

2000

# Utah v. Nathan Martinez : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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STATE OF UTAH /

Plaintiff/Respondent /

vs. / Case No 20000345-CA

NATHAN MARTINEZ /

Priority # 2

Defendant/Appellant /

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BRIEF OF APPELLANT

This appeal is from a verdict of guilty after a trial before a jury empaneled by the Honorable Michael D. Lyon to one count each of burglary, aggravated assault and riot on December 6, 7 and 8, 1999. On February 3, 2000 the Court sentenced the Defendant to serve term of nine years to life, 0 to five years and three years to five years, all sentences to run concurrently, at the Utah State Prison.

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**FILED**

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COURT OF APPEALS

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Defendant/Appellant	/	Priority No 2

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BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

This appeal is from an order of Judge Michael D. Lyon on February 3, 2000 sentencing the Defendant to serve concurrent terms of Nine years to life on Court I , burglary and for the use of a dangerous weapon, an additional one year to run consecutively, zero to five years on Count II, aggravated assault, and three years to five years, with an additional one year for the use of a dangerous weapon, to run consecutively to the basic term on Count III, riot, all to be served at the Utah State

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prison. The notice of appeal was filed with the Court on the 20<sup>th</sup> Day of April, 2000 after Judge Michael D. Lyon signed an order enlarging the time to file a Notice of Appeal on the 14<sup>th</sup> day of April, 2000. The Jurisdiction of this Court is conferred pursuant to U.C.A. Sec 78-2-2(3)(I).

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

Was the Defendant denied effective assistance of Counsel as guaranteed by the XIV amendment to the United States Constitution, Article IX of the Utah Constitution, see also Strickland v Washington 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1984) when the Defendant's counsel failed to interview and call witnesses supportive of the Defendant's position that they were invited to the apartment to party, and the Defendant's counsel putting on no witnesses for the Defendant.

STANDARD OF  
REVIEW

Where ineffective assistance of counsel is raised for the first time on appeal, the Appellant Court must determine as a matter of law, whether the Defendant was denied effective assistance of counsel. State v Callahan 866 P 2d 590 (Utah App 1993); State v Rawlings 893 P 2d 1063, 1066-67 (Utah App 1995).

STATEMENT OF THE CASE

After a trial held before a jury on December 6, 7 and 8, 1999 the Court on



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February 3, 2000 sentenced the Defendant to serve terms of not less than nine years or more than life on Count I, burglary, with a one year penalty enhancement for use with a dangerous weapon, to be served consecutively to the nine year to life term, zero to five years on Count II riot, and three years to five years on Count III, Aggravated Assault, with an additional one year for the use of a dangerous weapon, to be served consecutive to the three year to five year term, all terms to run concurrent and to be served at the Utah State Prison.

On June 4, 1999 the Defendant and some of his friends went to the apartment of Tiffany Montano at 2260 Madison Avenue in Ogden, Utah. The Defendant and some of his friends had been partying at an apartment either on 14<sup>th</sup> or 15<sup>th</sup> Street and Childs Avenue in Ogden, Utah. Upon leaving the Childs Avenue address they drove to Ms. Montano's apartment. There the Defendant and one of his friends went to the door of the apartment. Here the testimony varies as to whether one of the individuals in the apartment let them in or they pushed the door open and entered without an invite.

Upon entering the apartment, the Defendant who was a member of the West Side OVG gang asked Mike Montano what his name was. At first the victim merely gave the Defendant his first name. Then the Defendant asked Mike what his last

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name was and Mike answered, "Montano". When Mike told the Defendant his last name the Defendant hit him on the back of his head with a beer bottle. Mike retreated to a back bedroom where the Defendant and seven or nine other individuals commenced throwing beer bottle at Mike and Eric Leyva. Both Mike and Eric ran out of the apartment through the Defendant and his friends. They were hit a number of times by the attackers.

FACTS

On the evening of June 4, 1999 Eric Leyva and Mike Montano both went to the apartment rented by Tiffany Montano and located at 2260 Madison Avenue in Ogden, Utah at approximately 9:45.( T. Vol I p. 178) The purpose was to meet some friends there, kick back and have a few beers (T Vol I p. 87) Both Eric Leyva and Mike Montano were invited to the apartment by Cassie Maestas, Tiffany's roommate. ( T Vol I pg's 87-88)

Tiffany Montano knew the Defendant, but did not invite the Defendant to come to the apartment the night of June 4, 1999. ( T Vol I p 181) There was a claim that the members of the group who attacked the victim and Eric Leyva went to the apartment to party and believed that Tiffany had invited certain of the group to come to her apartment at any time. (T Vol I pg 183 and Vol II p 158)

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Moreover Leo Ornelas had specifically been invited to Tiffany Montano's apartment by Tiffany ( T Vol I p 183, Vol II pg's. 35, 44-46) Eric knocked at the door and was admitted to the apartment.

After some period of time there was a knock at the door (T. Vol I pg. 90) According to some testimony Veronica Palomo was going to or opened the door. Some said the door just opened. (T. Vol I pg's 90,333) However, Veronica Palomo was not available to testify at the trial. (T. Vol I p. 333) The first question the Defendant asked the group was where is Tiffany. (T. Vol I p 119) Further, Veronica did not invite anyone to come into the apartment at that time. (T. Vol I p. 92)

The victim, Mike Montano was sitting on a couch in the living room (T. Vol I p 92) Eric Leyva testified that the front door was unlocked or open so that the Defendant and his friend could just open the door and or walk in. (T Vol I pg's 94, 136) When the Defendant asked for Tiffany (T. Vol I p 137), one of the two individuals then walked over to where Mike Montano was sitting and asked him his name. Mike Montano responded with "Mike". The individual said "Mike what" Mike then said "Montano". The victim did not remember what the attacker looked like ((T. Vol I p. 138)

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The individual responded with "Fuck eight ball" and hit Mike Montano on the back of his head with a beer bottle. (T. Vol I pg's 94-95, 139) The assailant was about 5'7" and was wearing a blue bandana on his head ( T. Vol I p. 95) When questioning Eric Leyva further about what the Defendant meant by eight ball, the witness explained that eight ball is a gang, in which the witness was a member. (T. Vol I p 96) The witness testified that the Defendant was a member of the west side OVG which is a rival gang (T. Vol I p 97) At that point about eight or ten other individuals came into the apartment, all of who were similarly dressed as the Defendant.. (T. Vol I pg's 97-98)

After the victim was hit over the head by the beer bottle he and the other male in the apartment ran into Tiffany's bedroom, which was the far room on the hall. ( Vol I p. 99) There the victim and the other male tried to go out a widow, but were unable to go through the window. (T. Vol I p 100)

Then Defendant and four of his friends came into the bedroom where the victim had run. The victim and his friend were yelling, we are not tripping, which meant that we did not have any problems with the rival gang. ( T. Vol I pg's 101-102) Then the victim ran into the other bedroom, where the Defendant and his friends started throwing beer bottles at the victim. (T. Vol I pg's 104-105) In the

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bedroom there was a baby asleep on the bed. ( T Vol I p. 106) The friend of the victim started yelling to the Defendant and his friend, "there's a baby in here, leave." However, this did not stop the throwing of beer bottles. (T. Vol I p. 107) Eric Layva testified that he was hit on the head by four or five beer bottles. (T. Vol I p. 108) Eric Layva claimed he never saw any individual with a crow bar (T Vol p. 120) The victim testified he believed he saw somebody with a bar in his hand but could not identify the bar or who held it. (T. Vol I pg's 145-146)

Both the victim and Eric Layva ran out between the other individuals to go out the front door. During their run they were hit by several fists, but both of them made it out of the apartment. (T. Vol I pg's 112-114, 145) About five minutes later the police arrived at the apartment (T. Vol I p 114) Both the victim and Eric Layva were taken to the hospital where they had stitches taken on their heads. ( T. Vol I pg's 114-115)

At the close of the State's case Counsel for the Defendant closed the Defendant's case without calling any witnesses for the Defendant. (T. Vol II p. 124) However in closing argument Counsel for Defendant argued that the Defendant reasonable believed they were going to the apartment at 2260 Madison Ave, Ogden, Utah to party and that they were invited to the apartment to party, and did

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not go there to fight (T Vol II pg's 158-162)

SUMMARY OF ARGUMENT

To be guilty of burglary under Section 76-6-202, U. C. A. the Defendant must have entered or remained unlawfully in a building or any portion of a building with intent to commit a felony or theft or commit an assault on any person. The critical facts in this case are whether the Defendant was an invited guest in the apartment at 2260 Madison Avenue, Ogden, Utah or forced his way into the apartment without the permission of the lessee of the apartment. There was conflicting testimony as to whether any of the participants in the assault and riot were invited guests. Counsel for the Defendant was ineffective when, after the Defendant had identified witnesses who would testify that he was an invited guest in the apartment did not interview, issue subpoena or present any witnesses which would testify that the Defendant was an invited guest in the apartment of Tiffany Montano on June 4, 1999 at approximately 10:00 p.m.

ARGUMENT

THE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL, WHEN APPOINTED COUNSEL DID NOT VISIT THE DEFENDANT, REVIEW THE FACTS OF THE CASE, DID NOT DETERMINE POTENTIAL WITNESSES, DID NOT INTERVIEW OR SUBPOENA POTENTIAL

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WITNESS AND DID NOT CALL WITNESSES TO  
TESTIFY THAT THE DEFENDANT WAS AN INVITED  
GUEST AT THE APARTMENT OF TIFFANY  
MONTANO

This Court in the case of Salt Lake City v Grotepas 874 P 2d 136 (Utah App  
1994) stated as follows:

"In Strickland v Washington 466 U. S. 668, 104 S. Ct 2052, 80 L.  
Ed 674 (1984), the United States Supreme Court established a two-  
prong test for evaluating ineffective assistance of counsel claims brought  
under the Sixth Amendment to the United States Constitution, Id at  
687, 104 S. Ct. at 2064; accord State v Templin 805 P 2d 182,  
186 (Utah 1990; State v Snyder 805 P 2d 351, 354 (Utah App  
1992). To establish ineffective assistance of counsel claim, defendant  
must show, first, that counsel rendered a deficient performance that fell  
below an objective standard of reasonable professional judgment, and  
second, that counsel's deficient performance prejudiced the defendant.  
Strickland 466 U. S. at 687, 104 S. CT at 2064; Accord Templin  
805 P 2d at 186; Snyder, 860 P. 2<sup>nd</sup> at 354. To establish that  
counsel's alleged deficiency was sufficiently prejudicial, defendant must  
affirmatively demonstrate that there is a "reasonable probability" that,  
but for counsel's errors, the result would have been different.  
Strickland, 466 U. S. at 694, 104 S. Ct. at 2068; accord Templin  
805 P 2d at 186-187."

The Sixth amendment to the United States Constitution states in part, " in all  
criminal prosecutions, the accused shall enjoy the right to . . . have Assistance of  
counsel for his defense. The right to counsel has been held to be "the right to  
effective assistance of counsel." State v Templin at 186.

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One part of the test set forth in Strickland v Washington is that counsel's representation fell below an objective standard of reasonableness. To establish compliance with this test, State v Templin at 187 stated that a failure of Defense Counsel to make a reasonable investigation into the availability of prospective defense witnesses complies with the first part of the Strickland test. In State v. Templin at 187, 188 the Utah Supreme Court stated" It should be pointed out that trial counsel did not contact these people even though he had adequate time and resources to prepare his case. Defense counsel was hired after Defendant's arraignment, charged him \$9,000, and had almost a year to prepare for trial \* \* \*

If counsel does not adequately investigate the underlying facts of a case, including the availability or prospective defense witnesses, counsel's performance cannot fall within the 'wide range of reasonable professional assistance.'"

Defendant was charged by information of one count of aggravated burglary, one count of causing a riot and one count of aggravated assault. Section 76-6-202 of the Utah Code defines burglary as enters or remains unlawfully in a building or any portion of a building with intent to commit a felony or theft or commits an assault on any person.

Section 76-6-203 of the Utah Code defines aggravated burglary as where in attempting, committing, or fleeing from a burglary the actor or another participant



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in the crime causes bodily injury to any person who is not a to participant in the crime.

There arises the issue of whether the Defendant entered the apartment of Tiffany Montano by forcing his way into the apartment or whether he was an invited guest in the apartment. There was some evidence that Leo Ornelas had a standing invitation from the lessee to come to the apartment at any time. Further, there was testimony that the purpose of the group coming to the apartment was to party, i. e. drink beer and visit, rather than to commit a criminal act. Further there was testimony that Veronica Palomo might have opened the door of the apartment thereby inviting the Defendants into the apartment.

