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2
3
4
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8
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13
14
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NO. 83-CR-194-A

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
	X	
VS.	X	OF NUECES COUNTY, TEXAS
	X	
CARLOS DE LUNA	X	28TH JUDICIAL DISTRICT

STATEMENT OF FACTS

BEFORE: HONORABLE WALLACE C. MOORE
Sitting for the
28th District Court
Nueces County Courthouse
Corpus Christi, Texas 78401

JUDGE PRESIDING

NUECES COUNTY DISTRICT ATTORNEY'S OFFICE
Nueces County Courthouse
Corpus Christi, Texas 78401
BY: STEVE SCHIWETZ
and
KENNETH BOTARY

COUNSEL FOR THE STATE OF TEXAS

JAMES R. LAWRENCE
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Corpus Christi, Texas 78412

And

HECTOR DE PENA, JR.
Attorney at Law
2933 Norton, Suite 207
Corpus Christi, Texas 78412

COUNSEL FOR THE DEFENDANT

On the 15th day of July, 1983, the above entitled and
numbered cause came on for trial before said Honorable Court,

FILED IN
COURT OF CRIMINAL APPEALS
FEB 9 1984
Thomas Lowe, Clerk

OSCAR S. ...
CRIMINAL ...
NUECES COUNTY, TEXAS
NOV 14 9 06 PM '83
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1 Wallace C. Moore, Judge presiding, and the following
2 proceedings were had:
3
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8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO PROCEEDINGS - VOL. X

		<u>PAGE</u>
3	<u>JURY TRIAL - GUILT OR INNOCENCE</u>	
4	BY THE COURT.	3
5	ANNOUNCEMENTS OF READY.	5
6	INDICTMENT READ BY MR. SCHIWETZ	5
7	DEFENDANT'S PLEA.	6
8	WITNESS RULE INVOKED.	6
9	OPENING STATEMENT BY MR. SCHIWETZ	7
10	<u>FOR THE STATE</u>	
11	<u>LUIS VARGAS</u>	
12	DIRECT BY MR. SCHIWETZ.	21
13	<u>JESUS ESCOCHEO, JR.</u>	
14	DIRECT BY MR. SCHIWETZ.	26
15	CROSS BY MR. LAWRENCE	32
16	REDIRECT BY MR. SCHIWETZ.	34
17	<u>STEVEN FOWLER</u>	
18	DIRECT BY MR. SCHIWETZ.	35
19	CROSS BY MR. LAWRENCE	53
20	REDIRECT BY MR. SCHIWETZ.	59
21	VOIR DIRE BY MR. LAWRENCE	61
22	REDIRECT (CONT.) BY MR. SCHIWETZ.	61
23	<u>BRUNO MEJIA</u>	
24	DIRECT BY MR. SCHIWETZ.	64
25	CROSS BY MR. LAWRENCE	74
	REDIRECT BY MR. SCHIWETZ.	80
	<u>RUBEN RIVERA</u>	
	DIRECT BY MR. SCHIWETZ.	81
	CROSS BY MR. DePENA	90

MARK DAVID SCHAUER

DIRECT BY MR. BOTARY	110
CROSS BY MR. LAWRENCE	138
REDIRECT BY MR. BOTARY.	149
RECROSS BY MR. LAWRENCE	156

THOMAS DAMIEN MYLETT

DIRECT BY MR. SCHIWETZ.	157
---------------------------------	-----

PETE GONZALES

DIRECT BY MR. SCHIWETZ.	162
CROSS BY MR. LAWRENCE	170

MARK W. WAGNER

DIRECT BY MR. SCHIWETZ.	176
---------------------------------	-----

ARMANDO GARCIA

DIRECT BY MR. SCHIWETZ.	180
---------------------------------	-----

DOROTHY GOMEZ

DIRECT BY MR. SCHIWETZ.	184
---------------------------------	-----

JOEL INFANTE

DIRECT BY MR. SCHIWETZ.	189
CROSS BY MR. LAWRENCE	203
REDIRECT BY MR. SCHIWETZ.	204

JOSEPH C. RUPP, M.D.

DIRECT BY MR. SCHIWETZ.	206
CROSS BY MR. LAWRENCE	214

JULY 18, 1983GEORGE AGUIRRE

DIRECT BY MR. SCHIWETZ.	218
CROSS BY MR. LAWRENCE	231

ALPHABETICAL INDEX OF WITNESSES

	<u>VOL.</u>	<u>PAGE</u>
AGUIRRE, GEORGE		
DIRECT BY MR. SCHIWETZ.	III	8
DIRECT BY MR. SCHIWETZ.	X	218
CROSS BY MR. LAWRENCE	X	231
ARSUAGA, JOHN		
DIRECT BY MR. SCHIWETZ.	III	57
CROSS BY MR. LAWRENCE	III	68
DIRECT BY MR. SCHIWETZ.	X	240
CROSS BY MR. LAWRENCE	X	252
REDIRECT BY MR. SCHIWETZ.	X	259
RECROSS BY MR. LAWRENCE	X	261
FURTHER REDIRECT BY MR. SCHIWETZ. . .	X	262
FURTHER RECROSS BY MR. LAWRENCE . . .	X	262
ARSUAGA, JULIE		
DIRECT BY MR. SCHIWETZ.	III	86
CROSS BY MR. LAWRENCE	III	91
DIRECT BY MR. SCHIWETZ.	XI	346
CROSS BY MR. LAWRENCE	XI	353
REDIRECT BY MR. SCHIWETZ.	XI	359
RECROSS BY MR. LAWRENCE	XI	360
FURTHER REDIRECT BY MR. SCHIWETZ. . .	XI	361
FURTHER RECROSS BY MR. LAWRENCE . . .	XI	362
AVALOS, BLAS GARCIA		
DIRECT BY MR. DePENA.	XI	402
CROSS BY MR. SCHIWETZ	XI	407
BAKER, KEVAN EUGENE		
DIRECT BY MR. SCHIWETZ.	III	23
CROSS BY MR. LAWRENCE	III	31
REDIRECT BY MR. SCHIWETZ.	III	42
RECROSS BY MR. LAWRENCE	III	42
DIRECT BY MR. SCHIWETZ.	X	263
CROSS BY MR. LAWRENCE	X	279
BARRERA, THERESA		
DIRECT BY MR. LAWRENCE.	XI	440
CROSS BY MR. SCHIWETZ	XI	445

	<u>VOL.</u>	<u>PAGE</u>
BIENIEK, FLOYD		
DIRECT BY MR. SCHIWETZ.	XII	7
CAMPOS, CONNIE		
DIRECT BY MR. SCHIWETZ.	XII	16
CROSS BY MR. LAWRENCE	XII	20
DIRECT BY MR. SCHIWETZ.	XII	34
DE LUNA, CARLOS		
DIRECT BY MR. LAWRENCE.	XI	410
CROSS BY MR. SCHIWETZ	XI	424
DePENA, HECTOR, JR.		
DIRECT BY MR. SCHIWETZ.	II	14
DIRECT BY MR. DePENA.	XIV	16
CROSS BY MR. SCHIWETZ	XIV	22
ESCOBEDO, SGT. OLIVIA		
DIRECT BY MR. SCHIWETZ.	III	78
CROSS BY MR. LAWRENCE	III	82
DIRECT BY MR. SCHIWETZ.	XI	296
CROSS BY MR. LAWRENCE	XI	312
REDIRECT BY MR. SCHIWETZ.	XI	318
ESCOCHEA, JESUS, JR.		
DIRECT BY MR. SCHIWETZ.	X	26
CROSS BY MR. LAWRENCE	X	32
REDIRECT BY MR. SCHIWETZ.	X	34
FIN, DANIEL A.		
DIRECT BY MR. LAWRENCE.	XI	397
FOWLER, STEVEN		
DIRECT BY MR. SCHIWETZ.	X	35
CROSS BY MR. LAWRENCE	X	53
REDIRECT BY MR. SCHIWETZ.	X	59
VOIR DIRE BY MR. LAWRENCE	X	61
REDIRECT (CONT.) BY MR. SCHIWETZ. . .	X	61
GARCIA, ARMANDO		
DIRECT BY MR. SCHIWETZ.	X	180
GARCIA, GILBERT		
DIRECT BY MR. SCHIWETZ.	XI	466

	<u>VOL.</u>	<u>PAGE</u>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

GARCIA, GILBERT		
DIRECT BY MR. SCHIWETZ.	XII	8
CROSS BY MR. LAWRENCE	XII	9
GARCIA, JUANITA		
DIRECT BY MR. SCHIWETZ.	XII	21
CROSS BY MR. LAWRENCE	XII	27
DIRECT BY MR. SCHIWETZ.	XII	40
GARCIA, LUCINDA		
DIRECT BY MR. SCHIWETZ.	XII	11
DIRECT BY MR. SCHIWETZ.	XII	30
GARRETT, SGT. GARY		
DIRECT BY MR. SCHIWETZ.	XII	2
GARZA, SGT. EDDIE		
DIRECT BY MR. SCHIWETZ.	XII	4
GOMEZ, DOROTHY		
DIRECT BY MR. SCHIWETZ.	X	184
GONZALES, ESTELLA		
DIRECT BY MR. SCHIWETZ.	XI	321
CROSS BY MR. LAWRENCE	XI	327
REDIRECT BY MR. SCHIWETZ.	XI	329
GONZALES, PETE		
DIRECT BY MR. SCHIWETZ.	X	162
CROSS BY MR. LAWRENCE	X	170
GONZALEZ, ERNESTO		
DIRECT BY MR. SCHIWETZ.	XI	363
CROSS BY MR. LAWRENCE	XI	363
INFANTE, JOEL		
DIRECT BY MR. SCHIWETZ.	X	189
CROSS BY MR. LAWRENCE	X	203
REDIRECT BY MR. SCHIWETZ.	X	204
JIMENEZ, ESTELLA FLORES		
EXAMINATION BY THE COURT.	XIV	27
DIRECT BY MR. DePENA.	XIV	31
KLEMP, ROBERT		
DIRECT BY MR. SCHIWETZ.	XI	374

		<u>VOL.</u>	<u>PAGE</u>
1			
2	LAWRENCE, JAMES R.		
3	DIRECT BY MR. LAWRENCE.	II	4
3	CROSS BY MR. SCHIWETZ	II	7
4	McCONLEY, LT. EDDIE		
5	DIRECT BY MR. SCHIWETZ.	III	47
5	CROSS BY MR. LAWRENCE	III	52
6	DIRECT BY MR. SCHIWETZ.	X	287
7	MEJIA, BRUNO		
8	DIRECT BY MR. SCHIWETZ.	X	64
8	CROSS BY MR. LAWRENCE	X	74
9	REDIRECT BY MR. SCHIWETZ.	X	80
9	MYLETT, THOMAS DAMIEN		
10	DIRECT BY MR. SCHIWETZ.	X	157
11	DIRECT (CONT.) BY MR. SCHIWETZ. . . .	XI	463
12	PERALES, MARY ANN		
13	DIRECT BY MR. SCHIWETZ.	XI	449
13	VOIR DIRE BY MR. LAWRENCE	XI	454
14	DIRECT (CONT.) BY MR. SCHIWETZ. . . .	XI	455
14	CROSS BY MR. LAWRENCE	XI	455
15	RIVERA, RUBEN		
16	DIRECT BY MR. SCHIWETZ.	X	81
16	CROSS BY MR. DePENA	X	90
17	RUPP, JOSEPH C., M.D.		
18	DIRECT BY MR. SCHIWETZ.	X	206
18	CROSS BY MR. LAWRENCE	X	214
19	SCHAUER, MARK DAVID		
20	DIRECT BY MR. SCHIWETZ.	III	101
20	CROSS BY MR. LAWRENCE	III	115
21	DIRECT BY MR. BOTARY.	X	110
22	CROSS BY MR. LAWRENCE	X	138
22	REDIRECT BY MR. BOTARY.	X	149
23	RECROSS BY MR. LAWRENCE	X	156
23	THAIN, DONALD		
24	DIRECT BY MR. SCHIWETZ.	XI	366
25	DIRECT (CONT.) BY MR. SCHIWETZ. . . .	XI	370
25	CROSS BY MR. LAWRENCE	XI	372

		<u>VOL.</u>	<u>PAGE</u>
1			
2	VARGAS, LUIS		
3	DIRECT BY MR. SCHIWETZ.	X	21
4	WAGNER, MARK W.		
5	DIRECT BY MR. SCHIWETZ.	X	176
6	WAYCHOFF, WAYNE		
7	DIRECT BY MR. DePENA.	XI	388
8	CROSS BY MR. SCHIWETZ	XI	392
9	WILSON, ERNEST DAVE		
10	DIRECT BY MR. SCHIWETZ.	XI	333
11	CROSS BY MR. LAWRENCE	XI	341
12	REDIRECT BY MR. SCHIWETZ.	XI	342
13	RECROSS BY MR. LAWRENCE	XI	344
14			
15	REDIRECT BY MR. SCHIWETZ.	XI	458
16	RECROSS BY MR. LAWRENCE	XI	461
17			
18			
19			
20			
21			
22			
23			
24			
25			

JOHN ARSUAGA

DIRECT BY MR. SCHIWETZ.	240
CROSS BY MR. LAWRENCE	252
REDIRECT BY MR. SCHIWETZ.	259
RECROSS BY MR. LAWRENCE	261
FURTHER REDIRECT BY MR. SCHIWETZ. . .	262
FURTHER RECROSS BY MR. LAWRENCE . . .	262

KEVAN BAKER

DIRECT BY MR. SCHIWETZ.	263
CROSS BY MR. LAWRENCE	279

EDDIE McCONLEY

DIRECT BY MR. SCHIWETZ.	289
---------------------------------	-----

INDEX OF EXHIBITS

	<u>VOL.</u>	<u>PAGE</u>
<u>STATE'S EXHIBITS</u>		
SX-1 - PHOTOGRAPH		
MARKED	X	21
IDENTIFIED	X	24
OFFERED.	X	24
ADMITTED	X	25
IDENTIFIED	X	47
SHOWN: EXHIBIT VOLUME		
SX-2 - CASSETTE TAPE		
MARKED	X	29
IDENTIFIED	X	29
IDENTIFIED	X	169
IDENTIFIED	XI	378
OFFERED.	XI	380
ADMITTED	XI	380
SX-3 - DIAGRAM OF SIGMOR STATION		
MARKED	X	38
IDENTIFIED	X	38
OFFERED.	X	38
ADMITTED	X	39
SHOWN: EXHIBIT VOLUME		
SX-4 - PHOTOGRAPH		
MARKED	X	47
IDENTIFIED	X	48
OFFERED.	X	49
ADMITTED	X	49
IDENTIFIED	X	49
IDENTIFIED	X	230
SHOWN: EXHIBIT VOLUME		
SX-5 - PHOTOGRAPH		
MARKED	X	47
IDENTIFIED	X	48
OFFERED.	X	49
ADMITTED	X	49
IDENTIFIED	X	49
SHOWN: EXHIBIT VOLUME		

		<u>VOL.</u>	<u>PAGE</u>
1	SX-6 - PHOTOGRAPH		
2	MARKED	X	47
	IDENTIFIED	X	50
3	OFFERED	X	51
	ADMITTED	X	51
4	SHOWN: EXHIBIT VOLUME		
5	SX-7 - PHOTOGRAPH		
	MARKED	X	47
6	IDENTIFIED	X	50
	OFFERED	X	51
7	ADMITTED	X	51
	SHOWN: EXHIBIT VOLUME		
8	SX-8 - PHOTOGRAPH		
9	MARKED	X	52
	IDENTIFIED	X	52
10	OFFERED	X	52
	ADMITTED	X	52
11	SHOWN: EXHIBIT VOLUME		
12	SX-9 - PHOTOGRAPH		
	MARKED	X	60
13	IDENTIFIED	X	60
	OFFERED	X	60
14	ADMITTED	X	61
	SHOWN: EXHIBIT VOLUME		
15	SX-10 - PHOTOGRAPH		
16	MARKED	X	72
	IDENTIFIED	X	72
17	OFFERED	X	72
	ADMITTED	X	72
18	IDENTIFIED	X	230
	SHOWN: EXHIBIT VOLUME		
19	SX-11 - MAP		
20	MARKED	X	83
	IDENTIFIED	X	83
21	OFFERED	X	84
	ADMITTED	X	84
22	SHOWN: EXHIBIT VOLUME		
23	SX-12 - PROPERTY ENVELOPE		
	MARKED	X	123
24	IDENTIFIED	X	124
	IDENTIFIED	XI	309
25			

		<u>VOL.</u>	<u>PAGE</u>
1	SX-13 - MAN'S WALLET		
2	MARKED	X	123
3	OFFERED	XI	369
4	ADMITTED	XI	369
5	SX-14 - \$149.00 AMERICAN CURRENCY		
6	MARKED	X	123
7	OFFERED	XI	369
8	ADMITTED	XI	369
9	SX-15 - PROPERTY BAG		
10	MARKED	X	135
11	SX-16 - MAN'S TROUSERS		
12	MARKED	X	135
13	IDENTIFIED	X	135
14	IDENTIFIED	XI	311
15	OFFERED	XI	365
16	ADMITTED	XI	365
17	IDENTIFIED	XI	369
18	SX-17 - PHOTOGRAPH		
19	MARKED	X	150
20	IDENTIFIED	X	151
21	OFFERED	X	152
22	OFFERED	X	155
23	ADMITTED	X	155
24	SHOWN: EXHIBIT VOLUME		
25	SX-18 - PHOTOGRAPH		
26	MARKED	X	166
27	IDENTIFIED	X	166
28	OFFERED	X	166
29	ADMITTED	X	167
30	IDENTIFIED	X	167
31	IDENTIFIED	XI	304
32	SHOWN: EXHIBIT VOLUME		
33	SX-19 - PROPERTY BAG		
34	MARKED	X	182
35	IDENTIFIED	XI	367
36	SX-20 - MAN'S LEFT SHOE		
37	MARKED	X	182
38	IDENTIFIED	X	183
39	IDENTIFIED	XI	311
40	OFFERED	XI	365
41	ADMITTED	XI	365
42	IDENTIFIED	XI	367

		<u>VOL.</u>	<u>PAGE</u>
1	SX-21 - MAN'S RIGHT SHOE		
2	MARKED	X	182
	IDENTIFIED	X	183
3	IDENTIFIED	XI	311
	OFFERED	XI	365
4	ADMITTED	XI	365
	IDENTIFIED	XI	367
5	SX-22 - PROPERTY BAG		
6	MARKED	X	182
	IDENTIFIED	XI	368
7	SX-23 - MAN'S SHIRT		
8	MARKED	X	182
	IDENTIFIED	X	183
9	IDENTIFIED	XI	310
	OFFERED	XI	365
10	ADMITTED	XI	365
	IDENTIFIED	XI	368
11	SX-24 - EMERGENCY ROOM RECORDS		
12	MARKED	X	186
	IDENTIFIED	X	187
13	SX-25 - PHOTOGRAPH		
14	MARKED	X	193
	IDENTIFIED	X	193
15	OFFERED	X	194
	ADMITTED	X	194
16	IDENTIFIED	XI	303
	SHOWN: EXHIBIT VOLUME		
17	SX-26 - PHOTOGRAPH		
18	MARKED	X	193
	IDENTIFIED	X	193
19	OFFERED	X	194
	ADMITTED	X	194
20	IDENTIFIED	XI	303
	SHOWN: EXHIBIT VOLUME		
21	SX-27 - FINGERPRINT CARD		
22	MARKED	X	200
	IDENTIFIED	X	200
23	OFFERED	XI	381
	ADMITTED	XI	381
24	SHOWN: EXHIBIT VOLUME		
25			

	<u>VOL.</u>	<u>PAGE</u>
1 SX-28 - FINGERPRINT CARD		
2 MARKED	X	200
3 IDENTIFIED	X	201
4 OFFERED	XI	381
5 ADMITTED	XI	381
6 SHOWN: EXHIBIT VOLUME		
7 SX-29 - PROPERTY ENVELOPE		
8 MARKED	X	204
9 SX-30 - KNIFE		
10 MARKED	X	204
11 IDENTIFIED	X	204
12 IDENTIFIED	XI	306
13 OFFERED	XI	306
14 ADMITTED	XI	306
15 SHOWN: EXHIBIT VOLUME		
16 SX-31 - PHOTOGRAPH		
17 MARKED	XI	300
18 IDENTIFIED	XI	300
19 OFFERED	XI	301
20 ADMITTED	XI	301
21 SHOWN: EXHIBIT VOLUME		
22 SX-32 - PHOTOGRAPH		
23 MARKED	XI	300
24 IDENTIFIED	XI	300
25 OFFERED	XI	301
ADMITTED	XI	301
SHOWN: EXHIBIT VOLUME		
SX-33 - PHOTOGRAPH		
MARKED	XI	300
IDENTIFIED	XI	301
OFFERED	XI	301
ADMITTED	XI	301
SHOWN: EXHIBIT VOLUME		
SX-34 - PROPERTY BAG		
MARKED	XI	307
IDENTIFIED	XI	307
SX-35 - PACKAGE OF WINSTON CIGARETTES		
MARKED	XI	307
IDENTIFIED	XI	308
OFFERED	XI	308
ADMITTED	XI	308

	<u>VOL.</u>	<u>PAGE</u>
1 SX-36 - PHOTO LINEUP		
2 MARKED	XI	320
3 OFFERED.	XI	369
4 ADMITTED	XI	370
5 SHOWN: EXHIBIT VOLUME		
6 SX-37 - COMMISSARY LIST		
7 MARKED	XI	325
8 IDENTIFIED	XI	325
9 SX-38 - COPIES OF PAYCHECKS		
10 MARKED	XI	392
11 IDENTIFIED	XI	392
12 OFFERED.	XI	392
13 ADMITTED	XI	393
14 SHOWN: EXHIBIT VOLUME		
15 SX-39 - CHECK RECEIPT TAKEN FROM SX-13		
16 MARKED	XI	393
17 IDENTIFIED	XI	394
18 OFFERED.	XI	394
19 ADMITTED	XI	395
20 SHOWN: EXHIBIT VOLUME		
21 SX-40 - PHOTOGRAPH		
22 MARKED	XI	440
23 IDENTIFIED	XI	452
24 OFFERED.	XI	454
25 ADMITTED	XI	454
SHOWN: EXHIBIT VOLUME		

1 (At this time the following proceedings were
2 had before the Court, with counsel for the State,
3 counsel for the Defendant, and the Defendant
4 present; but outside the presence and hearing of
5 the Jury:)

6 THE COURT: All right, we ready for the Jury,
7 gentlemen?

8 MR. BOTARY: Excuse me, Your Honor. If it
9 please the Court, I believe the Rule is going to be invoked.
10 I am not concerned with the witnesses so much as I am the
11 spectators. There are certain family members of the Defendant
12 in the courtroom, and I would appreciate if the Court would
13 at least admonish them as to the Rule and what the Rule means
14 so that they won't go out and discuss the testimony from the
15 witnesses with potential witnesses for the defense.

16 THE COURT: Yes. Do you want to be seated a
17 moment, gentlemen.

18 In a moment when the witnesses or those that
19 are present are sworn, the Rule will be invoked, which means
20 that only one witness at a time is allowed in the courtroom
21 and that is for the purpose of not allowing them to hear the
22 testimony given by any other witness in this case. They are
23 permitted to discuss their testimony with Counsel on either
24 side, but even if they do that, they may not discuss that
25 testimony in the presence of any other witness. So if anyone,

1 as a spectator, remains in the courtroom, you will not be
2 permitted to -- in and out all the time and you will be
3 strictly under order of the Court not to divulge any testimony
4 that they hear in here from any witness to any other witness
5 in this case. That's a very strong admonition, so I -- I beg
6 you to please follow it.

7 Anything else?

8 MR. BOTARY: No, that's all, Your Honor.

9 THE COURT: Fine. Bring the Jury in.

10 (At this time the Jury was seated in the jury
11 box, after which the following proceedings were
12 had before the Court, in the presence and hearing
13 of the Jury, and with counsel for the State, counsel
14 for the Defendant and the Defendant present:)

15 THE COURT: Good morning, ladies and gentlemen
16 of the Jury, before we start this, let me ask you by a show
17 of hands how many of you smoke at home.

18 (Visible response from the Jury.)

19 THE COURT: Okay, is there anyone on this
20 Jury who is offended by someone smoking in your near vicinity,
21 allergic to it or just simply offended by it, because we can
22 all be equally uncomfortable, you know, I can put the non-
23 smokers at one end and the smokers at the other, so if anyone
24 is, why, please tell me and you can move. And, in the
25 meantime, now that you have your juror cards with your name

1 on them, you may sit anywhere, you're not assigned a seat,
2 you may sit anywhere that you like. So with that, both sides
3 ready?

4 MR. SCHIWETZ: The State's ready, Your Honor.

5 THE COURT: Carlos De Luna?

6 MR. DE PENA: Ready, Your Honor.

7 THE COURT: Is that your true name?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Present your indictment, please.

10 MR. SCHIWETZ: "Cause No. 83-CR-194-A, the
11 State of Texas versus Carlos De Luna. Charge: Capital murder.

12 In the name and by authority of the State of
13 Texas:

14 Count 1

15 The Grand Jury, for the County of Nueces,
16 State of Texas, duly selected, impanelled, sworn, charged,
17 and organized as such at the February Term A.D. 1983 of the
18 105th Judicial District Court for said County, upon their
19 oaths present in and to said Court at said term that Carlos
20 De Luna hereinafter styled Defendant, on or about the 4th
21 day of February A.D. 1983, and before the presentment of this
22 indictment, in the County and State aforesaid, did then and
23 there while in the course of committing and attempting to
24 commit the robbery of Wanda Lopez, intentionally caused,
25 during the commission of said robbery and attempted robbery,

1 the death of Wanda Lopez by stabbing her with a knife

2 Count 2

3 And the Grand Jurors upon their oaths further
4 present in and to said Court that on or about the 4th day of
5 February, 1983, in Nueces County, Texas, and anterior to the
6 presentment of this indictment, Carlos De Luna did then and
7 there intentionally and knowingly cause the death of an
8 individual, Wanda Lopez, by stabbing her with a knife against
9 the peace and dignity of the State." Signed by Thelma B. Bush,
10 Foreman of the Grand Jury.

11 THE COURT: How do you plead to that
12 indictment?

13 THE DEFENDANT: Not guilty.

14 THE COURT: All right. All witnesses who
15 expect to give -- you may take your seats. All witnesses who
16 expect to give testimony in this case stand and raise your
17 right hand, please.

18 MR. SCHIWETZ: Your Honor, I believe they're
19 all outside the courtroom.

20 MR. LAWRENCE: We would ask that the Rule be
21 invoked, Your Honor.

22 THE COURT: All right. All right. Will all
23 witnesses raise your right hands and be sworn and remain
24 standing after you have been sworn, please.

25 (At this time five witnesses were sworn by

1 the clerk.)

2 THE COURT: The Rule has been invoked, which
3 means that only one witness at a time is allowed in the
4 courtroom. This is so no witness will hear the testimony
5 given by any other witness during this case; consequently,
6 while you're out of the presence of this Jury and out of the
7 courtroom, do not discuss your testimony with any other
8 witnesses in this case. You may, if you wish, discuss it
9 with counsel on either side, but if you do this, take care
10 not to discuss it within the presence or hearing of another
11 witness. The Rule will remain in effect until this Jury has
12 finally been discharged in this case.

13 Who is your first witness?

14 MR. SCHIWETZ: Your Honor, my first witness
15 is Mr. Vargas. I do wish to make an opening statement,
16 however.

17 THE COURT: All right. Do you want to step
18 outside and you will be called as you are required.

19 MR. SCHIWETZ: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. SCHIWETZ: Ladies and gentlemen of the
22 Jury: The State is going to begin presenting its case to you
23 in a few minutes. We're going to call a number of witnesses,
24 some of whom you have just seen, a number of others are at
25 work now, we will be bringing them in over the next -- over

1 the day and the next few days next week. I will impress
2 upon you the opening statement that I am making is not
3 evidence, it's simply a tool which is allowed in the courts
4 to allow us to tell you what we anticipate the evidence will
5 show so that it will be easier for you to follow as the
6 witnesses come in.

7 In a few minutes I'm going to talk to you about
8 what some of the witnesses will testify to and I am going to
9 talk to you generally in chronological order, the time order,
10 the time sequence in which these events occurred on February
11 4th, 1983. The witnesses will not be called in chronological
12 order, for reasons of logistics, just getting people down
13 here, we can't always bring them in just the exact order in
14 which events occurred, it's a little clumsier that way so
15 we're going to call them out of order, some of them. The
16 first few witnesses we're going to be calling are going to be
17 primarily police officers who came after the events occurred.
18 We do not anticipate putting on our eye-witness testimony
19 until Monday, perhaps Tuesday. The witness I will call to
20 start with is Mr. Vargas. Mr. Vargas will testify that he is
21 the father or was the father of the victim in this case,
22 Wanda Lopez. He will tell you a little about her, about her
23 age, about where she worked, how long she had worked there,
24 things of that sort. He will tell you that back on
25 February 4th, 1983, she was working at a Sigmor Station in

1 the 2600 block of South Padre Island Drive. He will tell
2 you that she had been working there about a year. He will
3 tell you what shift she worked, just little things like that.
4 We will also introduce a photograph which showed what Mrs.
5 Lopez looked like when she was alive.

6 I am also going to call a man named George Aguirre
7 who is the first of a series of eyewitnesses we will call.
8 Mr. Aguirre will testify, I believe, that he is 19 years old;
9 that he is a graduate of King High School in 1982; that on
10 February 4th, 1983, he was attending a school called Hallmark
11 Aerotech in San Antonio, he was studying to be an electrician.
12 And on this particular weekend, this would have been on a
13 Friday, he was here in Corpus Christi visiting his family and
14 he took his van to the Sigmor Station to get some gas. He
15 will tell you that it was a little bit past 8:00 o'clock in
16 the afternoon or evening and that he pulled up there and
17 began putting gas in his car or his van and he noticed a man
18 standing a slight distance away. He noticed the man walked
19 around from behind the Sigmor Station and was standing there
20 drinking a beer; and he noticed that this man had a knife in
21 his hand and he saw the man put the knife into his pocket.
22 He will testify that this aroused his concern and so while he
23 was putting gas in his van, he kept a close watch on the man
24 and he watched him for several minutes and, in fact, he
25 didn't even take his eyes off of him because he was a little

1 bit worried about the knife. He will testify that the man
2 then came up to him and began to talk to him. The man asked
3 him to give him a ride to a place called the Casino Club over
4 on Port. He will tell you that the man offered him some
5 money, showed him a wallet, a black wallet, which had just a
6 couple of one dollar bills in it. He will testify that the
7 man offered to give him either the money or drugs if he would
8 take him over to the Casino Club. He will testify that he
9 refused, the man walked back to where he was by the side of
10 the station and that when Mr. Aguirre got finished putting
11 the gas in his vehicle, he went inside to pay and he told the
12 attendant, Wanda Lopez, that there was a man outside with a
13 knife and that he was going to call the police. He will
14 testify that Mrs. Lopez told him that was a good idea and
15 that she would call the police herself. He will testify that
16 as he walked out the door to go back to his van, the man he
17 had seen outside with the knife was walking into the Sigmor
18 Station. He went out and got in his van, drove down SPID,
19 tried to get some help, was unsuccessful and returned; that
20 at the time he returned, the man with the knife was gone and
21 the police had already arrived on the scene. He will testify
22 that he stayed there to help the police in their investigation,
23 telling them what he had seen and that within a short time
24 later, within an hour, a man was brought back in a police car.
25 He will testify that the man he saw in the police

1 car was the same man he had seen earlier with the knife in
2 his hand. He will testify that, with the exception of the
3 fact that the man who was brought back didn't have any shirt
4 on, keep in mind this is February, with the exception that
5 the man didn't have a shirt on, he was the exact same man and
6 looked the same as the fellow he had seen 30 minutes to an
7 hour before.

8 I will call a Lieutenant McConley, Eddie McConley
9 of the Corpus Christi Police Department. Mr. McConley will
10 testify that he was out there that night and that he was the
11 one that showed the man in the car, in the police car, to Mr.
12 Aguirre and he will testify that the man he showed in the
13 police car to Mr. Aguirre, the man that had no shirt on, was
14 the Defendant, Carlos De Luna.

15 I am going to call a man named Kevan Baker. He
16 will testify that he was a 32-year-old car salesman that on
17 the night of this particular offense he was working at the
18 Volkswagen sales place out on SPID and he got off at 8:00
19 o'clock and right afterwards he went to this Sigmor Station
20 to get some gas for his car. He will testify that when he
21 pulled up to the pumps, he saw a man inside wrestling with
22 the woman; first he thought they were playing, but then he
23 looked a little bit closer and realized that the man was not
24 playing, the man had the woman by the hair and was trying to
25 drag her into a back room; that when he went up there to

1 assist, the man threw the woman down on the floor and came
2 out the front door. He will testify that he confronted the
3 man at a distance of just a couple feet, looked right at his
4 face; that the man said to him, "I've got a gun, leave me
5 alone," or words to that effect. And that the man then broke
6 and ran, heading east down Padre Island Drive. He will
7 testify that the man he faced at a short distance, the man
8 that made these threats to him, was the Defendant, Carlos
9 De Luna. He will testify that shortly thereafter Mr. De Luna
10 was brought back to the scene in a police car, that he didn't
11 have a shirt on, but that Mr. De Luna was the man that he had
12 seen 30 minutes to an hour earlier.

13 I am going to call a man named John Arsuaga. Mr.
14 Arsuaga will testify that he is 19 years of age, he's a
15 construction worker. And on February 4th, 1983, he was
16 pulling into a club called Phase III, which is a few buildings
17 east of the Sigmor Station on South Padre Island Drive access
18 road. He was pulling in there with his wife of two weeks,
19 Julie Arsuaga, and he saw a man running from the direction of
20 the Sigmor Station. He will describe the man, how he looked.
21 He will testify that with his lights shining right in the
22 man's face and on his body and from a distance of about ten
23 feet away, he saw this man and he watched him cut across a
24 vacant lot next to another building. At about the same time
25 he saw police units pulling into the Sigmor Station down the

1 way. He went down there to tell them what he had seen about
2 this man who was fleeing from the direction of the Sigmor
3 Station. He will testify that he refused to go look at the
4 man in the car and he was scared, but that several hours
5 later he was taken to the police department and he looked at
6 a photographic lineup, a lineup of six pictures, and that
7 without any suggestion as to who he should pick out he did
8 pick out a picture and he will testify that the picture he
9 picked out was the Defendant, Carlos De Luna, and Carlos De
10 Luna was the man he saw running away from the direction of the
11 Sigmor Station.

12 I am going to call Jessie Escochea. Jessie will
13 testify that he is 21 years old, that he has been working as
14 a dispatcher at the police department for the last three years.
15 He will testify that at approximately 8:09 p.m. on the night
16 of February 4th, 1983, he received a call over the telephone.
17 He will testify that it was a woman whom he did not know.
18 She -- that she told him she was at a Sigmor Station in the
19 2600 block of South Padre Island Drive, there was a man in
20 the store with a knife and, among other things, she asked
21 him to send a police unit to the scene. He will testify that
22 he did so.

23 Steve Fowler will testify that he is a Corpus
24 Christi Police Department patrolman, one of the fellows that
25 wear the blue suits. He will testify that he was the first

1 one to arrive on the scene at the Sigmor Station after he
2 got the call from the dispatcher. He will testify that he
3 found Wanda Lopez, whom he knew from the station, lying on
4 her side at the door, front door of the station. He will
5 testify that he secured the scene to make sure that none of
6 the materials in the inside of the store were disturbed and
7 to be preserved for the investigating officer to look at and
8 that he tried to tend to Wanda Lopez. He will testify that
9 he had some experience in nursing before and that in his
10 opinion, that judged from what he observed, that Wanda Lopez,
11 for all practical purposes, was dead by the time he got
12 there, although she was still alive. He will testify that
13 he instructed another officer, Bruno Mejia, to interview the
14 witnesses who were there on the scene, the Arsuagas, Mr.
15 Aguirre, Mr. Baker, and to get a description, put a
16 description out so that other officers in the area could try
17 to locate the offender.

18 Mr. Mejia will testify he's been a police officer
19 for awhile, that he got some conflicting descriptions as to
20 clothes and the like, but he did put a description out, a
21 description called BOLO, it stands for be on the lookout. He
22 put a BOLO out for a young Hispanic male and he will tell you
23 about some of the descriptions he got regarding clothing,
24 particularly wearing a shirt.

25 I'm going to call a deputy constable in that works

1 for Constable Johnny Alaniz, Ruben Rivera. He will testify
2 that he was on patrol in the general area and that his partner,
3 Carolyn Vargas, and that they decided to help out the police
4 when they heard this armed robbery going down and that, in
5 fact, he helped arrest the Defendant in this case, Mr. Carlos
6 De Luna, less than three blocks away from the Sigmor Station
7 where Wanda Lopez was killed. He will testify that at the
8 time he found the Defendant, the Defendant, Mr. De Luna, was
9 hiding underneath a truck in a puddle of water, that he
10 smelled of beer, that he had no shirt on, he had no shoes on,
11 he merely had on a pair of pants and some socks. He will
12 testify that he was assisted in this arrest by Officers
13 Mylett and Schauer of the Corpus Christi Police Department.

14 Officer Schauer will testify that he took custody
15 of the Defendant, put him in his police car. He will also
16 testify that the Defendant, on the 4th day of February, 1983,
17 was wearing no shoes, no shirt. He will testify that the
18 Defendant had some scratch marks underneath the pectoral
19 muscles on his right side. He will testify that the Defendant
20 had a wallet on him; he will testify that that wallet was
21 black and that the wallet had two one dollar bills in it. He
22 will also testify that wadded up in one of the Defendant's
23 front pockets was \$149.00 in bills.

24 I am going to call a man named Pete Gonzales who
25 will testify that he has a management position with Sigmor

1 Shamrock Corporation, he was in overall command of the
2 station, among several others, and that on the night in
3 question he took possession of the store when the police
4 released it to him. He will testify to you about the
5 inventory procedures that they use at Sigmor Shamrock; he
6 will tell you that they inventory weekly, usually Tuesday in
7 this station; that the last inventory was on Tuesday, four
8 days before the murder. He will testify that on the given
9 day of the inventory, they usually have a 20 to \$30.00
10 discrepancy in the inventory, there's usually a 20 -- 20 to
11 \$30.00 shortage or surplus. He will testify that on the Friday
12 night right after the murder that there was a \$166.00
13 discrepancy.

14 I will call a couple people, probably just one,
15 from the Emergency Medical Service, one of the technicians
16 who went out there to look at Wanda Lopez to try and save
17 her life. He will testify that there was one stab wound to
18 her left side in the area of the lung, that they tried to
19 save her, but failed.

20 I will call Dorothy Gomez who is a registered
21 nurse there at the Memorial Medical Center emergency room.
22 She will testify that a second incision was made underneath
23 the left breast of Wanda Lopez to try and drain some of the
24 blood out of her lung; that that was unsuccessful and Mrs.
25 Lopez died.

1 I will call the county medical examiner, Dr.
2 Joseph Rupp, he will testify that by the time he got ahold
3 of the body there was two stab-like wounds; there was one
4 underneath the breast, which Ms. Gomez will testify about,
5 and one on the side, both of them into the lung; and he
6 will testify that the cause of death to Wanda Lopez was a
7 stab wound to the lung. He will testify that the type of
8 wound which was inflicted and the type of knife which was
9 used seems to be a dripping-type wound rather than a spurting
10 wound and so the wound -- the blood tended to drip rather
11 than to spurt out and get on everybody.

12 I am going to call a couple of people from the
13 police department, housekeeping chores, basically
14 identification work. I will call Joel Infante and he will
15 testify he is the identification technician at the Corpus
16 Christi Police Department; that he went out there that night
17 immediately after the robbery; that he took pictures, that he
18 dusted for fingerprints. He will talk to you about what
19 police officers do when they try to take fingerprints. He
20 will talk to you about how often they are capable of getting
21 fingerprints, how successfully you can use fingerprints, and
22 he will talk about fingerprints that he tried to lift. He
23 will testify that he tried to lift some from the area of the
24 counter in the grocery store of the gas station, from the
25 door, and from some beer cans which were found back around

1 behind the station where the Defendant was seen coming from.
2 He will testify that he did find a few partial prints on the
3 counter, two places inside the store and then he found a
4 partial print on a beer can. He will testify he does not
5 know whether any of those prints are capable of being compared
6 to someone else's.

7 Sergeant Ed Wilson of the Corpus Christi Police
8 Department will testify that his job is to compare finger-
9 prints, fingerprints that have been lifted from crime scenes
10 and known fingerprints of the fingers of suspects. He will
11 testify that the one found on the beer can was not of
12 sufficient quality to where it was capable of being compared
13 to anybody else's. He will testify that the other two
14 fingerprints, one which was found on the door, the main door
15 going in and out of the store, could not be matched up to
16 anybody. He will testify that he tried to take fingerprints
17 off the money which was found in the Defendant's front pocket,
18 the hundred forty-nine dollars, he will testify about the
19 procedure he uses or chemicals to try and lift the prints
20 off that. He will testify that he was unsuccessful in doing
21 that, in effect there are no fingerprints in this case.

22 I am going to call a man named Armando Garcia who
23 lives on Easter Street, about a block and a half or two
24 blocks from this Sigmor Station, right around the corner
25 from where the Defendant was captured, in fact, about halfway

1 from the Sigmor Station and where Mr. De Luna was found
2 hiding under the truck. He will also testify that he was
3 told by the police the night of the offense to be on the
4 lookout for any clothes that might be found in the area,
5 particularly a shirt and a pair of shoes. He will testify
6 that one and a half days later, while he was cleaning up his
7 yard, he found a shirt and a pair of shoes tucked away, one
8 in the back yard and one against his fence.

9 I will call Officer Olivia Escobedo, who was the
10 investigative officer, detective in this case. She will
11 testify about items that she picked up at the scene hoping
12 that they might develop into evidence. She will talk about
13 taking some of these items to the Department of Public
14 Safety to see if they could have any luck in coming up with
15 any evidence off of them. She will testify about the lack
16 of success.

17 I will talk to Lieutenant Klemp of the Corpus
18 Christi Police Department who will testify that he is in
19 charge of communications over there, in charge of the
20 dispatchers and the like. He will tell you about the
21 procedures which are used to copy down phone calls which come
22 in, tape them, and if necessary, at the request of people,
23 particularly assistant district attorneys, what they do to
24 maintain those tapes. He will testify about the effort they
25 made to maintain a tape in this case.

1 And the final witness I'm going to call will be
2 the deceased, Wanda Lopez. Mrs. Lopez, who was 26 years old
3 at the time she died, will be called through the means of a
4 tape recording, a phone call that she made to the police
5 department right before she died. On this tape you will
6 hear her asking for help, telling about a man who was in the
7 store with a knife. You will hear her trying to describe
8 him as he stands there -- stood there right in front of her
9 and you will hear her final words to this Defendant telling
10 him, "I'll give you what you want," and then you will hear
11 her screaming as he knifed her.

12 The State calls Mr. Vargas.

13 THE COURT: All right, prior to the time
14 that the testimony begins, let me ask you to do something
15 for me. Pay very close attention to the witnesses, listen
16 to them and try to retain whatever testimony they give you.
17 I believe I have explained this to one or two jurors during
18 the voir dire examination, but now that all of you are
19 together, because invariably when a jury retires to begin
20 deliberation on their verdict, the first thing they do is
21 write me a note and say, "May we please have a transcript of
22 the testimony," you see. This young lady writes this in
23 Sanskrit and she's the only one in town that can read it and
24 it takes a great deal of time to reproduce any testimony.
25 And the law on that point -- and there's no way I could get

1 you a transcript inside of five or six weeks, you know, so
2 the law on that is that if the Jury has a disagreement, a
3 real disagreement among themselves as to what a witness said
4 on a particular point, they may have that portion read back
5 and no other, so I would appreciate it.

6 Mr. Schiwetz.

7 (State's Exhibit 1 was marked for
8 identification.)

9 MR. SCHIWETZ: May I proceed, Your Honor?

10 THE COURT: Yes, sir.

11
12 LUIS VARGAS, JR.

13 having been called as a witness by the State and after having
14 been first duly sworn to tell the truth, the whole truth and
15 nothing but the truth, testified upon his oath as follows:

16 DIRECT EXAMINATION

17 BY MR. SCHIWETZ:

18 Q. Could you please state your name for the Jury, sir.

19 A. My name is Luis Vargas, Junior.

20 Q. And where do you live, Mr. Vargas?

21 A. Live in 2418 Cleo.

22 Q. And how long have you lived there, sir?

23 A. Since 1956.

24 Q. And where do you work?

25 A. CC Transfer, Mayflower.

1 Q. And how long have you worked there?

2 A. First I work 19 years and then came back one more year,
3 so that makes me 20 years working there.

4 Q. Are you a married man?

5 A. Yes, sir.

6 Q. And who is your wife?

7 A. Mary Vargas.

8 Q. And how long have y'all been married?

9 A. Twenty-seven years.

10 Q. Do you have any children?

11 A. Two.

12 Q. Okay, and who are they?

13 A. Richard Vargas and -- and Wanda Jean Vargas Lopez.

14 Q. And Wanda Vargas Lopez, when was she born?

15 A. 1958.

16 Q. And where was she born?

17 A. In Corpus.

18 Q. And where did she attend school, sir?

19 A. Sir?

20 Q. Where did she attend school?

21 A. Wynn-Seale.

22 Q. And where did she go to high school?

23 A. She didn't get to go to high school.

24 Q. Was your daughter -- did your daughter have a daughter
25 herself?

1 A. A what, sir?

2 Q. Did she have a child? Mrs. Lopez, did she have a

3 child? Do you have a granddaughter?

4 A. Yes.

5 Q. And what's her name?

6 A. Melissa.

7 Q. And who's she living with now?

8 A. She's living with us now.

9 Q. And how old is she?

10 A. She's six years old.

11 Q. Okay. Your daughter, Wanda, where had she worked

12 before she worked at Sigmor?

13 A. She used to work with Kroger's and -- let's see.

14 Q. And how long was she at Kroger's?

15 A. She worked there almost a year at Kroger's and then --

16 Q. And how long did she work at Sigmor?

17 A. A little over a year.

18 Q. Now, on February 4th, 1983, where was she working?

19 A. On a Shamrock Station located on SPID.

20 Q. How long had she been working at that particular one?

21 A. Well, she was doing -- she would work like just in

22 periods, you know, she worked about three stations,

23 something like that.

24 Q. Had she ever been robbed before?

25 A. She?

1 Q. Yes, sir.

2 A. Yes, sir.

3 Q. Okay. When was that?

4 A. I -- it was a short period before this happened.

5 Q. Okay.

6 A. It was on the same -- on another station close to Weber,

7 I believe, Shamrock.

8 Q. And how long had she been working with Sigmor total,

9 Sigmor Shamrock, the total period of time before

10 February 4th, 1983?

11 A. She had already the year there working for that

12 company.

13 Q. Did she have a vacation coming up?

14 A. Yes, sir.

15 Q. When was it supposed to start?

16 A. It was -- it wasn't -- she was just waiting to -- she

17 was waiting for some month, I forgot, but she was

18 already due for the vacation.

19 Q. I'm going to show you what's marked for identification

20 purposes as State's Exhibit Number One. Is that your

21 daughter?

22 A. Yes, sir.

23 Q. Okay. When was that picture taken?

24 A. It was taken a little while before this happened.

25 MR. SCHIWETZ: Your Honor, the State would

1 like to tender State's Exhibit Number One.

2 MR. LAWRENCE: I have no objection, Your
3 Honor.

4 THE COURT: It will be received.

5 MR. SCHIWETZ: I will pass the witness.

6 MR. LAWRENCE: I have no questions.

7 THE COURT: Thank you, sir, you may step down.
8 May we excuse this witness subject to recall,
9 gentlemen?

10 MR. SCHIWETZ: May we approach the bench?

11 (At this time an off-the-record discussion
12 was held at the bench, after which the following
13 proceedings were had:)

14 THE COURT: Do you want me to put something on
15 the record as to what we just agreed to, gentlemen?

16 MR. SCHIWETZ: The defense --

17 THE COURT: Without embellishing?

18 MR. SCHIWETZ: The defense agreed to release
19 Mr. Vargas from the Rule; is that fair enough?

20 MR. LAWRENCE: That's fair enough, with the
21 comment that I made previously.

22 THE COURT: Yes, certainly.

23 MR. DE PENA: We have no objection to it.

24 THE COURT: Call your next, please.

25 MR. SCHIWETZ: I call Jessie Escochea.

1 THE COURT: Would you please have that seat
2 right over there.

3
4 JESUS ESCOCHEA, JR.,

5 having been called as a witness by the State and after having
6 been first duly sworn to tell the truth, the whole truth and
7 nothing but the truth, testified upon his oath as follows:

8 DIRECT EXAMINATION

9 BY MR. SCHIWETZ:

10 Q Would you please state your name for the Jury, sir.

11 A Jesus Escochea, Junior.

12 Q And how are you employed?

13 A I am employed as a dispatcher with the Corpus Christi
14 Police Department.

15 Q And how long have you been working there?

16 A Four years.

17 Q And during that period of time, what kind of work have
18 you done?

19 A Dispatching, answer phones, work radio traffic with
20 police officers, deal with the public on the phones.

21 Q Is that all you've done while you're there?

22 A Yes.

23 Q You've never been a patrolman or anything like that?

24 A No.

25 Q Didn't go through police academy?

1 A. No.

2 Q. Where are you from originally?

3 A. Originally from Corpus. I was born here and I was --

4 but I was raised in Mathis, so I guess you would say

5 Mathis.

6 Q. I want to direct your attention back to the 4th day of

7 February of this year, 1983, and ask you if you were

8 working as a dispatcher on that particular day.

9 A. Yes, I was.

10 Q. By the way, how old are you?

11 A. Twenty-two.

12 Q. On February 4th, what shift were you working during that

13 time period?

14 A. The evening shift, 3:00 p.m. to 11:00 p.m.

15 Q. How many dispatchers were working at that particular

16 time, if you recall?

17 A. Four people plus a supervisor, that's the way I recall.

18 Q. On that particular night, directing your attention to

19 approximately 8:09 p.m., do you recall getting a phone

20 call regarding a man with a knife?

21 A. Yes, sir.

22 Q. And could you identify the sex of the person who was

23 calling?

24 A. It was a female.

25 Q. And did she identify herself by name?

1 A. No.

2 Q. Did she tell you where she was?

3 A. Yes.

4 Q. And where was that?

5 A. At the Shamrock, 2602 South Padre Island Drive.

6 Q. Did you question the person, without going into what you

7 asked her, did you talk to her for a minute?

8 A. Yes, I did.

9 Q. Did she request police assistance?

10 A. Yes, she did.

11 Q. And did you dispatch some assistance to her?

12 A. Yes, I did.

13 Q. Okay. Can you tell the Jury how it is that you actually

14 do that?

15 A. As far as the dispatching work or --

16 Q. Yes, sir.

17 A. Well, you want me to recall that night or how it

18 occurred?

19 Q. Well, just tell me -- I am interested in how a

20 hypothetical situation, say I call in and I say, "There's

21 a burglar in my house." What do you do to see to it

22 that a police officer arrives at my house?

23 A. Okay. The way I do is I see which available unit I have

24 closest to the location, then I will just dispatch a

25 unit from the position that I'm sitting on on the radio.

1 Q. Supposing you get a report of an armed robbery in
2 progress, how do you handle that?

3 A. Well, on an armed robbery in progress, we send a unit
4 on an emergency run from wherever the closest unit is,
5 which means they'll run it lights and siren, it just
6 depends on where the unit is coming from, who is the
7 closest to that location.

8 MR. SCHIWETZ: Could I get this marked as
9 State's Exhibit Two.

10 (State's Exhibit Two was marked for
11 identification.)

12 Q. (By Mr. Schiwetz) I want you to take a look, Mr.
13 Escochea, at what's marked as State's Exhibit Number Two
14 and ask you if you have ever seen that tape before.

15 A. Yes, sir.

16 Q. Have you listened to it?

17 A. Yes, I have.

18 Q. When was the last time you listened to it?

19 A. Yesterday.

20 Q. And where was that?

21 A. In your office.

22 Q. And have you heard the conversation that is on that
23 tape before?

24 A. Yes, I have.

25 Q. Okay. Where and when?

1 A. It was on February the 4th at 8:08 p.m.

2 Q. Is -- is that the call that you received from the woman?

3 A. Yes, it is.

4 Q. And can you identify a male voice on that tape?

5 A. Yes, I can.

6 Q. Whose is that?

7 A. It's my voice.

8 Q. Do you know for sure who the female voice is?

9 A. No, I don't.

10 Q. There is a third voice right at the end of that tape,

11 is there not?

12 A. Yes, there is.

13 Q. Do you know whose voice that is?

14 A. Yes, that -- that was my partner that night on the

15 radio, Cheryl Roberts, dispatcher.

16 Q. And what was she doing?

17 A. She was working channel two at the time.

18 Q. Now, her voice is on there very briefly, is it not,

19 right at the end?

20 A. Yes, it is.

21 Q. And what is the purpose in her call?

22 A. She was dispatching a unit to the location also, that's

23 what was recorded on there.

24 Q. Does State's Exhibit Two truly and accurately reflect

25 the conversation you had with that unknown caller on

1 February 4th, 1983, at approximately 8:00 or 8:15 p.m.?

2 A. Yes, it does.

3 Q. Have there been any additions to it?

4 A. No, there haven't.

5 Q. There's nothing new in it?

6 A. Nothing new.

7 Q. Are there any deletions in that particular tape?

8 A. None at all.

9 Q. Are there any corrections or anything like that on the

10 tape?

11 A. No.

12 Q. Did you remain on the -- on that frequency you were on?

13 A. Yes, I did.

14 Q. After you got the call?

15 A. Yes.

16 Q. Did you continue handling transmissions with the other

17 units in the police department there afterwards?

18 A. Yes, I did.

19 MR. SCHIWETZ: I pass the witness. Excuse me,

20 I do have one further question.

21 Q. (By Mr. Schiwetz) What unit did you dispatch to that

22 scene?

23 A. The primary unit was Officer Mylett. The -- he was the

24 primary unit. He did not make the scene, Sergeant

25 Fowler was the first on the scene so, therefore, we -- we

1 changed the card and he was assigned the call.

2 MR. SCHIWETZ: Thank you. I will pass.

3

4 CROSS-EXAMINATION

5 BY MR. LAWRENCE:

6 Q Mr. Escochea, did you -- after you sent out that primary
7 unit, did you, as a dispatcher, receive any calls
8 concerning or from citizens as such concerning someone
9 in the area or in the vicinity of the particular Sigmor
10 Service Station?

11 A I personally did not. I was informed -- since I was
12 working the radio, I was informed by another dispatcher
13 that they had received the information. They told me
14 which line they were on and I picked up and listened to
15 the conversation.

16 Q Did this -- was this from a private citizen --

17 A Yes.

18 Q -- I guess you would say?

19 A Yes.

20 Q Were you aware of more than one call from private
21 citizens?

22 A No, the only call that I -- I know of was that one
23 particular call which was dispatched and subject was
24 apprehended afterwards -- shortly thereafter.

25 Q Do you recall from what area that call came from?

1 A. It came from Franklin Street.

2 Q. Do you recall how long after you had already dispatched
3 the -- the unit to the scene that that call came through?

4 A. Fifteen to 20 minutes, more or less.

5 Q. During the period of time when you dispatched that first
6 vehicle out to the scene in the 15 or 20 minutes that
7 took place until the second call came through from the
8 private citizen, did -- were you in the process of
9 sending any more units to the scene or different areas?

10 A. Yes, sir, I had about 15 to 20 units in the area looking
11 for the subject.

12 Q. Okay.

13 A. I had every available unit within the city limits at
14 that location.

15 Q. Did you receive, from anyone, a -- a description of a
16 suspect?

17 A. Yes, sir. As soon as Sergeant Fowler arrived on the
18 scene, he called for an ambulance and then within a
19 couple of minutes we had a description out immediately.

20 Q. Okay.

21 A. His -- his primary concern was getting an ambulance
22 there first.

23 Q. And did you give out the descriptions to various other
24 units over the dispatching system?

25 A. Yes, sir.

1 Q. What -- do you recall what description you gave out?

2 A. It was a Hispanic male, five-eleven wearing black pants,
3 and as far as the shirt was concerned they weren't sure
4 whether it was a white shirt or a grayish-type pullover,
5 they advised that he had black hair and that was about
6 all that I can remember. They said he was running to
7 the rear of the store.

8 Q. To the rear of the store?

9 A. Right.

10 Q. And, basically, that's the information that you would
11 put out to the various units?

12 A. Right. That is the information I had put out.

13 MR. LAWRENCE: Pass the witness.

14

15 REDIRECT EXAMINATION

16 BY MR. SCHIWETZ:

17 Q. You said that they said that the person was running to
18 the rear of the store. Who are you getting that
19 information from?

20 A. Several units in the field. There was -- it was kind
21 of a hectic situation as far as radio traffic was
22 concerned, as you can recall on the tape. Units were
23 just throwing out traffic. I would really have to
24 listen to the tape to be able to identify the voices
25 that were telling me what was going on.

1 MR. SCHIWETZ: I don't have any more questions.

2 MR. LAWRENCE: I have no further questions.

3 THE COURT: Thank you, sir, you may step down.

4 You may be excused subject to recall.

5 MR. ESCOCHEA: Thank you.

6 MR. SCHIWETZ: I call Steve Fowler.

7

8 STEVEN FOWLER,

9 having been called as a witness by the State and after having
10 been first duly sworn to tell the truth, the whole truth and
11 nothing but the truth, testified upon his oath as follows:

12

13 DIRECT EXAMINATION

14 BY MR. SCHIWETZ:

15 Q Would you please state your name for the Jury, sir.

16 A Steven Fowler.

17 Q And how are you employed?

18 A Sergeant with the Corpus Christi Police Department.

19 Q And how long have you been with the police department?

20 A A little over three and a half years.

21 Q Prior to that, how were you employed?

22 A I worked part-time at Doctor's Hospital as a
23 respiratory therapist technician on the graveyard shift
24 and I was a nursing student at Del Mar College.

25 Q Where are you from originally, sir?

1 A. From Memphis, Tennessee.

2 Q. And how long have you been living in this area?

3 A. About 13 years.

4 Q. How did you first get down here?

5 A. I was stationed here in 1970 in the Coast Guard at the

6 Naval Air Station.

7 Q. I want to direct your attention back to February 4th of

8 this year, 1983, and ask you if you had occasion to be

9 working on that date.

10 A. Yes, sir, I did.

11 Q. Can you tell the Jury what hours you were working?

12 A. I was working from 3:30 in the evening till 11:30 in

13 the evening, swing shift.

14 Q. And were you working by yourself or did you have a

15 partner?

16 A. I had a partner with me.

17 Q. Were y'all in a patrol unit?

18 A. Yes, we were.

19 Q. Were you dressed in the kind of uniform that you are

20 wearing today?

21 A. I had a long sleeve shirt on instead of a short sleeve,

22 but other than that, it was the same uniform.

23 Q. Did you have occasion on that particular day to go to a

24 location in the 2600 block of South Padre Island Drive?

25 A. Yes, I did.

1 Q Is that in Nueces County, Texas?

2 A Yes, it is.

3 Q And what is the location you went to?

4 A It's a Shamrock Service Station.

5 Q And had you ever been there before?

6 A Yes, I have.

7 Q And what was the purpose in going there before?

8 A I made a couple of prowler calls there, suspicious car

9 a couple times, stopped by there occasionally just to

10 drive through the parking lot to let the clerks know

11 that we were in the area most of the time.

12 Q Now, are you talking about on this specific night or in

13 periods before?

14 A Oh, I'm sorry, just periods during the patrol.

15 Q That's what I was getting to, I wanted to make sure we

16 were getting to the Jury.

17 A Oh.

18 Q Did you know the attendant there, Wanda Lopez?

19 A Just from her being a clerk there, yes, I did.

20 Q When you arrived there on February 4th, 1983, about what

21 time was it?

22 A It was a few minutes after 8:00 o'clock, 8:00 -- 8:10 or

23 8:15, somewhere around there.

24 Q And when you arrived there, what did you find?

25 A Pulled up in the parking lot, I observed a clerk lying

1 on her side in front of the front door of the service
2 station and a gentleman was standing there bent over.

3 Q. Did you subsequently learn his name?

4 A. No, I didn't. I don't recall his name.

5 Q. Is he one of the people that did stay around and talk to
6 you?

7 A. Yes, he did. I advised him to just stand by his car
8 there until someone else could get there to assist me.

9 Q. Okay, where was his car?

10 A. It was at the gas pumps.

11 MR. SCHIWETZ: Could I have this marked as
12 State's Exhibit Number Three.

13 (State's Exhibit Three was marked for
14 identification.)

15 Q. (By Mr. Schiwetz) I'm going to show you what's marked
16 as State's Exhibit Number Three for identification
17 purposes and ask you if this drawing fairly and
18 accurately represents the way or a plan of the Sigmor
19 Station, Sigmor Shamrock Station at 2600 SPID on
20 February 4th, 1983?

21 A. Yes, it does.

22 Q. I'm not asking you if it's drawn to scale --

23 A. It's -- that's it.

24 MR. SCHIWETZ: I would like to tender State's
25 Exhibit Number Three.

1 MR. LAWRENCE: No objection, Your Honor.

2 THE COURT: It will be received.

3 Q (By Mr. Schiwetz) Could you step up here and help me

4 pin this thing up?

5 A Yeah.

6 Q Mr. Fowler, now that the Jury can see that, if the bottom

7 portion there represents Padre Island Drive, what would

8 be the road running directly in front of that station?

9 A This road right here (indicating)?

10 Q Yes, sir.

11 A That's going to be the access road, South Padre Island

12 Drive westbound access road.

13 Q Now, right above -- do you want to go ahead and keep

14 standing so you can point things out to them. There's

15 three little objects about halfway up to the station.

16 What would those be?

17 A The gas pumps.

18 Q And back behind the gas pumps, what's there?

19 A This right here (indicating)?

20 Q Yes, sir.

21 A That's the service station itself.

22 Q Where would the entrance be, the front door?

23 A Right here (indicating).

24 Q And the counter?

25 A In this area right across here (indicating).

1 Q Now, there's an object out to the right there alongside
2 the gas station. What would that be?

3 A This one here (indicating)?

4 Q Yes. Yes, sir.

5 A Ice machine.

6 Q And next to that there's another object.

7 A There's a wall right here with a fence with trash cans
8 inside of it, garbage cans.

9 Q Are the trash cans visible from the front of the station
10 or are they blocked by the wall?

11 A They're blocked by the wall.

12 Q Okay, off to the left there's another object to the left
13 of the station. What would that be?

14 A Right here (indicating)?

15 Q Yes, sir.

16 A That's another wall.

17 Q Right next to the wall, what would that object be?

18 A This is the -- the little box where they have the air
19 hose and the water hose (indicating).

20 Q Are there any lights in that area?

21 A Yes, sir, it's a well-lit area.

22 Q Where would the lights be?

23 A There's one here, here, here, and then here, and then
24 there's a series of lights all around here, the mercury
25 vapor-type lights (indicating).

1 Q Did you have any trouble seeing when you first got out
2 there?
3 A None whatsoever.
4 Q Could you point out to the Jury again where Wanda Lopez
5 was when you arrived?
6 A Laying right here, right -- this area right here with her
7 feet right at the opening of the door (indicating).
8 Q Now, you can go ahead and have a seat.
9 A (Witness complies.)
10 Q Did she appear to be injured?
11 A Yes.
12 Q Okay, did you check to see where the injury was?
13 A Yes, sir, I did.
14 Q Where was it?
15 A It was under her left armpit area, right in here
16 (indicating).
17 Q Could you tell whether it had been caused by a knife or
18 a gun or what?
19 A Not -- not at first, I was confused when I first arrived,
20 I couldn't tell exactly what kind of wound it was.
21 Q Were there any other officers there with you?
22 A My partner was -- was -- arrived at the scene with me
23 also.
24 Q And who was that?
25 A It was Reserve Officer McCoy, Bill McCoy.

1 Q And what did Mr. McCoy do?

2 A As soon as we arrived, the gentleman that was standing
3 by his car and some other people that were right there
4 at the store all began shouting and pointing in this
5 direction (indicating) eastbound, this area around here
6 (indicating); and Officer McCoy, before we even stopped,
7 he jumped out of the car and headed in this area to see
8 if he could find anybody.

9 Q To your knowledge, did he?

10 A No, he didn't.

11 Q Did any other officer show up afterwards?

12 A Just a few -- few seconds after I got there, Officer
13 Mejia showed up.

14 Q What's his name, first name?

15 A Bruno.

16 Q And what did you have Mr. Mejia do?

17 A He asked me -- what to do and I advised him to grab
18 every witness he could and take them over beside the
19 side of the station and isolate them and try to get some
20 information and put out a BOLO as quick as he could.

21 Q What's a BOLO?

22 A A BOLO is the abbreviation for be on the lookout, a
23 quick broadcast of what the description of the suspect
24 looks like and we try to get it on the air as soon as
25 possible so the people who are in the area will be able

1 to locate him if they can find him.

2 Q. Now, where did he take those witnesses to, Officer Mejia?

3 A. He stood them -- he grabbed them and they all just kind
4 of lingered in this area right here (indicating), so
5 that we were sure none of them would get away or get
6 tired and walk off.

7 Q. The fellow that was standing next to Mrs. Lopez when
8 you first got there, did he go over there with him?

9 A. Yes, sir, I believe he did.

10 Q. What was he doing when he -- when you rode up?

11 A. When I drove up, he was -- he was standing up and he was
12 bending over as if he was fixing to either reach down
13 or -- he was bent over Mrs. Lopez looking at her and
14 when we pulled up, he just stopped and looked at us and
15 then he backed off and pointed the direction, I believe.

16 Q. Did anybody go -- after you got there, did anybody go in
17 the gas station itself?

18 A. No, sir.

19 Q. Why not?

20 A. I -- as soon as I saw what had happened, I secured the
21 door, that was my prime concern being the first officer
22 on the scene was to secure the crime scene as best as
23 possible, so I just stood in front of the door to make
24 sure that nobody got near the door or inside the store.

25 Q. Who -- who was the first person actually going in the

1 store?

2 A. It would be Sergeant Escobedo.

3 Q. And who's that?

4 A. One of the CID officers.

5 Q. By "CID," you mean a detective?

6 A. Criminal -- yes, sir, a detective.

7 Q. And how long was it before Olivia Escobedo got there?

8 A. I couldn't say in minutes. It wasn't that long because

9 she had dispatched as soon as I was -- arrived.

10 Q. Now, did you try and tend to Wanda Lopez?

11 A. When I first got there I did, yes, sir.

12 Q. And was she still breathing then?

13 A. She was having -- she was in a -- a -- her breathing was

14 labored and her eyes were kind of glassy and --

15 Q. Have you ever had experience with dealing with people

16 who are in that condition before?

17 A. Yes, I have.

18 Q. Okay, where was that?

19 A. In the hospital, when I worked in the hospital in the

20 emergency room and I made several homicide cases since

21 I have been on the scene, people in that condition.

22 Q. Is there any particular medical language which is used

23 for a person that's in that condition?

24 A. I believe it's called Kussmaul is the type of breathing

25 she was in. It's kind of a rapid, shallow breathing.

1 It's caused by the body trying to compensate for an
2 acid -- a blood acid base imbalance; and what's happening
3 is they've either lost a lot of blood or they've lost
4 enough body fluid to where their body is trying to catch
5 up with the imbalance of the body fluid inside and they
6 breath heavy trying to compensate for this.

7 Q Did you try to question Mrs. Lopez?

8 A I tried at first. I bent over and asked her what had
9 happened, but when I saw her condition, I just -- that
10 was it, I just didn't bother asking anything else.

11 Q She never replied?

12 A No.

13 Q Now, when you -- when you got there, how long was it
14 before the people from the Emergency Medical Service
15 got there?

16 A Maybe two, three minutes --

17 Q Okay.

18 A -- at the most.

19 Q Did you have an opinion about her condition before they
20 got there?

21 A Yes, I did.

22 Q And what was that?

23 A That she was dead,

24 Q Okay, were you present when Officer Infante arrived?

25 A Yes, I was.

1 Q Tell the Jury who he is and what his function is.

2 A He's an ID officer.

3 Q When you say "ID," can you tell the Jury what they do?

4 A He takes fingerprints, photographs the scene, takes

5 care of evidence, makes sure that it's categorized, the

6 evidence that we don't take into the station ourselves.

7 Q Did you -- did you see Officer Infante process the

8 location, take pictures and the like?

9 A Yes, sir, I did.

10 Q Did you direct his attention towards any particular

11 item of evidence?

12 A The only item that I can recall was some beer cans that

13 were found back behind the station.

14 Q Do you recall what kind they were?

15 A No, I don't.

16 Q Did you direct his attention toward those?

17 A Yes, sir, I did.

18 Q What did he do with them?

19 A He photographed the beer cans at the scene where they

20 were at and after he did that, well, then, I stuck my

21 fingers in the drinking holes and picked them up, took

22 them to the front and laid them by the door and stayed

23 there with them until they were released to him after he

24 was through processing the scene.

25 Q Was there any particular reason why you -- your attention

1 was drawn to those beer cans?

2 A. Officer Mejia had come up to me and stated that someone
3 else --

4 MR. LAWRENCE: Your Honor, I'm going to object
5 to hearsay.

6 THE COURT: Sustained.

7 Q. (By Mr. Schiwetz) Who did you finally turn the location
8 over to?

9 A. Well, as soon as Officer Escobedo arrived, I turned the
10 scene over to her and then I stayed by the front door
11 to make sure no one else entered.

12 Q. How long did you stay out there that night?

13 A. It was over an hour, hour and a half, two hours maybe.

14 Q. Were you there when the people from Sigmor showed up?

15 A. Yes, I was.

16 Q. Do you recall who that was?

17 A. No, it was a gentleman, the general manager, he showed
18 up.

19 (State's Exhibits Four, Five, Six and Seven
20 were marked for identification.)

21 Q. (By Mr. Schiwetz) I am going to direct your attention
22 to what's marked as State's Exhibit Number One up there,
23 the photograph of the girl. Is that Wanda Lopez?

24 A. Yes, it is.

25 Q. Is that the same person you found lying in front of the

1 station that night?

