

APPENDIX A

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JUNIOR VAZQUEZ-SUAREZ,

Appellant,

v.

Case No. 5D18-2418

STATE OF FLORIDA,

Appellee.

Decision filed October 8, 2019

3.850 Appeal from the Circuit
Court for Marion County,
Robert W. Hodges, Judge.

Jack R. Maro, of Law Office of Jack R.
Maro, P.A., Ocala, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Kellie A. Nielan,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EVANDER, C.J., COHEN and GROSSHANS, JJ., concur.

APPENDIX B

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO.: 2013-CF-0386-C-0

JUNIOR VAZQUEZ-SUAREZ,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF
AFTER EVIDENTIARY HEARING**

THIS CAUSE is before the Court on the Defendant's "Amended Consolidated Motion Post-Conviction Relief [3.850]," filed with the Clerk on January 4, 2018. The Defendant originally filed a Motion for Post-Conviction Relief on February 11, 2016. After receiving the State's Response, this Court entered an Order denying four grounds and setting an evidentiary hearing on four grounds. The evidentiary hearing was originally scheduled for November 1, 2016. After the Defendant requested a continuance, the evidentiary hearing was held on January 19, 2017. After several witnesses testified, the Court granted the defense a continuance to review additional evidence. The Defendant then filed a motion to supplement his motion with additional grounds, which the Court granted. Thereafter, the Defendant filed the instant Amended Consolidated Motion, which included the four grounds the Court had previously denied—grounds one, two, three, and five—and the supplemented grounds. The Court ordered the State to respond to ground four only. After reviewing the State's Response, the Court set an evidentiary hearing on the grounds upon which the Court had not yet previously ruled. The evidentiary hearing was held on May 7, 2018. The Court, having considered the Defendant's Motion, the State's Response, and the evidence presented at the evidentiary hearings, finds as follows:

The Defendant was charged, by Information, with trafficking in cannabis (Count I), grand theft (Count II), possession of a place for the purpose of trafficking or manufacturing of a controlled substance (Count III), fleeing or attempting to elude (Count IV), possession of an unauthorized driver's license (Count V), driving while license suspended or revoked (Count VI), and providing a false name or identification to a law enforcement officer (Count VII). The Defendant was represented by Yvens Pierre-Antoine. The Defendant proceeded to trial and was found guilty as charged on all counts. On June 10, 2014, the Defendant was sentenced to 20 years in the Department of Corrections ("DOC") on Count I, 5 years in the DOC on Counts II, IV and V, 15 years in the DOC on Count III, 60 days in the Marion County Jail on Count VI, and 1 year in the Marion County Jail on Count VII. All counts were to be served concurrently. The Defendant appealed and, on March 17, 2015, the Fifth District Court of Appeal *per curiam* affirmed the Defendant's judgment and sentence. *Vazquez-Suarez v. State*, 160 So. 3d 457 (Fla. 5th DCA 2015) (Table).

The Defendant claims he is entitled to relief because he was denied effective assistance of counsel. In *Strickland v. Washington*, 466 U.S. 668 (1984), the Supreme Court established a two-pronged standard for determining whether counsel provided legally ineffective assistance. First, the defendant must point to specific acts or omissions of counsel that are "so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Id.* at 687. Second, the defendant must establish prejudice by "show[ing] that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

Unless the defendant makes both showings, it cannot be said that the conviction resulted from a breakdown in the adversary process that renders the result unreliable. Conversely, because "the *Strickland* standard requires establishment of both prongs, when a defendant fails to make a showing as to one prong, it is not necessary to delve into whether

he has made a showing as to the other prong.” *Waterhouse v. State*, 792 So. 2d 1176, 1182 (Fla. 2001).

In considering a claim of ineffective assistance of counsel, there is a strong presumption that trial counsel’s performance was effective; the defendant alone carries the burden to overcome this presumption. See *Johnson v. State*, 921 So. 2d 490, 500 (Fla. 2005). In viewing a counsel’s performance, the court must make every effort to eliminate the distorting effects of hindsight, reconstruct the circumstances of counsel’s challenged conduct, and evaluate the conduct from trial counsel’s perspective at the time. See *Spencer v. State*, 842 So. 2d 52, 61 (Fla. 2003). The *Strickland* standard is not what the best lawyers would have done; it is not even what most good lawyers would have done. The sole issue is whether any reasonable lawyer could have acted, under the circumstances, as trial counsel acted. Cf. *White v. Secretary Singletary*, 972 F.2d 1218, 1220-21 (11th Cir. 1992).

Ground One

This Court previously ruled on this ground in the Court’s Order Denying, in Part, and Setting Hearing on, in Part, Defendant’s Motion for Post-Conviction Relief, entered on September 15, 2016. See attached Order Denying, in Part, and Setting Hearing on, in Part, Defendant’s Motion for Post-Conviction Relief. The Court will not comment further on this ground.

Ground Two

This Court previously ruled on this ground in the Court’s Order Denying, in Part, and Setting Hearing on, in Part, Defendant’s Motion for Post-Conviction Relief, entered on September 15, 2016. See attached Order Denying, in Part, and Setting Hearing on, in Part, Defendant’s Motion for Post-Conviction Relief. The Court will not comment further on this ground.

Ground Three

This Court previously ruled on this ground in the Court's Order Denying, in Part, and Setting Hearing on, in Part, Defendant's Motion for Post-Conviction Relief, entered on September 15, 2016. *See attached Order Denying, in Part, and Setting Hearing on, in Part, Defendant's Motion for Post-Conviction Relief.* The Court will not comment further on this ground.

Ground Four

In his fourth ground, the Defendant claims Mr. Pierre-Antoine was ineffective because he failed to "conduct appropriate discovery, file pre-trial motions, and to take depositions in preparation for trial and then failing to call witnesses at the time of the trial."

At the outset, the Defendant's claims that Mr. Pierre-Antoine failed to file pre-trial motions and take depositions are only alleged in the title of this ground and are not mentioned anywhere else in the argument. Such conclusory allegations are facially insufficient. Those claims are also conclusively refuted by the record. Mr. Pierre-Antoine filed three pre-trial motions in limine, all of which were discussed on the record prior to trial. *See attached Trial Transcript, p. 10-19.* Additionally, the record reflects Mr. Pierre-Antoine conducted depositions of ten witnesses. *See attached Notices of Taking Depositions.* The Defendant's claims as to these two points are without merit.

The Defendant also claims Mr. Pierre-Antoine failed to investigate and call several witnesses, namely (1) Arturo Apolinar, a co-defendant; (2) Dale Kirby, the seller of the property at which the grow operation was conducted; (3) David Santiel, the Defendant's probation officer in Miami; (4) Justin Cranston, a Walmart employee; and (5) Kimberly Porter, an employee from the landfill. The Defendant also claims Mr. Pierre-Antoine failed to properly impeach Deputy Tanya Rightsell with the Defendant's statement made during

an interview with Deputy Rightsell at the property wherein the grow operation was conducted.

Arturo Apolinar

The Defendant claims Mr. Apolinar was available to testify on the Defendant's behalf and would have testified that the Defendant was not present at the property where the grow operation was conducted. The issue of the defense potentially calling Mr. Apolinar at trial was discussed at the evidentiary hearings. Mr. Pierre-Antoine testified that the Defendant neither advised him that he wanted to call Mr. Apolinar as a witness nor that he was available to testify. *See attached Evidentiary Hearing Transcript, p. 84 & 101.* Mr. Pierre-Antoine learned that Mr. Apolinar had absconded from his probation. *Id.* at 101. When viewing the potential testimony Mr. Apolinar could have provided with the evidence presented at trial against the Defendant—namely, the Defendant was seen at or near the property where the grow operation was conducted, the Defendant's flight and subsequent high-speed chase, and the presence of the fake ID on the Defendant with which the Defendant purchased the property—coupled with the fact Mr. Apolinar may not have been able to be located for trial, the Court finds the Defendant was not prejudiced by any alleged deficient performance of Mr. Pierre-Antoine in failing to call Mr. Apolinar as a witness at trial.

Dale Kirby

The Defendant claims Mr. Kirby, the owner of the property where the grow operation was conducted, would have testified that co-defendant Victor Rodriguez-Suarez gave money to the Defendant to give to Mr. Kirby on the day the property was purchased. The Defendant claims this testimony would have furthered his defense that he did not know what was going on at the property.

Mr. Pierre-Antoine testified at the evidentiary hearing that he “extensively” discussed with the Defendant the possibility of calling Mr. Kirby as a witness at trial but advised

against it because he believed that any testimony Mr. Kirby would have given would "not have been a good idea." See *Evidentiary Hearing Transcript*, p. 86. Mr. Pierre-Antoine further testified that he did not believe it would be beneficial to have Mr. Kirby testify that the Defendant and co-defendant Victor Rodriguez-Suarez were together at some point. *Id.* at 87. The Court finds Mr. Pierre-Antoine's decision not to call Mr. Kirby to be a reasonable strategic decision.

David Santiel

The Defendant claims Mr. Santiel, his probation officer from Miami, would have testified that the Defendant was on house arrest from June 1, 2012 until January 11, 2013, and, therefore, the Defendant would not have been able to visit the property where the grow operation was conducted. Mr. Pierre-Antoine testified at the evidentiary hearing that calling Mr. Santiel, who would have testified the Defendant was on community control, would have been highly prejudicial to the Defendant's case. *Id.* at 87-88. The Court finds Mr. Pierre-Antoine's decision not to call Mr. Santiel to be a reasonable strategic decision.

Justin Cranston and Kimberly Porter

Justin Cranston is a loss prevention officer at Walmart. Kimberly Porter works at Marion County Solid Waste. The Defendant claims Mr. Cranston and Ms. Porter would have testified that they saw co-defendant Victor Rodriguez-Suarez at Walmart and the landfill but did not see the Defendant with him. At the evidentiary hearing, the Defendant admitted he did not know who Mr. Cranston and Ms. Porter were because he had never met them before. *Id.* at 55. The Defendant testified that he asked Mr. Pierre-Antoine to investigate these witnesses;¹ however, Mr. Pierre-Antoine testified the Defendant never asked him to call Mr. Cranston and Ms. Porter to testify on his own behalf. *Id.* at 103. Given the fact that Mr.

¹ See attached *Evidentiary Hearing Transcript*, p. 26-27.

Cranston and Ms. Porter did not know the Defendant, coupled with the fact that the Defendant was seen at the property where the grow operation was conducted and then fled from police from that location, the Court finds Mr. Pierre-Antoine was neither ineffective in failing to call Mr. Cranston and Ms. Porter as witnesses at Defendant's trial nor was the Defendant prejudiced by such failure.

Deputy Tanya Rightsell (now Tanya Rodriguez)

The Defendant claims Mr. Pierre-Antoine failed to impeach Deputy Rightsell with statements the Defendant made during a recorded interview with Deputy Rightsell on scene at the property wherein the grow operation was conducted. Prior to the January 19, 2017 evidentiary hearing, Deputy Rightsell delivered the recorded interview to the office of the Defendant's post-conviction counsel. After presenting some evidence at the January 19, 2017 evidentiary hearing, the Defendant requested a continuance to have the recorded interview translated into English and transcribed. In his amended motion, the Defendant claims the recorded interview is newly discovered evidence.

In order for a defendant to be successful on a newly discovered evidence claim, he must meet the *Jones* two-prong test:

First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial.

Tompkins v. State, 994 So. 2d 1072, 1086 (Fla. 2008) (citing *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998)). In the context of the second prong of *Jones*, the court must consider (1) whether the newly discovered evidence would be admissible at trial, (2) whether the evidence goes to the merits of the case or is impeachment, and (3) whether the evidence is cumulative. *Jones*, 709 So. 2d at 521. Further, the court should consider the nature of the evidence and circumstances surrounding its discovery. *Id.*

Here, the alleged newly discovered evidence is a video recording of the Defendant's statement to Deputy Rightsell. The Court has reviewed the transcript of the English translation of the statement.

The Court notes the Defendant was aware of the existence of this recorded statement prior to trial. By his own admission at the evidentiary hearing, the Defendant discussed the recorded statement with Mr. Pierre-Antoine prior to his trial. *See attached Evidentiary Hearing Transcript, p. 16-17.* As both the Defendant and Mr. Pierre-Antoine were aware of the recorded statement, this evidence is not newly discovered.

Alternatively, the Defendant claims the State committed a *Brady*² violation by withholding the recorded interview. In order to succeed on such a claim, the Defendant "must allege specific facts that, if accepted as true, establish a *prima facie* case that (1) the State possessed evidence favorable to the accused because it was either exculpatory or impeaching; (2) the State willfully or inadvertently suppressed the evidence; and (3) the defendant was prejudiced." *Allen v. State*, 854 So. 2d 1255, 1259 (Fla. 2003) (citing *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999)).

The Court first notes that the recorded statement would not have been admissible in evidence because it is self-serving hearsay. The Defendant claims the statement would have been used to impeach Deputy Rightsell's trial testimony wherein Deputy Rightsell testified regarding the Defendant's knowledge that the property was being used to conduct a grow operation. However, when comparing Deputy Rightsell's trial testimony with the translated transcript of the recorded statement, the Court finds them to be consistent. *See attached Trial Transcript, p. 245-331 & English Translation of Spanish Recorded Interview of Junior Vazquez-Suarez Conducted by Officer Tanya Rightsell.* As Deputy Rightsell's trial testimony

² *Brady v. Maryland*, 373 U.S. 83 (1963).

and the Defendant's statement are consistent, the Court finds the recorded statement is not impeachment evidence.

Moreover, in the recorded statement, the Defendant admits that he possessed a false ID, fled from the police, owned a home in which a grow operation was conducted, and was on probation for operating a grow operation in another county. *See attached English Translation of Spanish Recorded Interview of Junior Vazquez-Suarez Conducted by Officer Tanya Rightsell.* It is unclear how presenting this information to a jury or using any of this information to impeach Deputy Rightsell would have been beneficial to the Defendant. The Court finds the Defendant was not prejudiced by not having the recorded statement because there is no reasonable probability the result of the proceeding would have been different had the Defendant had possession of the recorded statement prior to trial.

Based on the foregoing, the Court finds the Defendant's fourth ground for relief is without merit.

Ground Five

This Court previously ruled on this ground in the Court's Order Denying, in Part, and Setting Hearing on, in Part, Defendant's Motion for Post-Conviction Relief, entered on September 15, 2016. *See attached Order Denying, in Part, and Setting Hearing on, in Part, Defendant's Motion for Post-Conviction Relief.* The Court will not comment further on this ground.

Ground Six

In his sixth ground, the Defendant raises several grounds claiming Mr. Pierre-Antoine was ineffective. The Defendant claims (1) Mr. Pierre-Antoine failed to advise the Court of a sleeping juror; (2) Mr. Pierre-Antoine was not paying attention during trial, including texting during trial; and (3) Mr. Pierre-Antoine failed to obtain the services of an English-Spanish interpreter during communications with the Defendant.

At the evidentiary hearing, Mr. Pierre-Antoine testified that he never saw a juror sleeping or not paying attention during trial. *See Evidentiary Hearing Transcript, p. 104.* Mr. Pierre-Antoine further testified the Defendant never brought anything to his attention regarding a sleeping juror and, had he done so, Mr. Pierre-Antoine would have advised the Court. *Id.*

Mr. Pierre-Antoine also testified regarding his ability to communicate with the Defendant. Mr. Pierre-Antoine never had any trouble communicating with the Defendant in English. *Id.* at 82-83. According to Mr. Pierre-Antoine, the Defendant was "pretty engaged" in their conversations. *Id.* Additionally, Mr. Pierre-Antoine testified that the Defendant never indicated he was not able to communicate because he did not have an interpreter. *Id.* at 104.

After reviewing the trial transcript, the Court finds Mr. Pierre-Antoine was actively participating in the Defendant's trial. The Court further finds the Defendant's claims are not supported by the record or the evidence presented during the evidentiary hearing. Therefore, the Defendant's sixth ground for relief is without merit.

Ground Seven

In his seventh ground, the Defendant claims Mr. Pierre-Antoine was ineffective because he misadvised the Defendant regarding the maximum sentence that could be imposed and misadvised the Defendant not to partially pled guilty to five of the lesser charges. The Defendant also claims Mr. Pierre-Antoine failed to investigate the Defendant's competency to understand the State's plea offer due to the Defendant's "mental disability."

At the evidentiary hearing, Mr. Pierre-Antoine specifically testified that he advised the Defendant of his maximum exposure, reviewed the scoresheet with the Defendant, and recommended the Defendant take the plea offer because it was in his best interests. *Id.* at 90-92 & 104-05. Mr. Pierre-Antoine also discussed with the Defendant the possibility of

pleading to the lesser charges and going to trial on the more serious charges. *Id.* at 93. Mr. Pierre-Antoine also testified that the Defendant was highly engaged in his case, knew his case well, and was even demanding of certain aspects of his case. *Id.* at 100-01. Mr. Pierre-Antoine testified had no issues communicating with the Defendant and the Defendant was "very aware" of what was going on in his case. *Id.* at 107. As Mr. Pierre-Antoine discussed with the Defendant his maximum exposure and offered his advice regarding accepting the State's plea offer, the Court finds that Mr. Pierre-Antoine did not misadvise the Defendant. Therefore, the Defendant's seventh ground for relief is without merit.

Ground Eight

In his eighth ground, the Defendant claims Mr. Pierre-Antoine was ineffective because he failed to fully explain the Defendant's "right to testify and the nature of what the jury would be informed of as associated with his prior convictions." The Defendant claims that, because Mr. Pierre-Antoine misadvised him of what would be divulged regarding his prior criminal history if he testified, the Defendant did not testify on his own behalf.

At the Defendant's trial, the Court inquired of the Defendant regarding his decision not to testify on his own behalf. The Defendant informed the Court that he understood his right to testify and decided, on his own, not to testify on his own behalf.

THE COURT: All right. Mr. Vazquez-Suarez, just – the decision not to testify, you made that decision on your own; is that correct?

THE DEFENDANT: Yeah. Yes, Your Honor.

THE COURT: And you understand the pros and cons?

THE DEFENDANT: Yes.

THE COURT: And no one forced you to make that decision; did they?

THE DEFENDANT: No, Your Honor.

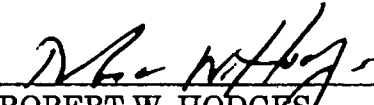
See attached Jury Trial Transcript, p. 391.

The Defendant claims this waiver of his right to testify was made because Mr. Pierre-Antoine incorrectly advised him that the jury would hear he was previously convicted of the same charges in the instant case. *See attached Evidentiary Hearing Transcript, p. 42-43.* However, at the evidentiary hearing, Mr. Pierre-Antoine testified that he advised the Defendant of his right to testify on his own behalf and explained that the jury would be advised of the number of his prior convictions but did not advise the Defendant that the jury would know the nature of his convictions. *Id.* at 95-96. Mr. Pierre-Antoine explained that he recommended the Defendant not testify on his own behalf because of his criminal history. *Id.* After hearing the evidence presented at the evidentiary hearings, this Court finds the testimony of Mr. Pierre-Antoine to be more credible than that of the Defendant. Therefore, the Court finds Mr. Pierre-Antoine did not misadvise the Defendant regarding his right to testify on his own behalf. The Defendant's eighth ground is without merit.

As the Court finds Mr. Pierre-Antoine was not ineffective in his representation of the Defendant, it is,

ORDERED: The Defendant's "Amended Consolidated Motion Post-Conviction Relief [3.850]," is **DENIED**. Defendant may appeal this decision to the Fifth District Court of Appeal within thirty (30) days of this Order's effective date.

ORDERED this 27 day of June, 2018, at Ocala, Florida.



ROBERT W. HODGES
Circuit Judge

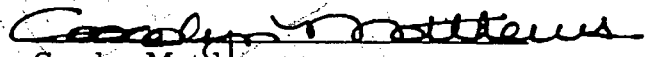
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been provided by US Mail/Inter-Office Mail this 27 day of June, 2018, to the following:

Office of the State Attorney
eservice@marion@sao5.org

Jack R. Maro, Esq.
PO Box 3868
Ocala, FL 34478

Junior Vazquez-Suarez, DC# M82087
South Bay Correctional Facility
600 U.S. Highway 27, South
South Bay, Florida 33493-2233


Carolyn Matthews
Judicial Assistant

APPENDIX C

1 IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
2 CIRCUIT, IN AND FOR MARION COUNTY, FLORIDA
3 CASE NO.: 2013-CF-000386C
4
5 STATE OF FLORIDA,
6 Plaintiff,
7 vs.
8 JUNIOR VAZQUEZ-SUAREZ,
9 Defendant.
10
11 -----
12
13 Transcript of Evidentiary Hearing
14 Before the Honorable Robert W. Hodges,
15 Circuit Court Judge
16 DATE TAKEN: May 17, 2018
17 TIME: 1:44 p.m. - 3:15 p.m.
18 PLACE: Marion County Judicial Center
19 110 Northwest 1st Avenue
20 Ocala, Florida 34475
21
22 TRANSCRIPT OF ELECTRONICALLY RECORDED MATERIAL
23 Transcribed by:
24 Britnee Shore, FPR
25 Joy Hayes Court Reporting
407 Courthouse Square
Inverness, Florida 34450

1 A P P E A R A N C E S:
2
3 TOBY HUNT, ESQUIRE
4 State Attorney's Office
5 110 Northwest 1st Avenue
6 Suite 5000
7 Ocala, Florida 34475
8
9 On behalf of the Plaintiff
10
11 JACK MARO, ESQUIRE
12 Jack R. Maro, P.A.
13 2309 Northwest 10th Street
14 Ocala, Florida 34475
15
16 On behalf of the Defendant
17
18 ALSO PRESENT:
19 The Defendant, in custody
20
21
22
23
24
25

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THE COURT: Vazquez-Suarez. 13-CF-386. The last hearing was in -- January 17, right, when we started this thing?
 MR. MARO: That is correct, sir.
 THE COURT: Okay. And you had filed -- have a seat -- an amended petition at some point, correct?
 MR. MARO: Judge, on -- hang on a second. On 10/24, we had filed a motion to supplement --
 THE COURT: Of what year?
 MR. MARO: I'm sorry. 10/24/17, we filed a motion to supplement, bring the record up to speed, and you granted that. Then on 01/04/18, we filed an amended consolidated motion for postconviction --
 THE COURT: Okay.
 MR. MARO: -- with attached exhibits.
 THE COURT: So that's what we're here on now then, right?
 MR. MARO: Yeah. Based on -- just to -- just to refresh your recollection, it was actually your suggestion that we consolidate the way this had been pieced -- you know, the way I put it together --

1 THE COURT: Right.

2 MR. MARO: -- than we make one big motion,
3 and that's what we did.

4 THE COURT: Okay. Are you ready to go then?

5 MR. MARO: Yes, sir.

6 THE COURT: All right. Go ahead.

7 MR. HUNT: Judge, just to be clear, the
8 issue -- the issue that the Court was asking about
9 was exclusively on the issue of the tape -- the
10 recorded interview and the alleged Brady violation
11 or newly discovered evidence. Everything else
12 was -- that was the narrow focus of their request
13 that the Court had me respond to.