Even with this conflicting testimony presented at the jury trial, neither Leo Ornelas or veronica Palomo were called as witnesses for the Defendant. In fact, counsel for the Defendant put on no evidence to support the Defendant's innocence of aggravated burglary. With no evidence supporting the innocence of the Defendant the jury had no choice, but to convict the Defendant of aggravated burglary.

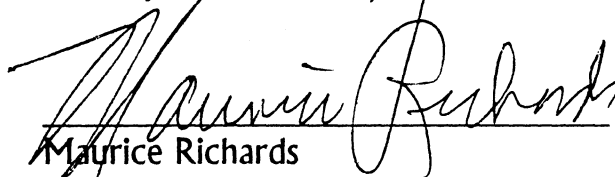
### CONCLUSION

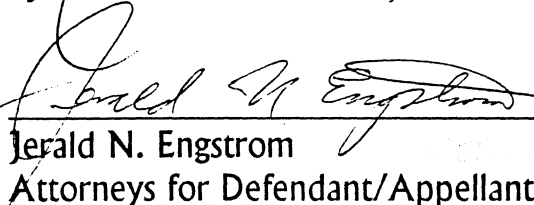
The Defendant received ineffective assistance of counsel. Counsel was assigned to defend the Defendant against one first degree felony and two third degree felonies in a jury trial. The Defendant's counsel's neither interviewed

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prospective witness to support the Defendant allegation that he was an invited guest at 2260 Madison Ave, Ogden, Utah nor subpoenaed potential witnesses. The attorney, even after being asked by the Defendant presented any witnesses to support the Defendant's allegation that he was an invited guest. If, as the Defendant maintained there were witnesses to support his claim that he was an invited guest, there would very possible have been a not guilty verdict. The appears to be plain error on the part of defense counsel. Since the Defendant did not receive effective assistance of counsel, the conviction of the Defendant of aggravated burglary, a first degree felony with a weapons enhancement should be reversed and new counsel assigned to defend the Defendant in a new trial before a different jury

Dated this 2nd Day of November, 2000

  
Maurice Richards

  
Gerald N. Engstrom  
Attorneys for Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Brief of Appellant was posted in the United States mail, postage prepaid, on this 2<sup>nd</sup> day of November, 2000 and addressed to:

Jan Graham

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IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

\*\*\*\*\*

STATE OF UTAH,	)	
	)	
PLAINTIFF,	)	
	)	REPORTER'S TRANSCRIPT
VS.	)	
	)	CASE NO. 991902167
NATHAN MARTINEZ,	)	
	)	
DEFENDANT.	)	

\*\*\*\*\*

TRIAL - VOLUME I

DECEMBER 6 & 7 (A.M.), 1999

HONORABLE MICHAEL D. LYON

\*\*\*\*\*

APPEARANCES:

FOR THE STATE: MS. BRENDA J. BEATON

FOR THE DEFENDANT: MR. MICHAEL D. BOUWHUIS

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Case Number 20000345-CA

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\_\_\_\_\_  
Attorney for Appellant

1       A.   NO, I WAS 20.

2       Q.   TWENTY AT THE TIME?

3       A.   YEAH.

4       Q.   ALL RIGHT.  DID YOU GO TO TIFFANY MONTANO'S HOUSE ON

5       JUNE 4, 1999?

6       A.   YES.

7       Q.   ABOUT WHAT TIME DID YOU GO THERE?

8       A.   I'D SAY IT WAS ABOUT 9:30, 10 O'CLOCK.

9       Q.   OKAY.

10      A.   I'M NOT EXACTLY FOR SURE.

11      Q.   WHY DID YOU GO TO THE HOME?

12      A.   I WAS SUPPOSED TO MEET SOME FRIENDS THERE TO KICK BACK

13      AND HAVE A FEW BEERS AND JUST VISIT FOR A LITTLE BIT.

14      Q.   WHAT FRIENDS IN PARTICULAR WERE YOU PLANNING ON MEETING

15      AT TIFFANY'S HOME?

16      A.   MY FRIEND, MIKE, AND HIS GIRLFRIEND WAS COMING OVER WITH

17      HIM AND -- AND TIFFANY WAS SUPPOSED TO BE THERE AND THAT'S

18      IT.

19      Q.   OKAY.

20      A.   THAT I -- THAT I KNEW WAS GOING THERE.

21      Q.   WERE YOU INVITED TO THE HOME?

22      A.   YES.

23      Q.   WHO WERE YOU INVITED BY?

24      A.   CASSIE.  IT WAS TIFFANY'S ROOMMATE.

25      Q.   WHAT'S CASSIE'S LAST NAME?

1     A.   MAESTAS.

2     Q.   OKAY.   AND MIKE THAT YOU REFERRED TO, WHAT'S HIS LAST

3     NAME?

4     A.   MONTANO.

5     Q.   AND HIS GIRLFRIEND, WHAT IS HER NAME?

6     A.   VANESSA GALLEGOS.

7     Q.   OKAY.   NOW, WHEN YOU -- DO YOU GO TO THE APARTMENT THEN?

8     A.   WHAT'S THAT?

9     Q.   DO YOU END UP GOING TO THE APARTMENT?

10    A.   YEAH.

11    Q.   OKAY.   WHEN YOU GET TO THE APARTMENT, WHO'S THERE?

12    A.   JUST CASSIE, AT FIRST, AND ME.   THAT WAS PRETTY MUCH IT.

13    Q.   OKAY.   WERE THERE ANY OTHER PEOPLE?   DID YOU EVER SEE A

14    CHILD INSIDE THE HOME?

15    A.   NOT AT FIRST, NO.

16    Q.   OKAY.   DO YOU KNOW VERONICA PALOMO?

17    A.   YES.

18    Q.   DID YOU SEE HER INSIDE THE APARTMENT?

19    A.   NOT AT FIRST, NO.

20    Q.   OKAY.   SOMETIME LATER DURING THIS INCIDENT YOU SEE HER?

21    A.   YEAH.

22    Q.   WHEN YOU GO TO THE HOME, DO YOU KNOCK ON THE DOOR?

23    A.   YES.

24    Q.   OKAY.   AND WHO ANSWERS THE DOOR FOR YOU?

25    A.   CASSIE.

1 A. NOT AT THAT TIME, NO.

2 Q. OKAY. ABOUT HOW LONG IS IT UNTIL SOMEBODY ELSE COMES TO  
3 THE APARTMENT?

4 A. PROBABLY ABOUT ANOTHER 10 MINUTES OR SO.

5 Q. OKAY. NOW, WAS TIFFANY AT THE APARTMENT AT THE TIME?

6 A. NO.

7 Q. OKAY. WHAT WAS YOUR UNDERSTANDING OF WHERE TIFFANY WAS?

8 A. SHE WAS AT A FRIENDS'S PICKING UP SOME CARDS OR  
9 SOMETHING LIKE THAT, I GUESS.

10 Q. OKAY. AND WHO TOLD YOU THAT VERSION OF WHERE SHE WAS  
11 AT?

12 A. CASSIE.

13 Q. OKAY. SO THE TWO -- YOU AND MIKE AND THE REST OF THE  
14 PEOPLE AT THE HOUSE WERE JUST KIND OF HAVING A CONVERSATION?

15 A. YEAH.

16 Q. OKAY. AND THEN DO YOU HEAR A KNOCK AT THE DOOR?

17 A. YEAH.

18 Q. OKAY. CAN YOU DESCRIBE WHAT IT WAS LIKE?

19 A. JUST A REGULAR KNOCK.

20 Q. OKAY. AND DID ANYBODY GO TO THE DOOR TO ANSWER IT?

21 A. MIKE WAS GOING TO ANSWER THE DOOR, BUT HE DECIDED NOT  
22 TO. AND AT THIS POINT VERONICA WAS IN THE HOUSE AND SHE WAS  
23 COMING TO THE DOOR AND THE DOOR JUST OPENED --

24 Q. OKAY.

25 A. -- BEFORE ANYBODY ANSWERED THE DOOR.

1       A.   NO.

2       Q.   DOES SHE EVER INVITE ANYBODY IN?

3       A.   NO.

4       Q.   YOU SAID THAT MIKE WAS GETTING READY TO GO TO THE DOOR.

5       A.   YEAH.

6       Q.   WHAT DID HE DO TO GET READY TO GO TO THE DOOR?

7       A.   HE WAS GETTING UP AND THEN HE DECIDED THAT THIS AIN'T

8       HIS HOUSE, HE WASN'T GOING TO ANSWER THE DOOR.

9       Q.   OKAY.  WHERE IS HE AT -- ON THIS DIAGRAM -- AT THE TIME

10      THAT YOU HEAR THE KNOCKING ON THE DOOR?

11      A.   HE'S ABOUT RIGHT HERE.  THERE'S A COUCH RIGHT HERE AND

12      HE WAS SITTING ON THE COUCH AT THE TIME.

13      Q.   THERE WAS A COUCH IN THE LIVING ROOM?

14      A.   YEAH.

15      Q.   OKAY.  WHERE WERE YOU AT WHEN THE DOOR -- WHEN YOU HEAR

16      THE KNOCKING?

17      A.   I WAS SOMEWHERE OVER HERE IN THIS AREA BECAUSE THERE'S A

18      KITCHEN TABLE RIGHT THERE AND I WAS OVER THERE.

19      Q.   OKAY.  A KITCHEN TABLE WHICH WOULD BE JUST NORTH OF THE

20      KITCHEN AREA?

21      A.   YEAH.

22      Q.   AND YOU WERE STANDING OVER BY THE TABLE?

23      A.   YEAH.

24      Q.   OKAY.  NOW, SO DID MIKE EVER END UP GOING TO THE DOOR?

25      A.   NO.



1       A.   YEAH.

2       Q.   OKAY.  SO EVERYBODY THAT YOU SAW IN THE APARTMENT,  
3       NOBODY WENT TO THE DOOR?

4       A.   NO.

5       Q.   HOW IS IT THAT THEY'RE ABLE TO COME THROUGH THE DOOR?

6       A.   I GUESS THE DOOR WAS JUST UNLOCKED BECAUSE THEY JUST  
7       OPENED THE DOOR AND WALKED IN.

8       Q.   OKAY.  AND WHEN YOU SAY "THEY" WALKED IN, DID YOU  
9       RECOGNIZE THE PEOPLE WHO WALKED IN?

10      A.   NO.

11      Q.   OKAY.  MALE OR FEMALE?

12      A.   THEY WERE MALE.

13      Q.   DID YOU KNOW WHAT RACE THEY WERE?

14      A.   MEXICAN.

15      Q.   OKAY.  TWO MEXICAN GUYS CAME IN THE DOOR?

16      A.   YEAH.

17      Q.   WAS IT TWO OR WAS IT MORE THAN TWO?

18      A.   JUST TWO AT FIRST.

19      Q.   OKAY.  AND WHERE DID THE TWO GO?

20      A.   AT FIRST THEY JUST STOOD IN THERE AND THEY LOOKED AROUND  
21      THE APARTMENT, AND THEN ONE OF THEM WENT OVER TO WHERE MIKE  
22      WAS SITTING AND ASKED HIM HIS NAME.

23      Q.   OKAY.  AND HOW DID MIKE RESPOND?

24      A.   HE TOLD HIM HIS NAME.

25      Q.   OKAY.  AND WHAT DID THAT PERSON DO AT THAT POINT, THAT

1 MAN?

2 A. AT FIRST HE ASKED HIM HIS NAME, HE SAID MIKE. AND HE  
3 SAID, MIKE WHAT? AND HE TOLD HIM MONTANO. AND AT THAT  
4 POINT THE GUY TOLD HIM, FUCK EIGHT BALL, AND HIT HIM WITH A  
5 BOTTLE OVER HIS HEAD.

6 Q. WHAT KIND OF A BOTTLE WAS IT?

7 A. A BEER BOTTLE.

8 Q. WAS IT SIMILAR TO THE BEER BOTTLE THAT WE HAVE UP HERE?

9 A. YEAH, I'M SURE IT WAS THE SAME SHAPE. I DON'T KNOW WHAT  
10 KIND OF BEER IT WAS OR --

11 Q. YOU COULDN'T TELL FROM WHERE YOU WERE AT?

12 A. NO. I COULDN'T TELL WHAT KIND OF BEER IT WAS.

13 Q. OKAY. CAN YOU DESCRIBE WHAT THAT PERSON THAT HIT  
14 MIKE -- WHAT DID THAT PERSON LOOK LIKE, THAT MAN? HE WAS A  
15 HISPANIC, HE WAS MALE. ABOUT HOW TALL WAS HE?

