

— Aldape: Trial Testimony (pp. 348-615)
(10/82) (testimony) (v. 22)



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RICARDO GUERRA

VOL. XXII

TRIAL IN CHIEF

69 081

CAUSE NO. 359,805

69081

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF HARRIS COUNTY, TEXAS

RICARDO ALDAPE GUERRA

248TH JUDICIAL DISTRICT

VOLUME XXII
STATEMENT OF FACTS
TRIAL IN CHIEF
CONTINUED
OCTOBER 6, 1982

FILED

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SEP 26 1983

Harris County, Texas
By 

FILED IN
COURT OF CRIMINAL APPEALS

SEP 19 1983

Thomas Lowe, Clerk

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I N D E X

VOLUME XXII

TRIAL IN CHIEF, CONTINUED

Juror J. H. Lee

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Examination by the State (Moen)

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1 (At this time the following proceedings
2 were had in the judge's chambers.)

3 THE COURT: The bailiff has reported to
4 me that a juror by the name of Lee is ill and
5 desires to speak to me. Rather than have a
6 barrage of questions from both sides, all attorneys,
7 what I would propose, if both sides agree, is to
8 ask Mr. Lee what his problem is and then report
9 back to the attorneys and make a decision on how
10 we go on.

11 MR. BAX: No objection from the State
12 to proceed in that manner, Your Honor.

13 MR. ELIZONDO: Will he be here, Judge?

14 THE COURT: When I talk to Mr. Lee, I
15 will report back what he says.

16 MR. HERNANDEZ: Will it be on the
17 record?

18 THE COURT: I can put it on the record.

19 MR. HERNANDEZ: Fine.

20 THE COURT: If you don't want to agree
21 to that, I can bring him in and do it with you
22 present, but I thought it might be more --

23 MR. BAX: Candy, it may turn out after
24 the judge talks to him, we may have to talk to him,
25 and this way, the judge can talk to him and see

1 what his problem is.

2 THE COURT: You do what you want.

3 MR. ELIZONDO: I was just thinking --

4 MR. MOEN: We have also made a request
5 to the judge earlier this morning to ask him to
6 bring in another certified interpreter to do the
7 witnesses on the rest of the case rather than have
8 Linda finish them up.

9 I was going to get up and do that, but
10 rather than cause a scene, I would do that, but I
11 would really appreciate that, because Linda is not
12 neutral like she should be.

13 We are thinking about bringing back two
14 of the witnesses who have testified who testified
15 they were extremely confused as a result of the
16 interpreter. We may call Saucedo and Elena
17 Hoglen back as well, but we are real serious
18 about getting a different interpreter.

19 MR. ELIZONDO: I would like to go on the
20 record that Linda has been interpreting, as far as
21 I know, what the witnesses are saying, what the
22 questions are.

23 MR. MOEN: But as far as we are concerned,
24 she hasn't been.

25 I understand what your position is on

1 it, Candy, but as far as we are concerned, we have
2 had nonsensical responses to perfectly sensible
3 questions asked of witnesses, witnesses who have
4 told us different responses on more than one
5 occasion, and now here in the courtroom, based on
6 Linda's interpretation, total nonsense based on
7 questions we have asked.

8 MR. ELIZONDO: They have been interpreted.

9 MR. MOEN: There are also reports from
10 our bilingual people in the courtroom that she
11 is not interpreting the questions exactly as
12 asked.

13 MR. ELIZONDO: I am going to go on the
14 record and say I think she is interpreting the
15 questions as asked.

16 MR. HERNANDEZ: And more.

17 MR. BAX: What do mean by "and more"?

18 MR. HERNANDEZ: What happens, they don't
19 say it right. She turns it around to say it
20 right. She says it right, but not word for word,
21 and I don't like it. I would rather it would come
22 out word for word and let y'all try to take it
23 out of them. That is why I said I don't want her
24 up there.

25 You see, it is not because she is for

1 I or you.

2 THE COURT: We will resolve that.
3 I will appoint another interpreter for the
4 witnesses and she can continue to interpret for
5 Guerra, but we will have another interpreter for
6 the witnesses.

7 MR. HERNANDEZ: I want to go on the
8 record as saying everything she translated
9 yesterday was aboveboard. There was nothing she
10 said, anything wrong in the record. As a matter
11 of fact, though, I was very upset. She told the
12 answer, and it was the wrong answer, a very wrong
13 answer that would have helped us and ended up
14 helping y'all.

15 MR. MOEN: We are not saying she is
16 doing anything intentional, just saying we feel
17 she is not interpreting the questions exactly as
18 asked and not giving the responses exactly as
19 stated.

20 MR. ELIZONDO: The only thing I am
21 objecting to, the jury will see another interpreter
22 and add two and two.

23 MR. BAX: Wait a minute, Candy. You, by
24 your own admission, have told us they are changing
25 the answers around. They may come out with the

1 same meaning. An interpreter is supposed to
2 interpret word for word.

3 MR. ELIZONDO: Who do you propose?

4 MR. MOEN: I haven't suggested anybody.
5 We will try to get a certified interpreter.

6 MR. HERNANDEZ: You are going to have
7 problems. There are very few qualified, and she
8 is one of them.

9 THE COURT: All right. Let's go ahead
10 and bring the juror in, and we will question him
11 in the presence of the lawyers.

12 (At this time, Mr. J. H. Lee entered
13 the chambers.)

14 THE COURT: Mr. Lee, just have a seat,
15 please, sir.

1 J. H. LEE,
2 a juror, was questioned as follows:

3
4 EXAMINATION

5
6 QUESTIONS BY THE COURT:

7 Q Mr. Lee, it is my understanding that you have
8 become ill; is that correct?

9 A Oh, yes, sir. Bad.

10 Q What type of illness do you have?

11 A I can't sleep. I can't eat. I've got the shakes.

12 Q How long has this been going on?

13 A Since yesterday.

14 Q Have you been to a doctor?

15 A No. No.

16 Q Do you have -- what symptoms do you have?

17 A Hives. Hives all over me.

18 Q Have you ever had this condition before?

19 A Yes, when I get real nervous. I am just real
20 nervous, scared to death.

21 Q About this case?

22 A Yes, sir.

23 Q Do you have an appointment with a physician?

24 A No, I don't. I was going to call you on the
25 telephone, and then I couldn't find that number.

1 I didn't feel like coming this morning, but I
2 didn't know whether I would be held in contempt
3 of court or what, but --

4 THE COURT: Any questions?

5
6 EXAMINATION

7
8 QUESTIONS BY MR. MOEN:

9 Q Mr. Lee, if you went to see a physician, do you
10 think you would feel better or be feeling the same
11 way if you had to come back and be a juror on
12 the case?

13 A If I had to come back and be a juror, I would be
14 just this nervous and on edge.

15 Q Do you think in the condition you are in this
16 morning that that type of condition will continue
17 along with your jury service if you still have
18 to serve as a juror on the case and continue to
19 serve?

20 A Yes, sir.

21 Q Is it affecting your ability to listen to the
22 evidence and the testimony?

23 A Yes, sir.

24 Q Do you feel like you would be able to reach any
25 type of verdict in the case, given your present

1 condition at this time, no matter how much more
2 evidence you listen to?

3 A. No, sir. I don't feel I could render a verdict,
4 a fair and impartial verdict, no, sir.

5 THE COURT: Any questions?

6
7 EXAMINATION

8
9 QUESTIONS BY MR. ELIZONDO:

10 Q. Mr. Lee, is the case -- is the case bothering
11 you?

12 A. Really. For one thing, because of the language
13 barrier.

14 Q. Uh-huh.

15 MR. HERNANDEZ: Can you be more specific
16 on that?

17 MR. LEE: Huh?

18 MR. HERNANDEZ: Can you be more specific
19 on that?

20 MR. LEE: I speak a little Spanish, and
21 I can tell by the way that the lady on the witness
22 stand yesterday was giving her answers, she was
23 giving them so fast and interrupting the
24 interpeter, and the interpreter could not keep
25 up with what the lady on the witness stand was

1 saying, you know. She tried to list off as much
2 of what the lady had said as she could remember.

3 Q. (By Mr. Elizondo) You are not saying to us --

4 A. She missed some of it.

5 Q. You are not saying to us that is the reason you
6 are ill, is it?

7 A. Oh, yes. I am scared.

8 Q. You are scared?

9 A. This case is really scaring me.

10 THE COURT: Can you explain that?
11 You are physically afraid?

12 MR. LEE: Yes. I am afraid for myself
13 and my family.

14 MR. HERNANDEZ: Did somebody call you up
15 or anything?

16 MR. LEE: Last night, I got a telephone
17 call and it was -- I may have read something into
18 it that was not actually there, but it scared me.
19 I have not been called on the telephone in a long
20 time. I usually don't answer the phone, but I was
21 at home alone. My wife and children were gone,
22 and a man called and gave me a spiel about buying
23 a magazine, Time magazine, and he knew my name and
24 address, and I may be reading something into this
25 that is not really there, but it scares me.

1 MR. HERNANDEZ: He didn't threaten you
2 in any way, did he?

3 MR. LEE: No. He said, "Is this J. H.
4 Lee," and then he said my address and zip code.

5 MR. HERNANDEZ: He didn't mention the
6 case, did he?

7 MR. LEE: No.

8 MR. HERNANDEZ: Nothing whatsoever?

9 MR. LEE: No.

10 MR. HERNANDEZ: Just trying to sell you
11 some subscriptions?

12 MR. LEE: That was all.

13 MR. MOEN: Mr. Lee, let's get back to
14 something you said earlier about the interpreter
15 not saying everything the witness was saying, and
16 the witness was going too fast for the
17 interpreter.

18 Did you understand the witness to have
19 said some things the interpreter didn't tell us
20 in English?

21 MR. LEE: Well, I thought --

22 THE COURT: Don't tell us what they were.

23 MR. MOEN: Not specifically.

24 MR. LEE: I thought she said some
25 things I picked up in Spanish that the interpreter

1 missed.

2 MR. MOEN: You didn't tell the jury?

3 MR. LEE: You see, the other people, I
4 am not supposed to talk about it with the other
5 people and they missed what she said. I don't
6 speak real good Spanish, but I do speak some, and
7 another thing that scared me, when he was coming
8 in the courtroom, one of the witnesses happened
9 to mention there was only one mulatto on the
10 jury.

11 MR. MOEN: Black?

12 MR. LEE: That is a colored person.

13 MR. ELIZONDO: What witness was that?

14 MR. LEE: The lady that was on the stand
15 yesterday. She was sitting in the hallway.

16 MR. MOEN: Ms. Hoglen?

17 MR. LEE: I believe so. The lady that
18 had the black dress on with the two flowers.

19 MR. HERNANDEZ: Let me ask you --

20 MR. MOEN: The black dress with two
21 flowers.

22 MR. HERNANDEZ: If you go and see a
23 doctor about this and perhaps take a day's rest,
24 could you come back?

MR. LEE: I don't think so. I really

1 don't and I hate -- I hate to -- I know y'all
2 put so much time and effort in presenting this
3 trial and the Prosecution has spent two days on
4 it and all that other stuff and we have really
5 gained a lot or done a lot in the trial as far as
6 I am concerned, but, you know, it is just -- that
7 is the way I feel. I don't think I could be fair
8 and impartial feeling the way I do now. I am
9 just a bundle of nerves.

10 THE COURT: All right. If you would,
11 step back into the jury room, please, sir.

12 MR. MOEN: Thank you, Mr. Lee.

13 MR. LEE: I am sorry, ma'am.

14 THE COURT: Take the jury down for
15 coffee.

16 (Mr. Lee left the judge's chambers.)

17 MR. MOEN: First of all, before we say
18 anything about Mr. Lee directly, if our conversations
19 we have had so far this morning haven't been
20 verified by what Mr. Lee has said, I don't know
21 what else could verify it.

22 We would like to have some kind of
23 temporary delay in the trial until we can get
24 another interpreter and call Ms. Hoglen and
25 Mr. Saucedo to redo that.

1 MR. HERNANDEZ: I object to that, and
2 I will tell you why. He doesn't say either way,
3 favorable to the State or favorable to the Defense.

4 My objection I made earlier --

5 THE COURT: One at a time.

6 MR. HERNANDEZ: Is that she definitely,
7 definitely let out at least two sentences, a
8 mouthful that was very important to us, and she
9 said it all wrong, and that is when I got up and
10 objected and I said, "Your Honor, if you can ask
11 her to ask that question again," but that is not
12 reason --

13 THE COURT: That is reason enough right
14 there, whether favorable to the State or the
15 Defense. That is reason enough right there to have
16 another interpreter.

17 MR. MOEN: The witnesses are entitled
18 to hear the facts, favorable or unfavorable.

19 I think it is clear the jury hasn't
20 heard them and is entitled to hear that, whether
21 favorable or unfavorable, not to make a mistake
22 based on misinterpretation by an interpreter, and
23 that is why we are requesting a new interpreter.

24 MR. HERNANDEZ: That is fine, but I
25 also want it on the record the reason we used Ms.

1 Hernandez is the lack of due diligence, not
2 getting their own interpreter.

3 MR. BAX: Judge, you appointed her at
4 their request at the beginning of this trial, and
5 she was supposed to be fair and impartial, and one
6 of their attorneys says he doesn't think she is
7 being fair and impartial.

8 MR. HERNANDEZ: That's right. Not for
9 us.

10 MR. BAX: They chose and represented
11 to the Court she was a good interpreter and would
12 be fair, and now they are telling the Court she
13 is not impartial.

14 MR. ELIZONDO: She is being fair and
15 impartial. I have yet to hear her say one thing
16 different. Whenever I ask her a question, she
17 repeats the question you asked her with the same
18 intonation and she's answered the question the
19 witness has testified to with the same
20 interpretation.

21 MR. BAX: How about word for word, Candy?

22 MR. HERNANDEZ : If it's -- let them
23 have word for word.

24 MR. ELIZONDO: If it's possible. Word
25 for word sometimes is not possible.

1 MR. HERNANDEZ: Word for word would
2 look good for us, and all of a sudden make it to
3 where they can understand it, and it didn't come
4 out that way.

5 THE COURT: Candy -- I mean, Joe, I have
6 used Linda Hernandez in the past and I have always
7 been satisfied with her. I have not been asking
8 questions, but I have always been satisfied with
9 her. I don't have any problems except for the fact
10 that you tell me that she has not interpreted
11 exactly the way things are, and whether it's
12 favorable for the State or for the Defense makes
13 no difference at all. It is the fact that she has
14 not done it word for word or as nearly as possible,
15 that she has changed some things.

16 MR. ELIZONDO: Sometimes it's hard
17 translating word for word. You can't do that.

18 THE COURT: I have heard that.

19 MR. ELIZONDO: Some words in English
20 cannot be translated word for word in Spanish.

21 THE COURT: But the jury is entitled
22 to decide this case one way or the other based
23 on the evidence.

24 MR. HERNANDEZ: My past experience, also,
25 Your Honor, has been where Hispanic people tend to

1 ramble more than they should and constantly
2 ramble, and that is what happened to us yesterday.
3 Every answer was rambling. I have done translating
4 in your court and I have had to stop them under
5 your admonishment not to ramble, and that is what
6 is going to happen unless they are admonished over
7 and over again, because Mr. Candelario Elizondo
8 and I already know it's an objectionable answer,
9 and y'all need to hear it, and it's come out, and
10 it's already tainted the jury's mind.

11 MR. BAX: That's the way it's done in
12 English. We have a right to object. Don't you
13 think we have the same right to hear that and
14 rephrase it?

15 MR. HERNANDEZ: True, but when they
16 ramble on and have a yes or no answer, you know
17 something's coming out other than yes or no.

18 MR. MOEN: In any event, we were in
19 the position of having at least one juror informing
20 the Court the interpreter has been inaccurate in
21 his opinion as to the version to the jury, and he
22 feels it is unfair for the jury not to have heard
23 all the information.

24 THE COURT: That decision has been made.
25 You will appoint another interpreter.

1 MR. MOEN: As far as Mr. Lee is
2 concerned, I don't know. We do have an alternate.
3 My feeling is from his statements so far, he hasn't
4 indicated which way he would be fair and impartial,
5 but has indicated he couldn't reach a fair and
6 impartial decision on the case because of the way
7 the case is. In other words, it is making him
8 ill, et cetera.

9 THE COURT: It is a sticky question.

10 MR. ELIZONDO: I object to Mr. Lee being
11 excused from the jury, for the record.

12 MR. BAX: Maybe we are in a position
13 now where we need to have a physician or someone
14 examine Mr. Lee and give the Court a conclusion
15 as to his physical well-being at this time and
16 whether or not his state of mind will affect his
17 deliberations and whether or not he can sit and
18 listen to evidence from a medical point of view.
19 If he does have hives and what not, obviously that
20 is a medical condition that perhaps could prevent
21 him from listening to evidence and rendering a
22 fair and impartial verdict based on the evidence,
23 and I think we probably need to have some type of
24 medical opinion.

25 MR. MOEN: We need to have his physician

1 indicate he is suffering from some type of physical
2 illness that would make it impossible to continue
3 with his jury service which would make it a
4 reason to excuse him and make the alternate take
5 his place and move up on the jury panel itself,
6 but I think out of an abundance of caution it
7 might be proper for Mr. Lee to be examined by a
8 physician and have the physician report back to the
9 Court in writing or maybe come himself to tell
10 the Court as to Mr. Lee's ability or inability
11 to reach a verdict and to continue with his jury
12 service as a result of his physical condition.

13 THE COURT: Well, I am going to have
14 him go to a physician and get a report from the
15 physician on his probabilities for continuing,
16 and we will stand in recess until that time.

17 MR. HERNANDEZ: Your Honor, also on the
18 decision as to whether or not to keep Ms. Hernandez,
19 I don't think she or the press need to know that.

20 THE COURT: I don't intend to embarrass
21 Ms. Hernandez, because I think highly personally
22 of her, and all I can go on is what we have had
23 told to us.

24 MR. ELIZONDO: Also, Judge, I would
25 ask for a limited gag order, I guess, from

1 everybody that is in this room not to tell the
2 press what the juror's problem is, including --

3 THE COURT: That will be ordered.

4 MR. GORDON: You might bring the staff
5 in. Some of them are aware. Tritico knows.
6 That is all who knows so far.

7 MR. ELIZONDO: I think if the press
8 finds out and it gets in the papers, we've got
9 problems.

10 THE COURT: Bring in everybody in the
11 court.

12 For the record, we have Joe Tritico,
13 the process server of this court, Janet Berkley,
14 one of the clerks, Neil Rogers, an investigator
15 with the District Attorney's Office, and there
16 has been a juror who has come in this morning
17 and told us he is unable to, in his opinion, to
18 continue his service as a juror because he is
19 frightened and he is nervous. He has the hives,
20 and certain other information, and it will be the
21 order of this Court that no one in this room
22 is to repeat anything to the media concerning
23 this juror or anything that is going on in this
24 case.

25 Does anyone not understand what I am

1 saying?

2 MR. BAX: You said anything about this
3 case?

4 THE COURT: I am talking about this juror
5 and the situation revolving around this juror and
6 the other matter that we have discussed.

7 MR. GORDON: Not just limited to the
8 media?

9 THE COURT: Everybody, not to repeat
10 anything concerning this juror or concerning Ms.
11 Hernandez to anyone, period.

12 MR. BAX: My only question now would be
13 how about someone from the Appellate Division
14 if we wanted to seek advice from them?

15 THE COURT: That is another story. I
16 am talking about the public.

17 MR. ELIZONDO: I expect they would be
18 confidential.

19 THE COURT: The news media or anyone.

20 MR. TRITICO: Connected with the case?

21 THE COURT: Or not connected with the
22 case.

23 MR. ELIZONDO: Judge, do you have a time
24 limit? When do you think we will start back up
25 again?

1 THE COURT: I would anticipate probably
2 in the morning.

3 MR. GORDON: May I tell the interpreter
4 to be here in the morning at 9:30?

5 THE COURT: Yes, sir.

6 MR. HERNANDEZ: Judge, what arrangements
7 are going to be made for this juror to get a
8 doctor's appointment? I am sure if he does it on
9 his own, he is not going to be actively seeking
10 an appointment.

11 THE COURT: I am going to try to get him
12 an appointment this afternoon to be examined by
13 a physician.

14 Anything further?

15 MR. BAX: No, sir.

16 (Everyone left the judge's chambers
17 except the Court and the attorneys and the court
18 reporter, and at this time, Mr. Lee was brought
19 back into the judge's chambers.)

20 THE COURT: Mr. Lee, in view of the
21 nature of this proceeding, a capital murder case,
22 and the length of time we have been involved in
23 it and your report to us this morning that you
24 are physically ill, I am going to request that
25 you make an appointment with a physician today and

1 be examined by that physician and report back
2 here at 9:00 o'clock in the morning and tell your
3 physician that he is to either in writing or in
4 person report to me as to your condition, and I
5 need to know as soon as you have made an
6 appointment who your physician is that you are
7 going to and when.

8 MR. LEE: L. W. Johnson.

9 THE COURT: All right, and have you
10 used Dr. Johnson very long?

11 MR. LEE: Yes, sir. He is my family
12 doctor.

13 THE COURT: All right. Do you know his
14 telephone number?

15 MR. LEE: 644-1651.

16 THE COURT: Why don't you come over here
17 and make an appointment with him this afternoon.

18 Dial nine.

19 (The juror complied.)

20 THE COURT: All right. You have an
21 appointment at 11:30 with Dr. McGuire, okay?
22 Would you take my card with you and can Dr.
23 McGuire call me immediately after he has completed
24 his examination?

25 Let me mention another thing. Have you

1 mentioned in any way to the other jurors the
2 situation that we have talked about involving
3 the interpreter?

4 MR. LEE: No.

5 THE COURT: YOU have had no conversation
6 at all with any of those jurors?

7 MR. LEE: Nothing. I said in there a
8 while ago to that gentleman who was doing a
9 crossword puzzle, and I said I couldn't do them
10 because I didn't know that much about different
11 words, and I made a statement that we had a
12 language barrier, but I don't think he derived
13 anything from it.

14 THE COURT: All right.

15 MR. ELIZONDO: Judge one other question.
16 Has he talked to the jurors in regard to his
17 physical or mental condition?

18 THE COURT: Have you? Have you said
19 anything to the other jurors?

20 MR. LEE: Yes. I told them I was sick.

21 THE COURT: Did you tell them what the
22 problem was?

23 MR. LEE: I just said nerves.

24 THE COURT: Can you relate to me
25 generally what the full conversation was?

1 MR. LEE: No, I don't recall just
2 exactly what was said.

3 THE COURT: Well --

4 MR. LEE: He said that he hoped it wasn't
5 contagious.

6 THE COURT: Did you tell them that your
7 nerve problem was caused by things that are
8 happening in the trial?

9 MR. LEE: I don't think so.

10 Can I ask a question?

11 THE COURT: Sure.

12 MR. LEE: Is the thirteenth juror a
13 Houston policeman?

14 THE COURT: A Houston policeman? I
15 don't know that we can respond to that question.

16 MR. HERNANDEZ: Why did you ask that?

17 MR. LEE: I am scared. I thought that
18 I had seen the bald-headed gentleman. I don't
19 know what his name --

20 MR. MOEN: The thirteenth juror is a
21 woman.

22 MR. LEE: Well, the gentleman that is
23 about my age and has a receding hairline.

24 MR. ELIZONDO: Mustache?

25 MR. LEE: I did not know his name. I

1 thought I had seen him in the basement of this
2 building in uniform.

3 MR. MOEN: There are no police officers
4 on the jury panel.

5 MR. HERNANDEZ: Why don't you take a
6 day's rest?

7 THE COURT: Go ahead and go to your
8 appointment and have the doctor call me as soon
9 as he is through with you.

10 MR. LEE: And be back at 9:00 in the
11 morning?

12 THE COURT: 9:00 o'clock in the morning,
13 yes, sir.

14 If you would, go back in the jury room
15 for just a moment.

16 (Whereupon the juror left the room.)

17 THE COURT: I think we need to bring
18 all of the jury out, including him, and just
19 dismiss them until 9:30 in the morning.

20 MR. ELIZONDO: 9:30 or 9:00?

21 THE COURT: I want him back at 9:00, but
22 the rest at 9:30, but if we don't bring them all
23 out at one time --

24 MR. MOEN: Judge, do you want to clear
25 the courtroom of witnesses before you tell the

1 jurors what is going on?

2 THE COURT: I am just going to recess
3 them.

4 (At this time, the in chambers hearing
5 was concluded, and the following proceedings took
6 place in the courtroom.)

7 THE COURT: Bring out the jury.

8 (At this time, the jury was seated in
9 the jury box, and in their presence and hearing,
10 the following proceedings were had.)

11 THE COURT: Good morning, members of the
12 jury. At this time, I am unable to explain the
13 reason for this, but we will recess this case
14 until 9:30 in the morning.

15 In the meantime, please remember the
16 admonitions I have given you previously, and do not
17 discuss what you have heard with anyone, your
18 family, friends, or anyone. Do not read, watch,
19 or listen to anything that is in the media
20 concerning this particular case. Do not visit
21 the scene of the alleged offense, and please report
22 back here to this courtroom at 9:30 in the
23 morning.

24 Thank you very much.

25 (At this time, court recessed for the

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day.)

1 OCTOBER 7, 1982

2 (At this time, the following proceedings
3 were had outside the presence of the jury.)

4 THE COURT: For the record, yesterday
5 this Court and the attorneys for the State and
6 the attorneys for the Defendant, Ricardo Aldape
7 Guerra, were notified that a juror, Jim Harvey
8 Lee, being the sixth juror picked in this case,
9 had become ill.

10 We visited with that juror and determined
11 that he was, in fact, unable to participate in
12 the trial at that point yesterday morning. I
13 ordered that he be examined by a physician and his
14 condition be reported back to this Court.

15 Mr. Lee did visit a physician and the
16 physician has diagnosed his complaint as
17 insomnia and nervousness and diarrhea, and the
18 diagnosis of acute anxiety and tension headaches
19 was reached, and Mr. Lee was prescribed medication,
20 Valium and codeine, and based upon conversations
21 that we have had, all parties in this case have
22 had with Mr. Lee this morning, it is the opinion
23 of all parties that Mr. Lee is physically and
24 medically unable to continue his services as a
25 juror in this case.

1 We have reached an agreement among
2 all parties that Mr. Lee will be excused from
3 jury service.

4 Mr. Elizondo and Mr. Hernandez, is that
5 the agreement of the Defense attorneys?

6 MR. ELIZONDO: It is, Your Honor.

7 THE COURT: And, Ricardo Aldape Guerra,
8 have you been explained -- has it been explained
9 to you what is going on at this point?

10 THE DEFENDANT: (By interpreter) Yes.

11 THE COURT: And are you in agreement
12 to excuse Mr. Lee from jury service?

13 THE DEFENDANT: (By interpreter) Yes.

14 THE COURT: And is that the agreement
15 of the Prosecution?

16 MR. MOEN: Judge, it is our agreement,
17 and I would like the record to reflect it is not
18 only our agreement, but in our opinion, he is
19 disabled from continuing in this jury service.

20 THE COURT: I believe I made that
21 statement, but if I did not, it is the opinion
22 of the attorneys for the Defendant and the
23 attorneys for the State and the Court, based
24 upon our conversations with Mr. Lee and the
25 diagnosis of the doctor, that he is unable to --

1 I have personally spoken with the doctor, and
2 he told me what the prescription and treatment
3 was, and I am of the opinion that Mr. Lee is
4 physically and mentally unable to continue as a
5 juror in this case, and I am therefore going to
6 excuse him from jury service and we will continue
7 with the alternate juror.

8 MR. BAX: One other stipulation in the
9 record, to have it clear in the record. Both
10 sides agree that the doctor need not appear and
11 personally testify, and we will go by the
12 information given to the Court from the doctor,
13 and neither side objects to that evidence being
14 used in this manner without having the doctor
15 here and personally testifying.

16 THE COURT: Is that the stipulation
17 and agreement of the attorneys for the Defense?

18 MR. ELIZONDO: It is, Your Honor.

19 THE COURT: And, Mr. Guerra, is that
20 also your stipulation?

21 THE DEFENDANT: (By interpreter) Yes.

22 THE COURT: Anything else?

23 MR. ELIZONDO: Your Honor, before we
24 start again, for the record, I want to say the
25 State has shown me their entire file on a prior

1 day, and for the record, I want to know -- we
2 have filed a ready motion, and it is a continuing
3 motion, and we would ask the State at this time
4 if they have any additional favorable material to
5 the Defense at this time.

6 MR. MOEN: Judge, I am sorry. We were
7 talking about something else.

8 MR. ELIZONDO: Your Honor, we have filed
9 a ready motion, and for the record, I have seen
10 the State's entire file on a prior date, maybe four
11 or five weeks ago, and I am asking the State at
12 this time if they have favorable evidence to the
13 Defense that may have come up in the interim.

14 THE COURT: What says the State?

15 MR. MOEN: Judge, we don't have any
16 additional information other than what is now
17 filed that will be favorable to the Defendant,
18 and, of course, all of our witnesses' statements
19 or people interviewed by the police are in that
20 file, and we have no new information which is
21 disfavorable to the Defendant, but also have no
22 new information favorable to the Defendant as well.

23 THE COURT: Anything further?

24 MR. ELIZONDO: Judge, again, before the
25 jury comes out, we would object to the exhibits,

1 State's Exhibit 19 and State's Exhibit No. 20
2 being paraded in front of the jury as being
3 inflammatory, prejudicial, of no probative value.

