

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 10 2014

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
Robin B. Stilwell, Circuit Court Judge

S.C. Supreme Court

Case No.: 2011-CP-23-1209
Appellate Case No.: 2013-002652

Marlon Rivera, 311864,..... Petitioner,

v.

State of South Carolina,..... Respondent.

APPENDIX VOLUME I

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INDEX

ORDER OF DISMISSAL ON PCR CASE	A-1
TRANSCRIPT OF MURDER TRIAL	1
OPENING STATEMENTS - MS. HODGE	33
OPENING STATEMENTS - MR. ROSS	36
DAVID BENDIG	
DIRECT BY MR. HODGE	40
CROSS BY MS. ROSS	48
NELSON CASTRO	
DIRECT BY MS. HODGE	51
CROSS BY MS. ROSS	61
REDIRECT BY MS. HODGE	63
RE CROSS BY MS. ROSS	65
CARLOS ESTRADO	
DIRECT BY MS. HODGE	67
BRIAN GARRETT	
DIRECT BY MS. HODGE	74
CROSS BY MS. ROSS	91
REDIRECT BY MS. HODGE	94
DIANE ORLANDO	
DIRECT BY MS. HODGE	94
CROSS BY MS. ROSS	125
CRAIG CHRISTENSON, M. D.	
DIRECT BY MS. HODGE	126

INDEX

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
MARK STEPHAN	
DIRECT BY MS. HODGE	137
CROSS BY MS. ROSS	151
EDDIE HUCKS	
DIRECT BY MS. HODGE	155
SEAN COLLINS	
DIRECT BY MS. HODGE	159
<u>TUESDAY, OCTOBER 11, 2005 - (VOLUME TWO):</u>	
CHRISTINE BARRICKMAN	
DIRECT BY MS. HODGE	166
CROSS BY MS. ROSS	171
ILA SIMMONS	
DIRECT BY MS. HODGE	172
CROSS BY MS. ROSS	180
DIANE REEVES	
DIRECT BY MS. HODGE	183
CROSS BY MS. ROSS	184
BRIAN GARRETT (JACKSON V. DENNO HEARING)	
DIRECT BY MS. HODGE	188
CROSS BY MS. ROSS	195
REDIRECT BY MS. HODGE	199

INDEX

INDEX

WITNESS

PAGE NO.

RAMON RIVERA (JACKSON V. DENNO HEARING)

DIRECT BY MS. HODGE 200

CROSS BY MS. ROSS 213

WESLEY SMITH (JACKSON V. DENNO HEARING)

DIRECT BY MS. HODGE 219

CROSS BY MS. ROSS 227

MARLON RIVERA (JACKSON V. DENNO HEARING)

DIRECT BY MS. ROSS 233

CROSS BY MS. HODGE 240

CARLOS FREEMAN (JACKSON V. DENNO HEARING)

DIRECT BY MS. ROSS 243

ROBERT TAYLOR (JACKSON V. DENNO HEARING)

DIRECT BY MS. ROSS 246

CROSS BY MS. HODGE 256

BRIAN GARRETT

DIRECT BY MS. HODGE 260

CROSS BY MS. ROSS 275

RAMON RIVERA

DIRECT BY MS. HODGE 279

CROSS BY MS. ROSS 308

REDIRECT BY MS. HODGE 317

INDEX

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
WESLEY SMITH	
DIRECT BY MS. HODGE	318
CROSS BY MS. ROSS	362
REDIRECT BY MS. HODGE	375
CARLOS FREEMAN	
DIRECT BY MS. ROSS	382
CROSS BY MS. HODGE	386
REDIRECT BY MS. ROSS	396
COURTNEY ROBLES	
DIRECT BY MS. ROSS	399
CROSS BY MS. HODGE	409
NORBERTO ORTIZ	
DIRECT BY MS. ROSS	416
CROSS BY MS. HODGE	424
REDIRECT BY MS. ROSS	427
ROBERT TAYLOR	
DIRECT BY MS. ROSS	429
CROSS BY MS. HODGE	443
REDIRECT BY MS. ROSS	449

INDEX

INDEX

WITNESS

PAGE NO.

WEDNESDAY, OCTOBER 12, 2005:

MARLON RIVERA

DIRECT BY MS. ROSS	452
CROSS BY MS. HODGE	479
REDIRECT BY MS. ROSS	494
CLOSING ARGUMENTS - MS. ROSS	502
CLOSING ARGUMENTS - MS. HODGE	519
CHARGE OF THE COURT	544
VERDICT OF THE JURY	578
SENTENCE OF THE COURT	585
CERTIFICATE OF REPORTER	586
PCR TRANSCRIPT	
ROBERT DUDEK	591
JUAN CARLOS	
DIRECT	598
CROSS	602
SUSANNAH ROSS	
DIRECT	603
CROSS	621
COURT	630
APPLICATION FOR POST CONVICTION RELIEF	635
RETURN TO APPLICATION	655
OPINION 2008-UP-187 CT APPEALS	659
OPINION 26877 S.CT.	665
FINAL BRIEF APPELLANT RIVERA	672
FINAL BRIEF RESPONDENT STATE	707
BRIEF OF PETITIONER STATE	752
BRIEF OF RESPONDENT RIVERA	774
PETITION FOR CERTIORARI STATE	789
RETURN TO PETITION FOR CERTIORARI RIVERA	807

INDEX

NOTICE OF APPEAL IN THIS PCR	819
ORDER OF APPOINTMENT IN THE APPEAL OF THIS PCR S.CT.	820
PRO SE MOTION IN PCR	821
INDICTMENT MURDER RIVERA	826
SENTENCING SHEET RIVER	828
SCDC RECORDS	829
AFFIDAVIT OF INDIGENCY IN CIRCUIT COURT PCR	830
ORDER APPOINTMENT OF FIRST OF SEVERAL PCR ATTORNEYS	833

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Marlon Rivera,
S.C.D.C. No. 311864,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-1209

ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 NOV 8 AM 10 52

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 17, 2011. The Respondent made its return on June 28, 2011. An evidentiary hearing into the matter was convened on August 27, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Jeffrey Falkner Wilkes, Esquire.¹ Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Juan Carlos Macano and the Applicant's trial counsel Susannah C. Ross, Esquire, testified at the hearing. The Applicant's appellate counsel, Robert M. Dudek, Esquire, testified by telephone. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and the Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted

¹ A Spanish language interpreter was also present.

1
f3 9

at the October 2004 term of the Greenville County Grand Jury for murder (2004-GS-23-7693).

He was represented by Susannah C. Ross, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On October 13, 2005, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to thirty years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals reversed and remanded the conviction. State v. Rivera, Op. No. 2008-UP-187 (S.C. Ct. App. filed March 18, 2008). The Respondent filed a petition for writ of certiorari at the South Carolina Supreme Court. The Supreme Court granted the petition and the parties briefed the issues. On September 7, 2010, the Supreme Court reversed the Court of Appeals. State v. Rivera, 389 S.C. 399, 699 S.E.2d 157 (2010).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

At the post-conviction relief hearing, the Applicant proceeded upon the following allegations for relief:

1. Ineffective assistance of trial counsel:
 - a. Failed to timely move to quash indictment.
 - b. Counsel's motion for sequestration resulted in two witnesses not being allowed to testify.
 - c. Failed to interview potential witness.
 - d. Failed to challenge the chain of custody of the gunshot residue evidence.
 - e. Failed to object during the State's closing argument.
2. Ineffective assistance of appellate counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Trial Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

Juan Carlos Macano stated he was a bouncer at a bar called La Roomba at the time of the shooting. Macano stated he was an acquaintance of the Applicant's at the time. Macano stated

he checked the Applicant at the door of the bar that night, felt an object, and told the Applicant to leave. Macano stated the Applicant did not have the item when he returned. Macano stated the Applicant fought with another man outside and the Applicant took out his gun. Macano stated the Applicant dropped his gun and a man picked it up and fired. Macano stated the Applicant never fired the gun. Macano admitted he did not contact the police or give a statement.

Trial counsel testified she filed discovery motions and then reviewed the discovery materials both independently and with the Applicant and an interpreter. Trial counsel testified the discovery materials included the incident reports, the Applicant's confession, witness statements, the autopsy report, and the gunshot residue test. Trial counsel testified she moved to quash the indictment. Trial counsel testified Macano's name was neither included in a potential list of witnesses nor uncovered by her investigator. Trial counsel testified that, in retrospect, she wished she had not moved to sequester witnesses because two witnesses (her investigator and Yamileth Corrales) could not testify. Trial counsel testified she could have objected to the chain of custody for the gunshot residue evidence. Trial counsel testified she did not object to a comment made about defense witnesses during the assistant solicitor's closing argument.

This Court trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not make a proper motion to quash the indictment. This Court finds the Applicant has failed to demonstrate either error or prejudice because a motion to quash the indictment was not filed sooner. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) ("[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a

warrant or prevent subsequent prosecution."'). Further, this Court finds the Applicant failed to provide evidence of any prejudice that resulted from the delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one's speedy trial rights were violated). This Court further notes the true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. This Court finds the Applicant has failed to present any evidence that the indictment in this case did not provide notice of the charge upon which he would be tried.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not interview a witness. Trial counsel testified that Juan Carlos Macano's name never came up during her investigation of this case. This Court finds trial counsel's testimony is credible. In contrast, this Court finds Macano's testimony is not credible. Macano testified he worked at a bar called La Roomba and his boss's name was Pepe. The trial transcript indicated the incident with the bouncer occurred at a bar called The Mexicali, which was operated by Carlos Estrado.² Further, Macano testified the Applicant never shot the gun; however, both the Applicant's statement and trial testimony indicated he fired the gun. Macano was not a credible witness who would have positively impacted the defense case.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly handle the sequestration issue. Trial counsel moved to sequester witnesses at trial. This

² Estrado testified The Mexicali was two blocks away from La Roomba. (Trial transcript, p.68).

Court notes trial counsel's investigator and another witness (Corrales) were thus barred from testifying later in the trial. This Court finds the Applicant cannot prove he suffered any prejudice. The investigator's testimony was proffered to the trial judge. (Trial transcript, pp.382-99). This Court finds the investigator's testimony contained several instances of hearsay. The investigator's testimony was also cumulative to testimony given by Investigator Smith. In addition, as Corrales did not testify at the PCR hearing, this Court cannot speculate as to whether her testimony at trial would have affected the outcome of the case. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the chain of custody of the gunshot residue evidence. Evidence is inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the evidence was not established at least as far as practicable. See State v. Horton, 359 S.C. 555, 567, 598 S.E.2d 279, 286 (Cl. App. 2004). This Court finds the Applicant failed to present any evidence or testimony that there was a missing link in the chain of custody or any potential contamination of evidence in this case. Without such evince before this Court, the Applicant cannot prove he was prejudiced because trial counsel did not challenge the chain of custody.

This Court finds the Applicant has failed to meet his burden of proving trial counsel should have objected during the assistant solicitor's closing argument. At trial, the assistant solicitor stated "their eyewitnesses . . . there are two, there are only two that they presented."

(Trial transcript, p.522, lines 16-17). This Court finds there was no valid, sustainable objection that trial counsel could have made respecting this comment that would have changed the outcome of the Applicant's trial. See State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) (finding a solicitor's argument must stay within the record and its reasonable inferences); see also State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999) (noting a solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony).

This Court finds the Applicant has failed to demonstrate that any acts or omissions by trial counsel prejudiced his case. This Court finds the State presented overwhelming evidence of the Applicant's guilt. The bouncer at The Mexicali would not let the Applicant into the club because he had a weapon. The Applicant left and returned without a weapon but a weapon was found in a tree outside The Mexicali. Alvaro Fernandez identified the Applicant as the shooter. There was a lead particle on the Applicant's hand. The Applicant told his cousin (Nelson Castro) that he shot someone but did not say anyone else fired the gun. The Applicant's statement to Detective Rivera was that he was mad and shot the gun twice (without stating anyone else fired the gun). The Applicant testified at trial that he fired twice during a fight and was not in fear for his life. Based upon all of this evidence, the Applicant cannot demonstrate prejudice. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

7
P. 137

Strickland test — that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland — that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309; 680 S.E.2d 273, 276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue).

Appellate counsel stated he was successful on appeal to the Court of Appeals. Appellate counsel stated he raised five issues on appeal to the Court of Appeals but that the court only addressed one of these issues. Appellate counsel said the State appealed and the Supreme Court reversed the Court of Appeals. Appellate counsel stated that, in retrospect, he wished he had asked the Supreme Court to remand the case back to the Court of Appeals to address the four issues they did not address the first time. Appellate counsel stated he could recall a single instance in which such a request has been successful.

This Court finds the Applicant failed to meet his burden of proving appellate counsel was

ineffective. The Applicant argues appellate counsel should have filed a motion to remand the case to the Court of Appeals – after the Supreme Court opinion was issued – in order for several issues to be addressed. The Applicant, however, failed to point to any case law or precedent that would allow appellate counsel to pursue such action. Rather, appellate counsel merely testified he recalled such a motion was filed by another attorney in his office at some point in the past. This Court does not find appellate counsel was deficient or that the issues that were not ruled upon by the Court of Appeals were meritorious. This Court finds the issues not ruled upon by the Court of Appeals or Supreme Court were unlikely to have been resolved in favor of the Applicant. This Court finds the propositions of law at issue are dubious, and the Court of Appeals most probably decided to address issues that were of marginal merit. Instead the Court of Appeals and Supreme Court chose to discuss the issue of the charge on the law. That, ultimately, was the material issue that needed resolution by the appellate courts and that issue was properly preserved, presented, and ruled upon. This Court further finds the Applicant cannot prove any prejudice related to this issue since, as noted supra, the State presented overwhelming evidence of guilt.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial, sentencing,

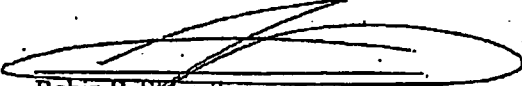
and appellate proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsels' representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of Nov, 2013.


Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

G. V. L. C., South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MARLON RIVERA,)
)
 DEFENDANT.)
 _____)

2004-GS-23-7693

TRANSCRIPT OF RECORD
(VOLUME ONE OF TWO)

OCTOBER 10 - 13, 2005
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE C. VICTOR PYLE, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

KRIS HODGE, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

SUSANNAH ROSS, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

(COURT REPORTER NOTE: THERE WAS A SPANISH INTERPRETER, CARLOS FREEMAN, SEATED BESIDE THE DEFENDANT THROUGHOUT THE ENTIRE TRIAL TRANSLATING FOR THE DEFENDANT AS TO WHAT WAS BEING SAID)

(COURT REPORTER NOTE: THE OFFICIAL SPANISH INTERPRETER FOR WITNESSES WAS EFRAIN PINEROS)

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
OPENING STATEMENTS - MS. HODGE	33
OPENING STATEMENTS - MR. ROSS	36
DAVID BENDIG	
DIRECT BY MR. HODGE	40
CROSS BY MS. ROSS	48
NELSON CASTRO	
DIRECT BY MS. HODGE	51
CROSS BY MS. ROSS	61
REDIRECT BY MS. HODGE	63
RECROSS BY MS. ROSS	65
CARLOS ESTRADO	
DIRECT BY MS. HODGE	67
BRIAN GARRETT	
DIRECT BY MS. HODGE	74
CROSS BY MS. ROSS	91
REDIRECT BY MS. HODGE	94
DIANE ORLANDO	
DIRECT BY MS. HODGE	94
CROSS BY MS. ROSS	125
CRAIG CHRISTENSON, M. D.	
DIRECT BY MS. HODGE	126

INDEXWITNESSPAGE NO.

MARK STEPHAN

DIRECT BY MS. HODGE 137

CROSS BY MS. ROSS 151

EDDIE HUCKS

DIRECT BY MS. HODGE 155

SEAN COLLINS

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DIRECT BY MS. HODGE 183

CROSS BY MS. ROSS 184

BRIAN GARRETT (JACKSON V. DENNO HEARING)

DIRECT BY MS. HODGE 188

CROSS BY MS. ROSS 195

REDIRECT BY MS. HODGE 199

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
RAMON RIVERA (JACKSON V. DENNO HEARING)	
DIRECT BY MS. HODGE	200
CROSS BY MS. ROSS	213
WESLEY SMITH (JACKSON V. DENNO HEARING)	
DIRECT BY MS. HODGE	219
CROSS BY MS. ROSS	227
MARLON RIVERA (JACKSON V. DENNO HEARING)	
DIRECT BY MS. ROSS	233
CROSS BY MS. HODGE	240
CARLOS FREEMAN (JACKSON V. DENNO HEARING)	
DIRECT BY MS. ROSS	243
ROBERT TAYLOR (JACKSON V. DENNO HEARING)	
DIRECT BY MS. ROSS	246
CROSS BY MS. HODGE	256
BRIAN GARRETT	
DIRECT BY MS. HODGE	260
CROSS BY MS. ROSS	275
RAMON RIVERA	
DIRECT BY MS. HODGE	279
CROSS BY MS. ROSS	308
REDIRECT BY MS. HODGE	317

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
WESLEY SMITH	
DIRECT BY MS. HODGE	318
CROSS BY MS. ROSS	362
REDIRECT BY MS. HODGE	375
CARLOS FREEMAN	
DIRECT BY MS. ROSS	382
CROSS BY MS. HODGE	386
REDIRECT BY MS. ROSS	396
COURTNEY ROBLES	
DIRECT BY MS. ROSS	399
CROSS BY MS. HODGE	409
NORBERTO ORTIZ	
DIRECT BY MS. ROSS	416
CROSS BY MS. HODGE	424
REDIRECT BY MS. ROSS	427
ROBERT TAYLOR	
DIRECT BY MS. ROSS	429
CROSS BY MS. HODGE	443
REDIRECT BY MS. ROSS	449

INDEXWITNESSPAGE NO.WEDNESDAY, OCTOBER 12, 2005:

MARLON RIVERA

DIRECT BY MS. ROSS	452
CROSS BY MS. HODGE	479
REDIRECT BY MS. ROSS	494
CLOSING ARGUMENTS - MS. ROSS	502
CLOSING ARGUMENTS - MS. HODGE	519
CHARGE OF THE COURT	544
VERDICT OF THE JURY	578
SENTENCE OF THE COURT	585
CERTIFICATE OF REPORTER	586

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
P-1	ARIAL PHOTO	42	43
P-2	STATEMENT OF NELSON CASTRO	59	X
P-3	ARIAL PHOTO	87	88
P-4	PHOTO	89	90
P-5	" "	97	99
P-6	" "	99	100
P-7	" "	99	100
P-8	" "	121	121
P-9	" "	114	115
P-10	" "	114	115
P-11	" "	121	123
P-12	GUNSHOT RESIDUE TEST KIT	106	125
P-13	AA KIT - ATOMIC ABSORPTION	108	125
P-14	REVOLVER & TEST SHOTS	117	118
P-15	BULLET	132	133
P-16	WAIVER OF RIGHTS	188	274
P-17	STATEMENT OF MARLON RIVERA	188	274
P-18	INMATE PROPERTY RECORD	486	486

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
C-1	DISCOVERY	183	
C-2	ARREST WARRANT	183	
C-3	SUN & MOON DATA SHEET	200	
C-4	STATEMENTS OF DEFENSE WITNESSES	450	
C-5	AFFIDAVIT OF CARLOS FREEMAN	450	
C-6	SUBPOENA - OLGA BARRERAS	451	
C-7	NOTES OF OLGA BARRERAS' STATEMENT	451	
C-8	STATE v. TISDALE CASE	496	
C-9	STATE v. FULTON CASE	496	
C-10	STATE v. BURRISS CASE	496	
C-11	STATE v. CROSBY CASE	496	
C-12	DEFENDANT'S REQUEST TO CHARGE	502	
C-13	JURY QUESTION	555	

1 THE BAILIFF: ALL RISE. COURT IS NOW IN SESSION. THE
2 HONORABLE JUDGE C. VICTOR PYLE, JR. PRESIDING.

3 THE COURT: GOOD MORNING. BE SEATED. ALL RIGHT.
4 WE'RE READY ON STATE V. RIVERA?

5 MS. HODGE: YES, SIR, YOUR HONOR.

6 MS. ROSS: YES, YOUR HONOR. WE DO HAVE SOME PRETRIAL
7 MOTIONS THOUGH.

8 THE COURT: DOES IT AFFECT JURY SELECTION?

9 MS. ROSS: NO, I DON'T THINK SO.

10 THE COURT: OKAY. LET'S GET US A JURY, AND THEN WE'LL
11 DO THE MOTIONS. OKAY. BRING OUR PANEL UP.

12 MS. ROSS: OUR INVESTIGATOR'S BROTHER, CHRISTOPHER
13 BURKETT, IS JUROR NUMBER 17 FOR WHAT IT'S WORTH.

14 THE COURT: NUMBER 17?

15 MS. ROSS: YEAH. THEY'VE GOT DIFFERENT LAST NAMES. I
16 DON'T KNOW IF YOU KNOW TRACY MCDANIEL, WHO'S AN INVESTIGATOR
17 WITH OUR OFFICE, BUT THAT'S HER BROTHER.

18 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM)

19 THE COURT: GOOD MORNING. LADIES AND GENTLEMEN, AT
20 THIS TIME WE WILL SELECT A JURY IN THE CASE OF THE STATE
21 AGAINST MARLON RIVERA. MR. RIVERA, WOULD YOU PLEASE STAND
22 UP, AND TURN AROUND AND FACE THE JURY PANEL FOR ME JUST ONE
23 MOMENT PLEASE? JUST TURN AROUND AND FACE THE JURY PANEL.
24 THANK YOU. YOU CAN BE SEATED.

25 MR. RIVERA IS INDICTED FOR MURDER. THE INDICTMENT

1 ALLEGES SPECIFICALLY THAT ON OR ABOUT JULY 18, 2004 HE
2 UNLAWFULLY AND WITH MALICE AFORETHOUGHT KILLED WILFRIDO
3 SOLIS MONGE, M-O-N-G-E. IS THAT THE CORRECT PRONUNCIATION?

4 MS. HODGE: MONGE.

5 THE COURT: BY MEANS OF SHOOTING HIM WITH A PISTOL.
6 NOW POTENTIAL WITNESSES IN THIS CASE WILL BE DEPUTY DAVID
7 BENDIG, MIKE PITTS, BRIAN GARRETT, WES SMITH, RAMON J.
8 RIVERA. HE IS A DEPUTY WITH THE SHERIFF'S OFFICE, WHO I
9 ASSUME HAS NO RELATIONSHIP TO THE DEFENDANT. DIANE ORLANDO,
10 EDDIE HUCKS, SEAN COLLINS, MARK STEPHAN, CHRISTINE
11 MONTGOMERY, ILA SIMMONS, DR. ERIK CHRISTENSEN, COURTNEY
12 ROBLES, R-O-B-L-E-S. IS THAT CORRECT, ROBLES?

13 MR. FREEMAN: ROBLES.

14 THE COURT: ROBLES. CLEMETE ROBLES BELTRAIN, NORBERTO
15 ORTIZ, NELSON CASTRO, CARLOS ESTRADO, DR. ROBERT TAYLOR,
16 YAMILETH CORRALES, OLGA BARRERAS. AND CARLOS FREEMAN IS THE
17 INTERPRETER IN THIS CASE. HE WILL BE INTERPRETING FOR THE
18 DEFENDANT.

19 NOW I WOULD INQUIRE AT THIS TIME IF ANY MEMBER OF THE
20 JURY PANEL IS RELATED BY BLOOD OR MARRIAGE, OR CONNECTED BY
21 EMPLOYMENT TO THIS DEFENDANT OR TO ANY POTENTIAL WITNESS IN
22 THE CASE, ARE YOU SENSIBLE OR AWARE OF ANY BIAS OR ANY
23 PREJUDICE WITH RESPECT TO THIS DEFENDANT, TO THE STATE, OR
24 TO THE SUBJECT MATTER OF THE CASE, THAT BEING AN ALLEGED
25 MURDER, OR DO YOU KNOW ANY REASON WHY YOU COULD NOT GIVE ALL

1 PARTIES TO THIS CASE A FAIR AND IMPARTIAL TRIAL BASED ON THE
2 LAW AND EVIDENCE TO BE PRESENTED? IF SO, WOULD YOU PLEASE
3 STAND AND GIVE ME YOUR NAME?

4 (NO RESPONSE)

5 THE COURT: NOW DO I HAVE ANY MEMBER OF THE PANEL WHO
6 HAS ANY CONNECTION, FAMILY, BUSINESS, SOCIAL, OR OTHERWISE
7 WITH BOB ARIAIL, THE SOLICITOR, OR ANY MEMBER OF HIS STAFF
8 INCLUDING CHRIS HODGE, WHO IS THE DEPUTY SOLICITOR HANDLING
9 THIS PARTICULAR CASE, OR WITH LAW ENFORCEMENT, WHETHER THAT
10 BE FEDERAL, STATE, COUNTY, OR MUNICIPAL? IF SO, WOULD YOU
11 PLEASE STAND AND GIVE ME YOUR NAME? YOUR NAME, SIR?

12 JUROR: CHRIS BURKETT.

13 THE COURT: ALL RIGHT, SIR.

14 MR. BURKETT: I HAVE A FAMILY MEMBER WHO IS AT THE
15 DEFENSE TABLE.

16 THE COURT: ALL RIGHT. AND WHO IS THAT?

17 MR. BURKETT: TRACY MCDANIEL.

18 THE COURT: ALL RIGHT. I UNDERSTAND SHE IS THE
19 INVESTIGATOR WITH THE PUBLIC DEFENDER'S OFFICE. WOULD THAT
20 FACT IN ANY WAY INTERFERE WITH YOUR ABILITY TO BE A FAIR AND
21 IMPARTIAL JUROR ON THIS CASE?

22 MR. BURKETT: I WOULDN'T THINK SO.

23 THE COURT: AS LONG AS YOU TELL ME YOU COULD BE A FAIR
24 AND IMPARTIAL JUROR, YOU'RE QUALIFIED. IS THAT WHAT YOU'RE
25 TELLING ME?

1 MR. BURKETT: YES, SIR.

2 THE COURT: THANK YOU. NOW SUSANNAH ROSS WITH THE
3 PUBLIC DEFENDER'S OFFICE REPRESENTS THE DEFENDANT. DO I
4 HAVE ANY CLIENTS NOW OR FORMERLY OF MS. ROSS OR WITH THE
5 PUBLIC DEFENDER'S OFFICE? IF SO, WOULD YOU PLEASE STAND AND
6 GIVE ME YOUR NAME?

7 (NO RESPONSE)

8 THE COURT: DO I HAVE ANY MEMBER OF THE PANEL WHO HAS
9 BEEN THE VICTIM OF A VIOLENT CRIME? IF SO, WOULD YOU PLEASE
10 STAND AND GIVE ME YOUR NAME? OR ANY MEMBER OF YOUR FAMILY,
11 WOULD YOU PLEASE STAND AND GIVE ME YOUR NAME?

12 (NO RESPONSE)

13 THE COURT: ANY FURTHER QUESTIONS, COUNSEL?

14 MS. HODGE: NONE FROM THE STATE, YOUR HONOR.

15 MS. ROSS: NONE FROM THE DEFENSE.

16 THE COURT: ALL RIGHT. STRIKES ARE FIVE FOR THE STATE,
17 TEN FOR THE DEFENSE. LADIES AND GENTLEMEN, WHEN YOUR NAME
18 IS CALLED I'LL ASK THAT YOU PLEASE COME FORWARD TO THIS
19 PODIUM, TURN AROUND, FACE COUNSEL, AND AWAIT FURTHER
20 INSTRUCTIONS. THANK YOU.

21 MADAME CLERK: JUROR 177, HARRY BATSON. WHAT SAYS THE
22 STATE?

23 MS. HODGE: PLEASE PRESENT THE JUROR.

24 MADAME CLERK: WHAT SAYS THE DEFENDANT?

25 MS. ROSS: PLEASE SEAT THE JUROR.

1 MADAME CLERK: MR. BATSON, PLEASE HAVE A SEAT IN THE
2 JURY BOX. JUROR 118, RONALD MORGAN. WHAT SAYS THE STATE?

3 MS. HODGE: PLEASE PRESENT THE JUROR.

4 MADAME CLERK: WHAT SAYS THE DEFENDANT?

5 MS. ROSS: PLEASE STRIKE THE JUROR.

6 MADAME CLERK: MR. MORGAN, PLEASE HAVE A SEAT. YOU ARE
7 EXCUSED FROM THIS CASE. JUROR 114, JENNIFER MICHENFELDER.
8 WHAT SAYS THE STATE?

9 MS. HODGE: PLEASE PRESENT THE JUROR.

10 MADAME CLERK: WHAT SAYS THE DEFENDANT?

11 MS. ROSS: PLEASE SEAT THE JUROR.

12 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

13 JUROR 121, ROY MULLINAX. WHAT SAYS THE STATE?

14 MS. HODGE: PLEASE PRESENT THE JUROR.

15 MADAME CLERK: WHAT SAYS THE DEFENDANT?

16 MS. ROSS: PLEASE SEAT THE JUROR.

17 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX, MR.

18 MULLINAX. JUROR NUMBER 10, PENELOPE BOSWELL. WHAT SAYS THE
19 STATE?

20 MS. HODGE: PLEASE PRESENT THE JUROR.

21 MADAME CLERK: WHAT SAYS THE DEFENDANT?

22 MS. ROSS: PLEASE EXCUSE THIS JUROR.

23 MADAME CLERK: MS. BOSWELL, YOU'RE EXCUSED FROM THIS

24 CASE. YOU CAN HAVE A SEAT. JUROR NUMBER 19, MICHAEL

25 BUTLER. WHAT SAYS THE STATE?

1 MS. HODGE: PLEASE PRESENT THE JUROR.
2 MADAME CLERK: WHAT SAYS THE DEFENDANT?
3 MS. ROSS: PLEASE SEAT THE JUROR.
4 MADAME CLERK: MR. BUTLER, PLEASE HAVE A SEAT IN THE
5 JURY BOX. JUROR 56, LISA FRAZIER. WHAT SAYS THE STATE?
6 MS. HODGE: PLEASE PRESENT THE JUROR.
7 MADAME CLERK: WHAT SAYS THE DEFENDANT?
8 MS. ROSS: PLEASE EXCUSE THIS JUROR.
9 MADAME CLERK: MS. FRAZIER, YOU'RE EXCUSED FROM THIS
10 CASE. JUROR 116, EVAN MINISH. WHAT SAYS THE STATE?
11 MS. HODGE: PLEASE PRESENT THE JUROR.
12 MADAME CLERK: WHAT SAYS THE DEFENDANT?
13 MS. ROSS: PLEASE SEAT THE JUROR.
14 MADAME CLERK: MR. MINISH, PLEASE HAVE A SEAT IN THE
15 JURY BOX. JUROR 122, NICHOLAS NABORS. WHAT SAYS THE STATE?
16 MS. HODGE: PLEASE PRESENT THE JUROR.
17 MADAME CLERK: WHAT SAYS THE DEFENDANT?
18 MS. ROSS: PLEASE SEAT THE JUROR.
19 MADAME CLERK: MR. NABORS, PLEASE HAVE A SEAT IN THE
20 JURY BOX. JUROR 57, PHILANDRA GILLIAM. WHAT SAYS THE
21 STATE?
22 MS. HODGE: PLEASE PRESENT THE JUROR.
23 MADAME CLERK: WHAT SAYS THE DEFENDANT?
24 MS. ROSS: PLEASE SEAT THE JUROR.
25 MADAME CLERK: MS. GILLIAM, PLEASE HAVE A SEAT IN THE

1 JURY BOX. JUROR 104, JANE MAYBIN. WHAT SAYS THE STATE?
2 MS. HODGE: PLEASE PRESENT THE JUROR.
3 MADAME CLERK: WHAT SAYS THE DEFENDANT?
4 MS. ROSS: PLEASE EXCUSE THIS JUROR.
5 MADAME CLERK: MS. MAYBIN, YOU ARE EXCUSED FROM THIS
6 CASE. JUROR 67, SHARON GREENWELL. WHAT SAYS THE STATE?
7 MS. HODGE: PLEASE PRESENT THE JUROR.
8 MADAME CLERK: WHAT SAYS THE DEFENDANT?
9 MS. ROSS: PLEASE EXCUSE THIS JUROR.
10 MADAME CLERK: MS. GREENWELL, YOU ARE EXCUSED FROM THIS
11 CASE. JUROR 119, ANNE MORRIS. WHAT SAYS THE STATE?
12 MS. HODGE: PLEASE PRESENT THE JUROR.
13 MADAME CLERK: WHAT SAYS THE DEFENDANT?
14 MS. ROSS: PLEASE EXCUSE THIS JUROR.
15 MADAME CLERK: MS. MORRIS, YOU'RE EXCUSED FROM THIS
16 CASE. JUROR 75, STEPHANIE HARBAUGH. WHAT SAYS THE STATE?
17 MS. HODGE: PLEASE PRESENT THE JUROR.
18 MADAME CLERK: WHAT SAYS THE DEFENDANT?
19 MS. ROSS: PLEASE SEAT THE JUROR.
20 MADAME CLERK: MS. HARBAUGH, PLEASE HAVE A SEAT IN THE
21 JURY BOX. JUROR 23, ALEJANDRO CAICEDO. WHAT SAYS THE
22 STATE?
23 MS. HODGE: WHAT NUMBER WAS THAT AGAIN?
24 MADAME CLERK: 23. WHAT SAYS THE STATE?
25 MS. HODGE: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS THE DEFENDANT?
2 MS. ROSS: PLEASE SEAT THE JUROR.
3 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.
4 JUROR 63, NANCY GRAHAM. WHAT SAYS THE STATE?
5 MS. HODGE: PLEASE PRESENT THE JUROR.
6 MADAME CLERK: WHAT SAYS THE DEFENDANT?
7 MS. ROSS: PLEASE EXCUSE THIS JUROR.
8 MADAME CLERK: MS. GRAHAM, YOU'RE EXCUSED FROM THIS
9 CASE. JUROR 82, WINNIE HOLLINGSWORTH. WHAT SAYS THE STATE?
10 MS. HODGE: PLEASE EXCUSE THIS JUROR.
11 MADAME CLERK: MS. HOLLINGSWORTH, YOU'RE EXCUSED FROM
12 THIS CASE. YOU CAN HAVE A SEAT. JUROR 92, DEBORAH
13 KOLTONSKI. WHAT SAYS THE STATE?
14 MS. HODGE: PLEASE PRESENT THE JUROR.
15 MADAME CLERK: WHAT SAYS THE DEFENDANT?
16 MS. ROSS: PLEASE SEAT THE JUROR.
17 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.
18 JUROR 59, MARSHALL GOERS. WHAT SAYS THE STATE?
19 MS. HODGE: PLEASE EXCUSE THE JUROR.
20 MADAME CLERK: MR. GOERS, YOU'RE EXCUSED FROM THIS
21 CASE. JUROR 35, ALEXIS CON. WHAT SAYS THE STATE?
22 MS. HODGE: PLEASE PRESENT THE JUROR.
23 MADAME CLERK: WHAT SAYS THE DEFENDANT?
24 MS. ROSS: PLEASE SEAT THE JUROR.
25 MADAME CLERK: MR. CON, PLEASE HAVE A SEAT IN THE JURY

1 BOX. JUROR 112, CHRISTINE MCELCAR. WHAT SAYS THE STATE?

2 MS. HODGE: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MS. ROSS: PLEASE EXCUSE THIS JUROR.

5 MADAME CLERK: YOU ARE EXCUSED IN THIS CASE, MA'AM.

6 JUROR 48, JENNIFER ESCONTRIAS. WHAT SAYS THE STATE?

7 MS. HODGE: PLEASE PRESENT THE JUROR.

8 MADAME CLERK: WHAT SAYS THE DEFENDANT?

9 MS. ROSS: PLEASE SEAT THE JUROR.

10 THE COURT: AND GIVE ME ONE ALTERNATE. MR. BATSON,
11 WOULD YOU COME TAKE THIS FIRST SEAT AND SERVE AS FOREMAN ON
12 THIS CASE FOR ME PLEASE, SIR? AND ONE ALTERNATE, ONE FOR
13 THE STATE, TWO FOR THE DEFENSE.

14 MADAME CLERK: JUROR 24, ELAINE CAMPBELL. WHAT SAYS
15 THE STATE?

16 MS. HODGE: PLEASE PRESENT THE JUROR.

17 MADAME CLERK: WHAT SAYS THE DEFENDANT?

18 MS. ROSS: PLEASE SEAT THE JUROR.

19 MADAME CLERK: HAVE A SEAT IN THE JURY BOX.

20 THE COURT: SWEAR THE JURY PLEASE.

21 (WHEREUPON THE JURY WAS DULY SWORN)

22 THE COURT: LADIES AND GENTLEMEN, I'LL GIVE YOU A

23 RECESS BEFORE WE START. WHILE ON RECESS DON'T TALK ABOUT

24 THIS CASE. YOU DON'T DISCUSS THE FACTS OF THIS CASE UNTIL

25 YOU'VE HEARD ALL OF THE TESTIMONY TO BE PRESENTED, THE

1 ARGUMENTS BY THE ATTORNEYS, AND MY CHARGE ON THE LAW. SO IF
2 YOU'LL BE AT EASE AND FOLLOW THE BAILIFF WE'LL START JUST AS
3 SOON AS WE CAN. THANK YOU.

4 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:35 AM)

5 THE COURT: AND FOR THE BALANCE OF THE PANEL WE CAN
6 EXCUSE YOU FOR THE REST OF TODAY. WHAT I'LL ASK THAT YOU
7 DO, PLEASE AFTER SIX PM TODAY CALL THE NUMBER THAT WAS
8 FURNISHED TO YOU THIS MORNING, AND WE'LL LET YOU KNOW WHEN
9 TO REPORT BACK FOR JURY SERVICE. SO CALL IN AFTER SIX PM
10 TODAY. THANK YOU VERY MUCH. YOU'RE EXCUSED.

11 (WHEREUPON THE JURY PANEL EXITED THE COURTROOM)

12 THE COURT: WHAT KIND OF MOTIONS DO YOU HAVE, MS. ROSS?

13 MS. ROSS: SOME GENERAL MOTIONS ABOUT THE -- TO QUASH
14 THE INDICTMENT. I BELIEVE WE SHOULD HAVE A JACKSON V. DENNO
15 HEARING. I HAVE A MOTION TO DISMISS BASED ON EXPERIENCE
16 WE'VE HAD WITH WITNESSES, AND A MOTION IN LIMINE, MOTION TO
17 SEQUESTER THE WITNESSES, AND A MOTION FOR A SEPARATE
18 INTERPRETER BESIDES OURS FOR THE ENTIRE TRIAL.

19 THIS HAS CERTAINLY BEEN THE CASE OR A MAIN ISSUE FOR ME
20 FROM THE BEGINNING IN TRYING TO COMMUNICATE WITH MY CLIENT,
21 EVEN WITH AN INTERPRETER. IT'S DIFFICULT. THIS IS SOMEONE
22 WHO IS ILLITERATE IN SPANISH AND ENGLISH. AND I THINK HE
23 HAS A RIGHT TO UNDERSTAND AND KNOW WHAT'S GOING ON WITH HIS
24 TRIAL. AND I HAVEN'T BEEN ABLE TO GET THE ASSURANCES THAT
25 HE TRULY DOES BECAUSE I CAN'T DIRECTLY COMMUNICATE WITH HIM.

1 AND THAT'S BEEN A DIFFICULTY FROM THE BEGINNING.

2 I ATTEMPTED TO GET A SPANISH SPEAKING ATTORNEY TO CO-
3 COUNSEL ON THIS CASE WITH ME, AND HE WAS NOT INTERESTED IN
4 DOING THAT. BUT I WOULD MAKE A MOTION THAT SOMEONE, AN
5 ATTORNEY WHO CAN SPEAK SPANISH BE APPOINTED TO THE CASE.

6 THE COURT: WELL, MR. FREEMAN, IS HE A QUALIFIED
7 INTERPRETER FOR THE STATE OF SOUTH CAROLINA?

8 MR. FREEMAN: INASMUCH AS THE QUALIFICATIONS EXISTING
9 AT THE MOMENT IN SOUTH CAROLINA ARE, YES, YOUR HONOR.

10 THE COURT: YOU'RE QUALIFIED?

11 MR. FREEMAN: YES, SIR.

12 THE COURT: ALL RIGHT. THAT MOTION'S DENIED.

13 MS. ROSS: OKAY.

14 THE COURT: AND YOUR MOTION TO SEQUESTER WILL BE
15 GRANTED. OF COURSE I UNDERSTAND ALL POTENTIAL WITNESSES ON
16 THE STATE AND THE DEFENSE WILL BE SEQUESTERED.

17 MS. ROSS: YES, WE UNDERSTAND.

18 THE COURT: ALL RIGHT. NOW YOU GOT A JACKSON/DENNO.
19 ABOUT HOW LONG WILL THAT TAKE?

20 MS. HODGE: YOUR HONOR, I WAS GOING TO ASK THE COURT IF
21 WE COULD DO THAT ACTUALLY TOMORROW. THE MAIN OFFICER ON THE
22 CASE, RAMON RIVERA, HAS BEEN IN A MOTORCYCLE ACCIDENT ABOUT
23 TEN DAYS AGO.

24 THE COURT: OKAY.

25 MS. HODGE: HE IS TECHNICALLY UNAVAILABLE, BUT IS

1 COMING TO COURT TO TESTIFY FOR US. HE HAS DOCTOR
2 APPOINTMENTS AND THERAPY APPOINTMENTS ALL DAY ON MONDAY,
3 WEDNESDAY, AND FRIDAY, BUT HE SAID, TUESDAY, HE'S AVAILABLE.
4 SO, OF COURSE, I WOULD NOT MAKE ANY MENTION IN MY OPENING
5 ABOUT A POTENTIAL STATEMENT OF THE DEFENDANT, ---

6 THE COURT: ALL RIGHT.

7 MS. HODGE: --- IF WE COULD DO THAT TOMORROW.

8 MS. ROSS: THE DIFFICULTY WITH THAT FOR THE DEFENSE IS
9 THAT WE HAVE AN EXPERT HERE TO ADDRESS THE JACKSON V. DENNO
10 CASE. I THINK HE'S BEEN HERE SINCE 9:00 THIS MORNING. I
11 ALSO WANTED TO, YOU KNOW, KNOW WHETHER TO MENTION THE
12 OPENING -- MENTION THE CONFESSION OR NOT IN MY OPENING
13 STATEMENT. I THINK THAT'S SOMETHING THAT I'D LIKE TO GET
14 OUT TO THE JURY IMMEDIATELY IF IT IN FACT IS COMING IN. AND
15 THAT WOULD BE A PART OF OUR DEFENSE TO DO SO. AND LIKE I
16 SAID, WE ALSO HAVE THIS EXPERT, ROBERT TAYLOR, HERE AS WELL
17 FOR THE JACKSON V. DENNO HEARING.

18 THE COURT: SOLICITOR?

19 MS. HODGE: YOUR HONOR, I CAN TRY TO GET MR. RIVERA
20 HERE AT SOMETIME MAYBE -- I THINK HE TOLD ME HE'S IN DOCTORS
21 APPOINTMENTS AND THERAPY FROM NINE TO TWELVE AND THEN AGAIN
22 AT THREE. SO IF WE COULD WORK IT TO THAT, BUT HE'S NOT
23 PREPARED TO BE HERE TODAY. HE'S IN THERAPY.

24 AND THE ONLY THING WOULD BE TO CONTINUE THE CASE. AND
25 WE'D CERTAINLY BE OPPOSED TO A CONTINUANCE ON THAT. WE HAVE

1 WITNESSES THAT SIT AROUND FOR HOURS. I MEAN, I DON'T
2 BELIEVE THAT THAT WOULD BE NECESSARILY ---

3 THE COURT: WELL, NO, I UNDERSTAND THAT. THAT'S NOT MY
4 PROBLEM. I MEAN, SHE WANTS TO TALK ABOUT THAT IN HER
5 OPENING STATEMENT. AND SHE'S IN A POSITION OF NOT KNOWING
6 WHETHER TO DO IT OR NOT BECAUSE SHE DOESN'T KNOW WHETHER
7 IT'S GOING TO BE ADMITTED.

8 MS. HODGE: YES, SIR.

9 THE COURT: WHAT OTHER MOTIONS DO YOU HAVE, MS. ROSS?

10 MS. ROSS: YOUR HONOR, I HAD A MOTION TO QUASH THE
11 INDICTMENT. BASICALLY THAT WAS BASED ON AN ARGUMENT THAT
12 THE INDICTMENT ITSELF GIVES A TIME AND PLACE OF THE
13 SHOOTING, BUT NOT OF THE DEATH, WHICH WAS ACTUALLY THE NEXT
14 DAY. AND I BELIEVE THAT THEY NEED TO HAVE A TIME AND PLACE
15 OF THE DEATH AS WELL IN THE BODY OF THE INDICTMENT. AND
16 THAT IS A CASE ---

17 THE COURT: WELL, IS THAT FATAL TO THE INDICTMENT, THE
18 FACT THAT IT'S NOT ALLEGED?

19 MS. ROSS: THERE'S A CASE, STATE V. WINNS, THAT WAS
20 RECENTLY DECIDED THAT SAYS THAT IT'S NOT -- THE COURT OF
21 APPEALS CASE, STATE V. WINNS, SAID THAT IT WAS. AND I WOULD
22 JUST LIKE TO PUT THAT ON THE RECORD THAT I BELIEVE THAT IT
23 IS FATAL TO THE INDICTMENT NOT TO GIVE A TIME AND PLACE OF
24 THE DEATH OF MR., I BELIEVE IT'S MONGE, AND WOULD LIKE TO
25 PUT THAT ON THE RECORD.

1 THE COURT: ALL RIGHT. WELL, I DENY YOUR MOTION. THE
2 DEATH HAS TO OCCUR WITHIN A YEAR, DOESN'T IT?

3 MS. HODGE: YES, SIR...

4 MS. ROSS: YES, IT DID.

5 THE COURT: I DON'T THINK THAT'S FATAL TO THE
6 INDICTMENT. SO I'LL DENY THAT MOTION.

7 MS. ROSS: ALL RIGHT. AND SECONDLY, I DON'T BELIEVE IT
8 WAS INDICTED WITHIN NINETY DAYS PURSUANT TO RULE 3(C) OF THE
9 RULES OF CRIMINAL PROCEDURE.

10 AND FINALLY, THERE'S AN ARGUMENT THAT COULD POSSIBLY GO
11 TO THE FACT THAT THIS CASE IS ALL ABOUT INTERPRETATION AND
12 LANGUAGE INTERPRETATION. OUR UNDERSTANDINGS OF THE FACTS
13 THAT ARE ALL THE WITNESSES AT THE SCENE OF THIS SHOOTING
14 RIGHT AFTER IT OCCURRED SAID THAT ONE MAN HAD A GUN, ANOTHER
15 MAN TOOK THE GUN AWAY FROM HIM, SHOT THE VICTIM, GAVE IT
16 BACK TO PERSON, WE'LL SAY PERSON "A".

17 IN THE PRELIMINARY HEARING WHEN I HADN'T SPOKEN TO ANY
18 WITNESSES THE OFFICER, THE INVESTIGATING OFFICER, WES SMITH,
19 DID NOT TESTIFY TO THERE BEING ANY CONFUSION ABOUT WHO SHOT
20 OR WHETHER THERE WERE TWO POTENTIAL GUNMEN AT ISSUE. SO WE
21 HAD NO IDEA OF THAT. THE WARRANT, WHICH I HAVE HERE AS
22 WELL, MAKES NO MENTION OF THAT AT ALL. WE FEEL SORT OF ---

23 THE COURT: AND WHAT IS YOUR MOTION?

24 MS. ROSS: THE MOTION IS TO DISMISS BASED ON IF THERE
25 WAS NO REPRESENTATION TO THE GRAND JURY THAT THERE WAS A

1 POTENTIAL SECOND GUNMAN OR ANY CONFUSION IN ISSUE, THAT THAT
2 WAS POTENTIALLY MISLEADING TO THE GRAND JURY.

3 THE COURT: I DISAGREE WITH THAT. I DENY THAT MOTION.

4 MS. ROSS: ALL RIGHT. AND I WOULD POINT OUT JUST TO
5 PRESERVE IT ON THE RECORD THAT AT THE PRELIMINARY HEARING
6 WHEN I ASKED SPECIFICALLY WHETHER THERE WAS ANY CONFUSION OR
7 ANY WITNESSES WHO TALKED ABOUT A SECOND GUNMAN THE
8 INVESTIGATOR SAID, NO. SO HE MADE A MISREPRESENTATION, IN
9 MY OPINION, TO ME ---

10 THE COURT: WELL, WHY WOULD THAT NOT GO TO WEIGHT
11 RATHER THAN TO ITS ADMISSIBILITY?

12 MS. ROSS: I THINK IT WOULD GO TO -- BECAUSE THE
13 WARRANT ITSELF SAYS THAT THIS IS WHAT HAPPENED. IT SAYS
14 THERE WAS A SHOOTING, MY CLIENT CONFESSED TO THE SHOOTING,
15 NONE OF WHAT THE WITNESSES OR ALL OF THE WITNESSES'
16 TESTIMONY CORROBORATES THE CONFESSION. AND THAT'S SIMPLY
17 NOT THE CASE.

18 IF THAT'S WHAT WAS PUT IN THE AFFIDAVIT OF THE WARRANT
19 IS A MISREPRESENTATION, I THINK ALONG THE LINES OF ~~FRANKS V.~~
20 ~~DEFEW V.~~ THAT THE IDEA THAT IF THERE IS A MISREPRESENTATION
21 MADE ON AN ARREST WARRANT THEN THAT AFFECTS THE ARREST
22 WARRANT AND THE INDICTMENT AS WELL. AND THE WHOLE CASE IS
23 SUCH THAT IT SHOULD BE DISMISSED.

24 ALSO, THE FACT THAT THERE WAS A POTENTIAL
25 ~~MISREPRESENTATION ON THE WARRANT SUGGESTS AND IN THE~~

1 PRELIMINARY HEARING WOULD GO ON TO SUGGEST THAT THAT SAME
2 ~~MISREPRESENTATION WAS ALSO MADE TO THE GRAND JURY~~. SINCE
3 THE GRAND JURY'S DELIBERATION AND ALL TESTIMONY GIVEN TO THE
4 GRAND JURY IS UNAVAILABLE TO US, WE CAN'T BE CERTAIN, BUT I
5 THINK THAT WOULD BE A REASONABLE ASSUMPTION AND, THEREFORE,
6 THAT WOULD MAKE THE INDICTMENT ITSELF FATALLY FLAWED. AND,
7 THEREFORE, THAT'S MY BASIS FOR THE MOTION.

8 THE COURT: I ~~DISAGREE WITH THAT. I DENY THAT MOTION.~~

9 MS. ROSS: ALL RIGHT. THANK YOU. WE'VE ALSO GOT A
10 MOTION SORT OF ADDRESSING MR. RIVERA'S DUE PROCESS RIGHTS TO
11 A FAIR TRIAL. I'VE GIVEN YOU SOME OF THE BACKGROUND.
12 BASICALLY AFTER THIS PRELIMINARY HEARING THE DEFENSE DID NOT
13 HAVE ANY -- ~~I DID NOT HAVE ANY IDEA THAT THERE WAS A SECOND~~
14 ~~GUNMAN INVOLVED IN THIS CASE WHATSOEVER.~~

15 AT THAT POINT I HAD MY INVESTIGATOR, WHO STARTED OUT AS
16 MY INTERPRETER, WHO VOLUNTEERED TO DO INVESTIGATORY WORK AS
17 WELL, CARLOS FREEMAN, GO OUT AND TALK TO WITNESSES. HE DID.
18 MANY OF THOSE WITNESSES, ALL OF THEM SPOKE OF ~~A SECOND~~
19 ~~GUNMAN~~. MANY INDICATED IT WAS ACTUALLY THE SECOND GUNMAN
20 WHO SHOT THE VICTIM.

21 AT THAT POINT, ON MY DIRECTION, I HAD MR. FREEMAN TELL
22 THE STATE WHO THESE WITNESSES WERE. AT THAT POINT I DIDN'T
23 HAVE DISCOVERY OR ANY IDEA THAT THE STATE KNEW ABOUT THE
24 SECOND GUNMAN. THE STATE WENT AND TALKED TO THESE WITNESSES
25 AND AFTERWARDS MANY WERE MORE DIFFICULT FOR US TO TALK TO.

1 WE MADE AN ATTEMPT TO CONTACT WITNESSES AND COULDN'T
2 FIND THEM AGAIN. THE TWO THAT WE WERE ABLE TO TALK TO AGAIN
3 WANTED TO MEET AT THE COURTHOUSE AND WOULD ONLY COME WITH
4 GREAT HESITATION AND ASSURANCES FROM US THAT THINGS WOULD BE
5 ~~OKAY BECAUSE WHEN WE SAID WHEN WE WERE TOLD BY THE STATE NOT TO~~
6 ~~TALK TO US ANYMORE.~~

7 THEN THERE WAS A WITNESS WHO WAS AT THE SCENE WHO TALKS
8 ~~ABOUT TWO SHOOTERS AS WELL.~~ AND SHE, WHEN WE ATTEMPTED TO
9 CONTACT HER TO TALK TO US, JUST FLAT OUT REFUSED AND SAID
10 THROUGH HER HUSBAND THAT SHE'D BEEN TOLD NOT TO TALK TO US
11 AND DIDN'T WANT TO TALK TO US.

12 THEREFORE, WE FEEL LIKE THIS HAS BECOME SORT OF A TRIAL
13 ~~BY AMBUSH WHERE WE WERE NOT ABLE TO TALK TO WITNESSES.~~ SOME
14 OF THEM OUR OWN WITNESSES FROM THE BEGINNING ABOUT WHAT
15 THEIR STORIES WERE, ~~HOW THEY'D CHANGED OVER TIME~~ AND WERE
16 UNABLE TO GO FORWARD WITH THE CASE IN A COMFORTABLE FASHION
17 TO TURN DOWN ANY PLEA OFFERS BECAUSE WE REALLY DIDN'T KNOW
18 WHERE THESE WITNESSES WERE BECAUSE WE'D BEEN TOLD NOT TO
19 TALK TO THEM.

20 THE COURT: WHAT'S YOUR RESPONSE TO THAT, SOLICITOR?

21 MS. HODGE: YOUR HONOR, ~~THAT IS CLEARLY ERRONEOUS.~~ WE
22 DID SPEAK -- A LITTLE BIT OF BACKGROUND. THERE WERE SOME
23 WITNESSES INVESTIGATOR SMITH TALKED TO INITIALLY. MS. ROSS,
24 THROUGH HER INVESTIGATION, CAME TO ME EARLY ON AND SAID, WE
25 ~~THINK THERE MIGHT BE ANOTHER PERSON.~~ WE THINK YOU HAVE THE

1 WRONG PERSON. I SAID, WELL, PLEASE PROVIDE US WITH THOSE
2 PEOPLE'S NAMES. WE'LL BE GLAD TO TALK TO THEM. IF WE HAVE
3 THE WRONG PERSON, YOU KNOW, SO BE IT. WE DON'T WANT THAT.

4 INVESTIGATOR SMITH WENT OUT -- THEY PROVIDED NAMES AND
5 ADDRESSES. INVESTIGATOR SMITH WENT OUT WITH MR. RIVERA, WHO
6 SPOKE SPANISH BECAUSE INVESTIGATOR SMITH DID NOT AND ASKED
7 THEM IF THEY'D GIVE A STATEMENT. HE HAD THEM HANDWRITE IN
8 THEIR OWN HANDWRITING IN SPANISH WHAT THEIR STATEMENTS WERE.

9 HE ALSO HAD TRANSLATED WHAT NOTES WERE PROVIDED BY MR.
10 FREEMAN WHAT THESE WITNESSES HAD SUPPOSEDLY SAID TO MR.
11 FREEMAN. RAMON TRANSLATED THAT TO THE WITNESS AND SAID, DID
12 YOU SAY THIS? AND EVERYONE THAT HE CONTACTED SAID TO
13 SPECIFICS, NO, I DID NOT SAY THAT. I DON'T KNOW WHY HE'S
14 SAYING I SAID THAT.

15 SO THERE WAS SOME MISTRANSLATION OR THERE WAS SOME
16 ISSUES WITH WHAT CARLOS FREEMAN WAS SUPPLYING TO THE STATE.
17 SO THE STATE WENT TO GO GET THESE CLARIFICATIONS. AT NO
18 TIME WAS ANYONE EVER TOLD, DO NOT SPEAK TO THE DEFENSE.
19 THAT WAS NEVER TOLD. I KNOW THAT'S NOT POSSIBLE. I HAVE
20 INSTRUCTED EVERY WITNESS I'VE EVER TALKED TO, IT IS YOUR
21 RIGHT, IT IS YOUR CHOICE, IF YOU WOULD LIKE TO SPEAK TO THEM
22 YOU'RE FREE TO, I CAN'T TELL YOU WHAT TO DO.

23 SPECIFICALLY THE WOMAN SHE'S TALKING ABOUT, I MET WITH
24 HER AT MY OFFICE. SHE TOLD ME, MR. FREEMAN'S BEEN CALLING
25 MY HOUSE AT 10:00 AT NIGHT. I SAID, THAT'S YOUR CHOICE IF

1 YOU WANT TO TALK TO HIM OR NOT. SHE SAID, I DON'T WANT TO
2 TALK TO HIM. I SAID, WELL, THEN THAT'S WHAT YOU NEED TO
3 TELL HIM.

4 I'VE NEVER TOLD ANYONE -- AND INVESTIGATOR SMITH, I'M
5 SURE, ~~WOULD SWEAR THAT HE'S NEVER TOLD ANYONE NOT TO SPEAK~~
6 ~~TO THE DEFENSE EITHER.~~ AND PRETTY MUCH, YOUR HONOR, I HAVE
7 A MOTION THAT DOVETAILS ON SOME OF WHAT SHE'S BEEN TALKING
8 ABOUT AS TO AN OBJECTION TO ANY ADMISSION OF THIRD PARTY
9 ~~GUILTY. IF YOU'D LIKE TO HEAR THAT AT THIS TIME.~~

10 THE COURT: WELL, I DENY THAT MOTION, MS. ROSS. ALL
11 RIGHT. YOU HAVE WHAT REMAINING NOW?

12 MS. ROSS: I'VE JUST GOT SIMPLY A MOTION IN LIMINE AS
13 FAR AS THE OFFICERS THAT -- NO OPINIONS ON THE TRUTHFULNESS
14 OR UNTRUTHFULNESS OF WITNESSES ---

15 THE COURT: THEY'RE NOT GOING -- ~~THEY WOULDN'T TESTIFY~~
16 ~~TO THAT.~~

17 MS. ROSS: OKAY. WE'D ALSO MOVE FOR JUST ~~A SEPARATE~~
18 ~~COURT INTERPRETER.~~ I MEAN, CERTAINLY IF MR. FREEMAN'S
19 INTERPRETATION IS BEING BROUGHT INTO QUESTION, HE IS THE
20 INTERPRETER THAT I TRUST AND HAVE -- WHO'S HELPED ME ALL
21 THROUGH THIS CASE. AND BASICALLY HE'S INTERPRETING TO MY
22 CLIENT WHAT'S HAPPENING, BUT HE IS NOT ~~THE STATE'S INTERPRETER~~
23 FOR THIS CASE. SO WE'D MOVE FOR AN INTERPRETER FOR THE
24 ENTIRE TRIAL ---

25 THE COURT: ~~DENY THAT MOTION.~~ NOW TELL ME, HOW WOULD

1 YOU BE PREJUDICED JUST IN YOUR OPENING STATEMENT HAVING TO
2 DECIDE WHETHER OR NOT TO TALK ABOUT A CONFESSION?

3 MS. ROSS: WELL, I THINK IF THE CONFESSION IS COMING IN
4 I WOULD LIKE TO EXPLAIN IT, AND TALK ABOUT WHAT HAPPENED,
5 AND THE BACKGROUND OF IT, AND THE BASIS OF IT.

6 THE COURT: ~~I DON'T SEE THAT THERE WOULD BE ANY~~
7 ~~PREJUDICE.~~

8 MS. ROSS: I THINK THERE WOULD BE BECAUSE THEN FROM --
9 I THINK THE JURY SHOULD KNOW THAT WE'RE GOING TO BE UP-FRONT
10 AND BRING THIS OUT IF IT'S GOING TO COME IN. AND I'D LIKE
11 TO GO AHEAD AND BE THE ONE TO DO THAT.

12 THE COURT: ~~I DISAGREE WITH THAT.~~ ALL RIGHT. WE'LL DO
13 YOUR JACKSON/DENNO HEARING IMMEDIATELY BEFORE THE WITNESS
14 TESTIFIES.

15 MS. HODGE: YES, SIR. THANK YOU.

16 THE COURT: ALL RIGHT. NOW YOU WANT TO MAKE OPENING
17 STATEMENTS TO THE JURY. AND I STRESS NOW, NO ARGUING IN
18 YOUR OPENING STATEMENT.

19 MS. HODGE: YOUR HONOR, MAY I ADDRESS THE COURT ABOUT
20 THIRD PARTY GUILT?

21 THE COURT: YES.

22 MS. HODGE: WE WOULD MOVE FOR A MOTION IN LIMINE TO
23 EXCLUDE ANY DEFENSE EVIDENCE TO THIRD PARTY GUILT IN THEIR
24 CASE IN CHIEF, BUT ALSO THROUGH CROSS EXAMINATION OF THE
25 STATE'S WITNESSES. ESSENTIALLY YOU KNOW THE STANDARDS SET

1 BY THE SUPREME COURT AND ---

2 THE COURT: HASN'T THERE BEEN A VERY RECENT CASE ON
3 THAT?

4 MS. HODGE: ~~STATE VERSUS HOLMES, 2004 CASE,~~ WHERE THE
5 DEFENDANT'S EVIDENCE OF THIS THIRD PARTY GUILT HAS GOT TO BE
6 COMPLETELY INCONSISTENT WITH HIS OWN GUILT AND ALSO MUST
7 BEAR LIGHT ON HIS INNOCENCE.

8 IN BEING PROVIDED -- WE'VE OBVIOUSLY, YOU CAN TELL,
9 WE'VE HAD A LOT OF COMMUNICATION ON THIS CASE. WE HAVE BEEN
10 PROVIDED A LOT OF STATEMENTS FROM POTENTIAL DEFENSE
11 WITNESSES. ~~THEY ARE NOT INCONSISTENT WITH THE DEFENDANT'S~~
12 ~~OWN GUILT.~~

13 THE STATE WOULD PUT UP EVIDENCE ~~THERE WAS ONLY ONE~~
14 ~~SHOOTER.~~ IT WOULD BE BASED ON THE DEFENDANT'S CONFESSION,
15 BASED ON THE DEFENDANT'S CONFESSION TO HIS OWN COUSIN, BASED
16 ON OUR BALLISTIC REPORT THE DEFENDANT WAS FOUND IN
17 POSSESSION ~~OF THE MURDER WEAPON,~~ WHICH MATCHED THE BULLET
18 FROM THE VICTIM'S HEAD, BASED ON GUNSHOT RESIDUE ANALYSIS
19 THAT CAME BACK ~~POSITIVE ON THE DEFENDANT'S HANDS.~~ THAT
20 WOULD BE THE STATE'S CASE.

21 THE DEFENSE IS THEN ATTEMPTING TO INTRODUCE EVIDENCE
22 AND WILL ATTEMPT, I'M SURE, TO CROSS EXAMINE ANY -- AND
23 DURING CROSS EXAMINATION OF THE POLICE OFFICERS THAT
24 INVESTIGATED THIS CASE. WELL, ISN'T THERE THIS OTHER
25 PERSON? DIDN'T PEOPLE TELL YOU THIS OTHER PERSON SHOT?

1 THIS OTHER PERSON HAS NEVER BEEN IDENTIFIED, HAS NO NAME, NO
2 RECORD, NO ADDRESS, HAS NOT BEEN FOUND OR LOCATED, FIRST OF
3 ALL.

4 SECOND OF ALL, IT WOULDN'T BE INCONSISTENT WITH THE
5 DEFENDANT ALSO FIRING A WEAPON IF THEIR THEORY IS THERE WAS
6 A MAN -- ~~TWO MEN AND A GUN~~ SUPPOSEDLY THE DEFENDANT SHOT A
7 GUN, ANOTHER MAN SHOT A GUN, THE DEFENDANT SHOT A GUN AGAIN.
8 THAT'S THEIR OWN WITNESS SAYING THAT. BUT NOBODY KNOWS
9 WHICH FIRED SHOT ACTUALLY STRUCK THE VICTIM. I'VE NOT BEEN
10 PUT ON NOTICE OF ANY TESTIMONY THE DEFENSE WOULD HAVE OF
11 THAT.

12 THEREFORE, ~~TWO SHOOTERS~~, NO ONE CAN SAY WHICH ONE SHOT
13 THE VICTIM. YOUR HONOR, THAT WOULD BE, IN OUR OPINION,
14 THIRD PARTY GUILT. ~~THERE'S A MIRROR OF SUSPICION CAST UPON~~
15 ~~THIS OTHER UNIDENTIFIED PERSON. AGAIN, I DON'T THINK IT~~
16 ~~MEETS THAT STRICT STANDARD.~~

17 THE COURT: WELL, ~~I WOULD BE INCLINED TO GRANT YOUR~~
18 ~~MOTION IN THEIR CASE IN CHIEF~~ NOW AS FAR AS CROSS
19 EXAMINING ON WHAT WITNESSES TOLD MR. SMITH, THEN I THINK I
20 WOULD PROBABLY ALLOW SOME LIMITING CROSS EXAMINATION ON
21 THAT.

22 MS. ROSS: AND, YOUR HONOR, IT'S NOT A THIRD PARTY
23 GUILT SITUATION, FROM THE BEGINNING OF THIS CASE. AND I'LL
24 BE HAPPY TO TURN OVER ALL DISCOVERY TO YOU TO LOOK AT. BUT
25 FROM THE VERY BEGINNING OF THIS CASE, THE FIRST THREE

1 WITNESSES WHO WERE SPOKEN TO, THE COMPLAINANT AND TWO
2 WITNESSES GAVE A STATEMENT BASICALLY SAYING THAT TWO MALE
3 HISPANICS LISTED ABOVE AS SUSPECT ONE AND TWO HAD SHOT THE
4 VICTIM WITH A REVOLVER, THAT SUSPECT ONE HAD PULLED OUT A
5 GUN AND POINTED IT AT THE VICTIM DURING A VERBAL
6 ALTERCATION, AND THAT SUSPECT TWO THEN TOOK THE GUN FROM HIS
7 HANDS AND FIRED TWO SHOTS AT THE VICTIM.

8 NOW MY CLIENT, WE WOULD ALLEGE, IS SUSPECT ONE. HE IS
9 THE ONE WHO INITIALLY HAD THE GUN. HE CONFESSED TO THAT.
10 HE IS THE ONE WHO LEFT WITH THE GUN. SO THE FIRST WITNESSES
11 ON THE SCENE ARE ALL SAYING THAT "A" HAD THE GUN, "B" TOOK
12 THE GUN FROM HIM AND SHOT. AND HERE THEY SAY, SHOT THE
13 VICTIM AND IDENTIFIED THIS OTHER PERSON AS THE SHOOTER.

14 CARLOS FREEMAN WENT OUT WITH HIS INVESTIGATION AND
15 FOUND OUT FROM THE OTHER PEOPLE'S DESCRIPTIONS, THERE WERE
16 TWENTY OR THIRTY PEOPLE THERE, WHO THIS OTHER SHOOTER MIGHT
17 HAVE BEEN. HE THEN WENT AND GOT A PHOTOGRAPH. THIS GUY HAD
18 A PRIOR RECORD, THIS OTHER SHOOTER, GOT A PHOTOGRAPH OF WHO
19 HE SUSPECTED, PROVIDED ALL THE INFORMATION TO THE
20 INVESTIGATOR FOR THE STATE, TRIED TO SAY, GO OUT AND GET
21 THIS PERSON, GO OUT AND INVESTIGATE THIS CASE. AND THEY
22 DIDN'T DO SO.

23 SO HERE, IT'S CLEARLY NOT A THIRD PARTY GUILT SITUATION
24 WHERE SOMEONE'S JUST SAYING MAYBE SOMEONE ELSE DID IT. THIS
25 IS A SITUATION WHERE ALL OF THE EYEWITNESSES ARE SAYING

1 SOMEONE ELSE DID IT.

2 THE COURT: ALL RIGHT. WELL, I'M GOING TO ALLOW YOU TO
3 CROSS EXAMINE. AS I SAY, I HAVE NOT RULED ON THE STATE'S
4 MOTION CONCERNING YOUR CASE IN CHIEF.

5 MS. ROSS: OKAY.

6 THE COURT: ALL RIGHT. ANYTHING BEFORE I BRING THE
7 JURY?

8 MS. HODGE: NO, SIR.

9 THE COURT: ALL RIGHT. BRING THEM ON.

10 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:57 AM)

11 THE COURT: ALL RIGHT. BRIEF OPENING STATEMENT,
12 SOLICITOR.

13 MS. HODGE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
14 COURT, LADIES AND GENTLEMEN OF THE JURY? JULY 17TH OF 2004,
15 IT WAS A TYPICAL SUMMERTIME SATURDAY NIGHT. PEOPLE WERE OUT
16 AND ABOUT. THEY WERE GOING TO EAT DINNER, THEY WERE GOING
17 TO DANCING, THEY WERE GOING TO SPORTS BARS TO HAVE A BEER
18 AND WATCH A BALL GAME. AND THAT'S WHAT MR. WILFRIDO SOLIS
19 MONGE THOUGHT HE WAS GOING TO DO ON THIS SATURDAY NIGHT.
20 LET'S GO HAVE A TYPICAL NIGHT, GO MEET SOME FRIENDS, HAVE A
21 COUPLE OF BEERS, AND WATCH A BALL GAME.

22 UNFORTUNATELY FOR HIM, HE PICKED TO BE IN THE WRONG
23 PLACE AT THE WRONG TIME ON THIS SATURDAY NIGHT. HE WAS IN
24 FRONT OF AN ESTABLISHMENT ON CEDAR LANE ROAD, WHICH IS
25 CALLED LA RUMBA'S, SOME PEOPLE CALL IT DON PEPE'S. AND HE

1 WAS THERE WITH SOME FRIENDS. HE WAS OUTSIDE IN FRONT OF
2 SORT OF A TEMPORARY TACO STAND SET UP SO WHEN PEOPLE CAME
3 OUT OF THE ESTABLISHMENT, AND THE CLUB ALSO IN THE SAME
4 BUILDING, THEY COULD EAT AND CONTINUE TO HANG OUT.

5 WELL, HE JUST HAPPENED TO PICK THAT PLACE TO BE A FEW
6 MINUTES AFTER MIDNIGHT. NOW WE'RE INTO JULY THE 18TH AS
7 MIDNIGHT'S PASSED. AND THAT -- BEING IN THAT WRONG PLACE AT
8 THAT WRONG MOMENT COST HIM HIS LIFE. HE WAS MURDERED. AND
9 HE WAS MURDERED BY THIS DEFENDANT, MARLON RIVERA. HE WAS
10 SHOT BETWEEN THE EYES. HE LIVED ON LIFE SUPPORT FOR A DAY
11 AND A HALF AND WAS THEN PRONOUNCED DEAD.

12 YOU SEE, AT THE TIME THAT THE VICTIM, WILFRIDO, WAS
13 STANDING IN THAT PLACE AT THAT TIME MINDING HIS OWN BUSINESS
14 AND HANGING OUT THE DEFENDANT WAS HAVING AN ALTERCATION WITH
15 ANOTHER MAN. AND THE DEFENDANT WAS CARRYING A PISTOL THIS
16 NIGHT, LOADED. AND THE DEFENDANT PULLED OUT THAT LOADED
17 PISTOL AND FIRED IT. INSTEAD OF HITTING HIS INTENDED
18 VICTIM, THE PERSON HE WAS FIGHTING WITH, HE HIT WILFRIDO,
19 WHO WAS STANDING IN THE WRONG PLACE AT THE WRONG TIME.

20 THE STATE CAN PROVE TO YOU THE DEFENDANT IS GUILTY OF
21 MURDERING WILFRIDO, AND WILL PROVE IT TO YOU THROUGH THE
22 EVIDENCE. THE EVIDENCE WILL COME IN TWO FORMS. EVIDENCE
23 CAN BE TESTIMONY, WHICH IS WITNESSES WHO TAKE THE STAND,
24 TELLING YOU WHAT THEY SAW, WHAT THEY HEARD, WHAT THEY DID.
25 THEIR WORDS ARE EVIDENCE. IN ADDITION, YOU WILL HAVE

1 PHYSICAL EVIDENCE, THINGS THAT YOU WILL BE ABLE TO SEE AND
2 TAKE BACK TO THE JURY ROOM WITH YOU, PHOTOGRAPHS, THE MURDER
3 WEAPON, THE BULLET FROM THE VICTIM'S HEAD.

4 AT THE CONCLUSION OF THE STATE'S EVIDENCE THE DEFENSE
5 HAS AN OPPORTUNITY TO PUT UP ANYTHING IF IT WANTS, BUT IT IS
6 NOT REQUIRED TO DO SO. THE BURDEN IS ON THE STATE TO PROVE
7 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. AT THE
8 CONCLUSION OF ALL OF THE EVIDENCE THE JUDGE WILL TELL YOU
9 WHAT THE LAW IS IN THIS CASE.

10 BRIEFLY, IN SOUTH CAROLINA A PERSON IS GUILTY OF MURDER
11 IF THEY UNLAWFULLY KILL ANOTHER HUMAN BEING WITH MALICE
12 AFORETHOUGHT. THE JUDGE IS GOING TO INSTRUCT YOU IN DETAIL
13 ON WHAT THAT MEANS. THERE'S ALSO ANOTHER PRINCIPAL OF LAW
14 CALLED TRANSFERRED INTENT, MEANING JUST BECAUSE A DEFENDANT
15 DIDN'T NECESSARILY INTEND TO KILL WILFRIDO, THE FACT THAT HE
16 INTENDED TO KILL SOMEONE CAN BE TRANSFERRED TO THE ACTUAL
17 VICTIM. THE JUDGE WILL EXPLAIN ALL OF THIS TO YOU IN DETAIL
18 AT THE END, BUT I DID WANT TO LET YOU KNOW THAT.

19 SO WHEN ALL THE EVIDENCE IS IN AND YOU'VE GOTTEN THE
20 LAW, THEN AND ONLY THEN WILL YOU BE ALLOWED TO DELIBERATE TO
21 REACH YOUR VERDICT. YOU HAVE ALREADY HEARD THE JUDGE TELL
22 YOU WHEN YOU WENT JUST BACK FOR A FEW MINUTES, DON'T DISCUSS
23 THE CASE. AND AT THAT POINT YOU DIDN'T EVEN KNOW ANYTHING
24 TO DISCUSS. YOU WILL BE TOLD THAT EVERY TIME YOU LEAVE
25 BECAUSE YOU WON'T HAVE HAD ALL THE TOOLS YOU NEED, THE

1 EVIDENCE AND THE LAW. THAT MAY NOT COME UNTIL TOMORROW OR
2 EVEN WEDNESDAY.

3 SO YOU MIGHT BE THINKING, WELL, I'M HERE, I'VE BEEN
4 PICKED, LET'S DO THIS THING, AND NOW YOU'RE BEING TOLD YOU
5 CAN'T DO ANYTHING. THAT'S NOT ACTUALLY TRUE. YOU ARE TO
6 LISTEN VERY CAREFULLY. THAT IS YOUR IMPORTANT JOB RIGHT
7 NOW. LISTEN CAREFULLY TO EACH WITNESS THAT TAKES THE STAND
8 BECAUSE WHAT THEY HAVE TO TELL YOU IS A PIECE OF EVIDENCE
9 THAT YOU'LL NEED TO REACH A VERDICT.

10 AND LASTLY, PLEASE TAKE YOUR JOB SERIOUSLY. I KNOW
11 THAT YOU WILL. BUT THIS IS A VERY IMPORTANT DAY AND A VERY
12 IMPORTANT CASE. NOT ONLY IS IT IMPORTANT FOR THE DEFENDANT,
13 HE IS ENTITLED TO A FAIR TRIAL BY AN IMPARTIAL JURY, BUT IT
14 IS AN EXTREMELY IMPORTANT DAY AND CASE FOR THE STATE OF
15 SOUTH CAROLINA, FOR ALL THE PEOPLE THAT LIVE IN GREENVILLE
16 COUNTY WHERE THIS CRIME OCCURRED, AND FOR THE VICTIM'S
17 FAMILY MEMBERS AND FRIENDS TO ENSURE THAT JUSTICE IS DONE.
18 THANK YOU.

19 THE COURT: MS. ROSS.

20 MS. ROSS: MAY IT PLEASE THE COURT, LADIES AND
21 GENTLEMEN OF THE JURY? I'M SUSANNAH ROSS. AND I'M
22 REPRESENTING MARLON RIVERA.

23 AND BASICALLY ON THIS CASE I WANT TO TELL YOU ALL THAT
24 TWO WRONGS DON'T MAKE A RIGHT. AND I'M STARTING WITH THAT
25 BECAUSE MURDER IS THE ULTIMATE CRIME, VERY SERIOUS. AND THE

1 DEATH OF AN INNOCENT PERSON, WILFRIDO SOLIS MONGE, WAS ALSO
2 A TERRIBLE, TERRIBLE TRAGEDY. IT'S A WRONG. AND THERE'S NO
3 QUESTION THAT A WRONG OCCURRED THAT NIGHT AND THAT IT WAS
4 TERRIBLE.

5 HOWEVER, ANOTHER WRONG OCCURRED THAT NIGHT. MARLON
6 RIVERA, AN HISPANIC MAN WHO SPEAKS NO ENGLISH, I SAY THAT --
7 HE SPEAKS A LITTLE BIT NOW BECAUSE HE HAS BEEN IN JAIL FOR
8 OVER A YEAR SINCE ---

9 MS. HODGE: OBJECTION, YOUR HONOR.

10 MS. ROSS: --- THIS OCCURRED.

11 THE COURT: YEAH. I SUSTAIN THE OBJECTION TO THAT, MS.
12 ROSS.

13 MS. ROSS: EXCUSE ME. BECAUSE NOW HE DOES SPEAK A FEW
14 WORDS OF ENGLISH BECAUSE HE'S BEEN LEARNING AND TRYING TO
15 LEARN, BUT AT THE TIME HE SPOKE NONE. NOT ONLY WAS HE
16 ILLITERATE IN ENGLISH, HE WAS ILLITERATE IN SPANISH. HE
17 CAN'T READ OR WRITE IN SPANISH OR ENGLISH.

18 THAT NIGHT HE WAS ARRESTED FOR THE SHOOTER. NOW ON
19 THAT NIGHT ALL THE WITNESSES TALKED ABOUT SOMEONE ELSE BEING
20 THERE, SOMEONE ELSE HAVING A GUN, TWO GUNMEN. NO ONE ELSE
21 WAS ARRESTED, ONLY MARLON RIVERA.

22 THE SECOND WRONG WOULD BE THE CONVICTION OF MARLON
23 RIVERA BECAUSE HE WAS NOT THE SHOOTER IN THIS CASE. AND
24 THAT'S WHY I'M TELLING YOU AT THE BEGINNING OF THIS CASE
25 THAT TWO WRONGS DON'T MAKE A RIGHT.

1 I AM NOT TRYING TO MINIMALIZE THE TRAGEDY OF THE DEATH
2 OF AN INNOCENT PERSON, THE SHOOTING OF AN INNOCENT PERSON,
3 BUT THAT TRAGEDY SHOULD NOT BE BUILT UPON OR MADE GREATER BY
4 THE CONVICTION OF SOMEONE WHO WAS NOT THE SHOOTER. THAT
5 WOULD BE AN EVEN GREATER TRAGEDY. AND THAT'S WHAT I'M
6 ASKING YOU NOT TO DO.

7 NOW THE COURT SYSTEM AND THE TRIAL SYSTEM ARE GOING TO
8 GIVE YOU TOOLS TO DECIDE GUILT OR INNOCENCE. THE EVIDENCE
9 IN THE CASE -- WE'RE GOING TO HAVE A TRIAL. EVIDENCE IS
10 GOING TO BE PRESENTED.

11 WITNESSES ARE GOING TO SPEAK TO YOU ABOUT WHAT
12 HAPPENED. WHEN THEY SPEAK TO YOU, I WANT YOU TO LISTEN TO
13 THEM AND LISTEN TO WHAT THEY'RE SAYING. AND I WANT YOU TO
14 INTERPRET SOME OF THAT WITH THE UNDERSTANDING THAT THESE
15 PEOPLE, MANY OF WHOM SAW THE EVENT ITSELF, ARE GOING THROUGH
16 A LANGUAGE BARRIER THEMSELVES. A LOT OF THEM ARE HISPANIC,
17 NOT ENGLISH SPEAKING PEOPLE.

18 AND SEE HOW WHAT THEY'RE SAYING MIGHT HAVE BEEN
19 AFFECTED BY THE FACT THAT THEY ARE TALKING TO THE STATE AND
20 POLICE OFFICERS WHO ONLY BROUGHT ONE MAN TO SAY, DID HE DO
21 IT? THEY DIDN'T HAVE THE TWO TO SAY, WHO DID IT? WHAT
22 HAPPENED? AND THINK ABOUT HOW THAT TESTIMONY MIGHT HAVE
23 BEEN AFFECTED IF THESE WITNESSES HAD BEEN TOLD ABOUT OR
24 GIVEN THE OPPORTUNITY TO TALK ABOUT TWO PEOPLE INSTEAD OF
25 JUST ONE, MARLON RIVERA.

1 MARLON RIVERA IS NOT A VERY CULTIVATED PERSON,
2 CERTAINLY NOT HERE IN GREENVILLE, SOUTH CAROLINA. HE'S GOT
3 NO ABILITY TO SPEAK ENGLISH WHEN HE'S ARRESTED. HE'S GOT NO
4 EDUCATION. HE GREW UP IN HONDURAS, DROPPED OUT OF SCHOOL IN
5 THE SEVENTH GRADE, EXCUSE ME, THE SECOND GRADE, AND AT THAT
6 POINT BEGAN TO SELL TORTILLAS ON THE STREET FOR HIS
7 GRANDMOTHER.

8 MS. HODGE: YOUR HONOR, I'M GOING TO OBJECT. ---

9 THE COURT: I SUSTAIN THE OBJECTION TO THIS LINE OF
10 ARGUMENT.

11 MS. ROSS: HE IS NOT THE MOST SOPHISTICATED PERSON.
12 AND THIS IS THE PERSON WHO WAS ARRESTED AND TOLD, THIS IS
13 WHAT YOU DID, AND THIS IS WHAT NEEDS TO HAPPEN. AT THE SAME
14 TIME HE'S NOT SOMEONE WHO DID NOT FEEL REMORSE THAT NIGHT.
15 AND THAT WAS ANOTHER THING THAT WAS GOING ON WITH MARLON
16 RIVERA.

17 MS. HODGE: YOUR HONOR, I'M GOING TO OBJECT ALONG THE
18 SAME LINES.

19 THE COURT: YEAH, I SUSTAIN THE OBJECTION, MS. ROSS.

20 MS. ROSS: MARLON RIVERA, AS SOMEONE WHO DIDN'T SPEAK
21 ENGLISH, WAS SOMEONE WHO WAS EASY TO MANIPULATE. AND THAT'S
22 A LOT ABOUT WHAT YOU'RE GOING TO HEAR IN THIS TRIAL, ALL
23 ABOUT THAT.

24 NOW I WILL JUST GO TO THE STATE'S BURDEN OF PROOF HERE.
25 THE STATE HAS THE BURDEN OF PROVING GUILT BEYOND A

1 REASONABLE DOUBT. AND THE REASON FOR THAT IS BECAUSE
2 WITHOUT THAT INNOCENT PEOPLE GET CONVICTED.

3 NOW HERE IS AN EXAMPLE OF JUST THAT TYPE OF SITUATION
4 WHERE PEOPLE NEED TO BE FIRMLY CONVINCED OF GUILT BEFORE
5 GOING FORWARD BECAUSE MARLON RIVERA WAS THERE. THERE'S A
6 LOT OF EVIDENCE THAT YOU'RE GOING TO HEAR TALKING ABOUT
7 MARLON RIVERA. HE WAS SIMPLY NOT THE SHOOTER. AND THE
8 STATE IS NOT GOING TO PRESENT YOU WITH PROOF BEYOND A
9 REASONABLE DOUBT THAT HE WAS.

10 SO I'D ASK YOU ALL JUST TO WATCH THE TESTIMONY THAT'S
11 PRESENTED TO YOU. LISTEN TO WHAT'S SAID, AND THINK ABOUT
12 IT. AND THINK ABOUT WHAT YOU'RE HEARING. AND I'M CERTAIN
13 IF YOU DO THAT YOU WILL FIND MARLON RIVERA NOT GUILTY.
14 THANK YOU.

15 THE COURT: ALL RIGHT. SOLICITOR.

16 MS. HODGE: YOUR HONOR, THE STATE CALLS DAVID BENDIG,
17 MASTER DEPUTY.

18 DAVID BENDIG, BEING DULY
19 SWORN TESTIFIED AS FOLLOWS:

20 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
21 RECORD.

22 MR. BENDIG: DAVID C. BENDIG.

23 DIRECT EXAMINATION BY MR. HODGE:

24 Q. MASTER DEPUTY, DO YOU WORK FOR THE GREENVILLE COUNTY
25 SHERIFF'S OFFICE?

1 A. YES, MA'AM, I DO.

2 Q. HOW LONG HAVE YOU BEEN WITH THEM?

3 A. I'VE BEEN WITH THE GREENVILLE COUNTY SHERIFF'S OFFICE
4 FOR SIXTEEN YEARS.

5 Q. WHAT ARE YOUR DUTIES WITH THE SHERIFF'S OFFICE?

6 A. FOR ALL SIXTEEN YEARS I'VE BEEN ASSIGNED TO THE PATROL
7 DIVISION, WHICH WORKS ROTATING SHIFTS COVERING THE COUNTY
8 TWENTY-FOUR HOURS A DAY SEVEN DAYS A WEEK. MY PRIMARY
9 RESPONSIBILITY IS THE UPPER BEREA AREA. I'M ALSO A FIELD
10 TRAINING OFFICER.

11 Q. AND WERE YOU EMPLOYED IN THIS SAME CAPACITY THEN LAST
12 YEAR, JULY THE 17TH, 18TH?

13 A. YES, I WAS.

14 Q. AND DID YOU HAVE AN OCCASION TO RESPOND TO CEDAR LANE
15 ROAD?

16 A. YES, I DID.

17 Q. ALL RIGHT. WHAT KIND OF CALL WERE YOU RESPONDING TO?

18 A. WE RESPONDED, I HAD A TRAINEE WITH ME AT THE TIME, WE
19 RESPONDED TO A GUNSHOT VICTIM CALL AT 1124 CEDAR LANE ROAD.

20 Q. AND THAT IS IN GREENVILLE COUNTY?

21 A. YES, IT IS.

22 Q. AND APPROXIMATELY WHAT TIME DID YOU RECEIVE THE CALL?
23 WHAT TIME DID YOU RESPOND?

24 A. WE RECEIVED THE CALL JUST AFTER 12:22 AM AND ARRIVED ON
25 THE SCENE RIGHT AT 12:30.

1 Q. WHAT DID YOU SEE UPON ARRIVAL?

2 A. WHEN WE ARRIVED ON THE SCENE WE PULLED IN OFF A SIDE
3 STREET INTO A STRIP MALL. AT THAT TIME FROM THE END OF THE
4 BUILDING, THIRTY, FORTY FEET DOWN FROM THE END OF THE
5 BUILDING JUST ON THE SIDEWALK WALKWAY THERE WAS A MALE
6 SUBJECT DOWN ON THE GROUND. HIS HEAD ACTUALLY WAS OFF THE
7 CURB INTO THE PARKING LOT AREA. THERE WERE TWO OTHER MALE
8 SUBJECTS CROUCHED DOWN RIGHT NEXT TO HIM.

9 Q. AND HOW ABOUT OTHER PEOPLE? WERE THERE OTHER PEOPLE IN
10 THE PARKING LOT AS WELL?

11 A. THERE WERE A LARGE NUMBER OF INDIVIDUALS IN THE PARKING
12 LOT, I WOULD ASSUME MAYBE TWENTY, THIRTY OTHER PEOPLE AT A
13 SCATTERED DISTANCE. THERE WAS ALSO A LITTLE FOOD STAND
14 PROBABLY ANOTHER TEN FEET PAST WHERE THE VICTIM WAS LAYING
15 DOWN.

16 (WHEREUPON STATE'S EXHIBIT 1 WAS MARKED FOR
17 IDENTIFICATION)

18 Q. LET ME SHOW YOU WHAT I'VE HAD MARKED STATE'S NUMBER 1
19 FOR IDENTIFICATION. ARE YOU FAMILIAR WITH STATE'S NUMBER 1
20 FOR IDENTIFICATION?

21 A. YES, I AM.

22 Q. AND WHAT IS THIS?

23 A. IT IS AN ARIAL PHOTOGRAPH OF THE AREA AROUND CEDAR LANE
24 ROAD, PART OF THE AREA WHICH IS COMMONLY KNOWN AS RIVER SIDE
25 AREA IN GREENVILLE COUNTY.

1 Q. AND IS IT AN ACCURATE REPRESENTATION OF THE ROAD AND
2 THE AREA ON THE NIGHT OF THIS INCIDENT WE'RE TALKING ABOUT?

3 A. YES, IT IS.

4 Q. AND WHAT WAS THE EXACT NAME OF THE LOCATION THAT YOU
5 RESPONDED TO?

6 A. IT WOULD HAVE BEEN RIGHT NEXT TO THE SPANISH AMIGOS
7 MARKET, WHICH IS MARKED THERE RIGHT AT THAT SAME STRIP MALL.
8 THE SPANISH AMIGO MARKET IS ONE OF THE MAIN KNOWN LOCATIONS
9 IN THAT STRIP MALL.

10 MS. HODGE: AT THIS TIME WE'D MOVE TO ADMIT NUMBER 1
11 INTO EVIDENCE.

12 MS. ROSS: NO OBJECTION.

13 THE COURT: WITHOUT OBJECTION.

14 (WHEREUPON STATE'S EXHIBIT 1 WAS ADMITTED INTO
15 EVIDENCE)

16 Q. AND IF YOU WOULD, I'M GOING TO ASK YOU JUST TO STEP
17 DOWN HERE, BUT KEEP YOUR VOICE UP SO THAT THE COURT REPORTER
18 CAN HEAR YOU. IF YOU WOULD EXPLAIN TO THE JURY THE ROUTE
19 YOU TOOK, WHERE YOU WENT, AND WHAT WE'RE TALKING ABOUT RIGHT
20 NOW.

21 A. WHEN I WAS DISPATCHED TO THE CALL I WAS FURTHER UP
22 CEDAR LANE ROAD GOING OUT TOWARDS THE PICKENS COUNTY LINE.
23 WE RESPONDED STRAIGHT DOWN CEDAR LANE ROAD. WHEN WE GOT
24 CLOSE TO WHERE WE KNEW THE SHOPPING CENTER WAS, WHICH WAS
25 RIGHT HERE, WE SLOWED DOWN JUST BECAUSE AT THAT POINT THERE

1 IS AN OPEN FIELD WITH SOME TREES HERE SO YOU CAN KIND OF GET
2 A VISUAL OF WHAT'S GOING ON AT THE STRIP MALL, WAITING FOR
3 ANY ADDITIONAL INFORMATION THAT MIGHT HAVE CAME THROUGH
4 RIGHT AT THAT TIME AS A POSSIBLE SHOOTER, WHICH WE DID NOT
5 RECEIVE ANY ADDITIONAL INFORMATION.

6 SO AT THAT POINT I TURNED ONTO CLARK DRIVE AND CAME
7 INTO THE SIDE ENTRANCE OF THE PARKING LOT AND PARKED MY
8 PATROL CAR ABOUT THIS LOCATION JUST DOWN FROM THE CORNER OF
9 THE BUILDING. AND THAT'S WHEN WE VISUALLY OBSERVED THAT THE
10 VICTIM WAS LAYING JUST AT THE EDGE OF THE WALKWAY RIGHT OVER
11 IN THIS LOCATION.

12 Q. AND WHERE WOULD THE TACO STAND HAVE BEEN SET UP IN
13 RELATION TO THIS ---

14 A. THE TACO STAND WAS A LITTLE BIT FURTHER DOWN TOWARDS
15 THE MIDDLE OF THE SHOPPING CENTER.

16 Q. THANK YOU. YOU CAN HAVE A SEAT. NOW IS THERE AN
17 APARTMENT COMPLEX BESIDE THAT AREA?

18 A. ON THE OTHER SIDE OF CLARK STREET FROM THE SHOPPING
19 CENTER IS AN APARTMENT COMPLEX THAT USED TO BE KNOWN AS
20 BARRINGTON PARK. AT THE TIME IT WAS STILL BARRINGTON PARK
21 APARTMENTS. THEY'VE CHANGED THE NAME SUBSEQUENTLY SINCE
22 THEN.

23 Q. SO WHAT DID YOU DO ONCE YOU ASSESSED THE SITUATION?

24 A. WHEN WE FIRST GOT UP THERE WE ATTEMPTED TO LOCATE
25 ANYBODY THAT COULD ADVISE US AS TO WHAT HAD HAPPENED THERE.

1 A LANGUAGE BARRIER EXISTED. WE HAD ONE FEMALE COME UP THAT
2 SPOKE ENGLISH AND SPANISH WHO WAS PRESENT WHEN THE INCIDENT
3 OCCURRED AND WAS ABLE TO GIVE US SOME BASIC INFORMATION.
4 AND ALSO THE TWO GENTLEMEN THAT WERE ATTENDING TO THE VICTIM
5 AT THE TIME, WHO ALSO WITNESSED IT, AND SHE WAS ABLE TO
6 TRANSLATE SOME OF THE INFORMATION THAT THEY ORIGINALLY GAVE
7 US AS TO WHAT HAPPENED.

8 Q. DO YOU KNOW THE NAME OF THE TWO GENTLEMEN THAT WERE
9 WITH THE VICTIM OR THE NAMES?

10 A. ONE WAS MANIOR NAVARRO. AND THE OTHER ONE WAS DELMAN
11 ARIAS.

12 Q. AND DO YOU KNOW THE NAME OF THE FEMALE THAT CAME AND
13 WAS DOING A LITTLE BIT OF TRANSLATING?

14 A. THE FEMALE WAS A COURTNEY ROBLES.

15 Q. NOW YOU SAY THERE WERE ABOUT TWENTY OR THIRTY OTHER
16 PEOPLE OUT THERE. DID ANY OF THOSE OTHER PEOPLE ATTEMPT TO
17 TALK TO YOU OR ---

18 A. NOT RIGHT AT THE GET -- WHEN WE FIRST ARRIVED ON THE
19 SCENE. WE DID HAVE ADDITIONAL UNITS COMING TO HELP SECURE
20 THE SCENE.

21 Q. DID YOU EVER SPEAK TO ANYONE ELSE OTHER THAN THOSE
22 THREE ---

23 A. NO, I DID NOT.

24 Q. DID ANYONE EVER COME TO HELP TRANSLATE OTHER THAN THIS
25 FEMALE THAT WAS THERE?

1 A. NOT WHEN I WAS ON THE SCENE. I KNOW THEY WERE HAVING
2 ANOTHER DEPUTY RESPOND TO THE SCENE.

3 Q. SO WHAT WERE YOUR DUTIES THEN ONCE YOU MADE INITIAL
4 CONTACT ---

5 A. AT THAT POINT IN TIME WE DETERMINED THAT THE VICTIM --
6 HE HAD AN INJURY RIGHT THERE ON THE BRIDGE OF HIS NOSE.
7 THERE WAS BLOOD COMING OUT FROM LIKE -- GOING INTO THE EYE
8 SOCKET AREA AND THEN DRAINING OUT. HE WAS UNRESPONSIVE,
9 UNCONSCIOUS. SO WE HAD EMS RESPONDING TO THE SCENE. ONCE
10 THEY GOT ON THE SCENE WE TURNED MEDICAL OR GAVE THEM MEDICAL
11 TREATMENT IN THE AREA. AT THAT TIME WE DID SECURE THE AREA
12 AROUND WHERE THE SHOOTING OCCURRED.

13 Q. AND DID YOU -- WAS THAT BASICALLY YOUR PRIMARY
14 RESPONSIBILITY TO JUST SECURE THE SCENE AT THIS POINT?

15 A. IT WAS TO SECURE THE SCENE, ATTEMPT TO LOCATE ANY
16 WITNESSES TO THE INCIDENT, ALSO TRY TO GET A BASIC
17 DESCRIPTION OF SUSPECT/SUSPECTS, GET THAT OUT TO OTHER UNITS
18 COMING TO THE SCENE.

19 Q. AND ONLY THREE PEOPLE CAME FORWARD AS FAR AS WANTING TO
20 GIVE INFORMATION, IS THAT CORRECT?

21 A. TO ME AT THE TIME I WAS ON THE SCENE.

22 Q. NOW WHEN EMS GOT THERE DID THEY AGREE OR WAS THERE SOME
23 CONFUSION AS TO WHAT ---

24 A. THERE WAS SOME CONFUSION AS TO WHETHER HE WAS ACTUALLY
25 SHOT AT THE TIME BECAUSE, AS I SAID, THERE WAS MORE OF A CUT

1 RIGHT AT THE BRIDGE OF THE NOSE. AND THEY DID NOT
2 ORIGINALLY THINK THAT HE HAD BEEN SHOT.

3 Q. SO WAS IT PART OF YOUR DUTIES THEN TO GO CONFIRM WHAT
4 HAD ACTUALLY ---

5 A. YEAH. WHEN THE SERGEANT ARRIVED ON THE SCENE I RELAYED
6 TO HER THE INFORMATION THAT ALL THE WITNESSES WERE SAYING
7 THERE WAS A GUNSHOT VICTIM, EMS SAID THE INJURY DID NOT LOOK
8 LIKE A GUNSHOT WOUND. SO AT THAT POINT IN TIME EMS HAD
9 TRANSPORTED. SO MYSELF AND MY TRAINEE WENT TO MEMORIAL
10 HOSPITAL TO CONFIRM WHETHER IT WAS EITHER A GUNSHOT WOUND OR
11 SOME OTHER TYPE OF INJURY.

12 Q. AND WAS IT CONFIRMED TO BE A GUNSHOT WOUND?

13 A. YES. WHEN I GOT TO GREENVILLE MEMORIAL HOSPITAL THEY
14 HAD THE VICTIM IN THE TRAUMA BAY. WE WENT IN THE TRAUMA
15 BAY, AND THE EMERGENCY ROOM DOCTOR DID CONFIRM THAT HE DID
16 RECEIVE A GUNSHOT WOUND TO THE HEAD. AT THAT POINT HE
17 ACTUALLY SHOWED US THE X-RAY SHOWING THAT THERE WAS A BULLET
18 IN HIS HEAD. SO AT THAT POINT I DID NOTIFY THE SUPERVISOR
19 ON THE SCENE THAT IT WAS A CONFIRMED GUNSHOT WOUND.

20 Q. DOES THAT THEN KICK INTO PROCESS A WHOLE OTHER CHAIN OF
21 EVENTS AS FAR AS LAW ENFORCEMENT?

22 A. YEAH. AT THAT POINT IN TIME THEY WOULD NOTIFY THE
23 VIOLENT CRIMES UNIT DETECTIVES. THEY WOULD COME TO THE
24 SCENE. OUR FORENSICS OFFICERS WOULD COME AND PROCESS THE
25 SCENE. THAT'S WHY ORIGINALLY WHEN WE RESPONDED TO THE SCENE

1 WE DO SECURE THE AREA AROUND WHERE THE INCIDENT OCCURRED TO
2 KEEP EVERYBODY OUT. AND THAT SCENE WAS MAINTAINED UNTIL WE
3 MADE A CONFIRMATION WHETHER IT WAS ACTUALLY A GUNSHOT WOUND
4 OR NOT.

5 Q. AND THEN IT WOULD BE MAINTAINED AFTER ---

6 A. AFTER THAT TOO, YES.

7 Q. AND ONCE YOU FINISHED YOUR RESPONSIBILITIES AT
8 GREENVILLE MEMORIAL HOSPITAL DID YOU EVER GO BACK TO THE
9 SCENE?

10 A. NO, I DID NOT.

11 Q. DID THAT CONCLUDE YOUR INVOLVEMENT IN THIS CASE?

12 A. YES, OTHER THAN DOCUMENTING THE ORIGINAL INCIDENT.

13 Q. MAKING YOUR REPORT?

14 A. MAKING AN INCIDENT REPORT.

15 Q. THANK YOU. ANSWER ANY DEFENSE QUESTIONS PLEASE.

16 THE COURT: MS. ROSS.

17 CROSS EXAMINATION BY MS. ROSS:

18 Q. HI, THERE. NOW YOU SAID WHEN YOU ARRIVED THERE THERE
19 WAS A LARGE GROUP OF PEOPLE THERE, TWENTY OR THIRTY PEOPLE,
20 IS THAT CORRECT?

21 A. YES, THERE WERE.

22 Q. AND YOU SPOKE TO THREE WITNESSES?

23 A. AT THAT POINT I HAD TALKED TO THE TWO INDIVIDUALS THAT
24 WERE AIDING THE VICTIM AND THE FEMALE THAT DID SPEAK ENGLISH
25 THAT WAS THERE. AS OTHER UNITS ARRIVED THEY STARTED

1 CANVASSING THE CROWD THAT WAS OUT THERE TO SEE WHAT
2 INFORMATION THEY COULD GATHER.

3 Q. THERE WAS COURTNEY ROBLES, WHO SPOKE ENGLISH?

4 A. CORRECT.

5 Q. AND THEN MANIOR NAVARRO AND DELMAN ARIAS, WHO DIDN'T?

6 A. CORRECT.

7 Q. NOW ALL THOSE WITNESSES WERE TELLING YOU THAT IT WAS A
8 SHOOTING, ---

9 A. YES, THEY WERE.

10 Q. --- CORRECT? AND YOU WROTE AN INCIDENT REPORT BASED ON
11 THAT. AND THERE WERE TWO SUSPECTS, CORRECT?

12 A. CORRECT. THEY DESCRIBED TWO INDIVIDUALS.

13 Q. DID THEY DESCRIBE ONE WHO WAS THE ACTUAL SHOOTER?

14 MS. HODGE: I'M GOING TO OBJECT TO ANYTHING THAT PEOPLE
15 SAID AS HEARSAY AND WHAT THEY DESCRIBED WOULD ALSO BE
16 HEARSAY.

