR, ACTUALLY.

15 Q. OKAY. I'M GOING TO SHOW YOU THAT SAME PICTURE
16 NUMBER FIVE THAT I SHOWED YOU A MINUTE AGO. AND YOU
17 SAID THAT'S YOU STANDING NEXT TO THE TRUNK OF THE
18 TREE?

19 A. MM-HMM. (AFFIRMATIVE RESPONSE)

20 Q. YES?

21 A. YES.

22 Q. REMEMBER TO SAY YES, PLEASE. IS THAT THE
23 APPROXIMATE LOCATION OF WHERE THE LAWNMOWER WAS
24 PARKED WHEN HE CLIMBED THE TREE?

25 A. YES.

1 Q. AND DID I ASK YOU TO STAND IN THE SPOT WHERE THE
2 LAWNMOWER WAS PARKED WHEN I TOOK THIS PICTURE?

3 A. YES.

4 Q. DID RAMON HAVE A TOOL IN HIS HAND ---

5 A. NO.

6 Q. --- WHEN HE CLIMBED THE TREE?

7 A. NO.

8 Q. ALL RIGHT. DID YOU HAVE A TOOL IN YOUR HAND THAT
9 YOU WERE PREPARED TO PASS TO RAMON?

10 A. NO.

11 Q. DID EITHER CESAR OR LEONARDO HAVE A TOOL IN THEIR
12 HAND THAT RAMON WOULD HAVE USED TO CUT A LIMB OUT OF
13 THAT TREE?

14 A. NO.

15 Q. DID YOU SEE EITHER OF THEM GO TO THE WORK TRUCK TO
16 GET A TOOL TO CUT A LIMB OUT OF THAT TREE?

17 A. NO.

18 Q. WHERE WERE YOU STANDING AS RAMON CLIMBED THE TREE?

19 A. SOMEWHERE AROUND THE BACK END OF THE TRAILER.

20 Q. OKAY. IF I SHOW YOU PICTURE NUMBER FIVE THAT WE
21 JUST LOOKED AT, COULD YOU POINT OUT WHERE YOU WERE
22 STANDING WHILE HE CLIMBED THE LIMB?

23 A. THE BACK END OF THE TRUCK APPROXIMATELY.

24 Q. AND WHAT YOU'RE POINTING AT ON PICTURE FIVE IS KIND
25 OF NEAR THE DRIVER'S SIDE REAR WHEEL ---

1 AND STAY?

2 A. NO.

3 Q. DID YOU GO INSIDE AT ALL?

4 A. NO.

5 Q. WERE YOU THERE -- DO YOU KNOW JUVENAL?

6 A. YEAH.

7 Q. IS IT JUVENAL? WAS JUVENAL AT WILLIAM'S HOUSE WHEN
8 YOU GOT THERE?

9 A. I CAN'T RECALL.

10 Q. DID YOU HAVE A CONVERSATION WITH WILLIAM WHEN YOU
11 GOT THERE THAT AFTERNOON TO DROP THE TRUCK OFF?

12 A. NO, NOT THAT I CAN RECALL.

13 Q. DID ANYONE INSTRUCT YOU TO TELL THIS STORY ABOUT A
14 BET?

15 A. NO.

16 Q. IS THAT ACTUALLY WHAT HAPPENED?

17 A. YEAH.

18 Q. HAVE YOU BEEN THREATENED AT ALL BY ANYONE AT
19 PRIORITY LANDSCAPING THAT YOU MIGHT LOSE YOUR JOB IF
20 YOU WERE NOT TO SAY ANYTHING ABOUT A BET?

21 A. NO.

22 Q. WERE YOU AT ONE TIME WORRIED THAT YOU MIGHT LOSE
23 YOUR JOB IF THIS BET CAME OUT?

24 A. YES.

25 Q. ALL RIGHT. WERE YOU WORRIED ABOUT LOSING YOUR JOB

1 WITH THIS BET GOING ON BECAUSE YOU WERE THE
2 SUPERVISOR OF THE CREW?

3 A. YES.

4 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS -- WELL,
5 IT'S PAGE FIVE OF THE CLAIMANT'S APA SUBMISSIONS. I
6 DON'T KNOW THAT IT QUALIFIES AS AN APA SO MUCH AS AN
7 EXHIBIT. BUT HAVE YOU SEEN THIS DOCUMENT BEFORE,
8 FRANK?

9 A. YES.

10 Q. ALL RIGHT. WHAT IS THAT?

11 A. IT'S A TESTIMONY I HAD WRITTEN THE DAY AFTER.

12 Q. OKAY. YOU SAY TESTIMONY. IS IT A STATEMENT?

13 A. STATEMENT, WHATEVER.

14 Q. ALL RIGHT. AND YOU SAY THE DAY AFTER. WHAT'S THE
15 ACTUAL DATE WRITTEN UP THERE ON THE TOP?

16 A. SEPTEMBER 5TH, 2008.

17 Q. ALL RIGHT. WHO TYPED THIS?

18 A. MY BOSS' WIFE.

19 Q. WERE YOU STANDING THERE WHEN IT WAS TYPED?

20 A. YEAH.

21 Q. DID YOU WATCH HER TYPE THIS?

22 A. YES.

23 Q. DID SHE TYPE WHAT YOU WERE TELLING HER?

24 A. YES, SHE DID.

25 Q. IN THAT STATEMENT DO YOU SAY ANYTHING ABOUT A BET?

1 A. NO.

2 Q. HAD YOU TOLD WILLIAM OR EVEN WILLIAM'S WIFE AT THIS
3 POINT ABOUT ANY BET?

4 A. NO, I DIDN'T.

5 Q. BUT THE BET HAD OCCURRED AT THIS POINT?

6 A. YEAH. YES, IT DID.

7 Q. AND YOU STATE THERE IN THAT -- DID YOU STATE IN THAT
8 STATEMENT SOMETHING ABOUT YOU THINKING THE CLAIMANT
9 CLIMBED FOR FUN?

10 A. YES.

11 Q. IS THAT WRITTEN THERE?

12 A. YES, IT IS.

13 Q. YOU JUST DIDN'T SAY ANYTHING ABOUT A BET?

14 A. NO, I DIDN'T.

15 Q. AND AS FAR AS YOU READ THIS NOW, IS THAT CONSISTENT
16 WITH YOUR TESTIMONY THAT YOU DIDN'T TELL HIM TO
17 CLIMB INTO THE TREE AND CUT A LIMB?

18 A. OH, YEAH, DEFINITELY.

19 Q. OKAY. WHILE RAMON WAS IN THE TREE, DID YOU TELL HIM
20 TO GET OUT?

21 A. NO.

22 Q. DID YOU EVER TELL HIM NOT TO CLIMB THE TREE?

23 A. NO.

24 Q. HAVE YOU EVER CLIMBED THAT TREE THAT RAMON FELL OUT
25 OF?

1 A. NO.

2 Q. IS THAT A TREE THAT IS MAINTAINED BY PRIORITY
3 LANDSCAPING?

4 A. NO.

5 Q. DOES PRIORITY LANDSCAPING CUT LIMBS OUT OF TREES
6 THAT BIG AS PART OF THEIR NORMAL BUSINESS?

7 A. NO.

8 Q. ALL RIGHT. I'LL SHOW YOU A PICTURE AGAIN,
9 DEFENDANTS' EXHIBIT "C" PICTURE NUMBER TWO. DO YOU
10 RECOGNIZE THAT PICTURE?

11 A. YES, I DO.

12 Q. DO YOU RECALL TAKING THAT PICTURE?

13 A. YES, I DO.

14 Q. I'M SORRY; DO YOU RECALL APPEARING IN THAT PICTURE?

15 A. YES.

16 Q. DID I TAKE THIS PICTURE?

17 A. YES, YOU DID.

18 Q. IS THAT YOU STANDING TO THE RIGHT OF A TREE?

19 A. YES.

20 Q. HOW TALL WOULD YOU SAY THAT TREE IS FROM BASE TO THE
21 TOP OF THE LIMBS SHOWN IN THIS PICTURE?

22 A. FIFTEEN TO TWENTY FEET.

23 Q. OKAY. GIVE THE COMMISSIONER AN ESTIMATE, JUST FROM
24 LOOKING AT THE PICTURE, OF HOW BIG AROUND YOU THINK
25 THE TRUNK OF THAT TREE IS, DIAMETER.

- 1 A. ABOUT THAT BIG.
- 2 Q. IS THAT A GOOD EXAMPLE OF A NORMAL TREE THAT
- 3 PRIORITY WOULD TRIM IN THE COURSE OF ITS BUSINESS?
- 4 A. YEAH.
- 5 Q. WOULD YOU EVER CLIMB INTO THIS TREE TO TRIM IT?
- 6 A. NEVER, NO.
- 7 Q. WHAT PART OF THIS TREE WOULD YOU NORMALLY TRIM?
- 8 A. THE BASE.
- 9 Q. YOU SAY THE BASE. DO YOU MEAN AROUND THE GROUND?
- 10 A. THAT ALSO, BUT THE LOWER LIMBS ON THE TREE.
- 11 Q. OKAY.
- 12 A. KEEP THEM UP BETTER FOR APPEARANCES AND THE BUSHES
- 13 UNDERNEATH.
- 14 Q. IF YOU NEEDED TO CUT A LIMB IN A TREE ABOUT THIS
- 15 SIZE, DO YOU HAVE A TOOL ON THE TRUCK THAT YOU COULD
- 16 DO THAT WITH?
- 17 A. YEAH.
- 18 Q. DO YOU HAVE A TOOL ON THE TRUCK YOU COULD DO THAT
- 19 WITH WITHOUT CLIMBING THE TREE?
- 20 A. YEAH.
- 21 Q. WHAT TOOL IS THAT?
- 22 A. A POLE SAW.
- 23 Q. AND HOW LONG IS THAT?
- 24 A. IT EXTENDS 11 OR 12 FEET.
- 25 Q. ALL RIGHT. JUST SO WE ALL UNDERSTAND WHAT THE POLE

1 SAW IS, IT'S BASICALLY A SMALL -- I DON'T WANT TO
2 PUT WORDS IN YOUR MOUTH, BUT IS IT A SMALL CHAINSAW
3 ON THE END OF A POLE?

4 A. YEAH.

5 Q. IT'S GOT A MOTOR ON IT?

6 A. YES, IT HAS.

7 Q. WITH A PULL START?

8 A. MM-HMM. (AFFIRMATIVE RESPONSE)

9 Q. ALL RIGHT. SO YOU COULD USE THAT TO CUT ANYTHING IF
10 YOU COULD REACH IT WITHIN 11 FEET; IS THAT WHAT
11 YOU'RE TELLING ME?

12 A. YEAH, A LITTLE MORE WITH THE LADDER.

13 Q. HAVE THERE BEEN TIMES WHERE YOU'VE USED THE
14 EXTENSION SAW, OR THE EXTENSION POLE SAW, AND A
15 LADDER?

16 A. YEAH.

17 Q. DO YOU CARRY A LADDER ON THE TRUCK?

18 A. YES, WE DO.

19 Q. HOW BIG IS THE LADDER ON THE TRUCK?

20 A. WE'VE GOT, I THINK, SIX, EIGHT, AND MAYBE TEN FOOT
21 LADDERS.

22 Q. ALL RIGHT. DO YOU USE STEP LADDERS THAT FOLD OUT?

23 A. YEAH.

24 Q. DO YOU HAVE ANY EXTENSION LADDERS?

25 A. YEAH.

1 Q. DO YOU CARRY THAT ON THE TRUCK EVERY DAY?

2 A. YEAH.

3 Q. WAS THERE A LADDER PULLED OFF THE TRUCK FOR RAMON TO
4 USE TO CLIMB THIS TREE?

5 A. NO.

6 Q. BUT IF YOU WERE GOING TO CUT HIGH LIMBS IN ANOTHER
7 TREE, WOULD YOU PULL THE LADDER OFF?

8 A. YEAH.

9 Q. IF YOU NEEDED IT?

10 A. MM-HMM. (AFFIRMATIVE RESPONSE)

11 Q. YES?

12 A. YES.

13 Q. OKAY. HAS ANYONE AT PRIORITY TOLD YOU, YOU WOULD
14 LOSE YOUR JOB IF YOU DIDN'T COME AND TESTIFY TODAY?

15 A. NO.

16 Q. NO MATTER WHAT YOU SAID?

17 A. NO.

18 Q. I'M GOING TO SHOW YOU ONE MORE PICTURE. ACTUALLY,
19 TWO MORE. PICTURE NUMBER SEVEN, AND IT'S EXHIBIT
20 "C." ARE YOU IN THAT PICTURE?

21 A. YEAH.

22 Q. DID I TAKE THAT PICTURE?

23 A. YES.

24 Q. ALL RIGHT. JUST FOR CLARIFICATION, WHEN DID WE TAKE
25 THESE PICTURES?

1 A. TUESDAY.

2 Q. IS THIS A TREE IN FRONT OF THE CHURCH?

3 A. YES, IT IS.

4 Q. AND DOES THAT SIGN SAY FORT JOHNSON BAPTIST CHURCH?

5 A. YES, IT DOES.

6 Q. SO THIS IS THE SAME CHURCH WHERE RAMON FELL?

7 A. JUMPED.

8 Q. OKAY. WHERE HE CAME OUT OF THE TREE?

9 A. YEAH.

10 Q. ALL RIGHT. WHAT ARE YOU DOING IN THAT PICTURE?

11 A. POINTING AT A LIMB THAT WE HAD TRIMMED OFF OF THAT

12 TREE.

13 Q. AND IS THE TREE IN THIS PICTURE A LITTLE BIGGER THAN

14 THE ONE I SHOWED YOU IN THE PREVIOUS PICTURE?

15 A. YEAH.

16 Q. WOULD YOU STILL TRIM A TREE THIS SIZE?

17 A. YEAH.

18 Q. WHERE WOULD YOU TRIM ON A TREE THIS SIZE?

19 A. SAME, BASE AND THE LOWER LIMBS OF THE TREE.

20 Q. AND I BELIEVE YOU SAID YOU'RE POINTING AT A CUT

21 MARK?

22 A. YES, I AM.

23 Q. IS THAT AN INDICATOR THAT A BRANCH HAS BEEN REMOVED

24 FROM THE TRUNK OF A TREE?

25 A. YES, IT IS.

1 Q. AND I'VE FLIPPED YOU OVER TO PICTURE NUMBER SIX. IS
2 THAT THE SAME TREE YOU'RE POINTING AT?

3 A. YEAH.

4 Q. IS THAT THE SAME CUT MARK YOU'RE POINTING AT?

5 A. YEAH.

6 Q. AND YOU CAN REACH THAT WITH YOUR HAND?

7 A. YEAH.

8 Q. AND IS THIS TYPICAL OF THE KIND OF TREE TRIMMING
9 THAT PRIORITY LANDSCAPING WOULD DO?

10 A. YES.

11 **BY MR. WYMAN:**

12 I THINK THAT'S ALL I'VE GOT, COMMISSIONER.

13 **BY THE COMMISSIONER:**

14 OKAY. ANSWER ANY QUESTIONS THAT MR. GIBSON MAY
15 HAVE, PLEASE.

16 **CROSS EXAMINATION BY MR. GIBSON:**

17 Q. MR. SHOPPEL, AS A SUPERVISOR OF THE GROUP, WOULD YOU
18 BE CONSIDERED THE LEADER OF THE GROUP?

19 A. YES.

20 Q. AND WOULD IT BE YOUR JOB TO MAKE SURE THE MEN WERE
21 OPERATING AND DOING THEIR JOBS SAFELY?

22 A. YES.

23 Q. WOULD IT ALSO BE YOUR JOB WORKING FOR MR. WILLIAM
24 AND PRIORITY TO MAKE SURE THE JOBS WERE MAINTAINED
25 AND THE WORKERS WERE DOING THINGS IN A SAFE MANNER?

1 A. YES.

2 Q. DID YOU EVER GIVE ANYONE ANY WRITTEN DOCUMENTS THAT
3 MR. WILLIAM HAD GIVEN YOU OR YOU HAD CREATED TO TELL
4 THEM NOT TO GO INTO BIG TREES?

5 A. NO.

6 Q. OKAY. AND ON THIS PARTICULAR DAY WHEN THIS WAS
7 GOING ON, WERE YOU THERE WHEN THE BET WAS BEING
8 OFFERED TO EACH OF THE PEOPLE?

9 A. YES.

10 Q. AND I BELIEVE YOU TESTIFIED THAT IT WAS 20 FEET
11 HIGH, THE TREE LIMB?

12 A. APPROXIMATELY.

13 Q. AND IS THAT NOT -- DO YOU KNOW WHAT A BASKETBALL
14 GOAL IS?

15 A. YES, SIR.

16 Q. DO YOU KNOW HOW HIGH A BASKETBALL GOAL IS?

17 A. YES, SIR.

18 Q. HOW HIGH IS THAT?

19 A. TEN FEET.

20 Q. SO IT'S ABOUT TWICE THE HEIGHT OF A BASKETBALL GOAL,
21 CORRECT?

22 A. APPROXIMATELY.

23 Q. AND DO YOU THINK SOMEONE GOING UP INTO THAT TREE
24 WOULD BE A SAFE THING TO DO?

25 A. NO.

1 Q. AND YOU WERE THE SUPERVISOR AND MANAGEMENT'S EYES
2 AND EARS ON THE JOB SITE, CORRECT?

3 A. YES.

4 Q. AND DID YOU STAND THERE AND WATCH THESE BETS BEING
5 EXTENDED BY YOUR RIGHT ARM, CESAR?

6 BY MR. WYMAN:

7 I'M GOING TO OBJECT TO THE REFERENCE TO RIGHT
8 ARM. I'M NOT SURE THAT THIS WITNESS HAS ---

9 BY THE COMMISSIONER:

10 I THINK IT'S BEEN ESTABLISHED THAT THE ONLY WAY
11 FOR YOU TO COMMUNICATE WITH THE GROUP, THIS GROUP,
12 WAS THROUGH CESAR, RIGHT? HE WAS BILINGUAL? IS
13 THAT FAIR TO SAY?

14 BY THE WITNESS:

15 YES, SIR.

16 BY THE COMMISSIONER:

17 RIGHT. SO, WHEN HE SAYS RIGHT ARM, WE'VE USED
18 THE WORD CO-SUPERVISOR. HE WAS A WORKING
19 SUPERVISOR, AS I UNDERSTAND IT, WHO ALSO SERVED AS A
20 TRANSLATOR; IS THAT FAIR TO SAY? CAN WE MOVE ON?
21 HE WORKED ---

22 BY THE WITNESS:

23 HE'S NOT SO MUCH A SUPERVISOR AS HE IS ---

24 BY THE COMMISSIONER:

25 AN INTERPRETER?

1 BY THE WITNESS:

2 AS HE WOULD JUST -- YEAH.

3 BY THE COMMISSIONER:

4 ALL RIGHT.

5 CROSS EXAMINATION RESUMED BY MR. GIBSON:

6 Q. AND DID YOU TELL HIM TO STOP DOING THAT? DID YOU
7 TELL CESAR NOT TO DO THAT?

8 A. NO.

9 Q. DID YOU WATCH RAMON GO AND CLIMB ON TOP OF THE
10 TRACTOR?

11 A. YES, I DID.

12 Q. DID YOU WATCH HIM CLIMB THE TREE?

13 A. YES, I DID.

14 Q. AS A SUPERVISOR, DID YOU EVER YELL AT HIM AND STOP
15 HIM AND TELL HIM TO GET BACK DOWN?

16 A. NO.

17 Q. DID YOU WATCH HIM WALK OUT ONTO THE LIMB?

18 A. YES, I DID.

19 Q. DID YOU SEE HIM AND WATCH HIM AS HE BECAME LOSING
20 HIS BALANCE?

21 A. HE DIDN'T -- HE DIDN'T -- HE NEVER LOST HIS BALANCE.

22 Q. OKAY. SO HE JUST DROPPED DOWN?

23 A. YEAH, HE CRADLED THE TREE.

24 Q. OKAY. AND DID YOU EVER TELL HIM, "DO NOT DO THAT"?

25 A. NO.

1 Q. WHY NOT?

2 A. IT HAPPENED QUICK, VERY QUICK.

3 Q. WELL, HOW LONG DOES IT TAKE SOMEONE TO GO AND MOVE A
4 TRACTOR TO A TREE?

5 A. BY THE TIME HE CLIMBED ON THE BACK OF THE TREE AND
6 CLIMBED UP THERE, HE SKIRTED ACROSS QUICKLY.

7 Q. MY QUESTION IS THIS: HOW LONG WOULD IT TAKE FOR
8 SOMEONE TO HAVE MOVED THE TRACTOR, WHOMEVER WAS
9 DRIVING IT, TO THE TREE?

10 A. TEN SECONDS.

11 Q. OKAY. AND THEN DID HE GO AND GET ON THE TRACTOR?

12 A. YEAH.

13 Q. HOW LONG DO YOU THINK THAT WOULD HAVE TAKEN?

14 A. TEN SECONDS.

15 Q. DID HE JOG OVER OR DID HE WALK OVER?

16 A. WALKED.

17 Q. HOW LONG DID IT TAKE HIM TO CLIMB UP THE TREE?

18 A. NOT VERY LONG.

19 Q. WHAT DO YOU THINK?

20 A. UNDER A MINUTE.

21 Q. UNDER A MINUTE. SO WE'RE NOW TALKING ABOUT TWO
22 MINUTES, ONE AND A HALF MINUTES?

23 A. WELL, FROM THE TIME HE WAS IN THE TREE AND I
24 REALIZED WHAT WAS GOING ON -- WELL, I KNEW WHAT WAS
25 GOING ON -- IT DIDN'T TAKE VERY LONG.

1 Q. WELL, YOU KNEW WHAT WAS GOING ON BEFORE HE LEFT THE
2 GROUND, CORRECT?

3 A. YEAH, BUT I DIDN'T TAKE IT TOO SERIOUSLY.

4 Q. YOU DIDN'T TAKE IT TOO SERIOUSLY?

5 A. MM-MM. (NEGATIVE RESPONSE)

6 BY MR. WYMAN:

7 WAS THAT A NO?

8 WITNESS ANSWERS:

9 A. NO.

10 CROSS EXAMINATION RESUMED BY MR. GIBSON:

11 Q. I'M GOING TO SHOW -- ON SEPTEMBER 4TH, OUT ON THE
12 JOB SITE, WERE YOU UNDER THE INFLUENCE OF ANY
13 ALCOHOL?

14 A. NO.

15 Q. WERE YOU UNDER THE INFLUENCE OF ANY DRUGS?

16 A. NO.

17 Q. WERE YOU UNDER THE INFLUENCE OF ANYTHING THAT WOULD
18 CAUSE YOU NOT TO BE ABLE TO THINK CLEARLY?

19 A. NO.

20 Q. OKAY. AND ON THE 5TH OF SEPTEMBER, THE FOLLOWING
21 DAY, WERE YOU UNDER THE INFLUENCE OF ANY DRUGS?

22 A. NO, SIR.

23 Q. ALCOHOL?

24 A. NO.

25 Q. ANYTHING TO KEEP YOU FROM THINKING CLEARLY?

1 A. NO.

2 Q. OKAY. I WANT YOU, IF YOU WOULD, TO READ THIS
3 DOCUMENT INTO THE RECORD.

4 BY THE COMMISSIONER:

5 AND FOR THE RECORD, THIS IS IN CLAIMANT'S APA
6 PAGE FIVE.

7 BY MR. GIBSON:

8 CORRECT. I'M SORRY.

9 BY THE COMMISSIONER:

10 ALL RIGHT. GO AHEAD, SIR.

11 WITNESS ANSWERS:

12 A. "ON THURSDAY, SEPTEMBER 4TH, 2008, I WAS WORKING AT
13 FORT JOHNSON BAPTIST CHURCH. I WAS WORKING WITH
14 CESAR RODRIGUEZ, RAMON ZEPEDA, AND LEONARDO SOLANO.
15 FOLLOWING OUR LUNCH BREAK, BEFORE RETURNING TO WORK
16 I HAD NOTICED THAT RAMON CLIMBED A LARGE OAK TREE AT
17 THE PERIMETER OF THE PROPERTY. WITHIN A COUPLE OF
18 MINUTES I SAW THAT RAMON WAS LAYING ON THE GROUND
19 BELOW THE TREE HE HAD JUST CLIMBED. RAMON CLIMBED
20 THE TREE WITHOUT BEING INSTRUCTED TO DO SO. GIVEN
21 THE SIZE OF THE TREE, IT IS NOT A TREE THAT IS
22 MAINTAINED BY OUR COMPANY. THERE WERE NO TRIMMING
23 TOOLS WHICH RAMON TOOK UP THE TREE. IT APPEARS THAT
24 RAMON CLIMBED THE TREE FOR FUN. HE WAS INJURED WHEN
25 HE JUMPED OR FELL OUT OF THE TREE. I DID NOT SEE

1 RAMON ACTUALLY FALL OUT OF THE TREE. I SAW HIM
2 CLIMB UP THE TREE AND A COUPLE MINUTES LATER ON THE
3 GROUND HURT."

4 CROSS EXAMINATION RESUMED BY MR. GIBSON:

5 Q. ARE YOU NOW SAYING IN LIVE TESTIMONY BEFORE THE
6 COMMISSIONER THAT THAT WAS A LIE?

7 A. PARTS.

8 Q. PARTS OF IT?

9 A. YES.

10 Q. AND WHAT PARTS WERE UNTRUE?

11 A. THAT I DIDN'T SEE HIM FALL OUT -- JUMP OUT OF THE
12 TREE.

13 Q. AND YOU ALSO SAID THAT HE WENT UP THE TREE FOR FUN?

14 A. WHICH IS ACTUALLY A BET.

15 Q. WAS HE LAUGHING WHEN HE WAS CLIMBING THE TREE?

16 A. NO.

17 Q. WHAT MADE YOU THINK IT WAS FUN?

18 BY MR. WYMAN:

19 OBJECTION, COMMISSIONER.

20 BY THE COMMISSIONER:

21 WELL, I'LL NOTE YOUR OBJECTION.

22 BY MR. WYMAN:

23 HE TESTIFIED IT WAS A BET.

24 BY THE COMMISSIONER:

25 I'LL NOTE YOUR OBJECTION. I THINK HE'S TRYING

1 TO -- I'D BE CURIOUS TO KNOW MYSELF.

2 CROSS EXAMINATION RESUMED BY MR. GIBSON:

3 Q. DID YOU THINK THAT WAS FUN?

4 A. NO.

5 Q. AND I BELIEVE YOU WERE TESTIFYING EARLIER ABOUT THIS
6 PIECE OF EQUIPMENT THAT REACHES UP TEN OR ELEVEN
7 FEET TO CUT TREE LIMBS?

