

1988

## Layton City v. Alex Lopez : Brief of Respondent

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

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LAYTON CITY,	:	
Plaintiff/Respondent	:	ADDENDUM TO BRIEF OF RESPONDENT
vs.	:	
	:	Case No. 880653-CA
ALEX LOPEZ	:	
Defendant/Appellant.	:	

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ADDENDUM TO  
BRIEF OF RESPONDENT

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DEPOSITED BY THE  
STATE OF UTAH  
AUG 17 1990

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1 be short because there's not going to be a lot of  
2 issues, it's going to be brief. I don't think that we  
3 will have a long trial this morning, I think it will be  
4 very short and again, I want to thank you for coming.  
5 Again, let me remind you that I support your decision and  
6 I want you to know that. We feel very strongly that way.  
7 We are here and your responsibility is to get the truth  
8 out.

9 If she was driving the car then maybe  
10 you should consider those things. But, we are submitting  
11 to you that she wasn't driving the car.

12 Thank you very much.

13 THE COURT: Thank you. Mr. Garside, you  
14 may call your first witness.

15 MR. GARSIDE: The City calls Mr. Horseman.

16 JOHN R. HORSEMAN,  
17 was called as a witness for  
18 and on behalf of the Plaintiff  
19 and testified upon his oath  
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. GARSIDE:

23 Q Sir, would you state your full name for  
24 the Court and the jury, please?

25 A It's John Roy Horseman.

1 Q And your address, sir?

2 A 1166 North 1250 West, Layton, Utah.

3 Q Do you know where your home is located in  
4 reference to 1154 North 1250 West in Layton?

5 A Right next door, directly to the north.

6 Q Okay. All right. And how long have you  
7 lived there, sir?

8 A Just a little over three years.

9 Q Okay. I am going to direct your attention  
10 back to the early morning hours of August 16th, 1986. Do  
11 you recall that morning?

12 A Yes.

13 Q And what is it that occurred that would  
14 cause you to recall that morning?

15 A Early in the morning we were awakened, we  
16 had our windows open, it was a warm night, and we heard  
17 screeching of tires and it was rather loud so, of course,  
18 we got up real quick and looked out the window to see what  
19 was going on and it took just a minute to see brake lights  
20 flashing. Somebody had their foot on the brake, it was  
21 kind of across the street from us where the car was at  
22 the front end against the curb side.

23 I went down to turn on our porch light  
24 to see if everything was all right and just shortly after I  
25 turned my porch light on our home was approached by Mr.

1       Lopez. He came up and said, "My wife is driving --

2               MR. VANDERLINDEN: I object to that, Your  
3 Honor, that's hearsay.

4               THE COURT: Mr. Garside?

5               MR. GARSIDE: We will establish a foundation  
6 for it in a moment, Your Honor.

7               THE COURT: All right, sustained at this  
8 point.

9               MR. GARSIDE: Okay.

10              Q        (By Mr. Garside) Let's back up just a  
11 little bit, Mr. Horseman. When you said you got up and  
12 looked out the window, was that the window in your bedroom?

13              A        It would have been out of my son's bedroom  
14 upstairs.

15              Q        Okay.

16              A        It looked directly across the street.

17              Q        And you said that his vehicle was across  
18 the street so that you saw the taillights of the back and  
19 the vehicle was towards you?

20              A        Yes.

21              Q        Okay. Do you recall any headlights being  
22 on?

23              A        No.

24              Q        All right. Is that part of -- 1250 West,  
25 is it very well lighted?

1           A       No.

2           Q       All right. Do you know -- do you recall  
3       which direction, compass-wise, the vehicle was facing?

4           A       It was facing west.

5           Q       Was it 90 degrees to the street or --

6           A       It was just about 90 degrees, it could have  
7       been facing just a fraction to the south, but more to the  
8       west than to the south.

9           Q       Okay. Did you see any people out there  
10      at that time?

11          A       Around the car I didn't see any people, I  
12      just seen the gentleman who came to our door.

13          Q       Okay. And that's when you went to the door  
14      and turned on your porch light, is that correct?

15          A       Yes.

16          Q       Okay. How much time elapsed from when you  
17      heard the crash, the screeching, and then you saw Mr.  
18      Lopez at your door?

19          A       Oh, maybe a minute and a half to two  
20      minutes, maybe not even that long.

21          Q       Okay.

22          A       Probably about two minutes.

23          Q       All right. And, now -- did he ring your  
24      doorbell?

25          A       No, I was going to the door to look out to

1       see what was -- everything was all right and I seen him  
2       approaching the porch so I just opened up the door there  
3       and spoke with him.

4               Q       Okay. All right. Did you ask him any  
5       questions at all?

6               A       No.

7               Q       But he gave you some information, is that  
8       correct?

9               A       Yes. He indicated that he needed --

10              MR. VANDERLINDEN: Your Honor, that's  
11       again hearsay. I apologize, but he's not the Defendant in  
12       the case. He is here to testify today and --

13              THE COURT: I understand your objection,  
14       we won't need to have it argued that way at this point,  
15       Mr. Garside.

16              MR. GARSIDE: Well, Your Honor, I think that,  
17       of course, it can be used on rebuttal, but at this point  
18       in time I would submit to the Court that it falls under the  
19       exception of the hearsay rules. The man has been in a  
20       vehicle that apparently has been involved in an accident  
21       and he sees a porch light come on and immediately goes to  
22       that house for some help and gives something quite  
23       spontaneous without any --

24              MR. VANDERLINDEN: Your Honor, let me --

25              MR. GARSIDE: -- and it's nothing that Mr.



1 Horseman elicited from this individual, it was  
2 volunteered statements that occurred quite shortly after  
3 the crash that he heard as well.

4 THE COURT: All right, thank you. Mr.  
5 Vanderlinden.

6 MR. VANDERLINDEN: Your Honor, the rules of  
7 evidence on spontaneous utterance means that they are  
8 observing something -- that is they utter what they observed.  
9 I don't think that after an accident somebody could walk  
10 over to the door, based on what he testifies to, and then  
11 make a statement to him. I don't think that that's a  
12 qualification. Mr. Lopez is here to testify, he is more  
13 than welcome to ask him the question himself when he  
14 testifies.

15 MR. GARSIDE: Your Honor, in response to  
16 that, it's not -- the spontaneity is different than the  
17 contemporaneous that Mr. Vanderlinden is referring to.  
18 The rules of evidence indicate that if someone is still in a  
19 state of being excited from an occurrence and haven't had  
20 the time or opportunity to fabricate or reflect on what  
21 has occurred, then the statement has probative value.

22 THE COURT: Thank you. We will go off the  
23 record for a moment.

24 (Off-the-record.)

25 THE COURT: The objection is overruled. The

1 Court feels that in the context that the witness has put it,  
2 it would be excited utterance under Rule 803 sub 2, and  
3 you may go ahead.

4 MR. GARSIDE: All right. Thank you, Your  
5 Honor.

6 Q (By Mr. Garside) Mr. Horseman, you said  
7 that he did give you some information. What was that  
8 information, if you can recall?

9 A Basically two things. He said, "My wife  
10 was driving the car and I need a jump to get it started and  
11 I just told him that I had to get dressed, get some pants  
12 and shoes on so I could do that.

13 Q Do you recall which of that portion he said  
14 first?

15 A He stated first that his wife was  
16 driving.

17 Q And then he requested a jump, I'm guessing --

18 A Yes.

19 Q -- to start his car.

20 MR. VANDERLINDEN: It's leading and  
21 repetitious, Your Honor. I have to object again.

22 THE COURT: It is leading, sustained.

23 Q (By Mr. Garside) Now, had you said  
24 anything prior to those statements at all?

25 A No.

1                   Q       Did you make any -- in your mind, was  
2       there anything that stood out concerning his conduct, his  
3       demeanor, that you can recall?

4                   A       When he first came to the door he just  
5       seemed in a hurry, a little excited and smelled of alcohol  
6       and that was basically my only two looks at it. That's  
7       just my impression.

8                   Q       Okay. Did you ever go outside?

9                   A       I went outside just shortly after that,  
10      yes. And the vehicle was gone.

11                  Q       Okay. Did you see the vehicle?

12                  A       I just seen the taillights of the  
13      vehicle.

14                  Q       Okay.

15                  A       I never did see the vehicle plainly.

16                  Q       All right. You said that the vehicle  
17      was gone, it was completely out of your sight at that  
18      time?

