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01 COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

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07 In the matter of:)

07) Case No. BA109900

08 PEOPLE vs. RAFAEL ANTONIO PEREZ) VOLUME 25

08 _____)

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CONFIDENTIAL

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TRANSCRIPTION OF INTERVIEW OF

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15

RAFAEL ANTONIO PEREZ

16

16

Los Angeles, California

17

17

Wednesday, May 10, 2000

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21 Transcribed by:

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22 Lynden J. Glover

23 CSR No. 5510

23

24
24 Job No.:
25 IAD4750
25

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14 TRANSCRIPT OF INTERVIEW OF RAFAEL

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15 ANTONIO PEREZ, taken on behalf of the

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16 Los Angeles Police Department, at the

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17 Internal Affairs South Section,

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18 Los Angeles, California, commencing at

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19 10:00 a.m., on Wednesday, May 10, 2000,

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20 reported by LYNDEN J. GLOVER, CSR No.

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21 5510, a Certified Shorthand Reporter for

21

22 the State of California.

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01 Los Angeles, California, Wednesday, May 10, 2000

02 10:00 a.m.

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05 MR. ROSENTHAL: All right. Today's date is
06 May 10th, the year 2000. I'm Richard Rosenthal,
07 deputy district attorney. These are the continuing
08 interviews of Rafael Perez.

09 All right, Mr. Perez, if you will please
10 raise your right hand.

11

12 RAFAEL PEREZ,
13 produced as a witness, and having been first duly
14 sworn, was examined and testified as follows:

15

16 EXAMINATION

17 BY MR. ROSENTHAL:

18 Q Thank you. You will remain under oath
19 during the pendency of the questioning which should
20 go on until about five o'clock or so today.

21 The first issue is back when we first
22 started our interviews, RHD detectives showed you

23 a -- or went over with you all of the officers who
24 were involved in CRASH or in CRASH when you were
25 there at Rampart and asked you whether they were in
3244

01 the loop or what their involvement was in any
02 criminal activity.

03 When we reviewed the transcripts, we noted
04 that there was one officer we mentioned named Juan
05 Guerra, G-u-e-r-r-a, serial number 30949. And you
06 had asked to see a photograph of Officer Guerra
07 before you could go ahead and tell us what his
08 involvement was, if any.

09 We realize that we have not shown a
10 photograph, so today I want to show you a
11 photograph. It's dated August 10th of 1997.

12 And based upon looking at that photograph,
13 can you tell us whether or not Officer Guerra was in
14 the loop or involved in any misconduct, to your
15 knowledge?

16 A After reviewing or looking at Mr. Guerra's
17 photo, it does refresh my memory. He was in the
18 loop. I had very little dealings as far as cases,
19 doing cases with him. We worked apart in different

20 sides of the Rampart area. But he was in the loop,
21 yes.

22 Q And do you have any specifics that you can
23 think of as to misconduct that he committed?

24 A Not off the top of my head. If I reviewed
25 some things. I know he would've been in position to
3245

01 see a lot of things that went on that, you know, he
02 didn't say anything. He was aware that misconduct
03 was happening or things were being planted.

04 But off the top of my head, something that
05 he did specifically, like I said, I very rarely
06 worked with him or when he was my partner. Or if he
07 needed additional units to work with him, it wasn't
08 me because I worked clearly on the other side of the
09 division.

10 Q But as far as you're aware, he would've
11 also been involved in misconduct such as planting
12 evidence, manufacturing probable cause, or such?

13 A Definitely.

14 Q Okay. Thank you.

15 All right. We have one habeas case that
16 we need to discuss today. This is the case of

17 Veronica Chavez, D.A. case number BA160587. The
18 D.R. number is 97-0239613.

19 We've got a copy of the arrest report
20 which appears to have been prepared by you for an
21 arrest date of December 5th of 1997. You've had an
22 opportunity to take a look at this before we went on
23 the record.

24 Having looked at this report, is there
25 anything inaccurate in this report as per your
3246
01 recollection?

02 A I have reviewed the report as well as the
03 search warrant affidavit. And there is nothing in
04 that report that was falsified, including reading
05 the admonition of rights. There is absolutely
06 nothing wrong with that report.

07 Q All right. Let me read to you from a writ
08 which was filed by the defendant and see if having
09 listened to this, if any of this is true.

10 According to the petitioner, she denies
11 the presence of any cocaine at 1133 South Burlington
12 on December 5th, 1997.

13 She says on the morning of December 5th,

14 1997, she awoke to the sounds of her mother in the
15 bathroom. She got up and went to the bathroom to
16 find her mother leaning over the toilet, vomiting.

17 While in the bathroom with her mother,
18 LAPD officers, with their guns drawn, entered the
19 residence and ordered her and her mother out of the
20 bathroom, into the living room, where they were
21 handcuffed and ordered to sit on the couch.

22 Next Officer Perez demanded, "Where is
23 Duster?" to which petitioner, which was Veronica
24 Chavez, the defendant, responded that her brother,
25 Edgar Jesus Chavez, also known as Duster, was not
3247

01 there and, in fact, had not lived there for over a
02 year.

03 She says that you did not accept this,
04 that you said that she was lying and that he knew
05 that Duster lived there, meaning that you knew that
06 Duster lived there.

07 For the next few minutes she claims that
08 Officer Perez continued to demand to know where
09 Duster was. And eventually, accepting the fact that
10 Duster was not there, you took the defendant into

11 the bathroom, closed the door, demanded that she
12 call Duster and get him to come there by making up a
13 story.

14 She says that you suggested that she tell
15 her brother that their mother had slipped and fallen
16 in the bathtub. She said she refused to cooperate
17 despite being threatened with arrest.

18 She says that having failed to coerce her,
19 you, Officer Perez, took her mother alone into the
20 bathroom for questioning.

21 And when her mother was brought out of the
22 bathroom, one officer berated her for coming into
23 the country and selling drugs while another
24 threatened her and her mother with deportation.

25 She says that the officers conducted a
3248

01 search of the residence which resulted in the
02 seizure of her mother's lifesavings, about \$1,600,
03 and they were arrested and taken to jail. She
04 obviously states that there were no narcotics at the
05 location.

06 Can you comment on those allegations?

07 A The fact that we asked her about Duster --

08 Q Yes.

09 A -- that's correct. We know for a fact
10 that he was there because he was there the night
11 before and we had an informant go in and buy
12 narcotics. The fact that we asked her about Duster
13 and where he's at, that's also true. Everything
14 else is a lie.

15 The fact that her mother supposedly was
16 over -- or over the tub and the toilet throwing up,
17 there was no indication that her face was wet or
18 that she was wiping her mouth.

19 Her hands were wet. There was a bucket
20 next to the -- to the bathtub, which is used --
21 commonly used for a power flush.

22 What you do is you throw the narcotics in
23 there, in the tub or in the toilet, and then you
24 throw the bucket of water so it makes it go down
25 faster. There's no residual left behind.

3249

01 When we went in there I'm pretty sure --
02 on the report it says myself and Durden. But I'm
03 pretty sure that there was -- Detective Mc Gee and
04 as well as Lusby was with us.

05 And we knew narcotics were going to be
06 flushed there. I happened to look down into the tub
07 area and found one little rock left.

08 And based on her admission that, "Yeah, we
09 saw you guys coming in when you guys came through
10 that sliding --" it was my opinion that they knew
11 that there was narcotics there. They intentionally
12 tried to destroy the evidence. They were in
13 possession of that evidence. And we booked them for
14 that charge.

15 I was aware that her brother and the
16 mother were primarily the dealers. But the fact
17 that the sister as well tried to destroy evidence so
18 she must have possessed it at some point in the
19 house while we were coming in, I did book them on
20 the charge.

21 But all the other allegations of
22 misconduct are false, completely false.

23 Q Okay. Thank you.

24 All right. The next case we've got Deputy
25 District Attorney Michael Carter here, who has a

3250

01 couple of questions.

25 than all the windows were tinted, dark tint. I mean
3251

01 like the tint that you can't see through.

02 Q When you say "unmarked," it didn't say
03 anywhere on it that it was a taxicab?

04 A Not that I recall. I remember it being
05 yellow, painted yellow. I mean there's some that
06 are white and green, but this one was yellow.

07 Q Okay. When you decided to go get this
08 taxicab, did you know exactly where you were going
09 to get it or did you just come across it on the
10 street?

11 A I knew that if I started driving from the
12 point where I was headed towards the station,
13 between there and -- or between those two points,
14 I'd see one that would be suitable and I'd just
15 detain the person, take them to the station, and
16 bring the cab back.

17 Q Okay. Had you made these stops on cabs
18 before?

19 A Oh, we've stopped cabs many times.

20 Q Okay. What's the procedure for stopping
21 them? What's the official reason for stopping them?

22 A Well, we know that they're bandit cabs.
23 There's no placard, no city placards. I mean that
24 wasn't the purpose on this date. But on other
25 occasions I've worked bandit cab details where
3252

01 that's all we do all day, a cash overtime detail.
02 We stop cabbies, cite them, impound the vehicle,
03 things like that.

04 Q Okay. So this is something that's
05 normally done? When you stopped this cab, were you
06 in your black and white?

07 A No, sir. I was in a plain Ford Taurus, I
08 believe.

09 Q Okay. How did you conduct the stop?

10 A Just a normal traffic stop.

11 Q Okay. You just pulled up alongside of it
12 or behind it?

13 A Pulled behind it. Just made a regular
14 traffic stop, pulled the vehicle over, told the male
15 that we needed to investigate something, that we had
16 to take him to the station, and then we took the
17 vehicle to the station.

18 Q When you took him to the station, did you

19 take him into custody? Did you handcuff him?

20 A Yes, sir.

21 Q And how was the cab transported back to
22 the station?

23 A My partner, Raquel Duarte, drove the car
24 from the traffic stop location to the station,
25 Rampart Station, and I transported the defendant.

3253

01 Q Okay. Did he have any questions or
02 anything once you stopped him? Did you have any
03 conversation with him?

04 A He was actually pretty -- very
05 cooperative, pretty mild-mannered, Hispanic male,
06 45, maybe 50, but he was very cooperative. I don't
07 think he asked any questions.

08 Q Okay. Did you take his driver's license
09 or any identification from him?

10 A I don't think so.

11 Q When you stopped the cab, as far as your
12 partner is concerned, where was she when you
13 actually did the stop?

14 A She was in the car with me.

15 Q I mean did she get out of the car and

16 approach the car?

17 A Yes, sir.

18 Q Okay.

19 A We did a normal routine traffic stop. We
20 both got out of our vehicles and then we explained
21 to him that we had to take him to the station to ask
22 some questions.

23 Q Now, before you actually did the traffic
24 stop, did you have a discussion with her about what
25 you were about to do and how were you going to do
3254

01 it?

02 A We had a discussion back where we
03 originally snoopied up or met up with the
04 supervisors and all the other officers.

05 We were given an assignment to go locate a
06 cab that we were going to use to approach the
07 location. So we knew exactly, you know, at that
08 point what we needed to do. We needed to go find a
09 cab.

10 Q Okay. When the stop was made, at any
11 point did you or your partner have a discussion with
12 the cab driver about using the cab?

13 A No, sir.

14 Q And so she never told him, "We're going to
15 borrow your cab," or anything along those lines?

16 A No, sir.

17 Q When you took him back to the station,
18 where did you put him in the station?

19 A If you walk into the Rampart upper level
20 rear door, as soon as you walk in and you turn left,
21 as you go through the door threshold, the first
22 interview room to the right, there's a small, little
23 interview room. We placed him in there.

24 Q And does that interview room have any
25 windows or glass in it?

3255

01 A No, sir.

02 Q When you took him in was he in handcuffs?

03 A He was in handcuffs and then I
04 unhandcuffed him once he was inside.

05 Q When you took him into the station, where
06 was your partner?

07 A She was with me.

08 Q She actually walked into the station with
09 you?

10 A Yes, sir.

11 Q And you put him in the interview room?

12 A Yes, sir.

13 Q And did you lock the room?

14 A Yes, sir. It's an outer lock. It locks
15 outside, one of those latches you just slide over.

16 Q Okay. And did you indicate that -- in any
17 way that the room was occupied? Or how would people
18 know that the room was occupied?

19 A They'd probably just knock, unlock and
20 see, look inside if there was somebody in. I did
21 not mark anything saying "occupant" or anything, no.

22 Q Okay. When you left the station, who was
23 driving the cab?

24 A I believe I drove the cab to the snoopy up
25 location. I keep using the word "snoopy" up.

3256

01 That's what we use, but the meet location.

02 Q Okay. And was Sergeant Ortiz at that
03 location when you came back?

04 A He was already there, yes.

05 Q Okay. And where was your partner at that
06 point? Was she in the car with you?

07 A When we -- from the station going to the
08 meet? Yes, sir.

09 Q And when you left the location to go to
10 Shatto Place, where was she situated in the car?

11 A She was the -- the driver officer of the
12 taxicab.

13 Q Okay. And where were you?

14 A I was in the taxicab as well.

15 Q In the passenger or in the back? If you
16 recall.

17 MR. MC KESSON: This is going back from the
18 station to the location?

19 BY MR. CARTER:

20 Q This is going from the place where you
21 snoopied up to Shatto Place. She's the driver
22 officer.

23 A I was a passenger, the front passenger.

24 Q Okay.

25 A I was a little confused as to you're

3257

01 talking about the station going to the snoopy up or
02 the snoopy up going to the Shatto location.

03 Q No, I'm talking about the snoopy up to

04 Shatto.

05 A Okay.

06 Q You switched places?

07 A Yes.

08 Q Okay.

09 A Because originally what was going to
10 happen was Ortiz was going to go with us.

11 Q Okay.

12 A And we decided that because they may run
13 northbound, that he would just drive slowly from the
14 north coming south.

15 Q In a --

16 A In a hybrid police vehicle.

17 Q Okay. Is there a reason why you changed
18 over and let her drive and you went to the passenger
19 side?

20 A That was my doing.

21 Q Okay.

22 A I wanted to be the closest to the
23 defendants -- I mean not that I have anything
24 against females, but it was just the way I wanted it
25 to be done. I wanted -- she was the junior officer.

01 I wanted to be closer to the defendants as I'm
02 getting out of the vehicle.

03 I'm not saying that there was a lack of
04 tactical awareness on her part. It's just the way I
05 wanted to do it. I wanted to not have to be
06 driving. I wanted to be looking at the situation in
07 front of me instead of having to drive it, park it,
08 and doing all that other stuff.

09 Q Okay. Now, after this is all over with,
10 you have a conversation with Sergeant Ortiz about
11 the taxicab.

12 A Yes, sir.

13 Q What is that conversation?

14 A To get rid of it and bring back the police
15 car and put it in its place.

16 Q And how did you accomplish that?

17 A I had her go out and do it.

18 Q Where was she when you had that
19 conversation with her?

20 A I believe she was in the lower level or
21 the first floor level of the apartment building.

22 Q Okay. Was she actually on the inside or
23 was she outside?

24 A When I actually told her, I think I
25 originally wanted to say that she must have been

3259

01 inside, but that, I can't be a hundred percent
02 positive.

03 I know there was a point where I talked to
04 her again outside the building. But I know I got --
05 I communicated that information to her, to get rid
06 of that car and get the police vehicle back.

07 Q Okay.

08 A I want to say that I told her inside the
09 building, but I may have talked to her a couple of
10 times about it.

11 Q Okay. That's what I wanted to ask you.
12 You say you talked to her a couple times about it.
13 Did she not do it the first time or what do you
14 think happened?

15 A I think it was a matter of who's going to
16 go, who's going to go with her, that type of thing.
17 Because she had to drive the Taurus and then come
18 back and bring the other vehicle back. So I
19 think -- I know I talked to her at least once or
20 twice about it. Because I was actually told to go

21 do it.

22 Q Okay.

23 A Ortiz told me to do it, and then I
24 delegated it to her. And it was just a matter of
25 who's going to go with her or how are we going to do

3260

01 this.

02 Q Okay. From the time that you first talked
03 to her until the time that she actually left in the
04 cab, how long would you say that was?

05 A This was immediately. This was -- I mean
06 it's hard for me to put a time on it.

07 Q Okay.

08 A But we're talking as soon as everything
09 happens. I mean as soon as.

10 Q Okay.

11 A You know, the defendants are still, you
12 know, being walked downstairs, that type of thing,
13 "let's get that car out of here, let's get," you
14 know, "the other car in," that type of thing. So
15 it's happening right away.

16 Q Okay. Since that time, since the
17 incident, did you ever have an opportunity to see

18 this same cab or cab driver again?

19 A No, sir. Not to my knowledge. I mean I
20 may have seen it but didn't realize it's him, you
21 know. We see, you know, people up and down Rampart
22 all day, but not that I was, you know, consciously
23 saying, "hey, that's the guy that we stopped that
24 one time," no.

25 Q Okay. What about that cab, did you ever
3261
01 come across any cabs like that?

02 A All the time, but I mean I wouldn't know
03 if it's that particular cab or not.

04 MR. CARTER: Okay. And -- I think that's about
05 it. Yeah.

06 MR. ROSENTHAL: All right. We'll go off the
07 record for a moment.

08 (Discussion off the record)

09 MR. ROSENTHAL: Okay. It's 10:40. We're back
10 on the record. And this -- we're going to be
11 discussing the case involving Defendants Raul Munoz,
12 M-u-n-o-z, and Caesar Natividad, N-a-t-i-v-i-d-a-d.
13 His true name is Banuelos, B-a-n-u-e-l-o-s. The
14 D.A. case number is BA135359. The D.R. number is

15 96-1121308. Go ahead.

16

17

EXAMINATION

18 BY DETECTIVE DEMUCHA:

19 Q Okay. You've had a chance to review all
20 the paperwork there.

21 When you actually approached the
22 location -- okay, you've already had the O.P. and
23 you're going to make your move in -- do you remember
24 who was in the car with you, if anyone?

25 A Well, let me clarify it a little bit.

3262

01 Q Okay.

02 A I was doing the O.P. I realized that the
03 meeting was definitely going down. I then have
04 several, I mean several units from northeast and, as
05 many as I can, all my Rampart CRASH units meet me at
06 the substation on Sunset. From there I make all the
07 assignments, where each unit -- what corner are they
08 going to take.

09 When we respond to the party itself, the
10 alley, I probably have about five people in our
11 vehicle. There is -- and I can't remember them all,

12 but I know there was -- there was several people.

13 We all just -- we figured the best thing to do is

14 get as many people in the car as possible.

15 And when we went to the alley, we parked

16 the car in the alley, got out, and started walking

17 it in.

18 Q Okay. Let me throw some names at you and

19 see if it rings any bells. Was Duarte with you?

20 A Yes, ma'am.

21 Q Was Buchanan?

22 A Yes, ma'am.

23 Q Was Liddy,?

24 A Yes, ma'am.

25 Q So that's three and you is four. Can you

3263

01 remember -- five people, one more person being in

02 the vehicle?

03 A Oh, in my vehicle? I believe Sergeant

04 Ortiz was also in my vehicle.

05 Q And Ortiz was possibly in your vehicle.

06 So that's five.

07 A Yes, ma'am.

08 Q Do you think there was anyone else stuffed

09 in there?

10 A In my vehicle?

11 Q Yes.

12 A I don't know because, remember, there's
13 several vehicles, not just one.

14 Q Right. Well, specifically, I want who's
15 in your car.

16 A I remember there was about five. I mean
17 we packed up pretty tight. I think those were the
18 ones that -- I know definitely my partner, which was
19 Duarte. I'm pretty sure about Buchanan, Liddy, and
20 I think it was Ortiz.

21 Q Okay. So you pull up. Did you go -- did
22 you initially go -- the alley runs north and south.
23 Did you initially go south first?

24 A Yes, ma'am.

25 Q Okay.

3264

01 A We went -- as we made a right on to that
02 street -- I think it's Clayton.

03 Q Yes.

04 A We went south because we thought that's
05 where they were going to be meeting at. But what

06 happened was the meeting was over and they were
07 already headed back to their vehicles, which is
08 north of that -- of that alley, that street there.
09 So -- but we left the vehicles there, got out, and
10 walked it up towards them.

11 Q Okay. And do you remember were you
12 walking in a skirmish-like formation or were you in
13 a column or one on either side of the other?

14 A We were column. We were stacked up one in
15 front of the other up along the alley going up
16 there.

17 Q Okay. And can you remember who was in
18 front, who was the point man?

19 A I know Ortiz -- what I do remember was
20 Ortiz was in front of me and Liddy was behind me and
21 there was somebody else in front of him.

22 Q Of Liddy?

23 A In front of Ortiz.

24 Q Okay.

25 A I don't know -- I just can't remember who

3265

01 it was, you know. I know there was somebody in
02 front of him, also.

03 Q And were the occupants of your car either
04 in front of you or directly behind you? No one
05 broke off to go anywhere else?

06 A No. We realized, oh, they're all over
07 there. So we had turned around and started walking
08 quickly that way. There was other vehicles coming
09 in, too, though.

10 Q Into the alley?

11 A Yes, ma'am.

12 Q You mean police vehicles or civilians?

13 A No, there was a vehicle I believe coming
14 from the -- from Clayton, one street north of
15 Clayton.

16 Q Camero.

17

18 EXAMINATION

19 BY DETECTIVE MICHELSON:

20 Q These are photos.

21 A Camero?

22 Q These are aerial photos. The bottom of
23 the photo would be Clayton Avenue and the top of the
24 photo would be Camero Avenue. Hillhurst would be to
25 your left.