8 A. YES.

9 Q. AND YOU'VE TESTIFIED THAT THIS WAS 20 FEET UP IN THE
10 AIR?

11 A. APPROXIMATELY.

12 Q. WOULD THAT LITTLE MOTORIZED DEVICE BE ABLE TO REACH
13 20 FEET TO CUT?

14 A. IT HAS A CHAIN -- WOULD IT BE ABLE TO REACH?

15 Q. YES.

16 A. FROM A LADDER.

17 Q. FROM A LADDER, BUT YOU DIDN'T HAVE A LADDER ON BOARD
18 THAT DAY?

19 A. I HAD A LADDER ON IT.

20 Q. YOU DID?

21 A. I BELIEVE I DID.

22 Q. OKAY. WELL, DID YOU HAVE IN THE TRUCK, EVEN THOUGH
23 IT WAS NOT, AS YOU TESTIFIED, OUT THERE WITH YOU,
24 DID YOU HAVE MACHETES?

25 A. YEAH.

1 Q. DID YOU HAVE HATCHETS?

2 A. NO HATCHETS.

3 Q. DID YOU HAVE AXES?

4 A. NO AXES.

5 Q. DID YOU HAVE SAWS, CHAINSAWS?

6 A. YES.

7 Q. DID YOU HAVE THE CLIPPERS, THE SHORT AND THE LONG
8 CLIPPERS?

9 A. HEDGE TRIMMERS?

10 Q. YES, HEDGE TRIMMERS.

11 A. YES.

12 Q. DID YOU HAVE ANY OTHER EQUIPMENT? ALL THE EQUIPMENT
13 WAS ON BOARD THE TRUCK TO DO THE JOB THAT DAY,
14 CORRECT?

15 A. YES.

16 Q. OKAY. YOU TESTIFIED WHEN YOU FIRST BEGAN THAT YOU
17 HAD WORKED FOR PRIORITY LANDSCAPING OFF AND ON FROM
18 1997 UNTIL NOW?

19 A. YES, SIR.

20 Q. WHEN YOU WERE NOT WORKING THERE, WHERE WERE YOU
21 WORKING?

22 A. I WAS CONSTANTLY -- I HAVEN'T HAD NO OTHER JOBS
23 BESIDES THIS SINCE I STARTED, I BELIEVE.

24 Q. WERE YOU EVER INCARCERATED?

25 A. YES, SIR.

- 1 Q. AND WHAT WERE YOU INCARCERATED FOR, SIR?
- 2 A. ASSAULT AND BATTERY WITH HIGH AND AGGRAVATED NATURE.
- 3 I HAD OTHER THINGS ON MY RECORD PREVIOUSLY.
- 4 Q. HAVE ANY BURGLARY CHARGES?
- 5 A. YES, I DO.
- 6 Q. HOW LONG DID YOU SERVE IN THE PENITENTIARY?
- 7 A. APPROXIMATELY, I THINK, BETWEEN 19 AND 22 MONTHS.
- 8 Q. AND WHAT YEARS WERE THOSE?
- 9 A. DURING '99 TO '01.
- 10 Q. AND IS THAT WHAT YOU MEANT EARLIER WHEN YOU
- 11 TESTIFIED YOU WORK OFF AND ON WITH PRIORITY
- 12 LANDSCAPING?
- 13 A. YEAH. I THINK BEFORE THAT I WENT BACK HOME TO
- 14 PENNSYLVANIA BRIEFLY AND CAME BACK.
- 15 Q. SO EXCEPT FOR THAT BRIEF INTERLUDE IN PENNSYLVANIA
- 16 AND YOUR TIME IN PRISON YOU'VE WORKED FOR ---
- 17 A. YES, SIR.
- 18 Q. --- PRIORITY LANDSCAPING?
- 19 A. YES, SIR.
- 20 Q. WAS WILLIAM AWARE OF ALL OF THESE CHARGES?
- 21 A. YES.
- 22 Q. DID YOU EVER MAKE ANY OBSCENE ---
- 23 A. YES.
- 24 Q. --- UNLAWFUL USE OF TELEPHONES?
- 25 A. YES.

1 BY MR. WYMAN:

2 OBJECTION TO THE REFERENCE TO OBSCENE,
3 COMMISSIONER.

4 BY MR. GIBSON:

5 I'LL STRIKE THAT.

6 BY THE COMMISSIONER:

7 RIGHT.

8 BY MR. WYMAN:

9 I'D ASK THAT THAT BE STRICKEN FROM THE RECORD.

10 WITNESS RESUMES:

11 A. THAT CHARGE HAD BEEN LOWERED.

12 CROSS EXAMINATION RESUMED BY MR. GIBSON:

13 Q. WAS THAT NOLLE PROSSED -- THEY CALL IT NOLLE PROS
14 DISMISSED -- THAT CHARGE?

15 A. DISORDERLY CONDUCT.

16 Q. OKAY. SO IT WAS LOWERED TO DISORDERLY CONDUCT?

17 A. MM-HMM. (AFFIRMATIVE RESPONSE)

18 Q. WAS THAT INVOLVING THE USE OF A PHONE?

19 A. YES, SIR.

20 Q. AND WAS IT INVOLVING THREATS THAT WERE MADE TO
21 SOMEONE?

22 A. YEAH.

23 Q. AND WHO WAS THAT?

24 A. IT WAS MICHAEL -- IT WAS SUPPOSED TO BE MICHAEL
25 SOMERSKI.

1 Q. HAVE YOU EVER TOLD CESAR TO TELL THIS GENTLEMAN,
2 RAMON, THAT HE WOULD GET IN TROUBLE IF HE KEPT
3 FOOLING WITH THIS LAWSUIT?

4 A. NO.

5 Q. HAVE YOU EVER BEEN CHARGED WITH PUBLIC DISORDERLY
6 CONDUCT?

7 BY MR. WYMAN:

8 OBJECTION, COMMISSIONER. I'D ASK IF THAT'S --
9 IF THAT'S A FELONY, WE CAN CERTAINLY DISCUSS IT. IF
10 IT'S A MISDEMEANOR, IT CERTAINLY DOESN'T GO TO HIS
11 VERACITY.

12 BY THE COMMISSIONER:

13 ALL RIGHT. I'LL NOTE THE -- DO YOU HAVE HIS
14 ENTIRE CRIMINAL RECORD THERE?

15 BY MR. GIBSON:

16 HE WAS CONVICTED AND SENTENCED UNKNOWN -- LET
17 ME JUST ASK ANOTHER QUESTION.

18 BY THE COMMISSIONER:

19 ALL RIGHT.

20 BY MR. GIBSON:

21 LET ME SEE IF THERE'S ANYTHING ELSE ON THERE OF
22 A SUBSTANTIAL ---

23 BY MR. WYMAN:

24 I HAVE NO OBJECTION TO HIM PUTTING THAT IN AS
25 AN EXHIBIT.

CROSS EXAMINATION RESUMED BY MR. GIBSON:

Q. HAVE YOU COMPLETED ALL OF YOUR PROBATION?

A. YES, SIR.

Q. HOW MANY YEARS PROBATION DID YOU HAVE?

A. I GOT ON PROBATION, I BELIEVE, PRIOR TO GOING TO PRISON IN '98, AND I BELIEVE I GOT OFF IN '05. I'M NOT EXACTLY SURE ON THE EXACT ---

Q. DID YOU EVER GET BROUGHT UP FOR VIOLATING YOUR PROBATION?

A. ONE TIME, YEAH.

Q. WHAT DID YOU DO?

A. I HAD KNOCKED A CAR WINDOW OUT.

Q. IS THAT THE MALICIOUS DESTRUCTION OF PROPERTY CHARGE?

A. YEAH.

BY MR. GIBSON:

THAT'S A SLED REPORT. I WOULD LIKE TO OFFER IT UP AS AN EXHIBIT.

BY THE COMMISSIONER:

ALL RIGHT.

BY MR. WYMAN:

I HAVE NO OBJECTION TO THAT. HE TESTIFIED THAT

BY THE COMMISSIONER:

LET'S GO OFF THE RECORD AND LET TIMMI MARK THAT

1 AS CLAIMANT'S FOUR.

2 (OFF THE RECORD)

3 (COURT REPORTER MARKS SLED REPORT CLAIMANT'S EXHIBIT
4 NUMBER FOUR.)

5 CROSS EXAMINATION RESUMED BY MR. GIBSON:

6 Q. AS THE SUPERVISOR IN SUPERVISING THESE GROUPS OF
7 MEN, WERE THEY MOSTLY HISPANICS?

8 A. YES.

9 Q. AND IN THIS PROCESS OF SUPERVISING THEM, DID YOU
10 EVER TELL THEM ANYTHING ABOUT WEARING HARNESES WHEN
11 THEY CLIMBED UP IN TREES?

12 A. NOBODY SHOULD BE IN A TREE.

13 Q. NOBODY SHOULD BE IN A TREE. ARE YOU TESTIFYING THAT
14 THERE WAS NOBODY THAT WOULD EVER CLIMB A TREE LIKE
15 THIS ONE?

16 A. NOT INSTRUCTED TO DO SO, NO.

17 Q. WELL, WHEN YOU'RE STANDING THERE AND YOUR FELLOW
18 EMPLOYEE CESAR IS ENCOURAGING AND A BETTING IS GOING
19 ON FOR SOMEONE TO GO 20 FEET UP IN THE AIR, ARE YOU
20 NOT ENCOURAGING THEM IF YOU DON'T DO ANYTHING ABOUT
21 IT IF YOU'RE THE SUPERVISOR?

22 A. WE WERE ON A LUNCH BREAK, SO NO.

23 Q. WELL, DURING A LUNCH BREAK YOU'RE STILL WORKING FOR
24 THE COMPANY ON THE SITE, CORRECT?

25 A. AFTER THAT, SURE.

1 Q. DID YOU EVER TELL CESAR THAT THE STORY SHOULD BE
2 THAT HE STEPPED IN A HOLE OR A DITCH?

3 A. YES.

4 Q. YOU DID?

5 A. MM-HMM. (AFFIRMATIVE RESPONSE)

6 Q. OKAY. SO, RIGHT AFTER IT HAPPENED YOU TALKED, YOU
7 AND CESAR, AND YOU DETERMINED THAT YOU WERE GOING TO
8 TELL HIM TO SAY HE STEPPED IN A HOLE?

9 BY MR. WYMAN:

10 OBJECTION. THAT JUST ASSUMES THERE WAS A
11 CONVERSATION BETWEEN CESAR AND FRANK. THERE'S BEEN
12 NO SUCH TESTIMONY.

13 BY THE COMMISSIONER:

14 I'LL NOTE YOUR OBJECTION. I DON'T KNOW HOW
15 ELSE HE WOULD HAVE KNOWN IT WITHOUT -- HE'S NOW
16 STATED THAT THE MECHANICS OF THE ACCIDENT, HE TOLD
17 CESAR WHAT THEY SHOULD BE, AND I NEED TO KNOW THAT.
18 SO, I'LL NOTE ---

19 CROSS EXAMINATION RESUMED BY MR. GIBSON:

20 Q. DID YOU TELL CESAR WHAT TO TELL HIM HE SHOULD SAY
21 ABOUT WHAT HAPPENED?

22 A. YES, WE DISCUSSED IT.

23 Q. AND DID YOU DISCUSS HIM SAYING THAT HE HAD STEPPED
24 IN A HOLE?

25 A. YES.

1 Q. AND WAS THAT PART OF YOUR EFFORT AS SUPERVISOR TO
2 COVER UP WHAT HAD HAPPENED?

3 A. YEAH.

4 Q. AND IS THAT ALSO THE REASON YOU FILED A FALSE
5 STATEMENT WITH YOUR EMPLOYER ON THE FOLLOWING DAY?

6 A. YEAH.

7 Q. AND ARE YOU STILL WORKING AS A SUPERVISOR SINCE THE
8 DATE OF THIS ACCIDENT?

9 A. YES, SIR.

10 Q. AND YOU'RE WORKING GROUPS OF MEN FOR MR. WILLIAM
11 EACH AND EVERY DAY?

12 A. YES, SIR.

13 BY MR. GIBSON:

14 I DON'T HAVE ANY FURTHER QUESTIONS.

15 BY THE COMMISSIONER:

16 ALL RIGHT. MR. WYMAN?

17 REDIRECT EXAMINATION BY MR. WYMAN:

18 Q. LET ME MAKE SURE I UNDERSTAND. NOW, YOU WERE
19 PRESENT AND -- ARE YOU SAYING HERE TODAY THAT YOU
20 WERE PRESENT AND WITNESSED A BET?

21 A. YES, I DID.

22 Q. DID YOU COME UP WITH THE STEPPING-IN-A-HOLE STORY?

23 A. YES.

24 Q. AND WAS THAT ANOTHER EFFORT ON YOUR BEHALF TO KEEP
25 YOUR JOB?

1 A. AND RAMON'S. I WAS WORRIED ABOUT BOTH.

2 Q. WERE YOU THREATENED IN ANY WAY TO CHANGE YOUR STORY?

3 A. NO.

4 Q. ALL RIGHT. THE STORY THAT YOU'RE TELLING NOW BEFORE
5 THIS COMMISSIONER UNDER OATH TO TELL THE TRUTH THAT
6 THERE WAS A BET THAT PROMPTED RAMON TO GET IN THE
7 TREE, IS THAT THE TRUTH?

8 A. YEAH.

9 Q. ALL RIGHT. DO YOU CONSIDER RAMON A GROWN MAN?

10 A. YEAH.

11 Q. DO YOU CONSIDER RAMON A GROWN MAN THAT CAN MAKE HIS
12 OWN DECISIONS?

13 A. YES, I DO.

14 Q. ALL RIGHT. AND WOULD YOU CONSIDER TAKING A BET TO
15 CLIMB A TREE ---

16 A. ME?

17 Q. --- A DECISION THAT A GROWN MAN WOULD HAVE TO MAKE
18 ON HIS OWN?

19 A. YES.

20 Q. ALL RIGHT. HE'S OLDER THAN YOU, CORRECT?

21 A. YES.

22 BY MR. WYMAN:

23 THAT'S ALL I'VE GOT.

24 BY MR. GIBSON:

25 I DON'T HAVE ANY FURTHER QUESTIONS.

1 BY THE COMMISSIONER:

2 LET ME SEE IF I HAVE ANY. IN THIS STATEMENT
3 THAT YOU MADE ON PAGE FIVE, THIS STATEMENT HERE THAT
4 YOU'VE ADMITTED LEFT OUT THE BET, HOW DID THAT COME
5 ABOUT? WHO TOLD YOU TO MAKE THAT STATEMENT?

6 BY THE WITNESS:

7 NOBODY TOLD ME TO. IT WAS MY OWN STATEMENT. I
8 CAME UP WITH IT ON MY OWN.

9 BY THE COMMISSIONER:

10 IS THAT A NORMAL THING IF SOMEBODY GETS HURT;
11 YOU JUST GENERATE A STATEMENT LIKE THAT?

12 BY THE WITNESS:

13 THIS WAS THE FIRST TIME ANYTHING LIKE THIS
14 HAS...

15 BY THE COMMISSIONER:

16 I DON'T HAVE ANY OTHER QUESTIONS. YOU HAD
17 ANOTHER WITNESS?

18 BY MR. WYMAN:

19 MAY I ASK A QUESTION THAT WOULD CLARIFY THAT
20 VERY POINT, YOUR QUESTION ABOUT THE ---

21 BY THE COMMISSIONER:

22 ALL RIGHT. I'M JUST CURIOUS TO KNOW HOW -- IT
23 APPEARED OUT OF THIN AIR APPARENTLY, AND I DON'T --
24 IF IT WAS ASKED, WE'VE HAD SO MUCH TESTIMONY, I MAY
25 HAVE MISSED IT. I WAS JUST CURIOUS TO KNOW HOW IT

1 POPPED UP.

2 BY MR. WYMAN:

3 SURE.

4 REDIRECT EXAMINATION RESUMED BY MR. WYMAN:

5 Q. AND I WOULD ASK YOU, FRANK, DID WILLIAM OR HIS WIFE
6 ASK YOU TO COME OVER AND GIVE A STATEMENT?

7 A. YES.

8 Q. OKAY. DID THEY TELL YOU WHAT TO SAY IN THE
9 STATEMENT?

10 A. NO.

11 BY MR. WYMAN:

12 ALL RIGHT.

13 BY MR. GIBSON:

14 LET ME ASK A FOLLOW-UP.

15 BY THE COMMISSIONER:

16 ALL RIGHT, SIR.

17 RECROSS EXAMINATION BY MR. GIBSON:

18 Q. HOW FAR DID YOU GO IN SCHOOL?

19 A. NINTH GRADE. I DID GET MY G.E.D.

20 Q. YOU GOT YOUR G.E.D.?

21 A. YES, SIR.

22 Q. DID YOU GO TO COLLEGE OR ---

23 A. NO.

24 Q. --- ANYTHING OF THAT NATURE? AND WHO TYPED THIS
25 DOCUMENT UP?

1 A. WILLIAM'S WIFE DID THAT.

2 Q. DID YOU SIT THERE WITH HER WHILE SHE DID IT?

3 A. YES, RIGHT NEXT TO HER.

4 Q. DID SHE DO IT ON HER COMPUTER?

5 A. YES, SIR.

6 Q. AND DID YOU DICTATE TO HER OR SAY IT AND SHE TYPED

7 IT AS YOU SAID IT?

8 A. YES.

9 Q. HOW LONG DID YOU SPEND DOING THIS STATEMENT?

10 A. FIFTEEN MINUTES APPROXIMATELY.

11 Q. WAS SHE A NOTARY?

12 A. WAS SHE?

13 Q. YES.

14 A. OH, I DON'T KNOW.

15 Q. DURING THE TIME YOU WERE TELLING HER THIS -- DO YOU

16 RESPECT HER?

17 A. YES, I DO.

18 Q. DID YOU THINK ABOUT, "I'M LYING TO THIS WOMAN"?

19 A. YEAH, I FELT BAD. YES, I DID.

20 Q. DID SHE DISCUSS THE WORKERS' COMPENSATION INSURANCE

21 WITH YOU?

22 A. THERE WAS NO DISCUSSION. THERE WAS ---

23 Q. WAS THERE TALK ---

24 A. THAT MY STATEMENT WOULD BE GIVEN TO, BUT THAT'S

25 ABOUT IT.

1 Q. DID THEY SAY YOUR STATEMENT WOULD BE GIVEN TO AN
2 INSURANCE COMPANY?

3 A. YEAH, THAT'S ABOUT IT.

4 Q. AND WHO TOLD YOU THAT?

5 A. I THINK -- I THINK MY BOSS, WILLIAM, HAD CALLED ME
6 THAT NIGHT ON THE 4TH AND ASKED -- OR MAYBE ON THE
7 5TH AT WORK AND ASKED ME IF I WOULD DO THAT AFTER
8 WORK.

9 Q. OKAY. DID HE ASK YOU OR DID HE TELL YOU, "COME ON
10 OVER TO THE OFFICE TOMORROW MORNING"?

11 A. NO, HE ASKED ME.

12 Q. WERE YOU NOT HAVING A WORK DAY THAT DAY? WHAT DAY
13 OF THE WEEK WAS IT?

14 A. I CAN'T -- I BELIEVE IT WAS EITHER -- IT WAS THE 5TH
15 OF SEPTEMBER. I BELIEVE IT MIGHT HAVE BEEN A
16 FRIDAY.

17 Q. OKAY. DID YOU NOT HAVE OTHER WORK THAT DAY?

18 A. OR A SATURDAY. I CAN'T REMEMBER WHETHER I WORKED OR
19 NOT.

20 BY MR. GIBSON:

21 OKAY. I DON'T HAVE ANY FURTHER QUESTIONS.

22 BY THE COMMISSIONER:

23 MR. WYMAN?

24 BY MR. WYMAN:

25 NOTHING, COMMISSIONER. I WOULD LIKE TO, IF YOU

1 WOULDN'T MIND, TAKE NOTICE OF WHAT ACTUAL DAY
2 SEPTEMBER 5TH WAS, AND I CAN LOOK IT UP ON MY
3 CALENDAR REAL QUICK.

4 BY MR. GIBSON:

5 YES, LET'S DO THAT.

6 BY THE COMMISSIONER:

7 ALL RIGHT.

8 BY MR. WYMAN:

9 JUST SO THERE'S NO GUESSING GOING ON.

10 BY MR. GIBSON:

11 YOU'VE GOT ONE OF THOSE BLACKBERRIES. YOU'RE A
12 SMART FELLOW.

13 BY MR. WYMAN:

14 AND I'M NOT CHECKING MY EMAIL. I ALWAYS FEEL
15 LIKE SOMEBODY THINKS I'M CHECKING MY EMAIL IN THE
16 MIDDLE OF A HEARING WHEN I PULL THIS OUT.

17 BY THE COMMISSIONER:

18 WHILE YOU'RE LOOKING, LET ME ASK THE WITNESS
19 ONE LAST QUESTION. ARE YOU AWARE OF ANY MONEY THAT
20 WAS TAKEN UP OR GIVEN TO THE CLAIMANT?

21 BY THE WITNESS:

22 I BELIEVE THERE WAS A CHECK ONE TIME FOR SOME
23 MEDICINE.

24 BY THE COMMISSIONER:

25 Q. WAS IT PAID BY CHECK?

1 A. I WOULD ASSUME SO.

2 Q. DID YOU GIVE HIM ANY MONEY?

3 A. I MEAN, ONE TIME ---

4 Q. NOT PERSONAL MONEY. I MEAN ---

5 A. YES, I DID ONE TIME.

6 Q. AND HOW MUCH WAS IT?

7 A. WE MADE A BIN AT WORK, AND I HAD PUT \$20 IN THERE TO
8 HELP HIM OUT WITH HIS MEDICINE.

9 Q. BUT WAS THERE ANY MONEY OTHER THAN WHAT YOU ALL TOOK
10 UP IN YOUR LITTLE BOX? WAS THERE ANY OTHER MONEY
11 GIVEN TO HIM? YOU MENTIONED A CHECK?

12 A. YES, ONE TIME. I BELIEVE SO.

13 Q. DO YOU REMEMBER HOW MUCH THAT WAS?

14 A. MAYBE \$100.

15 Q. RIGHT, AND WAS THERE A SECOND CHECK?

16 A. OH, I'M NOT SURE.

17 Q. DID YOU GIVE HIM THE FIRST CHECK?

18 A. NO.

19 Q. HOW DID HE GET THAT FIRST CHECK, OR DO YOU KNOW?

20 A. I BELIEVE IT WAS GIVEN TO CESAR AND GIVEN TO HIM.
21 THEY LIVE TOGETHER.

22 BY THE COMMISSIONER:

23 I SEE. OKAY. I DON'T HAVE ANY OTHER
24 QUESTIONS. DO YOU KNOW WHAT DAY THAT WAS?

25 BY MR. WYMAN:

1 IT WAS A FRIDAY, COMMISSIONER.

2 BY MR. GIBSON:

3 THE 6TH OR THE 5TH?

4 BY MR. WYMAN:

5 THE 5TH WAS A FRIDAY. IF YOU'D TAKE JUDICIAL
6 NOTICE OF THAT, PLEASE.

7 BY THE WITNESS:

8 THEN IT WAS AFTER WORK.

9 BY THE COMMISSIONER:

10 IT WAS DATED THE 5TH, I NOTICED. IT RELATES TO
11 THE 4TH, BUT THE DATE ON THE TOP OF IT IS 9/5.
12 ANYTHING ELSE?

13 BY MR. GIBSON:

14 I DON'T THINK SO. I'M OKAY, I THINK.

15 BY THE COMMISSIONER:

16 ALL RIGHT, SIR. ANY OTHER WITNESSES?

17 BY MR. WYMAN:

18 ONE MORE, MR. HAMPTON, AND WE'LL BE DONE.

19 BY THE COMMISSIONER:

20 ALL RIGHT, SIR.

21 BY MR. WYMAN:

22 I'LL BE QUICK.

23 BY THE COMMISSIONER:

24 IF YOU'D STATE YOUR FULL NAME FOR THE RECORD.

25 BY THE WITNESS:

1 WILLIAM ROBERT HAMPTON.

2 * * * * *

3 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
4 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
5 MATTER HEREIN:

6 WILLIAM ROBERT HAMPTON,

7 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
8 FOLLOWS:

9 BY THE COMMISSIONER:

10 ANSWER ANY QUESTIONS YOUR LAWYER MAY HAVE,
11 PLEASE.

12 DIRECT EXAMINATION BY MR. WYMAN:

13 Q. MR. HAMPTON, DO YOU OWN PRIORITY LANDSCAPING?

14 A. YES, I DO.

15 Q. HOW LONG HAVE YOU OWNED THAT BUSINESS IN ITS CURRENT
16 FORM?

17 A. SINCE 1996.

18 Q. OKAY. WHAT IS THE BUSINESS OF PRIORITY LANDSCAPING
19 AND LAWN CARE?

20 A. WE PROVIDE LAWN MAINTENANCE AND LANDSCAPING
21 SELECTION.

22 Q. OBVIOUSLY YOU'VE BEEN PRESENT WITH US ALL AFTERNOON,
23 ALL MORNING AND AFTERNOON NOW. YOU ARE AWARE OF THE
24 DISCUSSION ABOUT THE FALL OUT OF THE TREE, AND I
25 WOULD ASSUME YOU WERE AWARE OF THAT SITUATION,

1 OBVIOUSLY, FROM DAY ONE, CORRECT?

2 A. OF THE FALL OUT OF THE TREE?

3 Q. YES.

4 A. FROM THE DAY THAT IT OCCURRED?

5 Q. YES.

6 A. I WAS AWARE OF IT WHEN -- THE DAY IT OCCURRED FRANK
7 CONTACTED ME AND SAID SOMEBODY WAS INJURED ON THE
8 JOB AND THAT SOMEONE HAD FALLEN INTO A DITCH. IT'S
9 ON DAY ONE.

