

CO-Defendants Trial

Mark Foster

1 proffer of what I would say, I don't think there's any
2 necessity of that, judge.

3 THE COURT: All right. Then I'll make the findings
4 it's not impeaching, or for that reason, I will accept the
5 proffer as the statement, and it's preserved along with the
6 exhibits, and we'll go on. Let me get the jury in. We'll go
7 on to the next witness.

8 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT
9 IN THE PRESENCE AND HEARING OF THE JURY.)

10 THE COURT: Show for the record the jury has
11 returned, and we'll continue on with further evidence by
12 Mr. Skelton.

13 MR. SKELTON: We're going to recall Mark Foster,
14 and since we're on a different day, I would ask him to be
15 resworn.

16 THE COURT: Yes. I would ask him to come up and be
17 resworn.

18 (Witness sworn)

19 MARK FOSTER,
20 called as a witness on behalf of the Defense herein, having
21 been first duly sworn, was examined and testified as follows

22
23 DIRECT EXAMINATION

24 BY MR. SKELTON:

1 Q. Would you state your name please.

2 A. Mark Foster.

3 Q. And Mark, you testified briefly yesterday, is that
4 correct?

5 A. Yes, I did.

6 Q. And you're the same person that testified
7 yesterday?

8 A. Yes, I am.

9 Q. You had provided us with information or testimony
10 concerning your view of what used to be the Clark gas station
11 located at Empire and Linden Streets in Bloomington,
12 Illinois, is that correct?

13 A. That's correct.

14 Q. And at my request, have you made certain
15 measurements of, from specific points to specific points?

16 A. Yes, I have.

17 Q. I'd like to show you, if I could please, what's
18 earlier been marked as People's Exhibit Number Ten and ask
19 you if you recognize the area that is portrayed or depicted
20 in that photograph?

21 A. Yes, I do.

22 Q. Does it look somewhat different today?

23 A. Yes, it does.

24 Q. Or -- and has it during the year two thousand to

1 your knowledge?

2 A. Yes.

3 Q. The graveled area that is in the forefront of that
4 would be on what corner of Linden, of the intersection of
5 Linden and Empire streets in Bloomington please?

6 A. Northeast corner.

7 Q. And the perspective of that photograph would be
8 basically from northwest to southeast?

9 A. Correct.

10 Q. In that photograph, the second house from the right
11 that is depicted in the background of that photograph, are
12 you familiar with that home?

13 A. Yes, I am.

14 Q. And has it at some point in time been identified to
15 you as being the former residence of one Carlos Luna?

16 A. Yes, it has.

17 Q. Do you see the northwest corner of that building?

18 A. Yes, I do.

19 Q. And you're familiar with that after being there,
20 getting permission to be on the yard and things of that
21 nature?

22 A. Yes, I am.

23 Q. I would now like to show you what's been marked as
24 People's Exhibit Number Five and earlier admitted into

1 evidence. Can you tell me how that photograph relates to
2 People's Exhibit Number Ten, which we just talked about.

3 A. This is actually a photograph of where this first
4 photograph was taken.

5 Q. So it kind of is the opposite view, that would be
6 southeast to northwest?

7 A. That's correct.

8 Q. And is it fair to state, Mark, that in 1991,
9 well -- were you in the Bloomington community at that time?

10 A. No, I was not.

11 Q. So you don't know from personal knowledge what that
12 area looked like on March thirty-first of 1991?

13 A. That's correct.

14 Q. I'd also be showing you People's Exhibit Number
15 One, which purports to be a photograph of a Clark station.
16 Are you familiar with that area?

17 A. Yes, I am.

18 Q. The street that is in the foreground of this
19 photograph would be what street?

20 A. East Empire.

21 Q. And the curb that I'm pointing at now would be the
22 north or the south curb of that street?

23 A. It would be the north.

24 Q. If you go past the gas pumps and past the east side

1 of the building that is depicted in People's Exhibit Number
2 One and continue walking north, what do you come to?

3 A. I come to an alley.

4 Q. And that -- the composition of that alley that
5 you've seen in the year two thousand is what please?

6 A. It's not paved. It has more rock.

7 Q. Did you have occasion to measure from the south
8 edge of that alley directly south to the north curb of Empire
9 street?