2 A. Yes, it is.

3 Q. I am going to show you what's marked as State's Exhibit
4 Number Four and see if you can identify that photograph.

5 A. That's the front of the Shamrock Station.

6 Q. And does that door represent where you found her lying
7 that night?

8 A. Yes, sir, it does.

9 Q. Does it truly and accurately represent the way it
10 appeared after her body had been removed?

11 A. Yes, it does.

12 Q. I show you what's marked as State's Exhibit Number Five
13 and ask you if you can identify that photograph.

14 A. That's the front of the station taken from Padre Island
15 Drive, I imagine.

16 Q. Okay.

17 A. From the access road.

18 Q. And does that truly and accurately represent the way the
19 area looked that night right after you had gotten there?

20 A. Yes, it does.

21 Q. Okay, was that big red Sigmor sign on?

22 A. Yes, sir, it was on.

23 Q. How about the lights over the pumps?

24 A. Yes, sir, all the lights were on.

25 MR. SCHIWETZ: I would like to tender State's

1 Exhibits Four and Five.

2 MR. LAWRENCE: No objection.

3 THE COURT: Be received.

4 Q (By Mr. Schiwetz) Now, so that the Jury may see, I
5 show you what's marked as State's Exhibit Number Four
6 and ask you if you can describe that for them.

7 A. Okay, this is the front of the store (indicating), and
8 this area right here is the front door (indicating).
9 These two right here are the front doors here and then
10 you can see the counter running clockwise -- at this
11 angle and here's a cash register here (indicating) and
12 this is the area right in here where Mrs. Lopez was lying
13 (indicating).

14 Q. Now, this material, this debris out here; where's that
15 from? Do you know?

16 A. That's from the ambulance crew and the fire crew that
17 arrived to try to revive her, bandages and whatever they
18 had.

19 THE COURT: Pass these among you without
20 comment, please, ladies and gentlemen.

21 Q (By Mr. Schiwetz) I am showing you now what's marked
22 as State's Exhibit Number Five. Can you tell the Jury
23 what that is?

24 A. This is basically the same photograph as One, but it's
25 taken from the access road Padre Island Drive, the

1 sidewalk being this area right here and this is more or
2 less the area in that photograph maybe from here to here,
3 this little section here (indicating).

4 Q. Okay. And these over here, these candy-striped poles,
5 were those lights on when you arrived (indicating)?

6 A. Yes, sir, they were.

7 Q. And how about the big red Sigmor sign?

8 A. Yes, sir.

9 Q. The lights in the store, were they all on?

10 A. Yes, sir.

11 Q. Let me show you now what's marked as State's Exhibit
12 Number Six and ask you if you can identify this
13 photograph.

14 A. This would be an aerial shot of the Sigmor Station,
15 which is right here (indicating).

16 Q. Okay. And does that photograph accurately reflect the --
17 except for the fact it's taken during the day, does that
18 accurately reflect the layout of the buildings in that
19 area on February 4th, 1983?

20 A. Yes, it does.

21 Q. Showing you now what's marked as State's Exhibit Number
22 Seven and ask you if you can identify this photograph.

23 A. Basically the same photograph, but taken from the other
24 side, the north side.

25 Q. And where would the Sigmor Station be?

1 A. Right here.

2 Q. Okay. Does it truly and accurately represent the
3 layout of the streets around the Sigmor Station
4 February 4th, 1983?

5 A. Yes, it does.

6 MR. SCHIWETZ: I would like to tender State's
7 Exhibits Six and Seven.

8 MR. DE PENA: We have no objection, Your Honor.

9 THE COURT: Be received.

10 Q. (By Mr. Schiwetz) Showing you now, Officer Fowler,
11 what's marked as State's Exhibit Number Six. Can you
12 point out to the Jury where the Sigmor Station in
13 question is?

14 A. Right here (indicating).

15 Q. Could you go ahead and circle it in red just so they'll
16 be able to see it?

17 A. (Witness complies.)

18 Q. And this area out here I presume to be SPID (indicating).

19 A. Yes, sir, eastbound and -- eastbound and westbound going
20 that way (indicating).

21 Q. Showing you now what's marked as State's Exhibit Number
22 Seven. Can you tell the Jury what this shows?

23 A. It's the same photograph as that one, but it's taken
24 from the north side of the expressway instead of the
25 south side, with this being the Shamrock Station right

1 here (indicating).

2 Q Would that be the rear of the Shamrock Station?

3 A Yes, it would.

4 Q Would you go ahead and circle that, too.

5 A (Witness complies.)

6 (State's Exhibit Eight was marked for
7 identification.)

8 Q (By Mr. Schiwetz) Let me show you now what's marked as
9 State's Exhibit Number Eight and ask you if you can
10 identify that.

11 A That's the same layout taken from the western direction
12 facing the east.

13 Q Okay. Does this truly and accurately reflect the layout
14 of the neighborhood on February 4th, 1983?

15 A Yes, it does.

16 MR. SCHIWETZ: I would like to tender State's
17 Exhibit Number Eight.

18 MR. DE PENA: We have no objection, Your Honor.

19 THE COURT: It will be received.

20 Q (By Mr. Schiwetz) Showing you now what's marked as
21 State's Exhibit Number Eight, can you point out the
22 location of the Sigmor Shamrock Station?

23 A It's right here (indicating).

24 Q Do you want to go ahead and circle that?

25 A (Witness complies.)

1 Q. Basically it's just a view from the west?

2 A. Yes, sir.

3 MR. SCHIWETZ: I will pass the witness. Thank
4 you.

5

6 CROSS-EXAMINATION

7 BY MR. LAWRENCE:

8 Q. Sergeant Fowler, prior to making this particular call,
9 in what area were you at when you received the actual
10 call itself to proceed to the Sigmar Service Station?

11 A. We were 2 -- 286 southbound approaching the -- the
12 turnaround, the Airline Exit -- I mean the Ayers Exit
13 turnaround area.

14 Q. Approximately how far would that be from the actual
15 scene?

16 A. Maybe around a quarter of a mile, I guess, as far as
17 driving in a car.

18 Q. So from the time that you received the dispatch to the
19 time you arrived at the scene, how much time elapsed?

20 A. I couldn't say in minutes or seconds, just briefly,
21 less than a minute, I would say.

22 Q. Would it be safe to say in a relatively short period of
23 time?

24 A. Very short, yes, sir.

25 Q. Now, when you arrived at the Sigmar Service Station, I

1 presume that you drove up into the area near the pumps?

2 A. Yes, sir.

3 Q. Was any cars there?

4 A. Yes, sir, there was.

5 Q. Where was the car?

6 A. There was a -- there was a car parked right here

7 (indicating) and we drove up and parked just like this

8 (indicating).

9 Q. Blocking it in a way?

10 A. He could have backed out, I would imagine, if he had

11 wanted to.

12 Q. As you drove up in the angle that you have indicated

13 there on the exhibit, what did you do, if anything?

14 A. What do you mean?

15 Q. Well, did you get out of the car, did you stop the car,

16 did you -- as you drove up?

17 A. Oh, we stopped the car.

18 Q. Okay.

19 A. And --

20 Q. Who was driving?

21 A. I was driving.

22 Q. Then what happened?

23 A. I wasn't driving, I'm sorry. Officer McCoy was driving.

24 Q. All right.

25 A. And we pulled up. As soon as we pulled up, he

1 immediately got out of the car and began running in the
2 direction the people were pointing.

3 Q. Where were these people?

4 A. Oh, there was one gentleman that was standing next to
5 the body (indicating), and then there were several other
6 people lingering around this area over here (indicating).

7 Q. Okay.

8 A. See, there was a game room right down the -- one or two
9 buildings down in a bar and people were running in that
10 direction (indicating), several people were running
11 towards us.

12 Q. Was anybody running back toward the game room, maybe to
13 notify someone else of what's going on?

14 A. I didn't notice.

15 Q. Is it possible they could have been?

16 A. Possible.

17 Q. Did the gentleman that you saw over the -- the body of
18 the deceased, did he actually point or was he just more
19 concerned with the body there in front of him?

20 A. I don't -- I didn't pay that much attention to the
21 gentleman.

22 Q. Did you pay any attention to the people that were out
23 there, whoever they were?

24 A. No, not -- not when we first drove up.

25 Q. So you didn't see anybody pointing?

1 A. Well, I saw people pointing, I -- what you're -- I saw
2 the people pointing in that direction, but I didn't -- as
3 far as being able to say who they were or how they were
4 dressed, I couldn't.

5 Q. Okay. Do you recall if they were men or women?

6 A. They were both.

7 Q. They were both. There was women out there, too?

8 A. Yes, there was.

9 Q. You couldn't tell how many of each?

10 A. No, sir.

11 Q. Could you even give a rough guess?

12 A. No, sir.

13 Q. More than one?

14 A. Yes, there were more than one.

15 Q. More than two?

16 A. More than two.

17 Q. More than three?

18 A. Yes.

19 Q. More than four?

20 A. More than four. More than four, less than 20, maybe.

21 I --

22 Q. All right. Did you ever talk to any of those more than
23 four and less than 20 people personally?

24 A. I don't recall if I did or not.

25 Q. Did you talk --

1 A. I remember the one gentleman bent over, I told -- I
2 remember telling him just to stand over there and wait
3 and I was there when Officer Mejia was asking a few of
4 them some questions.

5 Q. Would it be fair to say, then, that for all practical
6 purposes you actually did not conduct any interviews
7 with any of the people because units started arriving
8 very shortly thereafter and you were concerned with the
9 victim at that time?

10 A. Yes, sir.

11 Q. And securing the scene for the most part?

12 A. Yes, sir.

13 Q. And as other officers came in, they actually did whatever
14 their jobs were, either to talk to prospective witnesses
15 or trying to find out, put together what really
16 happened?

17 A. Yes, sir.

18 Q. Did you hear anyone yelling or anything of that nature
19 from any of those more than four and less than 20
20 people that were there?

21 A. No, sir.

22 Q. Did your partner, Officer McCoy, did he leave on foot?

23 A. Yes, he did.

24 Q. From -- and you left your automobile where it was?

25 A. Yes, sir.

1 Q Do you recall him ever coming back to the scene?

2 A Yes, sir, I did.

3 Q Do you recall how long it was after he had left you

4 that he returned or that you first saw him back on the

5 scene there?

6 A Maybe five minutes, in that area there.

7 Q Now, these people that you saw that were pointing in a

8 general direction, which direction were they pointing in

9 or pointing at, I should say?

10 A Westbound direction.

11 Q Were they pointing -- I would assume that there's another

12 building there close by.

13 A Yes, sir.

14 Q Were they pointing directly at the building or were they

15 pointing out at the -- at an angle, say at a 45-degree

16 angle indicating the access road or were they pointing

17 behind that -- that small wall that they have there for

18 decorative purposes on each side of the service station?

19 A I didn't pay that much attention to it.

20 Q They were just pointing a general direction and you

21 really didn't pay that much attention; is that correct?

22 A No, sir, I didn't pay attention to it.

23 Q Did you notice if the witness that you saw there leaning

24 over the body, did he point in any general direction or

25 did he point at all?

1 A. I -- I don't recall exactly what -- I remember -- I
2 remember when he stood up, I remember him looking in
3 that direction. I was at the -- I was still trying to
4 recover from the drive over there because we went down
5 the wrong way on the expressway running cars off the
6 road trying to get there and Officer McCoy was a reserve
7 and I think it's the third time I had ever let him drive
8 the patrol car and I had been on top of him ever since
9 we got the call screaming at him and I was at that time
10 still a little bit hyper about the automobile drive.

11 MR. LAWRENCE: Pass the witness.

12

13 REDIRECT EXAMINATION

14 BY MR. SCHIWETZ:

15 Q. Could you step up there to the board and indicate on that
16 drawing which direction the people were pointing in?

17 A. This way (indicating).

18 Q. Now, on that drawing it has up there in the upper left-
19 hand corner an arrow pointing north; is that correct?

20 A. Yes, it is.

21 Q. So the direction the people were pointing was which
22 direction?

23 A. East.

24 Q. A few minutes ago you said "west." Did you just make a
25 mistake?

1 A. I made a mistake, I'm human.

2 Q. Aren't we all. So they were actually pointing in that
3 direction?

4 A. Yes, sir.

5 MR. SCHIWETZ: Could I get this marked,
6 please.

7 (State's Exhibit Nine was marked for
8 identification.)

9 Q. (By Mr. Schiwetz) I am going to show you now what's
10 marked as State's Exhibit Number Nine and ask if you can
11 identify that photograph.

12 A. That's the gentleman's car that was parked at the gas
13 pump.

14 Q. And which gentleman was it that owned that particular
15 car?

16 A. I don't recall his name. That was someone else's job
17 to do that and I was just concerned with protecting the
18 crime scene at the time.

19 Q. Okay. Do you know where the man who owned this car was
20 at the time you drove up?

21 A. That's the gentleman that was bent over, but I thought
22 you meant his name, I didn't know his name.

23 MR. SCHIWETZ: I would like to tender State's
24 Exhibit Number Nine.

25 MR. LAWRENCE: May I ask a question on voir

1 dire on this?

2 THE COURT: Certainly.

3

4 VOIR DIRE EXAMINATION

5 BY MR. LAWRENCE:

6 Q Officer, on this particular State's Exhibit Number Nine,
7 is this the exact place where this car was or had it
8 been moved at the time this photograph was taken?

9 A I am not a hundred percent positive. I believe the car
10 might have been moved, I can't say for sure.

11 Q Realizing that in this photograph you cannot see the
12 gas pumps. Is that correct?

13 A No, sir, you can't see the gas pumps.

14 Q Okay. So in all likelihood, it's probably been moved.

15 A Like I say --

16 Q By the time this photograph was taken?

17 A It could have been, I'm not a hundred percent positive.

18 MR. LAWRENCE: I have no objections, Your
19 Honor, to it being admitted.

20 THE COURT: It will be received.

21

22 REDIRECT EXAMINATION - CONT'D

23 BY MR. SCHIWETZ:

24 Q I'm showing you now what's marked as State's Exhibit
25 Number Nine. Is this the automobile that was parked by

1 the pumps?

2 A. Yes, it is.

3 Q. In relation to this vehicle, where would the pumps be in
4 this particular picture?

5 A. Right here (indicating) to the left of the car. Right
6 here (indicating).

7 MR. SCHIWETZ: I don't have any further
8 questions of this witness.

9 MR. LAWRENCE: I have no further questions.

10 THE COURT: Thank you, sir. Step down. You
11 may be excused subject to recall.

12 MR. SCHIWETZ: May we approach the bench?

13 THE COURT: Do you want this on the record?

14 MR. SCHIWETZ: No, sir, that's all right.

15 (At this time an off-the-record discussion was
16 held at the bench, after which the following
17 proceedings were had:)

18 THE COURT: Apparently our next witness is
19 having a little problem swimming down to the
20 courtroom this morning and so why don't we take
21 about ten minutes. We will be in recess for ten
22 minutes. Would you like time to get a cup of
23 coffee? Fine. Why don't you take a little bit
24 longer or whatever it takes to have a leisurely cup
25 of coffee. Don't discuss the case while we're in

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recess.

(At this time a recess was taken, after which the following proceedings were had before the Court, in the presence and hearing of the Jury, with counsel for the State, counsel for the Defendant and the Defendant present:)

THE COURT: Who is your next witness?

MR. SCHIWETZ: Bruno Mejia and he has not been sworn in, Your Honor.

THE COURT: All right, we can take care of that.

(At this time the witness was sworn by the clerk.)

THE CLERK: Please have a seat.

THE COURT: Officer Mejia, when you finish giving your testimony, the Rule has been invoked. Are you familiar with that?

MR. MEJIA: Yes, I am.

THE COURT: All right.

BRUNO MEJIA,

having been called as a witness by the State and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. SCHIWETZ:

Q Will you please state your name for the Jury, sir?

A My name is Bruno Mejia and I am an officer with the
Corpus Christi Police Department.

Q How long have you been with the PD?

A About two years now.

Q Where are you from?

A I'm from here in Corpus Christi.

Q Where did you go to high school?

A I went to Moody High School.

Q And how old are you?

A I'm 22 years of age.

Q What did you do before you became a policeman?

A Well, I was a student.

Q Where at?

A Over at Del Mar College.

Q I want to direct your attention back to February 4th of
this year, 1983, and ask you if you were working as a
police officer on that evening.

A I was.

Q And were you working as a patrol unit?

A Yes, sir, I was.

Q Were you in uniform?

A Yes, sir.

1 Q Did you work with a partner or were you by yourself that
2 afternoon -- evening?

3 A That evening I was assigned to work by myself.

4 Q And directing your attention to a period right after
5 8:00 o'clock that night, did you have occasion to respond
6 to a robbery call?

7 A I sure did.

8 Q And where was that?

9 A It was at 2602 SPID.

10 Q And did you go there?

11 A I certainly did.

12 Q When you arrived, were there any other police units on
13 the scene?

14 A There was one other police unit on the scene.

15 Q And who was that?

16 A Sergeant Fowler.

17 Q When you arrived there at the scene, did you see the
18 woman lying in front of the store?

19 A Yes, sir, I saw a woman lying on the floor.

20 Q What did you do when you did arrive?

21 A Well, as soon as I arrived, I went up and ran up to
22 Sergeant Fowler, who was kneeling over the woman seeing
23 if he could assist her, and I asked him if I could assist
24 him and he advised there were some witnesses there at
25 the scene, he wanted me to secure the witnesses and call

1 for some more help, call for some backup.

2 Q What did you do then?

3 A Okay, at that point, there were several people starting

4 to crowd around, I asked each and every one of them if

5 they had seen anything and if they didn't, to please

6 leave, that this was a crime scene and we could not

7 disturb it in any way and I then secured the witnesses

8 who were there at the scene.

9 Q How many people told you they had seen something?

10 A There was four people total.

11 Q Do you recall their names?

12 A Yes, sir, I do.

13 Q What are they?

14 A It's Kevin Baker, Jorge Aguirre, John Arsuaga and his

15 wife.

16 Q Her name is Julie?

17 A Julie Arsuaga.

18 Q And after you had narrowed it down to these four people

19 or the people that were there had narrowed it down,

20 what did you do with them?

21 A Okay. I made sure that each and every one of them was

22 secured, that they didn't talk to each other. I wanted

23 the most complete information from each and every one of

24 them because I was about to put out an all-points

25 bulletin or BOLO as we call it.

1 Q Did you move them to any particular place there?

2 A Yes, I did. I moved them over to the rear or the east
3 corner of the station there.

4 Q Directing your attention to what's marked as State's
5 Exhibit Number Two (sic) being that diagram up there,
6 if that's supposed to represent the Sigmor Station and
7 the bottom there is SPID and the access road, can you
8 show the Jury where you took the witnesses to, those four
9 witnesses?

10 A Yes, sir, right over here in this section right here
11 (indicating).

12 Q Now, can you tell the Jury how it is that you put out a
13 BOLO?

14 A You mean how I put it out?

15 Q Yes, sir. What's the mechanical method you use?

16 A Okay. First of all, we try to get -- there was a suspect,
17 whether it was male or female, that's very important;
18 whether there was a vehicle involved or not so that we
19 can determine mode of travel and so that we can -- so
20 that the other units can know whether this person is
21 supposed to be in the area or whether he's already
22 fleeing, you know, in a vehicle somewhere; then I find
23 out what he was wearing, what he looked like, get a
24 physical on him; all this information is being fed to me
25 by the witnesses, and then as soon as they give it to me,

1 I put it out over the air.

2 Q How do you put it out over the air?

3 A Just like they gave it to me, exactly like they gave it

4 to me.

5 Q Now, what's the mechanical way you put it out over the

6 air? Do you go to your car or what?

7 A Okay, I had a walkie talkie and it was instantly, as soon

8 as I got the information I keyed my button and I asked

9 the dispatcher to acknowledge me, as soon as she did,

10 then I put out the information.

11 Q Now, without going into any of the hearsay about what

12 they told you they saw, did you put out a BOLO?

13 A Yes, sir.

14 Q Did you describe the person as to sex?

15 A Yes, sir.

16 Q And what was the sex?

17 A Male.

18 Q Did you describe him as to ethnic origin?

19 A Yes, sir.

20 Q And what was that?

21 A Hispanic.

22 Q Did you describe a general age, approximate age?

23 A Yes, sir.

24 Q And what was that?

25 A About 24, 25 years of age.

1 Q How about height, did you get a description on that?

2 A Yes, sir.

3 Q And approximately how tall?

4 A About five foot seven to five foot nine.

5 Q Now, did you get a description as to clothing?

6 A Yes, sir.

7 Q Did you get a description as to shoes?

8 A No, sir, I can't recall.

9 Q Do you recall getting a description of pants?

10 A I can't really recall. Somewhat, yeah.

11 Q How about shirt?

12 A Shirt? Oh, yeah, I got several descriptions on that.

13 Q What were the descriptions you got of the shirt? What

14 was the first description you got?

15 A Well, the first description that I can remember

16 receiving was a gray type of shirt, possibly a sweatshirt

17 type of shirt, something like that.

18 Q Do you recall which one of them told you that?

19 A I believe Mr. Baker is the one who advised me of that.

20 Q What was the second description you got?

21 A A flannel type of shirt, that also being light-colored.

22 Q Okay. Did you get a third description?

23 A Yes, sir.

24 Q And what was that?

25 A It was a white long sleeve shirt, untucked.

1 Q Do you recall who gave you that?

2 A Yes, sir.

3 Q Who was that?

4 A The Arsuagas, Mr. and Mrs. Arsuaga.

5 Q Did this surprise you that you were getting three --

6 three different descriptions of a shirt?

7 A No, sir, not at all.

8 Q Why not?

9 A In fact, it's very common. Anytime we have a high

10 stress situation, such as that, witnesses are tending --

11 very prone to just giving everything that they think

12 they may have seen and then, you know, we, as the

13 officers, have to acknowledge that and respect that and

14 put that out, you know, as soon as it -- they give it to

15 us.

16 Q Did you put out all three descriptions over the air?

17 A Yes, sir, I did.

18 Q What else did you do while you were there?

19 A Well, my most important priority at that point was to

20 secure the witnesses, to make sure neither one of them

21 left, that not any of them left, that nobody came and

22 talked to them and that nobody would disturb the crime

23 scene. We secured the entire area, making sure that

24 nobody would go in and contaminate the crime scene.

25 Q Did you go around that area there looking for any

1 evidence?

2 A. Yes, we did, myself and Sergeant Fowler.

3 Q. And did you find anything?

4 A. Well, Mr. Aguirre, one of the witnesses, advised us

5 that he had seen the suspect --

6 MR. LAWRENCE: Your Honor, I am going to

7 object to any hearsay testimony.

8 THE COURT: Sustained.

9 Q. (By Mr. Schiwetz) Did you have a conversation with Mr.

10 Aguirre?

11 A. Yes, sir, I did.

12 Q. And after you had that conversation with Mr. Aguirre,

13 what did you do?

14 A. I looked for the evidence that he said might be there.

15 Q. Now, you are not allowed to go into hearsay.

16 A. Okay.

17 Q. In other words, what he said. Did you -- did you look

18 for -- for some items?

19 A. Yes, sir, I did.

20 Q. What did you look for?

21 A. Beer cans.

22 Q. Where did you look?

23 A. The east side of the store.

24 Q. Could you point to the Jury where you looked up there.

25 A. Right in this area (indicating).

1 Q Did you find anything?

2 A Yes, sir.

3 Q What did you find?

4 A I found two beer cans with condensation on them.

5 MR. SCHIWETZ: Could I have this marked for
6 identification, please.

7 (State's Exhibit Ten was marked for
8 identification.)

9 Q (By Mr. Schiwetz) I'm showing you what's marked as
10 State's Exhibit Number Ten and I am going to ask you if
11 you have ever seen it before.

12 A Yes, sir.

13 Q Okay. Where is that area?

14 A That's on the east side near the rear of the store.

15 Q Okay. And does this picture truly and accurately
16 represent the way that store looked that night after the
17 robbery?

18 A Yes, it does.

19 MR. SCHIWETZ: I would like to tender State's
20 Exhibit Number Ten.

21 MR. LAWRENCE: No objections, Your Honor.

22 THE COURT: It will be received.

23 Q (By Mr. Schiwetz) Showing you now what's been identified
24 and admitted as State's Exhibit Number Ten, can you tell
25 the Jury where this is located?

1 A. Okay. This is the Sigmor Station; this is the rear of
2 it; SPID is in front of it; this is the ice machine,
3 it's directly to the east and the back of the Sigmor
4 Station there (indicating).

5 Q. Could you step up to the drawing there, State's Exhibit
6 Number Two and point out to the Jury the area that's
7 covered by this photograph?

8 A. Okay. This is the ice machine here (indicating), it's
9 to the rear of the ice machine.

10 Q. There appear to be several objects scattered on the
11 ground back there. Can you tell what those are?

12 A. These are the two beer cans here (indicating). The
13 other is just debris from the back of the store there.

14 Q. What, if anything, did you do with those beer cans?

15 A. Okay. As soon as we found out they were there, we had
16 ID unit, which was there, Infante, photograph the cans
17 and then process them for prints.

18 Q. Could you tell whether those cans were --

19 MR. SCHIWETZ: Excuse me.

20 Q. (By Mr. Schiwetz) Could you tell how long those cans
21 had been there?

22 A. Yeah, they had some condensation on them, they couldn't
23 have been there too long.

24 MR. SCHIWETZ: Thank you. I pass the witness.

25

CROSS-EXAMINATION

BY MR. LAWRENCE:

Q. Officer Mejia, when you arrived were you by yourself?

A. Yes, sir.

Q. Where were you at when you first received the call?

A. I was at the intersection of Gollihar and Ayers.

Q. How long did it take you to get to the scene?

A. I don't recall.

Q. Any idea?

A. About two minutes, a minute or two.

Q. Were you on emergency run with your sirens on or were you just moving pretty fast?

A. Both.

Q. Now, how -- have you -- prior to this particular incident, have you ever secured a scene and talked to witnesses and things of this nature and put out previous BOLO's?

A. Yes, sir, numerous times.

Q. And you had experience with talking to, I guess, what would be termed eyewitnesses?

A. Yes, sir.

Q. Certain crimes?

A. Yes, sir.

Q. Have you found it, in your experience, sir, that when you talk to various eyewitnesses that invariably those

1 eyewitnesses give you differing stories?

2 A. Yes, sir.

3 Q. Okay. And this, I believe, would be due to what you

4 call high stress situation?

5 A. That's --

6 Q. For all practical purposes?

7 A. Yes.

8 Q. Things -- crimes are out of the ordinary and people that

9 witness them are somewhat shook, I guess would be a good

10 word?

11 A. Yes.

12 Q. So it was not unusual for you in -- when you made this

13 particular crime scene and in talking to those four

14 witnesses to receive varied descriptions of clothing and

15 height and weight and whatever; is that correct?

16 A. Not at all. Yes, sir, that's correct.

17 Q. In fact, to you that's common -- common knowledge,

18 common practice to run into situations like that?

19 A. Yes, sir.

20 Q. Other than the descriptions that you gave just a little

21 bit earlier which you put out on your BOLO, did you get

22 any other type of description of a suspect from any of

23 these four people that you talked to?

24 A. No, sir.

25 Q. Okay. No one told you about the type of pants they were

1 wearing?

2 A. I can't really recall anybody really making that

3 specific, sir.

4 Q. Okay. Did anyone tell you anything about shoes, type

5 of shoes?

6 A. Not that I can recall.

7 Q. Did anybody tell you anything about heavy beard or long

8 hair or anything of this nature or a hat?

9 A. No, sir, they described him without having a hat and

10 clean shaven.

11 Q. Clean shaven. Did all of the witnesses that you talked

12 to, those four, tell you that he was clean shaven?

13 A. No, not all of them.

14 Q. Okay. Three out of four or two out of four or do you

15 recall?

16 A. I recall one out of four.

17 Q. Okay. The rest, do you recall what they said about

18 clean shaven?

19 A. Excuse me?

20 Q. The rest, the other three witnesses that you talked to,

21 did they say he was clean shaven or did they even mention

22 it?

23 A. No, they didn't even mention it.

24 Q. So if they didn't mention it, it was pretty clear that

25 they just didn't know?

1 A. I don't know.

2 Q. Would you assume that?

3 A. I --

4 Q. From your experience.

5 A. No, sir, I wouldn't assume anything.

6 Q. But you do assume that they tell you different stories,
7 eyewitnesses?

8 A. Yes, sir, I know that for a fact.

9 Q. Okay. Now, after you did your -- put out the BOLO, is
10 that the only BOLO that you put out, a male Hispanic,
11 24 to 25, five-seven, five-nine and a general
12 description of the shirt and different -- in a different
13 context --

14 A. Yes, sir.

15 Q. -- you know, as flannel and whatever, that's the only
16 BOLO that you put out personally?

17 A. Yes, sir.

18 Q. Did you hear of any other BOLO's that were put out
19 different than the one you had put out?

20 A. No, sir.

21 Q. Were you in a position to hear?

22 A. Not really.

23 Q. Now, after you did this, I believe you went and talked
24 to witnesses or what-not, you then focused your attention
25 on I believe what's -- the information in State's Exhibit

1 Number Ten, a picture of the two beer cans.

2 A. Yes.

3 Q. What was the weather like that day?

4 A. It was clear, mild, warm.

5 Q. Had it rained?

6 A. Not that I can recall, sir.

7 Q. Would it surprise you if it had?

8 A. No, it wouldn't surprise me.

9 Q. Now, this was in February. Was it cold, cool?

10 A. No, sir, it was tending to be warm.

11 Q. You couldn't tell, really, on those beer cans -- your

12 testimony is not that they had just been used, that is

13 that someone had drank out of them and that was the

14 reason for the condensation, are you?

15 A. No, sir, I don't know.

16 Q. You just don't know, it could have been the weather,

17 high humidity, it could have been the fact that the

18 grass may have been moist?

19 A. It may have been anything.

20 Q. It could have been anything, so when you refer to

21 condensation, you're not trying to tell the Jury that

22 someone recently drank the beer.

23 A. In my opinion that's what it was, but I'm not sure.

24 Q. Okay. Do you make a habit of going around and testing

25 beer cans to see if they've got condensation when people

1 drink and set them aside so that you are able to tell
2 at some future time that, "Hey, I know that he just got
3 through drinking a beer because I can see the
4 condensation on it"?

5 A. No, sir, it's not a habit.

6 Q. This was -- your recollection of the condensation was
7 based upon what someone else had told you and you just
8 assumed?

9 A. No, sir.

10 Q. Well, then, I go back to my original question. Whenever
11 you found a beer can that has condensation on it, you
12 automatically say that someone had been drinking it a
13 little earlier?

14 A. Well, I don't automatically say that, sir, no.

15 Q. How long did you stay at the scene?

16 A. Throughout -- from the time I arrived, which is just
17 about, oh, I would put it about 8:10 to 8:11 p.m. until
18 the time that we had to clear up and go to the station,
19 it was about an hour, hour and a half.

20 Q. So basically you stayed pretty well the entire time out
21 there?

22 A. Yes, sir.

23 MR. LAWRENCE: I pass the witness.
24
25

REDIRECT EXAMINATION

BY MR. SCHIWETZ:

Q. Regarding this -- the BOLO you put out, did you put all of that information out at one time or did you stretch it out over several occasions?

A. I stretched it out over several occasions, as the information was given to me.

Q. So when you put out your BOLO, you didn't say, "Look for a Hispanic male five-seven to five-nine, clean shaven wearing a gray or white long sleeved shirt, possibly a sweatshirt," you didn't put all that out at one time?

A. No, sir.

MR. SCHIWETZ: Thank you, sir.

MR. LAWRENCE: I have no further questions.

THE COURT: Thank you, sir, you may step down.

You may be excused subject to recall.

MR. SCHIWETZ: I call Ruben Rivera.

(At this time the witness was sworn by the clerk.)

THE CLERK: Please have a seat.

THE COURT: Mr. Rivera, after you finish giving your testimony, the Rule has been invoked.

Are you familiar with the Rule?

MR. RIVERA: Yes, Your Honor.

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RUBEN RIVERA,

having been called as a witness by the State and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. SCHIWETZ:

Q Will you please state your name for the Jury, sir.

A Ruben Rivera.

Q And how are you employed?

A I am a deputy constable, Precinct 1 Constable's Office.

Q And how long have you been with the constable's office?

A Approximately a year and a half, sir.

Q The -- direct your attention back to February 4th of 1983, and ask you if you were on duty that particular date.

A I was, sir.

Q Were you working by yourself or did you have a partner?

A I had a partner with me.

Q And who was that?

A A female officer constable, Deputy Constable Carolyn Vargas.

Q And where were y'all working?

A We -- in a general area between Everhart and -- and Rand Morgan Road to the west, which is the general area of

1 Precinct 1.

2 Q. That night at approximately 8:00, a little after 8:00
3 o'clock, say 8:10, did you have an opportunity to
4 respond to a call that went out on the police radio?

5 A. Yes, sir, we did.

6 Q. And that was from the Corpus Christi Police Department?

7 A. Yes, sir.

8 Q. Was there any particular reason why y'all went out on
9 that police department call?

10 A. We had delivered some civil papers over in the area of
11 Ennis Joslin Road, which is past our precinct, but they
12 were urgent and we had them in our possession and we
13 needed to deliver them, we were running from that
14 location.

15 Q. And when you say "delivering civil papers," will you
16 explain to the Jury what that function was, what it was
17 you were doing?

18 A. Yes, sir, it was a civil matter, I don't recall exactly
19 what it was, but it was a civil matter. The papers were
20 given to us to deliver, but they were to be delivered to
21 a person who lives out of the precinct. They had to
22 deliver -- they had to be delivered urgently because I
23 believe the hearing was the next day. There was no time
24 to divert those papers to the proper precinct, so we
25 went ahead and delivered them, which is a -- an

1 occurrence that is not uncommon.

2 Q It's in the regular course of your business to serve
3 papers of that sort on people, is it not?

4 A Yes, sir.

5 Q And when -- when you did get that call, where did you
6 go?

7 A I beg your pardon, which call?

8 Q Where did you go when you got the call on the police
9 radio? When you decided to respond to that call, where
10 did you go?

11 A We went to the immediate area of the Sigmor Station or
12 the neighborhood immediately behind it.

13 Q And what was your purpose in going there?

14 A We responded to assist to a police call that -- of a
15 armed robbery involving a shooting.

16 MR. SCHIWETZ: Could I get this marked as a
17 State's Exhibit, please, ma'am.

18 (State's Exhibit Eleven was marked for
19 identification.)

20 Q (By Mr. Schiwetz) Let me show you what's marked now as
21 State's Exhibit Eleven and ask you if you can -- if you
22 recognize the streets that are reflected on this map.

23 A Yes, sir.

24 Q Okay. And if this little block up here is supposed to
25 represent the Sigmor Station in the 2600 block of SPID

1 and do the streets back here that are named back here,
2 does that accurately reflect their relative location?

3 A. Yes, sir, uh-huh.

4 Q. Does this reflect the area that you went to back on
5 February the 4th, 1983?

6 A. Yes, sir, it does.

7 MR. SCHIWETZ: I would like to tender State's
8 Exhibit Number Eleyen.

9 MR. DE PENA: We have no objection, Your Honor.

10 THE COURT: It will be received.

11 Q. (By Mr. Schiwetz) Could you help me with this a minute.

12 A. (Witness complies.)

13 Q. Constable Rivera, directing your attention to the map
14 that we just had introduced, could you point out for
15 the Jury where SPID would be? I realize it's rather
16 obvious, but would you point that out?

17 A. SPID being South Padre Island Drive, it would be this
18 top portion right here (indicating).

19 Q. And where would the Sigmor Station be?

20 A. I beg your pardon, sir?

21 Q. Where would that gas station be?

22 A. It would be represented by this block right here
23 (indicating).

24 Q. Now, the street that runs alongside that, which street
25 is that?

1 A. This one here (indicating)?

2 Q. Yes, sir.

3 A. I'm not too sure of the street name. It would be Dodd,

4 a continuation of Dodd, I suppose.

5 Q. Does it make that little jog that's represented there on

6 the map?

7 A. Yes, sir, that's what we refer to as a dog leg in the

8 street.

9 Q. And the street back behind there, how do you pronounce

10 that? Back behind the -- the one that's parallel to

11 SPID.

12 A. This one here (indicating)?

13 Q. Yes, sir.

14 A. That would be Nemec.

15 Q. And next to Dodd, what's the next street over?

16 A. This would be Easter.

17 Q. And next over there from that?

18 A. This would be Franklin.

19 Q. Now, can you point out to the Jury where you went in

20 response to this call?

21 A. We immediately went to the neighborhood in this general

22 area back here (indicating). As we continued to monitor

23 the progress of the incident, we eventually wound up in

24 this area right here (indicating), along Nemec Street.

25 Q. You can go ahead and have a seat.

1 A. (Witness complies.)

2 Q. Did there ever come a point in time where you actually

3 got out of your car?

4 A. Yes, sir, several times.

5 Q. Were there any other law enforcement units in that

6 general neighborhood?

7 A. Quite a few, sir.

8 Q. When you say "quite a few," could you give me a rough

9 estimate of how many you saw?

10 A. I would say roughly anywhere between ten to -- ten to

11 twelve different police units, city police units.

12 Q. Okay, that you actually saw?

13 A. That I actually saw. I saw at least six to eight units,

14 sir.

15 Q. Did there ever come a point in time where you made an

16 arrest of someone?

17 A. Yes, sir.

18 Q. Okay. And on what street was that?

19 A. That would have been on -- it was on Franklin Street,

20 right along in this area here (indicating).

21 Q. How many -- how far away in terms of blocks is that

22 from that Sigmar Station?

23 A. Approximately two, about one, two -- about two and a

24 half blocks from it.

25 Q. The person that you arrested, where did you find this

1 person?

2 A. Right here on Franklin Street about the second resident
3 or about the -- about in front of the second or the
4 third residence on Franklin Street, beneath a truck.

5 Q. What kind of truck was it, if you recall? A van, a
6 pickup?

7 A. It was a pickup truck.

8 Q. What drew your attention to the person underneath it?

9 A. Well, he was barefooted for one and he was -- looked like
10 he was hiding and I did hear some people over here shout
11 that the person was underneath the truck and that
12 diverted my attention to it and when I flashed my
13 flashlight up underneath there, I saw some movement.

14 Q. What did you do when you saw the movement under the
15 truck?

16 A. I instructed in a high voice to this person underneath
17 the truck to come out of the truck with his hands up.

18 Q. Did the person come out?

19 A. He was hesitant, but he eventually was brought out.

20 Q. When you say "brought out," did he come out voluntarily
21 or did you have to help him?

22 A. No, sir, myself and another police officer with the city
23 helped him out.

24 Q. Did you know the person that you pulled out from under
25 the truck?

1 A. There was two officers that were involved in the actual --
2 Q. Well, first of all, were there any other officers
3 involved while you were arresting him?
4 A. Yes, there was.
5 Q. Who were they?
6 A. There was Officer Mylett and Officer Schauer.
7 Q. Did you know the person you pulled out from underneath
8 the truck?
9 A. No, sir, I didn't.
10 Q. You didn't know him at the time?
11 A. No, sir.
12 Q. Okay. Describe for the Jury how the man was clothed.
13 A. He was wearing a blue jeans, no shirt, he was soaking
14 wet, and he wore -- for footwear, he wore socks and
15 that was it.
16 Q. No shoes?
17 A. No, sir.
18 Q. Did you have -- did you pull your weapon at any time?
19 A. I did at the initial contact, sir, when I first noticed
20 him there. I went into a prone position and I
21 unholstered my weapon.
22 Q. Now, when you pulled the man out, did you notice
23 anything unusual about his body odor?
24 A. Yes, sir, he smelled of alcoholic beverages of some kind.
25 Q. Could you tell what kind?

1 A. I would say possibly beer.

2 Q. You can't say for sure?

3 A. No, sir.

4 Q. Who was the person you pulled out from under the truck?

5 A. Who pulled him out from under the truck?

6 Q. No, who was the person you pulled out from under the
7 truck?

8 A. I don't know the gentleman. He was later identified as
9 Carlos De Luna.

10 Q. Do you see the man in the courtroom today that you pulled
11 out from under the truck?

12 A. Yes, sir, I do.

13 Q. Could you point him out for the Jury.

14 A. The man in the charcoal gray suit with the maroon tie.

15 MR. SCHIWETZ: Could the record reflect he has
16 pointed at the Defendant and described the
17 Defendant's clothing, Your Honor?

18 THE COURT: All right, sir.

19 Q. (By Mr. Schiwetz) Is there anything different about the
20 Defendant's appearance today and his appearance on that
21 day?

22 A. Seems like he's lost a little weight.

23 MR. SCHIWETZ: I'll pass the witness.
24
25

CROSS-EXAMINATION

BY MR. DE PENA:

Q. Officer Rivera, about what time did you initially hear the call on your radio?

A. I believe we monitored the call right before 8:00 o'clock, sir, or right about at 8:00 o'clock. It could have been five minutes before 8:00 or somewhere in that -- in that vicinity.

Q. How did -- how did you come to hear the response inasmuch as, you know, you previously indicated that you work for the constable's office? Do you all receive your calls on the same police band?

A. No, sir, they don't -- they don't come directly through our -- through our own working frequency, but they -- we monitor the police frequency for -- because we work hand in hand as far as the job is concerned.

Q. Okay. In other words, are you saying that you -- you have more than -- you have different types of radio units in your vehicle?

A. We have a -- a police monitoring frequency, which is commonly known as a scanner; and then we have our regular primary working communications equipment, which is the county frequency.

Q. Okay. So you're not actually able to communicate with the PD, but you can monitor or you can hear the calls

1 that are going out to police units?

2 A. No, sir, we can communicate with the police department.

3 Q. You can communicate directly with them or do you

4 communicate their county --

5 A. We can communicate directly with them. We cannot

6 communicate with the unit, unit-to-unit per se, in other

7 words, my unit cannot communicate with a police unit out

8 in the field, but I can communicate with the dispatcher

9 at the police station through an interceding frequency

10 that we have. As far as the calls are monitored, we

11 monitor those calls on a frequent -- on a separate piece

12 of equipment.

13 Q. Okay, what I'm trying -- what I'm trying to ascertain is

14 what alerted you actually to the original -- I believe

15 you were alerted to respond in this situation to a BOLO

16 or some sort of a dispatch. Did that come from your own

17 county dispatcher or did this come as a result of just

18 listening to the police calls, so to speak?

19 A. We responded as a result of the monitoring of the

20 initial call of an armed robbery through the police

21 scanner frequency.

22 Q. Okay. Approximately where were you and Officer Vargas

23 traveling at the time that you first heard the -- the

24 bulletin regarding an armed robbery?

25 A. We were about at the -- we were on Crosstown Expressway

1 headed north right over Gollihar, I believe, and we
2 proceeded to the next exit, which was Horne and made a
3 turnaround and came back, went southbound.

4 Q Exactly, as best you can recall, what did you hear come
5 over the -- the monitor; in other words, what actual
6 information can you recall hearing that put you into
7 action?

8 A I don't know the exact words that were used, but the --
9 the initial alert was the three beeps that always
10 indicates an armed robbery. The first three beeps come
11 on the -- on the frequency and that meant an armed
12 robbery was taking place or was -- had occurred. Of
13 course, that alerted me, and then the information
14 followed, it came over as an armed robbery in progress
15 at the Shamrock gas station, 2800 I believe or 26 or
16 2800 SPID.

17 Q Okay. Based on that, were you going to respond? Was
18 your -- were you going to go to -- what were your
19 intentions when you heard that? Were you going to go
20 back to the station or direct your -- did you ever go
21 back -- did you ever actually respond and go to the
22 Sigmor Station, as you recall?

23 A Yes, sir, that's what I did. I went back to the -- made
24 the turnaround on Crosstown and headed southbound
25 towards the direction of the gas station.

1 Q Okay. Did you actually arrive at the station?

2 A No, sir.

3 Q Okay. What did you do?

4 A Okay, when I made the turnaround and went back towards

5 the gas station, immediately another BOLO came back and

6 said that there was shooting involved, that there was a

7 unit already arrived at the scene and that the subject

8 had ran in the direction of the neighborhood immediately

9 behind the station, so I bypassed it and I went to the

10 neighborhood.

11 Q Okay. In terms of -- of time, from the time you first

12 responded to the -- to the armed robbery in progress --

13 you said you heard that at approximately what time?

14 A Could have been right before 8:00 o'clock, ten minutes

15 before, five minutes before 8:00 o'clock, right in that

16 vicinity.

17 Q Okay. You said that you got off at the Horne Road exit,

18 is that what you recall doing? You said you were

19 northbound?

20 A It's either the Horne or the -- I either got off on the

21 Horne exit or the Port exit, I made the turnaround once

22 I got to Port or Horne, I don't remember exactly, but it

23 was one of those exits where I made the U-turn and went

24 back.

25 Q Okay. Did you go back on the expressway itself?

1 A. Yes, sir.

2 Q. Okay. So that you got on Crosstown and headed back on
3 Crosstown, your -- I guess your intention was to go on
4 around on SPID or get off on Ayers or --

5 A. Well, my initial intention was to get off on -- on --
6 at the Ayers Chapman Ranch, which would have put me on
7 the access road all the way to Kostoryz and back to the
8 service station, like I say, but --

9 Q. In order to do this, you would have had to have gone
10 down the access road, took the turnaround and come back
11 up?

12 A. Yes.

13 Q. Because it's one way there in front of the station
14 going westbound; is that right?

15 A. Right.

16 Q. Did you, in fact, get off on Ayers?

17 A. No, sir, I didn't.

18 Q. On the Ayers Chapman Ranch?

19 A. No, sir, I didn't.

20 Q. Okay. Where did you proceed?

21 A. I got off at Kostoryz exit.

22 Q. Okay. Did you make the turnaround and come back on the
23 access road?

24 A. I made the turnaround, went back to the access road and
25 continued down the access road and went to the -- went

1 to the service station. I saw, in fact, that an
2 officer was already at the scene and I didn't stop, I
3 went directly to the neighborhood.

4 Q. How did you get back into the neighborhood, do you
5 recall?

6 A. I came down the access road on SPID, I observed the
7 officer and ambulance attendants already at the scene
8 (indicating), I hit this corner and went directly back
9 into the neighborhood (indicating).

10 Q. So the ambulance and the -- the ambulance was already
11 there; is that what you're saying?

12 A. If I remember correctly, I think they were there.

13 Q. Okay. And you went on further how far?

14 A. I beg your pardon?

15 Q. Where did you -- where did you -- after you passed the
16 gas station, did you turn down or did you go on down to
17 Ayers?

18 A. I didn't go to Ayers, sir, I went down Dodd into the
19 neighborhood.

20 Q. Okay. How long would you say -- how did you patrol the
21 area? Did you just go up and down the streets or did
22 you follow a particular pattern?

23 A. No particular pattern, I just continued to listen to the
24 monitor and frequencies kept on coming through the
25 monitor about people had observed him and I just did

1 what -- what came natural, I just went in through the
2 neighborhood and went all the way up to McArdle and
3 circled around and I met other police units up there and
4 just made a general search of the immediate area.

5 Q. Okay. How long would you say you searched in the
6 particular area and if you -- you know, just ballpark
7 figure?

8 A. Ten, twelve, fifteen minutes.

9 Q. Now, if I understand you correctly, you said that
10 during the time that you were patrolling the area that
11 you were getting other -- or you were overhearing other
12 broadcasts about -- what did you say? About people in
13 the area?

14 A. Apparently --

15 Q. Did you say that?

16 A. Apparently the people that lived in this area here were
17 calling in. I have really no real knowledge of how
18 they were coming in, but they were calling in that the
19 subject was seen running and he would pop up again in
20 different places and that kept coming over the police
21 frequency and guided on that, why, I made the -- you
22 know --

23 Q. Can you recall just offhand, if you can't, I mean to
24 the best of your recollection, how many of these calls
25 you might have heard during the progress of your search?

1 A. With reference to --

2 Q. With reference to suspicious person or subject seen in
3 the particular area.

4 A. All right. Well, there was a lot of police traffic
5 coming over the radio at that time, with reference to a
6 suspect maybe two times, three at the most.

7 Q. Okay.

8 A. There was other police traffic coming over like, "All
9 units be careful," "We have this and this other units,"
10 "We're covering this area," other police units kept
11 coming back on, "We're at this location," and we're
12 trying to coordinate it the best we can with what we
13 had at the time.

14 Q. Did you respond -- do you recall responding to more
15 than one location during the time that you were
16 searching? For example, might have come out, say, that
17 he was seen in the vicinity of such-and-such and you
18 drove over there?

19 A. Yes, sir.

20 Q. And all this other --

21 A. Yes, sir.

22 Q. Do you recall possibly which areas you recall responding
23 to?

24 A. No, sir. There was two or three different areas. We
25 came down in -- down Dodd, if I remember correctly, we

1 went directly over to McArdle, made a circle and went
2 all the way to McArdle. I think there was a report that
3 the subject had been seen in this nursing area next to
4 the ballpark over here and we took part in that little
5 search there, and then we heard another broadcast that
6 he had been observed over here and we just went back over
7 here and went back up one of these streets and wound up
8 in this area (indicating), and then that's when the call
9 came over or the broadcast came over that the suspect
10 had been seen under a truck.

11 Q. Okay. How -- how large an area would you say, let's
12 say beginning at -- at Dodd Street there to where, for
13 example I believe you talked about the ballpark which is,
14 what, part of the school ground way down at the end?

15 A. No, sir, this is a Little League park of some kind, and
16 then I believe there's a school and then a nursing home
17 way up towards Kostoryz.

18 Q. Okay. Does Nemec go all the way through? Does Nemec go
19 all the way through, say, to the next street?

20 A. No, sir, it dead-ends right here at the ballpark grounds
21 right here, it dead-ends.

22 Q. Somewhere in there?

23 A. Yes, sir.

24 Q. But Nemec -- Nemec dead-ends at the --

25 A. Yes, sir.

1 Q -- edge of the ballpark, okay. How far away would you
2 say that is in reference to, say, Dodd Street?

3 A In terms of blocks or miles or feet?

4 Q Yeah, blocks or -- you know.

5 A I would say this whole area that we focused on is
6 roughly eight blocks square from the nursing home or
7 the Kostoryz area to here, we're talking about eight
8 blocks also (indicating).

9 Q So your -- your -- your search took you as far as
10 Kostoryz, which is the next --

11 A It did momentarily.

12 Q What is that, that Retama Nursing Home somewhere down
13 there?

14 A Initially when I stopped over there, I went in there
15 30 seconds and I turned around and came back. It turned
16 out that the subject that someone had seen back here
17 was -- I think it was a plain clothes officer that was
18 back there searching also, so as soon as I heard that I
19 discontinued here and I went right back to the same area
20 again (indicating).

21 Q Then you say you got -- you received a bulletin about a
22 person under a truck; is that correct?

23 A I heard on the scanner, yes, sir, that they had just got
24 a call that someone had observed a subject underneath a
25 truck.

1 Q Do you recall the address?

2 A In the area of Nemec or in the area -- yeah, in the area
3 of Nemec and Franklin, that's what the -- the police
4 frequency report came out.

5 Q Do you recall possibly hearing at least two different
6 calls regarding whether -- whether or not it was -- or
7 two different calls of people near pickup trucks? Could
8 it be possible that you heard a call that took place
9 over on Easter, as well as over on Franklin Street?

10 A No, sir.

11 Q All right. When you came back into the area, what --
12 what -- what type of call did you say that you recall
13 that you received about a subject or someone under a
14 pickup truck?

15 A If I remember correctly when we headed back over in this
16 direction from -- from this point up here by the nursing
17 home, when we were headed back over here, we directed
18 our attention to this intersection here which was what
19 the police broadcast put out, subject under a truck in
20 this area (indicating). So we either came up one of
21 these streets here and came back to this location and
22 we parked right about here (indicating).

23 Q Okay. What -- what caused you to park right at that
24 location?

25 A There was a -- there was a pickup truck that was pulled

1 in a driveway that -- I believe the driveway is part
2 of this house here on the corner (indicating).

3 Q. Okay.

4 A. And there was a pickup truck here, so we parked right
5 next or about 50 feet from it right here so we could
6 check that pickup truck out right here (indicating).

7 Q. Did you, in fact, check that pickup truck? I mean, did
8 you stop and get out?

9 A. We did. Yes, sir.

10 Q. What did you do after that?

11 A. Well, we were satisfied that there was no one underneath
12 that truck, so we just kept a foot search down in here
13 and we saw another pickup truck down on this side
14 (indicating).

15 Q. At that particular point in time, as best you recall,
16 were there any other units in the area?

17 A. Police units, yes, sir.

18 Q. I mean, was there anyone parked or something like that?

19 A. There was another -- there was a city police unit
20 parked across the street when we parked here and
21 dismounted the vehicle, I saw another police unit back
22 in here or in this area right here, just across the
23 street (indicating).

24 Q. Okay. Now, you say you approached -- you approached
25 the vehicle on Franklin Street?

1 A. The number one vehicle or the number two?

2 Q. The number two vehicle.

3 A. Yes, sir, I approached it as I come around Franklin this

4 way. I saw the pickup over here and I approached it

5 from this side of the street.

6 Q. Were you by yourself at that time or was Officer Vargas

7 with you?

8 A. My partner was on foot just -- just behind me or on the

9 side.

10 Q. And what -- what basically did you do at that point?

11 A. Okay, when I -- when I reached this point here, of

12 course, my attention was this pickup here, there was a

13 group -- (indicating).

14 Q. Was there more than one pickup parked along the street

15 here?

16 A. If I remember correctly, there was more vehicles up

17 here and I don't remember whether there was any over

18 here, but my main attention was this pickup right here

19 (indicating).

20 Q. Okay.

21 A. Okay. I'm across the street here and there was a group

22 of people just further up ahead, maybe another couple of

23 residences down who hollered something at me, said,

24 "He's under that truck."

25 Q. Could you tell what this group was made up of?

1 A. Adults.

2 Q. Adults, females?

3 A. No, I don't remember. It was dark, it was at least

4 five to six male adults, Hispanics, I don't know what

5 they were doing there, but they were there and

6 apparently they had whoever was under the truck under

7 observation.

8 Q. You stated you had a flashlight or something. Did you

9 shine your light over --

10 A. I did, sir. Of course, I was going to check the truck

11 anyway, but whenever they diverted my attention to it,

12 I knelt down and I shined my light up under the truck

13 and I saw someone's feet up under there.

14 Q. Okay. Exactly what did you see?

15 A. I saw what looked like two human feet.

16 Q. No, what I'm saying is when you looked under the truck,

17 just what did you see?

18 A. I saw the movement of two human feet.

19 Q. Okay.

20 A. And then I went into a prone position and I -- at that

21 time I instructed my partner to go back to the car and

22 advise the dispatcher that we had located someone and

23 divert some more --

24 Q. Did your partner have an opportunity to see the person

25 who was underneath the truck?

1 A. Yes, sir.

2 Q. All right. When you finally saw the feet and then I
3 gather you probably investigated a little bit more with
4 the light, what -- what -- who did you see or what did
5 you see?

6 A. I saw that the -- that the person that I was seeing under
7 the truck was actually a -- looked like a male subject
8 and I instructed him to come out.

9 Q. Okay. Did he, in fact -- I believe you said he -- he --
10 he came out with your assistance?

11 A. He didn't come out the first time or the second time
12 that I shouted at him. I approached the truck after I
13 heard him say, "Don't shoot," or "don't hurt me," or
14 something of that nature. I saw he was not armed and I
15 holstered my weapon and I -- with the assistance of I
16 think it was Officer Schauer from the police department,
17 he helped me bring him out.

18 Q. Okay. How did y'all -- how did y'all bring him out?
19 Did any other conversations take place other than your
20 conversation with him?

21 A. Not at the initial contact, there was more conversation
22 afterwards.

23 Q. Okay. But I mean as far as -- as far as at the time
24 that you all were either coaxing him or helping him or
25 assisting him get out from underneath this truck?

1 A. Other than the first words from -- from the person that,
2 "I give up," or "don't shoot," or something of that
3 nature, "I'll come out," or --
4 Q. All right. Were there any other -- what I'm saying is:
5 Were there any movements on the part of -- any other
6 type of movements which would have caused you to draw
7 your gun or something? I gather you said you holstered
8 your gun until he was out there, until you ascertained
9 he wasn't armed. Did you ascertain this while he was
10 still under the truck that he didn't have any weapons or
11 anything and you didn't have anything to fear as far as
12 weapons were concerned?
13 A. Well, he was laying with both of his hands like this
14 (indicating) and I could see his hands clear. When I
15 was satisfied he was not armed, I put my weapon back in
16 my holster.
17 Q. Then did you assist him by helping him out?
18 A. Yes, sir.
19 Q. Did you grab ahold of his foot or arm or something to
20 help him out?
21 A. One part of his body, I can't remember which, the other
22 officer grabbed the other part and we pulled him out.
23 Q. But he was actually lying in the gutter; is that right?
24 A. He was in that part of the curb that accumulates with
25 water, he was laying in the water face down.

1 Q. Once he was assisted out from underneath the truck, did
2 you take any action when you were personally with him;
3 for example, did you remove any of his belongings or did
4 you check him out or pat him down or anything like that?
5 A. I didn't. One of the police officers did with the City,
6 one of the City police officers did.
7 Q. Okay. Did you have anything to do as far as inventorying
8 what he had on him at the time?
9 A. Not there and then, sir, afterwards while we was walking
10 him to the car, I saw a bill or something in his -- I
11 think it was right front pocket, one of his front pockets
12 and I -- I took it out and I gave it to the officer with
13 the other money.
14 Q. Okay. Were you present when they -- when they removed
15 his billfold from his pocket?
16 A. Don't think that -- let's see. Don't remember -- I was
17 there, but I don't remember whether his billfold was
18 removed from his pants or whether it was picked up from
19 underneath the truck, but I was there whenever the
20 billfold was recovered.
21 Q. And he was lying in the water?
22 A. Yes, sir.
23 Q. Did his pants appear to be totally wet?
24 A. Yes, sir.
25 Q. But as far as you know, everything went peaceable at

1 that point, you know, with -- I mean, in other words --

2 A. No struggle or anything, no, sir.

3 Q. No struggle or anything.

4 Did you observe any marks on him at the time that

5 you brought him out from underneath the car?

6 A. Seems I remember on his back of one of his shoulders

7 some scratch marks or something like that. I don't

8 know -- no blood or anything, just scratch marks some-

9 where on his back or shoulder, one of his shoulders.

10 Q. Conceivably that could have come from lying on the

11 ground or being pulled?

12 A. Possibly.

13 Q. Do you recall the color of -- the color of the clothing

14 that he was wearing?

15 A. The color of the clothing, sir?

16 Q. Yeah, or type of clothing.

17 A. I believe the pants were blue jeans, faded blue jeans or

18 whatever color blue jeans, you know, I don't remember the

19 socks, but he was wearing socks.

20 Q. Do you recall what the weather was that evening?

21 A. It was rainy, it had stopped raining, but it had rained

22 before. It was humid, temperate weather.

23 Q. Would you describe it as having -- being cold, hot?

24 A. It had been rather chilly, it wasn't extremely cold, it

25 was chilly.

1 Q. Okay. What kind of clothing were you wearing that
2 evening? Were you wearing --

3 A. Same clothing I'm wearing now, sir.

4 Q. Okay. Short sleeve uniform?

5 A. I think I was wearing long sleeves at that time, I don't
6 remember. I don't believe we go to short sleeves until
7 after April the 15th, so it had to have been possibly
8 long sleeves.

9 Q. Okay. You don't recall having the need to wear a
10 jacket or anything like that?

11 A. I'm sorry, sir?

12 Q. I said you don't recall having the need to wear a jacket,
13 gloves, anything like that?

14 A. No, sir.

15 Q. Total time, then, if you would, if we could put it in
16 perspective, how much time do you think passed from the
17 time you heard the initial call until you -- until the
18 suspect here that you arrested was placed in custody
19 I guess with the officers from the CCPD?

20 A. I would say the whole incident was possibly anywhere
21 between 15, 17, 20 minutes at the most.

22 MR. DE PENA: Thank you, sir.

23 MR. SCHIWETZ: I don't have any further
24 questions. Thank you.

25 THE COURT: Thank you, sir. You may be

1 excused.

2 Ready for lunch recess at this time?

3 MR. SCHIWETZ: Our next witness is going to
4 take a fairly good amount of time, Your Honor.

5 THE COURT: I wonder, since we're quitting a
6 little early about starting at 1:15. Is that
7 agreeable with everyone? I don't think you're going
8 to walk very far for lunch. 1:15, see you back at
9 that time.

10 (At this time the noon recess was taken,
11 after which the following proceedings were had
12 before the Court, in the presence and hearing of
13 the Jury, with counsel for the State, counsel for
14 the Defendant and the Defendant present:)

15 THE COURT: Who is the next witness?

16 MR. BOTARY: Officer Schauer, Your Honor.

17 THE COURT: Officer Schauer.

18 Ladies and gentlemen, I didn't tell you
19 earlier, but anytime you want just a short recess,
20 we do it here just like we do in school, just hold
21 up your hand.

22 MR. BOTARY: You ready to proceed, Your Honor?

23 THE COURT: Yes, sir.

24

25

1 MARK DAVID SCHAUER,
2 having been called as a witness by the State and after having
3 been first duly sworn to tell the truth, the whole truth and
4 nothing but the truth, testified upon his oath as follows:

5

6 DIRECT EXAMINATION

7 BY MR. BOTARY:

8 Q. Would you state your name for the Jury, please?

9 A. My name is Mark David Schauer.

10 Q. You're a police officer with the City of Corpus Christi?

11 A. Yes, sir.

12 Q. How long have you been a police officer?

13 A. About one-and-one-half years, sir.

14 Q. Were you raised here in Corpus Christi?

15 A. No, sir, I was born in Chicago, Illinois.

16 Q. How old a man are you?

17 A. I'm 24, sir.

18 Q. What did you do before you became a police officer with
19 the City of Corpus Christi?

20 A. I graduated from college and I worked for my dad for
21 about a year and a half.

22 Q. Okay. Where at, Chicago?

23 A. Right.

24 Q. What brought you down to Corpus Christi?

25 A. Oh --

1 Q Sunshine?

2 A Yeah, the climate, looking for a little bit something

3 better.

4 Q Officer Schauer, your duties with the police department

5 include patrolling the city streets. Is that correct?

6 A Yes, sir.

7 Q I want to take you back to the 4th day of February, 1983.

8 Were you on duty at approximately 8:00 to 8:30 that

9 night?

10 A Yes, sir, I was.

11 Q And what were your duties at that time, sir?

12 A I was on patrol.

13 Q Okay. Do you have a certain area in which you patrol

14 when you're working?

15 A Yes, sir, and that night I was patrolling the area

16 bounded by Ocean Drive, Staples and Airline Street.

17 Q All right. Were you a uniformed officer that night?

18 A Yes, sir, I was.

19 Q And were you in a marked police vehicle?

20 A Yes, sir, I was riding alone.

21 Q Do you have any partners with you or did you have any

22 partners with you that night?

23 A No, sir.

24 Q Did you have occasion to go to the Shamrock -- Sigmor

25 Shamrock Station on SPID that night?

1 A. Yes, sir, I did.

2 Q. What took you to that location?

3 A. I was dispatched there for a backup to help out.

4 Q. When you arrived, were there other units already there?

5 A. Yes, sir.

6 Q. Do you remember whether or not the ambulance was already

7 there when you arrived?

8 A. I don't recall, sir.

9 Q. Did you stop at the Sigmor Shamrock Station and see if

10 you could help any of the other officers there?

11 A. Yes, sir, I contacted Lieutenant McConley and I believe

12 Captain Glorfield was there and I asked them if I could

13 be of any assistance and they said just to go to the

14 back of the store and start patrolling the area, looking

15 for a suspect.

16 Q. All right. Now, a patrol officer on the beat that you

17 were on or that route, do you have a supervisor?

18 A. Yes, sir.

19 Q. That was assigned to you specifically?

20 A. It's assigned to all the people on that shift.

21 Q. And who was that, if you know?

22 A. It was supposed to be Lieutenant Castro, but he was sick

23 that day.

24 Q. Okay. So --

25 A. So the supervisor was Lieutenant McConley.

1 Q Lieutenant McConley. And he's a black officer; is that
2 correct?

3 A That's correct.

4 Q And you took your orders from him at the Sigmor Shamrock
5 Station?

6 A Yes, sir.

7 Q Did he assign you any particular area or just told you to
8 patrol the immediate area?

9 A The immediate area in back of the store.

10 Q How long were you at the station before you started your
11 driving around the area?

12 A Probably less than one minute.

13 Q Had you heard over your radio dispatch -- excuse me,
14 over the radio the description of the suspected
15 offender?

16 A Yes, sir, I had.

17 Q Tell the Jury -- there's a drawing of streets on the
18 bulletin board there. Could you tell the Jury
19 approximately what locations you patrolled?

20 A I -- I drove around quite a bit. This would be the
21 Shamrock Station here (indicating). When they told me
22 to go patrol around the station, I went down Dodd Street
23 and I started patrolling this entire area.

24 Q Okay.

25 A And during one -- during one -- during one part of the

1 incident, one officer called out that he had seen
2 something way over at McArdle and Kostoryz, there are a
3 lot of units going over there, so there were units all
4 over this area.

5 Q. Would you say pretty much you were combing the area
6 between Kostoryz and Ayers Street?

7 A. Yes, but I tried -- I tried to limit myself to this
8 big area in here (indicating).

9 Q. Okay. Now, Officer, were you driving in that area with
10 your lights on or lights off?

11 A. Lights off.

12 Q. Lights what?

13 A. Lights off.

14 Q. Off?

15 A. Right, sir.

16 Q. All right. Why were you doing that?

17 A. So that I couldn't be seen if someone was hiding there,
18 so that I could be less visible.

19 Q. All right. Go ahead and have a seat.

20 A. (Witness complies.)

21 Q. About how long were you patrolling that area before
22 you ran into Constable -- Deputy Constable Rivera?

23 A. It would have been a good twenty or so minutes.

24 Q. Okay. Had you seen anything yourself prior to that time?

25 A. No, sir.

1 Q. Now, was there quite a bit of communications going on
2 on the radio between units and between the dispatcher
3 and other units?
4 A. Yes. Mostly between the dispatcher and the units and
5 the dispatcher putting on more information.
6 Q. All right. Did the dispatcher at any time put out a
7 call to go to any particular area in that vicinity?
8 A. Yes, she said a suspect had been seen or a subject had
9 been seen running from an area, say, west of Franklin
10 towards Franklin, there had been a subject seen running
11 between houses, different people had called and that
12 someone had seen him lying under trucks.
13 Q. Somewhere on Franklin Street; is that correct?
14 A. Towards -- in that area. In that area.
15 Q. Was there any other suspect seen at any other area, so
16 far as you know?
17 A. Not to my knowledge.
18 Q. Did the dispatcher disseminate any information regarding
19 other suspects in other areas other than the one on
20 Franklin?
21 A. No.
22 Q. Now, when you got to -- how is it that you came upon
23 Sergeant -- Deputy Constable Rivera?
24 A. I parked my unit down here by Nemec and I got out and I
25 started walking between houses toward Franklin Street

1 (indicating). I climbed over a fence here, and as I
2 landed on the ground I heard Constable -- I heard the
3 constable yell out for help, he was yelling at somebody
4 under a truck and his partner was also there on the
5 other side of the truck (indicating).

6 Q. Okay. Let me stop you for a moment. Were you also
7 doing a foot patrol?

8 A. Right, sir, I was on foot, I had my unit parked down
9 Nemec.

10 Q. So there was nothing specifically to alert you to Deputy
11 Rivera, at the time you got out of your car you were on
12 foot patrol?

13 A. Right. I just parked my car and started walking.

14 Q. And you saw him doing what?

15 A. Okay. When I approached him, I saw him kneeling, it
16 would be on the west side of the pickup truck. He was
17 looking under it and he was yelling at somebody.

18 Q. Did you then approach Constable Rivera?

19 A. Yes, I approached on his side.

20 Q. What did you see underneath the truck, if you looked?

21 A. I saw a suspect lying under the truck on his belly and
22 his head was pointed towards McArdle and his feet were
23 pointed towards Nemec and he was lying there and the
24 deputy constable had his gun drawn and he was attempting
25 to get the suspect out from under the truck.

1 Q Did you draw your weapon?

2 A No, sir, I didn't.

3 Q Did you eventually get the subject out from underneath

4 the truck?

5 A Yes, sir. We -- Constable Rivera holstered his weapon

6 and we did pull the suspect out, we pulled him out by

7 the arms.

8 Q Did you have to pull him out of there?

9 A Yes.

10 Q He didn't come out voluntarily?

11 A No, he didn't come out by himself.

12 Q All right. Did you have to drag him on the concrete to

13 get him out of there?

14 A Not really, no. We -- we pulled him up and he -- he

15 came out, but he -- he wouldn't have come out by himself

16 if we didn't help him out.

17 Q Was it dark in that area underneath that pickup truck?

18 A Yes, sir, it was.

19 Q Was there water on the streets?

20 A Yes, sir, it had been raining.

21 Q And how was the man described -- dressed when you first

22 pulled him out from underneath that car?

23 A He had on no shirt -- no shirt and he had on black-

24 colored pants, no shoes.

25 Q Look around the courtroom and see if you can identify

1 anybody that you saw there that night.

2 A. I do see someone.

3 Q. Who is that?

4 A. It's the subject sitting there in the gray suit that I'm
5 pointing out (indicating).

6 Q. And who was that subject?

7 A. That was Mr. --

8 Q. Which one was he?

9 A. That was the suspect under the truck.

10 Q. That was the man under the truck?

11 A. Right.

12 MR. BOTARY: Your Honor, might the record
13 reflect he has identified the Defendant Carlos
14 De Luna?

15 THE COURT: All right, sir.

16 Q. (By Mr. Botary) Now, did you place Mr. De Luna under
17 arrest immediately after pulling him out from underneath
18 the truck?

19 A. Yes, sir, I did.

20 Q. All right, did you handcuff him?

21 A. Yes, sir.

22 Q. Did you see any injuries on him whatsoever at that time?

23 A. Not immediately at that time.

24 Q. Okay. Did you examine him later to see whether or not
25 he had any injuries?

1 A. Yes, sir, I did.

2 Q. What injuries did he have, if any?

3 A. He had several long scratches under his -- the right

4 part of his body, it would have been like this

5 (indicating).

6 Q. What did it -- what did those scratches appear to be to

7 you?

8 A. They appeared to me to be like fingernail scratches or

9 something sharp that was even, that was parallel to one

10 another.

11 Q. Could you tell whether they were scabbed over or did it

12 appear that they could have been recent injuries?

13 A. No, they were recent, they looked like they had just

14 been recently made. They weren't bleeding heavily, but

15 the blood was still fresh, it was like the blood had

16 come to the surface and stopped and it was still fresh.

17 It didn't smear, but it was -- I could see it was fresh,

18 it wasn't the dark red color that blood is when it's in

19 a smear.

20 Q. Now, are you sure where the -- these scratches were under

21 the arm area?

