

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2012-CF-8613-A-O
DIV.: 24

STATE OF FLORIDA,
Plaintiff,

v.

DIRECTIONS TO CLERK ON PAGE 17

RONNY BATISTA,
Defendant.

_____ /

**ORDER AFTER EVIDENTIARY HEARING ON DEFENDANT'S MOTION FOR
POSTCONVICTION RELIEF DENYING GROUNDS 2, 3(f) and 3(h), GRANTING
GROUNDS 3(B)(1) AND 3(B)(2) OF DEFENDANT'S MOTION FOR
POSTCONVICTION RELIEF, VACATING JUDGMENT AND SENTENCE on COUNT
1, AND SETTING EVIDENTIARY HEARING ON GROUND 3(J)**

THIS MATTER was before the Court on Defendant's Motion for Postconviction Relief, filed by and through counsel on August 3, 2020, and Amended Motion for Postconviction Relief, filed by and through counsel on June 7, 2021, pursuant to Florida Rule of Criminal Procedure 3.850. After reviewing Defendant's Motion, Amended Motion, the State's Response, the court file, the record, the testimony and arguments from the evidentiary hearing, the Court finds as follows:

PROCEDURAL HISTORY

On September 25, 2012, Defendant was charged by Indictment with First-Degree Murder (With a Firearm) (Count 1) and Possession of a Firearm by a Convicted Felon (Count 2). On June 2, 2017, the State charged Defendant by Amended Information with two counts of Solicitation to Commit First-Degree Murder (With a Firearm) (Counts 3 and 4). *See* Amended Information, attached. On June 9, 2017, a jury found Defendant guilty of the lesser included offense of Manslaughter (Count 1), making a special finding that he did actually possess and discharge a firearm during the commission of the offense, which resulted in the victim's death. *See* Verdict Form, attached. On August 15, 2017, Defendant filed a motion to dismiss Count 2, and the Court granted the motion on August 16, 2017. *See* Court Minutes, attached. On August 18, 2017, the Court sentenced Defendant to the Department of Corrections ("DOC") for 30 years and credited him with 802 days' time served. *See* Sentence, attached. Defendant appealed. The Fifth District

Court of Appeal per curiam affirmed the judgment and sentence, and the Mandate issued on July 29, 2019. *Batista v. State*, 276 So. 3d 308 (Fla. 5th DCA 2019).

On February 16, 2018, Defendant pled no contest to both counts of Solicitation to Commit First-Degree Murder (Counts 3 and 4). *See* Plea Form, attached. On the same day, Defendant was adjudicated guilty and sentenced to DOC for 30 years (Counts 3 and 4), to run concurrent with each count, including Count 1, and credit for 984 days' time served. *See* Judgment and Sentence, attached. Defendant appealed. The Fifth District Court of Appeal per curiam affirmed, and the Mandate issued on June 7, 2019. *Batista v. State*, 271 So. 3d 994 (Fla. 5th DCA 2019).

On August 3, 2020, Defendant filed the instant Motion for Postconviction Relief. On June 7, 2021, Defendant filed the instant Amended Motion for Postconviction Relief. The State filed a response on September 23, 2021. On September 4, 2024, the Court entered an order denying grounds 1, 3(a), 3(c), 3(d), 3(e), 3(g), and 3(i), granted an evidentiary hearing on grounds 2, 3(b)(1), 3(b)(2), 3(f), and 3(h), and reserved ruling on grounds 3(j) and 3(k). An evidentiary hearing was held on March 31 and April 1, 2025.

PRIOR ORDER

The Court incorporates the denial of the claims in its September 4, 2024, Order Denying in Part and Granting an Evidentiary Hearing in Part on Defendant's Motion for Postconviction Relief.

SUMMARY OF FACTS

On June 23, 2012, two groups of individuals encountered each other in a downtown Orlando parking garage after leaving nearby nightclubs. T. 155, 234, 746-47, 750. Pedro Gallardo's group, which included Amaryllis Phillips, was gathered in the parking garage, standing near a car while waiting for friends. T. 155, 234. Defendant's group entered the garage and encountered Gallardo's group at this time. T. 234-37. An argument broke out between the two groups, escalating to shouting and posturing, though no physical fight occurred at that moment. T. 122, 207, 220-22, 239-44. A witness described Defendant running away from the scene to a nearby vehicle where he retrieved a firearm. T. 95, 97, 117, 245, 840-43. Witnesses observed Defendant running back toward Gallardo's group while holding a gun. T. 117, 245. Amaryllis Phillips testified that Defendant was waving or pointing the gun and that she did not see Gallardo with any weapon. T. 254. Two of Defendant's friends testified that they were scared and believed

Gallardo's group might have had weapons, although they did not see one. T. 472, 742. Gallardo was standing between two vehicles and was described by a witness as making a shrugging motion with his hands up, palms open, when Defendant returned from his car. T. 100, 208-09. Witnesses testified that Gallardo was reaching toward his waistband during the confrontation, which was interpreted as potentially reaching for a firearm. T. 742, 845. Defendant testified that he shot Gallardo after he saw Gallardo reach for his gun from the right side of his waist. T. 867. After the shooting, Defendant fled the area. T. 846.

ANALYSIS AND RULING

Claims of ineffective assistance of counsel are reviewed under the two-part standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). The defendant has the burden of establishing that: (1) trial counsel's performance was deficient, and (2) the defendant was prejudiced as a result. *Id.* The defendant must establish both the deficient performance prong and the prejudice prong of the *Strickland* standard to be entitled to relief. *Stewart v. State*, 801 So. 2d 59, 65 (Fla. 2001).

To establish *Strickland* prejudice, a defendant must prove that "counsel's errors were so serious as to deprive [him] of a fair trial, a trial whose result is reliable." *Strickland*, 466 U.S. 668 at 687. Defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of this proceeding would have been different." *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* In a challenge to a criminal conviction, "the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Id.* at 695.

Ground 2:

Defendant alleges trial counsel, Rajan Joshi, rendered ineffective assistance of counsel by failing to disclose he was struggling with drug and alcohol addiction and was arrested for cocaine possession during the course of his representation. Defendant argues counsel's addiction interfered with counsel's ability to (1) investigate the case; (2) prepare for hearings and trial; and (3) advise Defendant and litigate the case.

The evidence does not support this claim. During the evidentiary hearing, Mr. Joshi testified he had used alcohol and drugs since he was in college and that although he was drinking nightly at the time of Defendant's case, it did not interfere with his ability to represent his clients. He testified he never drank at work or while preparing for trial in the case. Mr. Joshi stated that although the drugs and alcohol affected him, he did not think they affected his performance professionally. He testified that he graduated in the top 15% of his law school class, received the book award in criminal procedure, scored top five on the Florida Bar exam, won awards at work, made partner at his firm, was successful in obtaining convictions at trial, and opened and created a successful law firm.

Mr. Joshi testified that he spoke to Defendant about this issue at length and that Defendant kept him on the case. He further explained that at the time of the trial, he was sober and in a recovery program. Moreover, none of the witnesses who interacted with Mr. Joshi during that time testified that they were in any way concerned about his behavior or ability to try a case. Mr. Jay, (the prosecutor on the case) and Mr. Lafay (co-counsel) both testified that they would have reported it to the Court had they been concerned. Mr. Lafay, who was also a former law partner of Mr. Joshi, went so far as to say that he would have reported any concerns to the Florida Bar.

The Court finds Defendant has not demonstrated either deficient performance or prejudice on this ground. Even if he had demonstrated that counsel's performance was deficient these deficiencies were known to the defendant at the time of trial, knowingly and voluntarily concurred in by him, and cannot support his collateral attack. *Ross v. State*, 392 So. 2d 23, 24 (Fla. 4th DCA 1980). Mr. Joshi testified he spoke with the Defendant about his substance use at length, telling him he was sober, and Defendant chose to continue the representation. This fact is unrebutted as the Defendant did not testify at the hearing. Furthermore, the Court finds Mr. Joshi to be a credible witness. He was straightforward and forthcoming when answering questions from both the defense and the state regarding each issue he testified about. Therefore, Defendant has failed to establish that counsel rendered ineffective assistance of counsel as asserted in this claim. Accordingly, this ground is denied.

Ground 3(b)(1):

In ground 3(b)(1), Defendant alleges Counsel rendered ineffective assistance of counsel by failing to object to the forcible felony instruction given to the jury. Defendant asserts the instruction "[h]owever, the use of deadly force is not justified if you find that Ronny Batista was attempting to commit, committing, or escaping after the commission of aggravated assault," was legally incorrect, confusing, misleading and negated his sole defense of self-defense.

Under Florida law, the forcible felony instruction should not be given to the jury unless the defendant is charged with an independent forcible felony in addition to the offense for which the defendant is asserting self-defense. *Martinez v. State*, 981 So. 2d 449, 452 (Fla. 2008).

Martinez's trial counsel did not object to the inclusion of the "forcible felony" instruction, informing the jury that Martinez could not claim self-defense if he was engaged in a forcible felony other than the crime charged. Martinez was convicted of attempted first-degree murder and

aggravated battery after stabbing his girlfriend in the back with a knife, and causing a punctured lung. At trial, Martinez argued multiple conflicting defenses including self-defense, accident, intoxication, lack of premeditation and that the victim stabbed herself. The Court found the instruction was erroneous but did not constitute fundamental error because self-defense was not his sole defense, and the evidence supporting the self-defense claim was weak. The evidence showed Martinez had a superficial cut on his pinky, while the victim was stabbed in the back and sustained serious internal injuries. Additionally, there was no testimony or evidence indicating that the victim attacked him or posed a threat warranting deadly force.

On appeal, Martinez argued that this instruction constituted fundamental error because it effectively negated his ability to claim self-defense. The Court acknowledged that the instruction was improperly given because the defendant was not charged with a separate, contemporaneous forcible felony that would bar a self-defense claim. However, the Court held that the error was not fundamental. The Court explained fundamental error for failing to object to a jury instruction by stating, “[t]o justify not imposing the contemporaneous objection rule, ‘the error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.’” *Id.* at 454-55.

The Court determined that self-defense was not Martinez’s sole or primary defense, and the multiple contradictory theories presented at trial undermined the credibility of the self-defense claim. Given the weak evidentiary support for self-defense and the absence of an objection at trial, the Court concluded that the instruction did not deprive Martinez of a fair trial and affirmed his convictions.

Martinez, was a direct appeal, therefore the issue was reviewed using the fundamental error standard, meaning Martinez had to show that the erroneous jury instruction was so serious that it

deprived him of a fair trial. “The fundamental error doctrine should only be applied in rare cases where a jurisdictional error appears or where the interests of justice present a *compelling demand* for its application.” *Martinez v. State*, 981 So. 2d at 455.

In contrast, Defendant’s case arises in a postconviction context under Rule 3.850, where the standard is set by *Strickland v. Washington*. Here, the focus is not on whether the error was fundamental, but whether trial counsel was ineffective for failing to object and whether there is a reasonable probability that the outcome of the trial would have been different had counsel objected. In a Rule 3.850 context, the analysis shifts from the error itself to the performance of counsel and its impact on the defense.

In this case, the only charge presented to the jury for deliberation was count one, First-Degree Murder (With a Firearm). Therefore, it was error to give the forcible felony exception instruction. *See Sipple v. State*, 972 So. 2d 912, 914 (Fla. 5th DCA 2007). Although it was error to read the instruction, that does not mean the granting of a new trial is automatic. Applying *Strickland*, this Court must determine whether (1) counsel’s failure to object to the inclusion of the instruction was deficient, and (2) if so, did that result in prejudice to the Defendant.

The Court finds the failure to object to the instruction was deficient. During the evidentiary hearing, Mr. Joshi testified that the defense was self-defense, but he did not do any research on self-defense jury instructions before or during the trial. Mr. Joshi explained he was aware of the case law on the forcible felony instruction, but he could not say that he knew of the *Martinez* case at the time of trial. He testified that Defendant always maintained he was acting in self-defense. Mr. Joshi stated that he explored an identity defense, but it didn’t pan out.

Mr. Lafay testified he was initially hired to consult with an expert regarding the medical examiner’s report but ended up trying the case with Mr. Joshi. He testified he has been licensed to

practice law since 1985, is Board Certified in Criminal Trial Law and has tried over 300 cases. He recalled Mr. Joshi was supposed to cover the charge conference but didn't because he was working on the closing argument. Mr. Lafay stated there was no reason not to object to the forcible felony instruction, stating it was a "missed objection." Mr. Lafay was aware of the *Martinez* case and had argued it before in court in other cases. He testified that the failure to object was not strategic, and there was nothing helpful in the forcible felony instruction to this case. He further testified that he did not conduct any research on the self-defense jury instructions or prepare them. Mr. Lafay stated that he believed Defendant had a viable claim of self-defense.

Based upon the testimony of both Mr. Joshi and Mr. Lafay, the Court finds counsel's failure to object to the forcible felony instruction deficient. The Court also finds that absent the incorrect jury instruction, there is a reasonable probability that the outcome may have been different.

In *Sloss v. State*, 45 So. 3d 66 (Fla. 5th DCA 2010), Sloss was convicted of aggravated battery with a deadly weapon after an altercation with two neighbors. Sloss claimed he acted in self-defense after one of the neighbors hit him with a chair and the other approached him with what he believed was a weapon. At trial, the court gave the standard jury instruction on self-defense, which included the "forcible felony" exception, stating that a person cannot claim self-defense if they were engaged in a forcible felony. Defense counsel did not object. Sloss later filed a Rule 3.850 motion alleging ineffective assistance of counsel for failing to object to the instruction.

The appellate court found the instruction to be erroneous under *Martinez* because there was no independent forcible felony separate from the charged offense. Applying *Strickland* and not the fundamental error analysis to the claim and found counsel's performance was deficient and prejudicial. The Court found Sloss's self-defense claim was central, credible, and not contradicted

by overwhelming evidence. The court concluded that the improper instruction likely misled the jury and undermined the outcome, warranting a new trial stating, “[a] jury could reasonably view this case as a “swearing contest” between Sloss on the one side, and the alleged victim and his nephew on the other. The fact that the alleged victim's injuries were far more significant than those of Sloss does not compel a conclusion that Sloss could not have been acting in self-defense.” *Id.* at 69.

In *Sipple v. State*, 972 So. 2d 912, (Fla. 5th DCA 2007), Sipple was convicted of manslaughter with a firearm after fatally shooting his roommate during a violent struggle. Sipple consistently maintained that he acted in self-defense, stating during a police interview that the victim had attacked him first and the shooting occurred during a life-or-death altercation. At trial, the court included the standard self-defense instruction containing the “forcible felony” exception, which told the jury that a person cannot claim self-defense if they were engaged in a forcible felony. However, Sipple was not charged with or alleged to have committed any independent forcible felony aside from the offense for which he was on trial. Defense counsel did not object to the inclusion of the instruction and later testified that he believed including multiple defenses, including accident and self-defense was strategically advantageous.

Sipple filed a Rule 3.850 postconviction motion alleging ineffective assistance of counsel. The Fifth District Court of Appeal applying *Strickland* held that counsel’s performance was deficient for failing to object or request the removal of the forcible felony language from the jury instruction. Because Sipple presented a straightforward and plausible claim of self-defense, without conflicting theories, the court found that the instruction likely confused the jury and undermined the fairness of his trial and reversed the trial court.

In *Moradi v. State*, 2025 WL 63631 (Fla. 6th DCA 2010), Moradi appealed the denial of his Rule 3.850 motion which alleged that trial counsel was ineffective for failing to object to an erroneous jury instruction on the justifiable use of deadly force. Moradi was charged with first-degree murder, carjacking, and kidnapping after fatally stabbing the victim during what Moradi described as a self-defense encounter stemming from a phone-purchase arrangement. At trial, counsel failed to object to an erroneous justifiable use of force instruction, negating his entire defense.

Applying *Strickland*, the Sixth District Court of Appeal held that Moradi failed to establish prejudice. The court emphasized Moradi's self-defense claim was "thoroughly refuted by the evidence," and the record was "overwhelming" against him. Moradi inflicted multiple, forceful stab wounds, including a near seven-inch wound to the heart, pursued and assaulted the victim outside of his property after the victim ceased posing a threat, and then fled with a child in the vehicle before crashing and evading arrest. The court concluded that even without the instruction, there was no reasonable probability of a different outcome. Consequently, the Sixth District affirmed the denial of postconviction relief.

Like the cases cited above, Defendant's sole defense at trial was self-defense and defense of others. The incident arose from a heated verbal altercation between two groups. Tensions escalated as both sides became confrontational and appeared ready to fight. Defendant briefly left, retrieved a firearm, and returned while the argument continued. He then shot the victim once. Multiple witnesses testified that the victim was unarmed, while Defendant testified that he saw the victim reach for a weapon. No firearm was recovered. Witnesses also testified the victim was grabbing or reaching for his waistband, while others say he was not. The testimony at trial was

conflicting and it was difficult to determine who was credible and what testimony was reliable. The jury ultimately convicted Defendant of the lesser-included offense of manslaughter.

This case is more like *Sipple* and *Sloss* and distinguishable from *Moradi*. In *Sipple*, the court granted postconviction relief due to trial counsel's failure to object to the standard "forcible felony" instruction where self-defense was the defendant's only defense, and the erroneous instruction improperly negated that theory, preventing proper jury consideration. Similarly, in this case, self-defense was the only theory presented at trial, and the jury instruction on the forcible felony exception could have improperly instructed the jury to disregard self-defense entirely if they found Defendant committed an independent forcible felony such as aggravated assault as stated in the instruction and argued by the State in closing. TT page 998.

Unlike *Moradi*, the evidence in this case is not "overwhelming" and the Defendant's claim of self-defense is not "thoroughly refuted" by the record. Additionally, the verdict in this case further distinguishes this case from *Moradi* where the court denied relief under *Strickland* because the defendant's testimony was wholly inconsistent with the physical evidence and all other witnesses. In contrast, Defendant's partial success at trial, conviction of a lesser-included offense, indicates that the jury may have found some credibility in his account, increasing the likelihood that there is a reasonable probability that but for the faulty jury instructions the outcome would have been different.

Like *Moradi*, the Defendant did flee from prosecution. The State argues that this Court must consider Defendant's flight from prosecution and his solicitation to have a witness murdered in determining the totality of the evidence. Although both Defendant and *Moradi* fled prosecution, the Court does not place significant weight on this fact in evaluating the totality of the evidence, as the record does not thoroughly refute Defendant's claim of self-defense.

The Court applies the same analysis to the fact that the Defendant solicited the murder of a prosecution witness prior to trial. Defendant's flight and solicitation do not thoroughly or conclusively refute his claim of self-defense. It may certainly undermine his defense and help convince the jury that Defendant's version is less credible as they consider it as consciousness of guilt, but unlike *Moradi* there are inconsistent and conflicting accounts of what occurred.

The State argues that self-defense was not the sole theory of defense and Defendant promoted the defense theory of accident to the jury. Nowhere in the Defendant's testimony does he state the shooting was an accident. His testimony is best characterized as him indicating he intentionally fired the gun toward the victim but did not intend to kill him or he was not sure if he killed him. TT 845-47. In his closing argument Attorney Joshi states, "[h]e said it was an accident. Defendant said he didn't know if he shot the guy. He wasn't trying to kill him. He just saw the guy reaching and he just turned his head... and he shot the guy because he was grabbing his gun." The Court does not find this argument promotes an alternative theory of defense. The argument makes clear that the Defendant intended to shoot the gun at the victim, the pulling of the trigger was not an accident.

The cases relied upon by the State are generally non-preserved errors on direct appeal where the facts failed to meet the high threshold of fundamental error. Defendant's claim arises in the Rule 3.850 context and is governed by *Strickland*. This lower threshold requires showing deficient performance and prejudice, not fundamental error. That distinction is critical as *Strickland* focuses on whether there is a reasonable probability the result would have been different but for counsel's failure.

Therefore, Defendant has established both the deficient performance prong and the prejudice prong of *Strickland*. Accordingly, Defendant is entitled to relief on this ground.

Ground 3(b)(2):

Defendant alleges Counsel rendered ineffective assistance by failing to object and seek exclusion of a jury instruction that addressed whether the Defendant was engaged in “unlawful activity.” Specifically, Defendant asserts that the instruction informed the jury on two separate occasions that he did not have the right to stand his ground and meet force with force but had a duty to retreat if he was engaged in criminal activity.

During Defendant’s evidentiary hearing, both, Mr. Joshi and Mr. LaFay testified they did not do any research on jury instructions before or during trial. They both testified there was no reason not to object to the erroneous instruction. Mr. Jay testified he did not remember his understanding of the stand your ground jury instruction, but had he known the instruction was incorrect, he would not have allowed it to remain. T. 22.

In *Little v. State*, 111 So. 3d 214, 218-22 (Fla. 2d DCA 2013), the Second District Court of Appeal held that under section 776.012(1), a defendant does not have the duty to retreat and has the right to use deadly force in self-defense even if he was engaged in unlaw activity at the time he used the force in question. The State argued that Little was barred from Stand Your Ground immunity because he was engaged in the unlawful activity of possessing a firearm as a convicted felon. *Id.* at 218-19. However, the court held that while section 776.013(3) limits stand your ground immunity to law-abiding individuals, section 776.012(1) contains no such restriction. *Id.* at 219-222. Because section 776.032(1) grants immunity to individuals using force as permitted under any one of sections 776.012, 776.013, or 776.031, a person may qualify for immunity under section 776.012(1) even if disqualified under section 776.013(3). *Id.* Accordingly, Little was entitled to immunity under section 776.032(1) based on section 776.012(1) even though he was a

felon in possession of a firearm because the use of deadly force was justified to prevent imminent death or great bodily harm. *Id.* at 222.

The Court finds that Counsel performed deficiently by failing to object to or challenge the erroneous jury instructions. Here, the erroneous instruction informed the jury that if Defendant was “not otherwise engaged in criminal activity and was in a place he had a right to be, then he had no duty to retreat and had the right to stand his ground.” More specifically, the instructions informed the jury on two separate instances that Defendant did not have the right to stand his ground and meet force with force, but had a duty to retreat if he was engaged in criminal activity.

The Court also finds that there is a reasonable probability that the outcome of Defendant’s trial would have been different had the erroneous jury instructions been challenged. In this case, the entire self-defense justification became contingent on whether the jury believed Defendant was engaged in an aggravated assault. If the jury found that he was, they were told that Defendant lost the right to use deadly force and stand his ground, regardless of his belief that death or great bodily harm was imminent. Defendant was prejudiced by these instructions because they essentially removed the self-defense claim from the jury’s consideration.

In other words, if the jury believed Defendant committed aggravated assault, they were precluded from weighing whether the use of force was otherwise justified. The State also argued the instruction during closing, stating Defendant had no right to stand his ground because he initiated or committed a felony by drawing his gun. T. 998-99. Counsel was ineffective for failing to object to the inclusion of the instruction precluding application of the defense if the jury found Defendant was committing an aggravated assault. Accordingly, the Court grants relief on this ground.

Ground 3(f):

Defendant alleges Counsel rendered ineffective assistance of counsel by failing to advise him regarding the risks of testifying on his own behalf.

On the day of the evidentiary hearing, Defendant abandoned this claim. No testimony was taken on this issue. Accordingly, this claim is denied.

Ground 3(h):

Defendant alleges Counsel rendered ineffective assistance of Counsel by failing to file a pre-trial Stand Your Ground (“SYG”) Motion.

The Court finds the evidence establishes Counsel made a reasonable, strategic decision not to file a SYG motion. Mr. Joshi testified he did not file a SYG motion because he did not think it was a good idea as a pretrial motion. He testified he did not want to have to put Defendant on the stand to testify because the burden was on the defense at that time. Mr. Joshi testified he did not want the state to know the specifics of the defense. Mr. Joshi also testified he thought there was a good chance the motion would be denied. He testified he spoke with Defendant about this and he agreed with the decision not to file the motion.

Mr. Lafay testified that he did not recall discussing a SYG motion with Defendant, but he would not have been in favor of filing the motion because of the burden of proof issues. He explained he would not have wanted to put Defendant on the stand pre-trial and did not think the motion would have been successful.

The Court acknowledges that strategic decisions may be considered ineffective assistance of counsel if they are unreasonable, but in instances where the decision is reasonable, they do not constitute ineffective assistance. *See Boyd v. State*, 200 So. 3d 685, 699 (Fla. 2015) (There is a strong presumption that counsel’s performance was reasonable, and the defendant bears the burden

of overcoming that presumption. Courts must avoid hindsight and evaluate counsel's conduct from their perspective at the time; strategic decisions, if made after consideration and consistent with professional norms, do not constitute ineffective assistance.). Here, Mr. Joshi testified that he considered and discussed filing a SYG motion but that he decided not to because he did not want Defendant to testify during a pretrial hearing. He stated that he did not want the state to find out information regarding the defense. Mr. Joshi also testified that he did not think that the Court would have granted the SYG motion. The Court as previously stated, finds Mr. Joshi and Lafay credible witnesses and their decisions reasonable. Accordingly, this claim is denied.

Ground 3(j):

Defendant alleges that due to Counsel's ineffective assistance on the previous his plea on Counts 3 and 4 was involuntary. The Court reserved ruling on this claim pending the outcome of the evidentiary hearing on April 1, 2025. Two of Defendant's claims have merit, and the Court has granted relief on those claims. As a result, the Court grants an evidentiary hearing on this ground.

Ground 3(k):

Defendant alleges the cumulative effect of counsel's errors requires he be granted postconviction relief. Two of Defendant's claims have merit, and it is likely two erroneous jury instructions had a compound effect on the outcome of the trial. Therefore, the Court grants relief on this ground.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. The Court **GRANTS** grounds 3(b)(1) and 3(b)(2) and 3(k) of Defendant's Motion for Postconviction Relief.
2. Defendant's Judgment and Sentence in the above-styled case as to Count 1 only is hereby **VACATED AND SET ASIDE**, and this matter is set for a Case Management

Conference, August 1, 2025, at 9:30a.m. in Courtroom 9C of the Orange County Courthouse, 425 N. Orange Avenue, Florida 32801.

3. The Court **DENIES** grounds 2, 3(f), and 3(h) of Defendant's Motion for Postconviction Relief.
4. The Court **GRANTS** an evidentiary hearing on ground 3(j) of Defendant's Motion for Postconviction Relief.
5. Defendant shall remain in custody in the Orange County Jail without bond.
6. Attachments are incorporated into this Order by reference.
7. This is a non-final, non-appealable Order. Defendant may not appeal until the Court issues a final Order on the motion.
8. **The Clerk of Court is ordered to mail a copy of this Order to Defendant, including an appropriate certificate of service, addressed as follows: Ronny Batista, 25006772, Orange County Jail, M-3C, P.O. Box 4970, Orlando, Florida, 32802-4970. The Clerk shall also file a copy of the certificate of service in the court file.**

DONE AND ORDERED in Orange County, Florida, on the date of electronic signature.



eSigned by Amy Carter 06/16/2025 16:43:55 +W0vKvYr

AMY J. CARTER
County Judge

CERTIFICATE OF SERVICE

The foregoing was filed with the Clerk of Court by using the Florida Courts E-filing Portal System. Accordingly, a copy of the foregoing is being serviced on this day to all attorneys/interested parties identified on the ePortal Electronic Service List via transmission of Notices of Electronic Filing generated by the ePortal System. The Clerk was directed to serve a copy of the Order to the Defendant at the address above and file a Certificate of Service in the court file no later than three days from the date of this Order.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Human Resources, Orange County Courthouse, 425 N. Orange Avenue, Suite 510, Orlando, Florida, (407) 836-2303, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

IN THE CIRCUIT COURT OF ORANGE COUNTY, STATE OF FLORIDA

THE STATE OF FLORIDA

VS.

RONNY BATISTA

AMENDED

INFORMATION # 48-2012-CF-008613-O

DIVISION - 12

3. SOLICITATION TO COMMIT FIRST DEGREE MURDER (F1-L9)

4. SOLICITATION TO COMMIT FIRST DEGREE MURDER (F1-L9)

FILED BY INDICTMENT 9/25/2012

1. FIRST DEGREE MURDER (With a Firearm) (Capital)

2. POSSESSION OF A FIREARM BY A CONVICTED FELON (3 Year Minimum Mandatory) (F2-L5)

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

COUNT THREE

ARAMIS D. AYALA, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, or ARAMIS D. AYALA, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, by and through the undersigned Designated Assistant State Attorney, under oath, CHARGES that RONNY BATISTA, between 21st day of March, 2017 thru 26th day of March, 2017, in said County and State, did, in violation of Florida Statutes 782.04(1)(a)1 and 777.04(2), solicit Darnell Adams to commit first degree murder, and in the course of such solicitation commanded, encouraged, hired or requested Darnell Adams to engage in specific conduct which would constitute the murder or attempt to murder Grisel Rodriguez from a premeditated design to effect the death of Grisel Rodriguez.

COUNT FOUR

ARAMIS D. AYALA, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, or ARAMIS D. AYALA, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Orange County, by and through the undersigned Designated Assistant State Attorney, under oath, CHARGES that RONNY BATISTA, between 21st day of March, 2017, thru 26th March, 2017 in said County and State, did, in violation of Florida Statutes 782.04(1)(a)1 and 777.04(2), solicit Darnell Adams to commit first degree murder, and in the course of such solicitation commanded, encouraged, hired or requested Darnell Adams to engage in specific conduct which would constitute the murder or attempt to murder Carlos Ivan Benitez Centeno from a premeditated design to effect the death of Carlos Ivan Benitez Ceteno.

This information encompasses the transaction and all charges listed on Complaint Number 48-2012-CF-008613-O. The Orange County Sheriff's Office and the Orange County Corrections Department shall substitute the charge(s) indicated on the information for those on the above cited complaint. The bond(s) shall remain the same as that last set on 48-2012-CF-008613-O.

STATE OF FLORIDA
COUNTY OF ORANGE

Personally appeared before me William Robert Jay, Assistant State Attorney of the Ninth Judicial Circuit of Florida, who being first duly sworn, says that he/she has received testimony under oath from the material witness or witnesses, which if true, would constitute the offense herein, and that he/she institutes the prosecution in good faith.

The foregoing instrument was acknowledged before me this 2 day of June, 2017 by the aforementioned Assistant State Attorney who is personally known to me and who did take said oath.





TRACY TOMLIN-HARRINGTON
MY COMMISSION # FF 145886
EXPIRES: August 22, 2018
Bonded Thru Budget Notary Services

ARAMIS D. AYALA, State Attorney
Ninth Judicial Circuit of Florida

By 
William Robert Jay
Designated Assistant State Attorney
Florida Bar No. 0129046

PD/TT

STATE OF FLORIDA
Plaintiff,

vs.

RONNY BATISTA
Defendant.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

CASE NO: 48-2015-CF-003078-0

12CF8613AB
(14)

DIVISION: 12

CHARGES: FIRST DEGREE MURDER
WITH A FIREARM

VERDICT

_____ WE, THE JURY, find the Defendant guilty of First Degree Murder with a Firearm
as charged in the Indictment.

_____ WE, THE JURY, find the Defendant guilty of the lesser included offense of First
Degree Murder (no firearm).

_____ WE, THE JURY, find the Defendant guilty of the lesser included offense of Second
Degree Murder with a Firearm.

_____ WE, THE JURY, find the Defendant guilty of the lesser included offense of Second
Degree Murder (no firearm).

X _____ WE, THE JURY, find the Defendant guilty of the lesser included offense of
Manslaughter with a Dangerous Weapon.

_____ WE, THE JURY, find the Defendant guilty of the lesser included offense of
Manslaughter (no dangerous weapon).

_____ WE, THE JURY, find the Defendant not guilty.

SO SAY WE ALL.

DATED at Orlando, Orange County, Florida, on this 9 day of June, 2017.

FILED IN OPEN COURT 6/9/17
Clerk, Cir. Ct., Orange Co., FL

By (signature) D.C.

(signature)
FOREPERSON

STATE OF FLORIDA
Plaintiff,

vs.

RONNY BATISTA
Defendant.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

CASE NO: ~~48-2015-CF-003078-0~~ 12CF8613A10

DIVISION: 12

FIRST DEGREE MURDER WITH A
FIREARM

SPECIAL VERDICT

X WE, THE JURY, Find that the Defendant did during the course of the commission of the crime, discharged a firearm and, as a result of the discharge, death was inflicted upon Pedro Gallardo.

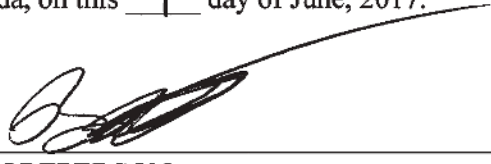
 WE, THE JURY, Find that the Defendant did during the course of the commission of the crime, discharge a firearm, which did not result in death.

X WE, THE JURY, Find that the Defendant, did, during the commission of the crime actually possess a firearm.

 WE, THE JURY, Find that the Defendant did not actually possess or discharge a firearm.

SO SAY WE ALL.

DATED at Orlando, Orange County, Florida, on this 9 day of June, 2017.


FOREPERSON

FILED IN OPEN COURT 6/9/17
Clerk, Cir. Ct., Orange Co., FL

By  D.C.

STATE OF FLORIDA
VS.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 2012-CF-008613-A-O
DIVISION: Blechman, Mark S

RONNY BATISTA, Defendant

DOB: 9/3/1986

ORDER

This cause coming on this day for: **Motion**, with Asst State Attorney, Division 12, present and you, the defendant, **RONNY BATISTA** being now Present **and represented by RAJAN JOSHI, MICHAEL LAFAY** Present, you have:

Count: 1	MURDER 1ST DEGREE	782.04(1)	Capital Offense
Count: 2	POSSESSION OF WEAPON OR AMMO BY CONVICTED FLA FELON	790.23	Second Degree - Felony
Count: 3	SOLICITATION TO COMMIT FIRST DEGREE MURDER	782.04(1)(A)(1)	First Degree - Felony
Count: 4	SOLICITATION TO COMMIT FIRST DEGREE MURDER	782.04(1)(A)(1)	First Degree - Felony

COURT ORDERS:

Court Minutes
Per the Court:

Defense motion to continue sentencing is hereby-
Denied.

Court dismiss count 2 based on reasons stated on
record.

DONE, ORDERED and FILED in Open Court on August 16, 2017

Honorable Judge: 

Mark S Blechman

RONNY BATISTA 1839 SHADOW OAKS RD
KISSIMMEE, FL, 34744

Deputy Clerk in Attendance: Mario A
Office of Tiffany M. Russell, Orange County Clerk of the Circuit and County Courts

COPIES TO:

☐ Probation Email ☐ ACS ☒ State Atty ☒ Defense Atty
☒ X2 Dockets ☐ C.F.S.C. ☐ Other ☐ Defendant

Defendant: RONNY BATISTA

Case Number: 2012-CF-008613-A-O

OBTS: 8888888888, 8888888888

SENTENCE
As to Count: 1

The defendant being personally before this court, accompanied by the Defendant's attorney of record, RAJAN JOSHI, MICHAEL LAFAY, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT THAT:

The Defendant is hereby committed to the custody of the Department of Corrections.

___ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED:

☒ For a term of 30 Years

___ For a term of Life.

SPLIT SENTENCE

___ Followed by a period of ___ on Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

___ Followed by a period of ___ on Probation under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarnation portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
As to Count: 1

Mandatory/ Minimum Provisions:

Firearm

It is further ordered that the 3-year minimum mandatory imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking

It is further ordered that the ___ mandatory minimum imprisonment provision of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

— It is further ordered that the Mandatory Minimum imprisonment provision for section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance
Within 1,000 Feet of School

— It is further ordered that the 3-year minimum imprisonment provision of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender

— The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent Felony Offender

— The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.84(4)(b), Florida Statutes. A minimum term of ____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Law Enforcement Protection Act

— It is further ordered that the defendant shall serve a minimum of ____ year(s) before release in accordance with section 775.0823, Florida Statutes.

Capital Offense

— It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

Short-Barreled Rifle, Shotgun, Machine Gun

— It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.

Continuing Criminal Enterprise

— It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Taking a Law Enforcement Officer's Firearm

— It is further ordered that the 3-year mandatory minimum imprisonment provision of section 775.0857(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Other Provisions:

Retention of Jurisdiction

____ The Court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983)

Jail Credit

X

It is further ordered that the defendant shall be allowed a total of **802 Days** as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED
IN RESENTENCING AFTER
VIOLATION OF PROBATION
OR COMMUNITY CONTROL

____ It is further ordered that the defendant be allowed ____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served (served prior to arrest as violator), and DOC shall compute and apply credit for time served on the original DOC sentence only, pursuant to section 912.0017 Florida Statute.

____ It is further ordered that the defendant be allowed ____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on case/count _____. (Offenses committed between October 1, 1989 and December 31, 1993)

____ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6)

____ The Court allows unforfeited gain time previously awarded on the above case/count (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

____ It is further ordered that the defendant be allowed ____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____. (Offenses committed on or after January 1, 1994)

Consecutive / Concurrent to other convictions

It is further ordered that the sentence imposed for this count shall run

____ any active sentence being served.

____ specific Sentences: _____.

In the event the above sentence is to the Department of Corrections, the Sheriff of Orange County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the legal right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to assistance of counsel in taking the appeal at the expense of the State on showing of indigence.

Done and Ordered at Orange County, Florida this 18 August 2017

Honorable Judge: _____


Mark S Blechman

Filed in Open Court this 18 August 2017

By: Maria F. Deputy Clerk in Attendance

Office of Tiffany M. Russell, Orange County Clerk of the Circuit and County Courts

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE / OSCEOLA COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. CF12-8613

v

DIVISION: 12

Rammy Batista Defendant.

PLEA (S) FORM

1. PLEA: I, R. Batista, Defendant, withdraw my plea(s) of not guilty and enter plea(s) of:

Count 3 () Guilty () Nolo Contendre to () as charged () lesser Substantive Count 1st Murder
Degree F1 F.S. 777.04(2) Maximum Sentence 30 years Min.Man. _____
Count 4 () Guilty () Nolo Contendre to () as charged () lesser Substantive Count 1st Murder
Degree F1 F.S. 777.04(2) Maximum Sentence 30 years Min.Man. _____
Count _____ () Guilty () Nolo Contendre to () as charged () lesser _____
Degree _____ F.S. _____ Maximum Sentence _____ Min.Man. _____
Count _____ () Guilty () Nolo Contendre to () as charged () lesser _____
Degree _____ F.S. _____ Maximum Sentence _____ Min.Man. _____
Count _____ () Guilty () Nolo Contendre to () as charged () lesser _____
Degree _____ F.S. _____ Maximum Sentence _____ Min.Man. _____
Count _____ () Guilty () Nolo Contendre to () as charged () lesser _____
Degree _____ F.S. _____ Maximum Sentence _____ Min.Man. _____

2. PROMISES/RECOMMENDATIONS: No one has promised me anything to get me to enter the plea(s) except as stated herein.

A. The prosecutor and I have agreed to the following: 30 years concurrent
w/ Count 1. Defense to reserve right to appeal
State agrees that if either MTS was granted, it would be dispositive.

B. The prosecutor has recommended the following: _____

C. The Judge has promised: _____

CLERK OF COURT

2/16/16
Clerk, Cir. Ct., Orange Co., FL

SV

D.C.

3. PENALTIES: I understand the total maximum penalties for the crime(s) to be 60 plus total maximum fine(s) of \$ 30,000 plus court costs, fees, costs, costs of investigation, and restitution. lb (Defendant's Initials)

4. TRIAL RIGHTS: I understand that if the Court accepts my plea(s), I give up my right to: (1) a trial by jury; (2) have a jury determine whether I am guilty or not guilty; (3) see and hear the witnesses testify, and to have my attorney(s) question them for me; (4) subpoena and present witnesses and items of evidence in my defense, and to present any defense I might have to the jury; (5) testify or to remain silent; and (6) require the prosecutor to prove my guilt by admissible evidence beyond a reasonable doubt before I can be found guilty. lb (Defendant's Initials)

5. **PLEA UNDERSTANDING:** I understand that a plea of Guilty admits that I committed the crime(s) and a plea of Nolo Contendere says that I do not contest the evidence against me. I understand that if the Court accepts my plea(s) there will be no trial and the Court will impose sentence(s) based upon my plea(s).

RB (Defendant's Initials)

6. **CHARGES, DEFENSES, PENALTIES:** I have read the Information/Indictment in this case and I understand the charge(s) to which I enter my plea(s). I have reviewed the evidence against me. I know of no physical evidence containing DNA which could exonerate me. My attorney(s) has/have explained to me the maximum penalties for the charge(s), the essential elements of the crime(s), and possible defenses to the crime(s). I understand these things. I also understand that if I am on probation/community control/parole, my probation/community control/parole can be revoked and I can receive a separate sentence up to the maximum on the probation/community control/parole charge in addition to the sentence imposed in the present case(s).

RB (Defendant's Initials)

7. **VOLUNTARINESS:** No one has pressured, forced, threatened, or coerced me to enter the plea(s). I am entering the plea(s) because: () I believe I am guilty or (✓) believe that it is in my best interest. I enter the plea(s) voluntarily of my own free will.

RB (Defendant's Initials)

8. **DEPORTATION:** I understand that if I am not a citizen of the United States, I WILL be deported. I have also had a meaningful opportunity to consult with an attorney(s) regarding deportation. I understand that no attorney(s) nor judge can advise/guarantee that I will or will not be deported.

RB (Defendant's Initials)

9. **EDUCATION:** The highest grade/education I have completed: _____
I read and write () English (✓) GED. I (✓) read () was read this Plea Form by _____

RB (Defendant's Initials)

10. **COMPETENCY:** At the present time, I am not under the influence of any drugs, alcohol, medication, or narcotics. I () am (✓) am not presently taking any medication. I am presently taking the following medication: _____. The medication () does () does not affect my ability to concentrate or to think clearly. I am not suffering from any physical or mental problems that would affect my understanding of these proceedings.

RB (Defendant's Initials)

11. **ENHANCED SENTENCE:** I understand that the State of Florida () is (✓) is not seeking an enhanced sentence as _____ for which the Court may impose a sentence of _____

RB (Defendant's Initials)

12. **PRISON RELEASEE REOFFENDER:** I understand that I will be sentenced to the statutory maximum unless the Court can give me a greater sentence if I am entering a plea(s) of Guilty/Nolo Contendere to an offense(s) enumerated in F.S. 775.082(9)(a)1. and (1) the offense(s) was committed within three years of my release from a state correctional facility operated by the Department of Corrections or a private vendor or from a correctional institution of another state, the District of Columbia, the United States, or any foreign jurisdiction; (2) the offense(s) was committed while serving a prison sentence in one of the aforementioned facilities; or (3) the offense(s) was committed while on escape status.

RB (Defendant's Initials)

13. **CRIMINAL PUNISHMENT CODE:** I understand that my sentence will be imposed pursuant to Florida Law and the Criminal Punishment Code Scoresheet (CPCS). The CPCS will be prepared and is based upon the offense(s) that I am entering plea(s) and my prior criminal record. I understand that I will not be permitted to withdraw my plea(s) if the correct CPCS at my sentencing is other than what is presumed at this time. I understand that the CPCS only suggests a minimum sentence and the Court can sentence me to any lawful sentence. I understand that if my Total Sentence Points are greater than or equal to 363, a life sentence may be imposed by the Court for any felony offense. I understand that my maximum sentence is up to the statutory maximum unless the Lowest Permissible Prison Sentence in Months exceeds the statutory maximum. No one has promised me that the Court will depart from the CPCS.

RB (Defendant's Initials)

14. **TIME SERVED:** I agree the correct amount of time served that I am entitled to is _____
(Defendant's Initials)

1/8 for
advice
case

15. **EARLY RELEASE:** I understand that I may serve every day of my sentence. No one has promised that I will be released prior to the expiration of my sentence nor that I will receive any good and gain time. LB (Defendant's Initials)

16. **ATTORNEY FEES:** I do () not waive () waive my right to a hearing, and I agree that \$ _____ is a reasonable sum to pay for the services of my court appointed attorney(s). LB (Defendant's Initials)

17. **CIVIL COMMITMENT:** I understand that if I am entering a plea(s) of Guilty/Nolo Contendre to a sexually motivated offense or if I have been previously convicted of a sexually motivated offense, this plea(s) may subject me to involuntary civil commitment as a sexually violent predator upon completion of my sentence. LB (Defendant's Initials)

18. **DRIVER'S LICENSE:** I understand that if I am entering a plea(s) of Guilty/Nolo Contendre to an offense for which automatic, mandatory, or discretionary driver's license/privilege suspension or revocation is required or discretionary by law to be imposed by the Court or by a separate agency, this plea(s) will provide the basis for the suspension or revocation of my driver's license/privilege. I understand that if I am entering a plea(s) of Guilty/Nolo Contendre to a traffic offense I may be declared a Habitual Traffic Offender. LB (Defendant's Initials)

19. **SUPERVISION TOLLING AND COSTS:** I understand that while I am incarcerated my probation/community control/parole is tolled unless ordered otherwise by the Court. I understand that if I am placed on probation/community control/parole I will be required to pay costs of supervision. LB (Defendant's Initials)

LB 20. **DNA:** I understand that the Court will order me to submit to a DNA sample. LB (Defendant's Initials)

21. **SENTENCING DATE:** I understand that if the Court permits me to remain at liberty pending my Sentencing I will comply with the following conditions: (1) show up on time on the date that Sentencing is set; (2) not violate any conditions of my release; (3) not violate any law; (4) all requests of the Department of Corrections to complete a Pre-Sentence Investigation report (if required); and (5) notify immediately any change in my address or telephone number to the Clerk of Court, bonds person, and my attorney(s). I understand that if I violate any of the aforementioned conditions I will not be allowed to set aside my plea(s) and the Court may sentence me to the total maximum penalties indicated in Paragraph 3. LB (Defendant's Initials)

22. **COLLECTIONS COURT:** I understand that if my financial obligations are referred to the Collections Court Program for collection that any failure to comply with the Collection Court Program requirements will result in the suspension of my driving privilege, a writ of bodily attachment being issued, and my case being sent to a Collection Agency to collect the Court Fines and Costs. LB (Defendant's Initials)

23. **HEARING PRESENCE:** I () waive () do not waive my right to be present at any Restitution/Attorney(s) Fee/Cost Hearing. LB (Defendant's Initials)

LB 24. **SEAL/EXPUNGEMENT:** No one has promised me that this case(s) will be sealed or expunged. LB (Defendant's Initials)

25. **APPEAL:** I understand that I have thirty (30) days to file an appeal of in writing of the Court's Judgment and Sentence to the Clerk of Court. I understand that if I cannot afford an attorney one will be appointed to represent me. My attorney(s) has/have explained to me what an appeal is. By entering this plea, I understand that I give up my right to appeal all matters except (1) the legality of my sentence; (2) this Court's authority to hear this case; and (3) any pre-trial ruling for which I have reserved the right to appeal, and for which this Court has made a finding that controls an issue in this case. LB (Defendant's Initials)

26. **DEFENDANT'S CERTIFICATION:** I have read every word in this Plea(s) form, have discussed the contents with my attorney(s), and fully understand it. I am fully satisfied with the way my attorney(s) has/have handled this case for me. My attorney(s) has/have done everything I have asked him/her to do. LB (Defendant's Initials)

_____, Defendant

CASE NO. _____

SWORN TO, SIGNED, AND FILED IN OPEN COURT in the presence of defense counsel and the Judge
this 16th day of Feb, 2018.

Orange / Osceola
Clerk of the Circuit Court
and County Court



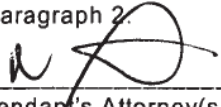
Defendant's Signature

By: _____
Deputy Clerk in Attendance

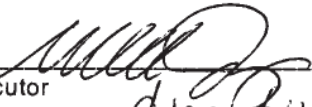
CERTIFICATE OF DEFENDANT'S ATTORNEY(S) AND PROSECUTOR

I/We, Defendant's Counsel of Record, certify that: I/we have discussed this case with defendant, including the nature of the charges, essential elements of each, the evidence against him/her of which I am aware, the possible defense he/she has, the maximum penalty for the charge(s) and the right to appeal. No promises have been made other than as set forth in this plea or on the record. I believe the defendant fully understands this written plea, the consequences of entering it, and that the plea is entered of the defendant's own free will.

I, the Prosecutor, consent to the plea(s) to lesser charges, if applicable, and confirm the representations in Paragraph 2.



Defendant's Attorney(s)
Florida Bar No. 0457728



Prosecutor
Florida Bar No. 0129046

DNA INQUIRY ADDENDUM TO PLEA OF GUILTY OR NOLO CONTENDRE

DEFENSE COUNSEL

1 I have reviewed the discovery disclosed by the State, including a listing or description of physical items of evidence.

1 I have reviewed with my client the nature of the evidence disclosed through discovery.

1 I am personally unaware of any physical evidence for which DNA testing may exonerate my client.



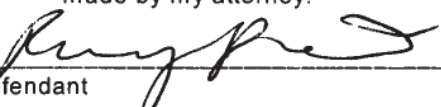
Defendant's Attorney(s)
Florida Bar No. 0457728

2/16/18

Date

DEFENDANT

1 I have discussed the discovery and information with my attorney and agree to the representations made by my attorney.



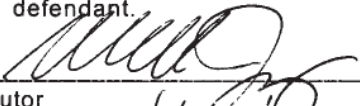
Defendant

2/16/18

Date

PROSECUTOR

0 I am personally unaware of any physical evidence for which DNA testing may exonerate the defendant.



Prosecutor
Florida Bar No. 0129046

2/16/18

Date

In the Circuit Court of the
Ninth Judicial Circuit, in and
for Orange County, Florida

Division: Div 12

Case No: 2012-CF-008613-A-O

State of Florida,
Plaintiff,

vs.

RONNY BATISTA
Defendant.

Date of birth: 9/3/1986

JUDGMENT

The defendant, RONNY BATISTA, being personally before this Court, represented by MICHAEL LAFAY, and the state represented by The State of Florida:

3. SOLICITATION TO COMMIT FIRST DEGREE MURDER	782.04(1)(A)(1)	First Degree - Felony	Nolo Contendere	1 - Adjudicated Guilty
4. SOLICITATION TO COMMIT FIRST DEGREE MURDER	782.04(1)(A)(1)	First Degree - Felony	Nolo Contendere	1 - Adjudicated Guilty

Filed in Open Court on February 16, 2018

Deputy Clerk in Attendance: Alan P., Maria F.
Office of Tiffany M. Russell, Orange County Clerk of the Circuit and County Courts

State of Florida

v.

Defendant:

Ronny Batista

Case Number:

12LF8613A10

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
1. Left Thumb	2. Left Index	3. Left Middle	4. Left Ring	5. Left Little
				

Fingerprints taken by:

Tom

Name

DTS

Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant,
Ronny Batista, and that they were placed thereon by the
defendant in my presence in open court this date.

DONE AND ORDERED in open court in **ORANGE** County, Florida, this 14 day of
February, 2018

Judge

Defendant: RONNY BATISTA

Case Number: 2012-CF-008613-A-O

OBTS: 8888888888, 8888888888

SENTENCE
As to Count: 3 AND 4

The defendant being personally before this court, accompanied by the Defendant's attorney of record, MICHAEL LAFAY, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT THAT:

The Defendant is hereby committed to the custody of the Department of Corrections.

___ The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED:

☒ For a term of 30 Years

___ For a term of Life.

SPLIT SENTENCE

___ Followed by a period of ___ on Community Control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

___ Followed by a period of ___ on Probation under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
As to Count: 3 AND 4

Mandatory/ Minimum Provisions:

Firearm

___ It is further ordered that the 3-year minimum mandatory imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

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It is further ordered that the ___ mandatory minimum imprisonment provision of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

— It is further ordered that the Mandatory Minimum imprisonment provision for section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance
Within 1,000 Feet of School

— It is further ordered that the 3-year minimum imprisonment provision of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

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— The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent Felony Offender

— The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.84(4)(b), Florida Statutes. A minimum term of ___ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Law Enforcement Protection Act

— It is further ordered that the defendant shall serve a minimum of ___ year(s) before release in accordance with section 775.0823, Florida Statutes.

Capital Offense

— It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

Short-Barreled Rifle, Shotgun, Machine Gun

— It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.

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— It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

Taking a Law Enforcement Officer's Firearm

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Other Provisions:

Retention of Jurisdiction

The Court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983)

Jail Credit

X

It is further ordered that the defendant shall be allowed a total of **984 Days** as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED
IN RESENTENCING AFTER
VIOLATION OF PROBATION
OR COMMUNITY CONTROL

It is further ordered that the defendant be allowed ___ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served (served prior to arrest as violator), and DOC shall compute and apply credit for time served on the original DOC sentence only, pursuant to section 912.0017 Florida Statute.

It is further ordered that the defendant be allowed ___ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on case/count _____. (Offenses committed between October 1, 1989 and December 31, 1993)

___ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6)

___ The Court allows unforfeited gain time previously awarded on the above case/count (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

___ It is further ordered that the defendant be allowed ___ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____. (Offenses committed on or after January 1, 1994)

Consecutive / Concurrent to other convictions

It is further ordered that the sentence imposed for this count shall run Concurrent

X Concurrent with each Count including Count 1

In the event the above sentence is to the Department of Corrections, the Sheriff of Orange County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the legal right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to assistance of counsel in taking the appeal at the expense of the State on showing of indigence.

Done and Ordered at Orange County, Florida this 16 February 2018

Honorable Judge: _____

Filed in Open Court this 16 February 2018

By: Alan P., Maria F. Deputy Clerk in Attendance

Office of Tiffany M. Russell, Orange County Clerk of the Circuit and County Courts

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE
COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO: 48-2012-CF-008613-O

Plaintiff,

DIVISION: 12

vs.

RONNY BATISTA

Defendant.

FILED IN OPEN COURT 6/9/12
Clerk, Cir. Ct., Orange Co., FL
By [Signature] D.C.

JURY INSTRUCTIONS

INTRODUCTION TO FINAL INSTRUCTIONS

Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

STATEMENT OF CHARGE

Ronny Batista, the defendant in this case, has been accused of the crime of First Degree Murder with a Firearm.

INTRODUCTION TO HOMICIDE

In this case Ronny Batista is accused of First Degree Murder with a Firearm.

Murder in the First Degree includes the lesser crimes of Murder in the Second Degree, and Manslaughter, all of which are unlawful.

A killing that is excusable or was committed by the use of justifiable deadly force is lawful.

If you find Pedro Gallardo was killed by Ronny Batista, you will then consider the circumstances surrounding the killing in deciding if the killing was First Degree Murder with a Firearm or was Murder in the Second Degree, or Manslaughter, or whether the killing was excusable or resulted from justifiable use of deadly force.

JUSTIFIABLE HOMICIDE

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an ~~attempt to murder~~ or commit a felony upon the defendant, or to commit a felony in any dwelling house in which the defendant was at the time of the killing.

Ronny Batista was justified in using deadly force if he reasonably believed that such force was necessary to prevent imminent death or great bodily harm to himself or another or the imminent commission of aggravated assault against himself or another. If Ronny Batista was not otherwise engaged in criminal activity and was in a place he had a right to be, then he had no duty to retreat and had the right to stand his ground.

An aggravated assault is an intentional and unlawful threat, either by word or act, to do violence to another,

when there is an apparent ability to carry out the threat, and

the word or act creates in the mind a well-founded fear that the violence is about to take place, and the threat was made with a deadly weapon or with the intent to commit an aggravated assault.

If the circumstances were such as to ordinarily induce a well-founded fear in the mind of a reasonable person, then there may be found to have been fear, and actual fear need not be shown.

A weapon is a "deadly weapon" if it is used or threatened to be used in a way likely to produce death or great bodily harm.

For an aggravated assault, it is not necessary there be an intent to kill.

In deciding whether Ronny Batista was justified in the use of deadly force, you must consider the circumstances by which he was surrounded at the time the force was used. The danger need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, Ronny Batista must have actually believed that the danger was real. However, the defendant had no duty to retreat if he was not otherwise engaged in criminal activity and was in a place where he had a right to be.

However, the use of deadly force is not justified if you find that Ronny Batista was attempting to commit, committing, or escaping after the commission of aggravated assault.

An aggravated assault is an intentional and unlawful threat, either by word or act, to do violence to another,

when there is an apparent ability to carry out the threat, and

the word or act creates in the mind a well-founded fear that the violence is about to take place, and the threat was made with a deadly weapon or with the intent to commit an aggravated assault.

If you return a verdict of guilty, it should be for the highest offense which has been proven beyond a reasonable doubt. If you find that no offense has been proven beyond a reasonable doubt, then, of course, your verdict must be not guilty.

The verdict must be unanimous, that is, all of you must agree to the same verdict. Only one verdict may be returned as to the crime charged. The verdict must be in writing and for your convenience the necessary verdict forms have been prepared for you. They are as follows:

SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the court deputy. The first thing you should do is choose a foreperson who will preside over your deliberations. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. It is also the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict and to bring the verdict form back to the courtroom when you return.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text message, or any other means.

Many of you may have cell phones, tablets, laptops, or other electronic devices here in the courtroom. The rules do not allow you to bring your phones or any of those types of electronic devices into the jury room. The deputies will provide storage for your devices and guard them while you deliberate.

Do not contact anyone to assist you during deliberations. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the court deputy.

If you need to communicate with me, send a note through the court deputy, signed by the foreperson. If you have questions, I will talk with the attorneys before I answer, so it may take some time. You may continue your deliberations while you wait for my answer. I will answer any questions, if I can, in writing or orally here in open court.

During the trial, items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your deliberations.

- a. These exhibits will be sent into the jury room with you when you begin to deliberate.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have lived by the constitution and the law. No juror has the right to violate rules we all share.

EXCUSABLE HOMICIDE

The killing of a human being is excusable, and therefore lawful, under any one of the following three circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with ~~usual~~ ordinary caution and without any unlawful intent, or
2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or
3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.

"Dangerous weapon" is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before Ronny Batista may be found guilty of First Degree Murder with a Firearm or any lesser included crime.

MURDER — FIRST DEGREE

To prove the crime of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Pedro Gallardo is dead.
2. The death was caused by the criminal act of Ronny Batista.
3. There was a premeditated killing of Pedro Gallardo.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

"Killing with premeditation" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If the circumstances were such as to ordinarily induce a well-founded fear in the mind of a reasonable person, then there may be found to have been fear, and actual fear need not be shown.

A weapon is a "deadly weapon" if it is used or threatened to be used in a way likely to produce death or great bodily harm.

For an aggravated assault, it is not necessary there be an intent to kill.

However, the use of deadly force is not justified if you find that Ronny Batista used force or the threat of force to initially provoke the use of force against himself, unless:

1. The threat of force asserted toward the defendant was so great that he reasonably believed that he was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than using deadly force on Pedro Gallardo.

2. In good faith, Ronny Batista withdrew from physical contact with Pedro Gallardo and clearly indicated to Pedro Gallardo that he wanted to withdraw and stop the use or threatened use of deadly force, but Pedro Gallardo continued or resumed the threatened use of force.

In considering the issue of self-defense, you may take into account the relative physical abilities and capacities of the defendant and Pedro Gallardo.

If in your consideration of the issue of self-defense you have a reasonable doubt on the question of whether the defendant was justified in the use of deadly force, you should find the defendant not guilty.

However, if from the evidence you are convinced beyond a reasonable doubt that the defendant was not justified in the use of deadly force, you should find him guilty if all the elements of the charge have been proved.

3.6(d) VOLUNTARY INTOXICATION

Voluntary intoxication resulting from the use of alcohol is not a defense to a crime. Evidence of a defendant's voluntary intoxication may not be taken into consideration to show that he lacked the specific intent to commit any crime. A person is voluntarily intoxicated if he knowingly consumed a substance that he knew or should have known could cause intoxication.

3.6(f) JUSTIFIABLE USE OF DEADLY FORCE

It is a defense to the crimes of first degree murder, second degree murder and manslaughter if the actions of Ronny Batista constituted the justifiable use of deadly force.

"Deadly force" means force likely to cause death or great bodily harm.

The use of deadly force is justifiable if the defendant reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself while resisting:

1. another's attempt to murder him, or
2. any attempt to commit aggravated assault upon him.

An aggravated assault is an intentional and unlawful threat, either by word or act, to do violence to another, when there is an apparent ability to carry out the threat, and the word or act creates in the mind a well-founded fear that the violence is about to take place, and the threat was made with a deadly weapon or with the intent to commit an aggravated assault.

If the circumstances were such as to ordinarily induce a well-founded fear in the mind of a reasonable person, then there may be found to have been fear, and actual fear need not be shown.

A weapon is a "deadly weapon" if it is used or threatened to be used in a way likely to produce death or great bodily harm.

For an aggravated assault, it is not necessary there be an intent to kill.

AGGRAVATION OF A FELONY BY CARRYING A FIREARM

If you find that Ronny Batista committed First Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he personally carried, displayed, used, threatened to use or attempted to use a firearm, you should find him guilty of First Degree Murder with a firearm.

A "firearm" is legally defined as any weapon including a starter gun which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

If you find that Ronny Batista committed First Degree Murder with a Firearm, but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use or attempted to use a firearm, then you should find him guilty only of First Degree Murder.

POSSESSION OF A FIREARM AND DISCHARGE CAUSING DEATH

If you find that Ronny Batista committed First Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he discharged a firearm, and in doing so, caused the death of Pedro Gallardo, you should find the defendant guilty of First Degree Murder with discharge of a firearm causing death.

If you find that Ronny Batista committed First Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he discharged a firearm, you should find the defendant guilty of First Degree Murder with discharge of a firearm.

If you find that Ronny Batista committed First Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he actually possessed a firearm, you should find the defendant guilty of First Degree Murder with actual possession of a firearm.

A "firearm" is legally defined as any weapon including a starter gun which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

To "actually possess" a firearm means that the defendant

- a. carried a firearm on his person.
- or
- b. had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

MANSLAUGHTER

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. Pedro Gallardo is dead.
2. Ronny Batista intentionally committed an act or acts that caused the death of Pedro Gallardo, or
The death of Pedro Gallardo was caused by the culpable negligence of Ronny Batista.

The defendant cannot be guilty of manslaughter by committing a merely negligent act or if the killing was either justifiable or excusable homicide:

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence.

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in any dwelling house in which the defendant was at the time of the killing

The killing of a human being is excusable, and therefore lawful, under any one of the following three circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or
2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or
3. When the killing is committed by accident and misfortune resulting from a combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.

In order to convict of manslaughter by act, it is not necessary for the State to prove that the defendant had an intent to cause death, only an intent to commit an act that was not merely negligent, justified, or excusable and which caused death.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant.

~~negligence is a course of conduct showing reckless disregard of the lives and safety of others, or a conscious indifference to the consequences, or which shows recklessness or a~~

overly and the defendant's conduct was not of the public nature. The defendant's conduct to the rights of others is confined to an intent to cause death or great bodily injury.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

AGGRAVATION OF A FELONY BY CARRYING A DANGEROUS WEAPON

If you find that Ronny Batista committed Manslaughter and you also find beyond a reasonable doubt that during the commission of the crime, he personally carried, displayed, used, threatened to use or attempted to use a dangerous weapon, you should find him guilty of Manslaughter with a Dangerous Weapon

"Dangerous weapon" is any weapon that, taking into account the manner in which it was used, is likely to produce death or great bodily harm.

If you find that Ronny Batista committed Manslaughter, but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use, or attempted to use a dangerous weapon, then you should find him guilty only of Manslaughter.

PLEA OF NOT GUILTY; REASONABLE DOUBT; AND BURDEN OF PROOF

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the indictment through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The defendant is not required to present evidence or prove anything.

Whenever the words "reasonable doubt" are used you must consider the following:

A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge

is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence, or the lack of evidence.

If you have a reasonable doubt, you must find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

WEIGHING THE EVIDENCE

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys' questions?
4. Did the witness have some interest in how the case should be decided?
5. Does the witness's testimony agree with the other testimony and other evidence in the case?
6. Has the witness been offered or received any preferred treatment, or other benefit in order to get the witness to testify?

7. Had any pressure or threat been used against the witness that affected the truth of the witness's testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony given in court?
9. Has the witness been convicted of a felony-which by law is a crime punishable by imprisonment in excess of one year?

Whether the State has met its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented.

The fact that a witness is employed in law enforcement does not mean that his or her testimony deserves more or less consideration than that of any other witness.

Expert witnesses are like other witnesses, with one exception—the law permits an expert witness to give his or her opinion. However, an expert's opinion is reliable only when given on a subject about which you believe him or her to be an expert. Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

You must consider the testimony of some witnesses with more caution than others. For example, a witness who hopes to gain more favorable treatment in his own case may have a reason to make a false statement in order to strike a good bargain with the State. This is particularly true when there is no other evidence tending to agree with what the witness says about the defendant. So, while a witness of that kind may be entirely truthful when testifying, you should consider his testimony with more caution than the testimony of other witnesses. However, if the testimony of such a witness convinces you beyond a reasonable doubt of the defendant's guilt, or the other evidence in the case does so, then you should find the defendant guilty.

The defendant in this case has become a witness. You should apply the same rules to consideration of his testimony that you apply to the testimony of the other witnesses.

It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his or her testimony.

You may rely upon your own conclusion about the credibility of any witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.
2. This case must be decided only upon the evidence that you have heard from the testimony of the witnesses and have seen in the form of the exhibits in evidence and these instructions.
3. This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.
4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.
5. Your duty is to determine if the defendant has been proven guilty or not, in accord with the law. It is the judge's job to determine a proper sentence if the defendant is found guilty.
6. Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.
7. Your verdict should not be influenced by feelings of prejudice, bias, or sympathy. Your verdict must be based on the evidence, and on the law contained in these instructions.

CAUTIONARY INSTRUCTION

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

VERDICT

You may find the defendant guilty as charged in the indictment or guilty of such lesser included crime as the evidence may justify or not guilty.

WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crime of which he is accused, there may be evidence that he committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of First Degree Murder with a Firearm are:

First Degree Murder without a Firearm, Second Degree Murder with a Firearm, Second Degree Murder without a Firearm, Manslaughter with a Dangerous Weapon and Manslaughter without a Dangerous Weapon.

MURDER — SECOND DEGREE

To prove the crime of Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Pedro Gallardo is dead.
2. The death was caused by the criminal act of Ronny Batista.
3. There was an unlawful killing of Pedro Gallardo by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is “imminently dangerous to another and demonstrating a depraved mind” if it is an act or series of acts that:

- 
1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
 2. is done from ill will, hatred, spite, or an evil intent, and
 3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.



AGGRAVATION OF A FELONY BY CARRYING A FIREARM

If you find that Ronny Batista committed Second Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he personally carried, displayed, used, threatened to use or attempted to use a firearm, you should find him guilty of Second Degree Murder with a firearm.

A "firearm" is legally defined as any weapon including a starter gun which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

If you find that Ronny Batista committed Second Degree Murder with a Firearm, but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use or attempted to use a firearm, then you should find him guilty only of Second Degree Murder.

POSSESSION OF A FIREARM AND DISCHARGE CAUSING DEATH

If you find that Ronny Batista committed Second Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he discharged a firearm, and in doing so, caused the death of Pedro Gallardo, you should find the defendant guilty of Second Degree Murder with discharge of a firearm causing death.

If you find that Ronny Batista committed Second Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he discharged a firearm, you should find the defendant guilty of Second Degree Murder with discharge of a firearm.

If you find that Ronny Batista committed Second Degree Murder and you also find beyond a reasonable doubt that during the commission of the crime, he actually possessed a firearm, you should find the defendant guilty of Second Degree Murder with actual possession of a firearm.