3266

01 A Hillhurst would be here?

02 Q Yeah.

03 A Hillhurst would be here. The fire station
04 is over here somewhere.

05 Q Yeah, here's --

06 MR. ROSENTHAL: All right. For the record,
07 you're going to have to state -- you can't just say
08 "here." You need to say "to the left of the
09 photograph" or "towards the bottom."

10 BY DETECTIVE MICHELSON:

11 Q Okay. On the top photo, this is Hillhurst
12 here. This is a rental car. This was tennis courts
13 back then. This is Clayton. This is the alley. On
14 the left side of the photo is the alley that's east
15 of Hillhurst. And this is Camero.

16 A Okay. This would be Hillhurst here coming
17 down on the left side of the picture, of the bottom
18 picture, and this would be Clayton.

19 We originally came eastbound on Clayton
20 and came in the alley southbound here. We realized
21 there was nobody here, and we looked -- we looked
22 behind us and we just saw the big gathering up here.

23 Q Which is north of where you are?

24 A North of Clayton in this -- I think it's a

25 rental car place?

3267

01 DETECTIVE DEMUCHA: It is now.

02 THE WITNESS: It was then, too.

03 BY DETECTIVE MICHELSON:

04 Q No, this is tennis courts here. It was

05 tennis courts.

06 A No, this here I mean.

07 Q Oh, okay. This is the dentist office.

08 A Is it a dentist office or something?

09 Q Yeah. And this is an auto repair.

10 MR. ROSENTHAL: Okay. Stop. Hold it.

11 Remember we're on the record.

12 DETECTIVE MICHELSON: Right. I'm getting

13 there.

14 MR. ROSENTHAL: No, no, no. You have to --

15 exactly. One at a time.

16 DETECTIVE MICHELSON: Right.

17 MR. ROSENTHAL: Wait for him to finish, then

18 ask the question.

19 DETECTIVE MICHELSON: Okay.

20 THE WITNESS: Anyway, we -- we ended up walking
21 it back north on the left side of the alley here,
22 the west side. And when I was saying there was a
23 vehicle coming in, there was a vehicle that was
24 going to close off this alley here.

25 And we primarily used Northeast and
3268
01 Rampart patrol units to seal off the outer
02 perimeter. What I had was a different unit in
03 between the alley, you know, over here in case I
04 needed a big perimeter.

05 DETECTIVE DEMUCHA: Right.

06 THE WITNESS: Because you got to remember what
07 we were looking for was a murder suspect --

08 DETECTIVE DEMUCHA: Right.

09 THE WITNESS: -- that was supposed to be there,
10 and he was there. We lost him. Yeah.

11 So when we -- we were responding this way,
12 I know Sergeant Ortiz was in front me, I know Liddy
13 was behind me, I believe Buchanan was behind me, but
14 there was somebody -- I don't know if it was Raquel
15 Duarte or who it was, but there was somebody in
16 front of me.

17 So I mean when we got to about -- I want
18 to say about to where this white car is now on the
19 bottom photo right towards the center, that's when
20 the truck came down this way here.

21 It's hard to describe it. Right in the
22 middle of the photo, if you come out of the parking
23 lot and come right down to the alleyway here, the
24 north/south alley, we're right about where this car
25 is.

3269

01 And the truck -- I believe it was a light
02 blue truck -- is coming down for about -- he's
03 coming about 20, 25 miles an hour. And we get
04 out -- we all started getting out of the way of the
05 truck.

06 I believe he came -- he started to sort of
07 turn left and ran into a tree that's right around
08 here.

09

10 FURTHER EXAMINATION

11 BY DETECTIVE DEMUCHA:

12 Q Okay. That was my next point, is that --
13 that the car was coming and you were -- "you",

14 meaning all of you -- had to get out of the way to
15 avoid being struck. Is that fair?

16 A I mean we took an exaggerated "get out of
17 the way." If I would've stood right where I was, he
18 probably would've missed me, but I would've been
19 awfully close.

20 Q Right.

21 A Now, had some of the other officers stood
22 there, yeah, they might have got runned over. You
23 know what I mean? But everybody -- I know everybody
24 jumped to this side over here.

25 Q So that would be, what, the east side?

3270

01 A The west side of the alley.

02 Q When you approached -- when you were
03 walking up the alley northbound, were you more or
04 less in the center of the alley, you know, in
05 between east or west, or were you like hugging one
06 side or the other?

07 A We were to the center left. Center --

08 Q West?

09 A -- west part of the alley.

10 Q Okay.

11 A We all were. And we were all like pretty
12 much behind each other. That's why I was -- when I
13 say one of us might have been a little bit off, you
14 know. Because the vehicle came right down the
15 middle of the alley, so -- but we were in the center
16 left of the alley.

17 So would he have hit us? That's
18 debatable. I mean but we certainly made an effort
19 to get out of the way just in case he ever swerved
20 toward us. But he never swerved towards us, so --

21 Q Okay. You never saw him changing
22 direction? You never saw him swerve?

23 A No, ma'am.

24 Q As the vehicle passed and you looked
25 behind you, did you notice anybody jumping out of
3271
01 the way?

02 A We all jumped out of the way.

03 Q Well, I mean falling. Okay. Did you see
04 anybody hit the deck?

05 A I know that Buchanan had to get up, and
06 I'm pretty sure that that's why we used him as the
07 victim officer. Because he did --

08 Q Go ahead. I'm sorry.

09 A He did have to like get out of the way.

10 He might have fallen or slipped or tore his pants or

11 something like that.

12 But the reason we used him as the victim

13 officer is because of that reason, because he had

14 some tore pants and some scratches or something.

15 But the vehicle never hit him.

16 Q Okay.

17 A And the vehicle door never hit Liddy,

18 definitely didn't hit Liddy.

19 Q Did you actually see him picking himself

20 up off the ground?

21 A That's what I remember.

22 Q Right after the truck passed? Sorry.

23 A Right. I definitely didn't see him

24 getting hit, and I don't remember him getting down.

25 But, you know, as we're now headed towards the

3272

01 truck, I could see him getting up.

02 Q Okay.

03

04 FURTHER EXAMINATION

05 BY DETECTIVE MICHELSON:

06 Q Let me stop right there. Then -- let me
07 see if I understand it right then.

08 Then he's fallen before the truck's gotten
09 even to you.

10 A Right. He's behind me.

11 Q Right.

12 A Right. Let me -- again, somebody's in
13 front and then it's Ortiz, then me, Liddy, and
14 then -- and I believe it's Buchanan. So he's behind
15 us.

16 Q Right.

17 A So we see the vehicle coming. I'm getting
18 out of the way, I'm getting out of the way, and we
19 see the truck, oops, hit the tree. We look over,
20 we're going to head towards the truck, and we see
21 Buchanan having to stand up.

22 Q Oh, I see. So you're going to turn around
23 and head back --

24 A Right.

25 Q -- towards the truck.

3273

01

02

FURTHER EXAMINATION

03 BY DETECTIVE DEMUCHA:

04 Q Did you see the guys bail out of the
05 truck?

06 A Yeah, I see them bail out and just start
07 running.

08 Q You didn't follow them, though?

09 A No, ma'am.

10 Q Do you remember who did, if anyone?

11 A I know on the report it says Liddy went
12 after foot pursuit of one of them and caught him.
13 That's absolutely fabricated. I believe Brehm might
14 have caught him. And then a canine caught the other
15 one in one of the garages later on that evening.

16 Q Right. But you weren't -- you didn't
17 observe that yourself --

18 A No.

19 Q -- the dog bite thing.

20 A No, ma'am.

21 Q Okay. All right. After all that's done,
22 I assume that you continued on up the alley and had
23 contact with gang members that were in the alley.

24 A Yes, ma'am.

25 Q Okay. Do you remember if any F.I.'s were
3274

01 taken?

02 A I'm assuming many F.I.'s were done. We
03 arrested -- I don't know -- five, six people that
04 day. So at least on the arrestees F.I.'s were done.

05 But I'm assuming -- there was other people
06 detained. There was the girlfriend of the murder
07 suspect that was there. I know we F.I.'d her. We
08 got all her information. How many total F.I.'s, I
09 don't know.

10 Q Do you remember what the girlfriend's name
11 was?

12 A I had all her information in one of my --
13 one of my books. I don't know where now, but -- it
14 was a female Hispanic, maybe 30 years old. Her name
15 I can't remember. I mean if you told it, I might
16 go, "Well, yeah, that sounds right."

17 I know she was driving a van, like a
18 gold-colored van. We detained a van. We detained
19 her. We received information from her where he was
20 working.

21 We set up a sting. He was working at some

22 kind of water purification place. And it turns out
23 he didn't show up for work the next day. He didn't
24 show up for work ever again.

25 Q Did that woman with the gold van, did she
3275

01 have any kids?

02 A She had a child with her, yes, ma'am.

03 Q Do you have any idea what may have
04 happened to the F.I.'s?

05 I mean usually they give it to whoever is
06 running the show. Do you remember if they did
07 anything like that?

08 A Usually what happens is, you know, if
09 we're booking -- let's say I need somebody to go
10 book five bodies for me. I think I booked five for
11 transmassing.

12 Whoever is going to book those five for
13 me, with the booking I'll put the F.I. because the
14 booking people need the F.I. to do their thing.

15 And a lot of times I'm not sure whether,
16 you know, they just turn them in or just keep them
17 or turn them in with their logs or they'll give them
18 to me, whichever is most or easiest to do for them.

19 Did I get those F.I.'s? I don't remember.

20 Q Okay.

21 A I know I would've at least kept her
22 information, her F.I., the female's.

23 Q Well, would you have turned it in with
24 your log or would you have kept it in your own
25 personal stuff?

3276

01 A I may have kept it.

02 Q Okay. After all that's done and Code 4'd,
03 you mentioned in your transcript from your earlier
04 interview about the windshield being broken on that
05 little truck that came down the alleyway.

06 A Yes, ma'am.

07 Q And that you thought that Sergeant Ortiz
08 had given the order to have the window broken.

09 A I know he did.

10 Q Okay. Did you personally hear Ortiz tell
11 someone to do that?

12 A He told Buchanan to do that.

13 Q Okay. Did you see Buchanan go over and
14 damage the window?

15 A I saw Buchanan going towards the vehicle

16 to do it, but I didn't go over there and watch him
17 do it.

18 Q Okay. Do you recall exactly what Ortiz
19 said about breaking the window?

20 A The initial conversation was who's going
21 to go and what were they going to go for and what we
22 were going to do. And it was, I believe, Liddy that
23 really wanted to take the tune for ADW on a P.O.,
24 that type of thing. I'm sorry.

25 Q Usually it's me they tell to slow down.

3277

01 A When we got that settled as to who's going
02 to go and for what, I remember right about -- still
03 right about maybe at the mouth of the alley, just
04 north of Clayton in the alley, we were having a
05 conversation and Ortiz is telling Buchanan to go
06 break the windshield.

07 Q And you say "we." Who was there besides
08 yourself and Ortiz and Buchanan?

09 A The people that I remember in this little
10 conversation at this point was myself, Liddy, and
11 Buchanan. And, I'm sorry, Sergeant Ortiz. And
12 Sergeant Ortiz is telling Buchanan to go break this

13 window here to the truck.

14 And, again, like I said, I think I was,

15 you know, back and forth to where all the gang

16 members were and other things that we were doing.

17 So I did not pay attention to whether, you know -- I

18 know I saw him walking towards the vehicle. I

19 didn't go watch him personally break it.

20 And I believe there was also some

21 direction about doing some damage to the door, but I

22 didn't see that at all.

23 Q Okay. Do you remember if the glass was

24 already broken when it came down the alley at you?

25 A I don't know.

3278

01 Q The other thing is just that there was a

02 traffic accident report that was made. Who directed

03 that that be done? I'm sorry. I didn't give that

04 to you.

05 MR. ROSENTHAL: And just for the record, what

06 you had previously looked at before starting the

07 interview was a transcript of your prior interview

08 on the subject and a copy of the arrest report of

09 Munoz/Natividad?

10 THE WITNESS: Yes, sir.

11 MR. ROSENTHAL: And now you're going to be
12 shown a traffic collision report that was prepared
13 with respect to this case.

14 THE WITNESS: Yes, sir.

15 BY DETECTIVE DEMUCHA:

16 Q And it bears the D.R. of 96-11-21307.

17 A Thank you.

18 Q I'm sorry.

19 A Okay. I've seen this accident
20 report/traffic collision report before. The names
21 that are on the report is my partner's, as though
22 she was the author, and my name. The front of
23 the -- the face sheet of the report is filled out by
24 my partner. Everything else, even in the front of
25 the report under the sketch, the little summary.

3279

01 Q On the first page?

02 A On the first page, everything on the
03 second page, everything on the third page, and
04 everything on the fourth page is done by someone
05 else completely different. Probably some traffic
06 officer or something like that. None of this was my

07 partner's handwriting or my handwriting.

08 Q Do you remember how it was that she
09 started to do this?

10 A Well, what it was is we wanted to do it.
11 There were -- there were some things that we wanted
12 on this. I mean this is our caper. This is -- we
13 wanted to handle everything as much as we can.

14 But as far as the traffic goes, we don't
15 have the expertise. So we needed somebody that had
16 expertise to help us out with this part, how to word
17 it and do all that stuff.

18 And I know a traffic report vehicle came
19 by, helped my partner do it, but I know she filled
20 this front initial part out.

21 Q Was that at scene do you recall?

22 A The information?

23 Q Yes.

24 A I don't believe so.

25 Q What she did.

3280

01 A No, I don't believe so. I believe that
02 was done back at the station.

03 Q Okay.

04

05

FURTHER EXAMINATION

06 BY DETECTIVE MICHELSON:

07 Q But I was going to say just now when you
08 were referring to it, you had just taken your hand
09 and -- on page 4 and said you wanted expertise in
10 regards to this information.

11 A You know, the summary and point of impacts
12 and distances, the terminology that's used. Because
13 we were aware that traffic collision reports are
14 kicked back. For any little mistakes, they'll get
15 kicked back.

16 Q Right.

17 A So we wanted the right wording as to how
18 these reports are supposed to go.

19 Q Okay.

20

21

FURTHER EXAMINATION

22 BY DETECTIVE DEMUCHA:

23 Q Can I see that back for a second? I'm
24 going to show you page 4. And up at the top it says
25 "Officer Serial Number," and it says "32055." And I

3281

01 believe that's Officer Buchanan's serial number.

02 Do you think he could've prepared this
03 report?

04 A I have no idea who did this part of the
05 report. I don't recognize the handwriting.

06 Q Okay.

07 MR. ROSENTHAL: And let's just try to -- what
08 page number again?

09 THE WITNESS: Page number 4 of the traffic
10 collision report, the investigation, with D.R.
11 number 96-11-21307. All I know that it's not my
12 handwriting or my partner's handwriting.

13 MR. ROSENTHAL: Okay.

14 BY DETECTIVE DEMUCHA:

15 Q And let me ask one further thing. Do you
16 know if Duarte or if Liddy or Buchanan ever reviewed
17 this report, to your knowledge?

18 A I don't know.

19 Q Okay. Did you discuss with Duarte whether
20 or not -- you know, the status of the injuries and
21 stuff, how the accident actually occurred?

22 Did you discuss with her that, in fact,
23 this never had occurred, there was no impact between

24 the vehicle and Buchanan and Liddy?

25 A Well, I think she knew that.

3282

01 Q But did you ever discuss it with her?

02 A Well, we discussed how it was going to be
03 written, yes.

04 Q Okay.

05 A We discussed -- I think her only
06 responsibility in all of this was to do that report.
07 And she discussed not only with me but with Liddy
08 and Buchanan how it was going to be written to
09 coincide with their report as far as injuries, how
10 things occurred, that type of thing.

11 Q And were you a witness to that when she
12 actually spoke to Liddy and Buchanan?

13 A Yes, but that was done back at the
14 station, not at the scene.

15 Q Okay. That was after the fact when
16 everything was quiet?

17 A Yes, ma'am.

18 Q Okay. Just to reiterate, just to clarify
19 it just one more time, you did not actually see
20 Buchanan get struck by the little blue truck. But

21 after the vehicle passed, you saw him standing up
22 from the alley?

23 A No one ever -- I watched the truck coming
24 southbound in the alley, from the north coming south
25 towards us. And there was about four or five

3283

01 officers stacked up.

02 I looked at that vehicle coming towards
03 me. In fact, I even looked at the guys going in
04 there. That's why I was able to tell them who it
05 was, that it was the suspects, that we knew who they
06 were.

07 I watched that vehicle go past us. That
08 vehicle didn't hit anybody, didn't strike anybody.
09 As it was leaving out of the alley, it went right
10 into the tree. I saw Buchanan getting up after that
11 occurred. But he never got struck by a car and
12 neither did Liddy.

13

14 FURTHER EXAMINATION

15 BY DETECTIVE MICHELSON:

16 Q How do you think he got hurt?

17 A I think getting out of the way he slipped

18 or fell or something. I know he scraped his pants
19 or scraped his leg or something, but he never got
20 hit by a car. That's a fact on that.

21 Q Did he ever tell you how he got injured
22 that night?

23 A I think it was assumed -- I mean you could
24 see that he was just getting out of the way and
25 slipped or did whatever on some oil or -- I don't
3284

01 know what he slipped on, but he did slip getting out
02 of the way. He didn't get hit by a car.

03 I mean I think that would've been -- I
04 mean you don't miss that. You don't miss somebody
05 getting hit by a car. I mean we're all right there.
06 I mean we're all within, you know, 10 feet of each
07 other. We're all -- I mean we're right there. It's
08 impossible to miss. You don't -- you don't miss
09 that.

10 Q Right. So he told you he did -- did he
11 ever say, "I didn't get hit by the truck"?

12 A He never used those words with me. The
13 words that we used were how -- who we're going to
14 take. That's the meeting -- or the conversation

15 that Sergeant Ortiz, myself, and Liddy and Buchanan
16 had at the mouth of the alley.

17 And because he had already had some -- a
18 little injury on his pants and had the torn pants,
19 we were going to use him as a victim. And we said,
20 "We're going to say that you got hit by the car."

21 And that's when Ortiz said, "You know
22 what? Go break the windshield of the car. Make it
23 look like that's where you hit."

24 So he knew with our conversation that
25 we're fabricating this story. I mean that -- right
3285

01 in the middle of the story, that's when he told
02 Buchanan, "Go break the windshield."

03 It wasn't like he started coming to me,
04 "So I really didn't get hit, but I'm going to say I
05 did," you know. It just doesn't happen that way.
06 That's robotic. It just doesn't occur that way.

07 DETECTIVE DEMUCHA: Okay. I think we're done
08 with this one. We have about three on the others if
09 you'll allow us to do it.

10 MR. ROSENTHAL: Yeah. The next one that you
11 want to discuss I believe was the Virula? That's

12 Defendants Maria Virula, V-i-r-u-l-a, and Samuel
13 Nolasco, N-o-l-a-s-c-o. The D.A. case number is
14 BA151865. The D.R. number is 97-0221945.

15 THE WITNESS: We've discussed it more than
16 this.

17 DETECTIVE DEMUCHA: That's all we had.

18 THE WITNESS: Four pages?

19 DETECTIVE DEMUCHA: Yeah.

20 MR. ROSENTHAL: All right. Hold on. Let's go
21 off the record for a moment.

22 (Discussion off the record)

23 MR. ROSENTHAL: Okay. We're back on the
24 record. It's 11:12.

25 Mr. Perez, we just had the investigators
3286

01 take a look at the transcript relating to your prior
02 interview relating to Virula and Nolasco that was
03 conducted on April 14th. They had not seen that
04 before. And I believe there is just one or two
05 quick follow-up questions.

06 DETECTIVE DEMUCHA: That's correct.

07

08 FURTHER EXAMINATION

09 BY DETECTIVE DEMUCHA:

10 Q Okay. The report that you've had a chance
11 to look at, the arrest report has been fabricated.
12 And just real quickly for us, there was an
13 individual other than yourself that actually
14 participated in the buy of the narcotics from Maria
15 Virula; is that correct?

16 A [*** CI # 14 Information Redacted *****]

17 Q [*** CI # 14 Information Redacted *****]

18 A [*** CI # 14 Information Redacted *****]

19 Q [*** CI # 14 Information Redacted *****]

20 [*****]

21 A [*** CI # 14 Information Redacted *****]

22 [*****]

23 [*****]

24 [*****]

25 Q [*** CI # 14 Information Redacted *****]

3287

01 Okay.

02 A Yes, ma'am.

03 Q I'm going to show you two photographs.

04 They're cal ops. [***** CI # 14 Info Redacted *****]

05 [*****]

06 [*****]

07 [*****]

08 A This is pictures of [**** CI # 14 ****]

09 Q [***** CI # 14 Information Redacted *****]

10 [*****]

11 A Yes, ma'am.

12 Q [***** CI # 14 Information Redacted *****]

13 [*****]

14 A Yes, ma'am.

15 Q Okay.

16 MR. ROSENTHAL: And just for the record,

17 [***** CI # 14 Information Redacted *****]

18 [*****]

19 [*****]

20 [*****]

21 BY DETECTIVE DEMUCHA:

22 Q Who was working with you that day, do you
23 remember, besides Durden?

24 A Coronado.

25 Q Anybody else?

3288

01 A Eventually?

02 Q No, just for this part.

03 A That, I think there was -- I think it was
04 the three of us.

05 Q Okay.

06

07 FURTHER EXAMINATION

08 BY DETECTIVE MICHELSON:

09 Q Yeah, I'm reviewing the report, and I'm
10 trying to find it in here. There's a section in
11 this report, and this report is authored by Officer
12 Coronado.

