

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court  
No. 160034

Plaintiff-Appellee,

Court of Appeals  
No. 345268

v

Circuit Court  
No. 84-005570-FC

ROBIN RICK MANNING,

Defendant-Appellant.

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*Mary Hernandez  
Karen Zamudio*

*Yolanda Santoyo  
Sharrnoch*

*Rebecca Barrera Ortiz  
Tito Valez*

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN, )

Plaintiff, )

-vs-

ROBIN RICK MANNING,

Defendant. )

Case No. 84-005570 FC

VOLUME II

PEOPLE OF THE STATE OF MICHIGAN, )

Plaintiff, )

-vs-

WILLIAM JOHN LUNA,

Defendant. )

Case No. 84-005572 FC

VOLUME II

The proceedings held in the above-entitled matter before the Honorable Fred J. Borchard, Circuit Judge, at Saginaw, Michigan, on March 13, 1985.

APPEARANCES:

CHRISTOPHER S. BOYD, Prosecuting Attorney  
BY: LYNDA HEATHSCOTT McLEOD, Assistant Prosecuting Attorney,

Appearing on behalf of the People.

THOMAS R. KOOPMAN, ESQ.,

Appearing on behalf of Defendant Robin Rick Manning.

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JOSEPH L. SCORSONE, ESQ.,  
Appearing on behalf of Defendant Willian John Luns.

Sharon Anne Vaughn, CSR, RPR, CM  
CSR-0211

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1 a car?

2 A Yeah.

3 Q Did you ever open the door with your left hand?

4 A A lot of times.

5 MR. SCORSONE: No further questions.

6 MR. KOOPMAN: Nothing further, Your Honor.

7 THE COURT: That's all. You may step down.

8 MRS. McLEOD: Your Honor, we call Rebecca  
9 Barrera.

10 THE COURT: Would you step up here, please?

11 REBECCA BARRERA ORTIZ,

12 a witness herein, being first duly sworn, testified under  
13 oath as follows:

14 DIRECT EXAMINATION

15 BY MRS. McLEOD:

16 Q State your full name, please.

17 A Rebecca Barrera Ortiz.

18 Q Mrs. Ortiz, I'd like you to remember, if you would,  
19 please, August 6th of last year. And I'm going to ask  
20 you if you were in the area of Hiland between Sheridan  
21 and Maple streets in the City of Saginaw about midnight  
22 that night. Midnight on the 5th and early morning hours  
23 of the 6th.

24 A Yes. That was around about that time.

25 Q All right. Did you go to a party on Hiland Street?

1 A Yes. I lived there at the time.  
2 Q You lived there? I'm sorry.  
3 A That was the residence I was staying at.  
4 Q All right. Had you been there all night, then?  
5 A No, I left. It was a little around midnight I had left  
6 for the store.  
7 Q You left at midnight to go to the store?  
8 A (Nodded.)  
9 Q Did you come back from the store?  
10 A When I came back, they had the road blocked off.  
11 Q All right. Before you went to the store, were you in the  
12 residence?  
13 A Yes.  
14 Q Were you in the basement attending a party?  
15 A I was at the door, but I had--they called me in the  
16 basement because it was a fight, and they called me down  
17 there to break it up.  
18 Q Did you go down there?  
19 A Yes, I did.  
20 Q Was there a fight?  
21 A Yes, there was.  
22 Q Would you describe the fight, please?  
23 A Gilbert Morales was bleeding. And Tom Newvine, they were  
24 pulling Gilbert away from him because he kept wanting to  
25 get at Tom. And he was using foul language. So I told

1 him he had to leave the house. And Tom was just standing  
2 against the wall, because they had had a fair fight.

3 And Gilbert kept wanting to get at him, so I  
4 told him, "You got to leave." And he was--his face was  
5 full of blood. And they took him outside. About three  
6 other guys. And then on the way out he kept talking and  
7 said he was going to come back. "And I'm going to kill  
8 you. And I'm going to show you more blood than this  
9 blood I have on me." And I told him to get out the yard  
10 talking like that.

11 Q All right. Specifically as he was leaving, what did he  
12 say about coming back and the blood on his face? What  
13 did you hear him say about coming back?

14 A He said, "I'm going to come back and I'm going to blow  
15 your--"

16 Q You may use any language.

17 A I may?

18 Q You may. You can say it.

19 A Okay. He said, "I'm going to come back, mother fucker.  
20 I'm going to blow your shit away." And then he--I told  
21 him to leave talking like that. And he said, "Just watch  
22 me." He said, "I'm going to come back. I'm going to  
23 kill that mother fucker."

24 Q Was he still in the house when he was saying that?

25 A He was talking in the house, but when he got outside to

1 the doors, when he said he was going to come back and kill  
2 him---

3 Q That's--sorry. Go on.

4 A Yeah. Yeah.

5 Q What did you do?

6 A He didn't have a ride. So I had--I was asking a guy,  
7 somebody get him out of the house because he was talking  
8 foul. So my sister-in-law's brother, I believe, gave him  
9 a ride that night.

10 Q All right. Did you stay in the residence?

11 A I stayed there.

12 Q Inside the house?

13 A (Nodded.)

14 Q Did you ever see Gilbert again that night?

15 A (Shook head.)

16 Q You have to answer for the record.

17 A No, I didn't. Just when they took him out, that was the  
18 last I seen of him.

19 Q After you expelled Gilbert from the party, what did Tom  
20 do?

21 A He stayed there because he wasn't really starting the  
22 trouble. I told him, "You don't have to leave." I said,  
23 "Because it was Gilbert's fault." So he just stuck  
24 around. They just continued dancing or whatever.

25 Q Did there come a point in time when Tom left?

1 A No. He didn't leave. They were outside, but then people  
2 kept going in and out. So they were just standing around  
3 outside.

4 Q Did there come a point at some point, though, in the  
5 evening that Tom left for whatever reason to get a  
6 breather, to take a walk?

7 A Well, yeah. He--yes. He left the house just to go  
8 outside and walk around. That's it.

9 Q Did he ever come back in?

10 A They kept coming in and out, yeah.

11 Q Okay. When you left to go to the store, where was Tom,  
12 if you know?

13 A He was on the side of the house by the door, I guess. By  
14 the porch. There was a few other people out there. But  
15 I stuck around when Gilbert said he was coming back. I  
16 waited around to see.

17 Q About how long did you wait before you left to go to the  
18 store?

19 A I don't know. Maybe around thirty minutes, something like  
20 that. I gave him enough time to go see if he was--they  
21 told me, the people that dropped him off said--

22 MR. SCORSONE: Objection.

23 THE COURT: I'll sustain it.

24 WITNESS: That he was--

25 THE COURT: No, you can't tell what people told



- 1 Q And so this was to celebrate a birthday party?
- 2 A More or less, yes.
- 3 Q Well, there was a charge at the door, was there not?
- 4 A Not that I know of.
- 5 Q People didn't pay to come to the party?
- 6 A I don't know if they paid or not. I was at the door, and
- 7 I was just--they had invitations and we were taking
- 8 invitations and that.
- 9 Q Didn't the invitation cost two dollars?
- 10 A I don't know. I didn't pass them out, she did.
- 11 Q I see. Were you present during the--at the fight?
- 12 A When the fight, when I got downstairs, the fight was done.
- 13 But Gilbert kept trying to get at Tom and they held him
- 14 back and took him out.
- 15 Q Well, it sounds like Gilbert may have been lucky that they
- 16 held him back. Would that be a fair statement? I mean,
- 17 Mr. Newvine beat Gilbert, didn't he?
- 18 A I would say he did by the looks of it.
- 19 Q He certainly did. Mr. Newvine wasn't bleeding, was he?
- 20 A Well, he got hit maybe once or twice good, but that was
- 21 it.
- 22 Q I see. But Gilbert got hit more than that?
- 23 A I didn't see how many times. I didn't see him get hit.
- 24 Q I see. You saw the blood though, right?
- 25 A I seen the blood on his face. Maybe a punch would, can

1 start that. I don't mean he got beat.

2 Q Yeah. But you don't know if he hit Tom either.

3 A No, I'm just saying--

4 Q You just testified here that you went over to the store;  
5 is that right?

6 A Yes.

7 Q Is that how you recall it, that you went off to the store?

8 A I left the premises. All right?

9 Q Oh, yes.

10 A Okay.

11 Q They were out of beer at the party, weren't they?

12 A I don't know. I wasn't drinking or nothing. I wouldn't  
13 know nothing about the beer.

14 Q I'm going to ask you to look at something to refresh your  
15 memory a little bit as to--do you remember giving a  
16 statement to the police right after or soon after this  
17 incident occurred?

18 A I can kind of remember. It was long ago.

19 Q Yeah.

20 A I can't remember exactly what I said.

21 Q Well, I'm going to show you as part of your statement--  
22 you can start reading right here from this question.

23 A Uh-hum.

24 Q In fact, if you want you can start reading about the  
25 middle of here after--so that you can orient your time.

1 Start from here. I can catch up.

2 A (Indicated.)

3 Q You know what it's saying?

4 A Yeah.

5 Q And now do you recall where you were going and where you  
6 got to? Does that refresh your memory?

7 A Yeah.

8 Q As a matter of fact, you went to catch last call at  
9 Shack's, didn't you?

10 A No. We didn't really go there. My friend said to say  
11 this so her daughter wouldn't ask to go with us, because  
12 she--she didn't want her to come with us.

13 Q Did you not tell the police--

14 A Yes, I told the police then--

15 MRS. McLEOD: Let him read the question.

16 A Yes, I did tell them that.

17 MRS. McLEOD: Let him read the question and  
18 answer, please.

19 THE COURT: All right.

20 Q Did the police not ask you as part of this statement,  
21 "Now, where did you go from there?" Answer: "Me and  
22 my friend took off for, to have last call." And then  
23 whoever she was answered so on and so forth. And then  
24 later at page, I'm going to show you page 7 where--let's  
25 see. Where it starts from Answer, here on page 7, just

1 read that right there about where you went and then until  
2 about what time.  
3 A (Indicated.)  
4 Q Okay. Does that refresh your memory as to what you told  
5 the police.  
6 A Uh-hum.  
7 Q Now, I'm going to ask you, you told the police that you  
8 were going to last call, did you not?  
9 A Yes, I did.  
10 Q And you further said in your statement that you made it  
11 to Shack's for last call, did you not?  
12 A Yes, I did.  
13 Q And the question, "Okay. And how long were you there,"  
14 and, "Probably, let's see, until about 2:00." Is that  
15 true?  
16 A I guess. That's what it says.  
17 Q Well, that's what it says?  
18 A Yes, it is.  
19 Q Do you remember going to Shack's for last call?  
20 A No. I told you already no.  
21 Q You didn't go to Shack's for last call, you just told the  
22 police that?  
23 A Yes.  
24 Q So you lied to the police in your statement, didn't you?  
25 A Didn't have nothing to do with the party. It was

1 something where we went.

2 Q Answer the question, please. Did you lie to the police  
3 in your statement?

4 A Yes.

5 Q Did you make up anything else?

6 A Nothing.

7 Q Everything else is crystal true, is that right?

8 A Yes, it is.

9 MR. SCORSONE: No further questions.

10 MRS. McLEOD: Nothing further, Your Honor.

11 MR. KOOPMAN: Nothing, Your Honor.

12 THE COURT: That's all. You may step down.  
13 Step right up here, please.

14 TITO VALEZ,

15 a witness herein, being first duly sworn, testified under  
16 oath as follows:

17 DIRECT EXAMINATION

18 BY MRS. McLEOD:

19 Q State your full name?

20 A Tito Valez.

21 Q Mr. Valez, I'd like you to remember August 6th of last  
22 year, please. Did you happen to be attending a party  
23 on Hiland Street?

24 A Yes.

25 Q On the late hours and early morning hours?

1 A Yes.

2 Q Do you know a person by the name of Gilbert Morales?

3 A Yes, I do.

4 Q Did you know Robert---Thomas Newvine?

5 A Yes.

6 Q Did you see either of them at the party?

7 A Yes, I did.

8 Q Did you see both of them at the party?

9 A Yes, I did.

10 Q Who did you see first?

11 A I went with Tom Newvine.

12 Q Did you go into the house?

13 A Yes, I did.

14 Q Was Gilbert Morales there at the time, or was he yet to  
15 arrive?

16 A He was there already.

17 Q Was there a problem at the party?

18 A Yes, there was.

19 Q What was that problem?

20 A I guess there was a little fight over some beer between  
21 Gilbert and Tom.

22 Q Were you there at the time?

23 A Yes, I was.

24 Q Did you see it?

25 A Yes, I did.

1 Q How long did the fight last?

2 A About five minutes. About five seconds, ten seconds.  
3 It was real quick.

4 Q How did the fight end?

5 A Um, Gilbert was on the ground and they were helping him  
6 up. And they helped him out the house and he was  
7 screaming saying that he was going to come back and  
8 shoot Tom.

9 Q He was threatening him? Do you remember--that's all I  
10 want to know about, Mr. Valez. Tell me about those  
11 threats, every one that you heard.

12 A Well, on the way out Gilbert was threatening him saying  
13 that he was going to come back and kill him. And he  
14 started saying words in Spanish. And they took him out  
15 the house. And I told Tom to stay downstairs and I  
16 followed him outside.

17 Q You followed who outside?

18 A Gilbert Morales. And he was upset, so they told him to  
19 get in the car. It was a white Ford. And there was five  
20 male guys that got in the car and they drove off. And I  
21 went back in the house and told Tom that they were gone.  
22 And about half an hour later they returned in a brown  
23 Ford.

24 Q Where were you when they returned?

25 A I was outside.

1 Q Where was Tom?  
2 A He was inside.  
3 Q He was inside?  
4 A Yes, sir, he was.  
5 Q Did Tom ever come outside?  
6 A Yes, he did.  
7 Q What did Tom do when he came outside?  
8 A Well, I told him to come home because it was 2:00, 2:00  
9 going on between 2:30. And he didn't want to go. And  
10 I told his cousin, Yolanda Santoya, to tell him to come  
11 if he were going to leave because he went with us, and he  
12 said that he was going to stay, so he stayed. And, about  
13 twenty minutes later, Tom seen me sitting in the car and  
14 he was coming up to me and he stopped. And he looked and  
15 he said wait a minute. But he didn't say nothing with  
16 his mouth. He just used his finger. And he walked  
17 towards the car and I looked and I seen Terry and Mary  
18 Helen sitting in the car. And he walked over there and  
19 he just put his hand on the car and started talking to  
20 them.  
21 Q Let me stop you. You said that Gilbert had already  
22 returned?  
23 A Yes.  
24 Q And Tom was downstairs?  
25 A Yes.

1 Q Where was Gilbert when he returned?

2 A He was parked in a brown--in the brown Ford in front of  
3 our car that we were in.

4 Q Where was your car?

5 A In front of his.

6 Q Okay. I thought he was parked in front of you?

7 A Well, he was parked--

8 Q Who was in front?

9 A We were on the--we were to the right side and he wasn't  
10 parked the way he was supposed to be parked.

11 Q Okay.

12 A Of the street. You understand?

13 Q No. But I'm going to try to. The car that Mary Heien  
14 and Terry were sitting in--

15 A Uh-hum.

16 Q --where was your car in relation to that car?

17 A Okay. We were on the right side. She was on the left  
18 side.

19 Q Let's go up to the board. It's going to be easier.

20 A Go up to the board?

21 Q Yes, please. If you would leave this--all right. Don't  
22 draw down into this. Are you tall enough to reach up  
23 there?

24 A Yes.

25 THE COURT: Why don't you draw the street right

1 in, because I don't think they understand how to draw the  
2 street in.

3 Q Is there a yellow line in Miland, on Miland? Is Miland  
4 a residential area? Do you know what I mean? Are there  
5 residential houses there?

6 A Yes, there is.

7 Q You will have to speak up now.

8 A Yes.

9 Q Is this--this is not a main street like Genesee or State?

10 A No, it isn't.

11 Q There is probably not a yellow line down the middle then;  
12 is that correct?

13 A I didn't see one.

14 Q Are there--is there room on Miland for a street to--for  
15 cars to pass each other in the opposite direction? You  
16 know what I'm saying?

17 A Yes, I do. There was cars parked on both sides. So he  
18 had one lane to go through.

19 Q That was the middle lane? So actually three cars in--

20 A Yes.

21 Q It's a broad--

22 A Yes.

23 Q Fine. Can you orient yourself to Sheridan and Maplewood  
24 if I tell you where they are?

25 A Yes.

1 Q All right. Mr. Valez, pretend Maplewood is the left side  
2 of the blackboard and Sheridan is on the right.

3 A Okay.

4 Q The divided line that I have drawn would be the middle of  
5 the street.

6 A (Nodded.)

7 Q I will place for you where the party was. It will be on  
8 the corner of Maplewood.

9 A Uh-hum.

10 Q Is that right?

11 A Uh-hum.

12 Q I'm going to cut this street off, too, because we have  
13 already got some orientation. We cut it off right there.  
14 That will be Sheridan. I want you to please draw in, if  
15 you would, and label them however you wish, the cars that  
16 Terry was sitting in your car and the car Gilbert was in,  
17 please.

18 A All right.

19 THE COURT: Draw it in first, witness, then you  
20 can explain it.

21 A (Indicated.)

22 Q Oh, okay.

23 A Now, Terry was sitting here. This is the car we came in.  
24 They came and they left. They came back down the street.

25 Q Who is "they," Mr. Valez?

1 A Gilbert and Robert and Luna. They left.  
2 MR. SCORSONE: I'm going to object to that, Your  
3 Honor. That's a fact not yet in evidence.  
4 MRS. McLEOD: Well, we're putting it in evidence  
5 now, Your Honor.  
6 THE COURT: I'll overrule it.  
7 WITNESS: Well, okay. I was in this car.  
8 Tony Gers's car.  
9 Q But we have to--let's put the G for Gers.  
10 A Okay.  
11 Q And your initials are T.V., right? Which way was that  
12 car facing, towards Sheridan or Maplewood?  
13 A Okay. These cars got to face this way towards Sheridan,  
14 right?  
15 Q If you say so.  
16 A Okay.  
17 Q That's the way they go? They go this way?  
18 A No. That's what I was saying. His car wasn't like that.  
19 His car was facing this way. That's what I was trying to  
20 explain.  
21 Q Draw it again. Draw it in again, please.  
22 A That's her car.  
23 Q All right. And the top car, that Terry's--the car Terry  
24 was in?  
25 A Yes. Terry.

1 Q The lead car is whose car?

2 A That's the car I was in. That's the car that I came in.  
3 I was sitting in this one.

4 Q All right. The car that was going the opposite way that  
5 it should have been going, whose car was that?

6 A Well, at first--that was the first time I ever seen a  
7 brown Ford. And I seen it real close up. And I thought  
8 it was Robert Morales's car, but it wasn't.

9 Q You may--would you like to sit down?

10 A (Indicated.) And I told the officer that I thought it was  
11 him, because I thought it was. I seen a Mexican male  
12 driving the car and he was real low. And I jumped out  
13 Tony Gera's car and they passed me about not even a foot.

14 Q All right. This is the brown Ford that Gilbert had  
15 returned in?

16 A Yes, it was.

17 Q And who else was in that car?

18 A I seen, I thought there was four people in the car,  
19 because there was people jumping around. And it zoomed  
20 by me so quick that all I seen was a Mexican male in the  
21 front seat and somebody in the passenger's side. And I  
22 seen Gilbert in the back seat.