A "firearm" is legally defined as any weapon including a starter gun which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

To "actually possess" a firearm means that the defendant

- a. carried a firearm on his person.
or
- b. had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

1 **THE COURT:** If you would please turn to your
2 right and introduce yourself to the jurors and kindly
3 spell your first and last name for the young lady in
4 front of you.

5 **THE WITNESS:** My name is --

6 **THE COURT:** Actually, hang on one second. Pull
7 the microphone close to you so you don't have to lean
8 forward. It bends. There you go. Okay.

9 **THE WITNESS:** My name is Grisel Rodriguez,
10 G-R-I-S-E-L; Rodriguez, R-O-D-R-I-G-U-E-Z.

11 **THE COURT:** Thank you, very much.
12 State, you may inquire.

13 **DIRECT EXAMINATION**

14 **BY MR. JAY:**

15 **Q.** Let me turn your attention back to June 23rd of
16 2012. Do you recall what you did that evening and with
17 whom?

18 **A.** I went out with my family. It was my brother's
19 birthday, so we went out to downtown Orlando.

20 **Q.** And who went in your vehicle?

21 **A.** My husband and my niece, who was in the back of
22 my truck.

23 **Q.** And did you drive?

24 **A.** Yes, I was the driver.

25 **Q.** To and --

1 **A.** Yes.

2 **Q.** -- ultimately later from there?

3 **A.** Yes.

4 **Q.** And where did you park?

5 **A.** I parked in the garage.

6 **Q.** And do you recall where that garage is or what
7 it's near or anything like that?

8 **A.** Around the corner from -- it's on Central, I
9 believe.

10 **Q.** In the downtown area?

11 **A.** Uh-huh, downtown area.

12 **Q.** And is that in Orange County, Florida?

13 **A.** Uh-huh.

14 **Q.** Is that a yes?

15 **A.** Orange County, Orlando, Florida, yes.

16 **Q.** Okay. And do you recall any businesses or
17 anything that's across the street or near this parking
18 garage?

19 **A.** Not really. I mean, I'm familiar with the area
20 but...

21 **Q.** Okay. Had you ever been there before in that
22 parking --

23 **A.** Yeah, plenty of times.

24 **Q.** About what time did you-all get there?

25 **A.** I want to say around 11:00, 11:30.

1 Q. All right. In the evening?

2 A. At night.

3 Q. Okay. And do you recall about what level or
4 where in the parking garage you parked?

5 A. No.

6 Q. And how long did you -- well, where did you-all
7 go while you were downtown?

8 A. We were on Wall Street.

9 Q. Do you recall any particular business or
10 businesses or just in that area?

11 A. Just the clubs on Wall Street.

12 Q. Okay.

13 A. The monkey, I think that's the club. Monkey's
14 club, something like that.

15 Q. Okay.

16 A. That one in particular.

17 Q. Okay. And did you have anything to drink that
18 night?

19 A. No.

20 Q. Any particular reason?

21 A. Cause I was pregnant.

22 Q. Okay. That's a good reason.

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. Yes, it is.

1 Q. Did anybody else you came with, your husband and
2 your niece, did they have any adult beverages?

3 A. My husband probably had two drinks, three drinks
4 probably, at the most.

5 Q. What's his name?

6 A. Carlos Benitez.

7 Q. And about what time did you-all leave?

8 A. After the clubs were -- basically they shut down
9 like around 2:30, 3:00.

10 Q. Okay. And so do you-all go directly back to your
11 car in the parking garage?

12 A. Yes.

13 Q. All right. And if you know, about what time do
14 you-all get up there?

15 A. No, I don't recall what time. I know it was
16 after they started shutting down.

17 Q. How busy is the foot traffic on the sidewalks
18 there from the point in time and place where you leave the
19 bars at Wall Street to get to the parking garage? How
20 would you describe the foot traffic, light, medium, heavy?

21 A. Heavy, medium. I mean, it's just right after --
22 you know, just starting last call; and people are out
23 there, so it's pretty busy.

24 Q. How about the automobile traffic in the parking
25 garage as you're trying to leave?

1 **A.** As I'm trying to leave, it was backed up.

2 **Q.** Okay.

3 **A.** It was backed up.

4 **Q.** And so by backed up, is that like you're stopped;
5 and then every once in a while, you have to pump forward?

6 **A.** Yeah, exactly. There was like three -- I would
7 say two or three cars in front of me. So I wasn't quite at
8 the turning point --

9 **Q.** Okay.

10 **A.** -- of going down the ramp.

11 **Q.** All right. So are you describing -- correct me
12 if I'm wrong. You're like going down the ramp, and it's
13 kind of like a spiral you have to go down? Is that a fair
14 description of how the ramp is?

15 **A.** Yeah, but I was not at that corner.

16 **Q.** Okay.

17 **A.** I was --

18 **Q.** Now, is that the first corner you were going to
19 have from your parking spot; or had you already gone
20 through a couple corners before this incident starts
21 happening?

22 **A.** I come around. I was on the -- okay. I was on
23 the level up and then I came around and then I stopped
24 because there was three -- like two or three cars in front
25 of me.

1 Q. All right. Now, while you're stopped there, is
2 there anything going on outside of your car?

3 A. There's two groups of people arguing.

4 Q. All right. Let's talk about that. How is it
5 that you decided that there was two different groups, as
6 opposed to one or three or zero?

7 A. Because you can clearly see it.

8 Q. About how many people were in what we'll call the
9 first group, and about how many people were in what we'll
10 call the second group?

11 A. I would say it's even take, as in four or five in
12 each group.

13 Q. And where are they relative to your car?

14 A. Right there.

15 Q. You're gesturing --

16 A. My truck just happened to stop because there was
17 two or three cars in front of me and I'm literally --
18 basically, I'm on the driver side and right over here is
19 the two groups of people arguing.

20 Q. So you're gesturing to your right, so is that
21 like your passenger side of your car?

22 A. Yeah.

23 Q. So it's you. Who's your front-seat passenger?

24 A. My husband.

25 Q. And then outside of the passenger side is these

1 two groups of four or five people; is that fair?

2 A. Well, no, four or five people, as far as two
3 different groups, like five and five, I would say.

4 Q. Okay. Are any of your windows down or your
5 windows up?

6 A. No, my window's up.

7 Q. Can you hear any discussion, despite your windows
8 being up?

9 A. No. I don't know what the argument was about.

10 Q. Well, let me clarify that. Even if you couldn't
11 understand the words, could you hear that words were being
12 exchanged between the two groups?

13 A. No, cause I didn't pay attention to what they
14 were arguing about. It's not my business.

15 Q. All right. And so -- but what did draw your
16 attention to them?

17 A. They was getting hostile.

18 Q. What do you mean by getting hostile? What did
19 you see?

20 A. Basically, the two groups were just getting in
21 each other's faces. A group of -- the group to the right,
22 which was a whole bunch of guys, went towards like up the
23 ramp to a car.

24 Q. All right. Let me stop you there because you're
25 going down the ramp you said; is that correct?

1 **A.** Yeah.

2 **Q.** So if you actually turn your head 90 degrees like
3 you're looking at your husband or outside of your car to
4 your right, is that up the ramp?

5 **A.** Yeah, up.

6 **Q.** And to your left is down the ramp to the turn
7 you're waiting to make; is that fair?

8 **A.** Yeah.

9 **Q.** Tell me about this group that's to the right
10 going up the ramp.

11 **A.** They go -- you know, they go up the ramp, arguing
12 but then I see two guys still going back and forth and
13 there's a girl there. They're going back and forth and
14 then I see one guy that goes up the ramp and then he comes
15 back. He goes up running; and then he comes back, coming
16 down with a gun in his hand.

17 **Q.** This person with the gun in his hands, can you
18 describe the pace that he used to go up and down the ramp?

19 **A.** It was quick. He wasn't taking his time.

20 **Q.** Okay. Now, how many in what you deem -- we're
21 deeming this group two, I guess. Were any of those group
22 members still up at the car where he had gone?

23 **A.** Yeah. Yeah.

24 **Q.** About how many were up there?

25 **A.** At this point, I would say -- I'm assuming

1 there's five in each group, so basically ten -- seven.
2 Seven are up there; and then there's the defendant, the
3 girl who was there and then the victim. And then the
4 defendant goes up the ramp, goes into the car and comes
5 back out --

6 **Q.** All right. So --

7 **A.** -- comes back down.

8 **Q.** At the point in time where the person who
9 ultimately gets the gun is up the ramp, who's actually left
10 down there --

11 **A.** The victim --

12 **Q.** Hold on. Let me finish my question.

13 **A.** Sorry.

14 **Q.** Who's left down there outside the passenger side
15 of the car?

16 **A.** The victim and the girl.

17 **Q.** Just two?

18 **A.** Two people.

19 **Q.** Did you see any other guys in that group at that
20 point in time?

21 **A.** No.

22 **Q.** Did you see any guys with the victim at all?

23 **A.** No. It was just the victim and girl.

24 **Q.** All right. And once it was just the victim and
25 the girl, were they still having -- what were they doing

1 while the rest of that group is up the ramp?

2 **A.** I'm not too sure because I was more concentrating
3 on looking to see what the defendant was doing.

4 **Q.** Okay.

5 **A.** Because he went running up, and I was looking at
6 the other guys. I'm like, what's going to happen, what's
7 going to happen? So I wasn't really paying attention to
8 them two as they were speaking or whatever they were doing.

9 **Q.** Was the pace that the person who ultimately gets
10 the gun, was his pace different than everybody else's?

11 **A.** Yeah.

12 **Q.** And how would you say it was different?

13 **A.** It was just like -- he was just in a rush, in a
14 rush.

15 **Q.** Okay. All right. Now, tell me about what
16 happens once this person comes back down the ramp with a
17 gun in his hand.

18 **A.** As I noticed that he has the gun in his hand, I'm
19 like, oh, my God, he has a gun, he has a gun. Words were
20 exchanged between him and the victim.

21 **Q.** Now, let me stop you there. Could you hear words
22 were exchanged?

23 **A.** I didn't hear no words, but you can see obviously
24 they were speaking to each other. There was mannerisms.

25 **Q.** Okay. You're gesturing with manners. Was the

1 person with the gun making gestures with the gun in his
2 hand?

3 A. He had his arm down and he was like (gesturing).

4 Q. You're gesturing for the record his right arm --
5 is that the one with the gun?

6 A. Yeah.

7 Q. Was down and he's gesturing with his left?

8 A. He's going (gesturing).

9 Q. What was the person that you're calling the
10 victim -- could you see his hands?

11 A. Yes, he was towards the back. You know how when
12 you park into a parking space there's the front and the
13 back side of your car? Well, he was all the way to the
14 front of the car and he's talking, whatever and then first
15 thing I see him he was like (gesturing) and then that's
16 when I heard the shot.

17 Q. Okay. So let's break this down. Was there a car
18 on both sides of him?

19 A. Yes, he was between two cars.

20 Q. When you say the front of the car, he's all the
21 way, like, at the headlights?

22 A. Yeah.

23 Q. So he's not next to the doors?

24 A. No. No.

25 Q. And where's the girl?

1 A. The girl is actually -- she's in the back of the
2 car to -- if I'm going down the ramp, she's on the left
3 side.

4 Q. Okay. By back of the car, that's at the trunk
5 area?

6 A. Uh-huh.

7 Q. Whereas, the person you're calling the victim is
8 at the headlight area?

9 A. Yeah.

10 Q. Where is the person with the gun standing at this
11 point?

12 A. By the trunk area.

13 Q. Okay. And is he between or almost between the
14 two same cars the victim is?

15 A. He's in the pathway. He's in the pathway of like
16 towards -- going towards the victim, but he's in the back.
17 He's in the back trunk.

18 Q. So let me ask it to you this way. If who we're
19 calling the victim at this point wanted to get out from
20 where he was standing, would he have to brush by the
21 person?

22 A. He would have to push -- yeah, he would have to
23 push his way through to get by.

24 Q. Okay. All right. So let's retake up where we've
25 gone. We've established where everybody is. You say

1 there's some sort of conversation apparently between who
2 you're calling the shooter and victim. Take us from there.

3 **A.** I'm sorry. I blanked. Repeat that again.

4 **Q.** We've kind of set up where everybody is and you
5 said they were apparently having a conversation but you
6 couldn't hear. What happens?

7 **A.** Basically, the next thing you know he lifts up
8 his hand, his right hand and he shoots him and he runs to
9 the car, to his -- wherever he got the gun from and the
10 other group of people were like, what are you doing? Like,
11 why? They're freaking out as well.

12 **Q.** All right. Where were what you're calling the
13 victim's hands at the time that he got shot?

14 **A.** Where? He basically -- he just -- he was
15 standing, said whatever he said; and he was like -- he
16 shrugged his shoulders like.

17 **Q.** All right. So just so we're clear, for the
18 record, you're raising your shoulders, like shrugging --

19 **A.** He shrugged his shoulders.

20 **Q.** And you're gesturing with your palms open and
21 facing upwards?

22 **A.** Uh-huh.

23 **Q.** Is that a yes?

24 **A.** Yeah.

25 **Q.** Is that what you saw?

1 **A.** That's what I saw.

2 **Q.** Okay. Do you see the person who had the gun and
3 shot the victim today in the courtroom?

4 **A.** I sure do.

5 **Q.** Would you point out where he is and what he's
6 wearing?

7 **A.** Sitting right here, and he's in the middle of two
8 other men (indicating).

9 **Q.** Okay. Were you shown a photo lineup at some
10 point in the investigation?

11 **A.** Yes, I was.

12 **MR. JAY:** May I approach the witness?

13 **THE COURT:** Show Mr. Joshi first, please.

14 Mr. Joshi says yes. Mr. LaFay hasn't said.

15 Would you announce what you're approaching with,
16 please?

17 **MR. JAY:** I'll wait for them, to see if there's
18 an objection.

19 **MR JOSHI:** Sorry, Your Honor.

20 **THE COURT:** Mr. Jay, would you announce what
21 you're approaching with?

22 **MR. JAY:** May I approach the witness with N, as
23 in Nancy, for identification?

24 **THE COURT:** You may.

25

1 **BY MR. JAY:**

2 **Q.** Ma'am, I'm showing you N for identification. Do
3 you recognize this document?

4 **A.** Yes, I do.

5 **Q.** What do you recognize it as?

6 **A.** The lineup that they gave me to pick. Wow.

7 **Q.** Did you pick anybody out of that lineup?

8 **A.** Yeah, I did.

9 **Q.** How did you do that? What did you do to the
10 paper?

11 **A.** I circled it, and that's my initials.

12 **Q.** Did you date it too?

13 **A.** I sure did.

14 **MR. JAY:** Your Honor, at this time the State
15 would move N for identification into evidence.

16 **THE COURT:** Mr. Joshi?

17 **MR JOSHI:** No objection, Your Honor.

18 **THE COURT:** Without objection, ladies and
19 gentlemen, certain items will be marked with letters
20 for identification purposes. Those items that are
21 marked with letters are not actual evidence. They're
22 just exhibits for use at trial. Once an exhibit is
23 moved into evidence and is given a numeric, a number,
24 then it becomes evidence for you to consider in
25 deciding if the State has proven its charge beyond a

1 reasonable doubt.

2 Items that are introduced as evidence can
3 actually go back to the jury room with you during
4 deliberations. The State has just asked to move in
5 what was marked for identification as exhibit N, as in
6 Nancy. Without objection, I will enter that into
7 evidence as State's Exhibit No. 1; and it will now
8 have a marking number one on the back of it.

9 (State's Exhibit No. 1 was received in evidence.)

10 **THE COURT:** You may proceed.

11 **BY MR. JAY:**

12 **Q.** Had you ever seen the defendant before in your
13 life before this incident?

14 **A.** No.

15 **Q.** How about the person who got shot?

16 **A.** No.

17 **Q.** Did you know any of the people that were outside
18 the passenger side of your car?

19 **A.** No, none of them.

20 **Q.** All right. What do you do next after you saw
21 this?

22 **A.** I freaked out. I came out my car, freaked out,
23 took off my shoe and threw it at him.

24 **Q.** Where was he when you threw your shoe at him?

25 **A.** He was running towards the car.

1 Q. And by running towards the car, which car are you
2 talking about?

3 A. The car that he got the gun from.

4 Q. Do you remember anything about what that car
5 looked like, make, brand, color, anything?

6 A. I want to say it was a silverish, maybe white
7 silverish. It was a light color. I can't recall.

8 Q. And about how many parking spots up the ramp was
9 it from where the victim ultimately gets shot?

10 A. From the car that he went?

11 Q. Yeah, how many car spaces were there?

12 A. I want to say between five and six, five, six
13 cars up.

14 Q. Immediately after the shot, did you hear anybody
15 shout or exclaim anything?

16 A. It was so much chaos I wasn't paying attention to
17 what people were saying, honestly.

18 Q. Okay.

19 A. Um, I just -- I know that his group of friends
20 were in shock.

21 **MR JOSHI:** I would object to speculation.

22 **THE COURT:** Overruled.

23 **BY MR. JAY:**

24 Q. Can you explain the basis for your opinion that
25 they were in shock?

1 **A.** They were saying, where'd you go? What were you
2 doing? Like, oh, my God.

3 **Q.** So let me break that down. Did you hear them say
4 that?

5 **A.** Yes.

6 **Q.** Okay. And you made some gestures. Describe
7 those gestures they were making.

8 **A.** They were like, yo, what happened?

9 **Q.** So for the record, you're kind of throwing your
10 hands up at eye level?

11 **A.** Yeah.

12 **Q.** Is that what you saw them do?

13 **A.** Yeah.

14 **Q.** All right. How about anybody to the left or
15 down-ramp, did you see anybody down-ramp reacting after the
16 shot?

17 **A.** The girl that was next to them, she was just --
18 she was frozen. She was -- she was frozen. She would not
19 move. And then at some point I saw her leaning towards the
20 victim but she was just frozen and there was another guy
21 that when he was arguing or whatever he was doing with the
22 other group of guys, came down and they were just like --
23 they were all in shock.

24 **Q.** Okay. And is that conclusion that they were in
25 shock based on the same --

1 **A.** Yeah.

2 **Q.** -- behaviors that you observed the other people
3 that you described?

4 **A.** Yeah.

5 **Q.** Okay. All right. And now what do you do?

6 **A.** I'm just basically like -- I'm seeing that
7 he's -- they're basically getting away. So I'm like we got
8 to stop them. I mean, like, he just shot somebody.

9 **Q.** By getting away, can you describe what you
10 observed? Were they going --

11 **A.** Getting in the car and they -- instead of going
12 down the ramp, they went some other way in the garage cause
13 they didn't go down the ramp.

14 **Q.** All right.

15 **A.** Not that side where I was going down, they
16 didn't.

17 **Q.** Did you see the car go up the ramp?

18 **A.** I didn't see which way they went, but I know they
19 didn't go down. They didn't pass me.

20 **Q.** Okay. And what did you do after they went away?

21 **A.** My husband was getting me into the car. I got
22 out again cause I was just like, I can't believe this
23 happened. I stood by the victim and put my hand on him. I
24 told him don't worry, papi. Don't worry. You're gonna be
25 fine, be fine.

1 Q. Was he responsive at all?

2 A. He was just like --

3 Q. Did you stay there until emergency personnel got
4 there?

5 A. (Nods head.)

6 Q. Is that a yes?

7 A. Yes, I did.

8 Q. About how long did that take?

9 A. It took forever.

10 Q. Did you hear anybody around you calling 911?

11 A. I didn't hear; but I know everybody was like,
12 someone call 911, so they ended up calling 911. Who called
13 911, I don't know.

14 Q. Okay. And what did you do after emergency people
15 got there?

16 A. I stayed.

17 Q. Okay. Did you ultimately talk to people in law
18 enforcement that night, that same night?

19 A. Yeah.

20 Q. Okay. About what time was it that you were able
21 to get your car out of the garage and go to your home?

22 A. Well, I think around 5:00 or 6:00 in the morning.

23 Q. Okay.

24 **MR. JAY:** Can I have a moment?

25 **THE COURT:** Yes.

1 **MR. JAY:** No other questions of this witness.

2 **THE COURT:** Mr. Joshi.

3 **MR JOSHI:** Yes, Your Honor. Thank you.

4 **CROSS-EXAMINATION**

5 **BY MR JOSHI:**

6 **Q.** Good morning, Ms. Rodriguez.

7 **A.** Morning.

8 **Q.** So you're saying there was no argument between
9 the groups at the time the person got the gun?

10 **A.** No arguments?

11 **Q.** You said there were two groups, correct?

12 **A.** Uh-huh.

13 **Q.** They were arguing, right? Correct?

14 **A.** Correct.

15 **Q.** Very heated argument, right?

16 **A.** Uh-huh.

17 **Q.** Yes?

18 **A.** Yes.

19 **Q.** Hostile argument?

20 **A.** Yes.

21 **Q.** Okay. Are you saying that hostile, aggressive
22 argument was over at the time the person got the gun?

23 **A.** Between the defendant and the victim?

24 **Q.** No, the two groups.

25 **A.** The two groups, they were still arguing. It

1 wasn't as hostile, the other group.

2 **Q.** Okay.

3 **A.** Once they moved away.

4 **Q.** At the time that the gun was retrieved, they were
5 still arguing, correct?

6 **A.** The other group was still arguing, yeah.

7 **Q.** Okay. Both groups were still arguing, correct?

8 **A.** Uh-huh.

9 **Q.** Is that yes?

10 **A.** Yes, I'm sorry.

11 **Q.** And if you would respectfully say yes or no so
12 the court reporter --

13 **A.** Yes.

14 **Q.** Thank you.

15 So the -- the altercation had not totally ended,
16 correct?

17 **A.** Correct.

18 **Q.** Okay. Now, you mention that the person who was
19 shot put his hands down and shrugged his shoulders?

20 **A.** (Nods head.)

21 **Q.** Is that yes?

22 **A.** Yes. I'm sorry.

23 **Q.** It's okay. It's quite okay.

24 Now, in this case the day that the event happened
25 at the parking garage, you gave a written statement to

1 Detective Montford, correct?

2 A. Correct.

3 Q. Okay. And that was on June 24th, 2012?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. Okay. And you didn't write anywhere in the
8 statement that the guy that got shot put his hands down and
9 shrugged his shoulders, did you?

10 MR. JAY: Objection.

11 BY MR JOSHI:

12 Q. Have you read your statement?

13 THE COURT: Hang on one second.

14 What's the objection?

15 MR. JAY: Improper negative impeachment.

16 THE COURT: Sustained.

17 BY MR. JOSHI:

18 Q. Have you read your written statement?

19 A. Not lately.

20 Q. When was the last time you read it?

21 A. It's been a while.

22 Q. Okay. Do you know if you told anyone that night
23 that the person that got shot put his hands down?

24 MR. JAY: Objection, improper negative
25 impeachment.

1 **THE COURT:** Overruled.

2 **THE WITNESS:** No.

3 **BY MR. JOSHI:**

4 **Q.** Okay. So you didn't mention the night that you
5 talked to the police and the detectives that the person who
6 got shot put his hands down and shrugged his shoulder?

7 **MR. JAY:** Objection, improper negative
8 impeachment.

9 **THE COURT:** Sustained.

10 **BY MR. JOSHI:**

11 **Q.** Did you tell anyone that the person that got shot
12 put his hands down and shrugged his shoulder?

13 **MR. JAY:** Objection, improper negative
14 impeachment and already asked and not answered because
15 this is the same objection.

16 **THE COURT:** Sustained.

17 **MR. JOSHI:** Your Honor, may I approach?

18 **THE COURT:** Sure.

19 Pardon me, ladies and gentlemen.

20 (There was a bench conference as follows:)

21 **MR. JOSHI:** Your Honor, she said that -- today
22 she's saying he put his hands down and shrugged his
23 shoulders. I've alerted her to the time, place,
24 statement; and I'm going into impeachment by omission
25 at this point.

1 **THE COURT:** Okay.

2 **MR. JAY:** And it's not a material omission, given
3 the fact that she wrote like a paragraph and wasn't
4 necessarily asked to give every detail. It isn't gone
5 into what she was asked to do with the statement. I
6 don't know that it's material that she didn't put
7 every detail --

8 **MR JOSHI:** Your Honor --

9 **MR. JAY:** Hold on.

10 **MR JOSHI:** Sorry. I apologize.

11 **MR. JAY:** -- that she ends putting into later
12 recorded statements, depositions and whatnot.

13 **THE COURT:** Hang on a second. I believe it has
14 to be material as well. It sure sounds like it's
15 material.

16 **MR JOSHI:** I apologize, Your Honor?

17 **THE COURT:** It sounds like it's material to me.
18 A material circumstance would have been a natural
19 connection in the statement. I'm going to reverse my
20 ruling and overrule the objection.

21 State, you can, if you wish, redirect on the
22 issue.

23 **MR. JAY:** Thank you.

24 **THE COURT:** At this time I'm going to reverse
25 myself and overrule the objection.

1 **MR. JAY:** Thanks.

2 (The bench conference concluded.)

3 **THE COURT:** Please proceed, Mr. Joshi.

4 **MR JOSHI:** Yes, Your Honor.

5 **BY MR. JOSHI:**

6 **Q.** Ms. Rodriguez, going back, the night that you
7 talked to the detectives you didn't state anything that the
8 person that got shot put his hands -- face in the air and
9 shrugged his shoulders, did you?

10 **A.** I gave my statement in the sense of what I saw.

11 **Q.** Okay.

12 **A.** If I specified shrugged shoulders, if I showed
13 him he shrugged his shoulders or he put -- I know I told
14 them what I saw.

15 **Q.** And you put a lot of detail on that statement,
16 correct?

17 **A.** Yeah, I remember.

18 **Q.** You put in the alleged height or what you
19 remember the height, weight, complexion of the person who
20 you saw with the gun, correct?

21 **A.** Correct.

22 **Q.** Okay. And you also gave a recorded sworn
23 statement to the detective, correct?

24 **A.** Correct.

25 **Q.** Okay. And your ex-husband -- it's your

1 ex-husband, correct?

2 A. Separated.

3 Q. Okay. He was there, and Detective Jackson was
4 there?

5 A. Correct.

6 Q. And Detective Montford had asked you to detail
7 what you saw?

8 A. Correct.

9 Q. And you didn't mention anything about the person
10 got shot putting his hands down or putting his shoulders
11 up, correct?

12 A. I'm sure I did. I probably did. I don't recall
13 right now. Right now I don't recall if I said it that
14 night or not, but I do -- right now what I'm saying is what
15 I remember.

16 Q. Okay. So are you saying your memory is better
17 almost five years ago than what happened that night when
18 you saw it?

19 A. I'm sorry?

20 Q. Are you saying your memory is better today almost
21 five years from --

22 A. It's been there all this time, all the five
23 years.

24 Q. Okay. And you were giving a lot of details that
25 night, correct?

1 **A.** (Nods head.)

2 **Q.** Is that yes?

3 **A.** Yes. I'm sorry.

4 **Q.** And you can't say whether or not you gave that
5 particular detail?

6 **A.** I gave that particular detail. You want to know
7 specifically if I gave that detail specifically that he
8 shrugged his shoulders? Um, yeah, I did.

9 **Q.** Okay. Who did you give that detail to?

10 **A.** To the detectives.

11 **Q.** All right. Did you talk to them -- aside from
12 your written statement and besides the sworn statement you
13 gave to the detective, did you give any other statements to
14 them?

15 **A.** No, just that night and then again --

16 **Q.** You made that statement that night, correct?

17 **A.** Uh-huh.

18 **Q.** Is that yes?

19 **A.** Yes. I'm sorry.

20 **Q.** When was the last time you read a transcript of
21 your sworn statement?

22 **A.** I don't think -- I don't think I've ever even
23 ever read it. I've never bothered with it. I basically --
24 I kept on getting subpoenaed, but I never bothered to go
25 over the line or anything. It's just whenever I get

1 called, I get called.

2 **Q.** Did the State Attorney's Office give you a copy
3 of your transcript?

4 **A.** Actually, they sent it, yes, they did.

5 **Q.** And did you read it when they sent it to you?

6 **A.** (Shakes head.)

7 **Q.** You never read it?

8 **A.** (Shakes head.)

9 **Q.** I see you're nodding [sic] your head. I just
10 want to make sure --

11 **A.** That's a no. That's a no.

12 **Q.** Now, you said that -- you said that you didn't
13 hear what was being said, correct?

14 **A.** Correct.

15 **Q.** Okay. So you don't know what the person who got
16 shot said to the other group, correct?

17 **A.** No.

18 **Q.** You don't know if that --

19 **A.** I don't know why -- what the argument was about,
20 why he decided to shoot him. I don't know nothing.

21 **Q.** So you don't know if the person who got shot
22 threatened to shoot anyone that night?

23 **MR. LaFAY:** Objection, calls for speculation.

24 **THE COURT:** Sustained. She said she didn't hear
25 anything.

1 **BY MR. JOSHI:**

2 **Q.** Obviously, you don't know what started the
3 altercation?

4 **A.** No.

5 **Q.** And the thing that caught your mind was when you
6 saw the person run to grab the gun, correct? That's what
7 caught your attention?

8 **A.** No. What got my attention was basically the two
9 groups arguing going back and forth; and I happened to have
10 to -- basically, I stopped my car because they were right
11 there.

12 **Q.** But you didn't want to get involved?

13 **A.** Exactly.

14 **Q.** None of my business, correct?

15 **A.** Exactly.

16 **Q.** But what you saw -- but the person, when you saw
17 him get the gun, it was split. It wasn't kind of like --
18 he ran and got the gun and came back, right?

19 **A.** He ran and got the gun and came back.

20 **Q.** Okay. So there was no hesitation or like slowly
21 walking?

22 **A.** No. No.

23 **Q.** This was like -- okay. It was like rush, get the
24 gun, come back, right?

25 **A.** Uh-huh.

1 Q. Is that yes?

2 A. Yes. I'm sorry.

3 Q. Okay. So it didn't seem like methodical and
4 thought out. It was darting and getting the gun and come
5 back, right?

6 A. Yeah. He thought to get the gun and come back.

7 Q. But it was very quick, right, running?

8 A. He was like (demonstrating).

9 Q. Okay. You said there were two groups of guys.
10 Were both groups -- how many guys were in group number one?
11 We'll call it the group that was -- that wasn't with the
12 shooter, who was with the --

13 A. The victim's group and the defendant's group.

14 Q. How many people were in the victim's group?

15 A. I want to say I think it was like two. It was
16 three guys altogether with the victim and two girls.

17 Q. Okay. So there were three guys?

18 A. Uh-huh.

19 Q. Is that yes?

20 A. Yes. I'm sorry.

21 Q. Okay. And were the guys still in the area at the
22 time of the shooting?

23 A. No.

24 Q. Okay. Do you know who's in whose group, I mean;
25 or are you speculating?

1 **A.** I don't know who's -- I don't know if they all
2 knew each other. I don't know what was going on.

3 **Q.** They weren't wearing a membership --

4 **A.** No, I just know that there was a group of guys
5 over here and a group of guys over here; and then there was
6 a girl in-between the two groups trying to like push them
7 like to let the argument cool down.

8 **Q.** Okay. I want to ask you a few things about that
9 night. That night when you were leaving, you were driving?

10 **A.** Yes.

11 **Q.** Okay. And your husband, Carlos Benitez, was in
12 the passenger seat?

13 **A.** In the front.

14 **Q.** Front passenger seat.

15 Anyone in the backseat?

16 **A.** My niece.

17 **Q.** Your niece. What's her name?

18 **A.** Dayondra (ph.) Quinones.

19 **Q.** Did the police ever get her information?

20 **A.** No.

21 **Q.** Was she with you when the police arrived?

22 **A.** No.

23 **Q.** Okay. Where did she go?

24 **A.** She left. She left with my brother. After they
25 let the cars leave, she left with my brother.

1 Q. Okay. Where was your brother?

2 A. He was in a different -- in a car behind me with
3 a friend of his.

4 Q. All right. Who's the friend?

5 A. I don't remember his name.

6 Q. Did the police talk to your brother?

7 A. No.

8 Q. Okay. Did the police ask you if anyone else was
9 in the vehicle?

10 A. Yeah.

11 Q. Did you give them your niece's name?

12 A. I believe so.

13 Q. Okay. And to your knowledge, did anyone ever
14 bother talking to her?

15 A. No, they didn't because she didn't give a
16 statement.

17 Q. I'm sorry?

18 A. She didn't give a statement because when the
19 police got there, they asked who saw -- who witnessed what
20 happened; and I came forward and said, I did, me and my
21 husband.

22 Q. Okay. But your niece was in the car too?

23 A. Uh-huh. She was in the back.

24 Q. She possibly could have witnessed it, right?

25 A. Possibly but she didn't because she wasn't

1 feeling well.

2 Q. But you don't know what she witnessed, correct?

3 A. Well, she didn't --

4 COURT REPORTER: Can you slow down. I'm sorry.

5 THE WITNESS: Sorry.

6 THE COURT: Repeat what you said, please.

7 THE WITNESS: She didn't see it because when we
8 freaked out, when we spoke, I asked her, did you see
9 anything? She said --

10 BY MR JOSHI:

11 Q. I don't want to go into what she said, as far as
12 hearsay statements.

13 Do you know if the police ever -- you gave the
14 police her name?

15 A. I believe so.

16 Q. Okay. So what she saw or didn't see was never
17 investigated by law enforcement, as far as you know?

18 A. Correct.

19 Q. What about your brother, was he in the garage at
20 the time when this occurred?

21 A. Yes, he was in the garage.

22 Q. Okay. And did you tell the police that you were
23 out with your brother and a friend too?

24 A. Uh-huh.

25 Q. Is that a yes?

1 **A.** Yes.

2 **Q.** Did they bother to take down your brother's name
3 and information to try and see what he saw or what he
4 didn't see?

5 **A.** I don't think so.

6 **Q.** Did you see someone from Pedro's group take his
7 shirt off?

8 **A.** Yes.

9 **Q.** Okay. And that was after the gun came, correct?

10 **A.** Yes.

11 **Q.** Okay. So there was a guy from Pedro's group who
12 was still at the scene taking his shirt off when the
13 shooter came with the gun?

14 **A.** Oh, no, no, no, no, no. When Pedro got shot, it
15 was the defendant and whatever the girl's name is that was
16 there. He took off his shirt after he got shot. He came
17 down the ramp.

18 **Q.** Okay. Um, was it -- did the person take their
19 shirt off at the time when the gun was pulled on Pedro
20 before the shooting?

21 **A.** After.

22 **Q.** After?

23 Do you remember giving a deposition in this case?

24 **A.** If I gave a deposition?

25 **Q.** Yes.

1 **A.** In reference to the shirt being taken off?

2 **Q.** About this case.

3 **A.** Yes, I did.

4 **Q.** Okay. And that was on August 19th, 2016 --

5 **A.** Yes.

6 **Q.** -- correct?

7 At a court reporter's office?

8 **A.** Yes.

9 **Q.** In Cleveland Street, Suite 380, 601 Cleveland
10 Street, Clearwater, Florida?

11 **A.** Yes.

12 **Q.** A court reporter was there?

13 **A.** Yes.

14 **Q.** And you were questioned by an attorney at my
15 firm, Pakiza Sajid?

16 **COURT REPORTER:** I'm sorry?

17 **BY MR JOSHI:**

18 **Q.** Pakiza Sajid, P-A-K-I-Z-A, S-A-J-I-D.

19 **A.** Yes.

20 **Q.** There was a prosecutor also present
21 telephonically?

22 **A.** Yes.

23 **Q.** Okay. And you swore to tell the truth, the whole
24 truth --

25 **A.** Yes.

1 **Q.** -- like you did today?

2 **A.** Yes.

3 **Q.** And I'm on page 11, line 17. Do you remember
4 Ms. Sajid asking you: Okay. Did any of the gentlemen in
5 Pedro's group, did they, like, take their shirt off or
6 anything like that? You said, yes, you do remember one guy
7 with, how do you call it, like a white T under the shirt.

8 **A.** Uh-huh.

9 **Q.** The question was, yeah, was it after he came with
10 the gun or before that he took off the shirt? You said, I
11 think it was after. I think, actually, it was put to
12 Pedro's head, I think, not sure.

13 **A.** That's true.

14 **Q.** So you're not sure when the shirt really came
15 off, correct?

16 **A.** I'm pretty sure it was after.

17 **Q.** But on August 19, you were saying that you
18 believed it was when the gun was pointed at Pedro?

19 **A.** Repeat that again.

20 **Q.** On August 19 when you were questioned about when
21 the shirt was taken off, you said you believe it was after
22 the gun came and when the gun was pointed at Pedro, not
23 before the shoot -- not after the shooting?

24 **A.** No. It was after it. It wasn't -- it doesn't
25 make sense to take it off before he got shot and put it

1 under his head.

2 Q. None of this makes sense, correct? Right?

3 A. No.

4 Q. Well, did the person who took off the shirt, was
5 he taking off the shirt in a manner like I'm ready to
6 fight?

7 A. No.

8 Q. Okay. So he was just taking off the shirt?

9 A. Taking off the shirt to put it under Pedro's
10 head.

11 Q. Okay. Now, did your husband try to intervene in
12 this matter at the time?

13 A. No.

14 Q. Okay. Did he want to get out of the car and get
15 involved?

16 A. He wanted -- I was actually -- as we were
17 driving, he wanted to like roll down the window or
18 something to find out what was it about. I was like, no,
19 that's not our business. Let's keep it moving.

20 Q. Okay. Remember in your deposition when -- page
21 six, line 12 -- you were saying he came running with a gun
22 besides him? I actually holding my husband by the shirt,
23 telling him, you know, mind your own business. It's not
24 with us because he want to get out. Next thing I know --
25 question is: Why did he want to get out? Line 18, you

1 said, I guess he wanted to intervene because he saw the
2 same thing I was seeing.

3 Did you say that under oath?

4 **A.** Yeah.

5 **MR. JAY:** Objection. That answer would still
6 call for speculation.

7 **THE COURT:** It would but overruled.

8 The question is, did you say that and your answer
9 was?

10 **THE WITNESS:** Yes.

11 **THE COURT:** Thank you.

12 Next question.

13 **BY MR JOSHI:**

14 **Q.** So today you're saying he didn't. You didn't try
15 to stop your husband from getting out of the vehicle,
16 correct? Right?

17 **A.** Yeah, because he was --

18 **Q.** In the deposition you're saying you had to grab
19 your husband by the shirt because he wanted to get out?

20 **A.** Yeah.

21 **Q.** Now, was the person that got shot facing the
22 shooter?

23 **A.** The person who got shot was facing the shooter?

24 **Q.** Yeah.

25 **A.** Yeah. I mean, within a distance, yeah.

1 Q. Okay. It wasn't like his back was turned,
2 correct?

3 A. Correct. Just like you and I right now.

4 Q. Okay. So we're facing.

5 A. Yes.

6 Q. And did you tell the detectives that on
7 June 24th when you were giving your statement?

8 A. I believe so.

9 Q. And were the females in the victim's group trying
10 to hold them back and trying to intervene?

11 A. Before the shooting?

12 Q. During the altercation.

13 A. Before the groups separated, yes. There was --
14 yeah, there was two girls trying to separate them.

15 **MR JOSHI:** Your Honor, may I have a moment?

16 **THE COURT:** You may.

17 **BY MR JOSHI:**

18 Q. Just have a few more questions. Now, just
19 briefly, you said that you're sure that you told Detective
20 Montford about the shrugging of the shoulders and putting
21 the hands down?

22 **MR. JAY:** Objection, asked and answered.

23 **THE COURT:** Sustained.

24 **BY MR JOSHI:**

25 Q. Okay. You indicated -- let me just ask you this:

1 You indicated you believe it was in your sworn statement?

2 **MR. JAY:** Objection, asked and answered.

3 **THE COURT:** Sustained.

4 **BY MR JOSHI:**

5 **Q.** Let me ask you this, did you -- you told us you
6 believe it was in your sworn statement, correct?

7 **MR. JAY:** Objection, still asked and answered.

8 **THE COURT:** Sustained.

9 **BY MR JOSHI:**

10 **Q.** To determine whether or not you put it in your
11 sworn statement, would it refresh your recollection to read
12 it?

13 **MR. JAY:** Objection, asked and answered.

14 **MR JOSHI:** Your Honor, may I approach?

15 **THE COURT:** No. Ask your question again to
16 determine if --

17 **MR JOSHI:** She said she didn't recall if she said
18 it. She believes she put it in her sworn statement.
19 But I can refresh her recollection on whether or not
20 it is in the sworn statement. She can take a look at
21 it and determine because she hasn't read her sworn
22 statement in years or, you know, she --

23 **THE COURT:** I heard what she said. You didn't
24 show it to her.

25 What's the response?

1 **MR. JAY:** It's irrelevant and asked and answered.

2 **THE COURT:** Overruled. Ask your question.

3 **MR JOSHI:** May I approach, Your Honor?

4 **THE COURT:** Ask your question. I don't believe
5 she answered.

6 **BY MR JOSHI:**

7 **Q.** It would refresh your recollection to see a
8 transcript of your sworn statement to determine whether or
9 not you told Detective Montford on June 24th, 2012 whether
10 or not the person put his hands down and shrugged his
11 shoulders before being shot?

12 **A.** You're asking me if I want to read my written
13 statement?

14 **THE COURT:** Ma'am, here's a simple question:
15 Would it refresh your memory if you read a transcript
16 of your statement?

17 **THE WITNESS:** No, because right now I do know
18 that he did shrug his -- I can -- I see him. I think
19 about it.

20 **THE COURT:** Okay. But the question is: Would it
21 refresh your memory as to whether or not you told
22 Detective Montford that, yes or no?

23 **THE WITNESS:** Yes.

24 **THE COURT:** Okay. Don't say the answer. Would
25 it refresh your memory of whether or not you told the

1 detective that or not?

2 **THE WITNESS:** Yes.

3 **THE COURT:** Okay.

4 **MR JOSHI:** May I approach with a copy of the
5 transcript?

6 **MR. JAY:** At this point the same objection. It's
7 immaterial and irrelevant during cross-examination.
8 Earlier he already asked; and she said, no, I didn't
9 say that.

10 **THE COURT:** Okay. I'll overrule the objection.
11 Show Mr. Jay what you're approaching the witness
12 with.

13 **MR JOSHI:** Yes, sir. May I approach?

14 **THE COURT:** Yes.

15 **BY MR JOSHI:**

16 **Q.** If you'd take a look at this.

17 **THE COURT:** Just hand it to the witness.

18 Ma'am, you've been handed a copy of the
19 transcript. Is that the transcript of the statement?

20 **MR JOSHI:** Yes, Your Honor.

21 **THE COURT:** If you'll look through it and see if
22 that refreshes your memory. Okay?

23 **THE WITNESS:** Okay.

24 **THE COURT:** Ms. Rodriguez, reading that
25 transcript, did that refresh your memory as to whether

1 or not you told Detective Montford?

2 **THE WITNESS:** Well, they didn't --

3 **THE COURT:** No, no, no. Does it refresh your
4 memory?

5 **THE WITNESS:** Yes, it does.

6 **THE COURT:** Thank you.

7 Next question.

8 **BY MR JOSHI:**

9 **Q.** You didn't tell Detective Montford in your sworn
10 statement about the person who got shot putting his
11 shoulders [sic] down and shrugging his shoulders?

12 **THE COURT:** Hang on one second.

13 **MR. JAY:** Objection, improper negative
14 impeachment. Request to voir dire the witness.

15 **THE COURT:** Overruled. You have redirect
16 examination.

17 Answer the question if you can.

18 **THE WITNESS:** Repeat the question again.

19 **BY MR JOSHI:**

20 **Q.** Okay. During your sworn statement, you never
21 told Detective Montford that the person who got shot put
22 his hands down and shrugged his shoulders, did you?

23 **A.** I believe I did.

24 **Q.** Okay.

25 **A.** That they didn't write it down or take it down, I

1 thought they did.

2 Q. Would it refresh your recollection to see a copy
3 of Detective Montford's report that he wrote about the
4 interview?

5 A. No, that's fine.

6 Q. It wouldn't refresh your recollection?

7 THE COURT: She said no. Next question.

8 MR JOSHI: Okay.

9 BY MR JOSHI:

10 Q. Would it refresh your recollection -- you
11 indicated you don't know whether or not you wrote it down
12 in your written statement, correct?

13 A. Can I say something?

14 THE COURT: No. Just try to answer the
15 questions. It's a simple question.

16 THE WITNESS: I'm sorry. Repeat it again.

17 BY MR JOSHI:

18 Q. I think you indicated you don't remember if you
19 wrote it down in your written statement; is that correct?

20 A. Correct.

21 Q. Okay. Would it refresh your recollection to see
22 a copy of your written statement to determine whether or
23 not you wrote down about the person putting his hands down
24 and shrugging his shoulders?

25 MR. JAY: Objection, asked and answered and

1 covered as far as the written statement.

2 **The Court:** Overruled.

3 Would it refresh your memory, yes or no, if you
4 looked at the statement as to whether or not you put
5 in the statement that the victim shrugged his
6 shoulders and put his hands down? Would that refresh
7 your memory?

8 **THE WITNESS:** No.

9 **THE COURT:** Thank you.

10 Next question.

11 **BY MR JOSHI:**

12 **Q.** So is your memory about what you wrote concise
13 today that you don't need it refreshed?

14 **A.** No. Because I've been thinking about it. And
15 it's -- I know what I saw. And I thought about it. Every
16 time I get subpoenaed I go over it in my brain of what
17 happened that night.

18 **Q.** Okay.

19 **A.** I do know that he -- Pedro shrugged his shoulders
20 and next thing you know, he got shot.

21 **Q.** And this whole thing happened very quickly,
22 correct?

23 **A.** Correct.

24 **Q.** You saw the person raise the gun and shoot
25 immediately, correct?

1 **A.** (Nods head.)

2 **Q.** I see you nodding your head.

3 **A.** When they came down, whatever they said to each
4 other; and then he shot him.

5 **Q.** The gun was raised and shot quickly, correct?

6 **A.** Uh-huh.

7 **Q.** I see you nodding your head.

8 **A.** Yes. I'm sorry.

9 **MR JOSHI:** Thank you.

10 **THE COURT:** Ms. Rodriguez, if you'll bear with
11 us, we'll let the State have something called redirect
12 examination. Okay?

13 Mr. Jay.

14 **MR. JAY:** Thank you.

15 **REDIRECT EXAMINATION**

16 **BY MR. JAY:**

17 **Q.** All right. Ms. Rodriguez, do you remember about
18 how long your written statement was that night?

19 **A.** How long?

20 **Q.** Yeah, it's length.

21 **A.** I don't think it was that long, maybe one page.

22 **Q.** Would it refresh your memory as to how long it
23 was, to look at it?

24 **A.** Yes.

25 **MR. JAY:** May I approach with page 51 Bates

1 discovery?

2 **THE COURT:** Show that to Mr. Joshi.

3 You may approach.

4 **BY MR. JAY:**

5 **Q.** Does that appear to be your written statement?

6 **A.** Yes.

7 **Q.** And how long does it appear to be?

8 **A.** Half a page.

9 **Q.** What kind of directions were you given about what
10 to put in it?

11 **A.** What to put in it?

12 **Q.** Yeah, what directions were you given about
13 writing the statement?

14 **A.** Nothing, just to put down what I saw.

15 **Q.** So basically an open-ended, write down what you
16 saw; is that fair?

17 **A.** Yeah.

18 **Q.** Did they ask you the same questions in detail
19 like I did this morning about describing what's right of
20 the ramp and down, all those details?

21 **A.** No. No.

22 **Q.** So the only direction you got during your written
23 statement was --

24 **MR JOSHI:** Your Honor, I'll object, leading.

25 **THE COURT:** Sustained.

1 **BY MR. JAY:**

2 **Q.** Now, you gave a recorded statement later to the
3 detective, correct?

4 **A.** Correct.

5 **Q.** Were the detectives the ones asking the questions
6 or were you?

7 **A.** The detectives were asking the questions.

8 **Q.** Did you have any control over what the detectives
9 asked you?

10 **A.** No.

11 **Q.** Did they ever specifically ask you like I did
12 today what the victim was doing with his hands immediately
13 prior to being shot?

14 **A.** No.

15 **Q.** Do you remember about how many pages the
16 transcript is of your recorded statement?

17 **A.** No.

18 **Q.** Would it refresh your memory to see how many
19 pages it is to get a sense of how long the interview was?

20 **A.** Yes.

21 **MR. JAY:** May I approach with Bates 52 through
22 57?

23 **THE COURT:** Yes.

24 **BY MR. JAY:**

25 **Q.** That's something I believe you just got to review

1 with Mr. Joshi; is that correct?

2 A. (Nods head.)

3 Q. Is that a yes?

4 A. Yes. I'm sorry.

5 Q. And just count how many pages it is.

6 A. Five.

7 Q. Five?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes, five.

11 Q. Now, did they ask you with the same specificity
12 and detail about the events of the night as I did today?

13 A. (Shakes head.)

14 Q. Is that a no?

15 A. No.

16 Q. And, again, they didn't specifically ask you what
17 the victim was doing with his hands?

18 A. Correct.

19 Q. Then you said with Mr. Joshi that you had your
20 deposition taken by another attorney regarding this case
21 last year on August 19th. Do you remember that?

22 A. Yes.

23 Q. Do you recall about how long that deposition was?

24 A. About 20 minutes, half hour.

25 Q. Okay. And during that deposition, were you asked

1 what the victim, Pedro Gallardo, did with his hands --

2 **MR JOSHI:** Your Honor, I'm going to object. This
3 is improper prior inconsistent statement. May I
4 approach?

5 **THE COURT:** No. Overruled. Ask your question.

6 **BY MR. JAY:**

7 **Q.** Were you asked about what the victim was doing
8 with his hands at that time?

9 **A.** No.

10 **Q.** Do you remember saying anything about what the
11 victim was doing with his hands during that deposition,
12 regardless of whether you were asked?

13 **A.** Yes.

14 **Q.** Okay. And what did you say?

15 **MR JOSHI:** Your Honor, I'm going to object to her
16 statement being hearsay, out-of-court statement.

17 **THE COURT:** Overruled.

18 **BY MR. JAY:**

19 **Q.** What did you say the victim was doing with his
20 hands during the deposition?

21 **A.** That he had -- he shrugged his shoulders up and
22 like with his hands down.

23 **Q.** Why did you throw your shoe at him?

24 **MR JOSHI:** I'll object, asked and answered,
25 beyond the scope of cross.

1 **THE COURT:** Asked and answered isn't a proper
2 objection. Beyond the scope of cross is. I'll
3 sustain the objection.

4 **MR. JAY:** No other questions.

5 **THE COURT:** Mr. Joshi, any recross on any new
6 issues raised in redirect examination?

7 **MR JOSHI:** Yes, Your Honor.

8 **THE COURT:** You may.

9 **RECROSS-EXAMINATION**

10 **BY MR JOSHI:**

11 **Q.** Mr. Jay asked you about the questions Detective
12 Montford asked you in your sworn statement, correct?

13 **A.** Correct.

14 **Q.** Okay. Detective Montford asked you, is there
15 anything else you can add to this statement, something I
16 may have forgotten to ask you; and your response was no.
17 Is that correct?

18 **MR. JAY:** Objection, improper impeachment. We
19 would need the Bates line and question, answer. I
20 would ask the witness to be shown that.

21 **THE COURT:** Sustained on all grounds.

22 **MR JOSHI:** I'm sorry?

23 **THE COURT:** Improper impeachment, sustained.

24 **BY MR JOSHI:**

25 **Q.** As far as your statement you made on June 24th,

1 2012 at South Kirkman, Apartment 189 with Detective
2 Montford, Earl Jackson and Carlos Benitez present -- I'm
3 referring to page five -- did Detective Montford ask you,
4 is there anything else you can add to this statement,
5 something I may have forgotten to ask you and you indicate,
6 no?

7 **MR. JAY:** Same objection, improper impeachment.

8 **THE COURT:** Sustained.

9 **BY MR JOSHI:**

10 **Q.** You're telling this jury today that you -- you
11 weren't asked certain questions during your sworn statement
12 to Detective Montford, correct?

13 **A.** Correct.

14 **Q.** Were you given an opportunity to add anything
15 else that you want to add?

16 **A.** No, because it was really quick.

17 **Q.** Were you given an opportunity to go over anything
18 he may have not asked you? Did he give you the opportunity
19 to do that?

20 **A.** He just said basically if you remember anything
21 else, you know, here's my card. Give us a call.

22 **Q.** Would it refresh your recollection to see what he
23 asked you, as far as anything else you want to add in this
24 statement?

25 **MR. JAY:** Objection. She's already testified to

1 what he said.

2 **THE COURT:** Sustained.

3 **BY MR JOSHI:**

4 **Q.** Okay. Did Detective Montford ask you anything
5 else about what you remember, besides if you remember
6 anything, here's my card?

7 **A.** Just that, what I just said, if I remember
8 anything else, any specifics, any concerns, just give him a
9 call.

10 **Q.** Did you ever call him and say I remember --

11 **A.** No, I did not.

12 **Q.** Did he ask you in a sworn statement, is there
13 anything else you recall?

14 **MR. JAY:** Objection, asked and answered.

15 **THE COURT:** Sustained.

16 **BY MR JOSHI:**

17 **Q.** Did you have an opportunity to add anything else
18 you wanted to add?

19 **MR. JAY:** Objection, asked and answered.

20 **THE COURT:** Overruled.

21 Do you understand the question?

22 **THE WITNESS:** He's asking me the same question
23 again, if I ever had an opportunity to specify more
24 what I saw. To me I had specified everything as to
25 that night.

1 **THE COURT:** Okay.

2 **BY MR JOSHI:**

3 **Q.** You didn't specify --

4 **A.** I didn't bother calling. I was just waiting for
5 the call to be, you know, a witness.

6 **Q.** Okay.

7 **MR JOSHI:** Your Honor, I'd like to have these
8 exhibits marked.

9 **THE COURT:** Would you approach the clerk and have
10 them marked.

11 **MR JOSHI:** Yes, Your Honor. Your Honor, I have
12 what's marked Defendant's Exhibit A for
13 identification. May I approach the witness?

14 **THE COURT:** Yes.

15 **MR JOSHI:** And I have what's marked Defendant's
16 Exhibit B for identification as well, showing the
17 State copies.

18 **THE COURT:** You want to approach the witness for
19 what purpose?

20 **MR JOSHI:** Just to have her authenticate it.

21 **THE COURT:** You may.

22 **BY MR JOSHI:**

23 **Q.** Ms. Rodriguez, I'm showing you what's been marked
24 as Defendant's Exhibit A for identification. Would you
25 take a look at that. Do you recognize that Defendant's

1 Exhibit A for identification?

2 A. My written statement.

3 Q. Is it a true and accurate copy of the written
4 statement you wrote on June 24th, 2012?

5 A. Yes.

6 Q. Any additions or is that complete and accurate?

7 A. It's accurate. It's what I'd done.

8 Q. Thank you. And I'm also showing you what's
9 marked as Defendant's Exhibit B for identification. Would
10 you take a look at Defendant's Exhibit B for
11 identification.

12 A. Yeah.

13 Q. Do you recognize Defendant's Exhibit B for
14 identification?

15 A. Yes.

16 Q. Okay. And is that the sworn statement you gave
17 to Detective Montford with Detective Jackson --

18 A. Yes.

19 Q. -- present on or about June 24th, 2012?

20 A. Yes.

21 Q. Is it fair and accurate?

22 A. Yes.

23 Q. You've read through it?

24 A. Briefly right now, yes, sir.

25 Q. Thank you.

1 **MR JOSHI:** That's all the questions I've got,
2 Your Honor.

3 **THE COURT:** Okay. Any re-redirect examination?

4 **MR. JAY:** Yes.

5 **FURTHER REDIRECT EXAMINATION**

6 **BY MR. JAY:**

7 **Q.** Did you tell the detectives where you had gone
8 specifically and what time you had gotten to those bars on
9 Wall Street?

10 **MR JOSHI:** I'll object, beyond the scope.

11 **THE COURT:** Well, the alternative is that the
12 witness can be released and recalled a second later.
13 Based on that, I'll overrule the objection. I
14 understand the objection, though.

15 **MR JOSHI:** Thank you.

16 **MR. JAY:** I'll tie it in.

17 **BY MR. JAY:**

18 **Q.** Go ahead. Did you tell the detectives what time
19 you got to the bar and what bar you went to and when you
20 left?

21 **A.** Specifics as to what time? From anywhere from
22 11:00, 11:30 to 3:00, 3:30 in the morning. There was no
23 specific time.

24 **Q.** So when you testified to specific times today,
25 are you lying about it?

1 **A.** No.

2 **Q.** All right. Did you in your recorded statement
3 tell the detectives that you knelt down and cared for the
4 victim until --

5 **MR JOSHI:** Your Honor, I'm going to object. This
6 is improper bolstering at this point.

7 **THE COURT:** I'll permit this particular question.
8 We'll see what happens after this question.

9 **MR JOSHI:** Thank you, Your Honor.

10 **THE WITNESS:** Yes.

11 **BY MR. JAY:**

12 **Q.** That would be in your recorded statement?

13 **A.** I believe so.

14 **Q.** Okay. So my question is just because you didn't
15 give every detail that night, whether or not you were asked
16 a specific question, are you lying about those details?

17 **MR JOSHI:** Your Honor, I'll object. This is
18 improper bolstering.

19 **THE COURT:** Sustained.

20 **MR. JAY:** No other questions.

21 **THE COURT:** May this witness be released?

22 **MR. JAY:** Yes.

23 **THE COURT:** Ma'am, thank you. You're released
24 from your subpoena.

25 Okay. Ladies and gentlemen, we've gone beyond

1 **EMMANUEL SANTINI**

2 was called as a witness and, having first been duly sworn,
3 testified as follows:

4 **THE WITNESS:** Yes, I do.

5 **THE COURT:** Good afternoon, sir.

6 **THE WITNESS:** Good afternoon.

7 **THE COURT:** If you'd please turn to the ladies
8 and gentlemen to your right -- hang on one second.

9 Ms. Welburn?

10 **THE JUROR:** Pen isn't working.

11 **THE COURT:** Let's get you a new pen.

12 Hang on one second, Mr. Santini.

13 Okay. Want to see if it works?

14 **THE JUROR:** Now it works.

15 **THE COURT:** Okay. Mr. Santini, if you would
16 please introduce yourself to the jurors and if you'd
17 spell your name for us.

18 **THE WITNESS:** Hi. My name is Emmanuel Santini,
19 E-M-M-A-N-U-E-L, S-A-N-T-I-N-I.

20 **THE COURT:** Thank you very much.

21 You may inquire.

22 **MR. INTERLICCHIO:** Thank you, Your Honor.

23 **DIRECT EXAMINATION**

24 **BY MR. INTERLICCHIO:**

25 **Q.** Mr. Santini, back on June 23rd of 2012, did you

1 go out that evening?

2 A. Yes.

3 Q. All right. And who did you go out with?

4 A. Pedro Gallardo and Victor Santini.

5 Q. Hold on. You're sort of soft-spoken.

6 A. Oh, sorry.

7 Q. There you go. All right. Now, on June 23rd,
8 2012, who did you go out with?

9 A. Me, Pedro, Victor Santini, Sharine, Melissa and
10 my sister and Bianca.

11 Q. And where did you guys go?

12 A. We went to Vain's nightclub.

13 Q. At Vain nightclub, did you do anything in
14 particular or special there?

15 A. Just typical night out, VIP, bottle.

16 Q. I'm a government servant, so I have no idea what
17 VIP at a club is. What is VIP at Vain?

18 A. There's a certain fee. You get a table. The
19 section is, like, privacy, basically; and we get offered
20 three bottles, depending on the place you go to.

21 Q. Okay. So there was seven of you in total?

22 A. Yes.

23 Q. And did you have any of the alcohol?

24 A. No. I don't drink.

25 Q. You don't drink?

1 **A.** No.

2 **Q.** And what about the other members of your party?

3 **A.** Yeah.

4 **Q.** They were drinking?

5 **A.** Yeah.

6 **Q.** Were they having a good time?

7 **A.** Yeah, they were having a great time.

8 **Q.** While at Vain, were there any problems?

9 **A.** No.

10 **Q.** Nobody had words with anyone, nobody having any
11 discussions with anyone?

12 **A.** No.

13 **Q.** Now, what time did you guys empty out of Vain?

14 **A.** When it closes. I think it was 2:00, 2:00, 3:00
15 maybe.

16 **Q.** And when it closed and you guys are leaving, who
17 left?

18 **A.** Bianca. Bianca had left our group. She seen
19 somebody familiar walking by in the crowd and she just left
20 the crowd -- left our group, introduced herself, said hi to
21 the guy and the remaining of us went to the car.

22 **Q.** Okay. Where were you parked?

23 **A.** In front of the fire station by Central.

24 **Q.** Okay. Were you parked --

25 **A.** Yeah, about second floor. It was different

1 levels of floors in the parking lot.

2 Q. Now, so your group of originally seven has now
3 reduced to six?

4 A. Yes, sir.

5 Q. Okay. Bianca is out. Now it's three men and
6 three women?

7 A. Yes.

8 Q. Now, as you're heading to the garage, do you guys
9 have any words with anyone?

10 A. No.

11 Q. Any problem?

12 MR. LaFAY: Objection.

13 THE WITNESS: No.

14 MR. LaFAY: Irrelevant. I don't want to make a
15 speaking objection.

16 THE COURT: Overruled.

17 BY MR. INTERLICCHIO:

18 Q. Did you have any issues with anybody as you
19 walked to the garage?

20 A. No.

21 Q. No problems whatsoever?

22 A. No problems.

23 Q. It's now closing time and there's three guys and
24 well, for you, two girls because your sister's not
25 included. What were your intentions that evening?

1 **A.** Carry on the night.

2 **Q.** And when you say carry on the night, what do you
3 mean?

4 **A.** We was just acting like it was planned out,
5 alcohol, females. Next step is the room.

6 **Q.** Okay. So you were hoping to hook up with one of
7 these women?

8 **A.** Yes.

9 **Q.** All right. Did you guys get up to the cars?

10 **A.** Yes.

11 **Q.** All right. Now, how many vehicles did you take
12 that night?

13 **A.** Two vehicles. The red van belonged to Sharine
14 and Pedro's car that he had brung with him.

15 **Q.** Okay. Now, this red vehicle, Sharine's vehicle,
16 who was in that vehicle?

17 **A.** Sharine, Melissa and my sister, my younger
18 sister.

19 **Q.** And so all the guys were in Pedro's vehicle?

20 **A.** Yes.

21 **Q.** When you come up to the parking garage, what are
22 you doing?

23 **A.** We were still together. I guess the girls,
24 Melissa and Sharine were trying to leave. I kind of got
25 next to their vehicle trying to stall, carry on a

1 conversation, convince them basically to stay with us, to
2 go with us where we wanted to go. And, yeah, the
3 conversation carried on. They kept saying no, my sister.

4 Q. Okay. So they were about to head home; and you
5 were trying to stall them because you wanted to hook up
6 that evening, right?

7 A. Yes.

8 Q. Now, where were you positioned?

9 A. I was leaning right into the driver's side
10 window. My arm was above the window, just like that. I
11 was leaning into the vehicle.

12 Q. Okay. Now, whose vehicle were you leaning into?

13 A. Sharine's.

14 Q. And who was sitting in the driver seat?

15 A. Basically, if I'm not mistaken, Melissa was there
16 at that time.

17 Q. And is that who you were trying to talk to that
18 evening?

19 A. Yes.

20 Q. You, now, as you're talking to her, is your
21 attention drawn to somewhere else?

22 A. No, not really. It was focused on them, and we
23 kept talking till Pedro tapped me on my shoulder.

24 Q. Where was Pedro and Victor while you were talking
25 to Melissa?

1 **A.** Pedro was right literally next to me, I'm
2 assuming, because --

3 **MR. LaFAY:** I'll object to any assumptions.

4 **THE COURT:** I'll sustain the objection.

5 Please continue.

6 **BY MR. INTERLICCHIO:**

7 **Q.** You can't assume anything. If you don't know the
8 answer or if you don't know --

9 **A.** I really don't know --

10 **COURT REPORTER:** I'm sorry?

11 **THE COURT:** Sir, hang on one second. Finish your
12 statement.

13 **BY MR. INTERLICCHIO:**

14 **Q.** If you don't know where somebody is or you don't
15 know something, you can say I don't know. It's an
16 acceptable answer. I don't want you to assume anything.

17 **A.** No problem.

18 **Q.** When I'm talking or you're talking, the court
19 reporter can't take down both of us. You'll have to wait
20 until we finish. All right?

21 **A.** Okay.

22 **Q.** Now, you said Pedro tapped you on the shoulder?

23 **A.** Yes.

24 **Q.** All right. And when Pedro tapped you on the
25 shoulder, what happened?

1 **A.** He notified me, hey, your brother is about to get
2 into a fight.

3 **Q.** Now, what did you do?

4 **A.** First, I was kind of stunned. I looked up,
5 didn't see nobody in our area. Basically, there was nobody
6 around us. So in my head I'm like, Pedro, what are you
7 talking about? There's nobody around. Who are we going to
8 fight?

9 When I stood up from the window, then I looked
10 above the car across the parking lot. That's when I see
11 there was the white guy, if I'm not mistaken, with blue
12 eyes. I really don't know him. I don't know him by name.
13 But he was standing in the middle of the road. That's when
14 he threw his hands up.

15 **MR. LaFAY:** I'll object. This is narrative.

16 **MR. INTERLICCHIO:** Let me slow you down.

17 **THE COURT:** I'll sustain the objection.

18 Please continue.

19 **BY MR. INTERLICCHIO:**

20 **Q.** You're leaning in the window. You're flirting
21 with Melissa. Do you hear any arguing?

22 **A.** No.

23 **Q.** So you have no idea that something's about to
24 happen.

25 **A.** Yes --

1 **MR. LaFAY:** Objection, leading.

2 **THE COURT:** Sustained.

3 **BY MR. INTERLICCHIO:**

4 **Q.** You stated that you looked up and you saw a guy
5 with blue eyes?

6 **A.** Yeah, looked like a white male, basically.

7 **MR. INTERLICCHIO:** I'll approach the clerk to
8 have this marked into evidence, please.

9 **THE CLERK:** L?

10 **MR. INTERLICCHIO:** Yes.

11 **BY MR. INTERLICCHIO:**

12 **Q.** Now, Mr. Santini, I'm going to approach with
13 what's been marked --

14 **THE COURT:** No, no, no, you're not. Where are
15 you going?

16 **MR. INTERLICCHIO:** May I approach, Your Honor?

17 **THE COURT:** Why don't you show that to defense,
18 please.

19 **MR. INTERLICCHIO:** Counsel has --

20 **THE COURT:** I don't know they saw it.

21 **MR. INTERLICCHIO:** Sorry.

22 May I approach, Your Honor?

23 **THE COURT:** You may.

24 **MR. INTERLICCHIO:** Thank you.

25

1 **BY MR. INTERLICCHIO:**

2 **Q.** Now I'm going to approach with what's been marked
3 for identification as State's Exhibit L for identification.
4 Do you recognize this?

5 **A.** Yes.

6 **Q.** All right. How do you recognize this?

7 **A.** Face, his face.

8 **Q.** Okay. And did you circle the person in this
9 lineup?

10 **A.** Yes.

11 **Q.** And the person that you circled in this lineup,
12 who is that?

13 **A.** I honestly don't know.

14 **Q.** Okay. You don't remember this?

15 **A.** Yes. This is who they asked me if I seen him
16 before.

17 **Q.** Okay. When you say you don't know, that means
18 you don't know his name?

19 **A.** Yes, we don't know each other. That's the thing.
20 I don't know why it happened.

21 **Q.** Not that you've never seen the person you've
22 circled before?

23 **A.** No. I seen him.