10 Q. YOUR UNDERSTANDING WAS THAT IT WAS FALLING IN A
11 DITCH?

12 A. FALLING IN A DITCH.

13 Q. AND DID YOU GET THAT FROM FRANK?

14 A. I GOT THAT FROM FRANK.

15 Q. OKAY. WHEN WERE YOU TOLD THAT HE FELL OUT OF A
16 TREE?

17 A. WHEN I ARRIVED AT THE DOCTOR'S OFFICE, IT WAS LATER
18 IN THE AFTERNOON. THIS WOULD BE AT DOCTORS CARE.
19 AND THERE WAS A SPANISH-SPEAKING NURSE THERE, AND
20 THE SPANISH-SPEAKING NURSE HAD ASKED RAMON OR HIS
21 WIFE, I CAN'T REMEMBER WHICH, WHAT HAD HAPPENED, AND
22 RAMON SAID HE HAD FALLEN INTO A DITCH. AND IN
23 TALKING WITH THE DOCTOR THERE ---

24 Q. YOU CAN'T TELL US WHAT THE DOCTOR SAID.

25 A. OKAY.

1 Q. LET'S STAY AWAY FROM THAT, AND I'LL JUST AVOID THE
2 OBJECTION FROM MR. GIBSON TO HEARSAY. MY QUESTION
3 WAS, WHEN EXACTLY WERE YOU TOLD THAT HE FELL OUT OF
4 A TREE?

5 A. WHEN WAS I EXACTLY TOLD THAT HE FELL OUT OF A TREE?
6 THE STATEMENT.

7 Q. THAT FRANK GAVE?

8 A. THE STATEMENT THAT FRANK GAVE.

9 Q. THE ONE HE JUST TESTIFIED TO?

10 A. YES.

11 BY MR. WYMAN:

12 JUST FOR THE RECORD, THAT IS PAGE NUMBER FIVE
13 OF THE CLAIMANT'S APAs.

14 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

15 Q. I'M GOING TO SHOW IT TO YOU JUST MAKE SURE THAT
16 WE'RE TALKING ABOUT THE SAME STATEMENT.

17 A. YES.

18 Q. ALL RIGHT. AND YOUR WIFE TYPED THAT?

19 A. YES.

20 Q. ALL RIGHT. SO THAT'S WHEN YOU FOUND OUT THERE WAS A
21 FALL OUT OF A TREE INVOLVED?

22 A. YES, OTHER THAN THE DOCTOR.

23 Q. OKAY. SO YOU WEREN'T PRESENT WHEN ALL THIS
24 HAPPENED?

25 A. NO, I WAS NOT.

1 Q. YOU CERTAINLY DIDN'T SEE THE FALL OUT OF THE TREE?

2 A. NO, I DID NOT.

3 Q. ALL RIGHT. LET'S TALK ABOUT THE TREE. YOU'VE HEARD
4 US REFERENCING THESE PICTURE ALL DAY. THIS IS,
5 AGAIN, EXHIBIT "C." I'LL SHOW YOU PAGE ONE. IS
6 THAT A PICTURE OF FORT JOHNSON BAPTIST CHURCH?

7 A. YES, IT IS.

8 Q. IS THAT THE JOB LOCATION WHERE RAMON FELL OUT OF A
9 TREE?

10 A. YES.

11 Q. DOES THIS PICTURE REFLECT YOUR UNDERSTANDING OF THE
12 LIMB THAT RAMON FELL OUT OF?

13 A. YES, IT DOES.

14 Q. OKAY. I'M GOING TO SHOW YOU ANOTHER PICTURE, THAT
15 IS NUMBER THREE, EXHIBIT "C" NUMBER THREE. IS THAT
16 THE SAME TREE?

17 A. YES.

18 Q. ALL RIGHT. IS THAT A PICTURE OF BASICALLY THE WHOLE
19 TREE?

20 A. YES.

21 Q. DOES IT LOOK LIKE THAT PICTURE IS TAKEN FROM A
22 DISTANCE?

23 A. YES.

24 Q. AND I TOOK THAT PICTURE?

25 A. YES.

1 Q. IS THAT THE SIZE OAK TREE THAT YOU WOULD CUT ---

2 A. NO.

3 Q. --- OR TRIM?

4 A. NO.

5 Q. ALL RIGHT. WHY WOULDN'T YOU TRIM AN OAK TREE THIS
6 SIZE?

7 A. THERE'S THREE THINGS OUR BUSINESS DOES NOT DO. IT
8 DOES NOT TRIM LARGE OAK TREES. WE HAVE A
9 SUBCONTRACTOR TO DO THAT. IT DOES NOT PROVIDE
10 IRRIGATION SERVICES. WE HAVE A SUBCONTRACTOR FOR
11 THAT. AND WE DO NOT PROVIDE CHEMICAL TREATMENTS.
12 WE HAVE A SUBCONTRACTOR FOR THAT.

13 Q. ARE YOU A CERTIFIED ARBORIST?

14 A. NO, I'M NOT.

15 Q. DO YOU HAVE ONE EMPLOYED BY PRIORITY LANDSCAPING?

16 A. WE HAVE ONE THAT WE HAVE USED FOR A NUMBER OF YEARS,
17 YES.

18 Q. OKAY. DOES HE WORK FOR PRIORITY LANDSCAPING?

19 A. NO, HE DOES NOT.

20 Q. WHAT'S HIS NAME?

21 A. HIS NAME IS RICHARD VAN KIRK.

22 Q. DOES HE OWN A BUSINESS?

23 A. YES, HE DOES.

24 Q. WHAT IS THAT BUSINESS?

25 A. BUDGET TREE SERVICE.

1 Q. IS BUDGET TREE SERVICE JUST AS ITS NAME IMPLIES, A
2 FULL TREE SERVICE?

3 A. A FULL TREE SERVICE. HE'S A CERTIFIED ARBORIST.

4 Q. IF ONE OF YOUR CLIENT PROPERTIES NEEDED A FULL TREE
5 REMOVED FROM THE BASE, WOULD YOU DO THAT?

6 A. NO, WE'D HAVE THE TREE SERVICE PROVIDE THAT SERVICE.

7 Q. YOU WOULD CALL -- WOULD YOU CALL RICHARD?

8 A. CALL RICHARD.

9 Q. HAVE YOU EVER INSTRUCTED ANY OF YOUR CREWS TO TRIM
10 THE TREE SHOWN IN THESE PICTURES IN EXHIBIT "C"?

11 A. NEVER.

12 Q. ALL RIGHT. IF FORT JOHNSON BAPTIST CHURCH CALLED
13 YOU AND SAID, "WE HAVE A PROBLEM IN A LARGE OAK
14 TREE," WHAT WOULD BE YOUR NEXT MOVE?

15 A. MY NEXT MOVE WOULD BE TO TELL THEM I NEED TO CONTACT
16 RICHARD FROM BUDGET TREE SERVICE, AT WHICH POINT WE
17 WOULD BOTH GO OUT THERE, TAKE A LOOK AT IT WITH THE
18 PROPERTY MANAGER OR OWNER.

19 Q. IS THAT WHEN THE DECISION WOULD BE MADE ABOUT
20 DEALING WITH THE ISSUE WITH THE TREE?

21 A. RIGHT, AND RICHARD WOULD TAKE A LOOK AT IT. HE
22 WOULD GIVE ME A PRICE. I WOULD TAKE THAT QUOTE. I
23 WOULD SUBMIT A PRICE TO THE CHURCH IN THIS CASE, OR
24 THE OWNER, AND THEY WOULD MAKE A DECISION AS TO
25 WHETHER OR NOT THEY WANTED RICHARD TO COME OUT AND

1 TAKE CARE OF IT.

2 Q. DOES YOUR COMPANY OWN A CHERRY PICKER TRUCK?

3 A. NO, IT DOES NOT.

4 Q. ALL RIGHT. IS THAT SOMETHING THAT'S GENERALLY
5 REQUIRED IN TRIMMING LARGE TREES, WHETHER THEY BE
6 OAK TREES OR ANY OTHER TREE?

7 A. EITHER THAT OR YOU WILL -- I'VE SOMETIMES SEEN
8 RICHARD SCALE A TREE. BUT YOU WOULD USE A CHERRY
9 PICKER OR SCALE IT DEPENDING ON ---

10 Q. DO ANY OF YOUR EMPLOYEES SCALE TREES THIS BIG?

11 A. NEVER.

12 Q. THERE'S BEEN DISCUSSION TODAY AND TESTIMONY ABOUT
13 CONCERNS OVER WHETHER THERE WERE SAFETY INSTRUCTIONS
14 GIVEN ABOUT CLIMBING LARGE TREES TO YOUR EMPLOYEES.
15 DID YOU EVER GIVE SUCH SAFETY INSTRUCTIONS?

16 A. NO, BECAUSE WE DON'T CLIMB LARGE TREES.

17 Q. OKAY. SO YOU WOULDN'T HAVE PREPARED ANY WRITTEN
18 MATERIALS?

19 A. NO, I WOULD NOT.

20 Q. ALL RIGHT. WOULD IT BE A POINT OF DISCUSSION AT A
21 COMPANY MEETING TO TALK ABOUT CLIMBING LARGE OAK
22 TREES?

23 A. NO. WE HAVE GENERAL SAFETY INSTRUCTION MEETINGS
24 ABOUT SAFETY GLASSES, EARPLUGS, YOU KNOW, QUALITY OF
25 WORK, BUT NOT ANY DISCUSSIONS ABOUT TRIMMING LARGE

1 TREES.

2 Q. OKAY. SO DID YOU SPECIFICALLY -- JUST SO WE'RE
3 CLEAR, DID YOU SPECIFICALLY TELL FRANK TO TELL CESAR
4 TO TELL RAMON TO CLIMB THE TREE THAT IS THE SUBJECT
5 OF OUR HEARING HERE TODAY?

6 A. NO.

7 Q. I'M GOING TO TURN TO DEFENDANTS' EXHIBIT "D," AND
8 THESE ARE DESCRIBED IN THE SUPPLEMENTAL NOTICE OF
9 WITNESSES AS EXHIBIT "D" INVOICES FOR SERVICE ISSUED
10 BY BUDGET TREE SERVICE TO PRIORITY LANDSCAPING AND
11 LAWN CARE, DATED 2/18/08 THROUGH 11/29/08,
12 CONSISTING OF TEN PAGES.

13 BY MR. WYMAN:

14 COMMISSIONER, I DID NOT INDIVIDUALLY LABEL
15 THESE. I'VE SUBMITTED THEM AS A WHOLE.

16 BY THE COMMISSIONER:

17 I'M LOOKING AT THEM.

18 BY MR. WYMAN:

19 AND I WILL HAVE HIM AUTHENTICATE THOSE NOW.

20 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

21 Q. I'M GOING TO SHOW YOU WHAT I'VE JUST DESCRIBED TO
22 THE COMMISSIONER ON THE RECORD AS EXHIBIT "D."
23 PLEASE FLIP THROUGH THOSE AND MAKE SURE THAT EACH
24 PAGE OF THOSE IS SOMETHING THAT YOU RECOGNIZE OR LET
25 ME KNOW IF YOU DO RECOGNIZE EACH OF THOSE PAGES.

1 BY THE COMMISSIONER:

2 AND I'M GOING TO ASK YOU TO READ FAIRLY QUICKLY
3 BECAUSE THIS HAS GONE WAY BEYOND WHAT I ANTICIPATED.

4 WITNESS ANSWERS:

5 A. I RECOGNIZE ALL OF THESE.

6 DIRECT EXAMINATION RESUMED BY MR. WYMAN:

7 Q. WHAT ARE THOSE?

8 A. THOSE ARE INVOICES SUBMITTED BY RICHARD TO OUR
9 COMPANY FOR WORK DONE AT VARIOUS PROPERTIES,
10 SPECIFICALLY TREE SERVICE WORK.

11 Q. ALL RIGHT. TO SPEED THIS ALONG, I'M GOING TO FLIP
12 TO A PARTICULAR INVOICE. WHAT IS THE DATE OF THAT
13 INVOICE?

14 A. 9/16.

15 Q. IS THAT 9/16/08?

16 A. YES, ALL THESE INVOICES ARE 2008.

17 Q. ALL RIGHT. WHAT IS THE DESCRIPTION OF THE WORK DONE
18 THERE?

19 A. THE DESCRIPTION OF THE WORK DONE -- THIS WAS DONE AT
20 FORT JOHNSON BAPTIST CHURCH, SAME LOCATION IN
21 QUESTION -- IS REMOVE SEVERAL BROKEN LIMBS AND ONE
22 LARGE BRANCH ON THE WIRE.

23 Q. AND THAT'S JUST 12 DAYS AFTER THIS DATE OF ACCIDENT?

24 A. YES.

25 Q. SO YOU HIRED RICHARD TO COME OUT AFTER TO DO SOME

- 1 WORK ON TREES AT THIS VERY LOCATION?
- 2 A. AT THAT VERY LOCATION.
- 3 Q. I'LL SHOW YOU ONE MORE, DATED MARCH 28TH. DO YOU
- 4 AGREE WITH THAT DATE?
- 5 A. YES.
- 6 Q. AND THIS IS ALSO AN INVOICE FROM BUDGET TREE
- 7 SERVICE?
- 8 A. YES.
- 9 Q. THERE ARE SEVERAL JOBS LOCATIONS LISTED HERE. I
- 10 WOULD DIRECT YOU TO THE LAST ONE AT THE BOTTOM OF
- 11 THE DESCRIPTION AREA. WHAT'S THE ADDRESS SHOWN
- 12 THERE?
- 13 A. 108 WEST COOPER.
- 14 Q. AND UNDERNEATH THAT WHAT IS THE DESCRIPTION OF THE
- 15 WORK?
- 16 A. IT SAYS, "CUT BACK BRANCHES FROM BUILDING ON OAK
- 17 TREE IN THE BACK."
- 18 Q. SO, IS THIS AN EXAMPLE OF YOU HIRING RICHARD TO WORK
- 19 ON AN OAK TREE?
- 20 A. YES, IT IS.
- 21 Q. DID YOU SEE THIS PARTICULAR OAK TREE?
- 22 A. YES, I WOULD HAVE HAD TO HAVE SEEN THAT OAK TREE.
- 23 Q. OKAY. BUT DO YOU REMEMBER ANY SPECIFICS ABOUT THAT
- 24 PARTICULAR OAK TREE?
- 25 A. NO.

1 Q. ALL RIGHT. WOULD YOU DESCRIBE THE OAK TREE SHOWN IN
2 THE PICTURES IN EXHIBIT "C" TO BE A LARGE OAK TREE?

3 A. THAT'S A VERY LARGE OAK TREE.

4 Q. OKAY. YOU'VE BEEN PRESENT TODAY FOR TESTIMONY FROM
5 ALL THE WITNESSES. WERE YOU AWARE OF -- OR, DID YOU
6 HEAR THE TESTIMONY ABOUT A MEETING THAT OCCURRED AT
7 YOUR HOME THE NIGHT AFTER -- OR, THE NIGHT OF THIS
8 ACCIDENT?

9 A. I'M SORRY; ASK THAT ONE MORE TIME, PLEASE.

10 Q. ALL RIGHT. DID YOU HEAR THE TESTIMONY EARLIER ABOUT
11 A MEETING THAT OCCURRED AT YOUR HOME ---

12 A. YES.

13 Q. --- THE NIGHT OF THIS ACCIDENT?

14 A. YES.

15 Q. DID YOU UNDERSTAND FROM THAT TESTIMONY THAT RAMON
16 CAME TO YOUR HOME THAT EVENING?

17 A. YES.

18 Q. THAT'S YOUR UNDERSTANDING OF HIS TESTIMONY?

19 A. YES.

20 Q. DID THAT HAPPEN?

21 A. I DON'T RECALL HIM BEING THERE.

22 Q. DID YOU GO TO THE DOCTOR'S OFFICE?

23 A. I WENT TO THE DOCTOR'S OFFICE.

24 Q. WHAT TIME DID YOU GET TO THE DOCTOR'S OFFICE?

25 A. I GOT TO THE DOCTOR'S OFFICE LATE IN THE EVENING,

1 PROBABLY ABOUT 7:00, AND WHAT HAD OCCURRED WAS THEY
2 WERE DEBATING WHETHER OR NOT THEY COULD BRING IN A
3 SPECIALIST TO LOOK AT HIS FOOT. RAMON HAD -- LET'S
4 SEE HERE. MARY JO HAD TAKEN RAMON TO THE DOCTOR'S
5 OFFICE, AND HE WAS CHECKED IN. THE DOCTORS THERE
6 LOOKED AT HIM. THEY WERE GOING TO RELEASE HIM AND
7 DID RELEASE HIM BECAUSE THE SPECIALISTS DIDN'T THINK
8 THEY COULD GET THERE IN TIME. THEY THEN CALLED ME
9 BACK, THE DOCTOR'S OFFICE, AND SAID BRING RAMON
10 BACK. HE HAD LEFT TO GO TO HIS HOME, I THINK, WITH
11 JUVE, AND THEY BROUGHT RAMON BACK, AND THE
12 SPECIALIST ARRIVED, AND THE SPECIALIST LOOKED AT HIS
13 LEG AS WELL. BUT HE WASN'T AT MY HOUSE THAT I
14 RECALL.

15 Q. DID YOU HAVE A CONVERSATION WITH FRANK ON THE
16 TELEPHONE RIGHT AFTER THE ACCIDENT, WHICH YOU WERE
17 INFORMED WAS JUST AN ON-THE-JOB INJURY, AND TELL
18 FRANK TO TELL RAMON THAT HE SHOULD SAY HE STEPPED IN
19 A DITCH OR A HOLE?

20 A. THAT HE STEPPED IN A DITCH OR A HOLE? ASK THAT ONE
21 MORE TIME.

22 Q. DID YOU TELL FRANK TO TELL RAMON ---

23 A. DID I TELL FRANK TO TELL RAMON ---

24 Q. --- RIGHT AFTER THIS HAPPENED WHEN FRANK FIRST

25 CALLED YOU THAT HE SHOULD SAY HE STEPPED IN A DITCH

1 OR A HOLE?

2 A. NO.

3 Q. IS THAT WHAT YOU WERE INFORMED?

4 A. THAT'S WHAT I WAS INFORMED.

5 Q. OKAY. AND YOU LATER FOUND THAT THAT IS NOT THE
6 CASE?

7 A. RIGHT.

8 Q. DID YOU MAKE ANY THREATS OF ANY SORT OF ADVERSE
9 ACTION AGAINST ANY OF THE EMPLOYEES WHO HAVE
10 TESTIFIED HERE TODAY EITHER FOR SHOWING UP OR FOR
11 TELLING THE TRUTH?

12 A. NEVER.

13 Q. AND DO YOU UNDERSTAND THE TRUTH TO BE THAT THERE WAS
14 A BET MADE ON THIS JOB SITE?

15 A. THAT'S WHAT I UNDERSTAND.

16 BY MR. WYMAN:

17 I HAVE NOTHING FURTHER.

18 BY THE COMMISSIONER:

19 ALL RIGHT. MR. GIBSON?

20 CROSS EXAMINATION BY MR. GIBSON:

21 Q. I HAVE AN INVOICE HERE, CLAIMANT'S EXHIBIT NUMBER
22 SIX.

23 BY MR. WYMAN:

24 IS THAT APA SIX?

25 BY MR. GIBSON:

1 APA SIX; I'M SORRY.

2 CROSS EXAMINATION RESUMED BY MR. GIBSON:

3 Q. IS THAT A FORT JOHNSON INVOICE FOR JUNE OF 2008?

4 A. YES, IT IS.

5 Q. AND WHAT DOES IT SAY THE TYPE WORK, DOWN AT THE
6 BOTTOM, WILL INCLUDE?

7 A. IT SAYS, "TREE WORK WILL BE DONE EACH WEEK
8 THROUGHOUT THE PROPERTY..." ---

9 Q. WHAT WILL?

10 A. "TREE WORK WILL BE DONE EACH WEEK THROUGHOUT THE
11 PROPERTY. SPECIAL ATTENTION GIVEN TO TRIMMING THE
12 BASE OF THE CREPE MYRTLES PARALLELING THE WALKWAY TO
13 THE SANCTUARY."

14 Q. OKAY. AND HOW LONG HAVE YOU HAD THAT CONTRACT WITH
15 THAT CHURCH?

16 A. THREE YEARS.

17 Q. THAT'S AN IMPORTANT CONTRACT TO YOU?

18 A. IT'S ONE OF THE IMPORTANT ONES, YES.

19 BY THE COMMISSIONER:

20 WHAT PAGE?

21 BY MR. GIBSON:

22 CLAIMANT'S NUMBER SIX.

23 BY THE COMMISSIONER:

24 PAGE SIX.

25 BY MR. WYMAN:

1 RIGHT UP FRONT.

2 BY THE COMMISSIONER:

3 I'M THERE. OKAY.

4 CROSS EXAMINATION RESUMED BY MR. GIBSON:

5 Q. AND IS THIS AN INVOICE THAT'S CUSTOMARY THAT YOU
6 WILL RECEIVE FROM THEM EACH MONTH?

7 A. NO, THAT IS AN INVOICE THAT WE GENERATE TO THEM.
8 THAT'S LETTING THEM KNOW WE'RE GOING TO BE DOING ALL
9 THE SERVICES ABOVE AS WELL AS THE SERVICES BELOW.

10 Q. OKAY. SO ON YOUR OWN INVOICE YOU STATE THAT TREE
11 WORK DONE EACH WEEK THROUGHOUT THE PROPERTY?

12 A. ABSOLUTELY. WE DO ---

13 Q. IT DOESN'T SAY LITTLE, SMALL, OR BIG, DOES IT?

14 A. NO, BECAUSE I WOULD NOT DIFFERENTIATE THAT ON THE
15 INVOICE.

16 Q. AND THEN IT SAYS, "SPECIAL ATTENTION GIVEN TO
17 TRIMMING THE BASE OF THE CREPE MYRTLES."

18 A. SURE.

19 Q. SO, IS IT CLEAR TO YOU THAT THIS INDICATES OTHER
20 TREE WORK WOULD BE DONE?

21 A. YES, FOR INSTANCE ON THE EXAMPLE GIVEN IN THE OTHER
22 PHOTOS.

23 Q. ISN'T IT TRUE THAT YOU REALLY DON'T KNOW WHAT
24 HAPPENED OUT THERE THAT DAY FIRSTHAND EXCEPT WHAT
25 YOU'VE BEEN TOLD?

1 A. THE ONLY THING I KNOW IS WHAT HAS BEEN STATED
2 BECAUSE I WAS NOT THERE THAT DAY.

3 Q. AND NOW YOU'VE HEARD FRANK ADMIT THAT HE TOLD A LIE
4 WHEN HE GAVE YOUR WIFE A STATEMENT AT YOUR HOUSE?

5 A. YES. HE DID NOT STATE EXACTLY WHAT HAPPENED.

6 Q. AND YOU'VE HEARD TESTIMONY FROM ANOTHER WITNESS THAT
7 USED TO WORK WITH YOU THAT SAID THAT ROUTINELY MEN,
8 THE FELLOW WORKERS, WOULD CLIMB INTO BIG TREES,
9 LITTLE TREES, AND MEDIUM-SIZED TREES, CORRECT?

10 A. I HAVE HEARD THAT TESTIMONY.

11 Q. DOES THAT SURPRISE YOU?

12 A. YES. THAT WOULD NOT BE SOMETHING THAT WE DO.

13 Q. DID YOU EVER HEAR ABOUT CESAR FALLING OUT OF A TREE?

14 A. I HAVE NEVER HEARD OF CESAR FALLING OUT OF A TREE.
15 WE'VE NEVER HAD AN ACCIDENT THAT INVOLVED ANYTHING
16 MORE THAN POISON IVY THAT I CAN RECALL.

17 Q. HAVE YOU EVER HAD TO HAVE A MEETING BECAUSE OF THE
18 MEN DRINKING ON THE JOB?

19 A. I HAVE HAD A MEETING IN REGARDS TO BEING INFORMED
20 THAT SOMEONE SAW A CREW DRINKING IN A VEHICLE.

21 Q. DID THEY INDICATE WHETHER THEY WERE DRUNK OR NOT?

22 A. NO, THEY DID NOT.

23 Q. DO YOU KNOW OF ANY -- HAVE YOU GOT ANYTHING IN YOUR
24 PERSONNEL RECORDS OR OTHERWISE FOR DISCIPLINARY
25 PROCEEDINGS AGAINST RAMON?

1 A. NO. THE ONLY THING THAT HE SIGNED WAS THE SAME
2 DOCUMENT THAT EVERYONE SIGNED SAYING THAT THERE
3 WOULD BE NO DRINKING OR ALCOHOL CONSUMPTION IN THE
4 VEHICLE. OTHERWISE THERE WOULD IMMEDIATELY BE
5 TERMINATION FOR THAT EMPLOYEE.

6 Q. AS FAR AS HIS WORK, WAS HE A GOOD WORKER AS FAR AS
7 YOU KNOW?

8 A. ABSOLUTELY.

9 Q. DO YOU HAVE ANY PROBLEM WITH HIS WORK?

10 A. I HAVE NO PROBLEM WITH HIS WORK.

11 Q. DO YOU KNOW OF ANY TIME HE'S EVER TOLD YOU A LIE?

12 A. I CAN'T SPEAK SPANISH.

13 Q. OKAY. HAVE YOU EVER COMMUNICATED WITH HIM WITH AN
14 INTERPRETER?

15 A. YES.

16 Q. AND DO YOU KNOW OF ANY CIRCUMSTANCE IN WHICH HE'S
17 TOLD YOU A FALSEHOOD?

18 A. I WOULD NOT KNOW THAT BECAUSE ---

19 Q. YOU WOULD NOT KNOW?

20 A. I WOULD NOT KNOW THAT, BUT I WOULD ASSUME -- WELL, I
21 SHOULDN'T ASSUME ANYTHING. I DON'T KNOW. I JUST
22 DON'T KNOW.

