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REPORTER'S RECORD

VOLUME 21 OF 35 VOLUMES

TRIAL COURT CAUSE NO. 1384794

COURT OF CRIMINAL APPEALS NO. AP-77,025

OBEL CRUZ-GARCIA	)	IN THE DISTRICT COURT
	)	
Appellant	)	
	)	
	)	
VS.	)	HARRIS COUNTY, TEXAS
	)	
	)	
THE STATE OF TEXAS	)	
	)	
Appellee	)	337TH JUDICIAL DISTRICT

\*\*\*\*\*

GUILT-INNOCENCE PROCEEDINGS

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On the 11th day of July, 2013, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Renee Magee, Judge presiding, held in Houston, Harris County, Texas;

Proceedings reported by computer-aided transcription/stenograph shorthand.

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1 (Open court, defendant present, no jury)

2 THE COURT: We're back on the record in  
3 the State of Texas vs. Obel Cruz-Garcia. Mr. Garcia is  
4 present at counsel table with his lawyers, Mr. Cornelius  
5 and Mr. Madrid. And present for the State is Ms. Tise  
6 and Mr. Wood. And the bailiff is presently bringing out  
7 the jury.

8 And we'll proceed with witness Special  
9 Agent Bill Ebersole. Is he present? Is that correct?

10 MS. TISE: Bill Ebersole was on the stand,  
11 Judge.

12 MR. CORNELIUS: Judge, when --

13 (Open court, defendant and jury present)

14 (At the Bench, on the record)

15 MR. CORNELIUS: I really can't  
16 cross-examine him now because my purpose would be if  
17 there is any inconsistent statement from Rudy's  
18 statement that he made to him, but I haven't laid those  
19 predicates yet to do that, but the State is going to  
20 recall Rudy.

21 THE COURT: You are going to recall  
22 Mr. Santana?

23 MS. TISE: Yes, Your Honor. I told him I  
24 was going to be recalling him this morning, but I just  
25 found out he's not crossing Ebersole. I was going to

1 call him after Ebersole, but I'm prepared to do it now  
2 if the bailiffs can make it happen.

3 THE COURT: Let's do it.

4 (Open court, defendant and jury present)

5 THE COURT: Good morning, ladies and  
6 gentlemen.

7 We are ready to proceed in the case of the  
8 State of Texas vs. Obel Cruz-Garcia.

9 And at this time, the State has requested,  
10 and I'm going to grant it, for them to recall Carmelo  
11 Santana, also known as Rudy, for a few additional  
12 questions. And then we'll allow Mr. Cornelius to go  
13 into his cross-examination, which he waived yesterday.

14 Please bring out Carmelo Santana.

15 THE BAILIFF: Your Honor, the witness has  
16 previously testified and was previously sworn.

17 THE COURT: Thank you, Deputy Perry.

18 Mr. Santana, please speak into the  
19 microphone. Keep your voice up. Have a seat.

20 THE WITNESS: Yes.

21 THE COURT: You may proceed, Ms. Tise.

22 MS. TISE: Thank you, Judge.

23 **CARMELO MARTINEZ SANTANA,**

24 having been first duly sworn, testified through the  
25 interpreter through the interpreter as follows:

**DIRECT EXAMINATION**

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**CONT'D BY MS. TISE:**

Q. Good morning.

A. Good morning.

Q. Give us your name again one more time for the record. Remind us of who you are.

A. My name is Carmelo Martinez.

Q. Okay. And you are the person that we call Rudy, correct?

A. That's right.

Q. Okay. And yesterday you told us a lot about the events that happened on the night of September 30th, 1992, and in the early morning hours of October 1st, 1992. Remember that?

A. That's right.

Q. Okay. And we were talking that whole time about an individual that you know as Obel Cruz-Garcia, correct?

A. That's right.

Q. And he was sometimes called Chico by a lot of people, right?

A. That's right.

Q. Do you see the individual that you know as Obel Cruz-Garcia in the courtroom today?

A. That's right.



1 Q. And can you point him out for the jury?

2 A. That's right. He is the man over sitting  
3 between those two persons sitting (indicating).

4 Q. Okay. And can you tell us what color of shirt  
5 he has on and what color of suit he has on?

6 A. Well, he has a blue shirt and -- but I couldn't  
7 tell you exactly the color of the suit, but it looks  
8 like a gray color.

9 MS. TISE: Your Honor, may the record  
10 reflect the witness has identified the defendant?

11 THE COURT: The record will so reflect.

12 Q. (By Ms. Tise) We also talked about an  
13 individual by the name of Roger quite a bit in your  
14 testimony yesterday.

15 A. That's right.

16 Q. And you were noting that he had changed quite a  
17 bit since you last saw him.

18 A. That's right.

19 Q. And you were looking at him from across the  
20 room, were you not?

21 A. That's right.

22 Q. Do you think looking at a closer-up picture of  
23 Roger might help you?

24 A. Well, yes, I believe so.

25 MS. TISE: May I approach?

1 THE COURT: Yes.

2 Q. (By Ms. Tise) Let me show you State's Exhibit  
3 91, and ask if you recognize the individual in that  
4 close-up photo (indicating)?

5 A. Yes.

6 Q. Okay. And in State's Exhibit 91, who is that a  
7 picture of?

8 A. That's Roger, Bory.

9 Q. And he is the same person that we see in this  
10 1992 photo right here on Page 2 of State's Exhibit 34 in  
11 the striped shirt, correct (indicating)?

12 A. That's right.

13 Q. And it's the same person in this much later  
14 photo on the left of Page 2 of State's Exhibit 34; it's  
15 also the person that you know to be Roger or Bory?

16 A. That's right.

17 MS. TISE: At this time, I will offer  
18 State's Exhibit 91, tendering to defense counsel for any  
19 objection.

20 (State's Exhibit No. 91 Offered)

21 MR. CORNELIUS: No objection.

22 THE COURT: State's Exhibit No. 91 is  
23 admitted without objection.

24 You may proceed.

25 (State's Exhibit No. 91 Admitted)

1 Q. (By Ms. Tise) Is it fair to say, Rudy, that he  
2 is a whole lot skinnier than the Roger you knew back in  
3 1992?

4 A. That's right.

5 Q. Okay. You knew Roger back in '92 as a big man,  
6 did you not?

7 A. That is right.

8 Q. Tall with a bulky build?

9 A. Yes, yes.

10 Q. I want to ask you a couple of other questions  
11 about the things that you told us yesterday. You talked  
12 about the location where y'all went, the little  
13 neighborhood where the actual stabbing of Angelo Garcia,  
14 Jr. happened.

15 A. That's right.

16 Q. Can you describe -- I'm sorry. I need to wait  
17 for your answer. That's my fault.

18 Can you describe that area a little bit  
19 better?

20 A. Well, it's an area where the main street, there  
21 is a park in the front and then that's the same street  
22 that leads -- it ends at a street. I don't know exactly  
23 the name of that street right now. There are stores and  
24 washaterias and stop-and-goes. That's on that side.  
25 And on the other side, that's where we used to live

1 before. Ms. Diana and I, we were neighbors.

2 Q. Okay. Diana Garcia?

3 A. Yes, the little boy's mother.

4 Q. And it was in that same area?

5 A. Yes, pretty close.

6 Q. So, the little cul-de-sac where you described  
7 where y'all pulled over and stopped, were there houses  
8 over there?

9 A. Are you saying where we stopped where the death  
10 of the little boy happened?

11 Q. Yes.

12 A. No. It was a dark place.

13 Q. And were there woods in that area?

14 A. Well, it ends there at the cul-de-sac and  
15 what's over there was woods.

16 Q. Okay. You also described for the jury that you  
17 didn't actually see when Angelo was actually killed  
18 because you were -- you had to go to the bathroom, did  
19 you not?

20 A. That's right.

21 Q. I think you described it as your insides went  
22 loose; is that correct?

23 A. Yes, that's right.

24 Q. But you heard what was said and you heard what  
25 happened, right?

1 A. That's right.

2 Q. And when you walked back over, you saw Baby  
3 Angelo on the ground, did you not?

4 A. That's right.

5 Q. And could you see where his wounds were?

6 A. No, not the wounds. I didn't see the wounds.

7 Q. Did you want to look at the wounds?

8 A. No.

9 Q. Did you see where the blood was?

10 A. Yes.

11 Q. And can you describe where the blood was on  
12 Baby Angelo's body?

13 A. It was all over here from -- starting from his  
14 chest and all over here (indicating).

15 Q. And I'm looking at you, but the record can't  
16 see that. But I see your hand starting in the collar  
17 area; is that correct?

18 A. Yes. From here all over down here  
19 (indicating).

20 Q. Going down?

21 A. Yes.

22 Q. Now, back when you talked to Agent Ebersole --  
23 let me stop just a second.

24 MS. TISE: May I approach?

25 THE COURT: Yes.

1 Q. (By Ms. Tise) I'm going to show you State's  
2 Exhibit 31 and ask you if you recognize who that person  
3 is (indicating)?

4 A. That's the little boy, Michael Angelo,  
5 Angelito.

6 Q. Angelito?

7 A. Right.

8 Q. Is this the little boy that was killed that  
9 night?

10 A. Yes, that's right.

11 Q. Back when you talked to Agent Ebersole, you  
12 knew you could have gotten an attorney in there before  
13 you talked to him, didn't you?

14 A. Yes.

15 Q. But you opted not to do that, didn't you?

16 A. That's right.

17 Q. And later on when you were brought back to  
18 Houston, you were appointed an attorney to represent  
19 you, were you not?

20 A. That's right.

21 Q. And Mr. Castro has been present with you  
22 throughout our interviews with you and in court  
23 frequently, has he not?

24 A. That's right.

25 Q. And he has explained to you that you don't have

1 any kind of deal for your testimony?

2 MR. CORNELIUS: Objection to the hearsay,  
3 Your Honor, talking about what Mr. Castro --

4 THE COURT: That will be sustained.

5 Q. (By Ms. Tise) You know and your attorney has  
6 worked with you and explained things to you, hasn't he?

7 A. That's right.

8 Q. Okay. And you continue to be willing to  
9 testify to all of these things?

10 A. The whole time.

11 Q. And have never even asked for a deal, have you?

12 A. No, never.

13 Q. You've never asked for one single thing from  
14 Agent Ebersole or us, have you?

15 A. No, no, no. I don't want to.

16 Q. And you knew -- you knew that there was going  
17 to be some inconvenience, some risk to you because  
18 you're testifying, did you not?

19 A. Well, yes, but I don't care.

20 Q. Okay. You've been in prison a long time and  
21 you recognize things can happen, don't you?

22 A. That's right.

23 Q. And when you talked to Agent Ebersole, at first  
24 you weren't going to tell him any of this; is that  
25 correct?

1 A. No.

2 Q. And you told him some of your concerns, didn't  
3 you?

4 A. Like what do you mean? I don't understand.

5 Q. Do you remember talking to him about not  
6 wanting to move out of the federal penitentiary that you  
7 were in in Pennsylvania?

8 A. I don't remember, no.

9 Q. You don't remember.

10 Okay. And about your concerns about  
11 testifying, do you remember being concerned about that?

12 A. I don't understand the question.

13 Q. Okay. Initially you were concerned about  
14 having to come to court and testify against Chico,  
15 weren't you?

16 A. That's right.

17 Q. And there were times when you were concerned  
18 about being secure, having some security; is that  
19 correct?

20 A. That's right.

21 Q. And you told Agent Ebersole all of those things  
22 up in Pennsylvania, didn't you?

23 A. No, I don't remember.

24 Q. I think Agent Ebersole will.

25 MR. CORNELIUS: Judge, I have to object to



1 the statement by counsel.

2 THE COURT: That will be sustained. No  
3 sidebar.

4 MR. CORNELIUS: I'd ask for the jury  
5 instruction.

6 THE COURT: You are instructed to disregard  
7 that and not consider it for any reason.

8 MR. CORNELIUS: Move for a mistrial.

9 THE COURT: That will be denied.  
10 You may proceed.

11 Q. (By Ms. Tise) And you didn't really want to be  
12 the only witness against Chico, did you? Do you  
13 remember that?

14 A. No.

15 Q. Is it fair to say, Rudy, that there were a lot  
16 of things on your mind before you finally decided to  
17 tell Agent Ebersole the truth about what happened?

18 A. That's right, a lot.

19 Q. Concerns about your own safety?

20 A. Yes.

21 Q. So, why did you decide to do it?

22 A. Because I wanted first with God and also with  
23 Ms. Diana and with the American justice, that everything  
24 to be known and to ask forgiveness for the mistakes I've  
25 made and the person that I have harmed.

1 MS. TISE: I will pass the witness.

2 THE COURT: Thank you, Ms. Tise.

3 Mr. Cornelius, you may proceed.

4 MR. CORNELIUS: Thank you, Judge.

5 **CROSS-EXAMINATION**

6 **BY MR. CORNELIUS:**

7 Q. Mr. Martinez, my name is Skip Cornelius. We've  
8 never met; is that correct?

9 A. That's right.

10 Q. You've never even been charged in this case,  
11 have you?

12 A. Well, I don't know. I'm here to tell the  
13 truth.

14 Q. Okay. But have you ever been charged with  
15 capital murder, a murder, kidnapping, robbery, burglary,  
16 or any crimes out of this particular incident?

17 A. Well, I don't care. I'm here to tell the  
18 truth.

19 Q. I understand that. I'm still trying to ask my  
20 question and I need an answer to my question, please.

21 Have you received any indictment or formal  
22 charges for anything concerning this incident?

23 A. No, but in the computer it say, when I check  
24 it, on ICT to come here, the computer says that I have a  
25 charge of a killing.

1 Q. Have you ever been indicted in this case or  
2 anything?

3 A. Well, I also say that the computer said so. I  
4 don't care, but the computer says so. I'm here to tell  
5 the truth.

6 Q. All right. Let me see if I can get to the  
7 bottom of this. Are you sure the computer is not  
8 attaching you to this case because you are a witness in  
9 this case?

10 A. No, never.

11 Q. Have you ever been before this Judge and been  
12 presented an indictment or been before this Judge where  
13 you are accused of something and had your warnings or  
14 any proceeding other than the trial?

15 A. No.

16 Q. Have you ever had to enter a plea of either  
17 guilty or not guilty to any charge relating to this?

18 A. No.

19 Q. Has anybody ever come to your jail cell and  
20 served you with a document or any charge relating to  
21 this?

22 A. No.

23 Q. Okay.

24 MR. CORNELIUS: Can we approach the bench  
25 for a moment?

1 THE COURT: Yes.

2 (At the Bench, on the record)

3 MR. CORNELIUS: I'm not sure what  
4 impeachment offenses that I can go into with him.  
5 Honestly, I'm not sure. In fairness, I've got an  
6 investigator's report, but I don't have that much  
7 confidence in it.

8 THE COURT: Okay. Are you saying you need  
9 to take the jury out?

10 MR. CORNELIUS: I think we should.

11 (Open court, defendant and jury present)

12 THE COURT: Let's take the jury out.

13 THE BAILIFF: All rise.

14 (Open court, defendant present, no jury)

15 THE COURT: Okay. Mr. Cornelius, you are  
16 wanting to impeach this witness with extraneous conduct  
17 of his own?

18 MR. CORNELIUS: No, no, no. Prior  
19 convictions.

20 THE COURT: With prior convictions.

21 MR. CORNELIUS: Prior convictions.

22 THE COURT: Okay.

23 MR. CORNELIUS: And there is the -- you  
24 know, there are rules on what you can go into and what  
25 you can't go into on prior convictions and time

1 restraints and all this kind of stuff. And I've got  
2 some conflicting information from my own investigators  
3 and so, I'm going to accept pretty much whatever the  
4 State tells me or what he tells me, but...

5 THE COURT: Okay. Would you like to take  
6 this witness on voir dire then?

7 MR. CORNELIUS: Yes.

8 THE COURT: Okay. You may proceed.

9 MR. CORNELIUS: May the record reflect we  
10 are proceeding outside the presence of the jury.

11 **VOIR DIRE EXAMINATION**

12 **BY MR. CORNELIUS:**

13 Q. Mr. Martinez, as I understood your testimony  
14 from yesterday, you are in federal custody serving  
15 prison time. For what, though?

16 A. For drugs.

17 Q. And what was your sentence?

18 A. Seventeen years, seven months.

19 Q. Okay. And you've served how much of that?

20 A. I went in in December of 1997. I have been  
21 there almost 17 years -- 16 years, 16 years.

22 Q. Now, was this a conviction for one case or more  
23 than one case?

24 A. For two cases.

25 Q. What was -- okay. Are they both drugs cases?

1 A. No.

2 Q. What was the other case?

3 A. A revolver that I had with drugs.

4 Q. Having a pistol?

5 A. Yes. A revolver, pistol.

6 Q. And is that did -- you get the same sentence on  
7 that case or did you get two sentences that are stacked  
8 or how does that work?

9 A. Well, I received two sentences.

10 Q. Are they running at the same time or are they  
11 stacked?

12 A. Seventeen years and seven months for the drugs  
13 and five years for the revolver.

14 Q. Is the five-year sentence running at the same  
15 time that the revolver is running -- let me rephrase  
16 that.

17 Is the 17-year sentence running at the same  
18 time that the 5-year sentence is running?

19 A. No. Because it's two charges, two cases, the  
20 drugs and the revolver. For the drugs, twelve years and  
21 seven months. And five years for the weapon. So, both  
22 sentences are seventeen years and seven months. That's  
23 what I'm serving.

24 Q. All right. So, the sentences are stacked on  
25 top of each other?

1           A.    Well, I don't know how that counts, but I  
2 imagine so.

3           Q.    Okay.  Added together, they come up to 17 years  
4 and 7 months?

5           A.    Yes.

6           Q.    Okay.  Now, I'm just going to ask this  
7 question.  I don't know if it's true.  Did you also get  
8 convicted of illegal entry after deportation and got a  
9 45-month sentence back in 2009?  Is that you or somebody  
10 else?

11          A.    No.

12          Q.    Okay.

13                   MR. CORNELIUS:  I have no confidence that's  
14 him, unless the State tells me it is.

15                   MS. TISE:  It's not him.

16          Q.    (By Mr. Cornelius) So, you were in prison in  
17 2009?

18          A.    I sure did -- I sure was.

19          Q.    All right.  Back in 1992, did you have a  
20 conviction for a misdemeanor charge of assault here in  
21 Harris County that you got six months for?

22          A.    Well, I don't remember the year, but I do know  
23 that I served six months --

24          Q.    Okay.

25          A.    -- for that charge.

1 Q. The person that you were accused of assaulting,  
2 was that person a male or a female?

3 A. No.

4 Q. Well, was the person you were accused of  
5 assaulting a male or a female?

6 A. No.

7 Q. It wasn't a boy or a girl?

8 A. It was a boy.

9 Q. Okay.

10 MR. CORNELIUS: Judge, can I have just a  
11 second?

12 THE COURT: Yes.

13 (Pause)

14 Q. (By Mr. Cornelius) Was that case where you got  
15 the six months for assault, did it -- was that --  
16 initially were you charged with -- let me rephrase that.

17 Were you initially charged with injury to a  
18 child?

19 A. That's right.

20 Q. And what was the age of the child that you were  
21 alleged to have assaulted?

22 A. I have no idea. Because I have not assaulted  
23 any child.

24 Q. So, even though you pled guilty to it, you are  
25 saying you were actually innocent?



1           A.     That's right.

2                         MS. TISE:    Just for the record, Judge, he  
3     pled guilty to assault, not injury to a child.

4                         MR. CORNELIUS:  Let me just tell you what  
5     my -- can we stop for a second and --

6                         THE COURT:   Off the record?

7                         MR. CORNELIUS:  No.  It's on the record.

8                         THE COURT:   Okay.

9                         MR. CORNELIUS:  -- what my thinking is on  
10    this.  Ordinarily that wouldn't be admissible because  
11    it's not a woman, but the Court has great discretion in  
12    allowing into evidence prior convictions.  I mean, it's  
13    always within the discretion of the Court in a situation  
14    like that.  Because we have, in this case, the murder of  
15    a child in 1992, I'm going to ask the Court to allow us  
16    to at least ask the question that I just asked of this  
17    witness because of the similarities between the two and  
18    because of the accusation in this case.

19                        THE COURT:    So, you are saying the  
20    accusation -- I'm unclear.  Was there an accusation --  
21    it was originally charged as an injury to a child?  Is  
22    that what you are saying?  And then it was reduced to  
23    assault.  I'm unclear.

24                        MR. CORNELIUS:  Well, I would like to be  
25    able to get that in.

1 THE COURT: Is that what happened? That's  
2 what I'm saying.

3 MR. CORNELIUS: That is what happened.  
4 Well, according to the records. I wasn't there, but  
5 according to the records, he was charged or indicted, I  
6 guess, for injury to a child, but it ended up being  
7 reduced to a misdemeanor assault and he pled out for six  
8 months.

9 MS. TISE: And he says that's because it  
10 wasn't a child. That would be completely --

11 MR. CORNELIUS: I thought he just didn't do  
12 it.

13 MS. TISE: He said he never assaulted a  
14 child. He called it a male.

15 THE COURT: Instead of going back and forth  
16 here, put on the record what you are asking and then  
17 I'll let the State respond.

18 MR. CORNELIUS: Can I just ask him to see  
19 if that's what he is saying?

20 THE COURT: You may ask him. You've got  
21 him on voir dire. Yes.

22 Q. (By Mr. Cornelius) Mr. Martinez, are you saying  
23 you did assault someone, but it wasn't a child?

24 A. No, I have not assaulted anybody.

25 MR. CORNELIUS: That's what I thought he

1 said.

2                   So, yes, I am seeking to go into that  
3 because of the similarities to this case. At least I'm  
4 seeking to go into the fact that he has the conviction  
5 for assault back in 1992.

6                   THE COURT: Okay. State, go ahead. What's  
7 your response?

8                   MS. TISE: That flies in the face of  
9 everything that the impeachment rules allow.

10                   First of all, Rule 609 only allows evidence  
11 of a conviction. You cannot go into the underlying  
12 facts of that conviction in any way. And there is a  
13 conviction here and the conviction is for assault.  
14 That's it. Assault. For you to allow him to talk about  
15 the fact that that involved injury to a child would be  
16 to completely ignore Rule 609 that says no specific  
17 instances of conduct, no going underneath the conviction  
18 with the facts. The only thing that's admissible is the  
19 conviction. And in this case, even the conviction is  
20 not admissible because it's -- first of all, it happened  
21 in 1992. It's very old, but, more importantly, the  
22 reason the conviction is not admissible is because it's  
23 not a crime of moral turpitude and it's not a felony.