24 **Q.** Who is he in what you've been telling the jury
25 just now?

1 **A.** I guess he was the first guy I seen.

2 **Q.** When you looked up above the car?

3 **A.** Yes.

4 **MR. INTERLICCHIO:** Your Honor, State would ask
5 what's been previously marked for identification as
6 State's Exhibit L be entered into evidence.

7 **THE COURT:** Any objection?

8 **MR. LaFAY:** No objection.

9 **THE COURT:** Without objection, ladies and
10 gentlemen, what's identified as State's Exhibit L will
11 now come into evidence as State's Exhibit No. 2.

12 (State's Exhibit No. 2 was received in evidence.)

13 **THE COURT:** And therefore be evidence for you to
14 consider in deciding whether or not the State has
15 proved its case beyond a reasonable doubt.

16 You may continue.

17 **MR. INTERLICCHIO:** Thank you, Your Honor.

18 **BY MR. INTERLICCHIO:**

19 **Q.** So you look up above the car and you see this
20 white guy right as you described?

21 **A.** Yes.

22 **Q.** Who is near him?

23 **A.** No one. He was literally by himself in that
24 moment.

25 **Q.** Is anyone in your group having a conversation

1 with him?

2 **A.** No. My brother was the only one, I guess,
3 responding to his comments.

4 **Q.** Okay. Could you hear what he was saying?

5 **A.** Yes.

6 **Q.** All right. And what kind of comments was he
7 making?

8 **MR. LaFAY:** By "he," I'm not sure who is the
9 declarant.

10 **THE COURT:** Nor am I.

11 **BY MR. INTERLICCHIO:**

12 **Q.** The blond guy.

13 **MR. LaFAY:** Objection, hearsay.

14 **THE COURT:** Sustained.

15 **BY MR. INTERLICCHIO:**

16 **Q.** The words coming from the blond guy's mouth, were
17 they conversational tone or argumentative?

18 **A.** Argumentative.

19 **Q.** All right. And who was responding to those
20 argumentative words?

21 **A.** My brother, Victor Santini.

22 **Q.** And how far apart were they when you first
23 noticed this?

24 **A.** I say about a good five to six cars in-between,
25 so like car lengths parked sideways. Like, I say about a

1 good 15, 25 feet from us.

2 Q. All right. And where Victor is standing, is
3 Victor near your group of cars, meaning Sharine's and
4 Pedro's?

5 A. He was standing literally, I say, about a foot or
6 two away that way away from in-between the cars. He was
7 literally in-between the cars. They were standing in the
8 middle of the road right behind the car.

9 Q. Right behind whose car?

10 A. Sharine's.

11 Q. And so this other individual was further up the
12 ramp?

13 A. Yes.

14 Q. What did you see happen next?

15 A. Is the guy made the comment, saying, what are you
16 looking at? Do you want problems? My brother just lifted
17 up, said, what you want to do?

18 Q. Okay. So they have fighting words between the
19 two?

20 A. Yeah.

21 Q. Does this individual come down the ramp towards
22 your brother?

23 A. Yeah. Looked like a haste walk, wasn't really
24 running, it was like fast-paced walk towards back to us and
25 at that same moment seven guys just appeared out of nowhere

1 and came with him. So, basically, we call it on the street
2 they ran up.

3 **MR. LaFAY:** Objection, narrative.

4 **THE COURT:** Hang on one second. Sustained.

5 **BY MR. INTERLICCHIO:**

6 **Q.** So what was once one guy is now seven other guys?

7 **A.** Yes, sir.

8 **MR. LaFAY:** Objection, leading.

9 **THE COURT:** Overruled.

10 **BY MR. INTERLICCHIO:**

11 **Q.** Now, in your mind, were you wanting to fight?

12 **A.** Regards to my brother, yeah, of course, I want to
13 defend my brother all the way. Once I seen the crowd come
14 up, we were outnumbered. So I was instantly trying to
15 squash the beef.

16 **Q.** You're saying you're trying to squash the beef.
17 How do you go about trying to squash this beef?

18 **A.** Walking up, everybody -- it's a big
19 confrontation, words coming back and forth. I'm in-between
20 both crowds; and I'm literally trying to shove my guys
21 back, Victor Santini and Pedro Gallardo, at the same time.

22 **Q.** Where are you attempting to shove them back to?

23 **A.** I'm in-between the opposite crowd and my crowd.
24 I'm literally in-between both. So right now they arguing
25 among themselves; and I'm literally caught up in-between,

1 kind of like, stop, stop.

2 Q. All right. At this point in time, has anyone
3 touched anyone?

4 A. No.

5 Q. Meaning nobody has hit anyone?

6 A. No. The only person who basically, like,
7 touched, I was the one touching anybody. I was the one
8 pushing everybody back.

9 Q. When you say pushing, who are you pushing?

10 A. First, it started with Victor Santini. The first
11 shove back to him to calm down, he spun to the left, like
12 literally just spun; and when he spun, I missed. Pedro was
13 standing right next to him, so I started pushing him back,
14 calm down, calm down. We don't need to fight.

15 Q. Okay. So your brother is still kind of engaged
16 in talking?

17 A. Yeah, arguing with them. That's when I told you,
18 that's the only time Pedro put his hands up, because when
19 he put his hands up, that's when he pointed. He said, hey,
20 he's getting closer to your brother. So I'm telling my
21 brother to calm down cause you --

22 COURT REPORTER: I'm sorry. Slow down, please.

23 THE WITNESS: I'm sorry.

24 BY MR. INTERLICCHIO:

25 Q. Okay. What were you saying?

1 **A.** Oh, trying to slow him down cause everything was
2 being escalated.

3 **Q.** What were you telling Pedro?

4 **A.** I was telling him, we don't have to do this, man.
5 We having a good night. Let's carry on the night. You
6 already know what's in store for us tonight. Let's just go
7 about with the females. Let's not get caught up with these
8 guys.

9 **Q.** Now, did you ever try and push back anyone in the
10 other person's crew?

11 **A.** No. My back was turned toward that group the
12 whole time.

13 **Q.** As you're pushing Pedro back, where do you push
14 him back to?

15 **A.** I got him so far that I shoved him all the way
16 in-between his car and, I guess, a random -- another
17 person's car; but we were literally in-between the car.

18 **Q.** Now, did you have a weapon on you that night?

19 **A.** No.

20 **Q.** Did anyone in your group have a weapon?

21 **A.** Nope.

22 **MR. LaFAY:** Objection. Improper predicate as to
23 his knowledge or lack of predicate as to his
24 knowledge.

25 **THE COURT:** I'll sustain as to predicate and

1 invite you to inquire more, if you wish.

2 **BY MR. INTERLICCHIO:**

3 **Q.** Now, what time did you get together with Victor
4 and Pedro that night?

5 **A.** Around 9:00, 10:00.

6 **Q.** And this ended about 2:30, 3:00 in the morning?

7 **A.** Yes.

8 **Q.** At any point in time, did you see a weapon on
9 Pedro?

10 **A.** No. We had no weapons at all.

11 **Q.** Did you see any weapons on Victor?

12 **A.** No.

13 **Q.** Did Victor ever display a weapon at any point in
14 time?

15 **A.** No.

16 **Q.** Did he ever threaten that he was going to get a
17 weapon?

18 **A.** No. Honestly, to be real, everything -- it was
19 supposed to be just a regular fistfight, honestly.

20 **Q.** What about Pedro, did he threaten to have -- that
21 he had a weapon?

22 **A.** He didn't say a word. Only thing that came out
23 of his mouth was, they getting closer to your brother.

24 **Q.** Now, you're pushing Pedro back?

25 **A.** Yes.

1 Q. Where are you pushing him towards?

2 A. The car. His car.

3 Q. Okay. Why are you pushing him toward his car?

4 A. I was just really trying to just stop from
5 anything escalating. I wanted to stop them, calm them
6 down; and like I said, eventually, I got far enough away
7 from the crowd that we were by ourselves in-between two
8 cars. I almost had him in the car.

9 Q. When you say you almost had him in the car,
10 describe for the jury what you mean by that.

11 A. He was standing next to his car. He opened his
12 back door. I tried to shove him through the back. We were
13 both facing that direction. I was trying to shove him into
14 the car. Since him being so hypped up, he slammed the door
15 shut and stood up. That's when I heard the bang.

16 Q. Now, as you're pushing him between the cars, are
17 you facing the crowd?

18 A. No.

19 Q. Or is your back to the crowd?

20 A. Both me and Pedro Gallardo were facing away from
21 the crowd. Only person that was facing towards the crowd
22 is my sister, who literally just walked up on us when it
23 happened and my -- then my brother, who's standing behind
24 the truck that I was telling you.

25 Q. Now, you're describing it as he opens up -- you

1 open up the car door?

2 A. Yes.

3 Q. Okay. And the door somehow closes. Who closes
4 the door?

5 A. I'm assuming he shut it close so I won't get him
6 in. So he tried to stay out the car. When he shoved it,
7 he stood up. When he stood straight up, that's...

8 Q. Okay. When he stood up, what happened?

9 A. Bang.

10 Q. All right.

11 A. At first, like I said, it was hard for me to
12 realize it was a actual gunshot because the timing of the
13 shot was the same timing of me closing the door. So if you
14 think about it, bang. At first I didn't realize it was a
15 real gunshot until my sister, like I told you, started
16 screaming. That's when I looked back. When I looked back,
17 there was nobody literally behind me at all whatsoever and
18 Pedro hit the floor and he was facing away from me. So,
19 basically, to me, what I'm thinking, he did get the shot in
20 the back of his neck; and it exit out his mouth.

21 Q. Did you ever see anyone with a gun?

22 A. No. Honestly, no.

23 Q. And when you see Pedro go to the ground, what do
24 you do?

25 A. I honestly didn't know what to do. I kind of

1 froze up at first cause I couldn't believe what I just seen
2 and I started talking to Pedro to see why you laying down,
3 why, you know -- excuse me -- why you on the floor and I
4 turn around and my brother takes off running after the
5 people and I just -- I couldn't think. I got to the point
6 I ran down from the parking lot and I literally tackled a
7 cop down because the freaking ambulance people on the phone
8 were giving me a million questions. I didn't have time to
9 answer no questions.

10 **Q.** When you're saying the people on the phone, did
11 you call 911?

12 **A.** Yes, sir. They asked me what freaking fire
13 station was in front, what parking lot we were on. We
14 don't need to know all that. Somebody is shot. We need
15 somebody here now.

16 **MR. LaFAY:** Your Honor, may I take a moment?

17 **THE COURT:** Yes, sir.

18 **MR. LaFAY:** I've been handed what's not marked.
19 I'll ask counsel to mark it.

20 **MR. INTERLICCHIO:** Could I have this marked as H,
21 please.

22 Your Honor, may we approach?

23 **THE COURT:** Sure.

24 (There was a bench conference as follows:)

25 **MR. LaFAY:** Your Honor, I understand that the 911

1 call, which is now being marked as likely H, that the
2 first portion of the tape is a witness who's not yet
3 been called, so I don't believe it can be
4 authenticated at this point.

5 **THE COURT:** You say the first part of the tape?

6 **MR. LaFAY:** The first part of the 911 call.

7 **THE COURT:** Aren't there two 911 calls?

8 **MR. LaFAY:** My understanding is that a girl gets
9 on the phone to 911 first and then hands the phone to
10 Mr. Santini.

11 **THE COURT:** Okay. Is that your understanding?

12 **MR. INTERLICCHIO:** Yes.

13 **THE COURT:** Okay. So you're objecting to --

14 **MR. LaFAY:** I don't think they can authenticate
15 at this time as to whether it's a true and accurate
16 copy but...

17 **THE COURT:** But what?

18 **MR. LaFAY:** So I don't know if the State is
19 attempting to introduce it at this time or through
20 another witness.

21 **MR. INTERLICCHIO:** No, I'm intending to introduce
22 it at this time, so...

23 **MR. LaFAY:** I guess they haven't done so; but
24 should they do so, my objection would be that there's
25 a lack of authentication for it, since this witness

1 cannot authenticate the entire recording.

2 **THE COURT:** Do you know that he can't?

3 **MR. LaFAY:** I don't think he would be able to --
4 it may have been on speaker phone where he listened to
5 both sides of the conversation, that's true, when the
6 other person had the phone. So if they can meet that
7 predicate -- it seemed to be a lengthy objection, so I
8 wanted to get up here first.

9 **THE COURT:** Appreciate that.

10 **MR. LaFAY:** Thank you.

11 (The bench conference concluded.)

12 **THE COURT:** You may proceed.

13 **MR. INTERLICCHIO:** Thank you, Your Honor.

14 **BY MR. INTERLICCHIO:**

15 **Q.** Mr. Santini, you were not the original person who
16 called 911. Who was that?

17 **A.** Um, I think it was Melissa who dialed 911.

18 **Q.** Now, were you next to her as she was calling 911?

19 **A.** Yes, I was the one who grabbed the phone and
20 talked to the operator.

21 **Q.** Okay. And then you're the one who continued to
22 have conversations with the 911 operator?

23 **A.** Yes.

24 **MR. INTERLICCHIO:** Your Honor, the State would
25 ask what's been previously marked for identification

1 as State's Exhibit H be entered into evidence at this
2 time.

3 **THE COURT:** Well, at this time I'm going to
4 sustain the objection that the defense made at the
5 table -- at the bench.

6 **MR. INTERLICCHIO:** Your Honor, may we approach?

7 **THE COURT:** Sure.

8 (There was a bench conference as follows:)

9 **THE COURT:** Let me go back to what I recall your
10 questions were, just to make sure I don't miss
11 something. You asked if he was the one who made the
12 initial 911 call. He said, no, he believed Melissa
13 did; and then he took the phone from her.

14 **MR. INTERLICCHIO:** Yes.

15 **THE COURT:** Did you ask him anything else?

16 **MR. INTERLICCHIO:** I didn't ask if this was the
17 actual 911 call, I guess.

18 **THE COURT:** Okay. What do you want to say at the
19 bench?

20 **MR. INTERLICCHIO:** I would ask we dismiss the
21 jury for a moment and allow him to listen to the 911
22 call, authenticate it; and we can move past that
23 hurdle.

24 **THE COURT:** What did you do over lunch?

25 **MR. LaFAY:** We were taking the deposition.

1 **THE COURT:** Okay. Thanks.

2 (The bench conference concluded.)

3 **THE COURT:** Ladies and gentlemen, I'm going to
4 need more time than a discussion up here. I'll ask
5 you retire to the jury room for a few minutes. Please
6 leave your pads on your chairs. We'll have you back
7 here as quickly as I can. Thank you.

8 **COURT DEPUTY:** Jury exiting.

9 (The jury exited the courtroom at 1:30 p.m.)

10 **THE COURT:** Okay. Mr. Interlicchio, how would
11 you like to proceed?

12 **MR. INTERLICCHIO:** Your Honor, I'm, with the
13 Court's permission, going to publish State's H to the
14 witness, have him listen and authenticate it.

15 **THE COURT:** Thank you. You may proceed.

16 (The exhibit was published in open court and
17 because of the nature of playing audio recordings and
18 the inability to distinguish between speakers, the
19 following transcription of the audio by this court
20 reporter should NOT be considered a verbatim record of
21 said audio recording:)

22 **VARIOUS SPEAKERS:**

23 Sunday, June 24th, 2012, the time 2:39 a.m.

24 (Unintelligible.)

25 You're being recorded.

1 Get him (unintelligible) phone.
2 Where are you? Hello?
3 (Unintelligible) alone (unintelligible).
4 Okay. Which parking lot or which street?
5 I don't know (unintelligible).
6 Okay. Where are you?
7 (Unintelligible.)
8 Okay. Ma'am?
9 (Unintelligible).
10 Ma'am, can you tell me where you are?
11 (Unintelligible) in the parking lot
12 (unintelligible).
13 Okay. Which parking lot are you in?
14 (Unintelligible) parking lot (unintelligible).
15 Hello. Hello.
16 (Unintelligible) parking lot.
17 What street are you on?
18 (Unintelligible) Central in downtown Orlando.
19 Central? Okay. What number are you on?
20 Huh?
21 What number are you on?
22 What number?
23 Are you in the parking garage?
24 No. I'm in the parking (unintelligible) floor.
25 Okay. Second or third floor? Sir?

1 Hello (unintelligible).
2 Sir?
3 (Unintelligible) shot him (unintelligible).
4 What's your name?
5 (Unintelligible) Emmanuel Santini
6 (unintelligible).
7 Okay. And what's going on?
8 (Unintelligible).
9 Can you tell me what's going on?
10 Somebody just got shot in the parking lot
11 (unintelligible).
12 Okay. Did you see what happened?
13 Yes, (unintelligible).
14 Okay. Are you with the victim?
15 Yes, I'm with the victim (unintelligible).
16 Okay. Stay on the line. I'll go ahead and get
17 you over to the fire department.
18 (Unintelligible) Central by Orange Avenue. Oh,
19 man, (unintelligible).
20 Hello.
21 Orlando Fire Department.
22 It's OPD with a medical (unintelligible). He
23 said
24 he's with the victim.
25 Yeah, hello.

1 Hi. This is the fire department. What's the
2 address of the emergency?

3 (Unintelligible) in the parking lot.

4 Okay. You're where?

5 Right here by the parking lot on Central, on the
6 parking lot (unintelligible) second floor.

7 Okay. In the parking garage, just across the
8 street from the fire station?

9 Yes, sir.

10 On Central, correct, not on (unintelligible)?

11 Yes, on Central.

12 Just one second. Let me pull up that address
13 here

14 real quick. You said Central and just off Orange
15 Avenue, correct?

16 Yeah.

17 What's the phone number you're calling me from?

18 (Unintelligible) got shot (unintelligible) lying
19 down.

20 I'm sorry, what?

21 (Unintelligible) street right now.

22 Yeah.

23 (Unintelligible).

24 I need your phone number, in case --

25 I really don't know it, sir (unintelligible),

1 like

2 I said.

3 Hey, Officer (unintelligible) right now.

4 What is your name? What is your name? Hello.

5 Hello.

6 Yeah, got a officer (unintelligible).

7 You have an officer there --

8 Yeah.

9 -- in the garage?

10 Yeah.

11 Why was your friend shot? Sir? Hello. Hello.

12 (Unintelligible).

13 (The audio recording ended.)

14 **MR. JAY:** That's the first file. Here's the
15 second one.

16 (The exhibit was published in open court and
17 because of the nature of playing audio recordings and
18 the inability to distinguish between speakers, the
19 following transcription of the audio by this court
20 reporter should NOT be considered a verbatim record of
21 said audio recording.)

22 **VARIOUS SPEAKERS:**

23 Sunday, 2/24, 2012. The time, 2:40 a.m.

24 (Unintelligible).

25 Hello. Dialed 911?

1 (Unintelligible). Hello?
2 Hi. Dialed 911?
3 (Unintelligible) somebody got shot in the head.
4 Hurry up. (Unintelligible) hurry up.
5 Okay. Stop yelling. Where are you?
6 We're downtown (unintelligible). Hurry up
7 (unintelligible) over here. Hurry up.
8 (Unintelligible).
9 (Unintelligible). Hurry up.
10 Listen to me. I need you to stop yelling at me
11 so
12 I can get your information.
13 What do you mean stop yelling? My friend
14 just got shot in the fucking head.
15 Are you in the parking garage?
16 (Unintelligible) downtown (unintelligible). We
17 need the cops. Hurry up. Hurry up. Hurry up.
18 (Unintelligible).
19 (Unintelligible) got shot in the fucking head.
20 Listen to me. You're saying you're by the fire
21 station?
22 One Central (unintelligible).
23 One Central (unintelligible) apartment complex?
24 Downtown, downtown Orlando. (Unintelligible) no,
25 no.

1 (Unintelligible) address?
2 Oh, my God. You've got to go find a doctor.
3 Are you in the parking garage?
4 Yeah, we are. We are. Hurry up.
5 Are you at Central and Garland? I need to know
6 where you are.
7 We're in downtown on Central by the fire station.
8 All right. Hold on a second.
9 (Unintelligible) man. Man, (unintelligible).
10 Okay. (Unintelligible) he's in the parking
11 garage
12 next to the fire station (unintelligible), saying his
13 friend was shot in the head.
14 (Unintelligible).
15 (Unintelligible) his number?
16 I'm putting it in 3376. What level of the garage
17 are you on?
18 By downtown (unintelligible).
19 Okay. (Unintelligible) listen to me. What
20 level
21 are you on in the garage?
22 The second level, second level. Hurry up. Hurry
23 up.
24 Do you know who shot him?
25 Hurry up (unintelligible). Man, (unintelligible)

1 over here.

2 Listen to me. You have to answer my questions so
3 I can give it to the officers.

4 Yeah. They in the parking lot. Hurry up.

5 Are they in a car?

6 (Unintelligible) car (unintelligible).

7 What kind of car?

8 I don't know what car. It's a silver car, either
9 a Chevrolet or Cadillac.

10 What is your name?

11 My name is Mr. Santini.

12 Do you know if you're on Pine or Central, or
13 where

14 are you?

15 (Unintelligible) the parking lot right in front
16 of

17 (unintelligible), right in Central.

18 Are you in front of the fire station or behind?

19 No. We're in front of the fire station in the
20 parking lot, in the garage (unintelligible), right
21 here.

22 (Unintelligible)?

23 Officer, officer, officer, officer, officer,

24 I came downstairs. I need you upstairs. You're needed
25 upstairs.

1 (Unintelligible) are the officers with you?

2 What?

3 Are the officers with you?

4 (Unintelligible) I don't know (unintelligible).

5 Officer, (unintelligible) Cadillac. (Unintelligible)
6 yet.

7 Are you with an officer?

8 He's yelling down at an officer.

9 (Unintelligible).

10 I'm just going to (unintelligible).

11 Sir?

12 (Unintelligible).

13 Hang up.

14 (The audio recording ended.)

15 **THE COURT:** Okay.

16 **PROFFERED DIRECT EXAMINATION**

17 **BY MR. INTERLICCHIO:**

18 **Q.** Now, Mr. Santini, the first call, that was the
19 one being made by who?

20 **A.** Me.

21 **Q.** And the voice you heard, the initial female
22 voice, who was that?

23 **A.** I think it was Melissa. Melissa was on the
24 phone.

25 **Q.** Do you recognize her voice as you heard it just

1 now.

2 A. Yeah, I could hear her gasping for air.

3 Q. Do you recall that being her voice?

4 A. Yes.

5 Q. All right. She was describing excitedly the
6 events that were unfolding in the garage as you were
7 present?

8 A. No, we called after it happened.

9 Q. But immediately thereafter?

10 A. Yeah.

11 Q. Immediately after Pedro was shot, she's on 911?

12 A. Yes.

13 Q. You snatched the phone from her and began to
14 speak on the phone?

15 A. Yes.

16 Q. The second call we heard, that would be your
17 brother?

18 A. Yes. That's when he started saying there's a cop
19 coming because I had literally basically dropped the phone
20 and run out the parking lot garage and that's -- and there
21 was an officer standing on the sidewalk. He was on a bike,
22 had a white shirt on; and I ran up on him. I ran to him.
23 I told him, look, you need to come with me.

24 Q. So the second 911 call that your brother was
25 making, you weren't present for that?

1 **A.** No. I was downstairs out of the garage --

2 **THE COURT:** The answer no is sufficient. Thank
3 you.

4 Any other questions?

5 **MR. INTERLICCHIO:** No, Your Honor.

6 **THE COURT:** You're motioning towards Mr. LaFay.

7 **MR. INTERLICCHIO:** I thought he was going to ask
8 questions.

9 **THE COURT:** I thought we just took a break to
10 play Exhibit H.

11 **MR. INTERLICCHIO:** So the State at this time,
12 Your Honor, we're going to redact a portion of it,
13 which would be the second phone call from Victor
14 Santini and only be seeking to admit the phone call
15 made by Emmanuel Santini.

16 **THE COURT:** Mr. LaFay?

17 **MR. LaFAY:** Your Honor, I don't believe there's
18 been any authentication for the first female vocal
19 portion of the first call, so I'm not going to -- with
20 regard to Mr. Emmanuel Santini's call and exchange
21 with 911, excited utterance being what it is, I'm
22 going to say I don't object to that.

23 **THE COURT:** Okay. I'm going to overrule the
24 objection. I think that Mr. Santini has identified
25 the first part of the call. I don't think the defense

1 is prejudiced by it. I couldn't make out any relevant
2 information identifying your client as even being
3 present there or any other reason; and based upon the
4 objection being lack of predicate, I find there is a
5 sufficient predicate.

6 **MR. LaFAY:** Well, I'm sorry to make a string
7 objection, Your Honor. My second objection would be,
8 you know, with regard to both -- I'm sorry, I forgot
9 the name of the first speaker.

10 **THE COURT:** Melissa.

11 **MR. LaFAY:** Melissa and also Mr. Emmanuel
12 Santini's 911 exchanges, I would say it's not
13 relevant. You could listen to the whole entirety of
14 the exchange and under the test of relevance, does it
15 make anything more probative? I would say the answer
16 would be no. I understand there's difficulty getting
17 911 or emergency personnel to the place of the
18 shooting but how that's relevant, I would say it is
19 not and it just seems to be -- and I'm not --

20 **THE COURT:** Your objection is relevance?

21 **MR. LaFAY:** It is.

22 **THE COURT:** I understand the objection.

23 **MR. LaFAY:** It's more probative -- I beg your
24 pardon. It's more prejudicial than probative.

25 **THE COURT:** How is it prejudicial in any way,

1 shape or form? Tell me how it's prejudicial.

2 **MR. LaFAY:** The only prejudice is that it
3 displays panic, emotional -- and emotion to the jury.
4 I understand that. I'm not saying people shouldn't be
5 panicked and emotional. I'm saying that, in and of
6 itself, would just, I suppose, pull on their heart
7 strings for a sympathy card.

8 **THE COURT:** Okay. State, what's the relevance of
9 this?

10 **MR. INTERLICCHIO:** It shows exactly what occurred
11 moments after this incident. This also plays into the
12 argument of any self-defense because you don't hear
13 anyone in there sitting there going, hey, hide the
14 weapons, take the gun away from Pedro. There's none
15 of that in there. It's just sheer panic for a friend
16 who was killed without any reason.

17 It adequately describes the events as it
18 transpired. It corresponds to everything they're
19 saying, as far as venue, time, things of that nature.

20 **MR. LaFAY:** I don't think anybody who's taking a
21 gun away would say to the 911 operator, we're taking
22 the gun away from Pedro. I just don't think -- if
23 that's the great plan, I don't think they would
24 divulge that to the 911 police officer or police
25 dispatch. Thank you.

1 **THE COURT:** Any final responses?

2 **MR. INTERLICCHIO:** No, Your Honor.

3 **THE COURT:** I don't see how it's relevant. I
4 don't see how it's prejudicial either. But I don't
5 see how its relevant to prove a material point at
6 issue here. I don't see how it's relevant to this
7 witness, what he observed, regarding the time of the
8 shooting or his difficulties in trying to communicate
9 with the 911 system. So I'm going to sustain the
10 objection.

11 **MR. LaFAY:** Could I approach for 30 seconds?

12 **THE COURT:** Sure.

13 (There was a bench conference as follows:)

14 **MR. LaFAY:** Your Honor, I don't know this is
15 necessary, but I meant to make a motion in limine
16 following the deposition. Actually -- the actuality
17 is that Mr. Gallardo is Mr. Santini's best friend and
18 Mr. Santini hasn't done any of it here but throughout
19 the deposition, he's emotional about this and that's
20 fine. But he would say this was an assassination
21 attempt. It was an assassination. I heard that, and
22 there were other pronouncements of that kind. So I'm
23 moving in limine that I don't want anything to be
24 blurted out like that during my cross-examination. I
25 know that Mr. Interlicchio will control his witness on

1 direct.

2 **THE COURT:** So how would you like me to enforce
3 that?

4 **MR. LaFAY:** I'd ask for an instruction saying,
5 you know, to the extent you have an opinion about
6 assassination or anything like that, I'm going to ask
7 you not to voice it.

8 **MR. INTERLICCHIO:** I don't have an objection to
9 that.

10 **THE COURT:** Okay.

11 (The bench conference concluded.)

12 **THE COURT:** Mr. Santini, apparently during the
13 deposition that you took over lunch with the
14 attorneys, I'm told you had made statements regarding
15 that you believed this was an assassination attempt.
16 Do you recall that?

17 **THE WITNESS:** Yes.

18 **THE COURT:** Okay. Unless you're specifically
19 asked your opinion regarding was this an assassination
20 attempt in your opinion, I'm going to instruct you not
21 to volunteer your opinion that you believe it was an
22 assassination attempt. Fair enough?

23 **THE WITNESS:** Yes, sir.

24 **THE COURT:** Okay. Good.

25 Okay. Let's bring the jurors in.

1 **COURT DEPUTY:** Jury entering.

2 (The jury entered the courtroom at 1:52 p.m.)

3 **THE COURT:** Does the State recognize the return
4 and presence of the jury?

5 **MR. INTERLICCHIO:** State so does.

6 **THE COURT:** Defense?

7 **MR. LaFAY:** We do, Your Honor. Thank you.

8 **THE COURT:** Ladies and gentlemen, please be
9 seated. Thank you for your patience.

10 I'll invite the State to continue with its
11 questioning.

12 **DIRECT EXAMINATION (CONTINUED)**

13 **BY MR. INTERLICCHIO:**

14 **Q.** Now, who was the victim to you?

15 **A.** Who was the victim to me?

16 **Q.** Yeah.

17 **A.** Pedro.

18 **Q.** And how long had you known Pedro?

19 **A.** We grew up together. My whole life I've been in
20 Florida I've been next to him.

21 **Q.** Would you say you were best friends?

22 **A.** Yes.

23 **Q.** All right. And after your best friend was shot,
24 did you go down and look at him?

25 **A.** Yes.

1 **Q.** Tell the jury what you saw.

2 **A.** I seen him laying down. It looked like he was in
3 a fetal position. He was facing away from me. When I seen
4 him, he was -- he had a trail of blood coming from either
5 the front side of his head; and he was gasping for air.
6 That's when I seen his tongue literally come out of his
7 mouth. That's when I knew he needed CPR or somebody to
8 keep him breathing.

9 **Q.** All right. As your friend is there laying on the
10 ground in a fetal position bleeding, where is all the other
11 guys that were arguing with your group?

12 **A.** They vanished.

13 **Q.** Did they run away?

14 **A.** I guess.

15 **MR. LaFAY:** Objection, leading.

16 **THE WITNESS:** I don't know where. They just --

17 **THE COURT:** Sir, hang on one second. There was
18 an objection to the question. Just let me rule on
19 that. Then I'll decide if you can continue. I'm
20 going to --

21 **MR. LaFAY:** And improper predicate.

22 **THE COURT:** -- sustain the objection.

23 Next question.

24 **BY MR. INTERLICCHIO:**

25 **Q.** Where did they go?

1 **A.** I guess they ran to their car.

2 **MR. LaFAY:** I'm going to object, calls for
3 speculation.

4 **THE COURT:** Okay. Mr. Santini, you used the
5 phrase, I guess. I understand normal people do that,
6 but that would be guesswork as to what happened. So
7 if you don't know the answer, you can say I don't know
8 what happened, if that's the appropriate answer; but
9 try not to say, I guess. Does that make sense?

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** Thank you very much.

12 Please ask the question again.

13 **BY MR. INTERLICCHIO:**

14 **Q.** When you looked up, were they still there?

15 **A.** No.

16 **Q.** When you called 911, were they there?

17 **A.** No.

18 **Q.** Did they ever stick around?

19 **A.** No.

20 **MR. INTERLICCHIO:** Nothing further, Your Honor.

21 **THE COURT:** Thank you.

22 Any questions, Mr. LaFay?

23 **MR. LaFAY:** Thank you.

24 **THE COURT:** Mr. Santini, Mr. LaFay is going to
25 ask you questions. Just answer like you've been

1 doing. Okay?

2 **THE WITNESS:** Yes, sir.

3 **CROSS-EXAMINATION**

4 **BY MR. LaFAY:**

5 **Q.** Mr. Santini?

6 **A.** Yes.

7 **Q.** You mentioned that that evening you and
8 Mr. Gallardo and others of your group had gone to Vain's --

9 **A.** Yes.

10 **Q.** -- nightclub.

11 And along with the VIP or part of being in the
12 VIP section is that you got three bottles of liquor,
13 correct?

14 **A.** Yes.

15 **Q.** And is it fair to say that Mr. Gallardo had, oh,
16 eight mixed drinks?

17 **A.** Yes.

18 **Q.** And on top of that, he had shots of straight
19 liquor?

20 **A.** Yes.

21 **Q.** You lost count of how many shots he had?

22 **A.** Yes.

23 **Q.** Is that fair?

24 **A.** Yes. I really lost count. It was three bottles,
25 so they drunk them all empty.

1 Q. And throughout the -- you also mentioned that
2 there was a young lady by the name of Bianca in the group?

3 A. Yes.

4 Q. And is it fair to say that Mr. Gallardo had
5 intentions towards her?

6 A. Yes.

7 Q. He wanted to be with her?

8 A. Not be with her, just spend the night.

9 Q. A short-term being with her for the night?

10 A. Yes.

11 Q. But she had left?

12 A. Yes.

13 Q. And so when you and the remaining girls and
14 Mr. Gallardo and your brother got to the car and you were
15 speaking to the driver --

16 A. Yes.

17 Q. -- who was also a young lady; is that correct?

18 A. Yes.

19 Q. Was that Melissa?

20 A. Yes.

21 Q. Okay. But -- and everybody in your group was
22 there, correct?

23 A. Yes, except Bianca.

24 Q. Right. And you were -- she was gone?

25 A. Yes.

1 **Q.** So you weren't waiting for her, correct?

2 **A.** No.

3 **Q.** There were stragglers that were going to be
4 coming. You guys were just all there at the car; and you
5 were speaking to Melissa, correct?

6 **A.** Yes.

7 **Q.** Okay. So -- and I think you mentioned that you
8 were basically facing inward to the car, that's to say
9 leaning in the driver side window?

10 **A.** Yes.

11 **Q.** So -- and you were pretty focused on Melissa and
12 the girls in the car --

13 **A.** Yes.

14 **Q.** -- correct?

15 So you, from that position, didn't see how any
16 argument started. I'm speaking about what you saw.

17 **A.** I didn't hear no argument. There was no argument
18 going on at all.

19 **Q.** You neither saw nor heard?

20 **A.** Yes, I didn't hear or saw.

21 **Q.** Now, your brother Victor had also been drinking;
22 is that correct?

23 **A.** Yes.

24 **Q.** And he had had easily as many drinks as
25 Mr. Gallardo, correct?

1 **A.** Yes, probably more.

2 **Q.** Okay. And he on top of the eight or more drinks
3 that your brother Victor had, he also had shots of straight
4 liquor?

5 **A.** Yes.

6 **Q.** And too many to count; would that be fair?

7 **A.** Yes, sir.

8 **Q.** Fair to say that Mr. Gallardo was drunk?

9 **A.** You could say. I say he had a buzz.

10 **Q.** Okay.

11 **A.** He didn't seem drunk. He seemed like he had a
12 buzz. They were all feeling nice.

13 **Q.** Okay. And your brother was drunk?

14 **A.** You could say so. But I think he sobered up by
15 the time everything started, basically.

16 **Q.** After 13 or 14 drinks, he had sobered up by the
17 time he left the club?

18 **A.** No. I guess after the argument, the verbal
19 argument they had going on with the other crowd, I guess he
20 sobered up. He was ready to fight.

21 **Q.** All right. You told us that you know when you
22 looked up, I think your testimony was that Mr. Gallardo had
23 alerted you, tapped you on the shoulder, whatever and you
24 looked up and, you know, you saw one person there at the
25 time. And was that the person with the blue eyes?

1 **A.** No. First person I saw was Victor Santini. I
2 had to verify to make sure, okay, what's going on. Are we
3 really going to fight, or Pedro's just trying to call the
4 cops on him.

5 **Q.** All right. So, but you just saw sort of your
6 brother with one person, correct?

7 **A.** No. It was nobody around us. It was just my
8 brother standing in the middle of the street by himself.

9 **Q.** All right. And he was able to stand in the
10 middle of the street, correct?

11 **A.** Yeah. He was posted, like he was about to take
12 on a kid or something.

13 **Q.** All right. And when you say the middle of the
14 street, you're talking about -- you know, it's a parking
15 garage?

16 **A.** Yeah.

17 **Q.** Let me back up.

18 **MR. LaFAY:** If I could strike that question, Your
19 Honor.

20 **THE COURT:** Sure.

21 **MR. LaFAY:** Thank you.

22 **BY MR. LaFAY:**

23 **Q.** It's a parking garage, correct?

24 **A.** Yes.

25 **Q.** There's cars parked on both sides?

1 **A.** Yes, sir.

2 **Q.** There's kind of a lane in the middle?

3 **A.** Yes, sir.

4 **Q.** Your brother is standing out in the middle?

5 **A.** Yes, right in the middle, right behind the car.

6 **Q.** It's like there was bumper-to-bumper traffic?

7 **A.** No traffic.

8 **Q.** No traffic?

9 **A.** No.

10 **Q.** He's standing out there, and did you see who he
11 was interacting with?

12 **A.** Yes. That's when I glanced up and looked down to
13 the parking lot. That's when I saw the white guy. I'm
14 like, okay. I guess he's talking to that guy.

15 **Q.** But you were still in-between the cars?

16 **A.** Yeah, I was still leaning up on the car --

17 **Q.** You had not --

18 **A.** -- cause --

19 **Q.** Didn't mean to interrupt. Go ahead.

20 **A.** I was just leaning, because remember I had said
21 when Pedro notified me, I looked. I didn't see nobody. I
22 had to make sure was this really going to happen --

23 **Q.** You --

24 **A.** -- so I had to look up.

25 **Q.** Didn't mean to -- I heard you pause.

1 **A.** It's okay.

2 **Q.** Frankly, you weren't ready to disengage from the
3 girls yet?

4 **A.** I didn't really disengage at all. That was my
5 intentions. That was my plan, and I wanted to execute it.

6 **Q.** Okay. So, um, you -- and as you were looking, is
7 that -- is that when you saw this one person who was -- who
8 you thought your brother was talking to; and I think you
9 used the term haste walking?

10 **A.** Yes. Let me correct it. My brother was
11 responding to it cause they're the first ones who said
12 something to us first.

13 **Q.** Well, I understand that you've now told the jury
14 that this person started talking first, correct?

15 **A.** Yes --

16 **Q.** But the reality --

17 **COURT REPORTER:** I'm sorry. I didn't hear you.

18 **THE WITNESS:** Provoking, like, basically, that's
19 what he was doing. Instead of just walking by, he's
20 ignoring it. He turned around and started it.

21 **BY MR. LaFAY:**

22 **Q.** Okay. But as you previously told this jury about
23 two minutes ago, you didn't see or hear any of that,
24 correct?

25 **A.** Huh-uh.

1 **Q.** So you don't know who started it, right?

2 **A.** No, no, no. When I glanced up, that's when the
3 argument started. I guess they made eye contact and when
4 they made eye contact, the guy came walking back and, you
5 know, typical day out for the guys, guys can turn around
6 and say, what are you looking at?

7 **Q.** Okay.

8 **A.** From there it escalated. My brother said
9 something. He said something. At the same time, the guy
10 kept walking away, cause I'm assuming why would you talk
11 and be all the way down --

12 **Q.** I'm not going to ask you what you're assuming.

13 **A.** Okay.

14 **Q.** Now, Mr. Santini, but you've also testified that
15 Mr. Gallardo tapped you on the shoulder and said, hey,
16 there's an argument out there?

17 **A.** No, no. He didn't say there was a argument out
18 there. He says, hey --

19 **COURT REPORTER:** He said what? I'm sorry.

20 **THE WITNESS:** He said my name. They call me E
21 for short, E-man. He said, hey, E-man, this guy is
22 trying to fight your brother.

23 **BY MR. LaFAY:**

24 **Q.** Okay. So you don't know how all that started,
25 correct?

1 **A.** Honestly, no. I didn't see nobody for it to
2 start. That's the thing. I understand. I know when the
3 argument is starting cause the guys are gonna stand right
4 in front of each other.

5 **Q.** And you don't particularly want to have anything
6 to do with it at that point; is that correct?

7 **A.** At first my reaction was, all right. If it's my
8 brother, I'm going to go up to him, see what's going on.
9 Like I said, I'm always going to have my brother's back,
10 first thing.

11 **Q.** Okay.

12 **A.** So when I realized they were down the road, there
13 were literally people there, I was, okay. There is
14 somebody there. That's when it escalated.

15 **Q.** As you looked up and you're still by this girl's
16 window, you look up; and you see more people show up?

17 **A.** When he started -- when the guy started
18 approaching us, he started coming by himself first. Then
19 the crowd came from behind him.

20 **Q.** Okay. So, and you also told us that then you
21 sort of stepped down to where Victor was and tried to push
22 him back, correct?

23 **A.** Yes.

24 **Q.** Now you're in the middle of the road, too?

25 **A.** Yes. I'm in the middle of the whole commotion,

1 right in-between.

2 Q. And these people had walked up the middle of the
3 parking lane as well, correct?

4 A. They got close enough that they were literally
5 standing --

6 Q. Well, that's not my --

7 A. -- behind the vehicle.

8 MR. LaFAY: Your Honor, I don't mean to interrupt
9 the witness.

10 BY MR. LaFAY:

11 Q. Here's my question. This other group they had
12 walked up the middle of the parking lane towards your
13 brother, correct?

14 A. Yes, they came. They approached us, yes.

15 Q. Again, they weren't dodging cars or anything like
16 that. They just came right on up?

17 A. There was no cars to dodge. They walked straight
18 towards us.

19 Q. Okay. So that's when you attempted to separate
20 your brother or push him back, correct?

21 A. Yes.

22 Q. But he spun out?

23 A. Yes.

24 Q. He was right -- he was ready to fight, correct?

25 A. Yes.

1 Q. And so you then tried to push Mr. Gallardo back,
2 correct?

3 A. Yes.

4 Q. And you were also -- you needed to calm
5 Mr. Gallardo down, did you not?

6 A. Yes.

7 Q. And Mr. Gallardo was yelling, correct?

8 A. He only yelled once.

9 Q. But he -- well --

10 A. Cause the only yelling -- it wasn't really
11 yelling. It was a little argument between us, cause he was
12 too busy about the crowd getting closer to my brother.

13 Q. Okay. And I don't mean yelling. Thank you. Let
14 me -- but is it fair to say --

15 MR. LaFAY: Your Honor, if I could just take a
16 moment?

17 THE COURT: Sure.

18 BY MR. LaFAY:

19 Q. -- that your brother and Pedro were yelling back
20 at them; and then they, your brother and Pedro, started
21 going crazy for a little bit, yelling and stuff?

22 A. Yes.

23 Q. Did that happen?

24 A. Yes. The yelling part on Pedro's behalf was him
25 telling me because I kept shoving him back, and my back was

1 turned to the crowd. In other words, look, watch these
2 guys, they getting closer to your brother. They getting
3 closer to your brother. That's the only time any gestures
4 or anything because he was literally in front of me, and
5 I'm trying to push him back. When I looked behind, my
6 brother was just fine; but he was the one who was having
7 the verbal confrontation cause he just wanted --

8 **COURT REPORTER:** Because what?

9 **THE WITNESS:** He just wanted to fight, fistfight.

10 **BY MR. LaFAY:**

11 **Q.** Here's my question, though. Isn't it true that
12 your brother and Pedro were next to you? You were right
13 with them at one point because you're trying to push them
14 both back, correct?

15 **A.** Yes.

16 **Q.** And isn't it true that your brother and Pedro
17 were yelling back at them, the other group?

18 **A.** At the moment, no. Pedro was yelling at me
19 because like I said, they were arguing among themselves.
20 He was mad the way I was playing out that situation. I
21 guess he wanted me to --

22 **Q.** I'm not asking you to guess, but here I'm going
23 to ask if you recall giving a statement under oath to
24 Detective Montford on June the 24th of 2012?

25 **A.** Yes.

1 **Q.** And I think, Mr. Santini, that this tape recorded
2 statement and also your written statement was provided to
3 you. You certainly had it in your hand earlier today,
4 correct?

5 **A.** Yes.

6 **Q.** And do you recall saying on page ten of your
7 statement: And that's when -- cause I was standing right
8 here and behind me was Pedro, right here and behind me then
9 next to me, next to me, next to him was my brother and they
10 were yelling back at them; do you recall that?

11 **A.** Yes.

12 **Q.** So that's my question; and that is, Pedro and
13 your brother were yelling back at the other group when they
14 were ready to fight, correct?

15 **A.** The only person yelling at the group was my
16 brother. Pedro was yelling to me to watch my brother's
17 back because they were approaching my brother.

18 **Q.** So when you said they were yelling, meaning your
19 brother and Pedro, do you stand by that statement you made
20 on January 24th; or would you like to take it back and
21 change it?

22 **A.** No. I stand by it. I didn't specify who or what
23 was yelling about or who was getting yelled at but yeah,
24 there was yelling. There was a big commotion. Verbal
25 words were going back and forth.

1 Q. There was a lot of commotion?

2 A. Yes.

3 Q. And there was yelling going back and forth?

4 A. Yes. The only thing --

5 Q. And your brother was part of that, correct?

6 A. Yes.

7 Q. And Pedro was part of that; is that correct?

8 A. Yes.

9 Q. Okay. Now, excuse me. You told us that you were
10 basically pushing Pedro back in-between two cars to get him
11 into Pedro's car, correct?

12 A. Yes.

13 Q. And this entire time your back was turned to your
14 brother and this other group?

15 A. Yes.

16 Q. So from the time that you started pushing Pedro
17 back --

18 A. Yes.

19 Q. And I want -- and here's my question,
20 Mr. Santini: From the first time that you began to push
21 Pedro back to the car to the time he -- you heard the bang,
22 that was really quickly, correct?

23 A. Yeah, in the blink of a eye.

24 Q. And even though in here in our courtroom today as
25 I ask you questions and as the prosecutor asks you

1 questions about it, it may take minutes and minutes but
2 form the time you started pushing to the time Pedro was
3 halfway in the car to the time Pedro Gallardo stood up,
4 that was a couple seconds, correct?

5 A. Yeah, happened all at the same time.

6 Q. Because you, yourself, were moving quickly during
7 this time, correct?

8 A. Yes.

9 Q. You're not wasting any time?

10 A. Yes. I didn't want to fight. Honestly, I didn't
11 want to fight that night.

12 Q. And, basically, your concern was that this fight
13 was escalating, correct?

14 A. I really -- no. I really didn't think it was
15 going to escalate to the point of this tragedy.

16 Q. I'm not asking --

17 A. The reason why is cause my focus, like I said,
18 was the females.

19 Q. Okay.

20 A. So on my behalf I was now trying to squash the
21 beef because I didn't want to fight. Basically, I was just
22 trying to tell them, look, I don't want -- this is the
23 exact -- the quote by quote what I said that night to them:
24 I don't want to touch no guys. I used the "N" word. I
25 don't want to touch no guys.

1 Q. Mr. Santini, I'm sorry. Could you repeat that?

2 A. Yes. I said that I don't want to touch no guys.
3 I want to touch females. That's exactly what I said to
4 them.

5 Q. Okay. As you started pushing Mr. Gallardo back
6 to the car door, your brother was taking off his shirt,
7 correct?

8 A. Yes. I hadn't seen him, though.

9 Q. Okay.

10 A. When I glanced back after the shot, that's when I
11 seen Victor Santini without his shirt. So the process of
12 him taking it off, I didn't witness that. I didn't see him
13 taking off the shirt. All I seen was when I turned around,
14 his shirt was off.

15 Q. So by the time the shot had happened, your
16 brother's shirt was off, correct?

17 A. Yes.

18 Q. All right. Now, Mr. Gallardo, as you said, was
19 sort of half -- you had him halfway in the car, correct?

20 A. Yes, sir.

21 Q. And he jumped up?

22 A. Yes, refusing to get in, basically.

23 Q. He slammed the car door shut, correct?

24 A. Yes.

25 Q. Now, earlier in your testimony when you were

1 speaking to the jury and the prosecutor was asking you
2 questions, at one point you said that Mr. Gallardo slammed
3 the door as you've just told us. But at another time you
4 said, I slammed the door. To the extent that you ever said
5 that you shut the door, would that have just been a
6 misspeak; or do you stand by your earlier testimony that
7 Mr. Gallardo shut the door, slammed the door shut?

8 **A.** Yes.

9 **Q.** Sorry for that round of questions. So at this
10 point in time when Mr. Gallardo jumped up and stood
11 straight up, you were between him and I'll call it the --
12 your brother and the other people, correct?

13 **A.** Yes.

14 **Q.** He is in front of you?

15 **A.** Yes.

16 **Q.** You were facing his back?

17 **A.** Yes.

18 **Q.** I'm going to ask if, with the Court's permission,
19 Mr. Santini, if you could stand and demonstrate where
20 Mr. Gallardo was at that moment when he stood up, if this
21 passage here is between the two cars, the group is where
22 the jury is and over here, if you will, is the wall of the
23 parking garage.

24 **MR. LaFAY:** With the Court's permission?

25 **THE COURT:** Do you understand the layout that

1 Mr. LaFay just described?

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Okay. Are you able to do that?

4 **THE WITNESS:** Yes, sir.

5 **THE COURT:** Okay. If you'll step down, please.

6 **BY MR. LaFAY:**

7 **Q.** So if you were Mr. Gallardo -- I will not -- I'll
8 only do this with the Court's permission. I will not, of
9 course, put my hands on you actually. But I'll take your
10 position for the purposes of demonstration.

11 **A.** Okay. Get in front of me.

12 **Q.** I'm standing here. We're between the two cars?

13 **A.** Shoving me. Calm down. Calm down. You can put
14 your hands on me.

15 **Q.** No, I'm not going to. So I get you back -- I get
16 you back; and I start to get you into the car, correct?

17 **A.** The car is on this side.

18 **Q.** Thank you. Get you into the car.

19 **A.** I turn around.

20 **Q.** You turn around because I get you turned around?

21 **A.** And I have his back.

22 **Q.** I got you down. I'm not touching you but -- and
23 this is hard for the jury to see because I'm blocking.

24 **A.** So my hands are on his back right now. I'm
25 trying to shove him in the car.

1 Q. A shove. There's a big shove.

2 A. Door is open. When I looked at that same moment,
3 my sister, younger sister, Amaryllis Melendez, was walking
4 around the car that was parked right there, around like
5 there.

6 Q. So Amaryllis is right here?

7 A. Yes.

8 Q. Let's take a minute. Let's take a minute,
9 Mr. Santini.

10 A. Yes.

11 Q. Because the other group is back here, correct?
12 Your brother is back there also?

13 A. Yes, he's right behind the car.

14 Q. He's right behind the car. So when Mr. Gallardo
15 jumps up --

16 A. Slams the door and stood straight up.

17 Q. He stood straight up.

18 Now, are you still standing up behind him?

19 A. Right behind him.

20 Q. Just where I am, if you will?

21 A. Yeah.

22 Q. Amaryllis --

23 A. Was right there on the right-hand side.

24 Q. Amaryllis right here. She's looking back at
25 the --

1 **A.** She's --

2 **COURT REPORTER:** I can't get both of you at the
3 same time. I'm sorry.

4 **MR. LaFAY:** Okay. I beg your pardon.

5 **COURT REPORTER:** That's okay.

6 **THE COURT:** Mr. Santini wants you further to the
7 left. Right there.

8 **BY MR. LaFAY:**

9 **Q.** So Amaryllis is looking out at the action past
10 you two?

11 **A.** Uh-huh.

12 **Q.** Okay. You're still Mr. Gallardo. So he stands
13 up; and he is shot at this minute, correct?

14 **A.** Bang.

15 **Q.** And he's shot in the back -- he's facing the
16 wall. He's shot in the back of the head?

17 **A.** Yes.

18 **Q.** Correct?

19 **A.** Yes.

20 **Q.** And you were standing there. As you said, you
21 kind of froze?

22 **A.** Yes. I froze because I can't believe it was a
23 gunshot. Like I said, only reason why I know it was is my
24 sister's face expression.

25 **Q.** Okay.

1 **A.** She's like this. So I'm assuming --

2 **Q.** Don't assume.

3 **A.** I mean --

4 **THE COURT:** Hang on one second. Are you done
5 with the demonstration?

6 **MR. LaFAY:** I am. Thank you.

7 **THE COURT:** Mr. Santini, if you'll retake your
8 seat for me.

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** Thank you, sir.

11 Please continue, Mr. LaFay.

12 **BY MR. LaFAY:**

13 **Q.** And you were looking right at your sister,
14 Amaryllis, correct?

15 **A.** Yes.

16 **Q.** You have to say yes.

17 **A.** Yes, sir.

18 **Q.** Now, a couple of questions more. So as -- when
19 you testified that when Mr. Gallardo stood up, he was
20 immediately shot, correct?

21 **A.** Yes.

22 **Q.** You did not see him do anything with his hands,
23 such as lift them up?

24 **A.** There was no time. Like I said, it happened in
25 the blink of an eye. Once he stood up, bang. That's it.

1 Q. His hands --

2 A. Never moved a finger.

3 Q. I'm sorry. His hands never went up?

4 A. No.

5 Q. He never shrugged or turned around towards him --

6 A. No.

7 Q. -- is that correct?

8 A. Yes.

9 Q. You never heard any verbal threats made to
10 Mr. Gallardo; is that correct?

11 A. Yes, sir.

12 Q. You never saw a gun or the shooter, correct?

13 A. No.

14 THE COURT: Unfortunately, Mr. LaFay said,
15 correct. So was his statement correct? You said no,
16 that his statement was not correct.

17 THE WITNESS: Yes, it's not correct. I didn't
18 see the shooter.

19 THE COURT: Right.

20 Don't say the word correct after your sentence if
21 you want the answer.

22 MR. LaFAY: In fairness, those are bad questions.

23 BY MR. LaFAY:

24 Q. Would it be fair to say that Amaryllis had a
25 better view of what was going on behind you obviously than

1 you, yourself, did?

2 **A.** Yes. She seen it coming.

3 **MR. LaFAY:** May I take a moment, please, Your
4 Honor?

5 **THE COURT:** You may.

6 **MR. LaFAY:** I don't have any further questions.
7 Thank you, Your Honor.

8 **THE COURT:** Thank you.

9 Mr. Interlicchio, any redirect examination?

10 **MR. INTERLICCHIO:** Yes, Your Honor.

11 **THE COURT:** Hang on a second while Mr. LaFay
12 packages his notes.

13 You may proceed.

14 **MR. INTERLICCHIO:** Thank you, Your Honor.

15 **REDIRECT EXAMINATION**

16 **BY MR. INTERLICCHIO:**

17 **Q.** Now, Mr. Santini, I want to take you to the
18 moment you're looking up and both your brother, Victor, and
19 your friend, Pedro, are having words with this group.

20 **A.** Yes.

21 **Q.** All right. How many men are in this group that
22 is not part of your group?

23 **A.** I couldn't really keep count. Like I said, it
24 was a good seven.

25 **Q.** So at this point when you look up, it's seven

1 versus two?

2 **A.** Yes.

3 **Q.** And you approach when you first attempt to pull
4 who out of this conflict?

5 **A.** Victor.

6 **Q.** All right. When I say conflict, no hands are
7 being exchanged, right?

8 **A.** No, just words.

9 **Q.** And what happens with Victor?

10 **A.** I shoved him up. I placed my hand in his chest.
11 I said, calm down, bro, calm down, that we don't need to
12 fight. That's when he spun off to the left. He literally
13 did a whole spin and by that time, he's past -- or he's
14 already past me and Pedro was still standing in front of
15 me. That's when I kept saying, calm down.

16 **Q.** Now, how far away is Victor and this other group
17 when you first have this -- when you first come up to
18 Victor?

19 **A.** I said a hand's reach, a hand's reach.

20 **Q.** Okay.

21 **A.** Literally, right behind --

22 **COURT REPORTER:** I'm sorry. I didn't understand
23 you.

24 **THE WITNESS:** Had about a hand's reach.

25 **COURT REPORTER:** After that.

1 **THE COURT:** They were literally right behind me
2 is what he said.

3 **THE WITNESS:** Yes.

4 **BY MR. INTERLICCHIO:**

5 **Q.** Okay. So you could reach out and touch them if
6 you wanted to?

7 **A.** Yes.

8 **Q.** And when you were telling your brother, what did
9 you say to your brother?

10 **A.** Calm down, calm down.

11 **Q.** Okay. And as you're telling your brother to calm
12 down, are you whispering in his ear; or are you saying it
13 out loud?

14 **A.** Everybody is yelling.

15 **Q.** Are you yelling at your brother to calm down?

16 **A.** Yes.

17 **Q.** Okay. So you're clearly trying to defuse the
18 situation?

19 **A.** Yes.

20 **MR. LaFAY:** Objection, leading and repetitive.
21 Thank you.

22 **THE COURT:** Overruled.

23 **BY MR. INTERLICCHIO:**

24 **Q.** But your brother re-engages, right?

25 **A.** Yes.

1 Q. And he's being combative verbally, right?

2 A. Yes.

3 Q. So then who do you switch your attention to next?

4 A. Pedro Gallardo.

5 Q. And what do you say to Pedro?

6 A. Say, Pedro, we don't need to fight.

7 Q. Okay. How far away are you from the group when
8 you're talking to Pedro?

9 A. I had to shove him twice. Say about a good ten
10 to eight feet.

11 Q. So Pedro is further away from the group?

12 A. Yes. By that time, I already shoved him back and
13 I mean, shoved. My brother and Pedro are big guys.
14 They're bigger than me. I'm shoving them back.

15 Q. Okay. Before you start shoving him back, where
16 do you find Pedro, to start with Pedro, trying to get him
17 out of the fight?

18 A. Right next to Victor. We all, like we all -- we
19 call it squatted. We all met up next to each other.

20 COURT REPORTER: You're going to have to repeat
21 that.

22 THE WITNESS: Sorry. Like, squatted, meaning
23 like being prepared for what's about to come.

24 BY MR. INTERLICCHIO:

25 Q. Now, when you first -- because you've already

1 tried to get Victor out of it, he's not cooperating; and
2 you're trying now for Pedro?

3 **A.** Yes.

4 **Q.** How far away from you -- from the group is Pedro?

5 **A.** Right now I'm getting -- like I said, I got him
6 all the way till I got him in-between the cars.

7 **Q.** No, no, no. When you first start on Pedro, is he
8 also an arm's length like Victor?

9 **A.** No. He was always behind. Remember, he's the
10 one that approached me, so he left Victor to come get me.
11 I was standing, leaning into the car when he notified me,
12 look, somebody's trying to fight your brother. When I
13 glanced up, who is he talking about? I don't see nobody in
14 my view. That's when I look over the car. When I looked
15 down, I see the guy. He's yelling something back to my
16 brother.

17 My brother is just standing there; and we called
18 it posted up, meaning like ready-to-fight stance. He was
19 literally standing there in that position and that stand.
20 So when I realized that, I was, hold on, that's my brother.

21 So I approached my brother and said, what's going
22 on, Vic? They were basically the whole time right there
23 arguing back and forth with that one guy, him and him. I
24 go, Vic, blah, blah, blah; and then it escalated from
25 there.

1 **Q.** All right. Let me backtrack. When you're trying
2 to get Victor away to kind of break this fight up, is
3 Victor and this about seven or you're approximating seven
4 individuals right next to each other?

5 **A.** Yeah. They were literally right in front of each
6 other. That's when Pedro put his hand up when I shoved
7 him. I got him so far out. He put his hand up, hey, he's
8 getting closer to your brother. Watch him. He's getting
9 closer to your brother.

10 **Q.** And is this as you're pushing Pedro away?

11 **A.** Yes.

12 **Q.** So it's seven versus three; and you have your
13 back to the group, right?

14 **A.** Yes.

15 **Q.** You're pushing Pedro away from them?

16 **A.** Yes.

17 **Q.** And the only person who's still kind of jawing
18 back and forth is your brother and the group?

19 **A.** Yes.

20 **Q.** And as you're pushing Pedro, is he making any
21 threats toward the group?

22 **A.** No.

23 **Q.** Is he shouting, I've got a gun; and I'm going to
24 get you?

25 **A.** No, not whatsoever. Like I said, we got into an

1 argument because I guess the way I played it out. I guess
2 he wanted me to react a different way, turn around and
3 let's go. We're going to fight, we're going to fight.

4 **MR. LaFAY:** I'd object to this particular point
5 of the testimony.

6 **THE COURT:** I'll sustain the objection.

7 Next question, Mr. Interlicchio.

8 **BY MR. INTERLICCHIO:**

9 **Q.** And while you're separating these groups, are you
10 making it abundantly clear with your words that you're
11 trying to break up this fight?

12 **A.** Yes.

13 **Q.** Or potential fight?

14 **MR. LaFAY:** I'm going to --

15 **THE WITNESS:** Both crowds --

16 **THE COURT:** Hang on one second.

17 **MR. LaFAY:** I have an objection, since, first
18 thing, it would seem to be compound, since clear to
19 whom. It's not more than one person. It's a group.

20 **THE COURT:** Sustained, compound question. Any
21 other objections?

22 **MR. LaFAY:** Yes.

23 **THE COURT:** I sustained the objection.

24 Next question.

25

1 **BY MR. INTERLICCHIO:**

2 **Q.** The words that you used when you were next to the
3 group with Victor and Pedro, were those words to fight or
4 words trying to stop the fight?

5 **A.** Stop the fight.

6 **Q.** As all this incident is going by, are you paying
7 attention to see if cars are coming or anything like that?

8 **A.** My back was turned to the crowd the whole time.

9 **MR. INTERLICCHIO:** Just one moment.

10 No further questions, Your Honor.

11 **THE COURT:** Okay. Mr. LaFay, any recross on what
12 was brought up on redirect?

13 **MR. LaFAY:** Your Honor, I have no further
14 questions. Thank you.

15 **THE COURT:** May this witness be released,
16 Mr. Interlicchio?

17 **MR. INTERLICCHIO:** Yes, he may.

18 **THE COURT:** Sir, thank you. You're released from
19 your subpoena.

20 **THE WITNESS:** Have a good day, sir.

21 **THE COURT:** Thank you.

22 Next witness, State?

23 **MR. JAY:** Amaryllis Melendez.

24

25

1 **THE WITNESS:** Okay.

2 **THE COURT:** Thank you, very much.

3 You may inquire.

4 **DIRECT EXAMINATION**

5 **BY MR. JAY:**

6 **Q.** Do you remember the evening of June 23rd, 2012,
7 going into the morning of June 24th, 2012?

8 **A.** Yes.

9 **Q.** What were you doing that night?

10 **A.** We were at a club.

11 **Q.** And when you say "we," who do you mean?

12 **A.** My two brothers, Victor and Emmanuel, Pedro and
13 three girls Melissa, me, um, Sharine and Bianca.

14 **Q.** And whose last names out of that group do you
15 know; could you tell us?

16 **A.** My brothers.

17 **Q.** All right. What are Victor and Emmanuel's last
18 name?

19 **A.** Cruz -- I'm sorry, Santini.

20 **Q.** In some Hispanic cultures do you take your mom's
21 last name and father's last name and sometimes it can be
22 Santini or Cruz?

23 **A.** Yes.

24 **Q.** So do they go by Santini or Cruz?

25 **A.** Santini.

1 **Q.** Okay. But Cruz is also one of their other
2 surnames?

3 **A.** I believe so, yeah.

4 **Q.** Okay.

5 **A.** I think they're just Santini.

6 **Q.** And yours is Melendez?

7 **A.** My maiden name, yes.

8 **Q.** Did you know Pedro's last name?

9 **A.** Gallardo.

10 **Q.** Okay. And what about the other girls, did you
11 know any of their last names?

12 **A.** No, not by heart.

13 **Q.** How long did you know everybody in the group?

14 **A.** Of course, my brothers all my life; Pedro, since
15 I was a little girl and the other three, maybe in my
16 teenage years.

17 **Q.** Okay. So you've known them for some time; is
18 that fair?

19 **A.** Yeah.

20 **Q.** About what time did you-all get to the club that
21 you're talking about?

22 **A.** Maybe 10:00, 11:00.

23 **Q.** Where is this club; and what's it called, if you
24 remember?

25 **A.** Vain.

1 Q. Okay. Where is it?

2 A. Downtown.

3 Q. Not far from here?

4 A. No.

5 Q. And --

6 **THE COURT:** I actually turned it up because the
7 witness is soft-spoken.

8 **MR. JAY:** I'll stay away.

9 **BY MR. JAY:**

10 Q. How did you-all get there?

11 A. We drove.

12 Q. Who out of your group drove?

13 A. Bianca drove her car. Sharine drove her car.

14 Q. And so who rode with who?

15 A. I drove with Pedro. I believe my brothers were
16 with Bianca, and then I drove with Sharine and I think
17 Melissa.

18 Q. Okay. Do you remember what kind of cars you guys
19 had that night?

20 A. Bianca's, I think it was a Lancer; and I don't
21 remember Sharine's.

22 Q. Okay. Where did you-all park?

23 A. In the garage.

24 Q. Were you able to park near each other?

25 A. A couple cars apart, I think or right next to

1 each other.

2 Q. Okay. Same proximity, same floor of the garage?

3 A. Yes.

4 Q. Okay. And did you guys go anywhere before Vain,
5 or do you go directly to Vain?

6 A. No, we went directly.

7 Q. And while you're at Vain, what do you guys do
8 there?

9 A. Just -- I mean, it's a club. I guess we just
10 walked in, dancing. That's about it.

11 Q. All right.

12 A. Listen to music.

13 Q. Did anybody drink?

14 A. Not that I know of. I wasn't drinking. I wasn't
15 able to drink.

16 Q. Were you dancing?

17 A. Yeah. I mean, it was music playing.

18 Q. All right. And how long did you-all stay there?

19 A. Not long, say about 30 minutes to an hour.

20 Q. Okay. What did you guys do after that?

21 A. We decided to go to a different club and I think
22 it was to Beacham club -- yeah, that was it -- after that.
23 We just went there, not all of us, though, because I
24 believe that the ladies were free. So me and the ladies
25 went, and the boys went a different way. They didn't go

1 in.

2 Q. All right. So by the ladies, did all four of you
3 girls go?

4 A. No, Bianca wasn't there.

5 Q. Where was she?

6 A. She was nowhere to be found.

7 Q. Did she mention where she was going?

8 A. No. She got lost in the club somewhere, in the
9 first club.

10 Q. Okay. Did you ever find her again that night?

11 A. Yes, after everything happened.

12 Q. Okay. We'll get back to that. All right. Just
13 the girls go to Beacham?

14 A. Yes.

15 Q. Minus Bianca?

16 A. Yes.

17 Q. And you don't know where the boys went, or did
18 you know?

19 A. They probably just went --

20 Q. Well, no probablies.

21 A. I don't know where they went.

22 Q. What I'm getting at is, did you-all walk together
23 to the Beacham and girls went into Beacham?

24 A. Yes. We parted right there.

25 Q. And the boys went wherever the boys went?

1 **A.** Yes.

2 **Q.** Did you meet back up with the boys in your group?

3 **A.** Eventually, yes.

4 **Q.** Where and about when would that have been?

5 **A.** We didn't stay in Beacham for long. So after
6 that, all I can remember is we met up exactly at the
7 garage. Like, we were walking. They were in front of the
8 garage, and we just seen them. That's when we got
9 together.

10 **Q.** Okay. And when you get to the garage, is it your
11 testimony that you just -- the boys were already there?

12 **A.** Uh-huh.

13 **Q.** Is that a yes?

14 **A.** Yes.