13 A Officer Durden authored this report.

14 DETECTIVE DEMUCHA: You're thinking of the
15 other one.

16 DETECTIVE MICHELSON: Oh, boy. I've got too
17 many of these cases right now. Okay. Durden did.
18 You know which part I'm looking for.

19 DETECTIVE DEMUCHA: Well, somewhere in this
20 report it indicates that Coronado was actually --
21 was waiting in the apartment building.

22 BY DETECTIVE MICHELSON:

23 Q Here it is here under "observations."

24 One, two, third paragraph it says:

25 "My partner and I then I.D.'d ourselves as

3289

01 police officers and detained defendant 1
02 without incident. Defendant 1 had advised
03 officers that she lives at 239 North Kenmore,
04 apartment number 3.

05 "At approximately 1620 hours, Officer
06 Coronado, who was positioned in the lobby area
07 of 239 North Kenmore, advised us that a male
08 Hispanic, approximate 50 years old, wearing a
09 tan shirt and brown pants, later identified as
10 defendant number 2 Nolasco, Samuel, had just
11 exited apartment number 3 and was walking
12 northbound in our direction."

13 MR. ROSENTHAL: What's the question?

14 BY DETECTIVE MICHELSON:

15 Q Okay. After reviewing that, did you at
16 some time respond back to that apartment for a
17 follow-up?

18 A Definitely. I mean but it didn't occur
19 like this.

20 Q That's fine.

21 A Okay. Yes.

22 Q If you can remember -- and I know this is,

23 what, three years ago -- remembering that
24 location -- and I have some photos to refresh your
25 memory. But from your memory, could Officer

3290

01 Coronado have made that observation of a male
02 Hispanic exiting apartment number 3 from the lobby?

03 A As a narcotics officer, I seriously doubt
04 that I would let a U.C. go into the lobby by
05 himself, an officer by himself, while we -- we were
06 expecting the person to come to us.

07 We know where they're coming from. What's
08 the purpose of watching him come out of their door?
09 And especially by himself.

10 Q So you're --

11 A I think -- I mean we wrote some of this
12 stuff to give us more probable cause, go back to the
13 apartment, all this other stuff. But Coronado -- I
14 mean it was the three of us. I mean we were out in
15 the street. I mean --

16 Q So you're saying two things here. One,
17 you're saying you already knew that it was apartment
18 number 3. You wouldn't need it verified.

19 A Well, we knew what building they were

20 coming from.

21 Q Okay.

22 A That, we knew. The apartment we may have
23 not known about, but we would've known once we
24 detained a person.

25 See, the apartment was just north of
3291

01 the -- just south of the arrest location. We knew
02 they were going to come out of this building, and we
03 knew they were just going to meet us right at the
04 corner.

05 We figured once they come out -- it's
06 suppose to be a husband and wife -- we'll detain
07 them. We'll just take them right back to the
08 building.

09 We know what apartment -- you know, it's
10 one of three or four apartments. And somebody will
11 tell us, the manager or somebody will tell us where
12 they live.

13 But I definitely wouldn't put Coronado as
14 a U.C. in a building by himself waiting to see what
15 apartment these people were coming from. I need him
16 more placed to point -- you know, in case something

17 goes down, I need him there.

18 Because we've got Durden in the vehicle,
19 and we've got me out there. I mean I just -- I
20 wouldn't put Coronado by himself in a building.

21 Q Do you remember Coronado being with you?

22 A Coronado was out there with -- we're not
23 like staying in a group. We're kind of like spread
24 out a little bit waiting for this lady to show up or
25 the male, whichever one was going to show up to
3292
01 deliver.

02 But the female ended up showing up. She
03 was taken into custody and we ended up going back
04 to -- what happened was the male ends up coming down
05 there.

06 And we weren't sure whether it was him or
07 not. But, you know, she kind of looks in that
08 direction. He turned around and walks back. And we
09 go, "That's him. That has to be the husband."

10 We go back to the apartment and we figured
11 out what apartment he's in. We go talk -- in fact,
12 he had already had time to take the narcotics out of
13 his house and put it in a Dumpster in the back.

14 Q Did you see that?

15 A No, he told us that. And me and Coronado
16 went and recovered it.

17

18 FURTHER EXAMINATION

19 BY DETECTIVE DEMUCHA:

20 Q When did he tell you that?

21 A At the residence.

22 Q Was he wife around?

23 A Yeah.

24 Q Was she within earshot?

25 A Earshot when he told us?

3293

01 Q Yeah.

02 A [***** CI # 39 Information Redacted *****]

03 [*****]

04 [*****]

05 [*****]

06 Q [***** CI # 39 Information Redacted *****]

07 [*****]

08 [*****]

09 A Yeah.

10 Q In fact --

11 A [***** CI # 39 Information Redacted *****]

12 [*****]

13 Q [***** CI # 39 Information Redacted *****]

14 [*****]

15 [*****]

16 [*****]

17 [*****]

18 A We took everybody out of there.

19 Q Well, I mean everybody went with you,

20 but --

21 A Okay.

22 Q -- Maria was taken to the station, and

23 then you guys did a follow-up over to the other

24 guy's house.

25 A Okay. Yes.

3294

01 Q Okay? I don't know if you want to get

02 into this without seeing the statement, but you said

03 that you left her with Lusby and that you thought

04 Mc Gee had gone with you to the follow-up location.

05 A One of the supervisors would've gone with

06 us.

07 Q Okay. And you thought at the time it was

08 Mc Gee, but we found out that Mc Gee was on
09 vacation. So do you have any other idea who it
10 might have been?

11 A Mc Gee was on vacation this day?

12 Q Yeah.

13 A No. Definitely not.

14 Q Oh, I'm sorry. No, that's my fault.

15 DETECTIVE MICHELSON: We got a lot of cases --

16 THE WITNESS: Okay.

17 DETECTIVE MICHELSON: -- and they start running
18 into one another.

19 BY DETECTIVE DEMUCHA:

20 Q My fault. Strike that.

21 A Okay.

22 Q Don't mean to confuse you any further.

23 A Yeah, I'm going, no, he was there.

24 Q And they all start with "V."

25 A Okay. Okay. Scratch all that.

3295

01 DETECTIVE DEMUCHA: We're done.

02 MR. ROSENTHAL: You're all done? All right.

03 Thank you. It is 11:20. We're off the record.

04 (Recess)

05 MR. ROSENTHAL: All right. It's 12:38. We're
06 back on the record.

07 Mr. Perez, you're still under oath.

08 THE WITNESS: Yes, sir.

09 MR. ROSENTHAL: And the case that's going to be
10 discussed right now involves two defendant arrests,
11 Roberto Andrade, A-n-d-r-a-d-e, and Olga Rodriguez,
12 D.A. case number BA151745. The D.R. number is
13 97-1117118. Go ahead.

14 SERGEANT RODRIGUEZ: This is the tape-recorded
15 interview of an administrative investigation, C.F.
16 number 0066. Today's date is May 10th, 2000. Once
17 again, the time that you gave the time check is --

18 MR. ROSENTHAL: 12:39.

19 SERGEANT RODRIGUEZ: -- 12:39.

20 The location of this interview is Internal
21 Affairs South Section. Present to be interviewed is
22 Rafael Perez. The interview is being recorded on
23 tape number 231494, side A.

24 The interview is being conducted by
25 Sergeant Jerry Rodriguez, 25066. Also present in

3296

01 the room is Court Reporter Lynden Glover. Lynden,

02 L-y-n-d-e-n, Glover, G-l-o-v-e-r.

03 Representing Perez is Mr. Winston

04 Mc Kesson, M-c-K-e-s-s-o-n. Representing the

05 district attorney's office is Mr. Richard

06 Rosenthal.

07

08 EXAMINATION

09 BY SERGEANT RODRIGUEZ:

10 Q Can I call you Ray?

11 A Yes, sir.

12 Q Okay. Ray, I've given you a copy of the

13 report in question here. In addition, I've given

14 you a paraphrased copy of your recorded statement

15 during a prior interview.

16 Does that help you refresh your

17 recollection regarding this case?

18 A Yes, sir.

19 MR. MC KESSON: Let me just state for the

20 record Mr. Perez was given a copy of the arrest

21 report. He was given a copy of one of the -- the

22 transcribed copy of one of the interviews with

23 respect to this case.

24 MR. ROSENTHAL: That would've been the

25 interview conducted on Monday, October 11th, 1999.

3297

01 MR. MC KESSON: There was also another
02 extensive interview that was conducted sometime in
03 April. I forget the exact date.

04 MR. ROSENTHAL: That was on April --

05 THE WITNESS: 12th.

06 MR. ROSENTHAL: -- 12th of 2000.

07 MR. MC KESSON: Which the detective has been
08 kind enough to paraphrase and give Mr. Perez a copy
09 of his paraphrased version of that interview.

10 I just want the record to reflect what the
11 protocol had been in these interviews is Mr. Perez
12 to be given a copy of his full transcript. And he
13 will attempt to testify as best as he can, but he is
14 somewhat hampered by not having a full transcript.

15 BY SERGEANT RODRIGUEZ:

16 Q Are you ready?

17 A Yes, sir.

18 Q Okay. Going back to the -- to that day,
19 the investigation of the arrest of Olga Rodriguez --
20 and I'm going to jump forward a little bit to
21 where -- some of the questions I want to ask you.

22 You got information from an informant
23 regarding Olga's involvement in narcotics. You
24 conducted a follow-up to the location, where you
25 detained her. And narcotics was recovered by
3298

01 Officer Sutherland, as stated by you earlier.

02 You stated that Gizzi was -- Gizzi was
03 Sutherland's partner.

04 Now, moving on a little bit before that,
05 do you recall if Lusby, Lusby, who is the D-3 or was
06 the D-3 in charge of the unit at the time, and
07 Mc Gee, did they respond to that location when you
08 took Olga into custody?

09 MR. MC KESSON: Let me just say for the
10 record -- I don't mean to keep interrupting you --
11 but when you -- in this report when you say
12 "Lesbee," L-e-s-b-e-e, do you mean Detective Lusby,
13 L-u-s-b-y?

14 SERGEANT RODRIGUEZ: That's correct.

15 THE WITNESS: Okay.

16 SERGEANT RODRIGUEZ: That is a rough
17 paraphrased copy. That's why it's --

18 MR. MC KESSON: I just wanted to make sure

19 we're talking about the right people.

20 SERGEANT RODRIGUEZ: The highlighted there is

21 where the names to be corrected or verified --

22 MR. MC KESSON: Oh, okay.

23 SERGEANT RODRIGUEZ: -- the spelling of the

24 last name.

25 MR. MC KESSON: Okay.

3299

01 SERGEANT RODRIGUEZ: But that is the same

02 person.

03 BY SERGEANT RODRIGUEZ:

04 Q You know who I'm referring to?

05 A Yes, sir.

06 Q Okay. Was he and Mc Gee present at that

07 location, if you recall?

08 A I believe they were.

09 Q Okay. Do you recall when -- and when I

10 say "when," at what part of the investigation with

11 Olga did they respond and what knowledge, if any,

12 did they have?

13 A [*** CI # 28 Information Redacted *****]

14 [*****]

15 [*****]

16 [*****]

17 [*****]

18 [*****]

19 This person delivers the narcotics. We're
20 all set up. Lusby, Mc Gee, myself, everybody that's
21 there in the FES unit are already set up waiting for
22 this person to arrive.

23 When this person arrives, you know, we
24 detain her. But we knew she was going to arrive,
25 you know, to deliver narcotics.

3300

01 Q Oh, okay. So there had been some
02 arrangement prior to that then. And was the whole
03 unit deployed there waiting for her?

04 A Yes, sir.

05 Q And Mc Gee and Lusby were aware of that?

06 A Yes, sir.

07 Q [***** CI # 28 Information Redacted *****]

08 [*****]

09 A [***** CI # 28 Information Redacted *****]

10 Q Okay. So then Olga responds. You already
11 know what -- or you believe you know why she's going
12 to be there. You detain her. The evidence is

13 recovered. And then can you tell me after that what
14 happened?

15 A I believe we transported the female Olga
16 back to the FES trailer and began interviewing her
17 and talking to her about turning over who her
18 supplier is.

19 Q You interviewed her?

20 A I'm sure I interviewed her. I believe
21 some other people might have talked to her but I did
22 the -- most of the interviews, yes.

23 Q Did the entire unit respond back to the
24 trailer?

25 A Yes, sir.

3301

01 Q Did the entire unit stand by pending
02 whatever follow-up info you would give?

03 A Absolutely. I was pretty confident that
04 she would eventually roll over, and we had everybody
05 standing by to go ahead and to do this follow-up.

06 Q SO I can assume then that at the trailer
07 you got her to provide you with the information?

08 A Yes, sir.

09 Q And then at that point did you brief the

10 unit again?

11 A Well, we decided that we're going to stage
12 at a certain location close to the follow-up
13 location --

14 Q Vista Del Mar?

15 A I'm sorry. Yeah, Vista Del Mar. We took
16 the female, drove her by the location. She pointed
17 it out to us.

18 Q When you say "we," you and Durden in your
19 car?

20 A Yes, sir.

21 Q Were you and Durden --

22 A I'm sorry. I believe it was me and
23 Sutherland in the car and Olga in the back seat. We
24 drove by it real quickly, and she pointed out which
25 door it was. And we went back where everybody was
3302

01 meeting and set up a game plan as to how we were
02 going to approach it.

03 Q So you had a code alpha location, a
04 staging area. Now, let me just -- a side note here.
05 The arrest report is completed by you and Durden,
06 but you say that Sutherland was your partner.

07 A No, no, I did not say Sutherland was my
08 partner. To drive there -- and I had -- I believe I
09 had the female in my car, I took Sutherland with
10 me.

11 Q Because she was --

12 A Right. But when we do the approach and
13 everything else, Durden is still my partner. This
14 is just a matter of convenience. Because I
15 believe -- I'm not a hundred percent sure, but I
16 believe she stayed with the female at the location.
17 When we approached we left the female in the car.

18 Q So you had Sutherland accompany you to
19 address the issue that you had a female in the
20 vehicle?

21 A Yes, sir.

22 Q But Durden was still your partner?

23 A Yes, sir.

24 Q And Durden drove in a different vehicle
25 with some other officer?

3303

01 A I believe so, yes, sir.

02 Q Do you recall who?

03 A Well, I was in this car, so I -- you know,

04 I can't say definitely, but I mean I'll have to
05 assume that he was in the other vehicle with Gizzi
06 and the other guys.

07 Q Do you have any recollection as to how
08 they approached, how many vehicles, or if they were
09 all -- maybe one or two vehicles?

10 A We all approached together. We stacked up
11 as many people in the cars as we could. From my
12 recollection, I believe there was about three or
13 four vehicles.

14 Q Okay. Were both detective supervisors
15 present?

16 A Yes.

17 Q That being Lusby and Mc Gee?

18 A You know what? I do remember Mc Gee very
19 clearly. Lusby, now, I'm not a hundred percent
20 sure.

21 Q Okay.

22 A But I definitely absolutely remember
23 Mc Gee.

24 Q But Lusby was present at the initial
25 arrest of Olga Rodriguez where she dropped off the

01 dope?

02 A Yes, definitely.

03 Q And to the best of your recollection, he
04 was advised of the circumstances of the arrest, was
05 aware of what was going on?

06 A Oh, yeah. We took -- everybody went back
07 to the trailer where -- you know, the office. And
08 we all talked about this. I mean this was -- this
09 was not like a secret thing.

10 Q Right.

11 A We were all discussing, you know, the
12 call-out that she's going to make or the location
13 that she's going to tell us about and everything
14 we're going to do.

15 Q And Lusby also knew that her arrest was as
16 a result of information obtained from an informant?

17 A Yes.

18 Q Okay. Now, getting back to the scene, do
19 you recall -- so Mc Gee was there. He was the
20 supervisor in charge?

21 A Yes, sir.

22 Q Okay. Do you recall the entry team? For
23 lack of a better word, the entry team, I'm referring

24 to the officers that approached the front door.

25 A Everybody went to the front door. I

3305

01 believe one, maybe two officers stayed at a sliding
02 door that was right next to the front door, but
03 eventually everybody went in.

04 They're what we call trailers. Once we're
05 in, if we call for trailers, you know, stack up,
06 move in. Because if we need you to take somebody
07 into custody, detain them while we keep moving.

08 Dynamic entries, you keep moving. You
09 step right over the person. Dynamic entries, we
10 move a little bit faster than normal search
11 warrants.

12 We just -- if there's somebody in front of
13 us, we throw them down. We step right over them.
14 The rear person takes them into custody. So we keep
15 moving because we want to get to every room as
16 quickly as possible.

17 Q Prior -- in your prior statement, you said
18 that you believe Sutherland stayed outside with the
19 female. Is that still your recollection?

20 A Yes, sir.

21 Q And that would make sense because she's
22 the female officer who you had assist you with the
23 transportation?

24 A Yes, sir.

25 Q Do you have any recollection as to who the
3306

01 trailers were that were possibly deployed in the
02 patio area as you refer to?

03 A You know, it would be easy for me to say,
04 you know, who the normal people were but I just -- I
05 mean I remember who was -- basically the officers
06 who were there. I know that Gizzi was doing the
07 shotgun. He was the point. I know I was there,
08 Durden was there, Cannister.

09 Q When you say he was there, Cannister in
10 the entry?

11 A In the entry, right. Did Mc Gee stay at
12 the door? Did he go in with us? Mc Gee was with
13 us. He was the team leader. So I'm not sure if
14 Coronado and somebody else stayed at the door, you
15 know.

16 Q Okay.

17 A I believe -- that's not real fresh in my

18 memory.

19 Q Did the trailers eventually come inside?

20 Using your phrase, "the trailers," did they

21 eventually come inside once the location was

22 secured?

23 A Yes. Once everything was done, everybody

24 was inside.

25 Q So everybody was at least inside. Whether
3307

01 they participated in the search or not, they were at

02 least in the location?

03 A Yes, sir.

04 Q Okay. And during the briefing you made it

05 clear that -- the reasons and the investigation

06 leading up your to follow-up.

07 Did they know -- did the assembled

08 officers know (a) that there was no search warrant

09 and what was their understanding as far as how the

10 entry would be obtained?

11 A Before every search, we brief it in FES.

12 In that briefing you talk about how you obtained the

13 information, locations, what led to the obtaining of

14 this information, what we expect to find, what type

15 of drug we expect to find, that type of thing.

16 Basically we'll go over the search warrant and you

17 just discuss it.

18 Q Sure.

19 A And if it's a search warrant, you talk

20 about how this is a search warrant, how we obtained

21 the search warrant.

22 It was very clear that this was not a

23 search warrant; this was just a clue that we had

24 just received from an arrestee.

25 And, you know, the arrestee was right

3308

01 there, the female. And we were going to follow up

02 to a location where supposedly she lives with her

03 boyfriend and he's the primary dealer.

04 Q So when you made entry, were they under

05 the impression that you obtained consent or --

06 remind me how --

07 A Were they under the impression?

08 Q Yeah, the entry team. Or did they have a

09 recollection -- you described it the last time that

10 as soon as you were met at the front door by the

11 male, he was taken down and, boom, you went in as if

12 it were a search warrant, although you didn't have
13 one.

14 A That's correct.

15 Q Would that have been the recollection or
16 would they have been advised by you that you did
17 have a consent to search or anything like that?

18 A When we went to the location -- I mean I
19 know what we wrote on the report. But when we went
20 to the location, as soon as somebody opened up, we
21 went right in, you know.

22 Q And Mc Gee was in a position clearly to
23 witness that?

24 A Oh, absolutely. I mean --

25 Q So -- okay. Now, once inside did you
3309

01 assign the folks inside who to search or what to
02 search?

03 A No, sir. Detective Mc Gee actually broke
04 it down as to who's going to search what area.

05 Q And he was acting as a supervisor and
06 observed all the searches?

07 A Not necessarily. He did not observe -- I
08 mean he was in and out of different rooms.

09 Q Okay.

10 A But when I recovered this little bag,
11 paper bag that had narcotics and money in it, he
12 didn't see me recovering that.

13 Q Okay. Did any of the other officers have
14 any knowledge of you recovering that money and
15 keeping it?

16 A Only Officer Durden. No one else did.

17 Q You never mentioned that to anybody else?

18 A None.

19 Q When you were in the bathroom questioning
20 him, "him" being Andrade, do you recall who was in
21 there with you?

22 A I know Coronado stepped in and out a
23 couple of times. Coronado is also a Spanish
24 speaker. And he, you know, said some words to him.
25 But I know last time they asked me whether I pushed
3310

01 his head in a wall or something.

02 Q Yeah.

03 A That definitely didn't occur. I mean
04 there was no need.

05 Q He describes a male white officer being

06 inside with you.

07 A Male white? A male white might have
08 walked in and out. There's several of them,
09 though.

10 Q Yeah.

11 A I didn't like close anybody off, don't
12 come in here while I'm talking to him. Mc Gee might
13 have walked in and out, "Hey, is he talking?" Or
14 Gizzi might have walked in, "Is he saying anything?"
15 That type of thing. If there's a specific
16 allegation --

17 Q Yeah. Well, that Gizzi was present when
18 the grabbing of the throat.

19 A Neither one of the white officers speak
20 Spanish.

21 Q So there would be no reason for them to be
22 in there with you?

23 A That's correct.

24 Q Okay.

25 A The only other officer that I said that
3311

01 speaks Spanish is Coronado.