24                   So, we would object vigorously to him being  
25 able to go into that. There is nothing in the rules of

1 impeachment, which is what he's trying to do, to allow  
2 him to do that. And his specific reason for wanting to  
3 do it is expressly prohibited under the rules of  
4 evidence. The specific reason for wanting to do is to  
5 go into the fact that it was an injury to a child and  
6 make some comparison to the fact that a child was hurt  
7 in this case. And that is specifically going into the  
8 specific instances of conduct to impeach a witness,  
9 which the rules do not allow.

10 THE COURT: My ruling is that you will not  
11 be able to go into the conviction for misdemeanor  
12 assault back in 1992 of a male. And you will not be  
13 able to go into the fact that it was originally charged  
14 as injury to a child. And the only reason I can see  
15 that you would want to go into that is to try and make a  
16 connection that he would be acting in conformity  
17 therewith and somehow impeaching his testimony here,  
18 even though he's not the charged individual.

19 So, I'm not going to allow it. And I don't  
20 believe the rules allow it.

21 So, do you want to continue with the voir  
22 dire of this witness?

23 MR. CORNELIUS: Yes. Just a couple more  
24 questions, if I might, Judge.

25 THE COURT: Okay.

1 Q. (By Mr. Cornelius) Do you have any other  
2 convictions that I haven't asked you about?

3 A. Yes, I have.

4 Q. What are they?

5 A. Well, I had problems with the mother of my  
6 child.

7 Q. And when was that? What year approximately  
8 would that be?

9 A. I don't remember.

10 Q. Did you actually -- just having problems with  
11 her is not what I'm asking. Did you actually get  
12 convicted for something concerning that?

13 A. I don't remember exactly how much time I  
14 served, but I did go to jail.

15 Q. For assaulting who, the mother?

16 A. Sure, of course.

17 Q. How many times did that happen?

18 A. Well, that I -- only once that I remember. I  
19 don't remember more than that time.

20 Q. The conviction you had for assaulting your  
21 wife, I guess it was -- was that about the same time  
22 that you were charged with this other stuff?

23 A. I don't remember, but -- I don't know exactly  
24 the times, what the times were.

25 Q. Okay.

1 MR. CORNELIUS: The records that I have  
2 show that he was charged on two cases. He's only  
3 admitted to being convicted of one. One is in '91 and  
4 one is in '92. And so, from that -- if he does admit  
5 that conviction of a woman, that is certainly admissible  
6 as a crime involving moral turpitude. And it's not  
7 remote because under attacking part of that, it would go  
8 back 10 years. And so, it wouldn't be remote. So, we  
9 also seek to go into that.

10 THE COURT: Okay. Ms. Tise.

11 MS. TISE: I agree with him. I think that  
12 it is remote, but I do think that attacking would allow  
13 him to go into and it is assault of a female. I have  
14 actually provided -- and I think Mr. Cornelius is  
15 looking there -- the date of that and the cause number  
16 and all of that. That's the 1992 case out of County  
17 Court 14.

18 THE COURT: Okay. So, is that the same  
19 county court case that you were referring to that was  
20 reduced from an injury to a child?

21 MS. TISE: Oh, no Your Honor. That's a  
22 different case.

23 THE COURT: So, there was two convictions  
24 for assault. One was in 1991, assault of a female, out  
25 of County Court 14?

1 MS. TISE: Yes.

2 THE COURT: And one was filed in some  
3 felony court as injury to a child but was reduced to a  
4 misdemeanor and he did six months in 1992?

5 MS. TISE: Correct.

6 THE COURT: Okay. Then, I will allow the  
7 1991 conviction assault of a female in from County Court  
8 14 as a crime of moral turpitude. Okay? I will allow  
9 you to go into that conviction.

10 MR. CORNELIUS: Okay. I don't want to do  
11 that in any way that's unacceptable. Having interpreted  
12 all of this stuff, I'm not exactly sure how to ask the  
13 questions. I'm open for suggestion.

14 MS. TISE: I think it would probably be  
15 best to go off the record and instruct the witness.

16 MR. CORNELIUS: Can you do that, or Justin  
17 do it or --

18 MS. TISE: Can we do that, Judge?

19 THE COURT: Let's go off the record for a  
20 moment.

21 (Pause)

22 MR. CORNELIUS: I'm planning on going into  
23 the bare bones of the two federal convictions and the  
24 one assault. And that's it. And I would like to go  
25 into all of them, but I understand your ruling and

1 accept your ruling.

2 THE COURT: Do we have anything further on  
3 the record outside the presence of the jury?

4 MR. CORNELIUS: No, ma'am.

5 MS. TISE: No, Your Honor.

6 THE COURT: Let's bring the jury in.

7 (Open court, defendant and jury present)

8 THE COURT: Please be seated.

9 We are ready to proceed with the  
10 cross-examination of Carmelo Santana by Mr. Cornelius.

11 You may proceed.

12 **CROSS-EXAMINATION**

13 **CONT'D BY MR. CORNELIUS:**

14 Q. Have we been calling you Martinez or Santana?

15 A. Well, Her Honor called me by Santana. And I am  
16 called Rudy, but I sign as Carmelo Martinez. And  
17 Santana is my second surname.

18 Q. Okay. All right. Well, if I refer to you as  
19 Mr. Martinez, you'll understand that, right?

20 A. I sure do.

21 Q. Okay. Yesterday when you were testifying you  
22 told the jury that you were serving some time in federal  
23 court, right?

24 A. Yes, that's right.

25 Q. What were you actually convicted of?



1 A. For drugs and for a weapon.

2 Q. Is that two different convictions?

3 A. That's right.

4 Q. And your sentences on those convictions were  
5 what?

6 A. Well, when I was arrested, I was caught with  
7 the drugs and the revolver and the sentence was five  
8 years for the revolver and twelve years and seven months  
9 for the drugs.

10 Q. So, a total of seventeen years and seven  
11 months?

12 A. That's right.

13 Q. And how much of that have you served?

14 A. Well, I have been in jail since December of  
15 1997.

16 Q. So, you've almost served it all?

17 A. That's right. I was told that on this year,  
18 the 13th, I was going to finish my sentence.

19 Q. And you have no other criminal cases pending  
20 against you, correct?

21 A. Well, I didn't at the time of my sentence over  
22 there.

23 Q. Okay. Did you have a conviction for  
24 misdemeanor assault back in 1991 or '92 here in Harris  
25 County, Texas?

1 A. Yes.

2 Q. How long was it after that that you actually  
3 went to prison on these federal cases?

4 A. Repeat the question again.

5 Q. From the time you were convicted of a  
6 misdemeanor assault case here in Harris County until you  
7 were incarcerated on this drug and pistol case, how much  
8 time transpired?

9 A. Well, I couldn't tell you exactly the time.

10 Q. Well, it's about five years, isn't it? Didn't  
11 you say you went to prison in '97?

12 A. That's right.

13 Q. Yesterday, when you were testifying about how  
14 you got involved in the drug business, you said it was  
15 when you met some -- did you call her a Dominican woman,  
16 girl? How did you refer to this woman?

17 A. It was a Dominican lady.

18 Q. Okay. She's the one that got you started using  
19 drugs?

20 A. That's right.

21 Q. And also selling drugs?

22 A. No. I sold drugs.

23 Q. Okay. Well, I thought you were kind of saying  
24 that it was her fault that you got involved in the drug  
25 life.

1 A. No, but using cocaine.

2 Q. So, just her fault that you started using  
3 cocaine?

4 A. That's right.

5 Q. You decided to sell drugs yourself?

6 A. That's right.

7 Q. And when you started to sell drugs, was that  
8 here in Harris County?

9 A. That's right.

10 Q. And when was it that you met my client whom you  
11 call -- well, I guess you don't call him Chico, but some  
12 people call Chico.

13 A. Well, I met him in Puerto Rico.

14 Q. Where was he when you started using drugs here,  
15 though?

16 A. Well, in Puerto Rico. I imagine so.

17 Q. Okay. So, he wasn't here then when you first  
18 started using drugs?

19 A. No.

20 Q. And was he here when you first started selling  
21 drugs?

22 A. No.

23 Q. You also told the jury yesterday that Mr. Obel  
24 Cruz-Garcia was mean to you and called you names. Is  
25 that true?

1           A.    Yes.  He began to -- he always -- he began  
2 taking control of the whole business and to control me  
3 because I was always -- I was always weak to him.

4           Q.    Okay.  So, basically, your troubles were his  
5 fault?

6           A.    When you say "trouble," what kind of trouble do  
7 you mean?

8           Q.    Being in the drug business.

9           A.    Well, the problem is that he was putting me  
10 down.  Yes.  Sure.

11          Q.    So, he was putting you down.  Is that what you  
12 said?

13          A.    The whole time.

14          Q.    Okay.  And is that the reason you were taking  
15 drugs and selling drugs?

16          A.    No.

17          Q.    All right.  Well, I thought the point you were  
18 trying to make to the jury is it was his fault that you  
19 got involved in all of this drug stuff.

20          A.    No.

21          Q.    It seems like you are saying on the one hand  
22 you want to be his right-hand man, his main ally to work  
23 with, and on the other hand he was terrible to you.

24          A.    No.  I arrived here first.  And the business --  
25 I made the business with the people that I met here.  He

1 asked me to come here where I was. When he got here, we  
2 got together, the guys, him and I, in the business.

3 So, he had problems because he has a strong  
4 character with the other guys. So, since I had brought  
5 him here and he is the husband of my cousin, then I went  
6 with him. We separated from the others.

7 Q. Well, don't you think it's a little consistent,  
8 though -- sorry -- a little inconsistent for you to say  
9 that he's such a bad person, he put you down all the  
10 time, and he's the reason you are in trouble, and yet  
11 you stayed with him through thick and thin? Don't you  
12 think that's a little inconsistent?

13 MS. TISE: I'm going to object that that  
14 mischaracterizes his testimony.

15 THE COURT: I'm going to allow him to ask  
16 that. He can clear it up, if he likes.

17 A. Well, sure, of course. Because he came to me  
18 and he was the husband of my cousin and we were  
19 partners, we would run half and half. And then he went  
20 taking over all the power and staying as the boss and  
21 putting me down all the time.

22 Q. (By Mr. Cornelius) Don't you think it's a  
23 little convenient for you, since you are not charged in  
24 this case, to put all the blame on Obel?

25 A. No, not at all. I am only telling the truth.

1 Q. Okay. Did you testify today that the area  
2 where you claim this little boy was killed was an area  
3 where y'all used to live?

4 A. No. Excuse me. What was the question? Can  
5 you repeat the question?

6 Q. Didn't you tell the jury earlier this morning  
7 that the area where the little boy was killed was an  
8 area close to where you used to live?

9 A. No, I haven't said that.

10 Q. Okay. I thought it was near a place where  
11 Diana used to live and you lived there, too.

12 A. You mean about the death of the boy?

13 Q. Yeah. Where you are claiming this boy was  
14 killed.

15 A. The little boy was murdered in Baytown.

16 Q. Yeah, I understand that.

17 A. But we lived here on 45. But -- at that time  
18 we lived in Humble, but I'm saying 45 because we always  
19 lived around 45.

20 Q. Okay. Well, maybe I misunderstood it. So, you  
21 correct me if I'm wrong, but I thought you were telling  
22 the jury and were describing the place where the little  
23 boy was killed earlier today. Do you remember that?

24 A. Can you repeat the question?

25 Q. Do you remember earlier this morning when you

1 were testifying describing to the jury the place where  
2 the little boy was killed?

3 A. Yes.

4 Q. You talked about the buildings and stuff and  
5 where the woods were or forest, or whatever you said.  
6 Do you remember talking about all of that?

7 A. I remember the cul-de-sac where we arrived and  
8 I remember it was a place with gravel. It ended in a  
9 circle and the street ran like this (indicating).

10 Q. Okay. That's what I'm talking about.

11 A. That's right.

12 Q. Did you tell the jury it was near where Diana  
13 used to live and where you used to live?

14 A. No, I didn't say that.

15 Q. Why would it be that you know that area so  
16 well?

17 A. No, I don't know that area.

18 Q. So, are you telling the jury that you can  
19 remember where the buildings were and all this stuff  
20 from going out there one time at night 21 years ago?

21 A. Well, I can tell the jury how the place --  
22 where we arrived was, but I can -- well, it was a place  
23 that was away from houses.

24 Q. You knew that area around there because you  
25 used to sell drugs there, didn't you?

1 A. No.

2 Q. When the FBI agent came to see you in 2011 --  
3 do you remember that?

4 A. Yes, I remember that two agents came to visit  
5 me.

6 Q. And do you remember telling them that you were  
7 familiar with the Baytown area because you used to sell  
8 drugs in that area?

9 A. No.

10 Q. You didn't tell them that?

11 A. No.

12 Q. So, all of your recollection of how to get to  
13 Baytown and whether to use 225 or 146 or -- you may call  
14 it 176, but I think we know what you mean -- is all  
15 based on one trip there 21 years ago at night; is that  
16 what you're telling us?

17 A. Yes, that's what I'm saying.

18 Q. Okay. Now, you didn't tell the FBI agent when  
19 they met with you in 2011 that you had been to Baytown  
20 many times and had friends there for purposes of dealing  
21 drugs?

22 A. Well, of course, the guys -- the friends that I  
23 had over here, they would go to Baytown.

24 Q. But did you make that statement to the FBI  
25 agents?



1 A. Not that I remember.

2 Q. All right. Did you not draw them maps of the  
3 area?

4 A. No, not that I remember. The only thing that I  
5 remember is what I'm always saying.

6 Q. Okay. So, what you're saying to the jury today  
7 is you did not know the area of Baytown because you had  
8 not sold drugs there?

9 MS. TISE: Objection. That's a compound  
10 question.

11 THE COURT: That's sustained.

12 Can you rephrase that?

13 MR. CORNELIUS: I sure can, Judge. I sure  
14 will.

15 Q. (By Mr. Cornelius) So, what you're telling the  
16 jury today is you did not know your way around Baytown?

17 A. No, I didn't know and I don't know it well.

18 Q. Okay. And you had not sold people drugs in  
19 Baytown?

20 A. That's right.

21 Q. And you didn't have friends in Baytown?

22 A. That's right.

23 Q. And you never told this jury this morning that  
24 where this boy was killed was near where you and Diana  
25 had used to live?

1 A. No, no way.

2 Q. Okay. Have you had an opportunity to read the  
3 16-page, single-spaced document that reflects the  
4 conversation that you had with the FBI agents in 2011?

5 A. No.

6 Q. Okay. How often would you and Obel Cruz-Garcia  
7 go to Diana's apartment?

8 A. We would go frequently.

9 Q. And by "frequently," is that once a day, once a  
10 week, once a month? What do you mean by that?

11 A. No. We would go almost every day, once or  
12 twice, I imagine. It was for family -- we were like  
13 family, like we were related.

14 Q. Well, were you also selling them drugs?

15 A. No, I never sold drugs to her. He did.

16 Q. Okay.

17 A. Because -- well, I can't say it.

18 Q. Were you present when you claim Obel  
19 Cruz-Garcia sold them drugs?

20 A. Yes, of course.

21 Q. And what was the quantity that was being sold  
22 to them?

23 A. Well, I can't exactly tell you, but sometimes 1  
24 ounce, most of the times; but sometimes I was not with  
25 him. I didn't live with him anymore. I don't know what

1 amounts he was selling.

2 Q. When you say you didn't live with him anymore,  
3 are you talking about who? Didn't live with who  
4 anymore?

5 A. With Obel Cruz-Garcia.

6 Q. Well, I thought you testified to the jury  
7 yesterday you stayed with him the very night that you  
8 claim all this stuff happened.

9 A. Of course, during that time when that happened  
10 I was staying with him.

11 Q. He went in and slept with Angelita and you  
12 slept somewhere else in the apartment, correct?

13 A. The apartment in Humble is two-bedroom. There  
14 is room for -- you know, for the couple and the other  
15 room where I stayed that night.

16 Q. But you remember that Obel slept with his wife?

17 A. No. Well, he stayed the rest of the night --  
18 the remainder of the night using drugs.

19 Q. You didn't tell the jury yesterday that Obel  
20 went and slept with Angelita?

21 A. No. We went to the apartment, but he didn't go  
22 to bed. He spent the rest of the night using drugs. I  
23 wanted to use drugs, too, but he didn't give me. He  
24 said to me to go to bed in the other room where he had  
25 that Buddha shrine.

1 Q. Do you think you told us that yesterday when  
2 you described this same thing?

3 A. I have never lied.

4 Q. Well, do you think you told that same story  
5 though yesterday?

6 A. Yes, of course.

7 Q. You did? You told the jury yesterday that Obel  
8 stayed up all night using drugs and you wanted to, but  
9 he wouldn't give you --

10 MS. TISE: Objection, Your Honor. He  
11 wasn't asked that question. This is totally  
12 mischaracterizing his testimony.

13 THE COURT: Hang on just a minute.

14 MR. CORNELIUS: Judge --

15 THE COURT: No. Wait. I'm going to rule  
16 first before anybody else talks. We can't all be  
17 talking at the same time.

18 So, your objection is sustained.

19 And ask your next question, Counselor.

20 MR. CORNELIUS: I object to speaking  
21 objections.

22 THE COURT: Okay. No speaking objections.  
23 Proceed.

24 MS. TISE: Yes, Your Honor.

25 Q. (By Mr. Cornelius) Did you testify yesterday

1 that when y'all got to Angelita and Chico's apartment  
2 that he went and slept with Angelita?

3 A. Well, I can say "go to sleep" because we went  
4 to the apartment.

5 Q. My question is: Isn't that what you said  
6 yesterday?

7 A. Yes, I said -- well, because to me -- I'm  
8 telling the truth -- to go to sleep is like to go home,  
9 but he didn't go to sleep with Angelita. He spent the  
10 night using drugs.

11 Q. Okay. So, what was the quantity that Diana was  
12 getting from y'all?

13 MS. TISE: Objection. Asked and answered.

14 THE COURT: That's sustained.

15 Q. (By Mr. Cornelius) Well, I know you said  
16 sometimes an ounce. What about the other times?

17 MS. TISE: Asked and answered.

18 THE COURT: That's sustained.

19 Q. (By Mr. Cornelius) What did an ounce go for in  
20 those days?

21 A. Well, it depended on the customer. From 500 to  
22 700, like that.

23 Q. Is that the bulk price buying the ounce or is  
24 that after the ounce is put in little baggies, like  
25 1-gram baggies?

1 MS. TISE: I object to the relevance of  
2 this.

3 THE COURT: I will allow him to go into it  
4 a little bit, but let's move on.

5 A. No, those are whole ounces.

6 Q. (By Mr. Cornelius) Okay. You said that you had  
7 not been to -- or at least yesterday -- you had not been  
8 to that apartment the day that you claim that the little  
9 boy was taken?

10 A. Repeat the question.

11 Q. Did you testify yesterday you had not been to  
12 Diana's apartment on the day the little boy was taken  
13 until y'all went there that night?

14 A. I don't remember if we went during the day.

15 Q. Is it possible you did go during the day?

16 A. Well, maybe so.

17 Q. Okay. So, is it possible that Obel went there  
18 earlier that day?

19 A. Of course it's possible.

20 Q. Is it possible he went there without you?

21 A. Well, yes, of course.

22 Q. Yesterday, when the prosecutor was asking you  
23 about whether there was a cell phone or not, did you say  
24 that y'all did not have a cell phone?

25 A. Not that night.

1 Q. Did you normally have one and just didn't have  
2 it that night?

3 A. No. At that time, we didn't have one.

4 Q. Did Obel make any calls that night?

5 A. Yes. He made a phone call from a pay phone.

6 Q. And when was that?

7 A. On that same night before going -- before  
8 arriving to Ms. Diana's apartment.

9 Q. Did he make any other phone calls?

10 A. No, not that I remember.

11 Q. He didn't call for a tow truck or call for a  
12 taxi or call Charlie or call anybody else?

13 A. Yes, but that was after the death of the little  
14 boy.

15 Q. Okay. But did he make all of those phone  
16 calls?

17 A. He -- well, excuse me. He made the phone call  
18 for a taxi, I think I seem to remember because we  
19 arrived to Charlie's on a taxi. That's what I think  
20 that I can remember.

21 Q. Did he call Charlie?

22 A. I cannot tell you exactly one hundred percent,  
23 but it's very probable that he did.

24 Q. But you are saying he didn't have a cell phone?

25 A. No.

1 Q. Okay. Did you tell us yesterday that all four  
2 tires blew out on the car?

3 A. Yes.

4 Q. When you were having your conversation with the  
5 FBI back in 2011, did you tell them that two tires blew  
6 out of the car?

7 A. I don't remember how many I said, but they  
8 began to blow up. One of them blew up first. And  
9 later, shortly later -- he continued driving -- and  
10 another one blew up. And then he continued, he went on  
11 driving, and the others continued blowing up.

12 Q. So, you are telling us that all four tires blew  
13 up?

14 A. Yes, to my recollection. Because they were --  
15 they were like this, they were like in the rims  
16 (indicating).

17 Q. Okay. Now, that's what you remember today?

18 A. That's what I remember happening with the tires  
19 on that night.

20 Q. Okay. When you talked to the FBI agent back in  
21 2011, they were very detailed, weren't they?

22 A. No. Well, it was me explaining what happened.

23 Q. Okay. All right. Do you recall only  
24 explaining to them that two tires blew up?

25 A. Well, maybe I did, but me -- after that, I was



1 thinking the whole time about what happened on that  
2 night. Because this is -- because I want to tell all of  
3 the details about the truth. And this is something very  
4 big and everything needs to be said. And what I  
5 remember is that they were blowing up. And I have been  
6 thinking and remembering. And we arrived with the -- on  
7 the rims. I mean, you could see the sparks.

8 Q. Okay. So, what you're saying is you may have  
9 told FBI agents that only two tires blew up, but what  
10 you remember today is four tires blew up?

