

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 RICARDO ALDAPE GUERRA * Civil No. H-93-290
5 VERSUS *
6 JAMES A. COLLINS, * Houston, Texas
7 Director, Institutional Division * November 18, 1993
8 Texas Department of Criminal Justice * 9:00 a.m.

9 TRANSCRIPT OF PROCEEDINGS
10 BEFORE THE HONORABLE KENNETH M. HOYT
11 UNITED STATES DISTRICT JUDGE
12 VOLUME III

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GENERAL ORDER 94-11, TEXAS
DISTRICT COURT, SOUTHERN DISTRICT
OF TEXAS.

19
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24 Proceedings recorded by mechanical stenography, produced by
25 computer-aided transcription.

1
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2
1 THE COURT: Mr. Zapalac, I believe you wanted to, I
2 believe, speak with one of the lawyers, or was it defense
3 counsel wanted to speak with -- petitioner's counsel speak
4 with Mr. Matamoros. Petitioner, right. I apologize.

5 I suspect Mr. Matamoros is on the 10th floor.
6 He would be brought in by the marshals, I believe, wouldn't
7 he?

8 MR. ATLAS: Yes, Your Honor.

9 THE COURT: Wouldn't he be brought in with Mr.
10 Guerra?

11 MR. ATLAS: No. Unlike Mr. Guerra, who is housed in
12 the Harris County Jail every day and available for a visit,
13 Mr. Matamoros is being brought here every day from Huntsville,
14 taken back at the end of the day; and the marshal's office has
15 informed me that while one can visit with one's client while
16 they're here, one cannot visit with someone who is not a
17 client, even if they're a witness to a hearing. Just a rule I
18 was not aware of.

19 THE COURT: I haven't heard of that law before.

20 MR. ATLAS: I just talked to him literally 15 minutes
21 ago down in the marshal's office.

22 THE COURT: Talked with who?

23 MR. ATLAS: Talked to the women behind the glass
24 cage.

25 THE COURT: The U.S. Marshal?

2 1 MR. ATLAS: In the U.S. Marshal's office, Your Honor.

2 THE COURT: Is he there?

3 MR. ATLAS: To my understanding, Your Honor, that he
4 is brought here every day there is a hearing. That is what
5 they have informed us on previous days.

6 Is the purpose of your visit with him to
7 determine whether or not you want to call him, or have you
8 already committed to call him, do you know?

9 MR. ATLAS: Your Honor we believe we are probably
10 going to call him but would like to have the opportunity for
11 some last minute questioning with him to finally ascertain
12 that.

13 THE COURT: When is he going to be called?

14 MR. ATLAS: He will be called either this afternoon
15 or tomorrow.

16 THE COURT: So, we have got a lunch break or some
17 other break that would occur at which time you could see him?

18 MR. ATLAS: Yes, Your Honor. Lunch today would be
19 the perfect time; but if it can't be at lunch today, for
20 whatever reason, this evening before he is taken back to
21 Huntsville would also work, or tomorrow morning before court
22 begins, if that's possible.

23 THE COURT: All right.

24 MR. ATLAS: Your Honor, how should we proceed on this
25 visitation issue with Mr. Matamoros.

2
1 THE COURT: I will work something out.

2 MR. ATLAS: Thank you.

3 Is the Court ready to proceed?

4 THE COURT: Well, no. We are still a few minutes
5 before 9:00. I was trying to get out to make sure if we have
6 some problem with the witness situation, I was thinking that
7 it was Mr. Zapalac wanted to meet with the witness, but I had
8 my parties mixed up.

9 MR. ATLAS: With the Court's permission, I would like
10 to step outside for a moment.

11 THE COURT: Sure. We have got a couple of minutes
12 before we get started.

13 MR. ZAPALAC: Your Honor, Cary Sckerl from the Harris
14 County District Attorney's office is going to be sitting at
15 counsel table and may be participating in the processs today
16 and tomorrow, if that's all right with the Court.

17 THE COURT: I have no problem with that.

18 MR. ZAPALAC: She is admitted to the practice in the
19 Southern District.

20 MR. ATLAS: Your Honor, I have no objection to that.
21 It's a pleasure to see her again.

22 MS. SCKERL: Thank you.

23 THE COURT: Let me get your name.

24 MS. SCKERL: Actually, my real name is Carolyn,
25 C-a-r-o-l-y-n, last name S-c-k-e-r-l.

2
1 THE COURT: E-r-l?

2 MS. SCKERL: Yes, sir.

3 THE COURT: Sckerl.

4 Are you all ready to proceed, Mr. Atlas?

5 MR. ATLAS: Yes, Your Honor. We are.

6 THE COURT: Who is your next witness?

7 MR. ATLAS: At this time, Your Honor, petitioner
8 calls to the stand Patricia Diaz.

9 THE COURT: Please come forward, Ms. Diaz, and I will
10 swear you in. Raise your right hand, please, ma'am.

11 Do you solemnly swear or affirm any testimony
12 you will give in this case will be the truth, the whole truth,
13 nothing but the truth so help you God?

14 THE WITNESS: I do.

15 THE COURT: Please take the witness stand.

16 And if you would adjust the microphone, you can
17 pull it around in front of you.

18 MR. ATLAS: If I may be permitted just a moment, Your
19 Honor.

20 THE COURT: Sure.

21 MR. ATLAS: I apologize for the delay.
22
23
24
25

PATRICIA DIAZ

was called as a witness by the Petitioner and,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ATLAS:

Q What is your name, please.

A Patricia Diaz.

Q Are you the same Patricia Diaz testified in a Houston court in October, 1982 in the murder trial of Ricardo Aldape Guerra for the July 13, 1982 murder of Houston Police Officer James Harris?

A Yes. I am.

Q In July, 1982 when Officer Harris was shot and killed, how old were you, Ms. Diaz?

A I was 17 years old.

Q Where were you at about 10:00 p.m. on the night of July 13, 1982 when Officer Harris was shot?

A I was in my car going down Walker.

Q Okay. Let me show you a blowup that we have of the intersection of where the shooting occurred, and it has Walker going left to right, which is from west to east; and then it shows the intersection where Edgewood comes south and dead-ends into Walker, and it shows the car that Mr. Aldape Guerra was riding in and the police car, and it shows another car, a Chevy, I believe, that was testified to by an expert,

3
1 based on the police records, pointing towards the east.

2 Can you tell me about where you were in connection
3 with all these? Are any of these vehicles the car you were
4 talking about?

5 A My car is the one on this side, the Chevy.

6 Q It's the Chevy?

7 A Uh-huh.

8 Q Pardon me?

9 THE COURT: Is that a yes?

10 THE WITNESS: Yes.

11 BY MR. ATLAS:

12 Q What kind of a Chevy was it?

13 A It was a Nova.

14 Q And were you going from left to right on this map at the
15 time that you stopped?

16 A Yes.

17 Q Let the record reflect that shows that the car was
18 heading in an easterly direction.

19 And who was driving the car at the time?

20 A I was.

21 Q Who else was in the car with you?

22 A My daughter, Elizabeth, and my aunt, Trinidad Medina.

23 Q Does this chart, which I was just pointing to a minute
24 ago that we marked Petitioner's Exhibit 12, does that show
25 approximately where your car was at the time you came to a

3
1 stop?

2 A Yes.

3 Q Is that where your car still was approximately at the
4 time of the shooting?

5 A Yes.

6 Q Now, when you got to that intersection of Edgewood, did
7 you see any cars on the road?

8 A Yes.

9 Q What did you see?

10 A I saw a black and red car, and it was like sideways.

11 Q Was that in approximately the location of the car that I
12 pointed to you on Petitioner's Exhibit 12 a minute ago as the
13 car that Mr. Aldape Guerra had been riding in?

14 A Yes.

15 Q Is the place where I am pointing to about the car where
16 Mr. Aldape Guerra had been riding, is that about the location
17 where you saw the black and red car?

18 A Yes.

19 Q Was the red on the body or on the roof of the car?

20 A I think it was on the roof.

21 Q Did you also see a police car in Edgewood near Walker?

22 A Yes.

23 Q Does this chart marked Petitioner's Exhibit 12 show, as
24 best you can recall, approximately the location of the police
25 car at the time of the shooting?

3
1 A Yes.

2 Q At about the time of the shooting did you see the
3 uniformed Houston police officer who we now know to be named
4 James Harris?

5 A Did I see him.

6 Q Yes. Did you see him at the exact time of the shooting?

7 A No.

8 Q As of that time, the time of the shooting, had you ever
9 seen Ricardo Aldape Guerra or the man we now call Roberto
10 Carrasco Flores before?

11 A No.

12 Q As you can see in front of you we have two mannequins,
13 two dummies, which have been marked as State's Exhibit 19 and
14 20, and they were from the original trial, although as you can
15 see, they're missing a few parts, including hair and an eye
16 lash or two and a variety of other things, and some scratches.

17 Do you recall those exhibits as being, with the
18 exceptions that I just described, as being the mannequins that
19 you saw at the original trial in 1982?

20 A Yes.

21 Q Do you remember that the mannequin marked State's Exhibit
22 19, which has a beard and mustache, also had long hair?

23 A Yes.

24 Q Do you remember that the mannequin with the purple shirt
25 marked State's Exhibit 20 had short hair?

3
1 A Yes.

2 Q Now, I know you didn't know Mr. Aldape Guerra's name at
3 the time, but you know now the mannequin marked State's
4 Exhibit 19 with the green shirt was what was shown at the
5 trial to be person who was more or less the way Mr. Aldape
6 Guerra looked at the time of the night of the shooting, right?

7 A Yes.

8 Q Now, at the time of the shooting did you see Mr. Aldape
9 Guerra anywhere?

10 A At the time of the shooting?

11 Q At the time of the shooting. Did you see him around the
12 intersection?

13 A I saw him like after the shooting.

14 Q How long after the shooting?

15 A I don't know. A couple of minutes probably.

16 Q Are we talking a couple minutes or was it instantaneous?

17 A Probably an instant because I just had a glance.

18 Q Now, at the time that you saw him -- let me get this
19 straight though. At the time that you saw him, where was he
20 standing?

21 A On the side of the police car or the -- on the side of
22 the police car.

23 Q Now, I am pointing on Petitioner's Exhibit 12 to the
24 police car. The police car is facing heading down when it
25 stopped there. The driver's side is on the right, and the

3
1 passenger's side is on the left. Was he on the driver's side
2 on the right or the passenger's side on the left?

3 A On the driver's side.

4 Q Was he in front or south of the driver door or was he in
5 back of or north of the driver door?

4
6 A He was in front.

7 Q Okay. So, he was in front and, according to this map,
8 south of the police officer's open driver door?

9 A Yes.

10 Q In fact, let me not take anything for granted.

11 Did you actually see the police car's driver door
12 open?

13 A Yes.

14 Q Now, how close -- at the time you saw him, how close was
15 he to the police car?

16 A How close was he to the door or the police car?

17 Q No. How close was he to the side of the police car?

18 This is the police car facing that way, (indicating). I am
19 using counsel table as an example.

20 If the lawyer's table facing the Judge is the way the
21 police car was going and the driver door is about where this
22 chair is, how close was he to the side of the police car?

23 A Like about in front of the headlight, like in front of
24 the headlight.

25 Q You are saying near the front of the car?

4
1 A Yes, yes.

2 Q Can you describe for me the posture he was in at the time
3 you saw him? How was he standing, how were his hands, and
4 which way was he facing?

5 A His hand were like this, (indicating), and I saw his
6 profile like this, (indicating).

7 MR. ATLAS: Let the the record reflect the witness is
8 demonstrating by putting her hands open, palms down, flat on
9 the top of the desk.

10 BY MR. ATLAS:

11 Q Are you saying then that his hands were actually on the
12 top of the police car?

13 A That's what it looked like.

14 Q Was he facing the police car driver door at the time you
15 saw him or was he facing the police car?

16 A The police car.

17 Q He was not facing the driver door?

18 A No.

19 Q Did you hear any shots?

20 A Yes.

21 Q Now, immediately after hearing these shots, is that when
22 you saw Mr. Aldape Guerra?

23 A Yes.

24 Q And if I understand what you are saying correctly, at the
25 time you saw him immediately after hearing the shots, he was

4
1 right next to the police car, on the driver's side, near the
2 front, facing the police car with his hands down, open and his
3 palms down on the top of the police car; is that correct?
4 A Yes.
5 Q Did it look like he had just shot the policeman?
6 A No.
7 Q What did it look like to you?
8 A Like if he was getting ready to run.
9 Q Did it look to you as if -- the way you described it
10 looks like it's somebody who's in a position where he was
11 about to be frisked.
12 A Uh-huh.
13 Q Is that a fair description?
14 A Yes.
15 Q Did you ever see a gun in Mr. Aldape Guerra's hands?
16 A No.
17 Q Did his hands look empty or did they look like he was
18 holding something?
19 A They looked empty.
20 Q Did it look like there was any way Mr. Aldape Guerra
21 might have been holding a gun at the time you saw him?
22 A No.
23 Q Now did you see anyone shooting the policeman?
24 A No.
25 Q Did you see any men running away from the police car?

4
1 A No.

2 Q Were you questioned by the police at the intersection of
3 Edgewood and Walker shortly after the shooting?

4 A Yes.

5 Q How did they treat you? Were they nice?

6 A No.

7 Q Tell me how they treated you there.

8 A They used a lot of obscene language. They were yelling
9 and cursing a lot and scaring -- they scared me.

10 Q Had you said something that you think provoked them to
11 react that way to you?

12 A I just said what I saw.

13 Q Did you tell them that you hadn't seen the shooting?

14 A Yes.

15 Q Did they threaten any kind of action against you unless
16 you told them something else.

17 A Yes. They told me if I didn't tell them more than what I
18 had seen they were going to take my daughter away from me.

19 Q Were the police acting courteously toward other people at
20 the intersection?

21 A No.

22 Q Did you see them treating anyone else particularly
23 roughly?

24 A My aunt was with me, and she had been drinking, and they
25 called her a lot of bad words, and they handcuffed her and

4
1 said she was a drunk.

2 Q How did you react to the way they treated you and your
3 aunt?

4 A Well, I was very upset.

5 Q Just so the record is clear, I am taking out the same
6 copy as Petitioner's Exhibit 12, and let me hand it to you Ms.
7 Diaz.

8 Let me ask you, if you would, to mark on here -- this
9 is just a copy of the same thing we've got blown up over there
10 as Petitioner's Exhibit 12. Let me ask you to mark
11 approximately where it was that you saw Mr. Ricardo Aldape
12 Guerra by putting "AG" for Aldape Guerra.

13 A "AG"?

14 Q "AG." Okay?

15 A (Witness complies).

16 Q Let me see if I can make that a little darker. Well,
17 this pen doesn't do it any more. Let's try this one. I will
18 let you mark over the "AG" that you just wrote.

19 A (Witness complies).

20 Q Let me go ahead and write your name down at the bottom so
21 we know this is the exhibit that you actually wrote.

22 Have you written down "AG" about where you say you
23 saw Mr. Aldape Guerra immediately after the shooting?

24 A Yes.

25 MR. ATLAS: Your Honor, at this time I would like to

5
1 move for the admission of Petitioner's Exhibit 29.

2 MS. SCKERL: No objection, Your Honor.

3 THE COURT: Admitted.

4 BY MR. ATLAS:

5 Q Now, the aunt that you say you saw handcuffed, what was
6 your aunt's name?

7 A Trinidad Medina.

8 Q Now, while at the intersection talking to the Houston
9 police officers, did anyone say anything about a police
10 shoot-out with one of the suspects later on that evening?

11 A Yes.

12 Q What did they say? Who was it, first of all, and what
13 did they say?

14 A I don't know who they were. They were police officers.

15 Q What did they say?

16 A They said one of the men got shot to death in the
17 shoot-out, and the other one -- one of the men got shot in the
18 shoot-out with the cops, and the other one that did the
19 shooting, that shot the cop got caught, or something like
20 that.

21 Q Were you taken down to the police station for
22 questioning?

23 A Yes.

24 Q Did you sit in the police station with other people from
25 the neighborhood?

5
1 A Yes.

2 Q Do you remember anyone in the hall saying anything about
3 who they thought had done the shooting?

4 A By name, no; but there was a person that talked louder
5 than everybody else.

6 Q Let me show you some pictures, and let's see if I can
7 pick out the person who was doing this talking.

8 I am going to show you a document that's been marked
9 as Petitioner's Exhibit 20, and ask you to go into these
10 pictures, if you would, and see if you can pick out that
11 person.

12 Was it a man or a woman, first of all?

13 A It was a woman.

14 Q Why don't you look at the pictures in Petitioner's
15 Exhibit 20 and see if you can pick out this woman.

16 A (Witness complies). This one, (indicating).

17 Q Are you pointing to the picture that is numbered F2037?

18 A Yes.

19 MR. ATLAS: Let the record reflect the witness has
20 picked out the picture of Hilma Galvan.

21 BY MR. ATLAS:

22 Q Do you recall if there was anyone sitting next to Ms.
23 Galvan at the time she was talking about this?

24 A A little boy.

25 Q Did you know the little boy's name at the time?

5
1 A No.

2 Q Do you see the little boys picture in the Petitioner's
3 Exhibit 20?

4 A Yes.

5 Q And what's the document number with an "F" in front of it
6 at the bottom of that picture?

7 A It's been F00203.

8 Q 203 what?

9 Well, let me see. You can show it to me. It's
10 probably my handwriting.

11 Is it this one, (indicating)?

12 A Uh-huh. Yes.

13 Q All right. That's F002034?

14 A Yes.

15 MR. ATLAS: Let the record reflect the witness
16 pointing to it to the picture of Jose Armijo, Jr.

17 BY MR. ATLAS:

18 Q Tell us, if you would, please, what you heard Ms. Galvan
19 saying the hallway louder than everyone else.

20 A She was saying that she saw -- she saw the man that shot
21 the officer.

22 Q Did she identify the man to the little boy she was
23 talking to?

24 A She was saying the man with the long hair.

25 Q What was it like in the police station that night?

5 1 A There was a lot of yelling and chaos, a lot of things
2 going on at the same time.

3 Q Did you hear anybody talking that night about having shot
4 and killed one of the men who had been involved in the
5 shooting?

6 A Yes.

7 Q What did you hear the police saying in that regard?

8 A As I said earlier, one of these men got shot and killed
9 by the cops, and we got the one that shot the cop.

10 Q Now, maybe I am confused.

11 Did you hear that from the police, at the police
12 station while you were awaiting to be questioned or did you
13 hear that earlier at the intersection?

14 A Earlier at the intersection.

15 Q Did you hear it at the police station, as well?

16 A There was a lot of talking about the same thing.

17 Q So, you heard it both places, then?

18 A Uh-huh.

19 Q Excuse me?

20 A Yes.

21 Q Did you tell the police at the police station what you
22 saw?

23 A Yes.

24 Q Were you taken back to one of those little offices where
25 somebody asked you questions?

5
1 A Yes.

6
2 Q Did you tell the police officer who was questioning you
3 that immediately after the shooting you saw the man with the
4 long hair standing on the driver's side of the police car,
5 facing the police car with his hands out-stretched and his
6 palms down, looking like his hands were empty, as if he were
7 about to be frisked?

8 A Yes.

9 Q Did you tell the police that night that you saw Mr.
10 Aldape Guerra pointing in the direction of the police officer?

11 A No.

12 Q While you were being questioned, did you hear other
13 people saying who -- while you were being questioned, were you
14 asked to sign a document prepared by the police?

15 A Yes.

16 Q Ms. Diaz, let me hand you who we have marked as
17 petitioner's Exhibit 30, and let me ask you if that appears to
18 be the document that you signed that evening before the
19 line-up?

20 A Yes.

21 MR. ATLAS: Your Honor, at this time I would like to
22 move for the admission of Petitioner's Exhibit 30.

23 MR. ZAPALAC: No objection, Your Honor.

24 THE COURT: What is it again?

25 MR. ATLAS: Petitioner's 30.

6
1 THE COURT: I mean, describe it.

2 MR. ATLAS: It's the statement that the witness
3 signed earlier in the evening before the line-up.

4 THE COURT: All right. It's admitted.

5 BY MR. ATLAS:

6 Q In the upper right-hand corner of that document, it has
7 the date July 14 and says 1:40 a.m. Is that about the time
8 you were questioned by the police?

9 A Yes.

10 Q Did you carefully read that document before you signed
11 it?

12 A No.

13 Q Why not?

14 A Because I was tired, and I kept on thinking of the threat
15 they had told me earlier, so I just signed it so I could go
16 home.

17 Q Now, I am going to point you to some language in that
18 statement that's on the first page, sixth paragraph down,
19 which the paragraph beings, "Just after I heard someone yell
20 'stop.'"

21 Do you see where that is, Ms. Diaz?

22 A Yes.

23 Q Then it says, "Just after I heard someone yell 'stop,' I
24 saw this Mexican man who I had originally seen by the black
25 car pointing a gun in the direction of the police car, and I

6
1 saw him shoot four times at the police car."

2 Did you know when you signed this statement that the
3 sentence I have just read was in it?

4 A No.

5 Q Had you told the police anything like that that night?

6 A No.

7 Q Are those two sentences accurate?

8 A No.

9 Q Now, Ms. Diaz, I would like to point you to some
10 testimony at the original trial and ask you if that is an
11 accurate description of what you testified about at the trial.

12 At Page 334 in the statement of facts, with you
13 testifying in response to questions from prosecutor Moen,
14 beginning at -- well, let's start at Page 333 on Line 23.

15 The question is: "I want to ask you about some
16 things in your statement, Patricia, so the jury will know. I
17 would like you to look at your statement and tell the jury
18 everything you said in your statement."

19 They asked about the dark-colored shirt, and then
20 asked you a couple of other things about how the man looked.

21 And then going from Line 3 on Page 334 down to Line
22 17, this question was: "Tell the jury how described the man
23 for the police in your statement on July 14th, 1982."

24 And you read: "I only saw one Mexican male around
25 the black and red car that was parked across Walker Street,

6 1 and I only saw him from the side, but he looked like he was in
2 his 20s, about five-ten, thin built." Then you described his
3 hair.

4 And then it says on Page 335, Line 3: "Okay. What
5 did you tell the police back in your statement about being
6 able to identify the man." And again asked you about what.

7 And then on Page 335, Line 18 it says: "Now, what
8 does this statement say about the pistol? Read the sentence
9 to the ladies and gentlemen of the jury."

10 You started the answer. It says: "I also do not, do
11 not."

12 And he asked again the question: "Can you make out
13 the word where it says 'I also did not actually see a
14 pistol'?"

15 Answer: "Pistol that the Mexican man used to shoot
16 the police officer. I think it was black in color."

17 Now, Ms. Diaz in that testimony, were you attempting
18 to tell the prosecutor that the statement that I just read to
19 you from Petitioner's Exhibit 30 was accurate, that you, in
20 fact, had seen the man with the long hair pointing a gun in
21 the direction of the police car and shoot?

22 A No. I didn't say that I saw a gun.

23 Q What were you trying to tell the police officer at the
24 time -- I'm sorry. Were you --

25 A I was trying to say I heard the shots, not that I saw the

6
1 gun.

2 Q Well, were you telling the district attorney at the
3 original trial, you were trying to tell him that you actually
4 saw the man with the long hair shoot the police officer, or
7 were you just trying to read your statement the way he asked
5 you to.
6

7 A I was trying to read the statement.

8 Q Did you stay at the police station all night that night?

9 A Yes.

10 Q At about 6:00 o'clock the next morning were you asked to
11 look at five or six men standing behind a large glass window?

12 A Yes.

13 Q Now, were you in a room with some other people from the
14 neighborhood and several policemen?

15 A Yes.

16 Q Let me show you a document that has already been marked
17 as Petitioner's Exhibit 24 and ask you if that looks like the
18 people who were in the line-up that night?

19 A Yes.

20 Q Was the man who appears to be standing in the front of
21 that picture, was he one of your neighbors or was he one of
22 the police officers there? There is a head at the bottom
23 covering up the legs of the second and third man from the left
24 in the picture. You see where I am talking about?

25 A Yes.

7
1 Q Was that person one of your neighbors or, in your
2 recollection, was it somebody from the police station who was
3 working for the police?

4 A I think it was one of the people at the police station.

5 Q Now, while these five or six men were standing behind the
6 glass and you were watching them in the line-up with other
7 people from the neighborhood, was anyone in the neighborhood
8 talking?

9 A Yes.

10 Q Who was it?

11 A This lady I just pointed out.

12 Q The lady I identified for you earlier as Hilma Galvan?

13 A Yes.

14 Q What was she saying?

15 A That the man with the long hair was the one that shot the
16 police officer.

17 Q Now, did the police try to stop her from talking?

18 A They just told us to be quiet.

19 Q Did that stop her?

20 A No.

21 Q In fact, when you went into the room you were instructed
22 that you weren't supposed to talk, weren't you?

23 A Yes.

24 Q Let me point you to your testimony at the original trial
25 on Page 339, Line 3. You have just been asked: "Drug the

7
1 line-up" -- this is talking about the line-up here -- "Anybody
2 point at him" -- meaning Mr. Guerra, Aldape Guerra -- "and
3 say, there is the man, there is No. 4, there he is?"

4 And your answer was: "No. Because before they
5 brought him out, everybody was asked to sit around two or
6 three chairs away from everybody else, and there was officers
7 in back and people in front, so you couldn't, you know, talk
8 to anybody."

9 Now, you testified at the original trial that you
10 couldn't talk to anybody. Did that stop Ms. Galvan from
11 talking?

12 A No.

13 Q Are you absolutely certain that you recall her saying,
14 while you were in the line-up room, while Mr. Aldape Guerra
15 and the other five gentleman were up there behind the glass,
16 that the man with the long hair had done the shooting?

17 A Yes.

18 Q After the line-up were you asked to sign another
19 statement?

20 A Yes.

21 Q Let me show you what has been marked as Petitioner's
22 Exhibit 31 and ask you if that is a copy of the statement that
23 you signed after the line-up early the morning of July 14th,
24 1982?

25 A It is.

1 MR. ATLAS: Your Honor, at this time I would move for
2 the admission of Petitioner's Exhibit 31.

3 MS. SCKERL: No objection, Your Honor.

4 THE COURT: Admitted.

5 BY MR. ATLAS:

6 Q Now, in the upper right-hand corner it has the date July
7 14 and says 6:20 a.m. Is that about the time you gave the
8 information for that statement after the line-up?