4 Furthermore, it bolsters the State's
5 witnesses and the identification of this Defendant.

6 THE COURT: Overruled.

7 MR. ELIZONDO: Your Honor, for the
8 record, will State's Exhibits 19 and 20 be allowed
9 to be viewed by the jury during the entire trial?

10 THE COURT: Yes, sir.

11 Let's swear in the interpreter, please.

12 If you would, raise your right hand
13 and be sworn.

14 (Mr. Rolf Lentz was sworn as an
15 interpreter.)

16 THE COURT: First of all, bring Mr. Lee
17 in.

18 (Mr. Lee entered the courtroom.)

19 THE COURT: Mr. Lee, come up, sir.

20 Mr. Lee, we have agreed that you will
21 be excused from jury service in the case. We do
22 appreciate your presence, and we appreciate the
23 problem you have and the situation that you have.

24 MR. LEE: Yes, sir. I am sorry.

25 THE COURT: It is one of those things.

1 We are sorry you were unable to continue in this
2 matter.

3 If you would, leave us the badge before
4 you are excused. You may or may not have to talk
5 to the media. You do not have to talk to them
6 if you don't want to. I don't think I can prevent
7 them from talking to you, but it will be very
8 strictly up to you as to whether or not you want
9 to visit with them.

10 MR. LEE: Okay. Thank you.

11 (At this time, a recess was taken by
12 the court.)

13 (At this time, the following proceedings
14 were had in the presence of the jury.)

15 THE COURT: Call your next, please,
16 sir.

17 MR. MOEN: I would call Mr. George
18 Brown.

1 GEORGE LEE BROWN,
2 was called as a witness on behalf of the State of
3 Texas, after having first been duly sworn, testified
4 as follows:

5
6 DIRECT EXAMINATION

7
8 QUESTIONS BY MR. MOEN:

9 MR. MOEN: May I proceed, Judge?

10 THE COURT: Yes, sir.

11 Q (By Mr. Moen) George, tell the ladies and
12 gentlemen of the jury your name, please.

13 A George Brown.

14 Q Back on July 13th of this year, where were you
15 living?

16 A 5004 McKinney.

17 Q Were you around home at 9:00 or 9:30?

18 A I was watching the All Star Game.

19 Q Did you have occasion to at that time get up and
20 leave your house?

21 A Yes, I did.

22 Q What was it that got you to leave the house?

23 A An ambulance siren.

24 Q To which street or intersection did you head?

25 A I headed toward Delmar, which is the dead end of

1 McKinney.

2 Q Let me show you a photograph marked for
3 identification purposes and introduced in evidence
4 as State's Exhibit No. 3, and this location marked
5 with an "H" is where Officer Harris was shot.
6 This is Walker street where it intersects with
7 Edgewood. You can see Edgewood intersecting with
8 Walker. This is Lenox.

9 MR. ELIZONDO: Objection to counsel
10 leading the witness.

11 THE COURT: Sustained.

12 MR. MOEN: Your Honor, this is an
13 exhibit that's been introduced into evidence and
14 explained to the jury, Judge, and I have a right
15 to explain to this witness who was not present
16 that exhibit, and that is all I am doing.

17 MR. ELIZONDO: Your Honor, I object to
18 counsel bolstering his witness, testifying, and
19 counsel leading his witness.

20 THE COURT: If he can identify it, he
21 can testify.

22 Q (By Mr. Moen) Now that we've had a chance to go
23 over this photograph, can you point out on this
24 photograph, George, where Delmar street would be
25 at?

1 A Right here.

2 Q This is Lenox. Is this street here -- what street
3 is this? What is the name of that?

4 A Walker.

5 Q So Walker makes a jog and continues down this
6 way?

7 A Yes.

8 Q How close were you to this intersection of Delmar
9 street where it intersects with Walker before
10 you noticed an automobile?

11 A I was right at the corner. Right here.

12 Q What type of automobile did you notice? Can you
13 -- let me put this down just a second. Can you
14 describe the automobile you noticed to the ladies
15 and gentlemen of the jury?

16 A A black Cutlass, about a '77, with a half burgundy
17 vinyl top.

18 Q What attracted your attention to that car?

19 A The music, and because I had to get out of its way
20 for it to make its turn.

21 Q How fast was that car traveling as best as you
22 can estimate at that time that you had to get out
23 of the way?

24 A Well, the first time, it was very slow because it
25 was making a right turn.

1 Q Did you have occasion to see the car then a second
2 time?

3 A Yes, because it went around the block again.

4 Q When it came back the second time, what, if
5 anything, did you notice about how fast the car
6 was traveling at that time?

7 A Well, first at twenty miles per hour. Then it
8 started to accelerate.

9 MR. ELIZONDO: May it please the Court,
10 I object to any further questioning along this
11 line unless he can tie it down to a specific
12 time and date, and furthermore, we object to the
13 interjection of any extraneous offenses.

14 MR. MOEN: I don't know how much more
15 specific I can get than watching the All Star
16 Game on July 13th, Judge, but if you'd like us to
17 --

18 THE COURT: Don't get excited. That
19 was my recollection of the testimony.

20 Go ahead.

21 MR. ELIZONDO: Your Honor, for the
22 record, I object to any extraneous offenses this
23 witness may testify to.

24 Q (By Mr. Moen) When you saw --

25 THE COURT: Go ahead.

1 Q (By Mr. Moen) When you saw this car the second
2 time, where were you at and about how fast was
3 this car tra eling, George?

4 A The second time?

5 Q Yes, sir.

6 A Between Altic and Delmar, middle of the block.

7 Q Can you give the ladies and gentlemen of the jury
8 an idea from this photograph marked State's Exhibit
9 No. 3 where Altic street would be at?

10 A Not on the map.

11 Q Would Altic be further down Walker street this
12 way?

13 A Right. It is a cemetery where it dead-ends.

14 Q Does Altic run parallel with Delmar?

15 A Right.

16 Q When you saw the car the second time, what
17 street were you on?

18 A Walker.

19 Q How fast was this car traveling when you saw it
20 the second time?

21 A First, it was going about twenty. Then it
22 swerved over because I was walking my dog.

23 Q Your dog?

24 A Yes. It went toward my dog, and as I was looking,
25 it went to the side of the street, and as it

1 continued to accelerate and it came closer to
2 me, I just moved out of the way because I had a
3 feeling they had been drinking.

4 Q I will have to stop you there about your feeling
5 on anything.

6 When you say you moved out of the way,
7 how fast did you have to move out of the way to get
8 out of the way of this car?

9 A Pretty quick. Not really. I had to get out of the
10 way because I had a feeling since he went towards
11 my dog --

12 MR. ELIZONDO: Objection to his feelings,
13 Your Honor.

14 Q (By Mr. Moen) You say the car went towards your
15 dog?

16 A First my dog, which was fifty yards away from
17 me.

18 Q In front or behind you?

19 A Behind me.

20 Q Did you turn around and look at the car as it
21 turned towards you?

22 A Yes. I watched it as it tried to go toward my
23 dog. I watched it.

24 Q At that part of Walker you were on, George, were
25 there sidewalks to walk on?

1 A Yes and no, because it was a real small sidewalk.
2 Q Okay.
3 A And it ends, and there is a lot of grass.
4 Q But you were walking in the roadway? That is what
5 you are telling the ladies and gentlemen of the
6 jury?
7 A Right.
8 Q Did you ever have to leave the roadway because
9 of the way that car was coming down Walker?
10 A Yes.
11 Q Where did you have to go on the road?
12 A I had to jump over into the ditch.
13 Q When you jumped over into the ditch, did you leave
14 your feet at any time or manage to keep on your
15 feet?
16 A I kept on my feet.
17 Q What happened to your dog, if anything? Did he
18 get out of the way?
19 A He got out of the way.
20 Q How fast was the car traveling as it came towards
21 you?
22 A About thirty-five, forty, about forty.
23 Q Did you manage to follow the car with your eyes
24 after it passed you?
25 A Yes.

1 Q How fast did the car continue to go after it came
2 by you?

3 A After it turned by me, it made a left turn on
4 Altic and continued on.

5 Q At that time or shortly thereafter, did you have
6 occasion to see a police officer?

7 A Yes. He approached me no more than ten seconds
8 right after that car had made that turn.

9 Q Did you have a conversation with the police
10 officer, George?

11 A Yes, I did.

12 Q What did you tell the police officer?

13 A That a black and burgundy Cutlass Supreme tried to
14 run over my dog and almost got me.

15 MR. ELIZONDO: Your Honor, I object to
16 any extraneous offenses elicited from this
17 witness.

18 THE COURT: Ask to the question asked,
19 I'll overrule it.

20 Q (By Mr. Moen) Did the police officer say anything
21 back to you after you told that to the police
22 officer?

23 A Yes.

24 Q What, if anything, did he say to you?

25 A He said --

1 MR. ELIZONDO: Objection to hearsay,
2 Your Honor.

3 THE COURT: Objection sustained.

4 Q (By Mr. Moen) You can't say what the police
5 officer said, George. It's been objected to so
6 --

7 MR. ELIZONDO: Your Honor, objection
8 to counsel's sidebar remarks.

9 THE COURT: Don't make sidebar remarks.

10 Q (By Mr. Moen) You understand you can't say
11 anything the police officer said, but after you
12 talked to the police officer, without saying what
13 he said, did he make some response to you in
14 regards to what you told him?

15 A Yes, he followed the same route the car did.

16 Q Okay. How fast did the officer leave?

17 A He left at a normal speed.

18 Q Okay. About how long was it after you had talked
19 to the police officer and he left following the
20 route the car had taken before you heard any
21 unusual sounds or sounds that attracted your
22 attention?

23 A Less than a minute, forty, fifty seconds.

24 Q When you heard those sounds, can you point out to
25 the ladies and gentlemen of the jury from State's

1 Exhibit No. 3, George, about where you were at
2 in relation to the intersection here of Edgewood
3 and Walker when you first heard the sounds that
4 attracted your attention?

5 A Right there.

6 Q Okay, so you were right here at the intersection
7 of Delmar and Walker when you heard the sounds?

8 A Yes.

9 Q What did the sounds seem to be that you heard?

10 A Shots.

11 Q How many such sounds did you hear?

12 A About --

13 Q As best as you can remember.

14 A Six to eight.

15 Q I was going to say give us your best guess. Six
16 to eight.

17 After you heard those shots, in what
18 direction did you proceed?

19 A Toward Lenox.

20 Q Okay. As you were heading towards Lenox, did you
21 have occasion to see any individual that was
22 running?

23 A Yes.

24 Q Okay. About where were you when you saw this
25 individual running?

1 A Right there.

2 Q And the individual that you saw, can you point
3 him out from State's Exhibit No. 3 where he was?

4 A Right there, around this way.

5 Q So he was headed down towards -- what is the next
6 street?

7 A McKinney.

8 Q And that is the street you resided on, resided on
9 back on July 13th?

10 A Right. That is where I live.

11 Q Could you tell what, if anything, this individual
12 was doing with his hands when you saw him in that
13 position, George?

14 A He was running and turning his head and had his
15 hand in his stomach like that, looking back.

16 Q This individual you saw, could you tell what, if
17 anything, he was holding in his hand in that
18 fashion?

19 A No, I couldn't.

20 Q I take it for granted because I can see something,
21 the jury can.

22 You demonstrated to me how this man was
23 holding his stomach.

24 Would you demonstrate that for the
25 ladies and gentlemen of the jury and demonstrate

1 how this man was running?

2 A Like that.

3 Q Were you close enough to make any type of
4 identification of that individual?

5 A No, only that he was Spanish and wore a white
6 T-shirt and blue jeans.

7 Q I would like for you to look at this man in this
8 case, Mr. Guerra, the Defendant.

9 Can you tell the ladies and gentlemen
10 of the jury whether it was that man you saw or
11 positively not that man?

12 A No, it was not him.

13 Q It was not?

14 A No.

15 Q Let me show you this photograph marked State's
16 Exhibit 71, and can you recognize the man that is
17 in that photograph?

18 A No, I can't.

19 Q And how about State's Exhibit No. 20? Can you
20 recognize this mannequin at all?

21 A No.

22 Q After you saw that individual running by, did you
23 continue to head towards the shots that you heard?

24 A Yes, because I could view the police officer's
25 car and the Cutlass at a dead stop.

1 Q Okay. When you got down -- did you ever proceed
2 to this location here on Walker?

3 A Yes, I did.

4 Q When you got to that location, did you have
5 occasion to see the car that had passed you over
6 on Delmar and Walker earlier?

7 A Same exact car.

8 Q Let me show you some photographs of the car that
9 have been introduced into evidence as State's
10 Exhibits No. 23 -- let me put them in front of
11 you -- State's Exhibit 27 and State's Exhibit 28,
12 and does that appear to be the same or similar
13 to the car that you saw that you got out of the way
14 of?

15 A That is the same car.

16 Q Let me show you these photographs so the ladies
17 and gentlemen of the jury can see. You are saying
18 in your opinion that is the same car that you say
19 almost ran into you on Delmar street and Walker?

20 A Right.

21 Q When you got to that location there at Edgewood
22 and Walker streets, did you go over to see what
23 condition the police officer was in at all?

24 A Yes, I did.

25 Q What efforts did you make in that regard to see

1 what his condition was? What, if anything?

2 A I checked his pulse on his neck.

3 Q Did you get any type of pulse or could you feel.

4 any type of pulse?

5 A Yes, I did.

6 Q Was there anyone else around the car at that time,

7 George?

8 A Yes, there was.

9 Q Who else? Do you know?

10 A An off-duty sergeant.

11 Q Did you ever learn what his name was at all?

12 A No. I know he lives between Walker -- right on

13 Walker between Edgewood and Lenox.

14 Q Okay. Did you make any -- or from the position

15 you were in with regards to the police officer,

16 did you ever check to see if the police officer

17 still had his pistol with him?

18 A Yes, I did.

19 Q How did you check that? What did you do?

20 A It was unbuttoned, and I was there and the guy

21 was there, and I moved it to look with my finger

22 and I told him his gun was gone and that was it.

23 Q You actually checked the officer's holster?

24 A Yes, I did, because I was afraid -- it happened

25 so quick, I was afraid something would happen,

1 someone would pop up --

2 MR. ELIZONDO: I would object to what
3 somebody was afraid of.

4 THE COURT: Sustained.

5 Q (By Mr. Moen) Other than yourself and the sergeant
6 who was there, George, did anybody else come up
7 and either tell you or the sergeant in your
8 presence they had seen what had taken place or
9 witnessed what had happened?

10 A No.

11 Q Who all was there at the scene of the police
12 officer and the Cutlass and the police officer's
13 car when you were there that you remember --

14 A Myself --

15 Q -- in the immediate area?

16 A Frank Perez, the off-duty officer. I think can't
17 of that lady's name, but her and all her kids, and
18 --

19 Q Who else do you remember being around?

20 A A few neighbors just right there. I know them by
21 seeing them, not really by name.

22 Q Back when you were headed down in this direction
23 towards where Officer Harris was shot and when you
24 saw the man running from this position here that
25 you have indicated, could you see where Frank

1 Perez was at?

2 A No.

3 Q When did you first see Frank Perez that night?

4 A Okay. Frank Perez lives right here. Right there.

5 Q He lives in this house we can see, this brick

6 house?

7 A No, it's over in the trees.

8 Q Is it blocked out by the trees here?

9 A It is, because that's his neighbor right there.

10 Q As you were walking down towards where the police

11 officer was shot, did you have occasion to see

12 and talk with Mr. Perez?

13 A Yes, he asked me what happened.

14 Q Well, don't say what he said, but did you have

15 occasion to see and talk with him?

16 A Yes.

17 Q Where did that take place? Can you point it out?

18 A Right there.

19 Q Right there at the corner of Walker and Lenox?

20 A Yes.

21 Q Did you and he proceed down to where the police

22 officer was shot together?

23 A Yes, sir.

24 Q When these individuals in the Cutlass passed by

25 you either the first time or the second time, were

1 you able to look inside the car to be able to
2 identify any one of the passengers or drivers
3 of the car?

4 A Yes. I saw a passenger and he had stringy hair,
5 and the driver was sort of blocked out because
6 of the light and the shadow was on him and I
7 couldn't possibly really see him.

8 Q So you can't really say who the driver of the
9 Cutlass was you saw?

10 A Right.

11 Q Are you telling the ladies and gentlemen of the
12 jury you can identify the passenger, though?

13 A I am pretty sure. Yes, I can.

14 Q Let me show you some photographs here of the
15 Defendant in this case marked State's Exhibit No.
16 17 and 18, and ask you if you recognize those
17 photographs?

18 A Yes, I do.

19 Q Who are those photographs of, not by name but as
20 far as that car was concerned?

21 A The passenger in the car.

22 Q And are you positive or just pretty sure?

23 A I am positive. I am pretty sure. I am really
24 positive, but --

25 Q Okay, but I want you to tell the jury in your own

1 mind how convinced you are this was the passenger
2 you saw.

3 A Because I was at the corner and the light shined
4 on the car and they passed by and made that turn
5 and they was going pretty slow, and I could tell
6 when someone turned around and looked at me like
7 that, and I could see the stringy hair and the
8 beard.

9 Q Look at the Defendant as he sits next to his lawyers
10 and the interpreter in court today. Do these
11 photographs look more like he looked on that day
12 or did he look more like he looks in court today?

13 A Right there.

14 Q Other than the driver and the passenger that you
15 have identified, could you see if there were any
16 other individuals in the car?

17 A Yes. It looked like there was three more in the
18 backseat.

19 Q Okay. As best you can remember, as best as you
20 could tell, there appeared to be four individuals
21 in the car?

22 A Yes, there did.

23 Q When they passed by you the second time, do you have
24 any idea how many individuals you saw in the car
25 that time?

1 A No, because their lights blinded me, plus the
2 light on the street. I couldn't really see.

3 Q The second time they came by, you can't tell how
4 many people were in the car, but the first time
5 you remember seeing approximately four people in
6 the car?

7 A Yes, because as they passed, I turned around and
8 looked because of the music..

9 Q How much time had passed between the first time
10 they came by slowly and the second time you had
11 to jump in the ditch? How much time?

12 A A matter of seconds.

13 Q When you say a matter of seconds, be as specific
14 as you can. Give us your best estimate as to how
15 much time had elapsed between the first and
16 second times.

17 A Eight, eight seconds.

18 Q How long did you stay there at the scene where the
19 officer was shot? How long did you remain at
20 that location?

21 A All night.

22 Q Okay. Did you happen to hear another or other
23 sounds a little later on that appeared to be
24 gunshots?

25 A About an hour and a half later.

1 Q What direction was that from? Can you tell the
2 ladies and gentlemen of the jury what direction
3 that sounded like, those shots?
4 A Between Dumble, Rusk -- Rusk runs parallel -- and
5 Edgewood.
6 Q Did you ever have occasion to go to that area to
7 see what happened?
8 A No, the officers wouldn't let me.
9 Q Let me show you State's Exhibit No. 3 again with
10 the intersection of Edgewood and Walker, and can
11 you point out on that photograph where you thought
12 you heard that second volley of shots an hour and
13 a half later?
14 A Right there.
15 Q About how many shots did it seem to you, as best
16 you remember at that time?
17 A About twelve or fifteen, something like that,
18 pretty many.
19 Q George, back to Edgewood and Walker for a second.
20 When you went back to check the officer's pulse,
21 could you tell where the man had been shot?
22 A In the head.
23 Q Based on the condition of that officer at that
24 time, can you tell the ladies and gentlemen of the
25 jury whether or not that was the same person you

1 had talked to earlier?

2 A Yes, it was.

3 Q You could still tell?

4 A Yes.

5 Q Okay. Could you see his dog in the car at that
6 time?

7 A No. His door was open and I thought his dog was
8 gone.

9 Q Did you ever see the dog later?

10 A Yes.

11 Q Where was the dog at when you finally saw it?

12 A Behind the backseat laying down.

13 MR. MOEN: That is all I have.

14 Pass the witness, Judge.

15

16 CROSS EXAMINATION

17

18 QUESTIONS BY MR. HERNANDEZ:

19 Q Mr. Brown, later on perhaps that morning, you had
20 a chance to make a statement, did you not?

21 A Yes, I did.

22 Q And you signed that statement, did you not?

23 A Yes, I did.

24 Q And you have a copy of that statement, have you
25 not?

1 A No, I have not.

2 Q Have you seen a copy of that statement since that
3 morning?

4 A Yes, I read it and okayed it and they notarized
5 it and I saw it today.

6 Q That was July 14th?

7 A Yes.

8 Q And you saw it again today?

9 A Yes.

10 Q That was the only two times you read it?

11 A Yes.

12 MR. HERNANDEZ: Your Honor, we have just
13 been handed a copy of the statement.

14 May we have a moment?

15 THE COURT: Yes, sir.

16 Q (By Mr. Hernandez) How long have you lived at
17 1504 McKinney?

18 A 5004.

19 Q How would you describe the street lanes in that
20 area, in that neighborhood?

21 A What do you mean?

22 Q Well, let me see if I can help you.

23 Are they two lanes, incoming traffic
24 and outgoing traffic, or is it one lane, for
25 example, and one car would have to get out of the

1 way for the other car to pass by, if coming from
2 the other direction, or is it wide enough for
3 two cars?

4 A It is wide enough for two cars.

5 Q Okay. As you were stepping out to follow the
6 ambulance, you were walking towards McKinney; is
7 that right? Or towards Lenox? Is that right?

8 A No. McKinney dead-ends.

9 Q Dead-ends.

10 To Lenox?

11 A To Delmar.

12 Q To Delmar.

13 And you proceeded to follow the
14 ambulance?

15 A Towards Walker.

16 Q Whatever happened to that ambulance? Did you
17 --

18 A I never even saw it.

19 Q That is when you first noticed the car coming
20 around the corner, the Cutlass?

21 A Right.

22 Q And you noticed the passengers?

23 A Right.

24 Q The first time?

25 A The first time.

1 Q And you noticed four people in the car?
2 A Yes, sir.
3 Q But you specifically noticed the passenger with the
4 stringy hair?
5 A Right.
6 Q And is that about it?
7 A That's about it.
8 Q Just the stringy hair, didn't notice the beard?
9 A Yes, I saw the beard and everything, because he
10 looked at me and the light was shining on the car
11 and shadowing out everybody else is what it was
12 doing.
13 Q Did you lose track of the car?
14 A I didn't pay no attention to it.
15 Q But it was a matter of eight seconds it came at
16 you again?
17 A It didn't come at me. It came around the block
18 again.
19 Q So can we assume you lost him for about eight
20 seconds?
21 A Just about like that. Long enough for me to cross
22 the street.
23 Q Okay. Now, when you first noticed the police
24 officer's car and the Cutlass, you had already
25 heard the shots, had you not?

1 A Yes, I did.

2 Q And the first man you ran into was a Frank Perez,
3 right?

4 A Right.

5 Q And Frank Perez, I guess you made the statements,
6 asked what happened or said what happened?

7 A Right.

8 Q Okay. As you arrived at the police car, okay?

9 A Uh-huh.

10 Q So, as you said, there was a man, or you mentioned
11 there was somebody already in the police car; is
12 that correct?

13 A Yes. As soon as I was walking up, he was getting
14 into the police car.

15 Q Okay. Was Frank with you at that time?

16 A Yes, he was. He was behind me.

17 Q Was there anybody else that you could see around
18 you?

19 A Just -- Just people out there that were looking.
20 I guess they didn't want to get too close. They
21 were standing on the porch.

22 THE COURT: If you would, back up just
23 a little bit.

24 A They were standing on their porch and watching.

25 Q As far as the vicinity is concerned, the close

1 proximity, very close, there was nobody around
2 except you, Frank, and the police officer?
3 A And Ms. -- I can't pronounce her name -- Galvan
4 or whatever.
5 Q And where was she?
6 A She was on her porch and her kids were all outside.
7 Q Okay. How far is her porch from, say, the police
8 officer's car?
9 A About thirty, twenty to twenty-five yards.
10 Q And did you later ascertain where she lived?
11 A I knew where she lived.
12 Q You knew where she lived?
13 A Yes.
14 Q Let me show you, if I can -- she lives at 4925
15 Walker, does she not?
16 A I don't know the address. I know the house.
17 Q All right. Do you remember or did you see another
18 car, a red car?
19 A Yes, I did, an Elite.
20 Q Let's say, for example, this is the red car.
21 A Uh-huh.
22 Q Was the red car in front of Ms. Galvan's house?
23 A Yes. It was. It was in a ditch against a tree.
24 Q There is a car and this would be Ms. Galvan's
25 house, would it not?

1 A Yes, it would be.

2 Q She would be standing right here, would she not?

3 A She got the kids out of the car.

4 Q The little boys?

5 A Right.

6 Q And brought them in?

7 A Brought them inside.

8 Q When you were here, she was over here?

9 A Right. Yes. I looked around to see if there
10 was anybody around.

11 Q And in this vicinity were only you, Frank, the
12 police officer, and the off-duty police officer?

13 A Yes.

14 Q Now, when the other police officers arrived, what
15 did you tell them?

16 A What did I tell them?

17 Q Uh-huh.

18 A It wasn't much I could tell them. They could see
19 for themselves. I got out of the way. I was
20 feeling his pulse and everything and I said, "He
21 is hurt bad," and I got out of the way and I said,
22 "Anybody who would do something like this and run,
23 they would probably run towards the cemetery."

24 A You even told them how they would run? How they
25 would run? You saw somebody running?

1 A I didn't tell them. Frank told them, but I know
2 that they told them.

3 Q Well, let me ask you this. Did you have occasion
4 to go with a police officer somewhere?

5 A Yes.

6 Q Where did he take you?

7 A He went down the street to the cemetery, and
8 looked --

9 Q Why did he take you there?

10 A Because I told him if anybody was to hide, they
11 would probably hide in the cemetery, because I
12 didn't know whoever was in that car lived in that
13 neighborhood.

14 Q And what happened then?

15 A The officer proceeded on foot, and he asked me to
16 show him, and there was about three officers.

17 Q And were we to assume nothing happened and you came
18 back?

19 A Because I was with the officers, right. They
20 didn't find anything.

21 Q All right. This man you said was running with the
22 blue jeans and a white T-shirt, was he pulling his
23 T-shirt in, or was he putting something in?
24 Evidently, you couldn't identify the man plus the
25 item he was putting in?

1 A Yes.

2 Q He could have very well been just tucking his shirt-
3 tail in?

4 A He probably could, but I doubt that very much.

5 Q But also you testified you didn't know who he was?

6 A Right. He was running and turning back about four
7 times.

8 Q Also you testified there was four persons --

9 A Yes.

10 Q -- in the vehicle?

11 A There was.

12 Q And you couldn't identify any of the four persons?

13 A That's right.

14 Q And you never saw, after the first time that they
15 came around, you never saw them again?

16 A Right. I seen the vehicle but not the persons
17 again.

18 Q You didn't see -- can I assume then by your
19 testimony all you saw was a Cutlass, a black
20 Cutlass with a burgundy top, driving fast with
21 four passengers in it, and that is about it that
22 you can definitely identify?

23 A The second time, yes.

24 MR. HERNANDEZ: That is all we have,
25 Your Honor.

RE-DIRECT EXAMINATION

QUESTIONS BY MR. MOEN:

Q And the first time you can possibly identify this man as being the passenger in that car?

A He looked at me.

Q About how long, George, was it after you saw the officer and talked to him before the first shots were fired? About how much time had passed?

A Less than a minute.

Q When did you first notice this automobile or pay any attention to this particular automobile marked State's Exhibit 36 and 37?

A The horn went on.

Q When did you first hear the horn come on or go off, as I usually say when someone honks the horn, on this vehicle?

A About right before the first unit arrived. The unit just drove up.

Q Do you remember passing this vehicle as you headed towards the officer's vehicle?

A Yes, but I didn't pay no attention to it really. He was sort of slumped over.

Q When you heard the horn go off, did you go back and inspect this car?

1 A. Yes, I did. I noticed there was a man in there.
2 Q. What did you notice?
3 A. There was bullet holes in the windshield.
4 Q. Did you check at all the man in the car?
5 A. Yes, I did.
6 Q. Did you see how he was?
7 A. Yes.
8 Q. What was he doing?
9 A. Talking to himself in Spanish.
10 Q. Did you make out anything he was saying?
11 A. No, I didn't. He was mumbling and his head was
12 hanging over. I tried to tell him, "What is wrong,"
13 and I grabbed his hand on his head and saw there
14 was a lot of blood, and I tried to hold his head
15 up, and put his armrest up and lay his head on
16 his armrest, and he grabbed my hand, and I put
17 them on the steering wheel, and I went back to the
18 officer again.
19 Q. Let me show you in State's Exhibit 35 a piece of
20 paper that is out here in the street and ask you
21 if you recognize that piece of paper in relation to
22 that car?
23 A. Yes, I do.
24 Q. What type of contact did you have with that piece
25 of paper that appears in State's Exhibit 35?

1 A. There was a bag in the car and I tore a piece off
2 and wiped my hands. They still had blood on them.
3 Q. Can you tell the ladies and gentlemen of the jury,
4 based on what you observed the night this offense
5 took place when you saw this man, the way he was
6 dressed?

7 A. The one running?

8 Q. The way he looked, the one running you saw and the
9 man you saw driving the automobile the first time
10 when you were able to get a look at some of the
11 occupants of that '77 Cutlass.

12 Can you tell the ladies and gentlemen
13 whether or not this man you saw running and the
14 driver of that Cutlass the first time you looked
15 at him, whether or not they appeared to be one and
16 the same person?