22 A. I can only give you a general area, it was generally

23 under this part of the arm (indicating).

24 Q. Were there any on top of the shoulder?

25 A. I don't recall.

1 Q Were there any on the back?

2 A I don't recall.

3 Q Were there any burn-type marks like a person who skids

4 along a concrete burns himself?

5 A No, sir, I don't remember anything like that.

6 Q Did you know Carlos De Luna at the time that you pulled

7 him out from under the truck?

8 A No, sir, it was my first contact with him.

9 Q Did you have occasion to try to identify him by any

10 manner?

11 A Through -- there was another officer on the scene that

12 came up and knew him immediately.

13 Q Did you pat him down or search him?

14 A Yes, sir, I did that immediately after I handcuffed him.

15 Q And what did you find in his possession?

16 A Okay. When we handcuffed him, I laid him down onto the

17 grass and we looked under the truck to make sure there

18 was no one else under there. I reached into his right-

19 hand pocket to search him for weapons for our safety and

20 I pulled out a -- a wad of dollar and -- a variety of

21 American currency, bills.

22 Q Where was that at, now?

23 A His right-hand pants pocket.

24 Q Okay, and was -- in what fashion was it in his pocket?

25 A It was in like a wad. It wasn't rolled up into a neat

1 little roll with a rubber band around it or anything
2 like that, it was just like if you take a clump of money
3 and kind of stick it together and stick it in your
4 pocket, that's kind of what it was like.

5 Q. The U.S. currency that you pulled out of his pocket, was
6 it one dollar bills or different denominations?

7 MR. DE PENA: Your Honor, I'm going to object
8 to this question, it's assuming something that's
9 not in evidence at this point. There's been no
10 evidence concerning what was in the pocket,
11 counsel is leading. He may ask him whether there
12 were dollars --

13 THE COURT: That's overruled.

14 Q. (By Mr. Botary) What type denominations were there, if
15 there were more than one type of demoninations?

16 A. Okay. There were three \$20 bills, there were seven \$10
17 bills, there was one \$5 bill and fourteen \$1 bills and
18 it came to like a hundred and forty-nine dollars all
19 together.

20 Q. Okay. Did you count that there while he was on the
21 grass?

22 A. No, I confiscated it there and I took it with me. I
23 put it in my police hat in my car and I counted it later
24 on at the station, booking desk.

25 Q. Okay. Was there any particular order like the 20's were

1 all together and the 1's were all together and the
2 other denominations together?

3 A. No, they were pretty much in a bunch. You have to
4 remember also when I dug in his pocket I had to lay
5 it on the grass.

6 Q. You had to what?

7 A. Some of it I had to lay on the grass and some of it I
8 had to stick in my pocket, so during that exchange, it
9 could have gotten mixed up so I really couldn't say when
10 I pulled it out of his pocket if it was all 20's and
11 then 10's and 5's and 1's, I can't say.

12 Q. Now, Officer Schauer, before you began searching him,
13 did you look underneath the truck to see whether anything
14 had been discarded underneath the truck?

15 A. No.

16 Q. Did you take anything else out of his -- from his
17 possession?

18 A. Yeah, I took a wallet out of one of his pockets.

19 Q. Out of one of his pockets?

20 A. Out of his back pocket.

21 Q. What color was the wallet?

22 A. I believe it was a dark color, I don't remember if it
23 was brown or black, but a dark color.

24 Q. Did you look in the wallet to see whether there was any
25 identification in there?

1 A. I did.

2 Q. And was there any identification?

3 A. I couldn't find any at that time.

4 Q. Did you look for the billfold to see what was in there?

5 A. For the identification? I found -- when I looked

6 through there, I found a couple of dollar bills.

7 Q. A couple of dollars?

8 A. Two dollar -- two one-dollar bills.

9 Q. What did you do with that billfold?

10 A. I tagged it as evidence.

11 Q. And then what did you do with it after you tagged it?

12 A. I turned it over at the booking desk.

13 Q. Is that what you're supposed to do?

14 A. Yes, sir. That's the procedure.

15 Q. Did you keep it in your possession until you took it to

16 the booking desk?

17 A. Yes, sir, I did.

18 (State's Exhibits 12, 13 and 14 were marked

19 for identification.)

20 Q. (By Mr. Botary) Officer Schauer, let me ask you to look

21 at that exhibit, that's State's Exhibits 12, 13 and 14.

22 Look at them for yourself, please, and open State's

23 Exhibit 12, which is the envelope and look at the other

24 two exhibits in there.

25 A. I have looked at it.

1 Q. Do you recognize State's Exhibit 12, 13 and 14?

2 A. Let's see. Fourteen, yes; 13 -- which one is 12, the
3 envelope?

4 Q. The envelope.

5 A. Yes, sir.

6 Q. Are any of your markings on State's Exhibit Number 12?

7 A. Yes, sir. It's the -- the tag here.

8 Q. Okay. Tell the Jury what a property tag is. Without
9 showing it to them, just tell them what it is.

10 A. A property tag is a small piece of paper, it's a
11 duplicate that we fill out at the booking desk. We
12 describe the kind of property on there, we write the
13 offense number for the report that goes along with the --
14 describing how we got the property and what we did with
15 it and it also is attached to the property so that we
16 can find it later on. There's a little number on the
17 tag and it goes in a little log book so that everything
18 can be kept track of. So when I tag something, I give
19 it to the jailer, the jailer puts it up in this little
20 room, and then everything is signed for. I sign it over
21 to him and when someone comes to pick that up to take it
22 to the property room, it's signed again, so there's a
23 chain of custody.

24 Q. Okay. The jailer, then, just takes the property from
25 you; is that correct, the booking desk?

1 A. Yes, sir.

2 Q. All right. And you're the one that actually seals it
3 and puts it in the envelope; is that correct?

4 A. That's right. That's right.

5 Q. And it's there for all purposes until somebody else
6 comes and gets it?

7 A. Until someone else comes and signs for it.

8 Q. Now, is your name signed on that property tag itself?

9 A. It is, sir.

10 Q. And did you put the money in that envelope and the
11 billfold in that envelope before you took it to the
12 booking desk?

13 A. Yes, sir.

14 Q. Now, the money itself in front of you, did it appear to
15 be that color when you turned it over to the booking
16 officer?

17 A. No, it was a regular color when I turned it over.

18 Q. Okay. It's got a different color, does it not, kind of
19 a purplish?

20 A. Yes, it would have been the same color as this money
21 when I first turned it over (indicating).

22 Q. Okay. Now, where did you pull that dollar bill from?

23 A. From the -- the wallet I got off the suspect.

24 Q. Okay. How many dollar bills are in that wallet?

25 A. Two one-dollar bills.

1 Q And is that what he had on him that night in the
2 billfold?
3 A Yes, sir.
4 Q And the other money is what you took from him and was
5 in one of his pockets?
6 A Yes, sir.
7 Q But it was green; is that correct?
8 A It was the color of regular money.
9 Q Now, you know what that purple money is, don't you?
10 A Ninhydrin.
11 Q Say it again real slow so the Jury can hear you.
12 A It's ninhydrin, it's a chemical used to bring out
13 fingerprints on paper.
14 Q And it was not on there when you took it from the
15 Defendant?
16 A No, sir.
17 Q How many dollar bills did you just count that were
18 treated with this process?
19 A Fourteen.
20 Q Sir?
21 A Fourteen \$1 bills, one \$5 bill, seven \$10 bills and
22 three \$20 bills.
23 Q All right. And does that conform with what you took
24 from him that night?
25 A Yes, sir.

1 Q Now, one other thing, the property tag number that you
2 told the Jury about that's on this little card, do you
3 use that on your reports when you write your reports?
4 A Yes, sir.
5 Q Let's go ahead and put all this back together, please.
6 A (Witness complies.) Do you want it back in the
7 envelope?
8 Q Yes, sir. Okay. Before you put State's Exhibit Number
9 13 back in, would you look inside of that for a second.
10 A Sure.
11 Q And tell us whether or not there's any identification in
12 there?
13 A There is, there's a driver's license.
14 Q And is there a name on that driver's license?
15 A Yes, the last name is De Luna, the first name is Carlos.
16 Q Okay, go ahead and put that back in there, please.
17 A (Witness complies.)
18 Q How long did you have Mr. De Luna out there on the
19 grass by the pickup truck before you took him anywhere?
20 A Probably no more than three -- two to three minutes.
21 Q And did you call in to Lieutenant McConley to find out
22 what you were to do with this man?
23 A Yes, I put out a broadcast that I had -- we had picked
24 up a suspect in the area and then I don't remember if I
25 called him or he called me, but he told me to bring the

1 suspect over to the scene of the crime.

2 Q Bring him -- take him back to the Sigmor Service Station?

3 A That's right.

4 Q And did you bring him back yourself alone?

5 A Yes, sir, I did.

6 Q Where was he seated?

7 A He was seated in the back seat of my patrol car.

8 Q Was he handcuffed?

9 A He was handcuffed behind his back.

10 Q By the way, could you determine whether or not he had

11 been drinking anything at all in the way of alcoholic

12 beverages?

13 A I really couldn't -- I really didn't have him breathe

14 on my face or anything at that time, so I really

15 couldn't smell anything strong on him. I really can't

16 recall smelling anything on him at all.

17 Q Well, how was he -- what was the actions, without

18 telling us what he said, if anything, what were his --

19 the demeanor and characteristics when you pulled him out

20 when you had him there on the grass before you took him

21 back to the station?

22 A He was real hyperactive, real tense, very -- very

23 talkative, he kept talking. I mean, he wouldn't shut up,

24 he kept talking and his -- he had kind of a stare in his

25 eyes like a -- it's hard to describe, but it was a stare

1 like a glare in his eyes, like an animal might have, it
2 was that kind of look in his eyes, that kind of a stare.
3 And he also had -- he constantly wore kind of a smile on
4 his face, kind of a smirk.

5 Q. Did you see any of his clothing around the immediate area?

6 A. No, sir, I didn't.

7 Q. As far as you know, you don't know what happened to his
8 shirt or his shoes, if he even had any on?

9 A. No, I don't know what happened to them.

10 Q. Now, when you took him -- took him back to the service
11 station, how many blocks did you have to travel before
12 you got to the service station?

13 A. About one and a half.

14 Q. And when you got to the service station, could you tell
15 the Jury where you parked your vehicle?

16 A. Yeah, I can show you. We picked him up here, travelled
17 down here, and those are short blocks, by the way, I
18 consider a block to be this way, that's why I say it's
19 a block and a half about, but it's only from -- from
20 here to here, it's only a good three-minute walk. But
21 I took him down here and about approximately to here
22 (indicating) is a little -- some little walls through
23 the back of the station and I took him just on the other
24 side of those walls and there were some cars parked
25 along here, some patrol cars and some other cars.

1 Q. Okay. Look at the map right above -- above you.

2 A. Okay. Yeah. This would be north, this would be
3 coming -- this is the front of the store here, sir
4 (indicating)?

5 Q. Uh-huh.

6 A. And this is -- yeah, I come around this way and we were
7 parked right in here (indicating).

8 Q. Okay. When you drove your vehicle up with the
9 Defendant in the back seat, did -- was there anybody in
10 that particular area?

11 A. Oh, you mean in this area here or this area here
12 (indicating)?

13 Q. No, in the area of the vehicle where they could see
14 your vehicle come in.

15 A. No, the Lieutenant could see me come in, but there were
16 cars here. I didn't want the suspect to see the scene
17 of the crime so I was trying to avoid that.

18 Q. Well, what I was concerned about was whether there were
19 any spectators or any witnesses, civilian people around
20 the area where you parked your vehicle as you came into
21 the station.

22 A. No, all those people -- all the people that I can recall
23 were police officers.

24 Q. What occurred after you had the Defendant there at the
25 scene, at the crime scene itself?

1 A. Well, we sat there for several minutes and I started
2 filling out an arrest sheet in case we had to actually
3 take him to jail and either Lieutenant McConley or
4 Captain Glorfield, both of them came over and they told
5 me that they were going to bring people over to -- to
6 look at him and see if he was the person they had seen.

7 Q. Okay. And did they do that?

8 A. Yes, sir.

9 Q. Did they bring the people over all in a group or did
10 they bring them over -- how did they bring them over?

11 A. No, what they did is they brought over one person and
12 they surrounded them by police officers, when they
13 brought him to the car, they took the flashlights and
14 they shine them in the suspect's eyes so he couldn't see
15 the witness, just in case, so there would be no revenge
16 kind of thing, then they took that witness back and then
17 they came back with another witness and they showed the
18 suspect again.

19 Q. Okay. Was the suspect ever taken out of the car to --
20 to be viewed by the witnesses?

21 A. I don't recall.

22 Q. So as far as you know, then, he was in the back seat of
23 the car and somebody was flashing the light in his eyes?

24 A. As far as I know.

25 Q. But each time a witness was brought forward to identify?

1 A. Yes, sir.

2 Q. And did the witnesses identify there at the automobile
3 or were they just permitted to view him and then taken
4 away?

5 A. They looked at him and then they took them away.

6 Q. So you don't know whether they were able to identify him
7 or not?

8 A. I don't know.

9 Q. How long did that procedure take or that process take?

10 A. Probably less than five minutes.

11 Q. About how many people were shown the Defendant?

12 A. I think there were two to my recollection. I think they
13 came over once, took him back, came over again, took him
14 back. I think it was one person each time.

15 Q. Okay. After the witnesses looked at the man you had
16 arrested in the back seat of the car, were you given any
17 additional instructions regarding that person?

18 A. Lieutenant McConley told me to go ahead and --

19 MR. LAWRENCE: Your Honor, I'm going to object
20 to any hearsay testimony.

21 THE COURT: Sustained.

22 Q. (By Mr. Botary) Just yes or no, that's all I want to
23 know.

24 A. Yes.

25 Q. And what did you do with the Defendant, Mr. De Luna,

1 after you got these instructions?

2 A. I arrested him, took him to jail,

3 Q. Did you take him -- transport him -- physically

4 transport him to the police department?

5 A. Yes, I drove the car and he rode in the back,

6 Q. And that's when you took him to the booking desk?

7 A. Yes, sir.

8 Q. And is that when you also took the property that you had

9 taken from him to the booking desk?

10 A. Yes, sir.

11 Q. At the booking desk, do you fill out reports and things

12 of this type?

13 A. Well, the first thing I did, I took him to the station

14 duty commander which is downstairs in central records

15 and he has to authorize the arrest sheet, it's done on

16 all arrests. He authorized it, I took the suspect

17 upstairs and then I had him sit down and I started

18 filling out paperwork because I wanted an ID person to

19 come out there and photograph him and process him before

20 I went ahead and booked him so I wouldn't ruin any

21 evidence.

22 Q. Were you able to get closer to him at this point in time

23 while he was at the booking desk?

24 A. Yes, sir.

25 Q. Could you tell me whether or not he had been drinking or

1 anything of that nature?

2 A. Yes, sir, I tried smelling his breath and I really
3 couldn't smell anything on him.

4 Q. What were his reactions and his demeanor at the booking
5 desk?

6 A. He was hyperactive and he was very talkative. He was
7 like -- he would be sitting -- we have a bench up at the
8 booking desk, it's a wooden bench, it looks like
9 something you see in a Catholic church. He was sitting
10 on the end of that and I had his hands cuffed behind his
11 back the whole time until I booked him and he kept
12 sitting near the edge of his bench and he still had that
13 look in his eyes and he kept talking, he kept asking me
14 repetitive questions, he kept asking me for cigarettes
15 or he kept asking me different questions about this and
16 that. He was real hyperactive.

17 Q. He kept asking you for cigarettes?

18 A. Right.

19 Q. Do you smoke?

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

21 Q. Did you ever go down and get him any cigarettes or buy
22 cigarettes?

23 A. Yeah, I promised him cigarettes but he didn't have any
24 change to buy them, so after I got all through with my
25 paperwork and I booked him and I was ready to go home, on

1 my way home I stopped at the Seven Eleven Store at
2 Staples and Leopard and bought him a pack of cigarettes
3 and took them back to him.

4 Q. Did you mark the pants that the suspect had on?

5 A. If I remember correctly, I tried to mark them with a
6 pencil or something on the inside.

7 Q. But they were removed from him; is that correct, and
8 also booked into property?

9 A. Yes, sir.

10 Q. And you did that yourself?

11 A. Yes, sir.

12 (State's Exhibits 15 and 16 were marked for
13 identification.)

14 Q. (By Mr. Botary) Let me ask you to look at State's
15 Exhibit Number 15 and the contents therein, State's
16 Exhibit Number 16. Just look at them to yourself.

17 A. Well, I marked this paper.

18 Q. Do you recognize those two exhibits?

19 A. Yes, sir. Those are the pants I took from him.

20 Q. And how do you know those are the pants you took from
21 him?

22 A. I stapled a piece of paper right there (indicating).

23 Q. That little yellow piece of paper on the inside?

24 A. Yes, sir. I remembered I marked them somehow, but I
25 guess that was it.

1 Q Okay, is it -- does that little piece of paper have your
2 name on it?

3 A Yeah, it has my signature on it, my employee number.

4 Q Do you recognize that?

5 A It's my handwriting.

6 Q And did you do that marking that particular night that
7 you arrested the Defendant?

8 A Yes, because I haven't seen these pants since I marked
9 them and turned them in.

10 Q Go ahead and put them back in the bag, Officer Schauer.
11 Just scoot them over to the side.

12 A (Witness complies.)

13 Q Did you take anything else from the Defendant that
14 night?

15 A The ID officer took some samples of whatever from his
16 upper body, they were like stains of some sort, I think
17 they were dirt, but she scraped some of that off and she
18 took that with her.

19 Q Did the Defendant appear to be clean shaven or dirty or
20 well groomed --

21 A No.

22 Q -- or how, when you found him?

23 A He was dirty, he had a few days growth of beard, kind of
24 a light moustache and he was dirty.

25 Q He was laying in water; is that correct?

1 A. Pardon me, sir?

2 Q. He was laying in water under the truck?

3 A. He was laying on a wet street, yeah.

4 Q. Did he have any type of T-shirt on or socks?

5 A. No.

6 Q. Did he have any jewelry on?

7 A. Not that I recall.

8 MR. BOTARY: Your Honor, could I have just a

9 few minutes? I may be finished with this witness.

10 Q. (By Mr. Botary) Now, Officer, one other thing that you

11 do, if I am correct, as part of your routine work is to

12 write reports; is that correct?

13 A. Unfortunately, yes.

14 Q. And did you have occasion to write a report in this

15 case?

16 A. I wrote a supplemental report.

17 Q. Supplemental report?

18 A. It wasn't an original offense report on the incident,

19 it was a supplemental report that supplements it, it

20 compliments the offense report, it adds information to

21 it.

22 Q. Is it correct to say that the officer that was assigned

23 the case to begin with is the one that would initiate the

24 original report?

25 A. Yeah, usually the officer that's assigned it or the

1 officer that has arrived there first and took command
2 takes -- immediate command of the scene.

3 Q And the supplemental reports are written by everyone
4 else that participates?

5 A Right.

6 Q And you wrote a supplemental report?

7 A Yes.

8 Q And have you had occasion to review that supplemental
9 report before you came in here to testify to refresh
10 your memory?

11 A Yes, sir.

12 Q How many reports did you have occasion to write on this
13 occasion?

14 A I wrote two supplemental reports. Each one was about
15 four pages, four pages each.

16 MR. BOTARY: Your Honor, at this time we pass
17 the witness.

18

19 CROSS-EXAMINATION

20 BY MR. LAWRENCE:

21 Q Officer Schauer, with regards to the supplemental
22 reports, did you write one report one day and then a
23 few days later write the second supplemental?

24 A Yes, sir.

25 Q The original supplemental report that you wrote, you

1 have had time to refresh your memory with it, didn't
2 have anything about fingernail scratches or anything of
3 that nature, did it?

4 A. I would have to -- have to look it over again, sir.

5 Q. Do you recall if that first supplemental report had
6 anything about an animal stare that my client was
7 alleged to have had?

8 A. No, sir, I could remember that.

9 Q. That wasn't in your first report?

10 A. I didn't write that down.

11 Q. That's right, that's just something you have added here
12 today; is that right?

13 A. That's right.

14 Q. Did you -- between the time of the first report -- I
15 believe the second report was written on the 8th of
16 February. During that interval of time, did you have a
17 chance to talk with other investigating officers
18 concerning what took place at the scene of the crime?

19 A. The only person I talked to that I can recall is
20 Sergeant Escobedo.

21 Q. And did you all discuss what she had found out under
22 her investigation as to what took place during the
23 robbery itself?

24 A. No. She caught me in the hallway of central records and
25 asked me to -- to add everything I could remember, as

1 much as possible to my -- to my supplementary.

2 Q At that point in time, you didn't add anything about
3 alcohol on the breath, did you?

4 A No, sir, because still -- at this time I still couldn't
5 recall smelling anything on his breath.

6 Q Even today you still can't recall it?

7 A I don't think he -- he -- when I smelled his breath, I
8 couldn't smell anything on his breath.

9 Q Okay. So if he had had alcohol beverage on his breath,
10 you would have certainly put it in both of your reports?

11 A Yes, sir.

12 Q Now, when you pulled Mr. De Luna out from under the
13 truck, what were the lighting conditions there at that
14 particular area where this pickup truck was?

15 A It's a pretty dark street.

16 Q What kind of truck was it, do you recall?

17 A It's an old -- old gold Chevrolet pickup truck, maybe
18 late 70's, early 70's.

19 Q Did any neighbors come out, y'all were right there with
20 flashlights and everything.

21 A Okay, that house there, the pickup is still out there,
22 it's 4945 Franklin and the pickup is still parked out
23 front, I don't know if it's broken down or what, but
24 there were people all over the neighborhood that I had --
25 I had seen as I was walking around, they were out in

1 their front yards looking around because they knew
2 something was going on, dogs were barking, there's a lot
3 of commotion. When we took him out, though, I don't
4 believe -- I didn't -- I don't recall seeing anybody in
5 that front yard.

6 Q And after you took him out from under the pickup truck,
7 did you all pat him down or did anybody pat him down or
8 do anything?

9 A The first thing I did was handcuff him.

10 Q Right there next to the truck?

11 A Yeah, we took him out and there was a small grassy area,
12 sidewalk and grassy area.

13 Q Where was this grassy area if you could point it out for
14 me, please?

15 A It's about two houses -- these two houses down. This
16 would be the curb line, there's a little grass area and
17 then a sidewalk and grass area (indicating).

18 Q Okay. Between the grass and the sidewalk you're talking
19 about that grass area?

20 A Yeah, we laid him down there, immediately handcuffed
21 him.

22 Q You laid him down?

23 A (Witness nods head affirmatively.)

24 Q Did you handcuff him with his hands behind his back?

25 A Right.

1 Q So he was laying face down to the grassy --

2 A Right.

3 Q It had been raining and the grass was wet, of course.

4 A Yes, sir.

5 Q How long did you leave him laying down there?

6 A Not very long because we picked him up again, we moved

7 him a little bit farther out. We picked him up and

8 moved him a little farther out from the pickup truck

9 because I was afraid if there was somebody still under

10 the pickup truck they were going to grab one of us or

11 start shooting because we didn't know what kind of

12 weapon was involved at that time.

13 Q And how far away did you move him at that point?

14 A Probably no more than five or six feet.

15 Q Toward the house, I guess, or --

16 A Toward the house, yes, sir.

17 Q Did you go -- would it be fair to say that you were on

18 the yard then?

19 A Right.

20 Q Who was with you at the time?

21 A Constable Rivera.

22 Q You all were the only two there?

23 A His partner had been on the other side of the truck and

24 Officer Mylett, I learned later, had come up from behind

25 there. I hadn't seen him at the time, but he had come

1 up from behind right after I got there and he was at
2 the back of the truck.

3 Q. So you don't know what time he got there during the
4 proceeding after you had pulled him out or before you
5 had pulled him out, Officer Mylett?

6 A. At that time I didn't.

7 Q. Officer, at that time back on February the 4th, would it
8 be fair to say that you had been a police officer for a
9 year or a little over a year?

10 A. A little over a year.

11 Q. And during this period of a year or a little over a
12 year that you were with the police department, have you
13 had occasion to arrest people?

14 A. Quite a few.

15 Q. Do most people when they are arrested, do they get a
16 little hyper and a little scared and a little wandering
17 and --

18 A. It all depends on the person, sir.

19 Q. So the mere fact that this person, like you said, was
20 hyper or something, that was no indication of anything,
21 was it?

22 A. I wouldn't say that, sir.

23 Q. Pardon?

24 A. I wouldn't say that.

25 Q. You wouldn't say that?

1 A. No.

2 Q. Okay. Based upon your previous statement it depends
3 upon the person.

4 A. That's right.

5 Q. And so --

6 A. And the incident.

7 Q. And the incident. You didn't know --

8 A. Because -- okay, what I'm saying is if I arrest somebody
9 for a crime, you know, if -- they usually know what
10 they're being arrested for or have some kind of an idea.
11 If I just go in the middle of nowhere and pull someone
12 out and they kind of act like they don't know what's
13 going on, it was that kind of thing where I -- it just
14 added to my probable cause to arrest him, the way he was
15 acting.

16 Q. Okay. How many people have you arrested that they
17 didn't know what they were being arrested for?

18 A. There have been some.

19 Q. There have been some?

20 A. That have no idea. And they were usually the ones that
21 were --

22 Q. And they react differently?

23 A. They're usually intoxicated.

24 Q. Okay. And you couldn't -- then you couldn't compare
25 this one to anyone that had been arrested like that.

1 A. They're all a little bit different, all a little bit
2 different.

3 Q. You ever see any other people that you arrested that
4 had this glassy-eyed animal stare?

5 A. Yes, there have been some.

6 Q. Okay, were they charged with DWI or something?

7 A. No, usually those people are -- the ones I can remember
8 with that kind of look in their eye are usually UID
9 subjects, under the influence of drugs.

10 Q. But you didn't determine that he was under any type of
11 influence of drugs, did you?

12 A. No, sir, I couldn't determine that.

13 Q. So you couldn't compare it at that time?

14 A. I didn't think he was. Well, there is a difference,
15 okay? You asked me about his eyes, there was other
16 characteristics of UID, usually they're just out of
17 their minds, they're crazy, they're hard to control and
18 they're very -- they're fighters usually.

19 Q. And they have animal stares?

20 A. Usually they have glassy-eyed stares, they just look
21 and -- they'll look at you and they won't really see
22 you, but they'll be looking at you.

23 Q. Well let me ask you: What's the difference here -- since
24 you have used this terminology here, what's the difference
25 between a glassy-eyed stare that looks right through you

1 and this so-called animal stare that my client has all
2 of a sudden?

3 A. They're similar.

4 Q. They're similar. Have you ever used animal stare before
5 on an individual that you have arrested?

6 A. Not in my reports that I can recall.

7 Q. He's the first one, in fact, he's the only one?

8 A. During court today, sir.

9 Q. Pardon?

10 A. I used it during court today.

11 Q. Yeah, so it would have more effect on the Jury; right?

12 MR. BOTARY: Excuse me, I am going to object
13 to that question, that's really an argumentative-
14 type question.

15 THE COURT: Sustained.

16 Q. (By Mr. Lawrence) Now, when you pulled my client out
17 from underneath this truck, what was he wearing?

18 A. Dark-colored pants.

19 Q. Was that all?

20 A. That's all I could see.

21 Q. You had a chance -- well, okay, let me ask you this: He
22 was wearing dark-colored pants, that's all you saw; how
23 long did you have him in your possession, as such, from
24 the time you arrested him through the time you actually
25 booked him at the city jail? Just a rough estimate.

1 A. I would have to say from the time we actually found him
2 under the truck until the time I got him to the jail was
3 probably at least 35 to 40 minutes at least, somewhere
4 in there. That's just a rough estimate.

5 Q. And during this whole period of time you didn't notice
6 if he had any socks on?

7 A. He didn't have any socks on, I can recall.

8 Q. He didn't -- you would remember if he had had them?

9 A. As far as I can recall, I can't recall any socks.

10 Q. Now, I believe you testified earlier that you had in
11 your foot patrol, while you were out there after you had
12 parked your car on Nemec and you had gotten down, I
13 believe you said that you had walked through houses and
14 I believe you said you jumped fence or jumped a fence.

15 A. I jumped over a fence.

16 Q. Okay. Was the area out there such as there's shrubbery
17 around houses, different type of fences, whether they're
18 cyclone or wood or, you know, things of this -- average
19 neighborhood, I guess.

20 A. Yes, sir, it was an average neighborhood.

21 Q. So that a person, if he was out there and if he
22 happened to be walking or if he happened to pass by some
23 bushes or if he happened to crawl under a truck could
24 conceivably scratch himself in some manner.

25 MR. BOTARY; Your Honor, the State's going to

1 object to that question because he's calling for an
2 opinion and speculation on the part of this witness
3 who would have no knowledge of it.

4 THE COURT: Overruled.

5 MR. LAWRENCE: Your Honor, he's already
6 formed --

7 THE COURT: That's overruled, he can answer it.

8 Q. (By Mr. Lawrence) Could it?

9 THE WITNESS: Do you want me to answer that?

10 THE COURT: Yes, you can answer it.

11 THE WITNESS: I would imagine, sir, it's
12 possible.

13 Q. (By Mr. Lawrence) So you couldn't -- the scratches that
14 you observed on my client, I believe they appeared to
15 you to be fingernails, that's just an opinion on your
16 part?

17 A. That's what I said, sir, I thought.

18 Q. Okay, you thought.

19 A. Uh-huh.

20 Q. They could be anything else?

21 A. Yes, sir.

22 MR. LAWRENCE: Pass the witness.

23 MR. BOTARY: Just a few more questions, Your
24 Honor, please.

25

REDIRECT EXAMINATION

2 BY MR. BOTARY:

3 Q. When you -- while you had this man out of the truck on
4 the grass and you had him in your car and when you later
5 had him at the booking desk, did you ever have occasion
6 to walk up to him and actually smell his breath to see
7 whether there was any alcoholic breath on him?

8 A. It wasn't till I got him to the booking desk I smelled
9 his breath and I really couldn't at that time smell
10 anything on him, it wouldn't have been --

11 Q. You intentionally, then, tried to smell his breath; is
12 that correct?

13 A. Yes, I don't remember if I had him blow on me or what,
14 but I tried to smell some aroma on him and I really
15 couldn't.

16 Q. Now, on Franklin Street where he was arrested, could
17 you tell us about how many houses from the corner he was
18 arrested?

19 A. Two houses.

20 Q. Two houses. About how many houses are on that block on
21 one side of the street, sir?

22 A. Maybe thirteen or so.

23 Q. Thirteen or so? Are you familiar with that area of
24 Corpus Christi?

25 A. I usually don't work that area very much.

1 Q Did you drive past there last night at my request?

2 A I sure did.

3 Q Okay, look at State's Exhibit Number 7, State's Exhibit

4 Number 8. After looking at both those aerial photographs,

5 can you locate a Franklin Street residence where his

6 pickup was parked where you found the Defendant?

7 A I'm looking here, I'm trying to find the streets. Yeah,

8 I believe it's this street right here (indicating).

9 Q Do you see it?

10 A Yes, I believe it's this street here (indicating). The

11 streets are kind of hard to see.

12 Q There's a lot of shrubbery, too, from that aerial

13 photograph.

14 A What's that, sir?

15 Q There's a lot of shrubbery in that area.

16 A There's quite a bit.

17 Q If you can locate the -- the house, could you mark it

18 with this green Marks-A-Lot, just draw a circle around

19 that house.

20 A This one here (indicating).

21 Q Okay, you have marked it on State's Exhibit Number 7; is

22 that correct?

23 A That's correct.

24 (State's Exhibit 17 was marked for

25 identification.)

1 Q (By Mr. Botary) Officer Schauer, look at the Defendant
2 for a minute, would you, please? Does he have that
3 animal-like stare right now?

4 A No, sir.

5 Q Does he have that glassy-type stare that you have
6 described?

7 A No, he doesn't have that smile either on his face.

8 Q Or the smile; is that correct?

9 Let me show you what's been marked for
10 identification as State's Exhibit 17. Would you look at
11 that to yourself, please. Do you recognize that?

12 A Yes, sir.

13 Q Who is that a photograph of?

14 A It's Carlos, the suspect.

15 Q Is that how he looked the night that you arrested him
16 after you took him to the booking desk?

17 A Yes.

18 Q Does he have that stare that you have described?

19 A I think so.

20 Q And is that the -- that's the stare that you called
21 animal-like and glassy?

22 A Yes. This is a front -- this is a straight-on photo,
23 so -- but that's the way he looked.

24 Q This is how he looked when you took him to the booking
25 desk that night?

1 A. He has kind of a smirk on his face, too.

2 Q. This was taken at the police department?

3 A. It was up at the booking desk.

4 Q. On the 4th day of February, 1983; is that correct?

5 A. Yes, sir.

6 MR. BOTARY: We offer that into evidence,
7 State's Exhibit 17.

8 MR. LAWRENCE: Your Honor, may we approach
9 the bench?

10 THE COURT: Yes, sir.

11 MR. LAWRENCE: We can make it off the record.

12 (At this time an off-the-record discussion was
13 held at the bench, after which the following
14 proceedings were had:)

15 THE COURT: I have a matter to take up in
16 your absence and I will ask you, if you would, to
17 go with your bailiff for just one moment.

18 (At this time the Jury was withdrawn from the
19 courtroom, after which the following proceedings
20 were had before the Court, with counsel for the
21 State, counsel for the Defendant and the Defendant
22 present;)

23 MR. LAWRENCE: Your Honor, at this time we
24 would object to the admittance of State's Exhibit
25 Number 17 on two points. Number one, the proper

1 predicate hasn't been laid as to who actually took
2 the picture, what time the picture was taken or
3 anything of this nature, if, in fact, it was taken
4 on February the 4th, 1983, and, secondly, we would
5 also object to the fact that on State's Exhibit
6 Number 17, if I am not mistaken, there is a tag on
7 the front part of it that shows it as State's
8 Exhibit Number 3, which was used at a pre-trial
9 hearing and over on the back of that same photograph,
10 State's Exhibit Number 17, there is a file mark by
11 the district clerk showing that it was filed on
12 June the 20th, and I think both of these writings
13 on the picture itself would somehow or another
14 cause the Jury to wonder that possibly this
15 evidence has already been introduced before and we
16 would ask that as far as the exhibit numbers, such
17 as SX-3 and the file numbers on the back could be
18 covered up in some form or fashion where the Jury
19 is unaware that they do, in fact, exist.

20 THE COURT: Is there any way that you can take
21 that off and put it on the back, then put it very
22 close to this file mark so we can cover both of
23 them up? Can we do that? I wonder if there's any
24 other -- if there are any other exhibits with a
25 file mark on the back of them.

1 MR. LAWRENCE: I think there will be, but
2 they will come up --

3 MR. SCHIWETZ: The automobile, the one that
4 was already admitted of Mr. Baker's automobile.

5 MR. LAWRENCE: Well, we would ask the same
6 be done for that in retrospect here, I don't think --

7 THE COURT: I would think that we should
8 certainly. That one has not been passed to the
9 Jury.

10 MR. LAWRENCE: Right.

11 THE COURT: And they have not seen the back
12 of that at this time.

13 MR. SCHIWETZ: This one (indicating)?

14 THE COURT: Whichever one has a file mark on
15 it.

16 MR. SCHIWETZ: This is State's Exhibit Number
17 9 and it was, it was admitted awhile ago.

18 MR. LAWRENCE: It was, but it wasn't passed
19 to the Jury, so they haven't seen it.

20 THE COURT: Does it have a June 20th file mark
21 on it?

22 MR. SCHIWETZ: Yes, sir, it does.

23 THE COURT: Okay. I think we ought to cover
24 that up some way so they can't later, after they
25 have seen it and it comes back as a matter of

1 record, if it does, then it will speak for itself.

2 MR. LAWRENCE: Could we also have a ruling
3 on the first part of the objection to State's
4 Exhibit Number 17?

5 THE COURT: That portion of it is overruled.

6 MR. LAWRENCE: Okay, note our exception.

7 (At this time there was a brief recess in the
8 proceedings while State's Exhibit 9 and State's
9 Exhibit 17 were conformed to the Court's rulings,
10 after which the following proceedings were had:)

11 THE COURT: All right, will that do?

12 MR. LAWRENCE: Yes, sir.

13 THE COURT: Do you want to bring them back in,
14 please.

15 (At this time the Jury was returned to the
16 jury box, after which the following proceedings
17 were had before the Court, in the presence and
18 hearing of the Jury, with counsel for the State,
19 counsel for the Defendant and the Defendant present:)

20 MR. BOTARY: Your Honor, we offer at this
21 time State's Exhibit Number 17.

22 MR. LAWRENCE: Your Honor, we have already
23 made our objection.

24 THE COURT: Yes, and I have made my ruling.

25 MR. BOTARY: Your Honor, could we pass the

1 photograph to the Jury?

2 THE COURT: Yes, pass this among you without
3 comment, please.

4 MR. BOTARY: Pass the witness.

5

6 RECROSS-EXAMINATION

7 BY MR. LAWRENCE:

8 Q. Officer Schauer, State's Exhibit 17, the one that's
9 being passed around right now, when you looked at that
10 particular exhibit it was just your opinion that that
11 was an animal-like stare; is that correct?

12 A. That's correct, sir.

13 Q. Up until this point, my client has had flashlights
14 shining in his face, he's had a flash camera shining in
15 his face, and this is just an opinion on your part, to
16 someone else it could look just normal, couldn't it?

17 A. Well, I'm thinking back to what he looked like earlier.
18 In my opinion, this does him fair justice of what he
19 looked like that night. That's my opinion, sir.

20 Q. This one doesn't do him justice?

21 A. I think it does.

22 Q. It does do him justice.

23 A. Fair justice.

24 Q. Fair justice. This so-called smirk may be just the way
25 his mouth is, but to you it's a smirk?

1 A. That's right, sir.

2 Q. Smirk to show defiance that here's a suspect been
3 charged with a heinous crime and to show defiance right,
4 so we use the word "smirk"?

5 A. That may be your opinion, but it's not mine.

6 MR. LAWRENCE: Pass the witness.

7 MR. BOTARY: No further questions, Your Honor.

8 THE COURT: Thank you, sir, you may step down.

9 You may be excused subject to recall.

10 MR. SCHIWETZ: I call Officer Mylett.

11 THE COURT: Officer Mylett.

12 (At this time the witness was sworn by the
13 clerk.)

14 THE COURT: When you finish giving your
15 testimony, the Rule has been invoked,

16 MR. MYLETT: Yes, sir.

17 THE COURT: Are you familiar with that?

18 MR. MYLETT: Yes, sir.

19 THE COURT: Fine, thank you, sir.

20

21 THOMAS DAMIEN MYLETT,

22 having been called as a witness by the State and after having
23 been first duly sworn to tell the truth, the whole truth and
24 nothing but the truth, testified upon his oath as follows:

25

DIRECT EXAMINATION

2 BY MR. SCHIWETZ:

3 Q Would you please state your name for the Jury, sir?

4 A Thomas Damien Mylett.

5 Q And you're employed as a police officer?

6 A Yes, sir.

7 Q How long have you been with the Corpus Christi Police
8 Department?

9 A A year and seven or eight months.

10 Q And are you -- have you been a patrolman the whole time?

11 A No, sir.

12 Q What else have you done?

13 A Undercover work with the vice squad and enforcement with
14 the vice squad.

15 Q How long have you lived in Corpus Christi?

16 A A year -- two years. Two years.

17 Q Where did you live prior to that?

18 A New York.

19 Q Is that where you're from?

20 A Yes, sir.

21 Q I'm going to ask you if you are familiar with the
22 Defendant in this case, Mr. Carlos De Luna?

23 A Yes, sir.

24 Q Will you point out the man that you are familiar with?

25 A Yes, sir, the gray suit right there.

1 MR. SCHIWETZ: Okay. Could the record reflect
2 he is pointing at the Defendant, Your Honor.

3 THE COURT: All right.

4 Q. (By Mr. Schiwetz) Were you familiar with this Defendant
5 prior to February 4th, 1983?

6 A. Yes, sir, I was.

7 Q. You were present at his arrest, were you not?

8 A. Yes, sir.

9 Q. Did you have any part-time jobs at the time that you
10 participated in the arrest of Mr. De Luna?

11 A. Yes, sir.

12 Q. Where did you work?

13 A. Club Casino, 1001 South Port.

14 Q. And what did you do there?

15 A. Security work. It's like an off-duty policeman to
16 maintain order in the club.

17 Q. Did you work days or nights?

18 A. Nights.

19 Q. And did you work in uniform?

20 A. Yes.

21 Q. And did you wear your Corpus Christi Police Department
22 uniform --

23 A. Yes.

24 Q. -- when you did that?

25 And for how long did you do that?

1 A. About eight months.

2 Q. Okay. And were you paid by that club itself or were
3 you paid by the City?

4 A. By the club itself, sir.

5 Q. And can you describe for the Jury generally what your
6 duties there were?

7 A. To remove anyone that was intoxicated to a point that
8 they were a danger to themselves or someone else,
9 break up fights, the duties that a bouncer would do in a
10 club.

11 Q. And the Club Casino, does it serve alcoholic beverages?

12 A. Yes, sir.

13 Q. Through your work at the Club Casino, did you come in
14 contact with the Defendant in this case, Mr. De Luna?

15 A. Yes, sir.

16 MR. LAWRENCE: Your Honor, I am going to object.
17 They're getting into the area of extraneous
18 offenses here.

19 MR. SCHIWETZ: I don't plan on going into any
20 extraneous offenses, Your Honor.

21 MR. LAWRENCE: Well, then, I don't see the
22 relevancy of this questioning, then, if they're
23 not going into --

24 THE COURT: Do you want to come up and tell
25 me about it right now before we --

1 MR. SCHIWETZ: Yes, sir.

2 THE COURT: Just tell me off the record.

3 (At this time an off-the-record discussion was

4 held at the bench, after which the following

5 proceedings were had:)

6 THE COURT: Your objection is overruled.

7 MR. LAWRENCE: Note our exception.

8 Q (By Mr. Schiwetz) Mr. Mylett, was the Defendant in this

9 case, Mr. Carlos De Luna, a regular patron at the

10 Casino Club? Could I have a yes or no answer?

11 A Yes, sir.

12 MR. SCHIWETZ: I will pass the witness. Thank

13 you, sir.

14 MR. LAWRENCE: No questions.

15 THE COURT: Fine, thank you, sir.

16 MR. LAWRENCE: No questions.

17 THE COURT: Thank you, sir, you may be excused

18 subject to recall.

19 MR. SCHIWETZ: Your Honor, could I have just

20 a moment to check through my witnesses with the

21 witness coordinator?

22 THE COURT: Certainly.

23 MR. SCHIWETZ: I call Mr. Pete Gonzales.

24 Thank you, Your Honor.

25 (At this time the witness was sworn by the

1 clerk.)

2 THE CLERK: Please have a seat in the
3 witness box.

4 THE COURT: Mr. Gonzales, are you familiar
5 with what the Rule is in a trial of a criminal case?

6 MR. GONZALES: Yes, sir.

7 THE COURT: You are, fine. The Rule has been
8 invoked, so when you finish giving your testimony --

9

10 PETE GONZALES,

11 having been called as a witness by the State and after having
12 been first duly sworn to tell the truth, the whole truth and
13 nothing but the truth, testified on his oath as follows:

14

15 DIRECT EXAMINATION

16 BY MR. SCHIWETZ:

17 Q It's probably redundant, but could you tell the Jury what
18 your name is?

19 A My name is Pete Gonzales.

20 Q Where are you from originally, Mr. Gonzales?

21 A Kingsville, Texas.

22 Q And have you lived in Kingsville or Corpus Christi all
23 your life?

24 A No, sir.

25 Q Okay. Where else have you lived?

1 A. Quite a few countries, Germany, I was -- I spent 22
2 years -- 22 and a half years in the military.

3 Q. In what branch?

4 A. Air Force.

5 Q. And after you retired, what did you do?

6 A. I immediately went to work for Diamond Shamrock
7 Corporation.

8 Q. Does Diamond Shamrock run the Sigmor Shamrock Stations?

9 A. Yes, sir.

10 Q. And how long have you been working with them?

11 A. Approximately five years.

12 Q. And what do you do for them?

13 A. I'm a supervisor for them.

14 Q. And how many stations do you supervise?

15 A. Six.

16 Q. Do you supervise the station at 2602 South Padre Island
17 Drive?

18 A. Yes, sir.

19 Q. And how long have you been supervising that station?

20 A. Off and on approximately four years.

21 Q. Do you know -- did you know an employee by the name of
22 Wanda Lopez?

23 A. Yes, sir, she was --

24 Q. Could you take a look at that board up there and look at
25 State's Exhibit Number 1, which is that first picture

1 there. Is that the Wanda Lopez that worked for you?

2 A. Yes, sir.

3 Q. And how long had she been working for you, if you know?

4 A. Approximately a year.

5 Q. Do you recall the first time you ever met her?

6 A. Yes, sir.

7 Q. And when was that?

8 A. That was back in January of -- of eighty -- '82.

9 Q. In what capacity did you first meet her?

10 A. She applied for employment.

11 Q. And did you interview her?

12 A. Yes, sir, I interviewed her.

13 Q. Did you hire her?

14 A. Yes, sir, I hired her.

15 Q. What shift did she work over at your station there on

16 SPID?

17 A. Sir?

18 Q. What shift did she work at SPID?

19 A. She normally worked the 2:00 to 10:00, 2:00 in the

20 afternoon, 10:00 at night.

21 Q. Did she work it by herself or did she have someone else

22 working with her?

23 A. Normally by herself.

24 Q. And why is it that you only have one person working

25 there?

1 A. The business -- the volume of business is not sufficient
2 to require two people.

3 Q. You have some other stations in town which have a higher
4 volume of business where you have several employees
5 there --

6 A. Right, sir.

7 Q. -- most of the time, don't you?

8 I'm going to ask you if you had occasion to go to
9 that particular store on the 4th of February at -- of
10 1983.

11 A. Yes, sir, I did.

12 Q. Do you recall about what time you went there?

13 A. I was there in the morning and also I got called back
14 at 8:00 -- about 8:15 in the evening, somewhere around
15 8:15.

16 Q. And who called you back?

17 A. The answering service for Jackson Alarm Systems.

18 Q. Does Jackson Alarm Systems handle y'all's business there?

19 A. Yes, sir.

20 Q. What kind of alarm system do you have?

21 A. We have a silent alarm for armed robberies, we have an
22 intrusion-type alarm for break-ins.

23 Q. And after you got that call, what did you do?

24 A. I immediately went -- went to the store.

25 Q. Okay. When you arrived there, what did you find?

1 A. I found the place completely engulfed with police cars
2 and my employee, Wanda Lopez, was laying -- the medics
3 ambulance service was working on her at the time.

4 Q. What kind of -- what does it take to trigger that alarm
5 to notify Jackson Alarm Service?

6 A. It's a push of a button, sir.

7 Q. And where is that button located?

8 A. It's located right by the cash drawer, right beside it.

9 MR. SCHIWETZ: Could I get this marked as a
10 State's Exhibit, please?

11 (State's Exhibit 18 was marked for
12 identification.)

13 Q. (By Mr. Schiwetz) Let me show you what's marked as
14 State's Exhibit Number 18 for identification purposes
15 and ask you if you can identify that.

16 A. The button itself?

17 Q. Just the photograph for right now.

18 A. Yes, sir, I can identify the photo.

19 Q. And what is that?

20 A. That is the inside of the sales area of a store.

21 Q. And is this the way it appeared to you on February 4th,
22 1983?

23 A. Yes, sir.

24 MR. SCHIWETZ: I would like to tender State's
25 Exhibit Number 18.

1 MR. LAWRENCE: No objections, Your Honor.

2 THE COURT: It will be received.

3 Q. (By Mr. Schiwetz) Let me show you now what's marked as
4 State's Exhibit Number 18 that has been admitted and
5 ask you to tell the Jury what that shows.

6 A. It shows a -- the sales area, the back of the counter of
7 our store and it's cluttered with -- there's blood and
8 just --

9 Q. Is this the way it appeared back on February 4th?

10 A. Right, sir.

11 Q. That night when you went there?

12 A. Right, sir.

13 Q. Could you point out for the Jury where that button is
14 that you have to push to notify Jackson Alarm?

15 A. It's located right here on the side of the cash drawer
16 (indicating).

17 Q. Okay. Could you draw a circle around it.

18 A. (Witness complies.)

19 Q. Okay. For the sake of the record, you have circled it
20 in blue; is that correct?

21 A. Right, sir.

22 THE COURT: Pass this among you without
23 comment.

24 Q. (By Mr. Schiwetz) How often do you do an inventory in
25 that particular store?

1 A. Once -- once a week.

2 Q. And on what day, if you have a particular day?

3 A. Yes, sir. It's normally done -- it's -- it's scheduled
4 to be done on Tuesdays.

5 Q. When was the last inventory that had been done before
6 this particular date, February 4th, 1983?

7 A. It was on Tuesday.

8 Q. Would that be the Tuesday immediately preceding the --

9 A. Tuesday immediately preceding the 4th.

10 Q. And do y'all ordinarily come out with your figures
11 exactly balanced?

12 A. No, sir.

13 Q. Is it customary that you have either a shortage or a
14 surplus?

15 A. Yes, sir.

16 Q. On the average, what do your shortages or surplusses
17 come out to?

18 A. Between 25 and \$50.

19 Q. Did you perform an inventory after this rob -- murder?

20 A. Yes, sir.

21 Q. When did you perform that?

22 A. Immediately that -- we started the physical count about
23 11:00 o'clock in the evening.

24 Q. And did you arrive at a figure of shortage for that
25 particular store four days after that first inventory?

1 A. Yes, sir.

2 Q. And what was the shortage that night after Mrs. Lopez

3 had been murdered?

4 A. A hundred sixty-six dollars and eighty-six cents.

5 Q. Does your company have a policy that you inform your

6 employees about what they're supposed to do when someone

7 comes in and tries to rob them?

8 A. Yes, sir, we do.

9 Q. And what are they instructed to do?

10 A. Their instructions to do is to do what the robber --

11 robber, robberess or the person that's going to rob

12 them, basically do what they ask and if they ask for the

13 money to go ahead and proceed and give them the money,

14 but by all means try to avoid any physical harm to them.

15 Q. Mr. Gonzales, I want to show you what's marked as

16 State's Exhibit Number 2, being a cassette. Have you

17 seen that cassette before?

18 A. Yes, sir.

19 Q. And where was that?

20 A. At your office.

21 Q. Did you have an opportunity to listen to it in my

22 office?

23 A. Yes, sir, I did.

24 Q. There is one female voice on there. Could you identify

25 that female voice?

1 A. Yes, sir.

2 Q. And whose voice was that?

3 A. Wanda J. Lopez.

4 Q. Okay, is that the same Wanda Lopez whose picture is
5 over there on that bulletin board?

6 A. Yes.

7 Q. State's Exhibit Number 1.

8 A. Yes.

9 MR. SCHIWETZ: Pass the witness. Thank you,
10 sir.

11

12 CROSS-EXAMINATION

13 BY MR. LAWRENCE:

14 Q. Mr. Gonzales, there's no cash registers at Sigmor
15 Service Stations, are there?

16 A. Yes, sir, we have two stores. I do have cash registers.

17 Q. Did this particular store on February the 4th, 1983,
18 have a cash register?

19 A. No, sir, it did not.

20 Q. That's the reason that every week you go in there and
21 make an inventory of what's in there and then do your
22 adding and subtracting to find out how much money you
23 should have made?

24 A. Right, sir.

25 Q. Now, do you, in that store, have a little cash box?

1 A. Yes, sir, we do.

2 Q. Do you in that particular store also have a -- an area
3 of -- maybe not -- I guess the closest thing we could
4 call them would be a safe type situation, or a safe?

5 A. We have three safes.

6 Q. In that store?

7 A. Yes, sir.

8 Q. And where is the key kept to that safe?

9 THE COURT: Now, is this necessary? I hate to
10 get -- let him divulge any information like that.

11 MR. LAWRENCE: Your Honor, I'm going to point
12 out in this exhibit something that I think is
13 relevant to this particular case.

14 THE COURT: All right. I don't want to destroy
15 his complete security system unnecessarily, that's
16 my --

17 MR. LAWRENCE: I'm just trying to get to the
18 heart of the whole key here, the robbery key on
19 this and if I can point it out, I will be happy to
20 point it out on State's Exhibit Number 18.

21 THE COURT: All right.

22 MR. LAWRENCE: May I approach the witness?

23 THE COURT: Certainly.

24 Q. (By Mr. Lawrence) Mr. Gonzales, I'm going to show you
25 what has already been marked and admitted as State's

1 Exhibit Number 18 and ask you if these are the so-called
2 safes?

3 A. Yes, sir. Those are three safes.

4 Q. All right. And do you know what this little item is
5 here right down below the safe, part of the safe and
6 right above these Coke bottles that are here?

7 A. That is a change box.

8 Q. Okay. And what does that in effect do or what is the
9 purpose of that?

10 A. That keeps the change, extra change in there in a little
11 box; in other words, once the cash drawer is depleted of
12 change, we normally go to that reserve right there.

13 Q. Okay. In that particular picture there there is a key.
14 Can you look in there and see if there was or do you
15 recall from actually being on the scene if there was a
16 key in -- in place in that change box?

17 A. There is normally a key in place most of the time.

18 Q. Okay. And normally if you want to open up anything
19 there, especially those other three cash boxes or
20 whatever they are, you need a key also.

21 A. No, sir, you need combinations.

22 Q. You need combinations for them?

23 A. Right, sir.

24 Q. But the one down there, you need a -- just the key.

25 A. Just the key.

1 Q So if somebody wanted change -- and when you talk about
2 change, what are you talking about?

3 A I'm talking about silver, copper, that's what I'm
4 talking about.

5 Q How much is usually kept down there?

6 A Between 20 and \$30 worth of silver.

7 Q Now, this particular location on SPID, were there more
8 than one cash drawer there?

9 A Yes, sir, we have two.

10 Q Were both of them disturbed?

11 A Sir, when I got there the police had already gone
12 through it. I don't understand what you mean.

13 Q Well, had -- obviously one of the cash drawers had been
14 opened and you could see that it was open and so forth.

15 A Right. One of them had -- had -- they were only using
16 one cash drawer, sir, only one was being used.

17 Q Now, when you say, "they were only using," you're
18 referring to the employees of Sigmor?

19 A Right. They were only using -- she was only using one.

20 Q Was the other one empty for all practical purposes?

21 A For all practical purposes, right.

22 Q Who did this particular inventory?

23 A I did, sir.

24 Q How long did it take you, sir?

25 A It takes approximately two to three hours to do an

1 inventory.

2 Q And the usual shortage on every inventory is anywhere

3 from 20 to \$50?

4 A Normally this is if everything is counted correctly and

5 at the -- to the best, this is the norm.

6 Q Okay.

7 A This is the norm.

8 Q Now, when you say you came up with a shortage of a

9 hundred and sixty-six dollars and some cents, does that

10 take into account that it could be anywhere from 25 to

11 \$50 below that, above that or --

12 A No, sir.

13 Q Okay. So what could -- in other words, are you saying

14 that a hundred and sixty-six dollars and some cents was

15 the actual amount that was actually taken?

16 A That I -- I -- I -- I don't know, sir. This is what the

17 physical inventory after we did the complete count of the

18 store, we could not account for a hundred and sixty-six

19 dollars and eighty-six cents.

20 Q And the usual shortage is 25 to 50.

21 A Right, sir.

22 Q You don't know -- who did the last inventory prior to --

23 A We did, sir.

24 Q We, you, yourself?

25 A I -- I --

1 Q You had done it that previous Tuesday?

2 A Right, sir.

3 MR. LAWRENCE: I'll pass the witness.

4 MR. SCHIWETZ: I don't have any more questions,
5 sir.

6 THE COURT: Mr. Gonzales, I'm not sure that
7 you do know what the Rule is. The Rule is that a
8 witness is not supposed to tell any other witness
9 his testimony or discuss his testimony with another
10 witness.

11 MR. GONZALES: Thank you, sir.

12 THE COURT: Okay, fine. You may be excused,
13 thank you, sir.

14 MR. GONZALES: Thank you, sir.

15 MR. SCHIWETZ: I would like to call Mr. Wagner.

16 THE COURT: Mr. Wagner.

17 (At this time the witness was sworn by the
18 clerk.)

19 THE COURT: Mr. Wagner, do you know what the
20 Rule is pertaining to witnesses in a criminal case?

21 MR. WAGNER: Not exactly, sir.

22 THE COURT: Okay. The Rule has been invoked
23 in this case, consequently when you finish giving
24 your testimony don't discuss that testimony with
25 any other witness in this case. You may, if you

1 wish, discuss it with counsel on either side, but
2 if you do this, don't do it within the presence or
3 hearing of another witness.

4 MR. WAGNER: Okay.

5 THE COURT: Fine.

6
7 MARK W. WAGNER,

8 having been called as a witness by the State and after having
9 been first duly sworn to tell the truth, the whole truth and
10 nothing but the truth, testified on his oath as follows:

11
12 DIRECT EXAMINATION

13 BY MR. SCHIWETZ:

14 Q Would you please state your name for the Jury, your
15 full name, sir?

16 A Mark W. Wagner.

17 Q And how are you employed, Mr. Wagner?

18 A I'm employed as a fire fighter and paramedic for the
19 City of Corpus Christi.

20 Q Back on February 4th, 1983, can you tell the Jury what
21 your duties were?

22 A I was assigned as a paramedic in charge of Ambulance 608
23 for the City Fire Department.

24 Q Did you have an occasion on that night to make a call in
25 the 2600 block of South Padre Island Drive at a Sigmor

1 Station?

2 A. Yes, sir, I did.

3 Q. Were you by yourself or was someone else --

4 A. I had my partner, George Migrow [phonetic spelling] and

5 Jim Vanecek, an MT student who was with me on the

6 ambulance on that particular day.

7 Q. And when you arrived there, what did you find?

8 A. Well, we received a call as a -- as a possible shooting.

9 Upon arrival at the scene, we found approximately 25-year-

10 old female was lying on the pavement in front of the

11 building, sustained an apparent stab wound to the left

12 chest.

13 Q. Okay. What did y'all do once you got there?

14 A. After our initial assessment, we proceeded with our

15 emergency care procedures and contacted the hospital for

16 physician advice and we proceeded with our treatment as

17 per the physician there and then transported the patient

18 to Memorial Medical Center.

19 Q. And how long were y'all actually out there at the Sigmor

20 Station?

21 A. At the scene, we were there for 13 minutes and 40

22 seconds.

23 Q. Did you personally attempt to aid the woman who was

24 lying there?

25 A. Yes, sir.

1 Q. Can you describe her condition to the Jury?

2 A. Well, upon arrival, the -- the lady was still semi-
3 conscious, she wasn't responding by speaking or anything,
4 she was just moaning slightly. She appeared to be in a
5 condition of shock at that time and we did take measures
6 to attempt to counteract that.

7 Q. Did you have any success?

8 A. No, sir, we did not.

9 Q. Did you transport her to the hospital?

10 A. Correct, uh-huh, to Memorial Hospital.

11 Q. And how long were you at Memorial Hospital?

12 A. From the time -- how long were we at the hospital?

13 Q. Yes.

14 A. Approximately thirty minutes after we got there and it
15 took us four minutes and 30 seconds from the time we
16 left the scene until we got to the hospital and then
17 cleaning up and restocking, it took about a half hour
18 after that.

19 Q. Were you present at the hospital when she did die -- was
20 pronounced dead, excuse me?

21 A. Not to my knowledge, they were still continuing care in
22 an attempt to resuscitate at the hospital.

23 Q. Is it your testimony there was one stab wound; is that
24 correct?

25 A. Correct.

1 Q Can you show the Jury approximately where it was?

2 A It was approximately on the outer -- outer portion of the
3 left chest approximately right here (indicating).

4 MR. SCHIWETZ: Thank you. I'll pass the
5 witness.

6 MR. LAWRENCE: No questions.

7 MR. DE PENA: No questions.

8 THE COURT: Thank you, sir. You may step down
9 and be excused, subject to recall.

10 MR. SCHIWETZ: Your Honor, we're going to be
11 using a translator with this particular witness, he
12 needs a little bit of help.

13 MR. ABARCA: Your Honor, I am the official
14 interpreter for the courts here and have been for
15 the past thirty-six years, Tony Abarca.

16 THE COURT: I am overwhelmed.

17 MR. ABARCA: You can go ahead and swear him in
18 and I will repeat it after you.

19 (At this time the witness was sworn through
20 the interpreter by the clerk.)

21 THE COURT: Have you been sworn in to truly --

22 MR. ABARCA: Yes, sir.

23 THE COURT: -- translate --

24 MR. ABARCA: Yes, sir. May I inform the
25 witness what my function is going to be so he will

1 know why I'm here?

2 THE COURT: Certainly.

3 MR. ABARCA: Thank you.

4

5 ARMANDO GARCIA,

6 having been called as a witness by the State and having been
7 first duly sworn through the interpreter to tell the truth,
8 the whole truth and nothing but the truth, testified upon his
9 oath as follows:

10

11 DIRECT EXAMINATION

12 BY MR. SCHIWETZ:

13 (At this time, the questions were translated
14 to Spanish and the answers to English and the
15 witness testified by and through the court
16 interpreter, Tony Abarca.)

17 Q. (By Mr. Schiwetz) Could you please state your name for
18 the Jury.

19 A. Armando.

20 MR. ABARCA: A-R-M-A-N-D-O.

21 THE WITNESS: Garcia.

22 MR. ABARCA: G-A-R-C-I-A.

23 Q. (By Mr. Schiwetz) And where do you live?

24 A. 4946 Easter.

25 Q. And is that a house that's on the corner?

1 A. No, the second one.

2 Q. And what is it second from the corner of?

3 A. From Nemec.

4 Q. Nemec?

5 A. Nemec.

6 Q. And how far is that from the Sigmor Station on South

7 Padre Island Drive?

8 A. Two blocks.

9 Q. Mr. Garcia --

10 MR. ABARCA: Let me get out of the way I think.

11 Stand over here.

12 Q. (By Mr. Schiwetz) Let me show you this drawing which

13 is State's Exhibit 11. If this is South Padre Island

14 Drive (indicating) and this is the Sigmor Station

15 (indicating), this would be Nemec, this would be Easter,

16 your house would be right here, would it not

17 (indicating)?

18 A. Yes.

19 Q. Do you remember back on February 4th, 1983, when there

20 was some excitement in your neighborhood?

21 A. Well, I arrived late from work.

22 Q. Do you remember talking to some policemen that night?

23 A. No.

24 Q. Do you remember talking to any policemen within the next

25 day or two?

1 A. Two days later.

2 Q. That would be on a Sunday?

3 A. Yes.

4 Q. And how did you talk to the police officers?

5 A. Because I found there in the corner of my yard some

6 shoes and in the rear of the yard a shirt.

7 Q. What were you doing when you found these shoes and shirt?

8 A. I was cutting the grass in the yard.

9 Q. Was the grass fairly high?

10 A. No.

11 Q. Where was the shirt?

12 A. Right at the very corner of the fence at the house.

13 Q. Is that close to any doors?

14 A. No.

15 Q. Was the shirt just lying stretched out or was it wadded

16 up?

17 A. Spread out.

18 Q. And the shoes, where did you find them?

19 A. Right at the corner of the house.

20 (State's Exhibits 19, 20, 21, 22 and 23 were

21 marked for identification.)

22 Q. (By Mr. Schiwetz) Mr. Garcia, I want you to look at

23 this paper bag marked State's Exhibit 19. Inside there's

24 a couple items marked State's Exhibit Number 20 and 21.

25 Do those look like the shoes that you found in your yard

1 that day?

2 A. More or less, yes.

3 Q. Let me show you now a paper bag marked State's Exhibit
4 Number 22.

5 MR. ABARCA: Exhibit what?

6 MR. SCHIWETZ: Twenty-two.

7 Q. (By Mr. Schiwetz) And inside there's a shirt marked
8 State's Exhibit Number 23. Does that shirt look like
9 the shirt that you turned over to the police department?

10 A. Yes.

11 Q. Do you know what those shoes and that shirt were doing
12 in your yard?

13 A. No.

14 Q. Had you ever seen them before?

15 A. No.

16 MR. SCHIWETZ: Thank you, sir.

17 MR. DE PENA: We have no questions, Your
18 Honor.

19 THE COURT: All right, fine. Thank you, you
20 may be excused.

21 MR. ABARCA: Can he go home?

22 THE COURT: Yes. Subject to recall if
23 necessary.

24 MR. ABARCA: Thank you, Your Honor.

25 THE COURT: I am overwhelmed, you show a great

1 deal of expertise in this and it doesn't take you
2 long to look at a hot horseshoe, does it?

3 (At this time the witness was sworn by the
4 clerk.)

5 THE CLERK: Okay, would you have a seat over
6 there in the witness box?

7 THE COURT: When you have finished giving your
8 testimony, the Rule has been invoked, which means
9 that you may not discuss it with any other witness
10 in this case.

11

12 DOROTHY GOMEZ,

13 having been called as a witness by the State and after having
14 been first duly sworn to tell the truth, the whole truth and
15 nothing but the truth, testified upon her oath as follows:

16

17 DIRECT EXAMINATION

18 BY MR. SCHIWETZ:

19 Q Would you please state your name for the Jury, ma'am?

20 A Dorothy Gomez.

21 Q And how are you employed?

22 A I'm a Registered Nurse at Memorial.

23 Q And how long have you been working at Memorial Medical
24 Center?

25 A About ten years.

1 Q And is there a particular place you work there?

2 A Emergency room.

3 Q How long have you been working the emergency room?

4 A Ten years.

5 Q And what are your duties there?

6 A Sir?

7 Q What are your duties there?

8 A I function as a Registered Nurse.

9 Q Were you working there back on February 4th of this year,

10 1983?

11 A I was.

12 Q And were you present and working there when a woman

13 named Wanda Lopez was brought in that night?

14 A I was.

15 Q You didn't know Mrs. Lopez, did you?

16 A Did I know her?

17 Q You didn't personally know her, did you?

18 A No. No. Huh-uh.

19 Q Did you participate in the efforts to save her life?

20 A I did.

21 Q And can you tell the Jury what kind of injuries she had

22 suffered?

23 A When she came in, she came in with a stabbing on her

24 left side of her chest.

25 Q Was -- what was done to try and save her life?

1 A. We did -- she came in, they were doing CPR and we
2 continued there at Memorial and the emergency room
3 doctor ordered his emergency drugs and tried to insert
4 a chest tube.

5 Q. Can you tell the Jury what a chest tube is?

6 A. A chest tube is a tube that goes into the cavity between
7 the chest wall and the lungs to release any fluid or
8 fluid -- air or fluid in between the cavity.

9 Q. And was an incision made to try and do that?

10 A. Yes, sir.

11 Q. And where was that incision made?

12 A. Right -- right next -- oh, I guess right -- I guess it
13 was right below the original stab wound or wound that
14 she came in with.

15 Q. Were any of these efforts successful?

16 A. No, sir.

17 Q. Do you recall what time she died or was declared dead?

18 A. I don't recall. We worked on her for quite a while,
19 about an hour, a little over an hour.

20 MR. SCHIWETZ: Could I get this marked as
21 State's Exhibit, please.

22 THE WITNESS: Do you want me to look at it?

23 (State's Exhibit 24 was marked for
24 identification.)

25 Q. (By Mr. Schiwetz) I am going to refer you to State's

1 Exhibit Number 24 and ask you if you can identify that.

2 A. Identify what, the handwriting?

3 Q. Well, the document itself.

4 A. Oh. The patient was pronounced dead by Dr. Arringdale

5 at 9:55.

6 Q. My question was: Can you identify what the document is?

7 A. This is an emergency chart.

8 Q. Are those filled out on every patient that comes in?

9 A. Exactly, yes, sir.

10 Q. And who fills those out?

11 A. We do, and the doctor.

12 Q. And is that the type of care which has been admitted

13 to the person once they are admitted into the emergency

14 room?

15 A. We document our notes and the doctors document their

16 notes as to what time everything is given and what's

17 being done.

18 Q. By referring to that document, can you refresh your

19 memory as to what time she was pronounced dead?

20 A. 9:55.

21 Q. P.M.?

22 A. P.M., exactly.

23 MR. SCHIWETZ: Thank you very much. I don't

24 have any more questions.

25 MR. LAWRENCE: We have no questions, Your Honor.

1 THE COURT: Thank you, you may be excused.

2 MR. SCHIWETZ: Your Honor, could we have a
3 recess?

4 THE COURT: I was about to ask you if we could.

5 MR. SCHIWETZ: Yes.

6 THE COURT: Would you like time for a cup of
7 coffee? All right. Take long enough to get a cup
8 of coffee, then.

9 (At this time a recess was taken, after which
10 the following proceedings were had before the
11 Court, in the presence and hearing of the Jury,
12 with counsel for the State, counsel for the
13 Defendant and the Defendant present:)

14 (At this time the witness was sworn by the
15 clerk.)

16 THE COURT: The Rule has been invoked after
17 you finish giving your testimony. Do you understand
18 the Rule?

19 MR. INFANTE: Yes, Your Honor.

20 THE COURT: You may have your seat there if
21 you like.

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JOEL INFANTE,

having been called as a witness by the State and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. SCHIWETZ;

Q. Would you please state your name for the Jury, sir.

A. My name is Joel Infante.

Q. And how are you employed?

A. I am employed by the City of Corpus Christi Police Department.

Q. And how long have you been with the police department?

A. I have been with the police department about eleven and a half years.

Q. And how long -- what division are you assigned to?

A. I am a sergeant assigned to the identification division.

Q. How long have you been with the identification division?

A. About seven years.

Q. As a sergeant in the identification division, can you tell the Jury what your duties are?

A. Our duties consist of fingerprinting prisoners that are arrested by the police; mugs or photos; we also operate the breathalyzer on DWI's; we also fingerprint immigrants that apply for citizenship; we also make field calls that

1 involve any burglaries, tests or armed robberies;
2 sometimes we even do homicide photography and finger-
3 prints.

4 Q Specifically referring to the date of February the 4th,
5 1983, did you have occasion to make a call out in the
6 2600 block of South Padre Island Drive?

7 A Yes, I did.

8 Q And did you go to the Sigmor Station there?

9 A Yes, I did.

10 Q And while you were there, did you do any identification
11 work?

12 A I did.

13 Q In regard to photographs, did you take any photographs
14 out there?

15 A Yes, I took photographs.

16 Q I want to direct your attention to those photographs
17 that are posted on that board over there, the State's
18 Exhibits showing that Sigmor Station and the three views
19 of the front of the station. Did you take all those?