9 A Yes.

10 Q Did you read it before you signed it?

11 A No.

12 Q When you signed it -- let me point you to the third
13 paragraph of that document where it says in the last sentence:
14 "I saw this man with his hands out-stretched, and I guess he
15 had a gun in his hands."

16 When you signed that statement, did you know it had
17 that sentence in it?

18 A No.

19 Q If you didn't know what was in it 'cause you didn't read
20 it, why did you sign it?

21 A I signed it because I was tired and I wanted to go home.

22 Q Did the police tell you anything that prompted you to
23 sign it?

24 A They said if I signed it, I could go home.

25 Q Did any police officer there tell you who they thought

7
1 had shot the policeman?

2 A I don't recall.

3 Q At any point in time while you were in the police station
4 did any police officer tell you that they thought the man with
5 the long hair had shot the police officer?

6 A There was a lot of police officers saying who they
7 thought shot the police officer.

8 Q And which one were they saying had done it? The man with
9 the long hair or the man with the short hair?

10 A The man with the long hair.

11 Q Were you hearing that literally all through the evening
12 while you were at the police station from police officers?

13 A Yes.

8
14 Q Do you remember going to the prosecutor's office here in
15 downtown Houston in another building in downtown Houston, not
16 here at the courthouse, the weekend before you testified?

17 A Yes.

18 Q Were there some of the people from the neighborhood
19 there?

20 A Yes.

21 Q Now, let's me ask you, was Jose Armijo, Jr. the boy shown
22 in F2034 in Petitioner's Exhibit 20 there?

23 A I don't remember him.

24 Q What about Ms. Galvan?

25 A I don't remember her.

8
1 Q What about Herlinda Garcia, the woman shown in F2038 of
2 Petitioner's Exhibit 20?

3 A Yes.

4 Q What about Vera Flores, the woman shown in F2036 of
5 Petitioner's Exhibit 20?

6 A Yes.

7 Q In fact, let me just find out whether the picture in
8 Petitioner's Exhibit 20 that is marked as F2042, do you
9 recognize that person?

10 A Yes.

11 Q Who is that?

12 A She is my aunt, Trinidad Medina.

13 Q Is that the same woman you said was handcuffed out at the
14 intersection of Edgewood and Walker shortly after the
15 shooting?

16 A Yes.

17 Q In addition to Vera Flores and Herlinda Garcia, were
18 there some other people from the neighborhood there, too, even
19 if you don't remember exactly who they were?

20 A I think there was.

21 Q At that meeting did the prosecutor show you any
22 mannequins or dummies?

23 A Yes.

24 Q Except for having an ear broken and hair missing and some
25 gouges, do these two mannequins in front of you that are

8
1 marked States Exhibit 19 and 20 look like the same dummies you
2 were shown at DA's office that weekend?

3 A Yes.

4 Q How did you react to these mannequins when they were
5 first shown to you by the district attorneys that weekend
6 before you testified?

7 A I was startled when I saw them.

8 Q You say startled. Do you mean frightened or something
9 else?

10 A It scared me.

11 Q What was it about them that scared you?

12 A Well, there was man that had blood stains and bullet
13 holes, and it scared me.

14 Q Was it the one with the purple shirt or the one with the
15 green shirt in front of you?

16 A The one with the purple shirt.

17 MR. ATLAS: Let the record reflect the witness is
18 referring to State's Exhibit 20.

19 BY MR. ATLAS:

20 Q At that meeting at the district attorney's office, did
21 you tell the prosecutor's, Mr. Bax or Mr. Moen, what you had
22 seen at the shooting?

23 A Yes.

24 Q Did you tell them that you saw the man with the long hair
25 standing alongside the police car, facing the car with his

8 1 hands out stretched about a foot apart, palms down, on the top
2 of the police car like he was about to be frisked almost
3 instantaneously after the shooting, with nothing in his hands?

4 A Yes.

5 Q Now, did you identify the mannequin with the long hair
6 and the green shirt as the one you had seen at time of the
7 shooting in the way you just described?

8 A Yes.

9 Q Did you at any point tell either prosecutor at the
10 meeting at their offices that weekend morning that the man
11 with the long hair, Mr. Aldape Guerra, had shot the police
12 officer?

13 A No.

14 Q Did you tell them that it looked like he had shot the
15 police officer?

16 A No.

17 Q Did you tell them he looked like he was holding a gun?

18 A No.

19 Q Did you tell them that he was pointing at the police
20 officer?

21 A No.

22 Q Did the district attorneys that morning, the weekend
23 before that you testified, show you pictures of Mr. Aldape
24 Guerra and Mr. Carrasco Flores?

25 A Yes.

8
1 Q Let me show you a picture as State's Exhibit 18 and what
2 has been marked here as Petitioner's Exhibit 2. Is that one
3 of the pictures they showed you?

4 A Yes.

5 MR. ATLAS: Let the record reflect that's a
6 photograph of Mr. Aldape Guerra with his long hair and beard
7 and moustache.

8 BY MR. ATLAS:

9 Q Let me also show you a document marked Petitioner's
10 exhibit -- I am sorry -- State's Exhibit 71 in Petitioner's
11 Exhibit 2. Is that another picture they showed you that
12 morning?

13 A Yes, but it wasn't like that. They showed the picture
14 when he was in the morgue; and they said, this is the man that
15 got shot in the shoot-out by the cops, and this is one that
16 shot the cop.

17 Q We need to get straight on which one they were talking
18 about. First of all, let's see if we can identify who is
19 doing the talking.

20 Let me show you a document marked Petitioner's
21 Exhibit 19, which is a picture of the two mannequins in the
22 middle and the two prosecutors on either side on the outside
23 of this picture.

24 Do the two mannequins in the middle look about the
25 way the mannequins looked during the trial?

1 A Yes.

2 Q Now, which of the prosecutors was showing you these
3 pictures and talking to you about it the weekend before you
4 testified, do you remember?

5 A They were both.

6 Q They were both there?

7 A Uh-huh.

8 Q Excuse me?

9 A Yes.

10 Q Do you remember specifically which one was doing the
11 talking at that time?

12 A No.

13 Q How could you tell that the picture they showed you of
14 Mr. Carrasco Flores was a picture of him at the morgue?

15 A How could I tell?

16 Q Yes.

17 A Because he was laying on -- he was laying on the -- I
18 don't know what you call it.

19 Q Steel table.

20 A Steel table.

21 Q Was he clothed?

22 A Yes.

23 Q Could you tell from looking at picture whether he was
24 alive or dead.

25 A He was dead.

9 1 Q Was it clear from the picture he was dead?

2 A Yes.

3 Q Now, when the DA showed you this picture of Mr. Carrasco
4 Flores at the morgue, obviously dead, what did they say about
5 that picture?

6 A This is the man who got shot, shot to death by the cops
7 in the shoot-out.

8 Q When they showed you the picture of Mr. Aldape Guerra
9 that was marked as State's Exhibit 18 in Petitioner's Exhibit
10 two, what did they tell you?

11 A This is man that shot the cop.

12 Q Now, when they said that, did you tell them "that's not
13 what it looked like to me"?

14 A I didn't say anything.

15 Q Why not? Why not?

16 A Because they were the ones doing all the talking.

17 Q Okay.

18 Could you tell tell from looking at the two
19 mannequins they showed you that day which of the two had been
20 shot and killed?

21 A Yes.

22 Q How could tell?

23 A By the bullet holes and blood on the clothes.

24 MR. ATLAS: Your Honor, I have blown up a page of the
25 testimony of Ms. Diaz, Page 313, which I would like to use for

9 1 demonstrative purposes, with the Court's permission.

2 THE COURT: You may.

3 BY MR. ATLAS:

4 Q Ms. Diaz, at Page 313, Line 14 you were asked the
5 question at the original trial in July, 1982: "You say you
6 saw this one man and you saw him pointing. Was he pointing
7 towards or in the direction of the police car or the police
8 officer?"

9 And the answer you gave was: "Uh-huh. The direction
10 of the police car."

11 Now, when you said that, were you meaning that he was
12 pointing towards the police car with his hands down, palms
13 open and empty, the way you testified today, or was he
14 pointing in the sense of having a finger pointing at somebody
15 like he was holding a gun?

16 A No. He was with his palms down.

17 Q And open and empty?

18 A Yes.

19 Q Did you mean to say that he was pointing at the police
20 officer or the police car the way the testimony shows?

21 A Pointing at the police car.

22 Q Now, I've also got another demonstrative exhibit that is
23 Page 316, but before I get to that, on Page 314 of your
24 testimony, actually at the bottom of Page 313 it says, Line
25 23: "Could you tell the ladies and gentlemen of the jury how

9 1 this man was pointing that you saw."

2 And on Page 314 it says: "You asked how he was
3 pointing?"

4 And the question is: "Yes. Can you demonstrate and
5 show the members of the jury how he was pointing. Stand up
6 and show them."

7 And your answer was: "He was like that. That is all
8 I got to see."

9 Can you demonstrate for us this morning how you
10 showed the ladies and gentlemen of the jury in the original
11 trial in July, 1982 the way that you showed the long-haired
12 man pointing, as you put it? What did you show the jury?

13 A That he was like this, (indicating).

14 Q Let the record reflect the witness, once again, has her
15 hands out in front of her about a foot apart with the palms
16 down open and empty.

17 Now, you have already shown that when you were asked
18 the question on Page 313 of whether you saw the long-haired
19 man pointing in the direction of the police car or police
20 officer that you said he was pointing in the direction of the
21 police car.

22 Now, just a few pages later, Mr. Moen asks you on
23 Page 316, Line 12, question: "Now, could you describe this
24 man you saw pointing at the police officer for the ladies and
25 gentlemen of the jury."

9 1 You then go ahead and describe the way the man looks
2 with long beard, long hair and a mustache.

3 His question asking you to describe this man says he
4 wants to you describe the man pointing at the police officer.
5 Did you mean to be saying in your answer to that question that
6 you saw the man pointing at the police officer?

7 A No. I didn't know that he said officer.

8 Q You just didn't notice that?

9 A No. I didn't notice it.

10 Q He says that, he uses the term "pointing at the police
11 officer" in several more questions in the next several pages,
12 asking you other questions.

13 In answering those questions did you realize he was
14 saying, that he was asking you about the man pointing at the
15 police officer?

16 A No. I didn't notice it.

17 Q Did you mean by answering those questions to be implying
18 you were changing your testimony and saying that you saw the
19 man pointing at the police officer instead of pointing at the
20 police car? Are you trying to change your testimony about
21 which way he was pointing when you answered those questions?

22 A I was all mixed up when he was saying those things.

23 Q Now, which way did you mean to be telling jury in July,
24 1982 that the man was pointing, pointing at the police officer
25 or pointing at the police car?

1 A At the police car, like that, (indicating).

2 MR. ATLAS: Again, let the record reflect the
3 witness, when she said "like that," had her hands out in front
4 of her about a foot apart, palms faced down, open and empty.

5 BY MR. ATLAS:

6 Q Did you ever see the long-haired man, Mr. Aldape Guerra,
7 pointing in the direction of the police officer?

8 A No.

9 Q Did you ever tell the police or the district attorney
10 that you saw Mr. Aldape Guerra pointing in the direction of
11 the police officer who was shot and killed that night?

12 A No.

13 Q At the meeting in the DA's office the weekend before
14 trial, did one of the district attorneys try to get you to say
15 that Mr. Aldape Guerra was pointing at the police officer?

16 A I don't know. I don't remember. I just remember, I just
17 told you about that they were showing me the pictures and they
18 were saying, they were the ones saying, and I was just
19 listening.

20 Q But at some point that morning at the DA's office you did
21 tell them what you told us here today, that you saw the
22 long-haired man pointing at the police car and not at the
23 police officer, right?

24 A Yes.

25 Q At any time point that morning at the district attorney's

1 office here in downtown Houston did either of the district
2 attorneys try to get you to say Mr. Aldape Guerra had a gun in
3 his hand, the way it reads in your statement,
4 or at least that it looked like a gun?

5 A Yes.

6 Q What did you say when they told you that?

7 A I said I never saw a gun.

8 Q Give us as best you can recall the words that the DA used
9 in asking you to say that there was a gun or it looked like a
10 gun, just your best recollection.

11 A I don't know. I don't remember.

12 Q You don't remember the exact words?

13 A No.

14 Q Are you reasonably certain, though, that one of the DA's
15 was urging you to say you had seen something that looked like
16 a gun in the long-haired man's hands?

17 A Yes.

18 Q Now, you were asked several questions at the trial that
19 had a reference to a gun in it, and you said you didn't see
20 it. Why didn't you show the jury the way you showed us today
21 when you were asked those questions that you couldn't see a
22 gun?

23 A Because by then they had done already a lot of yelling,
24 and I was scared.

25 Q Does that mean you said some things at the trial you

1 might not have meant to because you were so scared?

2 A Yes.

3 Q Who was it doing the yelling at you?

4 A One of these men, (indicating).

5 Q By "these men" are you referring to the prosecutors?

6 A Yes.

7 Q Now, let me show you again Petitioner's Exhibit 19. Was
8 it either one of the two men in particular or both of them?

9 A They were both.

10 Q So Mr. Bax and Mr. Moen actually did some yelling at you
11 while you were at the DA's office the weekend before you
12 testified?

13 A Yes.

14 Q Do you remember what it was they were saying when they
15 were yelling at you or why were they yelling at you? What was
16 it they were trying to get you to do?

17 A They were trying to get me to say that I saw the man with
18 the long hair with the gun, but I said again and again that I
19 never saw a gun. I just heard the shots.

20 Q And when you said that, they yelled at you?

21 A Yes.

22 Q And was there yelling again trying to get you to change
23 what you said to say that you had actually seen a gun or
24 something that looked like a gun?

25 A Yes.

0
1 Q At the trial, where were the mannequins while you
2 testified?

3 A They were in front of me.

4 Q While you were testifying, could you tell which dummy's
5 or which mannequin's shirt had bullet holes and blood stains
6 in it?

7 A Yes.

8 Q Which one was it, the green shirt or the purple shirt?

9 A The purple shirt.

10 Q Referring now to State's Exhibit 20, the mannequin made
11 up to look like the man they called Roberto Carrasco Flores?

12 A Yes.

11
13 Q Did that make it easy while you were testifying to tell
14 which one of the two people shown in the mannequins was
15 already dead?

16 A Yes.

17 Q Now, have you ever in your life spoken to my client,
18 Ricardo Aldape Guerra?

19 A No.

20 Q When was the last time that you spoke about the shooting
21 to Vira Flores, Herlinda Garcia, your aunt, Trinidad Medina,
22 or anyone out at or near the intersection the night of the
23 shooting, other than the lawyers for Mr. Guerra? Has it been
24 years?

25 A To my cousin, Vira, about four months ago.

1 Q Anyone else?

2 A No.

3 Q You and I have met a couple of times talking about this
4 case, haven't we?

5 A Yes.

6 Q I guess other lawyers representing Mr. Aldape Guerra have
7 met with you, sometimes with me and sometimes without me,
8 right?

9 A Yes.

10 Q Now.

11 Q Did any of the other attorneys for Mr. Aldape Guerra or I
12 tell you what you should say today?

13 A No.

14 Q In your opinion, based on what you saw that night, did
15 Mr. Aldape Guerra shoot police officer James Harris?

16 A No.

17 Q Why not?

18 A Because he looked like he was getting ready to run, and I
19 didn't see anything in his hand.

20 Q Was he even facing towards the police officer at the time
21 of the shooting, as best you could tell?

22 A No.

23 Q Is that what you told the police that night, the next
24 morning at the police station, and the district attorneys
25 before trial?

1 A Yes.

2 Q Why are you coming forward now to say all of this?

3 A Because then I was scared. I was 17 years old. I was
4 just a kid. And now I am an adult. I am 29 years old, and I
5 am not easy to scare any more.

6 MR. ATLAS: Thank you, Ms. Diaz.

7 Pass the witness.

8 THE COURT: Cross-examination.

9 MS. SCKERL: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. SCKERL:

12 Q Ms. Diaz, my name is Cary Sckerl. You and I have never
13 spoken about this case, have we?

14 A No.

15 Q I want to take you back to the evening of July 13th,
16 1982. Where were you and your aunt coming from?

17 A We were coming from my uncle's.

18 Q Is that your aunt's husband?

19 A No.

20 Q What were you doing at your uncle's?

21 A I had gone to pick her up. I was home that day.

22 Q Okay.

23 And what had she been doing at your uncle's, do you
24 know?

25 A She was drinking.

1 Q Drank a lot, didn't she?

2 A You could say that.

3 MS. SCKERL: May I approach the exhibits?

4 THE COURT: You may.

5 BY MS. SCKERL:

6 Q I would like to show you what has been marked as
7 Petitioner's Exhibit 12. You talked with Mr. Atlas about that
8 on direct examination, didn't you?

9 A Yes.

10 Q And the car to the left, as you are looking at that
11 diagram kind of on the side of the road, was your car; is that
12 right.

13 A Yes.

14 Q Why was it parked on the side of the road right there?

15 A Why?

16 Q Yes, ma'am.

17 A Because I heard someone yell, "stop, stop." So I
18 stopped.

19 Q And you had been driving, so your headlights were on,
20 right?

21 A Yes.

22 Q What did you see when you drove up there?

23 A A car was blocking my way.

24 Q Did you see anything else?

25 A At that time, no.

1 Q When did you first notice the police car?

2 A Well, I noticed it when somebody was yelling, "stop,
3 stop," I stopped to look, and I could see the car. I just saw
4 one car at the time.

5 Q Did you ever see the police car?

6 A Yes.

7 Q When did you first see it?

8 A When I already got out of the car.

9 Q So you got out of car. When did you get out of the car?

10 A After the shots; a little bit after the shots.

11 Q So you got out of the car after the shots, and that was
12 the first time you saw the police car?

13 A No. When I was in the seat, I could see the police car,
14 so I dimmed my headlights.

15 Q When you were in the seat. You just demonstrated you
16 were kind of leaning down, okay.

17 So --

18 A Yes. Leaning.

19 MR. ATLAS: Your Honor, forgive me for objecting, but
20 I think the witness hadn't finished her answer when Ms. Sckerl
21 inadvertently interrupted her.

22 MS. SCKERL: I'm sorry.

23 Q Go ahead.

24 A I was leaning in the seat like this, (indicating)
25 covering my daughter, and I saw could see the car.

1 Q Now, you were driving the vehicle; is that right?

2 A Yes.

3 Q Where was your daughter sitting?

4 A In the middle.

5 Q Where was your aunt sitting?

6 A On the passenger's side.

7 Q You were leaning down to cover your daughter; is that
8 right?

9 A Yes.

10 Q What were you -- why?

11 A Because I heard shots.

12 Q So you heard shots, and then you leaned down?

13 A Uh-huh. Yes.

14 Q How many shots did you hear?

15 A Four. I don't know. Around four.

16 Q And then how long did you wait after the shots ended
17 before you sat up and got out of your car?

18 A How long?

19 Q Uh-huh. How long?

20 A I don't know. A couple of seconds.

21 Q Would you kind of describe by going bang, bang, bang,
22 bang, bang how fast the shots occurred. Did they go bang,
23 bang, bang, bang, or was it bang, bang, bang, bang?

24 A No. It was fast.

25 Q So, like bang, bang, bang, bang?

1 A Yes.

2 Q So they were rapid.

3 When you first drove up on the scene, you said you
4 saw the red and black car. Did you see any people?

5 A I didn't notice if there was any people in there.

6 Q Did you see any people standing around the beside their
7 car?

8 A No.

9 Q So then you said you leaned down because you heard shots.

10 Tell me exactly what you did Ms. Diaz.

11 A When I heard the shots?

12 Q You stopped, you are driving, your car is still going; is
13 that right.

14 A Uh-huh. Yes.

15 Q You have got your hands on the steering; is that right?

16 A Yes.

17 Q So, then all of a sudden you hear shots from nowhere; is
18 that right?

19 A Yes.

20 Q So then you turn around and you went down to protect your
21 daughter, right?

22 A Yes.

23 MR. ATLAS: Your Honor, I object to that. She is
24 mischaracterizing the witness's prior testimony. She didn't
25 say she turned around. She said she leaned over.

1 MS. SCKERL: I will rephrase that, Judge.

2 BY MS. SCKERL:

3 Q You leaned over to protect your daughter; is that right?

4 A Yes.

5 Q Did you have to turn to face her before you could lean on
6 top of her?

7 A No. My body was this way, (indicating). I just went
8 like this, (indicating).

9 MS. SCKERL: May the record reflect she is indicating
10 she turned to one side and bent down.

11 BY MS. SCKERL:

12 Q So then, how many shots did you hear before you turned
13 sort of around to lean over your daughter?

14 A How many shots? I don't know. About four. I don't
15 remember.

16 Q So you heard all the shots before you leaned over your
17 daughter?

18 A Yes.

19 Q So you heard four shots, then you leaned over your
20 daughter to protect her. Then, after an amount of time, you
21 sat back up, and that's when you saw somebody at the police
22 car; is that right?

23 MR. ATLAS: Your Honor if Ms. Sckerl is attempting to
24 describe the witness's prior testimony, that's not an accurate
25 description of it. I think she needs to be clear about

2
1 whether -- because this whole line of questioning is an
2 attempt to ask the witness to repeat what she has already
3 testified about as if she's just said it.

4 If this is new testimony, that's fine. It's
5 perfectly fair cross-examination; but if it's an attempt to
6 characterize this witness's earlier testimony, it is not
7 accurate.

8 THE COURT: I am going to sustain it as to the form
9 of the question because what we have here is a three-part
10 scenario developing; and that is we have got prior written
11 statements that are not in evidence, that were not in evidence
12 during the course of the trial.

13 We have the testimony of the witnesses recorded,
14 which all of you us have access to, and we have the testimony
15 of the persons today relative or recollecting either the
16 testimony, or their being cross-examined or impeached about
17 that testimony on the previous occasion.

18 So let's make sure that you are not asking her
19 what happened at that time without making it clear to her that
20 you asking her to re-testify as opposed to recall her
21 testimony.

22 MS. SCKERL: Yes, Your Honor.

23 BY MS. SCKERL:

24 Q Ms. Diaz, based on your recollections of the events on
25 July 13th, 1982 -- that's what we are talking about right now,

2
1 your recollection of the events that night, okay -- when did
2 you first lean over your daughter to protect her?

3 A That night?

4 Q Yes, ma'am.

5 A When I heard the shots.

6 Q And how many shots did you hear before you leaned over
7 her, based on your recollection of the night?

8 A About four.

9 Q So you heard the four shots; you leaned over your
10 daughter. Approximately how long did you spend leaning over
11 your daughter?

12 A I don't know. A couple of seconds probably.

13 Q And then what did you do?

14 A Then I kind of looked up.

15 Q Were you still sitting in your vehicle?

16 A Yes.

17 Q Was your door open or closed?

18 A Closed.

19 Q So when you were leaning over your daughter, was your
20 face pointed towards the side of, the passenger's side of the
21 car down here, if the driver's side is right there, were you
22 looking towards the passenger's side?

23 A Yes.

24 Q Well, then, Ms. Diaz --

25 A Not looking. My head was like this, (indicating). I was

2 1 like this because of the steering wheel. I didn't fit all the
2 way down.

3 Q So, you didn't fit all the way down. You were turned to
4 your right; is that correct, because that would be to the
5 passenger's side?

6 A Yes.

7 Q And you were leaning over to protect your daughter, but
8 you didn't go all the way down; is that right?

9 A Yes.

10 Q And the driver's door was closed at that time, correct?

11 A Yes.

12 Q And did your head go below the dash, you know, where the
13 dash of the car is?

14 A It didn't fit all the way.

15 Q So was your head above?

16 A Just half of my face, just half.

17 Q So half of your face was above the car.

18 And what exactly were you looking at or what did you
19 see out of that one eye that was above the dash?

20 A I saw --

21 MR. ATLAS: Objection, Your Honor. The witness said
22 half her face.

23 THE COURT: I will sustain it as to the form of the
24 question.

25 Ask her what did she say without describing, in

3
1 your opinion, how she was situated.

2 MS. SCKERL: Yes, Your Honor.

3 BY MS. SCKERL:

4 Q What did you see?

5 A I saw the man with the long hair by the police car. To
6 me it looked like he was getting ready to run.

7 Q And this was while you were still leaning down over your
8 daughter; is that right?

9 A Yes.

10 Q What did I just do, just now?

11 A Point.

12 Q And what am I doing right now?

13 A Leaning.

14 MS. SCKERL: May the record reflect the first gesture
15 I used was to hold one finger out and hold it in the position
16 of the back door to the courtroom; and in the second position
17 I used, I walked up to the table in front of the bar and
18 placed both hands on that table.

19 Q You had, by the time you saw Mr. Guerra, Aldape Guerra
20 already heard four shots; is that right?

21 A Yes.

22 Q At the time you saw him, your testimony is that, as you
23 recall it, he had both of his hands flat on the police car; is
24 that right?

25 A Yes.

3 1 Q What part of the police car did he have his hands on?

2 A On the front of the hood.

3 Q Would that be in front of the headlights?

4 A He was standing by right by the headlights, or probably
5 in back of them. I don't remember.

6 Q I am confused on what you mean by the "front of the
7 hood."

8 As Mr. Atlas used before, he used this counsel table,
9 this lawyer's table as the car, and the headlights were coming
10 out this direction, (indicating)?

11 A Uh-huh.

12 Q If that's the case, was Mr. Aldape Guerra like this,
13 (indicating)?

14 A No. He was on the side.

15 Q Like this, (indicating)?

16 A Yes.

17 Q Did you see the defendant in profile, the side of his
18 face, or did you see the front of his face? I'm sorry. Not
19 the defendant. Mr. Aldape Guerra.

20 A The side.

21 Q You saw the side of his face.

22 Now, Ms. Diaz, I don't understand how you could have
23 seen the side of his face if he was on the front part of the
24 car there and you were facing towards the south. Could you
25 tell me how you were able to see his profile.

3
1 MR. ATLAS: Your Honor, I object. The question
2 assumes that this witness has testified she was facing south.
3 That's simply an inaccurate characterization of her testimony.

