

1 there abundantly in this case and make your decision based
2 on the evidence in total. Corroboration, look for it; that
3 is what helps you determine what the truth is in this case.

4 Does Gerardo Gutierrez provide corroboration for
5 Martinez's and Luna's identifications? Absolutely. Despite
6 the fact that Gutierrez, who was closer than either Luna or
7 Martinez to a man at the station that night, despite the
8 fact that he gave a description of a man inches taller than
9 either Luna or Martinez, and despite the fact he described
10 the dark jacket that the suspect was wearing a little
11 differently as a leather motorcycle jacket, not a trench
12 coat or spring coat, and despite his description of this
13 person wearing an earring as he recalls and some description
14 of a fresh scratch mark on the face, he still identifies
15 with Luna's and Martinez's identification. They all
16 describe a man with light brownish blondish hair, jacket and
17 baseball cap. *GENERAL*

18 I told you in opening statements that the evidence
19 would show that Gutierrez did not see the suspect at the
20 time of the shooting. And I suggest to you the evidence
21 still supports that position.

22 From the beginning Mr. Gutierrez talked about
23 having gone to the gas station to pump three dollars worth
24 of gas in his car the night of Easter Sunday. When he

1 enters the station to pay for that gas, he notices that the
2 attendant, Bill, appears to be nervous and upset, doesn't
3 talk, and he drops some change. He also notices that the
4 customer pulls out cigarettes and lights one up. And then
5 Gutierrez leaves. He notices tension between them, as he
6 described it, as if they were arguing over something. He
7 never hears any shots, never sees any police when he leaves;
8 and he never notices anyone else on the lot.

9 The review of the cash register detail tape shows
10 you that there was indeed a three dollar gas purchase and
11 that was at 6:55 p.m. There was no purchase of any kind of
12 gas after 7:53 p.m. and no other three dollar gas purchase
13 after 6:55 p.m.

14 I suggest that this provides corroboration for the
15 notion that Gutierrez was in the station before seven p.m.
16 And Bruce Roland's testimony would also tend to support the
17 notion that Gutierrez was in the store earlier because what
18 Roland says the defendant told him sounds remarkably similar
19 to what Gutierrez describes. When you remember what
20 Gutierrez described, it goes well with what the defendant
21 says happened. The defendant told Roland he was in the
22 station earlier to get cigarettes, did not have enough money
23 to pay for them, and the clerk refused to let him have them
24 without paying the full price. And he said he got mad about

1 that. Doesn't that sound very likely that that could be
2 what Gutierrez saw that hour before when he saw that tension
3 as if there was an argument between the clerk and the
4 customer?

5 And doesn't it then further corroborate what the
6 defendant told Roland, that later the defendant went back to
7 the station to get cigarettes and money? And doesn't it
8 seem likely that when he went back, the defendant would
9 change jackets, maybe even try to tuck his hair under his
10 ball cap like Randy Howard said was his trademark when he
11 didn't want to be identified, and to look different than he
12 did when he was at the station earlier?

13 But as I told you in opening, the ultimate
14 question is for your purpose -- statement is, for your
15 purposes is it really doesn't matter if Gutierrez saw the
16 defendant that night because the bottom line is the
17 defendant was convinced that Gutierrez had seen him. Take a
18 look at exhibit number 22. That's the sketch that Gutierrez
19 assisted in producing and compare it to exhibit 21, the
20 sketch that Martinez produced. I suggest to you that there
21 are remarkable similarities in the facial features and the
22 styles. And then take a look at the defendant's photographs
23 from February of 91 and from April of 91 and compare them to
24 exhibit 22. I suggest to you the similarities between them

1 and the Gutierrez sketch are stunning. But, again, I
2 recognize it's all in the eye of the beholder. And some of
3 you won't see it that way while some of you will.

4 But what's the most important point? The
5 defendant himself corroborated the sketch of Mr. Gutierrez.

6 We've heard evidence in this trial that Dawn
7 Roberts was told by this defendant and that this defendant
8 told his buddy, Randy Howard, that this defendant thought
9 the composite from the Little case looked just like him, the
10 Gutierrez sketch. And the defendant was so concerned about
11 that composite, that he told his friends and acquaintances
12 to take down that composite and bring them to him. And you
13 heard Dawn Roberts testify that, in fact, she saw a pile of
14 these on the defendant's kitchen table in his trailer, and,
15 in fact, she took one down herself and brought it to him.

16 And the defendant was so concerned about that
17 composite that he and his friend, Mark McCown, argued about
18 it. And when they were getting paranoid about being seen,
19 Dawn Roberts heard the defendant say to Mark McCown, what
20 are you worried about, it's not your picture up there, it's
21 mine.

22 Now even Mark McCown says he and the defendant had
23 discussions about the composites which corroborates Dawn's
24 testimony. And at grand jury over a year and a half ago,