17 THE COURT: NO, GO AHEAD.

18 A. THEY DID STATE THAT THERE WERE TWO INDIVIDUALS THERE.

19 Q. AND ONE OF THEM, WHO I BELIEVE WAS SUSPECT TWO, WAS THE
20 ACTUAL SHOOTER. ---

21 A. CORRECT.

22 Q. --- FROM WHAT THEY RELATED TO YOU? AND WHAT WAS THE
23 DESCRIPTION THAT YOU WROTE DOWN OF THAT SHOOTER?

24 A. THE DESCRIPTION OF THE SHOOTER WOULD HAVE BEEN HISPANIC
25 MALE, ABOUT TWENTY-FIVE, FIVE FOOT NINE, HUNDRED AND SIXTY

1 POUNDS, BROWN HAIR, BROWN EYES, PONYTAIL, BLACK SHIRT, AND
2 BLUE JEANS.

3 Q. WHAT WAS THE DESCRIPTION OF THE ONE WHO WASN'T THE
4 SHOOTER?

5 A. HISPANIC MALE, ABOUT TWENTY-FIVE, SIX FOOT TWO, A
6 HUNDRED AND SIXTY POUNDS, BROWN HAIR, BROWN EYES, A GRAY AND
7 BLUE STRIPED SHIRT, AND A SLIM BUILD.

8 Q. THANK YOU. I'VE GOT NOTHING FURTHER.

9 THE COURT: ANYTHING ---

10 MS. HODGE: NOTHING FURTHER.

11 THE COURT: THANK YOU. YOU CAN STEP DOWN. CAN WE
12 EXCUSE THIS OFFICER? ANY OBJECTION?

13 MS. ROSS: NO OBJECTION.

14 THE COURT: THANK YOU.

15 MS. HODGE: YOUR HONOR, OUR NEXT WITNESS NEEDS THE
16 INTERPRETER. CAN WE APPROACH THE BENCH?

17 THE COURT: SURE.

18 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
19 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

20 MS. HODGE: YOUR HONOR, THE STATE WOULD CALL NELSON
21 RABERO CASTRO.

22 THE COURT: COME AROUND PLEASE. AND YOUR NAME PLEASE,
23 SIR, THE INTERPRETER?

24 THE INTERPRETER: EFRAIN PINEROS.

25 THE COURT: ALL RIGHT, SIR. AND WE'LL NEED TO FIRST

1 ADMINISTER AN OATH TO YOU AND THEN TO THE WITNESS.

2 (WHEREUPON THE INTERPRETER, EFRAIN PINEROS, WAS DULY
3 SWORN)

4 NELSON CASTRO, BEING DULY
5 SWORN TESTIFIED AS FOLLOWS:

6 THE COURT: COME AROUND AND BE SEATED PLEASE.

7 DIRECT EXAMINATION BY MS. HODGE:

8 Q. MR. CASTRO, DO YOU SPEAK A LITTLE BIT OF ENGLISH?

9 A. A LITTLE BIT.

10 Q. DO YOU SPEAK SPANISH?

11 A. YES.

12 Q. DO YOU SPEAK SPANISH MORE FLUENTLY THAN YOU SPEAK
13 ENGLISH?

14 A. YES.

15 Q. SO WOULD YOU PREFER TO TESTIFY IN SPANISH?

16 A. IN SPANISH.

17 Q. AND THIS WILL BE TRANSLATED FOR YOU.

18 A. OKAY.

19 (WHEREUPON THE FOLLOWING QUESTIONS AND ANSWERS WERE
20 INTERPRETED BY EFRAIN PINEROS)

21 Q. DO YOU LIVE IN GREENVILLE?

22 A. YES.

23 Q. HOW LONG HAVE YOU LIVED HERE?

24 A. SEVEN YEARS.

25 Q. WHERE ARE YOU FROM ORIGINALLY?

- 1 A. HONDURAS.
- 2 Q. ARE YOU MARRIED?
- 3 A. YES.
- 4 Q. ANY CHILDREN?
- 5 A. YES.
- 6 Q. HOW MANY?
- 7 A. UNA. ONE. SORRY.
- 8 Q. AND DO YOU WORK?
- 9 A. YES.
- 10 Q. WHAT TYPE OF WORK DO YOU DO?
- 11 A. HE'S AN ORDER SELECTOR.
- 12 Q. FOR A COMPANY?
- 13 A. YES.
- 14 Q. WHAT COMPANY?
- 15 A. CNS.
- 16 Q. DO YOU KNOW THE DEFENDANT, MARLON RIVERA?
- 17 A. YES.
- 18 Q. HOW DO YOU KNOW HIM?
- 19 A. HE'S MY COUSIN.
- 20 Q. DO YOU RECALL THE LAST TIME YOU SAW MARLON RIVERA?
- 21 A. YES.
- 22 Q. AND WAS THIS BACK JULY OF LAST YEAR?
- 23 A. YES.
- 24 Q. JULY 18TH OF 2004?
- 25 A. I REMEMBER THE LAST TIME, BUT I DON'T REMEMBER

- 1 ACCURATELY WHAT WAS THE DATE.
- 2 Q. WHERE DID YOU SEE HIM LAST?
- 3 A. I SAW HIM LAST TIME AT HIS HOUSE.
- 4 Q. AT HIS HOUSE OR ---
- 5 A. YES, AT HIS HOUSE.
- 6 Q. AND HOW DID -- WERE YOU AT HIS HOUSE?
- 7 A. HE'S SAYING THE DAY OF THE ACCIDENT I WASN'T THERE. I
- 8 WAS AT MY HOME.
- 9 Q. SO YOU WERE AT YOUR HOME. AND DID THE DEFENDANT COME
- 10 TO YOUR HOME?
- 11 A. YES, HE DID.
- 12 Q. DO YOU REMEMBER WHAT TIME IT WAS?
- 13 A. IT WAS MORE OR LESS BETWEEN 1:30 AND 2:00 IN THE
- 14 MORNING.
- 15 Q. WHAT WERE YOU DOING AT THAT TIME?
- 16 A. I WAS SLEEPING.
- 17 Q. AND DO YOU KNOW WHAT DAY OF THE WEEK IT MIGHT HAVE
- 18 BEEN?
- 19 A. NO.
- 20 Q. DO YOU WORK EVERY DAY OF THE WEEK?
- 21 A. NO.
- 22 Q. DID YOU HAVE SATURDAYS OFF BACK THEN?
- 23 A. YES.
- 24 Q. HOW DO YOU KNOW WHAT TIME IT WAS?
- 25 A. I REMEMBER THAT I JUST TURNED AROUND AND LOOKED AT THE

1 CLOCK AND I SAW THAT IT WAS 1:30, 2:00 IN THE MORNING.

2 Q. AND DO YOU REMEMBER SOMEONE KNOCKING ON YOUR DOOR?

3 A. YES.

4 Q. DID YOU ANSWER THE DOOR?

5 A. NO.

6 Q. WHO DID?

7 A. MY WIFE DID.

8 Q. WHAT HAPPENED WHEN SHE ANSWERED THE DOOR?

9 A. HE'S SAYING HE TOLD ME THAT SOMETHING HAD HAPPENED TO
10 HIM.

11 Q. OKAY. LET'S COME BACK A LITTLE BIT. YOUR WIFE
12 ANSWERED THE DOOR?

13 A. HE SAID, YES, BUT MY WIFE SAID THAT HE TOLD ME THAT
14 SOMETHING ---

15 MS. ROSS: YOUR HONOR, I'D OBJECT TO HEARSAY.

16 THE COURT: OVERRULED. GO AHEAD.

17 Q. AND WHEN YOU SAY, HE, DO YOU MEAN THE DEFENDANT WAS AT
18 YOUR DOOR?

19 A. YES.

20 Q. WAS HE ALSO WITH HIS MOTHER?

21 A. YES.

22 Q. ANYONE ELSE?

23 A. AND THE HUSBAND OF HIS MOM.

24 Q. AND DID YOU GET OUT OF BED AND COME TO THE DOOR?

25 A. YES.

1 Q. DID YOU TALK TO THE DEFENDANT IN YOUR HOUSE THAT NIGHT?

2 A. YES. I TOLD HIM TO COME IN AND EXPLAIN TO ME WHAT
3 HAPPENED.

4 Q. AND WHAT DID THE DEFENDANT SAY?

5 MS. ROSS: AND I'D RENEW MY OBJECTION TO HEARSAY.

6 THE COURT: ALL RIGHT. PROCEED.

7 A. AND HE TOLD ME THAT HE HAD KILLED SOMEBODY.

8 Q. DID HE SAY SOMETHING ABOUT HAVING A PROBLEM?

9 A. EXCUSE ME. WILL YOU PLEASE ASK THE QUESTION AGAIN.

10 Q. DID HE -- DID THE DEFENDANT MAKE ANY MENTION THAT HE
11 HAD A PROBLEM?

12 A. YES. HE TOLD ME THAT HE HAS A PROBLEM.

13 Q. AND THAT HE HAD KILLED SOMEONE, IS THAT CORRECT?

14 A. YES.

15 Q. DID HE HAVE A WEAPON WITH HIM?

16 A. YES.

17 Q. WHAT DID HE HAVE?

18 A. HE SAID THAT HE HAD A PISTOL. I DON'T KNOW WHAT BRAND
19 NAME IS, BUT HE HAD A PISTOL.

20 Q. DID HE TELL YOU WHERE HE GOT THE PISTOL?

21 A. HE SAID THAT HE HAD TAKEN IT FROM SOMEBODY ELSE, THAT
22 SOMEBODY ELSE HAD -- HE HAD BORROWED IT, THE PISTOL FROM
23 THAT PERSON.

24 Q. DID HE SAY HE WAS CARRYING THIS PISTOL ON THIS EVENING?
25 DID THE DEFENDANT SAY HE WAS CARRYING THE PISTOL THIS

- 1 EVENING?
- 2 A. HE'S ASKING AT THE TIME WHEN THE THINGS HAPPENED?
- 3 Q. YES.
- 4 A. JUST TO REPHRASE THE QUESTION, HE'S ASKING.
- 5 Q. OKAY. WHEN THE DEFENDANT TOLD YOU HE HAD KILLED
- 6 SOMEONE DID HE SAY HE HAD THE PISTOL THAT BELONGED TO
- 7 SOMEONE ELSE?
- 8 A. HE DIDN'T -- ACTUALLY DIDN'T TELL ME THAT, BUT IT WAS
- 9 HIS MOM WHO TOLD ME THAT THE PISTOL BELONGED TO SOMEBODY
- 10 ELSE.
- 11 Q. AND THAT HE HAD GOTTEN THE PISTOL THE DAY BEFORE?
- 12 A. YES.
- 13 Q. DID HE SAY HOW IT WAS THAT HE CAME TO KILL SOMEONE?
- 14 A. HE SAID THAT THEY WERE WRESTLING WITH SOMEBODY ELSE,
- 15 AND THAT THE WEAPON WAS LOADED, AND THAT THE WEAPON JUST
- 16 WENT OFF BY ITSELF. THAT THE SHOT DIDN'T HIT THE PERSON
- 17 THAT HE WAS WRESTLING WITH, BUT IT HIT SOMEBODY ELSE THAT
- 18 WAS WATCHING.
- 19 Q. DID HE SAY THAT HE KNEW THE PERSON THAT GOT SHOT?
- 20 A. NO, HE DIDN'T SAY THAT HE KNEW THAT PERSON.
- 21 Q. HOW WAS HE ACTING THAT NIGHT?
- 22 A. HE LOOKED LIKE SAD FOR WHAT HAD HAPPENED.
- 23 Q. NERVOUS OR WORRIED?
- 24 A. HE WAS NERVOUS.
- 25 Q. WHEN HE TOLD YOU WHAT HAPPENED WHAT DID YOU SAY?

1 A. I INVESTIGATED ON THE PHONE. I CALLED SOMEBODY TO ASK
2 WHAT -- HOW THE THINGS HAD HAPPENED. AND THE PERSON TOLD ME
3 THAT HE DIDN'T KNOW.

4 Q. DID YOU ASK HIM TO LEAVE THE GUN THAT NIGHT?

5 A. YES.

6 Q. WHEN -- DID HE LEAVE THE GUN WITH YOU?

7 A. NO, HE DIDN'T.

8 Q. DID HE TAKE IT WITH HIM?

9 A. YES.

10 Q. HOW LONG WAS HE AT YOUR HOUSE AT THIS TIME?

11 A. IT WAS AROUND THIRTY, FORTY MINUTES THERE AT THEIR
12 HOUSE.

13 Q. AND DO YOU KNOW WHERE HE WENT WHEN HE LEFT?

14 A. HE LEFT WITH HIS MOM AND HIS -- THE HUSBAND OF HIS MOM,
15 AND THEY LEFT THEN. I DON'T KNOW WHERE THEY LEFT -- WHERE
16 THEY WENT.

17 Q. DO YOU HAPPEN TO REMEMBER WHAT MARLON WAS WEARING WHEN
18 HE SHOWED UP THIS NIGHT?

19 A. NO, I DON'T REMEMBER. I KNEW THAT HE WAS WEARING SOME
20 BLUE JEANS, BUT I DON'T REMEMBER THE SHIRT THAT HE WAS
21 WEARING.

22 Q. AT THE TIME DID THE DEFENDANT LIVE CLOSE TO WHERE YOU
23 LIVED?

24 A. LIKE AROUND TEN MINUTES DRIVE, A DRIVE OF TEN MINUTES.

25 Q. HOW ABOUT A BAR CALLED MEXICALI? HOW FAR WOULD THAT BE

- 1 FROM WHERE YOU LIVE?
- 2 A. LIKE AROUND SEVEN MINUTES DRIVE.
- 3 Q. WHEN THE DEFENDANT WAS LEAVING DID HE SAY ANYTHING TO
- 4 YOU, ANYTHING ELSE?
- 5 A. I'M SORRY?
- 6 Q. ANYTHING ELSE OTHER THAN WHAT HE'S TOLD US?
- 7 A. NO, HE DIDN'T SAY ANYTHING ELSE.
- 8 Q. DID HE SAY WHERE HE MIGHT BE GOING?
- 9 A. HE SAID THAT THEY WERE JUST LEAVING AND THAT HE WAS
- 10 GOING TO CONTINUE DRINKING.
- 11 Q. WHEN THEY LEFT DID YOU CALL THE POLICE?
- 12 A. NO.
- 13 Q. ANY REASON WHY NOT?
- 14 A. HE SAID THAT HE JUST DIDN'T CALL THE POLICE.
- 15 Q. NOW AT SOME POINT DID OFFICER WES SMITH COME TO TALK TO
- 16 YOU?
- 17 A. YES.
- 18 Q. DID HE COME WITH ANOTHER DEPUTY, RAMON RIVERA?
- 19 A. YES.
- 20 Q. DID RAMON RIVERA SPEAK SPANISH?
- 21 A. YES.
- 22 Q. WERE YOU ABLE TO UNDERSTAND HIM?
- 23 A. YES.
- 24 Q. AND DID YOU HAVE ANY PROBLEM COMMUNICATING WITH RAMON?
- 25 A. NO, JUST A WORD HERE AND THERE. BUT NO, NOT REALLY

1 MUCH.

2 Q. AND DID INVESTIGATOR SMITH EVER TRY TO TALK TO YOU?

3 A. HE SAID THAT HE WAS WITH RAMON AND THAT ONE DAY THAT HE
4 WENT TO MY HOUSE.

5 Q. AND WHEN HE TALKED TO YOU WITH RAMON, RAMON WOULD
6 TRANSLATE FOR YOU?

7 A. YES.

8 Q. AFTER THEY TALKED TO YOU DID THEY ASK YOU ABOUT THE
9 SAME THINGS I'M ASKING YOU?

10 A. YES.

11 Q. DID THEY ASK YOU TO WRITE A STATEMENT?

12 A. YES.

13 Q. IN YOUR OWN HANDWRITING?

14 A. YES.

15 Q. IN SPANISH?

16 A. YES.

17 (WHEREUPON STATE'S EXHIBIT 2 WAS MARKED FOR
18 IDENTIFICATION)

19 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S NUMBER
20 2 FOR IDENTIFICATION. IS THIS YOUR HANDWRITTEN STATEMENT?

21 A. YES.

22 Q. IF YOU WOULD TAKE A MOMENT, READ IT, MAKE SURE THAT IT
23 IS ACCURATE.

24 A. YES, IT IS.

25 Q. HAS IT BEEN CHANGED OR ANYTHING?

1 A. HE SAID THAT NOTHING HAS BEEN CHANGED.

2 Q. IN YOUR STATEMENT DID YOU SAY THE DEFENDANT TOLD YOU HE
3 HAD PROBLEMS?

4 A. I'M SORRY, SAY THAT AGAIN.

5 Q. IN HIS STATEMENT DID HE SAY THE DEFENDANT TOLD HIM HE
6 HAD PROBLEMS?

7 A. HE SAID, YES, THAT THE PROBLEM THAT HE HAD, HE SAID HE
8 HAD KILLED SOMEBODY.

9 Q. AND DID HE SAY THAT -- DID THE DEFENDANT SAY PER YOUR
10 STATEMENT ---

11 A. PRIOR?

12 Q. ACCORDING TO THE STATEMENT DID THE DEFENDANT TELL HIM
13 HE HAD BEEN IN A FIGHT AND TOOK OUT THE PISTOL?

14 A. REPHRASE -- EXCUSE ME. REPHRASE THAT, BUT JUST ---

15 Q. BREAK IT DOWN?

16 A. NO, JUST ---

17 Q. SHORTER?

18 A. SHORTER, YES, SO IT WILL BE MORE ACCURATE. YES.

19 Q. ACCORDING TO THE STATEMENT DID THE DEFENDANT TELL YOU
20 THAT HE WAS FIGHTING WITH SOMEONE ELSE AND THAT HE PULLED
21 OUT THE PISTOL HE HAD BEEN CARRYING AND THAT THE PISTOL
22 BELONGED TO A MR. ANTONIO?

23 A. THAT'S WHAT HE TOLD ME.

24 Q. AND DID HE THEN TELL YOU, AS IN YOUR STATEMENT, THAT
25 THE PERSON HE WAS FIGHTING WITH GRABBED THE PISTOL FROM HIM,

1 IS THAT CORRECT?

2 A. HE SAID THAT THE GUN JUST WENT OFF.

3 Q. THAT THE GUN JUST WENT OFF?

4 A. YES.

5 Q. BUT HE HAD PULLED THE PISTOL OUT?

6 A. YES, THAT'S WHAT HE TOLD ME.

7 Q. AND THAT IT HIT SOMEONE THAT WAS JUST LOOKING?

8 A. YES, THAT'S EXACTLY WHAT HE SAID.

9 Q. THANK YOU.

10 THE COURT: MS. ROSS.

11 Q. THAT'S ALL THE QUESTIONS I HAVE.

12 CROSS EXAMINATION BY MS. ROSS:

13 Q. MR. CASTRO, NOW THAT WE'RE LOOKING AT YOUR STATEMENT,
14 LET ME JUST MAKE SURE THIS IS THE SPANISH STATEMENT THAT YOU
15 WROTE YOURSELF. NOW I THINK IT'S DURANTE.

16 A. UM-HUM (AFFIRMATIVE).

17 Q. NOW IN THAT STATEMENT YOU SAID SOMEONE GRABBED THE
18 PISTOL AND SHOT IN THAT STATEMENT.

19 A. HE TOLD ME THAT -- HE SAID THAT WHEN THEY WERE
20 WRESTLING BOTH OF THEM WERE GRABBING THE PISTOL. AND WHAT
21 HE TOLD ME IS THAT THE OTHER ONE, ONE HAD GRABBED THE PISTOL
22 AWAY FROM HIM. AND IN THAT THE SHOT WENT OFF.

23 Q. SO BASICALLY HE SAID IT WENT OFF ACCIDENTALLY WHEN THE
24 OTHER MAN GRABBED THE PISTOL AND THEY WERE FIGHTING OVER IT?

25 A. THAT'S WHAT HE TOLD ME.

1 Q. AND IN THE STATEMENT YOU GAVE BEFORE, THE STATEMENT
2 DOES SAY SOMEONE GRABBED THE PISTOL AND THEY SHOT. YOU CAN
3 SEE THAT THAT'S WHAT THAT STATEMENT SAYS.

4 A. I DON'T REMEMBER TO SAY THAT -- TO HAVE SAID THAT.

5 Q. SO YOU THINK THEY MISTRANSLATED YOUR STATEMENT?

6 A. I THINK IT COULD BE THAT THEY DIDN'T TRANSLATE WELL,
7 BUT THAT'S WHAT HE TOLD ME.

8 Q. NOW DIDN'T HE ALSO SAY SOMETHING ABOUT HE'D BEEN
9 ATTACKED? DIDN'T MARLON SAY THAT HE'D BEEN ATTACKED AND WAS
10 IN A FIGHT?

11 A. NO, HE DIDN'T TELL ME THAT.

12 Q. WASN'T HE IN A FIGHT WHEN SOMEONE GRABBED THE GUN?

13 A. THAT'S WHAT HE SAID, THAT THEY WERE FIGHTING WITH THE
14 OTHER PERSON THAT THEY WERE WRESTLING.

15 Q. ONE SECOND. AND YOU SAY THAT MARLON HAD SAID THAT HE
16 HAD GOTTEN THAT GUN THE DAY BEFORE?

17 A. YES, THE DAY BEFORE.

18 Q. AND HE STILL HAD THE GUN WITH HIM AND HE LEFT WITH THE
19 GUN, THE SAME GUN?

20 A. THAT'S WHAT HIS MOM TOLD ME.

21 Q. ONE SECOND. I'VE GOT NOTHING FURTHER.

22 THE COURT: ANYTHING ELSE?

23 MS. HODGE: YOUR HONOR, REDIRECT? I DO HAVE BRIEFLY --
24 SINCE THERE HAS BEEN A QUESTION AS TO THE TRANSLATION OF THE
25 WITNESS' OWN STATEMENT WRITTEN IN SPANISH I'D ASK THAT THE

1 INTERPRETER READ ---

2 THE COURT: ALL RIGHT.

3 MS. HODGE: --- THE STATEMENT.

4 MR. PINEROS: A FEW MONTHS BACK I HEARD SOMEBODY
5 KNOCKING ON MY DOOR. I LIVE ON 29 SULFUR SPRING ROAD. I
6 OPENED THE DOOR, AND I LOOKED AT MARLON RIVERA WITH HIS MOM
7 AND -- WITH HIS MOM, ALEJANDRA, AND HER HUSBAND -- AND HER
8 HUSBAND. THEY CAME IN AND THEY TALKED TO ME. AND MARLON
9 TOLD ME THAT HE HAD SOME PROBLEMS.

10 HE SAID THAT HE WAS IN A CLUB -- IN A CLUB AND HE WAS
11 CARRYING A PISTOL THAT BELONGED TO MR. ANTONI. AND HE SAID
12 THAT DURING A FIGHT HE GOT THAT PISTOL OUT SO THE OTHER GUY
13 GRABBED THE GUN AND THE GUN WENT OFF. AND THE SHOT HIT
14 SOMEBODY THAT WAS -- SOMEBODY THAT WAS LOOKING.

15 HE SAID THAT HE WAS GOING TO COME BACK TO THE CLUB.
16 MARLON HAD THE PISTOL WITH HIM. I TOLD HIM TO LEAVE IT
17 THERE AT THE HOUSE, BUT HE DIDN'T WANT -- HE DIDN'T WANT --
18 HE DIDN'T WANT TO --- SHE DIDN'T WANT -- THE THREE OF THEM
19 LEFT. THE THREE OF THEM WERE TOGETHER DURING THE
20 CONVERSATION THAT WE HAD.

21 MS. HODGE: THANK YOU.

22 REDIRECT EXAMINATION BY MS. HODGE:

23 Q. TO CLARIFY, THE DEFENDANT TOLD YOU HE PULLED THE PISTOL
24 WITH THE MAN HE WAS FIGHTING WITH?

25 A. WOULD YOU PLEASE REPEAT IT?

1 Q. YES. THAT HE PULLED THE PISTOL OUT AT THE PERSON HE
2 WAS FIGHTING WITH.

3 A. HE SAID THAT THEY WERE FIGHTING AND THAT THE OTHER ONE
4 WANTED TO GET IT FROM HIM.

5 Q. SO THE PERSON HE WAS FIGHTING WITH WAS TRYING TO GET
6 THE PISTOL FROM HIM?

7 A. YEAH, THAT'S WHAT HE TOLD ME.

8 Q. NO THIRD PERSON TRIED TO GET THE PISTOL FROM HIM AND
9 THE GUY HE WAS FIGHTING WITH?

10 A. NO.

11 Q. HE NEVER -- MARLON NEVER TOLD YOU OF ANOTHER PERSON
12 GETTING THE GUN AND SHOOTING?

13 MS. ROSS: OBJECTION, ASKED AND ANSWERED. AND ALSO
14 SHE'S LEADING THE WITNESS.

15 THE COURT: THAT'S ALL RIGHT. GO AHEAD.

16 A. WOULD YOU REPEAT AGAIN?

17 Q. THE DEFENDANT NEVER TOLD YOU THAT SOME THIRD PERSON,
18 SOME OTHER PERSON, TRIED TO GET THE PISTOL FROM HIM AND THE
19 GUY HE WAS FIGHTING WITH?

20 A. NO, HE NEVER SAID THAT.

21 Q. DID HE EVER TELL YOU OF ANYONE ELSE HAVING THE GUN GO
22 OFF, ANY OTHER PERSON HAVING THEIR HANDS ON THE GUN BESIDES
23 HE AND THE ONE HE WAS FIGHTING WITH?

24 A. NO, HE DIDN'T TELL ME ANYTHING.

25 Q. AND IS YOUR COUSIN PRESENT IN THE COURTROOM TODAY?

1 A. WHAT COUSIN?

2 Q. MARLON RIVERA?

3 A. YES.

4 Q. AND WHERE IS HE?

5 A. HE'S THERE.

6 MS. HODGE: THANK YOU. THE RECORD WILL REFLECT HE'S
7 IDENTIFIED THE DEFENDANT.

8 THE COURT: ALL RIGHT.

9 MS. HODGE: THANK YOU.

10 THE COURT: ANYTHING ELSE, MS. ROSS?

11 MS. ROSS: YES.

12 REXCROSS EXAMINATION BY MS. ROSS:

13 Q. MR. CASTRO, YOU WEREN'T THERE. YOU DIDN'T ACTUALLY
14 WITNESS THIS EVENT WITH YOUR EYES? YOU JUST ---

15 A. NO.

16 Q. THANK YOU.

17 THE COURT: THANK YOU. YOU CAN STEP DOWN. AND CAN WE
18 EXCUSE THIS WITNESS?

19 MS. HODGE: YES, YOUR HONOR.

20 MS. ROSS: NO OBJECTION.

21 THE COURT: ALL RIGHT. WITHOUT OBJECTION, HE'S
22 EXCUSED. NOW, LADIES AND GENTLEMEN, WE'LL SUSPEND AT THIS
23 TIME FOR LUNCH. WE'LL PICK BACK UP AT 2:15. NOW DURING THE
24 LUNCH RECESS DO NOT TALK ABOUT THIS CASE AMONG YOURSELVES OR
25 WITH ANYONE ELSE. THIS INCLUDES EVEN MEMBERS OF YOUR OWN

1 FAMILY IF YOU SEE THEM.

2 IF ANYBODY CONTACTS YOU AND TRIES TO TALK TO YOU ABOUT
3 THIS CASE GET THEIR NAMES AND ADDRESSES AND REPORT THAT TO
4 ME. I'LL ASK THAT YOU KEEP YOUR BADGES ON DURING THE LUNCH
5 RECESS. I ASK THAT YOU DO THAT SO THAT EVERYONE INVOLVED
6 WITH THIS CASE WILL KNOW THAT YOU ARE A JUROR ON THIS CASE
7 AND THEY SHOULD NOT DISCUSS THIS CASE IN YOUR PRESENCE. SO
8 PLEASE BE BACK IN YOUR JURY ROOM WHERE YOU WERE ON RECESS AT
9 2:15, 2:15. THANK YOU.

10 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:55 PM)

11 THE COURT: ALL RIGHT. SEE YOU BACK AFTER LUNCH.

12 (WHEREUPON COURT WAS IN RECESS)

13 THE COURT: BE SEATED. ANYTHING BEFORE I BRING THE
14 JURY?

15 MS. HODGE: NOTHING FROM THE STATE, YOUR HONOR.

16 MS. ROSS: NOTHING FROM THE DEFENSE.

17 THE COURT: BRING THEM ON PLEASE.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:18 PM)

19 THE COURT: I UNDERSTAND THE QUESTION'S BEEN ASKED
20 ABOUT NOTE TAKING. IT'S PERFECTLY ALL RIGHT TO TAKE NOTES
21 DURING THE COURSE OF THIS TRIAL, BUT YOU CAN ONLY USE THOSE
22 NOTES TO REFRESH YOUR RECOLLECTION AS TO WHAT THE TESTIMONY
23 WAS IN THE CASE. YOU CAN'T USE YOUR OWN NOTES AS A
24 TRANSCRIPT. THE ONLY OFFICIAL TRANSCRIPT IS THAT BEING MADE
25 BY THE COURT REPORTER. SO YOU CAN TAKE NOTES, BUT USE THEM

1 ONLY TO REFRESH YOUR RECOLLECTION, OKAY? ALL RIGHT,
2 SOLICITOR.

3 MS. HODGE: THANK YOU, YOUR HONOR. THE STATE CALLS
4 CARLOS ESTRADO.

5 CARLOS ESTRADO, BEING
6 DULY SWORN TESTIFIED AS FOLLOWS:

7 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
8 RECORD.

9 MR. ESTRADO: CARLOS ELIAS ESTRADO.

10 MADAME CLERK: THANK YOU.

11 DIRECT EXAMINATION BY MS. HODGE:

12 Q. MR. ESTRADO, DO YOU SPEAK ENGLISH CLEARLY?

13 A. PRETTY WELL, YES.

14 Q. WHERE ARE YOU FROM?

15 A. COLOMBIA.

16 Q. HOW LONG HAVE YOU BEEN IN GREENVILLE?

17 A. THIRTY YEARS.

18 Q. THIRTY YEARS?

19 A. UH-HUH (AFFIRMATIVE).

20 Q. AND DO YOU WORK?

21 A. YES.

22 Q. AND WHAT TYPE OF WORK DO YOU DO?

23 A. I'M A CO-OWNER OF A SMALL CLUB HERE IN GREENVILLE.

24 Q. YOU'RE AN OWNER OF A SMALL CLUB?

25 A. YES, PART OWNER.

- 1 Q. PART OWNER? WHAT TYPE OF A CLUB IS IT?
- 2 A. IT'S POOL TABLES AND A BAR.
- 3 Q. WHAT'S THE NAME OF IT?
- 4 A. MEXICALI.
- 5 Q. WHERE IS IT LOCATED?
- 6 A. IT'S ON 1302 CEDAR LANE ROAD.
- 7 Q. IS IT A PRIVATE CLUB?
- 8 A. YES, IT'S PRIVATE.
- 9 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
- 10 NUMBER 1. I'LL JUST TURN IT AROUND FOR YOU TO LOOK AT REAL
- 11 QUICK AND THEN I'LL TURN IT BACK. IT'S A MAP WITH CEDAR
- 12 LANE ROAD ON IT?
- 13 A. UH-HUH (AFFIRMATIVE).
- 14 Q. AND DO YOU SEE YOUR RESTAURANT OR YOUR BAR, POOL TABLE,
- 15 POOL HALL?
- 16 A. YES, IT'S OVER THERE.
- 17 Q. IS IT MARKED ACCURATELY ON THERE?
- 18 A. YES, IT IS.
- 19 Q. SO IF WE'RE TALKING ABOUT MEXICALI IT'S THE ONE SHOWN
- 20 ON STATE'S NUMBER 1?
- 21 A. YEAH.
- 22 Q. AND IS IT PRETTY CLOSE TO WHAT USED TO BE CALLED OR MAY
- 23 BE CALLED LA RUMBA'S OR DON PEPE'S?
- 24 A. YES. IT'S ABOUT TWO BLOCKS FROM THERE.
- 25 Q. NOW DO YOU KNOW THE DEFENDANT IN THIS CASE, MARLON

1 RIVERA?

2 A. YES, I DID.

3 Q. AND HOW DO YOU KNOW HIM?

4 A. HE USED TO COME OVER THERE REGULARLY, YOU KNOW, LIKE ON
5 WEEKENDS, PLAY POOL, STUFF LIKE THAT.

6 Q. DID YOU KNOW HIM PERSONALLY OR SOCIALLY AWAY FROM YOUR
7 BAR OR JUST FROM YOUR BAR?

8 A. NO, JUST AT THE BAR.

9 Q. AND DO YOU RECALL IF YOU WERE WORKING AT THIS BAR ON
10 JULY 18TH OF LAST YEAR?

11 A. YES, I DO.

12 Q. AND DO YOU KNOW WHAT TIME YOU WERE WORKING THERE THAT
13 EVENING, MORNING?

14 A. IT WAS LATE NIGHT, BUT I DON'T REMEMBER THE TIME.

15 Q. HOW LATE IS YOUR BAR OPEN?

16 A. ON FRIDAYS, THREE OR 4:00 IN THE MORNING. SATURDAYS
17 UNTIL 2:00.

18 Q. IT'S SOMETIMES OPEN LATER THAN 2:00?

19 A. YEAH, BUT NOT REALLY.

20 Q. WHAT ARE YOUR MAIN RESPONSIBILITIES AT YOUR BAR, IF
21 YOU'RE WORKING AT YOUR BAR?

22 A. WELL, I'M MORE LIKE THE MANAGER, YOU KNOW, KIND OF AND,
23 YOU KNOW, TAKE CARE OF THE PLACE, AND MAKE SURE THAT
24 EVERYTHING GOES FINE, YOU KNOW, WITH THE PEOPLE.

25 Q. YOU KIND OF DO A LITTLE BIT OF EVERYTHING?

- 1 A. YEAH.
- 2 Q. AND DO YOU HAVE A BOUNCER OR ANY PERSON THAT STANDS AT
- 3 THE FRONT OF YOUR ---
- 4 A. YEAH. MOST OF THE TIME I HAVE SECURITY, YEAH, BUT THAT
- 5 DAY I DIDN'T HAVE ONE.
- 6 Q. WERE YOU STANDING AT THE FRONT AS PEOPLE WERE COMING IN
- 7 ON THAT DAY?
- 8 A. YEAH.
- 9 Q. AND DO YOU, AS PART OF YOUR SECURITY, PAT PEOPLE DOWN
- 10 FOR WEAPONS?
- 11 A. YEAH, WE DO.
- 12 Q. AND ARE PEOPLE ALLOWED IN YOUR BAR WITH WEAPONS ON
- 13 THEM?
- 14 A. NO, NEVER.
- 15 Q. NOW DID YOU SEE THE DEFENDANT COME TO YOUR BAR ON THAT
- 16 MORNING?
- 17 A. YES. I SAW HIM COME, YES.
- 18 Q. AND DID YOU ATTEMPT TO PAT HIM DOWN?
- 19 A. YES, I DID.
- 20 Q. HOW DID THAT -- WHAT HAPPENED?
- 21 A. I TRIED TO PAT HIM DOWN AND I TOUCHED SOMETHING ON HIM,
- 22 SOME KIND OF WEAPON OR SOMETHING. HE BACKED UP AND LEFT. I
- 23 TOLD HIM HE WAS NOT SUPPOSED TO BE THERE IF HE HAS ANY, YOU
- 24 KNOW, ANY WEAPONS WITH HIM OR SOMETHING.
- 25 Q. SO YOU WENT -- PATTED HIM DOWN AND YOU FELT SOMETHING?

- 1 A. YEAH.
- 2 Q. YOU DIDN'T SEE IT, BUT YOU FELT SOMETHING?
- 3 A. YES.
- 4 Q. AND AT THAT POINT ---
- 5 A. HE TURNED AROUND AND LEFT.
- 6 Q. AND YOU ADVISED HIM YOU COULDN'T COME IN WITH WEAPONS?
- 7 A. YES, I DID.
- 8 Q. AND DID HE COME BACK?
- 9 A. YES. HE CAME BACK PROBABLY TEN OR FIFTEEN MINUTES
- 10 LATER, HE CAME BACK.
- 11 Q. WHAT HAPPENED WHEN HE CAME BACK?
- 12 A. I TRIED TO DO THE SAME THING AGAIN. HE TOLD ME, YOU
- 13 KNOW, I TOLD HIM -- BEFORE ANYTHING I TOLD HIM, YOU KNOW,
- 14 YOU HAVE ANY WEAPON OR SOMETHING YOU'RE NOT SUPPOSED TO COME
- 15 IN. HE SAID, NO, I DON'T HAVE ANYTHING. SO I PATTED HIM
- 16 DOWN AND HE DIDN'T HAVE ANYTHING.
- 17 Q. SO THIS WAS THE SECOND TIME WHEN HE CAME BACK?
- 18 A. THE SECOND -- YEAH. THE SECOND TIME.
- 19 Q. AND SO DID YOU LET HIM COME INTO THE MEXICALI?
- 20 A. YES.
- 21 Q. AND DID YOU KEEP YOUR EYE ON HIM WHEN HE CAME BACK IN?
- 22 A. WELL, NO, BECAUSE HE WAS LIKE ANY REGULAR CUSTOMER,
- 23 LIKE HE COMES THERE ALL THE TIME.
- 24 Q. AND DID YOU HAPPEN TO SEE IF HE GOT A DRINK OR IF HE
- 25 DID ANYTHING ONCE HE WAS INSIDE?

1 A. I THINK HE ASKED FOR A BEER, BUT HE WENT TO TALK TO
2 SOMEBODY THAT WAS PLAYING POOL, YOU KNOW, SOMETHING LIKE
3 THAT HAPPENED.

4 Q. WAS HE ACTING LIKE THE REST OF THE PEOPLE INSIDE THE
5 BAR?

6 A. YEAH, HE ACTED LIKE ANYBODY ELSE.

7 Q. NOW I KNOW THIS IS A BAR. I ASSUME ALCOHOL IS BEING
8 CONSUMED?

9 A. EXCUSE ME?

10 Q. DRINKING ALCOHOL IN THE ---

11 A. YEAH.

12 Q. DID THE DEFENDANT -- LET ME BACK UP AND REPHRASE. HAVE
13 YOU SEEN PEOPLE THAT HAVE BEEN REALLY DRUNK BEFORE?

14 A. OH, YEAH.

15 Q. AS A BAR OWNER YOU'VE PROBABLY SEEN SOME REALLY DRUNK
16 PEOPLE?

17 A. YES.

18 Q. IN YOUR OPINION WAS THE DEFENDANT REALLY DRUNK THAT
19 NIGHT?

20 A. NO. HE WAS JUST -- I DIDN'T NOTICE HIM DRUNK, NO.

21 Q. AND WHAT HAPPENED ONCE HE CAME INSIDE THE BAR? DID THE
22 POLICE COME TO YOUR BAR?

23 A. YEAH, THE POLICE CAME.

24 Q. HOW LONG AFTER HE HAD BEEN INSIDE DID THEY COME?

25 A. I WOULD SAY PROBABLY THIRTY MINUTES AFTER, TWENTY,

- 1 THIRTY MINUTES AFTER.
- 2 Q. NOT A LONG TIME?
- 3 A. NO, NOT A LONG TIME.
- 4 Q. AND WHAT HAPPENED OR WHAT DID YOU SEE WHEN THEY CAME
- 5 IN?
- 6 A. WELL, THEY -- I DON'T REMEMBER -- I TALKED TO THE
- 7 DETECTIVE WEST, MR. WEST, I THINK. AND I THINK SOMEHOW THEY
- 8 WERE LOOKING FOR HIM. I DON'T KNOW IF THEY ASKED ME BY HIS
- 9 NAME OR SOMETHING, BUT I THINK I LET THEM IN AND THEY FOUND
- 10 HIM IN THERE.
- 11 Q. OKAY.
- 12 A. I THINK WHAT HAPPENED IS THEY WERE COMING WITH ONE GUY,
- 13 SOME SPANISH GUY, AND HE KNEW HE WAS THERE SOMEHOW. AND
- 14 THAT'S WHEN THEY GOT IN THERE.
- 15 Q. SO THE POLICE CAME WITH ANOTHER PERSON ---
- 16 A. ANOTHER PERSON, YEAH.
- 17 Q. --- AND THEY FOUND THE DEFENDANT. ---
- 18 A. YEAH.
- 19 Q. --- WITH THIS OTHER PERSON?
- 20 A. (AFFIRMATIVE NOD).
- 21 Q. AND DID THEY TAKE HIM OUT OF THE BAR AT THAT POINT?
- 22 A. THEY DID, YES.
- 23 Q. WAS THAT THE LAST TIME YOU SAW THE DEFENDANT IN YOUR
- 24 BAR?
- 25 A. THAT WAS THE LAST TIME, YES.

1 Q. AND THIS PERSON THAT WE'VE BEEN TALKING ABOUT TODAY
2 THAT WAS IN YOUR BAR AND TAKEN OUT, WAS THAT MARLON RIVERA?

3 A. YES, IT IS.

4 Q. IS THAT THE PERSON AT THAT TABLE?

5 A. YES, IT IS.

6 Q. THANK YOU. ANSWER ANY OF MS. ROSS' QUESTIONS.

7 THE COURT: MS. ROSS.

8 MS. ROSS: I'VE GOT NOTHING FOR THIS WITNESS.

9 THE COURT: THANK YOU. YOU CAN STEP DOWN. CAN WE
10 EXCUSE THIS WITNESS. ANY OBJECTION?

11 MS. HODGE: NONE FROM THE STATE.

12 MS. ROSS: NONE FROM THE DEFENSE.

13 THE COURT: THANK YOU. YOU'RE EXCUSED.

14 MS. HODGE: AND THE STATE WOULD CALL INVESTIGATOR BRIAN
15 GARRETT.

16 BRIAN GARRETT, BEING DULY
17 SWORN TESTIFIED AS FOLLOWS:

18 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
19 RECORD.

20 MR. GARRETT: BRIAN GARRETT.

21 DIRECT EXAMINATION BY MS. HODGE:

22 Q. INVESTIGATOR GARRETT, DO YOU WORK FOR THE GREENVILLE
23 COUNTY SHERIFF'S OFFICE?

24 A. YES, MA'AM, I DO.

25 Q. AND HOW LONG HAVE YOU BEEN WORKING THERE?

- 1 A. ABOUT FOUR YEARS AND THREE MONTHS.
- 2 Q. AND WHAT ARE YOUR DUTIES PRESENTLY WITH THE SHERIFF'S
- 3 OFFICE?
- 4 A. I'M AN INVESTIGATOR ON THE PROPERTY CRIMES UNIT.
- 5 Q. AND DID YOU HAVE SOME OTHER DUTIES BEFORE YOU BECAME AN
- 6 INVESTIGATOR?
- 7 A. YES, MA'AM. I WAS A UNIFORM PATROL OFFICER.
- 8 Q. AND WERE YOU EMPLOYED IN WHICH CAPACITY ON JULY 18TH OF
- 9 LAST YEAR?
- 10 A. I WAS A UNIFORM PATROL OFFICER.
- 11 Q. DID YOU HAVE AN OCCASION TO RESPOND TO 1124 CEDAR LANE
- 12 ROAD?
- 13 A. YES, MA'AM, I DID.
- 14 Q. WHY WERE YOU RESPONDING THERE?
- 15 A. AT THE REQUEST OF SERGEANT COLE AT THE TIME FOR
- 16 TRANSLATION PURPOSES.
- 17 Q. DO YOU KNOW WHAT TIME THIS WAS?
- 18 A. I'M THINKING IT WAS AROUND THREE AM.
- 19 Q. AND WHEN I SAY 1124 CEDAR LANE ROAD, WHAT'S AT THAT
- 20 LOCATION?
- 21 A. IT'S A HISPANIC CLUB.
- 22 Q. DO YOU KNOW THE NAME OF IT OR WHAT THE NAME WAS?
- 23 A. AT THE TIME, NO, I CAN'T RECALL. I CAN'T RECALL.
- 24 Q. DO THE RESTAURANTS OR BARS IN THERE CHANGE NAMES ---
- 25 A. YES, MA'AM, THEY DO ---

- 1 Q. --- SOMEWHAT FREQUENTLY?
- 2 A. --- FREQUENTLY.
- 3 Q. SO YOU WERE CALLED THERE FOR TRANSLATION PURPOSES?
- 4 A. YES, MA'AM.
- 5 Q. IS THAT THE ONLY REASON?
- 6 A. YES, MA'AM.
- 7 Q. YOU DID NOT DO ANY INVESTIGATING OR INDEPENDENT
- 8 INVESTIGATING AT THAT TIME?
- 9 A. NO, MA'AM.
- 10 Q. AND WHAT DID YOU OBSERVE AND WHAT DID YOU DO WHEN YOU
- 11 FIRST ARRIVED THERE?
- 12 A. WHEN I GOT TO THE SCENE THERE WERE SEVERAL HISPANIC
- 13 SUBJECTS STANDING AROUND. I WAS ADVISED TO TRY TO SPEAK TO
- 14 THEM TO SEE IF THERE WERE ANY POSSIBLE WITNESSES IN THE
- 15 CROWD.
- 16 Q. I'M GOING TO ASK YOU TO SPEAK UP A LITTLE BIT.
- 17 THE COURT: COME IN A LITTLE CLOSER TO THE ---
- 18 A. OKAY.
- 19 Q. NOW DO YOU SPEAK SPANISH FLUENTLY?
- 20 A. NO, MA'AM, I DO NOT.
- 21 Q. YOU DO SPEAK ENOUGH TO GET BASIC INFORMATION?
- 22 A. YES, MA'AM.
- 23 Q. AND SPANISH IS YOUR SECOND LANGUAGE?
- 24 A. YES, MA'AM, IT IS.
- 25 Q. HOW LONG HAVE YOU KNOWN SPANISH?

1 A. WELL, I TOOK IT IN HIGH SCHOOL. BUT SINCE COMING TO
2 THE SHERIFF'S OFFICE I'VE KIND OF DONE SOME REFRESHER
3 COURSES IN MY PERSONAL TIME.

4 Q. SO WERE YOU ABLE TO COMMUNICATE WITH ANY OF THE PEOPLE
5 THAT YOU SAW AROUND THREE AM THIS MORNING?

6 A. YES, MA'AM, I WAS.

7 Q. AND WHO DID YOU SPEAK TO?

8 A. TO AN ALVARO FERNANDEZ.

9 Q. COULD HE SPEAK ANY ENGLISH, DO YOU KNOW?

10 A. VERY LITTLE.

11 Q. AND WHEN SPEAKING WITH HIM DID YOU ALSO THEN WRITE DOWN
12 WHAT HE WAS TELLING YOU IN A STATEMENT?

13 A. YES, MA'AM. I TOOK A STATEMENT FROM HIM IN SPANISH AND
14 TRANSLATED IT INTO ENGLISH.

15 Q. AND WHEN YOU FINISHED SPEAKING WITH HIM ABOUT WHAT HE
16 MAY HAVE SEEN WAS HE FREE TO GO?

17 A. YES, MA'AM, HE WAS.

18 Q. ABOUT HOW LONG DO YOU THINK IT WAS THAT YOU TALKED TO
19 HIM AT THIS POINT?

20 A. THAT I SPOKE WITH HIM?

21 Q. CORRECT.

22 A. PROBABLY OVER THIRTY MINUTES.

23 Q. AND WAS HE TALKING TO YOU AT A NORMAL, COHERENT KIND OF
24 WAY?

25 A. YES, MA'AM, HE WAS.

1 Q. WAS HE CALM?

2 A. YES, MA'AM.

3 Q. HOW ABOUT ANYBODY ELSE AT THAT TIME? WERE THERE ANY
4 OTHER WITNESSES THAT CAME UP TO YOU ONCE THEY REALIZED YOU
5 SPOKE SPANISH?

6 A. NO, MA'AM. THERE WAS A GENTLEMAN THAT WAS HANGING
7 AROUND WITH HIM I THINK FOR -- JUST FOR KIND OF SUPPORTING
8 PURPOSES.

9 Q. SO NO OTHER WITNESSES CAME UP TO YOU ONCE THEY SAW
10 THAT, HEY, HERE'S A GUY WHO SPEAKS SPANISH? NOBODY CAME
11 FORWARD TO GIVE YOU ---

12 A. NO, MA'AM.

13 Q. --- ANY OTHER STATEMENTS?

14 A. NO, MA'AM.

15 Q. HOW MANY PEOPLE DO YOU THINK WERE STILL OUT THERE AS
16 POTENTIAL WITNESSES AT 3:00?

17 A. IF I RECALL THERE WAS, YOU KNOW, MAYBE FIFTEEN OR
18 TWENTY PEOPLE STANDING AROUND.

19 Q. DO YOU KNOW IF THOSE PEOPLE WERE ACTUALLY WITNESSES TO
20 THE INCIDENT OR JUST ---

21 A. I TRIED TO MAKE CONTACT AND SPEAK WITH MOST OF THEM AND
22 DETERMINED THAT NONE OF THEM HAD ANY KIND OF EVIDENTIARY
23 VALUE AS FAR AS A STATEMENT.

24 Q. DIDN'T THINK THEY WERE EYEWITNESSES OR ANYTHING LIKE
25 THAT?

- 1 A. NO, MA'AM.
- 2 Q. SO ONLY MR. ALVARO FERNANDEZ AT THIS POINT?
- 3 A. THAT'S CORRECT.
- 4 Q. YOU SAY YOU SPOKE TO HIM FOR ABOUT THIRTY MINUTES?
- 5 A. YES, MA'AM.
- 6 Q. DID HE LEAVE?
- 7 A. YES, MA'AM, HE DID.
- 8 Q. AND DID HE COME BACK?
- 9 A. YES, MA'AM, HE DID.
- 10 Q. ABOUT HOW LONG AFTER HE LEFT DID HE COME BACK?
- 11 A. I'M THINKING IT WAS FIFTEEN MINUTES MAYBE, AT THE MOST.
- 12 Q. AND WHEN HE CAME BACK HAD HIS DEMEANOR CHANGED?
- 13 A. YES, MA'AM. HE WAS KIND OF EXCITED.
- 14 Q. AND DID YOU SEE HIM DRIVE IN, OR WALK IN, OR ANYTHING
- 15 LIKE THAT?
- 16 A. I HAPPENED TO HAVE BEEN WORKING ON SOME PAPERWORK IN
- 17 THE CAR AND HAPPENED TO LOOK OVER AND SAW HIM TALKING TO
- 18 INVESTIGATOR SMITH.
- 19 Q. WAS HE ANIMATED?
- 20 A. YES, HE WAS.
- 21 Q. AND SO HE SEEMED EXCITED?
- 22 A. YES, MA'AM, HE DID.
- 23 Q. AND DID YOU APPROACH OVER TO INVESTIGATOR SMITH ---
- 24 A. INVESTIGATOR SMITH ASKED ME TO COME TO WHERE HE WAS AND
- 25 THAT HE WAS SAYING SOMETHING TO HIM HE DIDN'T QUITE

1 UNDERSTAND.

2 Q. AND DID YOU GO OVER THERE?

3 A. YES, MA'AM, I DID.

4 Q. AND WHAT DID HE SAY?

5 A. HE SAID ---

6 MS. ROSS: I'D OBJECT. MR. FERNANDEZ IS -- CAN BE
7 PRESENTED HERE AS A WITNESS. HOWEVER, I WOULD NOT LIKE HIS
8 HEARSAY TESTIMONY BEING BROUGHT THROUGH A POLICE OFFICER.

9 MS. HODGE: YOUR HONOR, I BELIEVE THIS FALLS UNDER
10 EXCITED UTTERANCE.

11 THE COURT: I AGREE.

12 MS. ROSS: AND, YOUR HONOR, HE WAS NOT INVOLVED IN
13 THIS. IT'S NOT AN EXCITED UTTERANCE. THIS IS WELL AFTER
14 THE FACT. THIS HAPPENED AROUND MIDNIGHT. THIS IS AROUND
15 3:00. IT'S CERTAINLY ENOUGH TIME NOT TO BE AN EXCITED
16 UTTERANCE OR PROTECTED FROM ANY OF THE HEARSAY PROBLEMS THAT
17 CAN OCCUR WITH HEARSAY. SO I WOULD OBJECT TO THAT COMING
18 IN.

19 THE COURT: GO AHEAD. PROCEED.

20 MS. HODGE: THANK YOU.

21 Q. WHAT DID MR. FERNANDEZ SAY AT THIS TIME?

22 A. HE WAS SPEAKING IN SPANISH AND SAID THAT THE PERSON
23 THAT HE HAD SEEN FIRE THE GUN AND SHOOT THE SUBJECT, THE
24 VICTIM, WAS AT THE MEXICALI DOWN THE STREET ABOUT TWO BLOCKS
25 DOWN, THAT HE HAD SEEN HIM IN THE BAR.

1 Q. AND HE WAS TELLING YOU THIS TO GET YOU TO COME OR ---

2 A. YES, MA'AM, HE WAS.

3 Q. AND HE SEEMED PRETTY EXCITED ABOUT IT?

4 A. YES, MA'AM, HE DID.

5 Q. AND SO AS A RESULT OF HIM TELLING YOU HE'D SEEN THIS

6 PERSON WHO SHOT DOWN AT THE MEXICALI WHAT DID YOU DO?

7 A. I PUT HIM IN THE BACK SEAT OF MY PATROL CAR AND WE RODE

8 DOWN TO THE MEXICALI WITH INVESTIGATOR SMITH FOLLOWING

9 BEHIND.

10 Q. AND WHEN YOU GOT THERE WHAT DID YOU DO?

11 A. WE GOT OUT OF THE PATROL CAR, AND I TOOK THE WITNESS

12 WITH ME. AND HE -- I WENT UP TO THE MEXICALI, OPENED THE

13 DOOR, AND HE CAME IN BEHIND ME AND WAS SPEAKING TO ME AS WE

14 CAME IN THE DOOR IDENTIFYING THE SUBJECT THAT HE THOUGHT HE

15 HAD SAW.

16 Q. THAT HE THOUGHT HE SAW ---

17 A. YES, MA'AM, THAT HE HAD SEEN SHOOT. YES, MA'AM.

18 Q. AND WHO DID HE IDENTIFY TO YOU?

19 A. MR. RIVERA.

20 Q. IS HE THE DEFENDANT IN THE CASE?

21 A. YES, MA'AM, HE IS.

22 Q. NOW ONCE YOU ENTERED THE MEXICALI WHAT HAPPENS INSIDE?

23 A. HE WAS SPEAKING TO ME BASICALLY GIVING ME SOME

24 IDENTIFICATION, SOMEWAY I COULD IDENTIFY HIM, THE COLOR OF

25 HIS SHIRT. AND I LOOKED STRAIGHT AHEAD AND COULD SEE THE

1 SUBJECT STARING AT ME AS IF HE KNEW I WAS THERE COMING TO
2 GET HIM. AND HE TRIED TO ---

3 MS. ROSS: YOUR HONOR, I OBJECT TO WHAT HE'S THINKING.

4 THE COURT: YEAH, JUST TELL US JUST WHAT YOU DID, NOT
5 WHAT YOU THINK HE WAS THINKING.

6 A. I SAW HIM. AND HE WAS WATCHING ME. I STARTED TO
7 APPROACH HIM AND SPOKE TO HIM IN SPANISH AND TOLD HIM TO
8 COME TO ME.

9 Q. LET ME STOP YOU THERE. YOU SAID SOMETHING ABOUT THE
10 COLOR OF HIS SHIRT OR ---

11 A. YES, MA'AM.

12 Q. --- MR. FERNANDEZ IDENTIFIED HIM BY WHAT HE WAS
13 WEARING?

14 A. YES, MA'AM.

15 Q. DO YOU RECALL WHAT THAT WAS?

16 A. HE WAS WEARING A RED SHIRT AND BLUE JEANS.

17 Q. HE WAS WEARING A RED SHIRT?

18 A. YES, MA'AM.

19 Q. AND YOU APPROACHED, WERE TRYING TO APPROACH HIM?

20 A. YES, MA'AM, I WAS.

21 Q. AND AS YOU WERE TRYING TO APPROACH HIM WHAT WAS THE
22 DEFENDANT DOING?

23 A. HE WAS WATCHING ME AND WALKING TOWARDS THE BACK OF THE
24 BUILDING.

25 Q. IS THERE AN EXIT AT THE BACK OF THE BUILDING?

- 1 A. YES, MA'AM, THERE IS.
- 2 Q. AND DID YOU ASK HIM TO COME TO YOU?
- 3 A. YES, MA'AM, I DID.
- 4 Q. AND DID HE COME TO YOU?
- 5 A. YES, MA'AM.
- 6 Q. AND WHAT HAPPENED THEN?
- 7 A. I TOLD HIM TO PUT HIS HANDS BEHIND HIS BACK IN SPANISH.
- 8 AND I PLACED HIM UNDER ARREST.
- 9 Q. AND AS FAR AS HIS DEMEANOR, DID HE APPEAR TO UNDERSTAND
- 10 WHAT YOU WERE TELLING HIM?
- 11 A. YES, MA'AM, HE DID.
- 12 Q. DID HE ASK YOU ANY QUESTIONS IN SPANISH?
- 13 A. NO, MA'AM, HE DID NOT.
- 14 Q. AND DID YOU STAY INSIDE THE BAR FOR LONG OR DID YOU
- 15 TAKE HIM OUT?
- 16 A. EXITED OUT THE FRONT OF THE BUILDING.
- 17 Q. WERE YOU WEARING A UNIFORM?
- 18 A. YES, MA'AM, I WAS IN UNIFORM.
- 19 Q. WHEN YOU TOOK HIM OUTSIDE THE BUILDING DID YOU ATTEMPT
- 20 TO QUESTION HIM IN ANY WAY OR ELICIT ANY KIND OF STATEMENTS
- 21 FROM HIM?
- 22 A. NO, MA'AM, I DID NOT.
- 23 Q. IS THAT SOMETHING INVESTIGATORS DO?
- 24 A. YES, MA'AM, IT IS.
- 25 Q. SO ONCE YOU TOOK HIM OUTSIDE THE BUILDING THEN WHAT DID

1 YOU DO?

2 A. I PLACED HIM IN THE BACK SEAT OF MY PATROL CAR.

3 Q. AND DID HE EVER SAY ANYTHING AT ALL TO YOU DURING ANY
4 OF THIS PROCESS?

5 A. NO, MA'AM, HE DID NOT. I THINK HE ASKED WHY HE WAS
6 BEING PLACED UNDER ARREST. AND I TOLD HIM FOR INVESTIGATIVE
7 PURPOSES.

8 Q. DID YOU ADVISE HIM OF ANY MIRANDA RIGHTS OR ---

9 A. NO, MA'AM, I DID NOT.

10 Q. AND WHY IS THAT?

11 A. IF I'M NOT GOING TO QUESTION HIM I WILL NOT ADVISE HIM
12 OF HIS RIGHTS.

13 Q. AFTER HE WAS PLACED IN THE PATROL CAR WAS THERE ANOTHER
14 DEPUTY THAT WAS TO SIT WITH HIM AND KIND OF MAKE SURE HE
15 DIDN'T GO ANYWHERE?

16 A. YES, MA'AM. I THINK DEPUTY WILL SMITH, WILL LEWIS,
17 EXCUSE ME, WAS ON THE SCENE AT THE TIME.

18 Q. AND DID YOU DO ANYTHING AFTER YOU PLACED HIM IN THE
19 PATROL CAR?

20 A. YES, MA'AM. I WENT BACK INTO THE BUILDING 'CAUSE I'D
21 BEEN TOLD BY SOMEONE THAT WAS AT THE DOOR AS I WENT IN AND
22 ALSO BY THE WITNESS THAT HE WAS SUPPOSEDLY CAME IN WITH A
23 GUN.

24 Q. WOULD THAT HAVE BEEN MR. ESTRADO?

25 A. YES.

- 1 Q. DID HE TELL YOU THAT?
- 2 A. YES, MA'AM. AND THAT HE TOLD HIM BEFORE HE PATTED HIM
- 3 DOWN THAT HE HAD A WEAPON ON HIM. AND HE SAID, YOU CAN'T
- 4 COME IN WITH A WEAPON. AND YOU'LL NEED TO -- HE SAID, WELL,
- 5 I'LL TAKE IT OUTSIDE.
- 6 Q. AND SO DID YOU ATTEMPT TO LOCATE THIS WEAPON?
- 7 A. YES, MA'AM, I DID.
- 8 Q. AT THAT TIME WERE YOU SUCCESSFUL IN LOCATING A WEAPON?
- 9 A. NO, MA'AM, WE WERE NOT.
- 10 Q. AND WAS IT LIGHT OUTSIDE AT THIS POINT?
- 11 A. NO, MA'AM, IT WASN'T, NOT AT THAT TIME.
- 12 Q. DO YOU HAVE ANY IDEA WHAT WE'RE TALKING ...
- 13 A. I'M GOING TO SAY IT WAS AROUND FOUR.
- 14 Q. AM?
- 15 A. YES, MA'AM.
- 16 Q. WERE THERE ANY LIGHTS IN THE PARKING LOT OR ANYTHING
- 17 LIKE THAT?
- 18 A. YES, MA'AM, THERE'S SOME LIGHTING IN THE PARKING LOT.
- 19 Q. BUT NOT NATURAL DAYLIGHT?
- 20 A. NO, MA'AM.
- 21 Q. AT THIS POINT? ALL RIGHT. AND YOU DID NOT LOCATE A
- 22 WEAPON AT THAT POINT?
- 23 A. NO, MA'AM, I DID NOT.
- 24 Q. WHAT DID YOU DO NEXT?
- 25 A. DEPUTY LEWIS TOOK POSSESSION OF THE SUSPECT, MR.

1 RIVERA, AND PLACED HIM IN HIS PATROL CAR. AND I TOOK THE
2 WITNESS, MR. FERNANDEZ, AND DROVE HIM TO THE LAW ENFORCEMENT
3 CENTER TO OBTAIN A STATEMENT.

4 Q. AND WERE YOU PRESENT DURING THE TAKING OF MR.
5 FERNANDEZ'S STATEMENT?

6 A. YES, MA'AM, I WAS.

7 Q. AT THAT POINT HAD ANOTHER TRANSLATING OFFICER BECOME
8 INVOLVED?

9 A. YES, MA'AM. AS I WAS HEADING TOWARD THE LAW
10 ENFORCEMENT CENTER I REQUESTED DEPUTY RIVERA TO RESPOND TO
11 THE LAW ENFORCEMENT CENTER FOR TRANSLATION PURPOSES.

12 Q. AND WHY WOULD YOU DO THAT IF YOU CAN SPEAK SPANISH?

13 A. BECAUSE HE IS FLUENT IN SPANISH.

14 Q. SO HE SPEAKS BETTER SPANISH THAN YOU?

15 A. YES, MA'AM.

16 Q. SO YOU DID NOT ACTUALLY TAKE MR. FERNANDEZ'S WRITTEN
17 STATEMENT, DEPUTY RIVERA DID?

18 A. THAT'S CORRECT.

19 Q. BUT DID YOU SIT IN ON IT?

20 A. YES, MA'AM, I DID.

21 Q. AND WHAT DID YOU DO AFTER MR. FERNANDEZ FINISHED GIVING
22 HIS STATEMENT?

23 A. I TOOK MR. FERNANDEZ BACK TO THE INCIDENT LOCATION
24 WHERE HIS CAR WAS AND DROPPED HIM OFF.

25 Q. AND WHAT DID YOU DO AFTER THAT?

1 A. JUST FROM ALL THAT WE'D BEEN THROUGH IN THE
2 INVESTIGATION SO FAR I DECIDED TO RIDE BACK TO 1302 CEDAR
3 LANE ROAD, WHICH IS THE PARKING LOT OF THE MEXICALI, TO SEE
4 IF I COULD LOCATE THE WEAPON.

5 Q. AND WAS IT DAYLIGHT NOW OR ...

6 A. YES, MA'AM, IT WAS STARTING TO GET DAYLIGHT. YES,
7 MA'AM.

8 Q. SO IS THAT SOMETHING YOU JUST TOOK UPON YOURSELF TO GO
9 BACK AND LOOK?

10 A. YES, MA'AM, IT WAS.

11 Q. AND WHAT DID YOU DO WHEN YOU GOT TO THE LOCATION, THE
12 MEXICALI?

13 A. I BASICALLY SEARCHED AROUND THE PARKING LOT, AND IN THE
14 TREE LINE THERE'S SEVERAL ROWS OF TREES IN THE PARKING LOT,
15 AND FOUND THE WEAPON.

16 Q. AND WHERE DID YOU FIND IT?

17 A. IT WAS IN A TREE, THE FIRST TREE RIGHT OUT IN FRONT OF
18 THE BUILDING ABOUT THE MIDDLE SECTION OF THE PARKING LOT.

19 Q. WAS IT HIGH, OR LOW, OR ...

20 A. IT WAS ABOUT EYE LEVEL.

21 Q. IN BRANCHES?

22 A. YES, MA'AM.

23 (WHEREUPON STATE'S EXHIBIT 3 WAS MARKED FOR
24 IDENTIFICATION)

25 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S NUMBER

1 3 FOR IDENTIFICATION. DO YOU KNOW WHAT THIS IS?

2 A. YES, MA'AM.

3 Q. WHAT IS THIS?

4 A. IT'S THE PARKING LOT OF 1302 CEDAR LANE ROAD.

5 Q. AND WHAT KIND OF PICTURE IS THIS?

6 A. IT'S AN OVERALL VIEW FROM OVERHEAD.

7 Q. AN ARIAL PHOTOGRAPH?

8 A. YES, MA'AM, AN ARIAL PHOTOGRAPH.

9 Q. IS IT AN ACCURATE DEPICTION OF THE PROPERTY OF THE
10 MEXICALI ---

11 A. YES, MA'AM, IT IS.

12 Q. --- PARKING LOT?

13 MS. HODGE: AT THIS TIME WE'D MOVE TO ADMIT STATE'S
14 NUMBER 3 INTO EVIDENCE.

15 MS. ROSS: NO OBJECTION.

16 THE COURT: AND THAT'S WITHOUT OBJECTION.

17 (WHEREUPON STATE'S EXHIBIT 3 WAS ADMITTED INTO
18 EVIDENCE)

19 Q. IF YOU WOULDN'T MIND STEPPING DOWN. PLEASE KEEP YOUR
20 VOICE UP WHEN YOU STEP DOWN.

21 A. OKAY.

22 Q. COME ON AROUND TO THIS. SO YOU SAY YOU RESPONDED BACK
23 TO LOOK FOR THE WEAPON AGAIN?

24 A. YES, MA'AM, I DID.

25 Q. AND YOU SAY YOU STARTED LOOKING IN THE TREE LINE?

1 A. YES, MA'AM, I DID.

2 Q. WHERE -- AND YOU CAN GO AHEAD AND MARK ON THERE. CAN
3 YOU KIND OF POINT OUT WHAT WE'RE LOOKING AT?

4 A. THIS FIRST TREE RIGHT HERE IN THIS CENTER AISLE.

5 Q. IF YOU'LL GO AHEAD AND PUT AN X ON IT. DO YOU KNOW

6 WHERE THE DOOR TO THE MEXICALI BAR WOULD BE?

7 A. YES, MA'AM. IT'S OVER HERE.

8 Q. AND WHAT'S THIS?

9 A. THAT WOULD BE THE PARKING LOT OUT IN FRONT OF HERE AND
10 THE FIRST ROW OF TREES IN THE PARKING LOT.

11 Q. SO THERE ARE HOW MANY ROWS OF TREES TOTAL?

12 A. THREE.

13 Q. AND IT WAS IN THE FIRST TREE IN THE MIDDLE?

14 A. YES, MA'AM.

15 Q. THANK YOU. YOU CAN HAVE A SEAT. ONCE YOU FOUND THAT
16 GUN WHAT DID YOU DO?

17 A. I CALLED DISPATCH AND HAD THEM RESPOND WITH AN ID
18 OFFICER TO PHOTOGRAPH AND COLLECT THE WEAPON.

19 Q. AND WHEN YOU SAY AN ID OFFICER, IS THAT A FORENSIC
20 OFFICER?

21 A. YES, MA'AM, IT IS, FORENSICS.

22 (WHEREUPON STATE'S EXHIBIT 4 WAS MARKED FOR
23 IDENTIFICATION)

24 Q. WILL YOU HIT THOSE LIGHTS FOR ONE SECOND PLEASE. WAIT
25 A MINUTE. I'M SORRY. LET ME SHOW YOU THIS FIRST. I

1 STARTED WORRYING ABOUT MY MACHINE COMING ON. I'LL SHOW YOU
2 STATE'S NUMBER 4 FOR IDENTIFICATION. AND WHAT IS THIS?

3 A. THAT'S THE GUN AS IT WAS SITTING IN THE TREE THE DAY I
4 FOUND IT.

5 Q. IS IT A TRUE AND ACCURATE REPRESENTATION OF WHAT YOU
6 SAW?

7 A. YES, MA'AM, IT IS.

8 MS. HODGE: AT THIS TIME WE'D MOVE TO ADMIT STATE'S
9 NUMBER 4 INTO EVIDENCE.

10 THE COURT: ANY OBJECTIONS?

11 MS. ROSS: YOUR HONOR, I HAVE NO OBJECTION. I'VE SEEN
12 IT NOW, THAT WASN'T INCLUDED IN DISCOVERY. SO THAT'S THE
13 FIRST TIME I'VE SEEN IT, BUT I HAVE NO OBJECTION.

14 THE COURT: ALL RIGHT.

15 (WHEREUPON STATE'S EXHIBIT 4 WAS ADMITTED INTO
16 EVIDENCE)

17 Q. I'M SHOWING STATE'S NUMBER 4. I KNOW IT'S KIND OF
18 BLINDING TO THE WITNESS. IF YOU COULD TURN AROUND. THIS IS
19 WHAT YOU HAVE JUST IDENTIFIED AS HOW YOU FOUND IT?

20 A. YES, MA'AM, IT IS.

21 Q. AND THAT AREA OF THE TREE IS HOW FAR UP?

22 A. IT'S RIGHT ABOUT MY NOSE LEVEL. IT'S THE FIRST ROW OF
23 BRANCHES AS THE TREE JUTS OUT.

24 Q. WERE THERE LEAVES ON THE TREE AT THIS TIME?

25 A. YES, MA'AM, THERE WERE.

1 Q. IS IT SOMETHING THAT YOU POSSIBLY WALKED BY ONE TIME
2 BEFORE YOU ---

3 A. YES, MA'AM.

4 Q. --- SAW IT?

5 A. YES, MA'AM, IT'S POSSIBLE.

6 Q. AND WHAT COLOR WAS THE HANDLE OF THE GUN?

7 A. BROWN.

8 Q. THANK YOU. YOU CAN TURN THE LIGHTS BACK ON, SIR.

9 THANK YOU. SO THE FORENSIC OFFICER TOOK THE PHOTO AFTER HE
10 TOOK THE GUN?

11 A. YES, MA'AM, SHE DID.

12 Q. AND WHAT DID YOU DO AFTER THAT?

13 A. I DROVE BACK TO THE LAW ENFORCEMENT CENTER.

14 MS. HODGE: AT THIS POINT I HAVE NO FURTHER QUESTIONS
15 FOR THIS WITNESS, BUT I WOULD LIKE TO RECALL HIM AT A LATER
16 POINT.

17 THE COURT: ALL RIGHT. MS. ROSS.

18 MS. ROSS: THANK YOU, YOUR HONOR.

19 CROSS EXAMINATION BY MS. ROSS:

20 Q. NOW YOU TOOK A WRITTEN STATEMENT FROM MR. FERNANDEZ AT
21 THE SCENE?

22 A. CORRECT.

23 Q. AND IN THAT STATEMENT HE SAID ---

24 MS. HODGE: I'M GOING TO OBJECT TO THIS AS HEARSAY.

25 MS. ROSS: WELL, HE WAS EXCITED. HE OBVIOUSLY ---

1 THE COURT: GO AHEAD.

2 MS. HODGE: YOUR HONOR, THIS IS A TOTALLY SEPARATE
3 TIME. THIS WAS BEFORE WHEN HE WAS CALM, THEN HE CAME BACK
4 ---

5 THE COURT: I'M GOING TO ALLOW IT. GO AHEAD.

6 MS. ROSS: THANK YOU, YOUR HONOR.

7 Q. IN THAT STATEMENT HE SAYS HE SAW TWO PERSONS ARGUING
8 OVER A GUN, ONE PERSON HAD THE GUN AND THE OTHER TOOK IT
9 AWAY FROM HIM, AND THEN I HEARD TWO SHOTS, ISN'T THAT
10 CORRECT? AND I'LL SHOW IT TO YOU IF THAT HELPS.

11 A. THAT'S MY HANDWRITING. THAT'S THE STATEMENT AS I TOOK
12 IT. THAT'S CORRECT.

13 Q. AND THAT'S THE STATEMENT YOU TOOK FROM HIM AT THE TIME
14 RIGHT AFTER IT HAPPENED?

15 A. CORRECT.

16 Q. NOW YOU SAID LATER ON YOU WERE PRESENT WHEN A STATEMENT
17 WAS TAKEN FROM MR. FERNANDEZ DOWN AT THE LAW ENFORCEMENT
18 CENTER, CORRECT?

19 A. CORRECT.

20 Q. AND ISN'T IT TRUE IN THAT STATEMENT HE SAID PRETTY MUCH
21 THE SAME THING, I SAW TWO MALES ARGUING, I SAW ANOTHER MALE
22 WALKING AROUND BEHIND ONE OF THE SIDEWALKS, WALKING AROUND
23 BEHIND ---

24 MS. HODGE: YOUR HONOR, I'M GOING TO OBJECT ---

25 Q. --- THE ONES ARGUING ---

1 MS. HODGE: --- TO THIS STATEMENT AT THE LAW
2 ENFORCEMENT CENTER.

3 MS. ROSS: I THINK UNDER COMPLETENESS THEY BROUGHT IN
4 PART OF THIS STATEMENT ---

5 THE COURT: GO AHEAD.

6 MS. ROSS: --- AND I CAN GET IN THE REST OF IT.

7 THE COURT: GO AHEAD.

8 Q. I SAW ANOTHER MAN WALKING AROUND BEHIND THE ONES
9 ARGUING. IT APPEARED THAT THOSE WERE TOGETHER. THE MALES
10 WERE ALL HISPANIC, BUT HAD DARK SKIN. THEY WERE ALL AVERAGE
11 HEIGHT AND THIN. I THEN SAW THE ONE THAT HAD -- THE ONE
12 THAT WAS WALKING AROUND BEND DOWN AS IF HE WAS GRABBING
13 SOMETHING FROM HIS LEG. A MOMENT LATER I HEARD TWO SHOTS.
14 I DID NOT SEE WHICH PERSON DID THE SHOOTING, BUT I KNOW ONE
15 OF THEM DID. WAS THAT THE STATEMENT? I'LL LET YOU LOOK AT
16 IT.

17 A. IT LOOKS LIKE IT TO ME. CORRECT.

18 Q. BUT CLEARLY IN THAT STATEMENT HE SAYS, I DID NOT SEE
19 WHICH ONE OF THE TWO ARGUING AND THE ONE WALK AROUND BEHIND
20 DID THE SHOOTING, CORRECT?

21 A. THAT'S WHAT HE SAYS THERE. THAT'S WHAT THE STATEMENT
22 SAYS.

23 MS. ROSS: I HAVE NOTHING FURTHER AT THIS TIME, BUT
24 WOULD LIKE TO LEAVE OPEN TO RECALL THIS WITNESS.

25 THE COURT: ALL RIGHT. RECROSS, I MEAN, REDIRECT.

1 MS. HODGE: YES, SIR.

2 REDIRECT EXAMINATION BY MS. HODGE:

3 Q. ON THE ORIGINAL STATEMENT THAT YOU TOOK FROM MR.
4 FERNANDEZ OUT ON THE SCENE, THE VERY FIRST TIME HE EVER
5 TALKED TO YOU, ACCORDING TO HIS STATEMENT IT SAYS, I WAS
6 ABOUT -- THE VICTIM WAS ABOUT TWENTY-FIVE FEET AWAY. AND I
7 SAW TWO PERSONS ARGUING OVER WHAT APPEARED TO BE A GUN. AND
8 ONE PERSON HAD THE GUN, AND THE OTHER PERSON TOOK IT FROM
9 HIM. AND I HEARD TWO SHOTS, IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. OKAY. THANK YOU.

12 THE COURT: THANK YOU. YOU CAN STEP DOWN.

13 MS. HODGE: THE STATE WOULD CALL DIANE ORLANDO.

14 DIANE ORLANDO, BEING DULY
15 SWORN TESTIFIED AS FOLLOWS:

16 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
17 RECORD.

18 MS. ORLANDO: DIANE ORLANDO.

19 DIRECT EXAMINATION BY MS. HODGE:

20 Q. OFFICER ORLANDO, WHO DO YOU WORK FOR?

21 A. I WORK FOR GREENVILLE COUNTY FORENSICS DIVISION.

22 Q. AND WHAT EXACTLY IS YOUR JOB?

23 A. I RESPOND TO CRIME SCENES, DOCUMENT AND COLLECT
24 EVIDENCE, PROCESS SOME ITEMS, OTHER ITEMS GET SENT FOR --
25 BASICALLY PRESERVING AND PACKAGING EVIDENCE FOR FURTHER

1 ANALYSIS.

2 Q. SO YOU DO NOT ANALYZE EVIDENCE, YOU JUST COLLECT
3 EVIDENCE, IS THAT CORRECT?

4 A. YES.

5 Q. AND DO YOU SERVICE BOTH THE GREENVILLE COUNTY SHERIFF'S
6 OFFICE AND THE GREENVILLE POLICE DEPARTMENT?

7 A. ACTUALLY WE DO ALL THE MUNICIPALITIES. IF WE'RE
8 REQUESTED, WE GO EVEN IF IT'S -- BIG CASES WHERE WE'VE GONE
9 TO OTHER STATES WHERE THE CRIME OCCURRED HERE AND WE WENT
10 THERE. SO IT JUST DEPENDS. BUT, YEAH, GENERALLY IT'S
11 GREENVILLE CITY AND GREENVILLE COUNTY.

12 Q. AND HOW LONG HAVE YOU BEEN DOING THIS JOB?

13 A. A LITTLE OVER A YEAR AND A HALF.

14 Q. AND WERE YOU THEN WORKING AS A FORENSIC OFFICER LAST
15 JULY?

16 A. YES, I WAS.

17 Q. AND DID YOU HAVE AN OCCASION TO RESPOND TO 124 CEDAR
18 LANE ROAD ---

19 A. YES, I WAS.

20 Q. --- JULY 18TH?

21 A. UM-HUM (AFFIRMATIVE).

22 Q. AND WHAT TIME DID YOU ARRIVE THERE?

23 A. I ARRIVED THERE -- WHEN I FIRST GOT TO THE SCENE IT WAS
24 IN REFERENCE TO AN ASSAULT VICTIM. AND I ARRIVED THERE AT
25 1:05 IN THE MORNING.

1 Q. AND WHEN WE REFER TO THIS 1124 CEDAR LANE ROAD, WHERE
2 ARE WE TALKING ABOUT? WHAT'S THERE?

3 A. IT'S A CARNIVAL. IT WAS LIKE A BIG EVENT. AND IT WAS
4 OUTDOORS. IT'S RIGHT ON CEDAR LANE ROAD TO THE LEFT IF
5 YOU'RE GOING AWAY FROM THE LAW ENFORCEMENT CENTER.

6 Q. ARE THERE SEVERAL DIFFERENT BUSINESSES IN THAT
7 BUILDING?

8 A. YES, THERE IS. IT'S LIKE A STRIP MALL. AND THEN IT
9 SAYS CARNIVAL REAL BIG. I GUESS THEY HOLD EVENTS OR
10 WHATEVER THERE. THIS WAS AN OUTSIDE EVENT. THERE WERE
11 PEOPLE IN THE PARKING LOT AND THINGS LIKE THAT.

12 Q. WAS THERE ALSO A FOOD STAND OF SOME SORT SET UP IN THE
13 PARKING LOT?

14 A. YEAH, THERE WERE SEVERAL THAT WERE JUST TEMPORARY TENTS
15 AND STUFF LIKE THAT.

16 Q. BUT YOU RESPONDED TO WHAT YOU WERE ORIGINALLY TOLD WAS
17 AN ASSAULT VICTIM?

18 A. YES.

19 Q. AND WHAT WERE YOU SUPPOSED TO DO WHEN YOU GOT THERE?

20 A. THEY HAD REQUESTED PHOTOGRAPHS OF THE VICTIM WHO WAS
21 INVOLVED IN SOME TYPE OF PHYSICAL ALTERCATION. AND THEY
22 REQUESTED PHOTOGRAPHS. THEY SAID THAT -- I SPOKE TO THE
23 GREENVILLE COUNTY DISPATCH AND THEY SAID THAT THE VICTIM WAS
24 STILL ON THE SCENE. AND GENERALLY THAT'S REALLY COMMON.
25 THOSE ARE A LOT OF OUR CALLS. A LOT OF THEM ARE ASSAULT

1 VICTIMS. SO IT'S NOT UNUSUAL FOR THAT.

2 Q. THEY WANT YOU TO COME AND TAKE A PHOTOGRAPH OF THE
3 PERSON ---

4 A. UM-HUM (AFFIRMATIVE).

5 Q. --- TO PRESERVE IT FOR FUTURE USE?

6 A. FOR COURT.

7 Q. AND WHEN YOU GOT THERE WAS THE VICTIM, IN FACT, STILL
8 THERE?

9 A. NO, HE WASN'T.

10 Q. DO YOU KNOW WHERE HE WENT?

11 A. I ARRIVED ON THE SCENE, AND I SPOKE TO THE SERGEANT WHO
12 WAS ON THE SCENE, SERGEANT COLE. AND I ASKED HER WHAT
13 HAPPENED. AND SHE SAID THAT HE HAD BEEN TRANSPORTED BY EMS.
14 AND THEN SHE REQUESTED PHOTOGRAPHS OF BLOOD. THERE WAS A
15 LITTLE BIT OF BLOOD IN FRONT OF THE BUILDING.

16 Q. SHE WANTED YOU TO PHOTOGRAPH THAT?

17 A. UM-HUM (AFFIRMATIVE).

18 (WHEREUPON STATE'S EXHIBIT 5 WAS MARKED FOR
19 IDENTIFICATION)

20 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
21 NUMBER 5 FOR IDENTIFICATION. WHAT IS THIS?

22 A. THAT IS THE SPANISH AMIGOS RESTAURANT.

23 Q. DID YOU TAKE THIS PICTURE?

24 A. YES, I DID.

25 Q. IS THIS WHAT YOU WERE INSTRUCTED TO TAKE A PICTURE OF

1 WHEN YOU INITIALLY RESPONDED?

2 A. YES, I WAS. THE BLOOD WAS APPROXIMATELY RIGHT HERE.
3 AND THEN I TOOK CLOSEUPS OF THE BLOOD. AND THIS IS PART OF
4 THE TENT.

5 Q. IS THIS PICTURE A TRUE AND ACCURATE REPRESENTATION OF
6 HOW THE SCENE LOOKED ON THAT EARLY MORNING?

7 A. YEAH. THE AREA WAS ROPED OFF RIGHT IN THIS GENERAL
8 AREA. AND THEN THERE ARE PEOPLE ALL OUT -- ALL OUTSIDE OF
9 THE CRIME SCENE TAPE. THE DEPUTIES ON SCENE HAD BLOCKED IT
10 OFF.

11 Q. IS IT AN ACCURATE PICTURE THOUGH ---

12 A. YES.

13 Q. --- OF WHAT YOU SAW?

14 A. UM-HUM (AFFIRMATIVE).

15 MS. HODGE: AT THIS TIME WE MOVE TO ADMIT STATE'S
16 NUMBER 5.

17 THE COURT: ANY OBJECTION?

18 MS. ROSS: YOUR HONOR, I'D JUST OBJECT TO ALL THESE
19 PHOTOGRAPHS BECAUSE THEY WEREN'T PROVIDED IN DISCOVERY.

20 MS. HODGE: YOUR HONOR, THEY WERE PROVIDED UNDER
21 CONTACT SHEETS.

22 THE COURT: MS. ROSS, SHE SAYS THEY WERE PRODUCED.

23 MS. ROSS: WELL, I DON'T REMEMBER SEEING THEM IN MY
24 DISCOVERY PACKAGE.

25 THE COURT: SHE REPRESENTS SHE'S DISCLOSED THEM. GO

1 AHEAD.

2 (WHEREUPON STATE'S EXHIBIT 5 WAS ADMITTED INTO
3 EVIDENCE)

4 Q. THIS IS ROUGHLY THE LOCATION THAT YOU WERE REQUESTED TO
5 PHOTOGRAPH?

6 A. YES. THE TENT'S RIGHT HERE.

7 Q. I'M GOING TO GIVE YOU THE -- IT'S GOT A LITTLE LASER.
8 IF YOU'LL DESCRIBE IT FOR ME.

9 A. SURE. THE TENT WAS APPROXIMATELY RIGHT HERE. THE
10 BLOOD AREA WHERE THE CLOSEUPS ARE WERE RIGHT HERE. AND THE
11 CRIME SCENE TAPE -- THIS WHOLE AREA WAS CORDONED OFF. WHEN
12 I MENTIONED THE CARNIVAL, I DON'T KNOW IF ANY OF YOU HAVE
13 EVER DRIVEN PAST IT, THERE'S A BIG SIGN. THAT WOULD BE
14 RIGHT ABOUT HERE BECAUSE IT'S A REALLY BIG STRIP MALL.

15 (WHEREUPON STATE'S EXHIBITS 6 AND 7 WERE MARKED FOR
16 IDENTIFICATION)

17 Q. AND LET ME SHOW YOU STATE'S NUMBER 6 AND STATE'S NUMBER
18 7 FOR IDENTIFICATION. FIRST LET ME ASK YOU, DID YOU TAKE
19 THESE PHOTOGRAPHS?

20 A. YES, I DID.

21 Q. AT THE SAME TIME YOU TOOK THE PHOTOGRAPH THAT WE JUST
22 LOOKED AT?

23 A. THIS WAS WHEN I WENT BACK TO THE SCENE AND I HAD
24 CORDONED OFF -- I DID IT WITH SCALES SO YOU COULD SEE
25 APPROXIMATELY HOW BIG THAT BLOOD SPOT WAS. EVIDENTLY THIS

1 WAS BEFORE I ARRIVED ON THE SCENE. THAT'S WHERE THE VICTIM
2 WAS LAYING BEFORE EMS CAME. I DON'T KNOW HIS CONDITION, IF
3 HE WAS LAYING OR STANDING, BUT THAT'S WHERE HE INITIALLY
4 ENDED UP.

5 Q. AND ARE THESE PHOTOGRAPHS TRUE AND ACCURATE
6 REPRESENTATIONS OF WHAT YOU SAW ON THIS DATE?

7 A. YES, THEY ARE.

8 MS. HODGE: AT THIS TIME WE'D MOVE STATE'S NUMBER 6 AND
9 STATE'S NUMBER 7.

10 THE COURT: LET MS. ROSS LOOK AT ---

11 MS. ROSS: SAME OBJECTION.

12 THE COURT: ALL RIGHT. SUBJECT TO YOUR OBJECTION, PUT
13 THEM IN.

14 (WHEREUPON STATE'S EXHIBITS 6 AND 7 WERE ADMITTED INTO
15 EVIDENCE)

16 Q. LET ME SHOW YOU STATE'S EXHIBIT 6. IS THIS JUST A
17 LITTLE CLOSER THAN STATE'S NUMBER 5 THAT WE JUST LOOKED AT?

18 A. YES.

19 Q. A LITTLE CLOSER SHOT. AND WHAT WOULD THIS BE? IS THAT
20 THE ---

21 A. THAT'S JUST THE GLARE FROM THE CAMERA.

22 Q. I'M NOT SPECIFICALLY TALKING ABOUT THAT DOT. THIS
23 DOOR, WHAT DOES THAT DOOR GO TO?

24 A. OH, THAT'S THE SPANISH AMIGOS RESTAURANT. I'M SORRY.

25 Q. THAT'S OKAY. AND I'M GOING TO SHOW YOU STATE'S NUMBER

1 7.

2 A. AND YOU CAN SEE THE BLOOD IS RIGHT ---

3 Q. IT'S HARD TO GET THIS -- OKAY. ON THE RIGHT HAND SIDE?

4 A. YEAH, RIGHT THERE. AND THEN THE PICTURE BEFORE IT, IT
5 WAS JUST OF THE -- RIGHT THERE, THE FRONT OF THE RESTAURANT
6 JUST SO YOU COULD SEE WHERE IT WAS. YOU TRY TO -- WHEN YOU
7 TAKE A PICTURE OF BLOOD LIKE THAT YOU WANT IT TO HAVE A
8 REFERENCE POINT WHERE YOU COULD SEE EXACTLY WHERE IT WAS.
9 SO I TOOK IT AND A PIECE OF THAT DOOR.

10 Q. AND WHAT IS OVER IN THIS AREA? DO YOU KNOW WHAT
11 ESTABLISHMENT OR WHAT BUSINESS?

12 A. YEAH. I HAVE -- THAT WOULD BE KEN'S PAWN SHOP. IT'S
13 THE SPANISH AMIGOS RESTAURANT, WHICH WAS RIGHT WHERE THE
14 BLOOD WAS AND THEN YOU HAVE KEN'S PAWN SHOP RIGHT OVER HERE.
15 AND THEN THE LAST BUSINESS OVER IN THAT STRIP MALL IS -- IT
16 SAYS THE SPANISH AMIGOS MARKET.

17 Q. THANK YOU. LET'S GO BACK TO WHAT YOU WERE ACTUALLY
18 DOING AFTER YOU TOOK YOUR INITIAL PHOTOGRAPHS AT THE
19 INCIDENT LOCATION. WHAT DID YOU DO NEXT?

20 A. AT THAT POINT, LIKE I SAID, THERE WASN'T -- IT WASN'T
21 KNOWN IF IT WAS AN ASSAULT. THEN THERE'S QUESTION IF IT WAS
22 AN ACTUAL SHOOTING BECAUSE OFFICERS SAID THAT THEY HAD
23 LOOKED FOR SPENT SHELL CASINGS AROUND. AND THEY WEREN'T
24 SURE EXACTLY WHAT THEY HAD. SO I WENT TO THE HOSPITAL TO
25 SEE EXACTLY THE STATUS OF THE VICTIM AND TO SEE WHAT HIS

1 CONDITION WAS.

2 Q. AND DO YOU KNOW WHAT TIME THIS WAS?

3 A. I CLEARED FROM THE INITIAL SCENE WHEN I TOOK THE
4 PHOTOGRAPHS AT 1:25. AND THEN I WENT DIRECTLY TO THE
5 HOSPITAL AT 1:25 AND GOT THERE AT 1:36.

6 Q. AND DID YOU DETERMINE OR WERE YOU ABLE TO FIND OUT THE
7 STATUS OF THE VICTIM AT THAT TIME?

8 A. YES, I WAS. WHEN I GOT THERE THEY WERE TRYING TO
9 STABILIZE HIM. HE LOOKED LIKE HE HAD BEEN BEAT UP. THERE
10 ARE A LOT OF PEOPLE KIND OF AROUND HIM. AND THEN OVER TO
11 THE SIDE THE DOCTOR WAS LOOKING AT SOMETHING ON AN OVERHEAD
12 SCREEN, AN X-RAY FILM. AND WHEN I WALKED OVER TO IT I SAW
13 THAT HE ACTUALLY HAD A PROJECTILE IN HIS HEAD RIGHT UP IN
14 HIS NASAL AREA ON THE RIGHT SIDE OF HIS HEAD.

15 Q. AND WITH THAT INFORMATION DID YOU CALL BACK TO THE
16 SCENE OR DID YOU LET ANYONE KNOW THAT? DID YOU DOCUMENT IT?

17 A. I HAD DOCUMENTED IT. AND AT THAT POINT SOMEBODY HAD
18 COMMUNICATED WITH THEM BECAUSE THEY STILL LEFT THE SCENE
19 INTACT. IT WAS STILL BLOCKED OFF.

20 Q. AND WHAT WAS -- HOW LONG DID YOU STAY AT THE HOSPITAL?

21 A. I STAYED AT THE HOSPITAL -- I WAS THERE AT 1:36 AND I
22 CLEARED FROM THERE AT 2:11. AND THEN I HAD WENT BACK TO THE
23 LAW ENFORCEMENT CENTER TO DOWNLOAD THE PICTURES AT 2:17.

24 Q. 2:17 IN THE MORNING. AND WHEN YOU SAY DOWNLOAD THE
25 PICTURES, WHAT DO YOU DO WITH THEM?

1 A. THE PHOTOGRAPHS ARE IN A LITTLE MEMORY CARD, A MEMORY
2 STICK. AND YOU DOWNLOAD THEM INTO THE DATABASE. AT THE LAW
3 ENFORCEMENT CENTER WE HAVE A PROGRAM. AND THEN IT STAYS
4 THERE.

5 Q. WERE YOU CALLED TO DO SOMETHING AFTER THAT?

6 A. YES. I THEN WENT BACK OUT TO THE SCENE. WHEN I HAD
7 CLEARED FROM THERE THEY KNEW I WAS GOING TO THE HOSPITAL TO
8 FIND OUT WHAT THE STATUS OF THE VICTIM WAS. AND THEY SAID
9 THAT THEY WOULD STAY THERE. THEY HAD OFFICERS THERE. AND
10 THEY JUST KEPT THAT AREA BLOCKED OFF.

11 Q. SO YOU WENT BACK TO THE SCENE?

12 A. YES.

13 Q. AND WHAT TIME WAS THIS?

14 A. I WENT BACK TO THE SCENE AT 3:50 IN THE MORNING.

15 Q. AND YOU TOOK MORE PHOTOS THEN?

16 A. YEAH. INVESTIGATOR SMITH HAD ASKED ME TO COLLECT BLOOD
17 SAMPLES. SO I SCALED OFF EACH AREA WHERE I TOOK BLOOD
18 SAMPLES. AND I TOOK THEM FROM FOUR DIFFERENT AREAS. AND I
19 HAD TAPE MARKING EACH AREA WHERE I TOOK IT FROM.

20 Q. IS THAT AS IT'S SHOWN ON STATE'S NUMBER 7? IS THAT
21 WHAT YOU'RE REFERRING TO?

22 A. YES, MA'AM.

23 Q. ONCE YOU COLLECTED THOSE BLOOD SWABBINGS -- DID YOU
24 TAKE ANY FROM A PERSON OR WERE THEY JUST FROM THE GROUND?

25 A. THEY WERE JUST FROM THE GROUND. THERE WAS A LARGE AREA

- 1 RIGHT HERE. I TOOK ONE AND THEN THERE WERE THREE OTHERS.
2 SO I WENT -- I TOOK IT FIRST FROM HERE AS ONE. I TOOK IT
3 THERE FROM ONE. AND THEN ON THE SIDE OF THE BUILDING RIGHT
4 IN FRONT OF THE DOOR THERE WERE JUST DROPS. AND I JUST TOOK
5 EACH DROP. AND THERE WERE A TOTAL OF THREE. IT WAS ABOUT
6 WHERE THAT WOULD BE. SEE HOW THAT'S PART OF THE BUILDING?
7 AND IT WENT FROM ONE, TWO, AND THEN THREE.
- 8 Q. AFTER YOU COLLECTED THOSE BLOOD SWABBINGS AND TOOK MORE
9 PHOTOS WERE YOU ASKED TO RESPOND SOMEWHERE ELSE?
- 10 A. YES. I WAS ASKED TO RESPOND TO 1302 AT THE CIVIC
11 CENTER IN REFERENCE TO -- THAT THEY HAD A POSSIBLE SUSPECT
12 IN CUSTODY.
- 13 Q. AND WHAT WERE YOU GOING TO DO OR WHAT DID YOU DO WHEN
14 YOU GOT TO 1302?
- 15 A. I SPOKE WITH INVESTIGATOR SMITH WHO WAS ON SCENE.
- 16 Q. AND IS THIS THE MEXICALI BAR?
- 17 A. YES, IT IS.
- 18 Q. WHAT DID YOU DO THERE?
- 19 A. I DID A GUNSHOT RESIDUE TEST FOR ANALYSIS TO SEE IF THE
20 SUSPECT POSSIBLY FIRED A WEAPON.
- 21 Q. AND WHO DID YOU DO THE TEST ON?
- 22 A. I DID IT ON THE SUSPECT THAT THEY HAD IN CUSTODY.
- 23 Q. AND WHO WAS THAT?
- 24 A. I HAVE IT RIGHT HERE. I'M SORRY. MARLON RIVERA.
- 25 Q. AT THE TIME THAT YOU TOOK THESE GUNSHOT RESIDUE KITS

1 WERE YOU ONE HUNDRED PERCENT CERTAIN OF THE NAME OF THE
2 PERSON YOU WERE TAKING THE TEST FROM?

3 A. NO, I WASN'T. IN FACT, WE HAD -- I HAD WAITED BEFORE I
4 ACTUALLY FILLED OUT THE FORMS. I FILLED OUT THE FORM, GOT
5 THE NECESSARY INFORMATION WHICH HAD THE DATE AND TIME ON
6 WHEN I WAS TAKING IT. I DID TWO DIFFERENT TYPES OF GUNSHOT
7 RESIDUE TESTS. ONE WAS AN SCM, THE OTHER WAS AN AA. AND
8 ---

9 Q. LET ME STOP YOU RIGHT THERE AND LET YOU EXPLAIN WHAT
10 EACH OF THOSE IS.

11 A. THE FIRST ONE I DID WAS A SCAN AND ELECTRON MICROSCOPE
12 TEST. IT TESTS GSR. AND ---

13 Q. WHICH IS WHAT? WHAT IS GSR?

14 A. GUNSHOT RESIDUE.

15 Q. OKAY.

16 A. OKAY. SORRY. YOU HAVE A LITTLE BOX. AND WHEN YOU
17 OPEN IT UP -- IT'S A SEALED BOX. THEY'RE ALREADY PRE-MADE
18 AND EVERYTHING. YOU POP OPEN THE BOX, YOU BREAK THE SEAL.
19 AND IT HAS FOUR DABBERS. ONE IS FOR THE RIGHT HAND, ONE IS
20 FOR THE LEFT HAND. AND YOU DO ONE DABBER. AND JUST THINK
21 OF A LITTLE VIAL, THINK OF A VIAL. AND AT THE END THERE'S A
22 LITTLE PIECE OF STICKY TAPE. AND THERE'S ONE FOR THE TOP OF
23 THE HAND AND THEN ONE FOR THE PALM AREA OF THE HAND FOR EACH
24 HAND, FOR THE RIGHT HAND AND THE LEFT HAND. AND YOU JUST
25 TAKE THE THING, YOU POP OFF THE PROTECTIVE CAP, AND YOU JUST

1 DAB IT. AND THEN YOU JUST CONSISTENTLY DO EACH ONE. AND
2 THEN YOU PUT THE CAP BACK ON.

3 (WHEREUPON STATE'S EXHIBIT 12 WAS MARKED FOR
4 IDENTIFICATION)

5 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
6 NUMBER 12 FOR IDENTIFICATION PURPOSES. ARE YOU FAMILIAR
7 WITH THAT?

8 A. YES.

9 Q. WHAT IS THAT?

10 A. THIS IS A GUNSHOT RESIDUE COLLECTION KIT FOR ANALYSIS
11 BY SCM.

12 Q. IS THAT WHAT YOU HAVE JUST DESCRIBED?

13 A. UM-HUM (AFFIRMATIVE). THAT WAS THE DABBER TEST.

14 Q. AND ARE YOUR INITIALS ON THERE OR ---

15 A. YES. THIS IS ALL MY HANDWRITING. I PUT THE CASE
16 NUMBER, THE NAME OF THE SUSPECT, AND MYSELF, AND THEN YOU
17 INITIAL IT TO LET THEM KNOW YOU DID IT.

18 Q. IS THAT SEAL BROKEN AT THIS POINT?

19 A. YES.

20 Q. AND IF YOU WOULD OPEN IT UP. WHAT'S INSIDE OF THERE?

21 A. THESE ARE THE DABBERS. IT'S LIKE A THICK VIAL. AND IF
22 YOU JUST OPEN IT ---

23 Q. CAN I OPEN IT?

24 A. YES, YOU CAN OPEN IT. THIS IS EXACTLY WHAT YOU WOULD
25 DO ON SCENE. YOU HAVE THE THING. AND THEN THE LITTLE BLACK

1 THING IS THE STICKY PART OF IT. AND THAT'S WHERE YOU
2 COLLECT IT FROM. AND YOU JUST -- I USUALLY JUST OPEN UP THE
3 PACK, SEE IF ALL OF THEM ARE IN THERE BECAUSE THEY'RE
4 LABELED. THIS ONE RIGHT HERE IS THE RIGHT PALM. AND THEN
5 YOU HAVE THE RIGHT BACK, AND THEN THE LEFT PALM, AND THEN A
6 LEFT BACK.

7 Q. AND IS THAT WHAT YOU DID WITH THIS DEFENDANT, MARLON
8 RIVERA, OUT AT 1302 CEDAR LANE?

9 A. YES, I DID.

10 Q. AND DO YOU HAVE A TIME THAT YOU DID THIS KIT OR
11 COLLECTED THIS KIT FROM HIM?

12 A. YES, I DO. I HAVE THE ACTUAL ORIGINAL PROPERTY AND
13 EVIDENCE FORM. I COLLECTED THE SAMPLE AT 4:43 IN THE
14 MORNING.

