Nueces D.A. Saucedo/ Hernandez

OFFICE OF THE DISTRICT ATTORNEY

901 LEOPARD, ROOM 206
NUECES COUNTY COURTHOUSE
CORPUS CHRISTI, TX 78401-3681

TELEPHONE
361-888-0410 FELONY DIVISION
361-888-0286 MISDEMEANOR DIVISION
361-888-0348 HOT CHECK DIVISION

CARLOS VALDEZ
DISTRICT ATTORNEY
105TH JUDICIAL DISTRICT
NUECES, KLEBERG, AND KENEDY COUNTIES

TELEPHONE
361-595-8544 KLEBERG COUNTY OFFICE

FACSIMILE
361-888-0399 FELONY DIVISION
361-888-0700 MISDEMEANOR DIVISION
361-888-0381 VICTIM ADVOCATE

June 28, 2004

Mr. William Belford
809 Henderson St.
Houston, TX 77007

RE: Public Information Request

Mr. Belford;

#1. As I stated, we do not have to give you the file but we are. — D.A. 1986 Saucedo File

#2. The file is missing.

#3. I have enclosed a copy of our file

#4. The DA office does not maintain files on class C misdemeanors. Please check with the Distict Clerk if you want information on that one.

I hope this information is useful.

Sincerely,

Lance A. Kutnick

VOLUNTARY STATEMENT-Not Under Arrest
PS2 form 9
(Rev. 5-84)

POLICE DEPARTMENT
CITY OF CORPUS CHRISTI
COUNTY OF NUECES, TEXAS

Before me, the undersigned authority, on this the 17th day of April A.D. 19 86, personally appeared Diana Gomez, address 712 5th #6 Corpus Christi, Texas, age 26, phone number no phone.

My name is Diana Gomez. I am 26 years old and my date of birth is 11-9-59. I live at 712 5th Street apartment #6. I don't have a telephone at home at the present time and I am self-employed at Diana's Kitchen located at 4261 Elvira Street, phone 852-9360. Sometime around the last two weeks of May of 1985 I started living with Carlos Hernandez, who is 30 years old, at 1010 Buford. We lived together until the last day of August, 1985. During the time that we lived together Carlos could not sleep at night and had to be drunk to get some sleep. One night Carlos was not able to sleep and I asked him what was wrong. Carlos sat up in bed and told me that he couldn't sleep because he had done something wrong. Carlos then told me that he had killed somebody. Carlos then asked me if I had heard about a girl killed in a van with a little girl. I told Carlos that I heard about it but never gave it much thought. Carlos then went on to tell me that the girl he killed was Delia Sauceda. Carlos told me that he had killed Delia Sauceda because Delia was going out with Carlos' brother-in-law named Freddy and that he (Carlos) was tired of seeing his (Carlos') sister suffer. Carlos went on to tell me that on the night of the murder he was picked up by Delia and that both went cruising in Delia's van and that Delia's little girl was asleep in the van. Carlos also told me that while cruising around drinking beer in Delia's van they parked somewhere and he and Delia went to the back of the van and that Delia wanted to have sex. Carlos told me that he got on top of Delia and then grabbed her by the throat and pulled it out and didn't let go until her eyes rolled back. He told me that while he was choking her that Delia grabbed him by the hair and pulled some hair out. He (Carlos) told me that after Delia was dead he (Carlos) turned her over on her stomach and he made an "X" on her back from her shoulders to her butt and that he had made a small "F" in the middle of her back where the X crossed. He said he used a knife to mark her back. He then told me that after cutting on her back he cut a toe from her foot. He told me he was going to give it to Freddy and he asked me if I wanted to see it. He then told me that he drove Delia's van to some bushes near C.C. Egg Company close to Mexico Street where he left the van with Delia and the baby girl who he said was asleep. I asked him if anybody had seen him and he told me that no one had seen him, that it was sometime around 5:00 in the morning. He told me that the only mistake was leaving his shorts behind. He said that he had used his shorts to wipe out fingerprints from the van. He also told me that he had cleaned Delia's fingernails with the shorts. He told me that he would do it again if he had to. Carlos told me the date when this happened but I can't remember the exact date. All I know is that it happened several years ago. This statement is true and correct to the best of my knowledge and I'm giving it to Sgt. Paul Rivera and Sgt. Eddie Garza of my own free will. END.

Diana Gomez
Diana Gomez

Subscribed and sworn to before me on this the 17th day of April A.D. 19 86

PAUL RIVERA
Paul Rivera C.C.P.D.
Notary Public, State of Texas

VOLUNTARY STATEMENT-Not Under Arrest
PS2 form 9
(Rev. 5-84)

POLICE DEPARTMENT
CITY OF CORPUS CHRISTI
COUNTY OF NUECES, TEXAS

Before me, the undersigned authority, on this the 29th day of July A.D. 19 86, personally appeared Diana Gomez, address 712 5th St. #6 Corpus Christi, Texas, age 26, phone number _____.

My name is Diana Gomez. I am 26 years old and my date of birth is 11-9-59. My address is 712 5th Street #6 and my telephone number is 852-9360. I wish to state to Sgt. Paul Rivera and Sgt. Eddie Garza of the Corpus Christi Police Department that during the time that I lived with Carlos Hernandez for about 3 months in 1985 we were not considered as husband and wife and never did I use Carlos' last name of Hernandez. I also like to state that Carlos and I never bought any property together and the only thing I did was stay at his apartment until my husband, Paz Ramon Gomez, returned from state prison. This statement is true and correct to the best of my knowledge and I'm giving it voluntarily to Sgt. Paul Rivera and Sgt. Eddie Garza. END.

Diana Gomez

Subscribed and sworn to before me on this the 29th day of July A.D. 19 86.

PAUL RIVERA 30C
Paul Rivera C.C.P.D.
Notary Public, State of Texas

C.C.P.D. SUPPLEMENTARY REPORT pg ___ of ___

OFFENSE NUMBER: 51121-021

OFFENSE REPORTED	LOCATION OF OFFENSE	OFFENSE RECLASSIFIED TO
Homicide	1500 Block Caldwell	

DATE OF OFFENSE	DATE OF SUPPLEMENTARY	VICTIM'S NAME	VICTIM TEL
11-20-79	7-16-86	Saucedo, Dahlia	Res. / Bus.

WITNESS	ADDRESS CHECKED	PERSON CONTACTED	HOME ADDRESS	TEL
1				Res. / Bus.
2				Res. / Bus.

SUSPECT	RACE/SEX	AGE	HGT	WGT	HAIR	EYES	CLOTHING DESCRIPTION	ARREST SHEET NUMBER

IDENTIFYING CHARACTERISTICS	NAME (L,F,M)	DOB	HOME ADDRESS

SUSPECT VEHICLE	LICENSE	STATE	YEAR OF VEHICLE	DESCRIPTION	IMPOUNDED
					☐ YES ☐ NO

Witnesses and suspects not named above should be identified and listed before beginning narrative.

MCI INDEX								

7-16-86
On 4-17-86 a person by the name of Diana Gomez, DOB: 11-9-59, address 712 5th Street #6, phone at work 852-9360, came to the station voluntarily and gave a sworn written statement implicating a subject by the name of Carlos G. Hernandez, DOB: 7-14-54, as being the offender to the above murder, which occurred on 11-20-79. In Diana Gomez's detailed statement she states of a conversation in which Carlos Hernandez told her that he committed the murder of Dahlia Saucedo. Also in Diana Gomez's statement, she describes several details told to her by Carlos Hernandez which occurred during the murder, which makes him a prime suspect in this murder. For detailed information in Diana Gomez's written statement, refer to her statement.

Reporting officer, Sgt. P. Rivera #306, after reviewing this case and also reviewing Diana Gomez's sworn written statement, it indicates that the murderer to the above homicide is Carlos G. Hernandez. The following shows that Carlos Hernandez is the prime suspect in this murder case.

1) Carlos Hernandez, when first interviewed by this officer on 12-14-79, lied to this officer as to the length of time in which he knew Dahlia Saucedo.
2) Carlos Hernandez lived on Carrizo Street, a few blocks away from where the body of Dahlia Saucedo was found inside her van.
3) Dahlia Saucedo was dating Freddie Schilling while Freddie Schilling was married to Carlos Hernandez's sister and was causing problems in their marriage.
4) Carlos Hernandez's fingerprint was found on a Schlitz cup inside the van in which Dahlia Saucedo's body was found.
5) A pair of shorts, size 36, were found inside the van in which the body of Dahlia Saucedo was found and Carlos Hernandez, while being interviewed, and after being warned of his rights, admitted that the shorts found at the murder scene were his. The shorts found at the scene were compared by this officer with other shorts found inside Carlos Hernandez's residence on Carrizo Street and both were the same size and same brand.
6) Carlos Hernandez admitted having sexual intercourse with Dahlia Saucedo the night of the murder.
7) Carlos Hernandez admitted to Diana Gomez that he killed Dahlia Saucedo because Dahlia was going out with Freddie Schilling and that he (Carlos Hernandez) was

(CONTINUED)

ORIGINAL INVESTIGATING OFFICER	REPORT TYPED BY
	Lozev #756
REVIEWING SUPERVISOR	STATUS: RTP ☐ UTP ☐
Gutierrez #124	FILED WITH DA ☐ CA ☐ JP ☐ MC ☐ CONFESSION ☐ INDEXED ☐
REPORTING OFFICER	SUPERVISORY REVIEW ☐ INSUFFICIENT EVIDENCE ☐ OTHER ☐
Paul Rivera #306	

PROGRESS REVIEW DATE					
SUPERVISOR'S INITIAL					

C.C.P.D. SUPPLEMENTARY REPORT pg ___ of ___

3. OFFENSE NUMBER: 91121-021

OFFENSE REPORTED	LOCATION OF OFFENSE	OFFENSE RECLASSIFIED TO
Homicide	1500 Block Caldwell	

DATE OF OFFENSE	DATE OF SUPPLEMENTARY	VICTIM'S NAME	VIC TEL
11-20-79	7-16-86	Saucedo, Dahlia	Res. / Bus.

WITNESS	ADDRESS CHECKED	PERSON CONTACTED	HOME ADDRESS	TEL
1				Res. / Bus.
2				Res. / Bus.

SUSPECT	RACE/SEX	AGE	HGT	WGT	HAIR	EYES	CLOTHING DESCRIPTION	ARREST SHEET NUMBER

IDENTIFYING CHARACTERISTICS	NAME (L,F,M)	DOB	HOME ADDRESS

SUSPECT VEHICLE	LICENSE	STATE	YEAR OF VEHICLE	DESCRIPTION	IMPOUNDED
					☐ YES ☐ NO

Witnesses and suspects not named above should be identified and listed before beginning narrative.

MCI INDEX

(CONTINUED-page 2)

tired of seeing his sister suffer.

8) Carlos admitted to Diana Gomez that he made an "X" on the back of Dahlia Saucedo's body from her shoulders to her butt with a knife and also cutting a toe from her foot. This information was available only to the investigating officers and Dr. Rupp, who conducted the autopsy on the body of Dahlia Saucedo.

9) Carlos Hernandez admitted to Diana Gomez that the only mistake he made was leaving his shorts at the crime scene after using them to wipe out fingerprints inside the van.

10) The fingerprints of Jesus Garza, who was originally charged with this offense, were never found inside the van or anywhere else connected with the murder. Also, Jesus Garza did not reside in the general area where the body of Dahlia Saucedo was found and he lived several miles away from the murder scene.

11) Jesus Garza never admitted being with Dahlia Saucedo the night of the murder and also never admitted committing the murder of Dahlia Saucedo.

12) A statement given by a Pete Olivares, who implicated Jesus Garza, had inconsistencies and after giving a statement to Sgt. Sidney Smith, reporting officer Sgt. Paul Rivera and Sgt. Ray De La Garza took Pete Olivares in an unmarked unit and when asked to take us to the crime scene, he was not able to find the crime scene where Dahlia Saucedo's van was found.

13) Pete Olivares has admitted to this officer that the statement he gave in which he implicated Jesus Garza was made up by him during the polygraph examination because of fear and that the entire statement which he gave was false. Furthermore, Pete Olivares, [illegible] scheduled to testify against Jesus Garza, failed to show up in court.

CASE PENDING.

ORIGINAL INVESTIGATING OFFICER	REPORT TYPED BY
[illegible]	Lozey #756
SUPERVISOR	STATUS
[illegible] #124	RTP ☐ UTP ☐
[illegible]	FILED WITH DA ☐ CA ☐ JP ☐ MC ☐ CONFESSION ☐ INDEXED ☐
[illegible]	SUPERVISORY REVIEW ☐ INSUFFICIENT EVIDENCE ☐ OTHER ☐

C.C.P.D. SUPPLEMENTARY REPORT pg ____ of ____

3. OFFENSE NUMBER: 791120-021

OFFENSE REPORTED	LOCATION OF OFFENSE	OFFENSE RECLASSIFIED TO
Murder	1500 Block Caldwell	

DATE OF OFFENSE	DATE OF SUPPLEMENTARY	VICTIM'S NAME	VICTIM TEL
11-20-79	7-29-86	Sauceda, Dahlia	Res. / Bus.

WITNESS	ADDRESS CHECKED	PERSON CONTACTED	HOME ADDRESS	TEL
1				Res. / Bus.
2				Res. / Bus.

SUSPECT	RACE/SEX	AGE	HGT	WGT	HAIR	EYES	CLOTHING DESCRIPTION	ARREST SHEET NUMBER

IDENTIFYING CHARACTERISTICS	NAME (L,F,M)	DOB	HOME ADDRESS

SUSPECT VEHICLE	LICENSE	STATE	YEAR OF VEHICLE	DESCRIPTION	IMPOUNDED
					☐ YES ☐ NO

Witnesses and suspects not named above should be identified and listed before beginning narrative.

MCI INDEX								

7-29-86

On 7-23-86 Asst. D.A. Bill May presented this case before the Nueces County Grand Jury and an indictment for Murder was returned on suspect Carlos Hernandez on Nueces County Grand Jury indictment #86-CR1032-B. 117th District Court Judge Jack Blackmon set bond at $25,000.00.

On 7-24-86 at approximately 10:55 AM reporting officers Sgt. Paul Rivera #306, Sgt. Eddie Garza #116 and Sgt. Robert De La Garza #240 located suspect Carlos G. Hernandez, DOB: 7-14-54, at 1021 7th Street where he was placed under arrest on the Murder capias warrant #86-CR1032-B. Suspect was placed in unmarked unit #70 and immediately warned of his constitutional rights by Sgt. Eddie Garza in the presence of this officer. Suspect was then transported to the city jail and booked under arrest sheet #D-31365 and booked on the above capias warrant, charge being Murder, bond set at $25,000.00. At approximately 11:00 AM same date, 7-24-86, reporting officers, Sgt. P. Rivera and Sgt. E. Garza checked out suspect Carlos Hernandez from the booking desk and took him before Municipal Court Magistrate Bill Monkres who warned him of his constitutional rights. Suspect, after being warned and acknowledging his constitutional rights, was taken to interview room #4 in C.I.D. and re-warned of his constitutional rights from the top block of a confession worksheet by Sgt. Eddie Garza in the presence of this officer. Suspect Carlos G. Hernandez acknowledged understanding his rights by signing the appropriate blocks where it reads "yes" with his initials and signing the bottom line to the top block of the confession worksheet with his signature, Carlos G. Hernandez, also placing the date, 7-24-86, and the time, 12:35 PM. Reporting officers proceeded to interview suspect in reference to the homicide of victim Dahlia Sauceda and suspect stated that he had no knowledge of participation in the murder of Dahlia Sauceda and stated that that night he had seen Dahlia Sauceda during the evening of 11-19-79 and that he had been with another girl who he could not remember her name, and stated that he had arrived at home sometime around 4:30 or 5:00 AM on 11-20-79. The interview lasted 55 minutes at which time suspect was taken back to the booking desk and turned over to the jail personnel.

On 7-25-86 at approximately 9:30 AM suspect Carlos G. Hernandez was transported from the city jail to the county jail on the murder capias warrant #86-CR1032-B.
CASE CLOSED: FILED DISTRICT ATTORNEY'S OFFICE. ONE ARREST.

ORIGINAL INVESTIGATING OFFICER	REPORT TYPED BY
	Lozev #756

REVIEWING SUPERVISOR	STATUS:
Gutierrez #124	RTP ☐ UTP ☐
REPORTING OFFICER	FILED WITH DA ☐ CA ☐ JP ☐ MC ☐ CONFESSION ☐ INDEXED ☐
Paul Rivera #306/E. Garza #116	SUPERVISORY REVIEW ☐ INSUFFICIENT EVIDENCE ☐ OTHER ☐

PROGRESS REVIEW DATE:					
SUPERVISOR'S INITIAL:					

AUTOPSY FINDINGS

1. Traumatic injuries of the neck, chest and abdomen

POSTMORTEM EXAMINATION UPON THE BODY OF

DALIA SAUCEDO

On November 20, 1979 at approximately 10:00 A.M. an autopsy was performed by Dr. Joseph C. Rupp, Nueces County Medical Examiner upon the body of Dalia Saucedo in the autopsy room at Memorial Medical Center. The body is identified after having been viewed at the scene.

When first viewed in the Memorial Medical Center autopsy room, the body is nude and ther is no jewelry upon the body. The body is that of a well developed, well nourished, adult white female, measuring 62" in length, weighing an estimated 105 pounds, and appearing younger than the recorded age of 27 years. Body hair is of normal distribution. The hair of the head is black and of medium length. The eyes are brown. The pupils are round, regular and equal. The teeth are natural and in a good state of hygiene. There are no prominent scars or identifying marks upon the body. There are no needle tracks in the arms. There are no old wrist scars. There are no defense wounds of the hands. The fingernails are short and none of the fingernails are broken. There is dirt underneath the fingernails but no evidence of tissue or foreign material. There are abrasions of the knees. There is a deep laceration in the web of the left little toe. This is a deep laceration approximately 1" in length with part of the laceration extending across the ventral surface at the base of the left toe. There is a small laceration through the skin in the left gluteal area measuring approximately 1" in length. There are four small round bruises in the left clavicular area, each measures approximately 1/2" in diameter. There is a contused area 2" in diameter on the tip of the left shoulder. There is a roughly circular faint abraded and contused area to the right of the midline at the lower edge of the rib cage measuring 2" in diameter. There are multiple abrasions over the tip of the right shoulder, posteriorally. There is a small ecchymosis at the lateral aspect of the left upper eyelid. There is a contusion with swelling over the right malor eminence but no palpable underlying fracture. There are a few superficial abrasions to the right of the midline of the neck at the level of the larynx. These occupy an area of approximately 1" in diameter. There is a bite mark which is faint in the posterior axillary line over the left hip area. There is a small laceration of the buccal mucosa of the right side of the upper lip which measures approximately 3/8" in length, and there are several contusions of the buccal mucosa.

On the back there is a thin linear abrasion in the form of a large X. The abrasion beings at the tip of the left shoulder, angles across the back to end in the right gluteal area where it is interrupted and then continued as a horizontal abrasion across the right buttock 5" in length. The other part of the X begins at the tip of the right shoulder, angles across the back to end in the left gluteal area and then is continued as a curvilinear abrasion 6" in length across the left buttock in the 7 to 10 o'clock direction.

The appendicular skeleton is intact to inspection and palpation.

Upon opening the body cavities, there are adhesions of the right lung which yield to blunt dissection. There are adhesions over the superior surface of the liver. There is a hemoperitoneum of approximately 300 cc's of liquid

and clotted blood. The left lung is atelectatic when viewed in situ and all of the viscera have their normal anatomic positions.

HEART: The heart weighs 180 grams. The great vessels to and from the heart arise and distribute in the normal manner. The coronary circulation is physiologic. The heart valves are competent. The myocardium is dark red, moderately firm and homogeneous showing no evidence of fibrous scarring or recent infarct.

LUNGS: The lungs have a combined weight of 500 grams. There are no petechial hemorrhages noted on the surface of the lungs. The left lung is atelectatic when viewed in situ. The pulmonary vasculature is unremarkable. The respiratory tree contains blood streaked mucoid material. The lung parenchyma is generally light and feathery with no significant amount of hyperemia or edema. There is a modest amount of underlying anthracotic staining. The thoracic cavity shows a fracture of ribs 2, 3, and 4 on the left in the mid clavicular line.

LIVER: The liver is of average size. The gallbladder and biliary tree are normal. The capsule of the liver is not intact. The parenchyma of the liver is dark reddish brown, moderately firm and homogeneous showing no evidence of fatty change or fibrosis. There is a large laceration of the liver deep in the parenchyma at the falsiform ligament involving the point of juncture of the right and left lobes of the liver.

SPLEEN: The spleen weighs 60 grams. The capsule is intact, smooth, glistening and not tense. The parenchyma of the spleen is soft, dark red and homogeneous.

PANCREAS: The pancreas weighs an estimated 70 grams. It has the usual tan, lobular parenchyma and is normal in its gross appearance.

ADRENAL GLANDS: The adrenal glands each weigh an estimated 6 grams. They have the usual yellow lobular cortex and thin pearly gray medullary zone.

KIDNEYS: The kidneys have a combined weight estimated at 250 grams. The capsules strip with ease revealing smooth, dark red cortical surfaces. Upon section, the cortex has the usual thickness. There is a moderately prominent line of demarcation at the cortico-medullary junction. The ureters are unobstructed. The urinary bladder contains a small quantity of urine. The external genitalia and perineal region are unremarkable to inspection. There is no injury to the external genitalia or vaginal canal. There is a small amount of dried fluid visible in the perineal region.

AORTA AND GREAT VESSELS: The aorta and great vessels have their normal origin and distribution and show no significant atherosclerotic change.

GASTROINTESTINAL TRACT: The esophageal, gastric and duodenal mucosa are intact. The stomach contains only a very small quantity of thick, mucoid material. The small and large intestine show hemorrhage into the mesentery and the cirrhosal surface of the bowel with a lot of retroperitoneal hemorrhage around both kidneys and around the points of attachment of the large intestine at the fecal area. Detailed inspection indicates a laceration of the vena-cava as well as traumatic injury of the mesentery.

Examination of the rectal area reveals no evidence of injury. The rectum is filled with soft, dark fecal material.

NECK ORGANS: There is hemorrhage into the strap muscles of the neck and the tissues surrounding the right lobe of the thyroid gland. The distribution of the hemorrhage is more to the right of the midline in proximity with the underlying abrasion of the skin of the neck. The cornu of the thyroid cartilage and hyoid bone are intact. The vocal cords show no significant evidence of edema and the airway is patent. There are multiple hemorrhages on the internal surface of the larynx. The trachea and larynx contain blood streaked mucoid material. The thyroid gland is small and symetrical and normal in its gross appearance.

HEAD: The scalp is intact. Upon reflection of the scalp there are a few small bruises in the scalp which are quite superficial. The vault of the skull is intact to inspection and palpation.

TOXICOLOGY: Swab taken from vaginal area is positive for acid phosphatase.
Blood alcohol - negative

Joseph C. Rupp, M.D.

Joseph C. Rupp, M.D.

CRIME AGAINST PERSON — DATE OCCURRED 11-20-79 — TIME: — 1

ATION OF OCCURRENCE

SCENE PROCESSED: ☐ YES ☐ NO

☐ HOMICIDE ☐ ASSAULT ☐ SEX OFFENSE ☐ THREATS
☐ SUICIDE ☐ AGGRAVATED ☐ RAPE
ATTEMPT ☐ DEAD BODY ☐ POLICE OFF. ☐ AGGR. RAPE
☐ ROBBERY ☐ SIMPLE ☐ IND. EXPOSURE ☐ OTHER — SPECIFY
☐ AGGRV. ROBBERY ☐ RECKLESS CONDUCT ☐ OTHER

PROCESSED BY: ☐ ID OFFICER ☐ REPORTING OFFICER

LATENT PRINTS ☐ YES ☐ NO
OTHER EVIDENCE ☐ YES ☐ NO

RECLASSIFIED TO (SPECIFY) HOMICIDE

VICTIM

LAST NAME	FIRST NAME	INIT	JR/SR	RACE	SEX	AGE	HEIGHT	WEIGHT	HAIR	EYES
SAUCEDO	DAHLIA			W	F	27			BLK	

DATE OF BIRTH	HOME ADDRESS	APT. NO.	CITY	HOME PHONE
	1806 CLIFF MAUS		C.C. TEXAS	

BUSINESS ADDRESS	CITY	BUS. PHONE

URE OF INJURY: D.O.A. — VICTIM REMOVED TO: M.M.C. — ORDER OF: DR. RUPP CREST AMBUL

RSON: REPORTING SCOVERING (UNDERLINE ONE)

LAST NAME	FIRST NAME	INIT	JR/SR	RACE	SEX	AGE	DATE OF BIRTH
PARKER	EMILIO			W	M	15	

HOME ADDRESS	APT. NO.	CITY	HOME PHONE
1509 CALDWELL		C.C. TEXAS	888-5864

BUSINESS ADDRESS	CITY	STATE	BUS. PHONE

XT OF KIN:

LAST NAME	FIRST NAME	INIT	JR/SR	RELATIONSHIP	HOME PHONE
SAUCEDO	APOLINAN			HUSBAND	

HOME ADDRESS	BUSINESS ADDRESS	BUS. PHONE

SCRIPTION WEAPON USED: — SERIAL NO. — RECOVERED PROPERTY/WEAPON ☐ YES ☐

IDENCE TURNED OVER TO: — SECTION — PROPERTY TAG NOS.

SUSPECT #1

LAST NAME	FIRST NAME	INIT	JR/SR	RACE	SEX	AGE	HEIGHT	WEIGHT	HAIR	EYES

STODY ☐ ☐ YES NO — CKUP ☐ ☐ — OADCAST

CLOTHING WORN — PHYSICAL CHARACTERISTICS (BEARD, MUSTACHE, LIMP, TATTOO, ETC.)

SUSPECT #2

LAST NAME	FIRST NAME	INIT	JR/SR	RACE	SEX	AGE	HEIGHT	WEIGHT	HAIR	EYES

STODY ☐ ☐ YES NO — CKUP ☐ ☐ — OADCAST

CLOTHING WORN — PHYSICAL CHARACTERISTICS (BEARD, MUSTACHE, LIMP, TATTOO, ETC.)