10 A. Yes, I did.

11 Q. Can you tell us the distance that separated those
12 two fixed points?

13 A. From the north curb to the south of the alley?

14 Q. Yes.

15 A. Yeah. I believe it was in my notes. I believe it
16 was 160 feet, I believe is what it was.

17 Q. Mark, did you prepare a report when you went out
18 and took these measurements?

19 A. Yes I did.

20 Q. And referring to that, would that possibly refresh
21 your recollection?

22 A. Yes, it would.

23 Q. As to specific distances?

24 A. Yes, it would.

1 Q. Mark, I'd now be tendering to you People's,
2 Defendant's Exhibit Number 12, which purports to be a
3 memorandum from yourself to myself dated August 10th, two
4 thousand. I'd like to you take a look at that for a moment.

5 A. Okay.

6 Q. And does that refresh your recollection as to the
7 specific distance between the north curb of Empire Street,
8 going due north to the south line of the alley that is
9 located in that block?

10 A. Yes, it does.

11 Q. And that distance is what please?

12 A. It's actually 160 feet, six inches.

13 Q. 160?

14 MR. SKELTON: One sixty with six inches after that.

15 Q. Mark, referring back to People's Exhibit Number
16 Ten, which displaces the Luna house or depicts the Luna
17 house, did you have occasion to measure from the northwest
18 corner of that building to the telephone pole that has
19 several transformers located at the top of it?

20 A. Yes, I did.

21 Q. And you've been there once again, to this lot, in
22 the year two thousand, correct?

23 A. Yes, I have.

24 Q. And is the telephone pole depicted in People's

1 Exhibit Number 10 consistent with what that telephone pole
2 looks like today?

3 A. Yes, it is.

4 Q. It still has transformers at the top?

5 A. Yes.

6 Q. And some sort of junction box or a metal box at the
7 base of it?

8 A. That's correct.

9 Q. On a line from the northwest corner of the Luna
10 home to that box, how many feet is that?

11 A. From the northwest corner to that box, it's
12 approximately 95 feet.

13 Q. Now, the house itself, you have not measured its
14 dimensions, have you?

15 A. I have not.

16 Q. On People's Exhibit Number Ten, on the west wall,
17 there are -- there appears to be, near the north side, a
18 window facing west?

19 A. Correct.

20 Q. Is that consistent with what you've seen?

21 A. Yes.

22 Q. What is your best estimate of the distance between
23 the northwest corner of that home and the north edge of that
24 window on the west side of the Lunar residence?

1 A. My best estimate would be three and a half feet.

2 Q. Mark, additionally, have you at my request taken
3 certain photographs at specified distances?

4 A. Yes, I have.

5 MR. REYNARD: Your Honor, may we approach?

6 THE COURT: Sure.

7 (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH
8 OUTSIDE THE HEARING OF THE JURY.)

9 MR. REYNARD: For purposes of my motion, I am
10 moving to stipulate that Mr. Foster will be able to identify
11 these exhibits and discuss his taking of the pictures and
12 that they truly and accurately portray what they purport to
13 portray. The Court is looking at them now, and I would
14 object to them being furnished to the witness, discussed in
15 any fashion. They purport to show perspectives during
16 daylight hours in a location that is totally --

17 MR. SKELTON: Judge, excuse me, may I make a
18 suggestion? I've got some, another area to go into with
19 Mr. Foster that is impeachment. Could we deal with this
20 after I get that done?

21 THE COURT: That's a good idea.

22 MR. SKELTON: So we don't have to mess around with
23 the jury.

24 THE COURT: Sure.

1 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT
2 IN THE PRESENCE AND HEARING OF THE JURY.)

3 Q. Mark, one of the things I asked you to do was talk
4 to a person by the name of Danny Martinez, is that correct?

5 A. Yes.

6 Q. And did you do so?

7 A. Yes, I did.

8 Q. On how many times did you talk to him face to face?

9 A. Three times.

10 Q. Can you tell us the dates of those conversations
11 please?

12 A. The 13th of July, the twenty eighth of July, and
13 the tenth of August of this year.

14 Q. On the second of those two contacts, were you there
15 for a specific purpose, or did I give you a specific
16 assignment?