23 Q. OKAY. YOU JUST DO NOT KNOW?

24 A. I DO NOT KNOW.

25 Q. HAS ANYTHING EVER BEEN BROUGHT TO YOUR ATTENTION

1 THAT YOU WOULD QUESTION HIS INTEGRITY OTHER THAN, OF
2 COURSE, YOUR FEELINGS ON THIS PARTICULAR CASE?

3 A. HE HAS ALWAYS BEEN A GOOD WORKER.

4 Q. HAS HE BEEN THERE ON TIME EVERY DAY?

5 A. HE'S BEEN THERE ON TIME.

6 Q. DID HE MISS ANY TIME FROM WORK?

7 A. I DON'T KNOW. HE WAS RELEASED AND THEN REHIRED.

8 Q. RIGHT.

9 A. SO HE WAS RELEASED IN THE FALL OF OCTOBER OF 2007,
10 REHIRED IN MARCH OF 2008.

11 Q. IS THAT BECAUSE OF THE SEASONAL FLUCTUATION?

12 A. BECAUSE OF THE SEASONAL FLUCTUATION.

13 BY MR. GIBSON:

14 I DON'T HAVE ANY FURTHER QUESTIONS.

15 BY MR. WYMAN:

16 REAL QUICK, COMMISSIONER, IF YOU DON'T MIND, ON
17 RE CROSS.

18 REDIRECT EXAMINATION BY MR. WYMAN:

19 Q. WE'VE DISCUSSED APA NUMBER SIX THERE, AND YOU'VE
20 LOOKED AT THAT. THAT'S THE INVOICE FROM YOUR
21 COMPANY TO FORT JOHNSON.

22 A. CORRECT.

23 Q. IT SAYS, "TREE WORK..." I'M GOING TO SHOW YOU A
24 PICTURE. IT'S EXHIBIT "C" PICTURE NUMBER TWO. WHO
25 IS THAT STANDING IN THAT PICTURE?

- 1 A. THAT'S FRANK SHOPPEL.
- 2 Q. DID I TAKE THIS PICTURE?
- 3 A. YES, YOU DID.
- 4 Q. WHAT'S IN THAT PICTURE?
- 5 A. AN OAK TREE.
- 6 Q. ALL RIGHT. IS IT A SMALLER OAK TREE THAN THE ONE
- 7 WE'RE TALKING ABOUT HERE TODAY?
- 8 A. MUCH SMALLER.
- 9 Q. HOW TALL WOULD YOU SAY THIS OAK TREE IN THIS PICTURE
- 10 IS?
- 11 A. THAT'S PROBABLY 20 FEET TALL.
- 12 Q. IS THIS THE TYPE OF TREE TRIMMING WORK YOU WOULD DO?
- 13 A. YES, AND THAT'S THE TYPE OF TREE TRIMMING WORK WE
- 14 HAVE DONE FOR THEM.
- 15 Q. OKAY. AND IF YOU TRIMMED THIS TREE, WHAT WOULD BE
- 16 YOUR FOCUS IN TRIMMING?
- 17 A. WE WOULD TRIM THE BASE OF THE TREE TO PREVENT THE
- 18 LIMBS FROM HITTING THE CARS AS THEY GO BY. THE SAME
- 19 WITH THE CREPE MYRTLES ON THE WALKWAYS, SO THE
- 20 PEOPLE DON'T HIT THEIR HEADS ON THE LOWER BRANCHES.
- 21 Q. AND I'M GOING TO SHOW YOU PICTURE NUMBER SEVEN, SAME
- 22 EXHIBIT. IS THAT FRANK STANDING IN FRONT OF A TREE?
- 23 A. THAT IS -- FRANK IS STANDING IN FRONT OF A TREE, A
- 24 LARGER TREE, PROBABLY 30-PLUS FEET TALL.
- 25 Q. IS HE POINTING AT A CUT MARK?

1 A. NO.

2 BY MR. WYMAN:

3 NOTHING FURTHER.

4 BY MR. GIBSON:

5 I HAVE NOTHING FURTHER.

6 BY THE COMMISSIONER:

7 LET ME ASK ONE QUESTION. I UNDERSTAND YOU
8 DON'T TIMBER TREES. YOU'RE NOT IN THAT BUSINESS.
9 BUT IF THERE WAS A LARGE TREE THAT HAD A DEAD LIMB
10 THAT ONE OF YOUR MEN COULD CUT DOWN, WOULD YOU STILL
11 SUB IT OUT OR WOULD YOU HAVE HIM CUT IT?

12 BY THE WITNESS:

13 IT WOULD DEPEND ON HOW FAR THE DEAD LIMB WAS UP
14 THE TREE.

15 BY THE COMMISSIONER:

16 Q. BUT IF WAS SOMETHING ---

17 A. IF IT WAS SOMETHING WE COULD REACH WITH A STEPLADDER
18 AND A SAW, WE WOULD DO IT.

19 Q. EVEN IF THEY COULD CLIMB IT, THEY FELT, SAFELY?

20 A. IT MAKES -- IT MAKES NO SENSE FOR SOMEONE TO WALK
21 OUT ONTO A LIMB, THE SAME LIMB -- AS YOU SAID, IT
22 WOULD MAKE NO -- THEY WOULD HAVE TO BE CRAZY TO DO
23 IT. IT MAKES NO SENSE TO WALK OUT 20 FEET OUT ONTO
24 A LIMB TO TRIM SOMETHING.

25 Q. I WASN'T TRYING TO MAKE THAT -- THE POINT I WAS

1 TRYING TO MAKE, IF IT WAS A LARGE LIMB BUT IT HAD
2 SHOOTS GOING OFF OF IT, AND THAT WAS REALLY THE
3 GENESIS OF THE QUESTION.

4 A. OKAY.

5 Q. IF YOU HAD A LARGE LIMB THAT WAS PERFECT BUT IT HAD
6 A DEAD LIMB COMING DOWN, YOU WOULDN'T CALL A
7 SUBCONTRACTOR OUT THERE TO CUT THAT ONE LIMB OFF?
8 IF YOU COULD DO IT, WOULD YOUR PEOPLE DO IT?

9 A. IF I COULD REACH IT. IF IT COULD BE REACHED. IF IT
10 COULD BE REACHED WITH A LADDER, WITH A STEPLADDER
11 AND AN 11-FOOT EXTENSION POLE SAW.

12 Q. IF YOU COULD PUT A LADDER IN THE BACK OF A PICKUP
13 WITH A POLE SAW, IT WOULD BE -- YOU COULD HANDLE --
14 YOU WOULDN'T BE CUTTING DOWN A BIG TREE, BUT YOU
15 COULD TRIM A BIG TREE? AND TRIMMING IS WHAT YOU DO.
16 I MEAN, YOU NEATEN THINGS UP; YOU WANT THEM TO LOOK
17 NICE, IS THAT RIGHT?

18 A. I WANT THEM TO LOOK NICE.

19 Q. SO IF IT WAS A BIG TREE THAT YOU FELT LIKE YOU COULD
20 HANDLE, YOU WOULDN'T CALL A SUBCONTRACTOR OUT THERE
21 TO CUT, I'M JUST GOING TO SAY A LIMB THIS BIG? IT'S
22 STILL AN ENORMOUS TREE, BUT ---

23 A. AN ENORMOUS TREE, YES, BUT ONLY IF WE COULD SAFELY
24 REACH IT FROM THE GROUND. FOR INSTANCE, WE HAVE
25 CONTACTED BUDGET TREE SERVICE TO TAKE DEAD LIMBS OUT

1 OF LARGE OAK TREES THAT ARE WAY TOO FAR UP.

2 Q. THAT I UNDERSTAND. I WAS JUST THINKING ---

3 A. SO IF WE WERE STANDING -- I'M SORRY TO INTERRUPT.

4 IF WE WERE STANDING ON THE GROUND LOOKING UP --

5 BECAUSE I WILL TAKE THEM TO A JOB SITE AND I WILL

6 TELL THEM, "OKAY, THIS IS WHAT WE NEED TO TRIM." IF

7 THEY'RE JUST DOING LAWN MOWING MAINTENANCE, THEY GO

8 OUT ON THEIR OWN AND THEY JUST CUT THE GRASS.

9 Q. IF FRANK -- WOULD FRANK EVER HAVE ANY DECISION

10 WHATSOEVER IF THERE WAS A DEAD LIMB COMING OFF A BIG

11 TREE? WOULD FRANK SAY, "TRY TO CUT IT, AND IF YOU

12 CAN'T I'LL CALL WILLIAM AND HAVE HIM GET A SUB OUT"?

13 CAN FRANK -- DOES HE HAVE THE AUTHORITY TO SAY "GET

14 THAT LIMB" IF IT'S A DEAD LIMB HANGING DOWN?

15 A. IF IT IS REACHABLE BY, ONCE AGAIN, A STEPLADDER, AN

16 EXTENSION POLE SAW, NOT PHYSICALLY CLIMBING INTO A

17 TREE. NOT PHYSICALLY CLIMBING INTO A TREE, BUT

18 USING A STEPLADDER AND EXTENSION POLE SAW. THE

19 EXTENSION POLE SAW WILL CUT A LIMB MAYBE IN AN OAK

20 TREE ABOUT THIS BIG.

21 Q. I UNDERSTAND.

22 A. THAT'S IT. IT CANNOT CUT LARGE LIMBS.

23 Q. I UNDERSTAND.

24 A. AND SO THAT IS THE ONLY TIME THAT WE WOULD CUT ON A

25 LARGE OAK, WOULD BE IF IT WAS REACHABLE WITH A

1 STEPLADDER AND EXTENSION POLE SAW.

2 BY THE COMMISSIONER:

3 OKAY. IF THERE ARE NO OTHER WITNESSES, THAT
4 WILL CONCLUDE THIS HEARING.

5 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
6 CONCLUDED AT THE HOUR OF 2:28 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0813616

EMPLOYEE/CLAIMANT: RAMON RAMOS ZEPEDA

EMPLOYER: PRIORITY LANDSCAPING AND LAWN CARE, LLC

CARRIER: ACCIDENT FUND INSURANCE COMPANY OF AMERICA

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 203 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **RAMON RAMOS ZEPEDA**, TAKEN ON THE 22ND DAY OF JANUARY, 2009.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 3RD DAY OF MARCH, 2009.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0813616

RAMON ZEPEDA-CAPEDA,
Claimant/Employee,

vs.

PRIORITY LANDSCAPING and LAWN CARE, INC.,
Employer,

and

ACCIDENT FUND INSURANCE COMPANY OF AMERICA,
Carrier.

COPY

DEPOSITION OF: RAMOS ZEPEDA

DATE: January 19, 2009

TIME: 10:00 a.m.

LOCATION: Gibson Law Firm, LLC
5422 Rivers Avenue
North Charleston, SC

TAKEN BY: Counsel for the Employer, Carrier

REPORTED BY: PATRICIA THOMPSON-MORRISON
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 LUNA GAINER,
2 being first duly sworn to accurately interpret and
3 translate.

4 RAMOS ZEPEDA-CAPEDA
5 being first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. WYMAN:

8 Q. State your full name, please.

9 A. Ramos Zepeda.

10 Q. Spell your last name, please.

11 A. Letter by letter?

12 Q. Please.

13 A. My last name or my name also?

14 Q. We'll do this. That is your last name?

15 A. Yes. No. This one is. This one is not.

16 MR. WYMAN: My file reflects a hyphenated
17 last name.

18 THE WITNESS: Ramos goes here.

19 MR. WYMAN: For the record, my file reflects
20 that there is a hyphenated last name that is
21 Z-E-P-E-D-A - C-A-P-E-D-A. Apparently that is not
22 correct and it is strictly Zepeda, and he's just
23 testified to that. His middle name being Ramos.

24 BY MR. WYMAN:

25 Q. What is your date of birth?

Page 4

1 A. April 30.
2 Q. What year?
3 A. '63.
4 Q. How old are you?
5 A. Maybe 48, 46.
6 Q. 45?
7 A. Uh-huh.
8 Q. What is your current address?
9 A. Shellfish, 1705.
10 Q. Charleston?
11 A. Charleston? Yes, I think.
12 Q. How long have you lived there?
13 A. It's been about six months.
14 Q. Do you own that house?
15 A. No.
16 Q. Are you married?
17 A. Yes.
18 Q. Does your wife live with you there?
19 A. Yes.
20 Q. Does your wife work?
21 A. Yes; once in a while. Sometimes she does;
22 sometimes she doesn't.
23 Q. When she does work, what does she do?
24 A. Taking care of children, and she mops the
25 house and irons. Cleaning of the house and taking

1 care of children.

2 Q. Does anyone else besides you and your wife
3 live with you in that house?

4 A. Yes.

5 Q. Who?

6 A. There are one, two, three, four more people.

7 Q. I need names, please.

8 A. Cesar.

9 Q. Last name?

10 A. I don't know. Rodriquez, I think.
11 Mr. Emilio.

12 Q. Do you know his last name?

13 A. No. The other one -- well, they call him
14 Chelo, but I don't know his name.

15 Q. They call Emilio Chelo?

16 A. Emilio, Chelo, Cesar, Juvenal.

17 Q. What was the last one?

18 A. And that's it. Juvenal. Four of them.

19 Q. Do those four people pay you to live there?

20 A. No. My wife -- no. I mean the owner of the
21 house. They're renting, just like I am.

22 Q. Do you have any children?

23 A. Yes.

24 Q. How many?

25 A. Six.

Page 6

- 1 Q. Where do they live?
- 2 A. Mexico, Vera Cruz.
- 3 Q. Who cares for your children in Mexico?
- 4 A. My mom.
- 5 Q. Do you send money home?
- 6 A. Yes. Now I have not sent. Only my wife has.
- 7 Q. Do you have a social security number?
- 8 A. Number here? No.
- 9 Q. Do you have a resident alien card?
- 10 A. No.
- 11 Q. Do you have any documentation that allows you
- 12 to work here legally?
- 13 A. No.
- 14 Q. How long have you been in the United States?
- 15 A. It's my first time.
- 16 Q. How long? How many years?
- 17 A. About two and a half years.
- 18 Q. Do you smoke?
- 19 A. No.
- 20 Q. Did you attend school in Mexico?
- 21 A. Yes.
- 22 Q. How many years?
- 23 A. Five years.
- 24 Q. Did you work in Mexico?
- 25 A. Yes.

1 Q. What jobs did you have?

2 A. In the fields and at a paper factory.

3 Q. What kind of work have you done since you
4 arrived in the United States?

5 A. Carpentry, concrete, and yard work.

6 Q. Have you done yard work for anyone other than
7 Priority Landscaping?

8 A. No.

9 Q. How long have you had the job with Priority
10 Landscaping?

11 A. Two years maybe.

12 Q. Did you work any other jobs while you were
13 working for Priority Landscaping?

14 A. Yes.

15 Q. Where?

16 A. Mt. Pleasant.

17 Q. Who did you work for?

18 A. With Mr. Eduardo.

19 Q. What did you do with Mr. Eduardo?

20 A. Also I was working at his home with the
21 carpentry, and I would work in his yard.

22 Q. Did Mr. Eduardo pay you?

23 A. Yes.

24 Q. Did he own a business?

25 A. I wouldn't know.

Page 8

- 1 Q. You just worked on his home?
- 2 A. Yes.
- 3 Q. How long did you work on his home?
- 4 A. Some three months, four.
- 5 Q. When did you last work on Mr. Eduardo's home?
- 6 A. I don't remember exactly.
- 7 Q. Had you finished working on his home when
- 8 this accident happened?
- 9 A. No.
- 10 Q. Did Mr. Eduardo pay you in cash?
- 11 A. Yes.
- 12 Q. How did you get the job with Priority
- 13 Landscaping?
- 14 A. Through a person who went to Mexico.
- 15 Q. Had that person worked for Priority
- 16 Landscaping?
- 17 A. Yes; he was working there.
- 18 Q. How many hours a day did you work for
- 19 Priority Landscaping?
- 20 A. Sometimes 50, 60 hours, 58, but always more
- 21 than 40.
- 22 Q. Per week?
- 23 A. Yes.
- 24 Q. How much were you paid per hour?
- 25 A. They started paying me 8 and lately they were

1 paying me 9.

2 Q. Were you paid by check?

3 A. Yes, sir.

4 Q. How often were you paid?

5 A. On Friday's.

6 Q. Every Friday?

7 A. Yes, sir.

8 Q. How many days per week did you work for
9 Priority Landscaping?

10 A. Five days. Sometimes I would work six days,
11 on Saturday's.

12 Q. Who was your direct supervisor? Your boss?

13 A. The person I was working with the most was
14 Juvenal.

15 Q. Was he a foreman? A boss?

16 A. He's the oldest and he's the one most ahead.
17 Manager you call them? The person in charge.

18 Q. Who is Frank?

19 A. He's above Juvenal. Manager.

20 Q. Who is William Hampton?

21 A. He is the boss.

22 Q. Does he own the company?

23 A. Yes, sir.

24 Q. What was your job with Priority Landscaping?

25 A. I would cut grass. I would plant the shrubs,

Page 10

1 sometimes trees. Sometimes I would do trimming of
2 the bushes and also to cut the branches of the trees
3 and blow with the blower. I would drive the tractor
4 and I would water the plants.

5 Q. Did you work with the same crew every day?

6 A. No.

7 Q. Was there a crew that you usually worked
8 with?

9 A. Well, the one I worked most with was Juvenal.

10 Q. Who else was on that crew?

11 A. They would change -- very often they would
12 change personnel. Almost daily we would change
13 personnel.

14 Q. Was Frank usually on the job with you
15 helping?

16 A. Yes.

17 Q. What happened on September 4th, 2008?

18 A. I fell off a tree.

19 Q. Where were you?

20 A. On top of the tree.

21 Q. What job were you working on?

22 A. Before I went up the tree?

23 Q. Yes. What yard were you working on?

24 A. I don't remember the name, but it was a
25 church. It's a church.

- 1 Q. Was the church on James Island?
- 2 A. Yes, sir.
- 3 Q. What time of the day did you fall out of the
- 4 tree?
- 5 A. Around 2:00 in the afternoon. 1:30.
- 6 Q. What time did you start work that day?
- 7 A. At 8:00 in the morning, sir.
- 8 Q. Were you working with a crew?
- 9 A. Yes.
- 10 Q. Where did you meet the crew to start the day?
- 11 A. At the shop. At the shop at Mr. William's
- 12 house.
- 13 Q. Who worked on that crew with you that day?
- 14 A. Leonardo.
- 15 Q. Do you know his last name?
- 16 A. No.
- 17 Q. Who else?
- 18 A. Frank and Cesar.
- 19 Q. Were you all riding in a company truck?
- 20 A. Yes, sir.
- 21 Q. Who drove?
- 22 A. Frank.
- 23 Q. Was there a trailer attached to that truck?
- 24 A. Excuse me?
- 25 Q. How did your crew get the equipment to the

Page 12

1 yards where you went to work?

2 A. It's a big car. It's the biggest in the
3 company.

4 Q. Was there anything attached to the truck that
5 you used to carry some extra equipment?

6 A. No, sir.

7 Q. Did you have a riding lawn mower?

8 A. Yes, sir.

9 Q. Did you put that in the back of the pickup
10 truck?

11 MR. GIBSON: I object to the form. He has
12 not said it's a pickup truck yet.

13 Q. (Continued) Was it a pickup truck?

14 A. I don't know. Big car.

15 Q. Did it have an open space in the back?

16 A. Yes, sir.

17 Q. Did you put the riding lawn mower in the open
18 space in the back of the truck?

19 A. Yes, sir.

20 Q. What other tools were in the truck that day?

21 A. A big blower, the one that you push; small
22 blowers that you put on your back, and several
23 weeders and a tractor.

24 Q. Any other tools that you can think of?

25 A. The weed eaters, the blowers and the tractor.

1 Q. Did you eat lunch before you fell out of this
2 tree?

3 A. No, sir.

4 Q. What kind of tree did you fall out of?

5 A. I don't know its name.

6 Q. Was it a big tree?

7 A. Yes, sir.

8 Q. Could you wrap your arms around the trunk of
9 the tree?

10 A. No, sir.

11 Q. It was bigger than that?

12 A. Yes; more or less.

13 Q. Why did you climb into the tree?

14 A. Cesar told me that Frank had said that I
15 should go up.

16 Q. Frank did not tell you directly to get into
17 the tree?

18 A. No. He was with Cesar, but I don't know how
19 to speak English. I don't understand what he says.

20 Q. Before September 4 of 2008 had you worked at
21 this church?

22 A. Yes, sir.

23 Q. Had you ever climbed this tree before?

24 A. No; others that are around it.

25 Q. Other trees?

Page 14

1 A. Yes.

2 Q. You had actually climbed --

3 A. Another one, smaller.

4 Q. But you actually climbed into the tree, the
5 other trees?

6 A. Before?

7 Q. Yes; before this one.

8 A. Yes.

9 Q. Why did you climb into the other trees?

10 A. We would trim the branches, the low branches.

11 Q. What kind of other trees did you climb into?

12 A. I don't know the names of the trees.

13 Q. What did Frank want you to do when you
14 climbed into this tree on September 4th, 2008?

15 A. I don't know. The one that talked to me was
16 Cesar. He told me to go up.

17 Q. What did Cesar ask you to do when you got
18 into the tree?

19 A. He told me to go up, that Frank had said --
20 I thought it was to cut a branch that was low.

21 Q. Did you cut a branch that was low?

22 A. I was not able to cut it.

23 Q. Why not?

24 A. Because I fell.

25 Q. Did you take a tool into the tree?

1 A. No, sir.

2 Q. How did you get into the tree?

3 A. I was on top of the machine.

4 Q. What machine?

5 A. The tractor. I was about to go to work.

6 I came back and I parked right next to the tree,

7 and then I went up.

8 Q. So you did not use a ladder?

9 A. We didn't have a ladder that day.

10 Q. If you were going to cut a branch, why didn't
11 you have a tool?

12 A. I would wait until somebody passed it on to
13 me.

14 Q. What tool were you going to use?

15 A. Maybe a hatchet. Maybe a saw.

16 Q. Was there a hatchet or a saw in the truck?

17 A. Underneath there is a drawer where we put the
18 smaller tools.

19 Q. How big was the branch you were going to
20 trim?

21 A. Thin.

22 Q. How thin?

23 A. A little like this.

24 MR. WYMAN: Let the record reflect it's three
25 to four inches that he's indicating.

Page 16

1 MR. GIBSON: I suppose. It's a best guess.

2 MR. WYMAN: Let the record reflect he used
3 the index and thumb of each hand and created a circle
4 that we think is three to four inches.

5 MR. GIBSON: But that's not exactly right,
6 because your hand is like that and he was doing
7 something like that.

8 MR. WYMAN: Three to four inches is our best
9 guess.

10 MR. GIBSON: In circumference or diameter?

11 MR. WYMAN: Diameter.

12 MR. GIBSON: I don't know about that.

13 BY MR. WYMAN:

14 Q. Show again, please.

15 MR. GIBSON: Okay.

16 MR. WYMAN: Three to four inches.

17 MR. GIBSON: Two to three.

18 MR. WYMAN: Two to four?

19 MR. GIBSON: Correct.

20 BY MR. WYMAN:

21 Q. Who was underneath the tree after you climbed
22 in it?

23 A. Frank, Cesar and Leonardo.

24 Q. Were they all standing there watching you?

25 A. Yes, sir.

1 Q. Had the crew already done all the work that
2 needed to be done at the church?

3 A. We were about to start.

4 Q. How many limbs were you supposed to cut in
5 the tree?

6 A. I wouldn't know yet.

7 Q. I'm not sure I understand "yet". What do you
8 mean by "yet"?

9 A. Well, because we were about to start the
10 work, and normally when we start debranching the
11 trees -- we might have done many before in the past.
12 Sometimes we come out with two trucks full of them.

13 Q. Who was supposed to pass you the tool to cut
14 the limb?

15 A. Cesar, sir.

16 Q. Is this the same Cesar that lives with you?

17 A. Yes, sir.

18 Q. How did you fall out of the tree?

19 A. Well, I don't remember. I think I lost my
20 balance and I ended up hanging, and I couldn't go
21 back anymore.

22 Q. Were you reaching for a limb when you lost
23 your balance?

24 A. I was already on the branch.

25 Q. Were you reaching for the limb you were

Page 18

1 supposed to cut when you lost your balance?

2 A. No. I was already standing on the branch,
3 and the branch would move.

4 THE INTERPRETER: The branch was moving.
5 Interpreter correction.

6 BY MR. WYMAN:

7 Q. Did you fall because the branch was moving?

8 A. No. When I realized that I was already
9 hanging, that's when I fell.

10 Q. Had you ever seen any other employee of
11 Priority Landscaping climb this tree that you fell
12 out of?

13 A. No others.

14 Q. Before you climbed in the tree did you get a
15 tool out of this drawer that you told me about?

16 A. No, sir.

17 Q. Before you climbed the tree did Cesar or
18 Frank get a tool out of the drawer you told me about?

19 A. No. I didn't notice. I was on top of the
20 tractor.

21 Q. How long were you in the tree before you fell
22 out?

23 A. Maybe some five minutes.

24 Q. What were you doing in the tree for five
25 minutes if you didn't have a tool?

1 A. I only walked on top of the branch that
2 probably we were about to cut.

3 Q. When you climbed into the tree, did you go up
4 several more branches? Did you continue to climb?

5 A. No; only one branch.

6 Q. So you were there to cut the branch that you
7 were standing on?

8 A. Yes, sir.

9 Q. You say you used the tractor to climb in the
10 tree.

11 Did you have to climb up higher on the
12 tractor to get onto the branch?

13 A. I was very close almost. Very little.

14 Q. So if you were standing on top of the
15 tractor, could you reach up and grab the branch?

16 A. No, sir.

17 Q. How did you get onto the branch if you
18 couldn't reach up and grab it?

19 A. I climbed onto the tractor first.

20 Q. While you were on top of the tractor how did
21 you get onto the branch?

22 A. I only went up the tree and from the tree I
23 went onto the branch, which supposedly was hanging
24 off.

25 Q. Did you use a rope at any point?

Page 20

1 A. No, sir.

2 Q. Were Frank, Cesar and Leonardo watching when
3 you fell?

4 A. Yes, sir; Cesar and Frank. Leonardo, I'm not
5 sure.

6 Q. Did you know you had broken your leg as soon
7 as you hit the ground?

8 A. No.

9 Q. Did you try to stand up?

10 A. Yes, sir.

11 Q. Were you in pain as soon as you fell?

12 A. No, sir.

13 Q. Were you able to actually get on your feet?

14 A. Yes, sir.

15 Q. What did you do next?

16 A. I limped to where the car was.

17 Q. Did you get in the car?

18 A. Yes, sir.

19 Q. What happened next?

20 A. That's when I started to feel a lot of pain.

21 Q. How long did you stay in the car?

22 A. I don't know, but I know that it was a long
23 time until Frank was finished. He had been on the
24 phone.

25 Q. How long?

1 A. Maybe half an hour.

2 Q. Did you tell Frank you were in pain?

3 A. I told Cesar because Frank doesn't understand

4 me.