20 A Yes, I took those photographs.

21 Q Did you take them that night? You can go ahead and have
22 a seat. Did you take them the night of the 4th?

23 A Yes, sir, I did.

24 Q And aside from taking photographs, what other duties
25 did you perform out there that night?

1 A. After I took the photographs of the scene, I processed
2 the inside of the service station for fingerprints.

3 Q. When you say "process," can you tell the Jury what you
4 mean?

5 A. When we process for fingerprints, we try to find
6 fingerprints, latent prints or prints that are not seen
7 by the eye, we use black powder which is mostly carbon
8 powder, we use a nylon brush and we process an area to
9 see if we can adhere the fingerprint, if it's there, if
10 it comes out or enhance it with the powder so we can see
11 it with the eye and can recover it.

12 Q. Tell the Jury how a fingerprint is actually made, like,
13 say I press my thumb down on this table, how does it
14 leave a print?

15 A. A print is mostly either perspiration or oil or any
16 substance that would be on the fingers of a person and
17 this print is actually -- if you touch a glass or
18 something that's smooth and clean and apply pressure,
19 enough pressure, a print will be left on the surface.

20 Q. So a print that's left isn't actually left from, say,
21 the skin, it's left from the oils or moisture in between?

22 A. That's correct.

23 Q. The rows?

24 A. That's correct.

25 Q. And how long have policemen, not just policemen here

1 but policemen around the country, been using fingerprints
2 as a method of identification in this country?

3 A. I'm not exactly sure, but it's been established for
4 many, many, many years.

5 Q. And do y'all print every person you take in as a
6 prisoner over there at the police department?

7 A. About 90 percent of the people that are arrested are
8 fingerprinted for records.

9 Q. Do y'all keep permanent records of those prints?

10 A. Yes, we do.

11 Q. Now, when you went out there to that particular location,
12 can you tell the Jury what areas you dusted with the
13 black powder to try and find fingerprints?

14 A. May I show --

15 Q. Yes, sir.

16 A. One area in particular is the door right here, the
17 front door (indicating), I processed the inside area,
18 say, the size of a normal person to see if anybody had
19 opened that door and left a fingerprint there. I also
20 processed the top counter on this, the top Formica
21 counter and other items, the telephone that was found
22 behind, the telephone receiver and a pack of cigarettes
23 and also some beer cans found, but not here, they were
24 found outside.

25 Q. You can go ahead and have a seat.

1 A. (Witness complies.)

2 MR. SCHIWETZ: Could I get this marked as a
3 State's Exhibit, please.

4 (State's Exhibits 25 and 26 were marked for
5 identification.)

6 Q. (By Mr. Schiwetz) Let me show you what's marked as
7 State's Exhibit 25 and ask you if you can identify this
8 photograph.

9 A. Yes, sir, I can.

10 Q. And where is that?

11 A. That is inside the office under the counter.

12 Q. Is that the telephone that you dusted for prints
13 (indicating)?

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

15 Q. Does this picture accurately represent the way it
16 appeared on that evening?

17 A. That is correct.

18 Q. Let me show you what's marked for identification as
19 State's Exhibit 26 and ask you if this photograph is
20 familiar? Are you familiar with it?

21 A. That's right.

22 Q. Okay. Did you take the photograph?

23 A. I did.

24 Q. And where is this at?

25 A. That is the same location, the same phone under the

1 counter.

2 Q. Does this show the counter that you say you dusted?

3 A. Yes, sir, it does.

4 MR. SCHIWETZ: I would like to tender State's

5 Exhibits 25 and 26.

6 MR. DE PENA: We offer no objection, Your

7 Honor.

8 THE COURT: It will be received.

9 Q. (By Mr. Schiwetz) Showing you again what's marked as

10 State's Exhibit 25, can you tell the Jury where this is

11 in that station?

12 A. This area is -- well, can I show over there?

13 Q. Yes.

14 A. Maybe we can -- this area would be this counter here and

15 it runs this way (indicating), this would be facing the

16 street, I believe. And this counter, this is the yellow,

17 it's facing this here (indicating).

18 Q. And the photograph in State's Exhibit Number 25 is the

19 one you did dust for prints?

20 A. Yes, that's right.

21 Q. Showing you what's marked as Exhibit 26, I believe you

22 testified that's the other side of the counter area; is

23 that right?

24 A. That's the same side, it's just a different area shot.

25 Q. Okay. It's the same telephone in State's Exhibit 25 and

1 26?

2 A. Yes.

3 Q. Okay. Were you able to lift any fingerprints off that

4 telephone?

5 A. No, sir, unfortunately I was not.

6 Q. Now, telephones are something that people use all the

7 time, are they not?

8 A. That's true.

9 Q. You use a telephone, you've got to pick it up, don't

10 you?

11 A. Right.

12 Q. How is it that somebody can pick up a telephone,

13 presumably with their hand, and not leave a fingerprint

14 on it?

15 A. Well, the question is maybe the person didn't leave a

16 fingerprint there, I just didn't find one because it was

17 no prints there.

18 Q. Is it -- is it possible that sometimes you could pick up

19 a fingerprint and other times you're not going to?

20 A. Yes, sir, that's possible.

21 Q. What kind of factors would influence whether a finger-

22 print was left or wasn't?

23 A. There's many, many factors. I could explain that

24 sometimes if a person has dirty hands or there's a

25 film of dirt embedded in the hands, it is very difficult

1 for that hand to leave any prints because of the film
2 of dirt; also, if the person has dry hands, you know,
3 no moisture, it's also very difficult for any prints to
4 be left on the surface of that -- whatever they touch,
5 you know; also sometimes the surface doesn't present
6 itself to pick up any fingerprints. There's many, many
7 reasons why fingerprints are not found sometimes. We
8 try, but we can't come up with them.

9 Q. You talked about a person who had dirty hands might not
10 leave them. Would someone who goes outside and works
11 with their hands, say does construction work or something
12 like that, would they be more or less likely than the
13 average person to leave a fingerprint?

14 A. They would be less likely because of the contamination
15 or the film or the dirt that they have, mechanics also
16 have a lot of grease on their hands and dish grease
17 picks up dirt and it just becomes a film of dirt and
18 it's very difficult, yes.

19 Q. You mentioned dry hands, a person whose hands don't
20 have natural moisture in them would be less likely to
21 leave one?

22 A. Yes. During the winter months, we have very difficult --
23 we find it difficult to find prints because the hands are
24 mostly dry on people and they don't leave any prints
25 behind.

1 Q. It would be lack of perspiration?

2 A. Right.

3 Q. Because of lack of heat?

4 You also talked about surface not being good for

5 prints. Is it true or is it fair to say that some

6 surfaces are very good for leaving prints and others

7 are not so good?

8 A. Yes.

9 Q. How about wood, is that a good thing to leave prints on?

10 A. Not really because wood is very porous and it has grain

11 and it's very difficult to find prints on wood.

12 Q. You dusted the top of that counter. What was it made

13 out of?

14 A. I believe that counter is made out of Formica.

15 Q. And is that a good surface to pick up fingerprints on?

16 A. No, sir, I don't believe so.

17 Q. Were you able to find any fingerprints on the top of

18 that counter?

19 A. I did not.

20 Q. Now, you said you also checked a pack of cigarettes,

21 were they on that counter?

22 A. They were on the counter.

23 Q. And is that the cigarettes that are represented in

24 State's Exhibit 26?

25 A. The ones -- yes, that's true.

1 Q. You also indicated you checked the door, the front door.
2 A. Yes, I did.
3 Q. Now, that's -- that's a general entrance and presumably
4 a lot of people would touch that during the course of
5 the day, isn't that true?
6 A. That's true.
7 Q. The door -- the handles on that particular door, the
8 outside handle, for instance, what's it made out of?
9 A. I believe it's made out of metal, maybe aluminum.
10 Q. Is -- were you able to get any prints off it?
11 A. No, sir, I tried, but the surface just didn't present
12 anything.
13 Q. How about the inside handle, what kind of handle did it
14 have on the inside?
15 A. It's made of the same thing.
16 Q. That top picture there on the -- on that board, does it
17 represent the type of handle you had on the inside?
18 A. Yes, sir.
19 Q. That's a bar type handle. Did you -- did you try and
20 dust that bar?
21 A. I tried and dust the bar and I dusted the glass on the
22 inside.
23 Q. Now, the glass. Did you find any fingerprints on the
24 glass?
25 A. I picked up some fingerprints off of the glass, yes.

1 Q. Okay. Were they partial prints or were they whole
2 prints, complete prints?

3 A. They were partial -- partial prints.

4 Q. Can you tell the Jury what a partial print is?

5 A. Well, a whole print would mean if you take a print and
6 roll it from one edge of the finger to the other and
7 leave a whole pattern (indicating). Now, a partial
8 print would be an edge of a print or a tip or something
9 that doesn't present the whole pattern of the finger.

10 Q. Under ideal circumstances you would prefer to have the
11 whole print, wouldn't you?

12 A. That would be -- yes, that would be better.

13 Q. But you can't -- you can make identifications off
14 partial prints, can't you?

15 A. Sometimes we can if we have enough points.

16 Q. In this particular instance, how many partials prints
17 were you able to lift off that door?

18 A. May I look at my -- I believe we lifted about two partial
19 prints,

20 Q. Okay. And you say "we" --

21 A. I mean -- I'm sorry, I did, I was --

22 Q. Now, tell the Jury how you go about the physical process
23 of actually getting the print off the glass and onto that
24 piece of paper.

25 A. What I do is after I dust the glass and if there's a

1 fingerprint or a partial print, the powder adheres to it
2 and it enhances or it makes it show up. After that, I
3 take a tape that we buy from Sirchie, it's a fingerprint
4 tape, and we apply it or I apply it over the fingerprint
5 and pull the tape back and the tape brings the finger-
6 print with it. After that, I take it and I just put it
7 on the back of a white card which has Corpus Christi
8 Police Department on the front.

9 Q. And that's what you did in this case?

10 A. That's true.

11 MR. SCHIWETZ: Could I get this marked as a
12 State's Exhibit, please?

13 (State's Exhibits 27 and 28 were marked for
14 identification.)

15 Q. (By Mr. Schiwetz) I'm showing you what's marked as
16 State's Exhibit 27. Is this one of your latent
17 fingerprint cards?

18 A. Yes, sir, it is.

19 Q. And does it reflect when the fingerprint was lifted?

20 A. Yes, sir, it does.

21 Q. And what time was it lifted?

22 A. At 8:15 P.M. Well, this is -- this is the time I got
23 the call.

24 Q. Okay. And was it lifted within an hour or so after
25 that?

1 A. Yes, sir.

2 Q. And on what date?

3 A. The 4th day of February, 1983.

4 Q. And over here it says, "Latents obtained by," what does
5 that say?

6 A. That's my initials.

7 Q. And what's the number back here?

8 A. That's my employee number, 239.

9 Q. And location of offense?

10 A. 2602 South Padre Island Drive.

11 Q. Okay. You have got, "Offense shooting." Were you
12 unaware it was a stabbing?

13 A. When I got the call it was told to me it was a shooting.

14 Q. And this indicates the print was lifted where?

15 A. Off the inside glass of the front door.

16 Q. State's Exhibit 28, again does it reflect the same
17 information?

18 A. Yes.

19 Q. Except for the location where the prints were taken?

20 A. That's correct.

21 Q. Okay. Where were these prints lifted from on State's
22 Exhibit 28?

23 A. These prints came off the glass on the door, the front
24 door and off the phone under the counter and off a beer
25 can found in the back of the gas station.

1 Q Let me show you what's marked as State's Exhibit Number
2 10 and ask you if you recall taking that photograph.

3 A Yes, sir, I did.

4 Q Okay. The beer cans that are shown back there, do they
5 have any relationship to the fingerprint that you got on
6 State's Exhibit 28?

7 A Yes, sir, they do.

8 Q Okay. And tell the Jury how that came to pass.

9 A When I arrived there, an officer advised me that he
10 wanted some fingerprint dusted for -- I mean some -- I'm
11 sorry, some beer cans dusted for fingerprints. I did
12 and I picked up some prints and put them on the card.

13 Q Was that the extent of your duties out there that night?

14 A Yes, sir, it is. It was.

15 Q Now, when you lift those prints out there, do you have
16 any way of being able to tell whether those prints are
17 capable of being compared to somebody else's?

18 A No, sir, I lift them and I turn them in to the
19 fingerprint examiner.

20 Q And who's the fingerprint examiner?

21 A Sergeant Wilson.

22 Q And what is Sergeant Wilson's function?

23 A His job is to identify fingerprints, match them with
24 suspects or the like.

25 Q Okay. His job, is it not, is also to determine if those

1 fingerprints are capable of being compared to somebody
2 else's; is that correct?

3 A. That's right.

4 Q. Just lifting them out there at the scene, you're not
5 able to tell whether or not they're good enough to be
6 compared, are you?

7 A. That's right.

8 Q. And you don't know whether those are good enough to be
9 compared to anybody else's, do you?

10 A. No, I just --

11 Q. Of your own knowledge?

12 A. No, I just turn them in.

13 MR. SCHIWETZ: I pass the witness.

14

15 CROSS-EXAMINATION

16 BY MR. LAWRENCE:

17 Q. Sergeant Infante, did you -- in the course of your work
18 out there at the scene, did you ever examine a knife?

19 A. Yes, sir, I did.

20 Q. Did you try to lift any prints off the knife?

21 A. Yes, sir, I did.

22 Q. And were you able to lift any prints off the knife?

23 A. None.

24 MR. LAWRENCE: Pass the witness.

25 MR. SCHIWETZ: Could I get this marked?

1 (State's Exhibit 29 was marked for
2 identification.)

3

4 REDIRECT EXAMINATION

5 BY MR. SCHIWETZ:

6 Q I'm going to show you what's marked as State's Exhibit
7 Number 29, describe what's inside.

8 MR. SCHIWETZ: Could I get it marked as
9 State's Exhibit Number 30, please.

10 (State's Exhibit 30 was marked for
11 identification.)

12 Q (By Mr. Schiwetz) Let me show you what's marked as
13 State's Exhibit Number 30, which was extracted from
14 State's Exhibit Number 29 and ask you if you have ever
15 seen a knife the same or similar to that one?

16 A Yes, sir, I did.

17 Q Is that similar to the knife that you examined out there
18 at the Sigmor Station that night?

19 A It's very similar.

20 Q Is it similar to the one that you were unable to get
21 prints off out there?

22 A Yes, sir.

23 Q Why were you unable to get prints off that knife, if
24 you can tell us?

25 A The -- the blade of the knife was -- was very wet, it

1 had some kind of substance on it, blood and some kind of
2 pulp or something that came out from -- the rest of it,
3 I couldn't -- I processed the rest of it starting from
4 here back (indicating) and I just couldn't find any
5 fingerprints on it.

6 Q. Now, I notice when I pick it up and I hold it like this
7 and I take my finger off of it, I can see something of a
8 fingerprint. Is it possible to put your hand on the
9 thing and not leave a print on something like that?

10 A. It's possible the way it's handled that you could, and
11 then you could not leave a print, very, very possible.

12 Q. How many crime scenes do you work for fingerprints every
13 week?

14 A. Roughly four or five a day, about 20 a week.

15 Q. Is it unusual to go to a crime scene and work, say, a
16 burglary or a robbery or something like that and not find
17 fingerprints?

18 A. Yes, sir, it's very unusual -- very, very usual.

19 Q. All right, how often on the average would you say that
20 you find any usable prints at a crime scene?

21 A. Fifty percent.

22 Q. Just depends on the case.

23 A. It depends on the -- the case, what happened in that
24 house, how the items were handled, what was handled, and
25 just -- it depends on the case.

1 MR. SCHIWETZ: Thank you, sir.

2 MR. LAWRENCE: No questions.

3 THE COURT: Thank you, sir, you may be excused.

4 MR. SCHIWETZ: I call Doctor Rupp.

5 (At this time the witness was sworn by the
6 clerk.)

7 THE COURT: Doctor, the Rule has been invoked,
8 so -- which means after you have given your
9 testimony don't discuss that testimony with any other
10 witness in this case.

11 DR. RUPP: Yes, sir.

12

13 JOSEPH C. RUPP, M. D.,

14 having been called as a witness by the State and after having
15 been first duly sworn to tell the truth, the whole truth and
16 nothing but the truth, testified upon his oath as follows:

17

18 DIRECT EXAMINATION

19 BY MR. SCHIWETZ:

20 Q. Would you please state your name for the Jury, sir.

21 A. Joseph C. Rupp.

22 Q. And can you tell the Jury how you're employed?

23 A. I am the Nueces County Medical Examiner.

24 Q. And how long have you held that position, sir?

25 A. Since 1970.

1 Q In the period preceding that, can you tell the Jury how
2 you were employed.

3 A Well, I took my training in forensic pathology, which
4 is medical examiner-type work after I got out of medical
5 school, that was done in Maimi, Florida, which is Dade
6 County, Florida, and then I finished my residency
7 training and also functioned as associate medical
8 examiner in Hennepin County, which is Minneapolis -- in
9 Minneapolis, Minnesota. Then when I finished training,
10 I was associate medical examiner and hospital pathologist
11 in Fort Lauderdale, Florida, which is Broward County,
12 Florida for five years before coming here in 1970.

13 Q Can you tell the Jury what a medical examiner's duties
14 are?

15 A A medical examiner inquires into all sudden, unexpected
16 or unnatural deaths that occur within his jurisdiction
17 and then he performs such investigations, autopsies and
18 tests as will enable him to determine the medical cause
19 of death and the manner of death, the manner of death
20 being homicide, suicide, accident or natural death.

21 Q And during the course of your training and your working
22 experience, have you ever had an opportunity to perform
23 an autopsy?

24 A Yes, many times.

25 Q How many times?

1 A. In my career I have done probably 5,000 autopsies or so.
2 Q. Can you tell the Jury what an autopsy is?
3 A. An autopsy is an examination of the body, first an
4 external examination and then an internal examination
5 and such fluids are retained or tissues as are pertinent
6 to analysis or microscopic examination, and the body is
7 described and all the organs are weighed and described
8 and the report is made and the laboratory findings are
9 included in the report and this is what the autopsy
10 essentially consists of.
11 Q. Directing your attention back to February 5th of 1983,
12 I believe that was a Saturday, did you have an occasion
13 to perform an autopsy on the body of a woman named Wanda
14 Lopez?
15 A. Yes, I did.
16 Q. I want to direct your attention to State's Exhibit Number
17 1, which is a picture in the upper left-hand corner of
18 this bulletin board over here, the one to your left, sir.
19 Does that appear to be the person you performed the
20 autopsy on?
21 A. Yes, it is.
22 Q. Can you tell the Jury how tall that person was?
23 A. The subject was 63 inches in length, that's five feet
24 three, and weighed an estimated 170 pounds and appeared
25 the recorded age of twenty-four years.

1 Q Did you check to determine if there were any external
2 injuries to this person?

3 A Yes.

4 Q What did you find?

5 A Subject had a stab -- had two stab-like wounds in the
6 chest, one was located 18 inches from the top of the
7 head in the anterior axillary line, which is the line
8 here (indicating) in the chest and this was a half inch
9 in length and penetrated into the chest cavity; and then
10 there was a second wound which was 19 inches from the
11 top of the head in the midaxillary line, which is the
12 midline under the armpit (indicating) and this wound was
13 an inch and a half in length and it also penetrated into
14 the left chest cavity.

15 Q Was there anything protruding from either one of those?

16 A Well, initially, one of them had -- when -- when the
17 subject was attended to in the hospital, prior to the
18 time that she was examined at autopsy, and one of them
19 was sutured shut and the other one had a tube in the
20 wound into the chest cavity.

21 Q The Jury has heard testimony from a person from the
22 emergency room to the effect that one of them -- the one
23 with the tube would have been the one in the front,
24 under the breast, I believe; the second wound, the one
25 that was an inch and a half, the one on the left-hand

1 side, can you point out to the Jury where that would have
2 been?

3 A. Well, that would have been -- that would have been in the
4 midline of the armpit probably down around this area down
5 here (indicating).

6 Q. And did it penetrate the skin?

7 A. Penetrated into the chest cavity and penetrated the lung.

8 Q. And what happened in the lung when that penetration
9 occurred?

10 A. Well, when the lung is penetrated, it is a very vascular
11 structure made up of a lot of vessels, plus you breathe
12 into your lungs, so when you penetrate the lung, first
13 of all, it collapses because the air that you're
14 breathing simply goes out through the hole in the lung,
15 plus because it's so vascular, so many vessels make up
16 the lung, there's a great deal of bleeding, very rapid
17 bleeding, so the lung collapses and it bleeds very
18 rapidly.

19 Q. The lung in this particular person, did you inspect it?

20 A. Yes.

21 Q. And what did you find?

22 A. Stab wounds of the lung.

23 Q. Was there any blood in that lung?

24 A. Well, there's always blood in the lung, but a great deal
25 of blood had come out into the chest cavity. There was

1 about two -- greater than two quarts of blood in the left
2 chest cavity. Let's see. About two liters of blood, as
3 I recall, in the left chest cavity.

4 Q. Okay. Liter is approximately a quart?

5 A. A liter's a little larger than a quart.

6 Q. The -- did you have an opinion as to cause of death?

7 A. Cause of death was as the direct result of a stab wound
8 to the chest.

9 Q. Now, when you were examining that body, you had no way
10 of knowing how those two entrances were made, did you?

11 A. No.

12 Q. You didn't have anybody there from the emergency room
13 telling you that they had made one of those entrances?

14 A. No. It is not unusual for -- in multiple stab wounds
15 or -- that -- that a tube will be inserted into one of
16 them so that I -- when I described the -- the wounds, I
17 had no way of knowing the size of the instrument that
18 produced them or that one of them was surgically
19 produced.

20 Q. Is it your testimony that either one of those wounds
21 that you saw could have caused the death?

22 A. Well, the one was surgical and the damage was caused by
23 the one that was not surgical.

24 Q. Let me ask you this: A wound of that sort going into
25 the lung, when a person -- presuming it was caused by a

1 knife, a knife enters into the lung in the fashion --
2 causing an injury in the fashion which you have
3 described -- in what you described as stab wound number
4 two, a person is injured in that fashion. What's their
5 chance of survival?

6 A. Chance of survival with that kind of wound is very slim.

7 Q. Let me ask you this: That type of wound, would it cause
8 a massive amount of bleeding externally?

9 A. Not necessarily. It depends on the position of the body,
10 when the lung collapses, the chest cavity is a big
11 empty space and if the person is upright and not leaning
12 in the direction of the slit of the wound, the blood
13 just pours into that empty space and there's no --
14 there's not necessarily a great deal of bleeding
15 externally.

16 Q. Okay. The external bleeding, would it likely be of the
17 dripping type or a spurting type wound?

18 A. Well, it would probably be of the dripping type,
19 although there are some arteries between the ribs and
20 the -- again, depending on the circumstances and the
21 exact structures that were severed by the knife, there
22 could be some spurting, but essentially it would be more
23 of a dripping type thing if you're talking about
24 bleeding into the chest cavity and then the position of
25 the body with the blood running out of the wound.

1 Q Did anybody ask you to do fingernail scrapings on this
2 particular person?

3 A No.

4 Q Can you tell the Jury what a defense wound is?

5 A Well, when you have people engaged in combat between
6 each other, you get sometimes what you call defense
7 wounds, which doesn't necessarily mean that the person
8 that has them is not the aggressor, but you will see,
9 for instance, when someone -- sometimes when someone is
10 assaulted with a gun, they will put up their hand and
11 have a bullet wound through the hand; or if a stick or
12 club is used, you'll see that they have put up their
13 hands or arms and have big bruises or broken bones in
14 their arms or their hands; or if there's a knife
15 involved, someone may reach out and grab the blade of
16 the knife and have a big cut across the palm or on the
17 fingers and these are generally called defensive-type
18 wounds on a body and indicate a -- a struggle-type
19 situation.

20 Q In a case of a knife -- of knife injuries where you have
21 defensive wounds, those can be caused, can they not,
22 either by reaching out and trying to grab the knife as
23 protection or by trying to block the knife as it's being
24 used to assault you?

25 A Yes, it can be, although it's more common for someone to

1 actually reach out and grab the blade of the knife.

2 Q. Defensive wounds are primarily on the hands or the arms;
3 is that safe to say?

4 A. Hands or forearms, yes.

5 MR. SCHIWETZ: Thank you very much, Doctor.

6

7

CROSS-EXAMINATION

8 BY MR. LAWRENCE:

9 Q. Doctor Rupp, in conducting the autopsy, did you find
10 that both of the stab wounds, whether they were made at
11 a scene or made at the hospital, both of the stab
12 wounds showed that they went through the lung?

13 A. No, knowing now what we know then, when the lung
14 collapses, it sort of folds up on itself so what I
15 describe as two tracks, contributing one to each of
16 these wounds, was upon now knowing the circumstances,
17 the result of just the -- the stab wound. When they
18 produce a wound surgically, they are very careful not
19 to penetrate the lung, just to penetrate into the chest
20 cavity, plus the fact that she had sustained the stab
21 wound prior to the time the surgical wound was made, so
22 that alone would have already collapsed and been away
23 from the chest wall when the surgical wound was made.

24 Q. So, therefore, your -- your autopsy report on page two
25 and page three indicating two stab wounds, indicating

1 that both of the stab wounds passed through the lower
2 lobe of the left lung --

3 A. Yes, when in fact --

4 Q. -- now, this is an error?

5 A. It's an error in description because I -- I originally
6 analyzed these wounds as being two individual stab
7 wounds from the assailant wherein, as I said before, it
8 is not uncommon when you have stab wounds that when the
9 body reaches the emergency room, tubes will be inserted
10 into the stab wounds. In this case, instead of
11 inserting the tube into the one stab wound, they elected
12 to make another stab wound or incision to insert the
13 tube.

14 Q. Well, could they have possibly made an incision deep
15 enough that it went into the -- into the lung?

16 A. It's possible, but that wasn't the cause of death.

17 Q. Could it have helped in the cause of death --

18 A. No.

19 Q. -- if it had been possible?

20 A. No. Not with the original wound.

21 Q. Well, could you tell us which was the original wound?

22 A. I can now that I know -- know what the size of the knife
23 was and have more history than at the time that we did
24 the autopsy. When we did the autopsy, we don't always
25 have all the peripheral information like how big the

1 knife was and that sort of thing.

2 Q Can you conceive of a situation where a person is
3 brought into an emergency room with a stab wound, such
4 as we have in this case, that went into the -- through
5 the lower lobe of the left lung and you get into the
6 emergency room and the medical team, of course, we're
7 all human, make an incision that goes a little bit
8 deeper and furthers the -- the wound by going through
9 the lower lobe of the left lung?

10 A It's not impossible, but you must always go back to
11 the proximate cause when you're dealing in causes of
12 death. The wound inflicted by the assailant was fatal
13 in and of itself and if such a circumstance should happen
14 that in -- in the -- the excitement of treating a
15 patient who's just about dead you quickly make an
16 incision in the chest and should perforate the lung,
17 that is insignificant with regard to the proximate
18 cause of death, which is the stab wound to the chest.

19 Q Okay. Would that second be a contributing cause, then,
20 and not the proximate cause?

21 A No. Not in a case like this.

22 Q Not from what you have been told afterwards.

23 A Not --

24 Q In a case like this.

25 A Not with an original wound like this.

1 MR. LAWRENCE: Pass the witness.

2 MR. SCHIWETZ: I don't have any further
3 questions.

4 THE COURT: Thank you, Doctor.

5 DR. RUPP: Am I excused, Your Honor?

6 THE COURT: Yes, sir.

7 DR. RUPP: Thank you.

8 THE COURT: Thank you.

9 Is this it?

10 MR. SCHIWETZ: For today I'm afraid.
11 Everybody else is gone.

12 THE COURT: Give everybody a running start
13 for their homes before -- do be careful and I'll
14 see you Monday morning at 9:00 o'clock. Under the
15 same admonition I have given you earlier, don't
16 discuss the case and try to avoid any news media
17 coverage, if there is any. They even took my
18 picture today, scare you to death.

19

20

21 (EVENING RECESS)

22

23

24

25

1 (Thereafter on the 18th day of July, 1980,
2 the following proceedings were had before the
3 Court, outside the presence and hearing of the
4 Jury, with counsel for the State, counsel for the
5 Defendant and the Defendant present:)

6 THE COURT: Who is your first witness, Mr.
7 Schiwetz?

8 MR. SCHIWETZ: George Aguirre. George Aguirre.
9 Do you want me to bring him in?

10 THE COURT: All right. Does either side have
11 any witnesses in the courtroom?

12 MR. LAWRENCE: I don't believe I do.

13 MR. SCHIWETZ: No, Your Honor.

14 THE COURT: Fine. Do you want to bring them
15 in?

16 (At this time the Jury was seated in the jury
17 box, after which the following proceedings were
18 had:)

19 THE COURT: When you have finished giving
20 your testimony, Mr. Aguirre, you are not to discuss
21 it with any other witness in this case. You may,
22 if you wish, discuss it with counsel on either side,
23 but not in the presence or hearing of another
24 witness.

25 MR. AGUIRRE: Okay.

1 GEORGE AGUIRRE,
2 having been called as a witness by the State and after having
3 been first duly sworn to tell the truth, the whole truth and
4 nothing but the truth, testified upon his oath as follows:

5

6 DIRECT EXAMINATION

7 BY MR. SCHIWETZ:

8 Q. Would you please state your name to the Jury, sir.

9 A. George Aguirre.

10 Q. And how old are you, Mr. Aguirre?

11 A. Nineteen.

12 Q. And where were you born?

13 A. Corpus Christi.

14 Q. Have you lived here almost all of your life?

15 A. All my life.

16 Q. Where did you go to high school?

17 A. At King, Richard King.

18 Q. Did you graduate?

19 A. Yes.

20 Q. After graduating from high school -- when would that
21 have been, last year?

22 A. That was '82, yes.

23 Q. What did you do after you graduated from high school?

24 A. I went to a tech school up in San Antonio.

25 Q. And what was the name of it?

1 A. Hallmark Aerotech.

2 Q. And what did you study there?

3 A. Electronics.

4 Q. And for how long did you go to that school?

5 A. For seven and a half months.

6 Q. Did you receive a certificate?

7 A. Yes.

8 Q. I want to direct your attention back to the 4th day of

9 February of this year, 1983, and ask you if you were

10 going to that school at that time?

11 A. Yes, I was.

12 Q. And on that particular date, were you in San Antonio or

13 Corpus Christi?

14 A. Corpus Christi.

15 Q. And what were you doing here?

16 A. I was visiting.

17 Q. Who were you visiting?

18 A. My family.

19 Q. And where does your family live?

20 A. 1554 Morales Street.

21 Q. Now, on that occasion -- on that particular date in the

22 evening, did you have occasion to leave your home?

23 A. I was going out to the mall.

24 Q. And what time did you leave home?

25 A. Maybe ten, fifteen till 8:00.

1 Q And where did you go?

2 A To the Shamrock.

3 Q Can you tell the Jury where that is?

4 A On SPID.

5 Q Had you ever been to that Shamrock before?

6 A Yes.

7 Q And when you drove in there, what kind of vehicle were

8 you driving?

9 A A van.

10 Q What kind of van was it?

11 A A Dodge '78 van.

12 Q Whose is it?

13 A My father's.

14 Q Do you recall what time you got to that Sigmor Station?

15 A It was a little after 8:00 o'clock.

16 Q And how do you know it was a little after 8:00?

17 A Because when I was getting there it said on the radio,

18 I couldn't remember what time it was, but it was a little

19 after 8:00.

20 Q Now, I want to direct your attention up to that black

21 board up there or white board, whatever it is. There's

22 a drawing up there at the top in the middle that's

23 supposed to represent that Sigmor Station. Does that

24 look familiar to you?

25 A Yeah. Yeah.

1 Q. Could you show the Jury where you pulled up with your
2 van?

3 A. I pulled up from this side (indicating), this street
4 (indicating), and I pulled to this first pump right
5 there (indicating).

6 Q. Did you pull up on the SPID side or this inside?

7 A. I was on this side facing that way (indicating).

8 Q. Okay. Now, when you pulled up there, what did you do
9 then?

10 A. I got out to put gas in my van.

11 Q. And were you putting the gas in from that side pump
12 there (indicating)?

13 A. From the first pump, this one right here (indicating).

14 Q. There's a little pointer right there to your right, if
15 you want to use that it will probably help a little bit
16 and you won't have to just keep getting up and down.

17 Now, when you pulled up there, were the lights on
18 around the station area?

19 A. Yes.

20 Q. Could you see pretty good?

21 A. Yes.

22 Q. Did you notice anything unusual when you started putting
23 gas into your van?

24 A. There was a person standing by the -- I guess this is
25 the ice machine, right by the ice machine drinking a

1 beer (indicating).

2 Q Had you ever seen that person before?

3 A No.

4 Q Did that person appear to be doing anything besides

5 just standing there drinking a beer?

6 A He was -- no, he was just drinking a beer.

7 Q Did it appear that he worked there?

8 A No, it didn't.

9 Q Did you see a vehicle there that he might have been in?

10 A No.

11 Q Did you notice anything else about this particular

12 individual?

13 A That when I was looking at him, you know, through the

14 corner of my eye, I saw him putting a knife in his left

15 pocket open, the blade was -- I saw him holding it by

16 the blade and putting it in his left pocket.

17 Q Did that cause you any particular problems?

18 A It just made me look at him a lot longer.

19 Q Now, this person that you saw there, how long did you

20 actually watch him while you were putting gas in your

21 van while he was standing right there?

22 A The whole time.

23 Q How long was that?

24 A About ten minutes.

25 Q Did you ever turn away and look at something else while

1 he was there?

2 A. No.

3 Q. Were you a little apprehensive about him being over

4 there with that knife?

5 A. Yeah.

6 Q. Can you tell the Jury what that fellow was wearing?

7 A. Like a dark blue pants or black, it was a dark color,

8 and a white shirt rolled up to the elbows.

9 Q. Would it be a long sleeve shirt?

10 A. Yeah.

11 Q. Did you notice what kind of shoes he had on?

12 A. No.

13 Q. Now, did the fellow ever leave the place he was standing

14 over there by the ice machine?

15 A. To come and talk to me.

16 Q. Now, when he came and talked to you, did he run over,

17 walk over?

18 A. He walked over.

19 Q. Walk over. Did that cause you any problems?

20 A. I pulled out the gas pump a little bit, the nozzle a

21 little more just in case, you know, he was --

22 Q. Why did you do that?

23 A. In case he was going to try something, I was going to

24 give him a little gas.

25 Q. Now, did the man say anything to you?

1 A. He was asking for a ride to the Casino Club on Port.

2 Q. Can you tell the Jury approximately what he did say?

3 A. He asked me like if I could give him a ride to the

4 Casino Club on Port and told me he would give me money

5 or drugs or, you know, whatever I needed, beer, anything.

6 Q. Did he show you any drugs?

7 A. No.

8 Q. Did he show you any beer?

9 A. No.

10 Q. Did he show you any money?

11 A. He had his wallet out, he had a black wallet, he had it

12 out in his hand.

13 Q. Was there any money in it that you could see?

14 A. In between one and four bills, you know, dollar bills.

15 Q. Can you say for sure how many there were?

16 A. No.

17 Q. Just a few?

18 A. Just a few.

19 Q. Okay. And what did he tell you when he asked you for a

20 ride to the Casino Club?

21 A. I told him my father was waiting for me and I had to get

22 back home.

23 Q. Was that the truth?

24 A. No.

25 Q. Okay. Why did you tell him that, then?

1 A. Because I knew he had a knife in his pocket and I
2 wasn't going to give him a ride.

3 Q. Now, after you told him that, what did he do?

4 A. He said, "Well, if that's the way you're going to be,
5 you know, be that way," and he walked back to the ice
6 machine.

7 Q. What did you do?

8 A. I put -- I went and paid for my gas.

9 Q. Now, did you still keep an eye on him after he went back
10 over by that ice machine?

11 A. Yeah.

12 Q. When you went to pay for your gas, where did you go?

13 A. Inside the Shamrock.

14 Q. How many people were working there then?

15 A. One.

16 Q. Male or female?

17 A. Female.

18 Q. Did you tell her what you had seen outside?

19 A. Yes, I told her that the guy outside had a knife in his
20 pocket and it was open and she asked me if he was with
21 me and I told her no and I told her I was going to go
22 down the street and call the police. And she said,
23 "For real?" and I said, "Yes." And she says, "Well, I'll
24 call them anyway." So she got on the phone and she
25 called the police station.

1 Q. What did you do?

2 A. I started going back to my van and when I was walking
3 towards my van, when I was halfway there, he was walking
4 in.

5 Q. Same man?

6 A. Yes.

7 Q. Did you have any words with him then?

8 A. No.

9 Q. What did you do then?

10 A. I got in my van and I got on SPID -- well, I got on SPID
11 on the access road and came underneath down by Ayers and
12 went under the underpass and got back on the freeway
13 going towards the mall and when I was passing by, I saw
14 that -- the person I was talking about earlier struggling
15 with the lady that was working at the Shamrock.

16 Q. You could see that from the --

17 A. From the other side of the freeway, I looked across and
18 I saw them.

19 Q. So what did you do then?

20 A. So I got off and I went to the bowling alley --

21 Q. How far --

22 A. -- the skating rink.

23 Q. -- is that bowling alley?

24 A. It's on Kostoryz. And I saw the security guard so I
25 asked the security guard if there was any way he could

1 get with the police quick, if he had a radio or
2 anything and he told me the only thing -- he could just
3 do what I could do, you know, go to a pay phone, so I
4 just said, "Forget it." And so I went back to the
5 Shamrock and the police were already there.

6 Q Did you see the girl?

7 A Yes.

8 Q Where was she?

9 A She was laying down outside.

10 Q Okay. Now, when you got there at the Shamrock, the
11 Sigmor, did you stay?

12 A The second time when I returned?

13 Q Yes, sir.

14 A Yes.

15 Q Did you talk to any policemen?

16 A Yes.

17 Q Did you tell them what you had seen?

18 A Yes.

19 Q How long did you actually stay there at the Sigmor the
20 second time when you went back?

21 A Till -- I don't know.

22 Q Approximate -- just approximate is fine.

23 A Maybe 40, 50, an hour.

24 Q What did you do after you left?

25 A Went down to the police station.

1 Q Did you give a statement while you were down there?

2 A Yes.

3 Q Now, did there ever come a point in time that evening

4 when you saw again the man that you had seen there by

5 the ice machine and the one that came and talked to you?

6 A Yes.

7 Q How long after you got back to the station was it before

8 you saw that man again?

9 A Maybe 30, 40 minutes.

10 Q And where was he?

11 A In the police car.

12 Q Where was the police car at?

13 A It was parked right here (indicating).

14 Q Now, how is it that you went over to see the man?

15 A I went over there and they had him standing up and they

16 had flashlights to him and they told me if I had seen

17 him before and I identified him as the guy I had seen

18 earlier.

19 Q Did they tell you or did they ask you?

20 A They asked me.

21 Q Now, was there anything different about the man the

22 second time you saw him from the first time you saw him?

23 A He didn't have a shirt on.

24 Q Was that the only difference?

25 A Yeah.

1 Q Are you sure the man you saw there that the police
2 showed to you was the same man you had seen earlier?
3 A Yes.
4 Q Any doubt in your mind?
5 A No.
6 Q When that man showed you his wallet, did you see
7 anything in it besides one dollar bills?
8 A No.
9 Q I'm going to show you what's marked as State's Exhibit
10 Number 10, marked and admitted. Does that picture
11 accurately reflect the -- the lighting back behind that
12 station that night?
13 A Yeah.
14 Q And just for the sake of clarification, is that you
15 there in that picture?
16 A Yes.
17 Q Was the -- were the lights -- could you step over here
18 for just a second?
19 A (Witness complies.)
20 Q I want to point out to you what's marked as State's
21 Exhibit Number 4, which is a front view of the Sigmor
22 Station. Does that fairly and accurately represent the
23 lighting out there that particular night?
24 A Yeah.
25 Q You could see pretty clearly?

1 A. Yes.

2 Q. You can go ahead and have your seat.

3 MR. SCHIWETZ: I pass the witness.

4

5 CROSS-EXAMINATION

6 BY MR. LAWRENCE:

7 Q. Mr. Aguirre, from the time you arrived at the Sigmor
8 Service Station until the time you left, did any other
9 vehicles or any other people show up?

10 A. When I was leaving there were two people in there.

11 Q. In where?

12 A. Inside of the Shamrock.

13 Q. Okay. Was one of those people the one that you have
14 described as being out there with the beer earlier?

15 A. That was the third one, he walked in when I was halfway.
16 That made three plus the one that was working.

17 Q. Okay. These two other people that were in there, were
18 they male or female?

19 A. I don't even remember. I think -- well, it was one of
20 each, there was a male and a female.

21 Q. Are you sure about that?

22 A. Yeah.

23 Q. When you left, you actually left the station, were three
24 people in that Sigmor Service Station along with the
25 clerk?

1 A. Yes. The two were getting ready to leave, they were
2 paying for gas.

3 Q. Okay. Did they have a car parked there?

4 A. Excuse me?

5 Q. Did they have a car parked there?

6 A. I guess, or they were buying beer or cigarettes, one of
7 the two.

8 Q. Well, how do you know they were getting ready to leave,
9 then?

10 A. Because they were at the cashier's.

11 Q. After you left the Sigmor and drove back under Ayers and
12 came back heading east on SPID, did you look over toward
13 the Sigmor Service Station?

14 A. Yes.

15 Q. Could you -- did you have a good view from the -- the
16 roadway there?

17 A. Yes.

18 Q. As you looked back toward the Sigmor Service Station,
19 did you see any cars parked --

20 A. No.

21 Q. -- in that service station?

22 A. (Witness shakes head negatively.)

23 Q. Okay. Did you see -- whom could you see in there?

24 A. The -- the man with the white shirt struggling with the
25 lady that worked there.

1 Q And how fast were you going, sir?

2 A Sir, I was just getting on the freeway.

3 Q Okay. And I'm sure you were looking over there and you

4 were looking at traffic and you were looking where you

5 were going to, at the same time; would that be fair to

6 say?

7 A Well, I was looking at the Shamrock because, you know --

8 Q Okay. I realize that, but you were also -- you had your

9 attention on getting on the freeway and not having a

10 wreck and driving in the right lane, weren't you?

11 A Yeah.

12 Q Okay. Could you see the other two people?

13 A No, they already left.

14 Q Well, how do you know that?

15 A Because they weren't inside.

16 Q Well, could you see the whole interior? Are you saying

17 you can see the whole interior, sir?

18 A Yeah, it was nighttime and the lights were on in there,

19 you can see clearly in.

20 Q Okay. You can see clearly through those windows?

21 A Yeah.

22 Q Okay, there's nothing obstructing the windows, there's

23 no display or nothing?

24 A Not at nighttime.

25 Q And there's no counters where they keep merchandise along

1 there, aisles that have things piled up that usually are
2 almost at least a good four, close to five feet in
3 height with things on them?
4 A. You could see them because they were standing up.
5 Q. You don't know for a fact that those other two people
6 had left, you just assume because you couldn't see them
7 as you drove by.
8 A. I -- yes.
9 Q. And your driving by was just a matter of a few seconds,
10 was it not?
11 A. Yeah.
12 Q. When you got back to the Shamrock after you had gone to
13 the skating rink --
14 A. Uh-huh.
15 Q. -- and talked to the security guard and what-not, who
16 was there when you got back?
17 A. The police.
18 Q. Were they the only ones?
19 A. And, I guess, you know, other people that were trying to
20 see what had happened.
21 Q. Okay. Were there any cars parked there as far as --
22 A. There was a lot of them.
23 Q. Were they mostly police cars or did you really pay that
24 much attention?
25 A. I didn't really pay attention.

1 Q The -- when this person came over and showed you the
2 wallet, you're not testifying that there were -- that
3 the bills that you saw were only one dollar bills, are
4 you?

5 A No.

6 Q Okay. You don't know what they were.

7 A Well, the first one was.

8 Q Okay. And then you don't know how many bills he had and --

9 A It was no more than three or four.

10 Q That you saw in the wallet.

11 A Yes.

12 Q You don't know if he had any more on him --

13 A No.

14 Q -- in his pockets or anything else.

15 Could you tell what type of shoes that person was
16 wearing?

17 A No, I wasn't looking at his feet.

18 Q Could you describe the pants he was wearing?

19 A They were black-like slacks, dark blue, black, kind of a
20 dark color.

21 Q And the shirt?

22 A The shirt was a white one, long sleeves that was rolled
23 up to the elbows.

24 Q Okay. Could you tell more or less what type of a shirt?
25 By that I mean was it a dress shirt, a sport shirt?

1 A. Like a button-up.

2 Q. It would be just a regular white shirt that a person
3 would wear and maybe put a tie on?

4 A. Yeah.

5 Q. A white dress shirt. Did it have any colors in it?

6 A. No, it was white.

7 Q. Sure it didn't have any stripes?

8 A. Not that I remember.

9 Q. This person that you saw, did he have a -- do you recall
10 how tall he was?

11 A. About five-ten.

12 Q. Okay. How tall are you, sir?

13 A. Six.

14 Q. So he was just a little bit taller than you?

15 A. Yeah.

16 Q. And could you tell how much he weighed?

17 A. He was, you know, about a hundred and sixty, hundred and
18 seventy. He was --

19 Q. Okay. Did you notice any distinguishing marks on his
20 face or arms or anywhere?

21 A. No.

22 Q. Did you notice if he had any type of moustache or beard
23 or was he clean shaven or --

24 A. Not clean, it looked like maybe, you know, two or three
25 days that he hadn't shaved.

1 Q Do you remember if his hair was long or short or --
2 A It was short, you know, you could see his ears.
3 Q Now, this knife that you saw, in what pocket did he put
4 it in?
5 A Left front.
6 Q The left front pocket.
7 A Yeah.
8 Q And you're sure about that?
9 A Yeah.
10 Q When they brought the person back, did the police ever
11 tell you, "Hey, we've got somebody here," or, "we've
12 got the suspect here," or --
13 A No, we were just standing on the corner of the Shamrock.
14 Q And what happened?
15 A And the car came and, you know, they told me if I wanted
16 to walk over there so I walked over there and they asked
17 me if I could identify him.
18 Q When you walked over there, when they asked you to walk
19 over there, did you have an idea what was going to take
20 place?
21 A I guess.
22 Q In other words, at that point, you felt or you knew or
23 you assumed that you were walking over to that police
24 car because they had someone there and they wanted you
25 to look at that person.

1 A. Yeah.

2 Q. Would that be fair to say?

3 A. Yeah.

4 Q. And when you got over there, were you the first person

5 to be shown the person that was in the car?

6 A. Was I --

7 Q. In other words, were you the first witness to be shown

8 the person that was in the police car?

9 A. I don't think so. I think I was the second one.

10 Q. Had you been over there with the first person that had

11 been taken to the police car?

12 A. Did I go over there with him?

13 Q. No. Had you been standing over there before the police

14 car with the suspect came back, had you all been over

15 there talking to police officers?

16 A. We were just standing there.

17 Q. Okay. Had you all talked earlier to the police officers?

18 A. Gave them our names and --

19 Q. Did each of you give descriptions of the suspect to the

20 police officer?

21 A. Yes.

22 Q. Okay. When you all were giving the descriptions and

23 what-not, were you all all together with the police

24 officers discussing --

25 A. He would take you off to the side.

1 Q Was it far enough where you couldn't hear what the
2 other person was saying?
3 A I wasn't listening, I -- you know --
4 Q After that first person, that other witness had been
5 taken over to the police car, were you able to see him
6 go over there to the police car?
7 A Did I see him go?
8 Q Yes.
9 A Yes.
10 Q Did you see him do anything?
11 A No.
12 Q Did you hear him say anything --
13 A No.
14 Q -- to the police?
15 When he came back, did he say anything?
16 A No.
17 Q What happened then after he came back?
18 A I went to the car.
19 Q Did they take the suspect out of the car?
20 A Yes.
21 Q Did they stand him up?
22 A Yes.
23 Q And how far were you -- how far away were you from the
24 suspect?
25 A Three, four feet.

1 MR. LAWRENCE: Pass the witness.

2 MR. SCHIWETZ: I don't have any more questions.

3 THE COURT: You may step down, thank you.

4 MR. SCHIWETZ: The next witness has not been
5 sworn, Your Honor. His name is John Arsuaga,
6 A-R-S-U-A-G-A.

7 THE CLERK: Stand here and be sworn.

8 (At this time the witness was sworn by the
9 clerk.)

10 THE COURT: Mr. Arsuaga, after you have
11 finished giving your testimony, don't discuss that
12 testimony with any other witness in this case.

13 MR. ARSUAGA: Yes, sir.

14

15 JOHN ARSUAGA,

16 having been called as a witness by the State and after having
17 been first duly sworn to tell the truth, the whole truth and
18 nothing but the truth, testified upon his oath as follows:

19

20 DIRECT EXAMINATION

21 BY MR. SCHIWETZ:

22 Q. Would you please state your name for the Jury, sir.

23 A. John Arsuaga.

24 Q. And how old are you, Mr. Arsuaga?

25 A. Twenty.

1 Q And how old were you back on February 4th of 1983?

2 A Nineteen.

3 Q You a married man?

4 A Yes, sir.

5 Q Okay. What's your wife's name?

6 A Julie.

7 Q And how long had y'all been married back on February 4th?

8 A Approximately two weeks.

9 Q Are you working now?

10 A Yes, I am.

11 Q When you're not in court. Where are you working?

12 A Coastal States Refinery.

13 Q And what are you doing out there?

14 A I'm a pipefitter's apprentice.

15 Q And back on February 4th, 1983, were you working at that

16 time?

17 A Yes, I was.

18 Q Where were you working then?

19 A With Champlin Petroleum Company.

20 Q And what were you doing there?

21 A Same thing.

22 Q Same thing. On that particular night, I want to direct

23 your attention to a period of about 8:00 o'clock,

24 shortly thereafter, and ask you if you were with your

25 wife at that time.

1 A. Yes, I was.

2 Q. Okay. Where were y'all going?

3 A. To the Phase III Club, it's --

4 Q. What's Phase III?

5 A. It's like a nightclub.

6 Q. Okay, and who owns it?

7 A. Richard Pena.

8 Q. Who's he?

9 A. My godfather.

10 Q. And how were you going about getting there? What route

11 did you take to get there?

12 A. I was going westbound on South Padre Island Drive, on

13 the access.

14 Q. Going from Kostoryz, which direction would you be going

15 in relation to that Sigmor Station? Would you be going

16 towards it or away from it?

17 A. Towards it.

18 Q. Now -- if you need to use this pointer, feel free to do

19 so. Could you step over here and show the Jury where the

20 Phase III would be, the one you were pulling into, on

21 State's Exhibit 6?

22 A. It would be right in this corner right here (indicating).

23 Q. Okay. I'm going to circle this with a green marker.

24 All right. And right --

25 MR. SCHIWETZ: With your permission, may I

1 mark a Roman numeral three above it? May I mark
2 a Roman numeral three above the Phase III Club?
3 Thank you.

4 Q. (By Mr. Schiwetz) Now, your direction of travel would
5 be which direction?

6 A. West. I was going --

7 THE COURT REPORTER: I'm sorry, I can't hear
8 you very well, Mr. Arsuaga. You're going to have
9 to speak up.

10 THE WITNESS: Yes, ma'am.

11 Q. (By Mr. Schiwetz) You said you were going west?

12 A. That's correct.

13 Q. Now, when you were pulling -- just for clarification,
14 the Sigmor Station being right here, what is it that's
15 next door to that on that next lot?

16 A. Ziebart Rustproof.

17 Q. And next to that?

18 A. It would be Brownes Harley Davidson.

19 Q. And then the Phase III Club?

20 A. Or the building it's in.

21 Q. Correct. And what's this next to it?

22 A. Lebowitz Furniture.

23 Q. Okay. In between Lebowitz and Phase III, what is it?

24 A. Just an empty lot.

25 Q. Okay, you can have a seat.

1 A. (Witness complies.)

2 Q. Now, when you pulled in there or were in the process of

3 pulling in, did you notice anything unusual?

4 A. Yes, I did.

5 Q. Okay. Again, you're going to have to speak up a little

6 bit. What was it that you noticed?

7 A. Well, I saw about -- well, I saw two patrol cars pull

8 into the Sigmor gas station.

9 Q. What else did you notice?

10 A. Well, I noticed a man running.

11 Q. Now, in relation to where you were, was the man towards

12 the Sigmor or away from it?

13 A. He was towards it.

14 Q. And what direction was he running?

15 A. Southbound -- I mean eastbound, excuse me.

16 Q. Again, is that towards or away from the Sigmor?

17 A. Away from the Sigmor.

18 Q. Did you look at the man?

19 A. Yes, I did.

20 Q. Did you have your lights on?

21 A. Yes, sir.

22 Q. All right. Was the man -- well, describe how the man

23 was running? Was it a fast run, a lope, a jog, a trot,

24 what?

25 A. It was a very slow run, almost a jog, about like a jog.

1 Q Did you get a good look at the man?

2 A Yes, I did.

3 Q How close did he actually come to you?

4 A At the closest point?

5 Q Yes, sir.

6 A About ten feet.

7 Q Okay. Would that be directly in front of you?

8 A Yes.

9 Q Did there -- was his face visible during the time that

10 you could see him?

11 A At one time it was.

12 Q Was there any point where he looked right at you?

13 A Yes, there was.

14 Q How long did that last?

15 A Maybe three seconds.

16 Q And how far away from him were you at the time he was

17 looking straight at you?

18 A About ten feet.

19 Q I want to -- sometimes people get confused as to how

20 far distances are. Was he further away from you than

21 I am right now or closer?

22 A Closer.

23 Q Closer. Now, I am going to start working towards you.

24 You tell me when to stop and when I am the same distance

25 away from you that this man was that you were looking at

1 in the face. All right?

2 A. (Witness nods head affirmatively.) About right there

3 (indicating).

4 Q. About right here?

5 A. Right.

6 Q. In your estimation that's about ten feet?

7 A. Yes, sir.

8 Q. And it was at this distance that you were looking at his

9 face for three seconds?

10 A. Yes.

11 Q. Was that man's face visible to you during the other

12 periods of time when he wasn't looking straight at you

13 but you could see him?

14 A. Only profile.

15 Q. Only profile. By "profile," you mean the side of his

16 face?

17 A. That's correct.

18 Q. Now, at my request, did you go back out there where

19 this happened and time the amount of time that it took

20 for this man to pass in front of your view?

21 A. Yes, I did.

22 Q. And how long was that?

23 A. Approximately 16 seconds.

24 Q. Now, after he passed in front of you, where did he go,

25 if you know?

1 A. He went at a 45-degree angle toward the back of
2 Lebowitz Furniture through the empty lot.

3 Q. Did you see when he got toward the end of the lot?

4 A. No, I didn't.

5 Q. What did you do after the man disappeared from view?

6 A. I tried to signal the police by flashing my high lights
7 at them and honking.

8 Q. Were you able to get a response out of them?

9 A. No, I wasn't, not at that time.

10 Q. So what did you do?

11 A. I drove my car through the parking lot right up to the
12 Sigmar Service Station and I told an officer where I had
13 seen the man run.

14 Q. Did you stay around there to help the police out?

15 A. Yes, I did.

16 Q. Did you give them a description of the person you had
17 seen?

18 A. Yes, I did.

19 Q. Were you there when a police car came back and they took
20 a couple people over to look at a man in the car?

21 A. Yes, I was.

22 Q. Did they ask you to do that?

23 A. Yes, they did.

24 Q. Would you do that?

25 A. No, sir.

1 Q Why wouldn't you do that?

2 A Well, I was scared, I guess. I didn't want him to be

3 able to recognize me later or --

4 Q Now, how long did you stay out there at the scene?

5 A About three hours, three and a half hours.

6 Q Actually out there at the Sigmor Station?

7 A Yes.

8 Q Now, where did you go after you left the Sigmor Station?

9 A Directly to the police station.

10 Q And when you were at the police station, did you have an

11 opportunity to look at some photographs?

12 A Yes, I did.

13 Q Can you tell the Jury who showed the photographs to you?

14 A Officer Escobedo.

15 Q That would be Officer Olivia Escobedo?

16 A That's correct.

17 Q A lady officer?

18 A (Witness nods head affirmatively.)

19 Q Now, can you tell the Jury how she showed you those

20 pictures, the way she showed them to you?

21 A Well, she showed me a folder, it had six pictures in it,

22 they were two across three down.

23 Q Now, when she showed you these photographs, did she

24 tell you which one to pick out?

25 A No, she didn't.

1 Q Did she give you any kind of help at all?

2 A No.

3 Q Did she make any kind of suggestions as to who you should

4 pick out?

5 A No.

6 Q Did she say the other witnesses have picked out this

7 guy or that guy or anything like that?

8 A No, she didn't.

9 Q The pictures you looked at, these six pictures, were

10 they all of the same sex?

11 A Yes, they were.

12 Q And what sex is that?

13 A Male.

14 Q Were they all of the same ethnic origin?

15 A Yes, they were.

16 Q And what was that?

17 A Hispanic.

18 Q Were they all approximately the same age?

19 A Yes.

20 Q Did they have any other distinguishing characteristics

21 that were similar?

22 A Facial hair.

23 Q Did they all have some facial hair or no facial hair or

24 full beards or what?

25 A They all had a fair amount of facial hair.

1 Q. Okay. When you say "fair amount," do you mean they had
2 full beards or they had little moustaches or goatees or
3 what? Do you recall?

4 A. I can't really be sure.

5 Q. Were you able to pick out one of the photographs?

6 A. Yes, I was.

7 Q. And whose photograph was it?

8 A. Carlos De Luna's.

9 Q. Now, that photograph, are you sure the photograph you
10 picked out was the same man that you had seen running
11 earlier that night?

12 A. Yes, I was.

13 Q. Do you see that man in the courtroom today?

14 A. Yes, I do.

15 Q. Could you point him out for the Jury?

16 A. Third over from the left.

17 MR. SCHIWETZ: Could the record reflect the
18 Defendant is sitting third over from the left,
19 Your Honor?

20 THE COURT: (Nods head affirmatively.)

21 MR. SCHIWETZ: Thank you.

22 Q. (By Mr. Schiwetz) Mr. De Luna does not look quite the
23 same today as he did --

24 MR. LAWRENCE: Your Honor, I am going to object
25 to a leading question.

1 THE COURT: Sustained.

2 Q. (By Mr. Schiwetz) Does Mr. De Luna look the same way as
3 he did six months ago?

4 A. No, he doesn't.

5 Q. How does he look different?

6 A. His hair is shorter, no facial hair.

7 Q. How about his clothes?

8 A. Definitely different.

9 Q. How was he dressed that particular night when you saw
10 him running across that parking lot?

11 A. He had like uniform slacks on with a light colored,
12 long sleeve shirt.

13 Q. When you say "uniform slacks," what do you mean?

14 A. Just like from a garage or uniform type.

15 Q. You wouldn't be able to positively identify those slacks
16 just from one look, would you?

17 A. No.

18 Q. Okay. Can you say for sure that these would or would
19 not be the slacks (indicating)?

20 A. I couldn't say for sure.

21 MR. SCHIWETZ: For the record, I was just
22 showing him State's Exhibit 16, which is inside
23 State's Exhibit 15.

24 Q. (By Mr. Schiwetz) Is there anything about this
25 experience that you had out there that caused you any

1 problems later?

2 A. Well, I kept seeing that face, you know, at different
3 times during the day, not at any particular time.

4 Q. For how long afterwards did you keep seeing that face?

5 A. Maybe a week.

6 MR. SCHIWETZ: Pass the witness.

7

8 CROSS-EXAMINATION

9 BY MR. LAWRENCE:

10 Q. Mr. Arsuaga, you have stated here in open court that in
11 the last six months, that from February to July, that
12 my client, Mr. De Luna, has changed. Is that correct?

13 A. That's correct.

14 Q. Have you changed your story from February the 4th to
15 here in July with regards to what took place that night?

16 A. To the best of my knowledge, no.

17 Q. Okay. Have you had a chance to see the statement that
18 you gave on February the 4th, 1983?

19 A. Yes, sir, I have.

20 Q. Okay. When was the last time you saw it?

21 A. Maybe three months ago.

22 Q. Have you had a chance to see it recently?

23 A. No, sir.

24 Q. Would it help you to look at your statement before I ask
25 you any questions?

1 A. I can't really say.

2 Q. All right. Let me ask you some questions and see if we
3 can get to the truth of the matter here.

4 Now, you say that you drove up to this Phase III.
5 Is that correct?

6 A. That's correct.

7 Q. And as you drove up, did you actually pull into a
8 parking space, a parking lot or what-have-you?

9 A. I was attempting to, and then I didn't.

10 Q. Now, that photograph over there that you were pointing
11 out earlier, of course it's a little -- it's a little
12 small and it's kind of hard to see.

13 A. That's correct.

14 Q. Could you possibly go up there to the board behind you
15 and just draw basically the -- the three buildings or
16 four buildings, including Lebowitz Furniture, so that we
17 could just see them and you can just draw them in box
18 squares, I guess.

19 A. (Witness complies.)

20 Q. Okay. That last building there, that would be the one
21 you're drawing on; right? And that would be Lebowitz
22 Furniture; is that correct?

23 A. That's correct.

24 Q. Okay. Now, could you draw in front of all those
25 buildings basically the road, the access road?

1 A. Yes.

2 Q. Okay. Now, could you point out where you were driving

3 in?

4 A. It was the first entrance on the Phase III.

5 Q. Okay. And how far were you into that entrance whenever

6 you saw anything?

7 A. I hadn't entered the parking lot yet.

8 Q. Okay. Where were you at? Put a little square to denote

9 your vehicle.

10 A. I was about 20 feet in front of the exit when I noticed

11 the patrol cars.

12 Q. Okay. Where were the patrol cars?

13 A. They were coming into the Sigmor, one from the east and

14 from what I can recall one from the north.

15 Q. Okay. When you say "coming in from the east," was that

16 car travelling in the same direction that you were?

17 A. Yes.

18 Q. Had it passed you earlier or do you recall?

19 A. Wait a minute. No, it was coming in from the west.

20 Q. Okay.

21 A. On this side (indicating).

22 Q. What else did you notice?

23 A. I noticed a man and his -- I noticed a man running.

24 Q. Where was he at when you first noticed him?

25 A. Right here (indicating).

1 Q That would be in front of what?

2 A Brownes Harley Davidson.

3 Q What did you do? Did you continue moving in your

4 vehicle?

5 A Yes, I did.

6 Q Did you actually pull in?

7 A Yes, sir.

8 Q And why don't you depict the route that you took and

9 where you actually pulled in.

10 A (Witness complies.)

11 Q Where was -- what happened then after you got, say, to

12 that point?

13 A Well, I made a comment about bad time to jog or something,

14 it's irrelevant, but at that time I sort of put the

15 pieces together and I continued to pull into the Phase

16 III. At the time I was about halfway into the parking

17 space, the man was directly in front of me.

18 Q And what did he do or what did you do at any time at

19 that point?

20 A At that time I did turn on my high beams and the man

21 sort of stumbled, maybe hesitated and turned and looked

22 directly at me.

23 Q Then what happened?

24 A I continued watching him as he ran right past the Phase

25 III. There's a fence right here (indicating), ran past

1 the Phase III, around the fence and continued running
2 toward the rear of Lebowitz Furniture.

3 Q Okay. And then after that, of course, you went over to
4 the -- toward the Sigmor.

5 A That's correct.

6 Q Okay. You can have a seat.

7 A (Witness complies.)

8 Q Now, do you recall in your statement that you say
9 something to the effect, "As I was pulling into the
10 parking lot, I noticed a Hispanic male about five-eight;
11 approximately 170 pounds; having wavy, medium length
12 dark hair; light colored shirt; dark colored slacks.
13 I noticed that he was running across a field beside
14 Phase III." Do you recall saying that?

15 A Yes, sir, I do.

16 Q Okay. This statement that you gave back on February the
17 4th, 1983, then, was fresh -- it was fresh in your mind
18 as to what you had just seen a few hours earlier; is
19 that correct, sir?

20 A That's correct.

21 Q So that if we believe your statement, we find that the
22 first time you see this person running is he's already
23 running beside Phase III, he never did even start out
24 from the Sigmor Service Station as you have just
25 indicated by your testimony; isn't that correct, sir?

1 A. That's correct from what the statement says, yes.

2 Q. Okay. You never made any mention in your statement that

3 all of a sudden in your mind say, "My gosh, that's a

4 funny time to be jogging," did you, sir?

5 A. No, sir, I didn't.

6 Q. You never said in your statement that he got right in

7 front of you as you pulled in and that you turned on

8 your bright lights, did you, sir?

9 A. Not that I can recall.

10 Q. Well, if it's not in your statement, then you didn't put

11 it in there, did you?

12 A. I can't see my statement.

13 Q. Would you like to refresh your memory?

14 A. I guess so.

15 Q. Have you had a chance to read it, sir?

16 A. Yes, sir, I just went over it.

17 Q. And that is a copy of your statement, is it not?

18 A. Yes, sir, it is.

19 Q. And there's nothing in there that says anything about

20 jogging, is there?

21 A. No, sir.

22 Q. There's nothing in there that says that he stopped right

23 in front of you and that you turned on your bright lights,

24 is there, sir?

25 A. No, sir.

1 Q Is there?

2 A No, sir.

3 Q There's nothing in there that when he was right in front
4 of you when you turned on your bright lights that he
5 looked directly at you, is there, sir?

6 A No, sir.

7 Q In fact, the only thing in there about getting a shot
8 or getting a real close look at him was when he was
9 running at a 45-degree angle when maybe he kind of just
10 all of a sudden maybe turned around and maybe didn't
11 give you a full view. Is that correct?

12 A That's correct.

13 Q There's nothing in your statement that says that you
14 didn't want to go look at the person who was brought
15 back by the police back at the Sigmor Service Station
16 because you were afraid or you were scared that the
17 suspect might see you and do something to you or something
18 to that effect, is there, sir?

19 A No, sir.

20 Q So you have added quite a bit.

21 A I have recalled quite a bit.

22 Q You have recalled quite a bit?

23 A Yes, sir, I have.

24 Q Just like all of a sudden you recall seeing this face
25 for a whole week, a face that you had seen for three

1 seconds. Is that correct?

2 A. That's correct.

3 Q. And you hadn't seen your statement for three months and
4 you never told anyone about these new things that you
5 have now brought forth.

6 A. I did mention at one time that that wasn't the first time
7 I had seen him.

8 Q. You don't wear glasses, do you?

9 A. No, sir.

10 MR. LAWRENCE: Pass the witness.

11

12 REDIRECT EXAMINATION

13 BY MR. SCHIWETZ:

14 Q. Mr. Arsuaga, relating to the fact that you kept seeing
15 that face for a week or so after this incident, there's
16 a pretty good reason why you couldn't put that into
17 your statement, wasn't there?

18 MR. LAWRENCE: Your Honor, I am going to object
19 to him leading the witness.

20 THE COURT: Try not to lead.

21 Q. (By Mr. Schiwetz) Okay. When did you give that
22 statement that Mr. -- that the defense attorney was
23 reading to you?

24 A. That evening.

25 Q. So at the time you gave it, you hadn't been seeing that

1 face for a week, had you?

2 A. No, I hadn't.

3 Q. Okay. So his attempts to ridicule you for not including
4 that in your statement are a bit presumptuous on his
5 part, aren't they?

6 MR. LAWRENCE: Your Honor, I object. I was
7 not trying to ridicule anybody, that's just proper
8 cross-examination as Counsel well knows.

9 THE COURT: Sustained.

10 Q. (By Mr. Schiwetz) It would have been rather difficult
11 for you to put that in there since it hadn't happened
12 yet, wouldn't it?

13 A. That's correct.

14 Q. And a point in fact, that is not the first time that you
15 have told about the -- about the information that you
16 didn't put in here, is it?

17 A. No, it's not.

18 Q. Okay. You have repeated it to me several times, have
19 you not?

20 A. Yes, sir.

21 Q. In regard to this three-second look, the three seconds
22 was from how far away?

23 A. Ten feet.

24 Q. And the Defendant was looking in what direction during
25 those three seconds?

1 A. Directly toward me.

2 Q. He didn't have a bag over his face the rest of that
3 sixteen seconds, did he?

4 A. No, he didn't.

5 Q. Wasn't a wearing a mask the other sixteen seconds, was
6 he?

7 A. No, sir.

8 MR. SCHIWETZ: Thank you.

9

10 RECROSS-EXAMINATION

11 BY MR. LAWRENCE:

12 Q. In your statement, Mr. Arsuaga, you say that you saw
13 this person running in a field, not in the vacant lot.
14 Do you recall saying that?

15 A. Well, vacant lot did have a fair amount of weeds in it,
16 it could be considered a lot or a field.

17 Q. And, of course, if you saw him, according to your
18 statement, which was fresh on your mind at the time, you
19 saw him, whether you want to call it a vacant lot, a
20 field that you saw him, it would be over to the -- on
21 the diagram that you have drawn up there to the right
22 of the Phase III and the way that you have shown your
23 vehicle moving, your headlights would never have hit
24 him in that vacant field or vacant lot or whatever it is;
25 isn't that correct?

1 A. That is correct.

2 Q. Okay.

3 A. At that time my headlights did not hit him.

4 MR. LAWRENCE: Pass the witness.

5

6 FURTHER REDIRECT EXAMINATION

7 BY MR. SCHIWETZ:

8 Q. Just for the sake of clarification, your -- when you
9 say your headlights did not hit him, they did not hit
10 him as he was crossing the field --

11 A. That's correct.

12 Q. -- but that was after he had already passed in front of
13 you.

14 A. Correct.

15 MR. SCHIWETZ: Thank you.

16

17 FURTHER RECROSS-EXAMINATION

18 BY MR. LAWRENCE:

19 Q. But after he passed in front of you -- none of that
20 information is in front of the witness.

21 A. Yes, sir.

22 MR. LAWRENCE: No more questions.

23 MR. SCHIWETZ: No more questions.

24 THE COURT: You may step down, thank you.

25 (At this time the witness was sworn by the

1 clerk.)

2 THE COURT: When you have finished giving
3 your testimony, don't discuss it with any other
4 witness in the case or with any other witnesses
5 present or in their hearing.

6 MR. BAKER: Okay.

7

8 KEVAN BAKER,

9 having been called as a witness by the State and after having
10 been first duly sworn to tell the truth, the whole truth and
11 nothing but the truth, testified upon his oath as follows:

12

13 DIRECT EXAMINATION

14 BY MR. SCHIWETZ:

15 Q Would you please state your name for the Jury, sir.

16 A Kevan Baker.

17 Q And how old are you, Kevan?

18 A Thirty-three.

19 Q And where do you work?

20 A I work at Staples Auto Mart, I'm a salesman.

21 Q And how long have you been working there?

22 A Three months.

23 Q Okay. How long have you been in the car business?

24 A Six months, or about eight months.

25 Q Are you from here originally?

1 A. I'm from Michigan.

2 Q. What part of Michigan?

3 A. Southern, Jackson.

4 Q. I want to direct your attention back to February 4th

5 of this year, 1983, and ask you where you were working

6 on that particular date?