17 A. Yes, I was.

18 Q. And that was to discuss generically with
19 Mr. Martinez what issue, if any?

20 A. It was discussed with Mr. Martinez the exact
21 distance he was away from identifying the person that came
22 out of the Clark station.

23 Q. And that would be referencing back to March
24 thirty-first of 1991?

1 A. Yes.

2 Q. At any point in time, did you have a conversation
3 with Mr. Martinez about his ability to identify that person
4 that he had said he saw come out of the Clark station?

5 A. Yes, I did.

6 Q. Can you tell us what date that took place on?

7 A. On the -- on, sorry, July 13th and the
8 twenty-eighth.

9 Q. Let's focus on the 13th, if we could please. What,
10 if anything, did Mr. Martinez tell you about his ability to
11 identify the person he saw coming out of the Clark station?

12 A. He stated without a doubt that if he saw the person
13 again, he could identify the person.

14 Q. Did you ask him during that conversation if he had
15 earlier made any identification or put a name with a face
16 that he had seen?

17 A. Yes.

18 Q. And what did he tell you?

19 A. He stated that no, he had not identified anyone.

20 Q. Moving on to your next conversation -- is that the
21 entirety of the portion of your discussion that you had with
22 Mr. Martinez on the 13th, I believe it was, relating to
23 identification?

24 A. We had talked about Mr. Snow at the time too.

1 A. Yes.

2 Q. At any point in time, did you have a conversation
3 with Mr. Martinez about his ability to identify that person
4 that he had said he saw come out of the Clark station?

5 A. Yes, I did.

6 Q. Can you tell us what date that took place on?

7 A. On the -- on, sorry, July 13th and the
8 twenty-eighth.

9 Q. Let's focus on the 13th, if we could please. What,
10 if anything, did Mr. Martinez tell you about his ability to
11 identify the person he saw coming out of the Clark station?

12 A. He stated without a doubt that if he saw the person
13 again, he could identify the person.

14 Q. Did you ask him during that conversation if he had
15 earlier made any identification or put a name with a face
16 that he had seen?

17 A. Yes.

18 Q. And what did he tell you?

19 A. He stated that no, he had not identified anyone.

20 Q. Moving on to your next conversation -- is that the
21 entirety of the portion of your discussion that you had with
22 Mr. Martinez on the 13th, I believe it was, relating to
23 identification?

24 A. We had talked about Mr. Snow at the time too.

1 Q. And what did he say, if anything, in reference to
2 Mr. Snow?

3 A. That it was definitely not Mr. Snow that came out
4 of the Clark station.

5 Q. The next meeting you had with him or contact you
6 had with him was on July twentieth of two thousand?

7 A. Twenty-eighth?

8 Q. Twenty-eighth, excuse me. And where would that
9 have taken place?

10 A. At his residence.

11 Q. And is that similar to the location where you spoke
12 to him the first time?

13 A. Yes, it is.

14 Q. You indicated on the twenty-eighth that the purpose
15 for you going there was to establish the distance that
16 separated him from the person that he said he saw coming out
17 of the station, correct?

18 A. That's correct.

19 Q. During the course of that conversation that you had
20 with him, with Mr. Martinez, did your scope become expanded?

21 A. Yes, it did.

22 Q. And did it include any questions about
23 identification or answers concerning identification?

24 A. Yes, it did.

1 Q. What statement, if any, did Mr. Martinez make to
2 you on that date of July twenty-eighth concerning
3 identification of the person that he had seen on Easter
4 Sunday of 91, coming out of the Clark station?

5 A. On the twenty-eighth, Mr. Martinez had informed me
6 that he identified Jamie Snow as being the one that had left
7 the Clark station.

8 Q. And did he tell you when he put those two together
9 or made that identification?

10 A. He told me that at approximately two weeks ago, he
11 had made that identification.

12 Q. I'm sorry to do this nonsequentially, but going
13 back to your first contact with Mr. Martinez, had you had an
14 opportunity to review reports that were generated during the
15 course of the investigation of this matter and provided to me
16 pursuant to discovery compliance?

17 A. Yes, I had.

18 Q. And did you discuss that with Mr. Martinez during
19 your first conversation?

20 A. Yes, I did.

21 Q. Did he tell you that there was anything
22 inconsistent contained in those reports that he was aware of?

23 A. No.

24 Q. The last contact you had with Mr. Martinez, once

1 again, would have occurred when please?