23 Q Now, when you were up at the board you said Manning and  
24 Luna?

25 A Yes.

1 Q Did you see them in that car?  
2 A Well, I wasn't not for sure.  
3 Q Did you see them?  
4 A Well, I seen a Mexican male but--  
5 Q Did you see Manning and Luna in the car?  
6 A No, I didn't.  
7 THE COURT: Then I'm going to ask that your  
8 testimony be stricken and the jury to disregard it.  
9 Proceed.  
10 Q How much time had gone by from the time of the fighting  
11 at the party until the time that you first saw Gilbert  
12 return in the brown car?  
13 A About twenty minutes.  
14 Q All right. Were you--did you go out of the party and sit  
15 in the car of the fellow with the initial, the G, first,  
16 or was Gilbert there first?  
17 A He was there at first.  
18 Q So when you came out of the party to sit in the car,  
19 Gilbert was there?  
20 A Yes, he was.  
21 Q Was the car standing still?  
22 A Yes, it was.  
23 Q How far away were you from that car?  
24 A Half a block.  
25 Q Did you recognize anybody at that time?

1 A No, I didn't.

2 Q Did you know there were persons in the car, however?

3 A Yes, I did.

4 Q Four or less or more?

5 A I thought I seen four people.

6 Q At the time that you went out to---what's the fellow's  
7 name that has the initial G?

8 A Tony Gera.

9 Q Tony Gera. At the time you went out to his car, where  
10 was Tom?

11 A He was inside the party.

12 Q How long did you see the brown Ford sit there before they  
13 left?

14 A Excuse me. I didn't understand that.

15 Q When you came out and sat in Tony Gera's car, the brown  
16 Ford was stationary, was standing still; is that right?

17 A Yes.

18 Q How long did it stay there before it left?

19 A As soon as the shooting took place they speeded off.

20 Q All right. I thought you said earlier that they left  
21 and came back?

22 A They did. They left in a white car, a white Ford.

23 Q Oh, all right. Are any of these cars that you have drawn  
24 the white Ford?

25 A No.

1 Q All right. When you came out of the party, when you saw  
2 Gilbert leave in the white Ford, you were outside of the  
3 party; is that right?  
4 A Yes, I was.  
5 Q Did you go back inside the party before you sat down in  
6 Tony Gera's car?  
7 A Yes, I did.  
8 Q And when you came out of the party then to sit in the car,  
9 the brown Ford was there?  
10 A No, it wasn't.  
11 Q All right. When you came out of the party, you saw  
12 Gilbert leave in the white Ford?  
13 A Yes.  
14 Q And then you went back inside the party, right?  
15 A Yes.  
16 Q Then you came out and you sat in Tony Gera's car?  
17 A Before that I tried to get Tom to let's go.  
18 Q Right. But he didn't want to go?  
19 A He didn't want to, so he stayed.  
20 Q So he stayed. And you went out and sat in Tony Gera's  
21 car?  
22 A Yeah. That's a while later.  
23 Q Okay. Have you seen the brown Ford yet?  
24 A Yeah. It was there then.  
25 Q Okay.

1 A But I thought it was Robert Morales's car, so I didn't  
2 suspect anything.

3 Q All right. I don't care whose car it is right now. Okay.  
4 I think we're misunderstanding each other. I don't mean  
5 to repeat myself. You went back in the party and you  
6 tried to get Mr. Newvine to leave?

7 A Yes, I did.

8 Q He didn't want to leave. How long did you stay at the--  
9 back in the party then before you went outside again?

10 A I stayed outside after that. I did not go back in.

11 Q But you had to go back in to try to get Tom out.

12 A No, he came outside.

13 Q I'm sorry. I'm sorry. So you stayed outside?

14 A Yes.

15 Q Had you seen this brown Ford yet? At that time, had you  
16 seen the brown Ford yet?

17 A When I was sitting in the car, that's when I seen it.

18 Q All right. When you--when you got into the car, into  
19 Tony Gera's car--

20 A Yes.

21 Q --did you notice that the brown Ford was already there,  
22 or did it still have to appear? Do you know what I'm  
23 saying?

24 A No, I don't.

25 Q When you got into Tony Gera's car--do you remember that?

1 A Yes.

2 Q The brown Ford that you're talking about, was it there

3 yet--

4 A Yes, it was.

5 Q --or not?

6 A It was there already, yes.

7 Q Do you know when the brown Ford got there in relation to

8 what you were doing?

9 A They had to be between twenty after 2:00, because I know

10 I told Tom to let's go about 2:00. So that's the time

11 it had to be there for sure.

12 Q All right. Mr. Valez, at the time that you asked Tom to

13 leave, did you know whether the brown Ford was there then?

14 A No, it wasn't.

15 Q Would you have known from your vantage point in paying

16 attention and so on, would you have known--what I'm

17 getting at, would it have been there and you wouldn't

18 have known or did you look in that area and it wasn't

19 there?

20 A Well, they had just left, so it couldn't have been there

21 yet.

22 Q But you don't know where they went, do you? I mean, the

23 time they were leaving, you didn't know if they were

24 coming back or what?

25 A Yes, I knew they were coming back.

- 1 Q Why did you know that?
- 2 A Because he said that they were going to come back and  
3 shoot Tom and they had guns to do it.
- 4 Q And you believed them?
- 5 A I certainly do.
- 6 Q Are you saying, Mr. Valez, that the first time that you  
7 saw the brown car you were sitting in Tony Gera's car,  
8 is that the first time that you saw that car I'm talking  
9 about?
- 10 A No.
- 11 Q Okay. When is the first time that you saw the brown car  
12 that night?
- 13 A It was after the fight when I seen the car.
- 14 Q Where did you see it?
- 15 A Parked down the street.
- 16 Q Did you know whose car that was at the time that you had  
17 seen it parked down the street?
- 18 A I thought it was Robert Morales's car.
- 19 Q Does he have a car like that?
- 20 A Exactly.
- 21 Q Did you see that brown car leave before it came back?
- 22 A Yes, I did.
- 23 Q Did you see who left in it?
- 24 A No, I didn't. They drove right by.
- 25 Q When did that happen?

1 A That was a little bit after the fight. But Tom wasn't  
2 outside then, so they kept going.  
3 Q Did you see who was in the car then?  
4 A No, I didn't. I didn't pay attention.  
5 Q Was it going the same way down Hiland as you described  
6 here? In other words, in an opposite direction of the  
7 car that you put in for Tony Gera?  
8 A Yes.  
9 Q So both times it was going towards Maplewood?  
10 A Yes, it was.  
11 Q How much time was there between the time first that you  
12 saw the car and the time that you saw it sitting  
13 stationary?  
14 A Excuse me?  
15 Q How much time--did you see the car twice that evening?  
16 A Yes, I did.  
17 Q How much time was there in between the times that you had  
18 seen it?  
19 A About fifteen to ten minutes.  
20 Q The first time that you saw the car, what was it doing?  
21 A It was driving by the house.  
22 Q In what manner or fashion?  
23 A Slowly.  
24 Q Did it stop?  
25 A No, it didn't.

1 Q Do you know where it went to after it passed the house?  
2 A It turned down Hiland.  
3 Q What was the name of that street? I thought you were on  
4 Hiland.  
5 A Parkwood, Maplewood. It's down Maplewood.  
6 Q All right. And then you saw it again in ten to fifteen  
7 minutes; is that right?  
8 A Yes, I did. Coming in the same direction towards  
9 Maplewood.  
10 Q What did you do at that time?  
11 A Well, I didn't see it when it came back. It parked--  
12 that's when I seen it again.  
13 Q All right.  
14 A When it was parked.  
15 Q And that would have been about a half a block away from  
16 Tony Gera's car?  
17 A Yes.  
18 Q And you saw Gilbert in it at that time?  
19 A Yes, I did.  
20 Q Where was Gilbert in the car?  
21 A In the back seat.  
22 Q Which side?  
23 A The passenger's side.  
24 Q And the car was parked? Do you know whether the engine  
25 was running in that car?

- 1 A I don't think it was.
- 2 Q Why do you say that?
- 3 A Because it was sitting still.
- 4 Q Well, if you put a car in neutral or park, won't it sit  
5 still?
- 6 A Yeah, but it makes some kind of noise.
- 7 Q You didn't hear any noise?
- 8 A No, I didn't.
- 9 Q How long did it sit there still?
- 10 A I wouldn't know. I wasn't paying attention to it.
- 11 Q How long--all right. Did you see it move then?
- 12 A When they started doing the shooting, yes.
- 13 Q At the time that the shooting started, from your drawing,  
14 is it fair to say that the brown Ford was across from the  
15 car that Mary Hernandez and Terry Zamudio were in?
- 16 A Yes, it was.
- 17 Q Was Tom around that car?
- 18 A He was talking to Mary and Terry.
- 19 Q What position was he in?
- 20 A He was on the driver's side, leaning over the car looking  
21 into the window talking to Terry.
- 22 Q How did the shooting begin?
- 23 A How did it begin?
- 24 Q Yes.
- 25 A Well, I didn't see that. I was sitting in the car and I

1 heard the gun shot. I lifted my head and I seen fire  
2 coming out the back seat. I seen somebody with a gun  
3 sticking it out the back seat and yelling some words.  
4 And I jumped out the car and then they came by me and  
5 they took a right and that's when they left.

6 Q How were they driving the car after this shooting?

7 A They went slow and then they speeded up and they were  
8 gone.

9 Q When you were in Tony Gera's car and the brown car was  
10 sitting still, was there any movement in the brown car?

11 A The brown car was moving itself.

12 Q What was it doing?

13 A It was taking off.

14 Q Okay. But when you saw--did you see the brown car  
15 standing still?

16 A When it was parked.

17 Q Did you see that?

18 A Yes.

19 Q Did you see any movement in the car at that time?

20 A People.

21 Q That's--

22 A Yes.

23 Q What were they doing, do you know?

24 A They were just sitting there.

25 Q Were they moving in any fashion?

1 A Well--

2 MR. SCORSONE: Objection, asked and answered.

3 THE COURT: I don't think it's been. I'm going  
4 to overrule it. Proceed.

5 Q So there was no movement; is that your testimony?

6 A No, there wasn't.

7 THE COURT: At this time, the Court will adjourn  
8 until 9:00 tomorrow morning. I caution the members of the  
9 jury not to discuss this case among yourselves or with  
10 anyone else. You may be excused.

11 (Whereupon Court was adjourned for the day.)

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN, )

Plaintiff, )

-vs- )

ROBIN RICK MANNING, )

Defendant. )

Case No. 84-005570 FC

VOLUME III

PEOPLE OF THE STATE OF MICHIGAN, )

Plaintiff, )

-vs- )

WILLIAM JOHN LUNA, )

Defendant. )

Case No. 84-005572 FC

VOLUME III

The proceedings held in the above-entitled matter before the Honorable Fred J. Borchard, Circuit Judge, at Saginaw, Michigan, on March 14, 1985.

APPEARANCES:

CHRISTOPHER S. BOYD, Prosecuting Attorney  
BY: LYNDA HEATHSCOTT McLEOD, Assistant Prosecuting Attorney,

Appearing on behalf of the People.

THOMAS R. KOOPMAN, ESQ.,

Appearing on behalf of Defendant Robin Rick Manning.

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JOSEPH L. SCORSONE, ESQ.,

Appearing on behalf of Defendant William John Luna.

Sharon Anne Vaughn, CSR, RPR, CM  
CSR-0211

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1 A No, I don't.

2 Q All right. But you know he was in the car?

3 A Yeah.

4 Q So you could, you could positively identify only those  
5 two people?

6 A Yeah.

7 MR. KOOPMAN: I have no other questions.

8 MRS. McLEOD: Nothing further, Your Honor.

9 THE COURT: Anything further?

10 REGROSS-EXAMINATION

11 BY MR. SCORSONE:

12 Q So that I get this clear. In response to this question,  
13 because you kind of mumbled--

14 A Uh-hum.

15 Q --you could positively identify Gilbert Morales and Tim  
16 Lazano in the car?

17 A I think so, yeah.

18 Q Yeah. A little louder.

19 A Yes.

20 THE COURT: Thank you.

21 MRS. McLEOD: No further questions.

22 MR. SCORSONE: No further questions.

23 THE COURT: That's all. You may step down.

24 Step up here, please. Raise your right hand.

25 JOSEPH STRICKER,

1 a witness herein, being first duly sworn, testified under  
2 oath as follows:

3 DIRECT EXAMINATION

4 BY MRS. McLEOD:

5 Q State your full name, please.

6 A Joseph Stricker.

7 Q Mr. Stricker, I'd like you to remember August 6th of last  
8 year, please. The evening hours of the 5th, the early  
9 morning hours of the 6th. Did you go to a party over on  
10 Hiland Street?

11 A Yes.

12 Q Were you there about 1:30 in the evening?

13 A Yes.

14 Q Were you outside?

15 A Yes.

16 Q Did anything unusual occur?

17 A Yes.

18 Q What was that?

19 A About 1:30.

20 Q Well, while you were outside, in the early morning hours,  
21 did anything unusual occur?

22 A Yes, somebody got shot.

23 Q Move the microphone down so you're talking right into it.

24 Thank you.

25 You were present at the shooting?

1 A Yes.

2 Q Where were you?

3 A I was in the car.

4 Q Where? I'm sorry. Were you on--was the car that you were  
5 in on Hiland Street?

6 A Yes.

7 Q What kind of car was it?

8 A I think it was an Impala. I'm not sure.

9 Q Where on Hiland? Are you familiar with Maplewood and  
10 Sheridan?

11 A Yes.

12 Q Was the party on the corner of Maplewood and Hiland?

13 A Yes.

14 Q Was your car between Maplewood and Sheridan?

15 A Yup. Yes.

16 Q Was it on the side where the house--

17 MR. SCORSONE: Your Honor, I'm going to object.  
18 I realize that we are all trying to be a little lenient.

19 THE COURT: I'll sustain it.

20 Q Where was your car in relation to where the party was?

21 A It was a couple streets from the--

22 Q Speak right up.

23 A A couple feet from the party.

24 Q The party was in a house?

25 A Right.

1 Q Where was the car in relation to the shooting?

2 A It was about twenty feet.

3 Q All right. Do you know a person was shot?

4 A Yes.

5 Q Who?

6 A Tom Newvine.

7 Q Did you see him get shot?

8 A Not really, no.

9 Q Where was he when he got shot, if you know?

10 A He was--

11 MR. SCORSONE: I'm going to object. No  
12 foundation.

13 THE COURT: I'm going to sustain the objection.

14 Q Mr. Stricker, you were in a car. Were you in the front  
15 seat or back seat of this car?

16 A Front seat.

17 Q Were you in the driver's or the passenger's side?

18 A Passenger's side.

19 Q Was there anybody in the driver's seat?

20 A Yes.

21 Q Who?

22 A My cousin.

23 Q Who?

24 A Homer Trevino.

25 Q Was he in the car at the time?

1 A Yes.

2 Q Did you--you didn't see the shooting; is that what you're

3 saying?

4 A Yes.

5 Q Yes? You mean you did not see it or you did see it?

6 A I didn't see him get shot, no.

7 Q All right. Did you become aware afterward that he was

8 shot?

9 A Yes.

10 Q How did you become aware of that?

11 A Well, I was at the--sitting in the bottom of the car

12 ducking and he threw up against the passenger door there

13 and he fell down.

14 JUROR: Your Honor, we can't--I can't hear him.

15 THE COURT: You will have to speak up. Move

16 up a little bit and now adjust the microphone right in

17 front of your mouth so that you can speak into it.

18 All right.

19 Q All right.

20 A Do you want me to say that all over again?

21 Q Let me back up for a minute, Mr. Stricker. How long had

22 you been sitting in the car before you knew there was a

23 shooting?

24 A About half hour.

25 Q Had you seen--do you know Thomas Newvine?

1 A No.

2 Q Did you know him on that evening?

3 A No.

4 Q Do you know who got shot?

5 A Yes.

6 Q Was that Thomas Newvine?

7 A I didn't know.

8 Q All right. We'll call him the victim then. Okay. Had

9 you seen the victim previous to the point of the shooting?

10 A No.

11 Q Do you know how the shooting occurred?

12 A No.

13 Q At what point did you become aware then, sir, that

14 something unusual had occurred or was occurring?

15 A Well, I heard some gun shots and that was about it, and

16 then--

17 Q Do you know where the gun shots came from?

18 A Yeah. A moving car.

19 Q Did you see that car?

20 A Yes.

21 Q Would you describe it?

22 A It was like a brown car.

23 Q Do you know how many doors it had?

24 A Four.

25 Q And the shooting came from that car?

1 A Yes.

2 Q What area of that car?

3 A The passenger's side.

4 Q Okay. Do you know what area of the passenger's side?

5 MR. SCORSONE: Your Honor, there has been no

6 foundation laid for this testimony.

7 THE COURT: I will overrule it. Proceed.

8 Q Do you know?

9 A No.

10 Q Did you see any guns?

11 A Yes.

12 Q How many?

13 A Two.

14 Q Where were they?

15 A On the passenger's side.

16 Q All right. There would have been two doors on the

17 passenger's side; is that right?

18 A Right.

19 Q Where were these guns in relation to those two doors?

20 A They're sticking out.

21 Q Sticking out where, though?

22 A Out of the window.

23 Q Are there two windows on that car?

24 A Yeah.

25 Q Were they both sticking out of one window or was one in

- 1           each window?
- 2           A     One in each.
- 3           Q     Do you know what kinds of guns they were?
- 4           A     No.
- 5           Q     Do you know what a hand gun is?
- 6           A     Yes.
- 7           Q     Do you know what a long gun is?
- 8           A     Yes.
- 9           Q     Do you know whether they were hand guns or long guns?
- 10          A     They were long guns.
- 11          Q     How many shots did you hear?
- 12          A     I only heard about four.
- 13          Q     What were you doing at the time of the shots?
- 14          A     When they occurred?
- 15          Q     Yes.
- 16          A     I was just sitting up and then I ducked.
- 17          Q     Did you say you were twenty feet away from where the
- 18                shooting occurred?
- 19          A     About twenty feet. A little further.
- 20          Q     Did the shooting occur by any car?
- 21          A     Yes.
- 22          Q     Where was that car in relation to the car you were sitting
- 23                in?
- 24          A     About two cars ahead of me. One or two cars.
- 25          Q     Were there cars in between that car and your car?

- 1 A No.
- 2 Q So it was your car, some space and then the car by the  
3 shooting?
- 4 A Yeah, I think so. Yeah.
- 5 Q Was the car that you were sitting in hit?
- 6 A Yeah.
- 7 Q Do you know where?
- 8 A It was hit twice. Twice in the window and towards the  
9 front headlight. The left front headlight and by the  
10 left front tire.
- 11 Q How many times then?
- 12 A Four.
- 13 Q Which window?
- 14 A The front window.
- 15 Q You mean the windshield or--
- 16 A Yeah, the windshield.
- 17 Q Was anything in your car hit?
- 18 A No.
- 19 Q Did glass fly in your car?
- 20 A Yeah.
- 21 Q Was anybody hit with any glass?
- 22 A Yeah. Me and my cousin.
- 23 Q Did you recognize anybody that was in the shooting car?
- 24 A No.
- 25 Q What happened after the shooting?

1 A I stayed down until some--one of my friends came up and  
2 opened the door and then I just got out of the car.

3 Q Now, that would have been the passenger's side?

4 A No. I got out the driver's side.

5 Q Where did your cousin get out?

6 A Driver's side.

7 Q Why didn't he get out of the passenger's side, if you  
8 know?

9 A I don't know.

10 Q All right. Where was the shooting vehicle when you got  
11 out of your car?

12 A I didn't see it.

13 MRS. McLEOD: That's all, Your Honor.

14 MR. SCORSONE: I have no questions of the  
15 witness.

16 CROSS-EXAMINATION

17 BY MR. KOOPMAN:

18 Q Mr. Stricker, you testified in response to a question by  
19 the Prosecuting Attorney that in fact you didn't see Mr.  
20 Newvine get shot; is that correct?