19                  A       Out of our sight by the time that I got  
20      out.

21                  Q       All right. Was that prior to the officers'  
22      arrival?

23                  A       Yes, this is prior.

24                  Q       And how soon after you went out and the  
25      vehicle was gone did the officers arrive?

1           A           Just within a matter of a few seconds.  
2   I stepped out, I went down the street and seen the officers'  
3   car coming and at that point our neighbor indicated which  
4   direction that the car was and they turned down the other  
5   street and headed after it.

6           Q           Okay. Did you have any other contact with  
7   Mr. Lopez that night, that morning?

8           A           No.

9           Q           Okay. You had a conversation with the  
10   police though, is that correct?

11          A           Yes, he took our statement down.

12          Q           Okay.

13                   MR. GARSIDE: I have nothing further at  
14   this time, Your Honor.

15                   THE COURT: Mr. Vanderlinden?

16                   MR. VANDERLINDEN: Yes, Your Honor.

17                               CROSS-EXAMINATION

18   BY MR. VANDERLINDEN:

19           Q           You say he took your statement, did you  
20   write a statement for him?

21          A           No.

22          Q           Did he make any notes on your statement?

23          A           Yes.

24          Q           He wrote down things pertaining to what  
25   you said?

1           A       He gathered information, yes. He took  
2 my name and address and took other notes. I didn't read  
3 them so I don't know what they were.

4           Q       Okay. How much time elapsed between the  
5 time that you first heard the accident until the time you  
6 finally stepped out of the house?

7           A       Probably five, six, seven minutes. Somewhere  
8 in there.

9           Q       Did you have jumper cables?

10          A       Yes, they were in my station wagon outside.  
11 MR. VANDERLINDEN: That's all I have, Your  
12 Honor.

13 THE COURT: Further direct?

14 MR. GARSIDE: No, Your Honor.

15 THE COURT: You may step down, Mr. Horseman.  
16 Thank you.

17 MR. GARSIDE: The City calls Vickie  
18 Summerville.

19                   VICKIE SUMMERVILLE,  
20 was called as a witness for  
21 and on behalf of the Plaintiff  
22 and testified upon her oath as  
23 follows:

24                   DIRECT EXAMINATION  
25 BY MR. GARSIDE:

1           Q       Ms. Summerville, would you state your name  
2 for the Court and record, please?

3           A       Vickie LaDawn Linda Summerville.

4           Q       Okay. And your address, please?

5           A       1154 North 1250 West, Layton.

6           Q       Okay. And where do you live in reference  
7 to Mr. Horseman?

8           A       I live one house to the south.

9           Q       Okay. Were you living there on the 16th  
10 day of August 1986?

11          A       Yes, I was.

12          Q       Do you recall what happened in the early  
13 morning hours of that day?

14          A       Yes, I do.

15          Q       Would you explain to the jury what  
16 occurred in the early morning hours and what -- what you  
17 recall occurring that morning.

18          A       We were awoken from our sleep with a  
19 sound of screeching tires and so I jumped up -- my husband  
20 and I ran into our son's bedroom and looked out the window  
21 and as we were looking out I said, "I think our mail box  
22 is missing," and so I ran back in the bedroom and got  
23 dressed and ran outside and I went out toward the mail box;  
24 it was missing and so I just looked around and it was up  
25 the yard further up towards Horseman's yard and at that time

1 I saw a gentleman out in the yard and he was over on  
2 Horseman's lawn and he came over to me and I picked up the  
3 mail box and I said, "Look what you did to my mail box."  
4 And I threw it back down, and he said, "I'm sorry, I will  
5 pay for that." And he said, "My wife was driving."

6 Q Okay. All right.

7 A And so I turned around and yelled to my  
8 daughter who was on the doorstep and I said, "Tell your dad  
9 to call the cops." And then I went back on in the house  
10 and went back into the bedroom while he did call the  
11 police and then we turned around and went back out and we --  
12 when we got back outside we looked over where the car was  
13 and it wasn't there anymore and we looked down the street  
14 heading to the west -- our house faces right at the end  
15 of the street, and looked down and kept seeing brake lights  
16 coming on. So we just stayed outside and by then Mr.  
17 Horseman was outside and so we just kind of talked as to what  
18 each of us had seen and we saw the police car coming down  
19 1200 North and so as he came around the corner I just  
20 pointed down the street, indicating that was where he had  
21 gone, and he just went right on down to where the car was.

22 Q Okay. Now, you said that the car wasn't  
23 there anymore when you went out the second time. You saw it  
24 down the street?

25 A We saw a car being -- apparently pushed. We

1 did not hear anything and every once in awhile you could  
2 just see brake lights coming on down the middle of the  
3 street. And that's --

4 Q But you didn't hear the engine of the car?

5 A I did not see it and I couldn't actually  
6 see the car, I just saw the brake lights every once in  
7 awhile coming on.

8 Q So you couldn't tell if anybody was  
9 pushing it?

10 A No.

11 Q Could you tell whether it was moving or  
12 not?

13 A Not very fast if it was because it was  
14 not very far down the street.

15 Q Okay. When you saw not very far down,  
16 approximately how many -- I'm guessing this is a  
17 residential area?

18 A Yes.

19 Q Is it a developed subdivision?

20 A Yes. It was and it was -- well, there's  
21 the length of the street and it was in front of the second  
22 house down.

23 Q You mean the width of the street?

24 A Well, yeah -- there's the width of the  
25 street plus two houses.



1 Q Okay.

2 MR. GARSIDE: Your Honor, if I could have  
3 her approach the board.

4 THE COURT: Yes, I was going to say, maybe  
5 you ought to go to the chalkboard if you wouldn't mind,  
6 ma'am. I'm not sure that any of us know exactly what she  
7 is talking about in terms of distance.

8 THE WITNESS: Okay, the street comes like  
9 this and my house is right here (indicating) and Horseman's  
10 house is right here (indicating) and the street comes down  
11 like this. And the car -- well, it comes about like that.  
12 When I came out the car was here (indicating) and then there  
13 is a house that faces this way --

14 MR. GARSIDE: If you -- Ms. Summerville.

15 THE WITNESS: Yes.

16 Q (By Mr. Garside) If I could -- okay, now.  
17 If you would draw the houses on the outside of the roadway.

18 A Okay. There's none here and then there is a  
19 house here on the other side of the road.

20 Q And as you explain it, if you would stand  
21 off to the side so the jury can observe your drawing.

22 THE COURT: And her house and Horseman's  
23 house, maybe we ought to take those --

24 THE WITNESS: My house is right here  
25 (Indicating).

1 THE COURT: Let's take it outside the  
2 roadway, ma'am, the way you've got then it would be in  
3 the road.

4 THE WITNESS: Okay. I'm not an artist.

5 THE COURT: There, that's better, thank  
6 you.

7 THE WITNESS: Okay. This is my house  
8 (indicating), and this is Horseman's (indicating).

9 When we came out the car was facing this  
10 way with the taillights this way.

11 THE COURT: Okay.

12 Q (By Mr. Garside) And where was your mail  
13 box originally situated?

14 A It sits -- there's a curb right here  
15 (indicating). Our driveway comes up the side of the house  
16 this way (indicating) and it sits on the curbway right  
17 here, and when I found it it was over here.

18 Q Okay. All right, you came back out the  
19 second time and where was --

20 A The car was about right here.

21 Q So it was just the width of the street --

22 A Two houses down.

23 Q Okay. Would you identify the streets by  
24 address, please?

25 A This is 12 --

1 Q Okay.

2 A It comes this way. I really don't know  
3 what street number this is, ours is 1250. I think this is  
4 1250 right here (indicating).

5 Q Okay. And the police -- and which way did  
6 the police arrive from?

7 A They came up the street along here  
8 (indicating) and they came around here and another police  
9 car came around this way (indicating).

10 Q What did you observe, if anything, as the  
11 officers approached the vehicle?

12 A We saw -- I saw one person run this way  
13 and one that way (indicating) and I don't know where the  
14 third person went, I just saw them scatter this way.

15 Q How many people did you see scatter?

16 A Two.

17 Q Two?

18 A Yes.

19 Q Okay. When the officer who came from the  
20 opposite direction, when his headlights hit the vehicle,  
21 were you able to see anybody inside the vehicle?