16 A. PROBABLY ABOUT 5'6', 5'7".

17 Q. OKAY. HAD YOU EVER MET THAT PERSON BEFORE?

18 A. NO.

19 Q. OKAY. WAS THERE ANYTHING -- ANY SORT OF DISTINGUISHING  
20 CHARACTERISTICS ABOUT HIM?

21 A. THE ONLY THING I NOTICED, HE WAS WEARING A BANDANA ON  
22 HIS HEAD, AND THAT'S IT, REALLY, THAT I REALLY RECOGNIZED.

23 Q. WHAT COLOR WAS THE BANDANA?

24 A. BLUE.

25 Q. AND HOW WAS HE WEARING THE BANDANA?

1 A. JUST LIKE OVER HIS HEAD RIGHT THERE (INDICATING) .

2 Q. OKAY. DID IT GO UP OVER THE TOP OF HIS HAIR, OR WAS IT  
3 JUST A BANDANA THAT HE SOMEHOW HAD WRAPPED?

4 A. I'M NOT SURE FOR SURE. I JUST KNOW IT WAS ON HIS HEAD.  
5 I DON'T KNOW IF HE HAD IT ALL THE WAY OVER OR JUST LIKE  
6 THAT. I DON'T KNOW.

7 Q. DO YOU REMEMBER ANYTHING ELSE ABOUT THAT PERSON'S  
8 CLOTHING?

9 A. NO, I DON'T.

10 Q. YOU DON'T REMEMBER IF IT WAS PANTS OR SHORTS OR --

11 A. PANTS. HE WAS WEARING PANTS.

12 Q. OKAY. DO YOU REMEMBER ANYTHING ABOUT WHAT TYPE OF SHIRT  
13 OR JACKET THAT PERSON WAS WEARING?

14 A. I DON'T.

15 Q. OKAY. WHEN YOU SAID THAT THE -- THIS PERSON SAID TO  
16 YOU -- SAID TO MIKE, FUCK EIGHT BALL, WHAT IS EIGHT BALL?

17 A. EIGHT BALL IS A GANG THAT I'M A MEMBER OF, AND THAT'S  
18 IT.

19 Q. OKAY. HOW LONG HAVE YOU BEEN A MEMBER OF THIS GANG?

20 A. WHEN I TURNED 21. IT'S BEEN SEVEN YEARS.

21 Q. DID YOU HAVE ANY SENSE OF WHAT GANG THESE PEOPLE WERE,  
22 THESE TWO PEOPLE WHO CAME IN THE APARTMENT?

23 A. AT FIRST, NO. I DIDN'T KNOW WHO THEY WERE.

24 Q. AT WHAT POINT DO YOU DISCOVER WHAT GANG IT IS THAT THEY  
25 BELONG TO?

1 A. JUST A MINUTE AFTER HE HAD HIT MIKE OVER THE HEAD WITH A  
2 BOTTLE, THEN A GROUP OF GUYS CAME IN YELLING WEST SIDE OVG.  
3 AND AFTER THAT THAT'S WHEN I KNEW IT WAS OVG.

4 Q. OKAY. AND WHAT IS WEST SIDE OVG?

5 A. IT'S A RIVAL GANG OF EIGHT BALL.

6 Q. OKAY. AND YOU HEARD THIS YELL?

7 A. YEAH.

8 Q. NOW, SINCE THESE ARE RIVAL GANG MEMBERS, DO YOU  
9 RECOGNIZE ANY OF THESE OTHER PEOPLE WHO ARE COMING INTO THE  
10 HOME?

11 A. NO. THE PEOPLE THAT CAME INTO THE HOME, THEY WERE --  
12 THEY WERE MORE YOUNGER THAN WHEN -- WHAT I WAS. YOU KNOW,  
13 THE GROUP THAT CAME IN, I DIDN'T RECOGNIZE NONE OF THEM.

14 Q. OKAY. SO YOU'RE FAMILIAR WITH OLDER WEST SIDE OVG GUYS,  
15 BUT NOT THESE YOUNGER GUYS?

16 A. YEAH.

17 Q. OKAY. SO YOU AT -- AT THIS POINT IN TIME AFTER MIKE  
18 GETS HIT BY THE BOTTLE, DOES THE BOTTLE STAY INTACT OR DOES  
19 IT SHATTER?

20 A. IT SHATTERS.

21 Q. OKAY. AND DO YOU SEE ANY KIND OF INJURY ON MIKE AT THAT  
22 POINT?

23 A. NO, NOT AT THAT POINT I DIDN'T SEE ANY.

24 Q. YOU SAID ALL OF THESE GUYS START COMING IN.  
25 APPROXIMATELY HOW MANY GUYS ARE WE TALKING ABOUT?

1 A. I WOULD SAY 10 TO 15 GUYS, BUT NOT FOR SURE. IT'S  
2 APPROXIMATELY ABOUT 10.

3 Q. NOW, YOU SAID THAT THE -- THE ONE THAT HIT THE -- HIT  
4 MIKE HAD A BANDANA ON HIS HEAD. DID YOU SEE ANYTHING ELSE  
5 LIKE THAT? WAS ANYBODY ELSE SIMILARLY DRESSED?

6 A. YEAH. PRETTY MUCH ALL OF THEM WAS WEARING BLUE BANDANAS  
7 OR -- OR WEST SIDE SHIRTS, AND THAT'S IT. THAT'S --

8 Q. SO YOU REMEMBER SEEING THIS. WHAT DOES MIKE DO AFTER HE  
9 GETS HIT?

10 A. HE GETS UP OFF THE COUCH, SAYS LET'S GO. HE RUNS INTO  
11 THE KITCHEN AREA. BOTH ME AND HIM RUN INTO THE KITCHEN AREA  
12 AFTER THAT.

13 Q. AND IS HE TALKING TO YOU WHEN HE SAYS LET'S GO?

14 A. YEAH. HE SAID, LET'S GO GET OUT OF HERE.

15 Q. OKAY. WHY ARE YOU THE ONE THAT HE GRABS?

16 A. BECAUSE WE'RE FRIENDS.

17 Q. OKAY. WHAT ABOUT THE REST OF THE PEOPLE IN THE HOUSE?  
18 ARE ANY OF THE REST OF THE PEOPLE TARGETED BY THIS GROUP OF  
19 PEOPLE?

20 A. NO.

21 MR. BOUWHUIS: OBJECTION. CALLS FOR SPECULATION,  
22 YOUR HONOR.

23 THE COURT: SUSTAINED.

24 MS. BEATON: OKAY.

25 THE COURT: HE CAN'T SPECULATE AS TO WHAT SOMEBODY

1 ELSE IS DOING.

2 Q. (BY MS. BEATON) OKAY. DID YOU SEE ANYBODY ELSE INSIDE  
3 THE APARTMENT, ANY OF THE PEOPLE WHO YOU WERE ORIGINALLY IN  
4 THE APARTMENT WITH? DID YOU SEE ANY OF THE REST OF THOSE  
5 PEOPLE GET ATTACKED?

6 A. NO.

7 Q. BY ANY OF THESE PEOPLE?

8 A. NO.

9 Q. ARE YOU AWARE -- DID YOU SEE ANY INJURIES, SAY AFTER  
10 THIS INCIDENT TAKES PLACE, OF ANY OF THE PEOPLE WHO WERE IN  
11 THE APARTMENT?

12 A. NO.

13 Q. SO MIKE MON -- MONTANO GRABS YOU AND HE SAYS, LET'S GO,  
14 AND WHERE DO YOU GO?

15 A. WE RUN TO TIFFANY'S BEDROOM. THAT'S THE FAR ROOM ON THE  
16 HALL.

17 Q. OKAY. WHY DON'T YOU SHOW US ON THE DIAGRAM, WHAT ROUTE  
18 DO YOU TAKE TO GET THERE?

19 A. WE RAN THROUGH THIS KITCHEN RIGHT HERE.

20 Q. OKAY.

21 A. AND CAME AROUND --

22 Q. SO YOU GO SOUTH --

23 A. -- TO THIS BEDROOM.

24 Q. -- INTO THE SOUTHWEST BEDROOM?

25 A. YEAH.

1 Q. WHICH IS -- ON THIS DIAGRAM -- BEDROOM NUMBER ONE?

2 A. YEAH.

3 Q. AND WHY DO YOU RUN INTO THAT BEDROOM?

4 A. WE WAS JUST TRYING TO FIGURE OUT A WAY TO GET OUT  
5 BECAUSE WE COULDN'T GET OUT THIS HALLWAY BECAUSE THEY WERE  
6 COMING FROM THIS HALLWAY, TOO.

7 Q. OKAY.

8 A. SO WE WAS JUST LOOKING FOR ANY WAY TO GET OUT.

9 Q. WAS THERE ANY WAY TO GET OUT THE FRONT DOOR?

10 A. NO. BECAUSE THE HALLWAY RIGHT HERE, LIKE I SAID, THEY  
11 HAD IT BLOCKED OFF AND WE COULDN'T GET THROUGH, SO --

12 Q. OKAY. SO YOU GO INTO THE BEDROOM. PRIOR TO RUNNING  
13 INTO BEDROOM NUMBER ONE, WERE YOU FAMILIAR WITH KIND OF THE  
14 LAYOUT OF TIFFANY'S APARTMENT?

15 A. NOT -- NOT REALLY. I DIDN'T REALLY KNOW, YOU KNOW, HER  
16 BEDROOM OR THE APARTMENT THAT MUCH, YOU KNOW. I'D ONLY BEEN  
17 THERE A COUPLE OF TIMES.

18 Q. DID YOU KNOW THAT THERE WAS ONLY ONE DOOR IN ORDER TO  
19 GET OUT OF THIS APARTMENT?

20 A. PRETTY MUCH, YEAH, UNLESS WE GOT THROUGH THE WINDOWS.

21 Q. OKAY. SO YOU GO INTO BEDROOM NUMBER ONE, AND WHAT --  
22 WHAT DO YOU PLAN ON DOING WHILE YOU'RE IN THERE?

23 A. WE WAS GOING TO TRY TO GO OUT THE WINDOW.

24 Q. OKAY. ABOUT HOW BIG IS THIS WINDOW?

25 A. LIKE A NORMAL SIZE WINDOW, I GUESS.

1 Q. OKAY. GIVE US KIND OF AN IDEA OF HOW BIG IT WAS, IF  
2 YOU WOULD.

3 A. ABOUT THIS -- ABOUT THIS WIDE.

4 Q. OKAY. ABOUT AS WIDE AS THE --

5 A. YEAH.

6 Q. I DON'T KNOW WHAT YOU'D CALL IT, LIKE PEDESTAL OR TABLE  
7 PART OF THE JURY BOX?

8 A. YEAH.

9 Q. OKAY. AND HOW WERE YOU GOING TO GET OUT OF THERE? WERE  
10 YOU GOING TO THROW SOMETHING THROUGH THE WINDOW OR WAS THE  
11 WINDOW ALREADY OPEN?

12 A. NO. WE WAS TRYING TO GET THE WINDOW OPEN WITH THE SLIDE  
13 THING, THEY JUST SLIDE OVER, BUT WE COULDN'T GET IT PULLED  
14 OPEN.

15 Q. OKAY. SO ABOUT HOW LONG ARE YOU IN THE BEDROOM BEFORE  
16 YOU'RE JOINED BY OTHER PEOPLE?

17 A. ABOUT 10 SECONDS OR SO. WE WERE JUST -- WE WASN'T IN  
18 THERE THAT LONG.

19 Q. OKAY. SO ARE YOU AND MIKE BOTH TRYING TO GET THE WINDOW  
20 OPEN OR JUST ONE OF YOU AT THAT TIME?

21 A. JUST MIKE AT FIRST TRYING TO GET THE WINDOW OPEN.

22 Q. DO YOU EVER SUCCEED IN GETTING THE WINDOW OPEN?

23 A. NO.

24 Q. AND YOU SAID YOU WERE IN THERE ABOUT 10 SECONDS OR SO  
25 BEFORE OTHER PEOPLE COME IN. ABOUT HOW MANY OTHER PEOPLE



1 COME INTO THE ROOM?

2 A. AT THAT POINT THERE WAS ABOUT FOUR OR FIVE OF THEM CAME  
3 IN THE BEDROOM WITH US.

4 Q. MALES OR FEMALES?

5 A. MALES.

6 Q. OKAY. DID YOU RECOGNIZE ANY OF THESE INDIVIDUALS?

7 A. NO.

8 Q. OKAY. ARE THEY THE SAME INDIVIDUALS WHO HAD BEEN IN THE  
9 LIVING ROOM AREA?

10 A. YEAH, I'M SURE IT WAS.

11 Q. OKAY. AND WHEN THOSE FOUR -- DID YOU SAY FOUR OR FIVE?

12 A. YEAH, ABOUT FOUR OR FIVE.

13 Q. WHEN THOSE FOUR OR FIVE INDIVIDUALS CAME INTO THE ROOM,  
14 IS THERE ANY KIND OF DISCUSSION GOING ON BETWEEN YOU AND  
15 MIKE AND THIS GROUP OF GUYS?

