

NO. _____

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM 2020

ANTONIO LOPEZ,
Petitioner,

v.

THE STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari
To the Texas Court of Criminal Appeals

APPENDIX (Vol. III)

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08-17-00039-CR
1st Supp Rpt Rec

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TRIAL COURT CAUSE NO. 20120D04452
COURT OF APPEALS NO. 08-17-00039-CR
FILED IN
8th COURT OF APPEALS
EL PASO, TEXAS
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Clerk

STATE OF TEXAS,) IN THE DISTRICT COURT
vs.) EL PASO COUNTY, TEXAS
ANTONIO N. LOPEZ.) 171ST JUDICIAL DISTRICT

MOTION TO SUPPRESS

On the 30th day of September, 2014, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable BONNIE RANGEL,
Judge presiding, held in El Paso, El Paso County, Texas:

Proceedings reporting by machine shorthand
utilizing computer-assisted realtime transcription.

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1 (Open court; attorneys and defendant
2 present.)

3 THE COURT: Court calls Cause Number
4 20120D04452, State of Texas versus Antonio Lopez.

5 Announcement of counsel, please.

6 MS. HAMILTON: Penny Hamilton and Holly
7 Rodriguez for the State. Ready, Your Honor.

8 MR. NORRIS: Robin Norris and Jaime
9 Gandara for Mr. Lopez, Your Honor. We're ready.

10 THE COURT: Very well.

11 Let the record reflect that we are here
12 with a continuation of the suppression hearing.

13 Mr. Norris, you may begin your
14 cross-examination of Detective Ruiz.

15 MR. NORRIS: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. NORRIS:

19 Q. Okay. Detective Ruiz, it's been a few days
20 since we've been here, so I may go over a few things,
21 but let me get right into it.

22 Did you respond to the scene where this
23 offense is alleged to have occurred?

24 A. Yes, sir, I did.

25 Q. And about what time was that, date and time?

1 A. I want to say it was July 28th, 2012. I
2 believe it was and 5:30, 6:00 in the p.m.

3 Q. In the p.m. And what day of the week was that;
4 do you recall?

5 A. I believe it was going to be a Saturday.

6 Q. Was the child Jayla Beckley present at the
7 scene when you arrived?

8 A. No, sir.

9 Q. Can you tell me who was present?

10 A. Um....

11 Q. Let's begin with police officers?

12 A. Okay. There was an officer and a sergeant
13 there. I just remember -- I can't recall the officer's
14 name, but I remember Sergeant -- I can't remember. It
15 was Radcliff, I believe.

16 Q. Okay.

17 A. I believe that was the sergeant that was there.
18 There was a police officer, a patrol officer there, a
19 sergeant, the defendant was present, and I believe
20 that's all that was at the house.

21 Q. Okay. So were the police officers both
22 uniformed officers?

23 A. Yes, sir.

24 Q. And did you check with them to see if the scene
25 had been secured?

1 A. Yes, sir.

2 Q. And were you satisfied that it had been?

3 A. Yes, sir.

4 Q. Okay. And now, it was only those two officers
5 and Antonio Lopez, the defendant, who were present?

6 A. That's my recollection yes, sir.

7 Q. Okay. Now, what was the first thing you did
8 when you arrived?

9 A. I met with patrol officer, the first responding
10 unit and the sergeant, and I got a little rundown as to
11 what they knew about the incident.

12 Q. And what did they know?

13 A. They pretty much relayed the information, that
14 I'm assuming, that Mr. Lopez provided to them at the
15 time.

16 Q. Did you speak to Mr. Lopez yourself?

17 A. At one point I did, yes, sir.

18 Q. While you were still at the scene?

19 A. Yes, sir.

20 Q. And how long was that conversation?

21 A. It was on and off. I'd say it was no more than
22 20 minutes or so. I just -- I tried to explain to him
23 what was going to happen. I explained to him that we
24 needed his consent or we were going to get a search
25 warrant. I explained to him what needed to be done. He

1 was real cooperative at the time.

2 Q. Okay. Well, let me ask you about a search
3 warrant. What did you feel you needed a search warrant
4 for?

5 A. To investigate the incident, we had a death of
6 the child, I believe, that the child died.

7 Q. And when you say search warrant, I presume you
8 mean a search warrant for that residence?

9 A. That's correct.

10 Q. Did you search that residence at all while you
11 were there?

12 A. Yes, sir.

13 Q. Okay. So if you searched it already, why would
14 you need a warrant?

15 A. Well, after we obtained consent from the
16 defendant we searched the premises.

17 Q. So the defendant did consent and allow you to
18 search the premises?

19 A. That is correct, yes, sir.

20 Q. Did you find any evidence of a crime?

21 A. Evidence was collected.

22 Q. Okay. Tell me what that was?

23 A. I believe it was some bedding from the crib,
24 numerous photographs were obtained, measurements of the
25 crib.

1 Q. Okay. Did you take the photographs?

2 A. No, sir.

3 Q. Did the sergeant take the photographs?

4 A. No, sir.

5 Q. Did the patrol officer that the photographs?

6 A. No, sir.

7 Q. So there must have been somebody else there?

8 A. Subsequently, a crime scene unit investigator
9 arrived.

10 Q. Okay. They arrived after you arrived?

11 A. Yes, sir.

12 Q. How long after you arrived did they arrive?

13 A. I want to say probably about an hour or so
14 after I arrived.

15 Q. Did they receive instructions from you?

16 A. Yes, sir.

17 Q. Did you ask them to collect the bedding from
18 the crib?

19 A. Yes, sir.

20 Q. Did you ask them to take the photographs?

21 A. Yes, sir.

22 Q. Did you direct them what photographs you wanted
23 taken?

24 A. Yes, sir.

25 Q. Did you question anyone else also the scene

1 other than Mr. Lopez?

2 A. I wouldn't say question. I mean, I had a brief
3 conversation with him, but any questioning was done at
4 the station.

5 Q. Brief conversation with whom?

6 A. Mr. Lopez.

7 Q. Okay. Did any other people arrive at the scene
8 while you were there, aside from the crime scene unit?

9 A. I believe a representative from CPS arrived
10 there at one point or another.

11 Q. While you were there?

12 A. Yes, sir, that's my recollection.

13 Q. And how many were they?

14 A. I believe it was one CPS and then eventually a
15 representative from Crime's Against Children also
16 arrived.

17 Q. Okay. As to the CPS, do you know who that was?

18 A. I want to say Mr. Andrade, but I'm not to sure.
19 He stands out in my mind.

20 Q. Who is Mr. Andrade? Do you know?

21 A. He's a -- he works for Child Protective
22 Services.

23 Q. Is he an investigator?

24 A. That's my understanding.

25 Q. Okay. And Crimes Against Children, are you

1 talking about somebody from the police department or the
2 the District Attorney's Office?

3 A. That would be the police department.

4 Q. Okay. And who arrived from Crimes Against
5 Children?

6 A. Detective Achividia, I believe. I believe
7 that's the way you pronounce the last name.

8 Q. Detective who?

9 A. Achividia, I believe.

10 Q. Achividia?

11 A. Yeah.

12 Q. And do you know whether or not he questioned
13 Mr. Lopez or anyone else at the scene?

14 A. The detective, she's a female male, I do not
15 believe she questioned Mr. Lopez.

16 Q. You do believe or don't?

17 A. I don't believe she questioned Mr. Lopez.

18 Q. And what was she doing there? What was the
19 purpose of her being there?

20 A. It's common that when we have a child death
21 there that we request a CAC detective to come out and
22 assist us.

23 Q. Did you relay any information to her from that,
24 that you gained, from the officers on the scene or Mr.
25 Lopez?

1 A. Yes, sir.

2 Q. Okay. So you basically told her what you had
3 been told?

4 A. That is correct.

5 Q. Okay. Did she leave before you did?

6 A. I believe we might have left around the same
7 time. I'm not to sure.

8 Q. Okay. Did the CSU leave before you did or
9 afterwards?

10 A. No, sir. I think -- I believe it was around
11 the same time.

12 Q. Okay. And when you left, did you leave
13 Mr. Lopez in the house?

14 A. No, sir.

15 Q. So what happened with him?

16 A. We transported him to our office.

17 Q. Now, you have testified before, I think, that
18 he wasn't under arrest at the time?

19 A. That is correct.

20 Q. So you must have asked him if he was willing to
21 go?

22 A. That is correct.

23 Q. And why did you want him to go with you?

24 A. I told him that-- I explained our procedures
25 that it was practice to secure a statement from him. He

1 had no problem with that.

2 Q. Okay. And was the residence, at that point,
3 closed as a crime scene?

4 A. Yes, sir.

5 Q. So his family or he would have been permitted
6 to return?

7 A. They were instructed if they allow us to hold
8 on to the crime scene until the autopsy and he agreed on
9 that.

10 Q. You asked his permission whether you could keep
11 it as a crime scene until after the autopsy?

12 A. That is correct, yes, sir.

13 Q. Okay. Did you have any information at that
14 time, when you left, about the child and the child's
15 condition, particularly?

16 A. Yes, sir. At one point, I was in communication
17 with Detective Hinojos.

18 Q. Okay. Detective Hinojos --

19 A. Hinojos.

20 Q. -- was not present there, I take it?

21 A. He was not at the scene. No, sir.

22 Q. Where was he?

23 A. He was at the hospital with the child.

24 Q. So you had information from him about the
25 condition of the child?

1 A. That would be correct. Yes, sir.

2 Q. Okay. And did you get that information from
3 him before leaving the scene?

4 A. Yes, sir.

5 Q. Okay. And what was that information?

6 A. That the child had expired.

7 Q. Okay. And did he have any -- did he give you
8 in additional information from what he knew about cause
9 of death at that point?

10 A. No, sir.

11 Q. Okay. No information at all?

12 A. No, sir.

13 Q. Okay. Did you actually drive Mr. Lopez, with
14 you, back to the station?

15 A. Yes, sir, I did.

16 Q. And what station did you go to, headquarters?

17 A. Yes, sir. That's correct.

18 Q. And that's down on Raynor Street and Piedras,
19 around five points there?

20 A. That is correct. Yes, sir.

21 Q. And I take it, from what you said, the purpose
22 was to have an interview with him?

23 A. That is correct. Yes, sir.

24 Q. Okay. Were any other people taken for an
25 interview at the same time?

1 A. At the same time from the scene?

2 Q. Well, from any location to headquarters to be
3 interviewed about this?

4 A. Well, I took Mr. Lopez, myself, to the station.

5 Q. You took Mr. Lopez?

6 A. Yes.

7 Q. And what about his wife, was she taken for an
8 interview?

9 A. She was there, I believe. Detective Hinojos is
10 the one that transported her to the station.

11 Q. So when you arrive was she already there?

12 A. I can't recall who arrived first, sir.

13 Q. Okay.

14 A. At one point we were together.

15 Q. Was she also interviewed?

16 A. Yes, sir.

17 Q. And was she interviewed by you or by Detective
18 Hinojos or both?

19 A. Detective Hinojos.

20 Q. Only Detective Hinojos?

21 A. Yes, sir.

22 Q. Okay. Let me ask you, who is the lead
23 investigator in this case, the case agent?

24 A. At that point, no lead investigator was
25 designated.

1 Q. So nobody had been assigned yet?

2 A. No, sir.

3 Q. Was somebody eventually assigned?

4 A. Yes, sir.

5 Q. Who?

6 A. I believe that was -- I believe that case ended
7 with me. I'm not to sure.

8 Q. With you?

9 A. Yes, sir.

10 Q. Describe what your duties would be as the lead
11 investigator?

12 A. Compile all the information possible related to
13 the incident, put it together, present it to the
14 District Attorney's Office in a timely manner.

15 Q. Okay. And so other people investigating the
16 case would report to you; is that correct?

17 A. Technically, yes, that's the way it works.

18 Q. And so anybody who had been instructed to
19 gather evidence would bring it to you or advise you of
20 what the results were?

21 A. Enter a report into the system yes, sir.

22 Q. Okay. Did you assign other people to do any
23 particular tasks in this case?

24 A. No, sir.

25 Q. You didn't assign the Crime Screen Unit to do

1 further investigation at the crime scene?

2 A. There might have been a request for two in
3 between it, sir, but it's not like -- assigned is a -- I
4 guess, it's not part of my duties. I called who ever
5 was working the case with me and I asked them is they
6 can do things for me.

7 Q. Not part of your duties to make assignments?

8 A. That is correct.

9 Q. But you can make requests?

10 A. Yes, sir.

11 Q. And is it typical for you to make requests?

12 A. Yes, sir, in a case by case --

13 Q. For the collection of further evidence?

14 A. Yes, sir.

15 Q. Cameras in the neighborhood?

16 A. Yes, sir.

17 Q. Interviewing people?

18 A. Yes, sir.

19 Q. Gathering the kind of evidence that you're
20 going to need before you feel you can present the case
21 to the district attorney?

22 A. Yes, sir.

23 Q. Okay. And when are you going to present the
24 case to the district attorney?

25 A. It all varies.

1 Q. I don't mean the time. I mean, what do you
2 feel you have to know before you can present such a
3 case?

4 A. As much as possible about the case.

5 Q. Of course. But I guess you know what I'm look
6 for, do you have to reach the point where you feel that
7 there is probably cause to make an arrest or that the
8 investigation is other wise concluded without that
9 information?

10 A. Yes, sir.

11 Q. Okay. So before you're going to refer a case
12 to the district attorney, you want to be able to present
13 them with enough evidence, to establish probable cause,
14 to believe that some person has committed an offense?

15 A. That is correct. Yes, sir.

16 Q. Or to let them know, we tried as hard as we can
17 and we can't solve this?

18 A. That is correct.

19 Q. All right. Now, before you left the residence,
20 did you have any idea how many people had been in the
21 residence, and by the residence I mean the scene of the
22 alleged crime, at the time when the child was discovered
23 to be in distress or at relevant times before that?

24 A. Just based on what Mr. Lopez provided to us, as
25 far as, who was present at the time of the incident.

1 Q. And what did Mr. Lopez tell you?

2 A. I believe it was...

3 Q. We got some of this from --

4 A. Right.

5 Q. -- watching your interview of him, in the
6 courtroom, last week.

7 A. I believe there was three minor children there.

8 Q. Okay. Do you remember who they were?

9 A. His two biological daughters.

10 Q. What were their names? Do you know?

11 A. I can't recall.

12 Q. Okay. Who else?

13 A. And then the foster --

14 THE COURT: Just a minute. I don't have
15 any problems with babies in the courtroom, but when they
16 make noise like that and distract, you have got to take
17 her out and until she can me quiet, ma'am. I'm sorry.
18 She's distracting.

19 MR. NORRIS: Beautiful little girl.

20 THE COURT: Is she?

21 MR. NORRIS: Yeah.

22 THE COURT: I can't see her.

23 MR. GANDARA: Nice melody also.

24 THE COURT: I'm sorry. Try and quiet her
25 down and then you can come back in, ma'am. Thank you.

1 Q. (BY MR. NORRIS) Okay. Let's see.

2 Mr. Lopez has two biological children?

3 A. Right. And then a foster child they were
4 taking care of for a couple weeks.

5 Q. It was a Respite Care child?

6 A. Respite Care, yes, sir.

7 Q. Do you remember her name?

8 A. I don't remember her name.

9 Q. Could that have been Brianne Reynolds?

10 A. It could be.

11 Q. Okay. And how old was she; do you recall?

12 A. I believe she was like 13.

13 Q. Would it be important for you to know the ages
14 of people who are present in --

15 A. Yes, sir.

16 Q. -- the residence? Why?

17 A. Well, we need to know who, eventually, we need
18 to interview.

19 A. Okay. And do you make the decision who is
20 going to be interviewed?

21 A. No.

22 Q. Okay. Who makes that decision?

23 A. One of our supervisors there.

24 Q. Okay. And in this case, who would that be?

25 A. They would be Sergeant Kozak.

1 Q. And would Sergeant Kozak consult with you
2 before making that decision?

3 A. Yes, sir.

4 Q. As the case agent?

5 A. Yes, sir.

6 Q. Okay. Did you recommend to Sergeant Kozak who
7 should be interviewed in case based on what you knew at
8 the scene?

9 A. Not at the scene, but eventually we got around
10 to it.

11 Q. Did you get around to that right after your
12 first interview with Mr. Lopez?

13 A. Yes, sir. It was done. It was done in a
14 timely manner.

15 Q. Well, timely, of course, but I noticed when we
16 played that recording of that interview, that was one of
17 the questions you had?

18 A. Right.

19 Q. And so was it immediately after that that
20 you --

21 A. No, sir.

22 Q. Okay. How long did it take before you
23 suggested to Sergeant Kozack who might also be
24 interviewed?

25 MS. RODRIGUEZ: Objection, Your Honor.

1 This is a motion to suppress on the voluntariness of the
2 the statement. This is outside the scope of that
3 motion.

4 MR. NORRIS: I assure the Court that it is
5 not outside the scope of the investigation and I will
6 make it clear why it is not.

7 THE COURT: Can you make it clear now
8 or...

9 MR. NORRIS: Well, in general, I can. The
10 basis for the motion to suppress is going to have to do,
11 among other things, with what the purposes and
12 objectives were, of this detective's investigation, at
13 the interviews, which have already been plaed to the
14 Court. Those purposes and objectives are going to be
15 effected by what he knew, and when he knew it about
16 facts and circumstances that he gathered as of his
17 investigation.

18 MS. RODRIGUEZ: Your Honor, that has no
19 legal relevance to the voluntariness the statement.

20 MR. NORRIS: Oh, it most certainly does,
21 Your Honor.

22 THE COURT: How does it have the
23 relevance?

24 MR. NORRIS: Because -- well, I don't want
25 the simply disclose, but I have already pled in the

1 motion to suppress, that the confession ultimately given
2 by Mr. Lopez, was the product of threats made to him.
3 And whether or not threats were actually made to him
4 will depend upon what the objective were of the
5 detectives, particularly during their second interview
6 with him.

7 THE COURT: Okay.

8 MR. NORRIS: And that will depend, in
9 turn, on what their objectives were in the first
10 interview.

11 THE COURT: Okay.

12 You want to respond?

13 MS. RODRIGUEZ: Your Honor, can't it
14 simply be did you make any threats to the defendant? I
15 mean, this seems like a way round about way of getting
16 to what he says he's trying to get to.

17 THE COURT: Well, what he is trying to do
18 is get inside the mind of the detective, what the
19 detective knew and didn't know. To see if those threats
20 were --

21 MR. NORRIS: And in intended to do.

22 THE COURT: If he did establish the
23 threats or not.

24 MS. RODRIGUEZ: I would object based on
25 relevance.

1 THE COURT: Overruled. Overruled.

2 Q. (BY MR. NORRIS) Okay. Let me see where I was,
3 Detective. Let's complete a catalogue of who you know
4 was there. We said Mr. Lopez's two minor children. Do
5 you remember how old they were?

6 A. It's documented on my supplement.

7 THE COURT: Now, that -- you're getting
8 ready to object. I know. You're getting ready to
9 object. That has nothing to do with what's in his mind,
10 what's not in his mind, does it?

11 MR. NORRIS: Yes.

12 THE COURT: Who's there and who's not
13 there?

14 MR. NORRIS: Well, I'm going to eventually
15 try to get at who would be a suspect in this
16 investigation, and how the investigation focused, and
17 who it focused on.

18 THE COURT: Okay. Well, ask that
19 question.

20 MR. NORRIS: And whether or not -- whether
21 the investigation was complete.

22 THE COURT: Ask those questions.

23 MR. NORRIS: Well...

24 THE COURT: Those questions are okay.

25 MR. NORRIS: When I ask those questions

1 they are going to lead to these other questions.

2 THE COURT: Well, let's see.

3 MR. NORRIS: So I'll just wind up backing
4 up.

5 THE COURT: Let's see.

6 Go ahead.

7 MR. NORRIS: Okay.

8 Q. (BY MR. NORRIS) So let me ask you, when you
9 got down the station, what were you objectives when --
10 during your first interview with Mr. Lopez?

11 A. Secure a statement from Mr. Lopez.

12 Q. A statement about what?

13 A. About what his recollection was that happened
14 at the household.

15 Q. So you're trying to find out things about what
16 happened that day at the residence?

17 A. That is correct.

18 Q. And you're try to go get that information from
19 Mr. Lopez?

20 A. That is correct.

21 Q. And there -- and what information -- these
22 kinds of questions were basically about who was at the
23 residence --

24 A. That is correct.

25 Q. -- at the time. And we saw the statement, and

1 tell me a complete list of all the people he told you
2 were at the residence?

3 A. I -- like I testified before, his two
4 biological daughters, the bed rest foster child that was
5 there, the wife, Mr. Lopez. I believe at one point or
6 another there was another foster child there, but my
7 understanding is that child left before the incident
8 occurred.

9 Q. Before the incident or before the 911 --

10 A. That's my recollection. That's my
11 recollection.

12 Q. I just want to know what mean by the
13 "incident"?

14 A. The incident of the child there.

15 Q. The incident of what?

16 A. The child there.

17 Q. The child died at the hospital so obviously
18 everybody left before the child died?

19 A. Okay. If you want to look at it that way.

20 Q. What do you mean by the "incident"?

21 A. The incident that happened at the house.

22 Q. The 911 call, is that the incident?

23 A. The investigation we were out there to
24 investigate, the child death.

25 Q. You would want to know who was at the house in

1 the hours leading up to the call to the police?

2 MS. RODRIGUEZ: Objection, Your Honor,
3 asked and answered.

4 MR. NORRIS: Not answered.

5 THE COURT: Overruled.

6 Q. (BY MR. NORRIS) Who was there?

7 A. I already told you who, I believe, was there.

8 Q. Anybody else?

9 A. That's my recollection.

10 Q. And did Mr. Lopez name any other people during
11 his -- during your first interview?

12 A. I cannot recall.

13 Q. Okay. So you don't recall whether he mentioned
14 that he has mother-in-law was present?

15 A. No, sir.

16 Q. Okay. And you don't recall whether he
17 mentioned to you that the other foster child, that you
18 just mentioned, was there with his mother-in-law?

19 A. That's my recollection that there was another
20 foster child there, but before the incident.

21 Q. Do you have any reason to believe that there
22 were an other people there other than the ones you
23 mentioned?

24 A. I can't recall off the top of my head.

25 Q. Okay. During this time, was an interview being

1 conducted by Detective Hinojos of Mr. Lopez's wife,
2 Alice Pearl Lopez?

3 A. During what time?

4 Q. During part or after of the time that you were
5 questioning Mr. Lopez?

6 A. I would have to assume there was. I can't
7 answer that.

8 Q. Well, I know that Detective Hinojos appeared to
9 be in the same room with you some of the time; is that
10 correct or no, am I mistaken about that?

11 A. I don't believe in the first interview.

12 Q. Okay. Do you know what Detective Hinojos was
13 doing there then?

14 A. You have to ask him.

15 Q. Do you know whether he was interviewing Alice
16 Pearl Lopez?

17 A. You have to ask him.

18 Q. So you didn't speak with him at all during that
19 interview?

20 A. Not while I interviewed the person in the room.

21 Q. I only asked because I notice you left the
22 room --

23 A. Okay.

24 Q. -- at a couple of points. During that time, am
25 I to understand, that you did not speak with Detective

1 Hinojos?

2 A. I can't recall if I did or not.

3 Q. Okay. After you released Mr. Lopez, at the
4 conclusion of that interview, what did you do next?

5 THE COURT: We're talking about the first
6 interview.

7 MR. NORRIS: Yes.

8 THE COURT: Let's clarify it.

9 MR. NORRIS: Yes.

10 THE COURT: For the record.

11 Q. (BY MR. NORRIS) At the conclusion of your
12 first interview with Mr. Lopez what did you do next?

13 A. I believe that was it for the night.

14 Q. Okay. What were you waiting for next, the
15 autopsy?

16 A. Yes, sir.

17 Q. Okay. And when did you get the results of the
18 the autopsy, when were you informed of that?

19 A. I believe that was July 31st.

20 Q. Okay. So that was how many days, three days,
21 four days later?

22 A. Three days.

23 Q. Okay. And your second interview of Mr. Lopez
24 occurred after you were informed of the results of the
25 autopsy; is that correct?

1 A. That is correct.

2 Q. Okay. During the interim, what further
3 investigation did you do of the case?

4 A. We just --

5 MS. RODRIGUEZ: Objection, Your Honor,
6 that's not relevant.

7 MR. NORRIS: It is relevant, Your Honor.
8 I want to know what he knew going into the second
9 interview because that's going to bear or what his
10 objectives were in the second interview, and what kind
11 of information he was trying to impart to Mr. Lopez, and
12 impact from Mr. Lopez.

13 MS. RODRIGUEZ: Your Honor, it's beyond
14 the scope of the voluntariness of the interview.

15 THE COURT: Well, remember, he's saying
16 that he was threatened as well. There were threats
17 made.

18 MR. NORRIS: Not just that --

19 THE COURT: Under duress and threatened.

20 MS. RODRIGUEZ: That doesn't have anything
21 to do with this investigation, that has to do with
22 asking him directly did he make any threats or did he
23 say this to the defendant.

24 THE COURT: Well...

25 MS. RODRIGUEZ: His investigation --

1 MR. NORRIS: Well, I know the answer to
2 that, Your Honor.

3 MS. RODRIGUEZ: -- is outside the scope.

4 MR. NORRIS: Really, I do think that I
5 should be permitted to get at my point in the way I
6 like, as long I don't burden the court in taking too much
7 of its time.

8 MS. RODRIGUEZ: Your Honor, you can't go
9 step by step into this entire case, this isn't a
10 discovery motion. This is a voluntariness motion to
11 suppress.

12 THE COURT: Right. Overruled.

13 I'll allow a little bit more. Let's see
14 where it goes.

15 MR. NORRIS: Okay.

16 Q. (BY MR. NORRIS) What additional information,
17 other than the autopsy, came to you during that period
18 of time, relevant to your investigation of this case?

19 A. I believe anything else.

20 Q. Did you conduct any interviews of any other
21 people --

22 A. No, sir.

23 Q. -- who with present? Did you receive
24 information from anyone that such interviews had been
25 conducted by someone else?

1 A. Not that I recall, sir.

2 Q. Were you aware that other interviews had been
3 ordered or were being conducting, during that time, with
4 other people?

5 A. Not that I recall.

6 Q. Were you aware that such interviews were going
7 to be conducted?

8 A. Not that I was aware of.

9 Q. So when you went into your second interview with
10 Mr. Lopez, what you knew was what he had told you at the
11 first interview, and the results of the autopsy?

12 A. Yes, sir.

13 Q. And nothing else?

14 A. Yes, sir.

15 Q. Now, your second interview lasted quite a long
16 time?

17 A. Yes, sir.

18 Q. It's been said on the record that it was about
19 to two hours and fifteen minutes, and you were out of
20 the room part of that time, but still that was a long
21 interview?

22 A. Is that a question or a comment?

23 Q. Is it correct that that was a long interview?

24 A. No.

25 Q. Okay. So you conducted interviews of that

1 length?

2 A. Longer.

3 Q. And longer. What was your objective in that
4 interview?

5 A. Getting the truth.

6 Q. Okay. And did you think that you knew the
7 truth at that point.

8 A. No.

9 Q. Well, you accused him of having killing the
10 baby, so that accusation was made without any confidence
11 on your part that it was true?

12 A. I was confident.

13 Q. So you did think you knew who did it?

14 A. Yes, sir.

15 Q. Well, you said just a moment ago you didn't?

16 A. I misunderstood your question.

17 Q. Okay. So you were convinced that Mr. Lopez had
18 done this?

19 A. Yes, sir.

20 Q. Why were you convinced of that?

21 A. By the fact that he provided his first
22 statement, he was the only one with care and control of
23 the child, the autopsy results.

24 Q. Did you have an interview at the point or were
25 aware of interviews that had been conducted with any

1 other person?

2 A. No, sir.

3 Q. Okay. So after about fifteen or twenty minutes
4 you advised Mr. Lopez that you were aware of the autopsy
5 results and that you believed that he was guilty and you
6 wanted him to confess?

7 A. He never told me he was guilty, but I believed
8 he was responsible for it.

9 Q. Okay. Responsible that he was one who had
10 caused the death of the child?

11 A. That is correct.

12 Q. Okay. And that's what I meant. So you're
13 objective after that, as far as I can tell, was to get
14 him to confess?

15 A. Yes, sir.

16 Q. So when you say, get at the truth, to get him
17 to confirm what you thought you already believed, that
18 he was guilty, or that he was responsible?

19 A. If you want to look at it that way. Yes, sir.

20 Q. Well, do you look at it that way?

21 A. I believe that he caused harm to the child that
22 was what I was doing to get to the truth.

23 Q. And that -- by that you mean to get him to
24 confession to having done it?

25 A. If want to look at it that way, yes, sir.

1 Q. You had said so a minute ago, I just want to
2 make sure I understand you correctly.

3 Now, what kind of techniques did you use
4 to try to get him to do that?

5 A. The ones you saw on the video.

6 Q. Okay. And that included suggesting to him that
7 if you were a real man he would admit to what he had
8 done?

9 A. That is correct.

10 Q. And that if he were a religious person he knows
11 that God would want him to do that?

12 A. That is correct.

13 Q. And that also includes, no fewer than 17 times
14 telling him, when he denied doing this, that it must be,
15 therefore the case, that his wife did it?