2 A. August 10th of this year.

3 Q. And was that a lengthy contact or, or not?

4 A. No.

5 Q. And how did that contact come about, Mark?

6 A. I stopped by Mr. Martinez's residence to speak to
7 him.

8 Q. And was there any conversation of substance that
9 took place that day?

10 A. I only spoke for a few seconds, nothing of
11 substance, no.

12 Q. And did you have -- did you want to talk to him
13 that day?

14 A. Yes, I did.

15 Q. And did he advise you that he didn't want to?

16 A. He advised me at that time that he was upset with
17 me.

18 Q. And he was upset with you, based on his words, for
19 what?

20 A. Based on his words, upset with me because I had
21 relayed information to the defense that he considered to be
22 off the record.

23 Q. Now, during the initial two conversations that you
24 had with Mr. Martinez, he did speak to you?

1 A. That's correct.

2 Q. Did that voluntarily?

3 A. Yes.

4 Q. Didn't hold a gun to his head or anything of that
5 nature?

6 A. No.

7 Q. Or offer him any kind of payment for talking to
8 you?

9 A. No.

10 Q. Did you advise him that you were in my employ and
11 working for the defense in this case?

12 A. Yes, I did.

13 Q. Did he appear to understand that?

14 A. Yes, he did.

15 Q. And he spoke to you?

16 A. Yes, he did.

17 Q. And he relayed information to you?

18 A. Yes.

19 Q. At the initial stages of that first contact or
20 conversation that you had with Mr. Martinez, was he eager to
21 speak to you, or how would you characterize?

22 A. At the initial stages, he was somewhat hesitant to
23 speak to me.

24 Q. During the course of your job doing what you do, do

1 you on occasion take notes?

2 A. On occasion, yes.

3 Q. During this first contact with Mr. Martinez, did
4 you take notes?

5 A. I did not.

6 Q. What was the length or the duration of that first
7 conversation that you had with Mr. Martinez?

8 A. Approximately an hour to an hour to 15 minutes.

9 Q. Did you at a later point in time record your
10 recollection of what you talked about?

11 A. No.

12 Q. Is it clear in your mind, however, what you talked
13 about with him?

14 A. Yes.

15 Q. Why didn't you take notes that day, if you recall?

16 A. On the 13th, the first day I spoke to Mr. Martinez,
17 his information he relied to me was consistent with what was
18 provided to us from the State from discovery.

19 Q. Did you show him those reports?

20 A. After we discussed the matter fully, yes, I did
21 show him the reports.

22 Q. And based on your review of those reports, did at
23 least one of those refer to a statement that he had given on
24 March thirty-first or April first of 1991?

1 A. Correct.

2 Q. Did it also relate to a June twenty-first, 1991,
3 lineup viewing?

4 A. Yes.

5 Q. And did it also relate to a session in which he
6 looked at a number of photographs or at least several
7 photographs provided to him by the Bloomington Police
8 Department?

9 A. Yes.

10 Q. And did he indicate that he had any knowledge that
11 was inconsistent with the contents of either of those three
12 reports?

13 A. He did.

14 Q. Or either of those three reports?

15 A. He did not.

16 Q. Moving on to the twenty-eighth, that was the second
17 time you talked to him?

18 A. Yes.

19 Q. Did you take notes that time?

20 A. No.

21 Q. Did Mr. Martinez at any point in time use the term
22 off the record?

23 A. Yes, he did.

24 Q. And in what context did he use that?

1 A. He -- prior -- we were there for the specific
2 matter, as we discussed earlier, to gauge the distance
3 between him and the person in the Clark station, and at some
4 point, he stated, well, off the record, I have identified
5 Mr. Snow as the one coming out of the Clark station.

6 Q. Were there any other areas or parts of that
7 conversation where he used that term off the record?

8 A. I don't recall. He did several times during the
9 three conversations we had, but I don't recall on the second
10 time.

11 Q. Subject to the earlier agreement of counsel, Your
12 Honor, I would not -- I would now tender the witness.

13 THE COURT: Okay. Mr. Reynard.

14
15 CROSS EXAMINATION

16 BY MR. REYNARD:

17 Q. I just need to look at the pictures for a moment,
18 judge. Mr. Foster, as I understand --

19 MR. SKELTON: Charlie, I'm sorry -- this is the
20 18th time I've done this -- and I can only apologize for the
21 18th time.