11 MS. TISE: Objection. That has been asked  
12 and answered.

13 MR. CORNELIUS: Well --

14 THE COURT: One last time. Make it clear.  
15 And that's a yes-or-no answer.

16 A. Yes.

17 Q. (By Mr. Cornelius) What I'm trying to do is  
18 make it clear. Are you saying that you may have told  
19 the FBI agent that it was only two tires, but today you  
20 remember it was four? Is that what you are saying?

21 MS. TISE: Your Honor --

22 THE COURT: I think this has been -- I  
23 sustained that objection. I think you're saying it's  
24 been asked and answered.

25 MS. TISE: Yes, Your Honor.

1 THE COURT: Yes.

2 Q. (By Mr. Cornelius) Do you remember when you  
3 were talking to the FBI agents saying that Chico went in  
4 to sleep with Angelita? Do you remember telling them  
5 that?

6 A. Well, from the way I see things, to go to sleep  
7 means to go to the apartment. And he goes inside his  
8 bedroom, his apartment, and he comes out whenever he  
9 wants. But I remember like right now, when -- that he  
10 went inside the room and I was laying down on the carpet  
11 and he was looking at me with the gun in his hand and I  
12 was pretending to be asleep.

13 THE COURT: Okay. Mr. Santana Martinez,  
14 you need to just answer the question that's asked. So,  
15 I'm going to instruct the defense attorney to ask the  
16 next question.

17 You may proceed, Mr. Cornelius.

18 Q. (By Mr. Cornelius) I'm trying to give you a  
19 chance to tell us if you remember what you actually told  
20 the FBI agent two years ago.

21 THE COURT: We're going to do this question  
22 and answer, not narrative.

23 MR. CORNELIUS: Okay.

24 THE COURT: So, proceed.

25 Q. (By Mr. Cornelius) Did you tell him that when

1 you got to the apartment Chico went in to sleep with  
2 Angelita?

3 A. Well, I don't remember saying it exactly like  
4 that.

5 Q. Okay. During all the time that you talked to  
6 the FBI agents and did whatever they did to make their  
7 notes, did you ever tell them anything about defecating  
8 either in your pants or on the ground out there when you  
9 claim the child was killed?

10 A. On the ground. But I cannot say -- well, I  
11 don't think that I said on my pants.

12 Q. Did you ever tell them anything about  
13 defecating at all?

14 A. Of course, I defecated, but that I can  
15 remember, I was able to get to the ground.

16 Q. The question is: Did you tell the FBI that?

17 A. Not that I remember. Well, if I told them that  
18 I defecated it's because that's the truth.

19 Q. It would be really hard to forget that,  
20 wouldn't it?

21 A. I have never forgotten everything. I always  
22 have that in my mind.

23 Q. Did you tell us yesterday -- "us" being  
24 everybody in the courtroom -- that the masks that were  
25 used on the night that that happened were like ladies'

1 stockings?

2 A. Yes.

3 Q. Okay. And what is that you've said as to how  
4 long the people were in -- out of the car that you were  
5 in and into Diana's apartment, if that's where they  
6 went, how long that took?

7 A. What do you mean exactly? Repeat the question.

8 Q. You were asked yesterday how long they were  
9 gone. You said that they got out of the car, went to  
10 where Diana's apartment was. I'm not sure if you could  
11 see the door or not. How long were they gone?

12 A. Well, from what I can remember, it was  
13 something between 30 -- 30, 40 minutes.

14 Q. Thirty to forty minutes, right?

15 A. Well, average, more or less.

16 Q. Okay. When you talked to the FBI and they  
17 interviewed you about this, did you tell them it was  
18 five to ten minutes?

19 A. I don't -- I don't believe that I said that  
20 because that's not how it was.

21 Q. Okay. What did you tell us about whether they  
22 came back together or separate, they came back to the  
23 car?

24 A. Chico came with the little boy walking. When I  
25 saw him walking, I got up and I got in front of him and

1 I asked him why he was bringing him.

2 Q. Okay. When Chico came back, did he come back  
3 with Roger or was it sometime later before Roger came  
4 back?

5 A. No. Chico -- that I remember, they came back  
6 one in front of the other one, like together.

7 Q. Together?

8 A. I don't remember exactly, but to me, my view  
9 that I can remember, he came shortly first.

10 Q. Okay. And you said Chico had the boy?

11 A. Yes. The first time, sure, he brought the  
12 little boy.

13 Q. And do you remember the FBI asking if the boy  
14 was crying?

15 A. I don't remember.

16 Q. Do you remember him asking a number of times if  
17 the boy was crying?

18 A. Well, I don't remember, but the little boy was  
19 not crying, but I don't remember.

20 Q. Okay. So, he wasn't crying?

21 A. No. The little boy was very calm. We're  
22 family.

23 Q. The boy was very calm because y'all were  
24 family. Is that what you said?

25 A. Yes. Yes. The little boy was in his arms and

1 he was very calm, as if he was -- as if he were his  
2 father.

3 Q. Did Chico have on a mask?

4 A. When he had brought the little boy, he did not  
5 have a mask.

6 Q. Okay. But the little boy was calm and not  
7 crying?

8 A. Very calm.

9 Q. So, what was then done with the little boy when  
10 Chico came back with the little boy?

11 A. Well, I have always said that I can't remember  
12 exactly if he left the little boy with me. I think that  
13 he left him with me because that's how I feel it. And  
14 he went back, supposedly, looking for the mother because  
15 I told him about that.

16 Q. Okay. So, you think either the boy was with  
17 Chico or with you?

18 A. I believe that he left him with me. I'm almost  
19 sure all the time.

20 Q. And he wasn't crying because you and Chico are  
21 like family to him?

22 A. That's right.

23 Q. Do you remember telling the FBI agent, when you  
24 talked to him, that Chico gave the boy to Rogelio?

25 A. No.

1 Q. Rogelio wasn't family, was he?

2 A. No.

3 Q. If I understood you correctly, you said  
4 yesterday that on this particular occasion Obel had a  
5 gun and Rogelio or Roger had a knife. Is that true?

6 A. Obel had a firearm and Rogelio had the knife,  
7 the pocketknife here outside (indicating).

8 Q. When you are saying "here" and making a  
9 gesture, was it attached to his belt or to his pants  
10 somehow? What do you mean?

11 A. It's like a pocketknife like this and it was  
12 here. Well, I don't know where it was hooked or what.

13 Q. So, one gun, one knife; is that correct?

14 A. That's right.

15 Q. Did you tell us yesterday that the body of the  
16 little boy would not sink?

17 A. No, it didn't sink.

18 Q. Is that the way you remember it this morning?

19 A. Sure, of course.

20 Q. When you talked to the FBI back in 2011, did  
21 you tell them that the boy's body eventually went under  
22 the water due to the weight of the rocks?

23 A. Well, I couldn't tell you what he understood  
24 from what I said or what depth he understood, but the  
25 body of the little boy was not -- did not sink very

1 much.

2 Q. Okay. So, you did not tell them that the boy's  
3 body eventually went underwater due to the weight of  
4 rocks?

5 A. Of course it sank, but not that much.

6 Q. Okay. Were you having any trouble talking to  
7 them, the FBI agents?

8 A. What do you mean?

9 Q. You made a comment that you don't know what  
10 they understood. Are you thinking they misunderstood  
11 you?

12 A. Well, I don't know if they misunderstood me or  
13 not, but it was the first interview -- it was the first  
14 time I talked about that.

15 Q. Were you having trouble understanding their  
16 questions?

17 A. Well. Maybe I don't remember, but it's  
18 possible.

19 Q. Okay. Where were you when you claim this boy  
20 was actually killed. Where were you standing or sitting  
21 or where were you in relation to everybody else?

22 A. I always have said that we arrived, all three  
23 of us opened the doors. Rogelio was behind him. I was  
24 in the back seat with Rogelio, but on the other side.  
25 And we were -- when we were standing outside, he told



1 Rogelio: You know what you have to do. That's what --  
2 I heard that

3 MR. CORNELIUS: I'll make an objection to  
4 not being responsive. I don't know what's faster.

5 THE COURT: I understand.

6 Mr. Santana Martinez, you need to answer  
7 the question that's asked you and only that question,  
8 not anything else.

9 So, you can rephrase your question or  
10 re-ask that question.

11 THE WITNESS: Okay.

12 Q. (By Mr. Cornelius) I will try to do better with  
13 my questions. Where were you standing or sitting at the  
14 time you say the little boy was killed?

15 A. No. I was walking.

16 Q. Okay. Where?

17 A. At the place where the little boy was killed.

18 Q. Okay. Where was Rogelio?

19 A. He's here in the front directing Obel.

20 Q. One moment. Hold on.

21 In relation to the car -- front, back side,  
22 wherever -- where was Rogelio standing when you heard  
23 the gasping or whatever it was that you described  
24 hearing?

25 A. The gasp? Do you mean the scream from the

1 little boy?

2 Q. Yes.

3 A. I was walking to -- I was walking to vomit, to  
4 use the bathroom.

5 Q. Walking to vomit?

6 A. To use the bathroom. I was -- inside of me, I  
7 was -- I felt very much like vomiting and going to the  
8 bathroom.

9 Q. Okay.

10 MR. CORNELIUS: Can I use that up there,  
11 Judge?

12 THE COURT: Yes, you may.

13 MR. CORNELIUS: Can I get a Sharpie from  
14 the briefcase?

15 THE COURT: I think I have one here.

16 Q. (By Mr. Cornelius) Can you see that  
17 (indicating)?

18 A. Yes.

19 Q. That is a crude drawing of a car going that  
20 way.

21 In relation to this car, as well as you  
22 recall, where was Roger or Rogelio and the little boy at  
23 the time you heard the scream or the gasp or whatever  
24 you've described?

25 A. I cannot tell you where he was because I was

1 already walking. My back was facing them.

2 Q. Then where was the last place you saw Rogelio  
3 and the boy before you walked away?

4 A. When we stood up.

5 Q. Where was Rogelio the last place you saw him?

6 A. Standing on the side by his door.

7 Q. So, that would be towards the rear of the car?

8 A. That's right.

9 Q. On the driver's side?

10 A. That's right.

11 Q. Okay. So, that would be somewhere in this area  
12 over here (indicating)?

13 A. Yes.

14 Q. Was the boy with him?

15 A. No. When we all stood up, the little boy  
16 remained sitting on the seat.

17 Q. When you talked to the FBI two years ago, do  
18 you remember talking about this?

19 A. Well, I think so because -- of course, I talked  
20 about this because I'm talking about the story, how this  
21 happened.

22 Q. Okay. Do you remember telling them that  
23 Rogelio exited the vehicle and took Angelo to the  
24 driver's side rear of the vehicle?

25 A. Well, maybe I told him that because I have

1 always believed that Rogelio is the one who killed him  
2 because he ordered it. He is the one who told him: You  
3 know what you have to do.

4 Q. Okay. Did you make that statement to the FBI  
5 or do you not remember?

6 A. Of course. I'm always stating what happened on  
7 that night.

8 Q. So, you did say to the FBI that Rogelio exited  
9 the vehicle and took Angelo to the driver's side rear of  
10 the car?

11 A. Well, maybe I did tell him that.

12 Q. Okay. Where was Obel?

13 A. Standing -- the last time I saw him, he was  
14 standing with his door open by the -- on the side of the  
15 driver.

16 Q. Do you remember telling the FBI that Chico was  
17 at the front of the car looking around?

18 A. I don't remember telling him that.

19 Q. Okay. Where were you in relations to the car?

20 A. I was in the back seat.

21 Q. Still in the car?

22 A. No. What time are you talking about?

23 Q. When you heard the boy gasp.

24 A. No, I didn't see that. I was walking to go use  
25 the bathroom.

1 Q. Where were you in relation to the car?

2 A. I arrived -- I was on that side, Rogelio on  
3 this side, and the little boy on the back seat. And he  
4 was at the driver's seat, behind the driving wheel.

5 Q. Okay. Did you get out of the car?

6 A. All three of us arrived and we got out of the  
7 car.

8 Q. Okay. Did you get out of the car?

9 A. Yes.

10 Q. Did you get out of the back seat passenger  
11 side?

12 A. That's right.

13 Q. Where did you go?

14 A. I walked to the front.

15 Q. To the front.

16 So, you came out here and went that way  
17 (indicating)?

18 A. Yes.

19 Q. Where were you when you heard the child gasp,  
20 if you remember?

21 A. Of course I remember. I was walking a short  
22 distance when I heard the little boy scream, when he  
23 moaned.

24 Q. Had you cleared the car or what is your  
25 recollection on that?

1           A.    I don't remember exactly, but I think I already  
2 had passed the car because it happened shortly, almost  
3 immediately.

4           Q.    Okay.  At that point, do you see Chico in front  
5 of the car?

6           A.    Where I was using the bathroom, he could be  
7 seen that he was at the front.

8           Q.    Was that at the time the child moaned?

9           A.    No.

10          Q.    Before or after you heard from the child?

11          A.    After.

12          Q.    Okay.

13                   MR. CORNELIUS:  I don't think I need this  
14 anymore.  Can I just move it so --

15                   THE COURT:  Yes.

16          Q.    (By Mr. Cornelius) So, Mr. Martinez, from being  
17 there and observing what you observed and having thought  
18 about it, you think that Rogelio stabbed this little  
19 boy, right?

20          A.    No.  From what I heard.

21          Q.    You think Rogelio stabbed the boy or you don't  
22 think Rogelio stabbed the boy?

23          A.    Actually, I'm not sure who stabbed the little  
24 boy, but I have always thought that Rogelio did because  
25 he ordered it.

1 MS. TISE: Judge, can I, for the record,  
2 have him clarify what he means when he says "he ordered  
3 it"?

4 THE COURT: Clarify it. I will let you  
5 clear that up on redirect.

6 You can continue on your cross.

7 Q. (By Mr. Cornelius) Well, all right. So, I'm  
8 confused. Do you think Rogelio stabbed the boy or you  
9 don't think Rogelio stabbed the boy?

10 A. I always believed in my mind from what I heard  
11 and from the order that he gave that Rogelio killed him,  
12 but I actually did not see who killed him.

13 Q. Okay. Would it be helpful for you to say one  
14 more time that you believe Obel gave the order for the  
15 child to be killed? Would you like to say that again?

16 A. Yes, of course. He said: You know what you  
17 have to do.

18 Q. Okay. You want to say that again? Do you  
19 think there's any question about that, that that's what  
20 you're saying?

21 A. No, not completely.

22 Q. You sure?

23 A. One hundred percent.

24 Q. Okay. Did you tell us yesterday that when  
25 y'all got back to the -- I don't remember if it was the

1 apartment or the hotel, I think it was the hotel -- that  
2 there was some statement made by Obel or by somebody  
3 about keeping this to yourselves? Do you remember  
4 saying that about that yesterday?

5 A. That's right.

6 Q. What did you say? What did you say happened?

7 A. He made us promise to him, both of us to  
8 promise to him that we were never going to tell anybody  
9 about this.

10 Q. Are you making that sound like a threat, that  
11 Mr. Obel Cruz-Garcia threatened y'all not to say  
12 anything?

13 A. I have always -- I have always felt his  
14 threats.

15 Q. Okay. So, that's the point you're trying to  
16 make by that, correct?

17 A. Yes, of course.

18 Q. When you were talking to the FBI, do you recall  
19 telling them that while at the hotel, Chico, Rogelio,  
20 and Martinez made a pact never to tell what had happened  
21 that night?

22 A. That's right.

23 Q. Nothing about being threatened by my client not  
24 to tell then, just that y'all made a pact?

25 A. Of course not, but he is the boss. He



1 always -- I was always threatened by him. And I was in  
2 this trouble because of him. And he ended Ms. Diana's  
3 life and mine as well.

4 Q. It's all his fault?

5 A. And he has also harmed many other people.

6 Q. I see.

7 You, on the other hand, have never harmed  
8 anyone, have you?

9 MS. TISE: I will object.

10 THE COURT: That's sustained.

11 Mr. Santana -- I believe that's right --  
12 Santana Martinez -- excuse me -- please just answer the  
13 question. Don't add any additional details. The  
14 lawyers will ask you the questions that they're  
15 intending to get answers from you.

16 THE WITNESS: I'm sorry.

17 THE COURT: Don't elaborate on that any  
18 further.

19 Please proceed with cross-examination.

20 THE WITNESS: I'm sorry.

21 MR. CORNELIUS: Judge, I'm almost done.  
22 Can I review my notes for a minute, though?

23 THE COURT: Yes.

24 (Pause)

25 MR. CORNELIUS: Judge, I pass the witness.

1 THE COURT: Thank you.

2 Ms. Tise, do you have any redirect?

3 MS. TISE: I do not.

4 THE COURT: All right. We're going to  
5 break for lunch at this time.

6 I'm going to remind you not to talk amongst  
7 yourselves or with anyone else on any subject connected  
8 with the trial or to form or express any opinion thereon  
9 until the end of the trial. You're going to be going  
10 out to lunch today, so it will be an hour-and-a-half  
11 before we see you again.

12 You may go with the bailiff.

13 THE BAILIFF: All rise.

14 (Open court, defendant present, no jury)

15 THE COURT: May the witness be excused?

16 MS. TISE: Yes, Your Honor.

17 MR. CORNELIUS: Yes, Your Honor.

18 THE COURT: Take him on back.

19 (Lunch recess)

20 (Open court, defendant and jury present)

21 THE COURT: Please be seated.

22 We're back on the record in Cause  
23 No. 1384794 before the jury. And the defendant is at  
24 counsel table with his two lawyers, Mr. Cornelius and  
25 Mr. Madrid. Present for the State is Natalie Tise and

1 Justin Wood. And we are ready to proceed with the  
2 cross-examination of the witness, Special Agent Bill  
3 Ebersole, who has already been sworn.

4 You may proceed, Mr. Cornelius.

5 MR. CORNELIUS: Thank you, Judge.

6 **WILLIAM EBERSOLE,**

7 having been first duly sworn, testified as follows:

8 **CROSS-EXAMINATION**

9 **BY MR. CORNELIUS:**

10 Q. Special Agent Ebersole, my name is Skip  
11 Cornelius. We've never met or discussed this case, have  
12 we?

13 A. No, sir.

14 Q. Okay. Obviously, I've heard your testimony  
15 from yesterday, so I'll pick right up into it.

16 A. Yes, sir.

17 Q. You went to Pennsylvania to interview  
18 Mr. Martinez, correct?

19 A. I worked in Pennsylvania, so I was there and I  
20 responded to a lead from the Houston office.

21 Q. Okay. Then you went to the Pennsylvania --  
22 which prison unit was it?

23 A. It's Mashan Valley, which is -- I believe it's  
24 a private type prison. Sometimes prisoners are  
25 contracted out to private institutions. It's not in my

1 area. It's in the Pittsburgh office area.

2 Q. Okay. So, you went over there, though, to talk  
3 to Mr. Martinez?

4 A. Yes, sir.

5 Q. And you went over there because you were  
6 helping some special agents from Houston?

7 A. Yes.

8 Q. All right. And you had a partner?

9 A. Yes. The other agent that went was Special  
10 Agent Mike Hawthorne from the Pittsburgh division. So,  
11 it was actually his area that he worked.

12 Q. Correct.

13 And so, y'all sat down and talked to this  
14 gentleman, correct?

15 A. Yes, sir.

16 Q. Now, did you record any of the conversation?

17 A. No, sir.

18 Q. So, it's all an oral conversation?

19 A. Yes, sir.

20 Q. Unrecorded?

21 A. That is correct, sir.

22 Q. Do you know if your partner, the one from the  
23 Pittsburgh office, made his own 302?

24 A. He did not make a 302. Both of us made that  
25 one with the interview. He made a 302 with regard to

1 taking buccal swabs, I believe.

2 Q. Okay. And 302 is just the form number that the  
3 FBI uses for official reports?

4 A. Yes, sir.

5 Q. Okay. How much time did you spend reviewing  
6 the documents and/or photographs that you received from  
7 Houston before you conducted this interview?

8 A. I don't recall specifically, sir.

9 Q. Can you give me a ballpark?

10 A. It would be more than an hour.

11 Q. Okay. All right. So, you go in there to talk  
12 to this suspect, I guess we'll call him, although he  
13 hadn't been charged with this offense, right?

14 A. To my knowledge, he has not been charged.

15 Q. Okay. But you went in to talk to him, correct?

16 A. Correct.

17 Q. And to see if he would talk to you?

18 A. Correct.

19 Q. When he started talking to you, how did you  
20 record either in your mind or in writing what it was he  
21 was saying to you?

22 A. Well, I took notes.

23 Q. Okay. Is that standard procedure in the FBI,  
24 at least at that time?

25 A. Yes, sir.

1 Q. It wasn't standard procedure at that time to  
2 actually record these types of interviews, was it?

3 A. You are correct.

4 Q. So, when would it have been that you would have  
5 converted your notes to a typewritten 302?

6 A. It would have been within the next day I would  
7 have started typing it. It was a rather lengthy report,  
8 so I don't know if I finished it in a day. Then I have  
9 to run it by Agent Hawthorne as well to make sure he was  
10 okay with it.

11 Q. Okay. Because y'all obviously did your very  
12 best to record what was said in the conversation?

13 A. Yes, sir.

14 Q. And the report is 16 pages, basically,  
15 single-spaced?

16 A. Correct, sir.

17 Q. And typed?

18 A. Yes, sir.

19 Q. So, it's a pretty long report?

20 A. Yes, sir.

21 Q. Do you have a copy of it?

22 A. I may, sir. If I may.

23 Q. Why don't you get it out because I'm going to  
24 ask you some specific questions about it and I want to  
25 be able to refer to it to refresh your memory.

1 A. Okay, sir.

2 Q. Before I get into a few specific questions, did  
3 you have any problem communicating with Mr. Martinez?

4 A. No, sir.

5 Q. Was there any Spanish to English  
6 miscommunications that you detected?

7 A. Well, I had -- there were a couple of phrases  
8 that he used, which I put in my report, for emphasis I  
9 put in there in Spanish. There may have been times, for  
10 example, where I had to repeat myself or he had to  
11 repeat himself. We're in a prison where it's a  
12 relatively small room, we're huddled together trying to  
13 talk. So, it wouldn't be as easy to converse, for  
14 example, like it would be in here.

15 Q. Okay. Do you stand by the report that you  
16 wrote as being the most accurate version of what was  
17 said and being put together?

18 A. Well, I typed up what I believed to be the  
19 substance of the interview. And FBI 302 is a summary,  
20 and large, of an interview. It's not a transcript like  
21 we would get in court proceedings.