17 A. I cannot.

18 Q. Okay. Thank you.

19 MR. MOEN: Pass the witness.

20 MR. ELIZONDO: No further questions.

21 THE COURT: Thank you, sir. You may
22 stand aside.

23

24

25

1 FRANK DAVID PEREZ,
2 was called as a witness on behalf of the State of
3 Texas, after having first been duly sworn, testified
4 as follows:

5
6 DIRECT EXAMINATION

7
8 QUESTIONS BY MR. MOEN:

9 MR. MOEN: May I proceed, Judge?

10 THE COURT: Yes, sir.

11 Q. (By Mr. Moen) Frank, would you tell the ladies and
12 gentlemen of the jury your name, please?

13 A. Frank David Perez.

14 Q. Where do you live?

15 A. At 919 Lenox.

16 Q. Were you present back on July 13th when a police
17 officer happened to be shot in the neighborhood
18 where you live?

19 A. Yes.

20 Q. Where were you when you first heard sounds that
21 sounded to you like gunshots?

22 A. In my driveway working on my car.

23 Q. Let me show you a photograph, aerial photograph,
24 marked for identification purposes as State's
25 Exhibit 3, and let me point out some things to you

1 that have already been pointed out to the jury.

2 This street is Walker street that runs
3 here and continues this way. This is Lenox. Here
4 is Harrisburg here. This would be the north
5 direction, and this is Rusk street running behind
6 Walker and McKinney over here.

7 From this photograph, can you point out
8 for the ladies and gentlemen of the jury the
9 approximate location of your house, even though
10 it might be obscured by trees?

11 A. Right here.

12 Q. And you say you were in the vicinity of your
13 house when you first heard what sounded like
14 gunshots?

15 A. Yes.

16 Q. What did you do?

17 A. Nothing. I never did anything at the time because
18 I have heard shotguns before. I didn't do anything.

19 Q. Did you ever start to proceed towards the direction
20 of the shots you heard?

21 A. Yes, I did. Not intentionally to see what was
22 going on, but to go to the rear end of my cousin's
23 car which was up on the driveway near to the
24 street, to get some tools to work on my car.

25 Q. How long was it after the shots before you saw

1 George Brown? Do you know George Brown?

2 A. Yes.

3 Q. About how long, just to your best guess, as to
4 how much time had passed before you saw George?

5 A. Maybe four, three or four minutes, I guess, five
6 minutes.

7 Q. Did you ever have occasion to see a man running
8 in the neighborhood towards your house after you
9 heard the shots?

10 A. Yes.

11 Q. Give us your best guess again, if you would, for
12 the ladies and gentlemen of the jury about how much
13 time passed before you saw this man running.

14 A. Maybe from the area, it might have been a minute
15 or less than that, or maybe a little over a
16 minute, somewhere around in that area.

17 Q. Somewhere around a minute, give or take?

18 A. Give or take. I couldn't really place the time.
19 I wasn't observing at that time what was going
20 on.

21 Q. When you first saw this man running, where did you
22 see him at, when you first noticed him? Where were
23 you at and where was he?

24 A. I was back of my cousin's car in the driveway right
25 here, and at that time, I was wondering what was

1 going on because I heard the shots and I was
2 wondering what was going on, and I looked this
3 way. At that time, I saw a man cutting the yard
4 right here, going around down the street cutting
5 the yard right here.

6 Q Coming from Walker and cutting across the yard on
7 Lenox street?

8 A And going down the street.

9 Q Heading towards McKinney?

10 A Heading towards McKinney.

11 Q Did you get a look at that man at all, any type of
12 close look or good look at him when he came by?

13 A Real close, I really can't say. I wasn't too
14 observant. I did see him. I looked straight at
15 him. It was dark, but I didn't observe what was
16 going on until I observed -- heard something drop
17 on the ground.

18 Q You heard something drop on the ground?

19 A It was metallic, scraping on the concrete. I
20 could tell it was metallic.

21 Q What did that man do after you heard that sound?
22 Could you see what he did?

23 A That is when I started observing him more. He
24 took a few steps forward and I thought he left
25 it, and then he turned back around and picked up

1 whatever he had dropped, the object, and he picked
2 it up and then went on all the way and made a left
3 around McKinney and headed towards this way.

4 Q A left on McKinney to where it dead-ends into
5 Delmar?

6 A That is the last I seen, after he turned the
7 corner there.

8 Q Frank, is there any way you could tell the ladies
9 and gentlemen of the jury what he dropped and went
10 back and picked up?

11 A No, I couldn't. It was real dark. It was real
12 dark.

13 Q You couldn't see or identify the object at all?

14 A The trees blocked the light around there.

15 Q After the man went back and picked that object
16 up, did he walk or continue to run up towards
17 Delmar?

18 A He jogged, glancing back every once in a while,
19 jogging and looking back.

20 Q Would you show, stand up and show the ladies and
21 gentlemen of the jury how this man was looking
22 back?

23 A Looking over his shoulder like that. He kept on
24 looking over his shoulder.

25 Q Could you see what, if anything, he was doing with

1 his hands, how his hands were positioned on his
2 body or what he was doing at all?

3 A. I wasn't that observant. He was looking around
4 like that. I guess his hands were near his body.

5 Q. When he picked this object up he had dropped,
6 could you see where he placed that object, where
7 he positioned it at all?

8 A. No, I didn't. I couldn't tell.

9 Q. Could you tell the ladies and gentlemen of the jury
10 anything about the way he dressed, give a general
11 description about the way he was dressed, give
12 them any type of physical description about the
13 man, about the way he looked or how he was
14 dressed?

15 A. Okay. He had short hair at the time, and when I
16 was looking at him, it looked like he had hair
17 maybe mid-ear, maybe right over his nose. It
18 looked like he had a short beard, but it was full
19 all the way across, you know, a mustache and
20 everything. He had a beard, but it wasn't long,
21 and he was wearing a T-shirt at the time, I
22 believe, and I guess it was jeans or something.
23 I couldn't really tell. I could see the T-shirt.
24 It was bright, a light-colored shirt. White, I
25 believe it was at that time.

1 Q You might look at this photograph introduced in
2 evidence and marked as State's Exhibit 71, and I
3 will ask you if you can recognize the individual
4 who is in that photograph. Not if you know his
5 name, but if you recognize this photograph.

6 A This is the subject running down the street.

7 Q Does that appear to be the man you saw running
8 down Lenox towards your house?

9 A Running down Lenox.

10 Q How certain are you in your mind this is the man?
11 Can you describe your type of identification to the
12 ladies and gentlemen of the jury?

13 MR. ELIZONDO: I object to counsel
14 bolstering his witness, Your Honor.

15 THE COURT: Overruled.

16 Q (By Mr. Moen) How certain in your mind are you
17 that this is the man you saw?

18 A I am pretty certain it is.

19 Q Let me ask you to look over here to State's
20 Exhibit 20, and disregarding the shirt that is on
21 the man, just from this area up, how does this
22 look? Does this appear to be the same or similar
23 to the man you saw?

24 A He appears to be the same, except his hair was
25 combed, combed at the time, more off his face.

1 Q Like it was combed back?

2 A Like it was combed back.

3 Q Did you ever have occasion to go to where the
4 police officer was shot later that night?

5 A Yes, I did. That is when I met George. George
6 came by and I was at the back of the car still
7 looking at the tools, you know, to try to decide
8 what I could use, and I saw George, and I said,
9 "George, what is going on?"

10 MR. ELIZONDO: Objection to hearsay,
11 Your Honor.

12 THE COURT: Sustained.

13 Q (By Mr. Moen) Okay. You can't say anything that
14 George said.

15 A Okay.

16 Q When you went down and saw the police officer, what,
17 if anything, did you notice about the police
18 officer?

19 A He was lying on the ground in a pool of blood.

20 Q Besides yourself and George, was there anybody else
21 there at the police officer's car that you remember,
22 right there, either at the officer or at his
23 car?

24 A Yes.

25 Q Who do you remember being there besides yourself

1 and George?

2 A. Two girls. Herlinda and -- well, I really can't
3 be too sure, but I do know the officer who lives
4 down the street came to the car, and this other
5 boy I hadn't seen -- I think he was with Herlinda
6 at the time -- was at the car at the time, and
7 that is when some lady started coming down the
8 street and I told them not to come on. I tried
9 to block everybody from coming around so they
10 wouldn't gather around.

11 Q. Were there people coming around the two cars
12 there?

13 A. Yes, and that's what me and George did, too. We
14 tried to keep everybody away from seeing what was
15 going on. We didn't want anybody gathering
16 around.

17 Q. Let me show you some photographs that have been
18 introduced in evidence and marked for
19 identification purposes as State's Exhibits 23 and
20 28.

21 Did you ever see that automobile back
22 on the night the police officer was shot?

23 A. Yes.

24 Q. When was the first time or about what time was it
25 you saw that vehicle the night the police officer

1 was shot?

2 A. At the time after I went to the scene, and that
3 was the first time I ever saw the car before.
4 It was about 10:00 or something like that. I don't
5 recall the time.

6 Q. How long did you remain at the scene where the
7 police officer was shot? How long did you stay
8 there?

9 A. Until assistance, other police officers and
10 ambulances came, and we went to the police officers
11 and told them what we saw, because I realized it
12 was the person --

13 MR. ELIZONDO: Objection, Your Honor.
14 Unresponsive to that question.

15 THE COURT: Please, if you would, just
16 answer the questions.

17 Q. (By Mr. Moen) Frank, did you ever hear any other
18 shots, more shots later on after you had gotten
19 down to where the police officer was shot later
20 on that night? Did you hear more shots?

21 A. Yes. Yes.

22 Q. Okay. About how long was it after you got over
23 to where the police officer was at, as best you
24 can remember, before you heard these other shots?
25 About how much time had passed, as best you

1 remember?

2 A. I already have -- I can't tell. The time went by
3 so fast, but I believe an hour and a half or two
4 hours.

5 Q. What direction did it seem these shots were coming
6 from?

7 A. Well, at the time I was on the scene, the shots
8 came from the north direction, from the Harrisburg
9 direction, Rusk direction.

10 Q. Did you ever go over that way or head that way
11 to see where the shots were?

12 A. No, sir. I was with the police officer at that
13 time.

14 Q. Frank, you had occasion, the day after the
15 police officer was shot, to go down to a lineup,
16 didn't you?

17 A. Right.

18 Q. Did you see any of the persons in that lineup or
19 identify any of the people in that lineup as being
20 the people -- the individual, rather, that you saw
21 run this way down Lenox street toward your house?

22 A. No.

23 Q. You weren't able to identify anyone?

24 A. I wasn't able to identify anybody.

25 Q. Did you see this man in the lineup here?

1 A Yes, I did.

2 Q Do you remember what position he was in in the
3 lineup, what number he was in the lineup where
4 he was standing?

5 A Three; I believe it was three. I am not sure.
6 I believe it was three or something like that.

7 MR. MOEN: Pass the witness.

8 Thank you, Frank.

9

10 CROSS EXAMINATION

11

12 QUESTIONS BY MR. ELIZONDO:

13 Q Mr. Perez, did you make a report on this case?

14 A Yes, sir. At the police station.

15 MR. ELIZONDO: Your Honor, may I have
16 a moment?

17 THE COURT: Yes, sir.

18 Q (By Mr. Elizondo) How old a man are you?

19 A Seventeen.

20 Q And you live in the neighborhood?

21 A Yes.

22 Q You live over here on the corner of Walker -- I am
23 sorry -- Lenox and --

24 A In between Lenox and Walker and McKinney. It's
25 the middle house of the three houses.

1 Q Are you familiar with the intersection of Walker
2 and Edgewood?
3 A Yes.
4 Q When you made the scene that night, could you
5 tell the jury where the police car was?
6 A The police car was parked right next to the
7 street, right there. That is on there.
8 Q Like right here?
9 A Like right there.
10 Q And where was the '77 Cutlass?
11 A It was right in front of them.
12 Q Right in front?
13 A Right in front.
14 Q Could you tell the jury where the police officer
15 was?
16 A At the time the police officer was -- the door
17 was open. He was right on the other side of the
18 door laying on the ground.
19 Q He would be north of Harrisburg on the street
20 towards Walker?
21 A Yes, sir.
22 Q How far north of Walker was the police officer?
23 A Maybe fifteen, twenty feet, something like that.
24 Ten feet -- I don't know.
25 Q Let's say he would be anywhere from ten to twenty

1 feet away from Walker street, correct?

2 A. Right. He would be right anywhere from here to
3 here.

4 Q. Around there?

5 A. Right.

6 Q. Is that correct?

7 A. Right.

8 Q. You are familiar with the area; is that not right?

9 A. Yes.

10 Q. Are there trees around here?

11 A. Yes, there are.

12 Q. How many trees are there on Walker street?

13 A. All the way down the street.

14 Q. Let's say from 4929 Walker, which would be the
15 third house on the right-hand side heading west.

16 A. I don't understand which way you are going.

17 Q. I am going that way, going towards Dumble.

18 A. Maybe three or four. I don't really know.

19 Q. Are they all on the edge of the street?

20 A. No. There is a ditch right there. They are on
21 the other side of the ditch.

22 Q. Aren't they crape myrtles?

23 A. I don't know.

24 Q. Do you know what a crape myrtle is?

25 A. I don't know.

1 Q A tree with a lot of branches growing up?
2 A Yes, there are.
3 Q So there are some growing right around here,
4 correct?
5 A Yes.
6 Q Are there any in the yards?
7 A I believe so. There is.
8 Q How many are in the first house at the corner of
9 Lenox and Walker, 4921, this one right here?
10 A Maybe two, I think. I don't know. I can't tell
11 you because I don't observe that much.
12 Q How many trees are there in Ms. Galvan's yard,
13 4925 Walker?
14 A One.
15 Q And where is that tree located?
16 A Okay. It is located looking at it towards the
17 entrance on the left-hand side.
18 Q Was it right about --
19 A Right about there.
20 Q Was it in the ditch or in the yard?
21 A It is in the yard.
22 Q Right about here then, right?
23 A In between the sidewalk and the ditch right there.
24 Q Okay. In between the sidewalk and the ditch?
25 A Yes.

1 Q Right here would be an accurate description of
2 where it was?
3 A Right.
4 Q And you live over here somewhere?
5 A Right.
6 Q Can you tell the jury how bright or lit up the
7 intersection of Walker and Edgewood was and how
8 lit up is it usually?
9 A How lit up is it usually? It is pretty lit up,
10 because there is a light post right there at the
11 intersection.
12 Q Right here?
13 A I am not sure about right there, but I noticed one
14 down the street where the car is.
15 Q Right here?
16 A No, where the black Regal was.
17 Q Was there a light about here?
18 A I am not sure there is, but I know there is a
19 light there.
20 Q There is a streetlight over here on the corner of
21 Edgewood and Walker; is that correct?
22 A There is, because it is lighted up. It is the
23 lightest part of the street.
24 Q Are you sure about that?
25 A I am sure about that.

1 Q Is there a light here also with the circle with the
2 little lines around it? Is there a light there
3 also?

4 A I am not sure.

5 Q Is there a light on the corner of Lenox and
6 Walker?

7 A Yes, there is.

8 Q Right here?

9 A Across the street straight into the intersection;
10 okay, all the way across the street from Lenox.

11 Q Right here?

12 A Yes. Right there. There is a light right there.

13 Q Is there a light, a streetlight by your house?

14 A By my house?

15 Yes, there is. Not in front of my
16 house, at the corner of McKinney and Lenox.

17 Q Which is how far from your house?

18 A Another house away, one house away.

19 Q Okay.

20 A Exactly.

21 Q Have you talked to the D.A.'s in this case?

22 A Yes.

23 Q And when did you talk to them?

24 A The first time?

25 Maybe it was a week after everything

1 happened, I believe.

2 Q And again, did you talk to them again?

3 A Yes.

4 Q When did you talk to them again?

5 A Let me see. I don't remember. I think it was, I
6 guess, over the phone. It wasn't the D.A. I guess
7 it was last Saturday. Last Saturday.

8 Q Did you go to the D.A.'s Office at 201 Fannin
9 on Saturday?

10 A Yes.

11 Q And did you go to a conference room there?

12 A Yes.

13 Q And in that conference room, were State's Exhibits
14 19 and 20 there?

15 A Yes.

16 Q And did they have the same colored shirt, same
17 pants, tennis shoes, have all the same clothes on?

18 A Yes.

19 Q Now, you gave a statement to the police on July
20 13th or July 14th; is that not correct?

21 A When is that? The night of it?

22 Q The night of it, or the early morning hours.

23 A Yes.

24 Q And is it not a fact you told the police that day
25 the person's hair you saw that night running in the

1 white T-shirt was long and over his ears, and he
2 had a full beard and mustache? Do you recall
3 telling the police that?

4 A. According to what I would say, he had a full beard
5 and mustache.

6 Q. Do you remember telling them that?

7 A. To my decision, yes.

8 Q. And you told them he had a full beard and a
9 mustache; is that correct?

10 A. Right. All the way around. Right.

11 Q. And you also told them he had long hair?

12 A. Over his ears.

13 Q. Over his ears?

14 A. His ears. Over his earlobes, the top of the ears,
15 the top of the ears.

16 Q. And then you go to the D.A.'s Office on Saturday
17 and you see these two mannequins and then all of
18 a sudden -- and correct me if I am wrong -- you
19 are telling this jury this is the man you saw,
20 State's Exhibit 20, running?

21 A. Yes.

22 Q. And you say he had a white T-shirt?

23 A. At the time, he did.

24 Q. And is this the way he looked back on July 13th,
25 July 14th of 1982?

1 A The way he looked when he was dressed or his
2 appearance?

3 Q His face.

4 A His face? Oh, yes.

5 Q He's got a full beard?

6 A Except for his hair.

7 Q He's got a full beard?

8 A A full -- excuse me.

9 Q A full beard and mustache?

10 A It was a little darker, but it was not long. It
11 was a short beard all the way around.

12 Q Now, you told the police he had a full beard, did
13 you not?

14 A That is what I think a full beard is, all the way
15 around.

16 Q You told them he had a full mustache; is that
17 correct?

18 A Yes.

19 Q Does State's Exhibit 20 have a full beard on
20 right now?

21 A No.

22 Q Does he have a mustache?

23 A Yes.

24 MR. MOEN: Excuse me, Your Honor, but
25 he is being argumentative and badgering and trying

1 to intimidate him, and he is not giving him a
2 chance to complete his answers before he shoots
3 another one at him.

4 MR. ELIZONDO: Your Honor, I believe he
5 answered the question.

6 THE COURT: He was in the process of
7 trying to get information. I will allow him to
8 finish his answers.

9 Q. (By Mr. Elizondo) Does he have a full beard right
10 now?

11 A. At the time, it was dark.

12 No, on the mannequin, it is not full.

13 Q. And you are telling this jury this is the man you
14 saw running --

15 A. Yes.

16 Q. -- back on July 13th, July 14th?

17 A. Yes.

18 Q. And does he have a full beard right now?

19 A. The mannequin doesn't.

20 Q. But it did then, huh?

21 A. What did?

22 Q. The person that was running.

23 A. It was a dark beard, right.

24 Q. Dark beard and mustache?

25 A. Dark beard.

1 Q And hair over his ears?
2 A The top of his ears.
3 Q Hair over the top of his ears or over his ears?
4 A His ears. What I mean is the top.
5 Q You told the police over his ears, did you not?
6 A That is what I was saying, his ears, to my decision.
7 Q How close was this man to you when you saw him
8 running?
9 A Maybe from me to your assistant right there.
10 Q For the record, would that be about fifteen
11 feet?
12 A I guess it would. Something like that.
13 Q And there is a street there at the corner of
14 Lenox and McKinney?
15 A Okay, but can I say something?
16 Q Yes or no.
17 A Yes.
18 Q And how far are you from the corner of Walker --
19 I am sorry -- Lenox and McKinney?
20 A From the streetlight, it would be about eighty
21 feet, a hundred feet, something like that.
22 Q One house over, right?
23 A Right. That street also makes an indentation
24 also, like Rusk and Lenox -- what is that --
25 Walker and Lenox. It makes an indentation also,

1 and the streetlight is on the far corner of the
2 indentation.

3 Q Let me go back to this conversation you had in the
4 conference room in the D.A.'s Office at 201 Fannin.

5 Ms. Galvan was there, was she not?

6 A Who is Ms. Galvan?

7 Q The one who lives at 2945 Walker street, the lady
8 with the kids.

9 A Yes, she was there.

10 Q Was Jose Armijo there?

11 A Who is he?

12 Q The little boy.

13 A The little boy -- I don't remember.

14 Q How many people were there?

15 A There was a few people, a few persons.

16 Q Citizens, civilians?

17 A Civilians.

18 Q Was everybody there at the same time in the
19 conference room?

20 A There was a few in there at the same time.

21 Q And you all rehashed the case at that time?

22 A Rehashed the case?

23 Q You talked about the case at that time?

24 A No, we really didn't. We did -- they talked to
25 us, you know, about not being scared or frightened

1 about the case or anything like that.

2 Q Did you talk about the facts?

3 A Yes, we did.

4 Q And when you talked about the facts, was everybody
5 else there in the same room at the same time?

6 A Some of us were and some of us weren't.

7 Q Okay, but there was more than one or two people
8 —

9 A Right.

10 Q — there when y'all were talking about the facts,
11 were there not?

12 A Right.

13 MR. ELIZONDO: Your Honor, we are going,
14 once again, to object to State's Exhibits 19 and
15 20 as being inflammatory, prejudicial, and
16 bolstering the State's witnesses and of no
17 probative value whatsoever.

18 We object to State's Exhibit No. 20 as
19 having a red shirt with bloodstains as being
20 highly inflammatory and prejudicial, and we object
21 to it.

22 THE COURT: Overruled.

23 MR. ELIZONDO: Pass the witness, Your
24 Honor.

25

RE-DIRECT EXAMINATION

QUESTIONS BY MR. MOEN:

Q Frank, before you had come to the District Attorney's Office, you had already positively told the police the man was not the man you saw running down Lenox street?

A. Right.

Q And before you had come to the District Attorney's Office to talk to Mr. Bax and myself, you had already positively ID'd this man as being the man you had seen?

A. Right.

Q How long was it after the police officer was shot that you told Mr. Bax or myself or the police officer that this was, in fact, the man you had seen run down Lenox street that night?

Do you remember how long after the police officer was shot it was?

A. I think it was a week, week and a half.

THE COURT: For the record, could you identify the number of the exhibit?

A. It was the time when y'all came back to the scene.

Q (By Mr. Moen) So the time we came out and put the cars back at the scene and had the witnesses

1 go over what they saw that night?

2 A. Right.

3 Q. About a week and a half after the offense took
4 place you positively identified this man as in
5 State's Exhibit 71?

6 A. Yes.

7 Q. At that time, you had never seen these?

8 A. No, I hadn't.

9 Q. The first time you saw these was Saturday, right?

10 A. Right. That was the first time I had seen it.

11 Q. And you had already been on a lineup and told the
12 police this was not the man, not the man you had
13 seen running by, hadn't you?

14 A. Right.

15 Q. Now, when you say "full beard," let me hold this
16 photograph, State's Exhibit 71, up next to this
17 mannequin marked State's Exhibit No. 20.

18 Does this photograph, to your way of
19 thinking, way of describing things, does this man
20 depicted in State's Exhibit No. 71 have a beard?

21 MR. ELIZONDO: I object to the form of
22 the question, Your Honor.

23 THE COURT: Overruled.

24 A. Excuse me.

25 Does the picture have a full beard?

1 Q The way you described a full beard, the way you
2 meant it when you gave the statement to the
3 police.

4 A Yes, it does.

5 Q To your way of thinking, does this man have a
6 full beard?

7 A Yes.

8 Q Different than one that is long and hangs down?

9 A Different. Short.

10 Q And how would you describe the man's hair in
11 State's Exhibit 71?

12 A Growing over his ears, to the top of his ears.

13 Q And that is what you said in your statement, too,
14 that the man had hair over his ears?

15 A Right.

16 Q Back when we talked, yourself and some of the
17 other witnesses and Mr. Bax and myself, were there
18 some people including yourself perhaps that were
19 afraid to testify in this case?

20 MR. ELIZONDO: Your Honor, I object to
21 the prosecutor's question as prejudicial and
22 bolstering.

23 MR. MOEN: He asked him earlier about
24 our meeting, and he's responding to that. He
25 asked about what we talked about.

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THE COURT: Overruled.

A Repeat the question again.

Q (By Mr. Moen) Back when Mr. Elizondo asked you about what had been talked about, whether or not we had talked about the facts of the case, you told the ladies and gentlemen of the jury really we hadn't talked about the facts too much, but we did talk about being afraid to come and testify?

A. Right.

Q We talked about that Saturday, didn't we?

A. Right.

Q In fact, we spent a pretty good deal of time talking about that, didn't we?

A. We did.

Q Has anyone in this case, either Mr. Bax or myself or a police officer at any time tried to tell you what you should say when you came to testify before the jury?

A. No.

MR. MOEN: Pass the witness.

1 RE-CROSS EXAMINATION

2
3 QUESTIONS BY MR. ELIZONDO:

4 Q You say he had a full beard and mustache; is that
5 correct?

6 What do you call your mustache? Is it
7 a mustache?

8 A It is a longer mustache.

9 Q They have longer mustaches and shorter mustaches,
10 right?

11 A Right.

12 Q And you say he had a full beard; is that correct?

13 A Correct. He did have a full beard.

14 Q I guess there are full, fuller, and fullest beards;
15 is that correct?

16 A What I think of is all the way around. My brother
17 doesn't have this right here. He has a goat
18 beard, I would say.

19 Q And he's got a full beard; is that correct? What
20 does he have on?

21 A He has a long full beard..

22 Q There are long full beards and short full beards,
23 I guess.

24 A Yes.

25 Q Oh, Mr. Moen brought it up, about the cars at the

1 scene. What is that about?

2 A. Excuse me?

3 Q. Mr. Moen was talking about somebody putting cars
4 back on the scene.

5 A. I guess they was trying to reenact the scene of
6 the crime.

7 Q. Reenact it?

8 A. I am not sure. Maybe just to put the cars to see
9 where everything was positioned at the time.

10 Q. And when was this?

11 A. Like I say, a week after, a week and a half or
12 something like that.

13 Q. And who was there?

14 A. The D.A.'s and --

15 Q. Mr. Moen and Mr. Bax?

16 A. I believe, and a police officer was there. I am
17 not sure. Two officers were there.

18 Q. How about citizens?

19 A. The neighborhood citizens were there.

20 Q. They were all there?

21 A. They were all there.

22 Q. They were all there at the same time?

23 A. No. They -- well, people were coming and going
24 to see what was going on, like a spectacle going
25 on, you know.

1 Q Have you talked to anyone else about this case?

2 A Such as?

3 Q Well, your neighbor or anybody?

4 A My mother.

5 Q Did you talk to your mother about this case?

6 A Yes.

7 Q When is the last time you talked to her about this
8 case?

9 A Back when it happened.

10 Q Did you talk to anybody about this case, say,
11 yesterday?

12 A Yesterday? No.

13 Q Day before yesterday?

14 MR. MOEN: Judge, we could go all the way
15 back to July 13th. I object to that as irrelevant
16 and immaterial.

17 MR. ELIZONDO: I am just going to Monday.

18 THE COURT: Okay. Go ahead.

19 Q (By Mr. Elizondo) Tuesday, did you talk to anybody
20 about the case?

21 A Tuesday? No. Not Tuesday.

22 Q How about Monday?

23 A Monday? No.

24 Oh, wait a minute. Monday, I did talk
25 to my counselor and told him I was going to be in

1 the case the rest of the week, and that was it.

2 I told him I might not be in school. That was it.

3 MR. ELIZONDO: Thank you.

4 Pass the witness.

5 MR. MOEN: That is all I have, Judge.

6 Thank you.

7 THE COURT: Thank you. You may stand
8 aside.

9 Call your next.

10 MR. MOEN: I would call Herlinda Garcia.

11 THE COURT: Has this witness been sworn?

12 MR. MOEN: She has.

13 THE COURT: You may proceed.

14
15
16
17 HERLINDA GARCIA,
18 was called as a witness on behalf of the State of
19 Texas, after having first been duly sworn, testified
20 as follows:

21
22 DIRECT EXAMINATION

23
24 QUESTIONS BY MR. MOEN:

25 Q Herlinda, tell the ladies and gentlemen of the

1 jury your name, please. Tell them who you are.

2 A. Herlinda Garcia.

3 Q. That is fine, just like you were doing just then.

4 When I ask you something, speak into the microphone
5 so everybody can hear what you have to say. Okay?

6 A. Okay.

7 Q. How old a lady are you? How old are you?

8 A. Fifteen. —

9 Q. I want you to do a couple of things. Try to relax
10 if you can and don't be afraid of anybody here.

11 Just relax as best you can.

12 I want you to think back to the night when
13 the police officer was shot in your neighborhood
14 and Mr. Armijo was shot in your neighborhood.
15 Can you do that for me?

16 A. Yes.

17 Q. Did you have occasion to be with a friend by the
18 name of Vera back on that particular day or night?

19 A. Yes.

20 Q. Did you have occasion to be with a friend by the
21 name of Vera back on that particular date?

22 A. Yes.

23 Q. Where were you and Vera going or coming from back
24 when the police officer was shot?

25 A. To the store.

1 Q About -- as best you remember -- about what time
2 of the night was it when the police officer was
3 shot, just your best guess?

4 A 10:00.

5 Q Was it dark out?

6 A Yes.

7 Q Where do you live on Walker street? Where do you
8 live at?

9 A 4938 Walker.

10 Q Let me show you -- let's see if we can do it with
11 this photograph.

12 Do you see this big photograph? Let me
13 point out things or explain some things.

14 This is the intersection of Edgewood
15 --

16 MR. ELIZONDO: I object to counsel
17 testifying.

18 MR. MOEN: This is a diagram or photo
19 spread in evidence. I have a right to explain
20 it to the witness, what it represents.