22 A No, I wasn't watching. I was watching  
23 the people. That's when you could see them was when the  
24 headlights shown on them you could see the people run.

25 Q Okay.

1 THE COURT: Mr. Garside, could she put a  
2 north scale on, which direction would north be?

3 (Witness complied.)

4 THE WITNESS: This is going west.

5 THE COURT: All right.

6 THE WITNESS: This is north.

7 THE COURT: Thank you, okay.

8 Q (By Mr. Garside) When you spoke to the  
9 individual about your mail box, was he walking from somewhere  
10 to somewhere or had he been standing there?

11 A He was -- he was about right here (indicating)  
12 on the lawn.

13 Q Was he just standing there or walking?

14 A He was walking away from the house.

15 Q Towards the vehicle?

16 A In -- kind of angling from the house  
17 this way (indicating).

18 Q From Mr. Horseman's house?

19 A Yes.

20 Q Okay.

21 MR. GARSIDE: Nothing further, Your Honor.

22 THE COURT: Thank you. Mr. Vanderlinden.

23 MR. VANDERLINDEN: Thank you.

24 CROSS-EXAMINATION

25 BY MR. VANDERLINDEN:

1                   Q       Mrs. Summerville, just going back briefly.  
2       You heard the screech from the car and you looked out your  
3       boy's window, was it?

4                   A       Yes.

5                   Q       And you saw one person at that time.

6                   A       I didn't see anybody at that time.

7                   Q       Oh.

8                   A       That's just when I looked out and didn't see  
9       my mail box and so I ran in and got dressed and ran out.

10                  Q       Okay. Were you upset at the time, somebody  
11       knocked over your mail box?

12                  A       Yes.

13                  Q       Okay.

14                  A       It was no big thing, but --

15                  Q       Okay. And so you saw nobody, you walked  
16       outside --

17                  A       Yes.

18                  Q       And you came in contact with Mr. Lopez  
19       at that time?

20                  A       I cannot tell you which one it was, there  
21       was a gentleman out there but I --

22                  Q       You don't remember or you could identify you  
23       mean?

24                  A       No, I could not.

25                  Q       Okay. And then you had a conversation with

1 him. Did you see anybody else in the immediate area?

2 A No, I did not.

3 Q Did he ask you to help him start his  
4 car?

5 A No.

6 Q How was the conversation, were you yelling  
7 at him or was it just a conversation. I mean, based on the  
8 fact that you were a little upset, was -- your tone of  
9 voice, what was that?

10 A Excited.

11 MR. VANDERLINDEN: That's all I have,  
12 Your Honor.

13 THE COURT: Thank you. Further direct?

14 MR. GARSIDE: Nothing further.

15 THE COURT: You may step down, ma'am.

16 MR. GARSIDE: The City calls officer Steven  
17 Brown.

18 STEVEN BROWN,

19 BY MR. GARSIDE:

20 Q Would you state your full name for the  
21 Court and record, please?

22 A Steven D. Brown.

23 Q How are you employed, sir?

24 A As a police officer for Layton City.

25 Q How long have you been a police officer for

1 Layton City?

2 A A little over seven years.

3 Q And how long have you been involved in  
4 law enforcement, Officer Brown?

5 A Approximately eleven.

6 Q Were you employed as a Layton police officer  
7 and on duty during -- in the early morning hours of  
8 August 16th, 1986?

9 A Yes, sir, I was.

10 Q Do you recall receiving a call to proceed  
11 to a location of 1154 North 1250 West?

12 A Yes.

13 Q Do you recall the nature of that?

14 A I can recall that it was different than what  
15 I found down there, just a little bit. A car was involved  
16 in a crash was my understanding, but I don't recall them  
17 saying, from my information, that it was a mail box.

18 Q Did you proceed to that location?

19 A Yes, sir, I did.

20 Q What did you observe upon arriving at  
21 the location?

22 A I observed a group of people standing out  
23 near the street at that address and I talked briefly to the  
24 people that were standing out there, received some directions  
25 and then I drove west looking for some people.

1           Q       And how far did you have to travel before  
2       you located the vehicle that you were looking for?

3           A       I didn't locate the vehicle right away.  
4       I drove right by it I found out later. I was looking more  
5       toward --

6           MR. VANDERLINDEN: Your Honor, he just  
7       asked him what he observed and he is making comments about  
8       what he found out and I think -- I would appreciate it if  
9       he would just answer the question. I don't know how he  
10      found out later and what basis it is, I am concerned about  
11      the conjecture at this point.

12          MR. GARSIDE: We can proceed in that  
13      fashion, Your Honor, I have no problem with that.

14          THE COURT: All right.

15          MR. GARSIDE: Okay.

16          Q       (By Mr. Garside) So as you proceeded  
17      westbound, Officer Brown, what did you see?

18          A       What I saw was an individual that was  
19      identified later as Alex Lopez running to the west and  
20      change direction and run to the north. I caught up with  
21      him and stopped him.

22          Q       Okay. Now, is that individual in the  
23      courtroom today?

24          A       Yes, sir, he is.

25          Q       And would you identify him for the jury?



1           A       That's Alex Lopez in the -- I guess  
2       it's kind of a --

3           MR. VANDERLINDEN: We will stipulate that  
4       that is Alex Lopez, Your Honor.

5           THE COURT: Third row, raised his hand, is  
6       that the one?

7           THE WITNESS: Yes.

8           THE COURT: All right.

9           Q       (By Mr. Garside) And when you stopped him,  
10      what did you say to him?

11          A       I asked him if he knew about a crash  
12      involving a mail box and he made some statements to me at  
13      that time.

14          Q       And what were the statements?

15          MR. VANDERLINDEN: Your Honor, there's been  
16      no foundation to this point, he knows there's been an  
17      accident, he knows there's people involved, he is investigat-  
18      ing it, I think there should be some foundation.

19          THE COURT: Would you claim that this is an  
20      excited utterance if he quotes him?

21          MR. GARSIDE: Well, Your Honor, I say it's  
22      an excited utterance, but I think that it is basically --  
23      it's not offered to prove the facts of the truth asserted  
24      therein, it's he's gathering information as to what occurred  
25      and --

1 THE COURT: Well, that's part of the  
2 relevant issue of what occurred and I suppose it would be  
3 hearsay unless it comes in under some exception. He can  
4 say what he did, he can say what he said to the man, what  
5 happened as a result of that. I don't think he can quote his  
6 statements.

7 MR. GARSIDE: That's true. I -- I'm  
8 concerned. I don't know whether, in good faith, I can argue  
9 that he could still, under the excited utterance, other than  
10 the fact that he was fleeing the area.

11 MR. VANDERLINDEN: Your Honor, I --  
12 excited utterances -- we are at least 10 minutes away from  
13 when it happened. I don't think there's any question that  
14 doesn't apply at that point. I agree with Mr. Garside. He  
15 said, "I don't think that I can, in good faith, argue it,"  
16 and I agree.

17 THE COURT: Aren't we going to reach this  
18 anyhow, Mr. Vanderlinden?

19 MR. VANDERLINDEN: If he lays the proper  
20 foundation I think he can. At this point, Your Honor, I  
21 can't -- I am just going by the Rules of Civil Procedure,  
22 Your Honor. Somehow I am getting to be the bad guy.

23 THE COURT: No, what I am asking is, is Mr.  
24 you mentioned witnesses, expected witnesses, are we going  
25 to hear from Mr. Lopez?

1 MR. VANDERLINDEN: Yes, we certainly are,  
2 Your Honor.

3 THE COURT: Well, he would have to say  
4 on cross what happened and he can be asked about what  
5 he said.

6 MR. VANDERLINDEN: And I want very much  
7 to.

8 THE COURT: All right.

9 MR. VANDERLINDEN: I don't want Mr. Brown  
10 to make -- to say what Mr. Lopez said. I want Mr. Lopez  
11 personally to say it so the jury can hear that.

12 THE COURT: Sustain any objection to  
13 hearsay at this point.

14 Q (By Mr. Garside) Were you able to receive  
15 some information from Mr. Lopez?

16 A Yes, sir, I was.

17 Q And what did you do in response to that  
18 information?

19 A After receiving that information and  
20 noticing his demeanor I became suspicious that he may be  
21 one of the parties that I was looking for.