22 Q. Right.

23 A. I stand by my report.

24 Q. Okay. For example, if Mr. Martinez had told  
25 you at the time of the alleged killing he defecated in

1 his pants or defecated on the ground, you wouldn't have  
2 trouble understanding that, if he said those words?

3 A. Yes, sir, you are correct.

4 Q. Okay. Now, I'm not saying the word "defecate,"  
5 he might have said it in Spanish, but you know how to  
6 say that in Spanish, I take it?

7 A. Well, the majority of the interview was  
8 English. So, one way or the other, I would have  
9 understood it, yes.

10 Q. That's not something that would have escaped  
11 your attention that this was such a traumatic event that  
12 he defecated in his pants or on the ground?

13 A. Correct, sir.

14 Q. He never told you that, did he?

15 A. I don't recall that being said, sir.

16 Q. Well, is there any doubt about it? Do you need  
17 to read your report?

18 A. I don't recall that at all being put in my  
19 report. No, sir.

20 Q. Okay. I want to turn to Page 9 of the report  
21 so you can refresh your memory. And in the second  
22 paragraph, the second third sentence, did Mr. Martinez  
23 tell you that he was familiar with the Baytown area  
24 having sold drugs in that area?

25 A. Yes, sir.



1 Q. Now, that's not a miscommunication that you  
2 would have just made up. I mean, are you confident he  
3 told you that?

4 A. I believe so, yes, sir.

5 Q. Because part of the -- what you testified to  
6 yesterday was how on earth could he have known how to  
7 describe how to get over to Baytown -- do you remember  
8 being asked that -- or giving the roads and the names  
9 and all that stuff. Remember those questions on direct?

10 A. Somewhat. I remember being asked and not being  
11 familiar with the roads.

12 Q. And you not being familiar?

13 A. Correct.

14 Q. And the next paragraph, did Martinez advise you  
15 that he had been to Baytown many times and had friends  
16 there for the purpose of dealing drugs?

17 A. Yes, sir.

18 Q. Okay. And, again, that's not something that  
19 was miscommunicated or you have any question in your  
20 mind about; he actually told you he was very familiar  
21 with Baytown, right?

22 A. I don't think there is a miscommunication, sir.

23 Q. All right. Now, turn to Page 7, the second  
24 full paragraph on Page 7.

25 A. Okay.

1 Q. Let me orient you, if I can, with my question.  
2 This is after he claims Rogelio and Chico had left to go  
3 to, perhaps, the lady's apartment. I don't know that he  
4 ever said he saw them go in there, but at the apartment.  
5 Did he tell you that Rogelio and Chico returned  
6 approximately five to ten minutes later?

7 A. Yes, sir.

8 Q. And Chico was holding Angelo?

9 A. Yes, sir.

10 Q. Okay. And, again, that's -- you think that's a  
11 miscommunication?

12 A. I'm not aware of it, sir.

13 Q. On Page 8, the next page, the third paragraph  
14 talking about Chico and Roger returning from Diana's  
15 apartment. Did Mr. Martinez tell you he believed Chico  
16 handed Angelo to Rogelio? Do you see the second  
17 sentence on that third paragraph?

18 A. Yes. Martinez believed that Chico handed  
19 Angelo to Rogelio.

20 Q. Now, again, are you backing off that in any  
21 way? Do you think that's a miscommunication, you didn't  
22 have the names right, or --

23 A. I'm not aware of it, no.

24 Q. Okay. Let's go to Page 10 at the top. Was  
25 there a part of the conversation -- or time in the

1 conversation when Martinez was telling you about what  
2 happened where he alleges the boy was actually killed?

3 A. Yes, sir.

4 Q. And, of course, you were, I'm sure, vitally  
5 interested in hearing what he had to say about that,  
6 correct?

7 A. Yes, sir.

8 Q. And trying to determine what role people  
9 played?

10 A. Yes.

11 Q. And one of the ways to determine what role they  
12 played would be to sort of figure out where they were at  
13 the time that the killing allegedly took place.

14 A. Yes, sir.

15 Q. So, did Mr. Martinez -- let me back up for a  
16 quick second.

17 Since there is not a recording of it --  
18 obviously, I haven't heard any recording of it -- I  
19 don't know exactly how it was going, but were you kind  
20 of trying to give him the lead? Since he was talking to  
21 you, were you trying to get him to tell the story?

22 A. I wanted him to tell the story in his own  
23 words, yes, sir.

24 Q. Okay. So, was it more of him just telling you  
25 the story or him answering specific questions that you

1 were asking?

2 A. There was a mixture. There were parts where he  
3 would just narrate and I would pay attention and then  
4 maybe, for example, have to ask a little more detail.

5 Q. Okay. If you thought it was something  
6 important that you needed to get some detail on, you  
7 would ask him that, right?

8 A. Yes, sir.

9 Q. That's not exactly reflected in here, your  
10 questions, but where people were standing at the time  
11 the child was killed was probably pretty important to  
12 you, wasn't it?

13 A. Yes, sir.

14 Q. So, at the top of that did he tell you that  
15 Rogelio exited the vehicle and took Angelo to the  
16 driver's side rear area of the vehicle?

17 A. Yes.

18 Q. Now, I bet you made -- took great attention in  
19 getting that down as close to exact as you possibly  
20 could, right?

21 A. Uh-huh, yes, sir.

22 Q. And when you typed this out, referred to your  
23 note and talking to your compadre there, your partner  
24 there, this is pretty important and y'all would be very  
25 certain that's what he told you?

1 A. Yes, sir.

2 Q. A little bit down from that, did Martinez say  
3 to you that he did not see Rogelio stab or slash Angelo,  
4 but did hear Angelo cry out one time, he heard Angelo  
5 say "uh" and then he heard him hit the ground. Remember  
6 that?

7 A. Yes, sir.

8 Q. Then he said, very next thing, at least you  
9 have recorded: At this time Chico was at the front of  
10 the car looking around.

11 A. Yes, sir.

12 Q. Back to the sixth page -- I'm sorry. Not the  
13 sixth page, the twelfth page. Now, in the interview  
14 we're at the point where Mr. Martinez -- or you're  
15 getting him to tell you about what was done with the  
16 body.

17 A. Yes, sir.

18 Q. All right. And did he tell you they were  
19 trying to get the body to go underwater, put it in the  
20 water and make it submerge and they had to put rocks on  
21 it? Is that generally what the conversation was?

22 A. Yes, sir.

23 Q. At the end of that -- well, I don't if it's at  
24 the end of it, but on the -- one, two, three, four,  
25 five -- fifth full paragraph down there, did you record:

1 Martinez noted that Angelo's body eventually went down  
2 underwater due to the weight of the rocks?

3 A. That is correct, sir.

4 Q. So, do you stand by that statement?

5 A. Yes, sir.

6 Q. Again, on Page 12, the last paragraph on Page  
7 12, he was talking about the tires blowing out on the  
8 way back.

9 A. Okay.

10 Q. And you devoted quite a lot of space to that.  
11 And this is a pretty long paragraph, right?

12 A. Yes, sir.

13 Q. And you record that he told you about one tire  
14 and then a second tire blowing out, correct?

15 A. Yes, sir.

16 Q. Nothing about a third tire or fourth tire  
17 blowing out?

18 A. No, sir.

19 Q. Pages 14 and 15; 14 at the top he is telling  
20 you how he had gotten the car back to a hotel?

21 A. Yes, sir.

22 Q. Did he say to you that while at the -- you said  
23 he mentioned a hotel.

24 A. Correct.

25 Q. At he mentioned the hotel, Chico, Rogelio, and

1 Martinez made a pact to never tell what happened that  
2 night.

3 A. Correct.

4 Q. Now, when you use the words "made a pact," I  
5 don't know if he used those exact words, but was he  
6 saying to you that Chico threatened him or made him  
7 swear not to tell anybody or did all this at gunpoint or  
8 the three of them just made a pact not to tell anybody?

9 A. In that section, the sentence you are referring  
10 to, sounds to me like an agreement amongst three  
11 parties.

12 Q. Let's turn over to the next page, Page 15, the  
13 first full paragraph. Did he reiterate that where you  
14 wrote: Martinez further noted that at the hotel the  
15 night of the murder all three agreed not to tell anyone  
16 regarding the murder of Angelo.

17 A. Yes, sir.

18 Q. That's the way you remember hearing it?

19 A. Yes, sir.

20 Q. Skip back to Page 13, the second paragraph.  
21 And this is where he's telling you about them getting  
22 back to -- you wrote or he called it the apartment used  
23 by Angelita. Are you with me?

24 A. Yes, sir.

25 Q. He said he did not speak with Angelita, Chico

1 went in to sleep with Angelita. Do you remember that?

2 A. Yes, sir.

3 Q. Now, is there any way that could be confused  
4 with Chico staying up all night doing drugs?

5 MS. TISE: Your Honor, I will object. That  
6 calls for speculation and conclusion on the part of this  
7 witness.

8 THE COURT: That's sustained.

9 Q. (By Mr. Cornelius) Well, I mean, if he had said  
10 that Chico did not go in to sleep with Angelita, but  
11 stayed up all night doing drugs, you wouldn't have  
12 written in there Chico -- that he said Chico went in to  
13 sleep with Angelita, would you?

14 A. If there was mention of drug use, I would have  
15 typed it.

16 Q. All right.

17 MR. CORNELIUS: Pass the witness, Judge.

18 THE COURT: Any redirect, Ms. Tise?

19 MS. TISE: A couple of questions, Judge.

20 THE COURT: You may proceed.

21 **REDIRECT EXAMINATION**

22 **BY MS. TISE:**

23 Q. First of all, all of those things that you were  
24 just asked about --

25 A. Yes, ma'am.



1 Q. -- and all of the page numbers you were just  
2 given --

3 A. Yes, ma'am.

4 Q. -- are things that are in your report --

5 A. That is correct.

6 Q. -- right?

7 And your report is basically your  
8 documentation at some later time from your handwritten  
9 notes during your interview of what was said?

10 A. Yes, ma'am.

11 Q. Have you ever played the game telephone -- Do  
12 you know what that game is -- when were you a little  
13 kid?

14 A. No.

15 Q. Was there also a written statement taken from  
16 Carmelo Martinez Santana?

17 A. Yes. Towards the end of our time with him, we  
18 asked him to write in his own words what happened. I  
19 didn't want him to give law enforcement officer words.  
20 We gave him the opportunity to write out what he thought  
21 happened and at no direction from us.

22 MS. TISE: May I approach?

23 THE COURT: Yes.

24 MS. TISE: And I realize I can't offer  
25 this, Judge, but I just wanted to identify it. I've

1 marked it as State's Exhibit 93.

2 A. The third page would have my name on it and the  
3 date May 23rd, 2011.

4 Q. (By Ms. Tise) Okay. And did he also sign it?

5 A. Yes. Carmelo Martinez.

6 Q. And you conducted this interview with him in  
7 English, right?

8 A. Yes, ma'am.

9 Q. But you had him write his statement in Spanish?

10 A. Yes, ma'am.

11 Q. Why?

12 A. I believe he felt more comfortable reading and  
13 writing in Spanish.

14 Q. Okay. And is it fair to say that what came out  
15 of his mouth in his own words in his own native language  
16 would be the more accurate version of his story?

17 A. That handwritten statement is his story without  
18 any questions, without any elicitation.

19 Q. We have seen throughout this trial the  
20 difficulties of -- even with a Spanish speaker  
21 communicating with a witness who speaks in Spanish --

22 MR. CORNELIUS: Objection to the form of  
23 this. There is not a question. She's putting things in  
24 evidence that he couldn't possibly know.

25 THE COURT: Let her finish her question.

1 And then wait until I rule on the objection.

2 Q. (By Ms. Tise) You've translated things for  
3 people who are Spanish speakers before, have you not?

4 A. Yes.

5 Q. Things get lost in translation, do they not?

6 A. Sometimes, yes.

7 Q. And different words are used to convey  
8 different things in certain languages that mean  
9 something different in other languages?

10 A. Yes. Even English. You talk to someone from  
11 Texas, you talk to someone from Louisiana, and you  
12 talking to someone from Pennsylvania, it's a lit bit of  
13 a difference.

14 Q. A couple of other things came up in the  
15 statement. We talked about the fact that initially he  
16 was not going to tell you the story.

17 A. That is correct.

18 Q. And you talked to him for a little while about  
19 telling his story and he expressed some concerns to you,  
20 did he not?

21 A. Yes.

22 Q. Okay. Can you tell the jury some of the things  
23 that he was concerned about before he gave his  
24 statement?

25 MR. CORNELIUS: Objection to hearsay, Your

1 Honor.

2 THE COURT: That's sustained.

3 Q. (By Ms. Tise) Would you say that there were  
4 three or four things that he talked to you about that he  
5 was concerned about before he gave his statement?

6 A. He did have some concerns. For example, about  
7 testifying --

8 MR. CORNELIUS: Objection --

9 THE COURT: That's going to be sustained as  
10 to hearsay.

11 Q. (By Ms. Tise) I'm not going to ask you what his  
12 specific concerns were, but there were a number of them,  
13 weren't there?

14 A. There were concerns, yes.

15 Q. And did those concerns seem like legitimate,  
16 real concerns?

17 A. Yes. And if I could further expound, the  
18 Williamsport office, my primary office of the FBI, one  
19 of its main missions is the bureau prison. We have  
20 several prison facilities out there. So, when we do  
21 custodial interviews, we are very sensitive towards what  
22 would be concerns by another inmate.

23 Q. Okay. And mainly I'm just trying to get  
24 across the point that he did express those to you and he  
25 did seem legitimately afraid or concerned about certain

1 types of things?

2 A. Yes, ma'am.

3 MS. TISE: I pass the witness.

4 MR. CORNELIUS: A couple of more questions,  
5 if I might.

6 THE COURT: Yes.

7 **RECROSS-EXAMINATION**

8 **BY MR. CORNELIUS:**

9 Q. On this handwritten statement that he wrote,  
10 does it also contain some diagrams that he drew?

11 A. There were diagrams, yes, sir.

12 Q. Okay. And the diagrams were drawn to help you  
13 understand what he was saying?

14 A. There was a diagram to show positions of  
15 people, for example. And that in a sense, yes, it did  
16 help me understand.

17 Q. Okay. And also in terms of deciding what is  
18 the more accurate -- and you don't have any personal  
19 knowledge about this case, do you?

20 A. I've reviewed reports, I have talked to  
21 different investigators. I'm probably the least  
22 knowledgeable person in this courtroom about the case.

23 Q. So, you wouldn't be in a position to tell us  
24 what's accurate and what is inaccurate with respect to  
25 him or any other witness in this case, would you?

1           A.    I have very limited knowledge about this case.

2                   MR. CORNELIUS: All right. Pass the  
3 witness.

4                   THE COURT: Anything further, Ms. Tise?

5                   MS. TISE: No, Your Honor.

6                   THE COURT: May this witness be excused?

7                   MR. CORNELIUS: Yes, Your Honor.

8                   MS. TISE: Yes.

9                   THE WITNESS: Thank you.

10                   THE COURT: Not to be recalled. Is that  
11 correct?

12                   MR. CORNELIUS: Correct.

13                   MS. TISE: That's correct. We'd like him  
14 to be able to go home.

15                   THE WITNESS: Thank you.

16                   THE COURT: You are excused, sir. Thank  
17 you.

18                   THE WITNESS: Thank you.

19                   THE COURT: Call your next, Ms. Tise.

20                   MS. TISE: The State calls Micah Webb.

21                   THE BAILIFF: Your Honor, he has not been  
22 sworn.

23                           (Witness sworn)

24                   THE COURT: All right. Speak right into  
25 the microphone and keep your voice up, please.

1                   You may proceed, Ms. Tise.

2                                   **MICAH WEBB,**

3           having been first duly sworn, testified as follows:

4                                   **DIRECT EXAMINATION**

5           **BY MS. TISE:**

6           Q.    Would you introduce yourself, please, sir, to  
7           the jury?

8           A.    My name is Micah Webb.

9           Q.    And, Mr. Webb, can you tell the jury what you  
10          do for a living?

11          A.    I'm an investigator with the Harris County  
12          District Attorney's Office.

13          Q.    And how long have you been an investigator at  
14          our office?

15          A.    Six years.

16          Q.    Okay.  What did you do before that?

17          A.    Immediately prior to, I was a healthcare fraud  
18          investigator with the attorney general's office.  And  
19          prior to that, I was a Houston police officer.

20          Q.    Okay.  What are your duties at the D.A.'s  
21          office?

22          A.    Generally speaking, we assist the prosecution  
23          in preparing a case for prosecution.

24          Q.    Did you actually get asked to assist us in our  
25          preparation of this case against Obel Cruz-Garcia for

1 trial?

2 A. Yes, ma'am, I did.

3 Q. Okay. And you were involved pretty much not  
4 too long after the case got filed, correct?

5 A. Yes, ma'am.

6 Q. And there were certain things that you were  
7 asked to do in order to help get the case ready for  
8 trial, correct?

9 A. Yes, ma'am.

10 Q. At some point in time, were you asked to try to  
11 locate some of the witnesses in the case?

12 A. I was.

13 Q. And did you find that some of the witnesses  
14 have passed away?

15 A. Yes, ma'am.

16 Q. Specifically, tell the jury who David Kerr is.

17 A. David Kerr was a gentleman that was crabbing  
18 along the --

19 MR. CORNELIUS: Objection. I mean,  
20 that's -- may we approach the bench?

21 (At the Bench, on the record)

22 MR. CORNELIUS: I'm not sure I'd object to  
23 everything that -- but I don't have any control of what  
24 he is going to say. And for him to sort of go off what  
25 a witness' testimony would be, but not -- it's hearsay.



1 THE COURT: Just a general investigation as  
2 to what role he played and --

3 MS. TISE: He was a crabber who found the  
4 body. That is all he was going to say.

5 THE COURT: He was concerned about --

6 MS. TISE: The other stuff I want to  
7 establish -- and we will confine him to --

8 MR. CORNELIUS: Okay. That's fine.

9 (Open court, defendant and jury present)

10 THE COURT: Proceed, Ms. Tise.

11 Q. (By Ms. Tise) So, briefly, who was David Kerr?

12 A. David Kerr was the gentleman who had happened  
13 upon the remains of the victim.

14 Q. Okay. And were you able to find that  
15 individual?

16 A. No, ma'am.

17 Q. Why?

18 A. He was deceased.

19 Q. Also, when this case was filed, did you try to  
20 locate Angelo, Sr.

21 A. Yes, ma'am, I did.

22 Q. And what did you learn?

23 A. He was also deceased.

24 Q. Did you also try to locate Bienviendo Melo or  
25 Charlie?

1 A. Yes, ma'am.

2 Q. Were you able to find him?

3 A. My databases were a little -- well, not  
4 confusing, but he was either in the Dominican or in  
5 Wisconsin. I was never able to find him.

6 Q. Okay. Or pinpoint an exact location?

7 A. Yes, ma'am.

8 Q. Some people, obviously, you did find?

9 A. Yes, ma'am.

10 Q. We found and talked to Linda Hernandez, for  
11 example. We talked to the complainants in the case, the  
12 parents?

13 A. Yes, ma'am.

14 Q. Talked to Rudy eventually?

15 A. Yes, ma'am.

16 Q. Okay. And as you were working and trying to  
17 keep track of all of these names and all of these  
18 nicknames and what people looked like back then and what  
19 they look like now, did you create some tools to kind of  
20 help us do that?

21 A. Yes, ma'am, I did.

22 MS. TISE: May I approach?

23 THE COURT: Yes.

24 Q. (By Ms. Tise) I'll show what's been marked as  
25 State's Exhibit 34, and ask if you recognize this packet

1 (indicating)?

2 A. Yes, ma'am.

3 Q. And does this packet kind of summarize some of  
4 the key players in this case and what they looked like  
5 back then and what they look like now and some of their  
6 nicknames?

7 A. Yes, ma'am.

8 MS. TISE: Okay. And if I can just go  
9 through it quickly with the jury by publishing --

10 THE COURT: On the screen?

11 MS. TISE: Because it's -- I can do it this  
12 way.

13 THE COURT: Let's do it on the screen.

14 Yes, you may publish it.

15 Q. (By Ms. Tise) The jury has seen sections of  
16 this, but on Page 1 of State's Exhibit 34, who is that  
17 (indicating)?

18 A. That's Obel Cruz-Garcia, the charged defendant.

19 Q. And you were able to track down an old picture  
20 of him, correct?

21 A. Yes, ma'am.

22 Q. And a more recent photo of him as well?

23 A. Yes, ma'am.

24 Q. Page 2, who is that (indicating)?

25 A. That's a gentleman that went by the name of

1 Roger, now known to be Rogelio Aviles.

2 Q. Okay. And he also went by another name, did he  
3 not?

4 A. Yes, ma'am.

5 Q. What was that?

6 A. Candido Lebron.

7 Q. Okay. Page 3 of State's Exhibit 34, what do we  
8 have here (indicating)?

9 A. Mr. Carlos Santana, also known as Rudy.

10 Q. Okay. Carmelo Martinez Santana?

11 A. Yes, ma'am.

12 Q. I know that's confusing at times, but we all  
13 have met Rudy.

14 And this is an old picture of who  
15 (indicating)?

16 A. That's Angelita Rodriguez.

17 Q. And is this also an old picture of who?

18 A. That's Diana Garcia.

19 Q. And on the next page, obviously --

20 A. Arturo Rodriguez.

21 Q. And the next page, who is this (indicating)?

22 A. Bienviendo Melo, also known as Charlie.

23 Q. Okay. He also went by Fred Ferrer sometimes,  
24 too, didn't he?

25 A. I believe so, yes, ma'am.

1 Q. And finally, Leonardo German (indicating).

2 A. Yes, ma'am.

3 Q. Let's go back to Page 2 and this Rogelio Aviles  
4 person. You were asked to try to locate that  
5 individual?

6 A. Yes, ma'am.

7 Q. Okay. And that request became much more  
8 significant after Rudy was interviewed by the federal  
9 agents, correct?

10 A. Yes, ma'am.

11 Q. And were you able to track his whereabouts?

12 A. I was.

13 Q. And where was he living?

14 A. We located him in Georgia.

15 Q. Okay. And were you also able, through your  
16 investigation, to determine and confirm by AFIS that  
17 this individual that was going by the name of Candido  
18 Lebron and living in Houston back in the early 90s was,  
19 according to AFIS, the same individual that was living  
20 in Georgia at the time?

