

268 3A 161

IN THE
SUPREME COURT OF VIRGINIA

RECORD NO. 032242



HUGO SANCHEZ,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

APPENDIX

Jeanne E. Klapps
Senior Assistant Public Defender
OFFICE OF THE PUBLIC
DEFENDER
4103 Chain Bridge Road, Suite 500
Fairfax, Virginia 22030
(703) 934-5600

Counsel for Appellant

John H. McLees
Senior Assistant Attorney
General
OFFICE OF THE ATTORNEY
GENERAL
900 East Main Street
Richmond, Virginia 23219
(804) 786-2071

Counsel for Appellee

TABLE OF CONTENTS

Grand Jury Indictment returned April 16, 2001.....	1
Notice and Motion for Funds for DNA Investigator dated April 27, 2001	3
Notice and Motion for Additional Funds for Expert Witness filed August 9, 2001	6
Order entered September 17, 2001	9
Order entered October 10, 2001.....	10
Order entered October 10, 2001.....	12
Order entered October 10, 2001.....	13
Order entered October 10, 2001.....	14
Order entered October 10, 2001.....	15
Sentencing Order entered October 10, 2001.....	17
Transcripts	
Transcripts of Proceedings before the Honorable Robert W. Wooldridge on May 4, 2001	19
Transcript of Proceedings before the Honorable Gaylord L. Finch on August 10, 2001.....	34
Transcript of Proceedings before the Honorable Gaylord L. Finch, Jr. on August 20, 2001	42
Testimony of Andrew P. Johnson:	

Direct Examination	68
Cross Examination	77
Redirect Examination	80
Recross Examination	81

Testimony of Helen Unangst:

Direct Examination.....	82
Cross Examination	89

Transcript of Proceedings before the Honorable Gaylord L. Finch, Jr. on August 21, 2001	98
--	----

Testimony of Sandra Contrevas:

Direct Examination.....	101
Cross Examination	106
Redirect Examination	110
Recross Examination	111
Redirect Examination	119

Testimony of Johnny Marquez:

Direct Examination.....	123
Cross Examination	135

Testimony of Donald Lee:

Direct Examination.....	156
-------------------------	-----

Testimony of David Huff:

Direct Examination.....	165
Cross Examination	175

Testimony of Detective Hula:

Direct Examination.....	194
Cross Examination	198

Redirect Examination	209
Testimony of Trooper Conte:	
Direct Examination.....	212
Cross Examination	225
Testimony of Trooper Scott:	
Direct Examination.....	228
Cross Examination	250
Redirect Examination	265
Recross Examination	267
Testimony of Bryan P. Edmonds:	
Direct Examination.....	270
Cross Examination	278
Testimony of Rosily Sanchez:	
Direct Examination.....	287
Cross Examination	292
Redirect	293
Testimony of Israel Montilla:	
Direct Examination.....	294
Cross Examination	298
Testimony of Detective Hula:	
Direct Examination.....	299
Cross Examination	301
Testimony of Trooper Conte:	

Direct Examination.....304

Testimony of Dalil Mitra:

Direct Examination.....	307
Cross Examination	308
Redirect Examination	310

Testimony of Detective Hula:

Direct Examination.....	312
-------------------------	-----

Transcript of Proceedings before the Honorable Gaylord L. Finch, Jr. on August 22, 2001	313
--	-----

Transcript of Proceedings before the Honorable Gaylord L. Finch on September 28, 2001	371
--	-----

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

April 16, 2001

COMMONWEALTH OF VIRGINIA)

vs.)

HUGO ALEXANDER SANCHEZ)

INDICTMENT FOR FAILING TO

STOP AFTER AN ACCIDENT

COUNT I

Hof
The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its March Term, 2001, charges that: On or about the 26th day of November, 1999, in the County of Fairfax, Hugo Alexander Sanchez, was the driver of a motor vehicle which was involved in an accident which resulted in death or injury to ~~Jese Israel Ramirez Alvarez~~ *a person* and he then left the scene of the said accident without reporting his name, address, operator's or chauffeur's license and registration number of his vehicle or otherwise make his identity known to the state police or local law enforcement agency and to the person injured or killed, and did fail to render reasonable assistance to the person injured or killed in the said accident.

Va. Code §46.2-894

COUNT II

NP
The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its March Term, 2001, charges that: On or about the 26th day of November, 1999, in the County of Fairfax, Hugo Alexander Sanchez, was the driver of a motor vehicle which was involved in an accident which resulted in death or injury to Rodrigo Omar Ramirez and he then left the scene of the said accident without reporting his name, address,

operator's or chauffeur's license and registration number of his vehicle or otherwise make his identity known to the state police or local law enforcement agency and to the person injured or killed, and did fail to render reasonable assistance to the person injured or killed in the said accident.

Va. Code §46.2-894

COUNT III

PH The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its March Term, 2001, charges that: On or about the 26th day of November, 1999, in the County of Fairfax, Hugo Alexander Sanchez, was the driver of a motor vehicle which was involved in an accident which resulted in injury to Johnny Rigaberto Cerrato-Marquez and he then left the scene of the said accident without reporting his name, address, operator's or chauffeur's license and registration number of his vehicle or otherwise make his identity known to the state police or local law enforcement agency and to the person injured, and did fail to render reasonable assistance to the person injured in the said accident.

Va. Code §46.2-894

A True Bill ☒

No True Bill ☐

Mary Draper
FOREMAN

Witnesses subpoenaed, sworn and
available to testify before the
Grand Jury:

Special Agent F. W. Scott, Virginia State Police

VIRGINIA :

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA :

vs. : Criminal No. K099191

HUGO SANCHEZ :

**NOTICE AND MOTION FOR
FOR FUNDS FOR DNA INVESTIGATOR**

PLEASE TAKE NOTICE that at 10:00 a.m. on May 4, 2001, Hugo Sanchez, by counsel, will move this court for an order authorizing state funds for the payment of a DNA investigator.

This motion is based on Mr. Sanchez's constitutional and statutory rights under fifth, sixth, eighth, and fourteenth amendments to the United States Constitution, article one, sections eight, nine, and eleven of the Virginia Constitution, and Virginia Code sections 19.2-163, 19.2-163.2, 19.2-332, 19.2-334, 14.1-183, and the law and argument set forth in this motion and to be presented at a hearing on this motion.

Mr. Sanchez requests that this Court authorize funds for an investigator to analyze the retrieval, storage and handling of the raw material used for the DNA testing in this case. The proper retrieval, storage and handling of this material is clearly vital to the integrity of the DNA results. Because these following the required protocols are predicate to valid results, Mr. Sanchez requests an investigator to gather the necessary information about the procedure and to evaluate its accuracy.

The United States Supreme Court, in recognizing the imbalance between the resources available to a State versus an indigent defendant, found that the Constitution requires appointment and payment for the "basic tools of an adequate defense." See Ake v. Oklahoma, 470 U.S. 68, 78 (1985). The rationale of the court's decision in Ake applies to all witnesses reasonably necessary for an effective defense.

Mr. Sanchez submits that authorization of funds for this purpose is "suitable for [this] particular case." Singleton v Commonwealth, 16 Va. App. 841, 842, 433 S.E.2d 507, 508 (1993).

Section 19.2-163 of the Virginia code authorizes compensation for "reasonable expenses incurred as it deems appropriate under the circumstances of the case" to an indigent defendant. "Thus, any such expense must be both 'reasonable' and 'appropriate under the circumstances of the case.'"

Singleton v. Commonwealth, 16 Va. App. 841, 842, 433 S.E.2d 507, 508 (1993) (quoting Va. Code § 19.2-163).

"Reasonableness addresses the amount of the expense. A trial court is not permitted to direct payment of such an expense if it is of an unreasonable amount." Singleton, 16 Va. App. at 842, 433 S.E.2d at 508. "Appropriateness addresses whether the purpose of the expense is suitable for the particular case. An expense would not be justified, even if reasonable in amount, if it served little or no purpose in the particular case." Singleton, 16 Va App. at 842, 433 S.E.2d at 508.

The defendant would hire this investigator if he were not indigent. The state's obligation to fund defense services "arises when a substantial question exists over an issue requiring expert testimony for its resolution and the defendant's position cannot be fully developed without professional assistance." Williams v. Martin, 618 F 2d 1021, 1026 (4th Cir. 1980). The showing required of the defendant to justify expert assistance is "a flexible one . . . designed to ensure that the indigent defendant has access to the raw materials integral to the building of an effective defense." State v. Moore, 364 S.E.2d 648, 657 (N.C. 1988).

The Virginia Supreme Court has similarly spoken in broad terms of the defendant's right to the "basic tools of an adequate defense." O'Dell v. Commonwealth, 234 Va. 672, 686, 354 S.E. 2d 491, 499, cert. denied, 499 U.S. 871 (1988). This investigator will provide vital services,

tailored to the needs of Mr. Sanchez's defense.

The requested funds are essential for a fair trial. Were it not for Mr. Sanchez's poverty, counsel would retain the investigator requested; without him, the defendant will be deprived of due process of law, the equal protection of the laws, the effective assistance of counsel, his right to a fair trial. In these circumstances, the constitutions of the United States and Virginia as well as other applicable Virginia law require that funds for the expert assistance be provided. See Ake v. Oklahoma, 470 U.S. 68 (1985); Williams v. Martin, 618 F.2d 1021 (4th Cir. 1980); O'Dell v. Commonwealth, 234 Va. 672, 364 S.E. 2d 491, cert. denied, 488 U.S. 871 (1988).

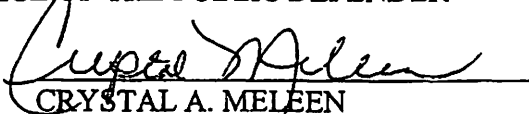
WHEREFORE, defendant respectfully submits that, under the circumstances of this case, the requested investigator is a basic and essential tool for the adequate preparation of the defense.

Respectfully submitted,

HUGO SANCHEZ

OFFICE OF THE PUBLIC DEFENDER

BY:

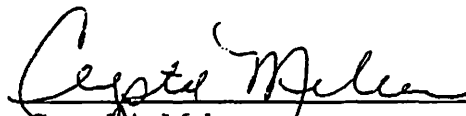


CRYSTAL A. MELEEN

Deputy Public Defender
4103 Chain Bridge Road, Suite 500
Fairfax, Virginia 22030
(703) 934-5600

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice and Motion was filed with the Fairfax Circuit Court and hand delivered to the Office of the Commonwealth's Attorney at 4110 Chain Bridge Road, Fairfax, Virginia 22030 on this 27th day of April, 2001.


Crystal A. Meleen
Deputy Public Defender

FILED
CRIMINAL

VIRGINIA:

2001 AUG -9 PM 3: 26

IN THE GENERAL DISTRICT COURT OF FAIRFAX COUNTY
CLERK, CIRCUIT COURT
FAIRFAX, VA

COMMONWEALTH

:

Criminal No. 99191

vs.

:

HUGO SANCHEZ,

:

Defendant.

:

NOTICE AND MOTION FOR ADDITIONAL FUNDS
FOR EXPERT WITNESS

PLEASE TAKE NOTICE that on Friday, August 10, 2001 at 10:00 a.m., Hugo Sanchez, by counsel, moves this Court to order the Commonwealth to provide additional funds for a DNA expert. This motion is based on Mr. Sanchez's Constitutional and statutory rights under the Sixth and Fourteenth Amendments to the United States Constitution, Article one, Sect. 8 and 11 of the Virginia Constitution; and Virginia Code sect. 19.2-163, 19.2-163.2, and 19.2-334. In support of this motion, Mr. Sanchez submits the following:

1. This Court previously authorized \$3,000.00 for the retention of an expert witness in the field of DNA analysis to aid the defense in the matters against Mr. Sanchez.
2. The defense was able to hire the services of Mr. George Riley of Fairfax Identity Laboratories to review various documents and provide an expert opinion regarding the DNA analysis that the Commonwealth will seek to admit as evidence against Mr. Sanchez.
3. Mr. Riley review all the documents provided by the Commonwealth crime

lab, prepared a report based on his review of those documents and met with defense counsel to discuss the results of his analysis. Following this work, Mr. Riley has informed counsel that he has reached the funds allocated by the Court.

4. Mr. Riley's fee for court testimony is \$250.00 per hour, with a maximum of \$1,750.00 per day. Since Mr. Riley is a local witness, counsel will keep him on a stand-by basis to keep costs down. Mr. Riley is a material witness who will testify as an expert in response to the Commonwealth's DNA expert.

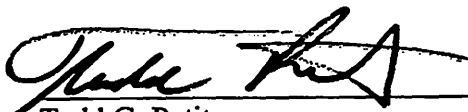
WHEREFORE, Mr. Sanchez requests that this court authorize additional funds for testimony of Mr. Riley.

Respectfully submitted,

Hugo Sanchez
By Counsel

OFFICE OF THE PUBLIC DEFENDER

By:




Todd G. Petit
Assistant Public Defender
4103 Chain Bridge Road, Suite 500
Fairfax, Virginia 22030
(703) 934-5600

000007

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2001, a true copy of the foregoing Notice and Motion was delivered to the Office of the Fairfax County Commonwealth's Attorney, 4110 Chain Bridge Road, Fairfax, Virginia 22030.



Todd G. Petit
Assistant Public Defender

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	CRIMINAL NUMBER 99324
VERSUS)	
HUGO ALEXANDER SANCHEZ	)	INDICTMENT - Failing to Stop After an Accident (Counts 1, 2, and 3)

On August 10, 2001, the Commonwealth's Attorney, the Defendant, HUGO ALEXANDER SANCHEZ, and Todd Petit, Counsel for the Defendant, appeared before this Court. The Defendant is indicted with three counts of the felony of Failing to Stop After an Accident, and he appeared while in custody.

This case came before this Court today for argument on the Defendant's motion in limine, amended motion in limine and for funds for expert testimony, which motions the Court, after hearing argument, granted in part, denied in part, and deferred in part.

The Defendant was remanded to jail.

Entered on August 17, 2001.



JUDGE GAYLORD L. FINCH

000009

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	CRIMINAL NUMBER K99324
VERSUS)	
HUGO ALEXANDER SANCHEZ	)	INDICTMENT – FAILING TO STOP AFTER AN ACCIDENT (3 COUNTS)

On August 20, 2001, the Commonwealth's Attorney, John Murphy, the Defendant, HUGO ALEXANDER SANCHEZ, Counsels for the Defendant, Crystal Meleen and Todd Petit, and a Spanish interpreter appeared before this Court. The Defendant is indicted for the felonies of FAILING TO STOP AFTER AN ACCIDENT (3 COUNTS) and he appeared while in the custody of the Sheriff.

The Court granted without the objection of the Defendant or his Counsels, the Commonwealth's Attorney's motion to amend Count I of the indictment by striking the name "JOSE ISRAEL RAMIREZ ALVAREZ" and adding the words "a person". The Court further granted, without the objection of the Defendant or his Counsels, the Commonwealth's Attorney's motion to nolle prosequi Count II and Count III of the indictment. The Court **ORDERED** that Count II and Count III of the indictment be nolle prosequied.

The Defendant was arraigned upon the amended indictment and the Defendant entered a plea of not guilty.

The Court, after hearing the objections by the Commonwealth's Attorney, granted the Defendant's motion in limine concerning a robbery which occurred in Maryland.

The Defendant's motion in limine to exclude evidence concerning the car jacking of April 23, 2001, was denied by the Court, after hearing argument.

The Defendant's motion to omit the incident which occurred outside the courtroom concerning the Defendant's brother threatening the Commonwealth's Attorney's witnesses, was granted by the Court, after hearing argument.

The Court, Commonwealth's Attorney, the Defendant and Counsel for the Defendant agreed that this would be a bifurcated trial.

Twenty veniremen were sworn and examined on their voir dire and found to be competent and qualified jurors. The Commonwealth's Attorney and Counsels for the Defendant alternately struck the names of four of the veniremen. The remaining twelve constituted the Jury and were sworn.

The Jury heard opening statements of the Commonwealth's Attorney and of Counsel for the Defendant. Counsel for the Defendant moved the Court for a mistrial, which motion the Court, denied.

The Court, after granting a curative instruction, read it to the Jury.

The Jury heard evidence presented by the Commonwealth.

The Court, being of the opinion that this case could not be completed at a reasonable hour, admonished the jurors as to their behavior during recess and continued this case to August 21, 2001 at 9:45 a.m.

The Defendant was remanded to the custody of the Sheriff.

Entered on August 10, 2001.



JUDGE GAYLORD L. FINCH

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	CRIMINAL NUMBER 99324
VERSUS)	
HUGO ALEXANDER SANCHEZ	)	INDICTMENT - FAILING TO STOP AFTER AN ACCIDENT

JURY TRIAL
(DAY TWO)

On August 21, 2001, John Murray, Assistant Commonwealth's Attorney, the Defendant, HUGO ALEXANDER SANCHEZ, and Todd Petit and Crystal Meleen, Counsel for the Defendant, together with two interpreters fluent in the Spanish language appeared before this Court. The Defendant is indicted for the felony of FAILING TO STOP AFTER AN ACCIDENT and he appeared while in custody.

The roll call was taken and the Jurors took their place in the Jury Box.

The Commonwealth's Attorney proceeded to present the evidence on behalf of the Commonwealth. Counsel for the Defendant moved the Court for a mistrial outside the presence of the jury. The Court, after hearing argument by counsel, denied the motion. Counsel for the Defendant then renewed his motion for a mistrial outside the presence of the jury, which motion the Court, after hearing argument from Counsel, denied.

The Jury heard the remainder of the evidence on behalf of the Commonwealth.

At the conclusion of the evidence presented, Counsel for the Defendant moved the Court to strike the evidence presented by the Commonwealth. The Court, after hearing argument, denied the motion.

The Jury heard the evidence presented by the Defendant and the rebuttal evidence presented by the Commonwealth.

The Court, being of the opinion that this case could not be complete at a reasonable hour, admonished the jurors as to their behavior during recess and continued this case to August 22, 2001 at 9:30 a.m.

The Defendant was remanded to the custody of the Sheriff.

Entered on September 10, 2001.


JUDGE GAYLORD L. FINCH

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	CRIMINAL NUMBER 99324
VERSUS)	
HUGO ALEXANDER SANCHEZ	)	INDICTMENT - FAILING TO STOP AFTER AN ACCIDENT

JURY TRIAL
(DAY THREE)

On August 22, 2001, John Murray, Assistant Commonwealth's Attorney, the Defendant, HUGO ALEXANDER SANCHEZ, and Todd Petit and Crystal Meleen, Counsel for the Defendant, together with two interpreters fluent in the Spanish language, appeared before this Court. The Defendant is indicted for the felony of FAILING TO STOP AFTER AN ACCIDENT and he appeared while in custody.

The Commonwealth's Attorney moved the Court to allow new testimony which was not originally brought out under direct examination, which motion the Court denied, after hearing argument.

Counsel for the Defendant renewed the motion to strike the evidence presented by the Commonwealth, which motion the Court denied, after hearing argument.

The roll call was taken and the Jurors took their place in the Jury Box.

C
The Jury received the instructions of the Court, heard closing arguments of Counsel and was sent to deliberate.

The Jury was recalled and the Court, being of the opinion that this case could not be complete at a reasonable hour, admonished the jurors as to their behavior during recess and continued this case to August 23, 2001 at 8:30 a.m. for deliberations.

The Defendant ~~was~~ remanded to the custody of the Sheriff.

Entered on September 22¹⁶, 2001.

Gaylord L. Finch

JUDGE GAYLORD L. FINCH

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	CRIMINAL NUMBER 99324
VERSUS)	
HUGO ALEXANDER SANCHEZ	)	INDICTMENT - FAILING TO STOP AFTER AN ACCIDENT

JURY TRIAL
(DAY THREE)

On August 22, 2001, John Murray, Assistant Commonwealth's Attorney, the Defendant, HUGO ALEXANDER SANCHEZ, and Todd Petit and Crystal Meleen, Counsel for the Defendant, together with two interpreters fluent in the Spanish language, appeared before this Court. The Defendant is indicted for the felony of FAILING TO STOP AFTER AN ACCIDENT and he appeared while in custody.

The Commonwealth's Attorney moved the Court to allow new testimony which was not originally brought out under direct examination, which motion the Court denied, after hearing argument.

Counsel for the Defendant renewed the motion to strike the evidence presented by the Commonwealth, which motion the Court denied, after hearing argument.

The roll call was taken and the Jurors took their place in the Jury Box.

The Jury received the instructions of the Court, heard closing arguments of Counsel and was sent to deliberate.

The Jury was recalled and the Court, being of the opinion that this case could not be complete at a reasonable hour, admonished the jurors as to their behavior during recess and continued this case to August 23, 2001 at 8:30 a.m. for deliberations.

The Defendant was remanded to the custody of the Sheriff.

Entered on September 10, 2001.


JUDGE GAYLORD L. FINCH

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	CRIMINAL NUMBER 99324
VERSUS)	
HUGO ALEXANDER SANCHEZ	)	INDICTMENT - FAILING TO STOP AFTER AN ACCIDENT

JURY TRIAL

(DAY FOUR)

On August 23, 2001, John Murray, Assistant Commonwealth's Attorney, the Defendant, HUGO ALEXANDER SANCHEZ, and Todd Petit and Crystal Meleen, Counsel for the Defendant, together with two interpreters fluent in the Spanish language, appeared before this Court. The Defendant is indicted for the felony of FAILING TO STOP AFTER AN ACCIDENT and he appeared while in custody.

The roll call was taken and the Jurors took their place and continued with the deliberations.

After some time, the Jury returned to Court and rendered the following verdict:

"We, the Jury, on the issue joined in the case of the Commonwealth of Virginia versus HUGO ALEXANDER SANCHEZ, Defendant, find the Defendant guilty of FAILING TO STOP AFTER AN ACCIDENT, as charged in the indictment.

/s/Kenneth Adler
Foreman."

The Jury was polled and each juror answered in the affirmative that this was his or her verdict.

Counsel for the Defendant moved the Court for a mistrial, which the Court, after hearing argument, denied.

The Jury heard argument presented by the Commonwealth and the Defendant regarding the issue of punishment.

The Jury received the instructions of the Court regarding punishment, heard closing arguments of Counsel and was sent to deliberate. After some time, the Jury returned to Court and rendered the following verdict:

"We, the Jury, on the issue joined in the case of the Commonwealth of Virginia versus HUGO ALEXANDER SANCHEZ, Defendant, having found the Defendant guilty of FAILING TO STOP AFTER AN ACCIDENT, fix his punishment at: four years.

/s/Kenneth Adler
Foreman."

The Jury was polled and each juror answered in the affirmative that this was his or her verdict.

The Jury was discharged.

In accordance with the verdict rendered by the Jury, the Court found the Defendant, HUGO ALEXANDER SANCHEZ, guilty of FAILING TO STOP AFTER AN ACCIDENT, as charged.

The Court granted the Defendant's motion to refer this case to the District Probation Officer for investigation and report before sentencing. This case was continued on September 28, 2001 at 10:00 a.m., for sentencing.

The Defendant was remanded to the custody of the Sheriff.

Entered on September 28 ¹⁰, 2001.



JUDGE GAYLORD L. FINCH

SENTENCING ORDER**JURY TRIAL****VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY****FEDERAL INFORMATION PROCESSING
STANDARDS CODE: 059****Hearing Date: September 28, 2001****Judge: GAYLORD L. FINCH****COMMONWEALTH OF VIRGINIA**

versus

HUGO ALEXANDER SANCHEZ, Defendant

This case came before the Court for sentencing of the Defendant, who appeared in person with his Attorney, Todd Petit and an interpreter fluent in the Spanish language. The Commonwealth was represented by John Murphy. The Defendant appeared while in custody.

On August 20, 2001, the Defendant was found guilty of the following offense(s):

CASE NUMBER	OFFENSE DESCRIPTION AND INDICATOR (F/M)	OFFENSE DATE	VA. CODE SECTION
99324	FAILING TO STOP AFTER AN ACCIDENT- (F)	11/26/1999	46.2-894

The pre-sentence report was considered and is ordered filed as a part of the record in this case in accordance with the provisions of Code § 19.2-299.

Pursuant to the provisions of Code § 19.2-298.01, the Court has considered and reviewed the applicable discretionary sentencing guidelines and the guideline worksheets. The sentencing guideline worksheets and the written explanation of any departure from the guidelines are ordered filed as a part of the record in this case.

000¹⁷

Before pronouncing the sentence, the Court inquired if the Defendant desired to make a statement and if the Defendant desired to advance any reason why judgement should not be pronounced.

The Court **SENTENCED** the Defendant to:

INCARCERATION. Incarceration with the Virginia Department of Corrections for the term of: four (4) years to run consecutively with criminal case number 99191. The total sentence imposed is **four (4) years**.

COSTS. The Defendant shall pay all costs of this case.

PUBLIC DEFENDER FEE. Todd Petit, the Public Defender, who was appointed to represent the Defendant in this case, is allowed a fee of \$395.00. This fee is to be assessed as costs as provided in § 19.2-163.2(7) of the 1950 Code of Virginia, as amended.

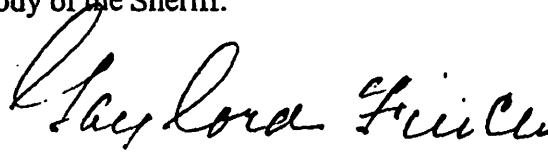
APPEAL RIGHTS. The Court advised the Defendant of his right to appeal from the sentence imposed, including the right to have an attorney appointed for him and to have the attorney's fees, costs and expenses in connection with an appeal paid for him in the event he is financially unable to pay. It is **ORDERED** by the Court that in the event the Defendant or his Counsel files a notice of appeal, the transcript is to be prepared and is made a part of the record in this case.

Counsel for the Defendant moved the Court to set aside the verdict, which motion the Court denied, after hearing argument.

The Court **ORDERED** that the motion to set aside the verdict be denied.

The Defendant was remanded to the custody of the Sheriff.

Entered on October 10, 2001.



JUDGE GAYLORD L. FINCH

000-18

COPY

FILED

MAY 10 2:34 PM

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - - X

COMMONWEALTH OF VIRGINIA :

-vs- : CRIMINAL DOCKET NO. 99191

HUGO ALEXANDER SANCHEZ :

Defendant. :

- - - - - X

Courtroom 4-E
Fairfax County Judicial Center
Fairfax, Virginia

Friday, May 4, 2001

The above-entitled matter came on to be heard
before the HONORABLE ROBERT W. WOOLDRIDGE, Judge, in and
for the Circuit Court of Fairfax County, in the Courthouse,
4100 Chain Bridge Road, Fairfax, Virginia, beginning at
11:26 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth
of Virginia:

JOHN MURPHY, ASSISTANT
COMMONWEALTH'S ATTORNEY

On Behalf of the Defendant:

CRYSTAL MELEEN, ATTORNEY-AT-LAW

P R O C E E D I N G S

(The Court Reporter was duly sworn.)

MR. MURPHY: Your Honor, there is a preliminary amendment before you get started. It's defense counsel's motion.

THE COURT: This is the matter of the Commonwealth of Virginia versus Hugo Alexander Sanchez, criminal case number 99191. Mr. Sanchez is present in the courtroom, along with his counsel, Ms. Meleen; the Commonwealth is represented by Mr. Murphy.

The matter is before me today on the Defendant's motion for funds for a DNA investigator.

When you say a preliminary amendment, to the indictment?

MR. MURPHY: No, no, Your Honor. With regards to this motion, in addition to case number 99191, I've spoken with counsel and I believe that these motions also apply to case number 99324.

MS. MELEEN: Your Honor, he has two cases in circuit court and there's no sense in doing this twice. Actually, Your Honor, I have two different motions: one is for a standard DNA expert -- did you know that?

THE COURT: I have a notice of motion for funds

1 for a DNA investigator. That's the motion I've read. Oh,
2 I see, it's also an appointment of a DNA expert.

3 MS. MELEEN: It all has to do with DNA.

4 THE COURT: All right, I've read both of them
5 actually then. But both of these motions apply in both
6 cases?

7 MS. MELEEN: Yes, sir.

8 THE COURT: So we'll also apply this in 99324?

9 MS. MELEEN: Yes, sir. We are here in these
10 motions in 99191, which is the matter on the docket, but
11 we're also hearing them in relation to 99324.

12 Ms. Meleen?

13 MS. MELEEN: Your Honor, I understand that a
14 DNA expert is not a right and that certainly it has to be
15 an appropriate case. I don't want to go into a lot of
16 detail and keep you busy more than I have to but I think I
17 need to tell you a little bit about where the DNA fits in
18 in this case and why the two cases fit together. It's
19 because the same test that links both of Mr. Sanchez's
20 cases.

21 THE COURT: What are the charges in the other
22 case?

23 MS. MELEEN: For now, they're hit and run.

1 THE COURT: Similar?

2 MS. MELEEN: Well, one is at the beginning of
3 the car and one is at the end of the car.

4 What has happened is that there is a carjacking
5 in Fairfax County. The same car that is carjacked
6 according to the complaining witness in that case ends up
7 in an accident. The accident is the result -- brings the
8 charges that are in the other case.

9 So a carjacking on one end and an accident on
10 the other. And he's charged with hit and run, although I'm
11 not sure the commonwealth has decided exactly what is going
12 to go forward on the charges that will be tried if that
13 goes to trial.

14 But in any event, the carjacking case is the
15 one that is scheduled to go to trial first. The
16 complaining witness in these cases, Helen -- and I always
17 have trouble with her name but I'm going to take a shot at
18 it, -- Ms. Unangst identified Mr. Sanchez. I think it's
19 important for the court to know that he is not the first
20 person that she identified as being the person who
21 approached her on the morning that her car was taken.

22 So although the commonwealth does have an
23 identification I think that it is not the standard

1 identification. I think it has some problems with the
2 eyewitness identification in this matter.

3 We also have some other issues in the case.
4 There is a statement which we previously filed a motion to
5 suppress and will be refiled. So there is some evidence
6 that the court will have to address at some point.

7 But the physical evidence between Mr. Sanchez
8 and this car is some blood that is taken from the inside
9 driver's door when the car is found wrecked.

10 Now that is going to be -- it's my
11 understanding the commonwealth has given notice of intent
12 to use DNA evidence. It is my understanding that that will
13 be the way the commonwealth tries to physically link Mr.
14 Sanchez with this particular car in both cases. And so
15 there was one test done and it implies in both. It is, to
16 my knowledge, the only physical evidence, forensic evidence
17 that the commonwealth will intend to introduce.

18 And in that context I think that this is the
19 kind of -- in light of the fact that from our perspective,
20 from the defense's perspective the identification of the
21 complaining witness of Mr. Sanchez that was made at the
22 preliminary hearing, we believe that that is suspect.

23 We believe that there are problems in the way

1 the statement from Mr. Sanchez was obtained to the extent
2 that we believe it's involuntary. And that leaves the
3 evidence against Mr. Sanchez to be this forensic evidence
4 which is the DNA.

5 THE COURT: What do you understand the
6 difference between a DNA investigator and a DNA expert to
7 be?

8 MS. MELEEN: A DNA expert is a scientist who
9 charges me to talk to him, \$250 an hour. A DNA
10 investigator is a lawyer who will help with what is the --
11 reviewing the files, going through the files, identifying
12 the problems; in the effect kind of like you would think of
13 a paralegal's job who only charges me \$75 an hour to do the
14 busy work associated with the forensic scientist.

15 I have done so many of these, Your Honor, and I
16 have never found a DNA expert that I have been happy with.
17 In fact, the DNA expert that I have, in speaking to him in
18 Mr. Sanchez's case, is someone from Fairfax that I have
19 never used before. But I usually get an allotment of
20 money. His his pretrial charge is \$250 an hour. I usually
21 get 10 hours for \$2500. And usually the forensic testing
22 and that sort of thing eats up the money and I have no
23 opportunities for anything other than that.

1 My suggestion was that perhaps I could get
2 three hours from the investigator for every hour of his
3 timem and then use my allotment of money more efficiently
4 for her to review the files and identify what he needs to
5 concentrate on.

6 THE COURT: The DNA investigator is a lawyer?

7 MS. MELEEN: She is. The only one I know is --
8 her name is Susan Herrera and she's a lawyer. She works
9 primarily -- she's not from Virginia, she's in Seattle.
10 But I'm not asking for travel time because I'm not planning
11 on calling her as a witness.

12 She investigates chain of custody; she
13 investigates problems in the files, identifies the things
14 for the DNA investigator to -- or the DNA expert to look at
15 where the problems are and can examine the raw data and
16 flag any inconsistencies that may require other testing or,
17 may be problems for him, and essentially does the
18 groundwork for his forensic testing and anything that he
19 needs to do.

20 THE COURT: Why isn't that something that your
21 office should do?

22 MS. MELEEN: Your Honor, if I had the expertise
23 to do that -- and I think that goes back to the case of

1 Huskie. In Huskie I think the case has always bothered us
2 in getting a DNA, or any kind of expert, is Huskie. And
3 they said you have a lawyer who has a skill, you have a DNA
4 lawyer, a lawyer who has an identifiable skill in this
5 area.

6 The problem with it is that I don't have that
7 skill, and neither does Mr. Petit who is working on this
8 case with me. There are things that I do not know. For
9 example -- I can give you all kinds of examples because
10 I've been asking Ms. Herrera about what she can do for us.
11 And, in fact, I asked her to send me an affidavit but I
12 haven't got it. And I think it's a problem with my fax
13 machine as opposed to her.

14 But one of the things that I don't know, for
15 example, is that in the test that was used in this case,
16 which is the Powerplex test, every person has two alleles:
17 one you get from your parents and one you get from -- one
18 from your mother and one from your father, and occasionally
19 there comes up in a test where a person may have more than
20 one.

21 A sample might show three or four, or five or
22 six, or whatever, and the system is done on a computer
23 system and allows you to delete those that you don't feel

1 are applicable. As the person who is running the test if
2 you see the two alleles you're looking for you can say,
3 identify these two and see if we have a match with these
4 two and not go forward with the other ones.

5 Had I not known to talk to her I would not
6 known that was possible. I would have thought it was a
7 computer reading from a disk of raw data that just showed
8 us whether there was a match or not. But there's this
9 human function that goes from the raw data that says, this
10 is what we're going to do; those don't fit in; we don't
11 delete them, we look at the two alleles that we're looking
12 for.

13 For example, there are often mixed readings on
14 blood samples. In order to get a match or not a match the
15 person who is running the test has the option of setting
16 the threshold for which they will measure the information
17 they get. So if it's a faint reading they can say, we're
18 going to not measure the faint readings, and we're going to
19 take these two readings, we're going to raise the bar a
20 little bit and only apply the test to these two readings
21 that we have here.

22 There are all kinds of questions that unless
23 you're a scientist I don't know how you know or have

1 developed an expertise where this is all you know. I don't
2 know to ask the questions.

3 THE COURT: What are you seeking in the way of
4 an amount for each of the two?

5 MS. MELEEN: Your Honor, as far as -- I'm not
6 asking for expert fees to testify. The DNA expert charges
7 \$1700 a day to testify. I'm not asking for that because I
8 haven't determined that that's appropriate.

9 I'm asking for pretrial work, and the standard
10 for him is 10 hours, \$250 an hour and \$2500.

11 THE COURT: Okay; how about for the
12 investigator?

13 MS. MELEEN: Your Honor, I guess probably I
14 would ask for 10 hours from her as well and that's \$75 an
15 hour.

16 THE COURT: Thank you; Mr. Murphy?

17 MR. MURPHY: Your Honor, in this case, as
18 counsel has already alluded to -- I want to address one at
19 a time. First the DNA investigator, Your Honor, I think
20 the court quite properly has asked counsel what it is that
21 a third lawyer paid at government's expense is going to
22 contribute to this case.

23 Now this is an indigent defendant. He now has

1 two lawyers working on his case full time at public
2 expense. He is now requesting an expert to be appointed
3 for him, and they're requesting a third lawyer to be added
4 to the team to investigate, if I heard her right, chain of
5 custody and other things which lawyers traditionally look
6 into. Those are basically legal questions.

7 And I would suggest to Your Honor that this
8 defendant, there is nothing in the constitution that gives
9 this defendant a right to those sorts of assets. There are
10 many lawyers in this county, if they got in trouble
11 tomorrow they couldn't mount a defense that included a team
12 of two full-time lawyers, a third lawyer consultant, plus
13 his own private experts to retest evidence. There is
14 lawyers in this county that couldn't mount that kind of
15 defense for themselves.

16 And I suggest to the court that the
17 constitution does not require the taxpayers to pay for that
18 kind of defense in a case like this. There's nothing
19 counsel has told you which specifies why the DNA evidence
20 needs to be retested or reanalyzed or reevaluated. She
21 can't point to a single specific issue which would require
22 that in this case.

23 Unless the court wants to find that basically

1 in all scientific cases indigent defendants always have a
2 right to retest any evidence at the government's expense, I
3 don't see anything that's made this case out of the
4 ordinary because nothing has been articulated, Your Honor,
5 that there is anything special about this case.

6 I'll add, by the way, this is a case where not
7 only has he been identified by the victim -- and, yes, we
8 do have evidence that the victim thought it might have been
9 somebody else at an earlier time, but not only does she now
10 believe that this defendant is the one who carjacked her,
11 this defendant has confessed to the police that he was
12 involved in the carjacking. He says he was the driver and
13 not the one with the gun. And so the DNA evidence is kind
14 of the icing on the cake. On top of everything else his
15 DNA is found in the driver's seat of the stolen car.

16 But I would suggest to Your Honor unless the
17 court has a general philosophy that in any kind of case
18 involving analysis, a criminal case involving analysis,
19 that the defendant has a constitutional right to reanalyze
20 it, then I would suggest to Your Honor there is nothing
21 that has been particularized in this case that would make
22 it special.

23 And with regards to the DNA investigator, I've

1 never seen a motion like this before, I don't hear anything
2 in those issues that is not quite frankly what a criminal
3 lawyer is paid to do. They're paid to figure out if there
4 are issues and what those issues are. And certainly
5 there's no justification for that in this case.

6 THE COURT: Ms. Meleen?

7 MS. MELEEN: Your Honor, I just want to make
8 sure that you understand -- I think Mr. Murphy referenced
9 several times a third lawyer -- I'm not asking for her to
10 be involved in the representation. She has a J.D., she
11 doesn't have a Virginia bar license. I had no inclination
12 that she was a third member of the defense team. She has
13 an expertise in the --

14 THE COURT: In my view she's a DNA expert. I
15 mean, you've distinguished them between a DNA investigator
16 and a DNA expert. If anything I suppose she's a DNA expert
17 and her expertise is something different than his expertise
18 -- if the other one is a he. I don't remember.

19 MS. MELEEN: I just want to make sure that you
20 understood we weren't asking for co-counsel. I think Mr.
21 Murphy referenced several times to another lawyer.

22 And I also wanted to make clear that I'm not
23 asking that this be retested at this point. It may be

1 something that comes up, I don't even know if there is
2 enough of the sample. It's the process that we intend to
3 look into at first.

4 And what we're asking for the expert to look
5 into the process -- the way the test was conducted, whether
6 or not the test is reliable that was used -- I don't even
7 know if there's enough to be retested. So obviously that
8 would take a court order to get any evidence that the lab -
9 - taken to an expert and that sort of thing. We're not
10 asking for that. We're asking for a review to make sure
11 that this is good, reliable evidence.

12 THE COURT: Well, I'm not sure that I go quite
13 as far as Mr. Murphy wonders aloud if I go -- that is, that
14 it's sort of automatic, but I do think that the frequency
15 with which DNA is arising, the reliability of that, and the
16 constitutional rights that get if not impinged at least
17 approached from my view is making DNA become close to
18 fingerprints in terms of automatic entitlement. It's not
19 automatic yet but I think it's a significant entitlement.

20 What I'm going to do, Ms. Meleen, is grant your
21 motion. I will allow the defense \$3,000 for DNA expert
22 consultation for you to use as you choose. I'm not going
23 to grant you an investigator per se. I'm going to allow

1 you \$3,000 in DNA expert consultation for you to use as you
2 think is most helpful to your client.

3 MS. MELEEN: Thank you, sir.

4 THE COURT: All right, thank you.

5 * * * * *

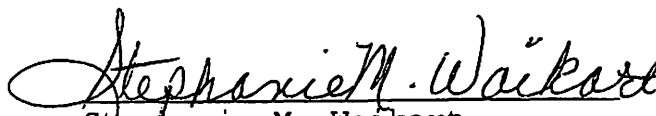
6 (Whereupon, at approximately 11:44 o'clock
7 a.m., the hearing in the above-entitled case was
8 concluded.)

9 * * * * *

10 CERTIFICATE OF REPORTER

11 I, Stephanie M. Waikart, the Verbatim Reporter
12 who was duly sworn to well and truly report the foregoing
13 proceedings, do hereby certify that they are true and
14 correct to the best of my knowledge and ability; and that I
15 have no interest in said proceedings, financial or
16 otherwise, nor through relationship with any of the parties
17 in interest or their counsel.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this 20th day of November, 2001.

21 
22 Stephanie M. Waikart
23 Court Reporter

COPY

1

VIRGINIA

93 PM12:28

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COURT COURT

- - - - - X
:
COMMONWEALTH OF VIRGINIA :
:
-VS- :
:
HUGO ALEXANDER SANCHEZ, :
:
Defendant. :
:
- - - - - X

Criminal Action Nos.
99191 & 99324

Fairfax County Courthouse
Courtroom Number 4E
Fairfax, Virginia

Friday, August 10, 2001

The above-entitled matter came on to be heard
before the HONORABLE GAYLORD L. FINCH, Judge, in and for
the Circuit Court of Fairfax County, in the Courthouse,
Fairfax, Virginia, beginning at 11:28 o'clock a.m.

APPEARANCES:

On Behalf of the Commonwealth:

John R. Murphy, Esquire
ASSISTANT COMMONWEALTH'S ATTORNEY

On Behalf of the Defendant:

Todd G. Petit, Esquire
ASSISTANT PUBLIC DEFENDER

1 MR. PETIT: Yes, sir. Your Honor, the only
2 one left is number 4, juvenile convictions, and that goes
3 to what Mr. Murphy's position is on that.

4 I believe the Bostnick case, which is 31 Va Ap
5 632, in that case the Defendant was trying to bring in the
6 witness' prior juvenile convictions and the Court of
7 Appeals said that under Alaska v. -- and I can't remember
8 the Supreme Court case, while the juvenile convictions do
9 come in, it only comes in for bias, not credibility.

10 If and when Mr. Sanchez testifies, the
11 convictions could only be used for credibility. Certainly
12 bias wouldn't have anything to do with his testimony. The
13 Court of Appeals said that it does not come in
14 credibility.

15 THE COURT: I'm really inclined to defer on
16 that one, too. I mean --

17 MR. MURPHY: That's fine, Judge.

18 MR. PETIT: Your Honor, there's one last
19 motion. I'm looking for additional funds. That was filed
20 yesterday. We spoke to our expert witness on Thursday.
21 He indicated that -- the expert witness was granted to
22 review the procedures and practices of the Commonwealth's
23 expert witnesses, the state DNA lab.

1 He has done that and he has gone over all of
2 it and he's met with us on several occasions, spoke with
3 us on several occasions, indicated that he has reached the
4 \$3,000 limit that the Court appointed to us.

5 When we motioned for the appointment of
6 counsel, we only asked for funds for the research and the
7 review. If he was helpful, we would come back and ask for
8 more funds. If he wasn't helpful, then the Court hadn't
9 expended extra funds to have him come testify when he was
10 not needed.

11 He has actually exceeded the \$3,000 limit.
12 He's indicated that he's not going to bill beyond that
13 because he didn't have the -- to bill beyond that, but at
14 this point we do need him to testify. He is local here in
15 Virginia. He's right in Fairfax. He's indicated that he
16 needs about two hours of notice before he testifies to
17 this. It's going to be a three day trial, two or three
18 day trial.

19 He indicates that his fees are \$250 an hour or
20 a maximum of \$1,750 per day. I don't expect that his
21 testimony will be more than a half a day, but his
22 testimony is material to the defense. If he doesn't
23 testify the only expert witness that will exist in this

1 case is the Commonwealth's witnesses.

2 For those reasons we're asking the Court to
3 allow additional funds to pay for his testimony.

4 THE COURT: Mr. Murphy?

5 MR. MURPHY: Your Honor, I think the threshold
6 question you have to ask the defense at this point is what
7 is the reason why this Defendant needs to have a second
8 DNA person available at trial.

9 We have a DNA expert, who will be available on
10 the 20th for the full trial, and will be available on the
11 13th after the first day. He's flying into town and he'll
12 be available about the second day.

13 I think that the rule is pretty clear. I
14 think it was actually argued earlier before you in a
15 different case that the Defendant has to have some
16 specific reason why he needs this second person at trial.
17 What's he going to say? Has he come to different findings
18 than the Commonwealth's witness, because if he hasn't,
19 then why are we paying for him to be here?