02 Q Okay. And that's why -- but is that why

03 you recall that he would be in there with you or do
04 you --

05 A No, I remember him walking in and out.

06 And, again, anybody that came, it wasn't like they
07 were with me the whole time. It was like they
08 walked in and out, in and out.

09 Q Now, with regards to the arrest report and
10 Mc Gee's signature on there, I believe in your prior
11 statement you said that that is his signature or you
12 believe it's his signature?

13 A Yes, sir.

14 Q You also stated that it was his practice
15 or you recall him prior to signing any arrest report
16 he would -- he would read it?

17 A Yeah. FES was definitely different than
18 CRASH where in CRASH we just signed whatever and you
19 just told a supervisor what you were going to
20 write. FES, they always wanted to read the reports.

21 Q So although you didn't witness him reading
22 it, there's no doubt in your mind he read that
23 arrest report prior to signing it?

24 A Absolutely.

25 Q And he would've been aware of the

3312

01 discrepancies regarding specifically the entry?

02 A Yes, sir.

03 Q Okay. Did Mc Gee question you regarding
04 the confidential informant, direct you in any way as
05 to taking appropriate steps to document that
06 informant?

07 A No. You know, we've discussed this issue
08 several times. And if I had to say that there was a
09 lack of anything in FES, it was probably that.

10 We very -- every once in a blue moon, for
11 whatever reasons, if a lieutenant happened to be
12 walking in while we were doing an informant, we'd do
13 a one-time use package on that informant.

14 Q Who was that lieutenant?

15 A Lieutenant Weaver.

16 Q Okay.

17 A But most times, you know, it was real
18 common and everyone knew, all the detectives knew,
19 that we had informants that we'd just use,
20 arrestees, you know, informants that we probably
21 shouldn't have used as informants. You know,
22 they're coming in high or they're drug users and,

23 you know, we'd use them all the time without
24 documenting them.

25 Q And when you say the detectives knew,
3313

01 specifically detectives --

02 A Mc Gee and Detective Lusby, the two
03 detectives in charge.

04 Q And then specifically again to this case,
05 they had knowledge that the informant was used --
06 not only in common practice but in this case, that
07 you used an informant and that neither one directed
08 you to document that?

09 A They saw the arrestee. They saw who we
10 were using as an informant. We brought her to the
11 trailer. They were well aware that she's an
12 arrestee, that we're using her as an informant, and
13 that we did not do a package.

14 Q [***** CI # 28 Information Redacted ****]
15 [*****]

16 A [***** CI # 28 Information Redacted ****]

17 Q Okay. The way you recall it, was Olga
18 Rodriguez Andrade's girlfriend?

19 A Yes, sir.

20 Q That's what she told you?

21 A The information that we had was that she
22 was an informant. And she also said that --
23 actually she said something about she lived with him
24 or something like, her boyfriend.

25 Q If I was to tell you that she later said
3314

01 that her boyfriend is actually another person who
02 rooms there with this Andrade individual, could that
03 possibly be true, that she wasn't necessarily
04 Andrade's girlfriend?

05 A The person that we were targeting who was
06 the dealer was supposed to be her boyfriend. That's
07 what she told me.

08 I mean did she -- I don't know what she --
09 you know, if she made up something at the time, I
10 don't know.

11 I know that she told me -- the information
12 that I received from the initial informant was that
13 this guy, a Hispanic guy, and this girl are working
14 together. The girl will deliver it on a bicycle
15 often.

16 And she corroborated that by saying,

17 "Yeah, my boyfriend deals out of this apartment, and
18 I'll show you where it's at."

19 Q When you and Durden divided the money --
20 and I know I'm jumping forward now.

21 A Yes, sir.

22 Q -- when and where was that?

23 A That would've been at the very end of the
24 day. Generally what would happen is everything else
25 was done and we were just finishing up like the
3315

01 packages or something. And everybody would leave
02 and we would tell them, "Yeah, we can handle the
03 rest. You guys go ahead."

04 We'd divide it right there in the office.
05 We'd lock the office and just sit there and divide
06 it. We'd have to count it and divide it.

07 Q And you stated earlier, "earlier" being
08 the prior interview, that you didn't recall exactly
09 how much was there.

10 A I did not.

11 Q But it was divided equally?

12 A It would always be divided equally.

13 Q And it was done in the office, and no one

14 else was present or had knowledge to that?

15 A No one.

16 Q Did you ever discuss it with any officers
17 or --

18 A No, sir.

19 Q You made another statement also that --
20 and this is referencing giving the Mirandized
21 statement to the individuals and documenting it,
22 that whenever that was done, it was accurate and you
23 tried to be as accurate as possible regarding those
24 issues, particularly when working with this squad.

25 Is that to say then that no one else

3316

01 working in this squad or the FES in Rampart had any
02 knowledge of your actions and Durden's actions? And
03 let me specify on "your actions." The taking money
04 or the narcotics, those things.

05 A If you're asking about taking money and
06 narcotics, no. No one -- no one that I know of
07 even -- I mean narcotics, that was a whole different
08 side note from everything else that was going on.

09 Narcotics and stuff like that, yeah, you
10 know, quite often in CRASH we would keep narcotics.

11 We would use it later for whatever reason.

12 But to keep it for personal purposes, no
13 one ever knew about that. I never discussed that
14 with anyone. I don't know if Durden did. I know I
15 didn't.

16 Q So -- and you specified then with the
17 money or narcotics. Were they involved in anything
18 else with you aside from the procedural neglect of
19 the packaging of the informants?

20 A That's what I was going to say. And I've
21 said this before. You know, you've got officers
22 that are, you know, officers that go by the book and
23 all that.

24 But sometimes officers, for the sake of,
25 you know, bettering their case, will write little
3317

01 things and will say that we got consent when we
02 didn't get consent or we say that we did a
03 door-knock and got a consent to come in when we
04 didn't.

05 We just walked right in and somehow
06 managed to convince a person so that -- to let us
07 search and give us a consent to search. Otherwise,

08 you know, they may have to lose their kid, they may
09 be deported, or whatever things.

10 You know, those things are used. I mean
11 it's a tool that we use in the police department,
12 and it's used, you know, by the best of officers.

13 I mean would that be construing -- you
14 know, looking at it, is it corruption? I don't
15 know. I'm just saying that even the best of
16 officers at times find themselves having to do these
17 kind of things.

18 Q Okay.

19 A And, yeah, did me and Durden at times do
20 certain things that I'm sure with them didn't sit
21 well? You know, "You can't really do that." "Don't
22 worry about it. It's going to be all right." Yeah,
23 it's happened several times.

24 Q Okay. And that was while in FES?

25 A Yes, sir. In fact, I think there was one
3318

01 discussion where Coronado brought up the issue of us
02 not following procedures.

03 Q Coronado brought that up?

04 A Yes, sir. He brought it up to Lusby, and

05 we had to have a meeting about it.

06 And basically what Lusby said was, "I'll
07 get rid of Coronado before I get rid of you guys."
08 He thought that we were doing real good work, and
09 he'd rather lose Coronado, his permanent guy, than
10 lose his loanees.

11 Q Do you remember what specifically he said
12 that Coronado was referring to not following
13 procedures or are we talking about what we know as
14 procedures, being, you know --

15 A And this was covered somewhere else. I'm
16 not sure -- I believe there was some kind of
17 interview of Coronado. I don't know where that's
18 at.

19 This is -- what I'm talking about is the
20 interview of him when he's talking about him
21 bringing to the supervisor's attention that myself
22 and Durden were not following procedure in his eyes.

23 Q Right.

24 THE WITNESS: Okay. I don't know if we can
25 get into it or not. That's -- it might be a

3319

01 compelled statement.

02 MR. ROSENTHAL: Well, no. There was testimony
03 by Coronado in the grand jury that was provided over
04 to you in discovery that -- where he talked about
05 issues to that extent very generally.

06 BY SERGEANT RODRIGUEZ:

07 Q Do you recall when that unit meeting was?

08 A It happened sometime, to the best of my
09 recollection, early September.

10 Because Lusby told me, "Don't worry about
11 Coronado. I'll get rid of him before I get rid of
12 you guys." And I believe later that month Coronado
13 left on vacation, and I believe a little bit after
14 that he left the unit. In September of '97.

15 Q Do you know if Lusby documented any -- the
16 meeting?

17 A I would think that he covered it in a -- I
18 don't know. But I would think he might have covered
19 it in his log.

20 Q Okay. We've covered a lot. I think I'm
21 done. Is there anything you could think of, Ray,
22 that --

23 A No, sir.

24 SERGEANT RODRIGUEZ: Okay. That concludes

25 this taped interview. The time now is approximately
3320

01 1302 hours, and we're going off tape.

02 MR. ROSENTHAL: Let's go off the record for a
03 minute.

04 (Discussion off the record)

05 MR. ROSENTHAL: All right. We're back on the
06 record. It's 1:05 in the afternoon. This is going
07 to be an interview relating to the case of Manuel
08 Najera, N-a-j-e-r-a. The D.A. case number is
09 BA153854. The D.R. number is 97-0816966. Go
10 ahead.

11 SERGEANT RODRIGUEZ: Okay. Once again, this is
12 a tape-recorded interview for an administrative
13 investigation regarding the Najera case. Today's
14 date is May 10th, 2000. The time now is
15 approximately 1307 hours.

16 The location of the interview is Internal
17 Affairs Group South Section. Present to be
18 interviewed is Rafael Perez. The interview is being
19 recorded on tape number 231493, side A.

20 Conducting the interview is Sergeant Jerry
21 Rodriguez, 25066. Present is Court Reporter Lynden

22 Glover. Representing Mr. Perez is Winston
23 Mc Kesson, M-c-K-e-s-s-o-n. Representing the
24 district attorney's office is Mr. Richard
25 Rosenthal.

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01 BY SERGEANT RODRIGUEZ:

02 Q Ray, once again, I've handed you an
03 arrest report and transcripts regarding this case.
04 Do you recall it? Do you have a recollection?

05 A Yes, sir.

06 Q Okay. There's a couple questions that
07 I've been asked to ask you for the investigators.

08 In your prior statement, you stated that
09 you returned \$600 to Najera's wife.

10 A Yes, sir.

11 Q You stated you obtained the money from
12 your -- and I'm quoting now, whatever money. Could
13 you please be more specific as to your whatever
14 money?

15 A I'm sorry. From just personal money. And
16 when I say "personal money," it was probably
17 personal money that I had obtained illegally
18 beforehand. But I did return it to her that next

19 morning.

20 Q Was it -- and I understand what you said.

21 It's money that you obtained illegally and converted

22 to your own personal use?

23 A Yes, sir.

24 Q Is it -- where would that money be, for

25 lack of a better word, stashed? Did you have a

3322

01 stash somewhere or where would you have that?

02 A I had probably several stashes, but --

03 where did I particularly get this money from?

04 Q Or your whatever money.

05 Do you remember like where you're saying

06 your stashes were. Where you kept them. Or, for

07 example, this night where would you go get that

08 money?

09 A I didn't return the money to her until the

10 next morning.

11 Q Okay. Or that morning.

12 A Either I had it in the house somewhere

13 or -- you know, I kept it -- I had it in a shoe box

14 for a while. I mean it varied at different times.

15 Q A shoe box at home?

16 A At home, yes. I mean I just don't have a
17 specific recollection where I got this money from.
18 I know I obtained the money.

19 It was probably at the house somewhere in
20 one of the shoe boxes. I got the money and, you
21 know, that next day I knew I was going to take it to
22 her.

23 Q So -- and is the reason you waited till
24 the next day because you had to possibly get it from
25 that stash or go get it somewhere else?

3323

01 A Right. This was already -- when she had
02 called up, it was already at like the end of the
03 day.

04 Q Okay.

05 A So I had to, first of all, obtain the
06 money to go take it to her. And I took it to her
07 the next morning.

08 MR. ROSENTHAL: Let me just ask him.

09 We did a search warrant on your house in
10 August '98. I assume that by that time the stash
11 money had already been all spent.

12 THE WITNESS: Yeah, you're talking about --

13 well, when this happened, this was -- you're talking
14 about -- you're talking about a whole year
15 afterwards.

16 MR. ROSENTHAL: Right. I'm not specifically
17 talking -- well, how long did you have stash -- did
18 you have a cash hoard that you were able to operate
19 from? At what point did it run out?

20 THE WITNESS: Probably right up until when
21 everything went down. Remember, I had already had
22 information that something was going down. So I
23 was, you know, getting rid of it and using it as
24 liberally as I could.

25 MR. ROSENTHAL: Okay.

3324

01 THE WITNESS: But at this point, yeah, I still
02 had money in my house. And from what I recall, it
03 was like a shoe box, and I had it -- the money
04 stacked up neatly in there.

05 BY SERGEANT RODRIGUEZ:

06 Q Did you have a stash like that at the
07 station, in your locker at the station?

08 A I didn't have a big stash. I had a stash
09 where I kept a certain amount of money in case it

10 was needed, you know. But we're talking, you know,
11 a hundred, 150 bucks, small bills, ones and fives.

12 Q Where?

13 A In my locker in the station.

14 Q Okay. Was Detective Lusby advised of the
15 informant used to call out Najera?

16 A Yes. He was aware that we were doing
17 again a call-out. This was again a call-out.

18 Q Okay. For some reason, I have problems
19 with Lusby. It's L-u-s-b-y, D-III, formerly in
20 charge of the Rampart FES unit.

21 Was the informant package made on that
22 informant, referring to the Najera case?

23 A No, sir.

24 Q Did Lusby advise you to make an informant
25 package?

3325

01 A No, sir.

02 Q Was he at the scene of either the arrest
03 of Najera or the search of Najera's residence?

04 A No, sir.

05 Q Was Lusby advised of the search of
06 Najera's residence which was outside of the city?

07 A Yes, sir.

08 Q He was?

09 A Yes, sir.

10 Q At what point was he advised of that?

11 A He was actually advised after Mr. Najera
12 was taken into custody that we were going to do a
13 follow-up. We had found some paperwork with a
14 possible address.

15 We actually went to another address before
16 that one, but it turned out to be a bogus address.
17 And we advised him, I believe via the radio, that we
18 were going to now do a follow-up to the city of I
19 believe Hawthorne. I believe it's the city of
20 Hawthorne. It says L.A., but I believe that area is
21 actually Hawthorne.

22 Q And you believe you notified him by radio?

23 A Yes, sir.

24 Q Police radio?

25 A Yes, sir. Not, you know, like tac 2

3326

01 Rampart. I believe we used narcotics frequencies.

02 I'm not sure what they are now, but --

03 Q And you specifically recall raising him on

04 the radio and advising him that you would be doing a
05 follow-up outside of the city, "city" being L.A.?

06 A Yes.

07 Q Do you remember what his response was?

08 A It was -- well, I remember he wanted to
09 know if we needed anything. I said no, it was just
10 going to be a simple follow-up to the -- to the
11 residence.

12 Actually, we did it twice. We did it from
13 when we went from -- from the arrest location to
14 another address that we thought where he lived at
15 that turned out to be bogus. We got him on the air,
16 told him it was bogus and we were going to head to
17 another one. And he acknowledged that.

18 Q And he acknowledged that it was outside
19 the city?

20 A Right.

21 Q Did Mc Gee respond?

22 A No. No one responded.

23 Q So neither supervisor responded?

24 A That's correct.

25 SERGEANT RODRIGUEZ: Okay. Thank you very

01 much. That concludes this interview. The time now
02 is approximately 1313 hours. We're going off tape.

03 MR. ROSENTHAL: Okay. And we're off the
04 record.

05 (Lunch recess)

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3328

01 Los Angeles, California, Wednesday, May 10, 2000

02 (Afternoon session)

03

04

05 MR. ROSENTHAL: All right. We're back on the
06 record. It's 1:58 in the afternoon.

07 SERGEANT SERAFIN: Okay. This is a
08 tape-recorded interview of Internal Affairs
09 investigation number 00-0663. Today is May the
10 10th, the year 2000. The time now rounded off is
11 1400 hours or 2:00 p.m. in the afternoon.

12 The location of the interview is Internal
13 Affairs Group South Section. Present to be
14 interviewed is Rafael Perez. Present acting as
15 Perez's attorney is Kevin Mc Kesson.

16 Also present is Deputy D.A. Richard
17 Rosenthal and Sergeant Wesley Buhrmester, serial
18 number 25204, Internal Affairs group, acting as an
19 observer.

20 Conducting the interview is Sergeant Gil

21 Serafin, serial 22508, Sergeant Ralph Mc Comb,
22 serial number 21276. The interview is being
23 recorded on tape number 229205, side A as in
24 "Adam."

25

3329

01 EXAMINATION

02 BY SERGEANT SERAFIN:

03 Q Okay. I'm sorry. I'll take it a little
04 slower.

05 Mr. Perez, mind if I call you Ray?

06 A No, sir.

07 Q Okay. Ray, the purpose for this interview
08 is to address some concerns which have come to the
09 Department's attention.

10 And it's my understanding that you were
11 originally interviewed previously by
12 robbery-homicide detectives back in November of 1999
13 concerning an incident involving Officer Daniel
14 Lujan and Sergeant Ortiz.

15 Prior to going on tape, I provided you an
16 opportunity to review transcripts concerning that
17 interview that took place back in November of 1993.

18 Is that correct, sir?

19 A '93?

20 Q Correct. 1999. I'm sorry.

21 MR. ROSENTHAL: Actually, let me just put on
22 the record the first interview was on September 17th
23 of 1999 and then there's a subsequent interview on
24 November 23rd of 1999.

25 SERGEANT SERAFIN: That's correct.

3330

01 THE WITNESS: Yes, sir.

02 BY SERGEANT SERAFIN:

03 Q What I'd like to do, Ray, is show you some
04 photographs. We need your assistance in attempting
05 to narrow down the occurrence as you've conveyed.
06 And I have a series of four -- four 8-by-11 covered
07 sheets containing various colored photographs,
08 booking-size photographs.

09 And what I'd like you to do is take an
10 opportunity and, if you can, if you identify that
11 individual which was involved in that occurrence
12 which you've conveyed to robbery-homicide detectives
13 involving Officer Lujan. So what I'd like you to
14 do, sir, is just go ahead and take your time, review

15 each one.

16 And for the purposes of my tape-recording,
17 Mr. Perez is reviewing photographs, booking-size
18 photographs.

19 MR. ROSENTHAL: For the record, why don't you
20 just let us know. Where did these photographs come
21 from?

22 SERGEANT SERAFIN: These photographs were taken
23 from various arrest reports which were made by
24 Officer Daniel Lujan.

25 MR. MC KESSON: For the record, how many
3331

01 photographs are there, approximately? 28?

02 SERGEANT SERAFIN: Well, there is nine for the
03 first three pages and then a singular photograph on
04 the last page.

05 MR. ROSENTHAL: 28.

06 BY SERGEANT SERAFIN:

07 Q Do any of those photographs look familiar
08 involving this particular occurrence, sir?

09 A Not that they don't look familiar, but
10 when I saw the person, I saw him very briefly. It
11 wasn't my case. It wasn't someone that I was going

12 to see later on that night or I had to book him or
13 anything like that. I saw him very briefly.

14 Now, I don't remember if it's in the
15 transcripts or not, but I thought I had described
16 him as like a male Hispanic, brown skin, you know,
17 shaved head.

18 Looking at the roundness of the face, if I
19 had to say, you know, which guy looked closest to
20 the person that I remember, because I only remember,
21 you know, the figure, the Hispanic male,
22 close-cropped haircut, I would say this guy looks --
23 number -- on the first page, the upper column, the
24 one furthest to the right.

25 MR. ROSENTHAL: Just indicate the booking
3332

01 number.

02 THE WITNESS: Oh, I'm sorry. Booking number
03 5453017.

04 And again, and the reason I'm picking him
05 is because of the short hair, the complexion. And
06 when I was saying "brown skin," I mean, you know,
07 there's a difference between a light-skin male
08 Hispanic and the brown-skin. And this guy has that

09 brown skin.

10 But other than that, there's nothing to
11 substantiate or any recollection as far as looking
12 at the photo that would tell me that this is
13 definitely him.

14

15 EXAMINATION

16 BY DETECTIVE MC COMB:

17 Q Just to make sure that I'm clear on the
18 identification, did you say that you don't have an
19 independent recollection of that person's face,
20 however, in looking at that photograph that
21 photograph most closely resembles the description
22 that you provided in your testimony initially?

23 A From my memory.

24 Q Okay.

25 A What I'm remember the guy looking like,

3333

01 you know. I don't have a real clear picture of his
02 distinction -- features in his face. What I mostly
03 remember is the close-cut haircut, male Hispanic,
04 kind of, you know, average size build. And that
05 most closely fits the description.

06 Q So you do have some independent
07 recollection of that individual's appearance?

08 A Well, I remember -- I definitely remember
09 seeing him.

10 Q Okay.

11 A But the thing is, you know, if you leave
12 here today, I remember he was a male white, kind of
13 grayish hair. I won't remember all the -- you know,
14 every little feature.

15

16 FURTHER EXAMINATION

17 BY SERGEANT SERAFIN:

18 Q Ray, during the second portion of that
19 interview that you had with robbery-homicide
20 detectives, you described, as you have mentioned,
21 that it was a male Hispanic. And it has here
22 "indicated probably 18 years old, shaved head."