4 She said that at the time she was covering her
5 daughter she was, at best, staring towards the east; and at no
6 point did she ever say she was facing down toward the south.

7 THE COURT: I will sustain it as to the form of the
8 question.

9 MS. SCKERL: I will rephrase the question, Your
10 Honor.

11 BY MS. SCKERL:

12 Q How was it you were able to see Mr. Aldape Guerra's
13 profile when you were leaning down in the car?

14 A How was it?

15 Q How did you see his profile?

16 A 'Cause I only had one eye, you know, I was halfway like
17 this, (indicating), I could only see this side of his profile,
18 his long hair. Like if he was standing like this, like this,
19 (indicating).

20 Q The exhibit that is up there, you testified earlier, I
21 believe, that is an accurate depiction of where the cars were
22 that night; is that right?

23 A Yes.

24 MR. ATLAS: Your Honor she said it was reasonably
25 accurate. We are not, certainly, asking the witness to

1 certify it's exactly correct.

2 THE COURT: Let's proceed.

3 BY MS. SCKERL:

4 Q Was that where the red and black car was when you pulled
5 up?

6 A Yes.

7 Q What part of your car was at what part of the red and
8 black car?

9 THE COURT: You mean pointed in the direction of?

10 MS. SCKERL: Pointing in the direction.

11 A My headlights reflected on the red and black car.

12 Q What part of the read and black car?

13 A I don't know. About the middle part. I don't know. I
14 am not exactly sure.

15 Q And right before you heard the shots, where were you
16 looking?

17 A I was looking around to see who said "stop, stop."

18 Q What area did you look at? Did you look behind you, to
19 the side of you, in front of you?

20 A In front.

21 Q Did you see anyone?

22 A No.

23 Q Did you see the police car then when you heard someone
24 yell "stop, stop"?

25 A Did I see the police car, no.

3
1 Q So, if I understand -- and I just want to make sure that
2 I understand -- your recollection of the night of the shooting
3 are, after you heard the four shots, you leaned down to
4 protect your daughter, you sat back up, and when you sat back
5 up, Mr. Aldape Guerra still had his hands on the police car;
6 is that correct?

7 MR. ATLAS: Your Honor, I object. That is not --
8 again, to the form of the question. That is an unfair
9 characterization of the witness's prior testimony.

10 THE COURT: Well, let me hear her answer.

11 A Can you repeat the question again?

12 Q Yes.

13 I am not sure that I do understand your testimony.
14 That's why I want to know.

15 After you heard the four shots, then leaned over to
16 protect your daughter and then sat back up, at that time was
17 Mr. Aldape Guerra standing by the police car with his hands on
18 the car?

19 A I don't know if they were exactly on the car, but he
20 looked like he was ready to run. They might have been in the
21 air. I don't remember. I don't know.

22 Q But he was still standing by the police car?

23 A Yes.

24 Q At that time did you see anyone else?

25 A No.

4
1 Q What did you do then?

2 A Nothing. I just sat in my car.

3 Q Where did you look?

4 A Just to the street; just to the street.

5 Q Did you look to the police car at that time?

6 A Yes. But I didn't see anybody there. I didn't see
7 anybody else there.

8 Q So the only person you saw at the police car was Mr.
9 Aldape Guerra?

10 A Yes.

11 Q On the night of the shooting, did you ever see Roberto
12 Carrasco Flores?

13 A No.

14 Q When was the first time -- how long after the shooting
15 did the first police officer talk with you?

16 A How long?

17 Q Yes, ma'am?

18 A I don't know. Probably an hour or -- I don't know.
19 Probably an hour or more.

20 Q And was the first police officer who talked with you an
21 officer wearing a police uniform or was he in plain clothes?

22 A They were one of them in police clothes, in the uniform,
23 and other one was in particular clothes.

24 Q And that was both at the scene of the shooting?

25 A Yes.

4
1 Q Can you give an estimate of how many police officers were
2 at the scene?

3 A There was a lot of them.

4 Q Were they all in uniform?

5 A There was some in uniforms and some in particular close.

6 Q Did you remain in your car for that entire, approximately
7 an hour between the shooting and when you talked to the police
8 officers?

9 A No. I got out.

10 Q When did you get out of your car?

11 A After I didn't hear any more shooting. I got out when I
12 heard somebody say, "the police officer is down."

13 Q Did you hear any more shooting -- you said you heard four
14 shots, then he sat up, then you saw Mr. Aldape Guerra, and
15 then did you hear any more shots after that?

16 A No.

17 Q You didn't hear any more shots?

18 A No.

19 Q You said you saw Mr. Aldape Guerra looking as if he was
20 about to run. Did he run?

21 A I don't know. I didn't see.

22 Q Where did you look at that time if you didn't see him
23 run?

24 A Where was I looking?

25 Q Yes, ma'am.

4
1 A At my daughter.

2 Q And your daughter was crying, wasn't she?

3 A She was crying.

4 Q Scared because she heard the shots and --

5 THE COURT: Is that a yes?

6 THE WITNESS: Yes.

7 BY MS. SCKERL:

8 Q After -- or you said that the police came and talked with
9 you about an hour after the shooting, right?

10 A Around an hour.

11 Q Where was your aunt, Trinidad Medina, at that time when
12 the police came to talk with you?

13 A She was standing outside of the house.

14 Q Outside of which house?

15 A Outside of her house on Walker.

16 Q Is that house depicted on the diagram?

17 A No.

18 Q Where is her house located on Walker?

19 A It's on -- second house to the corner.

20 Q Would that be on -- which side of the street? The right
21 hand over here or on this side, (indicating)?

22 A On this side, (indicating).

23 Q On this side, (indicating)?

24 A On this side, (indicating).

25 Q And on the bottom.

4
1 Okay. So on the south --

2 THE COURT: You need to answer that yes or no.

3 A Yes.

4 Q On the south side of the street about two houses from the
5 corner; is that right?

6 A About a house. About a house.

7 Q About a house, okay.

8 Were your present when the police officers talked
9 with your aunt?

10 A Yes.

11 Q So, had you moved from your car to the front of her
12 house?

13 A Yes. I put my daughter inside the house.

14 Q What did your aunt do in between the time of the shooting
15 and when she talked with the police officers?

16 A In between the time?

17 Q In between the shooting and when she talked with the
18 police officers?

19 A She got out of the car and she walked to her house.

20 Q Did you go with her?

21 A I think she went before I did because I got my daughter
22 out.

23 Q Then did you follow her into the house?

24 A I went into the house. I don't know if she went into the
25 house. I don't remember her going into the house. I only

4 1 remember me going into the house and putting my daughter down.

2 Q After you put your daughter down, what did you do?

3 A I went back outside.

4 Q Is that when the police started questioning you?

5 A No. I went to where the police officer was down, and
6 somebody had already called an ambulance; and he was still
7 alive when I saw him.

8 Q Who else was with the police officer that was down when
9 you went to see, or how many people? I will rephrase that.

10 A There was a couple. I don't remember how many.

11 Q Was your aunt with you then?

12 A I don't think she stayed at the house right there on the
13 side of the house. In front of the house or something. I
14 didn't remember her going to the corner to see the police
15 officer. I don't remember her going there.

16 Q She had been drinking at your uncle's, right?

17 A Yes.

18 Q When you saw the police come up, what was the first thing
19 that the police said to your aunt?

20 A I don't know what they were telling her. I don't know
21 what they were telling her.

22 Q So you couldn't hear or you don't remember?

23 A I couldn't hear at first.

24 Q Did it appear that they were having a normal
25 conversation?

5
1 A No. They were yelling at her.
2 Q So the first thing the police officers did was walk up to
3 your aunt and start yelling at her; is that right?
4 A No. They were asking her questions. It looked like they
5 were asking her questions.
6 Q Approximately how long did they ask her questions before
7 they started yelling at her?
8 A I don't know. A couple of minutes probably.
9 Q And your aunt was drunk, right?
10 A She had been drinking.
11 Q She was belligerent, wasn't she?
12 A What does that mean? I don't know.
13 Q She was angry and uncooperative?
14 A I don't know.
15 Q You don't know?
16 A I don't know.
17 Q When did you go down to the police station that night?
18 A When.
19 Q What time approximately?
20 A I don't know what time it was.
21 Q How long after the shooting did you go, when Officer
22 Harris was shot, how long was it before you went down to the
23 police station?
24 A A couple of hours. I don't know exactly what time it was
25 when they took us down there.

5
1 Q How did you get to the police station?

2 A The police took us in a car.

3 Q Did you go in a police car or a van?

4 A Car.

5 Q How many people were in the police car?

6 A Me and my aunt.

7 Q And a police officer driving; is that correct?

8 A Yes.

9 Q Were you in the front seat or the back seat?

10 A I don't remember.

11 Q Where was your aunt?

12 A I think in the back seat. I think we were both in the
13 back seat.

14 Q Now, you said earlier, I believe, that you thought that
15 the police mistreated your aunt?

16 A Yes.

17 Q When did your aunt file an internal affairs complaint to
18 have the police investigated for their mistreatment of her?

19 A I don't know. I don't know if she did that. I just
20 asked them why they put the handcuffs on her like that.

21 Q You never contacted the Internal Affairs Division of the
22 Houston Police Department, did you?

23 A No.

24 Q And you never talked with a lawyer about their
25 mistreatment of your aunt, did you?

1 A No.

2 Q When you got to the police station, were there a bunch of
3 other people from the neighborhood there?

4 A Yes.

5 Q Did they leave you all in one room or did they take you
6 off to separate rooms to give statements?

7 A To give a statement it was separate.

8 Q So, you weren't in the same room as your aunt when you
9 were giving a statement, were you?

10 A No.

11 Q What was the name of the police officer who took your
12 first statement?

13 A I don't know.

14 Q Would you tell me the procedure that he was used while
15 you were giving the statement?

16 A What do you mean? What procedure?

17 Q What happened when you gave your statement?

18 A Well, before we were sitting in the hall and you could
19 hear all of these -- all of the police officers and people
20 talking about who did the shooting and who got killed.

21 Q Ms. Diaz, I'm sorry. I may not have made myself clear.

22 When you went into the room to give your statement,
23 what happened in that room?

24 A They asked me questions.

25 Q How many police officers were present at that time?

5
1 A There was one.

2 Q Was that a white or a black person or Hispanic?

3 A I don't remember.

4 Q How long did you spend in the room giving a statement?

5 A I don't remember.

6 Q Was it maybe 10 minutes or closer to an hour or longer?

7 A Probably a couple of minutes. I don't remember. It was
8 a long time ago. I don't remember.

9 Q Was it a man or a woman who asked you the questions?

10 A I think it was a man. It was a man.

11 Q He brought you in, and did you sit down? Did you stand
12 up?

13 A No. He sat me down.

14 Q Did he have a typewriter there?

15 A No. I think it was like a computer.

16 Q You think it was a computer?

17 A I think so.

16
18 Q So, did he ask a question and then type something or how
19 did that go on?

20 A Yes. He asked a questions, and then he was typing.

21 Q Then he gave you the statement to read; is that right?

22 A Yes.

23 Q And back in 1982 you did read and write English, correct?

24 A Pretty good. Not that good, but pretty good.

25 Q Would you be able to understand words like, tonight about

6 1 11:00 p.m. my aunt, Trinidad Medina, asked me if I would drive
2 her over to her uncle's house on Rusk Street?

3 A Yes. But I did not read that when I signed it.

4 Q Did the officer who handed you the statement to sign tell
5 you to read it?

6 A Yes.

7 Q So, you had the opportunity to read the statement before
8 you signed it, and it was your choice not to; is that correct?

9 A Yes.

10 Q Then you went to the line-up; is that right, after a
11 period of time?

12 A Yes.

13 Q And how many people were in the side of the line-up that
14 was viewing the line-up, besides the civilians and the police
15 officers?

16 A I don't remember how many people.

17 Q Can you give me an estimate?

18 A I don't know. Five. I don't remember. I don't know.

19 Q Well, Ms. Diaz you testified earlier, I believe, that you
20 saw Ms. Galvan?

21 A Yes.

22 Q And a young boy?

23 A Uh-huh. Yes.

24 Q How many other people?

25 A About five or six. I don't remember. Around five or

6
1 six.

2 Q And you have testified earlier, when Mr. Atlas asked you,
3 that you were the same Patricia Diaz who testified in the
4 trial of Mr. Aldape Guerra raw back in October of 1982; is
5 that right?

6 A Yes.

7 Q Do you remember prior to testifying in that trial taking
8 an oath similar to the oath that you took today?

9 A Yes.

10 Q Do you recall testifying, back in October of 1982, that
11 while you were in the line-up room you did not hear anybody
12 say anything about Mr. Aldape Guerra and you did not see
13 anybody pointing to Mr. Aldape Guerra during the line-up?

14 A Can you repeat that again?

15 Q Yes, ma'am.

16 Do you recall testifying, back in October of 1982,
17 that while you were in the line-up room you did not hear
18 anybody say anything about Aldape Guerra and you did not see
19 anyone pointing to Mr. Aldape Guerra?

20 A I don't remember.

21 Q You do not recall testifying to that?

22 A I still don't understand the question.

23 MS. SCKERL: May I approach the witness, Your Honor?

24 THE COURT: You may.

25 BY MS. SCKERL:

6
1 Q I would like to show you Page 339 -- I'm sorry -- Page
2 338 of Volume 21 of the statement of facts. Would you look at
3 approximately Line 21 and see the question.

4 "Question: And when you were in the line-up room,
5 did somebody say, there is the man, or point at him?

6 Answer: To me?

7 Question: No. Just that you overheard or saw
8 anybody pointing at him, any of the witnesses that were in the
9 line-up room?

10 Answer: Did I see what?

11 Question: Anybody point at him or say, there is the
12 man, there is No. 4, there he is?

13 Answer: No. Because before they brought him out,
14 everybody was asked to sit around two or three chairs away
15 from everybody else; and there was officers in the back and
16 people in the front so you couldn't, you know, talk to
17 anybody."

18 Do you recall testifying to that back in 1982?

19 A Yes.

20 Q That was after you were administered and oath just like
21 today, correct?

22 A Yes.

23 Q That was on questioning by defense counsel, Mr. Elizondo
24 or Mr. Hernandez. Do you recall that?

25 A No.

6
1 Q But you do recall testifying to that now?

2 A Yes.

3 Q But your testimony today is that you did hear Ms. Galvan
4 tell somebody that Aldape Guerra was the shooter?

5 A Yes. She was the only one loud enough -- you know, she
6 was loud. Even though they told her not to talk, she was
7 still talking.

8 Q And the police told her not to talk?

9 A Yes.

10 Q When you went to the prosecutor's office on the Saturday
11 before trial, did they give you a copy of your statement,
12 those two statements that you made on July 14th, 1982? Did
13 they give you copies of those statements to take home with
14 you?

15 A Not that I remember.

16 Q Did you read those statements that you gave? Did you
17 read your two statements on the Saturday before trial?

18 A No.

19 Q Did you ever, from July 14th, 1982 until you testified at
20 trial, did you ever read your statements?

21 A No.

22 Q Do you recall testifying at trial that Mr. Aldape Guerra
23 was the man you saw out there on July 13th, 1982?

24 A Yes.

25 Q Do you recall testifying at trial that you saw Mr. Aldape

7
1 Guerra facing the police car and pointing, but you could not
2 see what he had in his hand?

3 A Yes.

4 Q If someone has their hands flat on a police car, would it
5 be possible for them to hold something in their hand?

6 A No.

7 Q Do you recall testifying at trial that you ducked and
8 then you heard shots?

9 A I don't remember.

10 MS. SCKERL: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MS. SCKERL:

13 Q On Page 314, I would like to show you the question at
14 Line 6.

15 "Question: Could you see or make out, Patricia, what
16 type of object, if anything, this man had in his hand? Could
17 you make that out?

18 Answer: No. Because there was lot of yelling and
19 everything. I was scared to look up, like I am telling you.
20 After I saw him do that, I just ducked, and then I heard some
21 shots."

22 Do you recall testifying to that?

23 A I don't remember.

24 Q You don't remember if that's what you testified to?

25 A I don't remember if that's what I said.

1 Q Do you recall saying in your statement, which has
2 previously been introduced into evidence: "Just after I heard
3 someone yell stop, I saw this Mexican man who I had originally
4 seen by the black car pointing a gun in the direction of the
5 police car, and I saw him shoot four times at the police car"?

6 A I don't -- no.

7 Q You don't recall making that statement?

8 A No.

9 Q Do you recall saying that when the Mexican man got
10 through shooting, he ran down Walker going away from downtown,
11 and that was the last time I saw him?

12 A No.

13 Q Do you recall testifying at trial that after the shooting
14 you saw the man run down the street or run away?

15 A No.

16 MS. SCKERL: May I have just a moment, Your Honor?

17 THE COURT: You may.

18 BY MS. SCKERL:

19 Q Do you recall being shown your written statement at trial
20 back in October of 1982?

21 A I don't remember if they showed it to me then.

22 MS. SCKERL: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 BY MS. SCKERL:

25 Q On Page 328 you were asked if you recalled making a

1 statement that this man -- on Page 327, Line 22.

2 "Now, you told the police back then on July 14th,
3 1982 that you weren't sure if you could ever identify this man
4 again; is that correct?

5 Answer: What man?"

6 Page 328.

7 "Question: This man?

8 Answer: What man?

9 Question: This man you said you saw down there?

10 Answer: I said that?

11 Question: Do you recall saying that?

12 Answer: I don't.

13 MR. ELIZONDO: May I show her the statement to
14 refresh her memory.

15 Question: Let me show you Page 2 of your statement,
16 and read that second to the last paragraph to yourself.

17 Question: Do you recall that as being part of your
18 sworn statement back on July 14th in the early morning hours?

19 Answer: Yes.

20 Question: Do you recall telling the police back then
21 you weren't sure you could identify the suspect again now?

22 Answer: Yes."

23 Do you recall testifying like that back in October of
24 1982?

25 A I don't remember.

1 Q So, you don't remember that you were shown the statement,
2 and you don't remember what you testified to; is that right?

3 A Yes.

4 Q When was the first time that you told either the
5 prosecutors or the judge at the trial or the defense attorneys
6 on cross-examination at the trial that you never saw Mr.
7 Guerra pointing at the police car?

8 A When was the first time?

9 Q When was the first time that you told anybody involved in
10 the trial back in 1982 that you did not see Mr. Aldape Guerra
11 pointing at the police car?

12 MR. ATLAS: Your Honor, let me object to the form of
13 the question. I am afraid the witness is going to be
14 confused. At least I am. I am not sure if Ms. Sckerl is
15 asking about when she told people during the trial or when she
16 told trial-related people before that; and if she means the
17 second, what trial-related people is she talking about?
18 Because I don't want this witness to think -- I think Ms.
19 Sckerl is asking, when did you tell any of the police or
20 district attorneys about this. I am confused.

21 MS. SCKERL: I will rephrase the question to try and
22 clear it up, Judge.

23 BY MS. SCKERL:

24 Q Ms. Diaz, when was the first time that you told anyone
25 involved in the trial back in 1982 that what you said in your

1 statement was incorrect?

2 THE COURT: Well, let me interject this. I think
3 this is really not going to get us anywhere because if I am to
4 believe her testimony, she never read the statement, then how
5 would she ever tell anybody what was in her statement was
6 incorrect, so I think we are going in the wrong direction.

7 MS. SCKERL: Yes, Your Honor.

8 BY MS. SCKERL:

9 Q Did you ever look at the statement during trial?

10 A No. I don't remember, no.

11 Q Did you tell Mr. Elizondo when he showed you this
12 statement that you had had not had a chance to read the
13 statement before?

14 A I don't remember telling him that I ever read it.

15 Q Did you tell Mr. Elizondo, when he showed you the
16 statement during the trial back in October of 1982, that that
17 really wasn't what you had said back on July 13th and 14th of
18 1982?

19 A I don't remember telling him.

20 Q So the first time that you told anyone that the
21 information in the statement was not accurate was when you
22 talked with Mr. Atlas or other lawyers working for Mr. Aldape
23 Guerra within the past year or so; is that right?

24 A Yes.

25 Q When did you first hear about new cases or new litigation

8
1 for Mr. Aldape Guerra?

2 A When did I hear about this?

3 Q Yes, ma'am.

4 A Oh, probably a year or -- I don't know -- a couple of
5 years, probably.

6 Q About a couple of years ago.

7 When was the first time you contacted anyone involved
8 with the state saying that you think -- let me withdraw that.

9 Did you ever tell any of the prosecutors after you
10 testified that what you testified to back in 1982 wasn't true?

11 A No. After I got out of the court, I just went home. I
12 just wanted to get this over with.

13 Q But are you saying today that what you testified to back
14 in 1982 about the line-up, that there was no talking in the
15 line-up, was not true?

16 A Yes.

17 Q You're saying that you didn't ever have a chance to look
18 at your statement before trial in 1982; is that right?

19 A Yes.

20 THE COURT: Did you ask her if she had a chance to?

21 MS. SCKERL: Yes, Your Honor.

22 THE COURT: She said she had a chance to. She just
23 didn't do it.

24 BY MS. SCKERL:

25 Q So you did -- I'm sorry.

1 THE COURT: That's been asked and answered. Let's
2 proceed.

3 BY MS. SCKERL:

4 Q Did you read your statement before trial back in 1982?

5 A No, ma'am.

6 Q Did you read your statement before today?

7 A Yes.

8 Q When did you read your statement?

9 A I don't remember. Probably a couple of days ago.

10 MS. SCKERL: May I approach the witness?

11 THE COURT: Yes.

12 BY MS. SCKERL:

13 Q Would you, please, read Petitioner's Exhibit 30 just to
14 yourself right now, the typed part in the center.

15 A Why do I have to read this? Why do I have to read this?

16 Q Because I would like to ask you some questions about it.
17 And if you will tell me when you're done.

18 THE COURT: I'm sorry. I think she misunderstood
19 you. She said the middle part.

20 Would you direct her to specifically what part
21 you want her to read.

22 MS. SCKERL: Yes, Your Honor.

23 This part and then that, (indicating).

24 THE COURT: Okay.

25 MS. SCKERL: It was the whole thing, yeah.

8
1 BY MS. SCKERL:

2 Q Have you had a chance to finish reading your statement?

3 A Yes.

4 Q Other than a couple of days before today, is this the
5 first time you have had the opportunity to read that
6 statement?

7 A Carefully?

8 Q Yes, ma'am.

9 A Yes.

10 Q And could you tell me exactly which parts of that
11 statement are inaccurate, are not correct?

12 MR. ATLAS: Your Honor, I would like to know if Mr.
13 Sckerl wants the witness to testify about statements other
14 than those she has already testified being incorrect or if she
15 wants a repetition of what she already testified about.

16 THE COURT: Let's approach the bench.

17

18 (Conference before the bench)

19

20 THE COURT: Does yours look like this?

21 MR. ATLAS: I have a better copy, the original copy.
22 We can take care of that.

23 THE COURT: No problem.

24 Are both sides sure this lady can read on the
25 stand?

1 MR. ATLAS: I am convinced.

2 THE COURT: If that's true, I don't want it to be
3 embarrassing her.

4 MS. SCKERL: Judge, would you like me to read a
5 paragraph and ask her?

6 THE COURT: No. I don't think that's appropriate. I
7 think you asked her to read it, and I really want to know from
8 her whether or not she can read, because if she cannot, then
9 it's lost. The questions that have been asked are really
10 irrelevant, so I am not sure. I don't want this to be
11 embarrassing her.

12 MR. ATLAS: I will tell, Your Honor, I read a couple
13 of sentences to her. I didn't give her the statement to read.
14 She didn't read it herself.

15 THE COURT: I think she cannot read. That's why she
16 is sitting there. She is offended by your asking her to read
17 it. So we may, if your client does not oppose it, we may
18 bring her up here. I may have to ask her. A lot of people
19 can't read. They don't want to admit it.

20 MR. ATLAS: I have no opposition to that.

21 THE COURT: Let's take about a 15-minute break.

22 MR. ATLAS: Other than this issue, have you got
23 anything?

24 MS. SCKERL: Couple of clean-up questions.

25 THE COURT: We will take it up about 11:05.

1 (At this time a recess was taken)

2
3 Ms. Diaz, approach the bench, please.

4
5 (Conference before the bench)

6
7 THE COURT: This looks better than mine.

8 MR. ATLAS: I am going to be able to clarify this
9 with two questions.

10 THE COURT: I am not sure I want to get back into the
11 redirect.

12 Where did you ask her to read from?

13 MS. SCKERL: Right here, (indicating), the typed
14 part.

15 THE COURT: All the way. I thought you told her the
16 middle of the page.

17 MS. SCKERL: I did. I meant the whole.

18 THE COURT: Ms. Diaz, this portion right here, could
19 you read that to me, please.

20 THE WITNESS: To shooting. He ran down Walker and
21 went all the way from downtown back. The last time saw I him,
22 this man tonight.

23 THE COURT: Do you understand what you have read?

24 THE WITNESS: Yes.

25 THE COURT: How far did you go in school?

9 1 THE WITNESS: Seventh grade.

2 THE COURT: Seventh grade. Okay.

3 I am doing this not to embarrass you but to make
4 sure you understand what you are being asked to do, make sure
5 you understand the gravity of this situation.

6 I am less concerned about your embarrassment
7 than about whether or not the testimony you are giving is true
8 and accurate to the best of your ability.

9 Do you know the reason why?

10 THE WITNESS: Yes.

11 THE COURT: So, I am asking you whether or not you
12 can read. I wanted to ask you to come up here to read so I
13 could understand the extent of your ability to read.

14 So, is it your statement to me you believe that
15 you can read all of this without any difficulty, serious
16 difficulty?

17 THE WITNESS: I can't read very well.

18 THE COURT: Well, I believe that; but when you do
19 read and what you have read, you did understand it; is that
20 correct, the parts you just read?

21 THE WITNESS: Pretty much so.

22 THE COURT: Did you finish reading this before we
23 took the break? You read all of this before I took a recess?

24 THE WITNESS: I didn't finish reading the other side.

25 THE COURT: Second page?

9
1 THE WITNESS: Right here, (indicating). From where
2 the police officer was, right here. I don't remember seeing
3 anybody bleeding.