20 MR. PETIT: I can tell the Court that there is
21 a difference, different testimony. If Your Honor wants
22 more information as to what that testimony will be, I have
23 no problem doing that to the Court, but I would ask that

1 that be done ex parte.

2 I don't want to tell Mr. Murphy what all my
3 witnesses are going to say because I need this expert. I
4 have no problem approaching the bench ex parte and telling
5 the Court precisely what he will testify to.

6 MR. MURPHY: Judge, I would object to ex parte
7 communications. I don't think the Commonwealth should be
8 placed in a position where we don't agree to ex parte, we
9 have to agree to a motion.

10 As an indigent client, he has to justify in a
11 public court why he's entitled to public funds, why he
12 needs all that money. He's already spent \$3,000 and we
13 don't know that this expert has come to a conclusion any
14 different than the state has.

15 MR. PETIT: Your Honor, I'm willing to tell
16 the Court precisely what he's going to say, but my
17 client's due process rights don't require the Commonwealth
18 to know what all my witnesses are going to say. Certainly
19 he wouldn't ask me to tell him what my client has said.

20 To require me to tell the Commonwealth what
21 all my witnesses are going to say certainly violates my
22 client's due process rights to have a fair and impartial
23 trial. If Your Honor orders me to do it in open court,

1 then I have no choice, but I do believe that approaching
2 the bench -- the Supreme Court of the United States has
3 agreed that ex parte motions are appropriate in certain
4 circumstances.

5 I submit to Your Honor that this is one of
6 those circumstances.

7 THE COURT: I'm going to take about a fifteen
8 minute recess.

9 (Brief recess.)

10 THE COURT: Let the record reflect that Mr.
11 Sanchez, the Defendant, has returned to the courtroom.
12 He's present with his attorney, Mr. Petit, and Mr. Murphy
13 is here on behalf of the Commonwealth.

14 I'm not inclined to have the motion to be made
15 ex parte. So unless there's something further, the Court
16 is going to deny your motion for additional funds.

17 MR. PETIT: In that case, Your Honor, based on
18 that ruling, I will proffer to the Court that what -- Mr.
19 George Riley works at a Fairfax laboratory, Identity
20 Laboratories here in Fairfax, Virginia.

21 Again, he was appointed. We received funding
22 so he could look over the Commonwealth's expert witness as
23 to the procedures that were followed in examining the DNA.

1 The only evidence that they have regarding my client --
2 they have two pieces of evidence putting my client in the
3 car, the DNA, and as Mr. Murphy said, a witness who was
4 drugged and drunk, drunk all night long.

5 So we did have Mr. Riley go over the documents
6 from the state laboratory. There are approximately --
7 about four or five inches worth of documents that he has
8 reviewed. In that documentation he has noticed that there
9 were errors in the way that the DNA procedures were
10 followed, that the standard operating procedures were not
11 followed, that there were errors in the way the
12 examination was done, which could have had a significant
13 impact in the results of the DNA.

14 So therefore the DNA results that the
15 Commonwealth is going to put forward as being
16 scientifically valid could be questioned, will be
17 questioned, to an extent by our expert witness and
18 therefore the Commonwealth's only other evidence, other
19 than the DNA, which we submit would not be evidence that
20 is credible, would be testimony of one witness who had
21 admittedly was doing cocaine and drinking alcohol.

22 So it is certainly material for the defense as
23 to whether Mr. Sanchez was in that car for those reasons.

1 His testimony is material to the defense.

2 THE COURT: Mr. Murphy?

3 MR. MURPHY: I don't have any further
4 argument.

5 THE COURT: The Court is going to deny the
6 motion for the additional funds.

7 MR. PETIT: So we're not going to be able to
8 have our witness testify, Your Honor?

9 THE COURT: I'm inclined to deny the motion.

10 (Whereupon, at 12:21 o'clock p.m., the
11 proceedings were concluded.)
12
13
14
15
16
17
18
19
20
21
22
23

VIRGINIA

COPY

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
SEP 20 PM 2:24
CLERK OF COURT
FAIRFAX, VA

- - - - -X
:
COMMONWEALTH OF VIRGINIA, :
:
-vs- :
:
HUGO A. SANCHEZ, :
:
Defendant. :
:
- - - - -X

CRIMINAL DOCKET NO. 99324

Circuit Courtroom 4E
Fairfax County Courthouse
Fairfax, Virginia

Monday, August 20, 2001

The above-entitled matter came on to be heard
before THE HONORABLE GAYLORD L. FINCH, JR., JUDGE, in and
for the Circuit Court of Fairfax County, in the
Courthouse, Fairfax, Virginia, beginning at 10:17 o'clock
a.m.

APPEARANCES:

On Behalf of the Commonwealth:

JOHN R. MURPHY, ESQUIRE
Assistant Commonwealth's Attorney

On Behalf of the Defendant:

CRYSTAL A. MELEEN, ESQUIRE
AND
TODD G. PETIT, ESQUIRE
Office of Public Defender

Also present:

Ricardo Abarca, Interpreter

Irene deGair, Interpreter

* * * * *

C O N T E N T S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ANDREW P. JOHNSON	161	170	173	174
HELEN UNANGST	175	182	-	-

* * * * *

E X H I B I T S

FOR IDENTIFICATION IN EVIDENCE

Commonwealth's Exhibit Nos. 1 & 2	164	-
Commonwealth's Exhibit No. 3	169	-

1 all the -- in both cases. If I can approach, Your Honor?

2 THE COURT: Sure. You've showed that to Mr.
3 Murphy?

4 MR. PETIT: Yes, Your Honor.

5 (Mr. Petit handed the documents to the Court
6 for his examination.)

7 MR. PETIT: Your Honor, these motions have
8 been, for the most part, I guess, denied. There was a
9 request for a -- some were also granted. There's a DNA --
10 an investigator motion, a DNA expert motion and there
11 should also be an order granting that motion.

12 There's a motion under Trombetta, that motion
13 was denied. I don't believe we have an order as of yet
14 because the clerk's office couldn't find the other file
15 from the carjacking case, but we will attempt to get that
16 by the end of the trial so it is in this record.

17 There's a motion to suppress statements,
18 there's a motion to suppress blood that was taken from Mr.
19 Sanchez. There's the Commonwealth's response to that
20 motion.

21 Again, all of these motions were done in both
22 cases and this is just an effort to make sure that all the
23 motions are in both files.

1 There was also a motion that was heard two
2 weeks ago, I believe it was on the 10th of this month, and
3 that was a motion to have additional funds for an expert.
4 That expert was George Riley. Your Honor, I believe, was
5 the Judge who heard that and denied the motion.

6 Again, my proffer to the Court regarding Mr.
7 Riley is he would have testified to the procedures that
8 were followed and not followed by the Commonwealth's
9 witnesses. He would have testified to procedures that
10 were not followed, would have impacted the testing and
11 would have called into question the DNA results.

12 That was the investigator and expert that we
13 were granted and the Court did deny the extra funds for
14 that. Again, that motion was for both the carjacking and
15 this case. I don't believe that that motion is there. We
16 will also get that.

17 The motion in limine, which was also filed in
18 this case that was heard two weeks ago, the Court granted
19 in part, denied in part and then deferred to some of the
20 motion to today's court hearing.

21 I do have another motion in limine if I can
22 approach, Your Honor?

23 (Mr. Petit handed a document to the Court for

1 (Whereupon, at approximately 2:28 o'clock
2 p.m., the jury returned to the courtroom and resumed their
3 seats in the jury box.)

4 THE COURT: Are you ready to make your opening
5 statement?

6 MR. MURPHY: Yes. Thank you, Your Honor.

7 THE COURT: Mr. Murphy?

8 MR. MURPHY: Ladies and gentlemen, I've
9 already introduced myself. My name is John Murphy. I'm
10 the prosecuting attorney in this case. This is my
11 opportunity to give you an opening statement. It briefly
12 summarize the evidence that you are about to hear.

13 You already know this is a charge of felony
14 hit and run. Felony hit and run occurs when an individual
15 leaves the scene without rendering assistance, the driver
16 leaves the scene of an accident without rendering
17 assistance to individuals who need it and that can occur
18 when people are injured, certainly when people are killed.
19 Both occurred in this case.

20 The evidence will be that this Defendant, Mr.
21 Hugo Sanchez, on November 23rd, 1999, carjacked an
22 automobile. He did it while armed. The victim in this
23 case, the owner of the vehicle in question, is Helen

1 Unangst, was accosted by him and another individual.

2 She was forced to relinquish her vehicle to
3 them. It was a green Honda and they took it on the 23rd
4 and this Defendant drove it.

5 Two days later on the evening of the 25th of
6 November, which was Thursday evening, the evidence will be
7 that this Defendant goes to a party in Maryland and the
8 party -- at that time he's still driving the car.

9 The evidence will be that he has several
10 people that he knows, allows them into the vehicle, that
11 he's driving around Maryland at that time in it.

12 The evidence will be that there is drinking,
13 there are drugs and this Defendant at some point in the
14 early evening hours or the early morning hours of the 26th
15 of November, we're now into the early hours of Friday
16 morning, starts driving on the Dulles Toll Road back into
17 Fairfax County.

18 A short distance before the toll road meets
19 the beltway, the Defendant's car careens off the road. It
20 drives over a field and crashes into a tree. It is
21 totaled. There is no question that this car is absolutely
22 totaled.

23 There are hit and run cases where an argument

1 can be made, "Well, did you know there was an accident
2 when you left the scene?" Well, there's no question in
3 this case.

4 The car is totaled and two people are killed
5 inside the vehicle. A third individual is severely
6 injured at the time or seriously injured anyway. That
7 third individual is lying face down. He hears and feels
8 the Defendant and another survivor rifle his pockets and
9 then leave him for dead lying face down with the two
10 bodies.

11 That third individual is here to testify
12 today. He lived through that accident. Two of his
13 companions and the Defendant's companions did not. He's
14 here to tell you the Defendant was operating that vehicle
15 that night, just as he had two days earlier when he stole
16 it.

17 He's here to tell you, and he will admit
18 candidly, they were all drinking, drugs were being used.
19 This witness, in other words, is no angel and right up
20 front I'm going to tell you that. He's somebody that
21 would hang around with the Defendant.

22 MR. PETIT: Objection, Your Honor.

23 THE COURT: Sustained.

1 MR. MURPHY: He is a companion of the
2 Defendant and he's going to tell you quite candidly that
3 that's the case. Nobody forced him into the car that
4 night.

5 The car was discovered the next morning later
6 on after the sun came up, about 11:30, by the Virginia
7 State Police. At that time the bodies were discovered as
8 well.

9 There's not going to be any question, both
10 sides agree, who was killed, two Hispanic males, and they
11 died as a result of the car accident, the car wreck. No
12 question about that in this case.

13 The third individual who had survived was no
14 longer at the scene when the state police arrived. He had
15 made his way to safety. The state police begin working
16 the scene. Their first job is to identify these bodies.

17 That gets a little bit easier when they find
18 that there is at least one license. There's a picture of
19 one of the dead people giving the name and address.

20 Basically they were able to figure out who these people
21 are after a couple of hours of doing research and running
22 down leads.

23 They figure out, okay, we know who has been

1 killed here. They approach the next of kin. The father
2 of one was able to say that he spoke with his son while he
3 was riding down the road in that car.

4 The son called him on a cell phone and that
5 helped us again to place that they were still alive at
6 that point, the wreck hadn't occurred.

7 But eventually it's determined obviously that
8 the two dead people were not the driver. One is in the
9 passenger seat dead, one is in the back seat dead. They
10 take blood swabs. The police take blood swabs from the
11 front driver's seat.

12 They also eventually apprehend this Defendant,
13 take his blood swabs, or blood from him, they compare it
14 and the DNA analysis shows that it's the Defendant's blood
15 in the driver's seat of that wrecked vehicle, which I
16 would suggest to you strongly corroborates the testimony
17 you're going to hear from the eyewitness.

18 Also, you will find that a boot print was
19 discovered, not on the ground, but on the inside of the
20 driver's window, as though somebody had tried to kick
21 their way out of the vehicle.

22 The state police took that boot print. Later
23 on when they apprehended this Defendant, they took his

1 boots and then they compared them and those comparisons
2 are consistent. You'll hear from the expert -- as a
3 matter of fact, you're going to hear about him out of
4 order.

5 You're going to hear from him first, because
6 he's also appearing in federal court in a totally
7 unrelated matter and has to leave. So, he's going to be
8 heard out of order first.

9 MR. PETIT: I'm going to object to where the
10 witness is --

11 THE COURT: Objection sustained. Go ahead.

12 MR. MURPHY: So, you'll be hearing from him
13 first out of order and I simply ask you to remember what
14 he says and then later on it will make more sense to you
15 when you hear additional evidence.

16 Ladies and gentlemen, at the end of this
17 evidence I'm going to ask you to find that Hugo Sanchez
18 was the driver of that vehicle in the early morning hours
19 of the 26th, that he's the one that wrecked it, that two
20 people died in that wreck and that a third was left for
21 dead.

22 He didn't try to assist anybody. The only
23 thing he did was rifle their pockets. He didn't call for

1 an ambulance as the law requires --

2 MR. PETIT: Objection, Your Honor.

3 MR. MURPHY: -- didn't do anything.

4 MR. PETIT: Objection, Your Honor.

5 THE COURT: What's the basis? Why don't you
6 approach? Come up.

7 BENCH CONFERENCE

8 MR. PETIT: Your Honor, Mr. Murphy is
9 testifying as to what the witness may or may not have
10 done. I think it's all speculation unless he has a
11 foundation that he didn't call the ambulance or anything.

12 THE COURT: Mr. Murphy?

13 MR. MURPHY: There's no evidence that he
14 called the ambulance. He denied that he was there to the
15 police.

16 THE COURT: I'm going to sustain the
17 objection. Either rephrase it or go on to something else.

18 OPEN COURT

19 MR. MURPHY: The evidence will be that he
20 rendered no assistance to these individuals as he's
21 required to do, that he simply fled the scene. And at the
22 end of this evidence, I'm going to ask that you find him
23 guilty.

1 THE COURT: Thank you, Mr. Murphy.

2 Mr. Petit, do you want to make your opening?

3 MR. PETIT: Thank you, Your Honor.

4 The Commonwealth makes a very compelling
5 opening argument. Assuming everything he says is
6 accurate, and assuming is the key word, because that is
7 what the Commonwealth's evidence is about, assumptions.

8 He tells you about DNA. He tells you that
9 there was a sample in the car that matched Mr. Hugo
10 Sanchez. What he didn't tell you, around that driver's
11 seat, their third party, their witness, also had his blood
12 all around that driver's seat.

13 What he doesn't tell you is the DNA isn't
14 going to tell you when Mr. Sanchez was in that car. He
15 could have been in the car the day before, he could have
16 been in the car two days before.

17 It doesn't tell you when Mr. Sanchez was in
18 that car, assuming he was in that car, but that's what Mr.
19 Murphy wants you to assume, that the DNA in the car -- the
20 assumption is he was there at the time of the accident and
21 that's the key point.

22 The burden of proof is on the Commonwealth to
23 prove that he was in the car at the time of the accident.

1 The DNA does not show that. The DNA will show that he was
2 in the car at some time.

3 The boot print does not show that Mr. Sanchez
4 was in the car at all. You'll notice that Mr. Murphy used
5 a very special word, similar, the word. They're very --
6 the comparisons are similar. That's what the expert is
7 going to testify to, that the manufacturing techniques are
8 similar.

9 He's not going to say that the boot belonged
10 to Mr. Sanchez. He's not going to say they were a match.
11 He is not going to say when the boot print was there.
12 He's going to say the manufacturing techniques are similar
13 to the boots that were taken from Mr. Sanchez and that's
14 all he's going to tell you.

15 It doesn't tell you if Mr. Sanchez was in the
16 car. It doesn't tell you -- if you find he was in the
17 car, when he was in the car. It doesn't tell you any of
18 this.

19 What does the Commonwealth hinge their entire
20 case on? Their entire case, ladies and gentlemen, comes
21 down to one person, Johnny Cerrato Marquez. And what is
22 Johnny Cerrato Marquez going to tell you?

23 "I was in the car at the time of the accident.

1 I was in the car with other people," and we'll figure out
2 how many other people were in that car a little later.
3 But he's going to say, "But I wasn't driving. I was in
4 the back seat. I was not driving. I was in the back
5 seat."

6 What else is he going to tell you? "Well, I
7 was drinking. Everybody was drinking." What else was he
8 doing? "I was smoking marijuana. Everybody else was
9 smoking marijuana."

10 What's the third thing he's going to say? "I
11 was doing cocaine. A lot of other people in the car were
12 doing cocaine, too." So, he's drinking, he's smoking
13 marijuana, he's doing cocaine and he'll also tell you, "I
14 was passing in and out of consciousness." I believe his
15 words should be, "I had flashes."

16 He will tell you that when he was in the
17 accident, he got out of the car, walked to a gas station
18 and called his mother and said, "Mom, I'm in Gaithersburg,
19 Maryland, please come pick me up." She says, "No."

20 He talks to the gas station attendant and he
21 says, "You're not in Maryland. You're in Fairfax,
22 Virginia. You're not in Gaithersburg."

23 He was in the wrong state, ladies and

1 gentlemen, and that is the witness that the Commonwealth
2 hinges their entire evidence on, a man who is passing out
3 because he's intoxicated from both drugs and alcohol, a
4 man whose own blood is in the driver's seat, a man who
5 fled the scene.

6 Mr. Murphy says there are two dead bodies in
7 the car and he says that Mr. Marquez went and sought help.
8 He says that Mr. Sanchez fled, Mr. Marquez left to get
9 help. He goes to the gas station, calls his mother to
10 come pick him up. She doesn't come pick him up. He calls
11 a taxi, he takes a cab back home to Maryland. Did he call
12 the police? No.

13 So, he's drunk, he's passing out, he flees the
14 scene, his blood is in the driver's seat and Mr. Sanchez
15 sits over here (indicating).

16 When you look at all the evidence, ladies and
17 gentlemen, when you look at what the Commonwealth is
18 resting their entire case on, I am confident that you will
19 not be able to come to a finding of proof beyond a
20 reasonable doubt that Hugo Sanchez was in that car.

21 What you will come to realize after all the
22 evidence is heard is that the Commonwealth, for whatever
23 reason, believes that Hugo Sanchez was in that car when

1 the evidence really points to Johnny Cerrato Marquez.

2 The Commonwealth brought up the point that Mr.
3 Sanchez is alleged to have been involved in a carjacking.
4 He hasn't been convicted. But we're here on a hit and run
5 when the evidence points to Johnny Cerrato Marquez.

6 MR. MURPHY: Judge, I would object to him
7 saying he hasn't been convicted. That trial is pending.
8 I don't want the jury to think he's been acquitted.

9 MR. PETIT: Your Honor, can we approach?

10 THE COURT: Please.

11 MR. MURPHY: I think we have to clarify that.

12 BENCH CONFERENCE

13 MR. PETIT: Your Honor, this is precisely why
14 we didn't want the carjacking to come in because the
15 Commonwealth is basically trying to keep -- they brought
16 it up in the opening arguments that he was carjacking and
17 they put him in the car that way.

18 To say that the trial is pending at this point
19 certainly prejudices him at that point. My fact that he
20 has not been convicted is accurate. I was not misleading
21 the jury in any way. Whether there are charges pending or
22 anything of that nature, that is highly prejudicial.

23 THE COURT: I'm going to have to at least

1 instruct the jury about it. I think his point is well
2 taken. I'm not sure why you got into that.

3 MR. MURPHY: He opened the door to that. I
4 don't think they should be considering what the status of
5 the case is.

6 THE COURT: This is the argument stage of the
7 opening statements.

8 MR. PETIT: I don't think at this point -- and
9 I'd hate to do this, but I really don't think that this
10 instruction is going to cure the prejudice that has been
11 caused by that. I think a mistrial is necessary in this
12 particular case.

13 MR. MURPHY: Judge, he's the one that opened
14 the door to it.

15 THE COURT: I'm aware of that.

16 What exactly did you say about -- did you say
17 it was pending? I can't remember what he said.

18 MR. PETIT: Mr. Murphy's statement in opening
19 arguments was that two days before or three days earlier
20 there was a carjacking.

21 THE COURT: I remember.

22 MR. PETIT: My point here was merely that he
23 has not been convicted of that charge. I think that was

1 accurate, I don't think it was misleading and it certainly
2 didn't open the door for Mr. Murphy to say that a charge
3 is pending.

4 THE COURT: What were your words, that the
5 charge was pending?

6 MR. MURPHY: I said that the charge was
7 pending. I objected to his phrase because it sounded like
8 he had been acquitted of that.

9 THE COURT: If I were to -- are you making a
10 motion for a mistrial or are you thinking about it?

11 MR. PETIT: No, Your Honor. I think I have to
12 ask for a motion for a mistrial.

13 THE COURT: If I were to grant that, what
14 would you like me to tell the jury as far as a curative
15 instruction?

16 (Mr. Petit and Ms. Meleen conferred, off the
17 record.)

18 MR. PETIT: I don't think I want a curative
19 instruction because obviously I don't think it's going to
20 cure it. He said a trial is pending.

21 THE COURT: I'm going to have to take a break.
22 This is really off to a real rocky start. We haven't even
23 got the first testimony and it's a quarter till 3:00. I'm

1 going to take about a ten minute recess.

2 OPEN COURT

3 (Brief recess.)

4 THE COURT: I apologize to everybody for
5 taking that recess, as I will to the jury when they come
6 back in. I would like to take up a few things before they
7 do come back though and since they're not here, we could
8 just do it right here.

9 As far as the -- before we recessed you had
10 made a motion for a mistrial, which I'm going to deny. My
11 question is, would you like the Court to give the jury any
12 type of instruction based on what we talked about?

13 MR. PETIT: Yes, sir. Based on the denial of
14 a mistrial, Your Honor, I would ask for a cured
15 instruction.

16 THE COURT: The curative instruction I have in
17 mind would be something to this effect. Any reference
18 that has been made to an alleged or possible carjacking
19 that you may have heard or you may hear during the course
20 of this trial would go solely and to be used to determine
21 motive, intent or possible state of mind on the date in
22 the indictment and is not offered as substantive evidence.

23 MR. MURPHY: No objection.

1 MR. PETIT: My only concern, Your Honor, is
2 that I don't believe that -- again our argument in motion
3 in limine is that it really doesn't go to the motive of
4 the hit and run. It doesn't go to the motive of whether
5 he was intending to call for help, it doesn't go to his
6 state of mind of whether he's calling for help.

7 I don't think that any of the exceptions that
8 Your Honor cited really apply in this particular case.

9 THE COURT: Mr. Murphy?

10 MR. PETIT: If the Commonwealth perhaps can
11 proffer why --

12 MR. MURPHY: Is counsel arguing again about
13 why the hit and run -- why the carjacking is relevant to
14 the hit and run?

15 THE COURT: The Court's understanding was that
16 it occurred --

17 MR. MURPHY: Two days earlier.

18 THE COURT: -- within two days before this
19 particular accident, was the same car.

20 MR. MURPHY: Correct.

21 MR. PETIT: My question to the Commonwealth, I
22 guess, is what exactly is he putting it in for. Is it for
23 motive, is it for state of mind? If it's for motive, then

1 I guess we can do motive.

2 We still object based on the motion in limine,
3 but if the Commonwealth is putting it in for a particular
4 reason, the curative instruction should be limited to that
5 particular reason.

6 So, I guess the Commonwealth needs to tell us
7 exactly why it's coming in.

8 MR. MURPHY: Judge, it goes to -- number one,
9 it corroborates my eyewitness. Counsel has already
10 attempted to impeach in his opening statement, so clearly
11 his credibility is at issue in this case.

12 The witness I'm referring to is Mr. Marquez,
13 who will be testifying for the Commonwealth. He's going
14 to place the Defendant behind the wheel and I would
15 suggest to Your Honor that it is probative for the jury to
16 know that the Defendant carjacked the vehicle forty-eight
17 hours earlier.

18 It tells them that he is more likely to be
19 behind the wheel than some other party, who just happens
20 to somehow shove him to the side, I guess, and drive the
21 car that he's gone through the trouble of carjacking.

22 It also provides circumstantial evidence of
23 why he would not attempt to help anybody, why he would, in

1 fact, have a reason to violate the statute. He can't go
2 for help.

3 THE COURT: So, you're saying it goes to
4 motive, intent?

5 MR. MURPHY: It goes to motive, intent. It
6 corroborates or helps at least to corroborate what the
7 Commonwealth's witness will testify to. It tells the jury
8 -- gives him a motive, yes, a motive for why he violated
9 this statute two days later. He can't go for help under
10 those circumstances.

11 THE COURT: Mr. Petit?

12 MR. PETIT: Your Honor, our position is the
13 same. We don't believe that goes to any of that. What
14 Mr. Murphy is trying to do is basically try the carjacking
15 today to this jury.

16 THE COURT: So, you're saying you don't want
17 me to give them a curative instruction?

18 MR. PETIT: Your Honor, I want a curative
19 instruction. If that's the only choice, then I would ask
20 the Court to limit it to motive. I think that's what the
21 Commonwealth is saying, that it goes to motive. I don't
22 think the other two options should be included in it.

23 THE COURT: I think the Commonwealth -- the

1 way I understand it, you're saying it goes to intent as
2 well.

3 Mr. Murphy?

4 MR. MURPHY: It does, Your Honor, and it also
5 goes to the credibility. It buttresses the testimony of
6 the Commonwealth's witness. I think that the Court's
7 instruction is absolutely a correct statement of the law
8 and it goes to what the jury needs to know about how they
9 should -- what they're supposed to do with this evidence
10 of the carjacking, how they're supposed to be looking at
11 it in this case.

12 I would ask the Court not to comment on what
13 particularly -- I mean, I think that we have to argue pro
14 and con in terms of how it impacts this case, in terms of
15 how they ought to be --

16 THE COURT: Let's get the jury back in.

17 MS. MELEEN: Your Honor, can we address
18 something procedurally before they come back?

19 THE COURT: Sure.

20 MS. MELEEN: Your Honor, when you take a
21 break, the jury is still in the box. The courtroom kind
22 of -- people start talking and start milling around the
23 courtroom. They start milling around with each other, but

1 they're still in the courtroom and they're unsupervised
2 and I think procedurally that's a problem.

3 THE COURT: It won't happen again.

4 MS. MELEEN: Thank you, sir.

5 MR. PETIT: One last issue, Your Honor.

6 THE COURT: Sure.

7 MR. PETIT: It's been referred to at this
8 point as a carjacking. I think that's a legal conclusion
9 just as a murder -- there's a death, murder is a legal
10 conclusion. I think carjacking is also a legal
11 conclusion.

12 If they want to say an allegation of theft or
13 something along those lines, I think that would be more
14 appropriate, but carjacking is a legal conclusion.

15 THE COURT: Mr. Murphy?

16 MR. MURPHY: Your Honor, it came in without
17 objection.

18 THE COURT: That's the problem, yeah.

19 MR. MURPHY: We could go -- and I can phrase
20 it different ways, but frankly I didn't want to go into a
21 long-winded description of precisely what he did. I mean,
22 everybody knows what a carjacking is and that is what
23 happened.

1 THE COURT: Just bring the jury in.

2 MR. MURPHY: Your Honor, may I step outside
3 for a moment to get a piece of evidence from the first
4 witness?

5 THE COURT: If you promise you'll come back.

6 MR. MURPHY: I promise.

7 (Whereupon, at approximately 3:05 o'clock
8 p.m., the jury returned to the courtroom and resumed their
9 seats in the jury room.)

10 THE COURT: I'd like to welcome the jury back.
11 I'd also like to apologize to you for the quite sudden
12 recess I took. During the recess, the Court took a
13 comfort break, plus I took the opportunity to check on a
14 legal issue and I'd just like to make an instruction to
15 you at this time.

16 It pertains to certain allegations that were
17 brought out in the opening statements of a carjacking or a
18 car having been taken approximately two days before the
19 incident that is referred to in the indictment.

20 I'd just like to instruct the jury that any
21 reference to the alleged car having been taken is solely
22 going to be used for a possible determination as to the
23 Defendant's motive, intent or his state of mind on that

1 particular date set forth in the indictment.

2 And it's not to be offered or considered by
3 the jury as substantive evidence of the offense, that
4 offense being alleged in the indictment on or about -- I
5 think it was November 26th of 1999.

6 Are we ready to proceed?

7 MR. PETIT: Yes, sir. I had concluded my
8 closing argument -- my opening.

9 THE COURT: Do you want to call your first
10 witness?

11 MR. MURPHY: Yes. Thank you.

12 Andrew P. Johnson.

13 THE COURT: Would you state the name, again.
14 I'm sorry, Mr. Murphy.

15 MR. MURPHY: Andrew Johnson.
16
17
18
19
20
21
22
23

1 Whereupon

2 ANDREW P. JOHNSON

3 a witness, was called for examination by counsel on behalf
4 of the Commonwealth, and, after having been first duly
5 sworn, was examined and testified, as follows:

6 DIRECT EXAMINATION

7 BY MR. MURPHY:

8 Q Sir, please state your name and your
9 occupation for the Judge and the jury in this case?

10 A My name is Andrew P. Johnson. I'm a forensic
11 scientist for the Commonwealth of Virginia. I'm assigned
12 to the Western Regional Laboratory in Roanoke.

13 Q How long have you been employed as a forensic
14 scientist?

15 A I've been with the Commonwealth of Virginia
16 for approximately eight years.

17 Q What sort of forensic science do you practice
18 for the Commonwealth?

19 A I'm a specialist in fingerprints and
20 impressions evidence. Impressions evidence are evidence
21 such as footwear, tire tread, lip impressions, ear
22 impressions, glove prints and anything that is manmade
23 that will leave an impression that we can make a

1 comparison to.

2 Q What sort of education or special training
3 have you received that has enabled you to give expert
4 evaluations in that area?

5 A I was a member of the Fairfax County Police
6 Department in Northern Virginia for twenty years. During
7 my tenure with that agency I received extensive training
8 in impressions evidence with the Federal Bureau of
9 Investigation, the Royal Canadian Mounted Police.

10 They sent me to the University of North
11 Florida, the University of Louisville and Texas Tech
12 University to specialize in this type of forensic
13 comparison.

14 I have authored several internationally
15 published articles in the area of impressions evidence. I
16 am an adjunct professor at Virginia Western Community
17 College in Roanoke and teach impression evidence and
18 fingerprint evidence to students at that location.

19 I also have taught at three different police
20 academies in the area of impression evidence and I will
21 continue to teach at our Forensic Institute located at our
22 headquarters in Richmond.

23 Q Sir, how long have you been working as a

1 forensic scientist?

2 A Eight years.

3 Q How many times have you been recognized in the
4 state and federal courts as an expert in the area of
5 impression evidence and its evaluation?

6 A Over a hundred times.

7 MR. MURPHY: Your Honor, at this time I do
8 offer Andrew Johnson as an expert in the area of
9 impression evidence and its evaluation.

10 MR. PETIT: No objection.

11 THE COURT: Mr. Petit?

12 No objection?

13 MR. PETIT: No objection.

14 THE COURT: I'm going to so qualify him.

15 MR. MURPHY: If I could approach the witness,
16 I want to show him two items at this time.

17 THE COURT: Okay.

18 BY MR. MURPHY:

19 Q Sir, I'm going to show you two sealed bags
20 that have been stapled together --

21 MR. PETIT: Your Honor, could we have those
22 marked as evidence?

23 THE COURT: Why don't you mark them as

1 Commonwealth's Exhibits? Is it 1 and 2 for
2 identification?

3 MR. MURPHY: Yes, Your Honor. I'll approach
4 the Clerk and show her.

5 (The items referred to
6 above were marked
7 Commonwealth's Exhibit
8 Nos. 1 and 2 for
9 identification.)

10 BY MR. MURPHY:

11 Q Sir, I'm going to show you these two sealed
12 Commonwealth's exhibits, one marked 1, Commonwealth's
13 Exhibit 1, and one that's Commonwealth's -- actually it's
14 item 2, item 1 and item 2.

15 Do you recognize those two items?

16 (Mr. Murphy handed the items to the witness
17 for his examination.)

18 A I recognize the packaging that encompasses the
19 items. They have my case number, my initials and the date
20 of January 10th, year 2000, affixed to both of them in
21 green ink on this item and also in green ink on this item.

22 These are the packages I received from the
23 Virginia State Police to analyze.

1 Q At this time I'd like you to open up item 1
2 and see if you can identify its contents.

3 MR. MURPHY: Your Honor, let the record
4 reflect he is now opening item 1.

5 THE COURT: I'll have the record reflect that.

6 (The witness complied with the request.)

7 THE WITNESS: Item 1, Commonwealth's Exhibit
8 Item Number 1, is my item number 37 and it is a latent
9 lift of footwear impression that I assigned item number 37
10 to on --

11 BY MR. MURPHY:

12 Q What is a latent lift of footwear impression?

13 A It's very similar to fingerprint development.
14 A state trooper, I assume, in this case or an evidence
15 technician would take a fingerprint brush and apply a
16 black fingerprint powder to the brush and dust an object
17 that you're looking for, fingerprints or impression
18 evidence, and what happens is the fingerprint powder
19 adheres to the latent print that is left on the object,
20 allowing it to develop.

21 After it's developed and it becomes visible
22 with the black powder, the evidence technician will take a
23 lifting film or lifting tape and apply it to the surface

1 of the substrate that the impression is on and the
2 impression is transferred to the adhesive side of the tape
3 and then it's put on backing material and is marked as an
4 exhibit.

5 When we received these I photographed them and
6 then classified them and analyzed them as to whatever else
7 is submitted within the case.

8 Q Sir, at this time I would like you to open up
9 Commonwealth's item 2 and see if you recognize the
10 contents of that bag. You've already identified the bag.

11 (The witness complied with the request.)

12 A In the inside tongue area of these Reebok
13 brand athletic shoes, it bears my initials and our case
14 number identified as the footwear that I examined in
15 concert with this case.

16 Q What size shoes are those?

17 A Size 7 and a half.

18 Q Sir, did the time come when you compared
19 Commonwealth's item 1 to Commonwealth's item 2?

20 A Yes.

21 Q What were you able to determine at the time
22 that you made that comparison?

23 A What I did is I took these articles of

1 footwear and I applied a thin film of printer's ink to the
2 outsole of the shoe and made known impressions. I brought
3 some copies of those with me today.

4 In doing so, it records the outsole design and
5 class characteristics that are encompassed in the molded
6 outsole of the athletic shoe.

7 And what you do is you look for the class
8 characteristics, the unique wear that is present in this
9 shoe, because it has been worn, and you compare that to
10 the latent lift submitted by the Virginia State Police to
11 see if they're similar or if you can associate to the lift
12 or sometimes you can immediately look at it and say,
13 "Well, this pair of shoes did not make this impression,"
14 and write a report that would reflect that.

15 Q What were you able to determine in terms of
16 whether or not those shoes made that impression that was
17 lifted pursuant to this investigation?

18 A I was able to find three footwear impressions
19 of value present in this lift made by the Virginia State
20 Police. The three impressions present in that conform to
21 the right shoe submitted by the state police with respect
22 to outsole design, approximate size and general wear.

23 You'll see when this shoe was made, it had a

1 lot of striations in the heel area and on the right side
2 of the heel, those striations are worn away. These
3 characteristics are present in the lift made by the state
4 police.

5 Q Sir, did you produce a certificate of analysis
6 dated April 24th of the year 2000 commemorating your
7 findings when you compared Commonwealth's item 1 with
8 Commonwealth's item 2?

9 A Yes, I did.

10 Q Do you have a copy of your certificate of
11 analysis at this time?

12 A Yes, I do.

13 Q Please produce it.

14 A (The witness complied with the request.)

15 Q Does that have your signature at the bottom?

16 A Yes, it does.

17 MR. MURPHY: Your Honor, may I approach the
18 witness?

19 THE COURT: Sure.

20 MR. MURPHY: I'm going to display this to
21 counsel and then I'm going to ask the Clerk to mark it as
22 Commonwealth's item 3.

23 (Mr. Murphy handed the document to Mr. Petit

1 for his examination.)

2 MR. MURPHY: Your Honor, I don't have any
3 other questions for this witness.

4 THE COURT: Are you asking that the Court
5 receive that?

6 MR. MURPHY: Your Honor, I'm asking the Court
7 to mark it as Commonwealth's item 3 at this time.

8 THE COURT: For identification.

9 MR. MURPHY: Pending our foundational
10 witnesses later in the trial.

11 THE COURT: Okay. We'll just withhold.

12 (The document referred
13 to above was marked
14 Commonwealth's Exhibit
15 No. 3 for
16 identification.)

17 MR. MURPHY: Those are the questions I have.

18 THE COURT: Mr. Petit? Or who is going to
19 cross examine Mr. Johnson?

20 MR. PETIT: I will, Your Honor.

21 THE COURT: Okay.

22

23

CROSS EXAMINATION

BY MR. PETIT:

Q Mr. Johnson, just so I'm clear, you're not saying that this sneaker made that impression?

A No. I'm saying that it's consistent with the shoe impressions developed by the state police.

Q But you can't state to a reasonable degree of scientific certainty that this is that sneaker?

A I can't make a positive identification. I can associate the three impressions as it being consistent with the size, the general wear and the outsole design that are present in this shoe, which is a very small shoe. It's a size 7 and a half.

Q You can't say it's the same sneaker. You can't say when the impression was left on the vehicle; correct?

A No.

Q So, the impression could have been left days before?

A I can't say when the impression -- all I can associate, the lift to the evidence submitted by the police.

Q You can't say obviously who was wearing the

1 particular shoe when the impression was lifted; correct?

2 A No, I can't.

3 Q Were you given any other shoes to test?

4 A No, I did not.

5 Q You weren't given any or you didn't test any?

6 A No, I was not given any.

7 Q You said the outsole design.

8 Is it the outsole, the outside of the sneaker
9 or is it the sole of it that was tested?

10 A This portion of a shoe is called an outsole
11 (indicating) and that is the characteristics that I
12 compared to the outsole designs that were developed at the
13 crime scene by the police to see if I could associate
14 these shoes to those.

15 Q If I could see Commonwealth's 1 from you?

16 MR. PETIT: If I may approach, Your Honor?

17 THE COURT: Sure.

18 (The witness handed the item to Mr. Petit for
19 his examination.)

20 BY MR. PETIT:

21 Q Did you say that on Commonwealth's 1 all three
22 of the impressions --

23 A Correspond to the right shoe.

1 Q Are they all in here?

2 A Yes.

3 Q So, on this one piece of paper all three
4 impressions are there?

5 A That is correct.

6 Q You said earlier that it was approximately the
7 same size?

8 A That's correct.

9 Q Based on the impressions, you can't say
10 whether the impressions made were by a 7 and a half shoe?

11 A The approximate same size is a 7 and a half
12 shoe.

13 Q But you can't say that -- your expert opinion
14 is not that a size 7 and a half shoe made the impression?

15 A That is correct.

16 MR. PETIT: Thank you, Your Honor. No further
17 questions.

18 THE COURT: May Mr. Johnson be excused or do
19 you have some redirect?

20 MR. MURPHY: Your Honor, he can be excused,
21 but I do have a couple of follow up questions.

22 THE COURT: Go ahead.

23

REDIRECT EXAMINATION

BY MR. MURPHY:

Q Sir, in your report, which was moved into evidence, you said that further --

MR. PETIT: Objection, Your Honor, I don't believe the report has been moved into evidence.

THE COURT: It was marked for identification as Commonwealth's 3.

BY MR. MURPHY:

Q What prevents you from making a further level of connection between these two exhibits?

A Because of the lack of unique characteristics. A unique characteristic happens in an outsole as a person wears it, when you step on a piece of glass or metal or its wear and tear on asphalt or concrete or something like that that would cause unique characteristics to appear in the outsole and none of those are present in the lift.

So, I cannot make a positive identification. I can say that these impressions were made by this right shoe or a right shoe exactly like it.

MR. MURPHY: I don't have any other questions of this witness and, Your Honor, he can be released.

MR. PETIT: Judge, if I can just recross?

1 THE COURT: Go ahead.

2 RECROSS EXAMINATION

3 BY MR. PETIT:

4 Q Sir, didn't you just say that you can't tell
5 whether the impression was from a size 7 and a half shoe
6 or not?

7 A Correct.

8 Q So, you can't actually say that that shoe
9 impression was made by that exact shoe or one exactly like
10 it because the size could be different?

11 A That's true, but the characteristics of the
12 unique wear in the heel area is exactly alike that appears
13 in the lift.

14 Q My question is --

15 A Because it doesn't have cuts, I can't identify
16 it. I can just say that it's consistent with the general
17 wear that appears in the heel area of the shoe.

18 Q If it's not consistent, it can't be exact?

19 A That's correct.

20 MR. PETIT: Thank you, Your Honor.

21 THE COURT: May Mr. Johnson be excused?

22 MR. MURPHY: Yes.

23 THE COURT: You may be excused. Thank you for

1 your time. I apologize for your wait today.

2 (The witness was excused.)

3 THE COURT: Did you want to call your second
4 witness, Mr. Murphy?

5 MR. MURPHY: Yes, Your Honor.

6 Helen Unangst.

7 THE COURT: I'm sorry. Say the name again.

8 MR. MURPHY: Unangst.

9 Whereupon

10 HELEN UNANGST

11 a witness, was called for examination by counsel on behalf
12 of the Commonwealth, and, after having been first duly
13 sworn, was examined and testified, as follows:

14 DIRECT EXAMINATION

15 BY MR. MURPHY:

16 Q Ma'am, please state your name for the Judge
17 and the jury in this case?

18 A Helen Unangst.

19 Q Ma'am, directing your attention to November
20 the 23rd, 1999, were you in Fairfax County at that time?

21 A Yes, I was.

22 Q Tell the members of the jury what occurred on
23 that date.

1 A I was living in an apartment in Vienna at that
2 time and I met a friend to walk every morning at 6:00 a.m.
3 So, at about ten of 6:00 I went out to the parking lot to
4 get in my car. I met her in the neighborhood where I had
5 lived till a month or so before that time.

6 I got in my -- I went out. I also had a bag
7 of garbage. There was a Dumpster outside. So, I left my
8 apartment and I put the bag of garbage in the Dumpster and
9 began walking to my car, which was in a parking space.

10 And I noticed a car moving very slowly through
11 the parking lot and when I got up to the driver's side
12 door of my car, I went to manipulate a little, you know, a
13 remote control opener.

14 A car pulled up and one of the persons -- the
15 driver inside asked me if I knew where building 2562 was
16 and I said -- I hesitated a moment because I was new to
17 the apartment complex and I was trying to figure out how
18 to direct them.

19 And then a moment later two men got out of the
20 car with guns and approached me and initially they -- the
21 one man sort of -- the leader put a gun -- put his arm
22 around me with the gun to my abdomen and the other fellow
23 was close at hand the whole time and they began pulling me

1 to their car.

2 Of course, I was trying to resist, but they
3 told me, using foul language, you know, I better shut up
4 and not make any sounds and then I began telling them a
5 little bit that I had a daughter and please not to hurt
6 me, that she was expecting me shortly and then they did at
7 some point, I guess, realized that they could take my car,
8 and so they asked for my --

9 MS. MELEEN: I'm going to object, Your Honor.
10 That's speculation.

11 THE COURT: Do you want to respond to the
12 objection?

13 MR. MURPHY: Judge, I think she's telling the
14 jury what happened.

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

17 BY MR. MURPHY:

18 Q Without speculating on what they may have
19 realized, what did they do?

20 A They asked me for the keys to my car and I
21 gave them the keys to my car and the person who had been
22 in the driver's seat got in the driver's seat of -- opened
23 the door and got in the driver's seat of my car and drove

1 away and the other man got in the car that they had driven
2 up in and they both left.

3 Q Ma'am, do you see one of those two men that
4 took your car in the room today?

5 A Yes, I do.

6 Q Please point him out if you see him.

7 A This gentleman here (indicating).

8 MR. MURPHY: Your Honor, let the record
9 reflect she's identified the Defendant in this case.

10 BY MR. MURPHY:

11 Q Ma'am, which of the men was this?

12 A This man was the man who drove up in the
13 driver's seat of his car initially. He was also the
14 person who drove away in my car. He's also the person
15 that I sort of indicated was the leader. He gave
16 directions to me and also directed the other gentleman
17 that was with him.

18 Q This is on November the 23rd.

19 What kind of car is it that they took?

20 A I had a green Honda Accord, I think an LX
21 model. It was a pretty fancy car with all of the options.

22 Q What year?

23 A 2000. It was a brand new car.

1 Q Ma'am, did the time come when you were
2 contacted by the state police?

3 A Yes. This happened the Tuesday before
4 Thanksgiving and that's why I remember the dates, but the
5 Friday afternoon I got a call that they had found my car.

