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(10/82) (testimony) (v. 24)

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RICARDO GUERRA

VOL. XXIV

TRIAL IN CHIEF

69.081

I N D E X

	<u>Page</u>
1	
2	
3	VOLUME XXIV
4	October 11, 1982
5	TRIAL IN CHIEF, CONTINUED
6	Jury Out 772
7	MOTION IN LIMINE HEARING
8	DEFENSE'S WITNESSES
9	Jose Manuel Esparza
10	Direct Examination (Elizondo) 772
11	Cross Examination (Moen) 774
12	Re-Direct Examination (Elizondo) 781
13	Jury In 781
14	Jose Manuel Esparza
15	Direct Examination (Elizondo) 782
16	Jury Out 787
17	Examination (Elizondo) 789
18	Jury In 790
19	Direct Examination, Cont. (Elizondo) 790
20	Cross Examination (Moen) 792
21	Jury Out 807
22	MOTION IN LIMINE HEARING, CONTINUED
23	Jose Luis Torres Luna
24	Direct Examination (Elizondo) 808
25	Cross Examination (Moen) 811

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page

VOLUME XXIV

TRIAL IN CHIEF, CONTINUED

STATE'S REBUTTAL WITNESS

Jerry Robinette

Direct Examination (Bax) 878

Cross Examination (Elizondo) 888

DEFENSE'S WITNESSES

Jose Manuel Esparza

Direct Examination (Elizondo) 772

Cross Examination (Moen) 774

Re-Direct Examination (Elizondo) 781

Jose Manuel Esparza

Direct Examination (Elizondo) 782

Examination (Elizondo) 789

Direct Examination, Cont. (Elizondo) 790

Cross Examination (Moen) 792

Ricardo Aldape Guerra

Direct Examination (Elizondo) 841

Cross Examination (Bax) 854

Re-Direct Examination (Elizondo) 876

Jose Luis Torres Luna

Direct Examination (Elizondo) 808

Cross Examination (Moen) 811

	<u>Page</u>
1	
2	Jury In 813
3	Jose Luis Torres Luna
4	Direct Examination (Elizondo) 813
5	Cross Examination (Moen) 321
6	Cross Examination, Continued (Moen) 831
7	Ricardo Aldape Guerra
8	Direct Examination (Elizondo) 841
9	Cross Examination (Bax) 854
10	Re-Direct Examination (Elizondo) 876
11	DEFENSE RESTS 877
12	STATE'S REBUTTAL WITNESS
13	Jerry Robinette
14	Direct Examination (Bax) 878
15	Cross Examination (Elizondo) 888
16	STATE AND DEFENSE CLOSE 889
17	
18	
19	
20	
21	
22	
23	
24	
25	

1 (The following proceedings were had
2 outside the presence of the jury.)

3 MR. ELIZONDO: Your Honor, I would
4 like to call my first witness, Manuel Esparza.

5
6
7
8 JOSE MANUEL ESPARZA,
9 was called as a witness on behalf of the Defense,
10 after having first been duly sworn, testified as
11 follows through an interpreter:

12
13 DIRECT EXAMINATION

14
15 QUESTIONS BY MR. ELIZONDO:

16 Q Tell the Court your name, please.

17 A Jose Manuel Barrosa.

18 Q (In Spanish)

19 A Yes. Esparza is my mother's maiden name.

20 MR. ELIZONDO: I'm sorry, Judge.

21 Q (By Mr. Elizondo) Is your name Esparza also?

22 A Yes, sir.

23 Q Do you recall back on July 13th of 1982 hearing
24 some gunshots?

25 A Yes, sir. I do.

1 Q. And after you heard those gunshots, did you see
2 a person walk or run into your house?

3 A. Yes, I did see.

4 Q. And who was that person?

5 A. The name of the boy was Antonio.

6 Q. And do you see him today in the courtroom in the
7 form of any mannequins?

8 A. Yes, sir.

9 Q. Point at him, please.

10 A. It is that one over there to the left.

11 Q. Describe his shirt and pants.

12 A. Well, he was dressed just like he is there.

13 Q. What kind of shirt does he have on right now?

14 A. It is sort of plum colored.

15 Q. And what color of pants does he have on right
16 now?

17 A. Sort of brown.

18 Q. And how soon after you heard the gunshots did
19 this man come into your house?

20 A. Well, something like three or four minutes,
21 certainly not more than five.

22 Q. And when he came into your house, what did he
23 tell you?

24 A. That he had just shot a policeman and he showed
25 me the gun.

1 Q. Was he -- what kind of condition was he in?

2 A. Well, he was sort of agitated. He had been
3 running.

4 Q. Did he do anything with that pistol?

5 A. Well, he just showed us the pistol that he had
6 just shot a policeman, and he had taken it away.

7 Q. Did he say it was a police officer's pistol?

8 A. Yes. He showed it to us. It was a large pistol.

9 MR. ELIZONDO: That is all we have,
10 Your Honor, for the purposes of this hearing.

11

12 CROSS EXAMINATION

13

14 QUESTIONS BY MR. MOEN:

15 Q. Where do you live?

16 A. In the street -- I think it is called Rusk. It
17 is the one at the park.

18 Q. What is the address?

19 A. It is at the corner of Rusk and Dumble. I think
20 it is 4907.

21 Q. What was Antonio's last name?

22 A. He never told us his family name.

23 Q. Did Ricardo Guerra live with you and at that
24 address, 4907?

25 A. Yes. He lived there for a while with us.

1 Q What is your date of birth?

2 A On June 11th.

3 Q What year?

4 A '63.

5 MR. ELIZONDO: Your Honor, may it
6 please the Court, I believe this is a hearing
7 on a Motion in Limine to determine whether
8 certain testimony is admissible, and I would
9 object to the prosecutor's line of questioning
10 as being inadmissible for this hearing.

11 Q (By Mr. Moen) What day are we talking about when
12 you heard the shots? What day was that?

13 A I don't remember the date.

14 Q Do you remember what month it was?

15 A Well, no.

16 Q You can't remember what month it was when Antonio
17 ran in and told you he had shot the police
18 officer?

19 MR. ELIZONDO: Your Honor, we would
20 object. He is going beyond the scope. I am
21 going to object again on our Motion in Limine
22 to determine whether these declarations that he
23 made on that day are admissible or not.

24 MR. MOEN: How can this be outside the
25 scope when he doesn't know what day, month, or

1 year it was?

2 THE COURT: Overruled.

3 Q. (By Mr. Moen) What month was it?

4 A. Well, I don't remember.

5 Q. Was it this year or last year?

6 A. Well, it was this year.

7 Q. Make your best guess as to what month he said those
8 things to you about shooting the police officer,
9 Antonio.

10 A. Well, it could have been towards the end of
11 August or the beginning of September, but I don't
12 really remember.

13 Q. Your best remembrance, though, is that it was the
14 end of August or beginning of September when
15 Antonio said these things to you?

16 A. Yes, sir.

17 Q. Okay. What time of the morning, afternoon, or
18 evening was it that Antonio said these things to
19 you when he said them?

20 A. Well, it was already at night.

21 Q. What time does he remember at night it to have
22 been? What time was it?

23 A. Well, it was sort of late, because we were about
24 going to bed. It must have been somewhere around
25 10:00 or after 9:00.

1 Q. Well, ask him, if you can, or if you would, his
2 best remembrance as to what time it was.

3 A. Well, I think somewhere around 10:00 o'clock,
4 because it was quite dark and we were about to
5 go to bed.

6 Q. Had you been drinking anything on this day?

7 MR. HERNANDEZ: Objection, Your Honor.
8 I think the interpreter mentioned the word beer
9 in Spanish, and I think the interpreter is not
10 asking the question directly as asked by Mr.
11 Moen.

12 THE COURT: I have no way of knowing
13 whether it was or not, but please repeat the
14 question exactly as asked.

15 Q. Had he been drinking any alcoholic beverages?
16 Let me limit it to that, whatever it might have
17 been.

18 A. Yes, he had been drinking some beer.

19 Q. How much beer had he been drinking?

20 A. It must have been two or three.

21 Q. When did he start drinking the beer on that
22 day?

23 A. Well, we hadn't been drinking for a long time.
24 We just had bought these beers.

25 Q. Where did you buy the beer at?

1 A In a shop that is just near the house.

2 Q How much beer did they buy?

3 A We bought something like two six-packs.

4 Q When did you start drinking the beer?

5 A You mean what hour?

6 Q How long before Antonio ran in and said he had
7 shot a policeman had you been started drinking
8 beer?

9 A Before Antonio arrived?

10 Q How long before did you start drinking?

11 A Something like an hour and a half.

12 Q And exactly how many beers did you have to drink,
13 as best as you can remember?

14 A It must have been something like three or two,
15 because we were ready to go to bed. You see,
16 my buddy there, he had already taken his shirt
17 off and I was in sandals, and we were ready to go
18 to bed.

19 Q Did you talk to some police officers the night
20 Antonio came in and said he shot a police
21 officer?

22 A That same night, no.

23 Q Did you talk to some police officers the next
24 day?

25 A No, sir.

1 Q. No?

2 Have you ever talked to any police
3 officers about the fact Antonio told you he had
4 shot a policeman?

5 A. No. I never talked to any policemen.

6 Q. Do you know what happened to Roberto Flores?

7 A. Who is Roberto Flores?

8 Q. Antonio.

9 A. You mean when they killed him?

10 Q. When was he killed?

11 A. I don't remember.

12 Q. Was it the same day he had told you he had shot
13 a policeman?

14 A. Yes, the same day.

15 Q. Were you present that night that he was shot
16 by the police?

17 A. That is to say I didn't see him when he was shot
18 at. I only saw him when he came to the house
19 and told us that.

20 Q. After he told you that, did you go to bed and
21 go to sleep?

22 A. No, sir.

23 Q. What did you do?

24 A. Well, we asked him for Ricardo, because he was our
25 friend, and he said, "Well, he must be coming."

1 Q Did you leave the house at 4907 Rusk after
2 Antonio told you he had shot the policeman?

3 A No, sir.

4 Q You stayed there at the house the whole night?

5 A We were outside because when the patrols
6 arrived, they took us out of the house, but we
7 didn't move from there.

8 Q The police took you out of the house?

9 A Yes. Some policemen.

10 Q Other than the police officer's gun, did Antonio
11 have any other guns with him?

12 A Yes. He had another pistol, another gun.

13 Q Can you describe it?

14 A Yes. I know the pistol, but I don't know what
15 caliber it is, because I don't know anything about
16 guns.

17 Q Can you describe it?

18 A Well, it was approximately this size and it was
19 all black, and the grip, I think, was sort of a
20 brown color.

21 Q Did you see Ricardo later that night?

22 MR. ELIZONDO: Your Honor, I object
23 again. This is a Motion in Limine trying to
24 determine whether or not the statement he heard
25 this man say is admissible and not a fishing

1 expedition.

2 THE COURT: That will be sustained.

3 MR. MOEN: Judge, that is all the
4 questions I have.

5 MR. ELIZONDO: Just one more question,
6 Your Honor.

7

8 RE-DIRECT EXAMINATION

9

10 QUESTIONS BY MR. ELIZONDO:

11 Q The day you heard Antonio say these things to you
12 was the same day he got killed; is that right?

13 A Yes. It was on the same day.

14 Q And when you say Antonio, you are referring to
15 this man here (indicating mannequin of Roberto
16 Carrasco Flores), or a facsimile of him?

17 A Yes, sir.

18 MR. ELIZONDO: That is all we have,
19 Your Honor.

20 MR. MOEN: No further questions.

21 Judge, we don't have any objections
22 to -- so far -- what has been proffered, as
23 far as statements by the deceased.

24 THE COURT: Bring in the jury, please.

25 (The jury returned to the courtroom,

1 were seated in the jury box, and in their
2 presence and hearing, the following proceedings
3 were had:)

4
5
6
7 JOSE MANUEL ESPARZA,
8 was called as a witness on behalf of the Defense,
9 after having first been duly sworn, testified as
10 follows through an interpreter:

11
12 DIRECT EXAMINATION

13
14 QUESTIONS BY MR. ELIZONDO:

15 MR. ELIZONDO: May I proceed, Your
16 Honor?

17 THE COURT: Yes.

18 Q. (By Mr. Elizondo) Tell the jury your name, please.

19 A. Jose Manuel Barrosa Esparza.

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

21 A. On Rusk street, 4907.

22 Q. Do you recall a day when you heard some gunshots
23 on or about July 13th, 1982?

24 MR. MOEN: I object to the form of the
25 question, Your Honor, as being leading and

1 suggestive. The witness' best memory is August
2 or early September, and I object to his trying
3 to refresh his memory in this manner.

4 THE COURT: Sustained.

5 MR. ELIZONDO: And I object to his
6 constant sidebar remarks.

7 MR. MOEN: That is not a sidebar remark.
8 He knows it is misleading.

9 THE COURT: Wait a minute. Wait a
10 minute. I sustained the objection as to the form
11 of the question. Let's don't have any further
12 sidebar remarks by either side in this case.

13 Q. Do you recall a day when you heard some gunshots?

14 A. Yes, sir.

15 Q. And you live at 4907 Rusk; is that correct?

16 A. Yes, sir. I still live there.

17 Q. Did you live there with a Ricardo Guerra?

18 A. Yes. He used to live there with us.

19 Q. Let me show you a facsimile of a person and ask
20 you if you can recognize this person?

21 A. Yes, sir.

22 Q. What did you know him by?

23 A. He told me that his name was Antonio. Antonio,
24 he said his name was.

25 Q. Did you know him by any other name?

1 A. No. That is all he told me.

2 Q. Now, the day you heard these gunshots, what time
3 of the day or night was that?

4 A. It was somewhere around 10:00, 10:30 at night.

5 Q. And on that night, did you see Antonio come into
6 your house?

7 A. Yes. He came into the house.

8 Q. How soon after you heard the gunshots did you see
9 Antonio walking to your house?

10 A. It was something like four minutes, maybe four or
11 three. I am not certain.

12 Q. And when you saw him, what kind of condition was
13 he in?

14 A. Well, he came running into the house and he was
15 agitated, sort of out of breath like he had been
16 running for some time.