16 A. That is correct.

17 Q. Okay. What did you mean to have him think by
18 that?

19 A. I just wanted him to rethink what he was
20 telling us.

21 Q. All right. Did you mean to have them think
22 that if he did not confess and tell you what you knew to
23 be be the truth, that his wife would also be held
24 response for this?

25 A. I believe he was told that at one point.

1 Q. He was told that his wife would be held
2 responsible for it if he didn't confess?

3 A. I don't believe we told him if he didn't
4 confess.

5 Q. Well, your objective was the get him to
6 confess.

7 A. I don't believe those were my words.

8 Q. No.

9 A. You didn't hear my words, sir.

10 Q. I did hear your words, and now I'm asking
11 asking what you intent was. What you meant to have him
12 understand by what you said?

13 A. To reconsider why he's being deceptive about
14 it.

15 Q. And why are you telling him something about his
16 wife to help him to reconsider?

17 A. I was trying to make him look at the overall
18 picture, sir.

19 Q. Why particularly his wife?

20 A. Because there are two people in the house, two
21 adults, capable of causing those kind of injuries.

22 Q. Were there other people in the house capable of
23 causes though injuries?

24 A. Not to my understanding, sir.

25 Q. Okay. Not the teenager Rihannon?

1 A. Not to my understanding.

2 Q. So you didn't believe that a 13-year-old girl
3 would be capable of causing the injuries?

4 A. It could be possible, but not based on the
5 facts that he provided earlier.

6 Q. Had you been advised by the medical examiner
7 that a 13-year-old was incapable of causing those
8 injuries?

9 A. I believe that might have been the issue.

10 Q. So the autopsy Report would confirm that a
11 13-year-old was not capable of causing those injuries.

12 A. I don't know what's in the autopsy report.

13 Q. And the medical examiner would, in your
14 expectation, confirm that a 13-year-old could not cause
15 those injuries?

16 A. I don't know what he said.

17 Q. Okay. And what about the other teenagers
18 present in the house?

19 A. Like I say, we have believed that Mr. Lopez was
20 responsible for the injuries to the child.

21 Q. I know you did and you were trying to get him
22 to admit it?

23 A. Yes, sir.

24 Q. And in order to do that, you told him that his
25 wife would get charged with responsibility for this

1 offense if he didn't confess?

2 MS. RODRIGUEZ: Objection, Your Honor,
3 that's a misstatement of what was on the DVD.

4 MR. NORRIS: Well, let's go through them
5 one at a time because --

6 THE COURT: Sustained.

7 Q. (BY MR. NORRIS) Because threats do not have to
8 have any particular form of words, as the Court well
9 knows. They don't even have to be expressed in words.
10 So we want to know whether what he was told, how he
11 intended that to be understood, and how it was in fact
12 understood.

13 MS. RODRIGUEZ: Objection, Your Honor,
14 sidebar. Where's the question?

15 MR. NORRIS: I am trying to explain to the
16 Court, in anticipation of further relevancy
17 objections --

18 THE COURT: Right.

19 MR. NORRIS: -- what the point of my
20 questioning is.

21 THE COURT: Go ahead.

22 Get to the questions, Mr. Norris.

23 Q. (BY MR. NORRIS) If you didn't do it yourself,
24 your wife did it?

25 A. Yes, sir.

1 Q. Do you recall say something like that?

2 A. I believe so.

3 Q. Did you want to make him understand, by that,
4 that his wife would be held responsible?

5 A. That she could be held responsible.

6 Q. Okay. It was you or your wife.

7 Do you ever remember make statements,
8 substantially, like that?

9 A. Yes, sir.

10 Q. And the point of that?

11 A. It was either him or his wife.

12 Q. Right. To make him believe that his wife would
13 be held responsible?

14 A. If that's what you want to believe, that's
15 fine.

16 Q. I want to know what your intention was?

17 A. My intentions were to get the truth, sir.

18 Q. And that is to get him to confess?

19 A. Yes, sir.

20 Q. And you used his wife as a means of trying to
21 get him to do that?

22 A. No, sir.

23 Q. Well, then why would you mention her?

24 A. Because it's the logical thing to mention.

25 Q. To mention in trying to get somebody to

1 confession?

2 A. Yes, sir.

3 Q. Okay. You or your wife, or both.

4 Do remember making that comment?

5 A. Yes, sir.

6 Q. Do you remember telling him, God will punish
7 your kids?

8 A. Umm...

9 Q. If you don't confess?

10 A. I don't believe I made that statement.

11 Q. Okay. Again, you or your wife?

12 A. Yes.

13 Q. I guess your wife did it then?

14 A. Yes.

15 Q. Then Pearl did this?

16 A. Yes, sir.

17 Q. Your kids will go to foster care and be at the
18 same risk?

19 A. I don't believe I made that statement.

20 Q. Did you hear Detective Hinojos make that
21 statement?

22 A. I believe he did.

23 Q. You believe what?

24 A. I believe he did.

25 Q. Again, you or your wife. Again, you or your

1 wife, at 44 minutes into this. You or your wife, at 45
2 minutes into this. If I wasn't you, it was your wife,
3 48 minutes into your interview.

4 Does that all sound right to you?

5 A. That's about correct as I recall it, yes, sir.

6 Q. Then Pearl did it, 51 minutes into the
7 interview. You're making me assume that your wife did
8 it, 54 minutes into the interview.

9 Do you recall that?

10 A. I believe so, yes, sir.

11 Q. Then your wife made the mistake, 59 minutes
12 into the interview.

13 Do you remember, at that point, leaving
14 the room to talk with his wife?

15 A. I believe I did. Yes, sir.

16 Q. Okay. What did you say to her? We haven't
17 heard, was that interview recorded?

18 A. No, sir.

19 Q. Where was she when you went to talk to her?

20 A. She was sitting in the waiting area of our
21 office.

22 Q. Okay. How far was that from the interview room
23 where you and Mr. Lopez were conversing?

24 A. 35, 40 feet. I'm not sure.

25 Q. Do you know how long she had been waiting

1 there?

2 A. Once they arrived, whatever time they arrived.

3 Q. So they arrived together?

4 A. Yes.

5 Q. What did you say to her?

6 A. I can't recall.

7 Q. Can't recall?

8 A. No, sir.

9 Q. Did you say to her -- well, if you can't recall
10 I guess it's meaningless, but did you say to her, one of
11 you is going to go to jail tonight?

12 A. I don't believe so.

13 Q. Might you have said that?

14 A. I can't recall, sir.

15 Q. So would you care to say, by my count --

16 THE COURT: Do you have that marked, that
17 statement marked?

18 MR. NORRIS: Excuse me?

19 THE COURT: Do you have that statement
20 marked and tell me where it is on --

21 MR. NORRIS: Which statement, Your Honor?

22 THE COURT: The last statement you said,
23 one of you will be going to jail tonight.

24 MR. NORRIS: No, that was -- my question
25 was about whether or not he had said that to --

1 THE COURT: Right.

2 MR. NORRIS: -- Pearl and Pearl was not --

3 THE COURT: Oh, to Pearl.

4 MR. NORRIS: Yes. Her interview or
5 questions or discussions with her --

6 THE COURT: Were not --

7 MR. NORRIS: -- were not recorded.

8 THE COURT: Okay. I thought he had said
9 that to Mr. -- okay.

10 MR. NORRIS: I'll pass the witness, Your
11 Honor?

12 THE COURT: Very well.

13 Ms. Rodriguez?

14 MS. RODRIGUEZ: Nothing further, Your
15 Honor, but subject to recall.

16 THE COURT: Very well.

17 You're subject to recall, sir. Please
18 remain outside, sir.

19 THE WITNESS: Thank you.

20 THE COURT: In case we need you.

21 THE WITNESS: Okay.

22 THE COURT: Thank you, sir.

23 Your next witness, Ms. Hamilton?

24 MS. HAMILTON: Your Honor, before we call
25 our next witness, we have what we have marked as State's

1 MS-3. This is the 911 call, that was made to the police
2 department by the defendant.

3 (Exhibit offered, State's MS-3.)

4 THE COURT: Got it.

5 MS. HAMILTON: We filed it as a business
6 record from the itself, so it is does have an affidavit.
7 It is self authenticated, but the defendant himself
8 identifies himself and basically calls 911 and says, I
9 am calling to confess there was a homicide and I'm the
10 one who did it. I need the cops to come and pick me up
11 because I'm confessing to it.

12 And that's what in the 911 call.

13 THE COURT: Okay.

14 MS. HAMILTON: And that is what starts the
15 third statement.

16 THE COURT: Oh.

17 MS. HAMILTON: Okay.

18 THE COURT: Got it.

19 MS. HAMILTON: And so for purposes of this
20 hearing, we've marked it as MS-3 and would like to be
21 able to play it for the Court.

22 THE COURT: Admit it first.

23 Any objections to it's admission, Mr.
24 Norris?

25 MR. NORRIS: I'm not going to have an

1 objection if we can make some stipulations about when it
2 was made, and that maybe clear from the 911 recording
3 itself. In particular, I'd like to have there be a
4 stipulation that -- of course, as my co counsel reminds
5 me, that is subject to the same objection as articulated
6 in the motion to suppress. I meant to say that we
7 didn't have further objection to its authentication.
8 We, of course, to it as -- on the grounds of the -- that
9 it was induced by threats, as we have to any inculpatory
10 statements he made both on the 911 tape and subsequent
11 to it. So --

12 MS. HAMILTON: It's --

13 MR. NORRIS: It is the subject of the
14 motion to suppress.

15 THE COURT: Right.

16 MS. HAMILTON: I think he's free to argue,
17 at the conclusion of the evidence, that when this guy is
18 at his house, calling on the phone saying, I want to
19 confess, have the cops to come get me, that is under
20 some sort of compulsion under the law. I certainly am
21 not going to --

22 MR. NORRIS: No.

23 MS. HAMILTON: I guess that's part of his
24 argument.

25 MR. NORRIS: No, I think it's clear that

1 for purposes of the suppress hearing the Court may hear
2 this.

3 THE COURT: Right.

4 MR. NORRIS: You know, I -- and my co
5 counsel reminds me, I don't want to give them the
6 impression, on the record, that we are abandoning our
7 motion the suppress.

8 THE COURT: Okay.

9 MR. NORRIS: All I wanted to say was, with
10 respect to authentication, is that I wanted to be clear,
11 if we can have a stipulation, if it isn't otherwise
12 clear from the recording itself, which I haven't
13 listened to for a while, that the recording was made
14 subsequently to the second interview.

15 THE COURT: Right.

16 MR. NORRIS: By Detectives Ruiz.

17 THE COURT: What was the date of the
18 second -- can we have that stipulation as the when that
19 call was made?

20 MS. HAMILTON: Yes, the call was made
21 August the 1st, Your Honor.

22 THE COURT: August the 1st.

23 When was the second statement?

24 MS. HAMILTON: The second statement was
25 taken July 31st, Your Honor.

1 THE COURT: Okay.

2 MR. NORRIS: And it was July 31st, late at
3 night, and August 1st the 911 call, very early in the
4 morning, within, you know, an hour or so. So the times
5 are going to be important to us here also.

6 THE COURT: July 31st. When was it that
7 the that interview ended on July 31st, second interview?

8 MR. NORRIS: It ended very late at night.
9 I'm not sure of the exact time, but it was close to
10 midnight.

11 THE COURT: Can we have a stipulation as
12 to what time that ended?

13 MS. HAMILTON: Your Honor?

14 MR. NORRIS: We can the exact time.

15 MS. HAMILTON: I can check in the...

16 THE COURT: It started at 7:30 or 8:00
17 p.m. was the second statement.

18 MS. HAMILTON: It was --

19 THE COURT: If it was two hours then it
20 was only 10:00 at night.

21 MS. HAMILTON: It was 10:00 at night, Your
22 Honor.

23 THE COURT: About.

24 MS. HAMILTON: With the second statement.

25 THE COURT: That sounds about right.

1 Can you both stipulate to that?

2 MS. HAMILTON: It's on the DVD.

3 MR. NORRIS: Yes.

4 MS. HAMILTON: And I have it marked in the
5 report.

6 THE COURT: Okay. 10:00 p.m., then that

7 --

8 MS. HAMILTON: 10:08, Judge.

9 THE COURT: 10:08. Then that August 1st
10 911 call, what was the time on that one?

11 MS. HAMILTON: That was 1:31 in the
12 morning, Your Honor.

13 THE COURT: That was four hours later.

14 MS. HAMILTON: Yes, Your Honor.

15 THE COURT: 1:31 a.m.

16 MS. HAMILTON: Yes, Your Honor.

17 MR. NORRIS: And I'm not exactly certain
18 of that and I don't trust, from experience, the time
19 stamps on the recorded interviews. They are often off
20 by usually, an hour, but sometimes even more. So --

21 MS. HAMILTON: Well, Your Honor, we could
22 introduce the event chronology that is produced by the
23 CAD report that indicates when the call was actually
24 initiated and it's 1:31 a.m., actually, and 36 seconds.

25 THE COURT: The CAD?

1 MR. NORRIS: As well as -- and we also
2 want to know for sure when the conclusion of the other
3 -- of the second interview was.

4 MS. HAMILTON: That was at 10:08.

5 THE COURT: Conclusion was 10:08.

6 MR. NORRIS: 10:08, according to the time
7 stamp on the recorded interview.

8 MS. HAMILTON: Detective Hinojos looked at
9 his watch as said it's 10:08. We're stopping now.

10 THE COURT: Okay.

11 MS. HAMILTON: And --

12 MR. NORRIS: And of course, that's before
13 the Court and the Court make its own judgment about
14 that.

15 THE COURT: Right.

16 MS. HAMILTON: Right.

17 THE COURT: It started at 7:30 or 8:00 is
18 what my notes say.

19 MS. HAMILTON: Yes, Your Honor.

20 THE COURT: And it was only two yours.

21 MS. HAMILTON: Yes, Your Honor.

22 THE COURT: So 10:08 sounds about right.

23 MS. HAMILTON: Yes, and that is documented
24 and it is on the DVD, Judge. So now we have the --

25 MR. NORRIS: So I'm good with the 911 call

1 subject to the objections already made.

2 THE COURT: Okay. Your objections are
3 overruled. MS-3 admitted.

4 (Exhibit admitted, State's MS-3.)

5 MS. HAMILTON: Thank you, Your Honor.

6 THE COURT: Are you going to play it right
7 now?

8 MS. HAMILTON: Yeah, I think I can get
9 this done here.

10 THE COURT: Does my court reporter have to
11 take?

12 MS. HAMILTON: I don't think so, Judge.

13 THE COURT: Mr. Norris wants to.

14 MR. NORRIS: Please, I've established
15 already a habit of doing this. It would be a strange
16 record is we didn't have this.

17 THE COURT: Okay. Go ahead.

18 MS. HAMILTON: But again, Your Honor, I
19 would ask, trying to take recording, in realtime,
20 especially when there are individuals who are talking
21 over each other, at the same --

22 THE COURT: Right.

23 MS. HAMILTON: Is not the same function
24 that A court reporter does in the court.

25 THE COURT: That's right.

1 MS. HAMILTON: Where you can control it,
2 and so, again, I would ask that the court reporter be
3 allowed to supplement the record, if necessary, if she
4 is not able to take down this record accurately. You
5 know, considering the fact that --

6 THE COURT: Absolutely.

7 MR. NORRIS: And we have no objection.

8 MS. HAMILTON: But it's kind of an
9 unrealistic expectation.

10 THE COURT: Right. And there is no
11 objection, Mr. Norris. Okay.

12 Go ahead. Let's play it.

13 MS. HAMILTON: Thank you, Your Honor.

14 (Recess taken.)

15 THE COURT: Let's start it.

16 911 CALL BY ANTONIO LOPEZ.

17 THE DISPATCHER: (Inaudible.)

18 MR. LOPEZ: Yes, my name is Antonio Lopez
19 and I'm at 1701 Villa Santo Circle. There was a
20 homicide here on Saturday, the 28th of (inaudible.)

21 THE DISPATCHER: Uh-huh.

22 MR. LOPEZ: And I'm just calling because I
23 want a police officer to by and pick me up, please, and
24 I'm confessing that it was me.

25 THE DISPATCHER: Okay. And how are you

1 doing today?

2 MR. LOPEZ: I'm -- I'm all right.

3 THE DISPATCHER: Okay. What's your

4 (inaudible.)

5 MR. LOPEZ: (Inaudible.)

6 THE DISPATCHER: What is your name?

7 MR. LOPEZ: Antonio Lopez.

8 THE DISPATCHER: Okay. And you're there
9 at (inaudible).

10 MR. LOPEZ: I'm right here, right now.

11 THE DISPATCHER: Okay. What is your name?

12 MR. LOPEZ: Antonio Lopez.

13 THE DISPATCHER: How old are you?

14 MR. LOPEZ: 27.

15 THE DISPATCHER: Okay. What is your date
16 of birth?

17 MR. LOPEZ: March 19th, 1985.

18 THE DISPATCHER: (Inaudible.)

19 MR. LOPEZ: No, (inaudible.)

20 THE DISPATCHER: All right. Have you been
21 drinking or under the influence of drugs?

22 MR. LOPEZ: No, ma'am.

23 THE DISPATCHER: What color shirt are you
24 wearing?

25 MR. LOPEZ: Blue.

1 THE DISPATCHER: Blue shirt.

2 MR. LOPEZ: Yes, ma'am.

3 THE DISPATCHER: Okay. What color pants?

4 MR. LOPEZ: Dark blue.

5 THE DISPATCHER: Are you alone?

6 MR. LOPEZ: Yes, ma'am.

7 THE DISPATCHER: Are you with a vehicle?

8 Are you in a vehicle?

9 MR. LOPEZ: No, I'm right at home.

10 THE DISPATCHER: Is anyone else there?

11 MR. LOPEZ: No, ma'am.

12 THE DISPATCHER: Where are you, in the
13 living room, the bedroom?

14 MR. LOPEZ: Right now I'm outside, but I
15 can be outside (inaudible).

16 THE DISPATCHER: It's up to you. Where
17 are going to be so I can tell them.

18 MR. LOPEZ: When I seem them or knock on
19 the door, I'll open it.

20 THE DISPATCHER: Okay. And you say that
21 happened on the 28th, right?

22 MR. LOPEZ: Yes, ma'am.

23 THE DISPATCHER: All right. We'll
24 (inaudible) for that.

25 (Break in 911 CD.)

1 THE COURT: Is that it?

2 MS. HAMILTON: No, Judge there's more.

3 (911 CD resuming.)

4 THE DISPATCHER: Okay. They are on their
5 way. If anything changes, go ahead and call us back,
6 okay?

7 MR. LOPEZ: Okay. Thank you.

8 THE DISPATCHER: Thank you.

9 (CD concluded playing.)

10 THE COURT: Okay.

11 MS. HAMILTON: State would call Officer
12 Albert Gandara.

13 Do you want me to get him, Judge?

14 THE COURT: Please. Please, Ms. Hamilton.
15 (Witness present in courtroom.)

16 THE COURT: How are you officer?

17 THE WITNESS: Good. Thank you, ma'am.

18 THE COURT: Please sit in that blue chair
19 in front of the microphone. Scoot your chair close into
20 -- I'll get you comfortable and then I'll put you under
21 oath.

22 THE WITNESS: Okay.

23 THE COURT: Very well.

24 Please raise your right hand to be sworn.

25 (Witness sworn.)

1 THE COURT: Very well.

2 Okay. Ms. Hamilton, you may proceed.

3 MS. HAMILTON: Thank you.

4 ALBERT GANDARA,

5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. HAMILTON:

8 Q. Sir, would you state your full name for the
9 record and how are you employed?

10 A. My name is Albert Gandara, Junior, and I'm a
11 police officer with the El Paso Police Department.

12 Q. How long have you been with the police
13 department, sir?

14 A. It will be eight years October 6th.

15 Q. You are -- I'm sorry?

16 A. This year it will be eight years, October 6th.

17 Q. Okay. And you are currently assigned to where?

18 A. I'm currently assigned to the Special Traffic
19 Investigations Unit out at headquarters.

20 Q. How long have you been there?

21 A. Since of 2012.

22 Q. November of 2012?

23 A. Yes.

24 Q. All right. And prior to that, where were you
25 assigned?

1 A. Prior to that I was assigned to the Pebble
2 Hills Regional Command Center. I did five years of
3 patrol there and another year of traffic there.

4 Q. Were you on duty on August the 1st, of the year
5 2012, in your capacity as a police officer?

6 A. Yes, I was.

7 Q. And did you have an occasion to go to an
8 address in El Paso 1701 Villa Santos?

9 A. Yes, I did.

10 Q. And -- let me ask you, what area of town is
11 that?

12 A. That is the east side, within the jurisdiction
13 of the Pebble Hills Regional Command there, County of El
14 Paso.

15 Q. Okay. Do you recall was it approximately about
16 1:30 in the morning?

17 A. Yes.

18 Q. What were you doing at that point? Were you on
19 patrol or were you at the station? How did you begin to
20 respond to this call?

21 A. Okay. I was working traffic. I was traffic
22 officer for the evening shift for that evening. And I
23 in the area of Vista Del Sol and Lee Trevino and I heard
24 a call over the radio of a picking up of a wanted
25 subject. I heard the dispatcher say that someone was

1 calling from 1701 Villa Santos confessing to a homicide,
2 and that he wanted to turn himself in.

3 Q. Okay. So did you know anything at all about a
4 homicide or what this -- you know, what he talking about
5 or what dispatch was talking about? Did you have any
6 knowledge about this case?

7 A. No, ma'am. Initially, I thought it was a prank
8 call, or a drunk disturbance, or something like that.

9 Q. All right. And are you by yourself or do you
10 somebody else with you in the car?

11 A. No, I'm by myself.

12 Q. Are you in a marked patrol vehicle?

13 A. I am, yes.

14 Q. And are you in uniform, as you are today, with
15 the standard El Paso Police Department issue dark
16 blue -- navy blue and light blue uniform?

17 A. Yes, ma'am.

18 Q. All right.

19 A. With the exception of the STI pin, but yes.

20 Q. Okay. So now you go in the direction of this
21 address on Villa Santos, do you recall approximately
22 what time you arrived?

23 A. I believe I arrived, something like, fourteen
24 minutes after the call went out over the radio.

25 Q. About fourteen minutes after?

1 A. Yeah, I got there about -- I heard the call.
2 The call went out at about 1:35, if I remember
3 correctly. I go to the scene about 1:49ish.

4 Q. Okay. So when you get there -- would you tell
5 the Judge, what do you see when you arrive there at that
6 scene?

7 A. I showed up expecting to see the other patrol
8 units who got dispatched out. I was not the unit that
9 was dispatched. There was another unit that was
10 dispatched. I just heard the call on the radio. When I
11 heard the type of call it was, and the comments, I
12 decided to go check on the units that I presumed were
13 already there.

14 Q. Okay.

15 A. And when I showed up to the street, from
16 Lomaland, to my surprise, I was the first unit on the
17 scene.

18 Q. All right. What do you see when you get there?

19 A. I turn left on to Villa Santos from Lomaland to
20 look for the numbers on the houses to find 1701. And
21 I'm driving slow and I look to my left and I see that
22 it's the corner house. The front porch light was on,
23 and I can see the defendant pacing inside the house.

24 Q. Okay. Now, are there street light there, is it
25 dark outside?

1 A. Well, the sun was down. It was 1:49 in the
2 morning, but his front porch light to his house was on,
3 and the light that was inside his house was also on. I
4 remember that. I can't remember if the street lights
5 were on, to be honest with you, but I could see inside
6 the house, at least the front part of the door.

7 Q. Okay. So you see the defendant pacing and so
8 what's the next thing that you do?

9 A. I drive passed the house and I could see that
10 he was trying to wave me down. I passed the house and
11 saw that the light -- the front porch light of the house
12 were being flicked on and off.

13 Q. So you're passing the house, are you like
14 leaving or turning around, or what are you doing?

15 A. Finding a place to stop, to park. So I pass
16 the house, I make a u-turn and I park about two, three
17 hours away from the corner house.

18 Q. Is there a reason why you parked a couple
19 houses away?

20 A. It's usually standard for officer's safety.
21 When we response to patrol calls we usually park about a
22 house or two houses away.

23 Q. All right. So you get out of your car, then?

24 A. I do -- well, I notify my dispatcher that I'm
25 at the scene, and then, yeah, I get out of the car.

1 Q. Are there any other officers there at that
2 point?

3 A. At that point, no, not yet.

4 Q. Okay. So when you get out of the car what's
5 the next thing you do?

6 A. I get out of the car and I remember walking,
7 approaching on foot and Mr. Antonio Lopez stepped out.
8 He was standing at the corner, his house -- his garage
9 extended out, and I could see he was standing at the
10 corner. I remember him trying to draw my attention.

11 Q. Okay. And I'm going to stop you right there
12 for two different things. First of all, right now, you
13 were making a motion with your right hand.

14 A. Yes.

15 Q. And you had you hand -- making a gesture like
16 curving your hand towards yourself, like is it a come
17 here type of a motion?

18 A. Yeah, it was something like this or waving at
19 me. It was a motion with his hands signifying that, you
20 know, he was the one that called.

21 Q. Okay. Signalling to you --

22 A. Yes.

23 Q. -- he was the one that called.

24 Okay. And the other thing I wanted to
25 stop you about is, when you were referring to Mr. Lopez,

1 you also had gestured with your left hand and you
2 pointed to an individual here in the courtroom. Let me
3 ask you, is there an individual here in this courtroom
4 that is known to you as Antonio Lopez, as the individual
5 you made contact with that night?

6 A. Yes.

7 Q. Would you please indicate where that individual
8 is located here the courtroom by -- or where he's seated
9 or what he's wearing?

10 A. He's seat to my left. He has glasses and he's
11 wearing tops and bottoms with orange and white stripes.

12 MS. HAMILTON: Your Honor, if the record
13 would reflect this the witness had identified the
14 defendant in the case.

15 THE COURT: Any objection?

16 MR. NORRIS: Not objection.

17 THE COURT: The record will so reflect.

18 MS. HAMILTON: Thank you, Your Honor.

19 Q. (BY MS. HAMILTON) Okay. So you see Mr. Lopez,
20 he's over by the corner of his garage. He's making
21 motions to you that you are interpreting as -- for you
22 to come to him?

23 A. Yes.

24 Q. And what do you do at that point?

25 A. I motion to him to come to me.

1 Q. Because?

2 A. Because we didn't -- I didn't know what type of
3 call it was. So for my safety, I just felt more
4 comfortable for him to come to me.

5 Q. Okay.

6 THE COURT: Counsel, the jury has reached
7 a verdict. So kind of back off a little bit, we are
8 getting Mr. Roberts in here.

9 MS. HAMILTON: Okay.

10 (Brief recess taken.)

11 THE COURT: Okay. Ms. Hamilton, you may
12 proceed.

13 MS. HAMILTON: Thank you.

14 Q. (MS. HAMILTON) Officer, you were saying, right
15 before we broke, that you actually motioned to the
16 defendant to come to you. You said something about
17 officer safety?

18 A. Yes.

19 Q. Okay. Did you just motion to the defendant
20 with your hand, or do you speak with him and ask him or
21 tell him what you want?

22 A. I believe it was a combination of the two.

23 Q. Okay.

24 A. With my hand and with my voice.

25 Q. And what, if you recall, did you say to him?

1 A. Something to the effect of, you know, can you
2 come over, or meet me over here, or come to me,
3 something to that effect.

4 Q. All right. Now, is there anybody else around
5 at this point?

6 A. No, the other units hadn't shown up yet.

7 Q. Do you see anybody else in the house?

8 A. No.

9 Q. Okay. So does the defendant come to you when
10 you make that request?

11 A. He does. He walks toward me with his hands out
12 like this.

13 Q. Okay. So what happens next, what do you say to
14 him?

15 A. He gets closer and I can see that he's got
16 nothing in his hands. I don't suspect he has a weapon
17 of any kind, so I ask him to put his hands down. I tell
18 him to relax. I say, I'm Officer Gandara with the El
19 Paso police department. I asked him if he's the one
20 that called. I asked him, you know, how I could help
21 him.

22 Q. Okay. And what does he say to you?

23 A. He said that there was a homicide at 1701 Villa
24 Santos on July 28th, I believe.

25 Q. Okay.

1 A. And he said that he called because it was --
2 his words were I called because it was me.

3 Q. All right. And so when the defendant said that
4 to you, did you ask him any questions or ask him what he
5 meant or anything like that?

6 A. At first, I stood quiet because I didn't know
7 what he was talking about. Usually, at shift meetings
8 we have the -- at roll call, we have our wanted subjects
9 and things like that, so I'm trying to think in my head
10 what is he talking about. I can't think of anything.
11 And then he tells me, he volunteers that he -- he says,
12 Well, I've already been talking to the police about it.

