

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

MIGUEL ANGEL BACIGALUPO,

On Habeas Corpus.

CAPITAL CASE

S079656

SUPREME COURT  
FILED

SEP 06 2001

Santa Clara County Superior Court No. 93351  
The Honorable Thomas Hastings, Judge

Frederick K. Ehrlich Clerk  
*Mausha Smith*  
DEPUTY

RETURN TO ORDER TO SHOW CAUSE AND MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF RETURN

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DEATH PENALTY

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

**MIGUEL ANGEL BACIGALUPO,**

On Habeas Corpus.

**S079656**

**RETURN TO ORDER TO SHOW CAUSE**

**COMES NOW**, C.A. Terhune, Director of the California Department of Corrections, and for a return to the order to show cause issued in the above-entitled cause on March 14, 2001, states:

**I.**

On December 29, 1983, petitioner, Miguel Angel Bacigalupo, shot and killed Orestes and Jose Guerrero, execution-style, as part of his plan to rob their jewelry store.

**II.**

On April 9, 1987, a jury in Santa Clara County Superior Court convicted petitioner for the first degree murders of Orestes and Jose Guerrero, and found a multiple murder and felony murder special circumstances allegations true. (Pen. Code. §§ 187, 190.2(a)(3), 190.2(a)(17)(1).)<sup>1</sup> On April 21, 1987, the same jury returned a verdict of death for the murders. The Superior Court pronounced judgment of death on June 16, 1987.

**III.**

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1. Unless otherwise noted, all further statutory references are to the Penal Code.

On December 9, 1991, this Court affirmed the convictions and death sentence on direct appeal. (*People v. Bacigalupo* (1991) 1 Cal.4th 103.) On October 5, 1992, the United States Supreme Court granted petitioner's petition for writ of certiorari, vacated the judgment, and remanded the case to this Court to evaluate the constitutional validity of the sentencing factors used in California's death penalty scheme in light of *Stringer v. Black* (1992) 503 U.S. 222. (*Bacigalupo v. California* (1992) 506 U.S. 802.)

On December 7, 1993, this Court found the sentencing factors constitutional under *Stringer v. Black* and reaffirmed its earlier judgment in full. (*People v. Bacigalupo* (1993) 6 Cal.4th 457.) On May 12, 1994, this Court denied petitioner's first habeas corpus petition.

#### IV.

On August 3, 1994, petitioner filed a pro per request for stay of execution and appointment of counsel in federal district court. The federal district court appointed new counsel to represent petitioner on July 28, 1995. Petitioner filed a federal petition for writ of habeas corpus on October 21, 1997.

#### V.

Petitioner filed the instant state petition for writ of habeas corpus with this Court on June 11, 1999, asserting *inter alia* that the prosecution withheld potentially mitigating evidence supportive of petitioner's claim to have acted under death threats. Specifically, petitioner alleges in claim G that a confidential informant told an investigator with the district attorney's office that she learned from Jose Angarita, a Columbian drug dealer, that the murders of Orestes and Jose Guerrero were "drug hits" contracted by Jose Angarita. Petitioner claims that the confidential informant was then instructed by the district attorney investigator or the prosecutor not to disclose this information to the trial court at the in camera hearing held by the court to determine

whether or not to disclose the identity of the confidential informant. As a result of the in camera hearing, the trial court denied the defense request for the identity of the informant, ruling that the informant had no material exculpatory information.

Petitioner asserts in claim I, paragraph 6, that the prosecution obtained material exculpatory evidence from Ronnie Nance, Steve Price, and Luis Alberto Albarran-Arnal pertaining to this alleged "drug hit" and failed to provide that material to the defense.

On April 27, 2000, pursuant to Rule 60 of the California Rules of Court, this Court requested respondent provide an informal response to the newest petition; we filed our response on October 4, 2000. On March 14, 2001, this Court issued an order to show cause for two of the claims raised in the petition for writ of habeas corpus, claim G, and claim I, paragraph 6.

## **VI.**

To support his petition with respect to the two issues identified in the Order to Show Cause, petitioner included a 1997 declaration by the confidential informant. In that declaration, the informant indicates that she told a prosecution investigator, Sandra Williams, that it was likely that Jose Angarita had ordered the murders of Orestes and Jose Guerrero, but the investigator instructed her not to mention this fact to the trial court at the in camera hearing on whether to reveal the identity of the informant.

## **VII.**

In May 2001, the informant was shown her 1997 declaration, which had been prepared for her by the defense and which she had signed. The informant was given an opportunity to review the contents of that declaration. Upon reviewing the contents of the declaration, the informant spontaneously declared that the pertinent information in the declaration was inaccurate. She explained that Sandra Williams never told her to withhold any information

from the trial court conducting the in camera hearing, and that the statement attributed to her in the declaration was a mistake. She also explained that she had told Sandra Williams that she "wondered if that was the case" that Angarita ordered the murders as a drug hit, but explained that she "never had any knowledge that it was a contract killing, period." She explained that the defense investigator who prepared the declaration for her must have added the challenged information before she signed the declaration, but she did not know why, because she had not made those statements to the defense investigator.

#### VIII.

The confidential informant also reviewed a transcript of her taped interview with the police from 1984. She confirmed that the taped interview contained all of the information she knew relating to the *Bacigalupo* case, and she explained that she gave the police and the prosecution no additional information aside from what was contained in the tape. This taped interview was provided to the trial court conducting the in camera hearing in 1984 on the question whether to reveal the confidential informant to the defense.

#### IX.

The confidential informant was also asked to view a photographic lineup and was asked if any of the individuals in the lineup looked like the person named "Miguel" whom she observed meeting with Jose Angarita. She identified someone other than petitioner as looking like the individual who met with Angarita.

#### X.

In 1984, Sandra Williams, then a Santa Clara County district attorney investigator and John Kracht, then a San Jose police officer, interviewed the confidential informant and made a tape recording of that interview. They reviewed a transcript of the tape recording and confirmed that all of the



information provided to them by the confidential informant was contained in that tape recording.

#### **XI.**

Sandra Williams and John Kracht both affirmed in affidavits that they did not direct the confidential informant to withhold any information from the trial court at the in camera hearing. Sandra Williams also reviewed her testimony from the in camera hearing in which she recounted what the confidential informant had related to her. Sandra Williams affirmed in her declaration that her testimony at the in camera hearing recounting the informant's information was truthful and accurate.

#### **XII.**

Judge Joyce Allegro, who in 1985 was the Santa Clara County Deputy District Attorney responsible for prosecuting petitioner, has denied directed the confidential informant to lie or withhold any information from the trial court conducting the in camera hearing. Thomas Ferris, the Santa Clara County Deputy District Attorney who in 1985 represented the prosecution at the in camera hearing on behalf of Ms. Allegro, has averred that he never directed the confidential informant to lie or withhold any information from the trial court at the in camera hearing.

#### **XIII.**

With respect to claim I, paragraph 6, petitioner asserts in his petition that potential witnesses Ronnie Nance, Steve Price, and Luis Alberto Albarran-Arnal (a.k.a., Luis Laureano) all had information supporting petitioner's duress defense. Petitioner contends that the prosecutor's office interviewed Nance and Price, and assisted in the prosecution of Albarran-Arnal/Laureano, and thereby obtained material exculpatory information from these witnesses, but failed to turn over this information.

#### **XIV.**

However, Sandra Williams averred in her affidavit that she never received any information from Luis Laureano/Albarran-Arnal and had no reason to believe that Laureano had any information concerning petitioner's case. Laureano/Albarran-Arnal similarly averred in his defense declaration that when he was arrested by agents with the Drug Enforcement Agency, he refused to cooperate with the authorities by providing information on Angarita's drug sales. There is no evidence, nor was there at the time of trial, that the prosecution had any information from Luis Laureano/Albarran-Arnal relating to petitioner's case.

#### **XV.**

Sandra Williams also averred in her declaration that she interviewed Steve Price in 1984 but he had no information relating to petitioner's case. Ms. Williams explained that she did not record his statements, make a written report of his statements, or make any notes about the content of his statements because they did not relate to petitioner's case. There is evidence, nor was there at the time of trial, that the prosecution had any information from Steve Price relating to petitioner's case.

#### **XVI.**

Sandra Williams did conduct a tape-recorded interview with Ronnie Nance. Mr. Nance was in custody on an unrelated case and was attempting to obtain favorable treatment in exchange for providing information about petitioner's case. During the interview, Mr. Nance explained that the confidential informant told him that Jose Angarita had ordered the double murder.

Ms. Williams then contacted the confidential informant and conducted the taped interview discussed above, in which the informant

explained that her statements to Mr. Nance were based on her own speculation, rather than any real knowledge of the murders.

Ms. Williams subsequently interviewed Mr. Nance in jail to discuss his previous statements about the Bacigalupo case. Ms. Williams conducted this follow-up interview of Mr. Nance's statements with a defense investigator, Public Defender investigator David Gonzales. Accordingly, Mr. Nance's statements were known to the defense in 1984. Moreover, Mr. Nance had no firsthand, admissible, or relevant information about the murders.

#### **XVII.**

The prosecution did not direct the confidential informant to withhold any information from the trial court conducting the in camera hearing on whether to reveal the identity and statements of the informant, nor did the prosecution withhold any material exculpatory information in violation of petitioner's constitutional rights under *Brady v. Maryland* (1963) 373 U.S. 83, 87.

#### **XVIII.**

Except as otherwise indicated, respondent denies each and every allegation of the petition, denies that petitioner's confinement is in any way illegal, and denies that any of petitioner's rights have been violated in any way.

#### **XIX.**

Respondent incorporates by reference Exhibits 1 through 4, lodged with the opposition to petition for writ of habeas corpus. Additional exhibits are lodged with this return.

#### **XX.**

Respondent incorporates by reference the memorandum of points and authorities which accompany this return, and the Brief in Opposition to Second Petition for Writ of Habeas Corpus, filed on October 4, 2000.

**WHEREFORE**, it is respectfully submitted that the petition for writ of habeas corpus should be denied and the order to show cause should be discharged.