15 Q. AND WHAT DATE?

16 A. THAT WAS 7/18/04.

17 Q. ONCE YOU COLLECT THE SAMPLE AND YOU'RE OUT ON SCENE
18 WHAT DO YOU DO WITH IT?

19 A. I CLOSE IT. THERE'S A PAPER -- EVERYTHING THAT YOU SAW
20 IN THAT KIT -- THERE ARE FOUR DABBERS. THERE'S ALSO A PIECE
21 OF PAPER, WHICH IS NOT YET IN THERE. THE CRIME ANALYSIS LAB
22 THAT WE HAVE AT THE LAW ENFORCEMENT CENTER, THEY HAVE ACCESS
23 TO IT. THE SEAL'S ALREADY BEEN POPPED. SO OBVIOUSLY THEY
24 LOOKED AT IT. AND THEN SLED WOULD NORMALLY INVESTIGATE IT,
25 ESPECIALLY THE AA, WHICH I'LL GET INTO PROBABLY NEXT. BUT

1 THAT'S THE ONLY THING MISSING FROM THAT KIT. THAT KIT IS AS
2 IT WAS.

3 Q. AND YOUR INITIALS ARE ON A PIECE OF TAPE ON THIS KIT,
4 IS THAT CORRECT?

5 A. YEAH, THEY ARE.

6 Q. AT SOME POINT DO YOU PUT A PIECE OF TAPE OVER IT TO
7 SEAL THIS BOX?

8 A. YES, I DO. AFTER THE PAPERWORK IS ALL COMPLETED -- WE
9 WERE NOT SURE WHO THE SUSPECT WAS AT THAT POINT IN TIME.
10 THEY WANTED TO WAIT AND HAVE A POSITIVE IDENTIFICATION. SO
11 I DID NOT WANT TO PUT THE WRONG NAME ON THERE. I HAD THE
12 SUSPECT IN CUSTODY. I FILLED OUT THE PROPER INFORMATION
13 WHICH SAYS -- IT ASKS DIFFERENT STUFF. IT ASKS FOR THE
14 DEPARTMENT, THE INVESTIGATING OFFICER, AND STUFF LIKE THAT.
15 I WENT AHEAD AND FILLED ALL THAT OUT. AND I JUST LEFT THE
16 NAME OFF AT THAT POINT.

17 (WHEREUPON STATE'S EXHIBIT 13 WAS MARKED FOR
18 IDENTIFICATION)

19 Q. NOW I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S
20 NUMBER 13 FOR IDENTIFICATION. AFTER YOU DID THE DABBERS,
21 PUT THEM IN THE BOX, ON THE DEFENDANT, WHAT DID YOU DO NEXT?

22 A. I WENT AHEAD AND DID AN AA KIT FOR A GUNSHOT RESIDUE
23 TEST.

24 Q. WHAT DOES AA MEAN?

25 A. IT'S ATOMIC ABSORPTION. SLED IS USUALLY THE ONES WHO

1 ANALYZE THESE. THEY CAN'T DO THEM IN OUR CRIME LAB BECAUSE
2 IT'S A MORE SOPHISTICATED TEST. I CAN'T GO INTO THE EXACT
3 DIFFERENCES, MORE OF A CRIME LAB SPECIALIST WOULD HAVE TO GO
4 INTO THAT BECAUSE THEY'RE MORE -- THEY CAN EXPLAIN IT
5 BETTER.

6 Q. YOU JUST DO THE COLLECTION OF THE EVIDENCE?

7 A. I JUST DO THE COLLECTION. AND HOW THIS LOOKS IS
8 THERE'S SKINNY VIALS WITH TWO Q-TIPS IN EACH OF THEM. AND
9 THERE ARE A TOTAL OF FIVE. AND YOU HAVE A LITTLE BOTTLE
10 WHICH WOULD BE COMPARABLE IF YOU WEAR CONTACT LENSES, A
11 LITTLE EYEDROP LOOKING BOTTLE. AND IT'S NITRIC ACID. IT'S
12 GOT FIVE PERCENT NITRIC ACID, AND IT'S GOT WATER.

13 SO WHAT YOU WOULD DO IS FIRST YOU TAKE -- YOU POP OPEN
14 THE CAPS AND THEN YOU HAVE THE TWO Q-TIPS EXPOSED. YOU PUT
15 THE ACID ON IT TO MAKE IT WET. THE ONLY TIME YOU REALLY DO
16 THESE -- THERE HAVE BEEN CONFLICTS ON WHETHER OR NOT -- IF
17 YOU DON'T KNOW WHAT TYPE OF GUN WAS FIRED THEN THE OTHER
18 TEST WON'T WORK. SINCE WE KNEW THE SEVERITY OF THE CASE I
19 JUST WENT AHEAD AND DID BOTH OF THEM.

20 BUT LIKE I SAID, YOU HAVE THE Q-TIPS, YOU WET THE Q-
21 TIPS, AND THEN YOU JUST DO THE SAME THING AS YOU DID BEFORE.
22 RIGHT HAND, I USUALLY DO FIRST. YOU DO THE BACK, THEN THE
23 PALM. BUT YOU'RE RUBBING IT WITH THE Q-TIP INSTEAD OF
24 DABBING IT. AND THEN I DID THE LEFT HAND.

25 AND THE REASON WHY YOU HAVE FIVE INSTEAD OF FOUR LIKE

- 1 YOU DO ON THE SCM IS BECAUSE WE USUALLY TAKE A CONTROL
2 SAMPLE, OR AT LEAST I DO BECAUSE IT'S IN THERE, AND USUALLY
3 YOU WANT TO GET A SPOT JUST TO -- AS A CONTROL, EXACTLY WHAT
4 IT IS, TO MAKE SURE -- YOU WOULD DO IT IN A SPOT WHERE
5 GENERALLY THEY SHOULDN'T HAVE IT ON THEM. I USUALLY DO THE
6 RIGHT ANKLE. I'LL GET IT FROM THEIR ANKLE OR SOMETHING LIKE
7 THAT. SOME PEOPLE DO THE BACK OF THE NECK. I GENERALLY
8 DON'T DO THAT BECAUSE IF YOU FIRE A GUN YOU MIGHT HAVE
9 GUNSHOT RESIDUE AROUND YOUR HEAD. SO ---
- 10 Q. SO YOUR CONTROL SHOULD BE SOMEWHERE YOU WOULD NOT
11 TYPICALLY EXPECT TO FIND GUNSHOT RESIDUE EVEN IF YOU FIRED A
12 WEAPON?
- 13 A. YEAH. THAT'S WHY IF THEY HAVE PANTS ON LIKE THAT OR
14 SOMETHING LIKE THAT I USUALLY GET IT FROM THE RIGHT ANKLE.
15 IT'S JUST GENERALLY ALWAYS WHAT I DO.
- 16 Q. IS THAT WHAT YOU DID IN THIS CASE?
- 17 A. YES.
- 18 Q. SO ONCE YOU TOOK THE DABBERS, PUT THEM IN THE KIT, YOU
19 DID THE SWABS?
- 20 A. UM-HUM (AFFIRMATIVE).
- 21 Q. WHAT DID YOU DO WITH THESE TWO BOXES?
- 22 A. I PUT THEM IN MY TRUCK. I FILL OUT THE PAPERWORK FOR
23 EACH OF THEM, PUT THEM IN MY TRUCK. AND WHEN I WENT BACK TO
24 THE LAW ENFORCEMENT CENTER I PUT THEM IN TEMPORARY STORAGE.
- 25 Q. AND WHERE IS THE TEMPORARY STORAGE?

1 A. IT IS AT OUR OFFICE, WHICH WAS AT THE LEC BEFORE.
2 WE'VE MOVED SINCE THEN, BUT I PUT THEM IN THE OFFICE. EACH
3 OF US ARE DESIGNATED A SHELF. AND IT'S SECURE. NOBODY HAS
4 ACCESS TO IT BESIDES THE EMPLOYEES.

5 Q. AND YOU PUT SOME EVIDENCE TAPE OVER IT AND PUT YOUR
6 INITIALS ON IT?

7 A. UM-HUM (AFFIRMATIVE).

8 Q. AND DO YOU KNOW WHY YOU DO THAT? TO KEEP IT SECURE?

9 A. I DO IT TO KEEP IT, YOU KNOW, SECURE. EVERYONE SHOULD
10 DO IT. AND IT HAS TO BE THAT WAY BEFORE IT GOES INTO
11 PROPERTY AND EVIDENCE. I SECURED IT AND PUT THE TAPE OVER
12 IT. ONCE I HAD A POSITIVE ID, I GUESS ONCE THE JAIL
13 IDENTIFIED WHO HE WAS BY FINGERPRINT RECORDS, I DON'T KNOW,
14 I JUST GOT A CONFIRMATION FROM THE INVESTIGATOR WHO HE WAS.

15 Q. MEANING WHAT HIS NAME WAS?

16 A. YES, JUST IN CASE HE WAS GIVING A FAKE NAME. I DON'T
17 THINK HE HAD ID ON HIM. I DON'T KNOW IF HE DID.

18 Q. AND IS THE PERSON THAT YOU TOOK THOSE KITS FROM, THE
19 DABBER AND THE SWAB, IS HE PRESENT IN COURT TODAY?

20 A. YES, HE IS.

21 Q. AND CAN YOU IDENTIFY WHO HE IS?

22 A. RIGHT THERE.

23 Q. IS HE THE DEFENDANT?

24 A. YES.

25 Q. AND YOU TOOK THE KITS DOWN TO PROPERTY AND EVIDENCE.

1 HOW DOES THAT WORK AND WHAT DID YOU DO IN PROPERTY AND
2 EVIDENCE?

3 A. ONCE EVERYTHING WAS FILLED OUT PROPERLY AND IT WAS
4 SEALED I TAKE IT TO PROPERTY AND EVIDENCE. THEY SIGN IT IN.
5 I ACTUALLY HAVE A -- LIKE AN ACTUAL FORM OF ---

6 Q. WHO TOOK POSSESSION OF IT FROM YOU AT PROPERTY AND
7 EVIDENCE?

8 A. EDDIE HUCKS DID.

9 Q. AND WHO IS EDDIE HUCKS?

10 A. HE'S JUST ONE OF THE EMPLOYEES WHO WORK UP PROPERTY AND
11 EVIDENCE. AND I FILL OUT A TYPED FORM WITH ALL THE
12 INFORMATION ON IT SAYING THE TIME, WHO I COLLECTED IT FROM.
13 IN THIS CASE I CHECKED OFF SUSPECT. AND I PUT THE NAME. I
14 PUT THE ADDRESS WHERE I GOT IT FROM, THE TIME, THE DATE,
15 WHAT THE ACTUAL EVIDENCE WAS, WHICH IS THESE TWO THINGS, TWO
16 GSR KITS. AND THEN HE SIGNED IT IN. AND HE ACTUALLY DATES
17 IT AND THEN PUTS THE TIME ON WHEN HE RECEIVED IT.

18 Q. AND DID IT DIRECTLY PASS FROM YOUR HANDS TO HIS HANDS?

19 A. YES. NOBODY ELSE IS ABLE TO TURN IN OUR STUFF FOR US.

20 Q. AND SO WHEN YOU HANDED IT OVER TO MR. HUCKS IT WAS
21 SEALED WITH THE TAPE OVER THE BOXES AND HAD NOT BEEN BROKEN?

22 A. YES.

23 Q. THE SEAL HAD NOT BEEN BROKEN?

24 A. UM-HUM (AFFIRMATIVE).

25 Q. NOW AFTER DOING THE GUNSHOT RESIDUE KIT, THE COLLECTION

1 KIT FROM THE DEFENDANT AT THE MEXICALI, WHAT DID YOU DO
2 NEXT?

3 A. I WAS -- AFTER I --- WELL, AFTER I WAS DONE DOING THE
4 KIT I WENT AND TALKED TO INVESTIGATOR SMITH. AND HE HAD
5 REQUESTED ME TO GO BACK OUT TO THE HOSPITAL TO COLLECT THE
6 VICTIM'S CLOTHING.

7 Q. AND DID YOU DO THAT?

8 A. YES, I DID.

9 Q. DID YOU DO ANYTHING ELSE AT THE HOSPITAL?

10 A. NO. THE VICTIM HAD BEEN MOVED SINCE WHEN I ORIGINALLY
11 SAW HIM. WHEN I SAW HIM AND TOOK A PICTURE OF WHERE THE
12 PROJECTILE HAD ENTERED, WHEN I WENT BACK HE WAS NOT IN THAT
13 ROOM. THAT WAS IN THE ER DOWNSTAIRS. HE HAD BEEN MOVED.
14 SO I WENT THERE, GOT THE CLOTHING, AND THEN I JUST LEFT.

15 Q. AND DID YOU TAKE THE CLOTHING ALSO TO THIS PROPERTY AND
16 EVIDENCE LOCATION AFTERWARDS?

17 A. I TOOK IT TO OUR OFFICE. AND I HUNG IT IN ORDER TO LET
18 IT DRY PROPERLY. AND THEN IT WAS PACKAGED ONCE IT WAS
19 DRIED.

20 Q. NOW YOU'VE BEEN SEVERAL PLACES ON THIS MORNING, IS THAT
21 CORRECT?

22 A. YES.

23 Q. ONCE YOU LEFT THE HOSPITAL FOR THE SECOND TIME AFTER
24 GETTING THE VICTIM'S CLOTHING WHERE DID YOU GO THEN?

25 A. AFTER THAT, AFTER I CLEARED FROM THE HOSPITAL, I HAD

1 WENT BACK TO THE OFFICE.

2 Q. AND DID YOU GET CALLED OUT TO A LOCATION AFTER BEING AT
3 THE OFFICE?

4 A. YES, I WAS.

5 Q. WHERE WAS THAT?

6 A. I WAS REQUESTED -- THEY SAID THAT THEY HAD -- THE
7 DEPUTIES APPARENTLY HAD LOCATED THE POSSIBLE WEAPON AND THEY
8 WANTED IT COLLECTED. AND THAT -- HUH?

9 Q. GO AHEAD. I'M SORRY.

10 A. AND I RECEIVED THAT CALL AT 6:30 IN THE MORNING. AND I
11 ARRIVED AT 6:40. AND THAT WAS THE SAME LOCATION THAT I WENT
12 TO WHERE I DID THE GUNSHOT RESIDUE TESTS.

13 Q. ON THE DEFENDANT?

14 A. UM-HUM (AFFIRMATIVE).

15 Q. SO NOW YOU'RE BACK THERE AROUND 6:40 IN THE MORNING?

16 A. YES.

17 Q. AND WAS THERE SOMEONE THERE TO MEET YOU?

18 A. YES.

19 Q. AND WHAT WERE YOU INSTRUCTED TO DO AT THIS POINT?

20 A. AT THAT POINT I MET WITH OFFICER GARRETT. AND
21 APPARENTLY HE HAD LOCATED A WEAPON. AND I SECURED IMAGES OF
22 IT, TOOK PHOTOGRAPHS TO SHOW THE LOCATION OF WHERE IT WAS.
23 AND THEN I COLLECTED IT.

24 (WHEREUPON STATE'S EXHIBITS 9 AND 10 WERE MARKED FOR
25 IDENTIFICATION)

1 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S NUMBER
2 9 AND STATE'S NUMBER 10 FOR IDENTIFICATION. AND WHAT ARE
3 THESE?

4 A. THAT'S WHERE I PULLED INTO THE CIVIC CENTER. I HAD
5 BEEN THERE ---

6 Q. YOU'RE REFERRING TO STATE'S NUMBER 9 FOR ID.

7 A. UM-HUM (AFFIRMATIVE).

8 Q. GO AHEAD.

9 A. THAT WAS WHERE THE WEAPON WAS WHERE I WENT TO COLLECT
10 IT.

11 Q. AND THEN WHAT IS STATE'S NUMBER 10 FOR IDENTIFICATION?

12 A. I HAD TAKEN A PHOTOGRAPH OF THE ACTUAL WEAPON THAT I
13 WAS CALLED OUT TO COLLECT WHERE HE HAD FOUND IT. HE HADN'T
14 TOUCHED IT BEFORE I GOT THERE.

15 Q. ARE THESE PHOTOS TRUE AND ACCURATE REPRESENTATIONS OF
16 WHAT YOU SAW WHEN YOU GOT TO THE MEXICALI AT 6:30?

17 A. YES.

18 MS. HODGE: AT THIS TIME WE'D MOVE TO ADMIT 9 AND 10
19 INTO EVIDENCE.

20 MS. ROSS: MY PRIOR OBJECTION.

21 THE COURT: SUBJECT TO YOUR OBJECTION, PUT THEM IN.

22 (WHEREUPON STATE'S EXHIBITS 9 AND 10 WERE ADMITTED INTO
23 EVIDENCE)

24 Q. STATE'S NUMBER 9, WHAT IS THIS?

25 A. THIS WOULD BE THE CIVIC CENTER. IT SAYS IT RIGHT

1 THERE. AND THIS IS THE TREE. DEPUTY GARRETT'S CAR IS RIGHT
2 THERE. AND I GOT OUT, SPOKE WITH HIM. AND HE STATED THAT
3 HE HAD LOCATED THE POSSIBLE WEAPON IN THE TREE.

4 Q. AND IS THAT THE TREE THAT'S IN THE PICTURE?

5 A. IT'S RIGHT HERE, YEAH.

6 Q. AND THEN -- WHERE IS THE MEXICALI IN RELATION TO THIS?

7 A. IT'S OVER THERE.

8 Q. AND SO STATE'S NUMBER 10, THIS IS JUST A CLOSEUP?

9 A. YEAH. THAT'S OF THE TREE. IT WAS RIGHT IN THE
10 BRANCHES. SEE HOW THE BRANCHES VEER OFF LIKE THAT. IT WAS
11 JUST STUCK RIGHT IN THERE.

12 Q. THANK YOU. THEN YOU ACTUALLY COLLECTED THIS WEAPON, IS
13 THAT CORRECT?

14 A. YES, I DID. FIRST I -- WHEN YOU COLLECT A GUN LIKE
15 THAT WHETHER IT'S A HOMICIDE OR WHAT HAVE YOU, USUALLY YOU
16 MARK WHERE THE BULLET WAS BECAUSE YOU WANT TO MAKE SURE --
17 IT WAS A REVOLVER. SO YOU WANT TO BE CONSISTENT AND MAKE
18 SURE THAT THE SHELL CASING IS WHERE IT SHOULD BE. IN THIS
19 CASE I THOUGHT THAT THE SHELL CASING WOULD BE IN THERE. SO
20 I MARKED IT WHERE THE ACTUAL BARREL WAS. AND THEN I OPENED
21 IT TO SEE WHERE THE SHELL CASING WAS, AND IT WAS EMPTY.

22 Q. SO THERE WERE NO BULLETS IN THIS GUN?

23 A. THERE WERE NO BULLETS AND THERE WERE NO SHELL CASINGS.

24 Q. AND I'M SORRY, DID YOU SAY WHAT KIND OF A GUN THIS WAS?

25 A. THIS WAS A .22 ROSSI.

1 Q. IS THAT A REVOLVER OR A SEMI-AUTOMATIC?

2 A. IT'S A REVOLVER.

3 (WHEREUPON STATE'S EXHIBIT 14 WAS MARKED FOR
4 IDENTIFICATION)

5 Q. AND LET ME SHOW YOU STATE'S NUMBER 14 FOR
6 IDENTIFICATION. DO YOU RECOGNIZE THIS BOX AND ITS CONTENTS?

7 A. YES, I DO. THIS IS MY HANDWRITING. IT'S GOT THE CASE
8 NUMBER. AT THAT POINT IT WAS A COUPLE OF DAYS BEFORE THE
9 VICTIM ACTUALLY PASSED AWAY. SO I HAD IT AS A 49 VICTIM,
10 WHICH MEANS A GUNSHOT VICTIM. I HAD THE DATE AND TIME I
11 COLLECTED IT, THE ADDRESS, AND WHERE IT WAS COLLECTED FROM,
12 MEANING THE TREE IN A PARKING LOT, FIRST TREE IN THE PARKING
13 LOT IN FRONT OF THE BUSINESS, AND THEN ROSSI .22, AND THEN
14 THE SERIAL NUMBER OF THE REVOLVER.

15 Q. I'M GOING TO ASK YOU TO OPEN IT UP AND TELL US WHAT'S
16 INSIDE.

17 A. DO YOU WANT ME TO CUT IT OUT?

18 Q. PROBABLY LEAVE IT IN THERE.

19 MS. HODGE: SHE ASKED ABOUT CUTTING IT OUT.

20 A. I COULD PROBABLY ---

21 MS. HODGE: SHOULD SHE JUST LEAVE IT INTACT?

22 A. --- HOLD IT UP.

23 Q. OKAY.

24 A. DO YOU WANT TO SEE IT? IT'S NOT GOING TO GO ANYWHERE.

25 THE COURT: JUST LEAVE IT. CUT THE LIGHTS BACK ON.

1 Q. IS THIS THE GUN THAT YOU COLLECTED FROM THE TREE?

2 A. YES, IT IS.

3 Q. NOW THERE ARE SOME BULLETS AND SHELL CASINGS IN HERE.

4 THOSE WERE NOT PART OF WHAT YOU COLLECTED, CORRECT?

5 A. NO.

6 Q. THAT WOULD HAVE BEEN ADDED BY BALLISTICS LATER, IS THAT
7 CORRECT?

8 A. YEAH, THEY PROBABLY USED TO TEST FIRE IT. BUT LIKE I
9 SAID, THERE WERE NO SHELL CASINGS IN THE WEAPON AND THERE
10 WERE NO LIVE ROUNDS IN IT.

11 Q. AS TO THE REVOLVER, IS IT IN SUBSTANTIALLY THE SAME
12 CONDITION AS WHEN YOU COLLECTED IT?

13 A. YES, BESIDES THE WHITE -- WHERE YOU SEE THE WHITE, WHAT
14 LOOKS LIKE POWDER, THAT'S JUST FROM ME WHERE I TRIED TO
15 PROCESS IT FOR FINGERPRINTS. IT'LL DISCOLOR THE GUN.

16 Q. NOW LET'S TALK ABOUT THAT. ONCE YOU COLLECTED THIS GUN
17 DID YOU TAKE IT BACK TO YOUR OFFICE AS WELL?

18 A. YES, I DID.

19 Q. AND TELL US A LITTLE BIT ABOUT ---

20 THE COURT: IS THAT IN EVIDENCE NOW?

21 MS. HODGE: I'M SORRY. AT THIS TIME WE'D MOVE TO ADMIT
22 IT INTO EVIDENCE.

23 THE COURT: ANY OBJECTION?

24 MS. ROSS: NO OBJECTION.

25 (WHEREUPON STATE'S EXHIBIT 14 WAS ADMITTED INTO

1 EVIDENCE)

2 Q. TALKING ABOUT FINGERPRINTING, YOU ARE NOT A FINGERPRINT
3 ANALYSIS PERSON, IS THAT CORRECT?

4 A. I'M NOT A LATENT EXAMINER, NO.

5 Q. AND WHAT IS YOUR ROLE IN REGARD TO FINGERPRINTS?

6 A. AS FAR AS THE EVIDENCE, I CAN PROCESS IT FOR
7 FINGERPRINTS AND TRY TO OBTAIN THE LATENT PRINTS FROM IT.

8 LATENT PRINTS ARE JUST PRINTS THAT YOU CAN'T SEE WITH YOUR
9 NAKED EYE. SO YOU HAVE TO PROCESS IT OR DO SOMETHING TO
10 ENHANCE IT IF IT IS THERE. IN THAT CASE I PROCESSED IT.

11 AND WHAT I WOULD DO IS I WOULD LIFT THE PRINT UP, PUT IT ON
12 A FINGERPRINT CARD, AND THEN IT WOULD GO TO A LATENT
13 EXAMINER. AND THEY'RE THE ONES WHO ARE QUALIFIED TO SAY
14 WHETHER OR NOT THEY'RE THE DEFENDANT'S PRINTS OR ...

15 Q. OR WHOMEVER'S?

16 A. YEAH. OR VICTIM'S OR ANYTHING LIKE THAT.

17 Q. BUT A LATENT PRINT IS NECESSARY BEFORE SOMEONE WOULD
18 HAVE ANYTHING TO EXAMINE, IS THAT CORRECT?

19 A. YES.

20 Q. AND WERE YOU ABLE TO LIFT A FINGERPRINT OFF OF STATE'S
21 WEAPON ---

22 A. NO, I WASN'T.

23 Q. NOW EVERY ITEM THAT A PERSON TOUCHES, DOES IT LEAVE A
24 FINGERPRINT? WOULD IT LEAVE THEIR FINGERPRINT?

25 A. NOT NECESSARILY. SOMEBODY CAN HANDLE SOMETHING AND

1 IT'S NOT -- IT DOESN'T MEAN THAT YOU'RE GOING TO NECESSARILY
2 GET A FINGERPRINT OFF OF IT.

3 Q. DOES THE SURFACE OF THE OBJECT MATTER?

4 A. IT HAS A LOT TO DO WITH IT.

5 Q. WHAT SURFACES ARE MORE LIKELY TO HAVE THE ABILITY TO
6 HAVE A PRINT LIFTED OR LESS LIKELY TO HAVE A PRINT LIFTED?

7 A. A SMOOTH, CLEAN, DRY SURFACE, RELATIVELY LARGE. IF
8 IT'S REALLY, REALLY SMALL THEY'RE NOT GOING TO BE ABLE TO
9 GET THAT MANY POINTS OFF OF IT. THE WEATHER CONDITIONS HAS
10 A LOT TO DO WITH IT WHETHER OR NOT -- IF IT'S TOO HUMID YOU
11 NORMALLY CAN'T -- IF IT'S WET YOU WOULD HAVE TO LET IT DRY.
12 THEY'RE EXTREMELY FRAGILE. YOU CAN RUB IT OFF. GENERALLY
13 YOU REALLY HAVE TO HANDLE SOMETHING -- IF IT'S ROUGH LIKE
14 THIS YOU PROBABLY WOULDN'T EVEN GET SOMETHING OFF OF THIS.

15 Q. SO IT'S A MISCONCEPTION THAT NO MATTER WHAT YOU TOUCH
16 YOU'RE GOING TO BE ABLE TO GET A FINGERPRINT OFF OF IT?

17 A. NO, IF THE FINGERPRINT'S THERE, YOU KNOW, YOU'LL BE
18 ABLE TO LIFT IT. BUT JUST BECAUSE SOMEBODY HANDLES
19 SOMETHING DOESN'T NECESSARILY MEAN YOU'LL GET A FINGERPRINT
20 OFF OF IT.

21 Q. AND AS YOU SAID, THEY'RE FRAGILE. DOES THAT MEAN
22 EASILY DESTROYED?

23 A. THEY CAN EASILY BE DESTROYED. AND YOU MAY NOT EVEN
24 HAVE RUBBED IT. IT COULD JUST BE WEATHER ENVIRONMENT. SOME
25 PEOPLE ARE LESS SECRETERS THAN OTHERS. THERE'S JUST A LOT

1 OF FACTORS THAT HAVE TO DO WITH IT.

2 Q. AND SO YOU WERE NOT ABLE TO GET A FINGERPRINT LIFTED
3 OFF OF THIS WEAPON?

4 A. NO. I PROCESSED IT, BUT I WASN'T ABLE TO RETRIEVE
5 ANYTHING.

6 (WHEREUPON STATE'S EXHIBITS 8 AND 11 WERE MARKED FOR
7 IDENTIFICATION)

8 Q. I'M JUST MAKING SURE I'VE GOT -- TWO PHOTOS THAT I'VE
9 JUST HAD MARKED FOR IDENTIFICATION, NUMBER 8 AND NUMBER 11.
10 IN REGARD TO NUMBER 8, WHAT IS THAT PHOTOGRAPH?

11 A. THAT WAS WHAT THE DOCTOR WAS LOOKING AT WHEN I GOT
12 THERE TO TAKE PHOTOGRAPHS INITIALLY OF THE VICTIM BEFORE
13 THEY MOVED HIM.

14 Q. AND IS THAT A TRUE AND ACCURATE REPRESENTATION OF WHAT
15 YOU SAW WHEN YOU TOOK A PICTURE AT THE ER?

16 A. YES.

17 MS. HODGE: I AT THIS TIME MOVE TO ADMIT NUMBER 8.

18 MS. ROSS: NO OBJECTION.

19 THE COURT: WITHOUT OBJECTION.

20 (WHEREUPON STATE'S EXHIBIT 8 WAS ADMITTED INTO
21 EVIDENCE)

22 MS. ROSS: SUBJECT TO THE SAME ONE.

23 Q. I KNOW THERE'S KIND OF A GLARE ON THIS ONE. CAN YOU
24 POINT TO WHAT YOU WERE SPEAKING OF?

25 A. WHEN THE DOCTOR WAS LOOKING AT IT HE WAS VIEWING IT,

1 AND I WALKED OVER TO SEE AND SPEAK WITH HIM. AND THIS IS
2 JUST AN X-RAY OF THE SKULL.

3 Q. OF THE VICTIM?

4 A. OF THE VICTIM. AND THAT RIGHT THERE IS A PROJECTILE.
5 AND IT'S KIND OF HARD TO SEE, BUT GENERALLY LITTLE SPECKS IN
6 THIS AREA IS JUST FRAGMENT. USUALLY YOU'LL SEE THAT. AND
7 IT'S JUST WHERE CERTAIN PIECES OF THE METAL BROKE UP.

8 Q. NOW AFTER THE -- AFTER YOU PROCESSED THE GUN ON JULY
9 THE 18TH, ATTEMPTED TO LIFT A LATENT PRINT AND WEREN'T ABLE
10 TO DO THAT WHAT, IF ANYTHING ELSE, DID YOU DO ON NOVEMBER
11 [SIC] THE 18TH IN RELATION TO THIS CASE? WAS THERE ANYTHING
12 ELSE OR DID THAT DO IT FOR THAT DAY?

13 A. WELL, I PUT ALL THE EVIDENCE INTO PROPERTY AND
14 EVIDENCE. BESIDES THAT I DIDN'T DO ANYTHING ELSE.

15 Q. NOW A FEW DAYS LATER WERE YOU ASKED TO DO SOMETHING IN
16 ADDITION ON THIS CASE?

17 A. AFTERWARDS I SPOKE TO MY SUPERVISORS ABOUT THIS CASE.
18 AND WE WENT BACK JUST TO -- WE WENT BACK TO THE INITIAL
19 SCENE WHERE THE SHOOTING OCCURRED AND JUST TOOK PHOTOGRAPHS
20 OF THE DAYLIGHT JUST SO YOU CAN SEE IT EASIER IN THE
21 DAYLIGHT WHERE IT WAS AS FAR AS THE BUSINESS AND STRIP MALL.

22 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
23 NUMBER 11 FOR IDENTIFICATION. AND IS THIS WHAT YOU'RE
24 REFERRING TO?

25 A. YES.

1 Q. IS THIS A TRUE AND ACCURATE DEPICTION OF THE INCIDENT
2 LOCATION, BUT A COUPLE OF DAYS LATER IN THE DAYLIGHT?

3 A. YES.

4 MS. HODGE: AT THIS TIME WE'D MOVE TO ADMIT NUMBER 11.

5 THE COURT: ANY OBJECTION?

6 MS. ROSS: SUBJECT TO THE SAME OBJECTION.

7 THE COURT: ALL RIGHT. SUBJECT TO THE SAME OBJECTION,
8 YOU CAN PUT IT IN.

9 (WHEREUPON STATE'S EXHIBIT 11 WAS ADMITTED INTO
10 EVIDENCE)

11 Q. SO IN THE DAYLIGHT YOU KIND OF GET A BETTER IDEA --
12 WHERE, IF YOU COULD POINT ON HERE, ON THE EVENING WHEN THIS
13 HAPPENED WHERE WAS THE SPOT OF BLOOD, THE MAIN SPOT OF
14 BLOOD?

15 A. RIGHT THERE. AND YOU HAVE THE SPANISH AMIGOS
16 RESTAURANT.

17 Q. AND WHERE WAS THE TACO STAND?

18 A. IT WAS RIGHT HERE. ALSO I WOULDN'T HAVE BEEN ABLE TO
19 GET THIS ANGLE ON THAT NIGHT BECAUSE THEY HAD THIS AREA
20 PRETTY MUCH FROM HERE TO HERE BLOCKED WITH CRIME SCENE TAPE.
21 AND THERE WERE PEOPLE ALL IN THIS AREA BECAUSE IT WAS LIKE
22 AN OUTSIDE EVENT TYPE. I DON'T KNOW EXACTLY WHAT IT WAS,
23 BUT IT WAS AN OUTSIDE EVENT. AND EVERYBODY WAS IN THE
24 PARKING LOT.

25 Q. AND THIS WAS WHEN YOU CAME AT LIKE ONE SOMETHING IN THE

1 MORNING?

2 A. UM-HUM (AFFIRMATIVE). THE INITIAL RESPONSE.

3 Q. NOW AS TO NUMBER -- STATE'S NUMBER 12 AND NUMBER 13 FOR
4 IDENTIFICATION, EVEN THOUGH THE SEAL HAS SINCE BEEN BROKEN
5 ON THESE WERE THEY -- WAS THIS THE WAY THEY INITIALLY WENT
6 INTO PROPERTY AND EVIDENCE?

7 A. YES.

8 Q. ASIDE FROM THE SEAL?

9 A. YES.

10 Q. ANY CHANGES MADE TO ANYTHING ON THE OUTSIDES?

11 A. NO. THIS IS ALL MY ORIGINAL HANDWRITING. I GUESS THEY
12 JUST PUT IT RIGHT BACK IN THE ORIGINAL BOX.

13 Q. AND I'M OPENING STATE'S 13 FOR IDENTIFICATION, WHICH
14 WAS THE AA KIT THAT USED TO HAVE THE Q-TIP SWABS.

15 A. YES. IT WOULD HAVE THE FIVE -- THE FOUR, ONE FOR THE
16 RIGHT HAND, ---

17 Q. RIGHT.

18 A. --- AND THE LEFT HAND, AND THEN THE CONTROL.

19 Q. BUT THERE'S NOTHING IN HERE ANYMORE?

20 A. NO.

21 Q. OTHER THAN THAT ARE THESE IN SUBSTANTIALLY THE SAME
22 CONDITION AS WHEN YOU PUT THEM IN?

23 A. YES.

24 MS. HODGE: AT THIS TIME WE'D MOVE TO ADMIT 13 AND 14.

25 THE COURT: ANY OBJECTION?

1 MS. HODGE: EXCUSE ME, 12 AND 13.

2 MS. ROSS: NO OBJECTION, YOUR HONOR.

3 MS. HODGE: THANK YOU.

4 (WHEREUPON STATE'S EXHIBITS 12 AND 13 WERE ADMITTED
5 INTO EVIDENCE)

6 Q. THANK YOU, MS. ORLANDO. YOU CAN ANSWER ANY QUESTIONS
7 OF MS. ROSS.

8 A. OKAY.

9 CROSS EXAMINATION BY MS. ROSS:

10 Q. I ONLY JUST HAVE ONE. DURING THE DAYLIGHT DID YOU GO
11 BY KEN'S PAWN SHOP AT ALL?

12 A. GO BY IT?

13 Q. WELL, IN THE WINDOW DID YOU SEE THAT THERE WAS A VIDEO
14 CAMERA AT KEN'S PAWN SHOP?

15 A. NO, I DIDN'T.

16 Q. SO YOU DIDN'T GO IN AND COLLECT OR ASK ABOUT ANY VIDEOS
17 THAT KEN'S PAWN SHOP ---

18 A. NO. I WASN'T AWARE THEY HAD A CAMERA.

19 Q. I'VE GOT NOTHING FURTHER.

20 THE COURT: THANK YOU. YOU CAN STEP DOWN. ALL RIGHT.
21 TAKE THE JURY OUT FOR A SHORT RECESS.

22 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:30 PM)

23 THE COURT: ALL RIGHT. TAKE A SHORT RECESS.

24 MS. HODGE: YOUR HONOR, MAY MS. ORLANDO BE EXCUSED?

25 THE COURT: ANY OBJECTION?

1 MS. ROSS: NO OBJECTIONS.

2 MS. HODGE: THANK YOU.

3 (WHEREUPON COURT WAS IN RECESS)

4 THE COURT: ALL RIGHT. BRING THE JURY.

5 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:46 PM)

6 THE COURT: ALL RIGHT, SOLICITOR.

7 MS. HODGE: YOUR HONOR, THE STATE WOULD CALL DR. ERIK
8 CHRISTENSEN.

9 ERIK CHRISTENSEN, M. D.,

10 BEING DULY SWORN TESTIFIED AS FOLLOWS:

11 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
12 RECORD.

13 DR. CHRISTENSEN: ERIK DEAN CHRISTENSEN.

14 DIRECT EXAMINATION BY MS. HODGE:

15 Q. DR. CHRISTENSEN, WHAT IS YOUR PROFESSION?

16 A. I'M A FORENSIC PATHOLOGIST.

17 Q. AND WHO ARE YOU CURRENTLY EMPLOYED BY?

18 A. I'M CURRENTLY EMPLOYED BY PATHOLOGY ASSOCIATES OF
19 GREENVILLE.

20 Q. AND ARE YOU LICENSED TO PRACTICE MEDICINE IN SOUTH
21 CAROLINA?

22 A. YES, I AM.

23 Q. AND IN ANY OTHER STATES?

24 A. ALSO IN VIRGINIA.

25 Q. AND WOULD YOU PLEASE TELL THE COURT AND THE JURY ABOUT

1 YOUR EDUCATIONAL BACKGROUND?

2 A. SURE. TO BECOME A FORENSIC PATHOLOGIST IT BASICALLY
3 REQUIRES GOING THROUGH FOUR YEARS OF COLLEGE, FOLLOWED BY
4 FOUR YEARS OF MEDICAL SCHOOL. AND THEN IT'S -- PATHOLOGY IS
5 A SPECIALTY OF MEDICINE JUST LIKE INTERNAL MEDICINE OR
6 SURGERY. WHICH AT THE TIME I DID IT WAS FIVE ADDITIONAL
7 YEARS OF RESIDENCY TRAINING. AND THEN TO BE TRAINED IN
8 FORENSIC PATHOLOGY IS AN ADDITIONAL YEAR OF FELLOWSHIP.

9 Q. AND ARE YOU A MEMBER OF ANY SPECIAL ORGANIZATIONS?

10 A. YEAH. I BELONG TO SEVERAL PROFESSIONAL ORGANIZATIONS
11 RELATED TO MY PRACTICE. I BELONG TO THE AMERICAN MEDICAL
12 ASSOCIATION, THE NATIONAL ASSOCIATION OF MEDICAL EXAMINERS,
13 THE AMERICAN ASSOCIATION OF AMERICAN ACADEMY OF FORENSIC
14 SCIENCES, AND A FEW OTHERS AS WELL.

15 Q. CAN YOU EXPLAIN TO US WHAT FORENSIC PATHOLOGY IS?

16 A. SURE. FORENSIC PATHOLOGY IS, LIKE I SAID, IS A
17 SPECIALTY -- PATHOLOGY IS A SPECIALTY OF MEDICINE. FORENSIC
18 PATHOLOGY IS A SUB-SPECIALTY OF PATHOLOGY THAT DEALS
19 SPECIFICALLY WITH THE APPLICATION OF AUTOPSY FINDINGS, FLUID
20 ANALYSES, TISSUE EXAMINATIONS TO DETERMINE CAUSE AND MANNERS
21 OF DEATH, IN THE CASE OF VIOLENT, UNEXPECTED, OR OTHERWISE
22 UNUSUAL DEATHS, THINGS THAT FALL UNDER THE JURISDICTION OF
23 THE MEDICAL EXAMINER.

24 AND BASICALLY WHAT -- THAT TRAINING ALSO INCLUDES
25 TRAINING IN THE NON-MEDICAL SCIENCES, THE FORENSIC SCIENCES,

1 FIREARMS EXAMINATION, FINGERPRINTING, QUESTION DOCUMENTS,
2 ALL THE THINGS THAT GO INTO THE ANALYSIS OF EVIDENCE FROM
3 CRIMES SO THAT THE EVIDENCE THAT WE THEN COLLECT AT THE TIME
4 OF AUTOPSY WE BASICALLY UNDERSTAND WHAT IS GOING TO HAPPEN
5 TO THIS SO WE CAN PROCESS IT IN THE APPROPRIATE WAY.

6 Q. AND SO WHAT WOULD YOU SAY THAT YOUR DAILY DUTIES ARE AS
7 A FORENSIC PATHOLOGIST AT THE MEDICAL EXAMINER'S OFFICE?

8 A. SURE. BASICALLY THE BULK OF MY DUTIES, THE BULK OF MY
9 JOB IS SPENT DOING AUTOPSIES. THE ACTUAL EXAMINATION PART
10 OF IT, I DO ALTERNATING WEEKS WITH MY PARTNER. AND THEN THE
11 REST OF THE TIME I SPEND REVIEWING MEDICAL RECORDS, POLICE
12 REPORTS. AND I GO TO COURT OCCASIONALLY. AND LOOK AT
13 TOXICOLOGY RESULTS AND BASICALLY SYNTHESIZING ALL THE DATA
14 THAT WE GATHER ON ANY GIVEN CASE TO DETERMINE WHAT THE CAUSE
15 OF DEATH WAS IN A GIVEN SITUATION AND WHAT THE MANNER OF
16 DEATH WAS.

17 Q. WHAT'S THE DIFFERENCE BETWEEN THE CAUSE AND THE MANNER
18 OF DEATH?

19 A. OKAY. THE CAUSE OF DEATH IS THAT THING, DISEASE
20 PROCESS OR INJURY THAT LEADS TO DEATH. FOR EXAMPLE, A
21 GUNSHOT WOUND WOULD BE A CAUSE OF DEATH. THE MANNER OF
22 DEATH IS AN ASSESSMENT OF THE CIRCUMSTANCES SURROUNDING THE
23 DEATH. USUALLY AN EXAMPLE OF A GUNSHOT WOUND IS THE CAUSE.
24 THE MANNER CAN BE ACCIDENTAL. IT COULD BE A HOMICIDE, IT
25 COULD BE A SUICIDE. AND WE LOOK AT EVERYTHING TO TRY AND

1 DETERMINE WHICH OF THOSE APPLY.

2 Q. APPROXIMATELY HOW MANY AUTOPSIES WOULD YOU SAY YOU'VE
3 PERFORMED IN YOUR CAREER?

4 A. AROUND A THOUSAND.

5 Q. HAVE YOU BEEN QUALIFIED AS AN EXPERT IN A COURT OF LAW
6 AS TO FORENSIC PATHOLOGY BEFORE?

7 A. YES, I HAVE.

8 Q. APPROXIMATELY HOW MANY TIMES?

9 A. PROBABLY THIRTY TIMES OR SO.

10 MS. HODGE: AT THIS TIME I WOULD MOVE TO ADMIT DR.
11 CHRISTENSEN AS AN EXPERT IN FORENSIC PATHOLOGY.

12 THE COURT: ANY VOIR DIRE?

13 MS. ROSS: NO, YOUR HONOR.

14 THE COURT: HE'S QUALIFIED. PROCEED.

15 Q. I'M JUST GOING TO ASK YOU TO SPEAK UP JUST A LITTLE
16 BIT, DR. CHRISTENSEN.

17 A. OKAY.

18 Q. NOW WERE YOU OBVIOUSLY EMPLOYED IN THIS SAME CAPACITY
19 LAST YEAR?

20 A. YES, I WAS.

21 Q. ON JULY THE 21ST OF 2004 DID YOU HAVE THE OCCASION TO
22 DO AN AUTOPSY IN RELATION TO A PERSON NAMED WILFRIDO SOLIS
23 MONGE?

24 A. YES, I DID.

25 Q. AND COULD YOU PLEASE STATE GENERAL CHARACTERISTICS

1 ABOUT MR. MONGE?

2 A. OKAY. OUR EXAMINATION REVEALED HIM TO BE BASICALLY A
3 NORMALLY DEVELOPED -- NORMAL APPEARING ADULT MALE WHO WAS
4 ABOUT A HUNDRED AND FIFTY-SIX POUNDS. HE WAS SIXTY-SEVEN
5 INCHES LONG AND LOOKED COMPATIBLE WITH THE AGE THAT HE WAS
6 REPORTED TO BE.

7 Q. WHICH WAS?

8 A. THIRTY-SEVEN.

9 Q. WHERE DOES THIS AUTOPSY TAKE PLACE?

10 A. AT THE AUTOPSY SUITE AT GREENVILLE MEMORIAL HOSPITAL.

11 Q. AND WHO WAS PRESENT FOR THIS AUTOPSY?

12 A. DURING THE AUTOPSY WE HAD A MEDICAL STUDENT WAS THERE,
13 WES SMITH FROM THE SHERIFF'S OFFICE, CHRIS BRYANT, WHO WAS
14 THE DEPUTY CORONER ASSIGNED TO THE CASE, AND MY AUTOPSY
15 ASSISTANT, SHARON KNIGHT.

16 Q. AND DOES A CORONER COME TO EACH -- A DEPUTY CORONER
17 COME TO EACH AUTOPSY?

18 A. MOST AUTOPSIES, YES.

19 Q. NOW THE PURPOSE OF YOUR AUTOPSY IS?

20 A. AGAIN, STATUTORILY OUR OBLIGATION IN DOING THE AUTOPSY
21 IS TO DETERMINE WHY THE PERSON DIED AND THE CIRCUMSTANCES
22 UNDER WHICH THAT HAPPENED.

23 Q. AND HOW DO YOU GO ABOUT DOING THAT? AND WHAT DID YOU
24 DO IN THIS CASE?

25 A. SURE. THE PROCESS IS BASICALLY THE SAME IN EACH CASE.

1 WE BEGIN WITH A VERY DETAILED EXTERNAL EXAMINATION INITIALLY
2 LOOKING FOR ANY EVIDENCE THAT MAY BE PRESENT, WHETHER THAT
3 WOULD BE GUNSHOT RESIDUES, OR FIBERS, OR WHATEVER MIGHT BE
4 ON THE BODY.

5 WE ALSO EXAMINE THE CLOTHING TO DETERMINE IF THERE ARE
6 INJURIES OR ANY FINDINGS ON THE CLOTHING THAT WOULD BE
7 RELATED TO THE UNDERLYING INJURIES. AND THEN FOLLOWING THE
8 EXAMINATION OF THE EXTERIOR OF THE PERSON AS WELL AS THEIR
9 CLOTHING ALL THE CLOTHING IS REMOVED AND WE DO A DETAILED
10 EXAMINATION OF THE BODY ITSELF, DOCUMENTING WHERE THE
11 INJURIES ARE, THEIR LOCATION, AND THE NATURE OF THEM, WHERE
12 THEY GO, AND THOSE SORTS OF THINGS.

13 THEN FOLLOWING THE COMPLETION OF THE EXTERNAL
14 EXAMINATION WE DO A COMPLETE INTERNAL EXAMINATION WHICH
15 INVOLVES LOOKING AT EVERY ORGAN IN THE BODY DETERMINING WHAT
16 NATURAL DISEASE PROCESSES MAY BE PRESENT THERE AS WELL AS
17 WHAT INJURIES MAY BE PRESENT. AND THEN WE ALSO AT THE TIME
18 OF AUTOPSY COLLECT FLUIDS WHICH ARE THEN USED TO DETERMINE
19 INTOXICATIONS OR OTHER DRUGS THAT MAY HAVE BEEN IN THE
20 SYSTEM AT THE TIME OF DEATH.

21 Q. AND SPECIFICALLY AS TO THE VICTIM IN THIS CASE WHAT
22 EVIDENCE OF INJURY DID YOU FIND?

23 A. BASICALLY THE ONLY SIGNIFICANT INJURY IN THIS
24 INDIVIDUAL WAS A PENETRATING GUNSHOT WOUND TO THE FACE.

25 Q. AND CAN YOU DESCRIBE THE WOUND ITSELF AND WHAT ---

1 A. SURE.

2 Q. THE TRAJECTORY?

3 A. THE WOUND ENTERED ESSENTIALLY RIGHT BETWEEN THE EYES, A
4 LITTLE BIT TO THE RIGHT OF THE MIDLINE ON THE BRIDGE OF THE
5 NOSE ABOUT FOUR INCHES OR SO DOWN FROM THE TOP OF THE HEAD.
6 THE BULLET THEN BASICALLY PENETRATED THROUGH THE FACE,
7 TRAVERSED THE SINUSES BEFORE ENTERING THE CRANIAL CAVITY OR
8 THE VAULT WHERE THE BRAIN RESIDES, PASSED THROUGH THE
9 TEMPORAL LOBE OF THE BRAIN ON THE RIGHT AND THEN CAME TO
10 REST AT THE POSTERIOR PORTION OF THE TEMPORAL LOBE OF THE
11 BRAIN. AND WE RECOVERED A SMALL CALIBER BULLET FROM THAT
12 LOCATION.

13 Q. SO THE BULLET DID NOT EXIT?

14 A. IT DID NOT.

15 (WHEREUPON STATE'S EXHIBIT 15 WAS MARKED FOR
16 IDENTIFICATION)

17 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
18 NUMBER 15 FOR IDENTIFICATION. DO YOU RECOGNIZE THAT?

19 A. YES.

20 Q. AND WHAT IS THAT?

21 A. THIS IS THE CONTAINER IN WHICH I PLACED THE BULLET,
22 WHICH HAS SINCE BEEN REMOVED. BUT THAT IS THE BULLET AND
23 THE CONTAINER IN WHICH I SUBMITTED IT TO THE POLICE.

24 Q. AND WHO DID YOU GIVE THIS TO?

25 A. THIS WAS TURNED OVER TO WES SMITH.

1 Q. AND AS FAR AS YOU CAN DETERMINE, ASIDE FROM THE FACT
2 THAT IT'S IN A DIFFERENT PACKAGE IN HERE, IS IT IN
3 SUBSTANTIALLY THE SAME CONDITION AS WHEN YOU REMOVED IT?

4 A. YES, IT IS.

5 MS. HODGE: AT THIS TIME WE'D MOVE TO ADMIT STATE'S
6 NUMBER 15 INTO EVIDENCE.

7 THE COURT: ANY OBJECTION?

8 MS. ROSS: NO OBJECTION, YOUR HONOR.

9 (WHEREUPON STATE'S EXHIBIT 15 WAS ADMITTED INTO
10 EVIDENCE)

11 Q. CAN YOU DETERMINE THE PATH AND DESCRIBE THE PATH OF THE
12 BULLET? I KNOW YOU GAVE THE MEDICAL TERMINOLOGY FOR MOST OF
13 IT, BUT DIRECTION OF TRAVEL, ----

14 A. SURE.

15 Q. --- THAT KIND OF THING?

16 A. BASICALLY THE BULLET ENTERED HERE, AS I SAID, JUST
17 BETWEEN THE EYES, A LITTLE BIT TO THE RIGHT AND BASICALLY
18 WENT STRAIGHT BACK AND TO THE RIGHT A LITTLE BIT. SO IT
19 TRAVELED FROM FRONT TO BACK AND A LITTLE BIT FROM LEFT TO
20 RIGHT AND ENDED UP HERE IN THE POSTERIOR PORTION OF THE
21 RIGHT SIDE OF THE BRAIN.

22 Q. BASED ON THE INITIAL OBSERVANCE OF THE VICTIM, YOUR
23 EXTERNAL EXAMINATION BEFORE YOU WERE ABLE TO GET IN AND FIND
24 THE BULLET, WOULD IT HAVE BEEN POSSIBLE TO HAVE THE EMS
25 WORKER LOOK AT THAT VICTIM AND THINK THAT MAYBE HE'D JUST

1 BEEN ASSAULTED, OR STRUCK WITH AN OBJECT, OR HIT, OR
2 SOMETHING LIKE THAT?

3 A. YES, IT WOULD BE CERTAINLY CONSISTENT WITH THAT GIVEN
4 THAT PARTICULARLY IT'S A SMALL CALIBER BULLET, THE HOLE IN
5 THE FACE WAS SOMEWHAT IRREGULAR. ALSO IT WASN'T A NICE
6 ROUND WOUND LIKE SOMETIMES GUNSHOT WOUNDS ARE. AND IT MIGHT
7 HAVE LOOKED JUST LIKE ANY OTHER LACERATION ON THE FACE.

8 Q. WOULD SOMEONE TEND TO BLEED A LOT FROM AN INJURY TO
9 THAT AREA?

10 A. AS A RULE, PROBABLY YES, BUT NOT NECESSARILY.

11 Q. BUT COULD BLOOD ALSO COVER THE AREA AND MAKE IT HARD TO
12 SEE?

13 A. IT CERTAINLY COULD, YES.

14 Q. WHEN YOU EXAMINE GUNSHOT WOUNDS ARE YOU ABLE ALSO TO
15 DETERMINE THE DISTANCE THAT THE PERSON WHO RECEIVED THE
16 WOUND MAY HAVE BEEN STANDING FROM THE END OF THE BARREL OF
17 THE GUN?

18 A. UM-HUM (AFFIRMATIVE). YEAH, THERE ARE SOME THINGS THAT
19 WE CAN LOOK AT IN DETERMINING THAT. BASICALLY RANGE OF FIRE
20 IS WHAT THE TECHNICAL TERM FOR THAT IS, TRYING TO DETERMINE
21 HOW FAR THE WOUND WAS RECEIVED FROM THE END OF THE GUN. AND
22 THERE ARE THINGS THAT WE LOOK AT ON THE SKIN AND THE
23 SURFACES SURROUNDING THE ENTRANCE WOUND THAT CAN GIVE US
24 SOME INDICATION.

25 BASICALLY WHEN YOU FIRE A GUN SEVERAL THINGS COME OUT

1 THE END, FLAME, UNBURNED GUN POWDER, AND SEVERAL OTHER
2 THINGS. AND THESE ALL TRAVEL MORE OR LESS A PREDICTABLE
3 DISTANCE FROM THE END OF THE GUN. FLAME TRAVELS THE
4 SHORTEST AMOUNT. FOLLOWING THAT, SMOKE AND DENSE SOOT WILL
5 TRAVEL SOMEWHAT BEYOND THAT. AND BEYOND THAT, UNBURNED
6 POWDER PARTICLES WILL TRAVEL BEYOND THAT. AND THEN BEYOND
7 THAT NOTHING WILL IMPACT THE SKIN EXCEPT THE BULLET ITSELF.

8 AND SO WE BASICALLY MAKE DETERMINATIONS OF RANGE SORT
9 OF IN BROAD CATEGORIES OF EITHER A CONTACT WOUND OR WE SEE
10 MARKS OF THE BARREL ON THE FACE, OR WHATEVER THE SITE OF
11 ENTRANCE IS. INTERMEDIATE RANGE WOUNDS WHERE WE HAVE SMOKE
12 AND SOOT AND SOMETIMES THE UNBURNED POWDER MARKINGS CALLED
13 STIPPLING ON THE FACE. AND THEN BEYOND THAT IT'S REALLY
14 WHAT WE CALL INDETERMINATE. WE CAN'T TELL, YOU KNOW, HOW
15 FAR IT IS. IT CAN BE ANYWHERE FROM A FEW FEET TO, YOU KNOW,
16 A MILE DEPENDING ON WHERE THE GUN WAS FIRED.

17 AND IN THIS PARTICULAR CASE THERE WERE NO SPECIFIC
18 MARKINGS DETERMINING -- TO HELP US WITH A RANGE OF FIRE
19 DETERMINATION. SO WE CLASSIFIED THIS AS AN INDETERMINATE
20 RANGE, WHICH MEANS BASICALLY SOMEWHERE BEYOND A FEW FEET.

21 Q. SO THE VICTIM WOULD HAVE HAD TO HAVE BEEN STANDING AT
22 LEAST A FEW FEET AWAY FROM THE BARREL OF THE WEAPON, IS THAT
23 WHAT YOU'RE ---

24 A. YES.

25 Q. IN EXAMINING THE VICTIM EXTERNALLY AND INTERNALLY DID

1 YOU FIND ANY OTHER INJURIES?

2 A. NO.

3 Q. ANY OTHER POSSIBLE CONTRIBUTION TO HIS CAUSE OF DEATH?

4 A. NO.

5 Q. AND BASED ON YOUR EXAMINATION AND AUTOPSY AND IN YOUR
6 EXPERT OPINION WHAT WAS THE CAUSE OF DEATH AND THE MANNER OF
7 DEATH OF MR. MONGE?

8 A. THE CAUSE OF DEATH WE DETERMINED TO BE THE GUNSHOT
9 WOUND TO THE FACE. AND THE MANNER OF DEATH WE DETERMINED TO
10 BE HOMICIDE BASED PRIMARILY ON RANGE OF FIRE INFORMATION.

11 Q. THANK YOU. PLEASE ANSWER ANY DEFENSE QUESTIONS.

12 THE COURT: MS. ROSS.

13 MS. ROSS: I HAVE NO QUESTIONS OF THIS WITNESS.

14 THE COURT: THANK YOU. STEP DOWN. AND CAN WE EXCUSE
15 THE DOCTOR?

16 MS. HODGE: YES, SIR.

17 MS. ROSS: YES.

18 THE COURT: THANK YOU, DOCTOR.

19 MS. HODGE: YOUR HONOR, MY NEXT WITNESS IS THE
20 PROFESSOR FROM BOB JONES, WHO IS SUPPOSED TO BE HERE ANY
21 MOMENT, BUT HE'S NOT.

22 THE COURT: OKAY. CAN YOU CHECK AND JUST FIND OUT
23 WHERE HE IS?

24 MS. HODGE: YES, SIR. HE IS HERE.

25 THE COURT: GOOD.

1 MARK STEPHAN, AFFIRMED TO
2 TELL THE TRUTH AND TESTIFIED AS FOLLOWS:

3 MADAME CLERK: PLEASE BE SEATED. AND PLEASE TELL US
4 YOUR FULL NAME FOR THE RECORD.

5 MR. STEPHAN: PARDON ME, YOUR HONOR. I'M STILL A
6 LITTLE BIT OUT OF BREATH. I JUST RAN UP THE STEPS.

7 THE COURT: THAT'S -- I UNDERSTAND.

8 MR. STEPHAN: MY NAME IS MARK STEPHAN. LAST NAME IS
9 S-T-E-P-H-A-N.

10 MADAME CLERK: THANK YOU.

11 DIRECT EXAMINATION BY MS. HODGE:

12 Q. MR. STEPHAN, WHERE ARE YOU EMPLOYED?

13 A. GREENVILLE COUNTY CRIME LAB.

14 Q. DO YOU HAVE ANY OTHER PLACES OF EMPLOYMENT?

15 A. YES, MA'AM. I TEACH AT BOB JONES UNIVERSITY IN THE
16 CRIMINAL JUSTICE PROGRAM.

17 Q. IS THAT WHERE YOU JUST RUSHED OVER FROM?

18 A. YES, MA'AM.

19 Q. WHAT ARE YOUR DUTIES AT THE GREENVILLE COUNTY CRIME
20 LAB?

21 A. I'VE BEEN EMPLOYED WITH THE GREENVILLE COUNTY CRIME LAB
22 SINCE 19, I'M SORRY, SINCE 2001. I STARTED THERE IN 2000 AS
23 A VOLUNTEER. BASICALLY THEY ASKED ME TO HELP THEM GET A
24 FIREARMS LABORATORY STARTED. AND AFTER ABOUT ONE YEAR WE
25 HAD THE OFFICE AND THE EQUIPMENT. THE LOGISTICAL THINGS

1 WERE IN ORDER, BUT WE DIDN'T HAVE -- THEY DIDN'T HAVE AN
2 EXPERT. AND THAT'S WHAT I DID FOR MOST OF THE LAST TEN
3 YEARS OF MY EMPLOYMENT, MY PREVIOUS EMPLOYMENT. SO THEY
4 ASKED ME IF I WOULD COME ON PART-TIME TO WORK THEIR FIREARM
5 RELATED CASES. AND I DID SO BEGINNING IN 2001.

6 Q. AND WHAT EXACTLY IS IT THAT YOU DO IN RELATION TO
7 FIREARM CASES?

8 A. I AM A FIREARM EXAMINER AND TRAINER FOR THE LABORATORY,
9 AS I SAID. PRIMARILY I IDENTIFY FIREARMS AND CONDUCT
10 FORENSIC TESTING WITH FIREARMS AND RELATED SPECIMENS, FIRED
11 BULLETS, FIRED CARTRIDGE CASES, DO EJECTION PATTERN TESTING
12 AND BASICALLY ANYTHING THAT HAS TO DO WITH THE SCIENTIFIC
13 ASPECT OF FIREARMS. I'LL DO THAT IN THE LABORATORY SETTING.

14 Q. AND WHAT KIND OF -- I THINK YOU GAVE A LITTLE BIT OF
15 IT, WHAT KIND OF TRAINING, EDUCATIONAL BACKGROUND DO YOU
16 HAVE TO BE A FIREARMS EXAMINER?

17 A. THERE IS NO SCHOOL THAT ANYONE CAN GO TO TO BASICALLY
18 COME OUT THE OTHER END AS A FULLY QUALIFIED FIREARM
19 EXAMINER. RECENTLY ATF HAS A BASICS PROGRAM. WHEN I SAY
20 ATF I MEAN THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARM. SO
21 FIREARM EXAMINERS BASICALLY LEARN THEIR TRADE IN A WORKING
22 LABORATORY.

23 I WAS WITH THE PHILADELPHIA POLICE DEPARTMENT IN
24 PENNSYLVANIA FOR TWENTY-FIVE YEARS PRIOR TO COMING DOWN HERE
25 IN 1999. MOST OF THE LAST TEN YEARS IN PHILLY I WAS WITH

1 THE FIREARM IDENTIFICATION UNIT, WHICH IS A FORENSIC
2 BALLISTICS LABORATORY. I WAS THE COMMANDING OFFICER OF THAT
3 UNIT.

4 FROM 1990 WHEN I WAS ASSIGNED THERE I HAD THREE YEARS
5 OF IN-SERVICE TRAINING, TECHNICAL TRAINING IN THE LABORATORY
6 IN THE SCIENCE OF FIREARM IDENTIFICATION. THAT INCLUDES
7 AGAIN THE PROCEDURES, PROTOCOLS, TECHNIQUE, INSTRUMENTATION,
8 EVERYTHING INVOLVING OR IS APPLIED TO THE LABORATORY
9 IDENTIFICATION OF FIREARMS AND FIRED SPECIMENS, BULLETS
10 FIRED, CARTRIDGE CASES, BASICALLY ALL THE THINGS THAT HAVE
11 TO DO AGAIN WITH THAT SCIENCE. I SPENT THREE YEARS EARNING
12 THAT AT PHILADELPHIA INSIDE THE LABORATORY.

13 I WAS SENT OUT, AND WE DO THIS ALSO WITH THE PEOPLE I'M
14 TRAINING HERE IN GREENVILLE AS WELL, WE SEND THEM OUT TO AS
15 MUCH OUTSIDE TRAINING AS POSSIBLE. IN MY CASE I RECEIVED
16 TRAINING AT OTHER FORENSIC LABORATORIES AROUND THE COUNTRY,
17 MOST NOTABLY THE FBI, ALCOHOL, TOBACCO, AND FIREARMS, STATE
18 LABORATORIES IN PENNSYLVANIA, NEW JERSEY, CONNECTICUT,
19 FLORIDA, NORTH CAROLINA, MISSISSIPPI, BALTIMORE POLICE
20 DEPARTMENT.

21 I RECEIVED FACTORY TRAINING FROM DIFFERENT FIREARM
22 COMPANIES, SMITH AND WESSON, GLOCK, RUGER, MARLIN,
23 WINCHESTER, WILSON ARMS. ADDITIONAL TRAINING, AND I'M
24 TRYING TO KEEP THIS BRIEF AND KEEP IT ROLLING, FROM U. S.
25 ARMY BOTH IN FORT DICKS, AND IN ABERDENE MARLIN AT THE

1 PROVING GROUNDS. AND ATTENDED MANY MISCELLANEOUS AND
2 SCIENTIFIC SEMINARS THROUGH THAT THREE YEARS.

3 SINCE THEN I'VE KEPT UP WITH THE SCIENCE BY OBVIOUSLY
4 BEING A PRACTITIONER, BY KEEPING TRACK OF DEVELOPMENTS
5 THROUGH SCIENTIFIC JOURNALS. I'VE LECTURED FOR VARIOUS --
6 AT VARIOUS UNIVERSITIES AND TRAINING PROGRAMS FOR DIFFERENT
7 CRIMINAL INVESTIGATION GROUPS.

8 OVER THE YEARS I WAS A MEMBER OF THE ASSOCIATION OF
9 FIREARM AND TOOL MARK EXAMINERS, THE INTERNATIONAL WOUND
10 BALLISTICS ASSOCIATION. I WAS A REVIEWER FOR THE AMERICAN
11 ACADEMY OF FORENSIC SCIENCE REVIEWING FIREARM RELATED
12 ARTICLES FOR THEIR PRESTIGIOUS JOURNAL OF FORENSIC SCIENCE
13 JOURNAL.

14 I WAS A CONSULTANT. I STILL AM A CONSULTANT FOR THE
15 INTERNATIONAL, I'M SORRY, THE INTERNATIONAL INSTITUTE OF
16 FORENSIC SCIENCE IN PHILADELPHIA AND ALSO FOR THE
17 PHILADELPHIA MEDICAL EXAMINERS OFFICE WHEN I WAS THERE OVER
18 THE YEARS AND FOR THE GREENVILLE COUNTY CRIME LAB. AND I'VE
19 ALREADY EXPLAINED MY HISTORY THERE.

20 Q. IS THAT ALL?

21 A. I COULD GO IN A LITTLE DEEPER, ---

22 Q. THAT'S ALL RIGHT.

23 A. --- BUT I THINK WE WANT TO KEEP THIS BRIEF.

24 Q. HAVE YOU BEEN QUALIFIED AS AN EXPERT IN A COURT OF LAW
25 AS TO FIREARM IDENTIFICATION PRIOR TO TODAY?

1 A. YES, MA'AM. I'VE TESTIFIED AND I'VE RECEIVED -- I'VE
2 BEEN SUBPOENAED OVER EIGHT HUNDRED TIMES. BUT I'VE
3 TESTIFIED -- MOST OF THOSE WERE STIPULATIONS. SO I'VE ENDED
4 UP TESTIFYING IN PROBABLY, AS AN EXPERT, AS A FIREARMS
5 EXPERT, IN OVER -- ON OVER FIFTY OCCASIONS BEFORE ABOUT
6 FORTY OR OVER FORTY DIFFERENT COURTS, DIFFERENT TRIAL
7 COURTS. AND, I'M SORRY, FORTY MURDER TRIALS IN OVER TWENTY-
8 FIVE COURTS AT THE STATE AND FEDERAL LEVEL, PENNSYLVANIA,
9 MARYLAND, SOUTH CAROLINA, GEORGIA.

10 MS. HODGE: AT THIS TIME, YOUR HONOR, WE'D MOVE TO
11 ADMIT ---

12 THE COURT: ANY VOIR DIRE?

13 MS. ROSS: NO VOIR DIRE, YOUR HONOR.

14 THE COURT: HE'S QUALIFIED. PROCEED.

15 A. THANK YOU, YOUR HONOR.

16 Q. MR. STEPHAN, I'M GOING TO SHOW YOU WHAT'S MARKED AS
17 STATE'S NUMBER 14 AND ALSO STATE'S NUMBER 15. I'M GOING TO
18 ASK YOU TO TAKE A LOOK AT THOSE.

19 A. ALL RIGHT. COUNSELOR, THE BOX THAT IS MARKED STATE'S
20 EXHIBIT 14 CONTAINS A ROSSI REVOLVER, SERIAL NUMBER 597869.
21 THAT CORRESPONDS WITH ITEM DC04 ON MY REPORT THERE, AND CASE
22 NUMBER 104102722, WHICH AGREES WITH THE CASE NUMBER THAT'S
23 ON THIS BOX ALSO. ALSO WITH THIS EXHIBIT IS A ZIPLOC
24 PLASTIC BAG, WHICH CONTAINS TEST SHOTS THAT I TOOK FROM THIS
25 REVOLVER. AND I DESIGNATED THOSE IN MY REPORT AS ITEM MS-1.

1 WITH REFERENCE TO THE OTHER ITEM YOU HANDED ME, STATE'S
2 EXHIBIT 15, THAT CORRESPONDS TO THE ORIGINAL SUBMISSION
3 CONTAINER, A HOSPITAL TYPE PLASTIC JAR AND A BULLET SPECIMEN
4 THAT I REFERRED TO ON MY REPORT AS ITEM EC1. IT'S A FIRED
5 BULLET SPECIMEN. IT'S IN AN ENVELOPE THAT I PREPARED AND
6 LISTED THE SAME CASE NUMBER.

7 Q. SO YOU HAVE EXAMINED BOTH STATE'S NUMBER 14 AND 15
8 PREVIOUSLY?

9 A. YES, MA'AM.

10 Q. AND WHEN DID YOU DO THIS AND FOR WHAT PURPOSE DID YOU
11 EXAMINE THOSE?

12 A. I RECEIVED THESE ITEMS FROM JAMES ARMSTRONG, WHO IS
13 ANOTHER EXAMINER IN THE LABORATORY. AND THEY WERE GIVEN TO
14 ME FOR THE PURPOSE OF CONDUCTING A FORENSIC EXAMINATION AND
15 DETERMINING WHETHER THIS BULLET WAS FIRED FROM THAT
16 REVOLVER.

17 Q. AND WHAT DID YOU DO TO MAKE THAT DETERMINATION OR COULD
18 YOU MAKE THAT DETERMINATION?

19 A. THIS PART OF THE SCIENCE IS VERY EASY, BUT BASICALLY I
20 FOLLOWED ESTABLISHED PROTOCOLS IN THE EXAMINATION, THE
21 IDENTIFICATION, AND EXAMINATION OF THESE SPECIMENS. THE
22 FIRST PART OF THE EXAMINATION IS AN OVERVIEW OF THE
23 SPECIMENS, THE SUBMITTED SPECIMENS.

24 SO BASICALLY I DESCRIBE IT AS A FIREARM BY MAKE, MODEL,
25 THE COMPOSITION OF THE GRIPS, THE TYPE OF FINISH THAT IS ON

1 THE FIREARM, AND A NUMBER OF OTHER THINGS THAT MAY OR MAY
2 NOT BE IMPORTANT AT SOMETIME SUBSEQUENT TO MY EXAMINATION.
3 SO I TRY TO BE AS THOROUGH AS POSSIBLE IN MY DESCRIPTION.
4 THAT DESCRIPTION IS MADE AGAINST OR IN COMPARISON WITH
5 STANDARDS, WITH SCIENTIFIC STANDARDS.

6 THE BASIS THEN OF MY REPORT BECOMES AN AID TO
7 INVESTIGATORS WHO SUBMITTED THIS, THEY WANT TO KNOW WHAT IT
8 IS. IN THIS CASE THEY ALSO ASKED ME ABOUT THIS BULLET. I
9 DESCRIBED THE BULLET BY COMPOSITION, MATERIALS, BY CALIBER,
10 BY ITS, IN THIS CASE, ITS DISTORTION. AND I DESCRIBED THAT
11 ALSO IN THE REPORT.

12 NOW IN ORDER TO DETERMINE IF THIS BULLET WAS FIRED FROM
13 THAT FIREARM I HAVE TO HAVE, AGAIN, THIS IS THE EASY PART,
14 THIS IS THE BASIC PART OF THE SCIENCE, WE HAVE TO COMPARE A
15 KNOWN SPECIMEN TO THIS QUESTIONED SPECIMEN. THE KNOWN
16 SPECIMEN, I RETRIEVED FROM THIS REVOLVER BY ACTUALLY
17 SHOOTING IT INTO A BIG WATER TANK THAT WE HAVE FOR THAT
18 PURPOSE AT THE LABORATORY. AND THAT'S WHY I FIRED THE TEST
19 SHOTS THAT ACCOMPANY THIS SPECIMEN TODAY.

20 SO I FIRED THIS FIREARM A NUMBER OF TIMES INTO A WATER
21 TANK THAT HAS NOTHING IN IT. SO ANYTHING THAT IS IN THAT
22 WATER TANK AFTER THE FIRING OBVIOUSLY CAME FROM THIS GUN.

23 I TOOK THOSE FIRED SPECIMENS, PUT THEM UNDER THE, UNDER
24 A COMPARISON MICROSCOPE WITH THE QUESTIONED SPECIMEN TO
25 DETERMINE ITS -- THE CORRESPONDENCE OF MICROSCOPIC SCRATCHES

1 THAT ARE ON THE BARRON SURFACE ON THE OUTSIDE OF THIS BULLET
2 THAT ARE PLACED ON HERE FROM THE TIME -- FROM THE PROCESS OF
3 FIRING WHERE IT TRAVELS DOWN THE BARREL OF THE FIREARM.
4 THOSE SCRATCHES THAT ARE PLACED ON THE BULLETS THAT ARE
5 FIRED FROM THE FIREARM ARE UNIQUE TO THAT FIREARM. AND THE
6 SAME SCRATCHES ARE PLACED ON EVERY BULLET THAT IS FIRED FROM
7 THAT FIREARM.

8 SO WHEN I'M COMPARING THE KNOWN TEST SHOTS TO THIS
9 QUESTIONED SPECIMEN, IF THOSE SERIES OF STRIATED LINES MATCH
10 UP UNDER MICROSCOPIC POWER I WOULD DETERMINE, IN THIS CASE I
11 DID DETERMINE, THAT THAT SPECIMEN, WHICH WAS EC1, WAS INDEED
12 FIRED FROM THE DC04 REVOLVER.

13 Q. WHEN YOU FIRED STATE'S NUMBER 14, THE REVOLVER, DID YOU
14 DETERMINE IT TO BE IN GOOD WORKING ORDER?

15 A. I NOTICED AS I WAS FIRING THAT -- WELL, FIRST OF ALL,
16 IT WAS OPERABLE. IT WILL DISCHARGE A CARTRIDGE. IT WILL
17 SHOOT. IT WILL EXPEL A PROJECTILE. HOWEVER, IT HAS WHAT WE
18 WOULD CALL IN SCIENTIFIC TERMS, OPERATIONAL ANOMALIES. THAT
19 MEANS SOMETIMES IT DOESN'T WORK RIGHT.

20 IN THIS CASE THIS FIREARM WOULD MISFIRE. IT MISFIRED
21 SEVERAL TIMES. IT DID NOT FIRE WHEN I PULLED THE TRIGGER.
22 AND I DETERMINED THAT TO BE BECAUSE OF A DIMENSIONAL PROBLEM
23 THAT SOMETIMES DEVELOPS WITH CHEAP FIREARMS THROUGH THEIR
24 USE.

25 THIS DIMENSION RIGHT IN HERE BETWEEN THE REAR OF THE

1 CYLINDER AND THE BACK OF THE FRAME CAUSED THE CYLINDER NOT
2 TO BE IN PROPER ALIGNMENT. IN OTHER WORDS, IT WAS NOT CLOSE
3 ENOUGH TO THE FIRING PIN. SO THEN SOMETIMES WHEN YOU WOULD
4 PULL THE TRIGGER THE FIRING PIN DIDN'T QUITE REACH THE BACK
5 OF THE CARTRIDGE IN ORDER TO START THE FIRING PROCESS. BUT
6 THAT WAS ONLY, AGAIN, INTERMITTENT. IT DIDN'T HAPPEN ALL
7 THE TIME.

8 Q. HOW MANY TIMES DID YOU TEST FIRE IT?

9 A. MY REPORT DOESN'T REFLECT -- I DIDN'T MAKE AN ACTUAL
10 COUNT OF THE TEST FIRES. BUT I HAVE THE BAG HERE, IF I
11 COULD JUST SEPARATE THEM OUT AND COUNT THEM REAL QUICK.
12 THIS BAG THAT I JUST CUT OUT OF THE BOX IS MARKED TEST
13 SHOTS. THIS WAS PREPARED BY ME WITH THIS CASE NUMBER AND
14 THE FIREARM SERIAL NUMBER.

15 IN THIS CASE I ACTUALLY RETAINED THREE OF THE MISFIRED
16 CARTRIDGES WHERE THEY SHOW FIRING PIN IMPRESSIONS, BUT THEY
17 WERE NOT -- OBVIOUSLY WERE NOT DISCHARGED. THE BULLETS ARE
18 STILL CONNECTED TO THE CARTRIDGE CASES. AND I HAVE ONE,
19 TWO, -- I HAVE TEN SETS OF TEST SHOTS THAT WERE SUCCESSFUL
20 IN BEING FIRED. SO THAT'S ROUGHLY THIRTY PERCENT MISFIRE
21 RATE.

22 Q. LET'S TALK A LITTLE BIT MORE ABOUT THE TYPE OF GUN.
23 YOU SAID IT'S A REVOLVER?

24 A. YES, MA'AM.

25 Q. AND IS IT A SINGLE ACTION OR A DOUBLE ACTION?

1 A. THIS IS A DOUBLE ACTION REVOLVER. AND BASICALLY WHAT
2 THAT MEANS IS THERE ARE TWO WAYS TO FIRE THIS. YOU CAN PULL
3 THE HAMMER BACK AND THEN PULL THE TRIGGER AFTER COCKING THE
4 HAMMER. AND IT TAKES LESS PRESSURE ON THE TRIGGER TO
5 DISCHARGE THE FIREARM IN THAT MODE OF FIRE. I DID NOT WEIGH
6 THE -- THAT FORCE, BUT I DID NOT DETERMINE IT TO BE
7 ABNORMALLY LIGHT OR NOT WITHIN A SPECIFICATION RANGE, IF YOU
8 WILL. IN OTHER WORDS, I THOUGHT THERE WAS NOTHING WRONG
9 WITH IT.

10 AND THERE'S A SECOND WAY THAT FIREARM CAN BE
11 DISCHARGED. AND THAT IS JUST BY -- WITHOUT IT BEING COCKED,
12 THE HAMMER'S IN THE FORWARD POSITION, JUST BY PULLING THE
13 TRIGGER. AND THAT ONE MOTION OF PULLING THE TRIGGER WOULD
14 BOTH COCK AND DISCHARGE THE HAMMER AT THE SAME TIME.

15 Q. AND THAT WOULD REQUIRE A SLIGHT AMOUNT OF EXTRA
16 PRESSURE ---

17 A. YES, MA'AM.

18 Q. --- AS OPPOSED TO THE DOUBLE ACTION MODE?

19 A. YES, MA'AM.

20 Q. IN YOUR OPINION DOES THIS GUN OR THIS REVOLVER HAVE A
21 -- WHAT'S KNOWN SOMETIMES AS A HAIR TRIGGER?

22 A. WHEN I TESTED THIS FIREARM IF I DETERMINED THAT --
23 FIRST OF ALL, THERE IS NO ESTABLISHED PARAMETERS FOR WHAT A
24 HAIR TRIGGER IS. TECHNICALLY, JUST THE TERMINOLOGY, IT'S
25 VERY LIGHT PRESSURE. AND THAT'S WHAT IT MEANS. BUT THERE

1 ARE NO ESTABLISHED PARAMETERS IN TERMS OF OUNCES OR ANY
2 OTHER WAY OF DETERMINING THAT. SO IT'S JUST -- WHAT IT
3 MEANS IS A VERY LIGHT OR UNSAFE TRIGGER.

4 NORMALLY -- AND I'VE FIRED -- I WAS A COMPETITOR FOR
5 FIVE YEARS WITH THE PHILLY P. D. AND THE FIREARMS THAT I
6 HAD TO COMPETE WITH, THE LEAST AMOUNT OF PRESSURE THAT YOU
7 WOULD BE ALLOWED TO HAVE ON A FIREARM WOULD BE TWO POUNDS
8 FOR A REVOLVER AND TWO AND A HALF POUNDS FOR A PISTOL. THE
9 PURPOSE OF THAT IS SAFETY. IF IT WAS ANY LESS THAN THAT YOU
10 WOULD BE ABLE TO UNINTENTIONALLY DISCHARGE A FIREARM.

11 SO I HAVE AN AMOUNT OF EXPERIENCE IN DETERMINING WHAT
12 THAT SHOULD FEEL LIKE. AND I DIDN'T FEEL ANYTHING LIKE
13 THAT, ANYTHING NEAR AN UNSAFE TOLERANCE. AS A MATTER OF
14 FACT, THIS IS A VERY INEXPENSIVELY MADE FIREARM. AND IF
15 ANYTHING, IT'S A LITTLE ON THE HEAVY SIDE, BOTH SINGLE
16 ACTION AND DOUBLE ACTION.

17 Q. WHEN THIS TYPE OF GUN IS FIRED, WHEN A REVOLVER OR THIS
18 SPECIFIC GUN, STATE'S 14 IS FIRED, DOES A SHELL CASING EJECT
19 AT THE TIME IT'S FIRED OR DISCHARGED?

20 A. NO, MA'AM. THIS HAS A SWING-OUT CYLINDER. AND THE
21 CYLINDER CONTAINS A NUMBER OF CHAMBERS. IN THIS CASE, SEVEN
22 CHAMBERS. SO THIS COULD BE LOADED WITH SEVEN CARTRIDGES,
23 THE CYLINDER WOULD THEN SWING INTO THE FRAME AND LOCK INTO
24 POSITION.

25 AT THAT POINT IT COULD BE FIRED SEVEN TIMES, EITHER

1 SINGLE ACTION OR DOUBLE ACTION. AND AFTER THAT IT HAS TO BE
2 MANUALLY OPENED. AND THE EJECTION ROD HAS TO BE MANUALLY
3 ACTUATED IN ORDER TO REMOVE THE FIRED CARTRIDGE CASES FROM
4 THE CHAMBERS IN THE CYLINDER.

5 Q. AND IS THAT DIFFERENT FROM SEMI-AUTOMATICS OR
6 AUTOMATICS?

7 A. YES, MA'AM. FIREARMS THAT ARE KNOWN AS SEMI-
8 AUTOMATICS, AUTO LOADERS, FULL AUTOMATIC, THEY HAVE A
9 MECHANICAL MEANS OF EXTRACTING AND EJECTING FIRED CARTRIDGE
10 CASES PASSIVELY THAT REQUIRES NO INPUT FROM THE SHOOTER AT
11 ALL.

12 Q. SO IF NO SHELL CASING WERE EVER RECOVERED AT THE SCENE
13 OF THIS CRIME WOULD THAT BE CONSISTENT WITH THIS WEAPON
14 BEING THE MURDER WEAPON?

15 A. YES, MA'AM, ABSOLUTELY CONSISTENT. AND THAT WOULD NOT
16 BE A PROBLEM WITH THIS AT ALL.

17 Q. YOU WOULDN'T EXPECT TO FIND SHELL CASINGS FROM THIS
18 GUN?

19 A. NO, MA'AM, I WOULD NOT.

20 Q. COULD YOU DETERMINE IF THIS HANDGUN HAD BEEN FIRED
21 RECENTLY DURING YOUR EXAMINATION? WHEN I SAY RECENTLY, I
22 MEAN AT THE TIME, OBVIOUSLY, YOU EXAMINED IT.

23 A. YES. MAY I REFER TO MY REPORT?

24 Q. YES.

25 A. THIS FIREARM, I FOUND GUNSHOT RESIDUE IN THE BARREL AND

1 ALL THE CHAMBERS OF THE CYLINDER. THERE'S NO WAY TO -- THAT
2 I'M AWARE OF ANYWAY, OF TESTING THE RESIDUE IN THE CHAMBERS
3 OF THE FIREARM. NOW I'M AWARE OF SOME TESTING THAT WAS
4 CONDUCTED. I'VE READ SOME JOURNAL ARTICLES ON THE CONDITION
5 OF THE RESIDUE, COLOR OF THE RESIDUE.

6 BUT BASICALLY IF -- WHEN I SEE A FIREARM AND THERE'S
7 GUNSHOT RESIDUE IN EACH OF THE CHAMBERS AND THERE'S A NOTED
8 ABSENCE OF LINT THE BASIC DETERMINATION FROM THAT IS (A)
9 THAT IS HAS BEEN FIRED SINCE IT WAS LAST CLEANED. AND
10 THAT'S NOT A GREAT MENTAL LEAP. AND THE ABSENCE OF LINT
11 INDICATES THAT IT WAS FIRED -- THAT IT HAD NOT BEEN STORED
12 FOR A LONG PERIOD SINCE IT WAS FIRED.

13 NOW HAVING SAID THAT YOU GET -- IT'S EASY TO GET INTO
14 AN ARGUMENT. WE'RE TALKING ABOUT LINT INSIDE OF -- THAT
15 BASICALLY GRAVITATES THROUGH THE AIR AND TRAVELS THROUGH THE
16 AIR AND ENDS UP INSIDE THE BARREL AND INSIDE THE CHAMBERS.
17 HOW MUCH TIME THAT COULD TAKE DEPENDS ON THE QUALITY OF THE
18 AERODYNAMIC ENVIRONMENT IN WHICH THE FIREARM HAS BEEN
19 STORED.

20 FOR INSTANCE, IF YOU PUT THAT FIREARM IN A PLASTIC BAG
21 AND PUT IT IN YOUR FREEZER OR A HOSPITAL OPERATING ROOM, NO
22 DUST. YOU'RE NOT GOING TO HAVE ANY LINT. BUT IF YOU PUT IT
23 IN THE BACK OF YOUR SOCK DRAWER AND TAKE IT IN AND OUT EVERY
24 DAY, YOU'RE GOING TO HAVE A LOT OF LINT.

25 Q. OR IF YOU DISCHARGE YOUR WEAPON AND IT'S COLLECTED

1 IMMEDIATELY YOU WOULD NOT TEND TO FIND LINT?

2 A. NO, MA'AM. I'VE NEVER SEEN THAT.

3 Q. AND AS FAR AS THIS PISTOL GOES IN ITS OPERATION AND
4 WHAT IT TAKES TO DISCHARGE IT, NUMBER ONE, IT WOULD HAVE TO
5 HAVE BULLETS IN IT, IS THAT CORRECT?

6 A. YES, MA'AM. IT WOULD HAVE TO HAVE -- I HAVE ONE FIRED
7 SPECIMEN. SO I KNOW THAT THIS WAS FIRED AT LEAST ONCE
8 BEFORE I HAD IT IN ORDER TO PRODUCE THIS. BUT ALSO THE
9 GUNSHOT RESIDUE IN THE OTHER CHAMBERS INDICATES TO ME THAT
10 IT WAS FIRED, BUT I DON'T KNOW WHEN.

11 Q. IT ALSO -- TO FIRE THAT WEAPON, HYPOTHETICALLY, AT THE
12 VICTIM IT WOULD HAVE HAD TO HAVE HAD A BULLET IN THE ACTUAL,
13 I'M NOT SAYING THIS RIGHT, THE REVOLVER GOES AROUND -- IN
14 FIRING POSITION?

15 A. YES, MA'AM.

16 Q. AS IN RUSSIAN ROULETTE, A GAME WE'VE ALL HEARD OF WHERE
17 YOU PUT ONE BULLET IN AND JUST KEEP GOING. BEFORE IT
18 DISCHARGES YOU'VE GOT TO HAVE IT IN THE PROPER POSITION,
19 CORRECT?

20 A. YES, MA'AM. DURING THE OPERATIONAL SEQUENCE OF THE
21 MECHANICAL ACTION THAT CAUSES THIS TO FIRE, THE BULLET THAT
22 FIRES HAS TO BE IN THE TOP POSITION UNDER THE HAMMER. SO AS
23 THE MECHANISM CONTINUES TO FIRE THE BULLETS THAT ARE IN THE
24 CHAMBERS IN THE CYLINDER THE CYLINDER WILL -- THE MECHANICAL
25 ACTION WILL ROTATE THE CYLINDER BRINGING EACH NEW CARTRIDGE

1 INTO ALIGNMENT UNDER THE HAMMER. SO AS TO THE ONE THAT'S IN
2 THE TOP POSITION IS THE ONLY ONE THAT CAN BE FIRED.

3 Q. SO YOU HAVE TO HAVE THE BULLET IN, YOU HAVE TO HAVE IT
4 IN THE RIGHT POSITION, AND YOU HAVE TO ACTUALLY PULL THE
5 TRIGGER ON THE WEAPON, IS THAT CORRECT, TO HAVE IT
6 DISCHARGE?

7 A. YES, MA'AM. YOU CAN LOAD THIS REVOLVER AND SET IT DOWN
8 RIGHT HERE FOR A HUNDRED YEARS AND IT WOULD NOT DISCHARGE.

9 Q. IT WOULD NOT JUST ACCIDENTALLY ---

10 A. NOT BY ITSELF, NO.

11 Q. IT WOULD HAVE TO BE MANUALLY DISCHARGED?

12 A. YES, MA'AM. SOMEONE WOULD HAVE TO PULL THE TRIGGER.

13 Q. THANK YOU. ANSWER ANY OF MS. ROSS' QUESTIONS.

14 THE COURT: MS. ROSS.

15 A. YES, MA'AM.

16 CROSS EXAMINATION BY MS. ROSS:

17 Q. MR. STEPHAN, I GUESS -- THERE WAS ONLY ONE BULLET
18 SUBMITTED TO YOU WITH THAT REVOLVER, RIGHT?

19 A. YES, MA'AM, THAT'S CORRECT.

20 Q. AND SO NO OTHER BULLETS WERE PRESENTED TO YOU FROM THE
21 SCENE TO TRY TO MATCH TO THAT GUN?

22 A. NO, MA'AM.

23 Q. AND WHEN YOU LOOKED AT THE REVOLVER WERE THERE ANY
24 OTHER CASINGS INSIDE? YOU TALKED ABOUT THE SEVEN THINGS
25 THAT WOULD HAVE CASINGS IN THEM. WERE THERE ANY CASINGS IN

1 THE REVOLVER WHEN YOU LOOKED AT IT?

2 A. THE ONLY THING SUBMITTED TO ME IN RELATION TO THIS CASE
3 WERE THE REVOLVER AND WHAT I REFERRED TO ON MY REPORT AS
4 ITEM EC1. NO OTHER AMMUNITION, NO OTHER FIRED BULLETS, NO
5 OTHER FIRED CARTRIDGE CASES.

6 Q. AND YOU DETERMINED THROUGH TESTING THAT YOU THOUGHT
7 THAT BULLET MATCH HAD COME FROM THAT -- BEEN FIRED FROM THAT
8 GUN?

9 A. YES, MA'AM.

10 Q. NOW I JUST WANT TO TALK ABOUT THE BULLET FOR A LITTLE
11 WHILE. WHAT IS THAT BULLET MADE OF?

12 A. THIS BULLET IS CONSTRUCTED OF PREDOMINANTLY LEAD. AND
13 IT WAS BRASS COATED PRIOR TO BEING FIRED OR WHEN IT WAS
14 MANUFACTURED.

15 Q. AND WHEN YOU RECEIVED THAT BULLET YOU RECEIVED IT, I
16 GUESS, FROM THE -- WELL, IN SOMETHING THAT THE DOCTOR HAD
17 PUT IT IN, CORRECT?

18 A. YES, MA'AM.

19 Q. AND WAS THAT BULLET -- WAS IT CONSISTENT WITH HAVING
20 BEEN FIRED DIRECTLY INTO SOMEONE'S SKULL BASICALLY?

21 A. I HAVE, IN MY EXPERIENCE, HANDLED NUMEROUS BULLETS THAT
22 WERE ALLEGED TO HAVE BEEN FIRED INTO BONE. I HAVE RECEIVED
23 FOR EXAMINATION ON MANY OCCASIONS BULLETS THAT WERE STILL --
24 THAT WERE SUBMITTED WITH AND ACTUALLY STILL IMBEDDED IN BONE
25 THAT HAD BEEN EXCISED FROM A SKULL THAT I HAD TO FINISH IN

1 THE LABORATORY TO TAKE OUT.

2 THIS BULLET, I DESCRIBED ON MY REPORT AS THE NOSE AREA
3 BEING FLATTENED AND DEFORMED WITH FOREIGN MARKS ON THE
4 BARRON SURFACE. THAT IS SOMETHING THAT COULD HAPPEN WHEN
5 THIS STRIKES A HARD TARGET. IT COULD BE WOOD, IT COULD BE
6 BONE. IN THIS CASE I WOULD SAY THAT THIS IS CONSISTENT WITH
7 HAVING STRUCK BONE BECAUSE OF THE DEFORMITY AND THE FOREIGN
8 MARKS.

9 Q. SO THAT DEFORMITY IS CONSISTENT OF BEING FIRED STRAIGHT
10 INTO BONE BASICALLY?

11 A. THERE -- ARE YOU SAYING IS THERE EVIDENCE OF ANGLE, OF
12 AN ANGLED FIRE WHERE ---

13 Q. YES. I MEAN, DOES IT LOOK -- I'M ASKING WHETHER THAT
14 CONDITION WHERE IT'S SORT OF FLATTENED AND DEFORMED IS
15 CONSISTENT WITH IT BEING FIRED STRAIGHT INTO BONE VERSUS
16 DOWN ON THE CONCRETE AND THEN RICOCHETING UP OR VERSUS IT
17 HITTING SOMETHING ELSE?

18 A. I SEE. WELL, THE PRESENCE OF FOREIGN MARKS INDICATES
19 THAT IT HIT SOMETHING AFTER IT LEFT THE BARREL, THE FIREARM,
20 THAT IT HIT SOMETHING HARD, THAT IT HIT SOMETHING THAT WOULD
21 LEAVE THESE STRIATIONS AND MARKS AND HAVE THE OVERALL
22 FLATTENING EFFECT ON THE NOSE OF THE BULLET. AS I
23 INDICATED, THAT COULD BE -- I'VE SEEN THIS HAPPEN WITH WOOD,
24 AND I'VE SEEN IT HAPPEN WITH BONE, SOMETHING THAT IS
25 BASICALLY THAT HARD.

1 THE ANGLE OF THE DEFORMATION COULD BE INDICATIVE OF
2 DIFFERENT THINGS. IT COULD BE THE ANGLE WITH WHICH THE
3 BULLET STRUCK THAT HARD SURFACE EITHER WOOD OR A HARD
4 SURFACE ON THE GROUND OR THE BONE ITSELF. BUT THAT DOES NOT
5 TELL ME ANYTHING ABOUT THE TRAJECTORY GOING UP OR DOWN. IT
6 ONLY TELLS ME ABOUT THE RELATIONSHIP OF THE BULLET WHEN IT
7 STRUCK THE ROUNDED SURFACE OF THE MATERIAL THAT IT STRUCK.

8 SO IF THIS BULLET WERE TO BE FIRED -- AND THIS, I
9 THINK, WILL DIRECTLY ANSWER YOUR QUESTION. IF THIS BULLET
10 WERE FIRED DIRECTLY AT A SKULL IT WOULD DEPEND ON IF IT HIT
11 A FLAT PART OF THE SKULL, OR A CURVED PART OF THE SKULL, OR
12 IF THE PERSON WERE STANDING AT AN ANATOMICALLY CORRECT
13 POSITION WHEN THEY WERE SHOT WHERE IF THEY HAD THEIR HEAD
14 DOWN, OR TO THE SIDE, OR -- IT WOULD PRESENT DIFFERENT
15 ANGLES THAT WOULD ACCOUNT FOR THIS DEFORMATION ON THE
16 BULLET.

17 Q. OKAY.

18 A. THE BOTTOM LINE IS, THIS IS ONLY CONSISTENT WITH HAVING
19 STRUCK BONE.

20 Q. SO BASICALLY THE CONDITION OF THAT BULLET IS TOTALLY
21 CONSISTENT WITH A BULLET BEING FIRED FROM A GUN AND THEN
22 GOING DIRECTLY INTO BONE?

23 A. YES, MA'AM.

24 Q. I'VE GOT NO FURTHER QUESTIONS.

25 THE COURT: ANY REDIRECT?

1 MS. HODGE: NO, SIR.

2 THE COURT: THANK YOU.

3 MS. HODGE: MAY HE BE EXCUSED?

4 THE COURT: YOU'RE EXCUSED.

5 A. THANK YOU, YOUR HONOR.

6 MS. ROSS: NO OBJECTION.

7 MS. HODGE: THE STATE WOULD CALL EDDIE HUCKS.

8 EDDIE HUCKS, BEING DULY

9 SWORN TESTIFIED AS FOLLOWS:

10 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
11 RECORD.

12 MR. HUCKS: EDDIE HUCKS.

13 DIRECT EXAMINATION BY MS. HODGE:

14 Q. MR. HUCKS, WHO DO YOU WORK FOR?

15 A. I WORK FOR THE DEPARTMENT OF PUBLIC SAFETY FOR
16 GREENVILLE COUNTY IN PROPERTY AND EVIDENCE. AND WE STORE
17 PROPERTY FOR THE SHERIFF'S OFFICE AND THE POLICE DEPARTMENT.

18 Q. IS PROPERTY AND EVIDENCE A SECURED TYPE AREA?

19 A. YES, IT IS.

20 Q. AND HOW MANY PEOPLE WORK IN THE PROPERTY AND EVIDENCE
21 AREA?

22 A. THERE ARE FOUR.

23 Q. AND IS ANYONE -- JUST ANY PERSON OFF THE STREET, ARE
24 THEY ALLOWED TO COME INTO THAT AREA?

25 A. NO.

1 Q. AND WHO IS PRIMARILY ALLOWED IN THAT AREA?

2 A. THE FOUR OF US WORKERS.

3 Q. AND IF SOMEONE WITH THE POLICE DEPARTMENT OR WITH THE
4 SHERIFF'S OFFICE COMES INTO THAT AREA ARE ONE OF THE FOUR OF
5 YOU ALWAYS WITH THEM?

6 A. THEY WOULD HAVE TO SIGN A LOG BOOK IF THEY WENT --
7 WOULD GO IN. AND ONE OF US WOULD HAVE TO BE PRESENT WITH
8 THEM ANYTIME ANYBODY WAS IN A SECURED AREA.

9 Q. SO IS IT LIKE A BIG SAFE, REALLY, REALLY BIG?

10 A. YES. WE HAVE A SAFE AND STORE ROOMS THAT ARE ALL
11 SECURE.

12 Q. AND DO YOU ALSO RETRIEVE EVIDENCE NOT ONLY FROM POLICE
13 OFFICERS, BUT FROM THE FORENSIC OFFICERS?

14 A. YES, WE DO.

15 Q. AND IS PROPERTY AND EVIDENCE OPEN -- IF SOMETHING
16 HAPPENED ON THE WEEKEND WHERE SOMEBODY COLLECTED A PIECE OF
17 EVIDENCE WOULD Y'ALL BE OPEN ON THE WEEKENDS TO TAKE IT?

18 A. WHAT WOULD HAPPEN, WE CLOSE AT SIX IN THE EVENING, BUT
19 WE ARE COVERED FROM SIX IN THE EVENING TIL SEVEN IN THE
20 MORNING BY RECORDS PERSONNEL. AND THE PROPERTY WOULD BE
21 TAKEN AND STORED IN A SECURE LOCATION NOBODY WOULD HAVE
22 ACCESS TO TIL ONE OF US FOUR CAME IN THE MORNING AND GOT IT
23 OUT.

24 Q. I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
25 NUMBER 13 AND STATE'S NUMBER 12. WE'VE KIND OF TAKEN IT

1 APART HERE.

2 A. OKAY.

3 Q. HAVE YOU SEEN STATE'S NUMBER 13 AND NUMBER 14 BEFORE?

4 A. YES, I HAVE.

5 Q. AND WHERE DID YOU -- WELL, LET ME ASK YOU, DID YOU TAKE
6 POSSESSION OF STATE'S NUMBER 13 AND 14?

7 A. YES. ON 7/22/04 I TOOK POSSESSION OF THIS PROPERTY
8 FROM FORENSICS OFFICER, DIANE ORLANDO.

9 Q. AT WHAT TIME?

10 A. AT 0:900.

11 Q. AND WHAT WOULD THAT BE? NINE AM?

12 A. NINE IN THE MORNING.

13 Q. AND WHAT DID YOU DO WITH IT WHEN YOU TOOK POSSESSION OF
14 IT?

15 A. WHEN I RECEIVED THE PROPERTY I PUT MY SIGNATURE ON IT
16 THAT I RECEIVED IT ON THIS SHEET AT THIS DATE AND TIME. I
17 SIGNED IT IN AND STORED IT IN THE SECURE LOCATION WHERE IT
18 STAYED.

19 Q. AND WHEN YOU TOOK IT FROM MS. ORLANDO DID IT HAVE TAPE
20 COVERING UP EACH OF THESE BOXES SO THAT YOU COULDN'T OPEN
21 THEM?

22 A. YES, IT DID.

23 Q. AND DID YOU OPEN EITHER OF THESE BOXES?

24 A. NO.

25 Q. YOU DID NOT DISTURB THE TAPE ON THERE?

1 A. NOT AT ALL.

2 Q. AND THEN WHAT WOULD YOU HAVE DONE OR WHAT DID YOU DO
3 WITH THESE TWO LITTLE BOXES?

4 A. THEN LATER ON THERE WAS A REQUEST FOR THEM TO BE
5 ANALYZED AT SLED. SO I RETRIEVED THE PROPERTY FROM THE
6 SECURE LOCATION. AND THEN I SIGNED IT OVER TO SEAN COLLINS
7 TO TAKE IT DOWN FOR ANALYSIS.

8 Q. WHEN YOU RECEIVED THESE TWO BOXES SEPARATE LIKE THIS
9 DID YOU PACKAGE THEM IN ONE ENVELOPE TO KEEP THEM TOGETHER?

10 A. YEAH, IT WAS PACKAGED IN ONE ENVELOPE.

11 Q. IS YOUR HANDWRITING ON THIS ENVELOPE?

12 A. THAT'S MY HANDWRITING.

13 Q. AND WHO DOES SEAN COLLINS WORK FOR?

14 A. FOR THE DEPARTMENT OF PUBLIC SAFETY IN THE CRIME LAB.

15 Q. AND SO WHEN YOU TURNED IT OVER TO SEAN COLLINS HAD
16 EITHER OF THE MARK OR THE TAPE ON THE BOXES BEEN DISTURBED
17 OR THE TAPE ON YOUR PACKAGE BEEN DISTURBED?

18 A. NO.

19 Q. THANK YOU. YOU CAN JUST LEAVE THAT RIGHT HERE. MS.
20 ROSS MAY HAVE SOME QUESTIONS FOR YOU.

21 THE COURT: MS. ROSS.

22 MS. ROSS: I DON'T HAVE ANY QUESTIONS FOR THIS WITNESS.

23 THE COURT: THANK YOU. YOU CAN STEP DOWN.

24 MS. HODGE: CAN HE BE EXCUSED?

25 MS. ROSS: YES.

1 THE COURT: YOU ARE EXCUSED.

2 MS. HODGE: THE STATE WOULD CALL SEAN COLLINS. MAY WE
3 APPROACH THE BENCH, YOUR HONOR?

4 THE COURT: SURE.

5 (WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE
6 OF THE JURY, BUT OUT OF THEIR HEARING)

7 SEAN COLLINS, BEING DULY
8 SWORN TESTIFIED AS FOLLOWS:

9 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
10 RECORD.