14 THE COURT: Okay.

15 MR. HUNT: So I think that -- that's my
16 understanding of what the purpose of today's
17 hearing is exclusively about, that issue.

18 MR. MARO: Yeah.

19 MR. HUNT: That's -- that's just -- so
20 we're --

21 THE COURT: I think everything we've heard
22 already, right?

23 MR. HUNT: Yes, sir. That's correct.

24 MR. MARO: Yeah, Judge. And Mr. Hunt is
25 correct. We had a full evidentiary hearing. And

1 what materialized was when Detective Rightsell
2 showed up with this tape, and that's what caused
3 basically the bifurcation here. So the only issue
4 we are -- is the issue, as Mr. Hunt has indicated
5 to the Court -- I forget what count that was, but
6 that is the only issue as far as the tape is
7 concerned.

8 THE COURT: Okay.

9 MR. HUNT: Yes.

10 THE COURT: What -- what -- what count is
11 that now, though?

12 MR. HUNT: I believe it was just -- I think
13 it was just Ground 4, but let me double-check,
14 Judge. I'll tell you.

15 THE COURT: So that's going to be Issue
16 Number 4?

17 MR. HUNT: Issue 5. Excuse me.

18 THE COURT: Five.

19 MR. MARO: Issue 5.

20 MR. HUNT: Yes, sir.

21 THE COURT: Madam Clerk, can you swear her
22 in?

23 THE CLERK: Do you solemnly swear or affirm
24 the testimony you're about to give will be the
25 truth, the whole truth, and nothing but the truth,

1 so help you God?

2 MS. RODRIGUEZ: I do.

25

1 TANYA RODRIGUEZ,

2 having first been duly sworn to tell the truth, the
3 whole truth, and nothing but the truth, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. MARO:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. Would you state your name --

10 THE COURT: Just give me -- just give me one
11 second. I'm trying to find where the trial file
12 starts. What page is that of your motion? I got
13 it. I'm sorry. It's page 32. All right. Go
14 ahead.

15 BY MR. MARO:

16 Q. Would you state your name for the record?

17 A. Tanya Rodriguez.

18 Q. And did you use to be known as Tanya
19 Rightsell?

20 A. I did. I was.

21 Q. Okay. And back in April of 2014, how were
22 you employed?

23 A. With the Marion County Sheriff's Office.

24 Q. And how long have you maintained that
25 employment, approximately?

1 A. This will be my twelfth year with the Marion
2 County Sheriff's Office.

3 Q. During the course of the scope of that
4 employment, did you get involved in an investigation
5 that resulted in the arrest of certain persons, one of
6 which became known to you, I believe, as Junior
7 Vazquez-Suarez?

8 A. Yes, I did.

9 Q. Do you happen to see Mr. Suarez in court here
10 today?

11 A. I do.

12 Q. All right. And he's sitting over at
13 counsel's table?

14 A. Yes, sir.

15 Q. Okay. Did there come a time during your
16 investigation that you conducted an interview with Mr.
17 Vazquez-Suarez?

18 A. Yes, I did.

19 Q. And where was that interview conducted and
20 what conditions, basically?

21 A. In front of a grow house.

22 Q. Okay. And that was allegedly the scene of
23 your investigation?

24 A. That is correct.

25 Q. Okay. And was that interview -- was it

1 memorialized? In other words, was it recorded?

2 A. It was.

3 Q. All right. And how was it recorded? On what
4 type of equipment?

5 A. On a voice recorder.

6 Q. Okay. Did you subsequently have an
7 opportunity to meet with the State during the course of
8 the scope of your employment in reference to preparing
9 for Mr. Suarez's trial?

10 A. I'm assuming so at some point.

11 Q. Okay. Do you remember if that recording
12 had -- was turned over to anyone, at least the state
13 attorney or anybody from the State Attorney's Office?

14 A. No. I hadn't realized that that was not in
15 evidence until recently.

16 Q. Okay. We'll get to that in a minute. So did
17 you have your deposition taken in this case?

18 A. Yes, I did.

19 Q. Do you remember the name of the attorney that
20 took your deposition?

21 A. I see him here. Mr. Antoine.

22 Q. Do you recognize him in the courtroom today?

23 A. Yes, I do.

24 Q. Do you remember discussing the tape with him
25 at the time of your deposition?

1 A. I really can't tell you what I recall from
2 the deposition. It was so long ago.

3 Q. All right. You do remember not producing the
4 tape, though, to the State or to the defense --

5 A. I -- I realized later, that, yes, it was not
6 in my evidence.

7 Q. Did there come a time that the tape became
8 known to you to have been in existence but not in
9 evidence?

10 A. Yes, sir.

11 Q. And did you appear at a hearing back in, I
12 guess, January regarding this issue and brought with
13 you a tape?

14 A. I was here --

15 Q. A recording?

16 A. Yeah, but I didn't -- I don't think I
17 testified.

18 Q. No, but do you remember bringing with you a
19 recording?

20 A. No.

21 Q. You did not bring with you a recording?

22 A. No.

23 Q. Did you ever produce your recording?

24 A. Yes, I did.

25 Q. And do you remember who you produced it to?

1 A. I dropped it off to your office.

2 Q. Okay. I stand corrected.

3 A. Okay.

4 MR. MARO: May I approach, Judge?

5 BY MR. MARO:

6 Q. Does this appear to be what you dropped off
7 at my office?

8 A. Yes, sir.

9 Q. All right.

10 MR. MARO: Judge, for the purposes of this,
11 it was marked as Defense Exhibit C, and we'd like
12 to introduce it into evidence as Defense Number 1.

13 MR. HUNT: No objection.

14 THE COURT: What is it?

15 MR. MARO: It is a disk, Vazquez-Suarez audio
16 interview.

17 THE COURT: With no objection, it will be in
18 evidence as Number 1 for the defense.

19 (Defense Exhibit No. 1 was admitted into
20 evidence.)

21 BY MR. MARO:

22 Q. When did you first have an opportunity to, I
23 guess, relisten or revisit the recording?

24 A. When I --

25 Q. Bad question. When was the first time after

13

1 you've done your recording -- did you ever have an
 2 opportunity to revisit or relisten to it?
 3 A. I listened to it today.
 4 Q. I'm sorry?
 5 A. I listened to it today.
 6 Q. Okay. Did you listen to it before trial?
 7 A. I don't remember.
 8 Q. All right. What is your background --
 9 Spanish background?
 10 A. I'm Puerto Rican. Both of my parents are
 11 from Puerto Rico -- born and raised in Puerto Rico.
 12 Q. Is -- I guess you do speak English, but was
 13 Spanish native to you?
 14 A. Spanish was not my primary language, but
 15 my -- we spoke Spanish growing up. My parents spoke
 16 Spanish. My grandmother doesn't speak any English, so
 17 that's -- we learned how to speak Spanish.
 18 Q. And what about English? When did English
 19 become, I guess, a primary --
 20 A. English is my primary language.
 21 Q. Okay. When you first came -- did you live in
 22 Puerto Rico? Until what age?
 23 A. No, I did not live in Puerto Rico.
 24 Q. You didn't?
 25 A. My parents did.

14

1 Q. Okay. So English was your primary language?
 2 A. Yes, sir.
 3 Q. Do you know Mr. Junior Vazquez as far as
 4 background? Do you know where he's from, ethnically
 5 speaking? In other words, he's from Cuba? Mexico?
 6 A. Yes.
 7 Q. Puerto Rico?
 8 A. He's Cuban.
 9 Q. He's Cuban? Okay. Is it true that there are
 10 dialects that are different for different-speaking
 11 Spanish people?
 12 A. Some. Uh-huh.
 13 Q. You've heard the term "Castilian Spanish,"
 14 have you not? People from Spain?
 15 A. Uh-huh.
 16 Q. Castilian Spanish.
 17 A. Proper -- right. More proper Spanish.
 18 Q. And people from Puerto Rico speak Puerto
 19 Rican Spanish.
 20 A. And Dominicans -- or Dominican Spanish or
 21 Cubans, Cubans.
 22 Q. All right. So can we concede the fact that
 23 there are dialects.
 24 A. Sure.
 25 Q. Right. And that dialects would mean that

1 certain words may mean different things in different
2 languages?

3 A. Sure.

4 Q. Okay. During the course of your testimony
5 during the trial -- do you remember the testimony? Did
6 you have a chance to go back and revisit it?

7 A. No.

8 Q. Do you remember what the -- the nature of the
9 testimony, though, as far as what it was about?

10 A. I'm assuming the case.

11 Q. Okay. Do you remember indicating that Mr.
12 Suarez -- you took an interview of Mr. Suarez?

13 A. Yes, sir.

14 Q. Do you remember, in the trial, indicating
15 that it was a taped interview, a memorialized
16 interview?

17 A. I don't remember. I'm assuming.

18 Q. And do you remember giving testimony in
19 reference to that, though?

20 A. I know I testified in the case, so I really
21 can't speak on --

22 Q. Would it --

23 A. -- exactly what I said.

24 Q. Would it be fair to say, then, for purpose of
25 our conversation, that the trial transcript of your

1 testimony would probably be the best evidence of what
2 was said back then?

3 A. Sure. Uh-huh.

4 Q. Do you remember, though, independently if one
5 of these issues was whether or not Mr. Vazquez-Suarez
6 had knowledge as to the existence of a grow house?

7 A. No, sir.

8 Q. So you have no independent recollection at
9 all of any of that testimony?

10 A. No.

11 Q. Okay. So, once again, the trial transcript
12 would be your best recollection?

13 A. Sure.

14 Q. All right. Independently, do you have any
15 recollection of any facts that may be associated
16 concerning his would-be guilt. In other words, other
17 than any, maybe, statements he made, any physical
18 evidence that tie him to that grow house?

19 A. The physical evidence -- everything that was
20 compiled throughout my investigation. The vehicle that
21 he was in when the high-speed chase occurred was the
22 vehicle that was related to another grow house that was
23 previously registered to him and was subsequently
24 registered to his cousin. There -- there was a lot of
25 things that -- I mean, without giving testimony --

1 Q. Okay. I understand. Do you have any
2 independent recollection as far as him never being seen
3 at that particular grow house that you were involved
4 in?

5 A. Just that day.

6 Q. Just that day?

7 A. That day, correct.

8 Q. And he was never seen inside of the grow
9 house?

10 A. The first time I was inside that house was
11 that day.

12 Q. Okay. So, again, we're not belaboring the
13 point. The trial transcript would be your best
14 recollection, right?

15 A. Sure. Yes.

16 Q. And I would make a quick assumption before I
17 sit down. You arrested him because you believed you
18 had sufficient evidence to establish the fact that he
19 knew the existence of that grow house and was
20 participating in it?

21 A. That is correct.

22 Q. Okay. Thank you.

23 MR. MARO: Judge, I tender this witness.

24 THE COURT: Okay.

25 CROSS-EXAMINATION

1 BY MR. HUNT:

2 Q. Detective Rodriguez, when you spoke to the
3 defendant that day that he was ultimately arrested, you
4 brought him back to that location; is that right?

5 A. Correct. After a high-speed chase.

6 Q. All right. And when he was at that location,
7 that's when you spoke to him and did the recorded
8 interview; is that correct?

9 A. Yes, that's correct.

10 Q. And when you spoke to him about that and you
11 asked him why he was there, do you recall him saying, I
12 came here to tell them to get that stuff out of here,
13 pointing at the things that were being taken out by all
14 the drug agents?

15 A. Yes, sir.

16 Q. And by that, I mean, the things that were
17 being taken out were what?

18 A. Marijuana plants.

19 Q. Okay. And he pointed at those things when he
20 said, That's what I came here for, to tell him to get
21 that out?

22 A. Correct.

23 Q. Meaning -- and you took that to mean the
24 marijuana plants because he was pointing at those
25 things that were being brought out of the house?

1 A. Correct.

2 Q. All right. And you also indicated that you

3 had tied that truck that he was driving -- that's part

4 of the high-speed chase -- to another grow house in

5 your investigation; is that right?

6 A. That's correct.

7 Q. And that you had seen that truck at the

8 location that day?

9 A. Yes.

10 Q. Is that right? And he ultimately was --

11 A. Leaving the property.

12 Q. -- leaving the property?

13 A. Correct. Uh-huh.

14 Q. And ultimately there were items found in the

15 truck that belonged to him --

16 A. Yes.

17 Q. -- is that right? As well as his cousin, who

18 was also arrested?

19 A. Yes, that's correct.

20 Q. And do you recall that in his wallet he had

21 the electric bill for the house that ultimately was the

22 location of the grow house that you all dismantled?

23 A. Yes, sir.

24 Q. Okay. And when you -- when you spoke to him,

25 did you first speak to him in English?

1 A. Yes. We were kind of going back and forth.

2 Well, I was speaking to him in English and he was -- we

3 were kind of going back and forth, and I asked him if

4 he would be more comfortable speaking Spanish, and he

5 said, Yes. And we started -- I started speaking

6 Spanish, and he kind of -- it kind of kept -- you know,

7 speaking English, but primarily from there on, I spoke

8 to him in Spanish.

9 Q. And did you have any difficulty understanding

10 what he was telling you as he was speaking to you in

11 Spanish?

12 A. No, sir.

13 Q. Did he appear to have any difficulty

14 understanding you?

15 A. No, sir. I do not believe so. And if I can

16 say something.

17 Q. Well, I've got to ask you a question before

18 you say anything --

19 A. Okay.

20 Q. -- but when you were speaking to him, can you

21 describe his demeanor? In other words, can you

22 describe, was he forthcoming? Or was he holding back?

23 What would you describe his demeanor?

24 A. He was all over the place. I would ask him a

25 question, and he'd start talking -- we'd be talking

1 about one thing, and then he just started making
2 statements and comments about other things, so he was,
3 like -- he was all over the place.

4 Q. And during the course of that recorded
5 interview, did he also tell you that he was on
6 community control from Miami for, essentially, the same
7 thing? In other words, operating a grow house?

8 A. And fleeing and eluding, yes, he did.

9 Q. And did you take that into consideration in
10 making a determination as well as all of the other
11 things, making your arrest?

12 A. The totality of the circumstances, yes, sir.

13 Q. And was that something that you took into
14 consideration to make the determination that you felt
15 like he had clear knowledge of what was going on in the
16 home?

17 A. I did.

18 Q. And when you make that decision, are you
19 basing it on one thing or on everything in its
20 totality?

21 A. I based it on everything on that day -- based
22 on everything that happened that day, correct.

23 Q. All right. And as well as --

24 A. As well as prior.

25 Q. -- prior?

1 A. And the other case that brought us to this
2 case.

3 Q. Okay. All right.

4 MR. HUNT: I don't have any further questions
5 at this time.

6 THE COURT: Any additional questions, Mr.

7 Maro?

8 MR. MARO: Just a couple quick questions.

9 REDIRECT EXAMINATION

10 BY MR. MARO:

11 Q. Detective, you seem to remember what happened
12 out at the scene, but you don't remember anything that
13 happened at the trial as far as your testimony is
14 concerned?

15 A. As far as what --

16 Q. As far as what you testified to?

17 A. Right. Well, I can't tell you what my exact
18 testimony was at trial, yeah. No.

19 Q. You --

20 A. But, yes, I do remember what happened on
21 scene.

22 Q. All right. Do you remember testifying that
23 Mr. Vazquez-Suarez had knowledge as to the existence of
24 the grow house?

25 A. No, sir.

1 Q. Okay. Again, we go back to the record.

2 There was nothing else -- there was no other witnesses
3 that had him involved in this grow house, was there, in
4 your investigation?

5 A. There was no witnesses to -- to what?

6 Q. To him being involved in the grow house. You
7 said there was somebody at the grow house. They never
8 said that he was involved in that grow house. His
9 cousin or whoever was there, they never incriminated
10 him, did they?

11 A. No, they did not.

12 Q. Right. And there was no neighbors or
13 anything that saw him at that house other than the day
14 in question when you were there, correct?

15 A. Uh-huh. Yeah. But that doesn't mean that he
16 didn't have anything to do with it.

17 Q. I understand. And you didn't see him inside
18 the house, just outside of the house, correct?

19 A. He was there leaving the house, yes. Leaving
20 the property as I arrived, correct.

21 Q. And when he said to you that he was there to,
22 as you indicated -- to I guess -- what was it -- to
23 deal with the marijuana?

24 A. He said he came there to tell them to get
25 that stuff out of there.

1 Q. Right. But he also told you that he didn't
2 know if it was a grow house, did he not?

3 A. The what?

4 Q. He also told you he didn't know if it was
5 specifically a grow house, isn't that true?

6 A. I -- I -- yeah, I guess he did.

7 Q. All right. And if he thought it might have
8 been a grow house -- and that's why he came up, if it
9 was a grow house, to get that stuff out of there?

10 A. It didn't make any sense.

11 Q. Okay. Did he tell you he had got a letter of
12 foreclosure?

13 A. He did.

14 Q. And that's why he came up from Miami?

15 A. He also said that he didn't know that he had
16 the house, that he still owned the house, yet he had
17 the electric bill dated October, November of that year.

18 Q. All right. The house that he had owned, that
19 he apparently had not been in contact for a while?

20 A. That's what he alleges.

21 Q. I understand. And that he got a foreclosure
22 notice, so he came up, right?

23 A. He got a foreclosure notice, but it was not
24 financed through a bank. Because I asked him what
25 bank. So how was he getting a foreclosure notice if it

25

1 was an owner finance like he said it was?
 2 Q. Your memory is coming back.
 3 A. I remember the --
 4 Q. Okay.
 5 A. -- facts of the case. The facts of the day.
 6 Q. All right. Then his testation (ph) to you is
 7 that he was there, if it was a grow house, to make sure
 8 whatever was there -- to get out of there; isn't that
 9 what he told you?
 10 A. He said that he was there to tell them to get
 11 that out of there.
 12 Q. If it was a grow house?
 13 A. I don't recall if he said "if it was a grow
 14 house."
 15 Q. Okay. All right.
 16 MR. MARO: I have nothing further, Judge.
 17 MR. HUNT: I don't have any other questions.
 18 THE COURT: Ms. Rodriguez --
 19 THE WITNESS: Yes, sir.
 20 THE COURT: -- he was coming out of the house
 21 when the police arrived or --
 22 THE WITNESS: Yes, sir.
 23 THE COURT: -- soon thereafter?
 24 THE WITNESS: Yes, sir.
 25 THE COURT: Is there any way a person could

26

1 be in that house and not realize it's a grow house?
 2 THE WITNESS: No, sir, not at all.
 3 THE COURT: It was entirely used as a grow
 4 house, correct?
 5 THE WITNESS: It was completely converted as
 6 a grow house, yes, sir.
 7 THE COURT: We're not talking about one --
 8 THE WITNESS: -- little plant in a room, no,
 9 sir.
 10 THE COURT: -- bedroom?
 11 THE WITNESS: No, sir. There were -- I
 12 believe there were over 200 plants.
 13 THE COURT: Okay. And it had been converted,
 14 essentially. The house had, essentially, converted
 15 to a grow house?
 16 THE WITNESS: Yes, sir.
 17 THE COURT: And it was bought in his name --
 18 or a name --
 19 THE WITNESS: In his alias name. The -- the
 20 name that he provided me, the driver's license, the
 21 name of Felix Alberto Martinez.
 22 THE COURT: He had a driver's license with
 23 someone else's name on it?
 24 THE WITNESS: Correct.
 25 THE COURT: And -- but his picture?

27

1 THE WITNESS: Yes.

2 THE COURT: And that's the name the house was

3 bought in?

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you. I appreciate it.

6 THE WITNESS: Yes, sir.

7 MR. MARO: Judge, if I may, just to clarify.

8 FURTHER REDIRECT EXAMINATION

9 BY MR. MARO:

10 Q. The judge asked you if you saw him coming out

11 of the house. You told me you saw him coming off of

12 the property -- on the property --

13 A. Yes, I saw him -- yes, that's correct.

14 Q. There's a difference between the two.

15 A. That's correct. I did -- that is correct. I

16 stand corrected. I saw him leaving -- leaving the

17 property. Driving.

18 Q. But you didn't see him coming out of the

19 house?

20 A. No, sir.

21 Q. Okay. And did you smell any raw marijuana on

22 him?

23 A. I can't -- I don't remember. I can't

24 really --

25 Q. You're familiar with the smell of raw

28

1 marijuana --

2 A. Yes, I am. Yeah.

3 Q. -- correct? Thank you, ma'am.

4 A. Yes.

5 THE COURT: Have a nice day.

6 THE WITNESS: Yes, sir. Thank you.

7 (The witness stepped down.)

8 THE COURT: And just so we're -- I think

9 we're on Issue 4.

10 MR. MARO: Yes.

11 THE COURT: I looked this up and I think it's

12 Issue 4; is that correct?

13 MR. MARO: Yes, sir.

14 THE COURT: Somewhere buried in Issue 4?

15 Issue 4 is -- several things going on; is that

16 correct?

17 MR. MARO: Yeah. Just the tape.

18 THE COURT: Okay. Issue 4 says that

19 defendant's counsel was ineffective for failing to

20 conduct appropriate discovery, file pretrial

21 motions, take depositions in preparation for trial.

22 His failure to call witnesses at the time of trial.

23 All of which were prejudicial to the defendant's

24 case.

25 MR. MARO: Yes.

1 THE COURT: And then somewhere in there you
2 mentioned what we're talking about here?

3 MR. MARO: Yes, sir.

4 THE COURT: Okay.

5 MR. MARO: All right.

6 THE COURT: I'm making sure I'm on the right
7 page. Yes, sir. Who is next?

8 MR. MARO: Judge, Holly Reed.

9 THE COURT: Okay.

10 MS. REED: Hey, Judge.

11 THE COURT: Hello.

12 THE CLERK: Do you solemnly swear or affirm
13 that the testimony you're about to give will be the
14 truth, the whole truth, and nothing but the truth,
15 so help you God?

16 MS. REED: I do.

17 HOLLY REED,

18 having first been duly sworn to tell the truth, the
19 whole truth, and nothing but the truth, testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. MARO:

23 Q. Please state your name.

24 THE COURT: Have a seat.

25 BY MR. MARO:

1 Q. Sit down. Make yourself comfortable. Scoot
2 up. There you go.

3 A. My name is Holly Reed.

4 Q. All right. Are you presently employed?

5 A. As a part-time interpreter -- English-Spanish
6 interpreter.

7 Q. All right. And have you been a full-time
8 interpreter anywhere?

9 A. Yes. In Marion County.

10 Q. And were you --

11 A. In the Fifth Judicial Circuit. I'm sorry.

12 Q. I'm sorry. And what other circuits -- just
13 Marion County or --

14 A. Fifth Judicial Circuit. The entire --

15 Q. Fifth Judicial --

16 A. Yeah.

17 Q. And was that a certified position?

18 A. No.

19 Q. How long have you been doing interpreting
20 work? Approximately?

21 A. Twenty-eight, twenty-nine years.

22 Q. Okay. And how often, specifically, in Marion
23 County?

24 A. The 28 or 29 years.

25 Q. Okay. I won't ask you how many cases you've

1 interpreted; we'll just say lots.