Dated: September 6, 2001

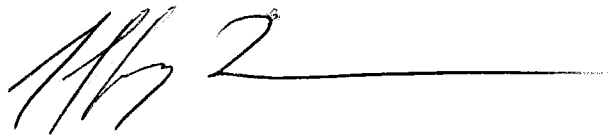
Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'J. Laurence', followed by a long horizontal line extending to the right.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### ARGUMENT

#### **THE PROSECUTION DID NOT WITHHOLD ANY POTENTIALLY MITIGATING EVIDENCE SUPPORTIVE OF PETITIONER'S CLAIM TO HAVE ACTED UNDER DEATH THREATS**

Petitioner contends that the prosecution committed prosecutorial misconduct because it "failed to disclose the names of a confidential informant and other witnesses and their statements . . . ." (Pet. 143 [claim G].) Petitioner also asserts that the prosecution committed misconduct by telling the confidential informant not to reveal exculpatory evidence to the trial court conducting the in camera review of the informant's statements when the court was deciding whether the confidential informant's identity should have been released to the defense. (See generally *Brady v. Maryland* (1963) 373 U.S. 83.)<sup>2</sup> Petitioner's claims are without merit.

#### **A. The Confidential Informant Was Not Told To Withhold Any Information From The Trial Court**

Petitioner bases his claim of prosecutorial misconduct and *Brady* error on a single statement in a 1997 defense declaration signed by the confidential informant, providing: "I remember that Sandy Williams [an investigator with the District Attorney's Office] told me not to mention the possibility that the Guerrero brothers' murders were contract hits ordered by Jose [Angarita]." (Pet. Exh. A-86; Pet at 143-149 [claim G].) However, this

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2. Although petitioner never cites *Brady v. Maryland* (1963) 373 U.S. 83, he appears to rest his claim on the teaching of that case.

assertion, which was inserted in the declaration by the defense investigator following an interview of the confidential informant and then presented to the informant to sign, is simply not factually supported by the record.

In May 2001, John Kracht, who in 1984 was a San Jose police officer who interviewed the confidential informant with Sandra Williams and who is now an investigator for the Santa Clara District Attorney's Office, met with the confidential informant. Before discussing the content of her 1997 defense declaration, Investigator Kracht provided the informant with a copy of her declaration and asked her to read it over and review it for accuracy. When the informant reached the portion of her declaration recounting that "Sandy told me not to mention the possibility of the Guerrero Brothers' murders were contract hits ordered by Jose," the informant spontaneously exclaimed, "No. I did not say...that." (Resp. Exh. 8 at 9 [ellipses in original].) The following colloquy then took place:

Informant: No. I did not say...that.

Kracht: Sandy never told you that?

Informant: Sandy never told me that. Sandy never told me that.

Kracht: Why did that woman [defense investigator] put it in?

Informant: That, I don't know. Now what...maybe she supplicated [sic] into this, with...I told...I told her that I wondered all of those things [about Angarita's possible involvement]. And Sandy had asked me about those things. But I told Sandy I had no knowledge of that as being true. But Sandy never ever...never told me not to mention that possibility. Never. She never said that...

Kracht: O.K. Why would they...

Informant: ... that I remember.

Kracht: Did the [defense investigator] record...you're...when you were...did she record? When she was out [] to see you, did she...?

Informant: I believe she did. Yeah, I ...I don't remember for certain...

Kracht: Did you see a...

Informant: ...but I think she did.

Kracht: ...tape recorder or anything like that?

Informant: I don't recall. I don't recall. But that's not...if...if it was said that way, that's not what I was trying to explain.

Kracht: But what [the defense investigator] said is not accurate?

Informant: It's not accurate. It's...it's what...that was not accurate.

(Resp. Exh. 8 at 9-10 [ellipses in original].)

After reaching the end of the declaration, the confidential informant once again explained: "And I...that's my signature. But my whole recollect—... I discussed those things with Sandy—that [sic: but] Sandy never told me what to say or not to say. Ever." (Resp. Exh. 8 at 11.)

At a subsequent interview on May 18, 2001, the informant was provided with a copy of her testimony from the 1985 in camera hearing to review. After she reviewed the transcript, the following colloquy took place:

Kracht: [Y]ou've read this reporter's transcript dated September 6, 1985 of your testimony in front of [Judge] Reed Ambler, an in camera hearing. Correct?

Informant: Correct

Kracht: Is this complete? Is the information that you testified to complete? Did you answer the corrections [sic: questions] fully?

Informant: Yes.

Kracht: Leave anything out?

Informant: No.

Kracht: Did Inspector Williams, Sandy Williams give you any advice on how to testify before this judge?

Informant: No.

Kracht: She tell you how to modify your testimony [in any way?]...

Informant: No.

(Resp. Exh. 10.)

Accordingly, the confidential informant explained that the statement suggesting that the district attorney investigator told her to withhold information was incorrect and was the result of a misunderstanding between the informant and the defense investigator who prepared the declaration for the informant to sign. She was never told to withhold information from the trial

court nor was she directed how to testify before that court. Thus, contrary to petitioner's claim, the evidence shows that the prosecution never told the informant to lie or withhold information from the court.

Sandra Williams has also provided a declaration categorically denying that she ever told the confidential informant to withhold any information from the trial court. (Resp. Exh. 6.) Similar declarations have been provided by Deputy District Attorney Thomas Ferris and Investigator John Kracht. (Resp. Exh. 5, 12.) Although Judge Allegro was the Santa Clara County Deputy District Attorney responsible for prosecuting petitioner in 1985, Santa Clara County Deputy District Attorney Thomas Ferris represented the prosecution at the in camera hearing on behalf of Ms. Allegro. He has averred that he never directed the confidential informant to lie or withhold any information from the trial court at the in camera hearing. (Resp. Exh. 12.) John Kracht similarly averred that he did not direct the informant to lie or withhold any information from the trial court. (Resp. Exh. 5.)

Finally, the record of the in camera hearing fully demonstrates that the informant did not lie or withhold any information from the trial court, nor did the prosecution. To the contrary, the informant related to the trial court all of her musings about the speculative possibility that the murders were a drug-related hit, but reaffirmed her explanation that she had no factual basis for her suppositions and was merely stating her opinions about the murders, as well as relating the speculation of Jose Angarita, who had commented on the nature of the killings.<sup>3</sup>

Nor did the prosecution withhold any of the informant's information from the court. To the contrary, the prosecution turned over to the court the

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3. The record of the in camera hearing is currently in this Court's record under seal. We are separately requesting that this Court transmit a copy of the record of this hearing, under seal, to defense counsel. (Cal. Rules of Court, Rule 12.5.)



tape recording of the interview of the confidential informant. Specifically, in April 1984, Sandra Williams and John Kracht conducted an interview of the confidential informant, which was tape recorded.<sup>4</sup> In that recorded interview, the confidential informant explained that she thought Jose Angarita might be involved in the murders because he told her the murders were a professional hit involving two assassins. (Resp. Exh. 7 at 45-46.) She further explained, however, that when she asked Angarita how he knew the murders were a professional hit, he stated that it was simply his belief based on the fact that the two victims were killed in different rooms, which he thought was unlikely if there was only one assailant. (Resp. Exh. 7 at 46-48.) She added that she entertained the possibility that Angarita might have been involved in the murders when she saw the otherwise-stoic Angarita crying while talking about how he was saddened by the murders. (*Id.* at 43-45, 48.) However, the informant had no personal knowledge that Angarita was involved in the murder in any way.

She also noted in that interview that she recalled being with Angarita when he was meeting with a Colombian he described as one of the biggest cocaine dealers in New York. (*Id.* at 54.) Angarita picked the man up in San Francisco, and the confidential informant recalled that the man's name was "Miguel." (*Id.* at 64-65.) However, the informant did not know the last name of this "Miguel," and she did not specifically identify "Miguel" as petitioner. (*Id.* at 65-67.) The informant explained that the individual came up in conversation only because Sandra Williams had asked her if she knew anyone named Miguel associated with Jose Angarita. The informant explained that she initially said no, but later she recalled this meeting and mentioned it to Ms.

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4. The tape recording of this interview is of a low quality, so we are including a transcript of the tape-recorded interview, filed under seal, as Respondent's Exhibit 7.

Williams. (*Id.* at 64.) The informant did not confirm petitioner was this Colombian, other than to say the individual's name was "Miguel."

Indeed, her description of the meeting demonstrates that the individual was petitioner. The informant indicated that this meeting with "Miguel" took place on the evening before the murders. She and Angarita picked up "Miguel" at the Hyatt Regency in San Francisco, where he was a registered guest in room 1011. (9/6/85 RT 49-50, 57-58.) She drove them around for a short time while they talked, and then she returned this "Miguel" to the Hyatt Regency. (*Id.* at p. 61.) However, in his confession to the police, petitioner explained that he was at his home in Palo Alto on the evening before the murders, rather than being a registered guest at the Hyatt Regency Hotel.<sup>5</sup> (Resp. Exh. 2 at p. 8.) Moreover, petitioner did not even have a car at the time he committed the murders (he took a bus to the jewelry store to commit the robbery and murders), and thus had no personal means of getting from Palo Alto to the Hyatt Regency Hotel for any meeting with Angarita.

In addition, when John Kracht interviewed the informant in May 2001, he showed the informant a photographic lineup containing petitioner's photo, and asked her if she could identify the individual named Miguel who was at that meeting, and she identified a person other than petitioner as closely resembling the individual she met. (Resp. Exh. 9 at 2.)

Furthermore, Sandra Williams and the confidential informant confirmed that all of the information that the informant gave to the prosecution was contained in the tape recording of the interview. (Resp. Exh. 9 at 1-2; Resp. Exh. 6 at 2.) This tape was provided to the trial court by the prosecution for the court's consideration at the in camera hearing. Indeed, the trial court

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5. Indeed, petitioner claimed that he received his orders while he was at his Palo Alto home over the phone from Karlos Tijiboy, not from Angarita during any car ride in San Francisco. (Resp. Exh. 2 at pp. 12-17.)

expressly noted that it was going to listen to the tape of the interview before ruling on the motion. (9/6/85 RT 35-37 [in camera hearing].) In addition, the informant's testimony at the in camera hearing was entirely consistent with this earlier tape-recorded interview, and contained all of the relevant information from that interview. (9/6/85 RT 17-28.) The informant explained at the in camera hearing that she did not have any first-hand knowledge of the murders, nor any factual knowledge of Angarita's possible involvement in the murders. Rather, she explained that Angarita knew the victims and had learned about the crime scene from Dan Burke. Angarita had speculated that the murders must have been a professional hit because of the fact that two people were killed in different rooms in the store. (9/6/85 RT 20-21, 23-28.) However, the informant explained that Angarita made it clear that his statements about the possibility of a contract killing were mere speculation on his part, and he never suggested that he had any actual knowledge of what occurred. (*Ibid.*)

Sandra Williams also testified at the in camera hearing, and she reiterated to the court what the informant had said about the possibility of Angarita's knowledge of the murders. She explained that the informant told her about Angarita's speculation that the murder was a contract hit, but noted that the informant had characterized this information as just speculation. (9/6/85 RT 29-35.) She also informed the court that she had interviewed Jose Angarita, and he explained that he had no knowledge about murders. (9/6/85 RT 33-34.)