5 Q. Did Cesar tell Frank you were in pain?

6 A. Yes, sir. Cesar did tell Frank.

7 Q. What did Frank do?

8 A. He told me to wait, that he was trying to get

9 in touch with William.

10 Q. Did William come to the church?

11 A. No, sir.

12 Q. Did anyone else besides Frank, Cesar and

13 Leonardo come to the church?

14 A. The secretary lady.

15 Q. Do you know her name?

16 A. No, sir.

17 Q. Why did she come to the church?

18 A. She came to pick me up in a car.

19 Q. Where did she take you?

20 A. In an office -- I think it's a doctor.

21 That's where I was and that's when they put -- gave

22 me a shot for the pain.

23 Q. Was there someone at the doctor's office that

24 spoke Spanish?

25 A. Yes, there was, but very little I heard her

Page 22

1 talk for him.

2 THE INTERPRETER: The interpreter is not sure
3 of the gender.

4 A. (Continued) I was in a lot of pain.

5 Q. Was this person getting information from you?

6 A. I don't remember. I only was asking thing --
7 that I was in a lot of pain, to do something.

8 Q. Do you remember if this person asked you what
9 happened?

10 A. Not exactly.

11 Q. You don't remember or that's not what she
12 asked? He or she asked.

13 A. I don't remember.

14 Q. Do you remember telling the people at the
15 doctor's office that you stepped in a hole and broke
16 your leg?

17 A. Yes, sir.

18 Q. But that's not what happened, is it?

19 A. No, sir.

20 Q. Did you hurt anything else in the fall
21 besides your right leg?

22 A. I had -- I was feeling pain on my left leg,
23 but already -- it already went away.

24 Q. How long have you been wearing the boot that
25 you're wearing now?

1 A. I already started walking at home with my
2 shoe, but when I go outside I put it on.

3 Q. Has a doctor told you to wear that when you
4 leave your home?

5 A. No, he hasn't.

6 Q. Have you seen any other doctors besides
7 Dr. Wildstein?

8 A. No, only the girl that massages my foot, that
9 gives me the therapy.

10 THE INTERPRETER: The interpreter said
11 "foot". She meant to say "leg".

12 BY MR. WYMAN:

13 Q. Do you go to therapy every week?

14 A. Three times a week. Two times -- three times
15 a week.

16 Q. Are you planning to go to therapy this week?

17 A. Yes, sir.

18 Now, on the 21st -- I don't know what date is
19 today, but I have an appointment on the 21st.

20 Q. For therapy?

21 A. Yes.

22 Q. Do you have an appointment to see
23 Dr. Wildstein?

24 A. Yes, sir.

25 Q. When?

Page 24

1 A. In April.

2 Q. When was the last time you saw Dr. Wildstein?

3 A. I don't remember. I think it was the 5th --
4 the 6th, the 6th of last month.

5 Q. December?

6 A. No; January.

7 Q. Is your right leg getting better?

8 A. Yes, sir.

9 Q. How much longer do you plan on wearing that
10 boot?

11 A. I would like to get rid of it, but the
12 problem is that sometimes when I take it off and I
13 step on like this, my foot hurts.

14 Q. When you step on something?

15 A. Yes. Like if I put my foot like this and I
16 step like this.

17 MR. WYMAN: Let the record reflect that I
18 think he's describing that when he steps on something
19 other than flat ground he has a problem with the
20 ankle.

21 MR. GIBSON: A precautionary -- he sounds
22 like he wears it as a precaution.

23 MR. WYMAN: That sounds fair.

24 BY MR. WYMAN:

25 Q. Is Dr. Wildstein telling you to walk with the

1 crutch that you brought here today?

2 A. Well, he had told me to use both, but I would
3 like to get rid of them and start working already.
4 So I only have one, and he said that it's okay.

5 Q. Have you worked anywhere since you fell out
6 of the tree?

7 A. No, sir.

8 Q. Who has paid for your medical treatment so
9 far?

10 A. I wouldn't know.

11 Q. Do you feel like you could go back to work
12 doing yard work now?

13 A. Yes, sir. I would like to, but the doctor
14 told me that since they ask me to carry the
15 wheelbarrows full of dirt or full of grass, he said
16 that I would no longer be able to do this. Because
17 sometimes we plant grass and we have to pick up the
18 wheelbarrow and fill it up with lots of grass and we
19 have to carry it to places where we're going to plant
20 the grass, and the doctor told me that probably that
21 kind of work I'm not going to be able to do anymore.

22 Q. Do you have metal screws or rods in your leg
23 right now?

24 A. Yes, sir.

25 Q. Has Dr. Wildstein told you he wants to take

Page 26

1 those out?

2 A. No. He hasn't said anything, and I haven't
3 asked him either. I would like for him to take it
4 out.

5 Q. Do you feel pain in your right leg when you
6 sit in a chair like you are right now?

7 A. No, not right now. Only when I walk.

8 Q. How far can you walk before it begins to
9 hurt?

10 A. I walk -- immediately, a small distance.
11 When I put weight on my foot is when it hurts. When
12 I move it like this, it also hurts.

13 Q. Your ankle hurts?

14 A. Yes, sir. This part here. This part here on
15 my foot. That's where I feel a discomfort, this part
16 of the foot.

17 MR. WYMAN: Let the record reflect he's
18 pointing at his wrist, but I think he's using it as
19 an example for his ankle.

20 BY MR. WYMAN:

21 Q. Are you still taking any medication?

22 A. Well, I have some pills that I've been saving
23 because I take it every once in awhile. The doctor
24 told me that he was no longer going to prescribe any
25 more pills, but I still have the pain.

1 Q. Before you fell out of this tree had you ever
2 injured your right leg or your right ankle before?

3 A. No, sir.

4 Q. Have you ever been in a car accident, a car
5 crash?

6 A. No, sir.

7 Q. Have you ever been hurt at work before?

8 A. A small little cut when we cut the grass.

9 Q. Did you file --

10 A. But it was very small, the cut. Nothing of
11 importance.

12 Q. Have you ever been treated for any sort of
13 psychological problems, mental problems?

14 A. No, sir.

15 Q. Have you understood all of the questions that
16 I have asked you here this morning?

17 A. Yes, sir, except the word "psychology",
18 because that I didn't understand.

19 Q. Do you understand the word "mental"? A
20 mental problem?

21 A. Yes.

22 Q. Depression?

23 A. No.

24 Q. You never had any depression?

25 A. No. I don't understand.

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1

MR. WYMAN: That's all I've got.

2

(Deposition concluded at 11:00 a.m.)

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CERTIFICATE OF REPORTER.

I, Patricia Thompson-Morrison, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 19th day of January 2009 at Charleston, Charleston County, South Carolina.



Patricia Thompson-Morrison
Registered Professional
Reporter

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I N D E X

Page

EXAMINATION

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(No Information Requested.)

(No Exhibits Proffered.)

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STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0813616

RAMON ZEPEDA-CAPEDA,
Claimant/Employee,
vs.
PRIORITY LANDSCAPING and LAWN CARE, INC.,
Employer,
and
ACCIDENT FUND INSURANCE COMPANY OF AMERICA,
Carrier.

DEPOSITION OF: RAMOS ZEPEDA

DATE: January 19, 2009

TIME: 10:00 a.m.

LOCATION: Gibson Law Firm, LLC
5422 Rivers Avenue
North Charleston, SC

TAKEN BY: Counsel for the Employer, Carrier

REPORTED BY: PATRICIA THOMPSON-MORRISON
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

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1 APPEARANCES OF COUNSEL: 2 3 ATTORNEYS FOR THE CLAIMANT 4 RAMOS ZEPEDA: 5 GIBSON LAW FIRM, LLC 6 BY: DON C. GIBSON 7 5422 Rivers Avenue 8 North Charleston, SC 29406 9 (843) 744-1887 10 dgibson@dgibsonlaw.com 11 12 ATTORNEYS FOR THE EMPLOYER/CARRIER 13 PRIORITY LANDSCAPING and 14 LAWN CARE, INC. and ACCIDENT FUND 15 INSURANCE CO. OF AMERICA: 16 McANGUS GOUDELOCK & COURIE 17 BY: MIKELL H. WYMAN 18 78 Wentworth Street 19 Charleston, SC 29401 20 (843) 534-0101 21 mwymen@mgclaw.com 22 23 ALSO PRESENT: 24 Luna Gainer, Interpreter 25 Incourt Interpreting and Translation Services (INDEX AT REAR OF TRANSCRIPT)	1 A April 30. 2 Q What year? 3 A '63. 4 Q How old are you? 5 A Maybe 48, 46. 6 Q 45? 7 A Uh-huh. 8 Q What is your current address? 9 A Shellfish, 1705. 10 Q Charleston? 11 A Charleston? Yes, I think. 12 Q How long have you lived there? 13 A It's been about six months. 14 Q Do you own that house? 15 A No. 16 Q Are you married? 17 A Yes. 18 Q Does your wife live with you there? 19 A Yes. 20 Q Does your wife work? 21 A Yes; once in a while. Sometimes she does; 22 sometimes she doesn't. 23 Q When she does work, what does she do? 24 A Taking care of children, and she mops the 25 house and irons. Cleaning of the house and taking
Page 3	Page 5
1 LUNA GAINER, 2 being first duly sworn to accurately interpret and 3 translate. 4 RAMOS ZEPEDA-CAPEDA 5 being first duly sworn, testified as follows: 6 EXAMINATION 7 BY MR. WYMAN: 8 Q State your full name, please. 9 A Ramos Zepeda. 10 Q Spell your last name, please. 11 A Letter by letter? 12 Q Please. 13 A My last name or my name also? 14 Q We'll do this. That is your last name? 15 A Yes. No. This one is. This one is not. 16 MR. WYMAN: My file reflects a hyphenated 17 last name. 18 THE WITNESS: Ramos goes here. 19 MR. WYMAN: For the record, my file reflects 20 that there is a hyphenated last name that is 21 Z-E-P-E-D-A - C-A-P-E-D-A. Apparently that is not 22 correct and it is strictly Zepeda, and he's just 23 testified to that. His middle name being Ramos. 24 BY MR. WYMAN: 25 Q What is your date of birth?	1 care of children. 2 Q Does anyone else besides you and your wife 3 live with you in that house? 4 A Yes. 5 Q Who? 6 A There are one, two, three, four more people. 7 Q I need names, please. 8 A Cesar. 9 Q Last name? 10 A I don't know. Rodriguez, I think. 11 Mr. Emilio. 12 Q Do you know his last name? 13 A No. The other one -- well, they call him 14 Chelo, but I don't know his name. 15 Q They call Emilio Chelo? 16 A Emilio, Chelo, Cesar, Juvenal. 17 Q What was the last one? 18 A And that's it. Juvenal. Four of them. 19 Q Do those four people pay you to live there? 20 A No. My wife -- no. I mean the owner of the 21 house. They're renting, just like I am. 22 Q Do you have any children? 23 A Yes. 24 Q How many? 25 A Six.

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Page 6 1 Q. Where do they live? 2 A. Mexico, Vera Cruz. 3 Q. Who cares for your children in Mexico? 4 A. My mom. 5 Q. Do you send money home? 6 A. Yes. Now I have not sent. Only my wife has. 7 Q. Do you have a social security number? 8 A. Number here? No. 9 Q. Do you have a resident alien card? 10 A. No. 11 Q. Do you have any documentation that allows you 12 to work here legally? 13 A. No. 14 Q. How long have you been in the United States? 15 A. It's my first time. 16 Q. How long? How many years? 17 A. About two and a half years. 18 Q. Do you smoke? 19 A. No. 20 Q. Did you attend school in Mexico? 21 A. Yes. 22 Q. How many years? 23 A. Five years. 24 Q. Did you work in Mexico? 25 A. Yes.	Page 8 1 Q. You just worked on his home? 2 A. Yes. 3 Q. How long did you work on his home? 4 A. Some three months, four. 5 Q. When did you last work on Mr. Eduardo's home? 6 A. I don't remember exactly. 7 Q. Had you finished working on his home when 8 this accident happened? 9 A. No. 10 Q. Did Mr. Eduardo pay you in cash? 11 A. Yes. 12 Q. How did you get the job with Priority 13 Landscaping? 14 A. Through a person who went to Mexico. 15 Q. Had that person worked for Priority 16 Landscaping? 17 A. Yes; he was working there. 18 Q. How many hours a day did you work for 19 Priority Landscaping? 20 A. Sometimes 50, 60 hours, 58, but always more 21 than 40. 22 Q. Per week? 23 A. Yes. 24 Q. How much were you paid per hour? 25 A. They started paying me 8 and lately they were
Page 7 1 Q. What jobs did you have? 2 A. In the fields and at a paper factory. 3 Q. What kind of work have you done since you 4 arrived in the United States? 5 A. Carpentry, concrete, and yard work. 6 Q. Have you done yard work for anyone other than 7 Priority Landscaping? 8 A. No. 9 Q. How long have you had the job with Priority 10 Landscaping? 11 A. Two years maybe. 12 Q. Did you work any other jobs while you were 13 working for Priority Landscaping? 14 A. Yes. 15 Q. Where? 16 A. Mt. Pleasant. 17 Q. Who did you work for? 18 A. With Mr. Eduardo. 19 Q. What did you do with Mr. Eduardo? 20 A. Also I was working at his home with the 21 carpentry, and I would work in his yard. 22 Q. Did Mr. Eduardo pay you? 23 A. Yes. 24 Q. Did he own a business? 25 A. I wouldn't know.	Page 9 1 paying me 9. 2 Q. Were you paid by check? 3 A. Yes, sir. 4 Q. How often were you paid? 5 A. On Friday's. 6 Q. Every Friday? 7 A. Yes, sir. 8 Q. How many days per week did you work for 9 Priority Landscaping? 10 A. Five days. Sometimes I would work six days, 11 on Saturday's. 12 Q. Who was your direct supervisor? Your boss? 13 A. The person I was working with the most was 14 Juvenal. 15 Q. Was he a foreman? A boss? 16 A. He's the oldest and he's the one most ahead. 17 Manager you call them? The person in charge. 18 Q. Who is Frank? 19 A. He's above Juvenal. Manager. 20 Q. Who is William Hampton? 21 A. He is the boss. 22 Q. Does he own the company? 23 A. Yes, sir. 24 Q. What was your job with Priority Landscaping? 25 A. I would cut grass. I would plant the shrubs,

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1 sometimes trees. Sometimes I would do trimming of 2 the bushes and also to cut the branches of the trees 3 and blow with the blower. I would drive the tractor 4 and I would water the plants. 5 Q. Did you work with the same crew every day? 6 A. No. 7 Q. Was there a crew that you usually worked 8 with? 9 A. Well, the one I worked most with was Juvenal. 10 Q. Who else was on that crew? 11 A. They would change — very often they would 12 change personnel. Almost daily we would change 13 personnel. 14 Q. Was Frank usually on the job with you 15 helping? 16 A. Yes. 17 Q. What happened on September 4th, 2008? 18 A. I fell off a tree. 19 Q. Where were you? 20 A. On top of the tree. 21 Q. What job were you working on? 22 A. Before I went up the tree? 23 Q. Yes. What yard were you working on? 24 A. I don't remember the name, but it was a 25 church. It's a church.	1 yards where you went to work? 2 A. It's a big car. It's the biggest in the 3 company. 4 Q. Was there anything attached to the truck that 5 you used to carry some extra equipment? 6 A. No, sir. 7 Q. Did you have a riding lawn mower? 8 A. Yes, sir. 9 Q. Did you put that in the back of the pickup 10 truck? 11 MR. GIBSON: I object to the form. He has 12 not said it's a pickup truck yet. 13 Q. (Continued) Was it a pickup truck? 14 A. I don't know. Big car. 15 Q. Did it have an open space in the back? 16 A. Yes, sir. 17 Q. Did you put the riding lawn mower in the open 18 space in the back of the truck? 19 A. Yes, sir. 20 Q. What other tools were in the truck that day? 21 A. A big blower, the one that you push; small 22 blowers that you put on your back, and several 23 weeders and a tractor. 24 Q. Any other tools that you can think of? 25 A. The weed eaters, the blowers and the tractor.
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1 Q. Was the church on James Island? 2 A. Yes, sir. 3 Q. What time of the day did you fall out of the 4 tree? 5 A. Around 2:00 in the afternoon. 1:30. 6 Q. What time did you start work that day? 7 A. At 8:00 in the morning, sir. 8 Q. Were you working with a crew? 9 A. Yes. 10 Q. Where did you meet the crew to start the day? 11 A. At the shop. At the shop at Mr. William's 12 house. 13 Q. Who worked on that crew with you that day? 14 A. Leonardo. 15 Q. Do you know his last name? 16 A. No. 17 Q. Who else? 18 A. Frank and Cesar. 19 Q. Were you all riding in a company truck? 20 A. Yes, sir. 21 Q. Who drove? 22 A. Frank. 23 Q. Was there a trailer attached to that truck? 24 A. Excuse me? 25 Q. How did your crew get the equipment to the	1 Q. Did you eat lunch before you fell out of this 2 tree? 3 A. No, sir. 4 Q. What kind of tree did you fall out of? 5 A. I don't know its name. 6 Q. Was it a big tree? 7 A. Yes, sir. 8 Q. Could you wrap your arms around the trunk of 9 the tree? 10 A. No, sir. 11 Q. It was bigger than that? 12 A. Yes; more or less. 13 Q. Why did you climb into the tree? 14 A. Cesar told me that Frank had said that I 15 should go up. 16 Q. Frank did not tell you directly to get into 17 the tree? 18 A. No. He was with Cesar, but I don't know how 19 to speak English. I don't understand what he says. 20 Q. Before September 4 of 2008 had you worked at 21 this church? 22 A. Yes, sir. 23 Q. Had you ever climbed this tree before? 24 A. No; others that are around it. 25 Q. Other trees?

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Page 14 1 A. Yes. 2 Q. You had actually climbed – 3 A. Another one, smaller. 4 Q. But you actually climbed into the tree, the 5 other trees? 6 A. Before? 7 Q. Yes; before this one. 8 A. Yes. 9 Q. Why did you climb into the other trees? 10 A. We would trim the branches, the low branches. 11 Q. What kind of other trees did you climb into? 12 A. I don't know the names of the trees. 13 Q. What did Frank want you to do when you 14 climbed into this tree on September 4th, 2008? 15 A. I don't know. The one that talked to me was 16 Cesar. He told me to go up. 17 Q. What did Cesar ask you to do when you got 18 into the tree? 19 A. He told me to go up, that Frank had said – 20 I thought it was to cut a branch that was low. 21 Q. Did you cut a branch that was low? 22 A. I was not able to cut it. 23 Q. Why not? 24 A. Because I fell. 25 Q. Did you take a tool into the tree?	Page 16 1 MR. GIBSON: I suppose. It's a best guess. 2 MR. WYMAN: Let the record reflect he used 3 the index and thumb of each hand and created a circle 4 that we think is three to four inches. 5 MR. GIBSON: But that's not exactly right, 6 because your hand is like that and he was doing 7 something like that. 8 MR. WYMAN: Three to four inches is our best 9 guess. 10 MR. GIBSON: In circumference or diameter? 11 MR. WYMAN: Diameter. 12 MR. GIBSON: I don't know about that. 13 BY MR. WYMAN: 14 Q. Show again, please. 15 MR. GIBSON: Okay. 16 MR. WYMAN: Three to four inches. 17 MR. GIBSON: Two to three. 18 MR. WYMAN: Two to four? 19 MR. GIBSON: Correct. 20 BY MR. WYMAN: 21 Q. Who was underneath the tree after you climbed 22 in it? 23 A. Frank, Cesar and Leonardo. 24 Q. Were they all standing there watching you? 25 A. Yes, sir.
Page 15 1 A. No, sir. 2 Q. How did you get into the tree? 3 A. I was on top of the machine. 4 Q. What machine? 5 A. The tractor. I was about to go to work. 6 I came back and I parked right next to the tree, 7 and then I went up. 8 Q. So you did not use a ladder? 9 A. We didn't have a ladder that day. 10 Q. If you were going to cut a branch, why didn't-- 11 you have a tool? 12 A. I would wait until somebody passed it on to 13 me. 14 Q. What tool were you going to use? 15 A. Maybe a hatchet. Maybe a saw. 16 Q. Was there a hatchet or a saw in the truck? 17 A. Undemeath there is a drawer where we put the 18 smaller tools. 19 Q. How big was the branch you were going to 20 trim? 21 A. Thin. 22 Q. How thin? 23 A. A little like this. 24 MR. WYMAN: Let the record reflect it's three 25 to four inches that he's indicating.	Page 17 1 Q. Had the crew already done all the work that 2 needed to be done at the church? 3 A. We were about to start. 4 Q. How many limbs were you supposed to cut in 5 the tree? 6 A. I wouldn't know yet. 7 Q. I'm not sure I understand "yet". What do you 8 mean by "yet"? 9 A. Well, because we were about to start the 10 work, and normally when we start debranching the 11 trees -- we might have done many before in the past. 12 Sometimes we come out with two trucks full of them. 13 Q. Who was supposed to pass you the tool to cut 14 the limb? 15 A. Cesar, sir. 16 Q. Is this the same Cesar that lives with you? 17 A. Yes, sir. 18 Q. How did you fall out of the tree? 19 A. Well, I don't remember. I think I lost my 20 balance and I ended up hanging, and I couldn't go 21 back anymore. 22 Q. Were you reaching for a limb when you lost 23 your balance? 24 A. I was already on the branch. 25 Q. Were you reaching for the limb you were

Page 18 1 supposed to cut when you lost your balance? 2 A. No. I was already standing on the branch, 3 and the branch would move. 4 THE INTERPRETER: The branch was moving. 5 Interpreter correction. 6 BY MR. WYMAN: 7 Q. Did you fall because the branch was moving? 8 A. No. When I realized that I was already 9 hanging, that's when I fell. 10 Q. Had you ever seen any other employee of 11 Priority Landscaping climb this tree that you fell 12 out of? 13 A. No others. 14 Q. Before you climbed in the tree did you get a 15 tool out of this drawer that you told me about? 16 A. No, sir. 17 Q. Before you climbed the tree did Cesar or 18 Frank get a tool out of the drawer you told me about? 19 A. No. I didn't notice. I was on top of the 20 tractor. 21 Q. How long were you in the tree before you fell 22 out? 23 A. Maybe some five minutes. 24 Q. What were you doing in the tree for five 25 minutes if you didn't have a tool?	Page 20 1 A. No, sir. 2 Q. Were Frank, Cesar and Leonardo watching when 3 you fell? 4 A. Yes, sir, Cesar and Frank. Leonardo, I'm not 5 sure. 6 Q. Did you know you had broken your leg as soon 7 as you hit the ground? 8 A. No. 9 Q. Did you try to stand up? 10 A. Yes, sir. 11 Q. Were you in pain as soon as you fell? 12 A. No, sir. 13 Q. Were you able to actually get on your feet? 14 A. Yes, sir. 15 Q. What did you do next? 16 A. I limped to where the car was. 17 Q. Did you get in the car? 18 A. Yes, sir. 19 Q. What happened next? 20 A. That's when I started to feel a lot of pain. 21 Q. How long did you stay in the car? 22 A. I don't know, but I know that it was a long 23 time until Frank was finished. He had been on the 24 phone. 25 Q. How long?
Page 19 1 A. I only walked on top of the branch that 2 probably we were about to cut. 3 Q. When you climbed into the tree, did you go up 4 several more branches? Did you continue to climb? 5 A. No; only one branch. 6 Q. So you were there to cut the branch that you 7 were standing on? 8 A. Yes, sir. 9 Q. You say you used the tractor to climb in the 10 tree. 11 Did you have to climb up higher on the 12 tractor to get onto the branch? 13 A. I was very close almost. Very little. 14 Q. So if you were standing on top of the 15 tractor, could you reach up and grab the branch? 16 A. No, sir. 17 Q. How did you get onto the branch if you 18 couldn't reach up and grab it? 19 A. I climbed onto the tractor first. 20 Q. While you were on top of the tractor how did 21 you get onto the branch? 22 A. I only went up the tree and from the tree I 23 went onto the branch, which supposedly was hanging 24 off. 25 Q. Did you use a rope at any point?	Page 21 1 A. Maybe half an hour. 2 Q. Did you tell Frank you were in pain? 3 A. I told Cesar because Frank doesn't understand 4 me. 5 Q. Did Cesar tell Frank you were in pain? 6 A. Yes, sir. Cesar did tell Frank. 7 Q. What did Frank do? 8 A. He told me to wait, that he was trying to get 9 in touch with William. 10 Q. Did William come to the church? 11 A. No, sir. 12 Q. Did anyone else besides Frank, Cesar and 13 Leonardo come to the church? 14 A. The secretary lady. 15 Q. Do you know her name? 16 A. No, sir. 17 Q. Why did she come to the church? 18 A. She came to pick me up in a car. 19 Q. Where did she take you? 20 A. In an office - I think it's a doctor. 21 That's where I was and that's when they put - gave 22 me a shot for the pain. 23 Q. Was there someone at the doctor's office that 24 spoke Spanish? 25 A. Yes, there was, but very little I heard her

6 (Pages 18 to 21)