21 A Right.

22 Q Yet you saw a gun?

23 A Right.

24 Q Did you see whether or not these two guns you saw fired?

25 A No.

1 Q So you don't know whether one gun fired or two guns  
2 fired?  
3 A No.  
4 Q Had you been drinking that night?  
5 A Yes.  
6 Q Were you drinking in the car?  
7 A Yes.  
8 Q How old are you?  
9 A Seventeen.  
10 Q Do you recall what color this car was?  
11 A Like a brown car. The car that did the shooting?  
12 Q Yes.  
13 A It was like a brown.  
14 Q How many people did you see in it?  
15 A Looked like about three.  
16 Q Did you make a statement to a police officer regarding  
17 this case?  
18 A That day?  
19 Q I'm--August 7th. It would probably have been the day  
20 after.  
21 A Yes.  
22 Q Do you recall if he had a tape recorder going at the time?  
23 A No.  
24 Q Do you recall telling the police officer that you saw a  
25 light-colored car?

1 A No.

2 Q Do you recall telling the police officer that there were  
3 about four people in that car, two in the front and two  
4 in the back?

5 A No.

6 Q Do you recall telling the police officer you saw one gun  
7 fire only?

8 A I heard one gun fire.

9 Q But you didn't see it?

10 A No.

11 Q Did you tell the police officer that you were unable to  
12 identify anybody in the car?

13 A Yes.

14 MR. KOOPMAN: I have no other questions.

15 MRS. McLEOD: Nothing further.

16 THE COURT: That's all. You may step down.  
17 Would you step right up here, please?

18 HOMER TREVINO,

19 a witness herein, being first duly sworn, testified under  
20 oath as follows:

21 DIRECT EXAMINATION

22 BY MRS. McLEOD:

23 Q Mr. Trevino, I'd like you to remember last summer,  
24 please, the date of August 6th. Do you remember being  
25 on Hiland Street in the late hours of the 5th, early

1 morning hours of the 6th?  
2 A Yes, I do.  
3 Q Had you been at a party?  
4 A Yes, I was. I was at the party.  
5 Q Where was the party?  
6 A Um, off of Sheridan. I'm not sure which road that was.  
7 Q How did you get to the party?  
8 A I drove my car.  
9 Q What kind of car is that?  
10 A Mine was a '76 Impala.  
11 Q Where did you park your car in relation to the party?  
12 A Where the house was. It was right across the street.  
13 Q Do you know a person--did you know a person by the name  
14 of Thomas Newvine?  
15 A No, I didn't.  
16 Q About 1:30 or 2:00 on the 6th, did you happen to be  
17 outside the party sitting in your car?  
18 A Yes. But I was not in my car.  
19 Q I'm sorry. You were sitting in a car?  
20 A Yes.  
21 Q Not the Impala?  
22 A No.  
23 Q What car was that?  
24 A It was a '67. I don't know. It was an old make. It was  
25 my friend's car.

1 Q Was anybody in the car with you at that time?  
2 A Yes, my cousin Joe.  
3 Q Joe Stricker?  
4 A Yes.  
5 Q He's the gentleman that just left the courtroom?  
6 A (Nodded.)  
7 Q You have to say yes or no, you can't nod.  
8 A Yes, he was.  
9 Q Did anything unusual occur while you were sitting in that  
10 car?  
11 A Besides the shooting, nothing besides that.  
12 Q Well, how about the shooting? Did that take place while  
13 you were in the car?  
14 A Yes.  
15 Q Would you describe the shooting, please?  
16 A Well, we were sitting in the car and the cars were just  
17 going down the middle nice and easy, you know. And then  
18 my friend was standing outside by a friend Jerry. He  
19 was talking to us, and then he yelled, he yelled, "They  
20 have a gun," and me and my cousin Joe had ducked down to  
21 the left and then bullets, we heard sounds like fire  
22 crackers.  
23 Q How many fire crackers or how many sounds like that did  
24 you hear?  
25 A It sounded like two. Two guns going off.

1 Q And it sounded like two guns were going off? Why do you  
2 say it sounded like two guns?  
3 A Because they came in like--the pops came in like a  
4 pattern.  
5 Q Just describe that, if you can remember.  
6 A I don't--it came in like maybe shots of three at a time.  
7 That's about it. That's what I, all I can remember.  
8 Q How many total shots did you hear?  
9 A I have no idea, everything happened so fast. It was  
10 about, could have been eight to ten shots.  
11 Q Did you see that happen?  
12 A See the shooting occur?  
13 Q Yes.  
14 A All I seen was barrels sticking out of the back window on  
15 the passenger's side back seat.  
16 Q What kind of barrel?  
17 A I have no idea. It was just a rifle.  
18 Q Did you see another gun?  
19 A No. Just one.  
20 Q But it sounded like two to you?  
21 A Yes, it did.  
22 Q Was anyone shot?  
23 A Tommy Newvine.  
24 Q Did you actually see him get shot?  
25 A No, I didn't. I--the shooting, when the shooting started,

1 I ducked down to the left. And when the shooting was  
2 still going on, I looked over to the right and I seen him  
3 slide down the window on the passenger's side.

4 Q Were you on the passenger's side?

5 A No, I was in the driver's side.

6 Q And you saw him slide down the window?

7 A (Nodded.)

8 Q What else did you see?

9 A That was it. After that, we just waited a couple seconds  
10 and got out of the car.

11 Q All right. You said that you saw a barrel come out of  
12 the back seat. And at what point--I'm sorry--I think I--  
13 I didn't mean to put words in your mouth, sir. When did  
14 you--where was the barrel at the time you had seen the  
15 gun? Was the barrel already outside the car or coming out  
16 or describe that?

17 A It was about halfway out. Just like resting out. The  
18 car was ahead. It was ahead of the car we were sitting  
19 in. It was coasting past.

20 Q The shooting car was ahead of your car?

21 A Right. It was coasting to pass when we had seen it.

22 Q What do you mean by coasting?

23 A Going about 15 miles an hour, maybe less.

24 Q What was that speed like in relation to other cars that  
25 were leaving at the time before the shooting? I'm talking

- 1           about before any of this happened.
- 2           A     It was about the same, that's why nobody expected it.
- 3           Q     When did you first notice that that car was around?
- 4           A     After my--all my friends had yelled, "They got a gun."  
5           And it just coasted past and I glanced up a little, and  
6           that was it. That's when I seen it just right up there.
- 7           Q     When you glanced up, what did you actually see?
- 8           A     Just a silhouette of a car and barrel sticking out the  
9           back window.
- 10          Q     Was it pointed at anything or anyone?
- 11          A     Just that it was up ahead and the barrel was pointing  
12          back.
- 13          Q     Did it go off at that point that you were looking?
- 14          A     No.
- 15          Q     Had it already gone?
- 16          A     Yes, it did.
- 17          Q     What else did you see?
- 18          A     That was it. Just seen a car go by and got out a couple  
19          seconds after everything stopped. Just--
- 20          Q     All right. What was by the barrel of the gun? What was  
21          in the direction that the gun was shooting?
- 22          A     I have no idea. It was just--it was just aimed backwards.  
23          I don't know what it was aiming at.
- 24          Q     Was the car that you were in pointed in the same  
25          direction as the shooting car or in an opposite direction?

1 A You mean the front end of the car, which way it was  
2 facing?  
3 Q Yes.  
4 A It was facing the way the car was going.  
5 Q Anything happen to the car you were sitting in?  
6 A It got shot at.  
7 Q Did it get hit?  
8 A Yes. About, I'd say, three times.  
9 Q Did you see anybody in the shooting car?  
10 A No, I did not.  
11 Q Did you, and I don't mean identify anything, did you see  
12 any silhouettes or bodies?  
13 A Silhouettes, yes.  
14 Q How many?  
15 A From where we were looked like two silhouettes, but--  
16 Q Where would they have been, if you remember?  
17 A Couldn't really tell you. One was in the driver's seat  
18 but the other one I don't know where it was at.  
19 Q Did you say, sir, that you only saw one gun?  
20 A Yes, I did.  
21 Q Do you remember talking with Detective Genovese at the  
22 Saginaw Police Department?  
23 A Yes.  
24 Q And that would have been that afternoon?  
25 A The day after.

1 Q This happened, the shooting occurred about 2:00 in the  
2 morning, didn't it?

3 A Okay. Then that afternoon.

4 Q Did you tell Detective Genovese what you saw that night?

5 A Yes, I did.

6 Q And were those events fresh in your mind at that time that  
7 you had talked with Detective Genovese?

8 A Yes, they were.

9 Q Page 6, please. Mr. Trevino, please read to yourself the  
10 last, the--well, the next to the last question, it's  
11 answer, and the next question. I'll turn the page.

12 A (Indicated.)

13 Q Is that right? I mean, have you read it?

14 A Yeah.

15 Q Have you--do you want to read it again?

16 A Yeah.

17 Q The first answer and question--okay. Does this refresh  
18 your memory, Mr. Trevino?

19 A A little, but I was shook up, you know. And all I can  
20 remember is just one. Basically, it's just one.

21 Q Did you tell the police two guns?

22 A Yes, I must have.

23 MRS. McLEOD: That's all, Your Honor.

24 THE COURT: The Court will adjourn at this  
25 time until 1:30 this afternoon. I caution the members

1 of the jury not to discuss this case among yourselves or  
2 with anyone else. You may be excused.

3 (Whereupon the Court was adjourned for noon  
4 recess.)

5 (Whereupon the Court reconvened at 2:10 p.m.  
6 with the jury present.)

7 THE COURT: Who's next?

8 MR. KOOPMAN: I think it's one of us.

9 CROSS-EXAMINATION

10 BY MR. KOOPMAN:

11 Q Mr. Trevino, you testified that when you saw--let me  
12 rephrase that. How many people did you see in this  
13 vehicle?

14 A Two silhouettes.

15 Q So you saw just two people?

16 A That's what it looked like from behind.

17 Q Where were they?

18 A One had to be in the driver's seat, the other one, I  
19 don't know if it was in the front or back on the  
20 passenger's side.

21 Q But that's all you saw?

22 A Yes.

23 Q What color was that vehicle?

24 A I have no idea what color it was, but it was a light  
25 color from the way the light was lighting it.

- 1 Q Was it, the vehicle, one solid color?
- 2 A I didn't bother to look.
- 3 Q How many guns did you see?
- 4 A One gun out the back.
- 5 Q But you told the police you saw two?
- 6 A Heard two.
- 7 Q How did you know that you heard two different guns?
- 8 A By the sequence of the pops.
- 9 Q Can you explain for us what you mean by the sequence of
- 10 pops?
- 11 A Well, usually when you shoot a gun, you keep cocking it.
- 12 It just keeps firing off and you can hear the way they
- 13 blended in together, just the sequence together.
- 14 Q Is it possible that the weapon which you heard discharge
- 15 could have been an automatic weapon?
- 16 A I have no idea.
- 17 Q Other than the sound, do you have any other reason to
- 18 believe that there was more than the one gun you saw?
- 19 A No, I have no other reason.
- 20 Q So the only thing that you really know for sure was, then,
- 21 there was one gun?
- 22 A Yes.
- 23 Q Were you able to positively identify anybody in the
- 24 vehicle?
- 25 A No, I was not.

1 MR. KOOPMAN: I have no other questions.

2 CROSS-EXAMINATION

3 BY MR. SCORSONE:

4 Q Just a couple of questions, Mr. Trevino, very briefly.  
5 You indicated to the police that you saw one gun sticking  
6 out the window?

7 A Yes, I did.

8 Q You've testified here both for the Prosecutor and for Mr.  
9 Koopman that you heard two and/or you believe you heard  
10 two because of the sequence of the pops?

11 A Yes. That's right.

12 Q Is that right?

13 A That's correct.

14 Q Do you remember when you talked to the police about  
15 hearing this sequence of the pops back when you made  
16 your statement very close to the time of the incident?

17 A If I had said anything about the sequence of pops?

18 Q Yes.

19 A No, I don't remember saying anything like that.

20 Q You don't? Okay. All right. Well, before I get back to  
21 that, you just mentioned to Mr. Koopman that you fire a  
22 weapon and then you cock it. You're used to a lever-  
23 action--strike that. Are you familiar with rifles?

24 A Not very familiar as types or anything, but I have heard  
25 quite a bit of them go off.

1 Q And are you familiar with what they call a lever-action or  
2 some kind of a--where you pump or cock a gun, then fire  
3 it and either pump or cock it again?

4 A Yes.

5 Q Okay. Have you ever had any dealings with automatic  
6 weapons?

7 A No, I have not.

8 Q Okay. So is it really, if I understand correctly, isn't  
9 it really the reason that you say you heard two guns was  
10 because of the repetity, by the rapidness of how fast the  
11 shots came bang-bang-bang?

12 A Yes.

13 Q Not giving somebody enough time to cock and fire and  
14 already you've heard a second shot?

15 A Yes, that's correct.

16 Q Right. Okay.

17 MR. SCORSONE: I have no further questions.

18 Thank you.

19

REDIRECT EXAMINATION

20 BY MRS. McLEOD:

21 Q Mr. Trevino, you said that the sound blended in together?  
22 Have you, have you ever heard two guns shot at the same  
23 time or very close together?

24 A Yes, I have.

25 Q Did it sound like that?

- 1 A Somewhat.
- 2 Q Explain that, please.
- 3 A Just like when you're out hunting, two guns are shooting  
4 at the same time at one target. That's what it sounded  
5 like. Just pop, not enough time for lever action or  
6 whatever.
- 7 Q All right. Did you--what did the guns sound like? What  
8 kind of a noise did it make?
- 9 A From inside the car, it sounded like fire crackers going  
10 off.
- 11 Q All right. When you heard these fire cracker-type sounds,  
12 was there like a beginning to them and then an end to  
13 them?
- 14 A Yes.
- 15 Q All right. When you heard the sound blend together or  
16 these sounds blend in together, was it as if you heard  
17 two beginnings before the one had ended?
- 18 A Excuse me? I don't understand very well.
- 19 Q All right. You said that when you heard these fire  
20 cracker-types of sound--
- 21 A Yes.
- 22 Q --there was like a beginning to them and an ending to  
23 them; is that correct?
- 24 A Yes.
- 25 Q All right. When you said earlier that the sound blended

1           together like two guns were being shot at the same time;  
2           is that right?

3           A     Yes.

4           Q     All right. Each one would have to have a beginning sound  
5           then; is that correct?

6           A     Yes, that's correct.

7           Q     Did you hear a second beginning at any point before you  
8           heard the first fire cracker sound end?

9           A     No, I did not. Just both, just all--it sounded like, as  
10          we were in the car, pops started going. First I just  
11          heard one pop, and then it just started getting a little  
12          louder and then it stopped and that was it.

13          Q     I'm sorry. Say that again, please.

14          A     I was in the car. One pop--it sounded just like one pop  
15          and then the sound grew a little louder, then it stopped,  
16          and that was it.

17          Q     You had testified earlier eight or ten shots; is that  
18          right?

19          A     Approximately.

20          Q     Is it your testimony that it didn't sound like one gun  
21          shot eight or ten?

22          A     Excuse me?

23          Q     Have you heard army, have you watched army movies on  
24          television?

25          A     Yes.

1 Q Have you ever seen an automatic gun or heard an automatic  
2 gun on television?

3 A Yes, I have.

4 Q All right. I believe that you testified that the guns  
5 that you heard or, I'm sorry, that the barrel of the gun  
6 in the back seat that you saw was a rifle?

7 A Yes.

8 Q Is that right?

9 A Yes.

10 Q Have you heard a rifle before?

11 A Yes.

12 Q Of the two guns, did they both sound like rifles?

13 A No, they did not.

14 Q Did they sound like one was a little louder than the  
15 other?

16 A You could tell by just the way they blended in. Just  
17 when one was going, one started, the next one kind of  
18 made a little louder, you know, made the sound just a  
19 tad louder.

20 Q Let me see if I can make this clear to you. You said as  
21 one was going, as one was already going then as the shot  
22 was already sounding, it was already out of the gun and  
23 making a sound, was there another sound that was beginning  
24 from the other gun?

25 A Must have discharged at the same time or something because

1 I didn't hear another go off.

2 Q The one had a louder sound than the other; is that what  
3 you're saying?

4 A Yes.

5 MRS. McLEOD: That's all, Your Honor.

6 THE COURT: Anything further?

7 MR. KOOPMAN: No, Your Honor.

8 MR. SCORSONE: No, Your Honor.

9 THE COURT: That's all. You may step down.

10 RONALD CARL HERZBERG,

11 a witness herein, being first duly sworn, testified under  
12 oath as follows:

13 DIRECT EXAMINATION

14 BY MRS. McLEOD:

15 Q Your name, sir?

16 A Ronald Carl Herzberg.

17 Q Your employment?

18 A I'm employed by the City of Saginaw as a police officer.

19 Q Were you employed as a police officer on August 6th of  
20 1984?

21 A Yes, I was.

22 Q Would you have been working in the early morning hours?

23 A Yes.

24 Q Did you have the occasion to be dispatched to the area of  
25 2300 Hiland in the City and County of Saginaw?

*Michor*  
*Luna*  
*Benito Juarez*  
*Roberto Robles*  
*Gloria Barrera*  
*Richard Gomez*

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN, )  
Plaintiff, )  
-vs- )  
ROBIN RICK MANNING, )  
Defendant. )

Case No. 84-005570 PC

VOLUME V

The proceedings held in the above-entitled matter before the Honorable Fred J. Borchard, Circuit Judge, at Saginaw, Michigan, on March 19, 1985.

APPEARANCES:

CHRISTOPHER S. BOYD, Prosecuting Attorney  
BY: LYNDA HEATHSCOTT McLEOD, Assistant Prosecuting Attorney,

Appearing on behalf of the People.

THOMAS R. KOOPMAN, ESQ.,

Appearing on behalf of Defendant Robin Rick Manning.

Sharon Anne Vaughn, CSR, RPR, CM  
CSR-0211

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(Hearing held in Chambers.)

1 THE COURT: Would you have a seat over here,  
2 please? I think that you have a letter for me?

3 MRS. SUTTO: Yes, sir.

4 THE COURT: I have already brought this matter  
5 to the attention of the attorneys and told them that you  
6 would probably bring in a letter.

7 (The Judge read the letter.)

8 THE COURT: Have you been having problems with  
9 the case from the time it started or has this just been  
10 building up, I mean?

11 MRS. SUTTO: Well, I've--why I went to Roger  
12 Brown before was of depression and I had--just find that  
13 with the headaches--

14 THE COURT: And you've told your father-in-law  
15 about this and your husband about it; is that correct?

16 MRS. SUTTO: They know by just living with me  
17 and he understands.

18 THE COURT: How long have you been having these  
19 interviews with--

20 MRS. SUTTO: Roger?

21 THE COURT: Yes.

22 MRS. SUTTO: I haven't seen him since, I think,  
23 last fall.

24 THE COURT: And you had some problems prior to  
25 that, I mean, the reason for going to him?

1 MRS. SUTTO: Yes, sir.

2 THE COURT: For a period of time, a long period  
3 of time?

4 MRS. SUTTO: Uh-hum.

5 THE COURT: Do you feel that continued service  
6 on the jury would be harmful to your health at this time?

7 MRS. SUTTO: Yes, I do.

8 THE COURT: Do you have any questions?

9 MRS. McLEOD: None.

10 THE COURT: I take it that you would like to be  
11 excused from this case?

12 MRS. SUTTO: Yes, sir.

13 THE COURT: Would you go and have a seat out  
14 there for a moment and then I will talk to you.

15 (Whereupon Mrs. Sutto exited the Chambers.)

16 THE COURT: Let the record reflect that Mrs.  
17 Sutto presented the Court with a letter from a Reverend  
18 Roger J. Brown, executive director of the Samaritan Center  
19 of Saginaw Valley, which reads as follows:

20 "Saginaw County Courthouse, 111 So. Michigan  
21 Avenue, Saginaw, Michigan, 48602.

22 "To Whom It May Concern: I wish to verify that  
23 my recommendation is that Mrs. Barbara Sutto be  
24 released from jury duty. She is finding that the  
25 material presented at the trial is inducing a

1 depressive reaction. This is directly aggravating a  
2 condition for which she has in the past been in  
3 treatment with me. If she is not released from this,  
4 there very likely will be a relapse. If there is a  
5 way for her to be released from this, then my strong  
6 recommendation is that this be done immediately."