Consequently, the informant did not withhold any information from the trial court at the request of the prosecution investigator, Sandra Williams. Moreover, it is readily apparent that the prosecution did not withhold any information from the trial court, given that the prosecution provided the trial court with the tape of the interview with the confidential informant in which

the informant related all of her musings about Angarita's possible involvement.

Finally, this Court has already reviewed the in camera hearing testimony and the tape of the interview with the confidential informant, in conjunction with petitioner's direct appeal, and this Court has already ruled that the trial court did not err in granting the prosecution's request to keep the confidential informant's name secret because she did not have any material exculpatory evidence for the defense. (*People v. Bacigalupo* (1991) 1 Cal.4th 103, 123 ["After a careful review of the sealed transcript of the in camera hearing held by the trial court, we reject defendant's claim."].) Given that all of the relevant information provided by the informant raising the speculative possibility that Jose Angarita might have been involved was already before the trial court conducting the in camera hearing, and given the uniform agreement by everyone involved with the in camera hearing that the prosecution never instructed the informant to withhold any information from the trial court, petitioner's claim of prosecutorial misconduct lacks any evidentiary support and is wholly without merit.

## **B. The Prosecution Did Not Withhold Any Material Exculpatory Information From The Defense**

Petitioner also contends that the prosecution withheld exculpatory evidence provided by the confidential informant and by witnesses Ronnie Nance, Steve Price, and Luis Alberto Albarran-Arnal. (Pet. at 154 [claim I, paragraph 6].) This claim is also without merit.

### **1. Standard of Review**

In *Brady*, the Supreme Court held that a failure to disclose material evidence favorable to the defense may constitute a violation of due process. "There are three components of a true Brady violation: The evidence at issue

must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." (*Strickler v. Greene* (1999) 527 U.S. 263, 281-282.) "Evidence is 'favorable' if it either helps the defendant or hurts the prosecution, as by impeaching one of its witnesses." (*In re Sassounian* (1995) 9 Cal.4th 535, 544.) "[E]vidence is 'material' under *Brady*, and the failure to disclose it justifies setting aside a conviction, only where there exists a 'reasonable probability' that had the evidence been disclosed the result at trial would have been different." (*Wood v. Bartholomew* (1995) 516 U.S. 1, 5 (per curiam), citing *Kyles v. Whitley* (1995) 514 U.S. 419, 433-434); *United States v. Bagley* (1985) 473 U.S. 667, 682 (opinion of Blackmun, J.); *id.*, at p. 685 (White, J., concurring in part and concurring in judgment); see also *Strickler v. Greene* (1999) 527 U.S. 263, 281-282; *People v. Memro* (1995) 11 Cal.4th 786, 837 [applying *Bagley*].)

Although the term "'*Brady* violation' is sometimes used to refer to any breach of the broad obligation to disclose exculpatory evidence," that is to "any suppression" of so-called *Brady* material, "strictly speaking, there is never a real '*Brady* violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." (*Strickler v. Greene, supra*, 527 U.S. at pp. 281-282; footnote omitted.) A reasonable "possibility" that the suppressed evidence might have produced a different result is insufficient to satisfy the defendant's burden to establish a "reasonable *probability* of a different result." (*Id.* at p. 291 [emphasis in original] [citing *Kyles v. Whitley*, 514 U.S. at p. 434].)

"[T]he materiality inquiry is not just a matter of determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury's conclusions.

[Citation.] Rather, the question is whether ‘the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.’ [Citation]." (*Ibid.*)

Moreover, to establish a *Brady* violation, a defendant must also show that he "did not possess the evidence nor could he have obtained it himself with any reasonable diligence." (*United States v. Newton* (11th Cir. 1994) 44 F.3d 913, 918.) "[T]he *Brady* rule does not apply if the evidence in question is available to the defendant from other sources." (*United States v. Wilson* (4th Cir. 1990) 901 F.2d 378, 380; see also *United States v. Davis*, 787 F.2d 1501, 1505 (11th Cir. 1986), cert. denied, 479 U.S. 852; *United States v. Grossman* (2d Cir. 1988) 843 F.2d 78, 85 [no *Brady* violation when defendant "knew or should have known the essential facts permitting him to take advantage of any exculpatory evidence"] [citations omitted]; *Lugo v. Munoz* (1st Cir. 1982) 682 F.2d 7, 9-10 [government has no *Brady* burden when facts are available to a diligent defense attorney].)

## **2. Petitioner Cannot Demonstrate Any *Brady* Violation**

Applying this standard to the present case, petitioner has not demonstrated any *Brady* violation. Specifically, in claim I, paragraph 6, petitioner asserts in his petition that potential witnesses Ronnie Nance, Steve Price, and Luis Alberto Albarran-Arnal (a.k.a., Luis Laureano) all had information supporting petitioner’s duress defense. Petitioner contends that the prosecutor’s office interviewed Nance and Price, and assisted in the prosecution of Albarran-Arnal/Laureano, and thereby obtained material exculpatory information from these witnesses, but failed to turn over this information. However, petitioner does not provide any evidentiary support for this assertion. Moreover, petitioner cannot demonstrate that any of the challenged evidence is exculpatory or material.

### 3. Factual Background

At the outset, we note that all of petitioner's claims that the prosecution withheld information about witnesses who could corroborate a defense of duress (namely his assertion that he was threatened by Jose Angarita) flow from his claim that the confidential informant had critical information relating to this defense. However, as explained above, because the informant did not in fact have knowledge of any connection between petitioner, Angarita, and the double murder -- only her own speculation to that effect -- all of petitioner's subsequent claims fail. Moreover, all of the relevant information was available to petitioner at the time of trial.

For clarity and to demonstrate fully that the prosecution did not withhold any material exculpatory information, we will set forth the circumstances leading to the meeting with the confidential informant. The informant first came to the attention of Sandy Williams through Ron Nance. Nance was arrested in February 1994, on an unrelated charge. (Pet. Exh. S at 49-56.) After he was taken into custody, Mr. Nance met with the authorities and offered to provide information relating to the murders of the Guerreros.

Nance explained to the authorities that he got out of prison in November 1983. (Resp. Exh. 11 at 3.) He then met up with his friend Steve Price, who introduced him to the confidential informant. The informant and Price told Nance that Jose Angarita was a major cocaine supplier. (*Id.* at pp. 4-5.) The informant was an acquaintance of Angarita but was mad at him after the two had a falling out. (*Id.* at pp. 13-16, 55.) Price was a friend of the informant and sold cocaine for Angarita. (*Id.* at p. 13-15.) The informant and Price decided to rip off Angarita, and they offered Nance part of the cut. (*Id.* at p. 16.) The informant showed Nance where Angarita lived and told him to go up and demand drugs, but when Nance went up to the apartment, no one

answered the door. (*Id.* at pp. 25-26.) The informant and Price then told Nance that Angarita's cousin (named "Ortez") owed Price \$15,000. They told Nance that Ortez had received the \$15,000 from Angarita for a shipment of cocaine that was never delivered, and that Nance just had to walk up to Ortez and demand the money and Ortez would pay him. Price offered Nance half of the money for his services. (*Id.* at pp. 4-6, 15, 19-20.)

Nance explained that when he went to Ortez's home and demanded the money, Ortez said he did not owe any money and he pulled a gun on Nance. Nance ran out of the house, expecting Price to be waiting with a car, but Price was not there. (*Id.* at pp. 6-7, 22-23.) Apparently, there was a shootout in the street between Nance and Ortez, and Nance knocked over a motorcyclist and tried to grab the motorcycle. When that failed, he took off running, and was arrested by the police. (Pet. Exh. S [Nance's preliminary hearing transcript].)

Nance told the police that one night while they were planning this job, the informant began bragging that Jose Angarita had ordered the Guerreros killed. (Resp. Exh. 11 at 11-12, 36-38.) Nance reported that the informant said that one of the Guerreros was getting cocaine from Angarita and had a past debt with Angarita. According to Nance, the informant said that Angarita had one brother killed because of this past debt, and that the other brother just happened to be there at the time. (*Ibid.*) Nance provided the police with information on how to locate the informant.

As explained above, the police then interviewed the confidential informant, and she clarified the comments she made to Nance. She explained that it was just her "gut feeling" that Angarita possibly may have had the brother murders committed. (Resp. Exh. 7 at p. 10.) However, when asked why Angarita would have the Guerreros killed, she replied "I don't know." (*Id.* at p. 11.) She noted that a few years earlier, Dan Burke had cheated



Angarita out of some money in a money-order scheme and that Angarita was mad at Burke because of it. She said that Orestes Guerrero was working for Burke and Angarita at the time, and she speculated that "maybe that had something to do with it. I don't know." (*Id.* at p. 11.) She explained that she was basing her speculation on the fact that Angarita had mentioned that he thought Guerrero was killed because of a past debt. (*Id.* at pp. 11-12.) She specified that this was just the impression she got from talking with Angarita, but that she had no basis for this belief other than her own musings. (*Ibid.*)

She related that she formed her suspicions after two conversations with Angarita. The first one was a brief conversation which occurred shortly after the murders. Angarita told the informant that the murders were not from a robbery, but rather they were a contract hit over something that happened a few years earlier, involving "bad blood." (*Id.* at pp. 36-37, 41.) She noted that Angarita was upset over the deaths of his friends, and at that time she did not believe Angarita was involved. (*Id.* at pp. 39-40.)

The second conversation occurred the following day, which was the day of the Guerreros' funeral services. Angarita was visibly upset by the deaths and saddened that he could not go to their services. (*Id.* at pp. 43-44.) Angarita explained his relationship with Orestes Guerrero, telling her that Orestes Guerrero's wife used to be a secretary for Angarita, and Orestes worked as a jewelry-maker in one of Angarita's stores. After Angarita's secretary married Orestes, Angarita helped Orestes get started with his own jewelry store. (*Id.* at p. 45.) He then repeated that he thought it was a professional hit, and that two hit men must have been involved, with one of them escaping. (*Id.* at p. 46.) When the informant asked why Angarita believed this, Angarita explained that it had to be a professional hit based on the location of the bodies. He speculated that one person could not kill two men, execution-style, in two different rooms. He pointed out that one guy had

been shot in the back of the head in the back room, and the other brother was killed in the front room, which did not make sense to Angarita. Angarita believed that only a professional could shoot two people in the manner petitioner had killed the Guerreros.<sup>6</sup> (*Id.* at pp. 46-47.)