23 And further along during this same
24 interview, you believe that he had some type of gang
25 affiliation with street criminals.

3334

01 A Yes, sir.

02 Q What I'd like you to do is to look at

03 these suspect identification cards involving street
04 criminals and see if there's anyone that you might
05 recognize that may have been involved on that date.
06 And the date that you provided to the
07 robbery-homicide detectives was sometime early in
08 1996.

09 A I'm sorry. What was that last statement?

10 Q The date that we're talking about as far
11 as this occurrence which you've conveyed was
12 sometime in early 1996.

13 A Okay.

14 SERGEANT SERAFIN: And for the purposes of my
15 tape-recording, Mr. Perez is reviewing the what's
16 commonly known as I. cards.

17 THE WITNESS: Can I look at that photo again?

18 DETECTIVE MC COMB: Sure.

19 THE WITNESS: You know, the roundness of the
20 face and the -- you know, and he looks sort of
21 similar. I don't think it's the same person. But
22 the face and the hair, the brown skin, that looks,
23 you know, pretty close.

24 DETECTIVE MC COMB: What's the name on that?

25 THE WITNESS: Paniagua, Louis Paniagua.

3335

01 MR. ROSENTHAL: Can you spell that?

02 THE WITNESS: P-a-n-i-a-g-u-a.

03 DETECTIVE MC COMB: Just that one?

04 THE WITNESS: You know -- back on the record?

05 After reviewing all the identification cards, I've

06 pulled out one with the name of Paniagua, Louis.

07 And, again, from my recollection, this is the

08 closest one that resembles the person that I

09 remember on that day.

10 DETECTIVE MC COMB: Okay. You can just set it

11 on top.

12 THE WITNESS: Okay.

13 MR. ROSENTHAL: Is there a booking number

14 attributed with him or --

15 DETECTIVE MC COMB: That's a gang card.

16 MR. ROSENTHAL: Oh, all right.

17 DETECTIVE MC COMB: So not likely. Although,

18 there may be something on there from a prior

19 arrest.

20 THE WITNESS: There's an old booking number.

21 What we usually do is put a booking number. Do you

22 want me to use that booking number that's on here?

23 MR. ROSENTHAL: How about just the date of
24 birth?

25 THE WITNESS: Date of birth of 9/25/78.

3336

01 DETECTIVE MC COMB: Thank you.

02 BY SERGEANT SERAFIN:

03 Q Okay. And, lastly, Ray, what I've done is
04 I've compiled some information concerning three
05 arrest reports that I have. I'd like to take an
06 opportunity, allow you to review them.

07 And this is all based on the information
08 that -- of the area which you had mentioned on
09 11th Place between Westlake and Burlington and -- as
10 far as my transcript from the second interview went.
11 And then near around the area of 12th and Alvarado
12 is mentioned in the first transcript.

13 So what I'd like you to do is take an
14 opportunity to review these three arrests.

15 And while you're reviewing that, am I
16 correct in understanding that this incident took
17 place sometime in early 1996 as compared to some
18 other year?

19 A We talked about this -- that was to the

20 best of my recollection. I mean I'm trying to
21 remember something that occurred four years ago.
22 And, in my opinion, I think it occurred sometime in
23 early 1996.

24 Q Okay.

25 (Discussion off the record)

3337

01 MR. ROSENTHAL: We're back on the record. It's
02 12:19.

03 BY SERGEANT SERAFIN:

04 Q Okay. Mr. Perez, you had an opportunity
05 to review three arrest reports which I have
06 presented to you.

07 Were you able to -- based on the
08 information contained in the narratives of those
09 arrests, able to select any one which reflects that
10 occurrence which you presented to RHD detectives?

11 A Yes. After reviewing all three of them, I
12 was quickly alerted to the arrest report by the name
13 of Chavez. It's a single defendant case. No, I'm
14 sorry, a two-defendant case, Banegas and Chavez.

15 Reading the narrative of this report, it
16 is exactly the incident that I was describing, a

17 driveway, running through the driveway, supposedly
18 climbing up on a fence, falling, falling backwards
19 back into the property, and recovering narcotics.

20 On the report he wrote that he recovered
21 narcotics. He was spitting the narcotics out as the
22 officers were detaining him.

23 It does not talk about any use of force
24 that was written. I don't know if the use of force
25 was covered in a -- or the injuries were covered in
3338

01 a sergeant's log or something like that.

02 Because I think they were trying to --
03 they didn't want to do a use of force report. They
04 probably handled it as injuries that he obtained
05 or something. I don't know how that part was
06 handled.

07 But by reading this -- from reading this
08 report, I strongly believe that this is the case
09 that I was talking about with Sergeant Ortiz,
10 myself, and Officer Lujan. And it also talks about
11 several other officers being there, Officer --
12 Officer Tovar and Officer -- Officer Patel.

13 And in my previous interview I had talked

14 about how there was a couple other officers there, I
15 just couldn't think of who they were. But like I
16 said, it is my opinion that this is the case that I
17 was describing.

18 Q Okay. Now, what I'd like you to do is to
19 have a second opportunity to review the
20 photographs. Go ahead.

21 A I'm sorry. There is -- this is a multi
22 two?

23 Q Yes.

24 A So I don't know if there's, you know, two
25 photos of these guys or not or --

3339

01 Q Let me take a look at that.

02 A Two people were arrested.

03 Q Okay. Andres is A-n-d-r-e-s, Banegas,
04 B-a-n-e-g-a-s, is the first individual. The second
05 one is Samuel, S-a-m-u-e-l, Chavez, C-h-a-v-e-s.

06 And based on the -- under "Observations"
07 in the arrest report narrative, Ray, are you able to
08 distinguish which of the individuals was involved,
09 in that we do have multiple suspects?

10 A The -- only based on the report as to who

11 they're describing that's climbing the fence.
12 Because what I do remember is when I'm showing up, I
13 remember them walking one of the guys from behind
14 the driveway or the rear of the driveway to the
15 front towards the police car.

16 I don't remember a second suspect. I mean
17 he may have been already sitting in the car or -- I
18 don't know. I remember one.

19 Q And is that reflected in the narrative,
20 sir, as to the identity of the involved individual,
21 whether it be defendant 1 or defendant 2?

22 A It talks about, defendant number 2 -- or,
23 I'm sorry. Yeah, defendant number 2 attempting to
24 jump the fence. "Defendant number 2 tripped,
25 falling into the adjacent property where we were

3340

01 positioned."

02 MR. ROSENTHAL: Who was defendant 2?

03 THE WITNESS: Chavez.

04 BY SERGEANT SERAFIN:

05 Q Is it my understanding that it's
06 defendant 2 Chavez --

07 A Yes, sir.

08 Q -- that is the involved party that you've
09 referred to in your interviews here?

10 A Yes, sir.

11 Q Now, what I'd like you to do is to --
12 Richard, did you have something that you
13 wanted to look at?

14 MR. ROSENTHAL: No, I just wanted to take a
15 look at the arrest report.

16 BY SERGEANT SERAFIN:

17 Q What I'd like you to do is take a second
18 opportunity to review the photographs again and
19 paying close attention to this particular photograph
20 here on -- which is page 3 identified as booking
21 number -- and if I may, sir, because I can't read
22 upside-down, 4881821, with the booking date of
23 6/29/96.

24 Take a look at that photograph again,
25 sir. And if I'm not mistaken --

3341

01 Ralph, if you can read that from over
02 yonder there on Samuel Chavez's booking number.

03 MR. ROSENTHAL: That would be 4881786. I'm
04 sorry. No. Samuel Chavez. That was Mr. Banegas.

05 Chavez is 4881821.

06 THE WITNESS: Yeah.

07 BY SERGEANT SERAFIN:

08 Q Okay. I'm making sure we've got the right
09 booking numbers.

10 A Looking at the photo itself, it doesn't
11 help me.

12 Q Okay. And you had mentioned that there
13 was a percentage in which you believe that that
14 incident which is addressed in this particular
15 arrest report, D.R. number 96-02-23679, as being the
16 occurrence which you conveyed to robbery-homicide
17 detectives and the one we're discussing today. You
18 had mentioned about 95 percent accurate, sir?

19 A That would be about correct, sir. I feel
20 like I'm about 95 percent sure that that's the
21 incident.

22 DETECTIVE SERAFIN: Okay. Ralph, do you have
23 any questions for Ray concerning this particular
24 occurrence or anything covered in his prior
25 interviews?

3342

01

02

FURTHER EXAMINATION

03 BY DETECTIVE MC COMB:

04 Q So the only thing that doesn't really
05 match with your recollection is the appearance of
06 the arrestee.

07 A Yes. And I'll say this: Keeping in mind
08 that this is a driveway in the evening and, you
09 know, I'm seeing this guy just being brought out.
10 It wasn't like I went and examined him.

11 So it would be very difficult for me to
12 say -- I mean I could tell it was a male, I could
13 tell it was a male Hispanic, but, you know, facial
14 features are very difficult for me at this point.

15 SERGEANT SERAFIN: And I would just like to
16 take a short break because I need to address an
17 issue with Mr. Rosenthal concerning what we
18 discussed earlier, sir.

19 So if we can, I'll just go ahead and pause
20 my tape. The time now is 1425 hours.

21 MR. ROSENTHAL: And we'll go off the record.

22 (Recess)

23 MR. ROSENTHAL: All right. It's 2:30. We're
24 back on the record.

25 SERGEANT SERAFIN: Exactly it's 1430 hours.

3343

01

02 FURTHER EXAMINATION

03 BY SERGEANT SERAFIN:

04 Q Ray, you apparently had selected D.R.
05 number 96-0223679 with the defendant 2 as it
06 reflected in the arrest report as Samuel Chavez,
07 booking number 4881821.

08 What I'd like you to do, Ray, is just take
09 a look at defendant 1, which is Mr. Banegas,
10 serial -- or correction, booking number 4881786, and
11 see if you recognize that individual as being one of
12 the parties that was at scene.

13 A I would've never been in position or I
14 never had occasion to see who the other defendant
15 was. I never -- as I talked about it in my first
16 interview, after Ortiz said what he had to say on,
17 you know, who was to get booked, I left the scene,
18 don't know what they got booked for later, I don't
19 know what happened with the case.

20 DETECTIVE MC COMB: I think you also said that
21 he was in the car.

22 THE WITNESS: No, I said if he was in a car, I
23 don't even know. I remember seeing one person. So
24 looking at a photo isn't going to help me as far as
25 who the other guy was.

3344

01 SERGEANT SERAFIN: Okay. That was just done to
02 provide you an opportunity.

03

04 FURTHER EXAMINATION

05 BY MR. ROSENTHAL:

06 Q Let me ask a question. With respect to
07 Defendant Chavez, what you're suggesting is that you
08 believe that he may have been framed by Lujan to
09 cover up Lujan's beating of Mr. Chavez?

10 A For running, yes.

11 Q For running. Now, with respect to
12 Mr. Banegas, who is defendant number 1, any reason
13 to believe that his arrest was also false?

14 Because I think I noticed -- I noticed on
15 the report -- let me just put this on the record.
16 It says:

17 "On two separate occasions we observed
18 defendant 1 approach vehicles and receive

19 currency from drivers. In exchange defendant 1
20 would remove unknown items from his mouth and
21 hand it to the drivers. Defendant 1 would then
22 return to the sidewalk with defendant 2."

23 They say they also would've observed
24 defendant 2 flag down a passing vehicle and receive
25 currency from its driver, and then he would also
3345

01 recover an unknown item from his mouth with his
02 right hand and hand it to the driver.

03 Obviously, you weren't there, and I don't
04 want you to speculate. But based upon the
05 information, you knew what about defendant 1
06 Banegas?

07 A Again, you're right. This is a total
08 speculation. I don't have any knowledge as to what
09 occurred. From the conversation as to who was going
10 to go, I would have to say that narcotics was
11 planted on both of them.

12 Did it say that defendant number 1 also
13 ran a short distance and was taken into custody
14 or -- I concentrated on Chavez only. I didn't --

15 Q You want me to take a look at the report?

16 I'll take a look at the report.

17 A But from how the conversation was going,
18 it was like -- you know, it wasn't like, "Hey, we
19 saw this guy dealing," you know, "and this other guy
20 was dealing, too, with him and he ran. But," you
21 know, "we ain't got nothing on him. We thumped
22 him." Nothing like that. It was sort of like, "The
23 guy ran him; we chased him."

24 Q It does say that:

25 "As Officers Patel and Tovar responded to
3346

01 the location, defendant 1 ran southbound down
02 the driveway, defendant 2 ran into the front
03 yard and westbound towards our location.

04 "Upon reaching the fence dividing the two
05 properties, defendant 2 attempted to jump the
06 fence. Defendant 2 tripped and fell into the
07 adjacent property where we were positioned."

08 They also said they observed defendant 1
09 climbing over a wrought iron fence between the two
10 properties where they had detained defendant 2. And
11 when defendant 1 reached the top of the fence and
12 began to climb over, he observed him with defendant

13 2 and dropped a foil bindle, then jumped back off
14 the top of the fence and fell backward onto the
15 ground and rolled onto his side.

16 So apparently both of them, according to
17 this, fell.

18 A Yeah. And, again, it would be a
19 speculation because I didn't see it. I don't know
20 what their observations were.

21 I can only say that the discussion wasn't
22 like, "Yeah, we saw them dealing and we had an O.P.
23 set up." It was more like, "They ran, we got them
24 into custody, and we got nothing," that type of
25 thing.

3347

01

02 FURTHER EXAMINATION

03 BY DETECTIVE MC COMB:

04 Q You say "them," but in actuality you mean
05 he?

06 A Exactly.

07 Q In the singular?

08 A Right. The one.

09

10

FURTHER EXAMINATION

11 BY SERGEANT SERAFIN:

12 Q I know it's indicated in the arrest
13 report, Ray, but do you have any independent
14 recollection or does this arrest report help you in
15 refreshing your memory as to who could've been
16 present during this occasion?

17 MR. MC KESSON: Can you read that question
18 back?

19 (Record read)

20 THE WITNESS: At the scene?

21 BY SERGEANT SERAFIN:

22 Q Yes.

23 A I know I was there. I know Sergeant Ortiz
24 was there. I know Officer Lujan was there. And I
25 know there were several other officers. I know what
3348

01 the report says as to the officers.

02 Does that report refresh my memory as
03 to that it was definitely them? No. Again, this
04 was relatively uneventful. As far as the other
05 officers that were there, once everything was
06 Code 4, I was on my way.

07 Q Okay. And, lastly, does this help you in
08 refreshing your memory as to who your partner may
09 have been that day?

10 A It does not refresh my memory. If I read
11 it, I know who it was. But as to me independently
12 remembering? No.

13 SERGEANT SERAFIN: Okay. I don't have anything
14 further. Ralph, do you have anything further for
15 Mr. Perez?

16 DETECTIVE MC COMB: No.

17 MR. ROSENTHAL: Okay.

18 SERGEANT SERAFIN: Richard?

19 MR. ROSENTHAL: No.

20 SERGEANT SERAFIN: Okay. This concludes my
21 interview with Mr. Rafael Perez. The time now is
22 1437 hours. Thank you.

23 MR. ROSENTHAL: We're off the record.

24 (Recess)

25 DETECTIVE BURDITT: Okay. This is a

3349

01 tape-recorded interview for an Internal Affairs
02 investigation. The C.F. number is 99-4624. Today
03 is May 10 of the year 2000, and the time is 1452

04 hours. The location of this interview is Internal
05 Affairs Group South Section.

06 Present to be interviewed is Rafael
07 Perez. The interview is being recorded on tape
08 number 229298, side A.

09 The interview is being conducted by
10 Detective II Michael Burditt -- my serial number is
11 24454. I'm assigned to Internal Affairs -- and by
12 Sergeant I Debora Orpin, serial number 27432, also
13 of Internal Affairs.

14 Also present is Rafael Perez's attorney,
15 Kevin Mc Kesson, Deputy District Attorney Richard
16 Rosenthal, and Court Reporter Lynden Glover.

17 EXAMINATION

18 BY DETECTIVE BURDITT:

19 Q Rafael, prior to us going on tape, I
20 presented you with some documents and gave you time
21 to review them.

22 Those included a summary of your prior
23 interview regarding this incident dated November 5th
24 of 1999, also the transcript of that interview, and
25 an arrest report for a Meldrano Vergara,

01 V-e-r-g-a-r-a.

02 This individual was arrested on it appears
03 June 5th of 1996. He was arrested for assault with
04 a deadly weapon.

05 And I also gave you for your review the
06 use of force report regarding this incident. And
07 for the record, the D.R. number --

08 MR. ROSENTHAL: The D.R. number is 96-0221086
09 and the district attorney case number is
10 BA132884. It appears the defendant's true name may
11 have been Henry Martillaro, M-a-r-t-i-l-l-a-r-o.

12 BY DETECTIVE BURDITT:

13 Q Did you have sufficient time to review
14 these --

15 A I have.

16 Q -- documents?

17 A Yes.

18 Q Would it be correct to say that the --
19 as far as addressing misconduct involving this
20 case, the main issues here are the fact that the
21 firearms in question in this arrest were not in
22 plain view?

23 A That's one of the issues, yes.

24 Q And the other main issue would be the
25 use of force upon this arrestee involving his

3351

01 elbow?

02 A That's correct.

03 MR. ROSENTHAL: You know what, there's one
04 other thing we just need to put on the record. I
05 apologize.

06 In this case, it does turn out I've been
07 informed that Officer Veloz, who's one of the
08 suspect officers, was compelled by an Internal
09 Affairs investigator.

10 I have been informed, however, that
11 Detective Burditt, who is conducting the questioning
12 today, has not had any exposure to that compelled
13 statement, did not participate in taking the
14 compelled statement, has not seen the compelled
15 statement, and has not discussed the compelled
16 statement with any of the officers who, in fact,
17 took that statement.

18 Is that true?

19 DETECTIVE BURDITT: That's true.

20 MR. ROSENTHAL: Okay. Thank you.

21 BY DETECTIVE BURDITT:

22 Q Okay. What I'd like to do, Ray, is go
23 through your recollection of this incident. Do you
24 recall, after reviewing these documents, who your
25 partner was that night?

3352

01 A I didn't review the report for the purpose
02 of seeing who my partner was. I can assume, but I'm
03 not going to assume. I'll read it.

04 Q That's fine. Now, this -- this defendant
05 Vergara was involved in an incident. And this
06 defendant Vergara was involved in an incident in
07 which the arrest report indicates that he repeatedly
08 rammed the back of the police car of Officers Veloz
09 and Lujan, which then led to a use of force incident
10 and his arrest at a location being Valley and
11 Crandall.

12 A Yes, sir.

13 Q Which is in Rampart Division?

14 A Yes, sir.

15 Q What was your first involvement in this
16 case?

17 You obviously arrived at the arrest

18 location. When you arrived what was occurring?

19 A The suspect was ramming his vehicle to
20 the -- the vehicle in front of him, the police car.

21 Q And which police vehicle would that have
22 been?

23 A It was Officer Lujan's vehicle.

24 Q Were you summoned to this location by
25 Officers Lujan and Veloz?

3353

01 A Yes, sir.

02 Q And do you recall the nature of that
03 summons?

04 A It was "request for additional units for a
05 415 man with a vehicle ramming police car,"
06 something to that effect.

07 Q When you arrived at scene, were there
08 other police cars there besides Veloz and Lujan?

09 A Yes, sir.

10 Q And do you know which officers those might
11 have been?

12 A Not off the top of my head. Eventually
13 there was probably a whole lot of officers. There
14 was probably 30 vehicles there. There was a lot of

15 people there.

16 Q Now, prior to or leading up to the point
17 where this suspect Vergara was taken into custody
18 and he was handcuffed, were there -- were there
19 additional officers there besides CRASH?

20 A Yes. There was patrol -- patrol officers
21 there, yes.

22 Q Do you know what patrol officers?

23 A Right off the top of my head, for some
24 reason, there's a tall male white that works
25 Rampart. And if you -- I know. That doesn't help.

3354

01 But if you told me the name, I'd say yes, or showed
02 me a picture. He became a P-III.

03 And the reason I remember him is because
04 when we started to approach the car and the guy
05 started kind of ramming the cars back and forth, he
06 pulled his gun out and he was pointing it at the
07 car. But his cross-fire was so bad that Ortiz had
08 to tell him, "Put your gun down. Watch your
09 cross-fire." I can't remember his name but --

10

11 EXAMINATION

12 BY SERGEANT ORPIN:

13 Q Can you describe him?

14 A Tall, male white, hair combed to the
15 side.

16 Q Color hair?

17 A Like a brownish-blondish hair. No
18 mustache, kind of big eyes. He has sort of big
19 eyes. You know who I'm talking about?

20 Q No. I'm trying.

21 A You know him. He became a training
22 officer. He worked patrol training, training
23 officer.

24

25 FURTHER EXAMINATION

3355

01 BY DETECTIVE BURDITT:

02 Q Okay. Well, we'll get back to the
03 incident here. You arrived and you indicated that
04 you observed the suspect vehicle ramming the police
05 vehicle?

06 A Well, there was very limited space between
07 the two. So he was spinning his tires going back
08 and forth and trying to, I guess, make -- get enough

09 room between the two cars to get out. And he was --
10 yeah, he was ramming back and forth, going back and
11 forth.

12 Q Was the police car in front of or behind
13 the suspect vehicle?

14 A I believe there was one in front. I'm not
15 sure who the car behind him was, but there was
16 definitely one in front.