7 Any objections--

8 MRS. McLEOD: I have no objections, Your Honor.

9 THE COURT: --of being released? We have  
10 fourteen jurors and we will still have thirteen jurors on  
11 there.

12 MR. KOOPMAN: I have no objection.

13 THE COURT: All right.

14 MR. KOOPMAN: Judge, while the court reporter  
15 is here, could we do something about putting on the record  
16 the negotiating?

17 THE COURT: I want my--that was my next subject  
18 matter. I want to know what counsel feels that the jury  
19 should be told insofar as Mr. Luna is concerned. I know  
20 that they are going to have to be told that he's entered  
21 a plea, and for this reason he is no longer a Defendant  
22 in this case. But I think they're also going to have to  
23 be told the type of plea that was entered, because I don't  
24 think that we can let the jury hang out there and think  
25 well, maybe he pled to first degree murder rather than

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1 second degree murder and then drop it at that.

2 MR. KOOPMAN: I think you're right. Although  
3 I have concerns that saying he pled to any charge of  
4 murder can be somewhat--

5 THE COURT: This is his involvement now. It's  
6 his case.

7 MR. KOOPMAN: Right. Maybe the Court could  
8 just say something to the effect of they shouldn't draw  
9 any inference of guilt.

10 THE COURT: I would indicate to them that we  
11 have two separate cases and in his case he entered his  
12 plea of guilty to second degree murder.

13 MRS. McLEOD: I think we have to tell them that,  
14 Judge.

15 THE COURT: Yes.

16 MRS. McLEOD: Judge, would the Court like to  
17 proceed and that I call Mr. Luna and the Court advises  
18 them of that, or I can ask Mr. Luna in my opening  
19 questions to him whether we have, you know, called him  
20 because he has pled guilty as part--

21 THE COURT: I think I'd better explain it to  
22 them.

23 MRS. McLEOD: Fine.

24 MR. KOOPMAN: Will he be sitting at the counsel  
25 table?

1 MRS. McLEOD: When they finish?

2 THE COURT: He will be out in the--as soon as he  
3 is finished, he will be in the waiting room.

4 MRS. McLEOD: Melchor? You mean Melchor? I was  
5 going to put Melchor on and then let you cross him and  
6 then let you finish.

7 MR. KOOPMAN: You're going to finish with  
8 Melchor? Can the Court say something immediately then,  
9 because he wouldn't be at the table?

10 THE COURT: Yes.

11 MR. KOOPMAN: I'm sure you're going to ask  
12 questions--they are just going to reiterate the same  
13 thing.

14 MRS. McLEOD: Do you want to put on the record  
15 that you have advised your client of--

16 MR. KOOPMAN: Just for purposes of making a  
17 record as a result of the plea bargain which Mr. Luna has  
18 entered into, I have had negotiations with my client  
19 explaining to him his rights to continue the trial, the  
20 ramifications of Mr. Luna's testimony, and the pros and  
21 cons of whether or not he should take the offer which has  
22 been extended to him. He has made it very clear that he's  
23 staying in the thing until the end, and is rejecting the  
24 offer frankly against my advice.

25 MR. SCORSONE: Off the record. Don't you have

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to--

THE COURT: We're going--when Court resumes, he is going to make these same statements in the courtroom.

MR. SCORSONE: All right.

(Whereupon the Judge and attorneys entered the courtroom at 10:25 a.m. without the jury present.)

THE COURT: You may proceed.

MR. KOOPMAN: Your Honor, I have several things that I'd like to place on the record at this time. First, on behalf of the Defendant, we would at this time move for a new trial on the basis that the co-Defendant has pled guilty. And certainly this could allow the jury to draw an inference of guilt in Mr. Manning's case, even though it is a separate case.

Also, we would ask the Court to advise the jury that in the event that the motion for a new trial is not granted, that simply because Mr. Luna has pled is not a reason for them to assume guilt in Mr. Manning's case. We have discussed in Chambers the wording of what the Court will say to the jury. At this time, we would ask the Court to reconsider and tell the jury only that Mr. Manning has pled to a--

MR. SCORSONE: Mr. Manning?

MR. KOOPMAN: I'm sorry. Mr. Luna has pled only to a charge without specifying what that charge is. I

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1 believe that if the jury is made aware of the charge being  
2 a murder charge, even though it is a second degree  
3 offense, that it could have some influence on their  
4 deliberations because of the magnitude of the charge.  
5 And after the Prosecutor responds to my two requests, I  
6 would like to put something on the record regarding the  
7 plea negotiations with Mr. Manning.

8 MRS. McLEOD: Your Honor, of course I object to  
9 the new trial. And I object to the--

10 THE COURT: I think you are referring to a  
11 mistrial.

12 MRS. McLEOD: A mistrial, correct.

13 THE COURT: All right.

14 MRS. McLEOD: Your Honor, I would ask the  
15 Court, of course, to deny the motion for a mistrial.  
16 This is no different than if Mr. Luna had been an endorsed  
17 witness from the beginning who had pled earlier, and we  
18 would be having his testimony in the case in chief against  
19 Mr. Manning.

20 Also, Your Honor, I believe that the Prosecutor  
21 should bring out, or the Court should bring out, what Mr.  
22 Luna has pled to. I think it's important that the jury  
23 not get an inference that Mr. Luna pled guilty to the  
24 original charge. And I believe with the Court's  
25 instructions throughout the trial and at the conclusion

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1 of the trial saying that these are separate trials and,  
2 of course, a burden of proof and the presumption of  
3 innocence continued against Mr. Manning or for Mr.  
4 Manning, that there will be no damage in this matter.  
5 And we would ask the Court to deny each motion.

6 THE COURT: The Court at this time is going to  
7 deny the motion for a mistrial. And the Court is going  
8 to advise the jurors that the co-Defendant, Mr. Luna,  
9 entered a plea of guilty to second degree murder.

10 MR. KOOPMAN: Your Honor, then for purposes of  
11 making a record, I would like to state that the  
12 Prosecuting Attorney has made an offer to Mr. Manning  
13 to accept a plea bargain negotiation. That I have  
14 discussed with him the contents of that offer. I have  
15 explained to him his rights and the ramifications in  
16 continuing the trial with the events that have recently  
17 taken place. And that Mr. Manning has been aware, made  
18 aware of these rights and been made aware of the rights  
19 and the resulting ramifications of the plea of Mr. Luna.  
20 He desires to continue the trial and to reject the plea  
21 bargain agreement.

22 And I would ask him for the record to indicate  
23 that that statement is correct.

24 MR. MANNING: Yes.

25 THE COURT: Anything else? You may call the

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1 Q Could you identify one from the other?

2 A No.

3 Q And you're certain that these shots came from an automatic  
4 weapon?

5 A No.

6 Q But you think they did?

7 A I'm not sure about that. I don't, you know, I could tell  
8 what it sounded like, and you could go from there.

9 Q Tell me what it sounded like.

10 A It was just like one after the other dot--dah--da--da,  
11 you know, constant. You make something of it.

12 MR. KOOPMAN: I have no other questions, Your  
13 Honor.

14 MRS. McLEOD: No other questions, Your Honor.

15 THE COURT: That's all. You may step down.

16 MRS. McLEOD: We would call William Luna, Your  
17 Honor.

18 WILLIAM JOHN LUNA,  
19 a witness herein, being first duly sworn, testified under  
20 oath as follows:

21 DIRECT EXAMINATION

22 BY MRS. McLEOD:

23 Q Mr. Luna--

24 A Yeah.

25 Q Good. I can hear you. Please speak up. Okay?

1 A Yeah.

2 Q Your name is William Luna?

3 A Yup.

4 Q Mr. Luna, you were a Defendant in this particular trial  
5 before today, were you not?

6 A Yes.

7 Q And earlier this morning, you pled guilty to second degree  
8 murder?

9 A Yes.

10 Q Mr. Luna, I want to talk about the party, and I want to  
11 talk about where you were that night and what happened.  
12 Okay?

13 A Yeah.

14 Q Did you have the occasion to be with the Defendant,  
15 Robin Rick Manning, that night?

16 A Yes.

17 Q On August 6th of last summer--

18 A Yes.

19 Q --where were you?

20 A Well, we were at my house, me and Manning.

21 Q Did there come a point in time when you left your home?

22 A Yes.

23 Q Why?

24 A Well, when we were at my house, and the phone ring, and I  
25 told Manning to answer it, and he said it was Gilbert, and

1 he needed a backup on a fight. And so we said, you know,  
2 we will go help him.

3 Q So did you leave your house then?

4 A Yeah.

5 Q How--were you in a car?

6 A Yeah.

7 Q Whose car?

8 A Manning's.

9 Q Where did you go?

10 A We went to Gilbert's.

11 Q Who drove?

12 A Manning.

13 Q What happened when you got to Gilbert's?

14 A Well, we got to his house and he came out with a--two  
15 guns.

16 Q Do you know what kind of guns they were?

17 A Well, right, you know, I know what they are now.

18 Q What were they?

19 MR. KOOPMAN: Objection, Your Honor.

20 THE COURT: I will sustain it.

21 Q Describe when Gilbert carried them out. What did they  
22 look like?

23 A Two long guns.

24 Q What was the--was there a difference between the two of  
25 them?

1 A Yeah. There was one short and one long.  
2 Q All right. I need you to demonstrate to the jury what  
3 short and long was.  
4 A Well, one was about this long.  
5 Q Now--okay. For the record, about how long is that?  
6 A How many feet? It was about, uh, four feet.  
7 Q All right. Was that the shorter or the longer?  
8 A I'll say the--  
9 Q Describe the other one.  
10 A All right. Well, one was about three feet or something,  
11 you know. One was about four or five feet.  
12 Q All right. How about the length of each barrel?  
13 A The length?  
14 Q Yeah. Was there a barrel to these guns?  
15 A Yeah.  
16 Q Were they long?  
17 A Yes. One was.  
18 Q How long was the other barrel?  
19 A Well, do you want me to describe it?  
20 Q Yes. Please.  
21 A One was about something like this, and one was a long like  
22 that.  
23 Q You're talking about the barrels now?  
24 A Yeah.  
25 Q Do you know what a scope is?

- 1 A Yeah, I know what a scope is.
- 2 Q Did either of those guns have a scope?
- 3 A No.
- 4 Q Gilbert carried both of those guns out of his house?
- 5 A Yes.
- 6 Q Where were you in the car?
- 7 A In the passenger's side in front.
- 8 Q Did you get outside at Gilbert's house?
- 9 A No.
- 10 Q Did Manning?
- 11 A Nope.
- 12 Q What did Gilbert do with those guns?
- 13 A He put them in the back seat, I think. Under the seat.
- 14 Q And did he get in the car?
- 15 A Yeah. He got in the car in back.
- 16 Q What happened then?
- 17 A Well, um, he said that he got in a fight with this dude
- 18 at a party and he was going to blow him away.
- 19 Q What else did he say?
- 20 A That--that's it when we were right there at his house.
- 21 We just drove to the party.
- 22 Q Were those his exact words, Mr. Luna?
- 23 A Yes.
- 24 Q Those were his exact words?
- 25 A Yes.

1 Q Mr. Luna, do you remember speaking to me earlier and do  
2 you remember pleading guilty earlier?

3 A Yes.

4 Q Do you remember saying that Gilbert said, "Fuck it, I'm  
5 going to blow his ass away"?

6 A Well, yes, that's the way he put it, you know. I just  
7 said like, you--he's going to blow this dude away at a  
8 party, you know.

9 Q Mr. Luna, you sat through the trial until today and heard  
10 testimony that Gilbert Morales was raving, steaming mad.  
11 What was his demeanor at the time he carried the guns into  
12 the car and the time that he was saying he was going to  
13 blow this dude away?

14 A You mean what kind of a--how he was mad or something?

15 Q Was he mad?

16 A Yeah, he was mad, you know.

17 Q Was he spouting off?

18 A What do you mean by that?

19 Q Was he talking a lot about going over to--back to the  
20 party?

21 A What I just said, that's what he was saying.

22 Q All right. Once Gilbert got in the car with the guns,  
23 what happened?

24 A Well, we drove to the party and then we stopped at that  
25 corner.

1 Q Who drove to the party?  
2 A Manning.  
3 Q And you stopped at what corner?  
4 A On Sheridan and Hiland.  
5 Q What happened on the corner?  
6 A Well, we stopped there for a minute and some dudes came  
7 up to the car and was talking to Gilbert and Gilbert was  
8 just saying, "What's up," this and that. And, uh, Gilbert  
9 asked somebody where was Tom at.  
10 Q Did he say, "Tom," or did he say "Tom Newvine"?  
11 A He said "Tom."  
12 Q Did anybody respond to Gilbert?  
13 A Yeah. They said he is up there, somewhere up there, you  
14 know.  
15 Q What happened then?  
16 A And then, well, Manning got out the car, was talking to  
17 somebody, too. And then he opened the back seat of the  
18 back, in back, and then he got, uh, the .22 out. And  
19 then he went around and went to the passenger's side  
20 where I was.  
21 Q All right. When you say around, did he go around the  
22 car in the front or around the car in the back?  
23 A The back.  
24 Q So Manning, who was in the driver's seat, got out, got  
25 a .22 out of the back seat?

1 A Yeah.

2 Q And walked around the back of the car and got in which  
3 passenger's seat?

4 A The front. In the passenger's seat.

5 Q The front? What did you do since you had already been at  
6 that seat?

7 A Well, I just scooted to the driver's seat.

8 Q Did anybody tell you to do that?

9 A Yeah. Manning told me, "Scoot over," you know. Gilbert  
10 said, "Go ahead, drive."

11 Q Go ahead, what?

12 A Drive.

13 Q Drive?

14 A Yes.

15 Q Did Manning tell you to drive, too?

16 A Yes.

17 Q What happened then?

18 A Well, then I scooted over and Manning got in the car with  
19 that rifle and then Gilbert handed him a shot gun, and  
20 then Manning passed him back the .22. And then Gilbert  
21 said, "You ready?" He said, "Yeah." So, you know, we  
22 were driving. I was driving slow and I ducked, you know,  
23 ducked down.

24 Q Demonstrate for the Court and the jury what you mean you  
25 ducked down?

- 1 A Well, I scooted down like this, you know.
- 2 Q Scooted down below the steering wheel?
- 3 A Yeah.
- 4 Q Why did you do that?
- 5 A Well, because I knew what was going to happen.
- 6 Q What was going to happen?
- 7 A Gilbert was going to shoot Tom.
- 8 Q And, well, at what point, Mr. Luna, when was the first
- 9 point that you knew that there was going to be a shooting
- 10 that night?
- 11 A When we got to Gilbert's.
- 12 Q When you and Manning got to Gilbert's?
- 13 A Yeah.
- 14 Q You knew that there was going to be a shooting?
- 15 A Yeah.
- 16 Q Was that confirmed in your mind that there was going to be
- 17 a shooting at the time that you were sitting on the corner
- 18 of Hiland and Sheridan?
- 19 A Yes.
- 20 Q How long did you sit on the corner of Hiland and Sheridan?
- 21 A About a minute or two.
- 22 Q So, when you slouched down behind the steering wheel, you
- 23 had been in a sitting position in the car?
- 24 A Yes.
- 25 Q And you sat there for a minute or two while all this is

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1 going on; is that right?  
2 A Yup.  
3 Q And then what did you do?  
4 A Well, um, like I said, we--Gilbert said, "Are you ready?"  
5 And we said, "Yeah." So I started driving slow and I  
6 just starting ducking down low, you know.  
7 Q And you were driving real slow?  
8 A Yeah.  
9 Q Then what happened?  
10 A And then I heard one shot and then I started driving kind  
11 of fast, and Gilbert just kept shooting, you know. He  
12 didn't stop shooting the gun.  
13 Q Did you take off with the car?  
14 A Yes, I took off.  
15 Q Is it fair to say, Mr. Luna, that you drove away real  
16 fast after the shooting?  
17 A Yes.  
18 Q You said that when you were sitting at the corner before  
19 you started driving slowly--  
20 A Uh-hum.  
21 Q --Gilbert said, "Are you ready?" Did he say, "Are you  
22 ready," or did he say, Mr. Luna, "Are you ready to do it?"  
23 A Yeah, he put it that way.  
24 Q Which way?  
25 A Are you ready to do it, you know.

1 Q And you knew in your mind, "to do it," meant---

2 A Shoot him.

3 Q Mr. Luna, at the time of your arrest, did you have the  
4 occasion to speak with Detective Genovese?

5 A Yes.

6 Q And did Detective Genovese read you your rights and you  
7 waived them and decided that you would give a statement?

8 A Yes.

9 Q In that particular statement, you said some things but  
10 didn't say everything that you told the Court and the  
11 jury today?

12 A Yes.

13 Q What happened between then and now? I mean, why didn't  
14 you tell Detective Genovese at the statement everything  
15 you're telling us now?

16 A Well, I was scared to tell them because, you know, I  
17 didn't want to get, get involved with this stuff. But  
18 that's why I'm here, to tell the truth, you know,  
19 because--

20 Q Is it fair to say, Mr. Luna, you were trying to save your  
21 neck at the time that you were talking to Detective  
22 Genovese?

23 A Yeah. Yes.

24 Q So you were going to put yourself in the car driving?

25 A Yes.

1 Q But you were going to be--

2 A What's that?

3 Q I'm sorry. You weren't going to tell everything?

4 A Yeah.

5 Q You were going to tell what you had to?

6 A Yes.

7 Q Are you telling the truth today?

8 A Yes.

9 Q Does Mr. Manning have a nickname?

10 A Yes.

11 Q What is it?

12 A Frog.

13 Q Is he in the courtroom today?

14 A Yes.

15 Q Point him out, please.

16 A He's wearing a sweater, a colored sweater.

17 Q A colored sweater?

18 A Yeah.

19 Q Where is he sitting in the courtroom?

20 A Sitting right there next to his attorney.

21 MRS. McLEOD: May the record reflect the  
22 identification of Mr. Manning as identified by Mr.  
23 Manning, Your Honor?

24 THE COURT: It will.

25 MRS. McLEOD: That's all, Your Honor.

CROSS-EXAMINATION

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BY MR. KOOPMAN:

Q Mr. Luna, how long have you known Robin Rick Manning?

A Manning? Well, I used to see him at Saginaw High. I just knew him by face.

Q How long have you known him?

A Known him?

Q As a friend.

A About--I'd say about maybe a year, a year and a half.

Q How long have you known Gilbert Morales?

A Well, uh, I can't recall that. I'd say--

Q Have you known him personally longer than you've known Mr. Manning?

A No. That's when I really knew them both, you know.

Q So would it be an accurate statement to say that you've known Mr. Morales personally for about a year, a year and a half?

A I'd say, uh, well, like I said, I just known him about off the streets.

Q Okay. Then would it be an accurate statement to say that you don't really know Mr. Morales?

A Well, I knew him, but not--

Q You don't--didn't you say you know him, you're able to recognize his face? I mean, know him personally?

A Not really.

1 Q Why was Mr. Manning at your house that night?

2 A We were with each other all day. We were just at the  
3 park. He just happened to be with me that day.

4 Q Which park was that?

5 A Well, I would say we were at, um, right there by  
6 Anderson Pools. That--

7 Q Where is that?

8 A Tennis. Where you go play tennis up there.

9 Q All right. Were you drinking?

10 A Not that much.

11 Q Just yes or no. Were you drinking?

12 A Yeah.

13 Q What were you drinking?

14 A We drank a pint of whiskey.

15 Q Between the two of you?

16 A Yeah.

17 Q Anything else?

18 A No.

19 Q Why did you leave the park?

20 A Well, that's when the cops came so, you know, we had to  
21 leave.

22 Q Why did the cops tell you to leave?

23 MRS. McLEOD: Objection.

24 WITNESS: They made everybody.

25 MRS. McLEOD: Objection, Your Honor. Relevance

1 and conclusion.