11 MR. COLLINS: SEAN FRANKLIN COLLINS.

12 DIRECT EXAMINATION BY MS. HODGE:

13 Q. MR. COLLINS, WHO DO YOU WORK FOR?

14 A. I WORK FOR THE GREENVILLE COUNTY DEPARTMENT OF PUBLIC
15 SAFETY.

16 Q. AND WHAT ARE YOUR JOB RESPONSIBILITIES WITH THEM?

17 A. I'M A CRIMINALIST IN THE CRIME LABORATORY. IN ADDITION
18 TO ANALYZING EVIDENCE HERE IN GREENVILLE, I ALSO TRANSPORT
19 SOME TYPES OF EVIDENCE THAT WE DON'T HAVE THE CAPACITY TO
20 ANALYZE DOWN TO THE STATE LABORATORY.

21 Q. AND AS PART OF YOUR JOB AND WHAT YOU JUST DESCRIBED AS
22 PART OF YOUR DUTIES, DID YOU, IN FACT, DO THAT ON THE CASE
23 INVOLVING THE STATE VERSUS MARLON RIVERA THAT WE'RE HERE ON
24 TODAY?

25 A. YES, MA'AM, I DID.

1 Q. AND WHY WOULD -- LET ME BACK UP AND SHOW YOU STATE'S
2 NUMBER 12 AND NUMBER 13. DOES A PROPERTY AND EVIDENCE SHEET
3 ACCOMPANY EACH PIECE OF PROPERTY?

4 A. YES, MA'AM. THAT'S HOW WE TRACK ITS MOVEMENT.

5 Q. AND DID YOU TAKE POSSESSION OF STATE'S 12 AND 13?

6 A. YES, MA'AM, I DID.

7 Q. AND WHO DID YOU GET THEM FROM?

8 A. I RECEIVED THEM FROM THE PROPERTY AND EVIDENCE ROOM IN
9 THE BASEMENT OF THE LAW ENFORCEMENT CENTER.

10 Q. DO YOU REMEMBER THE PERSON THAT YOU RECEIVED THEM FROM?

11 A. NO, MA'AM. IT WOULD JUST BE WHICHEVER CLERK WAS ON
12 DUTY THAT DAY.

13 Q. AND WOULD THEY HAVE TO SIGN THAT SHEET OF PAPER?

14 A. NO, MA'AM. ONCE IT'S IN CUSTODY THEY CAN BRING IT TO
15 THE NEXT PERSON.

16 Q. AND DID YOU RECEIVE IT -- STATE'S 12 AND 13, WERE THEY
17 SEALED?

18 A. YES, MA'AM, THEY WERE.

19 Q. DID YOU OPEN THE PACKAGING THAT THEY WERE IN?

20 A. I OPENED THE ENVELOPE TO MAKE SURE BOTH ITEMS WERE
21 THERE, BUT I DID NOT OPEN THE ITEMS.

22 Q. SO WHEN YOU RECEIVED THESE ITEMS THE BOXES WERE SEALED?

23 A. YES, MA'AM.

24 Q. AND THEN WHAT DID YOU DO WITH THEM?

25 A. I TRANSPORTED THEM TO THE SOUTH CAROLINA LAW

1 ENFORCEMENT DIVISION LABORATORY IN COLUMBIA AND TURNED IT
2 OVER TO THEM FOR TESTING.

3 Q. AND I THINK YOU STARTED TO SAY WHY WE DID THAT. WHY
4 DID WE DO THAT WITH THIS CASE?

5 A. WE DON'T HAVE THE CAPACITY OR THE INSTRUMENTATION TO
6 ANALYZE THIS EVIDENCE HERE IN GREENVILLE.

7 Q. DO WE HAVE THE ABILITY TO DO ONE TYPE OF THE TEST, BUT
8 NOT THE OTHER TYPE OF TEST HERE?

9 A. YES, MA'AM. WE DO NOT HAVE BOTH INSTRUMENTS. AND
10 SINCE IT WAS ONE ITEM FROM THE SAME PERSON WE DIDN'T WANT TO
11 SPLIT IT UP.

12 Q. AND WHAT INSTRUMENTS ARE YOU TALKING ABOUT? WHAT
13 THINGS ARE YOU TALKING ABOUT?

14 A. WE HAVE A SCANNING ELECTRON MICROSCOPE IN THE
15 GREENVILLE LABORATORY WHICH WE CAN TEST ONE OF THE TWO BOXES
16 WITH. THE OTHER ONE, SLED TESTS IT WITH AN INSTRUMENT
17 CALLED AN ICP, WHICH WE DO NOT HAVE THAT INSTRUMENT.

18 Q. SO IF THEY'RE GOING TO BE TWO TESTS DONE IT WOULDN'T
19 MAKE SENSE TO DO ONE IN GREENVILLE AND ONE IN SLED AND TRY
20 TO PUT THEM BACK TOGETHER?

21 A. NO, MA'AM. IT'S EASIER FOR ONE PERSON TO EXPLAIN IT.

22 Q. AND WHEN YOU TOOK NUMBER 12 AND 13 DOWN TO SLED WHAT'S
23 THE PROCEDURE ONCE YOU GET TO SLED?

24 A. THEY HAVE A LOG-IN ROOM STAFFED BY SEVERAL CLERKS. YOU
25 GO TO THE NEXT AVAILABLE ONE. THEY WILL GENERATE A SLED

1 NUMBER AND ASSIGN AN ANALYST TO EACH PIECE OF EVIDENCE YOU
2 BRING. AND THEN THEY TAKE IT INTO CUSTODY AND TRANSFER IT
3 TO THEM.

4 Q. THEY THEN REPACKAGE WHAT WE'VE ALREADY PACKAGED?

5 A. YES, MA'AM.

6 Q. AND DID THEY PLACE OUR PACKAGE IN ONE OF THEIR
7 PACKAGES?

8 A. YES, MA'AM. THEY SEALED IT IN THIS OUTER ENVELOPE.

9 Q. AND WHEN YOU GET TO THE CUSTODY AREA OR EVIDENCE INTAKE
10 AREA AT SLED DO YOU OBSERVE THEM DO THIS ---

11 A. YES, MA'AM. I HAVE TO SIGN FOR TRANSFERRING IT OVER,
12 AND SEAL IT, AND INITIAL THE MARKINGS ON THE EVIDENCE TAPE.

13 Q. AND WHEN YOU HANDED OVER STATE'S 12 AND 13 TO THE SLED
14 CUSTODIAN THERE WAS IT IN THE SAME CONDITION AS WHEN YOU HAD
15 RECEIVED IT?

16 A. YES, MA'AM.

17 Q. YOU DID NOT BREAK ANY OF THE SEALS ON ANY OF THE
18 PACKAGES NOR DID THE SLED PERSON IN YOUR PRESENCE?

19 A. NO, MA'AM.

20 Q. AND THEN WHAT'S DONE WITH IT AFTER IT'S REPACKAGED IN
21 SLED'S PACKAGING MATERIAL?

22 A. IT'S DISTRIBUTED TO THE ANALYST AT SLED, AND THEY DEAL
23 WITH IT.

24 Q. DOES IT GO INTO SOME TYPE OF A LOCK BOX OR A MAILBOX
25 TYPE THING?

1 A. THERE IS A DROP-BOX FOR THE ANALYST IN THAT PARTICULAR
2 SECTION. IT'S VERY MUCH LIKE A MAILBOX. YOU DROP IT IN.
3 YOU CAN'T GET TO IT UNLESS YOU HAVE A KEY FOR IT. AND THEN
4 SOMEONE FROM UPSTAIRS WHO HAS CUSTODY OF IT WILL COME DOWN
5 AND RETRIEVE IT.

6 Q. AND DID YOU PLACE 12 AND 13 INTO THIS DROP-BOX?

7 A. YES, MA'AM.

8 Q. AND IS THIS A SECURE LOCATION AT SLED? CAN ANYONE GET
9 IN THAT LOCATION OR IS IT JUST FOR PERSONNEL?

10 A. NO, MA'AM. YOU HAVE TO BE BUZZED IN AFTER YOU EXPLAIN
11 WHY YOU'RE THERE.

12 Q. THANK YOU. ANSWER ANY OF MS. ROSS' QUESTIONS.

13 MS. ROSS: I DON'T HAVE ANY QUESTIONS FOR THIS WITNESS.

14 THE COURT: OKAY. THANK YOU. CAN WE EXCUSE THE
15 WITNESS?

16 MS. HODGE: THANK YOU.

17 THE COURT: NOW, LADIES AND GENTLEMEN, I UNDERSTAND
18 WE'VE GONE AS FAR TODAY AS WE CAN GO. SO WE WILL SUSPEND
19 AND PICK BACK UP TOMORROW MORNING AT 9:00.

20 NOW PLEASE REMEMBER WHEN YOU LEAVE DO NOT DISCUSS THIS
21 CASE AMONG YOURSELVES OR WITH ANYONE ELSE, INCLUDING EVEN
22 MEMBERS OF YOUR OWN FAMILY. IF ANYBODY CONTACTS YOU AND
23 TRIES TO TALK TO YOU ABOUT THE CASE GET THEIR NAMES AND
24 ADDRESSES, REPORT THAT TO ME. PLEASE KEEP YOUR BADGES ON.
25 HAVE THEM ON WHEN YOU COME BACK IN THE MORNING.

1 LADIES AND GENTLEMEN, UNDER THE OATH YOU TOOK IN THIS
2 CASE YOU SWORE TO TRY THIS CASE BASED ONLY AND SOLELY ON THE
3 TESTIMONY AND EVIDENCE PRESENTED IN THIS COURTROOM. AND I
4 THEREFORE TELL YOU IT WOULD BE A VIOLATION OF YOUR OATH FOR
5 YOU TO GO TO CEDAR LANE ROAD TODAY TO THE SCENE OF THIS
6 ALLEGED EVENT AND CONDUCT YOUR OWN INVESTIGATIONS. I DON'T
7 KNOW IF ANY OF YOU HAVE TO GO HOME ALONG CEDAR LANE, BUT
8 SHORT OF CLOSING YOUR EYES WHEN YOU GO BY JUST PLEASE DON'T
9 LOOK, DON'T STOP AND CONDUCT ANY INVESTIGATIONS. AND I'LL
10 SEE YOU BACK AT 9:00 IN THE MORNING. THANK YOU.

11 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:41 PM)

12 THE COURT: HOW ARE WE DOING TIME-WISE WITH THE STATE'S
13 WITNESSES?

14 MS. HODGE: YOUR HONOR, WE SHOULD BE DONE BY LUNCHTIME
15 TOMORROW, I WOULD ASSUME.

16 THE COURT: OKAY. ALL RIGHT.

17 MS. ROSS: AND I JUST WANTED TO VERIFY WITH YOU. MY
18 UNDERSTANDING IS, I'M TRYING TO FIGURE WHEN WE'RE GOING TO
19 DO THE JACKSON V. DENNO HEARING BECAUSE I NEED TO KNOW WHEN
20 MY WITNESS NEEDS TO BE HERE.

21 MS. HODGE: WE COULD DO THAT IN THE MORNING. I'VE GOT
22 ---

23 THE COURT: FIRST UP?

24 MS. HODGE: WELL, I'VE GOT -- THE SLED AGENT'S COMING.
25 I COULD DO IT BEFORE THEN AND THEN DO THE SLED AGENT OR THE

1 SLED AGENT AND THEN DO IT. HOWEVER YOU WANT TO DO IT, YOUR
2 HONOR.

3 MS. ROSS: THAT'S FINE TO DO IT AFTER THE SLED AGENTS.
4 THAT'LL GIVE ME MORE TIME IN THE MORNING TO GET OVER HERE.

5 THE COURT: OKAY. SEE YOU IN THE MORNING.

6 (WHEREUPON COURT WAS IN RECESS AT 4:43 PM)

7 (END OF VOLUME ONE OF TWO)

1 TUESDAY, OCTOBER 11, 2005 - (VOLUME TWO):

2 THE COURT: GOOD MORNING. BE SEATED PLEASE. BE
3 SEATED. ALL RIGHT. YOU READY TO GO, SOLICITOR?

4 MS. HODGE: YES, SIR.

5 THE COURT: BRING THE JURY.

6 MS. ROSS: WE NEED THE DEFENDANT.

7 THE COURT: OH, HOLD ON JUST A MINUTE. I'M SORRY, I
8 THOUGHT HE WAS HERE.

9 MS. ROSS: THAT WAS OUR EXPERT.

10 THE COURT: OKAY. BRING THEM ON.

11 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:11 AM)

12 THE COURT: GOOD MORNING.

13 THE JURY: GOOD MORNING.

14 THE COURT: ALL RIGHT, SOLICITOR, YOU MAY PROCEED.

15 MS. HODGE: THANK YOU, YOUR HONOR. THE STATE CALLS
16 CHRISTINE MONTGOMERY BARRICKMAN.

17 CHRISTINE BARRICKMAN,
18 BEING DULY SWORN TESTIFIED AS FOLLOWS:

19 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
20 RECORD.

21 MS. BARRICKMAN: CHRISTINE BARRICKMAN.

22 DIRECT EXAMINATION BY MS. HODGE:

23 Q. MS. BARRICKMAN, IS YOUR MAIDEN NAME MONTGOMERY?

24 A. YES.

25 Q. WHEN DID YOU GET MARRIED?

- 1 A. JUNE.
- 2 Q. OF THIS YEAR?
- 3 A. UH-HUH (AFFIRMATIVE).
- 4 Q. AND WHERE DO YOU WORK?
- 5 A. SOUTH CAROLINA LAW ENFORCEMENT DIVISION.
- 6 Q. WHAT ARE YOUR DUTIES WITH THE SOUTH CAROLINA LAW
- 7 ENFORCEMENT DIVISION?
- 8 A. MY DUTIES ARE I'M THE FORENSIC TECHNICIAN IN THE TRACE
- 9 EVIDENCE DEPARTMENT. I PREPARE THE GUNSHOT RESIDUE KITS FOR
- 10 ANALYSIS FOR THE ANALYST.
- 11 Q. HOW LONG HAVE YOU BEEN THERE AND DOING THAT JOB?
- 12 A. I'VE BEEN IN THE TRACE DEPARTMENT APPROXIMATELY THREE
- 13 YEARS.
- 14 Q. WERE YOU AT ANY OTHER DEPARTMENT IN SLED BEFORE THAT?
- 15 A. I WAS IN THE EVIDENCE LOG-IN AREA FOR ABOUT THREE AND A
- 16 HALF YEARS.
- 17 Q. AND DOES STATE LAW ENFORCEMENT DIVISION SHORTENED, DOES
- 18 THAT MEAN SLED?
- 19 A. YES.
- 20 Q. AND WERE YOU WORKING THEN AS THE TRACE EVIDENCE
- 21 TECHNICIAN ON NOVEMBER 19TH OF 2004?
- 22 A. YES.
- 23 Q. AND AS PART OF YOUR DUTIES AS AN EVIDENCE TECHNICIAN DO
- 24 YOU GO TO THE EVIDENCE LOG-IN ROOM AND COLLECT EVIDENCE?
- 25 A. YES, I DO.

1 Q. CAN YOU KIND OF DESCRIBE THE PROCESS OF HOW EVIDENCE
2 COMES INTO SLED AND THEN WHAT YOU DO WITH IT?

3 A. AN OFFICER WILL BRING EVIDENCE INTO SLED. THEY HAVE
4 EVIDENCE LOG-IN TECHNICIANS WHO WILL PREPARE THE EVIDENCE
5 AND PACKAGE IT UP. AND THEN IT CAN GO TO DIFFERENT AREAS.
6 MY AREA IS CALLED A TRACE DROP-BOX. IT'S LIKE A MAILBOX,
7 AND IT HAS A LOCK ON IT. ONLY, YOU KNOW, THE TRACE
8 PERSONNEL AND THE CAPTAIN AND MAJOR CAN GET INTO THE BOX.
9 SO IT'S A LOCKED, SECURED AREA.

10 Q. LET ME SHOW YOU WHAT'S BEEN INTRODUCED AS STATE'S
11 NUMBER 12 AND NUMBER 13 AND ASK YOU IF YOU'LL LOOK AT THIS
12 AND SEE IF YOU CAN -- TELL ME IF YOU'VE EVER SEEN THAT
13 BEFORE.

14 A. YES.

15 Q. AND HOW DO YOU RECOGNIZE THAT?

16 A. IT'S MY HANDWRITING. I WROTE THE LAB NUMBER, THE ITEM
17 NUMBER, MY INITIALS, AND THE DATE IN WHICH I RECEIVED THE
18 EVIDENCE AND OPENED IT.

19 Q. LET'S START FROM THE BEGINNING. WHEN YOU COLLECT --
20 WHERE DID YOU COLLECT THIS FROM?

21 A. I TOOK IT FROM THE TRACE DROP-BOX IN THE EVIDENCE LOG-
22 IN AREA.

23 Q. AND WHAT WAS THE OUTER PACKAGING AT THAT TIME?

24 A. IT WAS INSIDE THIS. AND IT WOULD HAVE BEEN SEALED UP
25 WITH THIS EVIDENCE TAPE.

1 Q. SO DID YOU BREAK THAT SEAL ON THE OUTSIDE BAG?

2 A. YES.

3 Q. AND THEN WHAT WAS THE NEXT THING YOU DID?

4 A. THEN THIS ENVELOPE WAS IN THERE. AND IT WAS ALSO
5 SEALED. AND I BROKE THAT SEAL. AND WE HAVE THESE TWO GSR
6 KITS.

7 Q. AND WHAT ARE THOSE TWO? CAN ---

8 A. THEY'RE ACTUALLY ---

9 Q. --- YOU DISTINGUISH ---

10 A. --- A KIT FROM THE SAME PERSON. ONE KIT CONTAINED
11 TUBES WHICH HAD SWABS IN THEM, COTTON SWABS IN THEM. AND
12 THEN THIS ONE WOULD BE PARTICLE LIFTS THAT WERE ALSO TAKEN
13 FROM THE HAND.

14 Q. AND WHAT SPECIFICALLY ARE THOSE KITS TAKEN FOR?

15 A. THEY'RE TAKEN TO TEST TO SEE IF THERE'S GUNSHOT RESIDUE
16 ON THE HANDS.

17 Q. DID YOU PUT YOUR INITIALS ON EACH OF THOSE PIECES OF
18 EVIDENCE AND PACKAGING?

19 A. I DID.

20 Q. AND DID YOU BREAK A SEAL ON EITHER OF THOSE BOXES?

21 A. I DID. THERE'S PAPERWORK INSIDE BOTH OF THE KITS. SO
22 I BROKE THE SEAL TO GET THE PAPERWORK OUT OF BOTH KITS AND
23 PUT MY -- THE LAB NUMBER, ITEM NUMBER, INITIALS, AND DATE ON
24 THEM.

25 Q. AND THEN WHAT DO YOU DO WITH THEM?

1 A. THE PARTICLE LIFTS, I PUT BACK IN THE ENVELOPE BECAUSE
2 I DON'T PROCESS THOSE AT ALL. AND THE COTTON SWABS, WHAT I
3 DO IS THEY COME IN A TUBE AND THEY'RE ADDED TO A RACK WITH
4 OTHER CASES BECAUSE WE RUN IN BATCH. AND EVENTUALLY, ONCE
5 THOSE ARE SET ASIDE, EVENTUALLY WE ADD SOLUTION AND THEN
6 THOSE WILL GO ON INSTRUMENTATION TO BE ANALYZED. I CHECK
7 THE PAPERWORK TO MAKE SURE IT'S ALL THERE AND CORRECT. I
8 DOUBLE CHECK THE SEALS AND MAKE SURE ALL THAT'S GOOD.

9 Q. AS TO STATE'S 12 AND 13 IN FRONT OF YOU THEN WERE THE
10 SEALS INTACT, BUT THEN YOU BROKE THE SEALS?

11 A. RIGHT, THEY WERE FINE.

12 Q. AND THEN YOU PLACED ANY SWABS OR THE AA KIT INTO THE
13 INSTRUMENTATION FOR THE ANALYST TO COME AND ANALYZE?

14 A. RIGHT.

15 Q. AND AS FAR AS THE SCM KIT OR THE DABBERS, ---

16 A. RIGHT.

17 Q. --- YOU PUT THAT WHERE?

18 A. I JUST -- ALL I DID WAS OPEN THIS KIT TO TAKE THE
19 PAPERWORK OUT WHICH HAS THE PARTICLE LIFTS IN IT. THE
20 PARTICLE LIFTS, I DIDN'T EVEN TAKE OUT OF THIS BOX, JUST
21 REMOVED THE PAPERWORK, PUT THIS BACK, CLOSED THIS BACK UP,
22 AND PUT IT BACK IN HERE, AND TURNED IT OVER TO THE ANALYST.

23 Q. AND WHO WAS THE ANALYST ASSIGNED ON THIS CASE?

24 A. JENNIFER STONER.

25 Q. AND WHEN YOU PUT IT IN -- AND YOU SAY YOU PUT THE

1 PARTICLE LIFTS IN HER AREA, IS THAT WHAT YOU SAID?

2 A. I PUT IT BACK IN THIS ENVELOPE AND THEN BACK IN THIS
3 ENVELOPE, AND THEN I TRANSFERRED IT TO HER. AND WE EACH
4 HAVE A LOCKER. AND I PRESUME THAT SHE PUT IT IN HER LOCKER.

5 Q. IS ANYONE PUBLIC OR ANY BRAND OF PEOPLE, ARE THEY
6 ALLOWED UP IN THE AREA WHERE YOU'VE GOT YOUR LOCKERS?

7 A. NO. THE ONLY PEOPLE ALLOWED IN THERE ARE THE TRACE
8 PERSONNEL. AND YOU HAVE TO HAVE ACCESS WITH A KEY. YOU
9 HAVE TO HAVE A CARD ACCESS. IT'S ALL SECURE.

10 Q. AND IF I CAME THERE I WOULD HAVE TO HAVE SOMEBODY
11 ACCOMPANY ME OR ---

12 A. YES.

13 Q. DO YOU DO ANY PREPARATIONS ON THE SCM KIT?

14 A. NO.

15 Q. THANK YOU. ANSWER ANY DEFENSE QUESTIONS PLEASE.

16 THE COURT: MS. ROSS.

17 CROSS EXAMINATION BY MS. ROSS:

18 Q. MS. BARRICKMAN?

19 A. UM-HUM (AFFIRMATIVE).

20 Q. SO YOU RECEIVED A KIT FOR ONE PERSON? BOTH OF THOSE
21 BOXES APPLY TO ONE PERSON?

22 A. RIGHT.

23 Q. I'VE GOT NOTHING FURTHER.

24 THE COURT: THANK YOU. YOU CAN STEP DOWN. CAN WE

25 EXCUSE THIS WITNESS?

1 MS. HODGE: YES, SIR.

2 MS. ROSS: NO OBJECTION.

3 THE COURT: THANK YOU.

4 MS. HODGE: THE STATE WOULD CALL ILA SIMMONS.

5 ILA SIMMONS, BEING DULY

6 SWORN TESTIFIED AS FOLLOWS:

7 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
8 RECORD.

9 MS. SIMMONS: ILA SIMMONS.

10 DIRECT EXAMINATION BY MS. HODGE:

11 Q. AGENT SIMMONS, WHERE ARE YOU EMPLOYED?

12 A. I WORK AT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

13 Q. SLED?

14 A. YES, I DO.

15 Q. HOW LONG HAVE YOU BEEN THERE?

16 A. I'VE BEEN THERE A LITTLE OVER FIVE YEARS NOW.

17 Q. SO WHAT ARE YOUR DUTIES AT SLED?

18 A. I WORK IN THE FORENSICS LABORATORY IN THE AREA OF TRACE
19 EVIDENCE. IN TRACE EVIDENCE WE ANALYZE GUNSHOT RESIDUE,
20 GUNPOWDER RESIDUE. WE DO FIBER AND PAINT COMPARISONS. WE
21 ANALYZE EXPLOSIVES RESIDUES AS WELL AS FIRE DEBRIS.

22 Q. AND WHAT TYPE OF TRAINING AND EDUCATION DO YOU HAVE FOR
23 THAT JOB?

24 A. I HAVE A BACHELORS OF SCIENCE IN CHEMISTRY. I'VE BEEN
25 TRAINED AT SLED IN A VERY STRINGENT IN-HOUSE TRAINING

1 PROGRAM THAT TOOK THREE YEARS. DURING THOSE THREE YEARS I
2 WAS TRAINED IN THE COLLECTION, THE ANALYZATION, AND IN THE
3 INSTRUMENTATION THAT'S REQUIRED TO ANALYZE TRACE EVIDENCE.
4 AND I HAD TO TAKE COMPETENCY EXAMINATIONS IN EACH OF THOSE
5 AREAS AND THEY HAD TO BE PASSED.

6 Q. AND ARE YOU A MEMBER OF ANY PROFESSIONAL ORGANIZATIONS
7 ASSOCIATED WITH THIS TYPE OF WORK?

8 A. I AM. I'M A MEMBER OF THE SOUTHERN ASSOCIATION OF
9 FORENSIC SCIENCE AS WELL AS THE AMERICAN ACADEMY OF FORENSIC
10 SCIENCE.

11 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN TRACE
12 EVIDENCE ANALYSIS IN A COURT OF LAW?

13 A. I HAVE.

14 Q. HOW MANY TIMES?

15 A. PROBABLY FORTY-FIVE, FIFTY TIMES.

16 Q. AND THEN DID YOU, IN FACT, TESTIFY AS AN EXPERT IN
17 TRACE EVIDENCE ANALYSIS?

18 A. I DID.

19 MS. HODGE: AT THIS TIME, YOUR HONOR, THE STATE WOULD
20 MOVE TO ADMIT HER AS AN EXPERT IN TRACE EVIDENCE ANALYSIS.

21 THE COURT: ANY VOIR DIRE?

22 MS. ROSS: NO, YOUR HONOR.

23 THE COURT: SHE'S QUALIFIED. PROCEED.

24 MS. HODGE: THANK YOU.

25 Q. WERE YOU WORKING IN THIS SAME CAPACITY IN NOVEMBER OF

1 LAST YEAR?

2 A. I WAS.

3 Q. AND I'M GOING TO SHOW YOU WHAT'S BEEN INTRODUCED, AND
4 IT'S ACTUALLY IN FRONT OF YOU, AS STATE'S 12 AND 13 AND ASK
5 YOU IF YOU ARE FAMILIAR WITH THESE ITEMS?

6 A. YES. THIS IS A GUNSHOT RESIDUE COLLECTION KIT. IT
7 CONTAINS SWABS AND PARTICLE LIFTS THAT WE USE TO ANALYZE FOR
8 THE PRESENCE OF GUNSHOT RESIDUE.

9 Q. AND WHEN YOU SAY SWABS, DOES THAT HAVE A SPECIFIC NAME
10 FOR THAT KIND OF A TEST?

11 A. YES. WE ANALYZE -- IT'S CALLED AN ATOMIC ABSORPTION
12 TEST. WE ANALYZE THOSE ON AN INDUCTIVELY COUPLED PLASMA
13 MASS SPEC.

14 Q. I'M SORRY. I MISSED THE LAST ---

15 A. IT'S AN INSTRUMENT THAT PICKS UP ON THE CONCENTRATIONS
16 OF CERTAIN ELEMENTS THAT ARE PRESENT IN THE SWABS. IT'S
17 CALLED AN INDUCTIVELY COUPLED PLASMA MASS SPEC. IT'S A
18 REALLY BIG NAME FOR AN INSTRUMENT THAT BASICALLY IS A BEAN
19 COUNTER. IT COUNTS HOW MANY ELEMENTS ARE PRESENT OF EACH
20 TYPE -- HOW MANY ATOMS ARE PRESENT OF EACH TYPE OF ELEMENT.

21 Q. IS IT REFERRED TO AS AN ICP?

22 A. YES, AN ICPMS.

23 Q. CAN YOU ALSO THEN TELL US WHAT THE OTHER KIND OF TEST
24 IS?

25 A. YES. IT'S PARTICLE LIFTS, WHICH ARE LITTLE STICKY TABS

1 THAT HAS DOUBLE SIDED TAPE ON A LITTLE ALUMINUM DISK. AND
2 WE USE THOSE TO LOOK AT THE ACTUAL PARTICLE SIZE AND
3 PARTICLE SHAPE.

4 Q. AND HOW ABOUT LET'S BACK UP EVEN FARTHER. AND WHAT IS
5 GUNSHOT RESIDUE? IS IT THE SAME THING AS GUNPOWDER?

6 A. NO, IT ISN'T. GUNSHOT RESIDUE COMES PRIMARILY FROM THE
7 PRIMER OF A CARTRIDGE. THERE ARE SEVERAL COMPONENTS IN A
8 CARTRIDGE THAT'S PLACED IN A GUN TO BE FIRED. THERE'S A
9 PRIMER, THERE'S THE CARTRIDGE THAT CONTAINS THE POWDER, AND
10 THEN THERE'S THE PROJECTILE.

11 THE PRIMER CONTAINS SEVERAL SHOT SENSITIVE CHEMICALS
12 THAT WHEN THE HAMMER FALLS AND THE FIRING PIN STRIKES THIS
13 PRIMER IT CREATES A LITTLE SPARK. THE LITTLE SPARK STARTS
14 THE GUNPOWDER BURNING, BUILDS UP PRESSURE, AND CAUSES THE
15 PROJECTILE TO SHOOT OUT OF THE END OF THE GUN. AND THAT'S
16 WHERE THE GUNSHOT RESIDUE COMES FROM, PRIMARILY FROM THE
17 PRIMER OF THIS CARTRIDGE.

18 Q. AND DO CERTAIN CALIBER WEAPONS HAVE MORE OR LESS
19 GUNSHOT RESIDUE?

20 A. YES. WHEN SPEAKING OF HANDGUNS THE SMALLER CALIBER
21 HANDGUNS LIKE A .22 OR .25 ARE GOING TO HAVE MUCH LESS THAN
22 LIKE A .45 OR A .44, WHICH WOULD BE CONSIDERED A LARGE
23 CALIBER HANDGUN.

24 Q. AND WHERE DOES GUNSHOT RESIDUE EMIT FROM, THE END OF
25 THE BARREL OR OTHER PLACES?

1 A. IT COMES PRIMARILY FROM THE MUZZLE OR THE END OF THE
2 BARREL, BUT CAN ALSO COME OUT OF THE CYLINDER GAP, WHICH ON
3 A REVOLVER THAT HAS A CYLINDER THAT GOES AROUND PUTTING THE
4 CHAMBER, HAVING LIKE FIVE OR SIX DIFFERENT CHAMBERS, IT CAN
5 COME OUT OF THE CYLINDER GAP. IT CAN ALSO COME OUT AROUND
6 THE TRIGGER. IN A PISTOL WHERE THE SHELLS ARE EJECTED FROM
7 THE GUN IT CAN COME OUT OF THE EJECTOR PORT AS WELL.

8 Q. IF YOU EXAMINE GUNSHOT RESIDUE KITS HOW MANY POSSIBLE
9 RESULTS COULD YOU HAVE?

10 A. THERE'S PROBABLY THREE.

11 Q. WHAT WOULD THOSE BE?

12 A. YOU COULD HAVE A POSITIVE. GUNSHOT RESIDUE CAN BE
13 FOUND AND THEREFORE IS PRESENT. A NEGATIVE, THE METALS THAT
14 WE FIND AREN'T CONSISTENT WITH GUNSHOT RESIDUE. AND THEN AN
15 INCONCLUSIVE, WHICH WOULD MEAN WE WOULD TEST THE SWABS AND
16 MAYBE HAVE A POSITIVE AND THEN TEST THE PARTICLE LIFTS OR
17 STICKY TABS AND THEN HAVE A NEGATIVE OR VICE VERSA.

18 Q. IS GUNSHOT RESIDUE SOMETHING THAT IF -- IS EASILY
19 REMOVED OR IS IT PERMANENT?

20 A. GUNSHOT RESIDUE IS VERY EASILY REMOVED. IT'S LIKE
21 FLOUR. IF YOU WIPE YOUR HANDS ON YOUR PANTS, IF YOU START
22 SWEATING, IT'S GOING TO START BEING REMOVED. IF YOU WASH
23 YOUR HANDS YOU COULD WASH IT ALL THE WAY WITH JUST ONE
24 WASHING.

25 Q. IF YOU HANDLE SOMETHING THAT'S WET WITH CONDENSATION ON

1 IT WOULD THAT ALSO ---

2 A. YES. THAT COULD ALSO CAUSE A REMOVING OF THE GUNSHOT
3 RESIDUE.

4 Q. AND, IN FACT, DOES TIME ALSO ADD TO THAT?

5 A. YES. IN FACT, ON A LIVING INDIVIDUAL GUNSHOT RESIDUE
6 WILL NOT REMAIN ANY LONGER THAN SIX HOURS. AFTER SIX HOURS,
7 WE WON'T ANALYZE A KIT THAT WAS COLLECTED SIX HOURS BEYOND
8 THAT TIME.

9 Q. AND JUST BECAUSE THE PASSAGE OF TIME?

10 A. YES.

11 Q. WHY?

12 A. BECAUSE THE HUMAN BODY, WHEN YOUR HEART'S BEATING,
13 YOU'RE PERSPIRING, YOUR SKIN'S ABSORBING THE DIFFERENT
14 ELEMENTS THAT ARE ON THE SKIN. AND AFTER SIX HOURS, EVEN IF
15 YOU DON'T WASH YOUR HANDS OR DON'T WIPE YOUR HANDS, THE
16 GUNSHOT RESIDUE IS GOING TO BE COMPLETELY REMOVED.

17 Q. NOW LET'S TALK ABOUT STATE'S NUMBER 13 AND 12 IN FRONT
18 OF YOU. YOU WERE NOT THE INITIAL ANALYZER, IS THAT CORRECT?

19 A. NO, I WAS NOT.

20 Q. AND WHO WAS THAT?

21 A. THAT WAS JENNIFER STONER.

22 Q. AND WHERE IS SHE TODAY?

23 A. SHE'S ON MATERNITY LEAVE AT THE MOMENT.

24 Q. AND WHAT WAS YOUR ROLE THEN IN REGARD TO STATE'S 12 AND
25 13?

1 A. WE HAVE A REQUIREMENT THAT WHEN AN ANALYST DOES ANY
2 ANALYSIS ON ANY EVIDENCE THAT IT HAS -- THAT THE CASE JACKET
3 WHERE ALL THE NOTES, THE CASE NOTES, THE DATA HAS TO BE
4 REVIEWED BY SOMEONE ELSE IN THE LABORATORY WHO IS QUALIFIED
5 IN THAT AREA. IN THIS CASE IT WOULD BE GUNSHOT RESIDUE.
6 AND I REVIEWED HER CASE JACKET, HER NOTES, HER DATA SHEETS,
7 AND EVERYTHING AND CAME UP WITH THE SAME CONCLUSION THAT SHE
8 CAME UP WITH AND SIGNED OFF ON THE REVIEW.

9 Q. AND WHAT CONCLUSION WAS THAT?

10 A. SHE CONCLUDED THAT ONE ROUND LEAD PARTICLE -- IF I MAY
11 ---

12 Q. YES.

13 A. --- LOOK AT THE REPORT VERY QUICKLY. THAT ONE ROUND
14 LEAD PARTICLE WAS FOUND ON THE BACK OF THE LEFT HAND IN THIS
15 KIT THAT WAS LABELED RIVERA, MARLON.

16 Q. AND CAN YOU EXPLAIN WHAT THAT MEANS?

17 A. WELL, WHEN GUNSHOT RESIDUE IS FIRED IT'S IN A MOLTEN
18 STATE BECAUSE IT'S A COMBINATION OF LEAD, AND BARIUM, AND
19 ANTIMONY, WHICH ARE ALL SOLID AT ROOM TEMPERATURE, BUT
20 THEY'RE UNDER HEAT AND UNDER PRESSURE WHEN THEY'RE COMING
21 OUT OF THE MUZZLE OF THIS GUN. IT WOULD BE AS IF YOU THREW
22 WATER UP IN THE AIR AND FROZE IT IN MID AIR. YOU WOULD HAVE
23 ROUND LITTLE DROPLETS. THAT'S WHAT HAPPENS WHEN THE GUNSHOT
24 RESIDUE COMES OUT OF THE GUN.

25 IT GETS ON THE HANDS OF THE PERSON SHOOTING THE GUN OR

1 ANYTHING THAT'S IN THE VICINITY OF THE WEAPON. IT COOLS,
2 IT'S GOING TO BE IN THESE ROUND DROPLETS. AND THIS LEAD IS
3 A COMPONENT OF GUNSHOT RESIDUE. AND THE FACT THAT IT'S
4 ROUND MAKES IT VERY SPECIFIC TO GUNSHOT RESIDUE.

5 Q. SO THERE'S NOT -- DO YOU KNOW OF ANY OTHER THING THAT
6 COULD HAVE PRODUCED A ROUND LEAD PARTICLE ON THE BACK OF THE
7 DEFENDANT'S HAND?

8 A. IT WOULD HAVE TO BE IN A SITUATION WHERE LEAD WAS UNDER
9 EXTREME PRESSURE AND EXTREME HEAT. THE ONLY OTHER POSSIBLE
10 SITUATION WOULD BE MAYBE FROM A METAL LATHE WHERE IT'S UNDER
11 EXTREME HEAT AND SOMEONE WAS WORKING WITH LEAD ON A METAL
12 LATHE.

13 Q. IS THAT A SMALL AMOUNT FOR YOU TO FIND WHEN YOU
14 CONDUCTED A GUNSHOT RESIDUE KIT, OR IS THAT A NORM, OR ---

15 A. WELL, WE ---

16 Q. --- HOW WOULD YOU CHARACTERIZE THAT?

17 A. WE -- THAT CAN BE PRETTY MUCH NORMAL DEPENDING UPON THE
18 TIME THAT PASSES FROM THE INCIDENT UNTIL THE TIME THAT THE
19 GSR KIT'S COLLECTED. IT CAN BE NORM -- IF THIS WERE
20 COLLECTED IMMEDIATELY AFTER THE SHOOTING HAPPENED, IF THE
21 PERSON PUT THE GUN DOWN AND THE GSR KIT WAS COLLECTED
22 IMMEDIATELY THEN YOU WOULD EXPECT TO FIND MORE THAN THIS,
23 BUT IF TIME PASSES THEN IT CAN BE A NORM.

24 Q. SO IT WOULD BE CONSISTENT WITH IF THE FIREARM WAS
25 DISCHARGED BY THE DEFENDANT AT MIDNIGHT BUT THE AA KIT

1 WASN'T OR THE SCM KIT WAS NOT COLLECTED UNTIL 4:45 AM ---

2 A. YES, THAT'S VERY -- THAT'S VERY POSSIBLE.

3 Q. THAT WOULD BE CONSISTENT WITH JUST FINDING THE ONE
4 ROUND PARTICLE?

5 A. YES, IT COULD BE.

6 Q. AND I THINK YOU'VE TOUCHED ON THIS ALREADY, BUT WHAT IF
7 THE DEFENDANT HAD CHANGED HIS CLOTHING?

8 A. OH, IF THEY CHANGE THE CLOTHING OR WIPE THE HANDS IN
9 ANY WAY THEN THE GUNSHOT RESIDUE IS GOING TO START BEING
10 REMOVED.

11 Q. WHAT ABOUT IF HE WAS HOLDING A BEER OR A DRINK THAT HAD
12 CONDENSATION ON IT?

13 A. THE CONDENSATION CAN CAUSE THE GUNSHOT RESIDUE TO BE
14 REMOVED AS WELL.

15 Q. SO ANY COMBINATION OF THESE WOULD JUST CONTINUE TO WEAR
16 OFF WHAT MAY HAVE BEEN THERE?

17 A. THAT'S CORRECT.

18 Q. AND I'M NOT SURE IF YOU STATED EXACTLY, DID YOU STATE
19 WHERE THE LOCATION OF THE GUNSHOT RESIDUE WAS FOUND?

20 A. IT WAS FOUND ON THE BACK OF THE LEFT HAND ON THIS AREA.

21 Q. THANK YOU. ANSWER ANY DEFENSE QUESTIONS PLEASE.

22 THE COURT: MS. ROSS.

23 CROSS EXAMINATION BY MS. ROSS:

24 Q. NOW YOU SAID THAT THE GUNSHOT RESIDUE COULD HAVE --
25 IT'S PRODUCED GENERALLY FROM THE BARREL OF THE GUN?

1 A. YES, PRIMARILY FROM THE BARREL OF THE GUN.

2 Q. AND SO ANYTHING THAT WAS IN THE VICINITY OF THE BARREL
3 OF THE GUN COULD HAVE PICKED UP GUNSHOT RESIDUE?

4 A. THAT'S CORRECT.

5 Q. AND YOU SAID ON THE SAMPLE, THE ONE SAMPLE THAT YOU
6 RECEIVED THERE WAS GUNSHOT RESIDUE ON THE BACK OF THE LEFT
7 HAND?

8 A. CORRECT.

9 Q. THANK YOU. NOTHING FURTHER.

10 THE COURT: THANK YOU. STEP DOWN. AND CAN THIS
11 WITNESS BE EXCUSED?

12 MS. ROSS: NO OBJECTION.

13 MS. HODGE: YOUR HONOR, AT THIS TIME WE WOULD HAVE A
14 MOTION TO TAKE UP OUTSIDE THE PRESENCE ---

15 THE COURT: ALL RIGHT. TAKE THE JURY OUT PLEASE.

16 (WHEREUPON THE JURY EXITED THE COURTROOM AT 9:30 AM)

17 THE COURT: SOLICITOR.

18 MS. HODGE: THE STATE WOULD CALL BRIAN GARRETT FOR THE
19 JACKSON V. DENNO HEARING.

20 MS. ROSS: AND, YOUR HONOR, I WOULD JUST AT THIS TIME
21 LIKE TO PROFFER JUST THE COVER SHEETS OF ALL THE DISCOVERY I
22 HAD REGARDING -- HAVING LOOKED THROUGH MY DISCOVERY I DIDN'T
23 SEE ANY PHOTOGRAPHS.

24 THE COURT: ALL RIGHT.

25 MS. ROSS: WE WOULD PROFFER ALL THOSE COVER SHEETS.

1 AND I'D ALSO LIKE TO PROFFER THE WARRANT, FOR THE ACTUAL
2 WORDING THAT WAS ---

3 THE COURT: OKAY.

4 MS. ROSS: --- PLACED IN THE WARRANT.

5 THE COURT: SOLICITOR, CAN YOU SHOW ME WHERE NOW THE
6 PHOTOGRAPHS WERE PRODUCED? YOU SAID THAT ---

7 MS. HODGE: YOUR HONOR, I LOOKED THROUGH MY LISTINGS OF
8 DISCOVERY THINGS AS WELL, AND THEY WERE NOT LISTED ON --
9 WHEN WE TAKE THE DOCUMENTS AND LIST THEM. WHAT I DO IS AS A
10 MATTER OF COURSE, MY INVESTIGATOR, DIANE DEKOEYER, DOES
11 CONTACT SHEETS. AND SHE MAKES UP TWO EVERY TIME. AND I
12 PROVIDE ONE TO THE DEFENSE AND ONE STAYS IN MINE. AND I'VE
13 GOT JUST ONE COPY, IT'S MINE. AND I KNOW THAT SHE DOES THAT
14 ON ALL MY CASES. I CAN SWEAR HER IF THAT'S POSSIBLE.

15 IN ADDITION, MS. ROSS ASKED ME PROBABLY SIX MONTHS AGO
16 FOR THE DISCOVERY AGAIN BECAUSE SHE HAD MISPLACED IT. I HAD
17 ORIGINALLY PROVIDED IT. SO ---

18 MS. ROSS: AND I NEVER SAW IT THE FIRST TIME. YOU
19 KNOW, I WILL ALWAYS ASSUME THAT I MISPLACED IT BEFORE SAYING
20 THAT IT WAS NEVER PROVIDED TO ME IN THE FIRST PLACE.

21 THE COURT: ALL RIGHT. MS. ROSS, DO YOU WANT ME TO PUT
22 MS. DEKOEYER UNDER OATH SO THAT YOU CAN QUESTION HER?

23 MS. ROSS: THAT'S FINE. I MEAN, YOU CAN.

24 THE COURT: ALL RIGHT. COME AROUND PLEASE AND BE
25 SWORN.

1 REBECCA D. REEVES, BEING

2 DULY SWORN TESTIFIED AS FOLLOWS:

3 (WHEREUPON COURT'S EXHIBITS 1 AND 2 WERE MARKED)

4 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
5 RECORD.

6 MS. REEVES: REBECCA DIANE REEVES.

7 DIRECT EXAMINATION BY MS. HODGE:

8 Q. I'M SORRY. I THINK I SAID DEKOEYER, DID I NOT?

9 A. YOU DID.

10 Q. I APOLOGIZE.

11 A. NO PROBLEM.

12 Q. INVESTIGATOR REEVES, ARE YOU MY INVESTIGATOR AT THE
13 SOLICITOR'S OFFICE?

14 A. YES, I AM.

15 Q. AND AS A MATTER OF PREPARING DISCOVERY IN MY CASES DO
16 YOU PRODUCE CONTACT SHEETS IN CASES THAT HAVE PHOTOGRAPHS
17 LISTED BY FORENSIC OFFICERS?

18 A. YES, I DO.

19 Q. AND WHEN YOU DO THAT DO YOU PREPARE TWO COPIES OF
20 CONTACT SHEETS?

21 A. I ALWAYS PREPARE TWO AND ACTUALLY MARK ON THE FRONT OF
22 IT ONE FOR DISCOVERY AND ONE FOR YOU.

23 Q. AND CAN YOU RECALL FROM MEMORY IF YOU DID THAT IN THIS
24 CASE OR IS THAT YOUR NORMAL COURSE?

25 A. THAT WOULD BE MY NORMAL COURSE. I DO IT EVERY TIME.

1 AND ACTUALLY I PRINT THE CONTACT SHEETS PRIOR TO GIVING IT
2 TO YOU. I PREPARE THE FILES, GIVE THEM TO OUR VICTIM
3 ADVOCATE WITH THE PHOTOS IN THERE AND THEN GIVE THE FILE TO
4 YOU WITH TWO COPIES.

5 Q. THANK YOU.

6 THE COURT: OKAY. MS. ROSS.

7 CROSS EXAMINATION BY MS. ROSS:

8 Q. SO I GUESS YOU PROVIDE -- YOU MADE MORE THAN TWO COPIES
9 IF YOU HAVE TO GIVE ONE TO THE VICTIM ADVOCATE?

10 A. NO, MA'AM. I MAKE TWO COPIES. THE PROCESS OF THE FILE
11 WOULD BE TO ME, TO THE VICTIM ADVOCATE, THEN TO KRIS. AND
12 EVERYTHING WOULD BE IN THE FILE AT THAT TIME. SHE DOES NOT
13 GET A FILE WITHOUT THE PICTURES IN IT.

14 Q. NOW I KNOW NOW -- DO YOU REMEMBER -- DO YOU RECALL WHEN
15 YOU MADE THE PHOTOGRAPHS, THE COPIES?

16 A. NO, MA'AM.

17 Q. ISN'T IT YOUR NORMAL PROCEDURE NOW TO HAVE SOMEONE FROM
18 THE PUBLIC DEFENDER'S OFFICE ACCEPT DISCOVERY AND SIGN OFF
19 ON THAT?

20 A. THEY DO.

21 Q. IS THERE -- DO YOU HAVE THAT IN YOUR FILE ANYWHERE OR
22 DO YOU KNOW ---

23 A. I'M NOT SURE IF IT'S IN THE FILE OR IF THE PROCESS AT
24 THAT TIME WAS WHERE YOU ACTUALLY SIGN FOR THEM. JC NORMALLY
25 COMES UP AND SIGNS FOR ALL THE PDs. AND IN PROVIDING

1 DISCOVERY THOSE ARE COPIED AND PUT UP FRONT. YOU'RE
2 CORRECT. THE WHOLE FILE WOULD BE COPIED AND PUT UP FRONT.
3 I HAVE ---

4 MS. HODGE: ARE YOU LOOKING TO ME FOR ANSWERS?

5 MS. ROSS: I GUESS. I DIDN'T KNOW WHETHER YOUR FILE
6 WOULD REFLECT SOMETHING THAT SOMEONE FROM OUR OFFICE MIGHT
7 HAVE SIGNED OFF ON.

8 MS. HODGE: I'VE GOT NUMEROUS BECAUSE I'VE PROVIDED
9 ABSOLUTELY EVERYTHING I HAVE IN MY FILE. I HAVEN'T LEFT OUT
10 ONE THING, EVEN PROVIDED THINGS THAT SHE'S NOT ENTITLED TO.
11 SO I DON'T KNOW WHY I WOULD HAVE WITHHELD THE PHOTOGRAPHS
12 PURPOSEFULLY IF -- MY CONTENTION IS THEY WERE GIVEN BECAUSE
13 EVERYTHING IN THIS FILE WAS GIVEN. AND I'VE GOT AT LEAST
14 SIX OR SEVEN DIFFERENT RECEIPT OF DISCOVERY THINGS FROM THE
15 PUBLIC DEFENDERS OFFICE, THEY'VE COME AND PICKED THEM UP.

16 A. I'VE ACTUALLY ---

17 MS. HODGE: IT DON'T LIST THE ITEMS THAT SAY WHAT
18 THEY'VE PICKED UP. THEY'RE TO REVIEW THEM AT THAT TIME AND
19 SIGN OFF THAT THAT'S WHAT THEY'VE RECEIVED, BUT I DON'T
20 THINK THAT TECHNICALLY HAPPENS.

21 A. I HAVE ALSO HAND DELIVERED AT LEAST TWO TO THREE
22 DISCOVERY NOTICES TO YOUR OFFICE. I BELIEVE PAT SIGNED FOR
23 ONE, JC SIGNED FOR ONE, AND YOU SIGNED FOR ONE.

24 Q. AND I PROVIDED THE COURT A LIST OF A NUMBER OF COVER
25 SHEETS FOR PROPERTY -- FOR DISCOVERY IN WHICH EVERY ITEM

1 GENERALLY IS LISTED THAT'S WITHIN THAT DISCOVERY PACKAGE.
2 ISN'T THAT THE REGULAR COURSE OF BUSINESS, TO LIST EVERY
3 ITEM THAT ---

4 A. THE COVER LETTER, THE LIST.

5 Q. YEAH. AND I PROVIDED A NUMBER OF THEM TO THE COURT
6 THAT I BELIEVE WOULD REFLECT THAT, YES, IN FACT, THAT ABOUT
7 SIX DIFFERENT COVER LETTERS, BUT NONE OF THEM ACTUALLY
8 STATES ANYTHING ABOUT A CONTACT SHEET, OR PHOTOGRAPHS, OR
9 STATES ANYTHING DIRECTLY ABOUT PHOTOGRAPHS.

10 A. MY STANDARD PROCEDURE IS TO HAVE THEM IN THE FILE AND
11 THEY GO WITH DISCOVERY.

12 Q. AND ISN'T IT POSSIBLE THAT SOMEHOW THEY COULD HAVE BEEN
13 LEFT OUT IN THIS CASE?

14 A. THAT COULD BE A POSSIBILITY, BUT IT'S NOT STANDARD.

15 Q. THANK YOU.

16 THE COURT: THANK YOU. ALL RIGHT. NOW FOR THE SAKE OF
17 ARGUMENT, ASSUME THAT YOU DID NOT RECEIVE THE PHOTOGRAPHS,
18 HOW IS THE DEFENSE PREJUDICED BY NOT SEEING THESE
19 PHOTOGRAPHS, MS. ROSS? I MEAN, PHOTOGRAPHS HAVE BEEN
20 INTRODUCED SO FAR. I MEAN, THEY'RE JUST ...

21 MS. ROSS: THEY'VE BEEN BROUGHT INTO EVIDENCE, YOUR
22 HONOR. I GUESS WHAT -- WITH OUR THEORY OF THE CASE I WOULD
23 CONCEDE THAT THIS IS NOT SOMETHING THAT'S REVERSIBLE. I
24 THINK THE PHOTOGRAPHS -- I'VE GONE OUT TO THE SCENE, AND
25 THEY REFLECT WHAT THE SCENE REFLECTS. AND IT'S NOT REALLY

1 THE CRUX OF OUR CASE.

2 THE COURT: OKAY.

3 MS. ROSS: HOWEVER, I JUST PUT THIS FORWARD BECAUSE IT
4 CERTAINLY COULD HAVE BEEN. AND THEY, IN FACT, WERE NOT
5 PROVIDED TO ME. I DID NOT SEE THEM IN THE FILE. AND I
6 WANTED MY OBJECTION PRESERVED ON THE RECORD.

7 THE COURT: SURE. ALL RIGHT. AND IT'S IN THE RECORD.

8 MS. ROSS: ALL RIGHT.

9 THE COURT: OKAY. SOLICITOR, YOU MAY PROCEED.

10 MS. HODGE: THANK YOU, YOUR HONOR. BRIAN GARRETT.

11 MS. ROSS: AND, YOUR HONOR, AGAIN, WHILE I'M PRESERVING
12 THE RECORD, I WANT TO RENEW MY OBJECTION TO HOLDING THE
13 JACKSON V. DENNO HERE TODAY RATHER THAN YESTERDAY. I THINK
14 THE DEFENSE WAS PREJUDICED. I THINK CERTAINLY MY OPENING
15 WAS AFFECTED BY MY DIFFICULTY SORT OF WALKING THE LINE
16 BETWEEN TALKING ABOUT THIS CONFESSION, WHICH I WANTED TO DO
17 IF IT'S GOING TO COME IN TO ADDRESS IT AND NOT BEING ABLE TO
18 TALK ABOUT IT AT ALL. I CERTAINLY FEEL THAT THAT OPENING
19 WAS AFFECTED AND MY PERFORMANCE WAS AFFECTED BY MY INABILITY
20 TO WALK THE LINE. AND IT DIDN'T HELP TO HAVE WHAT WERE JUST
21 GENERAL OBJECTIONS MADE THROUGHOUT THAT WERE NOT GIVEN A
22 BASIS FOR. SO I WOULD JUST RENEW MY OBJECTION TO HOLDING
23 THE JACKSON V. DENNO TODAY.

24 THE COURT: THANK YOU.

25

BRIAN GARRETT, BEING DULY

1 SWORN TESTIFIED AS FOLLOWS:

2 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
3 RECORD.

4 MR. GARRETT: BRIAN MARK GARRETT.

5 DIRECT EXAMINATION BY MS. HODGE:

6 (WHEREUPON STATE'S EXHIBITS 16 AND 17 WERE MARKED FOR
7 IDENTIFICATION)

8 Q. INVESTIGATOR GARRETT, I KNOW YOU TESTIFIED YESTERDAY ON
9 YOUR ACTIVITIES IN THIS CASE. DID YOU ALSO HAVE AN OCCASION
10 TO BECOME INVOLVED IN WITNESSING THE WAIVER OF RIGHTS OF THE
11 DEFENDANT IN THIS CASE AND THE SUBSEQUENT STATEMENT OF THE
12 DEFENDANT?

13 A. YES, MA'AM, I DID.

14 Q. AND CAN YOU TELL US WHO ELSE WAS PRESENT DURING THE
15 WAIVER OF RIGHTS AND THE SUBSEQUENT STATEMENT OF THE
16 DEFENDANT?

17 A. INVESTIGATOR WES SMITH AND DEPUTY RIVERA, RAMON RIVERA.

18 Q. NOW YOU STATED EARLIER UNDER -- PREVIOUSLY THAT YOU
19 SPEAK SPANISH, BUT NOT FLUENTLY.

20 A. CORRECT.

21 Q. SO DID YOU PARTICIPATE IN ANY WAY IN ACTUALLY
22 CONVERSING WITH THE DEFENDANT DURING EITHER OF THESE
23 PROCESSES?

24 A. NO, I DID NOT.

25 Q. AND YOU HAD AN OCCASION TO OBSERVE THE DEFENDANT

1 EARLIER AT THE BAR HE WAS ARRESTED AT AND THEN AT THE -- OR
2 TELL ME WHERE THE STATEMENT TOOK PLACE.

3 A. IN THE LAW ENFORCEMENT CENTER OF THE CID IN
4 INVESTIGATOR SMITH'S OFFICE.

5 Q. AND IN YOUR OPINION DID HE APPEAR TO UNDERSTAND WHO YOU
6 WERE, AND WHERE HE WAS, AND THE SITUATION HE WAS IN?

7 A. YES, HE DID.

8 Q. AND DID HE APPEAR TO BE HIGHLY INTOXICATED OR UNDER THE
9 INFLUENCE OF ANY DRUGS OR ALCOHOL?

10 A. NO, HE DID NOT.

11 Q. DID HE APPEAR TO HAVE ANY MENTAL OR PHYSICAL DISABILITY
12 ---

13 MS. ROSS: I'D OBJECT. I ---

14 Q. --- THAT WOULD IMPAIR ---

15 MS. ROSS: --- DON'T THINK HE HAD THE QUALIFICATION TO
16 ---

17 THE COURT: HOLD ON.

18 MS. ROSS: I DON'T THINK HE CAN SAY WHETHER MR. RIVERA
19 APPEARED TO HAVE THE MENTAL OR PHYSICAL CAPABILITY TO -- I
20 DIDN'T KNOW WHETHER SHE WAS GOING TO SAY PSYCHOLOGICAL. HE
21 CAN'T -- IS NOT AN EXPERT. HE CAN'T ---

22 THE COURT: WELL, I UNDERSTAND THAT, BUT HE CAN NOTE
23 HIS OBSERVATIONS.

24 MS. ROSS: OKAY.

25 A. I'M SORRY. COULD YOU REPEAT THAT?

- 1 Q. DID HE APPEAR TO HAVE ANY MENTAL OR PHYSICAL
2 DISABILITIES SUCH AS -- SOMETHING SEVERE THAT IMPAIRED HIM?
3 A. NO, HE DID NOT.
4 Q. COULD HE SPEAK?
5 A. YES.
6 Q. COULD HE SPEAK ENGLISH?
7 A. NO, HE COULD NOT.
8 Q. BUT HE COULD -- HE COULD TALK?
9 A. YES, MA'AM.
10 Q. COULD HE HEAR?
11 A. YES.
12 Q. AND HOW DO YOU KNOW THIS?
13 A. JUST BY HIS REACTIONS. AND HE WAS SPEAKING BACK TO
14 THE, EXCUSE ME, DEPUTY RIVERA AS HE ASKED QUESTIONS, HE'D
15 ANSWER.
16 Q. AND DO YOU KNOW APPROXIMATELY WHAT TIME HE WAS TAKEN TO
17 THE LAW ENFORCEMENT CENTER TO BEGIN THE WAIVER OF RIGHTS AND
18 THE STATEMENT?
19 A. IT APPEARS ABOUT 6:30 THE WAIVER OF RIGHTS WAS TAKEN.
20 Q. AND WHAT DAY?
21 A. ON 7/18 OF '04.
22 Q. SO THIS WAS JUST TWO HOURS AFTER BASICALLY YOU HAD
23 ARRESTED HIM AT THE MEXICALI?
24 A. THAT'S CORRECT.
25 Q. AND YOUR NAME IS ON THE WAIVER OF RIGHTS?

- 1 A. YES, IT IS.
- 2 Q. AND IS THIS WAIVER OF RIGHTS IN ENGLISH OR IN SPANISH?
- 3 A. IT'S IN SPANISH.
- 4 Q. AND WHY WAS THIS WAIVER OF RIGHTS USED?
- 5 A. BECAUSE THE SUSPECT DOES NOT SPEAK ENGLISH.
- 6 Q. AND YOU WERE ON HERE STRICTLY AS A WITNESS, THAT'S
- 7 CORRECT?
- 8 A. THAT'S CORRECT.
- 9 Q. DURING ANY PORTION OF THE WAIVER OF RIGHTS DID THE --
- 10 DID YOU, DID DEPUTY RIVERA, OR DID WES SMITH FORCE THE
- 11 DEFENDANT, COERCE THE DEFENDANT, THREATEN THE DEFENDANT IN
- 12 ANY WAY TO GET HIM TO WAIVE HIS RIGHTS?
- 13 A. NO, WE DID NOT.
- 14 Q. DID YOU DENY HIM ANY FOOD, OR ANYTHING TO DRINK, OR A
- 15 BATHROOM BREAK, OR A SMOKE BREAK?
- 16 A. NO, WE DID NOT.
- 17 Q. DID HE REQUEST ANY OF THOSE THINGS?
- 18 A. NO, HE DID NOT.
- 19 Q. DID YOU PROMISE HIM OR ANYONE IN YOUR PRESENCE PROMISE
- 20 HIM ANY TYPE OF LENIENCY, MAYBE A LOWER BOND OR SOME TYPE OF
- 21 SENTENCE NEGOTIATION IF HE WOULD WAIVE HIS RIGHTS?
- 22 A. NO, WE DID NOT.
- 23 Q. CAN YOU TELL ME WHAT RIGHTS HE WAS ADVISED OF?
- 24 A. THIS IS HIS MIRANDA RIGHTS.
- 25 Q. AND DID HE APPEAR TO UNDERSTAND WHAT HIS MIRANDA RIGHTS

- 1 WERE?
- 2 A. YES, HE DID.
- 3 Q. HOW DID THAT TAKE PLACE?
- 4 A. DEPUTY RIVERA READ HIS MIRANDA RIGHTS TO HIM AND ASKED
5 HIM IF HE UNDERSTOOD. AND HE STATED THAT HE DID.
- 6 Q. DID YOU -- WERE YOU PRESENT -- DID YOU KNOW IF THE
7 DEFENDANT COULD READ OR WRITE SPANISH?
- 8 A. HE SAID HE COULD NOT READ OR WRITE IN SPANISH, THAT HE
9 DIDN'T HAVE ANY ACTUAL SCHOOL, SCHOOLING.
- 10 Q. DID YOU WITNESS DEPUTY RIVERA READ HIS RIGHTS TO HIM IN
11 SPANISH?
- 12 A. YES, I DID.
- 13 Q. AND DID IT APPEAR TO YOU THE DEFENDANT UNDERSTOOD WHAT
14 DEPUTY RIVERA WAS SAYING AS TO HIS RIGHTS?
- 15 A. YES, IT DID APPEAR THAT WAY.
- 16 Q. DID HE HAVE THE DEFENDANT MAKE SOME KIND OF A MARKING
17 TO INDICATE THAT HE UNDERSTOOD WHAT THE ---
- 18 A. YES, HE DID.
- 19 Q. --- DEPUTY WAS SAYING? AND WHAT WAS THAT?
- 20 A. HIS INITIALS.
- 21 Q. AND DID HE PLACE HIS INITIALS AFTER EVERY LINE ON THE
22 WAIVER OF RIGHTS?
- 23 A. YES, MA'AM, HE DID.
- 24 Q. AND DID DEPUTY RIVERA EXPLAIN EVERY LINE TO HIM?
- 25 A. YES, HE DID.

1 Q. AND SEEING THAT YOU SPEAK SOME SPANISH WERE YOU ABLE TO
2 FOLLOW THIS CONVERSATION?

3 A. YES, MA'AM, I WAS.

4 Q. DID AT ANY POINT DEPUTY RIVERA MISTRANSLATE OR MISSTATE
5 THE DEFENDANT'S RIGHTS ON THAT FORM?

6 A. NO, HE DID NOT.

7 Q. AND DID THE DEFENDANT THEN SIGN THE BOTTOM OF THE FORM
8 INDICATING THAT HE WISHED TO WAIVE ALL OF HIS RIGHTS?

9 A. HE DID SIGN IT.

10 Q. DID HE DO THAT FREELY AND VOLUNTARILY?

11 A. YES, HE DID.

12 Q. AND AFTER WAIVING HIS RIGHTS DID HE THEN AGREE TO GIVE
13 A STATEMENT REGARDING THIS CASE?

14 A. YES, HE DID.

15 Q. IN REGARD TO HIS STATEMENT DID YOU OR ANYONE IN YOUR
16 PRESENCE FORCE HIM, THREATEN HIM, COERCE HIM IN ANY WAY TO
17 GET HIM TO GIVE THIS STATEMENT?

18 A. NO, WE DID NOT.

19 Q. AND DID YOU PROMISE HIM ANYTHING, LENIENCY OF ANY KIND
20 TO GIVE THIS STATEMENT?

21 A. NO, WE DID NOT.

22 Q. DID YOU OR ANYONE IN YOUR PRESENCE DEPRIVE HIM OF
23 ANYTHING HE REQUESTED TO GET THIS STATEMENT?

24 A. NO, WE DID NOT.

25 Q. DID HE EVER SAY, I DON'T WANT TO TALK ANYMORE AND I

- 1 WANT A LAWYER?
- 2 A. NO, HE DID NOT.
- 3 Q. EITHER OF THOSE STATEMENTS?
- 4 A. NO, HE DID NOT.
- 5 Q. AND WHAT WAS HIS Demeanor DURING THIS TIME WHEN HE WAS
- 6 GIVING HIS STATEMENT?
- 7 A. HE APPEARED CALM.
- 8 Q. DID HE APPEAR TO UNDERSTAND -- WERE QUESTIONS ASKED OF
- 9 HIM?
- 10 A. YES, THEY WERE.
- 11 Q. DID HE APPEAR TO UNDERSTAND THE QUESTIONS?
- 12 A. YES, HE DID.
- 13 Q. DID HIS RESPONSES TO THE QUESTIONS SEEM APPROPRIATE TO
- 14 THE QUESTIONS?
- 15 A. YES, THEY DID.
- 16 Q. AND DID HE THEN SIGN -- WELL, LET ME BACK UP. WAS HIS
- 17 STATEMENT THEN DOCUMENTED AS HE WAS GIVING IT?
- 18 A. YES, IT WAS.
- 19 Q. AND HOW WAS IT DOCUMENTED?
- 20 A. IT WAS TYPED.
- 21 Q. AND WAS IT TYPED IN ENGLISH OR SPANISH?
- 22 A. IT WAS TYPED IN ENGLISH.
- 23 Q. AND OBVIOUSLY HE COULD NOT READ OR WRITE ENGLISH.
- 24 A. CORRECT.
- 25 Q. WAS HIS STATEMENT THEN READ BACK TO HIM?

1 A. YES, IT WAS.

2 Q. IN SPANISH?

3 A. YES, IT WAS.

4 Q. DID YOU HEAR THE ENTIRE STATEMENT AND WHAT WAS READ
5 BACK TO HIM?

6 A. YES, I DID.

7 Q. AND WITH YOUR KNOWLEDGE OF SPANISH, WAS IT ACCURATE AS
8 TO WHAT HE HAD RELATED?

9 A. YES, IT WAS.

10 MS. ROSS: AND I'D JUST OBJECT AND SAY HE'S ALREADY
11 SAID THAT HE DOESN'T HAVE A VERY SOLID KNOWLEDGE OF SPANISH.

12 THE COURT: OKAY. BUT NOW I'M ONLY CONCERNED WITH THE
13 VOLUNTARINESS. I'M NOT CONCERNED WITH THE CONTENTS AT THIS
14 TIME.

15 MS. HODGE: YES, SIR.

16 Q. AND DID HE SIGN HIS STATEMENT FREELY AND VOLUNTARILY?

17 A. YES, HE DID.

18 Q. IN YOUR OPINION DID THE DEFENDANT KNOWINGLY,
19 INTELLIGENTLY, AND FREELY WAIVE HIS RIGHTS, NUMBER ONE, AND
20 THEN GIVE A STATEMENT, NUMBER TWO?

21 A. IN MY OPINION, HE DID.

22 Q. THANK YOU.

23 THE COURT: MS. ROSS.

24 CROSS EXAMINATION BY MS. ROSS:

25 Q. SO THIS WAS THE MORNING YOU HAD -- YOU CAME BACK AFTER

1 YOU'D FOUND THE GUN? BASICALLY YOU'D BEEN GOING BACK AND
2 FORTH BETWEEN THE SCENE OF THE SHOOTING THAT MORNING?

3 A. JUST THAT ONE TIME, WHERE I ARRESTED HIM AT AND TOOK
4 HIM BACK TO THE LAW ENFORCEMENT CENTER AND WITNESSED THE
5 STATEMENT FROM THE WITNESS, TOOK THE WITNESS BACK TO THE
6 INCIDENT LOCATION.

7 Q. AND BY WITNESS YOU MEAN NOT MARLON RIVERA? YOU MEAN
8 FERNANDEZ?

9 A. CORRECT, CORRECT.

10 Q. AND SO YOU TOOK MR. FERNANDEZ BACK TO THE CEDAR LANE?

11 A. CORRECT. AND THEN I RECOVERED THE GUN AT 1302 CEDAR
12 LANE ROAD AND THEN DROVE BACK TO THE LAW ENFORCEMENT CENTER
13 WHERE I WITNESSED THE STATEMENT FROM THE DEFENDANT.

14 Q. NOW DIDN'T I READ SOMEWHERE THAT YOU SAW THE GUN WHERE
15 NO ONE HAD SEEN IT BEFORE BECAUSE AT THAT POINT THERE WAS
16 LIGHT? WAS THAT THE CASE?

17 A. CORRECT.

18 Q. SO BASICALLY THIS WAS MORNING OR DUSK WHEN YOU FOUND
19 THE GUN?

20 A. THAT'S CORRECT.

21 Q. WHAT TIME WAS IT?

22 A. I'D SAY IT WAS PROBABLY AROUND 6:00.

23 Q. AND -- OKAY. AND AT THAT POINT IT WAS LIGHT ENOUGH FOR
24 YOU TO SEE AND SEE THIS GUN SITTING THERE ---

25 A. IT WAS BECOMING LIGHT. YES, THAT'S CORRECT.

1 Q. SO THEN AFTER YOU FOUND THE GUN YOU CALLED MS. ORLANDO
2 OR SOMEONE TO COME OUT TO THE SCENE TO PHOTOGRAPH THE GUN,
3 RIGHT?

4 A. THAT'S CORRECT.

5 Q. AND THEN YOU RETURNED TO THE LAW ENFORCEMENT CENTER AND
6 THEN THIS WHOLE CONFESSION PROCESS ---

7 A. THAT'S CORRECT.

8 Q. --- WAS GOING ON? NOW AT WHAT POINT DURING THE
9 CONFESSION, I MEAN, DIDN'T YOU ARRIVE WHILE THE INTERVIEW
10 WAS IN PROCESS?

11 A. NO. I ARRIVED RIGHT AS THEY READ HIS RIGHTS BECAUSE MY
12 NAME'S ON THE WAIVER OF RIGHTS.

13 Q. WELL, I'LL JUST SHOW YOU YOUR SUPPLEMENTAL REPORT WHERE
14 IT SAYS -- WHAT DOES THAT SAY HIGHLIGHTED RIGHT THERE?

15 A. IT SAID I RETURNED TO CID WHERE DELTA 45 RIVERA AND
16 UNIT 614, WES SMITH, WERE INTERVIEWING THE SUBJECT WHEN I
17 ARRIVED.

18 Q. SO WERE THEY IN THE PROCESS OF INTERVIEWING ---

19 A. I BELIEVE THEY HAD PROBABLY READ HIM HIS RIGHTS. HE
20 HAD NOT SIGNED HIS WAIVER OF RIGHTS. AND THEY WERE TALKING
21 TO HIM.

22 Q. BUT SO YOU THINK THEY'D ALREADY READ HIM HIS RIGHTS
23 WHEN YOU ARRIVED?

24 A. I'M SURE THEY HAD. BUT HE HAD NOT ---

25 Q. BUT YOU JUST TESTIFIED THAT YOU SAW THEM TRANSLATING

1 THE WAIVER OF RIGHTS?

2 A. THAT'S CORRECT. BUT OCCASIONALLY, I MEAN, I KNOW AS AN
3 INVESTIGATOR I WILL SPEAK TO SOMEONE AND INTERVIEW THEM
4 BEFORE I ACTUALLY PUT IT ON PAPER. AND I WILL MIRANDIZE
5 THEM AS I'M SPEAKING TO THEM.

6 Q. SO YOU'RE JUST ASSUMING THAT THIS ALREADY OCCURRED WHEN
7 YOU WALKED IN IN THE MIDDLE ---

8 A. I'M SURE IT HAD.

9 Q. NOW DID YOU ACTUALLY WITNESS MARLON RIVERA PUTTING HIS
10 INITIALS ON THIS SHEET?

11 A. I DID.

12 Q. ISN'T IT TRUE THAT SOMEONE WAS HELPING HIM WRITE, THAT
13 HE COULDN'T ACTUALLY WRITE?

14 A. THAT'S NOT CORRECT, NO. NOBODY WROTE FOR HIM OR HELPED
15 HIM WRITE.

16 Q. SO HE WAS JUST -- THIS WAS HIS OWN JUST WRITING
17 HIMSELF?

18 A. THAT'S CORRECT.

19 Q. NOW THESE -- THE WAIVER OF RIGHTS SHEET IS WRITTEN IN
20 SPANISH?

21 A. THAT'S CORRECT.

22 Q. DID YOU KNOW WHETHER MARLON RIVERA COULD READ SPANISH?

23 A. I BELIEVE HE WAS ASKED AND HE SAID HE COULD NOT READ
24 SPANISH, BUT IT WAS READ TO HIM.

25 Q. SO -- BUT YOU SAID YOU ARRIVED, YOU THOUGHT, AFTER THEY

1 HAD READ HIM HIS RIGHTS?

2 A. VERBALLY, NOT THE WRITTEN FORM. AS I JUST EXPLAINED TO
3 YOU, AS AN INVESTIGATOR A LOT OF TIMES WE'LL INTERVIEW A
4 SUBJECT VERBALLY, READ THEM THEIR RIGHTS FIRST, TALK TO
5 THEM, KIND OF GET A BRIEF INTERVIEW, AND THEN WE'LL ACTUALLY
6 PUT IT ON PAPER. AND THAT'S WHAT HAPPENED HERE. IT WAS
7 TRANSPIRED ONTO PAPER.

8 Q. SO YOU SAID YOU'D READ THEM VERBALLY THEIR RIGHTS, AND
9 THEN GET A BRIEF INTERVIEW, AND THEN PUT IT ON PAPER?

10 A. A LOT OF TIMES THAT'LL HAPPEN. YOU KNOW, WE'LL DISCUSS
11 EXACTLY WHAT HAPPENED AND THEN WE'LL MIRANDIZE THEM IN
12 WRITTEN FORM AND GET THEIR SIGNATURE AND THEN DO THE ACTUAL
13 INTERVIEW AND TRANSFER IT ONTO PAPER.

14 Q. SO THIS PAPER IS JUST AN AFTERTHOUGHT THAT YOU DO AFTER
15 YOU'VE ALREADY INTERVIEWED THE ---

16 A. I WOULDN'T SAY THAT, NO.

17 Q. I'VE GOT NO FURTHER QUESTIONS.

18 REDIRECT EXAMINATION BY MS. HODGE:

19 Q. SO WHAT YOU'RE SAYING IS YOU'D ADVISE THEM OF THEIR
20 RIGHTS NOT ONLY ONCE, BUT TWICE?

21 A. CORRECT. THAT IS ---

22 Q. ONCE VERBALLY AND THEN YOU WOULD ACTUALLY GO TO THE
23 WRITTEN PROCESS ---

24 A. THAT IS CORRECT. THAT IS CORRECT.

25 THE COURT: STEP DOWN.

1 MS. HODGE: THE STATE WOULD CALL RAMON RIVERA.

2 MS. ROSS: AND, YOUR HONOR, FOR WHAT IT'S WORTH, I'D
3 LIKE TO PROFFER THIS SUNRISE CHART THAT I ---

4 THE COURT: OKAY. THAT'S FINE.

5 MS. ROSS: IT JUST SHOWS THE TIME OF SUNRISE ON ---

6 THE COURT: ALL RIGHT.

7 MS. ROSS: --- THAT DAY.

8 (WHEREUPON COURT'S EXHIBIT 3 WAS MARKED)

9 RAMON RIVERA, BEING DULY

10 SWORN TESTIFIED AS FOLLOWS:

11 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
12 RECORD.

13 MR. RIVERA: RAMON RIVERA.

14 DIRECT EXAMINATION BY MS. HODGE:

15 Q. DEPUTY RIVERA, YOU WORK FOR THE SHERIFF'S OFFICE?

16 A. YES, MA'AM, I DO.

17 Q. AND WERE YOU RECENTLY IN A MOTORCYCLE ACCIDENT?

18 A. MOST CERTAINLY WAS.

19 Q. WHEN WAS THAT?

20 A. ABOUT THREE AND A HALF WEEKS AGO, WEDNESDAY.

21 Q. AND AS PART OF YOUR JOB WITH THE SHERIFF'S OFFICE DID
22 YOU HAVE AN OCCASION TO GET INVOLVED IN A CASE AGAINST THE
23 DEFENDANT, MARLON RIVERA?

24 A. YEAH, I WAS INVOLVED IN THAT CASE. YES, MA'AM.

25 Q. AND WERE YOU INVOLVED ON JULY THE 18TH OF 2004?

1 A. YES, MA'AM.

2 Q. WHAT WERE YOUR RESPONSIBILITIES IN REGARD TO THIS CASE
3 ON THAT DAY?

4 A. I WAS ON MY REGULAR BEAT. AND I WAS CALLED IN TO GO TO
5 CID OFFICE AT THE LEC. AND I RESPONDED IN REFERENCE TO
6 TRANSLATING FOR A CASE WHERE SOMEBODY HAD GOTTEN SHOT.

7 Q. AND DO YOU SPEAK SPANISH?

8 A. I DO.

9 Q. WAS THAT YOUR FIRST LANGUAGE?

10 A. YES, MA'AM.

11 Q. WHERE ARE YOU FROM?

12 A. PUERTO RICO.

13 Q. AND THEN YOU LEARNED ENGLISH AT WHAT POINT IN TIME?

14 A. I WAS ABOUT TWELVE WHEN I MOVED TO FLORIDA. AND I
15 STARTED THERE. AND THEN I MOVED ABOUT SIX MONTHS LATER
16 HERE. AND THAT'S WHERE I FIRST REALLY GOT INTO A SCHOOL FOR
17 THAT.

18 Q. FOR ENGLISH?

19 A. YES, MA'AM.

20 Q. ARE THERE DIFFERENT DIALECTS IN SPANISH AS THERE ARE IN
21 ENGLISH?

22 A. CERTAINLY.

23 Q. SO SOMEONE FROM NEW YORK SOUNDS DIFFERENT FROM SOMEONE
24 FROM SOUTH CAROLINA?

25 A. THAT'D BE CORRECT.

1 Q. AND SOMEONE FROM COLOMBIA MIGHT SOUND DIFFERENT FROM
2 SOMEBODY FROM PUERTO RICO?

3 A. YES, MA'AM.

4 Q. OR SPAIN?

5 A. YES, MA'AM.

6 Q. EVEN THOUGH THEY'RE DIFFERENT DIALECTS ARE YOU ABLE TO
7 UNDERSTAND THE LANGUAGE, THE BASIC LANGUAGE?

8 A. YES, MA'AM. I SPENT FOUR YEARS IN THE MARINE CORPS IN
9 WHICH I ENCOUNTERED, I MEAN, JUST ABOUT EVERY RACE YOU COULD
10 THINK OF. SO I PICKED A LOT UP FROM THEM.

11 Q. AND WHEN YOU SAY DIFFERENT DIALECTS MAYBE WOULD THERE
12 ALSO BE DIFFERENT SLANG WORDS, BUT YOUR BASIC PROPER GRAMMAR
13 IN SPANISH WOULD BE THE SAME?

14 A. YES, MA'AM. THE BASICS ARE THE SAME. LIKE IF I'M
15 SPEAKING TO YOU, HEY, HOW ARE YOU? IT'S PRETTY MUCH THE
16 SAME. WHERE THE DIFFERENCE COMES, THERE'S JUST LIKE CERTAIN
17 OBJECTS. OBJECTS LIKE, I GUESS, BACK IN THEIR CULTURE MEANS
18 DIFFERENT THINGS SUCH AS A BUBBLER HERE IS A WATER FOUNTAIN
19 TO ME, BUT A BUBBLER TO SOMEBODY UP NORTH. IT'S JUST
20 DIFFERENT OBJECTS LIKE THAT ARE DIFFERENT, BUT FOR THE MOST
21 PART IT'S THE SAME THING.

22 Q. NOW YOU DID NOT RESPOND ACTUALLY TO THE INCIDENT OF THE
23 SHOOTING? YOU HAD NO KNOWLEDGE OF WHAT OCCURRED AT THE
24 SCENE?

25 A. I DID NOT.

1 Q. SO YOU WERE STRICTLY CALLED TO TRANSLATE FOR A WAIVER
2 OF RIGHTS AND AN INTERVIEW OF THE DEFENDANT?

3 A. YES, MA'AM.

4 Q. AND WHAT TIME WAS IT, DO YOU RECALL, WHEN YOU RESPONDED
5 TO THE LEC?

6 A. IT WAS AFTER MIDNIGHT. IT WAS LATE.

7 Q. AND WHAT -- YOU SAID YOU WENT TO CID?

8 A. YES, MA'AM.

9 Q. WHAT IS THAT AREA LIKE?

10 A. IT'S JUST AN OFFICE, JUST A SMALL ROOM. I'D SAY IT'S
11 ABOUT THE SIZE OF THAT HALF OF THE STANDS ON THAT SIDE.

12 IT'S GOT A FEW DESKS IN IT, AND SOME TVs, AND STUFF LIKE
13 THAT.

14 Q. AND YOU WERE THERE TO HELP TRANSLATE FOR THE DEFENDANT.
15 WHO ELSE WAS PRESENT DURING THIS TIME?

16 A. DEPUTY GARRETT WAS THERE. AND ANOTHER SUBJECT,
17 PORTUGUEZ, HIS LAST NAME, WAS A WITNESS. AND I BELIEVE THE
18 DEFENDANT WAS IN ANOTHER ROOM SEPARATE FROM THE WITNESS.

19 Q. SO YOU INITIALLY WERE GOING TO TRANSLATE FOR A WITNESS?

20 A. CORRECT.

21 Q. AND THEN YOU WERE GOING TO TRANSLATE FOR THE DEFENDANT?

22 A. CORRECT. WELL, THEY JUST TOLD ME TO COME TRANSLATE.

23 SO, I MEAN, I DO WHAT THEY TELL ME BASICALLY.

24 Q. YOU SHOWED UP AND DID WHAT THEY TOLD YOU TO DO?

25 A. (AFFIRMATIVE NOD).

- 1 Q. AFTER -- YOU TOOK THE WITNESS' STATEMENT FIRST?
- 2 A. YES, MA'AM, THE WITNESS WAS FIRST.
- 3 Q. AND THEN YOU HELPED TRANSLATE FOR THE DEFENDANT, IS
- 4 THAT CORRECT?
- 5 A. CORRECT, YES, MA'AM.
- 6 Q. AND WHEN YOU WERE TRANSLATING FOR THE DEFENDANT DO YOU
- 7 RECALL WHO WAS PRESENT AT THE TIME THAT YOU ENTERED THE ROOM
- 8 OR STARTED TRANSLATING?
- 9 A. IT WAS INVESTIGATOR WESLEY SMITH, AND BRIAN GARRETT,
- 10 AND MYSELF.
- 11 Q. AND DID YOU HAVE A CONVERSATION, DO YOU THINK, WITH THE
- 12 DEFENDANT TO KIND OF LET HIM KNOW WHO YOU WERE OR WHY YOU
- 13 WERE THERE OR DO YOU JUST WALK IN AND SAY, ---
- 14 A. NO. I WALKED IN, I SAID, I'M SUCH AND SUCH, AND I'M
- 15 JUST HERE TO TRANSLATE FOR THIS GENTLEMAN HERE IS PRETTY
- 16 MUCH WHAT I TOLD HIM.
- 17 Q. AND DID YOU THEN START TRANSLATING SOME FOR WES, OR DID
- 18 YOU GO STRAIGHT TO THE WAIVER OF RIGHTS, OR HOW DOES THAT
- 19 WORK, HOW DID THAT WORK?
- 20 A. BASICALLY HE WOULD ASK ME OR TELL ME WHAT I NEEDED TO
- 21 ASK HIM. AND AFTER HE SAID IT THEN I WOULD TELL IT BACK TO
- 22 HIM. AND HE WOULD WRITE IT DOWN ACCORDINGLY.
- 23 Q. WHEN WE SAY HIM, AND HIM, AND HIM, WE NEED TO BE A
- 24 LITTLE MORE SPECIFIC ---
- 25 A. OKAY. THE INVESTIGATOR WOULD ASK ME CAN YOU ASK HIM

1 THIS QUESTION. AND BY HIM I MEAN CAN YOU ASK THE DEFENDANT
2 THIS QUESTION? AND WHATEVER THE DEFENDANT SAID TO ME, THEN
3 I WOULD TRANSLATE AND TELL IT BACK TO THE INVESTIGATOR. AND
4 HE WOULD WRITE IT DOWN.

5 Q. AND LET'S START WITH THE DEFENDANT, IN YOUR OPINION,
6 HIS APPEARANCE AND DEMEANOR. DID HE APPEAR TO UNDERSTAND
7 WHO YOU WERE, AND WHERE HE WAS, AND THE SITUATION HE WAS IN?

8 A. YES, MA'AM.

9 Q. AND DID HE APPEAR TO BE COHERENT, NOT FALLING ASLEEP,
10 NOT HIGHLY INTOXICATED?

11 A. NO, MA'AM, HE WAS NOT INTOXICATED. HE APPEARED FINE.

12 Q. AND WERE YOU ABLE TO COMMUNICATE WITH HIM?

13 A. YES, MA'AM.

14 Q. DID YOU DETERMINE WHAT EDUCATION HE HAD?

15 A. HE WASN'T PER SE A SCHOLAR LIKE, YOU KNOW, TAUGHT IN
16 SCHOOL, HEY, YOU KNOW THIS, YOU KNOW THAT. BUT HE WAS A
17 VERY SMART INDIVIDUAL, LIKE STREET SMART. I MEAN, HE KNEW
18 WHAT WAS GOING ON.

19 Q. AND YOU GOT THAT FROM TALKING WITH HIM?

20 A. YES, MA'AM.

21 Q. DID YOU LEARN THAT HE COULD NOT READ OR WRITE SPANISH?

22 A. I ASKED HIM AND THAT'S WHAT HE SAID THAT HE COULDN'T
23 READ OR WRITE.

24 Q. AND -- BUT HE HAD NO PROBLEM VERBALIZING THINGS TO YOU
25 IN SPANISH?

- 1 A. NO, HE SPOKE FINE.
- 2 Q. AND YOU HAD NO PROBLEM UNDERSTANDING WHAT HE WAS
3 SAYING?
- 4 A. NO PROBLEMS.
- 5 Q. AND DID HE HAVE ANY PROBLEM HEARING YOU? WAS HE DEAF
6 OR ANYTHING THAT MIGHT ---
- 7 A. NO, MA'AM.
- 8 Q. --- IMPAIR HIS HEARING?
- 9 A. HE COULD HEAR FINE.
- 10 Q. WHEN YOU WOULD ASK HIM A QUESTION OR SPEAK TO HIM WOULD
11 HIS RESPONSES BE APPROPRIATE TO WHAT YOU WERE ASKING?
- 12 A. YES, MA'AM.
- 13 Q. AND LET'S START WITH THE WAIVER OF RIGHTS, HIS WAIVER
14 OF RIGHTS. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S NUMBER
15 16 FOR IDENTIFICATION. IS THIS WAIVER OF RIGHTS FORM IN
16 SPANISH?
- 17 A. IT IS.
- 18 Q. EVEN THOUGH HE CLAIMED HE COULD NOT READ AND WRITE
19 SPANISH WAS THAT ANOTHER STEP TO HELP OR TO HOPE ENSURE THAT
20 THIS WAS GOING TO BE COMMUNICATED PROPERLY?
- 21 A. YES, MA'AM.
- 22 Q. JUST ON ---
- 23 A. I MADE SURE THAT I EXPLAINED TO HIM THOROUGHLY EACH
24 INDIVIDUAL STEP BECAUSE HE DIDN'T KNOW HOW TO READ IT
25 HIMSELF.

- 1 Q. AND IS YOUR NAME ON HERE ---
- 2 A. YES.
- 3 Q. --- INDICATING YOU DID INTERPRET FOR THIS?
- 4 A. YES, MA'AM.
- 5 Q. AND WHAT RIGHTS DID YOU ADVISE HIM OF AND HOW DID THIS
- 6 PROCESS GO?
- 7 A. IT WAS THE MIRANDA RIGHTS. AND THEY'RE WRITTEN RIGHT
- 8 HERE.
- 9 Q. I NEED YOU TO READ FOR ME EXACTLY WHAT YOU TOLD HIM.
- 10 A. IN SPANISH?
- 11 Q. IF YOU TOLD HIM IN SPANISH, GO AHEAD AND READ IT IN
- 12 SPANISH AND THEN TELL US IN ENGLISH.
- 13 A. OKAY. NUMBER ONE SAYS, (WHEREUPON THE WITNESS SPOKE IN
- 14 SPANISH). AND IT SAYS, YOU HAVE THE RIGHT TO REMAIN SILENT,
- 15 AND NOT MAKE ANY STATEMENTS. AND YOU ARE NOT OBLIGATED TO
- 16 SPEAK TO ANYONE OR TO ANSWER ANY QUESTIONS. THAT'S NUMBER
- 17 ONE.
- 18 Q. AND DID HE TELL YOU OR COMMUNICATE TO YOU THAT HE
- 19 UNDERSTOOD THAT RIGHT?
- 20 A. YES, MA'AM.
- 21 Q. AND HOW DID YOU VERIFY THAT HE UNDERSTOOD THAT?
- 22 A. I ASKED HIM THAT IF HE UNDERSTOOD JUST PUT HIS INITIALS
- 23 ON THE END OF EACH ONE AFTER I READ EACH ONE INDIVIDUALLY.
- 24 Q. AND DID HE MARK HIS INITIALS AFTER THAT ONE?
- 25 A. YES, MA'AM.

1 Q. AND HOW ABOUT NUMBER TWO?

2 A. NUMBER TWO SAYS, (WHEREUPON THE WITNESS SPOKE IN
3 SPANISH). IT'S SAYING THAT YOU'RE BEING ADVISED THAT
4 ANYTHING YOU SAY MAY BE USED AGAINST YOU IN COURT.

5 Q. DID HE UNDERSTAND -- APPEAR TO UNDERSTAND THAT?

6 A. YES, MA'AM, HE DID.

7 Q. AND DID HE INITIAL BESIDE THAT ONE?

8 A. YES, MA'AM, HE DID.

9 Q. AND NUMBER THREE?

10 A. (WHEREUPON THE WITNESS SPOKE IN SPANISH). THIS ONE
11 GOES A LITTLE MORE IN DEPTH. IT SAYS THAT YOU HAVE THE
12 RIGHT TO HAVE AN ATTORNEY PRESENT. AND I BELIEVE FOR
13 JUVENILES IT SAYS, YOU CAN ALSO SOLICIT THAT YOUR PARENTS OR
14 YOUR GUARDIANS BE PRESENT. I DIDN'T READ HIM THAT PART
15 BECAUSE HE'S NOT A JUVENILE, IT DOESN'T ---

16 Q. DIDN'T APPLY TO HIM?

17 A. YEAH, DIDN'T APPLY TO HIM FOR HIS PARENTS TO COME OUT
18 HERE. AND HE ALSO DID SIGN OR DID INITIAL AT THE END OF
19 THAT ONE SAYING THAT HE UNDERSTOOD IT.

20 NUMBER FOUR, (WHEREUPON THE WITNESS SPOKE IN SPANISH).
21 IT SAYS YOU HAVE THE -- IF YOU DON'T HAVE THE MONEY OR
22 ECONOMIC MEANS TO PAY FOR AN ATTORNEY, IF YOU WISH, THAT ONE
23 CAN BE APPOINTED TO YOU PRIOR TO ANY STATEMENTS GIVEN.
24 THAT'S WHAT IT SAYS.

25 Q. AND DID HE APPEAR TO UNDERSTAND THAT?

- 1 A. YES, MA'AM.
- 2 Q. DID HE SIGN INDICATING THAT HE UNDERSTOOD WHAT YOU WERE
3 TELLING HIM?
- 4 A. YES, MA'AM, HE DID.
- 5 Q. AND THEN NUMBER FIVE?
- 6 A. (WHEREUPON THE WITNESS SPOKE IN SPANISH). IT SAYS THAT
7 YOU CAN AT ANYTIME EXERCISE THESE RIGHTS. THAT'S WHAT IT
8 SAYS.
- 9 Q. I'M SORRY. AT ANYTIME ---
- 10 A. THAT YOU CAN AT ANYTIME EXERCISE YOUR RIGHTS ---
- 11 Q. EXERCISE THESE RIGHTS?
- 12 A. --- OR INVOKE YOUR RIGHTS. YES, MA'AM.
- 13 Q. AND DID HE UNDERSTAND THAT?
- 14 A. YES, MA'AM.
- 15 Q. AND THEN DID HE INITIAL ALSO STATING HE UNDERSTOOD?
- 16 A. YES, MA'AM, HE DID.
- 17 Q. AND THEN IS THERE ANOTHER PART OF THIS WAIVER THAT YOU
18 EXPLAINED TO HIM?
- 19 A. THIS IS THE ACTUAL WAIVER. THESE ARE JUST LETTING YOU
20 KNOW WHAT YOUR RIGHTS ARE. BUT THESE WERE THE ACTUAL
21 WAIVERS.
- 22 Q. OKAY.
- 23 A. AND IT SAYS RIGHT HERE AFTER WARNING, IN ORDER TO
24 SECURE A WAIVER THE FOLLOWING QUESTIONS SHOULD BE ASKED AND
25 AN AFFIRMATIVE REPLY TO HIS QUESTIONS. IT SAYS, (WHEREUPON

1 THE WITNESS SPOKE IN SPANISH). IT SAYS, I HAVE BEEN
2 EXPLAINED THESE PRIOR RIGHTS. DO YOU UNDERSTAND EACH ONE
3 INDIVIDUALLY? AND HE INITIALED UNDER YES, WHICH IS SI.

4 Q. OKAY.

5 A. AND THE SECOND ONE IS (WHEREUPON THE WITNESS SPOKE IN
6 SPANISH). HAVING UNDERSTOOD YOUR RIGHTS DO YOU WISH TO
7 SPEAK TO ME RIGHT NOW OR GIVE A STATEMENT? AND HE ALSO
8 INITIALED UNDER YES.

9 Q. AND THEN DOES HE SIGN THIS FORM AT THE VERY BOTTOM?

10 A. YES, MA'AM. RIGHT HERE IT SAYS, (WHEREUPON THE WITNESS
11 SPOKE IN SPANISH), IT WOULD BE THE SIGNATURE FOR HIM. AND
12 THAT'S WHERE HE SIGNED. AND RIGHT THERE WES SMITH SIGNED AT
13 THE BOTTOM WHERE IT SAYS WITNESS.

14 Q. AND DID YOU OR ANYONE IN YOUR PRESENCE FORCE HIM,
15 THREATEN HIM, COERCE HIM TO SIGN OFF ON THIS WAIVER?

16 A. NO, MA'AM.

17 Q. DID ANYBODY PROMISE HIM ANYTHING IN YOUR PRESENCE, A
18 TYPE OF LENIENCY, OR BENEFIT ---

19 A. NO.

20 Q. --- IF HE WOULD WAIVE HIS RIGHTS?

21 A. NO, MA'AM.

22 Q. DID ANYBODY DENY HIM ANYTHING THAT HE REQUESTED, FOOD,
23 WATER, BATHROOM, SMOKE, ANYTHING LIKE THAT?

24 A. NO, MA'AM.

25 Q. DID HE REQUEST ANYTHING DURING THIS PROCESS?

1 A. NOT WHILE I WAS THERE. I THINK HE WAS DRINKING
2 SOMETHING. WHEN I SHOWED UP HE HAD A CUP OF DRINK. SO, I
3 MEAN, SOMEBODY HAD GIVEN HIM SOMETHING TO DRINK. HE DIDN'T
4 REQUEST THE USE OF RESTROOM WHILE I WAS THERE.

5 Q. AND HOW LONG DID THIS PROCESS TAKE OF GOING OVER WHAT
6 HIS RIGHTS WERE?

7 A. JUST A FEW MINUTES, TEN TO FIFTEEN, SOMETHING LIKE
8 THAT. JUST LONG ENOUGH TO READ IT AND MAKE SURE THAT HE
9 UNDERSTOOD.

10 Q. AND IN YOUR OPINION DID HE UNDERSTAND WHAT WAS GOING
11 ON, WHAT HIS RIGHTS WERE?

12 A. YES, MA'AM.

13 Q. IN YOUR OPINION DID HE FREELY AND VOLUNTARILY WAIVE HIS
14 RIGHTS?

15 A. YES, MA'AM, HE DID.

16 Q. AND AFTER DOING SUCH DID HE THEN GIVE A STATEMENT?

17 A. YES, MA'AM.

18 Q. AND IN YOUR OPINION DID HE GIVE THAT STATEMENT FREELY
19 AND VOLUNTARILY?

20 A. HE DID.

21 Q. IN REGARD TO THE STATEMENT WAS HE FORCED IN ANY WAY TO
22 SAY THE THINGS THAT ARE WRITTEN IN THE STATEMENT OR WAS HE
23 PROMISED ANYTHING IF HE WOULD SAY CERTAIN THINGS THAT ARE IN
24 THE STATEMENT?

25 A. NO, MA'AM.

1 Q. SO IN YOUR OPINION DID HE GIVE HIS STATEMENT KNOWINGLY?

2 A. HE DID.

3 Q. AND HE DID IT FREELY AND VOLUNTARILY?

4 A. ABSOLUTELY.

5 Q. HOW LONG DID THIS WHOLE PROCESS -- DO YOU THINK THIS
6 WHOLE THING LASTED?

7 A. I'D SAY FROM THE TIME I WALKED IN TIL THE TIME I WALKED
8 OUT, ABOUT THREE AND A HALF HOURS, SOMETHING LIKE THAT. BUT
9 I DID TWO PEOPLE. I MEAN, I DID THE WITNESS FIRST AND I DID
10 HIS SECOND. SO THE ENTIRE PROCESS A COUPLE OF HOURS, ABOUT
11 THREE OR FOUR.

12 Q. BUT AS FAR AS JUST THE DEFENDANT THAT WASN'T THREE OR
13 FOUR HOURS?

14 A. NO. THAT WAS, I'D SAY HALF OF THE TIME PROBABLY, ABOUT
15 TWO HOURS ALL TOGETHER JUST FOR HIM.

16 Q. AT ANY TIME DURING ANY OF THIS DID HE EVER SAY, I DON'T
17 WANT TO TALK ANYMORE?

18 A. NO, MA'AM.

19 Q. DID HE EVER SAY, I WANT A LAWYER?

20 A. NO, MA'AM.

21 Q. AND I HAVE BEEN REFERRING TO STATE'S NUMBER 17 AS HIS
22 STATEMENT. IS YOUR SIGNATURE ON THIS STATEMENT?

23 A. YES, MA'AM, RIGHT THERE AT THE BOTTOM.

24 Q. AND YOU WERE JUST TRANSLATING AS WELL ON THE STATEMENT?

25 A. CORRECT.

1 Q. THANK YOU.

2 MS. HODGE: THAT'S ALL THE QUESTIONS I HAVE OF THIS
3 WITNESS, YOUR HONOR.

4 THE COURT: MS. ROSS.

5 CROSS EXAMINATION BY MS. ROSS:

6 Q. OFFICER RIVERA, SO YOU TOOK THE STATEMENT OF TWO PEOPLE
7 THAT NIGHT. FIRST THERE WAS -- FERNANDEZ WAS THE GUY'S
8 NAME, THE FIRST GUY YOU TOOK THE STATEMENT FROM?

9 A. YES, MA'AM.

10 Q. AND OFFICER GARRETT WAS WITH HIM BASICALLY OR WAS WITH
11 FERNANDEZ, IS THAT RIGHT, WHEN YOU TOOK THE STATEMENT FROM
12 HIM?

13 A. WHEN I TOOK -- SAY THAT AGAIN.

14 Q. WELL, THE FIRST STATEMENT YOU TOOK -- DIDN'T YOU SAY AT
15 THE BEGINNING OF YOUR TESTIMONY THAT HE WAS WITH OFFICER
16 GARRETT, THE WITNESS?

17 A. I SAID THAT I TOOK A STATEMENT FROM THE WITNESS, LAST
18 NAME OF PORTUGUEZ AND THAT THE DEFENDANT WAS NOT THERE.

19 Q. OKAY.

20 A. AT LEAST NOT IN THAT ROOM ANYWAY.

21 Q. WAS THE DEFENDANT IN ANOTHER ROOM?

22 A. HE WOULD HAVE TO BE.

23 Q. AND THEN AFTER YOU TOOK THE STATEMENT FROM PORTUGUEZ
24 YOU WENT TO THE OTHER ROOM AND STARTED TALKING ---

25 A. NO, MA'AM.

1 Q. WHAT DID YOU DO?

2 A. THE WITNESS DEPARTED. I DON'T KNOW WHERE HE WENT. I
3 GUESS HE WENT HOME. AND THEN THEY WALKED IN THE DEFENDANT.

4 Q. SO AFTER TALKING TO THE WITNESS YOU WALKED IN AND
5 STARTED TALKING TO THE DEFENDANT?

6 A. NO, I DIDN'T WALK IN. I STAYED IN THE SAME ROOM.

7 Q. THEY BROUGHT THE DEFENDANT IN?

8 A. CORRECT.

9 Q. NOW -- AND AT THAT POINT YOU STARTED GOING OVER THIS
10 WAIVER AND IT TOOK TEN TO FIFTEEN MINUTES?

11 A. APPROXIMATELY.

12 Q. NOW ISN'T IT TRUE THAT MARLON WAS HAVING DIFFICULTY,
13 RIVERA WAS HAVING DIFFICULTY SIGNING HIS NAME? ISN'T IT
14 TRUE -- DID YOU HOLD HIS HAND TO HELP HIM SIGN HIS NAME?

15 A. NO.

16 Q. SO HE JUST ---

17 A. HE WAS CUFFED, BUT HE WAS CUFFED ON A BELT IN THE
18 FRONT. HE WASN'T CUFFED BEHIND HIS BACK. IT'S A BELT THAT
19 GOES AROUND YOUR WAIST AND HAS A LOOP ON IT. AND THEN THE
20 HANDCUFF CHAIN GOES IN THAT LOOP. SO YOU ACTUALLY HAVE YOUR
21 HANDS LIKE RIGHT HERE WHERE I HAVE MINE RIGHT NOW. SO, I
22 MEAN, IT WOULDN'T BE HARD TO SIGN. I DIDN'T -- I DIDN'T
23 HAVE TO HELP HIM AT ALL TO SIGN ANYTHING.