Page 22 1 talk for him. 2 THE INTERPRETER: The interpreter is not sure 3 of the gender. 4 A. (Continued) I was in a lot of pain. 5 Q. Was this person getting information from you? 6 A. I don't remember. I only was asking thing -- 7 that I was in a lot of pain, to do something. 8 Q. Do you remember if this person asked you what 9 happened? 10 A. Not exactly. 11 Q. You don't remember or that's not what she 12 asked? He or she asked. 13 A. I don't remember. 14 Q. Do you remember telling the people at the 15 doctor's office that you stepped in a hole and broke 16 your leg? 17 A. Yes, sir. 18 Q. But that's not what happened, is it? 19 A. No, sir. 20 Q. Did you hurt anything else in the fall 21 besides your right leg? 22 A. I had -- I was feeling pain on my left leg, 23 but already -- it already went away. 24 Q. How long have you been wearing the boot that 25 you're wearing now?	Page 24 1 A. In April. 2 Q. When was the last time you saw Dr. Wildstein? 3 A. I don't remember. I think it was the 5th -- 4 the 6th, the 6th of last month. 5 Q. December? 6 A. No; January. 7 Q. Is your right leg getting better? 8 A. Yes, sir. 9 Q. How much longer do you plan on wearing that 10 boot? 11 A. I would like to get rid of it, but the 12 problem is that sometimes when I take it off and I 13 step on like this, my foot hurts. 14 Q. When you step on something? 15 A. Yes. Like if I put my foot like this and I 16 step like this. 17 MR. WYMAN: Let the record reflect that I 18 think he's describing that when he steps on something 19 other than flat ground he has a problem with the 20 ankle. 21 MR. GIBSON: A precautionary -- he sounds 22 like he wears it as a precaution. 23 MR. WYMAN: That sounds fair. 24 BY MR. WYMAN: 25 Q. Is Dr. Wildstein telling you to walk with the
Page 23 1 A. I already started walking at home with my 2 shoe, but when I go outside I put it on. 3 Q. Has a doctor told you to wear that when you 4 leave your home? 5 A. No, he hasn't. 6 Q. Have you seen any other doctors besides 7 Dr. Wildstein? 8 A. No, only the girl that massages my foot, that 9 gives me the therapy. 10 THE INTERPRETER: The interpreter said -- 11 "foot". She meant to say "leg". 12 BY MR. WYMAN: 13 Q. Do you go to therapy every week? 14 A. Three times a week. Two times -- three times 15 a week. 16 Q. Are you planning to go to therapy this week? 17 A. Yes, sir. 18 Now, on the 21st -- I don't know what date is 19 today, but I have an appointment on the 21st. 20 Q. For therapy? 21 A. Yes. 22 Q. Do you have an appointment to see 23 Dr. Wildstein? 24 A. Yes, sir. 25 Q. When?	Page 25 1 crutch that you brought here today? 2 A. Well, he had told me to use both, but I would 3 like to get rid of them and start working already. 4 So I only have one, and he said that it's okay. 5 Q. Have you worked anywhere since you fell out 6 of the tree? 7 A. No, sir. 8 Q. Who has paid for your medical treatment so 9 far? 10 A. I wouldn't know. 11 Q. Do you feel like you could go back to work 12 doing yard work now? 13 A. Yes, sir. I would like to, but the doctor 14 told me that since they ask me to carry the 15 wheelbarrows full of dirt or full of grass, he said 16 that I would no longer be able to do this. Because 17 sometimes we plant grass and we have to pick up the 18 wheelbarrow and fill it up with lots of grass and we 19 have to carry it to places where we're going to plant 20 the grass, and the doctor told me that probably that 21 kind of work I'm not going to be able to do anymore. 22 Q. Do you have metal screws or rods in your leg 23 right now? 24 A. Yes, sir. 25 Q. Has Dr. Wildstein told you he wants to take

Page 26	Page 28
1 those out? 2 A. No. He hasn't said anything, and I haven't 3 asked him either. I would like for him to take it 4 out. 5 Q. Do you feel pain in your right leg when you 6 sit in a chair like you are right now? 7 A. No, not right now. Only when I walk. 8 Q. How far can you walk before it begins to 9 hurt? 10 A. I walk -- immediately, a small distance. 11 When I put weight on my foot is when it hurts. When 12 I move it like this, it also hurts. 13 Q. Your ankle hurts? 14 A. Yes, sir. This part here. This part here on 15 my foot. That's where I feel a discomfort, this part 16 of the foot. 17 MR. WYMAN: Let the record reflect he's 18 pointing at his wrist, but I think he's using it as 19 an example for his ankle. 20 BY MR. WYMAN: 21 Q. Are you still taking any medication? 22 A. Well, I have some pills that I've been saving 23 because I take it every once in awhile. The doctor 24 told me that he was no longer going to prescribe any 25 more pills, but I still have the pain.	1 MR. WYMAN: That's all I've got. 2 (Deposition concluded at 11:00 a.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 27	Page 29
1 Q. Before you fell out of this tree had you ever 2 injured your right leg or your right ankle before? 3 A. No, sir. 4 Q. Have you ever been in a car accident, a car 5 crash? 6 A. No, sir. 7 Q. Have you ever been hurt at work before? 8 A. A small little cut when we cut the grass. 9 Q. Did you file -- 10 A. But it was very small, the cut. Nothing of 11 importance. 12 Q. Have you ever been treated for any sort of 13 psychological problems, mental problems? 14 A. No, sir. 15 Q. Have you understood all of the questions that 16 I have asked you here this morning? 17 A. Yes, sir, except the word "psychology", 18 because that I didn't understand. 19 Q. Do you understand the word "mental"? A 20 mental problem? 21 A. Yes. 22 Q. Depression? 23 A. No. 24 Q. You never had any depression? 25 A. No. I don't understand.	1 CERTIFICATE OF REPORTER. 2 3 I, Patricia Thompson-Morrison, Registered 4 Professional Reporter and Notary Public for the 5 State of South Carolina at Large, do hereby certify 6 that the foregoing transcript is a true, accurate, 7 and complete record. 8 I further certify that I am neither related 9 to nor counsel for any party to the cause pending 10 or interested in the events thereof. 11 Witness my hand, I have hereunto affixed my 12 official seal this 19th day of January 2009 at 13 Charleston, Charleston County, South Carolina. 14 15 16 17 18 Patricia Thompson-Morrison 19 Registered Professional 20 Reporter 21 22 23 24 25

8 (Pages 26 to 29)

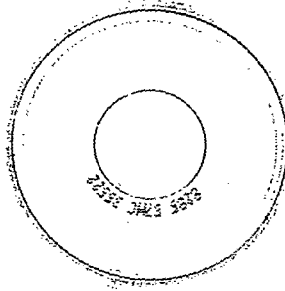
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Zepeda-Cepeda, Ramone
v.
Priority Landscaping and Lawn Care

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Vol: 1 Pages: 30

1/19/2009

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

No. _____

**On Appeal from the
South Carolina Workers' Compensation Commission**

W.C.C. File No. 0813616

RAMONE ZEPEDA-CEPEDA,

Employee/Appellant

v.

PRIORITY LANDSCAPING AND LAWN CARE, LLC,

Employer/Respondent

AND

ACCIDENT FUND INSURANCE COMPANY OF AMERICA

Carrier/Respondent

**APPEAL FROM SOUTH CAROLINA WORKERS'
COMPENSATION DECISION NO. 0813616**

YOU WILL PLEASE TAKE NOTICE that pursuant to S.C.Code Ann. § 42-17-60 (1976, as amended), Ramone Zepeda-Cepeda, the employee/claimant/appellant in the referenced action ("Mr. Zepeda-Cepeda"), intends to and does hereby appeal to the Court of Appeals from the Decision and Order of the South Carolina Workers' Compensation Commission filed on October 29, 2009 in the above-referenced case. The appeal will be predicated upon the attached

exceptions and the entire record and file made before the Workers' Compensation Commission
in its proceeding No. 0523398.

RAMONE ZEPEDA-CEPEDA

By counsel

A handwritten signature in black ink, appearing to read "Don C. Gibson", written over a horizontal line.

Don C. Gibson
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Post Office Box 60669
North Charleston, SC 29419-0669
(843) 744-1887

Attorney for Claimant/Appellant

November 30, 2009

North Charleston, South Carolina

EXCEPTIONS

1. The South Carolina Workers' Compensation (hereinafter "the Commission"), erred in issuing its Full Commission Decision and Order on October 29, 2009 that overruled the Order issued in this case on January 22, 2009 by Hearing Commissioner G. Bryan Lyndon, ordering that employee/claimant/appellant Ramone Zepeda-Cepeda (hereinafter "Mr. Zepeda-Cepeda"), was entitled to medical or compensation benefits under the South Carolina Workers' Compensation Act (hereinafter "the Act"), on the ground that Mr. Zepeda-Cepeda (a) sustained a compensable injury while performing duties within the course and scope of his employment; (b) was entitled to additional medical care inasmuch as he had not reached maximum medical improvement ("MMI"); and (c) was entitled to temporary total disability from September 4, 2008 through January 22, 2009, on the grounds that:
 - a. Mr. Zepeda-Cepeda had not been ordered by his supervisor to climb a large oak tree to trim a small branch.
 - b. Mr. Zepeda-Cepeda's version of the facts lacked credibility because, inter alia, (i) he had no tools when he climbed the tree; (ii) he could not name the employee who was supposed to pass him the tools to cut the branch once he was up in the tree; and (c) his fellow employees did not have tools in hand to pass up to the employee.
 - c. The company policy did not allow employees to trim trees that could not be reached with a pole saw and a ladder.
 - d. Mr. Zepeda-Cepeda had climbed the tree and then jumped in order to win a \$20.00 bet.
 - e. The Commission held that Mr. Zepeda-Cepeda as a matter of law not only had to believe that he climbed the tree in the course of his employment but that he actually was so acting in undertaking that act.
 - f. The Commission found the evidence insufficient in law to support the conclusion that Mr. Zepeda-Cepeda could reasonable have believed he was acting in the course and scope of his employment.
 - g. The Commission found as a matter of fact that Mr. Zepeda-Cepeda climbed the tree on a bet and that Mr. Zepeda-Cepeda was thus guilty of horseplay as a matter of law.
 - h. The Commission found that Mr. Zepeda-Cepeda's claim was not compensable so that he was not entitled to benefits under the Act.

THE ERRORS BEING:

- a. The great preponderance of the evidence in the record established that Mr. Zepeda-Cepeda climbed the tree at the request of his supervisor(s) for the purpose of trimming the branch in question within the scope of his employment.
- b. The testimony upon which the Commission made its findings of fact and conclusions of law totally lacked any credibility.
- c. The so-called company policy against climbing trees to cut limbs lacked any probative value.
- d. The testimony that Mr. Zepeda-Cepeda had climbed the tree and then jumped to the ground in order to win a \$20.00 bet is incredible, lacks any credibility, was unworthy of belief and cannot form the basis of a supportable denial of the employee's claim.
- e. The Commission misapplied the legal and factual burden upon Mr. Zepeda-Cepeda to prove that he was injured in the course and scope of his employment.
- f. The Commission's finding that the evidence was insufficient in law to support the conclusion that Mr. Zepeda-Cepeda could reasonably have believed he was acting in the course and scope of his employment is itself a reversible error of law.
- g. The Commission erroneously found as a matter of fact that Mr. Zepeda-Cepeda climbed the tree on a bet and committed an error of law when it found that Mr. Zepeda-Cepeda was guilty of horseplay as a matter of law.
- h. The Commission's finding that Mr. Zepeda-Cepeda's claim was not compensable so that he was not entitled to benefits under the Act constitutes reversible error.
- i. Even if, for the sake of argument only, the Commission's view of the facts was not clearly erroneous, the conclusions of law it drew from those facts were insupportable in law and so the Full Commission Decision and Order is fatally affected by errors of law.

Respectfully submitted,



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Attorney for Claimant/Appellant

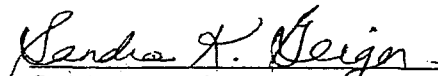
November 30, 2009
North Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, Legal Assistant in the law offices Don C. Gibson, attorney for claimant/appellant Ramone Zepeda-Cepeda, do hereby certify that I have served all counsel and interested parties in this action with a copy of claimant/appellant's Notice of Appeal and Exceptions to the Decision and Order of the South Carolina Workers' Compensation Commission by mailing copies thereof by United States Mail, postage prepaid, to the following address:

South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Attorney for Employer & Carrier/Respondent
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McAngus Goudelock & Courie, LLC
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Sandra K. Geiger, Paralegal for
Don C. Gibson

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0813616

RAMONE ZEPEDA-CEPEDA,

Employee,

Claimant,

vs.

PRIORITY LANDSCAPING AND LAWN
CARE, LLC,

Employer,

AND

ACCIDENT FUND INSURANCE COMPANY
OF AMERICA,

Carrier,

Defendants.

COPY

FULL COMMISSION
DECISION AND ORDER

DATE OF HEARING:

Hearing held in Charleston, S.C. on January 22, 2009.

APPEARANCES:

Claimant appeared and represented by Don C. Gibson, Esquire
of Gibson Law Firm, LLC of North Charleston, South Carolina.

Defendants represented by Mikell H. Wyman, Esquire of
McAngus Goudelock & Courie, L.L.C. of Charleston, South
Carolina.

PURPOSE OF THE HEARING:

To determine all issues as set forth in Forms 50 and 51.

COMMISSIONER:

Commissioner G. Bryan Lyndon

FILED:

10/29/09

STATEMENT OF THE CASE

The parties were heard by G. Bryan Lyndon on January 22, 2009 in Charleston, South Carolina.

On April 21, 2009, the Commissioner issued the following Order (in pertinent part):

FINDINGS OF FACT:

1. The Claimant injured his right leg in an accident arising out of and in the course and scope of his employment on September 4, 2008 when he fell from a tree limb after climbing a tree and proceeding out onto a limb during the course of employment under the instructions, direction of, and in the presence of his supervisor Frank Shoppel and interpreter Cesar Rodriquez.

After considering the testimony of all the witnesses, giving credence to that of the Employer owner's testimony, together with the Employer owners' invoice to Fort Johnson Baptist Church, I find that Priority Landscaping and Lawn Care, Inc., in the regular course of business did tree trimming on small, medium, and large trees when the limbs could be reached with a ladder and an extension saw.

I further find based on the cumulative evidence that the Claimant reasonably believed he was furthering the Employer's business when he climbed into the subject tree.

2. After considering all the evidence, I further find that the Defendants failed to prove by the greater weight of the evidence that the Claimant was engaged in "horseplay."
5. I find the following medical providers have provided causally-related medical care for the Claimant since the accident: Doctor's Care, Roper St. Francis, Michael Wildstein, M.D., of Wildstein's Spine Center, PHC Outpatient Rehabilitation (therapy). I further find that all medical bills related to these care providers should be paid by the Carrier pursuant to the South Carolina Workers' compensation schedule for medical payments.

6. I find the Claimant has not reached maximum medical improvement and is in need of future medical care. I find that the Defendants shall provide future medical care and shall direct the same.
7. I find that the Claimant is entitled to temporary total disability benefits from September 4, 2008, through the date of hearing using the compensation rate of \$308.89. I further find that the Defendants shall pay continuous temporary total disability benefits of \$308.89 from the date of hearing forward until further order of the Commission or by operation of state statute.

CONCLUSIONS OF LAW

1. That the parties of this proceeding are subject to and bound by the provisions of the Act.
2. That on or about September 4, 2008, Claimant sustained a compensable injury to his right lower extremity within the meaning of S.C. Code Ann. §42-1-160, as amended (1976) while performing duties within the course and scope of his employment.
4. That pursuant to S.C. Code Ann. §42-17-30, as amended (1976), Claimant shall be entitled to additional medical care as he has not reached maximum medical improvement. Defendants shall be responsible for provision of the same and may direct the medical treatment designed to lessen Claimant's period of disability.
5. That pursuant to S.C. Code Ann. §42-9-10 and §42-9-20, as amended (1976), Claimant is entitled to temporary total disability from September 4, 2008 through January 22, 2009 which shall continue until further order of the Commission or by operation of state statute.

ORDER/AWARD

1. This is a compensable claim.
2. That the Defendants pay temporary total disability to the Claimant from the date he was injured, September 4, 2008, to the date of hearing on January 22, 2009 utilizing a compensation rate of \$308.89.

3. The weekly temporary total disability of \$308.89 shall be paid as a continuous award beyond the hearing date until further order of the Commission or by operation of statute.
4. Claimant is entitled to all his past causally-related medical treatment. Defendants shall pay all causally-related medical costs and expenses to include but not limited to, medical transportation and interpretation costs, from the date of his injuries on September 4, 2008 to the date of hearing and continuing pursuant to the approved workers' compensation schedule. The Defendants shall pay all the specified medical providers as set forth in the above Findings of Fact.
5. The Defendants shall provide additional medical care for the Claimant for his causally-related injuries and may direct the same.

AND IT IS SO ORDERED.

Within the statutory period, counsel for the Defendants filed an Application for Review in the case setting forth Defendants' assignments of error to the Hearing Commissioner's Decision and Order. Copies of that Application for Review were furnished to all interested parties prior to oral argument presented before the Appellate Panel on August 25, 2009. All proper testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Defendants respectfully submit the following:

1. The Hearing Commissioner erred in finding as fact that the Claimant injured his right leg in an accident arising out of and in the course and scope of his employment on September 4, 2008, based upon the erroneous conclusion that the Claimant "reasonably believed that he was furthering the Employer's business when he climbed into the subject tree."
2. The Hearing Commissioner erred in finding as fact and concluding as a matter of law that the Defendants failed to prove by the greater weight of the evidence that the Claimant was engaged in horseplay at the time of his accident, after submitting evidence that the Claimant engaged in a bet with a co-worker to climb the tree and jump to the ground.

-
3. ~~The single Commissioner erred in concluding as a matter of law and ordering that the Defendants are responsible for payment of any benefits under the South Carolina Workers' Compensation Act.~~

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the award, weigh the evidence as presented at the initial hearing, and if good grounds be shown therefor, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the hearing Commissioner. Based on such a review conducted by the undersigned members of the Appellate Panel, we inter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Claimant alleges his supervisor Frank Shoppel, by and through a co-worker interpreter, Cesar Rodriquez, instructed Claimant to climb into a large oak tree to trim a small branch out of a limb approximately twenty to twenty-five feet above the ground. Claimant admitted he had no tools in his possession when he climbed the tree by scaling a riding lawnmower parked next to the trunk of the tree. He testified that a co-worker stood under the limb with a "weed-eater" but admitted he would not use that tool to cut a branch. (Hr. Tr., p. 46, ll. 9-18) There was no rope used to hoist a tool into the limb. (Hr. Tr., p. 52, ll. 9-15) Claimant alleges a co-worker was supposed to pass him a tool to cut the branch but was unable to identify which of his three co-workers' was charged with that duty or what tool would be passed to trim the limb. (Hr. Tr., p. 50, l. 18 – p. 51, l. 7)
2. Cesar Rodriquez had no tool in his possession to pass to the Claimant to trim the branch from the limb on which the Claimant climbed. That testimony was not challenged on cross-examination. (Hr. Tr., p. 94, ll. P. 16-21)
3. Frank Shoppel had no tool in his possession to the pass to the Claimant to trim the branch and the limb on which he climbed. He also testified that the other workers had no tool to pass to the Claimant. (Hr. Tr., p. 41, ll. 8-17) That testimony was not challenged on cross-examination.

4. The owner of the company, William Hampton, stated the company trims limbs out of large trees only if they can be reached using a pole saw and a ladder. (Hr. Tr., p. 201, l. 5 - p. 203, l. 1)
5. Eyewitnesses Frank Shoppel and Cesar Rodriguez both testified at various points during the hearing that the only reason the Claimant climbed the tree was to satisfy his obligation under a \$20.00 bet offered by Cesar Rodriguez that he would climb the tree and jump out. Shoppel testified that the Claimant "cradled the branch that he was standing on, turned over, and then hung and dropped." The witness later responded to a question from the hearing Commissioner that the Claimant "used both hands clasped around the trunk [sic, ostensibly "limb"] and was dangling. (Hr. Tr., p. 143, ll. 3-14)

CONCLUSIONS OF LAW

1. The Claimant failed to carry his burden to prove by the greater weight of the evidence that his injury occurred in the course and scope of his employment. The panel concludes that the hearing Commissioner's finding that Claimant "reasonably believed" he was acting in the course and scope of his employment is insufficient to conclude as a matter of law that this claim is compensable under the Act. The panel concludes that the Claimant must prove not that he believed he was operating in the course and scope of his employment, but that he actually was operating in the course and scope of his employment at the time of his accident. Claimant failed to carry that burden.
2. The Panel concludes that the evidence submitted by the Claimant fails to provide a basis even for a reasonable belief that Claimant was furthering the Employer's business when he climbed the subject tree. Claimant carried no tool and made no arrangements for a tool to be passed to trim the limb he alleges was his charge from supervisor Frank Shoppel. The Panel concludes that it stands to reason if the Claimant cannot adequately establish that he himself reasonably believed he was operating in the course and scope of

his employment when he climbed the limb, then he cannot prove that he was actually working in the course and scope of his employment when he climbed to the limb.

3. The Panel finds as fact that the Claimant climbed the tree after accepting a bet from his co-worker, Cesar Rodriquez. This conduct clearly falls within the perimeters of "horseplay" as defined by the Appellate courts of this state. Jones v. Hampton Pontiac, 304 S.C. 440, 405 S.E.2d 395 (1991); Allsep v. Daniel Const. Co., et al, 216 S.C. 268, 57 S.E.2d 427 (1950); Floyd v. City of Charleston, 287 S.C. 474, 339 S.E.2d 166 (Ct. App.), (1986); All as interpreting S.C. Code Ann. §42-1-160 (A) The circumstances under which this accident and injury occurred remove the accident from any consideration that it occurred in the course and scope of the Claimant's employment as required by the Act.
4. This claim is therefore not compensable. The Claimant is not entitled to benefits under the Act.

ORDER

IT IS, THEREFORE, ORDERED that the Decision and Order of the hearing Commissioner is fully and unanimously reversed by the Appellate Panel upon Defendants' application for review.

IT IS FURTHER ORDERED that Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act.

AND IT IS SO ORDERED.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 29 day of October, 2001
By Valerie D. Deller

Administrative Assistant to the Commissioner

Don C. Gibson
Michael H. Wynne

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

[Signature]
Commissioner Derrick L. Williams

[Signature]
Commissioner Susan S. Barden

[Signature]
Commissioner Avery B. Wilkerson, Jr.

EXHIBIT A

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0813616

RAMONE ZEPEDA-CEPEDA,

Employee,

Claimant,

vs.

PRIORITY LANDSCAPING AND LAWN
CARE, LLC,

Employer,

AND

ACCIDENT FUND INSURANCE
COMPANY OF AMERICA,

Carrier,

Defendants.

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND DON C.
GIBSON, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence: Any and all medical evidence identified by the Claimant; Defendants reserve the right to submit additional medical evidence, the existence of which is discovered at the Claimant's deposition that is scheduled for January 19, 2009.

EXHIBIT	DESCRIPTION	DATES	PAGES
A.	<i>Jones v. Hampton Pontiac</i> , 304 S.C. 440, 405 S.E.2d 395 (1991); <i>Allsep v. Daniel Const. Co., et al.</i> , 216 S.C. 268, 57 S.E.2d 427 (1950); <i>Floyd V. City of Charleston</i> , 287 S.C. 2474, 339 S.E.2d 166 (Ct.App., 1986)		8
B.	Wage form completed by Mary Jo Adams	9/22/08	1

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: William Hampton, Frank Shoppel, Mary Jo Adams, Cesar Rodriguez, Leonardo (last name unknown), and representatives of the Employer and/or Carrier may be called to testify; any and all witnesses identified by the Claimant.



MIKELL H. WYMAN
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 877
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Charleston, South Carolina 29402
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Attorneys for the Employer/Carrier

Charleston, South Carolina
January 12, 2009

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0813616

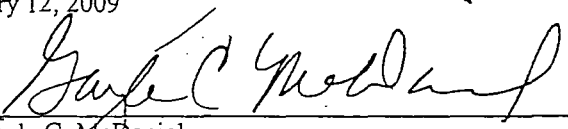
RAMONE ZEPEDA-CEPEDA,	}	
	}	
Employee,	}	
	}	
Claimant,	}	
	}	
vs.	}	
	}	
PRIORITY LANDSCAPING AND LAWN CARE,	}	
LLC,	}	
	}	CERTIFICATE
Employer,	}	OF
	}	SERVICE
AND	}	
	}	
ACCIDENT FUND INSURANCE COMPANY OF	}	
AMERICA,	}	
	}	
Carrier,	}	
	}	
Defendants.	}	

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Don C. Gibson, Esquire
Gibson Law Firm, LLC
5422 Rivers Avenue
North Charleston, South Carolina 29406

DOCUMENT: Pre-Hearing Brief and Notice of Witnesses and Written
Medical Reports

DATE OF MAILING: January 12, 2009



Gayle C. McDaniel
Legal Assistant to Mikell H. Wyman

304 S.C. 440

Calvin JONES, Respondent v. HAMPTON PONTIAC and The South Carolina Auto and Truck Dealers Association, Appellants.

405 S.E.2d 395

Calvin JONES, Respondent v. HAMPTON PONTIAC and The South Carolina Auto and Truck Dealers Association, Appellants.

23394

Supreme Court

WORKERS' COMPENSATION.—Employee injured while demonstrating karate-kick to co-worker during coffee break was not entitled to workers' compensation benefits; injury did not arise as a natural incident of work.

John W. Rabb, Jr., and Robert J. Sheheen, both of Savage, Royall & Sheheen, Camden, for appellants.

Daniel K. Felker, and David M. Ratchford, both of Ratchford & Associates, Columbia, for respondent.

Heard Jan. 8, 1991.

Decided May 6, 1991.

CHANDLER, Justice:

Hampton Pontiac (Employer) appeals a Circuit Court Order reversing the denial of Workers' Compensation benefits to Respondent, Calvin Jones (Employee).

We reverse.

FACTS

On September 20, 1988, during a coffee break, Employee slipped and fell while demonstrating a karate-kick to a co-worker. His left hip was fractured, disabling him from work for several weeks.

Employee's claim for Workers' Compensation benefits was denied by the single commissioner on the grounds (1) that the injury did not arise in the course of employment and (2) that,

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as the instigator of horseplay, Employee was not entitled to compensation. Full Commission affirmed; Circuit Court reversed.

ISSUE

Was Employee entitled to recover Workers' Compensation benefits?

DISCUSSION

In *Allsep v. Daniel Construction Co.*, 216 S.C. 268, 57 S.E.2d 427 (1950), this Court addressed the compensability of an injury which resulted from the horseplay of a fellow worker. There, we allowed an injured employee to recover benefits, noting that he was engaged in the performance of his duties when the "playful push or pull" of his co-worker resulted in injury. We stated:

Courts generally distinguish between aggressors or instigators, who are not compensated when injured, and non-participating victims or innocent bystanders who are compensated.