6 MS. MELEEN: Objection; hearsay.

7 THE COURT: Do you want to respond to the
8 objection?

9 MR. MURPHY: This just goes to what she did
10 next.

11 THE COURT: You're not offering it for the
12 truth of the matter?

13 MR. MURPHY: No; just what she did next.

14 THE COURT: Overruled. Go ahead.

15 BY MR. MURPHY:

16 Q When you were told this, did you go and see
17 the state police?

18 A I don't recall exactly how long it was. It
19 was a few days. It was still the holiday weekend and at
20 the time, when they found the car, I had a new secretary
21 at work and I had taken home several boxes of files to
22 organize so that she could file them. So, they found it
23 and knew that it was mine because there were lots of

1 papers in the car.

2 So, they did want to go through and make a
3 thorough inventory, then they said I could come and
4 retrieve my work papers, as well as some other things.

5 Q Did you retrieve from the state police
6 property that had been in your car at the time it was
7 taken?

8 A Yes, I did and I think it was the following
9 week. I gave them permission --

10 Q When you went there, did you also view the
11 wreck that had been towed by the police?

12 A Yes, I did.

13 Q Did you recognize it?

14 A Yes. It was my car.

15 Q License plate matched, et cetera?

16 MS. MELEEN: Objection; leading.

17 THE COURT: It is leading. Sustained.

18 BY MR. MURPHY:

19 Q How did you know it was your car?

20 A Well, first I knew because it was the same
21 color. It had a license plate that was the same license
22 plate. It also had items that had been mine prior to the
23 carjacking and things belonging to my children.

1 Q What kind of condition was the car in
2 physically when it was recovered by the police when you
3 saw it?

4 A It had been very badly wrecked. When I first
5 inquired about the state of the car, they told me it was a
6 total loss and, in fact, there were -- I mean, the
7 whole --

8 MS. MELEEN: Objection; hearsay.

9 THE COURT: Do you want to respond to the
10 objection?

11 MR. MURPHY: Judge, I think she saw the car.
12 I think I've laid the foundation for that now. I'm just
13 trying to --

14 THE WITNESS: I can just say the --

15 THE COURT: Objection sustained.

16 THE WITNESS: Sorry, Judge.

17 THE COURT: Just rephrase it.

18 BY MR. MURPHY:

19 Q When you saw the car, was it still in the same
20 condition as when they took it or had it been totaled?

21 A It had been totaled. The entire rear portion
22 and side portions of the car were totally bashed in. The
23 windows were broken. It was a wreck.

1 MR. MURPHY: I don't have any other questions
2 for this witness.

3 THE COURT: Ms. Meleen, would you like to
4 cross examine?

5 MS. MELEEN: Yes, sir. Thank you.

6 CROSS EXAMINATION

7 BY MS. MELEEN:

8 Q Ma'am, this happened before 6:00 o'clock in
9 November; is that right?

10 A Yes, that's correct.

11 Q It wasn't light out yet; is that right?

12 A It was just beginning to be dawn. I mean,
13 you're right, it was still dark, but there was certainly
14 light to see.

15 Q Do you remember having a conversation with the
16 police where you indicated that due to the lighting
17 conditions in the parking lot and the fog the only
18 information you could provide was that two Hispanic males,
19 approximately in their twenties, approached you?

20 A I don't think that was all the information I
21 gave to the police.

22 Q Do you remember who you talked to that
23 morning?

1 A I spoke to Detective Debbie Hula. I spoke to
2 another detective, who was not Hispanic, but was able to
3 speak Spanish. I spoke to several different officers that
4 morning.

5 Q Did you talk to Detective Donaldson?

6 A I don't recall offhand.

7 Q Do you remember saying on that morning that --
8 well, first let me talk to you about your testimony today.

9 Your testimony today is that the driver of the
10 car approached you and held a gun to your abdomen?

11 A Uh-huh.

12 Q Is that right?

13 A Right.

14 Q Do you remember on that day saying that the
15 person had a gun in his waistband?

16 A When they first got out of the car, that's
17 where they took the guns from. They did draw their guns.
18 That's how I knew that they had guns. I was able to watch
19 them do it as they walked over to me.

20 Q Did you tell the officer on that day, Officer
21 Donaldson or Officer Hula, that the person held the gun to
22 your waist?

23 A I'm pretty sure I did.

1 Q This gentleman here in court today, is not the
2 first time you've come to court and identified somebody as
3 the driver of that car; is that correct?

4 A No. I came and identified him before.

5 Q Did you ever identify somebody else as the
6 driver of the car?

7 A Not in the courtroom, no.

8 Q In the courthouse, in the Juvenile & Domestic
9 Relations courthouse, the brick building on the corner,
10 did you go over there and identify somebody else as being
11 the driver of that car?

12 A No.

13 Q You did not?

14 A No.

15 Q You did not tell Detective Hula that somebody
16 else was the driver?

17 A No, I didn't tell her it was someone else who
18 was the driver of the car.

19 Q Did you tell any police officer that?

20 A The only other person that was there that day
21 was someone from the attorney's office and that day they
22 asked me to be looking for someone involved with my
23 carjacking and at the most, it would have been the person

1 who was the accomplice, the other person involved.

2 It wasn't the driver. This man was the driver
3 of the car that pulled up next to me and he was the first
4 to me.

5 Q Were you called as a witness the day you went
6 to that court hearing?

7 A No.

8 Q As far as you know, you don't remember telling
9 anyone that the driver of the car was in that building?

10 A No.

11 Q You saw the driver of that car in that
12 building?

13 A No, I didn't say I saw the driver of the car
14 in that building.

15 Q What did the driver of the car say to you?

16 A Well, the very first thing they said is they
17 asked me if I knew which one was building 2562 and I was
18 trying to figure out, based on my building -- before I
19 knew they were going to carjack me, I was trying to be
20 helpful and I was trying to figure out which building it
21 was and which direction -- because it's a circle, which
22 way to direct them.

23 Then after that they -- when they got out of

1 their car, most of the other things they said were
2 profanities, directing me not to scream, not to make
3 noise. I was looking around to see if anyone else -- at
4 the time I thought they were going to take me. So, I was
5 looking to see if there was anyone who was going to notice
6 and notice if I was taken.

7 Then their other directions were related to
8 giving them the keys to my car.

9 Q My question was, what did the driver say to
10 you, not they and not generalizations, but what did the
11 driver say to you?

12 A Well, he told me to shut the fuck up. He told
13 me he was going to shoot my fucking head off. He told me
14 to give him the fucking keys to the car. I don't know
15 what other things I can tell you, but they all were in
16 that vein. Those were three specific things I can tell
17 you he said to me.

18 Q So, he said at least three things?

19 A And he said he was directing the other fellow
20 that, you know, "Shoot her fucking head off."

21 Q This was spoken in English; correct?

22 A Yes.

23 Q The man had no accent; is that correct?

1 A No. He had an accent, yes.

2 Q Do you remember telling the officer that day
3 that the man had no distinct accent in his voice?

4 A No, I wouldn't have said that.

5 Q Did you tell the officer the man had a
6 moustache?

7 A He had a goatee, facial hair. I'm not sure
8 about a moustache. I think he did have a small moustache,
9 but he had a little goatee.

10 Q What was he wearing?

11 A They both had on dark clothing and I believe
12 sort of sweatsuit kind of clothing with hoods, and just
13 athletic kind of clothing.

14 Q A hood on the sweatshirt?

15 A I think so.

16 Q Was the hood up?

17 A I don't recall at this time.

18 Q Was it foggy out that morning?

19 THE COURT: Would you repeat that question?
20 I'm sorry.

21 BY MS. MELEEN:

22 Q Was it foggy out?

23 A No.

1 MS. MELEEN: Your Honor, may I have the
2 Court's indulgence just for a moment?

3 THE COURT: Sure. Take your time.

4 (Brief pause.)

5 BY MS. MELEEN:

6 Q Ma'am, where were you living at the time?

7 A I lived at an apartment building called
8 Berkeley Square.

9 Q On Chain Bridge Road?

10 A Yes, that's correct. That's the address.

11 It's actually on an access road right off of Chain Bridge.

12 Q Was this car registered to you?

13 A No. It was registered to my former husband.

14 Q On Lawyers Road; is that correct?

15 A That's correct.

16 Q So, it did not have a Chain Bridge Road or a
17 Vienna address, that the address where you were living was
18 not on the registration for the car?

19 A No. It was titled in my husband's name.

20 Q Can you tell me what kind of a car the
21 individuals who approached you were driving?

22 A A small compact car.

23 Q Can you give me any more information, what

1 color it was, what kind it was?

2 A It was a dark color and I believe a compact or
3 a hatchback kind of a car. It was a, you know, small car.

4 Q Can you describe the height and weight of the
5 driver?

6 A The person who was the driver was about my
7 height, maybe a little bit taller, and I thought a little
8 bit heavy or husky. The other person was tall and thin,
9 thinner, taller than me and thinner.

10 Q How tall are you?

11 A Five, three.

12 Q So, when you say taller than you, how much
13 taller do you think he was?

14 A Five, eight or five, nine, the other person.
15 I mean, enough so that I noticed the height.

16 Q Would you estimate their ages to be the same
17 as each other, the two men?

18 A No. The person who was the driver, I
19 estimated to be older than the person he was directing,
20 who seemed less experienced.

21 Q Do you remember telling -- using the same
22 description on the morning that you talked to the police
23 that suspect number one was in his twenties and suspect

1 number two was also in his twenties?

2 Do you remember that?

3 A Yes, but I mean clearly there was a little bit
4 of an age difference between them and certainly -- I mean,
5 that was reinforced by the fact that one seemed very in
6 charge and the other person was taking directions and
7 seemed very nervous.

8 Q You attributed that to age?

9 A Or experienced in doing this. But the other
10 person being nervous made me very nervous.

11 MS. MELEEN: Your Honor, may I have the
12 Court's indulgence for a moment?

13 THE COURT: Sure.

14 (Brief pause.)

15 MS. MELEEN: I don't have any other questions.

16 THE COURT: Mr. Murphy, do you have any
17 redirect?

18 MR. MURPHY: No. I ask that she be subject to
19 recall, please.

20 THE COURT: You pronounce your name -- is it
21 Ms. Unangst? It's hard for me to say.

22 THE WITNESS: Unangst.

23 THE COURT: Unangst.

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA,

-vs-

HUGO A. SANCHEZ,

Defendant.

CRIMINAL NO. 99324

Courtroom 4E
Fairfax County Courthouse
Fairfax, Virginia

Tuesday, August 21, 2001

The above-entitled matter came on to be heard
before the HONORABLE GAYLORD L. FINCH, JR., Judge, in and
for the Circuit Court of Fairfax County, in the
Courthouse, Fairfax, Virginia, beginning at 9:52 o'clock
a.m.

APPEARANCES:

On Behalf of the Commonwealth:

JOHN MURPHY, ESQUIRE
Assistant Commonwealth Attorney

On Behalf of the Defendant:

TODD PETIT, ESQUIRE
CRYSTAL MELEEN, ESQUIRE

C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Sandra Contrevas	6	11	14 24	16 --
Johnny Marquez	28	49	--	--
Donald Lee	70	--	--	--
David Huff	79	89	--	--
Detective Hula	112	116	127	--
Trooper Conte	130	147	--	--
Trooper Scott	153	175	190	192
Bryan P. Edmonds	195	203	--	--
Rosily Sanchez	217	222	223	--
Israel Montilla	224	228	--	--
Detective Hula	229	230	--	--
Trooper Conte	233	--	--	--
Mitra Dalil	237	238	240	--
Detective Hula	242	--	--	--

E X H I B I T S

	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
Commonwealth's Exhibit 4	72	74
Commonwealth's Exhibit 5	72	75
Commonwealth's Exhibit 6	76	76
Commonwealth's Exhibit 7	76	76

E X H I B I T S

	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
Commonwealth's Exhibit 8	84	171
Commonwealth's Exhibit 8a	85	169
Defense Exhibit 1 (A)	102	188
Defense Exhibit B	103	103
Commonwealth's Exhibit A-114	109	109
Commonwealth's Exhibit A-115	109	109
Commonwealth's Exhibit 9	113	174
Defense Exhibit C	126	188
Commonwealth's Exhibit 10	159	159
Commonwealth's Exhibit 1	--	161
Commonwealth's Exhibit 2	--	162
Commonwealth's Exhibit 3	--	163
Commonwealth's Exhibit 11	164	164
Defense Exhibit D	182	188
Defense Exhibit E	184	188
Defense Exhibit F	186	188
Defense Exhibit G	188	188
Defense Exhibit H	192	194
Defense Exhibit I	193	194
Commonwealth's Exhibit 12	203	203
Defense Exhibit J	229	229

1 Whereupon,

2 SANDRA CONTREVAS

3 a witness, was called for examination by counsel on behalf
4 of the Commonwealth, and, after having been duly sworn by
5 the Clerk of the Court, was examined and testified, as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. MURPHY:

9 Q Ma'am, please state your name for the Judge
10 and the jury in this case.

11 A Sandra Contrevas.

12 Q And, ma'am, back in November of 1999, who were
13 you dating at that time?

14 A Ronnie Ramirez.

15 MR. MURPHY: And, Your Honor, at this time I
16 would move into evidence the fact that counsel and I have
17 stipulated that Ronnie Ramirez was one of the individuals,
18 one of the two men who were killed in the accident.

19 THE COURT: Is that all right?

20 MR. PETIT: No objection, Your Honor.

21 THE COURT: Okay. We'll go ahead and proceed
22 on that basis.

23

1 BY MR. MURPHY:

2 Q Now, ma'am, directing your attention to
3 Thursday evening, November the 25th, 1999, were you with
4 Ronnie that evening?

5 A Yes, I was with him before I dropped him off.

6 Q Tell the members of the jury and the Judge
7 what happened. Where did you drop him off? Tell us about
8 that.

9 A I picked him up from his mother's house, and
10 then he told me about a party that he wanted to go to and
11 he asked me to come with him. I told him I would drop him
12 off on Merrimack (ph) at some building complexes there.
13 And I parked, and he went inside to check out how -- if
14 the party was okay.

15 And I was parked. I was in my car. I was
16 waiting for him to come back outside.

17 Q And now when you dropped off Ronnie at a party
18 at the Merrimack Apartments, did you drop off anybody
19 else? Was there anybody else with him that you dropped
20 off as well?

21 A Yes, Johnny.

22 Q Is that Johnny Marquez, who's sitting in the
23 hallway?

1 A Uh-huh. (Nodding head.)

2 Q Okay. So when you dropped those two off at
3 this party at the Merrimack Apartments -- I guess I should
4 back up.

5 Where are the Merrimack Apartments? What
6 state is that in?

7 A That's in Maryland.

8 Q Now, when you dropped them off, what, if
9 anything, did you notice about the -- who was there?

10 A Well, as I was sitting in my car, these two
11 guys walked by my car, and I just happened to look at one
12 of the guys, and I saw both of them get in a green Honda
13 Accord. And to me, that was nothing important. I just
14 happened to look.

15 Q Now, could you tell what kind of make or --
16 could you tell with the green Honda Accord, what year it
17 was or anything like that?

18 A I think it was a '99 Honda Accord.

19 Q All right; and the two guys that got in it,
20 describe them, if you would.

21 A I can describe one of them.

22 Q Okay.

23 A One of them was wearing khaki-tannish pants

1 and a black leather jacket. He had black hair to the back
2 and sideburns, and he was like my skin complexion.

3 Q Could you tell what race they were?

4 A Hispanic.

5 Q Could you tell about what age they were?

6 A Maybe 23, 24.

7 Q And when you saw a 23 or 24 year old getting
8 in a late model Honda Accord, what did you think about
9 that?

10 MR. PETIT: I would object to the relevance as
11 to what she thought about that.

12 THE COURT: Objection is sustained. Why don't
13 you just rephrase?

14 BY MR. MURPHY:

15 Q Why, if at all, was this memorable to you?
16 Why did it draw your attention?

17 A I just -- I thought how a guy like that can
18 maintain a car like that. I don't know, it just came to
19 my mind.

20 MR. PETIT: I'm going to object to the
21 relevance of this.

22 MR. MURPHY: It lets the jury know why she
23 would notice a thing like that. Why was her attention

1 drawn to it to begin with.

2 THE COURT: Objection overruled. Go ahead.

3 MR. MURPHY: Thank you, Your Honor.

4 BY MR. MURPHY:

5 Q Now, what happened after that? You're waiting
6 for Ronnie to tell you whether or not he and Johnny are
7 going to stay at the party. What happens?

8 MR. PETIT: Objection.

9 THE WITNESS: I waited. I saw the car drive
10 by me. I don't know where they were headed, but I saw one
11 of the guys driving the car, the one I described for you.
12 And it just drove right past me.

13 BY MR. MURPHY:

14 Q And what happened next?

15 A Ronnie came outside, and he told me he was
16 going to stay, and then he was going to call me back like
17 around 1:00 in the morning, but he never called.

18 Q Did you ever see or hear from Ronnie again?

19 A No.

20 Q When did you find out that he had died in an
21 accident?

22 MR. PETIT: Objection, Your Honor, to the
23 relevance at this point.

1 THE COURT: Do you want to respond?

2 THE COURT: Judge, I just think it goes to
3 what she knows and when she knew it. I don't think it's
4 irrelevant in a case like this.

5 MR. PETIT: Your Honor, when she found out of
6 the death is not relevant to whether there was an accident
7 or whether that was reported.

8 THE COURT: Objection sustained.

9 MR. PETIT: Thank you, Your Honor.

10 MR. MURPHY: Your Honor, I don't think I have
11 any other questions for this witness.

12 THE COURT: Mr. Petit, would you like to cross
13 examine?

14 MR. PETIT: Yes, please, Your Honor.

15 CROSS EXAMINATION

16 BY MR. PETIT:

17 Q Did you say that Johnny Marquez was with you
18 in the car as well?

19 A Yes.

20 Q Did you pick him up or was he already at your
21 house?

22 A We picked him up.

23 Q And where did you pick him up from?

1 A I don't know exactly the name of the road, but
2 it's called Red Top.

3 Q Was that at his home or was it at a
4 restaurant?

5 A I'm not sure if it was his home, but it was
6 not a restaurant.

7 Q But it was a home, an apartment or a house?

8 A A home, yeah.

9 Q And was that an apartment or a house?

10 A I think it was a house.

11 Q A single-family house?

12 A Yes.

13 Q And how long were you in the presence of
14 Johnny Marquez?

15 A What do you mean?

16 Q Well, you picked him up. Did you go directly
17 to the party on Merrimack?

18 A Yeah, after we picked him up we drove straight
19 to Merrimack.

20 Q And how long was that drive?

21 A About fifteen minutes.

22 Q And did he go into the home with Ronnie when
23 they left the car?

1 A Yes.

2 Q So they both went in together?

3 A Right.

4 Q Did you see Mr. Marquez come back out of the
5 home?

6 A They both came out at the same time.

7 Q So they were both there when they told you
8 that they were staying at the party?

9 A Yes.

10 Q In the time that you were in Mr. Marquez's
11 presence, did he have any alcohol?

12 A No, not that I can recall; no.

13 Q Did you smell any alcohol on his breath or on
14 his person when he originally got into your car?

15 A No.

16 Q And did you see either of them smoke any
17 marijuana or do any cocaine when they --

18 A No.

19 Q So there were no illegal drugs or any type of
20 drugs at all done by Mr. Marquez in your car or in your
21 presence?

22 A Not in my car, no.

23 MR. PETIT: The Court's indulgence?

1 THE COURT: Sure.

2 (Brief pause while Mr. Petit conferred with
3 Ms. Meleen off the record.)

4 BY MR. PETIT:

5 Q Did you ever go into the party at Merrimack?

6 A No, I did not.

7 Q So the extent of your knowledge of the party
8 was dropping him off and leaving?

9 A Yes.

10 Q Did you ever tell any police officers or any
11 detectives that you were at the party or that you saw
12 anyone else at the party?

13 A I wasn't at the party. And the only people I
14 saw were the ones walking towards the Honda, the green
15 Honda Accord.

16 Q And you don't know who those two people were?
17 You couldn't identify them?

18 A I could have identified one, but not the other
19 one.

20 Q Did you ever tell anybody who else was at the
21 party or who else you saw by name to a detective or a
22 police officer?

23 A No, because I didn't go into the party.

1 MR. PETIT: Nothing further, Your Honor.

2 THE COURT: Mr. Petit, thank you.

3 Do you have any redirect?

4 REDIRECT EXAMINATION

5 BY MR. MURPHY:

6 Q Ma'am, do you see the driver of the green
7 Honda Accord in the courtroom today?

8 A Yes.

9 Q Please point him out if you see him.

10 A (Indicating)

11 MR. MURPHY: Your Honor, let the record
12 reflect she's identifying the Defendant.

13 MR. PETIT: Your Honor, if I can recross.

14 THE COURT: Go ahead.

15 MR. MURPHY: Well, I had one other question
16 before I was done.

17 BY MR. MURPHY:

18 Q To the best of your recollection, what time
19 was it when you dropped off -- what time Thursday evening
20 was it when you dropped off Ronnie and Johnny?

21 A Ten-thirty or 11:00.

22 MR. MURPHY: I don't have any other questions.

23 THE COURT: Mr. Petit, go ahead, please.

1 MR. PETIT: Thank you.

2 RE CROSS EXAMINATION

3 BY MR. PETIT:

4 Q So you're now saying that it was Mr. Sanchez
5 you saw get in the car?

6 A Yes.

7 Q Had you ever seen Mr. Sanchez before that
8 evening?

9 A No.

10 Q And how long did you see him there? You saw
11 him get into the car and drive off?

12 A I saw him walk right next to my car and get
13 into the driver's seat of the green Honda Accord.

14 Q Was the Honda Accord in front of your car or
15 behind your car?

16 A It was behind my car.

17 Q And where was the party in relation to your
18 car? Was the home in front of you? Was the home to the
19 right of you?

20 A It was to the left-hand side of me.

21 Q You were directly in front of the apartment
22 building, or the home?

23 A I was parked on the right-hand side of the

1 street.

2 Q And did you see where these two people were
3 coming from?

4 A From inside the building complex where Ronnie
5 and Johnny went in.

6 Q And the two people that you saw come out and
7 get into the green Honda, were they walking side-by-side?

8 A Yes.

9 Q And they both came equal distance to you?

10 A Just, the one identified, he walked right by
11 my driver's side.

12 Q And so did the other person who was right next
13 to him?

14 A The other one was right next to him on the
15 other side.

16 Q Had you had anything to drink?

17 A No.

18 Q And you said that -- well, let me ask you this
19 question. How dark was it?

20 A How dark was it?

21 Q Yes. You said it was approximately 10:30 at
22 night, so there was no sun out; correct?

23 A No, but there was light on the street.

1 Q Where was the nearest streetlight?

2 A Well, there -- I don't know how to answer that
3 question.

4 Q Were you parked under the streetlight? Was
5 there a streetlight fifty feet in front of you?

6 A Maybe less than fifty feet.

7 Q And you saw them for what, approximately five
8 seconds?

9 A More.

10 Q More than five seconds?

11 A Uh-huh. (Nodding head.)

12 Q How long did you see their face?

13 A Well, I took a glance at his face, and then I
14 saw him through my mirrors in my car.

15 Q And when you saw him through the mirrors of
16 the car, they were walking away from you?

17 A Right.

18 Q That glance to his face, how long was that
19 glance, two seconds?

20 A Maybe ten seconds.

21 Q You glanced at his face for ten seconds?

22 A Uh-huh. (Nodding head.)

23 Q Okay; and you noticed that it was a Hispanic

1 male with the same complexion and skin as yours.

2 What did his hair look like? You said it was
3 brown-black hair?

4 A Black hair to the back.

5 Q When you say to the back, what do you mean by
6 to the back?

7 A All combed to the back.

8 Q Do you know how long his hair was?

9 A No, I didn't look at that.

10 Q But you did look at him through the rear-view
11 mirror; correct?

12 A Yes, and that's when I saw the sideburns.

13 Q So you saw the sideburns through the rear-view
14 mirror as he was walking away from you?

15 A Uh-huh. (Nodding head.)

16 Q Anything else distinguishing about him?

17 A No.

18 Q You never glanced at the face of the person he
19 was walking with?

20 A No.

21 Q Now, have you seen that person that you saw
22 coming out of that house since 1999?

23 A The person I identified?

1 Q Right. You're saying that Mr. Sanchez was the
2 one who came out of the house?

3 A Yes, I remember his face.

4 Q Since 1999, when was the next time that you
5 saw Mr. Sanchez?

6 A I -- till right now.

7 Q Right now is the first time that you've laid
8 your eyes on Mr. Sanchez?

9 A Right.

10 Q Did the police ever show you a picture of Mr.
11 Sanchez?

12 A No.

13 Q Did they ever mention Mr. Sanchez's name to
14 you?

15 A No.

16 Q No police officer or detective ever
17 mentioned --

18 A Before I came to the court, they told me why I
19 was coming.

20 Q Okay.

21 A And that's when I found out -- well, that's
22 why I don't know what his name is.

23 Q So prior to coming to court yesterday and

1 today --

2 A Yesterday, I knew. Yeah, yesterday, I knew
3 his name.

4 Q So prior to coming to court yesterday, you had
5 no idea that the person that would be sitting at this
6 table was the person you saw walking out of that party.
7 Is that what you're telling the Court?

8 MR. MURPHY: Your Honor, I object. He asked
9 her when did she know the name Hugo Sanchez. That was the
10 original question.

11 THE COURT: Sustained.

12 MR. MURPHY: Thank you.

13 BY MR. PETIT:

14 Q When was the first time that you were told or
15 that you realized that the person that you were coming to
16 court for today was the person you supposedly saw come out
17 of that party?

18 Let me rephrase that.

19 You came here today to testify that the person
20 you saw come out of the party was Mr. Sanchez; correct?

21 A Yes.

22 Q When was the first time that you realized that
23 the person you saw at the party was going to be the person

1 that was going to be in trial today?

2 A Because of the person that I identified when I
3 first got interviewed by the detective, if I had seen
4 anybody when I dropped Ronnie off. And then I identified
5 who the person was, and then I identified who the person
6 was that got into the car that was driving.

7 Q And when you say you identified him, how did
8 you identify him? That's my question. Just by the
9 description you gave today in court?

10 A Yes. And I remember his face, because I told
11 you that I did see his face when I took a glance at it.

12 Q Did you tell the detective that -- or the
13 police officer?

14 A Yes.

15 Q And what is this description that you gave to
16 the police officer?

17 A The same one I just gave.

18 Q And based on that description, they subpoenaed
19 you to come to court today and yesterday?

20 A Right.

21 Q You never identified Mr. Sanchez as being that
22 person through a photograph or in any other way to the
23 police or the detective?

1 A No.

2 Q When you came into the courtroom this morning,
3 did you know that the person that you saw was going to be
4 sitting at this table?

5 A Yes.

6 Q And how did you know that?

7 A Because I knew that.

8 Q Did somebody tell you that?

9 A Well, nobody told me, but I knew what I was
10 coming in for.

11 Q You knew that the person that you haven't seen
12 since 1999 was going to be sitting at this table?

13 A Yes.

14 Q And you just saw him for the first time this
15 morning?

16 A This is the first time I've seen him again,
17 yes.

18 Q And before you walked through the doors behind
19 me, you knew you were going to be testifying that this was
20 the person?

21 A Yes.

22 Q Do you know what police officer you spoke to?

23 A When?

1 Q When you gave the description. What his
2 name --

3 A Two years ago?

4 Q Yes.

5 A I'm not sure, but it was a detective. I
6 talked to Detective Hula and Detective Perez, I think.
7 I'm not sure.

8 Q And Detective Hula is a female police officer;
9 correct?

10 A Yes.

11 Q And Detective Perez is a male police officer?

12 A Yeah, Hispanic.

13 Q And do you know which detective you gave that
14 description to?

15 A Both.

16 Q To both of them?

17 A Uh-huh. (Nodding head.)

18 MR. PETIT: Nothing further. Thank you, Your
19 Honor.

20 MR. MURPHY: Just one last question.

21 REDIRECT EXAMINATION

22 BY MR. MURPHY:

23 Q Ma'am, did any police officer ever tell you

1 that you had to pick out somebody in court today?

2 A No.

3 Q Did anybody ever say, you know, whether you
4 remember or not, the person is going to be there?

5 A No.

6 Q Would you identify this person if you didn't
7 remember him?

8 A Yes.

9 Q No. Listen to my question.

10 MR. PETIT: Objection, Your Honor. Asked and
11 answered.

12 THE COURT: Sustained.

13 BY MR. MURPHY:

14 Q Do you remember -- well, where do you remember
15 him from?

16 A From the night that I found him.

17 Q When the police were interviewing him or
18 interviewing you, that is, back in 1999, did you indicate
19 to them if you see him again you'll remember him?

20 A Yes.

21 MR. MURPHY: I don't have any other questions
22 for this witness. I would ask that she be subject to
23 recall, please.

1 THE COURT: Ms. Contrevas, you are subject to
2 recall. Please step outside the courtroom. Don't discuss
3 your testimony that you have given today with anyone out
4 there.

5 (Witness stood aside.)

6 MR. MURPHY: Your Honor, the Commonwealth's
7 next witness would be Mr. Alvarez.

8 THE COURT: What is his first name?

9 MR. MURPHY: He's the only Mr. Alvarez out
10 there, actually, Judge, so I think we can probably do it
11 that way.

12 Judge, I forgot to tell you he needs a Spanish
13 interpreter. I believe that's why we needed the second
14 interpreter.

15 THE COURT: Well, I don't think we have one
16 here at the moment.

17 MR. MURPHY: Judge, I think what I've seen
18 done in other matters, in other cases like this, is since
19 the Defendant can understand Spanish, if the translator
20 simply translates for us, the Defendant will hear the
21 testimony directly from the witness, and the rest of us
22 can hear it in English.

23 MR. PETIT: Your Honor, as Mr. Murphy stated

1 earlier in the trial, we're not supposed to be paying
2 attention to what the witness says. We're supposed to be
3 paying attention to what the translator says. And if Mr.
4 Sanchez has a question for counsel, then I need my
5 interpreter here.

6 THE COURT: Let's take -- do you want to call
7 another witness out of turn while we try to get a
8 translator or do you want us to just take a recess?

9 MR. MURPHY: Judge, I can call another witness
10 out of turn.

11 THE COURT: If you could call a translator,
12 that would be great.

13 MR. MURPHY: I can't call a translator, but I
14 can call another witness. Let's try that.

15 THE COURT: Mr. Alvarez, would you just tell
16 Mr. Alvarez that he can step back outside?

17 What is his first name?

18 (Whereupon, the interpreter spoke with the
19 witness in a foreign language.)

20 MR. MURPHY: Mr. Johnny Marquez.

21 THE COURT: Johnny Marquez.
22
23

1 Whereupon,

2 JOHNNY SARATO MARQUEZ

3 a witness, was called for examination by counsel on behalf
4 of the Commonwealth, and, after having been duly sworn by
5 the Clerk of the Court, was examined and testified, as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. MURPHY:

9 Q Sir, please state your name for the Judge and
10 the jury in this case.

11 A Johnny Sarato Marquez.

12 Q And, sir, directing your attention to this
13 Defendant, do you know him?

14 A Yes, I do.

15 Q Who is he?

16 A Hugo Sanchez.

17 Q And back in November of 1999, was he a friend
18 of yours?

19 A I knew him a long time ago because he was in
20 jail, so he wasn't my friend.

21 MR. PETIT: Objection, Your Honor. If we can
22 approach, Your Honor.

23

1 MR. MURPHY: Thank you.

2 OPEN COURT

3 THE COURT: Is the witness outside the
4 courtroom, counsel?

5 MR. MURPHY: Yes, he is.

6 THE COURT: I'd just like to briefly instruct
7 the jury to please disregard any statement that the
8 witness, the Commonwealth's witness, Johnny Marquez, may
9 have said in reference to, "I met him in jail." The Court
10 instructs you not to speculate as to what that means.

11 The witness may well have been speaking of
12 himself as having been in jail or they both could have
13 been visiting jail. We simply don't know what he meant by
14 that.

15 In any event, I'm instructing the jury that
16 it's simply not relevant to this trial; all right.

17 Why don't you call him back in?

18 Actually, Mr. Murphy, would you just step
19 outside?

20 MR. MURPHY: Right, yes, Your Honor.

21 (Brief pause while Mr. Murphy stepped outside
22 the courtroom.)

23 THE COURT: Mr. Marquez, would you please get

1 your hands out of your pocket? Just get your hands out of
2 your pocket.

3 THE WITNESS: Oh, okay. Thank you.

4 THE COURT: You were previously sworn. Why
5 don't you just please take a seat again.

6 (The witness resumed his seat on the witness
7 stand.)

8 BY MR. MURPHY:

9 Q Mr. Marquez, were you with Hugo Sanchez on the
10 Thursday evening, November 25th, and then on into Friday
11 morning, November 26 of 1999?

12 A Like what time you mean?

13 Q When did you meet up with him?

14 A I saw him 10:00 o'clock in his apartment.
15 Supposedly it was a party.

16 Q Supposedly there was a party?

17 A Yeah.

18 Q Do you remember the name of the apartments?

19 A I don't recall it right now, but, yes, I know
20 where they are.

21 Q Are they in Maryland or Virginia?

22 A Maryland.

23 Q And how did you get to the party?

1 A Sandra and Ronnie picked me up at my house at
2 ten to 10:00.

3 Q And where did you go? Where did they take
4 you?

5 A We first stopped at the liquor to buy some
6 beer and then like Ronnie told us that it was like a party
7 around there, so we went there.

8 Q And who went in the party?

9 A We went -- Ronnie and me went inside, and we
10 left Sandra outside -- to check it out.

11 Q And then when you checked it out, did you
12 decide you wanted to stay or what?

13 A Yeah, I saw these people there drinking and
14 everything, and we decided to stay. So we went outside
15 and told Sandra we were going to stay.

16 Q What did Sandra do?

17 A Well, Sandra, you know, we just like we talked
18 to her that we were going to stay, and then she left.

19 Q So when you went to the party, what happened?

20 A Okay. Well, when we went back again we were
21 drinking there, you know. They were smoking marijuana
22 there, too, and other stuff. And we just like were
23 drinking exactly.

1 Q Now, when did you first see this Defendant,
2 Hugo Sanchez?

3 A Oh, the first time I got in.

4 Q That evening, when is the first time you saw
5 him?

6 A Ten o'clock, right there at the apartment.

7 Q And what was he doing?

8 A Drinking with everybody.

9 Q Now, did you ever leave the party?

10 A Yes. We did like heard something, because
11 they left. Hugo and this other guy named Christian they
12 left outside, and they were like -- we went out, and then
13 when I went outside, I saw them just stealing like this
14 boombox from this apartment.

15 MR. PETIT: Objection, Your Honor. If we can
16 approach.

17 THE COURT: We're going to have to have the
18 witness step down.

19 (Witness stood aside.)

20 BENCH CONFERENCE

21 THE COURT: Do you want the Defendant up here?

22 MR. PETIT: No, sir; but I'm wondering if he's
23 going to accuse my client of shooting from behind the

1 agree with that. My concern is that if I don't request a
2 limiting instruction, then the Court of Appeals isn't
3 going to review it because they're going to say we have
4 waived it.

5 But at this time to have a third limiting
6 instruction, I submit to Your Honor, would be more harmful
7 to my client. But I do not want it.

8 THE COURT: So you're not asking --

9 MR. PETIT: I'm not asking you to do that, but
10 I am not waiving my objection to it, either.

11 I think a mistrial at this point --

12 THE COURT: You're not asking that I give it?

13 MR. PETIT: No, sir.

14 THE COURT: Okay. I won't give it then.

15 OPEN COURT

16 THE COURT: Why don't you call Mr. Marquez
17 back in here, please?

18 (The witness returned to the courtroom and
19 resumed his place on the witness stand.)

20 BY MR. MURPHY:

21 Q Sir, did there come a time when you got in the
22 car with Mr. Sanchez?

23 A What? Could you repeat the question?

1 Q That evening, did you eventually get in a car
2 with Hugo Sanchez?

3 A Yes, I did.

4 Q And who was driving the car?

5 A He was.

6 Q And who was in the car with you?

7 A It was this guy named Victor, his brother
8 supposedly.

9 Q Whose brother supposedly?

10 A Hugo's brother.

11 Q Hugo Sanchez's brother, Victor?

12 A Yes.

13 Q Who else?

14 A Me, Ronnie and Christian. There were six
15 people.

16 Q Ronnie, who you came with; and who's the last
17 one?

18 A Christian.

19 Q Christian?

20 A Yeah.

21 MR. MURPHY: And, Your Honor, at this time I
22 guess, if the record could reflect by stipulation,
23 Christian is the second individual who winds up dead in

1 the car because of injuries sustained in the accident.

2 THE COURT: Is that correct?

3 MR. PETIT: Yes, Your Honor, I believe that
4 Christian's actual name is Jose Israel Ramirez Alvarez.

5 MR. MURPHY: Alvarez, right. And he goes by
6 Christian -- went by Christian.

7 THE COURT: Say that name again. Jose Ramirez
8 Alvarez, was it?

9 MR. MURPHY: Jose Ramirez Alvarez, but he's
10 known as Christian. He's the second individual, by
11 stipulation, that was killed in the accident.

12 THE COURT: Okay. I'll receive that. Go
13 ahead.

14 MR. MURPHY: Thank you.

15 BY MR. MURPHY:

16 Q All right. Where did you go? Who was driving
17 the automobile?

18 A Hugo.

19 Q And where did you go from the party in that
20 car?

21 A We went to the liquor named Tick-Tock.

22 Q A liquor store named Tick-Tock?

23 A Yes; and me, Ronnie and Christian got out of

1 the car and went to buy the beers, then we came back, and
2 we didn't see the car of Hugo -- I mean Hugo with the car,
3 and we realized he was behind it, you know.

4 Q Did you get back in the car?

5 A Yeah, we got back in the car.

6 Q Was Hugo still driving?

7 A Yes, exactly.

8 Q Now, tell us about the accident.

9 A Okay. I just remember that they were
10 following us and --

11 Q Do you know who was following you?

12 A No. I recall just like screaming, you know,
13 they're following us, and people are screaming, you know,
14 like shut-up and everything. And then what happened, we
15 got a curve and the car just fly. I just remember the
16 impact, you know, boom-boom.

17 Q And who was driving when the car wrecked?

18 A Hugo was.

19 Q Where were you sitting?

20 A I was sitting behind him, in the backseat,
21 behind him.

22 Q Now, what's the next thing you remember after
23 the accident?

1 A Okay. After the accident, I just remember
2 that people were getting out of the car, stepping and
3 everything. I remember they put me down on something. I
4 don't know where did I get out from the car.

5 And then I remember like people saying like --
6 I don't know who, I don't remember the voice -- saying
7 that he's dead, he's dead. And then I just woke up and --

8 Q Now, wait a minute. When you say put you
9 down, what do you mean? When you say you remember them
10 putting you down, what do you mean?

11 A No. I mean I don't know how I got out of the
12 car. I just remember them pulling me out. And I remember
13 that I woke up and I mean I was saying -- I just heard
14 that they were saying that he's dead, he's dead. And --

15 Q When they were saying he's dead, what were you
16 doing?

17 A I mean I was passed out. I just remember the
18 words, you know.

19 Q While you were passed out?

20 A Exactly.

21 Q Okay; and at this point are you outside the
22 car or inside?

23 A Yeah, I woke up in just bushes of this creek.

1 Q Bushes of the creek?

2 A Yeah.

3 Q You woke up in the bushes of the creek?

4 A Exactly.

5 Q What happened next?

6 A I woke up, I remember, and I thought somebody
7 beat me up or something and that they left me there or
8 something, because I didn't recall anything.

9 And then I walked to the hill, to the bushes,
10 and I got up the hill and I saw a gas station, and I went
11 to the gas station and called my mom. And I asked this
12 guy at the gas station, you know, he told me that -- I
13 told them that somebody beat me up and that I needed a cab
14 or something, and he called me a cab.

15 Q Now, when you woke up, was Hugo Sanchez still
16 there?

17 A No, nobody was there.

18 Q Nobody alive?

19 A Nobody.

20 Q Did you notice the bodies in the car?

21 A No, I didn't.

22 Q When you got up to the gas station, that's how
23 you got the cab to come get you and bring you home?

1 A Yes. I asked the guy -- I called my mom
2 first. She didn't believe me. And I told her that
3 somebody beat me up because that's what I thought. And
4 this guy called me the cab.

5 Q When did you realize you had been in a wreck?

6 A I realized it Saturday, because I heard the
7 news and they called me -- I called Ronnie's mom, too, on
8 Friday, and I asked her if she saw Ronnie, and she said
9 that Ronnie didn't get to her house. She didn't know
10 nothing.

11 So like Saturday, that's when they told me,
12 you know, and that's when I knew that I was in an
13 accident, that I remembered things.

14 Q So you're saying you were in the back seat?

15 A Yes.

16 Q At the time of the accident, what size shoe do
17 you wear?

18 A Eleven.

19 MR. MURPHY: Your Honor, I don't have any
20 other questions for this witness. I will ask one
21 question.

22 BY MR. MURPHY:

23 Q Do you remember about when the accident

1 happened?

2 A No I didn't. I didn't remember.

3 Q Do you remember when you came to in the woods
4 by the creek?

5 A Yeah. I know it was like 4:00 in the morning
6 by that time. Four or five.

7 MR. MURPHY: I don't have any other questions
8 for this witness.

9 THE COURT: Mr. Petit, would you like to cross
10 examine Mr. Marquez?

11 MR. PETIT: Yes, Your Honor.

12 CROSS EXAMINATION

13 BY MR. PETIT:

14 Q So when Ronnie picked you up at your home, he
15 was there with his girlfriend?

16 A Yes.

17 Q And what is her last name? I'm sorry.

18 A Oh, I don't -- I just know her by Sandra.

19 Q Sandra? Okay. We'll just call her Sandra.
20 And she drove you to a liquor store?

21 A Yeah.

22 Q So you didn't go straight to the party. You
23 went to a liquor store first?

1 A No. We went first to the liquor store, yes.

2 Q And what did you buy at the liquor store?

3 A We bought some beer.

4 Q Do you remember what kind of beer or how many
5 beers?

6 A If I remember, it was about twelve.

7 Q A twelve-pack?

8 A Something like that, less.

9 Q Do you know what kind of beer it was?

10 A No, I don't.

11 Q And you started drinking that before you got
12 to the party?

13 A No, no. We just drank like one. It was just
14 fast.

15 Q But you had one in the car?

16 A Yeah, like one; something like that.

17 Q And Ronnie had one as well?

18 A I don't know. I don't recall.

19 Q Had you had anything to drink prior to them
20 picking you up?

21 A No.

22 Q And so you get to the party, you realize it's
23 a good party, you want to stay, and you go out and tell

1 her you're staying; correct?

2 A Yes.

3 Q Did you notice -- well, how many people were
4 at the party when you walked in?

5 A Oh, it was one, two, three, and the six of us.
6 It was like nine people.

7 Q And Hugo was already there?

8 A Yes.

9 Q And so the other people that were already at
10 the party are still in the house when you walk out to
11 Sandra's car?

12 A Sandra's car?

13 Q Right.

14 A Yeah, they still there.

15 Q And when you went back into the party --

16 A But not all the people, though.

17 Q Okay.

18 A Us and the -- they came out behind us, so I
19 don't remember.

20 Q But when you went back into the party, Hugo
21 was still there?

22 A I don't recall that.

23 Q You don't remember if he was there or not?

1 A No, no. I think he was. Then he came behind
2 us.

3 Q So he walked out behind you?

4 A Yes.

5 Q Did you see where he went?

6 A No, I don't recall.

7 Q So you go back into the party and you don't
8 remember if Hugo is there or not?

9 A I remember that he -- when I went back?

10 Q Right.

11 A Yeah, he was coming behind us. I don't know
12 what they were doing, but he was -- they were coming
13 behind me. I don't know what they went to do -- to a car
14 or something.