24 Q. NOW WHEN YOU GAVE HIM THIS SPANISH FORM, HE'D SAID HE
25 WAS ILLITERATE, SO ---

- 1 A. NO, I ASKED HIM.
- 2 Q. SO YOU WERE ASKING THE QUESTIONS ---
- 3 A. I DON'T ASSUME THAT ANYONE CAN READ BECAUSE OF OBVIOUS
- 4 REASONS. I ASKED, HEY, CAN YOU READ AND WRITE? HE SAID,
- 5 NO, I CAN'T READ AND WRITE.
- 6 Q. SO YOU WERE READING QUESTIONS AND THEN JUST TELLING HIM
- 7 TO SIGN HERE AND JUST POINTING TO WHERE ---
- 8 A. NO. I READ HIM THE QUESTIONS AND I SAID, DO YOU
- 9 UNDERSTAND WHAT I READ TO YOU? HE SAID, YES. I SAID, WELL,
- 10 IF YOU UNDERSTAND THEN SIGN HERE SAYING THAT YOU UNDERSTOOD.
- 11 Q. DID YOU TAKE A VIDEO OF THIS? WAS THERE A VIDEO CAMERA
- 12 AVAILABLE?
- 13 A. NOT THAT I WAS AWARE OF, NO.
- 14 Q. ANY TAPE RECORDING OF THIS EVENT?
- 15 A. (NEGATIVE NOD).
- 16 Q. AND THE SAME WITH THE STATEMENT, SO IT'S YOUR TESTIMONY
- 17 THAT YOU'VE DONE --- YOU'VE TAKEN THAT WAIVER, THE TEN TO
- 18 FIFTEEN MINUTES TO DO THAT WAIVER, YOU WERE DONE WITH THAT,
- 19 AND THEN WENT ON AND GOT A STATEMENT FROM MR. RIVERA?
- 20 A. (AFFIRMATIVE NOD).
- 21 Q. AND YOU SAID YOU GOT THAT THROUGH QUESTIONING AND
- 22 ANSWERING?
- 23 A. BASICALLY.
- 24 Q. NOW I'VE SEEN A LOT OF THESE STATEMENTS -- THE NEWS
- 25 THAT ARE IN SPANISH. YOU WEREN'T WRITING DOWN EXACTLY WHAT

1 HE SAID?

2 A. NO, I DIDN'T WRITE IT IN SPANISH. I TRANSLATED IT TO
3 ENGLISH, AND THEN I HAD THEM WRITE IT IN ENGLISH.

4 Q. NOW THAT STATEMENT, IT'S NOT DONE IN QUESTION AND
5 ANSWER FORMAT, IT'S JUST A BLURB OF THIS IS ---

6 A. WELL, I COULD ASK YOU, WHAT IS HAPPENING HERE TODAY?
7 AND THAT'S A QUESTION AND YOU WOULD TELL ME THE STORY. SAME
8 THING HERE. I'D SAY, HEY, WHAT HAPPENED? HE WOULD TELL ME
9 A STORY.

10 Q. SO ---

11 A. NOT EACH INDIVIDUAL QUESTION, OBVIOUSLY NOT. THAT
12 COULDN'T HAPPEN.

13 Q. SO IS THAT YOUR TESTIMONY OF HOW IT HAPPENED? YOU
14 SAID, WHAT HAPPENED AND THAT'S THE STORY ---

15 THE COURT: NOW I'M NOT INTERESTED IN -- AT THIS POINT.
16 ALL I WANT TO KNOW IS THE VOLUNTARINESS OF THE WAIVER OF THE
17 RIGHTS.

18 MS. ROSS: ALL RIGHT. AND I -- I THOUGHT THAT THE
19 STATEMENT ITSELF ALSO HAD TO BE KNOWINGLY AND VOLUNTARILY
20 MADE, THAT HE WAIVED HIS RIGHTS AND KNOWINGLY AND
21 VOLUNTARILY MADE THE STATEMENT.

22 THE COURT: ALL RIGHT. GO AHEAD.

23 Q. SO YOUR TESTIMONY -- THAT YOU ASKED HIM WHAT HAPPENED
24 AND BASICALLY HE SAID THAT?

25 A. YEAH. AND I WOULD ASK OTHER QUESTIONS JUST TO FURTHER

1 CLARIFY THINGS.

2 Q. NOW YOU'D JUST TALKED TO ANOTHER WITNESS. DID YOU EVER
3 ASK QUESTIONS ABOUT ANOTHER PERSON BEING THERE OR ---

4 A. DID I ASK HIM? DID I ASK THE DEFENDANT QUESTIONS ABOUT
5 SOMEONE ELSE BEING THERE?

6 Q. YEAH.

7 A. I THOUGHT IT WAS A CROWD. SO, I MEAN, OBVIOUSLY THERE
8 WAS A LOT OF PEOPLE THERE.

9 Q. WELL, THE WITNESS THAT YOU'D JUST TALKED TO HAD SAID
10 THAT ONE PERSON HAD THE GUN AND ANOTHER PERSON TOOK IT AWAY
11 FROM HIM AND SHOT AND THEN GAVE THE GUN BACK TO ONE PERSON.

12 A. UM-HUM (AFFIRMATIVE).

13 Q. DID YOU ASK HIM ANY QUESTIONS ABOUT THAT?

14 A. ABOUT THE GUN AND SOMEBODY ELSE BEING THERE WITH HIM?

15 Q. YES.

16 A. YEAH, OF COURSE.

17 Q. AND THERE WAS NO MENTION OF ANOTHER PERSON IN THAT
18 CONFESSION?

19 A. ONLY THE ONE THAT HE WAS FIGHTING WITH.

20 Q. AND THERE'S NO MENTION OF ANOTHER PERSON HAVING THE GUN
21 PUT IN THAT CONFESSION. AND YOU SAY YOU ASKED HIM ABOUT
22 THAT AND HE SAID ...

23 A. HE SAID IT WAS HIS GUN. HE SAID IT WENT DOWN HIS PANT
24 LEG AND HE GRABBED IT. BUT, NO, HE DIDN'T SAY THAT HE
25 PASSED IT OFF TO ANYONE.

1 Q. DID HE SAY ANYTHING ABOUT SOMEONE ELSE GRABBING THE GUN
2 LIKE THE ---

3 THE COURT: NOW I'M ONLY INTERESTED IN THE WAIVER OF
4 THE RIGHTS, THE VOLUNTARINESS OF THAT.

5 MS. ROSS: OKAY.

6 THE COURT: IF I DETERMINE THAT THAT WAS DONE THEN IT
7 WILL BE ADMITTED AND THE ISSUE FOR THE JURY WILL BE WHETHER
8 OR NOT HE VOLUNTARILY -- WHAT HE SAID WAS VOLUNTARY. OKAY?
9 SO I'M JUST INTERESTED NOW IN THE WAIVER OF THE RIGHTS.

10 MS. ROSS: OKAY.

11 Q. SO THIS WHOLE QUESTIONING PROCESS TOOK TWO HOURS YOU
12 SAID?

13 A. (AFFIRMATIVE NOD).

14 Q. DID -- AND THE WAIVER WAS THE FIRST TEN OR FIFTEEN
15 MINUTES OF THAT TWO HOURS BASICALLY IS WHAT YOU'RE SAYING
16 ---

17 A. BASICALLY. BETWEEN GETTING HIM SEATED AND, YOU KNOW,
18 HANDCUFFED IN THE FRONT AND ALL THAT, YEAH.

19 Q. SO YOU TALKED TO ONE WITNESS, PORTUGUEZ OR WHATEVER,
20 HE'S TAKEN AWAY, MARLON RIVERA'S BROUGHT IN, A WAIVER IS
21 SIGNED IN TEN OR FIFTEEN MINUTES, AND THEN YOU GO ON WITH
22 THE QUESTIONING, AND THAT LED TO THAT?

23 A. YES.

24 Q. I HAVE NOTHING FURTHER.

25 THE COURT: STEP DOWN.

1 MS. HODGE: THE STATE WOULD CALL WES SMITH.

2 WESLEY SMITH, BEING DULY

3 SWORN TESTIFIED AS FOLLOWS:

4 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
5 RECORD.

6 MR. SMITH: WESLEY SMITH.

7 DIRECT EXAMINATION BY MS. HODGE:

8 Q. INVESTIGATOR SMITH, ARE YOU THE LEAD INVESTIGATOR ON
9 THIS CASE?

10 A. I AM.

11 Q. AND DID YOU HAVE AN OCCASION TO -- WELL, DID YOU, IN
12 FACT, PARTICIPATE IN THE ARREST OF THE DEFENDANT AT THE
13 MEXICALI?

14 A. I DID.

15 Q. WAS THE DEFENDANT THEN TRANSPORTED TO YOUR OFFICE IN
16 THE LAW ENFORCEMENT CENTER?

17 A. YES, BY DEPUTY WILL LEWIS.

18 Q. AND WAS THE PURPOSE OF THIS TO DETERMINE IF HE WISHED
19 TO GIVE A STATEMENT OR NOT IN THIS CASE?

20 A. IT WAS TO TRY TO INTERVIEW HIM TO GET A STATEMENT, YES,
21 MA'AM.

22 Q. AND IN DOING SO DID YOU REALIZE THAT YOU WERE NOT GOING
23 TO BE ABLE TO COMMUNICATE WITH THE DEFENDANT?

24 A. WELL BEFORE WE GOT HIM TO THE LAW ENFORCEMENT CENTER.

25 Q. DID YOU ATTEMPT TO COMMUNICATE WITH HIM PRIOR TO THIS?

- 1 A. YES.
- 2 Q. AND DID HE SPEAK ANY ENGLISH TO YOU?
- 3 A. EVERYTHING I ASKED HIM, HIS ANSWER WAS, NO PROBLEM.
- 4 Q. NO PROBLEM?
- 5 A. NO PROBLEM.
- 6 Q. NO MATTER WHAT YOU ASKED HIM?
- 7 A. NO MATTER WHAT I ASKED HIM.
- 8 Q. AND SO KNOWING -- DO YOU SPEAK SPANISH?
- 9 A. VERY, VERY, VERY LITTLE.
- 10 Q. A WORD HERE OR THERE, BUT NOT ---
- 11 A. A FEW PHRASES TO INTRODUCE MYSELF, TO ASK HOW THEY'RE
- 12 DOING, TO ASK WHAT THEIR NAME IS. VERY, VERY LIMITED.
- 13 Q. AND SO TO BE ABLE TO COMMUNICATE WITH THE DEFENDANT DID
- 14 YOU REQUEST SOMEONE TO TRANSLATE FOR YOU?
- 15 A. I DID.
- 16 Q. AND WAS THAT RAMON RIVERA?
- 17 A. IT WAS.
- 18 Q. IS HE A DEPUTY WITH THE SHERIFF'S OFFICE?
- 19 A. HE IS.
- 20 Q. AND DID HE RESPOND TO THE SCENE OR JUST TO YOUR OFFICE?
- 21 A. HE WENT TO THE OFFICE.
- 22 Q. AND ONCE -- HE, I UNDERSTAND, WAS GOING TO INTERVIEW A
- 23 WITNESS?
- 24 A. ALVARO FERNANDEZ.
- 25 Q. AND THEN ---

- 1 A. OR FERNANDO.
- 2 Q. AND THEN HE WAS GOING TO HELP YOU TRANSLATE FOR THE
3 DEFENDANT?
- 4 A. YES.
- 5 Q. WHO ELSE WAS PRESENT AT THIS POINT?
- 6 A. AT THE INTERVIEW OF THE DEFENDANT?
- 7 Q. AT THE INTERVIEW OF THE DEFENDANT.
- 8 A. IT WAS ME, DEPUTY RIVERA, AND DEPUTY GARRETT.
- 9 Q. HAD DEPUTY GARRETT GONE AND COME BACK?
- 10 A. HE HAD.
- 11 Q. AND DEPUTY GARRETT ALSO, YOU KNEW, SPOKE SOME SPANISH?
- 12 A. YES.
- 13 Q. AND WHY DID YOU HAVE BOTH DEPUTY GARRETT AND DEPUTY
14 RIVERA PRESENT?
- 15 A. BECAUSE MY ABILITY TO COMPREHEND CONVERSATIONS IN
16 SPANISH IS NIL. I COULD NOT OF MY OWN VOLITION VERIFY
17 THAT'S WHAT HE SAID. SO I NEEDED TWO PEOPLE WHO COULD SPEAK
18 SPANISH AND COMPREHEND IT TO TAKE THE STATEMENT, ACTUALLY
19 TAKE THE STATEMENT. AND THEN ALSO I WANTED TWO WITNESSES
20 THAT COULD VERIFY IT.
- 21 Q. IN YOUR OPINION -- LET'S TALK ABOUT THE APPEARANCE AND
22 Demeanor OF THE DEFENDANT. EVEN THOUGH YOU COULD NOT
23 UNDERSTAND THE LANGUAGE HE WAS SPEAKING OR HE UNDERSTANDING
24 YOUR LANGUAGE COULD YOU IN ESSENCE LOOK AT HIM OR SEE BODY
25 LANGUAGE THAT LED YOU TO BELIEVE HE WAS COHERENT?

1 A. YES.

2 Q. WAS HE FALLING ASLEEP OR ANYTHING LIKE THAT?

3 A. NO.

4 Q. WAS HE SLURRING HIS WORDS OR TAKING LONG PAUSES BEFORE

5 SPEAKING?

6 A. NO.

7 Q. I KNOW THAT I DO NOT SPEAK SPANISH, BUT IT SOUNDS LIKE

8 A VERY FAST LANGUAGE COMPARED TO ENGLISH.

9 A. IT CAN BE VERY RAPID.

10 Q. MAYBE THAT'S THE PROPER TERM, RAPID. AND WAS HIS

11 SPEECH RAPID?

12 A. IT WAS CONVERSATIONAL. DIFFERENT PEOPLE SPEAK AT

13 DIFFERENT SPEEDS, BUT THEY WERE ABLE TO -- IT SOUNDED LIKE

14 NORMAL SPEED OF TALKING SPANISH TO ME.

15 Q. AND BECAUSE YOU COULD NOT UNDERSTAND EXACTLY WHAT HE

16 WAS SAYING HOW DID YOU DETERMINE THAT THE DEFENDANT

17 UNDERSTOOD WHAT WAS GOING ON?

18 A. WELL, I WOULD ASK RIVERA TO TRANSLATE WHAT HE SAID AND

19 THEN ASKED RIVERA REPEATEDLY IN THIS, ARE YOU SURE, ARE YOU

20 SURE? AND HE WOULD ASK HIM, AND THEY WOULD HAVE A

21 CONVERSATION OF ONE OR TWO SENTENCES, AND THEN RIVERA WOULD

22 ANSWER ME. AND THEN I WOULD SAY SOMETHING ELSE IN THE FORM

23 OF A QUESTION OR ASKING FOR AN AFFIRMATION OR SOMETHING.

24 AND RIVERA WOULD HAVE A TWO OR THREE SENTENCE CONVERSATION.

25 AND RIVERA WOULD GIVE ME THE ANSWER.

1 Q. AND WHEN YOU REFER TO RIVERA YOU'RE SPEAKING OF DEPUTY
2 RIVERA?

3 A. YES.

4 Q. BECAUSE THEY BOTH HAVE THE SAME LAST NAMES.

5 A. THAT'S RIGHT.

6 Q. IN REFERENCE TO RAMON RIVERA YOU'LL CALL HIM RIVERA?

7 A. YES.

8 Q. AND IN REFERENCE TO MARLON RIVERA YOU'LL CALL HIM THE
9 DEFENDANT?

10 A. RIGHT.

11 Q. AND WERE YOU PRESENT WHEN RAMON RIVERA WAS GOING OVER
12 THE DEFENDANT'S WAIVER OF RIGHT FORM?

13 A. YES, MA'AM.

14 Q. AND YOU OBSERVED AND HEARD, BUT EVEN THOUGH MAY NOT
15 HAVE UNDERSTOOD HIM EXPLAIN EACH LINE ON THE FORM?

16 A. BEFORE WE -- HE GOT TO THAT POINT I SAT DOWN WITH
17 RIVERA AND TOLD HIM EXACTLY HOW I WANTED HIM TO GO OVER THAT
18 FORM. GO ONE SENTENCE AT A TIME. USUALLY I TRY TO ASK THEM
19 TO READ THE SENTENCE OUT LOUD ABOUT AN ATTORNEY. BUT
20 BECAUSE HE TOLD US THAT HE COULD NOT READ THAT WAS
21 IMPOSSIBLE.

22 Q. AND YOU MEAN THE DEFENDANT, YOU USUALLY TRY TO GET THEM
23 TO READ A LINE SO THAT YOU CAN VERIFY THAT THEY, IN FACT,
24 CAN READ?

25 A. YES, MA'AM.

- 1 Q. BUT HE HAD ALREADY STATED HE COULD NOT READ?
- 2 A. THAT'S RIGHT.
- 3 Q. SO YOU HAD INSTRUCTED RAMON RIVERA TO GO LINE BY LINE?
- 4 A. YES, MA'AM.
- 5 Q. AND DID HE, IN FACT, DO THAT?
- 6 A. YES, MA'AM.
- 7 Q. AND AFTER EACH LINE THAT WAS EXPLAINED TO THE DEFENDANT
- 8 BY RAMON RIVERA DID THE DEFENDANT INITIAL STATING HE
- 9 UNDERSTOOD?
- 10 A. YES, MA'AM, HE DID.
- 11 Q. AND DURING THIS PROCESS COULD YOU TELL IF THE DEFENDANT
- 12 WAS EVER ASKING QUESTIONS BACK OF RAMON RIVERA?
- 13 A. NO. THE ONLY ANSWER HE WOULD GIVE DURING THE -- WHEN
- 14 RAMON WOULD ASK HIM, DO YOU UNDERSTAND, AND HE WOULD SAY,
- 15 SI, WHICH IS YES.
- 16 Q. DID YOU, RAMON, OR BRIAN GARRETT, OR ANYONE ELSE IN
- 17 YOUR PRESENCE FORCE, THREATEN, OR COERCE THE DEFENDANT IN
- 18 ANY WAY TO SIGN THOSE -- THAT WAIVER OF RIGHTS FORM?
- 19 A. NO, MA'AM.
- 20 Q. OR TO WAIVE HIS RIGHTS?
- 21 A. NO, MA'AM.
- 22 Q. DID YOU OR ANYONE IN YOUR PRESENCE PROMISE HIM
- 23 ANYTHING, ANY TYPE OF LENIENCY OR ANYTHING IF HE WOULD WAIVE
- 24 HIS RIGHTS?
- 25 A. NO, MA'AM.

1 Q. AND DID YOU DEPRIVE HIM OF ANYTHING HE REQUESTED, FOOD,
2 WATER, BATHROOM BREAKS, SMOKING?

3 A. NO, MA'AM.

4 Q. DID HE MAKE ANY SPECIAL REQUESTS AT ALL DURING THIS
5 WAIVER OF RIGHTS ---

6 A. NOT FOR SPECIAL REQUESTS. WE OFFERED HIM COFFEE A
7 COUPLE OF TIMES. HE DRANK COFFEE BEFORE WE TALKED TO HIM.
8 AND THEN HE DRANK COFFEE, A CUP WHEN WE FIRST STARTED. HE
9 HAD A CUP BY THE DESK.

10 Q. WAS THERE ANYTHING THAT WAS INDICATED BY HIS BODY
11 LANGUAGE TO YOU THAT HE WAS NOT WANTING TO WAIVE HIS RIGHTS,
12 THAT HE'S NOT DOING THIS OF HIS OWN FREE WILL?

13 A. NO.

14 Q. AND THEN DID YOU WITNESS HIM ACTUALLY SIGN THE BOTTOM
15 OF THE WAIVER OF RIGHTS?

16 A. YES.

17 Q. AND DID HE THEN PROCEED TO TELL WHAT HAPPENED OR
18 RESPOND TO QUESTIONS THAT WERE ASKED OF HIM ABOUT WHAT
19 HAPPENED IN THIS CASE?

20 A. YES.

21 Q. AND IN DOING THAT DID YOU OR ANYONE IN YOUR PRESENCE
22 FORCE HIM, OR THREATEN HIM, OR COERCE HIM TO MAKE THESE
23 STATEMENTS?

24 A. NO.

25 Q. AND WERE YOU ABLE TO DETERMINE FROM THE BODY LANGUAGE

1 AND THE FLOW OF THE CONVERSATION IF HE WAS VOLUNTARILY
2 SAYING THESE THINGS OR IF THEY WERE BEING FORCED OUT OF HIM
3 IN ANY WAY?

4 A. YES... IT SEEMED ALL VOLUNTARY. THERE WAS ONLY ONE TIME
5 WHERE HE PAUSED. AND RAMON ASKED HIM WHAT, WHAT, WHAT? AND
6 THAT WAS IT.

7 Q. DID HE RESPOND WHEN ---

8 A. YES.

9 Q. --- RAMON SAID, WHAT, WHAT -- OKAY. AND DURING THE
10 GIVING OF THE STATEMENT DID YOU OR ANYONE IN YOUR PRESENCE
11 PROMISE HIM ANYTHING, COME ON GIVE ME THIS STATEMENT AND
12 WE'LL WORK SOMETHING OUT FOR YOU?

13 A. NO.

14 Q. AND DID -- DURING THE STATEMENT DID HE EVER SAY, STOP,
15 NO MORE, ANYTHING THAT INDICATED TO YOU THAT HE DID NOT WANT
16 TO GIVE A STATEMENT?

17 A. NO.

18 Q. SO IN YOUR OPINION FROM WHAT YOU OBSERVED HE -- DID HE
19 VOLUNTARILY AND FREELY WAIVE HIS RIGHTS, NUMBER ONE?

20 A. YES.

21 Q. DID HE DO IT KNOWINGLY IN YOUR OPINION?

22 A. YES.

23 Q. AND THE SAME WITH THE STATEMENT, DID HE FREELY,
24 VOLUNTARILY, KNOWINGLY GIVE THAT STATEMENT?

25 A. YES.

1 Q. AFTER HE WAS FINISHED GIVING HIS STATEMENT DID HE, IN
2 FACT, MAKE SOME COMMENT THAT WAS TRANSLATED BACK TO YOU
3 ABOUT HOW FREELY HE WAS GIVING HIS STATEMENT?

4 A. YES. HE SAID THAT THIS WAS TAKING ENTIRELY TOO LONG
5 AND WE WERE BEING INCREDIBLY NICE TO HIM.

6 Q. AND THAT WAS TRANSLATED TO YOU?

7 A. RIGHT. WHEN HE SAID IT RAMON KIND OF LAUGHED. AND I
8 SAID, WHAT? AND HE SAID THIS IS -- WHAT HE SAID WAS YOU'RE
9 BEING -- THIS IS TAKING TOO LONG AND YOU'RE BEING ENTIRELY
10 TOO NICE ABOUT THIS. AND THEN RAMON -- WE TOLD HIM, WELL,
11 THIS IS THE WAY IT HAS TO BE IN OUR COUNTRY, THIS IS THE WAY
12 IT IS. AND HE SAYS, IN MY COUNTRY THEY PUT A BAG OVER YOUR
13 HEAD AND BEAT YOU.

14 Q. AND THAT WAS TRANSLATED TO YOU?

15 A. YES.

16 Q. THANK YOU.

17 THE COURT: MS. ROSS.

18 CROSS EXAMINATION BY MS. ROSS:

19 Q. NOW LIKE I GUESS THE THREE OF US, YOU REALLY DIDN'T
20 KNOW WHAT WAS BEING SAID BECAUSE IT WAS ALL IN SPANISH OR
21 ---

22 A. I ONLY KNEW WHAT RAMON WAS INTERPRETING BACK TO ME.

23 Q. RIGHT. SO EVERYTHING WAS GOING THROUGH THE INTERPRETER
24 AND SO YOU WERE WATCHING THIS INTERPRETATION AND YOU'RE, YOU
25 KNOW, ASSUMING THAT HE'S SAYING WHAT OR, YOU KNOW, WHAT

1 OFFICER RAMON RIVERA IS SAYING HE SAID BECAUSE THAT'S ALL
2 YOU CAN DO BECAUSE YOU DON'T SPEAK SPANISH?

3 A. THAT'S RIGHT.

4 Q. NOW YOU DIDN'T MAKE ANY VIDEO TAPE OR AUDIO TAPE OF
5 THIS WHOLE ---

6 A. NO. WE DON'T -- WE DON'T DO THAT AS A PRACTICE AT THE
7 SHERIFF'S OFFICE.

8 Q. AND WOULD YOU CONCEDE THAT THAT MIGHT BE HELPFUL IN
9 DETERMINING WHETHER A STATEMENT IS BEING GIVEN FREELY AND
10 VOLUNTARILY?

11 A. IT WOULD BE, BUT WE DON'T EVEN HAVE AN INTERVIEW ROOM
12 AT THE SHERIFF'S OFFICE.

13 Q. SO Y'ALL DIDN'T DO THAT?

14 A. NO, MA'AM.

15 Q. NOW -- AND ALSO ON THIS PARTICULAR CONFESSION IT'S NOT
16 NOTARIZED, IS IT?

17 A. NO, MA'AM. I WAS THE ONLY NOTARY PUBLIC THAT WAS
18 AVAILABLE.

19 Q. NOW DID YOU REALIZE THAT THE DEFENDANT RIVERA WAS A
20 FOREIGN NATIONAL?

21 A. YES, MA'AM.

22 Q. DID YOU TELL HIM ABOUT HE COULD CONTACT HIS CONSULATE
23 IF HE WANTED TO?

24 A. I'M NOT REQUIRED TO DO THAT.

25 Q. SO YOU DIDN'T DO THAT?

1 A. NO, MA'AM.

2 Q. AND SO YOU -- AND YOU DIDN'T, OF COURSE, CONTACT HIS
3 CONSULATE FOR HIM?

4 A. NO, MA'AM. I'M NOT REQUIRED TO DO THAT.

5 Q. NOW WAS THERE ANY NON-POLICE PRESENCE IN THAT ROOM?

6 DID YOU HAVE A VICTIM WITNESS PERSON OR A NON-POLICE
7 TRANSLATOR IN THE ROOM WHILE YOU WERE TAKING THIS STATEMENT?

8 A. NO, MA'AM.

9 Q. AND YOU SAID YOU WERE ASKING OFFICER RIVERA QUESTIONS
10 AND THEN HE WAS POSING THEM TO THE DEFENDANT?

11 A. YES.

12 Q. AND COMING BACK WITH ANSWERS. YET CLEARLY THE
13 STATEMENT IS NOT WRITTEN IN QUESTION AND ANSWER. SO IT'S
14 NOT A ---

15 A. THE WAY THE STATEMENT IS WRITTEN IS LIKE -- BASICALLY
16 THE QUESTION WOULD BE, WELL, WHAT HAPPENED NEXT? THEN WHAT
17 HAPPENED? AND WHO SAID WHAT? AND SO IT'S JUST A REPETITIVE
18 QUESTION OVER, AND OVER, AND OVER AGAIN. AND WE TRY TO
19 SOLICIT THE ANSWER IN THE FORM OF A SENTENCE THAT COULD BE
20 LINKED TOGETHER IN A NARRATIVE FORM.

21 Q. SO A LOT OF THE INFORMATION IN THERE WAS NOT JUST
22 VOLUNTEERED BY DEFENDANT RIVERA, IT WAS IN RESPONSE TO A
23 QUESTION?

24 A. YES.

25 Q. NOW YOU SAID THAT -- YOU TESTIFIED THAT YOU THINK THAT

1 IT WAS -- THE STATEMENT WAS KNOWINGLY MADE?

2 A. YES, MA'AM.

3 Q. NOW BY THAT DO YOU THINK HE KNEW -- WELL, LET'S GO TO
4 THE, NOT THE STATEMENT, THE WAIVER OF RIGHTS. GIVEN THAT
5 MR. RIVERA THINKS -- SAID THINGS LIKE, YOU'RE TOO NICE, I'M
6 EXPECTING A BAG TO BE PUT OVER MY HEAD AND BEING BEATEN, DO
7 YOU THINK HE KNOWINGLY -- ARE YOU TESTIFYING THAT HE KNEW
8 THAT HE HAD A RIGHT TO HAVE AN ATTORNEY PRESENT?

9 A. ONCE WE ADVISED HIM HE KNEW, YES, MA'AM.

10 Q. SO YOU'RE SAYING GIVEN THE FACT THAT HE'S ILLITERATE
11 AND FROM THIS OTHER COUNTRY AND HAS NO EXPERIENCE OF THIS
12 COUNTRY AND IS EXPECTING TO BE BEATEN UP THAT HE KNOWINGLY
13 TALKED TO YOU AND VOLUNTEERED THE INFORMATION CONTAINED IN
14 THE STATEMENT?

15 A. WE HAVE TO TAKE HIS ANSWER ON FACE VALUE. WE HAVE TO
16 ADVISE HIM ACCORDING TO THE FORM. AND WE HAVE TO TAKE HIS
17 ANSWER ON FACE VALUE.

18 Q. NOW DID YOU EVER TOUCH HIM IN ANY WAY?

19 A. YES, MA'AM, I DID.

20 Q. WHAT -- HOW DID YOU TOUCH -- WHAT DID YOU DO?

21 A. I PICKED HIM UP BY THE BELT AND PULLED HIS BELT BACK
22 UP, IT WAS VERY LOOSE, SO HE'D BE ABLE TO MOVE HIS ARMS
23 AROUND, BUT STILL BE RESTRAINED. I PICKED HIM UP BY THE
24 BELT, I STOOD HIM UP, MOVED IT BACK UP, AND JUST TOLD HIM TO
25 SIT BACK DOWN IN THE CHAIR.

1 Q. NOW ISN'T THIS TRUE THIS WAS IN THE CONTEXT OF TELLING
2 HIM HE'D LIED AND HE NEEDED TO TELL THE TRUTH NOW?

3 A. NO, MA'AM.

4 Q. SO YOUR TESTIMONY IS HE NEVER -- YOU NEVER SAID
5 ANYTHING ABOUT, YOU'VE LIED, TELL US THE TRUTH?

6 A. OH, YEAH, WE CONFRONTED HIM, THAT'S A LIE. YES, MA'AM.

7 Q. SO WERE ANY OF THE LIES WRITTEN DOWN IN THAT STATEMENT
8 THAT YOU WROTE OUT IN ENGLISH?

9 A. ONCE WE CONFRONTED ---

10 Q. ANY OF THE THINGS THAT YOU WERE CALLING LIES, DID YOU
11 WRITE THEM DOWN ---

12 A. THAT WAS JUST THE ONE TIME. AND THAT WAS ABOUT SOME
13 PART ABOUT WHERE THE -- BEING THE FRIEND WITH HIM, WHO THE
14 FRIEND WAS. AND WE WERE TRYING TO GET HIM TO TELL US WHO
15 THE FRIEND WAS.

16 Q. SO HE DID TALK TO YOU ABOUT SOMEONE ELSE BEING THERE?

17 A. BEING WITH HIM, YES, MA'AM.

18 Q. YET THAT STATEMENT DOESN'T REFLECT THAT?

19 A. YES, IT DOES. IT REFLECTS THAT HE SAID THAT THE GUY
20 THAT WAS WITH HIM SAID, OKAY, YOU'VE ALREADY SHOT HIM, LET'S
21 GO.

22 Q. BUT THE STATEMENT DOESN'T REFLECT ANYTHING ABOUT THE
23 GUY WHO WAS WITH HIM TAKING THE GUN OR TOUCHING THE GUN?

24 A. NO, MA'AM, BECAUSE THAT'S NOT WHAT HE SAID.

25 Q. NOTHING FURTHER.

1 THE COURT: THANK YOU. STEP DOWN.

2 MS. HODGE: THAT'LL BE ALL THE STATE HAS.

3 THE COURT: ALL RIGHT. NOW DOES YOUR CLIENT WISH TO
4 TAKE THE STAND SOLELY FOR THE PURPOSE OF CONTESTING THE
5 VOLUNTARINESS OF THE WAIVER?

6 MS. ROSS: I BELIEVE HE DOES, BUT LET ME ...

7 (WHEREUPON MS. ROSS WAS CONSULTING WITH CLIENT THROUGH
8 MR. FREEMAN)

9 THE COURT: ALL RIGHT. NOW I WANT -- DOES HE
10 UNDERSTAND NOW WE'RE NOT GETTING INTO THE STATEMENT ITSELF?
11 ALL WE'RE INTERESTED IN NOW IS THE WAIVER OF -- THE SIGNING
12 OF THE WAIVER. OKAY?

13 MR. FREEMAN: YES. NEVERTHELESS, YOUR HONOR, ALLOW ME
14 TO GO OVER THAT ONCE MORE.

15 (WHEREUPON THE INTERPRETER, MR. FREEMAN, WAS TALKING
16 WITH THE DEFENDANT)

17 MS. HODGE: YOUR HONOR, ARE WE GOING TO NEED THE
18 OFFICIAL INTERPRETER OR IS THIS GOING TO BE SUFFICIENT FOR
19 THIS HEARING?

20 THE COURT: PROBABLY SO. OKAY. WE'VE GOT TO GET THE
21 INTERPRETER DOWN HERE. SO WE'LL TAKE A VERY SHORT RECESS
22 WHILE WE ROUND HIM UP.

23 (WHEREUPON COURT WAS IN RECESS)

24 THE COURT: ALL RIGHT. MS. ROSS.

25 MS. ROSS: THE DEFENSE WOULD CALL DEFENDANT, MARLON

1 RIVERA.

2 THE COURT: COME AROUND. AND WE'LL NEED TO PUT HIM
3 UNDER OATH.

4 (WHEREUPON THE FOLLOWING QUESTIONS AND ANSWERS WERE
5 INTERPRETED BY EFRAIN PINEROS)

6 MARLON RIVERA, BEING DULY
7 SWORN TESTIFIED AS FOLLOWS:

8 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
9 RECORD.

10 MR. RIVERA: MARLON RIVERA CASTRO [SIC].

11 DIRECT EXAMINATION BY MS. ROSS:

12 Q. OKAY, MARLON, DO YOU SPEAK ANY ENGLISH?

13 A. NO, NOTHING.

14 Q. AND YOU JUST SAID A LITTLE BIT. HAVE YOU LEARNED ANY
15 WORDS IN ENGLISH DURING THE TIME YOU'VE BEEN IN JAIL, SINCE
16 YOU WERE ARRESTED LAST JULY?

17 A. YES. I MEAN, WHILE I HAVE BEEN IN JAIL I'VE LEARNED
18 SOME ENGLISH.

19 Q. BUT WHEN YOU WERE ARRESTED IN JULY OF LAST YEAR DID YOU
20 KNOW ANY ENGLISH AT ALL?

21 A. NO, NONE.

22 Q. NOW HOW ABOUT SPANISH? COULD YOU WRITE IN SPANISH?

23 A. NO, I NEVER WENT TO SCHOOL.

24 Q. YOU NEVER WENT AT ALL OR DID YOU GO EVEN A FEW YEARS?

25 A. I WENT TO FIRST AND SECOND GRADE.

- 1 Q. NOW I WANT TO TALK ABOUT AFTER YOU WERE ARRESTED AND
2 SIGNED THESE PAPERS. CAN YOU READ ANYTHING ON THIS PAPER?
3 A. NOTHING.
4 Q. DID YOU MAKE THESE MARKS ON THIS PAPER?
5 A. YES.
6 Q. WHAT DID YOU THINK WAS HAPPENING WHEN YOU MADE THOSE
7 MARKS ON THE PAPER?
8 A. NOTHING.
9 Q. DID YOU -- DID OFFICER RIVERA GO THROUGH EACH ONE OF
10 THESE THINGS ONE AT A TIME BEFORE YOU SIGNED ON THIS PAPER?
11 A. YES.
12 Q. WHAT DID YOU THINK THAT MEANT?
13 A. I DIDN'T UNDERSTAND ANYTHING.
14 Q. SO YOU DIDN'T UNDERSTAND ANYTHING HE WAS SAYING TO YOU?
15 A. WHAT I WAS SIGNING, I WASN'T UNDERSTANDING -- I WASN'T
16 UNDERSTANDING.
17 Q. DID -- DO YOU UNDERSTAND HIS SPANISH THAT HE WAS
18 SPEAKING TO YOU?
19 A. A LITTLE BIT.
20 Q. DID YOU HAVE ANY UNDERSTANDING OF WHAT RIGHTS WERE IN
21 GENERAL?
22 A. SAY THAT AGAIN.
23 Q. DID YOU HAVE ANY UNDERSTANDING OF WHAT A RIGHT WAS?
24 A. IN THIS COUNTRY I DO NOT KNOW ANYTHING. WHAT ARE MY
25 RIGHTS?

1 Q. DID OFFICER RIVERA EXPLAIN TO YOU THAT IN THIS COUNTRY
2 YOU HAVE RIGHTS?

3 A. YES.

4 Q. NOW WHEN YOU MADE THESE SIGNATURES WHAT DID YOU
5 UNDERSTAND THAT YOU WERE DOING?

6 A. WHEN I SIGNED THERE I WAS NERVOUS AND I DIDN'T KNOW
7 WHAT WAS GOING ON, WHAT HE WAS TELLING ME, NOTHING WHAT HE
8 WAS TELLING ME BECAUSE HE HAD ME IN A HOLD LIKE THIS. AND
9 ONE OF THEM SAID THAT I WAS LYING. HE GRABBED ME FROM THE
10 FRONT AND HOLD ME UP LIKE THIS. AND THEN THEY READ THE
11 PAPERS AND I JUST DIDN'T KNOW WHAT WAS GOING ON.

12 Q. ALL RIGHT.

13 A. I DIDN'T UNDERSTOOD ANYTHING. I DIDN'T UNDERSTAND
14 ANYTHING AND THEY TOLD ME TO SIGN. AND THEY TOLD ME TO
15 SIGN. AND I TOLD THEM THAT I DIDN'T -- I DIDN'T KNOW HOW TO
16 SIGN. SO THEY -- MR. RIVERA CAME. HE SAID THAT HE GOT MY
17 NAME THERE. AND BASED ON THAT, SINCE MY NAME WAS THERE THAT
18 I WOULD GO AHEAD AND SIGN DOWN THERE.

19 I WAS HANDCUFFED. AND I SAID, I CAN'T SIGN. AND HE
20 SAID, JUST WRITE DOWN A NAME, WRITE YOU. AND THIS NEXT
21 PAGE, HE READ THAT TO ME. I DIDN'T UNDERSTAND ANYTHING. I
22 WAS JUST KIND OF LOST. I DIDN'T KNOW WHAT WAS GOING ON
23 BECAUSE WHEN THEY GOT ME -- WHEN THEY GOT HOLD OF ME I WAS
24 NERVOUS.

25 AND MR. RIVERA TOLD ME TO SIGN. AND HE SAID -- AND I

1 ASKED HIM WHERE. AND I WAS VERY NERVOUS. AND I SIGNED UP
2 THERE ON THE TOP. I SIGNED ON THE OTHER SIDE TOO. AND I
3 SIGNED DOWN THERE. AND HE SAID, NO, IT'S NOT THERE. IT'S
4 NOT THERE. IT'S NOT DOWN THERE. AND THEN HE SAID, WHAT YOU
5 NEED TO DO IS SIGN DOWN HERE.

6 AND I SAID, WELL, I DON'T KNOW HOW TO SIGN. HE CAME,
7 HE GOT HIS PEN, AND HE PUT TWO OF THE FIRST LETTERS. I
8 REMEMBER MORE OR LESS A YEAR AGO. AND THE FIRST LETTERS HE
9 WROTE -- THERE'S A NAME. AND THERE'S THE NEXT LETTER THAT I
10 DON'T KNOW WHAT IT IS. AND THEN THE NEXT ONE. AND HE TOLD
11 ME, DO THIS, DO THAT, BUT I DIDN'T KNOW HOW TO COPY MY NAME.
12 AND I PUT -- I WROTE DOWN AN "R" AND OTHER LETTERS THAT I
13 DON'T KNOW WHAT THEY ARE, WHAT ARE THEIR NAMES.

14 Q. OKAY.

15 A. AND I WAS NERVOUS AND I DIDN'T KNOW WHAT I DID.

16 Q. SO THEY ACTUALLY TOLD YOU HOW TO MAKE EACH INDIVIDUAL
17 LETTER OF YOUR NAME?

18 A. THEY TOLD ME TO JUST COPY FROM THE TOP TO WRITE ON THE
19 BOTTOM OF THE PAPER. AND I COULDN'T DO ANYTHING BECAUSE
20 THERE WASN'T ANY WAY TO COPY SINCE -- RIVERA JUST PUT THE
21 FIRST TWO LETTERS. HE GOT HIS OWN PEN. AND HE GAVE ME HIS
22 PEN AND HE SAID TO SIGN ON THAT PAPER. RIGHT THERE MY NAME
23 IS MARLON RIVERA.

24 Q. SO HE WROTE THE "M" AND THE "A" AND YOU WROTE THE REST?

25 A. AND HE WROTE THE REST. YEAH, THEN HE ASKED ME TO WRITE

1 ON THE TOP, BUT I JUST COPIED FROM SOMEWHERE ELSE.

2 Q. NOW I WANT TO ASK WHEN YOU MADE THESE SIGNATURES HAD
3 THE POLICEMAN ALREADY GRABBED YOU AND CALLED YOU A LIAR?

4 A. WHEN THEY ASKED ME THOSE QUESTIONS ON THAT SIDE WE
5 HADN'T FINISHED THE PAPER. I'M WITH THE POLICEMAN THAT
6 SPEAKS SPANISH. THERE WAS ANOTHER POLICEMAN THAT WASN'T A
7 -- AND HE DIDN'T ASK ME ANY QUESTIONS WHILE I WAS
8 HANDCUFFED, ONLY WITH RIVERA.

9 THEN ---

10 MADAME COURT REPORTER: EXCUSE ME.

11 THE COURT: HOLD ON.

12 MADAME COURT REPORTER: WAIT, WAIT. I CAN'T HEAR ---

13 THE COURT: NOW THE COURT REPORTER CAN'T TAKE DOWN ---

14 MADAME COURT REPORTER: --- BOTH AT THE SAME TIME.

15 THE COURT: YOU'RE GOING TO HAVE TO GO A LITTLE SLOWER.

16 MR. PINEROS: OKAY. I WILL.

17 A. OFFICER RIVERA WAS ASKING ME QUESTIONS. I WAS GIVING
18 HIM ANSWERS. THEN HE CAME, MR. -- THE POLICEMAN. I DON'T
19 KNOW HIS NAME. I DON'T KNOW HIS NAME. HE CAME AND GRABBED
20 ME. HE JUST RAISED ME UP AND GOT ME LIKE THAT. AND HE TOLD
21 ME THAT I WAS LYING. AND I SAID HOW DO YOU KNOW IF YOU
22 DON'T KNOW HOW TO SPEAK -- YOU DON'T KNOW HOW TO SPEAK FIRST
23 ENGLISH AND THEN SPANISH? I SAID HOW DO I KNOW -- I ASKED
24 HIM HOW -- I WAS SITTING DOWN. HE GRABBED ME FROM THE BELT
25 UP. HE TOLD ME THAT I WAS LYING. I ASKED OFFICER RIVERA,

1 WHAT IS HE SAYING? AND HE SAID THAT THE OFFICER WAS SAYING
2 THAT I WAS LYING.

3 THEN I TOLD RIVERA, I'M NO LYING, I'M TELLING THE
4 TRUTH. I SAID, IF YOU DON'T BELIEVE ME THERE'S GOD IN
5 HEAVEN THAT IS A WITNESS. RIVERA ANSWERED TO ME WITH THESE
6 WORDS, THERE'S NO GOD HERE. AND I SAID, YES, THERE IS A GOD
7 AND HE'S A WITNESS. THEN I JUST KIND OF LOSE MY MIND. WHEN
8 THEY READ THE PAPERS I DON'T KNOW WHAT MY RIGHTS ARE.

9 Q. OKAY. AND THAT WAS AFTER YOU HAD SAID THIS? YOU SAID
10 -- OR THIS ---

11 A. WE HAVEN'T FINISHED YET THIS WHEN HE GRABBED ME.

12 Q. HOW ABOUT WHEN YOU SIGNED THIS?

13 A. FIRST WE WENT -- FIRST WE DID THIS PAGE. THEN WE WENT
14 TO THE OTHER PAGE. WHEN I SIGNED WE SIGNED BOTH OF THEM
15 TOGETHER.

16 Q. SIGNED BOTH TOGETHER?

17 A. HE MOVED THIS ONE THIS WAY. AND THEN HE SAID -- THEN
18 HE WENT -- WE WENT ONTO THE NEXT PAGE.

19 Q. SO YOU SIGNED THIS AND THEN YOU IMMEDIATELY SIGNED
20 THIS?

21 A. YES.

22 Q. AND THAT WAS AFTER YOU HAD BEEN GRABBED UP?

23 A. YES.

24 Q. AFTER YOU HAD BEEN CALLED A LIAR?

25 A. YES. THIS ONE, BUT THIS ONE DOWN AT THE BOTTOM AFTER

1 THEY CALLED ME AND SAID THAT I WAS A LIAR. I WAS NERVOUS
2 BECAUSE I DIDN'T KNOW WHAT THEY WAS GOING TO DO WITH ME
3 BECAUSE THEY HAD GRABBED ME LIKE THAT.

4 Q. NOW LATER ON AFTER YOU WERE ARRESTED IN JAIL YOU CALLED
5 AND WANTED TO TALK TO ME AND CARLOS ABOUT THIS. WHY DID YOU
6 CALL?

7 A. BECAUSE I DIDN'T KNOW WHAT WAS WRITTEN IN THE PAPER. I
8 DIDN'T KNOW WHAT THE PAPER SAID.

9 Q. DID SOMEONE AT THE JAIL TELL YOU WHAT THE PAPER SAID?

10 A. NO, NOBODY READ ANYTHING TO ME. I JUST KEEP IT -- I
11 KEPT IT WITH ME.

12 Q. AND SO YOU DON'T REMEMBER CALLING TO TALK TO ME AND
13 CARLOS ABOUT WHAT WAS SAID ON THAT PAPER?

14 A. SAY IT AGAIN. EXCUSE ME.

15 Q. SO YOU DON'T REMEMBER CALLING ME AND CARLOS TO COME
16 TALK TO YOU ABOUT WHAT WAS SAID ON THE PAPER?

17 A. YES, I REMEMBER.

18 Q. AND WHEN YOU FOUND OUT WHAT WAS ON THAT PAPER WAS IT
19 WHAT YOU EXPECTED?

20 A. NO.

21 Q. WHY WASN'T IT WHAT YOU EXPECTED?

22 A. BECAUSE THERE ARE THINGS IN THAT PAPER THAT OFFICER
23 RIVERA PUT THEM THERE. AND THAT INFORMATION I DIDN'T GIVE
24 TO HIM.

25 Q. SO WHEN WE WENT OVER WHAT WAS SAID THAT WAS NOT WHAT

1 YOU EXPECTED BECAUSE THAT WAS NOT WHAT YOU HAD SAID?

2 A. YES.

3 Q. I'VE GOT NO FURTHER QUESTIONS.

4 THE COURT: ANY QUESTIONS, SOLICITOR?

5 MS. HODGE: YES.

6 CROSS EXAMINATION BY MS. HODGE:

7 Q. THE PROBLEM WITH THE WAIVER OF RIGHTS WAS THAT YOU JUST
8 DID NOT UNDERSTAND THE LANGUAGE?

9 A. I DIDN'T UNDERSTAND ANYTHING. WHEN YOU MEAN LANGUAGE
10 YOU MEAN THE ---

11 Q. I DON'T MEAN TRANSLATION. I MEAN THE ACTUAL DEFINITION
12 OF THE WORDS.

13 A. I DIDN'T UNDERSTAND ANYTHING.

14 Q. THE TRANSLATION -- YOU COULD COMMUNICATE WITH DEPUTY
15 RIVERA?

16 A. YES.

17 Q. AND THERE WAS JUST ONE TIME THAT SOMEONE TOUCHED YOU
18 PHYSICALLY?

19 A. HE SAID HOW -- I DON'T UNDERSTAND.

20 Q. DURING THIS PROCESS AND THIS PROCESS ONE TIME ONLY A
21 POLICE OFFICER TOUCHED HIM.

22 A. JUST ONE TIME, YES.

23 Q. AND WHAT COUNTRY IS HE FROM?

24 A. I'M FROM HONDURAS.

25 Q. AND FIRST AND SECOND GRADE IN HONDURAS?

1 A. YES.

2 Q. DO YOU START TO LEARN HOW TO READ AND WRITE?

3 A. THE ONLY REASON WHY I WENT TO SCHOOL IS BECAUSE I WENT
4 TO SELL TORTILLAS TO HELP MY GRANDMA.

5 Q. SO AT SCHOOL HE WASN'T ACTUALLY IN SCHOOL, HE WAS JUST
6 SELLING THE FOOD?

7 A. I WENT TO THE SCHOOL ONE DAY, YES, THE OTHER ONE, NO.

8 Q. SO HE WENT SOMETIMES?

9 A. YES. THERE ARE TWO GRADES IN THE SCHOOL, THEY'RE FIRST
10 AND SECOND. FIRST AND SECOND.

11 Q. WHEN YOU CAME TO THIS COUNTRY DID YOU WORK? HAVE YOU
12 WORKED?

13 A. YES.

14 Q. YES? OKAY. AND WHAT KIND OF WORK?

15 A. EXCUSE ME, THE QUESTION? ARE YOU REFERRING TO HERE IN
16 THE UNITED STATES?

17 Q. YES.

18 A. (WHEREUPON THE INTERPRETER STARTED ANSWERING THE
19 QUESTION IN SPANISH). I WORK LAYING BRICK AND BLOCK. SORRY
20 ABOUT THAT.

21 Q. IT'S OKAY. WILL YOU ASK HIM IF HE WAS PAID WITH
22 CHECKS?

23 A. NO, THEY GIVE ME CASH.

24 Q. DID HE EVER GO TO A BANK?

25 A. NEVER.

- 1 Q. DID YOU GO TO A GROCERY STORE?
- 2 A. YES.
- 3 Q. DID YOU PAY WITH YOUR CASH AT THE GROCERY STORE?
- 4 A. YES.
- 5 Q. SO YOU UNDERSTOOD HOW TO PAY FOR GROCERIES?
- 6 A. YES.
- 7 Q. AND YOU UNDERSTOOD AT WORK WHAT YOUR EMPLOYER WANTED
- 8 YOU TO DO?
- 9 A. YES.
- 10 Q. HOW ABOUT DID YOU LIVE -- WHERE DID YOU LIVE?
- 11 A. BARRINGTON PARK.
- 12 Q. AND DID YOU RENT THAT APARTMENT?
- 13 A. YES, MY MOM AND MY STEP-FATHER.
- 14 Q. AND DID YOU PAY RENT AT THAT APARTMENT?
- 15 A. YES, THE RENT, THE BILLS, THE FOOD.
- 16 Q. SO YOU KNOW HOW TO FUNCTION IN AMERICA?
- 17 A. JUST MORE OR LESS BECAUSE I'VE BEEN A HARD WORKING
- 18 PERSON. I CAME TO WORK HERE WITH SOME PEOPLE FROM COSTA
- 19 RICA. AND THEY PAY ME PRETTY GOOD.
- 20 Q. CAN YOU READ THIS RIGHT HERE? UP TOP?
- 21 A. YES, THAT'S AN "S".
- 22 Q. WHAT IS THAT WORD?
- 23 A. I DON'T KNOW THE NEXT ONE.
- 24 Q. YOU DON'T KNOW WHAT THE NEXT LETTER IS?
- 25 A. NO.

1 Q. YOU DON'T KNOW HOW SI IS SPELLED?

2 A. SI? NO.

3 Q. THANK YOU.

4 THE COURT: WOULD YOU ASK HIM HOW LONG HE'S BEEN IN THE
5 UNITED STATES?

6 A. A LITTLE BIT OVER FOUR YEARS.

7 THE COURT: THANK YOU.

8 MS. HODGE: THAT'LL BE ALL THE QUESTIONS I HAVE.

9 THE COURT: THANK YOU. YOU CAN STEP DOWN NOW.

10 MS. ROSS: WE'D BRIEFLY CALL CARLOS FREEMAN, OUR
11 INVESTIGATOR, TO THE STAND.

12 THE COURT: ALL RIGHT. YOU'RE STILL UNDER OATH, MR.
13 FREEMAN.

14 MS. HODGE: YOUR HONOR, THEIR TRANSLATOR IS ASKING
15 WHETHER WE ARE GOING TO NEED HIM. I DON'T KNOW WHAT
16 SUSANNAH INTENDED TO CALL. HE'S GOT A WITNESS UPSTAIRS, I
17 UNDERSTAND.

18 MS. ROSS: NO. CARLOS SPEAKS ENGLISH ---

19 MS. HODGE: RIGHT.

20 MS. ROSS: --- AND OUR EXPERT SPEAKS ENGLISH. SO WE
21 SHOULD BE FINE.

22 DIRECT EXAMINATION BY MS. ROSS:

23 Q. CARLOS, YOU'VE HELPED ME WITH INTERPRETING IN THE
24 INVESTIGATION IN THIS CASE, RIGHT?

25 A. YES, THAT'S CORRECT.

1 Q. I WAS TALKING TO MARLON ON DIRECT ABOUT AN INCIDENT
2 WHERE HE'D CALLED US AND SAID THAT HE WANTED TO SPEAK TO US
3 ABOUT HIS CONFESSION.

4 A. YES.

5 Q. YOU DON'T RECALL THAT INCIDENT?

6 A. YES, I DO.

7 Q. DO YOU RECALL HIS STATE OF MIND WHEN HE CALLED US ABOUT
8 THIS?

9 A. YES. HE WAS VERY NERVOUS. EXTREMELY NERVOUS EVEN DOWN
10 TO THE POINT WHEN I WAS SPEAKING WITH HIM THERE. IT WAS A
11 LITTLE DIFFICULT TO KEEP HIM CALMED DOWN ENOUGH TO BE ABLE
12 TO CONTINUE A RATHER COHERENT CONVERSATION WITH HIM.

13 Q. SO HE SEEMED TO BE EXCITED WITH -- EXCITEDLY TALKING
14 ABOUT THIS CONFESSION?

15 A. EXCITEDLY TALKING. AND AS I WAS TRANSLATING IT TO HIM
16 HE KEPT INTERRUPTING. HE COULDN'T HOLD BACK FROM SAYING
17 THAT'S NOT TRUE, THIS IS NOT WHAT I DID.

18 Q. SO WHAT WAS HE TELLING YOU ABOUT THE CONFESSION?

19 A. THAT ON THAT CONFESSION THAT THAT IS NOT WHAT HE SAID,
20 THAT THIS WAS NOT WHAT HAPPENED.

21 Q. DID THIS SEEM TO BE THE FIRST TIME THAT HE WAS LEARNING
22 THAT THE PIECE OF PAPER, THE CONFESSION HE'D BEEN CARRYING
23 AROUND FOR MONTHS WAS NOT WHAT HE SAID?

24 A. YES, HE TOLD THAT TO ME.

25 THE COURT: NOW I'M NOT CONCERNED WITH THE CONTENT OF

1 THE CONFESSION. I'M CONCERNED ONLY WITH THE WAIVER.

2 MS. ROSS: THE WAIVER. AND THAT'S REALLY ALL I HAD ON
3 THAT.

4 Q. I WILL ASK, DID HE MENTION ANYTHING ABOUT THE WAIVER
5 AND COERCION OR FORCE, WHETHER THAT CONFESSION WAS KNOWINGLY
6 AND VOLUNTARILY MADE?

7 A. YES. HE PUT A LOT OF EMPHASIS ON SOME SORT OF PHYSICAL
8 ACT OF LIFTING HIMSELF UP. AND HE'S ALWAYS GONE THROUGH THE
9 PHYSICAL ACTION OF SHOWING THAT HE -- HOW IT WAS DONE.

10 Q. SO HE WAS SAYING THAT BACK THEN WHEN HE DISCOVERED WHAT
11 WAS ON THAT CONFESSION?

12 A. YES.

13 Q. I'VE GOT NOTHING FURTHER.

14 THE COURT: THANK YOU. YOU CAN STEP -- I'M SORRY.

15 MS. HODGE: NO, SIR.

16 THE COURT: THANK YOU. YOU CAN STEP DOWN.

17 MS. ROSS: WE WILL NOW CALL DR. ROBERT TAYLOR.

18 MS. HODGE: YOUR HONOR, I BELIEVE THIS IS AN EXPERT
19 THEY'RE GETTING READY TO CALL. I'VE NOT BEEN PUT ON NOTICE
20 OR GIVEN A REPORT OR ANYTHING OF THIS EXPERT'S FINDINGS OR
21 ANYTHING THAT HE'S DONE.

22 THE COURT: MS. ROSS, HOW ABOUT THAT?

23 MS. ROSS: THIS IS DR. ROBERT TAYLOR, WHO I GUESS MR.
24 FREEMAN, CARLOS FREEMAN, MY INVESTIGATOR KNEW HIM AND OVER
25 THE WEEKEND WE DETERMINED THAT HE COULD POSSIBLY BE HELPFUL

1 ON THE CONFESSION ISSUE. WE HAD HIM COME IN YESTERDAY
2 MORNING AT NINE AND MEET WITH MARLON RIVERA. HE'S BEEN HERE
3 IN OPEN -- I DIDN'T KNOW OF ANY WRITTEN NOTES UNTIL THIS
4 MORNING. HE SAID HE'D MADE SOME NOTES AND WE'RE WELCOME TO
5 LOOK AT THEM. AND I'LL BE HAPPY TO COPY THEM NOW AND
6 PROVIDE A COPY TO THE STATE. BUT HE'S HERE TO ADDRESS ---

7 THE COURT: WHAT IS HE HERE FOR? I MEAN, WHAT IS THE
8 PURPOSE OF CALLING HIM?

9 MS. ROSS: HE IS AN EXPERT. HE'S GOT A DOCTORATE IN
10 SOCIAL WORK AND PSYCHOLOGY. HE ALSO SPEAKS FOUR LANGUAGES.
11 HE'S FROM SOUTH AMERICA. HE DOES AN EMPHASIS IN BILINGUAL
12 AND BI-CULTURAL INTERACTION. HE TEACHES CRIMINAL DOMESTIC
13 VIOLENCE ---

14 THE COURT: OH, I UNDERSTAND. I MEAN, WHAT'S HE GOING
15 TO TESTIFY TO.

16 MS. ROSS: HE'S GOING TO ADDRESS MARLON'S CAPABILITY OF
17 UNDERSTANDING AND KNOWING HIS RIGHTS TO WAIVE THEM. SO HE'S
18 GOING TO ADDRESS WHETHER THE WAIVER WAS KNOWING AND
19 VOLUNTARY, VOLUNTARILY MADE.

20 THE COURT: ALL RIGHT. COME AROUND AND BE SWORN.

21 ROBERT TAYLOR, BEING DULY
22 SWORN TESTIFIED AS FOLLOWS:

23 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
24 RECORD.

25 MR. TAYLOR: MY NAME IS ROBERT CHRISTOPHER TAYLOR.

1 THE COURT: YOU'LL HAVE TO SPEAK INTO THE MICROPHONE,
2 MR. TAYLOR.

3 MR. TAYLOR: YESTERDAY I CONDUCTED AN INTERVIEW WITH
4 THE DEFENDANT. AND I WAS ASKED TO SEE -- NOT TO DO A
5 PSYCHOLOGICAL EVALUATION, NOT TO DO A MENTAL STATUS
6 EVALUATION, JUST TO ANSWER THE QUESTION OF WHETHER OR NOT HE
7 WAS CAPABLE OF SIGNING THE WAIVER AND THE CONFESSION.

8 THE COURT: OKAY. MS. ROSS.

9 DIRECT EXAMINATION BY MS. ROSS:

10 Q. WE'RE GOING TO GO THROUGH SOME QUESTIONS BEFORE I OFFER
11 YOU AS AN EXPERT.

12 THE COURT: YOU CAN SEE THAT HE'S AN EXPERT.

13 MS. HODGE: I'M NOT SURE -- I'D LIKE TO HEAR EXACTLY
14 WHAT IT IS HE'S AN EXPERT IN.

15 THE COURT: OKAY. GO AHEAD.

16 MS. ROSS: BASICALLY I'M GOING TO QUALIFY HIM AS AN
17 EXPERT -- HE'S GOT A DOCTORATE IN SOCIAL WORK AND PSYCHOLOGY
18 AND BILINGUAL AND BI-CULTURAL INTERACTION WITH AN EMPHASIS
19 IN THAT AREA.

20 A. I'D JUST LIKE TO CORRECT, A DOCTORATE IN THEOLOGY, A
21 MASTERS IN PSYCHOLOGY, A MASTERS IN SOCIAL WORK.

22 Q. MASTERS IN SOCIAL WORK.

23 A. UM-HUM (AFFIRMATIVE).

24 Q. AND DOCTORATE IN?

25 A. THEOLOGY.

1 Q. THEOLOGY. AND WHAT IS YOUR EDUCATION?

2 A. BASICALLY I HAVE THOSE FOUR DEGREES INCLUDING FINE
3 LANGUAGE ARTS, LATIN AND GREEK, CLASSICAL LANGUAGES, A
4 MASTERS.

5 MADAME COURT REPORTER: IF YOU COULD KEEP YOUR VOICE
6 UP.

7 THE COURT: YOU'RE GOING TO HAVE TO SPEAK UP.

8 A. I RECEIVED MY MASTERS DEGREE IN FINE LANGUAGES FROM
9 IMMACULATE CONCEPTION COLLEGE IN LONG ISLAND. I RECEIVED MY
10 SOCIAL WORK DEGREE IN '86 FROM RUTGERS UNIVERSITY. I
11 RECEIVED IN 1983 MY PSYCHOLOGY DEGREE FROM THE UNIVERSITY OF
12 LA PLATA, ARGENTINA. AND I RECEIVED MY DOCTORATE IN '71.

13 Q. IN THEOLOGY?

14 A. IN THEOLOGY IN ROME, ITALY, GREGORIAN UNIVERSITY.

15 Q. SO WHAT WAS YOUR DEGREE IN PSYCHOLOGY? I'M SORRY, I'M
16 JUST TRYING TO ---

17 A. PSYCHOLOGY FROM LA PLATA, ARGENTINA.

18 Q. IS THAT A MASTERS?

19 A. THAT WAS A MASTERS. AND A MASTERS IN SOCIAL WORK FROM
20 RUTGERS UNIVERSITY.

21 Q. NOW HOW MANY LANGUAGES DO YOU SPEAK?

22 A. I SPEAK FOUR LANGUAGES AND READ SEVEN.

23 Q. WHAT IS YOUR OCCUPATION?

24 A. I'M AN EPISCOPAL PRIEST. I AM THE MISSIONARY TO THE
25 UPSTATE FOR SPANISH. I'M A SOCIAL WORKER WITH THE

1 GREENVILLE SCHOOL SYSTEM, BILINGUAL SOCIAL WORKER WITH TWO
2 SCHOOLS, TWO ELEMENTARY SCHOOLS, BEREA AND SLATER-MARIETTA.
3 AND I AND MY PARTNER ARE THE ASSIGNED PEOPLE FOR ALL THE
4 DOMESTIC VIOLENCE BILINGUAL INSTRUCTION COURT MANDATED
5 CLIENTS FOR THE UPSTATE.

6 Q. SO YOU AND YOUR PARTNER RUN THE ANGER MANAGEMENT
7 COURSES ---

8 A. ABSOLUTELY.

9 Q. --- THAT ANYONE WHO'S BILINGUAL IS ORDERED TO GO TO BY
10 THE STATE?

11 A. EXACTLY.

12 Q. NOW DO YOU HAVE ANY PROFESSIONAL LICENSES,
13 CERTIFICATIONS, OR MEMBER OF ANY PROFESSIONAL ORGANIZATIONS?

14 A. WELL, NATIONAL ASSOCIATION OF SOCIAL WORKERS.

15 Q. AND DID YOU EVER HAVE AN OCCASION TO WORK WITH ANY
16 AFFILIATIONS WITH PSYCHIATRIC HOSPITALS IN THE PAST?

17 A. PRIOR TO THIS POSITION AS A SOCIAL WORKER WITH THE
18 SCHOOL SYSTEM I WAS THREE YEARS WITH MARSHALL PICKENS
19 HOSPITAL IN ADMISSIONS. I WOULD DIAGNOSE, REFER TO THE
20 PSYCHIATRIST, AND THEY'D BE ADMITTED BASED ON THAT
21 EVALUATION.

22 Q. AND I GUESS AT SOME POINT YOU HAVE LIVED IN SOUTH
23 AMERICA AND ALSO LIVED HERE?

24 A. YEAH, I'VE LIVED -- I WAS A PROFESSOR OF PASTORAL
25 THEOLOGY AND PSYCHOLOGY IN ARGENTINA FOR THREE YEARS, 1980

1 TO 1983. I LIVED FOUR YEARS IN ITALY. WHAT YEARS WERE
2 THOSE? '67 TO '71.

3 MS. ROSS: AT THIS POINT I'D OFFER MR. TAYLOR AS AN
4 EXPERT IN SOCIAL WORK AND IN PSYCHOLOGY WITH AN EMPHASIS ON
5 BI-CULTURAL AND BILINGUAL INTERACTION.

6 THE COURT: ALL RIGHT. ANY VOIR DIRE?

7 MS. HODGE: NOT FOR THE PURPOSES OF THIS HEARING.

8 THE COURT: ALL RIGHT. HE'S QUALIFIED. PROCEED.

9 MS. ROSS: ALL RIGHT.

10 Q. NOW, DR. TAYLOR, WHEN DID YOU MEET MARLON RIVERA?

11 A. IT WAS YESTERDAY MORNING.

12 Q. AND WHAT DID YOU DISCUSS?

13 A. I DISCUSSED WHAT HE'D WRITTEN OR WHAT WAS WRITTEN ABOUT
14 HIM IN TERMS OF THIS REPORT WHICH THEY SAID WAS A
15 CONFESSION. AND I ASKED HIM WHAT HAPPENED ON THAT DAY AND
16 HIS EXPLANATION.

17 Q. AND WITHOUT REALLY GOING INTO THAT I'D LIKE TO ASK YOU
18 WHETHER IN YOUR OPINION THAT THAT STATEMENT WAS KNOWINGLY
19 AND VOLUNTARILY MADE?

20 A. IN TERMS OF THE -- WHAT WAS TOLD TO ME AS A CONFESSION,
21 I DON'T BELIEVE THAT IT WAS KNOWINGLY MADE. IT HAD MANY
22 CORRECTIONS ---

23 THE COURT: I'M ONLY CONCERNED WITH THE WAIVER.

24 A. OKAY. IN TERMS OF THE WAIVER, I DON'T BELIEVE HE
25 KNOWINGLY SIGNED AND APPROVED OF THAT WAIVER.

1 Q. WHAT IS YOUR BASIS OF THAT?

2 A. THE WAIVER IS WRITTEN IN SPANISH, BUT HE IS ILLITERATE.
3 HE DOESN'T READ ENGLISH OR SPANISH. HE HAS NEVER BEEN TO
4 SCHOOL. THE SIGNATURES ON THE WAIVER WERE ORCHESTRATED FOR
5 HIM. HE KNEW HOW TO SIGN THE FIRST LETTER OF HIS NAME, BUT
6 THE REST HE HAD TO BE COACHED. IT'S AS IF I WERE ARRESTED
7 IN CHINA AND GIVEN THE CHARACTERS OF CHINESE TO SIGN MY NAME
8 IN CHINESE, A BRUSH AND AN INK DISPENSER AND WAS ASKED TO
9 SIGN IT. THAT WOULD BE QUITE A TASK. HE WAS GIVEN THAT TO
10 CONCENTRATE ON. I DON'T BELIEVE HE KNOWS WHAT A LAWYER IS.

11 Q. SO JUST SAYING ABOUT THE SIGNATURES ARE YOU SAYING THAT
12 BASICALLY THIS PIECE OF PAPER AS FAR AS SHOWING SOME INTENT
13 ON THE PART OF MARLON IS MEANINGLESS?

14 A. I WOULD SAY HE SIGNED IT UNDER DURESS. HE SIGNED IT TO
15 COMPLY. HE DIDN'T KNOW WHAT HE WAS SIGNING 'CAUSE HE
16 COULDN'T READ IT OR THINK ABOUT IT. HE DOESN'T UNDERSTAND
17 WRITTEN SPANISH.

18 AND IN MY INTERVIEW WITH HIM, BOTH MYSELF AND THE
19 INTERPRETER, CARLOS FREEMAN, HAD TO ASK HIM THE SAME
20 QUESTION THREE OR FOUR DIFFERENT TIMES BECAUSE HE WOULD
21 START GIVING AN ANSWER AND THEN WE'D SEE, THAT WASN'T THE
22 ANSWER TO OUR QUESTION. WE HAD TO REDIRECT HIM. IT WAS
23 ALMOST LIKE WORKING WITH A SPECIAL ED YOUNGSTER.

24 Q. AND SO IF THOSE QUESTIONS -- WHAT -- IF SOMEONE JUST
25 READ HIM ONE OF THOSE STATEMENTS WOULD HE UNDERSTAND THAT

1 EVEN IN SPANISH?

2 A. I THINK HE'D HAVE LESS OF A CHANCE OF UNDERSTANDING A
3 WRITTEN STATEMENT THAN FOR US PERSONALLY SEEING HIM WITH EYE
4 CONTACT AND DUMMYING DOWN THE QUESTIONS AS WE SEE WE HAD TO
5 ADJUST IT FOR HIM TO RESPOND CORRECTLY. SO I THINK THERE
6 WOULD BE A LESS OF A CHANCE OF THAT HAPPENING.

7 Q. NOW THE FACT THAT HIS SIGNATURES WERE ON THAT PAPER
8 DOES THAT REFLECT ANY UNDERSTANDING OF WHAT HE WAS DOING
9 WHEN HE SIGNED THAT PIECE OF PAPER OR WHEN HE GAVE THE
10 CONFESSION?

11 A. I THINK THAT -- NO. HE TRIED TO COMPLY. HE DID STATE
12 AT ONE POINT THAT THERE WERE TWO OFFICERS INVOLVED. THE ONE
13 WHO SPOKE ENGLISH AT ONE POINT, THIS IS WHAT HE ALLEGES,
14 GRABBED HIM BY THE BELT, RAISED HIM UP, AND CALLED HIM A
15 LIAR. HE DOESN'T UNDERSTAND THE WORD LIAR. SO THAT HAD TO
16 BE TRANSLATED BY THE OTHER OFFICER, YOU KNOW, HE'S SAYING
17 THAT YOU'RE LYING. I WOULD THINK THAT HE WAS A LITTLE
18 UPSET AND TENSE BY THAT.

19 Q. SO AFTER THAT HAPPENED WHEN HE WAS GIVEN THIS SHEET HE
20 WAS WILLING TO JUST COMPLY?

21 A. OH, YEAH. I HAVE MYSELF BEEN IN PROTECTIVE CUSTODY
22 DURING THE BALKAN ISLAND RULES IN ARGENTINA. THAT WAS A
23 COUNTRY THAT DURING THAT TIME KILLED THIRTY THOUSAND PEOPLE.
24 I KNEW THEY TORTURED PEOPLE IN PRISON. I WAS EXTREMELY
25 AFRAID OF WHAT WOULD HAPPEN.

1 AND HIS EXPERIENCE, I GUESS, OF JUSTICE IN HIS COUNTRY
2 MIGHT BE A LITTLE BIT DIFFERENT FROM JUSTICE HERE. BUT HIS
3 FEAR AND HIS REACTION TO THE SITUATION MIGHT BE THE SAME
4 EVEN THOUGH IT WAS NOT JUSTIFIED BY BEING HERE. HE MIGHT BE
5 REACTING TO WHAT HE THOUGHT WOULD HAPPEN.

6 Q. NOW IS THERE ANYTHING ELSE THAT YOU CAN OFFER IN
7 REGARDS TO THIS WAIVER, WHETHER IT WAS KNOWINGLY AND
8 VOLUNTARILY MADE IN YOUR SPEAKING TO MARLON YESTERDAY?

9 A. TWO THINGS I NOTICED BESIDES THE REPETITION THAT WAS
10 NECESSARY FOR US TO COMMUNICATE WITH HIM, ONE OF THEM WAS
11 THE VERY SIMPLE WAY OF HIS THOUGHT PROCESSES. USUALLY THERE
12 ARE DIFFERENT STAGES THAT CHILDREN GO THROUGH IN SCHOOL.
13 ABOUT THE AGE OF TWELVE THEY CAN DO FUNCTIONAL OPERATIONS,
14 BEFORE THEN IT'S CONCRETE OPERATIONS.

15 WHAT DOESN'T HAPPEN WITH VERY EARLY CHILDREN IS THAT
16 THEY CANNOT REVERSE THE PROCESS. IF "A" IS BIGGER THAN "B"
17 THEY CAN'T SAY THAT "B" IS MORE THAN "A". THEY CAN'T DO
18 THAT. THEY HAVE TO CARRY IT THROUGH.

19 WHEN I SAW HIM ANSWERING THE QUESTIONS OF WHAT HAD
20 HAPPENED HE HAD TO ACT THEM OUT. HE HAD TO USE BODY
21 LANGUAGE AND THEN TRANSLATE IT INTO WORDS. AND THAT'S
22 SOMETHING WE SEE IN SMALL CHILDREN WHEN THEY'RE LEARNING HOW
23 TO READ, IF THEY GET INTO IT THEY KIND OF JUST, YOU KNOW,
24 ACT IT THROUGH AND THEN USE THE WORDS AND MAKE THAT
25 CONNECTION BETWEEN VERBAL AND PHYSICAL. HE HAD TO DO THAT.

1 AND HE ALWAYS HAD TO START AGAIN FROM THE BEGINNING.
2 HE COULDN'T PICK UP MID-STREAM. YOU KNOW, HE HAD TO REPEAT
3 THINGS. SO GIVEN THAT KIND OF PRIMITIVE WAYS OF
4 UNDERSTANDING AND PROCESSING INFORMATION I VERY MUCH DOUBT
5 THAT THESE WRITTEN STATEMENTS, YOU KNOW, MADE MUCH SENSE TO
6 HIM.

7 Q. AND IN ORDER TO MAKE THEM MAKE SENSE, YOU'RE SAYING
8 HE'S VERY SLOW, THEY WOULD HAVE HAD TO GO THROUGH THEM. IN
9 ORDER TO EXPLAIN SOME LEGAL CONCEPTS AND RIGHTS THAT'S ON
10 THAT SHEET THEY WOULD HAVE HAD TO TAKE A LONG TIME TO REVIEW

11 ---

12 A. ABSOLUTELY.

13 Q. CERTAINLY A VERY LONG TIME? WOULD TEN OR FIFTEEN
14 MINUTES BE ENOUGH TO GET HIM ---

15 A. FOR THIS PIECE OF PAPER?

16 Q. UM-HUM (AFFIRMATIVE).

17 A. WELL, I THINK IT WOULD HAVE TO BE A STRUCTURED
18 INTERVIEW. YOU'D HAVE TO ASK HIM WHAT IS LAWYER? YOU KNOW,
19 WHAT WOULD BE THE GOOD THINGS ABOUT HAVING A LAWYER HERE?
20 WHAT COULD BE THE DISADVANTAGES? WHAT ARE YOU WORRIED
21 ABOUT? ARE YOU WORRIED ABOUT PAYING FOR THE LAWYER? YOU'D
22 HAVE TO REALLY WALK HIM THROUGH THE PROCESS SO THAT YOU
23 COULD BE ASSURED THAT HE KNOWS WHAT HE IS DOING BY SIGNING
24 THIS PAPER.

25 Q. BECAUSE HE HAS NO BACKGROUND OF JUST LIVING IN AMERICA,

1 AND WATCHING TV, AND ---

2 A. HE DOESN'T EVEN HAVE THE STRUCTURED BACKGROUND OF BEING
3 IN SCHOOL. IN SCHOOL FOR THREE TO SIX HOURS A CHILD IS
4 EXPOSED TO AN AUTHORITY FIGURE. YOU KNOW, THEY HAVE TO
5 MATCH THE SYSTEM. HE HASN'T HAD ANY OF THAT EXPERIENCE.

6 Q. AND BASICALLY HIS EXPERIENCE HAS BEEN SORT OF STREET
7 SURVIVAL OR JUST ---

8 A. YEAH. HIS COHORT, YOU KNOW, THE OTHER PEOPLE HE HANGS
9 WITH WOULD BE, YOU KNOW, THE NORMATIVE REASON FOR HIS ACTING
10 AND INTERACTING.

11 Q. WHAT WOULD BE HIS CAPABILITIES COMPARED TO ANOTHER
12 PERSON TO SAY, STOP, I DON'T UNDERSTAND, I DO WANT A LAWYER,
13 FOR EXAMPLE?

14 A. WE KNOW FROM THE INTERVIEW HE HAS NO QUESTIONS. HE
15 DIDN'T SAY, WHAT WAS THAT OR I DIDN'T CATCH THAT WORD? HE
16 NEVER ASKED ANY QUESTIONS. HE HAD TO BE ONLY REDIRECTED.
17 HE WOULD JUST GO SPINNING THEM OFF AND GIVING HIS
18 EXPLANATION. IT'S ONE THING AFTER ANOTHER. IT WOULD BE
19 SEQUENTIAL. ALSO THERE WAS A LOT OF TANGENTIAL THINKING.
20 HE WOULD GO OFF ON TRACKS, YOU KNOW, THAT HAD NOTHING TO DO
21 WITH WHAT WE WERE SAYING.

22 AND THERE WAS SOME MAGICAL THINKING. IF HE THOUGHT HE
23 WAS INNOCENT, THEN WE ALL SHOULD BELIEVE THAT HE'S INNOCENT.
24 I MEAN, I DIDN'T DO IT, SO WHAT'S THE PROBLEM? AND THIS
25 KIND OF MAGICAL THINKING IS ALSO A VERY EARLY FORM OF

1 THINKING.

2 Q. I'VE GOT NOTHING FURTHER UNLESS THERE'S SOMETHING ELSE
3 ---

4 THE COURT: ALL RIGHT. SOLICITOR.

5 CROSS EXAMINATION BY MS. HODGE:

6 Q. I'M SORRY. I PROBABLY MISSED THIS PART. HOW LONG DID
7 YOU TALK TO THE DEFENDANT YESTERDAY?

8 A. I THINK IT WAS ABOUT A HALF AN HOUR.

9 Q. AND YOU'RE BASING YOUR TESTIMONY TODAY ON THAT
10 DISCUSSION WITH HIM ---

11 A. YES.

12 Q. --- ABOUT A HALF AN HOUR YESTERDAY?

13 A. UM-HUM (AFFIRMATIVE).

14 Q. YOU MADE A COMMENT ABOUT IF YOU WERE ASKED TO SIGN YOUR
15 NAME IN CHINESE AND SHOWED THE SYMBOLS, TO WRITE IN SPANISH
16 AND TO WRITE IN ENGLISH YOU USE THE SAME ALPHABET, IS THAT
17 CORRECT?

18 A. YES, IT'S THE SAME ALPHABET. HE DOESN'T KNOW EITHER OF
19 THEM. HE ONLY KNEW THE FIRST LETTER OF HIS NAME.

20 Q. SO HE KNEW A LETTER OF THE ALPHABET?

21 A. HE KNEW "M".

22 Q. DO YOU THINK HE WOULD HAVE KNOWN MAYBE ANOTHER LETTER
23 OF THE ALPHABET OR DID HE SAY HE ONLY KNEW THAT ONE LETTER?

24 A. HE DIDN'T KNOW ANY AS FAR AS I KNOW. HE SAYS HE
25 DOESN'T WRITE AND HE DOESN'T READ.

1 Q. BUT YOU SAID HE KNEW THE LETTER "M"?

2 A. HE SAID HE WAS COACHED OF HOW TO DRAW THE REST OF THE
3 LETTERS.

4 Q. OTHER THAN "M"?

5 A. OTHER THAN "M".

6 Q. SO HE KNOWS "M"?

7 A. UM-HUM (AFFIRMATIVE).

8 Q. DID YOU NOTICE ANY PSYCHOLOGICAL, OR MENTAL, OR
9 PHYSICAL HANDICAP IN RELATION TO HIM IN YOUR THIRTY MINUTE
10 INTERVIEW?

11 A. NO. WHAT I DID IS ASSESS HIS FUNCTIONING. I DIDN'T DO
12 A PSYCHOLOGICAL STUDY. I HAVE OR I GUESS I LEFT IT OUTSIDE.
13 WHAT WE USE IN THE SCHOOL SYSTEM, IT'S A TEST, FOUR PEOPLE
14 NON-VERBAL AND FROM OTHER COUNTRIES. AND IT'S DESCRIBE
15 THESE OBJECTS AND WHAT ARE THEIR USES? THERE'S A PICTURE OF
16 A FIRE HYDRANT, THERE'S MATRICES, AND THERE'S ALSO PICTURES
17 TO DESCRIBE. BUT I WASN'T ASKED TO EVALUATE HIM, YOU KNOW,
18 INTELLECTUALLY. HE DID RESPOND TO QUESTIONS. I DIDN'T
19 FEEL, BUT IT'S NOT SCIENTIFIC, THAT HE WAS MENTALLY
20 DEFICIENT, YOU KNOW. I JUST OBSERVED HIS LEVEL OF
21 FUNCTIONING, AND UNDERSTANDING, AND HIS COMMUNICATION
22 SKILLS. THAT'S ALL I DID.

23 Q. YOU MADE SOME MENTION OF SOME TORTUROUS BEHAVIORS IN
24 SOUTHERN AMERICAN COUNTRIES. WOULD BEING CALLED A LIAR BE A
25 FORM OF TORTURE?

1 A. IT'S A GREAT INSULT.

2 Q. IT'S A GREAT INSULT?

3 A. BUT IT'S NOT A FORM OF TORTURE. WHEN I WAS MENTIONING
4 TORTURE, I'M TALKING ABOUT ELECTRICAL SHOCKS ---

5 Q. RIGHT. YOU'RE TALKING ABOUT MAJOR STUFF.

6 A. MAJOR THINGS.

7 Q. MAJOR INFLECTIONS OF PAIN.

8 A. UM-HUM (AFFIRMATIVE).

9 Q. NOT JUST, HEY, YOU'RE LYING.

10 A. EXACTLY. NO, I DON'T THINK THAT AT ALL WAS, YOU KNOW,
11 CRUEL TREATMENT. NO. I THINK THAT JUST HE DIDN'T

12 UNDERSTAND WHAT WAS GOING ON AND THEN RAISED THE QUESTION,
13 HOW CAN YOU KNOW IF I'M LYING IF HE DOESN'T SPEAK SPANISH?

14 Q. THANK YOU.

15 THE COURT: THANK YOU. YOU CAN STEP DOWN.

16 MS. ROSS: I'VE GOT NO FURTHER WITNESSES ON THIS
17 MATTER.

18 THE COURT: OKAY.

19 MS. HODGE: AND MAY I HAVE A COPY OF HIS NOTES? NOT
20 RIGHT THIS SECOND.

21 MS. ROSS: YEAH, I'LL GIVE YOU ...

22 THE COURT: ALL RIGHT. THE BURDEN ON THE STATE IS TO
23 SHOW BY THE GREATER WEIGHT OF THE EVIDENCE THAT HE WAS
24 ADVISED OF HIS RIGHTS UNDER MIRANDA AND THAT HE UNDERSTOOD
25 THOSE RIGHTS AND THAT HE FREELY AND VOLUNTARILY WAIVED THOSE

1 RIGHTS. AND I FIND THAT THE STATE HAS DONE THAT BY THE
2 GREATER WEIGHT OF THE EVIDENCE.

3 AND I BASE THAT PRIMARILY ON THE TESTIMONY OF DEPUTY
4 RAMON RIVERA, AND THE DEFENDANT'S BEEN IN THIS COUNTRY FOR
5 FOUR AND A HALF YEARS, HE'S GAINFULLY EMPLOYED. DEPUTY
6 RIVERA TESTIFIED THAT WHILE HE COULD NOT READ OR WRITE
7 SPANISH THAT NEVERTHELESS HE WAS STREET-WISE. AND I THINK
8 THAT'S VERY TRUE. I THINK THE DEFENDANT IS STREET-WISE.

9 I FIND THAT UNDER THE TOTALITY OF THE CIRCUMSTANCES,
10 INCLUDING THE BACKGROUND EXPERIENCE OF THIS DEFENDANT, THAT
11 HAVING BEEN PROPERLY ADVISED OF HIS RIGHTS THAT HE
12 VOLUNTARILY WAIVED THOSE RIGHTS AND MADE THE STATEMENT, THAT
13 IT WAS NOT THE RESULT OF ANY COERCIVE POLICE TACTICS. AND,
14 AS I SAID, I FIND THAT HE VOLUNTARILY AND KNOWINGLY WAIVED
15 THOSE RIGHTS AND GAVE THE STATEMENT. IT WILL BE ADMITTED IN
16 EVIDENCE AND THE ISSUE WILL BE FOR THE JURY. ALL RIGHT.
17 ANYTHING ELSE?

18 MS. HODGE: NOTHING FROM THE STATE, YOUR HONOR.

19 MS. ROSS: AND, YOUR HONOR, I'D ONLY -- I KNOW YOU'VE
20 RULED ON THAT. I'D ONLY STATE MY OBJECTION TO THAT RULING
21 AND THEN STATE TOO THAT THERE WAS TESTIMONY APPARENTLY THAT
22 THE WAIVER -- IT'S CERTAINLY QUESTIONABLE WHETHER THE WAIVER
23 WAS ACTUALLY SIGNED BEFORE THE CONFESSION WAS OBTAINED FROM
24 THE WITNESS. I MEAN, GARRETT SAID THAT HE CAME IN DURING
25 THE INTERVIEW PROCESS AND THEN THE WAIVER WAS SIGNED. THAT

1 WAS ALSO CONSISTENT WITH WHAT THE DEFENDANT SAID AS WELL.

2 THE COURT: OKAY. ALL RIGHT. BRING THE JURY.

3 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:26 AM)

4 THE COURT: ALL RIGHT, SOLICITOR.

5 MS. HODGE: YOUR HONOR, THE STATE WOULD RECALL DEPUTY
6 OR INVESTIGATOR BRIAN GARRETT.

7 THE COURT: YOU'RE STILL UNDER OATH, MR. GARRETT. COME
8 BACK AROUND PLEASE, SIR.

9 DIRECT EXAMINATION BY MS. HODGE:

10 Q. INVESTIGATOR GARRETT, YOU ACTUALLY TESTIFIED YESTERDAY,
11 IS THAT CORRECT?

12 A. YES, MA'AM, I DID.

13 Q. I BELIEVE YESTERDAY YOU LEFT OFF WITH YOUR TESTIMONY
14 THAT YOU HAD TAKEN A WITNESS, A MR. FERNANDEZ OR FERNANDO,
15 TO THE LAW ENFORCEMENT CENTER?

16 A. THAT'S CORRECT.

17 Q. AND WERE YOU A PART OF OR DID YOU WITNESS THE STATEMENT
18 THAT WAS TAKEN BY MR. FERNANDEZ OR FROM MR. FERNANDEZ?

19 A. YES, I DID.

20 Q. AND THAT, I BELIEVE, YOU SAID YOU DID NOT ACTUALLY
21 TRANSLATE FOR THAT STATEMENT?

22 A. THAT'S CORRECT.

23 Q. AND WHO DID THAT?

24 A. DEPUTY RIVERA.

25 Q. BUT YOU SAT IN ON THE ENTIRE PROCESS?

1 A. THAT'S CORRECT.

2 Q. AND AFTER THAT WHAT DID YOU DO?

3 A. I TOOK THE WITNESS BACK TO THE INCIDENT LOCATION ON
4 CEDAR LANE ROAD SO HE COULD PICK HIS CAR UP.

5 Q. AND THEN -- WE MAY HAVE GONE THROUGH THIS ALREADY.
6 THEN WHAT DID YOU DO?

7 A. I DROVE DOWN TO 1302 CEDAR LANE ROAD TO THE MEXICALI
8 CLUB IN AN ATTEMPT TO LOCATE THE WEAPON.

9 Q. AND DID YOU, IN FACT, FIND THE WEAPON?

10 A. YES, I DID.

11 Q. AND WE'VE ALREADY ADDRESSED THAT ---

12 A. THAT'S CORRECT.

13 Q. WHAT DID YOU DO AFTER LOCATING THE WEAPON?

14 A. I CALLED ID, ACTUALLY DISPATCH, AND HAD A FORENSICS
15 OFFICER COME AND RETRIEVE THE WEAPON AND PHOTOGRAPH IT AS IT
16 SAT. AND SHE RETRIEVED THE WEAPON. AND I WENT BACK TO THE
17 LAW ENFORCEMENT CENTER.

18 Q. AND DID YOU ADVISE ANYONE INVOLVED IN INVESTIGATING
19 THIS CASE THAT YOU HAD FOUND A WEAPON IN A TREE?

20 A. YES, MA'AM. I CALLED INVESTIGATOR WES SMITH.

21 Q. AND IS HE THE LEAD INVESTIGATOR ON THIS CASE?

22 A. THAT'S CORRECT.

23 Q. AND WHAT DID YOU TELL HIM?

24 A. I TOLD HIM THAT I HAD FOUND THE WEAPON IN THE TREE AND
25 HAD CALLED ID AND A FORENSICS OFFICER OUT TO PICK IT UP.

- 1 Q. AND YOU WENT TO THE LEC FROM THERE?
- 2 A. THAT'S CORRECT.
- 3 Q. AND WE SAY LEC, ARE WE REFERRING TO THE LAW ENFORCEMENT
- 4 CENTER?
- 5 A. YES, MA'AM, THAT'S CORRECT.
- 6 Q. IS THAT WHERE YOUR OFFICES ARE?
- 7 A. MY OFFICE -- THAT'S WHERE THE INVESTIGATING OFFICER IS.
- 8 Q. AND ONCE YOU GOT TO THE LAW ENFORCEMENT CENTER WHAT
- 9 AREA OF THE LAW ENFORCEMENT CENTER?
- 10 A. CID OFFICE IS WHERE I WENT TO.
- 11 Q. I KNOW IN LAW ENFORCEMENT WE SPEAK OF A LOT OF
- 12 ACRONYMS. WHAT DOES CID MEAN?
- 13 A. CRIMINAL INVESTIGATIVE DIVISION.
- 14 Q. IS THAT WHERE INVESTIGATOR SMITH'S OFFICE IS?
- 15 A. THAT'S CORRECT.
- 16 Q. CAN YOU DESCRIBE HOW THESE OFFICES ARE SET UP?
- 17 A. CRIMINAL INVESTIGATIVE DIVISION IS ON THE SECOND FLOOR
- 18 OF THE LAW ENFORCEMENT CENTER. AS YOU'RE GOING DOWN KIND OF
- 19 TOWARDS 85 IF YOU'RE WALKING THE HALLWAYS, IT'S ABOUT MIDDLE
- 20 WAYS DOWN THE HALL.
- 21 Q. IS IT -- ARE THERE INDIVIDUAL OFFICES WITH DOORS ON
- 22 THEM OR ---
- 23 A. THERE'S BASICALLY -- IT'S AN OPEN AREA. AND THEN AT
- 24 THE REAR OF THE OFFICE, THE OPEN OFFICE AREA IS A DOORWAY
- 25 WHERE THE VIOLENT CRIMES INVESTIGATING UNIT IS OR CID.

- 1 Q. ARE THERE MORE THAN ONE INVESTIGATOR THAT SHARE THAT
2 OFFICE BEHIND THE CLOSED DOOR?
- 3 A. YES, MA'AM, THERE ARE.
- 4 Q. SO WOULD YOU CHARACTERIZE IT A SMALL ROOM?
- 5 A. NO, I WOULD NOT.
- 6 Q. ABOUT HOW MANY DESKS ARE IN THERE?
- 7 A. I THINK THERE'S SIX. I BELIEVE THAT'S CORRECT.
- 8 Q. AND WHEN YOU GOT BACK TO THE LAW ENFORCEMENT CENTER AND
9 WENT TO THE CID AREA WHAT DID YOU FIND? WHO WAS THERE?
- 10 A. INVESTIGATOR WES SMITH, AND DEPUTY RIVERA, AND THE
11 DEFENDANT.
- 12 Q. AND WERE THEY BEHIND THAT CLOSED DOOR SECTION?
- 13 A. THEY WERE, BUT THE DOOR WAS OPEN.
- 14 Q. AND WHAT DID YOU DO WHEN YOU ENTERED THERE?
- 15 A. I JUST WALKED IN AND SAT DOWN.
- 16 Q. AND DO YOU KNOW WHAT WAS GOING ON WHEN YOU ENTERED?
- 17 A. THEY WERE -- APPEARED TO BE INTERVIEWING THE DEFENDANT.
- 18 Q. AND WAS THE -- WAS INVESTIGATOR SMITH IN A UNIFORM, A
19 POLICE UNIFORM?
- 20 A. NO, MA'AM, HE WAS NOT.
- 21 Q. HOW ABOUT DEPUTY RIVERA?
- 22 A. YES, HE WAS.
- 23 Q. HOW ABOUT YOURSELF?
- 24 A. YES, I WAS.
- 25 Q. AND WHEN YOU ENTERED THAT ROOM DID YOU TAKE PART AND

1 BEGIN TO IMMEDIATELY SPEAK OR DID YOU HAVE ANY CONVERSATION
2 WITH ANYONE IN THE ROOM AT THAT TIME?

3 A. I DID NOT.

4 Q. WHAT WAS YOUR ROLE?

5 A. AS A WITNESS BASICALLY. I SAT DOWN AND WITNESSED THE
6 STATEMENT.

7 Q. SO IT'S YOUR UNDERSTANDING THEY WERE ATTEMPTING TO GET
8 A STATEMENT FROM THE DEFENDANT?

9 A. CORRECT.

10 Q. AND BEFORE GETTING A STATEMENT FROM ANY SUSPECT WHAT
11 MUST LAW ENFORCEMENT DO?

12 A. READ HIM HIS MIRANDA RIGHTS, ADVISE HIM AND MAKE SURE
13 HE UNDERSTANDS HIS RIGHTS.

14 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
15 NUMBER 16 FOR IDENTIFICATION. CAN YOU TELL US WHAT THAT IS?

16 A. THAT IS AN INDIVIDUAL'S WAIVER OF RIGHTS.

17 Q. AND WHO IS IT FOR?

18 A. IT IS FOR MARLON ANTONIO RIVERA.

19 Q. IS THAT WAIVER OF RIGHTS WRITTEN IN ENGLISH OR SPANISH?

20 A. IT'S IN SPANISH.

21 Q. AND HAD YOU ALREADY ESTABLISHED THAT THE DEFENDANT
22 COULD NOT SPEAK ENGLISH?

23 A. YES, THAT'S CORRECT.

24 Q. AND THAT FROM YOUR CONTACT WITH HIM AT THE MEXICALI?

25 A. YES, MA'AM.

1 Q. YOU DID NOT, OR DID YOU, PARTICIPATE IN GOING OVER THIS
2 WAIVER OF RIGHTS FORM?

3 A. NO, I DID NOT.

4 Q. IS YOUR NAME ON THAT FORM?

5 A. IT IS.

6 Q. AND WHAT IS THE CAPACITY YOU WERE THERE?

7 A. IT STATES AS OTHERS PRESENT, DEPUTY BRIAN GARRETT.

8 Q. AND WHO ELSE'S NAME IS ON THAT?

9 A. DEPUTY RAMON RIVERA, AND INVESTIGATOR WES SMITH, AND
10 THE DEFENDANT.

11 Q. AND DO YOU KNOW WHAT TIME IS ON THAT WAIVER?

12 A. 06:38 AM.

13 Q. AND LET'S TALK A LITTLE BIT ABOUT THE DEFENDANT AND HIS
14 DEMEANOR AT THE TIME YOU ENTERED AND PRIOR TO GOING OVER
15 THIS STATEMENT. DID HE APPEAR TO UNDERSTAND WHERE HE WAS?

16 A. HE DID.

17 Q. AND WHO YOU ALL WERE AROUND HIM?

18 A. HE DID.

19 Q. AND DID HE APPEAR COHERENT?

20 A. HE DID.

21 Q. WAS HE AWAKE?

22 A. YES, MA'AM.

23 Q. ALERT?

24 A. YES, HE WAS.

25 Q. NOT FALLING ASLEEP OR DOSING OFF?

1 A. NO, HE WAS NOT.

2 Q. DID HE APPEAR TO BE SPEAKING CLEARLY, MEANING NOT
3 SLURRING WORDS, THAT KIND OF THING?

4 A. HE DID.

5 Q. AND HOW ABOUT DID HE APPEAR TO BE EXTREMELY
6 INTOXICATED?

7 A. NO, HE DID NOT.

8 Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF DRUGS OR
9 ALCOHOL IN YOUR OPINION?

10 A. IN MY OPINION, HE DID NOT.

11 Q. AND CAN YOU TELL US HOW THIS WAIVER OF RIGHTS PROCESS
12 WENT IN YOUR PRESENCE?

13 A. BASICALLY HE WAS ADVISED OF HIS WAIVER OF RIGHTS AND
14 ASKED IF HE UNDERSTOOD HIS RIGHTS AS THEY WERE READ TO HIM.
15 AND HE STATED HE DID. AND HE SIGNED -- HE INITIALED AS IS
16 PROCEDURE BESIDE EACH LINE OF HIS RIGHTS. AND THEN HE
17 SIGNED THE BOTTOM OF THE WAIVER.

18 Q. AND SINCE YOU WERE JUST ACTING AS A WITNESS WERE YOU --
19 HOW WAS HE ADVISED? WAS HE ADVISED IN ENGLISH OR SPANISH?

20 A. HE WAS ADVISED IN SPANISH.

21 Q. AND BY DEPUTY RIVERA?

22 A. THAT'S CORRECT.

23 Q. AND DID THE PROCESS -- WAS IT ONE LINE AT A TIME?

24 A. YES, MA'AM, IT WAS.

25 Q. SO DEPUTY RIVERA WOULD READ A LINE AND THE DEFENDANT

- 1 WOULD SIGN IF HE UNDERSTOOD?
- 2 A. CORRECT.
- 3 Q. NOW DOES DEPUTY RIVERA SPEAK A LITTLE BIT BETTER
- 4 SPANISH THAN YOU DO?
- 5 A. YEAH, HE'S FLUENT. YES, MA'AM.
- 6 Q. WERE YOU ABLE TO UNDERSTAND WHAT DEPUTY RIVERA WAS
- 7 SAYING TO THE DEFENDANT?
- 8 A. THE MAJORITY OF IT, YES.
- 9 Q. AND IN YOUR OPINION WAS HE STATING THE MIRANDA RIGHTS
- 10 AS YOU KNOW THEM AS A LAW ENFORCEMENT OFFICER?
- 11 A. THAT'S CORRECT.
- 12 Q. AND DID THE DEFENDANT EVER STATE THAT YOU COULD
- 13 UNDERSTAND, I DON'T KNOW WHAT YOU'RE TALKING ABOUT OR I
- 14 DON'T UNDERSTAND THAT?
- 15 A. NO, HE DID NOT.
- 16 Q. DID HE EVER ASK ANY QUESTIONS OF DEPUTY RIVERA IN
- 17 REGARD TO WHAT HIS RIGHTS WERE?
- 18 A. NO, HE DID NOT.
- 19 Q. DID HE EVER ASK FOR ANYTHING DURING THIS PROCESS OF HIS
- 20 WAIVER OR RIGHTS LIKE I'D LIKE SOME WATER, OR SOMETHING TO
- 21 EAT, OR GO TO THE BATHROOM?
- 22 A. NO, HE DID NOT.
- 23 Q. WAS HE IN ANY WAY FORCED OR THREATENED AND MADE TO
- 24 WAIVE HIS RIGHTS?
- 25 A. NO, HE WAS NOT.

1 Q. IN YOUR PRESENCE?

2 A. NO, HE WAS NOT.

3 Q. WAS HE PROMISED ANYTHING BY YOU OR ANYONE IN YOUR
4 PRESENCE THAT IF YOU GO AHEAD AND WAIVE THESE RIGHTS WE'LL
5 DO SOMETHING FOR YOU?

6 A. NO.

7 Q. ANY LENIENCY, OR BOND REDUCTION, OR ANYTHING LIKE THAT?

8 A. NO.

9 Q. SO IN YOUR OPINION DID THE DEFENDANT WAIVE HIS RIGHTS
10 FREELY AND VOLUNTARILY?

11 A. YES, MA'AM, IN MY OPINION HE DID.

12 Q. IN YOUR OPINION DID HE SEEM TO UNDERSTAND AND KNOW WHAT
13 HIS RIGHTS WERE?

14 A. HE DID UNDERSTAND.

15 MS. ROSS: AND I'D OBJECT TO HIM TELLING WHAT HE
16 UNDERSTOOD AND WHAT HE DIDN'T.

17 THE COURT: ALL RIGHT. SUBJECT TO YOUR OBJECTION, GO
18 ON.

19 Q. AFTER HE WAS INFORMED OF EACH OF HIS RIGHTS AND
20 INITIALED BESIDE THEM DID HE ALSO SIGN THE BOTTOM OF THE
21 PAGE?

22 A. HE DID.

23 Q. AND IS THAT HIS OWN HANDWRITING?

24 A. THAT'S CORRECT.

25 Q. AND DID YOU WITNESS THAT?

- 1 A. I DID.
- 2 Q. WAS HE FORCED IN ANY WAY TO SIGN THAT PIECE OF PAPER?
- 3 A. NO, HE WAS NOT.
- 4 Q. ONCE HE SIGNED THE PIECE OF PAPER DID HE BEGIN TO THEN
5 GIVE A STATEMENT IN THIS CASE?
- 6 A. HE DID.
- 7 Q. AND AS FAR AS THE STATEMENT GOES DID YOU OR ANYONE IN
8 YOUR PRESENCE FORCE HIM, THREATEN HIM, OR COERCE HIM IN ANY
9 WAY TO TALK AND SAY WHAT HAPPENED?
- 10 A. NO, WE DID NOT.
- 11 Q. I THINK WE'VE ESTABLISHED THAT HE COULD NOT READ OR
12 WRITE, IS THAT CORRECT?
- 13 A. THAT'S CORRECT.
- 14 Q. BUT COULD HE SPEAK?
- 15 A. HE COULD SPEAK.
- 16 Q. COULD HE HEAR?
- 17 A. HE COULD.
- 18 Q. AND BECAUSE YOU UNDERSTOOD SOME SPANISH YOU WERE ABLE
19 TO UNDERSTAND SOME COMMUNICATION BETWEEN HE AND DEPUTY
20 RIVERA?
- 21 A. THAT'S CORRECT.
- 22 Q. IN ADDITION TO HEARING THE WORDS COULD YOU ALSO LOOK AT
23 HIS BODY LANGUAGE AND DETERMINE IF IT WAS CONSISTENT WITH
24 WHAT HE WAS SAYING?
- 25 A. YES, I COULD.