16 A. WE JUST KEPT ON TELLING THEM WE DIDN'T WANT PROBLEMS,  
17 YOU KNOW, THAT WE WEREN'T TRIPPING, YOU KNOW. AND THEY --  
18 WE WAS JUST ARGUING BACK AND FORTH, YOU KNOW, JUST LIKE THAT  
19 FOR A LITTLE BIT AND --

20 Q. OKAY. WHEN YOU SAY YOU'RE NOT TRIPPING, WHAT DOES  
21 "TRIPPING" MEAN?

22 A. LIKE WE -- WE'RE NOT -- WE DON'T HAVE NO PROBLEMS, YOU  
23 KNOW. WE DON'T WANT NO PROBLEMS WITH THEM.

24 Q. OKAY. DOES TRIPPING MEAN YOU'RE ACTIVELY PARTICIPATING  
25 IN A GANG AT THE TIME?

1           **MS. BEATON:** I THINK IT'S -- YOUR HONOR, THE  
2           STATE'S POSITION IS IS THAT THEY'RE YELLING IT AND ALL OF  
3           THIS IS GOING ON AND IT'S SIMULTANEOUS TO THEM ENTERING.  
4           IT'S AN EXCITED UTTERANCE.

5           **THE COURT:** I'LL OVERRULE THE OBJECTION.

6           **Q.** (BY MS. BEATON) OKAY. WHAT WERE THEY SAYING?

7           **A.** THEY WERE JUST SAYING FUCK EIGHT BALL -- THEY KEPT ON  
8           SAYING FUCK EIGHT BALL AND WE JUST KEPT ON SAYING, YOU KNOW,  
9           WE AIN'T TRIPPING AND, YOU KNOW, IT WAS JUST PRETTY MUCH  
10          THAT. THAT WAS THE WHOLE CONVERSATION THE WHOLE TIME,  
11          REALLY.

12          **Q.** ABOUT HOW LONG IS IT JUST CONVERSATION THAT'S TAKING  
13          PLACE IN THE BEDROOM?

14          **A.** FOR ABOUT A MINUTE OR SO.

15          **Q.** OKAY. AND WHAT DOES MIKE DECIDE TO DO?

16          **A.** MIKE -- WE'RE JUST THERE FOR A MINUTE AND THEN SOMEBODY  
17          HIT MIKE AND THEN MIKE BULLS THROUGH THE CROWD THAT WAS IN  
18          THERE AT THAT TIME. AND FROM WHAT I SEEN, HE RAN TO THE  
19          OTHER BEDROOM ON THE OTHER SIDE AND THAT'S IT.

20          **Q.** OKAY. WHEN YOU SAY HE -- MIKE WAS HIT, HOW WAS HE HIT?

21          **A.** I THINK WITH A FIST. I THINK SOMEBODY JUST, YOU KNOW,  
22          HIT HIM AND THEN HE TOOK OFF THROUGH THE ROOM.

23          **Q.** OKAY. SO HE SOMEHOW GETS HIS WAY OUT OF BEDROOM NUMBER  
24          ONE?

25          **A.** YEAH.

1 Q. NOW, IF YOU'RE STILL IN BEDROOM NUMBER ONE, HOW DO YOU  
2 KNOW THAT HE IS EVENTUALLY IN BEDROOM NUMBER TWO?

3 A. BECAUSE HE RAN RIGHT HERE AND YOU COULD KIND OF, YOU  
4 KNOW, SEE THAT HE KIND OF LIKE RAN AROUND AND THAT WAS THE  
5 CLOSEST ROOM THAT I THOUGHT HE WOULD GO TO. I DIDN'T  
6 ACTUALLY SEE HIM GO IN THE ROOM.

7 Q. OKAY. YOU JUST THOUGHT HE WAS IN THERE?

8 A. YEAH, I FIGURED HE WAS IN THAT ROOM.

9 Q. COULD YOU HEAR ANY NOISE COMING FROM THAT ROOM WHILE YOU  
10 WERE STILL IN BEDROOM NUMBER ONE?

11 A. YEAH.

12 Q. WHAT DID YOU HEAR?

13 A. JUST LIKE A BUNCH OF RUCKUS, THINGS BEING HIT AGAINST  
14 THE WALL, YELLING, AND THAT'S IT, REALLY. JUST A BUNCH OF  
15 CHAOS.

16 Q. OKAY. SO YOU FIGURED HE WAS IN THERE?

17 A. YEAH.

18 Q. OKAY. SO WHILE YOU'RE IN BEDROOM NUMBER ONE, WHAT DO  
19 YOU DO THEN?

20 A. AT THAT POINT I'M GETTING READY TO GO HELP MIKE, AND  
21 THEN I WAS CUT OFF BY ABOUT THREE OR FOUR OTHER PEOPLE. I  
22 STARTED BACKING UP, I RAN IN THE OTHER ROOM, I GOT ON TOP OF  
23 THE BED.

24 Q. WHERE IS THE BED LOCATED IN THIS ROOM?

25 A. IT'S IN THE FAR CORNER RIGHT OVER HERE (INDICATING).

1 Q. WHICH WOULD BE THE SOUTHWEST CORNER OF THE ROOM?

2 A. YEAH.

3 Q. DOES IT TAKE UP A SUBSTANTIAL PART OF THE ROOM?

4 A. NOT REALLY. IT'S JUST A NORMAL SIZE BED.

5 Q. OKAY. IS IT A TWIN OR A KING OR A QUEEN?

6 A. PROBABLY A TWIN. I WOULD SAY TWIN. IT'S NOT A BIG BED.

7 Q. OKAY. WHEN YOU GET ON THE BED, DO YOU NOTICE ANYTHING  
8 ELSE ON THE BED?

9 A. YEAH. THERE WAS A KID UNDERNEATH MY FEET WHERE I WAS  
10 STANDING.

11 Q. OKAY. DID YOU STEP ON THE CHILD?

12 A. YEAH, ON ACCIDENT, I STEPPED BACK THEN I FELT HIM RIGHT  
13 THERE. THEN I LOOKED DOWN, THERE WAS A KID.

14 Q. AND DID YOU RECOGNIZE THE CHILD?

15 A. NO. I DIDN'T KNOW WHOSE KID IT WAS.

16 Q. YOU HAVEN'T MET TIFFANY MONTANO'S CHILD BEFORE?

17 A. NO.

18 Q. ABOUT HOW OLD IS THIS CHILD THAT WE'RE TALKING ABOUT?

19 A. I WOULD SAY NO OLDER THAN ONE OR TWO. I MEAN, HE'S NO  
20 OLDER THAN THAT.

21 Q. OKAY. AND YOU SAID THAT YOU STEPPED ON THE CHILD ON  
22 ACCIDENT. DOES THE CHILD START CRYING OR DO ANYTHING LIKE  
23 THAT?

24 A. NOT AT THAT POINT, HE DIDN'T.

25 Q. OKAY. AT WHAT POINT DOES THE CHILD CRY?

1 A. WHEN I'M LEAVING THE ROOM BECAUSE THEY STARTED THROWING  
2 BOTTLES AT ME. I WAS TRYING TO COVER THE KID, COVER MYSELF.  
3 THE KID WASN'T CRYING STILL, HE WAS PRETTY MUCH SLEEPING THE  
4 WHOLE TIME. AND THEN WHEN I'M GETTING READY TO LEAVE THE  
5 ROOM, I REMEMBERED THAT THERE WAS A BABY THERE. AND I  
6 TURNED AROUND AND THE BABY HAD WOKEN UP AND IT LOOKED  
7 LIKE -- YOU KNOW, STARTED CRYING AND EVERYTHING. IT STARTED  
8 TO CRY. AND THERE WAS GLASS SHATTERED ALL OVER THE BABY AND  
9 I STARTED PICKING THE GLASS OFF.

10 Q. YOU PICKED GLASS OFF THE BABY?

11 A. YEAH, I WAS TRYING TO GET ALL THE GLASS I COULD OFF THE  
12 BABY WITHOUT CUTTING HIM.

13 Q. WAS THE BABY INJURED?

14 A. NO, NOT THAT I COULD SEE.

15 Q. OKAY. NOW, WHEN YOU SAY THAT YOU'RE STANDING ON THE  
16 BED, YOU'RE THEN STANDING IN THE FARTHEST AREA FROM -- FROM  
17 THE DOORWAY?

18 A. YEAH.

19 Q. OKAY. DO YOU TELL THEM ANYTHING WHEN YOU REALIZE THAT  
20 THE BABY IS HERE, LAYING ON THE BED?

21 A. YEAH, I TELL THEM TO LEAVE, THERE'S A KID HERE. I KEPT  
22 ON REPEATING THERE WAS A KID HERE, TO LEAVE.

23 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT  
24 NUMBER 1, AND ASK IF YOU CAN IDENTIFY WHAT THIS IS?

25 A. THAT'S THE BED THAT I WAS ON.

1 Q. OKAY. AND THESE MARKS ON THE WALLS, WHAT ARE THOSE?  
2 A. JUST PROBABLY WHERE THE BOTTLES WERE HITTING.  
3 Q. OKAY. WHEN YOU WENT IN THE ROOM, DO YOU REMEMBER SEEING  
4 ANY MARKS ON THE WALLS?  
5 A. NO.  
6 Q. PRIOR TO THIS INCIDENT TAKING PLACE?  
7 A. NO, I REALLY WASN'T PAYING ATTENTION TO THAT. I WASN'T  
8 LOOKING AROUND.  
9 Q. OKAY. AND THERE'S SOMETHING RED ON -- ON THE WALL.  
10 WHAT IS THAT?  
11 A. I'M NOT SURE.  
12 Q. OKAY. WERE YOU BLEEDING AT THE TIME THAT -- AT ANY  
13 POINT IN TIME DURING THIS INCIDENT?  
14 A. YEAH. I DIDN'T KNOW THAT I WAS BLEEDING AT FIRST UNTIL  
15 IT HAD ALL STOPPED. I DIDN'T KNOW I WAS BLEEDING AT THE  
16 TIME.  
17 Q. WHERE WERE YOU BLEEDING FROM?  
18 A. THE BACK OF MY HEAD RIGHT HERE (INDICATING).  
19 Q. OKAY. AND DO YOU KNOW WHAT CAUSED YOU TO START BLEEDING  
20 FROM THE BACK OF YOUR HEAD?  
21 A. I'M PRETTY SURE IT WAS THE BOTTLES. I GOT HIT WITH LIKE  
22 FIVE OR TEN BOTTLES IN THE HEAD.  
23 Q. WHILE YOU'RE IN THAT ROOM?  
24 A. YEAH.  
25 Q. OKAY. SO ARE -- ARE -- IS JUST ONE PERSON THROWING THE

1       A.   NO.

2       Q.   AFTER YOU BRUSH THE GLASS OFF THE BABY WHO'S LAYING ON  
3       THE BED, THEN WHAT DO YOU DO?

4       A.   I START TO WALK TOWARDS THE ROOM WHERE MIKE WAS.

5       Q.   OKAY.  AND IS MIKE STILL IN THAT ROOM?

6       A.   WHEN I GET TO THE DOORWAY, HE COMES RUNNING OUT OF THE  
7       BEDROOM, THROUGH THE HALLWAY.

8       Q.   OKAY.  AND WHAT ROUTE DOES HE GO WHEN HE COMES OUT OF  
9       BEDROOM NUMBER TWO?

10      A.   THIS WAY HERE (INDICATING).

11      Q.   OKAY.  AND WHAT HE'S DOING IS TRYING TO GO TOWARD THE  
12      FRONT DOOR?

13      A.   YEAH.

14      Q.   IN THAT DIRECTION.

15      A.   YEAH.

16      Q.   OKAY.  AND WHAT'S HAPPENING OUT IN THE HALLWAY AREA  
17      THEN?

18      A.   THERE WAS A FEW PEOPLE BEHIND HIM, CHASING HIM.  AND  
19      THEN I GOT THROUGH THERE, THEY WAS CHASING US BOTH THROUGH  
20      THAT HALLWAY.

21      Q.   OKAY.  NOW, AS YOU'RE BEING CHASED THROUGH THE HALLWAY,  
22      ARE -- IS ANYBODY HITTING YOU OR DOING ANYTHING ELSE TO YOU?