15 Q So I want to make sure I get this right. You
16 left the party to go tell Sandra you were staying?

17 A Me and Ronnie, yeah, but --

18 Q How long did you talk to Sandra?

19 A We talked about five minutes. I don't
20 think -- five minutes, I think.

21 Q So literally five minutes or just thirty
22 seconds? I mean five minutes is a long time.

23 A I don't recall.

1 Q You don't remember how long?

2 A No.

3 Q But you talked to her the whole time?

4 A We talked to her.

5 Q And then you went back into the party?

6 A And we saw -- we saw Hugo passing. I don't
7 know if he was parking the car or something, moving it. I
8 don't know.

9 Q So you saw Hugo walk back into the house with
10 you?

11 A Yes.

12 Q And how long do you stay at the party?

13 A About an hour, an hour and a half; something
14 like that, an hour and fifteen minutes.

15 Q An hour and fifty or fifteen?

16 A Fifteen.

17 Q An hour and fifteen?

18 A Something like that.

19 Q Do you remember testifying at a previous
20 hearing prior to today's court date?

21 A Yes, I do.

22 Q And that was in a different courtroom?

23 A Yes, it was in a different courtroom.

1 Q And I was there and Mr. Murphy was there?

2 A Yes.

3 Q And do you remember testifying at that hearing
4 that you stayed at the party for about two hours?

5 A Yeah, I mean one hour and fifteen minutes.

6 Q So it could have been anywhere from an hour
7 and fifteen, two hours --

8 A Exactly.

9 Q It may have even been a little longer than two
10 hours, you're not sure?

11 A No, no more longer than that.

12 Q And do you remember -- okay. So you stay at
13 the party and you're drinking beer?

14 A Yes, we were.

15 Q And you said that marijuana was being smoked.
16 You also smoked marijuana, right?

17 A Not in there, though.

18 Q You didn't smoke marijuana at the party?

19 A No, no. I did, but in the car.

20 Q In the car?

21 A Yeah.

22 Q After you left the party?

23 A Yeah.

1 Q All right. And do you know how much marijuana
2 you smoked? Did you smoke a whole --

3 A No, I don't remember.

4 Q But it was enough to get you intoxicated by
5 the marijuana?

6 A I don't call it -- I mean, you know.

7 Q You were feeling good?

8 A I was more drunk than, you know.

9 Q Well, how many beers did you have?

10 A I don't remember. I didn't count them.

11 Q But you were pretty drunk?

12 A I call it not pretty drunk. I was drunk,
13 though.

14 Q And you don't remember how much marijuana you
15 had to smoke?

16 A No.

17 Q And how long were you driving around in the
18 car? Do you remember that?

19 A We just went to the Tick-Tock. We went to the
20 liquor store.

21 MR. PETIT: The Court's indulgence.

22 THE COURT: Uh-huh.

23

1 (Brief pause while Mr. Petit reviewed some
2 documents.)

3 BY MR. PETIT:

4 Q I'm sorry. So you went to the Tick-Tock?

5 A Yeah, we went there.

6 Q And what did you buy there?

7 A We bought some beer.

8 Q Do you know how much beer you drank -- you had
9 -- you bought?

10 A I don't know. I don't remember.

11 Q Did you go in and buy the beer?

12 A Yeah, I went with Ronnie and Christian.

13 Q So you were there when they paid -- who paid
14 for it? Do you remember who paid for it?

15 A I think it was Ronnie, yeah.

16 Q And you were there when he paid for it?

17 A Not exactly, no. I was inside the liquor, but
18 I didn't see. I mean I saw him paying it, but I don't
19 know how much he paid.

20 Q All right. But you did see what he bought?
21 You knew it was beer?

22 A Yeah, it was beer, yeah.

23 Q And do you know if it was a case or was it a

1 six-pack? You don't remember?

2 A No, I don't remember.

3 Q You were too drunk to remember how much it
4 was?

5 A No, I wasn't -- I wasn't drunk, but I don't
6 remember. I mean the beers, I don't remember.

7 Q And you brought them back to the car?

8 A Yes.

9 Q Where were the beers put?

10 A I don't remember that, either.

11 Q Well, were they on your lap? Were they in the
12 trunk?

13 A No. I know they were inside the car, but --

14 Q You know they were inside the car because you
15 kept drinking from the beer that was purchased?

16 A We were drinking it, so it was where we were
17 at.

18 Q And there was marijuana being passed around
19 the car?

20 A Yes.

21 Q And you were smoking some of that marijuana?

22 A Yeah, I did a little bit; yes.

23 Q And you actually started passing out, right?

1 You fell asleep?

2 A I got drunk. No, I didn't fall asleep.

3 Q You didn't fall asleep or pass out?

4 A No, I -- no.

5 Q Do you remember at that previous hearing
6 testifying that I had flashes I don't remember?

7 A Yes, I did say that when we headed over there
8 to D.C. That's what I said. After that, they were
9 following us. I don't know.

10 Q But when you say you had flashes, there were
11 just periods of time that you don't remember what
12 happened; right?

13 A I mean, yeah, when the accident happened I had
14 like, you know, flashes like that, yeah.

15 Q But there were flashes before the accident,
16 when you were in D.C.?

17 A Yeah, yeah, I remember.

18 Q So at one point you believe your car was
19 driving down Rock Creek Parkway?

20 A We did drive Rock Creek Parkway.

21 Q But you didn't remember where you were going?

22 A Because I remember they were following us.

23 Q But you didn't remember where you were going,

1 which direction?

2 A No. We were like running, you know, like
3 somebody's following you. You don't know. I mean you
4 just go ahead.

5 Q And then at one point you thought that you
6 were on the Beltway?

7 A Not then. Yeah, we were like there.

8 Q But you didn't remember --

9 A That was before the accident happened exactly
10 at the curve, yeah.

11 Q But you don't remember where on the beltway
12 you were; right?

13 A No, no, I don't remember.

14 Q And you were falling asleep in the back seat.
15 Isn't that what you --

16 A I was screaming that they were following us.

17 Q Okay; but after that?

18 A After the what?

19 Q After you were in D.C.

20 A Yeah.

21 Q There were periods of time that you don't
22 remember?

23 A After the accident, yeah.

1 Q Before the accident. Didn't you tell me --

2 A No. I remember -- I remember that I was
3 screaming, and I told you that there was screaming. They
4 were following us. They were like screaming in the car
5 saying shut-up and, you know, whatever.

6 Q Do you remember testifying at that previous
7 hearing --

8 A Yes.

9 Q -- that you pulled over several times in D.C.
10 in a parking lot?

11 A No, no. I told you that we pulled in this
12 parking lot, yeah.

13 Q But you don't remember --

14 A That's when they followed us.

15 Q And do you remember saying you didn't remember
16 if people got out or if people left?

17 A No, I don't remember.

18 Q Now, when the accident occurred, you say that
19 you woke up in a creek with some bushes; is that correct?

20 A It was like a little creek, and I just saw
21 bushes, because I was like -- I was passed out. I mean,
22 you know.

23 Q And you thought that someone had beaten you

1 up?

2 A Yeah, that's what I thought.

3 Q You had no idea that you had been in a car
4 accident?

5 A No idea that I had been in an accident,
6 exactly.

7 Q And this was at about 4:00 or 5:00 in the
8 morning?

9 A About, yeah, because I got to the station, the
10 gas station, at about 4:30, something like that.

11 Q And how long did it take you to get from where
12 you woke up to the gas station? How long? Ten minutes; a
13 half hour; two hours?

14 A I don't remember. I just walked. I don't
15 remember.

16 Q Could it have been as long as four hours, or
17 was it probably fifteen, twenty minutes?

18 A No, couldn't be, because --

19 Q Because you could see it from where you were;
20 right?

21 A Exactly. I mean, see, I got out the bushes
22 and I saw the street. Then I walked down it and saw a gas
23 station. That's where I went.

1 Q And when you got there, you told the gentleman
2 there that you thought you were in Gaithersburg, Maryland?

3 A Yes, I did say that.

4 Q And you told your mother that you were in
5 Gaithersburg and you wanted her to pick you up?

6 A Yes, exactly. I called her and I said that I
7 thought I was in Gaithersburg, somebody pick me up. And
8 she was like she didn't believe me or nothing. So then
9 she believed me, finally. She said like to get a cab and
10 go to your house, and they going to pay it over there.

11 Q And you did eventually call a cab; right?

12 A They did.

13 Q They did? The person at the gas station?

14 A Yes.

15 Q And is that person that told you that you
16 weren't actually in Gaithersburg, you were in Fairfax
17 County?

18 A Exactly.

19 Q And the cab took you home?

20 A Yes.

21 Q What did you do when you got home?

22 A I went -- I mean the people there, they were
23 like what happened and everything, and I just went to

1 sleep. They told me to go to the hospital.

2 Q Now, when you say they, who's they?

3 A The people who lives in the house, like the
4 owners of the house.

5 Q But you didn't go to the hospital; right?

6 A No, because I didn't feel like I wanted to go
7 to the hospital.

8 Q And you eventually talked to the detective, to
9 a detective in this case?

10 A Yes, Perez, I think.

11 Q Detective Perez?

12 A Yes.

13 Q And he spoke to you, what, on Saturday?

14 A He spoke to me on Sunday, and I saw him like I
15 think it was Tuesday or -- yeah, Tuesday.

16 Q And he kind of filled in some blanks about
17 what happened; didn't he?

18 A I think he did, yeah.

19 Q So he was telling you what he thought
20 happened?

21 A No, no. He didn't tell me that.

22 Q Okay.

23 A He was like telling me to explain whatever

1 happened.

2 Q And there were some portions that he had to
3 fill in the blanks for you?

4 A No, no, he didn't.

5 Q No?

6 A No.

7 Q Referring back again to that previous hearing,
8 do you remember testifying that the detective filled in
9 blanks? Do you remember saying that to me?

10 A No, I don't remember saying that.

11 Q You don't remember saying that at all?

12 A No.

13 Q How many times did you talk to that detective?

14 A About one, two -- I don't remember now, but it
15 was like a lot of times.

16 Q And do you remember the detective saying,
17 "Well, do you remember this?"

18 A No, no, he never told me that.

19 Q And you never testified to that at the
20 previous hearing?

21 A Yeah, I testified to him like two times.

22 Q No. But at a previous hearing, do you
23 remember testifying under oath that the detective would

1 ask you, "Do you remember this happening?"

2 A No, I didn't tell you that.

3 Q You didn't testify to that?

4 A I mean I don't think so.

5 Q So is it possible then that you said it and
6 you just don't remember?

7 A No, no, no. No, I didn't say it.

8 Q Now, you say that you were sitting behind the
9 driver's seat; correct?

10 A Yes.

11 Q In the back seat?

12 A Yes.

13 Q Who was sitting next to you?

14 A These two other guys, and Ronnie was in the
15 rear.

16 Q When you say he was in the rear, what do you
17 mean by that?

18 A The other door.

19 Q He was at the other door?

20 A Yeah.

21 Q So there were four people in the back seat?

22 A Yes.

23 Q And who was in the passenger's seat in front?

1 A Christian.

2 Q Christian was?

3 A Yes.

4 Q And you said that Hugo's brother was in the
5 car?

6 A Yes.

7 Q Do you know what Hugo's brother's name is?

8 A No, because he just came from El Salvador and
9 I didn't know him.

10 Q You haven't seen him here today in the
11 courtroom?

12 A No. Since that time I haven't seen him.

13 Q Do you remember telling Detective Hula that
14 there were only five people in the car?

15 A No. I said six people.

16 Q You don't remember telling Detective Hula that
17 Ronnie, Christian, Hugo, Vincent and Johnny were in the
18 car?

19 A No. I said Hugo's brother, too.

20 Q And you told that to Detective Hula?

21 A I told whoever asked me.

22 Q Did you tell that to Detective Hula?

23 A Yeah, I guess so.

1 Q Were you bleeding when you woke up in the
2 street?

3 A Yes, a little bit.

4 Q Where were you bleeding from?

5 A I don't remember.

6 Q Was it your face? Was it your hands?

7 A I think it was -- I don't know. I don't
8 remember.

9 Q Do you remember if you were bleeding a lot or
10 just a little bit?

11 A It wasn't a lot.

12 Q It was not a lot?

13 A No. It was a little bit, but I was bleeding a
14 little.

15 Q But just a little?

16 A (Nodding head.)

17 MR. PETIT: The Court's indulgence?

18 THE COURT: Sure.

19 (Brief pause while Mr. Petit reviewed some
20 documents.)

21 BY MR. PETIT:

22 Q Did you have any other injuries?

23 A Ribs, broken ribs.

1 Q You had broken ribs?

2 A On the right side.

3 Q I'm sorry?

4 A Broken ribs on the right side.

5 Q And when did you find out you had broken ribs

6 A Oh, it was hurting the same day. So I found
7 out when I went to the hospital.

8 Q When did you go to the hospital?

9 A I went to the hospital on Monday.

10 Q On Monday?

11 A Yes.

12 Q And you went to the hospital because the
13 police or the detectives suggested that you go to the
14 hospital; isn't that correct?

15 A Yeah, they told me go to the hospital, but I
16 was going to go anyway.

17 Q But you didn't go until they told you to?

18 A Yeah, but I was going.

19 Q Do you remember telling the gentleman at the
20 gas station that you had been kicked out of the car?

21 A That I was what?

22 Q That you got kicked out of a car?

23 A No, I don't recall that.

1 Q Do you remember bleeding from the head?

2 A I was bleeding some. I don't remember from
3 where. I told you that.

4 MR. PETIT: I have nothing further, Your
5 Honor.

6 THE COURT: Mr. Murphy, would you like to have
7 any redirect with Mr. Marquez?

8 MR. MURPHY: No, Your Honor. If he could just
9 be subject to recall at this time.

10 THE COURT: Mr. Marquez, you are free to step
11 down. Please don't discuss your testimony or the facts of
12 this case with anybody outside during the course of this
13 trial.

14 THE WITNESS: Okay.

15 THE COURT: Thank you.

16 (Witness stood aside.)

17 MR. MURPHY: Do we have an interpreter?

18 THE COURT: The interpreter is on the way.

19 MR. MURPHY: That's fine, Judge. I can call
20 another witness.

21 Donald Lee, please.

22

23

1 Whereupon,

2 DONALD LEE

3 a witness, was called for examination by counsel on behalf
4 of the Commonwealth, and, after having been duly sworn by
5 the Clerk of the Court, was examined and testified, as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. MURPHY:

9 Q Sir, please state your name and your
10 occupation for the Judge and the jury?

11 A My name is Donald Lee. I'm a motorist
12 assistant, state police.

13 Q And as a motorist assistant, what do you do
14 for motorist assist?

15 A I help stranded motorists on the interstates.

16 Q All right, sir. Directing your attention to
17 Friday morning, November the 26th, 1999, did you get a
18 call regarding a possible wreck?

19 A Yes, I did.

20 Q Tell the members of the jury about that.

21 A The dispatcher called me. It was
22 approximately 11:30. And he gave me a call to go to a
23 location on 267 east-bound, about an eighth of a mile west

1 of 495, to check for debris in the road.

2 Q To check for debris in the road?

3 A Yes, sir.

4 Q And 267, for those of us that don't go by
5 numbers, what road is that?

6 A It's the Dulles Connector Road.

7 Q It's in Fairfax County?

8 A Yes.

9 Q And, sir, when you arrived at the scene of the
10 debris, what did you find?

11 A Well, first I saw a boombox type of radio
12 along the side of the road. And out of the corner of my
13 eye, I saw some papers on the guardrail. And when I
14 noticed the papers on the guardrail, something caught the
15 side of the eye, and I looked down across the guardrail
16 and saw this car down in the woods.

17 So I went down to observe the situation and I
18 saw the individuals inside the car. And I went back up to
19 my car and called the dispatcher and asked for them to
20 send me a rescue squad and a trooper to the scene.

21 Q And you say this was about 11:30 in the
22 morning. Were those two individuals in the car already
23 dead?

1 A Yes, sir.

2 MR. PETIT: Objection, Your Honor.

3 THE COURT: Objection sustained.

4 BY MR. MURPHY:

5 Q Well, how did they appear to you?

6 A They appeared dead to me, sir.

7 Q And I'm going to show you some photographs.

8 MR. MURPHY: If I could approach the Clerk
9 first to have them marked.

10 THE COURT: Okay.

11 MR. MURPHY: This will be marked as
12 Commonwealth's Exhibit 4 and 5.

13 (The documents referred to
14 above were marked
15 Commonwealth's Exhibit
16 Numbers 4 and 5, for
17 identification.)

18 BY MR. MURPHY:

19 Q Sir, I'm going to show you what's been marked
20 as Commonwealth's 4.

21 THE COURT: Have you shown them to his
22 counsel?

23 MR. MURPHY: Counsel's already seen them, Your

1 Honor. I'll show them to him again now that they've been
2 marked.

3 (Whereupon, the photographs were shown to Mr.
4 Petit and Ms. Meleen for their review.)

5 BY MR. MURPHY:

6 Q Sir, do you recognize this view,
7 Commonwealth's Exhibit 4?

8 (Whereupon, Mr. Murphy handed a photograph to
9 the witness for his examination.)

10 THE WITNESS: Yes, sir, I do.

11 BY MR. MURPHY:

12 Q What is that a view of?

13 A That's the view of the scene of the accident,
14 where the car went into the woods, into the trees.

15 Q That's taken from the access road?

16 A It looks like east-bound on the connector
17 road, yes, where the intersection goes onto the Beltway
18 north and south, between that and the connector road.

19 Q And that entire area is in Fairfax County?

20 A Yes, sir.

21 Q And when did you notice any tracks leading off
22 the road and into the woods?

23 A When I got to the scene, I was primarily

1 looking for the debris in the road that the dispatcher had
2 called me to, and the radio caught my eye at the time when
3 I got there, because I was noticing the center of the road
4 more so than the side of the road.

5 MR. MURPHY: Your Honor, I'd move that in as
6 Commonwealth's 4.

7 THE COURT: Any objection?

8 MR. PETIT: No objection.

9 THE COURT: I'll receive that then as
10 Commonwealth's Exhibit Number 4.

11 (The document heretofore
12 marked Commonwealth's
13 Exhibit Number 4, for
14 identification, was received
15 into evidence.)

16 MR. MURPHY: And, sir, I want to show you
17 Commonwealth's Exhibit 5.

18 (Whereupon, Mr. Murphy handed a photograph to
19 the witness for his examination.)

20 BY MR. MURPHY:

21 Q Do you recognize that view?

22 A Yes, sir, I do.

23 Q What is that view?

1 A (No response.)

2 Q What is that view?

3 A That's a view of the accident that I observed
4 when I got to the scene.

5 MR. MURPHY: Your Honor, I would move that
6 into evidence at this time.

7 MR. PETIT: No objection, Your Honor.

8 THE COURT: I'll receive that as
9 Commonwealth's Exhibit 5.

10 (The document heretofore
11 marked Commonwealth's
12 Exhibit Number 5, for
13 identification, was received
14 into evidence.)

15 BY MR. MURPHY:

16 Q I'm going to show you Commonwealth's Exhibits
17 6 and 7. Do you recognize those views?

18 (Whereupon, Mr. Murphy handed some photographs
19 to the witness for his examination.)

20 THE WITNESS: Yes, I do.

21 BY MR. MURPHY:

22 Q What are those views of?

23 A Of the vehicle that I observed when I got to

1 the location that I described before.

2 MR. MURPHY: Your Honor, I'd move those into
3 evidence.

4 MR. PETIT: No objection, Your Honor.

5 MR. MURPHY: Your Honor, if I could have the
6 Court's indulgence just to take this up with counsel.

7 THE COURT: Sure; take your time.

8 (The document heretofore
9 marked Commonwealth's
10 Exhibit Numbers 6 and 7, for
11 identification, was received
12 into evidence.)

13 (Counsel conferred, off the record.)

14 BY MR. MURPHY:

15 Q And, sir, did you maintain custody over the
16 accident scene until Trooper Conte arrived at the scene?

17 A Yes, I did, but that wasn't but just a few
18 minutes until he arrived.

19 Q Right. It was just a couple of minutes until
20 he showed up?

21 A Yes, sir.

22 Q Okay. Thank you.

23 MR. MURPHY: I don't have any other questions

1 for this witness.

2 THE COURT: Mr. Petit, do we have cross?

3 MR. PETIT: No, sir.

4 THE COURT: Okay. May Mr. Lee be excused?

5 MR. MURPHY: He can be excused.

6 THE COURT: Mr. Lee, thank you for your time
7 yesterday and today. You are free to go.

8 THE WITNESS: Thank you, sir.

9 MR. MURPHY: Actually, Judge, I guess I should
10 ask -- there was one other question I had for him, just to
11 clarify. If I could just ask the one other question?

12 THE COURT: Why don't you just resume your
13 seat there, sir?

14 BY MR. MURPHY:

15 Q Sir, when you say you maintained custody over
16 the scene, did anybody tamper with the scene before -- did
17 you allow anybody to tamper with the scene before the
18 investigator arrives?

19 MR. PETIT: Objection to leading.

20 THE WITNESS: No, sir, there was nobody there.

21 THE COURT: It is leading, but I'm going to
22 allow it.

23 MR. MURPHY: Thank you.

1 THE COURT: Is that the last question?

2 MR. MURPHY: That's it, that's it.

3 THE COURT: You can step down, sir. Thank
4 you.

5 (Witness excused.)

6 MR. MURPHY: Your Honor, before I -- do we
7 have the interpreter yet?

8 THE COURT: We're still working on it.

9 MR. MURPHY: Can I step outside to see who
10 would be next?

11 THE COURT: Sure.

12 (Brief pause.)

13 MR. MURPHY: Judge, if we could call Dave Huff
14 next.

15 THE COURT: Okay.

16 Whereupon,

17 DAVID D. HUFF

18 a witness, was called for examination by counsel on behalf
19 of the Commonwealth, and, after having been duly sworn by
20 the Clerk of the Court, was examined and testified, as
21 follows:

22

23

1 DIRECT EXAMINATION

2 BY MR. MURPHY:

3 Q Sir, please state your name.

4 A My name is David Deland Huff.

5 Q And, sir, directing your attention back to
6 1999, how were you employed at that time?7 A I was a senior special agent, employed by the
8 Department of the State Police in Virginia.

9 Q And what was your specialty at that time?

10 A Among others, I was a forensic technician.

11 Q And what does a forensic technician do?

12 A We go to the crime scenes and collect
13 evidence, package it in a manner where it can be presented
14 to the forensic lab for examination.15 Q And have you had any special training or
16 education?17 A Yes. In 1985, I was a graduate of the
18 Virginia Forensic Academy.19 Q And about how many accident scenes did you
20 work collecting evidence for forensic study in your
21 career?

22 A I'd say approximately two or three hundred.

23 Q Sir, I'm going to show you some photographs

1 that have been marked as Commonwealth's 5, 6, and 7.

2 MR. MURPHY: If I can approach.

3 THE COURT: Yes, sir.

4 BY MR. MURPHY:

5 Q Sir, I'm going to ask you to look at
6 Commonwealth's Exhibit 7.

7 (Whereupon, Mr. Murphy handed a photograph to
8 the witness for his examination.)

9 BY MR. MURPHY:

10 Q Did the time come when you examined that
11 vehicle after it had been towed by the police, by the
12 state police?

13 A Yes, sir.

14 Q And what were you examining it for?

15 A I was examining it for any serology evidence,
16 blood, hair, or things of that nature, in an effort to see
17 if we could determine who was placed where in the vehicle.

18 Q Sir, directing your attention to the left
19 front window, did the time come when you obtained pursuant
20 to your examination a plastic lift of a print from the
21 window?

22 A Yes.

23 Q Tell the members of the jury how you obtained

1 that.

2 A Well, the driver's side window was intact, and
3 it appeared as though there was a footwear impression on
4 the glass.

5 Q On the outside or the inside?

6 A On the inside. And we attempted to photograph
7 it, but were unsuccessful because it was very faint. But
8 we treated it like we would a fingerprint and dusted it,
9 and it enhanced it, and we were able to lift it with the
10 plastic, much the same as you would a fingerprint.

11 Q Let me show you this document, something that
12 has been marked Commonwealth's Item Number 1. It's
13 attached to Commonwealth's Item 2, but I'm only directing
14 your attention to Commonwealth's Item 1.

15 MR. MURPHY: If I could approach the witness,
16 Your Honor.

17 THE COURT: Sure.

18 BY MR. MURPHY:

19 Q Do you recognize this?

20 (Whereupon, Mr. Murphy handed a document to
21 the witness for his examination.)

22 THE WITNESS: Yes, this is the way I packaged
23 the lift. Those are my initials at the top of that page.

1 BY MR. MURPHY:

2 Q Are you the one that put the -- well, first,
3 if you could look in the package and identify what's in
4 it.

5 Is that the lift we're talking about that you
6 obtained from the driver's side window?

7 A Yes, it is.

8 Q How do you know?

9 A Well, I didn't initial this, but it -- it was
10 in my possession from the time it was lifted until the
11 time I packaged it in this envelope. And, as I say, those
12 are my initials.

13 Q You initialed the envelope?

14 A (Nodding head.)

15 Q Once you packaged the Commonwealth's Item 1 in
16 the envelope and initialed the envelope, did you seal the
17 envelope, also?

18 A Yes, with the red tape.

19 Q With the red tape?

20 MR. MURPHY: And, Your Honor, let the record
21 reflect that red tape is still visible on the envelope.

22 THE COURT: The record will so reflect.

23

1 BY MR. MURPHY:

2 Q Sir, what did you do with the sealed envelope
3 once you'd done that?

4 A It was placed into evidence at the state
5 police headquarters.

6 Q And that was the end of your contact with it
7 from there?

8 A Yes, sir.

9 Q Now, sir, you mentioned that you took
10 serology, that is blood samples, from the vehicle; is that
11 correct?

12 A Yes, sir, it was.

13 Q I'm going to show you a package.

14 (Whereupon, Mr. Murphy handed a document to
15 the witness for his examination and the Bailiff opened it
16 for the witness.)

17 BY MR. MURPHY:

18 Q While they're doing that, on the print that
19 you've identified, you wound up numbering these items for
20 your own purposes; did you not? Every item that you
21 recovered from the wreck?

22 A Yes.

23 Q What was the number for the lifted shoe print

1 that you recall?

2 A One-twenty-eight.

3 Q Now that is not necessarily the same numbering
4 system that is used later when they are submitted to the
5 lab?

6 A Right. The reason for the difference, there
7 had been evidence collected at the scene of the accident.
8 And I was not aware of how many items had been collected,
9 but I was fairly certain that they had not collected one
10 hundred items. So I started my collection at that point,
11 at one hundred.

12 When the items were submitted to the forensics
13 lab, I'm sure that whoever submitted them started with
14 their number, their last number, and renumbered my
15 numbers.

16 Q Okay.

17 A So that they would be consecutive.

18 Q But the lifted shoe print starts out with
19 number 128 from you?

20 A Yes.

21 Q I want to show you a sealed package at this
22 time.

23 MR. MURPHY: I'd like the Clerk to mark this

1 as Commonwealth's 8, collectively.

2 (The document referred to
3 above was marked
4 Commonwealth's Exhibit
5 Number 8, for
6 identification.)

7 BY MR. MURPHY:

8 Q Do you recognize Commonwealth's 8?

9 (Whereupon, Mr. Murphy passed an item to the
10 witness for his examination.)

11 THE WITNESS: From the numbers and from the
12 way this is packaged, it would indicate to me that some of
13 the items that I collected are within this package.

14 Q I'd like you at this time to open up the
15 sealed package -- and if the record could reflect that it
16 was sealed until now -- and look inside and see if you
17 recognize some serology that you collected from the scene,
18 and specifically serology that you numbered number 17.

19 A All of the serology that I collected, I
20 indicated that they were red stains, and they are so
21 marked here.

22 This one (indicating) is my item 17 that was
23 renumbered as item number 26.

1 MR. MURPHY: Your Honor, I would like this
2 marked as Commonwealth's Item 8A, please.

3 THE COURT: 8A?

4 MR. MURPHY: Yes.

5 (The document referred to
6 above was marked
7 Commonwealth's Exhibit
8 Number 8A, for
9 identification.)

10 MR. PETIT: Your Honor, I have no objection to
11 having it marked as 8A, but I would ask that the witness
12 lay a foundation as to whether 8A is the actual sample he
13 took and is in the same condition that it was when he took
14 it.

15 THE COURT: Mr. Murphy, ask him those
16 questions.

17 BY MR. MURPHY:

18 Q Sir, directing your attention specifically to
19 8A, do you recognize this sample as the sample that you
20 took from the wrecked car?

21 A Yes, I do.

22 Q And how do you recognize it?

23 A It is sealed with red evidence tape that I

1 placed on it, and I placed my initials over the seal, both
2 on the sample and the control.

3 Q Now, where -- pardon.

4 MR. MURPHY: I thought Your Honor had said
5 something.

6 BY MR. MURPHY:

7 Q Sir, where did you obtain that particular
8 sample of blood?

9 A The left front door on the inside.

10 Q That would be the driver's door?

11 A Right, the area adjacent to the driver's seat,
12 below the window.

13 Q And, sir, once you had packaged and sealed
14 those items with the red tape, what did you do with all of
15 the items that we see in that larger bag?

16 A All the items that I collected at the -- were
17 collected within the same time period and were placed in
18 the evidence room at state police headquarters. The
19 serology was -- we have a refrigerator to keep those in
20 within the evidence room. So these were placed in
21 refrigeration because they were wet.

22 Q Because they were wet?

23 A Yes.

1 Q And when you say wet, what do you mean?

2 A Well, in order to lift the blood, we use swabs
3 and we use distilled water to wet the swab. And then we
4 collect the blood sample with the swabs and put those in
5 plastic bags.

6 And then for the control swabs, we wet those,
7 also, and swab an area adjacent to the area where we
8 collected blood, to show that there was no contaminants on
9 the controls that would adversely affect the exams that
10 they do on that.

11 Q So you swab the blood, but then you also take
12 a swab of where the blood isn't, just for comparison?

13 A Right.

14 Q Now, you placed them in refrigeration. Did
15 you put all of these several serology, smaller packets
16 that are sealed with your red tape, in the larger bag that
17 you had to open?

18 MR. PETIT: Objection. Leading, Your Honor.

19 MR. MURPHY: I'm asking him "did". That's
20 either a yes or a no. It doesn't suggest what the answer
21 is.

22 THE COURT: Objection overruled.

23 MR. MURPHY: Thank you.

1 THE WITNESS: No. These were not put in a bag
2 like this. This was done at a later time, it looks like
3 by Special Agent F.W. Scott, who made the submission to
4 the laboratory.

5 MR. MURPHY: Your Honor, I don't have any
6 other questions for this witness.

7 THE COURT: Mr. Petit or Ms. Meleen, would you
8 like to ask Mr. Huff any questions on cross?

9 MR. PETIT: Yes, please, Your Honor.

10 CROSS EXAMINATION

11 BY MR. PETIT:

12 Q Mr. Huff, are you currently employed by the
13 state police?

14 A No. I retired in January the 1st.

15 Q Of this year, 2001?

16 A Yes.

17 Q Now, how many samples or how many pieces of
18 evidence did you collect?

19 A Let's see. It looks like about 27, which
20 would actually be about 26, because I inadvertently
21 skipped over 101.

22 Q And of those, how many were red-stain swabs?

23 A It looks as though nine.

1 Q And those were numbered 115, 116, 117, 118,
2 119, 120, 122, and 123?

3 A And 114.

4 Q And 114. Thank you.

5 Where did you get number 114 from?

6 A The left front seat, near the door.

7 Q The left front seat. And what did you do to
8 take that sample?

9 A I used the same process on every one of the
10 samples.

11 Q So each one of the samples that were just read
12 out, you did the same process, which meant taking a swab,
13 wetting it with distilled water, taking some of the item
14 off wherever it was, the door or the seat, and then
15 packaging it?

16 A Yes, along with the control.

17 Q Along with the control? Okay. So there are
18 nine red-stain swabs and there would be nine control swabs
19 that correspond to each one of those?

20 A Yes.

21 Q What did you do immediately after taking swab
22 number 114? Did you place it immediately into a bag?
23 Where did you put the swab?

1 A Yes. The way we did it, and the way I
2 collected these swabs, I put on rubber gloves, and we have
3 swabs that are packaged two to a package, and we open
4 those up and withdraw them, wet them, collect the stain on
5 the swab, and then in this small plastic envelope you can
6 take it -- since I'm right-handed, I would take that in my
7 left hand and press it open and stick the swab in the
8 opening and break it off.

9 Q Okay.

10 A So none of my serology could be on it. And
11 then you seal it and then go on to the next collection.

12 Q And you seal it with red evidence tape?

13 A Yes.

14 Q So number 114 was a left front seat at the
15 door?

16 A Uh-huh. (Nodding head.) Yes, sir.

17 Q Number 115, that was also a red stain. where
18 was that collected from?

19 A That was from the left front seat on the right
20 side, the right side of the left front seat.

21 Q And just so I'm clear, when you're saying the
22 right side of the left front seat, that would be the
23 driver's seat, but on the right side of that driver's

1 seat?

2 A Yes.

3 Q So number 115 came from the driver's seat on
4 the right-hand side?

5 A Correct.

6 Q And number 114 also was the driver's seat near
7 the door?

8 A Right, which would have been the left side.

9 Q And number 116 is also a red stain?

10 A One-sixteen? Yes, from the left front window,
11 on the inside.

12 Q On the inside?

13 A Yes.

14 Q And, again, left front, meaning the driver's
15 seat?

16 A Yes.

17 Q And that would be the window right to the left
18 of the driver?

19 A Yes, sir.

20 Q And number 117 is the one that the
21 Commonwealth just referred you to; correct?

22 A Yes, that's correct.

23 Q And that was left front door, inside?

1 A Correct.

2 Q Number 118, that was also a red stain. Where
3 was that from?

4 A That was from the top of the left rear seat.

5 Q So left rear seat, we're talking about the
6 back of the car, the back passenger area, directly behind
7 the driver's seat?

8 A Yes, but it was a little closer to the window
9 side, but it was the -- that's the general location, yes.

10 Q A little closer to the window?

11 A Yes.

12 Q And when you say the window, you're referring
13 to the passenger window in the back?

14 A Right.

15 Q It's a four-door car. You're talking about
16 the back door?

17 A Right.

18 Q And number 119 is also a red stain; is that
19 correct?

20 A Yes, that was on the cloth headliner, and that
21 was -- that was collected differently. I just took a
22 scalpel and cut that stain out, and it was packaged in a
23 paper bag.

1 Q And you said that's the headliner of the top
2 left rear?

3 A Yes.

4 Q So, again, that would be in the back, behind
5 the driver's seat?

6 A Yes.

7 Q How close to the driver's seat; do you know?
8 Was it all the way back near the rear window? Was it in
9 the center?

10 A If you were sitting in the left rear -- where
11 the left rear passenger would be seated, it would be more
12 directly over top.

13 Q So it was in front of the back rest of the
14 back seat?

15 A Yes.

16 Q But not quite to the front, where the driver's
17 back rest is?

18 A Exactly.

19 Q Number 120 was also a red stain?

20 A Yes, it was.

21 Q And where was that found?

22 A The left rear door.

23 Q Do you know where on the left rear door?

1 A It would have been inside, next to the seat.

2 Q And I believe we then skipped down to 122; is
3 that correct? Another red stain?

4 A Yes.

5 Q The 121 was not a red stain; correct?

6 A Right.

7 Q And where was the number 122 found?

8 A The left rear door jamb, bottom front.

9 Q So let me see if I've got this right. Again,
10 behind the driver's seat?

11 A Yes.

12 Q Door jamb being the frame that the door would
13 close on or the actual portion of the door?

14 A It would be like it had seeped down under the
15 door. It was on the door jamb.

16 Q So where the door closes and creates a seal
17 with the car?

18 A Right.

19 Q It would be not the door portion, but the
20 actual frame portion of the car?

21 A Right.

22 Q And you said that was bottom front of that?

23 A Yes.

1 Q And the ninth -- well, number 123 was also a
2 red stain?

3 A Yes.

4 Q And where was that found?

5 A The right rear seat, the back of the right
6 rear seat. And I believe that was much like the
7 headliner. That was the section that I'd -- rather than
8 try to swab it, it was pretty heavily stained, so I cut
9 that out and submitted that.

10 Q So you cut that out because there was a big
11 stain there and there was a good sample of it?

12 A Yes.

13 Q So if there's a larger sample of it, then you
14 would cut it out, as opposed to taking a swab, because it
15 would give you a better sample for the lab to do?

16 A There is no particular reason for it. I just
17 felt like since there was a larger quantity of it in that
18 area, that I would just do it that way.

19 Q Now, that's nine. But, actually, I think
20 there may have been a couple more. Is number 125 also a
21 red stain?

22 A Yes.

23 Q And where was that from?

1 A That was from the right rear seat, also.

2 Q Now, again, for each of these that -- this was
3 taken by a swab?

4 A Yes, those ones, yes.

5 Q And, again, taken by a swab, you take out a
6 swab, distilled water, get some of the stain on it, put it
7 into a plastic bag?

8 A Right.

9 Q Do you know where in the right rear seat that
10 was located?

11 A On the portion that you would be sitting on
12 closer to the door.

13 Q So the seat cushion itself?

14 A Right.

15 Q And I believe number 127 is also another red
16 stain?

17 A That's correct.

18 Q And where was that one from?

19 A It's the left rear quarter panel.

20 Q Left rear quarter panel. What's a quarter
21 panel?

22 A That's --

23 Q Is that the back portion of the --

1 A That's outside of the vehicle. That would be
2 almost --

3 Q It's not --

4 A It's like from the rear door back to the rear
5 bumper.

6 Q So it's not the front portion in front of the
7 front door?

8 A No.

9 Q It's in back?

10 A It's in back.

11 Q And do you know where on the quarter panel
12 you've got the blood stains?

13 A I didn't indicate that on my diagram, but I
14 can only say that it was somewhere behind the -- between
15 the rear door and the rear bumper.

16 Q Now, when you took these samples, where was
17 the vehicle?

18 A It was in the Fairfax County garage. It's a
19 secured facility that they have underneath their
20 headquarters building, where they can bring an item such
21 as that and conduct the examination.

22 Q And there's no way this car was driven there;
23 correct? It would have had to have been towed in some

1 way?

2 A It would have had to have been towed, yes.

3 Q And on what day did you take these samples?

4 A On November the 29th. No. I'm sorry. It was
5 November the 30th, between 9:00 a.m. and 3:30 p.m.

6 Q And you said that you began your numbering at
7 one hundred because you knew that some samples and
8 evidence had been taken at the scene?

9 A Yes.

10 Q Do you know who had taken those samples?

11 A I'm not really sure, but I think it was
12 Special Agent Scott, but I really don't recall.

13 Q Now, do you have all those samples in front of
14 you -- numbers 114, 115, 116, 117, 118, 119, 20, 22, 23,
15 25 and 27?

16 A I'm not sure. I can call off the ones that I
17 do have.

18 Q Okay. Go ahead and I'll list them down here.
19 If you can also put them aside so we have them separated,
20 please.

21 A Item 36, 25, 29.

22 Q Are these your item numbers or somebody
23 else's?

1 A No. These are the ones that were -- do you
2 want my item numbers?

3 Q Yes, if you could read your numbers and put
4 those to the side.

5 A I've got 127, 116, 120, 118, 122, 125, 115,
6 114, and 117. Those were the items that were in this bag.

7 Q So you do not have item 123? That should
8 be --

9 A No, I don't.

10 Q Nor do you have 119?

11 A Yes.

12 THE COURT: Yes, you don't have it?

13 THE WITNESS: Oh, no, I do not have it.

14 MR. PETIT: Thank you, Your Honor.

15 Your Honor, if I can approach the witness.

16 THE COURT: Sure.

17 BY MR. PETIT:

18 Q If I could have all of the ones that you just
19 read off.

20 A (The witness complied with the request.)

21 MR. PETIT: Your Honor, I'd like to have these
22 marked as Defense exhibits.

23 THE COURT: Has Mr. Murphy seen them?

1 MR. PETIT: Yes, Your Honor.

2 MR. MURPHY: Are these all part of our Exhibit
3 8?

4 THE COURT: They're all part of the same.

5 MR. MURPHY: That's fine, Your Honor. I think
6 I've moved them into evidence; have I not?

7 MR. PETIT: I believe they've been marked, not
8 moved in, Your Honor.

9 THE COURT: They've been marked, but I don't
10 think they were moved in. Do you want to just receive
11 them all then?

12 MR. MURPHY: Your Honor, I'll move them all
13 in.

14 MR. PETIT: I do have an objection to that
15 coming in. I'm sorry. Mr. Murphy, I do have an objection
16 to them coming in at this point.

17 THE COURT: To yours coming in?

18 MR. PETIT: I'm just having them marked at
19 this point.

20 MR. MURPHY: Well, I think they're already
21 marked collectively as eight.

22 THE COURT: Well, they were 8A; weren't they?

23 MR. MURPHY: Well, 8A is one out of one

1 particular --

2 THE COURT: Starting with 117?

3 MR. PETIT: Right. One-fourteen through --

4 THE COURT: You went into 114 on cross.

5 MR. PETIT: That's correct, Your Honor..

6 What I'm asking to have marked are numbers
7 114, 115, 116, 117, 118, 120, 122, 125, and 127. I just
8 want them marked as evidence. I'm not moving them in at
9 this time. And I guess the Clerk will figure out to how
10 to mark them the best.

11 THE COURT: I hoped to take a recess at 11:30.
12 I was hoping we could finish with Mr. Huff.

13 MR. PETIT: Your Honor, I think I only have a
14 couple of more questions, Your Honor. I don't think it
15 will be more than a couple of minutes.

16 THE COURT: It's going to take a while to mark
17 them.

18 MR. MURPHY: No objection.

19 (The documents referred to
20 above were marked
21 Defendant's Exhibit Number
22 1, for identification.)
23

1 BY MR. PETIT:

2 Q Now, this is a four-door Honda Accord; is that
3 correct?

4 A Yes, sir.

5 Q And it is not a hatchback; it's a regular
6 sedan?

7 A Yes, to the best of my recollection.

8 Q Sir, I'm going to show you -- if I can have
9 this item marked, too.

10 THE COURT: Joe's going to quit.

11 MR. PETIT: Perhaps I could show the witness
12 now and we can have it marked later.

13 BY MR. PETIT:

14 Q Can you identify these two documents?

15 (Whereupon, Mr. Petit handed some documents to
16 the witness for his examination.)

17 THE WITNESS: Yes, these are two forms that I
18 use in the collection of evidence.

19 BY MR. PETIT:

20 Q And you do that in preparation of your report?

21 A Yes.

22 Q And you do that in the course of your duties
23 as an investigator?

1 A Yes, that's correct.

2 MR. PETIT: Your Honor, what I'd like to do is
3 have this marked when your Clerk gets an opportunity and
4 move it into evidence.

5 MR. MURPHY: No objection.

6 THE COURT: With no objection, I'll receive
7 that as Defense Exhibit B.

8 MR. PETIT: Exhibit B, Your Honor?

9 THE COURT: Is that how you wanted me to mark
10 it? It seems like --

11 MR. PETIT: Sure, yeah, that's fine.

12 THE COURT: That's about as good as I can do.

13 (The document heretofore was
14 marked Defendant's Exhibit
15 B, for identification, and
16 received into evidence.)

17 MR. PETIT: And if I could show the witness
18 again that exhibit.

19 (Whereupon, Mr. Petit handed a document to the
20 witness for his examination.)

21 BY MR. PETIT:

22 Q Sir, referring to the chart -- there's a chart
23 of the vehicle.

1 A Uh-huh. (Nodding head.)

2 Q And that vehicle -- those numbers there, those
3 correspond to the samples you have taken?

4 A Yes.

5 Q Just a point of clarification, what appears to
6 be the driver's side seat, there's a number that has the
7 seat going through that.

8 Could you tell me what number that is? It's a
9 little unclear to read, and I just wanted to make sure we
10 have that.

11 A Could you show me?

12 Q Certainly. In fact, why don't we go ahead and
13 circle it with a red pen.

14 A That's number 117.

15 Q That's number 117?

16 A Yes.

17 Q And that corresponds with the second page that
18 says number 117?

19 A Right.

20 Q And what I've done is I've circled both the
21 numbers so they're clear in that.

22 A And under the new section that would be -- or
23 the new numbering, that would be item 26.

1 Q Okay. And does this circle in the red on page
2 one correspond with the number on page two?

3 A Yes.

4 MR. PETIT: And I'll just show Mr. Murphy.

5 (Mr. Petit handed a document to Mr. Murphy for
6 his examination.)

7 MR. PETIT: Your Honor, I don't have any
8 further questions at this time.

9 THE COURT: Mr. Murphy, do you have any
10 redirect of Mr. Huff?

11 MR. MURPHY: No, I don't. I would ask that he
12 be subject to recall, please.

13 THE COURT: Mr. Huff, you are going to be
14 subject to recall. So I would ask you to please step
15 down. Don't discuss your testimony out there with anyone.

16 (Witness stood aside.)

17 THE COURT: I think we do have an interpreter
18 available; do we not? So perhaps when we come back, we
19 could -- well, maybe we could try to call the
20 Commonwealth's fourth witness, Mr. Alvarez. Is that how
21 you want to try to do it?

22 MR. MURPHY: Judge, whenever the interpreter
23 gets here, I guess we could call Mr. Alvarez.

1 THE COURT: We're trying to get another
2 interpreter to help out our main interpreter, because it
3 makes for a long day.