17 Q. What kind of clothes was he wearing that day?

18 A. Well, he was wearing the same clothes, sort of
19 shirt -- sort of plum color, and the pair of
20 pants, sort of brown color.

21 Q. The same color he's got on right now?

22 A. Yes. The same kind.

23 Q. When he came into your house, did he tell you
24 anything?

25 A. Well, he said he had just killed a policeman. He

1 came in running and said, "I have killed a
2 policeman."

3 Q Did he show you anything at that time?

4 A. Yes. He showed me the gun of the policeman,
5 the one that he had just taken away from the
6 policeman.

7 Q And where did he have this gun?

8 A. Well, he had the gun of the policeman over here
9 --

10 THE INTERPRETER: Pointing to his
11 belt line.

12 A. -- and he had another gun in his hand.

13 Q And would you describe this other gun that he
14 had in his hand?

15 A. Yes, sir. It was about this size, and I don't
16 know what caliber it was, but it was black and
17 the grip was brown. I don't know whether it was
18 wood or it was plastic.

19 Q But it was black in color, was it not?

20 A. Yes. It was black.

21 Q And did he do anything with this pistol?

22 A. Well, he was carrying a clip and he had another
23 one here in his belt --

24 THE INTERPRETER: Or over here, he
25 said.

1 A -- and he took one out of the pistol and put
2 another one that had bullets into it.

3 Q Into his pistol?

4 A Yes. Into the small pistol.

5 Q Now, when Antonio came in, where was Ricardo
6 Guerra?

7 A Well, he wasn't there. Just saw him running, and
8 then we asked him where he was, and he said he
9 was coming running behind him.

10 Q Did you ever see Ricardo Guerra that night?

11 A Yes, I did see him.

12 Q How soon after you saw Antonio?

13 A You mean when he arrived?

14 Q Uh-huh.

15 A Well, shortly after he came in. You see, we asked
16 him where Ricardo was, and then we went outside
17 and we saw him coming running.

18 Q Where was he running from? What street?

19 A I think it is called Dumble. It is the street
20 that is right next to a house there that goes
21 towards the park.

22 Q If I am standing in front of the porch like this,
23 would it be the street on the right side, this
24 side, my right?

25 A Yes. The street that was over on that side.

1 Q. On the right side?

2 A. Yes, sir.

3 Q. Was he coming -- was he coming from the front of
4 me or the back of me, if you are facing Dumble
5 and standing on the porch at 4907 Rusk?

6 A. He was coming from the front, sir.

7 Q. Then what happened?

8 A. Well, he came to the house also, and the fellow
9 that was with me asked what was happening.

10 (The witness continued talking in
11 Spanish.)

12 (Discussion at the bench out of the
13 hearing of the court reporter.)

14 THE COURT: Ladies and gentlemen of
15 the jury, would you please go into the jury room?

16 (At this time, the jury returned to
17 the jury room, and outside their presence and
18 hearing, the following proceedings were had.)

19 MR. HERNANDEZ: Tell him not to be
20 nervous, but just to tell the truth. Tell him
21 that.

22 (The interpreter complied.)

23 MR. MOEN: Wait a minute now. I object
24 to counsel making any comments to the witnesses.
25 It is not the proper thing to do so. It is not --

1 MR. HERNANDEZ: Your Honor, I just --

2 THE COURT REPORTER: I'm sorry, but I
3 cannot take all of you talking at once.

4 MR. MOEN: Excuse me. My objection, I
5 object to Mr. Hernandez going up and making
6 comments in Spanish to the witness while he is
7 on the witness stand.

8 MR. HERNANDEZ: I basically asked Mr.
9 Lentz to tell the witness --

10 MR. MOEN: I don't care. After the
11 jury's been excused, going up and making comments
12 to the witnesses is improper.

13 MR. HERNANDEZ: And I believe Mr.
14 Elizondo asked this Court also if he could talk
15 to the witness, and the Court said yes.

16 THE COURT: I heard the statement made
17 by Mr. Hernandez to the witness, and I confirm
18 what he said to the witness.

19 What is the nature of your conversation,
20 if anything? What is it you want to talk to him
21 about?

22 MR. ELIZONDO: What Ricardo Guerra said,
23 what, if anything.

24 THE COURT: Let's get on the record
25 with that. Go ahead and ask him.

1 EXAMINATION

2
3 QUESTIONS BY MR. ELIZONDO:

4 MR. ELIZONDO: May I proceed, Your
5 Honor?

6 THE COURT: Yes, sir.

7 Q. (By Mr. Elizondo) When you saw Ricardo coming,
8 he was coming from the front of you, front of
9 the house?

10 A. Yes, sir. Coming from the front.

11 Q. And did you talk to him?

12 A. No. He didn't say anything to me.

13 Q. Did you say anything to anybody else?

14 A. Well, I don't know if he talked to the fellow
15 that was with me.

16 Q. After Ricardo came to the house, did you ask
17 them to leave?

18 A. Yes, we did. You see, both the fellow that was
19 with me and I, we asked him to leave the house,
20 because we didn't want to have any problems.

21 Q. And did they leave the house?

22 A. Yes. They left the house through the door that
23 is in back of it.

24 MR. ELIZONDO: For the purposes of
25 this Motion in Limine, that is all we are going

1 to ask at this time for the purposes of the
2 Motion in Limine. I believe the only reason
3 he is up there is to see if any declarations
4 of hearsay are admissible or not.

5 THE COURT: Do you have questions?

6 MR. MOEN: No, sir. I haven't heard
7 any declarations at all yet.

8 MR. ELIZONDO: That is why I wanted
9 to talk to the Court.

10 THE COURT: Bring out the jury.

11 (At this time, the jury returned to
12 the courtroom, were seated in the jury box, and
13 in their presence and hearing, the following
14 proceedings were had.)

15 THE COURT: You may proceed.

16
17 DIRECT EXAMINATION, CONTINUED

18
19 QUESTIONS BY MR. ELIZONDO:

20 Q. And when you saw Ricardo Guerra coming, did he
21 enter the house?

22 A. Yes. He did enter the house.

23 Q. And did he tell you anything?

24 A. No. He didn't say anything to me.

25 Q. Did you later tell him and Antonio to leave the

1 house?

2 A. Yes. Both my companion and I ran him out of the
3 house. We didn't want any problems.

4 Q. And which way did they exit the house?

5 A. Through a door that is in the rear of the house.

6 Q. Did any police officers come and talk to you?

7 A. Yes. After we ran them out. A little while
8 later.

9 Q. Did these police enter the house?

10 A. Yes. They entered the house and they took us
11 outside, both me and the other fellow that was
12 there.

13 Q. What part of the outside?

14 A. Outside to the porch from the street side.

15 Q. How many police officers were there?

16 A. Well, there were about seven, I think, and there
17 was also a lady officer.

18 Q. Did anybody have their guns drawn?

19 A. Yes. The majority of them.

20 Q. Did anybody have their guns drawn on you?

21 A. No. They just took us out and made us lay down
22 on the ground and they stood over us.

23 Q. Did you ever hear any other gunshots?

24 A. That incident, no.

25 Q. How about later on that night?

1 A Yes. A little bit later, we heard some shots.

2 Q And where were those shots coming from?

3 A Just beyond the house.

4 Q Did you, at a later time, find out that Antonio
5 had been killed?

6 A Yes. A little later. That same day.

7 MR. ELIZONDO: Pass him, Your Honor.

8

9 CROSS EXAMINATION

10

11 QUESTIONS BY MR. MOEN:

12 Q What is your date of birth, please, sir?

13 A June 11th, '63.

14 Q Is your memory pretty good about everything you
15 have told the jury as you remember it?

16 A Yes, sir.

17 Q And I believe your memory also is that this
18 event that you have described to the jury took
19 place either at the end of August or the beginning
20 of September of this year. Is that the way you
21 remember it?

22 A Yes, sir.

23 Q And you are clear on when this took place, the end
24 of August or early September? That is as clear
25 in your mind as the other facts you described to

1 the jury?

2 A. Yes. I am quite certain, but the exact date,
3 I don't remember.

4 Q. Well, think back as best you can remember. Is
5 the end of August or beginning of September, as
6 best you can remember, when Antonio was shot by
7 the police?

8 A. No. I don't remember.

9 Q. You can't remember when it was, now, that Antonio
10 told you these things, what month?

11 A. No. I don't remember.

12 Q. You told the jury just a second ago it was the
13 end of August or early September. Is that the
14 best you remember?

15 A. Well, yes. Those were the months, but I am not
16 certain of which day it was.

17 Q. Well, the months are right, but you are not
18 exactly sure as to the day; is that correct?

19 A. No, I don't remember what day it was.

20 Q. Okay. Had you been drinking the night that this
21 took place, Antonio told you he had shot the
22 policeman?

23 A. Yes, sir.

24 Q. What had you been drinking?

25 A. Beer.

1 Q. Anything else? Any whiskey?

2 A. No. Beer only.

3 Q. How many beers had you had before Antonio
4 came in and said he had shot the policeman?

5 A. Well, I think it was two, two or three. I don't
6 think there were any more.

7 Q. Did you have any beers after Antonio left, after
8 Antonio and Ricardo left the house?

9 A. No. You see, we just had bought these, and it
10 was just time to go to bed, and we didn't drink
11 any more.

12 Q. Now, what time was it the police arrived at your
13 house, 4907 Rusk?

14 A. You mean to say when they came and took us out
15 of the house?

16 Q. Right.

17 A. It must have been something like 11:00 o'clock.

18 Q. 11:00?

19 A. Well, I don't know the exact time, but it was
20 around about that time.

21 Q. Who else was there at the house with you besides
22 yourself?

23 A. There was a fellow that lived there with us and
24 myself.

25 Q. What is his name?

1 A. His name is Jose Luis.

2 Q. What is his last name?

3 A. I don't know his last name. I think it is
4 Torres or Luna. I think it is Jose Luis Torres
5 Luna.

6 Q. Other than yourself and Jose Torres Luna, who
7 else lived at the house? Not who else was there,
8 but who else lived at the house?

9 A. There were two other buddies living there.

10 Q. What were their names?

11 A. One of them was called Roberto Onofrio and the
12 other one, I don't recall his name.

13 Q. And, Enrico Torres: Does that ring a bell in
14 your mind?

15 A. Yes. That is the brother of Jose.

16 Q. Is it your testimony when the police came and got
17 you out of the house there at 4907, the only
18 other person present besides yourself was Jose
19 Torres Luna?

20 A. That is correct. It was only he and I.

21 Q. And Roberto Onofrio and Enrico Torres: They were
22 not around anywhere?

23 A. No. At that time, they were paying rent.

24 Q. And you didn't go with them when they went to pay
25 the rent?

1 A No. There were Roberto and Enrico and another
2 fellow we know called Jacinto, and they went to
3 pay the rent.

4 Q Is that Jacinto Lopez?

5 A I don't know what his family name is.

6 Q In fact, Jacinto Lopez is the owner of the black
7 and red car, isn't he?

8 A Yes, sir. That is right.

9 Q Were you present at 4907 Rusk earlier in the
10 evening when Ricardo and Antonio left together
11 in Jacinto's car?

12 A Yes, sir.

13 Q About what time did Ricardo and Antonio leave
14 in Jacinto's car?

15 A I don't remember. It must have been something
16 like 9:30 or 9:00 o'clock.

17 Q Who did Jacinto give the car keys to, Ricardo
18 or Antonio?

19 A He gave it to Ricardo.

20 Q Have you seen Ricardo in possession of this gun
21 when he lived there at 4907 Rusk?

22 A I never saw him carrying -- never with an arm.

23 Q Never saw him with a pistol in his possession
24 such as this when he lived over there with you at
25 4907 Rusk?

1 A No. He never showed that to me.

2 Q Well, even if he didn't show them to you, have
3 you ever seen him with such a gun?

4 A No, sir.

5 Q Now, have you given a statement to the police
6 in this case?

7 A No. I haven't talked to the police. No.

8 Q In fact, you have never talked to the police,
9 have you?

10 A No. They never took my name or anything else.

11 Q Never took your name?

12 A Not until last Friday when we left here. A
13 policeman took our names.

14 Q That is the first time any police officers ever
15 took your name that you know of?

16 A There was some other gentleman who took my name,
17 but he wasn't a policeman. He was dressed in
18 civilian clothes.

19 Q Was that an investigator for Mr. Elizondo or Mr.
20 Hernandez?

21 A No. He was one of those agents that were out
22 there investigating. They were asking who lived
23 there.

24 Q Did you ever talk to the police the night Antonio
25 was shot?

1 A. No. No, sir.

2 Q. And you never talked to the police the day after,
3 did you?

4 A. Well, you see, they never asked us anything. They
5 just went through the house and searched it.
6 They never asked us anything.

7 Q. You never talked to the police the day after
8 Antonio was shot either, did you?

9 MR. MOEN: Your Honor, I believe that
10 calls for a yes or no answer.

11 THE INTERPRETER: Could you repeat the
12 question, please?

13 Q. (By Mr. Moen) You never talked to the police
14 the day after Antonio was shot either, did you?

15 A. No, sir.

16 Q. The fact is, you have never talked to the police
17 about what you have told the jury here this
18 morning, have you?

19 A. No. I never talked to anybody.

20 Q. You have talked to Mr. Elizondo and Mr. Hernandez
21 about this though, haven't you?

22 A. Yes, sir.

23 Q. Now, you know -- or when did you first find out
24 that your friend, Ricardo, was charged with
25 having killed the police officer? When did you

1 first find that out?

2 A. Well, that next day.

3 Q. So the next day after Antonio was killed, you
4 learned or knew that your friend, Ricardo, was
5 charged with having killed that police officer;
6 is that correct?

7 A. Well, I didn't see that in the papers, newspapers.
8 It was just our friends that were talking about
9 it and saying that he had been accused of doing
10 it.