15 **Q.** All of the boys, your brothers and Pedro?

16 **A.** Yes.

17 **Q.** And did the three girls come together?

18 **A.** Yes, but Bianca wasn't there.

19 **Q.** So it's just you, Melissa -- and who was the
20 other girl again?

21 **A.** Sharine.

22 **Q.** All right. What do you-all do as a group of six
23 outside the front of the parking garage?

24 **A.** That's when we were walking towards the car, and
25 we were just waiting there to see if Bianca will pop up.

1 Q. Okay. Did anybody stay down or did everybody go
2 up to the parking garage?

3 A. No, we all went up --

4 Q. All right.

5 A. -- together.

6 Q. Now, up until this point in the night, had you,
7 with your own eyes or ears, witnessed any confrontation?

8 A. No.

9 Q. Between anybody in your group and anybody?

10 A. No.

11 Q. Do you make it to the level where you guys
12 parked?

13 A. Yes.

14 Q. When you guys get up there, what, if anything,
15 happens?

16 A. We were just sitting there talking, like I said,
17 waiting for Bianca to pop up. I remember my brother going
18 to the store really fast.

19 Q. Which brother?

20 A. Victor.

21 Q. Okay. Do you recall which store he said he
22 intended to go to?

23 A. No. I think he just went to a store.

24 Q. Okay.

25 A. Gas station. And then a couple minutes later he

1 came up. That's when the other gentlemen were coming up.

2 **Q.** Let's stop. What other gentlemen are you talking
3 about? You're pointing. Do you see somebody in the
4 courtroom today?

5 **A.** Yeah, the -- I don't know what you guys refer him
6 to.

7 **Q.** Okay. Can you point out where this person is and
8 what this person is wearing?

9 **A.** With the blue suit jacket (indicating).

10 **MR. JAY:** May the record reflect she's identified
11 the defendant?

12 **THE COURT:** The record will reflect -- the record
13 will reflect Ms. Phillips has identified Mr. Batista
14 in this case.

15 Please continue.

16 **BY MR. JAY:**

17 **Q.** All right. When you first see the defendant,
18 where do you see him?

19 **A.** He was in a group with the guys. They were
20 walking into the garage.

21 **Q.** Okay. Now, is it my understanding there's stairs
22 in this parking garage?

23 **A.** I think they're elevators.

24 **Q.** Did you see which way they came?

25 **A.** No. I just seen a group of guys walking

1 towards -- the cars are parked. They were walking this
2 way.

3 **Q.** All right. Now, on the parking garage, like as
4 far as like the slant from one level to the next, were you
5 guys at the bottom of the slant, middle of the slant or top
6 of the slant?

7 **A.** Going up the slant.

8 **Q.** But like how far up? That's what I'm getting at.

9 **A.** A couple feet.

10 **Q.** Okay. So if I were to ask you how far along up
11 the slant, like, are you the first third, the middle third,
12 the last third? Like, if I'm walking up that slant, how
13 far would I have to go?

14 **A.** I would say, I think, the middle.

15 **Q.** Okay. All right. And so are you-all in your
16 cars, or are you hanging out behind your cars?

17 **A.** Behind.

18 **Q.** All right. And when you first see them, are
19 they -- well, let me strike that.

20 All right. If this is the back of your car, did
21 you guys pull in front first?

22 **A.** Yes.

23 **Q.** So you say you're behind the cars; is that fair?

24 **A.** Yes.

25 **Q.** Now, if you're looking out from behind your car,

1 is this group of guys coming up from your right or from
2 your left?

3 A. The right.

4 Q. And how many people did you see coming up with
5 the defendant?

6 A. Five or six. It was a big group.

7 Q. All right. And what, if anything, happens as
8 they're walking up?

9 A. I don't know what you're saying.

10 Q. Does anything happen or do they just walk by and
11 that's the end of the night?

12 A. No. Like, there was, I guess --

13 MR. JOSHI: I'm going to object to speculation.

14 THE COURT: In normal talking, we use the phrase
15 "I guess."

16 THE WITNESS: Oh, sorry.

17 THE COURT: It's okay. Just hear me out. We
18 can't have guessing. It's speculation. I'll sustain
19 the objection. Don't say anything you guess. If you
20 know, you can say you know. If you don't know, you
21 can say you don't know.

22 Please ask your question, Mr. Jay.

23 BY MR. JAY:

24 Q. What happens next as you see the defendant and
25 group of, I think, five or six other people walking?

1 **A.** There was -- I don't know exactly what happened
2 as they were walking, but I know there was words exchanged.

3 **Q.** Okay. Let me stop you there. Could you hear who
4 exchanged the words?

5 **A.** Not exactly.

6 **Q.** Could you tell whether it was either of your
7 brothers or Pedro?

8 **A.** Yes. It had to be between the boys, yes.

9 **MR. JOSHI:** Your Honor, I'll object to
10 speculation.

11 **THE COURT:** I'll sustain the objection and ask
12 you to rephrase your question.

13 **MR. JOSHI:** Move to strike the last comment --
14 Your Honor, I'll let her continue what she was saying.

15 **THE COURT:** Okay.

16 **MR. JOSHI:** Withdraw my objection.

17 **THE COURT:** Okay. Please continue.

18 **BY MR. JAY:**

19 **Q.** All right. What I'm trying to get out is you've
20 testified that there's a group of three boys and three
21 girls in your group, right?

22 **A.** Yes.

23 **Q.** And then there's a group of six or seven boys
24 that you don't know coming up the parking garage, right?

25 **A.** Yes.

1 **Q.** Now, when you say you hear words exchanged, what
2 I'm trying to get at is did you hear words exchanged
3 between the group, one group to the next or was it just
4 words among one group, like Pedro and your brothers talking
5 amongst themselves? That's what I'm asking.

6 **A.** I don't know.

7 **Q.** Okay. Did you hear any of the words? Could you
8 make out any of the words that were being said?

9 **A.** No.

10 **Q.** Okay. Could you tell if any of the words were
11 coming from any of the members of the group that you said
12 the defendant was in?

13 **A.** I don't know.

14 **Q.** Okay.

15 **A.** It just -- I just know one thing led to another.

16 **Q.** Okay. Let's talk about how much or how many
17 words were exchanged before something else happens. Can
18 you tell us about how many words or how much words were
19 exchanged?

20 **A.** Um, maybe ten --

21 **Q.** Okay.

22 **A.** -- words were exchanged, I would say, yeah.

23 **Q.** Now, at about this time that you say words were
24 being exchanged, do the defendant and his group that you
25 described, do they continue walking; or do any of them

1 stop? What happens?

2 A. Yes.

3 Q. Yes to what?

4 A. From the other group.

5 Q. Did they stop or keep going?

6 A. Yes, one of them did stop.

7 Q. All right. Can you describe this one person who
8 did stop?

9 A. It was the stocky one. I don't remember, um --

10 Q. Height, hair, race?

11 A. He wasn't that tall. He was pretty short and
12 stocky, short hair, shaded beard.

13 Q. White, Hispanic, something else?

14 A. Yes.

15 Q. Yes to what?

16 A. Like, light skin.

17 Q. Okay. All right. So that one person in the
18 group stops, but the defendant and the rest of the group
19 keeps going; is that what you're saying?

20 A. Well, they were behind him.

21 Q. Okay.

22 A. Like, they were backing him up in a way, yeah.

23 Q. All right. So what happens after this
24 fair-skinned guy stops?

25 A. He was just staring, like he was just staring at

1 them, like, okay, like, he wanted them to do something.

2 **Q.** Now, at this point in time, is your attention
3 drawn to anybody in particular?

4 **A.** My brother, yes.

5 **Q.** All right. And was your brother saying or
6 doing -- which brother are we talking about?

7 **A.** Victor.

8 **Q.** Okay. Why is your attention drawn to him?

9 **A.** That's when words started exchanging. I was
10 trying to have him calm down.

11 **Q.** Okay. Now, at this particular point in time, can
12 you tell who is exchanging words with whom?

13 **A.** So I don't know exactly. I just know that the
14 guy was staring; and that's when I guess -- all my brothers
15 were like, what's going on? What are you staring at?

16 **Q.** Okay. And does the starrer say anything in
17 response when he's asked, what are you staring at?

18 **A.** No. He just kept staring.

19 **Q.** Okay. Now what happens?

20 **A.** They --

21 **Q.** Who's they?

22 **A.** Well, my brothers and Pedro, that's when they got
23 offended, I guess, when my brothers were like -- my
24 brothers and Pedro were like, what are you looking at? And
25 the guy who was staring, I think, like, he got --

1 Q. Just tell us what you saw him or heard him do.

2 A. Yeah. They started arguing back and forth.

3 Q. Let me stop you. Now, at this point this
4 fair-skinned guy, when you say they're arguing back and
5 forth, is he actually opening his mouth and saying things?

6 A. Yeah. That's when his guys and my brothers
7 started arguing back and forth, just arguing. I can't say
8 exactly what they were saying but just arguing back and
9 forth: What are you looking at; what are you going to do,
10 stuff like that.

11 Q. Okay.

12 A. It was just on and on.

13 Q. Where are you at this -- like up until this point
14 in the event, where are you?

15 A. Holding my brother back.

16 Q. All right. And is -- are you still at the back
17 of one of your cars?

18 A. Yes.

19 Q. All six of you?

20 A. Yeah. Like, we were still next to the car, yes.

21 Q. All right. So what happens after this verbal
22 back and forth between the fair-skinned guy and your
23 brother, Victor?

24 A. Well, yes, I had him calmed down.

25 MR. JOSHI: I would ask her to say who "him" is.

1 **THE WITNESS:** Victor, my brother.

2 **THE COURT:** Thank you.

3 **THE WITNESS:** I was having Victor to calm down,
4 holding him back. I was kind of in-between, telling
5 each of them to calm down.

6 **MR. JOSHI:** Just ask she clarify.

7 **BY MR. JAY:**

8 **Q.** By them --

9 **THE COURT:** I'll sustain the objection. Please
10 continue.

11 **BY MR. JAY:**

12 **Q.** Who are you talking about besides Victor? Who
13 are you between?

14 **A.** Just Victor and him there.

15 **Q.** By "him," are you referring to the defendant or
16 the fair-skinned guy?

17 **A.** It was him. I was in-between. It was all
18 groups, the side of them. I was just in-between, okay,
19 calm down, calm down.

20 **Q.** Now, at this point, did you see this defendant do
21 anything or say anything up until this point?

22 **A.** Yes. That's when it narrowed down. My other
23 brother --

24 **COURT REPORTER:** Say that again. I'm sorry.

25 **THE WITNESS:** I'm sorry. Emmanuel, I didn't see

1 him in the picture. My main focus was on my brother,
2 Victor. That's when it narrowed down. I guess my
3 brother, Victor --

4 **BY MR. JAY:**

5 **Q.** Don't guess.

6 **A.** My brother, Victor, he had calmed down. That's
7 when it narrowed down to Pedro and him arguing and that's
8 when --

9 **Q.** Let's stop you. "Him," who are we talking about?

10 **A.** (Indicating).

11 **Q.** The defendant in the courtroom?

12 **A.** Yes.

13 **Q.** Let me see. Tell me if any part of this is
14 inaccurate. Are you saying that things had calmed down
15 with Victor and the fair-skinned guy?

16 **A.** Yeah. He kind of shadowed. He went to the back.
17 He shadowed. I didn't see him in the picture anymore.

18 **Q.** All right. By he shadowing, are you talking
19 about the fair skinned guy from the other group?

20 **A.** Yes.

21 **Q.** So now it's Pedro and the defendant who are
22 exchanging words?

23 **A.** Yes.

24 **Q.** How far apart are they from each other?

25 **A.** Like two feet, three. They weren't that far.

1 Q. Can you --

2 A. Like, they were not that far but not too close
3 either.

4 Q. For the record, you kind of hung your hands out
5 with your elbows directly under them. What, if anything,
6 do you recall them saying to each other?

7 A. Just -- I can't recall anything specific. I just
8 remember like, what are you going to do?

9 Q. Who's saying, what are you going to do?

10 A. I can't really -- it was just a lot back and
11 forth. I can't really put --

12 Q. At this point in time with the back and forth
13 between Pedro Gallardo and the defendant, where is the rest
14 of the group walking with the defendant?

15 A. Just in the back.

16 Q. How far back?

17 A. Five feet. They were a couple -- they were right
18 behind him, so...

19 Q. Okay. Where is your brother Emmanuel?

20 A. They're still -- I believe I remember Emmanuel
21 standing next to Pedro, and Victor was beside me.

22 Q. All right. And what, if anything, is Emmanuel
23 doing?

24 A. I don't recall.

25 Q. All right.

1 **A.** I don't recall.

2 **Q.** All right. So what happens after the verbal
3 exchange between the defendant and Pedro Gallardo?

4 **A.** While they were arguing, the defendant while it
5 got heated, he went to the car. I guess --

6 **Q.** Don't guess. Did you see the defendant go
7 somewhere?

8 **A.** Yes, to the car.

9 **Q.** And when you say "the car," what are you talking
10 about?

11 **A.** The vehicle that he came in.

12 **Q.** And how far away is this vehicle?

13 **A.** Couple cars down.

14 **Q.** And is it down or up the slope?

15 **A.** It's like -- it was like --

16 **Q.** Flat?

17 **A.** Yeah.

18 **Q.** All right. So let me ask it a different way. Is
19 it farther from the stairs or elevators?

20 **A.** Yes.

21 **Q.** So your car and your other friend's car was
22 closer to the stairs, elevators than where the defendant
23 went?

24 **A.** Yes.

25 **Q.** Okay. Now, did anybody go with the defendant to

1 that car?

2 **A.** No.

3 **Q.** What did this car look like if you remember?

4 **A.** I -- I remember it to be a BMW. It was a big
5 luxury car.

6 **Q.** Okay. And what's his pace as he walks away from
7 Mr. Gallardo towards this car?

8 **A.** Fast pace, like walking fast.

9 **Q.** Is he saying anything that you hear?

10 **A.** I didn't hear anything specific. I was just
11 paying attention to my group of people.

12 **Q.** All right. How long is he at this car?

13 **A.** Not long, just went in and got something and
14 walked back.

15 **Q.** And what makes you surmise that he went and got
16 something?

17 **A.** Cause I seen -- I looked at -- I glanced at what
18 he was doing and then that's when --

19 **Q.** And what was he doing?

20 **A.** He went into the car and grabbed a gun.

21 **Q.** All right. Now, did he go into the trunk, or did
22 he open a door? What did you see?

23 **A.** I seen the driver side open.

24 **Q.** Okay. And after he goes inside of the car, does
25 he shut that door?

1 **A.** I don't recall.

2 **Q.** All right. What does he do after he goes inside
3 the car?

4 **A.** He grabs the gun and walks towards...

5 **Q.** Now, at what point in time do you first see this
6 gun?

7 **A.** When he walked closer to us.

8 **Q.** Okay. Does he say anything?

9 **A.** To Pedro, yes.

10 **Q.** What does the defendant say to Pedro?

11 **A.** I remember Pedro -- they were exchanging words.
12 I don't know exactly what Pedro was saying, but the
13 defendant was saying okay. Well, I don't know exactly.
14 But he said, okay. I can show you --

15 **MR. JOSHI:** Your Honor, I'm going to object, ask
16 to approach.

17 **THE COURT:** Sure.

18 (There was a bench conference as follows:)

19 **THE COURT:** What's the objection?

20 **MR. JOSHI:** These statements are a discovery
21 violation. I haven't gotten any discovery of these
22 statements. I deposed her. She didn't say they said
23 anything at the time.

24 **THE COURT:** What were the statements?

25 **MR. JOSHI:** I don't know the statement she's

1 going to say.

2 **THE COURT:** But no statements up to this point?

3 **MR. JOSHI:** What's that?

4 **THE COURT:** No statements up to this point?

5 **MR. JOSHI:** I think they're going to elicit
6 statements from my client that have been disclosed to
7 her.

8 **THE COURT:** State?

9 **MR. JAY:** I don't have any statements in my
10 possession. What she testifies to is what she
11 testifies to.

12 **THE COURT:** Okay.

13 **MR. JOSHI:** Well, if the State is calling and
14 knows that she's going to make additional statements,
15 I have a duty to know about it.

16 **THE COURT:** The State's just said they're not
17 aware of any statements.

18 **MR. JOSHI:** They're about to elicit statements,
19 did he say anything?

20 **THE COURT:** Okay. But is the State aware of
21 those statements?

22 **MR. JOSHI:** I don't know.

23 **THE COURT:** It's their witness. Mr. Jay just
24 told me he's not aware of any statements. So how can
25 he disclose statements he doesn't know of?

1 **MR. JOSHI:** Well, if he's going to elicit
2 statements that could be prejudicial, I would want to
3 know what the statements are before she testifies to
4 them in front of the jury. I can't unring the bell.

5 **THE COURT:** Did you depose her?

6 **MR. JOSHI:** I did.

7 **THE COURT:** Did you ask her what your client
8 said?

9 **MR. JOSHI:** I believe I did. I haven't read the
10 deposition in some time. I think she said what Pedro
11 said. I don't think she said anything that my client
12 said. I just don't want surprises from witnesses that
13 came from Georgia.

14 **THE COURT:** Say that again?

15 **MR. JOSHI:** I just am making this objection as to
16 caution because I don't want any surprises. This is
17 the same witness I was trying to bring in. They've
18 brought her in here. I don't want to have her say
19 statements that I can't unring the bell, so that's why
20 I'm bringing it to this honorable Court's attention.

21 **THE COURT:** Why don't we remove the jury and find
22 out what the statements are and take it from there?

23 **MR. JOSHI:** Yes, Your Honor. I should have made
24 it more clear. Sorry.

25 **THE COURT:** That's okay.

1 (The bench conference concluded.)

2 **THE COURT:** Ladies and gentlemen, I'm going to
3 ask you step outside for a few minutes. This is
4 actually almost time for our afternoon break. We'll
5 utilize this for our afternoon break. We'll take a
6 ten-to-15 minute recess and give you a chance to
7 stretch and break for the afternoon. Please leave
8 your pads in the chairs.

9 **COURT DEPUTY:** Jury is exiting.

10 (The jury exited the courtroom at 2:55 p.m.)

11 **THE COURT:** Give me a second until I hear the
12 door shut. Okay. So there's been an objection
13 regarding a discovery violation.

14 Mr. Jay, if you would ask the last question you
15 asked so that the witness can answer.

16 **PROFFERED DIRECT EXAMINATION**

17 **BY MR. JAY:**

18 **Q.** At this point in time, did you hear the defendant
19 say anything to Pedro? By "this point in time," this is
20 after he went and got the gun and came back.

21 **A.** I don't recall exactly what he could have said.

22 **THE COURT:** Okay. Anything else, Mr. Joshi?

23 **MR. JOSHI:** Your Honor, I'm just going to say the
24 objection would be speculation.

25 **THE COURT:** She said she didn't recall. What's

1 the speculation?

2 **MR. JOSHI:** That's fine. I'm having someone
3 whisper in my ear.

4 **THE COURT:** It's annoying at some point, isn't
5 it?

6 **MR. JOSHI:** It is.

7 **THE COURT:** Okay. There's no reason to go any
8 further. She said she didn't recall any statements.

9 Ma'am, we're going take just a ten-minute recess
10 because it's in the middle of the afternoon. I don't
11 want you speaking to anybody about your testimony thus
12 far. Okay? You can go out and see whoever you want.
13 If they ask how it's going, say the judge told me not
14 to say anything. I don't want anyone to suggest
15 anything to you or say anything to you.

16 Just get some water. If you need to go to the
17 restroom or walk around to stretch your legs, that's
18 fine. Please stay on the floor for me. Okay?

19 **THE WITNESS:** Okay.

20 **THE COURT:** Thank you.

21 **MR. JOSHI:** Your Honor, may I approach with the
22 prosecutors real quick?

23 **MR. LaFAY:** There's nobody in here to approach
24 for.

25 **THE COURT:** You want to approach?

1 **MR. JOSHI:** This is kind of a housekeeping
2 matter.

3 **THE COURT:** Okay. Come on up.
4 Ms. Phillips, you can step out.

5 **THE WITNESS:** Okay.

6 **THE COURT:** Thank you.

7 (There was a bench conference as follows:)

8 **THE COURT:** Okay. You've got to speak in here;
9 otherwise, Madam Court Reporter can't hear you.

10 **MR. JOSHI:** I wanted to bring up to the State too
11 that one of the witnesses I heard from Mr. Batista's
12 family, Carlos Benitez, he's one of the ones who was
13 allegedly threatened, you know, went up to a member of
14 Mr., um --

15 **THE COURT:** I think he's the estranged husband of
16 the first witness.

17 **MR. JOSHI:** Yes. He went up to the Batista's
18 brother, Mr. Batista's brother and said, how would you
19 feel if someone threatened a member of your family?

20 You know, I just wanted to bring this up to
21 everyone's attention that he's out there being a
22 little bit antagonistic from what they've told me. I
23 just want to put the Court on alert and State on
24 alert.

25 **THE COURT:** What would you like me to do?

1 **MR. JOSHI:** Maybe --

2 **MR. LaFAY:** I think that's a violation of the
3 rule of sequestration, since it seems to be a matter
4 pertaining to this case, even though it was put as a
5 hypothetical. So he seems to be in a hypothetical way
6 discussing matters about this case. He's not talking
7 to another witness.

8 **THE COURT:** Therefore, it's not a violation of
9 sequestration. Just tell me what you want me to do.

10 **MR. JOSHI:** Maybe just admonish him.

11 **MR. LaFAY:** Tell him not to talk about anything
12 having to do with this case to anybody because it
13 doesn't matter if it's another witness.

14 **THE COURT:** Mr. Jay, are you comfortable speaking
15 to the witness?

16 **MR. JAY:** I'll have Mr. Interlicchio speak to the
17 witness.

18 **THE COURT:** If you'll speak to the witness. If
19 you're uncomfortable doing that, I'll invite him in
20 and speak to him.

21 **MR. LaFAY:** I think that will do it. Thank you,
22 Judge.

23 **MR. JOSHI:** Thank you. I just wanted to bring it
24 to your attention.

25 **THE COURT:** Thank you.

1 (The bench conference concluded.)

2 **THE COURT:** We'll take a ten-minute recess.

3 (A brief recess was taken from 3:00 to 3:10 p.m.)

4 **THE COURT:** Let's bring everybody in, please.

5 **COURT DEPUTY:** Put the witness back on the stand?

6 **THE COURT:** Yes, please.

7 **MR. INTERLICCHIO:** Your Honor, may I approach the
8 witness?

9 **THE COURT:** Yes, sir.

10 Let's call the jurors in, please.

11 **COURT DEPUTY:** Jury is entering.

12 (The jury entered the courtroom.)

13 **THE COURT:** Does the State recognize the presence
14 of the jury?

15 **MR. JAY:** Yes, sir.

16 **THE COURT:** Defense?

17 **MR. JOSHI:** Yes, Your Honor.

18 **THE COURT:** Thank you. Ladies and gentlemen,
19 please be seated.

20 Okay. You may continue with your questioning,
21 Mr. Jay.

22 **DIRECT EXAMINATION (CONTINUED)**

23 **BY MR. JAY:**

24 **Q.** At this point in time, you testified that the
25 defendant went to the car and came back with a gun. Did

1 you hear any -- anything that the defendant said at this
2 point in time?

3 **A.** Not exactly in what he said. I just know that
4 there was back and forth.

5 **Q.** Okay. And what, if anything, is the defendant
6 doing with the gun at this point in time?

7 **A.** He's waving it around.

8 **Q.** All right. Could you see him waving it around?

9 **A.** Yes.

10 **Q.** Where are you in relation to the defendant and
11 Mr. Gallardo at this point in time?

12 **A.** I'm still behind the car but I'm not --

13 **Q.** I'm sorry?

14 **A.** I'm behind the car.

15 **Q.** Okay.

16 **A.** But not right next to him.

17 **Q.** Okay. Closer than you and me, same or farther?

18 **A.** Closer I would say, about right there.

19 **Q.** You to the court reporter?

20 **A.** Uh-huh.

21 **Q.** About five feet for the record?

22 **A.** Yes.

23 **Q.** All right. So how long does this back and forth
24 with the words go on with the defendant waving the gun?

25 **A.** Not long. I would say two minutes.

1 Q. Now, did anybody in your group run away after you
2 saw that the defendant had a gun?

3 A. No.

4 Q. Where -- if you know, where was anybody else from
5 his group at this point in time that he's back with a gun?

6 A. They're still behind him.

7 Q. About how far behind him?

8 A. Not far, right behind him.

9 Q. All right. So they weren't running away?

10 A. No.

11 Q. Did Pedro run away?

12 A. No.

13 Q. What was Pedro doing -- Pedro Gallardo doing at
14 this time when the defendant is standing there talking to
15 him and waving the gun?

16 A. He was still standing there verbally arguing.

17 Q. What, if anything, was Pedro Gallardo doing with
18 his hands during the time the defendant was waving the gun?

19 A. He wasn't doing anything with his hand. He was
20 just pulling up his pants. That's it.

21 Q. And was he wearing those pants that some people
22 wear a little low?

23 A. Yeah. I would say like below a little bit.

24 Q. Do you know what I'm talking about?

25 A. Yeah.

1 Q. Some fashion statements is that you wear your
2 pants low?

3 A. Not too low, no. A little bit lower, yeah.

4 Q. And was his shirt tucked in or was his shirt not
5 tucked in?

6 A. I don't know. It looked out.

7 Q. Okay. So when you say he's just pulling his
8 pants up, what makes you say that, if anything?

9 A. I mean, what I see most men do when they're
10 arguing or having an altercation, they pull their pants up,
11 I guess, to hold their pants up.

12 Q. Okay.

13 A. To get a better...

14 Q. Did you hear Pedro Gallardo say anything about
15 him or somebody in your group having a gun?

16 A. No.

17 Q. Anything about popping anybody?

18 A. No.

19 Q. Busting a cap?

20 A. No.

21 Q. Nothing any way, phrases?

22 A. No.

23 **MR. JOSHI:** Your Honor, I'm going to object to
24 leading.

25 **THE COURT:** Sustained.

1 **BY MR. JAY:**

2 **Q.** Did you hear anybody in your group say anything
3 about having a gun or using a gun, no matter what the
4 terminology they used?

5 **A.** No.

6 **Q.** And so what, if anything, happens after this
7 verbal altercation continues with the defendant waving the
8 gun?

9 **A.** He just shot him.

10 **Q.** And tell us exactly what you saw happen.

11 **A.** I just seen him waving the gun around, and they
12 were just verbally arguing. Next thing you know, he shot
13 him; and they run.

14 **Q.** When you say "they run" --

15 **A.** The defendant and his group.

16 **Q.** Do you see where they run to?

17 **A.** To the car.

18 **Q.** What do you see happen after they run to the car?

19 **A.** They jump in the car and drove off.

20 **Q.** Okay. Which way?

21 **A.** Up the garage cause they couldn't go out.

22 **Q.** Why couldn't they go down?

23 **A.** Because it was jam-packed. Everybody was coming
24 out of the club. Everybody was driving out. So they
25 couldn't go out of the garage.

1 **Q.** Was it jam-packed when this dispute started?

2 **A.** Not started. It started to get packed; but when
3 it happened, yes, there was a lot of people around.

4 **Q.** Okay. Could you describe this gun that you saw?

5 **A.** It was silver, and the handle was black.

6 **Q.** Okay. And is it a type of gun that fits in one
7 hand, or is it a two-handed gun? Like, did it have a long
8 barrel?

9 **A.** No.

10 **Q.** And could you describe its size?

11 **A.** Um, it was pretty big, similar to a cop gun.

12 **Q.** Okay. Had anybody in your group had any physical
13 contact with anybody in the defendant's group?

14 **A.** No.

15 **Q.** Prior to the defendant shooting Pedro Gallardo?

16 **A.** No.

17 **Q.** Did you see Pedro Gallardo make any furtive or
18 quick movements toward the trunk or to anything that could
19 be interpreted possibly as him going for a gun?

20 **A.** No.

21 **Q.** Did any of his movements, pulling his pants up,
22 did they look furtive, like lifting his shirt up or
23 anything like that to get anything under his waistband?

24 **A.** No.

25 **Q.** Did Pedro Gallardo put his hands on anybody in

1 the defendant's group or on the defendant himself?

2 **A.** No.

3 **Q.** Now, prior to the defendant walking at a fast
4 pace up to the car, did you hear him say anything?

5 **A.** Maybe like he was mumbling to himself. I didn't
6 really catch anything. My main focus was just --

7 **Q.** Do you remember giving a deposition in this case
8 on April 15th of 2016 in Texas?

9 **A.** Yes.

10 **Q.** And do you remember whether or not you were asked
11 about that specific question, whether the defendant said
12 anything before he walked up to his car?

13 **A.** I believe so.

14 **Q.** Would it refresh your memory to see your
15 deposition?

16 **A.** Yeah. Yes.

17 **MR. JAY:** I'll show her page 16 of her
18 deposition.

19 With the Court's permission, can I approach her?

20 **THE COURT:** You may.

21 Mr. Joshi, do you have that?

22 **MR. JOSHI:** What line?

23 **MR. JAY:** Starting at line 8.

24 **BY MR. JAY:**

25 **Q.** I'm going to ask you to read to yourself,

1 starting at line 6, that paragraph indentation. Don't read
2 it out loud. Just read that paragraph.

3 A. Okay.

4 Q. Did reading that paragraph from your deposition
5 that you gave last year refresh your memory as to whether
6 or not the defendant said anything right before he walked
7 up to the car and got the gun?

8 A. Yes.

9 Q. What did he say?

10 A. He was saying, okay. You know what? You know
11 what?

12 Q. Do you recall what, if anything, Mr. Gallardo was
13 saying right before the defendant said those things?

14 A. No.

15 Q. Were you carrying a gun that night?

16 A. No.

17 Q. Did you see anybody in your group carrying a gun
18 that night?

19 A. No.

20 Q. Did you see a gun in your car that you traveled
21 in?

22 A. No.

23 Q. The clubs that you went to, did you-all have to
24 get patted down to go into them?

25 A. Yes.

1 **Q.** Did any bouncer give any indication of finding a
2 gun on anybody?

3 **A.** No.

4 **Q.** Prior to the defendant going to the car and
5 coming back with a gun, did you see Pedro Gallardo pulling
6 at his pants belt?

7 **A.** No.

8 **Q.** Was it only after the gun was introduced to the
9 scene?

10 **A.** It was the whole time.

11 **Q.** So is it fair to say that even once the gun was
12 introduced into the situation --

13 **MR. JOSHI:** I'm going to object to leading.

14 **THE COURT:** Sustained.

15 **BY MR. JAY:**

16 **Q.** Did anybody, after the gun was introduced into
17 the scene, anybody in your group back down or run away?

18 **A.** Not run away. But they were like, okay. Okay.

19 **Q.** What do you mean? You're gesturing with your
20 hands. Did anybody gesture with their hands?

21 **A.** I remember Victor, like calm down. I didn't see
22 E-man.

23 **Q.** Let me slow you down. What gesture did Victor
24 make so we can put it into words. He raised his hands up,
25 palms facing out?

1 **A.** And I even did that. I was like, okay.

2 Everybody calm down.

3 **Q.** Was this before or after?

4 **A.** After.

5 **Q.** He got the gun?

6 **A.** Yes.

7 **Q.** And did anybody ever try to take the gun away
8 from the defendant?

9 **A.** No.

10 **Q.** Did anybody hit the defendant?

11 **A.** No.

12 **Q.** Did anybody swing at the defendant?

13 **A.** No.

14 **Q.** Did anybody kick the defendant?

15 **A.** No.

16 **Q.** Did anybody swing at or kick anybody in the
17 defendant's group?

18 **A.** No.

19 **Q.** Did anybody you know rush at them, like flinch at
20 them or anything?

21 **A.** No.

22 **Q.** Was anybody popping open trunks and fidgeting and
23 like they were looking for a gun?

24 **A.** No.

25 **MR. JAY:** No other questions.

1 **THE COURT:** Mr. Joshi?

2 **MR. JOSHI:** Yes, Your Honor.

3 **CROSS-EXAMINATION**

4 **BY MR. JOSHI:**

5 **Q.** Um, the argument pretty much got started when
6 Victor said to the other group what are you looking at,
7 correct?

8 **A.** I don't recall.

9 **Q.** Would it refresh your recollection to see your
10 deposition that you took in regards to this matter? It
11 would, wouldn't it?

12 **A.** Okay.

13 **MR. JOSHI:** Showing page 11, line 15.

14 May I approach, Your Honor?

15 **THE COURT:** You may.

16 **BY MR. JOSHI:**

17 **Q.** Read that to yourself.

18 **A.** What number?

19 **Q.** Page 11, line 15. Does that refresh your
20 recollection that Victor had said something?

21 **A.** He said something, but I don't recall exactly
22 what he said.

23 **Q.** But once he said it, that kind of started -- that
24 escalated the altercation, correct?

25 **A.** No.

1 Q. All right. Now, this argument got really heated,
2 didn't it, between the two groups?

3 A. Not necessarily. It was just a lot of arguing
4 back and forth.

5 Q. Would you describe it as rowdy?

6 A. Yeah, a little bit.

7 Q. A little bit.

8 You had to hold Victor back, right?

9 A. For the most part.

10 Q. Okay.

11 A. But not --

12 Q. How big is Victor?

13 A. Six feet.

14 Q. Six feet.

15 How much does Victor weigh?

16 A. I don't know exactly, but he's a slim guy.

17 Q. Okay. And you held him back because you know how
18 Victor gets when he's about to fight, correct?

19 A. I was just trying to prevent.

20 Q. And Victor was angry, right?

21 A. Yeah. For the most part, yes.

22 Q. You can say yes. Was he angry?

23 A. For the most part, yes.

24 Q. So as you were holding Victor back, Pedro got
25 very rowdy, correct?

1 **A.** I was just -- my main focus was on Victor at that
2 point.

3 **Q.** Now, was -- Pedro started to escalate the
4 situation as he got more angry?

5 **A.** No.

6 **Q.** So Pedro, you're saying, is calm?

7 **MR. JAY:** Objection, misstating the facts.

8 **THE COURT:** Sustained.

9 **BY MR. JOSHI:**

10 **Q.** Okay. Would it refresh your recollection to see
11 your deposition as to how Pedro was acting that night?

12 **A.** Yes.

13 **MR. JOSHI:** Okay. May I approach the witness,
14 Your Honor?

15 **THE COURT:** Did you say you don't recall how
16 Pedro was acting that night?

17 **THE WITNESS:** No. He's saying --

18 **THE COURT:** Did you say you don't recall?

19 **THE WITNESS:** No. I didn't say that.

20 **THE COURT:** Okay. Overruled. No, you may not.

21 **BY MR. JOSHI:**

22 **Q.** You remember giving the deposition when you were
23 in Texas?

24 **A.** Yes.

25 **Q.** And you remember I was asking you questions?

1 **A.** Yes.

2 **Q.** Is that yes?

3 **A.** Yes.

4 **Q.** And you remember telling me, page 15 --

5 **MR. JAY:** Objection, improper impeachment.

6 **THE COURT:** Sustained.

7 **BY MR. JOSHI:**

8 **Q.** Back during your deposition, you were placed
9 under oath, correct?

10 **A.** I believe so, yes.

11 **Q.** Okay. And I was questioning you, correct?

12 **A.** Yes.

13 **Q.** And there was someone from the State there?

14 **A.** Yes.

15 **Q.** And you remember me asking you --

16 **MR. JAY:** Objection, improper impeachment.

17 **THE COURT:** Sustained.

18 **BY MR. JOSHI:**

19 **Q.** Did -- while you were holding Victor back, did
20 Pedro start getting more rowdy as you were holding Pedro
21 back?

22 **MR. JAY:** Objection.

23 **BY MR. JOSHI:**

24 **Q.** As you were holding Victor back, was Pedro
25 getting more rowdy?

1 **THE COURT:** Hold on one second. What was your
2 objection?

3 **MR. JAY:** It was confusing for the witness.

4 **THE COURT:** Okay.

5 **BY MR. JOSHI:**

6 **Q.** As you're holding Victor back, did Pedro get more
7 rowdy?

8 **A.** I don't recall.

9 **Q.** Would it refresh your recollection as to what you
10 stated in regard to that?

11 **A.** Okay.

12 **THE COURT:** Is that a yes?

13 **THE WITNESS:** Yes.

14 **THE COURT:** Okay.

15 **BY MR. JOSHI:**

16 **Q.** Okay. I would address the witness to page 15,
17 lines 24 through lines one through five of page 16, if you
18 would read.

19 **A.** Okay.

20 **Q.** As you were holding -- as you were holding Victor
21 back, Pedro was getting more rowdy?

22 **THE COURT:** I believe the next question is, does
23 that refresh your memory?

24 **THE WITNESS:** Yes.

25

1 **BY MR. JOSHI:**

2 **Q.** As you're holding Victor back, Pedro was getting
3 more rowdy?

4 **A.** Yes, while the defendant and Pedro were arguing.

5 **Q.** That escalated the situation out of proportion,
6 correct?

7 **A.** No. They were both arguing back and forth. They
8 were both escalating the situation.

9 **Q.** Okay. But everything blew out of proportion once
10 Pedro started getting rowdy, correct?

11 **A.** No, not necessarily.

12 **MR. JAY:** Objection, asked and answered.

13 **THE COURT:** Answer again for me.

14 **THE WITNESS:** Not necessarily. It was between
15 both of them. It didn't just escalate with just
16 Pedro.

17 **BY MR. JOSHI:**

18 **Q.** Okay. At the time the individual went and got
19 the gun, Pedro wasn't backing down, correct?

20 **A.** I don't recall him doing anything. I just was
21 paying attention to him walking from the car to the crowd.

22 **Q.** But Pedro hadn't calmed down, did he?

23 **A.** Not necessarily.

24 **Q.** He was, as you put it, rowdy, right?

25 **A.** Yes, I guess.

1 Q. Okay. He remained rowdy because you said he
2 didn't calm down, correct?

3 A. But he wasn't coming towards the --

4 Q. I'm not asking that. I'm just asking what you
5 saw of his demeanor.

6 A. He was still upset, yes.

7 Q. By "upset," we're not talking about depressed.
8 We're talking about bowing up, about to fight, correct?

9 A. Not about to fight but they were just arguing.

10 Q. It's not like an argument, like maybe some people
11 would call our dialogue an argument. It's not like this,
12 correct?

13 A. Okay.

14 Q. Correct, it's not a back and forth kind of
15 friendly verbal debate?

16 A. But they were arguing, yes.

17 Q. And this argument was loud, right?

18 A. Back and forth, yes.

19 Q. Okay. And you indicated that the people from the
20 other group were about five feet behind Mr. Batista,
21 correct?

22 A. No. They were behind him but about five feet
23 from us, like they weren't close to us. They were right
24 behind him.

25 Q. Okay. So they were about five feet from

1 Mr. Batista?

2 A. Who was?

3 Q. The people from his group were five feet behind

4 Mr. Batista, correct, when he was --

5 A. They were right behind the defendant.

6 Q. All right. And where were you standing exactly?

7 A. Behind the car.

8 Q. Were you behind Pedro?

9 A. No.

10 Q. Were you facing Pedro?

11 A. No. I was facing the defendant. I was looking
12 towards him.

13 Q. You're looking at Mr. Batista and the seven
14 people in his group, correct?

15 A. Yes.

16 Q. Okay. Because they were all right in the
17 vicinity, correct?

18 A. Yes, they were right there.

19 Q. How close were you to Pedro?

20 A. It was like a car in-between us.

21 Q. Okay. And where was -- you were holding Victor
22 back, correct?

23 A. Not anymore but he was -- he was beside me.

24 Q. Okay. Did you -- was Victor still engaged in the
25 fight prior to the gun coming out?

1 **A.** I don't recall. I believe he had calmed down by
2 then.

3 **Q.** Victor took off his shirt, correct?

4 **A.** I don't recall.

5 **Q.** Would it refresh your recollection to see if --
6 to see your deposition to determine if Victor took off his
7 shirt?

8 **A.** Yes.

9 **MR. JAY:** May I approach?

10 **THE COURT:** With what page?

11 **MR. JOSHI:** Deposition page 19, lines 13 through
12 18.

13 **THE COURT:** You may.

14 **BY MR. JOSHI:**

15 **Q.** Start at line 13.

16 **A.** What page?

17 **Q.** Page 19.

18 **A.** Okay.

19 **Q.** Does that refresh your recollection?

20 **A.** Yes.

21 **Q.** Victor took off his shirt?

22 **A.** Yes.

23 **MR. JAY:** Objection, without a point in time.

24 **THE COURT:** I'll overrule -- at this point I'm
25 going to overrule the objection.

1 **BY MR. JOSHI:**

2 **Q.** When did Victor take off his shirt?

3 **A.** I don't recall exactly when. I just remember him
4 with the shirt off.

5 **Q.** Okay. And you took your deposition back on
6 August 19th of 2016, correct?

7 **A.** I believe so.

8 **MR. JAY:** Objection, misstatement of facts.

9 **THE COURT:** Okay. Is it a misstatement?

10 **MR. JOSHI:** April 15th, I'm sorry.

11 **THE COURT:** Okay. Objection sustained.

12 **BY MR. JOSHI:**

13 **Q.** You took your deposition April 15th, 2016,
14 correct?

15 **A.** Uh-huh, yes.

16 **Q.** Okay. So a little bit over a year ago, right?

17 **A.** Yes.

18 **Q.** Okay. So was your memory better at the time of
19 your deposition than it is when you're testifying here
20 today?

21 **A.** No. I still remember.

22 **Q.** Cause there's a lot of things I'm asking you
23 which you don't recall.

24 **MR. JAY:** Objection, inappropriate comment.

25 **THE COURT:** Sustained.

1 **BY MR. JOSHI:**

2 **Q.** There have been things you need to use the
3 deposition to refresh your recollection, correct?

4 **A.** Okay.

5 **Q.** Is that a yes?

6 **A.** Yes.

7 **Q.** Okay. So is it fair to say that your memory at
8 the deposition was a little more accurate than it is today?

9 **MR. JAY:** Objection, asked and answered two
10 questions ago.

11 **THE COURT:** Sustained.

12 **BY MR. JOSHI:**

13 **Q.** Do you recall whether or not Victor took his
14 shirt off after the individual came back with the gun?

15 **A.** I don't recall.

16 **Q.** Okay. You gave a statement to Detective Montford
17 that was sworn to, correct?

18 **A.** When was this?

19 **Q.** Back on June 25th, 2012.

20 **A.** Okay.

21 **Q.** Did you give a statement to Detective Montford?

22 **A.** Yes.

23 **Q.** Okay. Has that been provided to you by the State
24 Attorney's Office?

25 **A.** Yes.

1 **Q.** And would it refresh your recollection to see
2 what you told Detective Montford of when Victor took his
3 shirt off?

4 **A.** Yes.

5 **MR. JOSHI:** Okay. May I approach the witness
6 with page 3?

7 **THE COURT:** I presume you have that, Mr. Jay?

8 **MR. JAY:** I do.

9 **THE COURT:** You may.

10 **BY MR. JOSHI:**

11 **Q.** Read the highlighted portions of the last
12 paragraph.

13 **A.** Okay.

14 **Q.** Does that refresh your recollection?

15 **A.** Yes.

16 **Q.** Okay. So did Victor take his shirt off after he
17 saw the person with the firearm?

18 **A.** Yes.

19 **Q.** Now, Victor was taking his shirt off to engage
20 in -- potentially engaging in combat from what it appeared,
21 correct?

22 **A.** No.

23 **Q.** He was just taking his shirt off to kind of hang
24 it on the car?

25 **A.** Probably so. I mean, yeah, he was taking his

1 shirt off. He wasn't ready to fight or anything. He
2 wasn't.

3 Q. Did he have a shirt on underneath it?

4 A. I don't recall.

5 Q. Was he, like, trying to show off his body in the
6 parking garage when he took off his shirt?

7 A. I mean, he was probably hot. I'm not sure
8 exactly why he took his shirt off. But he wasn't going
9 against anybody or...

10 Q. Now, Pedro kind of made a move when he put his
11 hands down, correct; and that's when he got shot?

12 A. Putting his hands up.

13 Q. When he puts his hands toward his pants, correct?

14 A. Okay. Yes.

15 Q. That's when he got shot?

16 A. I don't recall.

17 When he got shot, he had his hands by his pants?

18 Q. He was like making a move in his pants, correct?

19 A. No. I don't recall. He was just messing with
20 his pants, like picking his pants up.

21 Q. You say you don't recall. Would it refresh your
22 recollection to see what you told the detectives on
23 June 25th of 2012 when you gave a sworn statement?

24 A. I just want to know what you mean by him putting
25 his hands in his pants.

1 Q. Well --

2 A. Because I did say that he was picking up his
3 pants in the argument.

4 Q. Did Pedro make a move, and that's when he got
5 shot?

6 A. As in when he was picking his pants up. He
7 didn't put his hands in his pants.

8 Q. Did you describe that as Pedro -- would you
9 describe that as Pedro making a move?

10 A. Moving his pants, I mean.

11 Q. So when you gave a statement to the detective,
12 you didn't state that he was pulling his pants up, did you?

13 A. No, I didn't.

14 Q. And you read your statement, correct?

15 A. Yes.

16 Q. You read it today?

17 A. Yes.

18 Q. Did you read your deposition?

19 A. Yes.

20 Q. Did you read it today?

21 A. Um, no, I read through them.

22 Q. You read it before testifying, correct?

23 A. Yes.

24 Q. And did you read it either today or yesterday,
25 your deposition?

1 **A.** Yes.

2 **Q.** You read your witness statement?

3 **A.** Yes.

4 **Q.** And you didn't write anything about Pedro pulling
5 his pants up in the written statement, did you?

6 **A.** I don't recall. I mean --

7 **Q.** Would it refresh your recollection to see your
8 written statement?

9 **A.** Yes.

10 **MR. JOSHI:** May I approach the witness, Your
11 Honor?

12 **THE COURT:** You may.

13 **BY MR. JOSHI:**

14 **Q.** Do you recognize this written statement?

15 **A.** Yes.

16 **Q.** Is that your handwriting?

17 **A.** Yes.

18 **Q.** Is that the written statement you wrote on
19 June 24th?

20 **A.** Yes.

21 **Q.** Okay. And would you read that to yourself.

22 **A.** Okay.

23 **Q.** Does that refresh your recollection?

24 **A.** Yes.

25 **Q.** You didn't write it in your witness statement,

1 did you?

2 **A.** No.

3 **Q.** Now, when Pedro was reaching in his pants, he
4 made it look like he had something on him, correct?

5 **A.** I don't recall.

6 **Q.** Would it refresh your recollection to see your
7 deposition?

8 **A.** Yes.

9 **MR. JOSHI:** Okay. Your Honor, may I approach?
10 It's page 22, line -- starting at line 5.

11 **THE COURT:** You may.

12 **BY MR. JOSHI:**

13 **Q.** Read page 22, starting at line 5.

14 **A.** Okay. So it says right here --

15 **MR. JAY:** Objection, reading a document not in
16 evidence without a question.

17 **THE COURT:** Don't say anything. Just read it.

18 **THE WITNESS:** Okay.

19 **THE COURT:** Thank you. Sustain the objection.

20 **BY MR. JOSHI:**

21 **Q.** So did it appear like Pedro was grabbing for
22 something in his pants?

23 **THE COURT:** That's not the next question.

24 **BY MR. JOSHI:**

25 **Q.** Sorry. Does that refresh your recollection?

1 **A.** Yes.

2 **MR. JOSHI:** I apologize, Your Honor.

3 **THE COURT:** No problem.

4 **BY MR. JOSHI:**

5 **Q.** Did it appear like Pedro was reaching for
6 something in his pants --

7 **MR. JAY:** Objection, calls for speculation.

8 **THE COURT:** Sustained.

9 **MR. JOSHI:** Your Honor, if I may approach?

10 **THE COURT:** Sure.

11 (There was a bench conference as follows:)

12 **MR. JOSHI:** On direct examination she said it
13 didn't look like he was pulling anything out of his
14 pants, he was just pulling his pants up. I mean, this
15 is fair cross-examination. Once they asked that
16 question, elicited that testimony, I can now ask her
17 if her statement on direct was accurate and true.

18 **MR. JAY:** She can testify to what she saw and she
19 said she saw it looked like him pulling up his pants.
20 Now he asked in the deposition and got a speculative
21 answer. He shouldn't be able to regurgitate the
22 speculative answer just because it was asked during
23 the discovery deposition.

24 **THE COURT:** True. If she testified it looked
25 like he pulled up his pants -- and what was your

1 question?

2 **MR. JOSHI:** My question was did it appear like he
3 was reaching for something in his pants because
4 Mr. Jay asked her, and she said no. I just let her
5 look at her deposition. And his question was looks
6 like versus appears.

7 **THE COURT:** I recall that question, too. I'm
8 gonna overrule the objection.

9 (The bench conference concluded.)

10 **BY MR. JOSHI:**

11 **Q.** So it appeared like Pedro was potentially
12 reaching for something in his pants, correct?

13 **A.** No.

14 **Q.** Do you know if he was trying to reach for
15 something in his pants?

16 **A.** He wasn't.

17 **Q.** Okay. In your deposition did you state: I don't
18 know if he was trying to make it seem like he was making a
19 move for something on him?

20 **A.** He was just pulling -- like I said, he was
21 pulling up his pants.

22 **Q.** In your deposition did you say, I'm not --

23 **MR. JAY:** Objection, improper impeachment.

24 **THE COURT:** Sustained.

25

1 **BY MR. JOSHI:**

2 **Q.** Do you recall if Pedro was making it look like he
3 had something or whether or not he was picking up his
4 pants?

5 **MR. JAY:** Objection, asked and answered.

6 **THE COURT:** Sustained.

7 **BY MR. JOSHI:**

8 **Q.** Now, you had testified on direct examination that
9 it didn't appear like what Pedro was -- or when somebody is
10 pulling up their pants, it looks as if they're getting
11 ready to fight, correct?

12 **A.** Well, pulling up the pants probably from falling
13 down. I mean, it doesn't assume that they're going to
14 fight. I mean...

15 **Q.** When Mr. Jay asked you, you know, what could that
16 appear to you? You said it could be like pulling the pants
17 up, you know, before a fight, to make sure they don't fall
18 down, right?

19 **A.** Right.

20 **Q.** Is that also similar to people reaching for a gun
21 in their waistband?

22 **A.** Not that I know of.

23 **Q.** During your deposition on April 15, 2016, I asked
24 you, from your knowledge and people you hang out with who
25 carry guns, is it not common for them to have guns in their

1 waistband, correct? You said, yes, I mean, that's pretty
2 common.

3 **MR. JAY:** Objection, improper. It's not an
4 impeachment question.

5 **THE COURT:** Sustained.

6 **MR. JOSHI:** Your Honor, may I approach?

7 **THE COURT:** Sure.

8 (There was a bench conference as follows:)

9 **MR. JOSHI:** I don't understand what the grounds
10 for his objection is. I've laid out the place, the
11 time for the deposition. She's saying that it's not
12 common for them and in her deposition, she's saying it
13 is common for them to have guns in their waistband.

14 **MR. JAY:** I didn't hear that testimony.

15 **THE COURT:** I didn't hear that either.

16 **MR. JOSHI:** She just said that on
17 cross-examination.

18 **THE COURT:** She said it's not common?

19 **MR. JOSHI:** Huh?

20 **THE COURT:** That it's not common?

21 **MR. JOSHI:** Yes. Yeah, she said, not that I know
22 of.

23 **THE COURT:** Okay. Not that she knows of.

24 **MR. JOSHI:** And in her deposition, she says, yes,
25 it is common that she knows of. So that is direct

1 impeachment. She's saying that no, not -- that it's
2 not common today; but on April 16th of 2016, she's
3 saying it is common.

4 **THE COURT:** Okay. So?

5 **MR. JOSHI:** So I would say I should be able to
6 impeach her on this.

7 **THE COURT:** I think you can impeach her on it. I
8 don't think your impeaching her properly.

9 **MR. JOSHI:** I've set up the time, the place, the
10 question.

11 **THE COURT:** You did.

12 **MR. JOSHI:** You know, as far as the Florida
13 Supreme Court case law, I have to address the question
14 with her, give her a time to answer it; and if I want
15 to introduce any extrinsic evidence, I've got to give
16 her time to explain it.

17 **THE COURT:** Any other predicate objections
18 specifically?

19 **MR. JAY:** He hasn't shown it to her.

20 **MR. JOSHI:** Okay. Under 90.614, they have to
21 make a motion for me to show it to her. I can impeach
22 her without showing it to her until they make a
23 motion, so the objection I just don't get. The rule
24 says motion.

25 **THE COURT:** You start out impeachment with, have

1 you ever made a statement different than that? You
2 have yet to ask that. You can't impeach, unless she's
3 made a statement different than that. You can ask her
4 about that. You went right to the deposition. So I'm
5 going to sustain the objection.

6 **MR. JOSHI:** Thank you, Your Honor.

7 (The bench conference concluded.)

8 **BY MR. JOSHI:**

9 **Q.** Okay. Your testimony today when I just asked
10 you, you know, if you know of it being common for people to
11 carry guns in their waistband was no, correct?

12 **MR. JAY:** Objection, relevance, what's common.

13 **THE COURT:** Sustained.

14 **BY MR. JOSHI:**

15 **Q.** In general, you stated --

16 **MR. JAY:** Objection to relevance, in general.

17 **THE COURT:** Sustained.

18 **BY MR. JOSHI:**

19 **Q.** Did -- is it common, to your knowledge, for
20 people you know and hang out with on or around 2012 to
21 carry guns in their waistband?

22 **MR. JAY:** Objection, relevance.

23 **THE COURT:** Sustained.

24 **MR. JOSHI:** Your Honor, may I approach as to
25 relevance?

1 **THE COURT:** Sure.

2 (There was a bench conference as follows:)

3 **MR. JOSHI:** The relevance behind it is she's
4 basically saying that his hands were -- he was pulling
5 up his pants and the fact that --

6 **THE COURT:** She was saying he made a movement
7 toward his pants.

8 **MR. JOSHI:** Yeah, but she didn't say -- she's not
9 addressing -- she actually said it's not common for
10 people -- she doesn't know people to carry firearms.

11 **THE COURT:** It doesn't matter if it's common to
12 her or not.

13 **MR. JOSHI:** She said on direct examination it
14 didn't look like he was reaching for a firearm or
15 anything like that. I think it is -- I should be able
16 to impeach her on what her statement was, that it's
17 common and --

18 **MR. JAY:** On direct I asked her, did he reach for
19 his shirt to lift it up to pull anything out from his
20 waist. That's the questions, observations but
21 opinions about what other people did is irrelevant.

22 Moreover, Judge, this entire line of questioning
23 is irrelevant because if the defendant introduced this
24 gun into the situation, everybody there, bystander or
25 not, had a right to shoot him in the face. So it's

1 completely irrelevant.

2 **MR. JOSHI:** Not if the victim was reaching for a
3 gun first.

4 **MR. JAY:** He brought the gun.

5 **THE COURT:** Your guy was already there with a gun
6 waving it around.

7 **MR. JOSHI:** There may be evidence that -- that --
8 that will corroborate the other person was making a
9 move for a gun before.

10 **THE COURT:** At this point there's nothing that's
11 been introduced to indicate anything contrary to that.

12 **MR. JOSHI:** I understand that. I won't be able
13 to recall this witness when she goes back to Georgia.

14 **THE COURT:** What's common is irrelevant. Move
15 on.

16 **MR. JOSHI:** All right. Thank you.

17 (The bench conference concluded.)

18 **THE COURT:** Next question, please.

19 **MR. JOSHI:** Yes, Your Honor.

20 **BY MR. JOSHI:**

21 **Q.** The whole situation happened very fast, correct?

22 **A.** Yes.

23 **Q.** We're talking about a matter of seconds, correct?

24 **A.** Yes.

25 **Q.** Okay. Altercation happens, gets heated, right?

1 **A.** Yes.

2 **Q.** Okay. Words are exchanged; but you don't know
3 exactly what the words are, right?

4 **A.** Yes.

5 **Q.** So before the firearm is retrieved, you don't --
6 you're not listening exactly what's being said, correct?

7 **A.** Yes.

8 **Q.** Okay. You're holding Victor back initially,
9 correct?

10 **A.** I was.

11 **Q.** Okay. And where are you when you're holding
12 Victor back?

13 **A.** Behind the car.

14 **Q.** Okay. And then when Pedro was having words with
15 who you identify as Mr. Batista and the other guys were
16 behind Mr. Batista, where was Victor at that point?

17 **A.** He was next to me.

18 **Q.** Okay. And where was Emmanuel?

19 **A.** I don't recall exactly where he was.

20 **Q.** Was Emmanuel anywhere near Pedro when Pedro was
21 shot?

22 **A.** I don't recall. After the incident happened, I
23 did see him over there.

24 **Q.** But you had -- did you have a clear view of Pedro
25 at the time he was shot?

1 **A.** Yes.

2 **Q.** Okay. And Pedro was facing the person who shot
3 him, correct?

4 **A.** I don't recall. My main focus was on him.

5 **Q.** On the person with the gun?

6 **A.** Yes.

7 **Q.** So you weren't really paying attention to --
8 focusing on Pedro, correct?

9 **A.** Not necessarily.

10 **Q.** So when you say he put his -- his hands were
11 down, correct, towards his pants?

12 **A.** At the beginning, yes.

13 **Q.** Okay. How about -- when he got shot, he reached
14 down, as you indicated to the detectives, and made a move.
15 That's when he got shot?

16 **A.** I don't -- I just seen him pulling his pants up.
17 I mean --

18 **Q.** Did you make a statement -- well, would it
19 refresh your recollection to see what you told the
20 detective of where Pedro's hands were exactly when he got
21 shot?

22 **MR. JAY:** Objection, asked and answered.

23 **MR. JOSHI:** She doesn't recall.

24 **THE COURT:** Ladies and gentlemen, we need to take
25 an emergency five-minute recess. Please retire to the

1 jury room, and we'll have you back in a minute.

2 **COURT DEPUTY:** Jury is exiting.

3 (The jury exited the courtroom at 4:00 p.m.)

4 **THE COURT:** Deputy, would you take Ms. Phillips
5 to get her children.

6 **COURT DEPUTY:** Yes, Your Honor.

7 **THE COURT:** Mr. Jay, the childcare closed a
8 minute ago and won't release Ms. Phillips' children to
9 her brother, only to her. To avoid them calling DCF,
10 there's nobody to pick up her children, we're taking a
11 break so she can pick up her children.

12 **MR. LaFAY:** I understood. Thank you, Judge.

13 **THE COURT:** Could you explain it to Mr. Joshi.

14 **MR. JOSHI:** I think I got it. You said
15 Ms. Phillips.

16 **THE COURT:** Yes. That's what she swore her name
17 was.

18 **MR. JOSHI:** Yeah. Okay. I remember you
19 correcting her name, so okay.

20 **THE COURT:** Mr. Batista, do you need to use the
21 restroom?

22 **THE DEFENDANT:** No, sir.

23 **THE COURT:** Okay.

24 (Court was at ease.)

25 **THE COURT:** Okay. Got your kids?

1 **THE WITNESS:** Yes.

2 **THE COURT:** Let's bring the jurors back in.

3 **COURT DEPUTY:** Jury is entering.

4 (The jury entered the courtroom at 4:10 p.m.)

5 **THE COURT:** Does the State recognize the presence
6 of the jury?

7 **MR. JAY:** Yes, Your Honor.

8 **THE COURT:** Defense?

9 **MR. JOSHI:** Yes, Your Honor.

10 **THE COURT:** You may be seated, ladies and
11 gentlemen. I apologize, but we had to take care of an
12 important matter. I appreciate your patience.

13 Please continue with your questioning, Mr. Joshi.

14 **MR. JOSHI:** Okay.

15 **BY MR. JOSHI:**

16 **Q.** I think we were going into -- if I'm not
17 mistaken, where people were located at the time; and you
18 said you don't know where Emmanuel was, correct?

19 **A.** Right.

20 **Q.** And so he wasn't anywhere in the vicinity of
21 Pedro, correct?

22 **A.** I mean, the last time I saw him was around there.

23 **Q.** Okay.

24 **A.** Next to Pedro.

25 **Q.** Was he -- did he have his hands on Pedro when

1 Pedro got shot?

2 A. I don't recall.

3 Q. Okay. Would that be something you'd remember
4 seeing?

5 A. No.

6 Q. Okay. Now, when the person ran and got the gun,
7 he came running right back, right?

8 A. Yes.

9 Q. Now, initially he wasn't pointing the gun, he was
10 waving it around, correct?

11 A. While arguing, yes, like towards --

12 Q. He was waving it around, right?

13 A. Towards Pedro, yes, in that direction.

14 Q. Okay. And did he only shoot once Pedro reached
15 for his pants?

16 A. I don't -- it was after he said a couple words,
17 and he just shot.

18 Q. Okay.

19 A. I don't recall Pedro, like, reaching in his pants
20 or anything; and then he just shot him.

21 Q. Would it refresh your recollection to see your
22 deposition, page 25, line 15?

23 A. Okay. Yes.

24 THE COURT: Yes?

25 THE WITNESS: Yes.

1 **MR. JOSHI:** May I approach the witness?

2 **THE COURT:** Yes, sir.

3 **BY MR. JOSHI:**

4 **Q.** Start at page 15.

5 **A.** You said page 15?

6 **Q.** Page 25, line 15.

7 **A.** Okay.

8 **Q.** Does the sworn deposition you took on -- in April
9 after reading it, does that refresh your recollection?

10 **A.** Yes.

11 **Q.** So did the person just kind of wave the gun
12 around and only shot Pedro when he reached for his pants?

13 **A.** He was reaching --

14 **MR. JAY:** Objection, improper context about
15 reading the question and answers that she read.

16 **THE COURT:** Well, the question is, did it refresh
17 your recollection? And now the question that
18 Mr. Joshi just asked is, was Mr. Gallardo shot after
19 reaching for his pants? That's the only question,
20 correct?

21 **MR. JOSHI:** The question was, the person --

22 **THE COURT:** You're not impeaching her. You're
23 refreshing recollection.

24 **MR. JOSHI:** Refreshing her recollection, yes,
25 Your Honor.

1 **THE COURT:** What was your question?

2 **MR. JOSHI:** My last question was, was the person
3 with the gun just waving it around and only shot Pedro
4 when he reached for his pants?

5 **THE COURT:** That's the question. Objection
6 overruled.

7 You can answer that question.

8 **THE WITNESS:** Can you ask that again?

9 **BY MR. JOSHI:**

10 **Q.** The person with the gun was just kind of waving
11 the gun and only shot Pedro once Pedro reached for his
12 pants, correct?

13 **A.** He was reaching -- yeah, he was reaching, pulling
14 his pants.

15 **Q.** So the person -- my question is: The person only
16 shot Pedro once Pedro reached for his pants?

17 **A.** At the moment it happened like that, yes.

18 **Q.** Okay. So the shooting happened after Pedro --
19 once he reached for his pants. That's when he was shot?

20 **A.** He wasn't reaching. Like, he was just pulling
21 his pants, not reaching for anything.

22 **Q.** Okay. Would it refresh your recollection -- was
23 he reaching for his pants?

24 **A.** Yes, he was pulling on his pants.

25 **Q.** So he was reaching --

1 **A.** Pulling his pants.

2 **Q.** A person's coming at Pedro with a gun, correct?

3 **A.** Okay.

4 **Q.** Right?

5 **A.** Yes. He had the gun.

6 **Q.** Okay. Now, is Pedro kind of like fixing his
7 pants, kind of like getting all nice and, you know,
8 well-dressed for the person?

9 **A.** No. He was just pulling on his pants, like I
10 said before.

11 **Q.** And Pedro didn't back down when he saw the
12 individual with the gun, correct?

13 **A.** No.

14 **Q.** Okay. He was still angry, right?

15 **A.** Yes.

16 **Q.** All right. So he's not kind of like, you know,
17 fixing himself up, looking nice. He's reaching down to his
18 pants?

19 **MR. JAY:** Objection, asked and answered.

20 **THE COURT:** Sustained.

21 **BY MR. JOSHI:**

22 **Q.** Pedro was still kind of mouthing off when the
23 person came at him with a gun, correct?

24 **A.** They were both arguing, yes.

25 **Q.** You can't hear what they were saying?

1 **A.** Not specifics what they were saying.

2 **Q.** So you can't -- you don't know what Pedro was
3 saying, right?

4 **A.** It just happened fast.

5 **Q.** Now, just from your perception, when the person
6 came back with a gun, did it appear like he was trying to
7 scare people away?

8 **MR. JAY:** Objection, calls for speculation.

9 **THE COURT:** Sustained.

10 **BY MR. JOSHI:**

11 **Q.** The person who came with the gun didn't just come
12 out shooting, correct?

13 **A.** He wasn't just coming out shooting.

14 **Q.** Okay. Now, at the time the actual shot was
15 fired, you said Victor was next to you?

16 **A.** Yes.

17 **Q.** Okay. Where was Melissa?

18 **A.** Melissa, I think -- I recall her being next to
19 Pedro.

20 **Q.** Okay. And Sharine?

21 **A.** I recall her being in the car.

22 **Q.** All right. And Emmanuel, you don't know where he
23 was?

24 **A.** I believe he was next to Pedro and Melissa.

25 **Q.** All right. Now, you identified Mr. Batista,

1 correct?

2 **A.** Correct.

3 **Q.** Okay. Back on June 25th, 2012, were you shown a
4 six-photo lineup?

5 **A.** Yes.

6 **Q.** Okay. And did you indicate you -- were you able
7 to identify Mr. Batista in that lineup?

8 **A.** I wasn't aware of if I did or not.

9 **Q.** Okay.

10 **MR. JOSHI:** Your Honor, may I have a moment?

11 **THE COURT:** You may.

12 **MR. JOSHI:** That's all the questions.

13 **THE COURT:** Any redirect?

14 **MR. JAY:** Yes, sir.

15 **REDIRECT EXAMINATION**

16 **BY MR. JAY:**

17 **Q.** Turning towards the end of your conversation with
18 Mr. Joshi, you discussed page 25 of your deposition, where
19 basically the question and answer at the deposition was,
20 did he shoot Pedro when he reached into his pants? Do you
21 remember that conversation with Mr. Joshi?

22 **A.** Yes.

23 **Q.** Did you read the next few questions and answers
24 in the deposition there on page 25 and 26 to yourself?

25 **A.** Yes.

1 **Q.** Did you have any more discussion with Mr. Joshi
2 about how long Pedro Gallardo had been pulling on his pants
3 prior to him being shot?

4 **A.** Yes.

5 **Q.** How long was it?

6 **A.** It was through the whole arguing.

7 **Q.** Did you and Mr. Joshi actually agree on a time?

8 **A.** No.

9 **Q.** Would it refresh your memory to see whether or
10 not?

11 **A.** Yes.

12 **Q.** Okay. I'm going to show you page 25 and 26 of
13 your deposition. I'm going to ask you to read it to
14 yourself, starting on page 25, line 20; and then when
15 you're done, I'll scroll down to 26 for you. I'm going to
16 ask you, on page 26, to read to yourself lines one through
17 nine.

18 **A.** Okay.

19 **Q.** Does that refresh your memory as to whether or
20 not you and Mr. Joshi had a conversation about how long
21 Pedro Gallardo was pulling around his pants before the
22 defendant shot him?

23 **A.** Yes.

24 **Q.** How long?

25 **A.** About -- before he got shot, about that time,

1 less than a minute maybe.