4 I'm going to take a ten-minute recess. I'd
5 like to try to be back here at close to -- by five to
6 12:00, something like that.

7 As I indicated yesterday to members of the
8 jury for your recess instructions, I ask again that you,
9 during any break during the course of this trial, please
10 do not begin any discussion on any aspects of the case
11 whatsoever.

12 You are not to engage in any conversation with
13 any of the parties, the witnesses, the attorneys, or any
14 of the spectators. No one should approach you and discuss
15 this matter, and you should not remain within hearing
16 distance of anyone who may be discussing any aspect of
17 this particular case.

18 If you should ever be approached by anyone
19 concerning your jury service during the course of this
20 trial, you should make that fact known to the sheriff or
21 to my clerks.

22 And why don't you just take the jury back to
23 the jury room, please.

1 THE COURT: Mr. Murphy?

2 MR. MURPHY: Officer Hula, please.

3 Whereupon,

4 OFFICER DEBORAH HULA

5 a witness, was called for examination by counsel on behalf
6 of the Commonwealth, and, after having been duly sworn by
7 the Clerk of the Court, was examined and testified, as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. MURPHY:

11 Q Officer, please state your name and your
12 occupation for the Judge and the jury.

13 A Deborah Hula, and I'm a detective with Fairfax
14 County Police.

15 Q Directing your attention to 1999, were you a
16 detective for the Fairfax County Police at that time?

17 A Yes, I was.

18 Q On the night of December 7th, leading over
19 into December 8th of 1999, did you come in contact with
20 this Defendant, Hugo Sanchez?

21 A Yes, I did.

22 Q Can you point out the individual you came in
23 contact with?

1 A Sitting with the green shirt, sitting left of
2 counsel (indicating).

3 Q And, ma'am, did you take a blood sample from
4 him, have a blood sample taken in your presence and taken
5 into your custody?

6 A Yes.

7 Q I'm going to show you an exhibit.

8 MR. MURPHY: If I could approach the Clerk and
9 have it marked for identification as Commonwealth's 9.

10 If I could inquire of the Clerk, do they have
11 items one and two? Do you have those back? Okay. I'm
12 going to need those as well.

13 Could I have this marked as Commonwealth's 9?

14 (The document referred to
15 above was marked
16 Commonwealth's Exhibit
17 Number 9, for
18 identification.)

19 BY MR. MURPHY:

20 Q And I'm going to show you Commonwealth's Item
21 9. Do you recognize that?

22 (Whereupon, Mr. Murphy handed an item to the
23 witness for her examination.)

1 THE WITNESS: Yes. It's the envelope with the
2 blood in it.

3 BY MR. MURPHY:

4 Q Okay.

5 A That was given to Trooper Conte.

6 Q If you could open it at this time?

7 I'd like the record to reflect it's been
8 sealed until now. And if you could open it and check the
9 contents and see if you recognize that.

10 A (The witness complied with the request.)

11 MR. MURPHY: Your Honor, let the record
12 reflect that there is a white bag inside the manila
13 envelope that was sealed with envelope tape, and the
14 witness is now opening the white bag and the white
15 envelope that was inside.

16 THE WITNESS: Do you want me to actually take
17 the vials out?

18 BY MR. MURPHY:

19 Q No. Do you recognize those as the vials of
20 the Defendant's blood that you saw collected that evening
21 from the Defendant?

22 A Yes. They have his name tags on it from when
23 the tech took the blood.

1 Q Were you present at the hospital when that
2 happened?

3 A Yes, I was.

4 Q And did you take that blood into your custody?

5 A Yes, I did.

6 Q And did you also take the Defendant's shoes on
7 that evening?

8 A Yes, I did.

9 Q I'm going to show you Commonwealth's Item 2.

10 (Whereupon, Mr. Murphy handed an item to the
11 witness for her examination.)

12 BY MR. MURPHY:

13 Q Do you recognize these shoes?

14 A Yes, I believe these are the shoes that I gave
15 to Trooper Conte.

16 Q You submitted the shoes to Trooper Conte. So
17 you did not package the shoes. You just gave them to
18 Conte?

19 A I put them in a paper bag, and he was at the
20 station at the time, and I just handed them to him.

21 Q And with regards to the blood vial, the
22 Defendant's blood vial, did you also submit that to
23 Trooper Conte?

1 A Yes, I did.

2 Q So did you do any of the packaging on the
3 blood vial?

4 A I believe it was just in an envelope when I
5 handed him the blood vial.

6 Q And have either the shoes or the blood vial
7 been tampered with between the time you got it at the
8 hospital after it was taken from the Defendant and the
9 time that you submitted it to Trooper Conte?

10 A No.

11 MR. MURPHY: I don't have any other questions
12 for this witness.

13 THE COURT: Mr. Petit, would you like to cross
14 examine her?

15 MR. PETIT: Yes, sir.

16 THE COURT: Go ahead.

17 CROSS EXAMINATION

18 BY MR. PETIT:

19 Q Detective Hula, you said that you believe that
20 those are the sneakers. Did you put a mark on the
21 sneakers when you took them from Mr. Sanchez?

22 A No, I did not, but these are definitely the
23 shoes.

1 Q Definitely the shoes? Couldn't be another
2 pair of size seven and a half Reeboks?

3 A No.

4 Q How come?

5 A Because I handed the shoes to him directly
6 after I got them from the Defendant.

7 Q But how do you know these are the ones you
8 handed to Trooper Conte?

9 A I believe they were shoes I gave him.

10 Q Why? What is so special about those shoes
11 sitting right in front of you that they are definitely the
12 shoes you took from Hugo Sanchez?

13 A Let me check the bag. I might have written --
14 I thought my initials were somewhere on the bag. I just
15 don't see them.

16 Q So the bag that you had the shoes in had your
17 initials had it?

18 A I believe it did. That's my practice.

19 Q But the bag that's in front of you right now
20 does not have your initials on it?

21 A I don't see it anywhere. That doesn't mean
22 that it's not here amongst the table.

23 Q Well, how long have you been a detective?

1 A Approximately eight and a half years, nine
2 years.

3 Q And were you a police officer before that?

4 A Yes, I have been.

5 Q And I assume you've taken hundreds, if not
6 thousands, of pieces of evidence?

7 A Yes.

8 Q And in your training, when you are taught to
9 put tape on evidence, you're taught to make sure that you
10 don't cover up anything on the bag; correct?

11 A No. If we're giving a bag that we've
12 collected from somebody and we're giving them directly to
13 them, we don't need to go ahead and tape it up. They're
14 going to go ahead and package it themselves.

15 Q But that wasn't my question, Detective.

16 When you have a piece of evidence and you're
17 taping the bag up, you're taught to make sure the tape --

18 MR. MURPHY: Judge, I have to object at this
19 point because there's no evidence. As a matter of fact,
20 she's just testified she isn't the one that packaged it
21 and taped it. So this is not a relevant question to this
22 case.

23 MR. PETIT: Well, is it relevant, Your Honor,

1 because she testified that she put initials on the bag and
2 then stapled it.

3 MR. MURPHY: She said that's her normal
4 practice.

5 THE WITNESS: That's my normal practice. This
6 is two and a half years ago.

7 THE COURT: I'll overrule the objection,
8 wherever you're going with it.

9 MR. PETIT: Thank you, Your Honor.

10 BY MR. PETIT:

11 Q So the normal practice through your training
12 is that you make sure you don't tape over any initials;
13 correct?

14 A That's not correct.

15 Q So your practice is that it's okay to tape
16 over initials on a bag?

17 A When I personally am packaging evidence that
18 has been given to me, what I do is I put it in the bag.
19 Okay, I've seen it done several different ways; okay. And
20 it's taught several different ways; okay. It depends on
21 who's teaching you the class.

22 Q Okay.

23 A Okay. What you do is you take the evidence,

1 you put it in a paper bag, you go ahead and you tape it,
2 and then you can go ahead and put your initials on it and
3 then tape some more. It depends on what you get
4 accustomed to, what you're used to.

5 Q Well, let me ask you this question. What are
6 the initials there for?

7 A They're part of like a seal that you put the
8 seal down.

9 Q So the initials are very important to make
10 sure that the evidence in the bag can later be proven in
11 court is the evidence that you took?

12 A Yes.

13 Q So the initials following proper procedure
14 should be visible on the bag so there are no questions
15 about what evidence it is?

16 A Yeah, but I didn't package this bag.

17 Q But you said that you gave the shoes in the
18 bag --

19 A I gave him a bag --

20 Q To Trooper Conte.

21 A I gave him a brown paper bag with black
22 Reeboks in it, belonging to Mr. Sanchez that I had gotten
23 from him.

1 Q And my question to you originally was you
2 don't know if these are in fact the exact sneakers, as you
3 testified to on direct? That's my only question.

4 A That's right.

5 Q Now, the blood vials that are in front of you,
6 were you in the room when the blood was taken from Mr.
7 Sanchez?

8 A Yes, I was.

9 Q And you saw the hospital technician actually
10 take the blood?

11 A Yes, I did.

12 Q Did they hand you the blood right away in the
13 vials?

14 A Yes, they did.

15 Q The hospital didn't take them and put any
16 markings on it or anything of that nature. They handed
17 you the vials directly?

18 A They put the label on them with Mr. Sanchez's
19 name.

20 Q But they didn't leave the room or anything.
21 They put the label right in front of you?

22 A That's correct.

23 Q And what did you do with the vials at that

1 point? Did you put them into that bubble wrap?

2 A No.

3 Q What did you put it in?

4 A I put them in a brown envelope.

5 Q And is it that brown envelope there in front
6 of you?

7 A I'm not sure if that's the same brown envelope
8 that I gave Trooper Conte. I'm just --

9 MR. PETIT: She might need some scissors, Your
10 Honor. I believe she's trying to get into the last layer
11 of packaging.

12 THE COURT: We don't authorize using scissors.

13 MR. PETIT: Judge, perhaps the Bailiff would
14 walk over with a pair of scissors.

15 (Pause.)

16 BY MR. PETIT:

17 Q So did you find the brown envelope that you
18 put the vials in before you gave it to Trooper Conte?

19 A I'm not sure if this is the same envelope.

20 Q Okay. But you didn't find it in the packaging
21 that you just opened?

22 A No. I was checking the vials to make sure
23 that they were in fact the Defendant's.

1 Q How large was the envelope that you gave
2 Trooper Conte? You said it was a brown paper bag;
3 correct?

4 A I said a brown paper bag with the shoes.

5 Q Okay.

6 A And this is what I normally put blood in.

7 Q So it was a manila envelope as well?

8 A That's correct.

9 Q But you're not certain if it was that manila
10 envelope?

11 A No, I'm not.

12 Q Now, you've just looked at the vials, and you
13 said you were looking to make sure it was the vials that
14 the Defendant's blood was in; correct? Is that what you
15 just did by looking at the vials?

16 A I looked at the vials to see if they were
17 labeled Mr. Hugo Sanchez.

18 Q And did you put any markings on the vials?

19 A No, I don't believe I did.

20 Q When the blood was originally taken at the
21 hospital, how many vials were taken?

22 A I believe two were taken.

23 Q Two vials of blood were taken and you -- I'm

1 sorry?

2 A I believe it was two.

3 Q And you were there when they were taken, so
4 you saw the entire procedure?

5 A Uh-huh. (Nodding head.)

6 Q The only reason you know that those are the
7 vials is because of what the label says; correct?

8 A Yeah.

9 Q If the label had Joe Smith, you would have no
10 idea if in fact it was Joe Smith or Hugo Sanchez; correct?

11 There's no other identification on those vials
12 that would lead you to believe that it was Hugo Sanchez,
13 other than the fact that it says Hugo Sanchez?

14 A And I gave these to Trooper Conte, and Trooper
15 Conte submitted them to the lab, and Trooper Conte's
16 initials and everything is on it. So I would assume it
17 was the same vial.

18 Q I know you would assume that, but you're not
19 sure if that's your envelope, so you don't know if it's --

20 MR. MURPHY: Judge, I think he's arguing with
21 the witness at this point.

22 THE COURT: Objection sustained.

23 MR. MURPHY: Thank you, Your Honor.

1 MR. PETIT: Thank you.

2 BY MR. PETIT:

3 Q Mr. Sanchez voluntarily gave you the blood;
4 correct?

5 A That's correct.

6 Q You asked him for blood, and he said, sure, go
7 ahead? Maybe not in those words, but that's basically
8 what he said?

9 A I didn't ask him. Detective Anderson asked.

10 Q And he didn't argue; he didn't object?

11 A No.

12 Q And the sneakers that you took from him, who
13 asked him for the sneakers?

14 A I'm not sure if it was myself or Detective
15 Anderson.

16 Q But he gave them to you?

17 A I believe the sneakers were taken off and
18 given to me.

19 Q Oh, okay. Well, who gave you the sneakers?

20 A The Defendant.

21 Q So Mr. Sanchez did give you the sneakers?

22 A Right. He took off his sneakers and I put
23 them in a bag.

1 Q And, again, no objections by Mr. Sanchez?

2 A I don't believe so, no.

3 MR. PETIT: Your Honor, if I could have this
4 marked as Exhibit -- and I'm not sure what number we're up
5 to.

6 THE CLERK: C.

7 MR. PETIT: C.

8 (The document referred to
9 above was marked Defendant's
10 Exhibit Number C, for
11 identification.)

12 BY MR. PETIT:

13 Q Did there come a time when you spoke to Johnny
14 Sarato Marquez?

15 MR. MURPHY: Judge, I object. That's beyond
16 the scope.

17 THE COURT: Did you show that to Mr. --

18 MR. PETIT: I did, Your Honor.

19 MR. MURPHY: Your Honor, I would object.

20 That's completely beyond the scope of my examination. I
21 think there's ways he can get into that, but not as cross
22 to what I asked her about.

23 MR. PETIT: Your Honor, if the Commonwealth

1 wants me to call her as my own witness to impeach Mr.
2 Marquez later, I can. I'm just trying to save everybody a
3 little time.

4 MR. MURPHY: Judge, I think she's going to be
5 here anyway.

6 THE COURT: She could be.

7 MR. MURPHY: So at this point, if he wants to
8 call her as his own witness, that's fine. But in that
9 case of course, she's his witness and he can't lead her
10 around.

11 MR. PETIT: We'll just call her later, Your
12 Honor, if Mr. Murphy has a problem with that.

13 THE COURT: Why don't you do that?

14 MR. PETIT: That's not a problem. Your Honor,
15 I have nothing further then.

16 THE COURT: Okay.

17 MR. PETIT: If I could return this to your
18 Clerk?

19 THE COURT: Do you have any redirect?

20 MR. MURPHY: Yes, briefly.

21 REDIRECT EXAMINATION

22 BY MR. MURPHY:

23 Q Officer, were you working any other cases with

1 Trooper Conte that involved a pair of Reeboks like that?

2 MR. PETIT: Objection, Your Honor.

3 THE COURT: Do you want to respond to the
4 objection?

5 MR. MURPHY: I don't know what the objection
6 is.

7 THE COURT: I'm going to overrule it even if
8 you don't respond.

9 MR. MURPHY: Thank you.

10 THE COURT: Go ahead.

11 MR. PETIT: For the record, my objection is
12 relevance. I don't believe --

13 THE COURT: The objection is overruled. Go
14 ahead.

15 MR. MURPHY: Thank you.

16 BY MR. MURPHY:

17 Q Were you working any other cases with Trooper
18 Conte where you were handing him pairs of black Reeboks?

19 A This is the only case I've ever worked with
20 Trooper Conte. I didn't even know him prior to this.

21 Q So if those are the Reeboks that Trooper Conte
22 received, they're --

23 MR. PETIT: Objection, Your Honor. It calls

1 for speculation.

2 THE COURT: The objection is sustained.

3 MR. MURPHY: But it doesn't call for
4 speculation. It's fact.

5 THE COURT: I sustain the objection.

6 BY MR. MURPHY:

7 Q Other than the Reeboks you received from this
8 Defendant, have you ever handed Trooper Conte any other
9 Reeboks, other than the Defendant's Reeboks?

10 A No.

11 MR. MURPHY: I don't have any other questions
12 for this witness. I would ask that she be subject to
13 recall.

14 THE COURT: Detective Hula, you are subject to
15 recall. Thank you for your testimony, your time, and you
16 are not free to leave.

17 THE WITNESS: Thank you.

18 (Witness stood aside.)

19 MR. MURPHY: Your Honor, I'd call Trooper
20 Conte.

21

22

23

1 Whereupon,

2 TROOPER ANTHONY CONTE

3 a witness, was called for examination by counsel on behalf
4 of the Commonwealth, and, after having been duly sworn by
5 the Clerk of the Court, was examined and testified, as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. MURPHY:

9 Q Trooper, please state your name and your
10 occupation for the Judge and the jury.

11 A Trooper Anthony Conte, Virginia State Police.

12 Q And, sir, how were you employed in 1999?

13 A As a trooper.

14 Q Sir, did the time come when you received from
15 Detective Hula --

16 MR. MURPHY: Actually, Your Honor, let me --

17 BY MR. MURPHY:

18 Q Directing your attention to what has been
19 marked as Commonwealth's 8 -- pardon me, 9, which is
20 envelopes, a manila envelope with a white envelope inside,
21 with two apparent blood vials in some packaging.

22 Do you recognize that?

23 A Yes, I do.

1 Q Tell the Judge and the jury what is Exhibit 9?

2 A I received a sample of Hugo Sanchez's blood
3 from Detective Hula, and it was sealed in this package on
4 the night that I received it from her, or early morning.

5 Q Which package was it sealed in?

6 A Do you want me to pick it up?

7 Q Yes. Who did that?

8 A I assume it was sealed by Detective Hula.

9 Q Do you remember whether she did it or you did
10 it?

11 A I wasn't with her when it was sealed or taken
12 at the hospital. It was already sealed when I received it
13 from her.

14 Q What did you do to identify it as yours or
15 that you had had it?

16 A I took it in my possession. I didn't do
17 anything to it.

18 Q But do you recognize that package as the
19 package of blood that you received from her?

20 A Yes.

21 Q Has it got individualized markings on it that
22 makes it different than some other package?

23 A It states his blood and my name on it.

1 Q Sir, what did you do with the package of
2 sealed blood?

3 A I kept it in my possession and I locked it in
4 the trunk of my cruiser.

5 Q What eventually did you do with it?

6 A I brought it over to headquarters, where
7 Special Agent Scott was, and we both submitted it to the
8 lab for evidence.

9 Q You and Special Agent Scott?

10 A Yes.

11 Q I'm going to direct your attention now to
12 Commonwealth's Exhibit 2, which is a pair of shoes and an
13 envelope that it came in.

14 MR. MURPHY: And, Your Honor, with the Court's
15 permission, I'm going to return the contents of nine to
16 the Clerk.

17 THE COURT: Sure.

18 BY MR. MURPHY:

19 Q Do you recognize that pair of Reeboks?

20 A Yes, sir.

21 Q Where do you recognize them from?

22 A Those were Hugo Sanchez's shoes he actually
23 had on the night he was arrested.

1 MR. PETIT: Objection, Your Honor; foundation.
2 There's no knowledge of this trooper. Hearsay.

3 BY MR. MURPHY:

4 Q Sir, how do you know what you just said?

5 A Because before he left and he was taken to
6 Montgomery County for booking, we had him take his shoes
7 off his feet and we put them in a bag, which was given to
8 me in custody.

9 Q That brown bag that's part of Commonwealth's
10 Item 2, was this the bag that you're talking about?

11 (Whereupon, Mr. Murphy handed a document to
12 the witness for his examination.)

13 THE WITNESS: Yes, sir. Put them in this
14 brown paper bag and given in my custody.

15 BY MR. MURPHY:

16 Q All right, sir; and who handed the shoes to
17 you?

18 A Detective Hula. He actually took them off
19 right in the parking lot. Detective Hula handed them to
20 me, and we placed them in the bag together and sealed it.

21 MR. MURPHY: Your Honor, at this time I would
22 move Commonwealth's Exhibit 2 into evidence.

23 MR. PETIT: Your Honor, I would like to voir

1 dire on that issue.

2 THE COURT: Why don't you go ahead and voir
3 dire Trooper Conte.

4 VOIR DIRE

5 BY MR. PETIT:

6 Q Where did Mr. Sanchez give you those sneakers?

7 A We were walking him out to -- Detective
8 Anderson and Detective Hula were walking him out to a
9 cruiser for transportation, and he took them off in the
10 parking lot.

11 Q And you said that they were put in a brown
12 paper bag?

13 A Yes, sir.

14 Q And you say it's this brown paper bag
15 (indicating)?

16 A It appears to be, yes, sir.

17 Q It appears to be? Okay. Is there anything in
18 the bag that tells you that this in fact is that same
19 paper bag?

20 And when I say that tells you, I mean is there
21 a marking on that bag that you recognize from that evening
22 that tells you?

23 A No markings, no, sir.

1 Q So when you taped it, you didn't put your
2 initials on it?

3 A We stapled it. We didn't have tape.

4 Q So you have no way of knowing that in fact
5 this is the exact same bag that the shoes were put in or
6 not?

7 A Not by markings.

8 Q Any other way, other than they look similar?

9 A The bag looks similar or the shoes?

10 Q Either one. I mean how do you know that
11 that's the same bag with the same shoes? That's my
12 question.

13 A I don't have any markings, except that it was
14 stapled in my presence and it was given to me into my
15 hands at that point, and then it was in my possession.

16 Q But then you released it from your possession?

17 A No. I kept it in my possession, and then
18 Special Agent Scott had handed it to the lab.

19 Q But you have no idea whether this bag is the
20 one that you had in your hands on the day you took the
21 shoes?

22 There's no way for you to know that? You just
23 think it is?

1 A I know that the bag never left my possession
2 when it was submitted to the lab. So after that point,
3 after it was submitted to the lab, no, I don't know.

4 Q So if it came back in a different bag, then
5 you don't know if that would be the bag or not?

6 A No.

7 Q And if a different pair of shoes came back,
8 you don't know if this is them, either?

9 A If they came -- different shoes came back from
10 the lab, I wouldn't know, no.

11 Q And there are no markings on the shoes that
12 make you recognize the shoes that were put in your bag
13 that evening?

14 A No.

15 Q And you said that the only thing that was on
16 the bag to seal it was the staple and the tape?

17 A Yeah.

18 Q And you don't recognize the staple as the
19 staple and tape that were used on that day?

20 A No.

21 MR. PETIT: Based on that, Your Honor, I do
22 have an objection to having it moved into evidence.

23 THE COURT: Do you want to respond?

1 OPEN COURT

2 MR. MURPHY: If Trooper Conte could resume the
3 stand? I have some other questions.

4 (The witness resumed his place on the witness
5 stand.)

6 BY MR. MURPHY:

7 Q Trooper, directing your attention to November
8 the 26th of 1999, did you respond to the scene of a car
9 wreck in Fairfax County that Motor Assist Donald Lee had
10 located?

11 A Yes, sir.

12 Q And, sir, when you arrived, what did you find?

13 A I arrived on the scene approximately 11:49 in
14 the morning. Mr. Lee was on scene. He indicated to me
15 that he had found a wreck down in the woods --

16 MR. PETIT: Objection, Your Honor; hearsay.

17 MR. MURPHY: Judge, I think --

18 THE COURT: Are you offering it for the truth
19 of the matter?

20 MR. MURPHY: Just on what he did next. Mr.
21 Lee has already testified --

22 THE COURT: Objection overruled. Go ahead.

23 THE WITNESS: He indicated there was two

1 severely injured people. I put on some latex gloves,
2 entered the woods. When I got down to the scene, I
3 checked the bodies for any signs of life. I actually
4 checked to see if there was any pulse. The bodies were
5 cold to touch. I found the engine to be cold. And to me
6 it was a fatal crash at that time.

7 BY MR. MURPHY:

8 Q How many bodies were in the vehicle?

9 A There was two, one in the front seat,
10 passenger front seat in a seat belt, and there was one in
11 the back seat, slumped over to the left side of the car.

12 Q Was there anybody else in the area, other than
13 those two bodies and Officer Lee?

14 A No.

15 Q Now, if I could show you please four
16 photographs -- four, five, six and seven -- which have all
17 been entered into evidence.

18 MR. MURPHY: If I can approach the Clerk.

19 (Whereupon, Mr. Murphy retrieved some
20 documents from the Clerk.)

21 BY MR. MURPHY:

22 Q I'll show you seven. Is that a true and
23 accurate view of the wreck?

1 (Whereupon, Mr. Murphy handed a photograph to
2 the witness for his examination.)

3 THE WITNESS: Yes, sir.

4 MR. MURPHY: And I'm going to show you four,
5 five and six.

6 (Whereupon, Mr. Murphy handed some photographs
7 to the witness for his examination.)

8 BY MR. MURPHY:

9 Q Are these also true and accurate views of the
10 scene that you're talking about?

11 A Yes, sir.

12 Q Now, sir, regarding that car and the two
13 bodies inside of it, what did you do to determine who
14 these people were and who owned what? How did the
15 investigation proceed from there?

16 A First, from indicating to dispatcher there was
17 a fatal accident. The first thing we did is we run the
18 tag of the vehicle. At that time the vehicle came back as
19 stolen.

20 MR. PETIT: Objection, Your Honor, to hearsay
21 and relevance at this point.

22 THE COURT: Do you want to --

23 MR. MURPHY: Judge, it's already been

1 testified to inadmissible evidence, so I don't think
2 it's --

3 THE COURT: What's the basis of the --

4 MR. PETIT: It's still hearsay, Your Honor,
5 whatever he was told about the vehicle.

6 THE COURT: Objection sustained.

7 BY MR. MURPHY:

8 Q Were you able to determine the ownership of
9 the vehicle?

10 A Yes.

11 Q Who owns the vehicle?

12 MR. PETIT: Objection, Your Honor. It calls
13 for speculation -- excuse me. It calls for hearsay.

14 THE COURT: Do you want to respond?

15 MR. MURPHY: Judge, again, I think that she's
16 already testified to that in this case.

17 MR. PETIT: Regardless of what somebody else
18 may have testified to, it's still hearsay. I don't
19 believe that that's a valid exception to the hearsay rule.

20 MR. MURPHY: Judge, I can move on.

21 THE COURT: I'll sustain it. Go ahead.

22 BY MR. MURPHY:

23 Q Sir, when you looked at the two bodies in the

1 car, I understand at first you didn't know who they were.
2 Did you subsequently determine who they were?

3 A Yes, sir.

4 Q And tell us where were the bodies positioned?
5 Who was where?

6 A There was a license found at the scene of the
7 accident. That license identified the individual who was
8 in the back seat. So we knew who that individual was.
9 That was Rodrigo Omar Ramirez Villatoro, if I pronounced
10 that correctly, known as Ronnie. We did not know who the
11 passenger in the front seat was.

12 Do you want me to just move on to how he was
13 identified?

14 Q Well, tell me this. The person in the back
15 seat, was he seat belted in?

16 A No.

17 Q And how was he positioned in the back seat?

18 A He was slumped to the left of the car. So at
19 the front of the car, he was slumped to the left side,
20 across the back seat.

21 Q The person in the front seat, where in the
22 front seat was that body?

23 A He was in the passenger front seat, and he had

1 his seat belt on.

2 Q And that was the person later identified as
3 who?

4 A He was identified as Jose Israel Ramirez,
5 known as Christian.

6 Q And he was seat belted?

7 A Yes, sir.

8 Q Now, was there anybody in the driver's seat?

9 A No.

10 Q Now, with regards to the general area, did you
11 note any cell phones in the area?

12 A There was a cell phone found.

13 Q Was it in the area of the wreck that it was
14 found?

15 A Yes.

16 MR. MURPHY: The Court's indulgence for just
17 one moment.

18 THE COURT: Sure.

19 (Brief pause while Mr. Murphy reviewed some
20 notes.)

21 MR. MURPHY: Your Honor, I think those were
22 the only questions I had for this trooper.

23 THE COURT: Would you like to cross examine

1 Trooper Conte?

2 MR. PETIT: I believe I might have a question
3 or two.

4 CROSS EXAMINATION

5 BY MR. PETIT:

6 Q Mr. Johnny Sarato Marquez wasn't in the area
7 when you got there?

8 A No, sir.

9 Q And regarding the shoes that you took from Mr.
10 Sanchez, again, he voluntarily gave you those shoes?

11 A Yes, sir.

12 Q He didn't make any objections or argue with
13 you about giving him the shoes?

14 A No, sir.

15 Q Did you collect anything from the vehicle?

16 A As evidence?

17 Q Yes, sir.

18 A No.

19 Q So you didn't take any swabs, or you didn't
20 pick up the cell phone, or the driver's license or
21 anything?

22 A No.

23 MR. PETIT: Nothing further, Your Honor.

1 THE COURT: Redirect?

2 MR. MURPHY: No redirect for this witness.
3 Subject to recall, please.

4 THE COURT: Trooper Conte, you are not free to
5 leave. You may be subject to recall.

6 And this may be a good time for the Court to
7 recess. We still don't have that interpreter. We'll work
8 on that over the lunch recess.

9 You may step down. Thank you.

10 THE WITNESS: Thank you, sir.

11 (Witness stood aside.)

12 THE COURT: Before we take our lunch recess,
13 I'd again admonish the jury that during any break or
14 recess during this trial, please do not begin any
15 discussion of the case.

16 You are not to engage in any conversation with
17 any of the parties, the witnesses, the attorneys, or any
18 of the spectators. You are not to go on the scene or
19 imitate any independent investigation.

20 And should anyone approach you to discuss this
21 matter, you should not remain within hearing of anyone
22 discussing any aspects of this particular case.

23 And if you should be approached by anyone, as

1 I admonished you before, please let my Bailiff know, the
2 Sheriff know, or my Clerk. And that's especially
3 important during your lunch break because everybody uses
4 the same cafeteria.

5 And we will reconvene at ten till 2:00.

6 (Whereupon, the jury was excused from the
7 courtroom for a luncheon recess.)

8 MR. MURPHY: Your Honor, we have a stipulation
9 that we might be able to enter into which may obviate our
10 need for the interpreter.

11 THE COURT: For a second interpreter?

12 MR. MURPHY: Would you like for me to do that
13 now? For a second interpreter.

14 THE COURT: The way we're going now, it might
15 be good.

16 MR. MURPHY: The two sides both agree that
17 what Mr. Alvarez testified to is that he is the son of
18 Christian Alvarez.

19 THE COURT: Let me back up.

20 MR. MURPHY: Who's one of the --

21 THE COURT: Disente Alvarez, who was the --

22 MR. MURPHY: Disente Alvarez.

23 THE COURT: The Commonwealth's fourth witness?

1 MR. MURPHY: Trooper Scott.

2 Whereupon,

3 TROOPER FRANCIS W. SCOTT

4 a witness, was called for examination by counsel on behalf
5 of the Commonwealth, and, after having been duly sworn by
6 the Clerk of the Court, was examined and testified, as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. MURPHY:

10 Q Sir, please state your name and your
11 occupation for the Judge and the jury.

12 A Francis W. Scott, Jr. I'm a senior special
13 agent for the Virginia State Police.

14 Q And how long have you been employed in that
15 capacity?

16 A As an agent for over thirteen years, and I've
17 been with the Department since 1973.

18 Q And directing your attention to November of
19 1999, were you so employed at that time?

20 A Yes, sir, I was.

21 Q Sir, did the time come when you investigated a
22 traffic wreck which occurred in Fairfax County in the
23 early morning hours of November the 26th, 1999?

1 A Yes, sir.

2 MR. MURPHY: And if I could show him, please,
3 Commonwealth's Exhibits 4, 5, 6 and 7?

4 (Whereupon, Mr. Murphy handed some photographs
5 to the witness for his examination.)

6 BY MR. MURPHY:

7 Q Sir, are these true and accurate
8 representations of the accident in question, the one that
9 you investigated?

10 A Yes, sir. This is the one I was at, yes, sir,
11 and this represents the scene as I saw it.

12 Q Sir, did the time come when you had that wreck
13 towed to a secure location?

14 A Yes, sir, I did.

15 Q In the state police custody?

16 A Yes, sir.

17 Q And did the time come when you met with Helen
18 Unangst, the owner of the vehicle, and allowed her to
19 identify her car and recover some of her belongings from
20 the vehicle?

21 A Yes.

22 MS. MELEEN: Objection. Calls for hearsay.

23 THE COURT: Do you want to respond to the

1 objection?

2 MR. MURPHY: Judge, this is all stuff he
3 witnessed.

4 THE COURT: Overruled. Go ahead.

5 BY MR. MURPHY:

6 Q Go ahead.

7 A She came to the state police headquarters per
8 my request to pick up property that was part of the --
9 came out of the vehicle's trunk. I released it to her on
10 evidence receipt in a large red biohazard bags, and she
11 identified her car as --

12 MS. MELEEN: Objection to identification.
13 That's hearsay.

14 MR. MURPHY: Judge, she's already testified to
15 it, and this corroborates that, because she said she was
16 in the trooper's company.

17 THE COURT: Objection overruled.

18 MS. MELEEN: Your Honor, may I be heard?

19 THE COURT: Sure.

20 MS. MELEEN: It's not an objection to the
21 hearsay rule that she's already testified, and
22 corroboration is not an exception to the hearsay rule.

23 THE COURT: I'm going to sustain the

1 objection. Go ahead.

2 BY MR. MURPHY:

3 Q Would you have released property to Ms.
4 Unangst if it wasn't hers?

5 A No, sir, I would not.

6 Q Now, with regards to the property or rather
7 the evidence collected in this case, I would ask first to
8 show you Commonwealth's Exhibits 1 and 2.

9 (Whereupon, Mr. Murphy handed some documents
10 to the witness for his examination.)

11 BY MR. MURPHY:

12 Q Sir, this is Commonwealth's Exhibit 1 and
13 stapled to it is Commonwealth's Exhibit 2.

14 A Yes, sir.

15 Q Which includes the bag itself and what's in it
16 as the Commonwealth's exhibits.

17 Do you recognize those?

18 A Yes, sir.

19 Q What are they?

20 A The first one I'm looking here is the black
21 Reeboks, which I indicated on here are taken from Hugo
22 Alexander Hernandez Sanchez by Detective Debbie Hula from
23 Fairfax County, and it was delivered to this agent by

1 Trooper Anthony Conte on December 8th, 1999.

2 The other one here is a footwear impression
3 taken by Senior Special Agent that's now retired Dave
4 Huff, on November the 30th, 1999.

5 MS. MELEEN: Your Honor, I'm going to object
6 to Special Agent Scott reading what's on the bag. He can
7 only testify to what he has personal knowledge of.

8 THE COURT: Sustained.

9 BY MR. MURPHY:

10 Q Do you recognize these two bags?

11 A Yes, sir.

12 Q Did you in fact submit Commonwealth's Exhibits
13 1 and 2 to the laboratory for analysis?

14 A Yes, sir, I did.

15 Q And, sir, with regards to that, directing your
16 attention specifically to the laboratory request dated
17 December the 8th.

18 A Yes, sir.

19 Q Is that when you submitted those two items to
20 the laboratory for analysis?

21 A Yes, sir.

22 Q And, sir, did you have to re-number those
23 items?

1 A Yes, sir. The computer system within the
2 state police numbers everything from one to whatever
3 number -- from the first item all the way up to whatever.
4 And since Agent Huff and myself -- he was doing one part
5 of it and I was doing another part of it, I was allowed
6 the first one hundred numbers and he was given the second
7 hundred.

8 So that's the reason why there's division
9 between the numbers. The computer's going to number
10 automatically, and whatever number we're going to put
11 there is going to be adjacent to whatever property that we
12 seize or take.

13 MR. MURPHY: Your Honor, I would move his
14 request analysis dated December the 8th into evidence. At
15 this time I would like to ask him a couple of additional
16 questions about it.

17 THE COURT: What exhibit are you talking
18 about, Mr. Murphy?

19 MR. MURPHY: This would be, I guess we're at
20 Commonwealth's Exhibit 10.

21 BY MR. MURPHY:

22 Q Sir, if you could produce your request dated
23 December the 8th?

1 A (The witness complied with the request.)

2 MR. MURPHY: Your Honor, I'd move this into
3 evidence. I'd like to ask him some additional questions
4 about it.

5 THE COURT: Was Commonwealth's 10 marked yet,
6 Mr. Murphy?

7 MR. MURPHY: No. I'm showing it to counsel
8 first.

9 (Whereupon, Mr. Murphy showed a document to
10 counsel for their review.)

11 MS. MELEEN: We don't object, Your Honor.

12 MR. MURPHY: Your Honor, if I could have this
13 marked then as --

14 THE COURT: I'll mark it as Commonwealth's
15 Exhibit Number 10. Then I'll receive it.

16 (The document heretofore
17 marked Commonwealth's
18 Exhibit Number 10, for
19 identification, was received
20 into evidence.)

21 BY MR. MURPHY:

22 Q Sir, just asking you a couple of additional
23 questions about Commonwealth's Exhibit 10.

1 Your item 37 on Commonwealth's Exhibit 10 is
2 what?

3 A Is the computer-generated number. That would
4 be number 37.

5 Q And what is it?

6 A That is the footwear impression.

7 Q Was that Agent Huff's number 128?

8 A Yes, sir, it is.

9 Q And, sir, directing your attention to item --
10 I think it's 44, is that the pair of Reebok athletic
11 shoes?

12 A Yes, sir, they are.

13 Q And you submitted those to the laboratory
14 yourself?

15 A Yes, I did.

16 MS. MELEEN: Objection; leading.

17 THE COURT: Sustained.

18 BY MR. MURPHY:

19 Q Well, did you submit them to the laboratory
20 yourself?

21 A Yes, sir, I did.

22 MR. MURPHY: Your Honor, at this time I would
23 move in Commonwealth's Exhibits 1 and 2 into evidence.

1 Well, I guess two is already in; so I would
2 move one is, which is the shoe lift. The shoes are
3 already in.

4 MS. MELEEN: Your Honor, may we see number
5 one?

6 THE COURT: Number one is this (indicating).
7 (Mr. Murphy handed the item to Ms. Meleen.)

8 MS. MELEEN: We don't have any objection,
9 Judge.

10 THE COURT: I'll receive Commonwealth's Number
11 1, without objection. Why don't you just hand it back to
12 him? Where is it?

13 MS. MELEEN: It's right here.

14 (The document heretofore
15 marked Commonwealth's
16 Exhibit Numbers 1, for
17 identification, was received
18 into evidence.)

19 MR. MURPHY: Commonwealth's Number 2 are the
20 shoes. I think he's laid the same foundation for that.

21 THE COURT: I will go ahead and receive this.
22
23

1 (The item heretofore marked
2 Commonwealth's Exhibit
3 Number 2, for
4 identification, was received
5 into evidence.)

6 MR. MURPHY: Your Honor, I now move in
7 Commonwealth's Exhibit 3, which is the certificate of
8 analysis to Andrew Johnson.

9 THE COURT: Slow down.

10 (Discussion off the record.)

11 THE COURT: I've received those.

12 Now, you were about to say? I'm sorry.

13 MR. MURPHY: Your Honor, at this time I'd also
14 move Commonwealth's Exhibit 3, which is the certificate of
15 analysis issued by Andrew Johnson, our first witness, when
16 he compared that shoe lift with the shoes.

17 THE COURT: Would you like to see this again?

18 MS. MELEEN: We've seen it, sir. We don't
19 object to it.

20 THE COURT: I'll receive that. I've received
21 Commonwealth's Number 3 as well.
22
23

1 (The document heretofore
2 marked Commonwealth's
3 Exhibit Number 3, for
4 identification, was received
5 into evidence.)

6 MR. MURPHY: Now, sir, I'm going to show you
7 Commonwealth's Exhibit 8, with all of its contents.

8 (Whereupon, Mr. Murphy handed an item to the
9 witness for his examination.)

10 BY MR. MURPHY:

11 Q Do you recognize this exhibit?

12 A Yes, sir.

13 Q What is that?

14 A These are the swabs that were taken by Agent
15 Huff and the controls. My name and the indication I made
16 on the swab with controls and the numbers, the
17 corresponding numbers are here on the outside of this.

18 Q Did the time come when you submitted that to
19 the lab?

20 A Yes, sir, I did.

21 Q Was that on or about December the 3rd, 1999?

22 A Yes, sir.

23 Q And do you have a certificate of analysis, a

1 request for certificate of analysis, that you filled out
2 on that day?

3 A Yes, sir, I do.

4 Q Would you produce it?

5 A (The witness complied with the request.)

6 MR. MURPHY: Your Honor, I'd move this in as
7 Commonwealth's Exhibit 11.

8 THE COURT: Have you shown it to Defense?

9 MR. MURPHY: They've got it right now.
10 They've seen it before, but they've got the copy I've
11 introduced.

12 MS. MELEEN: Your Honor, I don't object to the
13 request for laboratory analysis.

14 THE COURT: It's eleven.

15 (The document heretofore
16 marked Commonwealth's
17 Exhibit Number 11, for
18 identification, was received
19 into evidence.)

20 THE COURT: Do you need to put this back?

21 MR. MURPHY: I'd like to show it to him and
22 ask him some additional questions.

23

1 BY MR. MURPHY:

2 Q Sir, on that certificate of analysis, once
3 again certain items are renumbered. Your item 26 is what
4 on that certificate?

5 A Item 26 is the computer-generated number, and
6 item number 117 is the item number that Agent Huff had
7 given the item when he collected it.

8 Q And is that the serology sample from the left
9 front door inside?

10 A Yes, sir.

11 MR. MURPHY: Your Honor, at this time I would
12 move Commonwealth's Exhibit 8A into evidence.

13 THE COURT: Did you wish to voir dire Special
14 Agent Scott?

15 MS. MELEEN: I guess I need to, because I'm
16 not sure about what's in there.

17 May I do that now, Your Honor?

18 THE COURT: Sure, why don't you do that?
19 Would you need some time to just take a look at it?

20 MS. MELEEN: I think I could ask --

21 THE COURT: Try not to cut your finger on it.
22
23

VOIR DIRE

BY MS. MELEEN:

Q Special Agent Scott, what's in that envelope?

A In this envelope?

Q Uh-huh.

A It's the swabs and the control swabs. It would be the blood stains swab and the control swabs.

Q What numbers are in there now? That has been opened? It was open when it was handed to you; is that right?

A Correct.

Q Can you tell me which numbers are in there right now?

A If they correspond to the numbers that are outside, it would be 23, 24, 25, 26, 27, 29, 31, 34, 36, which I wrote respectively on the outside of this package.

Q Where did you get that envelope?

A I got this envelope from Agent Huff. We placed it into evidence, and then I took it out. I put everything here on this request form to take to the lab.

Q When you got it from Agent Huff, were the items separate or were they in an envelope already?

A I don't recall whether they were in an

1 envelope or not, ma'am. I know that I wrote it here on
2 the outside, and I received what's in here as it is.

3 Q How can you tell from looking at that that you
4 had each of those items?

5 A How can I tell?

6 Q Yes.

7 A By the corresponding numbers that are here on
8 the outside.

9 Q And that's your handwriting?

10 A Yes, ma'am, it is.

11 Q Is that what you're saying?

12 A Right.

13 Q Now, because those have been out in the course
14 of the day, I'd like you to look at each of those and
15 actually tell me what's in the envelope now, at this time.

16 A This is item number 36, which is item --
17 corresponding number, which is item number 127, the swab
18 with a red stain and a control.

19 The next one is item number 26, which the
20 corresponding number is item number 17, the same with a
21 swab with a red stain and a control.

22 The next one is item number 23, which the
23 corresponding number is item number 14, the same as a swab

1 with a red stain and control.

2 The next is item number 34, which the
3 corresponding number is 125, a swab with a red stain and
4 control.

5 The next is item 24, which is corresponding
6 number item number 115, the same swab with red stain and
7 control.

8 The next one is number 29. The corresponding
9 number is 120, swab with red stain with control.

10 The next is number 27. Corresponding number
11 is 118, swab with red stain with control.

12 Number 25. Corresponding number is 116, swab
13 with red stain with control.

14 And lastly is item number 31, which the
15 corresponding number is 122, the same swab with red stain
16 with control.

17 Q And who did you turn those over to?

18 A To the lab.

19 Q Do you know who?

20 A Not specifically, ma'am, by name, no.

21 Q How did you accomplish that? How do you know
22 you turned them over to the lab if you don't know who you
23 gave them to?

1 A Well, I don't remember the man's name exactly,
2 but I took them directly to the lab. As the sheet
3 indicates here, I had my signature in two places here, and
4 it was received by the lab here at the bottom with their
5 signature.

6 And the information out to the side with the
7 numbers here that are -- all that writing that's on the
8 lab request itself was done by the laboratory, when I took
9 it to them.