11 Q. Okay, and you learned that the day after Antonio
12 was shot and killed?

13 A. Yes, sir.

14 Q. And you knew that your friend, Ricardo, didn't
15 kill the police officer because Antonio told you
16 he did? Is that true?

17 A. Yes. Antonio told me he had shot a policeman,
18 killed a policeman.

19 Q. Yet after Antonio told you that, you never came
20 down to the police or did anything as far as
21 telling the police what you knew so that you could
22 help your friend, Ricardo, did you?

23 A. Do anything about it? What do you mean by that?

24 Q. Well, you let your friend, Ricardo, be charged
25 with killing this police officer when you knew

1 Antonio told you he did it. That is true, isn't
2 it?

3 A. I don't understand you. You mean by that that
4 I was allowing him to be accused of it?

5 Q. That is exactly right.

6 A. Well, you see, nobody ever said anything to me
7 yet, so all I knew about it was from some of the
8 comments that my buddies and people around were
9 making.

10 Q. You let your friend, Ricardo, go to trial for
11 killing a police officer when you knew this
12 man, in fact, told you he killed a police officer.
13 That is what you have done, isn't it?

4 A. Well, yes. You see, there wasn't anything I could
15 do about it.

16 Q. And you have waited to come down here, and, so
17 to speak, spring it on the jury panel at Ricardo's
18 trial rather than tell the police before Ricardo
19 went to trial. That is what you have done, isn't
20 it?

21 A. Well, it is the only place where I could say so.
22 Nobody ever asked me to do anything.

23 Q. So before you would tell anyone your friend,
24 Ricardo, was innocent, they had to ask you first?

A. No. After a while, the lawyers were there, and,

1 you see, I was scared because the day the police
2 were there and they took us out there, I got
3 scared.

4 Q Scared enough to where you didn't tell the
5 police anything until today, October 11th, about
6 how Ricardo didn't kill this police officer?

7 A. That's right. I had never talked about it.

8 Q Isn't it, in fact, true that the night Antonio
9 was shot and killed by the police, the police
10 did ask you if you knew anything about this,
11 didn't they?

12 A. Well, they didn't ask me anything. You see,
13 they took us out there and then they asked us
14 if we had seen anybody and we hadn't seen anybody.

15 Q Well, the police did talk to you about this, didn't
16 they?

17 A. Well, yes. They did discuss if we had seen
18 anybody running around there, but we didn't
19 see anything.

20 Q You told them you didn't see anything?

21 A. That is what we said.

22 Q And, of course, that was your way of helping your
23 friend, Ricardo, and Antonio out, wasn't it?

24 A. No. I wasn't helping them in any way.

25 Q Well, Antonio runs into your house and he tells you

1 that Ricardo is running behind him. He tells
2 you that he's got a gun he took from a police
3 officer he has just shot, and later on, the
4 police come and get you out of your house and
5 ask you if you have seen anyone running and you
6 say, "No," and you are not helping anybody out.
7 Is that what you are telling the ladies and
8 gentlemen of the jury?

9 THE INTERPRETER: I will try to keep
10 up with that.

11 MR. MOEN: As best you can, if you
12 could repeat that.

13 THE INTERPRETER: I am not certain
14 that I kept up with the whole thing. Would you
15 please repeat it in parts?

16 Q. (By Mr. Moen) You said you were not trying to
17 help anyone out. The night Antonio was shot,
18 he runs into your house, this man, and said he
19 shot a police officer. He shows you a gun that
20 he said came from a police officer?

21 A. Yes, sir.

22 Q. You told the jury he was running and agitated?

23 A. Yes, sir.

24 Q. Antonio tells you Ricardo is running behind him?

25 A. Yes, sir.

1 Q You asked them to leave the house because you
2 didn't want any trouble; is that correct?

3 A Yes.

4 Q Then when the police asked you later if you had
5 seen anyone running, you tell them no? Well, yes
6 or no?

7 A Well, because I was afraid that the police would
8 do something to me.

9 Q You told the police, "No," when they asked if
10 you had seen anyone running? Yes or no?

11 A Yes. I said that.

12 Q And now you are telling the jury that you weren't
13 trying to help anyone out?

14 A No. I am not trying to help anyone. I am only
15 saying the truth of what they told me. Well, see,
16 the ones who were taken out of the house with
17 the drawn guns, I had never seen anything like
18 that.

19 Q The fact of the matter, you helped your friend,
20 Antonio, and Ricardo that night, didn't you, or
21 tried to?

22 MR. ELIZONDO: Objection, Your Honor.
23 That has been asked and answered. Repetitious.

24 THE COURT: Overruled.

25 A In that case, I would have left him inside the

1 house.

2 Q When the police asked you if you had seen anyone
3 running, you said no?

4 A Yes. I have said I haven't.

5 Q You tried to help Ricardo. You tried to help
6 Antonio just like you are trying to help Ricardo
7 today. Isn't that true?

8 MR. ELIZONDO: Objection. Repetitious.
9 That's been asked and answered.

10 THE COURT: Sustained.

11 Q (By Mr. Moen) The fact of the matter is that you
12 also told the police you weren't even at your
13 house when the shooting took place; isn't that
14 right?

15 THE INTERPRETER: That who wasn't even
16 --

17 Q (By Mr. Moen) That you weren't even home.

18 You told the police that, didn't you,
19 when they talked to you?

20 A No. They didn't ask me about that.

21 Q Didn't ask you whether you were home when the
22 shooting took place? No police officer asked you
23 that?

24 MR. ELIZONDO: Objection, Your Honor.
25 Repetitious.

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THE COURT: Overruled.

MR. MOEN: It's the first time it's been asked, Judge.

A. Well, you see, they saw us there. They assumed we lived there because they were the ones that took us out.

MR. MOEN: I wonder if you might ask him to respond to the question I asked him.

(Interpreter talked to witness in Spanish.)

Q. (By Mr. Moen) You told the police you were not home earlier in the evening, isn't that right, when the shots were fired?

A. That -- if I was at the house?

Q. You told the police when they talked to you, when they came and took you out of the house and talked to you, you told the police you were not even home when the first shots were fired; isn't that right?

A. Well, the police never asked me that question.

Q. All right. No one ever asked you that?

A. No, sir.

Q. And you never made that statement?

A. No, not with the police. It was only when later on a person in civil clothing asked me that

1 question.

2 Q When did you first talk to either Mr. Elizondo
3 or Mr. Hernandez? When is the first time you
4 talked to either one of those lawyers?

5 A I don't remember the exact date, but it's been
6 something like about a month.

7 Q And did you tell them what you have told the
8 jury here today?

9 A Yes, sir. That is what they asked me.

10 Q Did you make a written statement to Mr. Elizondo
11 or Mr. Hernandez?

12 A Yes. One of them took it down, but I didn't write
13 anything.

14 Q Did you sign anything?

15 A I didn't sign anything.

16 MR. MOEN: At this time, we would make
17 a request to see any written statement the witness
18 might have given.

19 MR. ELIZONDO: Your Honor, all I have
20 is the statement that I took down as to what he
21 said, what he's told this jury; no written
22 declaration of his attributed to him written
23 down in the correct sense of the word.

24 THE COURT: Proceed.

25 MR. MOEN: Pass the witness.

1 THE COURT: Anything further on
2 re-direct?

3 MR. ELIZONDO: Nothing further.

4 THE COURT: Thank you, sir. You may
5 step down.

6 Call your next.

7 MR. ELIZONDO: Your Honor, may we
8 approach the bench?

9 MR. MOEN: We need him to remain for
10 identification purposes.

11 (Discussion before the bench out of
12 the presence of and hearing of the court
13 reporter.)

14 THE COURT: Members of the jury, would
15 you please rise and retire? Please go into the
16 jury room.

17 (Whereupon the jury retired from the
18 courtroom, and out of their presence and hearing,
19 the following proceedings were had.)

20 MR. ELIZONDO: Judge, the last time
21 we had the Motion in Limine, the Prosecution was
22 allowed to go into other matters. I believe this
23 is a Motion in Limine to determine whether or not,
24 first of all, any declarations this man made,
25 State's Exhibit 20, will be admissible, and that's

1 all. It is not a fishing expedition.

2 THE COURT: It will be limited to that
3 purpose.

4 Call your witness.

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8 JOSE LUIS TORRES LUNA,
9 was called as a witness on behalf of the Defense,
10 after having first been duly sworn, testified as
11 follows through an interpreter:

12
13 DIRECT EXAMINATION

14
15 QUESTIONS BY MR. ELIZONDO:

16 MR. ELIZONDO: May I proceed, Your
17 Honor?

18 THE COURT: Yes.

19 Q. (By Mr. Elizondo) Tell the Court your name,
20 please.

21 A. Jose Luis Torres Luna.

22 Q. Mr. Torres, let me take you back to July 13th of
23 1982 and ask you if you heard any gunshots that
24 day?

25 A. Yes, I did hear some.

1 Q And what time of the day or night was that?

2 A It would have been something about 10:30 or
3 11:00 o'clock, more or less, but I don't know
4 exactly.

5 Q And did anybody walk in or run into your house?

6 A Someone did come in running.

7 Q How soon after you heard the gunshots?

8 A That was something like three to five minutes,
9 between three or five minutes.

10 Q And who ran into your house?

11 A The Werro, the light one.

12 Q Do you see him in the courtroom today or do you
13 see a facsimile of him?

14 A Yes.

15 MR. LENTZ: He is pointing towards the
16 mannequin and saying --

17 A Something like him. Similar to that. Not
18 exactly.

19 Q What color shirt was he wearing that day?

20 A Same as he is dressed now.

21 Q And what kind of condition was he in when you saw
22 him?

23 A Well, he wasn't dying yet.

24 Q Well, did he tell you anything?

25 A Oh, yes. He told me that he had just killed a

1 policeman.

2 Q. And what kind of condition was he in when he told
3 you that?

4 A. What condition was I in or who?

5 Q. What kind of condition was Werro in?

6 A. Well, he was -- he came running and he was sort
7 of out of breath.

8 Q. And what was the first thing he told you when
9 he walked or ran into the house?

10 A. Well, he said that he had just shot -- killed a
11 policeman and he was carrying a gun.

12 Q. Did you at a later time see Ricardo Aldape
13 Guerra?

14 A. Yes. He was arriving there and I asked him what
15 happened and he said, "Well, the Werro has killed
16 a policeman."

17 Q. Now, what kind of condition was Ricardo in when
18 he told you that?

19 A. Well, he was also out of breath.

20 Q. And how soon after Werro ran into your house did
21 Ricardo walk into your house?

22 A. Around a minute or two minutes.

23 MR. ELIZONDO: That is all we have for
24 the limited purposes of this hearing.

25 THE COURT: Any questions, Mr. Moen?

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MR. MOEN: Yes, sir. I do have, Judge.

CROSS EXAMINATION

QUESTIONS BY MR. MOEN:

Q Where were you at when --

Now, what name did you know him by,
first of all? What name did you know this man by?

A. Which one of the two?

Q The second one, furthest from him.

A. The Werro.

Q Is that the only name you knew him by?

A. Antonio.

Q You knew him by Antonio, too?

A. Yes. I only knew -- I also knew that he was
called Antonio or Tonio.

Q Did you ever hear the name Roberto Torres in
connection with this man?

A. No. I never saw him.

Q I don't know whether or not you saw him or not,
but did you ever know him by the name of Roberto
Carrasco Flores?

A. No. I did not know him.

Q Now, where were you at when you say Antonio came
running in and made these statements? What

1 address were you at?

2 A. I was inside the house.

3 Q. Which house? Where? What is the address?

4 A. It is on Rusk street, but I don't know the
5 number.

6 Q. Well, how long had you lived there?

7 A. I?

8 Q. No. The court reporter.

9 MR. ELIZONDO: Objection, Your Honor,
10 to the sidebar.

11 Q. (By Mr. Moen) Who do you think I am talking
12 about?

13 THE COURT: Sustained.

14 Q. How long had you lived there?

15 A. I left town May 9th.

16 Q. Do you still live there now?

17 A. Yes. I still live there.

18 Q. Had you been drinking this night? Had you had
19 any alcoholic beverages?

20 MR. ELIZONDO: Your Honor, I believe
21 this is a Motion in Limine hearing to determine
22 whether these statements are admissible.

23 MR. MOEN: Certainly his ability to
24 recall, Judge, whether or not they were is certainly
25 relevant as to whether these statements would be

1 admissible.

2 MR. ELIZONDO: They would certainly
3 be proper for cross-examination.

4 THE COURT: I agree with that.

5 Bring out the jury. Bring out the jury,
6 please, sir.

7 (At this time, the jury returned to the
8 courtroom, and in their presence and hearing, the
9 following proceedings were had.)

10 THE COURT: All right. Proceed.

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14 JOSE LUIS TORRES LUNA,
15 was called as a witness on behalf of the Defense,
16 after having first been duly sworn, testified as
17 follows through an interpreter:

18
19 DIRECT EXAMINATION

20
21 QUESTIONS BY MR. ELIZONDO:

22 Q. Tell the jury your full name, please.

23 A. Jose Luis Torres Luna.

24 Q. And, Mr. Luna, where do you live?

25 A. It is on Rusk street near Dumble.

1 Q A two-story white house, is it not?

2 A Yes, sir.

3 Q Do you live there with Manuel Esparza?

4 A Yes. We live there together.

5 Q Let me take you back to July 13th, 1982, and ask
6 you to tell this jury if you recall hearing any
7 gunshots that night?