17 Q You had mentioned Sergeant Ortiz --

18 A Yes, sir.

19 Q -- being there?

20 A Yes, sir.

21 Q At what point during this incident did
22 Sergeant Ortiz arrive?

23 A I think he was there as early as I was.

24 Q You were there prior to the use of force,
25 correct?

3356

01 A Yes, sir.

02 Q Prior to the suspect being pulled from the
03 vehicle?

04 A Yes, sir.

05 Q Was there a passenger in that vehicle?

06 A He was taken out early on. He jumped out
07 of the car, I think. Another male. He jumped out
08 of the car and was taken into custody way before
09 some of this other stuff occurred.

10 Q Okay. Now, were you present when the
11 passenger exited the vehicle?

12 A No. He was already out when I got there,
13 already in custody.

14 Q Do you know who had him in custody?

15 A He was sitting in a vehicle. I know
16 that. Who actually took him into custody, I don't
17 know.

18 Q Did you have any contact with this
19 passenger at all?

20 A Afterwards. After, you know, we were
21 talking to him about his friend, what was his
22 problem. And he was saying something like he just
23 wiggled out, they didn't know what's wrong with
24 him, or he didn't know what was wrong with him.

25 Q When you reviewed -- I know I'm jumping a
3357

01 little bit forward, but I'm going to hit this
02 question before I forget it.

03 In the arrest report there was a statement
04 that was written out by this witness relative to the
05 actions of his friend. And it was actually page 8
06 on the arrest report. It indicates, according to
07 the arrest report, that Montoya and Veloz obtained
08 this statement.

09 Were you present when this statement was
10 taken?

11 A No, sir.

12 Q Do you know if there's any misconduct at
13 all related to the statement that this defendant
14 gave or this witness gave?

15 A This statement appears to be correct from
16 what I remember him telling us. The only part that
17 I don't see correct is about, "I don't care. I'm
18 going to kill them. I'm going to kill the cops," or
19 whatever. I don't remember him ever saying that.

20 The part about the suspect hitting him, I
21 do remember him saying that. But, like I said, that
22 other part I don't.

23 Q So, now, you're there and this defendant
24 is sandwiched between two vehicles, correct?

25 A Yes.

3358

01 Q The one vehicle would be a police
02 vehicle. Was the other vehicle a parked car or
03 another patrol car, if you know?

04 A I'm not sure. I know one of them was a
05 police car. I'm not sure what the other car was.
06 I'm not sure.

07 Q Okay. What Rampart CRASH officers were
08 present that you recall that were there at this
09 incident besides, obviously, we know Veloz, Lujan,
10 and yourself?

11 A I remember seeing Officer Hewitt there,
12 Officer Montoya, Officer Lujan, myself, Sergeant
13 Ortiz, and there were several more, you know. And
14 I'm just not remembering their names, but there was
15 definitely several more.

16 Q Okay. The arrest report mentioned an
17 Officer Buchanan --

18 A Yes.

19 Q -- being there?

20 A Yes.

21 Q Do you recall him being there?

22 A Yes, sir.

23 Q And the arrest report also mentioned an
24 Officer Harper?

25 A Yes, sir.

3359

01 Q Do you recall him being there?

02 A Yes, sir.

03 Q Now, this defendant is bouncing back and
04 forth between these cars. At that point what action
05 did you or any of the other officers take?

06 A We were trying to figure out how we were
07 going to get him out. Sergeant Ortiz -- we sort of
08 get in a little circle. We tell him -- you know, we
09 discuss what we were going to do.

10 Q Now, when you say "we," who are "we"?

11 A Sergeant Ortiz, myself, Hewitt, Lujan,
12 Buchanan. There was about five of us, five or six
13 of us.

14 We decided we're going to break -- we were
15 going to try and open the door. If the door doesn't
16 open, we're going to smash the windshield, O.C. him,
17 try and get the door open to get him out, and then
18 we'll go from there. Somehow we're going to have to
19 extract him from the car.

20 Q Was -- what was this defendant doing
21 during this meeting? I presume this was a rather
22 quick meeting.

23 A Yes, right there as everything is going
24 on.

25 Q Real quick?

3360

01 A Yeah.

02 Q "This is -- this is our game plan"?

03 A Yes, sir.

04 Q Was the defendant still ramming vehicles
05 at that point?

06 A He was going back and forth. You know how
07 the tires screech, you know, trying to get some
08 momentum. But he's just not -- doesn't have enough
09 momentum to really bounce the cars out of their --
10 out of the way.

11 So, you know, we're having this little
12 meeting. And I call it a meeting, but it's
13 basically a quick, you know, "hey, here's what we're
14 going to have to do," da-da-da. And we decide that
15 this is what we're going to do, and we approach the
16 car.

17 Q Now, who formulated that plan?

18 A Ortiz.

19 Q The sergeant did?

20 A Yes.

21

22 FURTHER EXAMINATION

23 BY SERGEANT ORPIN:

24 Q And what was that plan?

25 A We were going to go up to the car, smash
3361

01 the windshield, spray him with O.C., try and get
02 that door open to pull him out.

03 If that didn't work, we were going to
04 figure out from there how we were going to extract
05 him. We were going to do something.

06 And what we ended up doing was I'm pretty
07 sure I punched him in the face and that kind of put
08 his face forward, and we just pulled him right out
09 of the car.

10

11 FURTHER EXAMINATION

12 BY DETECTIVE BURDITT:

13 Q Okay. Now, how did you get to the point

14 of approaching him?

15 A We went right up to the car. We went --

16 walked up to the car.

17 Q Now, which officers?

18 A All of us: Hewitt, myself, Lujan,

19 Buchanan, Ortiz. I think there was one more. There

20 was about five or six of us that approached the car.

21

22 FURTHER EXAMINATION

23 BY SERGEANT ORPIN:

24 Q Did you approach from one side only or did

25 you --

3362

01 A Yeah, we were all on one side. We did not

02 like, you know, there was two or three officers on

03 one side. No, we were all on the same side, the

04 driver's side.

05 Q The driver's side?

06 A Yes, ma'am

07

08 FURTHER EXAMINATION

09 BY DETECTIVE BURDITT:

10 Q Do you specifically remember who did what

11 when you guys approached that car?

12 A I know what I specifically did. I know
13 once he was on the ground, I know what was basically
14 done to him. I know we searched. I mean I know I
15 searched.

16 You got to remember, you know, we're being
17 real cautious. I know I'm one of the officers -- I
18 know Buchanan's right up front, too. I think
19 Buchanan O.C.'s him.

20 At one point Buchanan is right up with me.
21 Because I'm right by the door. Buchanan comes right
22 up to the door, sprays him. We were trying to get
23 the door open. We couldn't get the door open.

24 At some point -- before Buchanan actually
25 sprays him, somebody comes up and breaks the window.

3363

01 And then Buchanan comes up. I'm still right there.
02 He O.C.'s him.

03 And at that point he's still not coming
04 out. And that's when I decided -- I just punched
05 him and grabbed him by the collar and the shirt, and
06 I started pulling him out and we all just pulled him
07 out.

08

09

FURTHER EXAMINATION

10 BY SERGEANT ORPIN:

11 Q You pulled him out through the windshield?

12 A Yes. Through the window. You said

13 windshield?

14 Q Windshield.

15 A The window. The windshield is the front

16 one.

17 Q Right. And you pulled him out through

18 that --

19 A Window.

20 Q -- side?

21 A Side window, yeah.

22 Q Okay.

23

24

25

FURTHER EXAMINATION

3364

01 BY DETECTIVE BURDITT:

02 Q Now, prior to you guys -- when you were

03 formulating this plan, how close were you guys to

04 the car?

05 A While it was still moving and he was
06 acting silly or crazy, about 25, 30 feet back away
07 from him.

08 Q Did you at any time observe this defendant
09 reaching toward the back of the vehicle as if he was
10 attempting to grab something?

11 A No. That was a fabricated story. That
12 was after the fact. As I happened to be searching
13 the car, I feel a couple weapons in the back seat.
14 They were around the armrest. But I couldn't get to
15 them. There was no way to get to them.

16 I had to actually cut the leather in
17 the -- I don't know how to describe it. But you
18 know how the -- the armrest comes down so it leaves
19 like a little leather flap on the side. I had to
20 cut that little --

21

22 FURTHER EXAMINATION

23 BY SERGEANT ORPIN:

24 Q In the middle or on the side?

25 A In the middle.

3365

01 Q Like a console?

02 A Right. You know how an arm rests in the
03 middle in the back of the car in the back seats --

04 Q Okay.

05 A -- comes down on the side, you know, just
06 to make it -- for looks, it gives it like a little
07 leather covering so that it doesn't look like you
08 can see right -- well, I had to cut that open to get
09 the weapons out.

10 But that was well after the fact, you
11 know, and that was added to the story just to add to
12 the story. We had no idea that there was any
13 weapons in the car.

14 MR. ROSENTHAL: How did the weapons get in that
15 spot then?

16 THE WITNESS: I still don't know. We were
17 trying to figure that out.

18 BY SERGEANT ORPIN:

19 Q Did you ask him?

20 A I never did.

21 Q Do you know if anybody ever asked him how
22 they were able to --

23 A I don't know. I know that it was
24 pretty -- because I -- when I first felt them in

25 there, I said, well, maybe it's through the trunk.

3366

01 I went to the trunk.

02 In fact, I remember Sergeant Ortiz was
03 telling everybody, "Back away from the car. Back
04 away," because we didn't know if it was a booby trap
05 or something. So I remember Ortiz telling everybody
06 to back away from the car.

07 But there was no way to get in it through
08 the back either. So I went back to the front and I
09 just said, "Give me a knife." And I just cut the
10 material on the side, cut it and just removed the
11 weapons.

12

13 FURTHER EXAMINATION

14 BY DETECTIVE BURDITT:

15 Q Now, in the -- in the arrest report
16 Lujan -- you already indicated to me that it was
17 fabricated.

18 But Lujan wrote that he observed the
19 defendant reaching between the front seats as though
20 to get something and illuminated the interior of the
21 vehicle with his flashlight, and in plain view he

22 saw two semiautomatic pistols lying in the back seat
23 of his vehicle.

24 And that would've been fabricated?

25 A Yes. There was a lot of people out
3367

01 there. Believe me, if we would've saw or if Lujan
02 would've saw a weapon, that information would've
03 been communicated to us and everyone that was there.
04 You know, "Back up. Take cover. He's reaching for
05 a weapon," something.

06 Believe me, that was fabricated. That
07 never happened. That was just to add to the story.

08 Q Would it be fair to say that the tactical
09 plan that Sergeant Ortiz developed would have
10 been --

11 A Completely different.

12 Q -- completely different if, in fact, you
13 guys had information that this guy had loaded guns
14 in the car?

15 A Absolutely. Or if we're in the middle of
16 the operation and we see him reaching for weapons
17 and we look in the car and we see weapons, we're
18 going to back up, redeploy in a totally different

19 manner.

20 Q Were his hands on the steering wheel while
21 he was going back and forth?

22 A Not on the steering wheel the whole time,
23 but he was never reaching for -- for the back.

24 Q Do you remember what kind of car it
25 was --

3368

01 A I do not.

02 Q -- that this guy was in?

03 A I don't.

04 Q Back to the use of force, do you recall
05 who it was that -- which officers extracted Vergara
06 from the car?

07 A Myself, Hewitt, Lujan, Buchanan, and I
08 believe either Ortiz or another officer was sort of
09 trying to keep his legs down, like stepping on
10 the -- on the ankles type thing, but there was at
11 least four of us on him.

12 Q Was he resisting at the point where you
13 pulled him from the vehicle?

14 A When we were pulling him out of the
15 vehicle, yes.

16 Q In what way was he resisting?

17 A Going on the opposite direction as to
18 where we're trying to pull him. He's trying to pull
19 away from us. As we were trying to pull him out,
20 he's trying to get away.

21 Once we get him out of the car, he's still
22 kind of struggling up until the point once he's down
23 on the ground.

24 In fact, there was glass on the ground. I
25 remember his -- you know, him being -- laying right
3369

01 on top of that glass. But once he was down, he
02 was -- he was down. I mean he was -- he had pretty
03 much given up.

04 Q Now, when he -- you indicated -- you just
05 said that once he was on the ground he -- he gave
06 up?

07 A Yes.

08 Q Did he stop resisting at that point?

09 A Pretty much, yes, sir.

10 Q Okay. What happened after he was on the
11 ground facedown?

12 A That was the point -- at that point that's

13 when Lujan sort of straddled him from the side,
14 picked his wrist up, had him in sort of in a
15 wristlock twist and -- you know, as though you're
16 going to put his hands behind his back, but then he
17 lifted up.

18 I mean we were all sitting right there
19 looking right at it. Hewitt's -- I remember me
20 being towards the lower left leg as he's facedown.
21 Hewitt's right in front -- or Lujan is right in
22 front of me to his upper left arm. Hewitt is on the
23 right arm. And Buchanan is on the right lower leg
24 area, right lower leg area.

25 And Hewitt -- I mean or Lujan is grabbing
3370

01 that wrist and is lifting it up. And it's sort of a
02 technique you've got to use. But he lifted up, and
03 all of a sudden you could just hear -- you know, you
04 could see it. The elbow's out, totally dislocated
05 at that point.

06 Q Where was Sergeant Ortiz when that
07 occurred?

08 A He was right there.

09 Q When you say "right there" --

07 legs -- or his foot on his legs or not, but he's,
08 you know, right there the whole time.

09

10 FURTHER EXAMINATION

11 BY DETECTIVE BURDITT:

12 Q Was anyone giving this arrestee any
13 commands on what to do? Do you recall what anyone
14 said to him?

15 A I don't think we were giving him commands.

16 Q Do you know if Vergara spoke English?

17 A I don't know.

18 Q And after his -- was it apparent to you
19 that his shoulder was dislocated?

20 A His elbow.

21 Q His elbow?

22 A There was no doubt.

23 Q And that was by the sound?

24 A Well, the way he did it. Sort of like a
25 lifting up, twisting and lifting up at the same

3372

01 time, and it just dislocates your elbow.

02 Q And it is -- it's your opinion that this
03 was excessive force on the part of Lujan because of

04 the fact that the defendant at that point during
05 this arrest was not resisting?

06 A Yes, sir. We had four or five people on
07 him. This wasn't a big guy. We had him pretty much
08 contained already. All we had to do was handcuff
09 him.

10 Q Now, he was sprayed with O.C. prior to the
11 extraction, correct?

12 A Yes, sir, a couple of times.

13 Q What was the effect on him? What effect
14 did the O.C. have on him?

15 A It bothered his eyes, but it didn't make
16 him comply.

17 Q After Lujan lifted his arm up causing the
18 dislocation of the elbow, what occurred after that?

19 A I remember one word from Lujan, "shit,"
20 sort of like a giggly, "Shit," that type of thing.
21 And he brought his arm back down, handcuffed him,
22 and we got him out of there.

23 Q Just so I'm clear, because it's very
24 important, this one issue, the officers that would
25 have been present and would've had knowledge of the

01 actions of Lujan and the dislocation of the elbow
02 would have been who?

03 A I am very certain that Officer Hewitt,
04 Officer Buchanan, myself, Sergeant Ortiz, and
05 obviously Officer Lujan knew that -- that the arm
06 thing was a little -- a little added -- a little
07 added punishment to the defendant for what he did,
08 ramming police cars or whatever. That was sort of
09 like a little exclamation point on his arrest.

10 Q Okay. Now, when this occurred, the report
11 indicated that Officer Brehm was present. The
12 arrest actually indicated that Brehm took the
13 passenger into custody.

14 Where was Brehm when this occurred, if you
15 know?

16 A I don't know. He may have been watching
17 the other defendant. But he did not approach the
18 vehicle with the rest of us, so he may have been
19 watching the first defendant that got out of the
20 car.

21 Q Okay. But you're saying "may," so you
22 don't know?

23 A I don't know.

24 Q Okay. There was mention that Officer
25 Montoya was present.

3374

01 A Montoya was present, yes, sir.

02 Q Do you know where Montoya was when the use
03 of force occurred?

04 A Montoya was one of the ones that was
05 also -- remember I said there was Ortiz and somebody
06 else and I just can't remember? He was one of the
07 ones that was not involved in the actual, you know,
08 struggle, but he was right there. He would've seen
09 it. I mean we -- he knew it as well.

10 Q I think that covers the officers. Now,
11 when he was -- was he handcuffed after that
12 occurred?

13 A Yes, right there -- or immediately after
14 that.

15 Q Immediately?

16 A Yes.

17 Q Was there any further struggle or were
18 there any problems with this defendant after that
19 occurred?

20 A No. He was mostly moaning and groaning

21 that, that type of thing. I know that we -- I don't
22 know if I told somebody or I said something about,
23 "He's laying on glass. Let's pick him up," or
24 something.

25 Because the more he moved on the glass on
3375

01 the cement, it was just putting little cuts on him.
02 And I remember I said, "Let's put him in the car,"
03 or something. But other than that, I don't remember
04 any other struggles from him.

05 Q Now, after he was taken into custody, the
06 vehicle that -- just for the record, it was an Audi,
07 it was a 1985 Audi -- who conducted the search of
08 the vehicle?

09 A I did.

10 Q And how soon after this Vergara was taken
11 into custody did that occur?

12 A Probably five minutes after he was taken
13 into custody.

14 Q Did anyone assist you in the search?

15 A Ortiz assisted me a little bit in the
16 trunk area. Because I told him, "I think there's
17 something in between the console, in the back

18 console."

19 And he -- he went back there with me when
20 I first opened it and then decided to tell all these
21 other officers that were hanging around now just
22 talking to get out of the way and go across the
23 street.

24 We didn't know whether it was some type of
25 booby trap or -- I know I felt some kind of metal
3376

01 object that might be some type of weapon. And, you
02 know, we didn't want it to be some kind of shotgun
03 pointed outward and it goes off as we were trying to
04 open it or whatever.

05 Q Okay. And just for clarification,
06 these -- these two firearms that you recovered from
07 inside the vehicle, they were in -- they were
08 secreted in the armrest of the driver's seat?

09 A No, sir.

10 Q No? Okay. I want to make sure.

11 A Let me see your pen, sir. I'm going to
12 draw you, to the best of my ability, what would be a
13 diagram. This will be an aerial picture.

14 Q Looking down on the vehicle with no --

15 A This is the front of the vehicle.

16 Q I got it.

17 A Already we're starting off wrong, aren't
18 we? Here's the front seats, here's the back seat,
19 and here -- here would be the trunk. Okay. Now,
20 you know, these are two seats and these are the
21 backrests.

22 Right here in this vehicle, just like a
23 little, small armrest that comes down, that pivots
24 down, up or down.

25 Q In the back seat?

3377

01 A In the back seat. On the side -- while
02 it's up, you know, it's just flush with the seat.
03 When it's down, you know, if it comes down you'd be
04 able to see it through the side. But there's like a
05 little flap there that covers it.

06 I had to cut that flap open with a knife
07 to get to those weapons because there was no other
08 way for me to get to them.

09 I tried going underneath. I thought maybe
10 he went up underneath the backing of the seat.

11 There was just -- I couldn't figure out how he got

12 it in there unless he removed this whole thing and
13 then put it back in.

14 Q So would it be correct to say that those
15 guns were not accessible to the driver?

16 A No, sir. It's impossible.

17 Q Did anyone -- did any of the other
18 officers witness you recover those guns?

19 A Several. There were -- you know, sort of
20 anticipation what's in there because, you know,
21 everybody now knowing that there's something in
22 there and we're trying to figure out how to get it
23 out. So when I removed the weapons, everybody saw
24 them.

25 Q Okay. What involvement after this -- this
3378

01 case was wrapped up -- obviously, the officers that
02 handled the case were Lujan and Veloz?

03 Did you have any involvement in the
04 writing of the arrest report?

05 A No, sir.

06 Q Okay. Do you recall if you read this
07 arrest report before it was submitted?

08 A I doubt it. I don't think so.

09 Q Now, Sergeant Ortiz completed a use of
10 force report regarding this incident. And you
11 reviewed this before we started this interview,
12 correct?

13 A Yes, sir.

14 Q Are parts of this use of force report
15 incorrect?

16 A Well, I mean it's all in the wording, you
17 know. We say "firm grip" -- or Sergeant Ortiz says
18 "firm grip." I say --

19 MR. MC KESSON: "Choke."

20 THE WITNESS: I say, you know, techniques used
21 known to us to dislocate bones, dislocate shoulders,
22 wrists, ankles.

23

24 FURTHER EXAMINATION

25 BY SERGEANT ORPIN:

3379

01 Q But would you have said that if you were
02 writing the report to describe it?

03 What words would you use if you were
04 describing it in your arrest report?

05 MR. MC KESSON: You mean if he's trying to

06 fabricate or if he's trying to be accurate?

07 THE WITNESS: I would fabricate it. Of course.

08 BY SERGEANT ORPIN:

09 Q And so you would use -- what you're saying
10 you would use the terms you were taught as our -- in
11 that report?

12 A "Firm grip" --

13 Q Okay.

14 A -- you know. That covers just about every
15 spectrum of how firm was the grip.

16

17 FURTHER EXAMINATION

18 BY DETECTIVE BURDITT:

19 Q Okay. We'll cut right to the chase on the
20 main issue here. The arrest report doesn't indicate
21 any use of force relative to the separation of the
22 elbow; is that correct?