2 THE COURT: Well, he can testify. Proceed.

3 WITNESS: They made everybody leave.

4 Q Why?

5 A I don't know. It was kind of late.

6 Q Were just you and Mr. Manning together at that park or  
7 were there other people?

8 A Yeah. There was three other people.

9 Q What did you and Mr. Manning do at your house that night?

10 A We just stayed around there. Stayed in the house and  
11 just watched TV for a while.

12 Q Did you have anything to drink at your house?

13 A No.

14 Q Were you drunk that night?

15 A No. I was buzzed.

16 Q You were--

17 A Not drunk.

18 Q What, for the benefit of the jury, what does it mean when  
19 you're buzzed?

20 A I can't describe it. It was just--I don't know how to  
21 describe it.

22 Q Was there anybody else at your house that night besides  
23 you and Mr. Manning?

24 A Uh, just my sister.

25 Q Was she in the room when the telephone rang?

1 A I don't know. I just seen Manning get the phone.  
2 Q Does Mr. Manning normally answer the telephone at your  
3 house?  
4 A Nope.  
5 Q Did you ask him to answer it?  
6 A Yeah.  
7 Q Did you listen to the conversation that he had?  
8 A No. I was just sitting down when he was talking.  
9 Q You were in the same room?  
10 A Yeah. No. He was in the kitchen and I was in my living  
11 room.  
12 Q How would you describe Mr. Manning's condition when he  
13 returned to the room you were in?  
14 A Well, he just, um, said, come on, man, Gilbert, Gilbert  
15 wants--needs a backup on a fight.  
16 Q Okay. He said Gilbert needs a backup on a fight?  
17 A Yeah. That's what he said.  
18 Q What does a backup on a fight mean?  
19 A Go help him on a fight, you know. That's what he said,  
20 and that's what I'm telling you.  
21 Q At that point, what did you understand that you were going  
22 to do?  
23 A Go fight.  
24 Q Fight as in with fists?  
25 A Yeah.

1 Q Did you take any weapons with you?  
2 A From my house?  
3 Q Yeah.  
4 A No.  
5 Q Were there weapons available to you in that house?  
6 A No.  
7 Q How long a time period elapsed between the telephone call  
8 and when you left?  
9 A From my house?  
10 Q Yes.  
11 A When Manning was talking about--  
12 Q Yes.  
13 A Well, it's been a while. I can't remember. All I  
14 remember is what Manning told me.  
15 Q Well, did you leave right away?  
16 A Yeah. We left right away.  
17 Q Okay. Was there any talk between you and Mr. Manning on  
18 the way over to Morales's house?  
19 A Uh-uh. I don't think so.  
20 Q All right. At this point on the way over to Morales's  
21 house, you thought that you were going to be a backup in  
22 a fight?  
23 A From my house, yeah.  
24 Q Okay. A backup in a fight, meaning you're actually going  
25 to fight yourself?

1 A From my house is right.

2 Q Now, you testified in response to some of my earlier  
3 questions that you don't really even know Mr. Morales.

4 A Not really.

5 Q So why were you going to go over and fight as his backup?

6 A I don't know. Like I said, I was buzzed, and I didn't  
7 think about nothing, you know.

8 Q You got to Morales's house?

9 A Yeah.

10 Q Was he waiting on the front porch?

11 A Yeah.

12 Q What time of night was it when you got there?

13 A I don't know.

14 Q Was it after midnight?

15 A I'd say it was. I think it was.

16 Q Was Gilbert standing or sitting on the front porch?

17 A He was---I can't remember. It was a long while.

18 Q Were there other people out on the street that Gilbert  
19 lived at?

20 A I don't know.

21 Q Now, it's your testimony that Gilbert walked off that  
22 porch with two guns, correct?

23 A Yeah.

24 Q Were those guns in cases?

25 A No.

1 Q They were just in plain view?

2 A Yeah.

3 Q Did he have them both in one hand?

4 A No. They were big guns. I don't think he had them in one  
5 hand.

6 Q Did he have one gun in each hand?

7 A I think so.

8 Q And you say you saw two guns?

9 A Yes.

10 Q One gun that was approximately four to five feet long?

11 A Well, I really can't describe them, but they were long.  
12 And I really can't say how long they were. That's the  
13 way I have to put it. It's the only way I know it.

14 Q Did you see any ammunition?

15 A No.

16 Q Did he tell you the guns were loaded?

17 A Nope.

18 Q Would it be accurate to say you don't know whether or not  
19 there was ammunition in the guns when he got into the car?

20 A I don't know.

21 Q He put these two guns into the back underneath the back  
22 seat, you testified?

23 A Yes.

24 Q Did you ask him, hey, what are you doing? What have you  
25 got those guns for?

1 A No. He just said he was just going to go blow this dude  
2 away because he beat him up at a party.  
3 Q And you didn't think anything about that?  
4 A Nope.  
5 Q You didn't say anything to try and stop him?  
6 A Nope.  
7 Q You didn't say boy, that sounds like a bad idea?  
8 A I didn't say nothing.  
9 Q How were you feeling at the time?  
10 A What do you mean?  
11 Q Were you scared?  
12 A Was I scared?  
13 Q Yeah.  
14 A No. I couldn't recall that. I just don't know.  
15 Q Were you still buzzed?  
16 A Yeah, I was still buzzed.  
17 Q Had Mr. Manning been drinking that night or that day with  
18 you?  
19 A Yes. I told you we was.  
20 Q Would you describe his condition as being about the same  
21 as yours?  
22 A I'd say he was--he was more to it, you know, in more, more  
23 drunker.  
24 Q He was drunker than you were?  
25 A I would say he was.

1 Q Okay. Gilbert was pretty mad that night, wasn't he?  
2 A Well, yeah. He was pretty mad.  
3 Q Did you see any blood on him?  
4 A Uh, I don't know.  
5 Q Did you notice that his clothes were ripped or ruffled?  
6 A I really didn't pay attention to him about how he was,  
7 he looked or anything like that.  
8 Q Could you tell whether or not Gilbert had been drinking?  
9 A Well, yes. He had been drinking.  
10 Q Was he drunk?  
11 A Yeah, he was drunk.  
12 Q You arrived at Sheridan and Hiland--  
13 A Yes.  
14 Q --and you parked or Mr. Manning parked the car?  
15 A Yes.  
16 Q How long was the car parked?  
17 A About a couple minutes.  
18 Q Okay. You told us that there were some dudes talking to  
19 Morales.  
20 A Yes.  
21 Q Do you know who they were?  
22 A No, I don't know who they were.  
23 Q Did Morales get out of the car?  
24 A Nope.  
25 Q Did you hear any of the conversation?

1 A All I can remember right now is that Gilbert--some dudes  
2 came to the car and Gilbert said, "What's up?" And they  
3 were just talking. But I didn't hear what they were  
4 saying, but I heard Gilbert said, "Where's Tom at?"

5 Q Okay. You said that Mr. Manning got out of the car while  
6 it was parked there?

7 A Yeah.

8 Q And he was talking to somebody?

9 A Yeah, but I don't know who it was, for a second or two.

10 Q Do you know what they were talking about?

11 A No, I don't know what he was talking about.

12 Q Now, you say that in your case anyway you knew what was  
13 going to happen that night?

14 A From where?

15 Q You knew that Gilbert Morales was going to shoot somebody,  
16 I think you said, from the time you got to Gilbert's  
17 house?

18 A Yeah.

19 Q So why did you stay involved?

20 A I don't know. I was just--didn't think about it, you  
21 know. It was just a mistake. I went for it and I  
22 didn't--it's just one of these mistakes.

23 Q As soon as you heard the first shot you took off, didn't  
24 you?

25 A Well, that's when I still was going and he shot and then

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1 he just kept shooting and shooting still going. I was  
2 going slow and he shot.

3 Q How slow were you going?

4 A Well, I can't--let me see. I'd say just in a slow motion  
5 like that's all I can describe.

6 Q Were there a lot of people outside that night?

7 A Oh, all I can remember is there was people right there  
8 standing. I was just looking around. I can't really  
9 remember if it was a lot of people or not.

10 Q Well, there were the people that Gilbert was talking to  
11 initially?

12 A Yeah.

13 Q A person that Manning was talking to? We know that Mr.  
14 Newvine was in the street. I think you were in the  
15 courtroom when Mr. Melchor testified he was in the street.  
16 Were there more people than that?

17 A Like I said, I can't remember.

18 Q Is the reason you can't remember because you were drunk  
19 that night?

20 A No. I can't--just can't remember.

21 Q Okay. But when the shots, you heard the first shot, you  
22 knew it was time to get out of there, right?

23 A Well, when I first heard the first shot, uh, I was still  
24 going slow, you know. And then he just kept shooting it  
25 off.

1 Q And you took off, didn't you?  
2 A Yeah.  
3 Q Jammed your foot down on the gas pedal?  
4 A Yeah.  
5 Q Why did you do that?  
6 A Because he shot. He shot him. He was shooting.  
7 Q Were you surprised to hear the first shot?  
8 A No, because I knew what was going to happen.  
9 Q Okay. Now, you've told us this story. Let's talk about  
10 the story you told Detective Genovese. Do you remember  
11 talking to him?  
12 A Yeah.  
13 Q Do you remember giving him a statement?  
14 A Yup.  
15 Q Did the Detective give you your rights?  
16 A Yes.  
17 Q Did you realize at the time that you were a suspect in a  
18 murder case?  
19 A Yes.  
20 Q And you told him the story, didn't you?  
21 A Not the real story.  
22 Q You told him that all you thought was going to happen that  
23 night was a fight, didn't you?  
24 A From my house?  
25 Q Through your whole statement, that's all you told him,

1            isn't it?

2            A        Yeah.

3            Q        Do you recall telling Detective Genovese that Gilbert was  
4            mad and drunk? Do you?

5            A        That's what--

6            Q        Do you recall telling Detective Genovese that Gilbert  
7            Morales was mad and drunk that night?

8            A        Yes.

9            Q        I want you to read this question and this answer that  
10           I'm pointing to. Okay.

11           A        (Indicated.)

12           Q        Now, you told us in the Prosecuting Attorney's testimony  
13           that Gilbert said that he was going to blow this guy  
14           away.

15           A        Yes.

16           Q        What did you tell the Officer according to this statement?

17           A        Which--do you want me to say, that?

18           Q        Right there.

19           A        He said, "I'm going to get this dude," that's about it.

20           Q        So why is it that you told the police that Gilbert just  
21           said that he was going to get this dude, and now you're  
22           telling the Prosecuting Attorney that he said that he  
23           was going to blow him away?

24           A        Well, see, I was--that's when I was--when I talked to  
25           Genovese, I was like trying to protect myself. That's

1           why I told a lie.

2           Q       So you--are you trying to protect yourself now?

3           A       No. Right now I'm giving it all what happened.

4           Q       Okay. The ones that are circled there, what did you  
5           tell Detective Genovese as to where the--whether or not  
6           there were guns in the car?

7                        MRS. McLEOD: Mr. Koopman, would you tell me  
8           the page?

9                        MR. KOOPMAN: The same page.

10                      MRS. McLEOD: Thank you.

11          Q       You told him that the guns weren't put in the car.

12          A       Yes. I told him that.

13          Q       When Detective Genovese asked you whether the car ever  
14          stopped and people got out and changed places, how did  
15          you tell him? Did you tell him yes or no?

16          A       What's that?

17          Q       When Detective Genovese asked you whether or not the car  
18          had ever stopped and people had changed places, did you  
19          tell him that it happened or it hadn't happened?

20          A       I told him that it didn't happen.

21          Q       Did you tell the Detective that you didn't know that he  
22          had a gun?

23          A       Did I tell him?

24          Q       That you didn't know that Gilbert Morales had a gun.

25          A       Oh, yeah. That was--

1 Q Did you tell the Detective that Gilbert just said, "Stop  
2 so that I'm going to talk to him"?

3 A Talk to which--what you say now?

4 Q Did you tell the Detective that Gilbert just said, "Stop,  
5 so I'm going to talk to him," meaning talk to Tom Newvine?

6 A Talk to him? What--say that again. I don't know what  
7 you're saying.

8 Q Did you tell Detective Genovese that Gilbert Morales just  
9 simply said, "Stop, I want to talk to Tom Newvine"?

10 A Did I tell him that?

11 Q Yes.

12 A I guess so. It's right there.

13 Q And you did tell him that the guns were not brought to the  
14 car by Gilbert Morales, didn't you?

15 A That's when, uh, right. You know, that statement right  
16 there, that's when I was talking to him but, see, you  
17 know, I'm making everything clear so you know. Right  
18 there is where I lied on the statement. That's why I'm--

19 Q All right. You knew you were under oath when you were  
20 giving this statement?

21 MRS. McLEOD: I object, Your Honor, it was not  
22 under oath. I object to that being--

23 THE COURT: I'll sustain it.

24 Q Do you know whether or not Mr. Manning ever hit Mr.  
25 Newvine with anything?

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1 A No, he didn't hit him with nothing.

2 Q Did he ever shoot a gun?

3 A Manning?

4 Q Yeah.

5 A No

6 Q Would it be an accurate statement to say that you were  
7 afraid to tell the Detective the truth?

8 A Yes, it would be.

9 Q In response to one of the Prosecuting Attorney's  
10 questions, you stated or at least agreed with her  
11 statement that when you talked to the police, you were  
12 trying to, in effect, save your neck. Would that be  
13 an accurate statement?

14 A Yes.

15 Q Were you still trying to save your neck when you entered  
16 into a plea bargain agreement?

17 A Say that, you know.

18 Q Were you still trying to save your neck when you entered  
19 into the plea bargain agreement today?

20 A Well, all I just want to do is tell the truth like it was  
21 because--

22 Q Why did you suddenly want to tell the truth after you  
23 lied so much?

24 A Because, you know, that's the way I feel about it, you  
25 know.

1 Q What happened that suddenly changed your mind that you  
2 feel this way?

3 A I just didn't want to take it to trial because, you know,  
4 I'm guilty--we're guilty, you know.

5 Q Mr. Luna, isn't the truth of the matter that you didn't  
6 want to take it to trial because you didn't want to risk  
7 being found guilty by the jury?

8 A No, not that. It's just like I said. I wanted to plead  
9 guilty because I am guilty.

10 Q You wanted to take the sure thing, didn't you?

11 A What's that?

12 Q You wanted to take the plea bargain and take the sure  
13 thing, didn't you?

14 MRS. McLEOD: Objection, Your Honor. I think  
15 that counsel and I should approach the bench at this  
16 point.

17 (Whereupon a discussion was held off the  
18 record.)

19 Q I'm not certain that you answered the last question, Mr.  
20 Luna. My question to you was: Didn't you want to take  
21 the plea bargain because you knew what was going to  
22 happen?

23 A No. I took it because, you know, it's the way it is.

24 Q Was it that way yesterday?

25 A When the lawyer talked to me, uh--

1 Q And he explained the facts of life to you, didn't he?  
2 A Yeah.  
3 Q Yeah. Friday, we were in this trial and you were saying  
4 you weren't guilty; isn't that correct?  
5 A Friday I said that?  
6 Q By being in the trial, you were saying that, weren't you?  
7 A No. When they first offered us this bargain, I said yeah,  
8 I will take it. And Manning didn't want to because--  
9 Q All right. He is saying--all right. Let's talk about  
10 the plea bargain. Do you know what you were originally  
11 charged with?  
12 A Right now?  
13 Q No. What you were originally charged with?  
14 A Yes.  
15 Q What?  
16 A First degree.  
17 Q What else?  
18 A And carrying a weapon.  
19 Q By carrying a weapon, do you mean possession of a firearm  
20 while committing a felony?  
21 A Yes.  
22 Q Were you charged with anything else?  
23 A I don't know what the third one was.  
24 Q Was it carrying a dangerous weapon with unlawful intent?  
25 A Yeah, that was it.

1 Q So when you agreed to take the plea bargain, you pled to  
2 second degree murder, which was a reduced charge of first  
3 degree murder?

4 A Uh-hum.

5 Q And the Prosecutor dismissed the charge of possession of  
6 a firearm while committing a felony?

7 A Uh-hum.

8 Q Did they also dismiss carrying a dangerous weapon with  
9 unlawful intent?

10 A Yes.

11 Q Were you ever advised if you pled you would be testifying  
12 in the courtroom?

13 A Yes, I knew that.

14 Q Were you ever advised that if you were to take this  
15 plea bargain, you would have to make a statement to the  
16 Judge sufficient that he could accept a plea bargain?

17 A Yes, I knew that.

18 Q Did you discuss that with your attorney?

19 A Yup.

20 Q Did he tell you what you'd have to tell the Judge?

21 MRS. McLEOD: I object, Your Honor. I think  
22 that anything that occurred between Mr. Scorsone and Mr.  
23 Luna is their privilege. And I think it's irrelevant,  
24 the discussions they had.

25 THE COURT: I'm going to sustain it.

1 Q Mr. Luna, you're admitting that you lied in the statement  
2 given to Detective Genovese?

3 A Yes.

4 Q But you're telling us that you're telling the truth now?

5 A Yes.

6 Q This is a very important question. The fact that your  
7 story is suddenly changing, does it have anything at all  
8 to do with a plea bargain?

9 A No. Like I said, I'm here to tell the truth.

10 Q The truth?

11 MRS. McLEOD: I'm going to object, Your Honor.  
12 This has been asked and answered.

13 THE COURT: I'm going to sustain it.

14 Q You told me you drank or you at least shared with Mr.  
15 Manning a pint of whiskey that night; is that correct?

16 A Yeah.

17 Q Did you have anything to eat that night?

18 A Nope.

19 Q Had you ever backed up Robin Rick Manning in a fight  
20 before?

21 MRS. McLEOD: Objection, Your Honor. Relevance.

22 THE COURT: Sustained.

23 Q You knew what he meant when he said back up Gilbert in a  
24 fight?

25 A From our house, right.

1 Q How did you know that?  
2 A Manning told me.  
3 Q How did you know what those words meant?  
4 A Did I know what they meant?  
5 Q Yes.  
6 A Like he just said it. Like he said it, backup on a  
7 fight.  
8 Q You initially told the Prosecuting Attorney in response to  
9 questions that Gilbert said something to the effect of,  
10 "Are you ready?" Is that correct?  
11 A Are you ready?  
12 Q After the car was parked at the corner of Sheridan and  
13 Hiland--  
14 A Yeah. When we were in the car.  
15 Q Then when she pressed you, you--she was asking you if he  
16 said was it, "Are you ready to do it?" And you responded  
17 "You could say that." Do you remember that?  
18 A Yes, I remember that.  
19 Q I want you to answer the question for me, yes or no, do  
20 you distinctly remember Gilbert saying, "Are you ready to  
21 do it?"  
22 A Yes.  
23 Q Okay. Was there ever any discussion between the three of  
24 you as to how you were going to do it?  
25 A No.