2 Q. Did you give a direct answer about how many
3 seconds?

4 A. I'm sorry?

5 Q. Did you say exactly how many seconds in your
6 conversation with Mr. Joshi?

7 A. No. I said less than a minute.

8 Q. Okay. So you just had an opportunity to read
9 that statement, correct?

10 A. Yes.

11 Q. Did you give the following answer to the
12 following question on page 26 in your deposition --

13 MR. JOSHI: Your Honor, I'm going to object,
14 improper impeachment.

15 THE COURT: Overruled.

16 BY MR. JAY:

17 Q. Did you give the following answer to the
18 following question on page 26 of your deposition, lines
19 four and five: Okay. 45 seconds or so? Answer: Yeah.

20 Going on to six through nine. Question: Okay.
21 So roughly about 45 seconds he pulled around his pants; and
22 then he gets shot, correct? Answer: Yes.

23 Ma'am, did you give the following answers to
24 those questions?

25 A. Yes.

1 **Q.** Is that a yes?

2 **A.** Yes.

3 **Q.** Starting now, that was 45 seconds. Was it about
4 that long that the defendant and Pedro Gallardo were
5 arguing with the defendant waving his gun around and Pedro
6 pulling around his pants?

7 **A.** No, longer than 45 seconds.

8 **Q.** So it was even longer?

9 **A.** (Nods head.)

10 **Q.** Yes?

11 **A.** Yes.

12 **Q.** So about how long was the defendant waving the
13 gun around while he was arguing with Pedro Gallardo?

14 **A.** It was a good ten minutes.

15 **Q.** Okay.

16 **A.** Ten, 15 minutes, around.

17 **Q.** And that's from the point in time where the
18 defendant brought the gun down from the car?

19 **A.** Correct.

20 **Q.** Okay. So for ten or 15 minutes while the
21 defendant was waving the gun around, is Victor standing
22 behind the defendant, kind of behind him? He wasn't in
23 front of him.

24 **A.** Yeah, he was like on the side.

25 **Q.** During that ten or 15 minutes, did Victor get a

1 gun and shoot the defendant?

2 A. No.

3 Q. During that ten or 15 minutes, did you get a gun
4 and shoot the defendant?

5 A. No.

6 Q. Did any of the other girls in your group do that?

7 A. No.

8 Q. Did Emmanuel?

9 A. No.

10 Q. Did Pedro Gallardo pull out a gun and shoot the
11 defendant?

12 A. No.

13 Q. Did Pedro Gallardo even lift up his shirt so that
14 he could get anything that he may have had in his
15 waistband?

16 A. No.

17 Q. Now, earlier in your conversation with the
18 defense counsel, there was some conversation about who said
19 something first. Do you remember that part of the
20 conversation, whether it was Victor or the white or
21 fair-skinned guy that said something first?

22 A. Yes.

23 Q. Who is it that said something first between the
24 groups?

25 A. I recall the other group starting it.

1 **Q.** Okay. And then Victor says something back?

2 **A.** Yes.

3 **Q.** Okay. Now, when you say that people were getting
4 rowdy, you specifically said during cross that Pedro got
5 rowdy and fired up. Is that accurate, you said that with
6 Mr. Joshi?

7 **A.** Yes.

8 **Q.** Was the defendant, Mr. Batista, also being rowdy?

9 **A.** Yes.

10 **Q.** And can you describe his behavior that would
11 allow you to draw that conclusion of calling him rowdy?

12 **A.** He was rowdy, like with his hands up, arguing.

13 **Q.** Okay. Was there anybody in the defendant's group
14 trying to defuse the situation that was going on?

15 **A.** No.

16 **Q.** Now, at this time when Victor was taking his
17 shirt off -- remember when you testified with Mr. Joshi
18 about that?

19 **A.** Yes.

20 **Q.** Did you see any guns in Victor's waistband?

21 **A.** No.

22 **Q.** When the defendant was waving the gun around,
23 were you afraid that somebody was eventually going to get
24 shot by the defendant?

25 **A.** Yes.

1 **Q.** Who were you afraid he was going to shoot?

2 **MR. JOSHI:** Your Honor, I'm going to object.

3 It's irrelevant.

4 **THE COURT:** Sustained.

5 **MR. JAY:** May we approach?

6 **THE COURT:** Sure.

7 (There was a bench conference as follows:)

8 **MR. JAY:** I think this goes into the self-defense
9 analysis because they're trying to allege that the
10 defendant would have under the circumstances been
11 afraid and required to shoot somebody, but he's the
12 one waving the gun. So part of the analysis when you
13 started this self-defense thing is who's the aggressor
14 and whether or not the aggressor is justified in
15 grossly escalating it from nondeadly force to deadly
16 force.

17 In my estimation, this is relevant because I
18 would expect that if their client testified, they'd
19 ask him whether he was afraid. I mean, they were
20 making those arguments in opening statement.

21 **MR. JOSHI:** It's irrelevant. Her fear is
22 irrelevant, as far as self-defense is concerned. And
23 her fear is speculating on, you know, what you know
24 the other people in the situation are feeling,
25 including the defendant. So I think the facts are the

1 facts. It doesn't -- her fear or anyone else's fear
2 is not, you know, material or relevant to self-defense
3 or whether or not first-degree murder was committed.

4 **THE COURT:** Objection is sustained.

5 (The bench conference concluded.)

6 **BY MR. JAY:**

7 **Q.** Mr. Joshi also asked you about some things that
8 you didn't put in your written statement. Do you remember
9 that part of your conversation with him?

10 **A.** Yes.

11 **Q.** Is it fair to say that you didn't write
12 everything --

13 **MR. JOSHI:** Your Honor, I'm going to object,
14 leading.

15 **THE COURT:** Sustained.

16 **BY MR. JAY:**

17 **Q.** Did you put everything in your written statement
18 that you talked about today for however long we've been
19 here, you, me and Mr. Joshi?

20 **A.** No.

21 **Q.** And did you put everything in your written
22 statement -- retract that.

23 Do you remember giving a recorded statement to
24 the police?

25 **A.** Yes.

1 **Q.** And have you -- did you give them every single
2 detail? Was that conversation as long with the police as
3 it has been with us today?

4 **A.** Yes.

5 **Q.** Okay. And how about your deposition, how long
6 was that approximately?

7 **A.** It went fast, ten minutes, 15 minutes.

8 **Q.** Okay. Quite shorter than today?

9 **A.** Yes.

10 **MR. JAY:** Okay. No other questions.

11 **THE COURT:** Any recross on any new issues raised
12 in redirect examination?

13 **MR. JOSHI:** Yes, Your Honor.

14 **THE COURT:** Okay.

15 **RECROSS-EXAMINATION**

16 **BY MR. JOSHI:**

17 **Q.** Now, that written statement that Mr. Jay just
18 asked you about, you reviewed it, correct?

19 **A.** Yes.

20 **Q.** You wrote a full page, right?

21 **A.** Yes.

22 **Q.** In fact, 18 lines, correct?

23 **A.** Yes.

24 **Q.** You put a lot of details in there like colors of
25 cars, correct?

1 **A.** Yes.

2 **Q.** Colors of shirts people were wearing?

3 **A.** Yes.

4 **Q.** How people were built?

5 **A.** Yes.

6 **Q.** Is that yes?

7 And do you recall whether or not in your sworn
8 statement if Detective Montford asked you if there's
9 anything you want to add to this statement or something he
10 may have forgotten to ask you? Do you remember him asking
11 you that?

12 **A.** Okay. Yes.

13 **Q.** And you didn't have anything to add at that time,
14 correct?

15 **A.** Not at the moment, no.

16 **Q.** Okay. Now, when Mr. Jay first asked you how --
17 how long was the encounter when the defendant had the gun,
18 you initially said one minute -- less than a minute,
19 correct?

20 **A.** Correct.

21 **Q.** Then Mr. Jay showed you the deposition where you
22 said roughly about 45 seconds or so, correct?

23 **A.** Yes. I seen it.

24 **Q.** That is what you testified under oath in a
25 deposition, correct?

1 **A.** But you -- you said 45 seconds.

2 **Q.** Okay. And you said it was under a minute, right?

3 **A.** Right.

4 **Q.** Okay. So when Mr. Jay asked you, you said it was
5 under a minute when he first asked you, correct?

6 **A.** Correct.

7 **Q.** Okay. Then after he looked at the watch for 45
8 seconds, your less than a minute changed to ten to 15
9 minutes all of a sudden?

10 **A.** But you asked how long was it before he got shot.

11 **Q.** So --

12 **A.** You didn't specify.

13 **Q.** What Mr. Jay had asked you, how long was it
14 that -- when the person came back with the gun that
15 Mr. Gallardo was reaching for his pants, you said less than
16 a minute, right?

17 **A.** I don't --

18 **Q.** You don't recall what you told Mr. Jay?

19 **A.** No. I'm saying the question you asked was
20 different from what he asked.

21 **Q.** Okay. Would you clarify what was the difference?

22 **A.** He asked how long it's been since he went in the
23 car and he was waving around the gun and they were arguing.
24 And then you asked how long was it before he got shot when
25 he was putting up his pants.

1 Q. Okay. So you're saying the whole thing -- you
2 said the whole thing happened real fast, right?

3 A. I mean, yeah, you can say.

4 Q. But now from real fast, we're talking about now
5 it's ten to 15 minutes. Is it the whole encounter or when
6 the person went and retrieved the firearm?

7 A. Well, when he got the firearm, it was about,
8 yeah, the arguing, ten minutes, yeah.

9 Q. Ten minutes with the firearm.

10 So you said that Pedro didn't back down at all
11 when he saw the firearm, correct?

12 A. Yeah, I mean, not right away.

13 Q. So for ten to 15 minutes, your testimony here is
14 Pedro is beating his chest and pulling up his pants for ten
15 to 15 minutes?

16 A. No, not beating his chest; but he was pulling up
17 his pants. They were arguing.

18 Q. So he's basically arguing and pulling up his
19 pants for ten to 15 minutes, kind of like adjusting it?

20 **MR. JAY:** Objection, misstatement of testimony.

21 **THE COURT:** Overruled.

22 You may answer the question.

23 **THE WITNESS:** Can you ask it again?

24 **BY MR. JOSHI:**

25 Q. Are you saying that Pedro is continuing arguing?

1 **A.** Yeah. They were arguing back and forth, and he
2 was pulling on his pants.

3 **Q.** For ten to 15 minutes?

4 **A.** For ten minutes.

5 **MR. JAY:** Objection, compound. Arguing and
6 pulling up pants are two different things with two
7 different time frames, according to her testimony.

8 **THE COURT:** Sustain the objection.

9 **BY MR. JOSHI:**

10 **Q.** So Pedro was arguing for ten to 15 minutes, is
11 that your testimony, after the person got the gun?

12 **A.** Yes. They were arguing while -- after he got the
13 gun, yes.

14 **Q.** And Pedro was pulling up his pants for roughly
15 around the same time, ten to 15 minutes?

16 **MR. JAY:** Objection, misstatement of the
17 evidence.

18 **MR. JOSHI:** I'm asking her.

19 **THE COURT:** I'm going to overrule the objection
20 but before you continue, Mr. Cameron, are you able to
21 hear way back there?

22 **The Juror:** Yes.

23 **THE COURT:** You are? Good. Okay. Thank you.
24 Please ask your question.

25 **BY MR. JOSHI:**

1 **Q.** So Pedro was pulling up his pants for ten to 15
2 minutes?

3 **A.** Yeah, for the most part, he was.

4 **Q.** Before -- before Mr. Batista went to get the gun
5 when Pedro was arguing, was he still pulling up his pants
6 with the initial argument?

7 **A.** Before he went and got the gun?

8 **Q.** Yeah.

9 **A.** Yeah, he was still pulling up his pants the whole
10 time.

11 **Q.** Did he pull up his pants all night?

12 **A.** They were arguing back and forth. So he was
13 pulling up his pants while they were arguing.

14 **Q.** Okay. Did he ever manage to adjust his pants?

15 **A.** I don't understand why --

16 **Q.** I mean, did he ever have his pants -- I mean, did
17 his pants ever stay in one place?

18 **A.** No. I guess they were loose. I mean --

19 **Q.** Was his pants falling off earlier that night?

20 **A.** I don't recall. I wasn't paying attention to his
21 pants.

22 **MR. JOSHI:** May I have a moment, Your Honor?

23 **THE COURT:** You may.

24 **MR. JOSHI:** That's all the questions I have.

25 **THE COURT:** Mr. Jay, may this witness be

1 released?

2 **MR. JAY:** Yes.

3 **THE COURT:** Ma'am, thank you.

4 **THE WITNESS:** Thank you.

5 **THE COURT:** Attorneys approach.

6 (There was a bench conference as follows:)

7 **THE COURT:** Who's your next witness?

8 **MR. JAY:** Depends on who's out there.

9 **THE COURT:** Okay. We don't know how long the
10 witness is going to be?

11 **MR. JAY:** No. I'll just say Dr. Stephany.

12 **MR. LaFAY:** Is Dr. Stephany supposed to be here
13 at 3:00?

14 **MR. JAY:** He was supposed to be here at 3:00.
15 We're on witness number three at 5:00.

16 **THE COURT:** Okay. Let's start our next witness.
17 I don't think we'll be able to finish the next
18 witness. It depends on how far we get in direct. So
19 who's your next witness?

20 **MR. JAY:** I'll need -- I have to stop and talk to
21 Dr. Stephany, if he's out there because there are six
22 bodies that were delivered to the morgue; and they
23 have to work in the morning.

24 **THE COURT:** You want to see if he's there?

25 **MR. JAY:** Yeah.

1 **MR. JAY:** Xavier Goytia. And I believe that's
2 the witness we wanted to address things.

3 **XAVIER GOYTIA**

4 was called as a witness and, having first been duly sworn,
5 testified as follows:

6 **THE COURT:** Say yes or no. I understand your
7 mouth. Can you say yes?

8 **THE WITNESS:** Huh.

9 **THE COURT:** Please have a seat. Okay. Sir, are
10 you able to speak with words?

11 **THE WITNESS:** Huh-uh.

12 **THE COURT:** And is it because your jaw is wired
13 shut?

14 **THE WITNESS:** (Nods head.)

15 **THE COURT:** You're nodding your head yes?

16 **THE WITNESS:** Uh-huh.

17 **THE COURT:** And you said the noise, huh-uh. Is
18 that yes, you said uh-huh? Say uh-huh again.

19 **THE WITNESS:** Uh-huh.

20 **THE COURT:** Are you able to speak at all? Can
21 you say the words yes or no?

22 **THE WITNESS:** (Noise.)

23 **THE COURT:** Can you say yes?

24 **THE WITNESS:** (Noise.)

25 **THE COURT:** Okay. Those sounded both the same to

1 me. If you were given a device to type answers on,
2 are you able to type?

3 **THE WITNESS:** Uh-huh.

4 **THE COURT:** Okay. So, Mr. Jay, is there a device
5 that we can give to this witness to assist him? You
6 can actually speak.

7 **MR. JAY:** I was testing it.

8 **THE COURT:** Okay. We'll try to set up something
9 so you can communicate with us. Okay?

10 **THE WITNESS:** Uh-huh.

11 **THE COURT:** Just lost the connection.

12 Sir, can you please type your name for me. And
13 when you were asked earlier do you swear to tell the
14 truth the whole truth and nothing but the truth what
15 was your answer? Your answer was yes. Okay.

16 State, you may inquire.

17 **DIRECT EXAMINATION**

18 **BY MR. JAY:**

19 **Q.** On June 23rd, 2012, did you go out downtown with
20 some friends?

21 **THE COURT:** You typed yes.

22 **MR. JAY:** Who did you go out with?

23 And if you could hit return you can keep on
24 typing below that.

25 **THE COURT:** The witness typed: A couple friends

1 and my brother.

2 **MR. JAY:** And what are your friends' names and
3 your brother's name?

4 Instead of deleting, hit return and start a new
5 line. We'll save time.

6 **THE COURT:** The witness appears to have typed:
7 Dylan, Cruz, Carlos, Xavier, Ronny.

8 **BY MR. JAY:**

9 **Q.** Do you see Ronny in the courtroom today?

10 **A.** Uh-huh.

11 **Q.** Could you type yes or no, since it sounds the
12 same? I'm sorry.

13 **THE COURT:** The witness typed the word: Yes.

14 **MR. JAY:** Can you type where he is and what he's
15 wearing?

16 **MR. LaFAY:** Your Honor, in this instance, the
17 defense will stipulate to the identification of
18 Mr. Batista by this witness.

19 **THE COURT:** The defense, ladies and gentlemen, is
20 stipulating that this witness has identified the
21 defendant as the Ronny in the group of people that he
22 attended downtown Orlando with in June of 2012?

23 Fair enough?

24 **MR. LaFAY:** Thank you, your honor.

25 **THE COURT:** Thank you.

1 **BY MR. JAY:**

2 **Q.** Did you-all come in cars?

3 **THE COURT:** The witness typed the word, yes.

4 **BY MR. JAY:**

5 **Q.** Did you-all park in a parking garage?

6 **THE COURT:** The witness typed the word, yes.

7 **BY MR. JAY:**

8 **Q.** How many cars did you-all take?

9 **THE COURT:** The witness typed the number, two.

10 **BY MR. JAY:**

11 **Q.** Whose cars, if you know?

12 **THE COURT:** The witness typed the letters, I-D-K.

13 **BY MR. JAY:**

14 **Q.** And does I-D-K stand for I don't know?

15 **A.** (Nods head.)

16 **Q.** Can you type yes or no?

17 **THE COURT:** The witness typed the word, yes.

18 **BY MR. JAY:**

19 **Q.** Who did you ride with in your particular car?

20 **THE COURT:** The witness typed the name, Xavier.

21 **BY MR. JAY:**

22 **Q.** Did you-all park near the other car with your
23 other friends?

24 **THE COURT:** The witness typed the word, no.

25

1 **BY MR. JAY:**

2 **Q.** Where did you-all go out while you were downtown?

3 **THE COURT:** The witness typed first the letters,
4 I-D-K, then if Tier or Ono, O-N-O.

5 **BY MR. JAY:**

6 **Q.** After you-all went to whatever establishments you
7 went to, what did you do?

8 **THE COURT:** Well, left home -- we left home.

9 **MR. JAY:** Did anything happen to you prior to
10 being able to leave and go home? Did anything happen
11 before you got home?

12 **THE COURT:** The witness typed: Yeah, but not
13 sure what, a argument.

14 **BY MR. JAY:**

15 **Q.** So was there an argument? And that calls for yes
16 or no.

17 **THE COURT:** Witness typed the word, yes.

18 **BY MR. JAY:**

19 **Q.** Where was the argument?

20 **THE COURT:** The witness typed, garage.

21 **BY MR. JAY:**

22 **Q.** Inside the garage or near it?

23 **THE COURT:** Inside, the witness typed.

24 **BY MR. JAY:**

25 **Q.** Is that the garage -- is that the place that you

1 and the other Xavier parked?

2 **THE COURT:** The witness typed, yeah.

3 **BY MR. JAY:**

4 **Q.** Who were you with when you saw this argument?

5 **THE COURT:** The witness typed: Me, Ronny, my
6 brother and Dylan, Xavier, Carlos.

7 **BY MR. JAY:**

8 **Q.** And just so we're clear, is your brother named
9 Cruz, C-R-U-Z?

10 **THE COURT:** The witness typed, yeah.

11 **BY MR. JAY:**

12 **Q.** Who in your group was involved in the argument?

13 **THE COURT:** The witness typed, I-D-K, everyone.

14 **BY MR. JAY:**

15 **Q.** Can you describe the person or people everyone in
16 your group was arguing with?

17 **THE COURT:** The witness typed, no. There was a
18 lot of them.

19 **BY MR. JAY:**

20 **Q.** Can you estimate or give us an even better than
21 an estimation, how many numbers were in that group?

22 **THE COURT:** The witness typed, six, the word, to,
23 T-O, and the number, ten.

24 **BY MR. JAY:**

25 **Q.** At some point, did your group walk away from the

1 argument to your cars?

2 **THE COURT:** The witness typed, yeah; and that's
3 all I remember.

4 **BY MR. JAY:**

5 **Q.** Did the defendant get into one of the cars after
6 you walked away?

7 **THE COURT:** The witness typed, no, then the
8 letters, I-D-K.

9 **BY MR. JAY:**

10 **Q.** Do you remember giving a recorded statement to
11 the Orlando Police Department on July 2nd, 2012?

12 **THE COURT:** The witness typed, yeah. That
13 statement went wrong with cops.

14 **BY MR. JAY:**

15 **Q.** Were you specifically asked about whether or not
16 the defendant got into a car and then got out of that car?

17 **THE COURT:** The witness typed, no. I was more
18 told what to say without able to leave from there.

19 **BY MR. JAY:**

20 **Q.** Did you have an attorney present there with you
21 during this statement?

22 **THE COURT:** The witness typed, my brother's.

23 **BY MR. JAY:**

24 **Q.** Immediately before being asked about whether or
25 not the defendant got into a car and then got out of a car,

1 did you have a chance to talk with this attorney?

2 **THE COURT:** The witness typed, no. He wasn't my
3 attorney. I told him I wanted to leave; and that's
4 when he said he wanted to arrest me, like the two
5 other witnesses.

6 **BY MR. JAY:**

7 **Q.** Wasn't the attorney a female?

8 **THE COURT:** The witness typed, I think there was
9 a guy too. Not sure. Didn't hire her.

10 **MR. JAY:** May I approach the witness with pages
11 245 and 246, Bates stamp?

12 **THE COURT:** Have you seen that, Mr. LaFay?

13 **MR. LaFAY:** I have not. I have the statement,
14 but let me double-check. I do have that statement.
15 Thank you, Your Honor.

16 However, there's no predicate for approaching the
17 witness at this point.

18 **THE COURT:** I agree.

19 **MR. LaFAY:** Thank you.

20 **THE COURT:** Mr. Jay.

21 **BY MR. JAY:**

22 **Q.** Did you give the following answer to the
23 following questions --

24 **MR. LaFAY:** This would be improper procedure.
25 I'm going to object.

1 **THE COURT:** Sustained.

2 **BY MR. JAY:**

3 **Q.** Okay. Did you give a different answer to the
4 police that day regarding whether or not the defendant got
5 into a car and then got out of a car?

6 **THE COURT:** The witness typed, I don't remember
7 with my head trauma and codeine I'm on.

8 **BY MR. JAY:**

9 **Q.** Would it refresh your memory to see a transcript
10 of the statement you gave to the police?

11 **THE COURT:** The witness typed, seen it, didn't
12 refresh my memory.

13 **BY MR. JAY:**

14 **Q.** Did -- let's go back to what you're remembering
15 today. Did you and the defendant get into one of the cars
16 after you-all walked away from the argument?

17 **THE COURT:** The witness typed, no.

18 **BY MR. JAY:**

19 **Q.** And what was the defendant's level of sobriety or
20 being impaired that evening at this point in time in the
21 evening, at the argument?

22 **THE COURT:** The witness typed the letters, I-D-K
23 and following words, we was drinking.

24 **BY MR. JAY:**

25 **Q.** So what did happen after you walked away from the

1 argument?

2 **THE COURT:** The witness typed, I left with
3 Almonte.

4 **BY MR. JAY:**

5 **Q.** Is that the other Xavier's last name?

6 **THE COURT:** The witness typed, yes.

7 **BY MR. JAY:**

8 **Q.** Did you see where the defendant and the rest of
9 your group went?

10 **THE COURT:** The witness typed, no.

11 **MR. JAY:** No further questions.

12 **THE COURT:** Thank you.

13 Mr. LaFay?

14 **MR. LaFAY:** Thank you.

15 **CROSS-EXAMINATION**

16 **BY MR. LaFAY:**

17 **Q.** Mr. Goytia, the argument, did it start in the
18 parking garage with a bump, somebody bumped somebody?

19 **THE COURT:** The witness typed, yes but don't know
20 witness' names. Not sure who. I was pretty drunk.

21 **BY MR. LaFAY:**

22 **Q.** After -- so you're not sure who bumped who?

23 **A.** (Shakes head.)

24 **THE COURT:** The witness nodded his head no. You
25 want a typed word?

1 **MR. LaFAY:** No, Your Honor.

2 **BY MR. LaFAY:**

3 **Q.** Now after the bump with whatever persons, was
4 there a stare-down?

5 **THE COURT:** The witness typed, there was multiple
6 reaching for their waist coming towards us, so I left.

7 **BY MR. LaFAY:**

8 **Q.** Were you -- let's talk after the bump. So I'm
9 going to go there. Now, I'm going to ask you, Mr. Goytia,
10 some questions about before you left. Okay?

11 **A.** (Witness made noise.)

12 **THE COURT:** The witness made a noise and nodded
13 his head yes.

14 **BY MR. LaFAY:**

15 **Q.** So was there a time when Ronny or when -- excuse
16 me, was there a time when -- I'm going to strike that.

17 How many men were there in the other group, if
18 you recall, if you know?

19 **THE COURT:** The witness typed the number, four,
20 the word, to, T-O and then the number, six.

21 **BY MR. LaFAY:**

22 **Q.** After the bump, were two of them staring at Ronny
23 Batista?

24 **THE COURT:** The witness typed, at all of us.

25

1 **BY MR. LaFAY:**

2 **Q.** So two of them were staring at all of you?

3 **A.** (Nods head.)

4 **THE COURT:** The witness nodded his head yes.

5 **BY MR. LaFAY:**

6 **Q.** Was Ronny Batista staring back at them?

7 **THE COURT:** The witness typed, no, we was walking
8 away from the situation cause we were scared.

9 **BY MR. LaFAY:**

10 **Q.** You said that these two men, they were reaching
11 for their waists?

12 **THE COURT:** The witness typed the word, correct.

13 **BY MR. LaFAY:**

14 **Q.** Can you demonstrate? I'm going to ask the Court
15 for permission for to you stand up and show the jury what
16 you saw the two men doing with their waistband.

17 **THE COURT:** You may do so.

18 **THE WITNESS:** (Demonstrating.)

19 **BY MR. LaFAY:**

20 **Q.** Were they saying things like, come on, try us,
21 words like that?

22 **THE COURT:** The witness typed, come try us,
23 getting into a circle.

24 **BY MR. LaFAY:**

25 **Q.** Did you think they had guns?

1 **THE COURT:** The witness typed, it seem like they
2 have, the number, two.

3 **BY MR. LaFAY:**

4 **Q.** Because you thought they had guns, is that why
5 you left with Almonte?

6 **THE COURT:** The witness typed, correct.

7 **MR. LaFAY:** May I take a moment, Your Honor?

8 **THE COURT:** You may.

9 **MR. LaFAY:** If I could take a moment, please,
10 Your Honor?

11 **THE COURT:** You may.

12 **MR. LaFAY:** I have no further questions. Thank
13 you, Your Honor.

14 **THE COURT:** Mr. Jay, any redirect?

15 **MR. JAY:** Yes, sir.

16 **THE COURT:** You may.

17 **REDIRECT EXAMINATION**

18 **BY MR. JAY:**

19 **Q.** So, sir, you do remember all the details you just
20 gave to Mr. LaFay from before the shooting; is that
21 correct?

22 **THE COURT:** The witness typed, repeat that.

23 **BY MR. JAY:**

24 **Q.** You testified to a bunch of details about the
25 argument and what people were doing, that whole

1 conversation with Mr. LaFay; you do remember that, correct?

2 **THE COURT:** The witness typed, correct. And from
3 there I left, which I was try [sic] to tell the cop.

4 **BY MR. JAY:**

5 **Q.** And so in your conversation with the police, any
6 discussion about you helping Ronny get into a car and then
7 him getting out of the car --

8 **MR. LaFAY:** I'm going to object to that because
9 that's injecting what is now hearsay into the
10 questioning.

11 **THE COURT:** Overruled.

12 **BY MR. JAY:**

13 **Q.** Right now any discussion you had with the police
14 about you helping the defendant get into a car and then him
15 getting out of the car, that is inaccurate and a product of
16 the police making you say that, if I understood your
17 testimony?

18 **THE COURT:** The witness typed, correct. He
19 wanted me to say what he heard or was told or thought
20 happened.

21 **BY MR. JAY:**

22 **Q.** So you do remember telling the police those
23 things when you were interviewed?

24 **THE COURT:** The witness typed, no, no, that I
25 seen it, I do -- no, now that I seen it, I do.

1 **BY MR. JAY:**

2 **Q.** All right. I'm confused. It's important. Do
3 you remember saying those things to the police,
4 specifically that you helped Ronny, the defendant, Batista?

5 **MR. LaFAY:** I have an objection to the form of
6 the question. I need to approach.

7 **THE COURT:** You may approach.

8 (There was a bench conference as follows:)

9 **MR. LaFAY:** I think -- and as I recall yesterday,
10 Your Honor, he can't just go telling the witness he
11 said something. So there's an improper predicate for
12 just repeating verbatim his prior statements to the
13 police, which are, A, hearsay at this point; and he
14 can't offer them up within the question.

15 **THE COURT:** The impeachment requires have you
16 ever at any other time made a statement different than
17 what you're now testifying to, and then you go into
18 the predicate about the statement and things of that
19 nature. The question Mr. Jay was about to ask is --

20 **MR. JAY:** I'm trying to narrow it down. He seems
21 to be saying two different things, either the police
22 made him to say it or he doesn't remember it; and I'm
23 trying to pin him down so we can carry on with the
24 inconsistent statement impeachment.

25 **THE COURT:** Okay. Then you should try to pin him

1 down regarding -- without -- you said the statement
2 once. You don't need to repeat the statement, but you
3 can try to discern whether or not he remembers it. I
4 just heard -- I just read that he remembered it after
5 reading it. So I don't know if he now remembers
6 saying it or if he still never said it but has only
7 written it, so you can ask that.

8 **MR. JAY:** I'm right there with you. He's saying
9 two different things.

10 **THE COURT:** Okay. So why don't you just ask that
11 without saying the phrase again.

12 **MR. JAY:** Okay.

13 **THE COURT:** Any objection?

14 **MR. LaFAY:** No objection.

15 **THE COURT:** Thank you.

16 (The bench conference concluded.)

17 **THE COURT:** Mr. Jay.

18 **BY MR. JAY:**

19 **Q.** Do you remember being asked questions about
20 whether or not you helped the defendant into a car and
21 whether or not he got out of it with the police?

22 **MR. LaFAY:** Well, now I'm going to restate my
23 objection.

24 **THE COURT:** I'm going to sustain the objection.
25 Rephrase the question, please.

1 **BY MR. JAY:**

2 **Q.** Do you remember having a discussion with the
3 police about the events surrounding walking away from the
4 argument?

5 **THE COURT:** The witness typed, no. This was
6 years ago, five, the word, to, and then the number,
7 seven.

8 **BY MR. JAY:**

9 **Q.** But you're able to remember everything you just
10 told Mr. LaFay, correct?

11 **MR. LaFAY:** That's an objection because it's
12 leading.

13 **THE COURT:** Overrule.
14 The witness typed, cause I remember the night
15 till that part but not the interview like that.

16 **BY MR. JAY:**

17 **Q.** That night after your group walked away from the
18 interview, did you walk the defendant to a car and put him
19 in a car?

20 **MR. LaFAY:** That's -- objection. It's been asked
21 and answered on, I believe, this is the third time.

22 **THE COURT:** Overruled.

23 The witness typed, I-D-K.

24 **BY MR. JAY:**

25 **Q.** Now, when you spoke to the police, did you ever

1 mention to them anything about anybody bumping one another?

2 **THE COURT:** The witness typed, yeah, P-P-L,
3 pop -- witness is modifying with type.

4 The witness typed, yeah, P-P-L had confronted but
5 not sure who it was. Pretty drunk.

6 **BY MR. JAY:**

7 **Q.** And to narrow it down specifically to a yes or no
8 without explanation, did you tell the police about
9 people -- a bump being between the two groups?

10 **THE COURT:** The witness typed, yeah, once I seen
11 the statement yesterday.

12 **BY MR. JAY:**

13 **Q.** Are you friends with the defendant?

14 **THE COURT:** The witness typed the word, no.

15 **MR. JAY:** No other questions.

16 **THE COURT:** Any recross, Mr. LaFay? Is that a
17 yes?

18 **MR. LaFAY:** I think I do. Thank you, Your Honor.
19 Yes.

20 **THE COURT:** You may.

21 **MR. LaFAY:** I'm having a second thought. I'm
22 going to reverse myself. Thank you, Your Honor. I
23 have no further questions.

24 **THE COURT:** May this witness be released, Mr.
25 Jay?

1 **MR. JAY:** No.

2 **THE COURT:** Sir, you're still under subpoena.
3 Please wait in the courthouse. Actually, please wait
4 on this floor for me. Okay? Thank you.

5 Attorneys approach, please.

6 (There was a bench conference as follows:)

7 **THE COURT:** Who's your next witness?

8 **MR. JAY:** Probably nobody short.

9 **THE COURT:** Okay. So we'll take a break for
10 lunch. You guys okay with that?

11 **MR. JOSHI:** Yeah. I'm always hungry.

12 **THE COURT:** Okay.

13 (The bench conference concluded.)

14 **THE COURT:** Ladies and gentlemen, it's almost
15 12:00. It's a quarter to 12:00. We're going to take
16 our afternoon break. I've been informed our next
17 witness would not be short enough to complete in 15
18 minutes. We'll take a break now for lunch. Again,
19 it's quarter to 12:00.

20 I would like you back in the jury room at 1:15.
21 That gives us an hour and a half. It looks inclement
22 outside, but it doesn't look like rain. Hopefully,
23 you can matriculate somewhere. Please be in the jury
24 room at 1:15 to continue with the trial.

25 Leave your pads on your chairs. Don't speak to

1 anybody. Don't let anybody speak to you. Don't
2 mention any of the places mentioned in the trial. If
3 one of the attorneys or participants runs into you,
4 they're going to ignore you. That's on my
5 instructions, not because they mean to be rude to you.
6 Thank you, very much.

7 **COURT DEPUTY:** Jury exiting.

8 (The jury exited the courtroom at 11:45 a.m.)

9 **THE COURT:** Okay. We'll be in recess. I'd like
10 the attorneys back by ten after 1:00. Mr. LaFay,
11 please, ten after 1:00.

12 **MR. LaFAY:** Thank you, Your Honor. I see the
13 Court had thought that maybe I was putting minutes in
14 the bank because I was early this morning but no.
15 I'll be here.

16 **THE COURT:** You were speaking to Mr. Batista. I
17 wanted to make sure you heard. That's all.

18 **MR. LaFAY:** Thank you.

19 **THE COURT:** Thank you-all, very much.

20 (A luncheon recess was taken from 11:45 a.m. to
21 1:10 p.m.)

22 **THE COURT:** Okay. State, are you ready to
23 proceed? Actually, we're a few minutes early.

24 **MR. JAY:** We'd ask permission to have Howard
25 Kuehn from the Orlando Police Department roll the

1 defendant's prints.

2 **The Court:** Okay. Any objection, defense?

3 **MR. JOSHI:** None, Your Honor.

4 **THE COURT:** Okay. Can you get him now?

5 **MR. JAY:** Yes.

6 (Court was at ease.)

7 **THE COURT:** State, can you tell me who your next
8 witness is going to be?

9 **MR. JAY:** Detective Montford.

10 **THE COURT:** Okay. State, are you ready to
11 proceed?

12 **MR. JAY:** Yes, Your Honor.

13 **THE COURT:** Defense, are you ready?

14 **MR. JOSHI:** Yes, Your Honor.

15 **COURT DEPUTY:** Jury entering.

16 (The jury entered the courtroom.)

17 **THE COURT:** Does the State recognize the presence
18 of the jury?

19 **MR. JAY:** Yes, sir.

20 **THE COURT:** Defense?

21 **MR. JOSHI:** Yes, Your Honor.

22 **THE COURT:** Please be seated, ladies and
23 gentlemen. Welcome back from lunch. None of you have
24 spots on your clothing, so you either have umbrellas
25 or it didn't rain on you. I was not so lucky.

1 During our time apart, did anybody approach you
2 and speak to you or attempt to speak to you about this
3 case?

4 **THE JURY:** No.

5 **MR. JAY:** And did any of you do any research on
6 your own or visit any of the places mentioned in
7 trial?

8 **THE JURY:** No.

9 **THE COURT:** Okay. With that, I'll invite the
10 State to call its next witness.

11 **MR. JAY:** Detective Toyd Montford.

12 **TOYD MONTFORD**

13 was called as a witness and, having first been duly sworn,
14 testified as follows:

15 **THE WITNESS:** I do.

16 **THE COURT:** Sir, you can fix your collar, the
17 back of it.

18 **THE WITNESS:** Okay. The rain got me.

19 **THE COURT:** Yes. We were just talking about
20 that.

21 If you'll please turn to the right and introduce
22 yourself to the jurors and spell your first and last
23 name for the young lady in front of you.

24 **THE WITNESS:** Toyd Montford, spelled T-O-Y-D,
25 unusual and M-O-N-T-F-O-R-D.

1 G-O-Y-T-I-A.

2 **THE COURT:** Thank you, very much.

3 You may inquire, Mr. Lafay.

4 **DIRECT EXAMINATION**

5 **BY MR. LaFAY:**

6 **Q.** Mr. Goytia, how old are you?

7 **A.** Thirty-two years old.

8 **Q.** Can you tell us how you make your living or what
9 your job is?

10 **A.** Yes. I run a music company.

11 **Q.** And do you have a brother by the name of Xavier?

12 **A.** Yes, sir.

13 **Q.** Jaw wired shut?

14 **A.** Yes.

15 **Q.** I want to now ask you if -- in 2012, if you were
16 friends with Mr. Batista? And I'm talking five years ago.

17 **A.** Yes.

18 **Q.** Are you friends with him now?

19 **A.** I haven't kept in contact, no.

20 **Q.** So, but now I'm going to go -- I'm going to ask
21 you some questions about a night, which would be the
22 evening of June the 23rd and the 24th, early morning hours,
23 of 2012. Did you go out that evening with a group of
24 friends?

25 **A.** Yes, I did.

1 Q. Who were they?

2 A. I went with Ronny, Dylan, Carlos, and my brother
3 as well; but I think he was in another car.

4 Q. Your brother, Xavier?

5 A. Yes.

6 Q. Was there another Xavier as well?

7 A. Yes, Xavier Almonte.

8 Q. Before -- and I'm sorry to take some questions
9 out of turn. So let me ask you this, at that time did you
10 have a permit, that is to say --

11 A. Yes, sir.

12 Q. -- a carrying a concealed firearm permit?

13 A. That is correct.

14 Q. On that evening, did you have a pistol?

15 A. Yes.

16 Q. What kind was it?

17 A. A Ruger P89, 9 millimeter.

18 Q. A 9 millimeter?

19 A. Yes.

20 Q. What's your purpose in having a pistol?

21 A. For protection.

22 Q. On that evening, what did do you with your
23 pistol? Where did you keep it?

24 A. It was in the trunk of the car.

25 Q. Would that be the Mercedes?

1 **A.** Yes, that's correct.

2 **Q.** Who was driving the Mercedes that evening?

3 **A.** I was.

4 **Q.** So where -- so you mention that you guys were
5 going out. Where did you go?

6 **A.** We ended up going to club Tier.

7 **Q.** All right. Were you drinking?

8 **A.** Yes. I started drinking around 3:00.

9 **Q.** In the afternoon?

10 **A.** Yes.

11 **Q.** Okay. Well, at the end -- at the end of the
12 night, 'cause I'm going to fast-forward to that, at the end
13 of the night, do you recall leaving the nightclub and going
14 back to where the car was parked?

15 **A.** Bits and pieces I remember, yes.

16 **Q.** Where -- where was the car parked? And you don't
17 have to be specific; but let me ask it, was it in a garage
18 or out on the street or what have you?

19 **A.** Garage.

20 **Q.** Did you and the rest of the people in your group
21 go back to the garage to where the car was?

22 **A.** Yes.

23 **Q.** While on your way there, was there a
24 confrontation?

25 **A.** Yes.

1 Q. Let me ask you this, where did the
2 confrontation -- where did it take place? Where is it?

3 A. Well, the gentleman was standing in the middle of
4 the road where the parking garage was.

5 Q. Let me stop you there. When you said the middle
6 of the road, is this in the parking garage?

7 A. Yes.

8 Q. Is it cars parked on each side, and there's kind
9 of a travel lane in the middle?

10 A. Correct.

11 Q. Okay. Do you remember which floor?

12 A. No.

13 Q. Okay. So, first, you mention this other
14 gentleman. Was this person in your group or a different
15 group?

16 A. Different group.

17 Q. Now, he was standing in the middle of the road.
18 Were there a lot of cars backed up waiting to get out?

19 A. No.

20 Q. So when -- when you -- when you walked to where
21 this person was standing in the middle, what was going on?

22 A. He had his arms crossed; and he was, like,
23 looking with a stare, like a strong stare.

24 Q. Was he with anybody else?

25 A. When he was standing in the middle of the road,

1 no; but I know he was, I believe, with some people, like,
2 in the corner. People were getting in their cars.

3 Q. You mention a strong stare or a hard stare or
4 something like that. Did this escalate into some words
5 being exchanged?

6 A. Yes.

7 Q. Do you recall specifically what kind of words?

8 A. No, I don't.

9 Q. Did it look like at this point to you,
10 Mr. Goytia -- or did you think that there was a fight that
11 was about to break out?

12 A. Yes.

13 Q. Where was -- at this moment in time, where was
14 Mr. Batista?

15 A. Right next to me.

16 Q. Was somebody in front of him?

17 A. In front of him? Not that I remember.

18 Q. Was he speaking or having -- or was there
19 anybody -- let me --

20 MR. LaFAY: May I strike that?

21 THE COURT: Yes.

22 BY MR. LaFAY:

23 Q. When it looked like there was a fight about to
24 break out, did you see persons in the other group doing
25 anything that made you think they had a weapon?

1 **A.** Yes. At some point during the argument, I seen
2 somebody pop a trunk.

3 **Q.** Okay. Did you see them doing anything with their
4 hands around their waistband?

5 **A.** Yeah. The gentleman that was standing in the
6 middle of the road, he started having an exchange with
7 Ronny. When they went to go fight, he looked like he was
8 reaching for a gun.

9 **Q.** Can you show us what you mean by that?

10 **A.** He was kind of going like this, like had his hand
11 in his pants like that (demonstrating).

12 **Q.** Now, you can sit down.

13 Was he saying or doing anything, other than that,
14 that made you think he had a gun?

15 **A.** I couldn't really remember what words were being
16 said, but he was definitely acting like he had a gun.

17 **Q.** In any way when you saw that, in any way, did you
18 think that that person was adjusting his pants?

19 **A.** No, not at all.

20 **MR. JAY:** Objection, calls for speculation as to
21 the intent of another, not an observation.

22 **THE COURT:** Overruled. The witness answered.

23 Next question.

24 **BY MR. LaFAY:**

25 **Q.** Were there -- you mentioned -- let me ask you, at

1 this time did you see other people who were associated with
2 this person --

3 **A.** Yes.

4 **Q.** -- or in a group?

5 Were they doing anything, flashing or reaching,
6 that is to say --

7 **MR. JAY:** Objection, leading.

8 **THE COURT:** Sustained.

9 **BY MR. LaFAY:**

10 **Q.** Were they doing anything that made you think that
11 they also had guns?

12 **A.** Yes.

13 **Q.** What were they doing?

14 **A.** They were kind of like reaching in their pants as
15 well.

16 **Q.** Were you scared?

17 **A.** I was in fear for my life, yes.

18 **Q.** You mentioned that you saw one or more of the
19 other group with a trunk. Did that cause you any concern
20 or fear?

21 **A.** Yes.

22 **Q.** Why so?

23 **A.** Because I didn't know what they had in their
24 trunk. It could have been a baseball bat, gun, who knows.

25 **Q.** Did you see Mr. Batista run to the Mercedes --

1 **A.** Yes.

2 **Q.** -- car?

3 What did you see him do there?

4 **A.** Pop the trunk.

5 **Q.** Did you see him come back?

6 **A.** Yes.

7 **Q.** Did you -- did you see him with a gun?

8 **A.** No. I just -- I assumed he had it. I didn't see
9 it in his hand. I mean, he ran to the car, so I assumed he
10 had it; but I did not see it in his hand, no.

11 **Q.** Is it your belief that he had it?

12 **A.** Yes.

13 **Q.** When Mr. Batista ran back with the gun, did you
14 see what -- what happened?

15 **A.** No, because there was like a SUV blocking my
16 view, so I couldn't really see too well. It just looked
17 like he was crowded around a lot of people, like a lot of
18 people going towards him.

19 **Q.** Were other members of your group or could other
20 members of your group, the people you went with, were they
21 back with Mr. Batista?

22 **A.** They could have been, but I was so drunk I didn't
23 really notice who else was around him.

24 **Q.** What were you doing at that moment, were you
25 heading towards or away from things?

1 **A.** I was heading away from the situation. I was
2 scared, so I was just backing away.

3 **Q.** Did you hear the gun go off?

4 **A.** Yes.

5 **Q.** Did you see who was shot?

6 **A.** No, sir.

7 **Q.** When you heard the gunshot, did you think that
8 was your pistol?

9 **A.** Yes.

10 **MR. LaFAY:** May I take a moment, please, Your
11 Honor?

12 **THE COURT:** You may.

13 **BY MR. LaFAY:**

14 **Q.** From the time, Mr. Cruz, that you saw Mr. Batista
15 run up to that car to the time you heard the shot, was
16 this -- do you know how much time? Was it seconds,
17 minutes, more than minutes?

18 **A.** I don't know. I really don't.

19 **Q.** You weren't clocking it?

20 **A.** No. I was drinking since 3:00, so I was really,
21 really drunk.

22 **MR. LaFAY:** Your Honor, I don't have any further
23 questions. Thank you.

24 **THE COURT:** Thank you.

25 Mr. Jay, cross-examination?

1 **MR. JAY:** Yes. Thanks.

2 **CROSS-EXAMINATION**

3 **BY MR. JAY:**

4 **Q.** Okay. Going back to the beginning, you've been
5 friends with Ronny Batista for about eight or ten years?

6 **A.** That's correct.

7 **Q.** Went to school with him?

8 **A.** Yes, sir.

9 **Q.** And you see him here in the courtroom?

10 **A.** Yes, sir.

11 **Q.** He's the one in the middle of the table?

12 **A.** Yes, sir.

13 **Q.** All right. And did you also work out at the gym
14 with him back in 2012?

15 **A.** No, sir.

16 **Q.** All right. Out of that group of friends that you
17 described, who did you work out with?

18 **A.** Carlos Rubio and Dylan Stierle.

19 **Q.** And after this event, days, maybe weeks, did you
20 ever tell Carlos Rubio at the gym that you saw that the
21 defendant had a gun in his hand?

22 **A.** No, sir.

23 **Q.** Now, turning back to that day, you started
24 drinking around 3:00 in the afternoon?

25 **A.** Yes, sir.

1 **Q.** Did you drink alone, or did any of your friends
2 join you?

3 **A.** Yeah, I was drinking with a couple friends.

4 **Q.** Who were those friends?

5 **A.** Ronny and my brother.

6 **Q.** So that's Ronny Batista and Xavier Goytia?

7 **A.** That is correct.

8 **Q.** Carlos wasn't with you yet, or he wasn't
9 drinking?

10 **A.** I don't remember him being with us yet.

11 **Q.** All right. What were you drinking at 3:00 in the
12 afternoon.

13 **A.** There were like mixed fruit drinks.

14 **Q.** All right. And what distilled liquors were you
15 mixing with the fruit drinks?

16 **A.** Vodka.

17 **Q.** All right. Heavy pours, light pours, medium
18 pours?

19 **A.** I really can't remember.

20 **Q.** Okay. But is that what you did until you-all
21 decided to leave and go downtown around 11:00 at night?

22 **A.** Yes, sir.

23 **Q.** You left from Kissimmee to go downtown?

24 **A.** Yes, sir.

25 **Q.** And during this time frame of 3:00 p.m. to

1 11:00 p.m., was the defendant drinking Vodka with fruit
2 drinks as well?

3 A. I don't know if he was drinking as much as I was.
4 I think he had a few drinks, yes.

5 Q. All right. And what about Xavier Goytia, was he
6 drinking the Vodka and fruit drinks as well?

7 A. Yes.

8 Q. All right. So for about eight hours, is that
9 fair?

10 A. Well, I mean, we took a couple breaks; but, yeah,
11 you can say that.

12 Q. When does Carlos Rubio get into the picture?

13 A. I say when we started heading to the nightclub.

14 Q. All right. Does he come over and then you-all
15 leave together from there, or do you-all pick him up?

16 A. I don't remember.

17 Q. Okay. And you're driving, right?

18 A. Yes.

19 Q. And so it's the defendant's car or his mother's
20 car, right?

21 A. Yes.

22 Q. But you testified that you were drinking more
23 than the defendant, correct?

24 A. That is correct.

25 Q. And you've got a bachelor's degree in criminal

1 justice, correct?

2 A. Yes.

3 Q. And so you would never do anything to jeopardize
4 that, right?

5 A. No.

6 Q. You chose to drive the car after driving -- or
7 drinking eight hours, right?

8 A. Yes.

9 Q. And Ronny Batista, you say, was drinking less
10 than you, right?

11 A. Yes.

12 Q. So did the person who drank the least drive the
13 car; or did you guys elect for you to drive, even though
14 you had drank the most?

15 A. I felt I was okay to drive, so I drove.

16 Q. Did you feel like the defendant was un-okay to
17 drive his car?

18 A. I didn't even think about that.

19 Q. Okay. Now, you say you have a concealed carry
20 permit, right?

21 A. Yes.

22 Q. You had to take some classes to get that?

23 A. That's correct.

24 Q. Do they cover anything about whether it's a good
25 idea to carry while you're drinking?

1 **A.** Yes.

2 **Q.** What did they say about that?

3 **A.** It's not a good idea.

4 **Q.** Okay. Now, when you put the gun into the trunk
5 of your car, were you alone?

6 **A.** Yes.

7 **Q.** Strike that. It wasn't your car. Into Ronny
8 Batista's car. Were you alone?

9 **A.** Yes.

10 **Q.** Did anybody else see you do that?

11 **A.** No.

12 **Q.** So at what point in time did you get away from
13 the group and put your gun into the trunk of Ronny
14 Batista's car?

15 **A.** Before we left.

16 **Q.** Okay. Now, did you make the other people aware
17 that you had put your gun into the defendant's trunk?

18 **A.** Yes.

19 **Q.** Is that on the ride up or before you leave?

20 **A.** I really can't remember.

21 **Q.** All right. So you guys stop at an ATM in
22 Kissimmee and then head up to downtown, right?

23 **A.** Yes.

24 **Q.** Now, when you get to downtown, you park at that
25 parking garage we've been talking about there on Central

1 Boulevard, right?

2 A. Correct.

3 Q. Across from the fire station?

4 A. Yes.

5 Q. And sort of across from Ember nightclub?

6 A. Yes.

7 Q. And you guys, you-all go to Tier --

8 A. Correct.

9 Q. -- nightclub, right?

10 A. Yes, sir.

11 Q. And you also get bottle service there, right?

12 A. That is correct, sir.

13 Q. And six to eight bottles, correct?

14 A. Around that much, yeah.

15 Q. Of Vodka?

16 A. Yes.

17 Q. Okay. And so besides the four of you and the two
18 Xaviers, was there anybody else splitting all this Vodka?

19 A. Dylan, as well and Carlos.

20 Q. Okay. So is there anybody else in your group
21 besides these folks: You; the defendant, Ronny Batista;
22 Carlos Rubio; Dylan Joseph and then the two Xaviers?

23 A. No one else, other than that.

24 Q. So there's six of you, right?

25 A. Correct.

1 Q. And the bars close around 2:00 in the morning?

2 A. Correct.

3 Q. And Dylan takes a bottle with him?

4 A. I don't know.

5 Q. You didn't know that there was a black labeled
6 bottle even with the little pourer that you see in the bars
7 on top in the trunk of that car?

8 A. I don't remember. I don't recall.

9 Q. And so, after a course of a couple hours of
10 drinking six to eight bottles, you-all leave, right?

11 A. Correct.

12 Q. And now you're going back to the parking garage,
13 right?

14 A. Correct.

15 Q. On the way you might have stopped at Whitewood
16 and had to buy some food so you-all could use the restroom,
17 right?

18 A. Don't remember that.

19 Q. And so then you come up the parking garage to the
20 floor where you had parked on, right?

21 A. Correct.

22 Q. And the two Xaviers, had they also parked on that
23 same floor as well?

24 A. I can't remember.

25 Q. But they walked with you, right?

1 **A.** Yes.

2 **Q.** Okay. And so you come up the parking garage and
3 lo and behold, there is a guy kind of standing in the
4 middle of where the cars would go up and down with his arms
5 crossed, right?

6 **A.** Correct.

7 **Q.** And as your group is walking by him -- you're
8 walking up the ramp to the Mercedes-Benz, right?

9 **A.** Yes.

10 **Q.** The Mercedes-Benz is further up the ramp than
11 where this guy was standing, right?

12 **A.** I believe so, yes.

13 **Q.** And it was further up than where it looked like
14 the rest of his group was standing around some cars, right?

15 **A.** Yes.

16 **Q.** And so he's standing there with his arms crossed;
17 but he doesn't say a word to any of you-all at first,
18 right?

19 **A.** Correct.

20 **Q.** It's the defendant, Ronny Batista, who says, what
21 are you looking at, or something to that effect?

22 **A.** Right but --

23 **Q.** You can say your butts with Mr. Lafay.

24 All right. So that guy's standing in the road,
25 arms crossed, staring; and Ronny Batista asks him, what are

1 you staring at, right?

2 **A.** Correct.

3 **Q.** Nobody bumps shoulders with this guy, right?

4 **A.** Correct.

5 **Q.** In fact, nobody bumped shoulders or touched
6 anybody in each other's group at all, right?

7 **A.** To my knowledge, no.

8 **Q.** Okay. And so now words are getting exchanged
9 because that guy standing in the middle of the road says
10 something back to Ronny Batista, right?

11 **A.** Correct.

12 **Q.** And so that kind of stokes the fuel of an
13 argument, right?

14 **A.** Yes.

15 **MR. LaFAY:** I'm going to object to that, Your
16 Honor, because there is no way that this witness can
17 comment on what is stoking the fuel of an argument
18 with everybody else. It's beyond his competence as to
19 what he's thinking.

20 **THE COURT:** Well, he answered the question, which
21 presumes he understood the question, so I'll sustain
22 the objection based upon what you just stated and ask
23 if the State wishes to rephrase.

24 **BY MR. JAY:**

25 **Q.** So an argument ensues from there?

1 **A.** Correct.

2 **Q.** All right. But at some point, the argument dies
3 down, right?

4 **A.** I can't remember.

5 **Q.** Well, at some point did you start walking away
6 and walking the defendant back away from this argument?

7 **A.** At least I thought I did, from what I can
8 remember.

9 **Q.** All right. And as you're walking the defendant
10 away from this argument, he breaks free from you and runs
11 up to the car, right?

12 **A.** Yes. But like I said, I don't really remember
13 much.

14 **Q.** All right. But your answer is, yes, he did break
15 away and run up to the car?

16 **A.** Yes.

17 **Q.** Because you perceived he had calmed down, so you
18 kind of let loose on your hold. It calmed you down, right?

19 **A.** Yes.

20 **Q.** In fact, at this point in time, you felt a sense
21 of relief because this whole situation had been avoided
22 because you-all were walking to the car, right?

23 **A.** Correct.

24 **Q.** Everybody in your group was walking to your car,
25 right?

1 **A.** I don't know about that.

2 **Q.** Okay. But you were and the defendant were,
3 right?

4 **A.** Yes.

5 **Q.** Dylan Joseph was?

6 **A.** I don't know.

7 **Q.** So the defendant runs up to your car, and do you
8 see him go into the trunk?

9 **A.** Yes.

10 **Q.** And then you see him run back down to the group,
11 right?

12 **A.** Correct.

13 **Q.** Now, at this point in time, nobody in your group
14 is down there, except for the defendant?

15 **A.** I don't know about that. Maybe there was, maybe
16 there wasn't.

17 **Q.** All right.

18 **A.** I can't remember.

19 **Q.** And your testimony today is that you never saw
20 the defendant have a gun in his hand. You're just
21 assuming?

22 **A.** Yeah. I just assumed, since I seen him go to the
23 trunk.

24 **Q.** Okay. Do you remember giving a statement to
25 Detective Montford in the presence of your attorney at the

1 time, Ms. Young, at her office on July 12th, 2012?

2 A. Yes, I do.

3 Q. Do you remember being asked about whether or not
4 you saw the defendant with your gun in his hand at that
5 time?

6 A. Yes.

7 Q. And did you give the same answer then as you're
8 giving today?

9 A. Well, in that original statement, I said I seen
10 the gun; but I actually didn't. The reason why I even said
11 that is because Montford, before I gave my statement, he
12 was threatening my brother to put him in jail if he didn't
13 tell him what he wanted to hear.

14 Q. Okay. So by seeing the gun, did you make a
15 statement at that point in time that you saw the gun in the
16 defendant's hand?

17 A. I never recollect seeing the gun.

18 Q. I'm asking you about what you said at that time.
19 Did you say that?

20 A. Well, I really thought about it. Since I seen
21 him run to the trunk, I thought he had the gun.

22 Q. Would you like to see your statement before I
23 question you further about this topic?

24 A. No, sir.

25 Q. Okay. So did you, on page 273 of the

1 transcript -- and you've had a chance to review this,
2 right?

3 A. Yes.

4 Q. Quote, I just see Ronny with my gun in his hand
5 and he's full-out sprinting towards the guy's direction.
6 Did you say that then?

7 A. Yes, I did.

8 Q. But your explanation is that you said that out of
9 fear because Detective Montford had threatened to get you
10 and/or your brother arrested, right?

11 A. Correct. And not only that, I assumed that he
12 had the gun, since he ran to the trunk.

13 Q. Now, you had your attorney there during this
14 interview, right?

15 A. Yes.

16 Q. And, in fact, she stops the interview at some
17 point, correct?

18 A. Yes.

19 Q. Has a conversation with you, right?

20 A. Correct.

21 Q. In the privacy of just the two of you, no
22 detectives?

23 A. Correct.

24 Q. And then the conversation resumes, right?

25 A. Correct.

1 **Q.** Okay. So let's talk about something else that
2 night in the parking garage. After the defendant shoots --
3 or after you hear the shot, what do you do?

4 **A.** I take off to the car. We end up leaving, me,
5 him and Dylan.

6 **MR. LaFAY:** I'm gonna object at this point. It's
7 beyond the scope of direct.

8 **THE COURT:** I'm going to sustain the objection as
9 beyond direct.

10 **MR. JAY:** This all goes to his credibility.

11 **THE COURT:** Approach.

12 (There was a bench conference as follows:)

13 **MR. JAY:** Judge, we're going to be going into him
14 making different statements at a different time about
15 what happened afterwards. His first statement was
16 that he never went back into his car at all. But then
17 after his attorney talked to him, he did go back into
18 his car and inside his car at that point was him,
19 Dylan and the defendant.

20 Now, of course, you've heard that his testimony
21 today is the defendant was not with him in the car
22 when he goes back to the car. And this is all going
23 to build into after all this has gone down -- mind
24 you, he's already said he's saying these things
25 because he's afraid of the police.

1 Last year Ronny Batista's brother approaches him
2 in a nightclub, not just him but him and his brother,
3 Xavier, in a nightclub and basically threatened him
4 with, you better not show up. And then in response to
5 that, he ducks down and disappears for months until
6 his name gets put on television as a possible suspect.
7 And so then that's when he finally resurfaces.

8 He's also going to testify that the defendant's
9 mother has been trying to contact him and, in fact,
10 did contact him last year, trying to get him not to
11 testify. So everything that he's saying is being
12 shaped by this, so this is going into the bias of this
13 witness.

14 And I think once you open the door into this
15 situation as to what happened in the parking garage,
16 the door is opened up for what else happens in the
17 parking garage because --

18 **THE COURT:** I understand.

19 Any response?

20 **MR. LaFAY:** I think I left off my questioning
21 with Mr. Batista heading back up to the car and him
22 moving away from the fight, so this is all beyond the
23 scope of direct.

24 Should this witness have been subject to any
25 threats, unless those threats, of course, can be laid

1 at my client's door, then they're not relevant, so
2 it's beyond the scope.

3 **MR. JAY:** I think the phone calls have laid it
4 all at his door, when he says everybody is taken care
5 of or they're going to come and free me.

6 **THE COURT:** Overruled. Objection overruled.

7 (The bench conference concluded.)

8 **BY MR. JAY:**

9 **Q.** All right. So, Mr. Goytia, you say you go back
10 to the Mercedes?

11 **A.** Yes.

12 **Q.** And who's in the Mercedes with you?

13 **A.** It's me, Dylan and Ronny.

14 **Q.** Okay. So Ronny is with you in the Mercedes,
15 right?

16 **A.** Correct.

17 **Q.** Now, when you originally spoke to Detective
18 Montford on July 2nd, 2012 with your attorney present, is
19 that what you said about who was in the car -- or is that
20 what you said about what you did after the shot went out?

21 **MR. LaFAY:** I have an objection to that. It's an
22 impeachment on a collateral matter.

23 **THE COURT:** Overruled.

24 **BY MR. JAY:**

25 **Q.** Is that what you originally told Detective

1 Montford?

2 A. I can't remember.

3 Q. Would it refresh your memory to see your
4 statement as to what you originally told Detective Montford
5 on July 2nd with your attorney present?

6 A. Sure.

7 Q. I'm going to show you what's been Bates stamped
8 as 275 in the discovery.

9 MR. JAY: If I may approach the witness?

10 THE COURT: You may.

11 MR. LaFAY: I'm sorry, which page?

12 MR. JAY: 275 in the discovery.

13 BY MR. JAY:

14 Q. If you would, just read that to yourself.

15 A. From what I can remember --

16 Q. Hold on. I'll ask you a question.

17 Did that refresh your memory as to what you
18 originally told Detective Montford with your attorney
19 present?

20 A. Yes.

21 Q. What did you tell Detective Montford originally?

22 A. I told him -- I'm sorry, repeat the question.

23 Q. What did you originally tell him when asked what
24 you did?

25 A. That I just ran away.

1 **Q.** All right. And you said that you never got back
2 in the Mercedes?

3 **A.** Correct.

4 **Q.** Okay. That wasn't true at the time, right?

5 **A.** Correct.

6 **Q.** And at that time when you made that untruthful
7 statement to the detective, was that because you were
8 afraid of the police?

9 **A.** Yes.

10 **Q.** My understanding was that you were telling the
11 police what they wanted to hear because you were afraid of
12 the police and afraid of getting arrested, right?

13 **MR. LaFAY:** Objection. Mr. Jay's understanding
14 of things are just irrelevant.

15 **MR. JAY:** My understanding based on what you
16 said.

17 **THE COURT:** It's a question, so I'll overrule the
18 objection.

19 Did you understand the question, sir?

20 **THE WITNESS:** Repeat again, please.

21 **BY MR. JAY:**

22 **Q.** It's my understanding that you were not being
23 truthful to the police based on your testimony because you
24 were afraid they were going to arrest you or your brother,
25 right?

1 **A.** Correct.

2 **Q.** Because you weren't saying what they wanted to
3 hear, right?

4 **A.** Correct.

5 **Q.** So when you made that statement, is that what you
6 thought they wanted to hear, that you never went back to
7 the car?

8 **A.** No.

9 **Q.** After you talked to your attorney during this
10 interview, did you then say that you did go back to the
11 car?

12 **A.** Correct.

13 **Q.** Okay. And after the defendant let off the shot,
14 were you upset with him?

15 **A.** I didn't know what to think. I was scared.

16 **MR. LaFAY:** I'm going to object. That's
17 irrelevant.

18 **THE COURT:** I'm going to sustain the objection,
19 unless you think you can tell me the relevance up at
20 the bench. But I'll sustain the objection.

21 **MR. JAY:** I can approach and tell you what I
22 expect.

23 **THE COURT:** Approach, please.

24 (There was a bench conference as follows:)

25 **THE COURT:** I just didn't want a speaking

1 response in front of the jury, so that's why I said
2 that.

3 **MR. JAY:** He tells the police during that
4 interview that after the shot, he was like, "F" Ronny,
5 using the whole word and he was mad that he had done
6 that with his gun and so now this is going back into
7 the whole bias issue of how this goes from he's
8 originally afraid of the police at that time he's
9 making the statement but now, after being threatened
10 by Ronny's family, it's -- his testimony is different.

11 **THE COURT:** Okay.

12 **MR. LaFAY:** He would have had to have been -- for
13 that to be the case, he would -- he would have had to
14 have been threatened by the family in the middle of
15 the interview; and that didn't happen, because the
16 upset is pre any kind of threat from the family.

17 **THE COURT:** When did he say he was upset?

18 **MR. JAY:** Right after the shot. Well, at the
19 interview July 2nd with the police is when he's like,
20 after the shot, I was like "F" Ronny; and I was pissed
21 he did that with my gun.

22 **THE COURT:** When did he change his story as a
23 result of the threats?

24 **MR. JAY:** Well, the story about what he did
25 after, I mean, that's always continually evolving. I

1 mean, during direct he said Ronny wasn't in the car
2 with them when they drove off.

3 **MR. LaFAY:** Basically, Your Honor, the
4 sequence -- the sequence of events is that they took a
5 statement from him. I don't know when, in 2012 or
6 something like that. In that statement he said, "F"
7 Ronny. You know, I'm upset that he used my gun or
8 words to that effect. Now they're trying to say that
9 back at the time, meaning going back to the event, you
10 were really upset with Ronny Batista. And I
11 suppose -- again, relevance.

12 **THE COURT:** It's irrelevant. Move on.

13 **MR. JAY:** Okay. I'll move on.

14 (The bench conference concluded.)

15 **BY MR. JAY:**

16 **Q.** Now, after you took off on foot, you ended up at
17 the 7-Eleven by the Marriott in downtown?

18 **A.** Yes.

19 **Q.** You called for Steve Savinon to pick you up?

20 **A.** Yes, sir.

21 **Q.** Did you ever talk with any of the other friends
22 that had been drinking with you that night about what
23 happened that night?

24 **A.** No.

25 **MR. LaFAY:** Objection. What happened portion is

1 calling for hearsay. It's also beyond the scope.

2 **THE COURT:** Overruled.

3 **BY MR. JAY:**

4 **Q.** So your answer is no?

5 **A.** Correct.

6 **Q.** So on the ride home, did you ride just with Steve
7 Savinon; or was somebody else with you?

8 **A.** It was me, Steven and Dylan.

9 **Q.** All right.

10 **A.** And no we did not talk about the matter because I
11 was afraid.

12 **Q.** Did you have the gun on you?

13 **A.** No, sir.

14 **Q.** Did Dylan have the gun on him?

15 **A.** No, sir.

16 **Q.** Was there anybody else in the car with you after
17 the shot, besides you, Dylan and the defendant?

18 **A.** No, sir.

19 **Q.** Carlos didn't get in the car with you?

20 **A.** No.

21 **Q.** Was the defendant really drunk after all the
22 drinking you guys did?

23 **A.** I don't remember.

24 **Q.** Did you ever describe it as we all drank
25 excessively?

1 **A.** No.

2 **Q.** Would it -- do you remember having a conversation
3 about how much you drank with Detective Montford on
4 July 2nd, 2012 with your attorney?

5 **A.** It's hard to remember that far back.

6 **Q.** Would it refresh your memory to see page 272?

7 **A.** Sure.

8 **MR. JAY:** May I approach with 272?

9 **THE COURT:** You may.

10 **BY MR. JAY:**

11 **Q.** Just read to yourself, beginning with where it's
12 highlighted in yellow. Does that refresh your memory?