23 MR. MC KESSON: You mean the arrest report
24 doesn't?

25 DETECTIVE BURDITT: The arrest report.

3380

01 THE WITNESS: Does it say that the elbow was
02 dislocated?

03 MR. MC KESSON: No, no. He just wants to know
04 did they describe any activity in the arrest report
05 that's consistent with producing a dislocated
06 shoulder.

07 THE WITNESS: I think if you read one of the
08 paragraphs in the arrest report, I believe it's page
09 number 3, or maybe number -- number 2, you will
10 notice that they talk a little bit about -- well,
11 under the use of force. I'm sorry. Page 3, it
12 says, "The defendant became combative by kicking and
13 punching at officers with his free hand."

14 BY DETECTIVE BURDITT:

15 Q Is that true?

16 A It's impossible. There was four or five
17 of us on him. He doesn't have a free hand. And
18 we're talking about big officers, you know.

19 Q Let me ask you this, Ray --

20 A Let me -- let me -- I haven't answered
21 your question yet.

22 Q Okay.

23 A What I wanted to say was anytime that we
24 know something happened that we need to cover up,
25 we write a little bit extra in our report because

3381

01 we want to sort of cover that in case it comes up.

02 And, you know, I believe that this is what
03 he was trying to -- here by using that we used a
04 modified swarm technique, then placed him facedown
05 on the ground and attempted to handcuff him -- or
06 handcuff him with his hands behind his back.

07 And then he talks about how, "At that time
08 we ordered defendant to submit to arrest, to no
09 avail. The defendant continued to resist by rolling
10 over from his stomach and his back.

11 "After repeated attempts, officers were
12 able to handcuff the defendant and apply the Rip
13 hobble without further incident."

14 In my opinion -- I mean I know how I wrote
15 my reports. All that is is trying to explain that
16 during that -- if it comes up, during that procedure
17 of trying to handcuff him, he was trying to move
18 around and being combative, and that's when his
19 elbow was dislocated, if that's what the finding
20 will be of the doctor or whoever looks at him.

21 Q Was a hobble, in fact, placed on him?

22 A I believe so, yes, sir. You know, and it

23 says here under "Injuries" that a Dr. Kelsey treated
24 him and diagnosed him with a dislocated left elbow.

25 Q Does it in that arrest report indicate how
3382

01 that injury occurred?

02 A I don't think so other than what I read.

03 Q Now I have a question for you regarding
04 the use of force report, if I can just see that for
05 just a second.

06 I highlighted a statement that -- Sergeant
07 Ortiz completed this arrest report. And he
08 indicated that -- under "Injuries" it says,
09 "Vergara also sustained a dislocated left elbow
10 possibly injured during the ramming of parked
11 vehicles."

12 Would that be an incorrect statement?

13 A Absolutely. I mean that's --

14 Q And, in fact, from what you've told me,
15 Sergeant Ortiz was present when Lujan popped his
16 elbow.

17 A Dislocated -- yes, sir.

18 Q Let me ask you this: The witness, the
19 passenger, and I'm not sure of the proper

20 pronunciation, Saclolo. Sergeant Ortiz in --

21 MR. ROSENTHAL: Want to spell that?

22 DETECTIVE BURDITT: S-a-c-l-o-l-o.

23 BY DETECTIVE BURDITT:

24 Q Sergeant Ortiz, in his use of force

25 report, indicated that Saclolo was placed in Officer

3383

01 Brehm's vehicle and did not see the use of force.

02 Do you know where this witness was, where

03 the passenger was, when the driver was extracted?

04 A I do not.

05 Q So it's possible that he may have not been

06 in a position?

07 A He may, he may have not.

08 Q Okay. Do you know that if after this

09 incident occurred, after this guy was arrested, did

10 you continue patrol activities or were you back at

11 the station?

12 A I don't have an independent recollection

13 on that.

14 Q Do you have any knowledge as to which

15 officers, if any, reviewed this arrest report and

16 would've had knowledge of what was contained within

17 it?

18 A I do not -- I know quite often, I mean,
19 what the procedure was. Sergeant Ortiz would do his
20 logs or his reports off of that report. You know,
21 he would attribute some certain statements that the
22 witnesses would make off of the arrest reports.

23 Whatever the officers wrote, he would take
24 that, lift it right off the report, and put it in
25 his reports so that they jived.

3384

01 Q After this guy was taken into custody, you
02 indicated there were additional units that showed
03 up, other patrol cars.

04 A Before he was taken into custody.

05 Q Okay. Before and after there were a whole
06 lot of --

07 A Yes, sir.

08 Q -- cars that showed up.

09 Was there any discussion between the CRASH
10 officers relative to how this was going to be
11 written, how this arrest report was going to be
12 documented?

13 A I think there was. And I did not partake

14 in it, but I think that was done at the station on
15 this particular incident. I think there might have
16 been some talk a little bit there.

17 You're not asking me was it -- the
18 conversation held in front of the other patrol
19 officers?

20 Q No.

21 A Okay.

22 Q I'm just asking do you have any knowledge
23 as to if there was any discussion between the
24 officers as to this is the way that this report is
25 going to be written.

3385

01 A I know there was some discussion at the
02 station, and I don't know if there was some at the
03 scene. If there was, I wasn't involved in it.

04 MR. ROSENTHAL: Can we just go off the record
05 for one quick moment?

06 DETECTIVE BURDITT: Sure.

07 (Recess)

08 SERGEANT ORPIN: We're back on tape and
09 1540 hours we're back on tape.

10

11

FURTHER EXAMINATION

12 BY SERGEANT ORPIN:

13 Q Okay. I have a couple questions before we
14 finish up on this. Ray, were there any other
15 supervisors present that day other than Ortiz?

16 A I don't remember any other.

17 Q Okay. Do you think that any of the patrol
18 officers were in a position to have seen the use of
19 force occur?

20 A I would say no.

21 Q Why?

22 A Because I got -- like I had said, Ortiz
23 had ordered all the other officers that were there
24 to go on the opposite side of the street that we
25 were on. In other words, on the sidewalk that would

3386

01 be on the passenger side of the vehicle.

02 Q Was that prior to the extraction?

03 A Prior to the extraction. There was a
04 problem with cross-fire. Ortiz got upset. I
05 believe it was Officer Stewart who unholstered his
06 weapon and pointed it towards the car, towards the
07 defendant, and we were on the other side of the

08 defendant.

09 Ortiz was very pissed off because there
10 was -- in fact, I think he chewed him out, from what
11 I remember, that he went and talked to that officer,
12 Stewart. And he had all of those people that were
13 on that side, patrol officers, get up on the
14 sidewalk while we handled the situation.

15

16 FURTHER EXAMINATION

17 BY DETECTIVE BURDITT:

18 Q Was Vergara -- the use of force on
19 Vergara, was that directly outside the car on the
20 ground?

21 A Right outside the car right next to the
22 door.

23 Q So the view of the officers, if they were
24 across the street, the car would've been in the way?

25 A Yes, sir.

3387

01 Q How long did it take to get him into
02 custody from the time that he was extracted from the
03 vehicle to the point he was handcuffed?

04 A From the time I had to break the window,

05 everything, I'd say two minutes, two and a half
06 minutes.

07 Q What I'd like to do just in summary is go
08 down the name of each officer that you've identified
09 as being at the scene and just a quick summary on
10 your part as to what knowledge of misconduct these
11 officers would've had regarding this incident. The
12 first being Officer Brehm.

13 A Officer Brehm would have had knowledge
14 that this person was not reaching for a gun. I'm
15 not sure whether he would've had knowledge or
16 would've seen the use of force. I don't remember
17 him at that point.

18 Q How would Brehm have known that this
19 defendant was not reaching for the guns?

20 A Based on the conversations, based on our
21 actions, based on everything that we did.

22 I mean anybody out there while we were
23 doing -- trying to take him into custody, if anybody
24 would've been told, "He's reaching for a gun," or,
25 "We can see a gun," believe me, everything would've

3388

01 been completely different.

02 We have an armed, barricaded suspect now
03 reaching for a gun. I'm not breaking a window
04 trying to pull him out or anything like that. We're
05 going to handle it different.

06 We'll probably have to call SWAT out. I'm
07 not sure what we're going to have to do, but it
08 wouldn't have been handled that way.

09 In other words, while he's being taken
10 into custody and after he was taken into custody, no
11 one at that point had mentioned about any gun.
12 There was no talk of any gun, nothing.

13 All we talked about was get him into
14 custody. We got him in custody. After five or
15 10 minutes after he's in custody, I started
16 searching the car and finding guns, that's the first
17 anybody -- or the first we ever talked about a gun.

18 So for him to say that that's what
19 happened or to verify that that's what happened,
20 that definitely would've been wrong.

21 MR. ROSENTHAL: Let me just ask you. Because
22 this is just based upon all the information that
23 I've heard over the course of the last 25
24 interviews.

25 It seems to me that if this guy had --

3389

01 and, apparently, he did. He ran into the car of a
02 patrol officer numerous times. If he had reached
03 for a gun, you guys would've shot him.

04 THE WITNESS: You know, I didn't want to say
05 that, but absolutely. I mean that's about as easy
06 as they get.

07 MR. ROSENTHAL: Okay.

08 THE WITNESS: That's about as easy as they get.

09 BY DETECTIVE BURDITT:

10 Q Next in line would be Lujan.

11 A Oh, Lujan would've had knowledge that
12 there was no weapons being reached for in the back
13 seat.

14 He would've had knowledge as to the
15 excessive force that was used while taking him into
16 custody, as far as the elbow dislocation. And, of
17 course, he would've known that the report was
18 fabricated.

19 Q And Veloz?

20 A Veloz also -- I believe Omar Veloz was his
21 partner?

22 Q Correct.

23 A I believe Veloz, again, would've been --
24 he would've had knowledge as to everything that
25 happened, as Officer Lujan would've.

3390

01 Q And Buchanan?

02 A Officer Buchanan also would've had
03 knowledge as to the excessive use of force as well
04 as reaching into the vehicle. I'm not sure if he
05 would've read the report or not.

06 Q And Montoya?

07 A Montoya would've known that there was no
08 reaching for a weapon in the back of the car. He
09 would've also known about the use of force.

10 Q And Hewitt?

11 A Same thing with Hewitt. He would've known
12 about the excessive use of force as well as the fact
13 that he was not reaching for any weapons in the back
14 of the car. I'm not sure if he would've read the
15 report or not.

16 Q And Sergeant Ortiz?

17 A Sergeant Ortiz would've been -- or
18 would've had knowledge to the fabrication of the

19 report. He would've had knowledge of the excessive
20 use of force as well as the fact that he was not
21 reaching for a weapon in the back of the vehicle.

22 Q And based on what you have told us, would
23 it be a correct statement that the use of force
24 report that Sergeant Ortiz completed regarding this
25 incident was -- portions of this were fabricated?

3391

01 A Well, yes. I mean there's no -- there's
02 no doubt in my mind that Sergeant Ortiz read the
03 report, used some of the statements that were in the
04 report to put it on his -- on his use of force
05 report.

06 There was something that I read on here
07 about the defendant stating that, "I want to kill
08 officers." I'm sure he took that statement out of
09 the police report.

10 In other words, how would he have known
11 that he made that statement unless he read the
12 report? If you can follow me.

13 Q When you found those guns --

14 A Yes, sir.

15 Q -- was Vergara questioned about the guns?

16 A Vergara, the defendant?

17 Q The defendant.

18 A I don't know -- if he was, I don't know
19 who did it later. I think he was going to be
20 M.T.'d. I'm sure somebody talked to him. It wasn't
21 me.

22 Q Do you have any information as to whether
23 those guns were stolen?

24 A I don't remember that.

25 SERGEANT ORPIN: I don't have anything else.

3392

01 BY DETECTIVE BURDITT:

02 Q Okay. I don't have any other questions.

03 Before we wrap it up, is there anything
04 else you can think of that is -- would be pertinent
05 to this investigation we may have missed?

06 A Hold on a second.

07 (Attorney-client conference)

08 THE WITNESS: No, that's about it.

09 DETECTIVE BURDITT: Okay. We'll conclude this
10 interview at 1544 hours.

11 MR. ROSENTHAL: Off the record.

12 (Discussion off the record)

13 SERGEANT ORPIN: We're on tape.

14 This is a tape-recorded interview of
15 Internal Affairs investigation 00-1221. Today's
16 date is May the 10th, the year 2000, and the time is
17 1555 hours. The location of this interview is
18 Internal Affairs Group South Section.

19 Present to be interviewed is Rafael
20 Perez. Present as his attorney is Kevin Mc Kesson,
21 from the D.A.'s office Richard Rosenthal, and the
22 court reporter is Lynden Glover.

23 It's being conducted by Sergeant Debbie
24 Orpin, serial 27432, of Internal Affairs Group, and
25 Detective Mike Burditt, serial 24454, also of
3393

01 Internal Affairs Group. And it's being recorded on
02 tape 228026, side A.

03

04 FURTHER EXAMINATION

05 BY SERGEANT ORPIN:

06 Q Okay, Ray. This is just a follow-up
07 of an interview that we previously discussed on
08 an arrest that was made July the 10th, 1997, at
09 742 South Westlake.

10 When I first talked to you, I didn't have
11 photos of the location. And now I provided you with
12 some photos. And one of the things that the report
13 reflected was that there was an O.P. set up.

14 In your original interview, you said that
15 there was no O.P. because of high gang activity and
16 there was just no good locations for an O.P. in that
17 area.

18 MR. ROSENTHAL: Let me -- I'm sorry. Let me
19 get the case number. Did you --

20 SERGEANT ORPIN: Oh, I'm sorry. I did not get
21 that on.

22 MR. ROSENTHAL: This would relate to Oscar
23 Ochoa, O-c-h-o-a, case number BA153235. Go ahead.

24 BY SERGEANT ORPIN:

25 Q Okay. Now, after having a chance to look
3394

01 at the photographs and the area around, are you
02 absolutely sure that there was not an O.P. set up
03 prior to this?

04 A There was definitely not an O.P. set up in
05 this location. We went there with a direct
06 purpose. Also, when I think I was describing the

07 location, I said there was a pizzeria shop across
08 the street.

09 Q Correct.

10 A And if you look at the photos that you
11 provided me, page number D, the center photo, across
12 the street from the location you'll see that there's
13 an advertisement for a pizza shop there.

14 Q Right.

15 A This area right here -- again, I'm
16 referring to photo -- the center photo on page D.
17 This is -- I don't know if you remember this,
18 Sergeant Orpin.

19 MR. MC KESSON: Slow down.

20 THE WITNESS: But this is a real heavy gang
21 activity area. They hang out in that little
22 driveway back there. This place is flooded with
23 gang members. There's a real problem there.

24 BY SERGEANT ORPIN:

25 Q Okay. When you -- when you did approach

3395

01 the house, like the front yard up through the gate,
02 can you show on one of these photographs from what
03 direction you approached and how you did that?

04 A We approached from the south.

05 Q This one is south right here. And on what
06 side of the street? This would be south of the
07 location, photo E. I think there might be a better
08 one than that.

09 A I'm going to use this one.

10 Q Okay.

11 A I'm going to use photo B, the bottom
12 photo. We approached from the south. I believe
13 it's Wilshire.

14 Q No. It would be Eighth. The location is
15 742. And if you approached from the south, meaning
16 you walked northbound --

17 A Uh-huh.

18 Q -- you would've approached from Eighth
19 Street.

20 MR. MC KESSON: What? Wait a minute.

21 THE WITNESS: It's either -- okay. I'll go
22 with Wilshire or Eighth Street, one of those two.

23 BY SERGEANT ORPIN:

24 Q Okay. Now, I need to clarify that only
25 because that's pretty -- Wilshire is between Sixth

01 and Seventh.

02 A You know, when you get to between Sixth
03 and Seventh it cuts off. I know what you're
04 thinking but -- and it may very well be Eighth
05 Street. But I thought it was Wilshire, but --

06 Q Okay. Here's Eighth.

07 A Uh-huh.

08 Q The photos were taken Westlake and Eighth.

09 A Okay.

10 Q And at 742.

11 A And this down here would've been Eighth?

12 Q This down here would be Eighth, correct.

13 A Okay. Then we would approach from Eighth
14 coming northbound on the east side of the street, on
15 the side of the street that the house is located.

16 Q Okay. I just walked this location just
17 the other day. And if I -- and so it would be right
18 here if you're looking at it. It would be right
19 from here coming up.

20 A Okay.

21 Q From ground level or from sidewalk level,
22 because of this white fence right here next to your
23 location, you actually probably weren't seen until

24 you got right up to the gate.

25 Would you agree with that?

3397

01 A Right.

02 Q Okay. All right. So where -- if you can
03 look at the photo where -- the front of the house,
04 where did you see Mr. Ochoa when you first
05 approached?

06 A He was on the porch area on this house
07 right here. I'm referring to --

08 Q Okay. This little ledge?

09 A -- referring to photo sheet number B, the
10 bottom photo. There's like a little porch area,
11 ledge area, in front of a window. That's the area
12 that he was standing.

13 Q Okay. If you look at the photo on "B,"
14 the front gate, there is no lock there right now.
15 Was there at the time?

16 A Yes.

17 Q Do you recall there being a time --

18 A We actually called out to him and asked
19 him if he can open the door for us, and he came
20 down.

21 Q And on this photo, next to the gate
22 there's one wrought iron piece of the fence is
23 missing. Was that missing at the time?

24 A It was not.

25 Q It was not.

3398

01 A It's sitting on the stairs now.

02 Q Okay. The report indicates that Ochoa
03 came to the gate, which would've been right here on
04 photo B, and then that he went back into the house
05 for three to five minutes and then came back out
06 again before he let you in the gate.

07 Do you recall that happening?

08 A No, ma'am.

09 Q Okay. Is there any reason you can think
10 of that you would allow somebody to go back into the
11 house if you were conducting a narcotics
12 investigation?

13 A I don't know why that was written. I know
14 that once he came down we took him into custody.

15 Q Okay.

16 A We definitely wouldn't have let him back
17 in the house.

18 Q Do you recall if this gate opened from the
19 inside without a key or if it needed a key? And
20 this is the gate from the street.

21 A Well, you know, I don't know how he opened
22 it. I don't know if he just had to turn it. I'm
23 assuming you need a key because, otherwise, you can
24 just stick your hand in there and open it, so -- but
25 I'm assuming.

3399

01 Q Okay.

02 A But it wasn't the case -- you know, we
03 tried to get it open and we couldn't. So I'm
04 assuming it had to be a key.

05 Q Okay. Now, these questions I just need to
06 ask real quick are just clarifying from the last
07 interview.

08 Once you were inside the house, which
09 would've been inside the blue door on the photos,
10 was there times when you and Coronado were
11 separated?

12 A There was a time that he went upstairs,
13 came back down, and then I went upstairs and looked
14 and I came back down. So there was a couple times

15 that we were separated, yes.

16 Q And can you approximate how much time do
17 you think you were separated?

18 A Oh, we're talking minutes, you know, five
19 minutes maybe.

20 Q Do you remember who went to court and
21 testified on this case?

22 A I do not.

23 Q Okay. And this is regarding the closet
24 which is upstairs where Coronado recovered the
25 evidence that was booked.

3400

01 Did you hear him get permission from Ochoa
02 to search that closet?

03 A I did not.

04 Q You did not hear?

05 A I'm not saying it didn't happen, but I
06 didn't hear it.

07 Q Okay. Did Coronado ever tell you that he
08 got permission to search that closet?

09 A No, he never told me that.

10 Q Okay. Last time we talked about threats
11 made against Ochoa about deportation, arrest of his

12 wife, and taking the children. And your statement
13 was you very well could've said that, that was quite
14 probable that you did.

15 Did you ever hear Coronado make that type
16 of a threat to Ochoa to get him to cooperate?

17 A I don't recall.

18 Q Okay.

19 A I mean I'm saying, again, I don't
20 remember -- I can't say that it didn't happen.
21 There may have been a time that he may have, but I
22 don't -- I just don't remember it.

23 SERGEANT ORPIN: Okay.

24 Okay. That's the only thing I need to
25 clarify from talking to everybody else.

3401

01 Mike, did you have anything?

02 DETECTIVE BURDITT: Nothing.

03 BY SERGEANT ORPIN:

04 Q Ray, is there anything else that you want
05 to let me know about this investigation that you
06 might have remembered or that the pictures brought
07 back any memories?

08 A Regarding this investigation?

09 Q Regarding this investigation.

10 A No.

11 SERGEANT ORPIN: Okay. Thank you.

12 Okay. That's going to conclude this
13 interview, and it's 1604 hours.

14 (Recess)

15 MR. ROSENTHAL: We're on the record. This
16 relates to Charles Harris. D.A. case number
17 BA157278. D.R is 97-1227596.

18 SERGEANT ORPIN: All right. This investigation
19 is for Internal Affairs investigation number
20 99-4628. Today's date is 5/10, the year 2000. It's
21 1617 hours.

22 The location of the interview is Internal
23 Affairs Group South Section. Present to be
24 interviewed is Rafael Perez. The court reporter is
25 Lynden Glover. From the D.A.'s office is Richard
3402

01 Rosenthal, and Mr. Perez's attorney, Kevin

02 Mc Kesson.

03 It's being conducted by Sergeant Debbie
04 Orpin, 27432, and Detective Mike Burditt, 24454,
05 both of Internal Affairs, on tape number 228029,

06 side A.