216 S.C. at 273, 57 S.E.2d at 429.

The Court's reasoning in *Allsep* derived from that expressed in *Eargle v. South Carolina Electric and Gas*, 205 S.C. 423, 32 S.E.2d 240 (1944):

... if the injury can be seen to have followed as a *natural incident of the work* and to have been contemplated by a reasonable person familiar with the whole situation as a result of the *exposure occasioned by the nature of the employment*, then it arises 'out of the employment. But it *excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment*. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear

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to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. (Emphasis supplied.) (Citation omitted.)

205 S.C. at 429--430, 32 S.E.2d at 242--243.

We reaffirm *Eargle* and *Allsep*, and hold that Employee's demonstration of a karate kick, while on break, did not give rise to his injury as a "natural incident of the work."

Accordingly, Employee was not entitled to Workers' Compensation benefits.

The judgment below is

Reversed.

GREGORY, C.J., and HARWELL, FINNEY and TOAL,
JJ., concur.

SC

S.C.

216 S.C. 268
ALLSEP v. DANIEL CONST. CO. ET AL.
57 S.E.2d 427

ALLSEP v. DANIEL CONST. CO. ET AL.

16311

269

1. WORKMEN'S COMPENSATION.---Where claimant suffered arm injury when fellow employee seized claimant's leg and pulled him off truck while claimant was unloading material from truck for employer, injury resulted from accident which arose out of and was incidental to employment and was compensable. Code 1942, P 7035-15, 7035-17.

2. WORKMEN'S COMPENSATION.---It is common knowledge from universal experience that when men are gathered together at work they are given to pranks which sometimes result in injuries and it is one of the anticipated risks of employment, and for loss of wages and for injury, workman or his dependent should be compensated in conformity with purpose of compensation act to transfer in part financial burden of disability to employer for which employer is in turn relieved of liability for damages in tort actions. Code 1942, P 7035-15, 7035-17.

3. WORKMEN'S COMPENSATION.---A basic purpose of the Workmen's Compensation Law is to eliminate fault as a requisite to liability. Code 1942, P 7035-15, 7035-17.

Messrs. J. Wiley Brown, of Greenville, and Charles & Charles, of Greenwood, for Appellant, cite: As to a worker, injured as a result of "horse-play" or "fooling" in which he was a non-participant, being entitled to compensation if, at the time of injury, he was attending strictly to his duties: 159 A. L. R. 313, 325; 195 Wis. 134, 217 N. W. 734, 159 A. L. R. 329; 229 N. Y. 470, 128 N. E. 711; (Ohio) 130 N. E. 38; 150 P. (2d) 301, 112 Colo. 480; 161 Tenn. 376, 32 S. W. (2d) 1039; 221 N. Y. 493, 116 N. E. 1060; 277 Ill. 53, 115 N. E. 128; 186 Ill. 605; 78 Okla. 216, 190 Pac. 92; 47 S.E.2d 673; 115 Tex. 371, 283 S. W. 127; 46 A. L. R. 1137; 13 A. L. R. 522; 159 A. L. R. 313; 199 N. C. 28, 153 S.E. 594; 206 S.C. 381, 34 S.E.2d 802; 112 Fed. (2d) 11, 14; 204 S.C. 423, 30 S.E.2d 36; 205 S. C. 499, 32 S.E.2d 365.

Messrs. Haynsworth & Haynsworth, of Greenville, for Respondent, cite: As to a worker, injured as the result of engaging in "horse-play", not being entitled to compensation: 37 S.E.2d 291, 208 S.C. 86. As to there being no causal connection between the work in which the employee was engaged and the injury: 205 S.C. 423, 429; 204 S.C. 481, 30 S.E.2d 73; 208 S.C. 545, 38 S.E.2d 761; 212

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S. C. 514, 48 S.E.2d 497; 208 S.C. 139, 37 S.E.2d 286; 213 N. C. 356, 196 S.E. 343; 212 N. C. 662, 184 S.E. 303; 212 N. C. 627, 194 S.E. 301; 213 N. C. 148, 195 S.E. 370; 203 N. C. 466, 166 S.E. 301; 46 S.E.2d 838; 17 S.E.2d 20, 220 N.C. 246; 199 N. C. 733, 155 S.E. 728, 730; 159 A. L. R. 319; 68 N. E. (2d) 773; 127 N. E. 49, 15 A. L. R. 586; 143 N. E. 420; 65 N. E. (2d) 778; 212 S. W. (2d) 964; 18 So. (2d) 93; 135 A. 293; 8 A. (2d) 189; 24 A. (2d) 193; 279 N. W. 860; 214 N. W. 953; 31 B. W. C. C. 43-Ca.; 31 B. W. C. C. 47-Ca.; 271 S. W. 686; 123 Atl. 180 (Me.).

January 30, 1950.

STUKES, Justice.

The Industrial Commission made an award of workmen's compensation to appellant which was reversed by the lower court, whence this appeal. Claimant had been working two weeks as a laborer for Daniel Construction Company, which is a building contractor. It was erecting houses at a cotton mill and claimant and three other employees were moving sheetrock by truck from a warehouse to the job. In the unloading process he and one other stood on the truck, toward the cab, and pushed the pieces of material to the rear of the truck where the two other members of the crew received and took them to be piled nearby. While thus standing on the truck claimant was suddenly and without warning seized by one of his legs by a fellow crew member who was on the ground, and pulled off the truck. As he fell he grabbed the other employee who thereby fell on claimant and the latter's right arm was broken in several places and was found by the Commission to be permanently, functionally impaired.

Claimant and the other employee had worked together only a couple of days and were barely acquainted. The latter was known to claimant only by the name of "Red"; he did not testify. On the day before the accident he invited claimant to have lunch with him, which claimant declined because he had brought his lunch. Only claimant testified concerning

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the circumstances of the accident and he denied any other communication with Red, any difficulty between them or any horseplay except this incident. The record indicates that the employer offered no evidence.

1 The Commission found that the injury resulted from accident which arose out of the employment. On this

point the Court held that the accident was unconnected with the work and, principally upon the authority of *Gory v. Monarch Mills*, 208 S.C. 86, 37 S.E.2d 291, 293, decided that the injury was non-compensable. Upon consideration we conclude to the contrary. *Gory's case* is not controlling. It is distinguishable upon the facts as is seen from the following excerpt from the judgment in that case: "At the time of respondent's injury, he had stopped shoveling (the work he was employed to do) for the purpose of procuring a cigaret for his personal pleasure from Davis who was passing near where he was working. Davis had no connection with the labor at the sand pile, but as aforesaid was merely passing by in connection with work he had been assigned to perform". Here, on the contrary, claimant was immediately engaged in the performance of his duties and had not departed from them in the slightest when the apparently playful push or pull of his fellow employee resulted in the fall and injury.

Rather, the reasoning employed in *Eagle v. South Carolina Electric & Gas Co.*, 205 S.C. 423, 32 S.E.2d 240, 242, is dispositive of this case. There the following was quoted with approval from a Massachusetts opinion (*In re Employers' Liability Assur. Corp.*, 215 Mass. 497, 102 N. E. 697, L. R. A. 1916A, 306): "Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard

10 S. C. R. 216

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to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence".

Moreover, if the *Gory case* be considered one of horseplay, it appears that he was the aggressor or initiator which is often an important distinction as will be seen upon investigation of the many decisions of other courts which have had to deal with the problem. The annotations hereinafter cited contain the bulk of them.

2 It is common knowledge from universal experience that when men are gathered together at work they are given to pranks which sometimes result in injuries, as here; and it is one of the anticipated risks of employment. When injury and loss of wages result the workman or his dependent should be compensated in conformity with the

well-known purpose of the compensation act to transfer in part the financial burden of disability to the employer. In return he is relieved of liability for damages in tort actions. An early leading case to the point is *Leonbruno v. Champlain Silk Mills*, 229 N. Y. 470, 128 N. E. 711, 13 A. L. R. 522, in which Justice Cardozo wrote the since widely quoted opinion. He said in part, as follows: "The claimant while engaged in the performance of his duties in the employer's factory was struck by an apple which one of his fellow servants, a boy, was throwing in sport at another, and as a consequence lost the better part of the sight of one eye. He did not participate in the horseplay, and had no knowledge of it till injured. * * * That it arose 'in the course of employment' is unquestioned. That it arose 'out of employment, we now hold. The claimant's presence in the factory in association with other workmen involved exposure to the

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risk of injury from the careless acts of those about him. * * * Whatever men and boys will do, when gathered together in such surroundings, at all events if it is something reasonably to be expected, was one of the perils of his service. * * * For workmen of that age or even of maturer years to indulge in a moment's diversion from work to joke with or play a prank upon a fellow workman, is a matter of common knowledge to every one who employs labor. The claimant was injured, not merely while he was in a factory, but because he was in a factory, in touch with associations and conditions inseparable from factory life. * * * The risks of injury incurred in the crowded contacts of the factory through the acts of fellow workmen are not measured by the tendency of such acts to serve the master's business. Many things that have no such tendency are done by workmen every day. The test of liability under the statute is not the master's dereliction. * * * The test of liability is the relation of the service to the injury, of the employment to the risk."

It is illogical to say, as respondents argue, that the occasion of claimant's injury was unrelated to his work. On the contrary, the injury was incidental to the employment. This is demonstrated by the simple consideration that if the claimant had been in the shelter of his home or walking unaccompanied along the street he would not have been subject to hazard which resulted in his disability. Certainly the instant injury was more incidental to the employment than was the bite of a black widow spider, held compensable in *Schrader v. Monarch Mills*, 215 S.C. 357, 55 S.E.2d 285.

The homely word "horseplay" is applied by the courts to pranks and practical jokes which are frequently indulged in by congregated workmen; and courts generally distinguish between aggressors or instigators, who are not compensated when injured, and nonparticipating victims or innocent bystanders who are compensated. It is not required in this case to consider the

soundness of the distinction, now forsaken

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by some courts, because it is only inferable from the record here that claimant was not engaged in any form of play when injured and there is no evidence of willful or malicious assault, so the distinctions adhered to in assault cases are likewise irrelevant. *Cyrus v. Miller Tire Service*, 208 S.C. 545, 38 S.E.2d 761, and cases cited. Had claimant fallen from the truck as the result of pure accident, there would be no controversy as to compensability. How then can there be reasonable contention when he fell as the result of an uninvited and unprovoked antic of his fellow worker?

3 A basic purpose of the compensation law is to eliminate fault as a requisite to liability. Here it is not contended that there was any fault on the part of the employer but that does not relieve from liability for compensation. Nor can the employer find refuge in the fault of claimant's fellow servant. Cf. Code, P 7035-17. Contributory negligence of a claimant also plays no part, or even his sole negligence. These concepts are difficult to one grounded in the principles of the common law, yet they control in the realm of workmen's compensation. Our act contains a provision which in substance denies compensation when the injury results from intoxication or willful misconduct of the injured employee but that does not encompass this case. Code, P 7035-15.

A comparatively early (1930) North Carolina case is in point, *Chambers v. Union Oil Co.*, 199 N. C. 28, 153 S.E. 594, 596, in which it was said: "Indeed, if a workman be denied compensation solely upon the ground that he was injured by the 'sportive act' of a fellow workman, it would seem to be clear that the old 'fellow servant' doctrine is appearing in a brand new suit of legal clothes and parading through the law under the brand new name of 'horseplay'. It is generally conceded by all court that the various Compensation Acts were intended to eliminate the fault of the workman as a basis for denying recovery. In other words, a workman is entitled to recover irrespective of fault if the injury arises out of and in the course of the employment.

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The doctrine of horseplay, which excludes a workman from compensation, although he is not at fault, and does not engage therein, is inconsistent with the underlying philosophy of Compensation Acts, which are designed for the very purpose of eliminating fault as a basis for determining liability."

In a recent (1948) well-considered decision the Court of Appeals of Georgia joined the apparent majority, expressly overruled two of their former decisions and adopted the rule which was concisely stated as follows: "The injury of an innocent employee in the course of his employment by the horseplay of a fellow employee in

which the injured employee did not participate, arises out of the employment and nothing more appearing, is compensable." *American Mutual Liability Ins. Co. v. Benford*, 77 Ga. App. 93, 47 S.E.2d 673, 676.

Horseplay cases from many jurisdictions are collected in the following annotations: 13 A. L. R. 540; 20 A. L. R. 882; 36 A. L. R. 1469; 43 A. L. R. 492; 46 A. L. R. 1150; 159 A. L. R. 319; and in the article entitled Assaults and Horseplay under Workmen's Compensation Laws by Samuel B. Horovitz in the October 1946 issue of Illinois Law Review. Later treatment of the subject is found in 6 Schneider's Workmen's Compensation (3d Ed. 1948) 558 *et seq.* The following is quoted from page 560; "Since a majority of the jurisdictions now award compensation to innocent or non-participating employees, and to employees whose participation is but momentary and not 'aggressive', a rule, under the broader conception of the law, may be said to be that injuries sustained by an employee while in the course of his employment as a result of another's horseplay, are compensable as arising out of and in the course of his employment. The question of whether the aggressor should be entitled to compensation for injuries resulting from his own aggressiveness is one which must be left for future determination. The general trend, however, appears to be in that direction."

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Perhaps of all the cases read that which is closest in facts to this is *Borden Mills v. McGaha*, 161 Tenn. 376, 32 S. W. (2d) 1039. There the claimant-employee was sitting on a wheeled box awaiting frames on which she worked to be brought. Another employee, in a spirit of fun, came up behind her, pushed the box and rolled it rapidly. In making a turn she was thrown from the box and injured. Award of compensation was upheld, mainly upon the authority of *Leonbruno v. Champlain Silk Mills*, *supra*, 229 N. Y. 470, 128 N. E. 711, 13 A. L. R. 522, although many other supporting decisions were cited. The conclusion of compensability was expressly confined to a nonparticipating victim of the horseplay of another and that is as far as we need go in this case in order to sustain the award.

Judgment reversed and the award of compensation reinstated.

BAKER, C.J., and FISHBURNE, TAYLOR and OXNER, JJ., concur.

SC

S.C.

287 S.C. 474

Walter FLOYD, Employee, Respondent, v. CITY OF CHARLESTON, Employer and Self-Insurer, Appellant.

339 S.E.2d 166

Walter FLOYD, Employee, Respondent, v. CITY OF CHARLESTON, Employer and Self-Insurer, Appellant.

0605

Court of Appeals

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1. WORKERS' COMPENSATION.---Court of Appeals' review of workers' compensation commissioner's findings of fact concurred in by circuit court is limited to determining whether the findings are supported by substantial evidence.

2. WORKERS' COMPENSATION.---"Substantial evidence" required to sustain findings of fact of workers' compensation commissioner concurred in by circuit court on review by the Court of Appeals is something less than the weight of the evidence, being evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion that the administrative agency reached.

See publication Words and Phrases for other judicial constructions and definitions.

3. ADMINISTRATIVE LAW AND PROCEDURE.---Court of Appeals may not overturn findings of fact made by an administrative agency unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the agency's finding was based.

4. WORKERS' COMPENSATION.---Injury suffered by fire fighter while he was engaged in horseplay with a co-worker was incidental to his employment, for purposes of workers' compensation, where fire fighter was performing work-related task of washing dishes when his co-worker surprised him by grabbing him from behind and wrestling him to the floor.

5. WORKERS' COMPENSATION.---Fire fighter was not entitled to partial disability workers' compensation benefits to compensate him for salary lost after he was fired from his second job, where record contained no evidence that fire fighter searched for another job after his period of temporary total disability had ended, and his physician advised him that he could return to work without putting any restrictions on work which fire fighter could perform.

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6. WORKERS' COMPENSATION.---Fact that injured

employee did not work a second job from September 1980 through January 1982, after suffering work-related injury in June 1980, was not in itself determinative of extent of loss of his earning capacity so as to justify award of partial disability workers' compensation benefits.

Donald M. Williams of Regan & Williams, Charleston, for appellant.

Fred W. Riesen, Jr. of Riesen, McConnell, Bradley, Guerard & Ling, Hanahan, for respondent.

Heard Oct. 23, 1985.

Decided January 14, 1986.

CURETON, Judge:

In this workers' compensation case the South Carolina Industrial Commission affirmed the order of the single commissioner who found that the respondent, Walter Floyd, was entitled to an award covering two periods of total disability, a period of partial disability(fn1) and medical expenses. The circuit court affirmed the commission's decision but modified the award by lowering the wage rate used to calculate the partial disability award and crediting the employer for the salary Floyd received from the United States Air Force Reserve. We affirm in part and reverse in part.

At the time of his injury, Floyd who had held various service-related jobs, had been employed by the City of Charleston as a fire fighter for approximately five and one-half years and as an assistant maintenance supervisor at Ashley Oaks Apartments for twelve weeks. On June 13, 1980 he hurt his neck while working for the fire department when one of his co-workers engaged him in horseplay(fn2) by grabbing him from behind while he was washing dishes, locking him in his grip and falling to the floor.(fn3) When the two men fell Floyd felt a "severe straining and tightening of [his] neck."

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Not realizing the seriousness of his injury, he good naturedly accepted the fact his co-worker had won the "wrestling match" and returned to work. Thereafter, he informed his supervisor that he had been injured and that the pain in his neck had worsened. He was unable to work from June 25, 1980 to July 30, 1980. On this date Floyd's physician advised him to return to work after Floyd reported to him that he was "ninety-nine percent

well."

Floyd's health seemed to improve until September 5, 1980 when he was admitted to the hospital because of severe neck pain. He remained there for about two weeks. On September 24, 1980 he was examined by his physician who determined that he was doing well and could return to work. Floyd then resumed working for the fire department performing all of his usual tasks. Thereafter, he was involved in another horseplay incident when he sprayed a co-worker's cigar with air freshener. In this latter incident, the men wrestled over a can, overturned a couch and fell to the floor with no apparent injury to Floyd.

In April 1981 after passing the physical entrance examination, Floyd entered the United States Air Force Reserve and completed his basic training. In January 1982 he started his own part-time washer-dryer repair business. In April and May 1982 he returned to the physicians who had treated him in 1980 and follow-up x-rays indicated that he had degenerative disc disease with some spur formation. On May 31, 1982 Floyd filed a claim for disability benefits. He is still employed by the Charleston Fire Department and has received raises since the accident.

The employer raises three issues on appeal: (1) whether Floyd sustained a compensable bodily injury while performing a service, growing out of or incidental to his employment; (2) whether the circuit court erred in sustaining the commission's finding that the injury resulted in Floyd's being disabled from the second job; and (3) whether the circuit court erred in not giving the employer credit for the raises which Floyd received after returning to full-time employment with the fire department.

1-3 Our review of the commissioner's findings of fact concurred in by the circuit court is limited to determining whether the findings are supported by substantial

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evidence. *Lowe v. Am-Can Transport Services, Inc.*, 283 S.C. 534, 537, 324 S.E.2d 87, 89 (Ct. App. 1984); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). Substantial evidence is something less than the weight of the evidence. *Palmetto Alliance, Inc. v. South Carolina Public Service Commission*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984); *Todd's Ice Cream, Inc. v. South Carolina Employment Security* (Ct. App. 1984). Substantial evidence "is evidence which, considering the record as a whole, would allow reasonable minds to reach the [same] conclusion that the administrative agency reached...." *Lark v. Bi-Lo, Inc.*, 276 S.C. at 136, 276 S.E.2d at 306. We may not overturn findings of fact made by an administrative agency "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the [agency's] finding was based." *Lark v. Bi-Lo, Inc.*, 276 S.C. at 136,

276 S.E.2d at 307. However, we "may reverse or modify an administrative decision if such decision is affected by errors of law, characterized by an abuse of discretion, or clearly erroneous in view of the substantial evidence on the whole record." *Todd's Ice Cream, Inc.*, 281 S.C. at 258, 315 S.E.2d at 375; Section 1-23-380(g), 1976 Code of Laws of South Carolina, as amended.

4 The employer argues that Floyd's injury neither arose out of nor was incident to his employment because at the time of the injury Floyd was engaged in horseplay with a co-worker. We reject this argument. Our Supreme Court has sustained an award of compensation to an innocent victim of horseplay i.e. to one who was "engaged in the performance of his duties and had not departed from them in the slightest when the apparently playful [act] of his fellow employee resulted in the fall and injury." *Allsep v. Daniel Construction Co.*, 216 S.C. 268, 271, 57 S.E.2d 427, 428 (1950). Here, there is substantial evidence that Floyd was performing the work related task of washing dishes when his co-worker surprised him by grabbing him from behind and wrestling him to the floor. Following the precedent of *Allsep* we affirm the commissioner's finding of fact that Floyd's injuries were incidental to his employment.

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5 The employer next argues that Floyd should not receive partial disability benefits to compensate him for salary lost after being fired from his second job because there is "no medical advice or [lay] testimony concerning his ability to work [two] jobs and no other testimony in the record concerning his search for and inability to find other employment, either due to his inability to get hired or the lack of a job market." We agree.

In *Walker v. City Motor Car Co.*, 232 S.C. 392, 102 S.E.2d 373 (1958) the Court set forth the law relative to entitlements to awards for partial disability. The essential considerations are:

(1) The burden is upon claimants to prove such facts as will render the injury compensable within the provisions of the Workers' Compensation Act.

(2) The award must not be based upon surmise, conjecture or speculation.

(3) Disability means incapacity because of injury to earn the wages which the claimant was receiving at the time of the injury in the same or any other employment.

(4) Disability is to be measured by the claimant's capacity or incapacity to earn the wages which he was receiving at the time of his injury.

(5) There is no compensation for pain and suffering, discomfort or difficulty in performing work as long as there is no reduction of earning capacity.

(6) Loss of earning capacity alone is the criterion and medical opinion as to the extent of physical disability can have no probative value against actual earnings.

232 S. C. at 396, 102 S.E.2d at 375.

6 Here, Floyd did not sustain his burden of showing that he could neither hold any other employment nor locate a second job. See *Shealy v. Algernon Blair, Inc.*, 250 S.C. 106, 156 S.E.2d 646 (1967). (Supreme Court reversed an award of disability benefits when a review of the record revealed no support for the award. The claimant failed to establish incapacity to work, which could have been proved by evidence showing the claimant had made reasonable efforts to obtain employment). The fact that Floyd did

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not work a second job between September 1980 and January 1982 "is not in itself determinative of the extent of loss of his earning capacity." See *Bowen v. Chiquola Manufacturing Co.*, 238 S.C. 322, 328, 120 S.E.2d 99, 102 (1961).

The record does not reveal Floyd's loss of earning capacity. It merely reveals his loss of earnings. The record contains no evidence that he searched for another service-related job after his period of temporary total disability had ended. Additionally, the fact that he was physically able to continue working for the fire department, that his physician advised him that he could return to work without putting any restrictions on the work which Floyd could perform, and that he was well enough to pass the United States Air Force Reserve physical examination and complete basic training indicate that Floyd did not suffer a loss of earning capacity arising from the injury. An affirmance of an award to Floyd for partial disability based upon the record would be based upon surmise, conjecture and speculation to the effect that he could neither be reemployed by Ashley Oaks nor employed in any other employment that he was qualified to perform. For this reason, we reverse the partial disability award.

The employer's third argument is that the pay increases which Floyd received after returning to work should offset, in part, the amount to be paid to him as partial disability benefits. The employer has not cited any statute or case law which would require wage increases to be a factor in determining the amount of a partial disability award. Since we have reversed the partial disability award we need not consider this argument.

In conclusion, we affirm the order of the trial judge which found that Floyd's injury was incidental to his employment and that he was properly awarded temporary total benefits and compensation for his medical expenses. However, our review of the record reveals no evidence that Floyd's injury diminished his earning capacity to the extent that he could not work a second job. We note that

the record reveals that Floyd has made or anticipates making a claim for compensation

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for permanent physical impairment. Our decision to reverse the partial disability award should not be construed as a comment upon the merits of that claim.

The order of the circuit court is

Affirmed in part and reversed in part.

SANDERS, C. J., and GOOLSBY, J., concur.

Footnotes:

1. This award pertains to a decrease in income caused by the loss of a second job.

2. Horseplay is a term used to describe "pranks and practical jokes which are frequently indulged in by congregated workmen." *Allsep v. Daniel Construction Co.*, 216 S.C. 268, 273, 57 S.E.2d 427, 429 (1950).

3. The co-worker testified that after he grabbed Floyd, his grip was momentarily broken and Floyd could have terminated the wrestling match. Floyd denies that he freed himself from his co-worker's grasp.

SC

S.C.

EXHIBIT B



Wage Form

Return to:
Accident Fund Insurance Company of America
232 S. Capitol Avenue
P.O. Box 40790
Lansing, MI 48901-7990

Claim Number AF6005462WC08000002001Claimant Name Ramone Zepeda
(Please print)First Day Worked 03, 17, 2008Last Day Worked 09, 04, 2008Date of Injury 09, 04, 2008Hourly Rate of Pay \$9.00 per hourPay Period Type: ☒ Weekly ☐ Monthly ☐ Bi-weekly ☐ Annually ☐ Twice per Month ☐ OtherAverage days worked per week 8 First day of pay period (circle one) Su ☒ M ☐ T ☐ W ☐ Th ☐ F ☐ Sa

PLEASE LIST THE GROSS EARNINGS, INCLUDING TIPS, COMMISSIONS, OVERTIME & BONUSES FOR THE 64 WEEKS PRIOR TO THE DATE OF INJURY											
Pay Period Ending			Gross Amount			Pay Period Ending			Gross Amount		
From	To	\$	From	To	\$	From	To	\$	From	To	\$
1	8/27/08	9/4/08	454.50	23	3/28/08	4/3/08	291.13	44	3/18/08	3/24/08	419.00
2	8/22/08	8/29/08	504.75	24	3/21/08	3/27/08	378.05	45	3/11/08	3/17/08	64.00
3	8/15/08	8/21/08	444.50	25	3/14/08	3/20/08	489.25	46	3/11/08	3/17/08	461.00
4	8/8/08	8/14/08	509.50	26	9/2/07	9/8/07	507.89	47	3/4/08	3/10/08	410.00
5	8/1/08	8/7/08	449.50	27	9/14/07	9/20/07	412.85	48	4/20/07	4/26/07	472.00
6	7/25/08	7/31/08	454.50	28	9/7/07	9/13/07	406.94	49			
7	7/18/08	7/24/08	515.25	29	8/31/07	9/6/07	416.80	50			
8	7/11/08	7/17/08	508.50	30	8/24/07	8/30/07	464.31	51			
9	7/4/08	7/10/08	427.50	31	8/17/07	8/23/07	493.00	52			
10	7/4/08	7/10/08	542.25	32	8/10/07	8/16/07	486.63	53			
11	6/20/08	6/26/08	498.38	33	8/3/07	8/9/07	437.75	54			
12	6/13/08	6/19/08	528.75	34	7/27/07	8/2/07	542.00	55			
13	6/6/08	6/12/08	535.80	35	7/20/07	7/26/07	498.00	56			
14	5/30/08	6/5/08	511.89	36	7/13/07	7/19/07	521.00	57			
15	5/23/08	5/29/08	525.88	37	7/6/07	7/12/07	874.00	58			
16	5/16/08	5/22/08	474.75	38	6/29/07	7/5/07	342.00	59			
17	5/9/08	5/15/08	582.75	39	6/22/07	6/28/07	521.00	60			
18	5/2/08	5/8/08	399.42	40	6/15/07	6/21/07	514.00	61			
19	4/18/08	4/24/08	273.07	41	4/8/07	4/14/07	510.00	62			
20	4/11/08	4/17/08	585.44	42	4/1/07	4/7/07	434.00	63			
21	4/4/08	4/10/08	396.32	43	3/24/07	3/30/07	344.00	64			
22	4/4/08	4/10/08	515.50								

Employer Name Priority Landscaping Phone # (843) 588-6327

I certify that the above record is a true copy of the payroll information for the above captioned employee.