8 A Yes, I did hear something.

9 Q And could you tell this jury what time of the day
10 or night that was?

11 A I don't recall exactly, but it was somewhere
12 between 10:30 and 11:00 o'clock.

13 Q After you heard the gunshots, did you see anybody
14 walking or running to your house?

15 A Yes, sir.

16 Q And who was that?

17 A The Werro.

18 Q Was he running or walking?

19 A He came running.

20 Q Do you see a facsimile of Werro in the courtroom
21 today?

22 A The one that is over there on that side.

23 Q If you are facing him, he would be on your right
24 side or left side?

25 A On the right side.

1 Q And could you tell the jury what kind of clothes
2 he was wearing that day?

3 A Well, it seems that he was dressed like he is now.

4 Q What kind of condition was he in when you first
5 saw him?

6 A When he came running in?

7 Q Yes, when he came running in.

8 A Well, he was out of breath and he said he had
9 killed a policeman.

10 Q Did he show you a gun?

11 A Yes. He was carrying one, and he had another
12 one of the policeman's which was large.

13 Q Where was the policeman's pistol?

14 A It seems he had it stuck in here.

15 MR. LENTZ: Pointing to his belt line.

16 Q (By Mr. Elizondo) And where was the other
17 pistol?

18 A He had it in his hand, but no, I don't remember
19 where it was.

20 Q Did he ever take out the other police officer's
21 pistol?

22 A Well, yes. He gave it to me and said, "I give
23 it to you as a present," but I didn't touch it.

24 Q Did he tell you -- strike that.

25 Did you ever see him load or unload a

1 pistol?

2 A. Yes. He loaded a pistol.

3 Q. Which pistol was it that he loaded?

4 A. Not the policeman's. It was the other one that he
5 was carrying.

6 Q. How did he load it?

7 A. Like this.

8 MR. LENTZ: And he is making a gesture.

9 MR. ELIZONDO: May I approach the
10 witness?

11 May the bailiff check this weapon?

12 (The bailiff complied.)

13 Q. (By Mr. Elizondo) Show the jury how he loaded that
14 pistol.

15 A. He loaded it like this.

16 Q. What did he put in there? Do you know?

17 A. It is a clip.

18 Q. After Werro came into your house, did Ricardo
19 show up?

20 A. Yes, a little while later; something like one,
21 two minutes after that, Ricardo arrived.

22 Q. Where did he come from?

23 A. Ricardo was coming along Dumble --

24 MR. LENTZ: Making a gesture with his
25 hand.

1 A -- moving from right to left.

2 Q Let me ask you, if I am standing in front of your
3 porch like this and Dumble is on my right, which
4 way was he coming from, in front or in back of
5 me?

6 A Well, you see, Dumble runs this way and Rusk this
7 way, and the house is over here, and he came
8 turning the corner like that.

9 Q So, he was coming from Dumble?

10 MR. LENTZ: Positive motion of the head.

11 Q (By Mr. Elizondo) And did he come into the
12 house?

13 A Yes, he did go in.

14 Q And did he tell you anything?

15 A They asked him what had happened, and he said
16 Werro had just killed a policeman.

17 Q When you heard all this, what kind of condition
18 was Ricardo Guerra in when you saw him enter
19 your house?

20 A He was out of breath.

21 Q After he walked into your house and told you what
22 Werro had done, what did you tell them?

23 A The Werro said to me he was going to defend
24 himself. He said, "I am going to defend myself
25 from him."

1 Q. Who is that?

2 A. The Werro.

3 Q. State's Exhibit 20 right here?

4 A. Yes, sir. The one that is over on that side.

5 Q. And what did you tell him?

6 A. I told him that he should leave the house because

7 I didn't want any problems.

8 Q. And did they leave?

9 A. Yes. They left.

10 Q. How did they leave the house? Through which

11 door?

12 A. Through the rear door.

13 Q. Did you at a later time hear any more gunshots?

14 A. Well, that was only when the policemen were having

15 it out with them.

16 Q. Did you later find out that Werro was killed?

17 A. Yes. He said that he preferred to be killed

18 than to surrender.

19 Q. Who said that?

20 A. The Werro.

21 Q. Now, during all this time, were any police officers

22 around your house or in your house or --

23 A. Outside.

24 Q. Did they ever go into your house?

25 A. Yes. They went in.

1 Q And where were you when they entered your house?
2 A Well, I was inside and they took me outside.
3 Q Now, how many officers were there out there when
4 they took you outside?
5 A There were a lot of them. There were several
6 cars there, and there were many patrols there.
7 Q Did they have their guns drawn or undrawn?
8 A The policemen?
9 Q Yes.
10 A Yes. They had their guns drawn.
11 Q When you were asked to go outside, did you go
12 outside?
13 A Yes. I went out with my hands up.
14 Q And what happened next?
15 A She asked me who was inside, and I told them
16 nobody.
17 Q Now when they asked you this question, were there
18 weapons on or about your body?
19 A If I was carrying a gun?
20 Q Were there any weapons pointed at you or about
21 your body?
22 A Yes. They put a gun in the back of my head.
23 Q And were you standing or sitting when they had
24 this gun pointed at the back of your head?
25 A Well, they threw me down on the porch there,

1 facedown.

2 Q And that is when they asked you who else was in
3 there when the gun was pointed at your head?

4 A Well, they asked me who else was in the house,
5 and I said nobody, because there wasn't anybody.

6 Q Now, Roberto Onofrio lives there; is that
7 right?

8 A Yes. He lives there.

9 Q Where was he all this time?

10 A They had gone to pay the rent.

11 Q And where do you pay the rent?

12 A Well, it is over one block this way, and then
13 two more over this way.

14 Q Now, when you say they went to pay the rent, who
15 are you speaking about?

16 A My brother, Jacinto, and Enrico.

17 Q When you were facedown on the floor, did they
18 ever show up there? By "they," I mean Jose, your
19 brother, and Enrico.

20 A No. You see, all this took place while they were
21 paying rent, and they didn't arrive there yet.

22 Q Did they arrive at your house before the
23 shooting or after the shooting at Rusk street?

24 A Well, you see, they went to pay the rent, and when
25 all this took place, they hadn't come back yet.

1 Q So, at that time, there was only two of you in
2 the house; is that right?

3 A Yes, sir.

4 Q How many people live in that house?

5 A Four.

6 MR. ELIZONDO: We will pass him, Your
7 Honor.

8

9 CROSS EXAMINATION

10

11 QUESTIONS BY MR. MOEN:

12 Q Now, what had you been drinking the night Antonio
13 was shot?

14 THE COURT: Would you ask whether he
15 had alcoholic beverages? The interpreter has a
16 problem interpreting that.

17 MR. MOEN: Do you have problems
18 interpreting drinking?

19 THE INTERPRETER: Yes. It could be
20 Coke or orange juice.

21 MR. MOEN: Limit it to alcoholic
22 beverages, would you?

23 THE INTERPRETER: Yes.

24 A Oh, about two beers.

25 Q How much had Jose Manuel had to drink?

1 A. Well, the same. We only had one six-pack. We
2 had two six-packs and some sodas.

3 Q. Two six-packs and some sodas?

4 A. Yes, sir, and some soda.

5 Q. When had you bought the beer?

6 A. I don't know, because I didn't buy it.

7 Q. When did you start drinking? How long before
8 Antonio got shot did you start drinking beer?

9 A. Something like an hour, but we never finished up
10 this time because the police arrived.

11 Q. Ricardo Guerra lived at a house with you, too,
12 didn't he?

13 A. He did live, yes.

14 Q. And earlier in the evening, all of you were there,
15 weren't you: yourself, Jose, Manuel Esparza,
16 Ricardo Guerra, and Antonio? You were all present
17 at that house, weren't you?

18 A. Yes, sir.

19 Q. And, Jacinto Lopez Torres Luna also lived at the
20 house, too, didn't he?

21 You lived there, your brother, Enrico,
22 and Roberto Onofrio, and Jacinto Lopez all lived
23 at that house, didn't you?

24 A. They were all present, but they didn't all live
25 there. Jacinto didn't live there.

1 Q. Ricardo Guerra lived there?

2 A. No. He had left something like two or three days
3 before that. He had moved.

4 Q. To where?

5 A. I don't know.

6 Q. Well, you said five people or four people were
7 living there. Who was living with you back at the
8 time Antonio was shot?

9 A. Enrico Torres Luna, my brother, Roberto Onofrio,
10 Jose Manuel, and myself.

11 Q. And Ricardo had just moved out two days earlier,
12 three days earlier?

13 A. Yes, sir.

14 Q. Now, who was there earlier in the evening before
15 Ricardo left?

16 A. Do you mean by that who was there at the house
17 that --

18 Q. Who was there at the house before Ricardo left
19 the night the police officer was shot?

20 A. The persons I just mentioned.

21 Q. In addition to Antonio? He was there, too, wasn't
22 he?

23 A. Yes. He was there, too.

24 Q. Ricardo and Antonio left together, didn't they?

25 A. Yes, sir.

1 Q. Ricardo borrowed Jacinto Lopez's car, didn't he?
2 A. Yes. Jacinto lent the car to Ricardo.
3 Q. It is a black and red car, isn't it?
4 A. Yes, with red on top. Yes.
5 Q. Have you ever seen your friend, Ricardo Guerra,
6 in possession of a gun like this?
7 A. Yes, sir.
8 Q. Did you see him in possession of a gun like this
9 the night the police officer was shot, when he
10 came running in the house?
11 A. Yes, sir.
12 Q. How long had you seen Ricardo in possession of that
13 gun? How many days before the police officer
14 was shot had you seen him with that gun?
15 A. I couldn't say exactly, but I had seen him with
16 it.
17 Q. When?
18 A. I couldn't say exactly.
19 Q. Your best guess. I don't need an exact answer.
20 A. A week or two weeks.
21 Q. A week or two weeks before the police officer was
22 shot you saw Ricardo with that gun?
23 A. Yes, sir.
24 Q. And did Ricardo carry that gun with him all the
25 time?

1 MR. ELIZONDO: Your Honor, I object
2 to the counselor going into any prior extraneous
3 offenses. We would object on that ground.

4 THE COURT: As to that particular
5 question, I will overrule the objection.

6 Q (By Mr. Moen) Did Ricardo Guerra carry that gun
7 with him all the time?

8 A. No, I don't know him to.

9 Q Did everybody at that house there at 4907 Rusk
10 have a gun with them they carried around?

11 A. No, sir.

12 Q Just Antonio and Ricardo? Those were the only
13 two that carried guns with them?

14 A. Yes, sir.

15 Q Now, were you looking out the window when Ricardo
16 came running up to the house there on Rusk
17 street?

18 A. Yes, sir.

19 Q You weren't talking to Antonio? You were looking
20 out the window?

21 A. Yes, sir.

22 Q Well, then, how did you have this conversation
23 with Antonio you have described for the jury
24 if you were looking out the window? Was he
25 talking to the back of your head?

1 A. Which conversation?

2 Q. The conversation that you have just described to
3 the jury a few minutes earlier. The one you say
4 you had with Antonio.

5 A. Well, you mean when I talked with him? Yes. You
6 see, I talked to him first, and then I went to the
7 window.

8 Q. You talked to Antonio first and then you went and
9 looked out the window?

10 A. Well, this was just immediately then. There
11 was no delay between them.

12 Q. I am sorry. Go ahead.

13 A. There was no delay between them.

14 Q. And you looked out the window so you could see
15 which way your friend, Ricardo, was coming from?
16 Is that why you looked out the window?

17 A. Well, you see, I asked Antonio what had happened
18 to him, and Antonio said, "Well, he stayed behind
19 over there," and that is when I went to the
20 window and I saw him come running.

21 Q. You looked out of the window so you could see
22 which direction you friend, Ricardo, was coming
23 from?

24 MR. HERNANDEZ: Objection. He hasn't
25 finished the answer at all.

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Come running from?

A. On Dumble.

MR. HERNANDEZ: That is what he hadn't finished saying.

Q. (By Mr. Moen) You looked out the window so you could see which direction your friend, Ricardo, was running from? Is that why you looked out the window?

That either takes a yes or no answer. He either looked out the window for that reason or he didn't.

A. Well, I didn't see where he was coming from, but when I went to the window, I saw him come running.

MR. HERNANDEZ: Objection again, Your Honor. I don't think that was the answer.

Perhaps if he will answer it one more time.

MR. MOEN: Perhaps he can have it on cross-examination.

THE COURT: One at a time.

Members of the jury, go into the jury room.

MR. MOEN: Judge, my objection is to his --

THE COURT: Just a minute. Just a

1 minute.

2 (At this time, the jury retired to the
3 jury room, and out of their presence and hearing,
4 the following proceedings were had.)

5 MR. MOEN: My objection is to his
6 continued interruption of the responses from the
7 interpreter. If he has an objection to make or
8 has something he wants to clear up, he can do it
9 on cross-examination.

10 If he has an objection to make, that
11 is fine. But, he is not an interpreter in the
12 case. His version of what he thinks the witness
13 said is not the version he is to relate to the
14 jury by way of sidebar remarks.

15 I would like, if he has an objection
16 in that regard, to take it up in front of the
17 bench or wait until cross-examination rather
18 than blurt it out.

19 In addition, he is not the lawyer on
20 this witness. Mr. Elizondo is.

21 MR. HERNANDEZ: My only objection is
22 I did let the interpreter finish the answer.
23 When the interpreter gave that answer, he gave
24 not the proper answer that this witness made, so

25 --

1 The answer that this witness made
2 was, "The reason I looked out -- that was not the
3 reason I looked out."

4 The word "reason" was never mentioned
5 by the interpreter at all.

6 THE INTERPRETER: I don't have to say
7 reason. I say is that the reason you did it.

8 THE COURT: Wait a minute. Let him
9 finish it.

10 First of all, Mr. Elizondo is the lawyer
11 for this particular witness, and I will entertain
12 objections or discussions from only the lawyer
13 questioning this witness or who has him as his
14 witness.

15 MR. HERNANDEZ: My apologies to this
16 Court.

17 THE COURT: Secondly, if you have an
18 objection to what the interpreter says, approach
19 the bench. Do not blurt out anything to the jury.