1 Q. AT ANY POINT DID HE APPEAR TO NOT WANT TO TALK, TO STOP
2 GIVING A STATEMENT?

3 A. NO, HE DID NOT.

4 Q. AND TO GIVE HIS STATEMENT WAS THERE ANYTHING PROMISED
5 TO HIM OR GIVEN TO HIM TO TRY AND MAKE HIM GIVE A STATEMENT?

6 A. NO, THERE WAS NOT.

7 Q. ABOUT HOW LONG DO YOU THINK THE PROCESS LASTED FROM HIM
8 WAIVING HIS RIGHTS AND THEN GIVING A STATEMENT IN THIS CASE?

9 A. MAYBE THIRTY MINUTES. APPROXIMATELY THIRTY MINUTES.

10 Q. SO NOT A WHOLE LONG TIME?

11 A. NO.

12 Q. WERE YOU PRESENT DURING THE ENTIRE PART OR DID ---

13 A. I WAS.

14 Q. --- YOU COME AND GO?

15 A. I WAS.

16 Q. AND SO YOU HEARD WHAT THE DEFENDANT'S STATEMENT WAS?

17 A. THAT'S CORRECT.

18 Q. PER HIS OWN MOUTH?

19 A. CORRECT.

20 Q. AND DID YOU THEN READ WHAT HAS BEEN MARKED STATE'S
21 NUMBER 17 FOR IDENTIFICATION AFTER THE PROCESS WAS OVER?

22 A. YES, MA'AM, I DID.

23 Q. AND DID WHAT YOU HEARD FROM THE DEFENDANT'S MOUTH
24 COMPLY WITH WHAT YOU READ ON STATE'S NUMBER 17 FOR

25 IDENTIFICATION?

- 1 A. YES, IT DID.
- 2 Q. SO THERE WAS NOTHING THAT YOU HEARD THAT WAS DIFFERENT,
3 OR TRANSLATED, OR MISTRANSLATED IN YOUR OPINION ON THIS
4 STATEMENT OF THE DEFENDANT?
- 5 A. NO, THERE WAS NOT.
- 6 Q. WAS THE STATEMENT WRITTEN IN ENGLISH OR SPANISH?
- 7 A. IT'S IN ENGLISH.
- 8 Q. IS IT TYPED OR HANDWRITTEN?
- 9 A. IT'S TYPED.
- 10 Q. AND DO YOU KNOW WHO TYPED IT?
- 11 A. DEPUTY RIVERA.
- 12 Q. AND HOW DID THAT INTERVIEW PROCESS WORK? DO YOU KNOW?
- 13 A. HE WOULD ASK HIM A QUESTION, AND THE DEFENDANT WOULD
14 ANSWER.
- 15 Q. WAS INVESTIGATOR WES SMITH PART OF THIS ALSO?
- 16 A. HE WAS.
- 17 Q. DOES INVESTIGATOR SMITH SPEAK ANY SPANISH?
- 18 A. NO, HE DOES NOT.
- 19 Q. AND WOULD HE INSTRUCT DEPUTY RIVERA ON WHAT QUESTIONS
20 TO ASK?
- 21 A. YES, HE DID.
- 22 Q. THEN WOULD DEPUTY RIVERA ASK THAT IN SPANISH?
- 23 A. THAT'S CORRECT.
- 24 Q. OF THE DEFENDANT?
- 25 A. YES.

- 1 Q. DID THE DEFENDANT ANSWER IN SPANISH?
- 2 A. THAT'S CORRECT.
- 3 Q. AND THEN WOULD DEPUTY RIVERA TRANSLATE BACK IN ENGLISH
- 4 WHAT THE DEFENDANT SAID?
- 5 A. THAT'S CORRECT, HE WOULD.
- 6 Q. AND DEPUTY RIVERA WOULD ALSO TYPE IT IN ENGLISH?
- 7 A. THAT'S CORRECT. YES, MA'AM.
- 8 Q. AND YOU HAVE, LIKE I SAID, REVIEWED THE STATEMENT
- 9 THAT'S BEEN TYPED IN ENGLISH?
- 10 A. I HAVE.
- 11 Q. AND IN YOUR OPINION IT COMPLIES WITH WHAT THE DEFENDANT
- 12 VERBALLY SAID?
- 13 A. YES, IT DOES.
- 14 Q. WAS THAT STATEMENT READ TO THE DEFENDANT AFTER IT WAS
- 15 FINISHED?
- 16 A. YES, IT WAS.
- 17 Q. WAS HE ASKED IF HE WANTED TO MAKE ANY CHANGES OR
- 18 CORRECTIONS TO IT?
- 19 A. YES, HE WAS.
- 20 Q. IS THAT STANDARD PROCEDURE?
- 21 A. THAT'S CORRECT. YES, MA'AM.
- 22 Q. DID HE MAKE ANY CHANGES OR CORRECTIONS TO THE
- 23 STATEMENT?
- 24 A. THERE WERE NO CHANGES MADE.
- 25 Q. THEN DID HE SIGN THAT STATEMENT?

1 A. YES, HE DID.

2 Q. AND WHAT DOES HIS SIGNATURE INDICATE?

3 A. THAT HE UNDERSTOOD AS TO THE BEST OF HIS KNOWLEDGE WHAT
4 HE HAD STATED IN HIS STATEMENT. THAT'S WHAT IT STATES.

5 Q. AND ARE THESE -- IS THIS WAIVER, LET ME GO TO STATE'S
6 NUMBER 16, IS THIS THE ORIGINAL WAIVER?

7 A. IT IS.

8 Q. IS IT IN SUBSTANTIALLY THE SAME FORM AS IT WAS WHEN YOU
9 SIGNED AS A WITNESS?

10 A. YES, IT IS.

11 Q. HAS ANYTHING BEEN ADDED, OR DELETED, OR ALTERED ON
12 THIS?

13 A. NO, IT HAS NOT.

14 Q. AND AS FAR AS STATE'S NUMBER 17 FOR IDENTIFICATION, HAS
15 THIS STATEMENT BEEN ALTERED, AMENDED, OR DELETED FROM WHEN
16 YOU READ IT?

17 A. NO, IT HAS NOT.

18 Q. WHEN IT WAS ORIGINALLY GIVEN?

19 A. NO, IT HAS NOT.

20 MS. HODGE: AT THIS TIME WE WOULD MOVE TO ADMIT STATE'S
21 16 AND 17 INTO EVIDENCE.

22 THE COURT: AND SUBJECT TO MS. ROSS' OBJECTION.

23 MS. ROSS: SUBJECT TO MY OBJECTION. AND I WOULD EXPECT
24 ALSO OFFICER RIVERA TO TESTIFY TO IT AS WELL SINCE HE WAS
25 THE ACTUAL TRANSLATOR WITH MORE EXPERIENCE.

1 THE COURT: SUBJECT TO YOUR OBJECTION, IT'S ADMITTED.

2 MS. HODGE: THANK YOU.

3 (WHEREUPON STATE'S EXHIBITS 16 AND 17 WERE ADMITTED
4 INTO EVIDENCE)

5 Q. AFTER THE DEFENDANT'S STATEMENT WAS CONCLUDED DID YOU
6 DO ANYTHING ELSE IN THIS CASE AS FAR AS INVESTIGATING OR ANY
7 OTHER WITNESS STATEMENTS OR ANYTHING LIKE THAT?

8 A. NO. I DID GO BACK TO THE BARRINGTON PARK APARTMENTS
9 WHERE THE DEFENDANT STATED HE LIVED IN LOOKING FOR THE --
10 HE'D STATED THAT HE'D DROPPED SOME SHELL CASINGS IN THE
11 PARKING LOT OF THE APARTMENT COMPLEX. I WENT BACK OVER
12 LOOKING TO SEE IF I COULD LOCATE ANY OF THEM.

13 Q. ARE YOU FAMILIAR WITH BARRINGTON PARK APARTMENTS?

14 A. I AM. AT THE TIME I WAS PERFORMING SECURITY IN AN OFF
15 DUTY CAPACITY OVER THERE ON A, YOU KNOW, THREE OR FOUR TIMES
16 A WEEK BASIS.

17 Q. AND SO AFTER INFORMATION THAT YOU GATHERED FROM HIS
18 STATEMENT AS FAR AS WHERE SOME SHELL CASINGS MIGHT BE YOU
19 TOOK IT UPON YOURSELF TO GO TO BARRINGTON PARK?

20 A. THAT'S CORRECT. IT WAS ON MY WAY TO THE HOUSE. AND I
21 STOPPED BY THERE.

22 Q. DID HE GIVE A GENERAL LOCATION AS TO WHERE ---

23 A. HE DID.

24 Q. AND DID YOU GO TO THAT LOCATION?

25 A. YES, I DID.

1 Q. DID YOU FIND ANY SHELL CASINGS OR BULLETS?

2 A. NO, I DID NOT.

3 Q. AFTER THAT DID YOU DO ANYTHING ELSE IN REGARD TO THIS
4 CASE?

5 A. NO, I DID NOT.

6 Q. THANK YOU. ANSWER ANY DEFENSE QUESTIONS.

7 THE COURT: ALL RIGHT. MS. ROSS.

8 MS. ROSS: ALL RIGHT.

9 CROSS EXAMINATION BY MS. ROSS:

10 Q. OFFICER GARRETT, I JUST WANT TO GO BACK. YOU HAD TAKEN
11 A STATEMENT FROM A WITNESS, ALVARO FERNANDEZ AT THE SCENE?

12 A. THAT'S CORRECT.

13 Q. AND THEN YOU TRANSPORTED HIM TO THE LAW ENFORCEMENT
14 CENTER?

15 A. THAT'S CORRECT.

16 Q. WHERE HE GAVE A STATEMENT TO OFFICER RIVERA, NOT TO BE
17 CONFUSED WITH MARLON RIVERA, BUT THIS WITNESS GAVE A
18 STATEMENT TO OFFICER RIVERA AT THE LAW ENFORCEMENT CENTER?

19 A. THAT'S CORRECT.

20 Q. AND YOU STATE YOU WERE TRANSPORTING THAT WITNESS AND
21 THEN TRANSPORTED HIM BACK TO CEDAR LANE?

22 A. THAT'S CORRECT.

23 Q. NOW AT THAT POINT YOU WENT ACROSS THE STREET TO THE
24 MEXICALI?

25 A. THAT'S CORRECT.

- 1 Q. AND YOU BEGAN TO SEARCH FOR THE GUN?
- 2 A. CORRECT.
- 3 Q. AND IT HAD BEEN SEARCHED FOR PREVIOUSLY, HADN'T IT?
- 4 A. IT HAD, BUT IT WAS DARK AT THE TIME.
- 5 Q. NOW AT THIS POINT IT WAS LIGHT, CORRECT?
- 6 A. IT WAS ABOUT 6:00. IT WAS -- AND AT THAT TIME OF YEAR
- 7 IT WASN'T COMPLETELY LIGHT, BUT IT WAS BECOMING DAYLIGHT.
- 8 Q. THE SUN WAS COMING UP BASICALLY?
- 9 A. CORRECT.
- 10 Q. AND SO WITH THE BETTER VISUALS YOU WERE ABLE TO SPOT
- 11 THE GUN UP IN THE CREVICE OF THE TREE, RIGHT?
- 12 A. I WOULDN'T NECESSARILY SAY THAT. BASICALLY I -- IT WAS
- 13 PROBABLY A LOCATION THAT I DIDN'T CHECK BEFORE AND DECIDED
- 14 TO GO BACK AND LOOK IN THE TREE LINE. WE WERE INITIALLY
- 15 LOOKING FOR A VEHICLE THAT HE POSSIBLY HAD DRIVEN THERE AND
- 16 THOUGHT HE MIGHT HAVE LEFT THE GUN IN THE FRONT SEAT OF THE
- 17 VEHICLE. AND WE LOOKED IN SOME VEHICLES AND WASN'T ABLE TO
- 18 LOCATE ANYTHING.
- 19 Q. SO AT THIS POINT WHEN YOU WENT BACK YOU DROPPED OFF THE
- 20 WITNESS AT HIS HOME OR ---
- 21 A. AT THE INCIDENT LOCATION.
- 22 Q. AT THE INCIDENT LOCATION, WENT ACROSS THE STREET AND
- 23 STARTED JUST LOOKING AROUND FOR A GUN?
- 24 A. THAT'S CORRECT.
- 25 Q. NOW AFTER YOU FOUND IT YOU THEN CALLED MS. ORLANDO OR

1 SOMEONE TO COME OUT AND PHOTOGRAPH IT AND DOCUMENT IT?

2 A. I GOT ON THE RADIO AND CALLED DISPATCH. AND THEY HAD A
3 FORENSICS OFFICER ARRIVE.

4 Q. AND THEN WHEN THEY ARRIVED YOU POINTED IT OUT TO THEM
5 AND Y'ALL TOOK A PICTURE OF IT OR WHATNOT ---

6 A. SHE TOOK PHOTOGRAPHS, THAT'S CORRECT.

7 Q. AND WERE YOU THERE FOR THAT?

8 A. I WAS.

9 Q. AND THEN DID YOU TAKE THE GUN INTO CUSTODY AND
10 EVENTUALLY DELIVER IT TO WHERE, YOU KNOW, WE HAVE IT RIGHT
11 HERE?

12 A. I DID NOT. THE FORENSICS OFFICER TOOK CUSTODY OF IT.

13 Q. AT SOME POINT THEN YOU LEFT AND WENT BACK TO THE LAW
14 ENFORCEMENT CENTER?

15 A. THAT'S CORRECT, AFTER SHE'D ALREADY COLLECTED THE
16 WEAPON.

17 Q. AND AT THAT POINT OFFICER WES SMITH AND OFFICER RIVERA
18 WERE INTERVIEWING MARLON RIVERA?

19 A. THAT'S CORRECT.

20 Q. NOW YOU SAID THAT YOU WERE PRESENT AND THERE WHEN THIS
21 WAIVER WAS SIGNED?

22 A. THAT'S CORRECT. MY NAME IS ON THE WAIVER.

23 Q. AND YOU WERE PRESENT IN THERE WHEN THIS STATEMENT ---

24 A. THAT'S CORRECT.

25 Q. AND YOU WERE PRESENT -- WERE YOU PRESENT WHEN THAT

1 STATEMENT WAS TYPED UP?

2 A. YES, I WAS.

3 Q. NOW THIS PROCESS OF SIGNING THESE TWO PAPERS YOU SAID
4 TOOK APPROXIMATELY THIRTY MINUTES?

5 A. THAT'S CORRECT.

6 Q. NOW WAS MARLON GIVEN ANYTHING TO DRINK DURING THIS
7 PERIOD OF TIME THAT YOU WERE THERE?

8 A. TO MY KNOWLEDGE HE WASN'T AT THE TIME WHEN I WAS THERE.

9 Q. SO YOU DIDN'T SEE HIM ---

10 A. I DID NOT.

11 Q. --- DRINKING A SODA OR ANYTHING?

12 A. NO.

13 Q. AND YOU DIDN'T WITNESS HIM BEING TOUCHED IN ANY WAY?

14 A. NO, HE WAS NOT.

15 Q. AND THEN AFTER THAT, WE KNOW THE REST OF THE STORY.
16 YOU DID A LITTLE BIT MORE INVESTIGATION, BUT THAT WAS SORT
17 OF YOUR -- WHAT WE HEARD EARLIER YESTERDAY AND TODAY, YOUR
18 INPUT ON THIS CASE?

19 A. CORRECT.

20 Q. I'VE GOT NO FURTHER QUESTIONS.

21 THE COURT: THANK YOU. YOU CAN STEP DOWN.

22 MS. HODGE: THE STATE WOULD CALL RAMON RIVERA. MAY
23 OFFICER GARRETT BE EXCUSED?

24 THE COURT: YES. THANK YOU.

25 MS. ROSS: YES. NO OBJECTION.

2 SWORN TESTIFIED AS FOLLOWS:

4 MR. RIVERA: YES, SIR, IT IS.

7 MR. RIVERA: RAMON RIVERA.

11 A. YES, MA'AM, I DO.

13 A. THAT'S CORRECT.

17 Q. IS THAT WHAT'S WRONG WITH YOUR ARM?

20 A. THREE YEARS.

23 A. PRIMARILY I'M A TRAFFIC DEPUTY. I ENFORCE TRAFFIC
24 REGULATIONS. AND I'M ALSO A TRANSLATOR FOR ANYBODY WHO MAY
25 NEED IT.

- 1 Q. AND WHAT LANGUAGE DO YOU TRANSLATE?
- 2 A. SPANISH AND ENGLISH.
- 3 Q. AND IS SPANISH YOUR FIRST OR SECOND LANGUAGE?
- 4 A. THAT'S MY FIRST LANGUAGE.
- 5 Q. WHERE WERE YOU BORN?
- 6 A. I WAS BORN IN PUERTO RICO.
- 7 Q. AND WHEN DID YOU LEARN ENGLISH?
- 8 A. THE AGE OF TWELVE IS WHEN I FIRST HAD MY FIRST FORMAL
- 9 CLASS IN ENGLISH. AND THAT WAS HERE IN SIMPSONVILLE. AND
- 10 BEFORE THAT I WAS IN FLORIDA FOR ABOUT SIX MONTHS. BUT DOWN
- 11 THERE, THERE'S SO MANY HISPANICS THAT YOU DON'T REALLY HAVE
- 12 TO KNOW ENGLISH.
- 13 Q. YOU CAN SPEAK SPANISH PRIMARILY WHEN YOU'RE ---
- 14 A. YES, MA'AM, YOU CAN DO THAT.
- 15 Q. IN GREENVILLE IT WOULD BE A LITTLE BIT HARDER, WOULDN'T
- 16 IT?
- 17 A. IT DEPENDS ON WHERE YOU GO, BUT FOR THE MOST PART, THE
- 18 SIMPSONVILLE AREA, YOU HAVE TO KNOW ENGLISH.
- 19 Q. SO TO FUNCTION AND GET AROUND IF YOU ONLY SPOKE SPANISH
- 20 YOU'D HAVE TO LEARN A LITTLE BIT OF ENGLISH, WOULDN'T YOU?
- 21 A. CORRECT.
- 22 Q. AND YOU WERE NOT ACTUALLY A RESPONDING DEPUTY TO THE
- 23 SCENE OF THE CASE THAT WE'RE HERE ON TODAY, IS THAT CORRECT?
- 24 A. THAT'S CORRECT. I WAS NOT THE RESPONDING DEPUTY.
- 25 Q. WHAT WAS YOUR REASON FOR BECOMING INVOLVED IN THIS

1 CASE?

2 A. THEY HAD ADVISED ME THAT IT WAS SOMEONE WHO SPOKE
3 SPANISH AND VERY LITTLE ENGLISH. AND THEY CALLED ME TO
4 TRANSLATE.

5 Q. AND WHEN YOU SAY THEY, WHO ARE YOU REFERRING TO?

6 A. I BELIEVE MR. SMITH MADE THE CALL OR MAYBE ONE OF MY
7 SERGEANTS AUTHORIZED IT. I BELIEVE HE WAS THE ONE THAT
8 CALLED AND REQUESTED THAT I COME OUT AND TRANSLATE.

9 Q. AND SO WHERE DID YOU GO AND WHEN WAS THIS?

10 A. THIS WAS JULY 18TH OF '04. AND I ENDED UP IN THE CID
11 OFFICE, WHICH IS UPSTAIRS IN THE LEC. THAT'S WHERE ALL THE
12 INVESTIGATIONS THIS TYPE TAKE PLACE.

13 Q. AND WHEN YOU ARRIVED THERE DO YOU RECALL WHAT TIME IT
14 WAS?

15 A. IT WAS PAST MIDNIGHT. IT WAS LATE, REAL LATE.

16 Q. WERE YOU ACTUALLY ON DUTY AND WORKING AT THAT TIME?

17 A. YES, MA'AM, I WAS.

18 Q. SO WERE YOU IN UNIFORM?

19 A. I WAS.

20 Q. AND WHEN YOU ARRIVED TO THE CID OFFICE WHO WAS THERE
21 AND WHAT DID YOU DO?

22 A. INVESTIGATOR SMITH WAS THERE AND A WITNESS, LAST NAME
23 PORTUGUEZ, AND ALSO DEPUTY BRIAN GARRETT.

24 Q. AND WHEN YOU REFERRED TO A WITNESS, LAST NAME OF
25 PORTUGUEZ ---

1 A. I HAVE HIS WHOLE NAME HERE. LET ME FIND IT. ALVARO
2 FERNANDO PORTUGUEZ.

3 Q. SO IF WE HAVE BEEN REFERRING TO HIM AS MR. FERNANDO
4 THAT WOULD BE THE SAME PERSON ---

5 A. CORRECT. YEAH, FERNANDO.

6 Q. AND DID MR. PORTUGUEZ SPEAK ENGLISH?

7 A. HE SPOKE A LITTLE BIT OF ENGLISH.

8 Q. BUT HE SPOKE MORE SPANISH?

9 A. YES, MA'AM. HE SPOKE A WHOLE LOT MORE SPANISH THAN
10 ENGLISH.

11 Q. AND WERE YOU ABLE TO COMMUNICATE WITH HIM PRETTY
12 EASILY?

13 A. YES, MA'AM. IT WASN'T A PROBLEM AT ALL.

14 Q. DO YOU KNOW WHERE HE WAS FROM?

15 A. I DON'T REMEMBER. HE SAID IT AT ONE POINT, BUT I DON'T
16 REMEMBER. IT WAS OVER A YEAR AGO.

17 Q. AND IN SPEAKING SPANISH IS IT LIKE SPEAKING ENGLISH
18 THAT THERE ARE DIFFERENT DIALECTS IN SPANISH?

19 A. CORRECT.

20 Q. SO SOMEONE FROM SOUTH CAROLINA WOULD SPEAK A LITTLE
21 DIFFERENTLY THAN SOMEONE FROM NEW YORK CITY?

22 A. THEY WOULD, YEAH. BUT, I MEAN, IT'S JUST LIKE STUFF
23 LIKE THAT IS NOT -- BASICALLY ME AND YOU TALKING IS ABOUT
24 THE SAME THING, YOU KNOW, HEY, HOW ARE YOU AND STUFF LIKE
25 THAT.

- 1 Q. HEY, Y'ALL MIGHT ---
- 2 A. HEY, Y'ALL, BUT THEY ---
- 3 Q. --- BE FOREIGN TO SOMEBODY IN NEW YORK, BUT ---
- 4 A. BUT THEY GET IT. THEY GET THE MESSAGE.
- 5 Q. THEY UNDERSTAND. AND IT'S THE SAME WAY IN SPANISH?
- 6 A. YES, MA'AM.
- 7 Q. SO IT DOESN'T REALLY MATTER IF YOU'RE FROM PUERTO RICO,
- 8 OR FROM COSTA RICO, OR HONDURAS, OR COLOMBIA, YOU'LL BE ABLE
- 9 TO COMMUNICATE?
- 10 A. YES, MA'AM.
- 11 Q. THERE MAY BE A FEW WORDS HERE AND THERE THAT ARE A
- 12 LITTLE DIFFERENT. AND WOULD THOSE WORDS MORE BE SLANG TYPE
- 13 WORDS OR ---
- 14 A. THEY WOULD BE.
- 15 Q. --- LOCAL WORDS?
- 16 A. CORRECT, THEY WOULD BE. LIKE A FOUNTAIN, A WATER
- 17 FOUNTAIN HERE IS WATER FOUNTAIN. UP NORTH IT'S BUBBLER. A
- 18 SODA IS POP UP NORTH. I MEAN, IT'S JUST -- BUT YOU CAN
- 19 FIGURE OUT WHAT THEY'RE SAYING BY, HEY, WHAT DO YOU MEAN?
- 20 OH, A COKE. OKAY. THAT'S WHAT IT MEANS.
- 21 Q. SO WHEN YOU WERE SPEAKING WITH THE WITNESS IN THE CASE
- 22 YOU WERE ABLE TO COMMUNICATE PRETTY CLEARLY WITH HIM?
- 23 A. YES, MA'AM, I WAS.
- 24 Q. AND HOW LONG DO YOU THINK THAT YOUR TRANSLATING FOR
- 25 THAT STATEMENT TOOK?

- 1 A. JUST FOR THE WITNESS STATEMENT?
- 2 Q. YES, JUST FOR THE WITNESS.
- 3 A. AN HOUR AND SOME CHANGE. MAYBE TWO HOURS.
- 4 Q. AND WAS THERE SOMEONE DIRECTING YOU ON HOW TO TAKE THAT
- 5 STATEMENT FROM THE WITNESS?
- 6 A. THE WAY WE DID IT WAS INVESTIGATOR SMITH WOULD TELL ME
- 7 WHAT TO ASK HIM. I WOULD MAKE IT SPANISH AND ASK HIM IN
- 8 SPANISH. HE WOULD REPLY. AND THEN I WOULD TRANSLATE IT
- 9 BACK TO ENGLISH BACK TO MR. SMITH.
- 10 Q. AND DID YOU WRITE THE STATEMENT OR TYPE THAT STATEMENT
- 11 FOR THE WITNESS?
- 12 A. HE TYPED -- HE TYPED FOR THE WITNESS BECAUSE HE WAS
- 13 PRETTY CLEAR CUT.
- 14 Q. AFTER FINISHING UP WITH MR. FERNANDEZ WAS HE FREE TO GO
- 15 AT THAT TIME?
- 16 A. YES, MA'AM.
- 17 Q. AND WHAT WAS THE NEXT THING THAT YOU DID?
- 18 A. THEN THEY BROUGHT IN THE DEFENDANT.
- 19 Q. WHEN YOU SAY BROUGHT IN THE DEFENDANT DO YOU KNOW WHERE
- 20 HE WAS BEFORE THIS?
- 21 A. HE MUST HAVE BEEN IN AN OFFICE WITHIN CID. WE WERE IN
- 22 THE VIOLENT CRIMES OFFICE, WHICH IS A SMALLER OFFICE. YOU
- 23 KNOW, IT'S GOT ABOUT SIX OR SEVEN DESKS IN IT. HE MUST HAVE
- 24 BEEN IN ONE OF THE EVEN SMALLER OFFICES LIKE MAYBE SEX
- 25 CRIMES OR SOMETHING LIKE THAT. IT WAS NEARBY WITHIN TEN TO

1 FIFTEEN YARDS I'M SURE.

2 Q. BUT IT WAS OUT OF EARSHOT RANGE OF WHAT THE WITNESS WAS
3 SAYING?

4 A. YES, MA'AM.

5 Q. AND THAT'S ON PURPOSE?

6 A. YES, MA'AM.

7 Q. AND SO WHEN YOU SAY THEY BROUGHT THE DEFENDANT IN THEY
8 BROUGHT HIM INTO THE CID VIOLENT CRIMES OFFICE?

9 A. YES, MA'AM. THEY JUST WALKED HIM IN. HE WAS WALKING.

10 Q. AND WAS HE -- DID HE APPEAR TO HAVE ANY TYPE INJURIES
11 OR ANYTHING ---

12 A. NO, MA'AM.

13 Q. --- ON FIRST GLANCE?

14 A. NO, MA'AM.

15 Q. DID HE ASK OR SEEK -- WANT ANY MEDICAL ATTENTION OR
16 HELP?

17 A. NO, MA'AM.

18 Q. DID HE APPEAR TO UNDERSTAND WHO YOU WAS, WHO YOU WERE,
19 AND WHAT WAS GOING ON?

20 A. YES, MA'AM, HE DID.

21 Q. WAS HE COHERENT IN YOUR OPINION, AWAKE, ---

22 A. YES, MA'AM.

23 Q. --- ALERT?

24 A. YES, MA'AM.

25 Q. WAS HE DRUNK IN YOUR OPINION?

- 1 A. NO, MA'AM.
- 2 Q. WERE YOU ABLE TO COMMUNICATE WITH HIM?
- 3 A. I WAS.
- 4 Q. AND HOW DID THIS TAKE PLACE?
- 5 A. JUST VERBAL, JUST TALKING BACK AND FORTH.
- 6 Q. AND DID YOU ASCERTAIN HIS NAME, AND WHERE HE LIVED, ---
- 7 A. YES, MA'AM.
- 8 Q. --- BASIC INFORMATION?
- 9 A. HE DIDN'T KNOW WHERE HE LIVED. I THINK HE JUST SAID
- 10 THE APARTMENT COMPLEX NAME. BUT A LOT OF PEOPLE DON'T KNOW
- 11 WHERE THEY LIVE OR THEIR EXACT ADDRESS.
- 12 Q. HE DIDN'T SAY THE STREET IT WAS ON, BUT ---
- 13 A. NO.
- 14 Q. --- HE SAID THE APARTMENT COMPLEX ---
- 15 A. HE JUST SAID BARRINGTON PARK, YEAH.
- 16 Q. AND DID YOU ASK HIM IF HE HAD ANY EDUCATION?
- 17 A. I DID.
- 18 Q. AND WHAT DID HE SAY?
- 19 A. HE SAID HE DIDN'T KNOW HOW TO READ OR WRITE, BUT, I
- 20 MEAN, THAT'S FAIRLY COMMON FOR A LOT OF SOUTH AMERICAN
- 21 COUNTRIES AND STUFF LIKE THAT.
- 22 Q. SO HE DIDN'T KNOW HOW TO READ AND WRITE SPANISH
- 23 OBVIOUSLY?
- 24 A. SPANISH, YES, MA'AM.
- 25 Q. AND HE DIDN'T KNOW HOW TO READ OR WRITE ENGLISH

1 OBVIOUSLY?

2 A. NO, HE DID NOT.

3 Q. COULD HE TALK?

4 A. YES, MA'AM.

5 Q. HE DIDN'T HAVE ANY SPEECH IMPEDIMENT OR ANYTHING LIKE
6 THAT?

7 A. NO, MA'AM.

8 Q. AND COULD HE HEAR?

9 A. YES, MA'AM.

10 Q. DIDN'T HAVE ANY HEARING DISABILITY THAT YOU WERE AWARE
11 OF?

12 A. NO, MA'AM.

13 Q. AND SO THE TWO OF YOU COMMUNICATED PRETTY WELL?

14 A. YES, MA'AM.

15 Q. WAS THERE -- WHAT'S THE FIRST THING AFTER YOU, I SAY
16 THE FIRST THING, BUT AFTER YOU GET HIS BASIC INFORMATION
17 WHAT WERE YOU INSTRUCTED TO DO?

18 A. TO COMPLETE THIS WAIVER OF RIGHTS, WHICH IS WRITTEN IN
19 SPANISH.

20 Q. AND IS A WAIVER OF RIGHTS SOMETHING THAT MUST BE DONE
21 IN ANY CASE BEFORE YOU TALK TO A SUSPECT?

22 A. YES, MA'AM.

23 Q. AND WHAT IS A WAIVER OF RIGHTS?

24 A. IT BASICALLY EXPLAINS TO YOU YOUR RIGHTS, BASICALLY
25 YOUR MIRANDA RIGHTS. AND IT GOES DETAIL -- STEP BY STEP

1 EXPLAINS EACH SECTION OF IT AFTER WHICH IF YOU UNDERSTOOD IT
2 WE WOULD READ YOU WHAT IS CALLED THE ACTUAL WAIVER PART
3 WHICH IS THE BOTTOM PART. AND IT'S GOT TWO QUESTIONS TO IT.
4 ONE SAYS DID YOU UNDERSTAND WHAT I READ TO YOU? BEING THE
5 FIVE SECTIONS OF THE RIGHTS. AND THEN THE SECOND ONE SAYS
6 HAVING READ AND UNDERSTOOD DO YOU WISH TO MAKE A STATEMENT,
7 OR GIVE A STATEMENT, OR SPEAK TO US IS WHAT IT SAYS. THAT'S
8 THE SECOND PART OF IT.

9 Q. SO ARE THERE ENGLISH FORMS OF WAIVER OF RIGHTS AND
10 SPANISH FORMS ---

11 A. YES, MA'AM.

12 Q. --- AT THE SHERIFF'S OFFICE?

13 A. YES, MA'AM.

14 Q. AND WHICH FORM OF WAIVER OF RIGHTS WAS USED IN THIS
15 CASE?

16 A. WE USED THE SPANISH ONE.

17 Q. EVEN THOUGH HE INITIALLY TOLD YOU HE COULD NOT READ OR
18 WRITE SPANISH AS A PRECAUTION YOU STILL USED THE SPANISH
19 ONE?

20 A. YES, MA'AM.

21 Q. AND WAS THAT THE INSTRUCTION OF THE INVESTIGATOR?

22 A. CORRECT. BUT IT'S ALSO EASIER. THAT WAY I COULD READ
23 IT DIRECTLY FROM THE PAPER IN SPANISH AND HE WOULD
24 UNDERSTAND WHAT I'M SAYING. WHERE IF I HAD ONE IN ENGLISH
25 I'D HAVE TO READ IT IN ENGLISH, THEN TRANSLATE IT MYSELF AND

1 THEN GIVE IT TO HIM.

2 Q. SO THERE'S NO WORRY OF MISTRANSLATION IF IT'S ALREADY

3 ---

4 A. CORRECT.

5 Q. --- WRITTEN IN SPANISH?

6 A. EXACTLY.

7 Q. AND CAN YOU TELL THE JURY EXACTLY WHAT YOU DID, WHAT
8 YOU ADVISED THE DEFENDANT OF IN REGARD TO HIS RIGHTS?

9 A. OKAY. FIVE PARTS TO MIRANDA RIGHTS. AND I'LL READ
10 THEM IN SPANISH AND THEN I'LL READ THEM IN ENGLISH. IN
11 ENGLISH IT'S BASICALLY, YOU HAVE THE RIGHT TO REMAIN SILENT.
12 THAT'S PART NUMBER ONE. NUMBER TWO IS ANYTHING YOU SAY CAN
13 BE USED AGAINST YOU IN COURT, PART NUMBER TWO. YOU HAVE THE
14 RIGHT TO HAVE AN ATTORNEY PRESENT. THAT'S NUMBER THREE. IF
15 YOU CANNOT AFFORD IT ONE WILL BE APPOINTED TO YOU WITHOUT
16 COST TO REPRESENT YOU. THAT'S NUMBER FOUR. AND THE FIFTH
17 ONE IS YOU CAN ACTUALLY INVOKE YOUR RIGHTS AT ANY TIME. YOU
18 CAN EXERCISE YOUR RIGHTS AT ANY TIME. THOSE ARE THE FIVE
19 PARTS. AND I'LL READ THEM. NUMBER ONE IN SPANISH,
20 (WHEREUPON THE WITNESS READ THE MIRANDA RIGHTS IN SPANISH).

21 Q. ALL RIGHT.

22 A. AND THOSE ARE THE FIVE BASIC STEPS THAT I JUST SAID IN
23 ENGLISH IN SPANISH.

24 Q. AND YOU ADVISED THE DEFENDANT OF THOSE IN SPANISH?

25 A. YES, MA'AM.

1 Q. AND AFTER EACH LINE DID HE SIGNIFY THAT HE UNDERSTOOD
2 WHAT YOU HAD JUST EXPLAINED?

3 A. YES, MA'AM. THOSE LITTLE SLOTS RIGHT BESIDE OF EACH
4 ONE IS -- THAT'S INITIALS ON TOP. BASICALLY I'LL EXPLAIN
5 EACH ONE INDIVIDUALLY. I'LL READ NUMBER ONE. I SAY, DID
6 YOU UNDERSTAND IT? WHEN THEY SAY, YES, I GO, WELL, IF YOU
7 DID PUT YOUR INITIALS RIGHT HERE. AND WE'LL DO ONE FOR EACH
8 ONE. BEING FIVE OF THEM THERE'S FIVE SETS OF INITIALS RIGHT
9 HERE.

10 Q. AND SO DID THE DEFENDANT UNDER EACH FIVE OF THOSE
11 INITIAL INDICATING HE UNDERSTOOD WHAT EACH OF HIS FIVE
12 RIGHTS WERE?

13 A. YES, MA'AM.

14 Q. AND THEN WHAT DID YOU DO ONCE HE STATED HE UNDERSTOOD
15 HIS RIGHTS?

16 A. THEN I READ HIM THE ACTUAL WAIVER OF RIGHTS PART, WHICH
17 IS THE BOTTOM PART THAT HAS TWO QUESTIONS. FIRST ONE SAYS,
18 (WHEREUPON THE WITNESS SPOKE IN SPANISH), SAYING HAVING
19 EXPLAINED TO YOU WHAT I READ EARLIER, WHICH IS THE TOP
20 RIGHT, THE TOP FIVE PARTS, DO YOU UNDERSTAND YOUR RIGHTS?
21 AND IT SAYS RIGHT HERE, SI, WHICH MEANS YES. AND HE
22 INITIALED RIGHT THERE SAYING THAT HE UNDERSTOOD IT AND THAT
23 HE WAS OKAY WITH IT.

24 Q. AND HE ON THIS PAGE HAD A CHOICE? HE COULD HAVE
25 WRITTEN UNDER SI ---

1 A. CORRECT.

2 Q. --- MEANING YES OR NO UNDER NO?

3 A. YES, MA'AM. THERE'S NO ON THE RIGHT SIDE. AND IF YOU
4 DON'T WANT TO DO IT OR IF YOU DIDN'T UNDERSTAND IT JUST PUT
5 YOUR INITIAL SAYING THAT YOU DIDN'T UNDERSTAND. AND WE'LL
6 EXPLAIN IT TO YOU FURTHER OR WE'LL DO WHAT NEEDS TO BE DONE
7 TO GET YOU TO UNDERSTAND THAT.

8 Q. AND THEN WHAT WAS NUMBER TWO?

9 A. THE BOTTOM ONE SAYS, (WHEREUPON THE WITNESS SPOKE IN
10 SPANISH), HAVING UNDERSTOOD YOUR RIGHTS DO YOU WISH TO GIVE
11 A STATEMENT OR SPEAK WITH US RIGHT NOW? AND HE ALSO
12 INITIALED THE YES LINE.

13 Q. AND THEN AT THE BOTTOM OF THE PAGE IS THERE HIS
14 SIGNATURE ON IT?

15 A. CORRECT, RIGHT THERE. IT SAYS, (WHEREUPON THE WITNESS
16 SPOKE IN SPANISH), WHICH WOULD BE HIS SIGNATURE. THAT'S HIS
17 SIGNATURE RIGHT THERE. AND THAT'S INVESTIGATOR SMITH SAYING
18 THAT HE WAS A WITNESS AND HE WAS THERE WHEN IT TOOK PLACE.

19 Q. WHEN THERE IS A SUSPECT IN CUSTODY, ESPECIALLY ON A
20 CASE LIKE THIS, ARE THEY GENERALLY HANDCUFFED?

21 A. YES, MA'AM.

22 Q. AND HOW WOULD THEY BE HANDCUFFED?

23 A. WHEN WE DO AN INTERVIEW LIKE THAT SINCE OBVIOUSLY YOU
24 HAVE TO SIGN FOR PAPERWORK SOMETIMES WE USE WHAT'S CALLED A
25 BELT. IT'S JUST A REGULAR LEATHER BELT THAT GOES AROUND

1 YOUR WAIST, AND IT TIES ON THE BACK LIKE A REGULAR BELT, HAS
2 A LOOP IN THE FRONT. AND WHAT THEY DO IS THEY PUT THE CUFF
3 THROUGH THE LOOP SO THE CHAIN IS IN THAT LOOP AND YOUR HANDS
4 WILL SIT OUT HERE. YOU'RE NOT BEHIND YOUR BACK, YOU'RE NOT
5 -- YOU'RE RESTRAINED FROM GRABBING SOMEONE OR STUFF LIKE
6 THAT. BUT, I MEAN, WE'LL SEE YOUR HANDS AND THEY'LL BE
7 RESTRAINED IN FRONT OF YOU. SO YOU CAN STILL GRAB THINGS.
8 YOU CAN STILL SIGN PAPERWORK AND STUFF LIKE THAT.

9 Q. WOULD IT BE A LITTLE BIT, LOOKING AT STATE'S NUMBER 16
10 ON THE OVERHEAD, WOULD IT BE A LITTLE BIT DIFFICULT TO SIGN
11 A PIECE OF PAPER WITH THAT?

12 A. NO, MA'AM.

13 Q. SO YOU COULD DO IT ON YOUR OWN?

14 A. YES, MA'AM.

15 Q. DO YOU RECALL IN THIS CASE IF YOU HAD TO JUST HOLD THE
16 PAPER SO THE DEFENDANT COULD SIGN WITHOUT THE PAPER PUSHING
17 AWAY?

18 A. NO, MA'AM. I BELIEVE WHAT HE DID WAS HE HELD IT WITH
19 THIS HAND AND THEN HE GOT UP AND SIGNED IT LIKE THIS.

20 Q. DID HE HAVE TO STAND UP TO DO IT?

21 A. NO, MA'AM. I MEAN, HE GOT UP -- HE DIDN'T STAND UP.
22 HE JUST GOT CLOSER TO IT AND SIGNED IT AND WENT BACK DOWN.

23 Q. AND IS STATE'S NUMBER 16 YOU SEE WHAT WE'VE BEEN
24 TALKING ABOUT WITH THE WAIVER OF RIGHTS AND THE DEFENDANT'S
25 INITIALS? YOU CAN TURN AROUND. I KNOW IT'S RIGHT IN YOUR

1 EYES. IS THIS -- ARE THOSE THE INITIALS THE DEFENDANT PUT
2 ON THIS PIECE OF PAPER?

3 A. YES, MA'AM.

4 Q. AND FARTHER DOWN ON THE PAGE, IS THAT THE SIGNATURE
5 THAT THE DEFENDANT PUT ON THIS PIECE OF PAPER?

6 A. YES, MA'AM.

7 Q. AND IN GOING OVER THESE RIGHTS WITH THE DEFENDANT DID
8 YOU OR ANYONE IN YOUR PRESENCE FORCE HIM, COERCE HIM, OR
9 THREATEN HIM TO GIVE UP AND WAIVE HIS RIGHTS?

10 A. NO, MA'AM.

11 Q. DID YOU FORCE HIM TO MAKE HIS MARK ON THESE LINES?

12 A. NO, MA'AM. THAT'S VOLUNTARY.

13 Q. AND DID YOU OR ANYONE IN YOUR PRESENCE, DID Y'ALL
14 PROMISE HIM ANYTHING, SOME LENIENCY REGARDING A BOND OR A
15 POTENTIAL OF DOWN THE ROAD ---

16 A. NO, MA'AM, NO PROMISES WERE MADE.

17 Q. AT ANY TIME DID THE DEFENDANT DURING THIS WAIVER OF
18 RIGHTS PROCESS STOP YOU, ASK YOU QUESTIONS, TELL YOU HE
19 DIDN'T UNDERSTAND WHAT WAS GOING ON?

20 A. NO, MA'AM.

21 Q. DID AT ANY TIME HE ASK FOR ANYTHING, FOOD, WATER,
22 BATHROOM BREAK, ---

23 MS. ROSS: YOUR HONOR, AT THIS POINT I'M GOING TO
24 OBJECT TO THE LEADING, JUST SOME OPEN ENDED QUESTIONS FOR
25 HIM TO ANSWER.

1 THE COURT: NO, THOSE QUESTIONS ARE ALL RIGHT. GO
2 AHEAD.

3 Q. DID HE REQUEST ANYTHING, FOOD, WATER, SMOKING, ---

4 A. NOT WHILE I WAS THERE. WHEN I ARRIVED HE ALREADY HAD A
5 CUP OF DRINK. I DON'T KNOW WHAT THE DRINK WAS, BUT HE WAS
6 DRINKING SOMETHING WHEN I ARRIVED, WHICH I'M SURE EITHER HE
7 OR DEPUTY BRIAN GOT FOR HIM.

8 Q. INVESTIGATOR SMITH OR ---

9 A. YES, MA'AM, ONE OF THOSE TWO GOT IT FOR HIM. BUT, I
10 MEAN, WHEN I WAS THERE HE DIDN'T ASK FOR ANYTHING, NOT
11 RESTROOM. HE ALREADY HAD A DRINK. SO ...

12 Q. AND SO IN YOUR OPINION DID HE FREELY, VOLUNTARILY, AND
13 KNOWINGLY SIGN THIS PIECE OF PAPER KNOWING WHAT HE WAS
14 DOING?

15 A. YES, MA'AM.

16 Q. YOU SAID THAT HE DIDN'T OR YOU FOUND OUT HE DIDN'T HAVE
17 MUCH FORMAL EDUCATION. WOULD YOU CHARACTERIZE HIM AS BEING
18 STREET SMART?

19 A. YES, MA'AM. HE'S VERY STREET SMART.

20 Q. SO HE KNEW BASICS OF HOW TO LIVE HERE?

21 A. CORRECT.

22 Q. AND DID YOU ASCERTAIN FROM HIM HOW LONG HE'D BEEN HERE?

23 A. I DID NOT.

24 Q. ONCE THE DEFENDANT SIGNED THE WAIVER DID HE THEN GIVE A
25 STATEMENT IN THIS CASE?

1 A. YES, MA'AM, HE DID.

2 Q. AND HOW DID THAT PROCESS WORK?

3 A. BASICALLY ABOUT THE SAME AS THE WAIVER. INVESTIGATOR
4 SMITH WOULD ASK ME OR TELL ME WHAT TO ASK HIM IN SPANISH.

5 THE DEFENDANT WOULD REPLY BACK. I WOULD TRANSLATE IT AND
6 TELL HIM, AND HE WOULD WRITE IT DOWN.

7 Q. AND ON THE STATEMENT OF THE DEFENDANT DID YOU ACTUALLY
8 TYPE THAT STATEMENT?

9 A. I THINK I TOLD -- YEAH, I THINK I DID. BECAUSE IT WAS
10 TAKING TOO LONG BETWEEN HIM, YOU KNOW, ME TELLING HIM WHAT
11 TO WRITE AND ALL THAT STUFF AND EXACTLY HOW WE SAID IT. SO
12 I WENT AHEAD AND WROTE IT DOWN.

13 Q. AND WHEN YOU WROTE THE STATEMENT DID YOU WRITE IT IN
14 ENGLISH?

15 A. YES, MA'AM, I DID.

16 Q. IS THERE ANY REASON THAT YOU DIDN'T WRITE IT IN
17 SPANISH?

18 A. I DIDN'T DO IT SPANISH BECAUSE NO ONE ELSE COULD BE
19 ABLE TO READ IT. AND HE WOULDN'T KNOW WHAT I PUT IN THERE.
20 NO ONE ELSE WOULD KNOW. SO I WENT AHEAD AND WROTE IT IN
21 ENGLISH.

22 Q. AND THIS PROCESS, WOULD YOU CALL IT A QUESTION AND
23 ANSWER PROCESS OR A NARRATIVE PROCESS? HOW WOULD IT -- HOW
24 DID IT WORK?

25 A. IT'S LIKE A LITTLE BIT OF BOTH. LIKE I WOULD ASK A

1 QUESTION LIKE, HEY, YOU KNOW, WHAT HAPPENED OUT HERE? AND
2 HE WOULD GIVE AN ANSWER. AND IF IT WAS TOO LIMITED I WOULD
3 ASK MORE CLARIFYING QUESTIONS LIKE, HEY, EXACTLY WHAT
4 HAPPENED? AND STUFF LIKE THAT JUST TO GET, YOU KNOW, A
5 LITTLE MORE DETAILED QUESTIONS IF I NEEDED TO.

6 Q. AND THEN YOU WOULD REPLY BACK TO INVESTIGATOR SMITH.
7 AND IF HE FELT LIKE THERE WAS A QUESTION THAT NEEDED
8 CLARIFICATION HE WOULD ASK YOU TO ASK HIM ---

9 A. CORRECT. HE WOULD ASK ME TO CLARIFY ON WHATEVER IT WAS
10 THAT HE WASN'T COMFORTABLE WITH.

11 Q. AND WHEN ALL OF THIS WAS TAKING PLACE WITH THE
12 DEFENDANT DID HE APPEAR TO UNDERSTAND YOUR COMMUNICATION
13 WITH HIM, ---

14 A. YES, MA'AM.

15 Q. --- AND WHAT YOU WERE ACTUALLY TRANSCRIBING OR WHAT YOU
16 WERE WRITING?

17 A. YES, MA'AM.

18 Q. AND DID YOU TELL HIM AT THE END OF IT WHAT YOU HAD
19 WRITTEN?

20 MS. ROSS: AND, AGAIN, ---

21 A. YES, MA'AM.

22 MS. ROSS: --- I'D OBJECT TO THE LEADING, WHAT DID YOU
23 TELL HIM?

24 A. BEFORE HE SIGNED IT I SAID, LISTEN, HERE'S WHAT YOU'VE
25 TOLD ME. LET'S MAKE SURE THAT I HAVE, YOU KNOW, THAT WHAT

1 YOU'VE TOLD ME IS CORRECT AND ACCURATE. AT WHICH TIME I
2 TRANSLATED IT AGAIN. I READ IT BACK TO HIM WORD FOR WORD IN
3 SPANISH. I SAID, IS THAT WHAT YOU'VE TOLD ME? HE SAID,
4 YEAH. SO YOU AGREE WITH EVERYTHING I'VE SAID SO FAR? HE
5 SAID, YES. AND AFTER THAT IS WHEN I ASKED HIM TO SIGN IT.

6 Q. AND SO HE HAD AN OPPORTUNITY TO MAKE ANY CHANGES IF HE
7 WANTED?

8 A. YES, MA'AM.

9 Q. AND WOULD YOU HAVE CHANGED HIS ANSWERS IF HE WANTED?

10 A. YES, MA'AM. IT WAS ON A LAPTOP. SO YOU JUST BACK
11 SPACE AND PUT ANYTHING THAT YOU MIGHT NEED TO. I MEAN, IT
12 WASN'T WRITTEN ON PAPER. IT WAS TYPED OUT.

13 Q. SO YOU COULD MAKE CORRECTIONS IF NECESSARY?

14 A. CORRECT.

15 Q. AND AT ANY POINT OF THE DEFENDANT GIVING YOU THIS
16 STATEMENT DID HE EVER SAY, I WANT TO STOP TALKING, I WANT AN
17 ATTORNEY, ANYTHING LIKE THAT?

18 A. NO, MA'AM, NOTHING LIKE THAT.

19 Q. IF HE WOULD HAVE SAID EITHER OF THOSE THINGS WHAT WOULD
20 YOU HAVE DONE?

21 A. I WOULD HAVE STOPPED AND GOT HIM AN ATTORNEY. THAT'S
22 ALL YOU CAN DO.

23 Q. I'M GOING TO ASK -- YOU'VE GOT STATE'S NUMBER 17 IN
24 FRONT OF YOU. WOULD YOU PLEASE READ TO THE JURY WHAT THE
25 DEFENDANT STATED TO YOU DURING THIS INTERVIEW PROCESS?

1 A. IT SAYS I AM TWENTY-NINE YEARS OLD AND I RESIDE AT 1201
2 CEDAR LANE ROAD APARTMENT NUMBER C72 IN GREENVILLE, 29617,
3 WHICH IS BARRINGTON PARK. I HAVE A ZERO GRADE EDUCATION.
4 AND I CAN READ AND WRITE, WHICH HE COULDN'T. HE ALREADY
5 SAID HE COULDN'T. SO -- HE SAYS I HAVE NEVER BEEN TO
6 SCHOOL. I CANNOT READ OR WRITE. DEPUTY R. RIVERA IS
7 INTERPRETING WHAT I SAY AS I TELL IT. HE READ THE SPANISH
8 FORM THAT I SIGNED TO ME, THAT I SIGNED TO ME BEFORE I GAVE
9 A STATEMENT.

10 I WAS DOWN NEAR THE DON PEPE RESTAURANT WITH SOME
11 FRIENDS. THESE FRIENDS WERE BLACK. AND BY BLACK I MEAN
12 AFRICAN AMERICAN OR AMERICAN BLACK. I WAS WEARING A DARK
13 COLORED SHIRT AND JEANS. I WAS CARRYING A GUN THAT I HAD
14 GOTTEN FROM A FRIEND THAT HAD GOTTEN ARRESTED AND GONE TO
15 JAIL YESTERDAY. HIS NAME WAS ANTONIO MENDOZA.

16 THE GUN WAS A SILVER REVOLVER, .22 CALIBER. I PUT THAT
17 GUN IN THE FRONT OF MY WAISTBAND. HE STAYED THERE -- WE
18 STAYED THERE FOR A WHILE AND TALKED. AFTER A WHILE MY BLACK
19 FRIENDS SAID THAT THEY HAD TO OR THEY NEEDED TO GO HOME
20 BECAUSE THEY HAD TO WORK. I WALKED WITH THEM TOWARD
21 BARRINGTON PARK.

22 WHILE I WAS WALKING SOME OTHER FRIENDS WHO WERE THERE
23 CALLED ME BACK. THESE FRIENDS WERE HISPANIC. THEY WERE
24 EATING SOME TACOS THERE. I WENT AND TALKED TO THEM.

25 A LITTLE WHILE LATER THIS GUY THAT I KNOW, BUT IS NOT

1 MY FRIEND, APPROACHED ME AND ASKED WHY I WAS HANGING AROUND
2 THOSE BLACK GUYS OR THOSE BLACK PEOPLE. HE THEN GRABBED MY
3 SHIRT AND STARTED PUSHING ME AROUND. WE STRUGGLED FOR A
4 LITTLE BIT. FINALLY THE GUY LET GO OF ME. I WAS MAD
5 BECAUSE HE HIT ME. I WENT TO GRAB MY GUN, BUT IT FELL DOWN
6 MY PANT LEG. THE GUN FELL ON THE GROUND, AND I GRABBED IT.
7 I POINTED IT AT HIM AND SHOT TWO TIMES.

8 ONE OF MY FRIENDS SAID, OKAY, YOU ALREADY SHOT HIM,
9 LET'S GO. I PUT THE GUN IN MY RIGHT POCKET AND WE BOTH
10 LEFT. WHILE WALKING DOWN TO THE APARTMENT I TOOK THE
11 BULLETS OUT OF THE GUN AND DROPPED THEM IN THE PARKING LOT
12 NEAR MY BUILDING. I WENT INTO MY APARTMENT AND DRANK SOME
13 WATER AND CHANGED SHIRTS.

14 WE THEN WALKED TOWARD THE MEXICALI, MEXICALI BEING A
15 LITTLE NIGHTCLUB DOWN THERE. THERE THE GUY AT THE DOOR
16 PATTED ME DOWN. HE ASKED ME IF I HAD A GUN. I TOLD HIM
17 THAT I DID, BUT I WOULD GO PUT IT UP. I WALKED AWAY AND PUT
18 IT UP IN A TREE.

19 I RETURNED AND WENT INTO THE MEXICALI. I WENT IN AND
20 HAD A BEER. A LITTLE WHILE LATER THE POLICE CAME AND
21 ARRESTED ME. ALL OF THIS HAS BEEN READ TO ME. AND WHAT I
22 HAVE TOLD YOU ABOUT HAS HAPPENED. AND THEN HE INITIALED THE
23 END OF IT.

24 Q. AND AS YOU READ THAT DID THAT REFRESH YOUR MEMORY? WAS
25 THAT WHAT HE TOLD YOU ---

1 A. YES, MA'AM.

2 Q. DID HE EVER TELL YOU ANYTHING ABOUT SOMEONE ELSE FIRING
3 THIS WEAPON?

4 A. NO, MA'AM.

5 Q. EVER TELL YOU ABOUT ANY FRIEND OR GIVE A NAME OF
6 ANYBODY THAT HAD THEIR HANDS ON THIS WEAPON BESIDES HIMSELF?

7 A. AS FAR AS HE MADE IT SOUND, OR AS FAR AS THIS STATEMENT
8 GOES, AND WHAT HE TOLD ME, HE WAS THE ONLY ONE THERE. AND
9 ONCE HIS BLACK FRIENDS LEFT IT WAS JUST HIM AND SOME OTHER
10 GUY THAT HE KNEW.

11 Q. WAS THERE ANY STATEMENT MADE BY HIM, VERBAL STATEMENT,
12 THAT WAS NOT IN HIS OFFICIAL STATEMENT AFTER THIS PROCESS
13 WAS OVER, SOMETHING ABOUT ---

14 A. MATTER OF FACT THERE WAS.

15 Q. --- VOLUNTARINESS OF THE STATEMENT?

16 A. YES, MA'AM. WE WERE WALKING DOWN TO THE DETENTION
17 CENTER WHERE THE MAGISTRATE IS. WE DO PAPERWORK THERE. AND
18 PRIOR TO BOOKING HIM WE DO, YOU KNOW, JUST PAPERWORK
19 BASICALLY. ON THE WAY DOWN HE SAID SOMETHING TO ---

20 MS. ROSS: YOUR HONOR, I'D OBJECT TO ANY HEARSAY, WHAT
21 HE SAID.

22 THE COURT: NO. OVERRULED. GO AHEAD.

23 A. HE SAID SOMETHING TO THE POINT OF, MAN, THIS IS TAKING
24 TOO LONG. IN MY COUNTRY THEY WOULD HAVE PUT A BAG ON MY
25 HEAD AND BEAT ME DOWN OR BEAT ME UP IS WHAT HE SAID.

1 Q. SO BASICALLY YOU WERE BEING TOO NICE TO HIM?

2 A. BASICALLY -- ACCORDING TO WHAT HE STATED HAPPENS IN HIS
3 COUNTRY, THEY'D TIED HIM UP, AND BEAT HIM UP, AND BEEN DONE
4 WITH IT.

5 Q. AFTER THE STATEMENT WAS OVER AND Y'ALL HAD TAKEN HIM
6 DOWN TO THE DETENTION CENTER AREA DID THAT END YOUR
7 INVOLVEMENT ON THIS NIGHT WITH THIS CASE?

8 A. ON THIS NIGHT, YES, MA'AM. NOT ON THE CASE THOUGH.

9 Q. BUT ON THIS EVENING ---

10 A. YES, MA'AM.

11 Q. --- OR MORNING?

12 A. MORNING. YEAH, I WENT HOME AFTER THAT.

13 Q. WHEN WAS THE NEXT TIME THAT YOU WERE INVOLVED IN THIS
14 CASE?

15 A. INVESTIGATOR SMITH ADVISED ME THAT THERE WERE SOME
16 OTHER WITNESSES THAT WERE THERE THAT CAME FORWARD AND THAT
17 HE WAS INTERESTED IN GETTING STATEMENTS FROM THEM. AND IT
18 WAS ON -- NOVEMBER. I CAN'T -- I HAVE THE DATE WRITTEN
19 EXACTLY ON HERE, BUT IT WAS NOVEMBER. I WENT AND TOOK THE
20 OTHER STATEMENTS.

21 Q. SO THIS WAS SOME MONTHS AFTER THE INCIDENT?

22 A. YES, MA'AM, A FEW MONTHS AFTERWARDS.

23 Q. AND ANY OF THE PEOPLE THAT YOU WERE HELPING
24 INVESTIGATOR SMITH GET STATEMENTS FROM, WERE THEY THE SAME
25 PEOPLE THAT HAD BEEN AT THE LAW ENFORCEMENT CENTER ON THE

1 NIGHT OF THE INCIDENT?

2 A. NO, MA'AM. THERE WAS ONLY THAT ONE WITNESS THERE THAT
3 NIGHT. THESE WERE TOTALLY SEPARATE PEOPLE I'D NEVER SEEN
4 BEFORE.

5 Q. AND HOW -- AND WHAT DID YOU DO FIRST? OR DO YOU RECALL
6 WHO IT WAS FIRST THAT YOU AND INVESTIGATOR SMITH ATTEMPTED
7 TO ---

8 A. I WROTE IT DOWN. IT WAS A LADY THAT WORKED AT DON
9 PEPE'S, AT THE RESTAURANT. I BELIEVE HER NAME WAS YAMILETH,
10 SOMETHING LIKE THAT.

11 Q. AND WHEN YOU CALL -- WHEN YOU'RE SAYING DON PEPE'S, IS
12 ---

13 A. THAT'S THE RESTAURANT RIGHT -- THE INCIDENT HAPPENED
14 RIGHT IN FRONT OF THAT RESTAURANT. AND SHE WAS THE BARMAID
15 THAT WORKED THERE.

16 Q. AND WOULD IT HAVE HAD POTENTIALLY ANOTHER NAME, LA
17 RUMBA OR ---

18 A. YEAH. HE HAD CHANGED NAMES TO LA RUMBA, YEAH.

19 Q. ARE YOU FAMILIAR WITH THAT AREA OF TOWN?

20 A. YES, MA'AM. THOSE THINGS CHANGE NAMES ALL THE TIME. I
21 GUESS WHEN THEY CHANGE OWNERS THEY CHANGE THE NAME. HER
22 NAME WAS YAMILETH CORRALES. SHE WAS AN HISPANIC FEMALE.
23 SHE WAS FORTY-ONE.

24 Q. DID SHE SPEAK ANY ENGLISH?

25 A. VERY -- JUST WORDS. I MEAN, NOT ENOUGH TO CARRY ON A

1 CONVERSATION.

2 Q. AND WHAT WAS YOUR ROLE WITH INVESTIGATOR SMITH AND
3 THESE PEOPLE?

4 A. HE BASICALLY WANTED ME TO ASK HER, YOU KNOW, WHAT SHE
5 SAW THAT NIGHT. AND WHAT SHE SAW WITH HER OWN EYES AND
6 HEARD WITH HER OWN EARS, NOT WHAT SOMEONE ELSE SAID, NOT
7 WHAT SOMEONE MAY HAVE HINTED AT, JUST STRICTLY WHAT SHE
8 KNOWS WHERE SHE CAN SAY, YES, I KNOW.

9 Q. AND DID YOU DO THIS IN SPANISH?

10 A. YES, MA'AM, I DID.

11 Q. SO SHE COMMUNICATED WITH YOU IN SPANISH?

12 A. YES, MA'AM.

13 Q. DID YOU HAVE ANY PROBLEMS COMMUNICATING WITH HER IN
14 SPANISH?

15 A. I DID NOT.

16 Q. AND AS THINGS HAPPEN JUST IN NORMAL LIFE DO PEOPLE IN
17 THE COMMUNITY TALK ABOUT EVENTS?

18 A. I'M SURE THEY DO.

19 Q. SO WHEN YOU JUST WERE TALKING ABOUT YOU WANTED THE
20 WITNESSES TO SAY ONLY WHAT THEY SAW ---

21 A. CORRECT. ONLY WHAT -- WELL, SHE JUST SAID THAT, YES, I
22 SAW IT, NOT WHAT SHE MIGHT HAVE HEARD FROM BOB OR JIMMY
23 SOMEWHERE DOWN THE ROAD.

24 Q. AND SO DID YOU TAKE A OR DID YOU AND INVESTIGATOR SMITH
25 TAKE A WRITTEN STATEMENT FROM HER?

- 1 A. YES, MA'AM.
- 2 Q. AS TO WHAT SHE SAW OR DIDN'T SEE?
- 3 A. WELL, I DIDN'T SO MUCH TAKE IT FROM HER. THIS RIGHT
- 4 HERE I TOOK, WHAT HE SAID, WROTE IT DOWN. I GAVE HER A
- 5 FORM, AND I ASKED HER TO WRITE IT DOWN. SO SHE WROTE IT IN
- 6 HER OWN HANDWRITING.
- 7 Q. AND DID SHE WRITE IT IN SPANISH OR ENGLISH?
- 8 A. IN SPANISH.
- 9 Q. AND WAS THERE A REASON FOR DOING THAT? DO YOU KNOW?
- 10 A. FOR DOING WHAT?
- 11 Q. FOR HAVING ---
- 12 A. FOR MAKING HER WRITE IT?
- 13 Q. --- HER WRITE IT HERSELF IN SPANISH?
- 14 A. IT'S JUST SIMPLE. I MEAN, SHE KNOWS WHAT SHE SAW AND
- 15 HEARD. SO RATHER THAN TELLING ME AND ME HAVING TO TRANSLATE
- 16 IT AND ALL THAT, I MEAN, IF YOU SAW IT WRITE IT DOWN RIGHT
- 17 HERE YOURSELF AND THERE'S NO QUESTION ABOUT IT IF SHE WROTE
- 18 IT.
- 19 Q. SO THERE'S NO MISINTERPRETING IF IT'S ---
- 20 A. CORRECT. YEAH, CORRECT. SHE SAYS WHAT SHE WANTS TO
- 21 SAY, NOT WHAT WE TELL HER TO SAY.
- 22 Q. AND AFTER SPEAKING WITH MS. CORRALES WAS THERE ANOTHER
- 23 PERSON THAT YOU SPOKE TO IN THE CASE?
- 24 A. THERE WAS A GENTLEMAN DOWN AT THE BILO CENTER IN
- 25 MAULDIN, HIS NAME WAS NELSON RABERO CASTRO.

1 Q. AND WHO WAS HE?

2 A. I BELIEVE HE WAS A COUSIN, IF I -- LET ME READ IT REAL
3 QUICK RIGHT HERE. HE SAID HE WAS -- YEAH. HE SAID HE WAS A
4 COUSIN AND THAT MARLON OR THE DEFENDANT HAD GONE TO HIS
5 HOUSE LATE THAT NIGHT, THAT SAME DAY IN QUESTION. HE WAS --
6 ARRIVED ---

7 MS. ROSS: AND HE'S TESTIFIED. I'D OBJECT TO HIM ---

8 THE COURT: I SUSTAIN THE OBJECTION.

9 Q. YOU DON'T HAVE TO TELL WHAT HE SAID, BUT ---

10 A. OKAY.

11 Q. --- HE WAS THE COUSIN OF THE DEFENDANT?

12 A. YES, MA'AM. THAT'S WHAT HE SAID.

13 Q. THAT'S WHAT HE SAID?

14 A. CORRECT.

15 Q. AND DID YOU AND INVESTIGATOR SMITH GIVE HIM SOME PAPER
16 TO WRITE HIS STATEMENT ALSO?

17 A. YES, MA'AM.

18 Q. DID HE DO THAT?

19 A. YES, HE DID.

20 Q. AND HOW ABOUT ANY OTHER POTENTIAL WITNESS THAT YOU AND
21 INVESTIGATOR SMITH ATTEMPTED TO CONTACT?

22 A. WE TRIED A COUPLE OF OTHER PLACES, BUT EITHER THEY
23 WEREN'T THERE, OR THEY WERE WORKING, OR UNAVAILABLE. AND SO
24 WE ENDED UP HAVING TO GO BACK A COUPLE OF WEEKS LATER TO TRY
25 TO GET WITH THOSE PEOPLE.

1 Q. AND DO YOU HAVE NAMES OF ANYBODY ELSE THAT YOU AND
2 INVESTIGATOR SMITH SPOKE TO?

3 A. THAT NIGHT OR LATER ON?

4 Q. LATER ON?

5 A. NORBERTO ORTIZ. HE WAS ALSO A WITNESS.

6 Q. AND WHERE DID YOU FIND HIM?

7 A. WE FOUND HIM AT AN APARTMENT COMPLEX OFF SULFUR SPRINGS
8 ROAD DOWN THERE -- IT'S IN BEREA -- IT'S IN GREENVILLE. AND
9 HE WAS THERE AT HOME. AND WE JUST BASICALLY CALLED HIM UP
10 AND SAID, HEY, IS IT OKAY IF WE COME DOWN TO YOUR HOUSE AND
11 TALK TO YOU? HE SAID, YEAH, COME ON. SO WE WENT DOWN THERE
12 AND KNOCKED ON THE DOOR. AND HE SAID, COME ON IN. AND THE
13 SAME PROCESS. WE SAID, HEY, YOU KNOW, WE'RE INTERESTED IN
14 FINDING OUT WHAT HAPPENED OUT HERE, AND CAN YOU WRITE A
15 STATEMENT FOR US? HE SAID, YEAH, NO PROBLEM. GAVE HIM A
16 STATEMENT, GAVE HIM A PEN. HE WENT AT IT AND WROTE IT,
17 SIGNED IT SAYING THAT IT WAS ACCURATE AND TRUE.

18 Q. WAS THAT THE LAST WITNESS THAT YOU AND INVESTIGATOR
19 SMITH ---

20 A. I BELIEVE THERE WAS ONE MORE. I'VE GOT TO GO AND FIND
21 HIS NAME DOWN HERE. THIS OTHER GUY WENT TO HIS HOUSE. HE
22 SAID THAT HE'D BE BUSY THE NEXT COUPLE OF DAYS, SO WE MIGHT
23 AS WELL DO IT TONIGHT. SO HE HAD US COME OVER THAT NIGHT.
24 AND HIS NAME WAS NORLY RUIZ.

25 Q. AND THE SAME PROCESS WITH HIM AS WELL?

- 1 A. YES, MA'AM. SAME EXACT THING.
- 2 Q. AND SO ALL OF THESE PEOPLE WERE SEVERAL MONTHS AFTER
- 3 THE INCIDENT?
- 4 A. YES, MA'AM.
- 5 Q. THAT YOU MADE CONTACT?
- 6 A. A FEW MONTHS AFTERWARDS, YEAH.
- 7 Q. AND YOU SPOKE SPANISH TO ALL OF THESE PEOPLE?
- 8 A. YES, MA'AM.
- 9 Q. YOU TRANSLATED FOR INVESTIGATOR SMITH?
- 10 A. YES, MA'AM.
- 11 Q. AND ---
- 12 A. BASICALLY I JUST TRANSLATED WHAT THEY WROTE. I MEAN,
- 13 THEY WROTE THEIR OWN STATEMENT. AND THEN I JUST, HERE'S
- 14 WHAT THEY SAID. AND I TRANSLATED WHAT THEY WROTE.
- 15 Q. AND TOLD HIM WHAT THEY WROTE ---
- 16 A. SURE.
- 17 Q. --- BECAUSE IT WAS IN SPANISH?
- 18 A. BECAUSE THEY WROTE THEIR OWN THING IN SPANISH.
- 19 Q. AND AFTER THAT WITNESS DID THAT END YOUR INVOLVEMENT IN
- 20 THIS CASE?
- 21 A. UP UNTIL NOW.
- 22 Q. UNTIL COMING TO COURT?
- 23 A. YES, MA'AM.
- 24 Q. THANK YOU. ANSWER ANY OF MS. ROSS' QUESTIONS.
- 25 THE COURT: MS. ROSS.

1 CROSS EXAMINATION BY MS. ROSS:

2 Q. ALL RIGHT, OFFICER RIVERA. I'M GOING TO TRY TO GO
3 BACKWARDS HERE IF I CAN. ISN'T IT TRUE YOU GOT THE NAMES OF
4 THE WITNESSES YOU WENT AND SAW, I GUESS, IN NOVEMBER, THESE
5 LATER WITNESSES FROM THE DEFENSE?

6 (WHEREUPON A CELL PHONE STARTED RINGING IN COURT)

7 THE COURT: HOLD ON JUST A MINUTE. GET THE PHONE
8 PLEASE. ALL RIGHT. YOU MAY PROCEED.

9 MS. ROSS: THANK YOU, YOUR HONOR.

10 Q. SO DIDN'T YOU GET THE NAMES OF THESE LATER WITNESSES
11 THAT YOU WENT AND SPOKE TO FROM THE DEFENSE?

12 A. NOT THAT I KNOW OF.

13 Q. YOU DON'T KNOW?

14 A. INVESTIGATOR SMITH SAID, HEY, WE'RE GOING HERE,
15 TRANSLATE. THAT'S ABOUT THE END OF IT.

16 Q. SO YOU WERE JUST FOLLOWING ORDERS?

17 A. CORRECT. I WAS DOING WHAT I WAS TOLD.

18 Q. NOT NECESSARILY ORDERS, BUT JUST FOLLOWING DIRECTIONS?

19 A. YES, MA'AM.

20 Q. AND YOU SAID YOU HAD THEM WRITE EVERYTHING DOWN IN
21 SPANISH SO THERE WOULD BE NO CONFUSION?

22 A. CORRECT.

23 Q. AND THESE WITNESSES WERE A MS. CORRALES, A BARTENDER AT
24 THE ---

25 A. AT LA RUMBA.

1 Q. --- BAR WHERE THIS HAPPENED. AND MR. ORTIZ, AND MR.
2 RUIZ?

3 A. YES, MA'AM.

4 Q. WHO WERE ALSO WITNESSES TO THE EVENT. AND THEN, I
5 GUESS, CLEARLY MR. CASTRO HAS TESTIFIED EARLIER IN THE DAY.
6 HE WAS NOT ACTUALLY A WITNESS, BUT HE WAS A COUSIN OF THE
7 DEFENDANT, CORRECT?

8 A. CORRECT.

9 Q. NOW -- AND THIS WAS WELL AFTER THE FACT THAT YOU WENT
10 AND DID THIS?

11 A. DID WHAT?

12 Q. WENT AND INTERVIEWED THESE PEOPLE? IT WAS LIKE ---

13 A. OH, YEAH. IT WAS A FEW MONTHS LATER, YES.

14 Q. NOW I'M JUST GOING TO SKIP BACK TO THE NIGHT IN JULY
15 THAT WE'RE TALKING ABOUT IN THIS TRIAL REALLY. YOU -- THAT
16 NIGHT YOU WERE CALLED IN TO TAKE A STATEMENT FROM A WITNESS,
17 FERNANDO PORTUGUEZ, I GUESS?

18 A. I WAS CALLED IN TO TRANSLATE. I DIDN'T KNOW WHY I WAS
19 GOING THERE OTHER THAN TO TRANSLATE. I HAD NO PRIOR
20 KNOWLEDGE OF ANYTHING.

21 Q. AND SO BASICALLY THAT'S WHAT YOU DID. DID YOU TAKE
22 THAT STATEMENT IN SPANISH? DID YOU HAVE HIM WRITE OUT THE
23 STATEMENT IN SPANISH?

24 A. NO, MA'AM.

25 Q. SO YOU JUST TYPED IT IN ENGLISH?

- 1 A. YES, MA'AM.
- 2 Q. AND DEPUTY GARRETT WAS WITH THAT WITNESS?
- 3 A. HE WAS THERE.
- 4 Q. WAS THERE. OKAY. NOW -- AND THEN AFTERWARDS YOU WENT
- 5 IN AND STARTED TALKED TO MARLON RIVERA? AFTER INTERVIEWING
- 6 AND SPEAKING TO MR. FERNANDEZ PORTUGUEZ YOU THEN WENT AND
- 7 STARTED INTERVIEWING MARLON RIVERA?
- 8 A. WELL, I WAS ALREADY IN THERE. HE WALKED IN LATER.
- 9 Q. SO THEY BROUGHT HIM IN?
- 10 A. YES, MA'AM.
- 11 Q. SO THEN YOU BEGAN INTERVIEWING MARLON RIVERA AFTER MR.
- 12 PORTUGUEZ?
- 13 A. WELL, I DIDN'T BEGIN WITH THE INTERVIEW. I BEGAN WITH
- 14 THE WAIVER OF RIGHTS. BEFORE WE TALK TO YOU ANYTHING --
- 15 BEFORE WE SAY, HEY MAN, YOU KNOW WHAT HAPPENED? NO, WE
- 16 DON'T DO THAT. THE FIRST THING WE DO IS THAT WAIVER OF
- 17 RIGHTS TO MAKE SURE THAT HE UNDERSTANDS WHAT HE'S ENTITLED
- 18 TO. THEN WE INTERVIEWED HIM.
- 19 Q. AND YOU HAVE TO DO THAT WAIVER FIRST TO MAKE THE
- 20 CONFESSION OR STATEMENT GOOD?
- 21 A. TO MAKE IT LEGAL. YES, MA'AM.
- 22 Q. SO RIGHT AFTER INTERVIEWING THE FERNANDO PORTUGUEZ YOU
- 23 INTERVIEWED -- YOU STARTED GOING OVER THIS WAIVER SHEET ---
- 24 A. YES, MA'AM.
- 25 Q. --- WITH MARLON RIVERA? AND THAT TOOK APPROXIMATELY

1 HOW LONG?

2 A. THE ACTUAL WAIVER?

3 Q. UM-HUM (AFFIRMATIVE).

4 A. TEN, FIFTEEN MINUTES.

5 Q. NOW HOW LONG DID THE WHOLE INTERVIEW PROCESS WITH
6 MARLON RIVERA TAKE?

7 A. ABOUT TWO HOURS.

8 Q. ABOUT TWO HOURS. AND THAT WAS TWO HOURS THAT YOU WERE
9 IN TALKING TO HIM, I GUESS, AN HOUR AND FORTY-FIVE MINUTES
10 AFTER THAT WAIVER IS SIGNED ---

11 A. YES, MA'AM, SOMETHING LIKE THAT.

12 Q. NOW YOU SAID THAT MARLON WAS -- HAD SOMETHING TO DRINK
13 AT THAT POINT? WAS HE ---

14 A. YEAH, HE HAD A CUP OF SOMETHING. YEAH, I DON'T KNOW
15 WHAT IT WAS.

16 Q. WAS HE CUT OR BLEEDING IN ANY WAY?

17 A. NO, MA'AM.

18 Q. YOU DIDN'T SEE ANY?

19 A. I DIDN'T SEE ANY BLOOD COMING FROM HIM, NO.

20 Q. SO YOU DIDN'T -- HE DIDN'T ASK FOR A BAND-AID OR
21 ANYTHING LIKE THAT?

22 A. NO, MA'AM.

23 Q. NOW THE WAIVER IS IN SPANISH. HOWEVER, MARLON RIVERA
24 CAN'T READ. SO CLEARLY HE COULDN'T READ, YOU KNOW, WHEN HE
25 PUT HIS NAME ON THIS PIECE OF PAPER. HE COULD HAVE BEEN

1 SIGNING ANYTHING EXCEPT FOR WHAT YOU WERE INTERPRETING THIS

2 ---

3 A. WELL, I DIDN'T INTERPRET THAT, I READ THAT. SEE,
4 THERE'S NO THINKING IN MY PART. THAT'S THAT SPANISH WAIVER.
5 IF IT WAS IN ENGLISH THEN I'D HAVE TO TRANSLATE IT AND HE
6 WOULD HAVE TO TAKE WORD FOR WORD WHAT I TRANSLATED AND TRUST
7 MY TRANSLATION.

8 Q. SO YOU'RE SAYING ---

9 A. I READ THAT WORD FOR WORD.

10 Q. YOU'RE SAYING YOU READ THOSE OUT LOUD ---

11 A. YES, MA'AM.

12 Q. --- AND HE SIGNED? BUT THE ACTUAL INITIAL ON THE PIECE
13 OF PAPER AS FAR AS VISUALLY -- WHEN HE'S LOOKING AT THIS
14 PAPER AND SIGNING IT COULD HAVE SAID, I'M THE KING OF
15 ENGLAND, SIGN, FOR ALL HE KNOWS BECAUSE HE CAN'T READ
16 ENGLISH?

17 A. IF HE CAN'T READ, HE CAN'T READ.

18 Q. RIGHT. AND BASICALLY THE SAME IS TRUE WITH THIS
19 STATEMENT THAT'S READ -- THAT'S TYPED IN ENGLISH?

20 A. YES, MA'AM.

21 Q. NOW YOU SAID THAT YOU TYPED THIS AS A RESPONSE, BUT YOU
22 ALSO TESTIFIED THAT THERE WERE QUESTIONS AND ANSWERS?

23 A. OF COURSE.

24 Q. SO YOU WEREN'T WRITING OUT EXACTLY WHAT WAS BEING SAID.
25 YOU WEREN'T WRITING OUT, YOU KNOW, WHERE WERE YOU BORN? I

1 WAS BORN IN HONDURAS. YOU WEREN'T WRITING ---

2 A. NO, MA'AM. I WOULD ASK BROAD QUESTIONS AT FIRST JUST,
3 YOU KNOW, TO GET THE SETTING AND STUFF LIKE THAT. HEY, WHAT
4 WAS IT LIKE OUT THERE? AND THEN I WOULD ASK MORE DETAILED
5 QUESTIONS LIKE, HEY, WHAT STORE WAS IT? SO, OF COURSE, IT'S
6 NOT GOING TO BE LIKE "Q" AND "A", QUESTIONS AND ANSWERS.
7 IT'S GOING TO BE LIKE -- MORE LIKE A CHRONOLOGICAL TYPE
8 DEAL.

9 Q. AND THIS STATEMENT IS YOUR SUMMARY OF WHAT WAS SAID
10 BASICALLY OR WHAT ---

11 A. IT'S BASICALLY WHAT HE TOLD ME ABOUT THE SCENE.

12 Q. AND YOU TYPED IT UP? IT'S YOUR SUMMARY OF WHAT WAS ---

13 A. I TYPED IT UP AS HIS SUMMARY OF WHAT HAPPENED. BECAUSE
14 I -- THE THING IS THERE'S A TIME-FRAME. OF COURSE, IF HE
15 SAID, YEAH, I USED TO GO TO THE BEACH BACK IN THE DAY.
16 THAT'S NOT RELEVANT. SO I'M NOT GOING TO PUT THAT IN THERE.
17 ANYTHING THAT HE SAID THAT HAD TO DO WITH THAT CRIME SCENE
18 AND WHAT HAPPENED OUT THERE IS WHAT I PUT DOWN THERE. AND I
19 READ THAT BACK TO HIM.

20 Q. SO YOU PUT DOWN EVERYTHING HE SAID?

21 A. REGARDING THAT DAY.

22 Q. NOW THIS STATEMENT -- SO HE SAID NOTHING ABOUT ANOTHER
23 PERSON TOUCHING HIS GUN?

24 A. HE DID NOT.

25 Q. AND HE MADE NO MENTION OF ANOTHER PERSON TOUCHING OR

1 HOLDING THE GUN AT ALL AND THAT'S WHY ---

2 A. THE LAST PERSON I KNEW HELD THAT GUN WAS THE GUY THAT

3 GOT ARRESTED THE NIGHT BEFORE THAT GAVE IT TO HIM.

4 Q. AND JUST A SPECIFIC QUESTION. DID HE JUST VOLUNTEER

5 WHAT CLOTHING HE WAS WEARING?

6 A. BASICALLY, YEAH. HE WAS VERY COOPERATIVE.

7 Q. YOU WROTE HE SAID HE HAD DARK CLOTHING?

8 A. UM-HUM (AFFIRMATIVE).

9 Q. SO HE DIDN'T SAY, I WAS WEARING BLACK, OR BLUE, OR

10 ANYTHING LIKE THAT? HE JUST SAID ---

11 A. HE JUST SAID DARK.

12 Q. --- DARK?

13 A. YEAH.

14 Q. AND THEN YOU JUST LEFT IT AT THAT WITHOUT ANYMORE

15 SPECIFIC ---

16 A. YES, MA'AM. IN SPANISH, WHILE COLORS ARE IMPORTANT,

17 IT'S MORE OF A SHADE THING IN SPANISH. EITHER YOU'RE

18 WEARING LIGHT CLOTHES LIKE I AM RIGHT NOW WITH MY LIGHT

19 PANTS OR YOU'RE WEARING DARK CLOTHES, BLACK OR DARK BLUE.

20 Q. SO YOU ACCEPTED THAT AS A CULTURAL THING THAT ---

21 A. YES, MA'AM.

22 Q. --- YOU'D JUST SAY I WAS WEARING LIGHT OR DARK ---

23 A. LIGHT OR DARK.

24 Q. YOU DIDN'T QUESTION ---

25 A. THAT'S LIKE A LIGHT COLORED CAR OR DARK COLORED CAR,

1 THE SAME THING. IT COULD BE BLUE OR BLACK, BUT IT'S DARK IN
2 COLOR.

3 Q. AND YOU SIMPLY WROTE DOWN DARK AND THAT WAS IT? AND HE
4 DIDN'T SAY ANYTHING ABOUT IT, JUST LET YOU DO IT?

5 A. YEAH.

6 Q. AND YOU SAY HE WAS VERY COMPLACENT. WAS HE GOING ALONG
7 PRETTY MUCH WITH EVERYTHING Y'ALL WERE DOING?

8 A. NO, NOT COMPLACENT. HE WAS COOPERATIVE.

9 Q. SO COOPERATIVE, BUT NOT COMPLACENT?

10 A. NOT COMPLACENT. YEAH, HE WASN'T LIKE, ARE YOU TEN FEET
11 TALL? WELL, YEAH. THAT'S COMPLACENT. HE WAS MORE OR LESS
12 ANSWERING THE QUESTIONS THAT I ASKED HIM.

13 Q. NOW I WANT TO GO BACK -- THIS STATEMENT'S NOT
14 NOTARIZED. THERE'S NOT A -- THERE'S A PLACE FOR A NOTARY TO
15 SIGN, BUT IT'S NOT NOTARIZED.

16 A. OKAY.

17 Q. I MEAN, YOU'VE GOT YOURS RIGHT THERE TOO. AND THE
18 OTHER STATEMENTS YOU TOOK LATER ON YOU DID GET NOTARIZED,
19 CORRECT?

20 A. I BELIEVE INVESTIGATOR SMITH WAS A NOTARY PUBLIC OR ---

21 Q. AND SO HE NOTARIZED ---

22 A. YEAH.

23 Q. --- THOSE OTHER LATER STATEMENTS?

24 A. YES, MA'AM.

25 Q. BUT NOT THIS ONE? NOW ISN'T IT TRUE YOU HELD MARLON'S

1 HAND TO HELP HIM SIGN THESE?

2 A. HELD HIS HAND TO HELP HIM SIGN IT?

3 Q. BEING ILLITERATE HOW DID HE PUT HIS SIGNATURE? HE JUST
4 PUT ---

5 A. HE JUST GRABBED THE PAPER, HELD IT DOWN, AND WROTE HIS
6 INITIALS DOWN.

7 Q. NOW HOW ABOUT THE SIGNATURE AT THE BOTTOM? DID YOU
8 TELL HIM HOW ---

9 A. I TOLD HIM ---

10 Q. --- TO SIGN HIS NAME OR GIVE HIM ANY DIRECTION?

11 A. I SAID, SIGN YOUR NAME. I SAID, IF YOU UNDERSTAND AND
12 AGREE WITH IT, SIGN YOUR NAME.

13 Q. SO IT'S YOUR TESTIMONY YOU DIDN'T GIVE HIM ANY
14 DIRECTION?

15 A. NO, MA'AM.

16 MS. ROSS: I BEG THE COURT'S INDULGENCE.

17 Q. THERE WAS NO TAPE OR VIDEO OR ANYTHING OF THIS WHOLE
18 INTERVIEW PROCESS, CORRECT?

19 A. NO, MA'AM.

20 Q. BUT IT WAS HELD IN JUST BASICALLY AN OFFICE?

21 A. YES, MA'AM, UPSTAIRS OFFICE, LEC.

22 Q. AND IT TOOK ABOUT TWO HOURS?

23 A. ABOUT TWO HOURS, GIVE OR TAKE.

24 MS. ROSS: I BEG THE COURT'S INDULGENCE. I'VE GOT NO
25 FURTHER QUESTIONS.

1 MS. HODGE: ONE QUESTION ON REDIRECT.

2 REDIRECT EXAMINATION BY MS. HODGE:

3 Q. DO YOU RECALL WHAT COLOR SHIRT THE DEFENDANT WAS
4 WEARING AT THE TIME OF THE WAIVER OF RIGHTS AND INTERVIEW?

5 A. I'M MOSTLY COLOR BLIND. FOR THE SHERIFF'S OFFICE, FOR
6 THE MARINE CORPS, I'M COLOR BLIND. I SEE ALL THESE COLORS,
7 BUT I DON'T RECALL ANYWAY. EITHER WAY, I WOULDN'T KNOW.

8 THE COURT: THANK YOU. YOU CAN STEP DOWN.

9 MS. HODGE: MAY HE BE EXCUSED, YOUR HONOR.

10 THE COURT: ANY OBJECTION TO EXCUSING THIS WITNESS?

11 MS. ROSS: NO OBJECTION.

12 THE COURT: THANK YOU, SIR. YOU'RE EXCUSED. YOU BE
13 CAREFUL.

14 MS. HODGE: TOO LATE FOR THAT.

15 A. YEAH, A COUPLE OF WEEKS AGO I COULD HAVE USED THAT.

16 MS. HODGE: YOUR HONOR, OUR NEXT WITNESS IS
17 INVESTIGATOR WES SMITH. IT MAY BE A LITTLE LENGTHY. I
18 DIDN'T KNOW IF YOU WANTED TO ---

19 THE COURT: ALL RIGHT. WE'LL RECESS FOR LUNCH. LADIES
20 AND GENTLEMEN, WE'LL RECESS AT THIS TIME. PLEASE REMEMBER,
21 DON'T TALK ABOUT THIS CASE AMONG YOURSELVES OR ANYONE ELSE.
22 AND PLEASE KEEP YOUR BADGES ON. AND PLEASE BE BACK AT TWO,
23 2:00. THANK YOU.

24 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:30 PM)

25 THE COURT: OKAY. SEE YOU BACK AFTER LUNCH. HOW MANY

1 MORE WITNESSES YOU GOT, SOLICITOR?

2 MS. HODGE: ONE, MAYBE TWO.

3 THE COURT: OKAY.

4 (WHEREUPON COURT WAS IN RECESS)

5 THE COURT: BE SEATED. BRING OUR JURY PLEASE.

6 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:01 PM)

7 THE COURT: ALL RIGHT, SOLICITOR.

8 MS. HODGE: THANK YOU, YOUR HONOR. THE STATE CALLS
9 INVESTIGATOR WES SMITH.

10 WESLEY SMITH, BEING DULY
11 SWORN TESTIFIED AS FOLLOWS:

12 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
13 RECORD.

14 MR. SMITH: I'M WESLEY SMITH.

15 DIRECT EXAMINATION BY MS. HODGE:

16 Q. INVESTIGATOR SMITH, ARE YOU EMPLOYED BY THE GREENVILLE
17 COUNTY SHERIFF'S OFFICE?

18 A. YES, I AM.

19 Q. HOW LONG HAVE YOU WORKED FOR THE SHERIFF'S OFFICE?

20 A. SINCE NOVEMBER OF 1983. I HAVE OVER TWENTY-THREE YEARS
21 OF LAW ENFORCEMENT EXPERIENCE.

22 Q. COMING UP ON RETIREMENT SOON?

23 A. ONE YEAR AND TWO HUNDRED AND NINETY-EIGHT DAYS.

24 Q. I HAD A FEELING YOU'D KNOW EXACTLY HOW LONG. WHAT ARE
25 YOUR DUTIES CURRENTLY WITH THE SHERIFF'S OFFICE AND WHAT

1. HAVE YOU DONE IN THE PAST?

2. A. CURRENTLY I'M ASSIGNED TO THE VIOLENT CRIMES UNIT WHERE
3. I INVESTIGATE HOMICIDE AND ROBBERIES AND THEN THE OTHER
4. VIOLENT CRIMES AS THEY NEED MY ASSISTANCE ON. PRIOR TO THAT
5. I WORKED PROPERTY CRIMES AS AN INVESTIGATOR. AND I ALSO DID
6. SOME SIDE STINTS IN SOME NARCOTICS INVESTIGATIONS, AUTO
7. THEFT INVESTIGATIONS, SCHOOL INVESTIGATIONS, AND JUVENILE
8. INVESTIGATIONS. FOR THE LAST FIFTEEN YEARS WHAT PRIMARILY
9. I'VE DONE IS INVESTIGATIONS AS AN INVESTIGATOR. PRIOR TO
10. THAT I WAS ASSIGNED AS A UNIFORM PATROL DEPUTY. AND I WAS A
11. FIELD TRAINING OFFICER FOR THE LAST FIVE YEARS WHERE I WAS
12. IN UNIFORM PATROL.

13. Q. AND WHAT KIND OF EDUCATIONAL BACKGROUND AND TRAINING DO
14. YOU HAVE TO BE AN INVESTIGATOR THAT YOU'VE BEEN ACTUALLY FOR
15. THE LAST FIFTEEN YEARS?

16. A. OKAY. I HAVE GRADUATED FROM THE SOUTH CAROLINA
17. CRIMINAL JUSTICE ACADEMY. I'VE ATTENDED FURMAN UNIVERSITY
18. AND GREENVILLE TECH WHERE I MAJORED IN CRIMINAL JUSTICE AND
19. SOCIOLOGY. I'VE BEEN TO A -- SOUTHERN POLICE INSTITUTE,
20. UNIVERSITY OF LOUISVILLE WHERE I WAS -- ATTENDED AN EIGHTY
21. HOUR ADVANCED HOMICIDE INVESTIGATIONS CLASS. I ALSO WENT
22. AND WORKED IN A SCHOOL AT THE MIAMI DADE MEDICAL EXAMINERS
23. OFFICE IN MIAMI, FLORIDA FOR A FORTY HOUR CREDIT CLASS. AND
24. I'VE HAD OVER A THOUSAND HOURS OF IN-SERVICE TRAINING.

25. Q. AND AS PART OF YOUR JOB DO YOU KEEP UP WITH

1 INVESTIGATIVE TECHNIQUES, LEGAL REQUIREMENTS, THOSE TYPES OF
2 THINGS ---

3 A. YES, MA'AM.

4 Q. --- REQUIRED FOR LAW ENFORCEMENT? AND SO YOU WERE AN
5 INVESTIGATOR OBVIOUSLY THEN LAST JULY THE 18TH?

6 A. THAT'S RIGHT.

7 Q. AND WERE YOU THE LEAD INVESTIGATOR ON THE CASE, STATE
8 VERSUS MARLON RIVERA?

9 A. I WAS.

10 Q. AND WHEN DID YOU BECOME INVOLVED IN THIS CASE?

11 A. IT WAS ABOUT 1:50 IN THE MORNING ON JULY THE 18TH. AND
12 I WAS CONTACTED BY SERGEANT JULIE COLE, WHO ADVISED ME THAT
13 UNITS HAD RESPONDED TO THE DON PEPE'S/LA RUMBA NEXT DOOR TO
14 THE CARNIVAL ON CEDAR LANE ROAD IN GREENVILLE COUNTY WHERE
15 THEY INITIALLY RESPONDED TO A SHOOTING. AND THEN DURING THE
16 INITIAL INVESTIGATION THEY WEREN'T SURE WHETHER A SHOOTING
17 HAD OCCURRED AND THEY WERE WORKING IT AS AN ASSAULT. AND
18 JUST BEFORE SHE CONTACTED ME THEY HAD GOTTEN CONFIRMATION
19 FROM THE HOSPITAL THAT THE VICTIM HAD BEEN SHOT IN THE HEAD.
20 THIS WAS ABOUT TWO HOURS AFTER THEY INITIALLY RESPONDED TO
21 THE SCENE.

22 Q. AND SO WHAT TIME THEN DID YOU ARRIVE AT THE INCIDENT
23 LOCATION?

24 A. CLOSE TO 3:00 IN THE MORNING.

25 Q. AND DO YOU KNOW THE TIME THAT THE INCIDENT ALLEGEDLY

1 OCCURRED?

2 A. RIGHT AROUND MIDNIGHT, I THINK IT WAS.

3 Q. SO APPROXIMATELY THREE HOURS LATER. WHAT DID YOU FIND
4 ON ARRIVAL THREE HOURS AFTER THE INCIDENT?

5 A. THE IMMEDIATE SCENE AROUND THE LOCATION WHERE THE
6 INCIDENT OCCURRED HAD BEEN ROPED OFF WITH CRIME SCENE TAPE.
7 THERE WERE JUST A FEW CARS PARKED IN THE PARKING LOT AND
8 JUST A FEW HISPANIC PEOPLE AROUND IN THE OUTSIDE AREA OUT OF
9 THE ROPE.

10 THE CARNIVAL IS A CLUB JUST DOWN AT THE END. THEY WERE
11 CLOSING. AND PEOPLE WERE COMING OUT OF THE CARNIVAL AND
12 GOING TO THEIR CARS AND LEAVING. THERE WAS A WITNESS THERE
13 NAMED COURTNEY ROBLES, AND A WITNESS NAMED ALVARO FERNANDO.
14 DEPUTY GARRETT WAS THERE TALKING TO THE PEOPLE IN SPANISH
15 THAT THEY NEEDED TO HAVE AN INTERPRETER FOR.

16 Q. AND SO THAT WOULD HAVE BEEN MR. FERNANDEZ SPECIFICALLY?

17 A. RIGHT.

18 Q. AND WERE THERE ANY OTHER PEOPLE PRESENT AT THE TIME YOU
19 ARRIVED THAT CAME UP TO TRY TO TELL WHAT HAPPENED OR THEY
20 SAW ANYTHING OTHER THAN THOSE TWO PEOPLE?

21 A. COURTNEY ROBLES' HUSBAND, CLEMETE ROBLES, WAS THERE.
22 AND HE JUST AT THAT TIME DIDN'T WANT TO TALK ABOUT THE
23 INCIDENT. WE COULD NOT GET HIM TO TALK TO US ABOUT WHAT
24 HAPPENED, WHAT HE SAW, OR ANYTHING.

25 Q. IS THAT SOMETHING THAT YOU ENCOUNTER IN LAW

1 ENFORCEMENT, PEOPLE ---
2 A. VERY OFTEN.
3 Q. --- DON'T WANT TO GET INVOLVED?
4 A. VERY OFTEN.
5 Q. AND SO IF THERE WERE SEVERAL PEOPLE AT THE SCENE WHEN
6 YOU ARRIVED AT THREE IT DOESN'T NECESSARILY MEAN THEY WERE
7 ALL ABOUT THIS INCIDENT?
8 A. NO.
9 Q. BECAUSE THERE ARE OTHER BARS, THE CARNIVAL SPECIFICALLY
10 ---
11 A. YES.
12 Q. --- IN THIS AREA?
13 A. RIGHT.
14 Q. HOW ABOUT THE FOOD STAND OR THE TACO STAND? WAS THAT
15 STILL SET UP?
16 A. IT WAS. AND THE PEOPLE THAT WERE WORKING THE TACO
17 STAND WERE NOT PRESENT WHILE I WAS THERE AT THAT SCENE.
18 THERE WAS SOME PEOPLE THERE WATCHING THEIR STUFF ACCORDING
19 TO THE OFFICERS AT THE SCENE. I DIDN'T EVER GET TO TALK TO
20 THEM.
21 Q. DID YOU EVER FIND OUT WHO THEY WERE?
22 A. NO.
23 Q. HOW ABOUT A PERSON NAMED DELMAN ARIES OR ARIAS?
24 A. I WAS BRIEFED THAT DELMAN ARIAS WAS THERE AT THE SCENE
25 ASSISTING WITH THE VICTIM, BUT HE WAS GONE BEFORE I GOT

1 THERE. WHEN SERGEANT COLE HAD CONTACTED ME SHE SAID THEY
2 HAD BEGAN TO SECURE THE SCENE. AND ONE OF THE THINGS THAT
3 THEY DO WHEN THEY SECURE THE SCENE IS THEY MOVE PEOPLE AWAY
4 AND OUT THAT ARE NOT SUPPOSED TO BE THERE.

5 THEY THOUGHT THAT THEY WERE WORKING AN ASSAULT. THEY
6 HAD NO IDEA THAT THEY WERE WORKING A GUNSHOT CASE UNTIL THEY
7 GOT NOTIFICATION FROM THE HOSPITAL. SO WHEN SHE CALLED ME
8 AND SHE TOLD ME THAT MOST OF THE WITNESSES HAD ALREADY LEFT,
9 I TOLD HER TO TRY TO GATHER UP AS MANY AS THEY COULD
10 POSSIBLY FIND. AND MR. ARIAS WAS NOT ONE THEY COULD FIND.
11 ALL THEY HAD FOR HIM WAS A CELL PHONE NUMBER.

12 Q. HAVE YOU SINCE THAT TIME TRIED TO LOCATE MR. ARIAS?

13 A. YES.

14 Q. WHAT DID YOU DO TO TRY TO FIND OUT WHO HE WAS AND WHERE
15 HE WAS?

16 A. I'VE TALKED TO THE PEOPLE THAT WE WERE ABLE TO MAKE
17 CONTACT WITH IN THE CASE. NOBODY REALLY WANTS TO SAY WHO
18 THEY KNOW. THEY THINK HE WAS FROM COSTA RICO. WE HAVE
19 DETERMINED THAT HE WAS PROBABLY MAURICIO ARIAS BASED ON THE
20 STATEMENT FROM THE WITNESSES THAT THAT'S WHO WAS FIGHTING
21 WITH THE DEFENDANT IN THE CASE PRIOR TO THE CASE GETTING
22 STARTED. I'VE SINCE LEARNED THAT HE IS AN ASSOCIATE OF
23 ANOTHER WITNESS IN THE CASE, MANIOR NAVARRO. AND THEY LIVE
24 TOGETHER AT 5 RAINWOOD COURT. AND THEY HAVE GONE AND LEFT.
25 Q. SO YOU HAVE NOT BEEN ABLE TO LOCATE HIM TO SERVE HIM

1 WITH A SUBPOENA TO COME IN HERE?

2 A. NO.

3 Q. AND WHEN YOU CAME TO THE SCENE AT 3:00 DID YOU ALSO DO
4 A PHYSICAL EXAM OF THE SCENE YOURSELF?

5 A. YES.

6 Q. AND DID YOU NOTE OR FIND ANY SHELL CASINGS AT THE
7 SCENE?

8 A. NO.

9 Q. ANY BULLETS?

10 A. NO.

11 Q. DID YOU FIND OR WERE YOU INSTRUCTED AS TO WHAT AREA THE
12 SHOOTING MIGHT HAVE TAKEN PLACE?

13 A. IT WAS VISIBLE BASED ON SOME BLOOD SPATTER. THERE WAS
14 A LARGE AREA OF -- IF YOU WERE FACING THE BUILDING WHERE THE
15 TACO STAND WAS SET UP, TO THE RIGHT SIDE THERE WAS A PILLAR
16 WHERE THE PROMENADE OF THE SHOPPING CENTER WAS. AND THERE
17 WAS AN AREA OF BLOOD JUST A FEW INCHES FROM THAT PILLAR.

18 AND THEN DIAGONALLY FROM THAT PILLAR THERE WAS SOME SPOTS OF
19 BLOOD ON -- LIKE THREE SPOTS OF BLOOD, BUT THEY WEREN'T BIG.
20 THE ROPED OFF AREA ENCOMPASSED THAT PLUS SOME OF THE AREA
21 OUTSIDE OF THAT WHERE WE COULD SECURE THAT TO LOOK FOR
22 PROJECTILES AND SUCH AS THAT.