13 Q. Does he identify or tell you who it was he had
14 been speaking to?

15 A. He does. He tells me that he was talking to
16 detectives, Detective Hinojos and Detective Ruiz?

17 Q. Okay. And do you know those detectives or know
18 who they are?

19 A. I do now. At the time, I didn't know who they
20 were. I think I even asked him, you know, are they
21 detectives with El Paso Police Department or detectives
22 with the County Sheriff's Office.

23 Q. Okay. And does the defendant tell you?

24 A. Yeah, he tells me. He say s, no, El Paso
25 Police Department, and he tells me that they have -- I

1 think I asked him if he had -- if they had left him a
2 business card, phone number for him to call them.

3 Q. And had they?

4 A. They did. According to him, he had called a
5 number, I think it was to an office line. Nobody was
6 picking up and so he said that he called 911.

7 Q. All right. Now, when this conversation is
8 taking place, Officer Gandara, is it -- did you move
9 inside the defendant's house, are you still outside over
10 by the garage, the sidewalk, where are you?

11 A. Everything is outside and on the sidewalk. If
12 it's not his next -- his neighbors house, it's the one
13 over. We're not in front of his house. We're off to
14 the next house.

15 Q. Okay. Now, was the defendant able to give you
16 any other information, aside from the detectives names
17 like the case number or, you know, who was involved or
18 anything like that?

19 A. I don't remember if I asked for a case number.
20 I did ask him to kind of help me determine what he was
21 talking about. The name of the deceased person, and he
22 mentioned the name. I'm sorry. I can't remember it
23 right now, but he said that it was his 11-month-old
24 foster child.

25 Q. Okay. So what did you do with that

1 information, Officer?

2 A. At that point, the other units, the other
3 police officers show up to the scene, including a
4 sergeant. I ask him to stay there and I believe I tell
5 the other officer, Hey, partner, can you watch him?
6 Something to that effect. And I went to the corner of
7 the street to talk to my supervisor, Sergeant Molina.

8 Q. And to tell Sergeant Molina what you know at
9 this point?

10 A. Yes, to tell her what he told me and to help --
11 so that she can help me get in contact with the CAP
12 detectives who were in charge of the case?

13 Q. Okay. Now, at any point, Officer Gandara,
14 during this communication that you have with the
15 defendant, have you handcuffed him or placed him under
16 arrest or anything like that?

17 A. No. No.

18 Q. When he -- you asked your partner or another
19 officer to keep an eye on him?

20 A. Yes.

21 Q. To keep an eye on him, to cuff him, no, still
22 standing out there on the sidewalk?

23 A. Yeah, I told him can you watch him real quick,
24 and then I walked away.

25 Q. Okay. Now, did you have any further

1 involvement with the defendant after you walked away and
2 tell your supervisor what happened?

3 A. No. Well, very limited. Excuse me. The -- we
4 got ahold of -- the sergeant got ahold of the CAP
5 supervisor who had gotten ahold of the detectives. And
6 Officer Heredia transported the defendant to
7 headquarters and then I followed in a different car, in
8 my car, to headquarters where I confirmed with Detective
9 Hinojos. And then I typed out my supplement there at
10 headquarters and then that was it.

11 Q. Okay. Now, Detective Heredia, is that the
12 officer you asked to keep an eye on the defendant when
13 you were out there assisting?

14 A. Officer Heredia, yes.

15 Q. When you follow Officer Heredia talking to
16 defendant to headquarters?

17 A. Yes.

18 Q. Did you see was the defendant handcuffed at any
19 point within the officer's car or anything like that?

20 A. No. No. I didn't see him handcuffed.

21 Q. Was he ever placed under arrest there at the
22 home by any police officers that were present?

23 A. No. No.

24 MS. HAMILTON: Pass the witness.

25 THE COURT: Very well.

1 Let's do cross-examination in a minute.

2 Let's get Mr. Lucero.

3 (Brief recess taken.)

4 THE COURT: 20130D04452, State of Texas
5 versus Antonio Lopez.

6 Let the record reflect assistant district
7 attorneys are present, as well as defense counsel and
8 defendant.

9 You may begin cross-examination -- your
10 quick, brief cross-examination, Mr. Norris.

11 MR. NORRIS: Thank you, Your Honor.

12 THE COURT: Go ahead.

13 CROSS-EXAMINATION

14 BY MR. NORRIS:

15 Q. Officer Gandara, I'll try to make this quick.

16 So you did not yourself, I take it, place
17 Mr. Lopez under arrest?

18 A. No, sir.

19 Q. And the call that you received, you didn't
20 receive instructions to place him under arrest, I guess?

21 A. What do you mean?

22 Q. Did you receive instructions from the
23 dispatcher to place Mr. Lopez under arrest?

24 A. No.

25 Q. Did you hear anything instructing other

1 officers, who were dispatched, to place him under
2 arrest?

3 A. No.

4 Q. And you didn't witness him commit any kind of
5 crime in your presence?

6 A. No, I did not.

7 Q. Okay. And you didn't have a warrant for his
8 arrest?

9 A. No, I did not.

10 Q. And was it your understanding that this -- the
11 purpose of going there, either for yourself or for the
12 officer who was dispatched, was just to transport him?

13 A. Well, we didn't know what it was when we got
14 there, when we got the dispatch.

15 Q. Did you know anything about the reasons for
16 being asked to go to this?

17 A. No, I didn't know what -- like I said, I didn't
18 know what the --

19 Q. So what did the dispatch say?

20 A. The dispatch said that it was a pick up, wanted
21 subject.

22 Q. Pick up, what is that?

23 A. Usually it means that you pick up a wanted
24 subject, either that person has got a warrant or they're
25 turning themselves in for something or something to that

1 effect.

2 Q. And to pick up, do anything with them after you
3 pick them up?

4 A. Well, I mean, it depends. It depends. We just
5 get the big description. You've got to pick up a wanted
6 subject and then it's up to the officer to show up and
7 determine what's going on.

8 Q. Determine whether to make an arrest?

9 A. Exactly.

10 Q. Whether to transport?

11 A. Yes.

12 Q. Whether to interrogate?

13 A. Yes.

14 Q. And you did a little interrogation?

15 A. No.

16 Q. You asked questions?

17 A. I asked questions, yes.

18 Q. That's what I mean by interrogation.

19 A. Okay.

20 MS. HAMILTON: Objection, Your Honor,
21 because that is a legal conclusion and it assumes facts
22 not in evidence.

23 MR. NORRIS: An interrogation is a common
24 English word. It means to question, Your Honor.

25 THE COURT: Right.

1 MS. HAMILTON: I don't believe so, Your
2 Honor. In the legal community, we know it's
3 interrogation.

4 MR. NORRIS: I think it's time for a
5 dictionary. Did you question --

6 MS. HAMILTON: Judge, you know what?

7 THE COURT: No sidebar, Mr. Norris.

8 MS. HAMILTON: Thank you, Judge.

9 MR. NORRIS: Really?

10 THE COURT: Go ahead, Mr. Norris.

11 Q. (BY MR. NORRIS) You asked him questions?

12 A. Yes.

13 Q. Why were you doing that?

14 A. To ask him why he had called 911.

15 Q. Is that part of your -- of what goes into your
16 decision whether to arrest or detain or transport?

17 A. Well, that goes into the decision as to what
18 type of call we have, yes.

19 Q. Right. And that can be, as you said, to
20 arrest, detain, transport, or release them?

21 A. Yeah, it depends. It depends.

22 Q. And it's up to you?

23 A. Up to the police officers at the scene.

24 Q. Including you?

25 A. Including me, yes. I am part of that.

1 Q. I sense that you didn't feel as though you were
2 going to be able to make the decision yourself?

3 A. Make what decision?

4 Q. Make the decision whether to arrest, transport,
5 detain, to release?

6 A. Yeah, I didn't know what type of call it was
7 until I got there, and then we started talking to the
8 sergeant who got in contact with the detective.

9 Q. And what did the sergeant tell you the type of
10 call was?

11 A. The dispatcher said it was a pick up wanted,
12 subject call. The sergeant was the one that gave us the
13 orders to go ahead and transport.

14 Q. Okay. So you were waiting for a decision from
15 somebody else, the sergeant?

16 A. Either our sergeant or the detectives, yes.

17 Q. And in this case it was your sergeant?

18 A. Who told me, yes.

19 Q. Who told you what?

20 A. To follow Officer Heredia to police
21 headquarters.

22 Q. Okay. So it was you sergeant who made the
23 decision that there would be a transport?

24 A. Well, I don't know if she was the one that made
25 the decision, but she's the one that told me to --

1 Q. Okay.

2 A. -- to -- I don't know if somebody else told her
3 to do it.

4 Q. Is she was told by the detectives or somebody
5 else?

6 A. Yes.

7 Q. But you don't know that?

8 A. Exactly.

9 Q. Okay. And you were not the one ordered to
10 actually do the transport?

11 A. No, that was Officer Heredia.

12 Q. But you were asked to follow?

13 A. Yes.

14 Q. Okay. Do you know whether your sergeant or
15 Officer Heredia placed him under arrest before
16 transporting?

17 A. Can you repeat the question?

18 Q. Do you know whether your sergeant or Officer
19 Heredia placed Mr. Lopez under arrest before the
20 transport?

21 A. I do know that they didn't place him under
22 arrest before transport.

23 Q. Well, that was my question. Okay. So during
24 the transport, as far as you know, he wasn't under
25 arrest?

1 A. Yes.

2 Q. And how do you know that?

3 A. Because that what we were all understanding.

4 Q. So you witnessed everything as it was happening
5 there at the scene?

6 A. For the most part, yes, I was there.

7 Q. Okay. Did you -- let me get a clearer idea
8 where you parked your patrol vehicle on the street.

9 A. Sure.

10 Q. Was it the next door, a couple of doors down?

11 A. It was either next door or the -- either two or
12 three houses away.

13 Q. Okay.

14 A. One or two houses away. Excuse me.

15 Q. Within the line of sight to where Mr. Lopez was
16 standing in his yard?

17 A. On the same side of the street.

18 Q. Okay. Did you -- I guess what I'm getting at
19 is, did you exit your vehicle after parking it?

20 A. Yes.

21 Q. Okay. So you were parked next to the curb?

22 A. Yes, that would be the north -- the south curb
23 on the same --

24 Q. South curb facing --

25 MS. HAMILTON: Objection, Your Honor.

1 He's not even letting the witness answer the question.

2 They are talking at the same time.

3 THE COURT: That's happen several times,
4 both witness and Mr. Norris wait until each other
5 finishes.

6 MR. NORRIS: Okay.

7 THE COURT: Please.

8 Q. (BY MR. NORRIS) Please complete your answer.

9 A. I'm sorry. I was going to say that I was on
10 same street curb as the house.

11 Q. And you say that was the south side of the
12 street?

13 A. Yes.

14 Q. Vehicle facing to the east?

15 A. Yes.

16 Q. Dash cam operating?

17 A. It was working, but I didn't have it on, no.

18 Q. So there was no recording made of any of this?

19 A. No.

20 Q. Okay. Did you have -- were you wearing a
21 microphone on your uniform?

22 A. I don't remember. We have one in the car. I
23 don't remember if I left it charging after my traffic
24 stop, which I normally do. I leave it charging because
25 at the time I was a traffic officer, so to preserve the

1 battery, every time I stop I put it up.

2 Q. Okay. So you don't remember?

3 A. No.

4 Q. Do you remember that it was not operating when
5 you were talking with Mr. Lopez?

6 A. I know it wasn't on. It was working, but it
7 wasn't on.

8 Q. So you didn't make a recording of your
9 conversation with Mr. Lopez?

10 A. No.

11 Q. You could have done it?

12 A. I could have, yes.

13 Q. Can you tell my why you elected not to do that?

14 A. It's not something that we do on a patrol
15 dispatch call.

16 Q. Okay. Even one in which you've been told --
17 even if you did think it was a prank call, told that
18 somebody wanted to surrender for having committed a
19 murder?

20 A. Yes.

21 Q. See how important it is? You're here to
22 testify --

23 MS. HAMILTON: Objection, Your Honor, how
24 important it is? That is speculation.

25 THE COURT: Overruled.

1 Q. (BY MR. NORRIS) See how important it is?
2 You've been called as a witness to testify about it now.

3 MS. HAMILTON: Objection. What is the
4 relevance of that, Your Honor, that it's important that
5 he's been call to testify?

6 THE COURT: That's sustained.

7 MR. NORRIS: Your Honor, it's commonly the
8 case that the absence of evidence, which could have
9 routinely been collected and admissible, on the question
10 of the reliability of statements made.

11 MS. HAMILTON: And I don't dispute that at
12 all. What I dispute is his ability to be able to
13 continually argue to this Court, by way of his sidebar
14 comments, rather than sticking to the ruling, asking
15 question and answer, and then let us argue the end that
16 the Judge thinks of the evidence. That is my objection.

17 THE COURT: Right. Right. I understand.
18 Sustained.

19 Go ahead, Mr. Norris.

20 Q. (BY MR. NORRIS) How long were you at the scene
21 before other patrol vehicles arrived?

22 A. Not long, about two minutes.

23 Q. How many other vehicles arrived?

24 A. I believe it was two cars, two patrol officers
25 and a sergeant, which would make three other cars.

1 Q. So each of the other officers, including the
2 sergeant, was in his or her own vehicle?

3 A. Yes.

4 Q. Okay.

5 THE COURT: Haven't we exceeded the scope
6 of the motion to suppress with all these questions, with
7 this witness?

8 MR. NORRIS: Well, mostly I'm asking these
9 questions because they have to do with questions that
10 were asked on direct, which I thought didn't have much
11 to do with this.

12 THE COURT: Nothing had to -- yeah, this
13 witness has nothing to do with the motion to suppress.

14 MR. NORRIS: Well --

15 MS. HAMILTON: Your Honor --

16 MR. NORRIS: -- when those questions are
17 asked on direct without objection, I feel they're open
18 for discussion on cross.

19 MS. HAMILTON: Your Honor, may I just
20 clarify? The reason why this witness has to do with
21 this motion to suppress is because the defendant called
22 the police voluntarily and said, I'm confessing. I need
23 a ride. That was all voluntary. This is the first
24 officer that spoke with him, and so -- to show the Court
25 the defendant was not under arrest during this time. He

1 was transported not under arrest.

2 THE COURT: Okay.

3 MS. HAMILTON: And then he gave another
4 voluntary statement, so he has everything to do with --

5 THE COURT: Okay.

6 MS. HAMILTON: -- the voluntariness of the
7 final statement and the 911 call that the defendant made
8 that he is coming forward. Do you understand?

9 THE COURT: Okay.

10 MS. HAMILTON: Those -- all I did was ask
11 on direct exam those questions that had to do with --

12 THE COURT: No, he was asked where he
13 parked his car, that why he's taking five minutes on --

14 MS. HAMILTON: No, Judge, I didn't. I beg
15 to differ. I apologize. I didn't say where did you
16 park the car. I said where did you go? And he said I
17 made the u-turn and parked my car.

18 THE COURT: Anyway...

19 MS. HAMILTON: I apologize.

20 THE COURT: Let's --

21 MR. NORRIS: I'm nearly done, Your Honor.

22 THE COURT: -- get to the point.

23 MR. NORRIS: I don't agree with any of
24 that, but...

25 THE COURT: Go ahead.

1 MR. NORRIS: I'll finish up.

2 THE COURT: Go ahead.

3 Q. (BY MR. NORRIS) About what time did you leave
4 the scene?

5 A. I was there for about ten, fifteen minutes.
6 I'm not really sure.

7 Q. Okay. And then you left at the same time that
8 Officer Heredia left transporting the defendant?

9 A. About the same time, yes.

10 Q. How long did it take you to get to where you
11 were going?

12 A. To police headquarters?

13 Q. Is that where you were headed?

14 A. Yes.

15 Q. How long did it take you to get there?

16 A. About twenty minutes, fifteen, twenty minutes.

17 Q. Okay. Did you assist in delivering Mr. Lopez
18 to anyone there transporting him?

19 A. I believe -- I don't regular too clearly if I
20 help him or if he got to the building before I did. To
21 be honest with you, I don't remember.

22 Q. Okay.

23 MR. NORRIS: I'll pass the witness, Your
24 Honor.

25 THE COURT: Very well.

1 Ms. Hamilton, anything further?

2 MS. HAMILTON: Not at this time, Your
3 Honor. I ask subject to recall just in case, but...

4 THE COURT: Right. You are subject to
5 recall, sir, so you're temporarily excused. So remain
6 outside the courtroom.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Unless and until we need you.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Thank you, sir. Thank you.
11 Okay. We are going to take our noon
12 recess.

13 Can we come back at 1:30, that gives us
14 about 55 minutes?

15 MS. HAMILTON: Thank you, Your Honor.

16 MR. NORRIS: I'm at the Court's disposal.

17 THE COURT: Let's do that. Let's do 1:30.
18 Come back at 1:30, please.

19 (Lunch recess taken.)

20 THE COURT: We're on the record. State of
21 Texas versus Antonio Lopez, 20120D04452.

22 Announcement of counsel, please.

23 MS. HAMILTON: Penny Hamilton and Holly
24 Rodriguez for the State. We're ready, Judge.

25 MR. NORRIS: Robin Norris and Jaime

1 Gandara for Mr. Lopez. We're ready, Your Honor.

2 THE COURT: Okay. Very well.

3 Let the record reflect, we have come back
4 from lunch hour.

5 And so who is your next witness, Ms.
6 Hamilton?

7 MS. HAMILTON: Your Honor, that would be
8 Officer Carlos Heredia.

9 THE COURT: Officer Heredia.

10 Let's try to keep it to the issues because
11 I can't -- I obviously can't limit Mr. Norris after
12 you've done what you're going to do, so let's kind of
13 limit it just to issues of the voluntariness of the
14 confession.

15 MS. HAMILTON: Yes, Your Honor.

16 THE WITNESS: May I?

17 THE COURT: Absolutely.

18 You're Officer Heredia?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Very well, sir. How are you,
21 sir?

22 THE WITNESS: Very good.

23 THE COURT: Good. Very good. Take that
24 only seat right there in front of the microphone,
25 please, Officer. I'll put you under oath as soon as you

1 get comfortable.

2 Please raise your right hand to be sworn.

3 (Witness sworn.)

4 THE COURT: Thank you.

5 You may proceed, Ms. Hamilton.

6 MS. HAMILTON: Thank you, Judge.

7 OFFICER CARLOS HEREDIA,

8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. HAMILTON:

11 Q. Officer Heredia, could you please state your
12 full name, spell your last name, and indicate where you
13 work?

14 A. Yes. It's Carlos Heredia, H-E-R-E-D-I-A.
15 Right now I am currently assigned to the El Paso Police
16 Department SWAT team and to Pebble Hills Regional
17 Command on the eastside of El Paso.

18 Q. Were you working as a police officer on August
19 1st, of 2012, at around 1:35 in the morning?

20 A. Yes, I was.

21 Q. And did you have an occasion to be dispatched
22 to an address, 1701 Villa Santos in El Paso County,
23 Texas?

24 A. Yes, ma'am.

25 Q. What was the purpose of you going there? What

1 was the dispatch?

2 A. It was to pick up a wanted subject.

3 Q. And do you see the individual that you made
4 contact with at that address, who has since been name
5 the defendant in this case, here in the courtroom today?

6 A. Yes, ma'am.

7 Q. Could you please indicate where he is seated
8 and what he's wearing?

9 A. He seated right here to my left. He's wearing
10 an orange with white, stripe jumpsuit.

11 Q. Now, Officer, did you transport the defendant
12 some where that evening.

13 A. Yes, ma'am, I did.

14 Q. Where did you take him?

15 A. To -- from where we had picked him up to Pebble
16 Hills headquarters -- to headquarters on Raynor.

17 Q. On Raynor?

18 A. Yes.

19 Q. You said Pebble Hills Headquarters?

20 A. No, it's going to be headquarters on Raynor.

21 Q. The police headquarters?

22 A. Yes.

23 Q. Okay. And how did you transport him?

24 A. In a marked patrol unit.

25 Q. Was he under arrest?

1 A. He didn't have handcuffs on.

2 Q. So was he under arrest?

3 A. No.

4 Q. Okay. Was he in the front seat of your
5 vehicle, the back seat of your vehicle?

6 A. He was in the back seat of my vehicle.

7 Q. Did you happen to read the defendant his rights
8 prior to placing him in your vehicle?

9 A. Yes, I did.

10 Q. Why did you do that?

11 A. Because of some of the statements that he had
12 told my partner.

13 Q. Such as?

14 A. That he had a --

15 MR. NORRIS: Objection to hearsay, Your
16 Honor.

17 THE COURT: Sustained.

18 Q. (BY MS. HAMILTON) Based on the information
19 that you received, you read him his rights from a card
20 or did you do it from memory?

21 A. Yes, ma'am, from a card.

22 Q. Okay.

23 A. I read it word-for-word off of a card.

24 Q. And when you did that, did the defendant
25 acknowledge his rights?

1 A. Yes, ma'am, he did.

2 Q. Did he put his signature on that card?

3 A. Yes.

4 Q. Did you make a copy of that card and take the
5 original into evidence?

6 A. Yes, ma'am, I did.

7 MS. HAMILTON: May I approach, Your Honor?

8 THE COURT: Yes.

9 Q. (BY MS. HAMILTON) Officer, I'm showing you
10 what's been marked, for identification purposes for this
11 hearing, as MS-5 which is written in red on this piece
12 of paper --

13 THE COURT: Did I miss MS-4?

14 MS. HAMILTON: I used --

15 THE COURT: Did you skip one? You're
16 going to use 4?

17 MS. HAMILTON: I am going to do 4, that's
18 going to be statement. I'm sorry, Judge.

19 THE COURT: Got it.

20 Q. (BY MS. HAMILTON) Do you recognize this paper
21 that was a copy of --

22 A. Yes, I do.

23 Q. What is it?

24 A. It's going to be the warnings given before any
25 questioning.

1 Q. And how do you know this is the warnings that
2 you gave to this particular defendant?

3 A. On the top I did have my name, and my badge
4 number, and then once I'm reading all the information
5 that's on the card, I asked him to please sign at the
6 bottom.

7 Q. And did the defendant sign this card in your
8 presence?

9 A. Yes, he did.

10 Q. And does this piece of paper that's marked
11 MS-5, does it contain a copy of that Miranda warning
12 card the exact or the exact copy of the card of the
13 rights that you read that day?

14 A. Yes, it does.

15 MS. HAMILTON: Your Honor, for purposes of
16 this hearing, State moves to introduce into evidence
17 MS-5.

18 (Exhibit offered, State's MS-5.)

19 THE COURT: Any objection, Mr. Norris?

20 MR. NORRIS: May I just see it for one
21 second more?

22 MS. HAMILTON: If the record will reflect
23 that I am handing the document to defense counsel.

24 THE COURT: Yes, ma'am.

25 MR. NORRIS: No objection, Your Honor.

1 THE COURT: Very well. MS-5 admitted.

2 (Exhibit admitted, State's MS-5.)

3 MS. HAMILTON: Thank you. May I approach
4 the court reporter?

5 THE COURT: Yes, ma'am.

6 Q. (BY MS. HAMILTON) Now, Officer, after you read
7 the defendant his rights, did you place him under
8 arrest?

9 A. He wasn't in custody. I placed him in the back
10 of my unit. I turned on the camera and turned on the
11 microphone in the vehicle.

12 Q. Okay. And I understand he wasn't in cuffs, but
13 did you tell him he was under arrest?

14 A. I hadn't told him that he was under arrest.

15 Q. You had not?

16 A. No.

17 Q. Did you consider him to be under arrest once
18 you put him in the back of your car to take him to
19 Crimes Against Persons?

20 A. Well, at the time that he was going to be
21 wanted for the questioning.

22 Q. Okay. So did you consider him to be under
23 arrest?

24 A. Well, yes.

25 Q. You considered him to be under arrest?

1 A. When I transported him over there, yes.

2 Q. Okay. And what was it about him being under
3 arrest, or what is it about the way you transported him
4 that made you feel he was under arrest?

5 A. Just the fact that we were driving over there
6 and I had him in the back of my police car.

7 Q. Okay.

8 A. And I had already read him his rights to remain
9 silent, so on, and so forth.

10 Q. Okay. Did you know anything about the offense
11 that he had been accused or that he was confessing to
12 supposedly?

13 A. Just what I had from the computer itself.

14 Q. Okay. And so when you transported him in your
15 vehicle, you said you turned on the camera?

16 A. Yes.

17 Q. And you recorded the trip from the residence,
18 where you picked him up, all the way to Crimes Against
19 Persons?

20 A. Yes.

21 Q. And during that time, did you question the
22 defendant at all?

23 A. No, I did not.

24 Q. Was there any conversation that you had with
25 him on the drive down there?

1 A. No, ma'am.

2 Q. When you got to headquarters, was he handcuffed
3 when he got out of the vehicle?

4 A. No, he was not.

5 Q. Did he accompany you into headquarters?

6 A. Yes.

7 Q. And when you got to headquarters, what did you
8 do with him? I mean, where did you-all go?

9 A. The detectives were -- had already been
10 notified, so I just turned him over to detectives and I
11 wrote my statement.

12 Q. Okay. And at any time, did you ever see the
13 defendant ever placed in handcuffs?

14 A. No.

15 Q. Did you ever hear any police officer or
16 detective, anyone from El Paso Police Department, tell
17 the defendant that he was under arrest?

18 A. No.

19 MS. HAMILTON: Pass the witness.

20 THE COURT: Mr. Norris?

21 MR. NORRIS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. NORRIS:

24 Q. Officer, now I'm a little bit confused about
25 whether he was actually under arrest or not.

1 MS. HAMILTON: Judge, I'm going to have to
2 object, that is a statement. It's a sidebar. I ask
3 that he asked questions.

4 THE COURT: Your response to that being a
5 sidebar, Mr. Norris?

6 MR. NORRIS: Well, Your Honor there's a
7 question coming. I don't have any further response.

8 THE COURT: Okay. Overruled.

9 Q. (BY MR. NORRIS) What gave you the impression
10 that he was under arrest?

11 A. Like I said, I read him his rights, and I
12 placed him in the back of my unit to transport him over
13 there to headquarters.

14 Q. Were you specifically instructed to place him
15 under arrest by anyone?

16 A. No.

17 Q. For example, was your sergeant present at the
18 scene?

19 A. My sergeant was present at the scene.

20 Q. Were you instructed by your sergeant to place
21 him under arrest?

22 A. No, I wasn't.

23 Q. Did you receive a dispatch from any source in
24 the police department ordering you to place him under
25 arrest?

1 A. No.

2 Q. Is it your testimony that you believed him to
3 be under arrest because you believed that he was not
4 free to leave?

5 A. He's in the back of my patrol car when I'm
6 driving.

7 Q. If he had said to you, you know, what I changed
8 my mind. I'm just going to go home and go to bed, would
9 you have released him?

10 A. Not at that time, no.

11 Q. Would you have checked with your sergeant
12 before making that decision?

13 A. Before letting him go?

14 Q. Before deciding whether to release him?

15 A. I was taking him directly from the scene to
16 headquarters.

17 Q. No. At the scene, if he had said, look, I
18 changed my mind. I don't want to go anymore. I'm just
19 going to go inside and go to bed. Would you have
20 released him?

21 A. No.

22 Q. Would you have checked with your sergeant
23 before making a decision whether to release him?

24 A. It's possible.

25 Q. Okay. Did you have a warrant for his arrest?

1 A. At the time, no.

2 Q. Were you informed by anybody that a warrant for
3 his arrest existed?

4 A. No.

5 Q. Did he commit any offense within your view?

6 A. No.

7 Q. Did he make any statement to you which was a
8 confession, which you think would have been admissible
9 in evidence at trial, in court?

10 A. To me directly, no.

11 Q. And you asked him no questions during your
12 trip?

13 A. No.

14 Q. And had no conversation with him, if I
15 understand you directly, is that right?

16 A. That is correct.

17 Q. Do you remember which detective you turned him
18 over to?

19 A. The detective there was Hinojos I believe is
20 his, last name.

21 Q. Okay.

22 MR. NORRIS: I'll pass the witness, Your
23 Honor.

24 THE COURT: Ms. Hamilton?

25 MS. HAMILTON: Not at this time, but ask

1 that he --

2 THE COURT: Be subject to recall?

3 MS. HAMILTON: -- be subject to recall?

4 THE COURT: Your subject to recall, sir.
5 Please step outside.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: And just remain on this floor
8 in case your called.

9 (Witness excused from courtroom.)

10 THE COURT: Your next witness, Ms.
11 Hamilton?

12 MR. NORRIS: May I just make a statement
13 for the record at this point, Your Honor.

14 THE COURT: Okay.

15 MR. NORRIS: Of course, I have no idea
16 what evidence will be admitted next, but I just wanted
17 to place on the record the fact that I do not believe
18 that we have been furnished, as a part of the discovery
19 material in this case, any video recording involving
20 this officer with the transport.