21 A. That is correct.

22 Q. Okay. And what is AFIS?

23 A. AFIS is an acronym for Automated Fingerprint  
24 Identification System. It's an automated database that  
25 collects fingerprints.

1 Q. So, basically, based on prints, we know that  
2 the person that we went to talk to in Georgia is the  
3 same person who was living here in Houston in the 90s  
4 and used the name Candido Lebron?

5 A. Yes, ma'am.

6 Q. Or Roger?

7 A. Yes.

8 Q. And once we located him, did an investigator go  
9 out to talk to him and interview him?

10 A. Yes, ma'am.

11 Q. Okay. And after that interview, did you assist  
12 in preparing capital murder charges against Rogelio  
13 Aviles Barroso?

14 A. Yes, ma'am, I did.

15 Q. And that happened after the interview in  
16 Georgia?

17 A. That's correct.

18 Q. Additionally, was there a point in time in the  
19 history of this case that you were asked to meet with  
20 the defendant and obtain a buccal swab from him?

21 A. Yes, ma'am.

22 Q. And did you do that?

23 A. I did.

24 MS. TISE: May I approach?

25 THE COURT: Yes.

1 Q. (By Ms. Tise) I'll show you what's been marked  
2 as State's Exhibit 68, and ask you if recognize that  
3 document (indicating)?

4 A. Yes, ma'am.

5 Q. What is that?

6 A. It's a consent to take a blood, saliva, or hair  
7 sample.

8 Q. And did Obel Cruz-Garcia -- was he presented  
9 with that form?

10 A. Yes, ma'am. It was interpreted to him, he  
11 understood, and he voluntarily provided his sample and  
12 signed the form.

13 Q. Okay. So, you actually had an interpreter come  
14 and explain the form to him?

15 A. Yes, ma'am.

16 Q. In Spanish?

17 A. Yes, ma'am.

18 Q. And he signed it?

19 A. Yes, ma'am.

20 Q. Okay. And when did that happen?

21 A. That was on February 16th of 2010.

22 MS. TISE: At this time, I offer State's  
23 Exhibit 68.

24 **(State's Exhibit No. 68 Offered)**

25 MR. CORNELIUS: No objection.

1 THE COURT: State's No. 68 is admitted  
2 without objection.

3 You may proceed.

4 **(State's Exhibit No. 68 Admitted)**

5 Q. (By Ms. Tise) I'm going to show you State's  
6 Exhibits 76 and 77, and ask you if you recognize what  
7 those items are (indicating)?

8 A. It's a swab container box that has my  
9 handwriting dated February 16th of 2010 at 11:20 a.m.  
10 with the defendant's name, my name, and evidence tape.

11 Q. Okay. And looking at the next exhibit, which  
12 is State's Exhibit 77 (indicating).

13 A. It's identical. It's a second sample. They  
14 both contain a singular cotton swab that was used to  
15 collect the cheek material to contain DNA.

16 Q. Okay. And is it standard procedure to collect  
17 two swabs?

18 A. Yes, ma'am.

19 Q. Okay. And you did that?

20 A. Yes, ma'am.

21 Q. And both of these swabs were collected from the  
22 cheek of Obel Cruz-Garcia, correct?

23 A. Yes, ma'am.

24 Q. Can you point him out for us and identify him  
25 for the record?



1           A.    The gentleman in the gray suit with the  
2 headphones (indicating).

3           Q.    That's the person you collected these samples  
4 from?

5           A.    Yes, ma'am.

6                    MS. TISE:   At this time, I will offer  
7 State's Exhibits 76 and 77 -- actually, I will withhold  
8 my offer at this point in time.  I'll get back to that  
9 in a minute.

10          Q.    (By Ms. Tise) Were you also asked to map out  
11 some of the locations that came up during the  
12 investigation of this case?

13          A.    Yes, ma'am.

14          Q.    And asked to document those locations in a way  
15 that we could present it to the jury and show them those  
16 locations?

17          A.    Yes, ma'am.

18                   MS. TISE:   Can you help me with the exhibit  
19 number, Justin?

20                   MR. WOOD:   It will be 93, Natalie.

21          Q.    (By Ms. Tise) I'm going to show you State's  
22 Exhibit 93.

23                   THE COURT:   93 is Rudy's written statement.

24                   MR. WOOD:   94.

25          Q.    (By Ms. Tise) All right.  I'm showing you

1 State's Exhibit No. 94. Does this exhibit fairly and  
2 accurately show a number of the locations that were  
3 important during the investigation of this case?

4 A. Yes, ma'am.

5 Q. And do you think that it would be helpful for  
6 the jury to be able to see this and kind of get their  
7 bearings on these individual places?

8 A. Yes, ma'am.

9 MS. TISE: At this time, I will offer  
10 State's Exhibit 94.

11 **(State's Exhibit No. 94 Offered)**

12 MR. CORNELIUS: I just want to look at the  
13 stuff that's written on it.

14 No objection.

15 THE COURT: State's Exhibit No. 94 will be  
16 admitted without objection.

17 You may proceed.

18 **(State's Exhibit No. 94 Admitted)**

19 MS. TISE: I would ask the witness to step  
20 down.

21 THE COURT: Yes. Just keep your voice up.

22 THE WITNESS: Yes, ma'am.

23 MR. CORNELIUS: Can I stand over there,  
24 Judge, so I can see?

25 THE COURT: Yes, you may.

1 Q. (By Ms. Tise) I'll try to do this where  
2 everyone can still see.

3 Okay. Take a look at that diagram. You  
4 have color coded and indicated what those individual  
5 locations are?

6 A. Yes, ma'am.

7 Q. Let's start at where it began at Diana and  
8 Arturo's apartment over on Fairway.

9 A. What's indicated, I guess, navy blue or close  
10 to it, dark blue, is the 6705 Fairway address.

11 Q. Okay. And let's go next to where Linda  
12 Hernandez and Bienviendo Melo were living at the time  
13 over on Westover.

14 A. That's indicated in red as 7523 Westover.

15 Q. And did you also locate what at one time was  
16 the Pasadena Motor Inn?

17 A. Yes, ma'am. Indicated in the green.

18 Q. Okay. And what freeway is that (indicating)?

19 A. This is 225.

20 Q. Okay.

21 A. Also known as the Pasadena Freeway, the LaPorte  
22 Freeway.

23 Q. Okay. And did you also locate the place where  
24 Angelo Garcia, Jr.'s body was discovered on Goose Greek?

25 A. Yes, ma'am. That's in teal.

1 Q. Okay. And did you also locate where Angelita  
2 and Obel Cruz-Garcia were living in an apartment rented  
3 for them by Diana?

4 A. Yes, ma'am. Up here in the yellow  
5 (indicating).

6 Q. Up in the Humble area?

7 A. Yes, ma'am.

8 Q. That apartment was on Golden Eagle up there,  
9 correct?

10 A. Correct.

11 Q. Is this location in Harris County? In fact, is  
12 all of Baytown in Harris County?

13 A. Yes, ma'am.

14 Q. Okay. And if you were going to Baytown and  
15 went down 225 to get to this location where the body was  
16 found, where would you -- what would be the next street  
17 you would go on after you got off of 225?

18 A. The most logical to that location is off of  
19 Highway 146, which goes over the Fred Hartman Bridge.

20 Q. You can take your seat.

21 A. (Witness complies).

22 Q. Additionally, did I ask you to estimate the  
23 time that it would take, if you went a straight shot,  
24 from Diana and Arturo's apartment on Fairway to the  
25 location where the body was dumped in Goose Creek?

1 A. Yes, ma'am.

2 Q. And did you prepare an exhibit that illustrates  
3 that?

4 A. Yes, ma'am, I did.

5 Q. I'm going to show you what's been marked as  
6 State's Exhibit 78 (indicating).

7 A. Yes, ma'am. That's the map that I put  
8 together.

9 Q. And did you indicate the miles that it takes --  
10 the number of miles between those two locations?

11 A. This particular exhibit, I used Google Maps.  
12 So, that's the estimate according to Google.

13 Q. And what's that estimate?

14 A. 20.7 miles.

15 Q. And what's the estimated time to get there?

16 A. Twenty-three minute.

17 MS. TISE: I will offer State's Exhibit 78.

18 **(State's Exhibit No. 78 Offered)**

19 MR. CORNELIUS: No objection.

20 THE COURT: State's Exhibit 79 is admitted  
21 without objection.

22 Please proceed.

23 **(State's Exhibit No. 78 Admitted)**

24 MS. TISE: May I publish?

25 THE COURT: Yes.

1 Q. (By Ms. Tise) And is that basically the map  
2 we're talking about that documented that route?

3 A. Yes, ma'am.

4 Q. And, finally, were you asked to go out to that  
5 Fairway location and get some photographs documenting  
6 some things that we didn't have from the original scene  
7 photos?

8 A. Yes, ma'am.

9 Q. Okay. And did you drive by that location and  
10 confirm the accuracy of these photos?

11 A. Yes, ma'am.

12 Q. I'm going to show you State's Exhibits 71  
13 through 74 and ask you if those are photos of the  
14 Fairway apartments now (indicating)?

15 A. With the exception of 73, which is a shot taken  
16 across the street from the address, yes, ma'am.

17 Q. Okay.

18 MS. TISE: At this time, I'm going to offer  
19 State's Exhibits 71 through 74.

20 **(State's Exhibit No. 71 through 74 Offered)**

21 MR. CORNELIUS: No objection.

22 THE COURT: State's Exhibits 71, 72, 73,  
23 and 74 are admitted without objection.

24 You may proceed.

25 **(State's Exhibit No. 71 through 74**

1                                   **Admitted)**

2           Q.    (By Ms. Tise) Looking at State's Exhibit 71, is  
3 that the front view looking at those apartments from  
4 Fairway (indicating)?

5           A.    Yes, ma'am, it is.

6           Q.    And State's Exhibit 72, can we see where we  
7 would be looking back from the street towards the  
8 apartment that at one time Diana and Arturo lived in?

9           A.    Yes, ma'am.

10          Q.    And can you point out where Apartment No. 3 is  
11 on your screen there to the left?

12          A.    It's the second apartment at the -- the first  
13 floor from the corner (indicating).

14          Q.    And right across the street from that apartment  
15 complex, there was now and there still is what?

16          A.    Barnett Stadium.

17          Q.    And if you look down Fairway, would this be  
18 your view (indicating)?

19          A.    Yes, ma'am.

20          Q.    Okay.  And it's going to be really hard to see,  
21 but right down there you can see the street sign where a  
22 little street intersects with Fairway down there  
23 (indicating)?  And it would be kind of behind Diana and  
24 Arturo's apartment.

25          A.    Yes, ma'am.

1 Q. Okay. And can you circle for the jury where  
2 that street sign is?

3 A. Just above my mark -- apparently there's  
4 something -- well, you see it (indicating).

5 Q. Okay.

6 A. It's between those lines.

7 MS. TISE: Can I have just a moment, Judge?

8 THE COURT: Yes.

9 (Pause)

10 MS. TISE: I'll pass the witness.

11 MR. CORNELIUS: Could I have just a second,  
12 Judge?

13 THE COURT: Yes.

14 (Pause)

15 MR. CORNELIUS: May I proceed, Judge?

16 THE COURT: Yes, you may.

17 **CROSS-EXAMINATION**

18 **BY MR. CORNELIUS:**

19 Q. Mr. Webb, I'm Skip Cornelius. We've met  
20 before, but we've not really talked about this case,  
21 right?

22 A. Yes, sir.

23 Q. I've just got a couple of questions for you.

24 Do you know Baytown? Have you been to  
25 Baytown?



1 A. I have been to Baytown.

2 Q. If you were anybody in the southern part, I  
3 guess, of Harris County or Houston and was asking for  
4 directions to Baytown, would you tell them 225 to 146?

5 A. Yes, sir.

6 Q. That's the way he may have gone?

7 A. Generally, yes.

8 MR. CORNELIUS: All right. Pass the  
9 witness?

10 THE COURT: Anything further?

11 MS. TISE: No, Your Honor.

12 THE COURT: May this witness be excused?

13 MS. TISE: Yes.

14 MR. CORNELIUS: Yes.

15 THE COURT: You may step down, sir.

16 THE WITNESS: Thank you, ma'am.

17 THE COURT: Please call your next.

18 MS. TISE: The State calls Matt Quartaro.

19 (Witness sworn)

20 THE COURT: Sir, keep your voice up and  
21 speak right into that microphone.

22 THE WITNESS: Certainly.

23 THE COURT: You may proceed, Ms. Tise.

24 **MATT QUARTARO,**

25 having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

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**BY MS. TISE:**

Q. Would you introduce yourself please, sir?

A. Yes. My name is Matt Quartaro.

Q. And can you tell the jury what you do for a living?

A. Yes. I'm a supervisor of forensics at Orchid Cellmark in Dallas, Texas.

Q. Okay. And Orchid Cellmark, is that an independent lab?

A. Yes. We're an independent lab who performs DNA testings on specimens from criminal cases around the country.

Q. And as an independent lab, you are not connected with or controlled by any police agency, correct?

A. That's correct.

Q. Okay. Can you tell the jury what your background and training is that qualifies you to do what you do?

A. Sure. I have a bachelor's degree in molecular biology from Texas A&M University and a master's degree in molecular biology from the University of Texas at Dallas. And I have approximately twelve years experience performing forensic DNA testing. We have a

1 vigorous training program at our laboratory that helped  
2 me to become qualified to become a DNA analyst. And  
3 then we have to perform continuing education every year  
4 to maintain that status.

5 Q. And have you testified as an expert in court  
6 before?

7 A. Yes, I have.

8 Q. And has that been on few or many occasions?

9 A. Approximately 60 times.

10 Q. Okay. And have you testified and been  
11 recognized as an expert in the courts here in Harris  
12 County, Texas?

13 A. I have.

14 Q. Okay. Tell the jury what DNA is.

15 A. Sure. DNA is a chemical that's found in every  
16 cell in your body, except for red blood cells. The long  
17 name for it is deoxyribonucleic acid. And it's  
18 basically the blueprints, the genetic information that  
19 makes you who you are. The majority of DNA is the same  
20 from person to person, but what we concentrate on in  
21 doing forensic DNA testing is those small differences  
22 that make each person unique.

23 Q. And the testing that you do, how is it used in  
24 a forensic setting?

25 A. Basically, we obtain a specimen from the crime

1 scene samples. So, it may be a blood or semen or  
2 another biological fluid. And we'll try to see if we  
3 can obtain a DNA profile from that sample. We'll then  
4 compare it to a DNA profile that we'll get from  
5 potential parties that were associated with a crime  
6 scene, whether it be a victim or a potential suspect,  
7 and see if those two profiles, you know, match or if we  
8 can exclude some of those people from being a  
9 contributor.

10 Q. Okay. And were you asked to do just that in  
11 the case involving Obel Cruz-Garcia that we're here on  
12 today?

13 A. Yes.

14 Q. When did Orchid Cellmark first become involved  
15 in assisting with the case against Obel Cruz-Garcia?

16 A. It was -- may I refer to my notes?

17 Q. Yes.

18 A. Thank you.

19 We first received evidence in this case on  
20 October 3rd of 2007.

21 Q. Okay. And who did you receive that evidence  
22 from?

23 A. I believe Sergeant Eric Mehl from the Houston  
24 Police Department sent this evidence to us for testing.

25 Q. And can you tell the jury what evidence you

1 received in 2007?

2 A. Yes, ma'am. We received a cigar, a sexual  
3 assault kit, and reference samples from Diana Garcia and  
4 Arturo Rodriguez.

5 Q. At that point in time, had you received any  
6 sample from anyone named Obel Cruz-Garcia?

7 A. No.

8 Q. Okay.

9 MS. TISE: May I approach?

10 THE COURT: Yes.

11 Q. (By Ms. Tise) I'm going to show you some items  
12 and ask you to identify them. First, State's Exhibit 32  
13 (indicating).

14 A. Yes. This is the cigar that we received in  
15 this case.

16 Q. Okay. In 2007?

17 A. Correct.

18 Q. And I'm showing you State's Exhibit 33  
19 (indicating).

20 A. Yes. This is the sexual assault kit that we  
21 received in this case.

22 Q. And I'm showing you State's Exhibit 95  
23 (indicating).

24 A. Yes. This is a cutting from a pair of panties  
25 that we tested.

1 Q. Okay. And what were you asked to do with those  
2 items when you first received them in 2007?

3 A. We were asked to first see if we could identify  
4 any semen that was present on the sexual assault kit or  
5 the panties. And if we could, to see if we could  
6 develop a DNA profile that may be suitable for  
7 comparison.

8 Q. Okay. And did you do that?

9 A. Yes.

10 Q. Okay. And were you also asked to do something  
11 with the cigar?

12 A. Yes. We were also asked to see if we could  
13 obtain a DNA profile from someone who would have smoked  
14 the cigar as well.

15 Q. Okay. And did you also have instructions to do  
16 something with the panties?

17 A. With the panties, yes. As I said, to look for  
18 any potential semen there and see if we could generate a  
19 DNA profile from that as well.

20 Q. Okay. Now, let's start with -- well, where do  
21 you want to start; the cigar, the panties, or the rape  
22 kit?

23 A. For me -- the cigar is Sample No. 1, so that's  
24 the easiest for me.

25 Q. Can you tell the jury when dealing with a cigar

1 specifically, that's an item that you are not looking  
2 necessarily for DNA in the form of semen, obviously,  
3 correct?

4 A. That's correct. Basically, what we're looking  
5 for on a cigar is the DNA from the person who would put  
6 the cigar in their mouth as they're smoking it or  
7 chewing on it. It may even be from their fingers as  
8 they're holding it while they're smoke it. So, really,  
9 it's DNA close to the mouth and the end of that cigar  
10 that we're trying to identify.

11 Q. And those cells are a different type of cells,  
12 are they not --

13 A. That's correct.

14 Q. -- than semen, correct?

15 A. Yes. You would expect to find what's called  
16 epithelial or skin cells on that type of item. It  
17 wouldn't be sperm cells that you would find in the  
18 sexual assault portion of it, yes.

19 Q. And your science allows you to actually  
20 differentiate between those two kinds of cells in your  
21 analysis, correct?

22 A. Yes. And we're looking for -- we can visually  
23 look at cells and determine if there are sperm cells  
24 present. And if there are sperm cells present, then we  
25 do slightly different testing than if we're just looking

1 for epithelial cells.

2 Q. Okay. So, let's talk about the cigar. You  
3 were asked to see if you could develop a profile. And  
4 that was the limit of what you were asked to do at that  
5 point, correct?

6 A. That's correct.

7 Q. And were you able to do that?

8 A. Yes. We were able to obtain a complete DNA  
9 profile from an unknown male from the cigar.

10 Q. Okay. And the only samples that you had at  
11 that point to compare, were you asked to compare those  
12 samples at that point?

13 A. Yes. We had reference samples from Diana  
14 Garcia and from Arturo Rodriguez. So, we did compare  
15 the DNA profile that we obtained from the cigar to those  
16 two reference samples. Neither one of them matched.  
17 So, we said it originated from an unknown male.

18 Q. And, of course, you documented and prepared a  
19 report that included that profile that you developed  
20 from the cigar?

21 A. That's correct.

22 Q. What did you do next in 2007?

23 A. Well, sort of at the same time we also tested  
24 the vaginal swabs, the vaginal swabs from the sexual  
25 assault kit. We screened those for the presence of



1 semen. And sperm were identified on the vaginal swabs.

2 Q. And I will ask you to take a look inside that  
3 sexual assault kit because I believe the vaginal swabs  
4 in there are individually marked.

5 A. Yes. This is the vaginal swabs envelope.

6 Q. Okay.

7 A. Inside there --

8 Q. And it's marked as?

9 A. State's Exhibit 33-B.

10 Q. Okay. And do you recognize that as the vaginal  
11 swabs that you were asked to test?

12 A. Yes. They're labeled vaginal swabs and smear  
13 on the envelope. And this is our purple evidence tape  
14 in here, as well as our sample stickers as well. Inside  
15 there are two boxes, which would contain the vaginal  
16 swabs as well as some smears that were -- we didn't --  
17 these came with the kit.

18 Q. Okay. And when you analyzed the vaginal swabs,  
19 what result did you get?

20 A. Like I said, we identified semen. And when you  
21 identify semen on an item of evidence, you can perform  
22 what's called the differential extraction. And as we  
23 were speaking about earlier, if there are epithelial  
24 cells that you would expect to find from the female  
25 victim or from --

1 Q. Okay. Let's take this slowly. You've got  
2 vaginal swabs?

3 A. Correct.

4 Q. You are going to expect the female that you got  
5 those vaginal swabs skin cells to be present, correct?

6 A. Correct.

7 Q. Okay. Go on.

8 A. Sure. And so, the skin cells are basically --  
9 or then we also found semen here. So, the sperm cells  
10 are a much hardier type of cell. They came from a male,  
11 obviously. So, we can separate those cells out during  
12 our testing so that we have two separate fractions.  
13 One of them which contains the epithelial cells or skin  
14 cells and one that would contain the sperm cells. So,  
15 we have an epithelial fraction and a sperm fraction.

16 The epithelial fraction was consistent with  
17 Diana Garcia. And the sperm cell fraction was a  
18 mixture, meaning there was more than one individual  
19 present who contributed the DNA to the sample.

20 Q. Did you take the known sample that you were  
21 given of Arturo Rodriguez and compare it to that mixture  
22 of semen cells that you found in Diana's vaginal swabs?

23 A. Yes, we did.

24 Q. And what did you find?

25 A. That he could not be excluded as a possible

1 contributor to this vaginal swab.

2 Q. Okay. Did you also find that there was some  
3 male DNA there that was not consistent with Arturo  
4 Rodriguez?

5 A. Yes.

6 Q. Okay. And did you learn anything about that  
7 profile in particular?

8 A. That it was consistent with the -- basically,  
9 what we said is that Arturo Rodriguez and the unknown  
10 male donor from the cigar could not be excluded as  
11 potential contributors to this sample.