SEE OTHER SIDE FOR ADDITIONAL SUSPECTS

DESCRIPTION VEHICLE USED: 1979 DODGE VAN BROWN AND SILVER — LIC. NO. TTR 556 — STATE TEXAS

VEHICLE IMPOUNDED XX YES ☐ NO — TO CITY POUND XX YES ☐ NO — WHERE TAKEN:

TNESS #1

LAST NAME	FIRST NAME	INIT	JR/SR	RACE	SEX	AGE	HOME PHONE:
PARKER	EMILIO			W	M	15	888-5864

HOME ADDRESS	BUSINESS ADDRESS	BUS. PHONE
1509 CALDWELL		

TNESS #2

LAST NAME	FIRST NAME	INIT	JR/SR	RACE	SEX	AGE	HOME PHONE
DURON	JOE			W	M	18	884-3849

HOME ADDRESS	BUSINESS ADDRESS	BUSINESS PHONE
1509 CALDWELL #5	1811 AYERS	

SEE OTHER SIDE FOR ADDITIONAL WITNESSES

BRIEF NARRATIVE (CONTINUE ON SUPPLEMENTARY IF NECESSARY)

On 11-20-79 at approximately I received a call to go to the 1500 block of Caldwell in refere a D.O. A. Upon arrival I was directed to a vacant lot at Mexico and Mussett. Officer Garci had arrived at the scene before I did. He showed me a van that was parked in some high wee in the southeast section of the lot. There was a dead nude female laying on her side in th back of the van. There had been a small child in the van before I arrived. The child was narmed, and officer Judy Patton took the child to the police station before I arrived. The license on the van was TTR 556. It is registered to Apolinan Dalia Saucedo of 1806 Cliff It is a ~~brown and~~ silver 1979 Dodge van, it is called a House van. An ID Unit was requeste officer Sara Cooks arrived to take pictures and process the scene. Lt. F. Graham was also ~~scene. The medical examiner was notified and officer Escobedo and Lt. Pace arrived at the~~

CONTINUED... R.M. BOOS 94 #301 — CMDR. SMITH 18

REPORTING OFFICERS — REPORT REVIEW OFFICER

Sgt. P. Rivera 306 — Lt Pace 69

CASE ASSIGNED TO — ASSIGNED BY — REPORT APPROVED: ☐ YES ☐ NO — RETURN TO:

OFFENSE NO.: 1121-021	OFFENSE REPORTED: Homicide	COMPLAINANT/VICTIM'S NAME Dalia Sauceda

Continuation from page2)

also was not able to identify the other three subjects by the name of Peter known as Pete, esse and Roger.

1-21-79

n this date 11-21-79 reporting officer with the assistance of Officer Roger Garcia identified he subject Pedro Olivarez as the subject called Peter also known as Pete. This subject has jacket with this department. Jacket #078509, date of birth 6-27-56, he is 5'4", 140, black air, brown eyes, social security #455-11-1601 last known address 1314 Whitaker this city. ubject number 2 Jesus Z. Garza, date of birth 11-5-60, 5'6", 125, brown hair, brown eyes, ocial security #458-31-1766, this subject has a criminal history with this department, acket #150437, last known address 705 Dolores street. After obtaining these two photos ubject Johnny Longoria was located in Kingsville Texas by the Kleberg Sheriffs Office. gt. Sid Smith, Sgt. U. R. Alvarado and Officer Olivia Escobedo went to Kingsville and rought subject Johnny Longoria and his girlfriend Georgia Rand voluntarily to this city to e interviewed. This subject Johnny Longoria is a latin male, date birth is 7-26-58. This ubject was shown a series of six photos by Sgt. Smith, the photos included photo numbers 4427, 78509, 93733, 94601, 95118, and 151252. After viewing these photos subject Johnny ongoria identified #78509 as being the subject by the name of Pedro Olivarez and the same ubject who had been with him Johnny Longoria and Tony Larma and the above victim when they ent to Kingsville. He was also shown a second series of photos which included photo umbers 86993, 76866, 150437, 79862, 53746, and 59201 and after viewing these six photos ubject Johnny Longoria identified photo number 150437 as being the photo of Jesse whose ame is Jesus Z. Garza and who also accompanied the above group to Kingsville, Texas. fter Johnny Longoria identified these two subjects as the same two being in the van and he two who he knew as Peter and Jesse he stated that on Monday 11-19-79 sometime around :00 or 9:00 a.m. the above victim Dalia Sauceda had gone to the apartment where he was taying on Power ST. with the subject named Ray Benavides and was picked up along with ony Larma. He stated that the above victim Dalia Sauceda was accompanied by three subjects ho were introduced to him as Jesse, Pete, and third subject he could not remember his name. e stated that after being picked up by the above victim they drove to Kingsville Texas to lo or his, Johnny Longoria's, girlfriend whose name is Georgia Rand and that after failing to ocate his girlfriend they returned to Corpus Christi and dropped off the above three subject ater known as Pete, Jesse, the third subject whose identity is not known at this time. his subject Johnny Longoria took Sgt. Sid Smith to an address on Dunbar St. and showed him he residence where they had dropped off the three subjects. He stated that after dropping ff the three subjects he Johnny Longoria, Tony Larma, the above victim and her two year ld baby girl rode around for a while and then decided that they were going back to Kingsvill ecause to look for his girlfriend Georgia Rand. He stated that before leaving Corpus Christi, hey picked up a subject by the name of David Martinez on Third St. and he, David Martinez, ought $10.00 worth of gasoline and that all five and the baby girl drove to Kingsville, Tex nd did not find Georgia Rand and then returned back to Corpus Christi. He stated that they ame back and dropped off David Martinez at his residence. He stated that sometime around 1:00 p.m. he, Johnny Longoria,, Tony Larma, and the above victim and two year old baby girl rove to Dunbar St. and that the subject by the name of Jesse came to the van and spoke to he above victim for approximately 5 minutes then drove to Power ST. and dropped him off and ony Larma at Ray Benavides apartment at 304 Power apt #2. He stated that after they re dropped off the above victim drove away and did not say where she was going, but that , Johnny Longoria, was under the impression that she was going home because she appeared red. Also she had been drinking and smoking Marijuana pretty heavily. According to Johnny ngoria that was the last time that he saw the above victi. Also on the same date -21-79 subject Tony Larma came to the station with Fernando Schilling and was interviewed

(Continue on page 4)

REPORTING OFFICER		
Sgt. P. Rivera #306	386	388/69

OFFENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Homicide	Dalia Sauceda

(Continuation from page 4)

officers are not able to determine if the above subjects mentioned are involved in the Homicide and this case will be pending further investigation.

Case Pending: Further Investigation

Orginal Report: Officer R.M. Boos #94

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REPORTING OFFICER	
Sgt. P. Rivera #306	386

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SUPPLEMENTARY REPORT FORM

-87 REV. 7/74

OFFENSE NO.: 91120-021	OFFENSE REPORTED: Homicide	COMPLAINANT/VICTIM'S NAME: Dalia Sauceda

11-23-79

ON 11-20-79 a Tuesday Lt. Malcomb Pace assigned reporting officer P. Rivera#306 to assist officer Olivia Escobedo in the investigation involving the above Homicide. Reporting officer along with officer Escobedo met with step mother of the above victim whose name is Mrs. Virginia Guerrero and after meeting with Mrs. Guerrero she took us to an address at 746 Texas where a subject by the name of Fernando Mungia Schilling resides. According to Mrs. Guerrero this subject Fernando Schilling is an ex-boyfriend of the above victim and also according to Mrs. Guerrero this subject had been making threats to the above victim. Reporting officers after being shown the address by Ms. Guerrero went to 746 Texas apt #3 and made contact with Fernando Mungia Schilling. Upon making contact with subject Fernando Mungia Schilling reporting officers asked him if he would voluntarily accompany officers to the station to be questioned reference the above Homicide. Subject Fernando Schilling agreed to come to the station with officers voluntarily. He was also immediately told by this officer that he was a suspect in the homicide and read him his Constitutional Rights. He was brought to the station and brought to an interview room in the CID office and before being interviewed was again warned of his Constitutional Rights from a Miranda Warning Card which he initialed and signed and dated it 11-20-79. During the interview subject Schilling stated that he had gone to work the night before which was 11-19-79 at 11:00 p.m. at the Maverick Market located on Alameda and Doddridge. He stated that he had gotten off of work at approximately 8:00 a.m. 11-20-79. He also stated that he had not seen the above victim in several days and that the last time he had talked to her was on the phone which was approximately 3 days prior to her death. During the interview he was asked if he would submit to a polygraph examination voluntarily and he agreed to take the examination. Reporting officer along with officer Joel Castaneda took subject Fernando Mungia Schilling to the Department of Public Safety and met with the polygraph examiner Mr. Eddie De Shea. Subject Fernando Schillings submitted to a voluntary polygraph examination and according to Mr. Eddie De Shea the results showed that he had no involvement or knowledge as to who had committed the above Homicide. Fernando Mungia Schilling is a white male, age 23, date of birth 6-3-56, his address is 746 Texas Dr. apt. #3, he is 5'11", 160, Texas Drivers License #0613700, phone at home is 854-4723, phone at work is 852-3051. After the examination was conducted he was brought to the station and re-interviewed by this officer. Mr. Schilling stated that on the same date 11-20-79 at approximately 3 a.m. two female subjects by the name of Rosie Gonzales and Abbie Cisneros had gone by the store where he is employed which is the Maverick Market on Alameda near Doddridge and while at the store these two female subjects asked him Fernando Schilling if he had seen Dalia Sauceda at which time he stated that he had not see her in quite some time. Fernando Schilling stated that one of the two female subjects told him that she had seen the above victim with some subjects by the name of Johnny Longoria, Tony Lerma and three other latin male subjects first names only, Peter also called Pete, Jesse and the third subject named Roger. Also Fernando Schilling stated to officer that these two female subjects Rosie Gonzalez and Abbie Cisneros were employed at the Blood Plasma Center on Chaparral St. And that if I would talk to them maybe they could furnish this officer some information as to who were the subjects seen with the above victim on 11-19-79 at approximatley 3 p.m. After being interviewed subject Fernando Schilling was permitted to go home with out any charges pending at this time. Reporting officer then called the Blood Plasma Center on Chaparral and was advised by the personnel there that these two female subjects no longer were employed at this location and was advised they were currently employed at the Blood Plasma Center on Ayers St. and furnished this officer with a phone number 883-2640 to the Blood Plasma Center on Ayers. Reporting officer called the blood center on Ayers and made contact with Rose Gonzales who is 19 years old and Abbie Cisneros who is 21 years old.

(Continue page 2)

REPORTING OFFICER		
Sgt. Paul Rivera #306	386	388/69

OFFENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Murder	Sauceda, Dalia

(Continuation, Page 2)
She remembers this subject, Pedro Olivarez, motioning something to the victim which appeared to her like "hurry up," and then the subject walked out of the store, and the victim after paying for the items which she believed were cokes and chips walked out of the store. At this time the victim followed her to see what type of vehicle they were in. She stated that when she went out of the store she saw the subject identified as Jesus Garza urinating by the van near a trash dumpster. She stated that the victim, Dalia Sauceda appeared to be very high on some type of drugs, as well as the subject identified as Pedro Olivarez. A sworn written statement was given by Mrs. Irma Guyton.

Also, on 11-27-79, subject Johnny Longoria was in city jail after being picked up on a charge of burglary. This subject had also been seen with victim, Dalia Sauceda, on the night prior to the homicide. This subject was asked if he would submit to a voluntary polgraph examination and he agreed to take one. Reporting officer, along with Officer Ray De La Garza, took this subject, Johnny Longoria, to the Department of Public Safety and met with Mr. Eddie DeShea, the polygraph examiner. Mr. Eddie DeShea spoke with this subject, Johnny Longoria, and he then agreed to take a volutary polgraph examination. Subject submitted to the examination and the results, according to Mr. Eddie DeShea, showed that this subject, Johnny Longoria, had no knowledge of participation in any way in the homicide. Subject was brought back to the city jail and turned over to the jail personnel and has been cleared on the above homicide.

11-28-79

On this date, reporting officer, Sgt. P. Rivera #306 and Officer Ray De La Garza went to 2522 Dunbar and met with suspect, Jesus, known as Jessie, Z. Garza, and his brother, Roger Fuentes age 16, after they had indicated that they would take a voluntary polygraph examination. We asked these two subjects if they were still willing to take the polygraph, at this time both stated they would. Reporting officer after learning that this subject, Robert Fuentes, was a juvenile took him to his mother's address on Sam Rankin Street and she signed a consent form authorizing her son, Roger Fuentes, to submit to a voluntary polygraph examination. After obtaining permission from his mother, we took both subjects to the Department of Public Safety and both of them submitted to the polygraph examination. The juvenile, Roger Fuentes, was given the first test and the results showed that he was not telling the truth on certain things. After the polygraph examination on this juvenile, Roger Fuentes, he was interviewed by Sgt. Sidney Smith and he admitted to Sgt. Smith that this suspect Jessie Z. Garza had been away from his residence, 2522 Dunbar, on the morning of 11-20-79. The juvenile was brought to the station by Sgt. Smith to be interviewed further. Suspect, Jesus (Jessie) Garza then submitted voluntarily to the polygraph examination, and was given two tests and the results showed that this subject had knowledge of the homicide as well as participation. This suspect, after being given two tests, was interviewed by officers and he would not admit anything about the homicide. He was then brought to the station and was further interviewed and suspect would stick to his story that he had no knowledge of participation on the above homicide. Reporting officer then asked this suspect that we knew that he was not at home during the early morning hours on 11-20-79. The suspect stuck to his story that he was at home at 2522 Dunbar and that the last time he had seen the victim, Dalia Sauceda, was at approximately 11:00 p.m. on 11-19-79 after the above victim had gone to his residence for a short visit. At this time, reporting officer along with Sgt. Smith, and officer Ray De La Garza, asked the juvenile, Roger Fuentes, in the presence of Jesus Garza if Jesus Garza had been at home from 1:00 a.m. until 3:00 a.m. on 11-20-79, a Tuesday morning, and the juvenile, Roger Fuentes, stated that Jesus Garza and Pedro Olivarez had not been at home during those hours. At this time, the subject, Jesus Garza, became highly upset and became very belligerent. He was placed back in one of the interview rooms to be further interviewed & at this time officer walked out of the interview room briefly. The suspect, Jesus Garza, began bang-

FENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Murder	Sauceda, Dalia

(Continuation, Page 4)
to any officer. Suspect was taken to the booking desk and turned over to the jail personnel

11-30-79

Suspect, Jesus Z. Garza, was transferred from the City Jail to the County Jail on the charge of Murder by Officer Olivia Escobedo, Sgt. Sidney Smith and reporting officer, Sgt. P. Rivera #306.

Case Pending: Further investigation.

Initial report made by Sgt. Riley Boos #94

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EPORTING OFFICER	
Sgt. P. Rivera #306	284

FFENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Homicide	Dalia Sauceda

(continuation, Page 4)

And that he, Pete Olivarez had described how suspect Jesus Garza had committed the murder. After interviewing both coaches Fernando Rodriguez and Willie Odoms, reporting officer Sgt. P. Rivera, obtained a sworn written statement from Fernando Rodriguez and Officer Escobedo obtained a statement from Willie Odoms. During the investigation involving this Homicide reporting officers had not made contact with this subject Pedro known as Pete Olivarez on or before the 26 or 27th of November, 1979.

Case Pending: Further Investigation

Original report: Boos #94

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EPORTING OFFICER	
Sgt. P. Rivera #306	386

FENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
20-621	Homicide	Dalia Sauceda

ntinuation, Page 2)

Where were you the night when Dalia Sauceda was killed?
I was with a female friend, Yolanda Rodriguez, stayed at her house. I don't know where she lives.

On Tuesday, 12-20-79, when Dalia's body found, what time did you get home?
Five in the morning. I went to work and came back home about 7:30 a.m. I was sick that's why I went home. I had a sore throat and cough.

When you're at home, where do you go to buy your beer?
I go to the Seven Eleven Store, located at Staples and Mary.

Can you take and show us where Yolanda Rodriguez lives?
No, because I don't know where she lives. It was at night when I went to her house and I can not recall where she lives.

When was the last time that you were inside Dalia Sauceda's 1979 Dodge van?
Sometime between May 19th and May 22nd this year, when my brother was buried.

Do you wear undershorts?
Sometimes I do, sometimes I don't.

Are you wearing shorts now?
Nope.

What size shorts do you wear?
About size 36, sometimes 38 or maybe 40.

What brand shorts and what type shorts do you wear?
J. C. Pennys, Fruit of the Loom and they are box type shorts.

Do you know Jesus Garza and Pedro Olivarez?
No.

: this time reporting officer asked subject, Carlos Hernandez to go with him to take a volunt
olygraph examination, at which time he stated that he would. He also stated to officers that
: had no knowledge or anything to do with Dalia Sauceda's Homicide. Reporting officer then
de arrangements with Eddie De Shea the DPS polygraph examiner to give subject, Carlos
rnandez a polygraph examination. Reporting officers went to the DPS building and Mr. Eddie
: Shea gave subject two polygraph tests and according to Mr. Eddie De Shea the results were
nconclusive. Reporting officers then brought subject Carlos Hernandez back to the police
ation and he was re-interviewed reference the homicide involving Dalia Sauceda. After a
ief interview, subject Hernandez stated that he did in fact see Dalia Sauceda the night
ior to her body being found dead. He stated that he saw her on the night, which was a
nday on 11-19-79, and that the last time that he had seen her was sometime around 12:00
dnight. He also stated to officers that he did have sexual intercourse with Dalia Sauceda
metime around 10:30 p.m. Reporting officer asked subject Carlos Hernandez if he would be
lling to give a sworn written statement, reference seeing Dalia Sauceda on the night of
-19-79. Carlos stated in his statement that on a Monday 11-19-79, sometime around 10:00 p.
: went to the Seven Eleven Store located at Staples and Mary to talk to the lady who works
: the store and he wound up buying a six pack of Schlitz beer.

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PORTING OFFICER	
t. P. Rivera #306	386

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ENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	HOMICIDE	DAHLIA,Sauceda

At approximately 2;30 p.m. 11-20-79 I heard a call go out for unit 12, Sgt.Boos to 1509 Caldwell reference a possible dead body. I started to go to 1509 Caldwell and got there before unit 121. There I was met by Joe Duran 18 YOA DOB 1-17-61 from 1509 Caldwell phone 884-3849 he told me to go with him to a location where a van had a dead body (woman) in it. He took me to Mussett and Mexico and showed me the van off the road in field. I went up to the van a 1979 Dodge Van brown in color bearing Texas 80 TTR 556 with the side doors open and a latin female without clothes dead inside. Also in the van was another latin female approximately 2 1/2 YOA name unknown. I covered the body and removed the child from van. At this time unit 121 Sgt.Boos arrived and took over, I talked to the 2nd person who was with Mr. Duran when the body and van were found. He was Emilio Parker 15 YOA DOB 3-30-69 phone 888-5864 from 1509 Caldwell also at the scene was unit 115 Officer Patton who took the 3 YOA female to the station and away from the scene. Both witnesses told me they were walking through the field to go get the bus so that subject Parker could get to school. They saw the van. Both thought the van was stolen. They went up to it and saw the dead woman and child in the van. They called police. I transported both to the station for state ments.

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EPORTING OFFICER	
361 R.L.GARCIA#446	

ENSE NO.: 91120 021	OFFENSE REPORTED: HOMICIDE	COMPLAINANT/VICTIM'S NAME DAHLIA, SAUCEDO

I was following blood on Mussett street in the area of this scene. I followed blood from a driveway in the center of 1400 block of Mussett. The blood was followed East on Mussett to a parking lot on the southwest corner of Mussett and Alameda.
As I was following the blood I was contacted by Ms. Angie Saucedo of 511 S. Alameda phone 88 2649. Ms. Saucedo told me that she didn't have any information herself but that her 10 year old son Daniel Saucedo and a friend Joey Guerra of 1217 Mary had seen 2 males no other description chasing a female no other description on Mussett street at approximately 9pm 11-19-7 Both boys attend Woodlawn elementary school during the day. I gave this information to Lt. Graham unit 110 and Lt. M. Pace.

PORTING OFFICER SGT. R.P. WALKER 296	#301

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FENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Homicide	Dalia Sauceda

(Continuation page 2)

There are no keys in the ignition. There is a brush on the dash and numerous papers. On the panel door to the rear of the passenger door in the drink holder is observed an opened bean dip, still having some content in it. In the second holder is an unopen Schlitz Beer; in the third holder is a man's black nylon sock.

The van was parked in a brushy area with tall weeds and is about two feet from a fence. There is a gravel road leading off the street. The van is about 43 9/10 feet from the edge of the gravel roadway. I also saw that the van did not have a gas cap. Instead a pair of blue and white jogging shorts are stuffed into the gas tank.

At the scene were Lt. Graham, Capt. Wimbish; Lt. Malcom Pace, Officer R. M. Boos; Sgt. R. Caceres; Sgt. Randy Walker; I.D. Officer Sara Cooks who processed and photographed the scene; Medical Examiner, Dr. Rupp and Medical Examiner Assistant G. Risor. Crest Ambulance transported the body to the Morgue.

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EPORTING OFFICER	
O. Escobedo #388	386

SUPPLEMENTARY REPORT FORM

87 REV. 7/74

FENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Homicide	Dalia Sauceda

11-20-79

On this date at approximately 8:50 a.m. I returned to the CID office from Mexico and Mussett. When I arrived I was informed that a patrol unit had transferred a latin female to the station who was later identified as Virginia (Pena) Guerrero. I interviewed Mrs. Guerrero who is the step-mother of Dalia Sauceda. After speaking to Mrs. Guerrero about her step-daughter and the type of vehicle she owned. I determined that a possibility existed that the unidentified female found dead in the van TTR556 could possibly be Dalia Sauceda. I then asked Mrs. Guerrero to accompany me to the County Morgue; this was at 9:15 a.m. I contacted the Medical Examiners office and asked to view the body. At 9:50 a. Mrs. Guerrero viewed the body. Mrs. Guerrero made positive identification that the dead woman was Dalia Sauceda. I then brought Mrs. Guerrero back to the CID office where I continued my interview. I took a detailed statement from Mrs. Guerrero who advised me of the following. Mrs. Guerrero has been living with the victim and her husband Apolinar Sauceda for the past two months. She further told me that Apolinar works in Houston as an air condition repairman. He works for the victim's brother, Fernandeo Pena. Apolinar commutes hom on week-ends adn the last time he had been in Corpus Christi was two weeks ago. He was scheduled to come home on Wednesday 11-21-79 for the Thanksgiving Holidays. Mrs. Guerrero told me that Dalia did go out on her husband while he was gone and that this is one of their marital problems. She knows Dalia to be dating a subject by the name of Fernando, also known as "Freddy". Mrs. Guerrero later took this officer and Sgt. Paul Rivera and pointed out his residence to us. I was told that Dalia frequents the Casino and Carousel. Mrs. Guerrero also told me that Dalia and Freddy have been having problems since Freddy is jealous of Dalia dating anyone else. As a matter of fact she said on Saturday 11-17-79 Freddy threatened to "kick her ass" if she were to reunite with her husband.

Mrs. Guerrero stated also that Dalia went to the Casino on Saturday 11-17-79 but returned late that night. Also on Sunday 11-18-79 Dalia again went to the Casino. However on this occassion she failed to return home. Mrs. Guerrero says she next saw Dalia, Monday, 11-19 at 8:00 a.m. when she came by the house. She was accompanied by three male subjects who s did not recognize. Dalia told her step-mother she was going to Kingsville to take Johnny Longoria to pick up his wife Georgia Rand. She asked Mrs. Guerrero if she wanted to go. Mrs. Guerrero responded she would not be able to go since she had a doctor's appointment. Dalia then gave her step-sister Rosa a ride to Robert Wilson School and then drover her step-mother to the corner of Lawton and Greenwood where she dropped her off. Mrs. Guerre states this was the last time she saw Dalia. She had no further communication with her the remainder of the day.

Case Pending:

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PORTING OFFICER	
Escobedo #388	386

REV. 7/74		
ENSE NO.: 11120-021	OFFENSE REPORTED: Homicide	COMPLAINANT/VICTIM'S NAME Dalia Sanceda

11-21-79

On this date the following articles were taken to the booking desk and tagged as evidence. The articles listed were removed from the victim's van on 11-20-79 at approximately 4:00 p.m. by this officer.

1.) #28116 - Woman's beige strapless bra
2.) #28117 - A piece of rope, white in color, having a beige colored wooden bead at each end and also two knots, one at each end also.
3.) #28118 - A pair of woman's briefs, white in color with multi-colored design imprinted on it.
4.) #28119 - A man's black sock, nylon type material.
5.) #28120 - A halter top-white in color, with a border of plaid design, pink, white, and blue.

Case Pending:

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69

REPORTING OFFICER	
Escobedo #388	386

-87 REV. 7/74

FENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Homicide	Dalia Sauceda

11-21-79

On this date I contacted Apolinar Sauceda, of 1806 Cliff Maus, latin male, 26 years of age, date of birth 06-03-53. Texas driver license 8764572. Apolinar advised me he is employed in Houston by his brother-in-law Fernando Pena who is a sub-contractor of Mischer Airco in Houston, telephone #869-6725. He further told me he recieved word of his wife's death through his brother-in-law. He then left Houston to return to Corpus Christi. He did state that while enroute south he was issued a warning ticket by the Highway Patrol. He drives a 1975 Chevy Monza. Apolinar also spoke of having marital problems with Dalia because she dated other men. He further told me that they'd been separated for about three months and at that time she had left for Houston and was living with a guy named Freddy. Apolinar also said he went to Houston looking for Dalia in an attempt to reconcile their marriage. He says at the time Dalia told him it was over and did not want to go back to him. He also told me that about two weeks later after he first contacted Dalia he again located her van at a a Holiday Inn. He made contact with the Inn Keeper and was advised the van had been parked there about ten days, as though abandoned. After showing the Inn Keeper, proof of ownership papers, he then had a key made for the van and then he drove the van down to his sister's house in Brownsville, Texas. He does not know her address but her name is Victorianna S. Sylva. About two nights later Dalia came to Brownsvill and took the van back without telling him. Apolinar says that about 2½ months ago they got back together again. He says Dalia still continued to date other men. Apolinar did agree to take a polygraph examination at DPS. I then took him to DPS where he submitted to the polygraph exam given him by Eddie DeSha. After the completion of the examination, Mr DeSha advised that Sauceda had successfully passed the examination.