13 **A.** Yes.

14 **Q.** Did you say that we drank excessively?

15 **A.** Yes.

16 **MR. JAY:** Your Honor, at this time I'd move to
17 unseal his grand jury testimony.

18 **THE COURT:** Do you have a copy of it?

19 **MR. JAY:** May I approach?

20 **THE COURT:** Yes. Attorneys approach.

21 (There was a bench conference as follows:)

22 **THE COURT:** Do you have a copy of it?

23 **MR. JOSHI:** I don't.

24 **THE COURT:** Let's let the jurors go at lunchtime,
25 and we'll discuss this outside of their presence.

1 Okay?

2 (The bench conference concluded.)

3 **THE COURT:** Ladies and gentlemen, it's noontime
4 and this next discussion is going to require more than
5 just a few minutes. While I don't like interrupting a
6 witness in the middle of the questioning, I think it's
7 appropriate based upon the late hour of the morning --
8 now actually it's afternoon and the discussion that we
9 must have outside of your presence.

10 So it's noontime. I'd like you back in the jury
11 room at 1:30, so we can continue with the case.
12 Please leave your pads on the chairs. Remember my
13 former admonitions: Don't visit any of the places
14 mentioned. Don't do any research on your own. Don't
15 speak to anybody or let anybody speak to you about the
16 facts of this case. Thank you, very much.

17 **COURT DEPUTY:** Jury exiting.

18 (The jury exited the courtroom.)

19 **THE COURT:** Okay. Mr. Goytia?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** I'm going to excuse you until 20
22 minutes after 1:00, so you're free to leave. I'd like
23 you back here at 20 minutes after 1:00. Can you do
24 that?

25 **THE WITNESS:** Yes, sir.

1 **THE COURT:** Next is, you're in the middle of
2 being questioned, so I'm ordering you not to discuss
3 with anybody what's been going on in here or your
4 testimony with anyone until you come back and you're
5 done testifying and I release you. Can you do that
6 for me?

7 **THE WITNESS:** Yes, sir.

8 **THE COURT:** Any questions about that?

9 **THE WITNESS:** No.

10 **THE COURT:** Thank you, sir.

11 **MS. CRAG-CHADERTON:** Judge Blechman, he does have
12 counsel, so if you would allow him to --

13 **THE COURT:** Absolutely. I didn't realize he had
14 counsel. Ms. Crag-Chaderton, are you the counsel that
15 you speak of?

16 **MS. CRAG-CHADERTON:** Yes.

17 **THE COURT:** Sir, you may always speak to your
18 attorney. Okay?

19 **THE WITNESS:** Okay.

20 **THE COURT:** Thank you.

21 The State has moved to unseal grand jury
22 testimony. I'm just looking to the back page to see
23 that it's 12 pages in length on the transcript, dated
24 September 25th, 2012.

25 State, are you doing this in an attempt to

1 impeach the witness?

2 **MR. JAY:** Yes, Your Honor.

3 **THE COURT:** Okay. I will -- under *Minton versus*
4 *State*, 113 So.2d 361, Florida Supreme Court, I will
5 grant the request. Again, I have not read this. I'm
6 going to ask if you'd share this with the defense. It
7 appears to be very brief. Do you have more than one
8 copy, or is this your only copy?

9 **MR. JAY:** It's the only copy.

10 **THE COURT:** Okay. How quickly can I get two
11 copies of this? Is it quicker for me to go upstairs
12 and get it?

13 **THE CLERK:** Probably.

14 **THE COURT:** Let's see if she's still there.

15 **COURT REPORTER:** Who transcribed it, Judge?

16 **THE COURT:** Pardon?

17 **COURT REPORTER:** Who transcribed it?

18 **THE COURT:** Who?

19 **COURT REPORTER:** You can probably get it sent to
20 you, if you need it.

21 **THE COURT:** That would be great.

22 **COURT REPORTER:** If it was somebody from our
23 office. I'm sure it was.

24 **THE COURT:** Where would it be, on the last page?

25 **COURT REPORTER:** On the title page.

1 **THE COURT:** Cathy Matta.

2 **COURT REPORTER:** Oh, that's me.

3 **THE COURT:** I know.

4 **COURT REPORTER:** I don't remember doing it.

5 **THE COURT:** Don't you remember this?

6 **COURT REPORTER:** No. But I can get it to you.

7 **THE COURT:** You transcribed it on March 13, 2017,
8 so if you can send it to me.

9 Do you have e-mail abilities?

10 **MR. LaFAY:** I do.

11 **THE COURT:** With you now?

12 **MR. LaFAY:** No, Your Honor. But I'm going back
13 to my office at the lunch hour.

14 **THE COURT:** It's the testimony of Cruz Emmanuel
15 Goytia from September 25th, 2012. I'll give you,
16 Mr. Jay, this transcription, a stamped copy, back to
17 you. We found a different way to do it. Thank you.

18 Then if I could have the attorneys approach,
19 please, Mr. Joshi.

20 **MR. JOSHI:** Yes, Your Honor.

21 **THE COURT:** Mr. Jay.

22 (There was a bench conference as follows:)

23 **THE COURT:** It's what's going to happen next.

24 Okay. Just so I have an idea, do you have any other
25 defense witnesses that you're able to tell me that you

1 intend to call?

2 **MR. LaFAY:** We may. We may. That's the subject
3 of our lunch conversation --

4 **THE COURT:** Okay.

5 **MR. LaFAY:** -- based on the Court's ruling.

6 **THE COURT:** Could you speak to your client during
7 our break about whether or not to testify --

8 **MR. LaFAY:** I will.

9 **THE COURT:** -- and use that opportunity?

10 **MR. JOSHI:** Yes, Your Honor.

11 **THE COURT:** And depending on what comes out, if
12 you could have that preliminary discussion with him
13 now so that when we come to it, you've already had
14 that preliminary discussion.

15 **MR. LaFAY:** Great.

16 **MR. JOSHI:** Do you want me to get an answer to
17 you now?

18 **THE COURT:** No. I want you to have a discussion.

19 **MR. JAY:** He could change his mind anyway.

20 **THE COURT:** I want you to have a preliminary
21 discussion about it because more evidence may come
22 out, and he may change his mind. I don't want a
23 commitment now. I want you to discuss the preliminary
24 discussion.

25 Do you understand, Mr. Lafay?

1 **MR. LaFAY:** I do.

2 (The bench conference concluded.)

3 **THE COURT:** Okay. Let's be in recess until
4 ten -- well, 1:15. We'll be in recess until 1:15.

5 (A luncheon recess was taken from 12:05 to 1:15
6 p.m.)

7 **THE COURT:** Welcome back, Mr. Batista.

8 Mr. Joshi is here, Mr. LaFay. Mr. Jay is here.

9 Defense, do you have anything you want to say
10 before we continue now that I've unsealed the
11 testimony of your witness?

12 **MR. JOSHI:** Your Honor, we'll stand on
13 Mr. LaFay's prior objections.

14 **THE COURT:** Okay.

15 **COURT DEPUTY:** He's not out there, Judge.

16 **THE COURT:** How many jurors do we have?

17 **COURT DEPUTY:** Probably two or three right now.

18 (Court was at ease.)

19 **THE COURT:** Have you spoken to your client about
20 testifying?

21 **MR. JOSHI:** I have, Your Honor.

22 **THE COURT:** Okay. Are there any other witnesses
23 after this witness, other than your client?

24 **MR. JOSHI:** None, Your Honor.

25 **THE COURT:** Okay. So after this witness, do you

1 want me to take a break and have a conversation with
2 your client or do you want me to do it now so you can
3 flow into -- I don't know if your client is going to
4 testify or not -- but do you want to do it now so we
5 can flow into it or do you want to take a break?

6 **MR. JOSHI:** I would respectfully ask to take a
7 break.

8 **THE COURT:** That's fine. I wasn't asking -- I
9 wasn't trying to lead you to one answer or another.

10 **MR. JOSHI:** And that way more things can just be
11 placed on the record as well.

12 **THE COURT:** Okay. That's fine.

13 Mr. LaFay is doing the jury instructions, so I'll
14 be wasting my time discussing them with you.

15 **MR. JOSHI:** I would say it wouldn't be a waste of
16 time, but we'd probably have to do it over.

17 **THE COURT:** Where is he?

18 **MR. JOSHI:** I can call him and find out. May I
19 step out?

20 **THE COURT:** Please.

21 (Court was at ease.)

22 **THE COURT:** Any luck with your cocounsel?

23 **MR. JOSHI:** He's coming in. He should be up
24 shortly.

25 **THE COURT:** Okay.

1 (Court was at ease.)

2 **THE COURT:** Oh, Mr. LaFay.

3 **MR. LaFAY:** I did not know -- I had to take
4 something back to the office. I did not know there
5 were two bus lines. I've not taken the bus for
6 several years, so little did I know. Next thing I
7 knew we were down on Mark Street on the bus. Then
8 they wait at the depot before they make their
9 turnaround and come back to the courthouse.

10 **THE COURT:** Okay.

11 **MR. LaFAY:** I just had to get the grand jury
12 stuff.

13 **THE COURT:** Okay.

14 **MR. LaFAY:** I think that's my best argument.

15 **THE COURT:** Why can't the truth just be?
16 Okay. Defense, are we ready to proceed?

17 **MR. LaFAY:** I don't believe so, Your Honor,
18 because in order to proceed, I believe that the
19 statute says that there has to be an ascertainment
20 that the grand jury testimony is being used for
21 impeachment. So I don't think that's been
22 ascertained. Now, it doesn't say who would ascertain
23 that; but I would say that would have to be a court
24 finding. I know there's been a pronouncement that
25 it's being used for impeachment.

1 **THE COURT:** State?

2 **MR. JAY:** I would turn everyone's attention to
3 page eight of the grand jury testimony when there's
4 specific testimony about the gun being seen in the
5 defendant's hand, contrary to the testimony today and
6 while we're on the subject, when we go into that
7 particular line of inquiry I would appreciate a brief
8 instruction from the Court that grand jury testimony
9 can be considered substantively, as well as for
10 impeachment, pursuant to 90.804. It may be --

11 **MR. LaFAY:** I'm sorry, 90.804?

12 **MR. JOSHI:** I think it's in 801.

13 **THE COURT:** Where is it under 804? I don't see
14 it.

15 **MR. JAY:** I believe I misspoke. I believe it's
16 801.

17 **THE COURT:** Yeah, I looked at 801.

18 **MR. JAY:** Strike that. It is 90.801(2)(a): A
19 statement is not hearsay if the declarant testifies at
20 the trial or hearing subject to cross-examination
21 concerning the statement. The statement is
22 inconsistent with the declarant's testimony, is given
23 under oath, subject to penalty of perjury, trial or
24 hearing or proceeding or in a deposition. I think the
25 case law delineates the difference between a civil or

1 criminal discovery deposition.

2 **MR. LaFAY:** I'm sorry. Which statute?

3 **MR. JOSHI:** 801, subsection (2)(a).

4 **THE COURT:** Defense wasn't able to cross-examine
5 the subject, although defense can now cross-examine,
6 even though it's their witness, the subject now. Is
7 that what it means when it says cross-examine?

8 **MR. JAY:** I'm pulling it up.

9 **MR. LaFAY:** Your Honor, I think it means at the
10 time because they've had case law under this section
11 about, um --

12 **THE COURT:** Just introducing the statement.

13 **MR. LaFAY:** Correct, introducing the statement
14 and I know that they've had hearings about --
15 basically, witnesses at bond hearings, for example and
16 at depositions. And the case law uniformly said,
17 well, wait a minute, the defense had a different
18 agenda at the bond hearing or at the deposition. So,
19 therefore, even though they had an opportunity to
20 question, it's not meaningful cross-examination. I'm
21 familiar with that line of cases. So I would say
22 here -- and with what all those cases reference was
23 the ability to cross-examine at the time the statement
24 was made.

25 **MR. JAY:** Judge, the case is *Moore versus State*,

1 452 So.2d 559.

2 **THE COURT:** Hang on one second, please.

3 M-O-O-R-E?

4 **MR. INTERLICCHIO:** Yes, Your Honor.

5 **THE COURT:** 452 did you say?

6 **MR. JAY:** 452 So.2d 559, keynote four and five.

7 That's what it was saying what I was saying,

8 90.801(2(a)).

9 **THE COURT:** Seems to be pretty clear. It answers
10 my question in contradiction to the preliminary
11 defense argument.

12 Okay. Anything else, Mr. LaFay?

13 **MR. LaFAY:** No, Your Honor.

14 **THE COURT:** Okay. Then let's call Mr. Goytia
15 back to the witness stand, please.

16 **MR. LaFAY:** Your Honor, I am going to object to
17 that instruction. However, I should say in the
18 instruction highlighting one type of statement over
19 another because, example, I have other statements made
20 by witnesses that I'd like the Court to instruct the
21 jury that those can be considered. So I think we have
22 to take all of the statements in the trial to give
23 them equal dignity to the ones that are substantive in
24 nature and the other ones, of course, which are
25 impeachment; but I don't think the Court can just pick

1 one out of the bunch.

2 **MR. JAY:** That's fine, too, as long as during
3 argument, we can be allowed to argue what we believe
4 is only used for impeachment purpose and what is
5 actually allowed under the law to be substantive
6 evidence.

7 **THE COURT:** I think the problem with what you're
8 requesting, Mr. Jay, is it ignores all the other prior
9 inconsistent statement impeachment that's occurred
10 over the past two-and-a-half days, almost three days
11 without any kind of highlighting by the Court; and I
12 think your request regarding closing argument is a
13 fair request, so I'll grant the defense objection and
14 will not read a special instruction regarding it.

15 Let's bring in Mr. Goytia, please.

16 Okay. Welcome back, sir.

17 **THE WITNESS:** Thank you.

18 **THE COURT:** Did anything happen while we were
19 apart that caused you concern? Did anybody approach
20 you and try to talk to you or anything like that?

21 **THE WITNESS:** No, sir.

22 **THE COURT:** Any problems while we were apart?

23 **THE WITNESS:** No.

24 **THE COURT:** Thank you.

25 Let's bring the jury in, please.

1 **COURT DEPUTY:** Jury entering.

2 (The jury entered the courtroom at 1:35 p.m.)

3 **THE COURT:** Does the State recognize the presence
4 of the jury?

5 **MR. JAY:** Yes, Your Honor.

6 **THE COURT:** Defense?

7 **MR. LaFAY:** Yes, Your Honor.

8 **THE COURT:** Ladies and gentlemen, please be
9 seated. Welcome back. Hopefully, you didn't get too
10 wet out there. I had another unsuccessful day with
11 that problem.

12 While we were apart, did anybody approach you to
13 speak to you or attempt to speak to you about this
14 case?

15 **THE JURY:** No.

16 **THE COURT:** And did any of you do any research on
17 your own or visit any of the places mentioned during
18 the trial?

19 **THE JURY:** No.

20 **THE COURT:** So with that, we were in the middle
21 of the cross-examination of Mr. Goytia.

22 State, you may proceed.

23 **BY MR. JAY:**

24 **Q.** Earlier this morning, I believe you testified
25 that you had been drinking heavily, right?

1 **A.** Yes.

2 **Q.** And then you had said that we had been drinking
3 heavily, right?

4 **A.** Yes.

5 **Q.** Now, specifically, was the defendant drinking
6 heavily too?

7 **A.** I wasn't clocking him, so I don't know. From
8 what I could remember, we were all drinking heavily, yes.

9 **Q.** Including the defendant?

10 **A.** Yes.

11 **Q.** Now, you didn't see anybody else with any other
12 guns in the parking lot, correct?

13 **A.** No. But I seen guys flashing, like they had
14 guns.

15 **Q.** And by flashing you mean tugging at their belts,
16 right?

17 **A.** Yes.

18 **Q.** After that one shot from the defendant, were
19 there any more gunshots?

20 **A.** To my knowledge, no.

21 **Q.** All right. And you didn't hear anybody say that
22 they were going to pop anybody or pull a cap in anybody or
23 anything like that?

24 **A.** I don't know. I don't remember much.

25 **Q.** But you never heard anybody say that, including

1 the defendant. Nobody said that.

2 A. I don't remember much of anything being said.

3 Q. Now, do you also remember testifying before the
4 Orange County Grand Jury on September 25th, 2012 in the top
5 courtroom in this courtroom -- courthouse?

6 A. Yes.

7 Q. And you were placed under oath by Lawson Lamar,
8 the State Attorney at that time, right?

9 A. Yes.

10 Q. And you were asked and you testified about
11 whether or not you saw a gun in the defendant's hand,
12 correct?

13 A. Correct.

14 Q. And today's testimony is that you could not --
15 you did not see the defendant have a gun in his hand?

16 A. Correct.

17 Q. Would you like to see a copy of your grand jury
18 testimony on that topic?

19 A. No, sir.

20 Q. So did you give the following answer to the
21 following question on page eight, beginning at line 18:

22 Question, okay.

23 Answer, so there really wasn't nothing I could do
24 about it. I see him going towards all those people and
25 from my angle, I couldn't see the guy who he was originally

1 arguing with; but I was able to see him pull out the gun.

2 Did you testify to that?

3 **A.** Yes.

4 **Q.** Did you lie to that grand jury?

5 **A.** No. I know he shot the gun, but I just told them
6 what I knew.

7 **Q.** Well, he either had the gun in his hand or not.
8 Which one is it?

9 **A.** It's so long ago I can't remember.

10 **Q.** You hadn't been arrested by the time you
11 testified at grand jury, right?

12 **A.** No, sir.

13 **Q.** You haven't been arrested at all in this case,
14 right?

15 **A.** No, sir.

16 **Q.** So were you still afraid of the police when you
17 made that statement to the Orange County Grand Jury in
18 front of the State Attorney, Lawson Lamar?

19 **A.** Yes, I was.

20 **Q.** Now, immediately after the shooting, you got
21 yourself up on foot to the 7-Eleven by the Marriott
22 downtown, correct?

23 **A.** Yes.

24 **Q.** When you got there, did you call the police?

25 **A.** No.

1 Q. Were you afraid of the police at that time?

2 A. I was just -- I was blank. I was just scared,
3 and I just wanted to go home.

4 Q. Were you afraid of Ronny Batista at that time?

5 A. I was just afraid of the moment.

6 Q. Afraid of what specifically?

7 A. About what just happened.

8 Q. The next day when you saw in the news that the
9 person had, in fact, been shot and killed, did you call the
10 police?

11 A. No, sir.

12 MR. LaFAY: I'm going to object to a number of
13 things, objections to that question. First, it
14 assumes a fact not in evidence.

15 THE COURT: Sustained.

16 BY MR. JAY:

17 Q. You didn't know if anybody got shot that night,
18 right?

19 A. No idea, sir.

20 Q. But you later learned on the news that somebody
21 did get shot?

22 A. Yes.

23 Q. And you didn't call the police, did you?

24 A. No.

25 Q. Did you report your gun stolen?

1 **A.** Originally, yes.

2 **Q.** Well, when was originally? Was that after your
3 interview with Detective Montford on July 2nd, 2012 with
4 your attorney?

5 **A.** Yes.

6 **Q.** Prior to that you had not reported your gun
7 stolen, right?

8 **A.** Correct.

9 **Q.** And you didn't do that because you were trying to
10 protect Ronny Batista, correct?

11 **A.** Correct.

12 **Q.** He's your friend, right?

13 **A.** Yes.

14 **Q.** Okay. And were you trying to protect him when
15 you gave your statements on July 2nd, 2012 to Detective
16 Montford?

17 **A.** No. I was trying to protect myself. Like I
18 said, I was in fear because Montford already had threatened
19 to put my brother in jail for not telling him what he
20 wanted to hear, so...

21 **Q.** And your source of that information is, of
22 course, your brother, right?

23 **A.** No, I was actually there.

24 **Q.** All right. So you saw your brother's interview?

25 **A.** I was outside, yes.

1 **Q.** All right. So are you aware that your brother
2 also had to be stopped by your attorney?

3 **A.** Yes.

4 **Q.** Because he wasn't telling the truth originally,
5 right?

6 **MR. LaFAY:** I'm going to object, Your Honor.

7 **THE COURT:** Sustained.

8 **BY MR. JAY:**

9 **Q.** Are you aware of why his attorney stopped his
10 interview?

11 **MR. LaFAY:** Again, same objection, which is
12 relevance.

13 **THE COURT:** Sustained.

14 **BY MR. JAY:**

15 **Q.** Your attorney stopped your interview because you
16 weren't telling the truth, right?

17 **A.** Yes.

18 **Q.** Now, you drove the group of you, the defendant,
19 Carlos Rubio and Dylan Joseph to the parking garage, right?

20 **A.** That's correct.

21 **Q.** And then you drove the car up a level after the
22 shot was fired, right?

23 **A.** Yes.

24 **Q.** So you had the keys, right?

25 **A.** Yes.

1 Q. How did Ronny Batista get into the trunk to get
2 the firearm?

3 A. I don't know.

4 Q. What year was this Mercedes-Benz?

5 A. I can't remember, maybe early two thousands or
6 late two thousands.

7 Q. Did it have a key FOB?

8 A. I don't know. I can't remember.

9 Q. It's either a little FOB with buttons on it or a
10 it's a metal key. Did you have to put a metal thing into
11 the ignition to drive the car?

12 A. I can't remember.

13 Q. So did you-all lock the car with your gun in his
14 trunk when you went to Tier nightclub?

15 A. I don't remember.

16 **MR. LaFAY:** I'll object to that question because
17 it's compound as to how many. Apparently, numerous
18 people locking the car within that question you-all.

19 **THE COURT:** Sustained.

20 **BY MR. JAY:**

21 Q. Did you, as the driver of the Mercedes-Benz to
22 the downtown parking garage, lock the car, which you had
23 left your gun in the trunk?

24 A. I don't remember.

25 Q. Okay. Late last year did you and your brother,

1 Xavier, go to a club and did you bump into Ronny Batista's
2 brother, Roman and Jacinto Hurtado (ph.) -- or no, I'll
3 strike that, Roman Batista and his cousin, Jonathan, last
4 name we don't know?

5 **A.** I seen them there, yes.

6 **Q.** And did they at least imply, if not explicitly
7 tell you, it was in your best interest to not come testify
8 at this trial?

9 **MR. LaFAY:** I have an objection to that. I'd
10 like to approach.

11 (There was a bench conference as follows:)

12 **MR. LaFAY:** Your Honor, again -- and I believe
13 you may have already ruled about this; but I think I
14 have to make a contemporaneous objection.
15 Understanding the Court's prior ruling, I restate my
16 objection to the question and that is any kinds of
17 threats; and this would be an implied threat, I guess
18 or -- an implied threat. You know, in order to be
19 relevant, they have to be connected back to the
20 defendant; and this one has not been.

21 **THE COURT:** First, let's deal with the first
22 part. Why does it have to be tied back, when, in
23 weighing the evidence, the seventh instruction under
24 that says, has any pressure or threat been used
25 against the witness that affected the truth of the

1 witness' testimony?

2 **MR. LaFAY:** It's numerous cases, Judge and I know
3 that -- I'm sorry to be in the position of saying
4 while there are a lot of cases out there that say that
5 but in every case where there were threats against a
6 witness and in some way, shape or form there's even a
7 thin idea that it could be connected to the defendant
8 through some extrapolation, they have to directly
9 connect that specific threat to the defendant in order
10 for it to be relevant. So, in other words, and under
11 that rationale, threats made by the defendant's
12 family, threats made by his friends, threats made by
13 people connected to him are simply not relevant and,
14 indeed, I add to that more prejudicial than probative
15 and so that's my objection.

16 **THE COURT:** Based upon the statements that were
17 introduced, State's Exhibit No. 14, statements
18 attributed to your client regarding the witnesses
19 being taken care of, leaving the only two witnesses,
20 I'll overrule the objection.

21 **MR. LaFAY:** Your Honor, I'm so sorry. I'm going
22 to just put, for the record, the following two things
23 and just a matter of record: First, I understand the
24 Court's ruling. I would say that the nexus where he
25 says, all the witnesses have been taken care of, that

1 that bald statement alone has no specific connection
2 to this witness. It's made contemporaneous -- or,
3 excuse me, in temporal time, I believe and I don't
4 know when the meeting in the bar took place but the
5 statements by Mr. Batista, I believe, took place in
6 March of 2017, where all the witnesses have been taken
7 care of.

8 This particular exchange with Mr. Batista's
9 brother, I believe, from Mr. Jay's question was --

10 **MR. JAY:** Late 2016.

11 **MR. LaFAY:** -- late 2016, so approximately four
12 to five months' spatial time difference. I would say
13 the nexus is not sufficient. That's my only thing for
14 the record.

15 I also would move for a mistrial. I'm doing that
16 now even though the witness has not yet answered; and
17 I can approach again, Judge.

18 **MR. JAY:** I can proffer where we're going and
19 where we're going is that after this confrontation in
20 the nightclub, which had to be broken up with
21 bouncers, this witness and his brother went into
22 hiding and could not be located and only came out of
23 hiding when their pictures were put on television as
24 wanted people of interest in this case and that
25 occurred April or May of this year. So they were in

1 hiding at the time Ronny Batista was saying that
2 witnesses were taken care of in March of 2017.

3 **MR. LaFAY:** Therefore --

4 **MR. JOSHI:** I do remember --

5 **MR. LaFAY:** You have to speak loud enough.

6 **MR. JOSHI:** I do remember 'cause I've been on the
7 case for a very long time. I do remember it was
8 middle of last year, if I'm not mistaken, when
9 Catherine Marlowe was on the case. We were prepping
10 for trial; and she told me these two -- you know, they
11 put their picture on the news. The brothers came out,
12 and that's when her and I had that discussion about
13 allowing me to depose the other two guys before court.
14 It was last year. I was leaving court. We had a
15 pretrial coming up a day or two later, and we end up
16 with a continuance. They didn't come out of hiding in
17 April or May. This was like last year when Catherine
18 Marlowe was on the phone; and they showed their
19 picture on the news, so I can attest to that, my
20 conversations with Catherine.

21 **THE COURT:** Okay.

22 **MR. JAY:** What that was referring to was in 2012
23 how they got outed out into the public to be
24 interviewed the first time. There was none of that
25 last year. Montford did that this year.

1 **MR. LaFAY:** So, Your Honor, I think it would be a
2 time saving -- of course, I'm renewing my objections
3 on all grounds to the entirety of where I understand
4 the question and answer's going, per Mr. Jay's proffer
5 here at the bench. I would anticipate there's going
6 to be the same ruling, in which case I would now move
7 for a mistrial based on the grounds that I have said
8 and the significant prejudice that is being suffered
9 to the defense -- or suffered by the defense, excuse
10 me.

11 **THE COURT:** The objection is overruled. Motion
12 for mistrial is denied.

13 **MR. LaFAY:** Thank you, Judge.

14 (The bench conference concluded.)

15 **THE COURT:** Please continue.

16 **BY MR. JAY:**

17 **Q.** Roman Batista and this Jonathan, with last name
18 unknown, they implicitly or explicitly told you it would be
19 in your best interest not to show up at trial, correct?

20 **A.** I'd like to exercise my right to plead the Fifth.

21 **THE COURT:** I'm instructing you to answer that
22 question.

23 **THE WITNESS:** I seen them that night, yes.

24 **BY MR. JAY:**

25 **Q.** Is that what they implied or explicitly told you,

1 it would be in your best interest not to be here at the
2 trial?

3 **A.** No.

4 **Q.** Do you remember coming to the State Attorney's
5 Office on May 26th of this year with your attorney, sitting
6 in the front row in the gallery here?

7 **A.** Yes, I do.

8 **Q.** It was about 3:30 in the afternoon?

9 **A.** Correct.

10 **Q.** Did we have a discussion about this topic?

11 **A.** Yes, we did.

12 **Q.** And what did you say at that time?

13 **A.** I had said that they approached me over the
14 matter, and the reason why I said that is I was feeling
15 real uncomfortable. I had my back against the wall, and I
16 spoke out of context.

17 **Q.** Did the bouncers, in fact, have to separate
18 you-all?

19 **A.** No, sir.

20 **Q.** Did you say differently during the investigative
21 subpoena interview at the State Attorney's Office just a
22 mere week and a half ago?

23 **A.** Yes, 'cause once I told you guys I was going to
24 change my statement, you guys got angry and started putting
25 a lot of pressure on me. I didn't know what to do.

1 **Q.** Okay. And so you also said during that interview
2 that they did tell you that it's in your best interest not
3 to come to trial, but you're just saying that was false
4 because we pressured you?

5 **A.** That's correct.

6 **Q.** Is there anything else during your 41-minute
7 statement that you gave us that day that is not true
8 because we were pressuring you?

9 **MR. LaFAY:** I'm going to object to that, Your
10 Honor. First, I'm going to say it's impeachment
11 without the witness -- what the witness says is true
12 or not true about a statement generally or piecemeal,
13 whatever, is improper. That's my objection.

14 **THE COURT:** I think it's an improper question.
15 It's very vague. I'll sustain the objection.

16 **BY MR. JAY:**

17 **Q.** Did Ronny Batista's mother also approach you
18 about not testifying?

19 **A.** No.

20 **Q.** You never had a face-to-face conversation with
21 her late last year in regards to you not testifying?

22 **A.** No, sir.

23 **Q.** Has she also been trying to call you and reach
24 you through your parents' home and phone number?

25 **A.** Yes, but I never spoke to her.

1 Q. And you never -- you didn't say that during the
2 interview at the State Attorney's Office, correct?

3 A. Correct, because you guys were accusing me of
4 being bribed, so I didn't know what to do.

5 Q. Are you afraid of Ronny Batista?

6 A. I'm about afraid of everybody right now. I was
7 put on the news two times, and I'm not even a criminal.
8 That's -- it's outlandish.

9 Q. Let's go back to you being put on the news. Did
10 that second time just happen recently this year?

11 A. Yes.

12 Q. And after your conversation with Roman Batista
13 and Jonathan, last name unknown, at the club, did you go
14 into hiding?

15 A. Yes, but not because of that.

16 Q. Why did you go into hiding?

17 A. Just wanted to be to myself.

18 Q. Okay.

19 MR. JAY: No other questions of this witness.

20 THE COURT: Mr. LaFay, any redirect examination?

21 MR. LaFAY: I do, Your Honor. Thank you.

22 **REDIRECT EXAMINATION**

23 BY MR. LaFAY:

24 Q. Mr. Goytia?

25 A. Yes, sir.

1 Q. Do you -- do you have a -- an anxiety condition?

2 A. Yes, I do.

3 Q. Do you take medication for it?

4 A. Yes.

5 Q. With the news and everything like that, did your
6 anxiety condition have anything to do with your wishing to
7 lay low to the ground or keep away from everybody?

8 A. Yes, sir.

9 Q. Was that a mental health break for you?

10 A. Yes.

11 Q. I want to go back to your -- when you were being
12 questioned by the prosecutor. Do you remember when the
13 prosecutor asked you -- he said, so this guy was standing
14 in the middle with his arms crossed and Mr. Batista said
15 words like, what are you looking at? And you said, yes,
16 but. And he said, no buts, no buts. You can save that for
17 later.

18 Do you remember that?

19 A. Yes.

20 Q. Okay. So you said, yes, but. So what were you
21 going to say?

22 A. I was going to say the gentleman also was, you
23 know, really aggressive back at him.

24 Q. Now, you also have told us, you know, what you've
25 been through in the last five years.

1 **A.** Yes.

2 **Q.** As a result of all of that, are you friends --
3 did any of that make you friendly towards Mr. Batista?

4 **A.** No.

5 **Q.** So let's -- I want to go back to your statement
6 to Detective Montford. Let me see what date that is. I
7 don't have the first page with me for some reason. But let
8 me -- you recall the statement that you made to Detective
9 Montford --

10 **A.** Somewhat, yes.

11 **Q.** -- back in 2012?

12 **A.** Yes, sir.

13 **Q.** I believe it was on July the 2nd.

14 **A.** Yes, sir.

15 **Q.** So I want to go back because Detective Montford,
16 was he asking you about these guys gesturing like they had
17 guns? Do you remember that?

18 **A.** No.

19 **Q.** Would it refresh your memory to take a look at
20 your statement?

21 **A.** Yes.

22 **MR. LaFAY:** Your Honor, may I approach the
23 witness?

24 **THE COURT:** You may.

25 **BY MR. LaFAY:**

1 **Q.** I'm going to show you page 7. I'll just ask you
2 to -- you can read any part, but do you recall telling
3 Detective Montford about the gesturing?

4 **A.** The question --

5 **THE COURT:** Sir, don't answer the question.

6 **THE WITNESS:** Sorry.

7 **THE COURT:** You've been asked to refresh your
8 recollection. Are you done reading it?

9 **THE WITNESS:** Yes.

10 **THE COURT:** If you'll recover the statement and
11 return to the lecturn.

12 **MR. JAY:** I'm just going to preliminarily object
13 as to beyond the scope of cross.

14 **THE COURT:** Overruled.

15 Please continue.

16 **BY MR. LaFAY:**

17 **Q.** So did you say there were num -- did you tell
18 Detective Montford there were numerous amounts of people,
19 like two or three or more guys also flashing like they had
20 guns too?

21 **A.** Yes, that's correct.

22 **MR. JAY:** Objection. Move to strike. Improper
23 impeachment from a document not in evidence.

24 **THE COURT:** Sustained.

25 **BY MR. LaFAY:**

1 **Q.** Well, what did you tell Detective Montford about
2 numerous guys gesturing about guns? Did you tell him about
3 that? That's number one.

4 **A.** Yes, I did; and I told him once I seen that, I
5 got even more scared.

6 **MR. JAY:** Objection. The question was answered
7 before the "and."

8 **THE COURT:** The question is, did you? Ask your
9 next question. I'll sustain the objection.

10 **BY MR. LaFAY:**

11 **Q.** What did you tell him?

12 **A.** I told him that I seen guys flashing guns, and I
13 didn't know if they had a gun or not. I didn't know if
14 they were playing opossum but definitely flashing.

15 **MR. JAY:** Objection. This calls for hearsay.
16 It's not impeachment. I'm not sure what the relevance
17 is of what he said at that time.

18 **THE COURT:** Overruled.

19 Next question.

20 **BY MR. LaFAY:**

21 **Q.** So did you demonstrate to Detective Montford in
22 this very interview?

23 **A.** No. He didn't ask for a demonstration.

24 **Q.** Okay. Did -- did he stand up and ask you
25 questions about how that -- how they were doing that?

1 **A.** No.

2 **Q.** Did you --

3 **MR. LaFAY:** If I could just take a moment?

4 **THE COURT:** Yes.

5 **BY MR. LaFAY:**

6 **Q.** Did you also tell Detective Montford about the
7 first person -- whether the first person that Mr. Batista
8 was exchanging words with, whether that person was reaching
9 for a gun?

10 **A.** Yes, I told him.

11 **Q.** Now, I want to ask you about your grand jury
12 testimony. Do you recall in the grand jury whether or not
13 you told the grand jury about these -- this other group,
14 the people reaching and the main guy reaching? Do you
15 recall that?

16 **MR. JAY:** Objection, calls for hearsay. No
17 implication of recent fabrication.

18 **THE COURT:** Sustained.

19 **MR. LaFAY:** I just have an argument.

20 **THE COURT:** Come on up.

21 (There was a bench conference as follows:)

22 **THE COURT:** Are the grand jury minutes now being
23 used for impeachment?

24 **MR. LaFAY:** No.

25 **THE COURT:** Okay.

1 **MR. LaFAY:** No. What happened is that Mr. Jay
2 made an express or implied charge of improper motive.
3 He said, quote, you were trying to protect Mr. Batista
4 at various points and times. It doesn't even have to
5 be an express, it can be implied and this was way over
6 the implication and so when there are such
7 implications, I can go into prior consistent
8 statements.

9 **THE COURT:** And so you're using the grand jury
10 minutes --

11 **MR. LaFAY:** As a prior consistent statement.

12 **THE COURT:** Not for impeachment purposes?

13 **MR. LaFAY:** No, it's just a prior consistent
14 statement because there's been an express or implied
15 charge of improper motive.

16 **MR. JAY:** What's the prior consistent statement
17 prior to the grand jury that's consistent?

18 **MR. LaFAY:** No. It's a prior consistent
19 statement to today's testimony.

20 **MR. JAY:** But there's been no implication of
21 recent fabrication on this topic. He's been
22 fabricating it since the first day.

23 **MR. LaFAY:** I don't care about recent fabrication
24 at all. I'm not traveling under that. I don't care
25 about it. There's been an express or implied charge

1 of improper motive. Prior consistent statements can
2 come in to rebut, number one, recent fabrication,
3 which I'm not arguing or an express or implied charge
4 of improper influence or motive. That has been laid
5 down in the cross-examination.

6 **THE COURT:** Hasn't the witness denied it?

7 **MR. LaFAY:** No. He said --

8 **THE COURT:** He admitted it?

9 **MR. LaFAY:** Yeah. He said I was trying to
10 protect Mr. Batista. I had improper motive during my
11 statement. That's what he said, you were trying to
12 protect Mr. Batista? He said, yes.

13 **MR. JAY:** There's been no impeachment on this
14 topic of what he saw these other people doing. That's
15 not the point at all of his cross.

16 **MR. LaFAY:** I think it's under 90.802.

17 **MR. JAY:** There's no hearsay exception that
18 applies to doing this.

19 **THE COURT:** Give me a second. It's not hearsay
20 if it's consistent with declarant's testimony and
21 offered to rebut an express or implied charge against
22 the declarant of improper influence, which is what
23 Mr. LaFay is arguing.

24 **MR. JAY:** Right. But this particular topic
25 there's been no -- no argument or cross-examination

1 about what he saw those people doing.

2 **THE COURT:** I think it's offered to show that
3 it's consistent with his testimony. Your argument is
4 that what he said to the grand jury is consistent with
5 what he testified to today.

6 **MR. LaFAY:** With his testimony today.

7 **THE COURT:** Okay. Overruled.

8 (The bench conference concluded.)

9 **BY MR. LaFAY:**

10 **Q.** Do you recall telling the grand jury about these
11 people reaching and the main guy kept reaching --

12 **A.** Yes.

13 **Q.** -- do you recall that?

14 Do you recall -- do you recall your testimony
15 that even the main guy kept reaching like he had a gun to
16 Ronny?

17 **A.** Yes, that's correct.

18 **Q.** That was your testimony to the grand jury?

19 **A.** Yes.

20 **MR. LaFAY:** If I could just take a moment,
21 please, Your Honor?

22 **THE COURT:** Yes.

23 **MR. LaFAY:** I don't have anything further. Thank
24 you, Your Honor.

25 **THE COURT:** Mr. Jay?

1 **MR. JAY:** Yes, sir.

2 **THE COURT:** Any cross-examination on issues
3 raised in redirect?

4 **MR. JAY:** Yes, sir.

5 **RECROSS-EXAMINATION**

6 **BY MR. JAY:**

7 **Q.** So, again, this gesturing was like putting their
8 hand inside their waist, on their belt, right?

9 **A.** Yeah, like reaching, correct.

10 **Q.** You never saw anybody with a gun, right?

11 **A.** No.

12 **Q.** There was never any gunshots returned after the
13 defendant shot the gun, right?

14 **A.** That's correct.

15 **Q.** You never heard anybody threatening to pop or
16 bust a cap in anybody or shoot anybody, right?

17 **MR. LaFAY:** Objection. That specific question
18 has been asked and answered word for word.

19 **THE COURT:** Sustained.

20 **BY MR. JAY:**

21 **Q.** Your testimony is you were afraid of these people
22 because of what they were doing?

23 **A.** Yes.

24 **Q.** All right. Did you take the keys to the
25 Mercedes-Benz and go up, open the trunk and get your gun

1 out?

2 **A.** No, sir.

3 **Q.** It was the defendant who ran up to the trunk and
4 got the gun out?

5 **MR. LaFAY:** Objection. That's beyond the scope
6 of that particular cross-examination. I never once
7 mentioned Mr. Batista in my redirect.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** Could you repeat the question,
10 please?

11 **BY MR. JAY:**

12 **Q.** It was the defendant who ran up to the trunk and
13 got the gun out, right?

14 **A.** Yes.

15 **Q.** And he ran down alone back to the group, right?

16 **A.** I can't remember if he was alone or not.

17 **Q.** One second. Do you remember -- we talked about
18 this before -- going over to the State Attorney's Office
19 May 26th of this year about 3:30 p.m. with your attorney,
20 right?

21 **A.** Yes.

22 **Q.** Did you give a different response to that same
23 question about whether the defendant went alone back down
24 to that group?

25 **MR. LaFAY:** Objection, beyond the scope.

1 **THE COURT:** Overruled.

2 **THE WITNESS:** I had said that he was alone, yes.

3 **BY MR. JAY:**

4 **Q.** Which is the truth? Was he alone when he went
5 back or not?

6 **A.** From what I can recollect, I think so, yes.

7 **MR. JAY:** No other questions.

8 **THE COURT:** May this witness be released,
9 Defense?

10 **MR. LaFAY:** Yes, Your Honor.

11 **THE COURT:** State?

12 **MR. JAY:** Yes, thanks.

13 **THE COURT:** Sir, I want you to remain on this
14 floor for me. Okay?

15 **THE WITNESS:** Yes, sir.

16 **MR. LaFAY:** If I could approach about a
17 housekeeping matter?

18 **THE COURT:** You don't need to.

19 Ladies and gentlemen, we're going to take a
20 recess. Please leave your pads on your chairs and
21 retire to the jury room.

22 **COURT DEPUTY:** Jury exiting.

23 (The jury exited the courtroom at 2:10 p.m.)

24 **THE COURT:** Okay. Mr. LaFay, you wanted to say
25 something?

1 **MR. LaFAY:** Yes, Your Honor. Actually, the
2 defense had asked for Mr. Stierle-Joseph to remain.
3 The State had released him. We're now asking the
4 Court to release him, nor do we feel like paying for
5 another night in a motel for Mr. Stierle-Joseph.

6 **THE COURT:** Stierle-Joseph?

7 **MR. LaFAY:** Dylan.

8 **THE COURT:** Dylan Joseph. So you'd like to
9 release him at this point?

10 **MR. LaFAY:** Yes.

11 **THE COURT:** Is he present so I can inform him of
12 that?

13 **MR. LaFAY:** I saw him out in the hallway at some
14 point.

15 **MR. JOSHI:** I can get him.

16 **THE COURT:** If you'll just let him know he's
17 released. Okay.

18 **MR. LaFAY:** I had some matters to handle before
19 the jury comes back in. I can handle them in
20 Mr. Joshi's absence.

21 **THE COURT:** He's done. He's back. Okay. So we
22 have jury instructions to go over.

23 And other than potentially your client, are there
24 any other defense witnesses?

25 **MR. LaFAY:** There are none.

1 **THE COURT:** Okay. And have you had enough time
2 to discuss with Mr. Batista, Mr. Joshi, whether or not
3 Mr. Batista is going to testify?

4 **MR. JOSHI:** Yes, Your Honor.

5 **THE COURT:** Mr. Batista?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** You understand that you have the
8 right not to testify in this trial, correct?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** And that if you don't testify, you've
11 heard me twice already instruct the jurors that they
12 may not even consider the fact that you do not testify
13 in their deliberations. You heard me discuss that
14 with them in great detail during jury selection; and
15 then in preliminary instructions, at the request of
16 your attorneys, I read that instruction again. Do you
17 recall that?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** If you choose not to testify, I'll
20 read that instruction yet a third time, instructing
21 them that they may not consider the fact that you did
22 not exercise -- that you exercised your precious right
23 and did not testify in your case as any evidence of
24 guilt and they may not even consider that. Do you
25 understand that?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** On the other hand, you know you have
3 the right to testify in the case; and if you testify,
4 you'll take the witness stand like everybody else.
5 I'll treat you like everybody else. I'll ask you to
6 introduce yourself just like every other witness who's
7 testified, right?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** And then you'll be questioned by your
10 attorneys, and you'll be subject to cross-examination
11 by the State. Do you understand that?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** At this point, the -- over your
14 attorneys' objections, evidence of a prior felony --
15 prior conviction for a crime punishable by more than
16 one year has already been introduced; and that's an
17 element that the jurors can look to as to whether or
18 not to believe a witness. Do you follow me so far?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** And that's the major impediment to
21 somebody not testifying. There are other impediments.
22 Just off the top of my head, one of the instructions
23 I'm going to read the jurors is that, does the witness
24 have an interest in the outcome as to whether or not
25 you believe the witness?

1 In addition, another factor you might want to
2 consider is that many witnesses, such as police
3 witnesses, are practiced at testifying; and you may or
4 may not be, so you might appear to be nervous in front
5 of the jury just because you're speaking to a group of
6 people. So those are factors I'm sure your attorneys
7 have discussed with you on whether or not to testify,
8 correct?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. The decision on whether or not
11 to testify is yours and yours alone; although, you
12 should make it after consulting with your attorneys.
13 Have you had enough time to discuss this important
14 decision with your attorneys?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** And do you have a decision on whether
17 or not you wish to testify?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** What is your decision?

20 **THE DEFENDANT:** I wish to testify, sir.

21 **THE COURT:** Okay. Do we have shoes for
22 Mr. Batista, because -- here are the -- the way we
23 normally do it is I'll have Mr. Batista already in the
24 seat here and we'll practice with him standing up and
25 sitting down so we don't hear any chain noises and

1 have him placed under oath like every other witness.
2 He'll testify. He'll be subject to cross-examination.
3 The jurors will leave.

4 Are there any other suggestions on behalf of the
5 defense?

6 **MR. LaFAY:** Your Honor, I would ask that the
7 chains be removed during his testimony.

8 **THE COURT:** Speak up a little bit louder.

9 **MR. LaFAY:** I'm sorry. I'd ask the chains be
10 removed for Mr. Batista's testimony. I think clanking
11 is -- you know, if he has to get up, there could well
12 be demonstrations about how he's --

13 **THE COURT:** Okay. And thus far, you'll state
14 comfortably there's been no clankings, correct, that
15 you've heard?

16 **MR. LaFAY:** I have not heard.

17 **THE COURT:** And you have no indication that the
18 jurors heard or saw any chains on your client's
19 ankles, correct?

20 **MR. LaFAY:** I don't know -- I don't see how they
21 could have.

22 **THE COURT:** Okay.

23 **MR. LaFAY:** I'll say that.

24 **THE COURT:** Mr. Batista, are there shoes -- you
25 have shoes?

1 **MR. JOSHI:** Yes.

2 **THE COURT:** Will they fit?

3 **MR. JOSHI:** I don't know.

4 **THE COURT:** If they fit, what I'm suggesting,
5 Mr. Batista, is that you wear the shoes; and you'll
6 come take the witness stand like everybody else.
7 Okay?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Okay.

10 **MR. LaFAY:** I don't know -- since it's
11 Mr. Joshi's direct, I don't know if he's going to be
12 asking Mr. Batista, with the Court's permission, to
13 demonstrate what he was looking at that made him think
14 there were firearms.

15 **THE COURT:** Well, we're going to take the chains
16 off. What are you talking about?

17 **MR. LaFAY:** Oh, okay. Thank you.

18 **THE COURT:** That's why we're seeing if the shoes
19 work.

20 **MR. LaFAY:** Okay.

21 **THE COURT:** So that he can walk up there. He
22 can't walk up with chains, obviously.

23 **MR. JOSHI:** Your Honor, there's another matter I
24 do want to put on the record. I've talked to
25 Mr. Batista, and we've gone over whether we're going

1 to call any other witnesses.

2 **MR. LaFAY:** You're going into his attorney-client
3 privilege.

4 **MR. JOSHI:** Your Honor, we intend to call no
5 other witnesses. I've discussed that with my client.
6 I just wanted to put that on the record.

7 **THE COURT:** Is that right, Mr. Batista?

8 **THE DEFENDANT:** Yes, sir.

9 **MR. JAY:** Before he takes the stand, I'm just
10 asking now that since Darnell Adams was asked about
11 going to prison before and not wanting to go back
12 being allowed as cross-examination to show the bias or
13 interest the witness has in the outcome of the case, I
14 assume then that the defendant having gone to prison
15 before is going to be fertile ground for
16 cross-examination as to showing his bias to not want
17 to go back?

18 **MR. LaFAY:** That would be -- that would spark a
19 motion for a mistrial, since unlike Mr. Adams, we can
20 go into chapter and verse about his motives to cut a
21 deal. The defendant enjoys a special -- well,
22 Mr. Batista at least has two special rules going on.
23 Number one, they can ask him the two questions about
24 his prior record; and that's the limit. It's
25 different for other witnesses.

1 **THE COURT:** State?

2 **MR. JAY:** I mean, if there's authority that says
3 it's different for other witnesses, then I would
4 understand that; but I'm aware of no authority that
5 says that it's different.

6 **THE COURT:** Okay. I understand your request. I
7 think it's a logical request. I'm going to deny your
8 request.

9 **MR. JAY:** Thank you.

10 **MR. LaFAY:** Otherwise, Your Honor, because the,
11 um --

12 **THE COURT:** I denied the request. Why are you
13 talking?

14 **MR. LaFAY:** It's a very good question, but the
15 reality of it is that it's a different subject.

16 **THE COURT:** Okay. That's the answer.

17 **MR. LaFAY:** I don't win a lot, but I do know when
18 I do. But that said, Mr. Batista -- there's been a
19 stipulation that has been read to the jury about
20 Mr. Batista's prior record. Therefore, any further
21 questions of him, example, have you been convicted of
22 a crime punishable by more than one year in -- one
23 year imprisonment, would be cumulative, under the way
24 we've proceeded thus far. So I don't know -- I'm just
25 mentioning for no reason but thank you.

1 **THE COURT:** Okay. Let's go over jury
2 instructions. Any objection to the introduction to
3 final instructions, statement of the charge and
4 introduction to homicide, State?

5 **MR. JAY:** No, sir.

6 **THE COURT:** Defense?

7 **MR. LaFAY:** No objection.

8 **THE COURT:** Any objection to the standard
9 definitions of justifiable homicide, excusable
10 homicide, murder in the first degree, State?

11 **MR. JAY:** No, sir.

12 **THE COURT:** Defense?

13 **MR. LaFAY:** No, Your Honor.

14 **THE COURT:** Any objection to the aggravation of a
15 felony by carrying a firearm and possession of a
16 firearm and discharge causing death, State?

17 **MR. JAY:** No, sir.

18 **THE COURT:** Defense?

19 **MR. LaFAY:** No, Your Honor.

20 **THE COURT:** Okay. If I give the justifiable use
21 of deadly force, it would come next. And I'm going to
22 wait to hear Mr. Batista testify before I give that.
23 But if I give that, I've added aggravated assault
24 because we discussed that, and I have the elements of
25 aggravated assault in it. This is consistent with

1 what we discussed yesterday.

2 State, what's your position?

3 **MR. JAY:** Prior to that, I do want the first
4 paragraph of 3.6(d) read. That's the paragraph that
5 says, voluntary intoxication is not a defense.

6 **THE COURT:** The first paragraph only?

7 **MR. JAY:** Yes, sir.

8 **THE COURT:** Defense?

9 **MR. LaFAY:** All over the objection of the
10 defense, Your Honor. Number one, it's not an issue in
11 this case. Number two, I think it just signals in
12 some reverse logic -- if you look at the reverse of
13 that, I think there's -- since we're not arguing it,
14 it's just out there and it's like, well, drunk people
15 don't have defenses. They just don't. They're
16 drunks, and they don't get a defense. And it has no
17 place in this jury trial.

18 We're not -- we haven't -- there won't be a
19 single argument about voluntary intoxication. It's
20 not a legal defense. Not being a legal defense, there
21 should not be instructions on it. It would be the
22 same as if there were no arguments here about
23 self-defense and we said, oh, we just want
24 self-defense. Oh, we just want a necessity defense.
25 We want a insanity defense. Can we have that?

1 **THE COURT:** Well, the difference is there's been
2 some evidence of voluntary intoxication, correct? You
3 can admit it. It's okay, Mr. LaFay.

4 **MR. LaFAY:** There has been.

5 **THE COURT:** Okay.

6 **MR. LaFAY:** But it's not -- it's not a legal
7 defense.

8 **THE COURT:** Correct.

9 **MR. LaFAY:** And my objection is that we're
10 negating something that is, A, not being argued; B,
11 the defense isn't mounting a defense on voluntary
12 intoxication and, C, no one is even going to think
13 about it.

14 **THE COURT:** How do you know the jurors won't
15 think about it? How do you know that? I don't know
16 it.

17 **MR. LaFAY:** Well, I'm objecting to it.

18 **THE COURT:** I know you're objecting. I can't
19 find it in the Supreme Court website here. I got it.
20 I'll work on that.

21 Then we get to justifiable use of deadly force.
22 And, again, I'll make the decision after Mr. Batista
23 testifies. But as to the form of it, I believe it's
24 everything we spoke about yesterday. Is there any
25 objection to the form of 3.6(f), State?

1 **MR. JAY:** No, sir.

2 **THE COURT:** Defense?

3 **MR. LaFAY:** No, Your Honor. Will the fonts be
4 all --

5 **THE COURT:** They're not the same? Oh, they're
6 not. Okay.

7 **MR. LaFAY:** Then there's a number two on the any
8 attempt to commit aggravated assault. The numeral two
9 is somehow --

10 **THE COURT:** Yeah, I don't know I can fix the
11 numeral two. That's just a bolded bigger. I still
12 want the font to the instructions to be the same as
13 every other, so it doesn't look like it's an added
14 afterthought, if you will.

15 **MR. LaFAY:** I take it the italics would be --

16 **THE COURT:** I like them there because it gives
17 the definition of aggravated assault the three times
18 that the instruction mentions it.

19 **MR. LaFAY:** Okay.

20 **THE COURT:** Any objection to the --

21 **MR. LaFAY:** I'm into minutia now, so I don't
22 consider that worth arguing about. Thank you.

23 **THE COURT:** Then we have lesser includeds. I
24 will put the lessers as first-degree murder with a
25 firearm, second-degree murder -- actually without a

1 firearm, second-degree murder with a firearm,
2 second-degree murder without a firearm.

3 And then the State has the instruction -- in the
4 instructions, manslaughter with a dangerous weapon and
5 manslaughter without a dangerous weapon.

6 State, any objection to these lessers?

7 **MR. JAY:** No, sir.

8 **THE COURT:** Defense?

9 **MR. LaFAY:** I'm looking at the manslaughter.
10 Your Honor, I believe when committing -- for the
11 manslaughter instruction --

12 **THE COURT:** Read me the instruction number,
13 please.

14 **MR. LaFAY:** I haven't even gotten there yet. I'm
15 sorry. Manslaughter is 77 -- 7.7.

16 **THE COURT:** 7.7? Okay.

17 **MR. LaFAY:** I'm sorry. I know Mr. Jay told me
18 yesterday he was thinking about a manslaughter
19 instruction. I didn't see it.

20 I'm looking here at the committee note. There's
21 a special jury instruction on causation; but Judge, I
22 just really wasn't sure what that said. I don't think
23 causation is really in dispute here. Thank you. So
24 I'll move on.

25 **THE COURT:** Okay.

1 **MR. JAY:** I realize that there's been a statement
2 made to Darnell Adams this was an accident. I don't
3 know what their possible theory is; but if they're
4 theory is culpable negligence, I think there's more to
5 this instruction to be had. I just wanted to let them
6 know.

7 **THE COURT:** Okay. We're not to that instruction
8 yet. We're now at murder in the second degree with
9 the same verbiage for the instruction, aggravation of
10 a felony by carrying a firearm and possession of a
11 firearm and discharge causing death.

12 Any objection to those instructions, State?

13 **MR. JAY:** No, sir.

14 **THE COURT:** Defense?

15 **MR. LaFAY:** You're in second-degree murder?

16 **THE COURT:** Second degree, yes.

17 **MR. LaFAY:** Your Honor, with regard to the
18 aggravators -- I have to check the standard jury
19 instruction but I believe there is a sentence in there
20 that says, if you also find beyond a reasonable doubt
21 during the commission of the crime, he personally
22 carried, displayed, used or threatened to use a
23 firearm, you should find him guilty of second-degree
24 murder with a firearm. If, however, you do not find
25 beyond a reasonable doubt that the defendant carried a

1 firearm, then you should find him -- or find that he
2 carried no firearm.

3 I thought that was in the standards, but I have
4 to check. It's 3.3(c). I'm sorry. I don't see it.
5 Thank you. I'm going to move on.

6 **THE COURT:** Okay. Then we get to manslaughter.
7 Okay. Got the voluntary intoxication done.

8 Now let's deal with manslaughter. Okay. State,
9 I'm looking for manslaughter in the Florida Supreme
10 Court instruction. Here we go. Okay. As it's
11 written now is manslaughter by act.

12 State, do you want to modify that culpable
13 negligence?

14 **MR. JAY:** No. I was just bringing it to their
15 attention that it wasn't there, since they've elicited
16 a substantive statement from the defendant through
17 Darnell Adams that it was an accident. I just wanted
18 them to make sure they understand this is not the
19 complete jury instruction. I think paragraph B is
20 procurement, but I think paragraph (2)(c) as an option
21 is culpable negligence. I was just making sure they
22 were aware.

23 **THE COURT:** Okay. So the only addition would be
24 (2)(c).

25 **MR. LaFAY:** So I think we would make it in the

1 disjunctive, which is that it read, the defendant
2 intentionally -- I beg your pardon, defendant
3 intentionally committed an act that caused the death
4 of Pedro Gallardo or the death of Pedro Gallardo was
5 caused by the culpable negligence of Ronny Batista.

6 **THE COURT:** Okay. So I'll have to change the
7 entire form of instruction: To prove the crime of
8 manslaughter, the State must prove the following two
9 elements beyond a reasonable doubt: Number one, Pedro
10 Gallardo is dead and number two, Ronny Batista
11 intentionally committed an act or acts that caused the
12 death of Pedro Gallardo, comma or the -- or the death
13 of Pedro Gallardo was caused by the culpable
14 negligence of Ronny Batista.

15 It reads, the defendant cannot be guilty of
16 manslaughter by committing a merely negligent act or
17 if the killing was either justifiable or excusable
18 homicide as I have previously instructed you.

19 Next paragraph, each of us has a duty to act
20 reasonably towards others. If there's a violation of
21 that duty without any conscious intention to cause
22 harm, that violence is negligence.

23 Actually, the proposed instruction goes into
24 justifiable and excusable. It has those same
25 definitions.

1 **MR. LaFAY:** Judge, do you want to take out, as I
2 previously instructed above or leave that in?

3 **THE COURT:** Yes, I'll take that out.

4 Actually, what I'll do is since it's already in
5 the correct font, is I'll use the State's proposed;
6 but I'm going to add in there the third -- well, it's
7 listed as (2)(c), if you follow me.

8 **MR. LaFAY:** Yes.

9 **THE COURT:** And I'll put the disjunctive before
10 that.

11 **MR. LaFAY:** Are you leaving in Ronny Batista
12 intentionally committed an act or acts that caused the
13 death of Pedro Gallardo; or the disjunctive, the death
14 of Pedro Gallardo was caused by culpable negligence?

15 **THE COURT:** Yes, sir.

16 **MR. LaFAY:** Okay.

17 **THE COURT:** I have it in the disjunctive.

18 **MR. LaFAY:** Okay. Thank you.

19 **THE COURT:** Give me a second. I can't
20 double-screen this. Number two, will end with a comma
21 and then the word "or." Then, below that will be what
22 we know as C, which reads: Or the death of Pedro
23 Gallardo was caused by the culpable negligence of
24 Ronny Batista. And then it continues: The defendant
25 cannot be guilty of manslaughter by committing a

1 merely negligent act or if the killing was justifiable
2 or excusable.

3 **MR. LaFAY:** I think --

4 **THE COURT:** And then I read that and then it
5 continues: Each of us has a duty to act reasonably
6 towards others. If there's a violation of that duty
7 without any conscious intent, that violation is
8 negligence.

9 Bless you.

10 Then we have (2)(a), which I'm giving; and so
11 what I'm going to do is add the (2)(c) verbiage about
12 culpable negligence. Does that make sense?

13 **MR. LaFAY:** Yes, Your Honor.

14 **THE COURT:** Okay. Then I'll go to, I will now
15 define culpable negligence for you. Each of us has a
16 duty -- and it goes on in that paragraph.

17 **MR. LaFAY:** And then I believe that the
18 manslaughter instruction would end with the ending of
19 the definition of culpable negligence, ending, was
20 likely to cause death or great bodily injury.

21 **THE COURT:** Correct.

22 And then we go to the aggravation of a dangerous
23 weapon.

24 **MR. LaFAY:** I don't believe there is an
25 aggravation for manslaughter. It's not on the list

1 for personally carrying a firearm.

2 **THE COURT:** Why is it in the instruction?

3 **MR. LaFAY:** I'm suggesting we take our pens and
4 put big X's over that.

5 **THE COURT:** Why would it be in the instruction if
6 it doesn't exist? You don't think 782.07 can be
7 enhanced by a dangerous weapon?

8 **MR. LaFAY:** Not personally carrying like it says.
9 And, now, I don't know if they charged in the
10 indictment 775.087(1); but this instruction,
11 personally carrying, I believe is minimum mandatory,
12 which does not -- the minimum mandatory provisions do
13 not apply to manslaughter.

14 **THE COURT:** State?

15 **MR. JAY:** Judge, manslaughter is an enhanceable
16 offense when it's done with a weapon. The indictment
17 does say that this murder was carried out with a
18 weapon.

19 If I understand correctly, they're asking for the
20 looser definition of possession of a weapon, rather
21 than actual possession. If that's what they want,
22 please give it.

23 **THE COURT:** I don't want that. I want to leave
24 it that he personally, carried, displayed, used,
25 threatened to use or attempted to use a dangerous

1 weapon and then defines it.

2 Okay. Anything else regarding that instruction,
3 Defense?

4 **MR. LaFAY:** No, Your Honor.

5 **THE COURT:** Then we get to plea of not guilty,
6 reasonable doubt and burden of proof. It's standard,
7 except the State in the second to last sentence
8 changed the word "should" to "must." Any objection?

9 **MR. LaFAY:** I'm sorry, Your Honor?

10 **THE COURT:** Reasonable doubt.

11 **MR. LaFAY:** No objection.

12 **THE COURT:** Weighing the evidence. I have one
13 through five, and then I've left in six, seven, eight
14 and nine, as you can see. I've taken out ten. Any
15 objection?

16 Then it continues whether a witness has met the
17 burden of proof, the fact that a witness has been
18 employed by law enforcement, expert witnesses,
19 continuing with, you must consider the testimony of
20 some witnesses with more caution.

21 Then it says, give only if the defendant
22 testifies. So I'll take out the heading, and I will
23 unitalicize it. Then talking to a witness and your
24 own conclusion.

25 Any objection to that instruction, Defense?

1 **MR. LaFAY:** No objection to one through nine.
2 Your Honor, you have the accomplice instruction in
3 there, I believe?

4 **THE COURT:** Yes, I left it in there. It's
5 actually accomplice, backslash, informant, so I left
6 it in there for informant.

7 **MR. LaFAY:** Thank you. I have no objection.

8 **THE COURT:** State?

9 **MR. JAY:** No objection.

10 **THE COURT:** Then we have rules for deliberation.
11 Any objection, State?

12 **MR. JAY:** No, Your Honor.

13 **THE COURT:** Defense?

14 **MR. LaFAY:** None.

15 **THE COURT:** Verdict, State?

16 **MR. JAY:** No, Your Honor.

17 **THE COURT:** Defense?

18 **MR. LaFAY:** No objection.

19 **THE COURT:** Submitting the case to jury, State?

20 **MR. JAY:** No, Your Honor.

21 **THE COURT:** Defense?

22 **MR. LaFAY:** No objection.

23 **THE COURT:** Verdict form, State?

24 **MR. JAY:** No objection.

25 **THE COURT:** Defense?

1 **MR. LaFAY:** I actually do not see a verdict form
2 instruction on mine.

3 **THE COURT:** Not an instruction, the actual
4 verdict.

5 **MR. LaFAY:** Oh, the verdict.

6 **THE COURT:** Yeah.

7 **MR. LaFAY:** I thought you'd already asked me
8 about that. That was my only pause about that.

9 **THE COURT:** Oh.

10 **MR. LaFAY:** No objection.

11 **THE COURT:** Good.

12 How about special verdict?

13 **MR. LaFAY:** Only to the all caps, which is
14 different from --

15 **THE COURT:** Okay. I'll work on changing that.
16 I'll make it consistent with the verdict form.

17 **MR. LaFAY:** I mean, it doesn't matter to me which
18 one is different.

19 **THE COURT:** I'll keep them all consistent.

20 **MR. LaFAY:** Right. Thank you.

21 **THE COURT:** Okay. Anything else before -- first
22 of all, Deputy?

23 **COURT DEPUTY:** Yes, Judge.

24 **THE COURT:** Anything?

25 **COURT DEPUTY:** Yes. I need to go into the back

1 and do this.

2 **THE COURT:** Okay. Is that going to be visible
3 for the jury at all?

4 **COURT DEPUTY:** No, it will be under his pant leg.

5 **THE COURT:** Okay. I want to look at it after you
6 do it.

7 **COURT DEPUTY:** Okay.

8 **MR. LaFAY:** Your Honor, Mr. Batista has asked if
9 prior to assuming the stand if he could have a drink
10 of water.

11 **THE COURT:** Sure.

12 **MR. LaFAY:** Thank you, Judge.

13 **THE COURT:** Do you want to go back and get it
14 from the water fountain?

15 **MR. JOSHI:** Your Honor, could I step out just for
16 a minute?

17 (Court was at ease.)

18 **THE COURT:** See if the jurors are ready. Find
19 out if they're ready. They might not be.

20 **COURT DEPUTY:** They're ready, Judge.

21 **THE COURT:** Did you have your drink of water?

22 **THE DEFENDANT:** Yeah.

23 **THE COURT:** Are you okay?

24 **THE DEFENDANT:** Yeah, I'm good.

25 **THE COURT:** Are we ready to proceed, Mr. Joshi?

1 **MR. JOSHI:** Yes, Your Honor.

2 **THE COURT:** Mr. Jay?

3 **MR. JAY:** Yes, sir. Thanks.

4 **THE COURT:** Let's bring the jurors in, please.

5 Ms. Matta, I'll print you out a final copy.

6 Okay?

7 **THE COURT REPORTER:** Thank you.

8 **COURT DEPUTY:** Jury entering.

9 (The jury entered the courtroom at 3:00 p.m.)

10 **THE COURT:** Does the State recognize the return
11 of the jury?

12 **MR. JAY:** Yes, Your Honor.

13 **THE COURT:** Defense?

14 **MR. JOSHI:** Yes, Your Honor.

15 **THE COURT:** Please be seated, ladies and
16 gentlemen.

17 Okay. State -- I'm sorry, Defense, any other
18 witnesses?

19 **MR. JOSHI:** Yes, Your Honor. Respectfully,
20 defense would call Ronny Batista.

21 **THE COURT:** Mr. Batista, if you'd come take the
22 witness stand.

23 **RONNY BATISTA**

24 was called as a witness and, having first been duly sworn,
25 testified as follows:

1 **THE COURT:** Okay. Mr. Batista, if you'll please
2 introduce yourself to the jurors and spell your name
3 for the young lady in front of you.

4 **THE WITNESS:** My name is Ronny Batista,
5 R-O-N-N-Y, B-A-T-I-S-T-A.

6 **THE COURT:** Thank you.
7 You may inquire.

8 **DIRECT EXAMINATION**

9 **BY MR. JOSHI:**

10 **Q.** Good afternoon, Mr. Batista.

11 **A.** Good afternoon.