4 THE COURT: I am just asking, did you finish reading
5 all this before we stopped?

6 THE WITNESS: No. I didn't finish.

7 THE COURT: Where did you stop?

8 THE WITNESS: Right here, (indicating)

9 THE COURT: So you need to finish reading these two
10 or three paragraphs -- sentences; is that correct?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Go ahead and finish it.

13 THE WITNESS: (Witness reads exhibit).

14 I am finished reading.

15 THE COURT: Go ahead and take this back to your seat.

16 MR. ATLAS: Your Honor, if I may ask, this is the
17 first time the witness actually read this statement. It seems
18 to me critical to this line of questioning.

19 THE COURT: Let me go back and let counsel ask those
20 questions, and then we will start with that, and then whatever
21 else you want to ask her.

22 MS. SCKERL: Thank you.

23 THE COURT: I think we are ready to get started, Ms.
24 Sckerl. If you will go ahead and proceed.

25 MS. SCKERL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. SCKERL:

Q Ms. Diaz, did you have a chance today to read what is marked as Petitioner's Exhibit No. 30?

A Yes.

Q And was today the first time you read the whole statement?

A Yes.

Q And would you, please, tell me -- and I will come up there -- and point to which parts of the statement.

A Okay.

MR. ATLAS: Your Honor, may I approach?

(Conference before the bench)

MR. ATLAS: Your Honor, given how much time it took to read the statement the first time, this is tortuous.

Unless Ms. Sckerl has a particular sentence she can read, I will be happy to have her read a sentence at a time.

MS. SCKERL: That's fine. I will have her point to it.

THE COURT: I am not sure. I am not really sure it's totally relevant because there is nothing -- I am not going to do it that way. I am going to let the witness go ahead and do

1 her best to point out those things she thinks are innacurate.
2 Whether or not that's conclusive as to all the innacuracies is
3 really not relevant to me.

4 The statement was not in evidence during the
5 course of the trial, so it is not part of the jury's
6 consideration during its deliberation. The only basis that I
7 would want to look at it at this point is to determine whether
8 or not it is consistent or inconsistent with her testimony,
9 for one, and number two, whether or not their appears to be,
10 from her testimony today, something in there that she believes
11 were not "her words," and that's what she is testifying to;
12 and whether she can point them all out or not, you know, is
13 really not important to me.

14 MR. ATLAS: With respect to the first time, Your
15 Honor, it seems to me it is more efficient to point to
16 specific passages she can find inconsistent. With respect to
17 the later, it may not be a better way to do it.

18 THE COURT: I want this witness, counsel, to proceed
19 in the best way that she was to proceed.

20 One of the difficulties and problems that this
21 engenders is the fact that this witness has probably less than
22 a seventh grade education. If she went on and finished the
23 seventh grade doesn't mean a lot; but also it is not, in a
24 true sense, her statement. It's a recordation by another
25 person she adopts as her statement.

1 So, let's go ahead and proceed in the manner she
2 is proceeding, and we will see how it turns out.

3 MS. SCKERL: May I proceed?

4 THE COURT: You may.

5 BY MS. SCKERL:

6 Q Instead of the question I just asked, Ms. Diaz, is the
7 statement, the part that you read today, correct?

8 A No.

9 Q Could you show me where it is incorrect.

10 A It's almost all incorrect.

11 Q Did anyone, Mr. Bax or Mr. Moen or anyone else, read you
12 your statement back in 1982?

13 A I don't remember.

14 Q How many times did you meet with Mr. Moen and Mr. Bax
15 before you testified?

16 A I think only that one time downtown.

17 Q Just the Saturday beforehand?

18 A Yes.

19 Q And you don't remember -- do you think that they read
20 you your statement on that Saturday?

21 A I don't remember them reading the statement to me.

22 Q Now, you have testified, when Mr. Atlas asked you, that
23 you had not talked with any witnesses to the shooting except
24 for your cousin after the trial and up until a little while
25 ago; is that right?

1 A Yes.

2 Q Have you talked with other people besides the lawyers?
3 Have you talked with other people about the shooting of
4 Officer Harris?

5 A No.

6 MS. SCKERL: I have no further questions, Your Honor.

7 THE COURT: All right.

8 MR. ATLAS: Just one question, Your Honor.

9 THE COURT: Redirect. Go ahead.

10 REDIRECT EXAMINATION

11 BY MR. ATLAS:

12 Q When I met with you a week or two ago, did I actually
13 show you and let you read any documents or did I just read you
14 a couple of sentences from various documents?

15 A You just read me a couple of sentences.

16 MR. ATLAS: Pass the witness, Your Honor.

17 THE COURT: You may step down, ma'am. Thank you very
18 much.

19 You want to excuse this witness?

20 MR. ATLAS: Yes, Your Honor.

21 THE COURT: You may be excused, ma'am. Thank you
22 very much.

23 Who is your next witness?

24 MR. ATLAS: Trinidad Medina.

25 Your Honor, I think we are going to need an

0
1 interpreter for this witness.

2 THE COURT: Please raise your right hand.

3 Do you solemnly swear or affirm that any
4 testimony you will give in this case will be the truth, the
5 whole truth, and nothing but the truth so help you God?

6 THE WITNESS: I do.

7 THE COURT: You may be seated. Thank you very much.

8 TRINIDAD MEDINA

9 was called as a witness by the Petitioner and,
10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ATLAS:

13 Q What is your name, please.

14 A Trinidad Medina.

15 Q On July 13th, 1982 did you live at 4938 Walker Street in
16 Houston, Texas?

17 A Yes, sir.

18 Q You speak some English, don't you?

19 A Yes, sir.

20 Q Do you feel more comfortable speaking through an
21 interpreter today?

22 A Yes.

23 Q Are you the same Trinidad Medina who was at the corner of
24 Walker and Edgewood streets in Houston, Texas at about 10:00
25 p.m. on July 13th, 1982 when Houston police officer James

0 1 Harris was murdered?

2 A Yes, sir.

3 Q Let me show you, Ms. Medina, a chart marked Petitioner's
4 Exhibit 12 that shows Walker Street going left to right and
5 Edgewood up and down. Do you see that?

6 A Yes, sir.

7 Q This shows approximately where the police officer's
8 vehicle was and where the vehicle that Mr. Aldape Guerra had
9 been in at one time; and it has a car that supposedly was a
10 Chevrolet that was heading down Walker going toward the east
11 to the right.

12 Were you in this Chevrolet at the time of the
13 shooting of the police officer?

14 A Yes, sir.

15 Q Does this chart show approximately where the Chevrolet
16 had stopped at the time of the shooting?

17 A Yes, sir.

18 Q You were in the passenger seat with Patricia Diaz, your
19 niece, driving and Patricia's daughter in between you; is that
20 right?

21 A Yes, sir.

22 Q Ms. Medina, how are you related to Elvira Flores and
23 Herlinda Garcia?

24 A They're my daughters.

25 Q That's okay. If you understand the question in English

1 and you are comfortable with it, you can go ahead and answer
2 it.

3 THE COURT: Would you pull the microphone around in
4 front of her, please, so she may speak more directly into it.

5 BY MR. ATLAS:

6 Q Let show you from Petitioner's Exhibit 20 a document
7 marked F2038. Do you recognize that person?

8 A Yes, sir.

9 Q Who is that?

10 A My daughter.

11 Q Which one?

12 THE COURT: Please keep your voice up.

13 Q Herlinda.

14 Q So F2038 is your daughter, Herlinda Garcia, more or less
15 as she looked in July, 1982?

16 A Yes, sir.

17 Q Let me show you a document from Exhibit 20 marked F2036.
18 Who is that person?

19 A My daughter, Elvira.

20 Q Is that Elvira Flores in that picture?

21 A Yes.

22 Q Is that about the way you remember her looking in July of
23 1982?

24 A Yes, sir.

25 Q Now, let me refer to your daughter Elvira Flores as

1 "Vira" because we have been using that shorthand term during
2 the course of this hearing, all right.

3 Ms. Medina, just before the shooting, could you see
4 either of your daughters, Herlinda or Vira?

5 A Yes.

6 Q How did they look?

7 A Scared.

8 Q Could you see Vira, in particular?

9 A I don't remember exactly, but --

10 Q I'm sorry I couldn't here the answer.

11 A Yes.

12 Q And could you tell from looking at her whether she
13 appeared to have been drinking?

14 A Yes.

15 Q And did it look like she had been drinking?

16 A Yes.

17 Q Did it look like she had was drunk?

18 A Yes.

19 Q Now, you, yourself had been drinking some that night, had
20 you not?

21 A Yes.

22 Q Were you, yourself drunk at the time of the shooting?

23 A At the moment, yes.

24 Q Were you so drunk that you can't remember well what you
25 saw?

1 A I remember.

2 Q All right.

3 Now, did Herlinda, your daughter, look drunk at the
4 time?

5 A She don't drink.

6 Q I'm sorry?

7 A She don't drink.

8 Q She didn't drink?

9 A (Indicating in the negative).

10 Q In fact, was she pregnant at the time?

11 A Yes, sir.

12 Q Now let me focus you on exactly the time of the shooting.

13 At the time of the shooting, did you see where the
14 police officer was standing?

15 A Yes.

16 Q Was he standing near his police car?

17 A Yes. Yes, sir.

18 Q Now, I have shown you the police car that is shown in
19 Petitioner's Exhibit 12. The front of the police car was
20 heading down, all right. Is that accurately the way you
21 remember the police car facing when you saw it?

22 A Yes, sir.

23 Q Was the police officer standing in front, in back or on
24 one of the sides of his car at the time of the shooting?

25 A On the side.

1 Q Was it on the side of the driver's side, over on the
2 right side or the passenger's side over on the left side?

3 A Driver's side.

4 Q Was he near the front of the car, the back of the car,
5 the middle of the car? How would you describe where he was
6 standing approximately?

7 A In the center of the car.

8 Q Was it in the center or the front or the back, though?
9 For example, was it about where the driver door or the
10 passenger door was or was it behind those or in front of them?

11 A By the side of the door.

12 Q By the side of the door?

13 A Yes.

14 Q Now, could you actually see the driver's door of the
15 police car open or were you able to see that at all from where
16 you were sitting?

17 A No. I couldn't.

18 Q Was the police officer standing about where he should
19 have been standing -- strike that.

20 If the driver door was open, was the police officer
21 standing in front of the driver door or below, on this
22 picture, or behind the driver door in back?

23 A Behind.

24 Q So, behind it would be to the north of it, if up is north
25 on this map, right?

1 A Yes.

2 Q Now, let me ask you, before that night, had you ever seen
3 either Ricardo Aldape Guerra, my client, or the other man
4 Roberto Carrasco Flores, that the dummies were made up to look
5 like?

6 A No.

7 Q Did you see -- let's talk first about the man who's got a
8 dummy made for him with the green shirt with the beard.

9 Now, as you can see -- well, have you ever seen these
10 two mannequins before?

11 A Yes, sir.

12 Q Was it in the courtroom during the trial?

13 A No, sir.

14 Q Just to make it easier, let's show you a picture of
15 Petitioner's Exhibit 19. Now, this is a picture of the two
16 prosecuting attorneys at the trial in 1982 and the mannequins
17 made up to look like Mr. Aldape Guerra and Mr. Carrasco
18 Flores.

19 Let me direct you to the mannequin in that picture
20 that has the long hair and the beard and the moustache, all
21 right?

22 A Yes, sir.

23 Q That night at the time of the shooting, did you see the
24 man who that mannequin looks like anywhere in that
25 intersection?

1 A Yes.

2 Q Now, that man's name is Ricardo Aldape Guerra.

3 Can you tell me at the time of the shooting where Mr.
4 Aldape Guerra was, where was he standing?

5 A Is this the one you are talking about, the one with the
6 long hair?

7 Q The one with the long hair.

8 A He was in front of the trunk of the police car, with his
9 hands on the top, like that, (indicating).

10 Q Now, when you say in front of the trunk, do you mean at
11 the front of the car or the back of the car?

12 A Yes, sir. At the front.

13 Q Was he in front of the car or was he on the side of the
14 car?

15 A About a little bit to the side.

16 Q Let me use this lawyer's table here in the courtroom as a
17 good sample to make sure I understand it.

18 Let's say this car is heading that way, okay; and
19 according to that chart, you were in a car somewhere over
20 there, okay.

21 Let's say that the driver door is about here on the
22 car, in between these chairs, (indicating).

23 Now, was Mr. Aldape Guerra in the front of the car or
24 was he on the side of the car?

25 A Standing in front.

2
1 Q Right here, in front of the headlights, or over here on
2 the side near the front?

3 A Right there, (indicating).

4 Q Right here, (indicating).

5 MR. ATLAS: Let the record reflect I am standing on
6 what I will call the side of the car near the front.

7 BY MR. ATLAS:

8 Q Is that correct, Ms. Medina?

9 A Yes.

10 Q At the time you saw him, was he facing towards the police
11 officer or was he turned facing the police car or was he
12 facing in some other direction?

13 A Front of the car. On the side of the car, right there,
14 (indicating).

15 Q Let me show you several directions, and you stop me when
16 I get to the direction he is facing.

17 Was he facing this way towards the police officer,
18 (indicating)?

19 A No.

20 Q Was he facing this way towards the car, (indicating)?

21 A Yes.

22 Q Now, at the time of the shooting, could you see his
23 hands?

24 A Yes.

25 Q Where were his hands?

1 A Put them down. Go ahead and put them down. Right there,
2 (indicating).

3 Q Were they open or closed?

4 A Yes, open.

5 Q Were they on top of the car or off on the side or
6 somewhere else?

7 A No. Just like that.

8 Q When you say "just like that," what do you mean, on top
9 of the car?

10 A On top of the car.

11 Q How far apart were they, about a foot, about like this,
12 (indicating)?

13 A About.

14 MR. ATLAS: Let the record reflect I have got my
15 hands about a foot apart.

16 BY MR. ATLAS:

17 Q Were they open or closed, his hands at the time you saw
18 them?

19 A Open.

20 Q Were they actually on the hood of the car or were they
21 above, if you remember?

22 A Over, on.

23 Q So they were on the hood of the car.

24 Was he standing up straight or was he bent over
25 forward?

2
1 A He was bent.

2 Q What did it look like to you he was doing?

3 A Standing like that.

4 Q Now, did it look to you like he could have just fired a
5 gun at the police officer?

6 A No.

7 Q At the time of the shooting, did you see the man we
8 called Roberto Carrasco Flores, who looked like the man with
9 the short hair in the center of that picture marked
10 Petitioner's Exhibit 19?

11 A Yes.

12 Q And I am talking now about the man who is shown in the
13 dummy we have here in the courtroom marked Petitioner's
14 Exhibit 20, although he doesn't have any hair.

15 A Yes.

16 Q Where was he standing at the time of the shooting?

17 A On the side.

18 Q Was he on one side of the police car or the other? Was
19 he on the driver's side or the passenger's side?

20 A On the side of the driver of the police car. Right about
21 there; just right about there, (indicating).

22 MR. ATLAS: Let the record reflect I am standing to
23 the side of the police car but further away from the police
24 car than the witness has indicated that Mr. Aldape Guerra was.

25 A Couple more steps down.

2
1 Q Further this way?

2 THE COURT: You need to answer yes or no.

3 A Yes.

4 Q The witness has asked me to move further down, indicating
5 that Mr. Carrasco Flores was standing closer to across from
6 the center of the police car than Mr. Aldape Guerra was. Is
7 that correct?

8 A Yes, about, you know.

9 Q Okay.

10 Now, am I right, do I understand you correctly to say
11 Mr. Aldape Guerra was closer to the police car than Mr.
12 Carrasco Flores was?

13 A Yes, sir.

14 Q Let me show you a little drawing that's just a reduced
15 version of Petitioner's Exhibit 12, and what I would like you
16 to do, just assume for a moment the driver door was opened for
17 the police car, even if you couldn't see it, okay?

18 A Okay.

19 Q I am going to write your name on the bottom of this
20 exhibit just so it shows that this is a copy of the chart that
21 I have shown you.

22 Now, could you show me, by putting the initials -- I
23 forgot what initials we were using for the police officer --
24 JH. Would you put "JH" about where you saw the police officer
25 at the time of the shooting.

2
1 A (Witness complies).

2 Q Make it big enough that we can read it.

3
3 A (Witness complies).

4 Q Let me do this because it's hard to read it. I am going
5 to put "JH" myself in big letters over on the side and draw an
6 arrow to the one you just drew.

7 Have I done that accurately?

8 A Uh-huh.

9 Q Yes or no?

10 A Yes, sir.

11 Q Now I want you to draw "AG" where you saw Mr. Aldape
12 Guerra at the time the shooting took place.

13 A This one or this one, (indicating)?

14 Q The long-haired one.

15 A What were the initials?

16 Q "AG" for Aldape Guerra.

17 A (Witness complies).

18 Q You have actually written "AJ," but that's close enough.

19 Just to make it clear, I am going to put an "AG" in
20 big print off to the side and then draw an arrow to it.

21 Have I done that accurately?

22 A Yes.

23 Q Now, would you, please, draw the initials "CF" for
24 Carrasco Flores about where you saw the short-haired man at
25 the time of the shooting.

3
1 A (Witness complies).

2 Q You have drawn that pretty clearly, but just so it's
3 completely clear, I am going to make a print "CF" and draw an
4 arrow to the letters you just drew. Have I done that
5 accurately?

6 A Yes, sir.

7 Q Now, at the time of the shooting, could you, please, tell
8 me how Mr. Carrasco Flores, the short-haired man, was
9 standing. He is over here. Which way is he facing?

10 A Straight.

11 Q Is he facing towards Mr. Aldape Guerra, towards the
12 police officer, with his back to them, or some other way?

13 A Toward the police officer.

14 Q All right.

15 So, he's standing there towards the police officer,
16 and what posture does he have? Are his hands in the air? Are
17 they out to his side? Where are they?

18 A Pointing, (indicating).

19 Q Let the record reflect that the witness -- is the way you
20 are showing now the way you saw him pointing at the time?

21 A Yes, sir.

22 Q Let the record reflect that the witness had both hands
23 clasped together out in front of her, pointing, as she said,
24 at the police officer. Is that accurate?

25 A Yes, sir.

3
1 Q Could you see if the short-haired man, Mr. Carrasco
2 Flores, had anything in his hands?

3 A No, sir.

4 Q At the time of the shooting could you see any fire coming
5 out of his hands, for example?

6 A Yes, sir.

7 Q As you heard the shots, or at least immediately after
8 hearing the shoots, could you see Mr. Aldape Guerra's face?

9 A No, sir.

10 Q Could you see that he had long hair?

11 A This one, (indicating). This one, (indicating).

12 THE COURT: Sorry. I didn't understand her answer.

13 MS. CORNELIUS: I can't hear her when she is
14 answering.

15 THE COURT: Speak directly into the microphone.

16 MR. ATLAS: What was the answer to the last question?

17 THE COURT: She spoke in English, so she needs to
18 restate it herself, if she remembers what your question was.

19 Can you repeat your answer, Ms. Medina?

20 BY MR. ATLAS:

21 Q I guess the question was: Could you see that he had long
22 hair?

23 A No.

24 Q How could you tell that it was Mr. Aldape Guerra standing
25 there by the side of the car?

1 A This one was right beside the car, he didn't have nothing
2 in his hands. The other one did.

3 Q My question, though, is, how could you tell that the man
4 who was at the car with his hands on the hood was this man
5 with the long hair and the beard?

6 A Because he was all covered with his hair.

7 Q He was all covered with his hair. Is that what you said?

8 A Uh-huh.

9 Q Ma'am? Yes or no?

10 A Yes, sir.

11 Q After what you saw that night right at the time of the
12 shooting, who did you think was the shooter? Did you think it
13 was the man with the long hair or the man with the short hair?

14 A Man with the short hair.

15 Q Now, did you wear glasses in 1982, Ms. Medina?

16 A No, sir.

17 Q Were you close enough to the police car from where you
18 were inside the Chevy that you could see everything you
19 described to us the last few minutes?

20 A Yes, sir.

21 Q Now, later that night in the same neighborhood, were you
22 questioned by the police?

23 A Yes, sir.

24 Q Was it about an hour and a half or two hours later,
25 maybe?

3
1 A Yes, sir.

2 Q Now, did you tell the police what you had seen, that the
3 short-haired man was pointing at the police officer from off
4 to the east and that the man with the long hair had his hands
5 on the hood of the car?

6 A No.

7 Q Why not?

8 A Well, confused or nervous or terrified.

9 Q Did the police do anything to you to cause any of that
10 terror?

11 A Yes, sir.

12 Q What did they do?

13 A They were threatening us.

14 Q Who was "us"?

15 A Me and the girls.

4
16 Q Are you talking about your niece, Patricia Diaz?

17 A Yes, sir.

18 Q And her daughter?

19 A Yes, sir.

20 Q What kind of threats?

21 A They might take her baby away from Patricia and put us
22 all in jail.

23 Q If you know, what had prompted the police to make those
24 threats?

25 A Repeat it again.

4
1 Q I am sorry. I didn't hear you.

2 A Could you repeat it again?

3 Q Yes.

4 What had you or Patricia said, if you know, that had
5 been police had responded to by making threats?

6 A About the dummy, the man. We was talking about the man
7 in the shooting.

8 Q What had you told them about the man who had done the
9 shooting?

10 A Nothing. I told them nothing.

11 Q Well, when you told them nothing, is that what made the
12 police officer angry?

13 A Yes, sir.

14 Q Now, after the police officer got mad at you, how did he
15 treat you?

16 A Very bad. He handcuffed me.

17 THE COURT: I am sorry. He did what?

18 THE WITNESS: He handcuffed me.

19 THE COURT: Oh.

20 BY MR. ATLAS:

21 Q Did he actually arrest you?

22 A Yes, sir.

23 Q Were you attempting to physically attack him or beat on
24 him?

25 A No, sir.

4
1 Q Were you being verbally abusive, using bad words with
2 him?

3 A Yes, sir.

4 Q Why were you using those bad words, Ms. Medina?

5 A 'Cause he was threatening us.

6 Q Who used the bad words first, the police officer or you?

7 A He did.

8 Q How many hours -- how long did you have the handcuffs on,
9 Ms. Medina, approximately?

10 A Until the police station.

11 Q Was it more than an hour that you had the handcuffs on?

12 A More or less.

13 Q More or less an hour that you had handcuffs on?

14 A More or less, yes, sir.

15 Q While you were at the police station, did you see Mr.
16 Aldape Guerra in handcuffs?

17 A Yes, sir.

18 Q Ms. Medina, let me show you what's been marked as
19 Petitioner's Exhibit 16. And we've been told already that
20 this is more or less the way that the part of the floor where
21 you all were questioned would have looked like at that time.

22 Just to give you some frame of reference, here are
23 the elevators right here in the middle of the picture, and I
24 believe the line-up was over here, and then there is this long
25 hallway with an entrance to an area with a lot of offices

4
1 where people can be questioned, and there are some benches
2 where people can sit right outside the entrance to the
3 homicide offices.

4 A Yes, sir.

5 Q Does that help refresh your recollection about generally
6 what that area looked like?

7 A Yes, sir.

8 Q At the time you saw Mr. Aldape Guerra in handcuffs at the
9 police station, where were you on this picture?

10 A Sitting on the benches.

11 Q Sitting on the benches.

12 A Yes, sir.

13 Q Now, at the time that you saw him, was your niece,
14 Patricia Diaz, with you?

15 A Yes, sir.

16 Q What about your daughters, Herlinda Garcia and Vira
17 Flores?

18 A Yes, sir.

19 Q At the time did you know Hilma Galvan? Did you know who
20 she was at the time?

21 A At the time, yes.

22 Q Let me show you a picture in Petitioner's Exhibit 20
23 that's been marked F2037. Is that a picture Hilma Galvan as
24 she looked at the time?

25 A Yes, sir.

4 1 Q Was she sitting on the benches with you when you saw Mr.
2 Aldape Guerra walk by in handcuffs?

3 A Just about. Not too close, but --

4 Q Was she nearby?

5 A Nearby, yes.

6 Q Close enough for you to hear anything if she had been
7 talking?

8 A Yes, sir.

9 Q Did you know this little boy, Jose Armijo, Jr. at the
10 time.

11 A Yes, sir.

12 Q Let me show you a document from Petitioner's Exhibit 20
13 that's stamped F-2034. Is that the little boy, Jose Armijo,
14 Jr. looked like at that time?

15 A Yes, sir.

16 Q Was he also sitting nearby to you when you saw Mr. Aldape
17 Guerra in handcuffs at the police station?

18 A Yes, sir.

19 Q Show me, if you would, when you saw Mr. Aldape Guerra in
20 handcuffs, where was he? Where did he come from and where did
21 he go to, if you can remember. You can show me on
22 Petitioner's Exhibits 16 if it makes it easier.

23 A We were here (indicating), and they got out of the
24 elevator. They were coming to one of the rooms.

25 Q So, they brought him at least from the elevators down the

4
1 hallway past the benches?

2 A Yes, sir.

5
3 Q Did he walk right past where you all were sitting on the
4 benches, right in front of you?

5 A I don't exactly remember, but he was there for a while.

6 Q When you say "a while," what are you talking about, 5
7 minutes, 30 minutes?

8 A Just a couple of seconds.

9 Q Could everybody sitting on the park bench with you see
10 him, as best you could tell?

11 A Yes, sir.

12 Q Did he walk through quickly or did he stop there for a
13 while where you all could see him?

14 A We could see him just like that.

15 Q Did anyone sitting there with you or close enough to you
16 for you to hear say anything about Mr. Aldape Guerra as he was
17 brought into view where you could see him?

18 A Yes, sir.

19 Q Who did? Who spoke?

20 A This lady, (indicating).

21 Q Let the record reflect the witness pointing to the
22 picture of Ms. Hilma Galvan that's in Petitioner's Exhibit 20.

23 A Yes, sir.

24 Q Who was she talking to, if you could tell?

25 A The little boy.

5

1 Q Jose Armijo, Jr.?

2 A Yes.

3 Q What did she say?

4 A She was telling 'him, that was the one who had shot his

5 father and the police officer.

6 Q And was she pointing to anybody when she said that?

7 A No. She just said, "it's him."

8 Q Who did she seem to be referring to when she said "it's

9 him"?