2 A. Many.

3 Q. What is your native language?

4 A. Both English and Spanish.

5 Q. All right. And when you say "both," where
6 does the Spanish come from?

7 A. My parents were Americans in Puerto Rico, but
8 we had a nanny growing up and the nanny always spoke to
9 us in Spanish, so we learned --

10 Q. And where was the nanny from?

11 A. Puerto Rico.

12 Q. All right. Sorry.

13 A. And we learned both languages together.

14 Q. During your years of interpretation of the
15 Spanish language, have you come to learn that there are
16 different variations of the same language?

17 A. Oh, yes.

18 Q. And I addressed that there's a Castilian
19 dialect, which to me is a more formal Spanish dialect?

20 A. Correct.

21 Q. Is that your understanding?

22 A. Correct.

23 Q. And then, of course, we have the Puerto Rican
24 Spanish.

25 A. Correct.

1 Q. And we have Cuban Spanish?

2 A. Correct.

3 Q. And we have Mexican Spanish?

4 A. Right.

5 Q. And we have a couple other Spanishes?

6 A. Any other country has pretty much their own
7 dialect.

8 Q. All right. Now, can the dialects, as far as
9 his word and usage or (indiscernible) differ
10 substantially from one interpretation to another in the
11 language?

12 A. Oh, yeah.

13 Q. Okay. And you smile when you say that. And
14 when I say it differently, largely interpreted. Give
15 me an example.

16 A. The first time I ever encountered the
17 difference in the (indiscernible) -- the words -- when
18 I lived in New Jersey, after I graduated from high
19 school, I went to college. I lived with a Cuban
20 family. And the Cuban woman all of a sudden yelled out
21 (Spanish). And there's a bug; kill it. The only
22 thing, the word (Spanish) in Puerto Rico does not mean
23 "a bug." It's a male sexual organ.

24 Q. Okay. Substantial difference?

25 A. There was a substantial difference.

1 Q. Did there -- did there come a time where I
2 contacted you and asked you to listen to a recording
3 relating to some statements that a client had given to
4 law enforcement as a result of an arrest?

5 A. Yes.

6 Q. Did I send you over a disk or a recording?

7 A. Yes, you sent me the disk.

8 Q. And let me show you what I originally marked
9 as Exhibit C but introduced as Defense 1 into evidence
10 and ask you if you recognize that?

11 A. It looks like the disk that I translated or I
12 listened to.

13 Q. All right. And, in fact, did you file a
14 response to me -- a letter of response to me regarding
15 the translation?

16 A. Yes, I did.

17 Q. All right. And did I draw your attention to
18 what concerned me when -- in your would-be
19 interpretation as to the concept of admission or
20 knowledge about certain activity?

21 A. Well, there seemed to be a question as to
22 whether he admitted to knowing something was there, but
23 listening to the tape, it was obvious that he did not.

24 Q. Right. Did you memorialize your thoughts in
25 a written format to me?

1 A. I did.

2 Q. And you sent me an e-mail dated 02/22/17?

3 A. Correct.

4 Q. All right. Which we had marked for -- at
5 this time, let me approach and ask you if that looks
6 like the e-mail that you sent to me?

7 A. Yes, it is.

8 Q. All right. It's been marked as Exhibit B at
9 this time for identification purposes. Why did you
10 send me that?

11 A. You had asked me to listen to the tape and to
12 tell you what I understood had transpired during the
13 conversation between the law enforcement officer and
14 the defendant.

15 Q. All right. And would you reiterate from your
16 memory whether this memo helps you refresh that memory?
17 What is it that you came at -- came to know after you
18 listened to that tape?

19 A. That there was a definite problem in
20 communication.

21 Q. All right. Please go through the written
22 response.

23 MR. MARO: And, Judge, I'd like to introduce
24 it into evidence. I don't know if Mr. Hunt has an
25 objection at this time.

1 MR. HUNT: You're wanting to introduce the
2 letter?

3 MR. MARO: Yeah.

4 MR. HUNT: I'm going to object to the letter
5 as hearsay.

6 MR. MARO: Okay.

7 THE COURT: That's sustained.

8 MR. HUNT: She's here testifying about it.

9 BY MR. MARO:

10 Q. Then with that in mind, would you just go
11 ahead and informalize the information that you provided
12 me back on 02/22 of 2017?

13 A. Do you want me to read the letter to you?

14 Q. Yeah, please.

15 A. Dear Jack.

16 MR. HUNT: Judge, I'm going to object -- the
17 same objection. She can't just read the letter --

18 THE COURT: You just can't read the letter.

19 MR. HUNT: -- into evidence.

20 THE COURT: She can testify. She can't just
21 read her letter. She can testify.

22 MR. MARO: All right.

23 THE COURT: But I'm not having her -- her
24 read it.

25 BY MR. MARO:

1 Q. All right. Fine. Then let's just go through
2 the purposes of the letter. Were you able to
3 differentiate between a dialect -- between Cuban
4 Spanish and other Spanishes?

5 A. Yes.

6 Q. Okay. And when you went through this
7 particular letter, do you become aware of the fact --
8 or do you become aware of the fact that the -- Mr.
9 Vazquez-Suarez was being interviewed by law enforcement
10 associated with some type of foreclosure proceeding and
11 a criminal investigation?

12 A. Yes.

13 Q. All right. Is there anywhere when you were
14 listening to the tape of Mr. Vazquez-Suarez -- did --
15 anywhere that he specifically admitted to law
16 enforcement that he knew that there was a presence of a
17 grow house being conducted on the property in question?

18 A. No.

19 Q. All right. Did he indicate anywhere during
20 his testimony to law enforcement that he had come up in
21 reference to a foreclosure notice that he had?

22 A. Yes.

23 Q. Is there anywhere in that interpretation that
24 he had indicated to law enforcement that, if there was
25 a grow house there, he had come up to tell them to take

37

1 it down?

2 A. Yes.

3 Q. All right. Was -- was he addressed by the

4 Detective Situal (ph) on more than one occasion telling

5 him that he knew there was a grow house there?

6 A. Yes.

7 Q. And did he deny or admit it?

8 A. He had denied it every time.

9 Q. Each time? So is there anything in that tape

10 that you listened to that you could indicate to the

11 Court that he knew that there was a grow house up and

12 running there?

13 A. No.

14 Q. Anything in that tape -- your interpretation

15 of the language of that tape that indicated that he was

16 responsible for the grow house there?

17 A. No.

18 Q. All right. Any admissions that he knew the

19 existence of the grow house?

20 A. No.

21 Q. All right.

22 MR. MARO: I would tender the witness.

23 THE COURT: Mr. Hunt.

24 CROSS-EXAMINATION

25 BY MR. HUNT:

38

1 Q. Ms. Reed, when you say that it's clear that

2 he didn't understand, that's your opinion, correct?

3 A. Correct.

4 Q. You didn't speak to the defendant?

5 A. No.

6 Q. And you certainly didn't -- you weren't

7 there?

8 A. No.

9 Q. And so you don't really actually even have

10 the context that was going on while they were talking,

11 correct? You don't know what was going on around them?

12 A. No.

13 Q. And isn't it true that he uses the term

14 (Spanish)? Am I saying that correctly?

15 A. Yes.

16 Q. And I think you to translate that to say as

17 "feeling"; is that right?

18 A. Yes.

19 Q. In the original Spanish, it's more like

20 "imagine," right?

21 A. "Imagine," "feeling," yes.

22 Q. He didn't say "I imagine" or "I think" or "I

23 guess," "I suspect," something to that effect, correct?

24 A. Yes. It also has to do with the other words

25 that he used with it.

1 Q. Uh-huh. And so --
 2 A. So, yes, "imagine," yes, but also "feeling."
 3 Q. Sure. And in some ways, Spanish is like any
 4 other language. There are multiple words that have the
 5 same meaning and multiple words that have different
 6 meanings?
 7 A. Correct.
 8 Q. So the fact that this is -- this is
 9 essentially your opinion that he -- that (Spanish) --
 10 A. Uh-huh.
 11 Q. -- is him feeling like there was a grow
 12 house? When, in truth, it could be that he, in fact,
 13 knew there was a grow house and said, I had a feeling
 14 that's what it was, so that's why I told him to come
 15 get it.
 16 A. Not the way he said the statement, no.
 17 Q. Okay. But the terms that he used --
 18 A. The terms could be -- yes, could apply --
 19 Q. Could be interpreted --
 20 A. -- either way, but not -- if you understand
 21 the language and you listen to the tape, the way he
 22 said (Spanish), I had a feeling it wasn't that, that it
 23 was but a feeling that it might be.
 24 Q. Okay. All right.
 25 MR. HUNT: I don't have any other questions.

1 MR. MARO: I have nothing, Judge.
 2 THE COURT: Well, let me just ask -- what did
 3 he actually say? I mean, was this thing
 4 transcribed?
 5 MR. MARO: Yes, sir.
 6 THE COURT: Can I see the transcript?
 7 MR. MARO: That's -- the court reporter --
 8 this is actually the judicial notice of the court
 9 reporter out of Broward County that was bilingual,
 10 and they gave us an official language of it.
 11 THE COURT: Okay. Has Mr. Hunt seen the
 12 transcript?
 13 MR. HUNT: I have seen it. I have no
 14 objection to that.
 15 MR. MARO: Oh, yeah. He's had it --
 16 THE COURT: You have no objection to it?
 17 MR. HUNT: That's correct.
 18 THE COURT: Can you please point to what
 19 she's talking about when she says this is what he
 20 said?
 21 MR. HUNT: Well, I have to look. I have to
 22 find it.
 23 THE COURT: Do you want it in evidence?
 24 MR. MARO: Yes, sir, yeah. The clerk's
 25 already marked it. It would be defense --

1 THE COURT: It will be in evidence as Number
2 2. You can mark that.

3 (Defense Exhibit No. 2 was admitted into
4 evidence.)

5 THE COURT: Okay. So where does this
6 supposedly take place? This part of the
7 conversation -- I don't speak Spanish, although I
8 can understand different dialects of English, I
9 might point out. I understand -- just point me to
10 where -- point me, not her.

11 MR. MARO: I'm going to look for it, Judge.
12 It was -- excuse me, Judge. It was in the letter
13 that Ms. Reed was refreshing her memory from, so
14 let's see if we can find it.

15 MR. HUNT: The letter doesn't indicate what
16 page it's on. I think that's the issue.

17 THE COURT: This has been interpreted, right?

18 MR. MARO: Yes, sir.

19 THE COURT: I'm reading it in English, so
20 she's interpreted it?

21 MR. MARO: Yeah. (Indiscernible). Just, for
22 the record, we have filed a request for the Court
23 to take judicial notice of this for today's
24 hearing. And it's been previously filed with one
25 of the petitions that we filed. The copies being

1 presented to Mr. Hunt a long time ago
2 (Indiscernible).

3 MR. HUNT: Yeah. And it wasn't -- Ms. Reed
4 didn't do this transcription, but she did look at
5 the --

6 THE COURT: No, I understand.

7 MR. HUNT: Yes, I have no objection to this
8 transcription.

9 THE COURT: So this transcription is
10 translated by Elena Robaina, translator,
11 stenographer, and notary public for the State of
12 Florida?

13 MR. HUNT: Correct.

14 THE COURT: And that's the one -- you wanted
15 that in evidence, right?

16 MR. MARO: Yes, sir. That would be --

17 THE COURT: So I'm reading it -- it's --
18 reading in English, but it's been translated in
19 English, right?

20 MR. MARO: Yeah. What had happened -- we had
21 sent them the disk. That's where the translation
22 came from.

23 THE COURT: Right. Yeah. I --

24 MR. MARO: They translate its official
25 interpretation of it. Yes, sir.

1 THE COURT: So this is the official
2 translation?

3 MR. MARO: Yes, sir.

4 THE COURT: Okay. So on page 7 it says, I
5 came to tell them to get rid of all that?

6 MR. MARO: Yes, sir.

7 THE COURT: Okay. Because I -- because I
8 bought the house and I didn't know that this was a
9 grow house -- all right.

10 MR. HUNT: And, Judge, I don't know --
11 because I don't -- because we don't have the
12 Spanish translation, also on page 10, there's a
13 similar reference that's made.

14 THE COURT: Okay. Yeah. (Indiscernible).

15 THE WITNESS: Yeah, 10 is a little more --

16 THE COURT: One of the people in the house is
17 his cousin. On page 10 he says, I came to tell
18 them to get rid of all that, from doing that. I
19 told them they had to get rid of everything. That
20 my house is in foreclosure. So if I'm reading this
21 right, he's trying to suggest that he used to buy
22 houses and plants, but then he's saying, no, I had
23 this one before they caught me, which is down in
24 Dade County, right?

25 MR. MARO: That's correct.

1 THE COURT: So he forgot about this one,
2 maybe.

3 MR. HUNT: That's one interpretation.

4 MR. MARO: Well, one of the -- without
5 getting into explanation.

6 THE COURT: Okay. So I understand. So I got
7 this. I got the -- now, where is the part where he
8 said he has a feeling that it was a grow house?
9 Where is that?

10 MR. MARO: This is Ms. Reed's interpretation,
11 Judge.

12 THE COURT: What -- what -- what page are you
13 talking about where he says, I had a feeling it was
14 a grow house?

15 MR. HUNT: Judge, I don't know. I was basing
16 it on Ms. Reed's letter. I don't know which -- I
17 didn't listen to it in the original Spanish because
18 it wouldn't have done me any good, so I don't know
19 what part Ms. Reed was speaking about.

20 MR. MARO: Ms. Reed only got the disk -- when
21 I got the disk, we sent it over in an abundance of
22 caution to make sure --

23 THE COURT: Oh, I see. Page 16. He says, I
24 imagined it. I imagined it. Do you understand me?
25 I didn't know if it was a grow house. I came to

1 see if it was that way or not. You understand me?
2 I wanted to make sure for myself.

3 Okay. I think that's it, right?

4 MR. HUNT: I believe that -- that makes
5 sense.

6 THE COURT: All right. Thank you very much,
7 Ms. Reed.

8 THE WITNESS: You're welcome, sir.

9 (The witness stepped down.)

10 MR. HUNT: Your Honor, may I run across the
11 hall for one second? I'll be right back.

12 THE COURT: Certainly.

13 MR. HUNT: Thank you.

14 THE COURT: Thank you. I'll need -- I'll
15 need a copy of that for my own records. We can
16 make a copy of that -- of that as soon as we get a
17 chance.

18 THE CLERK: Do you solemnly swear or affirm
19 that the testimony you're about to give will be the
20 truth, the whole truth, and nothing but the truth,
21 so help you God?

22 MR. PIERRE-ANTOINE: I do.

23 THE COURT: Have a seat.

24 YVENS PIERRE-ANTOINE,

25 having first been duly sworn to tell the truth, the

1 whole truth, and nothing but the truth, testified as
2 follows:

DIRECT EXAMINATION

4 BY MR. MARO:

5 Q. State your name for the record.

6 A. Yvens Anthony Pierre-Antoine.

7 Q. And just to refresh your memory, we were back
8 here on January 19, 2017, for an evidentiary hearing.

9 Do you remember that? You gave some testimony --

10 A. Yeah. Yeah, I remember that.

11 Q. Okay. I'm not going to go back through all
12 the testimony, but we had left it off about this tape-

13 A. Okay.

14 Q. All right? My understanding is you indicated
15 that you had conducted discovery, which you took some
16 depositions?

17 A. I did.

18 Q. Do you remember taking a deposition that
19 Detective Rightsell -- who is Ms. Rodriguez now?

20 A. I don't remember exactly -- it was so long
21 ago. I know I took depositions of numerous people.

22 Q. No motions to suppress were filed in this
23 case?

24 A. I don't believe there were. I believe what
25 I -- I think there was -- was there a motion in limine?

1 I think there were a couple motions in limine that were
2 filed.

3 Q. Okay. Do you remember any discussions about
4 any would-be statements that Mr. Vazquez-Suarez would
5 have given to law enforcement in an interview?

6 A. I remember Mr. Vazquez-Suarez informed me
7 that there was some sort of tape of some kind, and I
8 believe when I -- when I inquired about a tape, I was
9 told -- I don't believe the State had --

10 Q. So --

11 A. -- the -- the tape.

12 Q. -- it's your understanding that Mr.

13 Vazquez-Suarez thought there may have been a recording?

14 A. Yes.

15 Q. But you were, in fact, aware of the fact that
16 he obviously gave some kind of a statement to law
17 enforcement?

18 A. Yes.

19 Q. Okay. During the deposition, would you have
20 asked if there was any type of a recording?

21 A. I'm assuming I did. I don't -- I don't
22 remember exactly what was asked in the deposition.

23 Q. Well, it would have been beneficial for you
24 if you had had a recording supposedly memorialized and
25 certain statements that he made that were utilized in

1 his trial?

2 A. Yes.

3 Q. All right. Could that have affected your
4 trial strategy if you knew what was on the tape?

5 A. Possibly.

6 Q. All right. Well, my understanding of the
7 trial strategy was that there was nothing tying him to
8 this grow house?

9 A. Yes.

10 Q. Except some statements that he may have made
11 to law enforcement?

12 A. Exactly.

13 Q. All right. And you did not have a copy of
14 the tape that actually memorialized those statements,
15 correct?

16 A. That's correct.

17 Q. Now, did you not have a copy of the tape
18 because you didn't ask for it or because you were told
19 it was nonexistent?

20 A. I was told that the State didn't have any
21 tape of that sort.

22 Q. How about the witness that you took her
23 deposition?

24 A. I don't remember -- I don't remember that.

25 Q. Okay. If you knew that there was a tape,

1 would you have requested it?

2 A. Yes.

3 Q. Why?

4 A. I would want to know -- it could either -- I
5 would want to know exactly if there was a tape so that
6 if it made his statement stronger, I thought that would
7 be important. Or if -- if he elected to testify, if
8 there were some statements to the contrary, I would
9 want to know as well.

10 Q. All right. Now, did he tell you that this
11 recording that he believed existed was in a foreign
12 language? In Spanish or English?

13 A. I don't remember. I just remember him saying
14 that there was -- there was -- there was -- there was
15 some sort of conversation that he had that may have
16 been recorded.

17 Q. And if you would have gotten this tape in a
18 timely fashion, would you have let Mr. Vazquez-Suarez
19 listen to it?

20 A. Yes, I would have.

21 Q. And if he would have told you the contents of
22 that tape -- let me strike that.

23 Would you have gotten the tape transcribed?

24 I don't think Spanish is your -- is your --

25 A. No, it's not. No, it's not. I would have

1 gotten it transcribed. I would have gotten a court
2 reporter -- or an interpreter appointed or what have
3 you -- done that.

4 Q. Let's fast-forward to the trial. During the
5 course of the trial, Detective Rightsell testified to
6 certain things that were incriminating to your client,
7 correct?

8 A. I believe so.

9 Q. And he told you at the time of trial that
10 that is not what he said?

11 A. He may have said that.

12 Q. Well, assuming that he did say that, okay, if
13 he would have had a transcript of the interview, you
14 could have dealt with it at that time, correct?

15 A. Exactly.

16 Q. And you could have impeached the witness?

17 A. Yes.

18 Q. But you didn't have a copy of the tape?

19 A. No.

20 Q. You didn't have a copy of a transcript?

21 A. No.

22 Q. And you had no way of knowing what Mr.
23 Vazquez-Suarez was telling you was correct or not,
24 correct?

25 A. Based -- yes, I didn't have anything to

1 that -- since I didn't have a recording of the
2 interview he had with Ms. Rightsell, I didn't have a
3 way to combat what she said.

4 Q. Well, the only way you could have is he would
5 have had to give up his Fifth Amendment right, taking
6 the witness stand --

7 A. Exactly.

8 Q. -- and say that "I didn't say that"?

9 A. Exactly.

10 Q. And then certainly his prior criminal history
11 would have come out, correct?

12 A. Right. That's correct.

13 Q. So that would have prejudiced him?

14 A. Exactly.

15 Q. And there still would be no way of being able
16 to say it is or it isn't without some type of
17 documentation, correct?

18 A. That's correct.

19 Q. Going back to -- just to some odds and ends,
20 other than the alleged statements that he made or
21 admissions, do you remember any testimony or any
22 physical evidence that tied him to that grow house?
23 There was a truck that was seen there, like, three days
24 earlier at another grow house. I understand that. But
25 him, physically, as far as any neighbors, any police

1 officers, anybody?

2 A. You know what? I believe that was the first
3 time they had actually seen him there.

4 Q. All right.

5 MR. MARO: I have nothing further, Judge.

6 Oh, one quick question.

7 BY MR. MARO:

8 Q. As far as the elements of proof, knowledge is
9 a requirement, is it not?

10 A. Yes.

11 Q. What was he charged with? Trafficking and
12 maintaining a grow house?

13 A. Yes.

14 Q. All right.

15 MR. MARO: I have nothing further, Judge.

CROSS-EXAMINATION

16 BY MR. HUNT:

17 Q. Mr. Pierre-Antoine, you're aware that even if
18 you had the tape, that the tape in and of itself would
19 be inadmissible in your case in chief, correct?

20 A. That's --

21 Q. As self-serving hearsay?

22 A. Yes.

23 Q. And you're also aware of the fact that
24 when -- when this case happened, that -- that you
25

1 deposited some witnesses that actually stopped your
2 client in a vehicle that had lots of cash and marijuana
3 in the vehicle, correct?

4 A. Yes.

5 Q. That was actually one of the substances of
6 one of your motions in limine, wasn't it?

7 A. Yes, it was.

8 Q. Okay. And you're also aware of the fact that
9 the identification used to buy this house by your
10 client was fake; is that right?

11 A. Yes.

12 Q. And you're aware of the fact that your client
13 had previously been on community control for the same
14 exact charges?

15 A. That's correct.

16 Q. In fact, presently on community control when
17 this case occurred?

18 A. Correct.

19 Q. And during the course of your having the
20 case, you also learned that he had additional charges
21 for the same thing in another county?

22 A. Yes.

23 Q. And also you are aware of the fact that his
24 cousin testified in the trial actually, right?

25 A. Yes. I remember that.

1 Q. And he -- and he was involved --

2 THE COURT: I need to take a short break.
3 I'll be right back.

4 (A break was taken from 2:31 p.m. until 2:43

5 p.m.)