10 MS. MELEEN: I don't have any other questions,
11 Your Honor. I don't object to that.

12 THE COURT: No objection?

13 MS. MELEEN: I don't object to that.

14 THE COURT: I will receive it.

15 (The document heretofore
16 marked Commonwealth's
17 Exhibit Number 8A, for
18 identification, was received
19 into evidence.)

20 BY MR. MURPHY:

21 Q And that signature by that person you don't
22 know, that's a lab employee that received the items from
23 you?

1 A Yes, sir.

2 MR. MURPHY: Could I just have that back a
3 moment, please?

4 Your Honor, at this time then I would ask you
5 to admit item A, since there's no objection.

6 THE COURT: This has been marked, hasn't it?

7 MR. MURPHY: Yes, it's already been marked.
8 So we can just admit it in full, I guess, including item
9 8A. Item 8A is probably in Item eight. Did you also mark
10 that that's in?

11 THE COURT: I'm not sure. I don't think we
12 did.

13 Did you want to see this before?

14 MS. MELEEN: Well, no. Actually, all of those
15 other packages inside that envelope, which I guess Mr.
16 Murphy is moving in collectively, but they have all been
17 identified and marked as Defense exhibits.

18 So I guess I would move at this time to move
19 those in; although I think Mr. Murphy moved them in as the
20 whole. So do we need to do it more than once or not?

21 MR. MURPHY: Judge, I think that we do. I'm
22 moving the whole batch in.

23 THE COURT: They have been received.

1 MR. MURPHY: Thank you, Your Honor.

2 THE COURT: Let me just check, double check
3 this.

4 (The document heretofore
5 marked Commonwealth's
6 Exhibit Number 8, for
7 identification, was received
8 into evidence.)

9 MR. MURPHY: Your Honor, may I approach the
10 Clerk?

11 THE COURT: Sure.

12 (Whereupon, Mr. Murphy retrieved a document
13 from the Clerk.)

14 MR. MURPHY: Sir, I'm going to show you what's
15 been marked as Commonwealth's 9.

16 (Whereupon, Mr. Murphy handed an item to the
17 witness for his examination.)

18 BY MR. MURPHY:

19 Q Do you recognize that?

20 A Yes, sir.

21 Q What's that?

22 A That is a sample of the known blood of Hugo
23 Alexander Sanchez.

1 Q And are you the one who submitted that to the
2 laboratory for analysis?

3 A Yes, sir.

4 Q Do you recognize the packaging?

5 A Yes, sir. My handwriting is here on the front
6 of it, where I've --

7 Q The front envelope?

8 A Yes, sir. And the rear, where I've marked it
9 here on the back with my initials.

10 Q Did you also submit that as item 45?

11 A Yes, sir.

12 Q And that was on which day?

13 A I think that was the 8th, on the other lab
14 request that you've shown with the shoes.

15 MR. MURPHY: If I could approach just to
16 retrieve ten and eleven, just so we can make sure that
17 there is no --

18 (Whereupon, Mr. Murphy retrieved some items
19 from the Clerk.)

20 MR. MURPHY: I'm showing you Commonwealth's
21 Exhibit 10, which has already been admitted into evidence.

22 (Whereupon, Mr. Murphy handed an item to the
23 witness for his examination.)

1 A Yes, sir, it indicates here at item number 45,
2 known sample of Hugo Alexander Sanchez, two vials of
3 blood, which were refrigerated.

4 MR. MURPHY: Your Honor, I would move nine in.

5 THE COURT: Have you shown them to counsel?

6 MS. MELEEN: Your Honor, I need to voir dire,
7 if I may.

8 THE COURT: Yes, sure. Go ahead. Why don't
9 you voir dire.

10 VOIR DIRE

11 BY MS. MELEEN:

12 Q Where did you get it from?

13 A I received it from Trooper Anthony Conte.

14 Q Do you remember when that was?

15 A The same day I submitted it to the lab. He
16 came to the office with the blood. And as soon as he got
17 there, I typed up the RFMB, and we walked to the lab
18 together.

19 Q Who did you give it to?

20 A Ma'am, I don't recall specifically. I gave it
21 to someone there at the lab. Their signature is there, as
22 well as mine, on the day I took it.

23 MS. MELEEN: No objection.

1 THE COURT: We'll receive that as
2 Commonwealth's 9.

3 (The document heretofore
4 marked Commonwealth's
5 Exhibit Number 9, for
6 identification, was received
7 into evidence.)

8 MR. MURPHY: Your Honor, is it my
9 understanding at this time then that all of the
10 Commonwealth's exhibits have been accepted into evidence
11 by the Court?

12 THE COURT: I think that they have. They
13 have.

14 MR. MURPHY: Thank you, Your Honor. With that
15 understanding, I have no other questions for the Trooper
16 at this time.

17 THE COURT: Would you care to ask Trooper
18 Scott any questions -- Special Agent Scott?

19 MS. MELEEN: Yes, sir.

20 THE COURT: Senior Special Agent.

21 MS. MELEEN: Senior Special Agent Scott?

22 MR. MURPHY: SSA.
23

CROSS EXAMINATION

BY MS. MELEEN:

Q Several times, when you looked at those items, you said something like known sample from Hugo Sanchez. You don't have any personal knowledge of that; is that correct?

A It was only what I was told.

Q You're counting on what you heard from the trooper that gave it to you; is that right?

A Right.

Q And the same thing with the examination request about a lab sheet, when it says that you know where this evidence comes from, that is information that you got from another trooper and --

A I didn't hear what you said.

Q The same thing that's on the request for laboratory analysis, and it indicates they are known samples. And you don't have any personal knowledge of that; is that right?

A Well, only from what I was told by Trooper Conte and I spoke with Detective Hula, also. So I can only take them at their word.

Q So, for example, where it says known tennis

1 shoes of Hugo Alexander Hernandez Sanchez, you're just
2 counting on what they told you?

3 A Yes.

4 Q All right. Are those the only items that you
5 received from Agent Huff?

6 A There were numerous -- yes. There were
7 numerous other items, as indicated on the RFLE and that
8 were submitted. There were a number of items.

9 Q Did you receive items 119 and 123 from Agent
10 Huff?

11 A What are they, ma'am?

12 Q Oh, okay. They are also red stains.

13 A Yes, whatever he has listed there was placed
14 into evidence. I didn't receive them personally. They
15 were placed into evidence, I got them out. Those were the
16 ones that he selected.

17 Q So what did you do with them? Where are they
18 now?

19 A Any of the other items that are not here
20 present in court would be in the evidence of the state
21 police.

22 Q And who is responsible for the evidence of the
23 state police in this case?

1 A There are two evidence technicians. They're
2 First Sergeant Leonard Lacy, First Sergeant Roger
3 Broadvent, and one other senior secretary there. But
4 those are the only three evidence custodians that are
5 allowed to do anything with the evidence, as far as the
6 Bureau of Criminal Investigation is concerned.

7 Q Well, who was responsible for determining
8 which evidence to bring in court today?

9 A Well, whatever the Commonwealth's Attorney
10 tells me to bring or you request, that's what I'll bring.

11 Q So do you know where --

12 A Any item that is not here would be in our
13 evidence locker. What I don't have in that box would
14 still be in the evidence room of the state police.

15 Q Now, you also have items that you collected on
16 this lab sheet?

17 A Yes.

18 Q Where are those items?

19 A I believe those are here today, ma'am,
20 excluding the guardrail, the seven-foot guardrail.

21 Q Can you tell the jury what items you
22 collected?

23 A I collected seven-foot, two-inches of

1 guardrail; a set of swabs that would be item number two,
2 three, and four; a twig; a headrest; an airbag; and a
3 bottle of Corona beer; and I think it might have been a --
4 I think his driver's license, one of the victim's driver's
5 license, was found at the scene also.

6 But whatever items that I've got on the
7 laboratory request here are basically most of the items
8 that I collected initially at the scene.

9 Q Now, specifically item number two --

10 A Uh-huh. (Nodding head.)

11 Q Where did you get those swabs?

12 A They were from the left door panel of the
13 vehicle.

14 Q And where was the vehicle when you collected
15 them?

16 A It was at the scene, up there on the toll
17 road.

18 Q And what was the process that you used to
19 collect those?

20 A I used six swabs that I used in the area of
21 the stain, and I used four controls on what would be an
22 adjacent area around the stain, or unaffected areas.

23 Q And you can the jury what you mean by

1 controls?

2 A The controls are to say that there's nothing
3 else that is around that is not contaminated or whatever,
4 that I didn't pick up anything else other than something
5 that was unaffected in the area where I took the initial
6 swab, which would be the sixth.

7 Q And what about item number three? Where did
8 you get that?

9 A Item number three was taken from the headrest
10 from the left front seat.

11 Q And when you say left front seat, do you mean
12 driver's side?

13 A From the driver's seat, yes.

14 Q And where was the car when you collected that?

15 A It was in the same place, at the scene of the
16 accident.

17 Q And how many swabs did you collect?

18 A The same, six and four.

19 Q And where did you get item number four?

20 A That was taken from the guardrail itself.

21 Q And what did you collect from the guardrail?

22 A I collected six swabs with blood or red stain,
23 as it would be called, and four controls.

1 Q And at this time same time -- well, actually,
2 you took another one. You took item number five. Where
3 did you get that?

4 A That was a twig that was found on the ground
5 that had a red stain on it.

6 Q What's item number six?

7 A Item number six is the left front seat
8 headrest and the left front cushion of the left front
9 seat.

10 Q Those are associated with the driver's seat?

11 A Yes. They also contained the other red stains
12 that were on them, also.

13 Q And where was the car when you seized those
14 items?

15 A The same, at the accident scene.

16 Q What's item number seven?

17 A Item number seven is the airbag taken from the
18 driver's side and the steering wheel that also had a red
19 stain on it then.

20 Q And was the car still at the scene when you
21 took that?

22 A Yes, it was. Yes, it was.

23 Q And did you submit all of these items to the

1 lab?

2 A Yes, ma'am, I did.

3 Q And was that on the same request for
4 laboratory analysis that you submitted the items were
5 received, the stained items that you received from Agent
6 Huff?

7 A No, ma'am.

8 Q Did you take them on different days?

9 A Yes, I have -- it was different days. These
10 were the first items that I had any dealings with at all,
11 if I recall it correctly.

12 MS. MELEEN: Your Honor, may I see the
13 Commonwealth's Exhibit 11?

14 THE COURT: Sure.

15 MS. MELEEN: Maybe it's still here.

16 THE WITNESS: These were submitted on the
17 29th, if I recall.

18 BY MS. MELEEN:

19 Q Do you have those items with you here today?

20 A Yes.

21 Q Can you --

22 A Except for -- as I stated --

23 Q Except for the guardrail?

1 A Right.

2 MS. MELEEN: Your Honor, may I ask Agent Scott
3 to go get those items? They are here.

4 THE COURT: Including the guardrail?

5 MS. MELEEN: Not the guardrail.

6 THE COURT: Good. Do you mind going and
7 getting them?

8 (The witness complied with the request.)

9 THE WITNESS: This is two through five.

10 MS. MELEEN: Let's take them one at a time.

11 Your Honor, may I have that marked as

12 Defendant's Exhibit -- whatever we're on?

13 (The document referred to
14 above was marked Defendant's
15 Exhibit D, for
16 identification.)

17 BY MS. MELEEN:

18 Q Do you want me to give you a minute or do you
19 want to do these one at a time?

20 A Whichever you prefer.

21 Q Why don't you take the stand and go ahead to
22 your chair? We'll go one at a time so the Clerk doesn't
23 get confused.

1 The first one has been marked as Defense
2 Exhibit D.

3 A Okay.

4 Q Why don't you tell the members of the jury
5 what that is, and look in the bag if you need to?

6 A These are items two through number five, which
7 would have been the swabs that were numbers two, three,
8 and four, and then number five was the twig I found on the
9 ground.

10 Q Now, who did the packaging on that?

11 A I did.

12 Q Who collected those?

13 A I did.

14 Q And why don't you look inside and make sure
15 that they're actually what you think is in there?

16 A Certainly.

17 (The witness complied with the request.)

18 THE WITNESS: Okay.

19 BY MS. MELEEN:

20 Q Tell us what is in there and how you know what
21 it is.

22 A Everything here is the swabs and control swabs
23 and the -- every piece of item of evidence that I could

1 collect. My signature, the numbers, the corresponding
2 numbers are all here, with the dates and my name and
3 initials and everything else that I can identify as all my
4 handwriting here on these packages.

5 Q And did you submit those items to the lab?

6 A Yes, I did.

7 Q What else did you find in that box?

8 MS. MELEEN: I need to have it marked.

9 THE COURT: As number E.

10 MS. MELEEN: This one is D. This is the one I
11 need marked. I'm returning this one to you.

12 (The document referred to
13 above was marked Defendant's
14 Exhibit E, for
15 identification.)

16 BY MS. MELEEN:

17 Q This one is marked as Defense Exhibit E. Can
18 you tell us what that is?

19 (Whereupon, Ms. Meleen handed an item to the
20 witness for his examination.)

21 THE WITNESS: That's the airbag taken from the
22 driver's side from the 1999 green Honda.

23

1 BY MS. MELEEN:

2 Q And how can you tell that that's what in
3 there?

4 A Because I marked it as so, and it's my
5 handwriting, and it's dated as the same case number and
6 the corresponding item number here.

7 Q Are you the person who collected the driver's
8 airbag?

9 A Yes, ma'am.

10 Q And why don't you look inside there and make
11 sure it's what you think it is?

12 A (The witness complied with the request.)

13 Q Do you recognize it?

14 A Yes.

15 Q And how is it that you recognize it?

16 A (No response.)

17 Q Do you need to take them out, Agent Scott? We
18 can cut you a break if you do.

19 A It's the same item that I put in the bag on
20 the date in question on the date that I obtained it. It
21 hasn't changed at all.

22 Q Do you recognize it?

23 A Yes, I do.

1 Q I won't make you take it out. And did you
2 find another item that you told the jury about?

3 A It's item number six here, which is the
4 headrest from the left front seat. It's the same. I've
5 marked it here with my name and the date collected. It's
6 from the 1999 green Honda.

7 Also, the item behind it is the left front
8 seat cushion, containing a red stain from the same
9 vehicle.

10 MS. MELEEN: Now, let me have those marked as
11 Defense Exhibit, I assume that will be F.

12 (The document referred to
13 above was marked Defendant's
14 Exhibit F, for
15 identification.)

16 BY MS. MELEEN:

17 Q And, Detective Scott, if you can tell us what
18 it is about this that you recognize and how you know those
19 are the items that you collected.

20 A I bagged them on the date of November the
21 26th, 1999. It's my handwriting here on the outside of
22 the bag, the number, corresponding number, and I took them
23 to the lab.

1 Q Do you also mind opening those and making sure
2 that the items inside the bag are what you think they are?

3 A (The witness complied with the request.)

4 It is what I placed in the bag.

5 Q Now, the headrest is from the driver's seat?

6 A Yes.

7 Q And when you say the cushion, that's from the
8 driver's seat as well?

9 A Yes.

10 Q Is that the part you sit on?

11 A It's part of -- I think part of the headrest
12 and all that was underneath, below the top --

13 Q The back of the seat?

14 A Yeah, the back of the seat, yes.

15 Q Is it the back of the seat that faces forward,
16 faces the steering wheel?

17 A Right.

18 Q So it would be on the driver's back?

19 A Yeah, so it would be the -- as you can see,
20 the hole here for the -- as far as the seat is concerned.
21 That is with my initials on it.

22 Q And do you have the request for laboratory
23 analysis that you --

1 A Yes, ma'am.

2 Q Associated with these items?

3 A Yes, ma'am.

4 MS. MELEEN: If I could have this marked as an
5 exhibit -- Your Honor, this request for laboratory
6 analysis marked as Defense Exhibit G.

7 MR. MURPHY: No objection.

8 THE COURT: I will receive it.

9 (The document referred to
10 above was marked Defendant's
11 Exhibit G, for
12 identification.)

13 MS. MELEEN: And I will move in all of those
14 items into evidence.

15 THE COURT: No objection?

16 MR. MURPHY: No objection.

17 THE COURT: We'll go ahead and receive those.

18 (The documents heretofore
19 marked Defendant's Exhibit
20 Numbers A through G, for
21 identification, were
22 received into evidence.)
23

1 BY MS. MELEEN:

2 Q Agent Scott, who made the determination as to
3 what you would ask the lab to do?

4 A I requested the lab to do specific things as
5 far as typing, identifying, and comparing all the items.

6 Q And when you say as far as typing and
7 identifying, do you mean the DNA analysis?

8 A Yes.

9 Q And did you ask the lab to look at all the
10 evidence samples that you had?

11 A Yes, ma'am.

12 Q Now, Special Agent Scott, if I still was
13 interested in those two exhibits, which are 119 and 123,
14 or those items collected by Special Agent Huff, you could
15 get those from the property room?

16 A I could if you needed them that bad.

17 MS. MELEEN: Your Honor, those are all the
18 questions that I have, but I would like to recall Agent
19 Scott after he has an opportunity to retrieve those from
20 the property room.

21 Do you think maybe we could be efficient by
22 allowing someone else to testify in the meantime?

23 THE COURT: Sure.

1 THE WITNESS: Which numbers were they?

2 THE COURT: Why don't you write them down for
3 him?

4 MR. MURPHY: Your Honor, on redirect I just
5 have one question.

6 REDIRECT EXAMINATION

7 BY MR. MURPHY:

8 Q Agent Scott, approximately how far was the
9 guardrail from the wreck?

10 A Probably about thirty feet, at the most.

11 Q This is the guardrail leading back up onto the
12 highway?

13 A Yes, sir, it is.

14 MR. MURPHY: I don't have any other questions
15 for this witness. I guess he is subject to recall.

16 THE COURT: You are going to be subject to
17 recall.

18 (Witness stood aside.)

19 MR. MURPHY: Your Honor, could former Agent
20 Huff be released at this time? Right now he's on recall,
21 subject to recall, in the hallway.

22 MS. MELEEN: Your Honor, I don't think we're
23 willing to do that. We still have the lab to deal with.

1 MR. MURPHY: Your Honor, I don't know that
2 there's going to be -- if counsel wants to tell me what
3 they want in evidence, if it's anything from this
4 investigation, I'm not going to have an objection to it.
5 So I don't know that we need to keep him there for the
6 duration.

7 THE COURT: Plus he's retired.

8 MR. MURPHY: Plus he's retired, which means he
9 has another job that he's not at if he's here.

10 MS. MELEEN: Your Honor, I don't mind if we
11 release him, as long as we have a phone number. That's
12 what we usually do.

13 THE COURT: Okay.

14 MS. MELEEN: And if something comes up, we can
15 reach him.

16 THE COURT: Why don't you check with -- is it
17 David Huff? Just check with him and see if he can provide
18 a phone number.

19 MR. MURPHY: Thank you, Judge. Shall I do
20 that now?

21 THE COURT: Why don't you just do that now?

22 (Pause.)

23 MR. MURPHY: Your Honor, counsel has indicated

1 that Mr. Huff will be willing to respond by telephone.

2 THE COURT: Fine.

3 MS. MELEEN: Your Honor, Special Agent Scott
4 has these two exhibits that I was looking for. They
5 weren't in the property room. He already has them. May I
6 just put him back up right now?

7 THE COURT: Sure.

8 MS. MELEEN: While he's coming, I'll have them
9 marked as Defense Exhibit --

10 (The document referred to
11 above was marked Defendant's
12 Exhibit Number H, for
13 identification.)

14 RECROSS EXAMINATION

15 BY MS. MELEEN:

16 Q Agent Scott, we're going to start with what
17 has been marked as Defense Exhibit H. And if you could
18 tell us what that is.

19 A It's item number 119. The computer
20 corresponding number is number 28. It appears to be
21 what -- the portion of the headliner from the top and side
22 portion, I'm not sure where. We obtained it from inside
23 the car.

1 Q Where did you get it?

2 A I got it from evidence and submitted it to the
3 lab.

4 Q And you got it from the evidence locker?

5 A Yes.

6 Q And you're the one that took it to the lab?

7 A Yes.

8 Q And is that included on one of the lab sheets
9 that was introduced into evidence earlier?

10 A Yes, as far as I know, ma'am, it is.

11 Q And let me show you what has been marked as
12 Defense Exhibit I.

13 (The document referred to
14 above was marked Defendant's
15 Exhibit I, for
16 identification.)

17 (Whereupon, Ms. Meleen handed an item to the
18 witness for his examination.)

19 BY MS. MELEEN:

20 Q And if you could tell us what that is?

21 A This is Agent Huff's number 123, corresponding
22 number 32. It's a red stain from the right front seat,
23 dated November the 30th, 1999. It says it's a piece of

1 the leather with a red stain.

2 Q And where did you get that?

3 A From evidence as well, ma'am.

4 Q And what did you do with that?

5 A I took it to the lab.

6 Q And that's also reflected on Exhibit Number
7 11, one of the exhibits on the request for laboratory
8 analysis?

9 A Yes, ma'am.

10 MS. MELEEN: Your Honor, I would move those
11 two into evidence.

12 THE COURT: There's no objection?

13 MR. MURPHY: No objection.

14 THE COURT: We'll receive those.

15 (The document heretofore
16 marked Defendant's Exhibits
17 H and I, for identification,
18 were received into
19 evidence.)

20 BY MS. MELEEN:

21 Q Special Agent Scott, one more question. Is
22 that all of the evidence that you know of that either you
23 or Detective Huff collected that were referenced as red

1 stains?

2 A As far as I know, ma'am, the best I do recall.

3 Q Thank you, sir.

4 MS. MELEEN: I don't have any other questions
5 at this time. But if Mr. Murphy doesn't, we need him
6 subject to recall on another matter.

7 MR. MURPHY: Your Honor, I don't have any
8 additional questions.

9 THE COURT: Special Agent Scott, you are
10 excused, but you're subject to recall.

11 THE WITNESS: Yes, sir.

12 (Witness stood aside.)

13 MR. MURPHY: Your Honor, my last witness is
14 Bryan Edmonds.

15 Whereupon,

16 BRYAN PAUL EDMONDS
17 a witness, was called for examination by counsel on behalf
18 of the Commonwealth, and, after having been duly sworn by
19 the Clerk of the Court, was examined and testified, as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. MURPHY:

23 Q Sir, please state your name and your

1 occupation for the Judge and the jury in this case.

2 A Bryan Paul Edmonds. I am a forensic scientist
3 with the Virginia Division of Forensic Science, which is
4 the crime laboratory system for the State of Virginia.

5 Q What is your area of expertise?

6 A My area of expertise is in the area of
7 serology and DNA analysis.

8 Q And, sir, what education and/or experience do
9 you have that qualifies you to be an expert in the area of
10 the analysis of DNA?

11 A I have a Bachelors of Science degree in
12 biology which I received from the George Mason University
13 in May of 1995.

14 I also have approximately a year of graduate
15 school education covering the subject areas of forensic
16 serology, molecular biology, bio-chemistry, and chemical
17 law.

18 In addition, I went through a formal DNA
19 training program at the Division of Forensic Science,
20 which is actually broken down into two separate training
21 sessions.

22 The first training session was in the area of
23 forensic serology, which is involved with the detection

1 and identification of body fluids. During this training,
2 I analyzed hundreds of body fluid samples, using the
3 techniques that are used in the laboratory to detect and
4 identify body fluids.

5 I analyzed these body fluids, have those
6 identified, saliva, urine and fecal material, as well as
7 mixed body fluids, body fluids mixed with contaminants. I
8 was also given competency exams, where I was taking
9 unknown samples and having to correctly determine what
10 body fluid was present in the samples.

11 My second training was in the area of DNA
12 analysis, where I again analyzed over two hundred samples,
13 which consisted of the body fluids, such as blood, semen,
14 saliva, urine, vaginal fluids, hairs, muscles, thumb and
15 teeth, as well as mixed body fluid samples and body fluid
16 samples mixed with contaminants.

17 My DNA training focused on how to recover DNA,
18 quantitate DNA, perform DNA typing, and interpret DNA
19 typing results. My DNA training also included how to
20 calculate statistics as it relates to DNA typing.

21 Q And, sir, how long have you been working for
22 the Division of Forensic Science as a scientist
23 specializing in the analysis of DNA samples?

1 A Well, I've been qualified in DNA analysis now
2 for approximately two years.

3 Q How many times have you testified as an expert
4 in state or federal courts?

5 A Approximately six times.

6 Q Directing your attention then to this case,
7 did the time come when you analyzed some serology items
8 which were recovered pursuant to this case and submitted
9 to you?

10 A Yes, I did.

11 Q Now, as a matter of background --

12 MR. MURPHY: Actually, before we get started,
13 and I ask him about DNA, Your Honor, I would ask that he
14 be recognized as an expert in the area of DNA analysis.

15 THE COURT: Did you wish to voir dire Mr.
16 Edmonds on that?

17 MS. MELEEN: No, sir. We have no objection.

18 THE COURT: Will you stipulate to his
19 qualifications?

20 MS. MELEEN: Yes, Your Honor.

21 THE COURT: Okay. I'll qualify him as an
22 expert in the area of DNA analysis.

23

1 BY MR. MURPHY:

2 Q Mr. Edmonds, if you could tell us first of
3 all, what is DNA?

4 A DNA stands for deoxyribonucleic acid. This is
5 a chemical that is found in our bodies which is often
6 referred to as the body's blueprint, because it is
7 responsible for controlling the structure and function of
8 all the components of our body.

9 DNA is responsible for characteristics such as
10 eye color and hair color and is inherited from our
11 parents. You receive one half of your DNA from your
12 mother. You get the other half from your father.

13 Q And where is DNA found in the body?

14 A The DNA that I test for is found in the cells
15 of the body. In particular it's found in a portion of the
16 cell known as the nucleus. The types of cells which
17 contain a nucleus include white blood cells, sperm cells,
18 cells found in saliva, which are often referred as
19 epithelial cells.

20 Q Is DNA in all cells of the body the same?

21 A Yes, the DNA in all cells of the body is the
22 same. So this simply means that the DNA that's obtained
23 from my blood will be the same as the DNA that's obtained

1 from my saliva or any other body fluid or body part.

2 Q Is everyone's DNA different?

3 A With the exception of identical twins,
4 everyone's DNA is different.

5 Q Did you conduct a DNA analysis on evidence in
6 this case? And if so, what kind of DNA testing did you
7 perform in this case?

8 A I conducted a form of DNA analysis known as
9 the polymerase chain reaction, or PCR, for short.

10 Q Could you explain what the PCR is and how it's
11 used?

12 A The PCR method is a simple method which is
13 used which is capable of making millions and millions of
14 copies of distinct areas of DNA.

15 The majority of DNA found in our bodies is the
16 same. That's why we all have two arms and two legs, two
17 eyes, two ears. There's a small percentage of the DNA
18 that is found in our bodies which differs from one
19 individual to another.

20 I used the PCR method to look at these regions
21 of DNA that vary from one individual to another. In
22 particular I look at eight different regions of DNA.

23 Q Is the PCR technique accepted within the

1 scientific community?

2 A Yes, it is.

3 Q And did you obtain a DNA profile consistent
4 with the Defendant in this case, Hugo Sanchez, on any of
5 the items you examined?

6 A Yes, I did obtain a DNA profile consistent
7 with the alleged suspect, Mr. Sanchez, item 26, which were
8 swabs that were collected from the inside front door of
9 the automobile.

10 Q Now, did you calculate the statistics of the
11 DNA profile from that item?

12 A Yes, I did.

13 Q Tell us about that.

14 A Before I go into these statistics, the purpose
15 of calculating statistics on a DNA profile is just to
16 demonstrate how rare or common a DNA profile is within the
17 population.

18 It's usually calculated as a probability for
19 what are the chances that a randomly selected individual
20 from the population that has a DNA profile which matches
21 the DNA profile that was detected from the swab from the
22 inside of that front door.

23 The probability of randomly selecting an

1 unrelated individual with a matching DNA profile as
2 detected from the stain swabs found on the left front door
3 inside, item 26, using the Power-Plex system, which is the
4 system that I used to detect the DNA, is approximately one
5 in greater than six billion in the Caucasian and Black
6 populations and one in 2.8 billion in the Hispanic
7 population.

8 Q So to a reasonable degree of scientific
9 certainty, that would be the Defendant's DNA?

10 A Yes, it would. This indicates that this
11 profile is extremely rare within these three populations.

12 Q Now, sir, did you produce a report summarizing
13 your results as well as containing the profile that you've
14 described?

15 A Yes, I did.

16 Q Do you have a copy with you?

17 A I have my copy with my notes.

18 Q Can you detach your copy? That's your only
19 copy I take it?

20 A Yes. I need this.

21 Q If you could detach that copy at this time.

22 MR. MURPHY: Your Honor, I would move it into
23 evidence, ask the Clerk at her convenience to please make

1 a copy for the records so we can return the original to
2 Mr. Edmonds, if there's no objection to that.

3 THE COURT: No objection?

4 MS. MELEEN: No, sir. I'd like to just make a
5 copy of it now, if we could. Assuming the Xerox machine
6 is working now.

7 (Brief pause while a photocopy of the document
8 was obtained.)

9 (The document heretofore
10 marked Commonwealth's
11 Exhibit Number 12, for
12 identification, was received
13 into evidence.)

14 MR. MURPHY: Your Honor, I have no other
15 questions for this witness.

16 THE COURT: Do you have any cross, Ms. Meleen?

17 MS. MELEEN: Thank you, sir.

18 THE COURT: Go ahead.

19 CROSS EXAMINATION

20 BY MS. MELEEN:

21 Q Mr. Edmonds, how many samples, evidentiary
22 samples, did you receive in this case?

23 A Probably over thirty samples.

1 Q And those are evidentiary ones, not including
2 control samples?

3 A I believe so.

4 Q How many of them did you type?

5 A Actually, I'd need the report to --

6 THE COURT: Yeah, let's just wait --

7 MS. MELEEN: Your Honor, I'm going to give him
8 one. I couldn't find it, but I see it.

9 THE COURT: And that's the same report that
10 we're in the process of copying.

11 (Whereupon, Ms. Meleen handed a document to
12 the witness for his examination.)

13 BY MS. MELEEN:

14 Q That's your report, right?

15 A Yes.

16 Q Eleven pages, that's the only one you did;
17 right?

18 A (Nodding head.)

19 Q Okay.

20 A Excluding the samples, known samples?

21 Q Right. The evidentiary samples, how many of
22 the ones that were items of evidence did you look at?

23 A Approximately 22.

1 Q How many of those came back with a sample that
2 you had which was known to be that of Hugo Sanchez?

3 A There was one sample.

4 Q Were you able to make a typing of the other
5 21? I mean all of them were items of value?

6 A Some of the samples I was not able to obtain a
7 DNA profile on.

8 Q How many of the 22 were you actually able to
9 get a typing on?

10 A Well, excluding the control samples?

11 Q Right.

12 A I have eleven samples on the chart, and there
13 were also two unknown DNA profiles which were not included
14 in the chart, because they did not match the victim's,
15 neither the victim's or the suspect's.

16 Q Now, you actually had the blood of the two
17 victims as you call them, right, the two deceased people,
18 one that you had attributable to Hugo Sanchez and one that
19 you had attributable to Johnny Sarato Marquez; is that
20 right?

21 A That's correct.

22 Q And so when you say that there were two
23 unknown, that means the two that didn't hit those four

1 known samples?

2 A That is correct. There were two DNA profiles
3 which did not match the DNA profiles of both the victim
4 and the suspect.

5 Q And how many of those came back to Johnny
6 Sarato Marquez?

7 A If I could just read my results --

8 Q No. I want you to answer the question.

9 A There were three samples that were consistent
10 with the DNA profile of Johnny Rigaberto Marquez, and
11 there were also several other samples where there was a
12 mixture of Johnny Rigaberto Marquez and other individuals.

13 Q How many where there was a mixture?

14 A I believe two.

15 Q So there were five all together?

16 A That's correct.

17 Q Associated with either him alone or as a
18 mixture?

19 A Correct.

20 Q Where were they found?

21 A The three DNA profiles which is consistent
22 with the DNA profiles of Mr. Marquez were found on the
23 guardrail, stain swabs from the guardrail, and a stain

1 area from the steering wheel airbag.

2 The profiles that were found which were
3 consistent with a mixture of Mr. Marquez and some other
4 individual were found on the headrest and front left seat.

5 Q So it was the guardrail, the steering wheel
6 airbag, and the front left headrest and seat?

7 A That's correct.

8 Q Did you find any blood consistent with him in
9 the back -- in the back seat?

10 A According to my report, no.

11 Q Can you tell me what item numbers are
12 consistent with his blood? And this is Johnny Sarato
13 Marquez's blood.

14 A Item number one, which is the guardrail; item
15 number four, which are stain swabs from the guardrail;
16 item number seven, which is the airbag from the steering
17 wheel; and item number three, which are stain swabs from
18 the headrest and the front left seat.

19 Q And now, when you say that, I come up with
20 four; and yet I'm thinking that I should be coming up with
21 five. And is that because there was more than one profile
22 in one of those items?

23 A I believe the headrest and the front left seat

1 were considered as one item, item three.

2 Q And in the mixtures, when you indicated that
3 there was only one that was returnable to Hugo Sanchez
4 consistent with Hugo Sanchez's profile, you were able to
5 look at the mixtures that you had and determine whether or
6 not it was consistent with the known samples; is that
7 correct?

8 A Could you repeat that?

9 Q I mean you looked at the mixtures. You can
10 tell -- when you do your analysis, you can tell if the
11 mixture is consistent with a person or not consistent with
12 a person; is that fair?

13 A Right. They should have been either
14 consistent with one or two people with the blood samples
15 that are submitted to the lab for comparison purposes; or
16 it's going to be consistent with at least one of the
17 victims or some unknown individuals.

18 Q Any of the mixtures that you had and that you
19 analyzed, were any of them consistent with Hugo Sanchez?

20 A No, they were not.

21 Q Now, you indicated earlier on direct that the
22 DNA in one body fluid is the same as your DNA in another
23 body fluid, is the same in every cell we have. Is that

1 fair enough?

2 A That's correct.

3 Q Did you do any serology on these items of
4 evidence to find out if they were blood or if they were
5 something else?

6 A Yes, I did.

7 Q And as considering the sample that you took
8 from the driver's seat airbag, did you test that to see if
9 it was blood?

10 A Yes, that particular stain from the airbag was
11 blood.

12 Q You also had some samples that were taken from
13 the brake pedal; is that right?

14 A Yes, there were samples taken from the brake
15 pad, the brake pedal.

16 Q Were you able to get a profile on those
17 samples, a DNA profile?

18 A Yes, I did obtain a DNA profile from the brake
19 pad.

20 Q And was that consistent with any of the known
21 people that you had?

22 A No, that DNA was not consistent with any of
23 the known samples that were submitted.

1 Q Did you understand my question to mean the
2 brake pad that's on the brake pedal inside the car?

3 A Yes, I did.

4 Q Not what you have around your wheels; right?

5 A No.

6 Q Okay.

7 MS. MELEEN: I don't have any other questions.
8 Your Honor, was that moved into evidence, his
9 report?

10 THE COURT: It was; and we received it I
11 thought without objection.

12 MS. MELEEN: Yes, Your Honor.

13 MR. MURPHY: Your Honor, that would be
14 Commonwealth's Exhibit 12?

15 THE COURT: Yes, that's correct.

16 MR. MURPHY: Thank you, Your Honor. And
17 that's in evidence?

18 THE COURT: Yes.

19 MR. MURPHY: Your Honor, if that's the case, I
20 have no other questions of this witness.

21 THE COURT: May Mr. Edmonds be excused?

22 MR. MURPHY: Yes.

23 THE COURT: Mr. Edmonds --

1 MS. MELEEN: Yes, Your Honor.

2 THE COURT: You are excused. Thank you for
3 your time.

4 (Witness excused.)

5 MR. MURPHY: That's the Commonwealth's
6 evidence.

7 THE COURT: This might be a good time to take
8 perhaps a fifteen-minute recess. And again, ladies and
9 gentlemen, I ask that you not begin any discussion of any
10 aspect of this case during your break.

11 You are not to engage in any conversations
12 with any of the parties, the witnesses, the attorneys, or
13 any of the spectators. No one should approach you and
14 discuss the matter.

15 And, as I admonished you before, if that
16 should occur, just let my Clerk or Bailiff know.

17 And you are in recess then for fifteen minutes
18 or thereabouts.

19 (Whereupon, the jury was excused from the
20 courtroom.)

21 THE COURT: Do you want to take up any motions
22 at this time, or just take a recess?

23 MS. MELEEN: Well, we can either do it before

1 morning, if that's okay with Your Honor.

2 THE COURT: I asked the jury -- or my Bailiff
3 asked them -- they said they would be willing to stay
4 until 6:00. So there might be a problem after that. That
5 sounds like a good plan.

6 MS. MELEEN: Thank you, sir. And we're ready
7 for the jury.

8 (Whereupon, the jury returned to the courtroom
9 and resumed their seats in the jury box.)

10 THE COURT: Have a seat, please. Does the
11 Defendant elect to present evidence?

12 MS. MELEEN: Yes, sir. We would call Rosily
13 Sanchez.

14 Whereupon,

15 ROSILY SANCHEZ

16 a witness, was called for examination by counsel on behalf
17 of the Defendant, and, after having been duly sworn by the
18 Clerk of the Court, was examined and testified, as
19 follows:

20 DIRECT EXAMINATION

21 BY MS. MELEEN:

22 Q Can you tell the members of the jury your
23 name, please?

1 A My name is Rosily Sanchez.

2 Q Mr. Sanchez, do you know Hugo Sanchez?

3 A Yeah, he's my brother.

4 THE COURT: The response was you are his
5 brother?

6 THE WITNESS: Yes, sir.

7 BY MS. MELEEN:

8 Q Mr. Sanchez, I'm going to draw your attention
9 to Thanksgiving Day, November 26 of 1999. Do you remember
10 that day?

11 A Yes, I do.

12 Q Do you remember the evening of that day?

13 A Yes, I do.

14 Q Can you tell the members of the jury where you
15 were in the evening of that day?

16 A My mother's house.

17 Q What time were you at your mother's house?

18 A About 3:00 or so in the afternoon.

19 Q And what plans did you have for the rest of
20 the day?

21 A I had plans of going over to a friend's house.
22 I was invited. And after having dinner with my mother, I
23 was invited over to a friend's house.

1 Q What's the name of your friend?

2 A Israel.

3 Q And where does Israel live?

4 A He lives in P.G. County.

5 Q And what's his last name?

6 A Montilla.

7 Q And did you have dinner that day with your
8 mother?

9 A Yes, I did.

10 Q What time did you have dinner with your
11 mother?

12 A About 7:00.

13 Q Who was there?

14 A My whole family. My brother was there.

15 Q Which brother?

16 A Hugo Sanchez.

17 Q What time was that?

18 A About 7:20, around when we had dinner.

19 Q What time were you planning on going to the
20 party?

21 A Oh, later, maybe at 9:00.

22 Q Who was going to the party with you?

23 A Hugo was going to the party with me.

1 Q Anyone else?

2 A Yeah, we would all meet up sometime at the
3 party.

4 Q And did you go directly from the party, or
5 from your mother's house to the party?

6 A No.

7 Q Tell the members of the jury why you did not
8 go directly from your mother's house to the party.

9 A Well, the reason I didn't go directly to the
10 party was because I had to pick up my fiance. She was at
11 her mother's house with my child. So I had to pick her up
12 and drop her off at his mother's house, and then we had to
13 go pick up my brother in D.C.

14 Q What time did you leave to pick up your
15 fiancé?

16 A A little after 10:00.

17 Q And what brother were you picking up in D.C.?

18 A Hugo.

19 Q And where did you pick him up?

20 A At D.C., Fourteenth Street at the Exxon gas
21 station. I picked him up there.

22 Q Had you planned to pick him up?

23 A No, I didn't.

1 Q And what changed your plan?

2 A Well, I called Israel to let him go that I was
3 going over. I told him, you know, I'm leaving my house to
4 go over to your house. And then he wasn't home. So then,
5 you know, I told his mother tell him to give me a call
6 back. So he returned the call. And then he told me your
7 brother called and he was like go pick him up at D.C. I
8 was like for what. He was like, well, you know, he's been
9 drinking and he got out of his car and it's breaking down,
10 and he didn't want to drive anyways.

11 Q What car did Hugo have?

12 A A Ford Taurus.

13 Q Whose car was it?

14 A Alex's.

15 Q Who went to D.C. with you, if anybody did, to
16 pick up Hugo?

17 A It was the owner of the car and Israel.

18 Q What time did you get him in D.C.? What time
19 did you pick him up?

20 A About 11:00, close to 10:40, around then.

21 Q And where did you go? After you picked him
22 up, where did you go?

23 A We went back to Israel's house.

1 Q And how long did you stay at Israel's house?

2 A Late, till the morning.

3 Q Pardon me?

4 A To 2:30 in the morning we stayed there.

5 Q Who did you leave Israel's house with?

6 A Well, I left with my fiancé, my baby, and Hugo
7 Sanchez.

8 Q And where did you go?

9 A We went to our house.

10 Q Did you drop Hugo off?

11 A No. He stayed with us.

12 Q Did he stay all night?

13 A Yes.

14 MS. MELEEN: I don't have any other questions.

15 THE COURT: Mr. Murphy, would you like to
16 cross examine Mr. Sanchez?

17 CROSS EXAMINATION

18 BY MR. MURPHY:

19 Q Sir, so you first picked up Hugo in
20 Washington, D.C., on November the 26th when?

21 A I didn't pick up Hugo Sanchez first.

22 Q Well, when you picked him up, when was it?

23 A Ten-forty, close to 11:00.

1 Q In the morning or in the evening?

2 A Nighttime.

3 Q Ten-forty the night of November 26th?

4 A Thanksgiving, I don't know what day. I don't
5 keep up with the date.

6 Q You'd already eaten dinner?

7 A At my mother's house, yes.

8 Q And now you're picking him up? Okay. And
9 then you take him to a party from there?

10 A Right.

11 Q At the time you picked him up in Washington,
12 D.C., you're picking him up because he doesn't have a car?

13 A He had a car.

14 Q But for some reason, whatever he was using for
15 transportation wasn't available to him at that time?

16 A The car was breaking down on him; plus he was
17 drinking.

18 MR. MURPHY: I don't have any other questions
19 for this witness.

20 THE COURT: Any redirect? Go ahead, please.

21 REDIRECT EXAMINATION

22 BY MS. MELEEN:

23 Q What car did he have that was breaking down?

1 A A Ford Taurus.

2 Q Who did that belong to?

3 A To Alex.

4 Q Was Alex one of the people, the car owner was
5 one of the people that went down with you to get Hugo?

6 A Yes.

7 MS. MELEEN: I don't have any other questions.

8 THE COURT: May Mr. Sanchez be excused?

9 MS. MELEEN: Yes, sir.

10 THE COURT: You are free to step down, sir.

11 Thank you.

12 (Witness excused.)

13 MS. MELEEN: Israel Montilla.

14 Whereupon,

15 ISRAEL MONTILLA

16 a witness, was called for examination by counsel on behalf
17 of the Defendant, and, after having been duly sworn by the
18 Clerk of the Court, was examined and testified, as
19 follows:

20 DIRECT EXAMINATION

21 BY MS. MELEEN:

22 Q Sir, can you tell the members of the jury your
23 name, please?

1 A My name is Israel Montilla.

2 Q Mr. Montilla, do you know Hugo Sanchez?

3 A Yes, I do.

4 Q How do you know him?

5 A He's Rosily Sanchez's brother. He's a friend.

6 Q I'm going to draw your attention to November
7 26th, Thanksgiving Day of 1999. Do you remember that day?

8 A Yes, sort of.

9 Q Do you remember seeing Hugo Sanchez on that
10 day?

11 A Yes.

12 THE COURT: Mr. Montilla, would you try to
13 keep your voice up, please?

14 Can the jury hear him? I don't think they can
15 hear him.

16 I think the last response was yeah. I mean
17 I'm not sure. Why don't you repeat the question?

18 MS. MELEEN: I can't remember what I asked
19 him.

20 BY MS. MELEEN:

21 Q I think I asked you if you saw Hugo Sanchez
22 that day?

23 A Yes, I did.

1 Q Can you tell the members of the jury under
2 what circumstances you saw him? When did you see him?

3 A I saw him on Thanksgiving Day after we picked
4 him up in D.C., went to my house, had some drinks, and
5 then from there they left; he left, went home with his
6 brother, Rosily.

7 Q When you said we went to pick him up in D.C.,
8 who went to pick him up?

9 A It was me, Rose, my other friend, my other
10 boy, named Alex -- just basically it was four of us who
11 went to go pick him up.

12 Q Do you remember what time you picked him up?

13 A We probably left around 10:15.

14 Q You left to go get him around 10:15?

15 A Yeah.

16 Q Then did you all ride in the same car back to
17 your house?

18 A No. Alex took his car, went on his way, and
19 me, Hugo and Rose got in one car and took that and went
20 back to my house.