10 A The one that was handcuffed.

11 Q Are you talking about the long-haired man, Mr. Aldape

12 Guerra?

13 A Yes, sir.

14 Q Now, did Jose Armijo, Jr. say anything in response to

15 that when she said that?

16 A He said, "no. It wasn't him."

17 Q So, Jose Armijo, Jr. said, "no, it wasn't him"?

18 A Yes, sir.

19 Q You actually heard him say that?

20 A He was all confused and everything. He was saying "no."

21 Q What did Ms. Galvan say in response to when he said, "no,

22 it wasn't him"?

23 A She said -- she told the little boy he was confused about

24 what was going on or what had happened.

25 Q Did she say this loud enough for you and the other

5
1 neighbors in the hall that were sitting out there or standing
2 around to hear?

3 A Yes, sir.

4 Q At some point while you were at the police station were
5 you questioned by the police? Did they take you into a little
6 office or cubicle and start asking you some questions?

7 A Yes, sir.

8 Q After being questioned, were you asked to sign a document
9 that they had typed up?

10 A Yes, sir.

11 Q Ms. Medina, let me show you a document marked
12 Petitioner's Exhibit 33, and let me ask you if that's your
13 signature in the lower right-hand corner. Is that your
14 signature?

15 A Yes, sir.

16 Q Did you read that document before you signed it?

17 A Part of it.

18 Q Did anyone try to rush you to get you to sign it before
19 you finished reading it?

20 A Yes, sir.

21 Q Who did?

22 A The police officer did.

23 Q What did he tell you?

24 A Told us just to read it, to read it; but he wouldn't give
25 us no time.

5 1 Q Wouldn't give you any time?

2 A No. He was rushing us.

3 Q Did he tell you to hurry up?

4 A Yes, sir.

5 Q Did anyone make any threats to you to try to persuade you
6 to sign it?

7 A Just about.

8 Q What kind of threats?

9 A Putting us in jail, taking the little one away from
10 Patricia.

11 Q Are you telling me one of the police officers there told
12 you if you didn't sign that statement that you would be put in
13 jail and they might take away Patricia Diaz' daughter?

14 A Yes, sir. They had already told me that.

15 Q Did they say that again in order to get you to sign that
16 statement marked Petitioner's Exhibit 33?

17 A No, sir.

18 Q When had they told you that?

19 A Before.

20 Q What did they tell you -- what threats, if any, did they
21 tell you at the time you were asked to sign that statement,
22 Petitioner's Exhibit 33?

23 A That to be sure and sign what was there, to read it; but
24 like said, everything, it was so confusing that I just read
25 part of it.

5
1 Q Now, did any of the police officers there at the police
2 station that night tell you who they thought had shot the
3 policeman?

4 A No. Not there.

5 Q The statement that you signed that's in front of you says
6 at the bottom of the first full paragraph, first paragraph:
7 "I did not see anybody shoot the policeman, and I did not see
8 anyone with pistols around there."

9 Now, when you signed this statement, did you realize
10 that sentence was in there?

11 A No, sir.

12 Q Now, it says you didn't see anyone with pistols. I guess
13 you actually didn't see a pistol in Mr. Carrasco Flores' hand,
14 did you?

15 A No.

6
16 Q It says you didn't see anybody shoot the policeman. I
17 guess, if you didn't see a gun in his hand, you can't be
18 absolutely certain he shot the policeman; but were you trying
19 to say in this statement, did you tell the police that you
20 hadn't seen Mr. Carrasco Flores point at the police officer?

21 Let me rephrase that.

22 Before signing this statement, had you told the
23 police what you just told us here at the police station, that
24 you saw Carrasco Flores stand there pointing, with fire coming
25 out away from his hands?

6 1 A I told them he was pointing towards the policeman.

2 Q You told him you saw fire coming out from his fingers, or
3 at least in front of where he was pointing.

4 A Yes.

5 Q Had you told them that Mr. Aldape Guerra at the time of
6 the shooting was standing next to the car, with his hands
7 spread out as if he were about to be searched or something
8 like that?

9 A Yes, sir.

10 Q Did you tell them that his hands were open and empty and
11 he couldn't possibly have been the person who shot the
12 policeman?

13 A Yes, sir.

14 Q Did you stay at the police station all night that night?

15 A Yes, sir.

16 Q At about 6:00 o'clock the next morning -- oh, let me back
17 up.

18 In this statement that we've marked as Petitioner's
19 Exhibit 33, it says in the third line at the end of the line:
20 "Patricia was driving on Walker, and all of a sudden I heard
21 some shooting. It sounded like two shots had been fired. I
22 told Patricia to park the car, park the car. Patricia stopped
23 the car, and we both got out."

24 That doesn't say anything about you having seen Mr.
25 Aldape Guerra and Mr. Carrasco Flores standing next to the

6 1 police car. Did you realize it didn't say anything about it
2 when you signed it?

3 A No, sir.

4 Q At about 6:00 o'clock in the morning later on, the
5 morning of July 14th, were you asked to look at five or six
6 men standing behind a two-way mirror --

7 A Yes, sir.

8 Q -- in a line-up?

9 Were there other people from the neighborhood sitting
10 in the same room with you at the time?

11 A Yes, sir.

12 Q Let me show you a document that has been marked already
13 as Petitioner's Exhibit 24. Does that look like a picture of
14 the line-up you saw early that morning of July 14th, 1982?

15 A Yes, sir.

16 Q While you were sitting in that room watching those six
17 men behind the two-way mirror, did anyone from the
18 neighborhood do any talking?

19 A There were all standing around mumbling.

20 THE COURT: I am sorry. I didn't understand your
21 answer.

22 THE WITNESS: Yes, sir.

23 BY MR. ATLAS:

24 Q Did Ms. Galvan do any talking?

25 A Yes, sir.

6 1 Q Did she say anything about who she thought had been the
2 shooter?

3 A Yes, sir.

4 Q Who did she say she thought was the shooter?

5 A The one with the long hair, (indicating).

6 Q Is that the man who's the fourth from the left in
7 Petitioner's Exhibit 24?

8 A Yes.

9 MR. ATLAS: Let the record reflect that the witness
10 pointed to Ricardo Aldape Guerra in that picture.

11 BY MR. ATLAS:

12 Q Who was she talking to when she said that?

13 A The little boy.

14 Q Jose Armijo, Jr.

15 A Yes, sir.

16 Q Did the little boy, Jose Armijo, Jr., ever say who he
17 thought had shot the policeman and then shot his father?

18 A He was all confused.

19 Q Now, at that time when Ms. Galvan told him that a man you
20 now know to be Ricardo Aldape Guerra Guerra was the one who
21 shot his father, how did he respond?

22 A He didn't respond because he was all confused. She was
23 saying things that she shouldn't have said.

24 Q What do you mean by that?

25 A Telling him that it was him that shot the police officer.

6 1 That's why the little boy was all confused all the time. The
2 little boy was all the time with her.

3 Q Was he with her all the evening, as far as you could
4 tell?

5 A All the evening.

6 Q Yes, ma'am?

7 A Yes, sir.

8 Q Did Ms. Galvan ever say anything, other than accusing him
9 of being the shooter, did she ever say anything in the line-up
10 room about Mr. Aldape Guerra that was, shall we say, criticism
11 of him or bad things about him?

12 A All she said, he was a wetback.

13 Q She called him a wetback?

14 A Yes, sir.

15 Q Did she say how she felt about wetbacks?

16 A She said wetback.

17 Q Did she say anything about whether she liked wetbacks or
18 not?

19 A Not exactly.

20 Q Now, when she pointed to Mr. Aldape Guerra in the
21 line-up, how did she describe him? Did she say the
22 long-haired guy or did she have some other description of him?

23 A The long-haired guy, the wetback.

24 Q Now, after you sat there in the line-up room and saw
25 Mr. Aldape Guerra and the other five people, did you tell the

7
1 police you recognized anyone?

2 A Yes, sir.

3 Q Did you tell them that you recognized the long-haired
4 man, Mr. Aldape Guerra, as the shooter of the police officer?

5 A No, sir.

6 Q What did you tell them about him?

7 A That he was not the shooter.

8 Q You told them that after the line-up?

9 A Yes, sir.

10 Q Did you tell the police after the line-up where this
11 long-haired man, Mr. Aldape Guerra, was at the time of the
12 shooting?

13 A Yes, sir.

14 Q Did you tell them the same thing you told us today; that
15 he was standing near the front of the police car, on the side,
16 facing the police car, with his hands straight out, palms down
17 and empty?

18 A Yes, sir.

19 Q As if he were about to be searched, or something to that
20 effect?

21 A Yes, sir. Yes, sir.

22 Q Did anyone at the police station that night tell you who
23 you could and could not talk to about this case?

24 A They told us we couldn't discuss it with nobody.

25 Q Did they specifically refer at all to the lawyers for Mr.

7
1 Aldape Guerra?

2 A Yes, sir.

3 Q Did they tell you you could or couldn't talk to them?

4 A We couldn't talk to nobody.

5 Q Did they tell you you could talk to the police and the
6 prosecutors?

7 A No, sir.

8 Q They didn't say anything one way or another about that?

9 A No, sir.

10 Q So they told you not to talk to the lawyers from Mr.
11 Aldape Guerra and not to talk to anybody else. Is that what
12 you are saying the police told you that night?

13 A Yes, sir. Not to talk to nobody. No papers, nobody at
14 all, not even between us.

15 Q Not even between you?

16 A Yes, sir.

17 Q But specifically not to talk to the newspapers and not to
18 talk to Mr. Aldape Guerra's lawyers?

19 A Yes, sir.

20 Q Did you attend a meeting in the district attorney's
21 office downtown the Saturday before you testified in October
22 of 1982?

23 A Yes, sir.

24 Q Or I'm sorry. You actually didn't testify, did you?

25 A No, sir.

1 Q But do you remember attending a meeting in early October,
2 1982 just before your daughters went to testify in the trial?

3 A Yes, sir.

4 Q Were both your daughters, Herlinda and Vira, present at
5 the DA's office when you went down there?

6 A Yes.

7 Q Patricia Diaz there to?

8 A Yes, sir. All of them.

9 Q What about Hilma Gavan and little Jose Armijo, Jr.? Were
10 they there?

11 A At the trial?

12 Q No, ma'am. I am talking about the weekend before the
13 trial in the district attorney's office downtown?

14 A Downtown, no, sir.

15 Q You don't remember?

16 A I don't remember.

17 Q Were both of the prosecutors there, both of the district
18 attorneys?

19 A Yes, sir.

20 Q I think I have got a picture of them. Showing
21 Petitioner's Exhibit 19, the two men on the outside, the far
22 left and the far right, were those two men present at this
23 meeting at the prosecutor's office downtown the weekend before
24 your daughters testified in October of 1982?

25 A Yes, sir.

7
1 Q At that meeting were you shown the original mannequins
2 made up to look like Mr. Carrasco Flores and Mr. Aldape
3 Guerra, looking pretty much the same way they do in
4 Petitioner's Exhibit 19?

5 A Yes, sir.

6 Q Do I have the right number for that one?

7 THE INTERPRETER: Yes.

8 BY MR. ATLAS:

9 Q Was that the first time you had ever seen those
10 mannequins?

11 A Yes, sir.

12 Q How did you react when you first saw them?

13 A We were scared, and the girls was scared, too. One of
14 them said, it couldn't be possible they were there.

15 Q Were you shown photographs of the two men?

16 A We saw the dummies.

17 Q In addition to the dummies, did anyone show you any
18 pictures of the two men?

19 A Yes, sir.

20 Q Were you shown a picture of the man who had the short
21 hair, Mr. Carrasco Flores?

22 A Yes, sir.

23 Q Who showed you those pictures? Do you remember which of
24 the district attorneys showed you?

25 A No, sir? I don't remember.

7
1 Q Was it one of the two men in Petitioner's Exhibit 19.

2 A Yes, sir.

3 Q Whether that prosecutor showed you the picture of Mr.
4 Carrasco Flores, could you tell from the picture that he was
5 dead, do you remember?

6 A No, sir.

7 Q When he showed you, when the prosecutor showed you that
8 picture, what, if anything, did he say?

9 A Could you please repeat it again.

10 Q Yes, ma'am.

11 When the prosecutor showed you that picture of Mr.
12 Carrasco Flores, did he say anything about the picture of what
13 he was showing you?

14 A Not exactly, no, sir.

15 Q Do you remember him showing you a picture of Mr. Aldape
16 Guerra while you were down in the prosecutor's office that
17 weekend before trial?

18 A Yes, sir.

8
19 Q Did the prosecutor that showed you that picture say
20 anything about Mr. Aldape Guerra?

21 A Yes, sir.

22 Q What did he say?

23 A He said he was the one that shot the police officer.

24 Q He was the one who shot the police officer.

25 At the time you saw those pictures, did you already

8
1 know that the man with the short hair, Mr. Carrasco Flores,
2 had been shot and killed by the police?

3 A Yes, sir.

4 Q In fact, could you see the bullet holes and the blood
5 stains on the purple shirt on the mannequin they showed you
6 that day?

7 A Yes, sir.

8 Q Did you tell the prosecutors that day when they showed
9 the picture of Ricardo Aldape Guerra and said "that's the man
10 who shot the police officer" -- strike that.

11 When they showed you the picture of Mr. Aldape Guerra
12 and said "that's the man who shot the police officer," what
13 did you say?

14 A The one with the short hair.

15 Q You said it was one with the short hair had done the
16 shooting.

17 A Yes, sir.

18 Q How did the district attorneys respond?

19 A He didn't respond that good.

20 Q Do you remember what he said?

21 A He just mumbled, and he didn't accept it.

22 Q Did he say whether he thought you were right or wrong?

23 A Not exactly.

24 Q What did he try to do?

25 A Just mumbling.

8
1 Q How could you be so sure at that time that Mr. Carrasco
2 Flores was the shooter and not Mr. Aldape Guerra?

3 A Because the way I saw it, the one with the long hair, the
4 way he had his hands on the police officer's car.

5 Q You are saying that since he had his hands this way, open
6 and empty, and that he wasn't even facing the police officer,
7 that that meant it would be difficult for him to be the
8 shooter?

9 A Yes, sir.

10 Q Did it look to you like Mr. Carrasco Flores was the
11 shooter, pointing like this, right at the police officer?

12 A Yes, sir.

13 Q In fact, after telling the district attorneys that you
14 were sure that it was the short-haired man who was the
15 shooter, did they tell you whether they wanted you to come
16 testify at trial?

17 A I was there all the time, but they never let me.

18 Q Did they tell you why they didn't want to use you?

19 A 'Cause I had been drinking, and I didn't know what I was
20 saying.

21 Q Have you ever spoken to my client, Ricardo Aldape Guerra,
22 ever?

23 A No, sir.

24 Q Since the trial, have you talked about the shooting to
25 either your daughters, Vira, Herlinda or your niece, Patricia,

8
1 or anyone else who was out at the intersection at the time of
2 the shooting?

3 A I don't speak to nobody.

4 Q Are you saying you haven't discussed the shooting with
5 any of them?

6 A No, sir.

7 Q Now, I have talked to you a couple of times about it,
8 haven't I?

9 A Yes, sir.

10 Q And I guess at least one, maybe two other lawyers for Mr.
11 Aldape Guerra have talked to you about it, as well, haven't
12 we?

13 A The one with the long hair?

14 Q No, no.

15 Some other lawyers for Mr. Aldape Guerra who work
16 with me have talked to you about this case too, haven't we?

17 A No, sir.

18 Q Did I ever tell you what you were supposed to say when
19 you testified here today?

20 A No, sir.

21 MR. ATLAS: Pass the witness, Your Honor.

22 THE COURT: Let's break for lunch at this point.

23 You have two exhibits you proffered. Do you
24 intend to offer those, 32 and 33?

25 MR. ATLAS: I apologize, Your Honor, if I haven't. I

1 certainly intend to.

2 Yes. I would like to offer into evidence
3 Petitioner's 32 and Petitioner's Exhibit 33. 33 is the
4 witness's signed statement from the early morning after the
5 shooting, and 33 is the -- 32 is, I believe, the chart.

6 THE COURT: Have you provided copies to opposing
7 counsel?

8 Why don't we take this up after we get back from
9 lunch. Let's be back here at 1:30.

10

11 (At this time a recess was taken for lunch).

12

13 THE COURT: Ms. Medina, if you will come back and
14 take the witness stand.

15 MR. ATLAS: Your Honor, I believe I passed the
16 witness before the break.

17 THE COURT: I understand that. I am trying to make
18 sure the interpreter is here. I believe the interpreter is
19 running a little bit late. We will check on him to make sure
20 he is not delayed.

21 MR. ATLAS: While we are waiting, I should point out
22 that I realize we needed photographs of the three weapons that
23 were State's Exhibits 43, 44 and 66.

24 THE COURT: What is that, now? You want to offer
25 what exhibit number?

8
1 MR. ATLAS: Your Honor, we realize that among the
2 exhibits in Petitioner's Exhibit 2, which were the original
3 trial exhibits, were the three weapons that were brought here
4 the first day of trial, State's Exhibits 43, 44 and 66; and we
5 had previously made a Polaroid copy of the picture of each of
6 the weapons; and with the Court's permission and no opposition
7 from opposing counsel, I would insert these in the appropriate
8 places in Petitioner's Exhibit 2 during the next break.

9
9 MS. CORNELIUS: No objection.

10 THE COURT: I think at the conclusion of your
11 testimony, I was concerned about whether or not you had
12 planned to offer Exhibits 32 and 33, and I believe you did
13 offer them.

14 Is there any objection?

15 MS. CORNELIUS: No objection.

16 THE COURT: They're admitted.

17 You may proceed with the cross-examination.

18 CROSS-EXAMINATION

19 BY MS. CORNELIUS:

20 Q Ms. Medina, my name is Shirley Cornelius, and I am with
21 the Harris County District Attorney's office. I don't believe
22 I have ever met you or spoken with you, have I?

23 A No, ma'am.

24 Q I guess before I dive into what you have testified to
25 today, I am kind of confused.

9
1 At trial your niece, Patricia Diaz, testified that
2 she was with her aunt, Gina Armalina Is that another name of
3 yours.

4 A No, ma'am?

5 Q Do you know a Gina Armalina?

6 A (Indicating in the negative).

7 THE COURT: You need to answer out loud.

8 A No, ma'am, no, ma'am.

9 BY MS. CORNELIUS:

10 Q You testified today that you had been drinking prior to
11 the events that occurred on July 13th of 1982.

12 A Yes, ma'am.

13 Q You also testified that you were drunk at the scene?

14 MR. ATLAS: I object to that question, Your Honor.
15 That is an inaccurate characterization --

16 THE COURT: I will sustain it.

17 MR. ATLAS: -- of the witness's testimony.

18 MS. CORNELIUS: Your Honor, I believe she testified
19 she was drunk.

20 MR. ATLAS: No.

21 MS. CORNELIUS: Those were her exact words.

22 THE COURT: But I don't know that she said she was
23 drunk at the scene.

24 MR. ATLAS: She said, Your Honor, she had some things
25 to drink. She never used the words "drunk."

9
1 THE COURT: Well, she was asked whether or not she
2 considered that to be drunk, and I believe that she did not
3 testify to that. Her niece testified that she felt that she
4 was drunk, so I agreed with that. And this witness has not
5 testified that she was drunk at the scene. That's why I
6 sustained the objection.

7 MR. ATLAS: In fact, Your Honor, with the Court's
8 permission, her niece testified, when I asked her if she
9 thought her aunt was drunk, said she had been drinking. She
10 have specifically did not use the word "drunk."

11 THE COURT: She did not. So this witness has not.
12 So, let's proceed. I sustain the objection.

13 BY MS. CORNELIUS:

14 Q You also testified that you were confused and terrified;
15 is that correct?

16 A Yes, ma'am.

17 Q Now, before the police ever came up on the scene, you
18 were pretty confused and terrified at that time; isn't that
19 correct?

20 A Yes, ma'am.

21 Q You had just -- within close proximity to you, two people
22 had been gunned down; is that correct?

23 A Yes, ma'am.

24 Q You also testified that you had been verbally abusive to
25 the police officers at the scene?

9
1 A Yes, ma'am.

2 Q And you would tell the police officers nothing?

3 A Yes, ma'am.

4 Q So, is it fair to say, then, you refused to cooperate
5 with the police officers at the scene and tell them what you
6 had seen?

7 A Repeat it again.

8 Q Is it fair to say, then, that you would not cooperate
9 with the police officers at the scene, and you would not tell
10 them anything about what you had seen?

11 A I was cooperating.

12 Q You would tell them nothing, and you were cooperating?

13 A I was cooperating. They were getting me confused in a
14 lot of things and threatening me at the same time.

15 Q They were getting you confused in a lot of things,
16 correct?

17 A Yes, ma'am.

18 Q Now, would you agree with me that the scene of that
19 double shooting was a rather confusing scene at that time?

20 A No, ma'am.

21 Q You don't think there was a lot of confusion on the scene
22 at that time?

23 A Yes, ma'am.

24 Q There was a lot of confusion on the scene?

25 A (Indicating in the affirmative).

9
1 Q Both on the part of the witnesses, who saw what had
2 happened, and the police officers who didn't know what
3 happened.

4 A Yes, ma'am.

5 Q And you would tell them nothing?

6 A No, ma'am.

7 Q You didn't really want to get involved at that time, did
8 you?

9 A None.

10 Q Is that correct? You did not want to get involved?

11 A Yes, ma'am.

12 Q Now, were you present when your niece, Patricia Diaz, was
13 talking to the police?

14 A Yes, ma'am.

15 Q So you heard Ms. Diaz at the scene tell the police
16 officers what she had seen?

17 A Yes, ma'am.

18 Q And you also heard Patricia Diaz tell the police officers
19 she was with you at the time all of this occurred?

20 A Yes, ma'am.

21 Q So, it's pretty obvious, then, that the police knew that
22 you were a witness to something at that time, correct?

23 MR. ATLAS: Your Honor, I object. Asking this
24 witness what the police knew as opposed to her perception of
25 what the police knew seems to go too far.

9
1 THE COURT: I will sustain it as to what was obvious
2 to her about the police.

3 BY MS. CORNELIUS:

4 Q So you were present when the police were informed that
5 you were with Patricia Diaz when the shooting occurred?

6 A Yes, ma'am.

7 Q But you didn't want to get involved, so you wouldn't tell
8 the police anything?

9 A Yes, ma'am.

10 Q When you were talking to the police officers at the
11 scene, were these Spanish-speaking officers or
12 English-speaking officers?

13 A They spoke English.

14 Q Now, I would like to point out at this time, Ms. Medina,
15 that on direct examination you answered probably half of the
16 questions without the aid of an interpreter; is that correct?

17 A Yes, ma'am.

18 THE COURT: Excuse me. Let her answer. Is that
19 correct?

20 THE WITNESS: Yes, ma'am.

21 BY MS. CORNELIUS:

22 Q And even if in response to some of my questions so far,
23 you have answered them without the benefit of the interpreter?

24 A Yes, ma'am.

25 Q So, you do understand English fairly well; is that

1 correct?

2 A Not very correctly.

3 Q And you speak English fairly well; is that correct?

4 A Yes, ma'am.

5 Q Well enough, even in 1982 that you could talk to the
6 English-speaking police officers?

7 A Yes, ma'am.

8 Q But perhaps not with perfect understanding?

9 A Yes, ma'am.

10 Q So, it's entirely possible that on top of your
11 unwillingness to cooperate there could have also been somewhat
12 of a language barrier present?

13 A No, ma'am.

14 Q There was no long barrier present?

15 A (Indicating in the negative).

16 Q You understood everything the police officers were
17 saying?

18 A Yes, ma'am.

19 Q And you were able to then communicate with them in what
20 you feel they could understand perfectly?

21 A Yes, ma'am.

22 Q When you went downtown, when you were taken downtown, you
23 said that you heard Ms. Galvan talking to Jose Armijo, Jr.?

24 A Yes, ma'am.

25 Q And she told the boy that the boy was confused; is that

1 correct?

2 A Yes, ma'am.

3 Q Was that the end of the conversation?

4 A Just about.

5 Q When you gave your statement down at the police station,
6 I believe you testified -- actually, I don't know if you
7 testified to this. Did they take you to a very small office
8 where you and a police officer sat down together and talked
9 about what you had seen?

10 A Yes, ma'am.

11 Q And did you tell him what you had seen or did you tell
12 him that you really saw nothing?

13 A I told him what I had seen.

14 Q Now, as you were telling him what you had seen, what was
15 this sergeant doing?

16 A He was writing on a piece of paper.

17 Q He was writing on a piece of paper, okay.

18 Were you present when he then reduced that writing to
19 a typewritten statement?

20 A I didn't see.

21 Q You didn't see the piece of -- you didn't see him typing
22 it; is that correct?

23 A (Indicating in the negative). No.

24 Q Do you recall the name of the detective that took your
25 statement?

1 A I don't remember.

2 Q Would the name J.K. Newman ring any bells with you?

3 A No, ma'am.

4 Q Do you recall if detective, the detective that took your
5 statement was in uniform or in plain clothes?

6 A He was not in uniform.

7 Q Was he one of the officers that you had spoken to at the
8 scene?

9 A Yes, ma'am.

10 Q He was at the scene earlier in the evening.

11 See one of the officers that you got into an argument
12 with?

13 A Yes, ma'am.

14 Q You didn't identify anyone as a shooter at the line-up;
15 is that correct?

16 A No, ma'am.

17 Q You also testified this morning before the lunch break
18 that before you were leaving the police department that night
19 a police officer or officers told you not to talk to anyone.

20 THE INTERPRETER: I forgot the question myself. I'm
21 sorry. It was too long.

22 BY MS. CORNELIUS:

23 Q Do you recall testifying that before you left the police
24 station that night you were told by a police officer or police
25 officers that you were not to talk to anyone.

1 A Yes, ma'am.

2 Q What police officer told you that?

3 A I don't remember.

4 Q Was he a uniformed officer?

5 A Yes, ma'am.

6 Q He had a uniform on?

7 A Yes, ma'am.

8 Q Who else was present when he told you that?

9 A The officer.

10 Q The detective who took your statement?

11 A Yes, ma'am.

12 Q What was specifically said that night?

13 A His words to me were to not talk to anybody, not even to
14 my daughter.

15 Q In fact, when you left the police department that night,
16 weren't there a lot of media people present in front of the
17 police department?