21 MS. HAMILTON: He absolutely has, Your
22 Honor. This is the copy of it. He has received a copy
23 of all of these materials. This is a video recording of
24 the defendant being transported. It's -- unfortunately
25 it only has audio for about half of it, but you can see

1 the camera is facing to ward the officer. You can see
2 officer. You can see the defendant in the back of the
3 vehicle throughout the whole time.

4 He's not talking. There is no
5 conversation taking place, and we did provide a copy of
6 this to the defendant.

7 MR. NORRIS: Yeah, and let me say, I
8 couldn't entirely be mistaken about that. It could be
9 that I took no notice of it for a variety of reasons and
10 I'm happy to accept assurances of this by the District
11 Attorney that we have been furnished with this.

12 THE COURT: Okay. Very good.

13 MS. HAMILTON: Now, what I can do, Your
14 Honor, if you want to see this video, we did make a copy
15 of it.

16 THE COURT: Okay.

17 MS. HAMILTON: I didn't think -- because
18 of the officer's testimony that we needed to go through
19 and play it, but --

20 THE COURT: Right.

21 MS. HAMILTON: -- if the Court...

22 THE COURT: I don't think we need it.

23 MR. NORRIS: It may very well be the case
24 that there is nothing of probative value on it.

25 THE COURT: Right. Very well.

1 Call you next witness.

2 MS. HAMILTON: That would be Detective
3 Jerome Hinojos, Judge.

4 THE COURT: Detective Hinojos, please.

5 MS. HAMILTON: As far as the evidence,
6 with four coming, I'm sorry, Judge.

7 THE COURT: Got it.

8 MS. HAMILTON: I had already put the label
9 on there.

10 THE COURT: You know, we check each other
11 out, right, to make sure.

12 MS. HAMILTON: Yes, ma'am.

13 THE COURT: To make sure didn't skip, we
14 didn't do. We're good.

15 (Witness present in courtroom.)

16 THE COURT: Detective, good afternoon.

17 THE WITNESS: Good afternoon, Judge.

18 THE COURT: Have a seat in that blue
19 chair. Scoot your chair close into the microphone, and
20 I'll put you under oath. Get comfortable.

21 Please raise your right hand to be sworn,
22 Detective.

23 (Witness sworn.)

24 THE COURT: Very well.

25 Go ahead, Ms. Hamilton.

1 MS. HAMILTON: Thank you, Judge.

2 DETECTIVE JEROME HINOJOS,
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. HAMILTON:

6 Q. Would state your full name, spell your last
7 name and indicate where you work, sir?

8 A. My name is Jerome Hinojos, H-I-N-O-J-O-S. I
9 work with the El Paso Police Department as a detective.
10 I been there for a little over 17-and-a-half years.

11 Q. In what capacity are you working now, sir?

12 A. Right now I handle civilian administrative
13 investigations and I do polygraphs for the department.

14 Q. How long have you been doing that?

15 A. I have been doing that for a little over --
16 coming up on two years.

17 Q. Prior to that, where were you assigned?

18 A. I was assigned to Crimes Against Persons.

19 Q. In what capacity?

20 A. As a detective.

21 Q. And were you the detective that was assigned to
22 this case involving this defendant?

23 A. Yes, I was.

24 Q. Now, on the 31st of July, of the year 2012, you
25 participated in a conversation -- a recorded

1 conversation with the defendant?

2 A. Yes, I did.

3 Q. And the other detective with you was?

4 A. Detective Arturo Ruiz.

5 Q. Now, during that entire conversation that you
6 had with the defendant, it was all recorded?

7 A. Yes, it was.

8 Q. When that conversation was finish, did the
9 defendant leave?

10 A. Yes, I walked him to the front of the police
11 headquarters and him and his wife were there when I
12 walked to the back, so they were still there, but they
13 were free to go.

14 Q. Okay. And during the time that the statement
15 was being taken on the 31st, this is the second
16 statement that the defendant gave?

17 A. That is correct.

18 Q. Throughout that time was he free to leave?

19 A. Yes, he was.

20 Q. And so this statement is completed, it's about
21 10:08 in the evening?

22 A. Yes.

23 Q. After that statement is done, Detective
24 Hinojos, when you walked the defendant to the front
25 door, did you stay there at Crimes Against Persons or

1 did you go home or what did you do?

2 A. We stayed and did a little bit of -- we had to
3 finalize the disc to finish the recording, annotate any
4 writings on there, case number, date, a thing of that
5 nature. And then shut down all the equipment that there
6 was there at the office and then we left.

7 Q. And when you say "we" would you tell the
8 Court --

9 A. I'm sorry about that. By "we" I mean myself
10 and Detective Ruiz.

11 Q. Okay. Later on that night, or very early the
12 next morning, did you receive a phone call regarding the
13 case and the defendant?

14 A. That's correct. I received a call from my
15 supervisor, Sergeant Karen Kozak, that the defendant had
16 called 911 and had requested for us to get him.

17 Q. Okay. Do you recall approximately what time?

18 A. Approximately about 2:00 a.m.

19 Q. And were you home at this time?

20 A. Yes, I was.

21 Q. What did you do when you received that call?

22 A. I dressed again. I headed out to the police
23 headquarters and met with a patrol officer who had met
24 with the defendant.

25 Q. All right. And this is all at headquarters on

1 911 North Raynor?

2 A. That is correct. 911 North Raynor, police
3 headquarters.

4 Q. When you made contact with the defendant,
5 Detective Hinojos, is he handcuffed?

6 A. No, he wasn't.

7 Q. In your opinion, it -- was he under arrest?

8 A. No, he wasn't.

9 Q. If once you got to police headquarters the
10 defendant had said, you know what, never mind. I don't
11 walk to talk to you any more.

12 Would he have been free to leave at that
13 point?

14 A. Yes, he would have.

15 Q. Ultimately, was the defendant placed under
16 arrest for the offense of capital murder?

17 A. Yes, he was.

18 Q. When did that happen?

19 A. That happened after we took the defendant's
20 third statement.

21 Q. Okay. And were you the person who personally
22 arrested the defendant?

23 A. Yes, I was.

24 Q. When -- and you're talking about the third
25 statement, was that taken that evening or the early

1 morning hours of the first of August?

2 A. That is correct.

3 Q. And during the taking of that statement, was he
4 under arrest at that point?

5 A. No, he wasn't.

6 Q. And what point, you know, during the taking of
7 the statement, did -- in your mind, did you decide he
8 was going to be under arrest or was under arrest, at any
9 time, during the taking of that statement?

10 A. No, that wasn't until after we had taken the
11 statement and we met with each other, with myself and
12 Detective Ruiz.

13 Q. Okay. And where was the defendant when he was
14 providing this third statement to you?

15 A. He was in an interview room, there at the
16 police headquarters, in the Crime's Against Persons
17 section.

18 Q. Who else was present, at that time, in the
19 Crime Against Persons section?

20 A. In the section itself?

21 Q. Sure, yes.

22 A. Detective Ruiz arrived and then it was the
23 patrol officer that brought him in.

24 Q. Okay. Anybody else?

25 A. No.

1 Q. And did you immediately begin taking a
2 statement from the defendant after he got there?

3 A. No, actually I had him sit down in the
4 interview room and in the process of me initiating the
5 video, my phone ringing, so I answered it. It was
6 actually the defendant's wife.

7 Q. Okay.

8 A. Pearl.

9 Q. It was his wife?

10 A. Yes, it was.

11 Q. Had you had previous conversations with her?

12 A. Yes, I had.

13 Q. So you recognized the voice and knew who it
14 was?

15 A. Yes, I did. I recognized her voice and she
16 identified herself as soon as I answered the phone.

17 Q. Okay. And so you had the conversation, without
18 telling us what was said, about how long did that
19 conversation take place?

20 A. About -- maybe about ten minutes.

21 Q. Okay. So when you finished with this
22 conversation with the defendant's wife, what do you do
23 next?

24 A. Then that's when I go ahead and I went in and I
25 head to the interview with the defendant.

1 Q. All right. Now, did you ask the defendant if
2 he would be willing to provide a recorded statement for
3 you?

4 A. Yes, I did.

5 Q. And did he consent to do that?

6 A. Yes, he did.

7 Q. Did you ever threaten the defendant in any way
8 to give you this recorded statement?

9 A. No, I did not.

10 Q. Did you ever promise anything, directly or
11 indirectly, in exchange for giving you this third
12 statement?

13 A. No, I did not.

14 Q. Did you ever deprive him of any sort of basic
15 necessity, food, drink, restroom, things of that nature?

16 A. No, I did not.

17 Q. Any during this statement or at the beginning
18 of his statement, did you read the defendant his rights?

19 A. Yes, I did.

20 Q. Did you do that from a card or did you do it
21 from memory?

22 A. From a card.

23 Q. And at the beginning of the statement, these
24 right that you're reading to him, they're recorded?

25 A. Yes, they have.

1 Q. On that third statement?

2 A. Yes, they are. On every statement we took from
3 the defendant.

4 Q. Okay. And after you read the defendant all of
5 his rights, did he voluntarily waive those rights and
6 agree to speak with you?

7 A. Yes, he did.

8 Q. Okay. And you -- you have participated in how
9 many statements with this defendant, up to this point?

10 A. I had participated in two. The first statement
11 was Detective Ruiz on his own.

12 Q. Okay. So you're counting the second statement
13 where the defendant left and then this last statement?

14 A. That is correct.

15 Q. Okay. And is anybody else in this room with
16 you when you take this statement from the defendant?

17 A. The third one, no.

18 Q. At any time, during the taking of this
19 statement, did the defendant ever stop and ask for an
20 attorney?

21 A. No, he did not.

22 Q. And any time, during the taking of this third
23 statement, does he ever indicated that he did not want
24 to talk to you any more?

25 A. No, he did not.

1 Q. And at any time did the defendant, during the
2 taking of this third statement, indicated to you that he
3 no longer wanted to waive his rights and didn't want to
4 speak with you?

5 A. No, he did not.

6 Q. And the statement that was taken on the first
7 of August, that you are speaking about, it was
8 completely recorded?

9 A. Yes, it was.

10 Q. Did you have a chance to review that recorded
11 statement in it's entirety?

12 A. Yes, I did.

13 Q. Did the entire statement -- was the entire
14 statement recorded from beginning to end?

15 A. Yes, it was.

16 Q. And the equipment was functioning properly?

17 A. Yes, it was.

18 MS. HAMILTON: May I approach the witness?

19 THE COURT: Yes, ma'am.

20 Q. (BY MS. HAMILTON) I'm going to show you what's
21 been marked, for identification purposes, as State's
22 Exhibit MS-4.

23 Is this the copy of the interview that you
24 had a chance to review from beginning to end?

25 A. Yes, it is.

1 Q. And is this the third statement that you took
2 from the defendant in this case?

3 A. Yes, it is.

4 MS. HAMILTON: Your Honor, at this time
5 State would move, for purposes of this hearing, to
6 introduce State's MS-4.

7 (Exhibit offered, State's MS-4.)

8 THE COURT: Mr. Gandara, any objection?

9 MR. GANDARA: We object to it on the
10 grounds, stated in the motion to suppress, this
11 statement and the other statements in this case.

12 THE COURT: Very well. Objection
13 overruled. MS-4 admitted for purposes of this hearing
14 only.

15 (Exhibit admitted, State's MS-4.)

16 MS. HAMILTON: May I publish?

17 THE COURT: Yes, ma'am.

18 (DVD being played in open court.)

19 THE COURT: Is there a lot of this
20 silence?

21 THE WITNESS: About 15 minutes of silence.

22 THE COURT: 15 minutes of silence?

23 THE WITNESS: Yes.

24 THE COURT: Fast forward it.

25 MS. HAMILTON: If there is no objection by

1 the defense?

2 THE COURT: Mr. Norris, are you okay with
3 that?

4 MR. NORRIS: I think it's Mr. Gandara's...

5 THE COURT: Oh, Mr. Gandara. I'm sorry.

6 MR. GANDARA: No, Your Honor. I have no
7 objection to fast forwarding this.

8 THE COURT: Thank you. There was nothing.

9 THE WITNESS: You'll see the door opening,
10 and when the door opens is when --

11 THE COURT: The audio begins?

12 THE WITNESS: That's the beginning.

13 THE COURT: Thank God I asked.

14 Q. (BY MS. HAMILTON) Detective, let me ask you
15 while we're watching this. Does this -- is this when
16 you're having your phone conversation that you were
17 talking about?

18 A. That is correct. I had gone into the separate
19 room to initiate the video, and when I initiate that
20 video, that's when it starts. I go back to my desk to
21 get the card, the Miranda card, and when I'm at my desk
22 is when the phone rings.

23 (DVD being played in open court.)

24 INTERVIEW OF ANTONIO N. LOPEZ,

25 BY DETECTIVE HINOJOS:

1 Q. My name is Detective Hinojos. I'm with the El
2 Paso Police Department, okay? We're at 911 North
3 Raynor, okay. Right now, today is now Wednesday, August
4 the 1st and it's 3:17 a.m. Okay. We're gonna be
5 talking reference to case number 12-210152, all right?

6 Can you give me your name, please?

7 A. Antonio N. Lopez, Jr.

8 Q. Okay. And the N stands for?

9 A. Nunez.

10 Q. Okay. And your date of birth?

11 A. March 19th, 1985.

12 Q. And your Social Security number?

13 A. 525-57-0560.

14 Q. Okay. And what's your address?

15 A. 1701 Villa Santo Circle, El Paso, Texas, 79935.

16 Q. Okay. All right. Mr. Lopez, before we do any
17 further, I'm going to read you your rights, okay?

18 A. (Nodding.)

19 Q. Right now you were read your rights again
20 before. You said you understood them. I'm gonna read
21 them once more, okay?

22 A. Okay.

23 Q. Warning to be given before questioning.

24 You have the right to remain silent and
25 not to make any statement at all. And any statement you

1 make may be used against you at trial.

2 Do you understand that?

3 A. Yes, sir.

4 Q. Any statement you make may be used as evidence
5 against you in court.

6 Do you understand that?

7 A. Yes, sir.

8 Q. You have the right to have a lawyer present to
9 advise you prior to and during any questioning.

10 Do you understand that?

11 A. Yes, sir.

12 Q. If you are unable to employ a lawyer, you have
13 the right to have a lawyer appointed to advise you prior
14 to and during any questioning.

15 Do you understand that?

16 A. Yes, sir.

17 Q. You have the right to terminate the interview
18 at any time.

19 Do you understand that?

20 A. Yes, sir.

21 Q. If you are not a United States citizen, you
22 have the right the contact your consulate?

23 Do you understand that?

24 A. Yes, sir.

25 Q. Are you a United States Citizen?

1 A. Yes, sir.

2 Q. Now, here it says, I understand my right and I
3 hereby knowingly, intelligently, and voluntarily waive
4 these rights.

5 Do understand that?

6 A. Yes, sir.

7 Q. Okay. By talking to me, you'll be waiving your
8 rights. You understand that?

9 A. Yes, sir.

10 Q. Okay. Mr. Lopez, the reason it took a while
11 for me to get back in here is because my phone was
12 ringing and it was Perla. The reason when you said you
13 were calling before, it was because it's our office
14 number, and we weren't in our offices.

15 A. Oh.

16 Q. That's why, okay?

17 A. So my wife called you?

18 Q. Yes, I was talking to her right now. Okay?

19 A. Is she okay?

20 Q. She's upset, you know. But you know she's like
21 -- like a lot of us. She wants answers, you know. We
22 were here earlier you know. We were here for quite a
23 while, and I just want to make sur that right now you're
24 here of your own free will.

25 A. Yeah.

1 Q. Nobody has forced you to come here?

2 A. No.

3 Q. Okay. How did you get her?

4 A. One of the police officers brought me.

5 Q. You came in a patrol car?

6 A. Yes.

7 Q. Were you handcuffed?

8 A. No.

9 Q. Okay. All right. All right. Did -- did any
10 of the officers, did they advise you of your rights?

11 A. Yes.

12 Q. Yes. Okay. Did they read them from a card
13 like I did?

14 A. Yes.

15 Q. Okay. All right. Did anybody -- did anybody
16 tell you to come here and what you're gonna tell me, did
17 anybody tell you what to say?

18 A. No.

19 Q. Okay. All right. All right, Mr. Lopez, what
20 happen on July the 28th, that Saturday, with Jayla?

21 A. You know, for the of best me, I -- I can't even
22 -- I don't even know why, you know. It's just...

23 Q. What was going on?

24 A. Nothing.

25 Q. Tell me -- tell me what's going on. Were -- I

1 mean, is what you told us before, was it the truth?

2 A. Yeah.

3 Q. I mean, were you there in the house?

4 A. Yeah, I was there. I mean, everything I said
5 about me going to the office, kitchen, everything was --
6 was the truth. I mean, we weren't having any marital
7 problem or nothing. I mean, nothing like that. I -- I
8 don't know. I just -- something -- I don't know. Just,
9 I feel like something must have got ahold of me, you
10 know, and you know, I'd like to believe that 27 years of
11 my life, you know, I spent them, well, you know,
12 excellent.

13 You know, I met my wife, you know, had two
14 beautiful kids, you know. Who'd jeopardize that? You
15 know, I was going to Bible college. You know, I
16 graduated from college, you know. And I was having some
17 trouble finding a job, but I mean, that's not, you know,
18 nothing like that would, you now, for us would cause
19 anything like that. I just -- I just had a -- I had a
20 blast, you know, watching my kids grow. I mean, you
21 name it.

22 You know, for the best of me, I, you know,
23 I don't know why. I woke up that morning and -- very
24 happy. We were both playing and we were giggling and my
25 wife woke up to that and, you know, that's the honest

1 truth, you know. Making sounds and -- and honestly, I
2 just, I don't know, you know. I didn't wake up with --
3 with a mentality of saying this is what I'm gonna do
4 today. I mean, I didn't, you know -- please don't think
5 that of me.

6 I don't know. It's just around that time
7 -- it happened around, I don't know, 10, 15 minutes
8 before we called the ambulance, I don't know. I just
9 picked her up from the crib and -- and I don't know.
10 She just -- she just started crying, but she kind of
11 started, you know, like she didn't want to be with me.
12 And honestly, you know, honestly, I don't know nothing
13 about the head, you know. I don't know.

14 I just put her down on the floor and --
15 and I stomped on her like two times; two, three times,
16 but the head, you know, I can honestly say that I don't
17 know. I didn't hit it. I mean, I would think I would
18 have scuff marks. I didn't kick her because I have
19 ingrown toenails. I mean, you know, for the best of me,
20 I just don't know. It's like something -- something go
21 ahold of me, you know, and I don't know, you know.

22 Q. You were wearing those shoes?

23 A. No, I think was barefoot.

24 Q. You were barefoot?

25 A. Yeah, I think I was barefoot when the ambulance

1 came. I'm pretty sure because I changed clothes and
2 all. I was wearing some shorts and stuff. You know, I
3 wish I could give you some answers as to why. I mean, I
4 didn't --

5 Q. Can you -- can you show me how you went to the
6 crib? And was she in the crib when you went in?

7 A. Yeah, she was standing up in the crib.

8 Q. Can you show me? Show me. Show me like that
9 was the crib right there?

10 A. Yeah, she was in and I just got her like this
11 and, you know, got her like that, you know, the head
12 this way.

13 Q. She didn't want to be with you?

14 A. Yeah, I guess so. She was just -- you know.
15 You know. And I don't know, at that time --

16 Q. Did you sit down like you're sitting down right
17 there?

18 A. Yeah. I sat on the bed, and then, I mean...

19 Q. She's in your arms?

20 A. Yeah, I mean, it would be so much easier to
21 just -- just call my wife, you know, and just say, hey,
22 you know, help me. And I put her on the floor.

23 Q. Show me. Show me how you put her on the floor.

24 A. I put her on the floor. And she went like that
25 and I just -- I guess I was so --

1 Q. Okay. But you placed her on the floor and then
2 what?

3 A. Yeah, I was just so upset, and you know, just
4 stomped on her like... I was wearing --

5 Q. Show me how you stomped on her.

6 A. You know. (Demonstrating.) And you know, I
7 don't know, Detective, honestly, I -- you know, please
8 don't think that I woke up that day with that kind of,
9 you know, mentality that I'm gonna hurt somebody. No.
10 I mean, because, you know --

11 Q. Were you frustrated with her?

12 A. I wasn't frustrated. I mean, you can even ask
13 my wife. I mean, for the past week and a half, almost
14 two weeks, she was making great strides, you know, with
15 me. She would give me her arms. We'd imitate sounds
16 together, we'd giggle, you know, so I don't know. It's
17 just -- I just don't -- you know. I guess at that point
18 I was -- I just got, you know, like why don't you want
19 to, you know, come with me, you know.

20 At the time my girls weren't there, Kayla
21 and Rebecca. They -- my wife did tell me to bring them
22 into the room, you know. For the most part I did. I
23 did have them in the room. There was a time when they
24 got up. And it was around that time when they got up.
25 They went over there, you know. That's when that

1 happened.

2 Q. So then that happens? Show me. You stomped on
3 her again. Can you show me again?

4 A. I just went like that, you know.

5 (Demonstrating.)

6 Q. Okay. With a little bit more force than that,
7 right.

8 A. Oh, right. Yeah.

9 Q. Can you show me at least, more or less?

10 A. Well like... (Demonstrating.)

11 Q. Okay. And then -- then what happened? Did you
12 pick her up? What happened?

13 A. Yeah, I picked her up and -- and you know --

14 Q. Was she crying? What was she -- does she
15 whimper or what?

16 A. No, she'd cry. She was just like -- I guess
17 she was just like trying to gasp for air, you know. And
18 then I felt her body limp. And I put her back in the
19 crib and I tried to pick her up, you no, sit her up and
20 -- but she wouldn't, you know. So I picked her back up
21 and that when I called my wife.

22 Yeah. You know, I -- you know, I don't
23 know. I have no prior crimes, you know. I think the
24 most I've ever had was a ticket, you know. I -- I did
25 spend one night in jail, but that's just because I

1 didn't pay a ticket, you know. I never hit my kids with
2 the belt. I -- I never hit my wife, you know. You
3 know, I let so much people down. And I don't know.

4 Q. What's the name of your two-year-old daughter?

5 A. Kayla.

6 Q. Kayla?

7 A. Yeah.

8 Q. What -- well, let me ask you this. What --
9 what do you think? What do you think happened?

10 A. Oh, to me?

11 Q. Yeah.

12 A. Well, I don't now what the law is here. I
13 just, you know, I wouldn't like to be on that death row
14 whatever they call it. I wouldn't like to die, you now.
15 I'm sure I'd -- I'd die someday. I just wouldn't like
16 to be in line to die, you know what I mean?

17 Q. What does your bible study tell you about that?

18 A. About?

19 Q. Something like this?

20 A. Well, I mean, it's happened. You know, it
21 happened Moses, you know.

22 Q. But what does -- what does the Bible say?
23 What's the --

24 A. Oh. Well, I mean, if you come wholeheartedly,
25 you know, before God, you now, the Bible says that if

1 you confess any -- any sins unto him, you know, he'll
2 forgive you. You know, there are portions in the Bible
3 that says you, you know, you do have to be held
4 accountable, you now, unto the laws of man, and
5 obviously unto the laws of god. I mean, I'd like to one
6 day get out, you know. Obviously, I'm sure anybody
7 would, you know, obviously one day.

8 Q. How would you feel if somebody put Kayla on the
9 ground and stomped her like that?

10 A. Yeah, you know, I would be angry, just as angry
11 as her family members.

12 Q. What would you want to happen the that person?

13 A. Well, I'd like for them to pay for what they've
14 done, you know. I'd like for them to say behind bars,
15 you know. I know that's hard, coming from me, saying
16 that when I -- when I'd like an opportunity to get out,
17 you know. It's something that I'm gonna have to live
18 with, you know. I -- I can't hug my kids anymore, you
19 now. I can't hug my wife, kiss my wife, I mean, you
20 know, watch them grow up. You know, I had the
21 opportunity and the privilege of watching my, you know,
22 my four-year-old, the first day of Headstart. That's,
23 you know, something that I can hold on dear to, but not,
24 you now, anything from then on.

25 I don't know, Detective, honestly. Please

1 don't think I woke up like that with that kind of
2 mentality. I -- it was just in that moment, you know,
3 in that instant, you know. It would have been so much
4 easier to just say, Pearl, you know can you help me.
5 You know, I'm a little frustrated or impatient or
6 whatever, you know. Just help me out for a little bit.
7 Let me go cool off. Let me walk off and -- and come
8 back, you know.

9 Q. How much longer was Jayla gonna be with you
10 guys?

11 A. Just till Wednesday, the 1st of August.

12 Q. Till today, right?

13 A. Wednesday, yeah. That's the hard part, you
14 know. That's --

15 Q. She would have been able to be with her family
16 today, right?

17 A. Yeah. Yes, sir. And I took that away. I did.
18 You know, the moment -- it's a spur-of-the-moment
19 mistake. You know, people -- yeah, people do make
20 mistakes, but you know, mistakes like these, you know,
21 they need to be held accountable for. It was just in
22 that moment, in that time frame, you know, that it
23 happened.

24 Yes, I did negate it at the beginnings.
25 You know, yes, I did deny it. And yes, I did deny it,

1 you know, to day, or the day before, whatever,
2 yesterday. And the only reason I denied it yesterday or
3 today, you know, was just so I could see my family
4 again, you know, so I could see my wife and my girls,
5 you know, one more time, be able to hug them, kiss them,
6 and just tell them that I love them. And that I made a
7 mistake and -- and that I have to pay for it.

8 Never it -- never in my life did I think
9 that I would be doing something like that, you know.
10 You just don't think that. You know, here I am, you
11 know. I'm 27, I'm, you know, college graduate, you
12 know, family, wife, two kids, beautiful kids, a home.
13 Nobody thinks about losing that, you know. I just...

14 Q. Did you really want to do foster parenting?

15 A. Honestly, yes. You know, I did. I did. We
16 did want to open our home, you know, our -- our arms to
17 -- to the children. My wife and I talked about --

18 Q. And why? Why?

19 A. Why?

20 Q. Why do that?

21 A. Oh, why Jayla? I don't know. Honestly, I wish
22 I could answer that. I don't know. It was just in
23 that --

24 Q. You sure you didn't like --

25 A. -- in that moment.

1 Q. When you grabbed her, you didn't drop her or
2 anything like that and then -- and then stomp?

3 A. No. No.

4 Q. I mean, come on. We're being honest. All
5 right?

6 A. I know. Yeah. Yeah.

7 Q. I mean, are you telling me the truth?

8 A. We're being totally honest. And that part, I
9 don't know, you know. I can honestly -- I don't know.
10 You know, that, I don't know. Okay. But the other
11 part, yes.

12 Q. Okay. When you picked her up, you -- how did
13 you put her back in the crib?

14 A. Just normal, like if there were --

15 Q. You just placed her back in there?

16 A. Yeah, just placed her back.

17 Q. What did her eyes look like?

18 A. Just, you know, what I had said, you know, kind
19 of cross-eyeded [sic], rolled back. You know, that's
20 something I'm gonna have to live with, that image, you
21 know. Here I am trying to get, you know, an image of my
22 wife and kids, you know. Well, that's part of it, too,
23 you know.

24 We honestly went into foster care with --
25 with that heart. I mean, you really need to have a

1 special kind of heart to do it in. And yes, I mean, I
2 know this happened, you know, but honestly, believe me,
3 you know, we did go in with a whole heart, you know, to
4 honestly helping these children. You know, we -- we
5 helped our in-laws and I really -- I really enjoyed it,
6 you know, especially --

7 Q. Well, at least, you're lucky. At least you're
8 lucky that you had that last image of her. At least she
9 had some kind of life in her, not the image that I --
10 the last I imagine I have of Jayla?

11 A. Yeah, I understand.

12 Q. Like I told you, when they cut her open and
13 they -- that blood poured out of her stomach --

14 A. Yeah.

15 Q. -- then I saw those -- saw her liver was cut
16 and the doctor said it had to be a significant amount of
17 force.

18 A. Yeah.

19 Q. At least you don't have to live with that
20 image.

21 A. Yeah. Yeah.

22 Q. That's something I have to live with.

23 I'm gonna take a break. I'll be right
24 back then. It's 3:36.

25 A. There's not a room I could -- I could lay or

1 something?

2 Q. Yeah. (Unintelligible.)

3 A. I guess I'm a little sleepy.

4 Q. Hold on.

5 A. Oh.

6 Q. Just -- I'll be right back.

7 A. Okay.

8 (Break in DVD interview.)

9 THE COURT: How long is the silence here?

10 THE WITNESS: About three minutes.

11 MS. HAMILTON: Do you want me to go ahead
12 and fast forward?

13 THE COURT: I'm sorry?

14 MS. HAMILTON: Do you want me to go ahead
15 and fast forward?

16 THE COURT: Please.

17 (DVD resuming.)