23 Q. I'M GOING TO SHOW YOU STATE'S NUMBER 5. AND I KNOW YOU
24 JUST DESCRIBED IT. LET ME GET YOU THE POINTER. KIND OF
25 POINT TO THE AREA YOU'RE SAYING THIS INCIDENT MAY HAVE TAKEN

1 PLACE.

2 A. THIS IS THE TOP OF THE TACO STAND. AND THIS IS THE
3 PILLAR THAT I MENTIONED. AND THIS IS THE FRONT DOOR OF THE
4 SPANISH AMIGOS/LA RUMBA. , THE BLOODY AREA ON THE GROUND WAS
5 RIGHT HERE. AND THE FEW LITTLE SPOTS OF BLOOD WERE RIGHT IN
6 HERE.

7 Q. AND THEN THIS IS STATE'S NUMBER 11. I BELIEVE IT'S IN
8 THE DAYLIGHT AND IT'S BACKED UP A BIT. AND YOU CAN JUST
9 POINT AGAIN WITH A DIFFERENT FRAME OF REFERENCE TO WHERE
10 YOU'RE TALKING ABOUT.

11 A. THIS AREA RIGHT HERE IS WHERE THE TACO STAND WOULD HAVE
12 BEEN SET UP, RIGHT HERE. AND THE BLOODY AREA -- THE LARGE
13 BLOODY AREA WAS RIGHT THERE. AND THE TWO LITTLE SPOTS WERE
14 RIGHT ABOUT RIGHT THERE.

15 Q. I'M GOING TO TAKE YOU BACK TO STATE'S 5. DID YOU
16 INSPECT OR LOOK AROUND THE CONCRETE AREA DOWN HERE WHERE THE
17 BLOOD SPATTER AND BLOOD DROPS WERE FOUND?

18 A. YES, MA'AM.

19 Q. AND HOW ABOUT EVEN FARTHER DOWN THIS DIRECTION? DID
20 YOU LOOK THERE AS WELL?

21 A. YES, MA'AM.

22 Q. DID YOU NOTICE ANY DAMAGE DONE TO THE CONCRETE THAT MAY
23 HAVE BEEN CAUSED BY GUNFIRE OR A BULLET?

24 A. NO. THERE DIDN'T APPEAR TO BE ANY KIND OF FRESH DAMAGE
25 TO THE SURFACE OF THE CONCRETE.

1 Q. AND IF A BULLET STRUCK THE CONCRETE WOULD IT HAVE
2 DAMAGED IT?

3 A. WE WOULD HAVE BEEN ABLE TO TELL THE DIFFERENCE BETWEEN
4 NEW DAMAGE AND OLD. AND WE WOULD HAVE PROBABLY LOOKED AT AT
5 LEAST SOME FRACTURED AREA OR MARKED AREA ON THE CONCRETE,
6 SURFACE OF THE CONCRETE.

7 Q. AND I'M NOT SURE IF YOU CAN TELL FROM THIS OVERHEAD.
8 DO YOU KNOW -- IS THE SIDEWALK HERE PAINTED A COLOR OR ---

9 A. IT'S PAINTED GREEN.

10 Q. AFTER YOU -- WELL, IS THERE ANYTHING ABOUT THE SCENE
11 THAT YOU NOTED BESIDES THE BLOOD AREAS?

12 A. NO, JUST THAT WAS AN OUTDOOR SCENE. IT WAS VERY OPEN,
13 THERE WASN'T ANY DAMAGE, AND THERE'S VERY LIMITED EVIDENCE
14 THERE. BASICALLY IT CONSISTED OF BLOOD SPATTER.

15 Q. AND WHILE YOU ARE AT THE SCENE WHAT HAPPENS? WHAT'S
16 THE NEXT THING THAT HAPPENS?

17 A. WELL, ---

18 Q. IN YOUR INVESTIGATION?

19 A. IN THAT INVESTIGATION WE'RE TRYING AT THAT POINT TO
20 MAKE SURE WE CAN IDENTIFY ALL THE WITNESSES THAT WE POSSIBLY
21 CAN AND TAKE WHATEVER STATEMENTS THAT ARE AVAILABLE TO US.
22 I HAD FINISHED TALKING TO COURTNEY ROBLES AND TAKING HER
23 WRITTEN STATEMENT AT THE SCENE.

24 AND I BEGAN TO EXAMINE THE SCENE WITH SERGEANT, OR
25 EXCUSE ME, LIEUTENANT RIDGEWAY, LIEUTENANT RIDGEWAY. AND WE

1 WERE LOOKING FOR EVIDENCE, SIGNS OF STRUGGLE, SIGNS OF
2 GUNFIRE STRIKING THE PAVEMENT, SHELL CASINGS, PROJECTILES
3 THAT MIGHT HAVE BEEN FLATTENED OUT ON THE PAVEMENT, OR
4 PROJECTILE FRAGMENTS, OR WHATEVER. AND WE NEVER FOUND ANY
5 OF THAT.

6 AND AFTER THAT I'D WALKED OUT INTO THE PARKING LOT, WAS
7 TALKING WITH MY SUPERVISOR, SERGEANT MIKE BROWN, WHO HAD
8 RESPONDED TO THE SCENE. AND AT THIS POINT ALVARO FERNANDEZ
9 DRIVES UP AGAIN, AND PARKS HIS CAR, AND WALKS OVER TO WHERE
10 WE'RE TALKING.

11 Q. AND HAD HE JUST LEFT THE AREA?

12 A. HE'D BEEN GONE FOR A LITTLE WHILE. I DON'T KNOW
13 EXACTLY HOW LONG, BUT HE'D BEEN GONE FOR A LITTLE WHILE.
14 AND WHEN HE CAME BACK HE SEEMED TO BE ANXIOUS AND EXCITED
15 AND WANTING TO TALK TO US.

16 MS. ROSS: AND AGAIN, I WOULD LIKE TO OBJECT TO THIS
17 HEARSAY TESTIMONY.

18 THE COURT: YES, SIR. DON'T TELL US WHAT HE SAID.

19 Q. AND SO WHAT DID HE SAY?

20 THE COURT: NO, I'M NOT -- HOW LONG ---

21 MS. HODGE: YOUR HONOR, THIS IS THE STATEMENT THAT
22 INVESTIGATOR GARRETT SPOKE OF YESTERDAY, EXCITED UTTERANCE.

23 MS. ROSS: AT LEAST THREE ---

24 MS. HODGE: STATEMENT OF ALVARO FERNANDEZ THAT
25 INVESTIGATOR GARRETT WAS TOLD TO COME OVER AND TRANSLATE FOR

1 WES SMITH. SO HE ACTUALLY HEARD IT FIRST.

2 THE COURT: ALL RIGHT. GO AHEAD. UNDER EXCITED
3 UTTERANCE. GO AHEAD.

4 MS. ROSS: AND I'LL OBJECT AGAIN. IT WAS OVER THREE
5 HOURS.

6 THE COURT: I UNDERSTAND.

7 MS. ROSS: IT'S CERTAINLY NOT PROTECTED FROM THE
8 HEARSAY ---

9 THE COURT: I UNDERSTAND.

10 MS. ROSS: --- UTTERANCE.

11 Q. AND SO WHAT HAPPENED?

12 A. HE WALKED UP AND HE SAID THAT HE -- AND HE HAD VERY
13 BROKEN ENGLISH AND WILD HAND SIGNALS, BUT HE SAID, I SAW THE
14 SHOOTING. AND THEN HE SAID, I SEE THE GUY THAT SHOT.

15 Q. WAS HE GIVING YOU SOME SIGN LANGUAGE?

16 A. YES. AND THAT'S WHEN I CALLED GARRETT OVER TO
17 INTERPRET AGAIN. AND THEY HAD A SEVERAL SENTENCE EXCHANGE.
18 AND I SAID, BRIAN, WHAT'S HE SAYING? AND HE SAID, WELL, HE
19 SAYS THAT THE GUY WHO SHOT THE VICTIM IS DOWN AT THE
20 MEXICALI AND HE CAN POINT HIM OUT TO US DOWN THERE.

21 Q. SO AS THE RESULT OF THAT CONVERSATION WHAT DID YOU DO?

22 A. SERGEANT BROWN, AND I, AND GARRETT WENT IN SEPARATE
23 CARS OVER TO THE MEXICALI. AND WE WENT TO THE FRONT DOOR TO
24 TRY TO GAIN ENTRY WITH THE WITNESS WITH US.

25 Q. I'M GOING TO POINT YOU TO STATE'S NUMBER 1. ARE THESE

1 LOCATIONS MARKED? YOU CAN USE YOUR POINTER. ARE THESE THE
2 LOCATIONS THAT YOU'RE TESTIFYING ABOUT?

3 A. YES. THIS IS THE LOCATION WHERE THE INCIDENT OCCURRED.
4 AND THIS LITTLE BUILDING RIGHT HERE ALONG SIDE THE BIG
5 BUILDING, THAT'S THE MEXICALI.

6 Q. AND ABOUT HOW FAR IS THAT?

7 A. MAYBE A LITTLE OVER A QUARTER OF A MILE.

8 Q. SO YOU GET TO THE MEXICALI AND WHAT HAPPENS?

9 A. WELL, THE DOOR'S LOCKED. AND WE KNOCK AT THE DOOR.
10 AND -- TO GAIN ENTRY. AND THERE BEGINS A COMMOTION INSIDE.
11 SO SERGEANT BROWN AND I RUN AROUND TO THE BACK OF THE
12 BUILDING TO COVER THE BACK DOOR. AND WE REMAIN THERE
13 COVERING THE BACK DOOR UNTIL GARRETT CALLS US ON THE RADIO
14 AND TELLS US HE HAS THE SUSPECT IN CUSTODY. AND WE GO BACK
15 AROUND TO THE FRONT OF THE BUILDING.

16 Q. AND WHO DID HE HAVE IN CUSTODY AT THAT POINT?

17 A. THE DEFENDANT, MARLON RIVERA.

18 Q. AND IS THAT PERSON PRESENT IN THE COURTROOM TODAY?

19 A. YES. THAT'S HIM RIGHT THERE.

20 Q. AND WHAT DID YOU DO THEN?

21 A. AS SOON AS HE WAS TAKEN INTO CUSTODY AND WE PATTED HIM
22 DOWN HE ONLY HAD A KEY IN HIS POCKET. AND SO WHEN I WOULD
23 SAY SOMETHING TO HIM, WHATEVER I SAID TO HIM, HE SAID, NO
24 PROBLEM, NO PROBLEM. AND SO GARRETT DID MOST OF THE TALKING
25 TO HIM. AND GARRETT TOLD HIM HE WAS IN CUSTODY, HAD BEEN

1 IDENTIFIED AS THE SHOOTER, AND THAT HE WAS TAKEN INTO
2 CUSTODY IN REFERENCE TO THAT SHOOTING.

3 AND I IMMEDIATELY CALLED FOR FORENSICS TO COME TO
4 COLLECT THE GSR KIT AT THAT POINT RIGHT THERE. THAT'S
5 SOMETHING WE DON'T NORMALLY DO. WE USUALLY TRY TO DO THAT
6 IN A CONTROLLED ENVIRONMENT. BUT THE REASON I ASKED FOR IT
7 WAS BECAUSE WE WERE RUNNING OUT OF TIME ON THE COLLECTION OF
8 THE GSR. SO THEY DID IT IN THE PARKING LOT.

9 Q. AND GSR IS GUNSHOT RESIDUE?

10 A. GUNSHOT RESIDUE.

11 Q. AND SO YOU OBSERVED FORENSIC OFFICER ORLANDO ---

12 A. YES.

13 Q. --- COLLECT THE GUNSHOT RESIDUE KIT ---

14 A. YES.

15 Q. --- FROM THE DEFENDANT? DID YOU ASCERTAIN AT THAT TIME
16 THE DEFENDANT'S NAME AND BASIC INFORMATION ABOUT HIM, WHERE
17 HE LIVED OR ANYTHING LIKE THAT?

18 A. YEAH, THROUGH BRIAN GARRETT. HE SAID HIS NAME WAS
19 MARLON RIVERA AND HE LIVED OVER IN BARRINGTON PARK.

20 Q. AND IS BARRINGTON PARK APARTMENTS ON THIS STATE'S
21 NUMBER 1 AS WELL?

22 A. RIGHT HERE.

23 Q. SO ALL OF THESE LOCATIONS ARE FAIRLY CLOSE?

24 A. VERY, VERY CLOSE. WALKING DISTANCE IN JUST A FEW
25 MINUTES.

1 Q. AND CAN YOU DESCRIBE THE APPEARANCE OF THE DEFENDANT AT
2 THIS TIME, SPECIFICALLY ANY INJURIES TO THE DEFENDANT?

3 A. NO INJURIES.

4 Q. ANY FRESH BLOOD?

5 A. NO SCRAPES, NO ABRASIONS, NO FRESH BLOOD, NOTHING.

6 Q. HOW ABOUT WHAT HE WAS WEARING?

7 A. RED T-SHIRT, BLUE JEANS, AND I CAN'T REMEMBER THE SHOES
8 HE HAD ON.

9 Q. SO HE HAD ON A RED T-SHIRT?

10 A. YES.

11 Q. AND IN YOUR OPINION DID HE SEEM COHERENT AT THIS TIME?

12 A. HE WAS COHERENT, YES, BUT YOU COULD SMELL ALCOHOL ON
13 HIS BREATH.

14 Q. WAS HE IN A BAR?

15 A. HE WAS IN A BAR.

16 Q. DO YOU KNOW IF HE HAD A DRINK IN HIS HAND WHEN HE WAS
17 ARRESTED?

18 A. WHERE HE'D -- THEY SHOWED ME WHERE HE WAS SITTING AT AT
19 THE COUNTER WHEN HE WAS TAKEN INTO CUSTODY. THERE WAS A
20 BEER BOTTLE ON THE COUNTER WHERE HE WAS AT. AND I THINK
21 BRIAN TOLD ME THAT'S WHERE HE WAS AT AND HAD HIS HAND ON THE
22 BEER WHEN HE WALKED IN.

23 MS. ROSS: AND I'D OBJECT. HE OBVIOUSLY DIDN'T SEE
24 THIS WHILE HE WAS AROUND BACK.

25 THE COURT: I SUSTAIN THE OBJECTION. INSTRUCT THE JURY

1 TO DISREGARD THAT LAST COMMENT.

2 Q. IN YOUR OPINION DID HE SEEM INTOXICATED?

3 A. NO, MA'AM.

4 Q. AFTER HE WAS -- AFTER THE GUNSHOT RESIDUE KIT WAS
5 COLLECTED WERE YOU APPROACHED BY THE OWNER OF THAT CLUB?

6 A. THAT WAS WHILE THAT WAS GOING ON.

7 Q. AND WHO WAS THAT?

8 A. CARLOS ESTRADO. AND HE'S THE MANAGER -- I KNOW MR.
9 ESTRADO FROM A DIFFERENT INVESTIGATION. HE WALKED UP TO ME
10 AND REINTRODUCED HIMSELF. AND I TOLD HIM I REMEMBERED WHO
11 HE WAS. AND HE SAID, LISTEN, THIS GUY WALKED UP TO THE DOOR
12 ---

13 MS. ROSS: AGAIN, I'D OBJECT. ---

14 THE COURT: YEAH, I SUSTAIN THE OBJECTION TO THIS. NOW
15 I'M NOT GOING TO ALLOW THAT.

16 MS. HODGE: YES, SIR.

17 Q. DID MR. ESTRADO PREVIOUSLY TESTIFY?

18 A. YES.

19 Q. AS THE CLUB OWNER? THAT'S THE SAME PERSON YOU SPOKE TO
20 THAT NIGHT?

21 A. THAT'S THE SAME PERSON.

22 Q. AND AS A RESULT OF YOUR CONVERSATION OF MR. ESTRADO
23 WHAT DID YOU DO?

24 A. WE SEARCHED AROUND THE AREA FOR A WEAPON.

25 Q. WHERE DID YOU LOOK?

1 A. MAINLY WE LOOKED -- WE LOOKED IN THE SEATS OF VEHICLES,
2 THROUGH THE WINDOWS OF VEHICLES, UNDERNEATH VEHICLES, ON THE
3 TIRES OF VEHICLES, ALONG THE CURBS, IN THE TRASH CAN THAT
4 WAS OUTSIDE THE DOOR, JUST PLACES LIKE THAT.

5 Q. AND DID YOU FIND ANY WEAPON OF ANY KIND?

6 A. I DID NOT, NOT AT THAT TIME.

7 Q. DID YOU FIND ANY EVIDENCE OF ANY VALUE?

8 A. NO.

9 Q. BULLETS, SHELL CASINGS, ANYTHING LIKE THAT?

10 A. DID NOT.

11 Q. WHAT WAS YOUR NEXT STEP THEN?

12 A. WE FINISHED COLLECTING THE GSR. I MADE ARRANGEMENTS
13 FOR THE DEFENDANT TO BE TAKEN TO THE LAW ENFORCEMENT CENTER
14 BY DEPUTY WILL LEWIS AND WAS TOLD TO PUT HIM IN A SECURE
15 AREA AND KEEP HIM AWAY FROM ANYONE ELSE. GARRETT TOOK MR.
16 ALVARO, I MEAN, MR. FERNANDEZ TO THE LAW ENFORCEMENT CENTER
17 AT MY REQUEST SO WE COULD INTERVIEW HIM AGAIN AND GET A MORE
18 DETAILED STATEMENT AND INCLUDE THE ID OF THE DEFENDANT IN
19 HIS STATEMENT.

20 THEN I WENT BACK TO THE ORIGINAL SCENE WITH SERGEANT
21 BROWN. AND WE EXAMINED THE SCENE ONE MORE TIME TO MAKE SURE
22 THAT WE HAD DONE EVERYTHING THAT WE COULD TO PROCESS THE
23 SCENE THERE. AND THEN WE LEFT THAT LOCATION AND WENT TO THE
24 LAW ENFORCEMENT CENTER.

25 Q. AND WHAT DID YOU DO AT THE LAW ENFORCEMENT CENTER AT

1 THIS POINT?

2 A. AT THAT TIME WE INTERVIEWED MR. FERNANDO AND TOOK
3 ANOTHER WRITTEN STATEMENT FROM HIM.

4 Q. AND WHO HELPED YOU WITH THAT?

5 A. RAMON RIVERA DID.

6 Q. WAS THIS -- DID YOU PERSONALLY REQUEST RAMON TO COME
7 OUT ON THIS CASE?

8 A. I ASKED FOR RIVERA, IF HE WAS AVAILABLE WITH HIS
9 SUPERVISORS, AND THEY TOLD ME THAT HE WAS. AND THEN I ASKED
10 FOR HIM TO BE SENT IN. AND THEY -- BRIAN GARRETT'S THE ONE
11 THAT ACTUALLY CALLED HIM AND TOLD HIM TO COME AND MEET WITH
12 US.

13 Q. AND WHY DID YOU WANT RAMON RIVERA SPECIFICALLY?

14 A. I HAD WORKED WITH RAMON ON ANOTHER MURDER INVESTIGATION
15 WHERE IT BECAME APPARENT TO ME THAT HE WAS VERY FLUENT IN
16 SPANISH. AND HE WAS ABLE TO CARRY ON DETAILED CONVERSATIONS
17 AND UNDERSTAND THEM VERY, VERY WELL AND ABLE TO COMPREHEND
18 WHAT WAS BEING SAID. I KNEW THAT DEPUTY GARRETT'S MASTERY
19 OF THE LANGUAGE WAS VERY LIMITED. AND BECAUSE OF THE NATURE
20 OF THIS I WANTED SOMEONE ELSE WHO HAD BETTER SKILLS, BETTER
21 LANGUAGE SKILLS TO COME HELP ME WITH THIS INTERVIEW.

22 Q. SO THE FIRST INTERVIEW WAS THIS WITNESS, MR. FERNANDO?

23 A. RIGHT.

24 Q. ARE YOU ACTUALLY IN CHARGE OF THE INTERVIEWS IN THIS
25 CASE?

1 A. YES.

2 Q. AND WHAT DOES THAT MEAN?

3 A. WELL, BASICALLY I WAS KIND OF DIRECTING THE NATURE OF
4 THE QUESTIONS THAT NEEDED TO BE ASKED AND WHAT FOLLOW-UP ON
5 THE QUESTIONS FROM THE ANSWERS.

6 Q. AND WHERE WAS THE DEFENDANT WHILE YOU WERE CONDUCTING
7 THIS INTERVIEW WITH MR. FERNANDO?

8 A. HE'D BEEN TAKEN TO THE UNIFORM PATROL OFFICE, WHICH IS
9 A VERY LARGE OPEN AREA THAT'S SHARED BY SEVEN SERGEANTS, GOT
10 A LARGE OPEN AREA IN THERE. AND HE WAS SITTING IN A CHAIR
11 BACK THERE WITH DEPUTY LEWIS.

12 Q. AND AT THIS TIME DO YOU KNOW -- WELL, DID YOU PROVIDE
13 HIM ANYTHING TO DRINK, OR ANY FOOD, OR ANYTHING LIKE THAT TO
14 THE DEFENDANT?

15 A. NO. WHEN LEWIS WAS ASKED TO TAKE HIM AND GIVEN
16 INSTRUCTIONS TO TAKE HIM AND KEEP HIM SEPARATE, HE WAS TOLD
17 TO TAKE HIM TO THE BATHROOM IF HE NEEDED TO GO, MAKE SURE HE
18 WAS COMFORTABLE, IF HE HAD SOMETHING -- NEEDED SOMETHING TO
19 DRINK TO GIVE IT TO HIM.

20 Q. AFTER THE CONCLUSION OF MR. FERNANDO'S STATEMENT WHAT
21 DID YOU DO?

22 A. I ASKED MR. GARRETT, DEPUTY GARRETT, TO TAKE HIM BACK
23 AND THEN TOLD HIM TO COME BACK BECAUSE I WANTED HIM TO BE
24 PRESENT WHILE WE INTERVIEWED THE DEFENDANT.

25 Q. AND WHY WAS THAT?

1 A. LIKE I SAID, I HAVE VERY LITTLE LANGUAGE SKILLS IN THE
2 SPANISH LANGUAGE. I CAN ONLY SAY A FEW SENTENCES. I CAN
3 ASK SOMEBODY THEIR NAME AND HOW THEY'RE DOING. VERY
4 LIMITED. I WANTED SOMEBODY THAT HAD A BETTER MASTERY THAN
5 ME TO BE ABLE TO DO THESE INTERVIEWS UNDER MY DIRECTION, BUT
6 TO WITNESS THESE INTERVIEWS.

7 Q. MR. FERNANDEZ, DID YOU ATTEMPT TO LOCATE HIM FOR THIS
8 TRIAL?

9 A. I DID.

10 Q. AND WHAT ATTEMPTS DID YOU MAKE?

11 A. WE HAVE A SKIP TRACE PROGRAM WHERE WE CAN FIND PEOPLE
12 BASED ON ADDRESSES, DATES OF BIRTH, AND SOCIAL SECURITY
13 NUMBERS. I TALKED TO HIS PREVIOUS LANDLORD, CHECKED THE
14 MAILING ADDRESS, TRIED TO FIND OUT THROUGH THE POST OFFICE
15 IF HE HAD A FORWARDING ADDRESS. NONE OF THAT WAS FRUITFUL.

16 Q. SO YOU WERE NOT ABLE TO FIND HIM TO SERVE HIM WITH A
17 SUBPOENA TO BE HERE FOR COURT?

18 A. NO, MA'AM. STILL HAVE IT WITH ME.

19 Q. AND BEFORE WE GET TO YOUR INTERVIEW WITH THE DEFENDANT
20 I'D LIKE TO GO TO ANY OTHER WITNESS ON JULY 18TH OR IN THE
21 NEXT TWENTY-FOUR HOURS IN RELATION TO THIS CASE. DID YOU
22 SPEAK TO ANOTHER WITNESS IN THIS CASE?

23 A. MANIOR NAVARRO.

24 Q. WAS HE PROVIDED -- A NAME PROVIDED TO YOU IN THE
25 BEGINNING OR WAS IT SOMEONE YOU TALKED TO AT THE SCENE?

1 A. HE WAS ONE OF THE PEOPLE THAT WAS LISTED IN THE REPORT
2 THAT WAS TAKEN BY DEPUTY BENDIG. HE WAS ONE OF THE PEOPLE
3 THAT WAS LENDING ASSISTANCE TO THE VICTIM AT THE SCENE.

4 Q. AND WHEN DID YOU SPEAK TO HIM?

5 A. THE NEXT DAY.

6 Q. AND DID HE SPEAK ENGLISH?

7 A. A VERY LITTLE BIT. I UTILIZED ANOTHER HISPANIC
8 EMPLOYEE, A VICTIM ADVOCATE, NAMED LILLIAN GARCIA TO ASSIST
9 ME IN THAT INTERVIEW.

10 Q. AND WHERE DID THIS INTERVIEW TAKE PLACE?

11 A. IN THE VICTIM ADVOCATE'S OFFICE AT THE LAW ENFORCEMENT
12 CENTER.

13 Q. AND WHERE IS MS. GARCIA FROM?

14 A. SHE'S OF PUERTO RICAN DESCENT, BUT SHE GREW UP IN NEW
15 YORK.

16 Q. DOES SHE SPEAK FLUENT SPANISH?

17 A. OH, YES.

18 Q. IN ADDITION -- WELL, DID YOU TAKE A WRITTEN STATEMENT
19 FROM MR. NAVARRO?

20 A. I DID.

21 Q. AND WHAT IS HIS FULL NAME?

22 A. MANIOR RODRICKO NAVARRO ABARCA IS HIS FULL NAME.

23 Q. AND WAS HE COOPERATIVE WITH YOU?

24 A. YES, VERY.

25 Q. AND IN TAKING A STATEMENT FROM HIM DID YOU ALSO PREPARE

1 A PHOTO LINEUP FOR HIM TO LOOK AT?

2 A. I DID.

3 Q. DID YOU PLACE THE DEFENDANT'S PICTURE IN THERE?

4 A. I DID.

5 MS. ROSS: YOUR HONOR, I'M GOING TO OBJECT. THEY CAN
6 HAVE THE WITNESS HERE TO BE UNDER CROSS EXAMINATION UNDER
7 CRAWFORD V. WASHINGTON. IF YOU DON'T HAVE A WITNESS ---

8 MS. HODGE: I BELIEVE THIS OFFICER CAN TESTIFY TO WHAT
9 HE DID.

10 THE COURT: GO AHEAD.

11 Q. DID YOU PREPARE A PHOTO LINEUP WITH THE DEFENDANT'S
12 PHOTO IN THAT LINEUP?

13 A. I DID.

14 Q. AND WHEN YOU PREPARE A PHOTO LINEUP HOW DO YOU PREPARE
15 IT?

16 A. GO INTO OUR PHOTOGRAPHIC DATABASE, I GET A PHOTOGRAPH
17 OF THE PERSON OF INTEREST. I THEN TAKE THAT PHOTOGRAPH AND
18 USE IT AS A COMPARISON. AND IN THE DATABASE WE CAN SET UP
19 PARAMETERS LIKE DATE OF BIRTH, DATE OF ARREST, HEIGHT,
20 WEIGHT, SKIN TONE, HAIR COLOR, LENGTH, FACIAL HAIR. AND
21 BASED ON THE DESCRIPTION OF THE PERSON OF INTEREST WE CAN
22 SET THOSE PARAMETERS.

23 THE DATABASE WILL THEN SINGLE OUT PEOPLE THAT MEET
24 THOSE DESCRIPTIONS. THEN IT RANDOMLY PUTS FIVE PICTURES
25 WITH THE PERSON OF INTEREST. AND THEN WE CAN GO TO EACH ONE

1 INDIVIDUAL PICTURE AND THEN CONTINUE TO SELECT UNTIL WE HAVE
2 PICTURES THAT ARE SUITABLE TO USE WHERE PEOPLE HAVE THE SAME
3 BASIC HAIR STYLE, THEY HAVE THE SAME BASIC HAIR LENGTH, TONE
4 OF THEIR SKIN IS BASICALLY THE SAME, THE BACKGROUND THAT THE
5 PHOTOGRAPH IS TAKEN AGAINST IS ALL THE SAME.

6 ONCE WE DO THAT THEN WE ACTUALLY CROP THE PICTURES AND
7 JUST FOCUS ON THE HEAD AND THE FACE JUST SO THEY'RE NOT
8 INFLUENCED BY CLOTHING OR ANYTHING LIKE THAT. ONCE WE'VE
9 DONE THAT WE SET THE LINEUP IN THE DATABASE AND WE PRINT THE
10 PICTURE.

11 Q. SO IS YOUR -- THE OBJECTIVE OF THAT DATABASE TO GATHER
12 PEOPLE THAT ARE VERY SIMILAR LOOKING?

13 A. YES.

14 Q. AND WHEN YOU PRESENT -- DID YOU PRESENT A PHOTO LINEUP
15 TO MR., I'M GOING TO SAY ABARCA?

16 A. YES.

17 Q. WHEN YOU PRESENTED IT TO HIM -- WHAT DO YOU TELL PEOPLE
18 WHEN YOU PRESENT A PHOTO LINEUP?

19 A. I GIVE THEM A WARNING OR NOT A WARNING, BUT AN
20 ADVISEMENT. I TELL THEM THAT I'M GOING TO SHOW YOU A CARD
21 THAT HAS SIX PICTURES ON IT. AND MOST OF THE TIME WE'RE
22 SHOWING THE VICTIMS OF A CRIME. BUT IN HIS CASE HE WASN'T A
23 VICTIM. AND THEN I WOULD SAY -- I SAID TO HIM, THE PERSON
24 THAT YOU SAW SHOOT THE GUY MAY OR MAY NOT BE IN ONE OF THESE
25 PICTURES. I WANT YOU TO LOOK CAREFULLY AT ALL THE PICTURES.

1 IF YOU SEE THE PERSON IN THOSE PICTURES AND YOU'RE SURE
2 BEYOND A REASONABLE DOUBT, THEN LET ME KNOW. IF YOU DON'T
3 SEE HIM, THEN DON'T IDENTIFY ANYBODY.

4 Q. AND DID YOU DO THAT IN THIS CASE WITH MR. ABARCA?

5 A. YES, MA'AM.

6 Q. AND DID HE VIEW THE LINEUP?

7 A. HE DID.

8 Q. AND HAVE YOU BEEN ABLE TO LOCATE MR. ABARCO FOR THIS
9 TRIAL?

10 A. NO, MA'AM.

11 Q. AND WHAT ATTEMPTS DID YOU MAKE TO FIND HIM?

12 A. I USED THE SKIP TRACE DATABASE. WE HAD -- HE ACTUALLY
13 HAD A PHOTO ID FROM COSTA RICA THAT WE MADE A COPY OF AND
14 KEPT IN THE FILE. AND WE USED THE SKIP TRACE AND DATABASE
15 TO CHECK THE MAILING ADDRESS DATABASES. I ACTUALLY THOUGHT
16 I HAD LOCATED HIM ON DEMPSEY STREET AND WENT TO SERVE HIM,
17 AND IT TURNED OUT NOT TO BE THE SAME GUY. I WAS UNABLE TO
18 LOCATE HIM.

19 Q. SO YOU'VE NEVER FOUND HIM SINCE THE DAY YOU TOOK THE
20 STATEMENT?

21 A. NO, MA'AM.

22 MS. ROSS: AND, YOUR HONOR, I'D OBJECT AGAIN. IT
23 DOESN'T MATTER WHETHER HE COULD FIND HIM OR NOT AS FAR AS
24 HAVING WITNESSES HERE TO CROSS EXAMINE.

25 THE COURT: IS THIS AS FAR AS YOU'RE GOING WITH IT?

1 MS. HODGE: THAT'S IT, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 Q. NOW I'D LIKE TO GO BACK TO THE EVENING BEFORE OR I
4 SHOULD SAY THE MORNING BEFORE, THE JULY 18TH.

5 A. YES, MA'AM.

6 Q. AND YOU'D FINISHED WITH WITNESS FERNANDEZ AND NOW
7 YOU'RE GETTING READY TO TALK TO THE DEFENDANT, IS THAT
8 CORRECT?

9 A. YES.

10 Q. AND DID YOU GET A PHONE CALL FROM INVESTIGATOR GARRETT
11 PRIOR TO STARTING THIS INTERVIEW?

12 A. YES.

13 Q. AND WERE YOU -- DID HE TELL YOU ABOUT THE WEAPON HE'D
14 LOCATED?

15 A. YES.

16 Q. AND YOU WAITED FOR HIM TO COME BACK?

17 A. I DID.

18 Q. WHO ELSE WOULD HAVE BEEN IN THE ROOM WITH YOU AND THE
19 DEFENDANT FOR HIS WAIVER AND HIS STATEMENT?

20 A. THAT WAS ALL. JUST ME, DEPUTY GARRETT, AND DEPUTY
21 RIVERA.

22 Q. AND THE DEFENDANT?

23 A. YES.

24 Q. DID YOU WITNESS THE -- DEPUTY RIVERA READ THE WAIVER OF
25 RIGHTS STATEMENT TO THE DEFENDANT?

1 A. YES. BEFORE HE DID I GAVE HIM THE FORM AND TOLD HIM
2 THAT I WANTED HIM TO DO IT STEP BY STEP, TO COVER EACH
3 SENTENCE INDIVIDUALLY AND THEN MAKE SURE THAT HE UNDERSTOOD
4 EACH SENTENCE BEFORE HE WENT TO THE NEXT SENTENCE.

5 Q. LET ME SHOW YOU STATE'S NUMBER 16.

6 A. YES, MA'AM.

7 Q. AND WERE YOU TOLD THAT THE DEFENDANT COULD NOT SPEAK,
8 OR EXCUSE ME, COULD NOT READ OR WRITE SPANISH?

9 A. YES.

10 Q. AND YOU CHOSE A SPANISH FORM THOUGH?

11 A. YES.

12 Q. AND IS THERE ANY REASON YOU CHOSE SPANISH OVER ENGLISH?

13 A. SPANISH IS HIS LANGUAGE, HIS SPOKEN LANGUAGE. AND
14 WHETHER HE COULD READ IT OR NOT, IT'S DEFINITELY THE ONE
15 THAT HE COULD PROBABLY UNDERSTAND THE BEST. AND SO WE
16 UTILIZED THIS FORM SO THERE WOULD NOT BE ANY PROBLEMS WITH
17 TRANSLATION.

18 Q. AND YOU INSTRUCTED DEPUTY RIVERA ON HOW TO GO OVER THE
19 WAIVER?

20 A. YES.

21 Q. DID HE FOLLOW YOUR INSTRUCTIONS?

22 A. TO THE LETTER.

23 Q. AND DID YOU THEN WITNESS HIM READING ONE RIGHT TO THE
24 DEFENDANT AND THE DEFENDANT INITIALING AS HE UNDERSTOOD?

25 A. YES.

1 Q. IN YOUR OPINION DID THE DEFENDANT SEEM TO UNDERSTAND
2 WHERE HE WAS AND WHAT WAS GOING ON?

3 A. YES.

4 Q. DID HE SEEM TO UNDERSTAND THE SEVERITY OF THE
5 SITUATION?

6 A. YES. BEFORE WE EVEN GOT STARTED HE WAS TOLD WHY WE
7 WERE GOING TO TALK TO HIM, WE WANTED TO TALK TO HIM. I TOLD
8 HIM THROUGH RIVERA TO TELL HIM THAT WE HAD ARRESTED HIM FOR
9 SHOOTING A GUY AT THE TACO STAND. WITNESSES HAD ALREADY
10 IDENTIFIED HIM AND ONE DIRECTED US TO THE MEXICALI WHERE WE
11 ARRESTED HIM, THAT WE'D FOUND A GUN HIDDEN IN THE TREE. WE
12 WANTED HIM TO TELL US ABOUT WHAT HAD HAPPENED. WE WANTED
13 HIM TO TELL US ABOUT THE INCIDENT. AND THIS WAS BEFORE WE
14 EVEN READ THE WAIVER OF RIGHTS TO HIM.

15 Q. IS THAT NORMAL COURSE ---

16 A. IT IS FOR ME.

17 Q. THAT'S HOW YOU CONDUCT YOUR INTERVIEWS TO START WITH?

18 A. YES, MA'AM.

19 Q. GIVE SOME INFORMATION AND THEN GO OVER THE WAIVER OF
20 RIGHTS?

21 A. YES.

22 Q. AND IN YOUR OPINION DID THE DEFENDANT SIGN EACH OF
23 THOSE LINES FREELY AND VOLUNTARILY WAIVING HIS RIGHTS?

24 A. YES.

25 Q. AND WHEN I SAY THAT, DID YOU OR ANYONE ELSE TRY TO

1 FORCE HIM, OR THREATEN HIM, OR PHYSICALLY HARM HIM IN ANY
2 WAY TO MAKE HIM SIGN THAT WAIVER OF RIGHTS?

3 A. NO.

4 Q. HOW ABOUT DID YOU DO ANYTHING IN THE OTHER EXTREME,
5 PROMISE HIM ANYTHING REALLY GOOD, OR, HEY, WE'LL JUST LET
6 YOU WALK OUT OF HERE IF YOU TELL US WHAT HAPPENED?

7 A. NO.

8 Q. AND DID YOU PROVIDE HIM WITH ANYTHING? HE MAY HAVE
9 REQUESTED FOOD, OR WATER, OR BATHROOM, OR SMOKE BREAK, OR
10 ANYTHING LIKE THAT?

11 A. DEPUTY WILL LEWIS HAD TAKEN HIM TO THE RESTROOM. HE'D
12 BEEN FURNISHED A CUP OF COFFEE. WHEN HE CAME INTO -- WHEN
13 WE WENT AND BROUGHT HIM FROM THE UNIFORM PATROL OFFICE TO
14 THE VIOLENT CRIME OFFICE WE GAVE HIM ANOTHER CUP OF COFFEE
15 IN A STYROFOAM CUP THAT WAS BY HIS DESK. TO MAKE SURE HE
16 WAS COMFORTABLE WE UTILIZED A WAIST BELT AND HANDCUFFED HIM
17 IN FRONT WITH A WAIST BELT. AND SO HE'D BE ABLE TO MOVE HIS
18 ARMS IN A LIMITED FASHION, THE BELT WAS VERY LOOSE.

19 Q. IS THAT DIFFERENT FROM HOW HE WAS HANDCUFFED ON THE
20 SCENE WHEN HE WAS ARRESTED?

21 A. YES. BEFORE HE WAS TRANSPORTED HE WAS HANDCUFFED
22 BEHIND HIS BACK.

23 Q. AND THAT'S NORMAL COURSE FOR ARRESTING PEOPLE ON THE
24 SCENE?

25 A. YES.

1 Q. BUT ONCE YOU GET THEM INTO YOUR INTERVIEW AREA YOU
2 LOOSEN IT UP A LITTLE BIT?

3 A. YES.

4 Q. DID HE COMPLAIN OF THE BELT BEING TOO TIGHT, OR THE
5 CUFF BEING TOO TIGHT, OR ANYTHING LIKE THAT?

6 A. NO.

7 Q. ONCE HE COMPLETED HIS WAIVER OF RIGHTS -- WELL, LET ME
8 BACK UP A LITTLE BIT. DID YOU -- OBVIOUSLY YOU DON'T SPEAK
9 SPANISH AS FLUENTLY AS GARRETT OR RIVERA. DO YOU KNOW ANY
10 WORDS IN SPANISH?

11 A. JUST A FEW.

12 Q. DO YOU KNOW THE WORD NO IN SPANISH?

13 A. IT'S NO.

14 Q. DID HE EVER SAY, NO, I DON'T WANT TO DO THIS OR, NO, I
15 DON'T WANT TO TALK?

16 A. NO. HE NEVER INDICATED THAT HE DIDN'T WANT TO DO -- HE
17 DIDN'T INDICATE ANYTHING OTHER THAN HE WAS WILLING TO
18 COOPERATE WITH US. HE WAS DOING WHAT WE ASKED HIM TO DO.

19 Q. DO YOU KNOW WHAT THE WORD FOR ATTORNEY IS IN SPANISH?

20 A. ABOGADO.

21 Q. DID YOU HEAR THAT WORD?

22 A. NEVER.

23 Q. AFTER HE SIGNED -- WELL, DID YOU SEE HIM SIGN THE
24 WAIVER OF RIGHTS FORM ALSO?

25 A. YES.

1 Q. WAS IT KIND OF A DIFFICULT PROCESS FOR HIM?

2 A. HE WAS DELIBERATE IN MAKING HIS LETTERS. HE HAD TO
3 LEAN UP ON THE DESK AND PULL HIS HANDS UP. AND IT WAS VERY
4 DELIBERATE IN HIS MOTIONS AND IN MAKING THE LETTERS.

5 Q. DID HIS HANDWRITING LOOK KIND OF SLOPPY, IN YOUR
6 OPINION?

7 A. YES.

8 Q. ONCE THE WAIVER OF RIGHTS WAS CONCLUDED THEN WERE YOU
9 PRESENT FOR THE STATEMENT?

10 A. I WAS.

11 Q. AND DID YOU CONDUCT ACTUALLY THE INTERVIEW FOR THE
12 STATEMENT?

13 A. THROUGH DEPUTY RIVERA I HAD PROVIDED QUESTIONS THAT
14 NEEDED TO BE ASKED. DEPUTY RIVERA TRANSLATED THEM TO
15 SPANISH. THEY WOULD HAVE A SENTENCE OR TWO EXCHANGE.
16 RIVERA WOULD TELL ME WHAT THE ANSWER WAS. AND HE WOULD TYPE
17 IT ON THE FORM.

18 Q. AND HOW DID THIS START? WHAT WAS THE FIRST QUESTION
19 ASKED?

20 A. WELL, WE ASKED HIM TO PUT IT ON PAPER THAT HE'D NEVER
21 BEEN TO SCHOOL. THAT WAS THE FIRST THING.

22 Q. SO THERE WAS NO TRYING TO GLOSS OVER THAT?

23 A. NO.

24 Q. AND WHEN HE WAS SPEAKING TO YOU TO GIVE YOU THE
25 STATEMENT AT ANYTIME DURING THE STATEMENT PROCESS DID HE

1 EVER STOP? DID HE STOP ANSWERING QUESTIONS, ANYTHING LIKE
2 THAT?

3 A. THERE WAS ONE POINT WHERE HE PAUSED FOR A LONG TIME.
4 AND I SAY A LONG TIME, IT WAS SEVERAL SECONDS. AND RIVERA
5 ASKED HIM, WHAT, WHAT, WHAT? AND THEN HE ANSWERED HIS
6 QUESTION. AND OTHER THAN THAT IF HE ASKED HIM A QUESTION
7 THE DEFENDANT IMMEDIATELY ANSWERED EVERY TIME. AND IT WAS
8 AN EXCHANGE BACK AND FORTH JUST THAT FAST.

9 Q. AND THE DEFENDANT'S SPEECH, EVEN THOUGH YOU COULDN'T
10 UNDERSTAND THE WORDS, WAS HIS SPEECH COHERENT, NOT SLURRED
11 IS WHAT, I GUESS, I'M SAYING?

12 A. YES. HE WAS VERY COHERENT.

13 Q. AND SPANISH IS A MUCH MORE RAPID LANGUAGE THAN ENGLISH?

14 A. YES.

15 Q. DID IT APPEAR TO BE IN A NORMAL TYPE OF ---

16 A. NORMAL. IT WAS A RAPID PACED CONVERSATION. THE WORDS
17 WOULD -- HE WOULD ANSWER JUST AS RAPIDLY AS DEPUTY RIVERA
18 WOULD ASK HIM.

19 Q. DID IT APPEAR TO YOU THERE WAS ANY LANGUAGE BARRIER
20 BETWEEN DEPUTY RIVERA AND MARLON RIVERA?

21 A. NO.

22 Q. AND WHAT DID THE DEFENDANT SAY WHEN YOU STARTED ASKING
23 HIM QUESTIONS FOR HIS STATEMENT?

24 A. WELL, I ASKED HIM TO MENTION SOMETHING ABOUT GOING TO
25 SCHOOL. AND THEN I ASKED HIM TO MENTION SOMETHING ABOUT

1 DEPUTY RIVERA TYPING HIS STATEMENT FOR HIM. AND THOSE WERE
2 THE FIRST TWO SENTENCES. AND THEN WE WENT OVER THAT HE HAD
3 BEEN READ HIS WAIVER OF RIGHTS FORM AND THAT HE HAD SIGNED
4 THEM. AND THEN WE ASKED HIM TO TELL US WHAT HAPPENED. AND
5 THEN HE SAID THAT -- HE GAVE US HIS STATEMENT ABOUT WHAT HAD
6 HAPPENED, HIS VERSION OF WHAT HAD HAPPENED.

7 Q. AND LET'S START AT THE BEGINNING OF HIS STATEMENT.
8 WHERE DID HE SAY THAT HE WAS?

9 A. HE SAID I WAS DOWN NEAR THE DON PEPE RESTAURANT WITH
10 SOME FRIENDS. AND HE SAID THOSE FRIENDS WERE BLACK. AND
11 THAT'S ONE OF THE QUESTIONS THAT I THEN ASKED HIM TO
12 CLARIFY. I SAID, WHAT DO YOU MEAN BLACK FRIENDS? AND HE
13 SAID, BLACK GUYS. AND I SAID, ARE YOU TALKING LIKE AMERICAN
14 BLACK GUYS OR WHAT? AND HE EXPLAINED THROUGH RIVERA THAT
15 SOMETIMES THEY REFER TO HISPANIC PEOPLE AS BLACK DEPENDING
16 ON WHERE THEY'RE FROM. AND I SAID, SO THEN ASK HIM WERE
17 THESE BLACK GUYS OR THE BLACK GUYS HE'S TALKING ABOUT FROM
18 SOME OTHER LATIN AMERICAN COUNTRY. AND HE SAID, NO, THEY'RE
19 AMERICAN BLACK GUYS.

20 Q. SO HE WAS TELLING YOU WHERE HE WAS AND WHO HE WAS WITH?

21 A. RIGHT.

22 Q. GO AHEAD.

23 A. AND THEN WE ASKED HIM WHAT KIND OF CLOTHES HE WAS
24 WEARING. AND HE SAID A DARK SHIRT AND JEANS. WE ASKED HIM
25 IF HE HAD A GUN. HE SAID I WAS CARRYING A GUN. THE

1 FOLLOWUP TO THAT WAS WHERE HE HAD GOTTEN THE GUN FROM. AND
2 HE SAID I WAS CARRYING A GUN THAT I'D GOTTEN FROM ANTONIO
3 MENDOZA. ANTONIO MENDOZA HAD BEEN LOCKED UP THE PREVIOUS
4 DAY FOR CRIMINAL DOMESTIC VIOLENCE.

5 Q. DID YOU VERIFY THAT?

6 A. YES.

7 Q. AND DO YOU HAVE ACCESS TO THE JAIL SCREEN AND COMPUTER?

8 A. YES.

9 Q. SO THEN AN ANTHONY MENDOZA WAS IN FACT ARRESTED THE DAY
10 BEFORE?

11 A. YES.

12 Q. AND AS FAR AS THE DEFENDANT, WHEN YOU ASKED HIM WHAT HE
13 WAS WEARING, WAS HE WEARING THE SAME THING AT THE INTERVIEW
14 THAT HE WAS WEARING AT THE TIME OF THE INCIDENT ---

15 A. NO.

16 Q. --- ACCORDING TO HIM?

17 A. NO.

18 Q. HE SAID HE WAS WEARING A DARK SHIRT?

19 A. HE WAS WEARING A DARK COLORED SHIRT AND JEANS. AND HE
20 SAID HE WAS CARRYING A GUN THAT HE GOT FROM MENDOZA. AND WE
21 ASKED HIM TO DESCRIBE THE GUN. AND HE SAID IT WAS A SILVER
22 REVOLVER THAT WAS .22 CALIBER AND ASKED HIM HOW HE WAS
23 CARRYING IT. AND HE SAID I HAD IT IN MY WAIST BAND. AND
24 THEN WE -- HE SAID WE STAYED THERE AND WE TALKED A WHILE.
25 AND AFTER A WHILE HE SAID HIS BLACK FRIENDS SAID THEY NEEDED

1 TO GO HOME BECAUSE THEY HAD TO WORK. AND WE ASKED HIM DID
2 HE GO WITH THEM. HE SAID HE WALKED WITH THEM TOWARD
3 BARRINGTON PARK. AND WHILE HE WAS ---

4 MS. ROSS: YOUR HONOR, I'D JUST OBJECT TO THIS LINE.
5 WE'VE READ THE STATEMENT INTO EVIDENCE. THE INVESTIGATOR
6 WHO IS GIVING TESTIMONY DIDN'T UNDERSTAND SPANISH, DIDN'T
7 ACTUALLY UNDERSTAND WHAT WAS BEING SAID IN EXCHANGE.
8 OFFICER RIVERA TESTIFIED, SPEAKS SPANISH. HE COULD HAVE
9 GONE THROUGH THIS A, B, C AND SAID THIS IS WHAT I ASKED,
10 THIS IS WHAT HE SAID BECAUSE HE KNEW WHAT MARLON RIVERA
11 ACTUALLY SAID. THIS OFFICER DOES NOT SPEAK SPANISH. SO
12 WITH HIS EARS WOULD NOT KNOW WHAT MARLON RIVERA ACTUALLY
13 SAID ---

14 THE COURT: WELL, AS I UNDERSTAND, HE'S REPEATING WHAT
15 WAS TOLD TO HIM BY OFFICER RIVERA.

16 MS. HODGE: THAT'S CORRECT. IN ADDITION BECAUSE HE
17 ASKED THE QUESTIONS ---

18 THE COURT: GO AHEAD.

19 A. HE SAID THAT WHILE THEY WERE WALKING AWAY SOME OTHER
20 FRIENDS WHO WERE HISPANIC HAD CALLED OUT TO HIM, AND THEY
21 WERE STANDING AT THE TACO STAND. AND ONE OF THOSE
22 APPROACHED HIM AND ASKED HIM WHY HE WAS HANGING OUT WITH
23 THOSE BLACK GUYS. AND THEN THE FOLLOWUP TO THAT WAS WHAT
24 HAPPENED NEXT? AND HE SAID THE GUY THAT HE SAID HE KNOWNED,
25 BUT HE'S NOT HIS FRIEND, GRABBED HIM AND ASKED HIM WHY HE

1 WAS HANGING AROUND WITH BLACK PEOPLE. THEN HE GRABBED HIS
2 SHIRT AND STARTED PUSHING HIM AROUND.

3 AND THEN HE SAID WE STRUGGLED FOR A LITTLE BIT, AND THE
4 GUY FINALLY LET GO OF ME. AND THEN I SAID -- I ASKED, I
5 SAID ASK HIM WAS HE MAD. AND HE SAID, YEAH, I WAS MAD. AND
6 WE ASKED HIM WHY HE WAS MAD. AND HE SAID BECAUSE HE HIT ME.
7 AND THAT CAME OUT THE SECOND TIME IN THIS ONE ANSWER.

8 Q. LET ME STOP YOU THERE. DID HE HAVE ANY INJURY THAT WAS
9 EVIDENCE OF BEING HIT?

10 A. NO.

11 Q. AND DID HE EVER SAY THAT THE PERSON HE WAS FIGHTING
12 WITH HAD A WEAPON OR ANYTHING?

13 A. NO.

14 Q. ALL RIGHT.

15 A. SO THEN HE SAID HE WENT TO GRAB HIS GUN, BUT IT FELL
16 DOWN HIS LEG. AND THE GUN WENT DOWN HIS LEG AND ONTO THE
17 GROUND. HE STOOPED DOWN AND PICKED IT UP. AND THEN ASKED
18 HIM WHAT HAPPENED NEXT. AND HE SAID I GRABBED THE GUN, I
19 POINTED AT HIM, BUT HE NEVER WOULD SAY WHO HIM WAS. AND HE
20 SAID HE SHOT IT TWO TIMES.

21 AND WE ASKED HIM AT THAT POINT DID ANYBODY ELSE GRAB
22 THE GUN AND SHOOT IT. AND HE SAID, NO. AND THERE WAS AN
23 EXCHANGE ABOUT, WELL, WE'VE BEEN TOLD THAT THERE WAS THIS
24 OTHER GUY THAT WAS THERE FIGHTING WITH YOU. DID ANYBODY
25 ELSE SHOOT THE GUN? AND HE SAYS, NO, HE SHOT THE GUN TWO

1 TIMES. AND THEN HE SAYS THAT HIS FRIEND COMES UP TO ME AND
2 SAYS, OKAY, YOU'VE ALREADY SHOT THE GUY, LET'S GO.

3 Q. WOULD HE IDENTIFY WHO THE FRIEND WAS?

4 A. NO.

5 Q. DID HE EVER GIVE YOU A NAME ---

6 A. HE NEVER WOULD IDENTIFY WHO THE PERSON WAS.

7 Q. SO THEN WHAT?

8 A. HE SAID HE PUT THE GUN IN HIS POCKET AND THEY BOTH
9 LEFT. AND HE WAS WALKING TOWARD HIS APARTMENT BUILDING, HE
10 TOOK THE GUNS OUT OF THE GUN, THE BULLETS OUT OF THE GUN AND
11 DROPPED THEM ON THE GROUND. AND THEN HE WENT INTO HIS
12 APARTMENT AND DRANK SOME WATER AND CHANGED SHIRTS.

13 AND THEN HE LEFT HIS APARTMENT AND WALKED TOWARD THE
14 MEXICALI. AND WE ASKED HIM WHAT HAPPENED THERE. AND HE
15 SAID THE GUY PATTED HIM DOWN, ASKED HIM IF HE HAD A GUN,
16 TOLD HIM THAT HE DID, BUT HE KNEW THAT HE WOULD GO PUT IT
17 UP. AND SO HE WALKED AWAY. AND THEN HE PUT IT IN A TREE.
18 AND THEN HE RETURNED TO THE MEXICALI AND WENT IN AND HAD A
19 BEER.

20 AND THEN WE ASKED HIM WHAT HAPPENED BETWEEN THERE. AND
21 HE SAID, WELL, I STAYED THERE UNTIL YOU GUYS CAME AND
22 ARRESTED ME. AND HIS ANSWER WAS A LITTLE WHILE LATER THE
23 POLICE CAME AND ARRESTED ME.

24 AND THEN RIVERA ACTUALLY PRINTED THIS OFF AND READ IT
25 TO HIM. HE SAID IT WAS RIGHT. AND THEN WE ADDED THE NEXT

1 SENTENCES. ALL THIS HAS BEEN READ TO ME AND IS WHAT I'VE
2 TOLD YOU ABOUT WHAT HAS HAPPENED AND TOLD HIM WE WERE
3 PUTTING IT IN THERE. AND HE WAS AGREEABLE TO THAT. WE
4 PRINTED OFF THE SECOND COPY WITH THAT ADDED TO IT. AND THEN
5 WE ASKED HIM TO SIGN -- SHOWED HIM WHERE TO PUT HIS INITIALS
6 BY THE DATE, HIS NAME AT THE END OF THE SENTENCE, AND WHERE
7 TO SIGN IT AT.

8 Q. AND ONCE IT WAS PRINTED OFF AND READ TO HIM, EVEN
9 THOUGH YOU MAY NOT HAVE UNDERSTOOD THE WORDS, DID HE EVEN
10 SAY ANYMORE THINGS OR DID HE SCRATCH ANYTHING, OR POINT TO
11 ANYTHING ---

12 A. NO.

13 Q. --- THAT WOULD REQUIRE CHANGING THE STATEMENT?

14 A. NO.

15 Q. AND DURING THE GIVING OF THIS STATEMENT WAS HE EVER
16 FORCED, OR THREATENED, OR PHYSICALLY HARMED TO BE MADE TO
17 GIVE THIS STATEMENT?

18 A. NO.

19 Q. HOW ABOUT PROMISED ANYTHING AGAIN?

20 A. NO.

21 Q. GIVE US THE STORY, WE'LL LET YOU GO, ANYTHING LIKE
22 THAT?

23 A. NO.

24 Q. DID HE EVER REQUEST ANYTHING OF ANYBODY IN THERE THAT
25 HE WANTED TO CALL HOME, OR A FRIEND, OR GO TO THE BATHROOM,

1 ANYTHING LIKE THAT?

2 A. NO.

3 Q. HOW LONG DO YOU THINK THIS PROCESS LASTED?

4 A. CLOSE TO TWO HOURS TOTAL.

5 Q. AT THE CONCLUSION OF THE STATEMENT AND HIM SIGNING OFF
6 ON HIS STATEMENT WHAT DID YOU DO THEN?

7 A. WELL, WE HAD TO WAIT A FEW MINUTES FOR THE NIGHT
8 MAGISTRATE TO MAKE SURE THAT THE SHIFT HAD CHANGED AND THE
9 MAGISTRATE WAS ON DUTY. WE THEN STARTED WALKING OVER TO THE
10 DETENTION CENTER WHERE THE MAGISTRATE'S OFFICE WAS. AND AS
11 WE WERE WALKING UP THE HILL HE STARTED HAVING AN EXCHANGE
12 WITH RIVERA.

13 Q. DID YOU ASK RIVERA WHAT HE WAS SAYING?

14 A. YEAH. RIVERA KIND OF LAUGHED. AND I SAID, WHAT DID HE
15 SAY? AND HE SAID, THIS IS TAKING ENTIRELY TOO LONG. YOU
16 GUYS ARE BEING TOO NICE ABOUT IT.

17 MS. ROSS: AND I'D RENEW THE PRIOR OBJECTION TO
18 HEARSAY.

19 THE COURT: I UNDERSTAND. GO AHEAD.

20 A. AND THEN I ASKED RIVERA WHAT HE MEANT. AND HE SAID,
21 WELL, HE SAID IN MY COUNTRY THEY'D PUT A BAG OVER THE HEAD
22 AND BEAT US.

23 Q. SO HE THOUGHT YOU WERE BEING ENTIRELY TOO NICE ABOUT
24 THIS WHOLE THING?

25 A. RIGHT.

1 Q. AND AT THE TIME DID YOU SWEAR OUT A WARRANT FOR ASSAULT
2 AND BATTERY WITH INTENT TO KILL IN THIS CASE?

3 A. I DID.

4 Q. AND WHY IS THAT?

5 A. THE VICTIM HAD NOT YET DIED. HE WAS STILL ON LIFE
6 SUPPORT. AND THEY WERE TRYING TO GET A HOLD OF HIS WIFE TO
7 DETERMINE WHAT MEDICAL TREATMENT THAT THEY WANTED TO PURSUE.
8 HE WOULD HAVE -- TO TRY TO HAVE -- TO SAVE HIS LIFE IT WOULD
9 HAVE REQUIRED SOME SORT OF SURGERY. AND THEY NEEDED TO GET
10 SOMETHING -- SORT OF PERMISSION TO DO THAT.

11 Q. AT SOME POINT DID THEY TAKE HIM OFF OF LIFE SUPPORT?

12 A. YES. THEY DETERMINED THAT HE WAS BRAIN DEAD. AND THEY
13 NOTIFIED HIS WIFE. AND THEY TOOK HIM OFF OF LIFE SUPPORT.

14 Q. DID HE DIE IMMEDIATELY?

15 A. I THINK HE LINGERED AROUND A LITTLE BIT BEFORE HE
16 FINALLY PASSED AWAY.

17 Q. DO YOU KNOW WHAT DAY HE DIED?

18 A. I THINK IT WAS ON THE 20TH.

19 Q. AND WHAT WAS THE NEXT STEP THEN THAT YOU DID IN THIS
20 CASE?

21 A. I ATTENDED THE AUTOPSY OF THE VICTIM. IT WAS DONE BY
22 DR. CHRISTENSEN. THERE WAS A MEDICAL STUDENT IN THERE WITH
23 HIM. DEPUTY CORONER BRYANT WAS THERE AND THE ASSISTANT,
24 SHARON KNIGHT WAS THERE.

25 Q. AND DURING THE AUTOPSY DID YOU COLLECT THE BULLET FROM

1 DR. CHRISTENSEN THAT WAS IN THE VICTIM'S HEAD?

2 A. YES.

3 Q. AND YOU PLACED IT IN PROPERTY AND EVIDENCE?

4 A. YES.

5 Q. AND WHAT SPECIFIC THING DID YOU REQUEST TO BE DONE WITH

6 THAT BULLET?

7 A. I SUBMITTED A LAB REQUEST FOR OUR BALLISTIC LABORATORY

8 TO COMPARE THE BULLET THAT WAS RECOVERED TO THE BRAIN --

9 FROM THE BRAIN TO THE GUN THAT WOULD HAVE BEEN RECOVERED TO

10 THE SCENE TO DETERMINE IF IT WAS OUR WEAPON.

11 Q. AND THAT -- WOULD MARK STEPHAN BE AN ANALYST FOR THAT?

12 A. YES.

13 Q. DID YOU ALSO REQUEST SOMETHING BE DONE WITH THOSE

14 GUNSHOT RESIDUE KITS?

15 A. YES. I SUBMITTED A REQUEST FOR THEM TO BE TRANSPORTED

16 TO THE STATE LAW ENFORCEMENT DIVISION FOR ANALYSIS.

17 Q. AND WHAT WAS YOUR NEXT STEP THEN IN THE INVESTIGATION

18 AFTER THE AUTOPSY?

19 A. I WENT AND GOT AN ARREST WARRANT CHARGING THE DEFENDANT

20 WITH MURDER.

21 Q. AND DID YOU EVER ATTEMPT TO LOCATE ANY OTHER WITNESSES

22 IMMEDIATELY AFTER THIS INCIDENT HAPPENED?

23 A. YES. I'D GONE BACK TO THE SCENE AND TRIED TO TALK TO

24 SOME PEOPLE. AND THEY SAID THAT THEY'D HEARD ABOUT IT, BUT

25 THEY WEREN'T THERE. WE UTILIZED MS. GARCIA VERY OFTEN AS A

1 CONDUIT TO THE COMMUNITY, THE HISPANIC COMMUNITY. AND SHE
2 HAD -- DURING THAT TIME WAS REGULARLY BEING ASKED TO COME
3 SPEAK AT ONE OF THE HISPANIC RADIO STATIONS ON A LITTLE
4 PROGRAM ABOUT VICTIM ASSISTANCE. AND SO I ASKED HER TO MAKE
5 AN ANNOUNCEMENT OVER THIS RADIO STATION THAT IF ANYBODY SAW
6 ANYTHING OR KNEW ANYTHING ABOUT THIS INCIDENT WOULD THEY
7 PLEASE COME FORWARD AND GET IN TOUCH WITH US THROUGH HER
8 OFFICE.

9 Q. AS A RESULT OF THOSE ANNOUNCEMENTS DID ANYONE EVER COME
10 TO YOUR OFFICE?

11 A. NO. WE NEVER GOT A RESPONSE.

12 Q. WAS IT ALSO IN THE HISPANIC NEWSPAPER?

13 A. YEAH. I THINK IT WAS IN THE LA VOZ. I THINK THAT'S
14 THE TITLE OF IT.

15 Q. AFTER -- AND HOW WOULD YOU SAY, I MEAN, DOES THIS GO ON
16 INTO PERPETUITY THAT PEOPLE COULD COME AND TALK TO YOU ABOUT
17 THIS CASE OR WAS THERE A TIME-FRAME YOU WERE LOOKING AT ---

18 A. NO. WITH EVERY INVESTIGATION WE'D BE WILLING TO TALK
19 TO ANYBODY THAT WOULD COME FORWARD IN A CASE NO MATTER HOW
20 LONG IT HAD BEEN.

21 Q. DID YOU THEN LEARN THAT THERE MAY BE SOME POTENTIAL
22 OTHER WITNESSES IN THE CASE THAT NEVER CAME TO LAW
23 ENFORCEMENT?

24 A. YES.

25 Q. AND DID YOU GO AND ATTEMPT TO LOCATE THESE PEOPLE?

1 A. I DID.

2 Q. AND DO YOU KNOW WHO IT WAS THAT YOU TALKED TO OR IF YOU
3 EVEN TALKED TO ANYBODY?

4 A. WE SPOKE TO YAMILETH CORRALES AND NORBERTO ORTIZ ON
5 NOVEMBER THE 8TH. I THINK THAT'S THE CORRECT DATE. AND
6 THEN WE TALKED TO NORLY NOLBERTO RUIZ. AND ...

7 Q. AND NELSON CASTRO?

8 A. NELSON CASTRO, YES. SORRY.

9 Q. THAT'S OKAY.

10 A. TALKED TO NELSON CASTRO. ACTUALLY TALKED TO NELSON
11 CASTRO ON NOVEMBER THE 8TH. AND THEN TALKED TO NORBERTO
12 ORTIZ AND NORLY RUIZ ON THE 14TH OF DECEMBER, I THINK IT
13 WAS.

14 Q. MR. CASTRO, IS HE THE PERSON THAT TESTIFIED HERE
15 YESTERDAY?

16 A. HE IS.

17 Q. AND MR. RUIZ, DO YOU KNOW WHERE HE IS ---

18 A. HE'S DECEASED.

19 Q. --- OR NORBERTO?

20 A. HE'S DECEASED. HE DIED THE DAY BEFORE I WENT TO HIS
21 HOUSE TO SERVE HIM WITH THE SUBPOENA.

22 Q. NOW WHEN YOU SPOKE TO THESE PEOPLE DID YOU HAVE SOMEONE
23 TRANSLATE FOR YOU?

24 A. YES. I TOOK DEPUTY RIVERA.

25 Q. AND HOW DID THESE MEETINGS WITH THESE PEOPLE GO?

1 A. THEY WERE VERY COOPERATIVE FOR THE MOST PART. I MEAN,
2 THEY WERE ALL TELLING US THAT THEY HAD ALREADY SPOKEN TO
3 SOMEBODY ELSE ABOUT THE CASE. AND WE WERE TELLING THEM,
4 WELL, WE WORK AT THE SHERIFF'S OFFICE, WE'RE INVESTIGATING
5 THE CASE FOR THE STATE AND WE NEED TO SPEAK TO THEM AS WELL.

6 Q. AND WHEN YOU SPOKE TO THEM DID DEPUTY RIVERA TRANSLATE
7 KIND OF LIKE THE DEFENDANT'S STATEMENT, YOU ASK THE
8 QUESTIONS, HE ASKS?

9 A. YEAH, BUT IT WAS -- AT THIS POINT HE KNEW AS MUCH ABOUT
10 THE CASE AS I DID BECAUSE HE HAD BEEN INVOLVED IN IT UP TO
11 THAT POINT. SO HE WAS ABLE TO PRETTY MUCH FUNCTION AND ASK
12 A LOT OF QUESTIONS WITHOUT ME EVEN PROMPTING HIM. AND I
13 WOULD GET THE ANSWERS FROM HIM. AND HE WOULD CONTINUE ON.
14 AND IF THERE WOULD BE SOMETHING SPECIFIC THAT I WOULD NEED
15 TO KNOW HE WOULD CONTINUE -- HE WOULD ASK THAT AND THEN
16 CONTINUE. ULTIMATELY, THE END, WHEN WE WERE TALKING TO
17 THEM, WE ALL GAVE THEM A CHANCE, AN OPPORTUNITY TO WRITE
18 THEIR OWN STATEMENT IN SPANISH.

19 Q. AND DID MS. CORRALES WRITE HER OWN STATEMENT IN
20 SPANISH?

21 A. SHE DID.

22 Q. AND MR. CASTRO, WHO TESTIFIED, HE WROTE HIS STATEMENT
23 IN SPANISH?

24 A. HE DID.

25 Q. MR. ORTIZ, DID HE WRITE HIS STATEMENT IN SPANISH?

- 1 A. HE DID.
- 2 Q. AND THEN THE DECEASED, MR. RUIZ, HE WROTE A STATEMENT
- 3 AS WELL?
- 4 A. HE DID AS WELL.
- 5 Q. IN ADDITION TO THOSE FOUR DID YOU EVER HAVE AN
- 6 OPPORTUNITY TO SPEAK TO AN OLGA BURRA, I THINK HER NAME IS
- 7 BURRAS, BORRALES?
- 8 A. OLGA BORRARES.
- 9 Q. BORRARES, YES.
- 10 A. I DIDN'T SPEAK TO HER.
- 11 Q. DID YOU ATTEMPT TO LOCATE HER AND SPEAK TO HER?
- 12 A. YES.
- 13 Q. WERE YOU ABLE TO FIND HER?
- 14 A. NO.
- 15 Q. AND, IN ADDITION, DID YOU EVENTUALLY GET TO SPEAK TO A
- 16 CLEMENTE ROBLES BELTRAIN?
- 17 A. YES.
- 18 Q. WAS HE ORIGINALLY AT THE SCENE?
- 19 A. HE WAS.
- 20 Q. DID HE WANT TO TALK TO YOU AT THE SCENE THAT NIGHT?
- 21 A. NO, HE DID NOT.
- 22 Q. AND WHEN DID YOU FINALLY GET A CHANCE TO TALK TO HIM?
- 23 A. I'D TAKEN A STATEMENT FROM HIS WIFE, COURTNEY ROBLES,
- 24 THE NIGHT OF THE INCIDENT. AND IN GETTING READY FOR THIS
- 25 CASE I ASKED HER WOULD SHE TALK TO CLEMENTE TO SEE IF HE

1 WOULD BE WILLING TO TALK TO US ABOUT THE CASE NOW. AND SHE
2 SAID, WELL, HE REALLY DOESN'T WANT TO GET INVOLVED. AND I
3 SAID, WELL, TELL HIM THAT, YOU KNOW, IF IT WAS ONE OF HIS
4 RELATIVES OR HIM INVOLVED HE WOULD CERTAINLY WANT US TO DO
5 EVERYTHING WE COULD AND THAT'S ALL THAT WE'RE ASKING OF HIM.
6 AND SO THEN HE AGREED TO TALK TO US AT THAT POINT.

7 Q. IN SPEAKING WITH ALL THESE PEOPLE LATER ON SEVERAL
8 MONTHS AFTER THE SHOOTING OCCURRED WERE YOU ABLE TO IDENTIFY
9 ANY OTHER SUPPOSED SHOOTER IN THIS CASE?

10 A. NO.

11 Q. WERE YOU EVEN ABLE TO GET -- WHEN I SAY IDENTIFY, I
12 MEAN GET A NAME, AND A FACE, AND AN ADDRESS, OR ANYTHING
13 ALONG THOSE LINES?

14 A. NO.

15 Q. SO THEN YOU DID NOT MAKE ANOTHER ARREST IN THIS CASE?

16 A. I DID NOT.

17 Q. AND BASED ON THE STATEMENTS THAT YOU HAD AND THE
18 EVIDENCE YOU HAD SHOULD YOU HAVE MADE ANOTHER ARREST IN THIS
19 CASE?

20 A. NOT BASED ON THE CONFESSION OF THE DEFENDANT I
21 SHOULDN'T HAVE.

22 Q. AND WHAT ABOUT OTHER EVIDENCE TOO?

23 A. NO OTHER EVIDENCE EXISTED THAT CONNECTED ANOTHER
24 DEFENDANT.

25 Q. THANK YOU. ANSWER MS. ROSS' QUESTIONS.

1 THE COURT: MS. ROSS.

2 CROSS EXAMINATION BY MS. ROSS:

3 Q. SO BASICALLY THIS CASE -- YOU'RE BASING IT ON THE
4 CONFESSION OF THE DEFENDANT?

5 A. NO, MA'AM, ALSO THE STATEMENTS OF THE WITNESSES.

6 Q. WELL, LET'S TALK ABOUT THAT. FIRST I WANT TO TALK
7 ABOUT ALVARO FERNANDO PORTUGUEZ, WHO WAS A WITNESS, CORRECT?

8 A. YES.

9 Q. NOW YOU TOLD THE JURY HOW HE CAME UP AND SAID, I SAW
10 THE SHOOTER AT THE MEXICALI.

11 A. RIGHT.

12 Q. NOW YOU ALSO TOOK A STATEMENT FROM HIM AT THE LAW
13 ENFORCEMENT CENTER.

14 A. YES.

15 Q. AND IN THAT STATEMENT HE SAYS TWO MALES WERE ARGUING,
16 ANOTHER MALE WALKED AROUND BEHIND THE ONE, THEY WERE
17 ARGUING. THEN I SAW THE ONE THAT WAS WALKING AROUND BEND
18 DOWN AS IF HE WAS GRABBING SOMETHING FROM HIS LEG. A MOMENT
19 LATER I HEARD TWO SHOTS. I DID NOT SEE WHICH PERSON DID THE
20 SHOOTING, BUT I KNOW ONE OF THE TWO DID.

21 A. THAT'S RIGHT.

22 Q. AND THAT'S WHAT HIS STATEMENT WAS?

23 A. THAT'S RIGHT.

24 Q. TWO PEOPLE WITH A GUN, HE DID NOT SEE WHO DID THE
25 SHOOTING.

1 A. HE SAID THERE WERE TWO PEOPLE. HE DIDN'T SAY THERE
2 WERE TWO PEOPLE WITH THE SAME GUN.

3 Q. SO ONE HAD A GUN. THEN I SAW THE ONE THAT WAS WALKING
4 AROUND BEND DOWN AS IF HE WAS GRABBING SOMETHING FROM A LEG.
5 A MOMENT LATER I HEARD TWO SHOTS.

6 A. RIGHT.

7 Q. SO THEN ANOTHER PERSON WHO WAS NOT IN THE ARGUMENT HAD
8 THE GUN?

9 A. I CAN'T MAKE THAT LEAP.

10 Q. WELL, HE'S SAYING THERE ARE TWO PEOPLE ARGUING.

11 A. HE'S SAYING THERE'S TWO PEOPLE ARGUING, YES.

12 Q. AND SOMEONE'S WALKING AROUND BEHIND ONE OF THE PEOPLE
13 ARGUING.

14 A. YES, MA'AM.

15 Q. BENDS DOWN AS IF HE'S PICKING UP SOMETHING FROM HIS
16 LEG, A MOMENT LATER HEARS TWO SHOTS.

17 A. RIGHT.

18 Q. AND HE SAYS, I DO NOT KNOW WHICH OF THE TWO DID THE
19 SHOOTING.

20 A. RIGHT.

21 Q. SUGGESTING THAT POSSIBLY ONE OF TWO PEOPLE MIGHT HAVE
22 HAD THE GUN AND DONE THE SHOOTING.

23 A. POSSIBLY.

24 Q. AND HE SAYS THAT IN THE SAME STATEMENT THAT WAS GIVEN
25 AFTER HE SUPPOSEDLY IDENTIFIED THE SHOOTER AS MARLON AT THE

1 MEXICALI?

2 A. IT WAS AFTER HE HAD IDENTIFIED MARLON AS THE SHOOTER,
3 YES, MA'AM.

4 Q. BUT AFTERWARDS HE'S SAYING I DON'T KNOW WHO THE SHOOTER
5 WAS.

6 A. THAT'S RIGHT.

7 Q. SO HE IS UNSURE WHO THE SHOOTER WAS?

8 A. THAT'S WHAT HE SAID IN HIS STATEMENT.

9 Q. SO WHEN HE TOLD YOU, AND THOUGH YOU DON'T SPEAK SPANISH
10 YOU SOMEHOW UNDERSTOOD, WHEN HE TOLD YOU THE SHOOTER WAS AT
11 THE MEXICALI HE COULDN'T HAVE KNOWN WHO THE SHOOTER WAS
12 BECAUSE HE HIMSELF SAID HE DIDN'T SEE?

13 A. HE DIDN'T TELL US THAT HE DIDN'T SEE IT UNTIL AFTER HE
14 HAD ALREADY IDENTIFIED MARLON RIVERA.

15 Q. SO AFTER HE IDENTIFIED MARLON RIVERA HE ADMITS TO YOU,
16 BUT I'M NOT SURE IF HE WAS THE SHOOTER BECAUSE HE WAS ONE OF
17 POSSIBLY TWO PEOPLE WHO COULD HAVE BEEN THE SHOOTER?

18 A. YES.

19 Q. NOW AT THE SCENE THERE WERE THREE WITNESSES WHO CAME UP
20 TO YOU. AND THAT WAS COURTNEY REBECCA ROBLES, MANIOR
21 NAVARRO, AND DELMAN ARIAS, THREE PEOPLE THERE AT THE SCENE
22 INITIALLY, IS THAT CORRECT?

23 A. NO. I DIDN'T TALK TO DELMAN ARIAS OR MANIOR NAVARRO AT
24 THE SCENE.

25 Q. AS THE LEAD INVESTIGATOR ON THE CASE ARE YOU AWARE OF

1 WHAT OFFICER BENDIG, I GUESS, TESTIFIED TO? HE ARRIVED ON
2 THE SCENE ---

3 A. I NEVER SAW BENDIG THAT NIGHT.

4 Q. ARE YOU FAMILIAR WITH THE INITIAL REPORT OF THIS CASE?

5 A. I GOT -- MY COPY OF THE INITIAL REPORT WAS FORWARDED TO
6 ME, I THINK, THE TUESDAY AFTER THE CASE WAS OPENED.

7 Q. WELL, WOULD YOU CONCEDE THAT THOSE THREE WITNESSES WERE
8 REPORTING A SHOOTING?

9 A. YES.

10 Q. YET IT TOOK SOME TIME BEFORE ANYONE BELIEVED IT WAS A
11 SHOOTING TO COME OUT AND INVESTIGATE THE CASE AS A SHOOTING,
12 CORRECT?

13 A. THAT'S RIGHT.

14 Q. NOW ONE OF THOSE WITNESSES WAS MANIOR NAVARRO, WHO IS
15 NOT HERE TO TESTIFY?

16 A. THAT'S RIGHT.

17 Q. AND ISN'T IT TRUE THAT THAT WITNESS TALKS ABOUT ---
18 MS. HODGE: I'M GOING ---

19 Q. --- TWO GUNMEN ---

20 MS. HODGE: --- TO OBJECT ---

21 THE COURT: HOLD ON.

22 MS. HODGE: --- TO ANYTHING HE SAYS ---

23 THE COURT: WHAT'S ...

24 MS. ROSS: THIS IS MANIOR ---

25 THE COURT: WAIT JUST A MINUTE. WHAT'S YOUR OBJECTION?

1 MS. HODGE: MY OBJECTION WOULD BE HEARSAY. SHE'S
2 GETTING READY TO SAY WHAT THE WITNESS SAID.

3 THE COURT: I SUSTAIN THE OBJECTION TO THAT.

4 MS. ROSS: YOUR HONOR, THIS IS THE CASE WHERE THEY
5 TALKED ABOUT TALKING TO THE WITNESS, THEY TALKED ABOUT THE
6 WITNESS IDENTIFYING MY CLIENT LEAVING IT OPEN TO SUGGESTIONS
7 THAT HE WAS IDENTIFIED ---

8 THE COURT: NOW WHO ARE YOU TALKING ABOUT NOW?

9 MS. ROSS: THIS WAS MANIOR NAVARRO WHO CAME AND SPOKE A
10 FEW DAYS LATER TO INVESTIGATOR WES. HE WAS AT THE SCENE AND
11 THEN CAME AND GAVE A WRITTEN STATEMENT ---

12 THE COURT: AND THIS WAS THE ONE THAT THE SOLICITOR
13 INQUIRED ABOUT?

14 MS. ROSS: THE SOLICITOR MENTIONED IT BEFORE BECAUSE
15 THEY TALKED ABOUT HIM PULLING OUT AN EYEWITNESS
16 IDENTIFICATION FORM AND IDENTIFYING ---

17 THE COURT: HOW ABOUT THAT, SOLICITOR?

18 MS. HODGE: YOUR HONOR, I ASKED THE INVESTIGATOR WHAT
19 HE DID IN THE CASE. HE SAID HE PREPARED A LINEUP. I NEVER
20 WENT INTO WHAT THE WITNESS SAID, IF THAT WITNESS IDENTIFIED
21 HIM OUT OF THE LINEUP. I NEVER SAID ANYTHING ---

22 THE COURT: I SUSTAIN THE OBJECTION.

23 MS. ROSS: I THINK THAT'S SUGGESTIVE TO THE POINT THAT
24 I SHOULD BE ABLE TO ---

25 THE COURT: I SUSTAIN THE OBJECTION.

1 MS. ROSS: ALL RIGHT.

2 Q. ISN'T IT TRUE THAT AS A RESULT OF TALKING TO MR.
3 NAVARRO THERE WERE POTENTIALLY TWO GUNMEN?

4 A. THERE WAS POTENTIALLY TWO PEOPLE INVOLVED IN THE FATAL
5 INCIDENT, YES, MA'AM, NOT TWO PEOPLE WITH SEPARATE GUNS.
6 AND IT COULD HAVE BEEN, YOU KNOW, IT COULD HAVE BEEN
7 POSSIBLE THAT AT ONE POINT THE PERSON HE WAS FIGHTING WITH
8 HAD POSSESSION OF THE GUN, BUT THE DEFENDANT SAID THAT HE
9 WAS THE ONE THAT FIRED THE SHOT.

10 Q. BUT THE WITNESS -- ISN'T IT TRUE THAT AS A RESULT OF
11 TALKING TO THIS WITNESS ONE GUN WAS SHOT BY TWO DIFFERENT
12 PEOPLE?

13 MS. HODGE: OBJECTION.

14 THE COURT: I SUSTAIN THE OBJECTION TO THE FORM OF THE
15 QUESTION.

16 MS. ROSS: YOUR HONOR, I THINK THEY'VE BROUGHT THIS OUT
17 BY BRINGING UP THIS WITNESS AT ALL.

18 THE COURT: I SUSTAINED THE OBJECTION TO THE FORM OF
19 YOUR QUESTION, THE WAY YOU PHRASED IT.

20 Q. AS A RESULT OF TALKING TO MR. NAVARRO ISN'T IT TRUE
21 THAT THERE WAS ANOTHER PERSON WHO HAD THE GUN, THE SAME GUN,
22 THAT YOU COULD HAVE INVESTIGATED?

23 (WHEREUPON THE SOLICITOR STOOD UP TO OBJECT)

24 THE COURT: I SUSTAIN THE OBJECTION TO THE FORM OF THE
25 QUESTION.

1 Q. YOU SPOKE TO MANIOR NAVARRO AND EVERYTHING THAT HE SAID
2 THE JUDGE HAS SAID IS HEARSAY, THAT YOU CAN'T BRING OUT.

3 MS. HODGE: OBJECTION. IS THIS A COMMENT ---

4 THE COURT: DON'T -- I SUSTAIN THE OBJECTION TO THE
5 COMMENT BY MS. ROSS.

6 Q. I'LL MOVE ON. IS IT YOUR TESTIMONY THAT NONE OF THE
7 WITNESSES STATED THAT TWO PEOPLE HAD AND/OR SHOT ---

8 MS. HODGE: OBJECTION, YOUR HONOR.

9 Q. --- THE SAME GUN?

10 MS. ROSS: I WANT TO KNOW IF THAT'S HIS TESTIMONY. AND
11 I DON'T CARE WHICH WITNESSES ---

12 THE COURT: THAT'S NOT A PROPER QUESTION. IF YOU CAN
13 REPHRASE YOUR QUESTION I'LL ALLOW IT, BUT NOT IN THAT FORM.

14 Q. ISN'T IT TRUE THAT OUR INVESTIGATOR, CARLOS FREEMAN,
15 CAME UP TO YOU AND GAVE YOU A LIST OF NAMES OF WITNESSES?

16 A. IT IS TRUE.

17 Q. AND ISN'T IT TRUE THAT HE ALSO GAVE YOU THE NAME OF
18 ANOTHER PERSON THAT HE SAID WAS KNOWN AS EL FLACO?

19 A. YES.

20 Q. AND HE GAVE THE NAME OF THAT PERSON AS DANIEL ARIANA

21 ---

22 MS. HODGE: I'M GOING TO OBJECT TO ANYTHING ---

23 Q. --- AND HAD AN ID ---

24 THE COURT: HOLD ON. WHAT'S YOUR OBJECTION?

25 MS. HODGE: MY OBJECTION IS, AGAIN, HEARSAY. IT'S --

1 SHE'S TRYING TO GET WHAT MR. FREEMAN SAID ---

2 THE COURT: I'LL ALLOW THAT. GO AHEAD.

3 Q. HE HAD SOMETHING FROM THE RECORDS DIVISION IDENTIFYING
4 THIS PERSON AS DANIEL ARIANA, ISN'T THAT CORRECT?

5 A. HE TOLD ME THAT OVER THE TELEPHONE. THIS WAS NOT AN
6 IN-PERSON CONVERSATION.

7 Q. BUT HE GAVE YOU THAT INFORMATION AND THAT'S WHAT
8 APPEARS IN YOUR SUPPLEMENTAL REPORT ---

9 A. THAT'S RIGHT.

10 Q. --- WHERE YOU HAVE THAT INFORMATION?

11 A. THAT'S RIGHT.

12 MS. ROSS: I BEG THE COURT'S INDULGENCE.

13 Q. SO YOU WERE GIVEN --- PROVIDED BY THE DEFENSE TEAM A
14 LIST OF WITNESSES WHO YOU WENT AND SPOKE TO?

15 A. THAT'S RIGHT.

16 Q. AS WELL AS THE NAME OF ANOTHER POTENTIAL SUSPECT?

17 A. THAT'S RIGHT.

18 Q. NOW JUST GOING BACK TO THE SCENE, DO YOU KNOW WHAT'S ON
19 THE ORIGINAL REPORT TALKING ABOUT WHAT HAPPENED? ARE YOU
20 AWARE OF WHAT THOSE THREE WITNESSES SAID HAPPENED?

21 A. YES.

22 Q. AND ISN'T IT THAT ONE PERSON HAD A GUN, ---

23 MS. HODGE: OBJECTION, YOUR HONOR.

24 Q. --- ANOTHER PERSON ---

25 THE COURT: I SUSTAIN THE OBJECTION TO THE FORM OF YOUR

1 QUESTION.

2 MS. ROSS: OKAY.

3 Q. WHAT WERE THE STATEMENTS OF THOSE INITIAL WITNESSES ---

4 MS. HODGE: OBJECTION, YOUR HONOR. THAT WOULD BE
5 HEARSAY.

6 THE COURT: I SUSTAIN THE OBJECTION.

7 MS. ROSS: I BEG THE COURT'S INDULGENCE.

8 Q. LET ME GET BACK TO THE INTERVIEW PROCESS. YOU
9 INTERVIEWED -- YOU WERE PRESENT FOR THE INTERVIEW OF ALVARO
10 FERNANDEZ?

11 A. YES.

12 Q. WHO STATED HE COULD NOT BE SURE WHO SHOT THE GUN?

13 A. THAT'S RIGHT.

14 Q. NOW AFTER THAT YOU THEN SPOKE TO MARLON RIVERA?

15 A. YES.

16 Q. AND IT IS YOUR TESTIMONY THAT YOU SPOKE TO HIM
17 IMMEDIATELY AFTERWARDS, AFTER FINISHING WITH FERNANDEZ?

18 A. NO, IT'S NOT MY TESTIMONY THAT IT HAD BEEN IMMEDIATELY.

19 Q. SO IT WAS LATER, SOMETIME LATER?

20 A. IT WAS WITHIN A SHORT PERIOD OF TIME LIKE FIFTEEN TO
21 TWENTY MINUTES.

22 Q. NOW WHEN YOU WAS TALKING TO MARLON RIVERA HIS RESPONSES
23 TO ALL YOUR QUESTIONS WERE NO PROBLEM INITIALLY?

24 A. AT THE SCENE, WHEN WE ARRESTED HIM AT THE MEXICALI.

25 THAT'S -- ANYTHING I SAID TO HIM HE WOULD SAY, NO PROBLEM,

1 NO PROBLEM.

2 Q. SO INITIALLY THAT'S WHAT CUED YOU INTO THE FACT THAT HE
3 DIDN'T SPEAK ANY ENGLISH BECAUSE YOU'D ASK HIM A QUESTION
4 AND HE'D SAY, NO PROBLEM?

5 A. THAT'S RIGHT.

6 Q. AND SO WHATEVER YOU WERE SAYING HE WOULD AGREE TO AND
7 SAY, NO PROBLEM? HE WAS TRYING TO GO ALONG WITH YOU
8 BASICALLY?

9 A. I THINK THAT'S ABOUT THE ONLY THING HE KNEW TO SAY TO
10 LAW ENFORCEMENT.

11 Q. AND YOU SAID YOU WERE WALKING AROUND BACK TO WAIT IF HE
12 RAN OUT. HE, IN FACT, NEVER RAN OUT THE BACK, DID HE?

13 A. NO.

14 Q. OF THE MEXICALI? HE WAS ARRESTED BY INVESTIGATOR
15 GARRETT INSIDE ---

16 A. HE WAS STOPPED AT THE BAR AND ARRESTED BY DEPUTY
17 GARRETT INSIDE THE BAR.

18 Q. NOW DID YOU EVER -- BEFORE THAT DID YOU SPEAK TO
19 COURTNEY ROBLES IN ENGLISH?

20 A. YES. SHE SPEAKS -- SHE'S BORN HERE. SHE SPEAKS
21 ENGLISH BETTER THAN I DO.

22 Q. AFTER SPEAKING WITH HER WERE THERE TWO SUSPECTS IN THE
23 CASE?

24 A. SHE HAD SAID THERE WERE TWO PEOPLE FIGHTING, ONE IN A
25 STRIPED SHIRT AND ONE IN A, I THINK, A BLACK SHIRT OR A DARK

1 SHIRT IS HOW SHE SAID IT.

2 Q. SO THERE WERE -- AND THERE WERE TWO SUSPECTS IN THE
3 CASE INITIALLY AFTER SPEAKING TO HER?

4 A. IN THE FIGHT, YES.

5 Q. AND THEN AFTER YOU GOT A CONFESSION FROM MARLON RIVERA
6 YOU LEFT IT AS ONE SUSPECT?

7 A. THERE WERE TWO PEOPLE INVOLVED IN THE FIGHT. AFTER
8 TALKING TO MARLON RIVERA AND HE ADMITTED TO SHOOTING THE
9 VICTIM OR SHOOTING IN THE DIRECTION OF THE VICTIM, HOWEVER
10 YOU WANT TO PUT IT, THEN THERE WAS ONLY ONE SOURCE BECAUSE
11 WE DID TRY TO FOLLOW UP WITH HIM ABOUT WHO ELSE SHOT THE
12 GUN. AND HE WOULD NEVER GIVE US AN ANSWER. HE NEVER
13 INDICATED ANYBODY BUT HIM SHOT THE GUN.

14 Q. SO IN RESPONSE TO QUESTIONING ABOUT THAT HE JUST NEVER
15 SAID ANYTHING ABOUT ANYONE ELSE, THAT'S WHAT YOU'RE SAYING?

16 A. RIGHT.

17 Q. NOW DID YOU REALIZE HE WAS A FOREIGN NATIONAL? DID YOU
18 CONTACT HIS CONSULATE OR TRY TO GET IN AN INTERPRETER OR
19 SOMEONE WHO WAS NOT WITH THE POLICE FORCE?

20 A. DIDN'T HAVE TO. I HAD AN INTERPRETER. I HAD SOMEBODY
21 WHO WAS ABLE TO SPEAK FOR HIM. I'M NOT REQUIRED UNDER OUR
22 POLICY OR THE LAW TO NOTIFY HIS EMBASSY OR CONSULATE.

23 Q. AND DID YOU ATTEMPT TO FIND SOMEONE FROM VICTIM
24 WITNESSES OR SOMEONE MORE NEUTRAL THAN A POLICE OFFICER TO
25 SPEAK TO HIM?

1 A. I SUPPOSE I COULD HAVE CALLED IN OUR VICTIM ADVOCATE,
2 LILLIAN GARCIA, BUT I DIDN'T EVEN KNOW IF SHE WAS AVAILABLE
3 THAT MORNING.

4 Q. AND THAT'S WHAT YOU DID LATER, FOR INSTANCE, WHEN YOU
5 INTERVIEWED NAVARRO, YOU GOT A VICTIM ADVOCATE IN THERE AND
6 NOTARIZED THAT STATEMENT.

7 A. WELL, WE HAD -- THAT WAS DURING A NORMAL WORK WEEK.
8 AND SHE WAS THERE DURING HER NORMAL WORK WEEK. SHE WAS
9 ALREADY AVAILABLE THERE. WE WOULD HAVE HAD TO CALL RIVERA
10 IN FROM THE NIGHT SHIFT.

11 Q. AND YOU DIDN'T DO THAT EVEN THOUGH RIVERA WAS BEING
12 ACCUSED OF A PRETTY SERIOUS CRIME, A SHOOTING?

13 A. NO, IT WASN'T NECESSARY. I HAD SOMEBODY WHO COULD
14 INTERPRET WHO WAS FLUENT.

15 Q. NOW -- AND YOU DIDN'T DO A TAPE, OR A VIDEO TAPE, OR
16 ANYTHING LIKE THAT?

17 A. THAT'S NOT OUR PRACTICE AT THE SHERIFF'S OFFICE.

18 Q. AND YOU ADMIT THAT AT ONE POINT YOU ADJUSTED MARLON
19 RIVERA'S CHAINS BASICALLY?

20 A. I PULLED HIM UP BY THE BELT, STOOD HIM UP, IT WAS ON
21 LOOSELY. AND WHEN YOU SLUMP AND MOVE IN THE CHAIR IT
22 CONTINUED TO GO DOWN. AND HE GOT TO WHERE HE COULDN'T MOVE
23 HIS HANDS AROUND. I PULLED HIM UP, I STRAIGHTENED HIS BELT
24 UP AND PULLED IT UP TO WHERE IT WAS IN THIS AREA SO HE'D BE
25 ABLE TO BE DESK HEIGHT OR WHATEVER. AND THEN I TOLD HIM TO

1 SIT DOWN AGAIN.

2 Q. BUT THAT'S THE ONLY EXTENT OF IT THAT YOU ADMIT TO?

3 A. YES, THAT'S WHAT HAPPENED.

4 Q. NOW BEFORE YOU WERE TESTIFYING OF QUESTIONS GOING BACK

5 AND FORTH -- AGAIN, THAT STATEMENT'S IN ENGLISH. THIS MAN

6 DOES NOT SPEAK ANY ENGLISH OR READ SPANISH ALL OF THAT WHICH

7 YOU WERE RELATING IS THE QUESTIONS YOU WERE ASKING TO

8 INVESTIGATOR RIVERA OR OFFICER RIVERA, ALL THAT WAS GOING

9 THROUGH HIM, ---

10 A. THAT'S RIGHT.

11 Q. --- EVERYTHING YOU TESTIFIED TO BEFORE?

12 A. YES.

13 Q. NOW JUST BRIEFLY, WHEN YOU SAID HE SIGNED CAN YOU SHOW

14 HOW HE SIGNED? DID HE SIGN WITH HIS RIGHT OR LEFT HAND?

15 A. I CAN'T REMEMBER WHICH HAND HE USED.

16 Q. WOULD IT SURPRISE YOU WHEN YOU SHOWED HOW YOU DID IT

17 BEFORE YOU WERE MAKING -- INDICATING THAT HE SIGNED WITH HIS

18 RIGHT HAND?

19 A. IT'S BECAUSE I'M RIGHT HANDED.

20 Q. AND I'M LEFT HANDED. OKAY. BUT THAT'S WHY -- SO YOU

21 DON'T KNOW ---

22 A. I WAS -- I DON'T KNOW. I CAN'T REMEMBER. BUT I WAS

23 USING MY RIGHT HAND BECAUSE I'M RIGHT HANDED.

24 Q. AND YOU SAID THAT IT WAS ABOUT TWO HOURS FOR THE ENTIRE

25 START TO FINISH INTERVIEW?

1 A. YES.

2 Q. IS IT YOUR TESTIMONY THAT YOU GOT A SIGNED WAIVER
3 INITIALLY BEFORE THEN?

4 A. IT IS. I WOULDN'T HAVE PROCEEDED WITHOUT IT.

5 Q. BECAUSE THAT WOULD HAVE BEEN ILLEGAL TO DO OR WRONG TO
6 DO THAT, TO GO FORWARD WITHOUT A WAIVER WITH QUESTIONING?

7 A. WELL, HE -- HE CAN WAIVE HIS RIGHTS VERBALLY. HE CAN
8 TELL US, I DON'T WANT TO SIGN ANYTHING AND STILL WAIVE HIS
9 RIGHTS AND I WOULD INVOKE HIS RIGHT TO AN ATTORNEY. BUT HAD
10 HE NOT WAIVED HIS RIGHTS AND SAID I'LL TALK TO YOU OR SIGNED
11 A WAIVER WE WOULDN'T HAVE PROCEEDED. I WOULD HAVE PUT HIM
12 IN DETENTION, MOVED ON TO OTHER THINGS.

13 Q. AND YOU SAID THERE WAS NO --- YOU NEVER FOUND ANY
14 BULLETS OR EVIDENCE OF A RICOCHET? THIS WAS A SITUATION
15 WHERE A BULLET WENT STRAIGHT AHEAD AND BASICALLY ON A LEVEL
16 PLAIN ---

17 A. YES. BASED ON THE RESULTS OF THE AUTOPSY AND THE
18 MANNER IN WHICH THE BULLET TRAVELED INSIDE THE WOUND, INSIDE
19 HIS HEAD IT WOULD HAVE BEEN A STRAIGHT ON SHOT ACCORDING TO
20 THE MEDICAL EXAMINER.

21 MS. ROSS: I BEG THE COURT'S INDULGENCE. I'VE GOT
22 NOTHING FURTHER.

23 THE COURT: ANY REDIRECT?

24 MS. HODGE: BRIEFLY.

25 REDIRECT EXAMINATION BY MS. HODGE:

1 Q. DO YOU KNOW HOW LONG THE DEFENDANT HAD BEEN IN THE US?

2 A. I DIDN'T ASK HIM THAT QUESTION AT THE TIME. I DON'T
3 REMEMBER IF RIVERA HAD. I DON'T REMEMBER. WE TALKED TO HIM
4 A LITTLE BIT. I TOLD HIM UP FRONT THAT I REALLY DIDN'T CARE
5 ABOUT HIS STATUS, I WANTED TO KNOW WHAT HAPPENED ABOUT THE
6 CASE.

7 Q. AND IN YOUR -- SHE WAS ASKING ABOUT A RICOCHET SHOT,
8 YOUR EXAMINATION OF THE SCENE WHERE THE SHOOTING TOOK PLACE
9 DID NOT REVEAL ANY EVIDENCE OF ANY KIND OF A RICOCHET SHOT?

10 A. NO.

11 Q. OR ANY SHOT FIRED INTO THE GROUND?

12 A. NO.

13 Q. IS KEN'S PAWN SHOP IN FRONT OF THAT OR IN THAT SAME
14 VICINITY?

15 A. YES. IT WOULD HAVE BEEN NEXT DOOR TO THE LA
16 RUMBA/SPANISH AMIGOS.

17 Q. A LITTLE BIT FARTHER AWAY FROM WHERE THE BLOOD WAS ---

18 A. YES.

19 Q. AND HAVE YOU DEALT WITH KEN'S PAWN SHOP BEFORE?

20 A. NUMEROUS TIMES.

21 Q. DID THEY HAVE A WORKING CAMERA AT THE FRONT OF THEIR
22 STORE?

23 A. NOT TO MY KNOWLEDGE. AND PART OF MY EXPERIENCE AS A
24 PROPERTY CRIME INVESTIGATOR THE PAWN BROKERS ARE REQUIRED TO
25 REPORT TO THE SHERIFF'S OFFICE TWICE A WEEK THE ITEMS WHICH

1 THEY BUY OR TAKE INTO PAWN. AND WE WOULD GO BY AND PICK UP
2 THE PAWN SHOPS. HE HAD A VERY OLD VIDEO CAMERA THAT WAS UP
3 IN THE FRONT OF THE BUILDING, BUT HE HAD ONE IN THE BACK
4 THAT WAS IN THE BACK FACING OUT TO THE FRONT THAT COVERED
5 THE FRONT DOOR. BUT THE ONES UP IN THE FRONT WERE JUST
6 DUMMIES.

7 Q. MEANS NOT ACTUALLY RECORDING ANYTHING?

8 A. THEY WEREN'T RECORDING.

9 Q. THANK YOU.

10 THE COURT: THANK YOU. STEP DOWN.

11 MS. HODGE: YOUR HONOR, THAT WOULD BE THE STATE'S CASE.

12 THE COURT: ALL RIGHT. TAKE THE JURY OUT PLEASE.

13 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:12 PM)

14 THE COURT: ANY MOTIONS?

15 MS. ROSS: YOUR HONOR, I'D DO A MOTION FOR A DIRECTED
16 VERDICT AT THIS TIME. THE EVIDENCE PRESENTED HERE -- THE
17 INDICTMENT CHARGE IS MURDER, THOUGH I DON'T BELIEVE THE
18 EVIDENCE OF ANY EYEWITNESSES WERE PRESENTED. THAT LEAVES
19 YOU WITH THE TESTIMONY OF MARLON RIVERA OR THE STATEMENT
20 THAT HE ALLEGEDLY MADE AND WAS PUT INTO EVIDENCE. IN THAT
21 CLEARLY INDICATES A FIGHT. THERE'S NOTHING IN THERE OF A --
22 TO INDICATE MALICE AFORETHOUGHT, TO INDICATE THE REQUISITE
23 ELEMENTS OF MURDER. MERE SUSPICION OF THOSE IS NOT ENOUGH.
24 THEREFORE, I'D MOVE FOR A DIRECTED VERDICT AT THIS TIME.

25 ALSO I WOULD RENEW ALL OF MY PRIOR MOTIONS AND

1 OBJECTIONS. CERTAINLY UNDER COMPLETENESS I THINK THAT I
2 SHOULD HAVE BEEN ALLOWED TO BRING IN A STATEMENT THAT WAS
3 REFERRED TO AND ALLUDED TO THAT DIDN'T ACTUALLY STATE WHAT
4 THE OFFICER PRESENTED THAT IT SAID. AND I WAS NOT ALLOWED
5 TO DO THAT. SO AT THIS POINT THAT WOULD BE MY MOTIONS.

6 THE COURT: AND I DENY YOUR MOTIONS. OKAY. YOU HAVE
7 TESTIMONY.

8 MS. ROSS: YES. I'D LIKE TO STAND -- AGAIN, I'VE GOT
9 THE SITUATION OF THE -- MY INTERPRETER'S DOING A GREAT JOB,
10 BUT I'M NOT COMMUNICATING DIRECTLY WITH MY CLIENT. SO I
11 WOULD LIKE TO NOTIFY HIM IF POSSIBLE ON THE RECORD OF HIS
12 RIGHTS. BUT MY UNDERSTANDING IS THAT WE DO HAVE TESTIMONY
13 AND THAT, IN FACT, HE WANTS TO TESTIFY.