The informant then explained that one thing that made her speculate that Angarita might be involved was the fact that he was so saddened by the two deaths, whereas she had always known him to be very stoic and unemotional. (*Id.* at p. 47-48.)

The informant also explained that another reason she wondered if Angarita was involved was that she heard from Luis Laureano, who was working as a dealer for Angarita, that Angarita left town because he was scared of the Guerrero family. She heard that the Guerrero family had followed Angarita's car, and accused him of killing Orestes and Jose Guerrero. (*Id.* at p. 15.) However, she noted that when she asked Laureano if he thought Angarita was involved in the murders he replied, "I don't think so." (*Id.* at p. 13, 16.)

Finally, as noted above, the informant recalled a meeting between Angarita and someone named "Miguel," who was supposed to be a major Colombian cocaine distributor from New York. (*Id.* at pp. 49-68.) However, she did not expressly identify this major cocaine distributor from New York named Miguel as petitioner. Nor could she relate anything about the content of the conversation between Angarita and this New York cocaine distributor. (*Ibid.*)

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6. The informant explained that Angarita had learned about the location of the bodies from Dan Burke, who had been at the scene shortly after the murders because he was a friend of Orestes Guerrero's wife, and she had spoken to him after learning of the murders from Carlos Valdiviezo. (*Id.* at pp. 48-49.)

Based on this information, the informant speculated that Jose Angarita could have been involved in the murders of the Guerrero brothers. However, as she acknowledged in her interview, and again in her in camera testimony, her belief was merely speculation, and was not based on any actual knowledge or any admissions made by Angarita. Indeed, the informant repeatedly stated in her in camera testimony that she had no personal knowledge of any hit by Angarita, and that her information came solely from Angarita's statements, which were also speculation. (9/6/85 RT 17-31.)

Finally, Sandra Williams also interviewed Jose Angarita on March 19, 1984.<sup>7</sup> Jose Angarita came down to the police station on his own accord to complain that, after the murders, members of the Guerrero family had been following him and had accused him of being involved in the murders. (Resp. Exh. 13 at pp. 1-6.) Angarita explained that he was concerned about the accusations of the Guerreros and wanted them to stop harassing him or he would have to take legal action against them, such as obtaining a restraining order or filing a lawsuit. (*Id.* at pp. 6, 26-28.)

While he was at the police station, Sandra Williams took the opportunity to interview Angarita about his relationship with the victims and his possible connection to the case. Angarita explained that he was friends with Orestes Guerrero and had no problem with him. (*Id.* at pp. 7-9, 25.) Angarita repeatedly denied having any involvement in the murders. (*Id.* at pp. 3-4, 6, 17, 20-21, 27, 29, 38.) Angarita explained that he had never met petitioner and did not know him. (*Id.* at pp. 35-36; Resp. Exh. 13B at p. 4, 19.)

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7. It appears from the Investigation Log (Resp. Exh. 14), that Nance was interviewed on February 17, 1984. The prosecution investigator then met the confidential informant at the end of February and received some information from the informant at that time. Jose Angarita was interviewed in March 1984, when he came down to the police station. The confidential informant was formally interviewed on April 18, 1984, at which time the interview was recorded as Respondent's Exhibit 7.

Angarita also did not know Karlos Tijiboy. (Resp. Exh 13B, at p. 5.) Finally, Angarita explained that he was surprised by the robbery because the Guerreros did not have much money or expensive jewelry in their store. (Resp. Exh. 13 at p. 32.)

All of this information gathered by the prosecution was presented to the trial court at the in camera hearing. Based on Sandra Williams's investigation, and based on the informant's repeated denials that she had any personal information about any contract hit on the victims, the trial court correctly concluded that the confidential informant was not a material exculpatory witness to the defense and the informant's identity need not be disclosed to the defense. For these same reasons, the other witnesses identified by petitioner were not material exculpatory witnesses, and the prosecution did not withhold any *Brady* material.

#### **4. The Confidential Informant**

Petitioner cannot demonstrate any *Brady* violation with regard to the information provided by the confidential informant. As noted above, "[t]here are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." (*Strickler v. Greene, supra*, 527 U.S. at pp. 281-282.)

First, the prosecution cannot be faulted for failing to turn over the identity and statements of the confidential informant because the trial court expressly ruled that her identity and statements should remain confidential, and this Court affirmed that ruling on direct appeal. Moreover, as explained above, the prosecution did not direct the witness to lie or withhold information from the trial court, and in fact provided the trial court with all of the

applicable information given by the informant, when the prosecution turned over the tape recording of the interview with the informant. Acting within the court's rulings under these circumstances cannot constitute prosecutorial misconduct or a violation of due process.

With regard to the informant's speculation that the murders might have been contract killings and that Angarita was possibly involved, the record shows the prosecution, in fact, turned over the relevant portion of the informant's statements. Specifically, the informant had no personal knowledge of any information as to whether the murders were contract hits or were drug related executions. Rather, the informant was merely repeating the statements made by Jose Angarita about the nature of the murders appearing to be professional rather than done in the course of a robbery. However, those statements made by Angarita were provided to the defense in the supplemental police report. The police report noted "The informant, relaying statements Jose Angarita made after the murders, suggested that revenge and not robbery was the motive and that the incident that was revenged [sic] happened some years ago." (Pet. Exh. R.) Consequently, petitioner was alerted to the relevant statements made by Angarita and could have interviewed Angarita directly.<sup>8</sup>

Moreover, the evidence provided by the informant was not exculpatory. Petitioner claims that the statements by the informant would have supported a defense of duress, namely that petitioner killed the Guerreros because he was forced to do so by Jose Angarita and the Colombian Mafia, and that his life was threatened if he did not carry out the murders. This Court,

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8. Moreover, Angarita's name came up repeated in the police reports, reflect that they had been investigating the possibility that Angarita was connected with the murders in connection with his cocaine dealing, which investigation proved fruitless. (Pet. Exh. Q.) Thus, the defense certainly had Angarita's name available to them.

in its opinion on direct appeal, recounted petitioner's duress claim raised at trial direct appeal as follows:

Immediately after his arrest, defendant talked to Officer Reyes after waiving his constitutional rights under *Miranda v. Arizona, supra*, 384 U.S. 436, 479. At first, defendant denied his involvement in the jewelry store incident, but later he admitted killing the Guerrero brothers. Defendant made vague reference to a group he called the 'Colombian Mafia,' which he said had 'contracted' him to commit the double murder and threatened to kill him and his family if he did not do so. Defendant said he was to turn the stolen jewelry over to the Colombian Mafia in New York. [¶] At trial, Officer Reyes testified to defendant's admissions made about the killings and defendant's comments about the Colombian Mafia. Defendant did not testify.

(*People v. Bacigalupo, supra*, 1 Cal.4th at pp. 123-124 [footnote omitted].)

In order for the challenged evidence to be exculpatory within the context of petitioner's case, it must support petitioner's claim of duress. In other words, it is not enough simply to show that the Colombian mafia or Jose Angarita contracted with petitioner to kill the Guerreros. Indeed, such evidence, by itself, would be highly *inculpatory*, because it would provide an additional basis for imposing the death penalty, based upon a murder-for-financial-gain special circumstance. Rather, in order for the challenged material to be exculpatory, it must establish duress, i.e., that petitioner or his family was actually threatened with death, and that he committed the murders because of the alleged threats.

However, none of the statements identified by petitioner provide any evidence *regarding a claim of duress*. At best, the informant's statements to the prosecution investigator raised the speculative possibility that Angarita may have been connected to the murders, and that the murders might have been a drug hit or a contract killing. The informant, however, did not and could not provide any information relating to any threats directed at petitioner by Angarita. Indeed, the informant provided no suggestion that Angarita even

knew petitioner, let alone that he threatened petitioner in any way. Absent any evidence of threats to petitioner, the speculations of the informant are not exculpatory.

Next, petitioner cannot meet his burden of demonstrating the third prong of *Brady*, namely that the statements by the informant were material evidence. As the confidential informant repeatedly explained, she was never told by Angarita that he was involved in the murders, and she had no evidence of this involvement. All she had to offer was her speculation that there was more to the murders, i.e., that Angarita was possibly involved. However, not turning over the informant's speculations related to Sandra Williams cannot constitute a *Brady* violation, because such speculations simply do not constitute material *evidence* within the meaning of *Brady*. Indeed, such speculation would never be admissible in court.

The Supreme Court addressed a similar point in *Wood v. Bartholomew, supra*, 516 U.S. at pp. 5-6, when it ruled that the failure to turn over the results of a polygraph examination did not constitute a *Brady* violation. The Court observed:

[A]s we reiterated just last Term, evidence is "material" under *Brady*, and the failure to disclose it justifies setting aside a conviction, only where there exists a "reasonable probability" that had the evidence been disclosed the result at trial would have been different. [Citations.] To begin with, on the Court of Appeals' own assumption, the polygraph results were inadmissible under state law, even for impeachment purposes, absent a stipulation by the parties, [citation], and the parties do not contend otherwise. The information at issue here, then -- the results of a polygraph examination of one of the witnesses -- is not "evidence" at all. Disclosure of the polygraph results, then, could have had no direct effect on the outcome of trial, because respondent could have made no mention of them either during argument or while questioning witnesses. To get around this problem, the Ninth Circuit reasoned that the information, had it been disclosed to the defense, might have led respondent's counsel to conduct additional discovery that might have led to some additional evidence that could have been utilized. [Citation.] Other than

expressing a belief that in a deposition Rodney might have confessed to his involvement in the initial stages of the crime -- a confession that itself would have been in no way inconsistent with respondent's guilt -- the Court of Appeals did not specify what particular evidence it had in mind. Its judgment is based on mere speculation, in violation of the standards we have established.

(*Ibid.*)

This holding is equally apt in the present case. The informant had no direct or admissible evidence linking Angarita to the murders or even suggesting the murders were anything other than a result of a botched robbery. Consequently, the informant's identity and statements could have no impact on the result of the trial or on the fundamental fairness of petitioner's trial. (*Wood v. Bartholomew, supra*, 516 U.S. at p. 6.) Moreover, for the reasons noted above, the informant's statements also were not material because she never offered any suggestion that Angarita ever made any threats against petitioner or forced petitioner to kill the Guerreros. Without any link to the duress defense, there is no reasonable probability the result at trial would have been different.