7 A. I was working for McKenzie Volkswagen.

8 Q. And what were you doing for them?

9 A. As a salesman.

10 Q. Now, on that -- on that particular date, can you tell us

11 how late you were working?

12 A. I worked till 8:00 o'clock every night that week.

13 Q. And when you got off work, where did you go that night?

14 A. I went to -- I was on my way home and I stopped to get

15 some gas.

16 Q. Where did you stop?

17 A. At the Sigmor gas station.

18 Q. Which one, there's a couple of them.

19 A. It's on SPID between Kostoryz and Ayers on the north

20 side of SPID.

21 Q. Had you stopped in that gas station before?

22 A. A couple times, not too often.

23 Q. What kind of vehicle were you driving?

24 A. I was driving a '67 Cougar.

25 Q. Okay, is that your car?

1 A. Yes, sir.

2 Q. There's a picture over there on that bulletin board of
3 the Sigmor Station with a Cougar parked out front; is
4 that yours?

5 A. Yes, sir.

6 Q. Now, when you pulled in there, had you ever been in
7 that gas station before?

8 A. Yes, sir.

9 Q. Did you go there regularly?

10 A. No, sir. Just a few times.

11 Q. Were you by yourself?

12 A. Yes, sir.

13 Q. When you pulled in, can you tell the Jury what you did?

14 A. I pulled right straight to the gas pump, didn't glance
15 around, nothing; got out of my car and I have a locking
16 gas cap on my trunk, which is -- on my cap -- on my
17 tank which is mounted in the rear of the car; got out
18 of the car, proceeded to unlock my gas cap; take my gas
19 cap off; went to the pump and grabbed the nozzle and
20 went to put it in the tank and just before I went to
21 insert the nozzle into my tank, I heard this bang on
22 the window and I proceeded to go ahead and try to pump
23 gas and the pumps weren't working.

24 Q. Okay. You need to slow down just a little bit and let
25 me ask the questions.

1 A. Okay.

2 Q. And give me one answer at a time.

3 A. Okay.

4 Q. Are you a little nervous?

5 A. Yes.

6 Q. Just try and slow it down a little bit and we will get
7 it all out. All right?

8 A. Okay.

9 Q. I'm going to draw your attention up to the big map in
10 the middle of the board, the white one. It's got three
11 little islands out in front that are supposed to
12 represent gas pumps and that blocked off area in the
13 front is supposed to represent the Shamrock Station
14 from a bird's eye view. Does that look vaguely
15 familiar?

16 A. Yes, sir.

17 Q. Does that look like the gas station that you pulled into?

18 A. Yes, sir.

19 Q. Can you take that pointer that's right there next to
20 your right hand and point where you parked your car.

21 A. Okay. I stopped right here (indicating).

22 Q. Now, that picture of your vehicle that's over there,
23 State's Exhibit, is that indicative of where you parked
24 your car approximately?

25 A. Yes, sir.

1 Q. Do you know whether or not that car was moved before
2 that picture was taken?

3 A. No, sir, it wasn't.

4 Q. It wasn't? So the pumps would be -- is it fair to say
5 would be right to the right from the picture?

6 A. Yes, I would say looking at the car from that angle.

7 Q. Now, when you heard this -- you said you heard a thump
8 on a window. What window did you hear a thump on, if
9 you know?

10 A. I really don't know, I wasn't paying any attention.

11 Q. When you heard this thump, what did you do?

12 A. I assumed that the clerk was alerting me that I had to
13 come in and pay for gas first before I could pump gas.

14 Q. Well, did the pump turn on when you tried to get gas?

15 A. No, sir.

16 Q. What did you do then?

17 A. I looked up and saw what was going on and proceeded to
18 walk into the store.

19 Q. Now, when you looked up, where did you look?

20 A. I looked right straight -- right through the rear window
21 or this same window right where the clerk and the counter
22 is at.

23 Q. And what did you see?

24 A. I saw a man and a woman fighting.

25 Q. Now, when you saw them fighting, how were they fighting?

1 Were they sitting there duking it out or what?

2 A. No, he was pulling her hair and I thought they were
3 playing at first, that was my first impression, boyfriend/
4 girlfriend.

5 Q. And was there anything to change your mind about that?

6 A. Yeah, the longer -- longer I stood there, the more
7 seconds I stood there, I realized they weren't playing.

8 Q. Did either one of them appear to be trying to accomplish
9 some aim?

10 A. Yes, the gentleman was trying to -- definitely pulling
11 the lady by the hair, trying to -- apparently pull her
12 through the door into the rear of the store.

13 Q. Okay. Could you point out the door to the rear of the
14 store?

15 A. Okay, that's this door right here (indicating).

16 Q. Can you -- can you step out for just a second.

17 A. Okay.

18 Q. Now, you play the gentleman, and I use the term
19 advisedly --

20 A. Okay.

21 Q. -- and let me play the woman and show me what the man
22 was doing.

23 A. She was bent over at the waist and he had her by the
24 hair and was pulling hard.

25 Q. What was she doing?

1 A. She was trying to hold herself back.

2 Q. Show the Jury.

3 A. Like this (demonstrating).

4 Q. Something like that?

5 A. Yes.

6 Q. And he was dragging her?

7 A. Yes.

8 Q. Go ahead and have a seat.

9 A. (Witness complies.)

10 Q. Were all of the lights on there at the store?

11 A. Yes, sir.

12 Q. Were the lights at the pumps on?

13 A. Yes, sir.

14 Q. And directing your attention to that collage of

15 photographs up there on the right, does that fairly and

16 effectively represent how much lighting there was out

17 there that night?

18 A. Yes.

19 Q. When you saw that, what did you do?

20 A. I proceeded to walk toward the door.

21 Q. Again, could you just use the pointer and show the Jury

22 the direction you went?

23 A. Okay. I was using this pump here, the tank of my car

24 was here and I proceeded to walk toward the door.

25 (indicating).

1 Q What happened inside as you were walking toward the
2 door?

3 A The gentleman had the lady -- apparently knew I was
4 there and trying hard to get her into the back of the
5 store and as I turned and saw them and started walking
6 toward the door, he threw her down and proceeded to
7 meet me at the door.

8 Q Now, when he met you at the door, were you inside or
9 outside?

10 A I was outside.

11 Q Where was he?

12 A He was at the door opening the door.

13 Q Now, could you tell how he was opening the door? Did he
14 push the door or push the window or what?

15 A I'm not really sure.

16 Q When y'all met each other, what happened then?

17 A We just looked each other face to face and he made the
18 comment, "Don't mess with me," and proceeded to run
19 around the door. I was standing here on the curb or
20 just off the curb and he come around and said, "Don't
21 mess with me," and took off in an easterly direction
22 (indicating).

23 Q Okay. Could you get up there and point specifically for
24 the Jury what direction he ran?

25 A Okay. We met each other face to face here and he went

1 running in this direction (indicating).

2 Q Did you actually see where he went?

3 A No, I didn't.

4 Q Could you step out for just a second, Mr. Baker.

5 A (Witness complies.)

6 Q Now, just stand right there.

7 A Okay.

8 Q Now, when you met him face to face at that door, were

9 you as far away as I am from you?

10 A We were closer.

11 Q Okay. I am going to start walking towards you and when

12 I get as close to you as you were to that man when you

13 were looking him face to face, you tell me to stop, all

14 right?

15 A Okay. Stop.

16 Q About right here (indicating)?

17 A Uh-huh.

18 Q How far do you think that is?

19 A Three feet.

20 Q Okay. And that's when he started talking to you?

21 A Yes.

22 Q How long were y'all actually standing there face to face

23 like that?

24 A Then he made the comment, "Don't mess with me," and I

25 just kind of looked him in the eye and he looked me in

1 the eye and a couple seconds went by and he took off.

2 Q Did you notice whether he had anything in his hands?

3 A I really didn't look. I paid all my attention to his

4 eyes.

5 Q To his eyes?

6 A Yes.

7 Q Okay. Now, I notice you are wearing glasses. Do you

8 have some sort of visual defect?

9 A Yes, sir.

10 Q Okay. What kind is it?

11 A I'm nearsighted.

12 Q Okay. Explain to me what that means.

13 A I can't see long distances without my glasses.

14 Q Were you wearing your glasses that night?

15 A Yes, sir.

16 Q Can you see good at short distances?

17 A Yes, sir.

18 Q Okay. What kind of shoes was the man wearing?

19 A I have no idea.

20 Q What kind of pants?

21 A No idea.

22 Q Shirt?

23 A No idea.

24 Q Do you want to go ahead and have a seat?

25 A Thank you.

1 Q Was there anything in particular to obstruct your view
2 of his face while you were looking into that store?
3 A Just displays in the window, I suppose.
4 Q Can you tell the Jury -- how tall are you?
5 A I'm five foot six.
6 Q And was this fellow taller, shorter, the same size?
7 A Taller.
8 Q How much?
9 A I'm not real sure, inches.
10 Q A lot, a little?
11 A A little.
12 Q How much do you weigh?
13 A I weigh a hundred sixty pounds.
14 Q How much does the man that you were dealing with weigh
15 approximately?
16 A A hundred eighty.
17 Q Did you notice any facial hair?
18 A Yes.
19 Q How much?
20 A Quite a bit.
21 Q Okay. Describe it for us.
22 A Apparently, to me it looked like he was either starting
23 a beard or that was -- you know, he just hadn't shaved
24 in, you know, ten days, a couple weeks.
25 Q Did he have a moustache?

1 A. Yes, he had -- the most hair he had on his face was the
2 moustache area.

3 Q. Was he old, young, middle-aged?

4 A. He was a young man.

5 Q. Can you give us a guess as to how old he was?

6 A. Twenty-four, 26.

7 Q. You never saw a weapon in the man's hand, did you?

8 A. No, sir.

9 Q. Now, after you had your confrontation with this man, he
10 ran away, what happened next?

11 A. I turned -- trying to think what to do basically and as
12 I turned, if I may use this pointer, I seen a car
13 pulling in here and I proceeded to come a few steps
14 away from the door and the gentleman had his window
15 down and I yelled at him to call the police.

16 Q. What did you do?

17 A. I turned around and met the store clerk at the door, she
18 had made it that far.

19 Q. Okay. Did she say anything to you?

20 A. She said, "Help me. Help me."

21 Q. What did she do then?

22 A. Fell back against the store window and slid to the ground.

23 Q. Did you see any blood on her?

24 A. Yes, lots.

25 Q. Did you see her when she got up off the floor in the

1 store?

2 A. No, sir.

3 Q. What did you do to try and help her?

4 A. I tried to make her stay on the pavement. Once she was
5 down to the little sidewalk there and once I saw that
6 she wasn't getting up and she was going to stay there,
7 I proceeded to go into the store.

8 Q. What did you go in the store for?

9 A. To get some paper towels or something to stop the
10 bleeding.

11 Q. Did you get some paper towels?

12 A. Yes, sir.

13 Q. Okay. What did you do then?

14 A. Turned around and come back to the door and just as I
15 started to open the door, police cars started pulling in.

16 Q. The -- when the police cars showed up, what did you do?

17 A. I just stood there by the door and sort of watched her
18 and made sure, you know, she wasn't going to get up and
19 the police came up to me and asked which direction they
20 went and I pointed off to the east and the officer went
21 in that direction. I still stood there and kind of
22 looked at her and kind of looked for the wound to see
23 if she was still bleeding and hopefully try to stop the
24 bleeding.

25 Q. Did any other police officer show up?

1 A. Yes, there was -- you know, they just kept coming is the
2 best way to put it.

3 Q. Was there any point in time when they segregated you
4 from the other people?

5 A. It was -- it was relatively quick after the first
6 initial police car showed up. I couldn't really put a
7 time on it, you know, five minutes or three minutes,
8 something like that.

9 Q. Now, did you give one of the policemen a description of
10 the person you saw running away?

11 A. Not really, no, I mean, we were asked but it was after,
12 you know, we were kind of in a group and like that.
13 It wasn't initial description, no, sir.

14 Q. Were you able to give them any kind of description as
15 to what he was wearing?

16 A. Yes, I tried to, but I just don't really remember, you
17 know, if it was right or not, you know, because I was
18 trying to be helpful as much as possible.

19 Q. And do you remember what kind of description you did
20 give them?

21 A. Yes, I said something red with flannel or something
22 flannel with red in it and dark pants.

23 Q. When you say "flannel," what do you mean by that?

24 A. Well, I couldn't -- you know, I don't know what else to
25 describe something with red in it, it wasn't really a

1 red T-shirt that I saw, you know, with red in it or
2 something like that, it was -- seemed more like a shirt
3 to me.

4 Q. Do you really have any kind of recollection about what
5 kind of shirt the man was wearing?

6 A. Not really, no.

7 Q. Do you remember what his face looked like, though?

8 A. Yes, sir.

9 Q. Did there come a point in time later on that night when
10 you saw that man again?

11 A. Yes, sir.

12 Q. How much later was it when you saw him?

13 A. Approximately 20 to 30 minutes.

14 Q. And tell the Jury how it was that you came to see him
15 the second time.

16 A. Pardon me?

17 Q. Tell the Jury how it was you came to see him the second
18 time.

19 A. We were standing over on the east side of the building,
20 the few people that did see what went on, and a police
21 officer came up and asked us if we would like to make --
22 if we would like to look at this gentleman they had in
23 the back of the car and see if we could -- you know, if
24 we recognized him from before or not and I myself said
25 I would go over and look and we proceeded over to the

1 car and they had him sitting in the back seat of the --

2 Q Just a second. When you say "we," who are you talking
3 about?

4 A Me and the other witness, it was a tall boy. I'm still
5 not sure of his name yet.

6 Q Did you go over to the police car?

7 A Yes.

8 Q Who took you over there?

9 A I'm not sure of the police officer's name either. It
10 was a -- a black gentleman.

11 Q Okay. Now, when you got over there, did they show
12 somebody to you?

13 A Yes, sir.

14 Q And were you able to identify the person?

15 A Yes, sir.

16 Q Was there anything different about this person when you
17 saw him the second time from the time you saw him the
18 first time?

19 A Yes, sir, he had more scratches on him or had scratches
20 on him and no shirt.

21 Q Was it the same person you had seen earlier?

22 A Yes, sir.

23 Q Are you sure?

24 A Yes, sir.

25 Q Do you see him in the courtroom today?

1 A. Yes, sir.

2 Q. Okay. Could you point him out for the Jury?

3 A. The gentleman that's sitting right here in front of
4 me (indicating).

5 Q. Okay, what's he wearing?

6 A. A blue blazer, yellow shirt, tie.

7 Q. There's two of us wearing blue blazers, yellow shirt and
8 ties.

9 A. Okay, the gentleman next to the man with the tan suit on.

10 MR. SCHIWETZ: Could the record reflect he
11 has identified the Defendant, Your Honor?

12 THE COURT: All right.

13 Q. (By Mr. Schiwetz) Does the man, Mr. De Luna, look any
14 different today than the way you saw him that night?

15 A. Same facial features, basically; less scars, scratches
16 on his face, after I initially identified him, he had a
17 few scratches on his face; and, of course, he's clean
18 shaven.

19 MR. SCHIWETZ: Pass the witness.

20

21 CROSS-EXAMINATION

22 BY MR. LAWRENCE:

23 Q. Mr. Baker, when you pulled into that Sigmor Service
24 Station, were there any other cars parked there?

25 A. I'm not sure. I suppose the girl's car was there, but

1 as far as people getting gas, no.

2 Q Did you notice anybody milling around outside?

3 A No, sir.

4 Q Is it possible that somebody could have been there and

5 you just didn't see them?

6 A Yes, it is, because I never looked.

7 Q Now, when you looked into that Sigmor Station from where

8 you're pumping the gas, do you have a clear view

9 completely or is it obscured where you can see certain

10 areas clear and certain --

11 A In that one particular window there is, of course, low

12 displays and maybe a sign or two on the window, but in

13 general in that particular pane of glass I looked in,

14 which is the end pane which looks right into the

15 cashier's area, there was a pretty much clear view.

16 Q Now, when you -- when you walked up toward the door,

17 I believe you said that the person was coming out?

18 A No, sir, I didn't.

19 Q Okay. What did you say?

20 A I said I walked toward the door and he threw her to the

21 floor and met me at the door.

22 Q Okay. What happened? Who opened the door?

23 A The Defendant.

24 Q Okay. Was he up -- were you standing up on that -- I

25 guess that first step that leads into the store?

1 A. No, sir, I was standing just at the bottom of it.

2 Q. And as he came out, which way does that door open?

3 A. It opens to your left if you're walking out the door.

4 Q. Now, as he came out, what did he say to you?

5 A. Well, he come out and met me and I assume he was still

6 standing on the step, if you want to call it that, and

7 the door shut or about the same time he said, "Don't

8 mess with me, I've got a gun," and we stood there for a

9 few seconds and he took off running.

10 Q. Okay. And which way did he run?

11 A. He ran to the left -- it would be to my right or to his

12 left in an easterly direction.

13 Q. Okay, when you say "he ran," do you mean a fast run or

14 a sprint, a job, a lope, a trot?

15 A. I would say a sprint.

16 Q. He was running pretty fast?

17 A. Yes, sir.

18 Q. Okay. Now, do you remember making a statement in this

19 particular case, giving the police a statement?

20 A. In the sense of afterwards and going downtown --

21 Q. Yeah.

22 A. -- yes, sir.

23 Q. And it was basically that same night, was it not?

24 A. Yes, sir.

25 Q. Okay. Do you recall in your statement that you said

1 that the person, after he got out the door and talked
2 to you, that you said he ran off behind the station?
3 A. Yes, sir.
4 Q. Okay. Behind the station, when we use the word "behind,"
5 we're talking about the back and now you're saying that
6 he's moving eastward.
7 A. Yes, sir.
8 Q. Or did he go eastward and then turn around and go up
9 the -- behind the station?
10 A. I would say you said it correctly that time.
11 Q. Which time?
12 A. That last time. He ran around to the eastward
13 direction and took off out of sight.
14 Q. Okay. Looking at that Sigmar Station up there, the way
15 it's drawn in that middle diagram --
16 A. Yes, sir.
17 Q. -- using the pointer, could you go up there and show
18 exactly where he ran?
19 A. Okay.
20 Q. To get behind the station.
21 A. He come out the door and we met each other face to face
22 and he took off running in this direction (indicating).
23 Now, to be honest, at this point or I assume beyond, I
24 didn't care about him anymore. I turned around and saw
25 this gentleman coming in and made my statement to him to

1 call the police.

2 Q Okay. So you put on there that he ran behind the

3 station. At that time, you presumed that he probably

4 ran behind the station.

5 A Yes, sir.

6 Q Okay. You have nothing to change your opinion on that,

7 do you?

8 A No, sir.

9 Q Okay.

10 A Because I didn't -- you know, there was other more

11 important things to worry about --

12 Q Okay.

13 A -- than where he was going.

14 Q Now, after you lost sight of him, did you go inside the

15 service station?

16 A I made that statement to the gentleman pulling in to

17 call the police and as I turned around to see how she

18 was, she was at the door coming out.

19 Q Okay. What did you do then?

20 A She said -- asked me for help, she said, "Help me, help

21 me," and she fell against the window, slid down and I

22 proceeded to make sure, you know, she tried to get up

23 like most people would and I proceeded to make sure she

24 laid down and hopefully stay there. I opened the door

25 and walked to the counter and picked up some paper

1 towels that happened to be right there and turned around
2 and walked back to the door.

3 Q. Okay. When you walked inside there, did you notice
4 anything?

5 A. I noticed blood and money and stuff all over the place
6 is the best way to put it.

7 Q. Did you notice money all over the place?

8 A. Yes, sir, that's the best way to put it.

9 Q. Was it on the floor or counter or --

10 A. Well, I guess my impression of all over the place was on
11 the floor and blood.

12 Q. So when you're talking about money, you're talking about
13 bills rather than change?

14 A. Yes, sir, bills and paper towels and blood.

15 Q. Now, when they -- after the police arrived and everything
16 and they talked to you, did they put all -- I believe
17 you said all the witnesses, your statement, that they
18 talked to you all, they got you over there in a group;
19 is that correct?

20 A. Yes, sir.

21 Q. By the side of the station and y'all were discussing
22 more or less to the officer what you saw, what he saw
23 and the officer was trying to put it together?

24 A. Yes, sir.

25 Q. Okay. Were you all together when y'all were discussing

1 this with the officer?

2 A. I suppose we were kind of in the same general area, yes.

3 Q. After you had been there for a while and they informed

4 you that they wanted you to look at a suspect --

5 A. Yes, sir.

6 Q. -- what did they actually tell you?

7 A. I really don't remember, other than, "We have a

8 gentleman, would anybody like to look at him." And

9 that's not word for word either, because I don't

10 remember.

11 Q. All right. Did you have the feeling, then, that they

12 were asking you to identify possibly the person that

13 you had seen earlier?

14 A. I don't know -- no, sir, not identify. They basically

15 wanted us to look at a gentleman they had.

16 Q. Okay. But what I'm asking you is did you get the

17 impression that you were going to go over there and see

18 the person that you had seen earlier?

19 A. No, sir. I was going to go over there and look at

20 somebody that they had.

21 Q. Did they ever take that person out of the car?

22 A. Yes, sir.

23 Q. They stood him up?

24 A. Yes, sir.

25 Q. How far were you away from him?

1 A. I was standing behind the officer that led me over
2 there, I was looking over his shoulder at the gentleman.
3 I suppose four feet, five feet.

4 Q. That person that you had seen earlier at the station,
5 would you describe him as a -- looking like a transient?

6 A. Yes, sir, I would.

7 Q. A transient being a person that -- well, what is a
8 transient to you?

9 A. To me a transient is somebody unshaven, I mentioned
10 looking hungry, clothes weren't all, you know, really
11 pressed or super neat and clean.

12 Q. Sort of like a person without a job, just somebody
13 bumming around doing nothing?

14 A. I suppose and I guess the biggest reason I would use
15 transient is the unshaven face.

16 MR. LAWRENCE: Pass the witness.

17 MR. SCHIWETZ: I don't have any further
18 questions.

19 THE COURT: You may step down. Thank you, sir.

20 MR. SCHIWETZ: I call Officer McConley.

21 (At this time the witness was sworn by the
22 clerk.)

23 THE COURT: When you have given your
24 testimony, don't discuss it with any other witness.

25 MR. McCONLEY: Yes, sir.

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EDDIE McCONLEY,

having been called as a witness by the State and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. SCHIWETZ:

Q. Would you please state your name for the Jury, sir?

A. Eddie McConley.

Q. And how are you employed?

A. With the Corpus Christi Police Department.

Q. And what is your rank, sir?

A. I'm a police lieutenant.

Q. As a lieutenant, can you tell the Jury what your duties are?

A. I'm a supervisor, shift supervisor.

Q. Okay. Can you tell them what a shift supervisor does basically?

A. Okay. Basically oversee the work product of the assigned officers on their particular beats.

Q. I am going to direct your -- well, let me ask you this: How long have you been a police officer?

A. Twelve and a half years.

Q. How long have you been a lieutenant?

A. A little bit over a year.

1 Q. Directing your attention back to the 4th day of February
2 of this year, 1983, and ask you if you were employed in
3 that capacity on that date.

4 A. I was.

5 Q. And were you working that evening?

6 A. Yes.

7 Q. Did you have an opportunity to go to the Sigmor Station
8 in the 2600 block of South Padre Island Drive?

9 A. Yes, sir.

10 Q. And when you went there, what was your purpose in going
11 there?

12 A. I responded to a call of an armed robbery with injuries.

13 Q. Is there any particular reason why a lieutenant would
14 go there?

15 A. Yes, sir. Because it's a major crime scene, it's a
16 matter of policy. I would go there to protect the crime
17 scene until the appropriate personnel could arrive to do
18 a follow-up investigation.

19 Q. Okay. Who does the follow-up investigations on a major
20 crime scene like that?

21 A. The criminal investigation division detectives.

22 Q. Do y'all have detectives that do work at night, on
23 weekends?

24 A. Yes, sir.

25 Q. Who was the particular detective that was working that

1 night?

2 A. That particular night was Sergeant Escobedo.

3 Q. Now, when you arrived there, were there other police
4 officers already on the scene?

5 A. Yes, sir.

6 Q. And can you tell the Jury what you did there at that
7 crime scene?

8 A. Okay. When I arrived on the crime scene, Sergeant
9 Fowler, who worked for me, was already on the crime
10 scene, he had a reserve partner with him, he was
11 assisting the victim, Mrs. Lopez; his partner was looking
12 over the immediate area. Also Officer Mejia, Unit 127,
13 was also on the scene. When I arrived, I posted Reserve
14 Officer McCoy, I believe that's his name, directly in
15 front of the front doors because I could see the large
16 amount of blood and whatever that was inside. I could
17 see that the place was in disarray and whatever, you
18 could tell that there had been a struggle there. Then I
19 turned my attention toward the victim that Officer
20 Fowler was working on. I couldn't see exactly where the
21 wound was for the blood, but after looking at her and
22 conversing with him, I immediately called for a follow-up
23 investigator and identification and whatever because I
24 knew that the wounds were serious.

25 Q. Now, without going into what the communication was, did

1 you subsequently get a communication from Officer Mark
2 Schauer?

3 A. Yes, sir, I did.

4 Q. And in response to that communication from Officer
5 Schauer, did you give him some instructions?

6 A. Yes, sir.

7 Q. And what were those?

8 A. I asked him to return to the scene there with the person
9 that he had taken into custody on Franklin Street,
10 approximately a block and a half away.

11 Q. Now, did you see Officer Schauer when he showed up?

12 A. Yes, sir.

13 Q. Using that pointer there, right over here, right in
14 front of you (indicating), there's a map over here
15 that's meant to represent the Sigmor Station, the one
16 there in the middle. Does that look familiar to you?

17 A. Yes, sir.

18 Q. The three objects out in front are supposed to be pumps.
19 Can you show where Officer Schauer parked approximately?

20 A. He parked on the west end of the building, which would
21 be here (indicating),

22 Q. All right. Now, you can go ahead and have a seat.

23 A. (Witness complies.)

24 Q. Can you tell the Jury what, if anything, you did after
25 Mr. Schauer returned to the scene?

1 A. Yes, sir. When he returned to the scene, I walked over
2 to the east end of the parking lot where we had witnesses
3 kind of isolated in that particular area. I talked to
4 a Mr. Kevan Baker, asked him to go with me over to
5 where Officer Schauer was parked to look at a person.
6 Q. Now, did you tell Mr. Baker the circumstances under
7 which that person had been arrested?
8 A. No, sir.
9 Q. Did you even know for sure at that time the circumstances
10 under which that person had been arrested?
11 A. I didn't. I suspected, but I didn't know.
12 Q. Now, did Mr. Baker accompany you?
13 A. Yes, sir.
14 Q. And did you go over to the police car of Mr. Schauer's
15 and show that person to Mr. Baker?
16 A. Yes, sir.
17 Q. Now, after you had shown Mr. Baker that person, did you
18 take him back over to where he had been before?
19 A. Yes, sir, I escorted him back over to the east side where
20 we had --
21 Q. Was there anybody else that you took over there to show
22 that person to?
23 A. I did, a gentleman named Aguirre, I believe was his name.
24 I escorted him over there.
25 Q. Now, Mr. Aguirre, did you take him over there by himself?

1 A. Yes, sir.

2 Q. And did you show him the person in the car?

3 A. Yes, sir.

4 Q. And did you make any suggestion to Mr. Aguirre about
5 what he was supposed to do when he got there?

6 A. No, sir.

7 Q. When you took him over there, did you show him the
8 person who was in the car?

9 A. Yes, sir.

10 Q. Was Mr. Aguirre -- excuse me. Was the person in the car
11 taken out of the car or were they left in it?

12 A. Officer Schauer took him out of the car.

13 Q. The person that was taken out of the car, was Mr.
14 Aguirre able to identify him?

15 A. Yes, sir.

16 MR. LAWRENCE: Your Honor, I'm going to object.
17 This would be bolstering the other witness's
18 testimony.

19 MR. SCHIWETZ: Your Honor, I think the rule is
20 to the effect that if the person is not able to
21 identify them in court but is able to testify that
22 they did identify someone, then the person who they
23 identified them to can come in and testify, for
24 that reason this witness would not be able to
25 testify about what Mr. Baker said but would be able

1 to testify about what Mr. Aguirre said.

2 MR. LAWRENCE: Mr. Aguirre could say whatever
3 he wanted to say when they had him on the witness
4 stand. To allow this to happen, you're just going
5 behind without asking Mr. Aguirre what he did at the
6 time and coming in and using this officer to bolster.

7 THE COURT: Well, that's overruled.

8 MR. LAWRENCE: Note our exception.

9 MR. SCHIWETZ: Thank you, Your Honor.

10 Q. (By Mr. Schiwetz) Was Mr. Aguirre able to identify the
11 person in the automobile?

12 A. Yes, sir.

13 Q. And was that person who was in the automobile that night
14 or was taken out of the automobile that night in the
15 courtroom today?

16 A. Yes, sir.

17 Q. Would you point that person out for the Jury?

18 A. The gentleman sitting to the left of the attorney with
19 the beige or brown suit on.

20 Q. And the person who was in the car, what kind of jacket
21 is he wearing?

22 A. It's a dark jacket, I'm sorry if I can't tell you the
23 colors from here.

24 MR. SCHIWETZ: Could the record reflect that
25 he is pointing at the Defendant, Your Honor?

1 THE COURT: All right.

2 MR. SCHIWETZ: Thank you. I pass the

3 witness.

4 MR. LAWRENCE: No questions.

5 THE COURT: Thank you, sir. You may step

6 down.

7 MR. SCHIWETZ: Would it be possible to take

8 a break at this point?

9 THE COURT: Would you like time enough for a

10 cup of coffee? All right. Why don't we take about

11 20 minutes.

12 (At this time a recess was taken, after which

13 the following proceedings were had before the Court,

14 outside the presence and hearing of the Jury, with

15 counsel for the State, counsel for the Defendant

16 and the Defendant present:)

17 THE COURT: You were previously sworn in this

18 case, were you not?

19 MS. ESCOBEDO: Yes, sir.

20 THE COURT: Bring them in.

21 (At this time the Jury was seated in the jury

22 box, after which the following proceedings were

23 had:)

24 (Statement of Facts continued in next volume.)

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OLIVIA ESCOBEDO,

having been called as a witness by the State and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. SCHIWETZ:

Q. Would you please state your name for the Jury, ma'am?

A. Olivia Escobedo.

Q. And how are you employed?

A. I'm a police sergeant with the Corpus Christi Police Department.

Q. How long have you been with the police department?

A. I have been with the police department about nine years.

Q. And how long have you been a detective?

A. Approximately four years.

Q. Are you assigned to any particular division over at the police department?

A. I'm assigned to crimes against persons.

Q. What would that include?

A. It includes homicide, robbery, aggravated assaults, sexual abuse cases, rapes.

Q. How long have you been assigned to work those particular types of cases?

A. The entire four years.

1 Q Directing your attention back to the 4th day of
2 February of this year, 1983, and ask you if you had
3 occasion to work a homicide that occurred in the 2600
4 block of SPID.

5 A I was working nights that particular day and I was on
6 duty from 7:00 o'clock until 3:00 o'clock in the
7 morning.

8 Q And about what time did you get out there to that
9 Sigmor Station, if you recall?

10 A Okay, according to my offense report or my supplementary,
11 it was at around 8:30 or so, I got the call at
12 approximately 8:15.

13 Q Did you go directly to the scene?

14 A I did.

15 Q Okay. Can you tell the Jury what you saw when you got
16 there?

17 A At the time I arrived there, there was numerous police
18 officers already on the scene. I observed that there
19 was a female laying on the ground directly to the left
20 of the door of the Sigmor service station. She was on
21 the ground. I could tell that she was bleeding, she was
22 wearing brown slacks and a white top. She was barefooted,
23 there was blood on the soles of her feet. I could tell
24 she was not conscious, although she was still breathing,
25 they were working on her, the paramedics were working on

1 her. I also saw that there was some blood smeared on
2 the door. At this time the scene was secured by one
3 of the officers and no one was inside the store. I
4 made contact with one of the supervisors there and
5 they --

6 MR. LAWRENCE: Your Honor, I'm going to object
7 to the narrative form and --

8 THE COURT: Question and answer.

9 MR. LAWRENCE: -- question and answer.

10 Q. (By Mr. Schiwetz) Was there anybody at the store when
11 you first arrived?

12 A. There was numerous officers there.

13 Q. Was there anybody inside the location?

14 A. No, there was not.

15 Q. After you first arrived there, what did you do?

16 A. After I contacted the supervisor, which was Lieutenant
17 McConley, I got the information from him as to what had
18 occurred and I then talked to a couple of the witnesses
19 very briefly. I talked to a couple of the officers
20 also very briefly trying to obtain more detail about
21 what was going on, also I was waiting for identification
22 to arrive so that we could go inside the store and
23 process the scene.

24 Q. Did identification arrive?

25 A. Yes, they did.

1 Q And who was the identification officer that did arrive?

2 A Sergeant Infante.

3 Q When you went into the store, could you -- describe

4 generally for the Jury what you saw.

5 A Okay. Could I refer to my notes here?

6 Q Well, before we do that, direct your attention to that

7 drawing up there on the board, I believe it's State's

8 Exhibit Number 2 [sic], the drawing which has the three

9 pumps out in front and represents the station.

10 A Yes.

11 Q Okay. Does that fairly and accurately approximate the

12 location out there?

13 A Yes, it does.

14 Q Now, when you went in, where did you go?

15 A I went in through the front door after Sergeant Infante

16 had processed the door.

17 Q After he had processed the door?

18 A Correctly.

19 Q Where did you go once you went inside?

20 A Initially I stepped inside the door and I made a visual

21 survey of the conditions in front of the desk or the

22 counter there. At the time we went in, the telephone

23 was ringing and there was a radio that was blaring real

24 loud. I saw that there was a package of cigarettes,

25 Winston cigarettes on top of the counter, there was a

1 ballpoint pen on the counter, also. I saw that the
2 stool, which I later found out was to be behind the
3 counter was in front of the counter and to the right of
4 it. I also noted there was blood on the floor and
5 footprints in the tiles.

6 MR. SCHIWETZ: Could I get this marked as a
7 State's Exhibit?

8 (State's Exhibits 31, 32 and 33 were marked
9 for identification.)

10 Q. (By Mr. Schiwetz) Officer Escobedo, I want to show you
11 what's marked for identification purposes as State's
12 Exhibit 31 and ask you if that -- if you recognize that
13 photograph.

14 A. Yes, I do.

15 Q. And what is that?

16 A. Okay, this is the photograph of the inside of the store
17 as you are facing the counter.

18 Q. And does that truly and accurately represent the way it
19 appeared approximately 8:30 to 9:00 o'clock on
20 February 4th, 1983?

21 A. Yes, it does.

22 Q. Let me show you now what's marked as State's Exhibit 32
23 and ask you if you can recognize that photograph.

24 A. Yes, sir, that's also a picture of the front of the
25 counter inside the store as it was on February the 4th,

1 1983.

2 Q Let me show you what's marked as State's Exhibit 33 and
3 can you tell me what that photograph is?

4 A Yes, sir, that also represents the area behind the
5 counter of the Sigmor service station, it also was taken
6 on February the 4th, 1983.

7 MR. SCHIWETZ: The State would like to tender
8 State's Exhibits 31, 32 and 33.

9 MR. DE PENA: We offer no objection, Your
10 Honor.

11 THE COURT: They will be received.

12 Q (By Mr. Schiwetz) Showing you first what's marked as
13 State's Exhibit 31, can you tell the Jury what that is?

14 A This area, as I stated before, is the immediate
15 entryway into the store. This was a -- just a little
16 floor mat and this was the blood that I spoke of and you
17 can see just barely a footprint here on the tile
18 (indicating).

19 Q Okay. When you speak of "footprint," you mean a
20 footprint or a shoeprint?

21 A A bare footprint.

22 Q And, again, the victim, was she wearing shoes or was
23 she barefooted?

24 A She was barefooted.

25 THE COURT: Pass these among you without

1 comment, please.

2 Q (By Mr. Schiwetz) I'm showing you now what's marked as
3 State's Exhibit Number 32 and it has been admitted. Ask
4 you to tell the Jury what that is.

5 A Okay. This is the area immediately in front of the
6 counter. It also shows an area of blood that was coming
7 toward the door and you can see the footprint a little
8 bit more clearly, I believe, on this one.

9 Q And the little carpet there that's shown here in State's
10 Exhibit 32, would that be the same carpet that's shown
11 in State's Exhibit 31?

12 A That's correct.

13 Q I am showing you now what's marked as State's Exhibit 33.
14 Can you tell the Jury what part of the store that's
15 coming from?

16 A Okay. This area is directly behind the counter, which
17 is displayed in exhibit number 32, I believe. This is
18 the cash register (indicating). It had two \$5 bills
19 laying on top, it had some of the coins in the individual
20 slots. This is a knife that was found, processed by
21 Sergeant Infante and later tagged by myself (indicating).
22 This is a \$5 bill, which was laying on the floor
23 (indicating). This is just a piece of paper that was on
24 the floor (indicating). This is an area which had some
25 blood on it and these are blood spots here (indicating).

1 The keys to the safe are still in the door, there's a
2 penny wrapper here (indicating). And I believe there was
3 a carbon paper laying on top of the register tray also.

4 Q Let me show you what's previously been marked, identified
5 and admitted as State's Exhibit Number 26 and ask you if
6 you can recognize that.

7 A Okay. Again, this is the area immediately behind the
8 cash -- behind the counter, the main counter. This area
9 is also the one depicted in that last photograph, I
10 don't recall the State Exhibit Number on it.

11 Q I believe it was 33.

12 A Thirty-three, okay. And this is the adjacent area. The
13 cash register is here (indicating), to the left of that
14 picture.

15 Q There appears to be a \$5 bill over there in the lower
16 right-hand corner. Is that the same \$5 bill that was in
17 State's Exhibit 33?

18 A Yes.

19 Q I'm showing you now what's been marked, identified and
20 admitted as State's Exhibit 25. Can you tell us what
21 that photograph is of?

22 A Okay. This is, again, the main counter. This is the
23 cash register which was on top of the counter --
24 correction. This is not the main counter, this area
25 here is the main counter which faces the customer

1 (indicating). This is the counter that's parallel to
2 the windows of the store there. The cash register, this
3 depicts the blood that was on the register (indicating).
4 Here is the two \$5 bills I spoke of (indicating). You
5 can see the coins in the individual slots there. The
6 phone is on the hook. (Indicating).

7 Q. I'm showing you what's marked as State's Exhibit 18
8 that has been previously admitted. Can you describe
9 for the Jury what that is?

10 A. Okay. Again, this is the counter which is parallel to
11 the windows of the store there. This is the cash
12 register which is exemplified in that photograph over
13 there, this is the blood on the register (indicating).
14 The knife is here, here's the \$5 bill which has also
15 been depicted in one of the other pictures (indicating).
16 Here's the paper towels (indicating). This is blood
17 indicating a struggle occurred back there (indicating).
18 This is the safe, the keys are in the safe back there
19 and -- let's see -- (indicating).

20 Q. Were those soft drinks knocked over when you went in or
21 did that happen after you got there?

22 A. No, they were as shown in the photograph.

23 Q. Likewise, the items that you found on the floor, were
24 they in that condition when you got there?

25 A. Yes, they were.

1 Q If you could take this pointer for a second, there's a
2 couple questions I want to ask you off this map up here.
3 Could you show the Jury where the counter was that you
4 have described as facing customers, the cash register.
5 A Okay. This is the pump; right?
6 Q Yes, ma'am.
7 A Okay. The counter facing the customers is this area
8 right here (indicating). This portion right here flips
9 up (indicating). This is the area on which the cash
10 register is laid (indicating).
11 Q So --
12 A And the safe is in this area right here (indicating).
13 Q Where would the knife have been found?
14 A Right here in this area (indicating).
15 Q And the \$5 bill that was on the floor?
16 A Right in this area (indicating). And there were two
17 \$5 bills laying on top of the register, were laying
18 right here (indicating).
19 Q You can go ahead and have a seat.
20 A (Witness complies.)
21 Q Okay. I want to show you what's marked as State's
22 Exhibit 29, being a bag which I am opening and I am
23 extracting from it what's marked as State's Exhibit
24 Number 30. I'm going to ask you to look at State's
25 Exhibit Number 30 and tell me if you have ever seen it

1 before.

2 A. This is the knife which I retrieved on February the 4th,
3 1983. According to the notes on this bag, which I took
4 from the store, I tagged it at 9:25 p.m. and it is the
5 same knife that I tagged that night. At the time that
6 I first observed this knife, it was open and it had some
7 type of substance on it. To me it appeared to be some
8 type of fatty substance, tissue on it.

9 Q. Would that be the same one -- the same knife which is
10 represented in previous State's Exhibits which I have
11 previously handed to you?

12 A. Yes, it is.

13 MR. SCHIWETZ: We move to admit State's
14 Exhibit Number 30.

15 MR. LAWRENCE: Your Honor, we would object to
16 the admittance of State's Exhibit Number 30 in that
17 the chain of custody hasn't been properly laid and
18 we don't know what happened in the intervening
19 period from the time she had it till today.

20 THE COURT: That's overruled.

21 MR. LAWRENCE: Note our exception.

22 THE COURT: Certainly.

23 Q. (By Mr. Schiwetz) Showing you that knife now that has
24 been opened, does that appear to be in the same condition
25 it was in the night you found it, aside from the fatty

1 tissue which you said was on it?

2 A. It was opened, yes, in the same position.

3 MR. SCHIWETZ: Could I get this package
4 marked, please.

5 (State's Exhibit 34 was marked for
6 identification.)

7 Q. (By Mr. Schiwetz) Officer Escobedo, I want to show you
8 what's marked as State's Exhibit Number 34 and ask you if
9 you can identify that package.

10 A. Okay. This package was marked by myself and it indicates
11 that the offense occurred on February 4th, 1983. It
12 indicates that I tagged this particular item at 9:30 p.m.
13 and it is a package of Winston cigarettes, which was
14 found next to the calculator on the counter which faces
15 the customers and it has my name on it.

16 Q. Would you go ahead and open that for us.

17 A. Do you have some scissors?

18 THE COURT: Use the knife.

19 THE WITNESS: That's okay.

20 MR. SCHIWETZ: Could I get this marked as a
21 State's Exhibit, please?

22 (State's Exhibit 35 was marked for
23 identification.)

24 Q. (By Mr. Schiwetz) Let me show you what's marked as
25 State's Exhibit 35 and ask you if you can identify that.

1 A. Okay. This is a package of cigarettes that was on top
2 of the counter, which was next to the calculator and
3 also a writing pen.

4 Q. Okay. Showing you what's marked as State's Exhibit 26,
5 which is this photograph of the top of that counter, is
6 the package of cigarettes shown in State's Exhibit 26
7 the same package that's now marked as State's Exhibit 35?

8 A. Yes, it is, sir.

9 Q. What's this black stuff on it?

10 A. That is fingerprint powder to indicate that the package
11 was processed for fingerprints.

12 Q. Who processed it?

13 A. Sergeant Infante.

14 MR. SCHIWETZ: I would like to tender State's
15 Exhibit 35.

16 MR. LAWRENCE: No objection.

17 MR. DE PENA: I have none, Your Honor.

18 THE COURT: Be received.

19 Q. (By Mr. Schiwetz) Officer Escobedo, aside from the
20 knife and the cigarettes, did you take custody of
21 anything else there at that location?

22 A. Okay, I'm going to refer to my supplementary report. I
23 took the victim's shoes, which was a pair of slaps, both
24 had some blood substance or appeared to be blood substance
25 on the sole of the shoe. I also retrieved a calendar,

1 which was laying on the floor. Okay. There was a
2 maroon-colored button which was on the floor mat behind
3 the counter that was also tagged for evidence. One of
4 the \$5 bills, I believe it was the one on the floor that
5 had some blood substance on it, was also tagged by my --
6 by me. Okay, also a cigarette butt, a very small
7 portion of a cigarette butt was also tagged.

8 Q. Show you what's marked as State's Exhibit Number 12 and
9 ask you if you can identify this.

10 A. Okay, this is a package which was tagged by Officer
11 Schauer which contains some American currency.

12 Q. Okay. And was that turned over to you?

13 A. It was -- it was taken to the booking desk and tagged
14 for evidence and I later went and retrieved it from the
15 booking desk and took it to Sergeant Wilson.

16 Q. Okay, who's Sergeant --

17 A. Sergeant Wilson is with the identification section and
18 he does processing for fingerprints also.

19 Q. And were you present when Sergeant Wilson processed it
20 for prints?

21 A. No, I was not.

22 Q. This is --

23 A. It shows on the package, I marked it on 2/7 of '83, I
24 turned it over to Sergeant Wilson at 1:58 p.m. and it
25 shows that he returned it that same date at the property

1 room at 3:00 p.m.

2 Q. Thank you. Officer, I'm going to show you what's
3 marked as State's Exhibit Number 22, being a paper bag
4 which has inside it an exhibit marked presumably 23 --
5 what's marked as State's Exhibit 23 here. I'm going to
6 ask you if you have ever seen this particular item
7 before.

8 A. Okay, this is the shirt that was retrieved by Officer
9 Shedd for --

10 MR. LAWRENCE: Your Honor, I'm going to object,
11 that's unresponsive as to --

12 THE COURT: Sustained.

13 Q. (By Mr. Schiwetz) Have you ever seen this shirt before?

14 A. Yes.

15 Q. Where?

16 A. At the police station.

17 Q. Okay. Did you do anything with this shirt?

18 A. I did. I took it to DPS to have it analyzed.

19 Q. When you say "DPS," who are you talking about?

20 A. The Department of Public Safety.

21 Q. Okay. And who did you take it to out there? If you
22 recall?

23 A. Don Thain is the person I turned it over to.

24 Q. Did you make any kind of distinguishing marks so that
25 you would be able to identify this shirt?

1 A. I put my initials, O. E., on the collar of the shirt.

2 Q. Are those initials on this shirt?

3 A. Yes.

4 Q. I'm going to show you now what's marked as State's

5 Exhibit 15, it being a paper bag which contains an

6 exhibit marked State's Exhibit 16, and ask you if you

7 have ever seen this?

8 A. Yes.

9 Q. Okay. And where have you seen it?

10 A. Also at the police station.

11 Q. Okay. Did you do anything with it?

12 A. I took those pants to the Department of Public Safety

13 to have them analyzed.

14 Q. Okay. And what did you do after you had them analyzed?

15 A. I returned them to the booking desk.

16 Q. Okay. By the way, on the preceding exhibit, State's

17 Exhibit 23, what did you do with it when you got it back?

18 A. I returned it to the property room at the booking desk.

19 Q. I'm showing you now what's marked as State's Exhibit 19,

20 being a paper bag which has two items inside marked

21 State's Exhibit 20 and 21. Have you ever seen them

22 before?

23 A. Yes, I have.

24 Q. And where was that?

25 A. At the police station after I retrieved them from the

1 booking desk.

2 Q And what did you do with them?

3 A I also took them to the Department of Public Safety to
4 have them analyzed.

5 Q Okay. And after they were analyzed, what did you do?

6 A I returned them to the property room.

7 MR. SCHIWETZ: May I have just a moment, Your
8 Honor?

9 THE COURT: Uh-huh.

10 MR. SCHIWETZ: Pass the witness.

11

12 CROSS-EXAMINATION

13 BY MR. LAWRENCE:

14 Q Sergeant Escobedo, as part of your investigation, did
15 you have an occasion to show a photo lineup to a person
16 by the name of John Arsuaga?

17 A I did.

18 Q And what was the purpose of that photo lineup?

19 A To attempt to see if he could identify the subject
20 involved in this offense.

21 Q Okay. And prior to showing the photo lineup to the
22 witness John Arsuaga, did you have occasion to gather
23 information with regards to the physical characteristics
24 of a particular suspect?

25 A I had received such information, yes.

1 Q Do you recall what information you had received in order
2 for you to make a photo lineup?

3 A I would have to review my notes to find out what it was
4 exactly.

5 Q Do you have your notes before you?

6 A I have some of them, yes. Okay, I do not have a
7 description of the suspect in my notes.

8 Q Do you recall the description?

9 A To the best of my recollection, I believe they told me
10 he was a Hispanic male; approximately five-eight, five-
11 nine; black hair; I don't recall the weight.

12 Q Now, as a result of that description, did you have
13 occasion to try and present or to put together what we
14 call a photo identification?

15 A Yes, I did.

16 Q And explain how you go about doing it.

17 A In this instance what I did, I went to the booking desk
18 and took a photograph of the Defendant; I then returned
19 to our office and I located pictures that were similar
20 in facial characteristics to the individual.

21 Q When you put a photo lineup together, you try to get
22 the photos to pretty well look alike in the sense that
23 they are taken basically along the same lines, for
24 example, you take a photo of a person, you want to make
25 sure that you're taking it, say, from the chest area up,

1 for all practical purposes, that possibly in the
2 background there is a -- a height chart in which that
3 person is kind of up against that chart so that when you
4 take his picture, you can see basically how tall he is;
5 is that correct?

6 A. That's true.

7 Q. And in this particular photographic lineup that you made
8 in which you have a picture of Mr. De Luna, did you have
9 pictures that indicated that?

10 A. Yes, I did.

11 Q. Okay. And if you recall, do you recall putting in some
12 pictures of people anywhere from a height of six foot
13 four inches to a height of five foot three inches?

14 A. If that's what it says on the photograph lineups, that's
15 what I did, yes.

16 Q. And, of course, you had a description of the man five-
17 eight to five-nine.

18 A. That's true.

19 Q. Okay. And you included Mr. De Luna's picture in there,
20 did you not?

21 A. Yes, I did.

22 Q. And his photograph would indicate somewhere five-eight,
23 five-nine, would it not?

24 A. I would have to look at his photograph.

25 Q. Okay. If I showed you -- would it help you if I showed

1 you a copy?

2 A. Yes, it would.

3 MR. LAWRENCE: May I approach the witness?

4 THE COURT: Certainly.

5 MR. LAWRENCE: Your Honor, for the record, I

6 have been tendered the originals by the State.

7 MR. SCHIWETZ: For the record, he's had the

8 originals for a month, Your Honor.

9 MR. LAWRENCE: Not in my possession, Your

10 Honor, for the record, I've had a copy.

11 THE COURT: Come on, gentlemen.

12 Q. (By Mr. Lawrence) Okay. Now that you have refreshed

13 your memory, do you have a picture of that photographic

14 lineup in your possession?

15 A. Yes, I do.

16 Q. Okay. And you're looking at it?

17 A. Yes.

18 Q. And this is the same photographic lineup that you showed

19 to any witnesses; is that correct?

20 A. This is the one I showed to the witnesses involved in

21 this case.

22 Q. And looking at photograph number one, you have an

23 individual there that the height would show somewhere

24 maybe six foot three, six foot four inches; is that

25 correct?

1 A. I would say six foot four, yes.

2 Q. Okay. And looking at picture number two, you have
3 somebody in there that shows a height of about six foot
4 one; is that correct?

5 A. That's true.

6 Q. And in photograph number three, you have a person whose
7 height is five foot three; is that correct?

8 A. That's true.

9 Q. Photograph number four, you have an individual whose
10 height indicates five foot six; is that correct?

11 A. Yes.

12 Q. Okay. And in photograph number seven, you have a person,
13 that because of the hair there, looks like five foot
14 nine or so, five foot nine and a half or so.

15 A. I would say five foot ten.

16 Q. Okay. And whose photograph is number five?

17 A. Photograph number five is the Defendant, Mr. Carlos
18 De Luna.

19 Q. Okay. And in photograph number six, you have another
20 person five foot ten or thereabouts?

21 A. Yes.

22 Q. Okay. So basically in this particular photographic
23 lineup, we have only two people, numbers five and six,
24 that are anywhere near the height that was given to you
25 by the witnesses in order to determine the suspect. Is

1 that correct?

2 A. That's true.

3 Q. Okay. So if a person, especially a witness that had

4 come up to you and told you, "Well, to me he was

5 anywhere five-eight, five-nine, somewhere around that

6 area," he's going to be looking at photographs in which

7 he wants to make sure that that person is five-eight and

8 five-nine, that's what he said. Is that correct?

9 A. Let me say that when I put a photograph lineup together,

10 I basically go by the facial characteristics. I allow

11 for error as far as heights because people can be

12 confused.

13 Q. But in all the reports that you had, there's no confusion

14 anywhere to even come close to six foot four inches or

15 five foot three inches, was there?

16 A. I still allow for that. I personally do that.

17 Q. If you -- so that a person looking at this would be

18 drawn really to just two pictures. Is that correct?

19 A. I would think they would look at the face more than they

20 would look at the height because you can make a mistake

21 about height and weight, that's obvious. It's been done

22 before many times, sir.

23 Q. You don't think that that's too suggestive, having a

24 height back there six foot four, that that's going to

25 eliminate a person?

1 A. When I put this photograph lineup together, I went by
2 the face and the hair characteristics.

3 Q. Did you, in fact -- do you think that's a fair
4 photographic lineup?

5 A. In my opinion, yes.

6 Q. Okay. If you were the person charged with the crime
7 and they had you as five foot four, five foot five,
8 people had described you as that and yet they put people
9 in there five zero and six foot tall, six foot two, and
10 you were the only suspect with the given information of
11 five foot four or so, would you think that would be fair?

12 A. Naturally if I was a defendant, I wouldn't think it was
13 fair, of course not.

14 Q. So as far as you're concerned, that's not fair to my
15 client.

16 A. I think it's a fair lineup for my purpose.

17 Q. For your purpose.

18 MR. LAWRENCE: Pass the witness.
19

20 REDIRECT EXAMINATION

21 BY MR. SCHIWETZ;

22 Q. Officer Escobedo, are there ever variances in the
23 descriptions that people give of the same person?

24 A. In the four years that I have worked CID, there have
25 been variances in weight and height, that's why I don't

1 depend too much on the height and weight descriptions,
2 I go mostly by the face description.

3 Q The description as to shirt that you had of the suspect,
4 what was that?

5 A I had various descriptions of the shirt.

6 Q You had a description of some people said the person was
7 wearing a white shirt, didn't they?

8 A That's true.

9 Q One person said that he thought he remembered seeing some
10 red in the shirt, didn't he?

11 A True.

12 Q What color shirt is Mr. De Luna wearing in this?

13 A Mr. De Luna is wearing an outfit that was issued by the
14 City.

15 Q Okay. What color is it?

16 A Blue.

17 Q Did you have any descriptions of the suspect wearing a
18 blue shirt?

19 A No.

20 Q Okay. A couple of the witnesses saw the Defendant
21 later on wearing no shirt at all, didn't they?

22 A That's true.

23 MR. LAWRENCE: Your Honor, I'm going to object
24 to leading questions. If he had a question, he
25 should ask it rather than lead the witness.

1 THE COURT: Sustained.

2 Q (By Mr. Schiwetz) Do you know if anybody saw -- any
3 of the witnesses saw the Defendant at any time wearing
4 no shirt at all?

5 A I heard that that description was put out also.

6 Q Did you have anybody in here who wasn't wearing a shirt
7 at all?

8 A I have one individual that's not wearing a shirt.

9 Q Is that Carlos De Luna?

10 A No, sir, it isn't, it's photograph number four.

11 MR. SCHIWETZ: Could I get this marked as a
12 State's Exhibit.

13 (State's Exhibit 36 was marked for
14 identification.)

15 Q (By Mr. Schiwetz) I'm showing you what's marked as
16 State's Exhibit 36. Is this the lineup that you showed
17 to the witnesses that you did show it to in this case?

18 A Yes, it is.

19 Q That include John Arsuaga?

20 A Yes.

21 MR. SCHIWETZ: I don't have any further
22 questions.

23 MR. LAWRENCE: I have no further questions.

24 THE COURT: Thank you, ma'am, you may step
25 down.

1 MS. ESCOBEDO: May I be excused?

2 THE COURT: Certainly.

3 MR. SCHIWETZ: Our next witness is out in the
4 hall, she'll be in in just a second, Your Honor.

5 (At this time the witness was sworn by the
6 clerk.)

7 THE CLERK: Do you want to have a seat over
8 there by the court reporter, please.

9 THE COURT: After you have given your testimony
10 in this case, you're not to discuss it with any
11 other witness in the case or in their presence or
12 hearing.

13

14 ESTELLA GONZALES,

15 having been called as a witness by the State and after having
16 been first duly sworn to tell the truth, the whole truth and
17 nothing but the truth, testified upon her oath as follows:

18

19 DIRECT EXAMINATION

20 BY MR. SCHIWETZ:

21 Q. Would you please state your name for the Jury, ma'am.

22 A. Estella Gonzales.

23 Q. You're going to have to speak up a little bit, I can
24 hardly hear you.

25 A. Estella Gonzales.

1 Q. Ms. Gonzales, how are you employed?

2 A. How am I employed?

3 Q. Yes, ma'am. Where do you work?

4 A. For the Nueces County Sheriff's Department.

5 Q. And what do for the sheriff's department?

6 A. I'm a bookkeeper for the commissary.

7 Q. And among -- can you tell the Jury what your general

8 duties are regarding the jail?

9 A. Do you want me to explain what I do?

10 Q. Yes, ma'am.

11 A. Okay.

12 Q. For the jail.

13 A. I work as a bookkeeper for the commissary department. I

14 fill out the orders for the inmates for commissary.

15 Q. Okay. And explain to the Jury how that works, filling

16 out the orders for the inmates.

17 A. All right. The inmates send their commissary lists and --

18 and I fill them out for them and I post them and I send

19 them to the commissary for the inmates.

20 Q. Now, let's say I'm over here in the jail, I'm charged

21 with some crime, and I'm a prisoner over there.

22 A. All right.

23 Q. And I -- I want to order some things from the commissary.

24 How would I go about doing that?

25 A. Okay. You fill a slip and the officer, the floor

1 officer, will send it to the commissary department, to
2 me.

3 Q Okay. And what will you do with it?

4 A And then I set out the slip. If the inmate has money,
5 I post the money, you know, on money cards, I take off
6 the commissary whatever amount they ask for, I fill out
7 the items that they want and I send it to the floor
8 officer and then he delivers it to the inmates.

9 Q Now, how do you physically fill out the order?

10 A How do I fill it out?

11 Q Yeah, what do you do? Do you get an order from them and
12 then what do you do with it?

13 A Okay, I have a commissary slip and it has the items they
14 want. I have the commissary -- the items, so whatever
15 they ask for, I fill out the commissary slip for them
16 and then, like I said, I take it off from their money
17 and send it to the floors.

18 Q What do you do with those commissary slips that they fill
19 out?

20 A After they return them back to me signed by them, I --
21 I put them up.

22 Q Okay.

23 A I keep them, you know, so that --

24 Q Do you keep -- do you keep those things in your own
25 custody?

1 A. Yes, sir.

2 Q. Where do you file them?

3 A. I have filing cabinets in my office.

4 Q. Okay. And do you keep care of those and take care of

5 them yourself?

6 A. Yes, sir.

7 Q. And what's the purpose in keeping those?

8 A. Well, we keep all the records because this is -- well,

9 it's for their benefit and our benefit. It's money,

10 you know, it's money transactions, in other words.

11 Q. It helps you keep track of how much money they have got

12 in their account?

13 A. The money they have in their account.

14 Q. And how much you're taking out for items they order; is

15 that fair to say?

16 A. Right. Yes, sir.

17 Q. And you do this in the regular course of your business,

18 don't you?

19 A. Yes, sir.

20 Q. And when you get one of those things, you're the one

21 that fills it out.

22 A. Yes, sir.

23 Q. So you know what -- what orders are being filled, don't

24 you?

25 A. Yes, sir.

1 (State's Exhibit 37 was marked for
2 identification.)

3 Q (By Mr. Schiwetz) Let me show you what's marked as
4 State's Exhibit Number 37, which is 16 pages of attached
5 documents and ask you if you have ever seen these before?

6 A Yes, sir.

7 Q Okay. What are those?

8 A These are the commissary slips right here (indicating).

9 Q Okay. And are those -- have those commissary slips been
10 kept in your care, custody and control since they were
11 filled out and ordered?

12 A Yes, sir.

13 Q And that's part of your job to keep those?

14 A Right, yes, sir.

15 Q Fill the orders and --

16 A And keep the records.

17 Q And keep the records, okay. And have you filled out
18 those orders?

19 A Yes, sir, I have.

20 Q And you have kept the records?

21 A Yes, sir.

22 Q These are copies, are they not?

23 A These are copies, yes, sir.

24 Q Are they identical to the originals?

25 A Yes, sir.

1 Q And are the originals still in your custody?

2 A Yes, sir.

3 Q Now, I notice on the first page you have got a little

4 slip which appears to be about eleven inches and about

5 four or five inches wide; is that the customary size of

6 those slips?

7 A Yes, sir, this is the size right here (indicating).

8 Q And on the second page it's got one like that, and then

9 on the third page and from then on it appears to have

10 about three of those on each page; is that fair to say?

11 A Yes, sir.

12 Q And are these simply done that way for the ease of

13 printing them?

14 A Yes.

15 Q Okay. But they do represent individual --

16 A Yes, sir, there's three on each one -- on each of these

17 cards.

18 MR. SCHIWETZ: May I have just a moment, Your

19 Honor.

20 Q (By Mr. Schiwetz) Okay. Have you had a chance to

21 review these since you made the copies?

22 A Sort of.

23 Q Okay. Could you take a look through those, look through

24 each one of them and tell me if the person who ordered

25 these ordered any cigarettes, and just take a look through

1 there and see what kinds of different -- different
2 kinds of cigarettes have been ordered. All right?

3 A. Okay.

4 Q. Have you had a chance to look through there?

5 A. Yes, sir.

6 Q. Okay. What kind of cigarettes has the person who's
7 doing the ordering ordering?

8 A. Winston.

9 Q. What's the name of the inmate who's ordering them?

10 A. Carlos De Luna.

11 MR. SCHIWETZ: Pass the witness.

12

13 CROSS-EXAMINATION

14 BY MR. LAWRENCE:

15 Q. Ms. Gonzales, you don't know for a fact that the person
16 who ordered is really Carlos De Luna, do you?

17 A. Yes, sir, I compare the signature.

18 Q. You're not a handwriting expert, are you?

19 A. No, sir.

20 Q. When they -- you don't come face to face with the person
21 that actually orders, do you?

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

23 Q. All you have is the signature of a person and that's all.
24 Is that correct?

25 A. No, sir. I have a signature, a birth date, booking

1 sheet number and a ledger number for the --

2 Q Well, what I'm saying is that a person can sign a

3 commissary slip; is that correct?

4 A Yes, sir.

5 Q Okay, the person that signs the commissary slip might

6 not necessarily be the one who fills in the request up

7 here as to what he wants; is that correct?

8 A Yes, sir.

9 Q So just because you have a commissary slip that has the

10 name "Carlos De Luna," you don't know if he actually

11 ordered this for himself or to trade with somebody else

12 or it's him or somebody else filled it out, other than

13 his own signature at the bottom. Is that correct?

14 A Yes, sir.

15 Q Did that particular State's Exhibit Number 37, did that

16 go all the way back to February the 4th or did you

17 recall?

18 A Yes, it does.

19 Q Does it show any other type of cigarettes on there?

20 A No, sir.

21 Q Are you sure about that?

22 A I just looked at it.

23 Q It doesn't have Camels in there?

24 A No, sir.

25 Q How many people do you have at the jail that order

1 Winston cigarettes?

2 A. A lot of them.

3 Q. A lot of them.

4 A. Yes, sir.

5 Q. Do y'all carry every brand or do y'all carry just
6 particular brands?

7 A. Just particular brands.

8 Q. Okay. And Winston is one of those particular brands;
9 is that correct?

10 A. Yes, sir.

11 MR. LAWRENCE: Pass the witness.

12

13 REDIRECT EXAMINATION

14 BY MR. SCHIWETZ:

15 Q. How many brands do y'all carry?

16 A. Let's see. Five.

17 Q. Five?

18 A. Uh-huh.

19 MR. SCHIWETZ: Thank you, ma'am.

20 MR. LAWRENCE: No questions.

21 THE COURT: Thank you, ma'am, you may be
22 excused.

23 MR. SCHIWETZ: May we approach the bench?

24 (At this time an off-the-record discussion was
25 held at the bench, after which the following

1 proceedings were had:)

2 THE COURT: All right, we will be in recess,
3 then, until 1:30 this afternoon, ladies and gentle-
4 men.

5 (At this time the Jury was withdrawn from
6 the courtroom, after which the following
7 proceedings were had before the Court, outside the
8 presence and hearing of the Jury, with counsel for
9 the State, counsel for the Defendant and the
10 Defendant present:)

11 MR. SCHIWETZ: For the sake of the record,
12 Mr. De Pena was worried about my circling on
13 State's Exhibit 6 that I -- my circling included a
14 part of the building other than the one I was
15 trying to describe and so he would like for me to
16 redraw my circle and make it a little smaller,
17 with the Court's permission.

18 THE COURT: Sure.

19 MR. SCHIWETZ: Let the record reflect that I
20 sort of trimmed the circling down.

21 MR. DE PENA: He, specifically, designated it
22 down to one building.

23 MR. SCHIWETZ: Thank you.

24 (At this time, the noon recess was taken,
25 after which the following proceedings were had

1 before the Court, outside the presence and hearing
2 of the Jury, with counsel for the State, counsel
3 for the Defendant and the Defendant present:)

4 MR. SCHIWETZ: Comes now the State and would
5 like to place upon the record an agreement which
6 has been reached with the defense attorneys
7 regarding certain State's Exhibits, namely State's
8 Exhibit 16, being the black pair of pants which
9 have been identified as being taken off the
10 Defendant; State's Exhibit 23, being a shirt which
11 was found in the back yard of Mr. Garcia; and
12 State's Exhibit Number 20, which are being -- and
13 State's Exhibit 21 which would be a pair of white
14 track-type shoes which also were found in the back
15 yard of Mr. Garcia. The State has announced that
16 its intention is to call a Mr. Don Thain, T-h-a-i-n,
17 of the Department of Public Safety, whose testimony
18 will be to the effect that there was no blood found
19 on any of these items. The defense has agreed the
20 State will be allowed to call Mr. Thain and get his
21 testimony without establishing a perfect chain of
22 custody, namely we have testimony already to the
23 effect these items were taken off the Defendant or
24 found in the general vicinity of where he was
25 arrested. The State will not have to put on

1 testimony to the effect that they were booked in,
2 booked out and booked back in again and then
3 brought to court.

4 MR. LAWRENCE: The Defense so stipulates and
5 agrees.

6 THE COURT: All right, fine.

7 MR. DE PENA: We do, Your Honor.

8 MR. SCHIWETZ: Thank you, Your Honor.

9 THE COURT: Who's your next witness?

10 MR. SCHIWETZ: I call Officer Shedd.

11 THE COURT: Officer Shedd, where would he be?

12 MR. SCHIWETZ: Shedd.

13 THE BAILIFF: Shedd?

14 MR. SCHIWETZ: Your Honor, the State is going
15 to call Sergeant Wilson.

16 THE COURT: Sergeant Wilson, all right.

17 (At this time the witness was sworn by the
18 clerk.)

19 THE CLERK: Please have a seat by the court
20 reporter.

21 THE COURT: You can bring them in.

22 The Rule has been invoked when you finish
23 giving your testimony.

24 (At this time the Jury was seated in the jury
25 box, after which the following proceedings were had:)

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ERNEST DAVE WILSON,

having been called as a witness by the State and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. SCHIWETZ:

Q. Would you please state your name for the Jury, sir?

A. Ernest Dave Wilson.

Q. And how are you employed?

A. City of Corpus Christi Police Department.

Q. And what division of the police department are you with?

A. I work in the identification division.

Q. And what are your duties in the identification division?

A. I'm the latent fingerprint expert.

Q. And how long have you been with the Corpus Christi Police Department itself?

A. I have been with the department 29 years.

Q. And how long have you been in the identification division?

A. Fifteen years.

Q. And how long have you been a fingerprint expert?

A. Fifteen years.

Q. Have you had an opportunity to testify in district courts of the State of Texas regarding the examination

1 and comparison of fingerprints?

2 A. Yes, sir.

3 Q. How many times?

4 A. Numerous times, I -- I couldn't say offhand.

5 Q. More than a hundred?

6 A. Oh, yes, definitely.

7 Q. What kind of training have you received to prepare you
8 for a life's work in identification of fingerprints?

9 A. I studied under the Institute of Applied Science,
10 Federal Bureau of Investigation, Department of Public
11 Safety, on-the-job training under supervision on the
12 job and I am certified as a Latent Print Examiner.

13 Q. Who are you certified by?

14 A. I am certified by the International Association for
15 Identification.

16 THE COURT: Would you like to possibly
17 stipulate to his expertise in this field?

18 MR. LAWRENCE: We so stipulate.

19 THE COURT: All right. Take his expertise in
20 that field, then, as being proved without any
21 further evidence being offered.

22 Q. (By Mr. Schiwetz) Mr. Wilson, can you tell the Jury
23 what a fingerprint is?

24 A. A fingerprint is an impression that is left on a smooth,
25 dry object after you touch it with your fingers, your

1 palms, with the soles of your feet.

2 Q. And what causes that print to be left there?

3 A. The friction ridges on your -- on your fingers or your
4 palms or the sole of your feet are equipped with sweat
5 pores. These sweat pores continuously secrete a
6 secretion which helps you to grip objects, keep objects
7 from sliding off your fingers or your hands or your
8 palms. When you touch something, these -- the
9 secretion circles the ridges of the palms of your hands
10 or your fingers or your feet and this adheres to whatever
11 you touch and this is where we get our latent prints
12 from.

13 Q. Can you tell the Jury what a latent print is?

14 A. A latent print is a chance impression that is left upon
15 some foreign object.

16 Q. Do we leave a fingerprint every time we touch some
17 object?

18 A. Yes, sir, we do.

19 Q. Do we leave an identifiable latent fingerprint every
20 time we touch some object?

21 A. No, sir.

22 Q. Why not?

23 A. Because some of the things you might touch, such as a
24 cold drink can or a cold drink glass has moisture of
25 its own. The secretion from the sweat pores of the

1 ridges of your fingers is 99.5 percent water itself, so
2 if you touch something that is wet itself or condenses
3 wet from it, it will wash out the fingerprints
4 themselves.

5 Q. Are there other reasons why you wouldn't leave such a
6 fingerprint?

7 A. Yes, sir. You might -- you might pick up something and
8 drag your fingers across it, which would smudge the
9 prints, or you might pick up some cloth, the print would
10 be there, but you could not bring it out to see it.