23      A.   NOT AT THAT POINT, NO.

24      Q.   OKAY.  SO AS YOU GET THROUGH THE HALLWAY AREA AND GET  
25      CLOSER TO THE FRONT DOOR, WHAT HAPPENS?

1     A.   MIKE'S IN FRONT OF ME.   I'M PUSHING HIM OUT THE FRONT  
2     DOOR.   SOMEBODY COMES AROUND FROM THE FRONT DOOR, HITS MIKE  
3     IN THE FACE, DROPS HIM.   I PICK MIKE UP.   I PUT MY ARM UNDER  
4     HIS SHOULDERS, PUSH HIM OUT, AND HE STARTS TAKING OFF.   I'M  
5     GETTING READY TO TAKE OFF WITH HIM, THEN I GET CAUGHT FROM  
6     BEHIND, THEN I GET HIT.

7     Q.   HOW MANY TIMES DO YOU GET HIT?

8     A.   I GOT HIT A COUPLE OF TIMES BY EACH PERSON WALKING OUT  
9     THE DOOR.   I DON'T KNOW HOW MANY TIMES EXACTLY.

10    Q.   AND ABOUT HOW MANY PEOPLE ARE WE TALKING ABOUT, GOING  
11    OUT THROUGH THE DOOR?

12    A.   AT THAT POINT THERE'S ABOUT SIX OR SEVEN LEAVING OUT THE  
13    DOOR.

14    Q.   OKAY.   AND WHEN THEY'RE HITTING YOU, WHERE ARE THEY  
15    HITTING YOU?

16    A.   THEY HIT ME IN MY FACE.

17    Q.   ALL RIGHT.   EVERY SINGLE ONE OF THEM TOOK A TURN HITTING  
18    YOU IN THE FACE?

19    A.   YEAH.

20    Q.   IS THERE ANY CONVERSATION GOING ON AS THEY'RE DOING  
21    THIS, AS THEY'RE LEAVING THE APARTMENT?

22    A.   THEY JUST KEPT ON SAYING THIS IS OVG, FUCK EIGHT BALL.  
23    THAT'S IT.

24    Q.   NOW, WHILE ALL OF THIS IS GOING ON, THERE'S SOME FEMALES  
25    INSIDE THE HOME.   DO YOU HEAR ANY OF THEM YELLING ANYTHING?



1       A.   NOT AT FIRST BECAUSE LIKE AT FIRST NOBODY SAID NOTHING.  
2       AND THEN WHEN THEY ALL STARTED COMING THROUGH THE DOOR,  
3       VERONICA WAS TELLING THEM TO LEAVE, YOU KNOW, SO -- SHE KEPT  
4       ON TELLING THEM LEAVE, LEAVE, LEAVE, AND IT WASN'T WORKING.

5       Q.   YOU DIDN'T SEE ANY OF THE GUYS LEAVE?

6       A.   NO.

7       Q.   OKAY.   HOW MANY TIMES DID YOU HEAR VERONICA TELL THEM TO  
8       LEAVE?

9       A.   I'M NOT SURE EXACTLY, ABOUT THREE, FOUR TIMES.   BECAUSE  
10      AT THAT -- SHE HAD TOLD THEM, AND THEN AT THAT POINT I WAS  
11      RUNNING THROUGH THE KITCHEN AREA WITH MIKE BECAUSE THAT'S  
12      WHEN THEY ALL STARTED COMING THROUGH HERE WHEN WE TOOK OFF  
13      LEAVING.

14      Q.   DID YOU SEE VERONICA OR DID YOU HEAR HER VOICE?

15      A.   I SEEN HER RIGHT THERE BY THE FRONT DOOR.   SHE WAS LIKE  
16      TRYING TO, YOU KNOW, PUSH THEM AWAY, BUT SHE WAS TOO SMALL.

17      Q.   OKAY.   DID YOU HEAR ANYBODY ELSE YELLING FOR THEM TO  
18      LEAVE?

19      A.   NO, NOT AT THAT POINT I DIDN'T.

20      Q.   AFTER THEY FINALLY LEAVE THE APARTMENT, ABOUT HOW LONG  
21      IS IT UNTIL THE POLICE ARRIVE AT THE APARTMENT?

22      A.   ABOUT FIVE MINUTES.

23      Q.   OKAY.   AND WHEN THE POLICE ARRIVE, DO YOU GO TO THE  
24      HOSPITAL AT THAT POINT?

25      A.   AT FIRST I DIDN'T WANT TO GO TO THE HOSPITAL.   I TOLD

1       THEM THAT I DIDN'T THINK I NEEDED TO GO TO THE HOSPITAL.  
2       AND THEN I WAS THERE FOR PROBABLY ABOUT ANOTHER TEN MINUTES  
3       THEN I STARTED GETTING LIGHT-HEADED, AND THEN THAT'S WHEN  
4       THEY TOLD ME WE'RE GOING TO HAVE TO TAKE YOU TO THE  
5       HOSPITAL.

6       Q.   AND DID YOU REALIZE AT THAT POINT THAT YOU WERE  
7       BLEEDING?

8       A.   I REALIZED -- REALIZED A LITTLE BIT BEFORE THAT THAT I  
9       WAS BLEEDING, BUT I DIDN'T THINK IT WAS, YOU KNOW, THAT MUCH  
10      UNTIL I LOOKED AT MY HAND AND I SEEN I HAD ALL KINDS OF  
11      BLOOD ON IT.

12      Q.   WHAT HOSPITAL DID YOU GO TO?

13      A.   MCKAY-DEE.

14      Q.   WHAT HAPPENED WHEN YOU WERE AT MCKAY-DEE HOSPITAL?

15      A.   THEY GAVE ME STITCHES.  THEY PUT STITCHES IN MY HEAD.

16      Q.   OKAY.  HOW MANY STITCHES DID YOU HAVE?

17      A.   I'M NOT -- I DON'T EVEN KNOW FOR SURE.  LIKE THREE OR  
18      FOUR.  IT WASN'T THAT MANY.

19      Q.   OKAY.  AND WAS THAT THE MAIN INJURY THAT YOU HAD WAS IN  
20      THE BACK OF YOUR HEAD?

21      A.   YEAH.

22      Q.   AND WERE THERE ANY OTHER INJURIES THAT YOU SUSTAINED?  
23      YOU TALKED ABOUT SOME BRUISING.

24      A.   UH-HUH.

25      Q.   DID YOU HAVE PAIN ANYWHERE ELSE?

1 Q. OKAY. AND HE BROUGHT SOME BEER?

2 A. YEAH.

3 Q. OKAY. DID YOU SEE HIM BRING THE BEER?

4 A. NOT AT THE TIME. I WASN'T REALLY PAYING ATTENTION.

5 Q. YOU DIDN'T PAY ATTENTION --

6 A. THE GROUP -- THE GROUP THAT HE WAS WITH HAD BEER.

7 Q. OKAY. YOU DON'T KNOW WHAT KIND IT WAS?

8 A. BUDWEISER.

9 Q. OKAY. THE SAME KIND AS THE BOTTLE WE'VE SEEN HERE?

10 A. YEAH.

11 Q. AND THEY WERE IN BOTTLES?

12 A. YEAH.

13 Q. OKAY. AND YOU'D HAD A COUPLE OF DRINKS BEFORE ALL THIS

14 HAPPENED?

15 A. NO. I WAS BARELY OPENING MY FIRST BEER.

16 Q. OKAY. ANYBODY ELSE IN YOUR GROUP HAVE ANY DRINKS BEFORE

17 THIS HAPPENED?

18 A. NOT THAT I KNOW OF.

19 Q. OKAY. BUT YOU SAID MIKE DID BRING SOME BEER IN?

20 A. YEAH.

21 Q. NOW, WHEN THESE INDIVIDUALS CAME INTO THE APARTMENT,

22 DIDN'T ONE OF THEM ASK WHERE TIFFANY WAS?

23 A. YEAH, WHEN THEY FIRST ENTERED THE APARTMENT.

24 Q. WHEN THEY FIRST ENTERED?

25 A. YEAH.

1 Q. TIFFANY -- WHAT'S HER LAST NAME?

2 A. MONTANO.

3 Q. MONTANO? AND SHE'S THE PERSON WHO WAS RENTING THE  
4 APARTMENT; IS THAT CORRECT?

5 A. YEAH.

6 Q. OKAY. OKAY. YOU SAID YOU SAW AN INDIVIDUAL HIT MIKE  
7 OVER THE HEAD WITH A -- WITH A BEER BOTTLE?

8 A. YEAH.

9 Q. OKAY. DID YOU SEE THIS PERSON WITH A CROW BAR?

10 A. NO.

11 Q. OKAY. DID YOU EVER SEE THAT PERSON WITH A CROW BAR?

12 A. NO.

13 Q. OKAY. AND YOU, IN FACT, WERE NOT EVER ABLE TO IDENTIFY  
14 THAT PARTICULAR INDIVIDUAL, WERE YOU?

15 A. WHAT'S THAT?

16 Q. YOU WERE NOT ABLE -- EVER ABLE TO IDENTIFY THAT  
17 PARTICULAR INDIVIDUAL, THE ONE WHO HIT MIKE?

18 A. NO.

19 Q. OKAY. NOW, YOU INDICATED ON YOUR DIRECT TESTIMONY THAT  
20 THERE WAS A LOT OF GLASS BREAKING --

21 A. YEAH.

22 Q. -- IS THAT CORRECT?

23 A. YEAH.

24 Q. A LOT OF BOTTLES BEING THROWN AROUND?

25 A. YEAH.

1 A. NO.

2 Q. NOT AT ALL?

3 A. NO.

4 Q. WEREN'T YOU A LITTLE UPSET AT THEM?

5 A. YEAH.

6 Q. BUT YOU DIDN'T TRY TO HIT THEM BACK OR ANYTHING?

7 A. NO.

8 Q. YOU ALSO INDICATED THAT YOU WERE IN -- YOU WERE IN A  
9 BEDROOM BY YOURSELF -- EXCEPT FOR THIS SMALL CHILD -- AND A  
10 BUNCH OF THEM WERE THROWING BOTTLES AT YOU?

11 A. YEAH.

12 Q. AND THEN THEY JUST KIND OF SUDDENLY QUIT?

13 A. YEAH.

14 Q. AND THEN THEY LEFT; IS THAT RIGHT?

15 A. THEY -- THEY WENT OUT THE ROOM AND MY FRIEND WAS COMING  
16 THROUGH THE HALL, AND THEY STARTED ATTACKING HIM WHEN HE WAS  
17 IN THE HALL.