20 MR. HERNANDEZ: My apologies to this
21 Court. We never had ground rules as to which
22 lawyer could make objections.

23 THE COURT: Those are standard rules
24 of evidence.

25 Any question?

1 MR. ELIZONDO: May it please the Court,
2 I am going to incorporate Joe Hernandez's
3 objection to the interpreter.

4 MR. HERNANDEZ: The only problem we have,
5 the last two answers have not been the same exact
6 answers he has given.

7 MR. MOEN: That is suitable for cross-
8 examination. That is his version of what
9 happened.

10 THE COURT: We should have complete
11 answers given, and if there is a problem with
12 that, we will find out why.

13 Mr. Lentz, if you will, repeat exactly
14 the answers that are given by the witnesses, what-
15 ever they may be. If you will, repeat them
16 exactly as given.

17 MR. LENTZ: Verbatim?

18 THE COURT: Yes, sir.

19 MR. LENTZ: Very well, sir.

20 THE COURT: Anything further?

21 Bring out the jury.

22 (At this time, the jury returned to the
23 courtroom, and in their presence and hearing, the
24 following proceedings were had.)

25 THE COURT: Proceed.

1 MR. MOEN: Thank you, Judge.

2
3 CROSS EXAMINATION, CONTINUED

4
5 QUESTIONS BY MR. MOEN:

6 Q. Now, you have never told the police what you have
7 told the jury here today, have you?

8 A. No, sir.

9 Q. And you talked to the police the night Antonio
10 was shot, didn't you?

11 A. Yes, sir.

12 Q. And they asked you whether you knew anything
13 about the shooting of the police officer, didn't
14 they?

15 A. No. They didn't say anything about that.

16 Q. Never asked you anything about that?

17 A. No, sir.

18 Q. On the night Antonio was shot, did you ever tell
19 the police you didn't know anything about the
20 shooting of the police officer?

21 A. They came to look, to search in the house, and
22 they didn't ask me anything about it.

23 MR. MOEN: Excuse me. I object to that
24 as being non-responsive. I asked him if he made
25 a specific statement.

1 I wonder if I might have his answer
2 to that statement?

3 A. Yes, sir.

4 Q. You told the --

5 A. I didn't understand what you were saying.

6 Q. Isn't it a fact, isn't it true you told the
7 police the night Antonio was shot that you didn't
8 know anything about the shooting of the police
9 officer?

10 A. No, I was afraid.

11 MR. MOEN: Excuse me just a second.

12 That is also non-responsive. He either
13 did or didn't make the statement.

14 THE COURT: Mr. Lentz, instruct the
15 witness only to answer the question. Do not
16 volunteer any other information.

17 MR. LENTZ: Very well, Your Honor.

18 THE COURT: Restate your question.

19 MR. MOEN: Yes, sir.

20 Q. (By Mr. Moen) Isn't it, in fact, true the night
21 Antonio was shot you told the police you didn't
22 know anything about the shooting of the officer?

23 A. No. I said I didn't know anything.

24 Q. As a matter of fact, you told the police that
25 you were not even home when the officer was shot;

1 isn't that true?

2 A. You mean that I said to the police that I wasn't
3 at home?

4 Q. That is exactly what I mean.

5 A. Any objection? It wasn't little?

6 If I said that I wasn't at home -- but
7 I was in.

8 Q. Isn't it, in fact, true -- yes or no -- that you
9 told the police you weren't even at home when
10 the officer was shot?

11 A. I was at home.

12 Q. Isn't it, in fact, true, yes or no, that you told
13 the police the night Antonio was shot that you
14 weren't at your house when the police officer was
15 killed? Yes or no. Did you make the statement or
16 did you not?

17 A. I don't remember. You see, I don't understand
18 you very well, what you are trying to say.

19 Q. Yes or no. Did you tell the police when they
20 talked to you after Antonio was shot that you
21 weren't even at home when the police officer was
22 killed? Yes or no.

23 Did you make that statement or didn't
24 you?

25 A. No. I don't remember.

1 Q Well, are you saying then that you probably did
2 make the statement, but you just don't remember
3 now making it?

4 A Probably. It could have been.

5 Q Well, you probably --

6 A Maybe I did say that.

7 Q You probably did tell the police that, didn't
8 you?

9 A Yes. It is possible. You see, I was scared. It
10 is possible.

11 Q You didn't tell the police that your friend,
12 Ricardo, and Antonio ran out the door with loaded
13 guns, did you?

14 A No. I didn't say anything.

15 Q You didn't tell the police both these men were
16 armed and for them to be careful, did you?

17 A No. I didn't say anything.

18 Q The fact of the matter, you didn't want to do
19 anything as far as helping the police, that might
20 hurt your friends, Ricardo and Antonio; isn't
21 that right?

22 A How was that? Could you please repeat that
23 question? I didn't understand.

24 Q The fact of the matter is you didn't want to do
25 anything that would hurt your friends, Ricardo and

1 Antonio, and that is why you didn't tell the
2 police anything you have told the jury here today,
3 isn't it?

4 A. No. I was afraid and I didn't want to know
5 anything about it.

6 Q. Now, the day after Antonio was killed, you didn't
7 say anything to the police either, did you?

8 A. No. I didn't want to say anything either.

9 Q. When did you learn that your friend, Ricardo, was
10 in jail for having killed this police officer?
11 When did you learn that?

12 A. When they took him from there.

13 Q. You knew he was charged with having killed this
14 police officer? Is that when you found this out?

15 A. No, sir.

16 Q. When did you first learn he was charged with
17 having killed a police officer?

18 A. When the lawyer told me.

19 Q. Which lawyer? This lawyer or this lawyer or both?

20 A. Mr. Candelario Elizondo.

21 Q. How long ago was it he told you Ricardo was charged
22 with killing a police officer?

23 A. Well, no, I don't recall. I don't know what date
24 it was.

25 Q. A day ago, two days ago?

1 A No, longer.

2 Q A week, two weeks, a month?

3 A I don't know.

4 Q You just don't have any idea when you had the
5 conversation with Mr. Elizondo?

6 A No. I don't remember.

7 Q You can't even give us a guess as to when it was?

8 A One month.

9 Q And that is the first time you learned Ricardo
10 was charged with having killed this police
11 officer? That is the very first time you learned
12 of it?

13 A Yes, sir, but even then, I didn't say anything
14 to them, what I knew.

15 Q You didn't even tell Mr. Elizondo when you talked
16 to him about what you knew?

17 A No. The first time, no; the second time, yes.

18 Q When was the first time you talked to him?

19 A I don't know. Probably a month ago.

20 Q The first time you talked to Mr. Elizondo you
21 told him, "I don't know anything about how the
22 police officer was shot"? Is that what you told
23 him?

24 A Well, you know, I was --
25 Could I talk?

1 Q The first time you talked to Mr. Elizondo, is it
2 your statement to this jury you told Mr. Elizondo
3 you didn't know anything about the killing of the
4 police officer or who did it?

5 A No. I didn't say anything to him.

6 Q You didn't say anything or you told him you didn't
7 know anything?

8 A No, I didn't talk to him and I didn't say anything
9 to him.

10 Q Well then, you have only talked to him once?

11 A Well then, he came again to the house, and that
12 is when I talked with him and I told him the whole
13 story, and I said that I was scared, I was afraid.

14 Q Well, you have known -- you have known since the
15 day Antonio was killed that your friend, Ricardo,
16 couldn't have killed that police officer; isn't
17 that right? You have known that since the day
18 Antonio was killed, your friend, Antonio, you
19 have known that?

20 MR. ELIZONDO: May we approach the
21 bench?

22 (Discussion at the bench out of the
23 hearing and presence of the court reporter.)

24 THE COURT: Read the question back that
25 Mr. Moen had, and, Mr. Lentz, repeat it to the

1 witness and let's get his answer to that.

2 THE COURT REPORTER: "Question: Well,
3 you have known, you have known since the day
4 Antonio was killed that your friend, Ricardo,
5 couldn't have killed that police officer; isn't
6 that right? You have known that since the day
7 Antonio was killed, your friend, Antonio, you
8 have known that?"

9 MR. MOEN: No, read the one before.

10 THE COURT REPORTER: "Question: Well
11 then, you have only talked to him once?"

12 Q. (By Mr. Moen) This man right here, the Defense
13 attorney for Ricardo Guerra, Mr. Elizondo.

14 A. That I have talked to him only once?

15 No. More times.

16 Q. And did you make a written statement in this case
17 to anyone?

18 A. No, sir. I never made any.

19 Q. You never made any statement you have sworn to
20 under oath at all in writing?

21 A. No, nobody.

22 Q. Now, you have known since the night Antonio was
23 killed that your friend, Ricardo, could not have
24 killed the police officer; isn't that right?

25 A. Well, I knew that because Antonio said to me he

1 had killed him.

2 Q That is right. You knew that, didn't you?

3 A Yes, I knew that.

4 Q Yet after your friend, or you found out your
5 friend, Ricardo, was charged with killing the
6 police officer, you never told one police officer,
7 did you?

8 A Nobody.

9 Q You just came down or -- or did you think it was
10 best to wait until Ricardo's trial to tell anyone
11 about it? Did you think that was the best idea?

12 A I was afraid. I didn't want to say anything.

13 Q You were so afraid you didn't want to help your
14 friend, Ricardo?

15 A I was afraid. That is all.

16 Q Too afraid to say anything the night Antonio was
17 killed or for the three or four months that had
18 passed since then?

19 A I was afraid. I didn't want to say it to anybody.

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

21 MR. ELIZONDO: We will pass him, Your
22 Honor. We don't have further questions.

23 THE COURT: The witness may stand aside.

24 MR. BAX: Judge, may he be instructed
25 to stay within the area here? We may need him

1 for identification.

2 THE COURT: So instruct him, Mr. Lentz.

3 (The interpreter complied.)

4 THE COURT: Members of the jury, we
5 will now recess for lunch. The bailiff will make
6 arrangements for you. Please be back at about
7 twenty minutes until 2:00. Remember the admonitions
8 I have given you many times.

9 (At this time, a lunch recess was taken
10 by the court.)

11 THE COURT: Bring out the jury, please.

12 Call your next.

13 MR. ELIZONDO: May it please the Court,
14 the Defense will call Ricardo Guerra.

15 THE COURT: For the record, Mr. Lentz,
16 if you would, ask him to stand and be sworn as a
17 witness, please.

18 (The Defendant was sworn.)

19 THE COURT: Mr. Lentz, if you would,
20 come around a moment, please, sir.

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25

1 him?

2 Q Well, I had known him only briefly. I had known
3 him only for about two or three weeks.

4 Q Do you see a facsimile of this person known as
5 Werro here in the courtroom today?

6 A Yes, sir.

7 Q And would you point at him, please?

8 A It is that one.

9 Q You are speaking of State's Exhibit No. 20?

10 A Yes, sir.

11 Q When did you first see him on July 13th of 1982?

12 A Well, I saw him there in the house at Rusk, 4907.

13 Q What time?

14 A It would be -- I am not certain. It would have
15 been something like 10:00 to 11:00 o'clock at
16 night.

17 Q Was Jacinto there?

18 A Yes.

19 Q What kind of car does Jacinto have?

20 A It is a black car with a rear end, red.

21 Q When you say the rear end is red, are you speaking
22 of the roof?

23 A Yes, sir.

24 Q Did you ever have an occasion to drive that car
25 that night?

1 behind this tree where you can't see in this
2 photograph, there is a store over there that you
3 used to go to over there, isn't there?

4 A. Yes, sir.

5 Q. You know who Mrs. Galvan is, don't you?

6 A. Yes. I know her from sight.

7 Q. You know her from sight not only in this
8 courtroom, but from when you used to live and roam
9 around this area in here, didn't you?

10 A. Yes, sir.

11 Q. As a matter of fact, you remember when she was
12 working in this store over here at the corner of
13 Walker and Dumble? Don't you remember her from
14 there?

15 A. Yes, sir.

16 Q. Of course, you were asked a little while ago about
17 whether this is a facsimile of Werro.

18 Do you remember when the attorney asked
19 you that?

20 A. Yes, sir.

21 Q. Who is State's Exhibit 19 a facsimile of?

22 A. It is I.

23 Q. It is you when? Back on July 13th of 1982, isn't
24 it?

25 A. More or less that is what I looked like.

1 Q More or less with the mustache?
2 A Yes.
3 Q More or less with a beard all the way around and
4 under the chin?
5 A Yes.
6 Q And more or less with hair down to the collar,
7 longer hair, huh?
8 A Yes, sir.
9 Q You don't look the same today that you did back on
10 July 13th, do you?
11 A No, sir.
12 Q Now, you look a little bit more like Werro today,
13 don't you, without your beard and without your
14 mustache? You look a little more like Werro now,
15 don't you?
16 A No, because we don't wear our hair the same.
17 Q As a matter of fact, it would be almost impossible
18 for anyone to mistake you for Werro, the way
19 you looked back on July 13th, 1982, wouldn't
20 it?
21 A No, we couldn't be confused or mixed up.
22 Q Werro could never be confused for you, could he?
23 A No, sir.
24 Q And you could -- the way you looked back then, you
25 could have never been confused for Werro, either,

1 A. No, sir.

2 Q. Did you know or do you know Jose Armijo, the
3 little ten-year-old boy who testified here?

4 A. I met him here.

5 Q. Well, you know he lives just down the street from
6 you in this house right here?

7 A. No, but I didn't get together with him.

8 Q. No, but did you ever see him out there riding
9 his bicycle or playing with his friends out there?

10 A. I haven't seen him.

11 Q. The first time you ever saw him was when he came
12 into the courtroom?

13 A. Yes, sir.

14 Q. Was this the first time that you had borrowed
15 Jacinto's car to go to the store to go driving
16 around in that area?

17 A. He had loaned it to me already several times.

18 Q. And, as a matter of fact, you did a lot of spinning
19 of tires in that neighborhood, didn't you, not only
20 on that night but on other nights, too?

21 A. No. I never spun tires before up until that
22 date.

23 Q. That was the first time?

24 A. Yes, sir.

25 Q. Tell the members of the jury why then all of a

1 sudden, after you had borrowed Jacinto's car
2 on that occasion, all of a sudden you decided to
3 start spinning your tires and terrorizing people
4 out there in that neighborhood.