1 Q Did the three of you plan it?

2 A Nope.

3 Q You just at some point knew that Gilbert was going to  
4 shoot somebody?

5 A From Gilbert's house.

6 Q But you didn't plan it?

7 A No.

8 Q And other than Gilbert making, uh, his threats, there  
9 really wasn't any other discussion about it, was there?

10 A No.

11 MR. KOOPMAN: I have no other questions, Your  
12 Honor.

13 REDIRECT EXAMINATION

14 BY MRS. McLEOD:

15 Q Mr. Luna--

16 A Yup.

17 Q --you told--your interview with Detective Genovese was on  
18 August 20; wasn't it?

19 A Yes.

20 Q All right. Was it at the police department?

21 A Yes.

22 Q On Federal Street?

23 A Yes.

24 Q About 1:30 in the afternoon?

25 A Yes, I think.

1 Q Did you tell Detective Genovese substantially the same  
2 thing you're saying today, except that you are just  
3 telling us more?  
4 A Say that again now?  
5 Q Okay. If you don't understand what I am saying, tell me  
6 that you don't understand.  
7 A Yeah. I don't understand what you're saying.  
8 Q Okay. You told Detective Genovese what happened that  
9 night; is that right?  
10 A Yes.  
11 Q You told Detective Genovese about driving the car.  
12 A Yes.  
13 Q Did you tell Detective Genovese about the shooting?  
14 A Yes.  
15 Q And you told Detective Genovese there were two guns in the  
16 car?  
17 A Yes.  
18 Q And you told Detective Genovese it was Gilbert and  
19 Manning who had the guns?  
20 A Yes.  
21 Q And you told Detective Genovese that when Gilbert said,  
22 "I'm going to get this dude," that he had a gun?  
23 A Yes.  
24 Q You were driving?  
25 A Uh-hum. Yup.

1 Q And that when--page 8. Part of your statement was shown  
2 to you by Mr. Manning's attorney. And the third, fourth,  
3 three questions and answers up from the bottom of the  
4 page. I believe you read that to yourself?

5 A It's this one?

6 Q This one right here. Read that to yourself right now.

7 A Uh-hum.

8 Q All right. Now, Mr. Manning's attorney asked you if when  
9 you stopped the car or when the car was stopped, Gilbert  
10 said, "Stop, I'm going to talk to him." Is that what you  
11 told Detective Genovese?

12 A Yes.

13 Q You also told Detective Genovese, "I saw him pull out the  
14 gun then," didn't you?

15 A Yes.

16 Q Is it fair to say, Mr. Luna, that you didn't want to tell  
17 Detective Genovese that you knew there was going to be a  
18 homicide?

19 A Yeah. I didn't tell him the truth.

20 Q All right. You didn't want to tell Detective Genovese  
21 that you knew there was going to be a death that night,  
22 there was going to be a killing, and there was going to  
23 be a shooting, right?

24 A Right.

25 Q But you knew that, didn't you?

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1 A Yes.

2 Q Page 12, the fourth question up from the bottom. Read  
3 that and it's attending answer to yourself.

4 A Uh-hum.

5 Q Mr. Luna, Detective Genovese asked you if the guns were  
6 put in the car before you left Sheridan Street, didn't  
7 he?

8 A Yes.

9 Q And your answer was, "I'm not sure"?

10 A Yes.

11 Q You didn't completely lie in your statement to Detective  
12 Genovese, but you did leave out some things; isn't that  
13 right?

14 A Yes.

15 Q Mr. Luna, you've already entered into the plea bargain.  
16 You realize that?

17 A Yes.

18 Q If you don't tell the truth here or not, I'm not going to  
19 know the difference. Are you telling the truth?

20 A Right now?

21 Q Yes.

22 A Yes.

23 MRS. McLEOD: That's all, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. KOOPMAN:

1 Q Mr. Luna, you just told the Prosecutor from your statement  
2 that you told the Detective you weren't sure when the guns  
3 were put in the car; is that correct?  
4 A Yes. But now I'm telling the truth right now.  
5 Q All right. Now, from your statement, the question and  
6 answer directly underneath the ones you just responded to  
7 for the Prosecuting Attorney, those two, the third  
8 question from the bottom, after saying you're not sure  
9 when the guns were put in the car, didn't you turn around  
10 and then tell Detective Genovese you never saw a gun  
11 until he was shot?  
12 A Let me read this first.  
13 Q Please do.  
14 A What's that now?  
15 Q When the Prosecuting Attorney just asked you the question  
16 from what you told Detective Genovese, you told them you  
17 weren't sure when the guns were put in the car; is that  
18 correct?  
19 A That's when I was lying.  
20 Q I see. Now, the question and answer from your statement  
21 which is directly underneath the questions you responded  
22 to, you told Detective Genovese you never seen a gun until  
23 Gilbert shot; isn't that correct?  
24 A Yes. But that's when I was lying.  
25 Q Okay. Now, that means you told either the police or us

1 here in Court three different things. You've said no,  
2 the guns weren't put into the car, then you said maybe  
3 they were, and now today you say yes, they were. Those  
4 are three different answers, aren't they?

5 A Uh-hum.

6 Q They're conflicting answers, aren't they?

7 A What you mean by that?

8 Q They don't agree with each other, do they?

9 A Well, the one I told here was the one I meant. It was  
10 true.

11 Q Oh, I see. So the others aren't true?

12 A Yes.

13 Q So you lied before?

14 MRS. McLEOD: I'm going to object, Your Honor.  
15 He's admitted that.

16 THE COURT: I will sustain it.

17 MR. KOOPMAN: I don't have any further  
18 questions, Your Honor.

19 MRS. McLEOD: Just something very brief, Your  
20 Honor.

21 REDIRECT EXAMINATION, Continuing

22 BY MRS. McLEOD:

23 Q Mr. Luna, you gave two conflicting statements about the  
24 guns at the time of the statement. At the time of the  
25 statement you were trying to protect yourself--

1 A Yes.

2 Q --weren't you?

3 A Yes.

4 Q Were things moving a little fast at the time that you  
5 were talking with the detectives? Well, were you trying  
6 to think fast, I guess is what I'm saying?

7 A Yeah. I was trying to think fast.

8 Q Mr. Luna, I think it's important for the Court and the  
9 jury to understand when it was that I first talked with  
10 you. Was that this morning?

11 A Yes.

12 Q Was your attorney present at the time?

13 A Yes.

14 Q That was the first time ever that I have discussed this  
15 case with you; is it not?

16 A Yes.

17 Q Did I ask you to tell me what happened?

18 A Yes.

19 Q Did I put words in your mouth?

20 A No.

21 Q Did I let you explain what happened?

22 A Yes.

23 Q And did you tell me the same thing you're telling the  
24 jury right now?

25 A Yes.

1 Q Did I tell you to tell the truth?

2 A Yeah. Yes.

3 Q Well, did I?

4 A Yes.

5 Q Did your attorney tell you to tell the truth?

6 A Yes.

7 Q Are you telling the truth now?

8 A Yes.

9 MRS. McLEOD: That's all.

10 MR. KOOPMAN: Nothing.

11 THE COURT: That's all. You may step down.

12 Thank you. The Court will declare a brief recess.

13 (Whereupon a brief recess was taken.)

14 (Whereupon People's proposed Exhibits No. 45,  
15 46, 47, and 48 were marked.)

16 (Whereupon the jury entered the courtroom at  
17 2:06 p.m.)

18 MRS. McLEOD: We call Benito Juarez.

19 BENITO JUAREZ,

20 a witness herein, being first duly sworn, testified under  
21 oath as follows:

22 DIRECT EXAMINATION

23 BY MRS. McLEOD:

24 Q State your full name, please.

25 A Ben Juarez.

1 Q Mr. Juarez, move your chair closer to the microphone,  
2 please. Did you say Benny Juarez?  
3 A Yeah.  
4 Q Mr. Juarez, I want you to remember last August 6th in the  
5 late night hours and early morning hours, please. Did  
6 you happen to go to, attend a party over on Hiland Street  
7 in the City?  
8 A No. Yeah. That--  
9 Q Do you see the chalkboard up there? I'm pointing to it?  
10 A Yeah.  
11 Q Were you--  
12 A I was at the party.  
13 Q Was that party on the corner of Maplewood and Hiland?  
14 A Toward Sheridan by the other side.  
15 Q How did you get to the party?  
16 A I came in a Firebird.  
17 Q What color is the Firebird?  
18 A Blue with a white strip.  
19 Q Did you drive?  
20 A Uh-hum.  
21 Q Did there come a point in time when you left the party?  
22 A I was going to leave, yeah.  
23 Q All right. Did you see a fight occur?  
24 A Yeah.  
25 Q Where were you when that fight ended?

1 A Downstairs in the basement.  
2 Q Did you hear any threats?  
3 A Um, that he was going to kill Tom.  
4 Q Who is "he"?  
5 A Gilbert.  
6 Q Did you hear Gilbert say anything?  
7 A He just said that, um, after the fight, he said that,  
8 "I'm going to come back and kill you."  
9 Q Were you still in the basement at that time?  
10 A Yeah. For about a few minutes I was down there.  
11 Q And then you left?  
12 A No. I was talking to Tom.  
13 Q All right. Did there come a point in time when you left  
14 the basement?  
15 A Not really. Just all I did was go outside and drink some  
16 beer or something outside.  
17 Q Did there come a point in time when you got in the  
18 Firebird to leave?  
19 A Oh, yes.  
20 Q Why?  
21 A I'm sorry. I was telling Tito let's go check out that  
22 other party. I was telling him and Tom.  
23 Q Mr. Juarez, you're going to have to speak up. I can  
24 hardly hear you.  
25 A Okay. I had told Tom and Tito if they wanted to go to the

1 other party, and Tom didn't want to go.  
2 Q All right. Where was the Firebird parked?  
3 A It wasn't parked in front of the house. It was like  
4 maybe about three or four houses away.  
5 Q Was it on the same side of the street as the party or the  
6 opposite side?  
7 A The opposite.  
8 Q Was it headed towards, do you know, the cross-street  
9 Sheridan?  
10 A It was. It was towards Sheridan.  
11 Q It was going--is it fair to say then it was going away  
12 from the house towards Sheridan the way it was parked?  
13 A Yeah.  
14 Q When you got in the Firebird, where did you go?  
15 A Let me see. I crossed Sheridan and then I went straight  
16 a little bit and pulled into the driveway and pulled back  
17 out.  
18 Q And where did you go when you pulled out of that driveway?  
19 A I was going back towards the park.  
20 Q Parked towards the party? Back towards Sheridan?  
21 A Yeah. To pick up Tito.  
22 Q Where was Tito?  
23 A He was waiting in front. He was waiting for me because I  
24 told him you know, let's go to the other party. He said  
25 all right.

1 Q All right. He was waiting out front what?

2 A He was by--in front of the house.

3 Q In front of the house where the party was?

4 A Uh-hum. He was waiting for me.

5 Q So you left the party and you're going towards Sheridan  
6 and you cross Sheridan. You went up that, up Hiland a  
7 little further, turned around in the driveway, and came  
8 back towards Sheridan?

9 A Uh-hum.

10 Q Did you then cross Sheridan going back towards Maplewood?

11 A Yeah. Across Sheridan.

12 Q Did you have to stop for anything once you had crossed  
13 Sheridan?

14 A Yeah. Because there was a car parked in front of me.

15 Q What kind of car?

16 A It was like a brownish maybe. Yeah, it was brown like  
17 coffee maybe.

18 Q Was it moving or was it stopped?

19 A It was stopped.

20 Q Did you see any persons that you recognized in or around  
21 the car?

22 A When it was stopped?

23 Q Yes.

24 A Not really, because I wasn't paying attention. I was just  
25 waiting for that car to move.

1 Q So that you could move?  
2 A I was waiting for that car to move, you know, so I could  
3 start stepping on the gas.  
4 Q Because you wanted to move?  
5 A Yeah. Because I was going to go pick up Tito.  
6 Q Did anything unusual occur then?  
7 A Well, it started, the car started ~~to move~~ slow, and then  
8 all of a sudden I just seen, um, there was started  
9 shooting. And I ducked under the dashboard because I  
10 thought it might be coming towards me. And I was looking  
11 and looking and I just seen some guns fire.  
12 Q Where were these guns?  
13 A On the right side of the car.  
14 Q How many were there?  
15 A Two.  
16 Q Describe the car with particularity, if you will, please.  
17 A Try to describe it?  
18 Q Yes. Do you know what make it was?  
19 A No, I don't. I don't even know what kind of car it was.  
20 Q Do you know whether it was two or four door? If you  
21 don't know, that's fine.  
22 A I'm not--well, I'm not sure, so I guess I don't know.  
23 Q All right. You saw two guns coming from the right side  
24 of the car?  
25 A Uh-hum.

1 Q Were there two windows on the right side of the car?

2 A I think so.

3 Q Did you see what kind of guns they were?

4 A Well, one was long and one was short.

5 Q Did you see each of them fire?

6 A Well, when the shooting was, when they were shooting, you  
7 know, I seen like, like two fires, you know, going like.

8 Q Did you recognize anybody at that time?

9 A At the shooting?

10 Q Yes.

11 A Well, after the shooting had stopped, the car took off,  
12 and I was going to pull to the side, and I seen Terry  
13 Zamudio screaming, "Tom."

14 Q Mr. Juarez, please come to the board. When you started  
15 testifying--let me orient you for a moment, please. The  
16 street that goes across the board to the left and to the  
17 right is Hiland. The street that's going up and down,  
18 that's labeled as Sheridan. That's to the right. To the  
19 left would be Maplewood as it's been identified before.

20 A So the party would be over here?

21 Q That's right. I'd like you to take the chalk, please.  
22 Draw in where your car would have been and if this is  
23 Sheridan, where, how far down to the right your car would  
24 have gone before it turned around and then draw it back  
25 its path.

1 A Oh, okay. This corner right here. The corner--that's the  
2 corner, right.

3 Q You're sure? Let's do it this way.

4 A Um--

5 Q Speak right up now, witness, so that the reporter can  
6 hear you.

7 A All right. Um, the car was parked. This, the party was  
8 over there and the car would be around here.

9 Q Let me take your chalk, please. And it was facing  
10 toward Sheridan; is that right?

11 A Yeah. And then I came all the way down the street,  
12 probably pulled in the driveway somewhere around over  
13 here. This driveway right here.

14 Q Correct me if I'm wrong, please. Is it fair then to say,  
15 Mr. Juarez, from your car, that the Firebird, that you  
16 stopped at Sheridan before you crossed?

17 A Yeah. Just a little to see if any cars were coming.

18 Q Up into a driveway?

19 A Uh-hum.

20 Q Backed out, came back? Do you stop at Sheridan on the way  
21 back?

22 A Yeah. Because--to see if any cars were coming.

23 Q You crossed Sheridan?

24 A Uh-hum.

25 Q Take the chalk, please. Where did your car come to rest

1 behind the car with the guns? Where was the car with the  
2 guns at the time you had to stop for it?

3 A It was about right here, and I was about there.

4 Q All right. You may resume your stand.

5 A (Indicated.)

6 MRS. McLEOD: That's all, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. KOOPMAN:

9 Q Mr. Juarez, do you recall giving a statement to Detective  
10 Genovese?

11 A To whom?

12 Q To Detective Genovese.

13 A That's you?

14 Q This gentleman on my right.

15 A Yeah.

16 Q Do you recall telling him that you saw one rifle protrude  
17 from a right rear window of the vehicle?

18 A Yeah.

19 Q You just told the Prosecutor you saw two guns. How come  
20 you didn't tell the Detective about the other gun?

21 A Because I didn't want to end up here.

22 Q I see. Did you ever tell the Detective that you saw the  
23 guns firing as you just testified?

24 A Huh?

25 Q Did you ever tell the Detective that you saw the gun

1 firing as you've just testified?  
2 A Which gun are you talking about?  
3 Q The gun that you told the Detective you saw come out of  
4 the right rear window?  
5 A Oh, Gilbert's gun, right? You're saying Gilbert's, right?  
6 Q Yes.  
7 A Yeah. I told him it was firing.  
8 Q You're sure about that?  
9 A When we were talking, I saw--well, I was pretty sure. I  
10 said yeah.  
11 Q Okay. Do you recall telling the Detective that you heard  
12 five shots?  
13 A Yeah. About five or six shots maybe.  
14 Q Do you recall telling him they sounded like they came from  
15 one gun?  
16 A Yeah.  
17 Q You saw two guns fire, but you only heard one gun fire?  
18 A I saw two guns fire, and I told him that it was one,  
19 because I didn't want to come here. Because, see, first,  
20 everybody in the basement heard Gilbert say that he was  
21 going to come back and kill Tom.  
22 Q All right. I don't--let me interrupt you for a minute.  
23 Is there anything else you told the Detective that wasn't  
24 true?  
25 A Like what?

1 Q I'm asking you. To avoid coming here today?

2 A The only thing that I lied to him about was saying that  
3 there was one gun and it was--and it was just Gilbert.

4 Q And now that you are here, you may as well tell the truth;  
5 is that correct?

6 A True.

7 Q In the drawing that you made for the Prosecuting Attorney,  
8 I'm going to ask you to come off the stand a minute so  
9 that you can see. You told the Prosecuting Attorney that  
10 the blue X on the left would be the brown car?

11 A Uh-hum.

12 Q And the blue X on the right would be--

13 A Me.

14 Q Your car. All right. These cars are drawn from an  
15 approximation of the curb and that they look like they  
16 are parked next to your car. Did he park next to the  
17 curb?

18 A Um, just--okay. Like--

19 Q Speak up, witness. We can't hear you.

20 A Okay. There is a corner right here.

21 Q All right.

22 A Okay. Here's about maybe one car that would fit right  
23 there.

24 Q Oh, right.

25 A And that's where I was.

1 Q You're saying then that a car could fit between you and  
2 the south side of Hiland?

3 A It would be the corner.

4 Q To the corner of Sheridan?

5 A No. Okay. That's where my car was, right. And I said  
6 that a car could fit right there.

7 Q My question to you is: Are you next to the curb or are  
8 you in the middle of the road?

9 A In the middle.

10 Q Okay. Is there a reason why you didn't draw the car in  
11 the middle of the road?

12 A I didn't have to, because the cars are right there on the  
13 side. You can't be on the other side.

14 Q What did it sound, the gun sound like?

15 A Something like--not no big heavy gun or nothing like that.  
16 It was like a cap gun or something.

17 Q All right. Describe the sounds. Were they rapid? Were  
18 they slow? How quickly did they come?

19 A What--are you saying at the same, both of them at the same  
20 time or one--

21 Q Any sounds that you heard.

22 A Of the guns?

23 Q Yes.

24 A They were like not slow, they were going kind of fast.  
25 Not real, real fast, but like a ta--ta--ta--ta.

1 Q One right after the other?

2 A Yeah.

3 Q How were you able to distinguish between the sounds of the

4 two guns?

5 A What do you mean by that?

6 Q How did one sound differently than the other?

7 A How did they sound different? They almost sounded the

8 same.

9 Q So is it possible then the sound could have come from one

10 gun?

11 A Not if there were two fires coming from the window.

12 Q All right. You testified you saw a long gun and short

13 gun?

14 A Uh-hum.

15 Q Describe for me what the long gun looked like?

16 A When he was firing, like it was going something most like

17 this. He was moving it up and downwards. Probably right

18 hand.

19 Q Like he was cocking it or something? What did the short

20 gun look like?

21 A I'm not too sure. But it was, like if I can remember, it

22 was like a square kind maybe.

23 Q What do you mean by it was like a square kind?

24 A It was like the kind that ain't got that round circle in

25 the middle.

1 Q Which round circle are you talking about?

2 A Um---okay. Like they got like about six shots, you know,

3 a circle. In a circle that turns and turns every time you

4 shoot. And that couldn't, it was not the kind that's--how

5 can I put it? It's something like a clip you would use

6 for a clip.

7 Q That's the kind of gun it was?

8 A Uh-hum. Because it was square, it wasn't no round.

9 Q Okay. So it was a hand gun?

10 A Yeah.

11 Q A pistol?

12 A Yeah. A hand gun.

13 Q All right. Which window did you see the long gun come out

14 of?

15 A The back.

16 Q From which window did you see the short gun come out of?

17 A The front.

18 Q Do you know what color the short gun was?

19 A I don't know. It looked like could have probably been a

20 nickel plated. That's like a cream color, ain't it?