22 THE COURT: Go ahead.

23
24 DIRECT EXAMINATION (CONT.)

1 BY MR. SKELTON:

2 Q. In reference to measurements, Mark, on the lot that
3 formerly contained the Clark station, you established earlier
4 that there is a, a like a restaurant located there now?

5 A. Yes.

6 Q. Is there a sidewalk that is adjacent to that
7 restaurant that runs east and west on the south side of that?

8 A. Yes, there is.

9 Q. Did you, from that northwest corner that we've
10 earlier talked about of the Luna home, make a measurement to
11 the south edge of the sidewalk that runs along the front or
12 the, the south wall of the Lucca restaurant?

13 A. I did.

14 Q. And the distance from that northwest corner of the
15 Luna residence to that sidewalk was what please?

16 A. I'm sorry, the question again.

17 Q. Which measurement are we talking about? Did you
18 measure from the Luna residence, the northwest corner of that
19 structure, to the south edge of the sidewalk of the Lucca
20 restaurant?

21 A. Yes, I did.

22 Q. And that's the sidewalk I earlier described running
23 east and west on the south side?

24 A. Yes.

1 Q. And the distance is, that separated those two
2 points is what?

3 A. Approximately 205 feet.

4 Q. Thank you. Now, I quit.

5 THE COURT: Okay. Mr. Reynard.

6
7 CROSS EXAMINATION

8 BY MR. REYNARD:

9 Q. Mr. Foster, with regard to that last point that
10 counsel elicited from you, is it fair to say that the -- you
11 don't know where that point on the sidewalk on the south edge
12 of the Lucca restaurant is with any degree of precision with
13 reference to where the front door of the Clark station was
14 back in 1991, and that is because you didn't -- you weren't
15 there back then, is that a fair statement?

16 A. That's correct.

17 Q. Okay. Now, with regard to what you testified to
18 earlier, my understanding is that with reference to People's
19 Exhibit Number Ten, you measured from the, the corner of the
20 Luna, former Luna residence, that northwest corner, to the --
21 either the northwest corner or the southwest corner, that
22 little metal box by the power pole?

23 A. Correct.

24 Q. And that was about 95 feet?

1 A. Approximately, yes.

2 Q. And was it from that point that you then measured
3 back to the alley?

4 A. No, sir.

5 Q. Okay. What was the point that you measured from
6 the, I think you had indicated it was the south -- it was the
7 north curb of Empire street -- at what point on that north
8 curb of Empire street did you measure back to the alley?

9 A. Just -- it would be just west of this pole here,
10 just west of that.

11 Q. Without -- so the jury knows, how many feet west?

12 A. Well, there's a fence there now. It's right where
13 the -- I am not exactly sure how many feet it would be from
14 that pole.

15 Q. Less than ten feet?

16 A. That would be approximate.

17 Q. So ten feet would be a best estimate as to the, the
18 jog in the overall measurement line, that if we were going to
19 ask the jury to compute from the Luna home to the pole, and
20 then west maybe ten feet or so, and then they can picture
21 your line of measurement back to the alley?

22 A. Yes, sir.

23 Q. Okay. You remember seeing People's Exhibit 54?

24 A. Yes.

1 Q. And you are familiar with it, oriented with what it
2 diagrammatically depicts?

3 A. I haven't seen it for a while, but yes.

4 Q. Okay. Could you step down and approach the
5 exhibit. And maybe you could bring those photographs from
6 the witness chair too in case we need to refer to them. With
7 whatever photographic reference assistance you need, can you
8 indicate where approximately, and only for demonstrative
9 purposes, where on what we refer to as the Empire Street curb
10 here, that phone pole is, or that power pole is that we're
11 referring to, I think it was in People's Ten.

12 A. I'm not sure what this line here is depicting here,
13 so it's hard to place the pole.

14 MR. SKELTON: I think it would be -- we would be
15 able, able to stipulate that that represents the fence line
16 on the east edge of the Clark station, and although it may
17 not be exact, that I believe we -- we are in agreement,
18 Mr. Reynard, that that would be close to the current fence
19 line.