18 A Yes, ma'am.

19 Q The police didn't want you talking to the media at this
20 time; is that correct?

21 A Yes, ma'am.

22 Q When you gave this -- excuse me.

23 When you signed this statement that I believe is
24 Petitioner's Exhibit 33, you said you only read a portion of
25 it.

0
1 A Yes, ma'am.

2 Q How far down did you get before you quit reading it?

3 A Where it says, "Answer the door, going back to room
11 Patricia is renting on Walker at 11th, I always figure I heard
4 some shooting, and it sounds like shooting and being felt."
5

6 That's about as far as I got. Not even in the middle
7 of it.

8 Q You got to, "I heard some shooting. It sound like two
9 shots had been fired"?

10 A Yes, ma'am.

11 Q That's as far as you got?

12 A As far as I got.

13 Q Did you tell Detective Newman at that time that you
14 weren't through with the statement?

15 A Yes, ma'am.

16 Q You did tell him that?

17 A Yes, ma'am.

18 Q What did Detective Newman do -- I am not saying said --
19 what did Detective Newman do after you told him you had not
20 completed reading the statement?

21 A He got the paper from my hand.

22 Q Then what happened?

23 A He told me to sign it.

24 Q He told you to sign it?

25 A Yes, ma'am.

1 Q Was there anyone else present when you signed the
2 statement?

3 A No, ma'am.

4 Q No one else was present?

5 A (Indicating in the negative).

6 Q Did anyone else enter the room after you signed the
7 statement?

8 A Yes, ma'am.

9 Q Who was that?

10 A The one with the suit on.

11 Q The detective that typed up the statement?

12 A Yes, ma'am.

13 Q Let me back up then.

14 When you signed this statement, you and the detective
15 with the suit on were in the room together; is that correct?

16 A The policeman.

17 Q The policeman with the suit on; is that correct?

18 A Yes, ma'am.

19 Q It was just you and the policeman with the suit on?

20 A Yes.

21 Q So you told him you had not completed reading the
22 statement?

23 A Yes, ma'am.

24 Q And he said to sign it anyway, correct?

25 A Yes, ma'am.

1 Q Was there anyone else in the room besides you and that
2 policeman in a suit when you signed the statement?

3 A I don't remember.

4 Q Do you recall someone else asking you if that was your
5 statement?

6 A Yes, ma'am.

7 Q And that was your signature?

8 A Yes, ma'am.

9 Q And had you read that statement prior to signing it?

10 A He didn't ask me.

11 Q He didn't ask you that?

12 A No, ma'am.

13 Q Do you recall who that was?

14 A It was a police officer in uniform.

15 Q No. I am asking you about another person other than the
16 police officer.

17 A No' ma'am.

18 Q So, at no time were there three people present, you, the
19 plain clothes policeman, and another person?

20 A I don't remember.

21 Q Do you know what a notarized statement is?

22 A Yes, ma'am.

23 MS. CORNELIUS: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes.

1 BY MS. CORNELIUS:

2 Q Ms. Medina, I show you what is marked as Petitioner's
3 Exhibit 33.

4 At the bottom of the page is a paragraph that begins
5 with: "I have completed eight years of school/college and can
6 read and write the English language."

7 Do you see that?

8 A Yes. I see it.

9 Q It then says: "I have read this statement, and it is
10 true and correct to the best of my knowledge."

11 A Yes, ma'am.

12 Q It then says: "I have given this statement to Detective
13 J.K. Newman of my own free will."

14 Now, down below that is your signature. Do you see
15 that?

16 A Yes.

17 Q And below your signature is a line that says:
18 "Subscribed and sworn to before me this 14th day of July,
19 1982."

20 A Yes.

21 Q Below that line it has a signature that says "Douglas B.
22 Osterberg."

23 Below the signature line it says: "Notary public in
24 and for the State of Texas."

25 A Yes, ma'am.

1 Q Have you ever had a document notarized.

2 A No, ma'am.

3 Q Other than this one?

4 A No.

5 Q You have never had to have anything notarized by a notary
6 public; is that correct?

7 A No, ma'am.

8 Q So, you are not familiar, then, with the procedure a
9 notary has to follow before he or she can sign off on a
10 notarized statement?

11 MR. ATLAS: Excuse me, Your Honor. I think the last
12 question and answer, well, the answer got a little garbled in
13 the translation, because the question ended with "is it
14 correct," and that didn't get translated that way, so the
15 witness answered "no" when she meant to say yes to the
16 question.

17 My Spanish is just barely good enough to
18 understand that, and I thought it might be worth asking the
19 question again so it's clarified.

20 I think that counsel interpreted the answer the
21 way it was intended, but it came out differently because of
22 the way the question was interpreted.

23 THE COURT: What was the previous question?

24 MR. ATLAS: The previous question is: You have never
25 had anything notarized; is that correct?

1 And the way it was interpreted was: "You have
2 never had anything notarized?"

3 And she said "no."

4 Because of the use of the additional words "is
5 that correct," the proper answer was yes, but the witness
6 didn't understand it.

7 THE COURT: I understand.

8 Well, I understood her answer, and I think --

9 MR. ATLAS: I think we all did, but the record is not
10 clear.

11 BY MS. CORNELIUS:

12 Q So, you are not familiar with the procedures that a
13 notary has to follow before he or she can notarize a document?

14 A No, ma'am.

15 MS. CORNELIUS: I have no further questions, Your
16 Honor.

17 THE COURT: Anything on redirect?

18 MR. ATLAS: Just a few, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. ATLAS:

21 Q Ms. Medina, that night after the shooting -- well, let me
22 stop for a moment.

23 We asked you where everybody was located at the time
24 of the shooting, and you said that the short-haired man, who
25 we now call Mr. Carrasco Flores, was somewhere off to the side

2
1 of the police officer.

2 THE INTEPRETER: You have to repeat it.

3 MR. ATLAS: I'm sorry.

4 BY MR. ATLAS:

5 Q Ms. Medina, earlier you said that Mr. Carrasco Flores, at
6 the time of the shooting, was off to the side of the police
7 officer. Can you tell me about how far away you think he was
8 from the police officer at the time of the shooting, if you
9 can estimate, because your angle wasn't so great?

10 A I can't say.

11 Q Did he look pretty close?

12 A Yes.

13 Q Within a couple of feet, do you think?

14 A Yes.

15 Q Now, when the police first showed up after the shooting,
16 were you willing to cooperate with them at the very beginning?

17 A Yes, sir.

18 Q What was it that made you decide to stop cooperating with
19 them?

20 A The way he was treating us.

21 Q So, it was the police officer's conduct towards you that
22 made you decide that you didn't want to cooperate any more; is
23 that correct?

24 A Yes, sir.

25 Q Now you go to the station and you're there all night, and

2
1 sometime during the night a police officer in uniform says
2 something to you, and you were asked what this police officer
3 who told you not to talk to anybody said.

4 A Yes.

5 Q And your answer to that question, when the state asked
6 you just a minute ago, was they told you not to talk to
7 anybody.

8 When you first testified when I was asking the
9 questions, you also said that the same person told you not to
10 talk to Mr. Aldape Guerra's lawyers. Is that still your
11 testimony?

12 A Yes, sir.

13 Q Do you recall, as best you can, the words he used when he
14 says don't talk to Mr. Aldape Guerra's lawyers?

15 A I don't remember.

16 MR. ATLAS: Pass the witness, Your Honor.

17 THE COURT: Anything else?

18 MS. CORNELIUS: No, Your Honor.

19 THE COURT: I have a couple of questions.

20 Ms. Medina, did you testify earlier that you saw
21 Ms. Galvan when she was arrested or when she was handcuffed?

22 THE WITNESS: Repeat it again.

23 THE COURT: Well, did you see anyone else out at the
24 scene that night handcuffed?

25 THE WITNESS: Yes.

1 THE COURT: Who was the other person that you saw
2 handcuffed?

3 THE WITNESS: Me.

4 THE COURT: Other than you.

5 THE WITNESS: No.

6 THE COURT: You didn't see anyone else?

7 THE WITNESS: (Indicating in the negative).

8 THE COURT: When were the handcuffs removed, or when
9 did the police take the handcuffs off of you?

10 THE WITNESS: When I was inside.

11 THE COURT: When you were inside of where?

12 THE WITNESS: The car.

13 THE COURT: Inside the car.

14 During the time that you were handcuffed, were
15 you -- well, let me ask this. Were you in the car, taken to
16 the car immediately after you were handcuffed or were you --
17 how did they handle you? Just tell me what happened?

18 THE WITNESS: He was just telling me -- we were right
19 there, and he just told me that they were going to take
20 Patricia's little girl away -- threatening me, and then they
21 put me inside the car.

22 THE COURT: All right. But did you have the
23 handcuffs on while you were sitting in the car?

24 THE WITNESS: Yes, sir.

25 THE COURT: And how long did you sit in the car with

1 the handcuffs on?

2 THE WITNESS: He asked me if I was confused, if I
3 was -- if I wouldn't say anything more, that he would take the
4 handcuffs off, and I told him I wasn't going to say anything
5 more.

6 THE COURT: Did he then take the handcuffs off?

7 THE WITNESS: Yes.

8 THE COURT: And you remained in the car until they
9 took you downtown?

10 THE WITNESS: (Indicating in the affirmative).

11 THE COURT: Is that a yes?

12 THE WITNESS: Yes, sir.

13 THE COURT: Did they charge you with any crime? Did
14 they charge you with any offense?

15 THE WITNESS: No, sir.

16 THE COURT: That's all I have. Thank you very much.
17 You may step down.

18 MR. ATLAS: Your Honor, may the witness be excused?

19 THE COURT: Any objection?

20 MS. CORNELIUS: I have no objection.

21 THE COURT: You may be excused, ma'am. Thank you
22 very much.

23 THE COURT: Who is your next witness?

24 MR. ATLAS: Your Honor, our next witness is Roberto
25 Onofre, O-n-o-f-r-e.

1 THE COURT: Did somebody get him?

2 MR. ATLAS: I think they had to go downstairs and get
3 him. He is in the building, and I am sure is heading in the
4 right direction.

5 THE COURT: Raise your right hand, please, sir.

6 Do you solemnly swear or affirm any testimony
7 you will give in this case will be the truth, the whole truth
8 and nothing but the truth so help you God?

9 THE WITNESS: Yes.

10 THE COURT: Please take the witness stand.

11 ROBERTO ONOFRE

12 was called as a witness by the Petitioner and,
13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ATLAS:

16 Q What is your name, please?

17 A Roberto Onofre.

18 Q Mr. Onofre, you speak some English, I believe. Would you
19 feel more comfortable testifying in English or in Spanish?

20 A Spanish.

21 Q Are you the same Roberto Onofre who lived with Ricardo
22 Aldape Guerra, Enrique Torres Luna, Jose Luis Torres Luna and
23 Jose Manuel Barracia Esparza at 4907 Rusk in July, 1982?

24 A Yes, sir.

25 Q And Jose Manuel Barracio Esparez, was he also known as

3
1 Cepe?

2 A Yes, sir.

3 Q Was that his nickname?

4 A Nickname.

5 Q Where were you at about 9:00 to 9:15 or 9:30 on the
6 evening of July 13th, 1982, the night that the Houston police
7 officer James Harris was shot and killed?

8 A We went to make a payment for a water bill.

9 Q Before you left the house to make the payment, who was
10 present?

11 A Jose Manuel, Jose Luis, Pepe was there, Jose Manuel,
12 Ricardo.

13 THE INTERPRETER: I'm sorry. He said Cepe, not Pepe.

14 BY MR. ATLAS:

15 Q Who about Enrique Torres.

16 A And Enrique Torres Luna, also.

17 Q What about Jacinto Lopez?

18 A He was there, too.

19 Q Was there another man who looked like this man in
20 Petitioner's Exhibit 19 with the short hair the second from
21 the right?

22 A Yes. He was there.

23 Q What name did you know him by?

24 A Antonio.

25 MR. ATLAS: Let the record reflect that I was

13 1 referring in Petitioner's Exhibit 19 to the man we now call
2 Roberto Carrasco Torres.

3 BY MR. ATLAS:

4 Q Did Antonio, as you knew him, look a little bit like
5 either of the two mannequins in front of you, if you can
6 imagine them having hair on them?

7 A Yes.

8 Q Which one? The one in the green shirt or the purple
9 shirt?

10 A Purple.

11 MR. ATLAS: Let the record reflect the witness is
12 describing State's Exhibit 20, which is the mannequin made up
13 to look like Roberto Carrasco Torres.

14 BY MR. ATLAS:

15 Q At some point that evening did Mr. Aldape Guerra ask to
16 borrow a car?

17 A Yes, sir.

18 Q Whose car was it?

19 A Jacinto.

20 Q Jacinto Lopez?

21 A Jacinto Lopez.

22 Q Could you describe the car for us.

23 A It was a black Buick car with a red cover.

24 Q Did Mr. Aldape Guerra say where he was planning to go, if
25 you can remember?

3

1 A No.

2 Q Did anyone join him?

3 A Yes.

4 Q Who?

5 A Antonio.

6 Q Did you know Antonio by any other name?

7 A Ricardo -- no. Roberto Carrasco.

8 Q How did you know him by the name Roberto Carrasco?

9 A He once told me he had taken that name from a person he

10 had killed.

11 Q Did he tell you what kind of work the person he had

12 killed was in?

13 A He said he was a taxi driver.

14 Q Did you ever hear him use the name "Guerro"?

15 A Yes.

16 Q Now, did Antonio live in the same house with you and

17 Enrique and Jose Luis and Ricardo and others?

18 A No, sir.

19 Q Where did he live?

20 A We never knew. He just got there like any other person

21 would.

22 Q How did you meet him?

23 A There at the house itself.

24 Q The house where you were living?

25 A Yes.

3
1 Q He just showed up one day?

2 A Yes, once, yes.

3 Q How long before the evening of the shooting of the police
4 officer, approximately?

5 A Must have been like a month, more or less.

6 Q Now, after Antonio, or Roberto Carrasco Flores, and
7 Ricardo Aldape Guerra left the house, did you stay home all
8 evening?

9 A When they left?

10 Q When they left did you stay in the house and stay there
11 for the entire rest of the night?

12 A No.

13 Q Where did you go when you left?

14 A He went to Mr. Pitt's house.

15 Q Who's house?

16 A Mr. Pitt. Oh, the landlord, the landlord.

17 Q I think his name is Pat, P-a-t, actually.

18 A Yes.

19 Q Who went with you?

20 A Enrique, Jacinto and myself.

14
21 Q That's Enrique Torres Luna and Jacinto Lopez and you?

22 A Yes, sir.

23 Q Did you travel there by car or on foot?

24 A On foot.

25 Q Where did Pat live at the time, how far away?

14 1 A About a block or a half block, more or less.

2 Q Now, what did Jose Manuel Barrosio Esparza, who we call
3 Cepe, and Jose Luis Torres, what did they do while the three
4 of you went to Pat's?

5 A They stayed at the house.

6 Q On the way to Pat's house, did you hear anything unusual?

7 A Yes.

8 Q What was it?

9 A Several shots.

10 Q Was that unusual in that neighborhood?

11 A No. You could here shots, shooting.

12 Q Was the neighborhood considered safe or a little
13 dangerous?

14 A A little dangerous.

15 Q About how long did you and Enrique and Jacinto remain at
16 your landlord Pat's house?

17 A Like some from 30 to 45 minutes, more or less.

18 Q After you left Pat's house, where did you plan to go
19 next?

20 A To our house.

21 Q Were Enrique Torres Luna and Jacinto Lopez still with
22 you?

23 A Yes.

24 Q Were you still walking?

25 A Yes.

4 1 Q When you got near the house where you were living at 4907
2 Rusk, did you see anything unusual?

3 A Yes.

4 Q What was it?

5 A Policemen.

6 Q About how many?

7 A Like from 40 to 50.

8 Q Did you see Jose Lopez and Cepe?

9 A Yes.

10 Q Where were they and what were they doing?

11 A They were on the porch, lying down. Or the policeman had
12 them like this, (indicating)

13 Q Did the policeman have anything in their hands?

14 A The big, big guns.

15 Q Is the porch in front of the house or in back?

16 A In the front porch.

17 Q So, as you got close to the house where you were living,
18 you saw Jose Luis and Cepe -- let me stop there, if you
19 want -- on the front porch lying down, spread out on the
20 ground, face down --

21 A Yes.

22 Q -- with police having guns pointed at their heads?

23 A Yes.

24 Q Seeing this, did you and Enrique then join them and go
25 back into your house?

4
1 A No.

2 Q What did you do?

3 A We stayed. We remained at the corner at Dumble Avenue at
4 the corner of the house.

5 Q Now, there is a police report, and I am referring now to
6 document number F269 which is part of Petitioner's Exhibit 4,
7 which shows that you and Jose Luis and Enrique and Cepe were
8 questioned by several police officers while you were walking
9 on Rusk.

10 Was this before or after Antonio was killed that
11 these two police officers questioned you?

12 A After they killed -- after the shooting.

13 Q Did the police officers show you a picture of Antonio?

14 A Yes, sir.

15 Q These are police officers who were questioning you on
16 Rusk?

17 A Yes, sir.

18 Q Did he look alive or dead?

19 A He was dead.

20 Q Was this one of these instant pictures that you get 30
21 second, 60 seconds after you take a picture?

22 A Yes.

23 Q Did you see these policemen question Jose Luis and Cepe?

24 A Yes.

25 Q Could you hear the questions that were being asked and

14 1 the answers Jose Luis Torres Luna and Cepe were giving?

2 A Yes.

3 Q Is that the only time that night that all four of you
4 were questioned standing in the same area out on the street?

5 A Yes. On the street, yes, it was once.

6 Q Now, at any time did while they were being questioned out
7 there on the street in your presence, did Jose Louis or Cepe
8 say that they had left the house that night?

9 A No. They stayed inside.

10 Q No. But did they tell the police they had left?

11 A No.

12 Q Did the police treat all of you courteously or were they
13 discourteous to you?

14 A Discourteous.

15 Q Can you describe for me how they acted?

16 A When they were questioning us, they told us if we did not
17 tell them who that person was, they would arrest us.

18 Q When you say "who that person was," you mean the person
19 in the picture they showed you?

20 A Yes, yes.

21 Q So they wanted you to tell them who Antonio was?

22 A Yes.

23 Q At some point after the shoot-out and after you had been
24 questioned by the police out on the street, did you go into
25 your house?

4
5
1 A Yes.

2 Q Did Jose Luis and Cepe -- I'm sorry. Strike that.

3 Did Jose Luis and Cepe go into the house with you?

4 A Yes.

5 Q While you were in your house, did the police come in?

6 A Yes.

7 Q How did they treat you and your roommates when they came
8 in?

9 A Once they went in and told us to sit down there, for us
10 not to move, because they were going to search inside the
11 house.

12 Q Was this the same night Antonio was shot?

13 A No. That was afterwards.

14 Q What about the night that Tonio was shot, after you and
15 the others went back into the house that night, did the police
16 come into the house, if you can remember?

17 A Yes.

18 Q And how did they treat you and your roommates when they
19 came in that night?

20 A They treated us wrongly.

21 Q Can you describe for us what you mean when you say you
22 were treated "wrongly"?

23 A We had a votive lamp and paper with the news, piece of
24 paper with the news.

25 Q I am talking about the night that Tonio was shot?

5

1 A No. I don't remember.

2 Q Okay.

3 A About that night.

4 Q After that night did the police visit your house again?

5 A Yes.

6 Q About how many times?

7 A Two or three times.

8 Q Each time when they came to the house, what would they

9 do?

10 A They got in to search.

11 Q Would they ask permission to enter the house every time?

12 A Only once.

13 Q And the other times, what would they do?

14 A They just went inside.

15 Q And how would they treat you when they came into the

16 house those times?

17 A They always told us to sit down and to stay there.

18 Q Now, you say one time they asked for your permission to

19 come into the house?

20 A Yes.

21 Q Did they actually give you a document to sign that said

22 they had permission to come in?

23 A Yes.

24 Q Did they ask you to sign it or tell you to sign it?

25 A They told me to sign it.

5 1 Q What time would they usually show up at your house during
2 these two or three times after the night of the shooting? Was
3 it morning or evening?

4 A In the evening.

5 Q Was it before or after you and your roommates had gone to
6 bed?

7 A After we had gone to bed.

8 Q Before or after midnight?

9 A Maybe after --

10 THE COURT: Excuse me just one second. We got a
11 beeper. All right.

12 A Maybe after. Maybe after midnight.

13 Q Was that true each of the two or three times they showed
14 up after the night of the shooting?

15 A Yes.

16 Q Let me show you a document that has been marked as
17 Petitioner's Exhibit 34. Is that your signature in the bottom
18 right-hand corner?

19 A Yes.

20 Q Is that the document that you say they ordered you to
21 sign?

22 A Yes, sir.

23 Q Now, there is a police report, and referring here to
24 Document No. F351 and 52, which is in Petitioner's Exhibit 4,
25 and on the Page 352 it says: "Roberto Onofre and five

5
1 detectives inside the house, where Detectives Montero advised
2 them that detectives were trying to identify "Guerro." Both
3 Onofre and Barracia stated they knew "Guerro" by that name."

4 Now, Mr. Onofre, did you at any time invite
5 detectives inside the house?

6 A Yes.

7 Q By inviting them, I mean, did you ask them to come in or
8 did they come in without asking?

9 A When they knocked on the door, well, I let them come in.

10 Q Now, the third paragraph of that same page says that the
11 police asked if you would give your consent to search the
12 house for stolen weapons. Did the police officer who asked
13 you that ask you politely?

14 A No.

15 Q How was it asked?

16 A They always treated us wrongly.

17 Q What do you mean?

18 A That we had to sign.

19 Q Now, any of the time that the police officers came to
20 search your house, did they show you a paper signed by a judge
21 that they said gave them the right to come in?

22 A No. Only once. Only one, one.

23 Q Are you talking about the paper that I have just shown
24 you with your signature on it?

25 A Yes.

5 1 Q That that's not signed by a judge. That's not what I am
2 talking about.

16 3 Did they ever say they had a paper signed by a judge
4 that said they were entitled to come in even if you didn't
5 sign anything?

6 A I don't remember.

7 Q Were these police officers who came into your house
8 acting friendly and courteously to you?

9 A No.

10 Q Were they ever violent or using abusive language?

11 A They always shouted at us and told us to sit there and to
12 stay there until they told us to get up.

13 Q Now, you mentioned something earlier. You were starting
14 to mention something about a newspaper that they did something
15 with a candle.

16 A One night we have a votive light candle with the news
17 stuck to the wall right next to it. And the policeman came in
18 and he tore the piece of paper from the wall. He tore it to
19 pieces; and after he through the pieces to the floor, he
20 kicked the votive candle out of the way.

21 Q Mr. Onofre, what was the candle for?

22 A We like believers, Catholic, we believe that votive
23 candle would help him.

24 Q Would help what?

25 A To ask God for Ricardo to come out.

16 1 Q I can't remember if you said this. Was there a picture
2 in the newspaper, on the front page of the newspaper that the
3 police officers tore up?

4 A Yes, sir.

5 Q Whose picture was it?

6 A Ricardo's.

7 Q You are referring to Ricardo Aldape Guerra?

8 A Yes, sir.

9 Q Now, these police officers who kicked over the candle and
10 tore up the newspaper, had you or any of your roommates said
11 anything to make them so angry?

12 A No.

13 Q Well, now, if you don't remember them having a document
14 signed by a Judge that said they could get into the house, why
15 did you let them in?

16 A Because I have nothing to hide.

17 Q Were you afraid?

18 A Yes.

19 Q But why were you afraid? What had they done to make you
20 afraid?

21 A I didn't have my papers at that time.

22 Q Do you have them now?

23 A Yes.

24 Q Now, did this behavior by the police and the way they
25 treated you and your roommates affect your willingness to

6 1 cooperate with you and provide them with information?

2 A Well, yes.

3 Q If they had been more courteous and less violent and had
4 asked you for information about Roberto Carrasco Flores, or
5 Tonio, would you have been more cooperative with them?

6 A Yes, sir.

7 Q Is there information about Roberto Carrasco Flores you
8 could have told them about?

9 A Yes.

10 Q Can you give us some examples of what you knew?

11 MR. ZAPALAC: Your Honor, I would object to this
12 whole line of questioning. It has nothing to do with police
13 misconduct and having witnesses change testimony or anything
14 like that. The entire examination has had nothing to do for
15 the purpose of this hearing.

16 THE COURT: I am not sure I agree with that.

17 I sustain the objection to this line of
18 questioning, though.

19 MR. ATLAS: Your Honor, if I may respond so I can
20 explain the purpose of this line of questioning, as well as to
21 respond to the comment about the entire line of testimony.

22 The purpose of it I thought was obvious. At the
23 trial and as is described in our habeas petition, the
24 prosecutors attempted to impeach the testimony of --

25 THE COURT: I don't know if it was this witness, was

16 1 it?

2 MR. ATLAS: It wasn't this witness, but I am
3 bolstering the testimony of that witness by this witness in
4 the following manner.

5 At the original trial, Jose Luis Torres Luna,
6 one of his roommates, testified that he had been home when
7 Roberto Carrasco Flores came running into the house out of
8 breath and boasted that he had just shot a police officer and
9 held a couple of guns.

10 The prosecutors then attempted to impeach him on
11 rebuttal by putting on the testimony of the police officer
12 named Robinette, who testified that he had been told by Jose
13 Luis Torres Luna that he hadn't even been in the house that
14 night.

15 And we argued in our petition that as one
16 example of prosecutorial misconduct that the prosecutors had
17 in their files at the time a document reflecting that Jose
18 Luis Torres Luna was questioned by a different officer, I
19 think his name was Antonio Paulos, earlier before the shooting
20 of Carrasco Flores, demonstrating that he clearly had been
21 home at the time of the shooting.

22 And one of the ways in which we wish to
23 demonstrate this was by demonstrating, in part through Mr.
24 Onofre, and subsequently we well through Jose Luis Torres Luna
25 himself, that he, in fact, did remain home that entire time

6
1 and was home at the time shooting and could well have been
2 home that Carrasco Flores was supposedly coming in boasting
3 about the shooting.