5 MR. ELIZONDO: Objection, Your Honor.
6 I believe there is no evidence he was spinning
7 --

8 I object to the form of the question.

9 THE COURT: That will be overruled.

10 MR. BAX: You may answer the question.

11 A. I wasn't trying to scare or frighten anybody.
12 I was just feeling well in the car, and I felt
13 like spinning the tires.

14 Q. When you say you were feeling well, is that because
15 you were drinking some beer before you went out
16 that night?

17 A. No, sir.

18 Q. Well, tell us how you were feeling well. Why were
19 you feeling well?

20 A. Well, because they very rarely lent it to me, and
21 I didn't have a car.

22 Q. Is that how you treat somebody's property when they
23 would lend it to you, go off spinning the tires
24 and running people off the road?

25 A. No. I don't know, but that is what I decided to

1 do in that instant.

2 Q Do you know that Mrs. Galvan was walking down the
3 street and had to jump out of the way so you
4 didn't hit her and the two kids that were with
5 her?

6 A Yes, sir.

7 Q How about the man with the dog? Did you have fun
8 trying to run at him with your car and trying to
9 hit his dog?

10 A No. I didn't try to scare anybody. I was just
11 passing by there.

12 Q I guess Mrs. Galvan and Mr. George Brown were
13 just mistaken when they thought you were trying
14 to run them down.

15 A They are mistaken.

16 Q Do you recall when you made a turn out there and
17 that you almost ran into the police car as you
18 made your turn and had to back up after seeing
19 the police car?

20 A That is not true.

21 Q So I guess when Mrs. Galvan testified that when you
22 were going -- again, looking at State's Exhibit
23 3 -- when you had made a turn down the street
24 like this and she saw you back out and then saw
25 a police car follow after you, she was mistaken

1 about that, also?

2 A. She is mistaken because the police car arrived
3 after a while, after my car was stopped there at
4 that -- when I was across Walker.

5 Q. Was that the first time you saw a police car that
6 night, was when your car stalled at the corner
7 of Walker where Officer Harris was killed?

8 A. Yes, sir.

9 Q. How did your car get into this position like this,
10 facing this way? How did your car end up like
11 that?

12 A. Because I turned it. You see, I was going to make
13 a U-turn, and that is when the car stalled.

14 Q. Coming down Walker this way?

15 A. Yes, sir.

16 Q. Speeding?

17 MR. LENTZ: Affirmative nod.

18 A. I had put on the brakes when I got to the corner.

19 Q. And tried to make a U-turn and go back the same
20 way you just came from, right?

21 A. Yes. As I wanted to take the car back, because
22 it was missing and the lights were dimming.

23 Q. Why not just make a right turn and go up to Rusk
24 and make a left turn and you would be home?

25 A. I don't know. It was that what I decided to do.

1 Q. The reason you decided to make a U-turn over here
2 is you knew the police officer was chasing after
3 you, didn't you?

4 A. No, sir.

5 Q. No, you don't -- back over in this area here
6 where you ran into the police officer, you weren't
7 trying to get away from that police officer, were
8 you, because you never saw him?

9 MR. LENTZ: Would you please rephrase
10 that? It is difficult to translate.

11 Q. (By Mr. Bax) Let me rephrase it.

12 Do you remember when Mrs. Galvan
13 testified?

14 A. Yes, I do remember.

15 Q. And you had Ms. Hernandez interpret for you when
16 she testified. Do you recall that?

17 A. No.

18 Q. Linda Hernandez didn't tell you what Mrs. Galvan
19 said as she testified?

20 A. Oh, yes.

21 Q. And you recall Mrs. Galvan testify that as you came
22 around this turn, you went up here and made a
23 right turn onto this street right here? Do you
24 recall her saying that when you testified?

25 A. I don't remember that.

1 Q Do you remember her testifying then that you backed
2 out real fast and took off?
3 A No, I don't remember any of that.
4 Q And do you recall her testifying just after you
5 drove off a police officer came out of that same
6 intersection following after you?
7 A No. I don't remember any of that.
8 Q You don't remember her testifying as to any of
9 that?
10 A No, sir.
11 Q Who did you think the police officer was after,
12 the passenger of the car that was driving all over
13 the place or the driver of the car that was
14 driving all over the place?
15 A I don't know.
16 Q Certainly you were the one that was responsible
17 for the way that car was being driven that night;
18 isn't that correct?
19 A Yes, sir.
20 Q How far away were you from Herlinda and Vera
21 when you talked to them after your car stalled?
22 A Like from here to the lady over there, to that
23 lady over there, to this chair.
24 Q Here?
25 A Right.

1 Q How long did you talk to them?

2 A I asked them for two cables and that was all.

3 Only that.

4 Q Did they look at you in the face?

5 A Yes, sir.

6 Q And then Werro came over and he was there, too,
7 wasn't he?

8 A Yes, over at the one side.

9 Q They could see him, too?

10 A Yes, sir.

11 Q How far were those two girls from Officer Harris
12 when he was killed?

13 A I don't know. I didn't see them anymore.

14 Q This far?

15 A I don't know. I didn't see them anymore after
16 that.

17 Q If they were still where they were when they
18 talked to you, they'd still be across the street,
19 wouldn't they?

20 MR. ELIZONDO: Your Honor, I object
21 to counselor testifying.

22 THE COURT: Sustained.

23 Q (By Mr. Bax) Tell us about the pistol that you
24 had with you. Was it loaded?

25 A No. It only had a clip with the bullets inside,

1 but it wasn't loaded.

2 Q If it wasn't loaded, how were you able to shoot
3 it off as you were running away?

4 A Because I took it out and I loaded it.

5 Q When did you do that?

6 A When we were running.

7 Q Okay. Tell me where on the street you were when
8 you pulled out the gun and loaded it. Were you
9 still here by the police officer's car?

10 A No, sir.

11 Q How far down the street were you when you loaded
12 that pistol that you had?

13 A I don't know. It was night, and I don't know.

14 Q Well, were you near the corner?

15 A No.

16 Q Halfway?

17 A Yes, it could be. I don't know. I don't
18 remember.

19 Q But you were at least halfway down the block before
20 you pulled that pistol and loaded it? Would that
21 be fair to say?

22 A Well, I loaded the gun before I got to halfway
23 down the block, and when I got to halfway down
24 the block, that is when I fired it.

25 Q Where did you have the pistol when you got out of

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RICARDO ALDAPE GUERRA,
the Defendant, was called as a witness in his own
behalf, after having first been duly sworn, testified
as follows through an interpreter:

DIRECT EXAMINATION

QUESTIONS BY MR. ELIZONDO:

Q. Tell the jury your name, please.

THE COURT: Just a minute. He is going
to convey something.

Q. (By Mr. Elizondo) Tell the jury your name,
please.

A. Ricardo Aldape Guerra.

Q. Mr. Guerra, would you tell the jury where you were
living on or about July 13th of 1982?

A. At Rusk, 4907.

Q. Did you, on or about July 13th of 1982, come into
contact with a person whom you know to be Werro
or Roberto Carrasco Flores, also known as
Antonio?

A. Yes.

Q. Also known as Antonio?

A. I don't know.

Q. What time did you first have an occasion to see

1 A. Yes, sir.

2 Q. What time of the day or night was that?

3 A. It was at nighttime about 10:00 or 11:00. I am
4 not very certain.

5 Q. And where did you go?

6 A. We went to the store to buy some soda.

7 Q. And who was with you?

8 A. The Werro.

9 Q. Who else?

10 A. The car, only he and I.

11 Q. Do you know if he had a pistol on him that night?

12 A. Yes.

13 Q. What kind?

14 A. The square 9-millimeter one.

15 Q. After you went to the store, where did you go?

16 A. We decided to take a trip through the vicinity.

17 Q. Were you driving fast?

18 A. Yes, sir.

19 Q. Were you spinning your tires?

20 A. Yes, sir.

21 Q. And who was driving?

22 A. I was.

23 Q. How many times did you spin your tires?

24 A. Well, I don't know. Maybe something like two or
25 three times, but I don't know.

1 Q Did your car ever come to a stop?

2 A Yes.

3 Q Where did it stop?

4 A It stopped in the middle of the entrance, I
5 don't know of what street.

6 Q What street did your car stop on?

7 A On Walker. It was sort of across it. It was
8 across it.

9 Q So, your car was blocking Walker street?

10 A Yes, sir.

11 Q Did you try to start your car?

12 A Yes, sir.

13 Q And would it start?

14 A No, sir.

15 Q Did you see any women or ladies around there?

16 MR. BAX: Judge, I am going to object
17 to him leading the witness. He can ask him what
18 happened or what he did, but every question is
19 calling for a yes or no from the witness. I
20 object to the leading nature of the question.

21 THE COURT: Rephrase your question.

22 Q (By Mr. Elizondo) Was anybody there at the corner
23 of Walker when your car stopped?

24 A There were two persons coming there, two girls.

25 Q And when you saw these two girls, what did you

1 do?

2 A. I got out of the car and I asked them for jumper
3 cables to see if I could get some current.

4 Q. Where was Werro all this time?

5 A. Well, he also got out of the car.

6 Q. Where did he go?

7 A. Well, he came around the front of the car and
8 both of us talked to the girls.

9 Q. What happened then?

10 A. They told us that no, they didn't have anything
11 like that.

12 Q. What did you do then?

13 A. We got back into the car and tried again to get
14 it started to see if it would start.

15 Q. And did it start?

16 A. No, sir.

17 Q. What happened then?

18 A. The police car arrived at the rear.

19 Q. And where was the police car situated in respect
20 to your car?

21 A. Behind my car.

22 Q. How far behind your car?

23 A. I don't know.

24 Q. What did the police officer say to you, if
25 anything?

1 A I understood only one word that he said: "Come
2 on."
3 Q And when he said that, what did you do?
4 A I went over to the police car, the patrol car, and
5 I put my hands on the hood of the car.
6 Q Where was Werro all this time?
7 A He also talked to him to get out of the car.
8 Q And did he get out of the car?
9 A Yes, sir.
10 Q Where did he go?
11 A Well, the policeman was talking to him. I don't
12 know what he did.
13 Q Where were you all this time?
14 A Well, up there with my hands on the top of the
15 car.
16 Q Would you show us how you had your hands on the
17 top of the car --
18 A On the hood.
19 Q -- assuming this rail right here is the hood of
20 the car.
21 A Like this, and with legs spread.
22 Q Who told you to spread your legs?
23 A Well, I did that because I thought that is what
24 he was saying to me, but I don't know what he was
25 saying to me.

1 Q Did the officer have anything in his hands?

2 A Yes, a gun.

3 Q All this time, where was Werro?

4 A He was behind me. I didn't see him. I couldn't

5 see him.

6 Q Did the police officer say anything else to you

7 or Werro?

8 A To me, no, but to Werro, yes. He was telling him

9 to come near. He was saying, "Come on."

10 Q And did he ever get near, if you know?

11 A Well, I don't know what to tell you, because I

12 didn't see him. I wasn't looking at him.

13 Q You were looking at who, or weren't looking at

14 who?

15 A I was looking at the policeman because he was

16 pointing the gun at me.

17 Q How was he pointing the gun at you?

18 A Well, he was like this with the gun.

19 Q While you were looking at the police officer, did

20 you hear anything?

21 A I heard some shots, almost in my ears.

22 Q And did you see the police officer at that time?

23 A Well, I saw the policeman drop to the ground.

24 Q Well, what was Werro doing all this time?

25 A He walked up to the policeman and took his gun

1 away.

2 Q What happened then?

3 A We ran.

4 Q Now, you ran up Walker street --

5 MR. BAX: Judge, I object to him
6 leading the witness.

7 MR. ELIZONDO: Let me rephrase the
8 question, Judge.

9 THE COURT: All right.

10 Q (By Mr. Elizondo) Where did you run?

11 A Straight ahead towards the cemetery by Walker
12 or on Walker.

13 Q Were you running on the right side or the left
14 side of the street?

15 A On the right side at the edge of the pavement.

16 Q So, if this is Walker street right here, you are
17 running this way and down Walker?

18 A Yes.

19 Q Did you ever fire a gun at this time?

20 A Yes.

21 Q Did you have a gun on your person?

22 A Yes, sir.

23 Q And when did you fire this gun?

24 A While we were running, because I saw a car coming
25 towards me and I heard some shots behind me.

1 Q And why did you fire a gun?

2 A Because I got scared, because I didn't want him
3 to follow me because I hadn't done anything.

4 Q When you say you didn't want him to follow you,
5 who are you referring to?

6 A To El Werro.

7 Q Now, when you fired your gun, what direction
8 did you fire it at?

9 A Upwards.

10 Q When you did that, what side of the street were
11 you on?

12 A On the right side.

13 Q Do you know which side of the street Werro was
14 on?

15 A I don't, because I didn't look back.

16 Q When you first started running, what side of the
17 street did you start running on?

18 A On the right side of the edge of the pavement.

19 Q And when you got to an intersection, which way
20 did you turn?

21 A To the right side.

22 Q And when you turned right off that intersection,
23 did you run to the south?

24 A I couldn't tell you whether it was towards the
25 south or the north.

1 Q You turned right here at the intersection?

2 A Yes, sir.

3 Q And how far did you run after that intersection?

4 A To the next block, and there I turned again to
5 the right.

6 Q And when you turned there to the right, which way
7 did you go?

8 A Straight ahead until I reached Dumble.

9 Q And then when you got to Dumble, which way did
10 you go?

11 MR. BAX: Wait a minute, Judge. If he's
12 made a right turn and is running in that direction,
13 he is not going to hit Dumble from there.

14 MR. ELIZONDO: I object to the counselor
15 testifying.

16 THE COURT: Sustained.

17 Q (By Mr. Elizondo) Now, you turned right here,
18 right?

19 A Yes, sir.

20 Q Then you turned right again?

21 MR. BAX: I object to him leading the
22 witness. He obviously knows you can't get to
23 Dumble that way either, and now he's trying
24 to lead the witness and make a jury argument,
25 and I object to it.