21 Q Did Alex ride down to D.C. with you?

22 A Yeah, he rode -- on the way up there, all
23 three of us rode up there. On the way back, Alex took his

1 car, and the other three, me, Rose and Hugo took back to
2 my house.

3 Q How long did Hugo stay at your house?

4 A Maybe a couple of hours, drinking, and then he
5 probably left about, after -- close to 2:00, 2:15.

6 Q Is there anything that happened that night
7 that gives you an idea of what time they left, anything
8 that you can remember specifically?

9 A I know around 1:15 I got a phone call from a
10 girl I was talking to. But from there -- I know they were
11 still there, because, you know, I was talking to her for a
12 good forty minutes.

13 Q Did you see Hugo leave?

14 A Yeah, I saw him leave.

15 Q Who did he leave with?

16 A Iris and Rose.

17 Q Who is Iris?

18 A Iris is Rose's fiancé.

19 MS. MELEEN: I don't have any other questions.

20 THE COURT: Mr. Murphy, would you like to
21 cross examine Mr. Montilla?
22
23

CROSS EXAMINATION

BY MR. MURPHY:

Q And you're also testifying that you saw Hugo Sanchez the evening of November the 26th?

A Yes, sir.

Q And you're sure about that?

A Yes, sir.

MR. MURPHY: I don't have any other questions.

THE COURT: May Mr. Montilla be excused?

MS. MELEEN: Yes, sir.

THE COURT: Mr. Montilla, you're excused. You are free to go.

(Witness excused.)

MR. PETIT: Your Honor, I would call Detective Hula.
Whereupon,

DETECTIVE DEBORAH HULA

a witness, was called for examination by counsel on behalf of the Defendant, and, after having previously been duly sworn by the Clerk of the Court, was examined and testified, as follows:

1 DIRECT EXAMINATION

2 BY MR. PETIT:

3 Q Detective, did Ms. Unangst ever identify
4 someone other than Hugo Sanchez as being the driver of the
5 vehicle the morning that she had her car stolen?

6 A Are you saying on that morning did she
7 identify?

8 Q Did Ms. Unangst ever identify someone other
9 than Mr. Sanchez as being the person who was involved in
10 stealing her car?

11 A Yes.

12 Q And she indicated that the person who drove
13 away with her car was not Mr. Sanchez? She indicated
14 somebody else other than Mr. Sanchez had driven her car
15 away?

16 A No. She said the other person I believe was
17 involved in that car jacking.

18 Q Do you remember being in a courtroom hallway
19 with Ms. Unangst?

20 A Yes.

21 Q And Ms. Unangst indicated that that's the
22 person that drove my car away, and that in fact was not
23 Mr. Hugo Sanchez?

1 A I don't remember her exact words, but she said
2 that person was involved in it. I don't remember if she
3 said that he was the person that did the car jacking, who
4 drove away in her car.

5 MR. PETIT: The Court's indulgence, Your
6 Honor.

7 (Pause.)

8 MR. PETIT: Your Honor, if I could have this
9 marked as a Defense exhibit, Your Honor.

10 (The document referred to
11 above was marked Defendant's
12 Exhibit J, for
13 identification.)

14 BY MR. PETIT:

15 Q Detective Hula, I'm going to show you what's
16 been marked as Defense J. I'd ask you to read the
17 highlighted portion to yourself.

18 (Whereupon, Mr. Petit handed a document to the
19 witness for her examination.)

20 MR. PETIT: Your Honor, if the record would
21 reflect I've retrieved Defense Exhibit J.

22 BY MR. PETIT:

23 Q Detective Hula, now after having refreshed

1 your recollection, do you --

2 THE COURT: Have you shown it to Mr. Murphy?

3 MR. PETIT: Yes, Your Honor.

4 BY MR. PETIT:

5 Q After having read and refreshed your
6 recollection, do you now remember Ms. Unangst indicating
7 that she believed there was a person other than Mr.
8 Sanchez who was the driver of the vehicle that was stolen?

9 A Yes.

10 MR. PETIT: Nothing further, Your Honor.

11 THE COURT: Mr. Murphy, do you have any
12 questions?

13 CROSS EXAMINATION

14 BY MR. MURPHY:

15 Q Ma'am, what was the setting where she thought
16 she saw the person who was the driver? Paint us a picture
17 of what it is that was going on.

18 A Okay. What had happened was I had developed a
19 suspect who I believed was another individual in the car
20 jacking. The individual was charged --

21 Q Now, with regard to that other individual, is
22 that somebody that you thought was the driver or somebody
23 that you thought was just involved?

1 A Somebody that I just thought that was
2 involved.

3 Q Okay.

4 A And what happened was the case went to court.
5 While we were in court, I asked her to walk around the
6 hallways and see if she could locate the individual who
7 was possibly involved in the car jacking in the court.

8 MR. PETIT: I object; legal conclusion as to
9 what --

10 MR. MURPHY: Your Honor, this is what she
11 asked Ms. Unangst to do that day.

12 THE COURT: I'm going to overrule the
13 objection. Go ahead.

14 BY MR. MURPHY:

15 Q So go ahead and continue.

16 A So we walked around the courtroom, and there
17 was an individual who was with the individual who I had
18 charged with it, and she had said that she believed that
19 that person was the person that drove away in her car that
20 day.

21 Q Now, with regards to that situation, that's in
22 a hallway of a courthouse?

23 A Yes.

1 Q That's not a formal lineup or something like
2 that?

3 A No.

4 Q And in fact, that person was never charged in
5 this; is that correct?

6 MR. PETIT: Objection, Your Honor, relevance.

7 THE COURT: Do you want to respond to the
8 objection, Mr. Murphy?

9 MR. PETIT: Beyond the scope.

10 MR. MURPHY: Well, Judge, I think it goes to
11 show that impression of hers was not pursued. That is not
12 the --

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

15 MR. MURPHY: I don't have any other questions
16 for this witness.

17 MR. PETIT: Nothing further, Your Honor.

18 THE COURT: May Detective Hula be excused?

19 MR. PETIT: Yes, sir.

20 THE COURT: You are excused. Thank you.

21 THE WITNESS: Thank you.

22 MR. MURPHY: Your Honor, if she could be
23 subject to recall, please.

1 THE COURT: You're not off the hook yet.

2 (Witness stood aside.)

3 MR. PETIT: Your Honor, I would call Trooper
4 Conte.

5 Whereupon,

6 TROOPER ANTHONY CONTE

7 a witness, was called for examination by counsel on behalf
8 of the Defendant, and, after having previously been duly
9 sworn by the Clerk of the Court, was examined and
10 testified, as follows:

11 DIRECT EXAMINATION

12 BY MR. PETIT:

13 Q Trooper Conte, did Sandra Contrevas -- you had
14 occasion to speak to her in your investigation?

15 A I sat in on an interview.

16 Q And did she indicate whether when she was
17 going to the party on Merrimack, whether they stopped
18 anywhere?

19 A Not that I recall. She stopped to pick up --
20 oh, she picked up Ronnie and then she picked up Johnny and
21 then went to the party.

22 Q Was there any statements regarding her picking
23 up liquor or alcohol?

1 A I believe she said that they -- I don't
2 remember or recall if they stopped, but I remember her
3 saying that they had a twelve-pack of beer.

4 MR. PETIT: Your Honor, if I could approach
5 and show this to the witness.

6 THE COURT: You may.

7 MR. PETIT: I show you this and I ask you to
8 read the highlighted portion.

9 (Whereupon, Mr. Petit handed a document to the
10 witness for his examination.)

11 THE WITNESS: Stopped --

12 MR. PETIT: Read it to yourself.

13 THE WITNESS: (Complied with request.)

14 MR. PETIT: Let the record reflect that I've
15 retrieved the document, Your Honor.

16 THE COURT: Okay.

17 BY MR. PETIT:

18 Q After having read this document, Trooper, do
19 you now remember if she indicated --

20 THE COURT: Have you shown it to counsel?

21 MR. PETIT: Yes, Your Honor, yes.

22 THE COURT: Okay.

23

1 BY MR. PETIT:

2 Q Do you remember whether she indicated that
3 they stopped anywhere between picking up Johnny and the
4 party on Merrimack?

5 A The notes to me indicate that they stopped at
6 Tick-Tocks to pick up a twelve-pack of Coronas.

7 MR. PETIT: Nothing further, Your Honor.

8 THE COURT: Mr. Murphy?

9 MR. MURPHY: No questions.

10 THE COURT: May Trooper Conte be excused?

11 MR. PETIT: Subject to recall at this time,
12 please.

13 THE COURT: You are subject to recall, Trooper
14 Conte. Thank you.

15 THE WITNESS: Yes, sir.

16 (Witness stood aside.)

17 MR. PETIT: Your Honor, I would call Mr.
18 Mitra.

19

20

21

22

23

1 Whereupon,

2 DALIL MITRA

3 a witness, was called for examination by counsel on behalf
4 of the Defendant, and, after having been duly sworn by the
5 Clerk of the Court, was examined and testified, as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. PETIT:

9 Q Can you please state your name for the Court
10 and spell your last name for the court reporter?

11 A My name is Mitra Dalil, D-A-L-I-L.

12 Q I apologize to you, Mr. Dalil. Sir, do you
13 know where you were working on the evening, or where you
14 were on the evening of November 25th, 1999, into the early
15 morning hours of the 26th, Thanksgiving Day of 1999?

16 A Thanksgiving Day, yeah.

17 Q Where were you working?

18 A It was in Getty gas station.

19 Q And did you have the opportunity to speak to a
20 gentleman by the name of Johnny Sarato Marquez on the
21 early morning hours of that day?

22 A Yeah, at that time he knocked the door and
23 he --

1 Q If you can just answer the questions I have
2 for you, sir.

3 You did speak to him?

4 A Yeah.

5 Q And did he say what had happened to him on
6 that -- what did he say happened to him on that evening?

7 A He said he need a taxi.

8 Q And why did he need a taxi? Did he tell you
9 that, what had happened to him?

10 A I asked him what happened. I got robbed, he
11 said.

12 Q He said he got robbed?

13 A Yeah.

14 MR. PETIT: Nothing further, Your Honor.

15 THE COURT: Do you have any questions of Mr.
16 Dalil?

17 CROSS EXAMINATION

18 BY MR. MURPHY:

19 Q Sir, do you remember that incident? Do you
20 remember when that man came in?

21 A Yeah, yes.

22 Q Do you remember about what time in the morning
23 it was?

1 A It was around 4:00 o'clock I think.

2 Q About 4:00 o'clock in the morning you think?

3 A Yeah, in the morning.

4 Q And, sir, this is back in 1999. Do you
5 remember if this person was injured?

6 A Yeah, he is injured, yeah.

7 Q Describe it.

8 A His hand with a little bit blood, and his
9 shirt all messed up. That's all --

10 Q Do you remember blood coming from his head?

11 A Yeah, from his head and his hand, also.

12 Q From his head and his hand?

13 A Yeah.

14 Q Do you remember him asking you to call a taxi
15 for him?

16 A Yes.

17 Q And do you remember that what he said was that
18 he'd been kicked out of a car going to Rockville?

19 A First time he said that. And then when I
20 asked him, he got robbed.

21 Q Do you remember talking to Trooper Conte about
22 this?

23 A Yeah.

1 Q You didn't tell Trooper Conte that the man
2 said that he got robbed; did you?

3 A I think I told Trooper Conte at that time. I
4 don't remember.

5 Q You also said you did not remember what date
6 this was; is that true?

7 A That's right, I didn't.

8 Q And when were you asked to remember that
9 evening back in 1999?

10 A When Trooper Conte called me Thanksgiving Day.

11 MR. MURPHY: I don't have any other questions
12 for this witness.

13 MR. PETIT: I do, very briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. PETIT:

16 Q Do you know Hugo Sanchez?

17 A No.

18 Q Have you ever met this gentleman over here
19 before (indicating)?

20 A No.

21 Q You spoke to Trooper Conte on the 29th of June
22 of this year?

23 A Yes.

1 Q And Trooper Conte told you you'd be coming to
2 court here today at his request?

3 A Yesterday and today, also, yes.

4 Q And that was at his request?

5 A Yeah, I got the subpoena letter.

6 MR. PETIT: Nothing further, Your Honor.

7 THE COURT: May this witness be excused?

8 MR. PETIT: Yes.

9 MR. MURPHY: Yes, sir.

10 THE COURT: You are excused, sir. Thank you
11 for being here.

12 (Witness excused.)

13 MR. PETIT: The Defense rests, Your Honor.

14 MR. MURPHY: I call Detective Hula.

15 THE COURT: You're putting on rebuttal?

16 MR. MURPHY: Yes.

17 Whereupon,

18 DETECTIVE DEBORAH HULA

19 a witness, was called for examination by counsel on behalf
20 of the Commonwealth, and, after having previously been
21 duly sworn by the Clerk of the Court, was examined and
22 testified, as follows:

23

1 DIRECT EXAMINATION

2 BY MR. MURPHY:

3 Q Detective Hula, you've already been sworn.
4 You've already testified twice.5 When you met, when you finally met this
6 Defendant in Maryland, on the night of December 7th and
7 8th, the same night that you drew blood from him and
8 obtained his shoes, was he interviewed by police regarding
9 the car jacking?10 MR. PETIT: Objection, Your Honor. I'm not
11 quite sure if that has any relevance. If we can approach?

12 THE COURT: Why don't we approach the bench?

13 BENCH CONFERENCE

14 THE COURT: Where are you going with this?

15 MR. MURPHY: The Defense has just tried to
16 impeach Ms. Unangst on whether she has properly ID'd the
17 Defendant as the person who car jacked her car two days
18 earlier.19 This Defendant confessed that he did the car
20 jacking. I mean there's no question about that. There's
21 no way this jury ought to be left --22 MR. PETIT: Your Honor, if we can get
23 Detective Hula out of the witness box for a moment, why

FILED

1
AUG 21 AM 10:09

CLERK OF COURT
FAIRFAX COUNTY

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - -x
:
COMMONWEALTH OF VIRGINIA, :
:
-vs- : CRIMINAL DOCKET NO. 99324
:
HUGO A. SANCHEZ, :
:
Defendant. :
:
- - - - -x

Circuit Courtroom 4E
Fairfax County Courthouse
Fairfax, Virginia

Wednesday, August 22, 2001

The above-entitled matter came on to be heard
before THE HONORABLE GAYLORD L. FINCH, JR., JUDGE, in and
for the Circuit Court of Fairfax County, in the
Courthouse, Fairfax, Virginia, beginning at 9:30 o'clock
a.m..

APPEARANCES:

On Behalf of the Commonwealth:

JOHN R. MURPHY, ESQUIRE
Assistant Commonwealth's Attorney

On Behalf of the Defendant:

CRYSTAL A. MELEEN, ESQUIRE
TODD G. PETIT, ESQUIRE
Office of the Public Defender

Also Present:

Anna Cisneros, Clerk's Office
(Interpreting for Decedent's Father)
Alicia Venturi, Interpreter
Ana Lorena Lefebvre, Interpreter
Paul V. Leach, Interpreter

* * * * *

E X H I B I T S

FOR IDENTIFICATION IN EVIDENCE

Commonwealth's Exhibit No. 13	32	-
Commonwealth's Exhibit Nos. 14-17	157	-

1 MS. MELEEN: Thank you.

2 MR. PETIT: Thank you.

3 OPEN COURT

4 THE COURT: Mr. Murphy, are you ready to
5 proceed?

6 MR. MURPHY: Yes. Ladies and gentlemen, first
7 of all, I want to thank you for your time and attention in
8 this case. You've been a very attentive jury. Everybody
9 on both sides has noticed that, and that is something
10 which everybody appreciates.

11 This is my opportunity to present to you final
12 argument in light of the evidence that you have heard and
13 also in light of the jury instructions that you just
14 received from the Court.

15 Those instructions, as we mentioned at the
16 beginning of this case, are instructions you will have in
17 writing. So what the Judge just told you is also
18 something that you'll be able to sit down and read for
19 yourself when you get back there.

20 And in my argument to you now, I'm not going
21 to reread all the instructions to you. However, I am
22 going to draw your attention to certain instructions that
23 are particularly relevant in every case, and particularly

1 to what is called the finding instructions, that is the
2 instruction that lays out the elements -- what lawyers
3 call the elements of the offense. Basically they're
4 building blocks upon which various charges are made.

5 In this case, there are four elements to the
6 charge of felony hit-and-run, and this is in Instruction
7 1. I want to go over these, because what you find is that
8 in every case certain facts are contested and certain
9 facts are not. Not everything is at issue in every case,
10 and this case is no different.

11 In this case, certain things are not at issue,
12 and it may be of assistance to you when you go back there
13 and you review all the evidence to realize up front what
14 is basically admitted and what is not.

15 In this case, element number one of hit-and-
16 run is that Hugo Sanchez was the driver of a vehicle which
17 he knew was involved in an accident.

18 Now half of that sentence, at least, is not in
19 contest, because if you look at the photographs here of
20 this vehicle, anybody -- anybody who was driving it would
21 know it was in an accident.

22 You can probably imagine just using common
23 sense certain types of hit-and-run cases where maybe it

1 would be a question, did the driver even know that they
2 had hit anybody. That's why you have language like that.

3 But in this case that's not applicable.

4 That's not really part of the question.

5 Similarly, number two, that the accident
6 caused personal injury or death to another. Again, not at
7 issue in this case. There's no question two people die in
8 the wreck, a third is left for dead, lying in a creek near
9 the bushes.

10 Third, that the driver, in this case Hugo
11 Sanchez, knew or should have known that another person was
12 injured by the accident. Again, no question about that.
13 When you look at this car, this car is pulverized.
14 Anybody that claws their way out of this car knows -- has
15 to know and have reason to know that people are injured,
16 that people are hurt.

17 And of course there is blood in that car that
18 also is silent testimony to that, the violence of this
19 accident.

20 And number four, that the driver, and in this
21 case he is named as Mr. Sanchez, because that's the
22 charge, failed to do any of the following: A) stop
23 immediately as close to the scene of the accident as

1 possible without obstructing traffic.

2 Again, in this particular case that's not such
3 an issue, because the car is undrivable. So again, you
4 can probably imagine why this language is in here.
5 Certain kinds of hit-and-runs, the vehicle leaves the
6 scene. In this case, not required.

7 B) Render all reasonable necessary assistance
8 to any person injured in the accident. B did not happen.
9 The testimony is un rebutted. Mr. Marquez -- that he was
10 left for dead. When he woke up, he was alone in the
11 woods. He staggers up to the roadway, actually and then
12 has to walk along the roadway until he can find someplace
13 with a phone.

14 And C) that the driver reported his name
15 address, driver's licence number, and vehicle registration
16 number forthwith to the State Police or local law
17 enforcement agency or to the person struck and injured if
18 the person appears to be capable of understanding and
19 retaining the information.

20 None of that happened. Marquez -- and we know
21 why it didn't happen in real life. We know that this
22 didn't happen because that was a car that had been
23 carjacked two days earlier, forty-eight hours earlier, and

1 nobody was going to report that to the State Police.

2 Ladies and gentlemen, I would suggest to you
3 that when you look at this instruction, what you realize
4 real quick is that the issue is number one. The issue in
5 this case, the only thing that's really contested, is that
6 Hugo Sanchez was the driver of the vehicle. And then the
7 rest of it flows from that.

8 If you think he's the driver, the rest of it
9 isn't even argued in this case. The question is do you
10 believe he's the driver. That's what I want to address in
11 my arguments to you today.

12 The defense in this case is that the defendant
13 was not there, and that's Instruction J. The defendant
14 relies on the defense that he was not present at the time
15 and place the alleged offense was committed. And of
16 course if he's not present, he couldn't be the driver.

17 Now I'd like to review with you the evidence,
18 because some of this evidence is eyewitness testimony,
19 some of this evidence is fair inference on the
20 circumstances, what is called circumstantial evidence, and
21 there is some evidence that is scientific evidence.
22 You've got all three types in this case.

23 I want to say a word about circumstantial

1 evidence. In layman's term, circumstantial evidence
2 sometimes has an almost pejorative meaning. We think of
3 it as second-class evidence. Not so under the law. I'll
4 give you an example of circumstantial evidence.

5 If you go to bed in the evening and you look
6 outside -- this is on a winter evening, and when you look
7 outside you see there's no snow on the ground, you go to
8 bed and you sleep, and when you wake up, there's a foot of
9 snow on the ground, that is circumstantial evidence that
10 it snowed.

11 And it's perfectly good. It's absolutely good
12 evidence. There's nothing wrong with that, and as a matter
13 of law as you will read in other instructions,
14 circumstantial and direct evidence are equally valid.

15 You have all three in this case. You have an
16 eyewitness. You have really more than one eyewitness.
17 And you have scientific evidence and you have
18 circumstantial evidence.

19 I'm going to talk to you about all three and
20 how all three lead, inevitably, to this defendant.

21 You heard first from Ms Unangst. Ms. Unangst
22 is the lawful owner of the vehicle. She is the one that
23 had custody of it. She's driving it and she is accosted

1 by this defendant, and she says one other person that she
2 does not know.

3 They are armed. You have heard her testify.
4 You heard her tell you what they were saying to her, what
5 they were ordering her to do, how they were ordering her
6 to do it.

7 She has testified that this defendant appeared
8 to be the leader between those two individuals, that he
9 was the one giving the orders, that he seemed to be in
10 charge. And that this defendant drove away in her
11 vehicle. She has identified him in court.

12 Now, defense counsel has suggested that she
13 might be wrong about that. But I would suggest to you,
14 ladies and gentlemen, that the hurdle the defendant has is
15 that we know at the end of this story, the defendant's
16 DNA -- six billion to one -- DNA is in that vehicle.

17 So I would suggest to you when Ms. Unangst
18 says, "This is how somebody I don't know got in my car,"
19 and you know as a matter of sheer science, he did get in
20 that car, I would suggest to you, ladies and gentlemen,
21 you can believe Ms. Unangst.

22 She was positive in court today, or rather,
23 when she testified -- I guess that's two days ago -- and I

1 would suggest that you can believe her.

2 Forty-eight hours go by, and where do we see
3 this car again? We see it at a party in Maryland. At
4 that time the defendant is calling attention to himself,
5 because he's driving around in this late model car, brand
6 new car.

7 He himself is young, very young, not the sort
8 of person you expect would be driving around in that car.
9 He's in his early twenties, he appears to be.

10 And he is noticed by Sandra Contreras, who you
11 also heard testimony from. She tells you she's brought
12 two individuals, one who winds up dead and then one who
13 you've heard testify, Johnny Marquez.

14 She drops them off, and she notices this car
15 and she notices the defendant. And you've heard testimony
16 from Trooper Conte that she told him this two years ago.
17 This isn't something that is brand new.

18 Ms. Contreras has been here for two years to
19 say that she saw this car -- noticed it that night and
20 noticed the individuals that were driving, because it was
21 unusual. It didn't match. It was something that didn't
22 fit for her.

23 And she has identified this defendant as

1 driving that vehicle just hours before this wreck. You
2 can believe it because, again, you already heard from
3 Unangst, and you can believe it, again, because you know
4 how this story ends up. You've read the last page. He
5 winds up bleeding all over that car.

6 He is driving at that time. That's what you
7 would expect. And you know two other things. You know
8 two other people don't have cars at all. Johnny Marquez,
9 he's been dropped off, so he doesn't have a car, and one
10 of the victims in this case, Ronny, he doesn't have a car,
11 because they've both been dropped off. So you know a
12 couple of other things.

13 You next hear from Johnny Marquez. And again,
14 ladies and gentlemen, I think we talked about this a
15 little bit in voir dire, but I will say it again so
16 there's no doubt in anybody's mind. I am not here to ask
17 you to like Johnny Marquez, or to think Johnny Marquez is
18 a great guy, or to think he hangs around with great
19 people. You don't have to believe any of that about
20 Johnny Marquez.

21 But I would ask you to consider one thing,
22 that Johnny Marquez has been candid with you. He's not
23 trying to hide the ball. He gets up and he says quite

1 candidly that he was using drugs that night, he was
2 drinking that night, along with everybody else he's with,
3 including the defendant.

4 And he gets in that car that night. And
5 nobody put a gun to his head and said he had to go along
6 for the ride. He was there voluntarily. He admits it.
7 But he tells you that in that car were two people who wind
8 up dead.

9 And he's not the person trying to kick his way
10 out of this mangled wreck. And you can look at this photo
11 for yourself. He's not the one at the driver's window,
12 the interior window, putting his full foot on it trying to
13 push it out. He's not wearing seven-and-a-halves.

14 And then you have the DNA evidence. DNA
15 evidence, of course, speaks volumes. DNA evidence says
16 without question that this defendant gets in the vehicle.

17 Now, obviously, if you believe the defendant's
18 brother who testified, or the defendant's friend who
19 testified, then there's no explanation for that. There's
20 no explanation for how his DNA, without question, winds up
21 in the car and indeed in the driver's seat.

22 However, I would suggest to you, ladies and
23 gentlemen, that if you put more credit in what you heard

1 from the Commonwealth's witnesses, then you know exactly
2 why. You know the full history. You know how he got the
3 car, you know where he went or at least where he went two
4 days later, you know he was driving that night and
5 partying that night, and you know he wrecked.

6 And you know that when he wrecked he, along
7 with everybody else in there, was bleeding.

8 I would suggest to you, ladies and gentlemen,
9 that that is a cogent and coherent explanation, the kind
10 of explanation that a jury ought to demand in a case and
11 that a jury gets in this case.

12 And we know that the violation occurred.
13 Again it's not contested that a hit-and-run did not occur,
14 but I'll just remind you, Johnny Marquez clearly bleeding,
15 bleeding from the head, two people are dead, at least by
16 the time the police get there.

17 Let's assume for the sake of argument they
18 were always dead, but obviously it's even worse for the
19 defendant if they were still alive and moaning or
20 something like that. You don't have any evidence one way
21 or the other. We only know that by the time the police
22 arrive, they're dead.

23 But this defendant leaves at least one

1 person, Johnny Marquez, lying there bleeding on the
2 ground. We know that Marquez is hurt badly. We know that
3 he staggers up -- and again, you haven't seen the
4 photographs yet, but you will. He staggers up from the
5 wreck, to a guardrail that leads onto the public road.

6 You can almost picture him in your mind,
7 getting to the guardrail and putting his hand down and
8 bleeding on that. You've heard testimony about that.
9 Marquez's blood is on the guardrail as he claws his way
10 back to civilization.

11 And you know that when he staggers into the
12 gas station, he's bleeding about the head, he's bleeding
13 in the hand, and he tells you he's out of it.

14 Clearly this is a man that needed help. He
15 winds up going to the hospital two days later. He's got
16 broken ribs from this injury and he's obviously got cuts
17 in the head area, because something is obviously bleeding
18 from the head area.

19 So there's no question this is a man that
20 needed treatment. He needed assistance and he didn't get
21 it. He had to wake up on his own, face down, and then he
22 had to find a way to get to a telephone, find a way to get
23 home.

1 I would suggest to you, ladies and gentlemen,
2 that this is a very common sense statute. This statute
3 says -- basically the idea behind this statute is
4 accidents are a terrible thing, but they're a lot worse
5 when people who are in a position to help don't help, when
6 people are only thinking about themselves and trying to
7 get away because the vehicle was hot, or because they just
8 don't care, or for whatever other concern they may have.

9 I would suggest to you, ladies and gentlemen,
10 when you look at all of this evidence what you will find
11 is that this defendant is the person who had control over
12 that car from the time it was forcibly taken from Ms.
13 Unangst, that this defendant is seen driving the car, that
14 he's the person you expect to see driving the car given
15 the fact that you know he took it to begin with and you do
16 see him do that.

17 The scientific evidence corroborates that that
18 happened, and the eyewitness -- however unsavory character
19 he may be -- the eyewitness also comes to court and tells
20 you candidly this is how it happened.

21 And remember about that footprint, too. It's
22 not just that it's a size seven. There's a little more to
23 it than that.

1 There is a discussion which Andrew Johnson had
2 on the witness stand. He of course was the expert witness
3 that had to be called out of order. But he points out to
4 you it's not just that they're size sevens. It's that
5 there's wear on them where the tread has been erased in a
6 certain kind of way.

7 Any of us who have had old shoes maybe
8 recognize that as a shoe is worn over time we leave our
9 imprint on it, our own style, the way we walk, our stance,
10 how we balance ourselves on our feet.

11 And Mr. Johnson points out in this case these
12 shoes aren't just another pair of size sevens. These
13 shoes aren't just another pair of size sevens that happen
14 to be Reeboks.

15 These shoes have the same wear pattern.
16 There's nothing totally unique about them, you know,
17 there's not some point where he stepped on a nail and left
18 some impression that, you know, "Man, it's got to be these
19 shoes."

20 But you see the wear patterns are the same.
21 And again we're combining this with everything else that
22 we know about this case.

23 The defendant apparently -- since his DNA is

1 in the car, apparently wants you to believe he was in the
2 car at some other time. But why was he in the car
3 bleeding at some other time? Is that logical that he's
4 in the car bleeding but not when the car is totaled, that
5 it happened some other time?

6 Is it logical that he's pressed his foot up
7 against the interior driver's window as though to try to
8 get out of the car -- is it logical he did that for some
9 other reason at some other time? Can we think of some
10 other reason?

11 Really, using common sense -- there's twelve
12 of you here on this jury. Combining twelve different
13 lifetimes of common sense, can you think of another
14 reason, a reasonable explanation for why this defendant
15 at some other time felt the need to be in the driver's
16 seat, pushing at the window with his foot?

17 Ladies and gentlemen, eventually when you
18 consider the bleeding, when you consider the foot, when
19 you look at the evidence of the wreck and the predicament
20 that he was in after he had wrecked the car, when you
21 consider the eyewitnesses from many different walks of
22 life -- Ms. Unangst is from a very different world from
23 Sandra Contreras -- but they all come and tell you he's

1 the driver.

2 When you consider all of it, I suggest to
3 you, ladies and gentlemen, this defendant is guilty. He
4 is guilty, and it's been proven in a variety of ways. I
5 ask you to find him guilty of this offense. Thank you.

6 THE COURT: Mr. Petit, are you prepared to
7 make your argument?

8 MR. PETIT: Yes, sir. Thank you.

9 THE COURT: Go ahead, please.

10 MR. PETIT: Good afternoon, ladies and
11 gentlemen. I'm glad that Mr. Murphy brought up common
12 sense, because I will get to that later. That's
13 precisely one of the things that I want you folks to use,
14 is your common sense. We'll get to that a little bit
15 later.

16 The first thing that I want to point out is
17 that Mr. Murphy says it's not logical for this to have
18 happened the way the defendant said, it's not logical for
19 the way this happened.

20 There's no burden of proof on Mr. Sanchez.
21 There's no burden of proof at all for him. The Judge
22 told you he didn't have to testify. He doesn't have to
23 put on any evidence. He doesn't have to prove himself

1 innocent. The Commonwealth must prove him guilty beyond
2 a reasonable doubt. Any reasonable doubt whatsoever that
3 is in your mind requires you to find Mr. Sanchez not
4 guilty.

5 If you think he was driving the car, if you
6 suspect he was driving the car, if you think he even
7 probably was driving the car, that's not sufficient,
8 because all of those words -- think, suspect, probable --
9 means that there is a reasonable doubt.

10 And Mr. Murphy, as the Commonwealth's
11 Attorney, has to prove it beyond a reasonable doubt. And
12 when you look at all the evidence there are mountains and
13 mountains of reasonable doubt.

14 You're going to be getting Instruction I.
15 Mr. Murphy already made a point of it. And again, the
16 first one is probably the most important instruction, the
17 first element. He has to prove that Hugo Sanchez was the
18 driver of the vehicle in the accident. Mr. Murphy is
19 right; that's the most important aspect, but he also has
20 to prove the other ones.

21 He has to prove that the accident caused
22 personal injury or death. We stipulated to that, we
23 agreed to that, there's no way around it. It was a

1 tragic accident. A lot of family members were touched by
2 this, and we stipulated to that. But that doesn't mean
3 that simply because somebody got hurt that we have to
4 hold him responsible, because he wasn't there.

5 The driver also has to know that another
6 person was injured by the accident. Whoever the driver
7 was likely would have known that somebody was injured.
8 But then they have to do -- on element four, they have to
9 do one of three things: stop immediately as close to the
10 accident as possible. Well, Mr. Murphy told us that was
11 not really an issue.

12 Number two. Render all reasonable and
13 necessary assistance to any injured person. Now, Mr.
14 Murphy said that's not really an issue, but I disagree
15 with that. Johnny testified that people dragged him out,
16 and they were touching him, and what did he hear? "He's
17 dead."

18 Mr. Murphy wants you to think that whoever
19 these people were that dragged him out of the car were
20 callous people and just left him to die. No. Johnny
21 said they said, "He's dead. He's dead." Now, whoever
22 left probably shouldn't have left, but they did.

23 But everybody, according to Mr. Marquez, is

1 thought to be dead. So reasonable assistance -- they're
2 dead, there's nothing these people could do.

3 Then the final issue is that they have to
4 report his name, his driver's license, his address, his
5 vehicle ID number forthwith to the State Police or local
6 law enforcement. Now, Mr. Murphy just summarily said,
7 "Well, we know that didn't happen." The burden of proof
8 is on the Commonwealth. How do we know that wasn't
9 reported?

10 Mr., I believe, Donald Lee came in and said,
11 "I got a report, and I went to the scene and I checked it
12 out." Where did that report come from? Was it the
13 driver of the vehicle? Was it Hugo Sanchez? Was it
14 somebody else? I don't know. Mr. Murphy just kind of
15 skates over that.

16 It's his burden of proof. It's not Mr.
17 Sanchez's burden of proof to say, "I called the police."
18 It's the Commonwealth's burden to show that it didn't
19 happen. But Mr. Lee showed up at the scene.

20 A small issue in this case, and I'm not going
21 to go on about it, but it's an issue nonetheless. And
22 it's characteristic -- it's characteristic about this
23 entire case.

1 There are almost no facts that put Mr.
2 Sanchez in that car, let alone driving the car at the
3 time of the accident. And that's the only reason I bring
4 that up. It's characteristic of what the police did.

5 How many times did we hear Ms. Unangst's
6 name -- however I pronounced it -- and about the theft of
7 her vehicle? Out of all the testimony that you heard,
8 out of everything that was brought into trial, how many
9 times did the Commonwealth mention Ms. Unangst, her name,
10 what happened on the 23rd of November?

11 They keep shouting it out -- Unangst,
12 Unangst, Unangst. What does that have to do with a hit-
13 and-run? Nothing.

14 The Commonwealth wants you to say, "Well, the
15 reason that Mr. Sanchez didn't call the police" -- of
16 course they have no evidence of that -- "the reason he
17 didn't call the police was because the car was stolen,
18 and that's why it's relevant."

19 That's not why. That's not why he brought it
20 in. He wants you to keep looking over there
21 (indicating). It's like a flashing light -- Unangst,
22 Unangst -- that's her vehicle on the 23rd, because he
23 doesn't want you to look over here (indicating), because

1 over here is where the hit-and-run facts are.

2 These are the important facts, but if he
3 keeps saying this over here (indicating), he wants you to
4 get so upset that he's alleged to have been involved in
5 this theft, that you're going to not care about the facts
6 of the hit-and-run, the facts that you're here to decide.

7 It's a distraction. It's a red herring.
8 Muddy the waters enough so the jurors don't know what
9 they're looking at, they're going to be so upset about
10 this theft a few days earlier that they're going to want
11 to get Mr. Sanchez on this case.

12 Ladies and gentlemen, I ask of you not to
13 fall into that trap. Whether you believe the theft
14 occurred and Mr. Sanchez was there or not I submit to
15 you, ladies and gentlemen, doesn't matter.

16 When you look at Instruction I, you'll never
17 see Ms. Unangst's name. You'll never see the date
18 November 23rd. You'll never see the word "stolen." You
19 won't see any of those words.

20 You will see that you have to find that at
21 the time of the accident, Mr. Hugo Sanchez was in the
22 driver's seat, he didn't render assistance, and he knew
23 people were hurt. That's it. Don't let the Commonwealth

1 lull you into thinking that you can convict Mr. Sanchez
2 on the hit-and-run because of an allegation two days
3 earlier.

4 At the beginning of the case I told you that
5 Johnny Cerrato Marquez should be sitting in this chair,
6 not Mr. Hugo Sanchez. And the reason that Mr. Hugo
7 Sanchez is sitting in this chair today is because of what
8 I call police mentality.

9 What is police mentality? Police mentality
10 is the police make their assumptions and do their
11 investigations, come to conclusions and come to court to
12 tell you that their conclusions are, in fact, true and
13 factual. That's what I consider police mentality: they
14 did the work, we know it's right, and you have to accept
15 what we've done.

16 Why do I bring that up? Because I believe
17 you saw with Detective Hula, and I believe you saw it
18 with Andrew Johnson, who did the shoe print impressions.
19 He's been an expert for eight and a half years, doing
20 forensics, and doing fingerprints, and shoe prints, and
21 other impressions. He works for the Commonwealth of
22 Virginia.

23 What did he do before he did the expert work?

1 He was a Fairfax County police officer for twenty years.

2 Fairfax County police officers enforce the
3 laws, come to court and testify.

4 Your Honor, if I may approach -- oh, excuse
5 me. Mr. Murphy has the exhibits. I'm sorry. Oh, he
6 returned them?

7 (Mr. Petit and the Clerk conferred, off the
8 record.)

9 THE COURT: Just take your time.

10 MR. PETIT: Yes, Your Honor.

11 Commonwealth's Exhibit No. 3, the report by
12 Andrew Johnson, says what happened, and what he did, and
13 what the results were. Before I read you what his
14 results were here, let's review what he said on the
15 stand.

16 He said that the striations, I believe were
17 his words, are consistent and that this seven-and-a-half
18 size sneaker -- I believe it's seven-and-a-half and not
19 seven -- seven-and-a-half -- this seven-and-a-half size
20 sneaker was the exact sneaker that made the impressions
21 on the car -- the exact one. That's what he said when he
22 was asked by the Commonwealth attorney.

23 What conclusions did you make? "This exact

1 sneaker" -- and then he backed off a little bit -- "or
2 one exactly like it made the impressions." Those were
3 his words, "exact." And on cross I asked him, "Well,
4 wait a second, wait a second. It could have been a
5 different sneaker; right?"

6 "Well, yeah."

7 "It could have been a little bigger, could
8 have been a little smaller?"

9 "Yes."

10 Let's see what his paperwork says. "Item 37
11 conforms to 44A right shoe with respect to size." Well,
12 wait a second. He just said it could have been a little
13 bigger or a little smaller.

14 So now, which is right, this paperwork that
15 says it's consistent to size or his testimony that says
16 it could have been a little bigger or a little smaller?
17 Police mentality.

18 He knows that these sneakers caused these
19 impressions because the police brought them to him and
20 they have their suspect. So he gets up on the stand and
21 says, "The exact same sneaker or one exactly like it" --
22 I'm not quite sure what that means -- created these
23 impressions.

1 "Well, yeah, it could have been a little
2 bigger or a little smaller."

3 "So I guess it's not really exactly, is it?"

4 "No."

5 "Is there a difference between exact and
6 consistent?"

7 Yes, he does admit that.

8 "Also conforms to outsole design and
9 manufacturing techniques. A further association between
10 these impressions and Item 44A, right shoe, could not be
11 made due to indistinct nature of impressions."

12 These impressions are so indistinct, other
13 than to say, according to the paperwork the size was the
14 same, but according to his testimony, it wasn't -- and if
15 manufacturing techniques and outsole designs are the
16 same, he can't tell.

17 No further -- and let me get this right -- no
18 further association between the impressions can be made.

19 What did he tell you when he testified?
20 Exact (indicating). Not exact. We don't even know if
21 it's the right size. "We know it's a Reebok
22 manufacturing technique." We're not even sure if we know
23 it's a Reebok. We just know it's the same manufacturing

1 technique.

2 How many Reeboks are made in this country, or
3 Taiwan, or wherever they make Reeboks? How many people
4 own Reeboks?

5 So really, Andrew Johnson doesn't know much
6 of anything about these impressions other than they may
7 or may not be right. Police mentality. He got the
8 sneakers from the suspect. The suspect's written on his
9 lab sheet when he got it, and he knows he's received it
10 from F.W. Scott. He knows he's supposed to analyze it
11 because they believe they go together. So he comes in
12 here and testifies "exact." Police mentality. Twenty
13 years as a police officer.

14 I'm not saying police are here to frame
15 people. I'm not here to say police are planting
16 evidence. But they are here to get their convictions.
17 And when they know -- when they've come to their
18 conclusion that they know who it is, that's all they look
19 at. And you're going to see that as we look at more of
20 the evidence.

21 Let's assume that you accept the
22 Commonwealth's position that these sneakers did, in fact,
23 make the impressions. I have to accept the fact that you

1 might accept the Commonwealth's evidence that beyond a
2 reasonable doubt this sneaker made those impressions.
3 What does that show you?

4 It tells you that at some point, these
5 sneakers were worn by somebody -- they want you to infer
6 that it was Mr. Sanchez -- who was in the car. Great.
7 The shoe was in the car. It doesn't tell you when. And
8 Mr. Johnson told you that. "I don't know who wore the
9 sneakers. I don't know when the impressions were made.
10 I don't know how they were made."

11 Mr. Murphy, again, wants you to make that
12 leap. "Well, it must" -- and remember, nobody testified
13 to this. How else did it get there? He goes on banging
14 on the window with his feet to get the door open. Nobody
15 testified to that. That's his argument.

16 And that's important. Nothing that I say
17 here today is factual. I'm making my argument to you.
18 And I'm making my argument based on what I heard and what
19 I saw. Mr. Murphy is doing the same thing. But nobody
20 testified that Hugo Sanchez was banging on that window
21 trying to get out after the accident.

22 That's argument. That's his interpretation.
23 He wants you to make that leap. "Well, the impression

1 must have been made after the accident because he was in
2 the driver's seat."

3 When you look at the other evidence, that's
4 not -- there's other evidence that shows that that's not
5 what happened, but there's no evidence that shows that
6 that argument is sound. There's no argument to show that
7 beyond a reasonable doubt that's how that impression got
8 there.

9 Ms. Contreras also testified. And she
10 testified that she saw Hugo Sanchez back in 1999 getting
11 into the green car. And she said this is Hugo Sanchez,
12 the same person that she saw in 1999. She probably
13 believes that. I have no reason to doubt that, that she
14 believes it.

15 What I do doubt is that it's true. And why
16 do I believe you should doubt that? Three years ago,
17 1999, she drops her boyfriend off at a party, she sees
18 two Hispanic males -- excuse me -- she sees one Hispanic
19 male -- we don't know if the second person is even
20 Hispanic -- she sees one Hispanic male walk by her car
21 and get into the green Honda.

22 She said she glanced at him -- glanced --
23 for ten seconds. Three years ago she glanced at somebody

1 for ten seconds, and yesterday said, "That is definitely
2 the man that I saw for that ten second period, when I
3 glanced at him while I was dropping my boyfriend off at a
4 party."

5 Ladies and gentlemen, I have no doubt that
6 she believes that. She went through a horrible thing --
7 her boyfriend dying in a car accident. But what else did
8 she tell you? "The police told me that I would be coming
9 to court today to identify the person I saw that night."

10 It's not Mr. Murphy. It wasn't me. I'm not
11 Hispanic. It wasn't Ms. Meleen. Where is the only
12 Hispanic man in the well of the courtroom? It was him.

13 She was told by the police she'd come to
14 court to testify, to identify the person who she saw that
15 night. The person she saw for ten seconds, three years
16 ago -- has never seen him since. That's not logical to
17 be able to support that. She believes it's him because
18 he's here in the courtroom and he's the one they charged.
19 That's what she believes.

20 Why does she believe it? Because the police
21 told her. Police mentality. "We know who did it. We
22 don't care what the facts show. We know who it is." And
23 that's what they keep trying to tell you. They're not

1 trying to show you the facts. They're trying to tell you
2 their conclusion. And ladies and gentlemen, you are the
3 ones to decide what the conclusion is.

4 DNA. Was Mr. Sanchez's DNA in the car? Yes.
5 No doubt about that. His DNA was in the car. I'd like
6 to compare and contrast a little bit the testimony -- if
7 we can back up a little bit -- of Mr. Johnson and Mr.
8 Bryan Edmonds.

9 Mr. Edmonds has never been a police officer.
10 You hear his qualifications: went to school, he's been
11 working in the forensics lab, he's been a scientist.
12 That's his job. He wasn't a police officer for twenty
13 years.

14 You know, compare and contrast how Mr.
15 Johnson testified to how Mr. Edmonds testified. I
16 already pointed out Mr. Johnson was -- had conclusions,
17 exact, even though his report says no, not exact. He was
18 trying to convince you.