22 Q Okay. Now, you mentioned his demeanor.  
23 Could you explain to the jury what observations you made  
24 concerning that?

25 A He appeared very much intoxicated at the

1 time.

2 Q And what do you base that on?

3 A Smell of alcohol, the appearance of his  
4 face, the way he was talking in a very slurred manner. I  
5 came to the impression that he was quite intoxicated.

6 Q Okay. All right. So again, your reaction  
7 to his information that he gave you.

8 A My reaction was at that time I still  
9 needed to do some questioning and I observed another  
10 individual on the other side of the street and I am trying --  
11 I guess it would be the south side of the street down  
12 there, walking west of our location, another male. At that  
13 time I patted down Mr. Lopez and put him in the back of my  
14 car so as not to lose track of him. I then drove down to  
15 the other individual who was walking on the sidewalk and  
16 stopped and talked to him.

17 Q Okay. Now, this second individual. Did  
18 you come to know his name?

19 A Yes, I know him from previous encounters  
20 and recognized him.

21 Q And who was that individual?

22 A Martin J. Martinez.

23 Q Is he in the courtroom today?

24 A No, he is not.

25 Q Okay. So you approached Mr. Martinez, is

1       that correct?

2               A       Yes, sir, I did.

3               Q       Did you make any observations concerning  
4       his demeanor or his conduct?

5               A       He appeared, to an extent, intoxicated  
6       also, but not, in my opinion, to the extent that Mr. Lopez  
7       was.

8               Q       Did he -- did he give you any indication  
9       what he was doing at that location?

10              MR. VANDERLINDEN: That's hearsay again,  
11       Your Honor.

12              THE COURT: Sustained.

13              Q       (By Mr. Garside) Approximately what time  
14       was this, Officer, do you recall?

15              A       This was approximately -- probably 12 after  
16       4:00.

17              Q       Okay, all right. Did you receive some  
18       additional information from Mr. Martinez?

19              A       While talking to him, Barbara Lopez  
20       approached. I didn't see from what direction she  
21       approached, it was kind of a surprise, while I was talking  
22       to Mr. Martinez.

23              Q       Okay. So while you were -- so Mr. Lopez  
24       is in the back of your patrol car?

25              A       Yes, sir.

1 Q And you are talking to Mr. Martinez?

2 A Yes, sir.

3 Q And the Defendant approaches?

4 A Yes, sir.

5 Q Okay. Had any other officers arrived  
6 at that time?

7 A Prior to Ms. Lopez walking up to our  
8 location, Officer Patterson had arrived.

9 Q Okay. So Officer Patterson was with you  
10 while you were speaking with Mr. Martinez then?

11 A Yes.

12 Q Okay. And so he was there when the  
13 Defendant approached?

14 A Yes.

15 Q Did you initiate any conversation with  
16 the Defendant?

17 A It was more her initiating the conversation  
18 with me.

19 Q Did you even ask her any questions  
20 initially?

21 A Not initially, no.

22 Q Okay. So what was it that she said in  
23 initiating this conversation?

24 A Well, the conversation started out with  
25 her telling me to leave the two males that I had in my

1 proximity alone because she was the driver of the car.  
2 We chatted a little bit more to find out what had actually  
3 occurred and she stated that she had hit the mail box and  
4 that they were -- had been looking for jumper cables to  
5 restart the car that would not run after the collision.  
6 She reiterated that she was driving the vehicle.

7 Q So her first -- she just walked right up to  
8 you and said, "Leave these guys alone, I was driving?"

9 A Yeah, that was basically it.

10 Q Okay. Now, subsequent to your conversation  
11 with her, then what did you proceed to do?

12 A I noticed an odor of alcohol while talking  
13 to her. I looked into her face and I saw some red and  
14 watery eyes at that time, it made me suspicious that she had  
15 been drinking also and so I asked her to take some field  
16 sobriety tests.

17 Q Okay. Officer Brown, could you briefly  
18 explain to the jury what field sobriety tests are and what  
19 you utilize them for?

20 A A field sobriety test is a series of tests  
21 that an officer, or me, would try and relate the results of  
22 the test to the condition of a person when they were  
23 driving a vehicle.

24 THE COURT: Let me ask you to stop for just  
25 a moment and ask counsel to approach the bench, if you will.

1 Q All right. And based on the opinion that  
2 you arrived at at the conclusion of those tests?

3 A Yes. Some people, I find out later,  
4 there's other excuses for the driving that I observed.

5 Q Okay. All right. At the conclusion of  
6 the final field sobriety test, what then occurred?

7 A I placed her under arrest for driving under  
8 the influence of alcohol.

9 Q Did she -- do you recall any reaction at  
10 that time that she had?

11 A Nothing that I can recall.

12 Q All right. What -- do you recall whether  
13 or not you gave the Miranda warning at the scene?

14 A I didn't give it at the scene, I gave it at  
15 the jail.

16 Q Okay. Who transported the Defendant?

17 A I did.

18 Q Do you recall any conversation during  
19 that transportation?

20 A No, sir, nothing specific comes to  
21 mind. She was in the rear of the car and there's a  
22 Plexiglas shield between her and I.

23 Q All right. When you arrived at the police  
24 department, did you request that she submit to a chemical  
25 test?



1           Q       All right. Did you have any other --  
2 subsequent to that did you have any other conversation with  
3 the Defendant?

4           A       I advised her of her Miranda rights. She  
5 stated --

6           MR. VANDERLINDEN: I think that would be  
7 sufficient, Your Honor, at that point.

8           Q       (By Mr. Garside) Okay, besides informing  
9 her of her Miranda rights, did she make any other statements  
10 to you?

11          A       She somewhat appeared to be agitated, remarks  
12 to me personally concerning the arrest itself.

13          Q       Okay.

14          MR. GARSIDE: I have nothing further at  
15 this time, Your Honor.

16          THE COURT: Thank you. Mr. Vanderlinden?

17          MR. VANDERLINDEN: Thank you.

18                   CROSS-EXAMINATION

19          BY MR. VANDERLINDEN:

20          Q       Officer Brown, what evidence, physical  
21 evidence, do you have, other than Barbara's statements, that  
22 she was driving the car?

23          A       None.

24          Q       Did anyone ever see Barbara driving the  
25 car, to your knowledge?

1                   Q        Okay.  So -- but it was just Officer Brown  
2   and Mr. Martinez that were speaking?

3                   A        Yes, sir, I was at a distance at that  
4   point.

5                   Q        Okay.  What then occurred?

6                   A        The Defendant, at that point, came into the  
7   picture, from where I can't recall where she walked up  
8   from, but I do recall her coming up and making some state-  
9   ments at that point.

10                  Q        Okay.  And what distance were you from  
11   Officer Brown and the Defendant when those statements were  
12   made?

13                  A        Approximately eight to ten feet.

14                  Q        Did you hear those statements?

15                  A        Yes, I did.

16                  Q        And what were those statements.

17                  A        Word for word I cannot recall, but to the  
18   effect to leave the two guys alone that she was the driver  
19   of the vehicle.

20                  Q        All right.  Did you make any observations  
21   or perceptions concerning her demeanor or conduct at that  
22   time?

23                  A        Not at that time, not at that time I  
24   didn't.

25                  Q        Shortly thereafter?

1 Your Honor.

2 THE COURT: All right, thank you. Mr.  
3 Vanderlinden?

4 MR. VANDERLINDEN: We are ready to proceed,  
5 Your Honor. If the Court please, we would like to call  
6 Alex Lopez to the stand.

7 ALEX LOPEZ,  
8 was called as a witness for  
9 and on behalf of the Defendant  
10 and testified upon his oath as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. VANDERLINDEN:

14 Q Would you state your name, please?

15 A Alex C. Lopez.

16 Q And your address?

17 A 54 South 450 East.

18 Q Are you married?

19 A Yes, I am.

20 Q To whom are you married?

21 A To Barbara Lopez.

22 Q Okay, she's the Defendant here today?

23 A Yes.

24 Q And were you married to her at the time of  
25 this incident we are talking about today?

1           A       Yes, I was.

2           Q       Okay. Were you with her on that

3 occasion?