18 Q. (BY MR. HINOJOS) After you -- you stomped on
19 Jayla and-- Jayla and picked her up and -- and placed
20 her back in there, did you -- did you try to help her in
21 any way?

22 A. What do you mean?

23 Q. I know you said you kin of st her up, but did
24 you try to do anything else for her? You said, you
25 know, like -- did she look like she was trying to get --

1 you know, like she was having trouble breathing? Did
2 you try to do anything like CPR, anything like that?

3 A. Oh, no. I blew in her mouth a little bit, you
4 know, I think two or three times -- like two or three
5 times, you know.

6 Q. Did you -- did you Google anything as far as
7 like what to do? Like did you go to your computer --

8 A. Oh, no.

9 Q. -- and see -- try to find out --

10 A. No. No.

11 Q. -- if you did anything?

12 A. No. And my computer is there. Well, mine has
13 a virus, but my wife's is there. No. No. I didn't --

14 Q. You didn't --

15 A. No.

16 Q. You didn't try to look anything up?

17 A. No. You can check. No.

18 Q. Okay.

19 A. There's nothing on there.

20 Q. All right. And -- just, like I said, just to
21 be clear again, you know, she wasn't crying. What was
22 it, I mean, what was it that, you know, caused you to
23 get to that point?

24 A. Detective, I -- I don't know.

25 Q. I mean, she was --

1 A. She was --

2 Q. -- laughing and giggling in the morning. You
3 guys are sharing that moment. From there to stomping on
4 her and --

5 A. No, she --

6 Q. How do you get from -- from giggling and
7 laughing to that? I just -- I guess I'm just trying to
8 understand.

9 A. Yeah, that makes two of us. I mean, no, she
10 wasn't crying. I mean and -- and usually you can hear
11 those cries, you know, cause Jayla would cry, you know,
12 sort of loud. The TV wasn't on that loud. The door
13 was, I think it was semi-open or halfway open. She
14 wasn't crying or anything. I was laying on the bed and
15 -- and watching the -- the TV and, you know, I just
16 happened to turn over, you know, and -- and I mad a
17 sound and she imitated the sound, you know. And I said,
18 Jayla, you know, and she got up, you know, and you know,
19 I grabbed and -- I grabbed her. She just didn't want
20 to, you know, be in my arms and she was having that sort
21 of trouble since she came in.

22 The agency had said, you know, something
23 must have happened when she was with her mom or grandma
24 or something. You know, she didn't have a male role
25 model, so any time a man or a boy would, you know, would

1 be by her she just -- you know, she wouldn't, you know,
2 she wouldn't like to go with you or, you know. And she
3 just did that.

4 And I don't know. I mean, I'm trying to
5 understand, you know. I'm -- I go to church on Sundays,
6 every Tuesday, every Thursday and Friday or every men's
7 Bible study, you know, Bible college on Mondays. You
8 know, I'm trying to understand. You know, I'm trying to
9 figure out why. You know, why would I mess up something
10 good I had going, you know?

11 Q. Well --

12 A. And you know, like you said, I mean, good
13 people make mistakes. Yeah, you know, but not like
14 this, you know.

15 Q. That's true. The other thing you've gotta
16 think about, you're kind of thinking about what went
17 wrong with you? You need to think a little bit about
18 her. What went wrong with her?

19 A. With -- what do you mean, Jayla?

20 Q. With Jayla?

21 A. What do you mean, like --

22 Q. She's not here any more?

23 A. Oh.

24 Q. She doesn't get the rest of her life?

25 A. Oh, yeah.

1 Q. I mean, I know you're focused on what you lost.

2 A. Yeah.

3 Q. But what about what she lost? That's really
4 what's important here.

5 A. Yeah, that's true.

6 Q. Okay. I don't have any more questions. I'm
7 gonna go ahead and terminate the interview and the time
8 now is 3:43.

9 (DVD interview concluded.)

10 Q. (BY MS. HAMILTON) So Detective, after the
11 conversation is over, the two of you walk out. Where is
12 it that you go?

13 A. He wanted some where to lay down, so we have a
14 cell there so we let him lay down in there.

15 Q. Okay.

16 A. There's like a long bench in there where he can
17 law down there.

18 Q. About did he go to sleep?

19 A. Yes, he did.

20 Q. Okay. At that point, is he now under arrest as
21 far as you're concerned?

22 A. Not yet, not yet. Detective Ruiz and I then
23 discussed the video confession and that's when we made
24 the determination. He didn't really have any where to
25 go at that point, so at that point we figured it was

1 best, not only for himself, but for us to as being able
2 to find him because he did, at that point, have no
3 family in El Paso. So it was -- at that point, we
4 decided it would be best to place him in custody.

5 Q. Okay. Did you prepare the arrest affidavit?

6 A. Yes, I did.

7 Q. Charging him with this offense?

8 A. Yes.

9 Q. And was that based on the confession that he
10 gave you?

11 A. That is correct.

12 Q. And the --

13 A. And the physical evidence.

14 Q. The evidence that you had from the autopsy?

15 A. Autopsy.

16 MS. HAMILTON: I'll pass the witness, Your
17 Honor.

18 May I approach the court reporter?

19 THE COURT: Yes.

20 Mr. Gandara, your cross-examination.

21 MR. GANDARA: May I proceed, Your Honor?

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION,

24 BY MR. GANDARA:

25 Q. Good afternoon, Detective Hinojos?

1 A. Good afternoon.

2 Q. You were -- what time were you called to go out
3 to investigate this event?

4 A. Which, the initial call out?

5 Q. Yes.

6 A. Of this actual one right here?

7 Q. The initial call out.

8 A. The initial call out?

9 Q. Yes.

10 A. The initial call out was in the afternoon
11 sometime.

12 Q. On what day?

13 A. On July 28th.

14 Q. What day of the week with that?

15 A. That was a Saturday.

16 Q. And you were called by the dispatcher or you
17 were called by somebody from your unit?

18 A. By my unit supervisor, Sergeant Kozack.

19 Q. Kozack. Okay. And were you on duty that day?

20 A. No, I was not.

21 Q. All right. And did you go out to the home?

22 A. I went to University Medical Center.

23 Q. You went directly to the hospital?

24 A. Yes, I did.

25 Q. And to the emergency room?

1 A. Yes, that's correct.

2 Q. All right. And that was at about 5:30 p.m.?

3 A. If that's what's noted on there, the exact
4 time, yes.

5 Q. Okay. And you were there the whole time, at
6 the hospital, in the emergency room, until the time the
7 doctors had determined that Jayla had passed away,
8 correct?

9 A. They had already determined that she had passed
10 away.

11 Q. When you got there?

12 A. Before I had gotten there.

13 Q. By the time you got there it was done?

14 A. That is correct.

15 Q. Okay. All right. And stayed at the hospital?

16 A. I stayed there gathering preliminary
17 information, yes.

18 Q. Gathering preliminary information from the
19 emergency room doctors and personnel?

20 A. That is correct, and then from far Perla who
21 was there at the hospital, she was the foster mom, the
22 defendant's wife. And there was some representatives
23 from the children's home, the placement center, and then
24 there was some representative from Child Protective
25 Services. So I was receiving information from all of

1 them.

2 Q. So you talked to Perla, to Antonio Lopez's
3 wife, there at the hospital?

4 A. That is correct.

5 Q. And you talked to people from CPS?

6 A. That is correct.

7 Q. How many?

8 A. I believe it was two. One was at case agent
9 which is the placement there -- the agency is separated
10 into different specialties. There was one there for
11 long-term services, foster services, and that's with
12 CPS, and there was another one which is the initial CPS
13 worker. And then there was a representatives from the
14 placement agency.

15 Q. Placement agency and the CPS?

16 A. That is correct.

17 Q. How many people were there that you --

18 MS. HAMILTON: Judge, I'm going to object
19 as to the relevance of how many CPS people he's talked
20 to. It doesn't go to the voluntariness of this
21 statement.

22 THE COURT: Mr. Gandara, your response?

23 MR. GANDARA: Your Honor, it goes to the
24 detective's investigation of the case, where his mind
25 was going in terms of what he did later in the case, and

1 in terms of what his mind was when he interrogated
2 Antonio Lopez.

3 MS. HAMILTON: Your Honor, this motion to
4 suppress claims that defendant was threatened, that's
5 all. It doesn't say there was a faulty investigation
6 that lead them to doing this, this, or this. Okay.
7 This not a fishing expedition. This is not a discovery
8 hearing, and so where ever this investigation lead him,
9 that is an issue, I think, for the trial. What's at
10 issue and what this motion is to hear, is the
11 voluntariness of the defendant's three statements, and
12 so I would object to any further line of this
13 questioning. It is beyond the scope of what this
14 hearing is about.

15 MR. GANDARA: Your Honor, I'm not fishing.
16 I know exactly where I'm going with Detective Hinojos.
17 I want the Court to know what was on his mind at the
18 time he's interrogating my client.

19 MS. HAMILTON: Your Honor, we ask that he
20 as that question.

21 THE COURT: Right.

22 MS. HAMILTON: He's going backwards in
23 time today.

24 THE COURT: Yeah, go ahead and ask those
25 questions specifically, Mr. Gandara.

1 MR. GANDARA: Yes, Your honor.

2 Q. (BY MR. GANDARA) Detective, you then -- after
3 talking to people at the hospital, including Ms. Perla,
4 Antonio's wife, and the CPS people, and the home
5 placement people, you went to over to the medical
6 examiner's?

7 A. No.

8 Q. Where did you go next?

9 A. We went to 911 North Raynor.

10 Q. To Raynor Street to talk to Detective Ruiz?

11 A. Well, I actually obtained a statement from
12 Perla.

13 Q. And did you record that statement?

14 A. Yes, I did.

15 Q. Okay. And after obtaining a statement from
16 Perla, you had a conference with Detective Ruiz?

17 A. That is correct. At some point, yes.

18 Q. And that is -- at that point, the time you took
19 the statement from Perla, that is before the first
20 statement that Antonio gave to Detective Ruiz or after?

21 A. Probably during.

22 Q. During the first statement?

23 A. It coincides. I'm talking the statement from
24 Perla. At some point, they arrive.

25 Q. Okay. And after taking Perla's statement --

1 after you took that and after Detective Ruiz's first
2 statement, Antonio Lopez's first statement, Perla and
3 Antonio left?

4 A. Yes, that is correct.

5 Q. Left 911 Raynor. And at that point, you and
6 Detective Ruiz, again, got together, compared notes, and
7 briefed one another and so forth, correct?

8 A. That's correct.

9 Q. Okay. Now, at that point in the investigation,
10 after you and Detective Ruiz talked, you made up your
11 mind that Antonio Lopez had -- was culpable. He was the
12 person who injured that child?

13 A. No, we did not.

14 Q. You did not. Have you ever made your mind up
15 about that?

16 A. Had I ever made up my mind about?

17 Q. Yes, that Antonio Lopez is culpable, is the
18 person who injured Jayla?

19 A. Yes, when he confessed.

20 Q. And that -- and before that, did that was never
21 a thought in your head?

22 A. The thought in my head was that there was two
23 adults in that home.

24 Q. Uh-huh.

25 A. And that the injuries were caused by a

1 significant amount of force.

2 Q. All right.

3 A. And that two adults that were in the house were
4 capable of delivering that significant amount of force,
5 and those were the two people.

6 Q. So since you investigated the case, and talked
7 to other people, you knew that there were more adults in
8 the home that day, besides Antonio and Perla?

9 A. That had access to the child alone, no.

10 Q. And that's as far as your investigation went
11 with that?

12 A. No, other adult -- as far as the investigation,
13 as far as the statement, no other adult that day was
14 alone with that child for any significant amount of
15 time.

16 Q. All right. So you had made up your mind that
17 it was Antonio Lopez?

18 A. We didn't make up our mind. It was two adults
19 that were -- that had care and custody of that child
20 from that day.

21 Q. And there was only one alone --

22 A. When I made up my mind it was when Antonio
23 Lopez was when he confessed to it. He confessed to
24 stomping on that child and taking that child's life.

25 Q. And before that, you were in doubt -- at the

1 time you took the confession when you told him time
2 after time that it was either him or his wife, that one
3 of you was going to go to jail for it. You were not
4 sure?

5 A. It had to be one or the other.

6 Q. You were not sure of it?

7 A. That is correct.

8 Q. And you didn't address Perla in the fashion,
9 did you?

10 A. As far as?

11 Q. Suggesting that she who hurt that child.

12 MS. HAMILTON: Your Honor, object to
13 relevance of how he addressed the defendant's wife.

14 THE COURT: What's the relevance of that?

15 MR. GANDARA: He's focused on one person.
16 He's made up his mind about who he thinks is guilty and
17 he's out to get a confession, not to investigate the
18 case.

19 MS. HAMILTON: There's still no relevance
20 as to how he addressed -- how this detective addressed
21 the defendant's wife.

22 THE COURT: Sustained.

23 Q. (BY MR. GANDARA) So you said, that in your
24 mind, there was the possibility that one of these two
25 people was the perpetrator of the injury.

1 A. Correct.

2 MS. HAMILTON: Objection, asked and
3 answered, Judge.

4 THE COURT: Sustained.

5 MR. GANDARA: Okay.

6 Q. (BY MR. GANDARA) And yet, you did not pursue
7 Perla in the same fashion as you pursued Antonio Lopez
8 when you interrogated her?

9 MS. HAMILTON: Objection as to relevance.

10 THE COURT: Sustained.

11 MR. GANDARA: Your Honor, I'd like to
12 reflect the fact that he has made up his mind that it
13 was Antonio and not Perla. With having gotten only so
14 far, as having in his mind, without investigating -- in
15 other words, with very little investigation he did, he
16 focussed on Antonio Lopez and his mind set when talking
17 to Antonio the second time, well, the first time for
18 him. Is that he's going to get a confession, not that
19 he's looking for facts.

20 MS. HAMILTON: Your Honor, is this the
21 time that we are going to argue motion? Are we done
22 with questions?

23 THE COURT: No, not yet.

24 MR. GANDARA: Well, Ms. Hamilton, argues
25 as we go along and so i figured I might as well fall

1 into the frame.

2 THE COURT: Right.

3 MS. HAMILTON: I think he's confusing me
4 with co counsel, Judge, but regardless, I think if we
5 stay on track, they have no standing to complain any
6 statement with the defendant's wife. You know, this is
7 only about the voluntariness of this statement.

8 THE COURT: Of this individual.

9 MS. HAMILTON: Yes.

10 THE COURT: Sustained.

11 MS. HAMILTON: Thank you, Your Honor.

12 Q. (BY MR. GANDARA) So the whole time that you
13 were talking, that you and -- oh, another thing. You
14 and Detective Ruiz went in there together to take a
15 statement from Antonio Lopez the second time?

16 A. That is correct.

17 Q. All right. You knew that it was going to take
18 two of you to get a confession?

19 A. No.

20 Q. You didn't? Why did you need two of you?

21 A. Because that's the approach that we decided to
22 take on that one.

23 Q. No particular reason?

24 A. No.

25 Q. And no reason that Detective Ruiz is extremely

1 hostile and forceful with Antonio. And you, on the
2 other hand, are talking to him about what God thinks.
3 Is there some particular reason for that, some strategy
4 for it?

5 A. The strategy is that is what he seems to -- he
6 has a passion for that and so I'm trying to establish a
7 rapport with him.

8 Q. While Detective Ruiz threatens time after time
9 that his wife is going to go to jail for this?

10 MS. HAMILTON: Objection, Your Honor.
11 That is a misstatement of what was contained in that
12 DVD.

13 THE COURT: Overruled.

14 MS. HAMILTON: Your Honor, then I would
15 ask that we play that DVD again.

16 THE COURT: The second DVD.

17 MS. HAMILTON: Yes, Your Honor, because it
18 is the State's position what happened in that DVD was --

19 THE COURT: I heard, at least three times,
20 I didn't count, three times that you wife did it. She
21 could possibly be arrested. It wasn't you. It was your
22 wife and she can possibly arrested.

23 MS. HAMILTON: And I absolutely agree with
24 you, Your Honor.

25 THE COURT: Okay.

1 MS. HAMILTON: But that wasn't the
2 question here, he was saying threatening your wife to go
3 the jail. Those words were not spoken the way that the
4 the question was phrased on the part of defense counsel.

5 THE COURT: No. Overruled.

6 Go ahead.

7 Q. (BY MR. GANDARA) Detective Hinojos, you made
8 up your mind, on your own, that the injuries had to have
9 been caused by an adult?

10 A. It had to have been caused by somebody who
11 could deal a significant amount of force.

12 Q. That's a pretty broad scope of people, right?

13 A. As far as who was there and had access to the
14 child, no it wasn't.

15 Q. It was not an adolescent, a 12 or 13-year-old
16 person may have been there?

17 A. If they had access alone to the child,
18 possibly.

19 Q. And you didn't follow through to check that
20 out, did you?

21 A. Yes, we did.

22 Q. With -- only with Antonio Lopez?

23 A. And with Perla and we interviewed the children
24 too.

25 Q. Okay.

1 A. And we had CAC detective interview them.

2 Q. All of them?

3 A. Yes.

4 Q. Okay. All of them being who?

5 A. All of them being the children that were there
6 at the home. There was two teenagers, and there was
7 some younger children that CAC interviewed.

8 Q. And out of all of those, did you -- were you
9 present for the CAC interviews?

10 A. No, I believe I was present -- no, I was not.

11 Q. Okay. And you did not review any of those CAC
12 interviews before you interrogated Antonio Lopez, the
13 second time, when it was you and Detective Ruiz?

14 A. Those interviews were being conducted
15 simultaneously and were being advised.

16 Q. So your answer is no, you did not review them
17 before you interrogated Antonio Lopez the second time?

18 A. No.

19 Q. All right. So without the benefit of the
20 results from the investigation, or questioning, of all
21 those children, you had already made up your mind --

22 A. I did have the results.

23 Q. -- that --

24 A. I received that information from the
25 detectives.

1 Q. So --

2 A. You said if I reviewed the interview. I didn't
3 review the interview but I had the information as
4 getting -- as received by the detectives from CAC.

5 Q. So when you stepped out, you're getting second
6 hand information from the CAC then?

7 A. That's first hand information because they are
8 the ones that actually conducted the interview.

9 Q. But it's hearsay with respect to what was being
10 said there, correct?

11 A. That's correct, but I'm still getting
12 information.

13 Q. Second then, right?

14 A. That is correct.

15 Q. Okay. All right. And so you made up you mind
16 while you in interrogating?

17 A. I don't see how you're saying that I made up my
18 mine. You can't see what's inside my mind, can you?

19 Q. Well, no.

20 A. Okay.

21 Q. That's why --

22 A. -- I'm just saying. You're saying that you --

23 THE COURT: Hang on. Hang on both of you.
24 I'm going to ask you Detective, please, wait until Mr.
25 Gandara has finished his question for you to response.

1 THE WITNESS: All right.

2 THE COURT: And no arguing, please.

3 Go ahead, Mr. Gandara.

4 Q. (BY MR. GANDARA) So you've already told us,
5 that from your perspective, it had to have been one of
6 the two adults that was in the home, yes?

7 MS. HAMILTON: Judge, objection, asked and
8 answered about five times.

9 THE COURT: Sustained.

10 Q. (BY MR. GANDARA) So by the time that you got
11 into the interview second interview with Antonio Lopez,
12 you had made up your mind that he was person that caused
13 that child's injuries?

14 MS. HAMILTON: Again, Your Honor, asked
15 and answered about fours times.

16 MR. GANDARA: Yes or no?

17 MS. HAMILTON: Objection.

18 THE COURT: Hang on. This is in regards
19 to the second one?

20 MS. HAMILTON: The second one.

21 THE COURT: Sustained.

22 MR. GANDARA: Pass the witness.

23 THE COURT: Ms. Hamilton?

24 MS. HAMILTON: Nothing further at this
25 time, but subject to recall, Your Honor.

1 THE COURT: Very well.

2 You're subject to recall, Detective.

3 Please step outside.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: To see if we need you in a
6 bit.

7 (Witness exits the courtroom.)

8 THE COURT: Your next witness, Ms.
9 Hamilton?

10 MS. HAMILTON: With regard to the motion
11 to suppress, Your Honor, I do not believe we have any
12 further witnesses dealing with the motion. We are
13 dealing with the state -- all three of his statements
14 that the Court has now heard.

15 THE COURT: Right.

16 MS. HAMILTON: And nothing else.

17 THE COURT: That's it.

18 MS. HAMILTON: So we rest at this time.

19 THE COURT: Very well.

20 Mr. Norris, any witnesses?

21 MR. NORRIS: Yes, Your Honor. We would
22 like to call Alicia Perla Lopez.

23 THE COURT: Alicia Perla Lopez, please.

24 (Witness present in courtroom.)

25 THE COURT: Ms. Lopez, please scoot you

1 chair close into the microphone so we can hear you
2 loudly and clearly. I am going to ask that you please
3 raise your right hand to be sworn.

4 (Witness sworn.)

5 THE COURT: You may proceed, Mr. Norris.

6 MR. NORRIS: Thank you, Your Honor.

7 ALICE PERLA LOPEZ,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. NORRIS:

11 Q. Would you give us your full name, please.

12 A. Alice Pearl Lopez.

13 Q. Okay. And do you know Antonio Lopez, this
14 gentleman seated right here?

15 A. Yes, I do.

16 Q. How to you know him?

17 A. He's my husband.

18 Q. How long are been married?

19 A. Going on eight years.

20 Q. And do you have any kids?

21 A. Yes, we do. We three.

22 Q. Okay. Tell names their names?

23 MS. HAMILTON: Your Honor, I'm going to
24 object. If it went to the voluntariness of the
25 statement, the number of children, their marriage, is

1 not relevant.

2 THE COURT: Right. I don't want
3 background information on a motion to suppress.

4 MR. NORRIS: Okay.

5 THE COURT: Sustained.

6 Q. We've met before, haven't we?

7 A. Yes, we have.

8 Q. People often call you Pearl?

9 A. Correct.

10 Q. Do you mind if I address you that way?

11 A. No, that's fine with me.

12 Q. Okay. Pearl, I want to ask you to recall the
13 incident in which a foster child, living with you and
14 your husband died?

15 A. Correct.

16 Q. Do you recall that?

17 A. Yes, I do.

18 Q. About when did that happen, do you recall the
19 date?

20 A. It was this the end of July.

21 Q. Of what year?

22 A. 2012, I believe.

23 Q. And do you remember what day of the week it
24 was?

25 A. It was a Saturday.

1 Q. Okay. Do you remember what you were doing that
2 day?

3 A. Yes. I was doing a cake, decorating, baking a
4 cake.

5 Q. Okay. What was your husband doing?

6 A. He didn't -- I mean, he was just there. He
7 wasn't really doing much.

8 Q. Where were you when you were baking the cake,
9 most of the day you were decorating?

10 MS. HAMILTON: Your Honor, again, I'm
11 going to object.

12 MR. NORRIS: I've got to set the scene in
13 order to establish who was in the apartment, where they
14 were and who had access to which room. Please, Your
15 Honor, this is obvious.

16 MS. HAMILTON: Judge, I don't understand
17 why you have to set that scene for the motion to
18 suppress for the voluntariness of this statement.

19 THE COURT: Asking here where she baked
20 the cake, in the kitchen.

21 MR. NORRIS: Was it?

22 THE COURT: I don't think she baked a cake
23 in the bathroom.

24 MR. NORRIS: I meant she --

25 THE COURT: That question sustained.

1 MS. HAMILTON: Thank you.

2 THE COURT: Go ahead, Mr. Norris.

3 Q. (BY MR. NORRIS) Where were you decorating the
4 cake?

5 MS. HAMILTON: Objection, Your Honor. How
6 is that relevant to the voluntariness of the statement.

7 THE COURT: Where she was doing this --
8 the people in the apartment are this house, possibly.
9 So where she was...

10 MR. NORRIS: She was one of the people who
11 was in the house.

12 THE COURT: Okay.

13 MR. NORRIS: And we have had a awful lot
14 of testimony from both of these detectives about who was
15 there and why the detective were convinced that they
16 needed to focus their investigation in the way that they
17 did.

18 THE COURT: That's true. That's true.
19 Okay. Overruled.

20 Go ahead.

21 Q. (BY MR. NORRIS) Where were you while you were
22 decorating the cake?

23 A. I was in the living room.

24 Q. Okay. In the living room. And where was your
25 husband, Tony?

1 A. He was in the bedroom part of the time.

2 Q. Part of the time. And the rest of the time
3 where was he?

4 A. He did come out. He was a while with us in the
5 kitchen where everybody else was.

6 Q. Okay. So he come in and out of the bedroom?

7 A. Yes, he would.

8 Q. Okay. And who else was in the bedroom?

9 A. The baby.

10 Q. Okay. The baby. Who do you mean by the baby?

11 A. Jayla.

12 Q. Jayla Beckley?

13 A. Yes.

14 Q. Is that your foster child?

15 A. Yes, she was.

16 Q. And she was in the bed, is that where she slept
17 at night?

18 A. Correct.

19 Q. And did she sleep in a bed or a crib?

20 MS. HAMILTON: Your Honor, I'm going to
21 object to this line of questioning. If he's asking who
22 was in the apartment --

23 THE COURT: Yeah.

24 MR. NORRIS: -- and where they were.

25 MS. HAMILTON: Where she slept at night is

1 not --

2 THE COURT: Sustained. Sustained, Mr.
3 Norris.

4 Go ahead.

5 MR. NORRIS: Okay.

6 Q. (BY MR. NORRIS) Who else was in the house that
7 morning and when did they arrive.

8 A. There was a lot of people there. It was
9 myself, my husband, my two daughters, my mother.

10 Q. Uh-huh.

11 A. She had three foster kids of herself.

12 Q. Okay. With her?

13 A. Correct.

14 Q. Okay. Who else?

15 A. And later on that day two other foster kids
16 arrived.

17 Q. Okay.

18 A. And then -- and then I had -- we had two foster
19 kids at the time, the baby, Jayla, and then we had
20 another teenager.

21 Q. Okay.

22 A. At the time.

23 Q. And who is the teenager?

24 A. I don't remember her name.

25 Q. Could it be Reannin Reynolds?

1 A. Correct.

2 Q. Okay. And how was she there, was she one of
3 your regular foster children?

4 A. No. She had -- it was her first time there.

5 Q. Okay. Where was she staying in your house?

6 A. She had her own bedroom.

7 Q. Okay. And is that bedroom adjoining your
8 bedroom?

9 A. Yes.

10 Q. Okay. And you say your mom was there, when did
11 she arrive?

12 A. Like 11:00 or...

13 Q. Late in the morning sometime?

14 A. Yes.

15 Q. And who did she bring with her?

16 A. She brought three of her foster kids?

17 Q. Okay. Who were they?

18 A. Jeremiah.

19 Q. How old was Jeremiah?

20 A. Excuse me?

21 Q. How old was Jeremiah?

22 A. I think 16 at the time.

23 Q. 16 years old. Who else?

24 A. There was two other foster young ladies, but I
25 do not recall their names.

1 Q. Okay. Could one of them be Alexandra --

2 MS. HAMILTON: Objection, Your Honor, as
3 to leading. This is his own witness.

4 THE COURT: Sustained.

5 Q. (BY MR. NORRIS) Okay. Tell me how old the
6 others were and what their gender was?

7 A. Two females, their age I do not recall, maybe
8 like 11.

9 Q. Okay.

10 A. The oldest one. The youngest one, maybe, like
11 nine. I'm not sure about their age.

12 Q. Okay. So your mother and her three foster
13 children?

14 A. Correct.

15 Q. Okay. Who else -- you said some others arrived
16 later, how did that happen?

17 A. My mom was going to Respite some other foster
18 kids, so...

19 Q. Can you tell us what Respite is, please?

20 MS. HAMILTON: Judge, I'm going to object.
21 This is going far afield of the voluntariness of the --

22 THE COURT: You know, Mr. Norris...

23 MS. HAMILTON: Okay. We've go t already
24 twice at least, twice as many children as the police
25 officers have described previously were in the

1 apartment.

2 THE COURT: Right.

3 MS. HAMILTON: That's not relevant to the
4 voluntariness of the statement.

5 THE COURT: Right.

6 MR. NORRIS: Absolutely is.

7 MS. HAMILTON: In what way, Judge? I
8 would ask that he articulate the relevance to this
9 Court.

10 THE COURT: Right.

11 MR. NORRIS: Of course, I'm more than
12 happy to do that because I have been challenged on this
13 before during the testimony of the Detective Ruiz. And
14 as I have explained to the Court before, and really
15 didn't think I kind of had to, was that the interview
16 that took place between these detectives and my client,
17 had different objective at different times. And they
18 were based on different processes of investigation and
19 were conducted for different purposes.

20 It is my point to illustrate that during
21 the first interview, both Perla and of Antonio that the
22 officers were conducting an investigation, and that the
23 investigation had barely begun. In fact, all they
24 really knew about this case, at all, was what Perla and
25 Antonio had told them during the first interview until

1 the autopsy was performed. Then they knew about autopsy
2 between the time of the first interview and the second
3 interview.