As for the possibility that the informant's speculation would have led to other evidence that could have been utilized at trial, the informant's statements simply led to Jose Angarita, and his own musings about the murders. However, Angarita's statements and involvement cannot serve as the basis for a *Brady* violation for several key reasons.

First, when he was interviewed by the police, Angarita denied any involvement in the murders. Just as the informant's speculation would not have been admissible at trial as direct evidence, her speculation also would not have been admissible as impeachment evidence had Angarita testified at trial. Petitioner cannot show any exculpatory evidence coming from Angarita.

Second, as noted above, Angarita's statements and his musings about the possibility that the murder was a drug hit were turned over to the defense



in a supplemental police report. Consequently, the defense had the information relating to Angarita available.

Third, and most importantly, under petitioner's theory that he was pressured by Angarita to commit the murders, he necessarily already knew of Angarita's alleged involvement. Therefore, any conceivable material exculpatory evidence that could have been developed indirectly through the informant's statements to the police could also have been developed directly by the defense through an independent source, namely petitioner. As noted above, in order to set out a *Brady* violation, a defendant must also show that he "did not possess the evidence nor could he have obtained it himself with any reasonable diligence." (*United States v. Newton, supra*, 44 F.3d at p. 918.) "[T]he *Brady* rule does not apply if the evidence in question is available to the defendant from other sources.'" (*United States v. Wilson, supra*, 901 F.2d at p. 380.)

The same result is true with respect to the informant's statement that she was in the car with Angarita when he picked up an individual named "Miguel" from the Hyatt Regency hotel in San Francisco. As noted above, petitioner's own confession to the police demonstrates that he was not the person who met with Angarita that night. However, assuming for the sake of argument that this person was petitioner, then this statement by the informant would be the only actual *evidence* provided by the informant even remotely pertaining to petitioner's case. However, once again petitioner cannot meet any of the requirements to establish a *Brady* claim.

First, the evidence is not exculpatory. As noted above, it is not enough to provide a link between Angarita and petitioner to support his duress defense. Rather, petitioner must provide evidence that his life was in jeopardy from Angarita unless he murdered the Guerreros. Moreover, to justify a duress defense, such threats of death had to be imminent. (*People v. Bacigalupo, supra*,

1 Cal.4th at p. 125.) Once again, the informant could not provide any evidence relating to petitioner's claim of duress. Indeed, the informant could not talk about the content of the conversation between the individuals in the car because that conversation was conducted in Spanish. (Resp. Exh. 7 at p. 61.).

Second, for this same reason, the evidence is not material. Because the informant could not discuss the content of the conversation that occurred in the back seat of the car and because she had no information relating to petitioner's claim of duress, the informant could not provide any material information relating to that car ride such as to create a "reasonable probability" that had the evidence been disclosed the result at trial would have been different.

Finally, this evidence was also available to petitioner through an independent source, namely petitioner, himself. Obviously, if petitioner was in fact in the car, then he necessarily already knew about the car ride, as well as Angarita's and the informant's presence in the car, and he would constitute an independent source for investigating that information.

Moreover, the informant's identity and her information was easily obtainable by the defense through the information already provided in discovery. Specifically, the prosecution disclosed in a supplemental police report that the confidential informant suggested that "revenge and not robbery was the motive." (Pet. Exh. R.) The prosecution also disclosed that Ron Nance had "characterized the homicides as drug related executions." (*Ibid.*) The prosecution further disclosed that Ron Nance had attributed his description of the murders to the confidential informant. (*Ibid.*) Finally, a defense investigator was present when the prosecution conducted a follow-up interview with Ron Nance about those statements made by the confidential informant. (Resp. Exh. 14.) Thus, the defense was aware that Ron Nance knew the identity of the informant, as well as the nature of the informant's

statements, and the defense easily could have independently located the informant through Nance (if the informant actually had any relevant information for petitioner's case).

## 5. Ron Nance

Petitioner also cannot demonstrate any *Brady* violation with respect to Ron Nance. As noted above, Ron Nance had no personal information, and merely repeated the speculative statements made to him by the confidential informant. Ron Nance's name was disclosed to the defense, as were his statements, regarding what he heard from the confidential informant about the two murders being drug related executions.

A supplemental police report from May 4, 1984, which was provided to the defense (Pet. Exh. R), expressly states that the police interviewed an attorney named Joseph W. DiLeonardo about statements, attributed to him, "describing the murders of the Guerrero brothers as a contract killing." The report indicates that Mr. DiLeonardo said that those statements were not made by him but rather by Ronnie Nance. The report then notes that another police officer confirmed that "the characterization of the homicides as drug related executions had been made by Ronnie Nance." The supplemental police report adds that, while interviewed, Ronnie Nance "attributed the description of the murders as 'executions' to the confidential informant . . . ." (Pet. Exh. R.)

At this time, respondent cannot determine whether the tape of the interview with Ronnie Nance (Resp. Exh.11) was provided to the defense. However, even if it was not, all of the relevant information provided by Nance in that taped interview was set out in the supplemental police report. Moreover, when Sandra Williams conducted a follow-up interview with Ronnie Nance at the Santa Clara County Jail to discuss the information he offered regarding the confidential informant's statements, she was

accompanied by a defense investigator, David Gonzales. (Resp. Exh. 14.) Accordingly, the defense had all of the relevant material information provided by Ronnie Nance, and none of the information was suppressed by the prosecution.

Petitioner cannot meet the other prongs required for a *Brady* violation, as well. (*Strickler v. Greene, supra*, 527 U.S. at pp. 281-282.) Just as the informant's statements were not exculpatory, Nance's statements recounting what the informant told him were similarly not exculpatory. Specifically, Nance had no information relating to petitioner's claim of duress, and only had secondhand, hearsay information from the informant suggesting that Angarita was involved. Specifically, Nance did not and could not provide any information relating to any threats directed at petitioner by Angarita. Nance provided no suggestion that Angarita even knew petitioner, let alone that he threatened petitioner in any way. Absent any evidence of threats to petitioner, the statements by Nance are not exculpatory.

Moreover, petitioner cannot demonstrate that the interview with Nance was material, i.e., that "the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." (*Strickler v. Greene, supra*, 527 U.S. at pp. 281-282 [footnote omitted.]) As explained above, Ron Nance's statements were double or triple hearsay and therefore were not admissible. Moreover, at best they referred to the statements of the informant, and as noted above, the informant's statements were also not admissible because they were based on speculation. Accordingly, the failure to turn over the transcript of Nance's interview would not reasonably likely have produced a different result.

Finally, petitioner cannot demonstrate that he "did not possess the evidence nor could he have obtained it himself with any reasonable diligence." (*United States v. Newton, supra*, 44 F.3d at p. 918.) Here, regardless of

whether the Nance interview tape was turned over, all of the relevant information provided by Nance, namely his recounting of the statements he heard from the informant, that the murders may have been a drug-related contract killing, were already available to the defense in the supplemental police report turned over to the defense. Moreover, a defense investigator was present when Nance was re-interviewed by Sandra Williams, and thereby had direct access to the source of this information as well as to the statements provided. Petitioner identifies no other information that Nance provided to the prosecution relevant to petitioner's case that was not disclosed or that was not otherwise available to the defense.

#### **6. Steve Price**

Sandra Williams averred in her declaration that she interviewed Steve Price in 1984, but he had no information relating to petitioner's case. Ms. Williams explained that she did not record his statements, make a written report of his statements, or make any notes about the content of his statements because they did not relate to petitioner's case. (Resp. Exh. 6.) Steve Price's only role in this case was to help the prosecution locate the confidential informant. A review of the prosecution's files has not turned up any further information relating to Steve Price. Consequently, there is no credible or admissible evidence, nor was there at the time of trial, that the prosecution had any information from Steve Price relating to petitioner's case. Petitioner has failed to demonstrate that there was any material exculpatory evidence provided by Price to the prosecution which was not turned over to the defense.

#### **7. Luis Laureano/Albarran-Arnal**

Finally, contrary to petitioner's claim, the prosecution had no material exculpatory information relating to Luis Alberto Albarran-

Arnal/Laureano. Sandra Williams averred in her affidavit that she never received any information from Luis Laureano/Albarran-Arnal and had no reason to believe that Laureano had any information concerning petitioner's case. (Resp. Exh. 6 at 2.) Indeed, the only information the prosecution had pertaining to Luis Laureano and to petitioner's case was from the confidential informant's recorded statement to the police, in which she explained that when she asked Laureano if he thought Angarita was involved in the murders, he replied "I don't think so." (*Id.* at p. 16.) The informant never suggested that Laureano would have any information relating to petitioner's case. (Resp. Exh. 6.)

In her 1997 defense declaration, the confidential informant claims that Luis Laureano was in the car with her when Angarita picked up someone named "Miguel" from a hotel in San Francisco. However, in her taped statement to Sandra Williams in 1984, she explained that she and Angarita were accompanied by Angarita's cousin, Augustine (also referred to as Ishmael Serrano Ortiz), not Luis Laureano, when they met the big cocaine dealer from New York. (Resp. Exh. 7 at pp. 53-58.) Accordingly, the prosecution had no information that Luis Laureano was in any way connected to petitioner's case, and certainly had no material exculpatory information with regard to Laureano pertaining to petitioner's case.

Laureano/Albarran-Arnal's defense declaration further supports this conclusion. In his defense declaration, Laureano/Albarran-Arnal avers that when he was arrested by agents with the Drug Enforcement Agency, he refused to cooperate with the authorities by providing information on Angarita's drug sales. At no point does he suggest that he provided any information to the authorities relating to petitioner's case, which was then

withheld from petitioner.<sup>9</sup> Consequently, petitioner has not and cannot demonstrate that the prosecution withheld any material information relating to Luis Laureano/Albarran-Arnal in petitioner's case.

Petitioner also cannot demonstrate that Laureano/Albarran-Arnal's statements are material. Laureano/Albarran-Arnal does suggest in his declaration that he believes that petitioner may have been threatened by Angarita. However, he does not provide any factual basis for this assertion – merely his own belief. He does not offer any admissible evidence that could serve as the basis for this belief nor even any reason to think that his belief is based on anything more than rank speculation. As such, Laureano/Albarran-Arnal cannot provide petitioner with any evidence that, had it been available to petitioner at the time of trial, would give rise to a reasonable probability that the outcome of the trial would have been different.