6 THE COURT: I'm sorry. Go ahead.

7 MR. HUNT: That's okay.

8 THE COURT: Sit down. Sit down. Sit down.
9 I cut myself. I was bleeding all over the place.
10 One of those deals.

11 BY MR. HUNT:

12 Q. So you're -- and you're also -- you also
13 recall that his cousin testified in the trial?

14 A. Yes.

15 Q. He was the person that -- he was also
16 arrested at the same time?

17 A. Yes, sir.

18 Q. He entered a plea, eventually testified in
19 the trial?

20 A. Yes, sir.

21 Q. And is it -- it's fair to say that his
22 testimony was not as helpful as probably your client
23 wished it to be?

24 A. Yes. I -- yes. It wasn't very helpful.

25 Q. And, in fact, he got -- he made a number of

1 inconsistent statements during the trial and --

2 A. He did. I think -- I think the part that was
3 probably more troublesome or more difficult was, when
4 he testified, it looked like he was looking at Junior
5 for whether or not what he was saying was to be
6 agreeable.

7 Q. Okay. And you also were -- and it's fair to
8 say that you represented many clients who have told you
9 something that, upon further investigation, turned out
10 not to be accurate; is that fair to say?

11 A. Yes.

12 Q. So it wouldn't -- neither would it surprise
13 you nor -- it wouldn't surprise you if what he said
14 wasn't true or if it was true? You really probably
15 can't make a judgment based on what they just say?

16 MR. MARO: Objection.

17 MR. HUNT: Is that fair to say?

18 MR. MARO: Speculative and relevance.

19 THE COURT: It's overruled.

20 THE WITNESS: It's fair to say.

21 BY MR. HUNT:

22 Q. I mean, you try at it and investigate and
23 determine if it's accurate or not, and then you go from
24 there?

25 A. That's correct.

1 Q. And in this case, you did ask us -- "us"
2 being the State -- for the audio recording; is that
3 right?

4 A. That's correct.

5 Q. And I -- and I told you we didn't have one?

6 A. That's correct.

7 Q. And we both proceeded to trial without one;
8 is that right?

9 A. That's correct.

10 Q. I never made any reference to one during the
11 trial or anything such as that; is that correct?

12 A. That's correct.

13 Q. And it's also fair to say that the evidence
14 in this case, as it relates to all the charges, doesn't
15 just center around what your client did or didn't say?

16 A. That's correct.

17 Q. I mean, there is other circumstantial
18 evidence involved. He fled the scene. He was in --
19 you know, he had information in the vehicle tied to the
20 house. He was leaving the residence. All those
21 different things?

22 A. That's correct.

23 Q. All right.

24 MR. HUNT: I don't have any further
25 questions.

1 THE COURT: All right. Anything else?
2 MR. MARO: Yeah. Just one clarification.

3 REDIRECT EXAMINATION

4 BY MR. MARO:

5 Q. It would be nice to know if your client had
6 made statements that would be memorialized on the tape,
7 wouldn't it have been?

8 A. Yes, it would be.

9 Q. It would have been nice to know that the lead
10 investigating officer at the time of trial imputed
11 knowledge to your client about the existence of this
12 grow house, simply by smell, wouldn't it?

13 A. Yeah.

14 Q. It would have been nice to know if that
15 officer based her testimony -- her sworn trial
16 testimony -- on extrinsic evidence that you didn't have
17 copies of -- it would be nice to know, wouldn't it?

18 A. Yes.

19 Q. It would have been nice to have that
20 extrinsic evidence so you could have challenged her
21 testimony in open court?

22 A. Yes.

23 Q. And going back, in spite of what Mr. Hunt
24 said, what convicted your client was the testimony of
25 the fact that he had knowledge that this was a grow

1 house, that he allegedly came up here to dismantle it;
2 isn't that true?

3 A. Yes.

4 Q. All right. The rest of it is just
5 circumstance; is that correct?

6 A. Yes.

7 Q. And if you had known about all of this
8 would-be testimony, you would have, I assume, discussed
9 it with Mr. Suarez?

10 A. Yes.

11 Q. And would it have been a possibility that Mr.
12 Suarez would have taken a plea if he felt that that
13 tape was so incriminating?

14 A. Yes.

15 Q. All right. But in this way -- he had no way
16 of knowing that?

17 A. No, he didn't.

18 Q. All right. And what was the plea offer? Do
19 you remember?

20 A. I believe it was seven years.

21 Q. Okay.

22 MR. MARO: Nothing further.

23 MR. HUNT: I don't have any further
24 questions.
25

THE COURT: Well, let me just ask. Was the

1 IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL
2 CIRCUIT, IN AND FOR MARION COUNTY, FLORIDA
3 CASE NO.: 2013-CF-000386C
4
5 STATE OF FLORIDA,
6 Plaintiff,
7
8 vs.
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10 JUNIOR VAZQUEZ-SUAREZ,
11 Defendant.
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13
14 Transcript of Evidentiary Hearing
15 Before the Honorable Robert W. Hodges,
16 Circuit Court Judge
17
18 DATE TAKEN: January 19, 2017
19
20 TIME: 2:00 P.M. - 4:00 P.M.
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22 PLACE: Marion County Judicial Center
23 110 Northwest 1st Avenue
24 Ocala, Florida 34475
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1 P R O C E E D I N G S

2 THE COURT: State of Florida versus Junior

3 Vazquez-Suarez. 13-CF-386. We're here for an

4 evidentiary hearing on a 3.850, motion for

5 postconviction relief.

6 MR. MARO: Judge, can he testify from here or

7 where -- on the witness -- wherever you'd like him.

8 THE COURT: Just one second. He can -- he

9 can testify from there, but, Mr. Vazquez-Suarez, do

10 you need any sort of interpreter for this case?

11 THE DEFENDANT: I don't think, Your Honor. I

12 think I'll be okay.

13 THE COURT: Okay. Because I know for the

14 trial we had an interpreter, did we not?

15 THE DEFENDANT: Well, I've been going to

16 school since I've been in DOC.

17 THE COURT: Okay.

18 THE DEFENDANT: So my English has got a

19 little bit better.

20 THE COURT: So you're saying you do not need

21 an interpreter?

22 THE DEFENDANT: No, I don't need one, sir.

23 THE COURT: Okay.

24 THE DEFENDANT: I mean, Your Honor.

25 MR. MARO: And, Judge, for the purpose of the

5
1 record, it's something that we discussed. I have
2 been communicating with him over the telephone, in
3 writing, one-on-one. I'm comfortable that over the
4 information that we are going to develop that he
5 is -- maybe for a word or two that we might have to
6 explain to him, but he's competent to understand
7 the English language and to deal with this in
8 English.
9 THE COURT: Okay. Well, we have an
10 interpreter if he wants one. So you're saying you
11 don't want one?
12 THE DEFENDANT: No, I don't need one, Your
13 Honor.
14 THE COURT: Okay. No problem. Go ahead, Mr.
15 Maro.
16 MR. MARO: All right.
17 THE COURT: Well, I do need to swear him in.
18 Raise your right hand. Do you swear or
19 affirm the information you shall give is the whole
20 truth, nothing but the truth, so help you God?
21 THE DEFENDANT: Yes, Your Honor.
22 THE COURT: State your full name, please.
23 THE DEFENDANT: Junior Vazquez-Suarez.
24 THE COURT: All right. Go ahead, Mr. Maro.
25 MR. MARO: Yeah.

6
1 JUNIOR VAZQUEZ-SUAREZ,
2 having first been duly sworn to tell the truth, the
3 whole truth, and nothing but the truth, testified as
4 follows:
5 DIRECT EXAMINATION
6 BY MR. MARO:
7 Q. Mr. Suarez, do you understand what we're here
8 for today?
9 A. Yes, sir.
10 Q. The motion that was filed on your behalf
11 regarding ineffective assistance -- alleged ineffective
12 assistance of your attorney, correct?
13 A. Yes, sir.
14 Q. And you and I have worked together --
15 actually I represent to the Court -- you've been very
16 diligent in your efforts to get this matter to where
17 you are here today, correct?
18 A. Yes, sir.
19 Q. All right. Now, the Court has brought
20 something up that's an issue that we've raised in the
21 motion for postconviction relief.
22 MR. MARO: But, Judge, before I do that, may
23 I just digress for a second? The Court denied
24 Grounds 1, 2, 3, and 5. Just for the purposes of
25 appellate, we would just object to that for the

1 record.
2 THE COURT: Okay.
3 MR. MARO: So if this doesn't go the way he
4 hopes it does, he's got a record to develop.
5 THE COURT: All right. I'll overrule the
6 objection, but you can go ahead.
7 BY MR. MARO:
8 Q. All right. Language -- the Court had drawn
9 your attention to the fact that there's an opportunity
10 for an interpreter, correct, sir?
11 A. Yes, sir.
12 Q. Now, at the time -- this goes back some years
13 ago, but at the time you spoke English?
14 A. Yeah, I spoke a little bit.
15 Q. Okay. And you did have an interpreter at the
16 time of trial; is that correct?
17 A. Yes, sir.
18 Q. Did you have the benefit of an interpreter
19 when you met with counsel over at the Marion County
20 Jail?
21 A. No, sir.
22 Q. You were never out on bond on this case,
23 correct?
24 A. No. No, never on this charge.
25 Q. Okay. When you communicated with your

1 attorney, would you -- did you communicate in English
2 or Spanish?
3 A. Oh, we communicate in English, but we got
4 hard time because I cannot understand half of the stuff
5 that he was explaining to me.
6 Q. Okay. But I noticed -- because I've seen
7 some letters you wrote -- you were competent to write
8 in English, were you not?
9 A. No. I was -- somebody else was writing the
10 letter for me.
11 Q. Okay. But you did write to your attorney?
12 A. Yes. I sent him a bunch of letters.
13 Q. Okay. Well, we'll talk about that in a
14 minute. Now, one of the issues that we raised, which
15 is -- actually, Judge, for the purpose of keeping track
16 of where we are, language was raised in Issue 6(d), and
17 the mental health issue also appears on Issue 6(e).
18 What type of mental history -- we've talked about
19 that -- do you have?
20 A. I've been diagnosed with depression, anxiety,
21 bipolar. Sometime I hear voices and see things.
22 Q. Okay. Have you had a history of being on
23 medication?
24 A. Yes, sir.
25 Q. All right. Now, we have filed a motion with

1 the Court, which you have signed under oath, and we've
2 made representations to the Court that you were on
3 certain types of medication. Now, prior to this
4 incident, do you remember what kind of medication you
5 were on?

6 A. You mean, while I was out on (indiscernible)?

7 Q. Before you got arrested here --

8 A. Yeah. I was on clonazepam and
9 (indiscernible).

10 Q. Okay. And the purpose of that was to do
11 what?

12 A. Well, I was -- I was on the psych medication
13 because I always got (indiscernible) since I was a
14 child.

15 Q. Okay. Now, there came a time where you got
16 arrested in Marion County, correct?

17 A. Yes, sir.

18 Q. And you were over at the Marion County Jail?

19 A. Yes, sir.

20 Q. And were you given medication?

21 A. Yes. The women that is inside the facility
22 provided me with some medications.

23 Q. All right. Do you remember the name of those
24 medications?

25 A. Yeah. I think one of them is Seroquel,

1 Zoloft, (indiscernible), tramadol. I forgot the other
2 one's name.

3 Q. Okay.

4 A. I know there were five different medications.

5 Q. Were you on that medication throughout the
6 proceedings here in Marion County?

7 A. Yes, sir.

8 Q. All right. Did they have any effects on you?

9 A. Yeah. I was -- I was sleeping all the time.
10 Sometime I twitch, you know.

11 Q. Right. Now, I had made representation in the
12 motion that you were denied medication. Actually, that
13 was a misstatement. It was my understanding that they
14 were mixing your medication?

15 A. No. The thing -- they got me on so many
16 medications that I can't think clearly what I was doing
17 in the time.

18 Q. Okay. Now, did you explain any of this to
19 your attorney, that you were concerned about the amount
20 of medication that --

21 A. Yeah. I explained to my attorney, like, two
22 or three times when he came to see me in the county.
23 One time he asked me what was wrong with me. I told
24 him that the psych doctor prescribed me more
25 medication. The only thing I want to do was go to

1 sleep all day. That I can't understand what's actually
2 going on with the case.

3 Q. Right. Now, there's been -- some time has
4 passed since this case is over. Are you still on
5 medication?

6 A. No, I'm off of the medication right now.

7 Q. All right. And when you say "off the
8 medication right now," where -- where are you housed
9 now? We know you're incarcerated. Where are you at?

10 A. I'm in Marion County.

11 Q. All right. And you're on no type of
12 medication?

13 A. No, no type of medication.

14 Q. And you have become familiar with your case
15 subsequent to the conviction here in this court,
16 correct?

17 A. Yes, sir.

18 Q. Is there anything that's -- now that you're
19 off your medication, that appears to be more lucid or
20 that you understand better than you did at the time
21 that you were on your medication?

22 A. Yeah, I understand the consequence to -- to
23 reject the plea offer is seven years. At the time,
24 nobody explained to me, nobody told me, if I reject the
25 plea offer, I can get up to 30 years in time.

1 Q. All right. We'll talk about that, but the
2 answer to the question is "yes"? In other words --

3 A. Yes.

4 Q. -- you're clear of this?

5 A. Yes, sir.

6 Q. As far as other things, communication with
7 your lawyer and the letters that you would -- do they
8 also have a better, I guess, clarity now than they did
9 then?

10 A. Yes, sir.

11 Q. Okay. So do you believe that the medication,
12 at the time, that you were on did something to hinder
13 your ability to adequately assist your attorney through
14 the process, not only of the trial, but pretrial?

15 A. Yes, sir.

16 Q. Okay. And you did, in fact, have
17 conversation with him?

18 A. Yeah.

19 Q. About that?

20 A. A few times.

21 Q. Did he make any efforts to find out what type
22 of medication that you were on?

23 A. Well, actually, he never asked me nothing
24 about the medication. I just told him about the
25 medication. And he said, Okay. That's it.

1 Q. Any discussions about determining whether or
2 not you should be determined to be competent for the
3 purposes of trial?

4 A. No, we never talked about that because --
5 like how I already explained to you, we got hard time
6 communicating because my English, at that time, wasn't
7 that good like right now.

8 Q. All right. Now, you have with you your -- I
9 believe, your medical records, correct?

10 A. Yes, sir.

11 Q. And where are they?

12 A. That's over here. (Indicating.)

13 Q. So you have a whole file of medical records?

14 A. Yeah, a whole file of medical records.

15 Q. Now, are these from the Marion County Jail?

16 A. Yes, sir.

17 Q. All right. Have you had an opportunity to
18 review these records?

19 A. Yes, sir.

20 Q. Do they clearly reflect the type of
21 medication that you were on?

22 A. Yes, sir.

23 Q. Without introducing them into evidence,
24 though, based on your testimony here today, do you
25 believe that that testimony coincides with the medical

1 records that Marion County Jail -- if you understand my
2 question?

3 A. Yes, sir.

4 Q. Okay.

5 MR. MARO: All right. Judge, we're going
6 to -- with the Court's permission, we'd stay on
7 Issue 6 and we would be talking about Sub A.

8 BY MR. MARO:

9 Q. We had raised in your postconviction motion
10 that you had concerns -- and you had voiced them to
11 counsel -- about a sleeping juror.

12 A. Yes, sir.

13 Q. Explain to the Court basically what
14 transpired.

15 A. Well, I remember there was a woman with the
16 short hair -- she was sitting in the right far side and
17 she was kind of falling asleep. I told my lawyer that
18 she was falling asleep. Actually, he did nothing about
19 that because he was always texting, checking his text
20 messages at the time.

21 Q. Why were you concerned about the -- now, was
22 this one time -- falling asleep -- or did this happen
23 more than once?

24 A. No. No. She was -- she was sleeping, like,
25 four or five times. I bring that to his attention, but

1 I guess he was too busy sending texts, receiving text
2 messages, that he did not pay attention to what I had
3 to say.

4 Q. All right. We also have raised -- that has
5 been referenced in Issue 6(c). You've complained to
6 the Court that your attorney was not paying attention
7 and also -- that was also a concern to you.

8 A. Yeah. It was a concern to me because, like,
9 he was all the time on the phone and he wasn't paying
10 attention to the testimony from the detective or the
11 witness.

12 Q. All right. Do you remember Detective
13 Rightsell?

14 A. Yes, sir.

15 Q. All right. She testified in your trial, did
16 she not?

17 A. Yes, she did.

18 Q. Now, did she make any testimony or any
19 statements under oath that you believe to be incorrect?

20 A. Yeah. She said that to her -- that came to
21 the house (indiscernible) took everything down. I
22 never told her that. I told her, If I knew that he was
23 growing weed, I would tell him to take everything down.
24 We argued that, like, two or three times. I told her,
25 Stop putting words in my mouth. You know I don't say

1 that. I told you, If I know he was growing weed, I
2 would tell him to take everything down. I told her,
3 You the one who say that; not me.

4 Q. All right. Did you represent to me that that
5 interview -- it was a post-Miranda interview?

6 A. Yes, sir.

7 Q. That that was memorialized in a recording?

8 A. Yes, sir.

9 Q. And did you make a request that I make an
10 effort to track that down?

11 A. Yes, sir.

12 Q. And that I represented to you that I made
13 efforts to track that down?

14 A. Yes, sir.

15 Q. That I contacted the State, your former
16 attorney, the clerk's office, evidence at the jail, and
17 came up empty-handed?

18 A. Yes, sir.

19 Q. And we've been advised today, though, that
20 Ms. Rightsell had her own copy, correct?

21 A. Yes, sir.

22 Q. So you have not had an opportunity to listen
23 to that, right?

24 A. Yes, sir.

25 Q. Now, the purpose of -- backtrack.

1 When you indicated that your lawyer wasn't
2 paying attention, did you try to advise him that the
3 witness was misstating what you had said?

4 A. Yeah. Every time they said something that
5 isn't on the discovery or everything I never say, I
6 bring to his attention, but he said, Oh, don't worry
7 about it. Because, like, if you tell someone to
8 testify on your behalf, then they are going to find you
9 not guilty.

10 Q. Had you ever discussed the tape recording
11 with your attorney?

12 A. Yeah. I even sent him a couple letters
13 asking him to do something -- the procedure -- and get
14 the tape recording, but I guess he ignored --

15 Q. All right.

16 A. -- my request.

17 Q. But the question is, did you ever listen --

18 A. Yes, sir.

19 Q. -- did you ever hear the tape?

20 A. No. I never heard the tape before.

21 Q. Do you know if your attorney ever got a copy
22 of the tape?

23 A. He never told me that he got a copy, so that
24 means -- I mean, no.

25 Q. So you were concerned that the witness may

1 have been making a misstatement? Do you know if he had
2 addressed that on cross-examination?

3 A. No. He never did nothing about that.

4 Q. Okay. What was your understanding of the
5 theory? Do you know what the word "theory" means?

6 A. Yes, sir.

7 Q. The idea or the concept of your defense in
8 your case? What was your understanding how you were
9 defending the State's case against you?

10 A. Well, my understanding was that every time he
11 came to talk to me -- there were four or five times in
12 the county jail -- he said, You don't have to worry
13 about nothing. The State's got nothing against you.
14 Your cousin is going to testify. He's going to say the
15 truth. So they (indiscernible) going to find you
16 guilty of the trafficking and to buy the house for
17 purpose of growing weed.

18 Q. Was the theory that you were not at the
19 house? In other words, you were not up here during
20 this --

21 A. Yeah, that was -- I never was inside the
22 house.

23 Q. Okay.

24 A. They cannot put me one time in the property.
25 Only the day I got arrested.

1 Q. All right. The testimony then of Detective
2 Rightsell, then -- assuming that her testimony was
3 believed by the jury -- actually gives you knowledge
4 that there was something going on up here, correct?

5 A. Yes, sir.

6 Q. All right. Okay.

7 MR. MARO: Judge, that would take us back to
8 Issue 4. If I may.

9 THE COURT: Just one second. All right. Go
10 ahead.

11 BY MR. MARO:

12 Q. We have made allegations in Issue 4, and
13 we're going to go down the paragraphs and talk about
14 the individual people. You are familiar with Arturo
15 Apolinar, no?

16 A. Yes. He was inside the house with --
17 together with Victor.

18 Q. Right. Was he ever arrested in this case?

19 A. Yes, sir.

20 Q. So he was a co-defendant?

21 A. He was a co-defendant.

22 Q. Did he ever enter a plea?

23 A. I guess he entered a plea of guilty or nolo
24 contendere. I'm not sure about that.

25 Q. Did he ever get sentenced in this case?

1 A. Yes, sir.

2 Q. Was it before your trial or after your trial?

3 A. I'm really not sure about that. It was
4 before or after.

5 Q. All right. And you have spoken to him on
6 occasions?

7 A. No. I only spoke to him one time when he
8 was -- when I went to DOC and I called my family, he
9 was there in the house with Victor's mother.

10 Q. Okay. Did you provide me an affidavit, which
11 we had attached originally, from Mr. Apolinar?

12 A. Yes, sir.

13 Q. And explain the scenario of how this
14 affidavit came in to intervene?

15 A. Well, when I called my aunt and them -- she's
16 Victor's mother -- and he was over there. I told him
17 that --

18 Q. Slow down. Slow down. I know you're
19 nervous, but slow down.

20 A. When I called my aunt, he was over there in
21 the house. And I told him that I need for him to do an
22 affidavit, telling the truth, that I never was inside
23 the property.

24 Q. Okay. Now, at the time of your trial, do you
25 know if Mr. Apolinar was available or willing to

1 testify?

2 A. Well, he was willing to testify on my behalf.

3 Q. Okay. And how do you know this?

4 A. Because one time when we went to church, he
5 told me that he was available to testify that I never
6 was inside the house. And he's going to say that he
7 don't know me because I never met him before.

8 Q. Right. Did he ever or did anyone ever
9 communicate that information to your attorney at that
10 particular --

11 A. Yeah, I told my lawyer a few times that I
12 want him to call Arturo Apolinar to testify on my
13 behalf.

14 Q. And what was the response?

15 A. Well, actually, every time I ask him to do
16 something, he don't agree with me.

17 Q. Mr. Apolinar, then, never became a witness in
18 this case?

19 A. No, sir.

20 Q. Would he have -- in your opinion -- now, I
21 understand, based on your theory of the case, that
22 you're not present or didn't know about this -- do you
23 believe that he would have been an important witness?

24 A. Yes, sir.

25 Q. Let's talk about this.

1 MR. MARO: Judge, one moment, please.

2 THE COURT: Yes, sir. Let me just ask, are
3 you calling all the witnesses -- or do you have
4 witnesses that you want to call?