4 It has been my purpose all along, to
5 demonstrate, that in the second interview these he
6 police officers were not investigating this case at all.
7 In fact, the investigation was still underway. Their
8 purpose was to obtain a confession from Antonio Lopez by
9 any means necessary.

10 THE COURT: Right.

11 MR. NORRIS: And that the means which we
12 are particularly challenging in this case, have to do
13 with threats made by them, to Antonio, that they would
14 throw his wife in jail and hold her responsible for this
15 offense.

16 THE COURT: Right.

17 MR. NORRIS: If he did not confess.

18 THE COURT: Right.

19 MR. NORRIS: They also told that to his
20 wife.

21 THE COURT: Right.

22 MR. NORRIS: And then after they left from
23 these interviews, Antonio and his wife left together and
24 he learned more about the discussions that had taken
25 place between his wife and those detectives. It was

1 then that he made a decision to confess.

2 Now, these detectives, to illustrate that
3 they were not investigating this case at all, but simply
4 trying to obtain a confession from him and didn't care
5 whether it true or no, is illustrated best by the fact
6 that there investigation was woefully incomplete. They
7 had to idea who was in that apartment. No idea who
8 where those people were during relevant times. They
9 testified on the stand, on direct examination and on
10 cross-examination, that the reason that they put Antonio
11 through that was because they believed that they had
12 come to the conclusion that nobody else, in that
13 apartment, had an opportunity or ability to inflict
14 these injuries and I need to illustrate that that's
15 false. And I've almost done it, and I think that Ms.
16 Hamilton knows what I'm doing and that's why she's try
17 to prevent this now.

18 Now, how many kids were there? How many
19 of them were big enough to inflict this injury? Where
20 they were at what time and whether they had access to
21 that bedroom as all important to illustrate that these
22 police officers felt that they need to obtain a
23 confession by threats. Rather than completing their
24 investigation in the ordinary course of things.

25 MS. HAMILTON: Your Honor, may I --

1 MR. NORRIS: And that's why it's relevant.

2 MS. HAMILTON: May I be permitted to
3 respond to that?

4 THE COURT: Absolutely.

5 MS. HAMILTON: Judge, first of all, how
6 many people were there, earlier in the day, that don't
7 have anything to do with whether or not the defendant
8 freely and voluntarily waived his right on those
9 recorded statements. Mr. Norris can attack the quality
10 of the investigation, all he wants to, in the trial. He
11 doesn't seem to comprehend that the narrow focus that we
12 are looking at right now, in the motion the suppress, is
13 whether or not the defendant freely and voluntarily gave
14 the statements to the police.

15 So he can complain about the quality of
16 the investigation and all of those other things, but
17 what really happened, in the direct and cross-exam, with
18 the detectives was, the first statement, we were just
19 trying to find out what happened. The second statement,
20 we find out information from the autopsy. We know it
21 had to be serious force and the defendant already placed
22 himself with the child at the time of the injury, so
23 they focus it, that's what they said. So now all we are
24 looking at is, is the defendant freely and voluntarily
25 going to the police station, was he under arrest, was

1 this a custodial interrogation, does this comport with
2 38.22? Were there any threats that were made to him?
3 All of the statements are in for the Court to see.

4 THE COURT: Right.

5 MR. NORRIS: And so if they are calling
6 this witness, now, to try to get hearsay statements,
7 what the defendant told her. What they said they told
8 him, this is not the witness to get it through because
9 I'm going to object to every word of hearsay that might
10 try to come out of her mouth. If the defendant is
11 claiming that they threatened him or coerced him in some
12 way, evidence that is not before this Court right now.
13 Based on the three statements, and the testimony, then
14 certainly the Court can take his testimony under -- in
15 consideration, but how that investigation proceeded does
16 not go to this two page, motion to suppress, that he was
17 under threat or compulsion to come in and gave the
18 statement.

19 As Your Honor has seen, each one of these
20 three statements complies with 38.22. It's our position
21 he was under arrest any way, but you know, they comply
22 with 38.22. It's an issue of voluntariness.

23 THE COURT: Right. A faulty, incomplete
24 investigation has little to do with the words, the
25 tactics, the mannerisms, what was going on in the actual

1 obtaining of the confessions.

2 MR. NORRIS: My purpose is only to
3 demonstrate the officer motives during the period when
4 they were questioning during the second interview.

5 THE COURT: But that's not relevant for a
6 motion to suppress.

7 MR. NORRIS: Okay. Well, that's what my
8 purpose is and if the Court find that not to be -- that
9 purpose to not be relevant to the issue here, I'll move
10 on.

11 THE COURT: Right. That's right.
12 Objection sustained.

13 MR. NORRIS: Okay.

14 THE COURT: Go ahead.

15 Q. (BY MR. NORRIS) Were you questioned about what
16 happened at your house, that day, by police officers at
17 any time afterwards?

18 A. After it happened?

19 Q. Yes. Were you taken down to the police station
20 and asked questions by any of the detectives.

21 A. Yes, the day that it happened.

22 Q. Okay. The day that it happened. Was that the
23 first time that you were questioning by the police?

24 A. Correct.

25 Q. Okay. Did anybody take you to the police

1 station to question you?

2 A. Yes. I went with one of the detectives, he
3 took me.

4 Q. Do you remember what his name was?

5 A. It was two of them.

6 Q. I understand one of them took you?

7 A. Correct. One of them -- I don't know their
8 names, but it was one of them that took me in his
9 vehicle to the police...

10 Q. Okay. And then you said there were two
11 detectives, were you actually questioned by more than
12 one?

13 A. Correct.

14 Q. Okay. Together or separately?

15 A. Visa versa.

16 Q. Excuse me?

17 A. Visa versa. I mean, it was both and then one
18 would leave, the other one would come back.

19 Q. Okay. And how long did that interview take?

20 MS. HAMILTON: Objection, Your Honor,
21 relevance to her interview?

22 THE COURT: So --

23 MR. NORRIS: Maybe the Court doesn't care
24 how long the interview took, so I wonder if the Court's
25 going to care what questions they asked.

1 MS. HAMILTON: I believe that I'm going to
2 object to all of that, her statement is not at issue in
3 this motion to suppress.

4 MR. NORRIS: It is if threats were made to
5 her which ultimately influenced the defendant in his
6 confession, Your Honor.

7 THE COURT: There's the issue.

8 MS. HAMILTON: If he asked if there were
9 -- did anybody threaten you, but the how long the
10 statement was, what she said, what the question were
11 asked, all of those things?

12 THE COURT: There's the issue. There is
13 the issue. So go ahead.

14 Overruled.

15 Q. (BY MR. NORRIS) How long did your interview
16 take?

17 A. I don't recall.

18 Q. Was it more than an hour?

19 MS. HAMILTON: Objection as to leading.
20 It's his witness.

21 THE COURT: It doesn't matter how long it
22 took, just get to the questions that were asked Mr.
23 Norris.

24 MR. NORRIS: Okay.

25 Q. (BY MR. NORRIS) What were you ask asked during

1 that interview?

2 A. Basic questions -- it was the first interview,
3 correct?

4 Q. Yes.

5 A. It was pretty much.

6 THE COURT: Hang on second. The first
7 interview. I though you said you only had one
8 interview.

9 THE WITNESS: No, it was two interviews.

10 THE COURT: Okay.

11 MR. NORRIS: I'll do my best to develop
12 this in chronological order.

13 Q. (BY MR. NORRIS) In the first interview, what
14 kind of questions were you asked?

15 MS. HAMILTON: Objection, Your Honor.
16 What kind of questions was she asked? He's saying that
17 there was some sort of threat.

18 MR. NORRIS: No yet.

19 MS. HAMILTON: Judge, it's --

20 THE COURT: Wait. Hang on. What is your
21 legal objection?

22 MS. HAMILTON: Number one, he is asking
23 about hearsay. Number two, it is not relevant to the
24 voluntariness of her husband's statement the type of
25 questions she was asked.

1 THE COURT: Overruled.

2 Go ahead.

3 Q. (BY MR. NORRIS) What were you asked?

4 A. How the kids we had. If we -- why did we
5 become foster parents? How long had we been foster
6 parents? Pretty much those kinds of questions. Why --
7 when we went to my parents, that they were foster
8 parents, that's the way we got into foster care, and --
9 just basic questions like that.

10 Q. Did they ask you how the people were in the
11 apartment that day or in the house?

12 A. I do not recall. I don't remember.

13 Q. Okay. At any time during that interview did
14 they threaten you with being arrested?

15 A. No, never.

16 Q. Never threatened to hold you responsible?

17 A. No.

18 Q. They were just trying to get information from
19 you?

20 A. Correct.

21 Q. Okay. Did you ever have another interview
22 then?

23 A. Correct.

24 Q. When did that happen?

25 A. A few days later.

1 Q. Okay. And how did -- where was that interview
2 conducted?

3 A. It was in the police department, the main...

4 Q. Was it the same place you had your first
5 interview?

6 A. Yes.

7 Q. Was the interview conducted in the same way?

8 A. No, it was really different in there.

9 Q. How was it different?

10 A. As soon they walked into the room, they told me
11 that tonight somebody was going to jail.

12 Q. Somebody? Who did they say would go to jail?

13 A. Either Antonio or me, in not both of us.

14 Q. Okay. And did they explain to you why that was
15 the case?

16 A. Afterwards they did. They told me that the
17 autopsy was here and that Jayla -- somebody hurt Jayla,
18 that she had been murdered.

19 Q. Okay. Was Antonio present there with you when
20 they said that?

21 A. No, he wasn't.

22 Q. Where was Antonio at that time?

23 A. They -- when we got there, they took him first
24 to another room. They left me there in the waiting area
25 and then came like way -- a lot of time passed before

1 they came back and took me the another room.

2 Q. How long did you wait there in the waiting area
3 before they took you another room?

4 A. I was a long time. I don't know exactly, but
5 it's seemed hours.

6 Q. Did they conduct their interview with you in
7 that waiting area or in the other room?

8 A. No, they took me into a room.

9 Q. Were in that room, as you described it, when
10 they made the remarks to you that you just described?

11 A. I'm sorry?

12 Q. Were you in that other room when they said
13 somebody was going to jail tonight?

14 A. Correct.

15 Q. Either you or Antonio or both?

16 A. It looking like the same room I had been the
17 first time.

18 Q. Okay. Who were both -- was it both detectives
19 or just one?

20 A. It was both of them. One would come in, then
21 he would leave. The other one would come. It was visa
22 versa.

23 Q. And did they tell you what they wanted you to
24 do?

25 A. They -- first they were really aggressive, that

1 somebody was going to pay for this. They -- that both
2 of us were going to go to jail, unless I told them what
3 I knew. That unless I confesses that it was him, that
4 he had done it, if not we were both going to go, me as
5 well for protecting him.

6 Q. And how long did that interview last?

7 A. I mean, I can't say how much, but it with while
8 because it took -- one would come, the other one would
9 leave. They were just taking turns. They would both
10 get there and it was just off and on thing.

11 Q. Okay. Were you eventually permitted leave?

12 A. Yes.

13 Q. Okay. Did you leave with your husband or by
14 yourself?

15 A. With him.

16 Q. Okay. Did you have your own car with you or
17 were you being transported by someone else?

18 A. No, we had our own vehicle.

19 Q. Okay. And you drive home?

20 A. Correct.

21 Q. Okay. Who was driving?

22 A. I was.

23 Q. Okay. And was there anybody else in the car
24 besides you and Antonio?

25 A. No, it was just us two.

1 Q. Okay. Did you drive directly home or did you
2 stop at any place a long the way?

3 A. We stopped on the way.

4 Q. Where did you stop?

5 A. It was at like a hotel, like in the parking
6 lot.

7 Q. Okay. What hotel was that?

8 A. I don't remember.

9 Q. Do you remember what part of town it was in?

10 A. I was like in Airways.

11 Q. So I was off of the Airway exit.

12 A. Correct.

13 Q. Did you take that exhibit?

14 A. Correct.

15 Q. So was the hotel located at the Airway exit?

16 A. Correct.

17 Q. Okay. And you stopped in the parking lot did
18 you say?

19 A. Yes.

20 Q. And why did do that?

21 A. To talk.

22 Q. Okay. Was it your idea to stop or did Tony ask
23 you to stop?

24 A. Antonio.

25 Q. Okay. Did he tell you why he wanted you to

1 stop?

2 A. So we could talk.

3 Q. Okay. And what did talk about?

4 A. We arrived and I was shocked. We were shocked
5 with what they had told us. I wasn't expecting that.

6 Q. Uh-huh.

7 A. Honestly and I asked him, did you have anything
8 to do with this, and he said --

9 MS. HAMILTON: Objection, Your Honor,
10 hearsay.

11 THE COURT: Sustained.

12 MR. NORRIS: Okay. I want to make it
13 clear on the record that we're not offering it for the
14 truth of matter asserted, but to show what influences
15 were at work, ultimately, leading to Antonio Lopez's
16 calling the police back and asking to be taken downtown.

17 THE COURT: Well -- and as well, hearsay
18 is permissible in --

19 MS. HAMILTON: Your Honor, I am --

20 THE COURT: -- a motion to suppress.

21 MS. HAMILTON: -- responding to their
22 defense, objections to hearsay earlier when we had
23 testimony by the police officers that were sustained by
24 this Court, even though it is a motion to suppress.

25 THE COURT: Right. Right.

1 MR. NORRIS: That's true, but --

2 MS. HAMILTON: And so I wasn't sure...

3 THE COURT: I'm going to allow it because
4 this I want to know, so overruled.

5 Go ahead.

6 Q. (BY MS. NORRIS) Go ahead, you can answer it.

7 A. I asked him if he had anything to do with it.
8 He asked me -- he told me how could I believe something
9 like that. I started crying. I told him you didn't do
10 it. I didn't do it, but we're both going to go to the
11 jail. The officer clearly said we're both going in, you
12 know, and I started crying. I physically felt really
13 bad at the moment, cramping, headache everything.

14 Q. Why where you cramping?

15 A. Later on I found out I was pregnant.

16 MS. HAMILTON: Objection, Your Honor, as
17 to the relevance.

18 MR. NORRIS: I'm moving along, Your Honor.

19 THE COURT: Yeah. Overruled.

20 Q. (BY MR. NORRIS) Go on.

21 A. I started crying.

22 Q. Did you tell Tony what the police had told you,
23 in your interview? Did you let him know? You said a
24 moment ago that you were both gonna go to jail. Did you
25 inform him of the threats that they made.

1 A. Yes, I did mention that they had said that we
2 were both going to go to jail. They told me that there
3 were going to remove or kids. They were going to go to
4 CPS, that's what the officer told me, and that -- the
5 detective, I'm sorry. And that they were going to go to
6 foster care, that they were not going to go with a
7 family member because most likely -- that our family
8 members were gonna -- were protecting us so that they
9 weren't gonna go with anybody else, only foster care.

10 Q. Then what happened?

11 A. I was crying. I felt bad, and that's when
12 Antonio told me, stop crying. I going to turn myself
13 in, and I remember I looked at him when he told me that.
14 I asked him, did you punch her? Because the detective
15 told me, that who ever did this, it was punches to the
16 stomach. And Antonio starts crying, he's like, no, I
17 would never do that. And he's like, I'm just going to
18 turn myself in I -- and he's like, I want to see my
19 daughters. I want to daughters and my mom.

20 Q. And your mom?

21 A. My mom calls because she was coming back from
22 the -- they were interviewing all our kids.

23 Q. Who was interviewing your kids?

24 A. I don't know. I guess, the people who...

25 Q. Who interview kids?

1 A. Yes.

2 Q. Okay. So now, was your mom there with you or
3 what?

4 A. She -- we all left at the same time. We left
5 to -- with the detectives, and my mom took all the kids
6 to another place to get interviewed, to have all the
7 kids interviewed.

8 Q. Okay. Do you what place that was?

9 A. We did go before because the detectives took us
10 before.

11 Q. Where is that place?

12 MS. HAMILTON: Objection, relevance?

13 THE WITNESS: I don't remember.

14 THE COURT: We don't need to know that.
15 Sustained.

16 Q. (BY MR. NORRIS) Okay. So did you see your mom
17 after that?

18 A. Yes, we did.

19 Q. Where did you see her?

20 A. She saw where we were at.

21 Q. At the hotel parking?

22 A. Gas station, like there's a gas station. It
23 was like right next to it. She stopped there and
24 Antonio say our kids there.

25 Q. And Antonio was able to see his kids?

1 A. Yes.

2 Q. What happened?

3 A. He was with them. He took her -- he took one
4 of her, the other one was asleep. He took her into the
5 store and bought her stuff, and just told her that he
6 loved her and things like that.

7 Q. And then what happened?

8 A. After that we drove home because one of my
9 lights was not working, so my mom kind of drove behind
10 us.

11 Q. You say you drove home, home where, to the
12 duplex?

13 A. My parents house.

14 Q. Your parents house okay. And then what?

15 A. And after that Antonio -- we got home to my
16 parents house and Antonio asked me to take him to our
17 house.

18 Q. To the duplex where you were living?

19 A. Correct.

20 Q. And that's where Jayla had been and where you
21 were making the cake?

22 A. Correct.

23 Q. Okay. And did you take them there?

24 A. Yes, I did.

25 Q. And did you stay with him there or what, what

1 happened?

2 A. No. I -- we -- I left. We got there. He got
3 off. I got off, and he just hugged me. We cried and I
4 turned away and left.

5 Q. Okay. And you don't know what happened to Tony
6 after that?

7 A. No.

8 Q. Okay. What did you do after that?

9 A. I drove home to my parents.

10 Q. Okay. And did you ever have any further
11 interviews with the police?

12 A. No.

13 Q. Did you have any further conversations with the
14 police?

15 A. With one detective.

16 Q. Okay. How did that happen?

17 A. It was with one detective. I told him that my
18 husband --

19 Q. Was he at your parents house?

20 A. He did go.

21 Q. Okay. Who the phone call?

22 THE COURT: This was the phone call that
23 was made to Detective Hinojos.

24 MR. NORRIS: I'm trying to determine that.

25 THE COURT: Hurry. This was a phone call

1 made when he was...

2 MR. NORRIS: I don't want to lead her.

3 Q. (BY MR. NORRIS) Did you make a phone call to
4 the detective?

5 A. I'm sorry?

6 Q. Did you make phone call to one of the
7 detective, yourself, from your parents house?

8 A. Yes, I did.

9 Q. When did you do that?

10 A. When I got home.

11 Q. Okay. And who did you talk to?

12 A. I left a voice message.

13 Q. Okay. What did you say in that message?

14 A. That Antonio was about or had turned himself
15 in.

16 Q. Okay. And is that the last time you had and
17 interview with any of the detectives or investigators in
18 the case?

19 A. Yes.

20 MR. NORRIS: I'll pass the witness, Your
21 Honor.

22 THE COURT: Ms. Hamilton?

23 MS. HAMILTON: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. HAMILTON:

1 Q. Ma'am, you indicated that you went to the
2 police station. This is the day that Jayla died,
3 correct?

4 A. Correct.

5 Q. And you're there at the police station and you
6 talked to the detectives, correct?

7 A. Correct.

8 Q. They take a statement from you, correct?

9 A. Correct.

10 Q. And they don't threaten you, correct?

11 A. No.

12 Q. They -- after -- they asked what happened,
13 right?

14 A. Correct.

15 Q. They ask you who was there in the house, that
16 day, the day that Jayla died?

17 A. The first day?

18 Q. Yes?

19 A. Yes.

20 Q. They are questioning you. They ask you if
21 Jalya has any kind of medical history, right?

22 A. (No response.)

23 Q. Is that correct?

24 A. I don't remember exactly the questions they
25 asked me.

1 Q. Okay. You don't remember the questions that
2 they asked you, but you remember during this time that
3 they don't threaten you, right?

4 A. Correct.

5 Q. Okay. And then you and your husband, the
6 defendant, leave the police station and you go back
7 home, correct?

8 A. Correct.

9 Q. Okay. And then you, say a couple days later,
10 there is another interview, right?

11 A. Correct.

12 Q. And this is on the 31st of July, after they did
13 the autopsy on Jalya, correct?

14 A. Correct.

15 Q. And you said, that at that time, you waited
16 outside. They took your husband to another room, right?

17 A. Correct.

18 Q. They are taking a statement from him, right?

19 A. Correct.

20 Q. And so then come and talk to you, right?

21 A. Right.

22 Q. And you said during that time, they said
23 someone's going to jail tonight, correct?

24 A. Correct.

25 Q. It's either going to be you or it's going to be

1 your husband?

2 A. Correct.

3 Q. But that's not true, right? You guys left;
4 isn't that right?

5 A. Afterwards.

6 Q. Yes, ma'am. That night you and your husband
7 talked to the police separately, and you leave together
8 and you drive --

9 A. Correct.

10 Q. -- away?

11 A. Yes.

12 Q. Right?

13 A. Yes.

14 Q. So despite the fact that you're saying that the
15 detectives told you somebody is going to go to jail
16 tonight. We are going to arrest somebody tonight. They
17 allowed you to walk out of the police station, the two
18 of you, and you left together, got in your vehicle an
19 you were driving; isn't that right?

20 A. Yes, it was.

21 Q. Okay. So nobody was arrested at that time,
22 right?

23 A. Correct.

24 Q. Okay. So then you say you pulled over, and you
25 said, your husband tells you, stop crying. I'm going to

1 turn myself in, right?

2 A. Correct.

3 Q. And he -- you asked him, did you punch her?

4 A. Correct.

5 Q. And he said he didn't punch her; is that right?

6 A. Correct.

7 Q. Did he tell you that he stomped on her?

8 A. No.

9 Q. So when he told the detectives later on, after
10 he called 911, and said give me a ride to the police
11 station. He describes, in detail, how he picked Jayla
12 up, put her one the floor, and stomped on her twice?

13 A. (No response.)

14 Q. Is that a yes?

15 A. No.

16 Q. Okay. So all he said was, he didn't punch her,
17 right?

18 A. Correct.

19 Q. And so -- now you say, you stop off at a store.
20 He buys your daughter some toys, then the drop his off.
21 You leave him at the house, right?

22 A. Correct.

23 Q. And then you call Detective Hinojos?

24 A. Correct.

25 Q. And isn't it true that you told Detective

1 Hinojos your husband confessed to you he did it?

2 A. That he was going to turn himself in.

3 Q. Isn't it true that you told him, he confessed
4 that he did it and he was going to turn himself in? You
5 said that on that phone call; isn't that right.

6 A. I don't remember exactly my words, but that he
7 was going to turn himself in, yes.

8 Q. Okay. That he confessed to you right?

9 A. (Head nod yes.)

10 Q. Now, you didn't tell Direct Hinojos, oh my God,
11 he's saying that he did it so I don't have to go to
12 jail. You never told him that, did you?

13 A. No, I didn't.

14 Q. You never said to Detective Hinojos, you know
15 what, you guys are threatening us, so one of us has to
16 be the person who is going to go the jail, so my husband
17 decided he's going to be the bigger man and he's going
18 to do it. You never said that, did you?

19 A. No.

20 Q. When you call Detective Hinojos, my husband is
21 at my house. He confessed to me what he did to Jayla
22 and he's going to turn himself. That's what you told
23 him, right?

24 A. That he confessed to me, what he did, to Jayla?

25 Q. That he did it. That he's the one who murdered

1 her?

2 A. He never confessed how he did it or if he did
3 it. He said he was going to turn himself in?

4 Q. Okay. So what does that mean to you then?

5 A. I'm going to be honest. At that moment, I was
6 overwhelmed, physically, emotionally, and in every sense
7 that you could put it. I didn't -- at that moment, I
8 felt I did not in want to know anything. I wanted -- I
9 felt bad. I really felt physically bad at the moment.

10 Q. About Jayla?

11 A. Yes.

12 Q. Okay. So you --

13 A. Of everything.

14 Q. You're the foster mom?

15 A. I cared for that little girl as well.

16 Q. You cared for that little girl. She was a
17 little baby and she was put in your care. You're the
18 foster mom, correct?

19 A. Correct.

20 Q. You're the one that's supposed to be in the
21 place of her mother?

22 A. Correct.

23 Q. Okay. And that child died on you watch?

24 A. Yes.

25 Q. And that child was murdered on your watch?

1 A. Yes.

2 Q. Right. And they told you, her autopsy showed
3 that she was murdered, correct?

4 A. Correct.

5 Q. And you're husband says, I'm going to turn
6 myself in and you're telling this judge you don't
7 understand what that means; is that what you're saying?

8 A. (No response.)

9 Q. Is that what you're saying, ma'am?

10 A. I don't know.

11 Q. So tell the Judge, does your husband tell you,
12 oh my God, I'm going to throw throe myself on the sword.
13 They threatened that one of us is going to jail, so I'm
14 going to be the bigger man. I'm going to say I --

15 MR. NORRIS: Objection, that's asked and
16 answered, Your Honor.

17 MS. HAMILTON: No, Judge, it has not. I
18 have not asked that question.

19 THE COURT: Okay. Overruled.

20 Go ahead.

21 Q. (BY MS. HAMILTON) Is that what he said to you?

22 A. I'm sorry. Can you repeat it?

23 Q. They threatened both of us and I don't want you
24 to do to jail, so I'm going to be the on. I'm going to
25 be the bigger man. I'm going to fall on the sword. I'm

1 going to go ahead and say I did it, and I will go to
2 jail.

3 Did he tell you that?

4 A. When I was crying, he told me that he going to
5 turn himself in.

6 Q. And that's all he said?

7 A. Yes.

8 MS. HAMILTON: Pass the witness.

9 THE COURT: Mr. Norris?

10 MR. NORRIS: No further question, Your
11 Honor.

12 THE COURT: Very well.

13 Subject to recall?

14 MS. HAMILTON: Yes, Your Honor.

15 THE COURT: You are temporarily excused.
16 You're subject to recall, so just remain outside in case
17 we need you in the next couple hours.

18 THE WITNESS: Yes.

19 THE COURT: Thank you.

20 Your next witness, Mr. Norris or Mr.
21 Gandara?

22 MR. GANDARA: May we have a brief recess
23 for a few minutes so we an confer with our client?

24 MR. NORRIS: Ten minutes, Your Honor.

25 THE COURT: Ten minutes. Five minutes.

1 MR. NORRIS: Okay.

2 THE COURT: Five minutes it is.

3 (Recess taken.)

4 THE COURT: On the record. 20120D04452,
5 State of Texas versus Antonio Lopez.

6 Announcement of counsel, please.

7 MS. HAMILTON: Penny Hamilton and Holly
8 Rodriguez for the State. Ready, Your Honor.

9 MR. NORRIS: Robing Norris and Jaime
10 Gandara for Mr. Lopez. Ready, Your Honor.

11 THE COURT: Very well.

12 Okay. Mr. Norris, your next witness.

13 MR. NORRIS: The defense will rest it's
14 evidence on the motion to the suppress.

15 THE COURT: Very well.

16 Do you have any rebuttal, Ms. Hamilton?

17 MS. HAMILTON: I do, Your Honor, a very
18 brief witness. Detective Hinojos.

19 THE COURT: Yes. Very well.

20 (Witness present in courtroom.)

21 THE COURT: Okay. Detective, come on in.
22 Come on back in and sit in that same chair. May I
23 remind you that you are under the same oath that I
24 previously administered to you.

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: Go ahead, Ms. Hamilton.

2 MS. HAMILTON: Thank you, Judge.

3 DIRECT EXAMINATION

4 BY MS. HAMILTON:

5 Q. Detective Hinojos, when is the first time that
6 you spoke with the defendant's wife; do you recall?

7 A. The first time was at the hospital.

8 Q. Okay. And when arrived there and saw Jayla?

9 A. That is correct.

10 Q. Did you speak with her for a very long time
11 there?

12 A. Yes. I was getting all the history -- family
13 history. History on the baby and how they came about to
14 have Jayla, and just the background there of the family.

15 Q. Okay. And then the next time you spoke with
16 her?

17 A. The next time I spoke with her was after the
18 autopsy, when we brought the in for -- the next time
19 after the autopsy, spoke to her there at CAP.

20 Q. Okay. Now, we've already seen the video?

21 A. Yes.

22 Q. When you were speaking with the defendant, you
23 and Detective Ruiz?

24 A. Uh-huh.

25 Q. Did you speak to the defendant's wife by

1 yourself, were you the only one speaking to her?

2 A. That day?

3 Q. That evening after you had the autopsy, so
4 we're talking really about the second statement on the
5 31st of July?

6 A. No, I spoke to her, by myself, at some point.
7 Detective Ruiz also spoke to her by himself, at some
8 point, until we spoke to her together.

9 Q. Okay. Did you ever threaten her in any way
10 that she was going to go to jail?

11 A. No.

12 Q. Did you ever threaten her in anyway that
13 somebody was going to jail that night, either her or her
14 husband or the both of them?