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9. Moreover, not only was the information Laureano includes in his defense declaration not known to the prosecution, all of the information in the declaration relating to petitioner is contrary to the statements given by the confidential informant and by Angarita himself in 1984. Laureano claims in his defense declaration that in the fall of 1983, Angarita told him that the Guerreros stole cocaine from him and that he wanted to have them killed because of it. However, the informant told the authorities that Angarita never spoke of any problems with the Guerreros and never suggested that they stole cocaine from him. Moreover, the informant recounted her conversation with Luis Laureano after the murders when she asked Laureano if Angarita was connected to the murders. Laureano said he did not think so, and did not mention any problems between Angarita and the Guerreros. (Resp. Exh. 7.)

In her May 2001 interview with John Kracht, the informant reaffirmed that the Guerreros had not stolen and cocaine from Angarita. She explained that Angarita would not store cocaine in jewelry shops, and she noted that Angarita did not have any drugs stolen from him at the time of the murders. She explained that Angarita would have told her about any theft of cocaine had it occurred, as claimed by Laureano. (Resp. Exh. 10.) Lastly, Angarita explained in his interview that he never had any serious problems with the Guerreros. He also had never met petitioner. (Resp. Exh. 13.)

For all of these reasons, petitioner's *Brady* claims with respect to the confidential informant, Ron Nance, Steve Price, and Luis Laureano/Albarran-Arnal are meritless.



## CONCLUSION

Accordingly, respondent respectfully submits that the order to show cause should be discharged and the petition for writ of habeas corpus should be denied.

Dated: September 6, 2001

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Jeffrey M. Laurence', written in a cursive style.

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Attorneys for Respondent

**EXHIBIT 5**

## AFFIDAVIT

My name is JOHN KRACHT. I am an investigator with the Santa Clara County District Attorney's Office assigned to homicide investigations. In five years with the District Attorney's Office I have assisted in the prosecution of over 20 homicides. Prior to joining the District Attorney's Office in 1995 I was a San Jose Police Officer with 27 years experience. I spent 14 years in the San Jose detective bureau which included five years as a homicide detective. In 1984 I was assigned to the homicide unit and assisted other San Jose detectives in the investigation of this case.

I assisted in conducting a tape recorded interview of the confidential informant with District Attorney investigator Sandra Williams in 1984. A true and accurate copy of that interview is attached as Exhibit "B". To my knowledge, all of the information the confidential informant provided to me during the investigation of the case is contained within Exhibit "B". At no time did I tell the confidential informant to withhold any information from the trial court in the Bacigalupo case.

On May 14, 2001, I contacted the confidential informant in this case and requested an interview with the informant regarding the declaration filed on behalf of the defendant (Defense Exhibit A-86).

On May 15, 2001 I met with the informant at the informant's home and after a brief introduction told her that I would be recording the interview, turned on the recorder and asked her to read the declaration filed by the informant and comment on its accuracy. A true and correct copy of this interview is attached as Exhibit "E". The informant began to read the declaration aloud and spontaneously made the following comment after the

paragraph that ends, "I remember that Sandy Williams told me not to mention the possibility of the Guerrero brothers' murders were contract hits ordered by Jose."

C.I. "This... this is not exactly what was said. I told...if you want me to say this now...and backtrack to this other paragraph?"

KRACHT Go ahead.

C.I. I told...I told this woman that...that at one time...that I...that I wondered if that was the case. But I never told her...I never told Sandy Williams specifically that I had knowledge, for sure, that it was a contract killing. That...that my suspicions from what they were talking about, that may be that was a possibility. But I never had...I've never had any knowledge that it was a contract killing, period.

KRACHT O.K. So...

C.I. ...And I never told Sandy that.

KRACHT And Sandy...O.K. Well...part...where it says, Sandy said...Sandy told me...

C.I. He told...let's see. Oh, O.K. This is about what Nance told to... But maybe Nance may have said that. But I never said...I never said...I may have said that I wondered that but I was never told by anyone that it was contract murder.

KRACHT O.K. But, but let's see...

C.I. So, I'm kind of confused here.

KRACHT All right. Let me...let's see here. Why don't you start reading from...start reading paragraph number 12...

C.I. O.K.

KRACHT ...again."

The informant then reread the following paragraph from the declaration:

"C.I. 'As part of my cooperation with the government, I testified *in camera* as a confidential informant in the Santa Clara County capital murder trial and the federal cocaine case, on the *United States versus Luis Angel Laureano, et al.*, USDA number CR84-079RPA. I testified *in camera* before Judge Robert Aguilar. I told the federal court what I knew about Jose Angarita

and Luis Laureano. Laureano and his codefendants were convicted. I also testified *in camera* before Judge Thomas Hastings in *People versus Miguel Bacigalupo*. My testimony was very brief and I was not asked many questions of that case. I remember that Sandy told me not to mention the possibility of the Guerrero Brothers' murders were contract hits ordered by Jose.'

Then the informant spontaneously said "No, I did not say...that?"

I asked her, "Sandy never told you that?"

The informant replied, "Sandy never told me that. Sandy never told me that."

Later the informant said "That's my signature." But my whole recollect...yes... I discussed those things with Sandy... that Sandy never told me what to say or not to say. Ever."

On May 17, 2001 I met with the informant who looked at two photo lineups, one of which contained a photograph of the defendant as he appeared in 1984. The informant attempted to identify the defendant from these photographs the individual named Miguel whom she had seen with Jose Angarita in 1983. The informant selected photograph number five in one of the lineups, a photograph that was not the defendant, Miguel Bacigalupo. A true and accurate transcript of this recorded interview is attached as Exhibit "F".

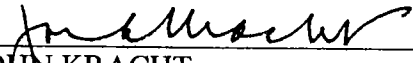
I conducted an additional interview with the informant who read the declaration of Luis Laureano, a.k.a. Luis Alberto Albarran-Arnal, (Defense Exhibit A-85) on May 18, 2001. A true and accurate transcript of this tape-recorded interview is attached as Exhibit "G".

///

///

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Dated: August 30, 2001

  
\_\_\_\_\_  
JOHN KRACHT

**EXHIBIT 6**

## AFFIDAVIT

I, SANDRA WILLIAMS, declare the following:

In February of 1984 I was employed as an investigator for the Santa Clara County District Attorney's Office. Prior to my employment as a District Attorney investigator, I had worked for ten years as a deputy for the Santa Clara County Sheriff's Office. For over two years I worked as a special agent for the California Department of Justice and participated in over 50 hand-to-hand sales transactions. I also supervised over 40 controlled buys by confidential informants. I had over 120 hours of specialized training in the investigation of sales and possession for sale of controlled substances.

In February and March of 1984 I interviewed Steve Price, Ronnie Nance and the confidential informant in this case. At the time I interviewed Ronnie Nance he was in custody for assault with a deadly weapon and attempted robbery committed in the City of Santa Clara. According to Nance this attempted robbery was instigated by the confidential informant to "rip off" a major Columbia drug dealer named Jose Angarita. Nance was attempting to obtain favorable treatment by offering information on the Bacigalupo case which consisted entirely of statements made about Angarita by the confidential informant while soliciting him to steal from Angarita. A true and correct copy of the interview with Ronnie Nance is attached as Exhibit "A." I also interviewed Steve Price during that time period. He had no information of the Bacigalupo case and I did not record his statements, prepare a written report concerning his statements or make any notes concerning the content of information that he had. I now have no recollection of any specific statements that he may have said to me during that contact.

I contacted the confidential informant during that time period and conducted a tape recorded interview with San Jose Homicide Detective John Kracht. A true and



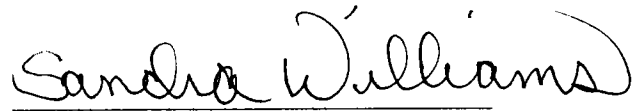
accurate copy of that interview is attached as Exhibit "B". To my knowledge all the information that the confidential informant had concerning the Bacigalupo case is contained within Exhibit "B." Exhibit "B" is the tape recording that was furnished to Judge Ambler during the *in camera* hearing on September 7, 1985. I have reviewed a copy of the testimony taken at the *in camera* hearing on September 7, 1985 attached as Exhibit "C". My testimony at that hearing was true and correct. At no time did I tell the confidential informant to testify falsely or withhold any information from Judge Ambler, the judge conducting the hearing. I never received any information from Luis Laureano and had no reason to believe that Laureano had any information concerning the Bacigalupo case.

According to a page of my activity log which I maintained as a District Attorney Investigator (a copy of which is attached as Exhibit "D") on February 29, 1984, I went to the Main Jail with Public Defender Investigator David Gonzales and interviewed Ronnie Nance. This interview would have concerned his previous statements regarding the Bacigalupo case. I made no tape recording or report concerning the contents of this interview. I believe that, had Ronnie Nance provided any new information over and above that previously related in the recorded interview with Nance (Exhibit "A"), I would have recorded that new information. I have no knowledge as to whether the defense investigator recorded this interview or prepared a written report of this interview.