5 MR. HUNT: I have only one witness.

6 THE COURT: Who is that?

7 MR. HUNT: Mr. Yvens Pierre-Antoine.

8 THE COURT: Okay. I just want to make sure
9 everyone's got the time they need.

10 Mr. Maro, make sure you keep track of the
11 time.

12 MR. MARO: Judge, I'm just looking for --

13 I'll try to introduce it later. I just --

14 THE COURT: Whatever. I'm just making sure
15 that --

16 MR. MARO: -- caught up in the paper -- paper
17 chase.

18 THE COURT: Do you got a certain amount of
19 time or is there something -- don't -- don't --

20 MR. MARO: I know.

21 THE COURT: -- you know, lose track of time.

22 MR. MARO: All right.

23 BY MR. MARO:

24 Q. All right. Mr. Suarez, you also had a few
25 other witnesses that, my understanding is, you wanted

1 counsel to call?
 2 A. Yes, sir.
 3 Q. All right. Just briefly, one of those
 4 witnesses was also a Dale Kirby?
 5 A. Yes, sir.
 6 Q. All right. And I've explained to the Court
 7 who Mr. Kirby is. Why do you want Mr. Kirby at the
 8 trial?
 9 A. Well, I want Mr. Kirby to be here because he
 10 was the guy -- the owner -- the owner of the house. He
 11 was the guy who sold me the house. The day -- the day
 12 I bought the house, Victor was there with me. Victor
 13 gave me a check for \$3,000 for the rent of the house,
 14 and then I gave the check to Mr. Kirby.
 15 Q. All right. Now, we're talking about Victor
 16 Rodriguez-Suarez?
 17 A. Yeah, we're talking Victor Suarez.
 18 Q. Was he involved in this also?
 19 A. Yeah. He was the -- he was the one who was
 20 inside the house when we -- I (indiscernible).
 21 Q. So did you tell your attorney that you wanted
 22 Mr. Kirby subpoenaed?
 23 A. Yes, sir.
 24 Q. And what was his response then?
 25 A. Well, he said he don't want the jury to put

1 me in the same place on the same day together with
 2 Victor in that house.
 3 Q. Okay. And the purpose is to show that Victor
 4 was there longer than the seven months; is that what --
 5 A. No. The purpose was to show that Victor was
 6 there more than what he say. Now, he was there for a
 7 month or a little over the month, you know, to show
 8 that the day I went to buy the house, that I rented the
 9 house to Victor. That was my purpose to have Mr. Kirby
 10 over here to testify on my behalf.
 11 Q. All right. Now, who is -- we talked about
 12 also a few other people -- very quickly -- Mr. Cranston
 13 and Kimberly Porter. Mr. Cranston is a Walmart
 14 prevention officer, and Ms. Porter is also someone
 15 else. Why did you want to have those two people there?
 16 A. Well, in those two places that they got --
 17 THE COURT: Excuse me a second. Hold on a
 18 second.
 19 THE DEFENDANT: -- video photo --
 20 THE COURT: Hold on. What are the first
 21 names of these people? Do you know?
 22 MR. MARO: Justin Cranston. Judge, it's in
 23 the petition, page 16. And Kimberley Porter,
 24 P-O-R-T-E-R.
 25 THE COURT: Okay. Go ahead.

1 BY MR. MARO:

2 Q. All right. What was the purpose of those --

3 A. Okay. The purpose to have them over here was
4 to testify. They got video and photo proof that Victor
5 was in those places with his wife. That they can
6 testify they never saw me in that place with Victor or
7 with Victor in that moment or any other moment.

8 Q. All right. So was the purpose then -- it was
9 represented to the Court in the petition -- that one
10 was someone at Walmart, and the State had used pictures
11 and videos showing Mr. Suarez -- Victor
12 Rodriguez-Suarez and his wife at Walmart, but not you?

13 A. Not me, yes, sir.

14 Q. In other words, your presence, not here?

15 A. Not --

16 THE COURT: Is that Cranston who would
17 testify to that?

18 MR. MARO: I'm sorry, sir.

19 THE COURT: I don't have the whole petition
20 memorized, so --

21 MR. MARO: Okay.

22 THE COURT: -- you know, please don't, you
23 know, just say, Well, like, you know, in the
24 petition -- the testimony you present is what I'm
25 going to rule on.

1 MR. MARO: I understand.

2 THE COURT: So I don't know who supposedly
3 works at Walmart.

4 MR. MARO: Okay.

5 THE COURT: Can you tell me which of these
6 two supposedly work at Walmart?

7 BY MR. MARO:

8 Q. Mr. -- Mr. Canston, do you know where he
9 worked?

10 A. I think -- okay. Let me see. Yeah, I know
11 one worked at Walmart security and the other one worked
12 in the landfill.

13 Q. All right. Was Mr. Cranston a loss
14 prevention officer at Walmart?

15 A. Yes, sir.

16 Q. Okay. And then that would make Ms. Porter
17 working at the landfill?

18 A. In the landfill.

19 Q. And the State introduced, during the trial,
20 videos of -- showing that Mr. Victor Rodriguez-Suarez
21 and his wife or woman were at those areas without you?

22 A. Without me.

23 Q. Okay. What was the response of counsel when
24 you asked him to subpoena those witnesses?

25 A. Well, he said that we don't need, you know,

1 to call them as witnesses because the jury -- like, he
2 always says the same thing. We don't need those
3 witnesses because the jury will find you not guilty of
4 the two top charges because your cousin is going to
5 tell the truth.

6 Q. Now, you -- Detective Rightsell had a receipt
7 that she received from one of the witnesses? From Ms.
8 Porter?

9 A. Yes, sir.

10 Q. And that was a receipt that was supposedly
11 signed by Victor Rodriguez-Suarez, a home renter?

12 A. Yes, sir.

13 Q. Okay. So was that ever developed during the
14 course of the trial?

15 A. Actually, not that much. She just said that
16 and it stayed like that.

17 Q. Now, to the best of your knowledge, Kimberley
18 Porter, Justin Cranston, and Victor Rodriguez-Suarez
19 were not deposed by your attorney; is that correct?

20 A. I guess not.

21 Q. Okay. The additional person that you would
22 have wanted to bring forth to trial was David Santiel,
23 S-a-n-t-i-e-l, and he was a probation officer out of
24 Miami?

25 A. Yes, sir.

1 Q. Did you discuss the possibility of utilizing
2 him as a witness? And, obviously, what did counsel
3 tell you?

4 A. Well, he told me it would not be a good idea
5 because the jury would find out I was on probation in
6 Miami for the same charge.

7 Q. Okay. And that your concern was that being
8 on -- you were on community control, actually, right?

9 A. Yeah, I was on community control.

10 Q. And the purpose would have been that you were
11 going to say you couldn't be in two places at once?

12 A. At the same time, because I was on community
13 control, so I cannot be over here in Ocala when I'm 300
14 miles away in Miami on community control.

15 THE COURT: I'm sorry. I missed -- what was
16 the name of the person who was going to explain
17 that?

18 MR. MARO: David Santiel, Judge.

19 S-a-n-t-i-e-l. Defendant's probation officer in
20 Miami.

21 BY MR. MARO:

22 Q. Had you ever discussed with your attorney
23 that you had originally cooperated with law
24 enforcement, the DEA, in Miami?

25 A. Yes, sir.

1 Q. And was that -- the purpose to help mitigate
2 a sentence or obtain a lesser offer?

3 A. Yeah, that was my arrest in Miami.

4 Q. All right. Do you know if anything was ever
5 done with that information?

6 A. I told him -- I give him the name of my
7 lawyer in Miami. I told him to call him so he can get
8 the record that I used to work for the DEA, but he
9 never did anything. He even don't got the file from
10 the federal court in Miami.

11 THE COURT: I'm trying to take notes here,
12 and you guys are going too fast. Let me just take
13 a note here. All right. So you go over this DEA
14 stuff again. Go ahead.

15 BY MR. MARO:

16 Q. We are now going to Issue Number 7.

17 THE COURT: Is that about the DEA stuff?

18 MR. MARO: I'm sorry, sir?

19 THE COURT: I missed the whole thing about
20 the DEA because I'm trying to take notes --

21 MR. MARO: Okay.

22 THE COURT: -- on everything.

23 MR. MARO: I'm sorry.

24 THE COURT: Okay. No problem.

25 MR. MARO: I'll go back.

1 BY MR. MARO:

2 Q. You gave them information about -- that you
3 worked with the DEA?

4 A. Yeah, I told my lawyer that I used to work
5 for the DEA. That he needs to call my ex-lawyer in
6 Miami to get the record from my lawyer that I can prove
7 that I never lied to the detective (indiscernible) I
8 was working for the DEA.

9 THE COURT: Go ahead.

10 MR. MARO: Judge, we're going to move on to
11 Issue 7. And just as a caveat --

12 THE COURT: Hold on one second. I don't
13 think we're going to need you. He says he speaks
14 English perfectly. He's the interpreter.

15 MR. MARO: Yup. You're all right?

16 THE DEFENDANT: No, I don't need it. I'll be
17 okay. Thank you.

18 THE COURT: Thank you. Thank you very much,
19 Ed. Go ahead.

20 MR. MARO: Yeah. Judge, Issue 7 does kind of
21 go back also to Issue 5(e), so it will be a dual --
22 the testimony would apply to both issues.

23 THE COURT: All right.

24 MR. MARO: And it basically is predicated
25 upon -- upon competency.

1 BY MR. MARO:

2 Q. In Issue Number 7, you had indicated to the
3 Court that you believe you got misadvice from your
4 attorney about the maximum sentence that could be
5 imposed and also about being able to plead -- partially
6 plead to some counts and take other ones to trial --

7 A. Yes, sir.

8 Q. -- is that correct?

9 A. Yes, sir, that is correct.

10 Q. Okay. Now, at the time you had these
11 conversations, were you still on medication?

12 A. Yes, sir.

13 Q. All right. Did you -- what was the
14 attorney's response? Speak slowly for the judge.

15 A. Okay.

16 Q. What was the attorney's response?

17 A. Well, first of all, I told him that I want to
18 plead guilty to the five low charges, but he said it
19 would not be a good idea because he wants the jury to
20 concentrate on the five lowest charges so they can find
21 me not guilty on the other two charges. At that
22 moment, he said that.

23 THE COURT: What was that charge, just so I'm
24 clear?

25 MR. MARO: Hang on, Judge. All right. We

1 have fleeing and/or attempting to elude, possession
2 of an unauthorized driver's license, driving while
3 license suspended or revoked, and providing a
4 loss -- I'm sorry -- a false name or identification
5 to law enforcement.

6 THE COURT: Uh-huh. Can you ask him which
7 ones he wanted to plead to because there are, like,
8 seven?

9 THE DEFENDANT: I wanted to plead guilty to
10 fleeing eluding the cops, possession of stolen DL,
11 driving with suspended license -- which one --
12 false name, and fleeing and eluding the cops.

13 BY MR. MARO:

14 Q. What was your -- if there was, what was your
15 reasoning?

16 A. Because I want to bring my -- I want to see
17 if I can bring my score points down to see if I can get
18 less sentence, the seven years.

19 Q. Did you discuss that with counsel?

20 A. Yeah, I discussed it with him, and he said
21 it's not a good idea because he wants the jury to
22 concentrate on the five lowest charges.

23 Q. Okay. Did you take that advice?

24 A. Yeah, I was taking his advice all the time.

25 Q. All right. Now, did you memorialize -- when

1 I say "memorialize" -- did you make it known to him,
2 not only verbally, but also in writing, that you wanted
3 to do this?

4 A. Yes. I sent him, like, two or three letters
5 explaining to him that what I want to do -- the
6 procedure -- I want to plead guilty to some charges and
7 go to trial with the other charges.

8 Q. Did you actually write him a four-page
9 letter --

10 A. Yes, sir.

11 Q. -- with that -- let me finish the question --
12 with that information contained therein?

13 A. Yes, sir.

14 Q. And that you had -- you kept copies of that
15 letter?

16 A. Well, the things I kept copies -- the day of
17 the trial, I left all the letters on top of the table.
18 When the jury found me guilty, they took me to the
19 holding cell. I came back -- the file was gone on top
20 of the table.

21 Q. Did you ask me to try to locate that file for
22 you three years later?

23 A. Yes, sir.

24 Q. And I -- did I tell you that I contacted your
25 attorney to see if he may have the file for

1 safekeeping?

2 A. Yes, sir.

3 Q. And the answer was he did not have the file?

4 A. Yes, sir.

5 Q. Okay. Did I also tell you I contacted what
6 we call "the blue man"? Because they video and audio
7 record things?

8 A. Yes, sir.

9 Q. And I told you there were four disks of your
10 trial with four recordings?

11 A. Yes, sir.

12 Q. And that they were kind enough to actually
13 look at the last one to see if there was anything left
14 at the table or who may have walked off?

15 A. Yes, sir.

16 Q. And I advised you that what they told me was
17 that there was nothing left on the table?

18 A. Yes, sir.

19 Q. Okay. But I did everything you asked me
20 to --

21 A. Yes, sir.

22 Q. Okay. Now, you had -- I had also requested,
23 at your request, from counsel -- your trial counsel, to
24 send you, or send me, copies of anything he had in his
25 file regarding letters; is that correct?

1 A. Yes, sir.

2 Q. And then I duplicated that and shared that
3 with you, did I not?

4 A. Yes, sir.

5 Q. Are you familiar with -- let me just show you
6 what we're going to mark as Exhibit A. Are you
7 familiar with -- it's a two-page document.

8 A. Yes, sir.

9 Q. It says "page 3 and 4."

10 A. Yes, sir.

11 Q. Okay. Is that your handwriting?

12 A. No, that's not my handwriting. That's
13 somebody else that was writing for me because, at the
14 time, I didn't know how to write English.

15 Q. Okay. But you understood the contents of
16 this letter?

17 A. Yes, sir.

18 Q. Now, this was a four-page letter?

19 A. Yes, sir.

20 Q. And you -- copies for me. What are these two
21 pages that purport to be on here?

22 A. Well, that's two pages -- the part I want him
23 to do stuff on my case, but from there, I'm missing two
24 pages.

25 Q. Okay. What does this say? Page --

1 A. To whom it --

2 Q. Page --

3 A. Page 1 of 4.

4 Q. Okay. And what does this say?

5 A. Page 3 of 4.

6 Q. Okay.

7 MR. MARO: Judge, I would like to mark this
8 as Exhibit A, if we could.

9 THE COURT: All right.

10 (Defense Exhibit A was marked for
11 identification.)

12 BY MR. MARO:

13 Q. That is an incomplete four-page letter?

14 A. Yes, sir.

15 Q. Okay. And the portion that's missing is
16 specifically what?

17 A. That's the part where I ask him that I want
18 to plead guilty to the four charges. That I want him
19 to call some witnesses.

20 Q. Okay. And that was before the trial,
21 obviously?

22 A. Yes, sir.

23 Q. Okay. And that did not happen, correct?
24 That did not --

25 A. Yes, sir.

1 Q. -- happen?

2 A. No, that did not happen, sir.

3 Q. In other words, you didn't plead guilty to
4 anything but --

5 A. No, I didn't plead guilty to nothing.

6 Q. And the witnesses, again, that you wanted
7 called are not -- they didn't get called?

8 A. No. They never -- he never called them.

9 Q. Okay.

10 THE COURT: I guess I'm confused, Mr. Maro.

11 Are you saying this letter that I thought was
12 missing -- but now you're saying you have it?

13 MR. MARO: No. The tape is what's missing.

14 THE COURT: Okay.

15 MR. MARO: The tape -- we got the tape today.

16 THE COURT: Well, what is this letter? Is

17 this the letter he supposedly sent to --

18 MR. MARO: This is the letter that I received
19 back from his trial counsel that's incomplete. In
20 other words, it's a four-page letter. We only got
21 two pages back.

22 THE COURT: Okay.

23 MR. MARO: And it supposedly memorializes --

24 THE COURT: I thought you said you didn't
25 have that -- he didn't have the file?

1 MR. MARO: No, his original file. I -- we
2 got it from his attorney, Judge. We got it back
3 from Mr. Pierre. In other words, he had copies of
4 letters that the defendant -- and other items that
5 the defendant had sent to him.

6 THE COURT: Okay. I guess I'm confused. I
7 thought you said he left it in a file on the table,
8 and the attorney said, I don't have the file? But
9 apparently the attorney did have the letter?

10 MR. MARO: Yes. Here's what we're talking --
11 two different things and it's on me. He had his
12 discovery, his trial file, everything. When he got
13 remanded, his file -- the defendant's file was
14 supposedly on counsel's table -- defense table. It
15 disappeared for one reason or another. His lawyer
16 claims he didn't take it. Certainly the clerk
17 didn't take it. And we got the video to see if we
18 could find it, and we couldn't. What he was saying
19 is he asked me to get copies of anything I could
20 from his trial counsel and get it duplicated --

21 THE COURT: Okay.

22 MR. MARO: -- and send it --

23 THE COURT: I got it.

24 MR. MARO: -- over to him. So that's what I
25 did. That's how we got a partial letter.

1 THE COURT: Okay. Can I see what they got
2 there?

3 BY MR. MARO:

4 Q. All right. Did you discuss -- we are still
5 talking on 21. Did you discuss with your --

6 MR. MARO: We're still on Issue 7, Judge. I
7 apologize.

8 BY MR. MARO:

9 Q. Did you discuss with your attorney the
10 potential exposure of this case? In other words, the
11 maximum amount of time?

12 A. No. He never told me, if we lost in trial,
13 they could give me up to 30 years.

14 Q. Okay. What was your understanding -- did he
15 go over a scoresheet with you?

16 A. Actually, we never went to the scoresheet.

17 Q. Okay.

18 A. He just told me one time the State offered me
19 seven years but not to take it because, if we go to
20 trial, he can prevail in trial.

21 Q. Okay. We have represented to the Court, in
22 your petition on page 22, that your scoresheet was 8.6
23 years. How did you make that determination?

24 A. Because after I lose in trial, I got my
25 scoresheet. Somebody there helped me out. He told me

1 what the score insist because he say -- my lawyer said,
2 like, this. Okay. If we go to trial and you lose, the
3 only thing they're going to give you a (indiscernible)
4 year because that's what you score out.

5 Q. All right. The State had made you a higher
6 offer, though, had they not?

7 A. I don't even know -- the only offer I could
8 remember they made was seven years.

9 Q. Okay. And who conveyed that offer to you?
10 Who told you that?

11 A. My lawyer.

12 Q. Okay. Did it ever happen in open court?

13 A. Yeah, it happened in open court. What
14 happened -- they came over here and I refused the
15 offer, but that day, nobody told me, if I don't take

16 the offer, I can get up to 30 years if I lose in trial.

17 Q. Without going into specific detail, at this
18 time, though, was it your -- recommendation of your
19 attorney that you not take the offer?

20 A. Yes. He told me because my cousin is going
21 to take -- tell the truth on trial day, the jury was
22 going to find me not guilty.

23 Q. For the record, your cousin is which one?

24 A. Victor Rodriguez.

25 Q. Okay. And the theory of your case, that you

1 were never here, was that the strength of the case? In
2 other words, every case has a strength and weakness
3 that we had talked about.

4 A. Yes, sir.

5 Q. And that was going to be your defense, that
6 you were never in Marion County and didn't know about
7 this?

8 A. Yeah. My defense was -- he was going to use
9 the defense that I was never inside the house.

10 Q. All right.

11 THE COURT: I'm sorry. Did he testify that
12 his attorney said not to take the offer? Is that
13 what he testified to?

14 BY MR. MARO:

15 Q. Do you understand that?

16 A. Yes, sir.

17 Q. Not to take the offer?

18 A. Yeah, he told me not to take the offer
19 because he was going to win in trial.

20 Q. Now, you were still taking your medications
21 at this time, right?

22 A. Yes, sir.

23 Q. And your attorney knew you were on the
24 medications?

25 A. Yes, sir.

1 MR. MARO: All right, Judge. We are going to
2 go over to 8. This was an allegation --

3 THE COURT: Issue 8?

4 MR. MARO: Issue 8. Issue 8 is the last
5 issue.

6 THE COURT: Okay.

7 MR. MARO: And, Judge, that -- summary of
8 that issue is that the nature of his right to
9 testify, the jury would be informed of specifically
10 what his -- the nature of his prior conviction, as
11 compared to the number of his prior convictions.

12 BY MR. MARO:

13 Q. Did you discuss with your attorney your --
14 outside the courtroom or on the record, did you discuss
15 with your attorney the fact that you could testify on
16 your --

17 A. Well, actually, the only thing we
18 discussed --

19 Q. Let me finish the question. Yes or no?

20 A. Yes, sir.

21 Q. Okay. Now, the nature of those discussions,
22 what were they?

23 A. Well, there was none -- he said if I don't
24 testify, the State cannot bring up my past, so he told
25 me, I recommend you not to testify in this case

1 because -- so they don't -- the jury is never going to
2 find out that you was a convicted felon from the same
3 charge that they are accusing you over here in Miami.

4 Q. All right. Do you understand the difference
5 or was it explained to you that if you did testify,
6 that the jury would know you were a prior convicted
7 felon but not necessarily the nature of those
8 convictions?

9 A. Yes, sir.

10 Q. Okay. Was it explained to you that way, or
11 was it explained to you that if you got up on the
12 witness stand and testified, not only would the jury
13 find out that you were a convicted felon, how many
14 times, but also the nature? In other words, what those
15 convictions were based upon?

16 A. No. He just explained to me, if I don't
17 testify, they cannot bring up my past.

18 Q. Okay.

19 A. That was all the conversation we had.

20 Q. Okay. And did you believe, at that time, it
21 was in your best interest to testify?

22 A. At that time, I was following his advice. It
23 wasn't a good idea for me to take the stand on my
24 behalf.

25 Q. Did the medication, now that you look back on

1 it -- I understand hindsight is a wonderful thing --
2 but you don't have medication. Now that you look back
3 on it, do you believe that the medication you were on
4 clouded your judgment or affected that judgment?

5 A. Yeah, the medication played a lot of
6 (indiscernible) on my mind because if I wasn't on the
7 medication, I would think clearly what to do in that
8 time.

9 MR. MARO: Judge, I would tender, at this
10 time, the witness to Mr. Hunt with just the ability
11 to redirect if necessary.

12 THE COURT: Okay. Mr. Hunt.

13 MR. HUNT: All right.

14 CROSS-EXAMINATION

15 BY MR. HUNT:

16 Q. So, Mr. Vazquez-Suarez, your testimony is
17 that, at the time of the trial and at all times prior
18 to the trial, you were under the -- you were taking
19 medications, right?

20 A. Yes, sir.

21 Q. And they affected your ability to think
22 clearly; is that right?

23 A. Yes, sir.

24 Q. And then you would agree with me then that,
25 if they affected your ability to think clearly at that

1 time, they also would affect your ability to remember
2 what happened then as well, correct?

3 A. Well, to remember, I don't have to -- short
4 time with memory loss. The medication played a lot of
5 role because the only thing I want, to go to sleep. I
6 can understand clearly what's going on with my case.

7 Q. So you did understand clearly what was going
8 on with your case then?

9 A. No. I understand really -- going on with my
10 case, but I can't remember everything.

11 Q. Okay. So you can remember some things, but
12 you did not understand at the time the different
13 aspects of what your attorney was talking to you about
14 and what was going on during the trial; is that right?

15 A. Yes, sir.

16 Q. And actually at the trial, it's your
17 testimony you were under medication as well; is that
18 right?

19 A. Yes, sir.

20 Q. And you -- and you remember at the trial,
21 prior to even picking a jury, that the judge asked you
22 if you wanted to have an interpreter, right?