Case Pending:

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PORTING OFFICER		
Escobedo #388	386	

OFFENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Homicide	Dalia Sauceda

11-26-79

On 11-20-79 I recieved from the Medical Examiner's Office two plastic vials. One vial contained known head hair removed from the victim; the second vial contained known pubic hair from the victim.

On this date I submitted both both samples to DPS lab to be used for comparison with the findings possibly found on the jeans already submitted by Texas Ranger, Bobby Poynter.

I also submitted to DPS an "Old Hickory Brand" knife which is rusty in nature. The wooden handle is 4 3/4" and the blade is 8½" long. The knife has possible blood specks on it. It was requested that they determine if it is human blood and if a sufficent amount is present, to attempt to type it.

CASE PENDING:

388
69

REPORTING OFFICER	
Escobedo #388	386

FENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
)1120-021	Homicide	Dalia Sauceda

11-27-79

On this date, reporting officer interviewed Irma Ramirez of 440 W. Ave. G., Robstown, Texas, telephone #387-2673. I specifically wanted to ascertain from Mrs. Ramirez if she was aware of any other individuals who were possibly dating her cousin, Dalia Sauceda. Mrs. Ramirez then informed me that during a conversation with Dalia's stepmother, Virginia Guerrero, she had found out that Dalia had seen an old boyfriend of her's who she identified as Richard Ramon of Petronila. He and Dalia began dating when she was 14 years old and living on the farm with her natural father. On Sunday, 11-18-79, Dalia saw Richard at the Casino and later gave him a ride to Petronila. Afterwards, she returned home at 1806 Cliff Lane. Mrs. Ramirez states that to the best of her knowledge Dalia and Richard never had any disagreements. She says they had remained good friends throughout the past years.

Also while Mrs. Ramirez was in our office I showed her two separate photo lineups. The photos included were #94427, 93733, 95118, 78509, 94601, 151252, 86998, 150437, 53746, 76866, 79862, and #59201. After viewing the photo line-up, she advised me that she had seen the subject in photo #78509 before. She states further that she had seen him speaking to Dalia numerous times at the Casino. She also told me that Dalia had known this subject for at least two years that she personally know of, as she had observed them conversing with each other at the Casino. Mrs. Ramirez says though that Dalia never did introduced him to her. I informed Mrs. Ramirez then that the man she had identified as knowing Dalia was Pete Olivarez.

Case Pending:

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PORTING OFFICER	
fficer O. Escobedo #388	284

SE NO.	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
120-021	Homicide	Dalia Sauceda

-4-79

this date reporting officer took the following articles to the booking desk and gged them for evidence. These articles were taken from the victim's van on -20-79 by L.D. Officer Sara Cooks.

1) One brown sandal with varigated colored straps found outside of Dalia Sauceda's van, which was found at Mexico and Mussett - tag #28250.

2) "Old Hickory" brand knife, rusty, with 8'" blade and 4 3/4" wooden handle, tag #28252.

(3) A pair of men's boxer shorts, J. C. Penny brand, cotton material, size 34, red, white, blue plaid design, received from Sara Cooks on 11-29-79 in opened package. Shorts retrieved from van by Cooks on 11-20-79 - tag #28253.

(4) A plastic bag with numerous contents collected by Officer Cooks from victim's van contents are:

(a) 7-11 brand bean dip
(b) one brown paper sack
(c) empty Dorito bag
(d) Schlitz plastic cup
(e) three 8 track tapes
(f) one legal size envelope

All above articles tagged with - tag #28249.

(6) One brown patent leather purse; with broken strap--contents are miscellaneous paper contents; purse turned in by Apolinar Sauceda on Thanksgiving day 11-22-79. Purse belonged to victim, - tag #28251.

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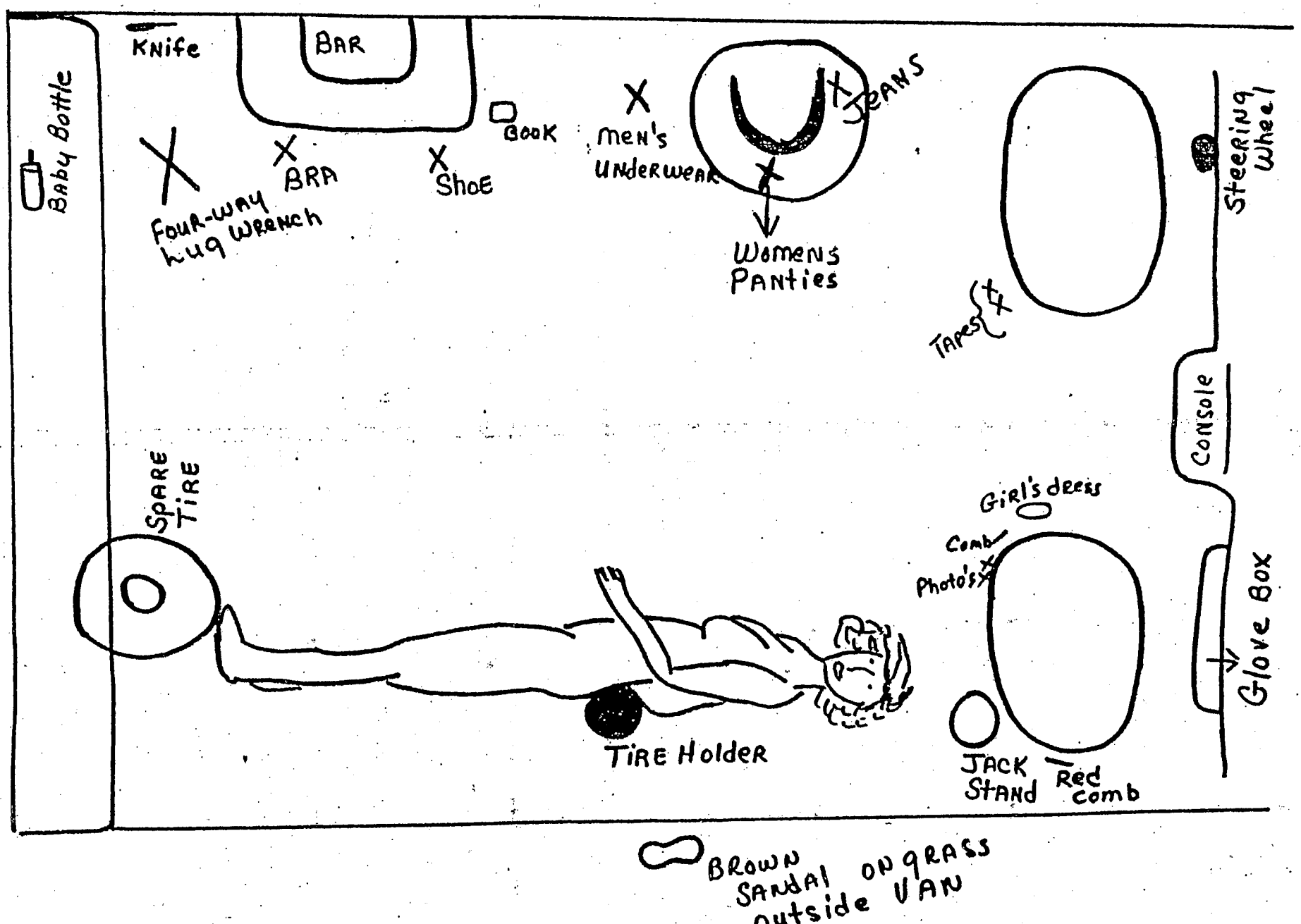
PORTING OFFICER	
Escobedo #388	386


Escobedo #388
Knife
BAR
Baby Bottle
BOOK
BRA
SHOE
FOUR-WAY
LUG WRENCH
MEN'S
UNDERWEAR
JEANS
WOMENS
PANTIES
TAPES
STEERING
WHEEL
CONSOLE
SPARE
TIRE
GIRL'S DRESS
COMB
PHOTO'S
GLOVE BOX
TIRE HOLDER
JACK
STAND
RED
COMB
BROWN
SANDAL ON GRASS
OUTSIDE VAN

E NO.	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
0-021	Homicide	Dalia Sauceda

9-79

this date reporting officer Sgt. S. L. Smith #158 and Officer Olivia Escobedo #388
t to the Department of Public Safety, polygraph examination office. We went to met
h Sgt. P. Rivera, and Officer Ray De La Garza who had brought in volumtarily a
pect by the name of Pete Olivarez. After DPS polygraph, operator Eddie De Shea
a first polygraph examination on Mr. Olivarez. De Shea stated that he felt that
e Olivarez was involved in the Homicide of Dalia Sauceda. But, he was going to
a second examination at which time he did and again came to the conclusion that
te Olivarez knew about the crime. At this time I interviewed Pete Olivarez at which
me I advised Pete we were going to talk about this incident that I needed to give
n what we normally come the Miranda Warning. You are accused of Murder. You may
main silent, and make not statement. Anything you say, and any statement you make, can,
d will be used against you in court. You may talk to a lawyer, and have him with you.
ior to and during any questioning. If you cannot afford to hire a lawyer, one will be
ppointed to advise you and be with you, prior to, and during any questioning. You may
rminate this interview at any time. Do you understand all the above rights? At which
ime Pete said, "yes". I then asked Pete do you want to give them up and make a statement
t which time Pete said "yes". At which time Pete told me that he was present when Dalia
auceda was killed and that Jesse Garza had killed her. And that he had threatened to
ill him, if he ever told anybody. At this time I stopped the interview and told Pete that
he was under arrest for Murder. And that we were going to go to the police station.
On arrival to the police station I then took Pete Olivarez, before Judge Joe J. Alsup and
had him read his Miranda warning. At which time I was present when Judge Alsup did this.
I then took Pete to CID interview room and told Pete that we needed to get his statement
written down and was he still willing to do this. Pete said he was at which time I got
a field work sheet and again read Pete Olivarez his warnings. At which time I told Pete
he was suspect of Murder. You have the right to remain silent and you do not have to
talk to any peace officer. You do not have to talk to any Peace Officers. Do you do not
have to make a statement and if you do the statement may be used against you in court at
your trial. You have the right to have a lawyer present to advise and to talk to you
before and during any questioning. If you are to poor to hire a lawyer you have the
right to have a lawyer pointed for you by the court. So that he can advise and talk to
you before and during any questioning by Peace Officers. You have the right to stop
talking to Peace Officers at anytime. I then asked Pete, "Do you understand these rights
I have read you," Pete said, "yes". At which time Pete initialed the yes block. "Do
you want to give these rights up and make a statement." At which time Pete said, "yes".
Put his initials in the yes box. I then had Pete sign his name and date which was
11-29-79 and the time was 1:22 p.m. I asked Pete, if he understood English. I asked
Pete if would like to have something to eat, yes he would. I asked him what he would
like to have. He said I would like to have a hamburger and potato chips and something
to drink. Pete was brought a hamburger, a bag of potato chips and a Pepsi. At this
time Pete then gave me a written statement concerning what happened on 11-19 and 11-20
of 79. And how the events lead to Dalia's Sauceda's death. Also that he witnessed
Jesse Garza kill Dalia Sauceda. It is noted that during the statement that was taken
from Pete Olivarez that there was some detail things that were never released to nobody
but the law enforcement personnel that were investigating this crime. After the statement
was taken, it be noted that during this statement being taken I had to stop for approximat
an hour and fifthteen minutes due to me having to be over at the 214th District Court,
Judge Norman Utters Court. I asked Pete enjoy his hamburger and soft drink and to think
things over and see if he would like to make a call to anybody or talk to anybody. At
which time left and proceeded to the 214th District Court.

(continuation)

388/69

EPORTING OFFICER	386
Sgt. Smith #158	

FFENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Homicide	Dalia Sauceda

11-30-79

On this date I got Pedro Olivarez out of the jail and brought him down to the CID office. At which I produced an old rusty kitchen knife. I asked Pete if he had ever seen this knife before. Pete stated that it looked like the knife that Jesse Garza used to make an "X" on the back of Dalia Sauceda when he killed her. At which time Pete Olivarez put his initials on the handle of this knife. At this time I was informed by Lt. Pace that he had talked to first Assistant Attorney, Grant Jones and that Mr. Jones felt that they were unable to file homicide charges on Pedro Olivarez. At which time I dropped charges on Pedro Olivarez and he was let go.

Case Pending:

Original Report: R. Boos #94

388
69

EPORTING OFFICER	
Sgt. Smith #158	386

FENSE NO.:	OFFENSE REPORTED:	COMPLAINANT/VICTIM'S NAME
91120-021	Homicide	Dalia Sauceda

(continuation, Page 2)

At this time the interview was terminated, Mr. Longoria was then brought before Olivia Escob who is also a notary public. At which time he read the volunatary statement, made a correct on his address and then stated that this was a true and correct statement to the best of his knowledge and signed it in front of the notary public.

Case Pending: Further investigation

Original report: Sgt. Riley Boos

388
69

EPORTING OFFICER	
Sgt. S. Smith #158	386

File No._____

COMPLAINT

THE STATE OF TEXAS

vs.

Jesse Garza also known as Jesus Garza

Filed 29th day of November A. D., 1979

Municipal Court, City of Corpus Christi, Texas

Justice of the Peace

Precinct No. , Nueces County, Texas.

Murder

VOLUNTARY STATEMENT

My name is Pedro Olivarez (name of accused). On 11/29/79 (date), at 6:45 PM (hour) Sgt. S. Smith read me my rights before I gave him this ment by telling me that:

"1) YOU ARE ACCUSED OF Murder.
2) YOU HAVE THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL AND ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU AT YOUR TRIAL.
3) ANY STATEMENT YOU MAKE MAY BE USED AS EVIDENCE AGAINST YOU IN COURT.
4) YOU HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE YOU BEFORE AND DURING ANY QUESTIONING.
5) IF YOU ARE UNABLE TO EMPLOY A LAWYER, YOU HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO ADVISE YOU BEFORE AND DURING ANY QUESTIONING.
6) YOU HAVE THE RIGHT TO STOP THIS INTERVIEW AT ANY TIME."

DO YOU UNDERSTAND YOUR RIGHTS? Yes P.O.

DO YOU WANT TO GIVE UP YOUR RIGHTS AND MAKE A STATEMENT? Yes P.O.

Pete Olivarez - 11-29-79 - 6:45PM

These rights were read to me before I made this statement. I understand my rights give them up before and during the making of this statement. No one has threatened forced me, or promised me anything to make me give up my rights and make this state- . This is my statement:

y name is Pedro Olivarez. I am 23 years old. I live at 1314 Whitaker. My phone umber is 991-1784. I am not working at this time. I am giving this statement to gt. Smith of my free will and Sgt. Smith has not threaten me or promised me anything o give this statement. On November the 18th, 1979 I went to the Casino Club on . Port Ave. While I was there I met a friend who I have known for two years. His ame is Jesse Garza who lives on Dunbar St., it was around 11:00 p.m. We danced till he club closed then we went outside and I asked Jesse if I could spend the night at is house. He said O K. While we were outside a girl who I have known for about wo years drove up in a dark brown and light brown van. Her name is Dalia Sauceda. nd Jesse went and talked to her. Then he came back and Dalia left. Jesse told me hat Dalia was coming back, but I told him not to count on it. But about thirty inutes later Dalia came back, and me, Jesse Garza, and Elias Garcia got into her an. Inside the van was some other people, a girl named Margie, a girl who I seen ut don't know her name, but a little fat, and a guy with a full mustache. We drove ut of town, to Kingsville and dropped this guy off. Then we came back to Corpus. hen we just cruised around town. We were smoking joints, we smoked three (3) joints. hen we went to a Seven Eleven Store and got ten dollars ($10) worth of gas. And I ot out of the van and Dalia gave me twenty dollars ($20) to get gas. And Jesse went ith me. Then we paid the lady and left, it was about 4:30 a.m. Then we went to ole Park on Ocean Drive. We got a flat tire on the back right tire. Me and Elias ot out and changed the tire. Then we went to the Ferry in Port Aransas and went cross, and then back to Corpus. We stopped at a Seven Eleven Store to get some olling paper. And I saw a friend, but don't remember his name, he gave us some olling paper. Then I layed down in the back of the van and went to sleep. Then woke up and we were all going to Margie's house. She lives on Staples St. near aldwin. We dropped Margie and her friend and we left and just cruised around till around 7:00 a.m., this was Monday morning the 19th of November 1979. We then went to Jesse's house and I asked Jesse for a shirt to wear. Jesse gave me a light brown shirt to wear. Then we got back into the van and left. We then went to an apartment in the downtown area and Dalia got out of the van and went to the door. Two guys came out and got into the van with us all. One's name was Tony and the other guy's name was Johnny. Dalia said we were going to Kingsville to look for Johnny's girl- friend.

(Continued)

Pedro Olivarez

Sgt. S. Smith #326
Witness

Witness

(OFFICER TAKING STATEMENT)

(SIGNATURE OF ACCUSED)

VOLUNTARY STATEMENT

My name is Pedro Olivarez (name of accused). On 11/29/78 (date) at 6:40 P.M. (hour).
:er Sgt. S. Smith read me my rights before I gave him this

:ement by telling me that:

"1) YOU ARE ACCUSED OF Murder.
2) YOU HAVE THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL AND ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU AT YOUR TRIAL.
3) ANY STATEMENT YOU MAKE MAY BE USED AS EVIDENCE AGAINST YOU IN COURT.
4) YOU HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE YOU BEFORE AND DURING ANY QUESTIONING.
5) IF YOU ARE UNABLE TO EMPLOY A LAWYER, YOU HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO ADVISE YOU BEFORE AND DURING ANY QUESTIONING.
6) YOU HAVE THE RIGHT TO STOP THIS INTERVIEW AT ANY TIME."

DO YOU UNDERSTAND YOUR RIGHTS? Yes PO.

DO YOU WANT TO GIVE UP YOUR RIGHTS AND MAKE A STATEMENT? Yes PO.

These rights were read to me before I made this statement. I understand my rights give them up before and during the making of this statement. No one has threatened forced me, or promised me anything to make me give up my rights and make this state-. This is my statement:

(Continuation page 2)

This was around 9:00 a.m., but first we stopped at some guy's house and Johnny went in and brought a lid of grass and then we left, going to Kingsville. On the way between Corpus and Driscoll, Texas, we had a flat and did not have a spare. So Jesse drove on the side of the road till we got to a gas station in Driscoll. Jesse had been driving all day. Dalia bought a tire that cost her around thrity nine dollars ($39). Then we went on to Kingsville to a house. Nobody was at home so we left. We then came back to Corpus, to Johnny's house and we were there for about ten minutes. Johnny came back and we left and went to a girl's house, I think they called her Abbey, Dalia said she wanted to take a bath. Dalia got out of the van and went into the house and then Johnny got out and went into the house. Later Dalia came back and we were all just talking in the van, when Jesse told Dalia he would like to go home and Dalia said O K. Dalia called Johnny who was still in the house and Johnny came out with a girl and they both got in the van. Dalia told Johnny to drive, so we just cruised around for awhile. Then we went to Jesse' house on Dunbar St., it was around 4:00 p.m. Myself, Jesse and Elias got out and then Jesse was standing by the van talking with Dalia. Then Dalia left and Jesse told me that Dalia was going to pick us up at 10:00 p.m. tonight. Jesse, myself, and Elias went into the house and we went to sleep. I got up around 6:00 p.m. and so did Elias. A guy by the name of Roger came to the house, he lives there with his brother Marty. Roger asked if we wanted something to drink and I said yes. We walked to the store and got some cokes and came back. Then Roger said he was going to his girlfriend's house and he left, this was around 7:15 p.m., Monday night. Then around 8:00 p.m. Elias said he was going home and he left. I was watching the football game and the phone rang, it was Roger and he asked me if the girl in the van had come back yet, I told him she hadn't come back yet. I had told Roger earlier about Dalia and that she was coming back arpund 10:00 p.m. tonight, and he wanted to go with us. I told Roger I don't care. Then he said he would see us about 10:00 p.m. and hung up. Then around 9:00 p.m. a guy named Marty who is Roger's brother and who Jesse lives with came home. Me and Marty were watching the football game.

(Continued)

Pedro Olivarez
Pedro Olivarez

Sgt. Paul Ramon #1306
Witness

Witness

(OFFICER TAKING STATEMENT)

Pedro Olivarez
(SIGNATURE OF ACCUSED)

VOLUNTARY STATEMENT

name is Pete Olivarez (name of accused). On 11/27/79 (date), at 6:40 Hrs. (hour), Sgt. S. Smith read me my rights before I gave him this

nt by telling me that:

.) YOU ARE ACCUSED OF Murder.
:) YOU HAVE THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL AND ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU AT YOUR TRIAL.
3) ANY STATEMENT YOU MAKE MAY BE USED AS EVIDENCE AGAINST YOU IN COURT.
4) YOU HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE YOU BEFORE AND DURING ANY QUESTIONING.
5) IF YOU ARE UNABLE TO EMPLOY A LAWYER, YOU HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO ADVISE YOU BEFORE AND DURING ANY QUESTIONING.
6) YOU HAVE THE RIGHT TO STOP THIS INTERVIEW AT ANY TIME."

DO YOU UNDERSTAND YOUR RIGHTS? Yes PO.

DO YOU WANT TO GIVE UP YOUR RIGHTS AND MAKE A STATEMENT? Yes PO.

hese rights were read to me before I made this statement. I understand my rights ve them up before and during the making of this statement. No one has threatened rced me, or promised me anything to make me give up my rights and make this state-
This is my statement:

(Continuation page 3)

While me and Marty were watching the game Dalia came in her van and I woke up Jesse. Jesse and me went outside to the van and I looked inside the van and saw two guys I asked her who the guys were and she said Johnny and Tony. Then I turned around and went back inside the house. Jesse stayed outside talking to Dalia for about 20 minutes. Then he came inside the house. Jesse told me that Dalia was coming back Tuesday morning for us. Then we finished watching the football game and Roger came back. Then we all went to the Circle K at Baldwin and Greenwood and got cokes and ice cream. On the way back a police car with two policemen in it stopped and checked us out. Then we got back to Jesse's house and ate ice cream and drank cokes. Roger went and layed down on the couch and I also layed down on the couch and Marty and Jesse were playing around like they were boxing. Marty went back to a bedroom, about 1:00 a.m., November 20, 1979. Shortly after that Dalia came back in her van and pulled up into the driveway. Dalia asked Jesse if he would like to go cruising around, Jesse said yes. I asked Jesse if I could go and Jesse said yes. We drove around for awhile around 1:30 a.m. we stopped at a Seven Eleven Store. Dalia and myself, went into the store. A lady was behind the counter. Dalia went over and got some cokes, bean dip, and Fritos. Then I told Dalia to hurry up. I went back to the van as Dalia was paying for the food and cokes. As I got close to the van Jesse was standing beside the van on the side of the store taking a pee. We all got back into the van and left. Jesse was driving, Dalia was sitting up front, and I was sitting in a chair behind the driver and Dalia's little baby girl was laying on the couch at the back of the van. Dalia's baby girl was with her when she picked us up at the house. We just drove around eating the bean dip, Fritos, and drinking the cokes. After we finished eating and drinking I asked Jesse, where we were going and he said not to worry about it. I went back to the couch near where the baby was asleep. Jesse then turned off some street onto a rough road and we parked. Jesse started kissing Dalia and trying to rub Dalia's tits.

(Continued)

Pete Olivarez

Sgt. Paul Lucio #306
Witness

Witness

(OFFICER TAKING STATEMENT) #158

Pete Olivarez
(SIGNATURE OF ACCUSED)

VOLUNTARY STATEMENT

My name is Pete Olivarez (name of accused). On 11-20-78 (date), at 4:40 p.m. (hour)
:er Sgt. S. Smith, read me my rights before I gave him this
:ement by telling me that:

"1) YOU ARE ACCUSED OF Murder.
2) YOU HAVE THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL AND ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU AT YOUR TRIAL.
3) ANY STATEMENT YOU MAKE MAY BE USED AS EVIDENCE AGAINST YOU IN COURT.
4) YOU HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE YOU BEFORE AND DURING ANY QUESTIONING.
5) IF YOU ARE UNABLE TO EMPLOY A LAWYER, YOU HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO ADVISE YOU BEFORE AND DURING ANY QUESTIONING.
6) YOU HAVE THE RIGHT TO STOP THIS INTERVIEW AT ANY TIME."

DO YOU UNDERSTAND YOUR RIGHTS? yes P.O.

DO YOU WANT TO GIVE UP YOUR RIGHTS AND MAKE A STATEMENT? yes P.O.

These rights were read to me before I made this statement. I understand my rights give them up before and during the making of this statement. No one has threatened forced me, or promised me anything to make me give up my rights and make this state-. This is my statement:
(Continuation page 4)

Dalia kept pushing his hands away. I got up and opened the side door of the van and got out. We were parked next to a fence and a lot of bushes. I then closed the door and was standing by the van when Jesse called me. I opened the side door, Jesse and Dalia were right in the middle of the van. Then Jesse told me lets rape her. I was still outside the van. Jesse told Dalia, "I am going to rape you and if you don't I'm going to beat the hell out of you".
Then Jesse started taking off her pants, but Dalia held her hand on the top of them. Jesse then hit her in the face knocking her down. Then Jesse pulled Dalia's pants off and panties. Her pants she had on were blue jeans. Then Jesse pulled down his pants and started fucking her. Dalia started screaming, and yelled, "Pete help me, his hitting me". Then Jesse went wild. He started hitting her all over, in the nose and all over her body. He just kept hitting her in the stomach till she stopped yelling. Then he got her blue jeans and wrapped the legs of the jeans around her neck and started choking her. I then turned around and left, because I didn't want to see what Jesse was doing to Dalia. I closed the van door. I waited about thrity minutes. While outside I saw the van rocking side to side as I opened the door I saw Jesse kneeling over Dalia. Dalia was laying on her back naked. Jesse then turned Dalia over and Dalia was laying face down. Jesse got an old rusty kitchen knife that was laying on the bar table in the van. Jesse then went back to where Dalia was lying and bent down and took the knife by the point and made a big "X" on her back. I told Jesse "lets go", Jesse said "Pete don't tell anybody I killed her, if you do I will come and shoot you". I looked at the baby and she was still asleep on the couch. Jesse got out of the van and I closed the door and left. We walked out from behind the van and across some railroad tracks up to the freeway and I started thumbing a ride on top of the freeway. About five to ten minutes passed when a white guy stopped. He was driving a white old Mustang and gave me and Jesse a ride to Jesse's house. Then we went to sleep. This statement I have just given Sgt. Smith is true and correct to best of my knowledge and Sgt. Smith did not promise me anything or threaten me to make this statement. And Sgt. Smith asked me if I would like a lawyer before I signed this statement and would I like to make a call to anybody and I told Sgt. Smith I did not want a lawyer or to make a phone call.