21 Q You told us that you ducked underneath the dashboard.

22 At what point did you do that?

23 A Why did I do this?

24 Q No. At what point did you do that? When did you do it?

25 A As soon as I seen the guns firing.

1 Q All right. You said you saw the guns firing?  
2 A Yeah.  
3 Q But you ducked under the dashboard because you didn't know  
4 if they were firing at you?  
5 A Yeah. Because they were still firing when I looked back  
6 up.  
7 Q How long did you--how long of a period were you ducked  
8 down?  
9 A About maybe a second. I just went down and I looks like  
10 that, you know. That was still firing.  
11 Q How many did you have to drink that night?  
12 A Not much because--because it was--oh, let me see. Not  
13 enough to be drunk, you know, drunk drunk where I wouldn't  
14 know what I was doing.  
15 Q Were you drinking beer from a cup?  
16 A Yeah.  
17 Q Were you drinking beer?  
18 A Yeah.  
19 Q Do you know how many cups you had?  
20 A I don't count.  
21 Q More than five?  
22 A Maybe. Maybe. I'm not too sure.  
23 Q Probably?  
24 A (No response.)

25 MR. KOOPMAN: I have no other questions, Your

1 THE COURT: That's all. You may step down.

2 MRS. McLEOD: Your Honor, we call Gloria  
3 Barrera.

4 GLORIA BARRERA,  
5 a witness herein, being first duly sworn, testified under  
6 oath as follows:

7 DIRECT EXAMINATION

8 BY MRS. McLEOD:

9 Q State your name, please.

10 A Gloria Barrera.

11 MRS. McLEOD: Your Honor, we tender Miss Barrera  
12 for cross-examination.

13 THE COURT: You may cross-examine.

14 MR. KOOPMAN: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. KOOPMAN:

17 Q Miss Barrera, were you at a party on the night of August  
18 6th, 1984?

19 A Yes.

20 Q Where was that party at?

21 A On Hiland Street.

22 Q Do you recall what time you arrived at the party?

23 A At about 10:00.

24 Q Did you go alone or did you go with somebody?

25 A By myself.

1 Q Did you see a fight that night?  
2 A No. I got there after it ended.  
3 Q While you were at that party, did you have anything to  
4 drink?  
5 A A little bit.  
6 Q How much is a little bit?  
7 A A little bit.  
8 Q Were you drinking beer?  
9 A Yup.  
10 Q Four glasses?  
11 A No. I don't know how many glasses.  
12 Q All right. At some point, did you leave that party to go  
13 outside?  
14 A Yup.  
15 Q Did you see anything unusual?  
16 A What do you mean?  
17 Q Did anything unusual happen while you were outside that  
18 night?  
19 A Well, what are you talking about unusual? Like what?  
20 Q Did you see somebody get shot that night?  
21 A Yup.  
22 Q When you were outside, were you alone?  
23 A Yeah. There was a lot of people out there.  
24 Q Were you talking to anybody in particular?  
25 A No.

1 Q Did you see a car come down the road?  
2 A Yup.  
3 Q What color was that car?  
4 A It looked like maroon.  
5 Q All right. When this car came down the road, where were  
6 you in relation to Mr. Newvine?  
7 A I was by the house.  
8 Q Were you in the driveway?  
9 A On the grass.  
10 Q Okay. Up by the house itself?  
11 A Yeah.  
12 Q What was it that drew your attention to this vehicle  
13 that was coming down the road?  
14 A I don't know. I just saw it.  
15 Q Did you see any guns sticking out of it?  
16 A Yup.  
17 Q How many?  
18 A Two.  
19 Q Where were they coming from?  
20 A Out the window.  
21 Q Which side?  
22 A The right. Um, on the passenger's side.  
23 Q Was there a front window and back window?  
24 A Yeah.  
25 Q Were both guns coming out of the same window or--

1 A No.

2 Q Both guns, each gun coming out of a different window?

3 A Yeah.

4 Q Do you know what kind of guns they were?

5 A Nope.

6 Q Were they long guns?

7 A Yeah.

8 Q They weren't hand guns?

9 A No. Well, one--I saw one and the other one--I don't know  
10 what kind it was.

11 Q You only saw one of the guns then?

12 A No, I saw two. I don't know how guns look. I don't know  
13 what kind they are.

14 Q Well, the one gun you saw for sure that you--

15 A It was a long gun.

16 Q All right. How long would you say that was in inches?

17 A I don't know.

18 Q Well, was it longer than two feet?

19 A I don't know.

20 Q What did the other gun look like?

21 A It was shorter. I don't know. It looked littler.

22 Q Could the other gun be held in one hand?

23 A I don't know.

24 Q Did you see any individuals in that car that you  
25 recognized?

1 A No. I thought I did, but I was wrong.

2 Q Who did you tell the police you saw in that car?

3 A Tim Lazano, David Dutcher, and Robert, and I think

4 Gilbert.

5 Q Okay. Have you had an opportunity to review your

6 statement since you gave it to the police?

7 A Yeah.

8 Q When was the last time you reviewed it?

9 A Last week when I got it.

10 Q What do you mean when you got it?

11 A I got it last week. They gave it to me. That's when I

12 read it.

13 Q Who gave it to you last week?

14 A Prosecuting Attorney. One of them.

15 Q Or one of the Detectives?

16 A Yeah.

17 Q Do you still have that statement?

18 A I don't have it with me.

19 Q This is a transcript of your statement that you gave to

20 the police.

21 A Uh-hum.

22 Q And I believe you've already testified that you saw

23 Gilberto Morales, Tim Lazano, David Dutcher, and--

24 A I told you that.

25 Q Okay. You said that--

1 A Yeah.

2 Q --you saw them in the car. Where did you tell them that

3 Gilbert was seated in the car?

4 A In the front seat.

5 Q Was he driving?

6 A No.

7 Q He was in the passenger's seat?

8 A (No response.)

9 Q Who did you say was driving?

10 A I said I thought Tim was driving.

11 Q Where did you say Robert Marillo was sitting?

12 A In the back.

13 Q And where did you say the other individual was sitting?

14 A In the back.

15 Q Okay. Did you see a bat that night?

16 A Yup.

17 Q Was the bat outside of the car?

18 A I saw one swing out the window.

19 Q Who swung it out the window?

20 A I don't know. I didn't see who did it.

21 Q Did it come out the front window or the back window?

22 A I don't know. I just didn't--seen them swing it out.

23 Q Where was it swung at?

24 A To hit Tom, I guess. I don't know.

25 Q Who did you see with guns, according to the statement you

1           gave to the police?  
2           A        I said I saw Gilbert with one.  
3           Q        Did you say anybody else?  
4           A        Nope.  
5           Q        When did you learn you were mistaken in the information  
6                    you gave to the police?  
7           A        When my mother read that, she said it was one. She told  
8                    me, "I thought you said two." I said I did. And she  
9                    said on there it was one.  
10          Q        When she read what?  
11          A        That--I let her read my paper.  
12          Q        So when you gave the statement to the police, this is  
13                    what you "saw" at the time?  
14          A        No. I said "I thought."  
15          Q        Did you--  
16          A        Did I what?  
17          Q        --say you thought these things?  
18          A        (No response.)  
19          Q        Now, using this same transcript, I'm going to ask you to  
20                    read starting where I'm pointing and then go on, go on to  
21                    the second or third answer on the next page.  
22          A        Did you see from--  
23          Q        No. Read it to yourself.  
24          A        Okay. (Indicated.)  
25          Q        Do you remember the name of the Detective that you gave

1           this statement to?  
2       A     Yeah.  
3       Q     What was the Detective's name?  
4       A     Him right there.  
5       Q     Pardon?  
6       A     Him.  
7       Q     Do you recall his name?  
8       A     Genovese.  
9       Q     Okay. Do you recall Detective Genovese asking you if you  
10       were sure that it was David Dutcher in the car?  
11       A     Yes.  
12       Q     And what did you say to him?  
13       A     Yup.  
14       Q     And do you recall him asking you if you were sure that it  
15       was Tim Lazano?  
16       A     Yeah, I do. Yeah.  
17       Q     How about Marillo?  
18       A     Yes, I do.  
19       Q     Do you recall telling him you were sure that Gilbert---  
20       A     Yeah.  
21       Q     ---did the shooting? And then did you tell him there was  
22       a fifth person in the car?  
23       A     I said I thought I saw heads in the car.  
24       Q     Did you actually tell him you thought, or did you just  
25       tell him you saw a fifth person?

1 A Said I saw, but I thought.

2 Q You didn't know that you had said the wrong thing then,

3 until somebody told you differently?

4 A My mother told me.

5 Q When did you get this statement from the Detective?

6 A I don't know. A while back.

7 Q Well, was it the same day?

8 A No.

9 Q Another day? Two days?

10 A Yeah. A couple days later.

11 Q A couple of days later? When did your mother first tell

12 you that you had the information wrong?

13 A When I gave her that paper. When they gave me the

14 statement.

15 Q This would have been just a couple weeks ago?

16 A It was sometime last week when I got my paper.

17 Q All right. Up until then, though, you thought what you

18 told the Detective was the truth?

19 A No.

20 Q Why did you tell that to him?

21 A I don't know.

22 Q When you gave this information to the Detective, were you

23 lying?

24 A No, I wasn't lying.

25 Q Were you giving him information that you knew to be the

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1 truth?

2 A No. No. I said I thought.

3 MR. KOOPMAN: I have no other questions, Your  
4 Honor.

5 MRS. McLEOD: I have no questions.

6 THE COURT: That's all. You may step down.

7 THE CLERK: Step over here, please. Right  
8 over here.

9 RICHARD GOMEZ,  
10 a witness herein, being first duly sworn, testified under  
11 oath as follows:

12 DIRECT EXAMINATION

13 BY MRS. McLEOD:

14 Q State your full name, please.

15 A Richard Gomez, Jr.

16 Q Mr. Gomez, do you remember last August 6th?

17 A Yes.

18 Q How is it that you remember that?

19 A A party. Friend's house.

20 Q Was this over on Hiland Street?

21 A Yes.

22 Q Mr. Gomez, were you at the party at the time of a fight?

23 A Yes.

24 Q Who was the fight between?

25 A Um, Tommy and Gilbert.

1 Q Do you know how it began?

2 A Yes.

3 Q How?

4 A Over a glass of beer in line.

5 Q And do you want to tell me about how it started?

6 A Yeah.

7 Q Okay. You were in line for a glass of beer, and?

8 A I was getting out of line with my glass and Gilbert, he

9 was sort of drunk and he bumped into me. And my beer

10 spilled on Tom's shoe and that's when they started

11 fighting.

12 Q Did the fight end at some point?

13 A Yes.

14 Q Did Gilbert leave the party?

15 A Yes.

16 Q Did you hear him saying anything as he was leaving?

17 A Yes.

18 Q What was he saying?

19 A If he wants to see some more blood, come outside.

20 Q Did you stay downstairs at that time?

21 A Yes.

22 Q Did there come a point in time when you went outside?

23 A Yes.

24 Q What was going on when you went outside?

25 A Nothing. Nothing really. Everybody was just drinking.

1 Q Why did you go outside?  
2 A Go to talk to some friends.  
3 Q Are you familiar with the area of Hiland, Maplewood and  
4 Sheridan?  
5 A Sort of.  
6 Q Do you know that the party was on the corner of Hiland  
7 and Maplewood?  
8 A Yes.  
9 Q If you don't know that--  
10 A No, I don't know it, but--  
11 Q Okay. Do you know that the party was on a corner?  
12 A Yes.  
13 Q Do you know that the street away from that corner, not  
14 the street where the party was, but the opposite one,  
15 would have been Sheridan?  
16 A Yes.  
17 Q Where in relation to the party on Sheridan then were you  
18 when you went outside?  
19 A To the corner of Sheridan, almost by--  
20 Q Were you on the same side of the street as the party, or  
21 opposite side?  
22 A Opposite side.  
23 Q What happened while you were standing out there on the  
24 corner?  
25 A We just talkin' at first and a cop pulled up.

1 Q Who is "we"?

2 A Me and a couple of my friends.

3 Q Okay. A car pulled up?

4 A Uh-hum.

5 Q Do you know what kind of car?

6 A No.

7 Q Do you know the make?

8 A Uh-uh.

9 Q Color?

10 A Looked like burgundy and dark.

11 Q Was it a two door or four door?

12 A Four door.

13 Q How long had the fight occurred? What period of time had  
14 gone by from the fight and the time that the car pulled  
15 up while you were on the corner there?

16 A Say about half an hour.

17 Q What did the car do when it pulled up?

18 A Gilbert got out.

19 Q Where did Gilbert get out of?

20 A Back seat.

21 Q Were there any other persons in the car?

22 A Yes.

23 Q How many?

24 A Two more.

25 Q Did you recognize them?

1 A No.

2 Q Where were those persons in the car?

3 A In the front and back seat.

4 Q I'm sorry. In front and back?

5 A Uh-hum.

6 Q Is that what you're saying?

7 A Yes.

8 Q What did those persons do?

9 A Gilbert got out and talked to me. He said--he was talking  
10 to me and my friends.

11 Q What did he say?

12 A He asked if we seen Tom and I told him yeah, he was in the  
13 basement. About that time, I said that Tom was coming out  
14 already.

15 Q Did anybody say, "There's Tom"?

16 A No. He said he seen him. He said, "Are you ready to do  
17 it?" And they said, "Yeah."

18 Q Back up, please.

19 A Uh-hum.

20 Q Gilbert said to you, "Do you see Tom?"

21 A Yes.

22 Q And you said he was downstairs?

23 A Uh-hum.

24 Q In the basement?

25 A Yes.

1 Q And then what happened?

2 A By the time he finished asking me, Tom was coming out the

3 door.

4 Q Yes.

5 A And Gilbert turned around and seen him, seen Tom coming

6 out the door. And Gilbert turned around and looked at

7 the car and said, "Are you's ready to do it?"

8 Q And they said yes? Gilbert turned around to the burgundy

9 car?

10 A Yeah. He looked--

11 Q And he said, "Are you's ready to do it?"

12 A Uh-hun.

13 Q And those two persons that were in that car responded?

14 A Yes.

15 Q What was said?

16 A They said yeah.

17 Q Both of them said yeah?

18 A Yes. Sounded like it.

19 Q "Are you's ready to do it?"

20 A Yes.

21 Q You said that Gilbert got out of the car. Did the other

22 two get out of the car?

23 A Yes. They got out and walked around.

24 Q How did they switch around, Mr. Gomez?

25 A They switched around?

1 Q Do you remember?

2 A It's been a while back.

3 Q If you can remember.

4 A The driver got out, went to the back seat and went in the  
5 back. And the guy went to the front seat.

6 Q The driver got out and went now into the back seat?

7 A Yeah. Yes.

8 Q Did you see what that person did when--were these all  
9 male or what?

10 A Males.

11 Q They were all males. When the driver got out of the front  
12 seat, went into the back seat, did you see what that  
13 person did?

14 A He went in the back seat and got a gun.

15 Q Did you see the gun?

16 A No.

17 Q How did you know that he went and got a gun?

18 A Um--well, I saw a rifle in the back seat. The rifle  
19 picked up, you know, he picked up the rifle and--

20 Q You saw that?

21 A I seen the rifle.

22 Q Okay. The driver got out of the--

23 A Front seat.

24 Q The front seat. Got into the back seat and got a rifle.

25 A Uh-hum.

1 Q And did what?

2 A Just--he just picked it up from the front, put it on the  
3 seat and got back.

4 Q Got back where?

5 A Front seat. And the guy was in the back seat went to the  
6 front seat and sat in the passenger's side by the driver,  
7 and Gilbert got in the back and slid over.

8 THE COURT: At this time the Court will declare  
9 a brief recess. You may step out of the jury box.

10 (Whereupon a brief recess was taken.)

11 (Whereupon Court reconvened at 3:22 p.m.)

12 Q (Mrs. McLeod, Continuing) Mr. Gomez---

13 A Yes.

14 Q You were at the corner of Sheridan and Hiland?

15 A Yes.

16 Q Is that right? And you saw the car pull up?

17 A Yes.

18 Q Did you see whether it was two door or four door?

19 A Four.

20 Q Four door? And you saw two persons get out of the car?

21 A Yes.

22 Q Describe that again, please.

23 A Well, the driver got out and went to the back seat.

24 Gilbert got out the back seat, first started talking to  
25 me, and the guy--

1 Q Let me stop you. Did Gilbert get out of the driver's  
2 back seat or the passenger's back door back seat?  
3 A The back seat.  
4 Q Okay. Were you standing on the driver's side of the car  
5 or the passenger's side of the car?  
6 A The driver's.  
7 Q All right. Did Gilbert get out the door by you then? The  
8 driver's side back seat?  
9 A Yes. As I recall.  
10 Q All right. And did he walk towards you?  
11 A No. He just stood where he got out from.  
12 Q I'm sorry.  
13 A He just took a few steps.  
14 Q Okay. And you and he had a conversation?  
15 A Yes.  
16 Q About where Tom was?  
17 A Yes.  
18 Q The driver got out of the driver's side?  
19 A Yes.  
20 Q Out of his door?  
21 A Yeah.  
22 Q Did he close that door?  
23 A Yes.  
24 Q And he went in the back seat and you saw a rifle?  
25 A Yes.

1 Q What else did you see?

2 A The guy in the back seat went to the driver's passenger's

3 side, sat in it.

4 Q The guy from the back seat?

5 A Yes.

6 Q Which side of the back seat?

7 A The passenger's.

8 Q He got into the front seat--

9 A Yes.

10 Q --passenger's?

11 A Yes.

12 Q And then what happened?

13 A And Tom was walking in the house and Gilbert seen him.

14 And he said, he told me never mind, and Tom was walking

15 and Gilbert asked him was, were they ready to do it, and

16 they said yes. And Gilbert got back in and slid to the

17 passenger's side and they drove off.

18 Q Now, you said when the driver got out of his door--

19 A Yes.

20 Q --the driver's door was closed?

21 A Yes.

22 Q Did you ever see the driver's door open again?

23 A No.

24 Q Well, how did you see the driver get in the car then?

25 A I was looking around when Gilbert was talking to me at

1 the time.

2 Q Did you see that rifle then again?

3 A No. When they shot, I saw it.

4 Q Where was it when you saw it then?

5 A Looked like it was in the front seat.

6 Q Which side, the driver or the passenger?

7 A Passenger's.

8 Q What happened after you heard Gilbert say, "Are you ready  
9 to do it," and the response was, "Yeah"? What happened  
10 then?

11 A He got back in the car and they drove off slow.

12 Q Then what happened?

13 A Then they shot and they called his name out. They said,  
14 "Tom," and they shot, shot about six times. They took off  
15 fast.

16 Q Did you recognize any other persons in the car besides  
17 Gilbert?

18 A No.

19 Q Mr. Gomez, do you remember speaking with Detective  
20 Genovese about this case?

21 A Yes.

22 Q Was it at the police department after the shooting?

23 A Yes. You mean that same night?

24 Q When did you talk with him?

25 A I think the next day.

1 Q Okay. At the police department?  
2 A Yes.  
3 Q And Detective Genovese is the gentleman to my left?  
4 A Yes.  
5 Q Do you remember telling him that you did recognize  
6 somebody else in the car?  
7 A Yes. But I was mistaken.  
8 Q Who did you tell Detective Genovese that you saw?  
9 A Tom. I mean, um, Tim Lazano.  
10 Q And did you say that he was driving?  
11 A Yes.  
12 Q Did you say who the passenger was?  
13 A Frog.  
14 Q At the break--Mr. Gomez, you understand you have the  
15 opportunity to speak; is that right?  
16 A Yes.  
17 Q I only want you to tell here, Mr. Gomez, what you know  
18 happened that night on Hiland, not what you heard from  
19 anybody. Okay?  
20 A Okay.  
21 Q Did you see Tim Lazano in the car?  
22 A That's what--that's what they said he looked like, but I  
23 don't know him.  
24 Q Okay. So when you told the Detective Tim Lazano was  
25 driving, you didn't know it was Tim Lazano?

1 A No.

2 Q When you told him it was Frog, did you know it was Frog?

3 A No.

4 Q Is that what you heard?

5 A Yes.

6 Q Mr. Gomez, what you've told us about hearing Gilbert say,  
7 "Are you ready to do it," did you hear that with your own  
8 ears?