21 THE COURT: Objection is overruled.

22 Q (By Mr. Moen) This is where Edgewood comes into
23 Walker street, and this is Rusk street. This
24 street is Dumble, and this street is Lenox, and
25 this street is McKinney, and this direction over

1 here is where Harrisburg is at. This is to the
2 north.

3 Can you point out on this photograph
4 where your house is at? Can you see it on the
5 photograph?

6 A. Right here.

7 Q. That's the house where you live?

8 A. Uh-huh.

9 Q. Okay. Can you show on this photograph where you
10 and Vera were when the police officer was shot?
11 Where were you and Vera?

12 A. On this street, this street right here.

13 Q. Which side of the street were you on when the
14 police officer was shot?

15 A. Right here.

16 MR. MOEN: Can everybody hear?

17 THE COURT: One juror indicates he cannot
18 hear.

19 Speak up.

20 Q. (By Mr. Moen) Where were you and Vera at when
21 the police officer was shot? Can you point on this
22 photograph to the ladies and gentlemen of the jury
23 where you and Vera were at?

24 A. This was my house. This side of the street.

25 Q. That side of the street?

1 A. This side of the street.

2 Q. And can you point out as best you can where you were
3 standing when the police officer was shot?

4 A. He was here and we were here.

5 Q. Just across the street?

6 A. No. Right here was where the cars were and here
7 is the policeman and we were right here.

8 Q. Could everyone hear?

9 Can you look at this photograph marked
10 State's Exhibit 26 and can you see on this
11 photograph about where you and Vera were standing
12 when the police officer was shot?

13 A. Yes.

14 Q. Why don't you point with your finger where you
15 and Vera were when the police officer was shot?

16 A. Right here in the street.

17 Q. That police car wasn't in that position?

18 A. No, those cars weren't there.

19 Q. Let me -- can you see this diagram from where you
20 are at? Can you see okay?

21 A. Yes.

22 Q. This diagram has been marked as State's Exhibit
23 No. 5, and that is just a number so we can refer
24 to it and identify it. Okay?

25 On this diagram, can you see Walker

1 street here and can you see that this street is
2 Edgewood from where you are at?

3 A. Yes.

4 Q. And right here is the intersection of Edgewood
5 and Walker street, and from what you have told the
6 jury, your house would be down in this part of
7 Walker street, right?

8 A. Uh-huh.

9 Q. Why don't you come and stand in front of the
10 ladies and gentlemen of the jury and just relax.
11 Come on down for a second.

12 Why don't you stand for the ladies and
13 gentlemen of the jury and point with your finger
14 where you and Vera were standing.

15 Come on this side and point where you and
16 Vera were standing.

17 A. Right here.

18 Q. Do you see these two boxes, this car?

19 A. Are they cars?

20 Q. They are supposed to be cars.

21 A. Uh-huh.

22 Q. Is that about where the police officer's car was
23 at?

24 A. Yes. Right here. This one was in front of it
25 right here.

1 Q Whose car was over here?

2 A My cousin's car.

3 Q Patricia Diaz?

4 A Yes.

5 Q Okay. Go ahead and have a seat. Go ahead and sit
6 back down.

7 Were you with Vera when this car that
8 is in State's Exhibit 23 came to a stop there and
9 blocked Walker street?

10 A Yes.

11 Q How many men did you see get out of this car that
12 you remember?

13 A Two.

14 Q When the men got out of the car, was the police
15 officer right behind them at that time or did he
16 come up a few minutes or a few seconds later?

17 A Well, the men got out of the car and the policeman
18 came toward them.

19 Q Okay. When the men got out of the car, Vera, did
20 they say anything to you or Herlinda -- rather,
21 did they say anything to Vera that you could hear?

22 MR. ELIZONDO: May it please the Court,
23 I object to counsel leading the witness.

24 THE COURT: You may go ahead.

25 Q (By Mr. Moen) Did either one of the men, when

1 they got out of the car, say anything to you or to
2 Vera?

3 A. Well, before, coming towards Walker --

4 Q What did they say?

5 MR. ELIZONDO: Your Honor, object to
6 hearsay.

7 MR. MOEN: Your Honor, this is res gestae
8 of the events, Judge.

9 THE COURT: Overruled.

10 Q (By Mr. Moen) What did the men say when they got
11 out of the car, the black and red car in State's
12 Exhibit 23? What did either of those men say to
13 you or to Vera that you could hear?

14 A. I heard them say something, something about a
15 boost, something about their car being messed up.

16 Q Did you say anything back to these men or did you
17 or Vera say anything back to these men, Herlinda?

18 A. No.

19 Q When one of the men got out of the car, do you know
20 which one said that to you and Vera?

21 A. It was the driver.

22 Q Can you recognize the driver of that car if you
23 saw him again? Can you do that for the ladies
24 and gentlemen of the jury? Can you point him out?

25 A. Yes.

1 Q If he is here, can you point him out for the ladies
2 and gentlemen of the jury?

3 A He is that one.

4 Q Look at that man, the Defendant in this case. Are
5 you saying this man here is the person that was
6 the driver of that car?

7 A Yes.

8 Q Look at the way he looks today. Look at his face
9 and hair today, and look at this mannequin marked
10 State's Exhibit 19.

11 Does this mannequin more accurately
12 reflect the length of his hair and the type of
13 facial hair that the man had?

14 MR. ELIZONDO: Once again, I object to
15 the use of State's Exhibit 19 as being inflammatory,
16 prejudicial, and bolstering to the witnesses, Your
17 Honor.

18 THE COURT: Overruled.

19 Q (By Mr. Moen) Does this look like the way the
20 man had his hair and beard the night you saw him
21 when the policeman was shot?

22 A Yes, sir.

23 Q How about these photographs marked 17 and 18? Does
24 that look more like the way the man looked when you
25 saw him with Vera?

1 A. Yes, sir.

2 Q After the man asked about a boost, how long was
3 it before the police officer came pulling up?

4 A. How long was it?

5 Q Yes, just your best guess, Herlinda. How long
6 was it before the police officer came pulling up
7 in his car?

8 A. About a second, just pulled the car -- the black
9 car just pulled up and then comes the policeman.

10 Q Could you hear the policeman say anything?

11 A. Yes, sir.

12 Q What did you hear the policeman say?

13 A. Well, after he put his headlights on him, he said,
14 "Hold it."

15 Q Could you ever see the policeman get out of his
16 car? Did you ever see the policeman get out of his
17 car?

18 A. No, sir.

19 Q Okay. Could you tell, though, from where you were
20 at and what you were able to see, could you tell
21 it was a police officer?

22 A. Yes, sir.

23 Q After the police officer said, "Hold it," what is
24 the next thing that you saw after that?

25 A. I saw those two men come out of the car. They came

1 out of the car.

2 Q Which way did they head when they came out of the
3 car?

4 A Toward the policeman.

5 Q After they started walking towards the policeman,
6 could you hear if the policeman said anything else
7 other than just, "Hold it"? Could you hear if the
8 police officer said anything else?

9 A No, sir.

10 Q After the men started walking towards the police
11 car or the police officer, what is the next thing
12 you saw or heard after that?

13 A Well, I only seen one man turn toward the policeman,
14 and he pulled something out of his pants.

15 Q And then what happened? What did this man do
16 that pulled something out of his pants?

17 A And then he shot that policeman, and that is when
18 I ran, me and my baby.

19 Q You had your baby with you? .

20 A Yes.

21 Q You are getting ready to have another baby, aren't
22 you, pretty soon, aren't you?

23 A Yes.

24 Q How old was this baby you had with you that you
25 had with you?

1 A It was seven months.

2 Q The man that you say you saw pull something
3 out of his pants, what man was that?

4 A This one and that one there.

5 Q Okay. Could you see at all what it was he pulled
6 out of his pants? Could you tell?

7 A It looked like it was a gun.

8 Q Well, I don't want you to guess. Just be as
9 accurate as you can. If you could see what it
10 was, that is fine; if you could not see what it
11 was, that is fine, too. But what could you, from
12 the position you were in, see the man pull out
13 of his pants? Could you tell what it was?

14 A Could I tell what it was? No. No.

15 Q After he took something out of his pants, you
16 say you heard some gunshots?

17 A Uh-huh.

18 Q How many shots do you remember hearing, as best
19 you can guess?

20 A Three. Three.

21 Q How many shots?

22 A Three gunshots.

23 Q Could you tell, Herlinda, if the police officer
24 was shot or not when you heard those shots? Did
25 you look over towards the police officer or take

1 off running?

2 A. I seen the policeman on the floor, and that is
3 when I ran. He was really shot, blood all over
4 him.

5 Q. Could you see that from where you were at? Was
6 that before you started running or when you came
7 back after it was all over?

8 A. No, that is when I started running with my baby.

9 Q. Which way did you run with your baby?

10 A. Toward my house.

11 Q. Okay. You ran down Walker street towards your
12 house over here?

13 A. Yes.

14 Q. Did either one of those men chase after you?

15 A. Yes.

16 Q. How do you know one of those men chased after
17 you? Could you see it?

18 A. When I was running with my baby behind me were
19 gunshots, and that's when I got a chance to open
20 the door, and I ran in.

21 Q. Ran into your house?

22 A. Uh-huh.

23 Q. Could you tell which way either one of these men
24 ran that you saw get out of the car when they
25 first asked you for a boost and the police officer

1 came up and said, "Hold it," and after the
2 police officer was shot, could you tell which way
3 either one of these men ran?

4 A. Only one. He was like -- like my house is on
5 this side --

6 Q. Uh-huh.

7 A. -- and he was running on the other side. That
8 is my house on this side.

9 Q. You saw one man running on this side of the
10 street?

11 A. That side of the street.

12 Q. Ms. Galvan lives on this side of the street, doesn't
13 she?

14 A. Yes.

15 Q. She is on the opposite side of the street from
16 where you live, right?

17 A. Yes.

18 Q. The man you saw running on this side of the
19 street, could you tell which man that was?

20 A. Yes. It was that man.

21 Q. The Defendant over here?

22 A. Uh-huh.

23 Q. Okay. How far did you see him run down the
24 street before you got into your house?

25 A. He was in the front of Ms. Galvan's house.

1 Q Okay, and is that the last time you saw him
2 that night?
3 A Yes.
4 Q Okay, and I guess it wouldn't be too much longer
5 after that before you ran in and probably locked
6 the door behind you or at least closed it?
7 A Uh-huh.
8 Q Okay. Did you come back out of the house later
9 when some more police officers arrived and stuff?
10 Did you come out of your house that night?
11 A Yes.
12 Q Did you ever go back over here to where the police
13 officer was at after you came out of your house?
14 A Yes.
15 Q And did you go over there with Johnny Matamoros?
16 A Yes.
17 Q Who is Johnny Matamoros in relation to you? Tell
18 the ladies and gentlemen of the jury.
19 A He is my boyfriend.
20 Q When you got back over to where the police officer
21 was at, did you try to use the police officer's
22 radio?
23 A Johnny did.
24 Q Okay.
25 A That is when I ran inside and told him a policeman

1 got shot and was shooting at me and he ran -- when
2 that man was shooting, still shooting, he ran
3 toward the policeman and said he was dead, and --
4 Q Johnny ran towards him?
5 A Yes.
6 Q And then he ran to the C.B. and called some help?
7 A Yes.
8 Q When you say "C.B.," are you talking about the
9 police officer's radio?
10 A Yes.
11 Q Were you with Johnny at the time he was doing that
12 or did Johnny just tell you about it later?
13 A I was with him. I was -- yes.
14 Q Do you know where Vera went when all this shooting
15 started, which way she went?
16 A Vera was right there under a black car that was
17 beside it.
18 Q She got underneath the car?
19 A Uh-huh.
20 Q Okay. When you got back over to the police
21 officer's car, besides yourself and Johnny, who
22 else was around over there? Did you see other
23 people that you knew or recognized?
24 A No.
25 Q Okay. Did another police officer come up?

1 A. That is the only one I knew, was the other
2 policeman.
3 Q. Do you know his name at all?
4 A. No.
5 Q. Do you know the Cavazos family?
6 A. Yes.
7 Q. Mr. and Ms. Cavazos who live next to Mr. Galvan?
8 A. Yes.
9 Q. Do you know that family at all?
10 A. Yes.
11 Q. When I say "know," I don't mean did you go to
12 their house to eat dinner or they would come to
13 your house --
14 A. Yes.
15 Q. -- but you do know them?
16 A. Yes.
17 Q. Do you know their son who happens to be a police
18 officer? Do you know him in the neighborhood?
19 A. Yes.
20 Q. And do you know if he is the one who came running
21 up to the car?
22 A. He is the one -- he came up and grabbed Johnny
23 by the shirt and asked him, you know, and Johnny
24 said, "No." I guess he thought Johnny was the one
25 who shot the policeman.

1 Q You think he thought Johnny was responsible?

2 A Uh-huh, and he grabbed Johnny and I said, "No, he's

3 trying to get help," and he said, "Just move out

4 of the way," and that is when he got on the radio.

5 Q How long did you stay that night before you left

6 with the police officers or left to give a

7 statement? How long did you stay there where the

8 police officer was shot?

9 A I stayed there quite a while, a long time.

10 Q Altogether, about how many shots did you hear when

11 the police officer was shot and you were running

12 towards your house? About how many shots did you

13 hear before you got inside the house and told

14 Johnny what had happened?

15 A I would say about three, three shots.

16 Q Do you know Mr. Armijo? Do you know Ms. Armijo and

17 her husband, Mr. Armijo? Do you know those people

18 at all? Do you know who I am talking about?

19 A You are talking about the ones who live across the

20 street from my house?

21 MR. MOEN: Ask Ms. Armijo to come to the

22 door, please.

23 Q (By Mr. Moen) When the lady comes to the door,

24 take a look at her, if you will, and don't say

25 anything, and when she leaves, I want to ask you

1 a question. Okay?

2 Take a look at this lady when she comes
3 to the door.

4 (Ms. Armijo came into the courtroom and
5 then left.)

6 Q. (By Mr. Moen) Do you know that lady?

7 A. Uh-huh.

8 Q. Have you ever seen her from out in the neighborhood?

9 A. Yes.

10 Q. Do you know her husband?

11 A. Her husband?

12 Q. Okay. Do you know this man who is in State's
13 Exhibit 72? Have you ever seen that man out
14 in your neighborhood before?

15 A. Yes.

16 Q. Okay. Let me show you some photographs of this
17 car here that appear in these photographs marked
18 State's Exhibit 36 and 37.

19 Did you see that car in front of Ms.
20 Galvan's house the night the police officer was
21 shot?

22 A. Yes.

23 Q. Did you ever go take a look at that car later on?

24 A. Yes.

25 Q. Later that night?

1 A. Yes.

2 Q. What did you see when you looked inside?

3 A. That lady's husband was shot.

4 Q. Do you know where the children were at?

5 A. Yes.

6 Q. His children?

7 A. One was in the front seat and one was in the back.

8 Q. When did you first see that red Ford? When did
9 you first notice it with the man inside who was
10 shot?

11 Maybe that is kind of a --

12 A. When I was running inside the house.

13 Q. That is kind of a confusing question, but you
14 didn't have too much trouble with it.

15 The first time you were running inside
16 the house you saw that red car?

17 A. He was coming down the street.

18 Q. When you ran toward the house, did you run down the
19 sidewalk or run in the middle of the street?

20 A. No, I ran where the grass was.

21 Q. Did you run between the street and the sidewalk
22 on the grass?

23 A. Uh-huh.

24 Q. And you saw -- you first noticed this car coming
25 towards you as you ran to your house?

1 A. Yes.

2 Q After you got in your house and told Johnny what
3 had happened and Johnny came outside, when did you
4 first have a chance to go look inside this car and
5 see Mr. Armijo was shot? When did you first go
6 take a look at the car? Not when you saw it, but
7 when did you first take a look at the car?

8 A. When Johnny was on the radio, we went over there.

9 Q Could you hear if the man was saying anything at
10 all --

11 A. No, sir.

12 Q -- at that time?

13 A. No.

14 Q Did you try to talk to him at all or say anything
15 to Mr. Armijo, say anything to the man?

16 A. No.

17 Q How about the children? Did you say anything to
18 the children or were his children saying anything
19 to you at all?

20 A. No.

21 Q Now, back when you gave your statement to the
22 police, and you did that the next morning, I
23 believe, wasn't it, or right around, right after
24 midnight, you gave your statement to the police,
25 you had seen --

1 A Yes, sir.

2 Q -- you described a man with blond hair, didn't
3 you?

4 A Yes, sir.

5 Q What did you mean when you said "blond hair," the
6 man you saw had blond hair?

7 A At a distance in the dark, it looked like it was
8 blond.

9 Q When you say blond, are you saying shiny hair or
10 blond hair like my hair is blond?

11 A Yes, like your hair.

12 Q Where you were at, you thought the man who did the
13 shooting had blond hair?

14 A Yes, sir.

15 Q Yet when you looked -- you went and looked at a
16 lineup, didn't you, on July 14th?

17 Do you know what a lineup is?

18 A Yes, sir.

19 Q Where they put a bunch of people together and ask
20 you if you have seen anybody?

21 A Yes.

22 Q And you picked a person out, didn't you?

23 A Yes.

24 Q And you told the police that you felt the man you
25 had seen shot the police officer.

1 Do you remember what man that was in the
2 lineup, what number it was?

3 A. Four.

4 Q. When you tell the ladies and gentlemen that this
5 is the man that you saw shoot the police officer,
6 and I want you to be as certain as you can in your
7 own mind, can you tell the jury how positive you
8 are that is the man?

9 MR. ELIZONDO: Objection. Repetitious,
10 Your Honor. Bolstering.

11 THE COURT: Overruled.

12 Q. (By Mr. Moen) How certain are you in your mind
13 that is the man you saw shoot the police officer?

*It's not in
evidence that
she saw him
shoot!!!*

14 A. Yes, sir.

15 Q. I mean, I want you to tell the ladies and gentlemen
16 of the jury, Herlinda, and don't be afraid. Just
17 relax, but tell the ladies and gentlemen of the
18 jury how certain you are in your mind that is the
19 man you saw shoot the police officer.

20 Do you understand what I am asking you?

21 A. Uh-huh. Yes. I am sure.

22 Q. Okay. Have you been afraid to come down here and
23 testify?

24 A. No, sir.

25 Q. Have you been scared at all?

1 A No, sir.

2 MR. ELIZONDO: Objection, Your Honor.
3 It's been asked and answered. Repetitious.

4 MR. MOEN: Okay, Judge. That's all I
5 have.

6 Pass the witness.

7
8 CROSS EXAMINATION

9
10 QUESTIONS BY MR. ELIZONDO:

11 Q Herlinda, you are fifteen years old? Is that
12 correct?

13 A Yes.

14 Q Did you give a statement to the police back on
15 July 13th or July 14th of 1982?

16 A Yes.

17 MR. ELIZONDO: May I have a moment?

18 THE COURT: You may.

19 Come up, please.

20 (Discussion before the bench.)

21 THE COURT: Members of the jury, while
22 the Defense is reading the statement of the
23 witness, I am going to go ahead and take a lunch
24 break at this time. You are to be back with the
25 bailiff about, say, a quarter of 2:00, and if you

1 will, go into the jury room. I will have the
2 bailiff make arrangements.

3 Remember the admonitions I have previously
4 given you.

5 (At this time a lunch recess was taken
6 by the court.)

7 (The following proceedings were had in
8 the presence of the jury.)

9 THE COURT: May we have Herlinda back,
10 please?

11
12 CROSS EXAMINATION, CONTINUED
13

14 QUESTIONS BY MR. ELIZONDO:

15 Q. Ms. Garcia, you are fifteen years old; is that
16 correct?

17 A. Yes.

18 Q. Where do you go to school?

19 A. I don't go to school.

20 Q. What is the last grade you attended?

21 A. Eighth.

22 Q. And what school was that?

23 A. Jackson.

24 Q. Jackson Junior High?

25 A. Yes.

1 Q And where were you living back then on July 13th,
2 1982?
3 A What?
4 Q Where were you living back then on July 13th, 1982?
5 A Where was --
6 Q Yes, where were you living?
7 A With my mom.
8 Q Where does your mom live?
9 A 4938 Walker.
10 THE COURT: Excuse me just a second.
11 Mr. Moen?
12 (Conference at the bench between the
13 Court and counsel.)
14 THE COURT: Proceed.
15 MR. ELIZONDO: Thank you, Your Honor.
16 Q (By Mr. Elizondo) What is your mother's name?
17 A Ms. Armalina.
18 Q And who else lives there at 3948 Walker street?
19 A Just my mom.
20 Q And you?
21 A Yes.
22 Q And anybody else?
23 A And my sister.
24 Q What is her name?
25 A Elvera Flores.

1 Q Elvera Flores?
2 A Yes.
3 Q Does she go by "Beth"?
4 A Yes.
5 Q Does she have a middle name of "Beth"?
6 A Yes.
7 Q I believe in your statement you said that your
8 husband ran to the police car?
9 A Yes.
10 Q Who is your husband?
11 A Johnny Reyes.
12 Q Johnny Reyes Matamoros?
13 A Yes.
14 Q How long have y'all been married?
15 A Two years.
16 Q Did you get married here in Harris County, Texas?
17 A I am not married to him. He is just my boyfriend.
18 Q Is he your husband or your boyfriend?
19 A He is my boyfriend.
20 Q I believe in your statement you said he was your
21 husband. Are you mistaken about that?
22 A Yes, sir.
23 Q Could you tell the jury what color of pants the
24 man had -- the man that you saw down on July 13th,
25 1982?

1 A What color pants?
2 Oh, I only can describe one of them, not
3 the other one.
4 Q Describe the one that you can describe. What
5 color of pants did he have?
6 A What color?
7 Q Uh-huh.
8 A Well, on my statement I said brown.
9 Q You said brown on your statement?
10 A Yes.
11 Q What about -- what color of shirt did the man
12 that you can describe, what kind of shirt did he
13 have on?
14 A I didn't say that.
15 Q Are you sure?
16 A No.
17 Q Go ahead and look at your statement and see if
18 that will refresh your memory, primarily the last
19 paragraph.
20 (The statement was handed to the witness.)
21 Q (By Mr. Elizondo) Do you recall now saying or
22 telling the police the color of shirt the man that
23 you can describe had on?
24 A Yes.
25 Q And what color did you tell the police --

1 A Brown.

2 Q -- back on July 13th, 1982?

3 A Brown.

4 Q You said a brown shirt, right?

5 A Uh-huh.

6 Q I believe you also said he had blond hair; is that
7 correct?

8 A Yes.

9 Q Have you seen our court reporter right here taking
10 notes?

11 A Yes.

12 Q What color hair does she have?

13 A Blond. It is blond.

14 Q How close were you to the black and red car when
15 you saw that man you have described? How close
16 were you?

17 A How close was I am to the car?

18 Q To the man that you described, the man in the brown
19 shirt and brown pants.

20 A How close was I am to him?

21 Q Uh-huh.

22 A Well, from here to over there.

23 Q Which is -- okay. Let me go ahead and stand up
24 and tell me when to stop so you can more or less
25 show the jury how far away the man that you saw

1 with the blond hair and brown shirt and brown pants
2 was from you when you saw him.

3 Tell me when to stop.

4 A Stop.

5 Q He was this far away from you?

6 A Uh-huh.

7 Q Was there a streetlight there at the corner of
8 Edgewood and Walker?

9 A A streetlight?

10 Q Yes.

11 A No.

12 Q There is nothing here, right?

13 A No.

14 Q Is there a streetlight anywhere on Walker?

15 A Anywhere on Walker? No.

16 Q There are no streetlights on Walker?

17 A No.

18 Q Was it pretty well lit or dimly lit, or how was
19 it?

20 A What is it that you are asking me?

21 Q How was the lighting condition on the corner of
22 Edgewood and Walker?

23 A Right there where the cars are at, only one
24 headlight, one of those big old lights.

25 Q Where? Right here?

1 A Yes.

2 Q Is that a streetlight or what?

3 A No, not one of those green or red lights, not
4 those; those white lights.

5 Q Where is that?

6 A Right there where you finished pointing at.

7 Q Right here or there?

8 A Not over there.

9 Q Right here?

10 A Where the street's at. That's where the street-
11 light's at.

12 Q Do you know if there is a streetlight here in
13 the round circle with dashes? Is there a street-
14 light there? Can you see that little round circle?

15 A Uh-huh.

16 Q Is there a streetlight there?

17 A One of those big white lights you are talking about?

18 Q Uh-huh.

19 A Yes.

20 Q Is there one of those big lights on the corner of
21 Edgewood and Walker?

22 A On the other side.

23 Q Over here?

24 A On this side of the street.

25 Q Can you come and show the jury where that

1 streetlight is?

2 A. See, we were standing here, and there is a light
3 right here. This is supposed to be one, some other
4 lights here, and another light here.

5 Q. Is there a light here at the intersection of
6 Edgewood and Walker street right here?

7 A. Is there one?

8 Q. Uh-huh.

9 A. No.

10 Q. So there are no streetlights there at the
11 intersection?

12 A. There is one.

13 Q. Where?

14 A. Between here and there.

15 Q. One over here, right?

16 A. Yes.

17 Q. And how far is that streetlight from the
18 intersection of Walker and Edgewood?

19 A. I can't be sure where it is.

20 Q. Not on the corner, is it? It's not here on the
21 corner, is it, the streetlight?

22 A. Is it right here on the corner?

23 Q. Uh-huh.

24 A. No, but there is light there.

25 Q. Where does it come from?

1 A From this light.

2 Q How far is that light from the intersection?

3 A Not so far away.

4 Q I know. How far?

5 A I don't know how far it is, but it is not far, far
6 away.

7 Q Like from here to the wall, from here to the next
8 wall, or from here to the elevators?

9 A No, from here to about -- to the wall.

10 Q To the wall.

11 How many feet is that? About twenty
12 feet, you think?

13 A You asking me?

14 Q Yes.

15 A I don't know. I don't know how far it is from
16 here to there.

17 Q Would you show the jury how far you were standing
18 when you saw the man you described as having
19 blond hair and brown pants and a brown shirt?
20 Where were you when you saw him?

21 A Where was I at?

22 Q Uh-huh.

23 A I was here.

24 Q You were over here? Is that where you were?

25 A Uh-huh.

1 Q Were you walking towards Dumble or walking towards
2 Lenox when you saw this car stop, the Defendant's
3 car?
4 A I was walking towards Dumble.
5 Q All right. You were going to the store?
6 A Right. Uh-huh.
7 Q And who was with you when you were walking back
8 towards Dumble?
9 A Vera.
10 Q Okay, and you saw this car stop, right?
11 A Uh-huh.
12 Q More or less blocking the street; is that correct?
13 A Uh-huh.
14 Q At that point in time, did you see a police car
15 behind this car, a black and red car?
16 A Did I see the police car? Yes.
17 Q Right away? He was already there?
18 A No, he wasn't already there.
19 Q Okay. When you first saw this black and red car,
20 the police car wasn't there; is that right?
21 A Well, this car was coming toward like this, and
22 we were walking like this, and then comes the
23 police car, and then that man, that is when the
24 police car stopped that car, stopped that black
25 car.

1 Q Okay. You may have a seat.

2 (The witness returned to the witness
3 box.)

4 Q (By Mr. Elizondo) You saw this car stopped right
5 here, right?

6 A Uh-huh.

7 Q Did you see this car coming from Lenox to Walker
8 -- to Edgewood? Did you see it driving from
9 Lenox to Edgewood?

10 A Did I see it driving? Yes.

11 Q It was going this way, right?

12 A Yes.

13 Q And it stopped right here, right?

14 A Yes.

15 Q When it stopped right there, was there a police
16 car right behind it?

17 A Was there a police car right behind it? Yes.

18 Q How long had the police car been there?

19 MR. MOEN: Your Honor, I object to
20 this as being intentionally misleading. He has
21 asked her and she has answered, and he is now
22 trying to get her to change her responses by
23 intentionally misleading her.

24 I object to the question.

25 THE COURT: Go ahead.

1 Q (By Mr. Elizondo) I am trying to find out when
2 the police car got there.
3 A The same time the black car got there. By the
4 time the black car got there, the police car
5 was already there.
6 Q And the police car was right there on Edgewood,
7 right?
8 A Yes.
9 Q And this police car was blocking Walker street?
10 A Yes.
11 Q There is no street here?
12 A No.
13 Q It is a tree.
14 Where was the police officer when you
15 first saw him?
16 A I just told you.
17 Q The police officer?
18 A Where was he at?
19 Q When you first saw him.
20 A He was getting out of his car.
21 Q Okay. Now, he was parked on Edgewood, was he not?
22 A Yes.
23 Q Are there any trees around here?
24 A No.
25 Q None at all, huh?

1 A Not that I can remember.

2 Q You live over here roughly at 3948 Walker street?

3 Right?

4 A Yes.

5 Q You don't recall any trees being around here in

6 the front yard of 4929 Walker street or 4925

7 Walker?

8 A No.

9 Q When the police officer got out of his car, did he

10 walk around a little bit?

11 A No.

12 Q So when he got out, where was he when you first

13 saw him get out of his car?

14 A Where was he at?

15 Q Yes. Where was he?

16 A He was standing by his car.

17 Q With the door open, right?

18 A Yes.

19 Q Any red lights on?

20 A Any red lights? From where? From his car?

21 Q Uh-huh.

22 A No.

23 Q Did his car have those two little red things on

24 top?