4           A       Yes.

5           Q       And are you familiar with a red Ford

6 Galaxy?

7           A       That's the vehicle I own.

8           Q       Okay. It's your vehicle, is it not?

9           A       Yes, it is.

10          Q       And in fact it was in an accident that

11 night, was it not?

12          A       I don't think it was.

13          Q       Well, when it hit a mail box?

14          A       Well, it hit the mail box but -- I guess you

15 would call it an accident.

16          Q       Well, it hit the mail box in any case, it

17 did hit the mail box?

18          A       All right.

19          Q       Okay. Where were you, Alex, before the

20 accident?

21          A       We was in Clearfield at my father-in-law's,

22 my wife's dad's, and we was there celebrating a birthday

23 party.

24          Q       And whose birthday was it?

25          A       That was her brother's.

1 Q Okay. And she was there with you?  
2 A Yes, she was.  
3 Q Who drove the car to the party?  
4 A I believe I did.  
5 Q Okay. And was anybody there with you at  
6 the party besides you and your wife and her parents and  
7 brother?  
8 A Sure. There was friends and relatives.  
9 Q Quite a big group of people?  
10 A Yes, there was.  
11 Q Okay. And after the party did you -- were  
12 you going to go home?  
13 A Well, yes.  
14 Q Okay. Did anybody ask you for a ride?  
15 A Yes, they did.  
16 Q Who asked you for a ride?  
17 A Mike Quintana and Marty Martinez.  
18 Q Going back to Mike, does he have a nick-  
19 name?  
20 A Yes, Otts.  
21 Q Okay, when we introduced him as Otts it was  
22 in fact Mike, was it not?  
23 A Yes.  
24 Q Okay, and that was my mistake. Okay, so  
25 that's Mike you are referring to in the courtroom today. He

1 was with you?

2 A Uh-huh.

3 Q Okay. And how many people total in the  
4 car?

5 A Four.

6 Q And was there alcohol served at the  
7 party?

8 A Yes, there was.

9 Q Did you have occasion to have some drinks?

10 A Yes, I did.

11 Q Okay. And did you have occasion to go to  
12 the Layton area?

13 A Yes, to give my friends a ride home.

14 Q Okay. Who were you going to drop off  
15 first?

16 A I was going to take Marty home.

17 Q Okay, and who was driving the car?

18 A I was.

19 Q Okay, and what happened as you were coming  
20 to take Marty home?

21 A Well, he said to turn this way or that way  
22 and I turned and we went down this road here.

23 Q Would you step to the board and show me  
24 exactly what happened, if you would.

25 A All right.

1           Q       Do you know that area, are you familiar  
2 with that drawing, don't --

3           A       No, I'm not too familiar with the area  
4 but --

5           Q       Well, don't change her drawing at all,  
6 don't erase anything.

7           A       All right. Okay, we was headed down this  
8 way and like they indicated earlier, there was no -- it's  
9 poor light.

10          Q       Okay.

11          A       We was coming down the road and I was driving  
12 and I was coming down the road like this and there was gravel  
13 there and I didn't notice the road took a shot left, I guess  
14 it would be, and I sitting in the driver's seat, and I  
15 took that -- all of the sudden I had to turn left. You see,  
16 my battery wasn't working very good so my lights were dim  
17 anyway and my car has bad springs so it lowers the front end  
18 of the vehicle so it's going down this way. All of the  
19 sudden I had to take the left, slammed on the brakes, and  
20 went out of control, went this way, hit the mail box, and  
21 that's how we ended up in that position.

22          Q       Okay. Why don't you take your chair. That's  
23 a fair representation of where the car ended up in, is that  
24 correct?

25          A       Exactly.

1           Q       And what you have heard the witnesses  
2 testify to is about what happened to your car, is that  
3 correct?

4           A       Yes.

5           Q       Did you get out of the car?

6           A       Yes, I got out of the car and --

7           Q       Where did you go?

8           A       I looked around and all of the sudden I  
9 looked over to see the lady's house -- no lights were on  
10 but at the gentleman's house there there was lights on  
11 in the inside and I believe the porch light was on and I  
12 walked towards the house to ask them for a jump because I  
13 thought they were awake.

14          Q       Okay. Why did you want a jump now? These  
15 are all ladies on the jury. What do you mean by a jump?

16          A       I needed to get my car restarted, jumper  
17 cables.

18          Q       Are you talking about getting some battery  
19 cables to hook up from car to car?

20          A       Yes.

21          Q       And so you went to the door to ask him  
22 about that?

23          A       Yes, I did.

24          Q       Did you in fact ask him?

25          A       Yeah, I asked him if he could give me a



1 jump and he said, "Sure, I will be right out." So I went  
2 back to the car and I said we would be all right because the  
3 guy .indicated he would let us -- would give us a jump.

4 Q Okay. Could you have started your car  
5 without the jump?

6 A No, I couldn't. We tried, that's why the  
7 lights were off when the lady looked out the window.

8 Q Okay. And then after you told them that,  
9 did you have occasion to come in contact with Mrs.  
10 Summerville?

11 A Yeah, she came out of the house kind of  
12 perturbed about her mail box.

13 Q Okay. And you had a conversation with  
14 her?

15 A Yeah, I told her, "Don't worry about your  
16 mail box, ma'am, I will pay for it."

17 Q Okay. And the mail box was -- you felt was  
18 your responsibility?

19 A Yes, it was.

20 Q Okay, and you still feel that way?

21 A Yeah, I told her earlier that I would pay  
22 for her mail box.

23 Q Okay. And so you -- you told her that and  
24 after you had a conversation with her what happened?

25 A Well, then we went back to the car and I --

1 no, I went to the gentleman's house again and asked him if  
2 he was going to give me a jump, but if his wife did call  
3 the cops I figured they were on their way, you know, and so  
4 I thought, "Oh, shit," (laughter), "Oh shucks," so I went --  
5 excuse me, Your Honor.

6 I went back to the car and so we pushed the  
7 car to the side of the road and parked it.

8 Q Okay. And your intention was to walk  
9 home?

10 A Yeah.

11 Q Did you have occasion to come in contact  
12 with Officer Brown?

13 A Yes. I was about 50 yards up the road  
14 already by the time he came on the scene. He turned the  
15 corner and I seen his lights and I got scared and so I  
16 took off running and then I thought, "What the heck am I  
17 running for?" So I stopped and he came up and I started  
18 walking down to the curb and he said, "Can you come over  
19 here?"

20 Q Did you go over?

21 A Yes, I did.

22 Q Did you have a conversation with him?

23 A Yes.

24 Q Okay, and then after your conversation with  
25 him did Barbara, your wife, in fact step forward?

1           A       No, not at that time.

2           Q       Oh, okay. After the conversation with  
3 him, what happened?

4           A       He asked me to step into his vehicle.

5           Q       And did you do that?

6           A       Yes, I did.

7           Q       Okay, and after you stepped into his  
8 vehicle what happened?

9           A       We started going up the road like he said  
10 and we went about another 10 yards and Marty was walking  
11 on the left hand side of the street.

12          Q       Now you've talked about a Marty that was  
13 in the car with you earlier that you were going to take  
14 home. Is that the same person?

15          A       Yes.

16          Q       Okay. And then did Marty, based on what  
17 Officer Brown said, did Marty come to the vehicle?

18          A       No, he says, he put his spotlight on him  
19 and he said -- I guess he realized who it was because he --

20          Q       Don't guess and don't make any observa-  
21 tions about what he said.

22          A       All right.

23          Q       He put a spotlight on --

24          A       He put a spotlight on him and he said, "Hey,  
25 Marty, what are you doing?"

1 Q Okay. Then did Marty come to the vehicle?  
2 A Yeah -- no, he stood there because the  
3 officer told him to stand right there.  
4 Q Okay. And then did the officer exit the  
5 vehicle?  
6 A Yes, he did.  
7 Q You had a conversation?  
8 A Yes.  
9 Q And after the conversation, what happened?  
10 A Well, out of nowhere here comes my wife.  
11 Q Okay. And your wife stepped forward?  
12 A Yeah.  
13 Q And she made some statements? Okay, and  
14 we don't want you to repeat those statements.  
15 A I don't even know what they were. I was  
16 inside the vehicle.  
17 Q Okay. And after she made those statements,  
18 what happened?  
19 A He gave her the field sobriety test.  
20 Q Okay. And after he gave her the field  
21 sobriety test, what happened?  
22 A I heard him say, "I am placing you under  
23 arrest for DUI."  
24 Q Okay. And after he said that to her what  
25 happened?