Pete Olivarez
Pete Olivarez

Sgt. Paul Rivera #306
Witness

Witness

2 P.C. Lock 158
(OFFICER TAKING STATEMENT)

Pete Olivarez
(SIGNATURE OF ACCUSED)

VOLUNTARY STATEMENT-Not Under Arrest
PS2 form 9
(Rev. 7-58)

POLICE DEPARTMENT
CITY OF CORPUS CHRISTI
COUNTY OF NUECES, TEXAS

Before me, the undersigned authority, on this the December 10, A.D.19 79

personally appeared Carlos Hernandez, address 217 Carrizo

age 25 years, phone number 883-4127

My Name is Carlos Hernandez, I'm 25 years old, My date of birth is 7-14-54. I live at 217 Carrizo Street and I work for Tennesse Pipeline Company. On a Monday, 11-19-79 sometime around 10:00PM, I had gone to the 7-11 Store at Staples & Mary to talk to the lady who works there and I wound up buying a six pack of Schlitz Beer. Coming out of the store I saw Dalia Sauceda in her van parked at the parking lot, she was holding her baby girl on her lap. Dalia asked me where I was going and I told her that I was going home. She gave me a ride home but before she took me home we went cruising for a little while. Dalia dro to Tancahua Street and parked at a driveway next to the Old Apache Bar on Tancahua Street We had already talked about having sex and Dalia took all her clothes off and I took all my clothes off too. We had sexual intercourse for about 15-20 minutes. After we finished she put her clothes on and I also put my clothes on except for my underwear which I left in Dalia's Van. Dalia was wearing a small type blouse and blue jeans. The shorts I left in the van were boxer type shorts and I don't remember what color or brand they were. After having intercourse Dalia took me home at 217 Carrizo Street. I finished drinking my six pack outside my house. Sometime around 11:40PM I walked to the 7-11 Store at Staples & Mary to buy another six pack of Schlitz Beer. Coming out of the store I saw Dalia again parked outside in her van. She was with her little baby girl. Dalia asked me "What are you doing here again? and I told her that I was buying some beer. Dalia offered me a ride to my house. I got in the van and she drove me straight to my house, This about 12:00Midn She left me at the my house. She didn't say where she was going. That is the last time I saw Dalia. This Statement is True and Correct and No One has Threatened or promised me anything in giving this statement. I'm giving this statement of my own free will to Sgt. Paul Rivera of the Corpus Christi Police Department. End.

Carlos Hernandez

Carlos Hernandez

Subscribed and sworn to before me on this the 10th day of December

A.D. 1979.

Paul Rivera C.C.P.D.

Notary Public, Nueces County, Texas

Rev. 7-58)

POLICE DEPARTMENT
CITY OF CORPUS CHRISTI
COUNTY OF NUECES, TEXAS

efore me, the undersigned authority, on this the 12th day of December A.D. 19 79

ersonally appeared Willie Odoms, address 2009 Blue Angel

ge 35 YOA, phone number 992-1466

My name is Willie Odoms and I live at 2009 Blue Angel. My telephone number is 992-1466. My DOB is 06-20-44. I am employed by the Corpus Christi Independent School District and I am a coach at King High School. I have known an ex-student by the name of Pete Olivarez for about three years. On either November 26th or 27th, 1979, I was in the office with another coach, Fernando Rodriguez. Pete Olivarez, who we also call "Humburger" came into the office and began talking to Fernando. I was only listening to what he was saying. He began talking about the girl in the van who had been killed. He said another guy whose name he never mentioned had been there, too. He said the girl had given him $20.00 and that then they went to some store and bought some things to eat. Pete said he gave her back the change for a $10.00 bill and that he kept $10.00 for himself. Afterwards they we to the Casino and then they went riding around somemore. He said that the guy and the girl then began kissing and that they then moved toward the middle of the van. Pete said the guy then tried to take off the girl's blouse off and Pete says that the girl kept saying for him not to do it. Pete says the guy then strangled her with the pants and that she was asking Pete to help her, but Pete says he didn't want to get involved. I do remember Pete saying he was there and he was trying to convince us of that but I didn't pay much attention to him since I had a class to attend to. I didn't see Pete again until the day we played Tuloso-Midway. This statement is true and correct to the best of my knowledge and given to Officer Escobedo of my own free will. End.

Willie Odoms

Willie Odoms

bscribed and sworn to before me on this the 12 Th day of December

D. 19 79.

PAUL RIVERA
Paul Rivera C.C.P.D.

Mag.Ct. No.:
BOND: By:

NO. 86CR1025-B

THE STATE OF TEXAS VS. CARLOS HERNANDEZ

CHARGE: MURDER

CCOURT: _____

* *

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The grand jury of Nueces County, Texas, duly organized as such at the February-July Term A.D., 1986, of the 105th Judicial District Court of Nueces County, in that Court at that term, do present that

CARLOS HERNANDEZ, defendant,

on or about the 20th day of November, 1979, in Nueces County, Texas, did then and there intentionally and knowingly cause the death of an individual, Dahlia ~~Hernandez~~ Sauceda, by asphyxiating Dahlia ~~Hernandez~~ Sauceda with his hands against the peace and dignity of the State.

FOREMAN OF THE GRAND JURY

FILED
JUL 23 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By _____ Deputy

Cause No. 86 CR 1025 B

THE STATE OF TEXAS

VS.

Carlos Hernandez

IN THE 117th District COURT

Nueces COUNTY, TEXAS

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the State of Texas by and through her Attorney, and respectfully requests the Court to dismiss the above entitled and numbered criminal action in which the defendant is charged with the offense of Murder, for the reason:

- ☐ The evidence is insufficient;
- ☐ The defendant was convicted in another case;
- ☐ The complaining witness has requested dismissal;
- ☒ xxx The case has been refiled;
- ☐ The defendant is unapprehended;
- ☐ The defendant is deceased;
- ☐ The defendant has been granted immunity in light of his testimony;
- ☐ Other;

and for cause would show the Court the following:

FILED
JUL 23 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Lupita Baca Deputy

WHEREFORE, it is prayed that the above entitled and numbered cause be dismissed.

Respectfully submitted

Bill May First Assistant District Attorney

ORDER

The foregoing motion having been presented to me on this the 23 day of July, A.D. 19 86, and the same having been considered, it is, therefore, ORDERED, ADJUDGED and DECREED that said above entitled and numbered cause be and the same is hereby dismissed.

Jack R Blackmon

Judge of the 117th District Court of Nueces County, Texas

Original - White; Defendant's Copy - Yellow; Sheriff's Copy - Pink

Decree from Nueces County D.C. clerk's office 7/26/04

NO. 86-CR-1032-B

STATE of TEXAS

V.

CARLOS HERNANDEZ

REINDICTMENT B COURT

Mag.Ct. No.:
BOND: 250000.00 By: JVB

NO. 86-CR-1032-B

THE STATE OF TEXAS VS. CARLOS HERNANDEZ

CHARGE: MURDER

COURT: 117TH

* *

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The grand jury of Nueces County, Texas, duly organized as such at the February-July Term A.D., 1986, of the 105th Judicial District Court of Nueces County, in that Court at that term, do present that

CARLOS HERNANDEZ, defendant,

on or about the 20th day of November, 1979, in Nueces County, Texas, did then and there intentionally and knowingly cause the death of an individual, Dahlia Sauceda, by inflicting trauma to her neck, chest and abdomen with his hands.

AND THE GRAND JURY further presents that the Defendant, Carlos Hernandez, has previously been convicted of one felony, namely Robbery by Firearms, on September 28, 1972, in cause number 14986, styled The State of Texas vs. Carlos Hernandez, in the 105th District Court of Nueces County, Texas

against the peace and dignity of the State.

Manuel Ayon Jr.
FOREMAN OF THE GRAND JURY

FILED
JUL 15 4 38 PM '86
OSCAR SOLIZ, CLERK
CRIMINAL DISTRICT COURTS,
NUECES COUNTY, TEXAS
By Diane Canton DEPUTY

THE STATE OF TEXAS

TO ANY PEACE OFFICER OF THE STATE OF TEXAS, GREETING:

You are hereby commanded to arrest Carlos Hernandez

and safely keep, so that you have him before the Honorable 117th District Court of Nueces County, Texas, at the Court House of said County, in Corpus Christi, Texas, on the instanter, then and there to answer the State of Texas upon a charge of indictment pending in said Court, wherein said defendant is charged with the offense of Murder

Herein Fail Not, but of this writ make due return on the instanter, showing how you have executed the same.

Witness my signature and official seal in Corpus Christi, Texas, this July 23, 1986

OSCAR SOLIZ
Clerk District Court, Nueces County.
By Gracie Cantu, Deputy

NO. 86 CR 1032 B

THE STATE OF TEXAS

VS.

CARLOS HERNANDEZ

117th District Court
Nueces County, Texas

STATE'S ANNOUNCEMENT OF READY

Now comes the State of Texas and announces ready for trial in this cause under Article 32A.02, Texas Code Of Criminal Procedure on this the 28th day of July, 1986.

Francis X. McIlvaine
Assistant District Attorney
Attorney For The State

FILED
JUL 29 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Augusta Garcia Deputy

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Pedro P. Garcia and the Defendant, Carlos Hernandez, and hereby requests that the Court continue the case which is set to be tried on September 15, 1986, and as ground thereof would show unto the Court as follows, to-wit:

I.

The said Defendant has been charged with a crime that occurred allegedly on November 20, 1979. The said Pedro P. Garcia was appointed to represent him on August 21, 1986. There is much discovery to be done in this case and the said Pedro P. Garcia does not have the time to do all of that work before that date.

II.

At this time, the said Pedro P. Garcia has filed a Motion For the appointment of an Investigator and for a Transcript of certain other proceedings, both of which will take time to be done.

III.

This Motion is being filed not for the purpose of delay but so that justice can be done.

IV.

For the reasons stated above, Carlos Hernandez and his attorney, Pedro P. Garcia, hereby request that the case be continued until a later trial date.

FILED
SEP - 5 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Leonila Garcia Deputy

Respectfully submitted,

Carlos Hernandez
CARLOS HERNANDEZ, Defendant

PEDRO P. GARCIA, Attorney For Defendant
4466 South Staples
Corpus Christi, Texas 78411
(512) 992-8061
SBN: 07641000

CERTIFICATE OF SERVICE

On this 5th day of September, 1986, was personally delivered to the Nueces County District Attorney's Office a copy of the above Motion.

PEDRO P. GARCIA

ORDER

On this 5 day of September, 1986, was presented to the Court the Motion For Continuance filed by the said Carlos Hernandez and his attorney, Pedro P. Garcia.

The Court, after having read the same, and having heard testimony pertaining to the same, is of the opinion that it should be granted.

The above captioned case is hereby continued on the trial docket from September 15, 1986 until a later date.

Order SIGNED this 5 day of September, 1986.

Judge Presiding

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

MOTION FOR TRANSCRIPT OF PRIOR TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Carlos Hernandez and his attorney Pedro P. Garcia, and hereby requests that the Court order a transcript of the prior proceedings and as grounds thereof would show unto the Court as follows, to-wit:

I.

At this time, the said Defendant, Carlos Hernandez has been charged with the murder of Dalia Sauceda. However, from the review of the record, it appears that a second and a possible third person, Jesse Garza and Pedro Olivarez, have already been charged and/or tried with this same offense. Defendant does not know the actual outcome of those proceedings.

II.

In order to better prepare his defense, the said Carlos Hernandez will hereby request that a complete transcript of all those proceedings against the above named persons, as well as any other persons previously charged with the murder of Dalia Sauceda, be delivered to him.

FILED
SEP - 5 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Deputy

Respectfully submitted,

PEDRO P. GARCIA, Attorney
For Carlos Hernandez
4466 South Staples
Corpus Christi, Texas 78411
(512) 992-8061
SBN: 07641000

CERTIFICATE OF SERVICE

On this 5th day of September, 1986, was personally delivered to the Nueces County District Attorney's Office a copy of the above Motion.

PEDRO P. GARCIA

O R D E R

On this 5 day of September, 1986, was presented to the Court the Motion For Transcript Of Prior Trial.

The Court, after having read the same and having heard evidence pertaining to the same, is of the opinion that it should be GRANTED.

IT IS HEREBY ORDERED that a complete transcript of Cause No. 79R881C State of Texas vs. Jesse Garza, be delivered

Order SIGNED this 5 day of September, 1986.

JUDGE PRESIDING

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

MOTION FOR REDUCTION OF BOND

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the above named Defendant by and through his attorney of record Pedro P. Garcia, and moves the Court to reduce the bond and as grounds thereof would show unto the Court as follows, to-wit:

I.

Defendant is presently under a $25,000.00 bond. He does not have any means to pay a bond that high and hereby requests a hearing to determine the reduction of said bond.

Respectfully submitted,

PEDRO P. GARCIA, Attorney
For Defendant, Carlos Hernandez
4466 South Staples
Corpus Christi, Texas 78411
(512) 992-8061
SBN: 07641000

CERTIFICATE OF SERVICE

On this 14th day of November, 1986, a copy of this Motion For Reduction of Bond was personally delivered to the Nueces County District Attorney's Office.

PEDRO P. GARCIA

FILED
NOV 14 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Deputy

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

MOTION FOR PRODUCTION OF RECORDS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the above named Defendant by and through his attorney of record, Pedro P. Garcia, and hereby files his Motion, to-wit:

I.

Defendant hereby requests that the Nueces County District Attorney's Office deliver to said Defendant any and all documents presently in their possession, which can assist in the defense of his case. Defendant further requests that the District Attorney's Office made known to him any evidence not reduced to writing which will help to exeronate said Defendant from the charges pending against him.

Respectfully submitted,

PEDRO P. GARCIA, Attorney For
Defendant, Carlos Hernandez
4466 South Staples
Corpus Christi, Texas 78411
(512) 992-8061
SBN: 07641000

CERTIFICATE OF SERVICE

On this 14th day of November, 1986, a copy of this Motion For Production of Records was personally delivered to the Nueces District Attorney's Office.

PEDRO P. GARCIA

FILED
NOV 14 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Angela Garcia Deputy

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

MOTION TO WITHDRAW

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Pedro P. Garcia, the Court appointed attorney in the above captioned case, and hereby request the Court to allow him to withdraw as counsel in this case and as grounds thereof would show unto the Court as follows, to-wit:

I.

The said Defendant, Carlos Hernandez, has requested that the said Pedro P. Garcia withdraw from the case and that another attorney be appointed to represent him.

WHEREFORE, PREMISES CONSIDERED, the said Pedro P. Garcia hereby requests that he be allowed to withdraw from this case.

Respectfully submitted,

PEDRO P. GARCIA, Attorney For
Carlos Hernandez
4466 South Staples
Corpus Christi, Texas 78411
(512) 992-8061
SBN: 07641000

I, Carlos Hernandez, have read the above Motion To Withdraw filed by the said Pedro P. Garcia and hereby ask the Court to allow him to withdraw from said case.

CARLOS HERNANDEZ

CERTIFICATE OF SERVICE

On this 14th day of November, 1986, a copy of this Motion to Withdraw was personally delivered to the Nueces District Attorney's Office.

PEDRO P. GARCIA

FILED
NOV 14 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Leopoldo Pacheco Deputy

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

ORDER ALLOWING ATTORNEY TO WITHDRAW FROM CASE

On this _____ day of _____, 1986, was presented to the Court the Motion To Withdraw filed by the said Pedro P. Garcia.

The Court, after having read the same, is of the opinion that it should be granted.

The said Pedro P. Garcia is hereby permitted to withdraw from this case.

Order SIGNED this _____ day of _____, 1986.

_____
JUDGE PRESIDING

On 11/13/86 the Court terminated Mr. Garcia's appointment, and appointed Jon Kelley to defend Def. Jon Kelley

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

MOTION FOR MENTAL EXAMINATION OF DEFENDANT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the above-named Defendant by and through his attorney of record, Pedro P. Garcia, and moves the Court to appoint a disinterested expert experienced and qualified in mental health and mental retardation to examine the Defendant herein with regard to his sanity at the time of the offense alleged in the indictment and with regard to his competency to stand trial. This motion is made pursuant to Article 46.02, Section 3 and Article 46.03, Section 3, Texas Code of Criminal Procedure.

At this time, your said Defendant has specifically advised the said Pedro P. Garcia that he is not guilty of the alleged offense. However, the said Pedro P. Garcia has found it difficult to communicate with the said Defendant and for this reason would still ask that the Defendant's competancy be examined as of the time of the alleged offense. Further, the said Defendant would show the Court that he does not have sufficient present ability to consul with the lawyer with a reasonable degree of rational understanding, and that he lacks a rational as well as factual understanding of the proceedings against him.

Defendant hereby files notice of his intention to offer evidence of the insanity defense, pursuant to Article 46.03, Section 2, Texas Code of Criminal Procedure.

WHEREFORE, PREMISES CONSIDERED, Defendant requests the Court to appoint a disinterested expert to examine the Defendant in regard to his sanity and to hi competency to stand trial.

FILED
SEP - 5 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Lupita Duero Deputy

Respectfully submitted,

PEDRO P. GARCIA, Attorney For Defendant
4466 South Staples
Corpus Christi, Texas 78411
(512) 992-8061
SBN: 07641000

CERTIFICATE OF SERVICE

On this 5th day of September, 1986, was personally delivered to the Nueces County District Attorney's Office a copy of the above Motion.

PEDRO P. GARCIA

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

O R D E R

The Court, having considered the foregoing Motion For Mental Examination Of Defendant, is of the opinion that it should be in all things GRANTED or DENIED.

IT IS THEREFORE ORDERED that _____ be appointed to examine the Defendant to determine whether or not he is competent to stand trial.

IT IS FURTHER ORDERED that Defendant deliver himself (or if in custody, that Defendant be delivered by the Sheriff of Nueces County) to the offices of _____ _____, for purposes of such examination.

_____
JUDGE PRESIDING

Court waives hearing.

NO. 86-CR-1052-D

The State of Texas . In the District Court
vs. . 117th Judicial District
Carlos Hernandez . Nueces County, Texas

FILED
NOV 17 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Deputy

MOTION NO. 1

Defendants Motion For change of Counsel

To The Honorabe Judge of Said Court:

Now Comes the Defendant's motion For change of Counsel for the said reasons;

I

The Defendant has been in costudy of the State of Texas in the Nueces County Jail since July 25, 1986. The Defendant's appointed Attorney has seen the Defendant three times since July 25, 1986. The Defendant feels that he has not discussed the Defendants charge properly with the Attorney.

II

Also, the Defendant has asked the said Attorney to file the proper motions, such as a hearing for a bond reduction several times.

III

Also the Defendant asked his Attorney to file a motion for the Defendants Right to have a private Inuestagater appointed to his case by the Courts. The Defendant has not the funds for a P.I. and feels he needs a P.I. appointed in his case.

IV

The Defendant has also asked his Attorney to file the motion for Discovery. and exsetra.

V

The Defendant respectfully prays the Court will appoint a proper Counsel whom is really able to properly discuss and who is willing to sit and talk over the Defendant case and rights to file the proper motions.

VI

The Defendant prays the court to dismiss Attorney, Pete Garcia, and be granted proper Counsel.

I, Carlos Hernandez, swears that the above information is in fact true to the best of my knoledge.

Respectfully submitted,
Carlos Hernandez
Carlos Hernandez

PUBLIC NOTARY
Hesiquio Rodriguez
Notary Public in the State of Texas
Comm Exp 7-11-89

NO. 86-CR-1032-B

The State of Texas	.	In the District Court
vs.	.	117th Judicial District
Carlos Hernandez	.	Nueces County, Texas

ORDER

The Defendant Motion for proper Councel, having been heard by this Court, the same is hereby GRANTED/ DENIED.

SIGNED this _____ day of _____, 1986.

_____
JUDGE PRESIDING

ORDER

The foregoing Defendant's Motion for proper Counsoling having been presented to the Court;

It is, therefore, ORDERED that the motion be set for a hearing on the _____ day of _____, 1986 at _____ o'Clock _____ m.

Signed this _____ day of _____, 1986.

_____
JUDGE PRESIDING

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
	X	
VS.	X	117TH JUDICIAL DISTRICT
	X	
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

ORDER APPOINTING AN ATTORNEY

On this day it appearing to the Court that the Defendant, Carlos Hernandez, having previously requested and having an attorney appointed to represent him, to-wit: Pedro P. Garcia; that the Court is of opinion that another attorney should be appointed to represent said attorney;

It is, therefore, ORDERED, ADJUDGED and DECREED that PEDRO P. GARCIA be relieved of the appointment to represent Carlos Hernandez.

It also appearing to the Court that the Defendant, Carlos Hernandez, is charged with the offense of Murder, is not being represented by an attorney, is without funds or the means to employ an attorney, and that an attorney should be appointed to represent him:

It is, accordingly, ORDERED that JON J. KELLY, a practicing attorney of this Court, is appointed to represent the said Defendant in this cause.

SIGNED this 13th day of November, 1986.

Judge Presiding

ccs: District Clerk
Booking Desk
Mr. Jon J. Kelly
Mr. Pedro P. Garcia
Mr. Carlos Hernandez, Jail
District Attorney

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

MOTION FOR AN APPOINTMENT OF AN INVESTIGATOR

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Pedro P. Garcia, attorney for Defendant in the above styled and numbered cause, and hereby request that an investigator be appointed to assist him in the preparation of this case and as grounds thereof would show unto the Court as follows, to-wit:

I.

The said Pedro P. Garcia was appointed to represent Carlos Hernandez on August 21, 1986. The case is set for trial on September 15, 1986.

II.

This case arising out of an alleged murder that occurred on November 20, 1979. Another person has already been tried on this particular case and your said Defendant does not know the actual outcome on that case except that the person charged was not convicted.

III.

In reviewing the actual offense report, there are several witnesses that will have to be tracked down and several court records that will have to be reviewed. Much time is going to be consumed outside the actual trial of this case.

IV.

After this investigation is completed, the said Pedro P. Garcia plans to file certain motion and will request leave of Court to file those motions at a later date.

WHEREFORE, PREMISES CONSIDERED, the said Pedro P. Garcia hereby requests the Court appoint an investigator to assist him in investigation and preparation of this case.

Respectfully submitted,

PEDRO P. GARCIA, Attorney For Defendant
4466 South Staples
Corpus Christi, Texas 78411
(512) 992-8061
SBN: 07641000

FILED
SEP - 5 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Brenda Garcia Deputy

CERTIFICATE OF SERVICE

On this 5th day of September, 1986, was personally delivered to the Nueces County District Attorney's Office a copy of the above Motion.

PEDRO P. GARCIA

ORDER

The Motion For Appointment of Investigator having been presented to the Court on this 23 day of October, 1986, the Court did proceed to consider the same and did proceed to hear testimony and arguments on this matter.

The Court is of the opinion that an investigator should be appointed to assist the said Pedro P. Garcia in the investigation and preparation of this case.

It is hereby ORDERED that Horacio Ortiz be appointed as an investigator to assist the said Pedro P. Garcia in the investigation and preparation of this case, and the investigator shall be paid a reasonable fee and reimbursed for reasonable and necessary expenses in an amount not to exceed $500 for both the fee and the expenses.

SIGNED this 23 day of October, 1986.

JUDGE PRESIDING

JRS

NO. 86-CR-1032-B

THE STATE OF TEXAS	)(	THE DISTRICT COURT
VS.	)(	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	)(	NUECES COUNTY, TEXAS

FILED
DEC 2 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Janie Ayala Deputy

MOTION FOR REDUCTION OF BOND

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Carlos Hernandez, Defendant in the above styled and numbered cause and would file this Motion for Bond Reduction, requesting this Honorable Court to reduce his bail bond, for the following reasons:

I.

Movant would show that he has been in the Nueces County jail since the date of his arrest, July 26, 1986.

Movant would further show the Court that this Court set his bond at $25,000.00, said bond being set by this Court as a result of his indictment in the above referenced cause. Movant was unaware of his indictment and the police experienced no difficulty in locating the Defendant and he did not secret himself from said law enforcement officials.

II.

Movant would further show the Court that the amount of the bond totaling $25,000.00 for the first degree offense of murder is excessive and fails to take note of the following facts:

1. Movant has been incarcerated for the last 4 1/2 months and despite efforts on the part of Movant and his mother, he has been unable to raise sufficient money to make a commercial bond.

2. Movant has insufficient funds to make said bond and in March of this year suffered a serious brain injury which forced his unemployment.

3. The offense of which the Defendant is presently charged, occurred seven years ago and in 1980 the Defendant testified for the State as a witness in the cause styled The State of Texas vs. Jesse Garza. Defendant cooperated with the law enforcement agencies at that time and at all times subsequent to November 20, 1979 until his arrest for the alleged murder of which he stands charged herein.

III.

Movant would show that this request is not for delay or to prolong this matter but to insure that justice be done.

WHEREFORE, PREMISES CONSIDERED, Movant prays that this matter be set down for a hearing at the Court's earliest convenience and that said motion be granted and the Defendant's bond be reduced to $5,000.00.