18 Q. AND THAT WAS ON THEIR WAY OUT?

19 A. YEAH.

20 MR. BOUWHUIS: THAT'S ALL I HAVE.

21 REDIRECT EXAMINATION

22 BY MS. BEATON:

23 Q. ERIC, I NOTICE YOU HAVE ON GLASSES TODAY. DID YOU HAVE  
24 GLASSES ON JUNE 4, 1999, WHEN THIS TOOK PLACE?

25 A. I HAD MY SUNGLASSES ON.

1 Q. AFTER YOU HEAR THIS LARGE HIT ON THE DOOR, KNOCK ON THE  
2 DOOR, THEN WHAT DO YOU SEE?

3 A. THEN THE DOOR OPENED. I'M NOT SURE IF THE DOOR WAS SHUT  
4 ALL THE WAY, BUT IT JUST OPENED.

5 Q. OKAY. SO THE DOOR JUST KIND OF COMES OPEN?

6 A. UH-HUH.

7 Q. AND WHEN THE DOOR COMES OPEN, WHO DO YOU SEE?

8 A. A COUPLE OF GUYS.

9 Q. OKAY. GUYS. DID YOU RECOGNIZE EITHER ONE OF THEM?

10 A. UH-UH.

11 Q. OKAY. YOU DIDN'T RECOGNIZE THEM. WHAT DID THEY LOOK  
12 LIKE?

13 A. I DON'T REALLY REMEMBER. I KNOW JUST ONE OF THEM WAS  
14 TALL, TALLER THAN ME, A LITTLE BIT TALLER THAN ME.

15 Q. ONE WAS TALLER THAN YOU WERE?

16 A. YEAH.

17 Q. ARE, I SHOULD SAY?

18 A. YEAH.

19 Q. HOW ABOUT THE OTHER GUY? WHAT DID HE LOOK LIKE?

20 A. I DON'T REALLY REMEMBER.

21 Q. OKAY. THEY'RE BOTH GUYS. DO YOU SEE TWO GUYS OR DO YOU  
22 SEE MORE THAN TWO?

23 A. I THOUGHT THERE WAS THREE, BUT I'M NOT SURE.

24 Q. WELL, TELL US WHAT IT IS THAT YOU REMEMBER. DO YOU  
25 REMEMBER TWO GUYS OR THREE GUYS?

1     A.   I -- I THOUGHT THERE WAS THREE GUYS.

2     Q.   OKAY.  WHAT DID THE OTHER PERSON LOOK LIKE, MALE OR

3     FEMALE?

4     A.   THEY WAS ALL MALES.

5     Q.   OKAY.  DID YOU NOTICE WHAT RACE THEY WERE?

6     A.   I THINK HISPANIC.  I'M NOT REALLY SURE ABOUT ALL OF

7     THEM.

8     Q.   OKAY.  THE THREE OF THEM APPEARED TO BE HISPANIC.  DID

9     YOU NOTICE ANYTHING ABOUT THEIR CLOTHING?

10    A.   NO.

11    Q.   DID YOU NOTICE IF THEY HAD ANYTHING -- IF THEY WERE

12    WEARING ANYTHING:  GLASSES, HATS, BANDANAS, ANYTHING OF

13    OTHER CLOTHING?

14    A.   I THINK THEY HAD BANDANAS.  I'M NOT SURE IF ALL OF THEM

15    DID.  AT LEAST ONE.

16    Q.   AT LEAST ONE OF THEM HAD A BANDANA?

17    A.   YEAH.

18    Q.   HOW WAS HE WEARING THE BANDANA?

19    A.   I DON'T -- I DON'T REALLY REMEMBER.  I THINK IT WAS JUST

20    ON HIS HEAD.

21    Q.   OKAY.  ALL RIGHT.  DO THOSE PEOPLE COME INTO THE ROOM?

22    A.   YEAH, THEY WALKED IN:  THEY CAME IN.

23    Q.   OKAY.  WHERE DID THEY GO?

24    A.   WELL, AT FIRST THEY ASKED FOR TIFFANY.

25    Q.   OKAY.

- 1 A. SAID SHE WASN'T THERE.
- 2 Q. YOU SAID SHE WASN'T THERE?
- 3 A. EITHER I DID OR VERONICA. I'M NOT REAL SURE.
- 4 Q. OKAY. AND WHEN THESE PEOPLE WERE INFORMED THAT TIFFANY
- 5 WASN'T THERE, DO THEY TURN AROUND AND WALK OUT?
- 6 A. NO.
- 7 Q. WHAT DID THEY DO?
- 8 A. THEY CAME AND ASKED ME MY NAME.
- 9 Q. OKAY. HOW MANY PEOPLE ASKED YOU YOUR NAME?
- 10 A. JUST ONE.
- 11 Q. OKAY. AND WHAT DID THAT PERSON LOOK LIKE?
- 12 A. I DON'T REALLY REMEMBER.
- 13 Q. OKAY. NOW, MIKE, YOU WERE TALKING TO THIS PERSON. YOU
- 14 DON'T REMEMBER WHAT THIS PERSON LOOKED LIKE?
- 15 A. NO.
- 16 Q. OKAY. WAS THIS THE TALLER PERSON OR THE PERSON WITH THE
- 17 BANDANA OR --
- 18 A. YEAH. IT WAS THE TALLER PERSON.
- 19 Q. HE WAS THE TALLEST OF THE THREE?
- 20 A. YEAH.
- 21 Q. AND HE HAD A BANDANA ON?
- 22 A. I THINK SO, YEAH.
- 23 Q. OKAY. AND WHAT DOES HE SAY TO YOU?
- 24 A. JUST ASKED ME MY NAME.
- 25 Q. OKAY. AND WHAT DO YOU TELL HIM?



1     A.   TOLD HIM MY NAME.

2     Q.   OKAY.  DO YOU TELL HIM YOUR FIRST AND LAST NAME OR JUST

3     YOUR FIRST NAME.

4     A.   NO, I JUST TOLD HIM MY FIRST NAME.

5     Q.   OKAY.

6     A.   AND THEN I TOLD HIM MY LAST NAME.

7     Q.   WHY DID YOU TELL HIM YOUR LAST NAME?

8     A.   I -- HE ASKED ME, I THINK, WHAT MY LAST NAME WAS.

9     Q.   DID YOU TELL HIM YOUR NAME IS MIKE MONTANO?

10    A.   UH-HUH.

11    Q.   HOW DOES THAT PERSON RESPOND?

12    A.   HIT ME IN THE HEAD WITH A BOTTLE.

13    Q.   OKAY.  WHAT KIND OF BOTTLE?

14    A.   JUST A BEER BOTTLE.

15    Q.   OKAY.  DO YOU KNOW WHAT KIND OF BEER BOTTLE IT WAS?

16    A.   I COULDN'T TELL YOU EXACTLY.

17    Q.   YOU DIDN'T KNOW WHAT BRAND OF BEER IT WAS?

18    A.   NO.

19    Q.   WAS IT A BOTTLE THAT LOOKED SIMILAR TO THIS KIND OF

20    BOTTLE?

21    A.   YEAH.

22    Q.   OKAY.  SO YOU GET HIT BY A BOTTLE.  WHERE DO YOU GET

23    HIT?

24    A.   IN THE BACK OF MY HEAD RIGHT HERE.

25    Q.   OKAY.  YOU GET HIT IN THE BACK OF YOUR HEAD.  ARE YOU

1 Q. WELL, ARE THEY TRYING TO PREVENT YOU FROM LEAVING  
2 BEDROOM NUMBER ONE?

3 A. YEAH, I HAD TO PUSH THROUGH THEM.

4 Q. OKAY. SO THEY'RE KIND OF BLOCKING THE DOORWAY?

5 A. YEAH.

6 Q. AND YOU GET INTO BEDROOM NUMBER TWO, WHAT HAPPENS IN --  
7 WHAT HAPPENS WHILE YOU'RE IN BEDROOM NUMBER TWO?

8 A. THEN THEY STARTED JUMPING ME IN THERE.

9 Q. JUMPING YOU?

10 A. YEAH.

11 Q. WHAT DO YOU MEAN --

12 A. WELL, THEY STARTED HITTING ME IN THERE.

13 Q. OKAY. THAT'S WHAT YOU MEAN BY JUMPING YOU?

14 A. YEAH, MORE THAN ONE.

15 Q. WHAT ARE YOU BEING HIT WITH?

16 A. I COULDN'T TELL YOU, FISTS, BUT -- AND THEN I FELT  
17 SOMETHING HARDER HIT ME, AND IT -- IT DIDN'T FEEL LIKE HOW  
18 THE BOTTLE DID.

19 Q. OKAY. IT FELT HARDER?

20 A. YEAH.

21 Q. DID YOU SEE ANYTHING PRIOR TO GETTING HIT BY THIS THING  
22 THAT FELT HARDER?

23 A. EARLIER I -- I SAW A BAR, AND THEN VERONICA HAD TOLD ME,  
24 TOO, THAT SHE HAD SAW THEM BRING IN A BAR.

25 Q. OKAY. SO YOU SAW --

1 A. BUT I WASN'T --

2 Q. -- A BAR. WHAT KIND OF BAR DID IT LOOK LIKE?

3 A. LIKE A CROW BAR. IT WAS LIKE THAT ONE. CROW BAR, TIRE  
4 IRON.

5 (WHEREUPON, THERE'S AN OFF-THE-RECORD DISCUSSION.)

6 Q. THE BAR THAT YOU WERE TALKING ABOUT THAT YOU SAW, AT  
7 WHAT POINT DID YOU SEE THE BAR?

8 A. I DON'T REALLY REMEMBER IF IT WAS WHEN I WAS IN THE ROOM  
9 OR BEFORE I WENT TO THE ROOM.

10 Q. BEFORE YOU'RE IN BEDROOM NUMBER ONE OR BEDROOM NUMBER  
11 TWO?

12 A. NUMBER TWO.

13 Q. OKAY. WHERE WERE YOU WHEN YOU WERE IN BEDROOM NUMBER  
14 TWO THAT YOU SAW?

15 A. IT MIGHT HAVE BEEN WHEN I WAS GOING IN. I DON'T -- I  
16 DON'T REALLY REMEMBER.

17 Q. OKAY. BUT AT SOME POINT YOU REMEMBER SEEING SOMEBODY  
18 WITH A BAR IN THEIR HAND?

19 A. YEAH.

20 Q. OKAY. DID THE BAR LOOK LIKE WHAT'S BEEN MARKED AS  
21 STATE'S EXHIBIT NUMBER 20 OR NUMBER 21?

22 A. I CAN'T EVEN REALLY TELL YOU. PROBABLY MORE LIKE THAT  
23 BECAUSE -- I DON'T -- I DIDN'T SEE THAT PART RIGHT THERE.

24 Q. OKAY. YOU DIDN'T SEE ANYTHING THAT LOOKED LIKE STATE'S  
25 EXHIBIT NUMBER 21?

1 LEAVE.

2 Q. OKAY. WHAT -- WHERE ARE YOU AT INSIDE THE HOUSE WHEN  
3 YOU REMEMBER VERONICA YELLING FOR THEM TO LEAVE?

4 A. I THINK -- I'M NOT REAL SURE -- I THINK IT WAS IN THE  
5 BEDROOM THOUGH. WHEN I WAS IN THE BEDROOM.

6 Q. ARE YOU IN BEDROOM NUMBER ONE OR BEDROOM NUMBER TWO?

7 A. IN NUMBER ONE.

8 Q. OKAY. AND WHERE IS VERONICA WHEN SHE'S YELLING THIS?

9 A. SHE WAS IN THE BEDROOM, TOO.

10 Q. VERONICA WAS IN BEDROOM NUMBER ONE WITH YOU?

11 A. YEAH.

12 Q. WHAT WAS SHE DOING IN BEDROOM NUMBER ONE?

13 A. SHE WAS JUST CRYING AND STUFF.

14 Q. DID SHE SPEND VERY MUCH TIME IN BEDROOM NUMBER ONE?

15 A. I DON'T -- I DIDN'T REALLY PAY ANY ATTENTION. I WAS  
16 JUST PAYING ATTENTION AROUND ME RIGHT THEN, RIGHT IN FRONT  
17 OF ME.

18 Q. OKAY. DID SHE STAY IN BEDROOM NUMBER ONE OR DID SHE  
19 LEAVE THE ROOM?

20 A. I DON'T KNOW.

21 Q. AND YOU REMEMBER HER YELLING FOR THEM TO LEAVE?

22 A. YEAH.

23 Q. DID THE GROUP COMPLY WITH HER REQUEST?

24 A. NO.

25 Q. OKAY. DO YOU EVER REMEMBER HEARING VERONICA YELL FOR

1 A. AND THEN I TOLD THEM, WILL YOU PLEASE LEAVE?

2 Q. YOU JUST SAID YOU ASKED THEM, WHY DON'T YOU JUST LEAVE?

3 A. I -- I SAID THAT FIRST AND THEN I SAID, WILL YOU PLEASE  
4 LEAVE?

5 Q. ALL THIS WHILE YOU'RE SCARED FOR YOUR OWN PHYSICAL  
6 SAFETY?

7 A. YES.

8 MR. BOUWHUIS: NOTHING FURTHER.

9 MS. BEATON: NOTHING FURTHER.

10 THE COURT: YOU MAY STEP DOWN. THANK YOU.

11 MS. BEATON: YOUR HONOR, THE STATE CALLS TIFFANY  
12 MONTANO.

13 TIFFANY MONTANO,

14 BEING FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED  
15 AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MS. BEATON:

18 Q. PLEASE STATE YOUR NAME.

19 A. TIFFANY MONTANO.

20 Q. TIFFANY, HOW OLD ARE YOU?

21 A. TWENTY-TWO.

22 Q. AND TIFFANY, WERE YOU RENTING THE APARTMENT AT 2260  
23 MADISON AVENUE, APARTMENT K3 ON JUNE 4, 1999?

24 A. YES.

25 Q. ABOUT HOW LONG HAD YOU BEEN LIVING IN THIS APARTMENT?

1 HOUSE. WAS NEVER WELCOME IN MY HOUSE.

2 Q. OKAY. WHAT DO YOU MEAN HE DISRESPECTED YOU AT YOUR  
3 HOUSE?

4 A. HE'S -- HE'S JUST A DISRESPECTFUL PERSON.

5 Q. ABOUT HOW LONG PRIOR TO THIS DID HE COME OVER TO YOUR  
6 HOUSE AND DISRESPECT YOU IN YOUR HOME?

7 A. ABOUT A WEEK. A WEEK, TWO WEEKS.

8 Q. WHAT WAS IT THAT HE WAS DOING THAT YOU THOUGHT WAS  
9 DISRESPECTFUL?

10 A. SMOKING IN MY HOUSE AND WHEN I TOLD HIM TO PUT OUT THE  
11 CIGARETTE, HE LAUGHED AT ME AND SMOKED THE REST OF IT AND  
12 TOLD ME TO PUT IT OUT MYSELF.