23 A. Yes, sir.

24 Q. And you told him you didn't need one then?

25 A. For the trial?

1 Q. Before the trial started. When they were
2 talking about the plea offer. Do you remember that?

3 A. Yeah, that day because I only had to refuse
4 the plea offer.

5 Q. Right. And that's when you rejected the
6 seven-year offer, correct?

7 A. Yes, sir, but nobody told me, if I reject the
8 seven years, I can face up to thirty years.

9 Q. Hold on one second. Just answer my question.
10 Okay? So you rejected the seven-year offer at that
11 time, correct?

12 A. Yes, sir.

13 Q. And you didn't have the benefit of an
14 interpreter then, right?

15 A. No, sir.

16 Q. Right? And after you were convicted, you had
17 a sentencing hearing. Do you remember that?

18 A. Yes, sir.

19 Q. And at the sentencing hearing, you
20 specifically said you didn't need an interpreter
21 either, correct?

22 A. Yes, sir.

23 Q. Because you understood what was going on?

24 A. I understood what's -- I understood what's
25 going to happen that day. I'm going to get sentenced.

1 Q. Right. But you understood what was going on,
2 though, right?

3 A. Actually, I understood what's going on, but I
4 don't understand I'm going to get 20 years because I
5 didn't know.

6 Q. I understand. That's not my question. Okay?
7 My question to you is, you understood what was
8 happening --

9 A. Yeah, I know --

10 Q. -- prior to the jury selection and at the
11 sentencing hearing, correct?

12 A. Yeah, I knew what's going to happen that day.
13 I'm going to get sentenced.

14 Q. Okay. Right. But you understood as it was
15 happening, what was happening, correct?

16 A. Yes, sir.

17 Q. In other words, you knew you -- after the end
18 of it, you understood, I just got 20 years in prison,
19 right?

20 A. Yes, sir.

21 Q. Okay. So your medication did not affect your
22 ability to understand what was going on, did it?

23 A. It's affected me a lot when I refused the
24 seven-year offer, because if I was on medication, I
25 wasn't in my right mind. I would never have refused

1 the offer.

2 Q. And you also indicate that -- and you -- in
3 your -- in the medical records that you have there
4 today, those are ones that you got from the jail; is
5 that right?

6 A. Yes, sir.

7 Q. And you never brought it to your attorney's
8 attention that you needed -- that you were on medicine,
9 did you?

10 A. Yes, I told him a few times, a couple of
11 times, I was on the medication. When he went -- a
12 couple of times when he went to see me, I was sleeping.
13 They were waking me up to see him. He asking me what's
14 wrong with me. I told him --

15 Q. Right.

16 A. -- that the psych medication the doctor
17 prescribed me has got me sleeping all the time. I am
18 sleeping and twitching all the time.

19 Q. Okay. And when you had talked to your
20 attorney, you did that without the benefit of an
21 interpreter as well, correct?

22 A. Well, we got a little bit of hard time to
23 communicate because, at that time, my English wasn't
24 that good.

25 Q. Okay. That's not the answer to my

1 question -- it's a "yes" or "no" question.

2 A. Yes.

3 Q. When you talked to your attorney, you did
4 that without the benefit of an interpreter, correct?

5 A. Yes, sir.

6 Q. All right. Now, you also indicated that --
7 and I'll try to go in the order that you and Mr. Maro
8 did. You indicated that there was a juror that was
9 sleeping four or five times, correct?

10 A. Yes, sir.

11 Q. And when you noticed that and you couldn't
12 get your attorney's attention, certainly you brought
13 that to the judge's attention, right?

14 A. No, I never told the judge.

15 Q. Okay. And you never brought that up that day
16 at all to anybody other than what your testimony is to
17 your attorney, correct?

18 A. I didn't know it was -- at that time it was
19 my right to bring it up to somebody, only to my lawyer.

20 Q. And you didn't -- when did they fall asleep?
21 Was it during jury selection? During --

22 A. No.

23 Q. -- closing arguments?

24 A. That was when -- actually, it was -- one time
25 when Detective Sams was giving testimony different than

1 the discovery -- than the other --

2 Q. Oh. Detective Sams was giving discovery --
3 giving testimony differently?

4 A. The different testimony. The other time was
5 when Tanya Rightsell was testifying. And the other
6 time I remember was the -- was -- I forgot the name --
7 the guy for the electrical company.

8 Q. Okay. So those were the times then?

9 A. Yes, sir.

10 Q. All right. So that's three times, right?

11 A. Three times, four times. I can't really
12 remember --

13 Q. I know, but you just said it was four or five
14 times.

15 A. -- how many times. But three or four times.

16 Q. Right?

17 A. Yeah, three or four, five times.

18 Q. Right. And you also said that in your sworn
19 affidavit, right?

20 A. Yes, sir.

21 Q. And you know that a sworn affidavit is where
22 you're supposed to tell the truth, correct?

23 A. Yes, I'm telling the truth.

24 Q. And today you're telling me about three
25 specific incidents --

1 A. Well, I don't remember --

2 Q. -- as --

3 A. -- the -- I cannot remember the other two
4 times. I just remember the most important times of the
5 trial.

6 Q. Okay. And the fact that your attorney was
7 texting, you would agree with me that your attorney did
8 not text while the actual trial was going, but that he
9 used his phone on breaks, correct?

10 A. No, he was texting during the trial. I had
11 two or three arguments with him. Even the jurors had
12 to stop the trial to ask also what's going on.

13 Q. Okay. And you also -- so you brought that to
14 the judge's attention then?

15 A. No. I was arguing with my lawyer. I never
16 told the judge that he was texting on the phone.

17 Q. Okay. And you said that you talked -- you
18 were telling him about how Agent Rightsell had given
19 incorrect testimony as well?

20 A. Yes, sir.

21 Q. All right. Now, you would agree with me that
22 you told us earlier that you had only spoken to Arturo
23 Apolinar one time, is that right, on the phone?

24 A. Twice.

25 Q. Okay. So when you told us earlier it was one

1 time, it was actually twice?

2 A. No. I said twice. I said one time in the
3 chapel and one time when he was in my aunt's house.

4 Q. Okay. Well, because earlier you said you
5 spoke to him one time on the phone, and then afterwards
6 you said, Well, I spoke to him at church, right?

7 A. No, I said twice.

8 Q. That is twice; you're right. Not once. And
9 you said that -- and when was that? You spoke to him,
10 while your case was pending, at church?

11 A. No. After he came back from -- from
12 (Indiscernible).

13 Q. After he came back from what?

14 A. I think he came back -- he violated his
15 probation. His probation.

16 Q. Right. But after you got arrested, you
17 weren't out of custody?

18 A. No.

19 Q. So you saw him at church in the jail?

20 A. Yes, in the jail.

21 Q. Okay.

22 A. Spanish church. We -- every Tuesday, we got
23 Spanish service.

24 Q. Okay. And when you talked to him about that,
25 that was the first time you ever talked to him then?

1 A. Yes, sir.

2 Q. So you didn't talk to him that day when he
3 got arrested?

4 A. No, I didn't talk to him that day because
5 they keep -- they keep me in one car; they keep him in
6 another car.

7 Q. Okay. And as far as Dale Kirby goes, you
8 would agree with me that when you bought the house from
9 Dale Kirby, you actually did not use your actual
10 identity to buy that house, did you?

11 A. Yes, I know that.

12 Q. So that's a "yes"?

13 A. Yes, sir.

14 Q. Right? So you understand that if Dale Kirby
15 testified, he would have to testify that he sold a
16 house to somebody who's not named Junior
17 Vazquez-Suarez, correct?

18 A. That's why I want to plea guilty to the five
19 lowest charges.

20 Q. Okay. Again, that's not the answer -- that's
21 not the answer to my question. Just answer my
22 question. Okay? Your attorney can clear up whatever
23 issues you want him to clear up. Okay? Please answer
24 my question.

25 You would agree with me that Dale Kirby would

1 have to testify that the person he sold the house to
2 was not named Junior Vazquez-Suarez?

3 A. Well, he had to -- the only thing he can
4 testify, that he sold the house to me. He really don't
5 know who I was at that time.

6 Q. Well, you had an identification with that
7 name, didn't you?

8 A. Yes, I --

9 Q. And that's what you used, right?

10 A. That's what I used in that moment.

11 Q. Right. And you used it when you got arrested
12 in this charge?

13 A. Yes, sir.

14 Q. And you would also agree with me that, if
15 Dale Kirby testified, he would be able -- he would
16 testify that he sold the house to you, right?

17 A. Yes, sir.

18 Q. Meaning that you would actually have
19 ownership of the property where the marijuana was being
20 grown, correct?

21 A. I never denied ownership to the house.

22 Q. Okay. Understood. But he would have to
23 testify to that then, right?

24 A. Yes, sir.

25 Q. All right. And then when you also wanted

Justin Cranston and Kim Porter to testify, you would agree with me that Justin Cranston and Kim Porter -- well, let me ask you this. Do you know who they are?

A. No, I don't know who they are.

Q. Have you ever seen them before?

A. No.

Q. Have they ever seen you before?

A. I don't think so because I never was in those places.

Q. Right. So how would they be able to testify whether you were at Walmart or not if they don't even know who you are?

A. Because you have to ask them to show -- you ever see the defendant in that place?

Q. Okay. And that brings up my next point. And that is Mr. Maro asked you if, during the trial, there was a video introduced from Walmart and from the landfill, correct?

A. I don't know if it was a video receipt.

Q. Okay. But you would agree with me that whatever is in the court file -- in other words, what is actually in evidence was what was introduced at trial, correct?

A. Yes, sir.

Q. Right. And it would -- and you also agree

with me that at no time was there ever a video introduced from either Walmart or the landfill, was there?

A. I cannot recall if it was a video or a receipt from those places. I know they talk about that in the court -- in the court. I don't know if they got the video, if they show it -- no, they never showed the video. They just say they got proof that Victor and his wife were in those two places in the same day.

Q. Right. And you also would agree with me that there is no receipt from the landfill introduced in trial at this case? From the landfill.

A. I cannot recall that.

Q. Okay. Was that because the medicine doesn't help you recall that?

A. Well, I cannot remember what really happened that day.

Q. Okay.

A. In that moment.

Q. All right. And then you also talked about wanting to call David Santiel. He was your community control officer; is that right?

A. Yes, sir.

Q. And the purpose of his testimony would be to say you can't be in two places at once, right?

1 A. Yes, sir.
 2 Q. Well, you would agree with me that, on the
 3 day that you were arrested, you were physically at that
 4 address prior to fleeing law enforcement, correct?
 5 A. Yes, sir.
 6 Q. All right. So his testimony that you would
 7 have not been in two places at once, he would have to
 8 agree that, even though you're on community control,
 9 you weren't in Miami?
 10 A. He already knew that I had to come over here
 11 to give the property back to the owner of the house.
 12 Q. Okay.
 13 A. That was the main point.
 14 Q. So you had gotten permission from David
 15 Santiel?
 16 A. Yeah, I got permission from him because I
 17 moved -- if I don't report when I move, then he's going
 18 to violate me. And I said, Okay. I got the property
 19 in Ocala that I have to give back to the owner
 20 because -- because Victor, my cousin, he'd making no
 21 payment, so I have to go over there.
 22 Q. And David Santiel knew that you bought that
 23 house with a fake name?
 24 A. No, he don't know that.
 25 Q. Okay. And you were actually on community

1 control for trafficking in marijuana, is that right?
 2 A. Yes, sir.
 3 Q. Which is what you ended up being convicted of
 4 here, correct?
 5 A. Yes, sir.
 6 Q. And, in fact, you actually had other charges
 7 of trafficking marijuana in other counties as well,
 8 right?
 9 A. Yeah. After the last trial, they decided to
 10 charge me. What the --
 11 Q. Not here, but other places?
 12 A. Yeah, other places after I lost in trial.
 13 Q. Sure.
 14 A. I wondered why they waited all that long to
 15 charge me for me to -- to see what happened in Marion
 16 County.
 17 Q. You never know. And you would agree with me
 18 that if David Santiel testified, then it would -- then
 19 the jury would have to know that you're being
 20 supervised by a Department of Corrections probational
 21 community control officer who would have to testify
 22 that you weren't in Miami like you were required to be?
 23 A. I got permission from him to be over here.
 24 Q. So you wanted the jury to hear that you were
 25 on community control out of Miami --

1 A. I used to work for the DEA. I used to work
2 for the DEA.

3 Q. So you wanted -- and David Santiel works for
4 the DEA?

5 A. No. David Santiel can testify at that moment
6 that I used to work for the DEA, that I never lied to
7 the detective.

8 Q. Okay.

9 A. They say I lied, I never worked for the DEA.
10 I got the proof over here.

11 Q. Okay. Well, listen to my question then.

12 David Santiel doesn't work for the DEA, right?

13 A. No.

14 Q. Right. And you don't know all the rules of
15 evidence, correct?

16 A. No, sir.

17 Q. And so you're just assuming that David
18 Santiel, your probation officer, will be able to
19 testify about the fact that you previously worked for
20 the DEA?

21 A. Yes, I assume that.

22 Q. Okay. But you didn't ask your lawyer to ask
23 him that?

24 A. I asked my lawyer to call him to get the
25 record and to bring over here to testify on my behalf.

1 Q. Okay. Now, I noticed that you had
2 specifically asked in your motion to talk about not
3 calling Deputy Rightsell and Deputy Dutton as when this
4 is -- Mr. Maro didn't ask you about that -- am I to
5 assume you're not contesting that that was effective
6 for him not to call those witnesses? Am I to assume
7 that because you didn't elicit any testimony?

8 MR. MARO: It's my understanding Rightsell
9 was called on behalf of the State.

10 MR. HUNT: She was, but he had -- but your
11 motion lays out that that was ineffective for him
12 not to call Rightsell or Dutton.

13 MR. MARO: What was the -- yeah. For the
14 purpose of clarification, I don't -- during the
15 deposition -- that I've got to go through with
16 counsel -- this tape if -- it was ever discussed.

17 MR. HUNT: No. I'm -- two -- we're talking
18 about apples and oranges.

19 MR. MARO: Oh, okay.

20 MR. HUNT: His motion -- his Issue Number 4
21 where he says that it was ineffective for him --
22 for Mr. Pierre-Antoine to not call these witnesses
23 at trial -- included Deputy Tanya Rightsell, who is
24 also Deputy Rodriguez, and Deputy Pam Dutton. And
25 you didn't elicit any testimony, so I'm just trying

1 to clarify for the record. Are you stipulating
2 that it was -- that it was ineffective why you
3 (indiscernible) to call them or did you just miss
4 that or --

5 MR. MARO: No. Actually, it was under -- Mr.
6 Hunt, it's under "conduct-appropriate discovery."
7 So as far as calling her to trial, no, she's a
8 State witness. They could have properly impeached
9 her if he would have conducted proper discovery.

10 MR. HUNT: Okay.

11 MR. MARO: And that's this magic tape that
12 we've been talking about.

13 MR. HUNT: Well, actually --

14 MR. MARO: So to answer your question, yeah,
15 in the affirmative, yeah.

16 MR. HUNT: Okay. And, actually, you wanted
17 Deputy Rightsell to testify about the lack of the
18 smell of marijuana in the house, which she did at
19 trial; is that right?

20 MR. MARO: That's the other factor, yeah.

21 And she did, I believe.

22 MR. HUNT: She did at trial, correct?

23 MR. MARO: Yeah.

24 BY MR. HUNT:

25 Q. And you remember that, correct, Mr.

1 Vazquez-Suarez?

2 A. Yes, I remember that.

3 Q. She testified that she didn't smell any
4 marijuana outside of the house? Okay. All right.
5 Now, talking about the -- and I guess we're sort of
6 jumping back and forth on Issue 7 here, talking about
7 your medications and that you would have pled guilty.
8 You said that you wanted to plead guilty to the lower
9 charges because it would have lowered your points; is
10 that right?

11 A. Yes, sir.

12 Q. Okay. Now, you also have testified
13 previously you didn't know what your score was; is that
14 right?

15 A. No, I didn't know what my score was until he
16 told me I score out to 8.6 years.

17 Q. Okay. So -- and you would agree with me that
18 8.6 is more than 7, right?

19 A. Yes, sir.

20 Q. Okay. So when you were offered seven years
21 that you rejected, you knew you could get more than
22 seven years if you were convicted at trial, correct?

23 A. No, I didn't know at that time. I -- I
24 told -- because I score out to 8.6 years, if I lost in
25 trial, that's what they were going to give me.

1 Q. All right. And you brought this -- and I
2 don't know if it's really introduced into evidence or
3 if it's -- but this letter here -- this letter is
4 addressed "To Whom It Concerns"; is that right? This
5 letter here? Page 1?

6 MR. MARO: Exhibit -- Exhibit A for --

7 MR. HUNT: A, yes. It wasn't introduced.

8 MR. MARO: Exhibit A for identification.

9 MR. HUNT: Yeah.

10 THE DEFENDANT: Yes, sir.

11 BY MR. HUNT:

12 Q. It's addressed to -- and you would agree with
13 me that when you write your lawyer, you wouldn't
14 typically write "To Whom It Concerns," would you? You
15 would say "Mr. Pierre-Anoine" or "defense counsel" or
16 something like that, right?

17 A. The letter was forwarded to him.

18 Q. Okay. That's not -- that's not the answer to
19 my question. My question is you would agree with me
20 that if you're writing a letter to your lawyer, you
21 would not address it "To Whom It Concerns," correct?

22 A. At that time, I did not know that.

23 Q. And --

24 A. I know that now.

25 Q. And, in fact, this letter here, "To Whom It

1 Concerns," was actually directed to the State
2 Attorney's Office, wasn't it?

3 A. No, sir.

4 Q. Because in this letter you specifically asked
5 for charges to be dismissed, correct?

6 A. No, I never sent this letter to the state

7 attorney. I sent this letter to --

8 MR. HUNT: This is what you gave me. This is
9 page 1 of 4 and this is page --

10 MR. MARO: Hold on a second. Your Honor, I
11 apologize. I gave a copy of the wrong letter.

12 MR. HUNT: Oh, that would help.

13 MR. MARO: Yeah, it would. I apologize.

14 Judge, for the record, I've given Mr. Hunt a copy
15 of --

16 MR. HUNT: No, actually this is the same
17 letter. You just have them backwards. This is --
18 page 3 is the first page and page 1 is the same.

19 MR. MARO: All right.

20 MR. HUNT: And it's addressed "To Whom It
21 Concerns."

22 MR. MARO: Okay.

23 MR. HUNT: So -- so let me get back to that.

24 MR. MARO: I stand corrected.

25 BY MR. HUNT:

1 Q. Mr. -- Mr. Vazquez-Suarez, in this letter,
2 you point out that you would like some of the charges
3 dismissed?

4 A. Yes, sir.

5 Q. Now, you understand that your attorney has no
6 ability to actually dismiss the charges, correct?

7 A. Well, if he put a motion to present evidence
8 of something like that, the judge might drop the
9 charge.

10 Q. Right. But you understand he doesn't have
11 the authority to do it?

12 A. I know he don't got the authority, but he's
13 got the power to do something about that.

14 Q. Right. And you would agree with me that you,
15 in this letter, as opposed to what you told this Court,
16 said you would like to answer for the charges of
17 fleeing and eluding and violation of probation, but the
18 other charges be dismissed -- you wrote that, right?

19 A. Yes, sir.

20 Q. Right. Which is different materially than
21 what you just told the judge, right?

22 A. No.

23 Q. You told the judge you wanted to plead guilty
24 to fleeing and attempting to elude, unauthorized
25 possession of a driver's license, driving on a

1 suspended license, and providing a false name. Not
2 violation of probation, but you did talk about fleeing
3 and attempting to elude. So this letter that you
4 talked about here actually says you want to plead to
5 one charge, not four, correct?

6 A. No, not correct.

7 Q. It's not correct?

8 A. I told him -- I sent him a couple letters
9 telling him I want to plead guilty to five charge.

10 Q. So that would be a different letter than the
11 one you brought here?

12 A. Yeah, different letter, but --

13 Q. Okay. All right.

14 A. -- we already argued that he took the file
15 from the top of the table, so he's been sending me what
16 I cannot use against him.

17 Q. Right. You argue that -- but your attorney
18 also just said that there is no evidence that he took
19 your file from off the table, correct?

20 A. Well, if we play the videotape, it might show
21 up that he took the file.

22 Q. It might. And it might show what your
23 attorney said it showed, right?

24 A. Well, let's play the tape.

25 Q. Yeah. Okay.

1 A. Just give me a copy of the one I gave you
2 yesterday.
3 Q. Your attorney has that tape, right?
4 A. What tape?
5 Q. The one in the courtroom?
6 A. No, we don't got the tape.
7 Q. From the blue man?
8 A. No, we don't --
9 Q. Okay.
10 A. -- have the tape.
11 Q. Okay. Now, you also said, this letter, you
12 actually didn't write. You had somebody else write it.
13 A. Yes, sir.
14 Q. But you understood the substance of it,
15 right?
16 A. Yes, sir.
17 Q. And you wrote this letter before you had the
18 benefit of taking these English classes in the
19 Department of Corrections, so these letters then --
20 A. No. Somebody else wrote this letter for me.
21 Q. Right.
22 A. I was telling him what to write.
23 Q. Right. And so you understood the substance
24 of it, right?
25 A. Yes, sir.

1 Q. Which -- and my point -- so my point is, when
2 you're telling us that you have difficulty
3 communicating in English, this letter communicates
4 everything in English, right?
5 A. Yes, sir.
6 Q. Okay.
7 A. Because I can't (indiscernible) that I can't
8 understand and talk.
9 Q. And you also testified that your attorney --
10 that you always followed the advice of your attorney
11 the entire time; is that right?
12 A. Yes, sir.
13 Q. Well, isn't it true that your attorney told
14 you to take the seven-year offer?
15 A. He told -- he never told me to take the
16 seven-year offer. He told me, Don't take the
17 seven-year offer because we can beat this case in
18 trial.
19 Q. Okay. And your attorney also told you, as it
20 relates to Issue Number 8, that if you were to testify,
21 that you would be subject to cross-examination by the
22 prosecutor, which would have been me, correct?
23 A. Yes, sir.
24 Q. And that you would have to answer the fact
25 that you were a convicted felon on a number of

1 different -- number of different times?

2 A. Yes, sir.

3 Q. Okay. And you also would have to -- if you
4 testified, you would have to agree with the fact that
5 you bought this property under a fake identity?