1           A       He handcuffed her, brought her to the  
2 car and opened the door and let me out and put her in.

3           Q       Okay, and where did you go?

4           A       I just stood there on the side of the  
5 road with Marty and these guys left.

6           Q       And there you were with the vehicle?  
7 What happened -- you didn't have your vehicle either?

8           A       No, it was parked down the street.

9           Q       Did they eventually impound your vehicle  
10 and take it away?

11          A       Yeah. I did indicate to the officer there,  
12 the other officer with the blond hair, I asked him if I  
13 could take the car home and he says, "No, you can't take  
14 the car home, but you can go ask Officer Brown." So I  
15 went down the street further where he was talking with  
16 these people and I went down the street and I asked him if  
17 I could take the car and he said, "You can't take the car."  
18 I said, "All right."

19          Q       All right. Did you ever make any statements  
20 to anybody that your wife was driving the car?

21          A       If I did it was out of -- probably frantic  
22 and excited, you know.

23          Q       Who was driving the car. Now, you are  
24 under oath and you understand that you are under oath here  
25 in the court today and I want you to tell the jurors who was

1 driving that car.

2 A I was driving the vehicle.

3 Q Is there any question about that at  
4 all?

5 A There's no question.

6 Q You own the vehicle, it's your car?

7 A Yes.

8 Q You were driving and you were taking  
9 Marty home?

10 A Yes, I was.

11 MR. VANDERLINDEN: That's all I have,  
12 Your Honor.

13 THE COURT: Thank you. Mr. Garside.

14 MR. GARSIDE: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. GARSIDE:

17 Q Mr. Lopez, does the Defendant drive your  
18 car very often?

19 A Yes, she does.

20 Q Does she have her own vehicle?

21 A Well, we have one but it's not registered.  
22 She used to drive it.

23 Q You testified that you parked the car and  
24 you were just going to walk home, is that right?

25 A Yeah, but I felt that the police were on

1       their way so we just decided that we had better get out of  
2       here.

3               Q       Isn't it true that you live in Clearfield?

4               A       Yes, I do.

5               Q       Quite a jaunt, isn't it?

6               A       Yeah, but the people I was giving a ride  
7       home lived in Layton.

8               Q       So you were going to walk to their house?

9               A       No, I was walking towards Clearfield. I was  
10      going to go home.

11              Q       You were going to walk home?

12              A       Uh-huh.

13              Q       But you didn't know where your wife was?

14              A       Heck, no. See, I was at the car looking  
15      for my cigarettes and I couldn't find them, you know, and  
16      I thought well, because of the way the car turned and what-  
17      not that they flew underneath the seat and so I was looking  
18      under the seat and everybody said, "Let's go, let's get out  
19      of here," and so they started running up -- going up the  
20      street, not running, walking up the street, and they were  
21      quite a ways up the street by the time I realized I  
22      couldn't find my cigarettes so I shut the door and got out  
23      and started walking up the street myself, and that's when  
24      the officer turned the corner. And where they went, I  
25      don't know. I was kind of surprised, looked around and there

1 was nobody else with me.

2 Q Okay. Now, you've heard both IIs.  
3 Summerville and Mr. Horseman testify as to the statements  
4 that you made --

5 A Uh-huh.

6 Q -- shortly after you hit the mail box. You  
7 went up to Mr. Horseman's and said, "My wife was driving,  
8 can you give me a jump."

9 A I could have said that in a state of  
10 frantic. I probably said that so that nobody would know that  
11 I was driving at the time. That's probably why I said  
12 that, if I did say it.

13 Q And then again you said it to IIs.  
14 Summerville?

15 A Probably did.

16 Q Did -- what did Officer Brown ask you when  
17 he came up to you?

18 A Well, the first thing he did, I think he  
19 asked me something about a motorcycle.

20 Q And what was your response to that?

21 A I just said yes or something. Everything he  
22 asked me I just agreed to. I said, "Yes, yes, yes," I didn't  
23 fight him over nothing. I said, "I'll get in the car," you  
24 know.

25 Q Yes to everything, I mean even if it wasn't



1 right you still said yes?

2 A Yes, exactly.

3 Q And why did you do that?

4 A I don't know.

5 Q This birthday party that you were at,  
6 had you had quite a bit to drink there?

7 A Well, I did. I drank a few earlier that --  
8 earlier in the party I did.

9 Q In your own opinion and knowing yourself,  
10 did you feel that you were impaired?

11 A Well, tell me what drunk does. I don't  
12 know, I drove the vehicle, I will say that much. I got  
13 in and drove it. Maybe I shouldn't have been.

14 Q Do you recall making a statement to the  
15 officer that you were too drunk to drive so you had your  
16 wife drive?

17 A No, I didn't state that. He stated that to  
18 me so I agreed with him. He said, "What was it, you were  
19 too drunk to drive so you let Barbara drive?" And I said,  
20 "Yes." I remember that. That's what he told me.

21 Q Did he use the name Barbara?

22 A He had already placed her under arrest.

23 Q And called her by her first name?

24 A He probably said "your wife." I don't  
25 remember, but he did say -- it was indicating Barbara when

1 he did ask me that question.

2 Q So it's your testimony that Officer Brown  
3 came up with that?

4 A Exactly.

5 Q You never made that statement?

6 A I never made that statement, she's the  
7 one that walked up and said that, that she was driving.

8 Q Were you in fact too drunk to drive?

9 A Well, with the street lights like it was  
10 and whatnot, maybe I was and maybe I wasn't. I'm not too  
11 sure, and then with my car the way it was acting, put all  
12 that together, a pile of junk going down the road.

13 Q And you were in the car and you heard  
14 Officer Brown tell your wife that she was under arrest  
15 for driving under the influence of alcohol?

16 A Yes.

17 Q Do you recall what his exact words were  
18 as he placed her under arrest?

19 A He said, "I am placing you under arrest  
20 for DUI driving under the influence," I guess.

21 Q Did he say DUI or did he say driving under  
22 the influence of alcohol?

23 A I know it was either one of those, but it  
24 still means the same, don't it? DUI, driving under the  
25 influence.

1 Q Did you say anything at that point?

2 A I was telling Barbara to shut up -- not --  
3 before he placed her under arrest I was telling her to shut  
4 up.

5 Q Okay.

6 A I was yelling out the window saying, "Shut  
7 up, what are you doing," you know. I kind of realized what  
8 she was doing.

9 Q You said that at the scene, even Ms.  
10 Summerville testified, that you told her you were going to  
11 take care of the mail box.

12 A Yes, I did.

13 Q Did you give her any information or  
14 identification as to who you were, where you lived, where  
15 she could get in touch with you?

16 A Well, like I say, I was lost and I really  
17 didn't know where I was at. I did tell her I would pay for  
18 the box. Now I know where she lives I will go down there  
19 and pay for her box.

20 Q But you didn't give any information as to  
21 your name and where you lived?

22 A No, I was too concerned about my vehicle.

23 Q Did you try to find out her name, her  
24 address? You said that you were lost.

25 A No. I was already too worried about

1 Barbara. The mail box really didn't mean much to me after  
2 they had placed her under arrest.

3 Q Okay. Prior to your --

4 A I was worried about the car to get it out  
5 of the road.

6 Q Okay.

7 MR. GARSIDE: Nothing further at this time,  
8 Your Honor.

9 THE COURT: Thank you. Any re-direct?

10 MR. VANDERLINDEN: Nothing, Your Honor.

11 THE COURT: Thank you. You may step down,  
12 Mr. Lopez.

13 MR. VANDERLINDEN: Mike Quintana, please.

14 MICHAEL QUINTANA,

15 was called as a witness for and  
16 on behalf of the Defendant and  
17 testified upon his oath as  
18 follows:

19 DIRECT EXAMINATION

20 BY MR. VANDERLINDEN:

21 Q Would you state your name for us, please?

22 A Michael Quintana.

23 Q Might I call you Mike?

24 A Yes, sir.

25 Q Thank you. Your address, Mike?

1                   A       2655 North 400 West, Layton.  
2                   Q       Are you a friend of Alex and Barbara?  
3                   A       Yes, I am.  
4                   Q       Did you have occasion to go to a party?  
5                   A       Yes, I did, a birthday party for her  
6 brother.  
7                   Q       You've heard testimony here today about a  
8 birthday party on the 16th. Is that correct that you were at  
9 that party?  
10                  A       Yes, I was.  
11                  Q       Did you ask anybody for a ride home?  
12                  A       Yes, I asked Alex Lopez for a ride.  
13                  Q       Okay, and did he agree to give you a ride  
14 home?  
15                  A       Yes, he did.  
16                  Q       Were you subsequently involved in an  
17 accident? Well, did you hit a mail box?  
18                  A       Yes, we did, we did hit a mail box.  
19                  Q       Okay. Who was driving the car?  
20                  A       Alex Lopez.  
21                         MR. VANDERLINDEN: That's all I have, Your  
22 Honor.  
23                         THE COURT: Thank you. Mr. Garside?  
24                         MR. GARSIDE: Thank you, Your Honor.  
25                                 CROSS-EXAMINATION

1 BY MR. GARSIDE:

2 Q Where were you located in the vehicle,  
3 Mr. Quintana?

4 A In the back seat, in the passenger side  
5 in the back seat.

6 Q All right. Who else was in the back seat?

7 A Marty Martinez.

8 Q And he was located where?

9 A On the back, on the driver's side in the  
10 back seat.

11 Q Who was seated directly in front of you?

12 A Barbara Lopez.

13 Q Just the four of you in the vehicle then?

14 A Yes, sir.

15 Q How long had you been at the party?

16 A I had been there for approximately two  
17 hours. My ride wanted to stay there and it was late and I  
18 wanted to get home so Alex was already going to give Marty a  
19 ride home and so I asked him if he would give me a ride and  
20 he said, "Sure, no problem." So we left.

21 Q You say you didn't get to the party until  
22 about 2:00 in the morning then?

23 A Right.

24 Q Had you had anything to drink at the party?

25 A No, sir, I didn't.

1                   Q       You hadn't had anything to drink at all  
2 then?

3                   A       No, sir, nothing at all, there or before.

4                   Q       Where were you when the officers arrived?

5                   A       We pushed the car off the road and I says,  
6 "I've had enough of this," you know. "I am going home." It  
7 was late and I was tired and I wanted to get home and so I  
8 took off walking and so the officer, when I was walking he,  
9 you know, he drove -- passed me right by. Apparently he  
10 didn't see me.

11                  Q       Which -- do you know which officer --

12                  A       No, sir, I don't. I was walking on the  
13 sidewalk.

14                  Q       Do you recall where you were when the  
15 officer passed you?

16                  A       Going north on -- going north on whatever  
17 street that is.

18                  Q       So you were headed that way.

19                  A       Right.

20                  Q       Are you good friends with Barbara and Alex?

21                  A       Yes, I've known them for 15 years.

22                  Q       Okay. Has there been any occasion when you  
23 have been with them when Barbara has been driving the  
24 vehicle?

25                  A       No, sir.

1 Q None at all?

2 A Never.

3 Q You hadn't been drinking anything at all  
4 that night, weren't you concerned that the driver of the  
5 vehicle had?

6 A Yes, sir, somewhat. But I felt that Alex  
7 was, you know, he seemed to be, you know, he had been  
8 drinking but he seemed to be all right.

9 MR. GARSIDE: Nothing further at this  
10 time, Your Honor.

11 THE COURT: Thank you. Further direct?

12 MR. VANDERLINDEN: Nothing, Your Honor.

13 THE COURT: You may step down.

14 MR. VANDERLINDEN: Your Honor, if the Court  
15 please we would like to call Barbara Lopez to the stand.

16 BARBARA LOPEZ,

17 was called as a witness for  
18 and on behalf of the Defendant  
19 and testified upon her oath as  
20 follows:

21 DIRECT EXAMINATION

22 BY MR. VANDERLINDEN:

23 Q Would you state your name for members of the  
24 jury, please?

25 A My name is Barbara Loraine Lopez. I live



1 at 54 South 450 East in Clearfield.

2 Q Are you married?

3 A Yes, I am.

4 Q And Alex is your husband?

5 A Yes.

6 Q Okay, fine. I would like to call your  
7 attention to what's been testified to as a party that  
8 occurred for your brother at your parent's house. Were you  
9 there?

10 A Yes, I was.

11 Q Okay, and what is your brother's name?

12 A Eli Garcia.

13 Q Okay, and you were at the party, his  
14 birthday party, is that correct?

15 A Uh-huh.

16 Q Who did you go to the party with?

17 A With my husband and my two children.

18 Q Okay. And who did you leave the party with?

19 A My husband and two of his friends.

20 Q What are their names, if you know?

21 A Mike Quintana and Marty Martinez.

22 Q Okay. And as you left the party, where  
23 were you -- what was your first destination, where were you  
24 going to go first?

25 A Well, we was going to go home but then his

1 friends asked for a ride and so we was going to Layton.

2 Q Okay. And who were you going to take to  
3 Layton?

4 A Marty and Otts.

5 Q Okay. What city was the party in?

6 A In Clearfield.

7 Q Okay. You live in Clearfield?

8 A Yes.

9 Q So it was out of your way but you agreed  
10 to take them home, is that correct?

11 A Yes.

12 Q Okay, and so you went to Layton. Who was  
13 driving the vehicle?

14 A My husband.

15 Q Okay. Did something happen while you were  
16 in Layton?

17 A Yes.

18 Q What was that?

19 A He hit a mail box.

20 Q Okay. What happened thereafter, what did  
21 you do?

22 A Well, after that everybody got out of the  
23 car and everybody said, "Let's just go," and first my  
24 husband goes, "Let me go see if I can go get some jumper  
25 cables to get a jump for the car to get it started," and so

1       then he went and talked to Mr. --

2               Q       Well, it's the gentleman who has testified  
3       here today.

4               A       Uh-huh.

5               Q       Okay.

6               A       And so then he was talking to him and then  
7       he came walking back and I don't know, everybody just --

8               Q       When you say "he came walking back," just  
9       take it easy.

10              A       My husband did.

11              Q       Okay, Alex came walking back and then what  
12       happened?

13              A       Then we all took off walking.

14              Q       Okay. You left, didn't you?

15              A       Yeah.

16              Q       Okay, and did the officers come shortly  
17       thereafter?

18              A       Yes, they did.

19              Q       The police officers. Did you step forward?

20              A       Yes, I did.

21              Q       Okay, and did you go up to any particular  
22       officer?

23              A       I didn't step forward right away, I was  
24       sitting down by this truck and I was just watching them.

25              Q       Okay.

1           A       Well, I seen an officer coming so I just sat  
2 down but I didn't really know what to do and I didn't know  
3 really where I was at, I'm not too familiar with Layton. So  
4 I just sat by the truck and was just watching and I seen  
5 Officer Brown talking to my husband. I figured that he was  
6 going to place him under arrest and I thought -- so then  
7 that's when I walked forward.

8           Q       Okay. Now, you tell these ladies of the  
9 jury why you walked forward and what you said.

10          A       I walked forward to the police officer  
11 because I didn't want my husband to go to jail, his record  
12 has been clean for quite a few years now and so then --

13          Q       Okay. Were you afraid that he was going to  
14 be arrested?

15          A       Yes, I was.

16          Q       What were you afraid he was going to be  
17 arrested for?

18          A       For DUI.

19          Q       Okay, for driving under the influence. Okay,  
20 and so you stepped forward and what did you say to Officer  
21 Brown?

22          A       I told him not -- I told him to leave the  
23 two guys alone that I was the one that was driving the  
24 car.

25          Q       Was that the truth?

1           A       No, I lied.

2           Q       Okay. Well, you didn't tell the officer  
3 the truth, did you?

4           A       Huh-uh.

5           Q       Who, in fact, was driving the car?

6           A       My husband.

7           Q       And why did you tell the officer a lie?  
8 Or why did you tell him something that wasn't true?

9           A       Because I was trying to protect my  
10 husband.

11          Q       Okay. And so what the officer, what  
12 Officer Brown has testified today about your statements is  
13 correct, isn't it? I mean, when he got on the stand under  
14 oath and said that you were driving -- and he testified under  
15 oath that you told him that you were driving the car, that's  
16 correct?