13 Q. OKAY. DID YOU ASK HIM TO LEAVE YOUR HOME AT THAT POINT?

14 A. YES, I DID.

15 Q. DID YOU HAVE ANY DISCUSSION WITH THE DEFENDANT ABOUT  
16 WHETHER OR NOT HE WAS EVER INVITED TO YOUR HOME AGAIN?

17 A. HE KNEW HE WAS NOT WELCOME AT MY HOUSE --

18 MR. BOUWHUIS: OBJECTION. SPECULATION.

19 A. -- THE FIRST TIME HE CAME.

20 Q. (BY MS. BEATON) HOW DID THE DEFENDANT KNOW THAT --

21 THE COURT: SUSTAINED.

22 Q. (BY MS. BEATON) HOW DID THE DEFENDANT KNOW THAT HE WAS  
23 NOT WELCOME AT YOUR HOME?

24 MR. BOUWHUIS: OBJECTION. SPECULATION.

25 THE COURT: DO YOU WANT TO REPHRASE?

1 DID YOU EVER INVITE ANY OF THESE PEOPLE TO YOUR HOME ON  
2 JUNE 4TH?

3 A. I HAD TALKED TO LEO EARLIER IN THE DAY, AND I DIDN'T  
4 TELL THEM COME TO MY HOUSE AND LET'S HAVE A PARTY, COME  
5 BRING BEER, NOTHING LIKE THAT WAS SAID.

6 Q. OKAY. DID YOU ASK HIM THOUGH OR LET HIM KNOW THAT HE  
7 WAS WELCOME TO COME OVER TO YOUR HOME?

8 A. WELL, LEO IS MY FRIEND AND I HAD TOLD HIM NO -- YOU  
9 KNOW, CALL ME LATER, STOP BY LATER, WHATEVER, TALKING TO  
10 HIM. I DIDN'T TELL NOBODY ELSE, DIDN'T TELL HIM TO BRING  
11 ANY OF HIS FRIENDS. I'M FRIENDS WITH LEO, I'M FRIENDS WITH  
12 HIS FAMILY, HIS MOM, HIS SISTER, AND NOBODY ELSE WAS INVITED  
13 TO MY HOUSE.

14 Q. AND HAD LEO BEEN OVER TO YOUR HOME IN THE PAST?

15 A. YES.

16 Q. OKAY. WHEN LEO CAME OVER TO YOUR HOME, IT WAS ALWAYS TO  
17 COME TO YOUR HOME TO VISIT AS A GUEST, I ASSUME NOT TO GET  
18 IN A FIGHT?

19 A. RIGHT.

20 Q. OKAY. NOBODY WAS EVER INVITED TO YOUR HOME TO ENGAGE IN  
21 ANY OF THE ACTIVITIES THAT TOOK PLACE AT YOUR HOME THAT  
22 NIGHT?

23 A. RIGHT. UH-HUH.

24 Q. OKAY. WHEN YOU'RE TALKING TO LEO, IS THERE ANYBODY ELSE  
25 PRESENT OF THE CO-DEFENDANTS?

1 LAST NIGHT STILL APPLIES. DO NOT DISCUSS THE CASE WITH  
2 ANYONE AND KEEP AN OPEN MIND. THANK YOU.

3 (JURY CONTINUES LEAVING THE COURTROOM.)

4 THE COURT: I SUSPECT THEY'RE GOING TO COME BACK  
5 THROUGH THIS COURTROOM IN JUST A MINUTE. WHY DON'T WE GIVE  
6 THEM JUST A MINUTE TO GATHER UP THEIR COATS.

7 MR. BOUWHUIS: COULD HE TAKE THEM THROUGH JUDGE  
8 GLASMANN'S COURT?

9 THE COURT: WELL, HE COULD IF HE WOULD. LET ME  
10 JUST GO TELL HIM TO DO THAT.

11 (WHEREUPON, THE COURT LEAVES THE BENCH MOMENTARILY,  
12 AFTER RETURNING PROCEEDINGS RESUME OUT OF THE HEARING OF THE  
13 JURY, AS FOLLOWS:)

14 THE COURT: GO AHEAD. YOU MAY MAKE YOUR MOTION.

15 MR. BOUWHUIS: WELL, I DON'T KNOW IF IT'S A MOTION  
16 AT THIS POINT. I HAVE -- I MADE A SLIGHT OVERSIGHT AND IN  
17 SOME -- SOMEBODY'S VIEW I MAY HAVE MADE A LARGE OVERSIGHT.

18 I ASSUMED -- WE HAVE A POLICE REPORT OF AN OFFICER,  
19 LOOKS LIKE IT'S OFFICER HANSELMAN. I MADE THE MISTAKE OF  
20 ASSUMING IT WAS DETECTIVE ZACCARDI WHO HAD RESPONDED TO THE  
21 SCENE AND HAD TALKED TO WITNESSES.

22 WHAT I'M GETTING AT IS IN OFFICER HANSELMAN'S REPORT HE  
23 INDICATES THAT WHILE HE WAS TALKING TO WITNESSES, HE  
24 OVERHEARD -- WHAT IS HER NAME -- PALOMO, I DON'T REMEMBER  
25 HER FIRST NAME, VERONICA PALOMO, TELL TIFFANY MONTANO THAT



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IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

\*\*\*\*\*

STATE OF UTAH,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	REPORTER'S TRANSCRIPT
	)	
NATHAN MARTINEZ,	)	CASE NO. 991902167
	)	
DEFENDANT.	)	

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TRIAL VOLUME II

DECEMBER 7 (P.M.) & 8, 1999

HONORABLE MICHAEL D. LYON

\*\*\*\*\*

APPEARANCES:

FOR THE STATE:	BRENDA J. BEATON
	RICK WESTMORELAND

FOR THE DEFENDANT:	MICHAEL D. BOUWHUIS
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REPORTED/TRANSCRIBED BY DEAN OLSEN, CSR  
2525 GRANT AVENUE  
OGDEN, UTAH 84401  
(801) 395-1056

COPY

1 Q HOW MANY TIMES DID YOU HEAR HER YELL, GET OUT?

2 A I HEARD JUST LIKE THREE TIMES, AND THEN I KNOW SHE WAS  
3 YELLING WHEN I RAN OUT.

4 Q OKAY. YOU HEARD HER YELLING WHILE YOU WERE IN BEDROOM  
5 NUMBER 1. DID YOU EVER HEAR HER YELLING WHEN YOU WERE IN THE  
6 LIVING ROOM?

7 A NO.

8 Q OKAY. IN ANY OTHER ROOMS OF THE HOUSE?

9 A NO.

10 Q WHERE WERE THE OTHER LOCATIONS THAT SHE WAS YELLING?

11 A I DON'T KNOW. I COULD JUST HEAR HER VOICE. I DIDN'T  
12 KNOW WHERE SHE WAS AT.

13 Q OKAY. WHERE WERE YOU THE THREE TIMES THAT SHE WAS  
14 YELLING, GET OUT?

15 A IN BY THE DOORWAY OF TIFFANY'S ROOM.

16 Q OKAY. ALL THREE TIMES?

17 A YEAH.

18 Q DID YOU EVER SEE A CROW BAR OR TIRE IRON IN THE HOME?

19 A YEAH.

20 Q WHO HAD THAT?

21 A LEO.

22 Q LEO, WHAT'S HIS LAST NAME?

23 A ORNELAS. I DON'T KNOW, SOMETHING LIKE THAT.

24 Q WHAT DID HE --

25 A I DON'T KNOW HOW TO PRONOUNCE IT.

1 Q OKAY. WE MEANING WHO?  
2 A WHAT I MEAN?  
3 Q YEAH, YOU SAY WE ALWAYS PARTY THERE.  
4 A ALL OF US WERE THERE, LIKE BETWEEN THE LAST FOUR, FIVE  
5 MONTHS, WE WAS ALWAYS THERE, JUST --  
6 Q OKAY. YOU MEAN MEMBERS OF O.V.G.?  
7 A YEAH.  
8 Q YOU GUYS ALL HUNG TOGETHER?  
9 A HUH? YEAH.  
10 Q YOU GUYS ALL HUNG TOGETHER --  
11 A YEAH.  
12 Q -- AND YOU PARTIED TOGETHER?  
13 A YEAH, UH-HUH.  
14 Q OKAY. BUT YOU RECALL THE OFFICER ASKING YOU IF -- WELL,  
15 WHEN YOU ARRIVED AT THE HOME, TIFFANY WAS NOT HOME, IS THAT  
16 CORRECT?  
17 A YEAH.  
18 Q OKAY. AND THAT'S WHAT YOU TOLD THE POLICE OFFICER?  
19 A YEAH.  
20 Q YOU RECALL HIM ASKING YOU WHO INVITED YOU INTO THE HOME?  
21 A YEAH.  
22 Q AND YOU TOLD HIM THAT TIFFANY'D TOLD YOU IN THE PAST YOU  
23 COULD JUST WALK IN?  
24 A NO, NOT US. THAT WAS LEO, HE USUALLY DID THAT.  
25 Q OKAY. BUT YOU TOLD THE POLICE OFFICER THAT. DO YOU

1 RECALL THAT?

2 A I SAID THAT LEO WOULD SAY THAT. LEO WOULD DO THAT, NOT  
3 US.

4 MR. BOUWHUIS: OKAY. MAY I APPROACH THE WITNESS, YOUR  
5 HONOR?

6 THE COURT: YOU MAY.

7 BY MR. BOUWHUIS:

8 Q I'M GONNA SHOW YOU WHAT APPEARS TO BE YOUR STATEMENT. IS  
9 THAT YOUR NAME?

10 A YEAH.

11 Q OKAY. MOVE BACK HERE. ON THE LAST PAGE, DOES THAT  
12 APPEAR TO BE YOUR SIGNATURE?

13 A NO.

14 Q THAT APPEAR TO BE YOUR SIGNATURE?

15 A YEAH.

16 Q AND THE DATE ON THERE IS OCTOBER 7TH?

17 A UH-HUH.

18 Q OKAY. WHY DON'T YOU GO AHEAD AND READ THAT HIGHLIGHTED  
19 PORTION JUST TO YOURSELF.

20 OKAY. DO YOU REMEMBER MAKING THAT STATEMENT?

21 A YEAH, JUST LIKE IN THE -- LEO WAS THE USUALLY ONE WALKING  
22 IN AND WE WOULD FOLLOW.

23 Q OKAY. IN THE FIRST PART OF THE STATEMENT, YOU SAID,  
24 TIFFANY HAD TOLD US IN THE PAST THAT WE COULD JUST WALK IN.  
25 THAT WAS THE FIRST PART OF THAT STATEMENT, RIGHT?

1 A YEAH, THAT WAS USUALLY LEO, THOUGH, BECAUSE --

2 Q OKAY. BUT THE FIRST PART OF THAT STATEMENT SAYS, SHE

3 TOLD US.

4 A THAT WOULD -- I PROBABLY MEANT LEO, AND THEN WE WOULD

5 JUST FOLLOW.

6 Q AND THE SECOND PART OF YOUR STATEMENT IS, LEO WAS USUALLY

7 THE ONE WALKING IN BECAUSE SHE LIKED HIM?

8 A WELL, YEAH, YOU KNOW.

9 Q AND THAT'S -- THAT STATEMENT IS CONTAINED ON -- IN

10 HERE --

11 A YEAH.

12 Q -- CORRECT? OKAY. DO YOU RECALL WHEN YOU TESTIFIED THAT

13 NATE MARTINEZ HIT MIKE MONTANO WITH A BEER BOTTLE?

14 A YEAH.

15 Q DO YOU RECALL HIM ASKING HIM WHAT HIS NAME WAS?

16 A YEAH.

17 Q OKAY. NATE MARTINEZ ASKED MIKE MONTANO WHAT HIS NAME

18 WAS?

19 A YEAH.

20 Q AND AT FIRST MIKE MONTANO JUST SAID MIKE, IS THAT

21 CORRECT?

22 A YEAH.

23 Q AND THEN -- AND THEN HE WAS ASKED HIS LAST NAME?

24 A YEAH.

25 Q AND MIKE MONTANO GAVE HIS LAST NAME, RIGHT?

1 PARTY. SO THAT'S WHERE THEY GO. THEY LOAD UP THEIR BEER --  
2 BEER BOTTLES, BY THE WAY, IT SEEMS ODD THAT THAT WOULD BE A  
3 WEAPON OF CHOICE. NOW, AS IT TURNS OUT IN THIS CASE, PROBABLY  
4 A VERY EFFECTIVE WEAPON. NOT ONE YOU WOULD THINK THAT PEOPLE  
5 WOULD CHOOSE. THE REASON THEY HAD THE BEER WITH THEM IS  
6 BECAUSE THEY WERE GOING OVER TO TIFFANY'S TO PARTY. WHALEY  
7 SAID THAT. NAVA SAID THAT. BALLI SAID THAT. THE EVIDENCE  
8 SUGGESTS THAT. BALLI SAID WHEN HE WAS ASKED BY POLICE  
9 OFFICER, WHO INVITED THEM INTO TIFFANY'S HOUSE, HE SAID, SHE  
10 SAID THERE WAS A PARTY AND TO COME OVER WHEN WE WANTED. IT'S  
11 LIKE WE'RE ALWAYS INVITED. WE DIDN'T BREAK IN OR ANYTHING.  
12 ANTHONY NAVA SAID, TIFFANY HAD TOLD US IN THE PAST THAT WE  
13 COULD JUST WALK IN. LEO WAS USUALLY THE ONE WALKING IN  
14 BECAUSE SHE LIKED HIM.