11 Q. Is it fair to say that most of the time when our hands
12 come in contact with items we don't leave a fingerprint
13 that could be lifted as a latent?

14 A. Quite often.

15 Q. Now, have there ever been -- well, let me back up a
16 second. How long have the police departments of the
17 world been using fingerprints as a method of
18 identifying criminal suspects?

19 A. They first started that in a serious manner about 1920.

20 Q. How many people have been fingerprinted in the years
21 that they have been using this, if you know?

22 A. Oh, I don't know. It's millions.

23 Q. How many fingerprint -- how many fingerprints have you
24 taken yourself in your career as a police officer?

25 A. I have taken thousands of them.

1 Q Has there ever been an incident in where two people had
2 identical fingerprints?

3 A Not to my knowledge and not that I have ever read about.

4 Q Can you tell the Jury some of the things within a
5 fingerprint that help you to distinguish one from
6 another?

7 A Basically about four characters in a fingerprint, the
8 ending ridges, short ridges, the bifurcations and the
9 islands.

10 Q Could you step up to the board and draw an illustration
11 of each of those and show the Jury just what they look
12 like?

13 A (Witness complies.) This would be what we call a loop
14 formation on a fingerprint (indicating). This would be
15 what we call a delta (indicating). This would be what
16 we call the core (indicating). This right here would be
17 what we call an ending ridge (indicating). This would
18 be an ending ridge (indicating). This would be a
19 bifurcation (indicating). This would be an island
20 (indicating).

21 Q Okay. Do you -- how do you go about the actual process
22 of comparing a latent fingerprint, an unknown finger-
23 print, with a fingerprint whose origin you know? Do
24 you do it by comparison?

25 A Yes, we break these down into four main groups. You

1 have your arch, your tented arch, your loops and your
2 whorls. If we can determine a latent print if it's a
3 whorl or if it's a loop, then we can eliminate the rest
4 of them and go for that identification alone.

5 Q. You can go ahead and have your seat.

6 A. (Witness complies.)

7 Q. I want to show you what's been marked for identification
8 purposes as State's Exhibit 27, which is a latent
9 obtained by Officer Infante and the writing on it says
10 off the inside glass front door and I ask you if you
11 have ever seen it before.

12 A. Yes, sir, I have.

13 Q. Okay. And State's Exhibit 28 also from Officer Infante
14 which also has a description of where it's from. I ask
15 you if you have seen that before.

16 A. Yes, sir, I have.

17 Q. Okay. Have you had an opportunity to make any
18 comparisons between -- well, let me -- first of all let
19 me ask you: What are the quality of these particular
20 fingerprints which Officer Infante lifted?

21 A. They're very bad quality.

22 Q. There's one that says it's lifted off a beer can. What's
23 its quality?

24 A. It's very, very bad quality in the fact that there are --
25 there are -- it's an impression over another impression

1 on that particular latent.

2 Q. How can that -- how does that happen?

3 A. Somebody would hold it one time, maybe set it down,
4 somebody else maybe picked it up and would superimpose
5 their print maybe over the one that's on the can.

6 Q. Are you saying that two people handled that can?

7 A. No, I'm not. It could be the same person.

8 Q. Is that print from that beer can, is it identifiable at
9 all. Is it a comparable print?

10 A. No, it's not.

11 Q. So even if you knew whose print it was, you couldn't
12 make a comparison with it?

13 A. No, we could not, due to the fact that you have two
14 impressions, one superimposed over the other.

15 Q. How about the others, what's the quality on them?

16 A. They're very bad quality.

17 Q. In spite of this, have you tried to make a comparison
18 between those prints and prints of other people?

19 A. Yes, I have.

20 Q. Whose fingerprints have you tried to compare that to --

21 MR. SCHIWETZ: Well, let me back up just a
22 second and rephrase that question.

23 Q. (By Mr. Schiwetz) Are you familiar with a man named
24 George Aguirre?

25 A. I met a George Aguirre this morning in my office.

1 Q Okay. Did you take his fingerprints?

2 A Yes, I did.

3 Q Did you try and make a comparison from his fingerprints

4 and the prints that are on these cards?

5 A Yes, I did.

6 Q Were you able to?

7 A No, I was not.

8 Q Do you know a man named Kevan Baker?

9 A I don't know the man, but I have a set of prints here

10 that was given to me that was taken by Sergeant Morales.

11 Q Did you try and compare Kevan Baker's fingerprints to

12 the fingerprints that are on State's Exhibits 27 and 28?

13 A Yes, sir, I compared them.

14 Q Was there -- were you able to make a comparison?

15 A No, I was not.

16 Q Did you try and compare the latent fingerprints of Carlos

17 De Luna with the fingerprints that were found there at

18 that crime scene?

19 A Yes, sir, I tried to match up several Carlos -- no.

20 Carlos De Luna or Luna?

21 Q Carlos De Luna.

22 A Oh, yeah. Yes, sir, I did try to match those up.

23 Q And when was that?

24 A This was a couple weeks ago.

25 Q Were you able to make a comparison on that?

1 A. No, I was not.

2 MR. SCHIWETZ: Pass the witness.

3

4 CROSS-EXAMINATION

5 BY MR. LAWRENCE:

6 Q. Sergeant Wilson, fingerprints usually will be left on
7 smooth surfaces; is that your testimony?

8 A. Yes, sir, dry, smooth surfaces.

9 Q. Okay, dry, smooth surfaces such as a table top counter?

10 A. It depends on what this counter is made out of, sir.

11 Q. Okay, if it's Formica or wood type?

12 A. If it's wood and highly polished, yes, sir, they will
13 leave good prints.

14 Q. What about Formica or plastic?

15 A. If it's good, smooth plastic it will leave good latents;
16 Formica, it depends on how much wear and tear it has had
17 being a counter as to how much it will have.

18 Q. What about a package of cigarettes?

19 A. It will leave good prints.

20 Q. What about a glass door?

21 A. If it's dry it will leave good prints.

22 Q. What about a telephone?

23 A. It will leave good prints.

24 Q. How about a -- an aluminum-type handle on a door?

25 A. If it's smooth and dry it will adhere to a good

1 fingerprint.

2 Q How about a handle of a knife?

3 A Well, here again, it depends on what the handle's made
4 out of. If it's rough bone, no, sir.

5 Q If it's a smooth surface?

6 A If it's a smooth, dry surface it should retain
7 fingerprints.

8 MR. LAWRENCE: Pass the witness.

9

10 REDIRECT EXAMINATION

11 BY MR. SCHIWETZ:

12 Q These different types of surfaces, are you saying that
13 they will for sure leave fingerprints or simply that
14 they can?

15 A They can adhere to fingerprints, yes, sir.

16 Q When you have a crime scene, assuming you know a crime
17 has been committed, how often are you able to actually
18 pick up any usable fingerprints there on the average?

19 A Between 50, 60 percent of the time.

20 Q I'm going to show you what's marked as State's Exhibit
21 12 and specifically an item within it marked State's
22 Exhibit 14. Have you ever seen State's Exhibit 12
23 before?

24 A Yes, I have.

25 Q And where was that?

1 A. That was in my office.

2 Q. When was that?

3 A. This was on February the 7th, 1983.

4 Q. Okay. Showing you State's Exhibit 14, I want you to take

5 a look at that and look at that -- those bills there

6 and ask me or let me ask you if you can tell the Jury

7 why those bills are discolored in that particular

8 fashion.

9 A. These bills are discolored in this particular fashion

10 because they were treated to ninhydrin solution. This

11 ninhydrin solution is sprayed on these bills to bring

12 out any possible latent fingerprints.

13 Q. Why do you use ninhydrin instead of the black powder?

14 A. Because on paper ninhydrin brings out better fingerprints

15 than a black powder does.

16 Q. Is it easy to bring out fingerprints on paper?

17 A. Some types of paper it is, sometimes it isn't.

18 Q. How about the kind of paper United States currency is

19 printed on?

20 A. No, sir, it's very hard to lift latent prints off of it.

21 Q. Did you try to lift latent prints off that money?

22 A. Yes, I did.

23 Q. Did you have any success?

24 A. No, sir, I didn't.

25 Q. On any of them?

1 A. None of them.

2 Q. Is that unusual?

3 A. Very unusual -- no, it's not.

4 Q. You're saying something is very unusual. What's very
5 unusual?

6 A. It's very unusual if we do lift a readable print off of
7 paper money.

8 MR. SCHIWETZ: Pass the witness.

9

10 RECROSS-EXAMINATION

11 BY MR. LAWRENCE:

12 Q. Sergeant Wilson, what effect does water have on
13 fingerprints, latent fingerprints?

14 A. Well, as I explained earlier, sir, the sweat pores in
15 your friction -- ridges, what we call friction and
16 ridges of the hand and palms and feet secrete sweat
17 through -- through the sweat pores at all times. This
18 is made up of 99.5 percent moisture and the other five
19 percent is amino acid; consequently, if you've got 99
20 percent water, you run water on it, it's going to
21 intermingle and become as one.

22 Q. But a print, how long will a latent print last on a
23 smooth surface?

24 A. That has never been proven, I don't know.

25 Q. But it lasts for more than a few hours, would you say?

1 A. Oh, yes.

2 Q. Now, if water was to pour over that latent print, would
3 that dissolve the print?

4 A. Yes, sir, it would destroy it.

5 Q. So if -- if money had gotten wet, there would be no
6 prints on the money; is that correct?

7 A. It's a possibility.

8 Q. You're talking about paper currency.

9 A. It would be a good possibility there would be no latents
10 left on it.

11 MR. LAWRENCE: Thank you. Pass the witness.

12 MR. SCHIWETZ: I don't have any further
13 questions.

14 THE COURT: Thank you, sir, you may be
15 excused.

16 Call your next, sir.

17 MR. SCHIWETZ: I call Julie Arsuaga.

18 (At this time the witness was sworn by the
19 clerk.)

20 THE CLERK: Please have a seat by the court
21 reporter.

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JULIE ELIZABETH ARSUAGA,

having been called as a witness by the State and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. SCHIWETZ:

Q. Would you please state your name for the Jury, ma'am.

A. Julie Elizabeth Arsuaga.

Q. And for the record, are you the wife of John Arsuaga, who testified earlier today?

A. Yes, I am.

Q. How long have y'all been married?

A. Since July 23rd -- January 22nd. Approximately five months.

Q. I want to ask you to go back to the 4th day of February of this year, 1983, about 8:00 o'clock and ask you if you were with your husband at that time.

A. Yes, I was.

Q. And where were y'all going?

A. We were going to Phase III.

Q. And where is Phase III?

A. It's on SPID by the Harley Davidson and the furniture store.

Q. And what was your purpose in going there?

1 A. We were just going. We were also going to see his
2 godfather who owns it.

3 Q. Now, could you turn around and take a look at that
4 drawing up there on the board. Now, if you can ignore
5 that stuff that looks like crop rotations, but just at
6 the little building things, do you see on the far right-
7 hand side it says, "Sigmor"?

8 A. Uh-huh.

9 Q. And then next to it it says, "Ziebart" and then it says
10 "Brownes" and then it says "Phase III" and over in the
11 corner it says "Lebo," I think.

12 A. For Lebowitz.

13 Q. Is that pretty much the way the buildings are laid out
14 along that street there? I'm not asking you if it's
15 drawn to scale, but is that approximately the way it's
16 laid out?

17 A. Yeah.

18 Q. Now, when y'all pulled in there, did you notice anything
19 unusual when you first started to pull in?

20 A. Okay, I didn't, but -- see, I -- I usually point things
21 out about, you know, when I see people or something.

22 Q. Yes, ma'am.

23 A. And John said, "Hey, look at that man, you know, running."
24 And, you know, he usually gives me a smart answer when
25 I say something like that and I said, "Well, he probably

1 has somewhere to go."

2 Q. Now, did you look up to see the man running?

3 A. Yeah.

4 Q. Could you go up there and point out where the man was

5 when you first saw him?

6 A. (Witness complies.) Okay. He was -- there's like a

7 little fence thing right here (indicating).

8 Q. Okay.

9 A. And he was standing approximately here (indicating), and

10 he was just entering the lot or the field or whatever you

11 want to call it, you know, and he ran like that across

12 (indicating).

13 Q. Now, was that when you first saw him right when he was

14 at that corner?

15 A. Uh-huh, that's when he first pointed him out.

16 Q. Do you want to go ahead and have a seat.

17 A. (Witness complies.)

18 Q. How far away from that man were you when you first saw

19 him?

20 A. From approximately here to, you know, where the seats

21 start back there (indicating).

22 Q. Now, did you have your lights on?

23 A. Yes, we did.

24 Q. Was there any other light on in the area that you recall?

25 A. Yeah, there's a light from the building right there, I

1 believe it's the furniture store --

2 Q. Okay.

3 A. -- and there's a light that goes over into the field,

4 you know, lot or field or whatever. And it, you know,

5 shines, you know, not great lighting, but it does give

6 some lighting onto the -- the lot.

7 Q. Were you able to see the man that was running along?

8 A. Yes, I was.

9 Q. Were you able to see what kind of pants he was wearing

10 or what color they were?

11 A. Uh-huh.

12 Q. What color were they?

13 A. I mean I can't say the exact color, but they were either

14 black or dark blue and they were, you know, the kind of

15 pants that you wear like if you were working in a

16 garage or something.

17 Q. And what color was the shirt, if you recall?

18 A. White.

19 Q. Was it a T-shirt, a long sleeve shirt, what?

20 A. It was like a shirt that you would wear with -- kind of

21 like -- you know, a blouse and the sleeves were folded

22 up and it was untucked and, you know, because I could

23 see the side of it, you know, going beside him as he was

24 running (indicating).

25 Q. Did you get a look at the man's face?

1 A. Just from a side view.

2 Q. You never actually saw him looking straight at you?

3 A. For a second, just real quick.

4 Q. Now, after you saw this man, did you see where he went
5 to?

6 A. I couldn't tell where he went to because, like I say,
7 he ran back toward the building. He was, you know,
8 going across like this and, you know, there's -- you get
9 to a certain point where you can't really see anything,
10 there's no light and, you know, it's hidden from view,
11 it's like around a corner or something (indicating).

12 Q. Is it fair to say that you didn't see him for more than
13 just a few seconds?

14 A. Uh-huh.

15 Q. Now, after y'all saw this man, what did you do then?

16 A. Well, John saw a commotion over at the Sigmor, you know,
17 there was a police car driving by and he thought maybe
18 this guy had something to do with it, so he, you know,
19 backed the car up and pulled around and we both jumped
20 out of the car and the police car didn't stop, but then
21 a policeman ran up to us and he asked us if we saw
22 anything and we told him that we saw a man running and
23 he asked us for the description and he asked us to wait
24 there.

25 Q. And did you wait there at the station?

1 A. Yes, we did.

2 Q. Now, later on when some witnesses -- well, let me ask
3 you this: Were you present when some witnesses were
4 taken over to a car?

5 A. Was I there when they took them?

6 Q. To a police car?

7 A. Yes.

8 Q. Did you go over there?

9 A. No, I did not.

10 Q. Did you have an opportunity to go down to the police
11 station that night?

12 A. Yes.

13 Q. And when you went down to the police station, did you
14 look at some pictures?

15 A. Yes, I did.

16 Q. Now, when you looked at the pictures, were you able to
17 make a positive identification out of those pictures?

18 A. I thought that I knew which one it was, but I didn't want
19 to say because I didn't think it was fair if I was not
20 100 percent positive to say, you know, that I was --

21 Q. Then the answer is no, you didn't pick somebody out?

22 A. Right.

23 Q. Is that fair to say?

24 A. Yeah.

25 Q. Now, did you ever get a good look straight on at the

1 person who was running, across their face?

2 A. No.

3 Q. Is it fair to say that you only saw the person in

4 profile?

5 A. Yes.

6 Q. Have you seen that person since then?

7 A. Yes.

8 Q. Where?

9 A. Here.

10 Q. Do you see him in the courtroom today?

11 A. Yes, I do.

12 Q. Would you point him out for the Jury?

13 A. He's sitting right there (indicating).

14 Q. Okay. You need to speak up.

15 A. He's sitting right there (indicating).

16 Q. What's he wearing?

17 A. A jacket and a striped tie.

18 Q. Is he sitting to my right or left?

19 A. Yours?

20 Q. Yes, ma'am.

21 A. Your right. Sorry, I'm nervous.

22 Q. What color coat's he wearing?

23 A. Dark like blackish, blue.

24 MR. SCHIWETZ: Your Honor, can the record

25 reflect that she identified the Defendant?

1 THE COURT: All right.

2 MR. SCHIWETZ: Pass the witness.

3

4 CROSS-EXAMINATION

5 BY MR. LAWRENCE:

6 Q Mrs. Arsuaga, you are aware, are you not, that my client
7 right here is the one that's charged with this
8 particular crime?

9 A Yes, I am.

10 Q There's no one else in here that's charged with that
11 crime. You're aware of that?

12 A Yes.

13 Q But you couldn't recognize him and for some reason you
14 didn't want to go see whatever suspect they may have had
15 at the Sigmor Station and you couldn't recognize him
16 that night from the photo lineup, and you really didn't
17 get to see him face on and we really don't know how many
18 seconds you actually saw him for, it must have been very
19 briefly. And by your own testimony, we know that you
20 saw him really at a 45-degree angle.

21 A Uh-huh.

22 Q And yet you come right in here and say that's him right
23 now.

24 A Is that a question or --

25 Q Yes.

1 A. I don't really understand what you're asking me.

2 Q. Well, I'm asking you based upon the situation that you

3 underwent, your husband all of a sudden saying, "Hey,

4 look at this guy running," by the time you look over,

5 he's over there running right by the open field,

6 evidently he's moving, he's not standing still. You

7 don't really get to see a good shot of him, we haven't

8 heard how in the world your vehicle was facing if, in

9 fact, the lights were shining straight on him.

10 A. They were.

11 Q. They were?

12 A. You know, for -- as we were parked like this and as he

13 was running, there's a certain point where he runs right

14 in front of the lights.

15 Q. Okay.

16 A. And as the lights were on him, it was kind of like he

17 stopped in motion and he stopped and that was the only

18 time that I saw him facing straight toward me

19 (indicating).

20 Q. Okay. Could you come up there to the board, please,

21 and show us where your car was when your husband first

22 pointed out to you, "Hey, look at that man running," and

23 that you actually saw him.

24 A. Uh-huh. It was --

25 MR. SCHIWETZ: Excuse me, Your Honor.

1 THE WITNESS: Oh, I'm sorry.

2 MR. SCHIWETZ: Could the witness be instructed

3 to move to the other side so that the Jury can see?

4 THE COURT: All right.

5 MR. SCHIWETZ: She's blocking their view just

6 a little bit. Thank you.

7 THE WITNESS: We pulled in and we were, you

8 know, somewhere within this area (indicating) where

9 we were pretty much, you know, like right in front

10 of it.

11 Q (By Mr. Lawrence) Okay.

12 A Pulling into the parking lot.

13 Q So he had already passed you, then, if he was at the

14 corner.

15 A Pardon me?

16 Q If you pulled in where you indicated --

17 A I know, but he -- John pulled around, you know, like --

18 there's cars right here (indicating), there was no --

19 probably there was no parking or anything. We were

20 about like right here (indicating) when he pointed him

21 out, so we were just a little bit over to the side of

22 him.

23 Q Yes, ma'am. So if your husband drew that line going up

24 where that little X is right there, that wouldn't be

25 right, would it?

1 A. I'm not sure.

2 Q. Okay. You can have a seat.

3 A. (Witness complies.)

4 Q. Basically, you're really not sure if the light shined
5 on him or not.

6 A. Yes, I am sure of that because I remember that. That
7 was, you know, the instant that a light stuck in my mind,
8 aside from the very beginning when I first saw him.

9 Q. It stuck so much in your mind that you didn't want to go
10 see the suspect that they had in the car and it stuck so
11 much in your mind that you couldn't even pick him out of
12 a photo lineup.

13 A. My husband advised me not to go look at him in the
14 parking lot because he thought it might be dangerous.

15 Q. That photo lineup stuck so much in your mind that you
16 still weren't a hundred percent sure.

17 A. I was upset and, you know, it's -- you're right, I did
18 not want to say 100 percent. I -- you know, to me the
19 way that I felt is that is the same person that I saw
20 running and I can't -- I can't say that I feel another
21 way because I don't, that's the way that I feel and --

22 Q. You have had opportunity to talk the situation over with
23 your husband?

24 A. We try not to discuss it.

25 Q. But you have had an opportunity to do so, it's only

1 human nature.

2 A. Yes.

3 Q. And he's told you what he saw, you've told him what you
4 saw -- seen?

5 A. We haven't really talked about it much since that -- the
6 night that it happened.

7 Q. You pretty well know what he's testified to here in
8 court, don't you?

9 A. Basically, yes.

10 Q. So you're going to go along with what he said, too.

11 A. Because that's what he says? No. I'm not like that,
12 you know, I have my own thoughts and, you know, if I
13 didn't agree with that, I wouldn't say it because that
14 wouldn't be right, you know, I mean that's the way I
15 felt.

16 Q. Well, you have never said it up until right now, is what
17 I'm driving at. You never identified my client until
18 right now.

19 A. You mean until just this moment or until I had been in
20 court?

21 Q. Until you had been in court.

22 A. The evening that I looked at the pictures and I thought
23 I knew which photo it was and I did ask later on if that
24 was the right one and I was told it was.

25 Q. That reinforced your belief.

1 A. Yeah, because it --

2 Q. Okay.

3 A. It appeared to be the same person.

4 Q. But you weren't a hundred percent sure, but when they

5 told you, "Hey, that's the one we've got here," --

6 A. Only after I had asked if that was the same.

7 Q. That's what I'm saying, after you asked and they told

8 you --

9 A. Yes.

10 Q. -- that settled it in your mind that that's the person

11 that you saw.

12 A. That I saw running, yes.

13 Q. And let me ask you: Did you actually see his face?

14 A. Yes, I did.

15 Q. For how long?

16 A. Two seconds.

17 Q. Two seconds.

18 A. You mean -- straightforward?

19 Q. Yes. Yes.

20 A. I would say a second.

21 Q. A second.

22 A. Very quickly. I probably -- you know, all in all, the

23 whole time that I saw him I saw him approximately eight

24 to ten seconds.

25 Q. But only one second of actual face?

1 A. Approximately, yes.

2 MR. LAWRENCE: I have no further questions.

3

4 REDIRECT EXAMINATION

5 BY MR. SCHIWETZ:

6 Q. Mrs. Arsuaga, the defense attorney asked you, I don't
7 know if it was a question so much as it was a statement --

8 MR. LAWRENCE: Your Honor, I'm going to object
9 to sidebar remarks.

10 THE COURT: That's sustained.

11 Q. (By Mr. Schiwetz) He stated that you had never
12 identified this Defendant before today. That's not
13 quite true, is it?

14 A. No, that's what I was trying to -- I was asking him in
15 court or, you know, at the pre-trial.

16 Q. You have identified him one time before, haven't you?

17 A. Yes, I have.

18 Q. Okay. Now, when you saw him out there that night running
19 across in front of Phase III and into that field, did
20 you get -- did you -- did your look at him primarily
21 involve profile or straight on?

22 A. Profile.

23 Q. And the pictures that you were shown, the photo lineup
24 that you were shown down at the police station, were
25 those profiles or straight on?

1 A. Straight on.

2 Q. When you came into this courtroom at the pre-trial and
3 looked at this Defendant straight on, were you sure that
4 he was the same man you saw?

5 A. No, I was not.

6 Q. When was it that you became sure it was the same man?

7 A. When he turned to speak with the other gentleman because,
8 you know, it's -- you know, certain things that I
9 recognized like, you know, the shape of his eyes and
10 that was something -- it was mostly his eyes that stuck
11 in my mind, his eyes and, you know, the shape of his
12 face from the side.

13 MR. SCHIWETZ: Thank you, ma'am.

14

15 RECROSS-EXAMINATION

16 BY MR. LAWRENCE:

17 Q. Do you wear glasses?

18 A. Yes, I do.

19 Q. You're not wearing them now, are you?

20 A. No.

21 Q. Would it be fair to say you weren't wearing them that
22 night?

23 A. Yes.

24 Q. Yes, you were not wearing them?

25 A. No, I was not wearing them.

1 Q. What type of vision correction do you need?

2 A. I'm nearsighted. It's primarily for reading small
3 print.

4 Q. Nearighted?

5 A. Yeah.

6 Q. Okay. So that means you can't see far.

7 A. It depends on what distance actually that you're talking,
8 like when I have taken eye examinations there was, you
9 know, generally no problem really with my eyes until we
10 got down to the very small, you know, like the bottom
11 row, so I really have, you know, a very small eye
12 problem.

13 Q. But they did prescribe eyewear for you?

14 A. Yes.

15 Q. And you were not wearing it that night?

16 A. No. I rarely wear them.

17 MR. LAWRENCE: Pass the witness.

18

19 FURTHER REDIRECT EXAMINATION

20 BY MR. SCHIWETZ:

21 Q. You weren't reading any small print out there in the
22 parking lot, were you?

23 A. No.

24 MR. SCHIWETZ: Thank you, I don't have any
25 more questions.

FURTHER RECROSS-EXAMINATION

BY MR. LAWRENCE:

Q. Mrs. Arsuaga, what were the weather conditions like?

A. It was fair, you know, a regular evening.

Q. Had it been raining? Was it dry? Was it cold? Was it warm?

A. I don't know if it -- I don't remember if it had been raining or not. It wasn't particularly cold, I don't believe.

Q. Do you recall --

A. Until we were standing out in the parking lot it started getting a little chilly.

Q. Do you recall what you were wearing?

A. I was wearing jeans.

Q. Is that a guess?

A. No, I'm sure I was wearing jeans but I can't remember what shirt I was wearing. But I can't even remember what I wore yesterday, so --

Q. But you can sure remember what you saw for one second six months ago.

MR. LAWRENCE: Pass the witness.

MR. SCHIWETZ: Is he going to give her an opportunity to answer his last question?

MR. LAWRENCE: I don't believe that was a question, Your Honor, just a summation.

1 MR. SCHIWETZ: Well, I would like for him to
2 refrain from making statements --

3 THE COURT: That's also sustained.

4 MR. SCHIWETZ: Thank you. I don't have any
5 further questions.

6 THE COURT: You may step down, ma'am. Thank
7 you.

8 MR. SCHIWETZ: I call Ernest Gonzalez.

9 (At this time the witness was sworn by the
10 clerk.)

11 MR. LAWRENCE: Your Honor, may we approach
12 the bench?

13 THE COURT: Yes, sir.

14 MR. LAWRENCE: I don't need a record on this.

15 (At this time an off-the-record discussion was
16 held at the bench, after which the following
17 proceedings were had:)

18

19 ERNESTO GONZALEZ,

20 having been called as a witness by the State and after having
21 been first duly sworn to tell the truth, the whole truth and
22 nothing but the truth, testified upon his oath as follows:

23

24

25

1 DIRECT EXAMINATION

2 BY MR. SCHIWETZ:

3 Q Could you please state your name for the Jury, sir?

4 A Ernesto Gonzalez.

5 Q And how are you employed?

6 A I'm a correction officer for Nueces County Sheriff's
7 Department.

8 Q And how long have you been working over in the jail?

9 A Going on eight months right now.

10 Q Are you familiar with the Defendant in this case,
11 Carlos De Luna?

12 A Yes, I am.

13 Q Can you tell the Jury what kind of cigarettes he smokes?

14 A Winstons.

15 MR. SCHIWETZ: Pass the witness.
16

17 CROSS-EXAMINATION

18 BY MR. LAWRENCE:

19 Q Can you tell the Jury what type of toothpaste he uses?

20 A Colgate.

21 Q Is that the only type?

22 A On the toothpaste I'm not sure of, sir.

23 Q Do you know any other inmates up there that smoke
24 Winstons?

25 A Yes, sir.

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MR. LAWRENCE: Pass the witness.

MR. SCHIWETZ: I don't have any other questions. May this witness be excused?

THE COURT: You may be excused.

MR. SCHIWETZ: I call Lieutenant Thain.

Excuse me, Your Honor. At this time the State would like to offer into evidence State's Exhibit Number 16 being the pair of black pants.

MR. LAWRENCE: We have no objection.

THE COURT: It will be admitted. Is there anything written on the paper sack itself?

MR. SCHIWETZ: I'm not going to offer the sack itself, Your Honor.

I would like to tender State's Exhibit Number 23 being a shirt found by Mr. Garcia.

MR. LAWRENCE: I have no objection.

THE COURT: It will be received.

MR. SCHIWETZ: State's Exhibit 20 and 21 being shoes found by Mr. Garcia.

MR. LAWRENCE: No objection.

THE COURT: It will be received. Do we have a witness coming?

MR. SCHIWETZ: Yes, Your Honor, he's right outside, he will be here in a second.

(At this time the witness was sworn by the

1 clerk.)

2 THE COURT: The Rule has been invoked when
3 you finish giving your testimony.
4

5 DONALD THAIN,

6 having been called as a witness by the State and after having
7 been first duly sworn to tell the truth, the whole truth and
8 nothing but the truth, testified upon his oath as follows:
9

10 DIRECT EXAMINATION

11 BY MR. SCHIWETZ:

12 Q Please state your name for the Jury, sir.

13 A Donald Thain.

14 Q And how are you employed?

15 A As a chemist for the Department of Public Safety in
16 Corpus Christi.

17 Q How long have you been employed in that capacity, Mr.
18 Thain?

19 A Approximately seven years.

20 Q Can you tell the Jury what your duties are?

21 A My duties are to analyze evidence brought into our
22 laboratory by law enforcement officers who think it is
23 related to a crime of some sort.

24 Q And how long have you -- and -- do you perform that kind
25 of work for the Corpus Christi Police Department upon

1 request?

2 A. Yes.

3 Q. Okay. And when they bring you something, do you make
4 out a report?

5 A. Yes.

6 Q. Did you bring your report with you today?

7 A. Yes, I did.

8 Q. Specifically I want to refer to some items which were
9 brought to you by Officer Olivia Escobedo, specifically
10 a pair of shoes, a pair of pants and a shirt. Do you
11 recall what day those items were brought to you?

12 A. The 9th of February.

13 Q. Of what year?

14 A. '83.

15 Q. Now, when evidence is brought to you, do y'all have some
16 labels that y'all put on the items that you get?

17 A. Yes, we -- well, we put labels on the outside packaging
18 when evidence is brought in to us.

19 Q. Let me show you what's marked as State's Exhibit Number
20 19 and ask you if you have ever seen that before.

21 A. This is the -- the package that was brought in to us
22 by Escobedo.

23 Q. Now, let me show you what's marked as State's Exhibits
24 Number 20 and 21 and ask you if you have ever seen those
25 before.

1 A. Yes. These were -- they were inside the package.

2 Q. Okay. Now, how do you know that these are the same shoes
3 that were inside the package?

4 A. Well, the outside of the package has my initials and
5 also a case number on it and the date it was brought in and
6 this same case number appears on the shoes, along with
7 my initials and a date.

8 Q. And did you inspect these shoes to see if they had any
9 blood on them?

10 A. Yes.

11 Q. And did they?

12 A. No.

13 Q. I'm going to show you what's marked as State's Exhibit
14 22 and ask if you have ever seen it before.

15 A. Yes. It also has the same case number on it along with
16 my initials and the date.

17 Q. Okay. Let me show you now what's marked as State's
18 Exhibit 23 and ask you if you have ever seen this shirt
19 before.

20 A. Yes. This has my initials on it along with the same
21 case number.

22 Q. Okay. Did you inspect this shirt to see if it had blood
23 on it?

24 A. Yes.

25 Q. Were you able to determine if there was any?

1 A. I could find no blood on it.

2 Q. Let me show you what's marked as State's Exhibit Number
3 16, a pair of slacks, and ask you if you have ever seen
4 them before.

5 A. Yes, these also have the same case number on it, with my
6 initials and the date.

7 Q. Did you inspect these pants to see if you could find any
8 blood on them?

9 A. Yeah. I could find no blood on them.

10 MR. SCHIWETZ: I pass the witness.

11 MR. LAWRENCE: I have no questions.

12 THE COURT: Thank you, sir. You may be
13 excused.

14 MR. SCHIWETZ: May I check out here for one
15 minute? Your Honor, the State would like to tender
16 into evidence State's Exhibit Number 14, being the
17 money with the ninhydrin discoloring.

18 MR. LAWRENCE: I have no objection.

19 THE COURT: It is received.

20 MR. SCHIWETZ: The billfold of the Defendant
21 being State's Exhibit 13.

22 MR. LAWRENCE: No objection.

23 THE COURT: It will be received.

24 MR. SCHIWETZ: I would like to tender State's
25 Exhibit Number 36.

1 MR. LAWRENCE: No objection.

2 THE COURT: It will be received.

3 MR. SCHIWETZ: I would like to recall Mr.
4 Thain for just a moment.

5 THE COURT: If you can catch him.

6

7 DONALD THAIN,

8 having been recalled as a witness by the State and after
9 having been previously sworn to tell the truth, the whole
10 truth and nothing but the truth, testified upon his oath as
11 follows:

12

13 DIRECT EXAMINATION (Continued)

14 BY MR. SCHIWETZ:

15 Q For the record, you're the same Donald Thain who was
16 just testifying, weren't you?

17 A Yes.

18 Q I'll show you State's Exhibits 20 and 21. Presume for
19 a moment that as a hypothetical matter that these did
20 have some blood on them, on the bottoms, and that a
21 person wearing them then ran several blocks and that at
22 least portions of the area where he was running had
23 water in the gutters and the like and he stepped in it.
24 Would that have any effect on whether you found blood
25 on it or not?

1 A. Well, fresh blood, particularly if it hadn't dried yet,
2 would come off very easily in water.

3 Q. I'm showing you now what's marked as State's Exhibit
4 16, being these pants. Presume for a moment that the
5 person got some blood, some blood dripped off a person
6 who had been stabbed and dripped onto these pants
7 somewhere and presume that that person laid down in one
8 gutter and that in that gutter there was water and when
9 this person got up, their pants were soaking wet. Would
10 that have any influence on whether you found blood on
11 them?

12 A. Yeah. As I say, if it was fresh blood, it would -- when
13 water gets on fresh blood, it would wash away pretty
14 easily.

15 Q. Same regarding the shirt, State's Exhibit 23, if it was
16 being worn by a person who was lying in a gutter with
17 some water on them, could the blood, if there was any,
18 wash out that way?

19 A. It could.

20 Q. Would it be difficult or easy?

21 A. It would -- as the water gets on the, you know, blood
22 and it's fresh, it would go out pretty good.

23 MR. SCHIWETZ: Thank you.
24
25

CROSS-EXAMINATION

BY MR. LAWRENCE:

Q. Sir, how long does it take for blood to dry?

A. It depends on a number of variables. One is say how humid it is; two is how thick or how much blood is it, just a light smear or is it a very heavy clot; and the temperature also would be dependent upon it. I guess in one extreme, if you had a very light smear on a very hot, dry day it would dry very rapidly; then again, if it was a very humid day, it would, you know, take a good length of time.

Q. Well, could you give me some time frame, seconds, minutes?

A. It -- as I say, it depends. A very light smear would dry I suppose within a few minutes on a hot, dry day and blood which is in a very humid condition perhaps wouldn't dry at all.

Q. Is blood itself one of the most difficult stains to get out of clothing?

A. It depends on how long it's been there. If a blood stain is dried on clothing and it's allowed to stay there for a good length of time, it probably wouldn't come out with water, but, as I say, this depends on the conditions of it. Blood stain which is perhaps months old would take -- would perhaps not come out after repeated washings, whereas very fresh blood would wash

1 out rather easily.

2 Q Would you say that based on those three items, a pant,
3 shirts and shoes, that blood would probably adhere to
4 one of those surfaces, I guess, of clothing or shoes
5 moreso than to the other?

6 A Well, like, for instance the shoes, the plastic part
7 which wouldn't penetrate, it would probably be less
8 adherent to other parts of it than, say which are cloth
9 and it would penetrate and be -- it wouldn't come out
10 quite as easily.

11 Q And once it penetrates also, it would have a tendency
12 to be absorbed into the material thereby probably drying
13 faster, would it not?

14 A No, I would think the surface which -- it's not
15 penetrated by moisture would dry faster.

16 Q For example, a drop of blood on the shoe or the shoe
17 laces would dry faster than a drop of blood on the
18 shirt or pants?

19 A Well, the shoe lace is porous and it would penetrate, so
20 it would require perhaps a longer time to dry than on a
21 surface in which it doesn't sink into it.

22 Q Given a hypothetical, if those three items that were
23 shown to you were never anywhere near blood, it would
24 be kind of difficult to find any blood on it, wouldn't
25 it?

1 A. Yes.

2 Q. And there was no blood found on it; is that correct?

3 A. That's correct.

4 MR. LAWRENCE: Pass the witness.

5 MR. SCHIWETZ: No further questions.

6 THE COURT: Thank you, sir.

7 MR. SCHIWETZ: I call Lieutenant Klemp.

8 (At this time the witness was sworn by the
9 clerk.)

10 THE COURT: The Rule has been invoked when
11 you have finished giving your testimony.

12
13 ROBERT KLEMP,

14 having been called as a witness by the State and after having
15 been first duly sworn to tell the truth, the whole truth and
16 nothing but the truth, testified upon his oath as follows:

17
18 DIRECT EXAMINATION

19 BY MR. SCHIWETZ:

20 Q. Would you please state your name for the Jury, sir?

21 A. Robert Klemp.

22 Q. And how are you employed?

23 A. City of Corpus Christi Police Department.

24 Q. And in what capacity do you work over there?

25 A. I'm a police lieutenant in communications section.

1 Q. How long have you been with the police department?

2 A. Fourteen years.

3 Q. And how long have you been in communications?

4 A. A total of about eight years.

5 Q. What are your duties in communications over there?

6 A. Supervise the communications center which includes the

7 monitoring of the emergency lines, the dispatchers,

8 taking complaints on personnel and generally just

9 monitoring the operation.

10 Q. Does the police department have a particular section

11 which is charged with dispatching units in response to

12 calls?

13 A. That's correct.

14 Q. Can you explain to the Jury how this is done?

15 A. Okay. The complaints -- the complaints for emergency

16 service come into the communications center through a

17 direct line, we also have extension lines which we're

18 able to talk within the building, they all terminate in

19 communications.

20 Q. Say somebody calls in with an emergency call and they

21 reach a dispatcher, what is a dispatcher supposed to do?

22 A. The dispatcher fills out an IBM card which has the

23 location, the type of request for service, the location,

24 the complainant's name and exactly what the service is

25 about.

1 Q. Supposing I was to call in and tell you that I was at
2 a given address and I was having some trouble with a
3 fellow. What kind of information would they ask me?

4 A. Okay. Normally the first thing we would ask you is
5 your -- the address where you're at, determine whether
6 it's an apartment or a house, if it's an apartment house,
7 determine which apartment; we find out exactly what is
8 going on, whether it's a disturbance or a fight,
9 classify the call accordingly; ask for a complainant's
10 name, which they're not obligated to give; and then
11 mark this information on the IBM card from the clerk's
12 position and send it up to the dispatch position.

13 Q. Now, is it fair to say that if I just call in and say
14 I'm having -- I'm at 3000 Dimple Street and I'm having
15 some trouble with a guy here is it safe to say that
16 y'all wouldn't just immediately dispatch a unit to 3000
17 Dimple?

18 A. Okay. We classify that normally as a -- more than
19 likely from what you said, as a disturbance call or
20 signal four investigation.

21 Q. You would ask for more information?

22 A. Yes, we request as much as we can.

23 Q. Is any kind of record kept of incoming calls at the
24 police department?

25 A. Okay, all the lines, all the telephone lines in the

1 communications division are recorded on a 20-channel
2 continuous 24-hour tape recorder. It's a dual deck
3 recording machine that all the radio traffic, all our
4 radio frequencies and all our telephone lines, emergency
5 lines and in-station lines are recorded on.

6 Q. And what kind of mechanical device records all of this?

7 A. Okay, like I said, it's a 20-channel magnetic tape, it's
8 a dual -- a dual mechanism where there are two tapes
9 going simultaneously taping the conversation. Our top
10 tape is what we call our playback tape which we can
11 stop at any time and play back and determine if there's
12 any question as far as the correct address or type of
13 complaint; and the bottom tape, the bottom deck, like I
14 said, is going simultaneously, it's recording all the
15 identical information and kept as a file tape. Kept for
16 approximately 45 days.

17 Q. Is it fair to say then that y'all record every incoming
18 call?

19 A. That's correct, everything is recorded.

20 Q. And when a dispatcher is dispatching units, do you have
21 something that records that?

22 A. That's correct, the same recording is used for all the
23 dispatching, all the radio broadcasts, incoming and
24 outgoing and all the telephone conversations both
25 emergency lines and in-station extensions.

1 Q So basically you're recording it on the same tape?

2 A That's true, we're recording it all on the same tape.

3 Q Now, is someone actually charged with operating that

4 thing or does it operate by itself?

5 A It operates by itself. The communications supervisor

6 at midnight every night changes the tape, it's a 24-hour

7 tape.

8 Q Now, have you listened to the tape from the area right

9 around 8:00 o'clock p.m. on February 4th, 1983?

10 A That's correct.

11 Q And at my request, did y'all save that at about the time

12 it was made?

13 A That's correct.

14 Q When was the last time that you listened to that tape?

15 A Last time I listened to the tape was yesterday.

16 Q Now, have you -- did you have occasion to listen to it

17 shortly after it was made?

18 A Yes. The day after it was made. that's correct.

19 Q I'm going to show you what's marked as State's Exhibit

20 Number 2 and ask you if you have ever seen this

21 particular exhibit before.

22 A Yes, this is the tape I made.

23 Q When did you make that tape?

24 A Okay, this tape was made on June 29th, 1983.

25 Q And what was it made off of?

1 A. It was made off the master file tape from February 4th,
2 1983.

3 Q. Who prepared that tape?

4 A. I prepared this tape, this cassette tape.

5 Q. Is it exactly the same as the recording made on
6 February 4th, 1983?

7 A. That's correct.

8 Q. Have any changes been made in it?

9 A. No.

10 Q. Have there been any -- well, let me qualify that. That
11 tape is a recording, is it not, of the tape of the call
12 made in reporting a man with a knife at 2602 SPID, is it
13 not?

14 A. That's correct.

15 Q. It ends at the point where that call ends, does it not?

16 A. Yes.

17 Q. Okay. Now, within that context, have any changes been
18 made to that conversation?

19 A. No.

20 Q. Have any additions been made?

21 A. No.

22 Q. Have any deletions been made?

23 A. No.

24 Q. How did y'all record -- how did you preserve the original
25 recording of that tape?

1 A. The original tape was placed in file in the file cabinet
2 and I separated it from our normal file tapes for
3 evidence purposes and I made this cassette, this cassette
4 tape off a cassette recorder which reproduced it off the
5 master tape.

6 Q. And you're not claiming to be able to identify all the
7 voices off there, are you?

8 A. No.

9 Q. Is there any particular reason why you made it off the
10 master and didn't bring the master down?

11 A. The master tape would be very awkward to bring the
12 machine in here, first of all, it probably weighs a
13 hundred fifty pounds, it's about six feet in height,
14 the playing machine itself is about -- the play deck is
15 about six feet in height and about five feet in width
16 and probably three feet in depth, that's the tape
17 playing machine we made the tapes off of. The actual
18 recording device itself is probably three times that in
19 weight and twice the dimensions as far as height.

20 MR. SCHIWETZ: Your Honor, I would like to
21 tender in evidence State's Exhibit Number 2.

22 MR. LAWRENCE: No objection.

23 THE COURT: It will be received.

24 MR. SCHIWETZ: May this witness be excused?

25 THE COURT: Do you want to pass him?

1 MR.SSCHIWETZ: I pass the witness.

2 MR. LAWRENCE: I have no questions.

3 THE COURT: Fine, you may be excused.

4 MR. SCHIWETZ: Your Honor, with the Court's
5 permission, I would like to play State's Exhibit
6 Number 2 to the Jury.

7 THE COURT: All right.

8 MR. SCHIWETZ: It's going to take me a minute
9 to get this set up. Could we take a break?

10 THE COURT: Take a short recess, five minutes.
11 Five minutes.

12 (At this time a recess was taken, after which
13 the following proceedings were had before the Court,
14 outside the presence and hearing of the Jury with
15 counsel for the State, counsel for the Defendant
16 and the Defendant present:)

17 MR. SCHIWETZ: Your Honor, I would like to
18 tender State's Exhibits 27 and 28.

19 MR. LAWRENCE: No objection.

20 THE COURT: They will be received. All right,
21 are we ready to proceed?

22 MR. SCHIWETZ: Yes, sir.

23 (At this time the Jury was seated in the jury
24 box, after which the following proceedings were had:)

25 MR. SCHIWETZ: May I proceed, Your Honor?

1 THE COURT: Yes, sir. Do you want to state
2 what this is for the record?

3 MR. SCHIWETZ: For the record, this is State's
4 Exhibit Number 2 which has been previously
5 identified as a phone call received by Jesse
6 Escochea and the female voice has been identified
7 as Wanda Lopez. May I proceed?

8 THE COURT: Yes, sir.

9 (At this time the cassette tape marked and
10 admitted as State's Exhibit 2 was played before the
11 Court and Jury.

12 The following is a transcription of the verbal
13 portions of said cassette tape made by the court
14 reporter from the tape at the request of Defendant/
15 Appellant for inclusion in the appellate record.)

16 FIRST MALE VOICE: Police department.

17 FIRST FEMALE VOICE: Yes, can you have a
18 officer come to 2602 South Padre Island Drive? I
19 have a suspect with a -- a knife inside the store.

20 FIRST MALE VOICE: What place is this?

21 FIRST FEMALE VOICE: Sigmor.

22 FIRST MALE VOICE: What's he --

23 FIRST FEMALE VOICE: Well, he --

24 FIRST MALE VOICE: What's he doing with the
25 knife?

1 FIRST FEMALE VOICE: I don't know, he was
2 outside bumming a ride off of this guy and he just
3 told me right now -- he just came inside the store.
4 FIRST MALE VOICE: Has he threatened you or
5 anything?
6 FIRST FEMALE VOICE: Not yet.
7 Could I help somebody?
8 FIRST MALE VOICE: What does he look like?
9 FIRST FEMALE VOICE: Por que?
10 FIRST MALE VOICE: What does he look like?
11 FIRST FEMALE VOICE: He's a Mexican. He's
12 standing right here at the counter.
13 FIRST MALE VOICE: Huh?
14 FIRST FEMALE VOICE: Can't talk.
15 Thank you.
16 FIRST MALE VOICE: Ma'am?
17 FIRST FEMALE VOICE: What?
18 FIRST MALE VOICE: Don't hang up, okay?
19 FIRST FEMALE VOICE: Okay. This? Eighty-five.
20 FIRST MALE VOICE: Where is he at right now?
21 FIRST FEMALE VOICE: Right here.
22 FIRST MALE VOICE: Is he a white male?
23 FIRST FEMALE VOICE: No.
24 FIRST MALE VOICE: Black?
25 FIRST FEMALE VOICE: No.

1 FIRST MALE VOICE: Hispanic?
2 FIRST FEMALE VOICE: Yes.
3 FIRST MALE VOICE: Tall, short?
4 FIRST FEMALE VOICE: Uh-huh.
5 FIRST MALE VOICE: Tall?
6 FIRST FEMALE VOICE: Yeah.
7 Thank you.
8 FIRST MALE VOICE: Does he have the knife
9 pulled out?
10 FIRST FEMALE VOICE: Not yet.
11 FIRST MALE VOICE: Is it in his pocket?
12 FIRST FEMALE VOICE: Uh-huh.
13 FIRST MALE VOICE: All right. We'll get you
14 someone over there.
15 FIRST FEMALE VOICE: You want it, I'll give --
16 I'll give it to you. I'm not going to do nothing
17 to you. Please.
18 FIRST MALE VOICE: Hold it, get a unit on a
19 17 to the Shamrock, 2602 South Padre, you've got an
20 armed robbery going down right now. God, she's
21 beating the shit out of him. Okay, hold on.
22 SECOND MALE VOICE: 165 --
23 SECOND FEMALE VOICE: Are you through with
24 your call?
25 THIRD MALE VOICE: 151, police department.

1 FOURTH MALE VOICE: Hello.

2 (Unintelligible.)

3 (At this time the playing of SX-2 was concluded
4 and the following proceedings were had:)

5 MR. SCHIWETZ: The State rests, Your Honor.

6 THE COURT: I believe you have a motion out
7 of the presence of the Jury and you have also asked
8 for the remainder of the afternoon before you start
9 presentation of the defense.

10 MR. LAWRENCE: That's correct, Your Honor.

11 THE COURT: All right, fine. I'm going to
12 excuse you, then, until 9:00 o'clock tomorrow
13 morning. See you back here at that time.

14 (At this time the Jury was withdrawn from the
15 courtroom, after which the following proceedings
16 were had before the Court, outside the presence
17 and hearing of the Jury, with counsel for the State,
18 counsel for the Defendant and the Defendant present:)

19 MR. LAWRENCE: Your Honor, at this time, after
20 the State has rested, the Defense moves for a
21 Motion for Instructed Verdict based upon the fact
22 that there's insufficient evidence to warrant this
23 case to go to the Jury.

24 THE COURT: It's overruled.

25 MR. LAWRENCE: Note our exception.

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THE COURT: Yes, sir.

(EVENING RECESS)

1 (Thereafter, on the 19th day of July, 1983,
2 the following proceedings were had before the
3 Court, in the presence and hearing of the Jury,
4 with counsel for the State, counsel for the
5 Defendant and the Defendant present:)

6 THE COURT: Who's your first witness?

7 MR. LAWRENCE: Your Honor, we would waive any
8 opening statement to the Jury and call our first
9 witness as Wayne Waychoff.

10 (At this time the witness was sworn by the
11 clerk.)

12 THE CLERK: Please have a seat over there by
13 the court reporter.

14 THE COURT: Mr. Waychoff, after you finish
15 giving your testimony, the Rule has been invoked
16 which means that you may not discuss that testimony
17 with any other witness in this case. You may, if
18 you wish, discuss it with counsel on either side,
19 but if you do this, please take care not to discuss
20 it in the presence of any other witness.

21 MR. WAYCHOFF: Yes, sir.
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WAYNE WAYCHOFF,

having been called as a witness by the Defendant and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. DE PENA:

Q. Mr. Waychoff, would you state your name for the record, please.

A. Wayne Waychoff.

Q. And what is your position or what -- what type of employment are you in?

A. I am the president and owner of Triarch Corporation, we do asphalt and concrete paving.

Q. Okay. And how long have you been in the business?

A. Almost ten years.

Q. Do you -- did you have occasion to employ a Mr. Carlos De Luna?

A. Yes, sir, I did.

Q. Okay. Would you tell us approximately, to the best of your knowledge, when he began working for Triarch?

A. It was approximately January the 18th or 19th.

Q. Of this --

A. 1983.

1 Q. 1983, okay. Are you familiar with any of Carlos'
2 family?
3 A. Yes, sir, I am.
4 Q. And who is that?
5 A. Blas Avalos, I believe that's his stepfather.
6 Q. Okay. And who -- he's been employed with the company
7 for some period of time?
8 A. Yes, sir, about six years, I believe.
9 Q. Okay. Do I understand correctly that you have two
10 different divisions of the company, one that handles
11 asphalt and one that does concrete work?
12 A. Yes, sir, that's correct.
13 Q. What -- what division or what department does Mr.
14 De Luna work in?
15 A. He was with the concrete division.
16 Q. And you say he started working approximately the 18th
17 of January?
18 A. Yes, sir.
19 Q. Part of the request, Mr. Waychoff, do you recall or do
20 you have the records which would reflect what kind of
21 hourly wage --
22 A. Yes.
23 Q. -- Mr. De Luna was earning?
24 A. Yes, sir, I do have.
25 Q. Okay. And how much was that?

1 A. Three dollars and seventy-five cents per hour.

2 Q. Would your records reflect approximately or would they

3 reflect that he was working regularly for you from the

4 time that he started -- from the time he was employed

5 with you?

6 A. Yes, they will.

7 Q. Okay. Basically, would that reflect at least a minimum

8 of a 40-hour week, assuming the weather was -- your type

9 of work depends a lot on the weather, does it not?

10 A. Yes, it does.

11 Q. And if the weather is bad, then the guys -- the crews

12 don't work?

13 A. Right.

14 Q. Approximately what date do you show as his last date of

15 employment?

16 A. May I refer to the records?

17 Q. Yes, sir.

18 A. February the 4th.

19 Q. Okay. Was that a pay day?

20 A. Yes, sir, it was.

21 Q. And would your records reflect approximately or would

22 your records reflect whether he got paid that day?

23 A. Well, it does not say in here that he did get paid that

24 day, but Friday is always pay day, has always been our

25 pay day.

1 Q All right, would your records reflect approximately
2 how many hours he worked for the week ending that -- that
3 work week?

4 A Yes, sir, they do.

5 Q All right. How many hours would that be?

6 A He had 20 and a half hours -- excuse me. This is for
7 the pay period ending February the 8th, our pay period
8 starts on a Wednesday and ends on Tuesday and we pay
9 on a Friday, so for his last week he had 20 and a half
10 hours and for the week prior to that pay day he had
11 42 and a half hours.

12 Q Okay, so his pay check would have reflected how many
13 hours of work?

14 A Yes, sir, it would.

15 Q Okay. How many hours of work would that have been on
16 that Friday, how many -- how many hours would he have
17 been paid for, the combination?

18 A On that Friday he would have been paid for 42 and a half
19 hours.

20 Q Okay. And that would have been at the rate of three
21 seventy-five an hour?

22 A Yes.

23 Q So approximately I -- you don't have a copy of his
24 paycheck there, but you -- roughly he would have been
25 paid, what, a hundred thirty-five dollars?

1 A. Yes, sir, I believe that's correct.

2 Q. Mr. Waychoff, I'm going to ask you again if you will
3 reflect back to your records, would your records reflect
4 how many hours he had gotten paid for the previous pay
5 period?

6 A. Yes, sir, they do.

7 Q. Okay. And approximately how much -- what does that
8 reflect?

9 A. On January the 28th, 1983, he received a check for
10 seventy-one dollars and three cents, net pay.

11 Q. Okay. That's after deductions for --

12 A. Yes, sir.

13 MR. DE PENA: I pass.

14

15 CROSS-EXAMINATION

16 BY MR. SCHIWETZ:

17 MR. SCHIWETZ: Could I get this marked as a
18 State's Exhibit, please?

19 (State's Exhibit 38 was marked for
20 identification.)

21 Q. (By Mr. Schiwetz) Mr. Waychoff, I want to show you
22 what's marked as State's Exhibit 38 and ask you if you
23 can identify that?

24 A. Yes, sir, that's a copy of our pay check to Carlos
25 De Luna for February the 4th, 1983.

1 Q And it has a second page which would be what, an
2 endorsement?

3 A That's the endorsement on the reverse side.

4 MR. SCHIWETZ: I would like to tender State's
5 Exhibit 38.

6 MR. DE PENA: We have no objection, Your
7 Honor.

8 THE COURT: It will be received.

9 Q (By Mr. Schiwetz) Mr. Waychoff, just for the sake of
10 the record, what was the total amount he was paid that
11 day?

12 A One hundred thirty-five dollars and forty-nine cents.

13 Q Okay. And you indicated that he had been paid one more
14 time seventy-something dollars. Is that correct?

15 A Yes, sir, seventy-one-oh-three.

16 Q And when was that?

17 A On January the 28th, 1983.

18 Q Okay, so that would be, what, approximately a week
19 before?

20 A The week prior to that check.

21 MR. SCHIWETZ: Could I get this marked as a
22 State's Exhibit, please?

23 (State's Exhibit 39 was marked for
24 identification.)

25 MR. SCHIWETZ: Your Honor, I would like the

1 record to reflect that what is now marked as
2 State's Exhibit 39 was just removed by me from
3 State's Exhibit 13, which was the Defendant's
4 wallet. May it so reflect?

5 THE COURT: Surely.

6 Q (By Mr. Schiwetz) Mr. Waychoff, let me show you what's
7 marked as State's Exhibit Number 39 and ask you if you
8 can identify that?

9 A That is the check stub that's normally attached to an
10 employee's pay check.

11 Q Is this one of these little things you just tear off
12 when you cash your check?

13 A Yes, sir.

14 Q And what's the amount on that?

15 A One hundred thirty-five dollars and forty-nine cents.

16 Q And does that reflect the date that it was given?

17 A Yes, sir.

18 Q What was that?

19 A That's the pay period ending on February the 1st, 1983.

20 Q Okay. And this would be the stub for the check he
21 received on the 4th, would it not?

22 A Yes, sir.

23 MR. SCHIWETZ: I would like to tender State's
24 Exhibit 39.

25 MR. DE PENA: We have no objection, Your

1 Honor.

2 THE COURT: It will be received.

3 Q. (By Mr. Schiwetz) Mr. Waychoff, do your records there
4 indicate what time the Defendant got off on this
5 particular date?

6 A. Yes, sir, they do.

7 Q. On February 4th?

8 A. He worked from 7:30 a.m. to 11:00 a.m.

9 Q. 11:00 o'clock in the morning?

10 A. Yes, sir.

11 Q. Okay. Do you remember whether it rained that day or
12 not?

13 A. Yes, sir, it did.

14 Q. Is that why he got off so early?

15 A. Yes, sir.

16 Q. And how do you keep track of what time your employees
17 get off?

18 A. We have a foreman for each crew and they record the
19 hours each morning for the previous day's time.

20 Q. What kind of work was Mr. De Luna doing for y'all?

21 A. He was a laborer on the concrete crew.

22 Q. And what kind of labor work was he doing? Was it
23 pretty hard work?

24 A. Yes, sir, most concrete work is -- it's preparation of
25 setting forms, digging, removing dirt, pouring concrete,

1 just manhandling concrete.

2 Q. What kind of uniform do they wear, or do they?

3 A. Most of the employees have a uniform service. I do not
4 recall if Mr. De Luna had enrolled and was receiving
5 uniform services.

6 Q. Is it pretty dirty work?

7 A. Yes, sir, at times it is.

8 MR. SCHIWETZ: Thank you, sir, I don't have
9 any further questions.

10 MR. DE PENA: We have nothing further, Your
11 Honor.

12 THE COURT: Thank you, sir. May we excuse
13 this witness?

14 MR. LAWRENCE: We have no objection.

15 THE COURT: You may be excused.

16 THE WITNESS: Thank you.

17 THE COURT: You're welcome.

18 MR. DE PENA: Your Honor, we would like to
19 call Danny Fino next.

20 (At this time the witness was sworn by the
21 clerk.)

22 THE CLERK: Please have a seat over there by
23 the court reporter.

24 THE COURT: When you have finished giving
25 your testimony, you're not to discuss it with any

1 other witness in this case.

2 MR. FINO: Yes, sir.

3

4 DANIEL A. FINO,

5 having been called as a witness by the Defendant and after
6 having been first duly sworn to tell the truth, the whole
7 truth and nothing but the truth, testified upon his oath as
8 follows:

9

10 DIRECT EXAMINATION

11 BY MR. LAWRENCE:

12 Q. Do you want to state your name, please.

13 A. Daniel A. Fino.

14 Q. You can sit down. State your name again, please.

15 A. Daniel A. Fino.

16 Q. Okay. You're going to have to speak up a little
17 louder because she's taking it down and the Jury has
18 to hear what you're going to say. Where do you work,
19 sir?

20 A. Triarch. Triarch Corporation.

21 Q. All right. And were you working at Triarch Corporation
22 back on February the 4th, 1983?

23 A. Yes, sir.

24 Q. And do you know a person by the name of Carlos De Luna?

25 A. Yes, sir.

1 Q. Where do you know him from?

2 A. Well, since the day he was working with us, the day he

3 was -- the day my boss hired him.

4 Q. Is that at Triarch Corporation?

5 A. Yes, sir.

6 Q. Okay. Was he working with you in your crew or with

7 your crew or with your group?

8 A. He was working with our crew.

9 Q. Do you recall how long he had been working there up to

10 February the 4th? More or less.

11 A. I sure don't.

12 Q. Do you recall having done anything with Carlos De Luna

13 on February the 4th, 1983?

14 A. Well, that day it was raining and we left work kind of

15 early and me and my friend went to go cash our checks.

16 Q. Okay, who's your friend?

17 A. Ramiro.

18 Q. Did y'all go to work that day?

19 A. Yes, sir, we did.

20 Q. Okay. Do you know more or less how long y'all worked?

21 A. About -- I would say about three or four hours.

22 Q. When y'all stopped working, where did you go?

23 A. We went to the HEB on Baldwin.

24 Q. All right. Let's get back to the job. When you were

25 working on the job, as soon as they told you that you

1 can't work no more or whatever was happening because it
2 was raining, where did you go then from your -- from
3 where you all were working at?

4 A. To the yard.

5 Q. To the yard, you mean back to the -- to the building
6 where the -- where the construction company is located?

7 A. Yes, sir.

8 Q. And why did y'all go back there?

9 A. Because they told us to go back there.

10 Q. Okay. And did anything happen there?

11 A. No, sir.

12 Q. Okay. Were you all paid that day?

13 A. Yes, sir.

14 Q. Okay. Were you paid back when you went back to the
15 yard?

16 A. Yes, sir.

17 Q. Were you paid yourself?

18 A. Yes, sir.

19 Q. Was Carlos De Luna paid that day?

20 A. Yes, sir.

21 Q. After you all were paid, what did you all do?

22 A. We left -- that's when we went to go cash our checks.

23 Q. In whose car was it?

24 A. Ramiro's car.

25 Q. And where did you all go?

1 A. Went to the HEB on Baldwin.

2 Q. Did all three of you go in and cash your checks?

3 A. We sure did, sir.

4 Q. After you cashed your checks, did all three get back in

5 the car, in Ramiro's car?

6 A. Yes.

7 Q. Where did you go then?

8 A. We went to the Shamrock on Greenwood and Horne Road.

9 Q. And what happened then, if anything?

10 A. Well, Carlos bought a twelve-pack of Miller Lite.

11 Q. Okay.

12 A. And he told us if we want a beer, so we did.

13 Q. Each one of you had a beer?

14 A. Yes, sir.

15 Q. Then what happened?

16 A. From there, we took him home and he asked us if we

17 wanted another beer, so we got another one.

18 Q. And you all left him there at his house?

19 A. Yes, sir.

20 Q. Did you know he lived there?

21 A. I knew his father lived there, but he said it was --

22 his -- that he would -- he was living there with them.

23 Q. Do you know more or less what time of the day that was

24 when you finally left Carlos De Luna at his house?

25 A. It was kind of close to 3:00 o'clock.

1 MR. LAWRENCE: Pass the witness.

2 MR. SCHIWETZ: I don't have any questions.

3 Thank you, Mr. Fino.

4 THE COURT: May we excuse this witness?

5 MR. LAWRENCE: We have no objection.

6 THE COURT: Fine. You may be excused, thank
7 you, sir.

8 MR. DE PENA: Your Honor, we would like to
9 call Mr. Blas Avalos and I requested the Court to
10 ask for Mr. Abarca.

11 THE COURT: All right.

12 THE CLERK: Tony, Tony, do you want to help
13 me swear him in? Do you want to come forward?

14 MR. ABARCA: Let me tell him what I'm going
15 to do.

16 (At this time the witness was sworn by the
17 clerk through the court interpreter.)

18 THE COURT: Would you advise him, please --

19 MR. ABARCA: Yes, sir.

20 THE COURT: -- that after he's given his
21 testimony he's not to discuss it with any other
22 witness in this case.

23 MR. ABARCA: I am going to explain my function
24 to him.

25

1 BLAS GARCIA AVALOS,
2 having been called as a witness by the Defendant and after
3 having been first duly sworn through the interpreter to tell
4 the truth, the whole truth and nothing but the truth,
5 testified upon his oath as follows:

6
7 DIRECT EXAMINATION

8 BY MR. DE PENA:

9 (The following questions to this witness were
10 translated from English to Spanish and the answers
11 by the witness were translated from Spanish to
12 English by the court interpreter, Mr. Tony Abarca.)

13 Q (By Mr. De Pena) Mr. Avalos, would you state your full
14 name, please?

15 A Blas.

16 MR. ABARCA: B-l-a-s.

17 THE WITNESS: Garcia.

18 MR. ABARCA: G-a-r-c-i-a.

19 THE WITNESS: Avalos.

20 MR. ABARCA: A-v-a-l-o-s.

21 Q (By Mr. De Pena) And where do you reside?

22 A Where do I live?

23 Q Yes.

24 A At 2046 Rockford.

25 Q And how long have you lived there?

1 A. About seven years.

2 Q. Okay, and who lives at your house?

3 A. Just I and my wife.

4 Q. Okay. And where are you employed?

5 A. Where do I work?

6 Q. Where do you work.

7 A. I work for Triarch.

8 Q. And what kind of work do you do?

9 A. Laborer.

10 Q. Were you working for Triarch on February the 4th, 1983?

11 A. Yes, sir.

12 Q. Now, do you know Carlos De Luna?

13 A. Yes, sir.

14 Q. How is he related to you?

15 A. How is he?

16 Q. Yes.

17 MR. ABARCA: He doesn't understand the question

18 as you propounded it, "How is he related to you?"

19 Q. (By Mr. De Pena) How is he related to you?

20 A. He is my stepson.

21 Q. Do you -- were you and Carlos working together for

22 Triarch?

23 A. Yes, sir.

24 Q. Okay. Did you help him get that job?

25 A. Yes, sir.

1 Q On February the 4th, 1983, were you all both working
2 for Triarch?

3 A Yes, sir.

4 Q Okay. Do you -- at what time did you and Carlos go to
5 work that day?

6 A 7:00.

7 Q Okay. What time did you all enter work or what time are
8 you supposed to be there?

9 A We go into work at 7:30.

10 Q On February the 4th, you and Carlos left to work and
11 went out to Triarch to work.

12 A Yes, sir.

13 Q Okay. When you arrived at Triarch, do you and Carlos
14 work --

15 MR. ABARCA: Are you saying arc or arch?

16 MR. DE PENA: Arch.

17 Q (By Mr. De Pena) Do you and Carlos -- did you and
18 Carlos work in the same crew?

19 A No, they work for another group.

20 Q Which group do you work for?

21 A With the asphalt.

22 Q And which group was Carlos working with?

23 A The concrete crew.

24 Q After you arrived at work on February the 4th with
25 Carlos, was that the last time you saw Carlos until

1 later on in the day?

2 A. Did I see him that same day?

3 Q. Later on.

4 A. When I left my job.

5 Q. Okay. How -- how long or how late did you work that

6 day?

7 A. About 5:00, around then.

8 Q. Okay. What did you do after you got off work?

9 A. What did we do? My foreman and I, after we got off the

10 job, we went to cash our checks and buy a beer.

11 Q. And when's the next time that you saw Carlos?

12 A. When I arrived at home.

13 Q. Okay. About what time did you arrive at home?

14 A. Well, about 6:00 or 6:30, around then.

15 Q. Okay. What did you do when you got home?

16 A. I arrived at home and I rested for a little while.

17 Q. Okay.

18 A. Then my wife told me that Carlos wanted us to give him

19 a ride.

20 Q. Okay. Did -- did you, in fact, give him a ride?

21 A. I and my wife, yes.

22 Q. About what time was this?

23 A. Well, about 7:00, something like that.

24 Q. Okay. And where did you take Carlos?

25 A. He said he wanted to go to that place, I think it's

1 about skating, skating or something like that.

2 MR. DE PENA: You didn't finish --

3 MR. ABARCA: Skating, I think he said Padre
4 Island Drive, I'm sorry.

5 Q (By Mr. De Pena) Do you remember if that was Gulf
6 Skating Rink?

7 A We took him there.

8 Q Okay. Did you see Carlos after that?

9 A No, sir.

10 Q All right. Did you ever talk to Carlos after that?

11 A He called about 8:00 or 8:15 for us to go pick him up.

12 Q Okay. Do you -- how do you know that it was around
13 8:00 or 8:15?

14 A The little store that's where -- they close it at 8:00
15 o'clock, I was going to buy some beer.

16 Q You say it was closed?

17 A It was about five minutes to 8:00, but I would not make
18 it because it's about three or four blocks away.

19 Q Okay, so you're saying that Carlos, then, called you
20 sometime, you knew that it was sometime between 8:00
21 and 8:15.

22 A Yes, sir.

23 MR. SCHIWETZ: Excuse me, Your Honor. I'm
24 going to object to him leading the witness.

25 THE COURT: Try not to lead.

1 Q (By Mr. De Pena) Did you, in fact, go and pick up
2 Carlos?
3 A No, I told him -- I told my wife to tell him to take a
4 taxi to come home because I was drunk.
5 Q And that was the last time you saw Carlos on February
6 the 4th?
7 A Yes, sir.

8 MR. DE PENA: I pass the witness.
9

10 CROSS-EXAMINATION

11 BY MR. SCHIWETZ:

12 Q Mr. Avalos, my name is Steve Schiwetz. I have never
13 talked to you before, have I?
14 A No, sir, I do not know you.
15 Q Can you tell the Jury when the next time you saw your
16 stepson was after his arrest?
17 A After he was arrested?
18 Q Yes, sir.
19 A I have come with my wife to see him here.
20 Q Now, the first time that you saw him after he had been
21 arrested, did you ask him what happened?
22 A No, they're locked up in there. I just knew what had
23 happened.
24 Q Okay.
25 A And all of that.

1 Q What did he know had happened?

2 A Just that he was being accused of a thing that he had

3 not done.

4 Q Do you remember what kind of clothes Carlos was wearing

5 that particular night?

6 A No, sir.

7 Q Do you know if Carlos De Luna owned a knife?

8 A Carlos has never carried a knife, sir.

9 Q Have you ever seen these shoes before (indicating)?

10 A Not that I remember, no.

11 Q They're not your son-in-law's or your stepson's?

12 A That I have seen them, no, sir.

13 MR. SCHIWETZ: Thank you, sir.

14 MR. DE PENA: That's all the questions we

15 have, sir.

16 (At this time the court interpreter was

17 excused.)

18 MR. DE PENA: Your Honor, could we ascertain

19 if Mrs. Theresa Barrera is present?

20 THE COURT: Would you see if Theresa Barrera

21 is out there?

22 THE BAILIFF: Your Honor, we have an Enrique

23 Barrera.

24 THE COURT: Is that close enough?

25 MR. DE PENA: May we approach the bench, Your

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Honor?

THE COURT: Certainly.

(At this time an off-the-record discussion was held at the bench, after which the following proceedings were had:)

THE COURT: We will be in a recess until this witness arrives, if you will go with the bailiff to your jury room, I will call you as soon as we can.