20 MR. REYNARD: I think that's a fair
21 characterization. Assume that the current fence line is
22 approximately in the same location as this line. Where would
23 the phone pole be?

24 A. Approximately in this area here.

1 Q. Indicating within about an inch to the west of the
2 line on the photograph indicating about here where my finger
3 is?

4 A. Approximately.

5 Q. Okay. And so if we moved approximately ten feet to
6 the west, and I'm pointing to the, to the left of the
7 diagram, approximately ten feet, you then measured backwards
8 to the alley, which is at the top of the diagram, is that
9 correct?

10 A. Yes, sir.

11 Q. And that's the measurement that you, that you came
12 up with, 160 feet?

13 A. Yes, sir.

14 Q. Thank you. You can resume the stand. I believe
15 you indicated on direct examination, Mr. Foster, that you
16 spoke to Mr. Martinez on three occasions, the first of which
17 was July 13, two thousand for approximately one hour, 15
18 minutes, on July twenty eighth, two thousand for a much
19 briefer period of time, and on August 10, two thousand, for
20 an even briefer period of time when he was upset with you?

21 A. That's correct.

22 Q. Okay. You're a licensed investigator, correct?

23 A. Yes.

24 Q. Six years experience as a private investigator, is

1 that right?

2 A. Yes.

3 Q. Is it also correct that you have had previous
4 investigation experience?

5 A. Yes.

6 Q. As a, a licensed and experienced investigator,
7 would it be fair to say that you do know the significance of
8 documenting your work?

9 A. Yes.

10 Q. And by documentation, you understand me to mean
11 that it -- you take notes or you take written and signed
12 statements, or you take and record information from witnesses
13 and/or you write reports concerning your work?

14 A. Yes.

15 Q. And would it be fair to say that the significance
16 of documenting your work in that fashion is to make certain
17 that you don't forget anything? Is that one of the purposes
18 that you would document your work?

19 A. Yes.

20 Q. And to make certain that you got it right, that you
21 didn't misunderstand, is that another reason to document your
22 work?

23 A. Yes, it is.

24 Q. And is another possible reason to protect yourself

1 from a witness who might change his mind or remember the
2 conversation differently from the way that you remember it?

3 A. Yes.

4 Q. Now, in this case, for example, Mr. Martinez wasn't
5 the only person with whom you conducted investigative
6 interviews, was he?

7 A. No.

8 Q. Was he the only one that you interviewed three
9 times?

10 A. I don't recall.

11 Q. He may -- you may have -- you may have interviewed
12 him more than any other witness, isn't that a fair statement?

13 A. That's possible.

14 Q. However, would it be fair to say that you
15 interviewed at least 14 witnesses in this case?

16 A. Yes.

17 Q. And when you spoke to those witnesses, did you take
18 notes?

19 A. Several of them, I did, yes.

20 Q. And with regard to at least 14 of them, of the
21 witnesses, did you -- you did prepare a, reports, which you
22 submitted to the defense lawyer for each of the witnesses, is
23 that correct?

24 A. Yes.

1 Q. And some of those reports would be as short as the
2 one I'm showing you now, which has Julie Knight's name on it,
3 maybe a third of a page long?

4 A. Yes.

5 Q. And others would be perhaps as long as or longer
6 than the one that you did for Bridget Logsdon, which is maybe
7 three quarters of a page long?

8 A. Yes.

9 Q. If I understand your testimony correctly, in none
10 of the three interviews of Mr. Martinez, did you take any
11 notes?

12 A. That's correct.

13 Q. And you didn't tape record what he had to say
14 either, did you?

15 A. No, I did not.

16 Q. You didn't take a written and signed statement from
17 him?

18 A. No.

19 Q. And you didn't even write a report for any of those
20 interviews the way you did with at least some of, other
21 witnesses?

22 A. That's correct.

23 Q. Which is to say you didn't in any manner document
24 these conversations in order to make certain that you didn't

1 forget anything that Mr. Martinez told you?

2 A. Correct.

3 Q. Is that a fair statement?

4 A. Correct.

5 Q. You didn't in any way document your conversations
6 with him to make certain that you got it right, that you
7 didn't misunderstand him? Isn't that also true?