25 A Uh-huh.

1 Q You are sure about that?

2 A Did he have it on top or did he have them on?

3 Q Did he have those little red things on top of his

4 patrol car?

5 A Not that I can remember.

6 Q Did he have any red lights on?

7 A No.

8 Q When the police officer got out of his car, he

9 stayed there by the door; is that correct?

10 A Did he stay there? No, he came toward that car.

11 Q Came towards that car over here, the black and red

12 car?

13 A Uh-huh.

14 Q And how close did he get to the black and red

15 car?

16 A How close in? How can I show you?

17 Q Well, was he a foot away, two feet away from the

18 black and red car, three feet away, six feet

19 away?

20 A He was pretty -- he wasn't that close, and he

21 wasn't too far.

22 Q Okay. If you can put that in feet, would you say

23 one foot away, two feet away, or five feet away?

24 A I am not sure how many feet away.

25 Q Was he close to the red car?

1 MR. MOEN: Object as being repetitious.
2 He wants it in feet and she can't give it to him.
3 Now he is going over the same thing.

4 MR. ELIZONDO: I am just trying to find
5 out how close.

6 THE COURT: Overruled.

7 MR. ELIZONDO: Pardon?

8 THE COURT: Overruled.

9 Q (By Mr. Elizondo) Would you tell the jury how
10 far away he was from the police car?

11 A Who was?

12 Q The police officer.

13 A I just answered you that. He wasn't far away from
14 his car and far away from the other car. He was
15 between both cars.

16 Q He was halfway there, right?

17 A Yes.

18 Q And where was this man that you described as having
19 blond hair and a brown shirt and brown pants?

20 Where was he?

21 A Close to that car.

22 Q Would you say right about here?

23 A It was by the door and by the back of the -- how
24 do you say it -- where the trunk's at.

25 Q Right here? The man with the blond hair and brown

1 shirt and brown pants?

2 A. Yes.

3 Q. Was anybody else there?

4 A. No.

5 Q. Nobody else was there?

6 A. Just the other man that was with him.

7 Q. Where was he?

8 A. I didn't see that one.

9 Q. You just said there was another man there. You
10 must have seen somebody there.

11 A. I just seen him standing there and that's it, with
12 his hands on top of the car.

13 Q. Where was he standing?

14 A. Where was he standing?

15 Q. The other man.

16 A. In the front of the car.

17 Q. Over here?

18 A. Not in the front where the lights are out, out of
19 sight.

20 Q. Right about there?

21 A. Uh-huh.

22 Q. And you were still right here, right?

23 A. Yes.

24 Q. Did any of these men have their hands up in the
25 air?

1 A Did they have them -- no, they had them on top
2 of the car.

3 Q They had their hands on top of the car, right?

4 A Uh-huh.

5 Q On the trunk and the hood?

6 A The other man had it on top of the car, and the
7 other one, the one I told you had blond hair and
8 brown pants and a brown shirt, that was the one
9 who was going towards the policeman.

10 Q Okay, and you were watching all this still, right?

11 A Uh-huh.

12 Q And so was Vera?

13 A Yes.

14 Q And what did this man with the blond hair, brown
15 pants, and brown shirt do then?

16 A He pulled something out of his pants.

17 Q Did you see what it was?

18 A No.

19 Q When he pulled that something out of his pants,
20 what did you do?

21 A That is when we just ran. I heard gunshots
22 somewhere.

23 Q When you heard the gunshots, did you see the
24 officer at all?

25 A No.

1 Q Did you see the gunshots?

2 A No. I told you I was running at the time of the
3 gunshots.

4 Q Well, did you see this man here, the man with the
5 blond hair and brown pants and brown shirt? Did
6 you see him fire at the police officer?

7 A Yes.

8 Q You did?

9 With what?

10 A I didn't see with what. He was going towards the
11 policeman.

12 Q Okay.

13 A And the other one I didn't see.

14 He was going towards the policeman, and
15 that is when I heard gunshots and that is when I
16 ran.

17 Q You are not telling this jury you saw the man with
18 the blond hair and brown pants and brown shirt
19 shoot the police officer?

20 A Yes.

21 Q With something he had in his hands?

22 A What else could it have been, if not gunshots?

23 Q Did you see the fire come out of the barrel?

24 A No, I didn't.

25 Q Because when you saw this, you ran, right?

1 A Uh-huh.

2 Q And which way did you run?

3 A Back that way.

4 Q Which way?

5 A Toward my house.

6 Q Toward your house.

7 So when you saw this man extend his arms

8 -- did he extend his arms?

9 A Did I see him?

10 Q Uh-huh.

11 A Yes. He pulled something out of his pants.

12 Q And what did he do when he pulled it out of his

13 pants?

14 A He got close to him.

15 Q And then?

16 A And the policeman was down on the floor.

17 Q You just said you didn't see the policeman fall

18 down.

19 A Well, when I was running, that man already was

20 going toward the policeman, was going toward the

21 policeman.

22 Q Did you see the man over here by the front

23 headlight?

24 A No, I didn't see the other one.

25 Q Did you see what he was doing?

1 A. I didn't see the other one.

2 Q. Do you know if he had anything in his hands?

3 A. No, I didn't see anything of him.

4 Q. When this man put his hands into his pants, where

5 was the other man?

6 A. I don't know. I didn't see him.

7 Q. You don't know where he was?

8 A. No.

9 Q. After you saw this man, I guess go into his pants

10 -- is that right?

11 A. Uh-huh.

12 Q. You turned and ran toward home, right?

13 A. Uh-huh.

14 Q. And when you were running, you heard the gunshots;

15 is that right?

16 A. Uh-huh.

17 Q. While you were running home, did you run on the

18 right side or the left side of the street?

19 A. On the right.

20 Q. On your side of the street?

21 A. Yes.

22 Q. When did you first see the red car?

23 A. When I was running toward home.

24 Q. Toward home?

25 A. Uh-huh.

1 Q Was the car going forward or backward?
2 A Was it going forwards or backwards?
3 Q Uh-huh, when you saw the car.
4 A Forward.
5 Q What speed was it going at?
6 A He wasn't going too far, not too fast and not
7 too slow.
8 Q Was he going ten miles per hour, twenty miles
9 per hour, thirty miles per hour?
10 A I am not sure.
11 Q Going at a normal speed?
12 A No.
13 Q Do you know how fast ten miles an hour is or
14 twenty miles an hour? Was he going slower than
15 he should have?
16 A The red car you are saying?
17 Q The red car..
18 A Was he going like ten or twenty miles, you say?
19 He was going -- right. He was going about, say,
20 ten maybe.
21 Q And when you saw it done, who was driving that
22 red car?
23 A No one.
24 Q You kept on running, right?
25 A Yes.

1 Q You were running home?

2 A Uh-huh.

3 Q Did you look back?

4 A No.

5 Q When did you first look back?

6 A When I was already inside the house.

7 Q So then you saw this man with the blond hair and
8 brown shirt and brown pants you say go into his
9 pants or something?

10 A Right. Uh-huh.

11 Q You never saw him raise his hand and at that point
12 in time you turned and ran home, right?

13 A Uh-huh.

14 Q As you were running home, you heard gunshots?
15 How many did you hear?

16 A Three.

17 Q At that point in time, you were running home
18 though, right?

19 A Yes, sir. That is the same time he was running
20 behind me.

21 Q Okay, and when you heard those gunshots, you ran
22 straight to your house and then didn't look back
23 until you got in your house, correct?

24 A I looked back a couple of times.

25 Q Well, just a little while ago you said you didn't

1 look back, and now you say you did. Which is
2 correct?

3 A I did look back a couple of times to call my
4 sister.

5 Q Okay, and when you got in your house, I believe
6 you've got a porch right in your house, right,
7 a screened-in porch?

8 A Uh-huh. Well, not really all screened in.

9 Q Did you go into your porch or did you go into your
10 house?

11 A No, I went to the porch.

12 Q And did you look outside then?

13 A Did I look outside? I went back outside.

14 Q How long were you on your porch?

15 A Not even two minutes. I just went in and came
16 back out.

17 Q You just --

18 Was your mother there?

19 A Was my mother there?

20 Q Yes.

21 A No.

22 Q Was anybody there?

23 A Yes.

24 Q Who was there?

25 A Johnny was there and my nephew and nieces were

1 there.

2 Q Okay. Where was Johnny?

3 A Inside.

4 Q Johnny Reyes Matamoros, right?

5 A Yes.

6 Q He came outside then, right?

7 A That is when -- I called him and he went outside.

8 Q And where did you go?

9 A Where did I go?

10 Q Yes, after you left the house.

11 A I went with him to the police car.

12 Q To the police car.

13 And the police car was on Edgewood, right?

14 A Yes.

15 Q And the police officer, where did he fall?

16 A Where did he fall?

17 He was right in by his door.

18 Q By his door?

19 A Well, his door was open, and his legs and every-
20 thing were laying there.

21 Q So he was between his car and the open door, right?

22 A Uh-huh.

23 Q At that point in time you saw Mr. Cavazos, right,
24 Sergeant Cavazos?

25 A Uh-huh.

1 Q Who lives across the street from you, right?

2 A Yes.

3 Q Or his parents did?

4 A Right.

5 Q And he grabbed your boyfriend and grabbed him and
6 took him out of the car, right?

7 A Yes.

8 Q How did he grab him?

9 A He just grabbed his arm and told him -- well, he
10 didn't tell him nothing, but he grabbed his arm,
11 and that is when Johnny told him the police was
12 shot and then Johnny moved out of the way.

13 Q Is Johnny here today?

14 A No.

15 Q Has he been here all along?

16 MR. MOEN: I object to the form of the
17 question as being irrelevant and immaterial.

18 THE COURT: Sustained.

19 Q (By Mr. Elizondo) Did you ever go to 4907 Rusk
20 street?

21 A 4907 Rusk?

22 Q That day?

23 A No.

24 Q Did you ever hear other exchanges of gunfire or
25 gunshots?

1 A From where?

2 Q Well, from Dumble and Rusk.

3 A Dumble and Rusk? No.

4 Q Was there a shooting an hour and a half later?

5 A Yes, there was.

6 Q Did you go to it?

7 A No.

8 Q After you went to the police officer, you saw him

9 there? Right?

10 A Yes.

11 Q Did you see a pistol on him?

12 A I wasn't looking at none of that, not looking at

13 his pistol or anything.

14 Q After that, you went over to the red car, right?

15 A Yes.

16 Q Was anybody there?

17 A Inside the red car?

18 Q Inside the red car, for one thing.

19 A Yes. There was somebody in there.

20 Q Okay. Mr. Armijo was there, right?

21 A Yes.

22 Q Anybody else?

23 A Yes.

24 Q Who?

25 A His son and his daughter.

1 Q Now, well -- now, Ms. Galvan lives in that same
2 house right in front of where the accident
3 happened?
4 A Yes.
5 Q Where was she?
6 A I don't know.
7 Q Did you see her?
8 A I didn't see her.
9 Q Do you know her?
10 A Yes, I know her.
11 Q Did you see her at all that night?
12 A Yes, I seen her that night.
13 Q Okay. When did you first see her?
14 A Well, when all this was happening, I didn't see
15 her.
16 Q Pardon?
17 A When everything was going on, I didn't see her.
18 Q Was Armando there? Do you know Armando?
19 A Yes.
20 Q Was he there?
21 A I didn't see him.
22 Q What about Ms. Galvan's husband? Was he there?
23 A I don't know. I didn't see any of those people.
24 Q How about Ricky Galvan? Was he there?
25 A I didn't see anybody out there. I was out there,

1 just me, Vera, and my baby when all this happened.

2 Q After you went to Mr. Armijo's car, where did you

3 go?

4 A Where did I go?

5 I stayed right there to see what was

6 going to happen to him.

7 Q And how long did you stay out there before you went

8 to the police station?

9 A About fifteen minutes.

10 Q And then you went down to the police station,

11 right?

12 A Uh-huh.

13 Q And when you went down there, did a lot of people

14 go down there, too?

15 A Yes.

16 Q Were you at the police station when the other

17 shooting took place or were you back --

18 A Yes, I was.

19 Q Was where?

20 A At the police station.

21 Q When the other shooting took place?

22 A Yes.

23 Q And how long were you at the police station?

24 A How long? All night. All morning.

25 Q What time did you get home?

1 A In the morning.

2 Q Have you talked to anybody about this case?

3 A Have I talked to anybody?

4 Like who?

5 Q Well, anybody.

6 A No.

7 Q Did you talk to your mother about this case?

8 A Did I talk to her about this, all this all over
9 again?

10 Well, we talked about it.

11 Q Did you talk to your husband or boyfriend?

12 A No.

13 Q Never talked to him about it at all?

14 A No.

15 Q How about the D.A.'s, Bob Moen and Dick Bax?

16 A No.

17 Q Did you ever talk to them about it?

18 How about the police?

19 A No.

20 Q So since then, you haven't talked to anybody about
21 this case; is that correct?

22 A Yes, that's correct.

23 Q Now where were you Saturday?

24 A This Saturday?

25 At my mom's.

1 Q Did you ever go to the D.A.'s Office?
2 A No.
3 Q When was the first time you saw those two
4 mannequins?
5 A The first time I seen them? I don't know what day
6 it was, but I seen them. My mother -- my mother
7 took me somewhere to go see them.
8 Q That was Saturday, wasn't it?
9 A I don't remember what day it was.
10 Q Well, you saw them before, right? Your mother
11 took you somewhere to show them to you, didn't
12 she?
13 A Yes.
14 Q And when you got there, you talked with some
15 people about this case, didn't you?
16 A Yes.
17 Q And you talked to Mr. Moen and Mr. Bax about this
18 case, didn't you?
19 A Yes.
20 Q You talked to the police about this case, didn't
21 you?
22 A I didn't talk to no police.
23 Q Remember when they had a reenactment and they went
24 down there about a week and a half later and they
25 put the two cars where they were according to that

1 diagram? Do you remember that?

2 A Oh, yes.

3 Q You talked to the police then, didn't you?

4 A I didn't talk to no police then.

5 Q Did anybody talk to you then?

6 A They were talking to some other people.

7 Q They didn't talk to you?

8 A They didn't ask me nothing then.

9 Q Before you testified today --

10 A They asked me Saturday. Saturday they talked to
11 me. There was no police.

12 Q I thought you didn't go anywhere Saturday.

13 MR. MOEN: Your Honor, I object to that
14 as being argumentative. He knows she's answered
15 to the opposite.

16 MR. ELIZONDO: I'm a little confused
17 here.

18 MR. MOEN: I don't argue about him being
19 confused. I do object to him being argumentative
20 with the witness.

21 THE COURT: Just move along.

22 Q (By Mr. Elizondo) Saturday you saw these two
23 dummies, right?

24 A Yes.

25 Q And where were they?

1 By dummies, I mean the mannequins.

2 A Where were they at?

3 In an office.

4 Q And that was right over here, a block and a half

5 away, right?

6 A Well, from here I don't know where it was at.

7 Q Near here or far from here?

8 A I don't know where it was at.

9 Q And when you were there, was Ms. Galvan there?

10 A Yes -- no.

11 Q Was Mr. Saucedo there?

12 A Who?

13 Q Saucedo.

14 A Who is that?

15 Q Gelasio Saucedo.

16 A By their names, I don't know them.

17 Q Were there civilians, citizens there?

18 A Citizens, yes. There were people there.

19 Q How many?

20 A I am not sure how many.

21 Q Well, less than ten? More than twenty or how

22 many?

23 A Say about ten.

24 Q Ten, ten people aside from Mr. Moen and Mr. Bax;

25 is that correct?

1 A Uh-huh.

2 Q Do you know Ms. Galvan?

3 A Ms. Galvan?

4 Yes.

5 Q Did you see her Saturday?

6 A No, she wasn't there.

7 Q She wasn't there?

8 A No.

9 Q How about -- do you know Patricia Diaz?

10 A Yes.

11 Q Was she there?

12 A Yes.

13 Q How about Joe Armijo? Was he there?

14 A I don't know.

15 Q Jose Armijo?

16 A Jose Armijo?

17 Q The one you said was in the backseat of the red

18 car.

19 A No, he wasn't there.

20 Q Are you sure?

21 A I don't remember seeing him. I don't know if he

22 was there or not there.

23 Q When you saw these two mannequins, now did this

24 one have on a green shirt and blue pants and light

25 tennis shoes?

1 A Yes.

2 Q And this one had on brown pants and a purple
3 shirt?

4 A Purple shirt.

5 Q Purple or burgundy shirt; is that right?

6 A Uh-huh.

7 Q And he had the same shirt on he's got on right
8 now?

9 A Yes.

10 Q Did you look at them real close?

11 A Yes.

12 MR. ELIZONDO: We'll pass her, Your
13 Honor.

14

15 RE-DIRECT EXAMINATION

16

17 QUESTIONS BY MR. MOEN:

18 Q Herlinda, do you even know what D.A. means, what
19 that stands for?

20 A No.

21 Q Mr. Bax and myself are lawyers and work for the
22 District Attorney's Office, so when Mr. Elizondo
23 asked if you had talked to the D.A.'s, he basically
24 asked if you had talked to Mr. Bax and myself about
25 the case.

1 You have talked to us, haven't you,
2 about the case?

3 A Yes.

4 Q Well, that's what the phrase "D.A." meant, when he
5 asked you --

6 MR. ELIZONDO: Objection, Your Honor, to
7 counsel testifying, bolstering the witness and
8 leading and suggesting the answers.

9 MR. MOEN: That's the same thing I had,
10 Your Honor, when he was misleading her.

11 MR. ELIZONDO: Your Honor, just a minute
12 --

13 THE COURT: Wait a minute. Hold it.
14 Let me make a ruling. I'm going to allow him to
15 clear up the confusion.

16 Q (By Mr. Moen) And that's what he meant, too, when
17 he asked if you had been to the D.A.'s building.

18 You went to an office building with your
19 mom, Trinidad, last weekend, 'didn't you?

20 A Yes.

21 Q Regardless of what the name was, you went to an
22 office building in the downtown area here, did
23 you not?

24 A Yes.

25 Q And you saw those two mannequins over the weekend,

1 didn't you?

2 A. Yes.

3 Q. Okay. All the times you have talked to Mr. Bax
4 and myself or all the times that you have ever
5 talked to the police, has anyone told you you
6 should come to the courtroom and tell a lie?

7 A. Has anybody?

8 Q. Has Mr. Bax and myself or any police officers told
9 you to come down here and lie?

10 A. No.

11 Q. Has Mr. Bax and myself anytime we've ever talked
12 to you, either at your neighborhood or over at the
13 District Attorney's -- well, over at the office
14 building -- ever tried to tell you what you should
15 tell the ladies and gentlemen of the jury or tried
16 to put words in your mouth?

17 A. No.

18 Q. Why were you telling the ladies and gentlemen of
19 the jury that this is the man who shot the police
20 officer? Why are you telling them that?

21 A. Because that is who I saw.

22 Q. And is that the truth?

23 A. Yes. That is the truth.

24 MR. MOEN: Pass the witness.

25 THE COURT: Anything further?

1 Anything further?

2
3 RE-CROSS EXAMINATION
4

5 QUESTIONS BY MR. ELIZONDO:

6 Q You never saw the other man, right?

7 A No.

8 Q Was he the passenger or the driver of the car?

9 A I never seen him. I just answered it. I never
10 seen him.

11 Q Well, you just answered that you saw --

12 A I never seen him. I just never seen him.

13 Q Well, you saw the black and red car going down
14 Walker, didn't you?

15 A Yes.

16 Q And was it one or two men in there or more?

17 A There were two, but I didn't see the other one.

18 Q Did you ever see the other one?

19 A No.

20 Q At all that night?

21 A No.

22 Q Now, a little while ago, you said you had seen the
23 other one though by the headlights, didn't you?

24 A He was standing by there, but I didn't pay any
25 attention to him.

1 Q But you saw him, right?

2 A I seen him but didn't see his face or anything.

3 Q But there was somebody else there, was there not?

4 A There was somebody else? Like who?

5 I don't understand what you are trying
6 to tell me.

7 Q Well, the man you said you saw there by the
8 headlights. You saw him there, didn't you?

9 A I am trying to explain. In the car there was two
10 men. I didn't see the other one. I didn't pay
11 any attention to him. He just got out of the car.
12 I didn't see him.

13 Q After they stopped the car, did you see anybody get
14 out of the car?

15 MR. MOEN: Your Honor, I object as being
16 repetitious. The question has been asked and she
17 has answered it.

18 THE COURT: Sustained.

19 Q (By Mr. Elizondo) When did they ask you for a
20 boost?

21 A When they were going by. They told us something,
22 something about a boost, and kept going.

23 Q Were they in the car or out of the car?

24 A In the car.

25 Q Who asked you for the boost?

1 A. The driver did.

2 MR. MOEN: Judge, excuse me, but I object
3 to that as being not only repetitious but outside
4 the scope of re-direct.

5 THE COURT: Sustained.

6 MR. ELIZONDO: Sustained as to what,
7 Your Honor?

8 THE COURT: Outside the scope of cross.

9 MR. ELIZONDO: We will pass her.

10 MR. MOEN: That is all I have.

11 May this witness be excused subject to
12 being on call?

13 THE COURT: Thank you, ma'am. You may
14 leave.

15 Call your next.

16 MR. MOEN: Vera Flores.

17

18

19

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21

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24

25

1 VERA FLORES,
2 was called as a witness on behalf of the State of
3 Texas, after having first been duly sworn, testified
4 as follows:

5
6 DIRECT EXAMINATION

7
8 QUESTIONS BY MR. MOEN:

9 MR. MOEN: Judge, may I proceed?

10 THE COURT: Yes, sir.

11 Q. (By Mr. Moen) Vera, when you answer your questions,
12 keep your voice up so even the persons on the last
13 row can hear what you have to say. You don't have
14 to shout, but if you will, speak into the
15 microphone so everyone will hear what you have to
16 say.

17 The second thing is to relax and don't
18 be nervous and afraid.

19 Tell the ladies and gentlemen of the
20 jury what your name is, please. Tell them who you
21 are.

22 A. Vera Flores.

23 Q. Vera, where do you live?

24 A. Walker.

25 Q. Who do you live on Walker street with?

1 A My mother.

2 Q Do you know the lady who just walked out of the
3 courtroom as you were coming in?

4 A Yes, sir.

5 Q Who is she in relation to you?

6 A My sister.

7 Q Were you with your sister back on last July 13th,
8 the night the police officer was shot in your
9 neighborhood?

10 A Yes, sir.

11 Q Where were you and your sister going to or coming
12 from when the police officer was shot?

13 A We were going to the store.

14 Q And besides yourself and your sister, was anybody
15 else with you?

16 A The baby.

17 Q That is your sister's baby?

18 A Uh-huh.

19 Q Let me show you a photograph that we have marked
20 here on the top as No. 3 and let me explain
21 it to you because you can't see the street names
22 on the photograph.

23 Let me point some out and hold it down
24 so you can see it.

25 This is Walker street here, and this is

1 Lenox, and this is Rusk street, and Harrisburg
2 would be here this way, and this is Dumble street
3 down here.

4 Now, this is where Edgewood runs into
5 Walker street.

6 Can you point out for the ladies and
7 gentlemen of the jury where you stay at with
8 Trinidad Medina? Show the ladies and gentlemen
9 of the jury where your house is at.

10 A. Right here.

11 Q. I wonder if you would do me a favor for a second.
12 Come to this diagram, and I want you to point out
13 where you and your sister, Herlinda, were at when
14 you saw the police officer get shot. Come and
15 point out to the ladies and gentlemen of the jury
16 where you were at. Stand there and place your
17 finger where you were at with your sister when
18 the police officer was shot.

19 I am sorry. Let me explain this diagram
20 first. This is marked State's Exhibit No. 5 for
21 identification purposes. This is Dumble street
22 here and here is Walker street and Harrisburg will
23 be down this way, and Rusk will be behind here,
24 and this is Edgewood as it runs into Walker
25 street, and this is Ms. Galvan's house over here,

1 and are you familiar enough with this diagram now
2 to point out about where you and Herlinda were
3 when you saw the police officer was shot? Can
4 you point out now for the ladies and gentlemen of
5 the jury?

6 A. Here.

7 Q. Stand over this way a little bit, okay, and point
8 again so everybody can see.

9 A. Right here.

10 Q. Now, before you get to your seat, let me ask you
11 just a couple of more questions.

12 When the police officer stopped, was
13 there another car there blocking Walker street?

14 A. Yes.

15 Q. In addition to the police officer's car?

16 A. Uh-huh.

17 Q. Can you point out on the diagram about -- see,
18 these little boxes represent cars. Can you point
19 out which one of those little boxes is the car
20 that was blocking the street?

21 A. This one.

22 Q. And where was the police officer's car? Can you
23 point out the little box that represents the
24 police officer's car?

25 A. Here.

1 Q Okay. Did you have occasion to see a cousin of
2 yours, Patricia Diaz?

3 A Uh-huh.

4 Q Can you point out where Patricia Diaz's car was
5 at?

6 A Right there.

7 Q Why don't you go and have a seat.

8 (The witness resumed the witness stand.)

9 Q (By Mr. Moen) The men that were in the car blocking
10 the street that you have pointed out on the
11 diagram, when did you first notice that car?

12 A When did I first notice it?

13 Q Yes, when did you first pay any attention to that
14 car at all?

15 A It just stopped, just stopped right there.

16 Q Let me show you some pictures and ask you if you
17 can recognize that car from these pictures.

18 A Uh-huh.

19 Q Now, the photographs are marked on the back as
20 State's Exhibit 24 and State's Exhibit 23, and
21 do those pictures show the car that you have pointed
22 out to the ladies and gentlemen of the jury?

23 A Yes, sir.

24 Q And is that the one that was blocking Walker
25 street?

1 A Yes, sir.

2 Q Okay. Let me show you some other photographs
3 that we have marked State's Exhibits 29 and 30,
4 and can you tell the ladies and gentlemen of the
5 jury whether or not that is your cousin's car,
6 Patricia Diaz?

7 A Yes, sir.

8 Q And that is the other car you have pointed out on
9 the diagram over there?

10 A Yes.

11 Q What was it that first made you notice this car
12 right here?

13 A Just stopping and a man got out.

14 Q Did he say anything to you when he got out?

15 A Yes, sir.

16 Q What, if anything, did the man say to you?

17 A He asked me if I had a car -- any cables to get
18 him a boost.

19 Q Did you say anything back to that man when he asked
20 you that about a boost? Did you make any response?

21 A Yes, sir.

22 Q What did you say?

23 A I told him no. I just kept saying no.

24 Q Vera, at that time, could you tell how many men
25 were in that black and red car when that man got

1 out and asked you if you had any cables or a car
2 to give him a boost?

3 A. That's the only one I was paying any attention to.
4 Just one.

5 Q. Could you tell if there were other men in the car
6 other than this one who talked to you at that
7 time? Did you notice any other men?

8 A. No, sir.

9 Q. Okay. Did you see the police officer or his car
10 at that time?

11 A. No.

12 Q. About how long was it before the police officer
13 arrived or drove up?

14 A. About a minute and a half after that.

15 Q. Other than what this man asked you, did you or
16 Vera have any other conversation --

17 A. No, sir.

18 Q. -- or say anything else to these men at all?

19 A. No, sir.

20 Q. What did you do or what did you and Vera do before
21 the police officer arrived? Did you stay right
22 there or did you walk anywhere? What did you do?

23 A. I was walking back, and then I heard him say, "Stop,"
24 and I thought he was talking to me.

25 Q. When you say you heard him say, "Stop," who did

1 you hear say that?

2 A. The police officer.

3 Q Okay. Is that the first time that you noticed
4 the police officer, when you heard him say, "Stop"?

5 A. Yes, sir.

6 Q Where was his car at? How far behind the black
7 and red car was the police officer's car? Just
8 give us your best guess as to how many feet or
9 how far behind the black and red car the police
10 officer was.

11 A. It was about five feet, I guess.

12 Q Just your best guess, that is all. I know you
13 didn't bring your yardstick out that night.

14 MR. ELIZONDO: I object to counsel
15 testifying, Your Honor.

16 THE COURT: Sustained.

17 Q (By Mr. Moen) Did you bring your tape measure to
18 mark off the distance?

19 MR. ELIZONDO: I object to counsel
20 leading and suggesting to this witness, and I object
21 to him testifying.

22 MR. MOEN: Your Honor, I just asked if
23 she brought a tape measure with her.

24 THE COURT: That objection is overruled.

25 Q (By Mr. Moen) Did you bring a yardstick or tape

1 measure that night?

2 A. No.

3 Q. Let me ask you this. Have you ever counted all
4 the trees in your neighborhood?

5 A. No, sir.

6 Q. I haven't in mine either, but I wanted to see --

7 MR. ELIZONDO: I object to his comments,
8 Your Honor.

9 THE COURT: Sustained.

10 Q. (By Mr. Moen) Could you tell what the police
11 officer was doing when he said, "Stop"? Could
12 you see him at that time and see what he was doing?

13 A. He was getting out of the car. No, he was already
14 off the car.

15 Q. Where was he standing or what was he doing? I
16 don't want to suggest anything, but you say he was
17 out of the car. What was he doing? Could you
18 see?

19 A. Just standing there.

20 Q. Where was he standing at in relationship to his
21 car, the police officer's car?

22 A. The inside by the door. There.

23 Q. Okay. Was the door of his police car opened or
24 closed?

25 A. Open.

1 Q Okay. What, if anything, could you see any of the
2 men from that black and red car doing when the
3 police officer said, "Stop"? Could you see what
4 they were doing, as best you remember?