4 THE COURT: I did sustain his objection to the line
5 of questioning.

6 What I was concerned about was whether -- I
17
7 sustained his objection to this witness telling this Court at
8 this point things about Carrasco at this point is really not
9 relevant.

10 MR. ATLAS: Your Honor, we would argue it is relevant
11 for this purpose, well, for two purposes.

12 First of all, we think the fact that Ricardo
13 Aldape Guerra, as the stipulation between the parties
14 demonstrates, had no criminal record whatsoever, no arrests,
15 no convictions in either the state where Monterrey is located
16 or the entire federal system of Mexico, and that -- I guess
17 three reasons.

18 That while Mr. Carrasco Flores, as this witness
19 will describe, had boasted of a number of killings he had
20 committed over the years; secondly, this witness will
21 testify -- and that that is relevant -- to intending to show
22 some likelihood about which of the two would have been the
23 cold-blooded killer who killed Officer Harris that night.

24 Secondly, he will testify about things
25 Roberto Carrasco Flores did in simulating the shooting of

1 police officers as they drove by and describing his hatred of
2 the police, that also tends to show he is more likely to have
3 been the one committed this crime.

4 THE COURT: I believe there is some testimony in the
5 record to that effect.

6 MR. ATLAS: Yes, Your Honor.

7 THE COURT: Regarding Carrasco's disdain for police;
8 and even if all of that were testified to, it wouldn't make
9 any difference to me, because the issue in this case at the
10 time of trial was an issue of identify. It wasn't a question
11 of whether or not Guerra was there; it wasn't a question of
12 whether Carrasco was there. The only question that the jury
13 should have been considering is which have these persons
14 committed the offense, and all the other stuff is just extra.

15 But in this proceeding it would not matter to me
16 whether or not Carrasco was a violent individual or not
17 because my concern is whether or not there has been some
18 injustice done here, not based upon what people know and
19 didn't tell, but based upon what was told to the police and to
20 the district attorney.

21 So, I sustain the objection. Let's proceed.

22 MR. ATLAS: Your Honor, my third point, which is a
23 very different one, goes to just a narrow narrow aspect of
24 what I propose to ask the witness, and I can tailor it more
25 narrowly. So the Court doesn't think I am attempting to

7
1 circumvent its rulnig, I would like to pose it to Your Honor
2 since it's a subset of the same question.

3 There is at least one instance where when this
4 man will talk about seeing Mr. Carrasco Flores showing off his
5 begun and then pointing it at a police car and doing it with
6 his left hand and practicing shooting with his left hand,
7 which is relevant to the issue of misidentification since --

8 THE COURT: That may be relevant, but what he knows
9 about Carrasco and --

10 MR. ATLAS: I will rephrase the question and focus on
11 that.

12 THE COURT: Proceed.

13 BY MR. ATLAS:

14 Q Mr. Onofre, how often did you see Antonio carry around a
15 gun when he was around your house?

16 A Carrasco?

17 Q Yes.

18 A Every time I saw, him he carried a gun.

19 Q Was it usually the same gun?

20 A Yes.

21 Q Did you ever see him loan it to anyone?

22 THE INTERPRETER: Loan it? Load it?

23 THE COURT: Loan it.
24
25

17 1 BY MR. ATLAS:

2 Q Loan it?

3 A No.

4 Q Do you remember whether Carrasco was right-handed or
5 left-handed?

6 A Left-handed.

7 Q What is it that makes you remember that?

8 A One day he was rehearsing a theft inside my house, he
9 grabbed the gun with this hand (indicating) and immitate the
10 noise, and he told everybody not to move, that this was a
11 robbery; and he immitated the sound of shooting with his
12 mouth, and he got the clip in with this hand, like this,
13 (indicating), he kept object drawing the shots, and then he
14 removed the clip again and he got another one in.

15 Q Which hands would he use when he was holding the gun?

16 A The left one.

17 Q Which hand would he use to hold the clip when he put the
18 clip in the gun?

19 A With the right hand.

20 Q Do you know whether Ricardo Aldape Guerra is right-handed
21 or left-handed?

22 A He's right-handed.

23 Q How do you know that?

24 A Once we went to eat at a restaurant, and I saw him that
25 he was eating with his right hand.

7
1 Q Have you spoken to Mr. Aldape Guerra since he left your
2 house with Carrasco in Jacinto Lopez' car on July 13, 1982?

3 A No.

4 Q When was the last time you spoke about the shooting to
5 Cepe or Enrique Torres Luna or anyone else who was out near
6 your house on the night of the shooting? Has it been years?

7 A Yes.

8 Q Now, you and I have spoken about this matter several
9 times, haven't we?

10 A Yes.

11 Q And other lawyers representing Mr. Aldape Guerra, or at
12 least one or two others have spoken to you about it as well,
13 haven't they?

14 A Yes.

15 Q Did I or either of these other lawyers for Mr. Aldape
16 Guerra tell you what to say today?

17 A No.

18 Q Why are you coming forward now to tell the story?

19 A Because I know Ricardo is innocent, and the criminal is
20 the other person, as he was saying.

21 Q At the time of the trial in October, 1982, were you
22 undocumented?

23 A What year?

24 Q October, 1982.

25 A I wasn't documented.

8
1 MR. ATLAS: I pass the witness, Your Honor.

2 THE COURT: Let's take a break at time time. Let's
3 take about 30 minutes and pick up at about 3:20.

4
5 (At this time a recess was taken)

6
7 THE COURT: Mr. Zapalac, I believe.

8 Did you finish the witness?

9 MR. ATLAS: Your Honor, I did, but I realized during
10 the recess I had forgotten to ask a fairly fundamental
11 question. Mr. Zapalac agreed to let me go ahead and ask it,
12 get it out of the way. If he will confirm that for me.

13 MR. ZAPALAC: Yes.

14 THE COURT: Sure.

15 BY MR. ATLAS:

16 Q Mr. Onofre, you said that you had seen Antonio with the
17 same gun all the time when he was around your house; is that
18 right?

19 A Yes.

20 Q Now, during the break I showed you pictures of three
21 guns, didn't I?

22 A Yes.

23 Q Did I hint at all to you which one of the guns was
24 Antonio's gun, or in any other way did I suggest to you which
25 gun you ought to pick out?

1 A No.

2 Q Let me show you Petitioner's Exhibits -- I'm sorry. In
3 Petitioner's Exhibit 2, this is State's Exhibit 43 and 44 and
4 66. Are those the three pictures I showed you during the
5 break?

6 A Yes.

7 Q Let me go back over them in reverse order.

8 Was it 66? Does that look like the gun Antonio
9 carried around with him when he was at your house?

10 A No.

11 Q What about 44?

12 A Yes.

13 Q Just so there is no doubt about it, what about 43?

14 A Not that one.

15 MR. ATLAS: Let the record reflect that the witness,
16 in picking out State's Exhibit 44 as the begun Carrasco Flores
17 was carrying around with him all the time when he was visiting
18 their house, is the 9mm weapon that was used to kill police
19 officer Harris.

20 And this time I really will pass the witness,
21 Your Honor.

22 THE COURT: Mr. Zapalac.
23
24
25

CROSS-EXAMINATION

BY MR. ZAPALAC:

Q Mr. Onofre, how long after Mr. Aldape Guerra and Mr. Carrasco Flores left the house on the night of July 13th did you also leave the house?

A About 30 minutes.

Q And you said that you went to your landlord's house?

A Yes.

Q And when was it that you heard the gun shots?

A About two or three houses before getting to the renter's house.

Q So, before you got to your landlord's house you heard the gun shots?

A Yes.

Q Did you see the shooting of Officer Harris?

A No.

Q Could you tell where the gun shots were coming from?

A Well, you could hear the noise, more or less, from where they killed the policeman, on that side.

Q Now, you said that you gave a statement to the police there outside of your house; is that correct?

A Yes.

Q You testified earlier this was after the shooting; is that correct?

A Yes.

18 1 Q Which shooting was this, the shooting of Officer Harris
2 or the shooting that occurred there on Rusk?

3 A I don't understand the question.

4 Q When you gave your statement to the police, was this
5 after the shooting of Officer Harris or was it after the
6 shooting where Mr. Carrasco Flores was killed?

7 MR. ATLAS: Your Honor --

8 A After Carrasco's death.

9 MR. ATLAS: -- I just want to point out for the
10 record, I thought there might be some confusion because Mr.
11 Zapalac asked about everything happening after he gave his
12 statement. Technically he didn't give a statement; he was
13 just questioned, but it sounds like the witness understood.

14 THE COURT: I understand that. Let's proceed.

15 BY MR. ZAPALAC:

16 Q Now you have also testified that the police showed you a
17 picture of Mr. Carrasco Flores and asked if you could identify
18 it; is that correct?

19 A Yes.

20 Q Did they tell you why they wanted to find out who this
21 person was?

22 A No.

23 Q At the time that they were asking you, were you aware
24 that a policeman had been wounded at same that Mr. Flores had
25 been killed?

18 1 A Yes.

2 Q Now, you also testified about police officers coming back
3 to your house to search it?

4 A Yes.

5 Q You said they came back on two or three occasions?

6 A Yes.

19 7 Q Do you recall -- well, do you recall the dates on which
8 they came back to search your house?

9 A I don't remember the dates; but after the shooting, it
10 was like a week after.

11 Q Could the police have come back to your house to search
12 the day, two days after the killing of Officer Harris?

13 A Perhaps one day.

14 Q Okay.

15 And is it possible on at least one occasion the
16 police came in the morning after it was daylight?

17 A I don't remember.

18 Q You did remember that on one or two occasions the police
19 came after midnight during the night; is that correct?

20 A Yes.

21 Q Do you recall the names of any of the police officers who
22 came to search your house?

23 A No.

24 Q Did the police ever tell you what they were looking for
25 when they came to search the house?

9 1 A They only said they were going to search the house.
2 That's all.

3 Q But they didn't tell you what they were going to look
4 for?

5 A No.

6 Q Did you see them take anything out of the house?

7 A No.

8 MR. ZAPALAC: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. ZAPALAC:

11 Q I'm going to hand you what's been marked as Petitioner's
12 Exhibit 34 and ask you -- well, I will ask you, first of all,
13 that document is in Spanish; is that correct?

14 A Yes.

15 Q And would you read what that says in Spanish and have the
16 interpreter interpret that into English?

17 A Yes. From the top?

18 Q Yes.

19 A Voluntary consent for search and seizure, date July 15th,
20 1982.

21 I can't read it. I don't know if that's 15 or 16.

22 MR. ATLAS: I would be happy, in the interest of
23 time, to just have Mr. Onofre read it to himself and have the
24 interpreter read it in English and save us all the time of him
25 reading it in Spanish.

9
1 THE COURT: I am not sure what his purpose is, but if
2 you want him to read it for a reason, that's fine.

3 Otherwise --

4 MR. ZAPALAC: If the interpreter can just interpret
5 it that would be fine.

6 THE COURT: Certainly.

7 THE INTERPRETER: "Voluntary consent for search and
8 seizure, date 7-15-92. I, Roberto Onofre, after having
9 received legal advice about having the right to not allow the
10 police to search my property without authority of the
11 judiciary courts and my right to deny that, I now authorize
12 the policemen, Detectives Montero and Castillo from the
13 Houston Police Department, Texas to register my home, to
14 search my home located on 4907 Rusk. These officers are
15 authorized by me, Roberto Onofre, to take from my home
16 letters, papers objects and every other property that will
17 they might need in their investigation. This written permit
18 is written by me voluntarily, without any promises or having
19 been threatened in any way, and I do give this, my affirmant,
20 complete and freely.

21 Signed, Roberto Onofre, no. Witness Jose Manuel
22 Barracia."

23 BY MR. ZAPALAC:

24 Q Mr. Onofre, you did sign this document, Petitioner's
25 Exhibit 34?

9
1 A Yes.

2 Q And who is Jose Manuel Barracia?

3 A He was one of our roommates.

4 Q The date on Petitioner's Exhibit 34, which was just read,
5 is July the 15th. Do you recall the police coming out to your
6 house on July the 15th, 1982?

7 A When they brought this document?

8 Q Yes.

9 A Yes. I remember.

10 Q And was this during the daylight hours or was it at
11 night?

12 A I believe it was at night.

13 Q Were you ever arrested for anything in connection with
14 the investigation involving the shooting of Officer Harris?

15 A No, sir.

16 MR. ZAPALAC: I have no further questions, Your
17 Honor.

18 THE COURT: Anything on redirect?

19 MR. ATLAS: Pass the witness, Your Honor, and ask
20 that he be excused.

21 THE COURT: I have a couple of questions I need to
22 ask before this witness steps down.

23 Is it my understanding, Mr. Onofre, that you
24 knew both, before this incident you knew both "Guerro" and
25 Carrasco?

9
1 THE WITNESS: Yes, sir.

2 THE COURT: And you referred to the fact that -- I am
3 not sure whether you said you called him, "you" meaning your
4 roommates and all, called him "Guerro" whether or not you said
5 he called himself that, but you said it was a nickname. How
6 do you know how he got that nickname?

7 THE WITNESS: The one, the "Guerro," the nickname,
8 that's how we knew him. That's how we called him.

9 THE COURT: Do you know why? Do you know why you
10 called him that?

11 THE WITNESS: Because he was guerro, fair-skinned.

12 THE INTERPRETER: I don't know if you want me to
13 translate. It's fair skin, light-colored hair.

14 THE COURT: Did you testify in this case? Not in
15 this case. I'm sorry. In the criminal case?

16 THE WITNESS: No.

17 THE INTERPRETER: I'm sorry, Judge. The other case?

18 THE COURT: The criminal case.

19 THE WITNESS: No, never. They never asked me.

20 THE COURT: Let me ask you if you would look at the
21 exhibits, and I don't know which number it is, that has the
22 picture of the mannequins fully-clothed with the wigs. What
23 is that number, Mr. Atlas?

24 MR. ATLAS: Your Honor, I believe that's Petitioner's
25 19.

1 THE COURT: 19.

2 Would you look at that, please sir.

3 THE WITNESS: Yes.

4 THE COURT: Would you look at those two, at the
5 mannequin that has the, I guess it's the purple shirt; and
6 would you look at the features of that mannequin and tell me
7 whether or not those facial and/or hair features are similar
8 to the ones that you know and believe to be those of "Guerro."

9 THE WITNESS: Yes.

10 THE COURT: Let me ask you this. Particularly -- we
11 don't have the wigs here, but is there anything -- and the
12 reason I am asking this is because one of the witnesses in a
13 statement to the police described the shooter as the
14 blond-haired one.

15 Did Mr. Carrasco have a blondish, blond-color
16 hair?

17 THE WITNESS: No. Just the body white.

18 THE COURT: Okay, all right.

19 Does that mean that he resembled more a white
20 man than a Hispanic?

21 THE WITNESS: Yes.

22 THE COURT: That's all I have, thank you.

23 MR. ATLAS: Your Honor, may this witness be excused?

24 THE COURT: Yes. You may step down, sir. Thank you
25 very much.

1 THE COURT: Who is your next witness?

2 MR. ATLAS: Your Honor, we call as our next witness
3 Jose Luis Torres Luna.

4 THE COURT: Do you solemnly swear or affirm any
5 testimony you will give in this case will be the truth, the
6 whole truth and nothing but the truth so help you God?

7 THE WITNESS: I swear.

8 THE COURT: Please take the witness stand.

9 JOSE LUIS TORRES LUNA

10 was called as a witness by the Petitioner and,
11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ATLAS:

14 Q What is your name, sir?

15 A Jose Luis Torres Luna.

16 Q Do you speak any English, sir?

17 A No. Spanish.

18 Q And you go by the name Torres, don't you?

19 A Jose Luis Torres Luna.

20 Q When I say Mr. Torres, should I say Mr. Torres or Mr.
21 Luna?

22 A Mr. Torres.

23 Q Thank you.

24 Are you the same Jose Luis Torres Luna who testified
25 in the Houston Court in October, 1982 in the murder trial of

0
1 Ricardo Aldape Guerra for the July 13, 1982 murder of Houston
2 Police Officer James Harris?

3 A Yes. I am.

4 Q Are you the same Jose Luis Torres Luna who lived with the
5 Ricardo Aldape Guerra, Enrique Torres Luna, Jose Manuel
6 Barracia Esparza and Roberto Onofre and Ricardo Aldape Guerra
7 at 4907 Rusk in July, 1982?

8 A Yes. I am.

9 Q How are you related to Enrique Torres Luna?

10 A He's my brother.

11 Q Where were you on about 9:00 o'clock to 9:30 p.m. on the
12 night of July 13, 1982, the night that Houston Police Officer
13 James Harris was shot and killed?

14 A In my house.

15 Q Were you at your house when several people left to go to
16 visit the landlord named Pat.

17 A Yes. I was in my house.

18 Q Before people left to go to Pat's house, who was there in
19 the house with you?

20 A Jacinto was there, Enrique, Roberto, Jose Manuel
21 Barracia, "Cepe," Ricardo Tonio, the "Guerro," and I.

22 Q When you say Jacinto, are you referring to Jacinto Lopez?

23 A Jacinto Lopez.

24 Q And the Enrique you referred to was your brother, Enrique
25 Torres Luna?

1 A Yes. He is my brother.

2 Q The Roberto you were referring to was Roberto Onofre?

3 A Yes. Roberto Onofre.

4 Q Now, were the person you called Tonio and "Guerro," was
5 that two different people or the same person?

6 A The same person.

7 MR. ATLAS: If I may approach the witness, Your
8 Honor.

9 BY MR. ATLAS:

10 Q Let me show you what's been marked as Petitioner's
11 Exhibit 19 and ask you if the four people shown in that
12 picture, if any of them looked like this man you called Tonio
13 or "Guerro"?

14 A (Indicating).

15 MR. ATLAS: And let the record reflect the witness
16 pointed to the second person from the right, the person that,
17 well, actually the mannequin made to resemble the person
18 called Roberto Carrasco Flores.

19 BY MR. ATLAS:

20 Q Can you tell me, on this person, the one just to the left
21 of the mannequin you just pointed to, who that looked like?

22 A It looks like Ricardo.

23 Q At some point that evening between 9:00 and 9:30 did
24 Ricardo, Mr. Aldape Guerra, ask to borrow a car?

25 A Yes.

- 1 Q Whose car was it?
- 2 A Jacinto Lopez'.
- 3 Q Can you describe the car?
- 4 A It was read and black Buick.
- 5 Q Was the roof red or black?
- 6 A The roof the top red, and around it black.
- 7 Q Did Mr. Aldape Guerra say where he was planning to go
- 8 when he got in the car?
- 9 A They were going to buy some sodas.
- 10 Q Did anyone ask to join him?
- 11 A Tonio, the "Guerro."
- 12 Q When Tonio left, was he carrying a gun?
- 13 A Yes.
- 14 Q How often did Tonio carry a gun when you saw him?
- 15 A He always carried one.
- 16 Q Now, did Tonio live at the house with you and the others?
- 17 A No.
- 18 Q Where did he live?
- 19 A I don't know.
- 20 Q How did you meet him?
- 21 A Another young man took him to the house.
- 22 Q How long before the night of the shooting of the police
- 23 officer did he show up?
- 24 A About one month.
- 25 Q Did you know him by any other maim besides Tonio and

1 "Guerro"?

2 A No.

3 Q Did you ever know him by the name Roberto Carrasco
4 Flores?

5 A No.

6 Q Now, you say that most of the time, well, all of the time
7 he was around your house he had a gun with him?

8 A Yes.

9 Q Let me show you pictures of three different weapons and
10 ask you if any of them resembles the gun he carried around
11 with him when he was at your house. Let me show you all three
12 and then ask you to identify any of them, if any one or more
13 looks like the gun he was carrying.

14 And I am in Petitioner's Exhibit 2, and I want to
15 show you what's been marked in there as State's Exhibit 43,
16 and State's Exhibit 44, and State's Exhibit 66.

17 Did any one of those three guns look like the gun
18 Antonio had with him when he came by your house?

19 A Yes.

20 Q Which one? Do you remember the number?

21 A Yes, yes. I know which one it is. The second one.

22 Q The second one I showed you was State's Exhibit 44. Is
23 that the one you are referring to?

24 A Yes. That's the one.

25 MR. ATLAS: Let the record reflect the witness is

1 identifying the murder weapon.

2 BY MR. ATLAS:

3 Q Now, you said that Ricardo Antonio left the house to go
4 get some sodas?

5 A Yes.

6 Q Did everyone else stay at the house or did they leave?

7 A First they stay, and then they left.

8 Q About how long after Ricardo and Antonio left did other
9 people leave?

10 A About 15 minutes.

11 Q Could it have been as much as 30 or 45 minutes?

12 A I don't recall.

13 Q Now, who was it who left the house?

14 A Enrique Torres, Jacinto Lopez, and Roberto Onofre.

15 Q When they left, did they say where they were going?

16 A That they were going to pay the rent.

17 Q Where did they say they were going to pay this rent?

18 A With Pat. He was the one who rented the house.

19 Q He lived within a block or two of you at the time, didn't
20 he?

21 A Yes. About three blocks; very close.

22 Q When they left, where did you go?

23 A I stayed there at the house.

24 Q Did anyone stay at the house with you?

25 A Yes.

1 Q Who?

2 A Jose Manuel Barracia.

3 Q Is that the roommate who also had the nickname Cepe?

4 A Yes. The same one.

5 MR. ATLAS: Now, I don't intend to ask you to repeat
6 your testimony from the October, 1982 trial, but I would like
7 to summarize a part of it, if I may, Your Honor, in order to
8 set the stage for my next set of questions.

9 BY MR. ATLAS:

10 Q You testified in brief that you heard gun fire about
11 10:30, and that you saw "Guerro" come running in with two guns
12 and boast that he killed a policeman.

13 A Yes.

14 Q And then Ricardo Aldape Guerra came running in and said
15 that "Guerro" had just killed a policeman.

16 A Ajura.

17 THE INTERPRETER: He said "ajura."

18 MR. ATLAS: I know what it means, too, but I don't
19 know -- it's really a policeman.

20 THE INTERPRETER: The interpreter doesn't know what
21 it means.

22 BY MR. ATLAS:

23 Q Is that a policeman with a uniform?

24 A Yeah. I believe when they used to call him jura.

25 Q In any event, then the two people, Ricardo and "Guerro,"

2
1 left the house.

2 What I want to know is this. About how long after
3 "Guerro" and Ricardo left the house, about how much later did
4 the police come?

5 A About 20 minutes, 15 to 20 minutes.

6 Q Now, you testified in 1982 that these police officers
7 came to the house with their guns out and took you outside and
8 threw you down on the porch, face down.

9 Where was Cepe while this was happening?

10 A We were both inside.

11 Q And while you were being taken outside and thrown down on
12 the porch face down, what was happening to Cepe?

13 A He was inside.

14 Q Did he come out on the porch with you?

15 A They also took him out. They took us both outside.

16 Q Now, while you were lying on the ground with the gun at
17 your head, was Cepe also lying on the ground next to you?

18 A Yes.

19 Q Was this porch in the front of the house or the back?

20 A Front.

21 Q While you were on the ground, how loud did the police
22 talk to you while they asked you questions?

23 A Loud.

24 Q Were they actually screaming at you?

25 A Yes, strongly.

2
1 Q Were they touching any part of your body while you were
2 on the ground?

3 A Yes.

4 Q What part of your body?

5 A Here and here, (indicating).

6 Q I would like the -- and I couldn't see the interpreter.

7 THE INTERPRETER: You want him to stand up?

8 MR. ATLAS: Yes, please.

9 THE WITNESS: Here, (indicating).

10 MR. ATLAS: Let the record reflect the witness is
11 referring to, I guess, the under part of the knee, back part
12 of the knee.

13 THE WITNESS: Yes, here, (indicating). Yes. From
14 the knee back, here, (indicating)

15 BY MR. ATLAS:

16 Q Did they have a foot on your knee? Is that what they were
17 doing?

18 A Yes.

19 Q You also gestured to the back of your head. What was
20 touching the back of your head?

21 A With the gun on the head.

22 Q How did you feel at the time?

23 A Well, I was very afraid.

24 Q While you were on the ground, did you tell the police who
25 were screaming at you that you had left home earlier that

2
1 night with your brother, Enrique, and Roberto and Jacinto,
2 that you had left the house with them?

3 A No. I never left the house.

4 Q But while the police were pointing their guns at you
5 while you were face down on the porch, did you tell them you
6 had left the house?

7 A No. I didn't say.

8 Q While you were on the ground with the police holding the
9 gun at your head and with the foot in your knee or the back of
10 your knee, did you tell them that Tonio or "Guerro" had
11 confessed to the murder, had boasted about murdering the
12 police Officer Harris?

13 A No. I didn't tell them anything.

14 Q Why not?

15 A I was afraid.

16 Q Let me show you those -- well, let me ask you. The
17 pictures of the three guns I showed you, did you recognize any
18 of those pictures as being the guns that Tonio had in his
19 hands when he came in and boasted that he killed a police
20 officer?

21 A Yes.

22 Q Let me point you in Petitioner's Exhibit 2 to State's
23 Exhibit 43. Is this one of the guns that Tonio had in his
24 hand when he came in the house?

25 A No.

2
1 Q Did anybody have this gun in his hand when he came in the
2 house?

3 A Ricardo.

4 Q Let me point you in State's Exhibit 44 in Petitioner's
5 Exhibit 2. This is the gun you have identified as the weapon
6 Tonio always had with him when he was around your house.

7 A Yes.

8 Q Did he have that in his hand when he came in the house
9 that night and boasted about killing the police officer?

10 A Yes.

11 Q Do you remember which hand he had the gun in when he came
12 in?

13 A No. I don't remember.

14 Q Let me show you State's Exhibit 66 in Petitioner's
15 Exhibit 2.

16 Q Do you recognize that as being a picture that looks like
17 the other gun that Tonio had in his hand when came into your
18 house and boasted of killing the police officer?

19 A Yes. That's the one.

20 Q Now, are one of these three guns that I have just shown
21 you pictures of the gun that you testified about in October,
22 1982 as being the gun that Carrasco or that Tonio offered you
23 as a present and said it was from the police officer?

24 A Yes.

25 Q Which of the three?

2
1 A The third one.