6 A. Yes, sir.

7 Q. Right? And you would also have to agree that
8 your license was suspended?

9 A. Yes, sir.

10 Q. And you also would have to agree with me that
11 you fled from the police?

12 A. Yes, sir, but I can explain why I fled from
13 the police.

14 Q. I understand that, but just answer my
15 question. All right?

16 A. Yes, sir.

17 Q. So you would have -- and you would have to
18 explain that the property where this marijuana was
19 found, that you bought it --

20 A. Yes, sir.

21 Q. -- with a fake name?

22 A. With a fake name.

23 Q. And you had that fake ID on you --

24 A. Yes, sir.

25 Q. -- when you were arrested?

1 A. Yes, sir.

2 Q. And you fled from the police?

3 A. Yes, sir.

4 Q. And you were presently on community control
5 when this happened?

6 A. Yes, sir.

7 MR. HUNT: I don't have any further
8 questions.

9 MR. MARO: Just very briefly, Judge. Just a
10 couple quick questions.

REDIRECT EXAMINATION

12 BY MR. MARO:

13 Q. Going backwards, though, as far as testimony,
14 you wanted the probation officer to come up to show
15 that you were on probation?

16 A. Yes, sir.

17 Q. Okay. That you were on community control?

18 A. Yes, sir.

19 Q. And that obviously you indicated to Mr. Hunt
20 that, if you did testify, you would explain to the jury
21 that you were fleeing from the police because why?

22 A. Because I was on community control. I don't
23 want to violate my probation.

24 Q. Okay. So it would have been -- whether they
25 believed it or not, the jury, but you had a reason for

1 what you wanted to do?

2 A. Yes, sir. I can explain a lot of stuff,
3 especially why I got the ID and then why I bought the
4 property with a fake ID.

5 Q. Okay. One of the other issues was the
6 purpose of bringing in your witnesses was to show that
7 you did not have contact -- I understand Mr. Hunt
8 brought out -- nobody knows who you were at the time,
9 but your position is nobody could identify you in the
10 courtroom as ever been to Walmart or at the landfill;
11 is that correct?

12 A. Yes, sir.

13 Q. So, again, the theory of the case was that
14 you may have owned the house, but you had no contacts
15 up here?

16 A. Yes, sir.

17 Q. And that the activity of the renters was
18 independent from you?

19 A. Yes, sir.

20 Q. And that was a theory that, I'm assuming, you
21 discussed with your attorney?

22 A. Yes, sir, I did.

23 Q. All right.

24 MR. HUNT: And that's actually the defense
25 you got; is that correct, sir?

1 THE COURT: Hold on. Are you done
2 questioning?

3 MR. MARO: Thanks, Judge.

4 BY MR. MARO:

5 Q. Is that the defense -- was that the way --

6 THE COURT: I think (Indiscernible) before
7 you.

8 MR. HUNT: Oh, I'm sorry. I thought he was
9 done.

10 BY MR. MARO:

11 Q. I'll ask the question. Is that the defense
12 that you actually got? In other words, the theory of
13 the trial that was developed -- I know you got found
14 guilty, but was that the theory that was brought out
15 there?

16 A. Yeah. Something about -- like that.

17 Q. Okay. And going back to Detective Rightsell,
18 you -- she testified differently than you believe you
19 testified to her or gave her your Miranda statement,
20 correct?

21 A. Yes, sir.

22 Q. And that was the only person, I believe, that
23 actually says that you admitted being up here and knew
24 what was going on?

25 A. Yes, sir.

1 Q. Because she said you were up here to
2 dismantle something?

3 A. No. She said that -- that I told her I came
4 to the house to tell Victor Rodriguez-Suarez to take
5 everything down.

6 Q. Okay.

7 A. I never told her that. I told her that if I
8 knew that he was growing weed, I would tell him to take
9 everything down.

10 Q. And that testimony was never refuted as far
11 as impeachment?

12 A. Never.

13 Q. In other words, your lawyer asking her
14 something different?

15 A. He never asked her about the tape.

16 Q. Okay. So the tape never was an issue?

17 A. Never.

18 Q. As far as your defense is concerned?

19 A. No, sir.

RECROSS-EXAMINATION

20
21 BY MR. HUNT:

22 Q. But you would agree with me --

23 MR. HUNT: Are you done, Mr. Maro?

24 MR. MARO: No, go ahead.

25 BY MR. HUNT:

1 Q. You would agree with me that your ultimate
2 defense was that you were never inside the house,
3 right?

4 A. Yeah, but -- because she said that I told her
5 that I came to tell my cousin to take everything down.

6 Q. I understand that. I've heard that.

7 A. I let you talk. Let me talk.

8 Q. Yes, sir.

9 A. That you believe her because she's an officer
10 of the law.

11 THE COURT: Excuse me a second. Please
12 don't --

13 THE DEFENDANT: I'm sorry, Your Honor.

14 THE COURT: If he's not letting you talk, ask
15 me and I'll let you talk.

16 THE DEFENDANT: Okay.

17 THE COURT: Go ahead -- go ahead, though.

18 BY MR. HUNT:

19 Q. Are you done?

20 A. Yes, sir.

21 Q. So you would agree with me that your defense
22 was that you weren't there. And, in fact, the
23 testimony elicited from the State's witnesses was that
24 they could not put you inside the house?

25 A. Yes, sir.

1 Q. And that, when you were arrested, you were
2 outside -- that you were outside the house when you
3 were first seen by law enforcement?

4 A. Yes, sir.

5 Q. And that your cousin Victor testified that
6 you weren't inside the house?

7 A. Yes, sir.

8 Q. All right. And that none of the witnesses at
9 trial actually said that you were in the house?

10 A. Yes, sir.

11 Q. Including Agent Rightsell?

12 A. Yes, sir.

13 Q. All right.

14 MR. HUNT: I don't have any further
15 questions.

16 MR. MARO: Judge, we would, at this time,
17 finish with Mr. Suarez but with the right to
18 recall. And if we could go to Mr. Antoine --
19 Pierre-Antoine.

20 THE COURT: Okay. You've got 25 minutes
21 left.

22 MR. HUNT: Madam Clerk, he gave me the one
23 that you marked. This is the one he had marked. I
24 think the one you gave back is what I had.

25 MR. MARO: Did I switch --

1 MR. HUNT: You did.

2 MR. MARO: I'm sorry.

3 MR. HUNT: You gave me the one that she had
4 marked, so I just want to make sure -- I didn't
5 want any evidence.

6 THE CLERK: Do you swear or affirm that the
7 testimony you're about to give will be the truth,
8 the whole truth, and nothing but the truth, so help
9 you God?

10 MR. PIERRE-ANTOINE: Yes, ma'am.

11 YVENS PIERRE-ANTOINE,

12 having first been duly sworn to tell the truth, the
13 whole truth, and nothing but the truth, testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. MARO:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. State your name for the record, sir.

20 A. Yvens Anthony Pierre-Antoine.

21 Q. And are you employed, sir?

22 A. Self-employed.

23 Q. And how is that?

24 A. As a criminal defense attorney.

25 Q. And how long have you maintained that

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1 position as a criminal defense lawyer? How many years
2 have you been practicing?
3 A. Since 2004. August 2004.
4 Q. Do you specialize in any particular area? Or
5 just general criminal law?
6 A. General criminal law.
7 Q. All right. Did you have an occasion to be
8 appointed to a case or retained on a case of a Junior
9 Vazquez-Suarez?
10 A. Yes, sir.
11 Q. Was that an appointment?
12 A. It was an appointment.
13 Q. And do you see Mr. Vazquez in the courtroom
14 today?
15 A. Yes.
16 Q. Okay. And with -- just sitting over at
17 counsel's table?
18 A. Yes.
19 Q. Making some quick assumptions. This was a
20 case relating to a drug-related case as far as a
21 marijuana grow house, correct?
22 A. Yes.
23 Q. And you conducted discovery in this case?
24 A. Yes.
25 Q. About -- and now other than receiving

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1 discovery from the State, reciprocal -- did you file
2 any reciprocal discovery? Did you have any witnesses
3 or anything on behalf of Mr. Suarez?
4 A. I believe I did.
5 Q. Okay. We took depositions in those case?
6 A. Yes.
7 Q. Do you remember taking the deposition of a
8 Detective Rightsell?
9 A. I don't remember -- I don't remember the
10 specifics of who I depose, but if the record
11 reflects -- I don't remember -- I don't remember if I
12 specifically depose her. I know I depose numerous
13 witnesses.
14 Q. Okay. During the course of the discovery,
15 did you become aware of the fact that Mr. Suarez had
16 given a post-Miranda interview?
17 A. I believe that there was a -- my
18 understanding was there was an interview or -- I don't
19 believe -- I don't -- I don't remember exactly. I -- I
20 believe I may have inquired about something like that.
21 Q. All right. Did you -- when you took the
22 deposition of Detective Rightsell, were you aware of
23 the fact that she was the one that conducted that
24 interview of Mr. Suarez?
25 A. Yes, I believe -- I think I may have even

1 asked her about an interview --

2 Q. Right.

3 A. -- in the deposition.

4 Q. Were you aware of the fact that that
5 interview was memorialized? In other words, it was
6 reduced to a recording?

7 A. I -- I could -- I inquired about it, but I
8 was never able to get one of those -- I wasn't able to
9 get that in my hand.

10 Q. Was that -- were you aware of the fact that
11 there was a recording?

12 A. I was aware there was a possibility there was
13 a recording, but I was -- I was -- I made an inquiry
14 about it and I never -- I never listened to the
15 interview. I never was able to get the interview.

16 Q. All right. So my understanding is that you
17 took Detective Rightsell's deposition and, during the
18 course of that deposition, you never could get an
19 answer if there was a recorded interview?

20 A. I don't -- I don't remember. I don't
21 remember the depositions or what was asked.

22 Q. Well, did you investigate whether or not a
23 suppression issue might be appropriate as far as any
24 would-be statements that may be attributed to Mr.
25 Suarez?

1 A. I don't remember whether or not -- I don't
2 believe -- I mean, generally when you represent
3 somebody, you kind of -- you more or less look to see
4 whether or not there was a particular statement,
5 whether or not -- typically, if there is a motion to
6 suppress, I feel so if I hadn't, then I must have come
7 to the conclusion that there wasn't a particular issue
8 there.

9 Q. But if you never got ahold of the tape, which
10 memorialized his statements, how would you know to file
11 a motion to suppress or not?

12 A. Based on whatever -- whatever remaining
13 evidence that was there.

14 Q. Well, this -- Detective Rightsell testified
15 at trial, did she not?

16 A. I believe she did.

17 Q. Okay. And during the course of that
18 testimony, it's my understanding that she made a
19 representation that when she interviewed Mr. Suarez,
20 your client, post-Miranda, that he told her that he had
21 come up here to dismantle, apparently, a grow house.

22 A. Uh-huh.

23 Q. Do you remember that?

24 A. I don't remember the specifics of her
25 testimony. Yeah, I do remember her testifying.

1 Q. Do you remember Mr. Suarez advised you at
2 that time that he had never made those statements to
3 Detective Rightsell?

4 A. I don't remember that.

5 Q. All right. Do you remember him at that time,
6 during the course of that time, asking you to ask -- or
7 what we would call -- cross-examine her about those
8 statements?

9 A. I don't remember that.

10 Q. Do you remember him asking you about the
11 tape? That it's different? That her testimony at
12 trial is different than what he told her and than it
13 would be on the tape?

14 A. I don't remember that.

15 Q. Okay. Did you ever -- did you share
16 discovery with him while he was at the Marion County
17 Jail?

18 A. Yes.

19 Q. Okay. And did you ever discuss the notes or
20 contents of any of the depositions?

21 A. Yes, we -- we talked about it and we -- you
22 know, we developed a strategy from the depo and --

23 Q. Okay. And the strategy -- the theory of this
24 trial was what?

25 A. To -- I believe Victor Rodriguez was -- had

1 indicated that the grow house was his, that he was
2 renting the property, and that that was his property.

3 I mean, he was living there, and Mr. Junior Suarez --
4 Vazquez-Suarez was residing in Miami.

5 Q. Okay. So if I may make the assumption, the
6 theory was that this was an independent act of the
7 renter?

8 A. Exactly.

9 Q. Okay. Without the knowledge of Mr. Suarez --
10 Mr. Vazquez-Suarez?

11 A. Yes.

12 Q. And that, in fact, Mr. Vazquez-Suarez, other
13 than buying the house, had never been up here until the
14 day he got arrested?

15 A. That he was not aware of what was -- what Mr.
16 Victor was doing inside the house.

17 Q. Okay. All right. Now, just quickly, run
18 through a couple of issues. Language was a
19 consideration?

20 A. Language with what -- with regards to what?

21 Q. Well, I know there was an interpreter at
22 trial?

23 A. There was.

24 Q. But he didn't have the benefit of an
25 interpreter when you used to see him at the Marion

County Jail?

A. When I talked to Mr. Vazquez, we didn't -- I didn't have any difficulties communicating with him at the jail.

Q. Okay. Were you aware of the fact that he was on medication?

A. No.

Q. You never discussed with him that he was on medication?

A. No.

Q. Did he ever make any -- did you make any inquiries as to why he was acting or behaving the way he was, such as, i.e., tired or distant or anything like that?

A. No, he didn't seem to be distant or tired.

He seemed to be very -- pretty engaged.

Q. Okay. So there was never any discussion

whatsoever that he was receiving any kind of medication or --

A. I don't remember -- I don't remember that. I just remember Mr. Vazquez being someone who knew his case very well and was very engaged as far as, you know -- about his surroundings.

Q. All right. In fact, about knowing his case pretty well, it's pretty demanding?

A. Yes.

Q. Okay. In fact, he wanted you to subpoena various witnesses, did he not?

A. The ones that we talked about -- there was one -- there was one specific -- that I do remember we talked about it, and I told him that it was not a good idea. And after talking to him, he agreed.

Q. Let me -- let me do this to expedite matters a little bit and help you memory-wise. Does the name of Arturo Apolinar ring a bell?

A. I believe that was one of the co-defendants -- no, we -- we didn't agree to depose -- I mean, to bring him in.

Q. Okay. Were you ever made aware of the fact that Mr. Apolinar was willing to testify on behalf of Mr. Vazquez-Suarez?

A. No.

Q. Did you ever have an opportunity to speak with Mr. Apolinar's attorney to see if he would be willing to testify -- Mr. Apolinar be willing to testify?

A. I think I talked to the -- briefly. I don't remember what the discussion was about, but my understanding, he -- Mr. Vazquez and I never discussed as far as him testifying. Didn't believe --

1 Q. You're talking about Apolinar? Mr. Apolinar?
 2 A. No. Mr. Vazquez.
 3 Q. We'll get to that.
 4 A. Okay.
 5 Q. Let's just talk about some witnesses. So
 6 it's your testimony that Mr. Apolinar -- it was never
 7 discussed with you that Mr. Apolinar was available to
 8 testify on behalf of --
 9 A. Yes. Yes.
 10 Q. Okay. And that that information would have
 11 possibly negated the argument that Mr. Vazquez-Suarez
 12 knew what was going on? There was no discussion along
 13 those lines?
 14 A. No. I don't remember that.
 15 Q. Then we also have a Victor Rodriguez-Suarez.
 16 A. Yes.
 17 Q. Do you know that name?
 18 A. Yes.
 19 Q. Did you have any opportunity to chat with him
 20 or his attorney about his possible testimony in the
 21 case?
 22 A. You mean Victor Rodriguez?
 23 Q. Victor Rodriguez, yes.
 24 A. The one that testified?
 25 Q. Yes.

1 A. Yes.
 2 Q. Okay. Did you have an opportunity to take
 3 his deposition prior to --
 4 A. Well, I didn't take his deposition. The
 5 state attorney did. I actually met with Victor at the
 6 jail with an interpreter.
 7 Q. All right. And we're talking about
 8 depositions. Is this where Mr. Hunt and you were over
 9 talking to him, and there became some confusion about
 10 how long he was at the house?
 11 A. Yeah. I don't -- I just -- yeah, there was a
 12 deposition that we did at the jail with Mr. Hunt.
 13 Q. All right. Did the -- did a gentleman by the
 14 name of Dale Kirby -- the seller of the home -- did you
 15 ever --
 16 A. Yeah.
 17 Q. -- the possibility of calling him as a
 18 witness?
 19 A. We talked about that, and I thought that was
 20 not a very good idea because my understanding was that
 21 Mr. Victor was actually there when the purchase of the
 22 home was made, and I thought -- Mr. Junior Suarez and I
 23 talked about that extensively. And I wanted -- the --
 24 what we were trying to convey is that, you know, he had
 25 no idea. This was kind of an independent act. And we

1 thought that it was not going to be good to have this
2 particular person --

3 Q. Okay.

4 A. Put them together, more or less.

5 Q. But that would have also put Victor
6 Rodriguez-Suarez, the renter of the house, also on the
7 premises that day, correct?

8 A. Yes, it would have.

9 Q. There was some discussion about David Santiel
10 -- that was Mr. Vazquez-Suarez's probation officer out
11 of Miami -- about possibly coming up and saying he was
12 on community control. Was that discussed?

13 A. Well, I don't remember if that was discussed
14 or not. The idea of having him brought up to talk
15 about that he was convicted, you know -- he had
16 convictions, I thought that was highly prejudicial. It
17 wouldn't be a wise move.

18 Q. I understand, but was it discussed as far as
19 location, that he couldn't be coming back and forth up
20 here since he was on community control? That portion
21 of it.

22 A. That was -- it never -- I don't believe we
23 talked about that possibility. That -- there's -- that
24 option never crossed my mind because of the factor --
25 of the fact that, you know, it would be highly

1 prejudicial to him.

2 Q. There were some other individuals that were
3 discussed. One was a Justin Cranston and a Kimberley
4 Porter. Justin Cranston was from Walmart, to refresh
5 your memory. And Kimberley Porter apparently was from
6 the landfill. Do you remember him requesting that
7 those people be --

8 A. No, I don't remember that.

9 Q. Was there any discussion -- to kind of
10 refresh your memory -- any discussion about a video or
11 being -- showing Mr. Victor Rodriguez-Suarez and his
12 wife being in attendance at Walmart or the landfill?

13 A. I don't remember that.

14 Q. But the theory of the case, once again, was
15 that Mr. Vazquez-Suarez just had no contact -- other
16 than buying the house, had no contacts over here?

17 A. That's correct.

18 Q. Okay. And if I may make the assumption from
19 the transcript, no one places him up here until the day
20 of his arrest, except Detective Rightsell, which
21 testifies -- I'm sorry. Bad question.

22 Nobody places knowledge of what was going on
23 up here other than Detective Rightsell, when she
24 testified during the course of her direct testimony
25 that the defendant said to her that he was coming up

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1 here to tell the renter to dismantle the house?
2 A. I don't remember that testimony, but I do
3 remember Detective Rightsell testifying.
4 Q. Right. But to the best of your knowledge,
5 nobody -- no witness of the State places -- gives
6 knowledge to Mr. Vazquez-Suarez as far as his knowledge
7 that that property is being utilized as a grow house?
8 A. That's --
9 Q. I understand he's arrested up here.
10 A. Uh-huh.
11 Q. But prior to that arrest --
12 A. Yeah. That's sounds about right.
13 Q. Okay. So with that in mind, there -- there
14 is no discussions about any statements --
15 THE COURT: Hold on a second, please.
16 MR. MARO: Yes, sir.
17 THE COURT: How much longer do you got with
18 him?
19 MR. MARO: I believe about 15 minutes.
20 THE COURT: All right. We have to take a
21 break. You only had 10 more minutes scheduled for
22 this hearing.
23 MR. MARO: That would finish up with him.
24 And we had a problem with this next witness anyway,
25 so -- you know. Okay.

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1 THE COURT: Okay. But I'm just saying, you
2 only had 10 minutes scheduled --
3 MR. MARO: Yeah.
4 THE COURT: -- but I'll still give you your
5 10 minutes, but you're going to have to go faster
6 because I'm scheduled for other stuff after that.
7 MR. MARO: Okay.
8 THE COURT: So you may have to come back
9 towards the end of the day if any time is left.
10 Right now I need to go upstairs and do something,
11 but I'll give you your 10 minutes when I get back
12 and we'll go from there.
13 (Court was in recess from 3:19 p.m. until
14 3:35 p.m.)
15 THE BAILIFF: Court is back in session.
16 THE COURT: All right. You've got 15 minutes
17 and then I'm moving to the next hearing. Go ahead.
18 DIRECT EXAMINATION (CONTINUED)
19 BY MR. MARO:
20 Q. Did there come a time that you discussed with
21 Mr. Vazquez-Suarez a plea agreement?
22 A. Yes.
23 Q. All right. Do you remember what the plea
24 agreement -- plea offer was?
25 A. Seven years.

Q. All right. Were there any discussions, any recommendations, as far as taking it or not taking it?

A. Yeah. I recommended that he take it.

Q. All right. And why was that, very briefly?

A. His exposure. He -- the exposure. The possibility of him getting convicted. He felt -- he thought -- he felt pretty confident, especially with Victor testifying, that he had a good shot of winning.

Q. Did you ever encourage him not to take the plea agreement and advise him that you believe that the case against him was weak and that you could get it down to three years?

A. No.

Q. Did you ever specifically go over his scoresheet with him?

A. Yes.

Q. Do you remember what his lowest permissible would have been?

A. I don't remember. I do have it here. I don't have it on me.

Q. Does 8.6 sound appropriate?

A. What's that?

Q. 8.6 -- 8 year, 6 months?

A. Yeah, that sounds -- sounds about right.

Q. That would have been more than the seven-year

offer?

A. Yes.

Q. Did you ever specifically discuss with him his maximum exposure under the statutes?

A. Yes, I did.

Q. Do you have an independent recollection of that?

A. Yeah. We talked -- yeah, we talked about it. That was one of the reasons why I offered -- I suggested that he take the seven years.

Q. Did there -- let me stay on that point. Meanwhile, the only thing that ties him into the grow house up here is the fact that he bought the place, correct?

A. He bought the place?

Q. There was no other times anybody ever put him up here around that grow -- law enforcement, surveillance, or anything like that, correct?

A. If I recall, that would be correct.

Q. Okay. And, in fact, again, going back to Detective Rightsell, other than the would-be statement that he admitted to her that he came up here to dismantle or to take down the grow house, there's nothing that imputes knowledge to him; isn't that true?

A. Other than that?

1 Q. Other than that?

2 A. You can make an argument that --

3 Q. Okay.

4 A. -- to be correct.

5 Q. So it was a triable case as far as the
6 elements of the crime were concerned, correct?

7 Knowledge being one?

8 A. Yes, it was a triable.

9 Q. Did there ever come a time where Mr.

10 Vazquez-Suarez had written to you and suggested maybe
11 it would be a good idea that he pleaded to a false ID,
12 fleeing and eluding, and maybe go to trial on the more
13 serious offenses so he could bring his points down?

14 A. We -- we actually talked about that. I don't
15 remember the discussions as far as what -- I mean, that
16 was -- that was always a possibility that we talked --
17 we talked about that possibility.