5 A They went up to the car.

6 Q Which car did they go up to?

7 A The police officer's.

8 Q Other than what you have described so far, what
9 were you able to hear? Could you hear any more
10 conversation between the police officer and these
11 men? Could you hear anything else that you can
12 remember or tell the jury about?

13 A No, sir.

14 Q Think as hard as you can. Is there anything else
15 you can remember being said either by these men to
16 each other or by the law officer to them?

17 A I did hear someone say, "No" --

18 MR. ELIZONDO: I object to any hearsay,
19 Your Honor.

20 MR. MOEN: Well, Judge, I submit this is
21 res gestae of the events, and regardless, if she
22 did hear a remark from either one of these three
23 men --

24 THE COURT: Overruled.

25 Q (By Mr. Moen) What was it that you heard, Vera,

1 in addition to what you have told the jury so far?

2 A. "No, no." Just asked me for something. That is
3 all I heard. Just said, "No, no," like they were
4 scared.

5 Q. Could you tell who was saying, "No, no"? Could
6 you tell which one of the three men or two men
7 were saying, "No, no"?

8 A. No, sir.

9 Q. About how many men did you see at this time in
10 addition to the police officer? How many other
11 men could you see near the police officer's car?

12 A. I saw two go up to the police officer's car.

13 Q. Okay. After you heard someone say, "No, no,"
14 what was the next thing you saw or heard after
15 that?

16 A. Gunshots.

17 Q. The gunshots that you heard, did you see anyone
18 with a gun?

19 A. No, sir.

20 Q. Okay. Could you tell who had fired those shots
21 from where you were at, which one of the three
22 men had fired those shots you heard?

23 A. Yes, sir.

24 Q. Which one was it of the three men who fired those
25 shots?

1 A The driver in the black car.

2 Q Okay. Could you see the pistol at all from where

3 you were at --

4 A No, sir.

5 Q -- or the type of gun?

6 A No, sir.

7 Q When you say it was the driver who fired those

8 shots, how do you know it was the driver who fired

9 the shots?

10 A Because when he started running, I just seen him

11 shooting down the street.

12 Q Okay. So in addition to those shots you heard,

13 you actually saw that man, the driver of the car,

14 shoot again sometime later after the police

15 officer was shot?

16 A Yes, sir. Yes, sir.

17 Q How many shots did you first hear, Vera? Just

18 your best guess. How many shots did it seem like

19 to you at the very first?

20 A Three.

21 Q Could you see or tell, when you heard those first

22 shots, what had happened to the police officer?

23 A No, because I ran.

24 Q Okay. Where did you run to?

25 A Underneath the car.

1 Q Which car did you run underneath?
2 A The black one.
3 Q And where was this black car at that you ran
4 underneath and hid underneath?
5 A About two houses down from us.
6 Q The same side of the street that you live on with
7 your mother?
8 A Yes, sir.
9 Q Was that car parked on the street or was it in
10 somebody's driveway?
11 A In the street, on the side of the street.
12 Q And you are telling the ladies and gentlemen of
13 the jury you actually got underneath that car?
14 A Not underneath, on the side of it.
15 Q Okay. Which side did you get on?
16 A This side.
17 Q The side facing your house?
18 A Yes, sir.
19 Q Now, you say you saw a man run down the street
20 shooting. What did you see this man do?
21 A He was just shooting.
22 Q Which side of the street did he run down? Your
23 side of the street or Ms. Galvan's side?
24 A Straight down.
25 Q The middle?

1 A. Uh-huh.

2 Q. Straight down this street towards your side?

3 A. Towards my house.

4 Q. Okay. Could you tell what this man was shooting
5 at?

6 A. All over. Just anywhere.

7 Q. Okay. Did you know Mr. Armijo?

8 A. No, sir.

9 Q. Do you know Ms. Armijo?

10 A. Yes, sir.

11 Q. Have you met her since you have been down here
12 at the courthouse?

13 A. Yes.

14 Q. Did you know her prior to the night her husband
15 was shot?

16 A. No, sir.

17 Q. Did you know her before?

18 A. No, sir.

19 Q. Did you see this car depicted in State's Exhibits
20 36 and 37 out there in your neighborhood that
21 night?

22 A. Yes, sir.

23 Q. When did you first notice this car?

24 A. When it fell in the ditch.

25 Q. Did you see it actually go into the ditch?

1 A Yes, sir.

2 Q You could see that from where you were hiding
3 at?

4 A No, sir.

5 Q Where were you at when you saw the car go in the
6 ditch?

7 A I was across the street by Ms. Galvan's house.

8 Q Okay. Did you come to know later that night that
9 the man in that car, State's Exhibits 36 and 37,
10 had been shot?

11 A Yes.

12 Q But did you actually see that man get shot?

13 A No.

14 Q You say you saw this -- a man running down the
15 street favoring your side of the street where you
16 live and shooting everywhere.

17 Did you see any other men other than
18 just that one man you have described to the jury?

19 A No.

20 Q The man that you have described, as far as being
21 the driver of the black and red car, can you
22 identify that man?

23 A Yes, sir.

24 Q Okay. Would you point him out for the ladies
25 and gentlemen of the jury if he is here in the

1 courtroom? Point him out for them so they will
2 know which man you are talking about.

3 A. Right there.

4 Q. Are you pointing to the Defendant in this case,
5 Ricardo Guerra, seated next to the interpreter?

6 A. Yes, sir.

7 Q. Is that the way he looked the night the police
8 officer was shot, with his hair trimmed like that
9 and his face and mustache shaved? Is that the way
10 he looked?

11 A. No, sir.

12 Q. Does this mannequin here with the long hair and
13 beard and mustache look closer to the way he looked
14 back the night the officer was shot?

15 A. Yes, sir.

16 Q. How about these photographs here marked State's
17 Exhibits 17 and 18? Does that look more like
18 him?

19 A. Yes, sir.

20 Q. Okay. Now, you went down for a lineup at the
21 police station the morning or day after the
22 police officer was shot, didn't you, and you
23 looked at some people in the lineup?

24 THE COURT: Please, ma'am, answer out
25 so the lady can take down what you are saying.

1 MR. MOEN: Vera, she takes down
2 everything you say, so answer out. I know what
3 you are saying, but a record is being made and
4 she takes down your answers.
5 A. All right.
6 Q (By Mr. Moen) You went to look at a lineup, didn't
7 you?
8 A. Yes, sir.
9 Q Did the police officers ask you if you recognized
10 anyone in the lineup?
11 A. Yes, sir.
12 Q And what did you tell them?
13 A. No.
14 Q You told them, "No," didn't you?
15 A. Yes, sir.
16 Q Why did you tell them that? Why did you say, "No"?
17 A. I was scared.
18 Q Did you recognize someone in that lineup?
19 A. Yes.
20 Q Do you remember what number the man was in the
21 lineup that you recognized?
22 A. Yes.
23 Q What number was it?
24 A. Four.
25 Q Now, back about maybe a week or ten days after

1 the police officer was shot, you met me and Mr.
2 Bax for the first time out in your neighborhood,
3 didn't you?

4 A. Yes.

5 Q. We came out there and put some cars in the middle
6 of the street?

7 A. Yes.

8 Q. And you talked to me that day, didn't you? We
9 had a conversation?

10 A. Yes.

11 Q. And I think it was that day, wasn't it, that you
12 told me you could identify the man?

13 A. Yes.

14 Q. Were you ever -- Vera, did you ever get close
15 enough to recognize the other man? Could you ever
16 recognize the other man in that black and red
17 car at all?

18 A. No.

19 Q. Now, at one time you described the man that you
20 saw as the driver of the black and red car as
21 having blond hair. Do you remember saying that,
22 telling someone that?

23 A. Yes.

24 Q. Why did you say the man had blond hair? Why
25 did you think he had blond hair?

1 A. Because of the reflection of the light.

2 Q. Reflection of the light?

3 A. Uh-huh, and it seemed like it was blond.

4 Q. Let me show you these photographs marked 17 and
5 18. Can you see how the hair is kind of shiny on
6 those photographs?

7 A. Huh?

8 MR. ELIZONDO: I object to counsel
9 leading the witness and suggesting the answers.

10 THE COURT: Overruled.

11 Q. (By Mr. Moen) Is that what you meant when you
12 told the police the man had blond hair?

13 A. Yes, sir.

14 MR. ELIZONDO: Objection, Your Honor.
15 Repetitious.

16 THE COURT: Overruled.

17 Q. (By Mr. Moen) He didn't have hair like this lady's,
18 did he?

19 A. No, sir.

20 Q. Now, last Saturday you came down to an office
21 building downtown here, did you not?

22 A. Yes, sir.

23 Q. And Mr. Bax and I talked to you and some of the
24 other people from the neighborhood, did we not?

25 A. Yes, sir.

1 Q. And is that the first day you had occasion to see
2 these two mannequins over here?

3 A. Yes, sir.

4 Q. Let me ask you to think back to when you first
5 noticed the black and red car. Can you tell the
6 ladies and gentlemen of the jury about the way
7 those men were driving that car, anything about
8 how fast they were going or the manner they were
9 driving the car?

10 A. They were going pretty fast.

11 Q. Okay. Were the tires on the car spinning at all?
12 Could you notice that?

13 A. No, sir.

14 Q. Okay. How did the car come to a stop there at
15 the intersection of Edgewood and Walker? How was
16 it that that car came to a stop at that particular
17 spot?

18 A. It just died on them.

19 Q. Which way were they headed down Walker street
20 before they came to a stop or which way did they
21 appear headed before this car came to a stop?

22 A. Straight.

23 Q. Which street were they coming down when you
24 first noticed them?

25 A. Edgewood.

1 Q You say the car died at this location where
2 Edgewood meets Walker?

3 A Yes, sir.

4 MR. MOEN: Pass the witness.

5 Thank you, Vera.

6

7 CROSS EXAMINATION

8

9 QUESTIONS BY MR. ELIZONDO:

10 Q Ms. Flores, how old a lady are you?

11 A Sixteen.

12 Q Where did you go to school?

13 A I don't.

14 Q What was the last grade you attended?

15 A Seventh.

16 Q At Jackson?

17 A Yes.

18 Q Did you graduate from there?

19 A No.

20 Q Did you finish in seventh grade?

21 A No.

22 MR. ELIZONDO: Your Honor, for the
23 record, I have been shown a copy of Ms. Flores'
24 statement.

25 THE COURT: All right.

1 MR. ELIZONDO: May I have a moment to
2 peruse it?

3 THE COURT: Yes, sir.

4 Q (By Mr. Elizondo) Now, you gave two statements
5 to the police; is that correct?

6 A Yes.

7 Q The first statement was on July 14th, 1982, at
8 12:40 in the morning; is that correct?

9 A Yes.

10 Q At that time, you said you couldn't identify
11 anybody; is that correct?

12 A Yes.

13 Q Then you went to a lineup that night or that
14 morning, right?

15 A Yes.

16 Q What time was that lineup?

17 A I don't remember.

18 Q Well, how many -- how many hours after the
19 incident? 2:00 o'clock, 3:00 o'clock in the
20 morning?

21 A I guess.

22 Q And at that lineup, there were maybe ten or
23 fifteen people there; is that correct?

24 A No.

25 Q I am sorry. I may have confused you. Ten or

1 fifteen of your neighbors were there?

2 A. Yes.

3 Q. And how many people were in the lineup?

4 A. I think eight.

5 Q. Eight of them.

6 And you know how they have lineups?
7 They have a one-way mirror, right?

8 A. Yes.

9 Q. They can't see you. You can see them; is that
10 right?

11 A. Yes.

12 Q. They told you that; is that correct?

13 A. Yes.

14 Q. And each person -- you say eight of them were in
15 the lineup?

16 A. I guess. I don't really remember.

17 Q. Well, were there eight or were there not eight?

18 A. I don't remember.

19 Q. I just wanted to get that cleared up. That is
20 all.

21 At the lineup, the police officers:
22 There is one in the front where y'all are and one
23 in the back where they are; is that correct?

24 A. Yes.

25 Q. And they will go ahead and they will say, "Number

1 one suspect, move one step forward"; isn't that
2 right?

3 A. Yes.

4 Q. And they will tell them, "Make a right-face. Make
5 a left-face," right?

6 A. Yes.

7 Q. And sometimes they make them say something, won't
8 they?

9 A. They didn't make anybody say anything.

10 Q. Never at that time?

11 A. No.

12 Q. And at this time they didn't, but they made every
13 one of those suspects take one step forward and
14 make a right-face and make a left-face, right?

15 A. Yes.

16 Q. And this man was in that lineup, right?

17 A. Yes.

18 Q. And you told the police at that time, "I don't
19 recognize anybody there." Isn't that right?

20 A. Yes.

21 Q. Now, in your first statement, was that a sworn
22 statement?

23 A. Yes.

24 Q. The one where you said, "I can't identify
25 anybody"?

1 A Yes.

2 Q That was sworn, wasn't it?

3 A Yes.

4 Q So was your second one, wasn't it?

5 A Yes.

6 Q Now, Elvera, you live with your sister, right?
7 Herlinda?

8 A Yes.

9 Q At 4938 Rusk?

10 A No.

11 Q Well, back at that time you were living
12 together, right, with the one who just testified?

13 MR. HERNANDEZ: Walker.

14 Q (By Mr. Elizondo) I am sorry. 4938 Walker.
15 Walker. Both of you lived together, right?

16 A Yes.

17 Q In your first statement, didn't you tell your
18 sister, Herlinda, to go ahead and she'd better
19 start going home when you saw the police car and
20 saw those two people get out of the car? Didn't
21 you tell her, "Herlinda, go ahead and go home.
22 There might be trouble"? Didn't you tell her
23 that?

24 A No.

25 Q That statement was made on July 14th of '82, and

1 I will show you a copy and ask you to read it
2 and see if that refreshes your memory.

3 (The witness complied.)

4 Q Have you read your statement? Are you ready?

5 A Yes.

6 Q In that first statement, in that first sworn
7 statement, didn't you tell the police that your
8 younger sister had already started walking back
9 to her house before anything happened?

10 A Yes.

11 Q And was she walking back to her house?

12 A She grabbed the baby, and she was.

13 Q Okay, and she started walking back towards 3948'
14 Walker?

15 A Yes.

16 Q During all this time, according to your statements,
17 where were the two people you saw in the black
18 and red car?

19 A Where were they?

20 Q Yes.

21 A By the police officer's car.

22 Q And they had their hands on their hood, didn't
23 they?

24 A Yes.

25 Q Which one had his hands on the hood? Which ones

1 had their hands on the hood?

2 A. Which one?

3 I was only keeping up with one.

4 Q. How many were there? Two?

5 A. I seen two people, but I wasn't really bothering

6 with the other one.

7 Q. You saw two people there, right, in the car?

8 A. Saw two people? Getting out of the car, yes.

9 Q. And one got out of the passenger side and one

10 out of the driver's side?

11 A. I was just paying attention to the driver. I

12 wasn't paying attention to no other one.

13 Q. Which doors did they get out of, these two people?

14 A. The driver got out of the driver's side.

15 Q. And the passenger?

16 A. I don't know. I wasn't keeping up with that one.

17 Q. Did you see the people?

18 A. I saw two.

19 Q. Did you ever see him get out of the car?

20 A. Yes.

21 Q. When he got out of the car, do you know where he

22 went?

23 A. No.

24 Q. Did you ever see him again?

25 A. No.

1 Q Now, in one of your statements, do you recall ever
2 saying that both of those suspects in the black
3 and red car put their hands on the police car
4 hood?

5 A That's right.

6 Q You said that once under oath, did you not?

7 A Yes.

8 Q Where was the driver? Where did he put his hands?

9 A On the car.

10 Q And the passenger?

11 A I don't know.

12 Q Okay, but just a little -- you have sworn before?

13 A Yes, but I -- like I said, I was not paying
14 attention to him. I was paying attention to the
15 other one.

16 Q But under a sworn statement at one time, you said
17 that the other one also put his hands on the
18 patrol car; is that right?

19 A Yes, I did. I saw both of them, but I did not
20 recognize the other one.

21 Q Okay. I am just --

22 Did you ever see both of these suspects
23 put their hands on the patrol car?

24 A Yes.

25 Q And when was that?

1 A When the police officer called him.
2 Q And where was the police officer?
3 A In the inside of his car.
4 Q And both of these people came, went up and put
5 their hands on the patrol car; is that correct?
6 A Yes.
7 Q Where was the driver, or where did he put his
8 hands? What part of the hood?
9 A He was on this part, this side of the car.
10 Q That is the front side?
11 A Yes.
12 Q And the passenger, where did he --
13 A No. I didn't see him.
14 What I am trying to say, I saw both of
15 them. I did, but I was not paying attention to
16 him. I was paying attention to the driver.
17 Q But you said you saw both of them put their hands
18 on the police car hood?
19 A I did.
20 Q I wanted to know where the driver put his hands
21 --
22 A I already told you.
23 Q -- and where the passenger put his hands.
24 A I already told you. When the driver would put his
25 hands on this side, where would you expect the

1 other one to put his hands?

2 Q I'm just asking you.

3 THE COURT: Ma'am, just answer the
4 questions. Don't argue with the attorney.

5 A. It was on the other side.

6 Q. Okay. The passenger then was nearest the police
7 officer, right?

8 A. Yes.

9 Q. How many feet away was the passenger from the
10 police officer? Two feet, three feet, four feet,
11 or was he real close?

12 A. Pretty close.

13 Q. About two feet away?

14 A. I would say.

15 Q. The passenger, the other one, not this one, right?

16 A. The passenger -- I'm talking about the driver.

17 Q. The driver was nearest to the police officer then,
18 right?

19 A. No, the driver was on this side.

20 Q. Let me get a picture. That is the police car.

21 A. Uh-huh.

22 Q. Where was the driver? Where did he put his hands?

23 A. Right here.

24 Q. Put an "X" right there.

25 (The witness complied.)

1 Q Where did the passenger put his hands?

2 A All I saw was four hands like that.

3 Q Okay. If you saw four hands, you can assume then

4 they were next to each other?

5 A Yes.

6 Q So then the passenger was nearest the police

7 officer; is that correct?

8 A Yes.

9 Q And who is the passenger?

10 A I don't know.

11 Q Not this man though, right?

12 A No.

13 Q But the passenger was about two feet away from

14 the police officer, right?

15 A I don't remember.

16 Q Where were you when you saw these four hands?

17 Where were you? On the corner of Edgewood and

18 Walker, a little to the right or left, or where?

19 A On Walker.

20 Q Which way? Near 4928 or this address here? Where

21 were you?

22 A By the house where that car was.

23 Q This car -- the black Grand Prix that was right

24 here?

25 A Yes.

1 Q It was a black Grand Prix, about a '72 Grand
2 Prix right there, wasn't it?
3 A Yes.
4 Q And it was parked halfway in the street and
5 halfway in the ditch?
6 A Yes.
7 Q Now, how far is that black Grand Prix from where
8 you saw the four hands on the hood?
9 A How far?
10 Q How many feet?
11 A I don't know.
12 Q Do you have any idea?
13 A No.
14 Q From here to the wall?
15 A No.
16 Q From here to the elevator?
17 A No.
18 Q From here to the mannequins?
19 A Closer.
20 Q From here to Mr. Moen?
21 A About right there.
22 Q About six feet away, right?
23 A Yes.
24 Q This Grand Prix was six feet away from where the
25 police car was?

1 A Yes.

2 Q The police car was on Edgewood, was it not?

3 A Yes.

4 Q How far was the police car from the intersection
5 of Edgewood and Walker? How many feet?

6 A I don't know.

7 Q Well, five feet, ten feet, fifteen feet, twenty
8 feet?

9 A I don't remember.

10 Q You don't remember.

11 Did you ever go to where the police
12 officer was?

13 A Yes.

14 Q And do you recall where he fell?

15 A Yes.

16 Q Where did he fall?

17 A By the door.

18 Q By his patrol car, right?

19 A He was already on the ground when I went to go
20 see him.

21 Q But the door was open, right?

22 A Yes.

23 Q And how many feet was his patrol car from the black
24 and red car? Do you know?

25 A No.

1 Q Roughly. Five feet, ten feet, twenty feet?
2 A Pretty close.
3 Q You heard the gunfire, right?
4 A Yes.
5 Q Did you see anybody shoot the police officer?
6 A Did I see it? No.
7 Q Now, you saw somebody running down Walker towards
8 Lenox street, correct?
9 A Yes.
10 Q And he was running on your side of the street,
11 right?
12 A Middle.
13 Q About the middle of the street?
14 A Uh-huh.
15 Q You live over here, right?
16 A Yes.
17 Q He was running down this way, right?
18 A Yes.
19 Q Is that where you saw him running?
20 A Yes.
21 Q Who did you see running this way?
22 A The driver.
23 Q The driver was running on this side of the street
24 right here?
25 A Yes.

1 Q On the right side?

2 A Yes.

3 Q Your side of the street?

4 A First he was going straight, and --

5 Q Let me ask you --

6 THE COURT: Just a minute.

7 MR. MOEN: Objection, Your Honor. She
8 is trying to answer the questions and he
9 interrupts her, and I think she is entitled to
10 finish it.

11 THE COURT: Go ahead.

12 A He was running straight, and after that, he, like,
13 ran across like that towards the ditch.

14 Q Okay, so he was running this way, like that down
15 the middle of the street --

16 A Yes.

17 Q -- and then he kind of zigged over here this way?

18 A Towards my house, yes.

19 Q And he went down Lenox and down towards McKinney,
20 right?

21 A McKinney?

22 Q McKinney is the street behind you.

23 A Right. I didn't see where he was going to.

24 Q But he was going towards that way?

25 A Yes.

1 Q You heard the gunshots?

2 A Yes.

3 Q And you immediately ducked down here behind that

4 black Grand Prix?

5 A I didn't duck. I threw myself down there.

6 Q You threw yourself down by the Grand Prix?

7 A Yes.

8 Q Where was the next time you saw the driver?

9 A I didn't see him no more.

10 Q You didn't see him again?

11 A No. The last time I saw him was when I fell.

12 I fell towards this way, and I was looking straight

13 toward him, and I fell --

14 Q Where was he when you saw him last?

15 A When he was running.'

16 Q Which way?

17 A That way.

18 Q Where was he in regards to this map? Tell me when

19 to stop. Where was he when you last saw him?

20 Tell me when to stop.

21 A Where was he?

22 Q When you last saw him.

23 A When I last saw him was when he just turned.

24 Q He turned over here?

25 A Yes.

1 Q He was on this side of the street when he turned?

2 A He was running straight, and then he turned
3 towards the ditch, running to the first house.

4 Q On the right side?

5 A Yes.

6 Q And where did the passenger go?

7 A I didn't even see the passenger.

8 Q You never saw him at all that night?

9 A No.

10 Q Well, you saw four sets of hands, right?

11 A That's right. I didn't pay no attention to whoever
12 it was.

13 Q Did you ever see him get out of the car?

14 A I saw two --

15 MR. MOEN: Excuse me just a second. That
16 is a question that's already been asked and
17 answered.

18 MR. ELIZONDO: I am not sure it's been
19 answered.

20 THE COURT: Sustained.

21 Q (By Mr. Elizondo) Did you come down here to
22 downtown Houston on Saturday, last Saturday?

23 A Yes.

24 Q Did you-all meet in a conference room on the second
25 floor --

1 A Yes.

2 Q Over here on the corner of Fannin and Franklin?

3 A Yes.

4 Q And Ms. Galvan was here, was she not?

5 A Yes.

6 Q Your sister was here, Herlinda?

7 A Yes.

8 Q Jose Armijo was there? Do you remember Jose

9 Armijo?

10 A No.

11 Q The ten-year-old boy?

12 A Yes.

13 Q Was he here?

14 A Yes.

15 Q How about Gelasio Saucedo?

16 A I don't know.

17 Q He is the one who lives over here. Do you

18 remember that?

19 A I don't remember him by his name.

20 Q How many people were here?

21 A I don't remember.

22 Q More than ten, less than twenty?

23 A I guess. I guess.

24 Q More than ten and less than twenty?

25 A I don't remember.

1 Q Were they there?

2 A Yes.

3 Q Were there police officers there?

4 A No.

5 Q None at all?

6 A No.

7 Q You are sure about that?

8 A I don't remember.

9 Q Were these two here (indicating mannequins) in

10 the conference room?

11 A No.

12 Q Where were they?

13 A In another room.

14 Q Did they take y'all to that other room?

15 A Yes.

16 Q And show you these State's Exhibits 19 and 20?

17 A Yes.

18 Q Had the same color of shirt on?

19 A Yes.

20 Q Same color of pants?

21 A Yes.

22 Q Same color of tennis shoes?

23 A Yes.

24 Q You changed your earlier sworn statement of July

25 14th. You changed that on July 22nd; is that

1 right?

2 A I don't remember.

3 Q But you did change it, right? Remember?

4 A I don't remember.

5 Q Well, how many days after the July 14th statement
6 did you change your --

7 A I don't remember.

8 Q Was it a week?

9 A I don't remember.

10 MR. ELIZONDO: Your Honor, may I see
11 the statement and show it to her?

12 (The document was handed to Mr.
13 Elizondo.)

14 Q (By Mr. Elizondo) That is your second statement.

15 Now, do you recall the date you gave that
16 statement?

17 A 7/22.

18 Q July 22nd.

19 Where were you when you gave that
20 statement?

21 A Where was I?

22 Q Were you in your house, in a car, at the police
23 station?

24 A When I gave that statement? I was at my house.

25 Q Who took the statement from you?

1 A I don't remember.

2 Q A police officer?

3 A I don't remember.

4 Q Was it a man or a woman?

5 A It was a man.

/ 6 Q How many?

/ 7 A One.

8 Q Was that the day everybody was out there at the
9 corner of Edgewood and Walker streets reenacting
10 the scene?

11 A Yes.

12 Q And was it that afternoon around 1:30, 1:00
13 o'clock?

14 A I guess.

15 Q Well, I have just a couple more questions and I
16 will let you go.

17 What color of shirt did the driver
18 have?

19 A Green.

20 Q Are you sure about that?

21 A Yes.

22 Q Did you tell that to the police in your first
23 sworn statement?

24 A Yes.

25 MR. ELIZONDO: We will pass her.

RE-DIRECT EXAMINATION

QUESTIONS BY MR. MOEN:

Q Vera, let me ask you just a couple of more questions.

Do you remember back in your statement of July 14th telling the police officer who took the statement from you that you saw the driver pull something from the front and shoot the police officer and that the police officer fell immediately to the ground? Do you remember telling the police that back on July 14th?

A Yes.

Q Okay, and is that what you, in fact, saw?

A Yes.

Q Did you see that?

Mr. Elizondo asked you earlier, he said you didn't see anybody shoot, did you? Do you remember him asking you that question?

A Yes.

Q And your response to the jury, I thought your response was you didn't see anybody shoot?

A Yes.

Q But back on July 14th, you told the police you saw the driver pull a pistol from somewhere in his

1 front and shoot the police officer, who then
2 fell immediately to the ground. Is that what
3 you saw?

4 A. Yes.

5 MR. ELIZONDO: Objection, Your Honor, to
6 leading the witness and suggesting the answers.

7 THE COURT: Don't lead your witness,
8 Counsel.

9 Q. (By Mr. Moen) I want you to explain to the ladies
10 and gentlemen of the jury if that is, in fact,
11 what you saw.

12 A. Yes.

13 Q. And are you sure?

14 A. Yes.

15 MR. MOEN: Okay. Pass the witness.

16

17 RE-CROSS EXAMINATION

18

19 QUESTIONS BY MR. ELIZONDO:

20 Q. In your first statement, the one that you changed
21 --

22 You changed the deal on July 22nd,
23 right?

24 A. Yes.

25 Q. You changed your first statement to a second

1 statement; isn't that correct?

2 A. Yes.

3 Q. Could you show me how this person motioned to pull
4 something out? How did he do that? Did you see
5 that?

6 A. Yes, I seen his hands, and then that is all I seen.
7 I wasn't going to stand up and let him shoot me.

8 Q. You ducked right away, right?

9 A. I ducked.

10 Q. You hit the ground?

11 A. I ran. I ran the same time he was running. Then
12 he was facing towards me, and then I fell beside
13 the car.

14 Q. Running?

15 A. Yes.

16 Q. This was after you heard the gunshots?

17 A. Yes, because he started running.

18 Q. Did you see him shoot the police officer?

19 A. Did I see him?

20 I don't remember.

21 MR. ELIZONDO: I will pass her, Your
22 Honor.

23 MR. MOEN: That is all I have, Judge.

24 THE COURT: Thank you, ma'am. You may
25 stand aside.

1 Let's take a short recess now, about
2 twenty minutes.

3 Go to the basement if you like, or you
4 may stay in the jury room.

5 Please remember the admonitions I have
6 previously given you.

7 MR. MOEN: May this witness be excused
8 as well if she can be placed on call?

9 THE COURT: Yes, sir.

10 (At this time a recess was taken by the
11 court.)

12 (After the recess, the jury returned
13 to the jury box, and in their presence and
14 hearing, the following proceedings were had.)

15 THE COURT: Call your next.

16 MR. MOEN: Judge, we will call Ms.
17 Galvan.

1 HILMA S. GALVAN,
2 was called as a witness on behalf of the State of
3 Texas, after having first been duly sworn, testified
4 as follows:

5
6 DIRECT EXAMINATION

7
8 QUESTIONS BY MR. MOEN:

9 Q Ms. Galvan, would you tell the ladies and
10 gentlemen of the jury your name, please?

11 A My name is Hilma Galvan.

12 Q Where do you live at?

13 A At 4925 Walker.

14 Q From where you are at, can you see this diagram
15 over here? Let me turn it around for you.

16 I am going to point out a couple of
17 things to you. This diagram is marked 5 for
18 identification purposes.

19 You see this street that runs here? That's
20 Walker street.

21 A Uh-huh.

22 Q You see this street here? That is Edgewood.

23 A Uh-huh.

24 Q And here is Dumble here, and here is Rusk street
25 here and Lenox up here, and we put some addresses

1 on the houses here, and at least as far as you
2 know when you left this morning, were you still
3 living at 4925?