15 A. No.

16 Q. When you finish speaking with her, she left?

17 A. Yes.

18 Q. With the defendant?

19 A. That is correct.

20 Q. Did you receive a telephone call from her?

21 A. Yes, I did.

22 Q. Did you receive a phone message from her?

23 A. Detective Ruiz received a phone message on his
24 desk, office phone, and I actually spoke to her.

25 Q. Okay. Did you hear the message that was left

1 on Detective Ruiz's office phone?

2 A. Yes, I did.

3 Q. Is it those type of office phones where you are
4 able to hit play and you can hear what's going on?

5 A. That's correct. It's a digital voice recorder,
6 a digital message machine.

7 Q. Okay. Did recognize the voice on that message?

8 A. Yes, I did. She identified herself a well.

9 Q. Okay. What did she say on that message?

10 MR. NORRIS: Objection, Your Honor,
11 hearsay.

12 THE COURT: Overruled.

13 MS. HAMILTON: Okay.

14 THE COURT: I want to hear it.

15 Q. (BY MS. HAMILTON) Go ahead.

16 A. She identifies, says, Detective, this is Alice
17 Pearl. I'm calling to let you know that Tony had
18 confessed to me that he had did it and can you call me
19 we back, please.

20 Q. Okay. And then you called her or she called
21 you?

22 A. No, she called -- we listened to the message --
23 this was afterwards. She called the office. When I
24 prepped the video equipment, I turned on the video
25 equipment and Mr. Lopez, the defendant, was sitting in

1 the interview room. I walked out to go get the Miranda
2 card. When I get the Miranda card from my desk the
3 phone rings. I went ahead and answered it because I
4 thought that it might be -- nobody knew that we were
5 there at that hour, so I had a feeling it was somebody
6 that knew we were there. So I answered the phone and
7 that's when I spoke with Alice Pearl.

8 Q. Okay. She didn't have your cellphone numbering
9 or anything?

10 A. No.

11 Q. She just had the office number?

12 A. Office phone; that is correct.

13 Q. So you answered the phone, it's her?

14 A. Yes.

15 Q. What does she tell you?

16 A. She asking if I had spoken with the defendant
17 and I told her that he was there. And then she said --
18 she told me, well. And I said, you know, did he tell
19 you what happened? She said, yes, he confessed me. Did
20 he tell you what happened? She said, I don't want to
21 know the details. Well, what exactly did tell you? She
22 just said he did it, but I don't want to know the
23 details.

24 Q. Okay. And you conversed with her a while
25 longer.

1 A. She just -- she was just wondering why that had
2 happened and she was crying. She was upset.

3 THE COURT: Why what had had happened?

4 THE WITNESS: Why had or why the defendant
5 had beaten and killed the victim, the child, Jayla.

6 THE COURT: Go ahead.

7 Q. (BY MS. HAMILTON) That's what she's talking to
8 you about?

9 A. Exactly. She goes, why did this happen? Why
10 did this happen?

11 Q. Okay. And so you talked to her for a time and
12 then, after you hang up, is that when you go back in or
13 when you go into the interview room and speak with the
14 defendant?

15 A. That is correct.

16 Q. Okay. Now, he didn't tell you that he punched
17 Jayla, ever?

18 A. He did not.

19 Q. Just that he stomped on her?

20 A. That he stomped her.

21 MS. HAMILTON: Pass the witness.

22 THE COURT: Mr. Norris?

23 CROSS-EXAMINATION,

24 BY MR. NORRIS:

25 Q. Detective Hinojos, do you have a recording of

1 that phone message that was left for Detective Ruiz.

2 A. A recording of the message, yes.

3 Q. So the recording of the message still exists?

4 A. I believe so, yes.

5 MR. NORRIS: It's basically my hearsay
6 objection, Your Honor.

7 THE COURT: What do you mean the basis of
8 a hearsay objection?

9 MR. NORRIS: Well, it wasn't the hearsay.
10 It wasn't based upon what Pearl said, but on the fact
11 that he -- it's double hearsay in a sense that he's
12 reporting on a message, which exists, and that message
13 itself might be an exception to the hearsay rule, but
14 his recording wouldn't be.

15 THE COURT: Got it.

16 Q. (BY MR. NORRIS) Okay. I want to be sure about
17 how many instances, a conversation we're talking about
18 here, one is a phone message she left for Detective
19 Ruiz.

20 A. That is correct.

21 Q. And then you also spoke with her personally at
22 a later point about that?

23 A. Yes, sir, that is correct.

24 Q. Now, she was in the waiting room, I believe, I
25 understood you to you say before?

1 A. No, she was in the second statement.

2 Q. Okay. So when she spoke with you personally,
3 where was the location that you have that conversation?

4 A. It was at my office desk. I was at my office
5 desk on the phone and I don't -- I believe she called
6 from her parents home.

7 Q. I'm sorry. I may have missed something, but
8 were you returning the message that she had left for
9 Detective Ruiz; is that the --

10 A. No, my phone was ringing.

11 Q. So she called and left a message for Detective
12 Ruiz, and then before that phone call could be returned
13 she also called again?

14 A. No, she called me. When she --

15 Q. She called you and spoke personally with you?

16 A. Yes, she had left a voicemail for Detective
17 Ruiz. I hadn't heard that yet because she called there.
18 She left a message and then she called me and I spoke to
19 her?

20 Q. About how much of an interval was there between
21 the phone message and her phone call to you?

22 A. I don't recall. I don't recall because I
23 didn't -- when I heard the message it was after the
24 fact.

25 Q. She left -- when she spoke with you on the

1 phone, had you already been involved in your interview
2 with -- your final interview with Tony?

3 A. No, that's the span in the video interview
4 where he's sitting there and the video starts, and
5 there's a while before I'm actually in there.

6 Q. Before you actually begin your first question?

7 A. When I go in there I tell him, sorry I took a
8 while. I was on the phone with your wife.

9 Q. Right. Did you tell him during that interview
10 what Pearl had told you?

11 A. I don't --

12 Q. Or you don't recall?

13 A. That --

14 MS. HAMILTON: Objection, Your Honor.
15 He's not letting him finish. They are talking over each
16 other.

17 THE COURT: Let each other finish, please.

18 THE WITNESS: Can you repeat the question?

19 Q. (BY MR. NORRIS) Yeah. Did you -- during your
20 final interview with Antonio, did you describe to him
21 the contents of your conversation with Pearl?

22 A. I told him that she had called.

23 Q. But didn't describe the contents?

24 A. He asked, how was she? How she was and I
25 answered his question.

1 Q. Okay. It's reflected on the video.

2 Now, when you say that during the second
3 per interview of Antonio, when Pearl was in the waiting
4 room, was she ever taken from the waiting room to
5 another interview room, at any time, by you?

6 A. No.

7 Q. Do you know whether she was ever taken, at any
8 time, by someone else to an interview room?

9 A. I couldn't say for sure.

10 Q. Do you know whether she was also visited at
11 any, by Detective Ruiz, while she was in the waiting
12 room?

13 A. I believe so.

14 Q. And do you -- were you present when she was
15 visited by Detective Ruiz?

16 A. Yes, on -- there is one instance where we are
17 both talking to her.

18 Q. And was there any instance on which Detective
19 get Ruiz visited her when you weren't present?

20 A. There may have been. I believe so, yes.

21 Q. Okay. Do you know whether Detective Ruiz may
22 have taken her to an interview room?

23 A. I do not know that for sure.

24 Q. Okay.

25 MR. NORRIS: I'll pass the witness, Your

1 Honor.

2 THE COURT: Ms. Hamilton?

3 MS. HAMILTON: Nothing further, Your

4 Honor.

5 THE COURT: Very well.

6 Subject to recall or permanently excused?

7 MS. HAMILTON: I think at this time we're
8 done.

9 MR. NORRIS: I'm done except for argument.

10 THE COURT: Right. Correct.

11 So we can excuse them permanently, right.

12 MS. HAMILTON: Yes, Your Honor.

13 MR. NORRIS: Yes, Your Honor.

14 THE COURT: Very well. Detective, thank
15 you very much. You are permanently excused.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Thank you.

18 (Witness not present in courtroom.)

19 THE COURT: Okay. No more rebuttal
20 witnesses, Ms. Hamilton?

21 MS. HAMILTON: No, Your Honor.

22 THE COURT: So you rest and close?

23 MS. HAMILTON: Yes, Your Honor.

24 THE COURT: And Mr. Norris, you rest and
25 close as well?

1 MR. NORRIS: Yes I do, Your Honor.

2 THE COURT: Very well. Okay.

3 With that being said, we will give a brief
4 closing argument.

5 Who wants to do it first? You, Ms.
6 Hamilton?

7 MS. HAMILTON: Well, Your Honor, it's his
8 motion.

9 THE COURT: Okay.

10 MR. NORRIS: I'll want to open this and
11 have a last word, of course.

12 THE COURT: Got it.

13 MR. NORRIS: And let me -- I know I'm
14 going to speak longer than I have should probably, but I
15 want to the say that I think that the critical issues
16 here I'm going to divide them into three parts really.
17 And of course, a lot is going to depend on credibility
18 of the witnesses and things like that, all for the
19 score. But the three particular, main issues I think
20 that would be, I guess you can call them special issues
21 or something like that, is whether or not Antonio Lopez
22 was threatened by either or both detectives that his
23 wife would be held responsible for the murder of Jayla
24 Beckley if he did not confess.

25 Now, a threat is, basically, a

1 communication by one person to another, that a certain
2 consequence will follow if the other person doesn't meet
3 a certain condition or engage in a certain act. I'm
4 going to do this, if you don't do that. No special form
5 of words are required, words aren't even required. So
6 long as it is the intention of a person, to make another
7 person believe that, and the other person does believe
8 it, then it is a threat. That would be my position in
9 the case.

10 The words actually spoken by the police
11 officers speak for themselves, so it's going to be no
12 good for anybody to try to mischaracterize them, and I
13 went through a lot of them with Detective Ruiz in short
14 hand and the Court heard them and the Court heard them.
15 The Court remembers a few of them, but I would urge the
16 Court to verify and I can give time points on the
17 recording where they occur. There are no fewer than 17
18 instances in which that was brought up to Antonio.

19 THE COURT: About his wife possibly
20 getting arrested?

21 MR. NORRIS: Yeah, either you or your wife
22 or both of you.

23 THE COURT: Okay.

24 MR. NORRIS: If it wasn't you it must be
25 her.

1 THE COURT: Give me time points.

2 MR. NORRIS: Yeah, let me mention some of
3 these.

4 Now, this is the time on the thing, so if
5 you run it it's not the time of day. It's not the time
6 signature at the top.

7 THE COURT: Got it.

8 MR. NORRIS: So at approximately 20
9 minutes and 50 seconds. 21 minutes and 30 seconds. 23
10 minutes and 52 seconds. 24 minutes and 50 seconds. I'm
11 going to skip the parts about God. 28 minutes and 10
12 seconds. 29 minutes and 55 seconds. 30 minutes and 40
13 seconds. 35 minutes and 10 seconds. 37 minutes. 41
14 minutes and 30 seconds. 44 minutes and 20 seconds. 45
15 minutes and 10 seconds. 48 minutes and 10 seconds. 51
16 minutes even. 53 minutes and 6 seconds. 54 minutes and
17 20 seconds. 59 minutes and 15 seconds.

18 Those are the only ones that I wrote down
19 here. It's a lot.

20 So the question is going to be whether
21 those things were threats. Whether or not they were
22 intended to be understood and were in fact understood by
23 Tony as a claim that if he didn't confess this is what
24 would happen. The same kind of thing was also made to
25 Pearl herself and then later communicated to Tony, which

1 essentially corroborated that it wasn't just him who was
2 being this, it always also his wife. Which is a scary
3 thing for him.

4 So that is all, I think, in important to
5 determine whether there actually were threats made,
6 whether the form of words were used or not. I think
7 that's the first thing that the Court needs to
8 determine. It's something we would like to have
9 findings on and that, of course, involves the
10 credibility of Pearl and it involves the credibility of
11 the other witnesses.

12 I would notice that from the very last
13 testimony of Detective Hinojos, he claimed that he
14 didn't actually make those commons to Perla, but he
15 doesn't know and we haven't hear any evidence from
16 Detective Ruiz that he didn't. In fact, the Court may
17 recall that I asked him that question and he said he
18 just didn't remember, but he head made that statement to
19 Pearl. So we essentially have --

20 MS. HAMILTON: Objection, Your Honor, that
21 is a total misstatement.

22 MR. NORRIS: Well, the Court will
23 remember.

24 MS. HAMILTON: Detective Ruiz never said
25 he threatened anyone.

1 THE COURT: No. No. No. He said he
2 didn't remember.

3 MR. NORRIS: He said he didn't remember.

4 THE COURT: That was what Mr. Norris said.

5 MR. NORRIS: I'm sure I was clear about
6 that, Your Honor.

7 THE COURT: He asked Detective Ruiz had he
8 ever threatened Perla and then he said he did not
9 remember.

10 MS. HAMILTON: Your Honor, with all do
11 respect, I do not recall it that way at all, that he
12 said he did not recall. So if that's the basis, you
13 know, we left the witnesses subject to recall.

14 THE COURT: Right.

15 MS. HAMILTON: I would ask to be allowed
16 to rebut this argument because there is no evidence
17 before this Court, I believe that there was --

18 THE COURT: Well, I just -- I can read the
19 record.

20 MR. NORRIS: Of course she's going to be
21 able to rebut the argument when it's her turn. This
22 isn't a legal objection. The Court will remember the
23 evidence.

24 THE COURT: Right.

25 MR. NORRIS: If she wants the Court to

1 remember differently then she can argue when it's her
2 turn.

3 THE COURT: Right. And I've got the
4 record.

5 MR. NORRIS: The Court has the record.

6 MS. HAMILTON: Thank you, Judge.

7 THE COURT: Right.

8 MR. NORRIS: So the next question, I
9 think, is going to be whether or not that kind of a
10 threat, if it was a threat, is of such a kind as would
11 be likely to persuade a person, who was not otherwise
12 inclined to do so, to confess his guilt to someone.

13 In other words, is this the sort of thing
14 that we induce somebody to confess his guilt. The cases
15 use all kinds of words about this, coercion of
16 persuasion, what have you. I understand that the police
17 have a different job to do and I just think, sometimes,
18 they cross the line. I think they did it here. This is
19 exactly the sort of thing that would convince somebody,
20 in Antonio's position, to falsely admit to something to
21 avoid the consequence which was being communicated to
22 him; is that he -- or both he and his wife would be
23 arrested and held responsible for this if he didn't
24 confess. And in her case, if she didn't persuade him to
25 confess or testify against him or something to that

1 effect.

2 So we -- of course, we want to have a
3 finding at to whether or not this is the kind of threat,
4 if it was a threat, that we do that. And then of
5 course, the question is whether or not that is, in fact,
6 what happened. And I think the evidence is
7 uncontroverted on that final thing that that is what
8 happened. I think it's perfectly clear that Tony's
9 decision to make a confession in this instance was made
10 because of those threats and because he believed, after
11 leaving and talking with his wife, about what she had
12 been put though. In addition, to what he had been put
13 through in terms of those threats, that the best thing
14 for him to do was -- as Ms. Hamilton's characterized
15 it -- to fall on the swore and admit to having been
16 responsible for the death of Jayla Beckley.

17 So of course we want to have those --
18 those are the three things up which we would want to
19 have findings.

20 Now, a lot of this will depend on
21 credibility, but I think it's fairly remarkable how
22 uncontroverted most of this is. The Court can chose to
23 disbelieve Pearl entirely, just on the face of it, based
24 upon observation and demeanor and what have you, but she
25 wasn't really contradicting. I believe Detective

1 Hinojos said he didn't make any of those remarks to her,
2 but she was clear that, as I said before, that were made
3 to her and that they were made to her when she was taken
4 to another room. And detective Hinojos couldn't say
5 that she wasn't taken there by Detective Ruiz, and
6 Detective Ruiz said, himself, he couldn't remember
7 whether or not he had made such a statement to her. So
8 her testimony is, essentially, uncontradicted. The
9 Court would have to find her not credible in order to
10 find that that didn't happen. Not because it believes
11 one witness rather than another, it's just entirely
12 based on her credibility.

13 And so I think that's essentially the core
14 of it. We're just going to -- the Court's going to have
15 to make a decision from -- from the statements that were
16 actually, under the circumstances that they were made,
17 whether they were intended to be to communicate to
18 Antonio, that his wife would be held responsible for the
19 murder of this baby, if he did not confess and that he
20 understood it that way.

21 And let me just say, all that I was trying
22 to get into, when I was describing the investigation
23 here, is to illustrate that in the second interview of
24 Tony, the two hour and fifteen minute interview, or
25 whatever it was, the police officer, except for the

1 first fifteen minutes, were making absolutely no
2 attempt, whatsoever, to gain any more information to
3 help them to try to resolve this issue. And Detective
4 Ruiz essentially admitted to this, we were just trying
5 to get him to confession. And they were using a lot of
6 really high pressure tactics to the it. And most of
7 those high pressure tactics do not constitute threats.
8 Like, God is going to get you or be a man, or whatever,
9 but some of them do. The things about his wife, in
10 particular, but also some of the remarks that were made
11 regarding the fact that his children were going to be
12 taken away from him and put in foster care. And he
13 better hope they are not going to be treated the same
14 way that, you know, that he treated poor Jayla Beckley.

15 And so the Court has to decide whether or
16 not those things were threats. Again, it doesn't make a
17 difference, so much, what the form of words was. I only
18 wanted to illustrate that the police officers aren't
19 trying to solve the crime. They are just trying to get
20 him to confess, and I think that's important because it
21 bears on the question, whether or not those things were
22 really worth that. Really what they were trying to do
23 is to get him to fear certain consequences rather than
24 get new information.

25 So that's about all I have to say on this.

1 THE COURT: Very good.

2 MR. NORRIS: That's our case and that's
3 those are the kind things we will want findings on.

4 THE COURT: Very good. Thank you, Mr.
5 Norris.

6 Ms. Hamilton?

7 MS. HAMILTON: Thank you, Your Honor.

8 THE COURT: Yes, ma'am.

9 MS. HAMILTON: Your Honor, all of these
10 references that defense counsel made to these times on
11 the statements, the 20 minutes, 50 seconds; 21 minutes
12 30 seconds; 23 minutes, 52 seconds; 24 minutes, 50
13 seconds, all those different references.

14 THE COURT: Right.

15 MS. HAMILTON: Your Honor, you have the
16 ability to be able to, not only recall the statement,
17 but you also have the statement in evidence and so you
18 can look at it and you can review that. And I'm sure
19 that what will happen, when you re view that statement,
20 what you will hear, is several different times and I'm
21 not disputing any of the references, will Detective Ruiz
22 and Detective Hinojos told the defendant, there were two
23 adult there. One of you did it. One of you had to have
24 done it because of the amount of force inflicted on this
25 child, based on the injuries that they saw at the

1 autopsy, it was an adult who did it. So you're the only
2 one there your wife, it's one of the two of you. And
3 they say that repeatedly. It's one of the two of you so
4 tell us the truth. We're trying to get to the truth.
5 Tell us what happening.

6 The defendant says over and over again. I
7 don't know what happened. I don't go in there. The
8 baby's eyes are crossed. They are rolling back. I call
9 for my forty wife. You know, she just goes limp for no
10 reason whatsoever. They refer -- both detectives refer
11 back to the first statement, when they talked to the
12 defendant, and they said, you put yourself with that
13 child. At the time that she becomes comatose, at the
14 time you need to call 911, you are there alone with that
15 child. So we're looking at you because you yourself
16 placed yourself with that child.

17 So here is the focus of what they're
18 doing. Now, I realize defense counsel is, well, this is
19 improper investigation. They didn't do anything else.
20 But Judge, that's not the evidence that you heard in
21 this case. 911 was called on 28th of January -- excuse
22 me, July of 2012, when Jayla became unresponsive. They
23 took her to the hospital and she was pronounced. During
24 that time, between that time, until the autopsy,
25 Detective Hinojos told you they were doing interviews.

1 They interviewed all of the children. They interviewed
2 all of the children that were there at the house that
3 day. They interviewed the defendant's wife. They went
4 to the autopsy. We didn't get into any more than that
5 because it is beyond the scope of this motion to
6 suppress. But for the defense to suggestion, without
7 the Court hearing everything that happened in that
8 investigation, it's disingenuous because that's not the
9 evidence before this Court.

10 The CAP detectives were doing a lot of
11 things looking at this case. And it's very evident if
12 you look at the first statement that was taken, which is
13 our position was entirely voluntary. He's not in
14 custody. He's not under arrest, and so 38.22 doesn't
15 even apply, because it's not custodial interrogation.
16 But even if it did, even if the Court found that he was
17 temporarily in custody, 38.22 is satisfied in this
18 particular situation because the defendant is read his
19 rights. He voluntarily, intentionally, knowingly waived
20 those rights. He agreed to the speak with the
21 detectives, that is quite evident on the video and he
22 answers all of their questions. He doesn't even say I
23 want a lawyer I want to stop. He didn't say any of
24 those things.

25 At the end of is that conversation, the

1 defendant and his wife, both leave the police station.
2 So it's very clear that this is not a custodial
3 interrogation. Two says later, once the detectives have
4 more information, they bring the defendant back in. How
5 does he get there? In his own car. His wife drives the
6 car, they go down to the police station, one again, the
7 defendant is read his rights. So this the second time,
8 now, that he's received all of his Miranda warnings.

9 Once again, on the recording, he voluntarily waives
10 those rights and says, yes, I will talk to you.

11 And throughout this time, despite the fact
12 that the detective are saying, it's got to be one or the
13 other of you. The defendant maintains it's not me. It
14 can't be her. I don't know what happened. He doesn't
15 ever say, quit threatening me. He doesn't ever say,
16 don't say these things to me. He doesn't ever say, I
17 want a lawyer. He doesn't ever say, I'm invoking my
18 rights. He doesn't say anything of those things
19 throughout all of he the time that wet are speaking with
20 him. He says, Nope, I don't know what happened, but it
21 wasn't me. He does make references to God. He does
22 make references to all these things, the that detectives
23 talk to him.

24 You know, Judge, the cases are very clear
25 on this point. There is nothing impermissible about the

1 techniques that were used by the detectives in talking
2 to the defendant in trying to get to the truth. As a
3 matter of fact, even making reference to Child
4 Protective Services, that was not a threat. That was a
5 statement of what exactly could happen. And if the
6 Court will look at that particular statement or review,
7 the recording, what the detectives told the defendant
8 was, if both of you are arrested, CPS would take your
9 children and they would go to foster care. We hope it
10 won't be the kind of foster home that you have, that is
11 what they said.

12 They didn't say, we are going to arrest
13 you and because we're going to arrest you CPS is going
14 to come and take your kids. They didn't ever say that
15 and they didn't threaten that. And I have a case that
16 is on point, Hernandez V. State, 421 S.W.3d 712.

17 THE COURT: Give me that cite again?

18 MS. HAMILTON: 421 S.W.3d 712.

19 THE COURT: Got it.

20 MS. HAMILTON: And in that particular
21 case, the Court found that the fact that the defendant
22 faced incarceration on a murder charge, that she would
23 be separated from her children, was not sufficiently
24 coercive to render the defendant's statement
25 involuntarily. We have pretty much the same type of

1 situation. What the Court said was, if you make a true
2 statement about what is going to happen in a situation,
3 that is not coercive on it's face. If you're describing
4 what will happen if you are arrested in this particular
5 case. Okay.

6 And so that's pretty much what happened
7 here, is the detectives said, okay, if both of you end
8 up getting arrested, CPS is going to come. And I
9 understand, you know, that the defendants --

10 THE COURT: That's different than that
11 case. In that case the threat was if -- I mean, you can
12 be arrested and be separated from your children.

13 MS. HAMILTON: Your Honor, honestly, I
14 don't see the distinction because what they told the
15 defendant was, if both of you are arrested, CPS will
16 take your children. You're going to be separated from
17 your children, and hopefully they won't go to a foster
18 home like this. I don't see the distinction here where
19 they're just talking about what actually could have
20 happen.

21 THE COURT: Well --

22 MS. HAMILTON: It was a true statement
23 that was given to the defendant and his wife.

24 THE COURT: Were the children going to be
25 displaced in that case, in the case you gave me, the

1 Hernandez case.

2 MS. HAMILTON: Actually, what the --

3 THE COURT: Like, she did haven't a
4 spouse.

5 MS. HAMILTON: The defendant was going to
6 be displaced from her children.

7 THE COURT: I understand that, but were
8 the children going to be displaced from the home.

9 MS. HAMILTON: Yeah, because --

10 THE COURT: In the Hernandez case.

11 MS. HAMILTON: Yes.

12 THE COURT: She didn't have a significant
13 other, or a father that was going to remain with custody
14 of the children, the father, that was with?

15 MS. HAMILTON: No, the issue was her
16 separation from the children.

17 THE COURT: Right.

18 MS. HAMILTON: That was the issue in that
19 case.

20 THE COURT: Okay. And in this case
21 they're saying that the children are going to be
22 displaced from their home. They're going to go to a
23 foster care. They maybe a bad foster car. That is
24 distinguishable; isn't it?

25 MS. HAMILTON: Well, Your Honor, I didn't

1 see it -- first of all, I didn't see it as a threat. I
2 saw --

3 THE COURT: What?

4 MS. HAMILTON: -- it as a statement of, if
5 you're arrested this is what can happen. So when I'm
6 comparing what they said in the Hernandez case, what the
7 Court held in the Hernandez case and what I'm talking
8 about what I heard on the video, where they're just
9 making a statement. If you're arrested, then this is
10 what could happen. That is what I am comparing in these
11 two particular cases.

12 THE COURT: In this particular case, it's
13 my understanding, there was some a testimony that the
14 threat was, if both of you get put in jail.

15 MS. HAMILTON: Uh-huh.

16 THE COURT: Then these kids are going to
17 go to foster care. Which is not really the truth.

18 MS. HAMILTON: Well, Judge.

19 THE COURT: It's not really -- I mean, I
20 didn't see Perla being targeted, so that wasn't the
21 truth.

22 MS. HAMILTON: Well, Your Honor, first of
23 all, I would dispute that it was a threat at all. I --
24 my position is and --

25 THE COURT: Losing your children and

1 putting them in foster care is not a threat.

2 MS. HAMILTON: Judge, what I'm saying is,
3 what was presented to the defendant, it is my position
4 that it wasn't a threat. What they said or what the
5 detectives said was, that she's -- then she's covering
6 for you. Okay. Then it's going to be both of you. No,
7 I mean, and your kids can go into foster care hopefully
8 they won't end up with a family like yours and end up on
9 a slab where I have to see them get cut open. That's
10 not a threat, that is a statement. I don't want to see
11 that happening. I don't take that as the detective
12 threatening to take those children and put them in
13 foster care. I take that as you're kids can go in
14 foster care if the two of you are covering each other.

15 So that's the point I'm trying to make,
16 Your Honor, is that, I did not, based on looking at the
17 totality of the entire statement, everything that was
18 being said, that the detectives were threatening the
19 defendant. In all of those couple of hours that the
20 statement was going on, there was one mention, and one
21 mention only, of foster care and Child Protective
22 Services. And I believe that it was taken -- if you
23 take it in the totality of the fact that the defendant
24 is operating a foster care and the child died, he is
25 that context, Your Honor. It is the State's position

1 that it wasn't a threat.

2 THE COURT: The words propounded to this
3 defendant, your children may go in to foster care, they
4 maybe dead, cut open in a slab?

5 MS. HAMILTON: Yes.

6 THE COURT: You don't think that kind of
7 overstepped the bounds of decency and...

8 MS. HAMILTON: I do not believe so, Your
9 Honor. Not when we have --

10 THE COURT: Your child dead on a slab,
11 open.

12 MS. HAMILTON: Judge, the detectives had
13 just seen a dead child, on a slab, cut open, with blood
14 poring out of her belly and her liver in two parts.
15 They are trying to get to the truth of the matter of
16 what happened, so that detective is reacting to a
17 situation that he just see with a dead child and nobody
18 is, as far as the testimony that we have and the
19 statements, is telling the truth about what happened to
20 that child.

21 I think it goes beyond the bounds of
22 decency that we have a child, of that age, that is
23 beaten so severely, that she dies and she had to suffer
24 such horrible injuries. And so, Your Honor, I don't
25 believe so. I think looking at the totality of that

1 statement and everything that the detectives say, it's
2 got to be one or the other of you. So somebody needs to
3 fess up about what happened to this child because they
4 always took it back to the child. And they always took
5 it back to that baby who had those severe injuries,
6 trying to find out what happened.

7 And so that's why, Your Honor, it's the
8 state's position that, no, I don't think it went beyond
9 that. And then throughout this entire time, as I said,
10 the defendant doesn't say, I want to stop. I don't want
11 to talk to you any more. I want a lawyer. No. No.
12 No. No. No. No. That's what he says. And then, he
13 leaves. Once again, he is not in custody. He walks out
14 with his wife and so, even if you believe that they
15 said, somebody is going to go to jail tonight. You know
16 what, didn't happen, Judge. That did not happen. Even
17 if you believe that that statement was true, that
18 somebody si going to jail tonight because, you know,
19 what they didn't go to jail that night. Both of them
20 walked out of there free. Got in the car and the wife
21 is driving.