07 BY SERGEANT ORPIN:

08 Q Okay, Ray. You've been given an
09 opportunity to look at your original statement given
10 to RHD and a copy of the arrest report of Charles
11 Harris.

12 Do you recall the incident?

13 A Yes, ma'am.

14 Q Your original statement does not indicate
15 how you became aware that Harris would be selling
16 narcotics at the Mc Donald's. Can you explain that?

17 A [***** CI # 40 Information Redacted *****]

18 [*****]

19 [*****]

20 [*****]

21 [*****]

22 [*****]

23 [*****]

24 [*****]

25 [*****]

3403

01 [***** CI # 40 Information Redacted *****]

02 [*****]

03 [*****]

04 [*****]

05 [*****]

06 [*****]

07 [*****]

08 [*****]

09 [*****]

10 And we responded to that location and
11 waited for this truck to show up with Mr. Harris.

12 Q Do you recall the name of the person you
13 spoke to that gave you this information?

14 A No. [**** CI # 40 Information Redacted ****]

15 [*****]

16 [*****]

17 [*****]

18 [*****]

19 [*****]

20 [*****]

21 [*****]

22 [*****]

23 [*****]

24 [*****]

25 Q [***** CI # 40 Information Redacted *****]

3404

01 A [***** CI # 40 Information Redacted *****]

02 Q [***** CI # 40 Information Redacted *****]

03 [*****]

04 A Yes.

05 Q A Mc Donald's?

06 A Yes, ma'am.

07 Q All right. You stated that Cannister
08 wrote a false arrest report regarding this arrest.

09 And in there it says that Harris was read his
10 Miranda rights.

11 Did you advise Cannister that you gave the
12 Miranda rights or did Cannister just assume that you
13 had?

14 A That section or that part I think was just
15 written up that way. In other words, I never told
16 him and he never told me or -- it was never done.

17 Q Okay. It was never done?

18 A No, it was never done.

19 Q Okay. And you never gave that information
20 to Cannister?

21 A No.

22 Q Okay. Do you think that Cannister

23 knowingly wrote a false arrest report?

24 A I do not suspect that Cannister is in the
25 habit of writing false police reports. Like I said
3405

01 before, sometimes officers to better their case or
02 their arrest will write certain things.

03 But, you know, the bulk of the arrest
04 report is correct. I mean other than some of
05 these, you know, Miranda rights issues.

06 Q Well, the events that occurred that day --
07 I know you and Cannister were partners that day; is
08 that correct?

09 A Yes, ma'am.

10 Q The events that occurred in this arrest,
11 was Cannister -- was he able to see and hear almost
12 everything that happened that day?

13 A Yes, ma'am.

14 Q Or were there large amounts of time where
15 you guys were separated?

16 A Well, there was definitely times when we
17 were separated. Not a large amount of times. We
18 were together. We were partners. And like I said,
19 most -- primarily most of the report is correct.

20 Did he assume that I read him his Miranda
21 rights? I don't know. Did I tell him? I don't
22 remember telling him that. Is it possible?
23 Anything's possible. I don't remember telling him.

24 Q Okay.

25 A But I can tell you that Officer Cannister
3406

01 is not in the habit of writing false police reports.

02 Q Okay. When you were at the Mc Donald's,
03 and you came upon Mr. Harris, where was he at?

04 A He was getting out of his truck, walking
05 towards the Mc Donald's, the entrance of the
06 Mc Donald's.

07 Q And what did you do?

08 A We detained him.

09 Q Did you tell him anything?

10 A We told him we were police officers and we
11 needed to talk to him.

12 Q Okay. What happened then?

13 A We immediately -- or actually Cannister
14 handcuffed him and we began our investigation.

15 Q How was Mr. Harris toward you when you
16 said that you were conducting an investigation?

17 A Well, he was -- well, he was fine, pretty
18 low-key.

19 Q Did you conduct a pat-down at that point?

20 A Of Mr. Harris?

21 Q Of Mr. Harris.

22 A Yes.

23 Q And did you recover any narcotics off his
24 person?

25 A You know, I don't recall if we actually
3407

01 recovered off of his person. I know we recovered,
02 you know, the larger amount. But off of his person,
03 I don't remember.

04 Q Okay. Did you ever conduct a strip search
05 of Harris at the Mc Donald's?

06 A A strip search?

07 MR. MC KESSON: Where?

08 THE WITNESS: I don't think so.

09 BY SERGEANT ORPIN:

10 Q In the bathroom at the Mc Donald's?

11 A A strip search, like a complete strip
12 search?

13 Q Yes.

14 A Boy, I would remember that. I just -- I
15 don't think so.

16 Q Okay. You don't think so?

17 A I do not think so.

18 Q Okay. Okay. When you patted him down
19 then, where were you located?

20 A In the parking lot of the Mc Donald's.

21 Q Okay. So you never actually went into the
22 Mc Donald's?

23 A At one point we did go back inside the
24 Mc Donald's. We were waiting for a couple of
25 things.

3408

01 We didn't want to tip anybody off that we
02 had taken Mr. Harris into custody. In other words,
03 you know, police are out in the parking lot with
04 him.

05 Because he decided that he was going to
06 help us out. Or we were hoping that he was going to
07 help us out. Later it turned out that he said he
08 was going to help us out, but he didn't.

09 Q So you went back in the Mc Donald's for
10 what reason?

11 A Because we wanted to talk to him, see if
12 he would help us out, give us information as to who
13 he gets it from.

14 Q So you brought him back in?

15 A Inside the Mc Donald's.

16 Q Was he handcuffed still?

17 A Yes.

18 Q Okay. And you had a conversation with him
19 there?

20 A Cannister was mostly talking to him, yes.

21 Q Okay. Did you search his truck prior to
22 that point? Had you searched his truck?

23 A Yes, ma'am. I'm searching his truck. I'm
24 trying to find anything. I couldn't find anything.

25 Q How did you get into his truck?

3409

01 A I think I just took his keys.

02 Q Did you ask him if you could go look in
03 his truck?

04 A I don't think so.

05 Q Okay. So he didn't give you permission;
06 you just took his keys and went to his truck?

07 A Yes, ma'am.

08 Q And your initial search, you did -- you
09 did or you did not recover anything?

10 A I didn't recover anything.

11 Q Do you recall anything specific about any
12 kind of jewelry that Harris was wearing that day?

13 A Oh, he had some type of Narcotics
14 Anonymous type necklace, like N.A., like initials
15 N.A. on a necklace.

16 Q Did he tell you that's what it stood for?

17 A Yeah. He said it was Narcotics
18 Anonymous. I don't know if that's true or not.

19 Q How did that conversation come about?

20 A We had found some paper or he was trying
21 to tell us that he works for N.A. and -- oh, you
22 know what? Or somebody else drove by or something,
23 somebody stopped by and said what was going on, that
24 they knew him, and that he was from Narcotics
25 Anonymous or something like that.

3410

01 And I think he was trying to tell us that,
02 and he said that's what the necklace was for. It
03 had like an "N" and an "A."

04 Q Did this other person have a necklace, the

05 same kind?

06 A That, I'm not certain, but I know there
07 was a conversation about the necklace and it being
08 from Narcotics Anonymous or something like that.

09 Q Did you do any type of investigation with
10 that person that drove by or talked to you or
11 Mr. Harris?

12 A For some reason, I want to say that there
13 was like a 280Z or some small, little compact car
14 that drove by as we were taking him into custody or
15 at some point while we were doing this
16 investigation.

17 And they asked us what's going on, that
18 they knew Mr. Harris, and that he was a or --
19 involved in Narcotics Anonymous or something like
20 that.

21 Q But nothing -- nothing more than that?

22 A Not that I can recall. Unless you refresh
23 my memory with something, that's --

24 MR. MC KESSON: Excuse me. Off the record.

25 (Discussion off the record)

3411

01 BY SERGEANT ORPIN:

02 Q Okay. So you searched Harris's truck, and
03 you were by yourself when you searched that truck?

04 A Part of the time, yes.

05 Q Okay. When you first got to the
06 Mc Donald's, was it just you and Cannister?

07 A I know Mc Gee eventually was with us. I
08 don't know how he got there. I think on the report
09 it says that he was with us, but --

10 Q What about Detective Lusby?

11 A See, I think they were together. I don't
12 think -- I know on the report it said that he was
13 with us, Mc Gee; I just don't remember him being
14 with us.

15 I remember, you know, we were setting up
16 on the parking lot waiting for the car to show up
17 where we can all move in, but -- that's not fresh in
18 my memory either.

19 Q Were there any other officers working that
20 day that assisted you in this arrest?

21 A No.

22 Q No.

23 A No.

24 Q And you're sure of that?

25 A Yes.

3412

01 Q Okay. Do you know during the time you
02 were at the Mc Donald's, did you ever use any force
03 on Harris?

04 A No. He was very cooperative.

05 Q Very?

06 A Yeah.

07 Q Okay. Did Cannister ever use any force on
08 Harris?

09 A No.

10 Q Did Harris ever complain to Lusby or
11 Mc Gee -- if they were there. I don't think you are
12 quite sure.

13 A Well, Lusby was definitely there, you
14 know --

15 Q At some point --

16 A -- at some point.

17 Q -- at the Mc Donald's?

18 A But I thought you were asking me like when
19 we took him into custody.

20 Q Yeah. Well, I'm going to eventually want
21 to know if they were at the Mc Donald's at all. But

22 if you can remember when, that would be very helpful
23 as to when they got there.

24 MR. ROSENTHAL: Remember, question, answer.

25 You guys are talking on top of each other.

3413

01 THE WITNESS: The question was?

02 BY SERGEANT ORPIN:

03 Q Did Harris ever make a complaint at the
04 Mc Donald's to either Lusby or Mc Gee?

05 A No. Like I said, the whole -- the whole
06 incident was pretty, you know, a cooperative-type
07 thing. In fact, when we went and did a follow-up to
08 his house, a large quantity of money was recovered.
09 And Lusby even gave him six, \$7,000 back.

10 Q Okay. I want to get to that, but if you
11 could hold up.

12 A Okay.

13 DETECTIVE BURDITT: When you asked him did
14 Harris complain, were you asking did he complain
15 relative to use of force?

16 SERGEANT ORPIN: About anything at that point.

17 THE WITNESS: I don't remember hearing him.

18 Like I said, he was pretty mild-mannered. I don't

19 remember any -- any complaint that he made.

20 BY SERGEANT ORPIN:

21 Q How did you come to find narcotics in that
22 truck if you were not able to find anything when you
23 searched?

24 A We knew there was narcotics there. He was
25 delivering narcotics. You know, we were told that
3414

01 this guy is definitely -- and I just knew there was
02 narcotics there. So we decided to get a canine to
03 come and sniff it out.

04 Q Okay. And did one come?

05 A Yes, ma'am. Narcotics -- a FES canine.

06 Q Did the dog make a hit?

07 A Big time hit, yes.

08 Q Okay. Now, were you the only officer that
09 searched that truck prior to the dog searching it?

10 A No. I'm pretty -- I'm pretty positive
11 that Cannister also searched it while we were
12 waiting.

13 Q And he didn't find anything?

14 A (No audible response)

15 Q Where did the dog hit?

16 A No, he didn't find anything.

17 Q Where did the dog --

18 A He hit in the -- under the driver's seat.

19 He hit real hard. The handler said, "There's

20 definitely something inside that seat."

21 Q So then what occurred?

22 A We decided that we were going to either --

23 we were going to do something. We were going to cut

24 the seat open or we were going to do something up

25 under the seat.

3415

01 And Harris said something like, "Man, I'll

02 tell you. You got to turn the key and push that

03 button under -- in the seat, and the whole thing

04 slides out."

05 Q And who was present to hear that statement

06 made by Harris?

07 A Both myself and Cannister.

08 Q Okay. Can you describe what it was that

09 this was contained in?

10 A What it was contained in? It's a -- it's

11 a false equalizer. It's under the seat. You turn

12 the key and push a button that's inside the cushion

13 of the thing, and it slides up. And it's just like
14 a false bottom. And, you know, there was a bunch of
15 narcotics there and a gun sitting right there.

16 Q And it worked exactly as he said it would?

17 A Exactly how it worked.

18 Q Did he tell you what you were going to
19 find prior to you opening it?

20 A Yes, he did. He said there was going to
21 be a gun there.

22 Q And did you ask him that or did he
23 volunteer that?

24 A He volunteered that.

25 Q And everything he said was there was
3416

01 there?

02 A Yes. There was a little chrome gun, if I
03 remember correctly, and several baggies of rocked up
04 cocaine.

05 Q Okay. Then you recovered that. Then what
06 did you do?

07 A We recovered it, talked to him some more,
08 and I think we decided that we were going to do a
09 follow-up to his residence.

10 Q Prior to you doing that follow-up, do you
11 know -- do you know how long you were at the
12 Mc Donald's?

13 A Quite some time. We ended up having to
14 wait for the canine and -- I'm going to be guessing.

15 Q Can you estimate? One hour, two, three,
16 four?

17 A Yeah.

18 Q One, two, three, four? Yeah.

19 A If I had to take a guess, about two hours.

20 Q Okay. You said you conducted a follow-up
21 to his house. What was the reason for doing that
22 follow-up?

23 A To his house?

24 Q Uh-huh.

25 A To find more fruits of the crime, more
3417

01 narcotics, more money.

02 Q Okay. Did he tell you there were more
03 fruits of the crime at his house?

04 A I'm not a hundred percent sure, but I
05 believe he made mention of some money in a safe.

06 Q Okay. Do you know if you went directly

07 from the Mc Donald's to his home or did you first go
08 back to Rampart?

09 A I don't recall. I know that eventually we
10 got to his house further down, a small, little
11 house, and there was a bunch of people there.

12 Q Did you impound his truck at the
13 Mc Donald's?

14 A I don't recall whether we impounded his
15 car. I'm assuming we did, but I'll be assuming.

16 Q Okay.

17 A If I could look at the report, I could
18 tell you yea or nay, but --

19 Q Okay. The report indicates that you did
20 not.

21 A Okay.

22 Q Now, why do you think you wouldn't impound
23 his truck?

24 A Probably going to release it to somebody
25 or tell them where to pick it up or something like

3418

01 that.

02 Q Okay. Explain to me -- I would think if I
03 was doing an investigation where I made an arrest

04 and got a substantial amount of anything out of a
05 car, I would impound that car or the truck.

06 Is there something that comes to your mind
07 that would tell you different why you wouldn't do
08 that?

09 A The only reason we wouldn't do it is
10 because if he's going to help us out.

11 Q Okay.

12 A If he says -- and he did say he was going
13 to help us out. He knew a guy that worked in a
14 garage who it was basically a fake business. It
15 looked like it was supposed to be a garage. They
16 were fixing cars. All they'd do is sell birds.
17 That's how he called it, selling kilos. And that's
18 where he got his stuff from.

19 And he was going to help us out. We met
20 with him a couple of times and --

21 Q A bird is a kilo?

22 A Yes.

23 Q Okay. So you've made deals in the past
24 before where you maybe haven't taken somebody's car
25 in exchange for information?

01 A Right.

02 Q Okay. Now, you said you don't recall if
03 you went back to Rampart first before going to his
04 residence. Did you get a consent to search?

05 A His home?

06 Q Yes.

07 A I believe so,

08 Q Okay. Now, there is a form attached to
09 the arrest report that you've looked at, and there
10 is a consent to search there and it is signed.

11 Do you know who -- who got that from him?

12 A I got the consent to search from him.

13 Q Was it given willingly or was there a
14 threat that went along if he didn't something would
15 happen?

16 A We had nothing else on him other than the
17 narcotics that he had and -- or the gun. Detective
18 Lusby and Detective Mc Gee were there.

19 This was going to go by the books as far
20 as this follow-up went. We had the consent to
21 search before we got there.

22 As far as anything after the Mc Donald's,
23 going to -- as far as consent to search to go into

24 his house, all that is legitimate.

25 Q Did Mc Gee go to the house with you, too?

3420

01 A I don't remember him there. I remember
02 specifically Lusby.

03 Q Okay. You remember Lusby being there. Do
04 you remember Cannister being at the house?

05 A Yes.

06 Q And you were at the house?

07 A Yes.

08 Q Do you remember any other officers being
09 at the house?

10 A There was more officers there. And I
11 can't remember who they were.

12 Q Were they uniformed?

13 A No. It would've been our people.

14 Q Okay. Because that day there weren't any
15 other officers working FES.

16 A No one else, just me and Cannister working
17 that day?

18 Q And Lusby and Mc Gee.

19 A Are you sure?

20 Q Uh-huh. Well, the time books show that.

21 So it would be very helpful if you did remember who
22 else was there.

23 A There was somebody else there. And I
24 don't remember --

25 Q One other officer, two other officers?

3421

01 A At least two other officers. When we got
02 there, there was probably five or six gang
03 member-looking types at the house.

04 I certainly -- I mean I can't be
05 positive. I just don't see that day -- just me and
06 Cannister working that day, just me and him, and
07 we're off at 77th Division handling this.

08 Q Okay. Five more minutes?

09 All right. What did you expect to find at
10 the house when you got there?

11 A Money, guns, more dope.

12 Q Now, money, guns, more dope. Is that what
13 you expected or -- let me rephrase that.

14 What did Harris tell you you would find at
15 that house?

16 A I think he had made mention of money.

17 Q Okay. Money only?

18 A I remember the talk of money in a safe or
19 something like that.

20 Q Okay. Did you make any agreement as to
21 what you would search inside that house?

22 A Actually, I think Lusby made an agreement
23 with him.

24 Q And what do you think that agreement was?

25 A That we were not going to ransack the
3422

01 house, "Tell us where things were and we'll just go
02 get it and we'll be out of there."

03 Q Okay. So do you recall Harris telling you
04 how much money he thought he had in this safe?

05 A He told Lusby. I did not know.

06 Q Okay. So you had no idea. Do you
07 remember where the safe was, if there was one?

08 A It's in the bedroom.

09 Q Okay.

10 A I actually opened it.

11 Q You did. When you got to the house, you
12 said there were four to six gang member-types inside
13 the house?

14 A Yes, ma'am.

15 Q Did they remain in the house?

16 A Yes, ma'am.

17 Q And where at in the house?

18 A On a sofa.

19 Q And who watched over them?

20 A Lusby is sitting on the dining room

21 table. He's counting the money. I know

22 Cannister --

23 Q No, prior to you getting the money. You

24 walk in the house.

25 A There's at least five of us there. Now,

3423

01 who the other two were, I don't even remember. I

02 know that Lusby is there, I'm there, Cannister is

03 there, and there's several other officers there.

04 And I don't think I would've gotten a

05 Rampart unit to come all the way to 77th. And I'm

06 not sure that we called the 77th unit. I don't

07 remember that.

08 Q Okay. Did Harris give you the combination

09 to the safe?

10 A His wife did.

11 Q And where did you find that safe?

12 A In the bedroom. As you open the door,
13 immediately to your left up against a wall.

14 Q Were you alone when you went in and opened
15 up the safe?

16 A No. I had her come with me to give me the
17 combination to open it, you know, whatever the
18 number was to the right and to the left and back to
19 the right, that type of thing. And then once I got
20 it open, I told her to go back to the living room.

21 Q Okay. Did you remove all the money from
22 the safe?

23 A Yes.

24 Q Was there any narcotics in the safe?

25 A No.

3424

01 Q How much money do you think was in the
02 safe?

03 A About \$20,000.

04 Q Okay. And what makes you think there was
05 \$20,000?

06 A There was a lot of money. I remember
07 seeing it.

08 Q Did you count it?

09 A Lusby sat there and counted it on the
10 kitchen table.

11 Q Okay. And how much did he count out?

12 A I think he -- what I remember or based on
13 the report?

14 Q What you remember.

15 A I remember it was like \$15,000. I think
16 the report says 18. I thought he had said like 15.
17 And I know he gave him some money back because she
18 was saying that that was her disability money or
19 some baloney story they gave him but he decided to
20 believe her.

21 Q Well, you said in your statement to RHD
22 that you took four or \$500.

23 A Yes, ma'am.

24 Q Do you know what denominations of that?

25 A Hundred dollar bills.

3425

01 Q Okay.

02 A Four or five of them.

03 Q Was there a lot of hundred dollars bills
04 in that amount -- in that money or was it smaller?

05 A I didn't understand.

06 Q Not in the amount that you took. In the
07 overall amount of money that was in the safe, was it
08 mostly large bills?

09 A Yes.

10 Q So --

11 A There was -- I'm sorry.

12 Q So easily you could peel off four or five
13 100's and --

14 A Exactly.

15 Q -- and that was not a problem?

16 A And they didn't even know -- they really
17 didn't know the exact amount that they had there.
18 There was one area where there was money and then
19 there was like another -- like a billfold that had
20 more money in it and like another envelope that had
21 more money in it. So I just don't think they even
22 knew exactly how much they had in there.

23 Q Were you able to bring it all out in one
24 trip to the table?

25 A I took out four or five of the bills, and
3426

01 then I called Lusby over and got it all out and
02 handed it to him.

03 MR. ROSENTHAL: Okay. It's 4:40.

04 MR. MC KESSON: Yeah. I'm sorry. The only
05 problem is they're going to kick him out of here.

06 MR. ROSENTHAL: Okay. So it's 4:40. We're
07 going to have to go off the record.

08 SERGEANT ORPIN: We're going to have to
09 conclude the interview and come back for a follow-up
10 at 1640 hours.

11 MR. MC KESSON: Okay.

12 (Interview concluded at 4:40 p.m.)

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