Signature of Employer Representative Maria AntelmoTitle Admin.Date 9/22/08

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803)737-5700

WCC File # 0813616
Carrier File # AF6005462 WC08000002
Carrier Code # 1072
Employer FEIN 571092367

RAMONE ZEPEDA

Plaintiff's Name
IS ISLAND, SC 29455
Address City State Zip
(843)559-0855 ()-
Home Phone # Work Phone #
Susan Higbie
Preparer's Name

PRIORITY LANDSCAPING & LAWN

Employer's Name
1108 EAST COOPER AVE FOLLY BEACH, SC 29439
Address City State Zip
ACCIDENT FUND INS CO OF AMER
Insurance Carrier
(517) 367-8481
Phone #

1. Date of injury: 9/4/2008
month day year

2. Total Weeks of Compensation Paid: _____

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: _____ From: _____ To: _____
Type: _____ From: _____ To: _____
Type: _____ From: _____ To: _____

4. Date of First Payment: _____
month day year

5. Total Amount Paid (a) Compensation: 0
(b) Medical (Include Nursing, Hospital Drugs, Etc.): 7827.14

6. Informal Conference is Requested: ☐ yes ☒ no
(check one)

7. Use these lines to send a memo to the Commission:

Susan Higbie
Employer's Representative

(517) 367-8481
Phone #

08/25/09
Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0813616
Carrier File # AF6005462 WC08000002
Carrier Code # 1072
Employer FEIN 571092367

RAMONE ZEPEDA

PRIORITY LANDSCAPING & LAWN

Claimant's Name
Address
City
State
Zip
Home Phone #
Work Phone #
Preparer's Name

SLAND, SC 29455

0-

Susan Higbie

Employer's Name
Address
City
State
Zip
Insurance Carrier
Phone #

1108 EAST COOPER AVE FOLLY BEACH, SC 29439

ACCIDENT FUND INS CO OF AMER

(517) 367-8481

1. Date of injury: 9/4/2008
month day year

2. Total Weeks of Compensation Paid: _____

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: _____ From: _____ To: _____

Type: _____ From: _____ To: _____

Type: _____ From: _____ To: _____

4. Date of First Payment: _____
month day year

5. Total Amount Paid (a) Compensation: 0
(b) Medical (Include Nursing, Hospital Drugs, Etc.): 2483.85

6. Informal Conference is Requested: ☐ yes ☒ no
(check one)

7. Use these lines to send a memo to the Commission:

Susan Higbie (517) 367-8481
Employer's Representative Phone #

03/04/09
Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

EXHIBIT C

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0813616

RAMONE ZEPEDA-CEPEDA,

Employee,

Claimant,

vs.

PRIORITY LANDSCAPING AND LAWN
CARE, LLC,

Employer,

AND

ACCIDENT FUND INSURANCE
COMPANY OF AMERICA,

Carrier,

Defendants.

**SUPPLEMENTAL NOTICE OF
WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND DON C.
GIBSON, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence: Any and all medical evidence identified by the Claimant; Defendants reserve the right to submit additional medical evidence, the existence of which is discovered at the Claimant's deposition that is scheduled for January 19, 2009.

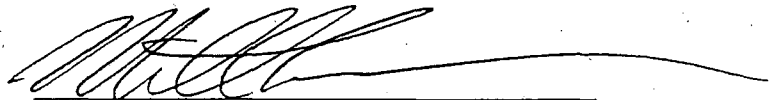
EXHIBIT	DESCRIPTION	DATES	PAGES
C.	Photographs of jobsite and specific tree that are subject of claim		7

D.	Invoices for service issued by Budget Tree Service to Priority Landscaping and Lawn Care, LLC	2/18/08-11/29/08	10
----	---	------------------	----

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: William Hampton, Frank Shoppel, Mary Jo Adams, Cesar Rodriguez, Leonardo (last name unknown), and representatives of the Employer and/or Carrier may be called to testify; any and all witnesses identified by the Claimant.



MIKELL H. WYMAN
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 877
78 Wentworth Street, Suite 200
Charleston, South Carolina 29402
(843) 534-0101
Attorney for the Employer/Carrier

Charleston, South Carolina
January 12, 2009

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0813616

RAMONE ZEPEDA-CEPEDA,

Employee,

Claimant,

vs.

PRIORITY LANDSCAPING AND LAWN CARE,
LLC,

Employer,

AND

ACCIDENT FUND INSURANCE COMPANY OF
AMERICA,

Carrier,

Defendants.

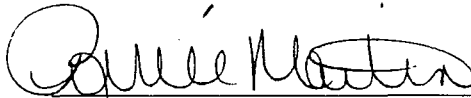
CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

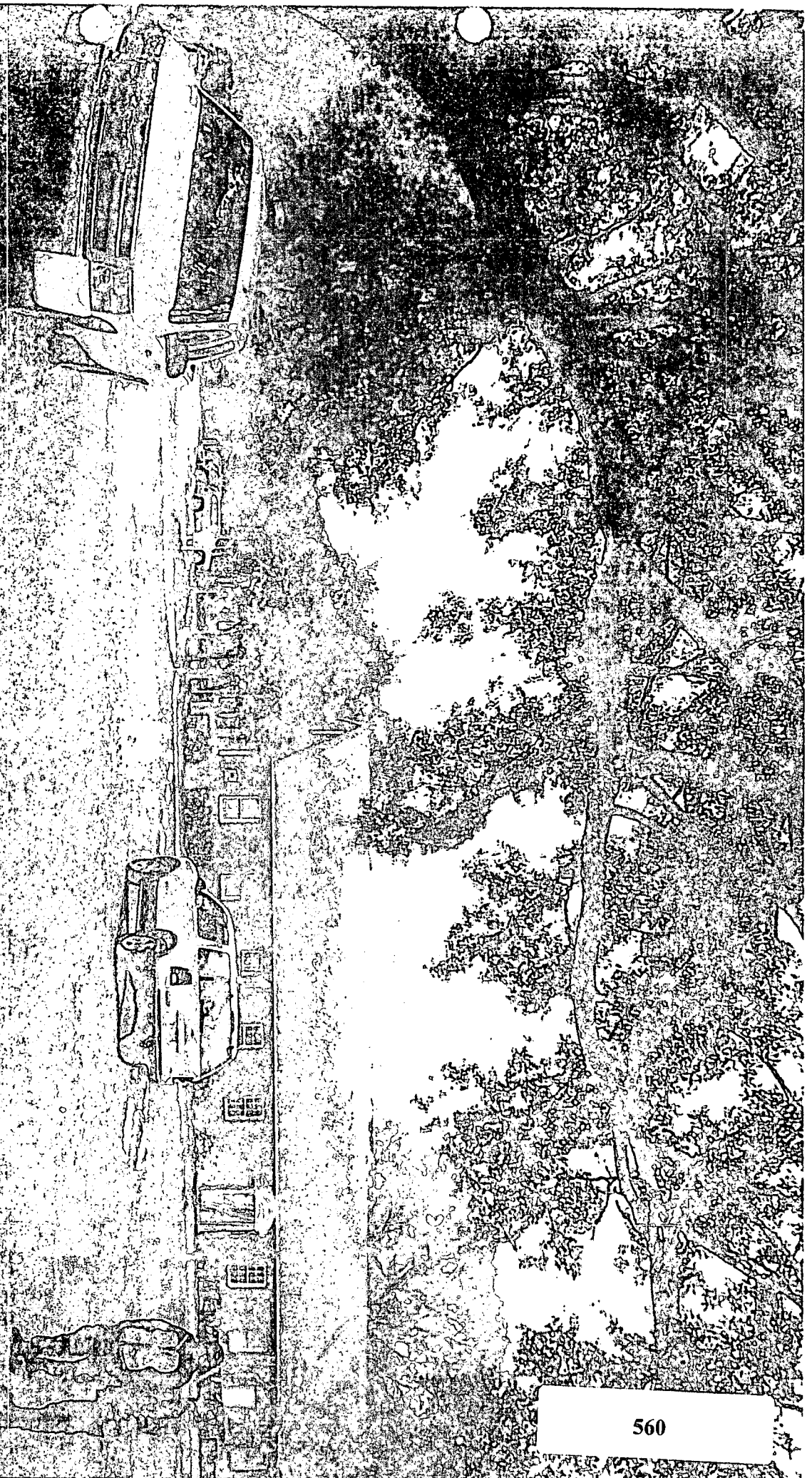
TO: Don C. Gibson, Esquire
Gibson Law Firm, LLC
5422 Rivers Avenue
North Charleston, South Carolina 29406

DOCUMENT: Supplemental Notice of Witnesses and Written Medical
Reports

DATE OF
MAILING: January 20, 2009

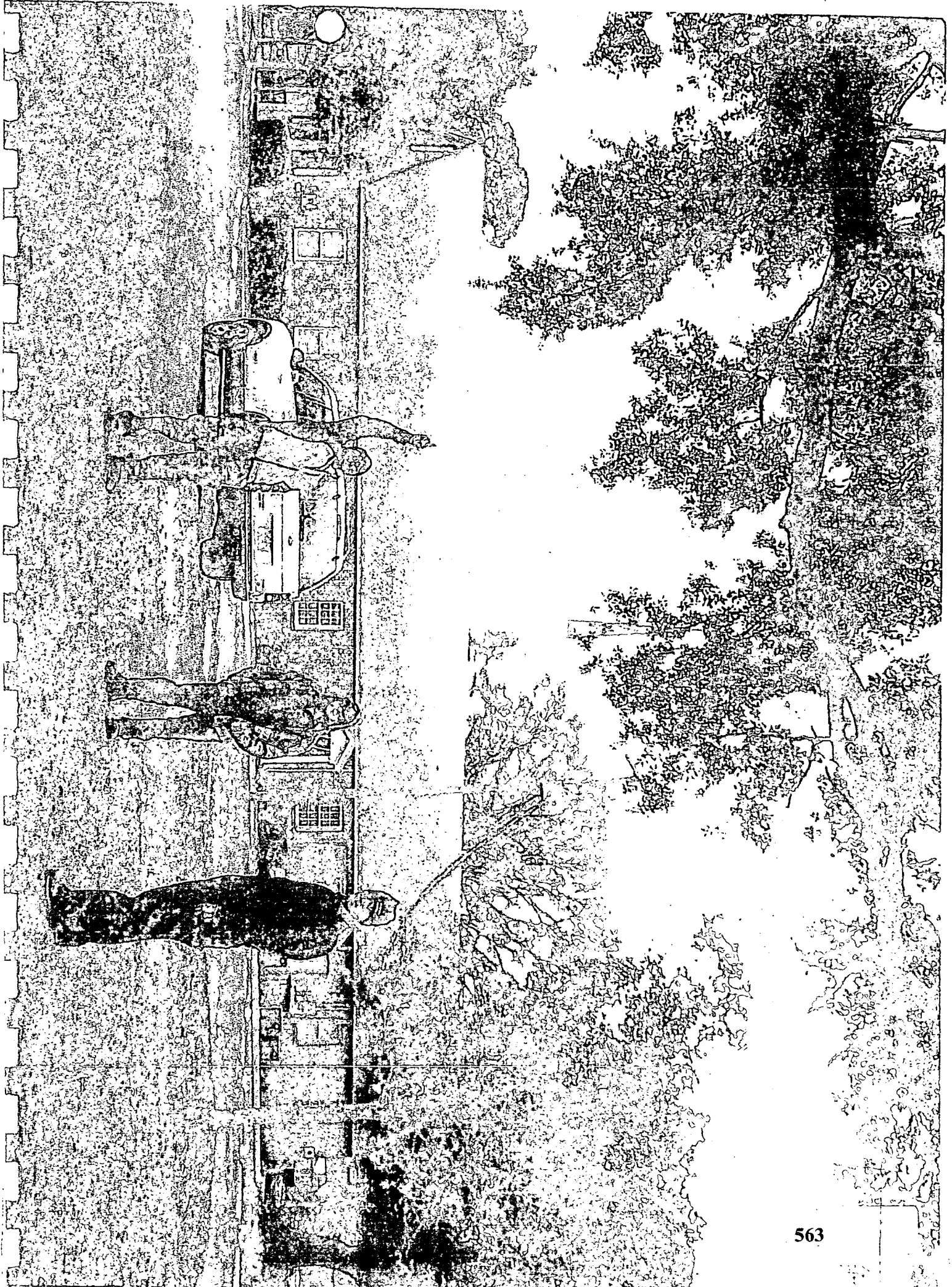


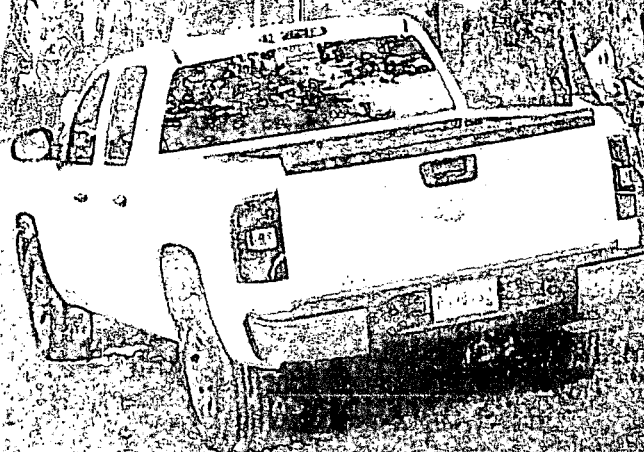
Renee Martin
Legal Assistant to Mikell H. Wyman











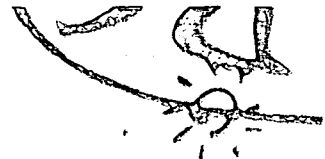




EXHIBIT D

7:26 AM

01/20/09

Priority Landscaping
Checks for Richard Van Kirk
January 2008 through January 2009

<u>Num</u>	<u>Date</u>	<u>Account</u>	<u>Amount</u>
Jan '08 - Jan 09			
1095	1/14/2009	Sub-contractor acco...	165.00
1068	10/28/2008	Sub-contractor acco...	95.00
1062	10/9/2008	Sub-contractor acco...	65.00
1048	8/19/2008	Sub-contractor acco...	275.00
1035	6/17/2008	Sub-contractor acco...	575.00
1021	5/9/2008	Sub-contractor acco...	450.00
1012	4/15/2008	Sub-contractor acco...	200.00
1013	4/14/2008	Sub-contractor acco...	1,175.00
1007	3/27/2008	Sub-contractor acco...	500.00
Jan '08 - Jan 09			<u>3,500.00</u>



BUDGET TREE SERVICE

1446 Battalion Drive
CHARLESTON, SC 29412
(843) 795-5546

Page No. _____ of _____ Pages

LANDSCAPING PROPOSAL/ INVOICE

TO:

100 E. Cooper Ave.
Ft. Worth

PHONE

DATE

2/

Owner: [REDACTED]

Certified Arborist #1083
Southern Chapter

MAKE

CHECK TO

3/17
check
100

We hereby submit specifications and estimates for landscaping as follows:

get 10 trees - 10' high, 10' wide
fully grown
10' high, 10' wide, 10' wide
back - need from house - 10' wide
10' high, 10' wide
\$ 25.00
\$ 25.00
2/10 D. L. H. M. P.
Mt. Pleasant
Car back - 75.00

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specification involving extra costs will be done only upon a written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases, or additional labor and materials which may be required should unforeseen problems arise after the work has started.

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. Cancellation must be done in writing.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Payment to be made as follows:

dollars (\$ 500.00)

[Signature]
Authorized Signature

Note: This proposal may be written by us if not accepted within _____ days

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____ Date _____ Signature _____ Date _____



BUDGET TREE SERVICE

1446 Battalion Drive
CHARLESTON, SC 29412
(843) 795-5546

Page No. _____ of _____ Pages

LANDSCAPING PROPOSAL/ INVOICE

Owner: Richard S. Van Kirk
Certified Arborist #1083
Southern Chapter

TO: Priority Landscaping
1108 E. Cooper Ave
P.O. Box
Folly Beach S.C.
PHONE _____ DATE 3/28

We hereby submit specifications and estimates for landscaping as follows:

Job location: Shadow Ridge
Folly Beach

1) Remove 2 Pine trees \$700.00
2) Remove 4 Palm trees 475.00

Paid
4/11/08
check
1013

108 W. Cooper

1) Cut back branches from building on Oak
tree in the back \$200.00

4/1 PAID-4-8-08 -> check 1012 4/10

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specification involving extra costs will be done only upon a written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases, or additional labor and materials which may be required should unforeseen problems arise after the work has started.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Payment to be made as follows:

\$1175.00
200.00
1375.00

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. Cancellation must be done in writing.

Note: This proposal may be written by us if not accepted within _____ days

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date _____

Signature _____

Date _____



BUDGET TREE SERVICE

1446 Battalion Drive
CHARLESTON, SC 29412
(843) 795-5546

Page No. _____ of _____ Pages

LANDSCAPING PROPOSAL/ INVOICE

TO: Priority Landscaping
1108 E. Cooper Ave.
P.O. Box
Folly Beach SC
PHONE _____ DATE 4/24

Owner: Richard S. Van Kirk
Certified Arborist #1083
Southern Chapter

Check
1001
5/2

We hereby submit specifications and estimates for landscaping as follows:

Job location: 276 Little Oak Island
Folly Beach.

1) Remove 1 Palm tree and several stumps.
\$ 275.00

Fred Holland Realty Office
1) Remove 3 Palm trees \$ 90.00

116-W Haven
2) 6-inch 2 stumps \$ 85.00
↑

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specification involving extra costs will be done only upon a written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases, or additional labor and materials which may be required should unforeseen problems arise after the work has started.

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. Cancellation must be done in writing.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Payment to be made as follows:

dollars (\$ 450)

Authorized Signature

Note: This proposal may be written by us if not accepted within _____ days

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____ Date _____ Signature _____

_____ Date _____



BUDGET TREE SERVICE

1446 Battalion Drive
CHARLESTON, SC 29412
(843) 795-5546

Page No. _____ of _____ Pages

LANDSCAPING PROPOSAL/ INVOICE

Owner: Richard S. Van Kirk
Certified Arborist #1083
Southern Chapter

TO: Priority Landscaping
1108 E. Cooper Ave

Folly Beach
PHONE 200-6571 DATE 5/19

check
1035
6/19

We hereby submit specifications and estimates for landscaping as follows:

Job location: 306 E. Hunon
Folly Beach

1) Cut back branches and wires on
1 small Oak tree back yard \$175.00

Sable on The Marsh
1) Remove, cut back broken branches
in Pine tree over neighbor's yard \$400.00

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specification involving extra costs will be done only upon a written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases, or additional labor and materials which may be required should unforeseen problems arise after the work has started.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

_____ dollars (\$ 400)
Payment to be made as follows: 175.00
\$575.00

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. Cancellation must be done in writing.

R. Van Kirk
Authorized Signature

Note: This proposal may be written by us if not accepted within _____ days

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____ Date _____ Signature _____ Date _____



BUDGET TREE SERVICE

1446 Battalion Drive
CHARLESTON, SC 29412
(843) 795-5546

Page No _____ of _____ Pages

LANDSCAPING PROPOSAL/ INVOICE

TO:

Priority Landscaping
1108 E. Cooper Ave
Folly Beach
P.O. Box 1924
PHONE _____ DATE 6/23

Owner: Richard S. Van Kirk
Certified Arborist #1083
Southern Chapter

Check
1308 10/13
8/14

Invoice
7/25

We hereby submit specifications and estimates for landscaping as follows:

Job location: 1305 E Ashley
Folly Beach

1) Cut back trees and shrubs
under and around wires and
off of house.

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specification involving extra costs will be done only upon a written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases, or additional labor and materials which may be required should unforeseen problems arise after the work has started.

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. Cancellation must be done in writing.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Payment to be made as follows:

dollars (\$ 275.00)

Pay to the order of Sub Contractor Peter

Authorized Signature

Note: This proposal may be written by us if not accepted within _____ days

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date _____

Signature _____

Date _____

1446 Battalion Drive
CHARLESTON, SC 29412
(843) 795-5546

Page No _____ of _____ Page:

LANDSCAPING PROPOSAL INVOICE

Owner: Richard S. Van Kirk
Certified Arborist #1083
Southern Chapter

TO:

PHONE

DATE _____

We hereby submit specifications and estimates for landscaping as follows:

check 10480
10/20

Part 1 Subcontract

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specification involving extra costs will be done only upon a written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases, or additional labor and materials which may be required should unforeseen problems arise after the work has started.

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. Cancellation must be done in writing.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Payment to be made as follows: _____ dollars (\$ _____)

Payment to be made as follows:

Note: This proposal
may be written
by us if not accepted within _____ days

Authorized Signatures

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date _____

Signature _____

Date _____



BUDGET TREE SERVICE

1446 Battalion Drive
CHARLESTON, SC 29412
(843) 795-5546

Page No _____ of _____ Pages

LANDSCAPING PROPOSAL/ INVOICE

TO:

Travis Landscaping
1000 Bay 1424
Tall Beach SC.
29431
PHONE _____ DATE 9/26

Owner: Richard S. Van Kirk
Certified Arborist #1083
Southern Chapter

Check
1062
10/6

We hereby submit specifications and estimates for landscaping as follows:

Sub Location: Bayview / Cordos
Tall Beach
g Pull vines out of one Palm tree

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according or standard practices. Any alteration or deviation from the above specification, involving extra costs will be done only upon a written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases, or additional labor and materials which may be required should unforeseen problems arise after the work has started.

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. Cancellation must be done in writing.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Payment to be made as follows:

dollars (\$ 65.00)

Authorized Signature

Note: This proposal may be written by us if not accepted within _____ days

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____ Date _____ Signature _____

575

_____ Date _____



BUDGET TREE SERVICE

1446 Battalion Drive
CHARLESTON, SC 29412
(843) 795-5546

Page No. _____ of _____ Pages

LANDSCAPING PROPOSAL/ INVOICE

Owner: Richard S. Van Kirk
Certified Arborist #1083
Southern Chapter

TO: Priority Landscaping
1108 E. Cooper Ave
Folly Beach S.C.

PHONE 200-6571 DATE 11/29

check
~~11810~~ 1095
11/14 \$25.00

We hereby submit specifications and estimates for landscaping as follows:

- Job location: 213 W. Hudson
Folly Beach Folly
- 1) Cut back branches from wive \$150.00
- Job location: 219 W. Hudson
Folly Beach
- 1) Prune Palmy tree remove small pine tree \$125.00
- 3) 220 E. Cooper - Cut back trees and shrubs away from house \$275.00

All materials is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specification involving extra costs will be done only upon a written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases, or additional labor and materials which may be required should unforeseen problems arise after the work has started.

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. Cancellation must be done in writing.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Payment to be made as follows:

dollars (\$ 550.00)

[Signature]
Authorized Signature

Note: This proposal may be written by us if not accepted within _____ days

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____ Date _____ Signature _____

_____ Date _____

Priority Landscaping
Paychecks for Thomas Martinez
All Transactions

Date	Num	Memo	Account	Amount
9/28/2007	11326		Priority Landscaping	292.77
9/20/2007	11286		Priority Landscaping	311.75
9/14/2007	11255		Priority Landscaping	290.88
9/7/2007	11220		Priority Landscaping	221.76
8/31/2007	11173		Priority Landscaping	373.12
8/24/2007	11127		Priority Landscaping	271.82
8/17/2007	11097		Priority Landscaping	334.39
8/10/2007	11065		Priority Landscaping	325.90
8/3/2007	11032		Priority Landscaping	381.44
7/27/2007	10988		Priority Landscaping	391.86
7/20/2007	10949		Priority Landscaping	402.31
7/13/2007	10909		Priority Landscaping	471.25
7/6/2007	10871		Priority Landscaping	265.20
6/29/2007	10850		Priority Landscaping	441.04
6/22/2007	10820		Priority Landscaping	344.55
6/15/2007	10784		Priority Landscaping	405.79
6/8/2007	10739		Priority Landscaping	402.30
6/1/2007	10701		Priority Landscaping	320.62
5/25/2007	10664		Priority Landscaping	312.64
5/19/2007	10632		Priority Landscaping	59.10
5/18/2007	10617		Priority Landscaping	245.29
5/11/2007	10584		Priority Landscaping	376.18
5/4/2007	10539		Priority Landscaping	446.92
Total				<u>7,688.88</u>

CERTIFICATE OF COUNSEL

The undersign hereby certifies that the Record of Appeal contains all material proposed to be included by any of the parties and not any other material.

April 30, 2010

A handwritten signature in black ink, appearing to read 'Don C. Gibson', with a long horizontal flourish extending to the right.

Don C. Gibson, Esquire
Gibson Law Firm
Post Office Box 60669
North Charleston, SC 29419
(843) 744-1887
Attorney for Appellant