(At this time a recess was taken, after which the following proceedings were had before the Court, in the presence and hearing of the Jury, with counsel for the State, counsel for the Defendant and the Defendant present:)

MR. LAWRENCE: Your Honor, at this time the Defense calls Carlos De Luna.

THE COURT: Was he sworn earlier?

MR. LAWRENCE: I don't think he was sworn, no.

(At this time the witness was sworn by the clerk.)

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CARLOS DE LUNA,

having been called as a witness in his own behalf, and after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. LAWRENCE:

Q Do you want to state your name for the record?

A My name's Carlos De Luna.

Q How old are you, sir?

A Twenty-one.

Q Where do you live?

A 2046 Rockford.

Q Back on February the 4th, 1983, were you working for Triarch Corporation?

A Yes, sir, I was.

Q And how were you able to get that job?

A By my father, stepfather.

Q And what's his name?

A Blas Avalos.

Q And prior to getting that job, where had you been?

A Before I got the job?

Q Yes, sir.

A I was in prison, sir.

1 Q And what were you doing -- what were you serving time
2 in prison for?
3 A Unauthorized use of a motor vehicle and attempted rape,
4 sir.
5 Q And where was that out of, do you recall what county?
6 A Dallas County, sir.
7 Q When -- when did you go to prison?
8 A In July the 21st, I think 1980, sir.
9 Q And when were you released?
10 A December 21st, 1982, sir.
11 Q From the time of your release or at the time of your
12 release, where did you go?
13 A Home, sir, to my stepfather's house, 2046 Rockford.
14 Q And was it after that that you were able to get a job?
15 A After that, sir, yes, sir.
16 Q Now, on that -- do you recall the events of February
17 the 4th, 1983?
18 A I do.
19 Q Did you go to work that morning?
20 A I did.
21 Q Who did you go to work with?
22 A For Triarch Corporation, sir.
23 Q Yeah, but who did you go to work with?
24 A Oh, my stepfather.
25 Q Does he own a car or something?

1 A. Yes, sir, he does.

2 Q. Do you own a car?

3 A. No, sir.

4 Q. Did you work that day?

5 A. I did.

6 Q. How long did you work?

7 A. Till about 11:30.

8 Q. Would that be 11:30 in the morning?

9 A. I started work at 7:00 and got off about 11:30 in the
10 morning.

11 Q. And why did y'all get off work at 11:30?

12 A. It started to rain.

13 Q. Where were y'all working at? Do you recall?

14 A. Yes, sir. At SPID and Flour Bluff, a place called
15 Holidays, it's a store.

16 Q. After you got off work at 11:30, what did you do, if
17 anything?

18 A. Went back to the office to pick up my check, sir.

19 Q. Who did you go with?

20 A. Danny Fino and Ramiro something, I can't remember his
21 last name.

22 Q. Were you all working out there at Holidays or whatever
23 it was in Flour Bluff?

24 A. We were.

25 Q. What time did y'all get back to -- the office?

1 A. I would say about 12:30, like that.

2 Q. Okay. Were the pay checks waiting for you or --

3 A. No, we had to wait awhile.

4 Q. And were you paid?

5 A. I was.

6 Q. What did you do then, if anything?

7 A. You mean after I got paid?

8 Q. Yes.

9 A. Well, I got my pay check, sir, and I asked Danny Fino

10 to take me to cash my check and Ramiro.

11 Q. And did y'all go cash the check?

12 A. We did.

13 Q. Do you recall where you went?

14 A. HEB on Morgan and Baldwin.

15 Q. Do you recall what you did after you cashed your check?

16 A. Yes, we went to the Shamrock gas station on Horne Road

17 and Greenwood.

18 Q. What did you do there?

19 A. We bought a twelve-pack of Miller Beer.

20 Q. And who bought it?

21 A. I did.

22 Q. Were you the only one that got down from the car?

23 A. I can't remember.

24 Q. What happened after you bought the twelve-pack of

25 Miller Beer?

1 A. I gave one each and I had one, we went home to my
2 house, 2046 Rockford, got there and I gave them another
3 one and got off at home.

4 Q. Do you recall more or less what time of the day that
5 was?

6 A. I would say about 2:30, 3:00 o'clock.

7 Q. What did you do then, if anything?

8 A. I went inside the house, then I noticed my neighbor
9 across the street outside, I went over his house.

10 Q. Did you do anything after that?

11 A. Yes, I did. I asked him if he knew anybody who could
12 fix watches because I had a watch that was broken and
13 he said no, but he would take me to find somebody to
14 fix watches.

15 Q. Did you go look for someone to fix your watch?

16 A. We did.

17 Q. Were you able to find anybody?

18 A. We weren't.

19 Q. What did you do then?

20 A. Well, we kept looking for awhile, got tired of looking,
21 went to a Whataburger on Gollihar. Ate there.

22 Q. About what time of the day or night was this?

23 A. I would say sometime about 4:00.

24 Q. What happened then after Whataburger?

25 A. We came back home to my house.

1 Q. Did you do anything at your house?

2 A. I went inside, took a shower, changed, was sitting
3 down and my stepfather asked me if I wanted to go to
4 Kroger's with him.

5 Q. Did you go to Kroger's?

6 A. I did.

7 Q. Who went to Kroger's?

8 A. Me, my stepfather and my mother.

9 Q. What happened after that?

10 A. Well, after that we came back home.

11 Q. Do you know what time it was?

12 A. I would say somewhere about 6:30.

13 Q. What happened then?

14 A. Oh, we sat around for awhile, my father sat around for
15 a few hours rest, my stepfather, and I asked him to take
16 me to the Gulf Skating Rink, I was supposed to meet
17 somebody there, sir.

18 Q. And did anyone take you to the Gulf Skating Rink?

19 A. Yes, sir.

20 Q. Who did?

21 A. My stepfather and mother.

22 Q. Did you actually go to the Gulf Skating Rink?

23 A. I did.

24 Q. Do you recall what time more or less that you arrived
25 at the Gulf Skating Rink?

1 A. About 7:00 o'clock, 7:15.

2 Q. What did you do at the Gulf Skating Rink?

3 A. I went inside to see if this girl was there I was
4 waiting for but she wasn't there, so I stepped back
5 outside.

6 Q. What happened when you stepped back outside?

7 A. When I stepped back outside, I noticed two girls I knew
8 and I went over there to talk to them.

9 Q. What were their names?

10 A. Mary Ann Perales and Linda Perales.

11 Q. Were they driving a car, were they on foot or were they
12 with someone else?

13 A. They were driving a car.

14 Q. Do you recall what type of car that was?

15 A. Something like a yellow Pinto car, I think it was a
16 Pinto.

17 Q. Where do you know them from?

18 A. I knew them back like in '76, sir, we used to go to
19 dances together, '77.

20 Q. Did -- what happened after you saw them?

21 A. I was talking to them, then I saw another guy approach
22 me, his name was Carlos Hernandez and he came and
23 talked to me, asking me if, you know, he knew me. I
24 said, "No, I don't know you." But then we started
25 talking and he did know me. It turned out that he did

1 knew me.

2 Q Do you know -- did you know him?

3 A I did.

4 Q Where did you know him from?

5 A I would say back when we were kids.

6 Q How long had it been since you had seen him?

7 A Like back in 1978, '79.

8 Q What happened then?

9 A Well, I asked if he had seen Ronnie Gonzalez, because

10 we knew Ronnie together and he said no, but he knew

11 where he lived so I asked him if -- if he want to, we

12 can ask these girls to take us over there.

13 Q Did you ask the girls?

14 A I did.

15 Q Did they take you anywhere?

16 A They did.

17 Q Where did y'all go?

18 A We went to -- first we stopped at the Kostoryz and

19 McArdle at Circle K. I walked in there to get some

20 Cokes and I asked her where the phone was. I wanted

21 to make a phone call to my father.

22 Q Who did you call?

23 A My stepfather, sir, my mother.

24 Q Why did you call your stepfather?

25 A To ask him for a ride, sir, to come pick me up. And

1 just in case Ronnie wasn't there, I was going to go
2 back to the skating rink and --

3 Q. Okay. Did you -- do you recall what time it was?

4 A. I would say it was close to 8:00, sir.

5 Q. You're not for sure, are you?

6 A. I'm not for sure.

7 Q. What happened after you made the phone call?

8 A. After I finished talking to him?

9 Q. Yes.

10 A. We proceeded to Ronnie's house.

11 Q. Do you know where that is?

12 A. No, I don't.

13 Q. Is it in that area or did y'all have to drive --

14 A. It is -- it is in that area.

15 Q. Did y'all find Ronnie Gonzalez' home?

16 A. No, we didn't.

17 Q. Did you find Ronnie Gonzalez?

18 A. Ronnie Gonzalez, no, we didn't.

19 Q. What happened then?

20 A. Well, I asked Hernandez what he wanted to do and told
21 me he was going to stick around for awhile, so I said,
22 "Well, since I got to catch a taxi home, I'll go stick
23 around there with you for awhile and wait."

24 Q. Where were the girls at this time?

25 A. They were there and then they said they had to leave,

1 so they left.

2 Q. They left y'all on foot there?

3 A. Yes, sir, they did.

4 Q. How long did you wait?

5 A. I would say about five to ten minutes.

6 Q. Then what did y'all decide to do, if anything?

7 A. Well, Carlos told me if I wanted to go to Wolfy's, that

8 sometimes he hung around there, Ronnie would hang

9 around there sometimes.

10 Q. Did you all go to Wolfy's?

11 A. Yes, we did.

12 Q. How did y'all get there?

13 A. Foot. Walking.

14 Q. Did you go into Wolfy's?

15 A. I did.

16 Q. And what about this friend of yours, Carlos Hernandez?

17 A. Well, he told me he had to go do something, to buy

18 something.

19 Q. What do you mean he told you he had to buy something?

20 A. Well, he went to buy something at that gas station, sir.

21 Q. What gas station?

22 A. That Shamrock gas station.

23 Q. Is it -- the -- the -- the Shamrock Service Station,

24 the one we have been talking about here?

25 A. Yes.

1 Q Where were you -- where were you all at when he said
2 he had to go to the Shamrock Service Station?
3 A At Wolfy's.
4 Q Were y'all inside or --
5 A No, we were outside standing at the door.
6 Q And do you know if he went over there?
7 A Yes, he did.
8 Q What did you do?
9 A I saw him -- I saw him -- well, I went inside Wolfy's,
10 I told him that I would meet him inside.
11 Q What did you do inside Wolfy's, if anything?
12 A I went in there and I bought a beer and sat down for
13 awhile listening to the music. I stayed there till
14 about -- about ten minutes and then I noticed he never
15 came back, sir.
16 Q What did you do then?
17 A I went back outside to see what was going on, what
18 happened.
19 Q Did you see anything, notice anything?
20 A I did. I noticed Hernandez inside the Shamrock Service
21 Station.
22 Q Were there any vehicles parked or any other people
23 inside the Shamrock Service Station?
24 A Not that I remember, can remember.
25 Q Okay. What happened then, if anything?

1 A. Well, then I noticed Hernandez going in somewhere in
2 the counter and started wrestling with that woman, so
3 I started walking off pretty quick, sir.

4 Q. Why --

5 A. Going down that road, Dodd Street or something like that.

6 Q. Well, why did you walk away?

7 A. Well, sir, I know I got a record, sir, and if I -- if
8 he came back to where I was, I knew these people would
9 say I was involved with this guy, so I got scared and
10 started walking away.

11 Q. Did you notice if any customers were at this Sigmor
12 Service Station at that time?

13 A. No, I didn't.

14 Q. Where did you go then?

15 A. I walked down Dodd Street, was walking pretty fast.

16 Q. What happened then, if anything?

17 A. Well, I kept walking till I got to about Franklin Street,
18 I think it was, or Nemec, can't remember, sir, then I
19 started running because I heard sirens, police coming
20 and I knew --

21 Q. Go ahead.

22 A. Oh. And then I knew that if -- you know, I just kept
23 running because I was scared, you know.

24 Q. What were you wearing that night? Do you recall?

25 A. Yes, sir, I do.

1 Q What?

2 A Black pants, black shoes, slip-on shoes, something
3 like these (indicating).

4 Q All right. What else?

5 A And a blue shirt.

6 Q Well, what happened then while you were scared and
7 running?

8 A I was running, I slipped -- some -- felt -- I slipped
9 on some bushes or some grass, something like that,
10 about three or four times and then I notice this fence
11 and I jumped over the fence and when I jumped, the
12 fence caught my shirt and it tore and it just came all
13 off, sir.

14 Q Then what happened?

15 A Then I get up and proceeded running and then people
16 started yelling, you know, something. I didn't know
17 what was going on and I got scared and I dove under
18 the truck, a truck I think it was, I don't know what it
19 was.

20 Q What happened after that?

21 A After that a policeman arrested me, sir.

22 Q Did -- do you recall what this Carlos Hernandez looks
23 like?

24 A I can give you a little bit what he looks like. He's
25 got hair about -- somewhere to about right here

1 (indicating) and about --

2 Q What color hair?

3 A Black.

4 Q What else do you remember?

5 A About five-eight, five-nine, weighs about a hundred

6 fifty pounds.

7 Q Do you recall what he was wearing?

8 A I remember the blue jeans, that's all I remember.

9 Q Do you remember the color shirt?

10 A No, I don't.

11 Q You don't remember what type of shoes?

12 A No, I don't.

13 Q Did you see him after you left the -- after you left

14 Wolfy's? Did you see him anywhere out there in that

15 area where you were running?

16 A I didn't.

17 Q Hiding?

18 A I didn't.

19 Q Did you ever tell the police that you knew who did it?

20 A At one time I was taken back to the gas station, I then

21 told Officer Schauer that I didn't do it, but I knew

22 who did it and then at one time I also told you about

23 it, my attorneys, about this guy and that you brought

24 me some pictures to see if I noticed him, but -- and he

25 turned out to be the guy and the State right here

1 wouldn't do nothing to help me or nothing to look for
2 this guy.

3 Q Did you ever go into that Sigmor Shamrock on
4 February the 4th, 1983?

5 A I never went in there before, sir.

6 MR. LAWRENCE: Pass the witness.

7

8 CROSS-EXAMINATION

9 BY MR. SCHIWETZ:

10 Q Mr. De Luna, do you recall ever telling anyone else
11 a version of your -- the events you have recounted here
12 today that is inconsistent with what you just told this
13 Jury?

14 A You mean the same thing I just told them?

15 Q Do you remember ever telling anybody anything that's
16 different from the story that you told these people?

17 A No, I don't.

18 Q You have never done that?

19 A No, I haven't.

20 Q Okay. Do you know a man named Gilbert Garcia?

21 A Gilbert Garcia?

22 Q Yes, sir.

23 A No, I don't.

24 Q You don't know Gilbert Garcia?

25 A No, I don't.

1 Q If you don't know Gilbert Garcia, then you couldn't
2 have called Gilbert Garcia on the afternoon of
3 February 4th and told him that you were having to work
4 late, could you?

5 A I don't know no Gilbert Garcia.

6 Q Do you know a man named James Plaisted?

7 A No, I don't.

8 Q Do you recall having an interview with James Plaisted
9 on June 15, 1983, a place over on Alameda?

10 A June the 15th?

11 Q Yes, sir.

12 A 1983?

13 Q Yes, sir.

14 A I was here then.

15 Q Do you remember being taken over to an office over on
16 Alameda and talking to a Doctor Plaisted?

17 A I do remember that.

18 Q Do you remember telling Mr. Plaisted that you couldn't
19 remember anything about what happened the day that the
20 fall happened?

21 A Well, I was scared, sir, because, you know, I knew he
22 was a psychiatrist.

23 Q Mr. De Luna, could you just answer the question I asked
24 you. Do you remember telling him that you couldn't
25 remember anything about what had happened?

1 A. I do.

2 Q. Okay. You denied knowing anything about it, didn't you?

3 A. I did.

4 Q. Do you remember talking on June 14th, 1983 to a

5 psychiatrist named Joel Kutnick?

6 A. I do.

7 Q. Okay. Do you remember telling him that you couldn't

8 remember anything?

9 A. I do remember that.

10 Q. Do you remember telling him that you had memory

11 problems?

12 A. I don't remember telling him that.

13 Q. Do you remember telling him that you couldn't remember

14 your mother's address?

15 A. No, sir, I don't remember saying that.

16 Q. Do you remember telling him that you didn't know what

17 kind of work your father did?

18 A. No. Because I know what kind of work she does.

19 Q. Do you remember telling him that you didn't know the

20 name of the company your father worked for?

21 A. No, I never told him that, either.

22 Q. You never told him that?

23 A. No, I didn't.

24 Q. Do you remember telling him that you didn't know if you

25 had ever been married?

1 A. I told him I had never been married, never.

2 Q. Do you remember telling him that you didn't remember
3 where you grew up?

4 A. No, I never told him that, either.

5 Q. Do you remember telling him that you didn't remember
6 how long you had had memory problems?

7 A. No, sir.

8 Q. Do you remember telling him that you didn't remember
9 being arrested?

10 A. No, sir.

11 Q. Do you remember telling him that you didn't know why
12 you had been arrested?

13 A. Well, at first I didn't know why until the police told
14 me why.

15 Q. I'm talking about on June the 15th.

16 A. Oh, no, sir.

17 Q. Do you remember telling him that you didn't remember
18 being arrested while you were hiding under a car?

19 A. Not that I remember.

20 Q. Okay. Do you remember telling him that you couldn't
21 remember whether you had ever been in trouble with the
22 law before?

23 A. No, sir.

24 Q. You don't remember any of those things?

25 A. No, sir.

1 Q And you don't even remember ever meeting Gilbert Garcia?

2 A I don't remember meeting Gilbert Garcia -- oh, Gilbert

3 Garcia, now I know who you're talking about. Okay, I'm

4 sorry. Now I know who you're talking about.

5 Q Do you remember calling Gilbert Garcia?

6 A February 4th, yes, sir.

7 Q The day of this killing.

8 A I do remember calling him that same time.

9 Q And do you remember telling him you couldn't come see

10 him that afternoon because you were going to be working

11 late?

12 A I don't remember telling that, I just told him -- do

13 you want me to tell you what I told him or just answer

14 the question?

15 Q Just answer the question --

16 A No.

17 Q -- you don't remember telling him that, do you?

18 A No, I don't remember that.

19 Q You indicated to the -- to the Jury that you went to

20 prison July 21st, 1980?

21 A 1980, I think it was. I can't remember.

22 Q And you were released December 21st, 1982?

23 A I was.

24 Q That would be roughly six weeks before this murder?

25 A Yes.

1 Q Is that all you want to tell them about that?

2 A That's it.

3 Q How much did you have to pay for that twelve-pack of

4 Miller beer?

5 A I would say about two fifty-nine, two sixty.

6 Q For a twelve-pack?

7 A I would say, I don't remember.

8 Q You went to Kroger's. Did you buy anything there?

9 A No, I didn't.

10 Q Did you buy anything at the Whataburger?

11 A Yes, I did.

12 Q What did you buy there?

13 A A hamburger and a French fries and a Coke.

14 Q How much did that cost you?

15 A About \$2.00 I would say.

16 Q Two dollars, okay. The Gulf Skating Rink, who was the

17 girl you were supposed to meet there?

18 A Mary Ann Perales.

19 Q That was who you were supposed to meet?

20 A Oh, no. What girl I was supposed to meet?

21 Q Uh-huh, who was that?

22 A It was Yvonne Gonzalez.

23 Q And where is she?

24 A Where is she?

25 Q Yes, sir.

1 A. She's around here somewhere in Corpus.

2 Q. She's not here at the courthouse?

3 A. No, she's not.

4 MR. SCHIWETZ: May I be excused for just a
5 second, Your Honor?

6 THE COURT: Sure.

7 (At this time Mr. Schiwetz withdrew from the
8 courtroom briefly, then returned, after which the
9 following proceedings were had:)

10 Q. (By Mr. Schiwetz) Do you recognize this lady that's
11 sitting right -- standing right here?

12 A. I do.

13 Q. Who is that?

14 A. It's Mary Ann.

15 MR. SCHIWETZ: Thank you.

16 Q. (By Mr. Schiwetz) So you claim that you -- you claim
17 you were with her for approximately how long that
18 night?

19 A. I would say about 15 minutes, maybe 20.

20 Q. From the time you met her there at the Gulf Skating
21 Rink and y'all went riding around looking for Ronnie
22 Gonzalez --

23 A. No, we didn't go riding around looking for him. We went
24 to the Circle K.

25 Q. You were only with them for about 15 minutes?

1 A. About that.

2 Q. How long had it been since the last time you had seen
3 her?

4 A. Sir?

5 Q. How long had it been since the last time you had seen
6 her?

7 A. Back in '78, '79, I would say.

8 Q. Has she changed much?

9 A. No, she hasn't.

10 Q. Sir?

11 A. No, she hasn't.

12 Q. Was her hair longer that night than it had been when
13 you knew her?

14 A. No, sir.

15 Q. Shorter?

16 A. About the same.

17 Q. She any taller or anything?

18 A. No, no taller.

19 Q. Just the same?

20 A. Just the same.

21 Q. This Carlos Hernandez fellow, who's the first person
22 you told about him?

23 A. Who was the first person I told about his name?

24 Q. Uh-huh.

25 A. My attorneys.

1 Q. Now, you and I haven't talked other than just greeting
2 each other in the hall, we haven't talked.

3 A. No, we haven't talked.

4 Q. So when you say that the State refused to do anything
5 to help you find Carlos Hernandez --

6 A. That's right.

7 Q. -- you really don't know what you're talking about, do
8 you?

9 A. Well, in a way I do, sir.

10 Q. Well, let me ask you this: Do you personally know what
11 efforts, if any, have been made by the State of Texas to
12 locate Carlos Hernandez personally?

13 A. Personally, sir?

14 Q. Yes.

15 A. No, I don't.

16 Q. All you know is what your lawyers have told you?

17 A. In a way, sir.

18 Q. Those pictures, how many pictures did you get to look
19 at?

20 A. About three or four.

21 Q. What kind of pictures were they?

22 A. They were little pictures about this big (indicating).

23 Q. Mug shots?

24 A. I would say.

25 Q. Who showed them to you?

1 A. My attorneys.

2 Q. Where do you figure they got them?

3 A. I don't know.

4 Q. Do you know anybody in town besides the police

5 department that goes around shooting mug shots of

6 people?

7 A. No, sir.

8 Q. Do you know anybody in town that goes around taking

9 mug shots of people?

10 A. No, sir.

11 Q. You weren't able to pick out any of those people, were

12 you?

13 A. No, I wasn't.

14 Q. What were the circumstances under which you originally

15 met Carlos Hernandez?

16 A. You mean back then, back when I knew him, first knew

17 him?

18 Q. Yes, sir.

19 A. Well, we used to -- oh, I met him with my brother at a

20 dance and we started meeting each other a little better.

21 Q. So you're pretty good friends?

22 A. Well, not too good a friends, we're just friends.

23 Q. Did you know where he lived?

24 A. At one time I did.

25 Q. Where was that?

1 A. That was over there by the City Bakery on 19th Street,
2 I think.

3 Q. Okay. Have you told your lawyers everything you knew
4 about Carlos Hernandez so that they could try and locate
5 him?

6 A. I did.

7 Q. Do you know if Carlos Hernandez has ever been arrested
8 in the city of Corpus Christi?

9 A. I'm not too sure, I thought he had but I'm not too sure.

10 Q. If he had been arrested, would it be fair to say that
11 they would have fingerprinted him?

12 A. It's fair to say, not all the time, but it's fair to
13 say.

14 Q. What was your purpose in calling up your father, your
15 stepfather to come pick you up when, in fact, you were
16 still planning on going over to Ronnie Gonzalez' with
17 Carlos Hernandez?

18 A. Well, I was going to go over there, if he wasn't there,
19 I was going to go back to the skating rink, tell my
20 parents to come pick me up. But instead, he wasn't
21 there so I -- and my father wouldn't come pick me up,
22 so I said, "I'll just stick around this guy for awhile."

23 Q. Those -- these shoes here, these aren't yours
24 (indicating).

25 A. No, they're not.

1 Q. Never seen them before?

2 A. Never seen them in my life.

3 Q. Okay. What size shoes do you wear?

4 A. Eight.

5 Q. Eight or eight and a half?

6 A. Eight.

7 Q. What size shoes are these?

8 A. Nine.

9 Q. And you don't know whether this Carlos Hernandez fellow

10 you claimed you were associating with, you don't know

11 if he was wearing these, do you?

12 A. No, I don't. I don't.

13 Q. Okay. These pants, these are yours, aren't they?

14 A. Those are my pants, that's right.

15 Q. This shirt, that's not yours, is it?

16 A. Not my shirt.

17 Q. Do you have a bank account?

18 A. Sir?

19 Q. Do you have a bank account?

20 A. Well, not really me. My mother, she put it down, you

21 know, her name and my name supposedly.

22 Q. How much money did you have on you that particular

23 night?

24 A. That night with me?

25 Q. Uh-huh.

1 A. About -- I would say about a hundred sixty, hundred
2 sixty-five, sir.

3 Q. Now, you had been paid a hundred thirty-five earlier in
4 the day; is that right?

5 A. Yes, sir. Yes, sir.

6 Q. Gone out and bought a twelve-pack for two dollars and
7 sixty cents?

8 A. Yes, sir.

9 Q. And then you had gone out and bought a few dollars
10 worth of hamburgers?

11 A. Right.

12 Q. That would cut that part down to, what, a hundred
13 thirty, something like that?

14 A. That's right.

15 Q. And you had 35 extra dollars, too?

16 A. About that.

17 Q. And where was that from?

18 A. That was from last week's pay check.

19 Q. Is there any particular reason why you were carrying
20 all that money wadded up in your front pocket?

21 A. Well, I always put my money in my front pocket, sir.

22 Q. Sir?

23 A. I always put my money in my front pocket.

24 Q. Always?

25 A. Always.

1 Q There's a couple of \$1 bills in the billfold?

2 A Yes, sir.

3 Q Police put that in there?

4 A No, sir.

5 Q Who did?

6 A I don't know, sir. Maybe I forgot it was there in my

7 wallet.

8 Q You just forgot and put it in your wallet?

9 A No, sir, I didn't say I put it in my wallet. It was

10 probably there from two weeks ago, three weeks ago, I

11 couldn't tell.

12 Q You ever hang out at the Casino Club?

13 A I do.

14 Q Were you a regular there?

15 A Sometimes.

16 Q Like Mylett said?

17 A I was a regular back in '77, '78.

18 Q How about in '83?

19 A In '83, one time I went.

20 Q You only went there one time?

21 A Since '83?

22 Q During 1983 -- since you got out of the penitentiary,

23 how many times have you gone to the Casino Club?

24 A I was there about twice.

25 Q For the record, you are the same Carlos De Luna who was

1 convicted of the offense of attempted rape back on
2 September 25th of 1980 in Cause Number F80-8598MQ in
3 the 204th Judicial District Court of Dallas County,
4 aren't you?

5 A. That's right.

6 Q. You are the same Carlos De Luna who was convicted in
7 Cause Number F80-1064MQ back on September 25th of 1980,
8 for the offense of unauthorized use of a vehicle, are
9 you not?

10 A. Yes, I am.

11 Q. But you're telling this Jury the truth.

12 A. I'm telling this Jury the truth.

13 Q. And you didn't kill that girl, did you?

14 A. I didn't kill that girl. I couldn't hurt nobody or
15 kill nobody.

16 Q. Are you going to qualify saying you can't hurt anybody?

17 A. Well, I can't say that.

18 Q. You can't say what?

19 A. I can't say that I won't hurt anybody.

20 Q. Why can't you say that?

21 A. Maybe they -- maybe they try to hurt me, you know, or
22 something.

23 Q. You would only hurt somebody if they tried to hurt you?

24 A. Well, it all depends on what it gets down to, sir.

25 Q. I guess it does, doesn't it?

1 MR. SCHIWETZ: Pass the witness.

2 MR. LAWRENCE: That's all the questions I
3 have.

4 THE COURT: You may step down.

5 MR. LAWRENCE: Your Honor, may we check out
6 in the hall and see if our witness is here?

7 THE COURT: Certainly.

8 MR. DE PENA: Your Honor, she has not arrived
9 yet. I don't know what the delay is.

10 MR. SCHIWETZ: May we approach the bench?

11 (At this time an off-the-record discussion
12 was held at the bench, after which the following
13 proceedings were had:)

14 THE COURT: Do you have any other witnesses?

15 MR. LAWRENCE: No, Your Honor.

16 THE COURT: You could call -- all right.
17 We'll be in recess, then, until we can get this
18 straightened out. If you don't mind, please go
19 with your bailiff. If you would like, I'm not
20 going to lock you in there, if you want to get a
21 Coke or something, you're welcome to do that.

22 (At this time, there was a recess taken, after
23 which the following proceedings were had before
24 the Court, outside the presence and hearing of the
25 Jury with counsel for the State, counsel for the

1 Defendant and the Defendant present:)

2 (At this time the witness was sworn by the
3 Court.)

4 THE COURT: The Rule has been invoked, which
5 means after you have given your testimony you may
6 not discuss this testimony with any other witness
7 in this case. You may discuss it with counsel on
8 either side, but take care not to discuss it in
9 the presence or hearing of any other witness.

10 I'm glad you could be with us. Now, come up
11 and have your seat.

12 (At this time State's Exhibit 40 was marked
13 for identification.)

14 THE COURT: Bring them in.

15 (At this time the Jury was seated in the
16 jury box, after which the following proceedings
17 were had:)

18
19 THERESA BARRERA,
20 having been called as a witness by the Defendant and after
21 having been first duly sworn to tell the truth, the whole
22 truth and nothing but the truth, testified upon her oath as
23 follows;
24
25

DIRECT EXAMINATION

BY MR. LAWRENCE:

Q. Would you state your name, please?

A. Theresa Barrera.

Q. And where do you live, Mrs. Barrera?

A. I live at 4949 Easter.

Q. Is that the -- let me ask you this: Do you recall the events of or did anything special happen back on February the 4th, 1983?

A. Is that in -- the date that I gave my statement about?

Q. Yes, ma'am.

A. Yes.

Q. Okay. Do you recall where you were at on that day or that evening that caused you to get involved?

A. I left my house, I don't remember the exact time, but I left my house after I got a phone call from my father who asked me to come down there and pick something up at his house, he lives -- I live at one end of the -- Easter Street and he lives at the other, so I walked down to his house with my son and I noticed that there were a great many police cars going up and down the street, some without lights, which it was night and dark and I thought that was odd, so I went to my father's house and picked up the tamales I went to get and I didn't stay there very long, I stayed not more

1 than ten minutes. And when I came out, there were
2 still police cars going around the neighborhood. I
3 went back home, I walked down the street and went home
4 and I noticed a police car had stopped on the corner.
5 We live on a corner of Easter and Nemec and there was a
6 police car parked on the Nemec side and I -- when I
7 went back in the house, I told my husband about the cars
8 going up and down the street and then I told him I
9 wanted to go back out and ask -- see what was going on.
10 He advised me not to, but I decided to do it anyway.
11 So I went outside and I looked over there and the police
12 car was gone and when I was looking in that direction,
13 I looked back towards my pickup truck, which was parked
14 in front of my house, and as I looked in that direction,
15 I saw a person lying underneath the pickup truck.

16 Q. Could you -- looking at the person under the pickup
17 truck, what was the first thing that drew your attention
18 to him?

19 A. Legs and feet.

20 Q. Did you notice anything such as shoes, pants or
21 anything of that nature on that person?

22 A. Well, I -- I did not have a certain picture of what
23 color pants he was wearing. When the police lady took
24 my statement, I told her that it appeared that he was
25 wearing light-colored pants, but I'm not certain of that.

1 Q Okay. Do you recall what type of shoes, if any, the
2 person was wearing?

3 A Maybe tennis shoes.

4 Q Did you see anything else as far as clothing?

5 A No, I just saw maybe he was wearing a white T-shirt
6 maybe.

7 Q Did you -- what happened after you saw him, if anything?

8 A I yelled to my husband, "Joe, there's a man under my
9 pickup." I was certain it was a man and he told me to
10 come back in the house and my other little boy and I
11 ushered him back in, then my husband came back out and
12 by that time he was gone.

13 Q Did you ever see that person that was underneath your
14 truck actually get up and run away or walk away or
15 anything?

16 A No, I didn't actually see him running or walking.

17 Q You just saw him lying there?

18 A And then I saw him moving out toward -- as he was lying
19 with his head towards Nemec Street and he moved out
20 toward the people who live across the street from me,
21 he moved out from under my pickup in that direction.

22 Q Out toward the middle of the street direction?

23 A Right.

24 Q Were you able to, in your own mind, ascertain how tall
25 that person was?

1 A. Appeared to me that he was no more than five-six and
2 perhaps five-four, because --

3 Q. Were you able to ascertain from looking at him lying
4 under the truck as to his weight?

5 A. He didn't appear to be a heavy person.

6 Q. Were you ever able to get a look at that person's face?

7 A. None.

8 Q. Approximately what time of the night was this that you
9 saw that person underneath the truck?

10 A. It was before 9:00 and after 8:00, but I think I -- did
11 I mention a time in that statement?

12 Q. Would you like to look at your statement to refresh
13 your memory?

14 A. Well, it's just that when I gave that statement, I had
15 a clear grasp of the time element involved then.

16 Q. Would you like to refresh your memory?

17 A. Yes. It says between 8:00 and 8:30, so it must have
18 been closer to 8:30. You're asking me when was what,
19 now?

20 Q. When was the approximate time that you saw the person
21 underneath the truck?

22 A. I'm going to say approximately 8:30, but I'm not --
23 right now I don't -- I'm not positive about that time.

24 Q. Is there any way you could tell if in this courtroom --
25 the person that you saw under the truck, if he was in

1 this courtroom today?

2 A. No. I didn't see his -- anywhere above his waist
3 mostly.

4 MR. LAWRENCE: Pass the witness.

5

6 CROSS-EXAMINATION

7 BY MR. SCHIWETZ:

8 Q. Mrs. Barrera, you indicated that you weren't really sure
9 what color the pants were or whether they were light or
10 dark; is that correct?

11 A. That's correct.

12 Q. Is there a particular reason that you were unable to
13 tell what color clothes the man was wearing?

14 A. Well, he was lying under my truck and there was -- at
15 that time there was some water which collects in front
16 of my house, we don't have very good drainage.

17 Q. That's a persistent problem there in that area, isn't
18 it?

19 A. Yes.

20 Q. And where does the water congregate out there in relation
21 to where your pickup was?

22 A. Right under it.

23 Q. This fellow was laying in the water, wasn't he?

24 A. Yes.

25 Q. Are there any lights right there?

1 A. Well, my front porch light was on and there's a -- there
2 is a corner light, one of those mercury lamps.

3 Q. Does that put any glare on that water?

4 A. Yes, it does.

5 Q. Okay, just so -- I want to make sure the Jury knows
6 exactly where we're talking about. I want you to step
7 up to this drawing over here, this one, excuse me
8 (indicating). Now, could you step over here for a
9 second.

10 A. (Witness complies.)

11 Q. Now, on this picture, which is State's Exhibit Number 7,
12 you see there's a red circle around that Shamrock
13 Station?

14 A. Yes.

15 Q. And then you have this first street here.

16 A. Dodd.

17 Q. Would be Dodd, and then the next -- and then the house
18 is facing Dodd right here; is that correct? This here
19 facing Dodd (indicating)?

20 A. Right.

21 Q. And these next here are facing which street?

22 A. Easter.

23 Q. Can I write "Easter Street" right there where the
24 street would be?

25 A. Right, that's Easter.

1 Q. Okay, I'm going to write that in blue. And we'll just
2 write "Dodd" over here where that would be. Is that
3 right?
4 A. Right.
5 Q. Now, where on Easter Street is your house?
6 A. It's the last house.
7 Q. Okay, is it totally obscured by trees, just about?
8 A. It looks like it is.
9 Q. Okay. Can I draw a little square there or why don't
10 you do it, draw a square, draw it in blue where your
11 house is.
12 A. (Witness complies.)
13 Q. Okay.
14 A. My comb fell.
15 Q. All right. So the truck that the man was hiding under
16 was where?
17 A. Where the -- this corner here, it was right off of the
18 corner -- (indicating).
19 Q. Okay.
20 A. -- of Easter and Nemec.
21 Q. Can I mark an "X" there?
22 A. Yes.
23 Q. Okay. X -- I will draw a little arrow there to
24 indicate that's where the truck was and write "truck"
25 up here. Is that okay?

1 A. Yes.

2 Q. Do you know a man named Armando Garcia?

3 A. Yes.

4 Q. Okay. Is he a neighbor of yours?

5 A. Yes.

6 Q. Can you show me where his house is?

7 A. He lives -- well, if this is my house and these are all
8 facing Easter?

9 Q. Yes, ma'am.

10 A. He would live here (indicating).

11 Q. Okay. And I'll draw a square around that in green, okay?

12 A. All right.

13 Q. And draw an arrow to that and write "Mr. Garcia" -- or
14 just write "Garcia" so the Jury can see where Mr.
15 Garcia's house is. And this street right here, what
16 street is that (indicating)?

17 A. You haven't skipped a street, have you?

18 Q. I don't think so. Here's one facing Easter and then --

19 A. All right. This is Franklin then (indicating).

20 Q. All right. "Franklin" there in blue. Okay?

21 A. All right.

22 Q. You have the Sigmor over here in red, your house with
23 the truck out front here in blue on Easter, Mr. Garcia's
24 house right here across the street, and the next block
25 over is Franklin; right?

1 A. Right.

2 MR. SCHIWETZ: Thank you, ma'am. Thank you,
3 ma'am.

4 MR. LAWRENCE: I have no further questions.

5 THE COURT: Thank you, you may step down.
6 May we excuse this witness?

7 MR. SCHIWETZ: Yes, Your Honor.

8 MR. LAWRENCE: No objection.

9 Your Honor, at this time the Defense rests.

10 MR. SCHIWETZ: I guess I'll call Mary Ann
11 Perales.

12 (At this time the witness was sworn by the
13 clerk.)

14 THE COURT: When you have finished giving
15 your testimony, you're not to discuss it with any
16 other witness.

17 MS. PERALES: Right here?

18 THE COURT: Yes, ma'am.

19

20 MARY ANN PERALES,

21 having been called as a witness by the State and after having
22 been first duly sworn to tell the truth, the whole truth and
23 nothing but the truth, testified upon her oath as follows:

24

25

DIRECT EXAMINATION

2 BY MR. SCHIWETZ;

3 Q Would you please state your name for the Jury, ma'am?

4 A Mary Ann Perales.

5 Q You're going to have to speak up some, your voice is
6 real light and I can just barely hear it and you've got
7 to talk loud enough so the last man on the jury panel
8 can hear you, okay?

9 A Mary Ann Perales.

10 Q And how old are you?

11 A Twenty.

12 Q And where do you live?

13 A 1002 19th Street.

14 Q And who do you live with there?

15 A With my husband.

16 Q What's his name?

17 A Ruben Benavides.

18 Q Are y'all common law?

19 A Common law.

20 Q Are you planning on getting married?

21 A Yes.

22 Q When are you planning on getting married?

23 A This month.

24 Q How long have y'all been together?

25 A Four and a half years.

1 Q Do you know the Defendant in this case, Mr. Carlos
2 De Luna?

3 A I have seen him before.

4 Q When did you know him?

5 A Well, I went to school with his brother and that was
6 about five years ago.

7 Q I want to direct your attention back to the 4th day of
8 February of 1983 and I want to ask you if you had
9 occasion to meet Mr. De Luna here at the Gulf Bowling
10 Alley or Gulf Skating Rink or someplace like that?

11 A No. I was attending a baby shower.

12 Q Just a second. Your answer is no?

13 A No.

14 Q At any time on that day did you talk to him or run
15 around with him at all?

16 A No.

17 Q Okay. You're going to have to speak up.

18 A No.

19 Q Now, he's testified that you looked the same back on
20 February the 4th --

21 THE COURT: You're violating the Rule.

22 Q (By Mr. Schiwetz) All right. Well, let me ask you
23 this: Was there anything different in your appearance
24 back on February the 4th from the way you appeared
25 three or four or five years ago when you knew this

1 Defendant?

2 A. Well, fat.

3 Q. Okay. Why were you fat?

4 A. I was seven months pregnant.

5 Q. Now, do you have any specific memory on what you were
6 doing on the 4th day of February, 1983, in the evening
7 hours, say, around 7:00 or 8:00 o'clock?

8 A. Well, my baby shower started at -- at 7:00 o'clock and,
9 well, I was attending my baby shower and it ended about
10 10:00.

11 Q. I want to show you what's marked as State's Exhibit 20
12 and ask you if you can identify that or excuse me, 40.
13 Can you tell me what this is?

14 A. That's my baby shower.

15 Q. Well, this is a copy of something, isn't it?

16 A. Yeah.

17 Q. Okay. What's it a copy of?

18 A. Well, I'm pregnant right there.

19 Q. Okay, was this copied off of something?

20 A. A picture.

21 Q. Okay. What was it a picture of?

22 A. My baby shower. It was in the little book, a baby's
23 book.

24 Q. Okay. Have you got that with you?

25 A. It's outside.

1 Q Is it with your friend?

2 A Uh-huh, with my sister-in-law.

3 Q Okay. Just a second. Do you want to keep ahold of

4 those? Okay. Let me show you this (indicating). Can

5 you tell me what this is?

6 A What it is?

7 Q Yes, what is this? This front page here.

8 A This front page (indicating), well, see, I just made

9 this book so -- brought it so you could see it.

10 Q When was this picture taken?

11 A On February the 4th.

12 Q Okay. And does that represent the way you looked on

13 February 4th?

14 A Yes.

15 Q Okay. And State's Exhibit 40, is this a copy of that

16 front page of that book?

17 A Yeah, uh-huh.

18 Q And does it fairly and accurately represent your

19 appearance in that picture?

20 A Yes.

21 (At this time, there was an off-the-record

22 discussion between counsel out of the hearing of

23 the court reporter, after which the following

24 proceedings were had:)

25 Q (By Mr. Schiwetz) Does the picture shown on State's

1 Exhibit Number 40 accurately represent your appearance
2 on February 4th, 1983?

3 A. Yes.

4 MR. SCHIWETZ: I would like to tender State's
5 Exhibit 40.

6 MR. LAWRENCE: Your Honor, may I take her on
7 voir dire?

8 THE COURT: Yes, sir.

9

10 VOIR DIRE EXAMINATION

11 BY MR. LAWRENCE:

12 Q. Ms. Perales, other than -- there's nothing marked on
13 State's Exhibit Number 40 that indicates that this
14 picture was actually taken on February the 4th; is
15 that correct?

16 A. No, but you -- I have witnesses.

17 Q. You didn't take this picture yourself of yourself.

18 A. No, my mother did.

19 Q. So we have no way of knowing if, in fact, this was,
20 other than just what you're saying that this was taken
21 on February the 4th, 1983.

22 A. Well, that's all I have.

23 MR. LAWRENCE: We have no objection.

24 THE COURT: It will be received. Pass this
25 among you without comment, please.

DIRECT EXAMINATION (Continued)

BY MR. SCHIWETZ:

Q. Ms. Perales, when was your baby born?

A. On April 1st.

Q. April 1st? Who was there at that shower, if you recall?

A. Who was there?

Q. Uh-huh.

A. Well, my sister-in-laws were there. They're here if you want to talk to them.

Q. And who else?

A. Friends from work, relatives.

Q. Do you have a sister?

A. Yes, she wasn't there, though.

Q. She wasn't there?

A. No.

Q. Do you know where she was?

A. No. Well, with her husband, I guess.

MR. SCHIWETZ: I will pass the witness.

CROSS-EXAMINATION

BY MR. LAWRENCE:

Q. Ms. Perales, where were you living at back on February the 4th, 1983?

A. At 1514 West Point.

1 Q Are those apartments or something?

2 A Yes.

3 Q What's the name of those apartments?

4 A Cliff Maus Village.

5 Q Did you know a person at those apartments by the name

6 of Alfredo Hernandez, Jr.?

7 A I would have to see him. Does he work there or what?

8 Q Yes.

9 A Yes, I know who he is.

10 Q Okay. Do you know what his job was there?

11 A Cleaning apartments, I guess.

12 Q Did you ever have occasion to talk to him or to request

13 things from him?

14 A I have never talked to him before.

15 Q Okay. You have never had to ask for him to open up

16 your apartment because you forgot your keys?

17 A Oh, yes, to open up the apartment, but never a

18 conversation.

19 Q Okay. Have you done this on more than one occasion?

20 A About twice.

21 MR. LAWRENCE: Pass the witness.

22 MR. SCHIWETZ: I don't have any more questions.

23 THE COURT: Thank you, ma'am, you may be

24 excused. Call your next.

25 MR. SCHIWETZ: Your Honor, can I check? I

1 hadn't anticipated finishing this quick. Let me
2 see if I have another witness.

3 Your Honor, I hadn't anticipated getting to
4 rebuttal this quick and my witnesses are supposed
5 to be here at 1:30, but I don't have any other
6 witnesses.

7 THE COURT: How many witnesses do you have?

8 MR. SCHIWETZ: Two, maybe three. Very brief.

9 THE COURT: All right. We will be in recess,
10 then, until 1:30.

11 (At this time the noon recess was taken,
12 after which the following proceedings were had
13 before the Court, in the presence and hearing of
14 the Jury, with counsel for the State, counsel for
15 the Defendant and the Defendant present:)

16 THE COURT: Who is your next witness?

17 MR. SCHIWETZ: Ernest Wilson.

18 THE COURT: Ernest Wilson?

19 MR. LAWRENCE: May we approach the bench,
20 Your Honor?

21 THE COURT: Yes.

22 (At this time, an off-the-record discussion
23 was held at the bench, after which the following
24 proceedings were had:)

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ERNEST DAVE WILSON, Recalled

having been recalled as a witness by the State and after having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified further upon his oath as follows;

REDIRECT EXAMINATION

BY MR. SCHIWETZ:

Q. Would you please state your name for the Jury, please, sir.

A. Ernest Dave Wilson.

Q. And for the sake of the record, you're the same Sergeant Wilson who testified in this case the other day, are you not?

A. Yes, I am.

Q. And you were qualified as a fingerprint examiner at that particular point in time, were you not?

A. Yes, I was.

Q. At my request, did you attempt to make some comparisons between the latent fingerprints lifted by Sergeant Infante and some other -- some people with another name?

A. Yes, sir, I did.

Q. And what was that other name?

A. Carlos Hernandez.

Q. And when did you try and make those comparisons?

1 A. About four days ago.

2 Q. And at that time were you able to pull out any
3 fingerprint cards over at the Corpus Christi Police
4 Department which matched the name Carlos Hernandez?

5 A. Yes, sir, I did.

6 Q. And between what ages did you pull those cards?

7 A. Between the age of 20 and 30.

8 Q. And how many cards did you find with the names Carlos --
9 different defendants with the name Carlos Hernandez?

10 A. Seven.

11 Q. Did you attempt to make comparisons between the
12 fingerprints of the known fingerprints of different
13 Carlos Hernandezes and the fingerprints which were
14 found, those partial fingerprints which were found on
15 the door at the Sigmor Station?

16 A. Yes, I did.

17 Q. Were you able to make any kind of comparison with them?

18 A. No, sir, I was not.

19 Q. All right. Let me ask you this, too, let me give you
20 a hypothetical: Say you have got a person who works
21 with cement pipe, who does laboring-type work with
22 cement pipe and let's say he's been doing that for
23 several weeks --

24 MR. LAWRENCE: Your Honor, I'm going to object
25 to this line of questioning. We're going into new

1 evidence which is not really rebuttal at this
2 point in time.

3 THE COURT: No, but don't -- don't answer the
4 question until I -- until I can hear the question,
5 so if you hold up on your answer after he finishes
6 the question I will appreciate it and I will rule
7 on it at that time.

8 Q. (By Mr. Schiwetz) Say you have got a person who for
9 several weeks has been working doing labor-type work
10 with cement pipe, would the mere fact of having done
11 that kind of work for, say, 20 to 40 hours a week for
12 a couple of weeks have any influence on whether that
13 person would leave a latent fingerprint at a crime
14 scene?

15 MR. LAWRENCE: Your Honor, again we would
16 renew our objection.

17 THE COURT: It's overruled.

18 MR. LAWRENCE: Note our exception.

19 THE COURT: Yes, sir.

20 Q. (By Mr. Schiwetz) Would that have any effect, sir?

21 A. It would have an effect upon him leaving a good,
22 legible print, yes, sir.

23 Q. Why?

24 A. Because the -- the rough material of the concrete
25 itself would wear down the friction ridges of the

1 fingers to where they would leave -- if it left
2 anything, it would be just a smudge.

3 MR. SCHIWETZ: I will pass the witness.

4

5 RECROSS-EXAMINATION

6 BY MR. LAWRENCE:

7 Q Sergeant Wilson, when you talk about somebody working
8 with concrete, are we talking about any type of
9 concrete or are we talking about somebody that actually
10 makes the concrete or has his hands in the dry-type
11 concrete or what?

12 A If a person has his hands in the dry-type concrete,
13 the acid in the concrete will eat the friction ridges;
14 also if he handles the rough block of the concrete or
15 rough surface of the concrete pipe, it will wear the
16 friction ridges down on the fingers.

17 Q Okay. And if a person just worked with concrete,
18 maybe just pouring it and smoothing it out with the
19 different tools that they use, we're not talking about
20 the same thing, are we?

21 A Yes, sir, we are.

22 Q You can still get all this stuff from wet concrete?

23 A Yes, sir.

24 Q At all times?

25 A Yes, sir.

1 Q What else works on fingerprints other than cement?

2 A Detergent is very bad on prints.

3 Q So if a person washes his hands quite often?

4 A If, say, a person in a cafe where -- that is a dish-

5 washer -- that does not have an automatic dishwashing

6 machine where he does it by hand, it is very rough on

7 the friction ridges of a person's hands.

8 Q If a person took a shower maybe an hour earlier before

9 and used quite a bit of soap on his hands, would that

10 wash off anything?

11 A No, sir.

12 Q Well, that wouldn't, that's soap, but it wouldn't wash

13 it off?

14 A It takes a matter of time for the detergent that is in

15 the soap to affect the ridges.

16 Q You're not telling this Jury, though, that because a

17 person works with concrete that he could not leave a

18 good, legible print?

19 A No, sir, I'm not telling the Jury that. I'm saying

20 that if the person worked in concrete for X number of

21 hours, days, weeks, months, etcetera, eventually or in

22 the proceeds of this type of work, the friction ridges

23 of the fingers will be worn down smooth.

24 Q So we're talking over a long period of time.

25 A That depends on how active he is in this line of work.

1 Q You're also not telling the Jury that there's a
2 possibility that there is a Carlos Hernandez walking
3 around loose that you all don't happen to have a
4 fingerprint of.

5 A. Very possible.

6 MR. LAWRENCE: Pass the witness.

7 MR. SCHIWETZ: I don't have any further
8 questions.

9 THE COURT: Thank you, sir. Do you want to
10 step down?

11 MR. SCHIWETZ: May this witness be excused?

12 MR. LAWRENCE: Pardon?

13 MR. SCHIWETZ: May he be excused?

14 THE COURT: Yes. He is excused.

15 MR. SCHIWETZ: I call Tom Mylett.

16
17 THOMAS DAMIEN MYLETT, Recalled,
18 having been recalled as a witness by the State and after
19 having been previously duly sworn to tell the truth, the
20 whole truth and nothing but the truth, testified further
21 upon his oath as follows:

22

23

24

25

DIRECT EXAMINATION, Continued

BY MR. SCHIWETZ:

Q. Would you please state your name.

A. Thomas Damien Mylett.

Q. And for the record, are you the same Thomas Mylett who testified in this court a day or two -- or Friday, I believe?

A. Yes, sir.

Q. You understand you're still under oath?

A. Yes, sir.

Q. You testified, if I remember correctly, that you are a security guard at the Casino Club on Port; is that correct?

A. Yes, sir.

Q. Can you tell the Jury whether or not you have a specific recollection of how many times --

MR. SCHIWETZ: Well, let me -- let me rephrase that.

Q. (By Mr. Schiwetz) How many times do you have a specific recollection of seeing this Defendant at the Casino Club between December and February of -- December of 1982 and February of 1983?

A. Four times, sir.

Q. That you have a specific recollection of?

A. Yes, sir.

1 MR. SCHIWETZ: I will pass the witness.

2 MR. LAWRENCE: I have no questions.

3 THE COURT: You may step down.

4 MR. SCHIWETZ: I call Gilbert Garcia. May I
5 check the hall?

6 Jim.

7 (At this time an off-the-record discussion
8 was held at the bench, after which the following
9 proceedings were had:)

10 THE COURT: We have a witness on the way, so
11 it will be about five or ten minutes. We will be
12 in recess.

13 (At this time a recess was taken, after which
14 the following proceedings were had before the
15 Court, outside the presence and hearing of the
16 Jury, with counsel for the State, counsel for the
17 Defendant and the Defendant present:)

18 MR. SCHIWETZ: We're ready, this is my
19 witness.

20 (At this time the witness was sworn by the
21 Court.)

22 THE COURT: The Rule has been invoked, so
23 when you finish giving your testimony, don't
24 discuss that with any other witness in the case.

25 MR. GARCIA: Yes, sir.

1 THE COURT: All right, fine, have your seat
2 right over there by the court reporter.

3 (At this time the Jury was seated in the
4 jury box, after which the following proceedings
5 were had:)

6
7 GILBERT GARCIA,
8 having been called as a witness by the State and after having
9 been first duly sworn to tell the truth, the whole truth and
10 nothing but the truth, testified upon his oath as follows:

11
12 DIRECT EXAMINATION

13 BY MR. SCHIWETZ:

14 Q. Would you please state your name for the Jury, sir.

15 A. My name is Gilbert Garcia.

16 Q. And how are you employed?

17 A. I'm district parole officer for the State of Texas
18 assigned to the Corpus Christi district office.

19 Q. And how long have you been a parole officer?

20 A. I have been a parole officer for about two years now.

21 Q. I want to direct your attention back to the 4th day of
22 February of this year, 1983, and ask you if you had an
23 occasion to have a conversation with a man named Carlos
24 De Luna?

25 A. Yes, he did, on February 4th of '83, he called me.

1 Q Just a second. Where did he call you?

2 A At the office.

3 Q About what time did he call you?

4 A It was exactly 1:50 p.m.

5 Q And did he -- well, before we go into that, can you
6 identify the Carlos De Luna that you are talking about?

7 A Yes, sir, he's sitting right there.

8 MR. SCHIWETZ: All right, would the record
9 reflect that he pointed at the Defendant, Your
10 Honor?

11 THE COURT: All right.

12 Q (By Mr. Schiwetz) And what did Mr. De Luna tell you
13 at 1:50 p.m.?

14 A He was supposed to report to me that day.

15 Q And what did he tell you?

16 A And he told me he was working, he was going to work
17 late and probably couldn't make it before 5:00 p.m. and
18 I informed him that I would wait until he reported until
19 about 5:30.

20 Q Did you wait till 5:30?

21 A Yes, I did.

22 Q Did he ever show up?

23 A No, he didn't.

24 MR. SCHIWETZ: Pass the witness.

25 MR. LAWRENCE: No questions.

1 THE COURT: Thank you, sir, you may step down.
2 MR. SCHIWETZ: May this witness be released?
3 THE COURT: You are excused.
4 MR. LAWRENCE: I have no objection.
5 THE COURT: You're excused.
6 MR. SCHIWETZ: The State rests.
7 THE COURT: All right. Anything else from the
8 Defense? Both sides close?
9 MR. SCHIWETZ: The State closes.
10 MR. LAWRENCE: Defense closes.
11 MR. DE PENA: Defense closes.
12 THE COURT: All right. So that you won't
13 feel that I'm being arbitrary in the matter, let
14 me tell you what the mechanics are now at this time,
15 at 5 minutes of 2:00. We will go over the Charge
16 that I intend to present, give each side a chance
17 to make suggestions, additions to it or object to
18 it, which will be a little time consuming. Both
19 sides have agreed to an hour's argument, which if
20 they use all of that will be two hours and I don't
21 want to read this Charge to you at this time of
22 the day with that time problem we have, within that
23 framework, because after I read it to you, I have
24 to lock you up. I think I just convinced you,
25 didn't I? Fine. No, I don't want to do that and

1 that's why I -- I don't like wasting this much
2 court time, either, but in deference to -- even
3 though I don't run for office anymore, I try not
4 to alienate the citizenry of the community. So
5 why don't we set it up for 9:00 o'clock tomorrow
6 morning and the arguments will be presented to you
7 at that time. Fine. See you back here at 9:00.

8 (At this time the Jury was withdrawn from the
9 courtroom, after which the following proceedings
10 were had:)

11 THE COURT: Have you seen a copy of the
12 proposed Charge?

13 MR. LAWRENCE: Your Honor, for purposes of
14 the record, I got here about 1:20 and there was a
15 copy of the Charge here in front of me. I haven't
16 looked at it, I would like maybe ten or fifteen
17 minutes to --

18 THE COURT: Sure.

19 MR. LAWRENCE: -- discuss with co-counsel
20 what --

21 THE COURT: Sure.

22 MR. LAWRENCE: -- we intend to do, then we
23 can come back on the record.

24 THE COURT: Fine.

25 (At this time a recess was taken, after which

1 the following proceedings were had before the
2 Court, outside the presence and hearing of the
3 Jury with counsel for the State, counsel for the
4 Defendant and the Defendant present;)

5 THE COURT: Do you want anything on the
6 record?

7 MR. SCHIWETZ: Yes, sir, it would probably
8 be better.

9 MR. LAWRENCE: Your Honor, we have received a
10 copy of the Charge of the Court and have submitted
11 to the Court prior to any arguments to the Jury
12 and prior to the Charge being read to the Jury our
13 objections to the Court's Charge to the Jury and we
14 have given that to the Court and we ask that it be
15 filed and in addition to that we have also filed
16 with the Court Defendant's Special Requested Charge
17 in which we asked for two additional charges to be
18 added to the Charge of the Court and I believe
19 that's in the hands of the Court at this time.

20 THE COURT: Your objection to the Charge is
21 overruled and your request for specific special
22 charge, first paragraph is granted and the second
23 paragraph is denied.

24 MR. LAWRENCE: Note our exception.

25 THE COURT: Yes, sir. Anything else? 9:00

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o'clock?

MR. SCHIWETZ: Fine.

MR. LAWRENCE: That will be fine.

(EVENING RECESS)

1 (Thereafter on the 20th day of July, 1983,
2 the following proceedings were had before the
3 Court, outside the presence and hearing of the
4 Jury with counsel for the State, counsel for the
5 Defendant and the Defendant present:)

6 THE COURT: All right. Have you had occasion
7 or an opportunity to read the Charge that has been
8 changed?

9 MR. LAWRENCE: Yes, I have, Your Honor.

10 THE COURT: And do you have any additional
11 objections or -- for the purpose of the record, now,
12 we drew a Charge yesterday and you gave me -- you
13 presented me an objection to the Charge and also
14 a request for certain additional charges and that
15 would also apply now to this Charge.

16 MR. LAWRENCE: We would ask that that also
17 apply.

18 THE COURT: Yes, it does, and I want to put
19 it in the record, of course, that your objections
20 also apply --

21 MR. LAWRENCE: That will be fine.

22 THE COURT: -- to this Charge. Fine. Do you
23 have any additional objections?

24 MR. LAWRENCE: Have no additional objections.

25 THE COURT: Did you also see at the bottom of

1 the first page I added to the definition of in the
2 course of committing theft?

3 MR. LAWRENCE: Yes, I have, Your Honor.

4 THE COURT: All right.

5 Okay. Both sides ready for the Jury?

6 MR. SCHIWETZ: The State's ready, Your Honor.

7 MR. LAWRENCE: The Defense is ready.

8 MR. DE PENA: The Defense is ready.

9 THE COURT: Bring them in.

10 (At this time the Jury was seated in the jury
11 box, after which the following proceedings were
12 had:)

13 (At this time the Charge of the Court was
14 read to the Jury by the Court.)

15 THE COURT: Gentlemen.

16 MR. SCHIWETZ: May it please the Court.

17 THE COURT: Yes, sir.

18 MR. SCHIWETZ: Co-counsel, Mr. Lawrence, Mr.
19 De Pena, ladies and gentlemen of the Jury: I want to thank
20 you, first of all, for your attentiveness during this trial,
21 your patience. I know it is very frustrating having to serve
22 on any jury, particularly one like this, but you are no doubt
23 fully aware, perhaps more even than I, it is absolutely
24 necessary that we have a jury that does pay attention, that
25 stays on the ball, that listens to the evidence carefully,

1 and then goes back and considers its verdict carefully. We
2 have had a chance to talk to all of you and I am sure that
3 all of you are going to do that, you wouldn't be on this
4 jury if both sides weren't convinced.

5 I get to open the arguments in this case because I have
6 the burden of proof. The burden of proof is on me, I have to
7 prove he did it, so I get to open. When I am finished, the
8 defense counsel will have an opportunity to address you, to
9 rebutt what I say and to argue their case. I will have some
10 time left to me to come back and rebutt what they say. We
11 have both been allotted the same amount of time, it's just
12 that I get to talk twice and have to divide my time up.

13 The Court instructs you in its Charge over in paragraph
14 13 basically what your job is now. You are the exclusive
15 judges of the facts proved, of the credibility of the
16 witnesses and the weight to be given to their testimony. I
17 want to talk to you some about credibility of witnesses and
18 weight to be given to their testimony. In any criminal case,
19 whether it be a traffic case or a capital murder case, a
20 jury has the same responsibility, to judge credibility, judge
21 weight. In any case, the Defendant, be he guilty or innocent,
22 has the most to lose, and I hope you keep that in mind when
23 you try to determine the credibility of this particular
24 Defendant. Without determining ahead of time whether he's
25 guilty or innocent, just keep in mind that he has the most to

1 lose and his credibility is going to be suspect simply
2 because of what the stakes are in this case.

3 The witnesses in this case, aside from this Defendant,
4 do not have any interest in this case. Keyan Baker did not
5 know any of the other people in this case; the Arsuagas did
6 not know anybody else in this case; George Aguirre testified
7 that he had seen Wanda Lopez before, but he didn't have any
8 interest in this case. None of the really important
9 material witnesses had a stake in this case, had any
10 interest in it other than as you or I would if we had
11 witnessed something like this. Simply as citizens who saw
12 something and who did what was right, who stuck around and
13 told the police what they saw and then they were willing to
14 get up here on the stand and testify as to what they saw
15 some months later. You have to determine whether they're
16 credible and how much weight to give to their testimony.

17 I want to talk about the people who identified this
18 Defendant and I want to talk to you some about the facts
19 in this case. The facts are that this girl, whose picture
20 is right here, State's Exhibit Number 1, was working at this
21 gas station on February 4th, 1983. At about 8:00 o'clock, a
22 man named George Aguirre pulled up there to get some gas.
23 He pulled up to this pump right here (indicating) and he
24 started putting some gas in. He saw a man step around the
25 corner here drinking some beer. He didn't remember what kind

1 of beer it was, he didn't testify to it. He saw a man
2 drinking some beer and the man stepped around from behind
3 the station there and he saw the man putting a knife into
4 his pants, dark-colored pants, the man was wearing a white
5 shirt. He got suspicious, let's face it, he got scared. He
6 was worried about the fellow and he kept an eye on him. He
7 was putting gas in his van and he's keeping an eye on the
8 fellow and he told you when the fellow started walking up to
9 him after a few minutes, he pulled that pump out a little bit
10 because if he came up to him and started giving him too much
11 trouble, he was going to squirt him with the gas. He watched
12 him because he was scared of him, he kept a close eye on him
13 the whole time. The man came up to him no further away than
14 I am from this juror sitting right here (indicating) and
15 started talking to him. "Would you give me a ride to the
16 Casino Club? I'll give you whatever you want, you want some
17 drugs, you want some booze, you want some money?" And he
18 pulled out a dark-colored wallet, a black wallet, and he said,
19 "You want some money?" And Mr. Aguirre could see inside and
20 he said there wasn't much money there, somewhere between one
21 and four dollars, he couldn't say for sure how much. The
22 Defendant, when he was captured, 20 or 30 minutes later, of
23 course, this is the black wallet that had two \$1 bills in it
24 (indicating). Mr. Aguirre lied to him, he said "No, I got
25 to get home to my dad, can't give you a ride to the Casino

1 Club." And the man walks off, stands there. Mr. Aguirre
2 goes inside and tells Wanda Lopez, "There's a guy outside
3 with a knife, I think I'm going to call the cops." He
4 testified there was two other people in the store at the
5 time he started to leave and he saw the man he had seen
6 outside start walking in as he was leaving, which puts three
7 people in the store at the time that Mr. Aguirre is leaving.
8 There were two people standing up by the counter, and then
9 the man who was walking in. And he testifies, of course,
10 that he identified that man positively with no doubt
11 whatsoever in his mind 30 minutes later when the police
12 brought him back and that that man was that man right there
13 (indicating), Carlos De Luna. That Carlos De Luna was the
14 one who had the white shirt and the black pants and was
15 standing out there with the beer and was putting the knife
16 in his pocket and was talking to him.

17 Now, the memory is a strange thing. All of our memories
18 work a little different. But I want to submit to you he got
19 a chance to look at that man for five or ten minutes and
20 right afterwards, it became immediately apparent to him that
21 that man's face and what that man looked like was going to be
22 important and he needed to remember it. And he did. He
23 remembered it and when he saw it again 30 minutes later, he
24 was able to identify him. George Aguirre had no reason to
25 lie. George Aguirre left. And he testified that the girl

1 said, "I'm going to call the police, too." And we know, of
2 course, that she did.

3 Now, the next person that actually saw this man in the
4 store, who we know is Carlos De Luna, is Kevan Baker. And
5 Kevan testified this is his car (indicating), he pulled up
6 here to this pump to get some gas (indicating), he went
7 around to put some in and he saw a man in there struggling
8 with a woman. And I thought it was significant the way he
9 said the struggle was going on. The man was trying to pull
10 the woman by the hair. That knife had already fallen out of
11 his hands, whether it was knocked loose or what, I don't
12 know. But he didn't have the knife in his hands anymore.
13 He was pulling her by the hair and do you remember when I
14 got him to demonstrate? She was like this (demonstrating),
15 she's got a wound right here (indicating), a dripping-type
16 wound, Dr. Rupp said, and that dripping wound is pouring out
17 like this and he's pulling her like this (indicating). Kevan
18 Baker did what I would like to believe I would do in the
19 circumstances. Kevan Baker went and tried to help that
20 woman. He ran up to the front door and he's about right
21 here (indicating) and Carlos De Luna throws the woman down
22 and he runs up here and they meet face to face. Again, no
23 further than I am away from this juror right here (indicating),
24 and Kevan Baker didn't have any doubt about how important it
25 was that he remember that fellow. And what did he tell you?

1 He locked on that guy's face, he's looking right in his face
2 and the fellow talks to him, "Don't mess with me." And he
3 takes off running. He saw him out there at the pumps, he
4 saw him throw the girl down, he saw him walk toward the door,
5 and he meets him right there in the door and looks him right
6 in the face. And you remember what Kevan said, "I don't
7 remember the pants, I don't remember much about the shirt, I
8 can't tell you if he was even wearing shoes, but I remember
9 that face." Six months later he can still remember that
10 face, even when it's clean-shaven and the hair is combed and
11 the clothes are different and everything else. Thirty
12 minutes later he remembered it and was able to identify him
13 and six months later he's able to identify him. Kevan Baker
14 had no motive, no reason whatsoever to lie and you would have
15 no reason to doubt his credibility as a witness.

16 Next we have the Arsuagas. The Arsuagas, as you recall,
17 were going to a club down here at SPID. And I took the map
18 down. Well, we'll go ahead and use this one. They're going
19 down here to go to this club and there's a -- there's a
20 field next to it. And if you look at those State's exhibits
21 when you get back there, you can see that little field.
22 They're pulling in to go to this club and there's some other
23 cars out front and John Arsuaga sees the guy first; and we
24 know John saw him first and saw him longer because what did
25 Julie tell you? Julie said, "John pointed at some guy and

1 said, 'Hey, look at that guy running along.'" And then
2 Julie made some remark about, "Well, maybe he's got
3 someplace to go." She looks up and she sees him, too. She
4 said that she saw him right about as he's reaching this
5 field (indicating). She said she saw him for approximately
6 eight to ten seconds, but she got a full facial view only
7 one second, the rest of the time was in profile. John
8 testified that he first saw him when he was running along
9 here (indicating), and apparently that's when he told Julie.
10 And I asked him, "Did you go out there and recreate that for
11 yourself, redo it yourself, run at that speed so you could
12 tell us how long you actually saw that man?" And he said,
13 "Yes, it was 16 seconds."

14 "How long did you look right at his face when he was
15 right in front of you ten feet away with your lights on?"

16 "Three seconds."

17 What else did he tell you? Almost simultaneously he
18 sees the police cars pulling in down here. He realized it
19 was important. He realized it was important. He ran down
20 there and told the police what he had seen. And he gets down
21 there and he tells them. Now, when they bring the man back
22 30 minutes later, he's scared, he doesn't want to go look at
23 him. "I'm not going to do it." But he goes down to the
24 police station and they show him some photographs, all of
25 the photographs are of young, Hispanic males with a little

1 bit of facial hair and he testified the guy is wearing a
2 white shirt, but the picture he's seeing the guy is wearing
3 a blue shirt. It was jail issue. That picture was not
4 suggestive. They weren't trying to say, "Pick this guy,
5 pick this guy, pick this guy." He looks at the six and lo
6 and behold, what does he do? He picked out the same guy
7 that Kevan Baker did, the same person that George Aguirre
8 did.

9 Now, if you're sitting down there in that coffee shop
10 and you see somebody start running across the way down there
11 and you see them for eight to ten seconds like Julie did or
12 16 seconds like John did, you may not pay any attention to
13 them, you may not be able to identify them 30 minutes later,
14 you might not be able to come up to this courtroom, say, 30
15 minutes later and say, "That was the guy." But as soon as
16 you see them running across there and you turn and you see a
17 bunch of police cars pulling up in the direction this guy is
18 running from, what's going to turn on your mind? This guy
19 is connected to this, just like the Arsuagas did. And you're
20 going to remember that face. John remembered it, he
21 remembered it for days afterwards, he kept seeing it. For
22 days after this happened, he kept seeing that man's face.
23 And Julie, they took her down there and they showed her the
24 same photo lineup and she said she couldn't say a hundred
25 percent, she didn't want to identify somebody from a picture

1 because she wasn't absolutely sure. And she testified that
2 when she came into this courtroom looking straight on at
3 him, which she had done for one second out there, she
4 couldn't say for sure. But when he turned and started
5 talking to his lawyer and she saw the profile, she said,
6 "That's him. That's the man I saw out there." These people,
7 there's no reason to doubt their credibility.