8 A. That's correct.

9 Q. And you certainly didn't protect yourself from the
10 possibility that he would change his mind or recall this
11 conversation differently than you have recalled it, did you?

12 A. No.

13 Q. Now, you -- you are advised now that Mr. Martinez
14 has denied several key statements, which you have attributed
15 to him. You are aware of it, aren't you?

16 A. I've heard that, yes.

17 Q. Now, in the very first interview on July 13, which
18 lasted an hour and 15 minutes, if -- you've indicated on
19 direct examination that Mr. Martinez told you that Snow was
20 not the person he saw come out of the gas station at, that
21 night, and that the police have the wrong guy? Did he tell
22 you those things?

23 A. Not those exact words, no.

24 Q. Is that the substance of what he told you?

1 A. Yes.

2 Q. Now, you recall that there was a hearing in this
3 Court prior to the trial actually beginning, don't you, back
4 on August 14th?

5 A. Yes.

6 Q. And do you recall that I interviewed you
7 immediately before that hearing out in the conference room
8 right outside the Court?

9 A. Yes.

10 Q. And that was to find out what your testimony at the
11 motion was going to be, wasn't it?

12 A. Yes.

13 Q. And that's because I didn't know what it was going
14 to be because you had prepared no reports or any
15 documentation of your work, isn't that a fair statement?

16 A. Yes.

17 Q. Now, during the course of that interview, you, did
18 you not, saw me taking notes of what you were telling me?

19 A. Yes.

20 Q. And I asked you during the course of that interview
21 how many times you spoke with Mr. Martinez, is that true?

22 A. Yes.

23 Q. And did I ask you what was said during the first
24 interview of Mr. Martinez?

1 A. Yes, you did.

2 Q. And is it a fair statement that you told me that
3 all he told you was pretty much verbatim from the police
4 reports?

5 A. That's correct.

6 Q. Is it also true that you did not, at any time
7 during my interview of you in the conference room, tell me
8 that Mr. Martinez had specifically seen a newspaper picture
9 of Snow and had said he was not the person he saw at the gas
10 station?

11 A. Correct.

12 Q. Now, you knew at that moment, did you not, that
13 that was not verbatim from the police reports?

14 A. I was aware of that, yes.

15 Q. You know the difference between being un, unable to
16 identify someone and saying definitely on the other hand,
17 saying definitely that someone is not the suspect; you know
18 there's a difference between those two realities, don't you?

19 A. Yes.

20 Q. You recall I asked you if there was anything else
21 in the first interview, and then we went on to the second
22 interview, isn't that a fair statement?

23 A. I don't recall that exact question, no.

24 Q. We did go on to talk about the second interview,

1 though, didn't we?

2 A. Yes, we did.

3 Q. And you told me that that had more specifically to
4 do with how far he was from the person who came out of the
5 station?

6 A. Yes.

7 Q. And then we went on to the third conversation; you
8 told me Martinez was upset with you, and it was a very brief
9 conversation, right?

10 A. Yes.

11 Q. But the most significant detail of all, which was
12 in the first conversation, the fact that Martinez had said
13 they have the wrong guy, something which was something that
14 wasn't verbatim in the reports, you omitted to tell us, isn't
15 that also true?

16 A. We didn't have time to discuss that, no.

17 Q. Okay. You omitted to tell us that, didn't you?

18 A. I didn't think -- we didn't have enough time that,
19 to go over all of the facts in discussion.

20 Q. You omitted to tell us that, didn't you?

21 A. Yes.

22 Q. And when I say tell us, I actually had a witness to
23 our conversation present also, didn't I?

24 A. Yes.

1 Q. And who was that?

2 A. Miss Griffin.

3 Q. And having a witness to a conversation is another
4 way of documenting your work, isn't it?

5 A. Yes.

6 Q. And in none of your conversations with Martinez did
7 you have a witness present to corroborate your version of
8 what statements you are attributing to him now?

9 A. No, sir.

10 Q. Now, I think you've indicated on direct examination
11 that during the second interview with Martinez on July
12 twenty-eighth, he told you that detectives showed up and
13 showed him a photo lineup, is that a fair characterization of
14 what you have testified to?