12 **Q.** I want to address your attention to June 23rd,
13 the night of June 23rd, going into June 24th of 2012. Do
14 you remember that night?

15 **A.** Yes, sir.

16 **Q.** Okay. Would you tell this honorable jury where
17 you went on June 23rd?

18 **A.** I went to downtown Orlando.

19 **Q.** Okay. And who did you go to downtown Orlando
20 with?

21 **A.** With Xavier Goytia, Xavier Almonte, Carlos and
22 Cruz.

23 **Q.** Okay.

24 **A.** And Dylan.

25 **Q.** And is Carlos, Carlos Rubio?

- 1 **A.** Yes, Carlos Rubio.
- 2 **Q.** Do you know is Dylan, Dylan Stierle?
- 3 **A.** Yes.
- 4 **Q.** Xavier, Cruz, are those the Goytia brothers?
- 5 **A.** Yes.
- 6 **Q.** All right. Now, how did you get downtown?
- 7 **A.** In my car.
- 8 **Q.** Okay. And what kind of vehicle was it?
- 9 **A.** A Mercedes-Benz.
- 10 **Q.** And who's the car registered to?
- 11 **A.** My mother.
- 12 **Q.** All right. And who was with you in the vehicle
- 13 when you went to downtown?
- 14 **A.** Cruz, Dylan and Carlos.
- 15 **Q.** All right. And were the Xaviers coming in
- 16 another car?
- 17 **A.** Yeah, they was in another vehicle.
- 18 **Q.** Do you remember what time you got to downtown
- 19 Orlando?
- 20 **A.** Probably about 11:00.
- 21 **Q.** Okay. And where did you end up parking?
- 22 **A.** In the parking garage downtown.
- 23 **Q.** Is that like 53 West?
- 24 **A.** Yes.
- 25 **Q.** Okay. Now, where did you guys end up going?

1 **A.** To club Tier.

2 **Q.** And what section of club Tier did you sit in?

3 **A.** In the VIP section.

4 **Q.** How was your night?

5 **A.** I had a decent night.

6 **Q.** Did you meet any women that night?

7 **A.** Yes.

8 **Q.** Okay. And what was your plans after leaving club
9 Tier?

10 **A.** We were going to meet up with the women in the
11 Westgate and continue the night.

12 **Q.** Hanging out?

13 **A.** Yeah, just hanging out.

14 **Q.** Were you in a good mood?

15 **A.** Yes, I was in a real good mood.

16 **Q.** Were you looking for any type of fight?

17 **A.** No, sir.

18 **Q.** Were you looking for any type of trouble?

19 **A.** No, sir.

20 **Q.** Do you recall -- I know this is going back to
21 2012. Do you recall how much you had to drink back on
22 June 23rd, going into June 24th, 2012?

23 **A.** I recall about three or four drinks.

24 **Q.** Okay. And who drove your vehicle over to
25 downtown?

1 **A.** Cruz.

2 **Q.** Cruz Goytia?

3 **A.** Yes, Goytia.

4 **Q.** And were you planning on driving that night?

5 **A.** Yes. I was going to drive back.

6 **Q.** Okay.

7 **A.** I had originally drove down there.

8 **Q.** Do you know if you had the keys of the vehicle
9 with you?

10 **A.** Yes, I had the keys. After we arrived downtown,
11 I had the keys.

12 **Q.** Okay. And after you left club Tier and you were
13 going to go meet these women over at Westgate, where did
14 you go?

15 **A.** When I got out the club?

16 **Q.** Yes, sir.

17 **A.** I stopped at the pizzeria on the corner. There's
18 a pizzeria on the corner.

19 **Q.** Okay. And if you -- if you would, after you left
20 the pizzeria, would you tell us where you went?

21 **A.** I went to the parking garage.

22 **Q.** Okay. Why did you go to the parking garage?

23 **A.** That's where we were parked.

24 **Q.** All right. And in relation to your friends --
25 like, when you were going to your car, where were they in

1 relation to you?

2 A. They were behind me. I was in front of the
3 group.

4 Q. All right. And when you were walking to your
5 car, what was your intention?

6 A. My intention was to get to my car to leave
7 downtown.

8 Q. And as you're walking, did you see a group of
9 people that you later learned Pedro Gallardo was a part of
10 and Victor Santini?

11 A. Yes.

12 Q. As you were walking past them, did you pay any
13 attention to them?

14 A. No, not really.

15 Q. Okay. And as you were walking past them, did you
16 hear them say anything to any of your friends?

17 A. Yeah. They were saying, what you looking at,
18 what you looking at?

19 Q. Do you remember who they were saying this to?

20 A. I believe it was Dylan.

21 Q. Okay. And did any words get exchanged between
22 Dylan and the person you later learned as Pedro or Victor?

23 A. I believe it was with Victor at first.

24 Q. Okay.

25 A. They started arguing back and forth.

1 Q. Were your friends right in the vicinity?

2 A. Yes.

3 Q. All right. How close were you to your vehicle

4 when this argument started?

5 A. About three or four car lengths.

6 Q. Okay. And --

7 A. Parking spots.

8 Q. All right. And so were they parked pretty close
9 to you?

10 A. Yeah, they were parked -- they were parked, like,
11 four cars before me.

12 Q. Okay. And as it started between Dylan and
13 Victor, could you describe for the jury how this
14 confrontation escalated?

15 A. Within seconds it went from what you looking at
16 to, oh, go get the guns, go get the guns.

17 Q. Okay. Now, you're saying it started from what
18 you looking at. Who was saying, what you looking at?

19 A. I believe it was Victor.

20 Q. Okay. And then when you said it went from what
21 you looking at to go get the gun, would you describe how
22 and who was saying go get the gun?

23 A. I believe it was -- it was Victor. He got
24 over -- very aggressive in a aggressive manner and just
25 started yelling, what you guys looking at? Go get the gun,

1 go get the gun. And he was, like, addressing which later
2 identified in my recollection as Pedro and Emmanuel
3 Santini.

4 Q. Okay. Now, how were they acting in response to
5 Victor?

6 A. In response to Victor, they ran straight to
7 Victor; and oh, what's up, what's up? Like they wanted the
8 altercation to escalate. They were escalating the
9 situation.

10 Q. Okay. And were there females in the group?

11 A. Yeah. The females was trying to push them back
12 immediately. They got --

13 Q. Describe, as they were pushing them back, how
14 they were reacting?

15 A. They were -- they were continuing to -- they was
16 hostile, like, no, "F" that, "F" that, "F" that. We got
17 handguns. And they just continued to -- they just got all
18 out of control within a matter of seconds.

19 Q. A matter of seconds it escalated?

20 A. Yes.

21 Q. And when Victor said something about the gun,
22 what was Pedro's reaction?

23 A. Pedro immediately ran to the back of car. I
24 believe it was a Lancer, to the back door of the Lancer.

25 Q. And what was Pedro saying about a gun?

1 A. He was like, oh, I'm gonna shoot these mother
2 "F"ers. I'm gonna shoot these mother "F"ers. He ran
3 straight to the back door of the Lancer.

4 Q. Now, had you been involved in the argument; or
5 were you just observing at this point?

6 A. I was right there. I wasn't involved in the back
7 and forth.

8 Q. So were you saying anything?

9 A. No.

10 Q. Okay. Now, as Pedro ran to the Lancer, saying,
11 I'm going to shoot, what was your thoughts?

12 A. I was just -- I was in complete shock. I was
13 scared to get shot, so I ran immediately to my vehicle to
14 retrieve a firearm.

15 Q. How close was Pedro to your friends?

16 A. Pedro was within 5 feet from my friends.

17 Q. Okay. And when he said -- okay. When he went to
18 the car and he was reaching in, what was he saying about a
19 gun? Pedro.

20 A. Pedro? He was saying, oh, I'm going to shoot
21 these mother "F"ers. I'm going to shoot these mother
22 "F"ers.

23 Q. Had Pedro told him to go to the car and get the
24 gun?

25 A. Yeah. He said, go get the gun, go get the gun.

1 That's when Pedro ran to the back of the Lancer.

2 Q. Did you perceive these as threats?

3 A. Yes.

4 Q. When Pedro went and got the gun, you indicated
5 that your friends were 5 feet away?

6 A. Yes.

7 MR. JAY: Objection, stating facts not in
8 evidence.

9 THE COURT: Sustained.

10 BY MR. JOSHI:

11 Q. When Pedro went and got the gun, how close were
12 your friends?

13 MR. JAY: Objection, stating facts not in
14 evidence.

15 THE COURT: Sustained.

16 BY MR. JOSHI:

17 Q. When Pedro went to the vehicle and said he's
18 going to get a gun, how close were your friends to Pedro?

19 A. About five, 6 feet away.

20 Q. Okay. Where were you?

21 A. I was a little farther down, more toward my
22 vehicle at the moment.

23 Q. Okay. Now, what were you concerned of when he
24 went to the vehicle?

25 A. That me or one of my friends was possibly going

1 to be shot.

2 Q. Okay. How real did this appear to be to you?

3 A. Like the situation got out of control, so it was
4 like -- it was like a real situation. It went from a
5 simple what you looking at to go get the gun, go get the
6 gun. So it was like -- I was in total shock that it even
7 got so serious about people speaking about guns over just
8 walking past and looking at somebody. So it was like I was
9 in shock.

10 Q. How real did the situation appear to you?

11 A. It was -- it seemed real, real scary at the
12 moment.

13 Q. And who did you think Pedro was going to shoot?

14 A. One of my -- me or potentially one of my friends.

15 Q. Okay. Were your friends, to your knowledge,
16 carrying any weapons?

17 A. No, not on them.

18 Q. Okay. Did you know whether or not there was a
19 firearm in the vehicle?

20 A. Yes. There was a firearm in my vehicle.

21 Q. When did you find out?

22 A. When we got to downtown.

23 Q. Who told you?

24 A. Cruz.

25 Q. Okay. And how soon did you run and get the gun?

1 **A.** Immediately.

2 **Q.** Okay. And --

3 **A.** Immediately after the threats.

4 **Q.** Okay. And was that immediately after Pedro went
5 to the vehicle?

6 **A.** Yeah. After he ran to the vehicle, I ran to my
7 vehicle as well.

8 **Q.** Okay. And when you went to your vehicle, were
9 you able to get in, get inside your vehicle and get the
10 gun?

11 **A.** Yes. I was able to get the firearm from the
12 vehicle.

13 **Q.** Do you recall where it was located?

14 **A.** I believe it was in the trunk of the car.

15 **Q.** Okay. As soon as you got the firearm, where did
16 you go?

17 **A.** I went back to the area where the altercation
18 was.

19 **Q.** Okay. And when you went back, would you describe
20 for the jury how you were holding the gun?

21 **A.** On my side.

22 **Q.** And how fast did you run to your vehicle?

23 **A.** As fast as I could.

24 **Q.** How fast did you get the firearm?

25 **A.** Probably 15 seconds.

1 Q. From the time you ran, how fast did you get the
2 firearm?

3 A. About 15, 20 seconds at the most.

4 Q. Okay. Was that from the time you left?

5 A. Yes.

6 Q. And did you come immediately back?

7 A. Yeah, I came immediately back.

8 Q. Okay. And from that -- as you're coming back,
9 where were your friends at this point?

10 A. They were still within 5 feet of Pedro and Victor
11 in the altercation.

12 Q. At this point was Victor still in the vehicle?

13 A. No, victor was never in the vehicle.

14 Q. He went towards the vehicle, correct?

15 A. No. Pedro went towards the vehicle.

16 Q. Pedro. I'm sorry.

17 At the point you came back, would you describe
18 where Pedro was?

19 A. Pedro was -- he was standing behind a Lancer,
20 like in the trunk area of a Lancer.

21 Q. And how close were your friends to him at this
22 point?

23 A. They were right about five feet away from him.

24 Q. And what was Pedro doing at this point?

25 A. He had his hand in his waistband.

1 Q. Okay. Was he saying anything?

2 A. Yeah. He said, which one of you-all want to get
3 shot? Which one of you-all want to get shot?

4 Q. What did you think he had on him?

5 A. A firearm.

6 Q. And could you hear this as you were running back?

7 A. Yes.

8 Q. What was Victor saying?

9 A. Victor, at that moment, I don't recall what he
10 was saying; but my focus was more on Pedro because he was
11 the one who was more rowdy in the situation.

12 Q. Had Victor taken off his shirt?

13 A. Yeah, Victor took off his shirt.

14 Q. But when you got back, you were focusing on
15 Pedro?

16 A. Yes, I was focusing on Pedro.

17 Q. Once you got the firearm, you stated you ran
18 back?

19 A. Yes.

20 Q. Okay. And how close did you get to Pedro?

21 A. About 10 feet.

22 Q. Okay. And when you got 10 feet, what did you do?

23 A. I stopped.

24 Q. Okay. And did he make any -- did he look in your
25 direction?

1 **A.** Yes. He recognized I was there. So he turned to
2 my direction.

3 **Q.** Where was your firearm at this point?

4 **A.** On my side.

5 **Q.** Had you raised your firearm and pointed it at
6 anyone?

7 **A.** No.

8 **Q.** Okay. But as you said Victor turned towards you,
9 what did you see Victor do?

10 **A.** Pedro.

11 **Q.** Pedro, I'm sorry. I'm sorry. What did you see
12 Pedro do?

13 **A.** Pedro immediately turned towards me, and he
14 pulled a firearm from his waistband.

15 **Q.** Did you see something in his waistband?

16 **A.** Yes, I seen a firearm.

17 **Q.** And what did you -- describe how he pulled it
18 out.

19 **MR. JOSHI:** Your Honor, may --

20 **THE COURT:** You asked him to describe.

21 **BY MR. JOSHI:**

22 **Q.** Describe how he --

23 **A.** He lifted up his hand in this area
24 (demonstrating) to go forward.

25 **Q.** And when you saw that, what did you think?

1 **A.** That he was going to shoot me.

2 **Q.** Okay. Was he looking your direction?

3 **A.** Yes.

4 **Q.** Did he say anything to you?

5 **A.** I don't recall exactly what he said, something
6 along the facts -- I think it was along the lines, oh, what
7 you gonna do, what you gonna do, something like that.

8 **Q.** As he was reaching towards his waistband?

9 **A.** Yeah.

10 **Q.** And as he was pulling out --

11 **A.** He started to pull out immediately.

12 **Q.** Okay. And what did you do at that point?

13 **A.** I immediately shot him.

14 **Q.** Okay. And would you describe how you shot him?

15 **A.** I shot him. I just lifted my arm and turned my
16 face and fired a shot out of fear.

17 **Q.** And why did you come back with a gun?

18 **A.** To protect myself and my friends.

19 **Q.** Okay. When you came back, did you make any
20 threats to Pedro?

21 **A.** No.

22 **Q.** Did you make any threats to Victor?

23 **A.** No.

24 **Q.** Did you make any threat to anyone?

25 **A.** No.

1 **Q.** You said you were about 10 feet away?

2 **A.** Yes.

3 **Q.** And you said you stopped. How soon after you
4 stopped did he turn towards you?

5 **A.** Probably like a second or two. He immediately
6 noticed me when I returned towards him.

7 **Q.** Okay. How soon when he turned towards you and
8 reached for his waistband did you shoot him?

9 **A.** Immediately.

10 **Q.** How many shots did you fire?

11 **A.** One.

12 **Q.** Okay. Did you know whether you hit him or not?

13 **A.** No.

14 **Q.** After you fired that shot, what did you do?

15 **A.** I ran back to my car.

16 **Q.** Why did you run back to your car?

17 **A.** I didn't want to get shot.

18 **Q.** Did you aim the gun?

19 **A.** No.

20 **MR. JOSHI:** Okay. Your Honor, may the witness
21 demonstrate how he fired the gun?

22 **THE COURT:** Did you just demonstrate it a moment
23 ago?

24 **THE WITNESS:** Yeah. I kinda --

25 **THE COURT:** I'm asking, did you just demonstrate

1 a minute ago?

2 **THE WITNESS:** Vaguely, yeah.

3 **THE COURT:** Okay. Go ahead and step down or
4 actually, just stand up.

5 **BY MR. JOSHI:**

6 **Q.** Okay. Would you demonstrate as soon as you
7 stopped and Pedro turned?

8 **A.** I stopped and had the firearm to my side like
9 this (demonstrating).

10 **Q.** And how did you -- do you recall how you fired
11 the firearm?

12 **A.** Yes, I just -- when I seen the firearm, when I
13 seen him pulling the firearm from his waistband, I
14 immediately just shot like this. I turned my face. I
15 didn't know if I shot him or it went in the air. I didn't
16 know. I wasn't sure where the bullet landed.

17 **Q.** How fast did this whole encounter last from when
18 you first heard these guys say something to your friends to
19 when you came back with the firearm?

20 **A.** Less than two minutes. Probably a minute and 30
21 seconds at the most.

22 **Q.** Did you shoot Pedro with any ill will?

23 **A.** No.

24 **Q.** Any spite?

25 **A.** No.

1 Q. Any hatred?

2 A. No.

3 Q. Any design for him to die?

4 A. Out of fear.

5 Q. An evil intent?

6 A. No.

7 Q. And after firing the shot, what was your state of
8 mind?

9 A. I was in complete panic. I was panicked over the
10 situation. I was shocked over the situation.

11 MR. JOSHI: May I have a moment?

12 THE COURT: Yes.

13 MR. JOSHI: Your Honor, that's all the questions
14 I've got.

15 THE COURT: Cross-examination, State?

16 MR. JAY: Yes. Thank you.

17 CROSS-EXAMINATION

18 BY MR. JAY:

19 Q. So did you guys gather at somebody's house that
20 afternoon before going downtown that night?

21 A. I don't recall what I did before -- throughout
22 the day.

23 Q. What's your first memory of the evening?

24 A. I have no --

25 MR. JOSHI: I'll object, beyond the scope.

1 **THE COURT:** Overruled.

2 **BY MR. JAY:**

3 **Q.** What is your first memory of the evening of
4 June 23rd, 2012, going into the early morning hours of
5 June 24th, 2012?

6 **A.** I was in downtown Orlando.

7 **Q.** Okay. You have no idea how you got there?

8 **A.** Yes.

9 **Q.** How did you get there?

10 **A.** In my car.

11 **Q.** All right. So do you remember being in your car
12 going to downtown Orlando?

13 **A.** Yes.

14 **Q.** Where do you remember -- if you remember, where
15 did you come from?

16 **A.** I came from my house.

17 **Q.** Okay. And was there anybody that was in the car
18 with you at your house? I believe you said it was Dylan
19 Joseph or Stierle, Carlos Rubio and Cruz Goytia?

20 **A.** When I left my house, I was by myself -- no, I
21 was with Dylan when I left my house.

22 **Q.** About what time did you and Dylan leave your
23 house?

24 **A.** Probably around 10:00.

25 **Q.** Okay. So you weren't with Cruz at his house

1 drinking during the day before going out that night?

2 **A.** No. I believe I passed by his crib earlier that
3 day, but I don't recall drinking at his house during the
4 day.

5 **Q.** And by crib you mean house?

6 **A.** House, yes.

7 **Q.** And so you didn't drink anything with Cruz, or
8 you did drink something with Cruz at his house before going
9 downtown?

10 **A.** No, I didn't have a drink before I went downtown
11 that night.

12 **Q.** Did Dylan have anything to drink before you-all
13 went downtown?

14 **A.** No, he didn't because he was with me the whole
15 day.

16 **Q.** What were you guys doing that day?

17 **A.** It was a normal day, I mean.

18 **Q.** I don't know what a normal day is for you.

19 **A.** I probably woke up and ran a couple errands. I
20 don't recall exactly what I did leading up to the late
21 night hours.

22 **Q.** Did Dylan run the errands with you?

23 **A.** Sometimes he would come with me.

24 **Q.** Okay. Now, when you get to Cruz's house, is it
25 still just you and Dylan or had you picked up Carlos Rubio

1 on the way?

2 A. No, we picked up Carlos last.

3 Q. Okay. So you and Dylan go to Cruz Goytia's house
4 and pick him up, I think you said, around ten?

5 A. Maybe around ten, 10:30.

6 Q. Okay. And did Cruz seem like he had been
7 drinking, either by odor, look in his eyes, his behavior,
8 his speech, any indication that he might have been drinking
9 all day?

10 A. No.

11 Q. Okay. And so does he drive you downtown, or do
12 you drive downtown?

13 A. He drives.

14 Q. Any particular reason he drives your car instead
15 of you driving your Mercedes-Benz?

16 A. I was tired of driving that day. He likes to
17 drive. So I just told him he could drive.

18 Q. Okay.

19 A. It wasn't a particular reason why he was driving.
20 Just he likes to drive, and I was tired of driving that
21 particular day.

22 Q. So then you-all pick up Carlos Rubio, right?

23 A. Yes.

24 Q. And then you go downtown?

25 A. Yes.

1 Q. All right. And I assume with all the cell phones
2 we all have, there was some sort of connection with the
3 Xaviers, both Xaviers to meet up downtown?

4 A. Yes.

5 Q. And do they park in the same garage as you?

6 A. I have no idea where they park.

7 Q. Okay. Do they walk back to that garage with you
8 after your night out at the Tier nightclub?

9 A. Yes. They all walked with us to the parking
10 garage.

11 Q. Just so we're clear, by "all," we mean you, Dylan
12 Joseph, Cruz Goytia, Carlos Rubio and the two Xaviers; or
13 am I missing anybody?

14 A. No, that's it.

15 Q. Six of you-all, right?

16 A. Yes, sir.

17 Q. And your testimony is you had nothing to drink
18 prior to going out to downtown, right?

19 A. Yes.

20 Q. At Tier nightclub did you have anything to drink?

21 A. Yes.

22 Q. What were you drinking?

23 A. I was drinking, I believe, Ciroc.

24 Q. I'm sorry?

25 A. Ciroc.

1 Q. What's that? Is that wine?

2 A. That's a Vodka.

3 Q. Okay. Flavored Vodka or plain Vodka?

4 A. Plain.

5 Q. Were you drinking it with anything or on the
6 rocks or no rocks?

7 A. Redbull.

8 Q. How much Vodka did you have?

9 A. I had about three or four drinks. I'm not a
10 heavy drinker.

11 Q. How much did your entire party have?

12 A. I'm not sure.

13 Q. You guys said you were VIP?

14 A. Yeah.

15 Q. That's bottle service?

16 A. Yes.

17 Q. Five or six bottles?

18 A. I can't remember how many bottles. We met up a
19 group over there, and we joined the VIP. I believe
20 in-between the group it was about four or five bottles.

21 Q. Did you feel like you were under the effects of
22 your three or four drinks?

23 A. No.

24 Q. Did you pour them yourself, or did somebody else
25 pour them for you?

1 **A.** I poured them myself.

2 **Q.** How much did Cruz Goytia have to drink, if you
3 know?

4 **A.** I have no idea. I wasn't counting his cups.

5 **Q.** How much did Xavier Goytia have, if you know?

6 **A.** I have no idea.

7 **Q.** How much did Dylan Joseph have, if you know?

8 **A.** I don't have any idea what everybody was drinking
9 that night or how many drinks they had.

10 **Q.** Then you-all stop and get, I think you said,
11 pizza?

12 **A.** No, we didn't actually eat there. Someone had to
13 use the restroom, so we all stopped there.

14 **Q.** Okay. Did they make anybody order food for the
15 privilege of using the restrooms?

16 **A.** No.

17 **Q.** All right. So from there, you go back to the
18 parking garage where you -- where Cruz parked the car on
19 the way up, right?

20 **A.** Yes.

21 **Q.** I believe you testified on direct with Mr. Joshi
22 you were kind of ahead of the group?

23 **A.** Yeah, I was off ahead of the group.

24 **Q.** All right. So let's break this down. At this
25 point in time, is the group still you, Dylan Joseph, Cruz

1 Goytia, Carlos Rubio and the two Xaviers.

2 A. Yes.

3 Q. Any of those folks that you met at the VIP
4 section of Tier come with you now or no?

5 A. In the parking garage, no.

6 Q. And the ladies weren't coming with you. You were
7 going to meet them at Westgate?

8 A. They were parked in another section. They were
9 going to meet us at the Westgate.

10 Q. How far -- when you say you're off ahead of your
11 group, how far ahead of your group are you?

12 A. About two or 3 feet, not far. I was just like
13 ahead of the group.

14 Q. All right. So two or 3 feet, like between me and
15 the monitor here, an arm's length?

16 A. No. Well, actually a little bit farther.

17 Q. Five or 6 feet?

18 A. Yeah, from the podium to the table.

19 Q. Okay. For the record, I'd say 6 feet.

20 And are you-all talking as you walk back, like,
21 about the girls that you're going to meet or anything like
22 that?

23 A. I'm not sure exactly what the type of
24 conversation we was having, but we probably were talking.

25 Q. Okay.

1 **A.** I don't remember what we were talking about.

2 **Q.** So you come up the stairs or do you guys take the
3 elevator or do you actually walk the ramp the long way?

4 **A.** I think I took the stairwell.

5 **Q.** Did your friends take the stairwell as well?

6 **A.** I believe so, yeah.

7 **Q.** Okay. I mean, were they behind you when you got
8 to the top of the stairs?

9 **A.** Yeah. I don't recall whether we used the
10 elevator or the stairs. I know we was all together. We
11 was in a group. We was like -- but we wasn't like holding
12 each other's hands.

13 **Q.** All right. So regardless of whether you get out
14 of the elevator or off the stairs, you get to your floor;
15 and I believe it's the third floor?

16 **A.** Second to third floor, yeah.

17 **Q.** And from there, that's where this guy's standing,
18 where the cars would come, right?

19 **A.** Yes.

20 **Q.** And we're calling him Victor, right?

21 **A.** Yes, I believe his name is Victor.

22 **Q.** Okay. And you believe that from reading the
23 paperwork in your case, right?

24 **A.** Yeah. I don't know him.

25 **Q.** And at this point, are you still ahead of your

1 group; or are you closer now?

2 A. When we walked by?

3 Q. Yeah. Are you still five, 6 feet ahead of the
4 pack?

5 A. Yeah. I was still ahead of the pack.

6 Q. All right. Now, did you or Victor bump
7 shoulders?

8 A. No.

9 Q. Touch in any way, pinkies, anything?

10 A. No.

11 Q. All right. Are you the first to walk by him
12 cause you're going up the ramp to your Mercedes, right?

13 A. Yeah, I was the first one to walk by him.

14 Q. And do you walk actually by him? You're past
15 him?

16 A. Yeah, I walk by him.

17 Q. How far past him are you when you realize
18 something is going on?

19 A. A few steps.

20 Q. All right. And what draws your attention again?

21 A. Because he immediately started yelling, oh, what
22 you looking at, what you looking at? I turned to the
23 side -- I turned around.

24 Q. And when you turn around, is he facing in your
25 direction; or is he facing in the direction of the people

1 that were behind you in your group?

2 **A.** He was facing the people behind me.

3 **Q.** At this point in time, how far are you from the
4 rest of the people in your group?

5 **A.** It wasn't very far. It was all -- it was all --
6 we was all within feet from each other. It wasn't like we
7 were yards away or nothing like that. I can't tell you
8 exact feet.

9 **Q.** Well, I mean, just -- are they as close as we
10 are, closer or farther?

11 **A.** Me to who?

12 **Q.** To the next closest person in your group?

13 **A.** Yeah. We're about that -- say that far away.

14 **Q.** Okay. Say six, 7 feet.

15 And so could you tell who, in particular, maybe
16 he was asking that question to -- "he" being Victor,
17 asking, what you looking at?

18 **A.** I believe it was Dylan and Xavier Almonte. They
19 were the ones directly behind me at the moment.

20 **Q.** Does anybody in your group respond to his inquiry
21 about what are you looking at?

22 **A.** I believe, like, what you talking about? They
23 started exchanging words after they started. I didn't
24 really -- I didn't really get too many words, but they
25 started exchanging a few words until he starts.

1 Q. Okay. Who in your group is exchanging words? Is
2 it multiple people or just one person?

3 A. I'm not sure. I know -- I believe Dylan was
4 exchanging words with him.

5 Q. Okay.

6 A. And Xavier at the time.

7 Q. Now, do you come closer back to your group when
8 the words start getting exchanged?

9 A. Yes.

10 Q. All right.

11 A. I turn back my attention to the situation.

12 Q. All right. So you come back down the ramp a
13 couple steps to get closer to your friends, right?

14 A. Yes. Like what's going on, see what's going on.

15 Q. At this point in time, how far away is the people
16 that we're assuming are Victor's friends? How far away is
17 that group?

18 A. We was all real close to each other.

19 Q. Were they as close to Victor as you-all were, or
20 were they farther than that?

21 A. I don't -- I don't understand the question. I
22 don't understand --

23 Q. Let me break it down. You say you're about five
24 or 6 feet away. You turn around when you hear Victor
25 saying what you looking at to somebody; and then you come

1 back when you realize that there's an exchange of words
2 between Dylan and Victor, right?

3 A. Yeah.

4 Q. So now you-all are pretty close because you've
5 taken a couple steps back, right?

6 A. Yeah. We was all in the same immediate area, two
7 or three arm lengths away from each other. We are all in
8 the same vicinity, like all in this area, like about, say,
9 from here to there, all in that area, all of us.

10 Q. And by "all of us," you're including the boys and
11 the girls in Victor's group?

12 A. Everybody. Everybody.

13 Q. So they're not super far away either?

14 A. No. Everybody is within several feet from each
15 other.

16 Q. Now, Victor is getting aggressive, right?

17 A. Yes. Victor was the first one to get very
18 aggressive.

19 Q. He's getting loud?

20 A. Yes, he's getting loud.

21 Q. And that's when Victor says, go get the gun,
22 right?

23 A. Yes.

24 Q. And he says that loud?

25 A. Yes.

1 Q. Loud enough for everybody in this area to hear
2 him, right?

3 A. Yes.

4 Q. Okay. Did you run away when he said that, yes or
5 no?

6 A. No. I didn't immediately run, no.

7 Q. Did Dylan Joseph run away when Victor said, go
8 get the gun?

9 MR. JOSHI: Your Honor, I'm going to object to
10 whether or not Dylan Joseph ran --

11 THE COURT: That wasn't the question. Overrule.

12 BY MR. JAY:

13 Q. Did Dylan Joseph run away when Victor said
14 loudly, go get the gun?

15 A. No, I don't believe he ran.

16 Q. Did Xavier Goytia run away when Victor said loud,
17 go get the gun?

18 A. Yeah. I believe he started backing away. He
19 didn't run. He started backing away. He started like, oh,
20 shit.

21 Q. Did Cruz Goytia back away when Victor said out
22 loud, go get the gun?

23 A. At that moment I don't know where Cruz was or
24 which direction he was in. I don't know.

25 Q. All right. If he testified he was close enough

1 to be with you and have hands on you, that's not accurate?

2 **MR. JOSHI:** I'll object to him asking as to the
3 credibility of another witness' testimony.

4 **THE COURT:** Overruled.

5 **BY MR. JAY:**

6 **Q.** If Cruz says he was right there and close enough
7 to put hands on you, is that accurate or --

8 **A.** I can't say it would be inaccurate or accurate.
9 We was all near each other. My main focus was on Pedro and
10 Victor. I wasn't watching -- my friends wasn't posing a
11 threat to me. I'm not watching what they're doing. I'm
12 watching what Victor and Pedro are doing because those are
13 the people I need to worry about. I'm not worried about
14 Cruz shooting me in the back.

15 **Q.** Did Carlos Rubio run away when Victor said out
16 loud, go get the gun?

17 **A.** Yeah, I believe -- I believe Carlos Rubio -- tell
18 you the truth, I don't even remember seeing him in the
19 direct area of the situation. I don't know if he went
20 ahead or was behind us.

21 **Q.** Okay.

22 **A.** Or he stopped somewhere.

23 **Q.** Now, after Victor says, go get the gun, that's
24 when Pedro leaves this group area that you're talking about
25 and goes towards the Lancer, right?

1 **A.** Yes, cause it was all -- it all happened like
2 right behind the Lancer. We were all by the Lancer. He
3 went towards between the two cars or the back door.

4 **Q.** Pedro turns his back on everybody to go towards
5 the Lancer, right?

6 **A.** Yes.

7 **Q.** And despite him facing away, he's loud enough
8 when he says, I'm gonna shoot these "MF"ers, you could hear
9 him still, right?

10 **A.** Yes. I directed my attention to him immediately
11 because he ran to the car. So I started -- I started,
12 like, watching him.

13 **Q.** Now, when Pedro said loud enough for you to hear
14 I'm gonna shoot those "MF"ers, did Dylan Joseph run away?

15 **A.** Did he run -- I don't know what Dylan did at the
16 moment.

17 **Q.** Did you see anybody run away?

18 **A.** No. They was all trying to calm down, saying
19 like most of them.

20 **Q.** So now as Pedro is going to the Lancer and he's
21 already said he's gonna shoot these "MF"ers, that's when
22 you decide you're going to the car to get your gun or
23 Cruz's gun?

24 **A.** Yeah. I immediately seen Pedro run and reach in
25 the Lancer, so that indicated to me that he was going to

1 get the gun that Victor was addressing him to go get. So I
2 immediately ran to my car because they posed a threat.

3 Q. Okay. And they posed that threat because of what
4 they said, right?

5 A. Yes.

6 Q. And your testimony with Mr. Joshi was that your
7 group was still there within 5 feet from Pedro and Victor
8 while you went to go get the gun, right?

9 A. Yes.

10 Q. So if they're only 5 feet away from them, they
11 haven't run away because of what they said, right?

12 MR. JOSHI: Your Honor, I'm going to object.

13 THE WITNESS: Well, I'm not sure if they heard
14 him. I don't know if they heard him because there was
15 a lot of back and forth.

16 THE COURT: What's your objection?

17 MR. JOSHI: Your Honor, I'm going to testify --
18 I'm going to object to him testifying as to what his
19 friends should have done.

20 THE COURT: Overruled.

21 BY MR. JAY:

22 Q. So if your friends are 5 feet away after those
23 things were said by Pedro and Victor, they didn't run away,
24 right?

25 A. They didn't -- it was -- I don't know if they

1 heard -- if they heard -- it was a lot of commotion. So I
2 don't know if they heard what I heard because there was
3 females yelling, pushing them back. It was a whole -- it
4 was a whole altercation. I don't know what they heard, if
5 they heard what he said, if they seen what Pedro was doing
6 but --

7 Q. I understand you can't say what they heard.

8 A. Yeah.

9 Q. Let me ask you a question. You guys were all
10 standing there together, right?

11 A. We're in the same area, but I directed my
12 attention to Pedro. Now I'm directing my attention to
13 Pedro. I'm not watching what they're doing or what they're
14 hearing or I can't hear for them. I don't know what they
15 heard.

16 Q. But you testified with Mr. Joshi your friends
17 were still 5 feet away from Pedro and Victor after they
18 said those things, right?

19 A. Again, I don't know the exact feet; but they was
20 all in the same area.

21 Q. Okay. Now, you're farther away because your car
22 is three, four or five cars away, right?

23 A. Three or four cars, yeah.

24 Q. All right. And so while you're that far away,
25 you're beginning to run back after having gotten a gun.

1 That's when you overhear Pedro say, which one wants to get
2 shot?

3 A. Yeah. That's when I got back to the -- I heard
4 him say it.

5 Q. Did you testify with Mr. Joshi that you heard
6 that as you were coming back, right?

7 A. Yes.

8 Q. So you're clearly a lot farther away than anybody
9 else in your group at that point in time, right?

10 A. I would suppose.

11 Q. Okay. And none of them ran away, right?

12 A. Once again, I don't know if they heard what Pedro
13 was saying cause he was arguing with Emmanuel. There was
14 females in the middle. It was a lot going on.

15 Q. Okay.

16 A. It wasn't a silent situation. It was loud,
17 everybody yelling. So I directed my attention to what
18 Pedro and he said; and I reacted how I, like, seen the
19 situation. I don't know if they recognized the situation.
20 So I don't know what you're implying by what --

21 Q. Over all the crowd noise, you were able to hear
22 what Pedro said, though, right?

23 A. Yes. My focus is on him. I'm not worried about
24 what the females are telling him to calm down, whatever
25 they were saying to them. It wasn't in my interest. They

1 wasn't posing a threat to me.

2 **Q.** And so as you get back, Pedro is still between
3 those two cars like we saw in those photographs, right?

4 **A.** No. He was more out of the two cars.

5 **Q.** Like, towards the taillights but still between
6 the two cars?

7 **A.** Yeah, more towards the outside -- like more
8 towards the road.

9 **Q.** And that's when Pedro says, what you going to do,
10 right? Isn't that what you testified to Mr. Joshi?

11 **A.** Yeah, something to that, right.

12 **Q.** And he goes for his gun, which you indicated was
13 on the right side of his waist, right?

14 **A.** Yes.

15 **Q.** And you can actually see it?

16 **A.** Yes.

17 **Q.** He actually has his hand on it?

18 **A.** Yes. I seen the gun.

19 **Q.** And then that's when you say you lifted your arm
20 and shot him, right?

21 **A.** Yeah, as soon as he started lifting the firearm
22 from his waist.

23 **Q.** Now, let me strike that. You don't know whether
24 or not you shot him is what you testified to, right?

25 **A.** Yeah, at that moment I didn't know that I shot

1 him.

2 Q. All right.

3 A. I shot in his direction.

4 Q. And you turned and ran, right?

5 A. Yeah.

6 Q. So let me get this straight. I want to make sure
7 we're clear. You fired one shot at -- in the general
8 direction of a person who has a firearm, and you didn't
9 stop to make sure you hit him. That's your testimony,
10 right?

11 A. Yeah. I wasn't aware if I hit him or not at the
12 moment.

13 Q. All right. Did you have any concern whatsoever
14 that if you missed him, he was going to shoot you and your
15 friends?

16 A. Yes.

17 Q. But despite that, you turned your back to him;
18 and you ran to your car, right?

19 A. It's not -- I've never been in a situation where
20 I needed to fire -- I needed to fire a gun. So it was my
21 instincts that after I shot, I was scared, so I turned away
22 from the situation.

23 Q. Well, you were afraid of being shot by him,
24 right?

25 A. Yeah.

1 Q. But you didn't make sure you hit him, right?

2 A. I wasn't sure if I hit him.

3 Q. Tell me about this gun. Was this a single-shot
4 gun like Barney Fife from the show Mayberry?

5 A. No.

6 Q. Was it a semiautomatic?

7 A. It was a 9mm, to my knowledge.

8 Q. You load it in the bottom. It didn't have a spin
9 wheel, right?

10 A. Yeah.

11 Q. How many rounds did it have?

12 A. I don't know.

13 Q. Did you pull the trigger more than once?

14 A. No.

15 Q. All right. Now, you fire this one shot. You
16 don't know whether or not you hit him. Did you hear him
17 hit the ground?

18 A. No, I didn't hear him hit the ground. The last
19 thing I saw was like after I shot was like he turned away.
20 That's all I know. I didn't know whether I hit him or
21 anything.

22 Q. Did you hear his gun hit the ground? He had his
23 hand on it, right?

24 A. No, I didn't hear.

25 Q. All right.

1 **A.** I don't believe it would have been that loud for
2 me to hear in a situation like that.

3 **Q.** Now, as you're running away, are you ahead of
4 your friends; or did you see any of your friends running
5 with you?

6 **A.** Can you say that again?

7 **Q.** Well, you say you turned and you raised and shot
8 Pedro as he's at the taillights of these cars --

9 **A.** I --

10 **Q.** Hang on.

11 -- and you turn and run. As you're returning
12 back to your car, are any of your friends in your field of
13 vision or no?

14 **A.** I'm not sure where they was at the moment.

15 **Q.** Did you have any concern that they might get shot
16 by Pedro Gallardo if you missed?

17 **A.** At that moment I was in shock that I pulled the
18 trigger.

19 **Q.** All right. And Emmanuel Santini, you saw him
20 testify today or the other day, right?

21 **A.** Yes.

22 **Q.** He was there and present at the scene, right?

23 **A.** Yes, I believe so.

24 **Q.** Did you have any concern that he would pick up
25 Pedro Gallardo's firearm, which had been displayed and

1 shoot it at you or your friends after you fired at Pedro?

2 A. After the shot was fired, everybody scattered.

3 Q. Did you have any fear or concern that Victor
4 would pick up the firearm that was in Pedro's hand and fire
5 it at you or your friends?

6 A. Yes. That's why we drove up instead of down.

7 Q. Were there any shots fired back at you?

8 A. No.

9 Q. Isn't it true that this situation had actually
10 defused to the point where you were back in the
11 Mercedes-Benz, and you got up out of it and ran back with
12 the gun?

13 A. No. I never -- I never went inside of the Benz.

14 Q. Now, there was no physical contact between your
15 groups whatsoever, right?

16 A. No.

17 Q. When you run back to the Mercedes, do you have
18 the gun in your hand still; or do you hand it to anybody?

19 A. No. I had it in my hand.

20 Q. Do you drive the car, or does somebody else drive
21 the car?

22 A. No. I hopped in the passenger seat. By that
23 time Cruz was already at the driver door. He hopped in the
24 car. I handed him the keys to turn it on. We left up
25 because we were scared they were going to shoot us.

1 Q. And by "we," is it just you and Cruz; or did
2 anybody come with you in the car?

3 A. Dylan had jumped in the car as well.

4 Q. All right. And eventually the car stops on the
5 next level, right?

6 A. Yes.

7 Q. And you bail out?

8 A. Yeah.

9 Q. Cruz bails out?

10 A. Yes.

11 Q. Dylan bails out?

12 A. Yes.

13 Q. Where do you go?

14 A. I left out the parking garage.

15 Q. On foot?

16 A. Yes.

17 Q. How did you get out, stairs, elevator; or did you
18 run down the ramps?

19 A. The stairs.

20 Q. And did you go back out onto Central, or did you
21 go out onto Washington?

22 A. I walked towards the Amway arena.

23 Q. And did you still have the gun on you?

24 A. No.

25 Q. What did you do with the gun?

1 **A.** I left it in the car.

2 **Q.** Where did you leave it in the car?

3 **A.** Inside the car. I don't recall exactly where I
4 put it, but I left it inside the car.

5 **Q.** Well, you're in the front passenger seat, so
6 glove box, center console, side pocket in the door,
7 underneath your seat?

8 **A.** I just left it in the car.

9 **MR. JOSHI:** Your Honor, objection asked and
10 answered. He said he doesn't know.

11 **THE COURT:** Overruled.

12 **BY MR. JAY:**

13 **Q.** None of those areas?

14 **A.** Everything was happening so fast. I don't know
15 exactly where I placed the firearm. I left it in the car,
16 and I left.

17 **Q.** Did anybody go with you to Amway, or were you by
18 yourself?

19 **A.** I was by myself.

20 **Q.** Did you have a cell phone on you?

21 **A.** Yes.

22 **Q.** All right. So you get to Amway. What did you
23 do?

24 **A.** I went -- I waived down a taxicab, and I went to
25 my house.

1 **Q.** All right. So you still had your wallet or a
2 means to pay?

3 **A.** Yes.

4 **Q.** Okay. The next day, what do you do?

5 **MR. JOSHI:** Your Honor, I'm going to object,
6 beyond the scope.

7 **THE COURT:** Overruled.

8 **BY MR. JAY:**

9 **Q.** What do you do the next day?

10 **A.** Nothing. I stayed home.

11 **Q.** All right. Do you get the Mercedes-Benz back?

12 **A.** No. It was -- to my knowledge, it was towed.

13 **Q.** Okay. Was that actually your car or your mom's
14 car?

15 **A.** My mom's car.

16 **Q.** Now, at some point you go to the Dominican
17 Republic.

18 **MR. JOSHI:** Your Honor, I'm going to object. May
19 we approach?

20 **THE COURT:** Sure.

21 (There was a bench conference as follows:)

22 **MR. JOSHI:** One, this is beyond the scope.

23 **THE COURT:** A defendant testifying is beyond the
24 scope?

25 **MR. JOSHI:** This is beyond the scope and number

1 two, he's -- it's a federal crime to leave to another
2 country to avoid prosecution. So he would be
3 exercising his Fifth Amendment right on this matter.

4 **THE COURT:** He's invoking his Fifth Amendment
5 right on cross-examination; is that what you're
6 saying?

7 **MR. JOSHI:** I'm not saying that -- I'm not
8 invoking the right for him. He has a Fifth Amendment
9 privilege not to incriminate himself.

10 **THE COURT:** Okay. Do you want to advise him on
11 whether he should exercise that? I'll take
12 appropriate action. Mr. Joshi?

13 **MR. JOSHI:** No, Your Honor.

14 (The bench conference concluded.)

15 **THE COURT:** Please continue.

16 **BY MR. JAY:**

17 **Q.** At some point you go to the Dominican Republic?

18 **A.** Yes, sir.

19 **Q.** When was that decision made?

20 **A.** I don't recall exactly how long afterwards, but I
21 left to the Dominican Republic.

22 **Q.** And you were there until 2015, right?

23 **A.** Yes.

24 **Q.** Did you call Jacinto Hurtado while you were in
25 the Dominican Republic?

1 **A.** Yes. I spoke to him a few times.

2 **Q.** Any of the times that you were speaking to
3 Jacinto Hurtado did you speak to Darnell Adams?

4 **A.** Yes. I spoke to him one time.

5 **Q.** At some point this spring, did you have a cell
6 phone with you where you were staying?

7 **A.** What do you mean by the spring?

8 **Q.** Spring of 2017, did you have a cell phone that
9 you could use to make phone calls where you were staying?

10 **A.** I don't understand. What spring? What are you
11 talking about?

12 **Q.** All right. Right now I think it's still
13 technically spring because it's not the summer solstice.
14 By spring, I mean March of 2017, April of 2017, that time
15 frame. At the place where you were staying, did you have
16 access to and did you use a cell phone?

17 **A.** I plead the Fifth.

18 **THE COURT:** Okay. Ladies and gentlemen, If
19 you'll step outside for me.

20 **COURT DEPUTY:** Jury exiting.

21 (The jury exited the courtroom at 3:55 p.m.)

22 **THE COURT:** Mr. Joshi, do you want to talk to
23 your client in private up here before I move forward?

24 **MR. JOSHI:** Yes, Your Honor.

25 **THE COURT:** Okay. Mr. LaFay, would you like to

1 join him? You don't have to.

2 **MR. LaFAY:** I'm working on legal research aspects
3 of this.

4 **THE COURT:** Okay. Mr. Joshi, you may have a
5 moment, then we'll call the jurors back.

6 (Court was at ease.)

7 **THE COURT:** I'll turn on the noise so you can
8 have a private conversation with your client.

9 **MR. JAY:** I can step out.

10 **THE COURT:** You don't have to. I've put on the
11 white noise.

12 (Court was at ease.)

13 **THE COURT:** Okay. State, the defendant during
14 cross-examination has invoked his Fifth Amendment
15 privilege and refused to answer questions. Do you
16 have any requests?

17 **MR. JAY:** I can confer immunity on him to not use
18 these against him for conspiracy -- or solicitation to
19 commit murder counts that were severed. I think that
20 should alleviate his memory problem.

21 **THE COURT:** Okay. So you say you could. Does
22 that mean that you are?

23 **MR. JAY:** I will. We've all heard the calls. I
24 mean, there's nothing more.

25 **THE COURT:** I understand that. So are you?

1 **MR. JAY:** Yes. We will confer immunity on his
2 testimony in this subject area from henceforth for
3 Counts 3 and 4.

4 **THE COURT:** Okay.

5 **MR. LaFAY:** Your Honor, I'm going to explain what
6 immunity means to Mr. Batista, and I think we should
7 be ready to go forward.

8 **THE COURT:** Okay.

9 (Court was at ease.)

10 **THE COURT:** Okay. Bring the jurors in.

11 **COURT DEPUTY:** Jury entering.

12 (The jury entered the courtroom at 4:05 p.m.)

13 **THE COURT:** Does the State recognize the return
14 of the jury?

15 **MR. JAY:** Yes, sir.

16 **THE COURT:** Defense?

17 **MR. JOSHI:** Yes, Your Honor.

18 **THE COURT:** Please be seated, ladies and
19 gentlemen.

20 Let's continue, Mr. Jay.

21 **BY MR. JAY:**

22 **Q.** This spring, March and April time frame, of 2017,
23 did you have a cell phone in the place where you were
24 staying?

25 **A.** Yes, sir.

1 **Q.** Now, besides that, did you also have a means to
2 make telephone calls to people if they pay for them?

3 **A.** Yes.

4 **Q.** Collect calls.

5 And did you have video visitation with folks,
6 too?

7 **A.** Yes.

8 **Q.** Were you still in contact with your mother during
9 this time frame and before?

10 **A.** Yes.

11 **Q.** And with your brother, Roman Batista?

12 **A.** Yes.

13 **Q.** And how about Jacinto Hurtado?

14 **A.** Yeah, I called him a few times.

15 **Q.** How about your cousin -- do you have a cousin
16 named Jonathan?

17 **A.** No.

18 **Q.** Do you know somebody named Jonathan that might
19 hang out with Roman Batista?

20 **A.** No.

21 **Q.** And you heard some phone calls earlier today in
22 court?

23 **A.** Yes.

24 **Q.** Was that you on the phone with Darnell Adams?

25 **A.** Yes.

1 Q. The information on the first call that you were
2 giving Darnell Adams, as far as addresses, that was for
3 Grisel Rodriguez, right?

4 A. The first recorded phone call, the first one?

5 Q. Yes.

6 A. Yes.

7 Q. How had you acquired that information?

8 A. Through paperwork.

9 Q. Okay. Discovery in the case?

10 A. Yes.

11 Q. And is that how you believed that she worked at
12 Carlton and Fields, a law firm out there in Tampa?

13 A. No, through Google.

14 Q. We Google or you Google?

15 A. I said, through Google.

16 Q. Okay. So you did that?

17 A. Yes.

18 Q. Okay. Now, when you're saying that everybody
19 else is either laying low or coming to free you, what do
20 you mean by that?

21 A. That I wasn't worried about any -- I wasn't
22 worried about anybody else's testimony.

23 Q. So you had people -- your understanding was that
24 people were laying low and hiding, right?

25 A. I didn't understand what they were doing. But to

1 my -- I seen on the news that they was trying to look for
2 them, so that indicated to me that they didn't want to
3 participate.

4 Q. Okay. And everybody else is freeing me, what
5 does that mean?

6 A. I mean that no other statements was -- I didn't
7 feel like any other statements was hurting me.

8 Q. Okay. And by code D, white boy, are you talking
9 about Dylan Joseph?

10 A. Yes.

11 Q. So your evaluation of the discovery materials was
12 that the only person that was presenting you a problem in
13 this case was Grisel Rodriguez, right?

14 A. Yes.

15 Q. And if this was self-defense, why is she a
16 problem?

17 A. Because for five years the State had a medical
18 examiner lie about Pedro getting shot in the back of the
19 head.

20 Q. The State had the medical examiner lie about
21 that?

22 A. Well, he had to -- it was pretty obvious after I
23 hired my own medical examiner that he was able to tell
24 immediately that it was through the front. I don't know
25 why for five years it was declared through the back of the

1 head.

2 Q. Okay. And you're familiar with all the discovery
3 in the case, right?

4 A. Yes.

5 Q. So you know how -- and your expert's Dr. William
6 Anderson, right?

7 A. I believe that's his name, yes.

8 Q. And he's a former medical examiner that used to
9 work for the Ninth District; do you know that?

10 A. I don't know where he used to work.

11 Q. And so you know that the basis of his opinion was
12 because of some CAT scan images, right?

13 A. Well, I know -- I don't know that because I never
14 spoke to him. But I know how the medical examiner who
15 testified here in the trial was able to determine it
16 because he explained it on the screen; but as far as what
17 Mr. Anderson explained to me how he was able to obtain any
18 type of information for his cause or his determination, I
19 don't know.

20 Q. All right. And so if Dr. Utz didn't have those
21 CAT scans at the time he made his opinion, is that him
22 lying and the State putting him up to lying against you?

23 A. Well, this is a five-year-old case; and it was
24 declared in the discovery immediately when I was indicted.
25 So why would he -- why would he basically report on a back

1 shot if this is a homicide investigation when that's a big
2 factor in any type of investigation? The in-and-out wounds
3 of a gunshot is very important in a homicide investigation.

4 Q. And so you read Grisel Rodriguez's discovery, her
5 statement, right?

6 A. Yes.

7 Q. And so you knew that she wrote in her statement
8 that you shot Pedro Gallardo in the front, right?

9 A. Yes.

10 Q. Okay. So why would you ask somebody to kill her
11 if she's going to come in here and corroborate your
12 testimony that you shot him in the front?

13 A. Because her testimony wasn't saying what the
14 medical -- wasn't matching the medical examiner. So the
15 medical examiner was going to override anything any other
16 witness said, due to the fact that he's an expert --
17 quote/unquote, expert by the State.

18 Q. Okay. And Emmanuel Santini still the other day
19 at trial maintains it was from behind, right?

20 A. Yes.

21 Q. So why not eliminate him, since he's saying that
22 you shot him from behind?

23 A. He never said -- he never made that statement.
24 He made that statement in court.

25 Q. Now, how did Jacinto Hurtado and Roman Batista

1 know this is what you wanted? Did you call them on that
2 phone?

3 **A.** I've never had a conversation with any of them
4 about having this done. It never really popped in my mind
5 until I spoke to -- Darnell was the one on the unrecorded
6 phone call when he contacted me and was telling me, hey --
7 and he suggested the situation, oh, I'm going to handle
8 this for you. What's up? What you need me to do? I was
9 like I don't need nothing. I'm going to trial soon. He
10 was like, oh, I could do this or you, I could do this, so
11 he basically manipulated me to -- for a situation. Like, I
12 wasn't -- I didn't reach out to him and tell him I need you
13 to do this. He contacted me and told me, oh, I want to do
14 this for you so you can come out better in the case or
15 whatever.

16 **Q.** Did you reach out to your attorney or Detective
17 Montford and tell them that --

18 **MR. JOSHI:** Your Honor, I'll object. It's
19 privileged.

20 **MR. JAY:** I can strike.

21 **THE COURT:** I'll grant their objection.

22 **MR. JAY:** Did you reach out to anybody and --

23 **MR. JOSHI:** Your Honor, I'm going to object. May
24 we approach?

25 **THE COURT:** Sure.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

RONNY BATISTA,

Defendant.

CASE NO.: 48-2012-CF-8613-A-O

DIVISION NO.: 24

EXCERPT OF POST-CONVICTION RELIEF PROCEEDINGS

Testimony of William Jay

BEFORE

THE HONORABLE AMY J. CARTER

Orange County Courthouse
425 North Orange Avenue
Orlando, Florida 32801
Courtroom 9C
March 31, 2025
Stenographically reported

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March 31, 2025

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TESTIMONY OF WILLIAM JAY

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Direct Examination By Ms. Drane Burdick 4

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2 **P R O C E E D I N G S**

3 (March 31, 2025)

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5 **THE COURT:** Mr. Jay, would you raise your right
6 hand, please.

7 **WILLIAM JAY**

8 **being called as a witness and, having first been duly sworn,**
9 **testified as follows:**

10 **THE WITNESS:** Yes.

11 **THE COURT:** Whenever you're ready,
12 Ms. Drane Burdick.

13 **MS. DRANE BURDICK:** Thank you.

14 **DIRECT EXAMINATION**

15 **BY MS. DRANE BURDICK:**

16 **Q** Please tell the Court your name and your
17 occupation.

18 **A** William Jay, assistant state attorney for the
19 Ninth Circuit.

20 **Q** Can you put on the record a little bit about your
21 education and professional background.

22 **A** Undergraduate degree in criminology from Florida
23 Southern. Law degree from Boston University School of Law.
24 Started at the state attorney's office in 1997. And with
25 the exception of defending people accused of crimes from

1 2008 to 2011, that has been my occupation.

2 Q Are you board certified?

3 A Yes.

4 Q In what discipline?

5 A Criminal trial law since 2009.

6 Q At some point in time did you become assigned to a
7 first degree murder charge against an individual by the name
8 of Ronny Batista?

9 A Yes.

10 Q Were you the original prosecutor on the case?

11 A No.

12 Q Who was?

13 A I'm not sure.

14 Q Okay. Do you know or do you have a recollection
15 of how much work had been done on the case prior to your
16 assuming responsibility?

17 A It would have probably been in February of 2017
18 that I got the case. And in reviewing case management, it's
19 my understanding that the defendant had been arrested in
20 2015, and this case went to trial in the summer of 2017. So
21 I think most of the case had been prepared before I got
22 involved in February of 2018.

23 Q Had been prepared?

24 A Yes.

25 Q Do you know Rajan Joshi?

1 **A** I do.

2 **Q** How long have you known him? Approximately.

3 **A** Probably whenever he started with NeJame's firm.
4 I don't know what year that was, but it was obviously a few
5 years before this trial.

6 **Q** Okay. Do you know if you've done other trials
7 with him?

8 **A** I don't think he was the trial attorney, but he
9 was the attorney in a case I had against somebody named
10 Elmer Banner, which was a homicide case as well.

11 **Q** In what timeframe?

12 **A** Similar timeframe. I would have taken that case
13 over I think in -- no, it predates this one. It was a 2012
14 case, but it went to trial sometime between '15 and '16, I
15 think. I'm not sure.

16 **Q** Okay. So, at any point in time prior to this case
17 actually going to trial, whether that be a motion to
18 suppress, depositions, even just pretrials where you had
19 some sort of communication with Mr. Joshi, did you have any
20 concerns about whether or not he was under the influence of
21 some illegal substance or even alcohol?

22 **A** No.

23 **Q** Turning specifically to this trial. Was it a
24 five-day trial with jury selection, four, five days?

25 **A** I know it was a late Friday night verdict, so I

1 assume it started that Monday. So, five days sounds right,
2 but I'd refer to the record for the right answer.

3 **Q** Okay. Any point in time during the trial that you
4 had a concern that Mr. Joshi's performance or effectiveness
5 was being affected by alcohol or other illegal substances?

6 **A** No.

7 **Q** If you did, what action would you have taken?

8 **A** Have to bring this to the court's attention. It's
9 actually something that has come up in a different matter
10 after this trial with a different attorney, and we had to
11 address that in open court.

12 **Q** Okay. So you wouldn't have sat passively and sort
13 of let it happen, you would have taken action, even if that
14 ultimately resulted in a mistrial of the case?

15 **A** Correct. Because every murder conviction is gonna
16 result in a direct appeal and then these proceedings.

17 **Q** Okay. Let's turn to the jury instructions in the
18 case. Do you have a recollection as to who prepared them?

19 **A** It's my custom to prepare and submit a draft to
20 the court. Some courts do it themselves. I know that I
21 have a draft of the instructions still for this case, and I
22 just can't remember if that's what we went off of, or if
23 Judge Blechman went off of what he had prepared as a draft.

24 **Q** Okay. At the time that either you prepared a
25 draft or you reviewed Judge Blechman's proposal to the

1 parties, were you familiar with a case named *Martinez* out of
2 the Florida Supreme Court from 2008 regarding forcible
3 felony --

4 **A** Yes.

5 **Q** -- exception?

6 Did you think it applied to this case?

7 **A** The issue -- not to dodge the yes or no question.
8 The issue was that the evidence in the trial developed in
9 such a way that it became appropriate to give that
10 instruction, in my opinion.

11 **Q** Tell us why. What evidence are you referring to?

12 **A** Well, what developed during the trial was -- it
13 got fleshed out more with one of the witnesses -- that the
14 decedent was standing there for some time while the
15 defendant had come back from the car where the firearm was
16 and had come back down the ramp and was face-to-face with
17 some distance between the decedent and the defendant. And
18 her testimony was -- and I forget her name, Amaryllis --

19 **Q** Amaryllis Phillips?

20 **A** Yes, is her first name. And it kind of developed
21 at that point in time that the gun was being pointed and
22 waved around. And then the defendant took the stand and
23 took the position that the decedent himself had pulled out a
24 firearm and that's the reason that he shot and killed the
25 decedent. So, it became a situation of -- and a

1 hypothetical I always use when explaining this concept to
2 people is, if I pull a gun to rob you, and then you pull a
3 gun to defend yourself from my attempted robbery, and then I
4 shoot and kill you first, I'm not acting in self-defense
5 because I was committing the separate, independent forcible
6 felony.

7 And what happened in the testimony and evidence in
8 this trial was, it got to be developed to the point where
9 the defendant was saying that he shot and killed the
10 decedent in self-defense because the decedent was pulling a
11 gun out. But the surrounding evidence and the testimony
12 from the witnesses in both parties, to the extent that they
13 saw the transaction between the two of them, was that the
14 defendant had come down with the gun and was waving and
15 pointing it first. So it developed into a situation where,
16 if the defendant's committing an aggravated assault, he
17 can't then claim that he shot and killed the decedent in
18 self-defense because the decedent was pulling a gun to
19 defend himself from the defendant's aggravated assault.

20 Q All right. You recognize that *Martinez* requires
21 that the aggravated assault be charged?

22 A Yes.

23 Q Okay. In this circumstance what you're saying is
24 that the evidence that would have supported the State
25 charging the aggravated assault was developed during the

1 trial and not beforehand, which would have given you the
2 opportunity to add an aggravated assault charge?

3 A Yes. And even if it was argued that it had
4 developed during the discovery -- like, with Amaryllis's
5 deposition, it came out a little bit more, but it was still
6 beyond the statute of limitations since this occurred in
7 2012.

8 Q So you couldn't have added it?

9 A I could not have.

10 Q Did the defendant give a statement to the police
11 after his arrest in Miami in 2015, to your recollection?

12 A My recollection is he did not.

13 Q So any testimony provided by the defendant
14 occurred in trial and you did not know exactly what he was
15 going to say until he took the stand?

16 A Correct.

17 Q All right. The other -- did you read the motion
18 in this case, the defendant's motion for post-conviction
19 relief?

20 A A long time ago, not recently.

21 Q Do you recall that the other contested jury
22 instruction has to do with his duty to retreat?

23 A Generally, but not specifically.

24 Q Okay. Based on your testimony so far, you believe
25 that there was evidence in the record to support an

1 aggravated assault charge, had it -- had the statute of
2 limitations not been expired --

3 A Yes.

4 Q -- on the case?

5 Okay. So, let me turn to the solicitation
6 charges. Those were severed out of the original trial,
7 correct?

8 A Yes.

9 Q And do you remember after the conviction on the
10 manslaughter the defense wanting to continue the sentencing
11 for some reason?

12 A Sounds right.

13 Q Do you remember filing a pleading basically saying
14 that the presumption in severing out Counts 3 and 4, at
15 least from your perspective, was that any sentence on those
16 solicitation charges, at least the State's recommendation,
17 would be that concurrent time -- consecutive time be
18 imposed?

19 A Yes. Because of the statute that says that
20 default for sentencing is concurrent when charges are in the
21 same charging instrument, and the default is consecutive if
22 they're in separate. And since they had severed them, I
23 considered that to be a separate charging instrument.

24 Q Okay. So, if Mr. Batista went to trial on the
25 solicitation charges, you would have been seeking

1 consecutive time consistent with that?

2 **A** Yes. It's ultimately up to the court, what the
3 court would do, but that would have been my position.

4 **Q** And would it be your opinion that an attempt to
5 assassinate or eliminate witnesses would be treated harshly
6 by any judge?

7 **A** Yes.

8 **MS. DRANE BURDICK:** I have no other questions of
9 Mr. Jay. Thank you.

10 **THE COURT:** Mr. Ponall?

11 **MR. PONALL:** Yes.

12 May I approach to get an exhibit?

13 **THE COURT:** Sure.

14 **CROSS-EXAMINATION**

15 **BY MR. PONALL:**

16 **Q** I'm looking at what's been marked as Defense
17 Exhibit 3. This is the written jury instructions on
18 justifiable use of deadly force that were provided to the
19 jury in this case.

20 **MR. PONALL:** May I approach the witness?

21 **THE COURT:** You may.

22 **BY MR. PONALL:**

23 **Q** Mr. Jay, I'm gonna refer you to page 2 of these
24 instructions. The bottom paragraph which reads, However,
25 the use of deadly force is not justified if you find that

1 Ronny Batista was attempting to commit, committing, or
2 escaping after the commission of aggravated assault. Do you
3 see that?

4 A I do.

5 Q Is it accurate to call that -- is that routinely
6 called the forcible felony instruction?

7 A Yes. It's reflective of 776.041(1).

8 Q Okay. Let me make sure I understand your
9 testimony on direct. Let me back up.

10 Did you -- in your opinion, this instruction was
11 properly given?

12 A Well, how many layers of the onion do you want?

13 Q As many as you got.

14 A Okay. So, I think it is appropriate because it
15 fits the evidence in this case. The idea of the Martinez
16 case is to not take away somebody's self-defense. If
17 somebody's charged with committing a violent crime, it's
18 very easy to fall into that circular logic of, well, he
19 committed a murder, but he's not allowed to commit a murder
20 if he's committing a murder. That's circular logic that
21 defeats somebody's self-defense.

22 In this particular instance the evidence -- and I
23 just reviewed the entire trial transcript this weekend --
24 the evidence developed in a way where, it's my position that
25 he did commit the aggravated assault of coming back down the

1 ramp, pointing the gun, at least generally in the direction
2 of the decedent, and waving it and whatnot, according to
3 that one witness's testimony, prior to then discharging it,
4 and shooting and killing him.

5 So, do I believe, yes, it should be given?

6 Absolutely. Do I also understand with Martinez, had there
7 been a contemporary objection made, that the court should
8 have sustained the objection. But that is -- we're at a
9 different legal analysis standard now during the 3.850.

10 Q Okay. Well, let's go back to then though because
11 we're gonna talk about the trial.

12 A Okay.

13 Q Are you saying at the time of the charge
14 conference when the judge said he was going to read this
15 instruction, you knew it was legally objectionable?

16 A I would refer you to the transcript of the charge
17 conference because, again, I don't know that this -- when
18 I -- when I looked at my draft submitted, like my draft of
19 the proposed instructions, what I had was the entire statute
20 laid out --

21 Q Okay.

22 A -- without adding or deleting anything. So I
23 refer to the record. But, yeah, I would think that I would
24 know that. But I honestly don't remember what I stated at
25 the time.

1 Q So, at the time -- at the time of this trial, do
2 you know what -- were you --

3 COURT REPORTER: I'm sorry?

4 BY MR. PONALL:

5 Q At the time of this trial were you familiar with
6 the *Martinez* case?

7 A Yeah. It's right there in the full printout of
8 the jury instruction for 3.6(f).

9 Q Would you agree that *Martinez* says that the
10 defendant has to be charged with a separate forcible felony?

11 A Yes.

12 Q Would you agree that there are subsequent cases
13 that say that -- numerous cases that say that?

14 A Yes.

15 Q Predating the trial in this case?

16 A Yes.

17 Q The defendant was not charged with a separate
18 forcible felony, was he?

19 A No.

20 Q So you knowingly allowed the jury to get an
21 improper instruction? Is that your testimony?

22 A Yeah. That appears to be what it was.

23 Q Okay. You're okay with that?

24 A Now that I better understand it, in 2025, because
25 I just went through this in October of 2024 with the

1 Sarah Boone trial -- it's tough because it's an overstated
2 improper Supreme Court case, and I don't know how to -- that
3 it will ever get remedied.

4 Q Okay. But you realize that -- that -- that the
5 trial court was bound by that case at the time of this
6 trial, right?

7 A Yeah.

8 Q So your -- you -- you, as an Officer of the Court,
9 allowed the jury -- knowingly allowed the judge to give an
10 improper instruction?

11 A I don't know how much thought I put into it at the
12 time. I would refer you to the charge conference
13 transcript.

14 Q You said you didn't notice anything that Mr. Joshi
15 did or Mr. LaFay did that gave you any concern? Were you
16 surprised that they didn't object to this instruction?