Respectfully submitted,

JON J. KELLY, BAR NO. 07629000
ATTORNEY AT LAW
1521 SO. PORT
CORPUS CHRISTI, TEXAS 78405
(512) 882-3396

CERTIFICATE OF SERVICE

This is to certify that on this the 2nd day of December, 1986, a true and correct copy of the foregoing Motion for Reduction of Bond was hand delivered to the Nueces County District Attorney's Office, 901 Leopard, Corpus Christi, Texas 78401.

JON J. KELLY

O R D E R

On this the 2 day of December, 1986, the Court after reviewing the foregoing Motion for Reduction of Bond finds that a hearing is necessitated and it is hereby ORDERED that a hearing be set for the 4 day of December, 1986 at 2:00 o'clock p.m.

JUDGE PRESIDING

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

FILED
DEC 2 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Jane Cigala Deputy

MOTION FOR DISCOVERY

TO THE HONORABLE JUDGE OF SAID COURT:

The Defendant in the above styled and numbered cause by and through his attorney of record, Jon J. Kelly, under the authority of Article 39.14 of the Texas Code of Criminal Procedure (1965), Article I, Section 10, of the Constitution of the State of Texas, and the Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States of America, makes this Motion for Discovery and Moves the Court to order the State by and through his Prosecuting Attorney to produce the items designated below and permit the Defendant to inspect, copy, photograph and/or conduct chemical or analytical tests on such items.

I.

In support of this Motion to Discovery, the Defendant would show:

(a) The items requested are in the possession, custody or control of the State of Texas by and through its agents, the police or the District Attorney's office.

(b) The items requested are not privileged and are within the proper scope of Article 39.14, T.C.C.P., 1965.

II.

The Defendant specifically requests the following items to be produced:

(a) Any statement made by the Defendant to the police, District Attorney or any of his employees, any law enforcement official or any private citizen within the knowledge of the police or the District Attorney or any of his employees, whether under arrest or not, or whether written or oral, which might in any manner be material to the guilt or innocence of this Defendant.

(b) Any photographs, drawings or charts made by the police, the District Attorney's office, or anyone else which were made with reference of this Defendant.

(c) The results of any scientific test made by a State agency or a contract agency at the request of the police or the District Attorney's Office, the result of which would in any manner be material to the guilt or innocence of this Defendant. The Defendant would further show that he has no means of ascertaining the existence of this evidence and the possibility of expert opinion testimony without the disclosures herein sought.

(d) Any papers, objects or real evidence that is in the possession of the police or District Attorney's office which may in any way be material to the guilt or innocence of this Defendant.

(e) Any criminal records of any of the witnesses the State plans to call (In conjunction with this request, see specifically Defendant's Motion to List Witnesses.) .

(f) The criminal records of any co-defendant charged in the indictment the present cause is based on in separate indictments charging the same or a related offense.

(g) The criminal records of the Defendant.

WHEREFORE, PREMISES CONSIDERED, Defendant prays the Honorable Court to order the State of Texas by and through her prosecuting attorney to produce and permit the inspection of the copying and/or photographing and/or the testing of, by and on behalf of the Defendant, all those items set forth in the foregoing Motion, at a time and place and in such manner as seems right and proper to this Court, and he prays for such other and further orders to which this Court may find him entitled.

Respectfully submitted,

JON J. KELLY, BAR NO. 11223500
ATTORNEY AT LAW
1521 SO. PORT
CORPUS CHRISTI, TEXAS 78405
(512) 882-3396

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

O R D E R

On the 4th day of December, 1986, came on to be heard Defendant's Motion for Discovery and Inspection of Evidence and the Court having heard and considered the same; makes the following findings:

1. That the offense of which the Defendant herein stands charged, is alleged to have been committed on November 20, 1979.

2. That on January 31, 1980, in Cause No. 79-CR-881-C, in the 94th District Court, a Jesse Garza was tried for the same offense that the Defendant herein stands charged with committing.

3. That the result of Cause No. 79-CR-881-C, styled the State of Texas vs. Jesse Garza, resulted in a finding of not guilty by the trial jury in said cause.

4. That during the trial of 79-CR-881-C, the State of Texas vs. Jesse Garza, there were introduced into evidence over 62 separate exhibits, said items of evidence having never been withdrawn, either by the State or the Defendant, said items remaining in the control of the Nueces County District Clerk's Office.

5. That the State of Texas, has in its possession a tape recording of a telephone conversation between the Defendant herein and his mother, said recording made while the Defendant was in custody, in December, 1979.

6. That the State of Texas has in its possession, a transcript of an interview between then Asst. District Attorney Kenneth Botary and Defendant Carlos Hernandez.

7. That in the trial of Cause No. 79-CR-881-C, styled The State of Texas vs. Jesse Garza, over 35 witnesses testified that almost seven years have elapsed since the trial of that cause and it would place an impossible burden on the Defendant to locate many of the witnesses who testified in that trial without assistance from the State.

It is the ORDER of the Court that the following offices of the State of Texas take the following affirmative acts pursuant to the above findings of this Court:

1. That the Nueces County District Clerk's office, locate the evidence file of Cause No. 79-CR-881-C, styled The State of Texas vs. Jesse Garza. Upon locating the aforesaid evidence file, the District Clerk's office is to contact the Nueces County District Attorney's Office and Defendant's attorney herein, and set a date for the inspection and copying by the Defendant and/or the District Attorney's office of all items retained in evidence by the District Clerk's Office in Cause No. 79-CR-881-C.

2. The Nueces County District Attorney's Office is to provide Defendant Carlos Hernandez by and through his attorney of record, with the tape recording of the conversation between Defendant Carlos Hernandez and his mother made by the Corpus Christi Police Department during the period of Defendant Carlos Hernandez' interrogation in the month of December, 1979.

3. The District Attorney's Office is to provide Defendant Carlos Hernandez with a transcript of the conversation and interview between Asst. District Attorney Kenneth Botary and Defendant Carlos Hernandez, made on or about January 4, 1980.

4. The Nueces County District Attorney's Office by and through the assisting law enforcement agencies is to assist the Defendant Carlos Hernandez and Defendant's attorney, in locating all witnesses who testified in Cause No. 79-CR-881-C styled the State of Texas vs. Jesse Garza. Assistance by the District Attorney's Office would be by means of providing Defendant's attorney with a "current" address for each of the aforesaid witnesses.

5. The Nueces County District Attorney's Office is to provide Defendant's attorney with the criminal records of all possible State's witnesses.

It is further ORDERED that a compliance hearing for discovery is hereby set for the 18 day of December, 1986, at 9:00 o'clock a.m., in the 117th District Court, Nueces County Courthouse, Corpus Christi, Texas.

SIGNED this 9 day of December, 1986.

Jack R. Blackburn

JUDGE PRESIDING

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

MOTION FOR SPEEDY TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Carlos Hernandez, Defendant in the above entitled and numbered cause, by and through his attorney of record and files this his motion for speedy trial and would show the Court the following:

I.

Movant would show that on the 15th day of July, 1986, the Defendant, Carlos Hernandez was indicted for the offense of murder, alleged to have been committed on or about the 20th day of November, 1979.

II.

Movant and Defendant Carlos Hernandez would further show the Court that Defendant was arrested on the 24th day of July, 1986, and confined in the County Jail of Nueces County, Texas, to await trial on said charge.

III.

Movant, Carlos Hernandez would further show the Court that from July 24, 1986, until December 4, 1986, the Defendant had been confined in the Nueces County Jail for a period of 131 days, awaiting trial with his bond set at the excessive amount of $25,000.00.

Movant would further show the Court that on December 4, 1986, Defendant upon proper motion filed with the Court, after a hearing by this Honorable Court, had his bond reduced from $25,000.00 to $5,000.00, yet Defendant is still unable to make said bond and remains confined in the Nueces County Jail.

FILED
DEC 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Irene Ayala Deputy

IV.

Defendant and Movant Carlos Hernandez, would request that this Court set this case down for a jury trial, at the earliest jury trial setting available.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this case be set for a speedy trial at the earliest possible date on the Court's jury docket and that if the State is unable to go forward on said trial date, that the indictment be dismissed against the Defendant and that the Defendant be released from confinement.

Respectfully submitted,

JON J. KELLY, BAR NO. 11223500
ATTORNEY AT LAW
1521 SO. PORT
CORPUS CHRISTI, TEXAS 78405
(512) 882-3396

CERTIFICATE OF SERVICE

This is to certify that on this the 8 day of December, 1986, a true and correct copy of the foregoing Motion for Speedy Trial was this date hand delivered to the Distirct Attorney's Office, Nueces County Courthouse, Corpus Christi, Texas.

JON J. KELLY

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

O R D E R

On this 9 day of December, 1986, came on to be heard Defendant's Motion for Speedy Trial and the aforesaid Motion is hereby GRANTED and the above styled and numbered cause is set for jury trial on the 12 day of January, 1987. ~~(DENIED, to which action of the Court the Defendant then and there excepts).~~

JUDGE PRESIDING

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

FILED
DEC 9 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Janie Ayala Deputy

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant Carlos Hernandez, in the above styled and numbered cause and moves the Court to have the prosecution of this case dismissed on the following ground:

1. That on the 4th day of December, 1986, Defendants Motion for Discovery and Inspection of Evidence was heard by this Honorable Court and the Court pursuant to that hearing of December 4, 1986 Ordered on December 9, 1986 the following:

   (a) That the Nueces County District Clerk's office, locate the evidence file of Cause No. 79-CR-881-C, styled The State of Texas vs. Jesse Garza. Upon locating the aforesaid evidence file, the District Clerk's office is to contact the Nueces County District Attorney's Office and Defendant's attorney herein, and set a date for the inspection and copying by the Defendant and/or the District Attorney's office of all items retained in evidence by the District Clerk's Office in Cause No. 79-CR-881-C.

   (b) The Nueces County District Attorney's Office is to provide Defendant Carlos Hernandez by and through his attorney of record, with the tape recording of the conversation between Defendant Carlos Hernandez and his mother made by the Corpus Christi Police Department during the period of Defendant Carlos Hernandez' interrogation in the month of December, 1979.

   (c) The District Attorney's Office is to provide Defendant Carlos Hernandez with a transcript of the conversation and interview between Asst. District Attorney Kenneth Botary and Defendant Carlos Hernandez, made on or about January 4, 1980.

   (d) The Nueces County District Attorney's Office by and through the assisting law enforcement agencies is to assist the Defendant Carlos Hernandez and Defendant's attorney, in locating all witnesses who testified in Cause No. 79-CR-881-C styled the State of Texas vs. Jesse Garza. Assistance by the District Attorney's Office would be by means of providing Defendant's attorney with a "current" address for each of the aforesaid witnesses.

   (e) The Nueces County District Attorney's Office is to provide Defendant's attorney with the criminal records of all possible State's witnesses.

The Court on December 9, 1986 further Ordered that a Compliance Hearing for Discovery was to be held on December 18, 1986.

I.

Defendant, Carlos Hernandez would show the Court that at the compliance hearing of December 18, 1986, the evidence of compliance was as follows:

1. That the District Clerk's Office, located the evidence filed of Cause No. 79-CR-881-C, styled The State of Texas vs. Jesse Garza. That the District Clerk's Office was contacted by Defendant's attorney, Jon J. Kelly and promptly located said evidence file.

2. That the Nueces County District Attorney's Office made no attempt as of December 18, 1986 to take the following acts as Ordered by the Court:

   (a) No effort was made to ascertain or discover whether there still existed a tape recording of the conversation between Carlos Hernandez and his mother made at the Corpus Christi Police Department during Defendant Hernandez' interrogation in December, 1979.

   (b) That the District Attorney's Office failed to make any attempt to locate a transcript of the conversation and interview between assistant District Attorney Kenneth Botary and Carlos Hernandez made in January of 1980.

   (c) That the District Attorney's Office although duly notified of this Court's Order to assist in locating all witnesses who testified in Cause No. 79-CR-881-C, by providing Defendant's attorney with a "current" address for said witnesses, failed to contact any law enforcement agency as Ordered by the Court.

   (d) Nueces County District Attorney's Office failed to provide Defendants attorney with criminal records of all possible State's witnesses.

II.

Defendant would show that he has been incarcerated since late July, 1986, well over 120 days. That the State was fully aware at the time of the Defendant's indictment that at least three witnesses would be necessary because of prior testimony that they had given in Cause No. 79-CR-881-C.

Defendant would further show that the State in failing to provide or even attempt to locate various items of physical evidence including but not limited to the alleged knife to have been taken from Carlos Hernandez in December of 1979, the tape recording of Carlos

Hernandez' tape recorded conversation with his mother and the transcript of the office conference between Mr. Botary and Carlos Hernandez, wilfully ignored this Court's Order.

III.

Defendant Carlos Hernandez would show that because it can reasonably be presumed that the State was aware of the exculpatory nature of the testimony of at least three witnesses in Cause No. 79-CR-881-C concerning Carlos Hernandez, the State was not ready for trial at any date subsequent to July 15, 1986, the date of Defendant's indictment.

IV.

Defendant would show that the failure of the State to make any attempts to comply with this Honorable Court's Order of December 9, 1986 has so prejudiced the Defendant's case as to deny Defendant of his constitutional rights under the 6th and 14th amendments of the United States Constitution and under Art. 1, Section 10 of the Constitution of the State of Texas.

V.

Defendant Carlos Hernandez would further show the Court that Defendant in no was impeated the State in its actions pursuant to the Court's Order of December 9, 1986 and orally stated by the Court on December 4, 1986

VI.

Defendant would further show that without live witnesses Defendant will be deprived of his constitutional right to defend himself under the United States Constitution and Texas Constitution. In that the record of 79-CR-881-C does not allow the Defendant to present a defense.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays and moves this Court to dismiss the prosecution of this case for the reasons outlined above.

JON J. KELLY, BAR NO. 11223500
ATTORNEY AT LAW
1521 SO. PORT
CORPUS CHRISTI, TEXAS 78405
(512) 882-3396

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

REQUESTED LIST OF WITNESSES

Pursuant to an oral Order issued by this Honorable Court on December 19, 1986, listed below are the witnesses requested by Defendant Carlos Hernandez to be located by the Nueces County District Attorney's Office:

1. Pedro Olivarez, last known address 1314 Whitaker, Corpus Christi, Texas. LOCATED
2. Roger Fuentes, last known address 2522 Dunbar, Corpus Christi, Texas. CAN LOCATE
3. Irma Gaytan, last known address 2830 Martin Luther King Blvd., Apt. 3, Corpus Christi, Texas. FRESNO CA.
4. Fernando Rodriguez, last known address 4714 Cobblestone. Corpus Christi, Texas. Last known place of employment, Corpus Christi Independent School District, Coach-King High School. LOCATED
5. Willie Odoms, last known address 2009 Blue Angel, Corpus Christi, Texas. Last known place of employment, Corpus Christi Independent School District, Coach-King High School. LOCATED
6. Shirley Curry, last known place of employment, February 1980, Texas Star Oil, 2728 Agnes, Corpus Christi, Texas. UNABLE TO LOCATE

FILED
DEC 23 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Jane Ayala Deputy

DEC 24 1986

Respectfully submitted,

JON J. KELLY, ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Requested List of Witnesses was this 22nd day of December, 1986 hand delivered to the District Attorney's Office, 901 Leopard, Corpus Christi, Texas.

JON J. KELLY

APPLICATION FOR FEE

AS COURT APPOINTED ATTORNEY
(Article 26.05 Code of Criminal Procedure, 1965)

IN CAUSE NO. 86-CR-1032-B

TO: NUECES COUNTY

RE: STATE OF TEXAS

VS.

CARLOS HERNANDEZ

TYPES OF APPEARANCES:	DATES:
Bond Reduction Hearing	12-4-86
Discovery Hearing	12-4-86
ALL DAY PREPARATION FOR Later HEARING	12-12-86
Hearing on Compliance	12-18-86
Hearing on Compliance (cont)	12-19-86
Motion to Dismiss hearing	12-24-86
Motion to Dismiss hearing (cont)	12-30-86

For representing the above indigent Defendant on the above occasions, I apply for a fee of $ _____. No compensation for work on this case has been, nor do I anticipate will be, received from any other source. I swear that the foregoing account and statements are true and correct.

Jon J. Kelly
Attorney At Law

11223500
Bar No.

1521 S. Port, C.C. Tx. 78405
Mailing Address

555-60-5689
Social Security No.

OSCAR SOLIZ, DISTRICT CLERK

Janie Ozuna
District Clerk Deputy
Verifying Above Information

Copy to Auditor _____

Copy to Treasurer _____

A fee of $ SEE ORDER is approved this 16 day of January, 1987.

District Judge

Jon J. Kelly
Attorney At Law

1521 S. Port
Corpus Christi, Texas 78405

Telephone:
(512) 882-3396

January 29, 1987

The Honorable Robert Blackmon
Judge, 117th District Court
Nueces County Courthouse
901 Leopard
Corpus Christi, Texas 78401

RE: The State of Texas vs.
Carlos Hernandez
Cause No. 86-CR-1032-B
Investigation Cost

Dear Judge Blackmon:

Enclosed please find an invoice forwarded to this office by the Court Appointed investigator, Mr. Horacio Ortiz of this city.

Please be advised that Mr. Ortiz and his associate, Mr. Garza-Gregg expended countless hours in attempting to track down possible witnesses on the above referenced cause.

Should you have any further questions, please do not hesitate to contact me.

Thank you.

Cordially,

Jon J. Kelly

JJK/pr

Approved 1/30/87

Judge 117

HORACIO ORTIZ - Independent
Security Consultant, Inc.
4455 S.P.I.D. Suite 45
Corpus Christi, TX 78411
Tel: (512) 855-8001
TEXAS STATE LICENSE No. C-1973

INVOICE

№ 1357

To:
Jon J. Kelly, Attorney
1521 S. Port
Corpus Christi,Tx 78405

Date	7 Jan. 87
Customer Order No.	Case Nr.: 86-CR-1032-B
Salesman	H.Ortiz/ A. G. Gregg
Via	

TERMS:
Due Upon Receipt

Quantity	Description	Price	Amount
1	Investigation (Carlos Hernandez) Grand Total Due	@$ 500.00	$500.00 $500.00

This Company is licensed and regulated by the Texas Board of Private Investigators and Private Security Agencies. COMPLAINTS may be directed to: P.O. Box 13509 Austin, TX 78711 Tel: (512) 463-5545

ORIGINAL

THANK YOU

INVESTIGATIONS – SECURITY & CONSULTATION SERVICES

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

ORDER GRANTING MOTION TO DISMISS

On the 30th day of December, 1986, came on to be heard the Motion of the Defendant to Dismiss, and it appearing to the Court that the State was not ready for trial within 150 days, excluding all statutory exemptions and exceptions, of the commencement of the criminal action herein, and it further appearing to the Court that there would be serious questions involving the availability of witnesses, the Court finds that the Defendant's motion should be granted.

IT IS, therefore, ORDERED, ADJUDGED, and DECREED that the indictment herein is dismissed and the Defendant is ordered discharged.

SIGNED this 31 day of December, 1986.

JUDGE PRESIDING

HORACIO ORTIZ - Independent
Security Consultant, Inc.
4455 S.P.I.D. Suite 45
Corpus Christi, TX 78411
Tel. (512) 855-8001
TEXAS STATE LICENSE No. C-1973

INVOICE

№ 1357

To:
Jon J. Kelly, Attorney
1521 S. Port
Corpus Christi, Tx 78405

Date	7 Jan. 87
Customer Order No.	Case Nr.: 86-CR-1032-B
Salesman	H.Ortiz/ A. G. Gregg
Via	

TERMS:
Due Upon Receipt

Quantity	Description	Price	Amount
1	Investigation (Carlos Hernandez)	@$ 500.00	$500.000
	Grand Total Due		$500.00

This Company is licensed and regulated by the Texas Board of Private Investigators and Private Security Agencies. COMPLAINTS may be directed to: P.O. Box 13509 Austin, TX 78711 Tel: (512) 463-5545

ORIGINAL

THANK YOU

INVESTIGATIONS — SECURITY & CONSULTATION SERVICES

NO. 86-CR-1032-B

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	OF NUECES COUNTY, TEXAS
CARLOS HERNANDEZ	*	117TH JUDICIAL DISTRICT

MOTION FOR AN APPOINTMENT OF AN INVESTIGATOR

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Pedro P. Garcia, attorney for Defendant in the above styled and numbered cause, and hereby request that an investigator be appointed to assist him in the preparation of this case and as grounds thereof would show unto the Court as follows, to-wit:

I.

The said Pedro P. Garcia was appointed to represent Carlos Hernandez on August 21, 1986. The case is set for trial on September 15, 1986.

II.

This case arising out of an alleged murder that occurred on November 20, 1979. Another person has already been tried on this particular case and your said Defendant does not know the actual outcome on that case except that the person charged was not convicted.

III.

In reviewing the actual offense report, there are several witnesses that will have to be tracked down and several court records that will have to be reviewed. Much time is going to be consumed outside the actual trial of this case.

IV.

After this investigation is completed, the said Pedro P. Garcia plans to file certain motion and will request leave of Court to file those motions at a later date.

WHEREFORE, PREMISES CONSIDERED, the said Pedro P. Garcia hereby requests the Court appoint an investigator to assist him in investigation and preparation of this case.

Respectfully submitted,

PEDRO P. GARCIA, Attorney For Defendant
4466 South Staples
Corpus Christi, Texas 78411
(512) 992-8061
SBN: 07641000

FILED
SEP - 5 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Rosalinda Garcia Deputy

CERTIFICATE OF SERVICE

On this 5th day of September, 1986, was personally delivered to the Nueces County District Attorney's Office a copy of the above Motion.

PEDRO P. GARCIA

O R D E R

The Motion For Appointment of Investigator having been presented to the Court on this 23 day of October, 1986, the Court did proceed to consider the same and did proceed to hear testimony and arguments on this matter.

The Court is of the opinion that an investigator should be appointed to assist the said Pedro P. Garcia in the investigation and preparation of this case.

It is hereby ORDERED that Horacio Ortiz be appointed as an investigator to assist the said Pedro P. Garcia in the investigation and preparation of this case, and the investigator shall be paid a reasonable fee and reimbursed for reasonable and necessary expenses in an amount not to exceed $500 for both the fee and the expenses.

SIGNED this 23 day of October, 1986.

JUDGE PRESIDING

APPLICATION FOR FEE

AS COURT APPOINTED ATTORNEY
(Article 26.05 Code of Criminal Procedure, 1965)

IN CAUSE NO. 86-CR-1032-B

TO: NUECES COUNTY

RE: STATE OF TEXAS

VS.

Carlos Hernandez

TYPES OF APPEARANCES:	DATES:
9-5-86	Pre-trial &
	Motions Filed.

For representing the above indigent Defendant on the above occasions, I apply for a fee of $ _____. No compensation for work on this case has been, nor do I anticipate will be, received from any other source. I swear that the foregoing account and statements are true and correct.

/s/ John A. Adam
Attorney At Law

07641000
Bar No.

4466 S. Staples
78411
Mailing Address

449-58-9993
Social Security No.

OSCAR SOLIZ, DISTRICT CLERK

Yami Reynolds
District Clerk Deputy
Verifying Above Information

Copy to Auditor_____

Copy to Treasurer _____

A fee of $ 100.00 is approved this 30 day of Dec., 1986

Jan R. Breen
District Judge

JACK R. BLACKMON, JUDGE
117TH JUDICIAL DISTRICT COURT
NUECES COUNTY COURTHOUSE, ROOM 901
CORPUS CHRISTI, TEXAS 78401-3389

December 9, 1986

Re: Arraignment, Pre-trial
Hearing and Trial Date
Cause No. 86CR1032B
State of Texas vs.
Carlos Hernandez

Arraignment for the above entitled and numbered cause will be held in the 117th District Court, Nueces County Courthouse, on the 12th day of December, 1986, at 11:00 a.m. . Attendance by the Defendant is required.

The above entitled and numbered cause is set for trial in this Court on the 12th day of January, 1987, at 9:30 a.m. .

Pursuant to Article 28.01, C.C.P., a pre-trial hearing is set on January 8, 1987, at 9:00 a.m. . All matters set out in Article 28.01 will be considered and announcements made at this hearing. Attendance by the defendant and his attorney who will try the case are required.

All motions (including motions for continuance), pleadings, and exceptions must be filed by January 5, 1987 , with a copy of such furnished to the Court and opposing counsel at the time of filing. Motions, pleadings, and exceptions not timely filed will not be allowed to be filed except by permission of the Court for good cause shown.

All motions for continuance on the part of the Defendant must be sworn to by the defendant himself, as required by Article 29.08, C.C.P.

Very truly yours,

Jack R. Blackmon

JACK R. BLACKMON

ccs: District Attorney
Mr. Jon J. Kelly
Mr. Carlos Hernandez, Jail

JACK R. BLACKMON, JUDGE
117TH JUDICIAL DISTRICT COURT
NUECES COUNTY COURTHOUSE, ROOM 901
CORPUS CHRISTI, TEXAS 78401-3689

August 12, 1986

Re: Arraignment, Pre-trial Hearing and Trial Date
Cause No. 86CR1032B
State of Texas vs.
Carlos Hernandez

Arraignment for the above entitled and numbered cause will be held in the 117th District Court, Nueces County Courthouse, on the 21st day of August, 1986, at 8:30 a.m. . Attendance by the Defendant is required.

The above entitled and numbered cause is set for trial in this Court on the 15th day of September, 1986, at 9:30 a.m. .

Pursuant to Article 28.01, C.C.P., a pre-trial hearing is set on September 5, 1986, at 1:30 p.m. . All matters set out in Article 28.01 will be considered and announcements made at this hearing. Attendance by the defendant and his attorney who will try the case are required.

All motions (including motions for continuance), pleadings, and exceptions must be filed by September 2, 1986 , with a copy of such furnished to the Court and opposing counsel at the time of filing. Motions, pleadings, and exceptions not timely filed will not be allowed to be filed except by permission of the Court for good cause shown.

All motions for continuance on the part of the Defendant must be sworn to by the defendant himself, as required by Article 29.08, C.C.P.