12 Q. Okay. So, in summary, you got Diana's DNA on  
13 epithelial cells from her vagina?

14 A. Correct.

15 Q. You also have Arturo Rodriguez's sperm, the  
16 sample is consistent with Arturo Rodriguez's DNA?

17 A. Yeah. He could not be excluded as the  
18 contributor.

19 Q. But you also know that there is another  
20 individual based on the DNA that you found?

21 A. Correct.

22 Q. Okay. And that other individual is a male  
23 because we're still talking about sperm fractions,  
24 correct?

25 A. Correct.

1 Q. And that male cannot be excluded as being the  
2 same male as the person that you found on the cigar?

3 A. Correct. That profile from the cigar could  
4 also not be excluded as a contributor to that vaginal  
5 swab.

6 Q. All right. What did you do next?

7 A. We also tested a cutting from a pair of  
8 panties --

9 Q. Okay.

10 A. -- as well.

11 And, again, the first thing that we did was  
12 screen it and look for the presence of semen, which we  
13 did find. And, again, we performed the same  
14 differential extraction, which separated out the skin or  
15 epithelial cells from the sperm cells. The epithelial  
16 fraction from the sample matched the DNA profile from  
17 Diana Garcia. So, again, it was her panties and her DNA  
18 profile was obtained in the epithelial fraction.

19 The sperm cell fraction, again, was a  
20 mixture, meaning there was more than one person's DNA  
21 present. There was a major profile. And what a major  
22 profile is, is the person who contributed the most DNA  
23 to this sample. So, you can tell relatively who  
24 contributed the most DNA to the sample. So, that is a  
25 major profile, which was consistent with the DNA profile

1 that we obtained from the cigar. And then Diana Garcia  
2 and Arturo Rodriguez could not be excluded as the minor  
3 contributors to this sample.

4 Q. Okay. So, when you tested the panties or the  
5 crotch of the panties, you had, again, a mixture of DNA?

6 A. Correct.

7 Q. And the epithelial cells on the crotch of the  
8 panties were Diana Garcia's?

9 A. Correct.

10 Q. And the sperm was separated out?

11 A. Correct.

12 Q. And Arturo Rodriguez contributed to that  
13 mixture?

14 A. Correct. He could not be excluded, yes.

15 Q. But the major profile, the person who  
16 contributed the most DNA to that sample, was an unknown  
17 individual whose DNA was also on that cigar?

18 A. Correct.

19 Q. And was also on the swabs from the vagina or  
20 could not be excluded from those swabs?

21 A. That's correct.

22 Q. Okay. Did you document those results?

23 A. Yes.

24 Q. Okay. And did you send those results to  
25 Sergeant Mehl?

1 A. Yes, I did.

2 Q. At some point later, did you hear from Sergeant  
3 Mehl again?

4 A. Yes. We received some more evidence December  
5 7th of 2007.

6 Q. Okay. And what evidence did you receive from  
7 Sergeant Mehl in December?

8 A. We received samples from four different  
9 potential suspects.

10 Q. Okay. And tell the jury who those people are.

11 A. The first sample was from Candido Lebron.

12 Q. Okay.

13 A. The second sample was from Bienviendo Melo.

14 Q. Uh-huh.

15 A. The third sample was from Leonardo German or  
16 German. And the last sample was from Carmelo Martinez.

17 Q. Okay. Let's talk about the last one first.

18 A. Sure.

19 Q. Did you have enough DNA on the sample you  
20 received from Carmelo Martinez at that time to make a  
21 comparison to the results that you had gotten on the  
22 cigar and the items from the rape kit?

23 A. No, we didn't. You know, basically when you  
24 receive a reference sample, you expect to get a complete  
25 DNA profile that you can compare to any of the evidence

1 samples that we tested. For Carmelo Martinez, we  
2 obtained a very partial profile from his reference  
3 samples. So, weren't able to make any comparisons to  
4 those evidence samples that we had already tested.

5 Q. At that time?

6 A. Correct.

7 Q. Okay. Let's talk about the other three  
8 individuals that you received reference samples on.

9 A. Sure. The other three individuals were  
10 excluded as possible contributors to any of the samples  
11 tested.

12 Q. Okay. So, they weren't on the cigar, they  
13 weren't on any of the items from the rape kit that you  
14 tested?

15 A. That's correct.

16 Q. Did you prepare a report about that?

17 A. Yes.

18 Q. And did you send that off to Sergeant Mehl?

19 A. Yes.

20 Q. At some point later on -- and let's just skip  
21 ahead a little bit to deal with Carmelo all at once.

22 A. Sure.

23 Q. -- did you receive a more full sample from  
24 Carmelo Martinez?

25 A. Yes, we did. On June 2nd of 2001, we had

1 obtained a new profile from Carmelo Martinez. And at  
2 this point, we were able to generate a complete DNA  
3 profile and he was excluded as a potential contributor  
4 to all of the samples that were tested as well.

5 Q. Okay. Now, let's go back into our time order.  
6 When did you -- that's right. When did you get the  
7 sample from -- the sample of Carmelo Martinez?

8 A. It was June 2nd, 2011.

9 Q. Okay. Now let's go back to after you notified  
10 Sergeant Mehl of the results of the testing from Candido  
11 Lebron and Bienviendo Melo and Leonardo German that was  
12 sent to you in December of 2007. Did Sergeant Mehl come  
13 calling again?

14 A. Yes.

15 Q. About when was that?

16 A. May 28th, 2008, we received a reference sample  
17 from Obel Cruz-Garcia.

18 Q. Okay.

19 MS. TISE: May I approach?

20 Q. (By Ms. Tise) I'm going to show you two items  
21 that are already in evidence, State's Exhibits 65 and 66  
22 (indicating).

23 A. Okay. This is the reference sample that we  
24 obtained from Obel Cruz-Garcia. We actually received  
25 both of these envelopes. We actually tested the sample



1 from this envelope. This is our purple evidence tape  
2 here, along with our evidence sticker as well.

3 Q. Okay. And did you test what's in State's  
4 Exhibit 66, the second reference sample?

5 A. No, ma'am. No, we did not.

6 Q. And why is that?

7 A. Well, we received, basically, two different  
8 swabs and that's more than enough DNA to perform our DNA  
9 testing. So, we just tested one of the swabs that was  
10 sent to us.

11 Q. And is that common practice, to use what you  
12 have and reserve a sample in case further testing is  
13 ever requested by either the State or the defense?

14 A. Absolutely. We never want to consume evidence  
15 when we have the opportunity. That way, if there is any  
16 retesting that needs to be done, we can do that.

17 Q. So, you tested the buccal swab in State's  
18 Exhibit 65, correct?

19 A. Correct.

20 Q. And were you able to obtain a DNA profile from  
21 State's Exhibit 65?

22 A. Yes, we did.

23 Q. And does your envelope here indicate who sent  
24 you that swab? Where did it come from?

25 A. As far as the remarks on it?

1 Q. What individual sent you that?

2 A. Griselle Guzman from the FBI.

3 Q. Okay. And does it indicate whose swab that is?

4 A. Yes. Obel Julian Cruz-Garcia.

5 Q. Okay. And when you tested this buccal swab in  
6 State's Exhibit 65, what result did you get?

7 A. We obtained, obviously, his profile. And we  
8 compared that to the samples that we had already tested.

9 Q. Okay. And what result did you get from that  
10 comparison?

11 A. Sure. We'll just go through the samples again  
12 as we have before.

13 Q. Okay.

14 A. So, the DNA profile that we obtained from the  
15 cigar, it matched the DNA profile that we obtained --  
16 that we had from Obel Cruz-Garcia.

17 Q. It was an absolute match?

18 A. Yes.

19 Q. Okay. And the DNA profile that you obtained  
20 from the sexual assault kit vaginal swabs?

21 A. Yes. He could not be excluded as a possible  
22 donor to the sperm fraction of the vaginal swabs.

23 Q. Okay. And the DNA that you obtained from the  
24 cutting of the panties?

25 A. Yes. We talked about there was a major profile

1 or major contributor. And the major profile we obtained  
2 from the cutting of the red panties matched the DNA  
3 profile from Obel Cruz-Garcia.

4 Q. So, he was the major contributor?

5 A. That's correct.

6 Q. There is more of his DNA there than Diana's  
7 husband's?

8 A. That's correct.

9 Q. There is more of his DNA there on the panties  
10 than Diana's?

11 A. In the sperm fraction, yes. I can't really say  
12 as a whole.

13 Q. All right. And so, you were able to determine  
14 that the DNA, the sperm in her panties, belonged to Obel  
15 Cruz-Garcia?

16 A. The major profile from the sperm, yes.

17 Q. Okay.

18 MS. TISE: Your Honor, at this time, I'm  
19 going to offer State's Exhibit 95, the cutting from the  
20 panties, the crotch of the panties. I'm going to offer  
21 State's Exhibit 33 and the individual swabs inside.

22 THE COURT: Is that 33-B?

23 MS. TISE: 33-B. I'm going to go ahead and  
24 call it 33 and its contents, which are 33-A through D,  
25 the contents of the rape kit.



1 nurse that provided the HPD Crime Lab with the panties  
2 from which they made a cutting and from, I guess, this  
3 cutting -- let me ask one question of the witness so I  
4 don't misstate something.

5 THE COURT: Okay. You can ask one  
6 question, but you're kind of mixing argument with  
7 testimony here, so...

8 MR. CORNELIUS: I don't want to make a  
9 mistake.

10 Did y'all make your own cutting from the  
11 panties or you used the cutting that HPD provided you?

12 THE WITNESS: We talked about this in the  
13 hearing. The HPD had cut out the entire crotch of the  
14 panties. We took a cutting from that crotch cutting.

15 MR. CORNELIUS: All right. But the overall  
16 cutting is what you got from HPD?

17 THE WITNESS: We received -- well, the  
18 entire crotch was cut. So, yes, we received the cutting  
19 of the crotch and then we took our own cutting from that  
20 crotch.

21 THE COURT: Which was all contained within  
22 the sexual assault kit; is that correct?

23 THE WITNESS: It was packaged separate.  
24 It was packaged as a cutting, but initially, I believe,  
25 it all was.

1 THE COURT: Okay.

2 MR. CORNELIUS: So, we don't have the  
3 person or the procedures or the quality control or any  
4 testimony as to how those panties were preserved and cut  
5 and kept. And that's the part that we wanted to go  
6 into. And I understand you're not going to let us, so  
7 we're not going to. But I think that maybe I haven't  
8 said in my motion that we have a breach in the chain of  
9 custody. We have completely jumped a whole step in  
10 what's being offered here because we don't have any  
11 input from the HPD Crime Lab. And that's what we're  
12 trying to get into and that's the basis of why we're  
13 objecting to the admissibility of this stuff.

14 I don't think that's too different from  
15 what I said before, but I won't have to say it anymore.

16 THE COURT: Right, it's not. And so, I'm  
17 going to rule on your objection right now, which I'm  
18 going to allow in State's Exhibit No. 95, which is the  
19 cutting from the panties. And it's my understanding --  
20 although, it seems like you are saying something  
21 different now -- that the cutting from the panties was  
22 delivered to you by Sergeant Eric Mehl when he delivered  
23 the sexual assault kit that he picked up from the HPD  
24 Crime Lab. Is that correct? Am I remembering correct?

25 MS. TISE: Yes.

1 THE COURT: So, that was delivered to the  
2 laboratory by Sergeant Eric Mehl. Correct?

3 THE WITNESS: That's correct.

4 THE COURT: So, I'll allow that in over  
5 objection.

6 And I'm going to allow State's Exhibits 33  
7 and 33-A, B, C, and D, which was the panties from the  
8 sexual assault kit, the vaginal swabs and smears from  
9 the sexual assault kit, the saliva sample of Diana  
10 Garcia in the sexual assault kit, and the blood sample  
11 of Diana Garcia from the sexual assault kit. Okay? And  
12 that's all in over objection. And your objection is  
13 noted.

14 **(State's Exhibit No. 33, 33-A, 33-B, 33-C,**  
15 **33-D, and 95 Admitted)**

16 MR. CORNELIUS: Thank you, Judge.

17 MS. TISE: Can we just say 33 and its  
18 contents and then specifically labeled items A, B, C,  
19 and D? Because there are some other items in 33 --

20 THE COURT: Which are not admitted.

21 MS. TISE: Okay. I will do that.

22 THE COURT: They're not marked, they're not  
23 admitted, or anything. So, I'm not going to let all  
24 that in unless you want to go through and say what those  
25 items are. I have no idea what's written on them or

1 anything else. We haven't reviewed them.

2 MS. TISE: Okay.

3 THE COURT: So, I don't want to put those  
4 in.

5 Specifically, in regards to your objection,  
6 I will let you cross-examine this witness on any  
7 perceived contamination or whether the items that he  
8 received and examine were degraded in any way or whether  
9 he could determine if they had been contaminated in any  
10 way. I will allow that in cross-examination. I believe  
11 you've already gotten into, in your prior cross, that  
12 some of this evidence at one point did go to HPD Crime  
13 Lab. And you can ask him if he can tell if anything  
14 happened to it there. But I will not allow in the  
15 results of the Houston Crime Lab or any testing that was  
16 done by the HPD Crime Lab.

17 So, is that clear?

18 MR. CORNELIUS: I can ask if he can tell it  
19 came from the HPD Crime Lab?

20 THE COURT: I think we went there. If  
21 you --

22 MR. CORNELIUS: I'm afraid to use the  
23 words --

24 THE COURT: Let's ask him right now so we  
25 don't go into a lot of stuff that -- can you tell that



1 it went to the HPD Crime Lab from your evaluation?

2 THE WITNESS: I can tell there was some  
3 testing done and we received it from the Houston Police  
4 Department, from Sergeant Mehl. So, I couldn't tell you  
5 who tested it or who touched it at the crime lab.

6 THE COURT: Then he can answer those  
7 questions right there. Okay?

8 MS. TISE: Well, he can tell that somebody  
9 tested it is going to open the door to the test. I  
10 mean...

11 THE COURT: Not if they're inadmissible.

12 MS. TISE: If he says somebody tested it, I  
13 thought that was the whole thing that we weren't going  
14 to get into, was the testing.

15 THE COURT: We're not getting into the  
16 results of the testing. This goes only to any  
17 contamination issues or any storage issues as to whether  
18 it was degraded or anything.

19 MS. TISE: And I understand that, but I  
20 think if he gets into the fact that it was tested, that  
21 opens up the whole thing that you ruled wasn't going to  
22 come in.

23 THE COURT: He can't open his own door.  
24 Okay? I'm not going to allow him to go into that. If  
25 he wants to ask that question in regards to

1 contamination and degradation of the evidence, he may.  
2 And he can argue whatever he wants to, which is a  
3 reasonable conclusion from the evidence if he wants to,  
4 but he's not going to be able to go into the testing.  
5 He can, by asking that question, open his own door to  
6 the testing of the HPD laboratory. Okay?

7 All right. Let's bring in the jury.

8 (Open court, defendant and jury present)

9 THE COURT: Please be seated.

10 We're ready to proceed with the  
11 cross-examination of the witness, Matt Quartaro.

12 You may proceed, Mr. Cornelius.

13 MS. TISE: I hadn't passed him, but I will,  
14 Judge.

15 THE COURT: Sorry.

16 MS. TISE: That's okay.

17 THE COURT: You may proceed, Mr. Cornelius.

18 MR. CORNELIUS: All right.

19 **CROSS-EXAMINATION**

20 **BY MR. CORNELIUS:**

21 Q. Mr. Quartaro, we met briefly before this trial  
22 started, correct?

23 A. That's correct.

24 Q. But before that, we had never met or talked  
25 about this case, right?

1 A. No, sir.

2 Q. Does Orchid Cellmark have quality control  
3 procedures?

4 A. Yes, sir, we have many quality control  
5 procedures.

6 Q. And why would you have that?

7 A. We're always concerned about the quality of our  
8 results. It's very sensitive technology, so we want to  
9 make sure we're getting the best and most accurate  
10 results that we can to all of our clients.

11 Q. Do lawyers sometime scream about contamination  
12 or -- I mean, that's a common claim, right?

13 A. Yes, sir, it is. And it's a concern that we  
14 take very seriously. Sometimes -- like in this case,  
15 it's a very old case, there is a limited amount of  
16 evidence, and we want to make sure we get things right  
17 the first time.

18 Q. And so, you have quality control to try to  
19 prevent there from being any contamination, right?

20 A. Both to prevent contamination and to identify  
21 it if it does happen.

22 Q. Because if evidence is contaminated, if it is  
23 contaminated, doesn't necessarily mean it's done  
24 intentionally, right?

25 A. No, sir.

1 Q. I mean, contamination can just be an accident?

2 A. It could, yes.

3 Q. And it's kind of hard to see because you  
4 actually can't see contamination?

5 A. I wouldn't say that. You can tell from the  
6 testing results or from the condition of the evidence.  
7 There are many different ways that things can be  
8 contaminated. So, I'm not sure exactly what you're  
9 speaking to, but...

10 Q. Well, some of them you can't see, though, can  
11 you, with the naked eye at least?

12 A. Well, I mean, you wouldn't be able to -- I  
13 mean, basically what you are looking for is  
14 contamination in the results themselves, which you  
15 really can't see with a naked eye. We're talking about  
16 DNA, it's very small amounts. But, I mean, that's why  
17 we have quality control steps, like I said, to identify  
18 them. We have computer software programs that search  
19 all of the DNA profiles that we obtain from each case to  
20 the DNA profiles that have been tested in our lab in the  
21 past two months to all of our employees to make sure  
22 there isn't any contamination from sample to sample in  
23 our laboratory. We have checks, when samples are moved  
24 from one tube to another, to make sure we're moving them  
25 from the correctly labeled tubes. We wear gloves and

1 masks and lab coats and hair nets to prevent ourselves  
2 from contaminating the evidence. We bleach all of our  
3 instruments in between each use. We only have one  
4 sample open at a time. So, there is a long list of  
5 quality control steps that we have in the laboratory to  
6 prevent contamination.

7 Q. Now, can Orchid Cellmark control how some other  
8 lab attempts to control or have quality control?

9 A. No, sir.

10 Q. Okay. The evidence that you received in this  
11 case came from where?

12 A. It came from the Houston Police Department.

13 Q. Okay. And can you tell if it came from --  
14 specifically where in the Houston Police Department?

15 A. Sergeant Eric Mehl sent the evidence to me.

16 Q. And can you tell from your study where he got  
17 the evidence?

18 A. No, sir, I don't know.

19 Q. Okay. But can you tell that this evidence was  
20 handled by the HPD Crime Lab?

21 A. I can tell it was somewhere before it was sent  
22 to me, but I don't know who before.

23 Q. All right. When you said that you received a  
24 sample from Obel Cruz-Garcia -- you really don't know  
25 Obel Cruz-Garcia, do you?

1 A. No, I do not.

2 Q. And you really received a sample that was  
3 labelled Obel Cruz-Garcia, correct?

4 A. That's correct, yes.

5 Q. Because you didn't get the sample from Obel  
6 Cruz-Garcia, did you?

7 A. No, I didn't. It was in this envelope, like I  
8 said, right here. It was just labeled with his name on  
9 it.

10 Q. All right. So, somebody else provided you with  
11 something that is labeled Obel Cruz-Garcia, right?

12 A. That's correct, yes.

13 Q. And you don't exactly know where that came  
14 from?

15 A. Just from the labeling on the evidence itself,  
16 yes.

17 Q. Okay. Or what measures were kept to keep it;  
18 you don't know that, do you?

19 A. I don't know. We received this evidence in a  
20 sealed condition with this label on it.

21 Q. All right. And that applies to all of the  
22 stuff that you've looked at today, right? You received  
23 it all from the same person?

24 A. I believe so, yes.

25 Q. Okay. DNA -- can you actually see DNA?

1 A. With the naked eye, no, sir.

2 Q. The epithelial cells that we're talking about,  
3 which are the skin cells, can you actually see those  
4 with the naked eye?

5 A. You can see them with a microscope, but not  
6 with the naked eye.

7 Q. What about the sperm fractions?

8 A. Sperm cells, again, they're microscopic. You  
9 couldn't see them with the naked eye.

10 Q. Did you examine any of the sperm fractions in  
11 this case yourself?

12 A. Yes, I did.

13 Q. Under a microscope?

14 A. Yes, I did.

15 Q. And when you look at the spermatozoa -- did you  
16 see spermatozoa?

17 A. Yes, sir.

18 Q. Heads and tails?

19 A. I saw heads. The tails are the first thing to  
20 degrade, so it's not really common to see the tails.

21 Q. So, no intact spermatozoa?

22 A. The sperm heads were in tact. The sperm is  
23 basically a cell and there is tail on the end of it, a  
24 propelled cell. And, again, it's not common to see  
25 tails on the sperm, especially in a case that's worked,

1 you know, many years after the sample was collected.

2 Q. It's not common to see them or not to see them?

3 A. It's not common to see them.

4 Q. Okay. So, did you find any spermatozoa with  
5 heads and tails?

6 A. I don't have it in my notes. I found many  
7 heads, but I don't recall seeing any tails. I made no  
8 notes of seeing tails.

9 Q. And this would have been -- when you first  
10 looked at it under the microscope, what year was that?

11 A. In 2007.

12 Q. 2007.

13 So, if that spermatozoa was first  
14 discovered in 1992, we're talking about 15 years?

15 A. That's correct.

16 Q. So, the spermatozoa can last 15 years?

17 A. They can. They can last a long time, yes.

18 Q. In your part of this case, your work on this  
19 case, other than what's labeled on various things, can  
20 you tell from looking at them where -- we'll start with  
21 the spermatozoa -- it was actually found? Can you tell  
22 by looking at them where they were found?

23 A. No, sir. I mean, the swabs were all labeled  
24 coming from different locations, but looking at an  
25 actual sperm cell it testify, no, there is no way to



1 tell where that came from.

2 Q. So, you've got to rely on the labeling that  
3 somebody gives you, correct?

4 A. Correct.

5 Q. I mean, I guess it doesn't matter for your  
6 testing, it doesn't matter to you where it was found;  
7 you're trying to see if it's semen, right, to see if  
8 there is sperm cells there?

9 A. That's correct.

10 Q. So, I'm not trying to make you the detective,  
11 Inspector Clouseau on this or whatever; but my point is,  
12 you don't know how it was placed, where it was placed,  
13 when it was placed, where it was placed, how it was  
14 collected, and how it was stored before you got it, do  
15 you?

16 A. No. My job was to basically figure out is  
17 there DNA there, can I get a DNA profile from it, and  
18 whose DNA profile it is.