18 Q. Pleading to -- get rid of the lessers --

19 A. Yeah.

20 Q. -- and go for the --

21 A. Yeah.

22 Q. -- more serious --

23 A. That was a possibility.

24 Q. I had made an effort -- we've been trying to
25 track down Mr. Vazquez's file, and I shared that with

1 you and you were kind enough to go through your file
2 and send me, if I may -- Madam Clerk -- what we

3 previously marked as Exhibit A, correspondence -- it's
4 supposed to be four pages, but we only have two. Do

5 you remember receiving a request from me --

6 A. Yes, I do.

7 Q. -- to duplicate whatever you could?

8 A. Yes. Yes.

9 Q. Does that look familiar to you --

10 A. Yeah, I may -- yeah, I may have -- yeah. I
11 mean, I did send you some things and --

12 Q. Okay. And as I represented to you, that's
13 what I received from you --

14 A. Okay.

15 Q. -- and he's testified that that letter was
16 sent to you and you testified you sent it to me?

17 A. Yes.

18 Q. Okay. Fair enough. You didn't have all his
19 file, though, did you?

20 A. I didn't have all of his correspondence.

21 Q. Okay. To you?

22 A. Right.

23 Q. But his actual physical file?

24 A. Yeah. I have, like, discovery, which I put
25 it in a disk for you.

1 Q. Bad question. Mr. Vazquez-Suarez's personal
2 file. His copies. You didn't take it from the
3 courtroom?

4 A. No. No, I did not.

5 Q. Okay. And I actually made inquiry from you
6 to help me try to find it?

7 A. Yes, that's correct.

8 Q. And we've been unsuccessful to date?

9 A. Yes.

10 Q. But you did provide copies of various
11 correspondence --

12 A. Yes.

13 Q. -- that he had sent to you?

14 A. Yes.

15 Q. Is there any reason why 2 and 4 may be
16 missing -- or 2 and 3?

17 A. I don't know. The case was a while ago. And
18 some of the paper -- some of the papers may have gotten
19 lost, what have you.

20 Q. Last issue, briefly. As far as him
21 testifying, I know there was a colloquy with the Court,
22 but did you have any conversations with him about him
23 testifying or not testifying? Making any suggestions?

24 A. Yes. I didn't think it was a good idea for
25 him to testify.

1 Q. Did you tell him that if he took the witness
2 stand, became a witness in the case, that the jury
3 would not only know how many prior felony convictions
4 he had, but also the very nature of those convictions?

5 A. I didn't say "the nature." I said -- I told
6 him that they could -- he would (indiscernible) his
7 convictions. Like, what -- how many convictions he
8 had.

9 Q. But not the nature of them?

10 A. Yes.

11 Q. Okay. And did he understand that?

12 A. Yes.

13 Q. Okay. And he seemed to be competent and
14 understand?

15 A. Yes.

16 Q. All right. Do you order depositions when you
17 take them? I know you have to go through a certain
18 process when you're court-appointed, but did you order
19 any of the depositions?

20 A. I don't -- I don't believe I did.

21 Q. Do you take copious notes?

22 A. I take notes and I don't believe there was
23 anything there -- it's a case-by-case basis.

24 Q. I understand. But the point I'm getting at
25 is you took Detective Rightsell's deposition --

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1 A. Uh-huh.

2 Q. -- and she interviewed your client

3 post-Miranda, correct?

4 A. That's my understanding.

5 Q. Well, in the deposition, I'm assuming you

6 would discuss that?

7 A. Yeah.

8 Q. And she memorialized it in a recording,

9 correct?

10 A. Yes.

11 Q. And you made no effort to get the recording

12 to go over that with your client to see what he said or

13 didn't say?

14 A. I didn't -- I didn't get that transcribed.

15 Q. And the fact that she testified one way at

16 trial and your client was vehemently trying to tell you

17 that he never said that didn't concern you?

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

19 Q. Okay. So he never drew it to your attention

20 at the time of trial that he had never made that

21 statement or those statements --

22 A. I don't --

23 Q. -- let me finish it -- those statements to

24 Detective Rightsell, that he was coming up here to

25 dismantle the grow house or the marijuana house?

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1 A. I don't remember that.

2 Q. Okay. Certainly that would have been

3 important to know if he said it or didn't say it, would

4 it not?

5 A. Yes. And in this particular trial, again, we

6 all see things differently, but that's the only thing

7 that gives knowledge to the grow house?

8 MR. HUNT: I'm going to object. That's been

9 asked and answered.

10 MR. MARO: Well, let's --

11 THE COURT: Overruled.

12 BY MR. MARO:

13 Q. As the attorney in the trial, you trying the

14 case, that's the only thing that implies that he has

15 any knowledge that the renter is growing a grow house?

16 A. Yes.

17 Q. Did you request that he talk to -- possibly

18 "independent act" instruction?

19 A. No, I don't believe I did.

20 Q. All right.

21 MR. MARO: Judge, I would tender this witness

22 at this time.

23 MR. HUNT: Judge, I would just ask the Court

24 to take judicial notice of the actual trial

25 testimony of Detective Rightsell, because

1 unfortunately Mr. Maro and Mr. Vazquez-Suarez are
 2 throwing around what she said and I think the Court
 3 will find it somewhat different than how it's being
 4 inflated here today, so I just want to make sure
 5 the Court takes judicial notice of that. Because I
 6 don't think her testimony was that --

7 THE COURT: I have it here.

8 MR. HUNT: Okay.

9 THE COURT: You're talking about page 308 of
 10 her testimony?

11 MR. HUNT: Yes, sir. And, actually, it
 12 continues up until 3- -- I believe 311.

13 THE COURT: But the part you're talking about
 14 is, He indicated to me while I was interviewing --

15 MR. HUNT: Right.

16 THE COURT: -- we were in front of the
 17 residence, as my team was dismantling the grow
 18 house and exiting the residence with the marijuana
 19 plants, and he said, I came here to tell them to
 20 get all that out.

21 MR. HUNT: Correct. She did say that. And I
 22 think the word "dismantle" was used in conjunction
 23 with her team, not with the defendant using that
 24 terminology. And I also wanted to point out the
 25 other issue of -- on page 310, her testimony as it

1 relates to that.

2 Line 4, she said: He knew who lived there;
 3 he didn't know who lived there. It was a grow --
 4 he thought it was a grow, but he wasn't sure. He
 5 was coming to, you know, make sure. So I think
 6 this whole way it's being sort of described is a
 7 little bit different than her testimony. I just
 8 want to make sure the Court's aware of that. I
 9 want to make sure the record is as clear on that,
 10 too.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. HUNT:

14 Q. Mr. Pierre-Antoine, I just want to ask you a
 15 couple questions. Do you recall ever having any
 16 conversations with the defendant where he told you that
 17 he was taking psychotropic medication?

18 A. No, I do not.

19 Q. Did he ever appear to you to be under the
 20 influence of any psychotropic or any other type of
 21 medication that you questioned his ability to converse
 22 with you about the case?

23 A. No.

24 Q. I believe you testified that he always
 25 appeared to be engaged?

1 A. Yes.

2 Q. Would you say that consistently, in all your

3 dealings with him, that he was engaged and was very

4 familiar with the facts of his case?

5 A. Yes.

6 Q. Do you recall him ever specifically asking

7 you to call the witness Mr. Apolinar?

8 A. No.

9 Q. Did you ever investigate as to whether Mr.

10 Apolinar was even available to testify?

11 A. No.

12 Q. Did you find out later that he had actually

13 absconded from probation?

14 A. Yes.

15 Q. As far as the -- you said you did talk to Mr.

16 Vazquez-Suarez about having Dale Kirby testify, the

17 owner, and you had determined that you didn't think

18 that was a good idea?

19 A. Yes.

20 Q. That was your -- is that your trial strategy

21 decision?

22 A. Yes.

23 Q. Did he specifically tell you he wanted Dale

24 Kirby to testify, or did he ask you about the

25 possibility of him testifying?

1 A. He asked me about testifying, and I told

2 him -- I gave him my advice.

3 Q. Okay.

4 A. And he followed it.

5 Q. All right. And did he ever specifically ask

6 you to have his community control officer from Miami

7 testify?

8 A. No.

9 Q. Did he ever specifically ask you to have his

10 community control officer from Miami testify about him

11 working for the DEA?

12 A. I did investigate about the DEA, but I wasn't

13 able to get any information as far as Mr. Vazquez's

14 work for the DEA.

15 Q. Right. Well -- and my question to you was,

16 Mr. Vazquez-Suarez today has testified that he told you

17 he wanted his community control officer --

18 A. No.

19 Q. -- to say he worked for the DEA.

20 A. No.

21 Q. Did he ever ask you that?

22 A. Yeah. No. No.

23 Q. He didn't ask you?

24 A. No.

25 Q. Okay. But you did investigate this claim

1 that he said he worked for the DEA; is that right?

2 A. Yes.

3 Q. Okay. You weren't able to find anyone that
4 was able to actually verify that; is that correct?

5 A. That's correct.

6 Q. As far as talking about Justin Cranston, the
7 employee at Walmart, your client ever ask you to --
8 specifically ask you to have him testify as a witness?

9 A. No. No, sir.

10 Q. How about Kimberley Porter from the Marion
11 County landfill?

12 A. No. No, sir.

13 Q. Do you recall in the trial there ever being
14 any testimony about either of those two witnesses or a
15 video being introduced about Victor Suarez being at the
16 landfill or at Walmart?

17 A. No.

18 Q. And you would agree with me that, if there
19 was one that was introduced, it would be in the court
20 file?

21 A. Yes.

22 Q. All right. As it relates to -- do you
23 recall -- did your -- did the defendant ever ask you or
24 point out to you that jurors were sleeping during the
25 trial?

1 A. No.

2 Q. Did you ever notice yourself, as you were
3 conducting the trial, whether or not there was any
4 jurors that were not paying attention or were sleeping?

5 A. No. No, I did not.

6 Q. You didn't see any?

7 A. I didn't see any.

8 Q. Okay. If you had been told that and if you
9 had noticed it, would you have brought it to the
10 Court's attention?

11 A. Yes.

12 Q. At any point did the defendant indicate to
13 you that he wasn't able to communicate with you because
14 he lacked a translator?

15 A. No.

16 Q. Did you ever tell the defendant that his
17 maximum exposure was only going to be seven -- that you
18 were -- that the most he could get was going to be that
19 seven years?

20 A. No. No, sir, I did not.

21 Q. Did he -- did you ever tell him that he could
22 get up to 60 years in prison?

23 A. Yes.

24 Q. When he -- and was it your advice to him that
25 he should take the seven-year plea offer that was made?

1 A. That's correct.

2 Q. And he rejected your advice; is that right?

3 A. That's correct.

4 Q. Did you ever tell him that he was going to be
5 acquitted and that he should reject the plea offer?

6 A. No, I did not.

7 Q. I believe Mr. Maro asked you a few minutes
8 ago if -- the fact that Deputy Rightsell or Agent
9 Rightsell's testimony was the only thing that could
10 show knowledge, and you said you could make that
11 argument. And I guess my question to you is, were
12 there other things that were actually argued at trial
13 to show knowledge of his -- of that by the State?

14 A. Yes.

15 Q. So when the State presented their case, it
16 wasn't solely based upon Agent Rightsell's testimony
17 that they were trying to prove the knowledge; there
18 were other things that were argued; is that right?

19 A. That's correct.

20 Q. Did the defendant ever indicate to you that
21 he didn't know he didn't -- that he didn't realize he
22 had a right to testify?

23 A. No, he did not.

24 Q. Did he -- did you and he -- you and he did
25 have a conversation about testifying?

1 A. That's correct.

2 Q. And it was your advice to him not to testify?

3 A. That's correct.

4 Q. And he took that advice?

5 A. That's correct.

6 Q. And when you talked to him about that, one of
7 the concerns you drew to his attention was the fact
8 that he would know that -- the jury would know that
9 there were -- he had been previously convicted of a
10 felony --

11 A. That's correct.

12 Q. -- or, actually, multiple felonies?

13 A. That's correct.

14 Q. Did you also talk to him about the fact that
15 he would be subject to cross-examination by the
16 prosecutor who could ask him --

17 A. Yes.

18 Q. -- many questions?

19 A. Yes.

20 Q. Did you talk to him about the fact that he
21 would have to acknowledge or perjure himself to say
22 that he actually bought this property by using a fake
23 identity?

24 A. Yes.

25 Q. All right. As it relates to him asking you

1 about pleading to lower charges, I know you said you
2 discussed it with him. Was it ultimately your decision
3 and his decision together to not plea to any of the
4 charges and to go to trial on all of them?

5 A. That's correct.

6 Q. Why did he not plea to those lower charges,
7 if you remember?

8 A. I don't -- I don't remember, but it was
9 something that we did discuss.

10 Q. Okay. When -- when you were in the
11 courtroom, did you -- I believe Mr. Maro asked you --
12 did you ever take any of his papers from him?

13 A. No.

14 Q. Do you recall a time when there were papers
15 on the desk that didn't belong to you that you took?

16 A. No.

17 Q. During any time in your representation of the
18 defendant, did he ever seem to you to not understand
19 what the two of you were discussing, whether it be
20 because of mental infirmities or inability to
21 communicate?

22 A. No. He was -- he was very aware of what was
23 going on and what was being discussed.

24 Q. And the decisions that you made to call
25 Victor Suarez and not call the owner of the house, were

1 those your trial strategy decisions to be consistent
2 with your theory of the case --

3 A. Yes.

4 Q. -- that you couldn't prove knowledge?

5 A. Yes, it was.

6 Q. All right.

7 MR. HUNT: I don't have any further questions
8 at this time.

9 MR. MARO: Judge, just very quick.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. MARO:

13 Q. Articulate for me, please, what convicts --
14 legal point of your theory of your case -- what
15 convicts Mr. Vazquez-Suarez as far as testimony that
16 puts him here that controlling or running the operation
17 of this grow house had knowledge, other than his
18 statement to Detective Rightsell -- a misstatement to
19 Detective Rightsell?

20 A. I don't remember the -- the whole case as far
21 as what was presented or what have you. So I couldn't
22 articulate exactly, you know, what was presented that
23 would -- the evidence.

24 Q. Well, let me help you. There isn't one
25 witness in the trial transcript that says they've ever

1 seen him in the house, including Detective Rightsell
2 and Detective Dutton or Button. One of the other
3 detectives, correct?

4 A. I believe that's the case --

5 Q. Right.

6 A. I think that was the first time they saw him
7 there.

8 Q. Right. Other than the would-be owner that
9 sold the house to him under a fake name, nobody's ever
10 seen him up here until the day of the arrest, correct?

11 A. That's correct.

12 Q. So there's nothing that puts him inside the
13 house? No witness testimony puts him inside the house?
14 Secondly, the knowledge aspect that he was somehow a
15 conspirator in this grow house only comes into play --
16 the way I read the transcript -- and I guess understand
17 that -- again, is from Rightsell by these would-be
18 statements that she testified to --

19 MR. HUNT: Objection. Counsel is testifying.
20 He's not asking questions.

21 THE COURT: Sustained.

22 BY MR. MARO:

23 Q. All right. Is there anything -- I'll
24 rephrase. Is there anything that you remember in the
25 trial other than Detective Rightsell's would-be

1 statements that he allegedly made to her?
2 A. Specifically that's -- I don't remember
3 anything else specifically.

4 Q. Right. And you didn't want him to testify,
5 correct?

6 A. That's correct.

7 Q. So he wasn't going to get up, from the real
8 beginning of this trial, and get on that witness stand
9 and refute what she had to say, correct?

10 A. She wasn't --

11 Q. He was not. Mr. Suarez -- Vazquez-Suarez?

12 A. Yeah.

13 Q. Right?

14 A. Your question is what now?

15 Q. He was not going to get up on the witness
16 stand and try to rebut or impeach the testimony of
17 Detective Rightsell as to her testimony?

18 A. So you're asking me if he was going to do
19 that if he testified?

20 Q. Yes. Yes. Your advice was, I don't want you
21 testifying.

22 A. Yeah.

23 Q. Take my advice?

24 A. Yeah.

25 Q. Okay. So the only thing that could have

1 impeached her testimony would have been the Miranda --
2 post-Miranda statements allegedly that she says that he
3 made. That he claims he didn't.

4 A. And -- and Mr. Victor Rodriguez.

5 Q. All right. But as far as detective -- law
6 enforcement, correct?

7 A. Yeah.

8 Q. But you don't have a copy of that? You never
9 got it?

10 A. No.

11 Q. You never let him listen to it?

12 A. I never got a copy of it.

13 Q. Right. You don't know what's on it, correct?

14 A. Are you --

15 Q. You never got it, so you don't know what's on
16 it?

17 A. Are you referring to a recording --

18 Q. His -- his recorded post-Miranda statement to
19 Detective Rightsell.

20 A. Yeah. I never received a recorded --

21 Q. Right. So you don't know if she is
22 mistating what he told her, paraphrasing what he told
23 her, taking it out of context, or even if he told her
24 those things, do you? You have no way of knowing?

25 A. No, I have no way of knowing.

1 Q. Other than the fact that he told you that
2 she's not telling you the truth; I didn't say those
3 things, correct?

4 A. That's correct.

5 Q. And he is not going to testify and you don't
6 have the tape, and you have a witness on the stand that
7 is attributing statements to your client, and you don't
8 know what your client even said or didn't say?

9 MR. HUNT: Judge, again, counsel is

10 testifying. He's not asking questions, Your Honor.

11 THE COURT: Sustained.

12 BY MR. MARO:

13 Q. All right. Were you ever asked to call a
14 Raymond Semento regarding paperwork for him working for
15 the DEA?

16 A. I -- I remember -- I don't remember the
17 specific name, but I did call somebody in the DEA and I
18 was not able to get any information of that.

19 Q. All right. Fair enough.

20 MR. MARO: Nothing further, Judge.

21 THE COURT: All right. Thank you. Anything
22 else?

23 MR. HUNT: Yes, sir.

24 RECROSS-EXAMINATION

25 BY MR. HUNT:

1 Q. Do you recall -- do you recall Victor
2 Rodriguez-Suarez's testimony?

3 A. Yes.

4 Q. Do you recall how credible he came across to
5 the jury?

6 A. Not very.

7 Q. He didn't come across very credible?

8 A. No, he didn't.

9 Q. Do you recall the fact that the defendant had
10 a fake ID, which is actually the same name as the name
11 on the contract deed of the house?

12 A. Yes.

13 Q. And do you recall that the argument -- one of
14 the main arguments by the State was that -- the fact
15 that the defendant bought the house with a fake name,
16 that you had that identification on him, that he had
17 Victor's ATM card with him when he was arrested, and
18 that the signatures matched consistent on those things,
19 and that he was paying the electric bill -- "he" being
20 the defendant.

21 A. Yes.

22 Q. Not -- all those things were tied to show
23 knowledge, beyond what Agent Rightsell may or may not
24 have heard the defendant say?

25 A. That is correct.

1 MR. HUNT: All right. I don't have any
2 further questions.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. MARO:

5 Q. The only question is knowledge to what?
6 Knowledge to what? That he owns a house up here? That
7 he had somebody else's ID? So what?

8 MR. MARO: Nothing further.

9 MR. HUNT: I, again, would object and move to
10 strike. It's not a question. It's argumentative.

11 THE COURT: Yeah. I'll strike that because
12 it's argumentative. He's not asking you a
13 question. And it wasn't answered. He didn't ask
14 for an answer.

15 You're excused. Thank you.

16 THE WITNESS: Thank you.

17 (The witness stepped down.)

18 THE COURT: What other witnesses do you got?

19 MR. MARO: Judge, we have -- if we can, I
20 would ask that we adjourn this and let me give you
21 a reason why. As we represented to you, we've been
22 trying to track down -- there's been a diligent
23 effort to track down the tape.

24 THE COURT: Okay.

25 MR. MARO: I just happened to send a subpoena

1 out to Detective Rightsell and just said, Hey, do
 2 you happen to have this tape or know where it is?
 3 And she showed up today and she had the tape. My
 4 understanding, it's part in English and part in
 5 Spanish. What I would like to do now that I
 6 finally found the tape is get a copy of it, get a
 7 copy to the State, and get this translated and then
 8 deal with that. Because it's an important issue,
 9 as you can see here --

10 THE COURT: All right.

11 MR. MARO: -- what's on that tape.

12 THE COURT: Is there any other testimony you
 13 want to present --

14 MR. MARO: No, sir.

15 THE COURT: -- or you just want to present
 16 that?

17 MR. MARO: Not at this time. I was going to
 18 call the detective, but, like I said, the tape is
 19 paramount. It's going to speak for itself.

20 THE COURT: Okay. So you just want to submit
 21 the tape?

22 MR. MARO: Yeah. Once we get it and get it
 23 recorded, Judge.

24 THE COURT: Or a transcript of it?

25 MR. MARO: Yes, sir.

1 THE COURT: All right. All right. So we'll
 2 adjourn this. But, Mr. Suarez -- Vazquez-Suarez,
 3 does he go back to prison or --

4 MR. MARO: Do you want to go back? It's
 5 going to --

6 THE COURT: Well, it's not a matter of "want
 7 to" or "not want to."

8 MR. MARO: He can't, but I asked his
 9 preference for a reason.

10 THE DEFENDANT: No. I just want to wait. I
 11 don't mind to wait to see what happened.

12 MR. MARO: Judge, I can probably get this
 13 done within a week, if that's a problem.

14 THE COURT: I'll wait a week, but, quite
 15 frankly, I'm not going to hold him on that because
 16 it costs the county for us to hold him. If you
 17 want to pay for us to hold him, then I guess we'll
 18 consider that.

19 MR. MARO: Let me -- let me make a
 20 representation to you. Let me speak to Rightsell.
 21 Let's see how quick --

22 THE COURT: Okay.

23 MR. MARO: -- we can get copies and how quick
 24 I get it.

25 THE COURT: Okay.

MR. MARO: If it's going to go more than next week, I'll let you know Monday or Tuesday.

THE COURT: Okay.

MR. MARO: Early, or we can set it back.

THE COURT: All right. Thank you.

MR. MARO: Okay.

THE COURT: So we'll be adjourned for right

now. All right. Thank you.

MR. MARO: Thank you, sir.

THE COURT: All right. Are you guys ready to

go?

THE CLERK: Yes, Judge.

(Court adjourned at 4:00 p.m.)

CERTIFICATE OF TRANSCRIPTION
STATE OF FLORIDA
COUNTY OF MARION

I, Brittnee Shore, hereby certify that I was authorized to and did transcribe the foregoing ELECTRONIC RECORDING, that the pages contained herein are a true and complete record of the proceedings, transcribed to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in this action.

Dated this 4th day of June, 2018, Ocala,
Marion County, Florida.

S/Brittnee Shore

Brittnee Shore

APPENDIX D

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JUNIOR VAZQUEZ-SUAREZ,

Appellant,

v.

CASE NO. 5D18-2418

STATE OF FLORIDA,

Appellee.

_____/

DATE: November 05, 2019

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Rehearing and Rehearing En Banc, filed November 4, 2019, is accepted as timely filed. It is further

ORDERED that Appellant's Motion for Rehearing, filed November 4, 2019, is denied. The concurrent Motion for Rehearing En Banc is stricken.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



Panel: Judges Evander, Cohen, and Grosshans

cc:

Office of Attorney General
Junior Vazquez-Suarez

Jack R. Maro

Kellie A. Nielan