4 A. Yes.

5 Q. This little area that represents your house has
6 got 4925 written on it. Okay?

7 A. Okay.

8 Q. But this intersection of Edgewood and Walker, is
9 your house the second house down Walker street
10 from that intersection?

11 A. Yes.

12 Q. Let me ask you to think back, if you would, to
13 the night that police officer was shot in your
14 neighborhood.

15 Before the police officer was shot, did
16 you have occasion to walk around your neighborhood
17 a little bit?

18 A. Yes, sir. I did.

19 Q. Why did you leave your house to go walking around
20 your neighborhood? What were you doing?

21 A. Well, I was looking for my fifteen-year-old
22 daughter.

23 Q. Why were you looking for your daughter?

24 A. Well, we heard sirens and we were sitting outside
25 on the porch and we were watching TV and my older

1 daughter left to go see what happened, and I said,
2 "Let me go find her because I don't know what's
3 happened," so I left to find my daughter.

4 Q. When you left your house to go find your daughter,
5 which way did you walk?

6 A. Down Lenox. Down Lenox.

7 Q. You walked this way towards Lenox street?

8 A. Yes.

9 Q. As you walked, did you see or find your daughter?

10 A. No.

11 Q. Okay. When you got down Lenox street, did you have
12 occasion to see a car --

13 A. Yes, sir.

14 Q. -- when you got in that vicinity?

15 A. Yes.

16 Q. Let me show you some photographs of the car and
17 ask you if you recognize this particular car.

18 Let me show you these photographs.
19 This one is marked State's Exhibit 24. This one
20 is marked State's Exhibit 23, and this one is
21 State's Exhibit 28.

22 Do you recognize the cars in those
23 photographs?

24 A. Yes.

25 Q. Where were you at the night the police officer

1 was shot when you first saw this car?

2 A. I was at the corner of Lenox and Walker.

3 Q. Okay. What made you look at that car? What
4 attracted your attention to that car?

5 A. Well, see, where we live on Walker, it is like
6 when you turn the corner like this. It is like
7 a little curve right there, and the car was parked
8 on Lenox, and the headlights were on. The motor
9 was on facing towards where we were coming from.

10 Q. Let me show you a photograph, and maybe we can
11 use this to help explain to the jury rather than
12 that diagram.

13 This street here is Walker street.

14 Okay?

15 A. Yes.

16 Q. And this is Rusk and Dumble right here, and
17 Harrisburg would be over here to the north.
18 This is Lenox street here and this is where it
19 makes that little jog up Walker.

20 A. Yes. Okay. When we turned this way, we were
21 here to go like this, and the car was over here.

22 Q. It was down near Lenox and McKinney?

23 A. Yes, and the headlights were on and towards where
24 we were coming, and that is why I seen the car,
25 because the lights were shining, so we were turning

1 right there.

2 Q Okay. Let me stop you for just a second. Who
3 were you with?

4 A I was with Armando and Jose Heredia.

5 Q Okay. Who are Armando and Jose Heredia from
6 the neighborhood? Can you identify them for the
7 ladies and gentlemen of the jury? Whose children
8 are they?

9 A Ms. Hoglen's children.

10 Q Okay. What did this car do after you saw it with
11 the headlights on? What did this car do?

12 A He just came real fast and turned the corner real
13 fast and almost hit us, and we just moved out of
14 the way.

15 Q Which corner? This one here?

16 A Walker.

17 Q Off of Lenox?

18 A Off of Lenox.

19 Q Did you folks have to get out of the way pretty
20 fast?

21 A We did. I just pushed Jose and Armando out of the
22 way.

23 Q After this car came around the corner, in which
24 direction did it go? Could you see it?

25 A It came straight down like this.

1 Q And where did it go?

2 A It turned, like going back on Altic towards Rusk.

3 Q Okay. Altic is -- we can't see it in this
4 photograph here?

5 A We can't see it, but it runs this way here and it
6 came down this way and turned.

7 Q Did you see the car again that night before you
8 saw it over here where the police officer was
9 shot?

10 A No, sir.

11 Q Did you ever see the police officer that night
12 before you saw his car at Edgewood and Walker?

13 A I didn't see the police officer. I saw the squad
14 car. I didn't see the officer. He was driving
15 the car, but I didn't see him because when we
16 were right on the corner right there, the
17 officer was on Delmar. He was -- apparently, he
18 was parked somewhere in there.

19 Q This is Delmar street right here, for the ladies
20 and gentlemen of the jury?

21 A Uh-huh, here.

22 And the car went this way, and he
23 tried to go in there, but I guess he seen the
24 police car and he backed up real fast and went
25 out again, and went towards --

1 Q Are you talking about the black and red car?

2 A Yes.

3 Q When you were here and the car almost --

4 A Well, that's as far as I walked to, there, about
5 right there.

6 Q When that car made the turn, did that car almost
7 hit you and Jose and Armando?

8 A Yes.

9 Q The car went down here and made a turn --

10 A He was going to, and I guess he saw the police
11 officer and came out and went real fast toward
12 Altic.

13 Q Where did you see the police car? Where did you
14 see the police car at?

15 A He came out of there. He came out of Delmar like
16 this, and this boy, George Brown, he was --

17 Q Could you see George?

18 A Yes, I could see George, because with the lights
19 from their car I saw George, and he stopped the
20 officer, and that was the last time that I saw
21 the officer. I didn't see the officer, but the
22 car was stopped and he was talking to George, and
23 I could hear the other car coming down Rusk real
24 fast, and I just left and went back towards my
25 house and didn't see him anymore until I saw them

1 parked where they were.

2 Q Okay, so you could hear the car racing down Rusk
3 street?

4 A Rusk, yes.

5 Q And you saw George talking to the officer?

6 A To the officer.

7 Q When was the next time you saw this car again?

8 A When I turned the corner again --

9 Q Go ahead.

10 A -- it was parked right in front of where it was
11 when the officer was shot.

12 Q Okay. Where were you at -- let me hold this up
13 again -- where were you at when you first saw the
14 car blocking the street here at Walker and --

15 A Right here, because when I turned, I seen the car
16 there, and I wondered what it was doing there
17 because that is not a street; you know, it is
18 almost one of the neighbor's driveways.

19 Q Edgewood dead-ends into Walker, doesn't it?

20 A Yes, it does.

21 Q Did you keep walking down towards where the car
22 was after you saw it?

23 A No, I kept walking towards my house.

24 Q Same direction?

25 A Same direction, yes.

1 Q When you first saw the car blocking the street at
2 Walker, did you see the police car?

3 A It wasn't there yet. It pulled up right as I was
4 at the house just before mine.

5 Q When you were at the Cavazos' house?

6 A Right, just before Mr. Cavazos' driveway.

7 Q So this is your driveway on the right side of the
8 house?

9 A That is right.

10 Q So, just before you got to the driveway of the
11 Cavazos's?

12 A That is when the officer pulled up.

13 Q You see these boxes we have drawn representing
14 some cars?

15 A Yes, sir.

16 Q Now, for the sake of the diagram, this box has
17 been identified as the black and red Cutlass or
18 Buick --

19 A Okay.

20 Q -- and this has been identified as the police
21 officer's car, and that is why that box is drawn
22 there.

23 Is that about the right location for
24 the cars as you first saw them?

25 A The officer's car was, I think, a little bit

1 closer to the suspect's car than where it is drawn
2 now.

3 Q A little closer?

4 A Yes. Yes. As a matter of fact, both cars were
5 blocking the intersection.

6 Q Could you, from the driveway at the Cavazos' home,
7 could you see the police officer or any of the men
8 in the black and red Buick or Cutlass?

9 A I could see one of the men.

10 Q The man you saw, what was he doing? Where was he
11 standing? What could you see?

12 A He was standing in front of his car, by my
13 neighbor's across the street sidewalk.

14 Q Did you continue walking towards your house?

15 A Yes, and I stood there at my sidewalk. When I got
16 there, I just stood there looking over there, you
17 know.

18 Q Okay.

19 A I was curious and standing there looking.

20 Q Let me show you a photograph that's been marked
21 for identification purposes as State's Exhibit
22 No. 35. Is that one of the crape myrtle bushes
23 right near the front yard?

24 A Yes, right in front of my house.

25 Q And this other crape myrtle bush shown by this

1 photograph, is that down there near Edgewood
2 and Walker right on the corner?
3 A It's right on the corner.
4 Q You were someplace on this side here?
5 A I was right there.
6 Q Could you see where the -- what the police officer
7 was doing after he pulled up?
8 A He got out of his car. He just stepped out of his
9 car and he yelled at the man that was by the
10 sidewalk and he told him, "Come here," and he kept
11 on walking, and he told him, "Come here," and he
12 kept on walking, and he told him again, "Hey, you
13 come back," and then he turned around and came back
14 towards the police officer.
15 Q Towards the police officer?
16 A Yes.
17 Q Could you see and hear that from where you were?
18 A Yes, I could.
19 Q Did the man walk towards the police officer then?
20 A He did.
21 Q Other than the police officer and that man, could
22 you see anybody else?
23 A No, sir, other than Vera and Herlinda. They were
24 standing in front of the car.
25 Q They were over by the front end of this black and

1 red car here?

2 A Yes, sir.

3 Q Did Herlinda have her baby with her?

4 A Yes, sir. She did.

5 Q As the man started walking towards the police
6 officer, what was the police officer doing? Could
7 you see what he was doing?

8 A He was just standing by his car.

9 Q Was the door of his car open or closed?

10 A Yes, sir. It was open.

11 Q Was he standing -- which side of his door or front
12 door was he standing on?

13 A He was standing like right by the door, not on
14 this side and not on that side. Right by the
15 door.

16 Q Imagine if I am in a car and I am seated down
17 driving my car and I open my door to get out and
18 I have opened the door of my car.

19 Was the police officer standing in front
20 of his door to the car or --

21 A No, sir. He was standing -- like the door was
22 like this, and he was standing like right here,
23 not on this side and not -- okay. The door is
24 like this, and he was standing almost even with
25 -- almost even to the door.

1 Q Okay. If this is the door of the car and it swings
2 open, he was standing even with the door of his
3 car?

4 A Almost.

5 Q Okay. Could you see if the police officer had
6 anything in his hand?

7 A No.

8 Q When the man was walking towards the police officer,
9 could you hear whether or not he was saying
10 anything to the police officer or the officer was
11 saying anything to him?

12 A No.

13 Q What did you see this man do when he got up to the
14 police officer?

15 A Well, it happened so sudden when the police officer
16 called him for the second time and he said, "Hey,
17 you, come here," he turned around and started
18 toward the police officer, and all I heard was
19 two shots, and I seen the officer fall, and then
20 I heard about two more shots, and then I just
21 started screaming and screaming, and I had Jose
22 next to me, and I started pushing Jose --

23 MR. ELIZONDO: Objection, Your Honor.
24 Unresponsive to the question, and I would request
25 that she go to question-and-answer form.

1 THE COURT: Please just answer the
2 questions.

3 THE WITNESS: Okay.

4 Q (By Mr. Moen) You say you saw the officer fall?

5 A Yes, sir.

6 Q Did you actually see this man who was walking
7 towards the police officer shoot at the police
8 officer?

9 A I did.

10 Q Okay. Could you tell from your position there
11 by your house what type of gun it was the man
12 had?

13 A No, sir. I never seen the gun.

14 Q You don't know anything about guns anyway, do you?

15 A No. Not that much.

16 Q But this man who shot the police officer, did you
17 see some type of gun or pistol in his hand?

18 A Yes, I seen the -- like, you know --

19 Q The flash?

20 A Yes, I seen the flash coming out, and it sounded
21 real loud.

22 Q The man who you saw do that to the police officer,
23 if he were in the courtroom today, could you
24 identify him for the ladies and gentlemen of the
25 jury?

1 A Yes.

2 Q Point him out if he is here.

3 A That man right there, which, of course, is him,
4 and he doesn't look the same.

5 A That is what I was going to say.

6 Q Look at this man. Is this the man you saw shoot
7 the police officer back on July 13th?

8 A Yes.

9 Q He looks a little different today than he did
10 back then, doesn't he?

11 A Yes.

12 Q Does this mannequin over here marked 19 for
13 identification purposes, does this hair and facial
14 hair and beard look more like the way the man
15 looked back on July --

16 A Yes.

17 MR. ELIZONDO: Your Honor, I object to
18 counsel leading the witness.

19 THE COURT: Don't lead your witness,
20 Counsel.

21 Q (By Mr. Moen) How about State's Exhibits Nos.
22 17 and 18? Does that look more like the way the
23 man looked back on July 13th?

24 A Yes.

25 Q After the police officer fell, what did you do?

1 A I ran screaming in the house, because he was still
2 shooting.
3 Q Could you tell where or who he might have been
4 shooting at?
5 A He was shooting at Herlinda and Vera.
6 Q What could you see Herlinda and Vera doing?
7 A Running.
8 Q In which direction were they running?
9 A To their house.
10 Q Okay. For the ladies and gentlemen of the jury,
11 they live just down the block from you, don't
12 they?
13 A Across the street.
14 Q And they're across the street from you and a house
15 or two over?
16 A One.
17 Q One house over from you?
18 A One.
19 Q Could you see or did you look at Vera and Herlinda
20 long enough to see if they made it to their house
21 or ran in their house?
22 A No, sir. I ran in my house.
23 Q After you ran into your house, could you tell what
24 this man did, where he went after that?
25 A No, sir.

1 Q Do you know Mr. and Ms. Armijo?

2 A Yes.

3 Q Did you know them before the officer was shot in
4 your neighborhood?

5 A Yes.

6 Q Did you have occasion to see one of the Armijo's
7 children, Jose?

8 A Yes.

9 Q On the night the police officer was shot?

10 A Yes.

11 Q When did you first see Jose?

12 A Well, when all of this happened, you know, I was
13 in shock, and my husband turned all the lights off
14 and we were all laying on the floor, and the little
15 boy was knocking and knocking on the door, and, of
16 course at the time, I didn't know who he was.

17 MR. ELIZONDO: Your Honor, may we go to
18 question-and-answer form?

19 THE COURT: Q. and A.

20 MR. MOEN: Well, I thought all the
21 questions had been answered in the last fifteen
22 minutes, but --

23 MR. ELIZONDO: I object to the sidebar
24 remarks.

25 THE COURT: The responses have not been

1 direct.

2 Q (By Mr. Moen) Let me stop you just a moment.

3 You were inside your house and you
4 say your husband turned out all the lights?

5 A Yes.

6 Q Did the Galvan boy come to your house -- not the
7 Galvan boy, but the Armijo boy?

8 A Armijo, yes.

9 Q When did you first see him when he came to your
10 house?

11 A When I opened the door.

12 Q And did you recognize who he was?

13 A Yes.

14 Q Did you have a conversation with him?

15 A All he said was, "Please help my father."

16 MR. ELIZONDO: Objection -- object to
17 hearsay, Your Honor. Object to hearsay.

18 THE COURT: All right.

19 Q (By Mr. Moen) Let me ask you to stop for a
20 second. Can you describe Jose when you saw him
21 for the ladies and gentlemen of the jury? How was
22 he acting?

23 A He was in shock. He was screaming. He was
24 hysterical.

25 Q In that type of condition, what did he say to

1 you?

2 A Please help my father.

3 MR. ELIZONDO: Object to any hearsay
4 declarations, Your Honor.

5 THE COURT: That will be overruled. You
6 may answer. Go ahead.

7 A He said, "Please help my father," and I was nervous
8 and I said, "What is wrong with him," and he said,
9 "He has been shot," and I ran out and the man was
10 in the car, shot.

11 Q Could you see and did you know Mr. Armijo's two-
12 year-old little girl?

13 A Yes.

14 Q Did you see her out there that night the police
15 officer was shot?

16 A When I ran to the car, I pulled the little girl
17 out of the car because she was hysterical.

18 MR. ELIZONDO: Your Honor, I believe
19 that calls for a yes or no answer and we would
20 object to her response. he never
moves to
strike!!!

21 THE COURT: Please, Ms. Galvan, if you
22 would, please just answer the questions and don't
23 volunteer anything.

24 He'll ask you the questions.

25 THE WITNESS: Yes, sir.

1 Q (By Mr. Moen) Where was she when you saw her?
2 A In the backseat of the car.
3 Q Did you help her out of the car?
4 A Yes.
5 Q Mr. Armijo: Where was he at? Could you see him?
6 A He was on the driver's side of the car. He was
7 driving the car. He was slumped on the seat like
8 this.
9 Q Did you notice whether he was hurt or not?
10 A Yes.
11 Q Was Mr. Armijo saying anything you could
12 understand?
13 A No, sir.
14 Q Did you try to talk to him at all?
15 A Yes.
16 Q Now, prior to July 14th -- or prior to July 13th --
17 excuse me -- had you ever seen this man, the
18 Defendant, in your neighborhood before?
19 A Yes.
20 Q Where had you seen him in the neighborhood before?
21 A At the store where I worked.
22 Q You had a job one time, didn't you, at a convenience
23 store there?
24 A Yes.
25 Q Where was that convenience store located?

1 A On the corner of Walker and Dumble.
2 Q So that is right down the block from your house?
3 A Yes.
4 Q Had this man ever come in before and bought things
5 or shopped at the store?
6 A Yes.
7 Q Can you give the jury any idea for how many months
8 you had been seeing this man in the neighborhood
9 prior to the night the police officer was shot?
10 A Well, it must have been somewhere around March
11 when I first saw him.
12 Q Would that be March of 1982?
13 A Yes, sir.
14 Q So when you saw, back on July 13th, this man shoot
15 the police officer, you knew who he was, didn't
16 you?
17 A Yes.
18 Q Did you ever see anybody else who may have been in
19 that black and red car that night?
20 A No, sir.
21 Q There wasn't anyone else you were able to
22 recognize?
23 A No, sir. I never saw anyone.
24 Q Now, back on July 14th, the morning after the
25 police officer was shot, you went to the police

1 station and looked at a lineup, didn't you?

2 A Yes, sir.

3 Q There were some other people from the neighborhood
4 down there, too, at that lineup, weren't there?

5 A Yes, sir.

6 Q Do you remember how many people altogether
7 were in the lineup, how many people up on the
8 stage for you to look at?

9 A If I am correct, I think there was six of them.

10 Q Which position was this man in? What was his
11 number? Do you remember?

12 A I think he was -- if I remember correctly, he was
13 number four.

14 Q Okay. When you were down there for the lineup,
15 did the police officers let everybody talk together
16 to see who they would decide to pick out of that
17 lineup?

18 A No, sir.

19 Q How did they decide to make y'all sit at the
20 lineup?

21 A One seat apart.

22 Q Did they let everybody talk together?

23 A No, sir.

24 MR. ELIZONDO: I object to counsel
25 leading the witness, Your Honor.

1 THE COURT: Don't lead your witness.

2 Q (By Mr. Moen) Did you tell the police officers
3 that night, or I should say did the police officers
4 ask you if you recognized anyone at the lineup?

5 A Yes.

6 Q And did you tell them that you did?

7 A Yes.

8 Q Ms. Galvan, are you positive this is the man you
9 saw shoot the police officer?

10 A Yes, sir.

11 Q Now, at one time in your statement to the police,
12 do you remember using the phrase "blond hair" to
13 describe the man you saw shoot the police officer?

14 A Yes, sir, because --

15 MR. ELIZONDO: Object, Your Honor. That
16 calls for a yes or no answer.

17 THE COURT: All right.

18 Q (By Mr. Moen) Why did you use that phrase, "blond
19 hair"? Now you can explain.

20 A Because when I saw him the first time, he was in
21 the car and the light was reflecting on the
22 street, and I guess in the glare, it looked like
23 a kind of light-colored hair, not necessarily
24 blond, but it was light.

25 Q Shiny?

1 A. Shiny.

2 Q Let me show you these photographs marked State's
3 Exhibits 17 and 18. Was it as shiny as that or
4 even shinier?

5 A. Even shinier.

6 Q After he got out of the car and you saw him
7 walking towards the police officer, were you able
8 to get a good look at him then to see who it was?

9 A. I had seen him before he shot the police officer
10 standing right by the sidewalk, and the light is
11 right in front -- the light was right in front
12 of him?

13 Q Okay. Back when that red and black Cutlass almost
14 struck you and Armando and Jose, did you have a
15 chance to look in the car and see who was in the
16 car at that time?

17 A. The driver.

18 Q Who was driving the car? Did you recognize
19 anybody?

20 A. The Defendant.

21 Q Okay. This man was driving the car that almost
22 hit you?

23 A. Yes, sir.

24 Q Back prior to -- well, back at the time the
25 police officer was shot, did you know where this

1 man lived in the neighborhood, back there?

2 A. Yes.

3 Q. Where did he live at?

4 A. On Rusk.

5 Q. Let me show you this photograph again, and let me
6 get another one. Hang on a second.

7 Let me show you a photograph marked
8 State's Exhibit No. 2 that has been introduced
9 in evidence. This is Edgewood street where it runs
10 into Walker. This is Dumble, Rusk.

11 I think we can see Ms. Galvan's house
12 from this photograph, too, can't we?

13 Can you point out to the ladies and
14 gentlemen of the jury where the Defendant was
15 staying at back at the time of the shooting of the
16 police officer?

17 A. This is Rusk here. This is Dumble. Right here.

18 Q. That two-story house there?

19 A. Yes, sir.

20 Q. Now, has Mr. Elizondo or Mr. Hernandez been out
21 to talk to you?

22 A. Yes.

23 Q. How many times did they come to talk to you?

24 A. On one occasion, they went to my home and my
25 husband asked them to leave, and on the second

1 A As far as being a paramedic, I had to have been
2 a fireman first. Once you get off probation, you
3 can volunteer to be a paramedic. I did.

4 I went to the University of Texas
5 Medical School for six months, and I served six
6 months' probation on the ambulance.

7 Q Tell the members of the jury basically what your
8 duties are as a paramedic and what you do.

9 A My duties as a paramedic are to stabilize a
10 patient en route to the hospital. We are an
11 advance life-support system, is what it is.

12 Q In your capacity as a paramedic, do you operate
13 -- you mentioned the term "ambulance" -- a white
14 truck with the orange stripe around it?

15 A Right.

16 Q And you also work in conjunction with the Life
17 Flight?

18 A Right.

19 Q Tell the members of the jury what the Life Flight
20 system is.

21 A They carry a doctor on board and a registered
22 nurse, and the reason we call them Life Flight
23 is because we are either too far from the
24 hospital or the patient is critical. At that
25 point, we have a doctor on board and he can do a

1 little bit more than I can.

2 Q What fire station do you work out of?

3 A Fire Station No. 18.

4 Q Tell the members of the jury where Fire Station

5 No. 18 is located.

6 A It is located at 6 -- 609 Telephone Road.

7 Q Does that service primarily the east part of

8 Houston?

9 A Right. Southeast.

10 Q Were you working back on July 13th of this year?

11 A Yes.

12 Q What hours were you working on that Tuesday?

13 A I come in at 6:30 a.m. and I get relieved at 6:30

14 a.m. the next morning.

15 Q So would you have come in at 6:30 a.m. on Tuesday

16 the 13th and scheduled to work until 6:30 a.m. the

17 next Wednesday morning?

18 A Right.

19 Q Were you working alone or do you have a partner?

20 A I do have a partner.

21 Q And what is his name?

22 A Chris Sanchez.

23 Q And is he also a paramedic?

24 A No, he's an E.C.A.

25 Q And what is an E.C.A.?

1 A That's an emergency care attendant. He's also
2 trained in stabilizing a patient, how to
3 stabilize. He can assist me, except he doesn't
4 have IV therapy, doesn't know how to start IV's
5 or drug therapy.

6 Q Going back to July 13th, did you have occasion to
7 go to the location at Edgewood and Walker --

8 A Yes.

9 Q -- where a police officer by the name of James
10 Harris had been shot and killed?

11 A Yes.

12 Q Did you receive that call while you were back at
13 Fire Station No. 18?

14 A No, I was initially responding to a shooting at
15 the cemetery.

16 Q Someone had reported a shooting at the cemetery?

17 A Right.

18 Q And were you and Chris Sanchez both trying to
19 locate that shooting?

20 A Right.

21 Q Were there also police officers in the same
22 vicinity as you, trying to locate that shooting?

23 A Right behind us.

24 Q Can you tell us, give us an idea of what time of the
25 night this was that you and the police officers

1 were trying to locate a shooting at the cemetery?

2 A. It was between 9:45 p.m. and 9:50.

3 Q. Were you ever able to find anyone shot at the
4 cemetery?

5 A. No.

6 Q. When did you get any type of word a police officer
7 had been shot at Edgewood and Walker streets?

8 A. Well, it was at the cemetery.

9 Q. How were you informed? On the radio, or did
10 someone come and tell you that?

11 A. No, one of the police officers came running to the
12 ambulance and advised us there was an officer down
13 at 4900 Walker.

14 Q. Was this still around 9:50 that night?

15 A. Right.

16 Q. How long -- did you go then to Edgewood and
17 Walker?

18 A. No. I went to the 4900 block of Walker.

19 Q. Is that the same block as Edgewood and Walker?

20 A. Right.

21 Q. How long did it take to get there from the
22 cemetery, from that location?

23 A. About thirty seconds to a minute.

24 Q. Let me show you what's been marked and

25 introduced in evidence as State's Exhibit No. 3,

1 and I will ask you: Do you recognize that? If
2 this is Dumble here and Eastwood Park here, Walker
3 street running in this direction, Rusk street
4 running in this area here and McKinney in this
5 area, are you familiar with that area at this
6 time?

7 A. Yes, sir.

8 Q. Would you show the members of the jury which way
9 you came down Walker street to get to the
10 intersection of Walker and Edgewood?

11 A. We made a left turn off of Dumble into Walker,
12 right here.

13 Q. And would you show us approximately where you
14 stopped your emergency vehicle?

15 A. It was in the middle of the block on Walker.

16 Q. Somewhere in this area here?

17 A. Right.

18 Q. Did you see the diagram on the board over here?
19 Maybe it will be a little easier if we discuss
20 that.

21 Are you familiar with that diagram, and
22 have you seen it earlier today?

23 A. Yes, sir.

24 Q. What I am referring to is State's Exhibit No. 5.

25 I believe your testimony is you were

1 coming down Walker in a southerly direction and
2 then made a left turn on Walker and headed towards
3 the intersection of Edgewood and Walker?
4 A. Right.
5 Q. Just tell me where to stop where you had stopped
6 your vehicle.
7 A. Right about there.
8 Q. Right in the middle?
9 A. Right in the middle of the block.
10 Q. Tell us what you saw from that location when you
11 first arrived.
12 A. When I first arrived, I saw several police cars
13 there on the scene already. As I got out of the
14 ambulance, there were several police officers
15 that approached and told me a police officer was
16 shot, and led me to the officer.
17 Q. Where on this diagram would they have led you to
18 him?
19 A. They led me to the car right -- this.
20 Q. This car here?
21 A. Yes, sir.
22 Q. Which side? The side closest --
23 A. The officer was on the passenger's -- I mean, the
24 driver's side of the car.
25 Q. It would have been on this side here?

1 A Right. Of his squad car.

2 Q Was there another vehicle parked in that

3 intersection?

4 A Yes.

5 Q Would that have been in the approximate location

6 of this box marked on Exhibit No. 5?

7 A Right.

8 Q Would you describe the condition of the officer

9 as you saw him there on the ground?

10 A When I got there, I noticed that the officer was

11 lying faceup. He was in a pool of blood. His

12 face was full of blood. At that time, I wiped as

13 much blood as I could off of his face and his

14 neck to establish and see if I had a pulse, and

15 at that time, I did have a very weak pulse.

16 Q Where did you try to determine on his person if

17 he had a pulse?

18 A On his carotid.

19 Q On his neck?

20 A Yes.

21 Q And would you describe the kind of pulse he had at

22 that time?

23 A He had a very weak, rapid pulse.

24 Q What did you do at that point in time?

25 A At that point, I went back in the ambulance to get

1 a stretcher.

2 Q And did someone assist you in getting a stretcher?

3 A Yes, sir. Me and my partner got the stretcher
4 out and went back to the officer, and at that
5 time, we loaded the officer on the stretcher and
6 took him back to the ambulance.

7 Q Were you able to see the type of injuries the
8 officer received?

9 A Yes. Once I got him in the ambulance, I went
10 ahead and wiped -- blood was gushing out, and I
11 wiped all of the blood I could from him to see
12 how many gunshot wounds he had to the head, and I
13 saw what appeared to be three.

14 Q Do you recall what side of his face those gunshot
15 wounds appeared?

16 A Yes. It seemed like the injuries were to the left
17 side of the head, and I saw what appeared to be
18 two exit wounds on the side of his neck.

19 Q Would you tell the jury then the type of treatment
20 you tried to give Officer Harris?

21 A At that time, I felt for a pulse again. I didn't
22 have one. I started C.P.R.

23 At that time, I advised my partner to
24 get me a pumper for assistance.

25 Q Let me stop you there.

1 Did you have an opinion at that time,
2 when you tried to check the pulse the second time,
3 as to whether or not the officer was dead or
4 alive?