17 A Right now, today, I would be because I'm so
18 familiar and fresh with it with the Sarah Boone trial, but
19 then, I don't -- I don't remember thinking twice about it
20 because of the way the testimony and the evidence had been
21 developed during the trial.

22 Q Okay. Do you remember in closing arguing that
23 Mr. Batista had committed an aggravated assault?

24 A My memory from reading the transcript just this
25 weekend was I don't think it was brought up during my

1 initial closing argument, but it was made in response to the
2 defense closing argument.

3 Q And you remember affirmatively arguing that he
4 committed aggravated assault?

5 A I would refer you to the transcript, but I think I
6 did mention it during rebuttal.

7 MR. PONALL: May I approach?

8 THE COURT: You may.

9 BY MR. PONALL:

10 Q I'm going to show you what's been marked as
11 Defense Exhibit 4, which is a portion of your rebuttal
12 closing argument, pages 998 to 999 of the trial transcript.

13 MR. PONALL: May I approach?

14 THE COURT: You may.

15 BY MR. PONALL:

16 Q At the bottom of those instructions there is a
17 highlighted portion. Can you read that to yourself, please?

18 A Yes.

19 Q Is it fair to say that you affirmatively argued,
20 quote, According to the instruction, Ronny Batista has
21 committed aggravated assault?

22 A Yes.

23 Q So, you're telling the Court now today, as an
24 Officer of the Court, not only did you knowingly allow an
25 improper jury instruction to go be read to the jury, you

1 took advantage of that instruction during closing?

2 A Well, this also applies to the argument for
3 776.041(2).

4 Q Okay. Let's assume that -- let's separate that
5 out for a second. You would agree that that -- that takes
6 advantage of the forcible felony instruction, correct?

7 A Yes. In response to the argument that the defense
8 made. I didn't say anything in my opening argument about
9 it.

10 Q No, I understand. But the law is -- and I think I
11 understand this -- the law is, according to the Florida
12 Supreme Court -- and last time I checked, we're bound by
13 that -- that you have to be charged with a separate forcible
14 felony. So, you sat silently when the judge violated that
15 case. And then not only did you sit silent, you took
16 advantage of that in closing to the detriment of the
17 defendant. Is that what you call seeking justice?

18 A I would call it responding to the argument that
19 the defense made.

20 Q Responding to the argument that defense made is to
21 make an improper argument based on an improper instruction?

22 A Neither party objected to it, and there is a case
23 that says that the jury instructions aren't always presumed
24 to be accurate or correct, and it fit the facts of the case.

25 Q Is there a case that says the Supreme Court

1 case -- the Supreme Court isn't binding?

2 A There's not a case that says that.

3 Q Okay. So, what's your explanation for doing it?

4 A At the time, I don't remember putting a lot of
5 thought into that paragraph of the instruction.

6 Q You put any thought into arguing it in closing?

7 MS. DRANE BURDICK: Your Honor, I'm going to
8 object to him interrupting his answer.

9 THE COURT: Sustained.

10 THE WITNESS: I don't remember putting a lot of
11 thought into that paragraph because I don't believe
12 that I was the one that typed the final instructions or
13 did the edits. I'm not the one that's -- frequently
14 with judges, we will be the ones, we being the state
15 attorney, who makes all the corrections and we're
16 sending the updated instructions to the judge.

17 In this particular case, and my file folder for
18 this case, there's only my first draft of the jury
19 instructions. And so if we're going through this and
20 nobody objects to it, I'm probably not gonna put a lot
21 of thought into it, unless there is an objection and
22 somebody is -- it's a contentious part of the
23 instruction.

24 BY MR. PONALL:

25 Q Is that your routine practice, to allow

1 instructions that you know are incorrect to be read to the
2 jury?

3 **A** Routine?

4 **Q** Yeah.

5 **A** No, that is not my practice.

6 **Q** Okay. Let's look at page two of the same
7 instructions, the top paragraph, the last sentence. **It**
8 **says, quote, If Ronny Batista was not otherwise engaged in**
9 **criminal activity, and was in a place he had a right to be,**
10 **then he had no duty to retreat and had the right to stand**
11 **his ground.**

12 **At the time of this trial, do you think that was**
13 **legally correct?**

14 **A** Which paragraph?

15 **Q** First paragraph, last sentence.

16 **A** First paragraph, last sentence. I mean, that kind
17 of shows what he's thinking about doing is the last line.

18 **Q** No, second page.

19 **A** I know. Is there a line number you can refer me
20 to?

21 **Q** I don't have a line. Does your copy have a line
22 number?

23 **A** It does.

24 **Q** Okay. Let me see. I was referring to this.

25 **A** Oh. So what are we looking at?

1 Q Last sentence, first paragraph.

2 A Last sentence, first paragraph.

3 Q Okay. At the time of this trial, do you believe
4 that was an accurate interpretation of Florida Statute
5 776.012?

6 A Yes.

7 Q It's your understanding that -- that -- that a
8 person, if they're engaged in a criminal activity, in 2012
9 they had a duty to retreat?

10 A What's that?

11 Q This offense occurred in 2012, correct?

12 A Yes.

13 Q On that date, under Florida law, specifically
14 776.012, if a defendant was engaged in unlawful activity,
15 did they have a duty to retreat before using self-defense?

16 A That is what the jury instruction says, but I do
17 know at some point there was an amendment to the statute, if
18 that's what you're referring to.

19 Q I'm not referring to that. There was an
20 amendment. But before the amendment -- are you familiar
21 with the *Little* case from the Second DCA which addresses
22 this?

23 A I mean, not from memory by name, but I'm familiar
24 with the principal.

25 Q Okay. So, my understanding of the law -- and you

1 tell me if you understand it differently, because I could be
2 wrong -- was that under -- at the time of this offense, even
3 if you were engaged in criminal activity, you did not have a
4 duty to retreat. Was that your understanding at the time of
5 trial?

6 A You're asking me to remember my understanding
7 about this from eight years ago?

8 Q If you don't remember, you don't remember.

9 A I don't remember.

10 Q Okay. If you had known that that instruction was
11 a misstatement of the law, like the other one, would you
12 have allowed it to stay in?

13 A No.

14 Q Why not?

15 A Well, we're not talking about something that
16 develops during trial. The law is either you have a duty to
17 retreat or you don't, and under which circumstances.

18 Q What case -- what case says that there's an
19 exception for something that develops during trial?

20 A As far as what legal issue -- like, if somebody
21 objected to that jury instruction being given, then that
22 objection should have been sustained.

23 Q So you -- you -- you agree it should have been
24 sustained, but you're okay leaving it in there and okay
25 taking advantage of the closing? Okay.

1 Okay with that? You're okay with that?

2 **A** Of course I'm not okay with mistakes being made,
3 but we're at a point in the proceedings where that is not
4 the standard.

5 **Q** I'm just kind of shocked as an Officer of the
6 Court that that was your actions.

7 **MR. PONALL:** So I don't have any other questions.

8 **THE COURT:** Any redirect, Ms. Drane Burdick?

9 **MS. DRANE BURDICK:** Yes, Your Honor.

10 **REDIRECT EXAMINATION**

11 **BY MS. DRANE BURDICK:**

12 **Q** Mr. Jay, it appears that Counsel would like to
13 leave the Court with the impression that you intentionally
14 left in instructions that were not correct. Is that true?

15 **A** That would never be my intention to do it. Again,
16 I leave it to the transcript of the charge conference as to
17 how -- what I proposed for the jury instruction for 776 --
18 or 3.6(f) was literally the entire thing to be edited by the
19 court. Whatever the discussion is on the record is whatever
20 the discussion was on the record.

21 **Q** And this trial took place in 2017, which is, what,
22 now almost seven, eight years ago?

23 **A** Almost eight years ago.

24 **Q** Okay. So, this idea that you snuck these into the
25 jury instructions, hoping that the defense wouldn't object,

1 is not accurate?

2 **A** That is not accurate.

3 **Q** Okay. Now, if I'm understanding what Counsel
4 asked you about the second part of the jury instruction, is
5 it this part where it says, If Ronny Batista was not
6 otherwise engaged in criminal activity and was in a place he
7 had a right to be, then he had no duty to retreat, and had
8 the right to stand his ground. Is that what he's been
9 asking you about?

10 **A** I believe so. It's part of what has carrots on it
11 in the document?

12 **Q** Let me see the document.

13 **A** I don't remember the final jury instructions
14 having carrots written on the pages.

15 **Q** Okay. And by that, you mean, like, parenthesis?

16 **A** They look like -- parenthesis are kind of round,
17 that looks like carrots.

18 **Q** Understood. So, do you believe this line, If
19 Ronny Batista was not otherwise engaged in criminal activity
20 and was in a place he had a right to be, then he had no duty
21 to retreat, and had the right to stand your ground is an
22 incorrect statement of the law?

23 **A** My understanding -- and I know that they have
24 tweaked it at least once -- but part of the ability to stand
25 your ground was not being in a place where you weren't

1 allowed to be and not being engaged in unlawful activity. I
2 don't know that those core tenets have changed. I know they
3 changed something, and I forget what.

4 Q All right. So this instruction is kind of in a --
5 I don't want to say a double negative, but it has that
6 connotation to it where if he was not doing this, then he
7 could do this. So, if you rewrite this, it basically says,
8 If he was engaged in criminal activity, then he had a duty
9 to retreat and couldn't just stand his ground. That's not
10 what it says, but that's the implication of that. Would you
11 agree?

12 A That is my understanding of what the statute has
13 said.

14 Q So, this portion here where it talks about, was
15 not otherwise engaged in criminal activity, would you put
16 aggravated assault into that category?

17 A Yes. That's engaging in criminal activity.

18 Q Okay. Does this jury instruction have the same
19 restriction as the other one regarding a forcible felony on
20 having to charge the aggravated assault?

21 A No, nor does 776.041(2) about being the initial
22 aggressor.

23 Q All right. And so when you made a comment in
24 rebuttal closing about Mr. Batista committing an aggravated
25 assault, were you making that comment in reference to the

1 aggressor instruction, to your recollection?

2 **A** No. It was in direct -- it was in response to
3 their argument that the decedent was committing an
4 aggravated assault. There had never been any testimony or
5 any evidence to suggest that the decedent had committed an
6 aggravated assault or had a firearm. Nobody heard a firearm
7 hit the ground when he got shot in the face. Nobody
8 recovered a firearm. Nobody else had a firearm and pointed
9 it at anybody in the defendant's party or the defendant
10 himself. And so, my understanding was, that's how the
11 evidence developed, and, for whatever choice or whatever
12 strategic reason, the defense was not objecting to that
13 forcible felony instruction. And especially on these cases
14 with self-defense instructions, I defer largely to the
15 defense. Because the biggest thing that will get a case
16 overturned is jury instruction issues. They did not make an
17 objection. They made a point to make an argument during
18 their closing argument about it, and I spent all of a
19 paragraph or two rebutting that.

20 **Q** So, your point in rebuttal was that, under the
21 facts as they developed in the trial, the victim is the one
22 who had the right to stand his ground?

23 **A** Yes. The defendant -- the parties separate. The
24 defendant, by almost all accounts, except for, perhaps, his
25 own, rushes ahead of everybody in his party, retrieves the

1 firearm, and comes back. So, regardless of who's the
2 initial aggressor with this non-deadly force or just talk,
3 not even non-deadly force, he comes back and is now, in my
4 opinion, the initial aggressor by bringing a firearm to the
5 situation, and according to the testimony, pointing it,
6 waving it around, and reengaging.

7 And then his testimony during the trial was, he's
8 standing there with the gun by his side and the victim
9 reaches for and pulls out an actual firearm -- it wasn't --
10 his testimony wasn't even just, I thought he was reaching,
11 his testimony was he touched an actual firearm and that's
12 why I shot once with closing my eyes and not even looking in
13 the direction of the decedent, and pulled the trigger.

14 So knowing that that was what the testimony had
15 developed and knowing that they did not object to that
16 instruction being given, I let -- I let the defense have
17 their way on the instructions because, again, you don't want
18 to object and have it overturned because of instructions.
19 Then they made the argument that the decedent committed an
20 aggravated assault, and I rebutted that by saying the
21 defendant committed the initial aggravated assault. Then
22 going through that analysis, the decedent, or anybody else,
23 would have the right to defend themselves against the
24 defendant's aggravated assault.

25 **MS. DRANE BURDICK:** Okay. I have no other

1 follow-up. Thank you, Your Honor.

2 **THE COURT:** Thank you, Mr. Jay. You're excused.

3 Thank you, sir.

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STATE OF FLORIDA:

COUNTY OF ORANGE:

I, Susan McGee, RMR, CRR, Official Court
Reporter of the Ninth Judicial Circuit of Florida,
do hereby certify, pursuant to Florida Rules of Judicial
Administration 2.535(h)(3), that I was authorized to and did
report in stenographic shorthand the foregoing proceedings,
and that thereafter my stenographic shorthand notes were
transcribed to typewritten form by the process of
computer-aided transcription, and that the foregoing pages
contain a true and correct
transcription of my shorthand notes taken therein.

WITNESS my hand this 1st day of April,
2025, in the City of Orlando, County of Orange,
State of Florida.

s/Susan McGee, RMR, CRR

Susan McGee, RMR, CRR

1 Those are the first two sections of the jury
2 instructions. I'll now take a break from reading the
3 instructions and give the attorneys an opportunity to
4 make their final summation or closing argument to you.

5 First, please remember that what the attorneys
6 say is not evidence. The evidence came from two
7 sources, the testimony of all the witnesses and the
8 items that were introduced into evidence. However, do
9 listen closely to what the attorneys are about to say.
10 Their statements are intended to assist you in
11 understanding this case.

12 Both sides will have an equal time to present
13 their arguments to you. However, because the State of
14 Florida has the burden of proof, it gets to go first.
15 Then the defense goes; and then the State may give a
16 rebuttal, if it wishes.

17 So with that, State.

18 **MR. JAY:** Thank you. At the beginning of this
19 trial, I told you the evidence would show that this
20 defendant ran down a parking garage ramp, extended his
21 right arm, which had a gun in it, pointed it in Pedro
22 Gallardo's face and pulled the trigger with no
23 justification for doing so; and Pedro Gallardo
24 subsequently passed away six days later.

25 Now, what did we say was the cause of this

1 situation? Well, three things: Alcohol, what you
2 heard was involved with both Ronny Batista's group of
3 people and with Pedro Gallardo's group of people;
4 testosterone. Clearly, you heard evidence from both
5 groups about not wanting to back down from this
6 argument at first, staring possibly starting it,
7 saying words about being stared at and whatnot.

8 But the third thing that led to this tragedy was
9 a firearm. The only firearm involved in this case is
10 the one that Cruz brought to the parking garage and
11 the defendant went and retrieved, came back down and
12 used. Nobody else saw anybody else with a firearm,
13 except for the defendant in his testimony.

14 The defendant says that Pedro Gallardo, after
15 saying things about getting a firearm and popping
16 people and I'm going to use this, goes to the trunk of
17 a car in front of everybody; but nobody sees it. In
18 front of everybody gets a gun and then instead of
19 keeping the gun in his hand so that he can continue
20 threatening or execute those threats, conceals it
21 under his shirt into his waistband, according to the
22 defendant.

23 And then as the defendant's running back down to
24 address this situation, Pedro Gallardo, by the photos,
25 is now backing himself in-between these two cars

1 because that's the witness' testimony; and that's the
2 evidence with the blood scene.

3 Now, the defendant confronts him as the hero.
4 The defendant has a gun in his hand. Pedro Gallardo
5 has a firearm that's concealed and says, what you
6 gonna do and goes for his firearm, gets it in his hand
7 and that's when the defendant, out of pure necessity
8 and out of being an ordinarily reasonable and cautious
9 person, had no choice, other than to pull the trigger
10 and shoot Pedro Gallardo. And he just got lucky by
11 hitting him in the face because he wasn't particularly
12 aiming, didn't particularly stay around to see if he
13 actually hit the man that was armed with a gun,
14 essentially a warning shot and then turns and runs
15 away.

16 Well, ladies and gentlemen, if Pedro Gallardo had
17 a gun in his hand at the time the defendant shot him,
18 gravity would make that gun fall to the ground. That
19 metal gun clanking on the cement floor of the parking
20 garage would make noise.

21 The people that are standing right there would
22 have seen this. Victor Santini, Emmanuel Santini
23 would have picked that gun up and returned fire, if
24 there was such a gun. Grisel Rodriguez, Carlos
25 Benitez, who were already outside of their car and

1 right there would have seen Pedro Gallardo's gun drop
2 to the floor. Everyone else says this argument was
3 broken up.

4 According to Cruz Goytia, Xavier Goytia, this
5 argument, however it started, staring, words, never
6 gets past staring and words had broken up and was
7 de-escalating.

8 Pedro Gallardo is getting shoved or poured into a
9 car. The other group was walking away back to the
10 defendant's car. But still, the defendant, according
11 to Cruz Goytia runs ahead, runs to the car, goes in
12 the trunk and comes back. That's not self-defense in
13 the State of Florida.

14 So let's talk about three witnesses who are not
15 under the influence of alcohol or testosterone or
16 both. First, Grisel Rodriguez, nothing to do with
17 either one of these groups of people, just in the
18 wrong place at the wrong time, going out in a family
19 celebration. She's pregnant. She's not drinking.
20 She's driving. She's stuck in the parking garage
21 during closing.

22 And you heard testimony about the flow of
23 traffic. It wasn't so busy when this stuff started
24 and her testimony at the time, she was stuck; and she
25 couldn't make the corner. There's no reason to

1 disbelieve her testimony in the evidence.

2 What does she say she sees? Well, she sees the
3 defendant come down. Words are exchanged, so it's not
4 this sudden instant shooting as the defendant would
5 have you believe. Words are exchanged, and it ends
6 with Pedro Gallardo raising his hands up. What am I
7 going to do? You have a gun pointed at me, and then
8 the defendant shoots him in the face.

9 She doesn't see a gun. She's right there. She
10 starts caring for Pedro Gallardo. What reason does
11 she have to lie about there not being a gun? None.
12 There's no gun. Pedro Gallardo didn't have a gun,
13 according to her. We'll talk more about her later.

14 Why isn't there shrugging? You heard during
15 cross-examination -- I believe it was Mr. Joshi --
16 about, well, you never said that in your written
17 statement or your recorded statement. Well, let me
18 talk about that and offer you a few things to
19 consider.

20 This week, while we were all over here doing this
21 trial, it's my understanding that Shaquille O'Neal
22 came over to the State Attorney's Office. And if I
23 see pictures of Shaquille O'Neal with a friend, Dave,
24 at the State Attorney's Office on social media and
25 that night I see Dave at dinner and I say, hey, Dave,

1 anybody come by the office today, any celebrities,
2 anything unusual happen today, you would naturally
3 expect him to say, well, yes, an NBA star, an
4 all-star, somebody who has rings from winning
5 championships. He's seven-foot-one, 330 pounds.
6 Shaquille O'Neal came by. That would be a natural
7 response to that inquiry of did anything unusual,
8 anybody special come by the office today.

9 So let's talk about Grisel Rodriguez. Her
10 written statement, she's given a pen, given a piece of
11 paper. Tell me what happened. So she writes a
12 paragraph about what she said happened. Because she
13 didn't include everything she testified in the
14 courtroom today, does that make her testimony
15 untruthful? I would submit not. And just because she
16 didn't include every detail that she testified in the
17 courtroom in her brief five, six-page recorded
18 statement she talked about where she was just
19 identifying the shooter doesn't mean everything she
20 said in the courtroom is untruthful.

21 And she did have that conversation during
22 deposition about the shrugging when there was more
23 detail. You know, you saw us lawyers for this whole
24 week, four lawyers. We asked specific questions over
25 and over again sometimes.

1 So, ladies and gentlemen, when -- if and when
2 that argument is made that you shouldn't believe her
3 because she didn't include every detail, ask yourself,
4 would it have been natural to include every single
5 detail when you're just given a piece of paper and
6 pen, tell me what happened, have a short conversation
7 with the detective, tell me about what this person
8 looked like. Can you identify him?

9 What else is missing from her testimony? Well,
10 nobody else fired back. So if Pedro Gallardo has a
11 gun and his amped-up friend, Victor, sees his friend,
12 Pedro, get shot in the face, he's not going to grab
13 that gun that's in his hand and shoot back? Emmanuel
14 Santini is not going to shoot back for his best
15 friend?

16 What does happen? She throws a shoe. That's all
17 she can do is throw a shoe at the defendant as he runs
18 away after shooting Pedro Gallardo.

19 Carlos Benitez, again, has nothing to do with
20 either one of these groups of people. Doesn't even
21 want to get involved. He's just letting his wife get
22 involved. He has a felony conviction. But I submit
23 to you in this particular instance, that had nothing
24 to do with the credibility of his testimony. It might
25 explain why he didn't want to get involved.

1 But you learn during the trial why he did get
2 involved in the end. That's because the defendant was
3 threatening to kill him and Grisel Rodriguez. It
4 might explain some of his feistiness on the stand as
5 well.

6 But he didn't see a gun. He was right there. He
7 didn't see anybody return fire. He didn't see anybody
8 conceal or hide a gun, because there was no gun.

9 Andrew Patterson, just heard from him yesterday.
10 Another person who has nothing to do with either one
11 of these groups of people. He wasn't drinking,
12 according to him. He comes up, out of the elevator
13 door, pouring his drunk friend out of the elevator as
14 well.

15 What does he see? He sees this group of people
16 but the one person -- there's one person that's not
17 doing what everybody is doing, which is standing
18 around. That's the shooter. He sees the shooter come
19 flying down, you'll remember on the diagram, from four
20 or five car spaces down, comes, fires a shot and then
21 goes back.

22 Now, again, if Pedro Gallardo had just gotten a
23 gun out of the trunk, had been saying -- him and
24 Victor saying, we're going to shoot people, get the
25 gun, let's shoot people, is that the natural reaction

1 for everybody to stand around, wait to get shot, hope
2 for the best? That's not reasonable.

3 Another interesting thing he says is he couldn't
4 see the victim because he was between cars. Well,
5 that's a little bit different than the defendant
6 saying he was at the taillights when he shot the
7 victim.

8 Even Cruz Goytia says he can't see the victim
9 when he gets shot. That's interesting for two points.
10 First point is, again, the victim is trapped behind --
11 between these two cars, unlike the defendant saying
12 he's at the taillights. And also it shows that Cruz
13 is so far up the ramp that now that car that's beside
14 the victim is blocking his view. Cruz clearly still
15 isn't down there with him; and Cruz said his entire
16 group was up there, but for the defendant.

17 Now, the rest of the witnesses talking about the
18 events of that night were in one group or the other,
19 alcohol involved, testosterone involved. Emmanuel
20 Santini has love in his eyes. But what do they say?

21 Amaryllis Melendez, seems like it starts by
22 somebody saying something, somebody staring, something
23 stupid. Their group is outnumbered six guys to three
24 guys, not very good odds. She's holding Victor back.
25 Emmanuel is pushing back Pedro too.

1 Eventually, the defendant says, you know what,
2 you know what and runs away, comes back waving the gun
3 for some time, then eventually shoots Pedro Gallardo.
4 She says once the gun's down there, Pedro is touching
5 his pants like he's going to fight, talking like that.
6 But, again, she doesn't say anybody in their group has
7 a gun; and if there was a gun, where was it? Why
8 wasn't it used to fire back?

9 Emmanuel Santini, his focus was on the girls. He
10 made that abundantly clear to everybody. He's leaning
11 in, trying to talk to Melissa. Pedro taps him on the
12 shoulder and says, hey, Victor's about ready to get in
13 a fight. He looks over there, and Victor is by
14 himself. Who is my brother going to be fighting? And
15 then he stands up and he sees, oh, well, off in the
16 distance, there's that white guy. That's, of course,
17 Dylan Joseph, staring, jaw-jacking. Now he tries to
18 get Victor out of the way. Victor spins back because
19 he's going to argue some more with Dylan. He pushes
20 Pedro back.

21 His back is now facing the crowd and then at some
22 point when he's dealing with Pedro, trying to get him
23 in the car, pour him into the car and Pedro hopping
24 out, that's when he believes a shot comes over his
25 shoulder and hits Pedro in the back.

1 Now, of course, according to the medical examiner
2 testimony, the only medical examiner testimony, it was
3 from the front. And with him spinning around and
4 whatnot, that doesn't mean he's lying. It just means
5 he's inaccurate based on what actually happened in the
6 heat of the moment.

7 But, again, if Emmanuel is right there, he would
8 have seen the gun. He would have heard the gun fall.
9 He would have had the opportunity to pick said gun up
10 and return fire but that didn't happen because there
11 was no gun.

12 Now we go to Xavier Goytia and what I must admit
13 was a first, he typed his testimony. He says people
14 are tugging at their waists, but he doesn't say that
15 he sees a gun. He, for the first time in court, says
16 they're talking about guns but had never said that
17 before. And inconsistent statements, like you just
18 heard in the jury instructions, can be used to impeach
19 somebody's credibility.

20 And just like when you're watching a play or a
21 movie -- I'd mentioned movies in opening statements.
22 What's a good movie? Got to have good character, good
23 conflict and then resolution to those conflicts.

24 You've got to look at motivations. What's
25 motivating him to say what he says when he says? One

1 thing he is consistent on, though, is the defendant's
2 group, including him, is walking away from the
3 situation. The situation is defused.

4 But then he has very convenient memory problems.
5 His memory is super-great up to that point, but then
6 it's not so good after that. We have this long
7 discussion about whether they got the defendant
8 actually into the car or not. And so then we go into
9 the whole details of how did his statements come about
10 and what's the evolution of this and what's his
11 motivations at that time and his motivations this
12 week.

13 Well, he made prior statements about putting
14 Ronny in the car. That was inconsistent with his
15 statements in court. The context of that statement
16 was at his attorney's office with his attorney present
17 and right before making that statement about Ronny
18 Batista being pushed into the car, his attorney stops
19 the interview, has a word with him and then the
20 interview resumes and then that's when he makes those
21 statements.

22 But now his explanation is, of course, the police
23 threatened him to make those statements and they were
24 going to arrest him and that's why he said those
25 things.

1 Well, what we do hear and what we do know is,
2 yeah, Montford will say those things to people who are
3 potentially lying, that the only thing that's going to
4 get you in trouble is if you lie to me. That's what
5 he always says to these witnesses. I submit that was
6 the testimony during the trial, and that it's the
7 police that shape his testimony.

8 But what we learn at a later time is that Xavier
9 Goytia is with his brother Cruz Goytia when they're
10 approached at this club by the defendant's brother and
11 another guy named Jonathan and at least implicated
12 that it's in their best interest not to come, not to
13 come testify at trial. So you got to ask yourselves.

14 And I submit, they're in a tough spot. They're
15 being pressured to tell the truth by the police.
16 They're being pressured to not say anything or not
17 show up or not be truthful by the defendant. That's a
18 tough spot to be in.

19 So you have to consider that when you consider
20 all his testimony, particularly the new testimony that
21 he came up with this week, which was, yeah, they were
22 saying stuff about guns too, because he had never said
23 that before. Besides him saying that this week and
24 the defendant saying that this week, nobody in five
25 years in either group or the neutral parties, Grisel

1 Rodriguez and Carlos Benitez, nobody ever said that.

2 What else is new and improved about Xavier's
3 testimony? Well, now there's a bump, even though
4 nobody else, including the defendant, himself, says
5 there was no physical contact, no bumping, nothing
6 going on between these groups. Now this week,
7 according to Xavier Goytia, there's a bump; and he had
8 never said that before.

9 So, ladies and gentlemen, you've got to consider
10 motivations, motivations of characters in movies just
11 like motivations of players in trials. Obviously, the
12 number one motivation for everyone is to save your own
13 skin. I mean, that's natural.

14 But how do you go about saving your own skin?
15 Well, in the beginning of the police interview was
16 Xavier. It's to not say anything. Protect your
17 friend. Stay out of this. He has a conversation with
18 his lawyer, with a little admonition from the
19 detective, now he says things. Ronny was pushed back
20 in the car, and then he ran out.

21 And then he says new things at trial. You hear
22 about laying low after threats being made by family
23 members. So consider all that when you consider their
24 statements and their credibility because it's in the
25 jury instructions to do so.

1 Cruz Goytia. Their day, according to Cruz
2 Goytia -- and their day, being him, the defendant and
3 Dylan, starts at three in the afternoon; and it starts
4 with drinking Vodka and fruit drinks. Completely
5 different from the defendant's testimony, who says he
6 and Dylan were off running errands and doing other
7 things and not involved with Cruz until ten, 10:30 at
8 night. They're drinking.

9 At some point, even though he's been drinking
10 from three to 11:00 p.m., Cruz Goytia makes the
11 decision to put his gun into the trunk of the
12 defendant's Mercedes-Benz; and he tells everybody it's
13 there, just in case somebody else needs it, I guess.
14 He admits that it's a 9mm, like the casing.

15 They go to the nightclub, six of them. He
16 doesn't mention any other people joining them, like
17 the defendant did and they kill six to eight bottles
18 of Vodka and everybody is drinking heavily. That is
19 contrary to the defendant's testimony of saying he
20 only had three or four drinks.

21 So in the garage, according to Cruz's testimony,
22 somebody is standing there in the middle with their
23 arms crossed. It seems from the evidence we can infer
24 that's Victor. Victor stares down the defendant.

25 Now, mind you, the defendant's testimony is it's

1 Victor and Dylan; but according to Cruz, Victor stares
2 down the defendant. The defendant says something to
3 Victor, what are you looking at? Cruz is right there.
4 Nobody bumps anybody, like Xavier said during trial.

5 Ronny has words with Victor. According to Ronny
6 Batista during his testimony, it wasn't him. He
7 didn't have words with anybody.

8 Victor has words back with the defendant, and
9 everybody starts arguing. And, yes, again, his
10 testimony is people are pulling on their pants; but it
11 settles down. Everybody in the group is going back
12 towards the defendant's car.

13 And as soon as he thinks that the defendant has
14 simmered down, he eases up; and the defendant runs
15 away from him, runs up to the car. And now, of
16 course, here we go into the motivations of people and
17 when they say things and save your own skin, protect
18 your friends, try not to lie and get caught for
19 perjury. He's got a lot going on here too.

20 So what's his statement in trial? Well, that he
21 didn't actually see the defendant get a gun. He just
22 assumes he got a gun because the defendant runs up to
23 the car, gets something, runs back; and then he hears
24 a gunshot. And he had never seen anybody else with a
25 gun, which is consistent with everybody else's

1 testimony, except for the defendant's.

2 And then the defendant runs back up and when the
3 defendant runs down, back to the victim's group,
4 Cruz's testimony is the defendant is the only one
5 there. When you're thinking about these self-defense
6 instructions and aggressor and who's doing what,
7 there's a clean slate, just like in a boxing match.
8 Round one was over. It was jaw-jacking, staring,
9 puffing like male peacocks, fluffing their feathers,
10 acting tough in front of the girls, whatever,
11 testosterone.

12 But the defendant after round one is over,
13 everybody is pushed back into their corners, Pedro is
14 getting poured into his car. Cruz is dragging him up
15 to their car. The defendant re-initiates, brings the
16 gun down there and shoots Pedro Gallardo in the face.

17 Again, Cruz is so far up that he can't even see
18 the victim between the cars. That's consistent with
19 his testimony that everybody in the group, except for
20 now the defendant, went up there.

21 Now, there's a couple different stories. First
22 one offered, with his attorney present to Detective
23 Montford, is he just ran away on foot, never got in
24 that Mercedes-Benz again and just like Xavier, the
25 attorney says, can I speak to you a minute alone, has

1 a little word with Cruz. Now, Cruz, well, yeah, you
2 know, we did get back into that car together. That
3 was ultimately his testimony in trial today.

4 Then he says the defendant actually runs away
5 from him separately. You can choose to believe that
6 or not. I submit there's credibility issues with
7 that. He says the defendant runs off in his own
8 direction. The defendant says that, and Cruz and
9 Dylan run off together.

10 He doesn't report his gun stolen. He admits
11 that's to protect his friend, the defendant. He
12 doesn't call the police after learning the victim is
13 dead, has to be found and interviewed at his
14 attorney's office. The lawyer has to intervene during
15 the interview because he's lying.

16 And then he even lied to the grand jury, at least
17 he says he lied about seeing the defendant with the
18 gun. That was his original statement in his testimony
19 to the grand jury.

20 And why, why all these misstatements? Well,
21 because he's afraid of the police and they're
22 threatening to arrest me, threatening to arrest my
23 brother. But, again, is it being warned that if
24 you're untruthful, you're going to get arrested; or is
25 it, say what I want you to say or you're going to get

1 arrested? I would submit it's the former.

2 Mind you, it's not me or anybody from my office
3 or Detective Montford from Orlando Police Department
4 or anybody else approaching him at nightclubs, having
5 bouncers separate us, talking about what he's going to
6 testify about. I would submit that influence on his
7 testimony came from the defendant's family.

8 But the one thing that seems to remain the same
9 is that everybody in the defendant's group had
10 disengaged. That's his testimony. He didn't hear
11 anybody saying anything about shooting, popping caps,
12 killing people. The only people that say that was his
13 brother, who had never said that before and the
14 defendant during trial.

15 Now, let's talk about the police investigation
16 because I'm sure it's going to get brought up.
17 There's always the argument made and it will be made,
18 I submit or has at least in opening, that the police
19 could have done more. You know, why didn't we stop
20 and interview everybody in that garage, keep it on
21 lockdown for however long it takes, search every car,
22 leave no stone unturned, so on and so forth.

23 And, importantly, we know the victim's cars
24 weren't searched. Well, that -- you don't even need
25 to reach that to understand that there's no gun there

1 because if there was a gun there, people would have
2 seen it. People would have heard it drop from his
3 hand after he got shot in the face, Pedro. Somebody
4 would have returned fire.

5 Victor, who's all fired up, in particular, shirt
6 off, dukes out, ready to go, would have returned fire,
7 I believe, is the safest inference from the evidence.
8 Emmanuel says that's his best friend.

9 **MR. JOSHI:** Your Honor, I'm gonna object to his
10 personal opinion.

11 **MR. JAY:** I'm sorry. I said, believe. I meant
12 submit.

13 I submit that is the safest inference to draw
14 from the evidence.

15 Remember, Grisel Rodriguez and Carlos Benitez are
16 right there. They have nothing to do with either one
17 of these groups of people. They didn't see the gun
18 disappear. They didn't see the gun run away. They
19 didn't see it get placed anywhere. They have no
20 motivation to do it on their own or lie about it.

21 Darnell Adams. Okay. That is your classic
22 informant. You know that. Nobody is hiding that.
23 But that's why everything is recorded. You can listen
24 to those recordings again for yourselves as many times
25 as you want but what the recordings plainly say is

1 that the defendant is giving Darnell Adams information
2 on how to kill these witnesses, Grisel Rodriguez and
3 Carlos Benitez and why.

4 There's one phone call that was unrecorded prior
5 to this situation getting set up. Again, you don't
6 even have to believe Darnell Adams about that because
7 his testimony was everything got repeated on that
8 first recorded phone call. But there's a couple of
9 interesting things that did come out during
10 cross-examination about that phone call.

11 The first thing that the defense elicited from
12 Darnell Adams was that the defendant said this was
13 just an accident. Ladies and gentlemen, it's either
14 you intentionally did it but you were justified in
15 self-defense; or it's some sort of horrible accident.
16 So he says it's an accident, the defendant, according
17 to Darnell Adams; and that's what they elicited.

18 They also elicited through Detective Montford
19 that Darnell Adams also said that the defendant said
20 the victim was going for a gun. So you get those two
21 completely divergent stories straight from the horse's
22 mouth, through Darnell and through Detective Montford.
23 Why would you say it's an accident if it's
24 self-defense, unless it's not true? Why would you say
25 he was going for a gun if it's an accident, unless

1 it's not true?

2 And, ladies and gentlemen, when you follow that
3 jury instruction about considering all the testimony
4 in evidence together, you know there was no other gun
5 there. It would have been used. It would have been
6 found. It would have hit the ground. It's metal.
7 The floor is concrete.

8 So let's now turn to the defendant's story. His
9 credibility is also an issue, the same way Darnell
10 Adams is. They're both convicted felons. And like we
11 talked about during jury selection, you can't
12 automatically throw people's testimony out just
13 because of that one factor. You need to stop and
14 consider everything. The judge outlined nine things
15 to consider. Well, that's something to consider.

16 The defendant's interest in the outcome of this
17 case is also something else to consider. Where does
18 his story start? The defendant's story starts with
19 three or four drinks that night, had nothing to do
20 with this day-drinking, pre-partying with Cruz that
21 Cruz testified about and goes downtown and just out of
22 all the bottles they could consume, it's just three or
23 four drinks for the defendant.

24 The defendant concedes that the girls in Pedro's
25 group were trying to break things up.

1 He says as his group enters the parking garage,
2 he's only ahead by five or six feet, which isn't that
3 far. I submit that's clearly within earshot, even for
4 normal speaking voices, not lawyer voices. And that's
5 when Victor says to Dylan, what are you looking at?
6 Mind you, that's contrary to what his friend Cruz
7 said, that it was Victor and the defendant that
8 exchanged words. But according to the defendant, it's
9 Victor and Dylan.

10 Everybody's standing there now. He gets even
11 closer to his friends. He says he's not arguing with
12 anybody at all. While the defendant is standing right
13 there in the same earshot as everybody in his group,
14 Victor yells for everybody to hear that's in earshot,
15 Pedro, go get the gun. Pedro -- or Victor was being
16 loud and aggressive. Yet, nobody testifies to hearing
17 that, except for him and then Xavier's new and
18 improved testimony during trial.

19 So in response to Victor yelling to Pedro to go
20 get the gun, Pedro shouts back, I'm going to shoot
21 these "MF"ers. But, again, nobody hears this
22 statement being made, including Cruz, who's standing
23 right there and testified. Everybody in the victim's
24 group, nobody hears this being said, except for
25 Xavier, who had never said it before.

1 The defendant says this is all happening really
2 fast. So if it's happening really, really fast, you
3 would expect Grisel Rodriguez's car to be right there
4 in this earshot too; but she didn't hear any of this.

5 Now, the defendant, because that exchange has
6 happened between Victor and Pedro, he and his friends
7 are in danger for their lives. He goes up by himself,
8 gets the gun out of the trunk and comes back and as
9 he's running back from several parking spots away, now
10 he hears Pedro say, which one wants to get shot first
11 or something to that effect.

12 Again, he's much farther away, the defendant,
13 running back from his car. Everybody else is right
14 there, according to the defendant. They don't hear
15 it. Nobody says this again, except for Xavier's new
16 testimony this week.

17 So now the defendant's testimony in contradiction
18 with everybody else's testimony and the blood on the
19 pavement says that Pedro's out there by the end of the
20 cars by the taillights: What you gonna do? Even
21 though the defendant has the draw on him and has a gun
22 in his hand, Pedro says, what you gonna do, reaches
23 for a gun, gets it in his hand; and the defendant has
24 no choice but to shoot him.

25 But, again, I remind you, why is Pedro going to

1 go to that car, pop the trunk, make all these threats
2 about shooting people and then tuck his gun into his
3 waistband, instead of just keeping it in his hand? It
4 makes no sense.

5 Again, nobody is running away. I submit in your
6 common sense experiences, if there's gun talk and you
7 see somebody getting a gun out of a trunk and stuffing
8 it in their waistband, sayonara, goodnight, check
9 please, see you later.

10 Now, the story continues. The defendant says, I
11 fired one shot at this guy with a gun, who's already
12 been threatening to shoot people and asking which
13 "MF"er needs to get shot first; just doesn't want to
14 make sure that he actually hit him; doesn't fire more
15 than one shot; just fires one shot, which could have
16 missed; turns his back to this armed man who's making
17 threats. Really? You turned your back after not even
18 knowing if you hit this guy, and he just happens to be
19 so lucky that he hits him center mass of the head in
20 the mouth, just a lucky shot?

21 The gun would be there. Even if he did shot --
22 even if he did know that he shot Pedro, which he says
23 he doesn't because he just turns his back to this
24 armed man that he doesn't know if he shot, that gun
25 would be there available for Victor, Emmanuel and even

1 one of those girls if they wanted to try their luck or
2 even Grisel Rodriguez, who gets out of her car and is
3 so pissed at what she just saw the defendant do to
4 Pedro, she throws a shoe at him. It would be a lot
5 more effective if Grisel picked up the gun and shot
6 back, but nobody picks up a gun and shoots back
7 because there's no gun.

8 So essentially what the defendant says is I
9 fired, as far as I know, a warning shot. I turned my
10 back, and we just go up to the car and hope for the
11 best.

12 Then he leaves. He runs, like I said in
13 openings, like Forrest Gump, all the way to the
14 Dominican Republic. There's a boat or airplane
15 involved, instead of running; but for two years, he's
16 in the Dominican Republic.

17 Then he gets back. He's staying as a guest of
18 Orange County and gets a cell phone. And what's he
19 doing with this cell phone? He's trying to get
20 Darnell Adams to kill people, specifically Grisel
21 Rodriguez and Carlos Benitez, because, according to
22 him, everybody else is taken care of. They're all
23 gonna lay low. My co-D, Dylan, he's going to come
24 free me. Everybody is going to come free me; or
25 they're going to lay low, except for these two.

1 They're beyond bribing. They're old, 43, like me,
2 old, beyond bribing, so please kill them.

3 Why would he say that if this is self-defense or
4 an accident? Why would he run if this is self-defense
5 or an accident? It's called consciousness of guilt.
6 He knew what he did was wrong and unjustified.

7 And to say, to say what he said was very
8 interesting. Why were you going to kill Grisel
9 Rodriguez? Because the medical examiner's lying on
10 me. What? This poor woman has nothing to do with the
11 medical examiner's office. You're going to kill her
12 because you say the medical examiner's lying on you,
13 and her husband, even after you have your own expert
14 who can show that the shot was from the front?

15 The real explanation, ladies and gentlemen, is a
16 very, very old saying. The truth hurts. The truth
17 hurts him. He doesn't say he's going to kill Grisel
18 Rodriguez because she's lying on him. The truth
19 hurts.

20 Her testimony he doesn't challenge as being
21 untruthful. Her testimony was Pedro has a gun pointed
22 at him. What am I going to do? Can't outrun it, got
23 nowhere to go between these two cars, shoots him in
24 the face, no gun on the ground, no return fire.

25 I'm just going over some of these instructions.

1 As is customary, it drops after ten seconds every
2 morning. All right. Killing with premeditation,
3 killing after consciously deciding to do so. I know
4 that might be a little small. But the decision must
5 be in the mind at the time of the killing. The law
6 does not fix the exact period of time that must pass
7 between the formation of the premeditated intent to
8 kill and the killing. The fight, the argument --
9 can't even call it a fight cause nobody said any
10 physical contact happened, except for Xavier, who had
11 never said it before.

12 It's broken up. They're walking back. Cruz says
13 that he let's loose of the defendant when he senses
14 he's calm. It calms him down. Cruz, it's thank God,
15 we avoided a bad situation. The defendant then makes
16 a decision. He's going to run up to the car. Why
17 does he run up to the car? Cause he's making the
18 decision he's going to get the gun. Why does he get
19 the gun? Well, it's not to talk. The talking is
20 over.

21 He runs back down there and he shoots Pedro
22 Gallardo. He doesn't shoot him in the kneecap,
23 doesn't shoot him in the arm. He shoots him right in
24 the mouth.

25 Ladies and gentlemen, that is sufficient time and

1 that is sufficient evidence to decide that the
2 decision was made to kill or second-degree murder. I
3 think there's certainly sufficient evidence as well
4 but, again, the jury instructions say convict for the
5 highest that the evidence supports. I submit it's
6 murder in the first.

7 But second-degree murder, a person of ordinary
8 judgment would know what you do is reasonably certain
9 to kill or do serious bodily injury to somebody.
10 Putting a gun in somebody's face and pulling a trigger
11 seems to meet that. Done from ill will, hatred,
12 spite, evil intent. They haven't known each other to
13 say hatred, spite but certainly ill will out of the
14 argument. Is of such a nature that the act indicates
15 an indifference to human life. Meets that.

16 The self-defense instruction, again, like I said,
17 it's long. It's not as simple and cut and dry as, oh,
18 the defendant was justified in using deadly force
19 because it was him or the other guy. You have to
20 think about all the entire situation.

21 And I submit really because the evidence, the
22 unrebutted evidence, but for the defendant's
23 testimony -- and he has a lot of credibility issues --
24 the unrebutted testimony is that the groups were
25 broken up, according to both brothers Goytia,

1 everybody in the victim's party. This was broken up.

2 So like I said, round two, clean slate.

3 Everybody is in the corner, getting water, mouthpiece
4 back in. He runs back down with a gun. There is no
5 imminent threat of harm to him at that point in time.

6 At that point in time, when it's broken up and
7 they're walking up the ramp -- cause, remember, Cruz
8 Goytia, he's right there with the defendant. He's so
9 far up he can't see the victim between the cars when
10 the defendant goes down and shoots. It's over. It's
11 over.

12 All that nonsense before was nondeadly force,
13 arguing, staring, even talking smack. That's not
14 deadly force. Nobody actually sees a gun. Talking
15 smack. The defendant grossly escalates all of this to
16 deadly force, and that's another issue in the jury
17 instruction is whether or not, depending on who's the
18 aggressor or not, whether he grossly overdoes it.

19 One of the most interesting parts of this
20 instruction is -- I love this -- the danger need not
21 have been actual; however, to justify the use of
22 deadly force, the appearance of the danger must have
23 been so real that a reasonably cautious and prudent
24 person under the same circumstances would have
25 believed that the danger could be avoided only through

1 the use of that force.

2 Well, ladies and gentlemen, you're lucky because
3 you had a lot of other people there experiencing those
4 exact same circumstances. Everybody in the
5 defendant's group, everybody in the victim's group,
6 they all experienced the same circumstances as the
7 defendant. None of them were running away because
8 people were talking about shooting. None of them were
9 running away because they saw guns.

10 None of them -- Cruz doesn't run up and get his
11 gun. He's the one with the permit to carry it. He
12 doesn't run up and get his gun. He doesn't feel like
13 he's in such danger.

14 Nobody appears to think there is any danger
15 warranting deadly force except the defendant and then
16 when you go through his testimony, it just -- it can't
17 be credible. Where is this gun? Why would Pedro go
18 and get this gun after talking all that smack and then
19 stuff it in his pants? It would fall to the ground.
20 Somebody else would use it.

21 You don't fire one shot at somebody with a gun
22 and just hope for the best. You fire your gun until
23 they're down and they're not a threat anymore. You
24 can't say Pedro Gallardo was a threat if you don't
25 know you extinguished the threat.

1 He testified he fired one shot and just turns his
2 back, hope that was good enough. Hope those guys that
3 said they were going to shoot us don't pick that gun
4 up and shoot me. It's just incredible. And it just
5 goes to the narrative, cause everything he does and
6 says over the next five years by fleeing and all those
7 calls trying to kill the only witnesses that had
8 nothing to do with anybody show consciousness of
9 guilt.

10 This is not self-defense, nor an accident. I'm
11 going to ask you to convict at the end of all the
12 closing arguments.

13 **THE COURT:** Thank you, Mr. Jay.

14 Ladies and gentlemen, do you need a break to go
15 to the restroom? Do you need a break to stretch or go
16 to the restroom, anybody? Okay. Let's take a quick
17 recess.

18 Ladies and gentlemen, a couple things: Leave
19 your pads on the chairs. Second, do not speak to each
20 other about this case. So, cone of silence, if you'll
21 remember that, it's on all of you. Don't speak to
22 each other. I'll have you back here shortly.

23 (The jury exited the courtroom at 10:45 a.m.)

24 **MR. JOSHI:** May I step out briefly, Your Honor?

25 **THE COURT:** Of course.

1 (A brief recess was taken.)

2 **THE COURT:** Are they ready?

3 **COURT DEPUTY:** I can check.

4 **THE COURT:** Will you, please? We all appear to
5 be ready.

6 **COURT DEPUTY:** They all said yes.

7 **THE COURT:** Let's bring them back in.

8 **COURT DEPUTY:** Yes, Judge.

9 **THE COURT:** Deputy, have you got menus for me?

10 **COURT DEPUTY:** Fratelli's. That's all I have.

11 **THE COURT:** Okay.

12 **COURT DEPUTY:** Jury entering.

13 (The jury entered the courtroom at 11:00 a.m.)

14 **THE COURT:** Does the State recognize the return
15 of the jury?

16 **MR. JAY:** Yes, Your Honor.

17 **THE COURT:** Defense?

18 **MR. JOSHI:** Yes, Your Honor.

19 **THE COURT:** Ladies and gentlemen, you may be
20 seated.

21 Mr. Joshi.

22 **MR. JOSHI:** Yes, Your Honor. Permission to move
23 around the courtroom?

24 **THE COURT:** You may.

25 **MR. JOSHI:** Thank you.

1 you can hear all the truth. You can hold the
2 Government to their vote.

3 I'm asking you to hold them to their burden and
4 find Mr. Batista not guilty because they have failed
5 miserably to prove this case.

6 **THE COURT:** Thank you, Mr. Joshi.

7 Mr. Jay, rebuttal?

8 **MR. JAY:** Yes. Thank you.

9 I'm not going to belabor you-all with just going
10 through my first argument again. I'm going to try to
11 stick to addressing some of the things Mr. Joshi said.
12 Some of those things were in evidence. Some of those
13 things, I submit, were not.

14 First thing is the testimony about the medical
15 examiner. You had Dr. Stephany come in. He's the
16 chief medical examiner for the Ninth District Medical
17 Examiner Office. He testified that, one, the entrance
18 wound is the mouth. Two, the exit wound is the neck.

19 But that wasn't just it. He testified that with
20 the healing that went on during the six days that the
21 victim lingered after the defendant shot him in the
22 mouth, that there's healing; and then that can make
23 the exit wound look like it could have been the
24 entrance wound. And, of course, the mouth is all
25 messed up and mangled with the teeth and whatnot and

1 healing.

2 And so he was asked and he answered, well,
3 Doctor, would it be pretty hard to say for sure what's
4 the entrance wound and what's the exit wound with
5 these healing processes going on? He said, yes, until
6 you consider the CAT scans.

7 And then you guys saw the CAT scans and how the
8 blowout when the defendant shot a gun that put a
9 bullet through Pedro Gallardo's spine. Those
10 fragments of Pedro Gallardo's spine went backwards
11 with it, and that allowed Dr. Stephany to make that
12 opinion. That was the testimony.

13 And then as Mr. Joshi says, Medical Examiner
14 Batista, in his infinite wisdom, he's going to kill
15 witnesses because he disagrees with Dr. Utz, who you
16 didn't hear from. You can gather from Medical
17 Examiner Batista's testimony that Dr. Utz had said the
18 opposite, and that's it. That's what we got.

19 And then Dr. Anderson, their expert who didn't
20 testify either, corrected, apparently, Dr. Utz's first
21 opinion. That's what you got in the evidence. Now,
22 the inferences that Mr. Joshi wants you to draw from
23 that is, A, Dr. Utz never changed his opinion. That's
24 the inference he wants you to draw, even though he
25 knows that's not true.

1 **MR. JOSHI:** I'm going to object, goes to lack of
2 knowledge. No argument was made on that behalf.

3 **MR. JAY:** Invited argument.

4 **THE COURT:** Overruled. Please continue.

5 **MR. JAY:** The other thing is Dr. Utz is gone for
6 a nefarious reason, and he knows the real reason. So
7 let's drop that.

8 The fact of the matter is the testimony and
9 evidence in this case is that the medical examiner
10 says that it went in his mouth and out his neck.
11 That's all you need to consider.

12 All this stuff about what went on before that,
13 the only reason it's apparently relevant is that's why
14 the defendant thinks he needs to kill two people who
15 had nothing to do with the medical examiner's opinion.
16 Two people, Grisel Rodriguez, Carlos Benitez, they
17 just need to die to free him because the medical
18 examiner says something?

19 And mind you, Grisel agrees. Grisel Rodriguez
20 agrees with his theory, Medical Examiner Batista's
21 theory that the entrance wound was the mouth. Why
22 would you kill that witness? But the truth hurts.
23 The truth really, really, really hurts Mr. Batista.

24 Now, if this was a mere fistfight, I would submit
25 that you would never be able to untangle who started

1 it, who stared at who first. What does staring mean?
2 What is the threshold for a mean mug, as opposed to,
3 hmm, I wonder what that person is up to or who says
4 what?

5 And when -- you know, in law school, when do
6 words become fighting words? Just because you saw
7 something, that doesn't mean you're entitled to fight
8 somebody. You would never be able to untangle this
9 mess, never.

10 You don't have to because the defendant and the
11 defendant alone changed this entire situation from a
12 nondeadly force situation to a deadly force situation.
13 You're going to see that in the jury instructions
14 later.

15 The unrebutted testimony, but for the defendant,
16 including his two friends, Cruz and Xavier Goytia, the
17 defendant's group had walked away. Bygones are
18 bygones. First round is over. Referee pushes
19 everybody into the corner, quite literally. Emmanuel,
20 the girls, his friends pulling him away, Cruz Goytia
21 pulling him away and it's the defendant's sole
22 decision that he's going to have a round two and he's
23 going to escalate it from nondeadly force to deadly
24 force.

25 So the defense came up here and argued with great

1 certainty, you know, that Pedro and Victor started
2 this. Well, is it that certain from the evidence?

3 I mean, even from their own witnesses, Cruz
4 Goytia says, well, you know, there's some staring
5 going on and the defendant says, what are you looking
6 at? Victor says back, what are you going to do about
7 it?

8 So he's the first one that said words. I mean,
9 you can just walk by, even though somebody is staring
10 at you, and then just go on to your house party that
11 you're planning with the girls. Luckily, you don't
12 have to untangle a fistfight because it would be
13 impossible.

14 Now, next, the argument was Andrew Patterson.
15 Apparently, during my first closing, I didn't mention
16 him, according to the defense. I submit I think I
17 did. But Andrew Patterson contradicts Grisel
18 Rodriguez. That's the argument that was just made to
19 you. Oh, really? Really? How?

20 Grisel Rodriguez says the defendant runs down
21 there back to the victim. Could have just walked
22 away, could have just walked away, stayed away. In
23 fact, he did walk away and stay away. He came back.

24 Sees him come down, gun in his hand. Words are
25 exchanged. The victim shrugs, drops his hands. What

1 are you going to do, outrun a bullet, particularly
2 when you're trapped between two cars? And then the
3 defendant shoots him in the face.

4 How is that in any imaginable, even contrived way
5 inconsistent with Andrew Patterson saying, yeah, I saw
6 this guy come running down, hesitates a little bit and
7 then shoots; and I can't see the victim because he's
8 between cars? That's the same story, ladies and
9 gentlemen. That is the same testimony.

10 Cruz Goytia, I submit, never said anything about
11 hearing people say they're going to shoot, pop, cap.
12 How many times did I ask him? I mean, you had to have
13 heard the answer several times. Yet, the argument was
14 made by the defense counsel that Cruz Goytia did, in
15 fact, say he heard people talking about shooting
16 people and capping and whatnot. He multiple times
17 during the trial said he did not hear that.

18 Then there's argument that's made multiple times
19 about the defendant being surrounded. He's
20 surrounded. What can he do?

21 Well, let's put that in context. He's surrounded
22 because he runs up to the car, gets a gun and runs
23 back alone. And as he's running back with the gun, if
24 people surround him trying to do something about it,
25 that's not self-defense. He brought the gun into the

1 situation unnecessarily. There was no imminent harm.
2 If you-all leave, there's no imminent harm anymore.

3 Amaryllis, the big liar. Let's parse this out a
4 little bit. Did she say it was ten to 15 minutes for
5 the total confrontation or ten to 15 minutes that the
6 defendant's standing there waving a gun?

7 And it was Mr. Joshi during the deposition that
8 made suggestions about how long the victim's pulling
9 on his pants. If he's pulling on his pants for 45 or
10 60 seconds, is that reaching for a gun? Is that a
11 sudden move as the defendant says? I mean, I think --
12 I think we stopped the trial for 45 seconds; and then
13 she said, no, no, it was even longer than that. So
14 that's inconsistent with the defendant's testimony, as
15 well that there's this sudden move.

16 And, again, when you walk away from a fight,
17 round one is over. The referee pushes everybody back
18 in the corner. You spit your mouthpiece out, get some
19 water, they put Vaseline on your forehead. And then
20 you choose to run back in with a gun?

21 Everybody there, according to the jury
22 instructions because now Ronny Batista is committing
23 the aggravated assault -- had a right to shoot him in
24 the face. There was no need for Ronny Batista to run
25 back in there with a gun when it's over, and that's in

1 the jury instructions too.

2 But what does Amaryllis say? Because we're
3 talking about this premeditation, I don't want to
4 belabor it again because I covered it in my first
5 argument. But during this verbal argument, finally
6 the defendant says, you know what? You know what?
7 Okay. And that's when he runs and goes and gets the
8 gun. I mean, that kind of shows what he's thinking
9 about doing.

10 It's not like, you know what? Okay. I'm going
11 to get a six pack of beer, and we're just gonna be
12 friends. He goes back and gets a gun and shoots him
13 in the face.

14 I'm not asking you to convict on her testimony
15 alone. I fully concede I think you should have heard
16 during the first argument that the parties, the
17 victim's party and defendant's party, everybody has
18 motivations. But when you look at the core, except
19 for the defendant, everybody, even in both parties,
20 says the defendant's group disengaged and walked away.
21 They're pouring Pedro into the car, Victor. Everybody
22 is settled down. It's over for everybody, except the
23 defendant.

24 Counsel made argument about they cleaned up the
25 gun. He said that's what the evidence showed. What

1 are we talking about? They cleaned up the gun, like
2 somebody picked up the gun Pedro allegedly had, wiped
3 it down and disposed of it?

4 Ladies and gentlemen, that's not in evidence.
5 There's no evidence of that; and, in fact, the
6 evidence makes it impossible for that to have
7 happened. Grisel Rodriguez, Carlos Benitez would have
8 seen this done. It would have clanked on the ground.
9 They would have used it to return fire.

10 Self-defense. There's a lot of argument about,
11 well, gee, if you only fire one shot, it's not
12 self-defense. How can you say it's self-defense?

13 Well, let me give you an example, a real example.
14 There's this guy who's sleeping in his car in a
15 parking lot in an apartment complex -- nothing to do
16 with this case -- and he sees another guy breaking
17 into cars. If he takes his gun out of the glove box,
18 waits for that guy to come up to break into his car
19 and shoots him in the face --

20 **MR. JOSHI:** I'm gonna object, ask to approach.

21 **THE COURT:** Come on up.

22 (There was a bench conference as follows:)

23 **THE COURT:** What's your objection?

24 **MR. JOSHI:** Your Honor, he's bringing in facts of
25 another unrelated case over here to use as precedent.

1 **MR. LaFAY:** You can't bring up other cases. What
2 about that guy in the subway in New York? He was
3 surrounded by those black kids and he shot them, and
4 he was found not guilty. I mean, let's bring that up.

5 **MR. JOSHI:** He's bringing up other cases to --

6 **THE COURT:** You've got to speak louder.

7 **MR. JOSHI:** He's bringing up another case as a
8 precedent to establish that this is a murder. You
9 can't do that in closing argument. It's like --

10 **THE COURT:** What case is he bringing up?

11 **MR. JOSHI:** He's talking about a case, a
12 real-life situation where somebody is breaking into a
13 car and someone reaches into a glove box. I wanted to
14 stop that before he goes on arguing about some
15 separate case that was found to be first-degree murder
16 in similar circumstances.

17 **THE COURT:** State?

18 **MR. JAY:** This is important to be able to
19 illustrate that premeditation -- self-defense is a
20 complete defense. Even if you premeditated for months
21 that you're going to kill somebody, if they give you a
22 reason to defend yourself, it's a complete defense.
23 And he was making these weird arguments about one shot
24 and so I need to go into it and why one shot in the
25 this particular instance is not self-defense; whereas,

1 one shot can be and whereas, multiple shots can be
2 self-defense. I need to be able to use an example.

3 **MR. JOSHI:** I wouldn't be allowed to use examples
4 of where police officers in specific cases use, um --

5 **THE COURT:** Is this a specific case you're using?

6 **MR. JAY:** Nobody here would ever know about it.

7 **MR. LaFAY:** He said it was a real case.

8 **THE COURT:** What?

9 **MR. JOSHI:** He said it was a real case. And so
10 now he's going to give credibility to his argument of
11 why this is not self-defense.

12 **THE COURT:** If you said this is a real case, I'll
13 sustain the objection.

14 **MR. JAY:** So I'll go to a hypothetical.

15 **THE COURT:** I ruled. Okay.

16 (The bench conference concluded.)

17 **MR. JAY:** So going into this explanation of
18 self-defense, how it's a complete defense to
19 premeditated murder. If somebody plans a murder, so
20 hypothetically you see somebody breaking -- or
21 somebody sees another person breaking into cars and
22 you sit -- that persons sits in their car and waits
23 for that person, just try my car, it's a complete
24 defense if they're trying to commit a burglary in your
25 car.

1 Self-defense is a complete defense to
2 premeditation. So when there's this argument about,
3 oh, well, if Mr. Batista had shot him more than once,
4 it wouldn't be self-defense, no, that's not the law.
5 That's not how that works. Self-defense is a complete
6 defense to premeditation or to second-degree murder or
7 to manslaughter.

8 And so here's the issue and here's the point I
9 was making in the first closing. One shot that you
10 don't even know hits the person that you say is
11 pulling the gun on you is not defending yourself
12 because that person can still shoot you and very
13 likely will shoot you in the back.

14 The defendant's testimony is, I fired one shot.
15 I didn't even know if I hit him. I was defending
16 myself. Well, no, if you're defending yourself, you
17 feel like somebody just a couple feet from you is
18 pulling a gun on you and you're genuinely afraid of
19 your life and your friends' life, you are going to
20 drop that dude and you're going to make sure he's
21 dropped and then because he has friends there, you're
22 going to make sure that situation --

23 **MR. JOSHI:** Your Honor, I'm gonna object, Golden
24 Rule.

25 **THE COURT:** I'll sustain the objection.

1 **MR. JAY:** Anybody in that situation would do --
2 that's self-defense, dropping the dude that is the
3 threat, not firing one shot and turning your back, so
4 that's the purpose of this explanation. Twenty shots
5 can be self-defense; and one shot cannot be,
6 particularly this one shot because it's right in his
7 mouth, right after he shrugs and gives up because
8 there's nothing he can do to outrun a bullet.

9 So when he says something like he did, he didn't
10 know he shot the guy, which was the argument that
11 counsel made that the defendant said to Darnell, well,
12 he goes into making two different statements. One,
13 it's an accident; or one, the guy is reaching for a
14 gun. It can't be both. I mean, you're either
15 shooting the guy to save your own life or you screwed
16 up and you accidentally shot your friend.

17 Arguments about saying the gun is in the car were
18 not inside the evidence of this case and, again, if it
19 had been there, it would have been used. It would
20 have been found.

21 Grisel Rodriguez changing her testimony because
22 of the threat made against her life. Well, what part
23 of her testimony was different from her 2016
24 deposition? That was the only inconsistent statement
25 that she allegedly made was that she hadn't mentioned

1 the shrugging until the 2016 deposition. So any
2 argument that she changed her testimony because of the
3 threats against her life -- not that she even said she
4 was aware of those threats -- is not accurate because
5 her deposition was taken before those threats.

6 Not every inconsistency is reasonable doubt. I
7 readily admit that everybody in the victim's party and
8 the defendant's party has different perspectives and
9 obviously different motivations but, again, there's a
10 core there and you're not left with just them. You
11 have three independent witnesses and the forensics of
12 the scene.

13 The defendant's group totally disengaged. The
14 victim's group was totally disengaged too. The
15 defendant decides to get a gun and bring it back and
16 shoot Pedro Gallardo.

17 The quote from defense counsel was during closing
18 the defendant sees the danger is over. Ronny Batista
19 sees the danger is over. That is not the testimony in
20 the evidence.

21 The evidence was, I didn't know. I didn't know
22 if I hit him. I'm fighting for my life. I'm
23 protecting my friends as a very good person but I just
24 fired one shot at this armed guy, who's a couple feet
25 from me and he has other friends there. I didn't make

1 sure I dropped him. That's not credible. It didn't
2 happen that way because it's simply incredible.

3 Then we still -- despite Andrew Patterson's
4 testimony in the trial, defense counsel made arguments
5 that you-all don't know who tampered with the scene,
6 who dragged the victim. Did Andrew Patterson not say
7 that the victim was dragged by his ankles, and his
8 explanation given was because CPR could not be
9 performed there? I submit that was the trial we
10 watched. I don't know if we all watched the same
11 trial.

12 Then there was some argument -- and I don't know
13 if it met its fruition -- was the defendant went and
14 got his gun. I would submit even in this situation --
15 now there's a difference. Just getting a gun, even
16 just pointing a gun is nondeadly force for
17 self-defense. But when everybody is disengaged, the
18 defendant didn't even have the right to go back there
19 with the gun and just have it and wave it. The threat
20 is over. Now he's the primary aggressor, and that's
21 in the jury instructions.

22 Then there's arguments about, you know, the
23 victim's friends want a conviction. Well, I mean,
24 it's clear Xavier and Cruz Goytia want an acquittal.
25 I mean, you've got to parse all these motivations of

1 people out. But, thank goodness, we have the three
2 independent witnesses and the forensic evidence.

3 Darnell's a liar cause he's a felon. Well, the
4 same argument can be made about Ronny Batista.

5 And then even in 2013, you know, there's this
6 argument by counsel, well, Ronny made a consistent
7 statement in 2013. He said in 2013 that the victim
8 was reaching for a gun. But in the same breath, he
9 tells Darnell Adams it's an accident. That's not
10 consistent at all.

11 Those calls are extremely relevant to this case.
12 That shows consciousness of guilt. Why? Because the
13 truth hurts. The lame excuse of wanting to kill
14 Grisel Rodriguez because a medical examiner is
15 mistaken about you does not fall true. The real
16 reason is the truth hurts. Her testimony hurts him
17 more than anybody.

18 Planning and preparation. Again, like we
19 discussed in jury selection, you don't have to sit
20 down and plan a murder for weeks and months and days,
21 as long as you have conscious time to make a conscious
22 decision and execute it. He tells Amaryllis, you know
23 what? You know what? Okay. Okay. And then he runs
24 off. He makes the decision to get the gun. He makes
25 the decision to run back with the gun.

1 What evidence was there that there was video that
2 existed that could have and should have been
3 collected? Arguing facts not in evidence.

4 State's not up here making excuses for people's
5 memory after five years. Again, all of these folks,
6 except for three, have their own independent
7 motivations, except for Grisel Rodriguez, Carlos
8 Benitez and Andrew Patterson.

9 And even still you've got to consider what hurts
10 a person's motivation. Cruz and Xavier, it hurts
11 them; and it hurts their friend, the defendant, when
12 they say we walked away and disengaged. I kind of let
13 up on the defendant when I sensed he was calm, and
14 then he ran from me. That's what Cruz said. So when
15 people say things that hurt their apparent
16 motivations, that has a lot of weight.

17 There's just one more thing I'm going to publish
18 from State's 4, Judge, image 204. Johnnie Walker
19 Black Label bottled liquor with one of those things on
20 the top of it that bars typically use to pour liquor
21 out. Standing upright, no spillage. It's only got a
22 third or quarter of the liquor in it. So I would
23 submit it's not super-likely to be tipped over during
24 a slow trip through a parking garage.

25 How did that get in there, unless somebody put it