I also interview Karlos Tijiboy. This is the person that the defendant claimed ordered him to kill the victims for the Peruvian Mafia. In my opinion, Mr. Tijiboy was exactly what he presented himself to be, a hard working immigrant from El Salvador whose only connection to the defendant was to help the defendant's mother find him a job at the Palo Alto restaurant where Karlos worked.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Dated: 8/15/01

  
SANDRA WILLIAMS

**EXHIBIT 7**

1984 INTERVIEW WITH CONFIDENTIAL INFORMANT

(Respondent's Exhibit 7)

**LODGED WITH COURT UNDER SEAL**

**EXHIBIT 8**

MAY 15, 2001, INTERVIEW WITH CONFIDENTIAL INFORMANT

(Respondent's Exhibit 8)

**LODGED WITH COURT UNDER SEAL**

**EXHIBIT 9**

MAY 17, 2001, INTERVIEW WITH CONFIDENTIAL INFORMANT

(Respondent's Exhibit 9)

**LODGED WITH COURT UNDER SEAL**



**EXHIBIT 10**

MAY 18, 2001, INTERVIEW WITH CONFIDENTIAL INFORMANT

(Respondent's Exhibit 10)

**LODGED WITH COURT UNDER SEAL**

**EXHIBIT 11**

1984 INTERVIEW WITH RON NANCE

(Respondent's Exhibit 11)

**LODGED WITH COURT UNDER SEAL**

**EXHIBIT 12**

**AFFIDAVIT**

I, THOMAS O. FARRIS, declare the following:

I am a deputy district attorney employed by Santa Clara County with over twenty years experience as a prosecutor. On September 7, 1985 I was the prosecutor assigned to conduct an *in-camera* hearing before the Honorable Read Ambler, Judge of the Superior Court in Santa Clara County. I presented the testimony of the confidential informant in this case and the testimony of District Attorney Investigator Sandra Williams as set forth in Exhibit "C". At no time did I instruct any witness to testify falsely or withhold any information from Judge Ambler. To my knowledge all the testimony presented to Judge Ambler on September 7, 1985 was truthful and complete.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Dated: 8-1-01

  
THOMAS O. FARRIS

**EXHIBIT 13**

PEOPLE VS. MIGUEL ANGEL BACIGALUPO  
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SANTA CLARA COUNTY DISTRICT ATTORNEY'S OFFICE  
INTERVIEW OF JOSE ANGARITA

1 MALE OFFICER Okay, Joe.  
2 FEMALE OFFICER Hi.  
3 MALE OFFICER I found a person here that is most familiar with  
4 the, with the case, that might, that might know  
5 some of the people involved in the thing, and that  
6 type of thing. And that's what took, took so long  
7 for me to get here. So basically, can we start  
8 over again, and just run down a little bit as to  
9 what happened to you.  
10  
11 ANGARITA Uh, about last Friday, last Friday?  
12 MALE OFFICER Last, okay, now we're talking uh, today's Monday,  
13 we're talking just last Saturday.  
14  
15 ANGARITA Last Saturday, okay. Okay, I was uh, having  
16 breakfast with my son, we're in restaurant by  
17 Alameda.  
18 MALE OFFICER Okay.  
19 ANGARITA In Denny's Restaurant. And then I see coming out,  
20 eh, Orestes' two brother, you know there was two  
21 guys coming out from the restaurant. You think you  
22 can understand my English?  
23  
24 FEMALE OFFICER Sure.  
25 MALE OFFICER Sure I can.  
26 FEMALE OFFICER Sure.



PEOPLE VS. MIGUEL ANGEL BACIGALUPO  
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INTERVIEW OF JOSE ANGARITA

1 MALE OFFICER You're doing fine.

2 ANGARITA And then I recognize, Orestes' brothers, his two

3 brothers. And then I try to say hello to them. I

4 say, "Hi." And they look at me like, you know,

5 (inaudible). I say, "Wow, you know." I talked to

6 my son, I say, "Hey, these guys. They used to go

7 to my shop there and say "Hi, how you doing?" You

8 know. So after maybe five minutes, ten minutes,

9 they, the two guys coming inside to the restaurant

10 again. They go by the phone, and they look at me,

11 and look at me, and look at me and they go out

12 again. And then I finish my breakfast, I get out

13 there. I get in my car. When I go in the stop

14 light, my son tell me, "Hey, Father, one of those

15 guys follow you, in a car, in a blue car." So I

16 make a U-turn and, and he's keep going straight.

17 So I go, and then maybe like four or five blocks, I

18 check in my mirror and I see that blue car right,

19 in-from behind, like three blocks to me. So I say,

20 "Oh, you know, something is going to be going on."

21 So I make a right and I go and stop by, in front of

22 the one house. The guy pass by, drive by that

23 street, and then they see my car and then I move my

24

25

26

PEOPLE VS. MIGUEL ANGEL BACIGALUPO  
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INTERVIEW OF JOSE ANGARITA

1 car from there and go around, start to go around  
2 the block and the guy come and park right in front  
3 of that house. And then I coming back, they-but  
4 they seen me, he's gone. And when I see it's only  
5 one guy, I jump in my car and then push  
6 (inaudible), and then stop him, you know, and see  
7 who it is. And then it's, you know, Orestes'  
8 brother. And then I say, "Hey, what's going on?  
9 Why you follow me?" And he said, "Nothing, I  
10 looking for an address around here." I say, "I  
11 know you follow me, I seen you in the restaurant.  
12 And I see you by Alameda, and I know you follow me.  
13 Tell me what is the problem. I want to know what  
14 is the problem." I can't, you know. And, and then  
15 he say, "Nothing. I looking for an address, I  
16 looking for an address, and maybe you around, you  
17 know." I say, "I not around, you have to tell me  
18 right now what is going on." He say, "You kill my  
19 brother." He say that to me. I say, "What?" He  
20 say, "You kill my brother." He say that in front  
21 of my son. So I say, "Hey, just go to the Police  
22 Department, because that is something, you know,  
23 something you're not supposed to say to nobody just  
24  
25  
26

PEOPLE VS. MIGUEL ANGEL BACIGALUPO  
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INTERVIEW OF JOSE ANGARITA

1 like that." And he say, "I don't want to go  
2 nowhere." "Okay, well whatever, I going to, see  
3 what is the problem." So I coming back the same  
4 day, almost one hour after that, coming to Sunday,  
5 and talk to the Police and they, they give me  
6 Officer Lloyd, and, and they say he's coming back  
7 Monday and I couldn't find out. I want to know  
8 what, where (inaudible).  
9

10 FEMALE OFFICER Let me ask you a couple questions now.

11 ANGARITA Okay.

12 FEMALE OFFICER When you went to the restaurant with your son...

13 ANGARITA Um hum.

14 FEMALE OFFICER Were they already at the restaurant?

15 ANGARITA They, they already in the restaurant.

16 FEMALE OFFICER So in other words, they had just finished breakfast  
17 and...

18  
19 ANGARITA I don't know, I kind of feeling maybe they're in  
20 the bar, in the back of the restaurant. Because I  
21 just seen him right in front of my table like that.  
22 Maybe they are in the bar, I'm not sure what end of  
23 the bar they're coming from, 'cause I just seen him  
24 when I, passed by in front of my table.  
25

26 FEMALE OFFICER When you're walking to your table...

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INTERVIEW OF JOSE ANGARITA

1 ANGARITA No-no-no. I sit down, I'm having breakfast in that  
2 moment, -  
3  
4 FEMALE OFFICER That's the...  
5 ANGARITA -- when they coming out, yes.  
6 FEMALE OFFICER And you saw them leaving, that's right.  
7 ANGARITA Yeah, and I say to them, "Hey, hi." And I tell my,  
8 maybe they not recognize me, or but, the way they  
9 treated me, you know, I said, "Something's going  
10 on." So I say we going to the police or something  
11 like that, you know.  
12 MALE OFFICER And there was, there was four, --  
13 ANGARITA There was four guys, yeah.  
14 MALE OFFICER -- four together?  
15 ANGARITA Four together, yeah. So two guys coming back, no,  
16 there was two guys coming back inside to the  
17 restaurant again. And then I say, "Oh boy,  
18 something's going on around here." So, but uh, I  
19 really not afraid, you know, because I, I don't  
20 know what is going on in that, in that moment. But  
21 I say, "Something's going on. Why these guys  
22 coming back in?" So I decide to finish my  
23 breakfast and, and leave, you know. And then that,  
24 what I tell you happen after that.  
25  
26

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INTERVIEW OF JOSE ANGARITA

1 MALE OFFICER Okay, but there was only one guy in the car that  
2 you saw?  
3 ANGARITA Yeah, only one guy there, Orestes' older brother,  
4 (inaudible), in the car, he's the only one.  
5  
6 MALE OFFICER The older brother.  
7 ANGARITA Yeah, the older brother.  
8 MALE OFFICER Than the rest.  
9 ANGARITA And I said to him, "You ought to tell me, what is  
10 going on?" And then he says, "Aw, you killed my  
11 brother, na-na-na-na." You know, and I said,  
12 "Well, whatever you want to do, you know. I be  
13 available for anything. I have to go to court, I  
14 have to go anywhere, I going, you know, to find out  
15 what's going on. I don't know where this coming  
16 from."  
17  
18 FEMALE OFFICER Let me ask you, you do know Orestes then?  
19 ANGARITA Oh yeah, he used to work for me. I used to have a  
20 business in Second Street and...  
21 FEMALE OFFICER At the coin shop?  
22 ANGARITA Yes, in the coin shop where Scott and Daniel work.  
23 FEMALE OFFICER Okay.  
24 ANGARITA With Scott. And then uh...

26

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INTERVIEW OF JOSE ANGARITA

1 FEMALE OFFICER Who did you, were you uh, one of the owners in that  
2 business?  
3 ANGARITA Yeah, I used to be one of the owners. Me and Dan.  
4 FEMALE OFFICER And the father, Dan?  
5 ANGARITA Yeah, and Dan.  
6 FEMALE OFFICER You and Dan...  
7 ANGARITA And Orestes used to work for us there.  
8 FEMALE OFFICER So actually you were in business with Dan Burke?  
9 ANGARITA Yes.  
10 FEMALE OFFICER Not Scott Burke?  
11 ANGARITA No, well, no, not really Scott, not really Scott, -  
12 -  
13 FEMALE OFFICER Dan, the father?  
14 ANGARITA -- Dan, yeah, he take care of his father's side or  
15 whatever.  
16 FEMALE OFFICER Okay, and when Orestes, evidently he, what did he,  
17 work for Dan and you?  
18 ANGARITA Yeah, no, he worked for us in that time. He used  
19 to be jewelry repair, jewelry repairs and  
20 everything. And then his wife come in, --  
21 FEMALE OFFICER Maria.  
22 ANGARITA -- working for us too, Maria. So that's...  
23 FEMALE OFFICER So Maria worked for you too?

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1 ANGARITA Yes, both work.  
2 FEMALE OFFICER How long did that go on?  
3 ANGARITA Orestes work maybe couple months. You know, I  
4 can't remember exactly but maybe it was a couple  
5 months.  
6 FEMALE OFFICER Just a couple months?  
7 ANGARITA Yeah, because he turn around and he say he's going  
8 to open his own business and all that type of  
9 thing. We say, "Okay."  
10 FEMALE OFFICER Were you...  
11 ANGARITA And then Maria take over from him. Maria come in  
12 and, and work for him. Maria work for us.  
13 (inaudible), she's working there.  
14 FEMALE OFFICER Yeah.  
15 ANGARITA Yeah, so, I don't know.  
16 FEMALE OFFICER What I'd like to know though is were you friendly  
17 with Orestes while he was working there?  
18 ANGARITA Yeah, we never had no...  
19 FEMALE OFFICER No problems.  
20 ANGARITA Yeah, it's a little misunderstanding there.  
21 FEMALE OFFICER Sure.  
22 ANGARITA I say, "Where'd you put that chain?" He say, "I  
23 don't know." And I had to ask everybody in here  
24  
25  
26

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1 and there, but just little things, no nothing,  
2 nothing big, just little things. We only had, you  
3 know, because uh, or they say, they say, "Orestes,  
4 we give you that one to fix it." He say, "No, you  
5 don't give me nothing." You know, just little  
6 things there, we, we always very friendly with  
7 them. Like uh, I know him for maybe like five or  
8 six months before that.