9 A Yes.

10 Q And you saw some switching around take place?

11 A Yes.

12 Q And you saw a rifle?

13 A Yes.

14 Q Did you tell the police that you saw a pistol also?

15 A I don't remember.

16 Q Did you see a pistol?

17 A No.

18 Q Mr. Gomez, I asked you if you heard with your own ears,  
19 "Are you ready to do it?" Did you also hear their  
20 response of the two persons, "Yeah," with your own ears?

21 A Yes.

22 Q Nobody told you that?

23 A No.

24 Q Thank you.

25 MRS. McLEOD: That's all, Your Honor.

CROSS-EXAMINATION

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BY MR. KOOPMAN:

Q Mr. Gomez, you stated that you were standing on the corner of Hiland and Sheridan; is that correct?

A Yes.

Q Is that the end of the block the party house was on?

A What was the--it was on Sheridan, where I was on Sheridan.

Q I'm sorry.

A I was on Sheridan by the stop sign.

Q Okay. Was that in front of the party house?

A Down the street.

Q The party house was down the street?

A I was down the street from the party house.

Q Okay. How did you end up at the corner?

A Went to see some friends.

Q All right. Were you on the north side or the south side of Hiland at the time? In other words, were you on the same side of the street as the house where the party was being held or the other side?

A The other side.

Q Okay. If you would take this piece of chalk, please, and make an X where you were standing.

A This is Hiland crossing. This is Sheridan. Right here is Sheridan. This is where the party is at. Right down that way. I was about right here.

1 Q Okay. Let's put a circle around there so we don't  
2 mistake it with anybody else's. You're right at the  
3 curb? You can return to your seat. Were you standing  
4 right at the curb?

5 A No. I was sort of in the road.

6 Q Okay. Were you actually in the road then?

7 A By the curb. By the curb.

8 Q There was a car parked there?

9 A Yes. A car parked in front of me.

10 Q Was the car parked in front of you?

11 A Yes.

12 Q Was it behind you?

13 A It was in front of me.

14 Q So you would be standing then somewhere in the neighbor-  
15 hood between the curb and the car that's parked on the  
16 street?

17 A You're confusing me.

18 Q You said first that you were standing here, which would  
19 indicate that you're on somebody's lawn. Now you're  
20 telling me---

21 A I was---

22 Q Was there a car parked?

23 A There was a Blazer parked in front of me. It was in the  
24 front of me.

25 Q There would be a car parked in front of you as you faced

1 Sheridan; is that correct?  
2 A Yes.  
3 Q All right. You spoke to Gilbert Morales that night?  
4 A Yes.  
5 Q What was Gilbert wearing that night?  
6 A I don't remember.  
7 Q Do you remember if he had a jacket on?  
8 A No.  
9 Q No, you don't remember or no--  
10 A Yes, I do remember he didn't have one on.  
11 Q You say you saw the shadow of a rifle?  
12 A Yes.  
13 Q When you say you saw the shadow of a rifle, does that mean  
14 that you didn't actually see the rifle at that point?  
15 A It sort of looked like a rifle, a shadow of a rifle.  
16 Q But you didn't actually see a rifle?  
17 A No.  
18 Q At that point?  
19 A Not at that point.  
20 Q You saw a shadow?  
21 A Yes.  
22 Q Which resembled--  
23 A Yes.  
24 Q Do you remember giving a statement to Detective Genovese?  
25 A What statement is that?

1 Q Sometime after this whole thing happened, you talked to  
2 him?

3 A I talked to him?

4 Q To the Detective.

5 A Yes. I talked to him the day after the party.

6 Q And he had a tape recorder going when you talked to him,  
7 didn't he?

8 A Yes.

9 Q I'm going to show you the transcript of that statement and  
10 ask you if you will read the question and the answer on  
11 the bottom of the page just to yourself.

12 A (Indicated.) Uh-hum.

13 Q What did you tell the police--well, first of all, did you  
14 tell the police that Gilbert had a gun?

15 A Yes.

16 Q What kind of a gun did you tell the police?

17 A I don't know. That's what I heard. That's what I heard.

18 Q What did your statement say?

19 A That he had a pistol.

20 Q All right. Now you're telling us that you don't, you  
21 never saw that pistol either?

22 A No.

23 Q That's what you heard?

24 A Yes.

25 Q All right. Did you see a rifle or is that what you heard,

1           too?

2       A       No, I saw that.

3       Q       Okay. But you only saw the shadow at first?

4       A       Yes.

5       Q       You knew there had been a fight?

6       A       Yes.

7       Q       Did you know when Gilbert left the house after the fight

8           that he was upset?

9       A       Well, he looked like he was upset.

10      Q       Did he look upset when you saw him, when he came back in

11           the car?

12      A       He looked anxious to do it.

13      Q       He looked anxious to do what?

14      A       To shoot.

15      Q       You didn't know he was going to shoot him when you saw

16           him?

17      A       No. Well, he said that if he wants to see some more

18           blood, outside.

19      Q       Did he say that when you talked to him after he returned?

20      A       No. He said that in the basement when they were fighting.

21      Q       All right. Did you know that Tom Newvine was out in the

22           street at that time? Did you know where he was?

23      A       He was in the basement.

24      Q       Pardon me?

25      A       He was in the basement.

1 Q All right. Did you see him come out of the basement?

2 A Yes. He seen him come out of the basement.

3 Q Did you shout to, in vain, to watch out?

4 A No, I seen--

5 Q Did you know at that point that anything was going to  
6 happen?

7 MRS. McLEOD: Objection, Your Honor, relevance.

8 THE COURT: I will sustain it.

9 Q Did you warn him?

10 A No.

11 Q Now, if you were standing on the north side of Hiland, if  
12 you saw a gun stick out a window, the passenger's side of  
13 the vehicle, would that be on the side away from you?

14 A Yes.

15 Q Okay. When you saw this gun that you said stuck out the  
16 window, did you see it through the car?

17 A No, I saw it from the top.

18 Q You saw the barrel sticking over the roof?

19 A Well, they were taking off.

20 Q So it wasn't pointed in the air at the time?

21 A Well, they were taking off.

22 Q How did you know it was in the front seat?

23 A From my position, it was in the front seat.

24 Q By that answer, does it mean it's possible that it could  
25 have been in the rear seat?

- 1 A Yes.
- 2 Q ~~You~~ never actually saw a pistol in Gilbert's hand?
- 3 A No.
- 4 Q Did you see fire from the gun?
- 5 A No.
- 6 Q Were the shots rapid?
- 7 A Yes.
- 8 Q Were they loud?
- 9 A Like a fire cracker.
- 10 Q When you told the police that Tim was, Lazano, was driving
- 11 the car, that was because somebody told you that?
- 12 A Yes.
- 13 Q And you told them that Gilbert had a pistol and that was
- 14 because somebody told you that?
- 15 A Yes.
- 16 Q And when you told them that somebody named Frog was in the
- 17 vehicle, that was also because somebody told you?
- 18 A Yes.
- 19 Q You never saw--did you ever see Mr. Manning in that
- 20 vehicle?
- 21 A No.
- 22 Q During your interview with Detective Genovese, did he give
- 23 you photographs to look at?
- 24 A Yes.
- 25 Q Who, if anybody, were you able to identify in those

1            photographs?

2            A        Just Gilbert.

3            Q        Is that the only person?

4            A        Yes.

5            Q        Did you tell the police that there would have been more  
6            than three people in that vehicle?

7            A        No.

8            Q        You didn't tell them that?

9            A        Not that I remember.

10                            MR. KOOPMAN: I have no other questions.

11                            MRS. McLEOD: Nothing further.

12                            THE COURT: That's all. You may step down.

13            Thank you.

14                            MRS. McLEOD: Your Honor, may we approach the  
15            bench? You may leave, witness.

16                            THE COURT: The jury will go with the court  
17            officer, please.

18                            (Whereupon the jury left the courtroom at  
19            3:40 p.m.)

20                            MRS. McLEOD: Your Honor, the people will rest  
21            very shortly. The only witness that we intend to call is  
22            Detective Genovese. There are, however, some endorsed  
23            witnesses that I would like to offer for cross-  
24            examination. And I have gone over these with Mr.  
25            Koopman. They are Anthony Gonzales, Theresa Barrera,

1 Phillip Borasco, Robert Gomez, Concepcion Perez, and  
2 John Davila.

3 MR. KOOPMAN: Your Honor, we will waive those  
4 witnesses being presented.

5 MRS. McLEOD: Your Honor, I believe Mr. Koopman  
6 wants to make a motion before Detective Genovese  
7 testifies as to Mr. Manning's statement.

8 MR. KOOPMAN: Your Honor, the Court has  
9 previously ruled as to the admissibility of this  
10 statement. This motion, regards the possibility and  
11 in fact it is my understanding, that the Prosecution  
12 intends to actually play the tape recording of the  
13 statement given by Mr. Manning. On behalf of Mr.  
14 Manning, we are asking the Court to restrict the  
15 Prosecution to allow Detective Genovese to only testify  
16 as to what went on during that interview for two  
17 reasons. One being that there is a fairly excessive  
18 amount of profanity in the statement which would certainly  
19 have an adverse effect upon the jury. And the second  
20 reason is that up to this point, there has been no  
21 other taped statement brought before the jury and we  
22 think that this, again, could have a harmful effect  
23 upon the jury.

24 MRS. McLEOD: I would respond, Your Honor, that  
25 if there is any profanity, they're Mr. Manning's words

1 and we believe that the jury should hear his entire  
2 statement not piecemeal and so on. And there would have  
3 been no other reason prior to this to play a taped  
4 statement for the jury.

5 THE COURT: If it's properly authenticated,  
6 the Court would consider admission.

7 MRS. McLEOD: Thank you, Your Honor. We're  
8 ready to proceed.

9 Your Honor, we will have to take up the issue  
10 of all of the Exhibits. I can do that later or I can do  
11 it now.

12 THE COURT: Well, also as to this recorded  
13 statement, if it's admitted I would contemplate that it  
14 will not be necessary for the court reporter to take it  
15 down verbatim. That it can be marked as an Exhibit then  
16 and received in that respect.

17 MRS. McLEOD: Yes, sir.

18 MR. KOOPMAN: Yes, Your Honor.

19 THE COURT: Thank you.

20 MRS. McLEOD: Would the Court like to--

21 THE COURT: Yes. Maybe we can review--how many  
22 Exhibits do you have there?

23 MRS. McLEOD: Or let me review the Exhibits and  
24 offer them and see.

25 Your Honor, No. 1 I believe was admitted and is

1 a death certificate. People's proposed Exhibits 2, 3, and  
2 4 I believe were also admitted. They are the bullets that  
3 Dr. Hines identified. If they are not admitted, I would  
4 of course move that they be admitted.

5 THE COURT: Let's take them up one at a time  
6 now. Any objection?

7 MR. KOOPMAN: Your Honor, I believe that we have  
8 stipulated to 2, 3, and 4.

9 MRS. McLEOD: I think they have been admitted.

10 THE COURT: They will be received.

11 MRS. McLEOD: Thank you, Your Honor. Your  
12 Honor, 5 and 6 and 7 were bullets or fragments thereof.  
13 It's my understanding they have been admitted.

14 THE COURT: If not, you're offering them?

15 MRS. McLEOD: I'm sorry. They are photographs,  
16 Your Honor. It's my understanding--yes, Your Honor, that  
17 5 through 12, all photographs, have been admitted.  
18 Actually, they are photographs up to People's proposed  
19 Exhibit No. 41, starting with People's proposed Exhibit  
20 No. 5. I would move for their admission in total, Your  
21 Honor.

22 MR. KOOPMAN: Your Honor, I believe the Court  
23 has already ruled that numbers 13 and 15 would not be  
24 admitted.

25 MRS. McLEOD: I think the Court reserved its

1 judgment on that.

2 THE COURT: Yes. I'm not going to admit them  
3 at this time.

4 MRS. McLEOD: People's proposed Exhibits 16  
5 through 41 are photographs. I don't believe that the  
6 Court has ruled.

7 THE COURT: They are photographs at the scene?

8 MRS. McLEOD: Yes, sir.

9 MR. KOOPMAN: Your Honor, first of all with  
10 regards to photograph numbers 16 through 36, these were  
11 photographs that Mr. Birr from the crime lab testified  
12 that either he had taken, or his partner, I believe, Mr.  
13 Avery, had taken these photographs. He was unable to  
14 testify as to exactly which photographs he took, which  
15 photographs he did not take. He also testified that these  
16 photographs were taken somewhere in the neighborhood, I  
17 believe, of around 3:30 in the morning, which would have  
18 been at least a couple of hours after this incident  
19 occurred.

20 He further testified that they had lights and  
21 other artificial means of illumination that were used.  
22 Based on those things and particularly the fact he cannot  
23 testify that he took any specific photographs, we would  
24 object to the admission of any of the photographs at all  
25 in that group.

1 MRS. McLEOD: Your Honor, Mr. Birr testified  
2 that they were an accurate depiction of the crime scene  
3 when he arrived. Detective Genovese will testify that  
4 the crime scene was surrounded when they received the  
5 call.

6 THE COURT: 16 through 36 will be received  
7 in evidence.

8 MRS. McLEOD: Thank you, Your Honor.

9 MR. KOOPMAN: Your Honor, excuse me. I do have  
10 a couple of specific objections to some of these photo-  
11 graphs.

12 THE COURT: I thought your--that was your--

13 MR. KOOPMAN: That was just a general objection.  
14 Let me get into specifics then. There are certain  
15 photographs that--

16 THE COURT: Start with them right now.

17 MR. KOOPMAN: I have no objection to No. 17.  
18 No. 18 I would object to because it really does nothing  
19 but show blood. No. 23 is a similar photograph of nothing  
20 but blood splattered on a window. No. 30 we would object  
21 to as being what appears to be blood on the grass. No. 31  
22 is a trail of blood on the pavement which we would object  
23 to as is 32. 33 is simply a large pool of blood. We  
24 would object to that. Those would be our objections.

25 THE COURT: They will all be received except 33.

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MRS. McLEOD: 37 through 41.

MR. KOOPMAN: Your Honor, there are three photographs being numbers 39, 40, and 41. Those are the photographs which indicate a .22 shell casing on-- somewhere underneath, I guess, the rear seat of this vehicle. The individual who took that particular photograph was not able to testify or to give any idea as to the amount of time that that particular shell casing had been there. Since there is no way to tie it in to this actual incident, I believe that it could be inflammatory and would ask that these photographs be stricken.

MRS. McLEOD: Your Honor, I believe Mr. Willmer testified when he received the car he did a thorough search of it. He testified as to the position of the back of the seat of the car which is People's proposed Exhibit No. 38. And that the car was off of the bolts at that time. And what he found after that, I think is very relevant as to the condition of the seats. And I believe it suggests, Your Honor, that this car was searched after the shooting, not by police, of course, but--and where the .22 shell was. If Mr. Koopman wants to argue that it doesn't tie in, I think that that's-- he certainly can do that, but I do believe it's relevant.

THE COURT: Could I see them, please?

1                   These are the ones you object to?

2                   MR. KOOPMAN: Yes.

3                   THE COURT: 39, 40, and 41 will be received in  
4                   evidence.

5                   MRS. McLEOD: I don't believe Mr. Koopman has  
6                   any objection to 37 and 38 from what he's told me.

7                   MR. KOOPMAN: No, Your Honor.

8                   THE COURT: Any objection, Mr. Koopman?

9                   MR. KOOPMAN: No, Your Honor.

10                  THE COURT: They will be received.

11                  MRS. McLEOD: Your Honor, I also move for  
12                  admission of People's proposed Exhibits 42, 43 and 44.  
13                  42 is, 42 and 43 are the lead fragments removed from the  
14                  '67 blue Bonneville Pontiac. And 44 is the .22 cartridge  
15                  shown in the Exhibits, the photographs just admitted.

16                  MR. KOOPMAN: No objection.

17                  THE COURT: They will be received.

18                  MRS. McLEOD: Your Honor, Mr. Podeleski brought  
19                  over the photographs of the blackboard that was erased.  
20                  They are numbered People's proposed Exhibits 45 and 46.  
21                  I would move for their admission.

22                  MR. KOOPMAN: No objection, Your Honor.

23                  THE COURT: They will be received.

24                  MRS. McLEOD: Thank you. To this point, Your  
25                  Honor, those are the only Exhibits.

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THE COURT: Bring the jury. We're going to adjourn until tomorrow morning at 9:00.

(Whereupon the jury entered the courtroom at 3:55 p.m.)

THE COURT: Members of the jury, at this time the Court is going to adjourn until 9:00 tomorrow morning. I caution you not to discuss this case among yourselves or with anyone else. I further caution you not to read any news accounts of this trial or to listen to any radio or TV accounts of the trial. You may be excused at this time

(Whereupon Court adjourned for the day.)

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN, )  
Plaintiff, )  
-vs- )  
ROBIN RICK MANNING, )  
Defendant. )

Case No. 84-005570 FC

SENTENCE

The proceedings held in the above-entitled matter before the Honorable Fred J. Borchard, Circuit Judge, at Saginaw, Michigan, on June 17, 1985.

APPEARANCES:

CHRISTOPHER S. BOYD, Prosecuting Attorney  
BY: GARNER TRAIN, Assistant Prosecuting Attorney  
Appearing on behalf of the People.

THOMAS R. KOOPMAN, ESQ.,  
Appearing on behalf of the Defendant.

Sharon Anne Vaughn, CSR, RPR, CM  
CSR-0211

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THE CLERK: People of the State of Michigan  
versus Robin Rick Manning.

THE COURT: Your name is Robin Rick Manning?

MR. MANNING: Yes.

THE COURT: Robin, you were in this court on  
the 21st day of March, 1985, and at that time by verdict  
of the jury were convicted of murder in first degree,  
possession of a firearm at the time of the commission of  
a felony, and carrying a firearm with unlawful intent.  
These matters were referred to the corrections department  
for a presentence investigation.

Did you discuss the matter with a probation  
officer?

MR. MANNING: Yes.

THE COURT: Did you explain to that probation  
officer your version of this offense?

MR. MANNING: I believe so.

THE COURT: And you had a written report?

MR. MANNING: Yes.

THE COURT: And do you wish to advise the Court  
of any circumstances that you believe the Court should  
consider in imposing sentence?

MR. MANNING: No, sir.

THE COURT: I would ask counsel whether or not  
you wish to respond to any of the factual representations

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set forth in the presentence report?

MR. KOOPMAN: Your Honor, I have had the opportunity to review the report with Mr. Manning. It is my understanding that there are no additions, deletions, or corrections to make at this time.

THE COURT: And do you wish to advise the Court of any circumstances you believe the Court should consider in imposing sentence?

MR. KOOPMAN: Your Honor, I believe the Court is aware of all the circumstances surrounding this event, and, therefore, we would have nothing to say.

THE COURT: It's the judgment of this Court, Mr. Manning, under the Count of murder in first degree that you are to be sentenced in the State Prison for southern Michigan for a life term. For the carrying of a firearm with the unlawful intent, the minimum term is set at three years and maximum term is set at five years. And you are to receive credit for 306 days on each of these terms that you spend in the County Jail.

As for the possession of a firearm at the time of the commission of the felony, you're sentenced to the State Prison for southern Michigan for a two-year term. It's to be served consecutively and preceding the term that you are just sentenced on murder in first degree and carrying a firearm with unlawful intent.

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The Court further wants to advise you that you are entitled as a matter of Constitutional right to an appellate review of your conviction on your plea, on your--the jury finding you guilty. Further advise you if you are financially unable to provide a lawyer to perfect the appeal, the Court will provide a lawyer for you. This request for the assistance of counsel must be made within 56 days from this date.

I hand you the forms on which that request can be made should you desire to do so. That is all.

MR. MANNING: Thank you, sir.

(Sentence concluded.)