15 ERIC LEYVA TESTIFIED THAT WHOEVER IT WAS THAT CAME UP TO  
16 MIKE MONTANO ASKED HIM, WHERE'S TIFFANY. AND YOU'VE ALREADY  
17 HEARD THAT. AND YOU HEARD IT FROM THE PERSPECTIVE OF THE  
18 STATE. BUT HE WANTS TO MAKE SURE TIFFANY'S NOT AROUND SO HE  
19 CAN CARRY OUT HIS ORIGINAL INTENT, WHICH WAS TO ASSAULT THESE  
20 TWO GUYS. THERE'S NO EVIDENCE TO SUGGEST THAT WHEN THEY LEFT  
21 15TH AND CHILDS, THEY KNEW THESE TWO GUYS WERE THERE. THE  
22 ONLY EVIDENCE SUGGESTS THAT THEY KNEW THERE WAS A PARTY GOING  
23 ON OR THERE WAS GOING TO BE A PARTY GOING ON. THAT'S WHY THEY  
24 WENT OVER THERE. SO WHOEVER IT IS THAT WALKS IN, WALKS UP TO  
25 MIKE AND SAYS -- OR AT SOME POINT SAYS, WHERE'S TIFFANY.

1 THAT'S CONSISTENT WITH SOMEBODY WHO'S HEARD THAT THERE WAS A  
2 PARTY, THAT THEY WERE INVITED OVER TO COME. TIFFANY'S THE  
3 HOST, TIFFANY RESIDES THERE. NONE OF THE OTHER PEOPLE DO.  
4 WHERE'S TIFFANY? WELL, THEY DON'T KNOW.

5 AND THEN THIS INDIVIDUAL SEES MIKE MONTANO SITTING THERE,  
6 WALKS UP AND SAYS, WHAT'S YOUR NAME. I THINK IT'S FAIR TO SAY  
7 AT THAT POINT THAT HE PROBABLY WASN'T LOOKING TO HUG THE  
8 INDIVIDUAL. AT THAT POINT HE PROBABLY SUSPECTED THAT HERE'S  
9 AN INDIVIDUAL WHO MAY BE A MEMBER OF A RIVAL GANG AND HE  
10 WANTED TO KNOW WHO IT WAS. HE WANT TO KNOW HIS NAME.  
11 PROBABLY BECAUSE HE WAS FAMILIAR WITH MEMBERS OF RIVAL GANGS  
12 AND WAS FAMILIAR WITH MICHAEL MONTANO, HIS NAME. SO HE ASKS  
13 HIM, AFTER HE SAYS WHERE'S TIFFANY, OKAY, WHAT'S YOUR NAME.  
14 MIKE. MIKE WHAT. MONTANO. AND SMACKS HIM OVER THE HEAD WITH  
15 A BEER BOTTLE. CLEARLY AT THAT POINT, THERE'S AN INTENT TO  
16 ENGAGE IN ILLEGAL ACTIVITY. THERE'S NO GETTING AROUND THAT.  
17 THAT'S WHERE THE INTENT FORMS. THE ONLY -- THE ONLY WEAPONS  
18 THAT WERE PRESENT WERE THE BEER BOTTLES AND THEN THERE WERE A  
19 COUPLE OF BARS, A CROW BAR AND SOME OTHER KIND OF BAR. MOST  
20 OF THE TESTIMONY ABOUT THOSE, WE HEARD ABOUT THE CROW BAR.  
21 BUT THE TESTIMONY ABOUT THAT WAS THAT IT WAS HIDDEN INSIDE  
22 SOMEBODY'S JACKET, LEO ORNELAS' JACKET. IF IT'S HIDDEN INSIDE  
23 HIS JACKET, YOU HAVE TO ASSUME NOBODY ELSE SAW IT. EVERYBODY  
24 ELSE HAD BEER. IN FACT, JONATHAN WHALEY TESTIFIED AT LEAST AT  
25 THE JUVENILE COURT PRELIMINARY HEARING, THAT EVERYBODY HAD A

1 BOTTLE OF BEER IN THEIR HANDS WHEN THEY WALKED IN. AND OF  
2 COURSE, LIKE EVERYTHING ELSE, HIS VERSION CHANGES AS EACH TIME  
3 HE TELLS THE STORY. BY THE TIME HE GETS HERE HE SAYS, WELL,  
4 NATHAN MARTINEZ IS THE ONLY ONE WITH A BOTTLE OF BEER IN HIS  
5 HANDS. BELIEVE WHAT YOU WILL ABOUT JONATHAN WHALEY, THE FACT  
6 IS THESE PEOPLE BROUGHT BEER. HOW THE WEAPONS GOT INSIDE THE  
7 HOME, THE ONLY THING THAT -- I BELIEVE THE ONLY THING WE HAVE  
8 EVIDENCE ON IS THAT CROW BAR WAS HIDDEN INSIDE LEO ORNELAS'  
9 COAT. SO THE INTENT ON GOING OVER THERE WAS TO PARTY.  
10 OBVIOUSLY, IT CHANGED AT SOME POINT.

11 NOW, TIFFANY MONTANO TESTIFIED THAT SHE -- THERE WAS AN  
12 INCIDENT APPROXIMATELY A WEEK PRIOR WHEN NATHAN MARTINEZ WAS  
13 IN THE HOME AND HE DISRESPECTED HER. HE WAS SMOKING IN HER  
14 HOME. SHE DIDN'T APPRECIATE THAT. I'M SURE NONE OF YOU WOULD  
15 EITHER. AND SHE TOLD HIM TO PUT IT OUT AND HE DIDN'T. WHAT  
16 SHE SAID HERE ON THE STAND WAS THAT HE KNEW HE WASN'T WELCOME  
17 IN THE HOME. AND TECHNICALLY WE CALL IT SPECULATION ABOUT  
18 WHAT'S GOING ON IN HIS MIND. SHE ALSO SAID THAT EVERYBODY  
19 ELSE KNEW THAT NATHAN MARTINEZ WASN'T WELCOME IN THE HOME.  
20 NOW, WHEN I PRESSED HER ABOUT THAT AND ASKED HER HOW THEY  
21 KNEW, WELL, THEY JUST KNEW. DID YOU PUBLISH A LIST RULES ON  
22 DOOR? NO. AND OBVIOUSLY, THAT WAS A SARCASTIC QUESTION, BUT  
23 THE INTENT WAS TO TRY TO GET TO EXACTLY HOW IT IS THAT  
24 EVERYBODY KNEW THAT NATHAN MARTINEZ WELCOME IN THE HOME. AND  
25 IN KIND OF AN INTERESTING TWIST, I THINK THAT TIFFANY



1 EXHIBITED ONE OF MORE HONEST MOMENTS IN THIS TRIAL WHEN SHE  
2 FAILED TO TAKE THE BAIT AND SAY, THE REASON HE KNEW AND  
3 EVERYBODY ELSE KNEW IS BECAUSE I EXPLICITLY TOLD HIM.

4 NOW, I KNOW YOU'VE HEARD ARGUMENT THAT SHE DID EXPLICITLY  
5 TELL HIM. THE REALITY IS THAT WHEN SHE WAS PRESSED ON THE  
6 ISSUE, HOW DID HE KNOW AND HOW DID EVERYBODY ELSE KNOW, HER  
7 RESPONSE WAS, THEY JUST DID. EVERYBODY KNEW. WELL, I'M NOT  
8 CERTAIN THAT'S ENOUGH. IS THAT ENOUGH TO SAY, HE KNEW BEFORE  
9 HE EVERY WENT OVER THERE THAT THERE'S NO WAY HE WAS GONNA COME  
10 IN THERE? FURTHERMORE, IT WAS COMMON KNOWLEDGE, ALL THESE  
11 PEOPLE KNEW EACH OTHER EXCEPT MIKE MONTANO AND ERIC LEYVA  
12 OBVIOUSLY DIDN'T KNOW THESE PEOPLE. BUT TIFFANY KNEW NATE  
13 MARTINEZ, SHE KNEW LEO. OBVIOUSLY LIKED HIM. INVITED HIM  
14 OVER ON PREVIOUS OCCASIONS. HIS UNDERSTANDING WAS IT WAS KIND  
15 OF AN OPEN INVITATION TO GO TO THE HOME. AND ALSO THAT HE  
16 COULD SIMPLY WALK IN. OBVIOUSLY, THAT WOULD HAVE TO BE UNDER  
17 REASONABLE CIRCUMSTANCES, BUT COMMON ACKNOWLEDGE THAT NATHAN  
18 MARTINEZ WAS IN THE SAME GANG WITH LEO, THERE'S A -- WHEN  
19 THEY'RE LEAVING 15TH AND CHILDS, LEO SCREAMS OUT, HEY,  
20 TIFFANY'S INVITED US OVER TO GO PARTY. LET'S GO. THESE GUYS  
21 WHO TESTIFIED, THEY WERE ASKED SPECIFICALLY, DID YOU EVER HEAR  
22 ANYBODY SAY, LET'S ALL GO, BUT WAIT A MINUTE, NATE CAN'T GO  
23 OVER. HE'S NOT WELCOME THERE. THEY'RE GOING TO A PARTY.  
24 NOBODY SAYS THAT. PROBABLY BECAUSE THEY DIDN'T ALL KNOW THAT  
25 THERE WAS SOME OFFICIAL POLICY THAT NATHAN MARTINEZ COULDN'T

1 GO OVER WITH THEM. THEY'RE ALL OVER GOING OVER TO THE PARTY  
2 AND HE'S GOING WITH 'EM. HE'S PART OF THE GROUP. AND IN  
3 FACT, YOU COULD CERTAINLY INTERPRET THE QUESTION, IS TIFFANY  
4 HERE, AS SOME OBVIOUSLY SOME CONCERN ABOUT HER AND WHETHER OR  
5 NOT SHE STILL FELT THAT WAY ABOUT NATHAN MARTINEZ. BUT IT'S  
6 NOT CLEAR AT ALL, NOT CLEAR AT ALL THAT THERE WAS SOME  
7 OFFICIAL RULE THAT NATHAN MARTINEZ COULDN'T GO OVER TO THE  
8 HOME. AND HE WAS PART OF THE GROUP AND THAT WAS KNOWN BY  
9 EVERYBODY AND THERE WAS AN INVITATION TO LEO. AND THERE  
10 WASN'T ANY EVIDENCE THAT THIS INVITATION WAS SOME NARROWLY  
11 DEFINED, LEO, YOU CAN COME OVER, BUT YOU CAN'T BRING ANYBODY  
12 ELSE. I WANNA MAKE THAT CLEAR TO YOU, LEO. DO YOU UNDERSTAND  
13 THAT? NO EVIDENCE ABOUT THAT. NO TESTIMONY ABOUT THAT.

14 CLEARLY, TIFFANY'S NOT HAPPY WITH NATHAN MARTINEZ. SHE  
15 COMES BACK -- SHE LEAVES THE APARTMENT. SHE SAYS, THERE MIGHT  
16 HAVE BEEN A COUPLE GIRLS THERE. LEFT HER BABY AND, WELL, SHE  
17 SAYS THE LIGHTS WERE OUT. I'M NOT SURE EXACTLY WHAT THAT  
18 MEANS. THINK THE LIGHTS WOULD BE OUT WHEN PEOPLE ARE STILL  
19 THERE. BUT SHE GOES TO GET A DECK OF CARDS. BECAUSE THERE'S  
20 GONNA BE A PARTY.

21 NOW, WE KIND OF BICKERED BACK AND FORTH ABOUT WHETHER  
22 THERE WAS A PARTY, WHETHER SHE HAD PARTIES THERE AT THE  
23 APARTMENT OR WHATNOT OR WHETHER THEY WERE SOCIALS. CALL 'EM  
24 WHAT YOU WANT, THERE WAS PLENTY OF TESTIMONY THAT THERE HAD  
25 BEEN GATHERINGS. PEOPLE GATHERED AT HER PLACE ON MANY