19 Mr. Edmonds did not do that. Mr. Edmonds is
20 a scientist. Scientists are supposed to be unbiased. He
21 tells me, "Yes, I did this, I did this, I did this. Yes,
22 it came back as Hugo Sanchez's DNA. Yes, it came back as
23 a mixture. Yes, it came back with Johnny Cerrato

1 Marquez."

2 He told you all that factually; didn't try to
3 tell you, "Well, this defiantly means someone was in the
4 driver's seat," or, "That definitely means that he was in
5 the accident," or "That it was definite." He didn't do
6 that. He prepared his report and put in facts. And
7 you'll see this report because it's been moved into
8 evidence. You'll see the report.

9 And you will see all of the DNA that was
10 collected and that could be identified, and will show the
11 DNA of Hugo Sanchez by the door, the driver's side door.
12 And it is, as Mr. Murphy pointed out, a one in 2.8
13 billion for the Hispanic population -- six billion in
14 Caucasian black, but one in 2.8 billion. That's still
15 pretty good odds.

16 Mr. Murphy didn't point out Page 9 of that
17 report. And you'll remember Page 9 -- you won't remember
18 but you'll see Page 9, regarding the other blood that was
19 found, the other DNA that was found in that car.

20 What other DNA? Johnny Cerrato Marquez.
21 Johnny Cerrato Marquez's DNA is found on the driver's
22 seat air bag that had exploded. It is found on the
23 driver's seat headrest. It is found on the driver's seat

1 cushion. All around that area.

2 Mr. Hugo Sanchez had one portion of DNA in
3 the driver's side door. Mr. Sanchez sits here
4 (indicating). Mr. Cerrato Marquez sits outside with the
5 witnesses. Police mentality.

6 And remember again Ms. Unangst -- police
7 mentality there.

8 And before I forget, I do want to point out
9 that on the first page of this, Johnny Rigaberto Cerrato
10 Marquez is under suspect. He apparently was a suspect.
11 He's the one out there. This report, as I read it, makes
12 it much more likely -- much more likely that he was the
13 driver than Mr. Sanchez, sitting here (indicating).

14 You're also going to get this chart which was
15 moved in as Exhibit B, and that was a report that was
16 done by Officer Huff. And he'll have all those numbers
17 around it.

18 Remember, we circled that number here -- I
19 believe it was 117 -- to make sure you could read it.
20 And that's the left front door inside and that's the DNA
21 of Mr. Hugo Sanchez, left inside door.

22 This chart does not include, ladies and
23 gentlemen, the items that were taken by Trooper Scott,

1 Special Agent Scott. That is not on there.

2 And what did Trooper Scott take? The
3 driver's seat air bag, the headrest, and the cushion. He
4 took other things as well. Those are the important ones.
5 And you're going to see some numbers back here
6 (indicating) as well. We have 100, 102, 104, 119 --
7 they're a bunch of numbers in the back seat.

8 I believe it was the last question that Mr.
9 Edmonds answered on cross examination. "Did you find any
10 of Johnny Cerrato Marquez's blood in the backseat?"
11 And he looked through his paperwork and Mr. Edmonds said
12 no -- the backseat where Johnny Cerrato Marquez says he
13 was sitting at the time of the accident, the same seat
14 that he was in when his face got all bloody, the same
15 seat he was in when his ribs got broken and when his head
16 got bloody somehow as well, that same seat where all of
17 this happened was in the backseat.

18 Mr. Edmonds says none of Johnny Cerrato
19 Marquez's blood is in the backseat. Where does he say it
20 is? All around the front seat.

21 Mr. Murphy wants you to think how else did
22 Mr. Sanchez's blood get in the front door? He must have
23 been the one who was driving. I wish the same logic had

1 been used by the police when they got these reports
2 showing Johnny Cerrato Marquez's blood all over the front
3 seat, on the air bag, on the headrest.

4 And the headrest -- the driver's seat
5 headrest? It wasn't on the back of the headrest. I'm
6 pretty sure the police officers would have brought that
7 out. "Well, that swab was from the back." I'm pretty
8 sure they would have brought that out to you. But they
9 didn't say where on the headrest. They just said on the
10 headrest, on the cushion, on the air bag.

11 I'm sure what Mr. Murphy's going to argue --
12 he gets another chance to come up and argue, I don't.
13 This is my only chance. I'm sure what he's going to
14 argue is, "Well, when he was dragged out of the car,
15 that's when the DNA got on there."

16 Even if you want to accept that -- even if
17 you want to accept that, wouldn't there be blood in the
18 backseat from Johnny? I can't imagine a situation where
19 there wouldn't be Johnny's blood in the backseat.

20 And let's not think that perhaps the police
21 didn't take all the swabs or they didn't test certain
22 swabs. First of all, they had two police officers -- two
23 State Police officers, one Special Agent, one Trooper --

1 go through the car twice, and they each took separate
2 swabs.

3 Special Agent Scott took out all that he
4 thought was important, cut out the air bag. The other
5 trooper comes in and follows behind him and takes what he
6 thinks is important. And they ask the lab to test
7 everything. They're the ones who ask to test everything.

8 Not one ounce of DNA in the backseat, where
9 Johnny Marquez claims he was.

10 So what does Hugo Sanchez's blood mean? It
11 was in the car. What does that mean? It means the exact
12 same thing that these shoe prints mean, assuming you
13 believe these are his shoe prints and he made them. It
14 means he was in the car at some point. At some point.

15 The Commonwealth seems to have put in the
16 same evidence over and over again. But it just proves
17 the same point. He was in the car at some point.

18 Ms. Unangst says that she was in the car --
19 he was in the car -- if you want to believe her, he was
20 in the car. No problem. I have no problem with that.
21 Bring in Sandra Contreras -- he was in the car. Great,
22 he was in the car.

23 Bring in a shoe print. Great -- he was in

1 the car. Bring in the DNA. Okay. We know he was in the
2 car according to the Commonwealth's testimony. Why do we
3 keep putting him in the car? Because they have nothing
4 else.

5 Mr. Murphy says, "Well, how do you explain
6 the blood?" Well, if it was a great big pool of blood or
7 if there was blood in four different parts of the car,
8 okay, maybe you have a difficulty explaining how the
9 blood gets there. You have one little piece of DNA by
10 the driver's side door.

11 Number 7, photograph number 7, Mr. Murphy
12 showed it to you. You will have this back there.
13 Pulverized is the word Mr. Murphy used. The car is
14 pulverized.

15 Two people have died. Johnny Marquez has
16 broken ribs, facial bleeding, and bleeding on his hand.
17 Whoever was in this car was seriously injured.

18 Hugo Sanchez has one little piece of DNA on
19 the driver's side door?

20 Detective Hula saw Hugo Sanchez on December
21 7th, I believe is the day she said, a week and a half
22 after Thanksgiving -- the same year, so it's not a
23 different year or anything, and that's when they took his

1 sneakers that he voluntarily gave up. That's the same
2 day that they took blood from Hugo Sanchez, that he
3 voluntarily gave up. "Sure, go ahead and take it. No
4 objection." Each witness said he had absolutely no
5 objections.

6 Did Detective Hula say anything about Hugo
7 Sanchez's injuries? Was there any evidence that he was
8 injured whatsoever; broken nose, broken hand, cuts on his
9 face, anything like that? No.

10 Again, so you think Detective Hula would have
11 brought that out, would have told you, whether asked or
12 not, that he was injured? I submit to you that she would
13 have. And she didn't. Why? Because he wasn't injured.

14 The Commonwealth's going to say that the air
15 bag saved him. An air bag is not going to save you from
16 every injury in this car wreck. You're going to have a
17 black eye. You're going to have broken ribs. You're
18 going to have -- the air bag comes out, the car ends up
19 like this (indicating). How fast do you think that face
20 hit that air bag? Quick enough to break someone's nose
21 or to cause a bloody nose? Quick enough to cause cutting
22 on the face? Those come out like that (indicating). It
23 explodes to that size that quick.

1 And whose blood is on that air bag? It's not
2 Hugo Sanchez. It's Johnny Cerrato Marquez.

3 You heard the testimony of two defense
4 witnesses -- Rosily Sanchez and Israel Montilla. They
5 both told you where he was on that evening. "We picked
6 him up in D.C., picked him up between 10:30 and 11:00, I
7 believe. We brought him to a party at my house,"
8 Israel's house. "He stayed with us until about 2:00
9 o'clock, maybe a little after, somewhere in there."

10 "How do you know it was after 2:00?" Mr.
11 Montilla says, "I remember a girl called me at 1:15. We
12 talked on the phone for forty-five minutes." The phone
13 call was after 1:00 o'clock. They didn't leave until
14 after he hung up.

15 Did you hear anybody say, other than Johnny
16 Cerrato Marquez, that Hugo Sanchez wasn't in D.C. being
17 picked up by his brother and his friends sometime around
18 11:00 o'clock, and that he wasn't at a party with his
19 brother and his friends? No.

20 Again, I have to anticipate what the
21 Commonwealth's going to say. My anticipation here is
22 that they're going to say, "Well, of course his brother
23 and his friend are going to say he was where they were.

1 Of course, they're his friend and his brother. They're
2 going to say anything that they want."

3 Well, if I'm with my brother and my friend, I
4 can't bring in the Pope to say I was with the Pope.
5 You're with who you're with. You can only have your
6 witnesses -- as Mr. Murphy says, he doesn't want you to
7 like Mr. Cerrato Marquez. He just wants you to believe
8 him.

9 Well, all I can do is bring in the witnesses
10 he was with. Those are the people that went to go pick
11 him up in D.C. Those are the people that came here
12 today. And nothing has impeached them. Nothing has made
13 them incredible -- incredible, like a former police
14 officer, now scientist, who says that, "It's exact --
15 well, not really." Incredible.

16 Not like somebody who could be charged with a
17 hit-and-run but points a finger at somebody else.
18 Incredible.

19 There is nothing that Mr. Sanchez, Rosily
20 Sanchez or Israel Montilla said to you, or was brought
21 out by the Commonwealth, that makes them incredible.
22 They told you where he was, and that's it.

23 Happily, this is my last point. What I told

1 you in my opening is that the Commonwealth's case hinged
2 on one piece of evidence: the testimony of Johnny
3 Cerrato Marquez. I told you that there would be
4 scientific evidence: the shoe print. I told you there'd
5 be DNA. I told that there'd be other witnesses saying
6 where they were.

7 I told you that one piece of evidence, and
8 one piece alone, is what the Commonwealth's evidence
9 hinges upon: Johnny Cerrato Marquez. Because none of
10 the other evidence that you've heard puts Mr. Hugo
11 Sanchez as the driver of the vehicle.

12 Remember -- Instruction I says that Hugo
13 Sanchez was the driver. The only person that puts Hugo
14 Sanchez as the driver is Johnny Cerrato Marquez. And
15 what do we know about him? We've already mentioned it.
16 We're going to go over it briefly because this is
17 important. Mr. Sanchez's life basically rests on it.

18 "I was in the backseat." Brian Edmonds: "No
19 DNA in the backseat." Hugo was driving; pulverized
20 vehicle. Johnny's DNA is on the seat cushion, on the
21 headrest and the air bag. Hugo Sanchez's door -- one
22 moment.

23 Johnny says he's drunk and high, drunk on

1 alcohol; not too drunk, you know, just a little drunk.
2 And he also did a little marijuana. and they come to him
3 and they said, "Do you know anything about this
4 accident?"

5 "I was drunk, I was high. Yeah, I was in the
6 backseat."

7 "Who did it?"

8 "Hugo Sanchez did it. He was the one
9 driving."

10 There are two dead people in the car. Do you
11 think he's going to admit that he was driving or is he
12 going to do like grammar school children when the teacher
13 calls him and says, "Johnny, were you just scratching
14 your fingernails on the board?"

15 "No, no, Mrs. Jones; it was him, it wasn't
16 me."

17 That's what Johnny Cerrato Marquez did: "No,
18 no, no, it wasn't me; I wasn't driving."

19 Did they take the lab results and then go
20 back to him and ask him, "Why is your DNA on the air bag;
21 Why is your DNA all over the driver's seat?" They didn't
22 ask those questions, or at least we don't know about them
23 if they did.

1 Why? Police mentality, ladies and gentlemen.
2 They have reached a conclusion that Hugo Sanchez did it.
3 Facts be damned. "He did it and that's who we're
4 charging."

5 Johnny Cerrato Marquez was a suspect, you see
6 it on the lab sheet, but he disappears as a suspect after
7 the DNA report, after the DNA report that puts him in the
8 driver's seat if you read it the way I read it.

9 Johnny goes down to the gas station, had this
10 big wreck, and he was robbed? Well, that's what Mr.
11 Mitra said. The police went to go see him on December
12 29th. He apparently told the police officer something
13 else, that he said he had just been beat up.

14 But either way, he goes down there and
15 doesn't say, "I was just in this big car wreck." He
16 doesn't say that to the gas station attendant. He says,
17 "I was robbed," or, "I was assaulted."

18 He's bleeding from the head, bleeding from
19 the hand, he's got broken ribs. The gas station
20 attendant says, "You need to go to the hospital."

21 "No; just call me a taxi."

22 If he was beat up or he was robbed -- he's
23 bleeding from the head, he's got broken ribs -- if he

1 truly believed that or if he truly was in the backseat of
2 this car, wouldn't he go to the hospital or at least call
3 the police to tell them he was beat up, he was robbed, or
4 he was in the backseat?

5 But what does he do? He lies about where he
6 was -- he wasn't sure what had happened, he wasn't robbed
7 or he wasn't beat up -- he was in a car accident. He
8 takes a taxi and he goes back to Maryland, and doesn't
9 say anything to anybody until the police come and talk to
10 him.

11 And that's when he remembers Hugo was
12 driving, when the police come to him. It's amazing what
13 the police can make you remember.

14 Forget all of the evidence, ladies and
15 gentlemen. Forget Rosily Sanchez and Israel Montilla who
16 tell you he was with them at the time of the accident.
17 Forget the DNA and the shoe print because it doesn't tell
18 you who was the driver. Forget everything that you heard
19 but the testimony of Johnny Cerrato Marquez. Because
20 that is the only evidence you have putting him at the
21 time of the accident in the driver's seat.

22 And, ladies and gentlemen, after you've done
23 all of that, you will come to the realization that Hugo

1 Sanchez was not in the driver's seat, that he should not
2 be in this seat (indicating), that Johnny Cerrato Marquez
3 was in the driver's seat, that Johnny Cerrato Marquez
4 should be sitting in this chair (indicating), and Johnny
5 Cerrato Marquez should be the one looking at a maximum
6 five years in prison, because the evidence is not there,
7 ladies and gentlemen, beyond a reasonable doubt that Hugo
8 Sanchez was driving that vehicle on the night of the
9 accident, and I would ask you to return that verdict of
10 not guilty.

11 Thank you.

12 THE COURT: Mr. Murphy, could you give an
13 estimate as to how long your rebuttal argument might be?

14 MR. MURPHY: Just about ten minutes.

15 THE COURT: If you can confine it to ten
16 minutes, I'd rather do it before we break for lunch.

17 MR. MURPHY: Yes, Judge.

18 THE COURT: But the cafeteria closes at 2:00.
19 I'd prefer that we could do it now.

20 MR. PETIT: Your Honor, If I could return
21 these exhibits here?

22 MR. MURPHY: Thank you, Your Honor. I can
23 get started right away.

1 THE COURT: Thank you, Mr. Petit.

2 Mr. Murphy, you may make your rebuttal
3 argument.

4 MR. MURPHY: Thank you, Your Honor.

5 Ladies and gentlemen, I'm going to try to
6 confine my rebuttal argument only to the points counsel
7 raised. There's a certain theme to the defendant's
8 argument, defense counsel's argument, and that theme, I
9 would suggest to you is basically this: look at every
10 little fact like it's a factoid, like it exists in a
11 vacuum, but whatever you do, don't ever put them all
12 together.

13 Look at the blood and the fact that there's
14 blood all in the vehicle, but don't ever consider that in
15 conjunction with the eyewitness testimony. And if you
16 consider the eyewitness testimony, don't remember while
17 you're doing it that you also know about scientific
18 evidence, and don't remember about the circumstantial
19 evidence.

20 I think you see my point.

21 Defense counsel's argument basically -- you
22 know, he talks about wanting you to use common sense, but
23 he doesn't want you to think about this case the way a

1 rational person in a search for the truth would think
2 about this case. He wants you to think about it in an
3 artificial way, where nobody's ever allowed to look at
4 more than one thing in conjunction.

5 He has said that there was a police mentality
6 afoot, and has accused virtually everybody of it,
7 including people who aren't police officers, like Sandra
8 Contreras. But he also points out to you that the police
9 had other suspects.

10 The police looked at Johnny Cerrato Marquez.
11 The police didn't sit there and say, "We like everybody
12 except Hugo Sanchez. We're going after Hugo Sanchez. If
13 we find something that doesn't fit the picture, we're not
14 going to consider it."

15 The police didn't go at it that way. They
16 looked at everybody. There is no reason why they should
17 like Johnny Cerrato Marquez any more than Hugo Sanchez.
18 If the evidence, all of the evidence, pointed at Marquez,
19 he would be sitting in that seat (indicating), but the
20 evidence didn't point there.

21 When the police looked at everything, talked
22 to everybody, that wasn't where the evidence went, and it
23 wasn't a police mentality. It was the mentality of,

1 "Let's find the person who is responsible for two people
2 dead and a third one left for dead, and let's hold that
3 person accountable for what they did."

4 It wasn't, "Let's nail the first person we
5 see and call it a day's work and go away."

6 This case took, as you know, two years to
7 bring together. It wasn't easy.

8 MR. PETIT: I'm going to object, Your Honor.

9 THE COURT: Do you want to approach?

10 MR. PETIT: Certainly, Your Honor.

11 BENCH CONFERENCE

12 THE COURT: What's the basis of your
13 objection?

14 MR. PETIT: Your Honor, Mr. Murphy is about
15 to argue that it took two years to bring these charges,
16 and he's going to imply that the police were
17 investigating this for two years, when in fact, the
18 investigation did not take two years. He was
19 incarcerated --

20 MR. MURPHY: Well, I want to point out that
21 it's not like it happened Monday and we're prosecuting
22 Wednesday.

23 MR. PETIT: He was incarcerated.

1 THE COURT: You went into the police
2 mentality.

3 MR. PETIT: Yes, sir. But I don't want -- if
4 Mr. Murphy wants them to know how long they investigated,
5 then Mr. Murphy can say, "They investigated this case for
6 so many months," but I don't want him to imply that they
7 investigated since 1999, when they haven't investigated
8 it.

9 MR. MURPHY: Well, I would disagree with
10 counsel's suggestion. I just want to finish my argument.

11 THE COURT: I'd like you to finish it, too.

12 MR. MURPHY: Thank you.

13 THE COURT: But let's go someplace else
14 besides that.

15 MR. MURPHY: All right.

16 OPEN COURT

17 MR. MURPHY: This isn't a case that happened
18 Monday, and here we are Wednesday. This is a case where,
19 as you know, many witnesses have been brought forward,
20 many scientific studies have been done. This is a case
21 where there was a search for the truth on the part of the
22 Police Department.

23 And I would suggest to you, ladies and

1 gentlemen, when this defense attorney gets up and he says
2 that Andrew Johnson, who is the first witness you heard
3 from -- you remember him -- when he says Andrew Johnson
4 used to be a police officer, therefore he's going to say
5 any old thing because of that, because he's got some kind
6 of mentality, I would suggest to you, ladies and
7 gentlemen, that if this defense attorney wanted to take
8 on Mr. Johnson and talk to Mr. Johnson, and say, "Look;
9 isn't it so that you're testifying that way about these
10 items?" why didn't he do it? What is cross examination
11 for if it isn't for that?

12 He waits until now, three days later, after
13 Johnson is safely out of town, and now he lays that on
14 you. I would suggest to you, ladies and gentlemen, if he
15 thought Andrew Johnson was unscientific, he should have
16 taken him on, because that's what he is there for.
17 That's why we bring a live body for you to see, so they
18 can answer questions, field all the questions from both
19 sides, and you evaluate them.

20 Sandra Contreras, the same thing. She
21 testified and told you that nobody told her she had to
22 pick somebody or that she was here today because she had
23 to do something.

1 I would suggest to you, she's got nothing to
2 gain from this. Furthermore, counsel keeps asking, "Why
3 do we keep calling witnesses to say the defendant was in
4 the car?"

5 Well, the witnesses don't say the defendant
6 was in the car. They say the defendant was driving that
7 car. Contreras says he was the driver. Unangst says he
8 was the driver.

9 It matters. It matters. And just because
10 the defense counsel doesn't like it, the fact of the
11 matter is is that all of these facts all go in the same
12 direction.

13 He says Marquez's DNA isn't in the backseat.
14 Neither is the defendant's. And I would suggest to you,
15 ladies and gentlemen, there isn't a lot of room up in the
16 front seat. We know who's in the passenger's seat,
17 because he died belted in.

18 When we look at this case, we don't know --
19 we know that Marquez was injured severely. He may very
20 well have been thrown around in that car.

21 The other person in the backseat who was dead
22 was not wearing his seatbelt. Trooper Conte testified to
23 that. If Marquez was not wearing it, either, then he may

1 very well have been thrown around.

2 The point being this: again, you've got to
3 look at all of the evidence in the case. You can't look
4 at just one thing. And that's what counsel wants you to
5 do over and over in this case. That's what he asked you
6 to do.

7 With regards to the law, I just want to point
8 out something. Number four, when it says, "That Mr.
9 Sanchez failed to do any of the following," look at these
10 words, because these are legal words. "Failed to do any
11 of the following." He's got to do all three.

12 Now, the first one, "Stop immediately as
13 close to the scene of the accident as possible," well,
14 since it's this kind of wreck where the car is wrapped
15 around a tree, I think we can give him that. Whoever the
16 driver was, we can give them that one.

17 But B, "Render all reasonable assistance to
18 any person injured," there's no way you can argue that
19 leaving somebody alone and bleeding in the woods --
20 leaving two other people dead or dying in the car, one
21 still strapped in, that that's reasonable assistance to
22 anybody.

23 And number --

1 MR. PETIT: Let me just object, Your Honor.
2 And perhaps, Mr. Murphy, I just heard you wrong. But I
3 believe he said that they had to do A, B, and C of number
4 four. I believe they're or. He does not have to do all
5 three. He has to do one of the three. And I want to
6 make sure that that's clear.

7 MR. MURPHY: Your Honor, can we approach on
8 that?

9 THE COURT: Sure.

10 BENCH CONFERENCE

11 MR. MURPHY: He's got to fail to do --

12 THE COURT: Any of the following.

13 MR. MURPHY: -- any of the following.

14 MR. PETIT: Right.

15 MR. MURPHY: If he fails to do this
16 (indicating), he's guilty. If he fails to do this
17 (indicating), he's guilty. If he fails to do this
18 (indicating), he's guilty.

19 MR. PETIT: He has to do any of the
20 following: A, or B, or C. There are "ors" after A and
21 B.

22 THE COURT: Yes.

23 MR. PETIT: And, Your Honor, I would ask the

1 Ladies and gentlemen, I'm not going to repeat
2 any of what I said, because I know that, as I started
3 out, that you all are being very attentive, and I don't
4 think either side would complain on that score.

5 Defense counsel has asked you in this case to
6 adopt the testimony of the two witnesses, the defendant's
7 brother and friend, who testified where he was on the
8 evening of November the 26th.

9 I asked them if they were sure that's what
10 they wanted to testify to. They all said that they were.
11 I'm sure you probably know as well that the events
12 they're talking about would be twenty-four hours after
13 the events we're interested in, because we're interested
14 in the night of the 25th going on into the 26th.

15 MR. PETIT: I'm going to object, Your Honor.
16 Your Honor, I apologize. But one of the witnesses
17 indicated it was Thanksgiving Day.

18 MR. MURPHY: Judge, I would really like to
19 have my own closing argument.

20 MR. PETIT: And I agree with him.

21 THE COURT: I'm going to overrule your
22 objection. Please go ahead.

23 MR. MURPHY: Thank you.

1 And, ladies and gentlemen, even if you wanted
2 to adopt the theory, or if counsel I guess would like to
3 argue a theory that, "Well, they have the day wrong, that
4 it was Thanksgiving," there's a problem with that, too,
5 because if we adopt that, then it's not simply that the
6 defendant isn't there at the time of the accident, but
7 it's that Sandra Contreras is completely wrong --
8 completely wrong, didn't even see him when she saw the
9 car that had been carjacked, and it means, again, we're
10 back to having no explanation for why the defendant's
11 DNA -- and it's blood DNA -- it's not a piece of DNA,
12 like defense counsel said -- it's blood -- why his blood
13 is in the car and why his foot is pressed up against the
14 driver's side window.

15 And I would suggest to you, ladies and
16 gentlemen, that whatever your theory of this case is, it
17 must be a theory that explains all of the evidence,
18 including that evidence.

19 The defendant was bleeding in that car. Why
20 was he bleeding in that car? If not from that accident,
21 then why? The defendant was pressing his foot -- his
22 full foot against the window. Why was he doing so?

23 These are issues that are answered if you

1 believe the Commonwealth's witnesses. They remain
2 absolutely unanswered under any other theory of the case.

3 In closing and in conclusion, I'll direct
4 your attention back to Instruction I. Mr. Sanchez did
5 fail to do the following.

6 Stop immediately as close to the scene of the
7 accident as possible without obstructing traffic. Well,
8 the car went off the road and hit a tree, so that's moot.

9 But he did fail to render reasonable and
10 necessary assistance to a person injured in the accident,
11 because he did not assist and render reasonable
12 assistance to either the two individuals who were dead by
13 the time the police were there at any rate, and certainly
14 Mr. Marquez, who was not dead and who survived.

15 And three, the defendant certainly did fail
16 to report his name, address, driver's license number, and
17 vehicle registration number forthwith to the State Police
18 or local law enforcement authority or to the person
19 struck and injured.

20 And I would suggest to you, ladies and
21 gentlemen, that your memory of the testimony controls in
22 this case. You are the owners of the evidence. You were
23 all taking notes. I think if you look back on your notes

1 for Mr. Lee, the Motor Assist person who first got to the
2 accident scene, he didn't say he was just called,
3 notified that there was an accident, "Go look at it."

4 What the report was was debris in the road --
5 debris in the road. That's how the police had to find
6 out about this.

7 There is testimony about this. The police
8 found out when people reported debris in the road. So,
9 ladies and gentlemen, that does not cut it. That is not
10 what the duty of a driver is in a situation like this.

11 The duty of a driver is to render the
12 assistance that needs to be rendered. If that's calling
13 an ambulance, it's calling the ambulance. If it's
14 helping somebody up to where people can see them so that
15 they can be rescued and assisted, that's what it takes.

16 It is not -- it is not running and leaving
17 Mr. Marquez for dead.

18 I ask you to find that this defendant is
19 absolutely guilty of the offense of felony hit-and-run.
20 Thank you.

21 THE COURT: Thank you, Mr. Murphy.

22 We're going to have the jury just step out
23 briefly while we go over the verdict forms.

V I R G I N I A

COPY

FILED

IN THE CIRCUIT COURT OF FAIRFAX COUNTY 02 PM 12:29

CLERK
CIRCUIT COURT
FAIRFAX COUNTY
VIRGINIA

- - - - - x

COMMONWEALTH OF VIRGINIA :

-vs- :

CRIMINAL NO. 99324

HUGO ALEXANDER SANCHEZ, :

Defendant. :

- - - - - x

Circuit Courtroom 4E
Fairfax County Courthouse
Fairfax, Virginia

Friday, September 28, 2001

The above-entitled matter came on to be heard
before the HONORABLE GAYLORD L. FINCH, Judge, in and for
the Circuit Court of Fairfax County, in the Courthouse,
Fairfax, Virginia, beginning at 12:54 o'clock p.m.

APPEARANCES:

On Behalf of the Commonwealth:

JOHN R. MURPHY, ESQUIRE
Assistant Commonwealth's Attorney

On Behalf of the Defendant:

TODD G. PETIT, ESQUIRE
CRYSTAL MELEEN, ESQUIRE
Assistant Public Defenders

Also Present:

DAVID C. WINTER

Probation Officer

PAUL V. LEACH

Interpreter for Defendant

* * * * *

E X H I B I T S

FOR IDENTIFICATION IN EVIDENCE

COMMONWEALTH'S EXHIBIT NO. 1
(Pre-Sentence Report)

6

6

P R O C E E D I N G S

(The Interpreter was duly sworn by the Clerk of the Court.)

(The Court Reporter was duly sworn by the Clerk of the Court.)

THE COURT: I'd like the record to reflect that the Defendant, Hugo Alexander Sanchez, is present in the courtroom with his attorney, Mr. Todd Petit. The Commonwealth is represented in this matter by Mr. Murphy, who's present in court. And I believe Mr. Winter prepared the pre-sentence investigation report and he is present as well.

MR. PETIT: I'd just like to point out, Your Honor, that Ms. Meleen is actually behind me on the bench, just for the record.

THE COURT: She's doing a very effective job of hiding.

And we also have a Spanish translator here as well. Why don't you just go ahead and have a seat.

And, Mr. Petit, have you had a chance to read and review the pre-sentence investigation report?

MR. PETIT: Ms. Meleen has gone over it with the client, yes, Your Honor.

1 THE COURT: So you've had an opportunity to
2 read and review the report with the Defendant?

3 MR. PETIT: Yes, sir.

4 THE COURT: Do you have any questions that
5 either of you would like to ask Mr. Winter about anything
6 in the report, or any additions, corrections, or deletions
7 to the report?

8 MR. PETIT: No, sir.

9 THE COURT: I'd like the record to reflect as
10 well that the Court had read the pre-sentence
11 investigation report before coming into court. I also
12 read letters. One of the letters, I recall, was from the
13 Defendant's mother, a letter from two of his sisters, his
14 relative, Luis Vasquez, and friends, Jose and Marina
15 Amaya. I have read all those letters.

16 And any questions at all of the probation
17 officer?

18 MR. PETIT: No, Your Honor.

19 THE COURT: Do you have any evidence you want
20 to put on?

21 MR. PETIT: Your Honor, the time estimate is
22 short. And simply I'd like to proffer just that there are
23 two witnesses here in the courtroom, one by the name of

1 Wayne Burrillo{ph.}, and the other is Evelyn Cartegena.
2 Mr. Burrillo would testify that he was a very good friend
3 of Mr. Sanchez and they've been friends for several years
4 now, and that Mr. Sanchez has been very helpful. In fact,
5 at one point during his life a few years ago, Mr. Burrillo
6 was going through a depression, and it was through help
7 from Mr. Sanchez that he was able to come out of that
8 depression.

9 Ms. Cartegena would have testified that back
10 in I believe 1992 or 1993, she was his girlfriend. They
11 were trying to conceive and were able to conceive a child.
12 Unfortunately, she was in a car accident and lost the baby
13 at that point before she gave birth. She would have
14 testified that at that point in the early 1990's, she saw
15 a change in Mr. Sanchez.

16 THE COURT: Would you mind spelling her last
17 name, Cartegena?

18 MR. PETIT: Cartegena. I believe it's C-A-R-
19 T-E-G-E-N-A. Everybody is nodding, so that looks like
20 it's correct.

21 THE COURT: I'll accept those two proffers.

22 MR. PETIT: Thank you, sir.

23 THE COURT: I'd like to make the pre-sentence

1 investigation report part of the record. No objections?

2 MR. PETIT: No, sir.

3 (The document heretofore
4 marked Commonwealth's
5 Exhibit Number 1, for
6 identification, was received
7 into evidence.)

8 THE COURT: Does the Commonwealth have any
9 questions of the probation officer?

10 MR. MURPHY: No, Your Honor.

11 THE COURT: Does the Commonwealth have any
12 evidence?

13 MR. MURPHY: Just argument.

14 THE COURT: I'll go ahead and entertain
15 argument at this time.

16 MR. MURPHY: Your Honor, I'm sure you
17 recollect this jury trial just went on for about four
18 days. This is a case where the Defendant might easily
19 have been charged with the even more serious offense of
20 manslaughter.

21 The evidence of course was that the Defendant
22 was driving the car-jacked vehicle at the time that it
23 wrecked. After what the Defendant apparently believed was

1 maybe that he was being pursued or whatever, one of the
2 witnesses in the car recalled -- his last recollection of
3 being in the car was everybody screaming that they were
4 being chased.

5 Anyway, he flew off the beltway, over a field,
6 and struck a tree, and two people died, either in the
7 wreck or slowly thereafter. They were dead by the time
8 that the police discovered the wreck, after receiving
9 complaints of debris in the road as the Court may recall
10 at 11:00 o'clock the next morning. The wreck probably
11 occurred about 2:00 in the morning.

12 A third individual was left for dead at the
13 scene, face-down. He awoke and staggered to safety, but
14 this Defendant and at least one co-Defendant left the
15 scene, and this Defendant of course not reporting the
16 accident and of course not rendering any assistance to the
17 people involved.

18 Your Honor, I would suggest to this Court that
19 there is no more serious felony hit-and-run than a felony
20 hit-and-run that results in someone dying while they sit
21 there buckled in the car, which is the evidence that you
22 have in this case, two people.

23 I would suggest to Your Honor that there's no

1 more serious hit-and-run than a hit-and-run that occurs
2 when the Defendant is blatantly driving in a reckless
3 manner, and when he leaves people that -- he just leaves
4 people dead and injured, and he walks away from that
5 carnage, and just leaves it for somebody else to discover.

6 And I would suggest to this Court that when
7 this jury gave him four years, they gave him a break by
8 one year. He deserved the maximum.

9 This Defendant has been convicted since then
10 of the hit-and-run -- pardon me, of the carjacking which
11 lead up to this hit-and-run and of the use of the firearm
12 in the commission of that. As counsel is probably going
13 to tell you, that came to sentencing yesterday before
14 Judge Keith. Judge Keith gave the Defendant the full jury
15 verdict, full jury sentence in each of those two cases,
16 and I would suggest to the Court he had very good reasons
17 for doing so.

18 Reason number one is this pre-sentence report,
19 which is atrocious, and which outlines a long career of
20 criminal activity, far more extensive than what our jury
21 knew at the time they sentenced him.

22 I would also suggest to the Court that the
23 reason Judge Keith imposed the jury verdict in full in

1 this carjacking case was because when we look at Mr.
2 Winter's final recommendation summary, we know that this
3 Defendant wasn't even supposed to be in this country.
4 He's already been deported once. When this case is over,
5 when he's done serving his time, he's going to get
6 deported again.

7 So the whole theory behind suspending part of
8 this time and putting him on probation is irrelevant in
9 this case. He's not going to be on probation. There
10 isn't going to be any probation officer and there isn't
11 going to be any way to monitor him. So there's simply no
12 rationale.

13 I would respectfully suggest for not
14 suspending one hour of the sentence this jury gave him. I
15 would ask this Court to impose the jury sentence in full.
16 I would suggest to the Court that, as Mr. Winter tells
17 you, at the end of all of the time that he serves for his
18 carjacking in Maryland and the one down here -- of course
19 he wasn't convicted of the carjacking in Maryland, but
20 that's the factual predicate that led to the conviction he
21 received. But when he's done serving all of these
22 sentences, he's going to be deported.

23 He deserves to serve this time. He deserves

1 to have it run consecutive of all other sentences. I
2 would ask this Court to impose the verdict in full. It
3 was a fair verdict and fairly considered and adjudicated
4 by that jury.

5 THE COURT: Mr. Petit, go ahead, please.

6 Thank you.

7 MR. PETIT: Thank you, Your Honor. Your
8 Honor, I wasn't going to bring up the facts. The Court
9 heard it all. But based on what Mr. Murphy argued, I
10 think I should just mention a little bit.

11 First of all, the jury did hear all the facts,
12 and Mr. Murphy said that Mr. Sanchez left everybody there
13 dying, or two dying or dead. Well, so did Johnny Cerrato
14 Marquez, Your Honor. Your Honor remembers my client's
15 blood was found in the door. Johnny Cerrato Marquez's
16 blood was found on the airbag of the driver's seat. It
17 was found on the driver's seat, and it was also found on
18 the driver's seat headrest. Yet, Mr. Sanchez was the only
19 one charged in this.

20 Mr. Murphy indicates that a co-defendant also
21 left. Well, that co-defendant, if he wasn't driving, is
22 guilty of the exact same thing that Johnny Cerrato Marquez
23 is guilty of, at the very least, which is leaving the

1 scene of the accident without having rendered aide and
2 assistance, even though you're not the driver.

3 The Commonwealth just basically gave Mr.
4 Cerrato Marquez a free pass on this case, even though he
5 left people at the scene. So to say that my client did
6 anything worse than the Commonwealth's own witness that
7 hasn't been charged, I think is not really stating the
8 facts clearly. But Your Honor heard the facts and the
9 jury convicted him of those charges.

10 Your Honor, you've seen the letters. You've
11 heard the proffer, the testimony that Mr. Sanchez does
12 have a good side to him. The pre-sentence report
13 indicates that he went back to El Salvador. I believe it
14 also indicates that he has two daughters there, along with
15 a wife.

16 We're asking the Court not to suspend the
17 time. We're asking the Court to run the time that he was
18 given in this case concurrent with that sentence from
19 Judge Keith.

20 The reason we're asking the Court to do is
21 several reasons. Number one, he's twenty-seven years old
22 at this point. He has a ten-year sentence to serve in
23 Maryland. He has twenty years to serve from Judge Keith.

1 As Your Honor knows, once someone has been deported and
2 comes back into the country and is found to be here
3 illegally again, there is a mandatory minimum of five
4 years of federal time he is going to have to serve.

5 So in essence, without even the four years
6 that this jury gave him, he is going to be serving the
7 next thirty-five years in prison. I'd submit to Your
8 Honor that the additional four years is redundant at that
9 point.

10 He will have served thirty-five years in
11 prison, and while he may only be fifty-five at the time,
12 fifty-five after thirty-five years in prison is certainly
13 much older than an ordinary fifty-five-year-old person
14 would be.

15 I'd submit to Your Honor that if you can make
16 it through thirty-five years in prison, there's not much
17 of a life left when you're eventually released.

18 Reading through a recent transcript, I noticed
19 that -- I believe it was actually Mr. Murphy who made the
20 objection to when an expert was requested in another case
21 that's currently in the Court of Appeals that the
22 Commonwealth of Virginia shouldn't expend the extra funds
23 for the defense expert.

1 I'll make the same argument here today. Four
2 years incarceration is an expense that the citizens of
3 Virginia don't need to incur, when he's going to be
4 incarcerated for several years, decades.

5 When he's released, Your Honor, he will be
6 going back to his country. And, again, I'd submit that
7 after thirty-five years in prison, he is not going to be
8 coming back to this country.

9 I'd submit to Your Honor that running these
10 four years concurrent with Judge Keith's sentence would be
11 the appropriate thing to do in this particular case. Your
12 Honor, the jury well may not have -- Mr. Murphy said
13 there's a lot in the pre-sentence report that the jury
14 wasn't aware of, they were certainly aware of a lot
15 concerning the carjacking. So I think this jury knew more
16 than Mr. Murphy would like the Court to believe. They
17 knew exactly what they were doing. But they didn't know
18 that he was being -- that was one of the arguments in
19 court. They didn't know that there was a pending
20 carjacking that he ultimately got twenty years for. I
21 think the jury looked at the carjacking, took that into
22 account when they imposed a four-year sentence.

23 Finally, Your Honor, just referring back to

1 the sentencing guidelines, the sentencing guidelines takes
2 everything into account. It takes into account his
3 juvenile convictions, his adult convictions. The
4 guidelines even count several convictions multiple times.
5 The guidelines take into account the prior number of
6 felony convictions. Then they break it down after you've
7 counted the felony conviction against the person. So the
8 guidelines are redundant a little bit, in that they count
9 certain convictions twice.

10 And even after you take all that into account,
11 the guidelines are still only half of what the jury gave.
12 The jury gave double the guidelines. I believe the
13 guidelines are one to two years or one to two years and
14 some months. So the jury --

15 THE COURT: Two years and nine months.

16 MR. PETIT: Two years, nine months. So in
17 effect, Your Honor, the jury doubled, I believe more than
18 doubled the bottom end and certainly went excessively over
19 the high end of the guidelines.

20 So if Your Honor would not consider running
21 them concurrent, I would submit at least suspending it
22 down to what the guidelines take into account.

23 THE COURT: Thank you, Mr. Petit.

1 Mr. Sanchez, I'd like you to stand, please.
2 Is there anything you'd like to say to the Court before
3 the Court imposes sentence?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Go ahead.

6 THE DEFENDANT: I can't ask you -- I can't ask
7 for pardon from anybody because I'm not guilty. At no
8 moment did I commit this crime. The Court has
9 discriminated against me. The Prosecutor has been a
10 racist against me and my color and the kind of person that
11 I am.

12 I can't beg anybody that they have any
13 consideration because this is just a court. You're the
14 one who can say something about this. I've suffered a lot
15 already. It's been enough what my family has already
16 suffered from the Court.

17 You can always do what you want to do. I just
18 want it to be clear that I am innocent. I want to say
19 that to the last word. You can do what you want with my
20 body, but you can't do anything to my spirit and to my
21 mind. I am innocent. I am free in my opinion and in my
22 thoughts.

23 THE COURT: Is there anything else, Mr.

1 Sanchez, you'd like to say?

2 THE DEFENDANT: No; that's all.

3 THE COURT: Do you know of any reason, Mr.
4 Sanchez, why the Court should not impose sentence?

5 THE DEFENDANT: No; that's it.

6 THE COURT: Mr. Sanchez, the Court having
7 considered the pre-sentence report and the letters, the
8 Court is going to impose a sentence of four years to be
9 served with the Virginia Department of Corrections,
10 pursuant to the jury's verdict, and the Court is going to
11 order that that time run consecutively.

12 Before he goes back, I do need to read him his
13 appeal rights.

14 Mr. Sanchez, you have the right to appeal the
15 decision of this Court, the decision of the jury. If you
16 want to appeal the decision of this Court, you must note
17 your appeal within thirty days. If you cannot afford an
18 attorney to represent you on your appeal, the Court will
19 appoint an attorney to represent you. Unless you were to
20 tell me otherwise, I would appoint Mr. Petit and Ms.
21 Meleen to represent you on an appeal.

22 I'd like to remand him to the custody of the
23 sheriff at this time. I want to thank --

1 MR. PETIT: Your Honor --

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

3 MR. PETIT: I'm sorry. I just wanted to
4 interrupt before the deputies take him away. He is a
5 prisoner of Maryland, so I'm not sure when they're going
6 to take him back. I would like to just proffer a few
7 things and actually --

8 THE COURT: Go ahead.

9 MR. PETIT: Your Honor, what I'm asking the
10 Court to do now is, just so the record is clear, I'm
11 asking the Court to set aside the verdict based on all the
12 objections that we made during the trial, including the
13 fact that the carjacking came in. I believe some
14 witnesses made statements that they weren't supposed to
15 make, that a mistrial should have been granted.

16 For those reasons, I would ask the Court to
17 set aside the verdict.

18 One additional reason, Your Honor, is I
19 believe during the trial Your Honor did take breaks, and I
20 believe on three occasions the jury was left in the room,
21 and I believe that Ms. Meleen at one point did request
22 that the jury be released before the Court left the bench,
23 and Your Honor did do that.

1 But I just want to point out for the record
2 that on the transcript dated Monday, August 20th, on page
3 seventy-two, on page one-seventeen, and one-fifty-two,
4 those were the occasions that the jury was left in the
5 room. We believe that that's a due process violation that
6 we would ask that the verdict be set aside for all the
7 other reasons that were argued in the trial, as well as
8 for that reason.

9 MR. MURPHY: Your Honor, nothing was going on
10 while the jury was sitting in the room.

11 THE COURT: Do you want to respond to the
12 motion to set aside the verdict?

13 MR. MURPHY: It is absolutely no error of
14 trial. I think the Court's ruling are absolutely proper,
15 and there was simply nothing wrong with this trial, and
16 the jury wasn't affected in any way.

17 THE COURT: The Court is going to deny your
18 motion to set aside the verdict. I'm going to deny your
19 second request as well.

20 MR. PETIT: Thank you, Your Honor.

21 THE COURT: And I appreciate your serving as
22 counsel, Mr. Petit.

23 MR. PETIT: Thank you, Your Honor, very much.

* * * * *

(Whereupon, at approximately 1:12 o'clock
p.m., the hearing in the above-entitled matter was
concluded.)

* * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
CERTIFICATE OF COURT REPORTER

I, CLAUDETTE M. GAUJOT-TURNER, a Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings and thereafter reduced the same to typewriting; that the foregoing is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Claudette M. Gaujot-Turner
CLAUDETTE M. GAUJOT-TURNER
Verbatim Reporter