Very truly yours,

Jack R. Blackmon

JACK R. BLACKMON

ccs: District Attorney
District Clerk
Mr. Carlos Hernandez; Jail

CRIMINAL DOCKET

I CASE No. 86-CR-1032-B

NUMBER OF CASE	NAMES OF PARTIES	ATTORNEYS	OFFENSE	DATE OF FILING (MONTH / DAY / YEAR)
	THE STATE OF TEXAS VS.	Grant Jones	Murder	7 23 86
86-CR-1032-B	Carlos Hernandez	Jon J Kelly ~~Pedro P. Gardia~~ (Ct Appt.)		FEE BOOK: VOL. / PAGE

DATE OF ORDERS (MONTH / DAY / YEAR)	ORDERS OF COURT	MINUTE BOOK (VOL. / PAGE)	INFORMATION OR INDICTMENT WITNESSES
AUG 21 1986	Defendant present and arraigned before Judge Jack R Blackmon ~~Defendant is represented by~~ and enters a plea of ~~guilty or~~ not guilty. Dept waived reading of Indictment, Ct. Appt. Atty.	CM10 479	DE
8 21 86	ORDER APPOINTING ATTORNEY	CM10 500	
SEP 5 1986	Def granted continuance. Motion for mental exam will need evidentiary hearing. Motion for Statement of Facts in another case (or cases) involving trial of a third party for same murder granted. State to notify style and number of case(s).		Jack R Blackmon
10 23 86	Order	CM10 864/865	Jack R Blackmon
11 14 86	Order (Jon Kelly appt'd as atty, P. Garcia terminated)	CM10 932	
7 13 86	Order appt'g attorney	CM10 922	
12 2 86	[illegible]	CM10 931	
		CM10 984	

THE STATE OF TEXAS

2 VS. NO.

CRIMINAL DOCKET

DATE OF ORDERS MONTH	DAY	YEAR	ORDERS OF COURT—CONTINUED	MINUTE BOOK VOL.	PAGE	
DEC	4	1986	Hearing (2:20 p.m.) on Motion to Reduce bond. Def. present, his atty Jon Kelly appeared. Mr. McIlvane represented State. Evidence heard, bond reduced to $5000.			Jack R Blanchard
REPORTER USED KWK			2:40 p.m. Hearing on Motion for Discovery. Disposed of. Def. and his atty withdrew motion for mental exam -	CM10	993	Jack R Blanchard
	12	9-86	Order (Mtn for discovery)	CM11	1-2	
	12	9-86	Order (Mtn for speedy trial)	CM11	3	
~~DEC~~	~~18~~	~~1986~~	~~2 p.m. Cause came on for hearing on contempt motion. Each party present and ready. Petitioner (movant) offered evidence~~			
REPORTER USED KWK						
DEC	18	1986	Hearing on Def. Motion for compliance - Evidence/representations heard. Recessed for additional witnesses.			
REPORTER USED KWK						
DEC	19	1986	3:30 p.m. Def's Motion came on for further			

3

CRIMINAL DOCKET

CASE No. 86-CR-1032-E

NUMBER OF CASE	NAMES OF PARTIES	ATTORNEYS	OFFENSE	DATE OF FILING (MONTH / DAY / YEAR)
	THE STATE OF TEXAS VS. Carlos Hernandez	Grant Jones Jon Kelly		FEE BOOK (VOL. / PAGE)

DATE OF ORDERS (MONTH / DAY / YEAR)	ORDERS OF COURT	MINUTE BOOK (VOL. / PAGE)	INFORMATION OR INDICTMENT WITNESSES
DEC 19 1986 REPORTER USED Jill Scott	Special Prosecutor) present. 2 transcripts turned over by Mr Perra to Mr. May - copies to be provided Defense Counsel. Since Def has filed a Motion to Dismiss, hearing on it and any further matters relative to Defense Motions (other) is set for 10:30 a.m. Wed Dec. 24th.	Cm11	Jack [illegible]
DEC 24 1986 REPORTER USED K.W.K.	10:30 AM. Hearing resumed. Def and his atty Jon Kelly present. Bill May for State. MX1 and MX2 admitted for this hearing. Statements made. Motions under consideration. Court to rule [illegible]		Jack [illegible]

THE STATE OF TEXAS

4 vs. No._____

CRIMINAL DOCKET

DATE OF ORDERS MONTH	DAY	YEAR	ORDERS OF COURT—continued	MINUTE BOOK VOL.	PAGE	
DEC	30	1986	State reports no progress. Cause			
REPORTER USED KWK			dismissed for lack of information,			
			lack of disclosure, unavailable of			
			defense requested witnesses, and			
			lack of speedy trial.	Com II	101 DC	Janice Blackburn
12-31-86			Order granting extn to file	Com II	75	
1-2-87			C/C of order mailed to atty + copy sent to jail	Com II	141 DC	

06/15/2004 TUE 14:42 FAX 361 884 1667 NUECES CTY RECORDS CTR 004/004

Carlos HERNANDEZ, DOB 07/14/1954

REINDICTMENT B COURT

Mag.Ct. No.:
BOND: 250000.00 By:

NO. 86-CR-1032-B

THE STATE OF TEXAS VS. CARLOS HERNANDEZ

CHARGE: MURDER

COURT: 117th

* *

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The grand jury of Nueces County, Texas, duly organized as such at the February-July Term A.D., 1986, of the 105th Judicial District Court of Nueces County, in that Court at that term, do present that

CARLOS HERNANDEZ, defendant,

on or about the 20th day of November, 1979, in Nueces County, Texas, did then and there intentionally and knowingly cause the death of an individual, Dahlia Sauceda, by inflicting trauma to her neck, chest and abdomen with his hands

AND THE GRAND JURY further presents that the Defendant, Carlos Hernandez, has previously been convicted of one felony, namely Robbery by Firearms, on September 28, 1972, in cause number 14986, styled The State of Texas vs. Carlos Hernandez, in the 105th District Court of Nueces County, Texas

against the peace and dignity of the State.

Manuel Ayo Jr.
FOREMAN OF THE GRAND JURY

FILED
JUL 15 4 38 PM '86
OSCAR SOLIZ, CLERK
CRIMINAL DISTRICT COURTS,
NUECES COUNTY, TEXAS
BY Diane Cantu DEPUT.

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	)(	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

O R D E R

On the 4th day of December, 1986, came on to be heard Defendant's Motion for Discovery and Inspection of Evidence and the Court having heard and considered the same; makes the following findings:

1. That the offense of which the Defendant herein stands charged, is alleged to have been committed on November 20, 1979.

2. That on January 31, 1980, in Cause No. 79-CR-881-C, in the 94th District Court, a Jesse Garza was tried for the same offense that the Defendant herein stands charged with committing.

3. That the result of Cause No. 79-CR-881-C, styled the State of Texas vs. Jesse Garza, resulted in a finding of not guilty by the trial jury in said cause.

4. That during the trial of 79-CR-881-C, the State of Texas vs. Jesse Garza, there were introduced into evidence over 62 separate exhibits, said items of evidence having never been withdrawn, either by the State or the Defendant, said items remaining in the control of the Nueces County District Clerk's Office.

5. That the State of Texas, has in its possession a tape recording of a telephone conversation between the Defendant herein and his mother, said recording made while the Defendant was in custody, in December, 1979.

6. That the State of Texas has in its possession, a transcript of an interview between then Asst. District Attorney Kenneth Botary and Defendant Carlos Hernandez.

7. That in the trial of Cause No. 79-CR-881-C, styled The State of Texas vs. Jesse Garza, over 35 witnesses testified that almost seven years have elapsed since the trial of that cause and it would place an impossible burden on the Defendant to locate many of the witnesses who testified in that trial without assistance from the State.

It is the ORDER of the Court that the following offices of the State of Texas take the following affirmative acts pursuant to the above findings of this Court:

1. That the Nueces County District Clerk's office, locate the evidence file of Cause No. 79-CR-881-C, styled The State of Texas vs. Jesse Garza. Upon locating the aforesaid evidence file, the District Clerk's office is to contact the Nueces County District Attorney's Office and Defendant's attorney herein, and set a date for the inspection and copying by the Defendant and/or the District Attorney's office of all items retained in evidence by the District Clerk's Office in Cause No. 79-CR-881-C.

2. The Nueces County District Attorney's Office is to provide Defendant Carlos Hernandez by and through his attorney of record, with the tape recording of the conversation between Defendant Carlos Hernandez and his mother made by the Corpus Christi Police Department during the period of Defendant Carlos Hernandez' interrogation in the month of December, 1979.

3. The District Attorney's Office is to provide Defendant Carlos Hernandez with a transcript of the conversation and interview between Asst. District Attorney Kenneth Botary and Defendant Carlos Hernandez, made on or about January 4, 1980.

4. The Nueces County District Attorney's Office by and through the assisting law enforcement agencies is to assist the Defendant Carlos Hernandez and Defendant's attorney, in locating all witnesses who testified in Cause No. 79-CR-881-C styled the State of Texas vs. Jesse Garza. Assistance by the District Attorney's Office would be by means of providing Defendant's attorney with a "current" address for each of the aforesaid witnesses.

5. The Nueces County District Attorney's Office is to provide Defendant's attorney with the criminal records of all possible State's witnesses.

It is further ORDERED that a compliance hearing for discovery is hereby set for the 16 day of December, 1986, at 9:00 o'clock a.m., in the 117th District Court, Nueces County Courthouse, Corpus Christi, Texas.

SIGNED this 9 day of December, 1986.

JUDGE PRESIDING

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

MOTION FOR SPEEDY TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Carlos Hernandez, Defendant in the above entitled and numbered cause, by and through his attorney of record and files this his motion for speedy trial and would show the Court the following:

I.

Movant would show that on the 15th day of July, 1986, the Defendant, Carlos Hernandez was indicted for the offense of murder, alleged to have been committed on or about the 20th day of November, 1979.

II.

Movant and Defendant Carlos Hernandez would further show the Court that Defendant was arrested on the 24th day of July, 1986, and confined in the County Jail of Nueces County, Texas, to await trial on said charge.

III.

Movant, Carlos Hernandez would further show the Court that from July 24, 1986, until December 4, 1986, the Defendant had been confined in the Nueces County Jail for a period of 131 days, awaiting trial with his bond set at the excessive amount of $25,000.00.

Movant would further show the Court that on December 4, 1986, Defendant upon proper motion filed with the Court, after a hearing by this Honorable Court, had his bond reduced from $25,000.00 to $5,000.00, yet Defendant is still unable to make said bond and remains confined in the Nueces County Jail.

FILED
DEC 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Jane Ayala Deputy

IV.

Defendant and Movant Carlos Hernandez, would request that this Court set this case down for a jury trial, at the earliest jury trial setting available.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this case be set for a speedy trial at the earliest possible date on the Court's jury docket and that if the State is unable to go forward on said trial date, that the indictment be dismissed against the Defendant and that the Defendant be released from confinement.

Respectfully submitted,

JON J. KELLY BAR NO. 11223500
ATTORNEY AT LAW
1521 SO. PORT
CORPUS CHRISTI, TEXAS 78405
(512) 882-3396

CERTIFICATE OF SERVICE

This is to certify that on this the 8 day of December, 1986, a true and correct copy of the foregoing Motion for Speedy Trial was this date hand delivered to the Distirct Attorney's Office, Nueces County Courthouse, Corpus Christi, Texas.

JON J. KELLY

Hernandez' tape recorded conversation with his mother and the transcript of the office conference between Mr. Botary and Carlos Hernandez, wilfully ignored this Court's Order.

III.

Defendant Carlos Hernandez would show that because it can reasonably be presumed that the State was aware of the exculpatory nature of the testimony of at least three witnesses in Cause No. 79-CR-881-C concerning Carlos Hernandez, the State was not ready for trial at any date subsequent to July 15, 1986, the date of Defendant's indictment.

IV.

Defendant would show that the failure of the State to make any attempts to comply with this Honorable Court's Order of December 9, 1986 has so prejudiced the Defendant's case as to deny Defendant of his constitutional rights under the 6th and 14th amendments of the United States Constitution and under Art. 1, Section 10 of the Constitution of the State of Texas.

V.

Defendant Carlos Hernandez would further show the Court that Defendant in no was impeated the State in its actions pursuant to the Court's Order of December 9, 1986 and orally stated by the Court on December 4, 1986

VI.

Defendant would further show that without live witnesses Defendant will be deprived of his constitutional right to defend himself under the United States Constitution and Texas Constitution. In that the record of 79-CR-881-C does not allow the Defendant to present a defense.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays and moves this Court to dismiss the prosecution of this case for the reasons outlined above.

JON J. KELLY, BAR NO. 11223500
ATTORNEY AT LAW
1521 SO. PORT
CORPUS CHRISTI, TEXAS 78405
(512) 882-3396

The Court on December 9, 1986 further Ordered that a Compliance Hearing for Discovery was to be held on December 18, 1986.

I.

Defendant, Carlos Hernandez would show the Court that at the compliance hearing of December 18, 1986, the evidence of compliance was as follows:

1. That the District Clerk's Office, located the evidence filed of Cause No. 79-CR-881-C, styled The State of Texas vs. Jesse Garza. That the District Clerk's Office was contacted by Defendant's attorney, Jon J. Kelly and promptly located said evidence file.

2. That the Nueces County District Attorney's Office made no attempt as of December 18, 1986 to take the following acts as Ordered by the Court:

   (a) No effort was made to ascertain or discover whether there still existed a tape recording of the conversation between Carlos Hernandez and his mother made at the Corpus Christi Police Department during Defendant Hernandez' interrogation in December, 1979.

   (b) That the District Attorney's Office failed to make any attempt to locate a transcript of the conversation and interview between assistant District Attorney Kenneth Botary and Carlos Hernandez made in January of 1980.

   (c) That the District Attorney's Office although duly notified of this Court's Order to assist in locating all witnesses who testified in Cause No. 79-CR-881-C, by providing Defendant's attorney with a "current" address for said witnesses, failed to contact any law enforcement agency as Ordered by the Court.

   (d) Nueces County District Attorney's Office failed to provide Defendants attorney with criminal records of all possible State's witnesses.

II.

Defendant would show that he has been incarcerated since late July, 1986, well over 120 days. That the State was fully aware at the time of the Defendant's indictment that at least three witnesses would be necessary because of prior testimony that they had given in Cause No. 79-CR-881-C.

Defendant would further show that the State in failing to provide or even attempt to locate various items of physical evidence including but not limited to the alleged knife to have been taken from Carlos Hernandez in December of 1979, the tape recording of Carlos

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

FILED

1986

OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By Janie Alejandro DEPUTY

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant Carlos Hernandez, in the above styled and numbered cause and moves the Court to have the prosecution of this case dismissed on the following ground:

1. That on the 4th day of December, 1986, Defendants Motion for Discovery and Inspection of Evidence was heard by this Honorable Court and the Court pursuant to that hearing of December 4, 1986 Ordered on December 9, 1986 the following:

   (a) That the Nueces County District Clerk's office, locate the evidence file of Cause No. 79-CR-881-C, styled The State of Texas vs. Jesse Garza. Upon locating the aforesaid evidence file, the District Clerk's office is to contact the Nueces County District Attorney's Office and Defendant's attorney herein, and set a date for the inspection and copying by the Defendant and/or the District Attorney's office of all items retained in evidence by the District Clerk's Office in Cause No. 79-CR-881-C.

   (b) The Nueces County District Attorney's Office is to provide Defendant Carlos Hernandez by and through his attorney of record, with the tape recording of the conversation between Defendant Carlos Hernandez and his mother made by the Corpus Christi Police Department during the period of Defendant Carlos Hernandez' interrogation in the month of December, 1979.

   (c) The District Attorney's Office is to provide Defendant Carlos Hernandez with a transcript of the conversation and interview between Asst. District Attorney Kenneth Botary and Defendant Carlos Hernandez, made on or about January 4, 1980.

   (d) The Nueces County District Attorney's Office by and through the assisting law enforcement agencies is to assist the Defendant Carlos Hernandez and Defendant's attorney, in locating all witnesses who testified in Cause No. 79-CR-881-C styled the State of Texas vs. Jesse Garza. Assistance by the District Attorney's Office would be by means of providing Defendant's attorney with a "current" address for each of the aforesaid witnesses.

   (e) The Nueces County District Attorney's Office is to provide Defendant's attorney with the criminal records of all possible State's witnesses.

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

REQUESTED LIST OF WITNESSES

Pursuant to an oral Order issued by this Honorable Court on December 19, 1986, listed below are the witnesses requested by Defendant Carlos Hernandez to be located by the Nueces County District Attorney's Office:

1. Pedro Olivarez, last known address 1314 Whitaker, Corpus Christi, Texas. LOCATED
2. Roger Fuentes, last known address 2522 Dunbar, Corpus Christi, Texas. CAN LOCATE
3. Irma Gaytan, last known address 2830 Martin Luther King Blvd., Apt. 3, Corpus Christi, Texas. FRESNO CA.
4. Fernando Rodriguez, last known address 4714 Cobblestone. Corpus Christi, Texas. Last known place of employment, Corpus Christi Independent School District, Coach-King High School. LOCATED
5. Willie Odoms, last known address 2009 Blue Angel, Corpus Christi, Texas. Last known place of employment, Corpus Christi Independent School District, Coach-King High School. LOCATED
6. Shirley Curry, last known place of employment, February 1980, Texas Star Oil, 2728 Agnes, Corpus Christi, Texas. UNABLE TO LOCATE

FILED
DEC 23 1986
OSCAR SOLIZ, CLERK
DISTRICT COURT, NUECES COUNTY, TEXAS
By [signature] Deputy

DEC 24 1986

Respectfully submitted,

[signature]
JON J. KELLY, ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Requested List of Witnesses was this 22nd day of December, 1986 hand delivered to the District Attorney's Office, 901 Leopard, Corpus Christi, Texas.

[signature]
JON J. KELLY

NO. 86-CR-1032-B

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	117TH JUDICIAL DISTRICT
CARLOS HERNANDEZ	X	NUECES COUNTY, TEXAS

ORDER GRANTING MOTION TO DISMISS

On the 30th day of December, 1986, came on to be heard the Motion of the Defendant to Dismiss, and it appearing to the Court that the State was not ready for trial within 150 days, excluding all statutory exemptions and exceptions, of the commencement of the criminal action herein, and it further appearing to the Court that there would be serious questions involving the availability of witnesses, the Court finds that the Defendant's motion should be granted.

IT IS, therefore, ORDERED, ADJUDGED, and DECREED that the indictment herein is dismissed and the Defendant is ordered discharged.

SIGNED this 31 day of December, 1986.

JUDGE PRESIDING

SHIRLEY CURRY,

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

DIRECT EXAMINATION

BY MR. BOTARY:

Q. State your full name for the jury, please.

A. Shirley Ann Curry.

Q. Do you live in Corpus Christi?

A. Yes, sir.

Q. How long have you lived here?

A. All my life.

Q. Where do you work?

A. Texas Star Oil Company now.

Q. How long have you worked there?

A. Since September.

Q. Where did you work prior to that time?

A. 7-11 at Staples and Mary.

Q. Do you know the address of that store?

A. It's 521 South Staples.

Q. How long did you work in that store?

A. Approximately ten or twelve months; I'm not sure.

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715 ADMITTED
MX-1

Q. Were you --
A. I was manager.
Q. You were manager? Did you work a day shift or split shift or what?
A. When I first went to work there, I worked five to one in the evenings, and then three to eleven, sometimes two to ten depending on the shift, but towards the end of the time I worked there six to two mainly.
Q. Did you work in that store anytime during the time when Ms. Gaytan worked there?
A. Yes, sir.
Q. How long did y'all work together?
A. I hired Irma probably six to eight months; I'm not sure.
Q. And do you know Carlos Hernandez?
A. Yes, sir.
Q. How long have you known Carlos Hernandez?
A. About a year and a half or so.
Q. Where did you meet him at?
A. At the 7-11.
Q. At the Staples Street store?
A. Yes, sir.
Q. All right, and what is your relationship with Carlos?
A. Well, he used to come in the store when I first met him and we would talk, you know. He would kind of

have problems and we would sit and talk. I have several children and some that aren't too much younger than he is and I kind of, you know, counseled him on things, and if I had a problem, wanted to get something off my chest, he used to listen, too.

Q. Would he talk to you at the store or would you go out somewhere and talk?

A. At times. One evening we went and had dinner and we talking about the situation. I think he had gotten laid off at Tennessee Pipeline and was kind of despondent about that, but was looking.

Q. Did you ever date Carlos as a man and woman would have a relationship?

A. No, sir.

Q. Would you mind telling us how old you are?

A. I'm forty-two.

Q. And do you know how old Carlos is?

A. I believe he's twenty-five; I'm not sure.

Q. You have never had a relationship with him, such as, a man and woman would have?

A. No, sir.

Q. Your relationship is that of a friend, is that correct?

A. Yes, sir.

Q. Does Carlos know where you live?

A. Yes, sir.
Q. And do you have a telephone number?
A. Yes, sir.
Q. Did Carlos have that information?
A. Yes, sir.
Q. Did he ever visit you in your home?
A. He's been to my apartment.
Q. Often?
A. No, not very often.
Q. And what about -- have you ever visited at his home?
A. At his mother's, yes. I have been to his mother's one time.
Q. Is that all?
A. Yes, sir.
Q. Do you know where he lives in relation to the store?
A. It's on Carrizo. You have to go down Laredo and take a left on Staples. I'd say it's about five or six blocks; I'm not real sure.
Q. Where do you live at?
A. I live on Airline at Spanish Keys Apartments.
Q. I want to take you back to Tuesday morning on November 20, 1979.
A. Yes, sir.
Q. I have talked to you before this, have I not?
A. Yes, sir.

Q. And I have asked you to try to recall that particular date?

A. Yes, sir.

Q. And whatever process you used to determine that date, I have asked you that specific date in mind?

A. Yes, sir.

Q. Do you recall that date?

A. Yes, sir, I do.

Q. And would you tell the jury how you recall that date?

A. Well, on Friday night prior to the death of Mrs. Sauceda, I had seen her at Ray's apartment. I had been there with Mario and had seen her there, and Mario had seen it on T.V. and called me at work and said that he had seen where Dalia had been killed. He said: "We just saw her a couple of nights ago." I said: "Yes, I know." It was right around the time.

Q. Is November 18 -- did you tell me it was something special to you?

A. Yes, it's kind of a special day for me.

Q. Every month?

A. Every month.

Q. Was it before the 18th or after the 18th that you recall a certain event happening?

A. It was after.

Q. And before Thanksgiving?
A. Yes, sir.
Q. Would you tell me where you were at in the early morning hours -- I'm talking about one o'clock in the morning?
A. I was at home.
Q. On November 20th?
A. Yes, sir.
Q. And Tuesday morning?
A. Yes, sir.
Q. Who were you at home with?
A. Well, my daughters and Mario was there.
Q. Okay, do you date Mario?
A. Yes.
Q. How old a man is he?
A. Twenty-six.
Q. Okay, and how long have you dated Mario?
A. For about a year.
Q. Is Mario a friend of Carlos'?
A. They know each other. I don't think they're real good friends. Their mothers live across the street from each other.
Q. I don't know how to ask this question. Were you sleeping at one o'clock in the morning on November 20?
A. Yes, I was in bed.

Q. Okay.
A. I hadn't really gone to sleep. I was -- I'm kind of an insomniac.
Q. Okay, after that hours, one o'clock in the morning on November 20, did you have occasion to receive any telephone calls?
A. Yes, sir, Carlos called me sometime after two.
Q. How can you be sure of that time?
A. Well, I'm not absolutely certain, but I know the last time I looked at the clock it was two o'clock when I turned the light off, so it was sometime after two, not long after two o'clock.
Q. And do you recognize Carlos' voice?
A. Yes, sir.
Q. And did you recognize the voice on the phone that night?
A. Yes, sir.
Q. All right, a little after two o'clock, is that right?
A. Yes, sir.
Q. After you received that telephone call and because of that telephone call, did you go anywhere?
A. Yes, I went to Cole Park to pick him up. He had been drinking and asked if I would come take him home and I said yes, I would.
Q. Okay, what time did you leave your house after

receiving the call?

A. About 2:30.

Q. And how long did it take you to get to Cole Park to find Carlos?

A. It takes about twenty minutes, fifteen to twenty minutes from my apartment to get to Cole Park, and Carlos had told me where he was -- where he would be.

Q. So let me get this straight. At two o'clock you got a telephone call?

A. Yes, sir.

Q. At 2:30 you left your house?

A. Yes, sir.

Q. And it took you about twenty minutes to get to the park?

A. Yes.

Q. So that's right at 2:50, is that correct?

A. Something like that.

Q. Did you find Carlos?

A. Yes, sir.

Q. Where was he at?

A. There was this little -- I don't know what you call it. It's like a little wooden area up on top of stilts for children to play in, and he was up in there asleep.

Q. Did you know where to look for him?

A. Yes, sir. He told me where he'd be. He told me he'd be in that little thing.

Q. Did you have any trouble finding him over there?

A. No, not really. He was asleep and I had kind of a hard time getting him up, but I didn't have a hard time finding him.

Q. What time would you say that Carlos got in your automobile?

A. About 3:15.

Q. Did y'all spend anytime out there in the park together?

A. Not really. I have got a bad knee, so I can't climb in the thing, so I kind of stood there and shook him until I could get him awake.

Q. Did you get him awake?

A. Yes, finally, and he kind of climbed down and I had a little bit of trouble getting him to the car.

Q. And then where did you take him, if anywhere?

A. We sat in the car for a few minutes. I asked him if he wanted to get some coffee or something because I wanted some coffee, but he said no, so I drove him on home.

Q. Did you see any beer over there?

A. No, not on him at the time.

Q. Did he appear as though he had been drinking?

A. Yes, sir. I could tell on the phone that he had been drinking.

Q. Could you tell whether or not he was drunk, in your opinion?

A. No, not really. He was still sleeping it off more or less. In the car he was more or less kind of nodding like he was going to go back to sleep.

Q. Is there anything in particular you and Carlos talked about that evening?

A. No, sir, I asked him what the problem was and he just rambled on a lot of stuff I couldn't understand. Sometimes he talked in spanish and I couldn't understand.