8 Now, there's a couple of things you have to find here,
9 there's a couple of elements to this offense we have to
10 prove. One of them was that it was a robbery, that he did it
11 while in the course of committing robbery. The manager of
12 that store, Mr. Gonzales, told you that they inventory every
13 Tuesday. He inventoried the Tuesday before. They usually
14 come up somewhere between 20 or 30 or \$50.00 short every week.
15 When he inventoried on Tuesday, I think he said it was, what,
16 \$30.00 short, something like that. Four days later he goes
17 down to inventory right after all this has gone on, right
18 after Olivia Escobedo has gone in there and found the cash
19 register open with a couple bills and change laying on top
20 and bills lying on the floor, he inventories and what's the
21 shortage? A hundred and sixty-six dollars. A robbery, you
22 bet there was a robbery. Somebody didn't just walk in there
23 and kill Wanda Lopez because they didn't like her looks or
24 because they were mad at her or something like that, they
25 killed her to rob her and there shouldn't be any doubt

1 whatsoever about that.

2 Now, Carlos De Luna. Carlos De Luna, who has been
3 identified by four people as the man who was either there with
4 a knife right before the murder, there fighting with the
5 woman at the time of the murder, or running away from there
6 within seconds after the murder, is found right in front of
7 this house on Franklin Street (indicating). It's got the --
8 it's the one with the green circle around the house. He's
9 found hiding underneath a truck in a gutter full of water
10 about 30 minutes later. Right behind the house where he's
11 found is the house of Mr. Garcia, Armando Garcia, where these
12 shoes and pants -- and shirt were found. They're found in
13 that yard right there (indicating). Right across the street
14 lives Theresa Barrera and Theresa Barrera, who, again, just
15 like Mr. Garcia, has no reason whatsoever to lie, who has
16 no interest in this case whatsoever, testified that she
17 called up the police and told them, "There's a guy hiding --
18 hiding under my truck out in front of my house out here. Me
19 and my little boy saw him." And what did she tell you about
20 that guy? She said she couldn't see the guy real good, all
21 she could say for absolutely certain was that it was a male
22 and he was wearing pants and he had a shirt on. She thought
23 he was wearing some light-colored shoes, but other than that,
24 she couldn't say. And I asked her, "Why couldn't you -- why
25 couldn't you get a better description? Why couldn't you see

1 what the guy looked like a little bit better?" Well, for
2 one thing he was lying on the ground in some water and the
3 other thing is there's water that sits there almost all the
4 time, and we know it rained that day, and she told us there's
5 water there; there's her porch light and there's a light
6 overhead on the corner and there was a glare there so she
7 wasn't able to tell us for sure what the man was wearing and
8 she never got a look at his face. She couldn't even say for
9 sure where he ran. I submit to you, from the evidence, we
10 know where he ran. He ran across the street in Mr. Garcia's
11 yard, shucked his shirt, shucked his shoes, got across over
12 here and crawled up underneath a truck. And why does he crawl
13 up underneath a truck and why did he get out of the
14 neighborhood? Jessie Escochea told you that. There was 15
15 to 20 police cars in that neighborhood almost immediately.
16 And if you don't believe Jessie Escochea, you say, "Well,
17 he's a policeman and they're just all out there working to
18 convict everybody," believe Kevan Baker. Kevan Baker says
19 the girl slides to the thing, he goes in there to get a piece
20 of paper to help her out and before he gets back to her, the
21 cops are there. And believe John and Julie. They told you
22 that this guy is running away and they see the police pulling
23 in. Believe George Aguirre, because George Aguirre tells you
24 that by the time he circled SPID and got back there, the
25 police were already there. There shouldn't be any doubt in

1 this case whatsoever about who committed this murder or about
2 why he did it.

3 Now, the defense attorney is going to get up here in a
4 minute and they're going to talk to you and say, "Well, he
5 just got paid that day, for heaven sakes, he had plenty of
6 money, he just got paid." And one of the things I think is
7 interesting is that the money, which they're going to claim
8 he just got paid that day, one, it's more money than he got
9 paid and we know he already spent some of the money he got
10 paid, he bought a twelve-pack of beer for two-sixty, if you
11 can believe that, and he bought a Whataburger and some fries,
12 I think it was, he already spent part of that money; he had
13 been to the skating rink, I presume he spent a little money
14 there or so he says, anyway; he got some more beer out here --
15 and, by the way, I thought it was interesting, his buddy,
16 the one that came up and testified for him, Danny Fino, do
17 you remember what kind of beer he told you he drank? Miller
18 Lite. Lite beer from Miller. Cans look familiar? These are
19 the cans found behind the gas station where Wanda Lopez bled
20 to death. Y'all take a look at them, this is State's Exhibit
21 Number 10. Take a close look at what kind of beer cans the
22 murderer was drinking out of.

23 He's got \$2.00 in his wallet and his pay stub, his pay
24 stub was in his wallet, \$2.00 and a pay stub in here
25 (indicating) and a hundred forty-nine dollars wadded up in

1 his front pocket.

2 I want to talk to you some about this tape. Y'all got
3 to hear it rather hurriedly the other day. There's a couple
4 things that are interesting on here from an evidentiary
5 standpoint, if I can figure out how to get it in. This one
6 is up or down? Thank you.

7 The first thing you're going to hear is Jessie Escochea
8 identifying this is the police department and Wanda Lopez
9 saying can you have an officer come to a specific address,
10 keep in mind she doesn't tell him where it is, she doesn't
11 say, "This is Wolfy's," where they probably have people
12 walking around with knives all the time or whether it's a
13 Sigmor or Phase III or what-have-you. That's the first
14 thing you're going to hear.

15 (At this time, the following portion of
16 SX-2 was played:)

17 FIRST MALE VOICE: Police department.

18 FIRST FEMALE VOICE: Yes, can you have a
19 officer come to 2602 South Padre Island Drive? I
20 have a suspect with a -- a knife inside the store.

21 FIRST MALE VOICE: What place is this?

22 FIRST FEMALE VOICE: Sigmor.

23 FIRST MALE VOICE: What's he --

24 FIRST FEMALE VOICE: Well, he --

25 FIRST MALE VOICE: What's he doing with the

1 knife?

2 FIRST FEMALE VOICE: I don't know, he was
3 outside bumming a ride off of this guy and he
4 just told me right now -- he just came inside the
5 store.

6 (At this time this portion of SX-2 was
7 concluded, after which the following proceedings
8 were had:)

9 MR. SCHIWETZ: Okay. Now, keep in mind she
10 says he just came inside the store. What George Aguirre told
11 you was that when he went inside the store, there were already
12 two people in there, so presumably she's waiting on somebody.

13 (At this time, the following portion of SX-2
14 was played:)

15 FIRST MALE VOICE: Has he threatened you or
16 anything?

17 FIRST FEMALE VOICE: Not yet.

18 Could I help somebody?

19 (At this time this portion of SX-2 was
20 concluded, after which the following proceedings
21 were had:)

22 MR. SCHIWETZ: Okay. I don't know for sure
23 what she was saying there, you can listen to it later on
24 yourself; but it sounds like: "Can I help somebody?" She
25 presumably is talking to those other two people there.

1 (At this time the following portion of SX-2
2 was played:)

3 FIRST MALE VOICE: What does he look like?

4 FIRST FEMALE VOICE: Por que?

5 FIRST MALE VOICE: What does he look like?

6 FIRST FEMALE VOICE: He's a Mexican. He's
7 standing right here at the counter.

8 FIRST MALE VOICE: Huh?

9 FIRST FEMALE VOICE: Can't talk.

10 Thank you.

11 (At this time this portion of SX-2 was
12 concluded, after which the following proceedings
13 were had:)

14 MR. SCHIWETZ: Now, who is she saying thank
15 you to, the guy who's standing there with the knife or the
16 people who were leaving, the other two people? I submit to
17 you she's talking to the two people who are leaving.

18 (At this time the following portion of SX-2
19 was played:)

20 FIRST MALE VOICE: Ma'am?

21 FIRST FEMALE VOICE: What?

22 FIRST MALE VOICE: Don't hang up, okay?

23 FIRST FEMALE VOICE: Okay.

24 This? Eighty-five.

25 (At this time this portion of SX-2 was

1 concluded, after which the following proceedings
2 were had:)

3 MR. SCHIWETZ: Okay. There she says, "Eighty-
4 five."

5 Now, what's interesting about the 85 is what's found on
6 the counter afterwards. There are several of these pictures,
7 but you will see it's a package of Winstons which we have
8 introduced in evidence. We know, for instance, that the
9 Defendant also smokes Winstons. A lot of people do, that's
10 of no big significance. Eighty-five cents, if you look at
11 this picture right here of the front of the store, you will
12 see, "Cigarettes, 85¢." Now, Mr. Escochea starts asking for
13 a description.

14 (At this time the following portion of SX-2
15 was played:)

16 FIRST MALE VOICE: Where is he at now?

17 FIRST FEMALE VOICE: Right here.

18 FIRST MALE VOICE: Is he a white male?

19 FIRST FEMALE VOICE: No.

20 FIRST MALE VOICE: Black?

21 FIRST FEMALE VOICE: No.

22 FIRST MALE VOICE: Hispanic?

23 FIRST FEMALE VOICE: Yes.

24 FIRST MALE VOICE: Tall, short?

25 FIRST FEMALE VOICE: Uh-huh.

1 FIRST MALE VOICE: Tall?

2 FIRST FEMALE VOICE: Yeah.

3 Thank you.

4 (At this time this portion of SX-2 was
5 concluded, after which the following proceedings
6 were had:)

7 MR. SCHIWETZ: All right, tall. Keep in mind
8 what Dr. Rupp told you. This girl was five foot three, comes
9 up to about right here (indicating). This Defendant, what's
10 he, five-eight, five-nine, something like that? If you're
11 five foot three, something like that, he's about this tall
12 (indicating), about like that, he's going to look pretty tall
13 to you.

14 (At this time the following portion of SX-2
15 was played:)

16 FIRST MALE VOICE: Does he have the knife
17 pulled out?

18 FIRST FEMALE VOICE: Not yet.

19 FIRST MALE VOICE: Is it in his pocket?

20 FIRST FEMALE VOICE: Uh-huh.

21 FIRST MALE VOICE: All right. We'll get you
22 someone over there.

23 FIRST FEMALE VOICE: You want it, I'll give --
24 I'll give it to you. I'm not going to do nothing
25 to you. Please.

1 (At this time this portion of SX-2 was
2 concluded, after which the following proceedings
3 were had:)

4 MR. SCHIWETZ: Now, the person by this point
5 in time has obviously pulled that knife out, because you can
6 tell from her voice that she's scared, she's terrified.
7 She's saying, "I'll give you what you want. I'm not going to
8 do nothing to you, please." Well, we know from the other
9 evidence what kind of luck she had trying to talk her way
10 out of this situation. We know what her instructions were
11 from the company she worked for were; Give them what they
12 want, somebody comes in and tries to rob you, give them what
13 they want, don't resist, don't try and fight with them, give
14 them what they want. That's exactly what she tried to do.
15 It didn't work. Because -- well, I'm not even going to play
16 the rest of that for you, I'm tired of listening to it. But
17 the person didn't give her a chance. He walked right up,
18 you can hear a little bit of a sound of a struggle, and then
19 she starts screaming. She lets out that one horrible scream,
20 and I submit to you that's when he pushed that knife into
21 her.

22 Now, why would he do that? Why would he just walk up
23 there and kill a woman who's willing to give him what he
24 wants? He didn't have to do it. Well, y'all can take that
25 thing back there and listen to it again, if you want to. But

1 keep in mind that she's sitting there talking on the
2 telephone right in front of that guy, "Can't talk, he's right
3 here." She's sitting there talking on the telephone, giving
4 the police a description of this guy, calling for help and
5 looking right at him. He knows the fellow outside has seen
6 him. He knows she's looking right at him. He knows she
7 knows what's up, so he killed her. We use the term cold-
8 blooded murder real loosely sometimes, you ought to take a
9 long look at the face of Carlos De Luna, the face that George
10 Aguirre saw, the face that Keyan Baker saw, the face that
11 Julie Arsuaga saw, the face that John Arsuaga saw, because
12 that's about the best look you're ever going to get at a
13 cold-blooded murderer.

14 Now, one of the things the Court charges you here
15 relates to the prior convictions of this Defendant.
16 Certainly evidence was admitted before you in regard to the
17 Defendant having been convicted of offenses other than the
18 one for which he's now on trial. It cannot be considered by
19 you as any evidence of guilt in this case, just because he
20 committed offenses before does not necessarily mean he
21 committed this one. That evidence was admitted before you
22 for the purpose of aiding you, if it does aid you, in passing
23 upon the weight you will give his testimony and you will not
24 consider the same for any other purpose. The weight of the
25 testimony. He said that he was with the Perales girls and

1 then he was with Carlos Hernandez and then he called his dad
2 to come give him a ride and then he went to look for George
3 whoever it was, somebody, some friend of his. You can
4 believe him if you want to, you can believe all of what he
5 says, you can believe some of what he says, you can believe
6 none of what he says, but you are allowed to take into
7 consideration those prior convictions. One of them was for
8 unauthorized use of a motor vehicle. A lot of people, I
9 suppose, have taken somebody else's car at one point in time
10 in their life and turned around and become respectable
11 citizens and totally believable and they're probably entitled
12 to belief under oath. A lot of people have gone to the
13 penitentiary and they're entitled to belief under oath because
14 they have straightened their lives out.

15 He was also convicted of the offense of attempted rape.
16 Now, we don't know anything about the facts of that offense.
17 Rape is the nonconsensual taking of sexual intercourse with a
18 person not your spouse. He attempted to do that and was
19 convicted of it. I want to ask you if a man who would attempt
20 to rape a woman, at least we can presume it was a woman, if
21 a man who would attempt to rape a woman might get up on the
22 stand and lie to save his own life. You're allowed to take
23 that into consideration. You're also allowed to take into
24 consideration just how much common sense what a person tells
25 you makes. He tells you that he knew the Perales girls a

1 few years ago and that that's who he ran into that night and
2 he was with them for awhile and Mary Ann Perales, I ran her
3 in here, he got a good look at her and I said, "Is this the
4 Mary Ann Perales you're talking about?" I ran her out and I
5 asked him a few questions about her. "She looks the same now
6 as she did that night?"

7 "Yes."

8 "She looked the same that night as she did several years
9 ago when you saw her?"

10 "Yes."

11 "You knew her when you used to go to dances with her?"

12 "Yes."

13 Mary Ann Perales testified not that she used to go to
14 dances with him, but that she knew his brother. She knew
15 who he was. She also testified that she was seven months
16 pregnant and I suggest to you from that one State's exhibit
17 y'all saw that that would -- that fact would have been readily
18 obvious had he actually been with her that night. She also
19 testified that at 7:30 that night, when he claims he was
20 running around with her and her sister and this phantom
21 Carlos Hernandez, that she was at her baby shower, her baby
22 shower. I submit to you that this man lied under oath, that
23 he is not entitled to belief on anything. That anyone who
24 would go out and fabricate events like this man did can't be
25 believed in any fashion whatsoever. He's a convicted car

1 thief, he's a convicted attempted rapist and he murdered
2 Wanda Lopez for no good reason whatsoever. He's a cold-
3 blooded murderer, he killed her in the course of a robbery
4 and I suggest that when you go back out there in that jury
5 room and you open up the jury forms, it shouldn't take you a
6 whole long time to pick the appropriate place for the
7 foreperson to sign and that should be the top one where it
8 says that, "We, the Jury, find the Defendant, Carlos De Luna,
9 guilty of the offense of capital murder as alleged in the
10 indictment."

11 MR. LAWRENCE: May it please the Court,
12 counsel for the State, ladies and gentlemen of the Jury:
13 Let me also, before I get into my argument, thank you for
14 being here through the tedious work of selecting a jury. I
15 guess you know why we go through that long, painstaking way
16 of doing it, because we have a person that's charged with a
17 very serious offense. We want to make sure that we have
18 jurors that can come in here, that can listen to the evidence
19 and hopefully sometimes disregard what attorneys tell them,
20 because whatever attorneys tell you is not evidence anyway.
21 So that you can cut through all of this and you bring
22 justice into the court of law. And that's all we're asking.
23 And sometimes that particular role that you have to assume
24 is very, very difficult. And it's even compounded even more
25 because of the seriousness of this particular offense.

1 I sometimes look at criminal trials and look at the
2 attorneys involved and I think to myself, "My gosh, look at
3 those frustrated Hollywood would-be actors, never got there."
4 And they come into the courtroom and they use that as a stage.
5 A stage to come before you and point the dramatic effect
6 point, look straight at the person accused and drive home the
7 point that all of their evidence is believable and that he's
8 a cold-blooded killer and none of his evidence is any good.
9 That's why I say "we," we go through all this. I'm not
10 going to persuade you on anything. You heard the evidence,
11 you probably heard it better than we did. Don't get caught
12 up in this stage production because we're dealing with two
13 lives, certainly Wanda Lopez' life has a bearing on this case
14 for our society, for our community, certainly my client's
15 life also has a bearing. Just as important, a life's a life
16 and all lives are important. He's charged with capital
17 murder. What evidence has been brought before you that
18 would warrant, actually warrant, the removal -- the removal
19 of all reasonable doubt for you to go back into that jury
20 room and to do what the prosecutor has just told you to do,
21 to just take that first form right here and sign it and go
22 back and did he tell you without any delay, it shouldn't take
23 you too long. My God, a person's life and it shouldn't take
24 you too long? I've already told you he in effect said that,
25 "I've told you that our evidence is credible and I've told

1 you how bad their evidence is." Gosh, if that's the case,
2 we ought to just let you hold up your hand right now; right?
3 According to him? Just go ahead and take this person's life.
4 On the converse, you can argue, "Look how long he gave her
5 to live. Listen to the tape. Count the seconds, how long
6 did he give her to live?" That's what they tried to say
7 because that would bring about the dramatic effect. But what
8 we talk about here and while he talked to you, it was right
9 away that my client did it. In other words, all the
10 argument points this way because their evidence is much
11 better than ours. Well, let's look at this evidence.

12 What do you really have? You have in effect eyewitness
13 testimony. If I were to ask you what was John Arsuaga
14 wearing when he testified, how many of you could get that
15 straight? Or if I was to ask you any of the other witnesses
16 that testified, what were they wearing? It's difficult. I
17 think one officer said something when he came in here to
18 testify and he said what? Whenever we have situations like
19 this, it's a high stress situation. People react differently,
20 can't remember what they saw. If it can be reinforced in
21 any way whatsoever, then maybe that will help. And the
22 reason I say that is because we want to reinforce what the
23 witnesses saw. This is what the police did. And how did
24 they reinforce that to make sure? They brought a suspect
25 back to the scene, my client. He's in a police car, I'm

1 sure they get him out, I'm sure he's handcuffed, they have
2 him stand there. "Hey, that's the one," sure that's going
3 to reinforce. There's no doubt about that. In fact, it
4 reinforced it so much did you ever see George Aguirre come
5 into this courtroom and point to my client that that's him?
6 Did he ever do that? Absolutely not. He didn't. Why, do
7 you ask? Why didn't they ask him? Of course, they might say
8 why didn't we ask him. They have the burden of proof, we
9 don't. And if you're hesitant about that or if you're not
10 sure that happened, you can always ask to have that portion
11 read back to you. And you will not see in there that he was
12 able to identify. But what did they do? What did Mr.
13 Schiwetz just argue to you? He said, "Well, they brought
14 him back, he did it through a police officer or what-not
15 through George," yet when they brought him back to the scene,
16 when they brought my client back to the scene that he
17 identified him there." Well, is that the best place to
18 identify him? You have been through a high stress situation.
19 They bring only one person back; "Yes, that is." You're
20 convinced. Did he have second thoughts? Is that why he was
21 never pointed out in court? Think about that. I think
22 that's very important. And I think something else is very
23 important about Mr. Aguirre's testimony, because he had just
24 left the station and there's an interval, and we don't know
25 how long it is, but we can almost try and surmise how long

1 it took him to leave there to drive by to Ayers, come back,
2 go down SPID and look back. I would say, gosh knows,
3 depending on traffic anywhere from three to five minutes,
4 maybe. And it was somewhere during toward the end of those
5 three or five minutes that the struggle took place, because
6 he saw a struggle, he said, as he looked back across SPID
7 into the service station. Okay? Now, if we listen to the
8 tape, and I'm sure and I hope you do, you will hear two
9 thank you's in there, a first thank you, a second thank you.
10 How many people are in there? And if you do one other thing,
11 that second thank you, you look at a watch and it will be no
12 more than ten seconds from the second thank you to the
13 scream, which would indicate the struggle. Where -- and
14 between the first thank you and the second thank you, you
15 have another bunch of seconds, ten, fifteen seconds.
16 They're saying somebody left, she waited on somebody and
17 somebody left. Well, where was Mr. Baker? He had just --
18 he had already come in because he saw them when the struggle
19 was taking place. So if we're going to get down to
20 nitpicking, let's make sure we got the facts straight from
21 the evidence that they introduced and put this in
22 perspective, then we can see that something is not right.
23 Mr. Aguirre is saying there's three people in there and yet
24 we never see anyone leave. The only one we see leave is,
25 according to Mr. Baker, is my client. At least he seems to

1 think so. Of course, he was in a high stress situation and
2 that's what he saw. That's what he was more than sure that
3 took place. And yet there's a very interesting aspect of
4 Kevan Baker's testimony. He said that he went inside the
5 store to get paper towels, remember? He said that when he
6 was in there he saw money all over the store. He said that.
7 "I saw money all over the store." He didn't say, "I saw one
8 \$5 bill on the store -- on the floor," and that, "I saw
9 another \$5 bill where the money box was." He said, "I saw
10 money all over the floor." And all of a sudden it disappears,
11 there's only one \$5 bill. And yet he was the only one that
12 went in and it was secured and then later Sergeant Escobedo
13 went in. He says that he didn't even -- he came back or
14 was -- and I never could understand what he really said,
15 that he came back toward the door, he had the towels with
16 him and he never got to use the towels on the victim. Right?
17 Never got to use the towels. Yet when Sergeant McConley
18 showed up, he said, "I saw someone bending over the body,"
19 which would have been Kevan Baker. And I point these things
20 out to you because I want to show you that there are also
21 some discrepancies as to way -- as to the way even the
22 State's witnesses testified. They're not all sure what
23 happened. It's very difficult and I'm not trying to say
24 that they should be unbelieved because they happen to be
25 the witness, but I'm saying -- what I'm asking you to do is

1 to take that into account, that just because you're an
2 eyewitness, just because you're there, that your eyes do
3 play tricks with you, that you're in a high stress situation
4 and that a lot of what you think you saw or what you did
5 could be reinforced, could be suggested to you and that's
6 the way you have to picture it into your mind and that's the
7 way you're going to resay it. And it may not necessarily be
8 completely correct.

9 What else do we have in their evidence that would
10 warrant removing all reasonable doubt and finding my client
11 guilty of capital murder? Well, they say, "Well, okay, so
12 George Aguirre, he has no reason for lying," we're not saying
13 he's lying, we never did. But we're saying there's something
14 funny there, he's got three people and I'm not sure what
15 really happened. We've got some time frame situation that
16 we're never able to really piece together, no one's fault,
17 just the way things happen.

18 Then we go to the fact that Mr. Baker shows up. I've
19 already made some comments about him, he saw what he did, and
20 then he made one interesting comment, and then, of course, he
21 changed it a little bit to give the impression it was changed
22 when I said, "Where did this person run that you saw in the
23 store when he came out?" He said, "Well, he ran over here,"
24 (indicating) and his original statement, remember when we
25 talked about it, that he ran behind the store. He said,

1 "Well, he ran that way." And I said, "Well, you said he ran
2 behind the store, didn't you?" And he said, "Yes," and
3 then he said, "well, when he got over there to the corner of
4 the store, I -- I didn't know where he ran after that." See,
5 we have a person running to the corner of the store and then,
6 if we believe everybody else, we have a person then going
7 diagonally to get in front of all these other stores and run;
8 if he's at the corner of the store, why didn't he just run
9 through there, there was nothing, just a vacant lot right
10 there, there's just that wall right there, you could go from
11 any side. So we don't know which way that person ran. And
12 the reason I bring that up is because the next testimony we
13 had were the Arsuagas. And I think if that testimony is
14 believable, everything that they said, I think there's
15 something wrong. We, as human beings, cannot perceive or we
16 are called upon to just rubber stamp this whole situation
17 here because if you listen to his testimony, and you believe
18 that he would come in here and say and add to all the things
19 that happened to give this dramatic effect that they seem to
20 so desperately want to do, he comes in here and adds things
21 to what he had originally said. He said that he was scared
22 to view the suspect when they brought him back. He didn't
23 seem scared in here, I don't understand that. Was he scared
24 or was he just not sure? What seems more believable? A
25 bunch of cops there, a bunch of witnesses get there, they

1 went over and looked, several other witnesses went over and
2 looked. What's his problem? I submit to you that he was
3 not sure. Then he comes into this courtroom and tells you
4 in a very dramatic fashion, "Oh, yes, I'm sure that's him.
5 I'm sure. For a whole week all I could see was his face."
6 What does that sound -- that sounds like something out of a
7 soap opera. I would maybe believe it had a woman said that,
8 that would have seemed more along those lines, female gender
9 would have said something like that, "I could see his face.
10 I've got it implanted on my mind," but to have a male come
11 in here and say that for the few seconds that he saw him
12 that -- that has nothing to do with anything but to gang up,
13 to do this dramatic effect and just say disregard all these
14 other things, let's just go ahead, rush in there, find him
15 guilty of capital murder, that's all we're trying to do.

16 Then he comes in here, even adds more to his story.
17 Tells us, "I thought to myself, 'That's a bad time to be
18 jogging.'" How many of you drive around Corpus Christi?
19 What is a good time to job in Corpus Christi? You can see
20 people jogging every hour of the day, different parts of the
21 city, and what's so unusual about that? But he's trying to
22 show you a point, "My gosh, 8:00 o'clock at night, that's a
23 bad time to be jogging." The dramatic effect again, that's
24 all they're trying to add. And that finally he says it was
25 at this point when he saw the police over here that he put

1 the pieces together, whatever they were. He put the pieces
2 together and yet refused to go over there and identify the
3 person that they had brought back.

4 His wife takes the stand and she says that her husband
5 said, "Hey, look at this fellow," that he pointed him out at
6 the time that he was in the field. He wasn't 15 feet down,
7 18 feet down, 30 feet down the way in front of those
8 buildings, he was right at the field. And that he was
9 already running at a 45-degree angle, then she had to kind
10 of figure out how in the world the light shine on him because
11 they would have had to made a funny turn in there, right?
12 But somehow or another the lights came on, they even
13 happened to be on bright I think at one point in time, and
14 that all of a sudden he turned and one second, "Ooh, that's
15 him. Wow, I don't have to see him around for a week, I've
16 got a one-second view, that's him." But she never did do
17 anything with this one-second view, she never went also and
18 identified him at the place where he had been -- where they
19 had him when they brought him back. In fact, they have to
20 wait awhile before they decide to go down there and view
21 some pictures. And I submit to you the reason they did all
22 this was because they were not sure. Then she said, to top
23 it all off, she says, "Well, I wear glasses, but I don't
24 wear them, only to read." And, of course, a little funny
25 note was interjected at that point, "Well, you weren't reading

1 out there that night, were you?" "No, we were doing
2 something more serious out there than reading at night, we
3 were out there trying to see is this the person or not."
4 Who is this person that was running? Was it really Carlos
5 Hernandez and not my client that was running out there? But
6 for the fact that we can't get ahold of Carlos Hernandez,
7 well, by golly, we got somebody, let's get him. What
8 difference does it makes? My gosh, here is a convicted
9 attempted rapist, that was thrown in there for the benefit
10 of you ladies, the dramatic effect again, that's part of his
11 jury argument, sure. I'm going to shock your conscience.
12 Sure. Look at that. Although don't consider it, the Court
13 says, "Hey, don't consider that really," but, my gosh,
14 attempted rapist, wow. Psychological effect. All of these
15 things come into play here. Don't get caught up in that,
16 please don't. Eyewitness testimony I think leaves a lot to
17 be desired and I think you all would agree. It's not the
18 best evidence in the world. Our eyes play foolish things
19 on us, high stress, all these things come together, so
20 therefore we're left with something else also. We're left
21 with something called physical evidence, okay? And I'm
22 perplexed, to say the least, as to how we can have a
23 situation in which a person is charged with a capital crime,
24 a person that may have been seen by various people, and yet,
25 we have nothing to connect him with the crime. We have a

1 knife, that may or may not be the murder weapon. What did
2 you hear that would suggest to you that that was the murder
3 weapon, other than the fact that Sergeant Escobedo said it
4 had some type of fatty material on it? Did we hear any
5 evidence that this thing was analyzed, other than just for
6 fingerprints? No. You didn't hear no chemist, nobody come
7 in here and says, "I examined the --" whatever was found on
8 this knife, "and it turned out to be such-and-such, therefore
9 you could then assume that this was the murder weapon." No.
10 But we found the knife, let's throw it in, we're going to use
11 this, connect it with him and here is the weapon. Right?
12 Let's just pile it on, gang it up, let's just keep going
13 with this thing.

14 Then we're going to go out and we -- I don't really
15 want to get into all these photos, well, here it is, right
16 in front of me. We're going to go out and we're going to
17 say, "Hey, looky here. We found some cans of Miller beer."
18 Now, let's look at where those cans are really found. See,
19 here is the ice machine, I would take it that this is way
20 back over here in the back of the station. I would assume
21 from this picture, and you correct me if I'm wrong, that the
22 beer cans were found way over here (indicating), over here
23 in the back. And yet, Aguirre says that he saw someone
24 drinking beer right about here next to the cooler
25 (indicating), that they're going to find some cans back here

1 and they're going to say, "Hey, looky here, we got some
2 evidence." But, gosh, guess what, the evidence is no good
3 because there's no fingerprints. Ah, but if they were
4 freshly -- it had been freshly drunk, they're still cold,
5 condensation, of course they finally had to admit that it
6 had been raining quite a bit, there's moisture, it's humid
7 and so on. Okay, so we can't use those cans right now. My
8 gosh, how can we still use those cans, because we still have
9 got to connect it to the crime. So then when Danny Fino gets
10 up here and when he said, "What kind of beer did you get?"
11 and he said Miller Lite, my client said Miller. There's two
12 different kinds, you be the judge.

13 We go back inside the store, still looking for physical
14 evidence. Everyone claims my client was in there, we find no
15 fingerprints. Nothing. Nothing from my client. They're
16 going to say nothing from some of the other witnesses that
17 showed up, like Keyan Baker and George Aguirre, that they
18 didn't find those prints, either. I don't know if they said
19 that they couldn't find anyone's fingerprints, but they just
20 made mention of a few people, but supposedly my client must
21 have done something, we don't know how he did it or when he
22 did it, but he did something and he got some money and someone
23 must have hung up the phone, someone must have touched the
24 cigarettes, someone must have touched the counter and, yet,
25 we have a person come in here and say, "Well, sometimes we

1 just can't get fingerprints." Then Sergeant Wilson said
2 50, 60 percent of the cases we get some types of prints, in
3 this case we couldn't. So let's just -- man, I'm sorry, we
4 have no prints. However, let's just go ahead, the rest of
5 the stuff points to my client, so let's just go ahead and
6 convict him, we have no case. We're really not sure if we
7 have the murder weapon.

8 What about the robbery itself? Look at the way they
9 inventoried the store. You know they inventory it or they --
10 the inventory gives them an idea of the money situation.
11 You find out how many things you have one week, how many less
12 you have and if you have restocked in between and you take
13 the difference, which doesn't mean that you have to go in
14 there and steal money; right? You can go in there and steal
15 products and you would be short because they devaluated
16 money-wise. I don't know, there's money on the floor, a lot
17 of money, yet, when they take these pictures, when they
18 testify, there's only one \$5 bill. Kevan Baker says there's
19 more. Yet, what about the people that steal? I don't know,
20 maybe they had some stealing going on there, it was just a
21 coincidence that it happened right before this incident and
22 that it would have been -- had this incident not happened,
23 they would have had that same shortage anyway. What's so
24 difficult to believe that a person would carry money in his
25 pocket and some in his wallet, especially in view of the fact

1 that he had just cashed a check earlier in the week. What
2 sounds right in this case? Ask yourself. Ask yourself. If
3 you have to ask it a thousand times, do so. What reason,
4 what purpose, what in the world was my client going to gain,
5 what was the need for going in there and robbing? He's
6 working, he's being paid, he's living at home, what -- what
7 need, what's the reason to go in there and say -- and then
8 capital murder? You're going to have to find out that he
9 specifically intended to kill her. Why in the world would
10 he even rob her?

11 Do you know what they're going to tell you? They've
12 already told you? Well, we'll tell you why. Point
13 dramatically, cold-blooded killing. My gosh, what is a
14 cold-blooded killing? Well, it's one just as this. On
15 this evidence? It's a cold-blooded case.

16 They put Officer Mylett on, another aspect of the
17 dramatic effect. Remember he was one who showed up right as
18 Schauer and Ruben Rivera were pulling him out from under the
19 truck and he didn't testify to none of that, remember? They
20 only asked him one question or two, remember? Was he a
21 regular at the Casino Club? They're going to try and tie
22 all of this stuff in. The dramatic effect. Well, he goes
23 to the Casino Club, therefore he's a bad egg. That makes
24 him a little characteristic that makes him a
25 cold-blooded murderer. We're also going to show you that he

1 smokes Winstons. So do a lot of other people, I don't know,
2 maybe these other people that were in there had ordered it,
3 I don't know, I can't explain why we can't get no
4 fingerprints or anything. And yet we're relying on flimsy,
5 to say the least, flimsy eyewitness evidence and everything
6 else by inuendo. And we're telling you or they're telling
7 you, based upon that type of evidence, you find him guilty
8 of capital murder. That shocks the conscience. To do that,
9 you would have to shuck away your duties as a juror, you
10 would have to say, well, I can't then go by beyond a
11 reasonable doubt, because, ladies and gentlemen, this case
12 reeks of reasonable doubt.

13 My client testified to the events that evening. Told
14 you about Mary Ann Perales. I cannot explain whether that's
15 true or not true. I did notice one thing, though, and I
16 think that it might prove to be a little interesting, that
17 when they -- Mary Ann came in here and testified and she
18 brought her little shower book and they took pictures of her
19 and she had written on there February the 4th, that we were
20 to take her word for it. She was at a shower, she wasn't
21 with my client. So, I think in a situation like that when
22 you have one person -- and then she said, "I've got people
23 out there to testify," and no one else came in here and
24 said, "Yeah, we were at her shower." I think when you have
25 a situation like that you can say: Well, okay. I don't know

1 who to believe on that. It's not necessarily wrong, maybe
2 she's covering up something, I don't know. Maybe she should
3 have been home or something and she didn't want to get
4 involved and that's why she said that. Maybe the shower was
5 the next day. I didn't hear nobody come in and say that was
6 the day. All right? But let's just -- let's just say okay,
7 let's just disregard that portion of the evidence, you know,
8 and go somewhere else and continue.

9 We've got a lot of things that lead up to the situation.
10 Let's look at the situation itself. My client says that he
11 had called earlier. Well, there -- and I like this, too,
12 because our clients are referred to as George and it's really
13 Ronnie Gonzales. Our clients are no nothings or, you know,
14 whatever, and not to be believed, the State would have you
15 believe that. Yet he's looking for Ronnie Gonzales and he
16 said he called home at the Circle K and it had to be
17 somewhere right before 8:00 or 8:00 because the father
18 testified -- the stepfather, that he had got a call and
19 there was no way he could make it to the store, so that's
20 how he knew that it had to be around that time and that
21 they were over there at Circle K and they walked back. And
22 my client did one other thing. He said that he had given
23 this information, and I believe he said to his attorney, and
24 I believe the State tried to say: Well, you know, we helped
25 as such, he's trying to say we didn't help, you know, who do

1 you think provided you those pictures? You know, stuff like
2 this to say that they also knew about it. But did you notice
3 one thing about that? That he didn't come in here at the
4 last moment and say: It wasn't me, it was somebody else,
5 like some of these other witnesses said. I said this one
6 time, but now I'm coming in here and I'm also saying this and
7 adding on. He didn't do that. He told this from the very
8 beginning. You heard him. Evidently, from what you have
9 heard, you can deduce that they haven't been able to find
10 Carlos Hernandez. It would certainly help to say the least.
11 But we haven't been able to do it. What can you do in a
12 situation like this? What's your duty? What does your
13 conscience tell you? What does your heart tell you? What
14 does common sense tell you? I think it would be a very easy,
15 extremely easy thing for you to just look at this situation,
16 again disregard what we're saying up here, because of the
17 dramatic effect, and I'm sure they're going to come up here
18 and say: Look at what he did, wow. Disregard it. Remember
19 the evidence. You're the sole judges of the facts.

20 And if I have said something up here that's a little bit
21 different from the way you heard it, you remember the way you
22 heard it. You're the sole judge. You believe who you want
23 to believe. No matter whom you believe, has the State met
24 its burden of proof? Have they proved to you beyond a
25 reasonable doubt that my client actually went into that store,

1 robbed the attendant and killed her? Beyond a reasonable
2 doubt. Have they? Do you still have questions unanswered?
3 What -- came away with this so I'm hanging my hat over here
4 or I can picture how this could have happened just as easily
5 as the State has presented its case. Saying: Well, let's
6 disregard all physical things, let's disregard -- and that's
7 another thing. In talking about physical evidence, when the
8 chemist came up, did you notice what they did? They gave
9 you all the reasons why they could not provide you with any
10 physical evidence. Do you remember what he said? "Well, if
11 the person handles concrete; well, if the person's got soaps;
12 well, if the surface is dry;" you know, my gosh. Why can't
13 they bring you something positive like: Well, we goofed it
14 all up. We just messed it up. We didn't get no prints, we
15 forgot to have the knife analyzed. All those questions
16 that you're asking. How come they didn't do these things?
17 This is capital murder. I want proof, I want proof beyond a
18 reasonable doubt. Look at the seriousness of the offense.
19 Do you have reasonable doubt? If you do, you have a duty,
20 as a juror, you have reasonable doubt that he didn't even go
21 in that store, you find him not guilty. If you say to
22 yourself, "Well, I want to believe the eyewitness testimony,
23 I'm going to go along with George Aguirre and Kevan Baker,
24 although that's all I've got, everything else doesn't really
25 add up or add to the situation, the fingerprints and stuff

1 like that, I'm going to go ahead with that." And yet you
2 tell yourself, "I'll go along with that, however I still
3 question the robbery aspect. I'm not sure about the robbery."
4 Then, the law, in the Charge here, the Court's telling you:
5 Well, if you have a doubt about the robbery, then you can't
6 find him guilty of capital murder, even if you -- even if
7 you may want to, even if there's some sort of human nature in
8 there that's called vengeance, you may want to do it because
9 of what you have seen and heard, you may not. You are bound.
10 If you have some question as to whether or not there was a
11 robbery, then you cannot find him guilty of capital murder.
12 If you believe that there was a robbery, but you believe
13 that maybe it was a struggle, and I don't think he specifically
14 intended to kill Wanda Lopez, but he did, but I don't think
15 he specifically intended, but I think there was a robbery,
16 then the law says you should consider murder and you cannot
17 find him guilty of capital murder.

18 You have a lot of options, you just don't take all this
19 and trot right back there and sign the first one. You have
20 options and this Jury, as you well know, was picked because
21 we felt, and I speak for both sides and they can correct me
22 if I'm wrong, that you would be fair and just and look at all
23 the facts and then apply the law and that it wouldn't hurt
24 your conscience one bit to either find him guilty or not
25 guilty or it wouldn't hurt your conscience one bit to say

1 there is reasonable doubt; therefore I must do what I must
2 do as a juror and that is find him not guilty of capital
3 murder or not guilty of murder, if that be what you want to
4 do. I think your task is a very awesome responsibility and
5 I think you know that, you have known it for several weeks
6 now. And what makes it even more important is that you will,
7 in a few more minutes, maybe within the next half hour or so,
8 be asked to actually make decisions that you were first
9 called upon several weeks to do. I have faith in you, I
10 know my client does, no matter how you vote, what your
11 decision is, I want you to go away from here knowing that
12 you have done your duty as a juror and you have the respect
13 of all and you can be proud of what you do. Keep in mind
14 that when you do make your decision, that it is something
15 that you can live with. This is your decision and your sole
16 decision, based upon the evidence and not sympathy, not
17 dramatic effect that we put on as attorneys, simply what you
18 have heard. Reconstruct the situation again in your own mind.
19 Relive the evidence that you have heard, not just those
20 points that were highlighted and so on. I think that you will
21 do a job that, like I said before, you can be proud of.

22 Thank you very much.

23 THE COURT: Would you like a short recess now,
24 about five minutes or so? Anyone? All right, Mr. De Pena.

25 MR. DE PENA: Ladies and gentlemen of the

1 Jury, I thank counsel for the State as well as co-counsel
2 in this case. I would like first of all to thank you again,
3 I would on my behalf, acting as co-counsel in this -- in
4 this case.

5 I would like to basically highlight a couple of the
6 facts, possibly each of us in presenting our facts,
7 sometimes we tend to overlook. We each, as individuals,
8 have a tendency of wanting to try and point out those things
9 that we feel are more important than others and sometimes in
10 doing so, we overlook things that sometimes I have found,
11 past experience, that jurors sometimes question later on
12 and very little minute type of things that leave impressions
13 in your mind or they're left unanswered and, as such, you
14 want to try and point these things out. I don't want to
15 duplicate anything that's already been said, but to the
16 extent I would like to go over the Charge with you just
17 basically before the State comes back with its -- its final
18 argument and rebuttal to what has been said here previously
19 to you and what you have already heard, I don't want to do
20 that in this case.

21 There are a couple of things I would like to, however,
22 point out just very briefly and before the State comes back.
23 One of the things that I wanted to point out, and I realize
24 that it may sound duplicitous [sic] in some respects, but I
25 think it's very important.

1 Mr. Lawrence brought out the fact that each of -- each
2 of us, and we have had a very difficult time in the
3 presentation of this case with regards to -- to time frames.
4 One of the things that apparently seems to be -- a point
5 that stuck out in my mind and I felt like might -- I felt
6 like would be beneficial to you --

7 THE COURT REPORTER: I'm sorry, Hector, I
8 can't hear you.

9 MR. DE PENA: I'm sorry.

10 Is worth bearing -- bearing out is the fact that you
11 have a situation where you have two people, Mr. Lawrence
12 pointed out to you that Mr. Aguirre had not -- had possibly
13 seen this individual for the longest time and, as such,
14 would be probably the person to -- that for all practical
15 purposes be a witness to, had he made an in-court
16 identification, it would have borne a lot of weight in your
17 decision as to whether or not Mr. De Luna was at the scene or
18 not at the scene. He didn't make that in-court identification.
19 But keeping in mind one thing that he did bring out and I
20 think it's very important and a lot of -- a lot didn't go
21 into it was the fact that when you're questioning the point
22 of reasonable doubt was the fact that Mr. Aguirre pointed
23 out that there was at least and, again, you have to -- you're
24 the judges of the facts, but there was at least three people,
25 and if I -- my recollection of his testimony was correct,

1 there was at least three people in the store in addition to
2 the clerk, testified that there were at least two males and
3 there was a female in addition to the clerk. And that at
4 the time that he left, there was at least those three people
5 or those three customers in the store as well as the clerk.

6 Now, keeping in mind that your time frame, you will --
7 you can -- you will hear from this tape, this tape takes
8 approximately, I would say three and a half minutes from the
9 time that she was on the phone with -- with the officer, the
10 dispatcher at the police department and the time that -- and,
11 of course, we don't really know, but at the time that this
12 tape goes out and you don't hear any more, you hear -- you
13 hear the scream, both Mr. Lawrence and Mr. Schiwetz would
14 ask you to listen to the testimony closely in that tape.

15 You have about two thank you's, you have a situation where
16 they ask us -- you see the eighty-five cents or you hear the
17 eighty-five cents. You don't really know whether these
18 people have left. Now, Mr. Aguirre said, and if you will
19 correct me if I'm right, I think you will remember, he said
20 when he left there was at least four people in the store.

21 Now, keeping in mind that the time frame, as Mr. Lawrence
22 pointed out, assuming you have got traffic and so forth and
23 you're making that little loop from the Sigmor Station down
24 to Whataburger coming back around and getting on the
25 expressway, that period of time he says he looks over and he

1 only sees a struggle. Now, if you take same place, same
2 time, you can't have more than one struggle. He says he
3 didn't see anything else except that struggle. He said his
4 vision wasn't -- wasn't hindered or anything.

5 Now, please compare that with Mr. Baker who says he
6 hears the tap on the glass and he looks up and he thinks
7 somebody is horseplaying and then he realizes that it's a
8 struggle. There can only be one struggle, yet Mr. -- Mr.
9 Baker is presumably there, he's only possibly three or four
10 feet from the store itself, you can tell from the photographs,
11 and he says that he couldn't see anything, he couldn't see an
12 individual in the store. He says that all he could see was
13 the back of the lady, somebody being pulled. And then he
14 would have you believe that very shortly after that that's
15 when he realizes something is going on. He comes in and
16 supposedly the Defendant comes out and he says he sees him
17 for about two seconds and then the guy's gone.

18 What did anyone see? Mr. -- Mr. Aguirre, who was on
19 the other side of the expressway, I can't tell you in feet
20 how far away he is, he says he has a clear view of a struggle
21 and he says this person that he says he saw outside the
22 store inside. How fast can three or four people leave out
23 of a place?

24 Another thing to keep in mind is Mr. Baker. We say that
25 he walked right in. I think his testimony was that he saw

1 something, he went in or at least saw -- he said he saw the
2 girl coming toward the door and I don't know if he stated
3 that he -- he saw her sliding down, but his testimony was
4 that he didn't keep an eye on this girl all the time. He
5 says he went out, turned around and went back out here to the
6 parking lot because he said he thought he saw a car driving
7 in and he asked somebody to go call the police, then he went
8 back into the store to see, quote unquote, to get towels or
9 whatever to see if he could help this girl to take care of
10 her until the police arrived.

11 You had the officer testify that there was already a
12 crowd down here at the end of the store when he gets there.
13 All I'm trying to point out to you through this is the fact
14 that there are many other people around at that point in
15 time within that very short time frame, we're talking a time
16 frame of not -- anywhere from five to ten minutes max that
17 you have people already congregated presumably, you have a
18 nightclub that's down here. Mr. Aguirre was asked, "Well,
19 could somebody have been running back to go tell somebody,
20 'Hey, you know, something is going on down here.'" People
21 are rubbernecks. You have the possibility that there is
22 much more, much more activity, more people there than what
23 you lead -- the State would lead you to believe that there
24 was only Mr. Hernandez there, the last one, the only one.
25 If somebody else was in there when Mr. Baker possibly went

1 back to go ask somebody to call the police, somebody could
2 have slipped out.

3 Now, one other thing, and there's some pictures in
4 there and I'm trying to be brief because of the time,
5 Officer Escobedo testified, and you will see a picture in
6 there, of what she said was a cash register, but you will
7 know from Mr. Gonzales that the Sigmor Station didn't have a
8 cash register. She kept referring to it as a cash register.
9 If you will look at it closely, you will see what it is,
10 it's a gas pump meter.

11 Now, if you take the State's version of how the
12 physical stabbing took place or that she was stabbed here
13 in the side and this is a dripping wound (indicating). Now,
14 you will see pictures and you will notice that most of the
15 activity would apparently have been behind right there at the
16 counter. You will see the pictures of the L shape here and
17 here and you will see that most of the activity took place
18 right here (indicating). Yet they would have you believe
19 that he dragged her away, she's dripping and then ran out.
20 Now, with all the blood that you see and very predominantly,
21 like I said, you will see in that picture with the gas meter,
22 you will see that there's blood, Mr. Baker said that she was
23 walking when he comes -- when he sees her, then she grabs on
24 the door and she's sliding down, if you will notice from
25 that gas meter from the pictures that you will see of the

1 apparent blood on the door frame, as he said she was sliding
2 down, she basically had quite a bit of blood, possibly from
3 grasping her wound, we don't know. But something that has
4 been highlighted, we have people come in like Mr. Wilson and
5 Mr. Infante to testify regarding the physical evidence that,
6 you know, all they did was tell you -- give you a brief
7 history of fingerprints and so forth, that you have actually
8 no fingerprints and, if I'm not mistaken, I think that when
9 the State makes the argument concerning the fact that: Well,
10 they couldn't compare these prints to anybody, nobody else's
11 seem to match up, but at this last minute we tried to match
12 them up with other people, Mr. Aguirre, Mr. Baker. But if
13 you will recall Mr. Wilson's testimony, as well as Mr.
14 Infante, the prints themselves were of such poor quality,
15 if they were prints, that they really couldn't have been
16 matched against anybody. So to have you state: Well, if we
17 find the right person maybe we can match them up, they
18 didn't have a comparable print, period.

19 We could -- we could have fingerprinted anyone in here
20 and tried to compare the prints and they wouldn't have
21 matched up because there's nothing to match up.

22 Another part of the physical evidence which I would
23 like to point out is the question of the clothing. By
24 innuendo they would have you believe that all of this
25 clothing belonged to Mr. De Luna, he shed it somewhere

1 because he was trying to -- he was trying to hide evidence
2 of whatever. You heard the chemist testify that there was
3 no blood on anything. Now, if you will look at the pictures,
4 whether this was a dripping wound, the object is to say:
5 Well, all the blood is going to run down so obviously there's
6 not blood on the wall, blood here, blood there, everywhere,
7 you know, it's not a spurting wound which would get blood
8 all over the place. Obviously if someone were in a physical
9 death struggle with someone like that, there was going to be
10 some blood. Yet none of this clothing had any blood on it.
11 Now, again, they have -- they brought the chemist back in to
12 give some excuses. Well, if the guy -- if the blood was
13 fresh, if the weather conditions were just right, well, it's
14 going to all wash out. Well, there wasn't any testimony that
15 he was wallowing in this water with a shirt on or with his
16 shoes on. Now, they would have you think the guy jumped in
17 a swimming pool or something to wash all this out. All
18 this -- all that was found, or at least as to the pants the
19 Defendant was wearing was laying in some water, yet there's
20 no blood. So the only thing you have to connect him with is
21 you have the fact that the man was wearing some black pants,
22 you have all kinds of descriptions as to the type of clothing
23 and, again, I'm -- I'm pointing these out just as small
24 points, but as Mr. Lawrence pointed out, you don't have any
25 physical evidence, you basically have these two -- the only

1 thing you really have to connect the man with anything or at
2 least by innuendo is just that.

3 And I would, you know -- as horrible as it is, and we
4 know that Mrs. Lopez suffered when she died, the dramatic
5 effect of showing you: Well, this is the dead speaking to
6 you, again we go back to theatrics. But take it just from a
7 scientific point of view. Listen to the tape. Listen, and
8 I know it's difficult because there's a lot of -- there's a
9 lot of garble, but you will hear and that tape I think will
10 convince you, that right up at the moment, because the last
11 thing you hear is, "Does he have the knife out yet?" "No."
12 And then you hear her say within a half second maybe, "I'll
13 give it to you." She just said thank you to several people,
14 she's carrying on a transaction with more than one people,
15 there's no reason to presume that these people just walked
16 in and out within two seconds. Somebody, more than one
17 person, was in that store.

18 THE COURT: You have three minutes.

19 MR. DE PENA: An interesting point is -- that
20 I might point out also, is in terms of people being there,
21 it's -- it's very difficult to understand and, granted, it's
22 only a small point, but you heard Officer Escobedo -- Kevan
23 Baker was the only person other than an Officer Escobedo who
24 said she came in after that, the first person to come in to
25 look for evidence. And you can see in the picture, as Mr.

1 Lawrence has pointed out to you, that, you know, Mr. Baker
2 said there was money all over the place, yet the picture
3 only shows two \$5 bills on top and I think one on bottom and
4 it's interesting to note that that knife, and I think you
5 will see the pictures, is stuck way down in a corner, way
6 down by the safe. No blood on the knife or fatty tissue
7 possible. We -- you know, they want you to presume. This is
8 an assumption, they want you to take all these things and
9 assume, you guys fill in the gaps, you know, if we haven't
10 proved it up, you just fill in with your own imagination.

11 Don't assume anything. The evidence that you have is
12 basically that's been presented, this is what you need to
13 make your decision on. The thing I wanted to point out was
14 the fact that Sergeant Escobedo, when she testified that she
15 came in to secure the premises, she was the first person to
16 go in there, she said the phone was ringing. Now, if you
17 will listen to that tape very closely, you can hear the
18 phone drop and if you hear it a little bit further on, you
19 can hear the phone hang up. Who hung up the phone? I mean,
20 if someone had just committed a heinous crime, you know,
21 I'll stick around to hang up the telephone?

22 I would like to point out a couple of other points. At
23 Julie Arsuaga very briefly. I would like to just emphasize
24 the fact that she and her husband both pointed out that when
25 they were asked to describe the type of pants, they both

1 pointed out that they were uniform pants. It's funny how
2 both of them would describe a pair of pants as uniform-type
3 pants, the kind that you rent, I think she said when you
4 work in a business. Keep it in mind. She doesn't identify
5 him there at the scene, she can't identify him from the photo
6 lineup, but yet she wants to come in six months later and
7 say that's him. Had a man on the other hand who saw him for
8 ten minutes at least and then says: No, he's -- you know,
9 there's no -- there's no in-court identification.

10 I would like to briefly just go over the Charge with
11 you. I think the main thing, as Mr. Lawrence has specifically
12 pointed out to you, assuming you take whatever you want to
13 take into consideration as evidence in this case, I think
14 one of the things that I would ask you please to read and
15 go over are the definitions of intention -- intentional and
16 knowingly and go over them to show you that you don't want
17 to, as the State would have you do, you don't go in there and
18 just decide that this is capital murder. You're going to
19 have to show elements. A robbery element as well as the
20 specific intent to kill. That specific intent has to be an
21 intention that you've begun with and an intention that you
22 carry through.

23 Knowingly, on the other hand, you might not have
24 intended to go in and do something, but you caused the
25 effect, that knowingly you do something and that causes -- it

1 causes the effect situation.

2 And if you find that, then it says -- the law tells you
3 you follow the law that you cannot find capital murder. You
4 can only find murder.

5 I think basically, ladies and gentlemen, what I'm saying
6 in this situation is that you need to -- coupled with what
7 Mr. Lawrence has told you and with what I have tried to
8 highlight, a couple other points here, that your decision is
9 one where you have to take the evidence, you cannot assume
10 anything. You can't let the theatrics, I realize that Mr. --
11 that Mrs. Lopez died a very tragic death, the presentation of
12 her screams and so forth I realize has a very psychological
13 effect on a person, nobody wants to hear a death cry. But
14 I think at the same time you have to try and take this as
15 your duty as jurors. Take only the real physical evidence
16 without any presumptions of anything. Don't assume anything,
17 don't presume anything. Take only what's given to you and
18 make that decision in this particular case.

19 Thank you.

20 THE COURT; Why don't we take about a five or
21 ten-minute recess now. And when you're in your jury room,
22 now, don't go out into the hallway, I don't know whether it's
23 locked or not, but from now on you must remain together, so
24 don't go out into the hallway through that door and I'll
25 call you back in about ten minutes.

1 (At this time a recess was taken, after which
2 the following proceedings were had before the
3 Court, in the presence and hearing of the Jury,
4 with counsel for the State, counsel for the
5 Defendant and the Defendant present;)

6 MR. SCHIWETZ: May it please the Court, ladies
7 and gentlemen: I will try to be brief, I have 32 minutes,
8 but I hope to give most of it back. The defense attorneys
9 went over a couple points that I want to hit on very briefly.

10 One thing they talked about was the question of intent.
11 I would suggest to you that if you take a knife like this one
12 and you drive it into somebody far enough to where it
13 penetrates all the way through the lung, it's real hard to
14 do that without intending to cause them harm; and if you go
15 up to a woman who's five foot three and you jab this thing
16 into her at about this level (indicating) where it went in,
17 where the lung is, if you're aiming at her and you're aiming
18 anywhere from here anywhere over to the same point on the
19 other side, the things you're going to hit are heart and lungs
20 and either one of them are going to kill you. I hope you
21 don't get confused by this question of intent which they
22 tried to use.

23 He's accused me of using the courtroom as a stage and
24 that I was here pointing out the Defendant for dramatic
25 effect. Keep in mind I'm not the one who pointed out the

1 Defendant, the witnesses were. As far as the dramatic effect
2 in these cases, it's kind of built in, there's nothing you
3 can do about it. I didn't get up here and start waving
4 bloody clothes around and things like that, I tried not to
5 do that. He's gone into the question, he said: Well, what
6 were the witnesses wearing, John Arsuaga? Can you remember
7 what he was wearing. And I don't know if you can or not.
8 If you can remember that he was wearing a gray suit, you
9 remember he was wearing a vest, do you remember whether he
10 was wearing a tie? Did you notice him chewing something?
11 What was it? Was it tobacco, was it gum, what was it? I
12 don't know. If you had found out a few seconds later that he
13 had just killed somebody, I'm pretty sure your memory of him
14 would be a little better. You would try to freeze that into
15 your memory.

16 They talked about criticizing the police for taking a
17 fellow back and showing him to them as soon as they caught
18 him. I just want to suggest to you that if they didn't have
19 the right guy then, they needed to let Mr. De Luna loose and
20 intensify their search for the person who did do it. But
21 after they had a couple people identify him, they didn't have
22 to worry about that so much anymore.

23 He said that Mr. Baker seemed to think that he saw my
24 client leave. Mr. Baker didn't seem to think that. He said
25 flat out that's the guy. He said that's the guy that night

1 and he said that's the guy today, it's the same person. He
2 said that Mr. Baker's testimony was inconsistent with the
3 other testimony because Mr. Baker said he saw money all over
4 the store when he went in to get the paper towels and the
5 police officers testified there was only one \$5 bill there.
6 He said that repeatedly (indicating), said it three or four
7 times. There was only one \$5 bill. Well, take a look at
8 State's Exhibit 33. You will see that as Olivia Escobedo
9 told you, there's two \$5 bills laying on the cash drawer
10 there and there's one on the floor and there's a penny
11 wrapper or something like that lying on the floor and, of
12 course, up there you can see the paper towels, which was
13 what Mr. Baker was looking for. Mr. Baker wasn't looking
14 for money. He noticed some lying around. He wasn't looking
15 for the money, he was trying to help someone who was hurt.
16 He said that Mr. Baker was inconsistent because he said they
17 ran that way and ran behind the store. Mr. Baker told you
18 he didn't see for sure where he went once he got out of the
19 corner there. But what does Steven Fowler say, the first
20 policeman who got there? He said the fellow who was leaning
21 over the victim pointed that the guy ran that way
22 (indicating), and I asked Fowler: Show me on this map up
23 here which way the guy pointed; and what did he tell you?
24 The same way that the Arsuagas saw the guy running and the
25 same place that Kevan Baker said.

1 I don't know what he's trying to suggest by this bit
2 about how there was supposed to be money on the floor and
3 there wasn't any. What I think they're trying to suggest is
4 that maybe there wasn't a robbery. There's only two people
5 that I know of who could have stolen the money if it wasn't
6 the murderer, Mr. De Luna. One of them is Officer Escobedo,
7 I guess she could have pocketed it all when she went in
8 there. The other person I guess would be Wanda Lopez, but
9 it seems like it would have shown up on Mrs. Lopez when they
10 took her to the hospital and I didn't hear any testimony
11 about that.

12 He talks about John Arsuaga, says he added to what he
13 saw. He knows what's involved here so he added to what he
14 actually saw. Keep in mind John Arsuaga has no reason to
15 lie, to add to, to detract or anything else on what he saw.
16 He does know what's involved here. He got involved in a bad
17 situation and he's tried to do his best. He's not going to
18 get up here and elaborate on things he didn't see when he
19 knows what the possibilities can be for this man right here
20 (indicating). He said that Julie Arsuaga's testimony was
21 worthless because she only saw the man for one second. She
22 said she saw him straight on for one second, she said she
23 saw him, the Defendant, the profile of him ten seconds.

24 He blames me for throwing in the attempted rape. He
25 says I did that for the benefit of the ladies on the Jury.

1 Keep in mind that they're the ones who brought that up first,
2 not me. I'm not here trying to talk about the attempted rape
3 conviction, all I'm trying to do is point out to you that a
4 person who tried to rape somebody is going to probably get
5 up here and lie in order to keep from getting executed. I
6 don't have any control over what this man does when he's
7 out of jail.

8 He talks about physical evidence. Oh, they don't have
9 any physical evidence. Eyewitness testimony and all that
10 stuff's not any good. Well, I've never seen a defense
11 attorney get up and say in a trial that, "Yeah, you guys are
12 right. You convinced me beyond a reasonable doubt, the Jury
13 should go out and convict him." There's not going to be
14 enough evidence to get them to do that. As far as the
15 physical evidence, all I can say is, sorry, they tried.
16 They tried to get fingerprints, you will get to see those
17 cards, there's hundreds of people go out of those stores
18 every week. Some of them leave fingerprints and some of
19 them don't. That officer tried, he's been doing it for
20 years. He tried to get some, you can see what results he
21 had. You can see the little partial -- little blemishes and
22 things like that he tried to lift off there. He said we're
23 trying to hang his client on the testimony that he smokes
24 Winstons and went to the Casino Club. If that was all the
25 evidence in the case, we wouldn't be here. It's just that

1 those are little things that are consistent with what we
2 know about Carlos De Luna and consistent with what we know
3 about the killer in this case.

4 And he says well, you know, these people could be
5 misleading him. People could be lying. He said Mary Ann
6 Perales, she could be lying. She said she was at her
7 shower that night that she was seven months pregnant that
8 night and, which, of course was totally inconsistent with
9 what Mr. De Luna said. He said well, maybe she's lying.
10 That's the best he can do, maybe she's lying. Yeah, well,
11 you know, maybe this girl wasn't killed with this knife, too,
12 but, look, there's one with some kind of fatty tissue lying
13 on the floor right underneath where she was bleeding and it's
14 wide open. I don't know what else it's doing there. Maybe
15 somebody wheeled a Howitzer in there and blew a hole in her
16 lung. Maybe, maybe, maybe. I suggest to you this is the
17 knife that killed her. Maybe Mary Ann Perales is lying.
18 Let's talk about lying.

19 He lied to his parole officer, there's no doubt about
20 that, there's no maybe. He lied about seeing Mary Ann
21 Perales. He lied about how often he went to the Casino Club.
22 He lied about how he lost his shirt. Do you remember he was
23 hopping over a fence and it got snagged and just the whole
24 thing came off. Remember that? He never did explain how he
25 lost his shoes, he kept talking about how he was tripping,

1 so presumably I guess he wanted to say that he ran out of
2 his shoes. And finally he lied about how he killed Wanda
3 Lopez in this robbery. Mr. De Pena got up and he threw some
4 more smoke in, he said well, there had to have been three
5 people in that store, George Aguirre told you that, that
6 there were three, there was two in there ahead of him or
7 behind him and then Mr. De Luna walked in. There had to have
8 been more than three in the store. That's right, for a
9 brief period of time there was three people in the store.
10 Two customers, Mr. De Luna and Wanda Lopez. Two of them
11 left. You can hear her on that tape waiting on them. Thank
12 you. They leave. He steps up and gets some cigarettes and
13 when the people leave, he starts to do his thing. He's not
14 going to kill her while there's people there to watch, that's
15 why he killed her so he wouldn't leave any witnesses. It's
16 interesting how the man's mind worked. When he gets up here
17 and tells you that bunch of lies yesterday, he told you,
18 "I ran away because I had just gotten out of the penitentiary
19 and they might think I was involved." When he was in that
20 store and he realized what Wanda Lopez was doing on that
21 telephone, he killed her. That's why he did it. That's the
22 way his mind works.

23 Finally they say that there's no blood on the clothing.
24 That's got to tell you something. What it tells you is that
25 if it's been raining all day and you run away and you get mud

1 all over your shoes and you get water all over your shoes,
2 that it's not going to leave a trace for the police or the
3 DPS lab to pick up. That's what it tells you. And he says
4 all they show is that he was lying in water once. He was
5 lying in water twice, out in front of Theresa Barrera's
6 house he was lying in a puddle out there that filled the
7 gutter and makes the glare come off the water, he was lying
8 out there with his shoes, shirt and pants on. She sees him,
9 he rolls out from underneath that, cuts across from there,
10 runs across to Mr. Garcia's and he shucks the shoes and
11 shucks the shirt. Now, why is he shucking the shirt? He's
12 been lying in the water out there at night, 8:00 o'clock at
13 night, it's dark, you're running along and you're scared
14 because you just killed somebody and the neighborhood is
15 flooded with cops, you're trying to get away and you're
16 wearing a shirt this color. What are you going to do with
17 it? You're going to take it off and you're going to get rid
18 of it so they can't see you as easy. And you're going to
19 hide under anything that's available in order to keep them
20 from seeing you and that's exactly what he did. And that's
21 why there's no blood on his shoes and that's why there's no
22 blood on his pants. Keeping in mind there may never have
23 been any to begin with because he's pulling her like this
24 (indicating), she's bent over, she's got a dripping wound
25 and he's pulling her like this. When he sees George come in

1 there, he throws her down on the floor and he takes off.
2 He's probably got some on his shoes, but he's running through
3 wet grass, he's lying in puddles, water puddles, he's not
4 going to leave anything for them to pick up. This man is
5 guilty beyond a reasonable doubt. He went in there to rob
6 that woman because he wanted to go out to the Casino Club
7 or some other place and all he's got left is \$2.00. He
8 didn't have cab fare to go home, all he's got on him is
9 \$2.00. So he goes in there, robs her, gets a hundred forty-
10 nine dollars and kills her because she can identify him,
11 she's on the phone calling the cops and he knows better than
12 to leave a witness. And he takes off, unfortunately --
13 unfortunately, the last act she did in her life was call
14 the police, unfortunate for him because she called the
15 police and they got there so quick he couldn't get out of
16 the neighborhood and they caught him, and that's what we're
17 all here about today. And I urge you to fill out that form
18 and find him guilty of capital murder.

19 Thank you.

20 THE COURT: All right. You're excused now to
21 go into your jury room and, of course, your first act will
22 be to select a foreperson and we're making arrangements to
23 take you to lunch now in the custody of the sheriff,
24 protective custody of the sheriff.

25 (At this time the Jury was withdrawn to the

1 jury room to begin their deliberations, during
2 which the following proceedings were had before
3 the Court, outside the presence and hearing of the
4 Jury and the Defendant, with counsel for the State
5 and counsel for the Defendant present;)

6 THE COURT: The Defendant doesn't have to be
7 here for this, does he?

8 MR. LAWRENCE: We will waive it.

9 (At this time an off-the-record discussion
10 was held at the bench.)

11 (At this time the Jury was seated in the
12 jury box and the Defendant was brought into the
13 courtroom, after which the following proceedings
14 were had;)

15 THE COURT: I just wanted -- who is your
16 foreperson?

17 JUROR MORALES: Right here, sir.

18 THE COURT: Fine. Mr. Morales, I just want
19 to know what you want to do about supper. Do you want to
20 go out for dinner tonight or do you want it brought to you?
21 It will take about an hour out of your deliberations if you
22 go.

23 JUROR MORALES: Your Honor, if we could have
24 approximately 45 minutes more.

25 THE COURT: Oh, sure.

1 JUROR MORALES: And can we just refrain from
2 answering your question as far as the food is concerned?

3 THE COURT: Certainly. Certainly. I had some
4 other questions and I will just hold them back. Fine. You
5 can continue your deliberations, then.

6 (At this time the Jury was excused to continue
7 their deliberations, after which the following
8 proceedings were had before the Court, outside the
9 presence and hearing of the Jury, with counsel for
10 the State, counsel for the Defendant and the
11 Defendant present:)

12 THE COURT: Ladies and gentlemen, we're about
13 to receive the verdict in this case. I know that there are
14 diverse feelings among the audience, people here, but
15 whatever the verdict is, please no obvious approval or
16 disapproval of it.

17 Bring them in.

18 (At this time the Jury was seated in the jury
19 box, after which the following proceedings were
20 had:)

21 THE COURT: Have you arrived at a verdict in
22 this case, ladies and gentlemen?

23 JUROR MORALES: We have, Your Honor.

24 THE COURT: Would you give it to the bailiff,
25 please. I need the entire Charge.

1 "We, the Jury, find the Defendant, Carlos De Luna,
2 guilty of the offense of capital murder, as alleged in the
3 Indictment." Signed by Alfred Morales, Foreman.

4 All right. Anything else before I discharge this Jury
5 overnight?

6 MR. LAWRENCE: Your Honor, the Defense asks
7 to have the Jury polled.

8 THE COURT: All right. Let me ask you
9 individually now whether or not this is your individual
10 verdict.

11 Mr. Gonzales, is that your verdict?

12 JUROR GONZALES: Yes, sir.

13 THE COURT: Mr. Rasmusson?

14 JUROR RASMUSSON: Yes, sir.

15 THE COURT: Mr. Morales?

16 JUROR MORALES: Yes, sir.

17 THE COURT: Mrs. Dahlman?

18 JUROR DAHLMAN: Yes, sir.

19 JUROR VICKERS: Yes, sir.

20 THE COURT: Is that Mr. Perez?

21 JUROR PEREZ: Yes, sir.

22 THE COURT: Mr. Botello?

23 JUROR BOTELLO: Yes, sir.

24 THE COURT: Mrs. Gavlik?

25 JUROR GAVLIK: Yes.

1 THE COURT: Mrs. Jiminez?
2 JUROR JIMINEZ: Yes, sir.
3 THE COURT: Ms. Kurtz?
4 JUROR KURTZ: Yes, sir.
5 THE COURT: Mrs. Bradley?
6 JUROR BRADLEY: Yes, sir.
7 THE COURT: Mr. Abernathy?
8 JUROR ABERNATHY: Yes, sir.
9 THE COURT: I'm going to excuse you overnight,
10 then. You may eat at home, so that resolves that problem.
11 And what time would you like to start in the morning? 9:00
12 o'clock all right?
13 THE JURY: That's fine.
14 THE COURT: In the meantime, don't discuss
15 the case among yourselves or with anyone else. Avoid
16 scrupulously now any news media coverage there may be of
17 the matter and I will see you back here at 9:00 o'clock in
18 the morning.
19 (At this time the Jury was withdrawn from the
20 courtroom, after which the following proceedings
21 were had:)
22 THE COURT: And I will ask the audience, if
23 you would, please, wait until the Jury has left this floor.
24 I think the bailiff will come back in when they have left
25 through that door there. Thank you very much.

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(END OF GUILT OR INNOCENCE PHASE)