2 Q You are referring to State's Exhibit 66?

3 A Yes. That's the one.

4 MR. ATLAS: Let the record reflect the witness has
5 selected as the weapon that was offered to him as a gift, he
6 testified of October, 1982, the weapon of Police Officer
7 Harris.

8 Q Now, when these police officers who had you lying down on
9 the porch with guns at the back of your heads finished
10 screaming at you, did you and Cepe go back inside the house?

11 A No.

12 Q Did you remain outside for a while?

13 A In the porch, yeah. We remained there.

14 Q Did other police officers come up and ask you questions?

15 A Yes.

16 Q Did you stay on the porch as you were being questioned
17 the second time?

18 A Yes.

19 Q What did they talk to you about?

20 A They were looking for Pablo.

21 Q Who is Pablo?

22 A The one whose name the house was in. The one who was
23 renting the house.

24 Q What did you tell them about when they asked you about
25 Pablo?

3

1 A No. That I didn't know where he was.

2 Q How did the police react when you told them that?

3 A They cursed me.

4 Q Did either of the two police officers ask you about

5 Enrique, your brother?

6 A Yes.

7 Q What did you tell them about Enrique?

8 A That they had gone to pay the rent.

9 Q Did you tell them that he was your brother?

10 A No. I don't remember.

11 Q How did these two police officers treat you?

12 A Bad.

13 Q In what way?

14 A They just kept cussing.

15 Q What language were they speaking in?

16 A Spanish.

17 Q Did you tell either of those police officers, when they

18 were questioning you, that earlier that evening Tonio come

19 into the house carrying two guns and boasted about killing a

20 police officer?

21 A No.

22 Q Why not?

23 A I was afraid.

24 Q At that time were you undocumented?

25 A Yes.

3
1 Q Incidentally, Mr. Torres, where do you live right now?
2 Where do you normally live?

3 A In Monterrey, Mexico.

4 Q Have you come up here solely for the purpose of
5 testifying in this hearing?

6 A Yes.

7 Q Now, let me quote to you from a portion of a statement of
8 a police Officer, Antonio Palos, that is at Document No. F92
9 that I have marked as Petitioner's Exhibit 35.

10 It says -- I am going to quote part of it beginning
11 in the third paragraph. It says -- I am going to paraphrase
12 parts of it.

13 It says: At approximately 11:00 p.m. officers were
14 advised that wanted suspects would be living at 4911 Rusk and
15 were there now, and that they searched 4911 Rusk and didn't
16 find the people they were looking for; and they then went to
17 4907 Rusk where a small group of people was standing in
18 front."

19 It then says: "After a brief interview, it was
20 learned that one of the wanted suspects did live there. This
21 suspect was Enrique Gomez Luna. I obtained this info from a
22 Latin American male who lived at 4907 Rusk and who also stated
23 Luna was his brother. This same Latin American male advised
24 Luna had left approximately 30 minutes earlier to go eat and
25 did not know when he would return."

3
1 Now, except for the fact that I know your brother's
2 name is Enrique Torres Luna, not Gomez Luna and the fact that
3 your brother had left to go pay rent and not to eat, does this
4 sound like the same questioning by the two police officers you
5 have just been describing?

6 A Can you repeat the question?

7 Q Okay.

8 I recognize that there are at least two things wrong
9 with what I have just read. It has your brother's name wrong,
10 and it says he was going to eat instead of going to pay the
11 rent; but forgetting about that for a moment, those two
12 mistakes, does this sound like the questioning that the two
13 police officers you have just described did upon your front
14 porch with you?

15 A No.

16 Q Why not?

17 A I'm understanding the question wrong.

18 Q I'm sorry. I am afraid the question is so long it's
19 becoming convoluted.

20 A Anyway, I know I understand. May I talk?

21 Q Let me try to rephrase the question to make it a little
22 easier.

23 These two police officers that you said came up to
24 you after the other policemen had taken their guns away, the
25 two police officers who were cursing you a lot in Spanish and

3 1 who asked you about Enrique, is it possible that you told them
2 that Enrique was your brother?

3 A It's possible.

4 Q And do you remember telling them that he had left about a
5 half an hour earlier and that you didn't know when he would
6 come back?

7 A Yes.

8 Q And was the police officer who was asking you questions
9 speaking to you in English or Spanish?

10 A In Spanish, but, well --

11 Q I'm sorry. I don't understand "but." He was either
12 speaking in Spanish or speaking in English. Which was it?

13 A In Spanish.

14 Q Now, when these two police officers questioned you and
15 asked asked you about Enrique -- I'm sorry. Strike that.

16 When these two police officers questioned you and
17 asked you about Enrique, was that before or after Tonio was
18 shot? Which came first?

19 A Before.

20 Q So, which came first, the police officers questioning you
21 or Tonio being shot?

22 A First the questions.

23 Q How did you know Antonio was shot?

24 A They showed us some pictures.

25 Q Did you also hear the gunfire?

4
1 A Yes.

2 Q Did you see the police shooting towards the back of the
3 yard?

4 A Yes.

5 Q Was gunfire common in that neighborhood?

6 A Yes. They were common.

7 Q Did some people there carry guns there just for
8 protection?

9 A Yes.

10 Q Did Enrique and Roberto Onofre return before Tonio was
11 shot or afterwards?

12 A After.

13 Q Was it a long time after or just a few minutes?

14 A Just a few minutes.

15 Q When they arrived, or at least when you first saw them,
16 where were you and Cepe?

17 A In the parking lot.

18 Q Are you talking about the porch or the parking area next
19 door?

20 A At the corner of the porch and the park.

21 Q After your brother, Enrique, and Roberto Onofre returned,
22 were you questioned any more by the police?

23 A They only showed us the pictures, yes.

24 Q Maybe I better repeat the question.

25 Enrique and Roberto, you saw Enrique and Roberto

4 1 while you were standing off the corner of the porch near the
2 parking area, right?

3 A Yes.

4 Q And you got back together with them?

5 A Yes.

6 Q And this was out on the street near Rusk, wasn't it?

7 A Yes, on the street.

8 Q And did the police come up and ask any more questions of
9 the four of you while you were together?

10 A Yes.

11 Q Were they asking these questions in English or in
12 Spanish?

13 A In Spanish.

14 Q Did the police officer asking you questions show you any
15 pictures?

16 A Yes.

17 Q What picture did they show you?

18 A Tonio, when he was dead.

19 Q Was it a picture of him lying on the ground, obviously
20 dead?

21 A Yes.

22 Q Were you asked questions by this policeman after he
23 showed you this picture?

24 A Yes.

25 Q Did you tell this policeman that you were not home when

4
1 the police officer was shot?

2 A No. I didn't tell them.

3 Q Now, in your original trial testimony, it says that you
4 testified that you might have told him this.

5 Are you testifying now that you don't think it is
6 possible that you told him this?

7 A No.

8 Q So, if you didn't tell him this, why did you say at the
9 trial it was possible?

10 A There was a mistranslation. We weren't being interpreted
11 right.

12 Q Did you have problems with the interpreter at the trial?

13 A Yes.

14 Q What kinds of problems?

15 A Do I say it?

16 Q Please.

17 A When I was saying about Tonio coming in and giving me the
18 pistol, he said something about it being a Christmas present
19 or a birthday present, and all the jury laughed.

20 Q By the jury, okay, and people in the audience as well, I
21 guess?

22 A Yes. All the people.

23 Q Did he tell other jokes in interpreting some of the
24 things you said, as well?

25 A No.

4
1 MR. ATLAS: Your Honor, I realize I have forgotten to
2 offer into evidence Petitioner's Exhibit 35. I would like to
3 do that at this time.

4 THE COURT: Any objection?

5 MR. ZAPALAC: No objection, Your Honor.

6 THE COURT: What is that? Is that the statement of
7 this witness or just a recordation?

8 MR. ATLAS: No, Your Honor. It is a statement of
9 police officer Antonio Palos.

10 THE COURT: As a result of the interviews with this
11 witness and others?

12 MR. ATLAS: Yes, Your Honor. It's the statement that
13 includes a paragraph or two that, at least as best I can tell,
14 appears to the one of him being interviewed by the two
15 policemen shortly after the policemen with their guns drawn
16 withdrew.

17 THE COURT: Go ahead.

18 BY MR. ATLAS:

19 Q Mr. Torres, during the next week or two after the
20 shooting, did the police come search your house several times?

21 A Yes.

22 Q About how many times?

23 A About two or three times.

24 Q Were they morning, afternoon or evening visits?

25 A Early morning.

5

5
1 Q Was it before or after you and your roommates woke up in
2 the morning?

3 A No. When we were sleeping. One morning 2:00 in the
4 morning.

5 Q Would they ask permission when they came each of these
6 three times?

7 A No, no.

8 Q Would they just knock on the door and come in?

9 A I opened the door, and they moved me to the side.

10 Q Did they show you any documents saying they had a right
11 to search?

12 A No.

13 Q Did they act politely?

14 A No.

15 Q Were they cursing?

16 A Yes.

17 Q Did you ever object or complain about them coming into
18 your house this way?

19 A Yes.

20 Q How many times did you do that?

21 A Once.

22 Q How did the police officer you complained to react? What
23 did he say or do?

24 A "Out of the way, idiot."

25 Q Did he push you out of the way?

5
1 A Yes. He just said, "out of the way, idiot."

2 Q Why didn't you object to their entering the house the
3 other times they came?

4 A Well, I was scared. I was afraid of them.

5 Q Let me just clear up one thing I realize I did not clear
6 up earlier.

7 You pointed out the gun, State's Exhibit 44 in
8 Petitioner's Exhibit 2 you said Tonio had with him all the
9 time when he came by your house.

10 A Yes.

11 Q Did you ever see him loan it to anyone?

12 A No, to nobody.

13 Q Why are you so sure he didn't do that?

14 A Because he had bought it.

15 Q What did he tell you about having bought it?

16 A I'm sorry?

17 Q What did he tell you about having bought it in explaining
18 why he wouldn't let anyone else use it?

19 A He told me it had cost him \$500 and it was only for him
20 to use.

21 Q Do you know whether Ricardo Aldape Guerra is right-handed
22 or left-handed?

23 A Right-handed.

24 Q How do you know?

25 A 'Cause I have known him for a long time.

5
1 Q Now, you and I have visited a couple of times about this
2 case, both here in Houston and in Monterrey; isn't that
3 correct?

4 A Yes.

5 Q And you may have visited with one or two other people who
6 worked with me in representing Ricardo in this case; is that
7 right?

8 A Yes.

9 Q Did I or any of the other people representing Ricardo
10 ever tell you what we wanted you to say here today?

11 A No.

12 MR. ATLAS: Pass the witness, Your Honor.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. ZAPALAC:

16 Q Mr. Torres on the night that Officer Harris was killed,
17 July the 13th, 1982, did you see Ricardo Aldape Guerra with a
18 gun?

19 A Yes. I saw him.

20 Q Did he have a gun when he left the house the first time?

21 A No. I didn't see him.

22 Q You didn't see one?

23 A No. I didn't see one.

24 Q How long after Mr. Guerra left the house did you hear gun
25 shots?

- 5
- 1 A About 15 or 20 minutes.
- 2 Q And you were still at your house at that time?
- 3 A Yes. I was there.
- 4 Q When the police came the first time to question you and
- 5 took you outside on to the front porch, what language were
- 6 they speaking?
- 7 A Spanish.
- 8 Q And there was a lot of noise in the neighborhood at that
- 9 time, wasn't there?
- 10 A Oh, yes.
- 11 Q There were a lot of sirens from police cars and
- 12 ambulances?
- 13 A Yes.
- 14 Q And there were lots of people running around?
- 15 A Yes.
- 16 Q And there was just lots of noise generally in the
- 17 neighborhood at that time?
- 18 A Yes.
- 19 Q And in order to be heard, people had to speak loudly; was
- 20 that correct?
- 21 A Where we were, no.
- 22 Q On the porch you didn't think it was necessary to speak
- 23 loudly to be heard?
- 24 A It wasn't necessary.
- 25 Q Okay.

5 1 What kinds of questions were the police asking you at
2 this time?

3 A About who had come into the house.

4 Q Did they ask you specifically at this time about Tonio?

5 A No.

6 Q Did they ask you at this time specifically about Ricardo
7 Aldape Guerra?

8 A No.

9 Q How long did they ask you questions out on the front
10 porch?

11 A About three minutes.

12 Q Now, after Tonio had been shot in the back yard, the
13 police came and questioned you again; is that correct?

14 A Yes.

15 Q And it was at this time that they showed you a picture of
16 Tonio?

17 A Yes.

18 Q Did they ask you if you could identify the person in the
19 picture?

20 A Yes.

21 Q Did you know at this time that another police officer had
22 been shot in trying to capture Tonio?

23 A Yes.

24 Q Did the police explain to you why they wanted to identify
25 the person in the picture?

6
1 A I don't remember.

2 Q During the trial when you testified, were you able to
3 understand the English translations that the interpreter was
4 giving of your testimony?

5 MR. ATLAS: Your Honor, I want to make sure I
6 understand the question. Does he mean every single
7 translation or just selective words?

8 BY MR. ZAPALAC:

9 Q Well, could you understand any of the English
10 translations?

11 A No.

12 Q Were you ever arrested for interfering with the police
13 when they were trying to investigate the murder of Officer
14 Harris?

15 A No.

16 MR. ZAPALAC: I have no further questions, Your
17 Honor.

18 MR. ATLAS: Your Honor, just one.

19 REDIRECT EXAMINATION

20 BY MR. ATLAS:

21 Q Mr. Torres, if you couldn't understand any of the English
22 words that the interpreter said, how did you know that the
23 interpreter referred to the gun as being offered as a
24 Christmas present?

25 A Because he said, "happy birthday," and everybody knows

6
1 that, and also "Christmas."

2 MR. ATLAS: I pass the witness, Your Honor.

3 THE COURT: All right. You may step down.

4 MR. ZAPALAC: Your Honor, I have one.

5 May I approach the witness?

6 THE COURT: You may.

7 RECROSS-EXAMINATION

8 BY MR. ZAPALAC:

9 Q Showing you Volume 24 at Page 815, beginning at Line 20
10 and going to line 23.

11 A He didn't say it was as a present.

12 THE COURT: I am sorry. Say that again.

13 A He didn't say it was as a present.

14 MR. ATLAS: Meaning the witness?

15 BY MR. ZAPALAC:

16 Q The witness did not say meaning as a present?

17 A He didn't tell me that.

18 If you want me to, I can tell you what he said.

19 Q No. I want to know what the testimony was at trial.

20 A I don't understand the question.

21 Q Okay.

22 Is this what you testified to at trial?

23 A No. Not that.

24 MR. ZAPALAC: Okay. I have no further questions,
25 Your Honor.

6
1 MR. ATLAS: Pass the witness, Your Honor.

2 THE COURT: What did you testify to at trial,
3 regarding that particular -- what page is that you are looking
4 at?

5 MR. ZAPALAC: Page 815.

6 THE COURT: Is this of the trial transcript?

7 MR. ZAPALAC: Yes, Your Honor. Volume 24.

8 THE COURT: Would you let him look at it again.

9 MR. ATLAS: Your Honor, I believe it's in the
10 clippings, the brief version we provided you.

11 THE COURT: What was that page again, 815?

12 MR. ZAPALAC: Yes, Your Honor.

13 THE COURT: What line was it you were referring to?

14 MR. ZAPALAC: Line 20 to line 23.

15 THE COURT: Regarding the testimony you just gave
16 where you said, Mr. Luna, that that is not what was said, or
17 you asked the attorney whether or not you wanted -- whether or
18 not he wanted you to tell him what was said. Do you recall
19 that?

20 THE WITNESS: What was said?

21 THE INTERPRETER: I'm sorry.

22 THE COURT: What was said by Mr. Antonio?

23 THE WITNESS: He came to the house with the pistol,
24 and told me, "I have just killed the cop. Let's hide here in
25 the house. We are going to hide here in the house."

6

1 Do I go on?

2 THE COURT: Yes, yes, please.

3 THE WITNESS: He told me, "we have just killed the

4 cop, and we're going to hide here in the house."

5 And I told him to leave because I didn't want

6 any trouble.

7 THE COURT: Did he offer you the weapon, the pistol?

8 THE WITNESS: Yes. But not as a present; just to

9 shoot the police from the house.

10 THE COURT: If they came after them, or was that

11 supposed to be the plan? If they came to the house, you were

12 supposed to use that weapon to shoot the police?

13 THE WITNESS: He said to fight. I didn't say that.

14 He said that.

15 THE COURT: Right. I understand that. But that was

16 his statement to you?

17 THE WITNESS: What he told me. That was it.

18 THE COURT: All right. Anything else?

19 MR. ZAPALAC: Nothing further, Your Honor.

20 MR. ATLAS: Your Honor, we would like to ask this

21 witness to be excused.

22 THE COURT: Any objection?

23 MR. ZAPALAC: No objection.

24 THE COURT: You may step down, sir. You may be

25 excused. Thank you very much.

1 Let's approach the bench, please.

2
3 (Conference before the bench)

4
5 THE COURT: I suspect you don't have a 20-minute
6 witness?

7 MR. ATLAS: I actually do. I have one I think is
8 less than 20 minutes.

9 THE COURT: Go ahead and do that.

10 Who is your next witness?

11 MR. ATLAS: Your Honor, let me confer just a moment.

12 THE COURT: Sure.

13 MR. ATLAS: Your Honor, at this time I would like to
14 call Enrique Torres Luna.

15 THE COURT: Mr. Atlas, you forgot to bring that other
16 matter to your attention, your witness No. 18. Looking down
17 my list, I realized I didn't talk to you about that.

18 MR. ATLAS: Your Honor, I actually thought -- I
19 wasn't sure who was supposed to raise it. I was going to
20 raise at the end of the day if it wasn't raised before lunch
21 time. I frankly thought that --

22 THE COURT: Where is Mr. Matamoros? Is he in this
23 building?

24 MR. ATLAS: I believe so, Your Honor.

25 THE COURT: Is he upstairs?

6 1 THE MARSHAL: Yes, Your Honor.

2 THE COURT: You may proceed. Well, no. He isn't
3 here yet.

4 Please come forward, sir. Raise your right
5 hand, sir.

6 Do you solemnly swear or affirm that any
7 testimony you will give in this case will be the truth, the
8 whole truth, nothing but the truth so help you God?

9 THE WITNESS: Yes. I swear.

10 THE COURT: Take the witness stand.
7

11 ENRIQUE TORRES LUNA

12 was called as a witness by the Petitioner and,
13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ATLAS:

16 Q What is your name, sir?

17 A Enrique Torres Luna.

18 Q Are you the same Enrique Torres Luna who lived with
19 Ricardo Aldape Guerra, Robert Onofre, Jose Luis Torres Luna
20 and Jose Manuel Barracia Esparza at 4907 Rusk in July, 1982?

21 A Yes.

22 Q Did you mention July, 1982?

23 A Yes.

24 Q How are you related to Jose Luis Torres Luna?

25 A He is my brother.

7
1 Q Do you remember the night on July 13th, 1982 when a
2 police officer was shot and killed and then a man you knew as
3 Tonio or "Guerro" was shot and killed?

4 A Yes. I remember.

5 Q At some point late that night or early the next morning
6 were you taken down to the police station?

7 A Yes. They took me.

8 Q While you were at the police station that night, did you
9 ever see the Ricardo Aldape Guerra in handcuffs?

10 A Yes. I saw him.

11 Q Where was he at the time you saw him in handcuffs?

12 A I don't understand the question.

13 Q Well, was he in a small room or in a big room or in a
14 long hall or something else at the time you saw him in
15 handcuffs?

16 A Well, I don't remember exactly.

17 Q Now, at the time you saw him, was he standing still or
18 was he walking from one end of the room to the other?

19 A He was walking, and he had a detective behind him.

20 Q Were there other people from the neighborhood around at
21 the time he was being walked through, if you remember?

22 A No, no. I can't remember.

23 Q How was he being treated, Mr. Aldape Guerra, at the time
24 you saw him in handcuffs?

25 A They were pushing him. They pushed him. They were

1 pushing him.

2 Q How long did you stay at the police station that night?

3 A Like for five or six hours.

4 Q Mr. Torres, I know you speak a little English, don't you?

5 A Yes.

6 Q If you feel more comfortable ---

7 A I need him.

8 Q So you feel more comfortable with an interpreter?

9 A Yes.

10 Q At about 6:00 o'clock in the morning, after being at the
11 police station for several hours, were you asked to look at
12 five or six men standing behind a two-way mirror in a line-up?

13 A Yes. They ordered me so, but I was behind the door, not
14 inside the room.

15 Q Were there people inside a room looking at the people who
16 were -- the five or six men who were behind the two-way
17 mirror?

18 A Yes.

19 Q But you weren't allowed to go into that room; you were
20 kept outside that room?

21 A Yes. Outside the room.

22 Q Let me show you what's been marked as Petitioner's
23 Exhibit 24 and ask you if that looks like the people in the
24 line-up you saw that night?

25 A Yes. That's the way they looked.

7
1 Q And do you recognize the man who is the fourth person
2 from the left in Petitioner's Exhibit 24?

3 A Yes. I recognize him.

4 Q Who is he?

5 A Ricardo Aldape.

6 Q Now, when you looked into the room to see the people
7 behind the two-way mirror, did you recognize any of the people
8 who were sitting in the room looking at those people?

9 A Yes.

10 Q How many people did you recognize?

11 A Only Mrs. Galvan.

12 Q How do you know her?

13 A Because she worked at a store at the corner where we
14 lived at.

15 Q Let me show you a picture that's part of Petitioner's
16 Exhibit 20 that is marked F2037. Does that look like the way
17 Mrs. Galvan looked back in July of '92?

18 A Yes, yes. That's she.

19 Q Who did you see who was sitting next to her in that
20 little room while they were looking at the line-up?

21 A There were several people.

22 Q Did you see a little boy sitting next to her?

23 A Yes.

24 Q Can you pick out the picture of that little boy in
25 Petitioner's Exhibit 20.

1 A Yes.

2 Q You have handed me a picture of Petitioner's Exhibit 20
3 that's marked F2034. Is this the little boy that you saw
4 sitting next to Ms. Galvan that night?

5 A Yes.

6 MR. ATLAS: Let the record reflect the witness has
7 selected a picture of Jose Armijo, Jr.

8 BY MR. ATLAS:

9 Q When you looked into the room to look at the people in
10 the line-up, was Ms. Galvan talking?

11 A Yes. She was talking.

12 Q Was she talking to the small boy sitting next to her?

13 A I don't remember exactly.

14 Q Could you hear what she was saying?

15 A No.

16 Q Was the little boy sitting as close to her as anybody
17 else was or was there somebody sitting in between them?

18 A Well, no. I don't remember where he was, but they were
19 there all together.

20 Q Now, you and I have spoken a couple of times about this
21 case, haven't we?

22 A Yes.

23 Q And you've probably talked to other lawyers representing
24 Ricardo in this case, haven't you?

25 A Yes.

1 Q Did any of us tell you what to say today?

2 A No, no. I am saying that on my own free will.

3 MR. ATLAS: All right. I will pass the witness, Your
4 Honor.

5 THE COURT: Cross-examination.

6 MS. CORNELIUS: Your Honor, this will be brief.

7 THE COURT: Okay.

8 CROSS-EXAMINATION

9 BY MS. CORNELIUS:

10 Q I am sure I am going to butcher your name. Is it Enrique
11 Luna Torres?

12 A Yes.

13 Q If I call you Mr. Torres, I am calling you correct?

14 A It's fine.

15 Q Mr. Torres, my name is Shirley Cornelius, and I am with
16 the Harris County District Attorney's office; and I have never
17 spoken with you, have I?

18 A No.

19 Q Really and truly, all I want to know is, on the --
20 probably in the early morning hours of July 14th, 1982 when
21 you were downtown, did you give a statement?

22 A Yes.

23 Q A written statement?

24 A That if I signed it?

25 Q I will get to that point. Yeah.

1 Did you sign a statement?

2 A Yes, yes, yes. I signed it.

3 Q Do you recall the person who helped you make the
4 statement?

5 A Yes.

6 Q Do you recall his name?

7 A Detective Castillo.

8 Q And did Detective Castillo speak Spanish?

9 A Yes.

10 Q The statement actually that you signed was typewritten in
11 English; is that correct?

12 A Yes, exactly.

13 Q And did he read it to you in Spanish before you signed
14 it?

15 A Yes. He read it to me in Spanish.

16 Q And then you signed it, correct?

17 A Yes, yes.

18 Q Afterwards do you recall if someone else came in and
19 asked you if this was your true statement?

20 Let me rephrase it. Let me rephrase that.

21 Besides the Detective Castillo --

22 A Yes. There was another gentleman, too.

23 Q And he asked you, "is this your signature," correct?

24 A No. He didn't ask me anything.

25 Q So he didn't ask you anything?

8
1 A No. Not about my signature, no.

2 Q He asked if you were Enrique Luna Torres?

3 A No. I don't remember if he asked me that.

4 Q Did someone ask you, then, is this your statement that
5 Detective Castillo read to you, is basically what --

6 A No. Only Castillo.

7 Q Just Castillo.

8 MR. CORNELIUS: Okay. Thank you.

9 No further questions, Your Honor.

10 THE COURT: Anything else?

11 MR. ATLAS: Just one question, Your Honor, to clear
12 up the record.

13 REDIRECT EXAMINATION

14 BY MR. ATLAS:

15 Q Is your name Enrique Luna Torres or Enrique Torres Luna?

16 A That's the way it is, Enrique Torres Luna, but sometimes
17 they call me just Enrique Luna.

18 MR. ATLAS: Pass the witness.

19 THE COURT: I would like to know, before you leave,
20 how old were you in July of 1982?

21 THE WITNESS: 21 years old.

22 THE COURT: How old was your brother, Jose?

23 THE WITNESS: 23.

24 THE COURT: All right. You want to excuse this
25 witness?

1 MR. ATLAS: Yes, Your Honor.

2 THE COURT: You may be excused, sir. Thank you very
3 much.


4 Let's recess until 9:15 tomorrow morning. 9:15.
5 You get a break.

6
7
8 (Conclusion of proceedings for October 18, 1993)
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CERTIFICATION

I, FRED WARNER, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 217 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 18th day of November, 1993.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 14th day of August, A.D., 1995.


Fred Warner, CSR
Official Court Reporter