Q. You don't understand spanish?

A. No.

Q. What was his general appearance, semi-intoxicated?

A. Yes, I wouldn't say he was so drunk he couldn't stand up.

Q. Was he sweating or anything like that?

A. No, he wasn't.

Q. Was he crying or anything?

A. No, sir.

Q. Did he have his clothes torn?

A. No, sir.

Q. Was he dirty, his clothing dirty?

A. Not that I recall, no, sir. He had on some jeans and like a sweatshirt-type thing.

Q. And did you then take him home after you talked for a while?

A. Yes, sir.

Q. What time would you say that you got him home?

A. Somewhere between fifteen minutes to four and four o'clock.

Q. At 3:45 to four o'clock?

A. Yes, sir, I didn't take him to the house. I took him to the corner of Carrizo and Kinney.

Q. How far is that from his house?

A. About three houses, I think; I'm not sure.

Q. Did you see him walk inththe direction of his home?

A. He cuts through the back of a house, yes, sir. He walked through the back.

Q. Okay, and how far a trip is that from Cole Park to Carrizo and Kinney?

A. How far? I don't know.

Q. Did you tell Mario that you were going to go pick up Carlos?

A. No, sir, Mario had been drinking and he was out cold.

Q. He was what?

A. He was out. He was asleep. He never knew about it.

Q. What time did you finally get home yourself?

A. When I got home, it was 4:30. I know it was 4:30 because I looked at the clock. I always set my alarm for five. I looked at the clock, so I turned my alarm off and I had stopped on my way home and got some coffee.

Q. Where did you stop?

A. At the 7-11. It used to be Third and Elizabeth. It's Morgan and Third now.

Q. Did you stay there and buy a cup of coffee and leave?

A. I went to the restroom and bought a cup of coffee and left.

Q. Who was the attendant that night?

A. I'm not real sure. I think it was Sergio, but I'm not positive.

Q. Do you know Sergio's last name?

A. Martinez is his last name.

MR. BOTARY: I pass the witness.

CROSS EXAMINATION

BY MR. PENA:

Q. What is Mario's last name?

A. Martinez.

Q. And his mother, you say, lives across from Carlos' mother's?

A. Yes.

Q. Is Mario related to David Martinez?

A. Yes, sir, they're brothers.

Q. Brothers?

A. Yes, sir.

Q. Were you aware that David Martinez had been with Dalia the Monday before she was killed?

A. I was not aware of it beforehand. I was afterwards. After we had heard on the news, David and Ronnie and Tony and Mario were all talking about it and they said --

MR. BOTARY: I'm going to object to any hearsay that she may have heard from some other witness.

COURT: Sustained. Don't tell what other people may have told you.

A. Yes, sir.

Q. Now at the time that you have described on November 20, on that particular date were you still working at that 7-11 on South Staples?

A. No, I was working for Texas Star Oil on that date. I went to work for them in September.

Q. You had gone to work for them in September of '79?

A. Yes, sir.

Q. And I believe you said that you personally hired

Irma Gaytan?

A. Yes, and I supervised her.

Q. And you were the supervisor of that store?

A. Well, I was the manager.

Q. Of the store on Staples and Mary Street?

A. Yes, sir.

Q. And how far is that particular store from where Carlos lives?

A. Like I told Mr. Botary, about five or six blocks, I guess. You have to go down Laredo up Staples a couple of blocks. They're kind of long blocks, but when you say five or six blocks -- it's really five or six blocks according to those blocks, but regular blocks, I'd say five or six blocks because those blocks on Laredo are long.

Q. But in any event, you met Carlos because he frequented the store? He used to go buy his beer and bread?

A. Yes, sir.

Q. How long ago did you say you met him?

A. It was the summer of '78.

MR. BOTARY: Excuse me, could we approach the bench?

(A conference followed among counsel and the Court out of hearing of the jury panel

and the court reporter.)

Q. After you first met him, after you first made his acquaintance there at the store, did he still frequent that particular store?

A. Yes, sir, on occasion.

Q. And on any occasion that you remember, did he go down there just to talk to you?

A. No, sir, he just came in and bought something and, you know, once or twice he might have come down specifically to talk, but you know, we were just friends.

Q. I understand that. In fact, you say you have some children his age?

A. Almost. The oldest is twenty-two. My oldest is twenty-two.

Q. How old is Carlos?

A. I think he's twenty-five; I'm not sure.

Q. Mario is twenty-six?

A. Yes, sir.

Q. How long were you working there at the 7-11 store that Irma Gaytan was also working there?

A. Like I say, about six months. I think she went to work, I'm not sure, in October or November of '78.

Q. All right.

A. I'm not real sure of the date.
Q. And during the time that Irma Gaytan had been working there, I'm sure Carlos had been to the store several times?
A. Not having been there when Irma was there, I wouldn't know. I would assume so, but I wouldn't know for certain.
Q. Did you ever discuss Carlos with Irma?
A. No, sir.
Q. So you have no way of knowing if she knows Carlos?
A. No, sir. I know the other employees in the store knew who he was, you know, but I don't know if Irma did.
Q. Who would that be?
A. Well, Mary who worked for me, and Elodia who worked for me, my daughter, Cindy.
Q. She also worked at the store?
A. She did. She doesn't now. She lives in San Antonio.
Q. Who else that worked at the store knew Carlos?
A. I'm not sure. That's the only ones I can tell you for sure. They did not necessarily know his name, but recognized him as being in there.
Q. And in all likelihood Irma Gaytan was probably there when he's been in there?
MR. BOTARY: I object, calling for

conclusion.

COURT: Sustained.

Q. Well, he's a regular customer of the store, right?

A. Yes, sir.

Q. As far as you know, he still goes to the store?

A. Yes, sir.

Q. It's right near his house?

A. Yes, sir.

Q. Is that the closest convenience store to his house?

A. Yes, sir.

Q. Does he own a car?

A. No, sir. Well, he didn't. I think he might now, but he didn't at the time I knew him.

Q. So most of his shopping was done by walking to the store?

A. Yes, sir, but I never saw him there, you know, after six o'clock in the evening because I was rarely there after six o'clock, maybe, once or twice.

Q. You see that pocketknife there. Have you ever seen that pocketknife before?

A. No, sir.

Q. You've never seen Carlos with this pocketknife?

A. No, I never seen him with any type of a weapon.

Q. I know that you said you didn't have an affair with him, but did you ever have occasion to see him in

his shorts?

A. No, sir, I didn't.

Q. You wouldn't be able to know whether these were his shorts or not?

A. No, sir, I would not.

Q. When you got the telephone call from him --

A. Yes.

Q. -- you don't know where he was calling from?

A. He said he was at Cole Park.

Q. I understand that, but you were not there present at Cole Park and you're just going by what he said -- and remember the Judge said let's not go into hearsay. You weren't there where he was calling you from?

A. No.

Q. So you have no idea where he's calling you from?

A. No, sir.

Q. And you, by your personal observation, have no idea where he was prior to the time he called you?

A. No, sir.

Q. When is the first time that anyone contacted you about being a witness in this case?

A. I don't remember exactly. It's been a few weeks ago.

Q. Been a few weeks ago?

A. Yes. I'm not sure. It was week before last or two weeks ago. I went with Carlos to Mr. Botary's

office and that's when I talked to Mr. Botary.

Q. I see. Did Carlos ask you to accompany him?

A. No, sir, I told him. I think when he originally testified, he didn't want to bring me into it because of Mario.

Q. When Carlos originally testified?

A. Whatever they do whenever they arrested him. I didn't even know they had picked him up for questioning. His mother told me.

Q. When did his mother tell you?

A. I'm not real sure. It's been, like I say, two or three weeks ago.

Q. That's the first time you learned --

A. Carlos called my house and I wasn't home and I called his mother's and I tried several times to get ahold of him. Finally, she said she was kind of worried because the police had picked him up and that's the first time I knew that he had been, you know -- it was several days later before I talked to him.

Q. When you came to talk with Mr. Botary, had the trial already started?

A. No, sir.

Q. It had not yet started?

A. Not the first time I saw him, no, sir, but I didn't know I was going to be a witness. I hadn't been

subpoenaed or anything.

Q. But you had already talked to Mr. Botary yourself?

A. Yes, sir, with Carlos.

Q. Was Mr. Botary aware of what your possible testimony would be?

A. Well, I don't know if he was aware of it. He asked me a few questions about the 20th, you know, the morning.

Q. Did you tell him: "Yes, Carlos called me."

A. Yes, sir, I told him that.

MR. PENA: Your Honor, at this time we would move that the witness' entire testimony be stricken from the record. This is not the name of any of the witnesses given to us that they intended to use in his case-in-chief, and it's catching us by surprise. We don't know anything about this witness and we would, therefore, request that this witness' testimony be stricken from the record. It's been established from her own testimony that Mr. Botary was aware of the existence of her prior to the time the trial began and was aware of the nature of the testimony and Mr. Botary did give me the name of this witness, but it was only until yesterday that he gave it to me.

MR. BOTARY: Your Honor, I explained

that reason to the Court out of the presence of the jury and I don't want to take that up at this time.

COURT: Let's do this. Let's recess. It's ten until twelve. Ladies and gentlemen, you remember that we will be back at one. We'll go on until three o'clock without a coffee break at which time we'll recess.

(The jury leaves the courtroom.)

COURT: All right, do you care to respond now, Mr. Botary?

MR. BOTARY: No, Your Honor, I advised the Court yesterday that my initial intent was to use this witness as a rebuttal witness and I intended to do that at all times until yesterday, and I don't have to disclose rebuttal testimony to defense counsel. I explained to the jury during voir dire examination and explained to the Court that I did not intend to call Carlos Hernandez to the stand. Carlos Hernandez's name has been mentioned time in and time out, and I think at that point when I made the final decision not to put him on in

my case-in-chief, I felt I could develop my case. He's got an investigator who was advised last night of her address and telephone number. He can be working right now if he needs additional time to check her story. What she said is true. I talked to her with Carlos Hernandez, I believe, on the 7th of January, 1980 for the first time. I took no statements from her. She was present during the time I was talking to Carlos Hernandez. I made her stand outside in the lobby so she could not hear. After that interview, I then brought her in. For the first time I learned what she's testified to. I don't think the state, because of the materiality and importance of her testimony and the attack that defense counsel has made on Carlos Hernandez, that I ought to be prohibited from presenting this witness. He's shown no injury, he's shown no harm. He's got an investigator that can assist him in developing her testimony if he wants to.

MR. PENA: Your Honor, I respectfully disagree with Mr. Botary. The law is very clear that the defense is entitled to all names of witnesses that they anticipate in good faith

that they will use in their case-in-chief. If they thought this was a rebuttal witness, but they knew about her beforehand and that she could possibly be a witness in their case-in-chief, they should have given us her name. And the fact that they intended or, at least, anticipated calling her shows that they should have given us her name. We agree we have no right to the name of rebuttal witnesses. We're not asking for that. We're asking that this Court strike this testimony from the record on the basis of a pretrial motion that this Court ordered that we would be entitled to a list of all witnesses that the state anticipated, and that doesn't mean that they would be bound to present them in their case-in-chief, but this Court ordered the state to provide us with a list of all the witnesses, not only that they were going to be called, but all the ones they had anticipated to be called. And we were told we could rely on their subpoena list and if there would be additional witnesses, we would be notified prior to trial. I think it's very clear we were not notified of this witness who is a witness in their

case-in-chief until yesterday. For that reason, we again ask that this witness' testimony be stricken from the record.

COURT: I'll make a ruling on that at one o'clock. Let me ask you to be sure to be here at one o'clock.

(After a lunch recess and before the jury enters the courtroom, the following proceedings take place:)

COURT: I'll deny his motion to strike the testimony of the witness.

MR. PENA: Your Honor, we would like to make an additional request before the jury gets back.

COURT: All right, sir.

MR. PENA: The Court had told us that we were going to work until three today. That gives us another two hours to work and I certainly don't want to postpone this case anymore than necessary, but we would request that before the state rests and before we finish cross examination of this witness, that we have a continuance until tomorrow morning

in order to do some investigative work on the lady in order that we can properly propound cross examination of the witness.

MR. BOTARY: Your Honor, I think that is an unnecessary delay. The state is just about ready to conclude its case-in-chief after which I don't have any objections to Mr. Pena if we run until about two o'clock, if the Court wants to recess until tomorrow morning. That's fine. That will give him an additional few hours this afternoon and tonight to prepare. He's got an investigator. He actually could have started it last night, but didn't do it. This witness was present in the corridors, in my office, and at the lunch counter from yesterday at two o'clock all day long. No one attempted to contact her or talk to her.

COURT: Let me ask you this: What witness do you have after this?

MR. BOTARY: I'm going to recall Sidney Smith, Your Honor, and I believe that's going to be it.

COURT: Well, that's going to take an hour or two.

MR. BOTARY: No, Your Honor, he's already testified.

COURT: It doesn't make any difference. We keep going over and over back and forth.

MR. PENA: And I wanted to recall Olivia Escobedo.

MR. BOTARY: Your Honor, again he can't recall her unless it's his time to present evidence, and it's not his time.

COURT: I sustain the objection to that. Well, then when do you think you will complete your evidence?

MR. BOTARY: Your Honor, depending on his cross examination of this witness, I'm going to call Sidney Smith for about five minutes.

COURT: That will be your last witness?

MR. BOTARY: I expect that will be my last witness.

COURT: I want to give you time to make your investigation today. I have gone ahead and told this jury that we would work until three o'clock. I hate -- if I say you're recessed, then they'll say: "What kind of deal are you pulling on us?" That's the

only thing that worries me.

MR. BOTARY: Your Honor, she has already named people that he can have his investigator go out and check the story. He'll have to wait until it's his time to present evidence to impeach her.

MR. PENA: But the problem is I won't be able to properly cross examine her until I know what the investigation will reveal.

COURT: Well, that's true.

MR. PENA: And once he rests, then I won't be able to cross examine her anymore. I would have to call her as my witness.

COURT: No, I don't expect you to do that under the facts, under the way that this has developed. I wonder, Mr. Botary, would you have any objection to him, if he wishes, having his cross examination in the morning of the witness even after you close?

MR. BOTARY: Well, Your Honor, what we could do, if the Court wants me to do it this way, is we can go ahead and recess her testimony and take Sidney Smith out of order. Let me finish my case with him. We'll recess the trial until tomorrow morning without me closing

and I have an additional night to look over my evidence. I can either close in the morning, let him go forward, or present whatever evidence in addition to that I may have.

COURT: Well, this sure is embarrassing to tell them to be back here at one o'clock and then a situation like this. Let's do this: You can go ahead and complete your examination of her, put on Sidney Smith, and not close.

MR. BOTARY: I have no disagreement with that.

COURT: And then rather than have cross examination with her, we can recess as much as I hate to, but I don't see any way out of that.

MR. BOTARY: I have concluded with my direct, and I understand he's concluded with his cross.

MR. PENA: No, I haven't concluded, not for today. I'd like to develop more facts and continue my investigation.

COURT: All right, then you'll have this afternoon to do the checking tonight before nine o'clock. Does that give you sufficient time?

MR. PENA: We would not request one minute more.

COURT: All right. We'll do that then. Bring the jury in.

MR. BOTARY: Will the Court rule on defendant's motion in the presence of the jury?

COURT: Yes, sir.

(The jury enters the courtroom and the case proceeds as follows:)

COURT: The defendant's motion to strike the testimony of the witness is denied. Do you have anything else at this time?

MR. PENA: Yes, I'd like to ask her a few more questions.

COURT: All right.

Q. (By Mr. Pena) Would you please again give me your address?

A. It's 1601 Airline, No. 12.

Q. And your telephone number?

A. 992-2375.

Q. And on November 20, November 19 and 20, that date, where were you employed at that time?

A. Texas Star Oil.
Q. And what were your working hours?
A. I worked during the day in the accounting department, eight to five.
Q. Monday through Friday?
A. Yes, sir.
Q. And I believe you mentioned that when you received a telephone call, that you went home and that Mario Martinez was out?
A. Yes, asleep. He had been drinking and he fell asleep.
Q. He'd been drinking?
A. Yes, sir.
Q. Does Mario live there with you?
A. No, sir.
Q. He just spent the night, that particular night?
A. He does sometimes. He comes and goes. At that particular time he was working at a job not too far from my house and he was staying there.
Q. Where does Mario live?
A. I don't know where he is right now, sir. I haven't seen him in about two weeks. He called me from Austin Saturday, but I wasn't home.
Q. You don't know where he's working?
A. He's not working as far as I know.
Q. During the year of 1979, were you married?

A. No, sir.
Q. Who aside from yourself lives there at the apartment?
A. My two daughters, Alice and Leslie, and as of Sunday I have a girlfriend staying with me.
Q. As of Sunday?
A. We moved her stuff in Sunday.
Q. What is her name?
A. Kim Spitzer. I don't know how you spell the last name. I took her in because she's pregnant. She's young and she's pregnant, so I'm going to help her out.
Q. She's not working?
A. Yes, sir, she's working.
Q. Where does she work?
A. E.L. Caldwell.
Q. What kind of business is that?
A. I have no idea, sir.
Q. Now the period, the timeframe -- let's say, the month of November, 1979, who was living with you at the apartment?
A. My girls and myself.
Q. These same two girls, Alice and Leslie?
A. Yes, sir.
Q. Where does Alice work?
A. She doesn't. They go to school.

Q. What school do they go to?
A. W.B. Ray.
Q. How old is Alice?
A. Seventeen.
Q. And Leslie?
A. She's sixteen and she works parttime at Whataburger.
Q. And I believe you said that Mario and Carlos know one another?
A. Yes, sir.
Q. Did Mario at anytime live across the street?
A. His mother lives across the street, yes.
Q. Did Mario ever live right across the street?
A. Yes, he stayed there.
Q. His mother lives across the street from Carlos' mother?
A. Yes.
Q. And Carlos lived with his mother?
A. Yes.
Q. How long has he lived with his mother?
A. I don't know, sir. As long as I have known him, yes.
Q. Where does David Martinez live?
A. I don't know, sir. He's in the Army right now.
Q. And how long has he been in the Army?
A. He went in the Army somewhere around the first of January.

Q. Now when you arrived at Cole Park, you knew exactly where to proceed to find Carlos?
A. Well, he told me that he was going to be -- I call it a little fortress that the kids play on. I knew -- I'm familiar with Cole Park.
Q. And the little fortress, that's where he was?
A. Yes.
Q. I'm not familiar with what fortress it is. You said something about not being able to climb.
A. It's got a little -- it's about that far off the ground. It's got a little bitty ladder that you climb up and climb over the side into it.
Q. It's relatively high?
A. It's on stilts.
Q. Oh, I see. What does the top look like?
A. It looks like a picket fence around, a platform with what looks like a picket fence.
Q. It -- is it the only one like that?
A. Yes, sir, and it's down towards where the pier is, on the far side of that open amphitheater thing, behind it.
Q. Okay, you yourself had been to Cole Park and you're familiar with Cole Park?
A. Yes, sir.
Q. And you're familiar with Cole Park; you have been

there before?

A. Have I been there?

Q. Before November 20.

A. Oh, yes, sir.

Q. Many times?

A. Oh, yes. I used to live on Southern Street which deadends at Cole Park.

Q. You said that you noticed the surrounding area where Carlos was; you didn't observe any beer cans or beer bottles?

A. I really wasn't looking for any. I didn't see any, but I wasn't looking for any. I wasn't aware of any.

Q. When Carlos left you, did he have any beer with him?

A. No, sir, he did not.

Q. And you said that he was mumbling?

A. Well, I was trying to talk to him and he was saying something -- like I say, it was in spanish and I can't understand spanish.

Q. Does he know that you don't understand spanish?

A. Yes.

Q. So he apparently -- he wasn't aware that he couldn't communicate with you in spanish?

A. Apparently.

Q. And you say you took him home?

A. Yes, sir.
Q. And he lived --
A. -- on Carrizo. I didn't take him to the house. I took him to the corner of Carrizo and Kinney.
Q. That's where his mother lives, right?
A. Yes.
Q. Now Carlos never approached you about the possibility of being a witness in this case?
A. No, sir.
Q. It was his mother?
A. She didn't actually approach me either. She said she was concerned because the police had picked him up. That's the first I ever heard about it. Nobody ever approached me about being a witness.
Q. It was about two weeks ago?
A. Whenever. It was before two weeks ago. It was sometime in January.
Q. It was in December?
A. I don't know, but it was when I talked to Carlos after Christmas.
Q. You learned about it after the first of the year?
A. Yes, sir.
Q. And when you first learned about it, to your knowledge, he was still not in custody?
A. No, sir, he had been picked up and questioned is all

I know.

MR. PENA: Pass the witness.

REDIRECT EXAMINATION

BY MR. BOTARY:

Q. You said you're familiar with Cole Park?

A. Yes.

Q. Do you know whether or not there is any pay phones, public phones in that park?

A. Yes, sir.

Q. Would you tell the jury where they are at and how many there are?

A. It's down close to where Booty Street is or that's Ayers, I think. It's referred to as Booty down there. It comes into Ocean Drive. There's a restroom area and there is a pay phone.

MR. BOTARY: Thank you, Mrs. Curry.

RE-CROSS EXAMINATION

BY MR. PENA:

Q. You have been to Cole Park several times. Have you ever had occasion to use that telephone?

A. Yes, sir.

Q. And isn't it true that that telephone is inoperative many times?

A. I have never found it inoperative, no. I have used it two or three times.

Q. It's not in a phone booth?

A. No, it's in one of those new little things they've got just opened.

MR. PENA: Thank you. I have no other questions.

COURT: You are excused, but be back at nine o'clock in the morning.

MR. BOTARY: Your Honor, the state would recall Sidney Smith.

SIDNEY SMITH,

recalled as a witness by the state, having previously been duly cautioned and sworn, upon his oath, testified as follows:

DIRECT EXAMINATION

BY MR. BOTARY:

Q. Officer Smith, you have testified earlier, have you not?

A. Yes, I have.

Q. You understand that you're still under oath?

A. No, sir.

MR. PENA: Pass the witness.

MR. BOTARY: No further questions.

COURT: You may step down. Call your next witness.

IRMA GAYTAN,

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

DIRECT EXAMINATION

BY MR. BOTARY:

Q. State your full name, please.

A. Irma Gaytan.

Q. You live in Corpus Christi?

A. Yes, sir.

Q. How long have you lived in Corpus Christi?

A. All my life.

Q. How old are you?

A. Twenty-nine.

Q. Do you work somewhere?

A. I was working at 7-11, not anymore.

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Q. When did you leave 7-11?
A. About a week ago, maybe two weeks.
Q. Were you at any particular store while you worked for 7-11?
A. Since I started I was at 521 South Staples.
Q. Would you tell the jury for those that don't know where that is, what part of town that's in?
A. Well, it's next to the Bluebonnet Restaurant, almost about, I'd say about the half-way block or a block from Les Feldser, in that area.
Q. Not far from the courthouse?
A. No, sir.
Q. Do you work a particular shift over there?
A. I work the third shift 10:00 at night until 6:00 in the morning.
Q. Do you work that shift everyday of the week?
A. Except Thursday and Friday I'm off.
Q. And were you working this shift around November 20, 1979?
A. Yes, sir.
Q. Do you work that shift with any other employees there?
A. Sometimes they work with me until 2:00 in the morning, 1:00, and when nobody shows up mostly I work by myself.

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Q. What time do you stop selling beer at that store?
A. Twelve.
Q. Weekdays?
A. Twelve.
Q. Did you have occasion to talk to some police officers in reference to what you may or may not have seen on a particular night in November of 1979?
A. Yes, sir.
Q. Do you know when the police came to talk to you?
A. I don't remember the date exactly, but it was -- I had just gotten there about, maybe, 10:30, fifteen until eleven, something like that.
Q. Do you know which officer talked to you?
A. Rivera, I believe was his last name.
Q. Officer Rivera?
A. I think so.
Q. And did he talk to you at the store or did you go to the police station?
A. In the store first and then I went to the police station.
Q. Did you give the police a statement?
A. Yes, sir.
Q. Have you had occasion to look at that statement before you testified?
A. Yes, sir.

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Q. If at any time you need to look at the statement to refresh your memory, I've got a copy here. You can look at it. I explained that to you did I not?
A. Yes, sir.
Q. Did you have occasion to help the police in reference to the homicide in Corpus Christi involving one Dalia Sauceda?
A. Yes, sir.
Q. And did you know Dalia Sauceda?
A. Not personally, only because she used to go to the store a lot.
Q. You recognized her as somebody who went to the store?
A. Yes, sir.
Q. When did she go to the store?
A. Not that often. Usually she would go late hours. That's why I would talk to her a little.
Q. Do you know Jesse Garza?
A. No, I don't.
Q. What about Pete Olivarez?
A. I've seen him, maybe, once or twice. That's it.
Q. Again a customer at the store?
A. Yes.
Q. I want to take you back to the early morning hours of November 20, 1979, which was a Tuesday morning.
A. Yes.

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Q. Monday night, Tuesday morning. Were you working, say around 2:00 or 3:00 in the morning?

A. Yes, sir.

Q. Were you working with anyone else?

A. No, sir.

Q. Sometime during the early morning hours of November 20, 1979, did you see Dalia Sauceda?

A. Yes, I did.

Q. Would you tell the jury why you recall seeing her that day?

A. It was after beer hours and then, how should I say it, well at night on my shift usually you notice people coming in that late because hardly anybody comes in. I had seen her before, so I recognized her.

Q. What did she do when she came in the store?

A. She went in the store and went where the cokes were and she looked like she was undecided what to buy. She went to the frito section and bought potato chips or fritos, I'm not sure. Then she came to where the cokes were. She still hadn't made up her mind.

Q. How long was she in the store before the fellow came in?

A. I'd say about five, not more than six minutes.

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Q. Did you see what kind of vehicle she came in?
A. No.
Q. Then this man came in?
A. Yes.
Q. Then what happened?
A. The way he was motioning, to me it appeared like to hurry up, something like that. I didn't hear what he said, just the motion he was making.
Q. Did he go in the store?
A. Yes.
Q. Did he walk up to Dalia?
A. Yes.
Q. They had a conversation or not?
A. Just those few words that were exchanged.
Q. What did he do after?
A. He just walked out.
Q. Ma'am.
A. He just walked out of the store.
Q. Did Dalia come to the counter?
A. She grabbed the coke and came out to the counter and paid for it, plus whatever she had gotten.
Q. Do you remember who that fellow was that came in the door and told her let's go or made those motions?
A. Well, on the mug shots they showed me, I pointed the guy out that looked like him.