17          A       I did say it but I really wasn't driving  
18 the car.

19          Q       I know, but what he testified to what he  
20 heard is correct?

21          A       Right.

22          Q       What he said that you said -- am I getting  
23 too many saids in for you there?

24          A       Uh-huh.

25          Q       I'm sorry. The officer told the truth about

D O C K E T

ND CIRCUIT COURT - LAYTON

Page 1  
TUESDAY MARCH 20, 1990  
1:00 PM

endant CITATION: LPD Case: 872000401 TC  
LOPEZ, ALEX Traffic Court Case  
54 SO 450 E Judge: K. ROGER BEAN  
CLEARFIELD UT 84015

NO CDR # FOR THIS CASE

<u>arges</u>	<u>Bail</u>
olation Date: 08/16/86	
1. DRIVING UNDER THE INFLUENCE OF ALCO/DRUG C41-6-44	600.00
2. DELAYING AND OBSTRUCTING AN OFFICER 9.52.030	300.00
3. FAILURE TO REPORT ACCIDENT W/UNATTEN VEH C41-6-32	150.00
4. CONTEMPT OF COURT CONTEMPT	85.00
Plea:	Finding/Judgment: Guilty - Bench

eedings

26/87 Case filed on 01/26/87.	JDW
27/87 ARR scheduled for 2/ 9/87 at 9:00 A in room 1 with KRB	JDW
SUMMONS TO LPD RET ON 2-9-87 9AM	JDW
10/87 D CALLED ON 2-9-87 STEVE VANDERLINDEN IS SUPPOSED TO CALL IN	JDW
AN APPEARANCE ON HIS MATTER*** CONT TO 2-17-87	JDW
27/87 PTC scheduled for 3/31/87 at 8:30 A in room 1 with KRB	GLG
31/87 KRB/MAH T4488 D170 THIS IS TIME SET FOR PRE TRIAL. PL REP	MAH
BY STEVE GARSIDE. D NOT PRESENT BUT REPRESENTED BY ATTY	MAH
VANDERLINDEN.	MAH
CONSIDERING NEGOTIATION/REQUEST ADDITIONAL SEVEN DAYS TO	MAH
WORK OUT PROPOSAL - BY APRIL 7, 1987 AT 4:30 PM.	MAH
30/87 PTC RESCHEDULED FOR 1-13-88 AT 3:00 P.M.	GLG
PTC scheduled for 1/13/88 at 3:00 P in room 1 with KRB	GLG
CITY PROSECUTOR AND DEF COUNSEL, STEVE VANDERLINDEN ADVISED	GLG
VERBALLY OF THE DATE	GLG
13/88 KRB/MAH T4961 C2852 PTC ATTY GARSIDE PRES FOR CITY	MAH
D PRESENT WITH ATTY VANDERLINDEN PRESENT TO REP HIM.	MAH
ATTY VANDERLINDEN WILL FILE MOTION WITH COURT THAT D'S RIGHTS	MAH
TO A SPEEDY TRIAL HAVE BEEN VIOLATED WITHIN 10 DAYS.	MAH
28/88 FILED MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL	JSK
25/88 NOTIFIED ATTNY STEVEN VANDERLINDEN'S OFFICE OF HRG DATE BY PHONE	JSK
SENT NOTICE TO CITY ATTNY'S OFFICE AND MR. VANDERLINDEN'S OFFICE	JSK
HRG scheduled for 3/11/88 at 2:00 P in room 1 with KRB	JSK
'11/88 T # 5089 C # 2827 TIME SET FOR HRG. P IS REP BY STEVE GRSIDE	GLG
DEF IS NOT PRES, BUT IS REP BY PAUL COLTON, APPEARING FOR STEVE	GLG
VANDERLINDEN. DEF COUNSEL MOVES THE MATTER BE DISMISSED FOR	GLG
LACK OF SPEEDY TRIAL	GLG
C # 2980 O RESPONDS	GLG
COURT SETS MONDAY APRIL 11, 1988 AT 8:30 A.M. ALL DAY, SINGLE	GLG
SET JURY	GLG
'18/88 TRJ scheduled for 4/11/88 at 8:30 A in room 1 with KRB	GLG
COPY OF THE DOCKET WITH TRL DATE MAILED TO ATTY VANDERLINDEN	GLG
AND SENT TO THE CITY ATTY	GLG
'21/88 COUNTY ATY RECEIVED NOTICE CITY SHOULD HAVE RECEIVED -	MAG
THEY WILL RETURN THEM.	MAG
'29/88 COPY OF DOCKET SENT TO LAYTON PROSECUTOR ADVISING OF TRIAL	MAG
DATE.	MAG
'11/88 BEAN/GLG T # 5136 C # 2700 TIME SET FOR JURY TRL. P IS REP BY	GLG
STEVE GARSIDE. DEF IS PRES WITH ATTY STEVEN VANDERLINDEN.	GLG

LPD Case: 872000401 TC  
Traffic Court Case

/11/88 ALL PROSPECTIVE JURORS ARE PRES. EXCEPT THOSE EXCUSED BY THE  
 COURT ARE PRES.  
 NEW TAPE, # 5136  
 JUROR KAREN MEYERS PRES---LATE  
 JURORS ARE SWORN AND QUESTIONED.  
 THE FOLLOWING ARE CHOSEN TO SIT ON THE JURY:  
     WINNIE R KILLPACK  
     LAWSEN JOE MAHI  
     KAREN MEYERS  
     ERIC LAWRENCE  
 C #700 RECESS TEMP  
 C # 7001 COURT IS BACK IN SESSION  
 ALL PARTIES AND THE JURY ARE BACK IN COURT  
 JURORS ARE SWORN  
 C # 896 INFORMATIONS ARE READ TO THE JURORS  
 C #900 CITY GIVES OPENING STATEMENT  
 C # 1134 JURY EXCUSED TEMP. WHILE COUNSEL PRESENT ARGUMENTS  
 C# 1150 EXCLUSIONARY RULE IS ENVOCKED  
 ON MOTION OF THE PLAINTIFF DEF  
 DEF MOVES FOR DISMISSAL BASED ON THE LACK OF SPEEDY TRIAL AND  
 OBJECTS TO ANY TESTIMONY PRESENTED AT A PREVIOUS TRIAL.  
 C # 1588 COURT DENIES THE MOTION FOR DISMISSAL AND RULES THE TESTI-  
 MONY THAT THE DEFENDANT PROPOSES ON ANOTHER TRIAL. IS ADMISSABLE,  
 EXCEPT FOR THE VERDICT  
 C # 1638, JURY IS BACK IN THE JURY BOX.  
 1717 DEF GIVES OPENING STATEMENT .  
 C# 1902 P W I # 1 VICKIE L.L. SUMMERVILLE  
 C# 2370 XEX  
 C # 2597 P W I #2 STEVEN BROWN, LPD  
 C # 3272 OBJ. BY DEF, OVERRULED  
 NEW TAPE # 5137  
 C # 212 XEX                      C # 600 RDEX  
 C # 688 RDEX                    C # 688 CITY RESTS  
 C # 740 DEF MOVES THE COURT DISMISS THE CHARGES OF FAILURE TO  
 REMAIN AT THE SCENE OF ACCIDENT AND RESISTING AN OFFICER  
 C # 884 COURT DENIES MOTION  
 C # 944 RECESS TEMP  
 C # 370 P W I # 3 DAVID PATTERSON, LPD  
 C # 600 XEX  
 C # 900 DEF W I # 1 ALEX LOPEX    C # 1350 XEX  
 C # 1771 DEF RESTS              C X 1776 CITY RECALLS OFFICER BRN  
 C # 1855 BOTH SIDES REST    C # 1865 COURT READS INSTRUCTIONS  
 TO THE JURY/  
 C # 2600 P GIVES SUMATION  
 C # 2925 DEF GIVES SUMATION  
 NEW TAPE 5138  
 C # 55 CITY FINAL SUMATION  
 C # 306 JURY RETIRES 12:30 P.M.  
 C # 486 JURORS ARE BACK FOR A QUESTION  
 C # 500 JURY IS BACK AND FINDS THE DEF GUILTY OF DUI. AND  
 OBSTRUCTING AND DELAY. NOT GUILTY TO FAILURE TO REMAIN AT THE  
 SCENE OF ACCIDENT SENT SET MAY 4, 1988 AT 9:00 A.M.