14 THE COURT: OKAY, THAT'S FINE. WHY DON'T YOU DO THIS.
15 I'LL ASK THE QUESTIONS IF YOU'LL JUST ASK THOSE QUESTIONS TO
16 HIM.

17 MR. FREEMAN: YES, SIR.

18 (WHEREUPON CARLOS FREEMAN WAS INTERPRETING THE
19 FOLLOWING QUESTIONS AND ANSWERS)

20 THE COURT: MR. RIVERA, THE TIME HAS COME FOR YOU TO
21 MAKE A DETERMINATION AS TO WHETHER OR NOT YOU WILL PRESENT
22 EVIDENCE IN THIS CASE OR YOURSELF TESTIFY. I WANT TO TELL
23 YOU THAT IN THE UNITED STATES IN A CRIMINAL TRIAL YOU HAVE
24 ABSOLUTELY NO BURDEN. YOU DO NOT HAVE TO TESTIFY OR PRESENT
25 EVIDENCE BECAUSE THAT IS YOUR CONSTITUTIONAL RIGHT. DO YOU

1 UNDERSTAND THAT? SIR?

2 MR. FREEMAN: I DON'T UNDERSTAND. COULD YOU TELL ME
3 WHAT TESTIMONY AND EVIDENCES ARE?

4 THE COURT: IN THIS TRIAL THE BURDEN IS ON THE STATE OF
5 SOUTH CAROLINA TO PROVE YOU GUILTY OF MURDER. DO YOU
6 UNDERSTAND THAT?

7 (WHEREUPON THE DEFENDANT RESPONDED WITH A NEGATIVE NOD)

8 THE COURT: ALL RIGHT. THE STATE OF SOUTH CAROLINA HAS
9 PRESENTED EVIDENCE IN THIS CASE OF YOUR GUILT OF MURDER. DO
10 YOU UNDERSTAND THAT?

11 MR. FREEMAN: IF THE COURT SO PLEASES, CAN I EXPLAIN

12 ---

13 THE COURT: SURE.

14 MR. FREEMAN: --- A FEW WORDS SUCH AS EVIDENCE?

15 THE COURT: YES, SIR.

16 MR. FREEMAN: HE DOES NOT GRASP THE CONCEPT.

17 (PAUSE)

18 MR. FREEMAN: YES.

19 THE COURT: IF YOU MAKE A DECISION NOT TO TESTIFY OR
20 PRESENT EVIDENCE IN THIS CASE I WILL INFORM THE JURY THAT
21 THAT IS YOUR CONSTITUTIONAL RIGHT AND THEY CANNOT IN ANYWAY
22 HOLD THAT AGAINST YOU.

23 MR. FREEMAN: I WISH TO GO AHEAD. I WISH TO DEFEND
24 MYSELF. THE SHOTS THE POLICE SAY I DID, I DID NOT DO. SO I
25 WISH TO DEFEND MYSELF.

1 THE COURT: ALL RIGHT. AND THAT'S FINE. BUT I NEED
2 FOR HIM TO UNDERSTAND THAT IF HE TAKES THE STAND THEN HE
3 WILL BE SUBJECT TO CROSS EXAMINATION JUST LIKE ANY OTHER
4 WITNESS. AND HE UNDERSTANDS THAT?

5 MR. FREEMAN: YES.

6 THE COURT: AND WITH THAT UNDERSTANDING HE WANTS TO
7 TAKE THE STAND AND TESTIFY OR OTHERWISE PRESENT EVIDENCE?

8 MR. FREEMAN: YES.

9 THE COURT: ALL RIGHT. I NEED FOR YOU TO ASK HIM IF
10 YOU, YOURSELF, OR MS. ROSS HAVE PUT ANY PRESSURE ON HIM TO
11 MAKE HIM DO THIS.

12 MR. FREEMAN: NO.

13 THE COURT: THIS IS HIS DECISION ALONE THAT HE HAS
14 MADE?

15 MR. FREEMAN: (AFFIRMATIVE NOD).

16 THE COURT: AND WOULD YOU ASK HIM IF HE'S UNDER THE
17 INFLUENCE OF ANY ALCOHOL, DRUG, OR ANY OTHER SUBSTANCE RIGHT
18 AT THIS MOMENT.

19 MR. FREEMAN: NO.

20 THE COURT: HE'S SOBER?

21 MR. FREEMAN: YES.

22 THE COURT: HE KNOWS WHAT HE'S DOING, AND HE WANTS TO
23 TESTIFY?

24 MR. FREEMAN: YES.

25 THE COURT: ALL RIGHT. THAT'S FINE. THANK YOU.

1 MS. ROSS: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT. YOU'LL HAVE HIS TESTIMONY AND
3 THEN SOME OTHER TESTIMONY?

4 MS. ROSS: YES, YOUR HONOR. I THINK SIX WITNESSES.

5 THE COURT: OKAY. ALL RIGHT. WE'LL TAKE A VERY SHORT
6 RECESS.

7 (WHEREUPON COURT WAS IN RECESS)

8 MS. HODGE: BEFORE THE JURY COMES BACK IN, MR. FREEMAN
9 IS ON HER WITNESS LIST. AND HE OBVIOUSLY HAS BEEN IN HERE
10 THE ENTIRE TIME TRANSLATING. AND HE'S BEEN OUTSIDE TALKING
11 TO POTENTIAL WITNESSES AS WELL. SO I WOULD SAY THAT WOULD
12 EXCLUDE HIS TESTIMONY IN THIS CASE.

13 MS. ROSS: WELL, HE'S JUST TESTIFYING BASICALLY ABOUT
14 HIS INVESTIGATION AND SUBSTANTIATING SOME THINGS THAT HAVE
15 BEEN SAID BASICALLY.

16 MS. HODGE: HE'S BEEN ---

17 MS. ROSS: WELL, INVESTIGATOR SMITH ---

18 MS. HODGE: --- PRIVY TO ALL THESE STATEMENTS ---

19 MS. ROSS: --- GOT TO SIT HERE THE WHOLE TIME AND BE
20 PRIVY TO THE ENTIRE, YOU KNOW, EVERYTHING ---

21 MS. HODGE: WELL, ---

22 MS. ROSS: --- THAT WENT ON AS WELL.

23 THE COURT: WELL, HE'S -- YEAH, SHE'S ENTITLED TO THAT.
24 BUT YOU MADE THE MOTION TO SEQUESTER. SO I HAVE TO GRANT
25 THAT MOTION.

1 MS. ROSS: WELL, YOUR HONOR, I DID MAKE THE MOTION TO
2 SEQUESTER, BUT INVESTIGATOR WES SMITH WAS ALLOWED TO STAY IN
3 ---

4 THE COURT: BUT ---

5 MS. ROSS: --- AS THE PRIME INVESTIGATOR ---

6 THE COURT: --- UNDER THE RULES HE -- THE STATE'S
7 ENTITLED TO HAVE THE CHIEF INVESTIGATOR OFFICER IN. BUT I
8 DON'T KNOW OF ANY RULE ---

9 MS. ROSS: WELL, HE'S MY INVESTIGATOR. SO I THINK --
10 AND THE INTERPRETER. SO THERE'S NO REASON HE WOULDN'T BE
11 ABLE TO ---

12 THE COURT: NO, I SUSTAIN THE OBJECTION. I'M NOT GOING
13 TO ALLOW MR. FREEMAN TO TESTIFY.

14 MS. ROSS: WELL, THEN I'D LIKE TO PROFFER HIS TESTIMONY
15 PLEASE.

16 THE COURT: ALL RIGHT.

17 MS. ROSS: I'LL GO AHEAD AND CALL -- SO I'M GOING TO
18 CALL, YOU, CARLOS FREEMAN TO THE STAND.

19 CARLOS FREEMAN, BEING
20 DULY SWORN TESTIFIED AS FOLLOWS:

21 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
22 RECORD.

23 MR. FREEMAN: CARLOS FREEMAN.

24 DIRECT EXAMINATION BY MS. ROSS:

25 Q. OKAY, MR. FREEMAN, YOU WERE THE INTERPRETER AND

1 INVESTIGATOR FOR THE DEFENSE IN THIS CASE, CORRECT?

2 A. YES, CORRECT.

3 Q. AND HOW DID YOU COME TO BE INVOLVED IN THE CASE?

4 A. I HAD FIRST HEARD ABOUT THE CASE IN THE COMMUNITY. AND
5 THEN I WAS REQUESTED TO COME BY DEFENSE TO INTERPRET FOR THE
6 DEFENDANT.

7 Q. AND DID YOU COME IN ON ANY SIDE OR WITH ANY BIAS
8 TOWARDS ONE SIDE OR THE OTHER WHEN YOU STARTED?

9 A. NO, ABSOLUTELY NOT.

10 Q. SO YOU'RE NOT FRIENDS WITH MARLON RIVERA'S FAMILY OR
11 ANYTHING LIKE THAT?

12 A. NO. I HAVE NEVER SEEN -- AS FAR AS I KNOW, SEEN OR
13 HEARD OF HIM BEFORE.

14 Q. NOW OVER THE COURSE OF YOUR INVESTIGATION WHAT DID YOU
15 DO?

16 A. I TRIED TO FIND DIFFERENT PEOPLE WHO MIGHT HAVE EITHER
17 WITNESSED THE INCIDENT OR BE ABLE TO DIRECT ME AND INDICATE
18 TO ME PEOPLE WHO HAD WITNESSED THE INCIDENT.

19 Q. AND YOU DID FIND A NUMBER OF WITNESSES, CORRECT?

20 A. YES.

21 Q. AND YOU PROVIDED THOSE NAMES TO INVESTIGATOR SMITH,
22 CORRECT?

23 A. THAT IS TRUE.

24 Q. WHY DID YOU GIVE THOSE NAMES TO INVESTIGATOR SMITH?

25 A. IT HAD BECOME APPARENT TO ME, AND I SHARED THE

1 INFORMATION, THAT TOO MANY WITNESSES WERE INDICATING ANOTHER
2 PERSON, THAT ANOTHER PERSON WAS PRESENT, AND THAT ANOTHER
3 PERSON EFFECTUATED THE SHOT.

4 Q. NOW WERE YOU THERE TO TRANSLATE AT THE PRELIMINARY
5 HEARING?

6 A. YES, I WAS.

7 Q. DID INVESTIGATOR SMITH MAKE ANY MENTION THAT THERE EVEN
8 EXISTED ANOTHER PERSON?

9 A. NO, HE DID NOT.

10 Q. AND, IN FACT, IN RESPONSE TO DIRECT QUESTIONING HE SAID
11 THERE WAS NO OTHER PERSON INVOLVED?

12 A. THAT IS TRUE.

13 Q. SO DID THAT CONTRIBUTE TO YOUR THINKING THAT THE STATE
14 DID NOT KNOW OF ANY POTENTIAL OTHER PERSON?

15 A. ABSOLUTELY.

16 Q. AND THOUGHT IT WOULD BE THE BASIS FOR PROVIDING THIS
17 INFORMATION TO THEM, RIGHT?

18 A. IF MY MEMORY IS CORRECT, I BELIEVE THAT AT THAT TIME IT
19 WAS MENTIONED IN THE PRELIMINARY HEARING THAT THEY ONLY HAD
20 THREE WITNESSES. I BELIEVE, I'M NOT SURE OF THE DATE, BY
21 THAT TIME I ALREADY HAD MORE. I KNOW THAT AT LEAST SHORTLY
22 THEREAFTER INDEED I DID HAVE MUCH MORE THAN THAT. AND ALL
23 OF THEM SEPARATE FROM THE THREE PERSONS THAT THEY HAD SPOKEN
24 TO.

25 Q. NOW THROUGH YOUR SPEAKING TO A NUMBER OF WITNESSES DID

1 YOU BEGIN TO SUSPECT A PARTICULAR PERSON AS BEING THE
2 GUNMAN?

3 A. YES. MOST OF THE PEOPLE GAVE A RATHER CONSISTENT
4 DESCRIPTION OF THE INDIVIDUAL. THERE WERE DIFFERENCES.
5 THERE WERE SOME DISCREPANCIES. THEY SEEMED TO BE MINOR.
6 SLOWLY AN IMAGE OF A PERSON STARTED TO COME OUT, SOMEONE WHO
7 HAD BEEN SEEN IN THE COMMUNITY, SOMEONE WHO DID GO TO
8 DIFFERENT SOCIAL EVENTS, AND WAS KNOWN SOMEWHAT BY MANY
9 PEOPLE.

10 Q. AND WHAT DID YOU DO WITH THE INFORMATION ABOUT THE
11 POTENTIAL SECOND SHOOTER?

12 A. WHEN -- ESPECIALLY WHEN IT WAS NARROWED DOWN TO ONE
13 PROBABLE PERSON I SHARED THIS KNOWLEDGE WITH THE POLICE OF
14 GREENVILLE COUNTY IN A PERSON OF DETECTIVE WESLEY SMITH
15 INDICATING TO HIM THAT THIS WAS SOMEONE THAT WE THOUGHT
16 SHOULD BE A PERSON OF INTEREST.

17 Q. AND HOW WERE YOU ABLE TO GET THE INFORMATION ON THE
18 PERSON?

19 A. THROUGH EXTENSIVE, I GUESS YOU WOULD CALL IT,
20 CANVASSING TO BEGIN WITH.

21 Q. WELL, HOW ABOUT -- YOU ENDED UP WITH A PICTURE, LIKE A
22 MUG SHOT OF HIM.

23 A. YES. AT THAT POINT BY THEN WE HAD BEEN ABLE TO NARROW
24 DOWN TO A NAME. FIRST WE STARTED WITH DAN, DANIELRENE,
25 DANIELONE. FINALLY WE'RE ABLE TO EVEN GET A LAST NAME FOR

1 THAT, DANIEL ARIANA OR BOTH LAST NAMES, DANIEL ARIANA
2 GONZALES.

3 Q. AND HE WAS IN THE CRIMINAL SYSTEM?

4 A. HE WAS IN THE SYSTEM FOR SOME MINOR CHARGE. WE FOUND
5 HIM IN THE SYSTEM AND THEREFORE OBTAINED A PHOTOGRAPH.

6 Q. NOW YOU TESTIFIED TO THIS BEFORE. AT A CERTAIN POINT
7 MARLON CALLED ABOUT HIS CONFESSION AS WELL FROM THE JAIL?

8 A. YES.

9 Q. AND YOU INTERPRETED IT?

10 A. YES.

11 Q. WHAT WAS HIS REACTION WHEN YOU WERE INTERPRETING WHAT
12 WAS SAID IN HIS CONFESSION?

13 A. HIS REACTION WAS AN INCREDULOUS REACTION. I HAD TO
14 CONSTANTLY CALM HIM DOWN BECAUSE HE WAS CONTINUALLY SAYING,
15 NO, THAT, I DIDN'T SAY. NO, BUT THAT PART I DIDN'T SAY.
16 THAT'S NOT TRUE.

17 Q. AND SO HE WAS SURPRISED BY WHAT WAS ACTUALLY IN HIS
18 STATEMENT?

19 A. GREATLY SURPRISED.

20 Q. I'VE GOT NOTHING FURTHER.

21 THE COURT: NOW ANY QUESTIONS, SOLICITOR?

22 CROSS EXAMINATION BY MS. HODGE:

23 Q. YOU WERE TRANSLATING AT THE PRELIMINARY HEARING?

24 A. YES, I WAS.

25 Q. AND WE DID INTRODUCE EVIDENCE OF THE DEFENDANT'S

1 STATEMENT AT THE PRELIMINARY HEARING, IS THAT CORRECT?

2 A. I CAN'T REMEMBER IF THERE WAS A MENTION OF IT.

3 Q. I BELIEVE THERE WAS EXTENSIVE QUESTIONING OF IT SEEING
4 THAT THE DEFENSE HAD WANTED US TO PROVIDE WHAT THE BASIS FOR
5 OUR PROBABLE CAUSE WAS AND THAT WAS ONE OF THE ELEMENTS.

6 A. OKAY.

7 Q. SO THAT WOULD HAVE ALREADY BEEN TRANSLATED TO HIM AND
8 DISCUSSED WITH HIM AT THE PRELIMINARY HEARING.

9 A. WHETHER THERE WAS A STATEMENT IN THE FORM OF
10 CONFESSION, I REALLY CAN'T REMEMBER IF SUCH WAS READ AT THE
11 PRELIMINARY HEARING OR NOT. IT WAS QUITE SOME TIME AGO.

12 Q. NOW YOU ARE NOT A LICENSED PRIVATE INVESTIGATOR, IS
13 THAT CORRECT?

14 A. ABSOLUTELY NOT.

15 Q. YOU ARE NOT LAW ENFORCEMENT OR HAVE EVER BEEN A LAW
16 ENFORCEMENT OFFICER, IS THAT CORRECT?

17 A. NO, I HAVE NOT.

18 Q. AND YOU ESSENTIALLY VOLUNTEERED YOUR SERVICES IN THIS
19 CASE, IS THAT CORRECT?

20 A. THAT IS CORRECT.

21 Q. AND YOU HEARD ABOUT THIS CASE IN THE COMMUNITY, IS THAT
22 CORRECT?

23 A. THAT IS CORRECT ALSO.

24 Q. YOU WERE NOT PRESENT AT THE SCENE?

25 A. ABSOLUTELY NOT.

1 Q. OR THE INCIDENT? SO YOU WERE BASING ALL OF YOUR
2 INFORMATION ON HEARSAY? WHAT OTHER PEOPLE WERE SAYING
3 HAPPENED AT THE SCENE, NOT OF YOUR OWN FIRSTHAND KNOWLEDGE?

4 A. NO. IT GOT TO THE POINT WHERE I WAS HEARING PEOPLE
5 TELLING ME WHAT THEY SAW THEMSELVES.

6 Q. CORRECT. BUT IT WAS NOT WHAT YOU SAW, ---

7 A. NO, IT IS NOT WHAT I SAW.

8 Q. --- IT WAS WHAT SOMEONE ELSE SAW? AND AS FAR AS NOT
9 BEING LAW ENFORCEMENT OR A PRIVATE INVESTIGATOR YOU'VE NOT
10 HAD ANY FORMAL TRAINING IN INTERVIEWING WITNESSES OR
11 SUSPECTS, IS THAT CORRECT?

12 A. MIGHT I TAKE JUST A SECOND?

13 Q. I'M SORRY. YOU HAVE TO ANSWER THE QUESTIONS YOURSELF.
14 THE COURT: YES, YOU HAVE TO ANSWER THE QUESTION.

15 A. MIGHT I CONFER WITH HIS HONOR FOR ONE SECOND?

16 Q. I DON'T BELIEVE SO. I BELIEVE YOU NEED TO ANSWER ---
17 THE COURT: YES, ---

18 Q. --- ANSWER THE QUESTION.

19 THE COURT: --- ANSWER THE QUESTION.

20 Q. HAVE YOU ---

21 A. I HAVE DONE WORK ABOUT WHICH I AM NOT AT LIBERTY TO
22 TELL FOR ENTITIES OF THE UNITED STATES OF AMERICA.

23 Q. SO YOU'VE WORKED SOME TOP SECRET CASE, IS THAT WHAT
24 YOU'RE TRYING TO ALLUDE TO?

25 MS. ROSS: I OBJECT. HE ---

1 A. I CANNOT PROVIDE DETAILS ON SUCH.

2 Q. AS PART OF THIS WHATEVER YOU MAY OR MAY NOT HAVE DONE
3 HAVE YOU RECEIVED ANY TRAINING IN HOW TO INVESTIGATE OR
4 SPEAK TO WITNESSES, POTENTIAL WITNESSES IN A CASE?

5 A. SUCH AS WOULD BE CONSTRUED TO BE TRAINING FOR THIS SORT
6 OF CASE, NO.

7 Q. HOW ABOUT IN PRESENTING PHOTO LINEUPS THAT -- FOR
8 POTENTIAL IDENTIFICATION OF A SUSPECT? HAVE YOU EVER BEEN
9 TRAINED IN THAT?

10 A. NO, I HAVE NOT.

11 Q. AND, IN FACT, WHEN YOU WERE ATTEMPTING TO GET
12 IDENTIFICATION ON THIS PERSON, DANIEL ...

13 A. DANIEL ARIANA.

14 Q. ARIANA, YOU ONLY HAD A SINGLE PHOTOGRAPH, IS THAT
15 CORRECT?

16 A. I WAS NOT AT THAT TIME TRYING TO OBTAIN IDENTIFICATION
17 WITH HIM -- OF HIM BY THE PHOTOGRAPH. I ASKED, I BELIEVE IT
18 WAS, TWO PEOPLE THAT WERE NOT EYEWITNESSES, I DO BELIEVE,
19 I'LL HAVE TO LOOK AT MY NOTES, IF THIS HAPPENED TO BE THE
20 PERSON THAT I HAD BEEN TOLD ABOUT IN AN EFFORT TO BE ABLE TO
21 STIPULATE SUCH TO DETECTIVE SMITH IN THE SENSE OF WHETHER IT
22 SHOULD BE SOMEONE THAT INDEED HE SHOULD LOOK FOR OR NOT.

23 Q. AND THESE ARE DETERMINATIONS YOU'RE MAKING THROUGHOUT
24 YOUR EXTENSIVE INVESTIGATION, I THINK YOU'D SAID, CANVASSING
25 THE AREA?

1 A. YES.

2 Q. ISN'T IT TRUE THAT YOU ACTUALLY TOLD INVESTIGATOR SMITH
3 YOU HAD GOTTEN MOST OF YOUR INFORMATION FROM THE DEFENDANT'S
4 SISTER, ENIPHEA X, NO LAST NAME?

5 A. NIMPHA?

6 Q. NIMPHA.

7 A. NO. NO, I DID NOT.

8 Q. THAT'S NOT TRUE?

9 A. NO, THAT IS NOT TRUE.

10 Q. AND ISN'T IT ALSO TRUE THAT YOU ACTUALLY IDENTIFIED
11 YOURSELF AS AN ATTORNEY TO MANY OF THESE PEOPLE YOU WERE OUT
12 TALKING -- THAT YOU WERE THE DEFENDANT'S ATTORNEY?

13 A. ABSOLUTELY NOT. I AM ALWAYS VERY EMPHATIC ABOUT THAT.

14 Q. SO IF EVERY SINGLE ONE OF THE PEOPLE YOU TALKED TO
15 STATED THAT YOU REPRESENTED YOURSELF TO BE HIS LAWYER THAT
16 WOULD NOT BE CORRECT?

17 A. I DID NOT REPRESENT MYSELF. I DO NOT REPRESENT
18 MYSELF AS A LAWYER. I DO LOTS OF TRANSLATIONS IN MANY
19 DIFFERENT AREAS, ESPECIALLY IN THE AREA OF PICKENS WHERE I
20 LIVE. IT IS TRUE THAT SOMETIMES WITH SOME OF OUR MORE
21 MODEST HISPANICS I CAN TALK EXTENSIVELY ABOUT NOT BEING A
22 LAWYER, IN MANY CASES, MANY OF OUR MAGISTRATE CASES I CAN
23 EXPLAIN TO THEM THAT I AM JUST THERE, EVEN IF IT'S JUST FOR
24 A BOND HEARING, JUST TO TRANSLATE. AND WHEN I LEAST EXPECT
25 THEY LOOK UP AND SAY, (WHEREUPON THE WITNESS SPOKE IN

1 SPANISH) YES, LICENSE, WHICH IS THE WAY MANY HISPANICS --
2 IT'S A WORD MANY HISPANICS USE FOR -- WOULD USE FOR A
3 LAWYER.

4 Q. AND IN LATIN AMERICA IS A NOTARY -- DOES A LAWYER HAVE
5 TO BE A NOTARY?

6 A. NO. IN MOST OF LATIN AMERICA A NOTARY IS NOT JUST A
7 PRIVATE CITIZEN. NOTARY IS AN OFFICIAL POST. IT'S A JOB.
8 IT IS A POSITION PER SE. IT IS AN OFFICIAL POSITION. IT IS
9 NOT MERELY A PRIVATE CITIZEN. AND NORMALLY IN THE ENORMOUS
10 MAJORITY OF THE CASES THEY WOULD NOT BE LAWYERS NOR HAVE
11 ANYTHING TO DO. THEY'RE A CAREER PERSON WHO IS MERELY
12 RUNNING A NOTARY.

13 Q. SO IF SOMEONE FROM SOUTH AMERICA OR CENTRAL AMERICA
14 SAID THAT ATTORNEY -- YOU MUST BE AN ATTORNEY TO BE A NOTARY
15 THAT WOULD NOT BE CORRECT?

16 A. IF SOMEONE FROM SOUTH AMERICA WOULD SAY THAT? IT WOULD
17 NOT BE CORRECT IN THE GREAT MAJORITY OF SOUTH AMERICA WITH
18 THE EXCEPTION AS FAR AS I KNOW OF CERTAIN AREAS OF PARAGUAY.

19 Q. DO YOU HAVE A NOTARY SYMBOL ON YOUR CARD?

20 A. NO. I HAVE WHAT I THINK IS A LEGAL SYMBOL AND A
21 MEDICAL SYMBOL BECAUSE MOST OF THE TRANSLATIONS I DO ARE
22 EITHER FOR LEGAL CONCERNS OR MEDICAL CONCERNS.

23 Q. DOES YOUR CARD SAY THAT YOU ARE A NOTARY PUBLIC?

24 A. NO, ABSOLUTELY NOT.

25 Q. DO YOU HAVE A CARD WITH YOU THAT I MAY SEE?

- 1 A. YES.
- 2 Q. THANK YOU. HAVE YOU CHANGED CARDS ANYTIME RECENTLY?
- 3 A. NOT SIGNIFICANTLY. EVERY ONCE IN A WHILE, SINCE I DO
- 4 THEM ON MY OWN COMPUTER, I TRY TO MAKE THEM ONE WAY OR THE
- 5 OTHER A LITTLE BIT CLEARER. I USED TO HAVE THE HOME PHONE
- 6 FIRST AND THE CELL PHONE SECOND. I TURNED THAT AROUND,
- 7 TRIED TO MAKE IT MORE EXCLUSIVE, MORE EASY TO USE.
- 8 Q. BUT YOU DO HAVE A SCALE OF JUSTICE ON HERE, IS THAT
- 9 CORRECT?
- 10 A. YES. THAT'S WHAT I THOUGHT WOULD BE THE MOST
- 11 APPROPRIATE FOR LEGAL TRANSLATIONS.
- 12 Q. COULD IT POSSIBLY HAVE OTHER IMPLICATIONS TO LESS
- 13 SOPHISTICATED PEOPLE THAT SEE THAT SYMBOL AND ASSUME LAWYER?
- 14 A. I DON'T THINK SO IN THE SAME WAY THEY SEE THE MEDICAL
- 15 SYMBOL AND THINK I'M A DOCTOR.
- 16 Q. COULD THEY DRAW THAT CONCLUSION?
- 17 A. THAT I WOULD BE A DOCTOR AND A LAWYER? I DOUBT IT
- 18 BECAUSE IF WE'RE DEALING WITH A MORE HUMBLER AND MORE
- 19 SIMPLISTIC PEOPLE MOST OF THEM WOULD NOT RECOGNIZE THE
- 20 SYMBOL FOR LAW OR THE SYMBOL FOR MEDICINE.
- 21 Q. THEN WHY DO YOU HAVE THEM ON THERE?
- 22 A. BECAUSE SOME OF THE PEOPLE I DEAL WITH HOPEFULLY DO.
- 23 Q. MAY I KEEP THIS?
- 24 A. SURELY.
- 25 Q. THANK YOU.

1 MS. HODGE: JUST ONE MOMENT, YOUR HONOR.

2 Q. YOU WERE SPEAKING TO THE POTENTIAL WITNESSES THAT YOU
3 CANVASSED THE AREA TO FIND, IS THAT CORRECT?

4 A. YES.

5 Q. AND YOU PROVIDED THOSE BY THE INSTRUCTION OF MS. ROSS
6 OVER TO INVESTIGATOR SMITH, IS THAT CORRECT?

7 A. YES.

8 Q. AND THEN HE WENT OUT AND LOCATED AS MANY OF THOSE
9 PEOPLE AS HE COULD, IS THAT CORRECT?

10 A. I DON'T KNOW.

11 Q. OF YOUR KNOWLEDGE? DID HE COME BACK TO YOU -- I'LL
12 STRIKE THAT QUESTION. DID HE COME BACK TO YOU AFTER HE HAD
13 INTERVIEWED THE PEOPLE THAT YOU PROVIDED TO HIM AND INFORM
14 YOU THAT A LOT OF THE THINGS OR SOME OF THE THINGS THAT YOU
15 HAD STATED TO HIM THAT THEY WOULD SAY THEY, IN FACT, DID NOT
16 SAY? DO YOU RECALL THAT CONVERSATION WITH INVESTIGATOR
17 SMITH?

18 A. NO. HE DID NOT GET BACK TO ME. I GOT BACK TO HIM. I
19 WAITED, AND WAITED, TO BE QUITE FRANK, RATHER ANXIOUSLY. I
20 WAS REALLY ENTHUSED BY WHAT I THOUGHT WAS SOMETHING GOOD IN
21 TRANSPARENCY IN A CASE. FINALLY I COULD NOT RESIST. I
22 CALLED HIM.

23 I WAS INFORMED BY HIM INDEED THAT THE WITNESSES WERE
24 SAYING DIFFERENT THINGS AND THEY HAD NOT SAID WHAT I HAD
25 SAID THAT THEY HAD SAID. I MERELY GAVE HIM NOTES THAT I

1 HAD. I NEVER THOUGHT ABOUT TAKING A SO-CALLED, I THINK YOU
2 SAY THIS DEPOSITION. I THINK A LAWYER HAS TO DO THAT. BUT
3 ANYWAY, I GAVE HIM MY NOTES.

4 YES, I WAS ENTHUSED ABOUT IT. HE TOLD ME THAT THE
5 PEOPLE HAD SAID SOMETHING ELSE. I TOLD HIM THAT I WOULD
6 SPEAK WITH THEM AGAIN AND SEE WHY THE DIFFERENCES -- WHAT
7 WAS GOING ON AT THAT TIME. HE TOLD ME, NO, THAT I COULD NOT
8 SPEAK WITH THEM. THEY WERE GOING TO BE CALLED AS STATE
9 WITNESSES AND THAT I COULD NOT SPEAK WITH THEM.

10 Q. LET ME BACK UP. YOU TOOK NOTES FROM WHAT THESE PEOPLE
11 TOLD YOU, CORRECT?

12 A. YES.

13 Q. AND YOUR NOTES WERE WHAT THEY TOLD YOU? YOU DIDN'T
14 MAKE UP THIS STUFF, DID YOU?

15 A. NO.

16 Q. SO IF THEY WERE PRESENTED WITH WHAT THEY SUPPOSEDLY
17 TOLD YOU BY INVESTIGATOR SMITH AND THEY THEN DENIED PARTS OF
18 THOSE THINGS WOULD THAT BE BECAUSE THERE WAS A
19 MISCOMMUNICATION OR WOULD THAT BE BECAUSE THAT WASN'T WHAT
20 THEY SAID AT ALL?

21 A. I PUT DOWN WHAT I UNDERSTOOD FROM THEM. I DID NOT HAVE
22 ANY DIFFICULTY WITH COMMUNICATION BY ANY MEANS.

23 Q. SO IT WOULD NOT BE A MISTRANSLATION ON YOUR PART?

24 A. NO, IT WOULD NOT.

25 Q. SO BASICALLY IF THEY DENIED IT THEN -- IF IT WASN'T A

1 MISTRANSLATION IT WAS A FABRICATION?

2 A. YES. THEN EITHER A ---

3 MS. ROSS: I'D OBJECT TO THIS ---

4 A. --- FABRICATION OR ---

5 THE COURT: WAIT, WAIT. HOLD ON. I SUSTAIN THE
6 OBJECTION TO THE FORM OF THAT QUESTION.

7 Q. WHEN YOU STATED THAT YOU WERE REALLY EXCITED ABOUT THIS
8 CASE, ---

9 A. YES.

10 Q. --- THAT YOU JUST COULDN'T WAIT TO CALL INVESTIGATOR
11 SMITH AND ONCE HE TOLD YOU THERE WAS A LITTLE DIFFERENCE IN
12 THE STATEMENTS THAT THE WITNESSES GAVE HIM AND GAVE YOU THAT
13 DISAPPOINTED YOU?

14 A. YES. I WAS EXCITED ABOUT THE IDEA OF INSTEAD OF
15 ARBITRARIAL SYSTEM, WHAT LITTLE I KNOW OF IT, OF SOMETHING
16 WITH TRANSPARENCY, OF BEING ABLE MERELY TO SHARE, SHARE WHAT
17 WE HAD FOUND.

18 Q. AND YOU WERE HOPING AND THINKING THAT THIS WAS THE
19 HISPANIC COMMUNITY RALLYING AROUND GETTING ONE OF THEIR OWN
20 OFF OF SOME CHARGES?

21 A. NO. I SAW IT MORE IN THE LIGHT OF SOME PEOPLE WHO WERE
22 WILLING TO COME FORWARD. MANY PEOPLE WERE VERY HESITANT.
23 SOME PEOPLE WERE WILLING TO COME FORWARD. AND I WAS
24 HEARTENED BY THE IDEA OF BEING ABLE TO SHARE THIS
25 INFORMATION BEFOREHAND. BY BEFOREHAND I MEAN NOT

1 NECESSARILY WAITING FOR A TRIAL. THE POLICE ARE TRYING TO
2 FIND -- TO GET TO THE BOTTOM, TRYING TO FIND THE BASE FACTS,
3 WE'RE TRYING TO FIND FACTS. I FELT HEARTENED BY THE IDEA,
4 THE BASE IDEA OF BEING ABLE TO SHARE THIS INFORMATION TO GET
5 TO REALLY WHAT HAPPENED INSTEAD OF TWO VERSIONS IF IT COULD
6 COME TOGETHER SO THE INFORMATION COULD BE SHARED AND TRY TO
7 GET REALLY TO THE BOTTOM OF WHAT HAPPENED.

8 Q. THE RESULT OF THE STATEMENTS OF THE WITNESSES YOU
9 TALKED TO THOUGH DID NOT GIVE YOU ONE CONSISTENT VERSION OF
10 EVENTS, DID THEY?

11 A. NO. THERE WERE SOME DIFFERENCES TO A CERTAIN EXTENT AS
12 I EXPECTED.

13 THE COURT: THANK YOU.

14 MS. ROSS: I JUST WOULD LIKE TO DO SOME REDIRECT.

15 REDIRECT EXAMINATION BY MS. ROSS:

16 Q. YOU'VE SEEN THE STATEMENTS THAT WERE WRITTEN OUT BY THE
17 WITNESSES AFTER YOU GAVE THEM TO OFFICER SMITH AND HE WENT
18 OUT AND SPOKE TO THEM THROUGH DEPUTY ---

19 A. YES.

20 Q. ARE THEY SUBSTANTIALLY DIFFERENT FROM WHAT YOU WERE
21 TOLD?

22 A. THEY VARIED IN DETAILS. ONE DETAIL THAT POPS INTO MY
23 MIND THAT ONE WITNESS SAID THAT THE SHOT WAS EITHER LOUD OR
24 SOFT, AND AFTER THE PERSON SAID THE OTHER WAY. I REMEMBER
25 -- I DON'T REMEMBER WHICH WAY IT WAS, THAT THE SHOT WAS SOFT

1 OR LOUD.

2 Q. BUT DID THE DETAILS CHANGE AS TO THE FACT THAT THERE
3 WERE TWO ---

4 THE COURT: WELL, THE STATEMENTS ---

5 Q. --- GUNMEN?

6 THE COURT: --- DO YOU HAVE THE STATEMENTS? THEY WILL
7 SPEAK FOR THEMSELVES. JUST PUT THEM IN THE RECORD.

8 MS. ROSS: I'VE GOT THEM IN SORT OF A CONVOLUTED
9 MANNER. I'M GOING TO PUT IN THE RECORD ---

10 THE COURT: I'M NOT GOING TO ALLOW HIM TO TESTIFY AS TO
11 THE DIFFERENCES. IF YOU'VE GOT THE STATEMENTS THEN PUT THEM
12 IN THE RECORD.

13 MS. ROSS: I'LL DO THAT THROUGH TAKING -- I'D HAVE TO
14 COMPILE IT. I'M JUST TRYING ---

15 THE COURT: WELL, I MEAN, YOU GAVE THOSE STATEMENTS TO
16 THE SOLICITOR?

17 MS. HODGE: YES, SIR.

18 MS. ROSS: RIGHT. AND THEY'RE ---

19 THE COURT: DID SHE PROVIDE A COPY?

20 MS. ROSS: --- ALL JUST KIND OF MIXED IN.

21 MS. HODGE: YOUR HONOR, I HAVE COPIES I'VE MARKED ON
22 AND HIGHLIGHTED OF MY OWN, BUT THEY'RE ACTUALLY HIS NOTES.
23 HIS INITIAL INTERVIEWS WERE RECORDED IN HIS PERSONAL NOTES.
24 BUT I HAVE COPIES OF THE STATEMENTS THAT LAW ENFORCEMENT
25 TOOK.

1 THE COURT: WELL, WE'LL MAKE -- WE'LL FIND THOSE AND
2 WE'LL MAKE THEM A PART OF THE RECORD. ALL RIGHT. ANYTHING
3 ELSE, MS. ROSS?

4 MS. ROSS: YES, BRIEFLY.

5 Q. JUST AS FAR AS YOUR IDENTIFICATION, WHETHER YOU PUT
6 YOURSELF OUT THERE AS A LAWYER OR NOT YOU WERE REPRESENTING
7 ME? I HAD SENT YOU TO TALK TO THESE PEOPLE ON BEHALF OF
8 THIS DEFENDANT?

9 A. YES. AND I CONSTANTLY MADE IT CLEAR FOR SEVERAL
10 REASONS THAT IT WAS FOR PUBLIC DEFENSE THAT I WAS THERE.
11 AND AT NO TIME PLACING MYSELF AS A PUBLIC DEFENDER.

12 Q. AND THE PRELIMINARY HEARING, I DON'T THINK IT WOULD
13 SURPRISE YOU IF IT WAS HELD ACCORDING TO MY RECORDS ON
14 SEPTEMBER 1ST, 2004?

15 A. ALL RIGHT.

16 Q. NOW MR. MARLON RIVERA WAS ARRESTED JULY 18TH, 2004.
17 WOULD IT SURPRISE YOU IF MY NOTES REFLECT THREE PROFESSIONAL
18 VISITS BETWEEN US AND THE DEFENDANT BETWEEN THOSE PERIODS,
19 BETWEEN THE TIME OF THE PRELIMINARY HEARING?

20 A. I WOULD IMAGINE THAT TO BE CORRECT.

21 Q. SO WHEN THE STATEMENT WAS BROUGHT OUT IN THE
22 PRELIMINARY HEARING OR ALLUDED TO IN THE PRELIMINARY HEARING
23 THAT WAS AFTER WE CONFERRED WITH MR. RIVERA ---

24 A. YES.

25 Q. --- THREE TIMES?

1 A. YES.

2 Q. I'VE GOT NOTHING FURTHER.

3 THE COURT: THANK YOU. YOU CAN STEP DOWN. ALL RIGHT.
4 BRING THE JURY.

5 MS. ROSS: AND CLEARLY I'D RENEW MY OBJECTION BASED ON
6 WHAT HE SAID.

7 THE COURT: ALL RIGHT. OKAY, MS. ROSS.

8 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:54 PM)

9 MS. ROSS: THE DEFENSE WOULD CALL COURTNEY ROBLES.
10 COURTNEY ROBLES, BEING

11 DULY SWORN TESTIFIED AS FOLLOWS:

12 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
13 RECORD.

14 MS. ROBLES: COURTNEY REBECCA ROBLES.

15 THE COURT: CAN YOU PULL IN CLOSE TO THE MIKE PLEASE,
16 MA'AM?

17 MS. ROBLES: COURTNEY REBECCA ROBLES.

18 DIRECT EXAMINATION BY MS. ROSS:

19 Q. HEY, THERE. I GUESS WE'LL START -- DID YOU EVER TALK
20 TO LAW ENFORCEMENT? DO YOU RECALL THIS SHOOTING ON JULY
21 18TH, LATE AT NIGHT ON THE 17TH, 18TH OF 2004?

22 A. UM-HUM (AFFIRMATIVE).

23 Q. DID YOU EVER TALK TO POLICE ABOUT THAT SHOOTING?

24 A. YES, MA'AM.

25 Q. AND WHEN DID YOU TALK TO THE POLICE ABOUT THAT

1 SHOOTING?

2 A. THE NIGHT THAT IT OCCURRED ON THE 18TH.

3 Q. AND WHAT DID YOU TELL THE POLICE?

4 A. I TOLD THEM THAT WHEN I ARRIVED I SAW TWO MEN SHOOTING.

5 AFTER A FEW MINUTES THEY WERE -- MY FRIEND SEPARATED THEM.

6 AND SOMEBODY PULLED OUT A GUN AND SHOT IT OFF TWO TO THREE
7 TIMES MAYBE.

8 Q. AND I WANT YOU JUST TO SLOW DOWN. AND GOING BACK WHEN
9 YOU ARRIVED YOU SAW TWO MEN SHOOTING?

10 A. I SAW ONE MAN WITH THE GUN AND HE SHOT IT TWICE.

11 Q. BEFORE ANYONE PULLED OUT THE GUN WERE TWO MEN DOING
12 ANYTHING?

13 A. THEY WERE FIGHTING.

14 Q. SO HOW LONG DID LAW ENFORCEMENT GET THERE AFTER THE
15 SHOOTING OCCURRED?

16 A. ABOUT FIFTEEN, TWENTY MINUTES MAYBE, IF NOT LONGER.

17 Q. AND DID YOU EVER SEE THE HEAD INVESTIGATOR, MR. SMITH?

18 A. I DID.

19 Q. AND DID YOU TELL HIM WHAT HAPPENED?

20 A. I DID.

21 Q. AND SO YOU TOLD HIM THAT THERE WERE TWO MEN WHO SHOT?

22 A. I TOLD HIM THE TWO MEN WERE TOGETHER, BUT ONLY ONE OF
23 THEM ACTUALLY SHOT THE GUN.

24 Q. AND WHAT WAS THE CONTEXT -- SLOW DOWN ABOUT -- DID --
25 WHAT WAS THE CONTEXT OF THE SHOOTING? DID THE PERSON WHO

1 SHOT HAVE THE GUN THE WHOLE TIME OR ---
2 A. NO.
3 Q. --- SLOW DOWN AND TELL US SLOWLY WHAT HAPPENED.
4 A. THERE WERE TWO -- WHEN I ARRIVED THERE WERE TWO MEN
5 FIGHTING. ONE -- THERE WAS A MAN IN A STRIPED SHIRT WAS
6 FIGHTING A MAN WHO HAD ON A WHITE T-SHIRT AND BLUE JEANS.
7 Q. SO A MAN IN A STRIPED SHIRT WAS FIGHTING A MAN IN A
8 WHITE SHIRT?
9 A. RIGHT.
10 Q. I'M GOING TO TURN THIS AROUND. WHERE -- DO YOU
11 RECOGNIZE THIS MAP AT ALL?
12 A. UM-HUM (AFFIRMATIVE).
13 Q. WHERE DID THIS ALL OCCUR?
14 A. THIS HAPPENED AT SPANISH AMIGOS.
15 Q. AND WHAT DID THE FIGHTING -- WHERE WERE YOU?
16 A. I WAS IN THE PARKING LOT. I HAD PULLED UP NEXT TO MY
17 HUSBAND. AND HE WAS WAITING ON ME IN THE PARKING LOT. AND
18 WE WERE WALKING TOWARDS THE TACO STAND RIGHT THERE IN FRONT
19 OF SPANISH AMIGOS.
20 Q. SO YOU'D JUST ARRIVED THERE?
21 A. UM-HUM (AFFIRMATIVE).
22 Q. WERE YOU ABLE -- WERE YOU DRUNK OR OUT OF IT? DID YOU
23 ---
24 A. NO. I HAD ---
25 Q. --- KNOW WHAT WAS GOING ON?

- 1 A. --- JUST GOTTEN OFF WORK.
- 2 Q. SO YOU JUST -- WHERE WERE YOU WORKING?
- 3 A. I WAS WORKING -- I WAS A MANAGER AT BOJANGLES AT THE
4 TIME ON PARIS ROAD.
- 5 Q. AND WHERE ARE YOU WORKING NOW?
- 6 A. GREENVILLE PLACE ASSISTED LIVING.
- 7 Q. AND SO THERE YOU'D JUST GOTTEN OFF OF WORK, YOU DRIVE
8 UP IN THE PARKING LOT, AND YOU SAID YOU SAW A MAN IN A
9 STRIPED SHIRT AND A MAN IN A WHITE SHIRT FIGHTING?
- 10 A. UM-HUM (AFFIRMATIVE).
- 11 Q. NOW AFTER THAT WHAT DID YOU SEE ABOUT THE GUN?
- 12 A. A GUY IN A BLACK T-SHIRT AND BLUE JEANS SEPARATED THE
13 TWO MEN THAT WERE FIGHTING.
- 14 Q. A DIFFERENT PERSON, NOT ---
- 15 A. A DIFFERENT PERSON. HE SEPARATED THEM. HE PULLED --
16 AND THE GUY THAT HAD ON THE BLACK T-SHIRT PULLED A GUN OUT
17 FROM -- I'M NOT SURE IF IT WAS HIS WAISTBAND OR A POCKET OF
18 THE GUY THAT HAD THE STRIPED SHIRT ON.
- 19 Q. SO THE GUY IN THE BLACK SHIRT TOOK THE GUN FROM THE GUY
20 IN THE STRIPED SHIRT?
- 21 A. UM-HUM (AFFIRMATIVE).
- 22 Q. AND THEN WHAT DID HE DO?
- 23 A. HE POINTED IT TOWARD THE DIRECTION OF THE GUY THAT HAD
24 BEEN FIGHTING IN THE WHITE SHIRT AND SHOT IT OFF.
- 25 Q. SO HE POINTED STRAIGHT AHEAD AND SHOT?

1 A. YEAH.

2 Q. AND THEN WHAT DID YOU SEE?

3 A. HE HANDED THE GUN BACK TO THE GUY IN THE STRIPED SHIRT.

4 AND HE SAID, COME ON, THE POLICE ARE COMING. AND HE LEFT.

5 THEY LEFT WALKING TOWARDS BARRINGTON PARK.

6 Q. NOW SO I'M GOING TO DO "A" AND "B". WE'LL CALL "A"

7 STRIPED SHIRT AND "B" BLACK SHIRT. "A" HAS GUN.

8 A. UH-HUH (AFFIRMATIVE).

9 Q. "B" TAKES GUN AND SHOOTS ---

10 MS. HODGE: I'M GOING TO OBJECT TO THE ---

11 THE COURT: YEAH, I SUSTAIN THE OBJECTION.

12 MS. ROSS: ALL RIGHT.

13 Q. IF YOU'RE CALLING STRIPED SHIRT "A" AND BLACK SHIRT "B"

14 WHAT HAPPENED?

15 A. THE GUY IN THE BLACK SHIRT SEPARATED THE GUY -- THE TWO

16 MEN THAT WERE FIGHTING OR OTHER WORDS, THE GUY "A" AND THE

17 GUY -- THE OTHER GUY IN THE WHITE SHIRT. AND THE GUY THAT

18 HAD THE BLACK SHIRT ON TOOK A GUN OUT FROM THE WAISTBAND OR

19 THE POCKET OF THE GUY WHO HAD THE STRIPED SHIRT ON, "A", I

20 SUPPOSE.

21 Q. I'M SORRY.

22 A. AND POINTED IT TOWARDS THE OTHER MEN -- THE OTHER MAN

23 THAT HAD BEEN FIGHTING THE GUY IN THE STRIPED SHIRT AND SHOT

24 IT OFF.

25 Q. AND THEN WHAT HAPPENED TO WHO YOU, I GUESS, LATER FOUND

1 OUT WAS WILFRIDO, THE VICTIM?

2 A. AS WE WALKED AROUND TO THE OTHER SIDE OF THE TACO STAND
3 WE SAW HIM LAYING ON THE GROUND KIND OF HALF -- HALF HIS
4 BODY WAS OFF OF THE SIDEWALK AND HIS UPPER HALF AND HIS HEAD
5 WERE KIND OF UP ON THE SIDEWALK RIGHT NEXT TO THE -- I
6 FORGET WHAT IT'S CALLED. RIGHT THERE AT THE END OF THE TACO
7 STAND.

8 Q. AND THEN DID HE HAVE ANYONE WITH HIM? WERE THERE
9 PEOPLE HOLDING HIM THAT YOU SAW?

10 A. YEAH, THE OTHER GUY THAT HAD BEEN FIGHTING IN THE WHITE
11 SHIRT.

12 Q. HAD STAYED?

13 A. YEAH.

14 Q. AND HE GAVE HIS NAME TO POLICE AS WELL AS YOU DID AT
15 THE SCENE AFTERWARDS?

16 A. UM-HUM (AFFIRMATIVE).

17 Q. WAS THERE ANOTHER MAN THERE WHO STAYED AS WELL?

18 A. NOT THAT I REMEMBER THAT WAS THERE WITH THE MAN THAT
19 HAD BEEN SHOT, NO.

20 Q. SO YOU REMEMBER TALKING TO THE POLICE WITH YOU AND ONE
21 OTHER PERSON?

22 A. UM-HUM (AFFIRMATIVE).

23 Q. DID THE OTHER PERSON AGREE WITH WHAT YOU WERE SAYING?
24 WERE Y'ALL ALL SAYING THE SAME ---

25 MS. HODGE: OBJECTION, YOUR HONOR.

1 THE COURT: I SUSTAIN THE OBJECTION TO THE FORM OF THE
2 QUESTION.

3 Q. WERE YOU ABLE TO DETERMINE WHAT WAS -- WHAT EVERYONE --
4 WHAT HAPPENED OR WHAT WAS TOLD TO LAW ENFORCEMENT?

5 A. WE DIDN'T REALLY TALK ABOUT WHAT EACH OTHER HAD SAID TO
6 THE POLICE.

7 Q. SO YOU ALL TALKED SEPARATELY?

8 A. UM-HUM (AFFIRMATIVE).

9 Q. AND DO YOU SPEAK SPANISH?

10 A. A LITTLE. ENOUGH.

11 Q. SO YOU WERE TELLING THIS TO THE OFFICERS IN ENGLISH?

12 A. UM-HUM (AFFIRMATIVE).

13 Q. SO YOU TOLD WHAT YOU'VE TOLD US HERE TODAY TO THOSE
14 OFFICERS RIGHT AFTER IT HAPPENED IN ENGLISH?

15 A. UM-HUM (AFFIRMATIVE).

16 Q. AND YOU TOLD THEM THAT THERE WAS A SHOOTING?

17 A. UM-HUM (AFFIRMATIVE).

18 Q. CORRECT? NOW DID THE POLICE BELIEVE YOU?

19 MS. HODGE: OBJECTION, ---

20 A. NO.

21 MS. HODGE: --- THAT'S SPECULATION.

22 THE COURT: I SUSTAIN THE OBJECTION TO THE QUESTION.

23 Q. WHAT DID THE POLICE DO WHEN YOU TOLD THEM IT WAS A
24 SHOOTING?

25 A. THEY SAID, OH, HE HAD JUST BEEN FIGHTING AND HE HAD

- 1 GOTTEN HIT.
- 2 Q. THEN ---
- 3 A. THAT MAYBE HE WAS ONE OF THE GUYS THAT HAD BEEN
- 4 FIGHTING AND SOMEBODY HAD JUST PUNCHED HIM IN THE EYE
- 5 BECAUSE BY THE TIME THEY GOT THERE HIS EYE WAS SO SWOLLEN
- 6 THAT YOU COULDN'T SEE THE ENTRY WOUND.
- 7 Q. BUT YOU BEING ON THE SCENE EARLIER KNEW THAT IT WAS A
- 8 SHOOTING?
- 9 A. RIGHT.
- 10 Q. AND HOW DID THE POLICE TREAT YOU AND YOUR STATEMENT?
- 11 A. THEY WERE VERY RUDE. VERY RUDE. BEFORE THE DETECTIVE
- 12 WES SENT THEM OUT THERE TO COME AND GET ME, BEFORE HE
- 13 ARRIVED THEY WERE VERY RUDE TO ME, AND MY HUSBAND, AND
- 14 EVERYBODY ELSE THAT WAS OUT THERE.
- 15 Q. AND WHEN THEY -- WHEN YOU SAY SENT TO GET YOU THEY SENT
- 16 TO GET YOU LATER AND ---
- 17 A. RIGHT.
- 18 Q. --- YOU GAVE A WRITTEN STATEMENT?
- 19 A. RIGHT. RIGHT.
- 20 Q. AND IN THAT WRITTEN STATEMENT DID YOU SAY THE SAME
- 21 THING THAT YOU'VE BEEN SAYING ALL ALONG ABOUT ---
- 22 A. UM-HUM (AFFIRMATIVE).
- 23 Q. --- THE FIGHT ---
- 24 A. UM-HUM (AFFIRMATIVE).
- 25 Q. --- AND EVERYTHING? SO THAT'S WHAT YOU TOLD POLICE

- 1 FROM THE BEGINNING?
- 2 A. RIGHT.
- 3 Q. NOW LATER ON DID YOU EVER MEET WITH THE PROSECUTOR OR
- 4 THE SOLICITOR IN THIS CASE HERE IN THE COURTHOUSE?
- 5 A. A COUPLE OF -- ABOUT A MONTH, A MONTH AND A HALF AGO
- 6 THE FIRST TIME I DID.
- 7 Q. AND DID YOU TELL HER OR THEM WHAT HAPPENED, THE SAME
- 8 THING YOU'VE SAID TODAY?
- 9 A. UM-HUM (AFFIRMATIVE).
- 10 Q. AND DID THEY GIVE YOU A SUBPOENA TO COME TO COURT?
- 11 A. UM-HUM (AFFIRMATIVE).
- 12 Q. AND THEN WHAT DID THEY TELL YOU YESTERDAY ABOUT THAT
- 13 SUBPOENA?
- 14 A. THAT I WAS RELEASED FROM IT.
- 15 Q. SO THEY TOLD YOU YOU DIDN'T HAVE TO COME AND TESTIFY?
- 16 A. RIGHT.
- 17 Q. NOW DO YOU RECALL -- JUST WHEN YOU TALK ABOUT STRIPED
- 18 SHIRT AND BLACK SHIRT, DO YOU RECALL WHO WAS TALLER?
- 19 A. NO.
- 20 Q. DO YOU RECALL ANY DIFFERENCES WHATSOEVER? COULD YOU
- 21 IDENTIFY EITHER OF THEM?
- 22 A. NO, I COULDN'T.
- 23 Q. NOW AT THE TIME YOU GAVE THE STATEMENT IT WAS THE DATE
- 24 THIS HAPPENED?
- 25 A. RIGHT.

1 Q. NOW IF I TOLD YOU -- IF I SHOWED YOU THIS STATEMENT AND
2 LET YOU LOOK AT IT WOULD IT REFRESH YOUR RECOLLECTION OF
3 WHAT YOU SAID THEN ABOUT DESCRIPTIONS OF THE TWO?

4 (WHEREUPON THE WITNESS WAS READING THE STATEMENT)

5 THE COURT: ALL RIGHT. WHAT'S YOUR QUESTION?

6 Q. MY QUESTION IS CAN YOU RECALL MORE SPECIFICS BESIDES
7 THE SHIRT AND HOW YOU DESCRIBED THE TWO?

8 A. NOT REALLY. I MEAN, ---

9 Q. EVEN LOOKING AT THAT?

10 A. I MEAN, I MIGHT HAVE RECOGNIZED IT MORE THAT NIGHT, BUT
11 IT'S BEEN OVER A YEAR.

12 Q. WELL, AFTER READING THAT DO YOU REMEMBER WHAT YOU MIGHT
13 HAVE SAID ABOUT THE DESCRIPTIONS OF STRIPES VERSUS BLACK
14 SHIRT?

15 A. I REMEMBER BOTH OF THEM BEING TALL AND SLENDER, BUT I
16 DON'T REMEMBER ANYTHING TO DO WITH FACIAL HAIR OR ANYTHING
17 LIKE THAT.

18 Q. DO YOU REMEMBER ONE BEING TALLER THAN THE OTHER?

19 A. MAYBE. I'M NOT SURE.

20 Q. WHICH ONE DO YOU REMEMBER BEING TALLER?

21 A. I THINK THE GUY IN THE STRIPED SHIRT WAS A LITTLE BIT
22 TALLER THAN THE OTHER ONE.

23 Q. AND WOULD IT SURPRISE YOU THAT YOU DESCRIBED THE ONE IN
24 THE STRIPED SHIRT AS TALL AND SLENDER WITH A MUSTACHE?

25 A. I REMEMBER HIM BEING TALL AND SLENDER. I'M NOT SURE

1 ABOUT THE FACIAL HAIR BECAUSE I NEVER DID SEE BOTH OF THEM.

2 Q. OKAY.

3 A. I COULDN'T DESCRIBE ---

4 Q. WELL, BEFORE WHEN YOU GAVE THAT STATEMENT YOU DID WRITE
5 THAT? AND YOU MIGHT NOT REMEMBER SPECIFICALLY NOW.

6 A. RIGHT.

7 Q. BUT AT THE TIME DO YOU THINK YOU LIED ON THE STATEMENT?

8 A. NO.

9 Q. AND AT THE TIME DID YOU BASICALLY TELL THE POLICE WHAT
10 HAPPENED?

11 A. UM-HUM (AFFIRMATIVE).

12 Q. THAT TWO PEOPLE HAD THE GUN?

13 A. UM-HUM (AFFIRMATIVE).

14 THE COURT: ALL RIGHT, SOLICITOR.

15 MS. HODGE: THANK YOU.

16 CROSS EXAMINATION BY MS. HODGE:

17 Q. MS. ROBLES, YOU TOLD THE POLICE WHAT YOU THOUGHT YOU
18 SAW, IS THAT CORRECT?

19 A. (AFFIRMATIVE NOD).

20 Q. AND I BELIEVE THAT I'M GOING TO SHOW YOU STATE'S NUMBER
21 5. YOU'RE GOING TO HAVE TO TURN AROUND AND LOOK BEHIND YOU.
22 ARE YOU FAMILIAR WITH THIS PHOTOGRAPH? I KNOW IT'S GOT SOME
23 GLARE ON IT.

24 A. YES.

25 Q. IS THIS THE INCIDENT LOCATION THAT WE'VE BEEN TALKING

- 1 ABOUT?
- 2 A. YES, MA'AM.
- 3 THE COURT: SPEAK INTO THE MICROPHONE IF YOU CAN.
- 4 A. YES, MA'AM.
- 5 Q. AND IS THIS THE TACO STAND YOU'VE BEEN REFERRING TO?
- 6 A. YES, MA'AM.
- 7 Q. AND WERE YOU ACTUALLY ON THIS SIDE COMING THIS WAY ON
- 8 THE TACO STAND?
- 9 A. YES, MA'AM.
- 10 Q. AND WERE THE PEOPLE FIGHTING IN THIS AREA OVER HERE?
- 11 A. YES, MA'AM.
- 12 Q. SO THEY WERE THROUGH THE OTHER SIDE OF THE TACO STAND?
- 13 A. UM-HUM (AFFIRMATIVE).
- 14 Q. AND YOU SAID YOU ONLY SAW TWO PEOPLE FIGHTING, IS THAT
- 15 CORRECT?
- 16 A. CORRECT.
- 17 Q. AND THAT THERE -- ONLY ONE MAN FIRED THE GUN THAT YOU
- 18 SAW?
- 19 A. RIGHT.
- 20 Q. AND THAT HE FIRED IT STRAIGHT ON TOWARDS THE MAN HE WAS
- 21 FIGHTING WITH, IS THAT CORRECT?
- 22 A. RIGHT, OR THE GUY -- THE OTHER GUY WERE FIGHTING WITH.
- 23 Q. THE OTHER GUY WAS FIGHTING WITH?
- 24 A. UM-HUM (AFFIRMATIVE).
- 25 Q. AND WHICH, IF YOU CAN, THERE'S A LASER POINTER IN FRONT

1 OF YOU. YOU SEE THIS LITTLE THING HERE? AND IT'S GOT A
2 BUTTON RIGHT HERE. RIGHT THERE. IT MAKES A RED DOT. CAN
3 YOU TELL ME WHERE THE PERSON WITH THE GUN WAS STANDING?

4 A. PROBABLY MAYBE RIGHT THERE AT ...

5 Q. THAT POST?

6 A. THE POST OR A LITTLE BIT BEHIND IT.

7 Q. WHAT DIRECTION WAS HE FACING?

8 A. TOWARDS -- HE WAS FACING TOWARDS US, TOWARDS THE TACO
9 STAND.

10 Q. AND THE PERSON IN THE WHITE SHIRT THAT WAS INVOLVED IN
11 THE FIGHT, BUT DIDN'T HAVE A GUN?

12 A. PROBABLY RIGHT HERE IN FRONT OF THE DOOR RIGHT HERE AT
13 THIS POST.

14 Q. AND WHERE WAS HE FACING?

15 A. HE WAS FACING TOWARDS THE MEN THAT HAD THE GUN.

16 Q. WHAT ABOUT THE MAN WHO ENDED UP GETTING SHOT, DO YOU
17 REMEMBER WHERE HE WAS?

18 A. HE WAS STANDING RIGHT HERE IN FRONT OF THE POST.

19 Q. SO HE WAS STANDING RIGHT NEXT TO THE PERSON THAT WAS
20 ACTUALLY IN THE FIGHT?

21 A. UM-HUM (AFFIRMATIVE).

22 Q. DID YOU EVER SEE HIM INVOLVED IN THE FIGHT, THE MAN
23 THAT GOT SHOT?

24 A. NO, MA'AM.

25 Q. THE MAN THAT WAS INVOLVED IN THE FIGHT IN THE WHITE

1 SHIRT THAT YOU SAID IS STANDING NEXT TO THIS PILLAR HERE,
2 DID HE HAVE A WEAPON OF ANY KIND THAT YOU SAW?

3 A. NO, MA'AM.

4 Q. AND, IN FACT, WASN'T THIS FIGHT THAT YOU SAW BETWEEN
5 THE GUY IN THE WHITE SHIRT AND THE STRIPED SHIRT, IT WAS
6 MORE LIKE A DRUNKEN KIND OF PUSH AND SHOVING?

7 A. RIGHT.

8 Q. IT WASN'T ANYTHING REALLY VIOLENT WHERE ANYBODY WAS
9 GETTING REALLY CRAZY OR HURT?

10 A. NO.

11 Q. AND THE PERSON THAT DIDN'T HAVE A GUN DIDN'T HAVE A
12 KNIFE OR ANYTHING LIKE THAT THAT YOU SAW?

13 A. NO, MA'AM.

14 Q. AND SO BASICALLY YOU SAW ONE MAN IN THE BLACK SHIRT
15 TAKE A GUN OUT FROM ANOTHER MAN, YOU THINK'S, WAISTBAND OR
16 POCKET, SOMETHING LIKE THAT?

17 A. UM-HUM (AFFIRMATIVE).

18 Q. PULLED IT OUT AND SHOOT IT TWO TIMES TOWARDS ---

19 A. IN THE DIRECTION ---

20 Q. IN THE DIRECTION OF THE GUY THAT WAS ---

21 A. RIGHT.

22 Q. --- IN JUST THE FIGHT? HAD NO WEAPONS AT ALL?
23 COMPLETELY ---

24 A. RIGHT.

25 Q. --- UNARMED? AND ACTUALLY WOULD IT BE ACCURATE TO SAY

1 PER YOUR STATEMENT THAT IT WAS -- THIS PERSON SHOT THE GUN
2 ONCE, WAITED A COUPLE OF SECONDS, AND THEN ---

3 A. AND THEN SHOT AGAIN.

4 Q. --- SHOT IT AGAIN?

5 A. UM-HUM (AFFIRMATIVE).

6 Q. SO IT WASN'T RAPID SUCCESSION, BAM, BAM?

7 A. NO.

8 Q. YOU DO NOT -- COULD NOT AT THE TIME AND, I'M ASSUMING,
9 CANNOT TODAY IDENTIFY WHO WAS THE MAN IN THE BLACK SHIRT BY
10 A NAME OR A FACE VERSUS WHO WAS THE MAN IN THE STRIPED SHIRT
11 BY A NAME OR A FACE?

12 A. NO, MA'AM.

13 Q. SO YOU CANNOT IDENTIFY ANYBODY IN THIS CASE?

14 A. NO, MA'AM.

15 Q. AND ---

16 THE COURT: CAN WE TURN THE LIGHTS BACK ON?

17 MS. HODGE: I'M SORRY. YES, SIR, WE CAN TURN THE
18 LIGHTS BACK ON.

19 Q. AND WHEN THE POLICE OFFICERS THAT YOU'RE TALKING ABOUT
20 THAT WERE RUDE TO YOU, THAT WAS NOT INVESTIGATOR ---

21 A. NO.

22 Q. --- SMITH, WAS IT?

23 A. NO. NO, NO, NO.

24 Q. IT WAS THE INITIAL RESPONDING OFFICERS?

25 A. RIGHT.

1 Q. WHEN YOU WERE CALLED BACK TO COME BACK UP TO TALK TO
2 INVESTIGATOR SMITH HE WAS NICE TO YOU, CORDIAL?

3 A. VERY MUCH SO.

4 Q. THANK YOU.

5 THE COURT: THANK YOU. YOU CAN STEP DOWN.

6 MS. ROSS: THE DEFENSE WOULD CALL YAMILETH CORRALES.

7 MS. HODGE: YOUR HONOR, MAY WE APPROACH THE BENCH?

8 THE COURT: TAKE THE JURY OUT A MINUTE PLEASE.

9 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:12 PM)

10 THE COURT: SOLICITOR.

11 MS. HODGE: YOUR HONOR, I BELIEVE THIS WITNESS HAS BEEN
12 IN THE COURTROOM ---

13 THE COURT: YEAH, SHE'S BEEN IN THE COURTROOM SITTING
14 BACK THERE, MS. ROSS.

15 MS. ROSS: AND I HAD NO IDEA SHE WAS. AND WHEN I ---

16 THE COURT: WELL, ---

17 MS. ROSS: I DIDN'T KNOW WHO SHE WAS. AND WHEN I
18 TURNED AROUND SHE WAS ASKED TO LEAVE. SHE DOESN'T SPEAK
19 ENGLISH. SHE DIDN'T UNDERSTAND WHAT WAS GOING ON. SHE'S
20 GIVEN STATEMENTS THAT THEY CAN CROSS EXAMINE HER -- IF HER
21 STATEMENT DOESN'T MATCH THE ONE BEFORE ---

22 THE COURT: MS. ROSS, YOU MADE THE MOTION TO SEQUESTER
23 WITNESSES. THIS WITNESS CAME IN AND I'VE WATCHED HER. I
24 WONDERED IF SHE WAS A WITNESS.

25 MS. ROSS: AND, YOUR HONOR, I DIDN'T SEE HER. AND I

1 DID NOT KNOW SHE WAS A WITNESS.

2 THE COURT: MS. ROSS, YOU'VE GOT AN INVESTIGATOR IN THE
3 COURTROOM, DON'T YOU?

4 MS. ROSS: YES, YOUR HONOR, BUT I PERSONALLY DID NOT
5 KNOW ---

6 THE COURT: WELL, ---

7 MS. ROSS: --- AND HAD NO WAY OF KNOWING TO -- I'VE
8 NEVER MET HER BEFORE.

9 THE COURT: I'M SORRY, MS. ROSS, BUT THIS WOMAN IS NOT
10 GOING TO TESTIFY. SHE WAS IN THE COURTROOM DURING
11 TESTIMONY. AND ON YOUR MOTION TO SEQUESTER I TOLD YOU
12 SPECIFICALLY THIS APPLIED TO ALL WITNESSES FOR THE STATE AND
13 FOR THE DEFENSE.

14 MS. ROSS: AND I UNDERSTAND THAT. AND I THINK THAT
15 WOULD DENY MY CLIENT A FAIR TRIAL BASED ON SOMETHING I DID
16 NOT KNOW AND MY CLIENT ---

17 THE COURT: I'M SORRY, MS. ROSS. I'LL GRANT THE MOTION
18 OF THE STATE.

19 MS. ROSS: YOUR HONOR, I'D OBJECT. AND I'D ASK FOR A
20 MISTRIAL AT THIS POINT.

21 THE COURT: I DENY YOUR MOTION. THANK YOU. YOU'RE
22 EXCUSED. ALL RIGHT. BRING THE JURY. WHO'S YOUR NEXT
23 WITNESS, MS. ROSS?

24 MS. ROSS: I NEED TO SEE IF MY NEXT WITNESS IS HERE.

25 THE COURT: ALL RIGHT. BRING THE JURY.

1 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:16 PM)

2 MS. HODGE: I'M SORRY, YOUR HONOR. MAY WE APPROACH THE
3 BENCH?

4 THE COURT: SURE.

5 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
6 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

7 MS. ROSS: WE'D CALL NORBERTO ORTIZ.

8 (WHEREUPON THE FOLLOWING QUESTIONS AND ANSWERS WERE
9 INTERPRETED BY EFRAIN PINEROS)

10 NORBERTO ORTIZ, BEING
11 DULY SWORN TESTIFIED AS FOLLOWS:

12 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
13 RECORD.

14 MR. ORTIZ: NORBERTO ORTIZ.

15 DIRECT EXAMINATION BY MS. ROSS:

16 Q. NORBERTO, I SEE THAT YOU MIGHT HAVE A CELL PHONE. I
17 JUST WANT TO MAKE SURE IT'S TURNED OFF. THANKS. NORBERTO,
18 CAN YOU TELL THE JURY HOW OLD YOU ARE, HOW LONG YOU'VE BEEN
19 IN AMERICA, AND WHAT YOU DO FOR A LIVING?

20 A. I AM TWENTY-THREE YEARS OLD. I'M FIVE YEARS HAVE BEEN
21 HERE IN THE UNITED STATES. AND I'M WORKING IN CONSTRUCTION.

22 Q. NOW WERE YOU A WITNESS TO A SHOOTING NEAR THE TACO
23 STAND LAST JULY OF 2004?

24 A. WHAT'S THE NAME OF THE BUSINESS?

25 Q. THERE WAS A TACO STAND OUT THERE, BUT IT'S SPANISH

1 AMIGOS, I BELIEVE.

2 A. YES.

3 Q. AND BASED ON THAT OUR WITNESSES HAVE -- AN INVESTIGATOR
4 OR TRANSLATOR HAS TALKED TO YOU ABOUT WHAT HAPPENED?

5 A. YES.

6 Q. AND WE'VE GIVEN YOU A SUBPOENA TO APPEAR IN COURT
7 TODAY?

8 A. YES.

9 Q. AND DID YOU ALSO HAVE AN OCCASION TO TALK TO LAW
10 ENFORCEMENT ABOUT WHAT HAPPENED IN THIS CASE?

11 A. YES.

12 Q. AND DID YOU RECEIVE A SUBPOENA FROM THE STATE TO COME
13 TO COURT YESTERDAY?

14 A. I DIDN'T.

15 Q. DIDN'T. NOW DID YOU EVER COME TO THE COURTHOUSE AND
16 TALK TO THE SOLICITOR OR THE PROSECUTOR ABOUT WHAT HAPPENED
17 IN THIS CASE?

18 A. YES, A FEW DAYS BACK.

19 Q. AND DID YOU TELL THEM WHAT YOU SAW?

20 A. YES.

21 Q. AND JUST GETTING BACK --- ARE YOU FRIENDS -- THIS IS
22 MARLON RIVERA SITTING OVER AT THE DEFENSE TABLE. DO YOU
23 HAVE A CLOSE RELATIONSHIP OR FRIENDS WITH MARLON RIVERA?

24 A. WE JUST GREET EACH OTHER, BUT NOTHING ELSE.

25 Q. AND WOULD YOUR TESTIMONY BE AFFECTED BY THAT AT ALL?

1 ARE YOU ---

2 MS. HODGE: I'M GOING TO OBJECT TO THE BOLSTERING ---

3 THE COURT: HOLD -- NO, I'LL ALLOW THAT QUESTION. GO
4 AHEAD.

5 A. WILL YOU PLEASE REPEAT THAT QUESTION?

6 Q. IS YOUR TESTIMONY AFFECTED BY KNOWING HIM IN ANY WAY?
7 ARE YOU TRYING TO HELP HIM OUT HERE?

8 A. I DON'T HAVE A REAL CLOSE FRIENDSHIP WITH HIM. AND I'M
9 NOT HERE IN FAVOR OF ANYBODY.

10 Q. WHAT DID YOU SEE HAPPEN THAT NIGHT?

11 A. I, MYSELF, I'M WITH THREE OTHER FRIENDS OF MINE. WE
12 WERE DRINKING BEER AND WATCHING A SOCCER GAME. AND BECAUSE
13 OF SOME PROBLEMS DURING -- IN THE PLACE WHERE WE WERE, WHICH
14 IS SPANISH AMIGOS, THE PERSON IN CHARGE OF THE PLACE TOLD US
15 THAT WE NEED TO LEAVE. AND MARLON HAD SOME PROBLEMS WITH A
16 GUY THAT WAS INSIDE THE PLACE. AND THE GUY THAT HAD THE
17 PROBLEMS WITH MARLON AND STARTED JUST SAYING BAD WORDS AND
18 INSULTING HIM.

19 Q. DO YOU KNOW THAT PERSON'S NAME?

20 A. DELMAN MAURICIO ARIAS.

21 Q. SO WHAT HAPPENED AFTER THIS ARGUMENT STARTED?

22 A. MAURICIO ATTACKED MARLON. AND HE SAID, JUST LEAVE ME
23 ALONE, I DON'T HAVE -- I DON'T WANT ANY PROBLEMS WITH YOU.
24 AND MAURICIO JUST CONTINUED THE SAME THING, AND MARLON GOT A
25 WEAPON FROM HIS RIGHT LEG.

- 1 Q. SO MARLON HAD THE PISTOL?
- 2 A. YES, HE HAD THE WEAPON.
- 3 Q. MARLON RIVERA, RIGHT OVER THERE?
- 4 A. YES.
- 5 Q. THEN WHAT HAPPENED?
- 6 A. THEY CONTINUED FIGHTING. AND HE SAID, JUST LEAVE ME
- 7 ALONE. AND HE THREW HIM TO THE GROUND.
- 8 Q. WHO THREW WHO TO THE GROUND?
- 9 A. I'M SORRY. HE SAID THAT MARLON DID SHOOT TO THE FLOOR,
- 10 TO THE GROUND.
- 11 Q. SO I GUESS TO CLARIFY, DID ANYONE THROW ANYONE TO THE
- 12 GROUND?
- 13 A. IT WAS A SHOT.
- 14 Q. AND SO MARLON SHOT IN THE GROUND?
- 15 A. YES.
- 16 Q. AND THEN WHAT HAPPENED AFTER THAT?
- 17 A. I DON'T KNOW WHAT MAURICIO THOUGHT ABOUT THE WEAPON.
- 18 AND HE JUST KEPT BUGGING MARLON.
- 19 Q. DID MAURICIO GRAB OR TOUCH MARLON AT ALL?
- 20 A. YES. MAURICIO KICKED MARLON.
- 21 Q. DID HE KICK -- SO HE KICKED HIM. DID HE HIT HIM AT ALL
- 22 OR PUSH HIM?
- 23 A. I'M SORRY. REPHRASE THE QUESTION.
- 24 Q. MAURICIO KICKED MARLON. DID HE HIT HIM OR PUSH HIM?
- 25 DID MAURICIO HIT OR PUSH MARLON?

- 1 A. I JUST SAW THAT HE JUST KICKED HIM.
- 2 Q. AND THEN WHAT HAPPENED AFTER MAURICIO KICKED MARLON?
- 3 A. A GUY THAT WAS ON MY RIGHT SIDE, I OVERHEARD HIM
- 4 SAYING, I'M GOING TO GET THE WEAPON, I'M GOING TO SHOOT HIM.
- 5 Q. WAS THAT MARLON OR MAURICIO, THE PERSON ON YOUR RIGHT
- 6 SIDE?
- 7 A. THEY WERE IN FRONT OF ME.
- 8 Q. SO THAT WAS ANOTHER GUY?
- 9 A. THERE WAS A GUY THAT WAS WITH MARLON.
- 10 Q. WHAT DID HE DO? THE OTHER GUY?
- 11 A. HE GOT CLOSE TO MARLON AND ASKED FOR THE WEAPON. AND
- 12 HE SHOT MAURICIO.
- 13 Q. DID HE ASK FOR THE WEAPON OR DID HE TAKE THE WEAPON?
- 14 A. HE ASKED FOR THE WEAPON.
- 15 Q. AND THEN HE GOT THE WEAPON?
- 16 A. I'M SORRY?
- 17 Q. AND SO THEN THIS OTHER PERSON GOT THE WEAPON? AND WHAT
- 18 DID HE DO WITH IT?
- 19 A. HE SHOT -- HE SHOOT MAURICIO.
- 20 Q. AND AT THIS POINT WAS THE GUN POINTED AT THE GROUND?
- 21 A. NO, HE WOULD JUST POINT IT AT HIS -- AT HIS CHEST.
- 22 Q. SO IT WAS JUST SORT OF CHEST LEVEL, STRAIGHT?
- 23 A. YES.
- 24 Q. NOW WHAT DID -- CAN YOU DESCRIBE WHAT THIS OTHER PERSON
- 25 LOOKED LIKE?

1 A. I REMEMBER THAT HE HAD SOME BLACK SLACKS, BLACK SHOES,
2 A BLACK CAP. I DON'T REMEMBER IF THE SHIRT WAS BLACK OR
3 BEIGE.

4 Q. SO HE WAS WEARING BASICALLY DARK COLORS?

5 A. YES. HE HAD AN EARRING ALSO ON HIS RIGHT -- ON HIS
6 LEFT EAR.

7 Q. DID YOU KNOW HIM?

8 A. NO.

9 Q. WHAT -- DO YOU REMEMBER WHAT MARLON WAS WEARING?

10 A. I THINK THAT HE HAD A BLUE -- AND A LONG GREEN SLEEVE
11 WITH SOME SQUARE PRINT ON IT.

12 Q. SO A PRINT SHIRT? SO IT WAS A PRINT SHIRT?

13 A. YEAH, A PRINT SHIRT.

14 Q. AND LONG SLEEVES?

15 A. YES, LONG SLEEVES.

16 Q. NOW AFTER THE OTHER MAN WEARING, I GUESS, A BLACK OR
17 BEIGE SHIRT SHOT STRAIGHT AHEAD WHAT HAPPENED NEXT?

18 A. MARLON ASKED HIM FOR THE WEAPON, TO GIVE IT BACK TO
19 HIM.

20 Q. AND DID ANYTHING HAPPEN AFTER THAT?

21 A. MARLON HAS THE WEAPON IN HIS HAND. AND MAURICIO GOT
22 CLOSE AGAIN TO BOTHER HIM. AND MARLON WANTED TO SCARE HIM.
23 AND HE SHOOT TO THE GROUND AGAIN. AND THEN IT JUST --
24 EVERYTHING -- AND WILFRIDO JUST CAME OUT SAYING THAT HE WAS
25 WOUNDED.

1 Q. AND FROM YOU WATCHING THE SCENE WHO DO YOU THINK SHOT
2 WILFRIDO?

3 MS. HODGE: OBJECTION TO WHAT HE THINKS.

4 THE COURT: I SUSTAIN THE OBJECTION TO THE FORM OF THAT
5 QUESTION.

6 Q. WHO DID YOU SEE SHOOT WILFRIDO?

7 A. I DO NOT KNOW.

8 Q. BUT THE SHOTS THAT MARLON FIRED, WHERE WERE THEY
9 POINTED?

10 A. TO THE GROUND.

11 Q. AND THE SHOTS THAT THIS OTHER MAN SHOT, WHERE WAS THAT
12 POINTED?

13 A. HE SHOT ONLY ONE TIME TOWARD MAURICIO.

14 Q. AND YOU KNOW IT DIDN'T HIT MAURICIO, RIGHT?

15 A. NO, BECAUSE HE WAS JUST THERE.

16 Q. AND MARLON STARTED WITH THE GUN AND ENDED WITH THE GUN?

17 A. YES, THAT'S CORRECT.

18 Q. AND YOU SAID MARLON WAS WEARING A PRINT SHIRT?

19 A. YES.

20 Q. NOW I KNOW YOU SAID -- WERE YOU RIGHT THERE VERY CLOSE
21 TO WHAT HAPPENED?

22 A. YES, VERY CLOSE.

23 Q. AND I KNOW YOU DIDN'T SEE THE BULLET FLY THROUGH THE

24 AIR, SO TO SPEAK. DO YOU THINK MARLON OR THE OTHER GUY SHOT

25 ---

1 MS. HODGE: OBJECTION, YOUR HONOR.

2 THE COURT: I SUSTAIN THE OBJECTION TO THE FORM OF THE
3 QUESTION.

4 Q. WHO DID YOU WITNESS SHOOT WILFRIDO?

5 A. I WAS JUST LOOKING TO THE PERSON THAT WAS SHOOTING. I
6 DIDN'T KNOW WHO HE WAS SHOOTING AT.

7 Q. SO YOU WERE LOOKING AT THE SHOOTER SHOOTING STRAIGHT
8 AHEAD. SO SINCE YOU DIDN'T SEE THE SHOT HIT WILFRIDO YOU
9 CAN'T BE SURE WHO SHOT HIM, IS THAT WHAT YOU'RE SAYING?

10 A. NO, I DO NOT KNOW.

11 Q. IS IT POSSIBLE WHEN YOU -- AND ONLY ONE PERSON WAS
12 SHOOTING THE GUN STRAIGHT AHEAD? YOU'VE SAID THIS BEFORE,
13 BUT ONE PERSON WAS SHOOTING THE GUN STRAIGHT AHEAD?

14 A. YES, ONLY ONE PERSON.

15 Q. AND THAT WAS NOT MARLON RIVERA?

16 A. NO, HE WASN'T.

17 MS. ROSS: I BEG THE COURT'S INDULGENCE.

18 Q. I'M SORRY. AFTER WILFRIDO WAS SHOT DID HE DO ANYTHING?

19 A. HE SAID, I GOT SHOT, I GOT SHOT THREE TIMES.

20 Q. AND DID HE INDICATE WHO SHOT HIM?

21 MS. HODGE: I'M GOING TO OBJECT, YOUR HONOR.

22 THE COURT: NO, I SUSTAIN THE OBJECTION.

23 MS. ROSS: I THINK IT WOULD BE A DYING DECLARATION ---

24 THE COURT: I SUSTAIN THE OBJECTION.

25 MS. ROSS: NOTHING FURTHER.

1 THE COURT: ALL RIGHT, SOLICITOR.

2 MS. HODGE: THANK YOU.

3 CROSS EXAMINATION BY MS. HODGE:

4 Q. MR. ORTIZ, YOU STATED THAT MARLON WAS WEARING A GREEN
5 LONG SLEEVE SHIRT, AND YOU STATED IT HAD SQUARES ON IT? I'M
6 SORRY.

7 A. YEAH, IT WAS GREEN WITH BEIGE AND SOME SQUARES -- A
8 SQUARE PRINT ON IT.

9 Q. AND THE OTHER PERSON THAT YOU DO NOT KNOW THAT WAS WITH
10 MARLON THAT YOU SAY FIRED THE GUN ALSO, ISN'T IT TRUE YOU
11 TOLD ME THE OTHER DAY HE WORE A BEIGE OR A LIGHT SHIRT?

12 A. I DON'T KNOW EXACTLY, BUT I KNOW THAT HE HAD A -- SOME
13 KIND OF BEIGE SHIRT.

14 Q. AND YOU KNEW WILFRIDO?

15 A. YES.

16 Q. YOU KNEW MARLON?

17 A. YES, JUST AN ACQUAINTANCE.

18 Q. YOU KNOW OR WERE ACQUAINTED WITH MAURICIO?

19 A. YES, ALL MY LIFE.

20 Q. AND WAS MAURICIO THE PERSON MARLON WAS FIGHTING WITH?

21 A. YES.

22 Q. AND WAS -- LET ME ASK, HOW MANY PEOPLE WOULD HAVE BEEN
23 OUTSIDE TO WITNESS WHAT HAPPENED TO WILFRIDO?

24 A. THERE WAS QUITE A BIT -- QUITE A FEW PEOPLE AROUND.

25 AND THE ONES THAT WERE, JUST ONLOOKERS, IF I DON'T REMEMBER

- 1 WRONG, THERE WAS AROUND PROBABLY EIGHT.
- 2 Q. SO ABOUT EIGHT PEOPLE COULD HAVE WITNESSED WHAT
- 3 HAPPENED?
- 4 A. YES.
- 5 Q. SO IF WE COUNTED YOU AS ONE?
- 6 A. SI.
- 7 Q. THE DEFENDANT TWO? WILFRIDO?
- 8 A. WILFRIDO.
- 9 Q. MAURICIO?
- 10 A. MAURICIO.
- 11 Q. WHAT ABOUT, DID YOU KNOW A FERNANDO ALVAREZ OR
- 12 ALVARILLO PORTUGUEZ? ALVARO FERNANDO, I'M SORRY.
- 13 A. ALVARO FERNANDEZ?
- 14 Q. YES.
- 15 A. NO, I DIDN'T SEE HIM.
- 16 Q. WHAT ABOUT MANIOR NAVARRO ABARCA?
- 17 A. YEAH, HE'S MY FRIEND.
- 18 Q. AND DID YOU SEE THIS OTHER SHOOTER PERSON?
- 19 A. YES.
- 20 Q. DID YOU SEE MS. COURTNEY ROBLES, A HEAVY-SET WHITE
- 21 FEMALE AT THAT TIME?
- 22 A. I DO NOT KNOW WHO COURTNEY ROBLES IS.
- 23 Q. DID YOU SEE A HEAVY-SET WHITE WOMAN WITH LONG DARK HAIR
- 24 AT THE SHOOTING?
- 25 A. NO.

1 Q. YOU DID SEE THE DEFENDANT SHOOT THE PISTOL TWO TIMES,
2 CORRECT?

3 A. YES, TWO TIMES.

4 Q. AND YOU DID SEE HIM GET IT FROM SOMEWHERE DOWN AROUND
5 HIS ANKLE OR LEG?

6 A. YES.

7 Q. AND HE HANDED OVER VOLUNTARILY THE PISTOL TO THIS OTHER
8 PERSON WE DON'T KNOW?

9 A. YES, VOLUNTARILY. HE DID VOLUNTARILY.

10 Q. AND THIS OTHER PERSON AT THAT TIME WAS SAYING, GIVE ME
11 THE PISTOL, I'LL SHOOT HIM?

12 A. YES.

13 Q. AND YOU CANNOT SAY WHICH OF THE THREE SHOTS HIT
14 WILFRIDO, IS THAT CORRECT?

15 A. NO, I DON'T.

16 Q. AND WILFRIDO DID NOT MENTION OR SAY HE WAS HIT UNTIL
17 AFTER THE THIRD SHOT, IS THAT CORRECT?

18 A. YEAH, IT WAS AFTER ALL THAT, AFTER EVERYTHING HAPPENED.

19 Q. SO AFTER THE THIRD SHOT AND EVERYTHING WAS OVER?

20 A. YES.

21 Q. MAURICIO, DID HE HAVE ANY TYPE OF A WEAPON THAT HE WAS
22 FIGHTING THE DEFENDANT WITH?

23 A. NO, HE DIDN'T.

24 Q. JUST FIST FIGHTING?

25 A. YES.

1 Q. BUT THE ONLY THING YOU SAW MAURICIO DO WAS KICK HIM?

2 A. HE JUST PUSHED HIM AND THEN HE KICKED HIM.

3 Q. AND YOU DO NOT KNOW THE NAME OF THE MAN THAT SUPPOSEDLY
4 SHOT THE SECOND SHOT?

5 A. NO.

6 Q. THANK YOU.

7 MS. ROSS: JUST ON REDIRECT.

8 REDIRECT EXAMINATION BY MS. ROSS:

9 Q. YOU SAID THE OTHER MAN WAS STANDING NEXT TO YOU AND
10 SAID, I'M GOING TO SHOOT HIM?

11 A. YES, HE SAID THAT.

12 Q. AND THIS WAS WHILE MARLON IS OVER FIGHTING WITH
13 MAURICIO?

14 A. YES.

15 Q. SO YOU CAN'T BE CERTAIN WHETHER MARLON HEARD THAT OR
16 NOT?

17 MS. HODGE: I'M GOING TO OBJECT. HE CAN'T ---

18 THE COURT: I SUSTAIN THE OBJECTION

19 MS. HODGE: --- TESTIFY TO WHAT MARLON HEARD.

20 THE COURT: --- TO THE FORM OF THE QUESTION. INSTRUCT
21 THE JURY TO DISREGARD IT.

22 Q. YOU CAN'T TESTIFY TO WHAT SOMEONE ELSE HEARD, CAN YOU?

23 A. NO, I CANNOT SAY THAT.

24 Q. RIGHT. AND WHEN YOU SPOKE TO ME IN MY OFFICE YOU
25 STATED THAT THE OTHER MAN GRABBED THE GUN.

1 MS. HODGE: OBJECTION, YOUR HONOR.

2 THE COURT: I SUSTAIN THE OBJECTION TO THAT QUESTION.

3 YOU CANNOT TESTIFY.

4 MS. ROSS: I THINK SHE SAID THE SAME THING EARLIER IN
5 HER ---

6 THE COURT: I SUSTAIN THE OBJECTION, MS. ROSS.

7 MS. ROSS: ALL RIGHT.

8 Q. ISN'T IT POSSIBLE THAT THE THIRD MAN ACTUALLY TOOK THE
9 GUN FROM MAURICIO?

10 MS. HODGE: OBJECTION, YOUR HONOR.

11 THE COURT: HOLD ON, HOLD ON. I SUSTAIN THE OBJECTION
12 TO THE FORM OF THAT QUESTION.

13 Q. DID THE THIRD MAN TAKE THE GUN FROM MARLON?

14 A. YES.

15 Q. SO -- NOW, IN FACT, WAS HE INSISTENT ABOUT THAT?

16 A. I THINK HE TOLD HIM TWICE TO GIVE HIM THE WEAPON.

17 Q. SO HE SAID, GIVE ME THE WEAPON.

18 A. YES.

19 Q. AND THEN HE SHOT IT STRAIGHT AHEAD?

20 A. YES, HE DID.

21 Q. AND THIS IS WHAT YOU TOLD THE STATE, THE PROSECUTION,
22 WHEN YOU MET WITH THEM?

23 A. HE'S SAYING THAT WHEN I MET WITH THE STATE WHAT DID I
24 TELL THEM?

25 Q. DID YOU TELL THEM THE SAME THING YOU'VE TOLD US HERE

1 TODAY?

2 A. YES, THE SAME THING.

3 Q. I'VE GOT NOTHING FURTHER.

4 THE COURT: THANK YOU. STEP DOWN. ALL RIGHT. WILL
5 COUNSEL APPROACH JUST A MINUTE PLEASE?

6 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
7 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

8 MS. ROSS: THE DEFENSE WOULD CALL DR. ROBERT TAYLOR.

9 ROBERT TAYLOR, BEING DULY

10 SWORN TESTIFIED AS FOLLOWS:

11 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE
12 RECORD.

13 MR. TAYLOR: MY NAME IS ROBERT CHRISTOPHER TAYLOR. AND
14 I'M A SOCIAL WORKER.

15 DIRECT EXAMINATION BY MS. ROSS:

16 Q. DR. TAYLOR, IF YOU COULD JUST MAKE SURE YOU'RE SPEAKING
17 UP. AND JUST TELL THE JURY ABOUT YOUR EDUCATIONAL
18 BACKGROUND.

19 A. WELL, I HAVE A BACHELOR OF ARTS FROM LONG ISLAND. I
20 HAVE A MASTER'S DEGREE IN SOCIAL WORK FROM RUTGERS
21 UNIVERSITY. I HAVE A MASTER'S DEGREE IN PSYCHOLOGY FROM THE
22 UNIVERSITY OF LA PLATA, ARGENTINA. AND I HAVE A DOCTORATE
23 IN THEOLOGY FROM THE GREGORIAN UNIVERSITY IN ROME, ITALY.

24 Q. AND WHAT IS YOUR OCCUPATION?

25 A. I'M A SOCIAL WORKER AND AN EPISCOPAL PRIEST.

1 Q. AND WHAT DO YOU DO AS A SOCIAL WORKER?

2 A. I BASICALLY WORK IN THE SCHOOL SYSTEM OF GREENVILLE
3 COUNTY AS A BILINGUAL SOCIAL WORKER IN TWO ELEMENTARY
4 SCHOOLS. I'M ALSO ONE OF TWO SOCIAL WORKERS WHO DO ALL THE
5 UPSTATE DOMESTIC VIOLENCE SPANISH GROUPS AND ANGER
6 MANAGEMENT GROUPS.

7 Q. SO YOU USE BOTH YOUR MASTER'S IN SOCIAL WORK AND YOUR
8 MASTER'S IN PSYCHOLOGY ---

9 A. PSYCHOLOGY.

10 Q. --- TO DO THE JOB YOU DO?

11 A. EXACTLY.

12 Q. AND HOW MANY LANGUAGES DO YOU SPEAK?

13 A. I SPEAK FOUR LANGUAGES AND I READ SEVEN.

14 Q. AND ARE YOU -- HAVE YOU ALWAYS LIVED IN THE UNITED
15 STATES?

16 A. NO. I LIVED FOUR YEARS IN ITALY, TRAVELED IN EUROPE.
17 AND THEN I LIVED THREE YEARS IN ARGENTINA.

18 Q. AND FROM YOUR TIME IN ARGENTINA DID YOU GO TO SCHOOL,
19 ATTEND SCHOOL IN ARGENTINA?

20 A. YES, AT THE UNIVERSITY OF LA PLATA. I LEARNED
21 PSYCHODRAMA AND I GOT MY MASTER'S IN PSYCHOLOGY.

22 Q. AND WHILE YOU WERE LIVING IN SOUTH AMERICA DID YOU
23 BECOME SOMEWHAT FAMILIAR WITH SOUTH AMERICAN CULTURE?

24 A. OBVIOUSLY. YOU CAN'T GO TO SCHOOL IF YOU DON'T
25 UNDERSTAND THE LANGUAGE AND HAVE SOME EXPOSURE.

1 MS. ROSS: AND BASED ON THE QUESTIONS I WOULD OFFER MR.
2 TAYLOR AS AN EXPERT IN SOCIAL WORK AND PSYCHOLOGY WITH AN
3 EMPHASIS ON BI-CULTURAL AND BILINGUAL INTERACTION.

4 THE COURT: ANY VOIR DIRE?

5 VOIR DIRE BY MS. HODGE:

6 Q. DR. TAYLOR, YOU ARE A DOCTOR OF THEOLOGY, IS THAT
7 CORRECT?

8 A. THAT'S CORRECT.

9 Q. WHICH IS RELIGION?

10 A. THAT'S RIGHT.

11 Q. AND YOU ARE NOT A MEDICAL DOCTOR?

12 A. NO, I'M NOT.

13 Q. OR A PSYCHIATRIST?

14 A. NO, I'M NOT A PSYCHIATRIST.

15 Q. AND YOU'VE NEVER BEEN QUALIFIED IN COURT BEFORE AS AN
16 EXPERT IN ANY AREA, HAVE YOU?

17 A. WELL, REPRESENTING AS A SOCIAL WORKER TO GIVE TESTIMONY
18 FOR CUSTODY CASES, AS A THERAPIST IN LONG ISLAND TO EXTEND
19 OR TO PROMOTE CHILDREN TO REMAIN IN CARE AND CLOSED SCHOOL
20 SYSTEM THERAPEUTIC SETTING.

21 Q. THAT WOULD BE IN FAMILY COURT?

22 A. YES, IN FAMILY COURT.

23 Q. IN GENERAL SESSIONS HAVE YOU EVER BEEN QUALIFIED AS AN
24 EXPERT BEFORE IN ANY OF THESE AREAS?

25 A. NO.

1 Q. STATE COURT OR FEDERAL COURT?

2 A. NO.

3 MS. HODGE: THAT'S ALL THE QUESTIONS I HAVE.

4 THE COURT: AND YOU'RE OFFERING EXPERT IN WHAT NOW?

5 MS. ROSS: AN EXPERT IN SOCIAL WORK AND PSYCHOLOGY WITH
6 AN EMPHASIS ON THE BI-CULTURAL AND BILINGUAL ASPECTS THAT
7 HE'S ---

8 THE COURT: ALL RIGHT. PROCEED.

9 MS. ROSS: --- GOING TO TESTIFY TO TODAY.

10 THE COURT: PROCEED.

11 DIRECT EXAMINATION BY MS. ROSS CONTINUED:

12 Q. WELL, HOW DID YOU COME TO BE INVOLVED IN THIS CASE?

13 A. WELL, CARLOS FREEMAN ASKED ME SATURDAY OR SUNDAY WOULD
14 I BE ABLE TO INTERVIEW THE DEFENDANT. AND I DID DO THAT ON
15 MONDAY FOR HALF AN HOUR. AND THE IDEA WAS TO SEE WHETHER HE
16 WAS CAPABLE OF UNDERSTANDING THE TWO DOCUMENTS THAT HE
17 SIGNED. ONE OF THEM WAS A WAIVER FOR COUNSEL AND THE OTHER
18 BEING A STATEMENT OF WHAT HAPPENED.

19 Q. I JUST -- WE TRY TO PAY YOU FOR YOUR WORK, BUT YOU
20 HAVEN'T -- DON'T EXPECT ANY PAYMENT OR ANYTHING IN EXCHANGE
21 FOR ---

22 A. NO.

23 Q. THIS IS THE STATEMENT. I DON'T SEE THE WAIVER AT THIS
24 POINT. THIS IS THE WAIVER. DID YOU HAVE OCCASION TO TALK
25 TO MR. RIVERA ABOUT THOSE TWO ITEMS?

1 A. YES, I DID. MY FIRST QUESTION, OF COURSE, WITH THE
2 WAIVER IS DID HE SIGN IT? AND I FOUND OUT THAT HE KNOWS THE
3 FIRST LETTER OF HIS NAME, BUT HE DOESN'T KNOW HOW TO MAKE
4 THE OTHER LETTERS. AND HE WAS COACHED TO DOING THAT BY ONE
5 OF THE OFFICERS. THERE WERE TWO OFFICERS, ONE ENGLISH
6 SPEAKING AND ONE WAS BILINGUAL. HE WAS PUERTO RICAN.

7 Q. AND I KNOW YOU'RE NOT A HANDWRITING EXPERT.

8 A. NO.

9 Q. BUT DOES HIS HANDWRITING LOOK A BIT SIMPLE?

10 A. IT'S DEFINITELY SIMPLE.

11 Q. NOW WHEN YOU WENT OVER THIS WAIVER JUST -- LET'S START
12 WITH THE WAIVER. WHAT DID HE TELL YOU ABOUT THE WAIVER?
13 COULD YOU GLEAN ANY -- WHAT YOU FELT HIS UNDERSTANDING, YOUR
14 OPINION OF HIS UNDERSTANDING OF THAT WAIVER TO BE?

15 A. WELL, BASICALLY I WANTED TO KNOW WHAT HE THOUGHT THE
16 CONSEQUENCES OF DOING THIS WERE BECAUSE IT'S WRITTEN IN
17 SPANISH, BUT HE CAN'T READ SPANISH. AND WHEN I WAS
18 INTERVIEWING HIM AND LISTENING TO THE INTERVIEW BETWEEN HIM
19 AND CARLOS FREEMAN, WE HAD TO REPEAT THINGS THREE AND FOUR
20 TIMES 'CAUSE HE WASN'T GETTING IT.

21 IT WASN'T THAT THE ACCENT WAS BAD. IT WASN'T THAT THE
22 WORDS WERE STRANGE. HE DIDN'T UNDERSTAND THE WORDS. HE
23 JUST DIDN'T UNDERSTAND THE QUESTIONS. AND WE HAD TO KEEP
24 REDIRECTING HIM AS YOU WOULD WITH SOMEONE IN SPECIAL ED
25 ENCOURAGING HIM TO FOCUS. SO WHEN I ASKED HIM WHAT HE

1 THOUGHT THE CONSEQUENCES OF THESE QUESTIONS WERE, HE DIDN'T
2 KNOW.

3 Q. AND WHEN YOU TALKED TO HIM DID IT TAKE A LONG TIME TO
4 GET A SIMPLE QUESTION OR IDEA THROUGH TO HIM?

5 A. OH, DEFINITELY, YOU KNOW. MOST OF THE QUESTIONS HE HAD
6 TO BE ASKED A NUMBER OF WAYS AND A NUMBER OF TIMES.

7 Q. BEING READ THAT WAIVER OF RIGHTS IS IT YOUR OPINION
8 THAT HE COULD HAVE GRASPED OR UNDERSTOOD WHAT HE WAS DOING
9 TO WAIVE THOSE RIGHTS IN TEN OR FIFTEEN MINUTES?

10 A. I DON'T BELIEVE SO BECAUSE I DON'T THINK HE KNOWS WHAT
11 THE WORD RIGHTS MEAN. COMING FROM A DIFFERENT COUNTRY I
12 DON'T THINK HE WOULD KNOW WHETHER HIS RIGHTS IN THAT COUNTRY
13 WERE THE SAME AS HIS RIGHTS IN THIS COUNTRY OR WHAT HIS
14 RIGHTS WOULD BE. SO EVEN WORDS LIKE RIGHT, YOU HAVE THE
15 RIGHT, PROBLEMATIC. A LAWYER, WHAT DOES A LAWYER DO? YOU
16 KNOW, I DIDN'T ASK HIM SPECIFICALLY DID HE KNOW WHAT A
17 LAWYER DID. I ASKED HIM IF HE KNEW THE CONSEQUENCES OF
18 SIGNING THIS DOCUMENT.

19 Q. AND WHAT WAS YOUR OPINION -- BASED ON HIS RESPONSE WHAT
20 WAS YOUR OPINION ABOUT ---

21 A. THAT HE DIDN'T. HE DIDN'T KNOW WHAT HE WAS SIGNING.
22 AND IT WAS QUITE A TASK TO SIGN IT. IT WAS ALMOST LIKE, YOU
23 KNOW, I SAID, YOU'RE ARRESTED IN CHINA AND HERE'S A LIST OF
24 CHINESE LETTERS, AND HERE'S AMERICAN LETTERS, AND YOU HAVE
25 TO TRANSPOSE THEM AND SIGN THIS DOCUMENT, AND IT'S ALL IN