19 Q. And so, in the case of spermatozoa, you can't  
20 tell from anything that you look at or study whether  
21 this was the result of consensual sex or a sexual  
22 assault, can you?

23 A. No, sir, I can't.

24 Q. Now, the epithelial cells, the skin cells,  
25 pretty much the same thing, you can't tell how they got

1 there or under what circumstances they got there, how  
2 long they had been there, can you?

3 A. No, sir.

4 Q. And, again, with epithelial cells, if that  
5 evidence was collected in 1992 and you didn't examine it  
6 till 2007, it had been there for 15 years?

7 A. Apparently, yes.

8 MR. CORNELIUS: Could I have just a second,  
9 Judge?

10 THE COURT: Yes.

11 (Pause)

12 Q. (By Mr. Cornelius) I want to get back to the  
13 cuttings from the panties for a moment. There was a  
14 cutting from the crotch of the panties, correct?

15 A. Yes.

16 Q. You don't know who did that cutting?

17 A. No, I don't.

18 Q. But it's from that cutting that you made your  
19 own cutting?

20 A. Yes, that's correct. We received -- basically,  
21 the crotch of the pair of underwear was cut out from the  
22 original pair of panties and we took a cutting from the  
23 crotch area for our testing.

24 Q. Now, was that cutting that was done by somebody  
25 else packaged in its own package?

1 A. Yes, it was.

2 Q. For example, you didn't take the panties  
3 themselves that were left and try to make your own  
4 cutting from that, you took a cutting out of whoever  
5 else had already taken a cutting from the panties. Does  
6 that make sense?

7 A. Yes. And it was a large sample. Again, if it  
8 would have been a very small sample, we would have gone  
9 back to the panties; but it was the crotch of the  
10 underwear, which we'd expect to find semen there, if  
11 there is semen there. So, we took a cutting, we did our  
12 own testing, looked for semen, and then performed the  
13 DNA test on that.

14 MR. CORNELIUS: Okay. I pass the witness.

15 THE COURT: Anything further, Ms. Tise?

16 MS. TISE: Yes, Your Honor.

17 **REDIRECT EXAMINATION**

18 **BY MS. TISE:**

19 Q. When you received the evidence in this case,  
20 you told us some -- scratch that.

21 When you received the evidence in this  
22 case, did you see anything that indicated any kind of  
23 contamination or mishandling that you could see?

24 A. There was no notations made of any sort of  
25 potential tampering with any of this evidence.

1 Q. Everything seemed to be in good condition?

2 A. Yes.

3 Q. And packaged the way you would ordinarily  
4 expect it to be?

5 A. All evidence is packaged a little bit  
6 different, but, yes, there was nothing that stood out  
7 about this evidence.

8 Q. Separate items were packaged in their own  
9 plastic bags to keep them from being -- touching other  
10 items?

11 A. Correct. Whether it be plastic or envelopes,  
12 yes.

13 Q. And the items in the rape kit were in a bag and  
14 in that box, correct?

15 A. That's correct.

16 Q. The panties were in the little bag that we see  
17 here, correct (indicating)?

18 A. Yes. The cutting from the panties, yes.

19 Q. Cutting from the panties sealed up.

20 And you didn't get a cutting from the  
21 crotch, you got the whole crotch of the panties,  
22 correct, it had been cut out.

23 A. We got that cutting, yes, which was a large  
24 cutting from the crotch.

25 Q. And you cut out your own cutting from it --

1 A. Correct.

2 Q. -- to test it?

3 Nothing unusual about that, right?

4 A. No.

5 Q. And the cigar came to you in its own package,  
6 correct?

7 A. That's correct.

8 Q. All sealed up, right?

9 A. Yes.

10 Q. If you were just a bad person and you wanted to  
11 contaminate some DNA from a crime scene, would you be  
12 able to contaminate evidence to create a DNA sample with  
13 someone's DNA that you did not have?

14 A. I would not be able to, no.

15 Q. All right. So, hypothetically, let's say  
16 someone was mishandling evidence. Okay? But they  
17 didn't have Obel Cruz-Garcia's DNA. Is there any way  
18 they could put Obel Cruz-Garcia's DNA on evidence that  
19 didn't already have it?

20 A. No. You would have to have a sample of his DNA  
21 to contaminate the evidence with.

22 Q. Okay. Because it's there, right?

23 A. Those profiles match, yes.

24 Q. And if you don't have his DNA, you can't put it  
25 on there if you are an evil person and have bad

1 intentions, right?

2 A. Correct.

3 Q. And let's just talk about cross-contamination.  
4 Let's say you have one item of evidence that has his DNA  
5 on it, like the cigar, and another item of evidence like  
6 the panties. If you were just an evil person and you  
7 wanted to just deliberately mess things up and  
8 contaminate those panties with the cigar, what about the  
9 evidence tells you that that didn't happen?

10 A. Well, basically there is -- we obtain a DNA  
11 profile from the cigar, which would be epithelial cells.  
12 From the panties and from the vaginal swabs, we obtained  
13 his DNA profile -- or a profile that matches DNA profile  
14 from sperm cells. So, you'd have to have a semen sample  
15 in order to contaminate those samples with sperm cells.

16 Q. So, it's not only the fact that they didn't  
17 have his DNA -- they would have had to have his semen,  
18 correct, to contaminate the items from the rape kit and  
19 the panties?

20 A. Correct.

21 Q. Okay. Because that's semen we're talking  
22 about, right?

23 A. That's correct.

24 Q. So, you wouldn't be able to take the cigar with  
25 epithelial cells on it and turn that into the

1 defendant's semen to put it in the rape kit and the  
2 panties?

3 A. No. And if there was -- if the cigar -- if  
4 there was epithelial cells that would have come in  
5 contact with the vaginal swabs or the panties, you would  
6 expect to find that in the epithelial fractions of those  
7 samples, but we found his DNA profile in the sperm  
8 fractions.

9 Q. Okay. Anything in this case that indicates any  
10 kind of contamination or mishandling to you?

11 A. Nothing that I can see.

12 MS. TISE: I will pass the witness.

13 MR. CORNELIUS: A couple more questions, if  
14 I may.

15 **RECROSS-EXAMINATION**

16 **BY MR. CORNELIUS:**

17 Q. All of these quality control procedures and  
18 assurances, are they in place just to detect evil people  
19 or mistakes?

20 A. They're just to detect contamination regardless  
21 of how it happens.

22 Q. I mean, contamination happens, right?

23 A. It does.

24 Q. It doesn't necessarily mean that people are  
25 evil that do it, does it?

1 A. No, it doesn't.

2 Q. Okay. In you looking at this evidence and  
3 being asked whether there is anything indicated, any  
4 kind of contamination, did you receive from HPD any  
5 notations of quality control procedures or assurances?

6 A. No, I did not.

7 MR. CORNELIUS: Pass the witness.

8 **REDIRECT EXAMINATION**

9 **BY MS. TISE:**

10 Q. Did you see any mistaken contamination as well  
11 as evil contamination?

12 A. I didn't see anything that -- you know, there  
13 was nothing to me to indicate there was contamination.

14 MS. TISE: Nothing further.

15 MR. CORNELIUS: Nothing further.

16 THE COURT: Okay. Very good. May this  
17 witness be excused?

18 MS. TISE: Yes, Your Honor.

19 MR. CORNELIUS: Yes, Your Honor.

20 THE COURT: You may step down. Thank you,  
21 Mr. Quartaro.

22 Call your next, please.

23 MR. WOOD: The State calls Courtney Head.

24 THE BAILIFF: Your Honor, this witness has  
25 not been sworn in.



1 THE COURT: Thank you.

2 Please raise your right hand.

3 (Witness sworn)

4 THE COURT: Take the stand. Speak directly  
5 into the microphone and you keep your voice up.

6 We'll start in just a moment. One of the  
7 attorneys just stepped out.

8 THE WITNESS: Okay.

9 (Pause)

10 THE COURT: Are you ready to proceed?

11 MR. CORNELIUS: Yes, Your Honor.

12 THE COURT: Ms. Tise, you may proceed.

13 MR. WOOD: Actually, Judge, it's my  
14 witness.

15 THE COURT: I'm sorry. Mr. Wood, you may  
16 proceed.

17 **COURTNEY HEAD,**

18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. WOOD:**

21 Q. Good afternoon, Ms. Head.

22 A. Good afternoon.

23 Q. Can you tell the ladies and gentlemen of the  
24 jury how you're employed?

25 A. I'm employed as a criminalist specialist with

1 the Houston Police Department Crime Laboratory.

2 Q. How long have you been with the Houston Police  
3 Department Crime Lab?

4 A. I've been at HPD for three-and-a-half years.

5 Q. What is a criminalist specialist?

6 A. My role there is a first-line supervisor. So,  
7 I supervise a small group of about eight individuals.  
8 I'm also responsible for some of the training programs  
9 in the section. I'm also a qualified DNA analyst as  
10 well as a screener.

11 Q. So, you supervise and you do actual work, DNA  
12 analysis?

13 A. Yes.

14 Q. Tell me a little bit about your education  
15 leading up to this point.

16 A. I have a bachelor's degree in biology from  
17 Ouachita Baptist University. I also have a master's  
18 degree in forensic science with a concentration in  
19 forensic molecular biology from the George Washington  
20 University.

21 Q. And through that education, have you had  
22 training in the area of DNA analysis?

23 A. Yes, I have.

24 Q. And when did you start working in that field?

25 A. I started working in the field of forensics in

1 2001.

2 Q. What did you do in between finishing up your  
3 education and coming to HPD three years ago?

4 A. Actually, while I was still in graduate school  
5 I got an internship at a lab in Virginia. And so, I  
6 started working there. And I got hired on full-time as  
7 a DNA analyst at that laboratory. I worked there for  
8 about four years. And I moved back to Texas and worked  
9 in Dallas for a while at the medical examiner's office,  
10 also as a DNA analyst. I worked for Dallas Police  
11 Department for about a year before I moved to Houston as  
12 the director of the Crime Scene Unit.

13 Q. Ms. Head, have you been called upon in the past  
14 to testify as an expert in the area of DNA analysis?

15 A. Yes, I have.

16 Q. And would you say that's few or many times?

17 A. I would say many times.

18 Q. Okay. Ms. Head, I want to take about two  
19 minutes and teach the jury everything you know about  
20 DNA. Okay?

21 A. Okay.

22 Q. Just a quick rundown about general concepts of  
23 DNA. Tell the ladies and gentlemen of the jury  
24 generally what is DNA?

25 A. DNA is really what makes the person that you

1 are. You get half your DNA from your mom, half your DNA  
2 from your dad. DNA is kind of what makes us all look  
3 similar. Our legs are in the same spot, arms in the  
4 same spot, but DNA is also what makes us look different  
5 from each other and act different from each other. We  
6 have to have different DNA, obviously, inside our body  
7 to that makes that happen.

8 Q. Is DNA unique to specific individual?

9 A. DNA is unique to all individuals unless you  
10 have an identical twin, in which the identical twins  
11 would have the same identical DNA.

12 Q. So, it varies from person to person excluding  
13 identical twins?

14 A. That's correct.

15 Q. Does your DNA change over time?

16 A. Not really, no. Only if you were to have a  
17 blood transfusion or something major like that.

18 Q. In the area of forensics, are there particular  
19 sources of DNA that you usually -- that are common?

20 A. Yes.

21 Q. And tell us about that.

22 A. It's common to receive evidence that may  
23 contain blood or semen or something like contact DNA, in  
24 addition to buccal swabs. These are normal pieces of  
25 evidence that would possibly contain DNA.

1 Q. And how does that -- how is that applicable in  
2 a forensic setting regarding what you do?

3 A. Usually, we try to examine evidence items and  
4 get a DNA profile from that piece of evidence that might  
5 have been left at a crime scene and compare that to a  
6 reference sample or a known sample of DNA that is  
7 collected from a certain individual.

8 Q. What happens -- well, let's go back.

9 What is a known sample or reference sample?

10 A. A known sample or a reference sample is a  
11 sample of DNA that's collected from an individual. For  
12 example, a buccal swab would be collected by placing  
13 some -- what looks like a bigger Q-tip inside of your  
14 mouth, rubbing it around a little bit, and collecting  
15 those cells that are inside of your mouth, which are  
16 called buccal cells. And so, that would be a known  
17 sample of DNA from a person.

18 Q. And what about evidence samples? How is it  
19 that you commonly encounter evidence samples in your  
20 work?

21 A. At HPD, the Crime Scene Unit usually goes to  
22 the scene or maybe a hospital some SANE nurses,  
23 depending on the type of evidence that's collected, but  
24 usually it's from a crime scene. And evidence is  
25 collected by HPD personnel and is taken to the property

1 room.

2 Q. What happens generally when you receive an item  
3 of evidence, whether it be a known reference sample or  
4 an item of evidence, for you to do DNA analysis on?

5 A. Usually we'll get a request from an  
6 investigator asking us to work this case, along with  
7 some information on whether we need to test for blood or  
8 test for semen or these are the references that we need  
9 to compare them to. And then we'll just get started  
10 based on what type of testing is requested.

11 Q. Is there some type of screen or extraction  
12 process involved?

13 A. There is a screening step that would first kind  
14 of try to identify what kind of biological fluid we are  
15 dealing with. So, we have certain tests that we can use  
16 to identify blood or semen. And then once a certain  
17 biological fluid is identified, we can do a step further  
18 and start DNA testing, which would require extraction of  
19 that DNA and some other steps as well.

20 Q. And when you go to extract DNA from an item,  
21 generally what does that mean?

22 A. That means that the DNA is contained in cells  
23 and we need to bust open those cells in order to get DNA  
24 out of them. There is also a bunch of other stuff. I  
25 don't know if you can flashback to your biology classes

1 in high school. Liquids and fats and other things that  
2 are inside of that cell, that we just need to clean them  
3 out as well as we can so we can get the most pure form  
4 of DNA that we can get.

5 Q. After you have extracted an item for DNA, what  
6 happens next?

7 A. After we've extracted DNA, we know exactly how  
8 much exact DNA we have. So, we have a process, which we  
9 call quantification, in which we can determine exactly  
10 how much DNA we have collected from a sample.

11 Q. And then at some point, do you perform analysis  
12 on that extraction?

13 A. Yes. Yes. After the extraction, the  
14 quantification happens, we do a couple of other  
15 processes. And, ultimately, we can get a profile that  
16 we can analyze.

17 Q. And when you say "a profile," what is a DNA  
18 profile?

19 A. A DNA profile is a set of markers that is  
20 contained within the chromosomes in your DNA. And we  
21 look at certain locations which ultimately make up an  
22 entire DNA profile.

23 Q. Can you obtain DNA profiles from both known  
24 reference samples and also evidence samples?

25 A. Yes.

1 Q. And if you are able to obtain those known --  
2 I'm sorry -- a DNA profile from each of those, a  
3 reference sample and an evidence sample, are you able to  
4 then compare those --

5 A. Yes.

6 Q. -- DNA profiles?

7 A. Yes.

8 Q. And what would the comparison tell us?

9 A. The comparison? So, if we had a sample from a  
10 crime scene or a piece of evidence and a sample from  
11 known individual to compare it to, we would try to  
12 determine whether the profile from the known sample  
13 could be included, so that person could be a possible  
14 contributor to whatever evidence was left at the crime  
15 scene, or that person would be excluded and could not be  
16 included as someone who might have left that DNA at the  
17 crime scene.

18 Q. Are there different methods of DNA analysis  
19 that are used?

20 A. There are different extractions and different  
21 kits and some different locations that are looked at.

22 Q. And when you say "locations," what do you mean?

23 A. I mean different location on the actual  
24 chromosome.

25 Q. Ms. Head, I want to visit with you about your



1 work on this case. Would you consider this case to have  
2 been what we call in our industry a cold case?

3 A. Yes.

4 Q. And have you done work on cases similar to this  
5 in the past?

6 A. Yes.

7 Q. Because it was considered a cold case, was your  
8 work a little bit different than it is on maybe a fresh  
9 case?

10 A. Yes, it was a little bit different.

11 Q. When was it that you were first assigned to do  
12 some work on this particular case?

13 A. In 2010.

14 Q. And at that time in order to, I guess, get up  
15 to speed, were you -- did you review some reports and  
16 documents in order to get up to speed on the case?

17 A. Yes, I did.

18 Q. Did you learn that at that point in 2010 that a  
19 lab called Orchid Cellmark had done some work on this  
20 case?

21 A. Yes, I did.

22 Q. Are you familiar with that lab?

23 A. Yes.

24 Q. Is that a lab that HPD Crime Lab worked with in  
25 conjunction or has in the past?

1 A. Yes, it is.

2 Q. Was this case assigned or had it been assigned  
3 a uniquely identifying case number for y'all's record  
4 purposes?

5 A. Yes.

6 Q. And can you tell us what that lab number was?

7 A. Sure. The lab number was L92-10367.

8 Q. Did you ultimately generate a report of your  
9 findings and your work in this case?

10 A. Yes, I did.

11 Q. And are you a custodian of those records?

12 A. I am.

13 Q. Are those records kept in the normal course of  
14 business at the Houston Police Department Crime Lab?

15 A. Yes, they are.

16 Q. And were those records actually made by you?

17 A. Yes.

18 Q. And you had personal knowledge of what went  
19 into those records?

20 A. Some of the reports, yes.

21 Q. And they were made at or near the time that you  
22 were doing your work on this case?

23 A. Yes.

24 MR. WOOD: Your Honor, may I approach the  
25 witness?

1 THE COURT: Yes, you may.

2 Q. (By Mr. Wood) Ms. Head, I'm going to show you  
3 what's been marked as No. 70. Can you take a second and  
4 tell me if you recognize that (indicating)?

5 A. Yes. It appears to be a copy in which I have  
6 the original of the report I generated on this case.

7 Q. And is it a fair and accurate copy to the best  
8 of your knowledge?

9 A. Yes.

10 Q. And it summarizes the work that you did in this  
11 case?

12 A. Yes.

13 Q. Do you think it would assist the jury in  
14 understanding your work and analysis in this case?

15 A. Yes.

16 MR. WOOD: I will offer State's Exhibit 70  
17 after tendering.

18 (State's Exhibit No. 70 Offered)

19 MR. CORNELIUS: I have a copy of this. No  
20 objections other than ones I have already made, Judge.

21 THE COURT: Okay. Very good. State's  
22 Exhibit 70 will be admitted over objections.

23 You may proceed.

24 (State's Exhibit No. 70 Admitted)

25 Q. (By Mr. Wood) Ms. Head, going back a little

1 bit. In your training, is it possible to test whether  
2 an item -- whether there is the presence of blood on a  
3 particular item?

4 A. Yes, it is.

5 Q. And that happens when certain items are  
6 submitted to your lab and you're asked to test for that,  
7 right?

8 A. Yes.

9 Q. Generally how is that done when -- where you  
10 test for the presence of blood on an item?

11 A. For example, if it was a t-shirt or an item of  
12 clothing, we would look for certain stains. A red-brown  
13 stain would be a pretty good indication that blood might  
14 be on this item. However, if there are no stains or  
15 we've since talked to an investigator and they have told  
16 us to continue with the blood work testing, then we  
17 would basically take what is a larger Q-tip and swab  
18 across the area or maybe even take a filter paper, wet  
19 it with a little bit of water to try and collect some  
20 samples from the t-shirt and transfer that onto the  
21 filter paper.

22 We would then apply some chemical testing  
23 and look for a color change. And if we see a color  
24 change, then that would indicate to us that blood would  
25 be present on that item. However, if we do not see a

1 color change, that would be indicative that blood is not  
2 present on this item.

3 Q. At some point, Ms. Head, was your lab asked to  
4 test a t-shirt that was related to this case?

5 A. Yes, it was.

6 Q. And was that to test for the presence of blood,  
7 whether or not there was any?

8 A. Yes.

9 Q. And were you able to -- well, I'm going to show  
10 you first -- I'm going to show you what's been  
11 previously admitted as State's Exhibit 64. This is  
12 what's been previously admitted as State's Exhibit 64.  
13 Does this look familiar to you as it relates to any of  
14 the records that you have of any testing that was done  
15 by your lab in this case (indicating)?

16 A. Yes. I have a record of testing that was done,  
17 some photographs that were also provided in which I can  
18 tell that those look to be the same t-shirt. In  
19 addition to I could see there was a tag on that t-shirt  
20 that would indicate the analyst tested.

21 Q. And was -- according to your records, was that  
22 t-shirt tested by your lab for the presence of that --  
23 whether or not there was blood?

24 A. Yes.

25 Q. And what were the results of that test?

1 A. Blood was not detected on that item.

2 Q. I'm going to give a hypothetical situation,  
3 Ms. Head. If you were told that blood was on an item of  
4 clothing, potentially on an item of clothing and that  
5 that item had been submerged in water and/or exposed to  
6 the elements, weather and whatnot, for a period of time,  
7 say, for example, 30 plus days, would you necessarily  
8 except for there to be blood on that item given those  
9 circumstances?

10 A. No. Given the fact that it was in water, or,  
11 perhaps, exposed to the elements for that amount of  
12 time, I would not expect there to be blood on the item.

13 Q. I want to go back to the other testing in this  
14 case, Ms. Head. Did you learn -- you stated that you  
15 were familiar with the lab of Orchid Cellmark?

16 A. Yes.

17 Q. And you had learned that they had previously  
18 done some analysis or work on this case; is that right?

19 A. That's correct.

20 Q. Did you review reports and information from  
21 Orchid Cellmark at the time that you were assigned this  
22 case?

23 A. Yes, I did.

24 Q. Did you independently receive a known reference  
25 sample from an individual in this case?

1 A. Yes, I did.

2 Q. Would you say that that's unrelated to anything  
3 that Orchid Cellmark did in this case?

4 A. Yes. To my knowledge, Orchid has never seen or  
5 touched that sample.

6 Q. And based on your records, who was the known  
7 reference sample from that you received in your lab?

8 A. The known sample was from Obel Cruz-Garcia.

9 Q. And do you know when that reference sample was  
10 submitted to y'all?

11 A. I believe it was submitted on February 8th of  
12 2010.

13 Q. And what kind of reference sample was that?  
14 Were those buccal swabs like you've discussed?

15 A. They were buccal swabs.

16 Q. What did you then do with those buccal swabs?

17 A. Once I took them into my custody, I started the  
18 DNA extraction process on those samples.

19 MR. WOOD: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q. (By Mr. Wood) Ms. Head, I'm going to show you  
22 what's been marked as State's Exhibits 76 and 77. Can  
23 you identify what those are for the jury (indicating)?