1 THE COURT: Let's not make jury
2 arguments.

3 Proceed.

4 Q (By Mr. Elizondo) Then where did you get to?

5 A I got to Dumble, and then I got to Rusk, to the
6 4907.

7 Q And when you got there, was anybody there at that
8 house?

9 A Yes, sir.

10 Q Would you tell the jury who was there?

11 A There were, of course, Jose Luis was there, Jose
12 Manuel was there, and the Werro.

13 Q What did you first tell these people when you first
14 got to your house?

15 MR. BAX: I object to that as being
16 hearsay, what was said at that house at this
17 point in time.

18 MR. ELIZONDO: I believe the question
19 was, Judge, "What did you say to these people when
20 you walked in the house."

21 MR. BAX: It is still a statement offered
22 in court for the truth of the matter asserted,
23 and it would be bolstering and self-serving.

24 I object on those grounds.

25 THE COURT: Come up here.

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MR. ELIZONDO: Pardon?

THE COURT: Come up.

(Discussion before the bench out of the hearing of the court reporter.)

THE COURT: Sustain the objection.

Q (By Mr. Elizondo) Did you see Werro there when you got to 4907 Rusk?

A Yes, sir.

Q And what kind of a pistol did he have?

MR. BAX: Judge, I object to that. He hasn't testified whether he saw him with a pistol. I object to leading the witness.

THE COURT: Sustained as to the leading.

Q (By Mr. Elizondo) Did he have a pistol?

A Yes.

Q How many?

A Two.

Q What kind of pistols were they, if you know?

A He had his own, and he the one of the policeman's which was the revolver.

Q Did you at a later time come to find out what those volleys of shots were after the initial shots when you were running?

A Yes, sir.

Q How did you come to find out?

1 A. The Werro said that he had shot at the car.

2 Q. Now, which car was that?

3 A. The one that was in front of us when we ran.

4 Q. What happened next?

5 A. I decided to go out the rear door. I didn't want
6 to have anything to do with it.

7 Q. What did you do then?

8 A. I went out the rear door and I hid behind a horse
9 trailer.

10 Q. What happened then?

11 A. It looked like they were sort of putting on lights
12 there, and a short time after that, I heard a lot
13 of shots.

14 Q. And what happened then?

15 A. They found me behind a trailer.

16 Q. And where was your pistol?

17 A. Under the trailer within my reach.

18 Q. Did you ever fire that pistol that night, aside
19 from those two shots you shot up in the air?

20 A. No.

21 Q. Did you shoot Officer J. D. Harris?

22 A. No.

23 Q. Did you shoot Jose Armijo?

24 A. No, sir.

25 Q. Did you shoot Larry Trapagnier?

1 A. No.

2 Q. You are telling this jury the truth today?

3 MR. BAX: Judge, I object to that.

4 He is trying to bolster the witness.

5 THE COURT: I will overrule that. The
6 objection is overruled.

7 A. Yes, sir.

8 MR. ELIZONDO: Pass him, Your Honor.

9

10 CROSS EXAMINATION

11

12 QUESTIONS BY MR. BAX:

13 Q. Mr. Guerra, you understand the man you have now
14 accused of killing Officer Harris, he can't come
15 in and tell us his side of it, can he?

16 A. Yes. I know.

17 Q. All we've got is yourself and two of your buddies
18 who lived over there at 4907 to tell us he did
19 the shooting; isn't that right?

20 A. Yes. They were there, the two of them.

21 Q. When did you come to Houston?

22 A. In May.

23 Q. About two months before this happened?

24 A. More or less.

25 Q. Where did you come from?

1 A. Monterrey.

2 Q. In Mexico?

3 A. Yes, sir.

4 Q. Who did you come here with?

5 A. With Jose Luis and Jose Manuel.

6 Q. The two fellows who testified for you today, huh?

7 A. Yes.

8 Q. Were y'all buddies, friends back in Monterrey?

9 A. Yes, sir.

10 Q. How long had you known Jose Manuel and Jose
11 Luis before coming here to the United States?

12 A. I knew Jose Manuel, it seems, ever, because he
13 was with me in school, and Jose Luis, I think it
14 had been four years.

15 Q. So you went to school with Jose Manuel back in
16 Mexico, and I guess you knew him when you were a
17 little boy, as far back as you can remember; is
18 that right?

19 A. Yes, sir.

20 Q. And tell us how you got to know or how you met
21 the other fellow, Jose Manuel.

22 Is that the other one or Jose Luis?

23 How did you meet him four years ago?

24 A. Well, they were in the vicinity and at the school
25 also.

1 Q What brought y'all to Houston?

2 A We came to work.

3 Q Did you know that there was a brother of Jose

4 Luis' that was already living here at that time,

5 Enrico?

6 A Yes, sir.

7 Q Was Enrico already living at 4907 Rusk when you

8 came to Houston?

9 A Yes, sir.

10 Q Where were you working?

11 A Who? Luis or I?

12 Q You.

13 A I was working with a Mexican contractor.

14 Q What is his name?

15 A Manuel.

16 Q Manuel what?

17 A I don't know his family name.

18 Q How about Jose Luis and Jose Manuel, what were they

19 doing for work?

20 A They didn't work with me.

21 Q What type of work did they do?

22 A I don't know.

23 Q You have been living with them for more than two

24 months and you don't know what type of work they

25 did?

1 A. Well, see, they went to work by themselves. I
2 didn't know where they went to work.

3 Q. Y'all had known each other and come here from
4 Mexico and never talked about what type of work
5 each of you did?

6 A. Well, I did know that he was working at Sheetrock,
7 but I didn't know what he was doing.

8 Q. Now, were you living over here at 4907 Rusk on
9 July 13th, or were you not living there on that
10 day?

11 A. Well, I had been living there before, but I had
12 moved from there.

13 Q. Tell us where you moved to.

14 A. To another house with another friend from where
15 it was easier to go to work.

16 Q. Tell us where that is. What is the address of
17 this other house?

18 A. I don't know.

19 Q. Tell us the name of this other friend.

20 A. A friend.

21 Q. His name, please.

22 A. I only knew him by Efrin.

23 Q. Efrin?

24 A. Efrin. E-F-R-I-N.

25 Q. And you don't know where he lives?

1 A Well, I don't know the address, but I know how to
2 locate it.

3 Q Let me show you State's Exhibit 3. That is the
4 house that you were living in on Rusk street up
5 until around July 13th, I take it; is that correct?

6 A Well, I wasn't living there anymore, but that
7 is where I lived before.

8 Q In this house here?

9 A Yes, in the first one.

10 Q And you had lived in this area, in this neighborhood
11 for about two months before you moved out; is
12 that right?

13 A Yes, sir.

14 Q You knew the people that lived in this area,
15 didn't you? You saw people that you knew lived
16 there, didn't you?

17 A Only from sight.

18 Q Sure. You used to sit out here on the porch with
19 your buddies and drink beer about every night,
20 didn't you?

21 A Yes, sir.

22 Q And people knew who you were in that neighborhood,
23 didn't they?

24 A Yes, sir.

25 Q As a matter of fact, over here at Dumble and Walker

1 the car?

2 A. On the belt. Here. (indicating).

3 Q. Is that how you customarily carried that pistol
4 while you were in Houston?

5 MR. ELIZONDO: I object to the
6 Prosecution's possible --

7 THE COURT: Sustained.

8 Q. Let me ask you this. When did you decide to
9 take that pistol with you that night?

10 A. Well, that night, because we were going to the
11 store, and in that area, there are a lot of goings
12 on and happenings in that place, a lot of thefts
13 going on.

14 Q. So you were carrying that pistol for your
15 protection?

16 A. Yes, but I never thought of using it badly.

17 Q. If the witnesses that were here saw you make a
18 motion like this (indicating) with something
19 in your hands towards the police officer, they
20 were mistaken when they saw that; is that
21 correct?

22 A. Yes, sir.

23 Q. And if Mrs. Galvan was standing in front of her
24 porch and saw you aim and shoot and saw the
25 muzzle flash, she was also mistaken; isn't that

1 correct?

2 A. Yes, sir.

3 Q. Because you didn't pull out your pistol until
4 you were way down here?

5 A. Yes, sir.

6 Q. You had testified earlier that when y'all left,
7 Werro had a nine-millimeter pistol; is that
8 correct?

9 A. Yes, sir.

10 Q. Did you know that because you and he both checked
11 to make sure you had your pistols before you left
12 out that evening?

13 A. No, sir.

14 Q. How did you know that he had his nine-millimeter
15 pistol with him?

16 A. Because I had seen it on him.

17 Q. Where did you see it?

18 A. Because he was carrying it here.

19 THE INTERPRETER: Pointing to his belt
20 line.

21 Q. The same place you carried your .45?

22 A. Yes, sir.

23 Q. Now, Mr. Guerra, isn't it true that when y'all
24 would drive around, you would take those pistols
25 out from your belt and set them on the seat next

1 to one another?

2 A. No, sir.

3 Q. Do you always, even when you are driving around,
4 always keep those pistols tucked in your pants?

5 A. Yes. He left them in the same place.

6 Q. And I believe you testified earlier, when you put
7 your hands on that police car, you put them down
8 just like this, didn't you?

9 A. Yes, sir.

10 Q. And I imagine you kept them there for a little
11 while, didn't you, just like this?

12 A. Yes.

13 Q. And then, after the shooting, you took them off
14 and you ran?

15 A. No, sir.

16 Q. No, sir, you didn't pull your hands off like that?

17 A. No, sir.

18 Q. What did you do?

19 A. Well, I turned around to see the policeman who was
20 falling, and I turned around this way, pulling hands
21 off, and turning to see who was behind me.

22 Q. How long were your hands on the hood of the
23 officer's vehicle?

24 A. I don't know.

25 Q. Ten seconds?

1 A. I don't know. I don't know.

2 Q. Give me your best estimate.

3 MR. ELIZONDO: Your Honor, objection.
4 He asked the question and he answered the
5 question that he didn't know.

6 THE COURT: I will give him a little
7 latitude.

8 Q. (By Mr. Bax) Give me your best estimate.

9 A. I don't know.

10 Q. Long enough for Werro to walk up behind you from
11 the other car?

12 A. Something like two minutes or less. I don't know.

13 Q. For more than just a second or two? You had them
14 on there from thirty seconds to two minutes; isn't
15 that right?

16 MR. ELIZONDO: He has answered the
17 question. He has answered the question he doesn't
18 know. Object.

19 THE COURT: Sustained.

20 Q. (By Mr. Bax) Mr. Guerra, as I understand your
21 testimony, you pretty much agree with what the
22 two girls had to testify to, didn't you?

23 A. No.

24 Q. The only thing you really disagree with that the
25 two girls testified to is that you were the one

1 that did the shooting?

2 A. Well, in that they say they had talked to Amelia,
3 and with the fact that I talked with them and they
4 answered and they say they didn't, and the fact
5 that I didn't shoot at anybody and I didn't pull
6 the gun there.

7 Q. Well, basically, you agree with what they say
8 except for the fact you are the one they say did
9 the shooting. You disagree with that, don't you?

10 A. Yes, sir.

11 Q. And, of course, you pretty much agree with what
12 little Jose Armijo said about one guy running down
13 one side of the street and another guy running
14 down the other side of the street. You pretty
15 much agree with that, don't you?

16 A. Yes, sir.

17 Q. The only thing that you disagree with, as far as
18 Jose is concerned, is what side of the car you
19 were on?

20 A. I don't remember which side he said. All I
21 remember is that I was running down the right side
22 of the street.

23 Q. Let me see if I can refresh your memory.

24 Do you recall when Jose Armijo said you
25 were the one running down the passenger's side of

1 the street and you were the one who shot through
2 the windshield, which ultimately killed his
3 father?

4 A. That is not so.

5 Q. That is where you disagree with him, isn't it?

6 A. Yes, sir.

7 Q. After you went back to 4907 Rusk, you testified that
8 you went out the back door because you didn't want
9 any more trouble; is that correct?

10 A. Yes, sir.

11 Q. Was Jose Luis and Jose Manuel mistaken when they
12 told this jury that they told you and Werro to get
13 out of the house?

14 A. Yes. Rick told us, but I decided on my own that I
15 wanted to do that also.

16 Q. And you didn't want any trouble, so you took your
17 pistol along with you again this time, didn't you?

18 A. Well, yes. I took it, but I didn't take it for
19 that. I took it so it wouldn't stay there and
20 cause problems to them.

21 Q. I see. You were doing them a favor?

22 A. Yes, because they had nothing to do with that.

23 Q. Where did you meet Werro?

24 A. Well, at the same place there at 4907.

25 Q. Was he living there also?

1 A No, sir.

2 Q Where was he living?

3 A I don't know his address.

4 Q Did y'all hang around together?

5 A No.

6 Q Is this the first time you had ever seen him?

7 A No, I had seen him several times.

8 Q He stayed over at that same house with you and
9 Enrico and Jose Luis and Jose Manuel, didn't he?

10 A Yes, sir.

11 Q Did y'all cause any problems there in that
12 neighborhood?

13 MR. ELIZONDO: Your Honor, I object to
14 the prosecutor trying to interject extraneous
15 offenses. We object.

16 THE COURT: Sustained.

17 Q (By Mr. Bax) Mr. Guerra, I believe you had
18 testified that when you and Werro left the house
19 that night you were going to the store to buy some
20 soda; is that correct?

21 A Yes, sir.

22 Q And you also went out and bought some gasoline for
23 that car, didn't you?

24 A No.

25 Q Well, when you went to the store to buy the sodas,

1 who went inside?

2 A. I did.

3 Q. And did you take that pistol in the store with
4 you?

5 A. No.

6 Q. What did you do with the pistol when you went to
7 the store?

8 A. Put it under the seat.

9 MR. BAX: No further questions.

10 THE COURT: Anything further?

11 MR. ELIZONDO: May I have a moment, Your
12 Honor?

13

14 RE-DIRECT EXAMINATION

15

16 QUESTIONS BY MR. ELIZONDO:

17 Q. Did you put that pistol -- after you went to the
18 store, did you put that pistol inside your pants
19 when you got back from the store?