22 And then what does she tell you that, you
23 know, happens? You know, the defense says, you have to
24 find her not credible. I think it's okay to find her
25 not credible. She's here right now, you know,

1 testifying on behalf of her husband. But what did she
2 he say? She said, he told her, I'm going to turn myself
3 in. That's what she said. He didn't tell her, I am
4 going to take the blame for this because they are saying
5 one or the other of us did this, right? I'm not doing
6 that. He said to her, I am going to turn myself in.
7 And she said, did you punch her? That is what she asked
8 her husband, and you know what, that's not what he
9 confessed to.

10 All throughout that second statement, you
11 can hear the detectives making references to how the
12 baby was punched. She was punched. She was punched.
13 She was punched so hard that it left bruises on her
14 organs, that is split her liver. That's not what he
15 said. He said, I say stomped her and he demonstrated in
16 that third statement. If he is truly doing this, Judge,
17 if he's doing this to protect his wife and himself and
18 he's going to be the one who's ultimately going to take
19 the blame? First of all, we have to take into
20 consideration the fact that we have a dead child. And
21 up to this point in time, both adults are saying, I have
22 no idea.

23 And then he comes in, he calls the police
24 himself. He calls 9111. There was a homicide. I want
25 to -- it was me. There is nobody there at his house.

1 There was nobody there. The wife isn't there. The cops
2 aren't there. The patrol officers that get there really
3 don't know what's going on. They don't even know if
4 it's a prank call. I don't know how in the world, Your
5 Honor, it can be any more voluntary than an individual
6 picking up the phone, calling the cops and saying, can
7 you come and get me please, because I'm the one who did
8 it. I'm did the homicide. Please take me to the police
9 station.

10 They get him to the police station and,
11 once again, now, he has his rights read before he's
12 transported. So now it's the third time his rights have
13 been read to him. They get to the police station and
14 Detective Hinojos does it again, and reads him his
15 right. This is four times that this man has had his
16 right read to him. So he understands what his rights
17 are and he voluntarily waive those rights and what does
18 duds he do? He tells Detective Hinojos, I put her on
19 the floor and I stomped on her. He doesn't say I
20 punched her. He's not under arrest at that point, not
21 at this point. Detective Hinojos told you, I didn't put
22 him under arrest until after, after he confessed that
23 he's the one who did it. Who else would know but the
24 defendant himself.

25 THE COURT: That's what I didn't

1 understand. He had already confessed in the 911 call,
2 so why wasn't he put under arrest. Detective Hinojos
3 could have very easily said, yes, he's under arrest. He
4 confessed in the 911.

5 MS. HAMILTON: What he said in the 911
6 is --

7 THE COURT: I committed a homicide.

8 MS. HAMILTON: -- I committed a homicide,
9 absolutely.

10 THE COURT: That's a confession.

11 MS. HAMILTON: And you know --

12 THE COURT: He could have very well -- he
13 should have been under arrest and Detective Hinojos
14 should have said, yes, I put him under arrest. There's
15 a 911 call. He confessed.

16 MS. HAMILTON: Well, Your Honor, I think
17 that when you look at the patrol officers who go to give
18 him a ride, they both said they didn't know anything
19 about it.

20 THE COURT: One of them said he's under
21 arrest.

22 MS. HAMILTON: One of them said he --

23 THE COURT: The patrol officer --

24 MS. HAMILTON: He believed he was under
25 arrest.

1 THE COURT: He's under arrest.

2 MS. HAMILTON: Yes.

3 THE COURT: Because --

4 MS. HAMILTON: Because he wasn't free to
5 leave because he's in the car and I'm take him down
6 there.

7 THE COURT: I think he understood the
8 dispatch call correctly, in that, I have a man who
9 confessed to a homicide. Go pick him up.

10 MS. HAMILTON: I understand. I was going
11 to get that point, Judge.

12 THE COURT: Simple.

13 MS. HAMILTON: Judge, I was going to get
14 to that point.

15 THE COURT: Okay.

16 MS. HAMILTON: Here's the thing, the first
17 officer said I didn't know anything about the offense,
18 what he was talking about. I don't know if this was a
19 prank call. I don't know what's happening so I'm trying
20 to find out, so I ask this other officer to watch him.
21 That other officer says, I'm supposed to take him
22 downtown, so in my mind, he is not free to leave. I'm
23 not going to let him go. I'm going to take him
24 downtown.

25 So even if at that point, even though

1 Detective Hinojos didn't consider him to be under
2 arrest, because Detective Hinojos had not heard the 911
3 call yet.

4 THE COURT: Right.

5 MS. HAMILTON: Even if the Court were to
6 find that the defendant was indeed under arrest because
7 that officer believes he was, that statement still
8 complies with 38.22. So whether it was a custodial or
9 noncustodial interrogation at that point, you know,
10 which ever the Court findings, still 38.22 requires,
11 again, if you have a recorded statement all the rights
12 have to be read. It has to be there on the statement,
13 at the begin, with the rights of the statement, the
14 defendant has to intentionally, knowingly and
15 voluntarily waive his rights.

16 THE COURT: But it doesn't go to that,
17 complying with that. It goes to the credibility of the
18 officers, that's what this goes to. It doesn't go to
19 complying with the Code of Criminal Procedure.

20 MS. HAMILTON: It does too, Your Honor, I
21 believe.

22 THE COURT: No to this Court it doesn't.

23 MS. HAMILTON: Well, Your Honor --

24 THE COURT: It goes to the credibility of
25 these witnesses, of these police officers.

1 MS. HAMILTON: It -- and Your Honor, if
2 the Court believes, based on that one officer's state of
3 pine mind, that he thought that the defendant was indeed
4 in custody, it's still does go back to 38.22 whether or
5 not it was complied with or whether or not the statement
6 was voluntary.

7 THE COURT: It has a major impact on
8 credibility as well.

9 MS. HAMILTON: And --

10 THE COURT: Credibility of these police
11 officers.

12 MS. HAMILTON: And I absolutely understand
13 that.

14 THE COURT: Okay.

15 MS. HAMILTON: Judge, I understand that
16 you need to look at the totality of all of the
17 circumstances. I do understand that, and based on the
18 testimony that was given by Detective Hinojos, when he
19 tells you, he's called out that this guy has made a 911
20 call. He doesn't know what's going on. He gets to the
21 office. He starts the recording equipment and he talks
22 to the wife. She says, he told me he did it. He
23 wouldn't give me any details. So he goes in, reads him
24 rights, and at that point Detective Hinojos hasn't heard
25 a confession from this man, so in his mind --

1 THE COURT: I'm sure they told him.

2 MS. HAMILTON: He said. He said the wife
3 told him that he confessed and he said did it.

4 THE COURT: I'm the police officers that
5 listen to that 911 call told him.

6 MS. HAMILTON: And what he said on there
7 was that I did it.

8 THE COURT: Because they are
9 simultaneously exchanging information at all times in
10 this particular case.

11 MS. HAMILTON: Detective Hinojos did say
12 he met with that officer, and he says what he knows is
13 that -- and the sergeant called him. What he knows is
14 that he called and says, I did it. But Detective
15 Hinojos doesn't know what it is he saying he did.

16 THE COURT: I committed a homicide.

17 MS. HAMILTON: Yes, Your Honor.

18 THE COURT: And Detective Hinojos has been
19 investigating a homicide.

20 MS. HAMILTON: Right, But he doesn't --
21 you know what, Judge? I can sit here and say, I'm the
22 one on the grassy knoll. I did it.

23 THE COURT: So you're sitting there saying
24 Detective Hinojos did not know what this -- what Mr.
25 Lopez was confessing to?

1 MS. HAMILTON: He didn't know the details.
2 What he is saying he did. All he says -- he knows he's
3 saying I did a homicide, that's all he knows. So he is
4 following the procedure and he is getting the details
5 from the defendant. What is he asking? What did you
6 do? What happened? How did you do it? That's what
7 Detective Hinojos testified to. He's trying to get to
8 whatever you're saying you did. You said you did a
9 homicide. What are you saying that you did? And that's
10 what he did in that statement, and that's with evident
11 from the statement itself. When Detective Hinojos asked
12 him, so what did you say you did? How did you do it?
13 How did it come about? Why did you do it? All of those
14 things that are recorded there for the Court to take
15 into consideration.

16 When the Court takes into all the totality
17 of the circumstances and everything that the witnesses
18 had to say, that's what's I'm talking about, Your Honor.
19 I absolutely agree that the Court needs to look at all
20 of the facts and circumstances in making a determination
21 of what happens. But what defense counsel is arguing is
22 that the defendant was so afraid of these threats that
23 he decided that he had to confess. The only evidence
24 that we have that there were any kind of threats,
25 whatsoever, is his wife saying, oh, they were

1 threatening us. We're going to get arrested, both of
2 us. We are going to get arrested tonight, right? But
3 then when she stops the car, and she is talking to her
4 husband, he says, I'm going to turn myself in. He
5 doesn't tell her because we're both threatened, I'm
6 going to do this for you honey.

7 THE COURT: Does he have to verbalize
8 that?

9 MS. HAMILTON: Your Honor, I think --

10 THE COURT: Does that have to be
11 verbalized?

12 MS. HAMILTON: Your Honor, I think if the
13 Court is going to believe that this defendant was
14 intimidated by threats supposedly that were made to him,
15 and the only evidence that you have those threats were
16 made, and there was this effect on the him is from his
17 wife? Who is not an unbiased witness, then I think so,
18 Judge. I think you need to have that evidence to make
19 that determination because what you have is the
20 testimony of all those detectives. You have their
21 credibility of the two detectives, plus you have their
22 documentation of what happened in those statements. You
23 know, the testimony that they gave is recorded and it's
24 there and it does comport with what is on the video.

25 And so I do believe for this Court to rule

1 that the defendant had these threats and that that's the
2 reason why he confessed to this crime, you would have to
3 have evidence that's the reason -- that's not what he
4 said to the wife. He just said, I did. I'm turning
5 myself in is what he said. She tells the detective, I
6 don't want to know the details. Then he turns up and he
7 gives -- he tells -- really the killer would know. If
8 he's really doing this because he's threatened, Judge,
9 why did he not say, yeah, I punched her. Just like you
10 said, just like you were suggesting whenever we on the
11 video. Okay. I'm not going to make this easy for
12 everybody, quit threatening me. Quit saying that you're
13 going to send my wife to jail. Look, you've got me.
14 But he doesn't say that, Judge, and you know, that last
15 statement says it all. I denied it because I wanted to
16 see any kids again.

17 I don't want you to think I'm that type of
18 person that got up that day and had this bad thought in
19 my mind. I can't tell you why I did it. It would have
20 been so much easier for me to call my wife and say, I'm
21 frustrated. I'm angry. Can you come. Can you take
22 over or whatever. He says all of those things, Judge.
23 He gives a reason and an explanation about why he is
24 confessing at that moment, and what happened he is just
25 not able to give an explanation as to why.

1 And that's huge in this case if you're
2 looking at the credibility of all these different
3 witnesses and how this case developed from the first
4 statement, to the second statement, to finally when the
5 defendant decides to come clean and tell the Detective
6 Hinojos what really happened. I think that's what the
7 Court needs to look at. And so I think it's okay to say
8 the wife is trying to do what she can for her husband,
9 but she us an unbias. And she is making these innuendos
10 that that's why he saying it. She doesn't ever, ever
11 indicate that that's he's saying, he's going to turn
12 himself in. And she tells Detective Hinojos, I don't
13 want to know. I don't want to know what those details
14 are, so I don't let him any further.

15 It's such a leap to go from that to
16 saying, he was so constantly threatened that this is the
17 reason why he finally confessed. There is no evidence
18 of that, Judge. You can welcome at demeanor. For those
19 15 minutes or so that he's sitting in there, that he's
20 got his head down. You know, he's not going anything
21 that shows that he's agitated or that he is doing
22 something other than finally trying to come clean.

23 And I think if the Court looks at that
24 statement it's going to be so very obvious. And so I
25 would ask the Court to find, Judge, based on the content

1 of all those statements, and the testimony from the
2 officers, that he freely, voluntarily waived his rights
3 and he give statements to the police, each and every
4 time, that these were voluntary statements; and
5 therefore, they are admissible in this case.

6 Thank you, Judge.

7 THE COURT: Thank you, Ms. Hamilton.

8 Mr. Norris?

9 MR. NORRIS: I'm going to try to be a
10 little brief. First thing, just one of the last
11 comments. Pearl told us essentially from the stand the
12 same thing. You know, that she just didn't want to know
13 the details. When she was testifying on direct
14 examination about the consequences of her discussion
15 with Tony at the hotel parking lot, she said she was
16 just so upset that she just didn't want to know anything
17 more about the details. So it isn't just something she
18 just said to Detective Hinojos.

19 You know, Tony doesn't know why he did it
20 because he didn't do it. But that's not really the
21 point of this hearing after all this, and you know, as I
22 listened to opposing counsel's argument, I find, to tell
23 you the truth, very little to disagree with in many
24 respects. I just think it misses the point mostly.

25 For example, you won't find anything in

1 the motion, or in the evidence, or in my argument to
2 suggest that he wasn't read his rights. You won't find
3 anything to suggestion that I felt that there was
4 anything, any basis for suppressing his confession,
5 other than the fact that it was coerced, that it was the
6 result of threats. And that he made not as a free
7 exercise of his will, but because of the threats that
8 were made, to try to avoid having his wife bear any of
9 the responsibility for this.

10 So I'm confident that the Court is able to
11 tell a threat when she sees me. And the Court can
12 reexamine such parts of the video recordings and audio
13 records, as are necessary, to decide whether those
14 things amount threats. And I'm confident the Court will
15 know a threat when he sees one.

16 Let me just address a few of the issues
17 which were talked about, as far as, whether or not Tony
18 was actually under arrest at one point or another point.
19 I think most people would, lay people would certainly
20 think he was under arrest. And there is conflicting
21 testimony about it, if you remember from last week,
22 Detective Ruiz testified that he was under arrest when
23 he was transported. He wasn't under arrest in the first
24 interview. He wasn't under arrest in the second
25 interview, but after his call and they fetched somebody

1 to go him. He was under arrest. He was in custody when
2 he was transported to the station.

3 And it is matter of interest, because
4 police officers can't ordinarily arrest without a
5 warrant under our Code of Criminal Procedure unless they
6 see an offense being committed within their view, or
7 they have been instructed by a magistrate to make an
8 arrest for an offense committed with in the magistrate's
9 view, and there some other exceptions. There are --
10 there is an exception for when somebody confesses to a
11 felony. But the confession has to be a confession which
12 is -- would be admissible under 38.21, 38.22. And the
13 oral statements that he made, at that time, arguably
14 with not. So I suspect that that was the motive for
15 some of the polices, particularly Detective Hinojos, to
16 avoid saying that he was actually under arrest until he
17 made his confession. When in fact, Detective Ruiz had
18 said to contrary. It's not really big deal but it's not
19 really the basis for our motion. I want to keep my eye
20 on the ball here.

21 The ball is the coercion, the threats.
22 And again, as I say, I believe the Court is capable of
23 determines, on it's own, whether or not, these things
24 that were are claiming were threat, were in fact
25 threats, that they were intended to be threats, whether

1 they were understood to be threats, whether that's the
2 reason that Tony confessed.

3 Now, there is also a lot of stuff about
4 how many adults were in the house. I don't know, again,
5 why that becomes so important initially. Of course, the
6 police officers are entirely wrong about this, and this
7 is another contradiction in their testimony. Detective
8 Ruiz says that at the time they were interrogating Tony,
9 in the second interrogation, second interview of him,
10 Detective Ruiz testifies that he has absolutely no more
11 information in the case than the statements Pearl, the
12 statements of Tony and the autopsy report. I asked him
13 repeatedly about that and he said they knew nothing
14 else.

15 Detective Hinojos suggested that during
16 the period of time when that interview was going on,
17 some how he was getting calls from the Advocacy Center,
18 letting him know what the results of those interviews
19 were at the Advocacy Center. Of course, none of those
20 are in evidence here, but those interviews were being
21 conducted with no fewer than four teenage children who
22 were in the apartment at the time. Apparently unknown
23 to Detective Hinojos or to Detective Ruiz at the time
24 they were interrogating him. Any one of whom could have
25 stomped or punched or whatever, that is eleven-month old

1 baby and create the injuries and create the injuries
2 that resulted in the baby's death. There was also an
3 adult women, Pearl's mother, who was also present there
4 with some of those teenage children. There were a whole
5 lot of more large sized humans in that apartment or in
6 that duplex than either Detective Hinojos or Detective
7 Ruiz, apparently, were aware of.

8 THE COURT: Well --

9 MS. HAMILTON: Your Honor, I have to
10 object.

11 THE COURT: -- if you recall, Detective
12 Hinojos said, that his investigation said, that -- it
13 came to the point where they had narrowed it down to the
14 adults that were alone with the children. Alone with
15 the children. Their investigation lead them to these
16 two because their investigation shows these were the
17 only two individuals that were left alone, unsupervised.

18 MR. NORRIS: And I believe that is exactly
19 or close to what he actually said.

20 THE COURT: Right.

21 MR. NORRIS: And certainly what he meant
22 us to understand. It's not true, of course, and I would
23 have be able to demonstrate that, to the satisfaction of
24 the Court, if I been permitted to pursue that line of
25 questioning, but you yourself will be able to the

1 determine from remembering or recalling the first and/or
2 second interview with Tony about whether he was during
3 various times and whether people came into the room.
4 And there were people who came into the room while he
5 was in the area of the room, or the house which he
6 describes as his office, and so he was in and out. And
7 people did have an opportunity to come in and out of the
8 room during the time when he was there, and there is no
9 evidence that the detectives took any steps to exclude
10 those people or to demonstrate that the didn't have
11 access to the room. And further questioning would have
12 be extremely defective, if they did.

13 Frankly, the detectives didn't really know
14 all of who was there at the time they obtained a
15 confession from Tony. That didn't become clear until
16 later because the interviews with the children at the
17 Advocacy Center were going on contemporaneously and
18 Detective Ruiz didn't even know about it Detective
19 Hinojos did. But again, that's not the most important,
20 the only reason I wanted to bring that is to demonstrate
21 what the motives were of the police officers during the
22 second interview. Besides that, none of that represents
23 a ground for suppression of his confession.

24 The only ground for suppress of his
25 confession is that he had threats against him to put his

1 wife in jail and hold her responsible for this offense
2 if he didn't confess. And those threats were
3 communicated to him, repeatedly they were communicated
4 to her directly and when they talked together about it
5 he became aware of the fact that they had been
6 communicated to her directly. And it was at that moment
7 that he made a decision to confess.

8 I don't think he has to put in writing. I
9 don't think he has to say, well, you know Pearl, given
10 all of what you told me, I think I want to fall on my
11 sword, so that's what I'm going to do. I think a
12 reasonable inference from the evidence is that he did it
13 because of that.

14 The Court is a judge of the credibility of
15 the witnesses, and it's also a judge of what reasonable
16 inferences that can be draw from the evidence that it
17 hears, and the weight to be given the evidence.

18 Of course, it doesn't matter whether this
19 was custodial interrogation or not. I didn't complain
20 that this was the problem, custodial interrogation, only
21 that it was the product of coercion. It doesn't really
22 matter, all that is beside the point. Coercion or
23 persuasion is what we say in our law. Threats or
24 promises, we go over and over and over again. The issue
25 is whether it was a threat, an whether it was a threat

1 of a kind that is likely to produce a false confession
2 and whether it did in this case.

3 How you characterize the kinds of things
4 that Tony said to Pearl, or Pearl said to the police,
5 did she say he was going to turn himself in? Did she
6 say that he was going to confess? Both of those things
7 are true. She doesn't remember the exact words that
8 were spoken. Hinojos had his own recollection of what
9 words were spoken. We don't actually have any of that
10 stuff in evidence. You don't know directly. These are
11 different recalls. Pearl doesn't deny it. She
12 remembers that she never meant to say that Tony had
13 actually given her any details about it and she said she
14 didn't want any details. I'm going to turn myself in.
15 I did it.

16 People are going to regard those things as
17 being essentially equivalent until we get into Court and
18 start parsing words. What's most import is what did she
19 understand him to say? And she understood him to say,
20 I'm going to confess to this. I'm going to go in there
21 and turn myself in. And the only question we have here
22 is why? That's a simple question.

23 A couple of other things. Opposing
24 counsel suggests that when the police suggest somebody
25 is going to go to jail tonight, well, nobody did. So

1 they must have realized that was just a bluff. Well, of
2 course, in the end it wasn't true. Tony did go to jail
3 that night. Pearl didn't go, but the only reason she
4 didn't go is because Tony confessed. So the police
5 prediction about what was going to happen did happen.
6 Again, I don't think that's a big deal. I think the big
7 deal, and most important thing, is why Tony confessed.
8 Whether it was in response to threats or not.

9 And again, I think the Court has been
10 through this, also with this question. When the -- ans
11 you don't rely very much on he the threats about having
12 the children taken away, but it's a significant part of
13 the interrogation. They weren't just telling Tony what
14 apparently being told to the defendant in their
15 Hernandez case, that these are real consequences and
16 they're true and they are going to happen. And the
17 Court's saying, you know, if you give the defendant true
18 information about what the likely consequence are going
19 to be of something, well, that is a coercion, even if it
20 maybe, is some sense, be persuasive.

21 Telling Tony that his own children are
22 going to wind up on a slab, that's not true. That's not
23 remotely true. You know...

24 Punch or stomp? Does that really make a
25 difference? During the -- if the Court will remember

1 that during the police interrogation, after the autopsy,
2 during the second interview, they frequently mention
3 that it could either be a punch or a stomp. Somebody
4 kicked or punched that baby in the stomach. You know,
5 opposing counsel suggests that Tony's ultimate
6 statement, his confession, is corroborated by
7 circumstances -- other circumstances in the case, such
8 as, I supposed, the autopsy report which simply isn't
9 true. The autopsy report doesn't conclude that it was a
10 stomp as opposed to a punch.

11 So Tony isn't giving any information that
12 they don't already know, which would be something to
13 help corroborate the confession which is not other wise
14 supported by any evidence other than a dead baby. The
15 question is, who did it. And nothing Tony said able how
16 it was done, imparted any information as to what they
17 already had.

18 So again, keeping our eye on the ball, the
19 only issue really, is whether Tony gave a confession as
20 a result of threats of put his wife in jail if he
21 didn't. All of the rest of this is a smoke screen. I'm
22 perfectly confident that the main principle issue is
23 whether these thing were actually threats and to say,
24 I'm confident that the Court will be to tell a threat
25 from whatever.

1 Thank you, Your Honor.

2 THE COURT: Very good. Very good. Okay.
3 I will take it under advisement.

4 MR. NORRIS: Thank you, Your Honor.

5 THE COURT: I'll get back to you.

6 MS. HAMILTON: Do you want any proposed
7 findings, Judge?

8 THE COURT: Yes, that would be good. Yes,
9 please.

10 MS. HAMILTON: And we can just make our
11 proposal sent and our copy to you.

12 THE COURT: Please, that's a good idea.

13 MS. HAMILTON: Okay.

14 THE COURT: Please.

15 MS. HAMILTON: Okay. We'll do that Judge.
16 Is there any particular timeframe you would like us...

17 THE COURT: Well, we have to do it quickly
18 because we're set for trial December 2nd on this?

19 MS. RODRIGUEZ: Yes, Judge.

20 THE COURT: Yeah. We are set for trial
21 December 2nd.

22 MS. HAMILTON: So then like a week, Judge.

23 THE COURT: If you can do it within a week
24 to ten days.

25 MS. HAMILTON: Okay.

1 THE COURT: A week to ten days I think is
2 good, to submit proposed findings of facts.

3 MR. NORRIS: In ten days?

4 THE COURT: Right.

5 MR. NORRIS: Proposed findings in ten
6 days, yes, Your Honor.

7 There was one other matter I wanted to
8 bring up, something that we're worried about. Many of
9 the --

10 THE COURT: Your are worried about?

11 MR. NORRIS: Well, mainly the people who
12 were present in the apartment, including many of these
13 foster children, we don't know where they are, and we
14 feel that they are important witnesses at trial. So we
15 would like to make a request that if the State does have
16 current contact information or these children that we
17 can be supplied with.

18 THE COURT: You don't have the names of
19 these children?

20 MR. NORRIS: Oh, yes, names and birth
21 days. I don't have it memorized, the birthdays, but the
22 names are -- the names of the children, that some of
23 which we have mentioned, Rihannon Reynolds, who was a
24 teenage --

25 THE COURT: I don't the DA's office -- do

1 you have that information? It would be CPS probably.

2 MS. HAMILTON: That's right, Judge.

3 Because they are in foster care.

4 THE COURT: Unless you're going to use
5 them as witness?

6 MR. NORRIS: Well, we don't have a -- I
7 don't believe we yet a complete witness list, that was
8 one of the things I was thinking about.

9 THE COURT: But the problem is they are
10 probably not going the use them as a witness.

11 MS. HAMILTON: It's all filed, Judge, they
12 have a complete witness list.

13 MS. RODRIGUEZ: They do, Judge, but I mean
14 --

15 THE COURT: It doesn't it include the
16 foster people.

17 MS. RODRIGUEZ: It does include the foster
18 people, but it puts that they are in CPS custody. I
19 don't know their current custody. They are kids. They
20 move from house to house.

21 MR. NORRIS: So we have to find them if we
22 want them, is what I'm hearing.

23 THE COURT: Right.

24 MR. NORRIS: And that's going to be
25 daunting. I just wanted to make sure that we didn't

1 devote resources unnecessarily to finding them, if the
2 best source of information is that State already knows
3 when they are.

4 THE COURT: I don't -- I didn't think they
5 did know, do you guys?

6 MS. RODRIGUEZ: No, Judge.

7 MR. NORRIS: Okay. That's all I really
8 wanted to know. We have to find them.

9 THE COURT: Can you do a motion -- a
10 subpoena duces tecum to the CPS? Tell them to come in
11 and bring all the records of all the names of these
12 foster care people.

13 MR. NORRIS: We can do.

14 THE COURT: That would probably be the
15 quickest.

16 MR. NORRIS: If we can set an early
17 hearing on that.

18 THE COURT: I'll do that, right. I think
19 we've done that before.

20 MR. NORRIS: Okay. I think that will be
21 the appropriate way for us to go.

22 THE COURT: I think so. Then that way the
23 burden is not on the State and the State doesn't have to
24 do that.

25 MR. NORRIS: No, and I don't want to put

1 the burden on them.

2 THE COURT: Right.

3 MR. NORRIS: I just wanted to know if they
4 had help with that, that they would.

5 THE COURT: Right. And I think that's
6 going to be your quickest way so it's not so daunting.

7 MR. NORRIS: Okay. We'll do it, Your
8 Honor.

9 THE COURT: Okay. Okay. Findings of
10 fact, please, submit them. Conclusions of law, ten
11 days.

12 MS. HAMILTON: Thank you, Judge.

13 MR. NORRIS: Thank you, Your Honor.

14 MS. HAMILTON: May we be excused?

15 THE COURT: Yes. Have a wonderful evening
16 everybody. Thank you. You all maybe excused.

17 (Proceedings concluded.)

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1 STATE OF TEXAS)

2 COUNTY OF EL PASO)

3

4 I, Anita D. Garza, Official Court Reporter in and
5 for the 171st District Court of El Paso County, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested in
9 writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$ -0- and was
18 paid/will be paid by _____.

19 WITNESS MY OFFICIAL HAND this the 16th day of
20 November, 2017.

21

22

23 Anita D. Garza
24 ANITA D. GARZA, Texas CSR# 8444
171st District Court
El Paso, TX 79901 (915) 546-2100
25 Expires: December 31, 2018

REPORTER'S RECORD
 VOLUME 3 OF 3 VOLUME
 TRIAL COURT CAUSE NO. 20120D04452
 COURT OF APPEALS NO. 08-17-00039-CR

STATE OF TEXAS,) IN THE DISTRICT COURT
)
 vs.) EL PASO COUNTY, TEXAS
)
 ANTONIO N. LOPEZ.) 171ST JUDICIAL DISTRICT

I, Anita D. Garza, Official Court Reporter in and for the 171st District Court of El Paso County, State of Texas, do hereby certify that the following exhibits constitute true and complete duplicates of the original exhibits, excluding physical evidence, offered into evidence during the Motion to Suppress, September 30, 2014, in the above-entitled and numbered cause as set out herein before the Honorable Bonnie Rangel, Judge of the 171st Judicial District Court of El Paso County, Texas.

I further certify that the total cost for the preparation of this Reporter's Record is \$ -0- and was paid/will be paid by _____.

WITNESS MY OFFICIAL HAND this the 16th day of November, 2017.

/s/ Anita D. Garza
 ANITA D. GARZA Texas CSR# 8444
 171st District Court
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 Expires: December 31, 2018