24 A. Yes. These are the buccal swabs that I tested.  
25 I can tell that because my initials, the date, and all

1 the appropriate lab identifiers are on that item.

2 Q. Also contained on State's Exhibits 76 and 77,  
3 is there an individual's name who is the source of the  
4 those buccal swabs?

5 A. Yes.

6 Q. What is the name?

7 A. Obel Cruz-Garcia.

8 Q. And does it show who those were collected by?

9 A. Yes, it does.

10 Q. Who is that name?

11 A. It says M.K. Webb.

12 Q. And does it show a date and time at which time  
13 those samples were collected?

14 A. Yes. February 16th, 2010 at 11:20 a.m.

15 MR. WOOD: Your Honor, at this time, I will  
16 offer State's Exhibits 76 and 77.

17 **(State's Exhibit No. 76 and 77 Offered)**

18 MR. CORNELIUS: No additional objections,  
19 Judge.

20 THE COURT: Okay. State's Exhibits 76 and  
21 77 will be admitted over objections.

22 You may proceed.

23 **(State's Exhibit No. 76 and 77 Admitted)**

24 Q. (By Mr. Wood) Ms. Head, when you say that you  
25 started doing the extractions on those items, 76 and 77,



1 what do you mean by that?

2 A. It means that I cut a portion of that sample  
3 and put it into a tube and applied certain chemicals  
4 that will aid me in extracting that DNA from the cells  
5 that they're currently in.

6 Q. Was your goal in doing that in attempting to  
7 see if you could obtain a DNA profile from that item?

8 A. Yes.

9 Q. And were you able to do that?

10 A. Yes, I was.

11 MR. WOOD: Your Honor, I'm going to ask  
12 permission to publish parts of State's Exhibit 70 that  
13 was admitted, the report.

14 THE COURT: State's Exhibit 70? Okay.  
15 Yes, you are allowed to.

16 Q. (By Mr. Wood) Ms. Head, as contained in your  
17 report in State's Exhibit 70, I'm going to show you, if  
18 I can, if it shows up on here -- is this the final page  
19 of your report in State's Exhibit 70?

20 A. Yes, it is.

21 Q. And we're not going to go into specifics, but,  
22 basically, tell us what this first column is that I'm  
23 pointing at in the upper left-hand corner (indicating).

24 A. That is the locations on the chromosome that  
25 we're looking for when we do DNA testing to get a

1 certain DNA profile.

2 Q. And the second column just to the right of  
3 that, is that the DNA -- essentially the DNA profile  
4 that you obtained from that item?

5 A. Yes.

6 Q. And that would be the DNA profile of Obel  
7 Cruz-Garcia; is that right?

8 A. Yes, it is.

9 Q. You've talked about evidentiary samples. What  
10 did you rely upon regarding evidentiary samples in this  
11 case?

12 A. Do you mean what did I compare this reference  
13 to?

14 Q. Yes. That's probably a better question.

15 A. I compared this to a cigar, the sperm fraction  
16 vaginal swabs, and also the sperm fraction of panties,  
17 the crotch and -- from Diana Garcia.

18 Q. And when you say you compared that, are you  
19 saying you compared that to DNA profiles obtained from  
20 those items?

21 A. Yes. I compared the known profile, which is  
22 what you can see on the screen there, to the profiles  
23 that Orchid Cellmark generated on the samples.

24 Q. So, in this case -- well, let me ask you this.  
25 Was this case a little bit different in that you had

1 evidence samples that DNA profiles had been already  
2 obtained from to work with?

3 A. Yes. Typically, in our laboratory we do the  
4 testing on the evidence and then compare the references,  
5 but in this case, since another laboratory had  
6 previously done the testing, we could rely on their  
7 results and compare it with the reference sample.

8 Q. And the DNA profiles that you compared the  
9 known samples to regarding the panties, the cutting from  
10 the panties, the crotch of the panties, and the vaginal  
11 swabs, was that sperm fraction DNA?

12 A. Yes, it was.

13 Q. As opposed to -- what about the cigar?

14 A. The cigar was just a straight extraction. So,  
15 in some situations, we extract DNA and we can make two  
16 fractions, what we call an epithelial fraction and a  
17 sperm cell fraction, and those would be in  
18 semen-containing samples only. If we do DNA extraction  
19 on other types of samples, we would just get one DNA  
20 profile. We wouldn't separate that into two different  
21 types.

22 Q. Were you able to ultimately make comparisons  
23 between the known reference sample, the DNA profile of  
24 Obel Cruz-Garcia, and those three items of evidence, the  
25 DNA profiles from those three items of evidence?

1 A. Yes.

2 Q. Let's talk about those one-by-one. With  
3 regards to your findings about the cigar or the  
4 comparison with the cigar to the known DNA profile of  
5 Obel Cruz-Garcia, what were your findings?

6 A. I found that I -- or that Orchid Cellmark  
7 obtained a full single-source male DNA profile. And  
8 when I compared it to the buccal swabs, I determined  
9 that Obel Cruz-Garcia cannot be excluded as a  
10 contributor to the DNA profile obtained from this item.

11 Q. And, you know, I guess, I'm probably used to  
12 this wording, but we hear "cannot be excluded" and all  
13 of those words. What does that mean if you break that  
14 down?

15 A. We, as a crime lab, do not say that a certain  
16 individual matches the profile. So, we usually say the  
17 person is excluded or the person cannot be excluded.  
18 So, therefore, if they can be excluded, then that  
19 person's DNA is not found on that item. If the  
20 sample -- if the person cannot be excluded, then  
21 potentially that person is on that sample.

22 Q. Okay. So, I want to make sure I'm clear on  
23 that. So, if you say that a person cannot be excluded,  
24 what does that mean?

25 A. That means that the profile obtained from the

1 buccal swab contains all of the same alleles as the  
2 evidence sample.

3 Q. Okay. What were your findings regarding the  
4 vaginal swabs, the sperm fractions from the vaginal  
5 swabs of Diana Garcia?

6 A. The vaginal swabs sperm fraction was a mixture  
7 of DNA from at least three individuals and Obel  
8 Cruz-Garcia cannot be excluded as a possible contributor  
9 to this DNA mixture.

10 Q. What about your results regarding the sperm  
11 fraction DNA from the panties of Diana Garcia?

12 A. The panties was a mixture of DNA from at least  
13 two individuals and Obel Cruz-Garcia could not be  
14 excluded as the contributor to the major component of  
15 that profile.

16 Q. Let's go back. As far as a mixture of DNA from  
17 two individuals, does that appear to be -- was there any  
18 differentiation between male and female contributors to  
19 that mixture?

20 A. Well, the way the DNA works is if you get an X  
21 and Y, that would indicate that a male profile -- or a  
22 male would be contributing to this DNA sample. However,  
23 females only contain an X. And so, we can't necessarily  
24 differentiate to know that the female and the male is  
25 contributing to this sample because there would always

1 be an X and a Y, or at least in this DNA mixture there  
2 is.

3 Q. Okay. Are we talking about -- regarding the  
4 vaginal -- I'm sorry -- the panties, sperm fraction from  
5 the panties, are we talking specifically about sperm  
6 fraction DNA?

7 A. For the panties?

8 Q. Yes.

9 A. I'm sorry. Could you rephrase the question?

10 Q. I've probably asked a confusing question.

11 Regarding the panties, let me ask you this:  
12 It was a mixture of DNA from at least two individuals,  
13 right.

14 A. Yes.

15 Q. Are we talking about sperm fraction DNA?

16 A. Yes.

17 Q. Okay. And how does that factor into your  
18 analysis of that?

19 A. Well, if we get a DNA profile with sperm  
20 fraction, then typically that sample would contain sperm  
21 and could only come from a male because females do not  
22 have sperm. Sometimes, however -- in this case, the  
23 sample was collected from a pair of panties that a  
24 female is wearing. So, at times we get a mixture that  
25 contains mostly male DNA, which is from that semen

1 sample, but it could contain some carryover DNA from the  
2 female. That would be epithelial DNA.

3 Q. And with regards to you identifying Obel  
4 Cruz-Garcia being -- cannot be excluded as a major  
5 contributor to that DNA mixture, what does that mean,  
6 "major contributor"?

7 A. That means that when we're looking at the DNA  
8 profile, we can tell based on the intensity of the  
9 profile that one person is contributing much more DNA  
10 than another person.

11 Q. And when you said that it was a mixture of at  
12 least two individuals, did you have any other known  
13 reference samples by which to compare that -- those  
14 results to?

15 A. I did not.

16 Q. So, for example, if there -- Diana Garcia's  
17 husband, Arturo Rodriguez, you didn't have a known  
18 reference sample from Arturo Rodriguez to compare to see  
19 if he was the other contributor or if he was at all in  
20 play in that DNA mixture, did you?

21 A. No, I did not.

22 Q. You were just looking at the known reference  
23 sample of Obel Cruz-Garcia, correct?

24 A. Yes.

25 Q. Once you obtain results, Ms. Head, are you able

1 to apply statistics to those results?

2 A. Yes.

3 Q. And explain that for the ladies and gentlemen  
4 of the jury.

5 A. We try to use statistics to kind of give a  
6 weight to how common or uncommon that DNA profile may  
7 be.

8 Q. And when you say statistics, are we talking  
9 about particular population groups or what do you mean?

10 A. Yes. We use population groups and the  
11 frequencies that we typically see certain DNA profiles  
12 in those population groups.

13 Q. And are those split up into -- do you have  
14 specific population groups that you look at in each and  
15 every case or how does that work?

16 A. Well, we use a database to assist us in  
17 calculating the statistics. So, there are some  
18 population groups within that database.

19 Q. What are those population groups?

20 A. They are the Caucasian, the African-American,  
21 the Southeast Hispanic, and the Southwest Hispanic.

22 Q. Now, I guess it's probably a dumb question, but  
23 does every individual necessarily fit nice and neat into  
24 one of those categories?

25 A. No. And in order to develop these databases, a



1 certain subpopulation of each of the population groups  
2 were sampled in order to get enough to create this  
3 database. And so, some people may think they are  
4 Caucasian and so they say that they are Caucasian when  
5 they were giving their samples in order to go into this  
6 database. However, they may not know their complete  
7 lineage. And so, it may not be completely accurate.

8 Q. So, when you report on these statistics, do you  
9 report on each of those subpopulation groups?

10 A. Yes.

11 Q. And do you think often it's helpful to compare  
12 those statistics, your results on those statistics to  
13 what the world's population is?

14 A. To give a reference as to how great or small  
15 the statistic may be?

16 Q. Yes.

17 A. Yes.

18 Q. Generally or approximately do you know what the  
19 world's population is?

20 A. Yes. It's about 7 billion.

21 MR. WOOD: Your Honor, may I approach the  
22 witness?

23 THE COURT: Yes.

24 Q. (By Mr. Wood) Ms. Head, I'm going to show you  
25 what's been marked as State's Exhibits 96, 97, and

1 actually 92. Generally, 96, 97, and 92, would you say  
2 that these are summaries of your results in this case  
3 regarding 96 and 97?

4 A. Yes. They appear to be the paragraph taken  
5 right out of my actual report.

6 Q. And with regards to 92, are those some  
7 statistics or figures that you think would be helpful in  
8 aiding jury in understanding your findings and results  
9 in this case?

10 A. Yes. It contains the approximate world  
11 population and then some examples of what a quadrillion  
12 and what a quintillion looks like as far as how large  
13 that number is.

14 MR. WOOD: Your Honor, at this time, I will  
15 offer 92, 96, and 97.

16 **(State's Exhibit No. 92, 96, and 97**  
17 **Offered)**

18 MR. CORNELIUS: No additional objections,  
19 Judge.

20 THE COURT: Okay. State's Exhibits 92, 96,  
21 and 97 are admitted.

22 **(State's Exhibit No. 92, 96, and 97**  
23 **Admitted)**

24 MR. WOOD: Permission to publish?

25 THE COURT: Yes, you may publish.

1 Q. (By Mr. Wood) Ms. Head, I want to visit with  
2 you about State's Exhibit 96. And I know the words are  
3 small, but in State's Exhibit No. 96, is this just a  
4 section from your report (indicating)?

5 A. Yes.

6 Q. And what we're looking at in State's Exhibit  
7 No. 96, is that your results regarding the testing you  
8 did on the cigar or the comparison you did on the cigar?

9 A. Yes.

10 Q. I just want to focus a little bit on the  
11 statistics. Can you read for the jury what the  
12 statistics are regarding the cigar?

13 A. The statistics would be 1 in 6.2 quintillion  
14 for Caucasians; 1 in 700 quintillion for  
15 African-Americans; 1 in 140 quadrillion for Southeast  
16 Hispanics; and 1 in 100 quintillion for Southwest  
17 Hispanics.

18 Q. And in pink, can you tell the ladies and  
19 gentlemen of the jury what your results read?

20 A. It says: To a reasonable degree scientific  
21 certainty, Obel Cruz-Garcia is the source of this DNA  
22 profile, excluding identical twins.

23 Q. And in State's 97, this is, is it not, your  
24 results regarding the comparison of Obel Cruz-Garcia's  
25 known DNA profile with the cutting from the crotch of

1 the panties?

2 A. Yes.

3 Q. And can you read the statistics as it relates  
4 to that item of evidence?

5 A. The statistics are 1 in 6.2 quintillion for  
6 Caucasians; 1 in 700 quintillion for African-Americans;  
7 1 in 140 quadrillion for Southeast Hispanics; and 1 in  
8 100 quintillion for Southwest Hispanics.

9 Q. And, again, can you read for us what is written  
10 in pink on that sheet?

11 A. To a reasonable degree of scientific certainty,  
12 Obel Cruz-Garcia is the source of the major component of  
13 this DNA mixture, excluding identical twins.

14 Q. Okay. So, put some of those numbers in  
15 context. I think you said before that the world's  
16 population is approximately 7 billion. Is that right?

17 A. Yes.

18 Q. And that's what's on that first line in State's  
19 92?

20 A. Yes.

21 Q. Many of the statistics that you just read off  
22 dealt with numbers like quintillion and quadrillion, did  
23 they not?

24 A. Yes, they did.

25 Q. As it relates to -- compares to 7 billion, what

1 is a quadrillion?

2 A. Quadrillion is much larger than a billion.

3 Q. And, in fact, a billion has nine zeros, does it  
4 not?

5 A. Yes.

6 Q. And a quadrillion has -- is that 15?

7 A. Fifteen, yes.

8 Q. And a quadrillion then is many times over what  
9 the world population is, is it not?

10 A. Yes, it is.

11 Q. And what about a quintillion, is it that 18  
12 zeros?

13 A. It is 18 zeros.

14 Q. And that is even a larger number than the  
15 quadrillion, is it not?

16 A. Yes, it is.

17 Q. Many times over what the world's population is?

18 A. Yes.

19 Q. Is that partially what contribute to your  
20 findings that you state to a reasonable degree of  
21 scientific certainty Obel Cruz-Garcia is the source of  
22 this DNA profile or mixture on both of those items?

23 A. Yes.

24 Q. Was there a technical review of your work in  
25 this case, Ms. Head?

1 A. Yes.

2 Q. And what is a technical review?

3 A. A technical review is when I hand my work, all  
4 of the work that I have done and the report, the allele  
5 chart, to another analysts that will independently look  
6 at everything to determine if they agree with the  
7 ultimate conclusions that I have drawn.

8 Q. Is that an element of quality control within  
9 your lab?

10 A. Yes, it is.

11 Q. And that was done in this case?

12 A. Yes.

13 MR. WOOD: I pass the witness, Your Honor.

14 THE COURT: Thank you, Mr. Wood.

15 Mr. Cornelius, you may proceed.

16 (Pause)

17 MR. CORNELIUS: May I proceed?

18 THE COURT: Yes, you may.

19 **CROSS-EXAMINATION**

20 **BY MR. CORNELIUS:**

21 Q. Ms. Head, we've met before and actually on this  
22 case, but not during this trial, right?

23 A. That's correct.

24 Q. Okay. If I'm understanding what you said, you  
25 did not perform any testing on the cigar, correct?

1 A. No. That's correct.

2 Q. Or on the vaginal swabs?

3 A. Also correct.

4 Q. Or on the cutting from the panties?

5 A. Yes.

6 Q. So, there is no quality control or technical  
7 review on your work on those because you didn't do any  
8 work on those, correct?

9 A. I simply reviewed their work.

10 Q. Okay. You developed a profile from the buccal  
11 swab or buccal swabs that you were provided by the  
12 D.A.'s office?

13 A. That's correct.

14 Q. And that would have been what, in 2010?

15 A. Yes.

16 Q. And is that about when you went to work for the  
17 Houston Crime Lab?

18 A. Yes.

19 Q. So, the only quality control about your work  
20 would be on the buccal swabs that the D.A.'s office  
21 provided you from Obel Cruz-Garcia, correct?

22 A. They would also be -- when I do my comparisons  
23 and I calculate the statistics, they would make sure  
24 that I included everything correctly.

25 Q. Just that the math is right?

1 A. Right.

2 Q. Okay. Well --

3 MR. CORNELIUS: Can I approach the bench,  
4 Judge?

5 THE COURT: Yes.

6 (At the Bench, on the record)

7 MR. CORNELIUS: I'm thinking, if you'll  
8 allow me to go into the quality control that existed on  
9 other things when they were ran by the crime lab because  
10 of what -- she didn't work there, number one. And,  
11 number two, the old crime lab -- I want to do that, but  
12 I don't want to do it if you've told me not to.

13 THE COURT: Do not go into that.

14 MR. CORNELIUS: Okay.

15 (Open court, defendant and jury present)

16 MR. CORNELIUS: I'm going to pass the  
17 witness, Judge.

18 THE COURT: Anything further?

19 MR. WOOD: No, Your Honor.

20 THE COURT: Okay. May this witness be  
21 excused?

22 MR. WOOD: No, Judge.

23 MR. CORNELIUS: Yes, Judge.

24 THE COURT: You may step down. Thank you.

25 THE WITNESS: Thank you.



1 THE COURT: Please call your next.

2 MS. TISE: Your Honor, at this time, the  
3 State rests.

4 THE COURT: What says the defense?

5 MR. CORNELIUS: May we have a five-minute  
6 recess?

7 THE COURT: Yes. Let's take jury out.

8 THE BAILIFF: All rise.

9 (Open court, defendant present, no jury)

10 THE COURT: Okay. So, the State is  
11 offering State's Exhibits 99 and 100 for purposes of the  
12 record only, not to go back to the jury. And I'm going  
13 to allow that.

14 **(State's Exhibit No. 99 and 100 Offered)**

15 MR. CORNELIUS: All right.

16 **(State's Exhibit No. 99 and 100 Admitted  
17 For Record Purposes Only)**

18 THE COURT: So, you will keep them, but  
19 they have to stay separate. They're offering them, but  
20 put them as Court exhibits. And there is no objection  
21 to that, correct?

22 MR. CORNELIUS: No, ma'am.

23 THE COURT: Let's talk about tomorrow.  
24 We're going to bring them back at 10:00, if that's good  
25 with everybody. And we can meet at 9:00 and go over the

1 charge. We'll talk a little bit about it after we  
2 release them and see what you think about the charge  
3 right now and see if there is anything you want to add.  
4 And then we can work on that more between 9:00 and 10:00  
5 in the morning.

6 Does that sound good to everybody?

7 MR. CORNELIUS: Whatever you want to do,  
8 Judge.

9 THE COURT: All right. Have you had a  
10 chance to look at it?

11 MR. CORNELIUS: I've had a chance to look  
12 at it. I know what I'm going to request. And you've  
13 probably already considered it, so you may be able to  
14 make your -- there is a mistake on the accomplice  
15 charge.

16 THE COURT: So, we'll stick with that  
17 schedule. Bring them back now and release the jury.

18 (Open court, defendant and jury present)

19 THE BAILIFF: All rise.

20 THE COURT: You may be seated.

21 We're back on the record in Cause  
22 No. 1384794.

23 The State has rested. What's says the  
24 defense?

25 MR. CORNELIUS: We're going to rest, Judge.

1 THE COURT: Okay. And so, you also.

2 State, you rest and close?

3 MS. TISE: State rests and closes.

4 THE COURT: Defense rests and closes.

5 MR. CORNELIUS: Yes, Your Honor.

6 THE COURT: Okay. What that means, ladies  
7 and gentlemen of the jury, is that all of the evidence  
8 in this case is before you. However, you have not been  
9 given the Court's charge, which will be the law that you  
10 should apply to this case. And you have not heard the  
11 closing arguments of counsel.

12 So, we're going to take a recess at this  
13 time. We need to prepare that charge and I want to give  
14 the attorneys an opportunity to review it before reading  
15 that charge to you. We'll do that at 10:00 in the  
16 morning. We'll read the charge to you and then the  
17 lawyers from both sides will have an opportunity to  
18 argue their case to you. Okay?

19 In recessing tonight, I want to continue to  
20 admonish you that all of the same instructions are  
21 applicable tonight. It is most important that you, of  
22 course, don't do any investigation on this case. Don't  
23 watch any media reports on the case. And, please, you  
24 are reminded, you should not talk amongst yourselves or  
25 with anyone else on any subject connected with the trial

1 or to form or express any opinion thereon until the end  
2 of the trial.

3 So, we stand in recess until 10:00 a.m.  
4 tomorrow when you will be read that charge and hear  
5 arguments from counsel. Okay?

6 You may go with the bailiff at this time.

7 THE BAILIFF: All rise.

8 (Open court, defendant present, no jury)

9 THE COURT: Let's go over the charge and  
10 make some notations. Let me see if I've got my copy  
11 here.

12 (Discussion off the record)

13 (Proceedings recessed)

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**REPORTER'S CERTIFICATE**

THE STATE OF TEXAS    )  
COUNTY OF HARRIS     )

I, Mary Ann Rodriguez, Official Court Reporter in and for the 337th District Court of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this the 3rd day of October, 2013.

/s/ Mary Ann Rodriguez  
Mary Ann Rodriguez, Texas CSR 3047  
Expiration Date: 12/31/2013  
Official Court Reporter  
337th Court  
1201 Franklin  
Houston, Texas 77002  
713.755.7746

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