5 A. Yes.

6 Q. Tell the ladies and gentlemen of the jury what
7 your opinion was at that time.

8 A. At that time, my opinion was he was dead.

9 Q. And you said even though you had no pulse, you
10 started C.P.R.?

11 A. Right.

12 Q. Why would you do that, if you had formed an
13 opinion that the officer was dead?

14 A. Because once we initiate C.R.R., we must continue
15 until we get to the hospital because the only
16 person who can pronounce somebody dead is a
17 doctor.

18 Q. Tell the members of the jury what C.P.R. is and
19 how it is administered.

20 A. Cardiopulmonary resuscitation.

21 What it is, you have a man who does
22 five compressions to one ventilation, to the
23 sternum.

24 Q. In other words, someone is pushing down on the
25 chest five times, and someone is ventilating the

1 lungs with oxygen or air one time for each five
2 compressions of the sternum?

3 A. Yes.

4 Q. Now, is that done with mouth-to-mouth resuscitation
5 or is there another method that you employ?

6 A. Well, at that time, we used a bag valve mask, what
7 they call a bag valve mask, and that's what my
8 partner ventilated the officer with until we could
9 get orders from the Medical Center to go ahead and
10 start intubating the patient.

11 Q. Did you see the officer's name tag?

12 A. Yes.

13 Q. What was the officer's name tag that you saw?

14 A. Officer J. D. Harris.

15 Q. How long did you work on Officer J. D. Harris at
16 the location on Walker street?

17 A. I would say approximately thirty to forty-five
18 minutes.

19 Q. Did you leave and go to another location?

20 A. Yes.

21 Q. Where did you go?

22 A. Eastwood Park where Life Flight was to meet us.

23 Q. Okay. Looking at State's Exhibit No. 3, would
24 that be the area of the ball park in the right-
25 hand corner of State's Exhibit No. 3?

1 A. Yes.

2 Q. And is that where the helicopter Life Flight would
3 be able to land?

4 A. Yes, sir.

5 Q. That would be approximately how long after you
6 had arrived at the location of Walker and Edgewood,
7 that you arrived at that location?

8 A. About thirty to forty-five minutes.

9 Q. Did a doctor look at Officer Harris?

10 A. Yes, sir. He did.

11 Q. And did he continue any treatment of Dr. -- Mr.
12 Harris at that time?

13 A. Yes, he did. He pushed several different types of
14 drugs, and we defibrillated Officer Harris.

15 Q. Defibrillated, what does that mean?

16 A. That means -- well, we have these paddles there
17 in the ambulance on our telecare, and that is
18 what we use to bring a patient more or less,
19 trying to get a rhythm back on him when they are
20 in a defib.

21 Q. Did you have a pulse rate?

22 A. At that time, we didn't have a pulse rate, no.

23 Q. Was there success in trying to defibrillate
24 Officer Harris?

25 A. No, sir.

1 Q How long did the doctor work on Officer Harris?
2 A Forty-five minutes to an hour.
3 Q And did he then finally pronounce Officer Harris
4 dead?
5 A Yes, he did.
6 Q What was done with Officer Harris' body at that
7 time?
8 A At that time, we transported the body to the
9 morgue, the Harris County Morgue.
10 Q Mr. Escobar, let me show you what has been marked
11 for identification purposes as State's Exhibit 73,
12 and I will ask if you can identify that for us?
13 A Yes.
14 Q Tell the members of the jury what State's Exhibit
15 73 is a photograph of.
16 A A photograph of Officer J. D. Harris.
17 Q Does that photograph truly and accurately depict
18 the way Officer Harris appeared back when you were
19 trying to revive him back on July 13th, 1982?
20 A Yes, sir.
21 Q There is an object that is protruding from Officer
22 Harris' mouth. Can you tell us what that is?
23 A That is an endotracheal tube which we use to
24 intubate a patient.
25 Q Is that what you were using to administer the

1 C.P.R.?

2 A Yes.

3 Q There are also two round disks on Officer Harris'
4 chest. What are those?

5 A Those are electro-pads. We use those to monitor
6 the heart.

7 Q To determine if there is a heartbeat?

8 A Yes, sir.

9 Q And there's also some type of tube that runs along
10 and over his left shoulder. Do you know what that
11 is?

12 A Yes, sir. That is an IV line.

13 MR. BAX: At this time, the State would
14 offer State's Exhibit 73, after tendering same to
15 counsel.

16 MR. ELIZONDO: I object to State's
17 Exhibit No. 73 as being inflammatory and
18 prejudicial.

19 MR. BAX: May we approach the bench,
20 Your Honor?

21 (Discussion at the bench out of the
22 hearing of the court reporter.)

23 THE COURT: State your objection on the
24 record.

25 MR. ELIZONDO: For the record, State's

1 Exhibit 73, we will object to it as being highly
2 prejudicial and inflammatory.

3 I don't know what probative value
4 that exhibit may have, and we would object to it.

5 THE COURT: Your objection is overruled.

6 The photograph will be admitted.

7 Q. (By Mr. Bax) Mr. Escobar, let me ask you a few
8 questions. Going back to the scene when you
9 arrived, did you have anything to do with removing
10 Officer Harris' vehicle from the location where
11 it was when you arrived to a vehicle straight
12 ahead and next to another vehicle?

13 A. Yes, we did. We had it moved for the reason we
14 had to get the ambulance through there.

15 Q. Could you back up the ambulance?

16 A. No, sir. There was more police units behind us.

17 Q. Is that the reason when the other officers arrived
18 they found the police vehicle next to the other
19 vehicle when they arrived?

20 A. Yes, sir.

21 Q. Do you recall whether or not Officer Harris'
22 vehicle, whether he had lights on that vehicle
23 when you pulled up?

24 A. Yes. I believe he had his high beams on. The
25 parking lights were blinking.

1 Q Okay. Do you recall, or could you tell us if
2 there was any other lights in this area that
3 illuminated the area of that intersection at
4 Edgewood and Walker streets?
5 A I believe there was a lamp pole.
6 Q A street lamp?
7 A Yes. A street lamp.
8 Q We have one marked in this area here, and would
9 that be the general area?
10 A Yes, sir.
11 Q How would you describe this area as far as the
12 lighting conditions were concerned, and I am
13 referring to that same intersection.
14 A I guess it was fairly well lighted.
15 Q And was it not only lit by the light or the street
16 light but also by Officer Harris' high beams on
17 his vehicle?
18 A Yes, sir. The only dark area in the block would
19 be the middle of the block down toward Dumble.
20 Q Back where you parked your vehicle?
21 A Right.
22 Q It got darker as you proceeded down that way?
23 A Right.
24 MR. BAX: That's all I have.
25 MR. ELIZONDO: I have a couple of

1 questions.

2 THE COURT: All right, sir.

3
4 CROSS EXAMINATION

5
6 QUESTIONS BY MR. ELIZONDO:

7 Q Where is that light pole located?

8 A It would be -- on Walker, on this side here.

9 Q Right here?

10 A Yes.

11 Q There is no light pole at the intersection of
12 Edgewood and Walker; is that correct?

13 A It was on Walker. That's all I remember.

14 Q Okay.

15 A Because I remember that, you know, the light as
16 it shown on the cars would reflect off the cars.

17 Q Was there artificial light there also at the scene,
18 artificial light produced by generators, police
19 units, et cetera?

20 A Yes, sir.

21 Q Headlights, et cetera, that kind of stuff?

22 A Yes.

23 Q I'm not talking about light poles or anything
24 like that.

25 A Yes.

1 Q Where was the light pole that you saw?

2 A I would say it was on the Walker side.

3 Q Could it be right here where the little round
4 thing is?

5 A More or less in that area, yes.

6 MR. ELIZONDO: That is all we have, Your
7 Honor.

8 MR. BAX: We have nothing further.

9 THE COURT: All right. Thank you, sir.
10 You may stand aside. You may be excused.

11 All right. Bring in the witnesses.

12 I will swear the witnesses in front of
13 the jury and excuse them.

14 MR. BAX: Are we going to invoke the
15 rule as to these witnesses in the hall?

16 MR. ELIZONDO: Judge, they have all been
17 sworn. I would like the Court to admonish them to
18 show up tomorrow.

19 Do you want me to bring them in now?

20 THE COURT: Yes, sir.

21 (The witnesses from the hallway entered
22 the courtroom.)

23 THE COURT: Have each one of you been
24 sworn as a witness?

25 (The interpreter asked the question in

1 Spanish to the witnesses.)

2 THE INTERPRETER: Not this one.

3 THE COURT: Ask him to raise his right
4 hand and be sworn as a witness.

5 (The witness was sworn as a witness by
6 the interpreter.)

7 THE COURT: All right. Each of you has
8 been sworn as a witness and the rule has been
9 invoked. That means that you are not to discuss
10 your testimony amongst yourselves or with anyone
11 else. Only a witness who is giving his testimony
12 is allowed to be in the courtroom, and the others
13 must remain in the hallway until you are called
14 as a witness to testify, and when you go home this
15 evening, do not discuss your testimony amongst
16 yourselves, and you must be back in this courtroom
17 at 9:30 in the morning.

18 MR. MOEN: Judge, may we approach the
19 bench?

20 THE COURT: Yes, sir.

21 (Discussion at the bench out of the
22 hearing of the court reporter.)

23 THE COURT: Members of the jury, you
24 may now be excused until 9:30 in the morning.

25 Please remember the admonitions I have

1 previously given you regarding publicity and
2 discussing anything outside.

3 Thank you, and we will see you at 9:30.

4 (At this time, court recessed for the
5 day.)
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1 occasion, I went to the ball park to drop off my
2 son and they were there and they talked to me.

3 Q If you know, have they been talking to other
4 witnesses out there, too?

5 A Yes.

6 Q Do you know if they have talked to Jose or
7 Armando?

8 A Yes.

9 Q How about Herlinda or Vera? Have they talked
10 to them, if you know?

11 A I don't know.

12 Q Now, you came down Saturday, didn't you, to --

13 A No, I didn't.

14 Q I was going to say -- not here. No, you didn't
15 -- I am sorry. You did not. I am sorry. You
16 were not here Saturday.

17 THE COURT: May we stipulate to that?

18 Q (By Mr. Moen) Thank you for correcting me.
19 Everybody else said you were here. I forgot you
20 weren't.

21 Ms. Galvan, thank you for letting me
22 visit with you. I will pass you and let the
23 Defense attorney ask you questions.
24
25

CROSS EXAMINATION

QUESTIONS BY MR. HERNANDEZ:

Q Ms. Galvan, you mentioned that I appeared at your house and your husband ran us out; is that correct?

A That's correct.

Q Did you see me out there?

A No, sir.

Q All right, so it's a misstatement, is it not?

A What did you say?

Q It is a misstatement, what you just stated, that Mr. Elizondo and Mr. Hernandez were out there and run off by your husband? Is that a misstatement?

A What are you trying to say?

Q I don't know, ma'am, but you mentioned --

A Oh, that I had seen you. No, I did not see you.

Q In essence, I have never been to your house, have I?

A Well, if you want to put it that way.

Q Have I --

A Well, you have been to my house, because you talked to my husband, and I know my husband wasn't going to lie.

Q Well, I'm sorry, ma'am, but I've never met your

1 husband, and I've never had occasion to go to
2 your house.

3 MR. MOEN: Objection, Your Honor. That
4 is a sidebar remark.

5 THE COURT: Sustained.

6 Get on with the questions and answers,
7 please.

8 Q (By Mr. Hernandez) Was I present at your house
9 the day that your husband allegedly ran me and Mr.
10 Elizondo out?

11 MR. MOEN: Objection, Your Honor. That's
12 repetitious.

13 MR. HERNANDEZ: She didn't ever answer
14 the question, Your Honor.

15 MR. MOEN: And that's a sidebar remark,
16 and I object to it.

17 THE COURT: Well, now, just a minute.
18 Your objection is overruled.

19 She may answer.

20 A I don't know.

21 THE COURT: Now it's been answered.

22 Q (By Mr. Hernandez) But you stated I was at your
23 house and Mr. Elizondo was at your house --

24 MR. MOEN: Objection, Your Honor.
25 Argumentative and repetitious.

1 THE COURT: Sustained.

2 Q (By Mr. Hernandez) The next occasion, or you
3 made a statement that the next time you saw Mr.
4 Elizondo and Mr. Hernandez was when we were
5 talking to some witnesses at a ball park; is that
6 true?

7 A. True.

8 Q Is that the first time you ever saw me?

9 A. That's correct.

10 Q And we didn't go and talk to you, did we?

11 A. No.

12 Q We were passing by, and you talked to us; is that
13 correct?

14 A. Yes.

15 Q Did you make a statement on the night of July
16 13th or in the early morning of July 14th, 1982?

17 A. I did.

18 MR. HERNANDEZ: May we see that
19 statement, please?

20 MR. MOEN: May the record reflect we
21 are tendering again Ms. Galvan's statement to the
22 Defense?

23 THE COURT: The record will so reflect.

24 Q (By Mr. Hernandez) So you made two statements to
25 the police officers on the early morning of the

1 14th, did you not?

2 A No.

3 Q Well, let me show you?

4 A I think they corrected one.

5 Q All right. What date is that right there?

6 A The 14th.

7 Q And what time?

8 A 12:05.

9 Q All right. And then we have this one.

10 A The 14th.

11 Q What time?

12 A 6:20.

13 Q So there were two statements made.

14 You were looking for your daughter, and

15 you went all the way to the end of the corner of

16 Walker and Lenox and stood right here?

17 A No. I went a little bit past that.

18 Q This way?

19 A Yes.

20 Q And it was Armando, Jose, and yourself?

21 A Yes.

22 Q You saw the car pass by?

23 A Yes.

24 Q And you remembered Mr. Guerra?

25 A That's right.

1 Q Did you ever mention to Armando and Jose, "That
2 is Mr. Guerra going by"?
3 A That's right. I didn't know his name.
4 Q But did you mention any names at all?
5 A No names, no.
6 Q Did you say anything to Jose and Armando?
7 A Yes.
8 Q What did you say?
9 A You want me to tell you?
10 Q Yes.
11 A Okay. I said, "There goes that fool."
12 Q There goes that fool?
13 A Yes.
14 Q But you knew who that fool was, didn't you?
15 A Yes.
16 Q Then, before you got to your house at 4925, you
17 saw the car come up over here?
18 A Yes.
19 Q So at 4925 you are standing on the sidewalk?
20 A Yes.
21 Q All right. From 4925 to the corner of Edgewood
22 and Walker, how far is that?
23 A How far is it? Well, I haven't measured it, but
24 I'm more than sure maybe --
25 Q Well, let me ask you this. Let me help you.

1 A Well, not half; about maybe fifty feet.

2 Q Well, let me help you. If I am standing right
3 here, would it be as far as that wall?

4 A No, I don't think it's that far.

5 Q All right. Would it be as far as the front row?

6 A Maybe a little bit further.

7 Q Okay. So we would say from here to the middle of
8 the benches?

9 A More or less.

10 Q More or less.

11 All right, and if you are standing here,
12 this is your house right here and there is a big
13 tree right next to you, is there not, or is it in
14 front of you? You have a tree in front of your
15 house?

16 A There's two of them. As a matter of fact, there's
17 three of them.

18 Q Okay. All right, and as you are sitting, there's
19 one to the right and one to the left? Would that
20 be fair?

21 A No, they're all in a row.

22 Q Okay. So, you're behind them or in front of
23 them?

24 A No, I have a clear view because the trees are
25 spaced pretty far from each other.

1 Q All right, so you are looking, and is there a
2 light at that corner?

3 A Yes. There is a light. Two of them.

4 Q And, of course, there is a tree right at the
5 corner, too, isn't there?

6 A Yes.

7 Q All right. Now, the first thing you saw was the
8 black car?

9 A Yes.

10 Q And then you stated that it stalled on you, or the
11 car stalled?

12 A The car was stopped there.

13 Q All right. Then what happened?

14 A What happened?

15 Q What did you see next?

16 A The car was just there.

17 Q Okay, and what did you see next?

18 A Next I saw the police officer pull in back of the
19 car.

20 Q Next you saw the officer pull in back of the car.

21 Let me ask you something real quick.
22 Before the police officer stopped behind them, did
23 anybody get out of the black car?

24 A They were already out of the black car.

25 Q Okay. They were already out of the car?

1 A Yes.

2 Q Okay. Where was the driver?

3 A He was standing by the sidewalk in front of the

4 car.

5 Q So, if the car was in the middle of the street

6 going this way, okay, what sidewalk are we talking

7 about, this sidewalk right here or this one across

8 the street?

9 A The one in front of the car.

10 Q Okay. So the front of the car, say, for example

11 this is the front of the car here, so the driver

12 is standing right here in front of the car and

13 this is the sidewalk?

14 A Uh-huh.

15 Q So, in essence, it is covering the whole street?

16 A Uh-huh.

17 Q And this is Walker?

18 A That is Walker.

19 Q Or shall we say this is Walker and the car is

20 already on --

21 A On Edgewood -- no, not Edgewood. That is a dead

22 end.

23 Q All right. I'm sorry, but sitting right in the

24 middle of Walker?

25 A Yes.

1 Q But this would be Walker and the front ended here?
2 A Yes.
3 Q Where was the passenger?
4 A I don't know. I never saw him.
5 Q You never saw the passenger get out or did you see
6 the passenger get out?
7 A No, no. I never saw anyone else.
8 Q You only saw one person?
9 A One person.
10 Q So all we have is one person and that is the
11 driver?
12 A That's right.
13 Q And he gets up front here and that is about the
14 time you saw the police officer arrive, is it
15 not?
16 A Yes.
17 Q All right. Then is the driver speaking with
18 anybody?
19 A With Vera and Herlinda.
20 Q And he was having a conversation with her?
21 A Well, they were very close to him, but I could
22 hear them yelling -- I could hear Vera yelling back
23 towards him, but I don't know if they were having
24 a conversation or what. All I know is they were
25 yelling back and forth to each other.

1 Q How much time is that that we are talking about?
2 A Not more than a minute, or less than that.
3 Q So, at this point, there's only one person in the
4 car or one person at all period, right?
5 A Yes.
6 Q Then the police officer arrives, right?
7 A Yes.
8 Q All right. He steps out of his car?
9 A Yes.
10 Q All right. Now, say, for example, this is his
11 car right here --
12 A Uh-huh.
13 Q -- and he is on the driver's seat and he gets
14 out. Okay?
15 A Uh-huh.
16 Q What does he do?
17 A He yells.
18 Q At the young man?
19 A At the young man.
20 Q At the front end of the car?
21 A At the front end of the car.
22 Q Let me ask you this. Does he have his headlights
23 on or does he have any headlights?
24 A The officer?
25 Q Yes.

1 A I don't remember.

2 Q Did the officer ever go beyond his door? In
3 other words, his door is opened, right?

4 A Uh-huh.

5 Q Say, for example, I am standing here and here is
6 the driver's seat and my door is open and I could
7 lean my arm on the arm-board, and probably my boot
8 on the boot-rest, right?

9 A Uh-huh.

10 Q Did he ever leave from that stop to go around?

11 A I don't know because I was looking at the
12 Defendant. I was not looking at the police
13 officer.

14 Q You were looking --

15 A Straight at him walking back to the officer's
16 car.

17 Q So you saw the driver come back to the police
18 officer? Okay.

19 Now, the police officer, did he leave
20 or go around the door?

21 A Like I tell you, I wasn't looking at the officer.
22 I was looking at the Defendant walking back, and
23 that's when I heard the shots, and that's --

24 Q Well, we'll get to that in just a second. We'll
25 get to that in just a second.

1 If I remember correctly, in your
2 statement, you said that the police officer stepped
3 out of the front door; in other words, he went
4 around and grabbed the Defendant or whoever, and
5 put him against the car?

6 Do you remember making a statement like
7 that many times?

8 A. No, I don't.

9 Q. Well, let me show you.

10 Why don't you read it right here.

11 A. That's correct.

12 Q. So, are we in agreement that he actually left the
13 door, went up to the suspect and pushed him against
14 the car?

15 A. Just let me think a minute.

16 Q. All right.

17 A. Yes. I remember.

18 Q. Okay. Now, did the police officer at that time
19 have his service revolver out?

20 A. I couldn't see the officer. His back was towards
21 me.

22 Q. And so was the suspect also, was he not?

23 A. He was like on an angle like that.

24 Q. Okay. Now, let me back up a little bit.

25 So we've got the police officer pushing

1 the suspect against the car, right?

2 A He didn't really push him against the car. He
3 tried to go -- well, I know I said "pushed," but,
4 of course, I was confused that night. He tried
5 to get ahold of him like this, and everything
6 happened so soon. The shots were fired right
7 there and then.

8 Q But we have him touching the suspect, right?

9 A Yes.

10 Q And then we have the two young ladies over there
11 and nobody else; is that right?

12 A That's right.

13 Well, Jose and Armando.

14 Q And they're standing by you?

15 A Jose is standing right next -- back of me, and
16 Armando further down towards my house.

17 Q So then the shooting started?

18 A Yes.

19 Q And what transpired in that immediate second that
20 you saw if you can remember?

21 A If I can remember?

22 I heard the shots. I seen the officer
23 fall, and I seen the man running towards us,
24 shooting.

25 Q Let me stop you right there.

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You heard the shots?

A. Yes.

Q. You didn't see the shots?

A. I seen the man that was right in front of him, and a flash was coming out of his gun.

Q. You saw the flash?

A. Yes.

Q. Now, when that happened, you immediately turned around and went straight to your house?

A. No.

Q. I am sorry. I must have misinterpreted you. What happened?

A. Well, I was screaming, and I was still standing there, because I guess I was just in shock. When I started running was when I was about from here to where the jury is from us, because he was still shooting.

Q. So he was close?

A. He got very close, yes.

Q. To you?

Was he shooting at anybody specifically this way?

A. To Herlinda and her baby across the street.

Q. If he was running this way, straight ahead?

A. Straight out.

1 Q Straight out this way?

2 A Yes.

3 Q What side of the street was he running on?

4 A On my side of the street.

5 Q So he was on your side of the street?

6 A Yes.

7 Q And this was the young man you said you had seen

8 before?

9 A Yes.

10 Q Let me ask you this. Had you ever seen this guy

11 before?

12 A No. Never. I never saw him that night. Never.

13 Q Okay. You never saw him that night?

14 A No.

15 Q Let me ask you this then. The first time that

16 this man came to your store where you worked, was

17 this young man with him?

18 A To tell you the truth, I think he was, but there

19 were so many of them that it's hard for me to

20 remember all of them and they don't look the same

21 now.

22 Q All right. Let me ask you one more time so we will

23 be safe about this. You have never seen a man

24 by the name of, they call Werro in your life?

25 Is that what you are saying?

1 A. No. I am not saying that.

2 Q. So you know who Werro is?

3 A. No, I don't, because I don't know their names.

4 Q. Let me ask you this: You know who Werro is?

5 A. No, because I don't know what his name is. I
6 don't know if his name was Werro or what.

7 Q. Let me see if I can clear it up. I'll back up a
8 little bit.

9 This young man is named -- his nickname
10 or street name is Werro.

11 Have you ever seen this man before?
12 That is what I want to get to.

13 A. That man standing right there?

14 Q. Yes.

15 A. No.

16 Q. All right. When you were standing in front of
17 your house and he gets up right in front of you,
18 say he's coming towards you as close as where
19 you are standing and the jury's standing, right?

20 A. Uh-huh.

21 Q. And you recognized his clothing, right?

22 A. Yes.

23 Q. What was the description of the clothing that
24 you gave the police officers that night?

25 A. A dark pair of pants and a dark shirt.

1 Q Dark pair of pants and a dark shirt?

2 A Yes.

3 Q As a matter of fact, you said it was a dark
4 brown shirt or a black shirt, did you not?

5 A I said it could have been either color. All I
6 said is it was dark and it could have been black
7 or any dark color.

8 Q But to be exact, your exact statement was he wore
9 or black or dark brown shirt with dark brown
10 pants and blond hair?

11 A Yes, because like I said, in the light, it looked
12 like -- well -- not -- I guess they must not have
13 understood what I said, because the light was
14 reflecting and his hair looked like it was very
15 shiny, a light color.

16 Q Light-colored hair?

17 A Light colored, yes, like the light was reflecting
18 off the street.

19 Q Not that light are you talking about?

20 A Well, as a matter of fact, his hair was lighter
21 than that at one time.

22 Q Okay, and when he came at you and you saw him
23 between here and here, you could see his hair
24 then, too, could you not?

25 A Yes.

1 Q Was it still blond?

2 A It was dark right there where he was running
3 towards us.

4 Q Let me ask you this: Had you seen this man on few
5 or numerous or many occasions before?

6 A On few.

7 Q On few occasions you had seen him before?

8 A Yes.

9 Q But that night, you gave a statement that it was
10 brown pants, brown shirt or black, and blond,
11 right?

12 MR. MOEN: Excuse me, Your Honor. It's
13 repetitious.

14 THE COURT: Sustained.

15 Q (By Mr. Hernandez) That night, you gave a
16 statement he had blond hair?

17 MR. MOEN: That's repetitious, too, Your
18 Honor. I object to it.

19 THE COURT: Sustained.

20 Q (By Mr. Hernandez) What happened to Armando and
21 Jose all this time? Do you remember, by any
22 chance?

23 A Jose was standing right next to me. Armando was
24 further down the stairs.

25 Q Who hit the door first? You, Armando, or Jose?

1 A Armando ran in, and I pushed Jose out of the way
2 right in front of me.

3 Q All right. Would it be fair enough to say when
4 the incident began -- this was your house and
5 you are standing there and all three of y'all did
6 see it? Would that be fair enough, a fair
7 statement?

8 A I don't think Armando saw the thing.

9 Q He was standing next to you?

10 A No. Jose was.

11 Q He is the one back here?

12 A Yes.

13 Q So I won't get confused, if you were standing
14 where you are sitting now, tell me how far, when
15 to stop, how far Armando was from you.

16 A You need to come up closer.

17 Q I need to come up?

18 Tell me when to stop.

19 A Right -- before you get to the corner. Right
20 there.

21 Q So we've got you facing the incident that way
22 and Jose facing the incident that way and Armando
23 facing the incident that way? Right?

24 A Right.

25 Q Then all three went into the house, and that is

1 when the boy came in?

2 A. No, no. Not right that minute, no.

3 Q. Well, I am sorry. I am skipping.

4 So that's when you pushed Armando --

5 A. Jose.

6 Q. -- right after you got close, you went in the
7 house?

8 A. Yes. We ran in the house.

9 Q. And the lights were off?

10 A. Yes.

11 Q. So, would it be fair enough to say then that
12 from that point on, you did not see anything until
13 the little boy walked in, Jose Armijo?

14 A. Correct.

15 MR. HERNANDEZ: That's all, Judge.

16 THE COURT: Anything further?

17 MR. MOEN: Just a couple more questions.

18

19 RE-DIRECT EXAMINATION

20

21 QUESTIONS BY MR. MOEN:

22 Q. Ms. Galvan, were Herlinda and Vera afraid to come
23 and testify?

24 A. Very.

25 Q. Do you know what they were afraid of?

1 MR. ELIZONDO: Your Honor, I object.
2 That calls for a hearsay answer and is bolstering
3 their witnesses, and I would object.
4

5 THE COURT: Sustained. I'll sustain it
6 on hearsay.

7 Q. (By Mr. Moen) Are you afraid to come down here and
8 testify?

9 A. Yes.

10 Q. Other than Mr. Guerra, the Defendant that you have
11 seen over here at this house, have you seen other
12 occupants of that house back at or about the time
the police officer was shot?

13 A. Yes.

14 Q. Were there a bunch of people at that house living
15 there?

16 A. Yes.

17 Q. Have you seen any of them down at the courthouse
18 today?

19 A. Yes.

20 Q. Have you ever seen the Defendant with any of those
other people, hanging around with those other
people you have seen at the courthouse?

21 A. Yes.

MR. MOEN: That is all I have.

THE COURT: Okay. Anything else?

*Approved
to produce*

1 MR. HERNANDEZ: Two questions.
2

3 RE-CROSS EXAMINATION
4

5 QUESTIONS BY MR. HERNANDEZ:

6 Q You've never seen this man in your life before?

7 A Okay. The way you are putting it, that man there,
8 no.

9 The man that they killed, yes.

10 Q All right, and his nickname is Werro?

11 A I don't know.

12 Q But you had seen him before?

13 A Yes.

14 Q And one more question. Nobody was around except
15 one man; is that right?

16 A That's right.

17 MR. HERNANDEZ: That is all we have,
18 Your Honor.

19 MR. MOEN: Nothing further, Judge.

20 THE COURT: All right, Ms. Galvan. Thank
21 you very much. You may stand aside.

22 MR. BAX: May we approach the bench,
23 Your Honor?

24 THE COURT: Yes, sir.

25 (Discussion before the bench out of the

1 hearing of the court reporter.)

2 THE COURT: Call your next.

3 MR. BAX: We would call Joe Escobar.

4 (At this time, State's Exhibit No. 73
5 was marked for identification purposes by the court
6 reporter.)
7
8
9

10 JOSEPH ALEXANDER ESCOBAR,
11 was called as a witness on behalf of the State of
12 Texas, after having first been duly sworn, testified
13 as follows:
14

15 DIRECT EXAMINATION
16

17 QUESTIONS BY MR. BAX:

18 Q. Tell us your name, please.

19 A. Joe Escobar.

20 Q. Tell the members of the jury how you are employed.

21 A. I work for the Houston Fire Department. I am
22 classified as a paramedic. I have been working
23 for the fire department about four years.

24 Q. Could you briefly tell us what your background
25 and qualifications are for being a paramedic?