15 A. Yes, sir.

16 Q. And you know now, of course, that detectives didn't
17 show up to show him a lineup, isn't that also true?

18 A. Yes.

19 Q. That in fact, you know now he had merely come to
20 Miss Griffin's office to prepare for his testimony at trial?

21 A. Yes.

22 Q. And then he told you that he -- excuse me a moment.
23 He told you at that point in time that he had identified a
24 Jamie Snow as the person he saw at the Clark station that

1 night?

2 A. Yes.

3 Q. That came as a surprise to you at that moment,
4 didn't it?

5 A. Yes, it did.

6 Q. And so you immediately asked him about the fact
7 that he had changed his identification, didn't you?

8 A. No, I did not.

9 Q. No further questions.

10 THE COURT: Mr. Skelton.

11
12 REDIRECT EXAMINATION

13 BY MR. SKELTON:

14 Q. Mark, have you forgotten your conferences with
15 Mr. Martinez, which have occurred within the last two months,
16 month and a half?

17 A. No, I have not.

18 Q. Are those conversations fresh in your mind?

19 A. Yes.

20 Q. Are you uncertain as to anything Mr. Martinez told
21 you about his ability to make an identification?

22 A. No.

23 Q. As to either of the first two conversations you had
24 with him?

1 A. No.

2 Q. How long was your conversation with Mr. Reynard in
3 the conference room outside this courtroom approximately two
4 weeks ago?

5 A. Approximately three minutes.

6 Q. Based upon your review and our discussions of the
7 police reports that we've earlier referred to, did
8 Mr. Martinez, by virtue of his professed inability to
9 identify anybody, appear to be a, a witness that we would
10 want to call?

11 A. Yes.

12 Q. And did you in fact serve a subpoena on
13 Mr. Martinez?

14 A. Yes, I did.

15 Q. On behalf of the defense?

16 A. Yes, I did.

17 MR. REYNARD: At this point, I'll object to counsel
18 leading the witness.

19 THE COURT: Sustained.

20 MR. SKELTON:

21 Q. At any point in time, did I ask you to serve
22 subpoenas upon potential witnesses for the defense?

23 A. Yes, you did.

24 Q. Was Mr. Martinez included in that list or not?

1 A. Yes, he was.

2 Q. And did you in fact do what I asked you to do?

3 A. Yes, you did. Yes, I did.

4 Q. And prior to your first conversation with
5 Mr. Martinez, you've indicated earlier that we discussed
6 those reports, and I provided you with copies of them?

7 MR. REYNARD: Objection to leading.

8 MR. SKELTON: This is foundationary, Your Honor.

9 MR. REYNARD: Withdrawn.

10 THE COURT: All right. Go ahead.

11 A. Yes.

12 Q. Based on your understanding of the case and your
13 understanding of the contents of those reports that I had
14 given to you, was there anything in there that you believed
15 to be damaging or damaging to the defense?

16 MR. REYNARD: Objection to conclusions.

17 THE COURT: Sustained.

18 MR. SKELTON:

19 Q. What, if anything, in those reports that -- I have
20 already asked this. I'll stop now, judge. I have no other
21 questions.

22 THE COURT: Mr. Reynard.

23 MR. REYNARD: Nothing further.

24 THE COURT: Then let me ask counsel to approach for

1 a moment.

2 (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH
3 OUTSIDE THE HEARING OF THE JURY.)

4 THE COURT: Before we deal with this, I need to ask
5 a couple of questions. Do you have any other witnesses right
6 now?

7 MR. SKELTON: Not any short ones, judge.

8 THE COURT: Does Knight have to go on at one, is
9 that what you told me?

10 MR. REYNARD: She has a two o'clock appointment.

11 THE COURT: So you want to try to accommodate her
12 at one?

13 MR. REYNARD: I only have to ask her two or three
14 questions.

15 THE COURT: We can reopen on cross.

16 MR. SKELTON: I can do that at one.

17 THE COURT: And I would be more than happy to do
18 that for you.

19 MR. SKELTON: We've got Cherrie Cochran, who I have
20 spoken to. I've got Carol Powell, and let me check my
21 witness list.

22 THE COURT: Okay.

23 MR. SKELTON: We've got Gain done. I've got
24 Cochran, Carol Powell, Tim Powell, Aaron Fox, and Tony --