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Q. You were able to identify that person for the police?
A. Yes, sir.
Q. After they left the store, did you do anything?
A. I followed Dalia out because I was going to throw the trash out because I was curious to see what all the loud music was about. I heard loud music and I couldn't leave the store at that time, but when she left I followed, not immediately, but almost.
Q. And what did you see as you followed her out the door?
A. A van, late model van.
Q. Do you think you would be able to identify that van if you saw a picture of it?
A. Yes.
Q. Let me show you what's been marked as State's Exhibit No. 3. Does that appear to be the kind of van that you saw that night?
A. Yes, sir.
Q. Had you ever seen her in that van before?
A. No.
Q. And what else did you see, if anything?
A. One of the boys that was with her or men was urinating outside by the dumpster, but I'm so used to seeing those things, it doesn't bother me anymore. I just went the other way.

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Q. Did you surprise the fellow?
A. He didn't look surprised.
Q. He kept right on doing it?
A. He was just trying to. He didn't sound -- like usually they get startled, nothing like that.
Q. Where is the dumpster in relation to the front door?
A. On the right, the far right.
Q. Is it on the side of the building or in front of the building?
A. On the side.
Q. Was the van parked on the front of the building?
A. On the side.
Q. By the front, I'm talking about the front door.
A. On the side, far right.
Q. How many people did you see out there with Dalia in that van?
A. I saw the boy that was urinating, plus another, the boy that had gone inside the store.
Q. Plus the guy that had gone inside the store? Not the same man?
A. No, it was not the same one, the one that went in the store to tell her to hurry up and the one that was urinating.
Q. The one that told her or motioned her to hurry and the fellow urinating was the same man?

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A. No, two different guys.

Q. Were you able to help the police identify the person you saw urinating?

A. More or less. Like I say, I didn't pay too much attention when he was urinating and when he was in the van all I saw was the profile of him.

Q. Would you describe him for the jury as best you recall?

A. To me when I saw him in the van he was sitting down and he was kind of, like, talking to somebody in the back over the loud music and he looked kind of young, maybe, in his twenties or twenty-one at least and he had kind of long hair. He had a mustache that I did notice. Other than that --

Q. Were you able to identify anybody for the police?

A. Yes, I did.

Q. And do you know who it was that you identified?

A. No. I just went by what the profile looked like when I saw him that night and the pictures.

Q. Do you recognize anybody in this courtroom that you saw that night?

A. I would hate to say. I need to see the pictures that I saw.

Q. Would it help you to refresh your memory if you saw the pictures and saw your statement?

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A. Maybe just the pictures, not the statement.

Q. Either way, how many pictures did you see?

MR. PENA: Your Honor, we object to this procedure as being bolstering. She can either identify the man or she can't. If she can't, that's fine. He's trying to bolster his witness and trying to suggest which individual that might be.

MR. BOTARY: We're entitled to have her refresh her memory and if she needs the photographs, she can do it in that light.

COURT: Objection overruled.

Q. For purposes of identification the State has marked a folder State's Exhibit No. 6 and State's Exhibit No. 7. Would you look at these two folders to yourself, please.

A. This one right here, Number 3.

Q. Is that the one that you identified for the police?

A. Yes.

Q. Do you know who No. 3 is?

A. I have never seen him.

Q. Did you recognize him in court today?

A. He looks to changed to me. He looks younger.

Q. What does the photograph that you pointed out -- does the man have a mustache and long hair?

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A. No.
Q. What about in the other folder, do you see anybody in that folder that you recognized?
A. No. 2.
Q. Does that photograph reflect a photograph -- does that photograph reflect a person that has long hair and a mustache?
A. No.
Q. And those are the two people that you have identified for the police?
A. Yes.
Q. And when did you identify those people?
A. I think about a day later after the incident had happened, maybe two days; I'm not sure.
Q. After you identified those two people, did the police officers tell you who you picked out by name?
A. Yes, by name.
Q. Did they suggest to you who it was prior to the time that you identified them?
A. No.
Q. And do you know Jesse Garza?
A. No, I don't.
Q. Do you know Pete Olivarez?
A. No, I don't.
Q. At this time I hand you your statement and ask you to

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look at it. If you need to refresh your memory concerning the people that you identified, the two photographs that you identified for the police, after you identified them to the police, did they tell you who they were?

A. After I identified them, yes.

Q. And who were those two people?

MR. PENA: We object to that as calling for hearsay, Your Honor.

COURT: I'll sustain the objection.

Q. Do you recall the names of the people that you identified?

MR. PENA: Again he's asking her hearsay questions as to what the officer said the guy's name was.

MR. BOTARY: Your Honor, at this time we offer State's Exhibit 6 and 7 into evidence and in State's Exhibit No. 7 would you mark the person that you identified for the police, just draw a circle around him.

A. (Witness complies.)

Q. And State's Exhibit No. 6, would you draw a circle around that one?

A. (Witness complies.)

MR. PENA: May I approach the bench,

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Your Honor?

COURT: Yes, sir.

(A conference followed among counsel and the court out of hearing of the jury panel and the court reporter.)

COURT: Ladies and gentlemen, please go with Mr. Martinez.

(The jury leaves the courtroom.)

MR. BOTARY: Your Honor, I don't have any questions on the motion at this time.

MR. PENA: Your Honor, it's my motion, but the burden is on the State because we have unique situation where she's been unable to identify anyone in the courtroom. Consequently, if he wants to use the photographs which we in the first instance contend they cannot be used unless there was an in court identification, it's incumbent upon him to show there was no suggestiveness to the persons that he has alluded to in direct testimony.

MR. BOTARY: You Honor, I have already done that. I have ask her if the police suggested to her before the jury. I don't have any additional questions.

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COURT: Alright, do you have any additional questions?

MR. PENA: We have no other additional questions, and we would object to the photographs being offered on the basis there is no in court identification and consequently would be of no probative value in this case.

MR. BOTARY: Your Honor, she's using those photographs to refresh her memory. She's identified two people. You can either have her refresh her memory as to the identification of the names that were given to her by the police or have the police come in here in a few minutes and say the two photographs they picked out are so-and-so. She'll say it's Jesse Garza and Pete Olivarez.

MR. PENA: We object to the introduction of those pictures because those are mug shots that have mug shots of various individuals on there and, of course, that would certainly be highly prejudicial.

MR. BOTARY: Your Honor, I have concealed the name tags as best I can in those photographs.

COURT: They can be obscured in some

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way. That part of the pictures can be cut out. I'll grant your motion on that, but you have a right if you want to -- you say to question the witness as to her identification. If you refuse to, that's fine. We can go on.

MR. PENA: I'll ask her some questions.

COURT: Alright, sir.

VOIR DIRE EXAMINATION

BY MR. PENA:

Q. When were you first contacted by the police, Mrs. Gaytan?

A. I'd say, maybe, two days after the incident happened.

Q. And what police officer contacted you.

A. Rivera was his last name.

Q. He was the first one that contacted you?

A. Yes.

Q. You had not been contacted by any other police officer?

A. No.

Q. And was it on this first contact that you had with him that he showed you any pictures?

A. Yes.

Q. He had the pictures with him?

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A. Yes.
Q. Two days after?
A. I say about two days after.
Q. That would have been on Thanksgiving Day?
A. Probably.
Q. Did you work on Thursday, Thanksgiving Day?
A. Yes.
Q. When you say two days after the incident, when to the best of your recollection did the incident occur?
A. I don't know.
Q. Well, when is it that you saw these people out there at 7-11?
A. On that Monday night, Tuesday morning.
Q. Are you sure of that?
A. Yes.
Q. How can you be sure?
A. I know. I just do.
Q. Could it have been Sunday night and Monday morning?
A. No.
Q. Why do you say no?

MR. BOTARY: Excuse me, I'm going to object on this point because it's not an identification he's going into at this point. If he's going to be allowed to cross examine her outside the presence of the jury,

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that's prejudicial.

MR. PENA: The identification as of this day.

COURT: The time from the date she saw him from the date she identified him is a proper area for him to check into. Isn't that what you are doing?

MR. PENA: I'm trying to establish what date it is that she said she saw him.

COURT: That's what I have reference to.

Q. (By Mr. Pena) What date did you see these people that you described at your store?

A. I don't remember the date.

Q. But it was -- whatever day it was, it was two days that Officer Rivera appeared?

A. More or less, like, I really don't have an account of how many days elapsed between the incident and when he approached me with those pictures. I really can't say for sure two days, three days. I don't have an account.

Q. Could it be less than two days?

A. I don't know.

Q. When he first approached you, you said it was about 10:00 at night?

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A. Maybe a little later. I had just gotten there.
Q. Alright, up to that point you had not been contacted by any policeman?
A. No.
Q. Did you ever speak to any other policemen?
A. No.
Q. When he approached you, what did he tell you?
A. He said he told me what had happened.
Q. What did he tell you had happened?
A. About that girl that had been killed in the van, if I had heard about it or read about it. I said I had read about it and he ask me if they had been here that night at the store and I said I remember, you know, I told him what I had on my report that I gave the policeman.
Q. I understand that, but what is it that you remember that he told you?
A. He said: "You heard about the van, the girl that was found in the van," and he wanted me to see if I could help him identify some of the people and that's when he showed me the pictures. He said: "Do you recognize any of these?"
Q. But before you get to that point, what else did he tell you about the incident?
A. That's all that I can remember.

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Q. Did he tell you anything about having anybody as a suspect?
A. No.
Q. He didn't mention any suspect?
A. No, I don't really remember him saying that.
Q. Did he tell you that he knew or had information that they had been at the 7-11 that night?
A. No. In fact, that's when I started wondering. I wondered how he knows me and how he got here. I wondered how he got to me.
Q. Now do you remember whether or not for sure it was the night or the morning hours of the 20th that you saw the van?
A. I'm sure it was the morning hours.
Q. But on the 20th, November 20?
A. The date I'm not sure.
Q. You're not sure?
A. No.
Q. It could have been on the 19th in the morning?
A. I don't know.
Q. Is that correct?
A. It could have been.
Q. That's all I'm asking you. Now when you first remembered about it, did you call the police and tell them: "I saw that van at my store that night."

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A. No.
Q. Why didn't you do that?
A. I just read it and dismissed it.
Q. And it didn't register that perhaps it was the same night that they had been there that you had seen them?
A. I'm too busy to keep up with those things. No, it didn't register.
Q. That's all I'm asking. I'm not trying to trick you or anything.
A. No, it's just that I have so many things to do. I read it and dismissed it and that's all.
Q. But you didn't read it and say: "He was there that night."
A. No.
Q. Did you know who they were talking about when you read the article?
A. No, I saw the van, but, you know, it's not in color and so I didn't recognize it at the time. I just glanced at the newspaper anyway.
Q. So you never thought about anything when you read it?
A. No.
Q. Just another murder?
A. Yes.
Q. It wasn't until the policeman went over there and then

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you said --

A. I recollected.

Q. -- what you saw?

A. Yes.

Q. But you're not sure what date you saw it?

A. It might have been that Monday morning because beer hours are over at 12:00 Sunday night. Anyway Monday or Tuesday they're over at 12:00. If it had been on a weekend, I would have noticed because I'm very busy until beer hours until 1:00 and I wouldn't have noticed all this going on if it had been after beer hours.

MR. PENA: Thank you. I have no other questions.

COURT: Alright. Bring the jury in.

(The jury enters the courtroom.)

COURT: You may continue.

Q. (By Mr. Botary) Mrs. Gaytan, you have circled a photograph in State's Exhibit 6 and one in State's Exhibit 7, is that correct?

A. Yes.

Q. And you did not know either one of these two men?

A. No, I didn't.

Q. And these are the two men that you picked out for Sgt. Paul Rivera?

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A. Yes, sir.
Q. And did he at that time tell you who you identified?
A. No.
Q. Okay, you have seen your statement?
A. Yes.
Q. Would you look at it again, please? Did he give that statement to you or did he take the statement from you at the store?
A. No, he didn't take it from me at the store.
Q. Did he show you the photographs at the store?
A. Yes, he did.
Q. Did he show you the photographs the first night he saw you at the store?
A. Yes.
Q. When did you sign that sworn statement, where at and when?
A. I signed it at the police department. I was called in.
Q. The following day or three or four days later or what?
A. It might have been a couple of days later.
Q. When you went to the police station did you have to sit down with an officer and tell him or give him the information in this statement?
A. Yes.
Q. Alright, you did not give that information to Paul

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Rivera and he took a handwritten statement at the store?

A. No.

Q. So all you did then at the store that night was identify the two people that you pointed out in this State's Exhibit 6 and 7?

A. Yes.

Q. And several days later then you went back and gave a sworn statement to the police?

A. Yes.

Q. In that sworn statement did you read it?

A. Yes.

Q. Now the sworn statement is pretty positive, is it not, as to the times and dates?

MR. PENA: We object to bolstering his statement based on some sworn statement.

COURT: Sustained.

Q. Did the police fill out the information in that statement or did you tell the police the information in that statement?

A. I told the police.

Q. Did you give the police a time as to when you saw these people at the store?

A. I said more or less.

Q. What did you tell the police more or less?

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A. About 1:20.
Q. Why did you determine it was about 1:20?
A. Because, like I say, beer hours were over with and then there is some people that roll the newspaper there at the store and usually on weekdays it comes in real early like 2:30, maybe 2:00 sometimes and they weren't there yet.
Q. So you are estimating because of the circumstances where you work?
A. Yes.
Q. Did you tell them the particular date that you saw these people?
A. No.
Q. You just left it open?
A. Yes. Like all I said was maybe between that Monday night, Tuesday, I said, you know.
Q. Why did you tell them Monday night, Tuesday?
A. Because I go by the beer hours, real slow, and you notice more things. I have more time to notice.
Q. And what day -- what you're telling us is you can eliminate the weekend?
A. Yes.
Q. And can you eliminate -- what days did you say you get off work?
A. I'm off on Thursdays and Fridays.

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Q. So you can eliminate Thursday or Friday?
A. Yes.
Q. Who worked with you ordinarily at the store?
A. Dave Holman. I really don't remember his name. It starts with an H. He still works out there.
Q. Do you remember him working that night?
A. He might have.
Q. But you do not know for sure?
A. No.
Q. By the way, did you swear to that statement there?
A. Yes, I did.
Q. Did you swear at the police station?
A. Yes.
Q. And did you swear the same day you gave this statement to the police?
A. Yes.
Q. Do you remember the date that you swore to that?
A. I don't remember the date. I have to look at the paper.
Q. If it refreshes your memory, you can answer. If it does not refresh your memory, you can't answer.
A. No, it doesn't.
Q. After looking at your statement there, does it refresh your memory as to who you identified in those photographs?

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A. Only by number.

MR. PENA: Your Honor, again he's trying to get her to say that the police told them the name of the suspect.

COURT: Sustain the objection.

Q. Did you say that you just recognized Dalia Sauceda or -- as a customer, or did you know her just by her name?

A. Just as a customer.

Q. Do you recall reading about the lady being found in a van being killed in a van?

A. Yes.

Q. Was it the same week in which you saw her, saw these two men and identified these men?

A. Yes.

Q. That's the same week in which you saw them?

A. Same week when the policeman came to the store.

Q. No, when you said that you saw these people in the store.

A. Yes, I think so, I'm not to sure.

Q. What are you not to sure about?

A. Repeat the question again.

Q. Okay, are you saying that it could have been three or four weeks before the killing that you saw this lady in the van and these two guys out there?

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A. No, no.

Q. Was it the same week she was killed?

A. The same week.

Q. And it was a weekday, not a weekend?

A. No, not a weekend, definitely a weekday.

Q. The girl that you saw in the van or you recognized, you did not know her name to be Dalia Sauceda?

A. No.

MR. BOTARY: Pass the witness.

CROSS EXAMINATION

BY MR. PENA:

Q. Now if I understood your testimony correctly, you don't know Jesse Garza and you don't know Pete or Pedro Olivarez?

A. No.

Q. And I believe you have testified -- I'm not sure if it was in front of the jury or not -- but did you not testify under oath that you were not sure whether it was on the morning of November 20th or on the morning of November 19th?

A. On dates I'm not sure.

Q. Okay, it could have been Monday morning at 1:20, is that correct, or approximately?

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A. It might have been.
Q. Or it could have been approximately Tuesday morning?
A. Yes.
Q. In fact, when you read about it in the paper, it didn't register with you?
A. No.
Q. That you had seen that same van, same woman and what have you that night?
A. No.
Q. It wasn't until sometime later on the police came and you said possibly it could have been that night, but you're really not sure; it could have been the night before that you saw the van there at your store?
A. Yes.
Q. Now you have told us here in court about having seen Dalia Sauceda, the deceased, right?
A. Yes.
Q. She was in your store and you have told us about another individual that walked in your store and was in there very briefly, I presume?
A. Yes.
Q. Well, did that individual go in there and did he read books?
A. Did he read books?

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Q. Right.
A. No.
Q. He didn't stop off by the magazine rack and start reading books or --
A. Not that I recall.
Q. Is that your memory of what happened?
A. Yes.
Q. And then when you went outside, you saw the same individual that goes inside, you saw that same individual outside, is that correct?
A. No, he was already in the van. I assume he was already inside.
Q. Now the individual that you saw urinating and the individual that went in the store and Dalia Sauceda, did you see any other people in the van?
A. No, sir.
Q. You didn't?
A. No.
Q. Was the person that you saw urinating, was he the driver of the van?
A. Yes.
Q. You're sure of that?
A. Yes, because when I went outside to throw the trash, there was no one in the van on the driver's side.
Q. There wasn't?

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A. There was just loud music and, like I say, I just dismissed him because he was urinating. I threw the trash out.

Q. Okay. Now I refer to your statement and did you not tell the police that you saw someone else in the driver's -- behind the driver's wheel in the van?

A. That was an error. You're talking about where it says three persons?

Q. Right.

A. No, that was an error.

Q. Whose error was that?

A. I guess the one that was typing it.

Q. You didn't?

A. They must have misunderstood me. I meant three persons, but they put three persons plus. I saw no one but those three persons.

Q. Now did you tell the police there was another latin male on the driver's seat about the same age as the first two.

A. I might have said, but that's not so. I already read it and it's an error.

Q. That's another error in your statement?

A. Yes.

Q. Who was the one that wrote out the statement? Was it you?

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A. No.
Q. You didn't?
A. Yes.
Q. And they wrote it out the way they felt it should be written out?
A. Yes, it could have easily been an error because I had my one year old and he was crying and carrying on and trying to talk to the policemen at the same time.
Q. Did you see the girl get in the van?
A. Yes.
Q. Where did she go in the van?
A. Towards the back because I didn't see her in front.
Q. And where was the other individuals?
A. On the -- not the driver's side, but the opposite side.
Q. The passenger side?
A. Yes.
Q. So the other fellow was on the passenger side?
A. Yes, sir.
Q. He was not in the back?
A. No, not that I recall.
Q. Do you know Carlos Hernandez?
A. Do I know Carlos Hernandez?
Q. Right.
A. No.

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MR. PENA: I wonder if we might ask Carlos Hernandez to come in so she can see him to see if she's ever seen him there.

(At this time Carlos Hernandez is brought into the courtroom.)

Q. Can you see him?

A. Yes.

Q. Would you step up a little bit closer so she can see you.

MR. BOTARY: Excuse me, she said she could see him from where he's at.

MR. PENA: That's all we wanted at this time.

COURT: Alright, can you see him alright?

A. Yes.

Q. Okay. Now that you have seen him, do you know who he is?

A. Now that you told me, yes, his name.

Q. But have you ever seen him before?

A. No.

Q. You have never seen him at your store?

A. I can't recall, like I say. The only ones I do recall is the ones that stop awhile and talk or the ones that when I'm by myself, they come in late at night.

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Otherwise, I wouldn't be able to say this or that about a customer.

Q. But this individual that just walked in, he's never gone over there to talk to you?

A. No.

Q. Do you have a person working there at that time or before whose name is Norma?

A. Working?

Q. At the 7-11.

A. Not at my store.

Q. Not at your store?

A. No.

Q. Of course, you don't remember seeing him on the night of November 20?

A. No, sir.

Q. Or before midnight November 19?

A. No, sir.

Q. Now as far as the pictures are concerned, did you tell the police that you were sure those were the people that you had seen or did you tell them that you thought they looked like them?

A. Looked like them.

Q. So you weren't really sure those were the people?

A. He just ask me to point out if any of the boys looked like or something looked like I had seen that

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night and I pointed those two boys out.

Q. I see. Now when you were first shown some pictures, isn't that true that in the first group of pictures, the fellow the police thought had gone into the store, that you were not able to recognize a fellow by the name of Pete?

A. Yes.

Q. Isn't that true?

A. Yes.

Q. And did the police then tell you: "That's the fellow we think went inside the store with Dalia?"

A. I would hate to say really because I don't remember exactly what the conversation was like.

Q. Alright, fine. That's fair enough. As far as I'm concerned have I been pestering you to talk to you or have I tried to make you talk to me?

A. You tried to talk to me, yes.

Q. And you told me that the reason you wouldn't talk to me is you were told not to talk to me?

A. There was a man at my house and he said I didn't have to talk to no one. He didn't say you in general, just anybody.

Q. Who was that man?

A. I don't know.

Q. Did he identify himself?

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A. Yes, he did.

Q. As being with the District Attorney's Office.

A. He might have.

Q. Was it that fellow sitting over there?

A. Yes.

Q. He's their investigator?

A. I don't remember names, maybe faces. I was so sleepy anyway and he can verify to that. I had just fallen asleep and he knocks on my door and I was trying to get rid of him really.

Q. I don't blame you. If he knocked on my door, I'd try to get rid of him, too.

MR. PENA: Thank you. No more questions.

RE-DIRECT EXAMINATION

BY MR. BOTARY:

Q. What did Tony Martinez tell you about talking to other people or talking to anybody about the case.

COURT: Counsel, I don't think she recognizes the name.

Q. This man right here. What did he tell you?

A. The best I can recall is he says I didn't have to -- just in case someone would try to get ahold of me and

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he mentioned some names, but I don't remember them and now he says: "You don't have to talk to them. You may talk to them if you want to, but don't let them try to force you that you have to or you'll get in trouble if you don't because you don't have to."

Q. That's what he told you?

A. That's what he told me.

Q. Did you ever talk to Mr. Pena?

A. Only on the phone and when he was trying to see if he could set up a time where he could talk to me. That's all, but we never really did get together.

Q. What about Mr. Cruz?

A. No.

Q. Is he the only other one that talked other than Mr. Martinez and Mr. Pena on the telephone?

A. I don't know who Mr. Cruz is.

Q. Well, you said you got a telephone call from Mr. Pena?

A. Yes.

Q. And you got a visit by Mr. Martinez?

A. Yes.

Q. Did anyone else talk to you on the telephone or come by?

A. No, sir.

Q. And have you recently had your phone number changed?

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A. Yes.

Q. Was that in connection with this case?

A. No, we had already changed it, but the telephone man hadn't come by and this was before this.

Q. Now let me ask you about the procedures at the 7-11. Whenever you come in on a shift, do you take somebody else's place?

A. Yes.

Q. Alright, is that a twenty-four hour store?

A. Yes.

Q. Who did you replace that night?

A. I'm not sure.

Q. I'm talking about the night that you say Dalia and these two men were there.

A. I think I replaced Dave. Like I say, I'm not sure if he stayed with me a little bit later, maybe a little bit after hours; I'm not sure if he didn't stay with me until about 12:20 or 12:15 when I relieved him. It's hazy.

Q. Then 7-11 Corporation at that particular store, they just have one employee that works that night shift?

A. Because we're short. Most of the time we're short of employees. That's why I work the night shift and there's only one person on two to ten. Sometimes they try to keep two persons, but it's not all the time.

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Q. Were they keeping two persons at that time, November or Thanksgiving time?
A. I'm not sure. I can't say.
Q. Do you punch in sometimes on a time clock?
A. No.
Q. Do you call in the office and say you're there?
A. No. They don't have to with the employees we have.
Q. In other words, your shift comes around and you don't replace the other employees, he's on the telephone calling the office?
A. The manager, that there's nobody here and what is he going to do because he's probably afraid he's going to work sixteen hours.
Q. So it wouldn't be unusual for you to come in and work all night anyway without any help?
A. I've always done that, in fact, from the time I was employed until the time I quit about three-fourths of the time I worked by myself.
Q. What I'm trying to get at, you didn't have any regular help that kind of worked with you every night?
A. No, no, no.
Q. Now the man that you identified through the photograph, was he one of the men that was urinating out there? Would you tell us which one of the

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photographs it was. There's two exhibits.

A. Number 3 on Exhibit 7.

Q. And you know Pete Olivarez?

A. Now I do. I know the person. I recognize the person.

Q. And you said you had trouble identifying him or not?

A. Like I said, he went out and left. I didn't have that much time to look at his face and look him over and everything.

Q. I'm talking about when the police came to talk to you.

A. No, I pointed him out readily.

Q. Did you point the other man out readily?

A. Yes.

MR. BOTARY: That's all I have, Your Honor.

RE-CROSS EXAMINATION

BY MR. PENA:

Q. Now the other fellow that was urinating, I assume that you didn't just stare at him?

A. No.

Q. You didn't look at him while he was urinating, I presume?

A. No.

Q. So you didn't get to good a look at him either, did you?

A. No.

Q. I forgot to ask you one other question. Do ya'll sell gas at that 7-11?

A. No, sir.

Q. You don't have any gas pump?

A. No, sir.

MR. PENA: Thank you. I have no other questions.

FURTHER RE-DIRECT EXAMINATION

BY MR. BOTARY:

Q. Where is the -- is there any other 7-11s in that area and if so would you tell the jury where?

A. Yes, two of them, in fact, real close to our store, the one on Staples and Mary. There's one, I'd say, maybe six blocks which is Brownlee and Agnes and they have gas pumps. There's one on Third and Morgan and they have gas pumps.

MR. BOTARY: Thank you very much.

COURT: You may step down.

MR. BOTARY: I call Danny Olivarez.