20 A. Yes, sir.

21 Q. Have you talked to Jose Luis or Jose Manuel since
22 this incident?

23 A. No. I haven't said anything to them.

24 MR. ELIZONDO: May I approach the bench?

25 (Discussion at the bench out of the

1 hearing of the court reporter.)

2 MR. ELIZONDO: Pass him, Your Honor.

3 MR. BAX: Nothing further.

4 THE COURT: You may stand aside, Mr.
5 Guerra.

6 MR. ELIZONDO: The Defense rests, Your
7 Honor.

8 MR. BAX: May we have just one moment,
9 Your Honor?

10 May we approach the bench?

11 (Discussion at the bench out of the
12 hearing and presence of the court reporter.)

13 THE COURT: Members of the jury, let's
14 take a short recess for coffee. Take twenty or
15 twenty-five minutes.

16 Remember the admonitions I have given
17 you.

18 (At this time, a recess was taken by
19 the court.)

20 THE COURT: All right. What says the
21 State?

22 MR. BAX: The State would call Officer
23 Robinette.

24 THE COURT: Officer Robinette.
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JERRY ROBINETTE,
was called as a rebuttal witness on behalf of the
State of Texas, after having first been duly sworn,
testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. BAX:

Q Will you tell us your name, please?

A Jerry Robinette.

Q How are you employed?

A Employed by the City of Houston as a police
officer.

Q And in what capacity are you employed as a City
of Houston police officer? What is your
assignment?

A I work for Central Patrol Metro Bureau, which is
the night shift; and as a criminal investigator
also.

Q And when you work in that capacity, do you wear a
standard blue Houston police officer's uniform?

A Yes, sir. I am assigned to uniformed patrol.

Q Calling your attention back to the late hours of
July 13th and early morning hours of July 14th,
1982, did you have an occasion to become involved

1 them as to any information they may have had
2 concerning the shooting of Officer Harris or the
3 shooting of Officer Trapagnier?

4 A. Yes, sir. I did.

5 Q. And what did they tell you in relation to any
6 information they had in relation to those two
7 shootings?

8 A. They stated that they remembered --

9 MR. ELIZONDO: I object to hearsay
10 unless it is determined who "they" are.

11 THE COURT: Who are we talking about?

12 Q. (By Mr. Bax) Let's start with the two witnesses,
13 Jose Luis Torres and I believe he was the taller
14 of the two witnesses who testified; is that
15 correct?

16 A. Yes, sir. That is correct.

17 Q. What did he tell you concerning any information
18 he possessed regarding the shooting of Officer
19 Harris?

20 A. Jose Luis Torres stated to me that he remembered
21 that the dead suspect that was killed at the
22 scene of the second shooting, him and the
23 Defendant had left prior to -- prior to the first
24 shooting, they had left together in a black
25 Buick.

1 Q How were you able to establish the identity of the
2 dead man with Jose Luis Torres?

3 A Okay. I had in my possession at that time a
4 Polaroid picture of the dead suspect.

5 Q Who is now depicted in State's Exhibit 20 with
6 a purple shirt?

7 A Yes, sir. That is correct.

8 Q You showed that person a photograph of that
9 person?

10 A Yes, sir. That is correct.

11 Q And his response to you concerning his knowledge
12 of that person was what?

13 A He stated that the dead suspect had left with the
14 Defendant prior to the shootings; he had left
15 driving in a black Buick, and shortly after they
16 left, they had left, all four of the gentlemen
17 that I spoke to at that time had left together,
18 and --

19 Q All right. Let me stop you there and see if I am
20 following you correctly to this point.

21 When you talked to Jose Luis Torres --

22 A Yes, sir.

23 Q -- he told you that the only information that he
24 had was the Defendant and the deceased man had
25 left in a black car with a red top?.

1 A. That is correct.

2 Q. And did he tell you whether that was before or
3 after the officer had been shot there at the corner
4 of Walker and Edgewood?

5 A. That would have been before the officer was shot.

6 Q. Did he then tell you anything about any contact
7 he had with either one of those two people, either
8 the Defendant or the deceased, after they had left
9 in that black car with the red top?

10 A. No, sir. He stated he had no knowledge of anything
11 after that point. He remembers they left together,
12 and the next thing he knew -- that is when he
13 spoke to me -- that is when he returned to his
14 home.

15 Q. Did Jose Luis Torres tell you where he went or
16 where he stayed after those two people, the
17 Defendant and the deceased, left the residence at
18 4907 Rusk?

19 A. No, sir. I don't know if he stated particularly
20 where he had gone.

21 Q. Did he say he stayed at that location, or did he
22 state he left?

23 A. No. He said he had left that location and did not
24 return until the time I was speaking to him at that
25 time.

1 in the investigation concerning the shooting death
2 of Officer James Harris?

3 A. Yes, sir. I was.

4 Q. And you were also involved in the investigation
5 surrounding the shooting of Officer Larry
6 Trapagnier?

7 A. Yes, sir. That is correct.

8 Q. Did your investigation center around the address
9 at 4907 and 4911 Rusk street?

10 A. Yes, sir.

11 Q. Did you have an occasion that evening to come in
12 contact with two people you have seen here in the
13 courtroom today or around the courtroom named
14 Jose Luis Torres and Jose Manuel Esparza?

15 A. Yes, sir.

16 Q. In relation to when Officer Trapagnier was shot,
17 will you tell us when you came in contact with
18 those people?

19 A. I spoke to those two witnesses shortly after the
20 shooting of Officer Trapagnier.

21 Q. Were they alone or were they with other people at
22 that time?

23 A. They were with two other Latin American males.

24 Q. Do you know what their names were, the other two?

25 A. Not offhand right now.

1 Q I will show you a copy of an offense report with
2 some names in it. Would you be able to tell us
3 at this time?

4 A Yes, sir. These are the two suspects. Here are
5 the witnesses to the other two I spoke to.

6 Q What are the other people's names with Jose
7 Luis Torres?

8 A Enrico Torres and Roberto Onofrio.

9 Q Were those names all taken down when those four
10 witnesses were talked to?

11 A Yes, sir.

12 Q Were the addresses taken down?

13 A Yes, sir.

14 Q Was the date of birth taken down also?

15 A Yes, sir.

16 Q This was the time after Officer Trapagnier was
17 shot, that you first came in contact with these
18 four people?

19 A Yes.

20 Q That would put us somewhere after 11:30 on the
21 night of July 13th, 1982; is that correct?

22 A Yes, sir. That is correct.

23 Q What was your basic function out there that night,
24 Officer? What were you doing?

25 A I was called out there as a criminal investigator

1 to check for evidence, and also as an interpreter,
2 since it all occurred in a predominantly Spanish-
3 speaking neighborhood and they needed officers
4 capable of interpreting the witnesses' statements.

5 Q And I assume then you, along with other officers,
6 assisted in canvassing the area for any witnesses
7 that may be available?

8 A Yes, sir. We went up and down the streets
9 knocking on houses, speaking with everyone we could
10 come in contact with that might throw some light
11 on what had happened.

12 Q Referring to State's Exhibit No. 2, do you recognize
13 what this is a photograph of?

14 A Yes, sir.

15 Q And do you see the address at 4907, or the
16 residence at 4907 Rusk on State's Exhibit 2?

17 A Yes, sir.

18 Q Would you point that out for the members of the
19 jury, please?

20 A 4907 would be this house on the corner.

21 Q The two-story house there?

22 A The two-story white house.

23 Q Tell the members of the jury where you first saw
24 the four witnesses you just mentioned to us.

25 Where were they when you first saw them?

1 A. When I first saw them, I observed them to be on the
2 west side of this parking lot approaching this
3 house, the 4907 Rusk house.

4 Q. Where were you?

5 A. I was in the parking line of the house. The
6 scene was secured. We had crime scene tape, and
7 they were walking up to the scene.

8 Q. And what gave you an occasion to go up to them, if
9 you did?

10 A. When I saw them walking up, one of the officers
11 stated they were securing the scene, stated they
12 were living in that house. I approached them,
13 since I had just previously searched the house,
14 and found no one in the house.

15 Q. You had just previously searched 4907?

16 A. Yes, sir. Due to its location to one of the
17 shootings, I thought there might be some witnesses
18 who might be able to testify to something. I
19 checked the house and there was no one in the
20 house at all.

21 Q. When you talked to the four men that were walking
22 up the street and coming towards the house, did
23 you later learn those people lived there,
24 specifically with reference to Jose Manuel
25 Esparza and Jose Luis Torres? Did you question

1 Q So, when you were talking to him then, according
2 to what he was telling you then, shortly after
3 the Defendant and the deceased left in the black
4 car, he also left that residence and was returning
5 later?

6 A. That's correct.

7 Q Now, regarding any statements or any information
8 that Jose Manuel Esparza had, would you tell us
9 what information he had at that time?

10 A. Jose Manuel Esparza stated the same thing. He
11 stated he did see the Defendant and the dead
12 suspect leave together in the same automobile
13 and that he, along with Jose Luis Torres, Roberto
14 Onofrio, and Enrico Torres had left together.
15 After he and the dead suspect left, they also
16 left together, and the next thing he found was
17 when he was returning and I was questioning him.

18 Q So basically, the only information he could
19 provide you with at that time was that the
20 Defendant and the deceased left at that time in
21 the black car with the red top and they don't
22 know what happened from that point until they
23 had just arrived at that residence?

24 A. That is the only information we could get from
25 them at that time that I knew that pertained to

1 anything that both of them saw -- both of them,
2 Jose Torres and Jose Esparza, remember seeing the
3 suspect who was killed and the Defendant leave
4 together, and that is the only knowledge they had
5 of that.

6 Q Did either one of the two mention anything about
7 the suspects returning to the residence after
8 Officer Harris had been shot?

9 A No, sir. Not at all.

10 Q Did either one of them mention that the deceased,
11 Roberto Carrasco Flores, had come into that
12 residence later on that evening and had admitted
13 to them that he was the one that killed the police
14 officer?

15 A No, sir. He did not.

16 Q Certainly had they had that type of information,
17 you would have been interested in it at the time?

18 A Yes, sir.

19 Q Do you recall either one of them saying that
20 Roberto Carrasco Flores showed them Officer
21 Harris' pistol that he had taken from the body
22 of Officer Harris?

23 MR. ELIZONDO: Objection to leading the
24 witness, Your Honor, and suggesting the answer.

25 THE COURT: Sustained.

1 Q (By Mr. Bax) The only information you got was,
2 "We saw him leave in the car and we don't know what
3 happened after that"?

4 A That was the only information they told me that I
5 felt had anything to do with this case.

6 Q Did you notice anyone out there that had a gun
7 pointed to their head as they were being talked
8 to by any other police officer at that time?

9 A No, I didn't.

10 MR. BAX: That is all I have.

11

12 CROSS EXAMINATION

13

14 QUESTIONS BY MR. ELIZONDO:

15 Q Officer, did you make a report on this?

16 A I myself didn't actually make it. I didn't actually
17 write the report.

18 Q Did you use it to refresh your memory?

19 A I used the names on it. That is correct.

20 MR. ELIZONDO: May I have a moment?

21 Q (By Mr. Elizondo) Officer Robinette, what time
22 did you get there?

23 A I would say it was approximately sometime after
24 midnight.

25 Q This was after the shooting of Larry Trapagnier;

1 is that correct?

2 A Yes, sir. That is correct.

3 MR. ELIZONDO: Pass the witness.

4 MR. BAX: Nothing further.

5 THE COURT: Thank you, Officer
6 Robinette. You may step down.

7 Call your next.

8 MR. BAX: We close, Your Honor.

9 THE COURT: Mr. Elizondo?

10 MR. ELIZONDO: We will close, Your
11 Honor.

12 THE COURT: Members of the jury, you have
13 heard all the evidence that you are going to hear
14 in this case. It will become necessary now for
15 me to prepare the charge to present to the jury.
16 I anticipate that that will take some period of
17 time.

18 I am going to discharge you now. Let's
19 shoot for 10:30 in the morning. Be back in this
20 courtroom at 10:30 in the morning, and report
21 directly to the jury room, and I believe at that
22 time we will have the charge ready and we can
23 proceed immediately.

24 In the meantime, please remember the
25 admonitions I have given you in the past, and it

1 may be a good idea for you to make provisions to
2 perhaps spend the night with us tomorrow night.
3 I can't say whether you are going to have to or
4 not, but please take that into account and make
5 arrangements in case you have to do that.

6 With that, I will see you at 10:30 in
7 the morning.

8 (The jury left the courtroom, and out
9 of their presence and hearing, the following
10 proceedings were had.)

11 THE COURT: Do you want to put that on
12 the record or wait until in the morning?

13 MR. ELIZONDO: Now is fine, Your Honor.

14 On Friday, what happened was that,
15 Your Honor --

16 THE COURT: The 11th?

17 MR. ELIZONDO: Today is the 11th.

18 THE COURT: The 8th.

19 MR. ELIZONDO: On Friday, October the
20 8th, we had Jose Heredia on the witness stand
21 and propounded a question to him.

22 Basically, the question was, as stated
23 to the interpreter who was to interpret for this
24 witness a certain paragraph in this statement,
25 and the interpreter did interpret that to the

1 witness, and at that point in time, I, Candelario
2 Elizondo, asked the interpreter to translate what
3 the witness had read.

4 At that point, there was an objection.
5 The proper testimony would have been that that
6 particular statement, that particular paragraph
7 stated that the Defendant in this case was the
8 driver of the vehicle and Roberto Carrasco Flores
9 was a passenger, and in that same statement, the
10 witness stated that the passenger shot the police
11 officer.

12 We would have also gone on further and
13 would have asked to admit the entire statement of
14 the witness.

15 At this point in time, we have had it
16 marked as Defendant's Exhibit No. A to be sent
17 in camera to the Court of Criminal Appeals.

18 THE COURT: It will be so marked.

19 MR. ELIZONDO: For the record, it would
20 be admitted in evidence for the sole purpose of
21 the appellate record.

22 (At this time, court recessed for the
23 day.)