10 FEMALE OFFICER Before he started working there?

11 ANGARITA Yeah.

12 FEMALE OFFICER And where did you meet him at?

13 ANGARITA He applied for a job too, when I had another  
14 business in 24 and Santa Clara. Long time ago.  
15 (inaudible) years. He's coming and apply there,  
16 he's gonna come apply to work. He say, "I'd like  
17 to work here."

19 FEMALE OFFICER What was that, a coin store?

20 ANGARITA It used to be a coin store long time ago in 24 and  
21 Santa Clara.

23 FEMALE OFFICER 24<sup>th</sup> and Santa Clara?

24 ANGARITA Yes.

25 FEMALE OFFICER 24<sup>th</sup> and Santa Clara. And you couldn't give him a  
26 job there because you...



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1 ANGARITA I offer it to him, and he say no. Maybe because  
2 it's a little job, you know. We don't have really,  
3 any really, we really like do some repairs and  
4 something like that, whatever you say. And then he  
5 go to work with some guy by the, he's taking on a  
6 job by, what's is the name? Shop Around, one  
7 little jewelry store.  
8  
9 MALE OFFICER Um hum.  
10 ANGARITA This is when, after that, when he's work. And then  
11 he's coming back to us again, on Second Street.  
12  
13 FEMALE OFFICER Jose, let me get this straight.  
14  
15 ANGARITA Okay.  
16  
17 FEMALE OFFICER I don't wanna sound dumb to you, but I wanna make  
18 sure I understand all that..  
19  
20 ANGARITA Okay, okay.  
21  
22 FEMALE OFFICER When you first met Orestes, he came into your coin  
23 shop which was 24<sup>th</sup> and -  
24  
25 ANGARITA Yes.  
26  
27 FEMALE OFFICER -- Santa Clara Street.  
28  
29 ANGARITA Yes.  
30  
31 FEMALE OFFICER And he asked you for a job.  
32  
33 ANGARITA Yes.  
34  
35 FEMALE OFFICER And you told him yes, he could have a job?

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1 ANGARITA Yeah, we say, "Okay, you want to try, I give you a  
2 corner. You don't have to pay rent. We just go  
3 fifty-fifty in repairs, and he wanted take  
4 (inaudible) that time.  
5  
6 FEMALE OFFICER And then what happened? He didn't take the job?  
7 ANGARITA And he say, "I gonna bring my table tomorrow," and  
8 then he never show up.  
9 FEMALE OFFICER So he never showed up?  
10 ANGARITA Um hum.  
11 FEMALE OFFICER Okay, and then when's the next time you saw him?  
12 ANGARITA When I have, it was on Second Street.  
13 FEMALE OFFICER Second Street?  
14 ANGARITA Yeah.  
15 FEMALE OFFICER What's the address there?  
16 ANGARITA 38 South.  
17 FEMALE OFFICER 38 South Second?  
18 ANGARITA Um hum.  
19 FEMALE OFFICER And that's when you were in business with, with Dan  
20 Burke?  
21 ANGARITA Uh, Dan Burke.  
22 FEMALE OFFICER Who were you in business with in the other coin  
23 store? On 24<sup>th</sup>.  
24 ANGARITA For myself.

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1 FEMALE OFFICER It was all by yourself?  
2 ANGARITA Yeah.  
3 FEMALE OFFICER Do you still own that one?  
4 ANGARITA No-no-no-no.  
5 FEMALE OFFICER Oh.  
6 ANGARITA I have give it away to my ex-wife, that one. She  
7 take it, I don't know what happened with it.  
8 FEMALE OFFICER And your ex-wife got that one in the divorced?  
9 ANGARITA Yeah, we have a divorce since, I don't know. I  
10 think, no longer, well it's closed or whatever. I  
11 don't want to even know.  
12 MALE OFFICER What was the name of it? What was the name of your  
13 shop at 24th and...  
14 ANGARITA Chibcha, Chibcha. It's sounds crazy.  
15 MALE OFFICER How do you...  
16 ANGARITA C-I, C-H-I-B-C-H-A.  
17 MALE OFFICER C-H-I-A...  
18 ANGARITA B-A-A.  
19 MALE OFFICER A-A.  
20 ANGARITA You want me to write it out for you?  
21 MALE OFFICER Sure, if you would. You can just write it right  
22 next to that.  
23 ANGARITA Okay.

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1 FEMALE OFFICER Jose, what nationality are you?  
2 ANGARITA South America, Columbia.  
3 FEMALE OFFICER Columbia?  
4 ANGARITA Yeah.  
5 FEMALE OFFICER Colombian?  
6 ANGARITA Yes.  
7 FEMALE OFFICER A hundred percent?  
8 ANGARITA Not really. North American now.  
9 FEMALE OFFICER How long have you been here in the country?  
10 ANGARITA Almost, I think six years.  
11 FEMALE OFFICER Six years?  
12 ANGARITA Yeah.  
13 FEMALE OFFICER Orestes been here, --  
14 ANGARITA Yeah.  
15 FEMALE OFFICER -- I think, he was, I think he had been here six  
16 years. But you never met him before, five or six  
17 months prior to him working for you at Dan's, you  
18 never...  
19 ANGARITA Yeah, never, never.  
20 FEMALE OFFICER You never met him before?  
21 ANGARITA Never.  
22 FEMALE OFFICER And when you knew him at Second Street, he actually  
23 worked for you and Dan?  
24

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1 ANGARITA Yes.

2 FEMALE OFFICER And that was only for two or three months?

3 ANGARITA I can't remember exactly how long. I have, he's  
4 work for us there a couple months, couple months.  
5 I'm not sure, I have to ask Dan, ask Dan  
6 (inaudible).  
7

8 FEMALE OFFICER That's okay, I'm just trying to get a rough  
9 estimate on it. Do you have any other coin stores  
10 or jewelry businesses?  
11

11 ANGARITA Not anymore.

12 FEMALE OFFICER Not anymore?

13

14 ANGARITA No. I just doing by dealers, buy and sell to  
15 dealers for myself. Diamonds and...  
16

16 FEMALE OFFICER So you're like a travelling salesman?

17 ANGARITA That's what I doing now. Try to, I have to survive  
18 one way or the other way. By, you know, go to my  
19 friends, offer me diamonds. I know a whole coin  
20 dealers around, so I buy and sell whatever is good  
21 for me from (inaudible). So this is what I do.  
22

23 MALE OFFICER Sandy, can I interrupt just a little bit?

24 FEMALE OFFICER Sure.

25 MALE OFFICER Jose, do you go, just for our records, do you go by  
26 any other names? Other than Jose Santos and...

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1 ANGARITA No.

2 MALE OFFICER I don't know how to spell your last name.

3 ANGARITA No.

4 MALE OFFICER You don't? If I, how would I get in touch with

5 you? Well, you say you...

6

7 ANGARITA Through my attorney.

8 MALE OFFICER You say you don't live anywhere.

9 ANGARITA Well I had to, I can't, I try to get an apartment

10 right now. But uh, I had to wait, for they approve

11 my, they, my application. Because I don't have no

12 business and they don't want to give me no

13 apartments right now. So I guess I have to go and

14 put a business before they give me an apartment or

15 something like that.

16

17 FEMALE OFFICER Where are you sleeping at now, Jose?

18 ANGARITA I staying at friends, or with some friends

19 (inaudible), you know, because uh...

20 FEMALE OFFICER What friends do you stay with? In other words, if

21 we're trying to get a hold of you to warn you that

22 there is...

23

24 ANGARITA Well through my attorney is the best way.

25 FEMALE OFFICER So he always knows where you're at?

26

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1 ANGARITA He's always know where I at. I told him, I was  
2 talking about what happened, he say, "You stay  
3 away, just no go, watch out because this guy maybe  
4 do something to you." And I say, "Why? I don't  
5 have nothing to hide. So I go to them for they  
6 see, you know."  
7  
8 MALE OFFICER Well what, what do you do with your son while  
9 you're, while you're staying all over? Who's,  
10 who's watching over your son?  
11 ANGARITA Her mother.  
12 FEMALE OFFICER His mother.  
13 ANGARITA Her mother, yeah.  
14 FEMALE OFFICER How old is he?  
15 ANGARITA He's thirteen.  
16 FEMALE OFFICER Thirteen?  
17 ANGARITA Yes.  
18 FEMALE OFFICER So he lives with her, and you just happened to be  
19 having him on the weekends?  
20  
21 ANGARITA Um hum, yeah, have him with me some, sometimes,  
22 however.  
23  
24 MALE OFFICER Do you keep in contact at all with your ex-wife,  
25 other than -  
26 ANGARITA No.

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1 MALE OFFICER -- from the son's standpoint?  
2 ANGARITA With the, with my son's mother?  
3 MALE OFFICER Yes.  
4 ANGARITA Sometimes. Most of the time we talking.  
5 MALE OFFICER Okay. Does she know about these threats?  
6 ANGARITA Yeah, I told her. I told her --  
7 MALE OFFICER You told her about the threats?  
8 ANGARITA -- "Watch out because these guys can say da-da-da-  
9 da-da-da-da, they're wrong." You know. What we  
10 can do?  
11 MALE OFFICER Sure.  
12 ANGARITA You know. I can't do anything. I have to just...  
13 MALE OFFICER Do they know your son, does the Guerrero brothers  
14 know your son very well?  
15 ANGARITA Oh yeah, they know my son. He used to be in the  
16 shop almost, almost every day.  
17 MALE OFFICER And do they know where your ex-wife lives?  
18 ANGARITA I don't think so.  
19 MALE OFFICER Okay, where, where does she live?  
20 ANGARITA She's live on 10<sup>th</sup> Street.  
21 MALE OFFICER Do you know the address?  
22 ANGARITA Ten, I can't remember now, I can't remember  
23 exactly, a friend of mine, a friend of mine house.  
24  
25  
26



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1 MALE OFFICER Okay. Where, what's close to there?  
2 ANGARITA It's between Martha and okay, between Martha and  
3 San Salvador, 10<sup>th</sup> Street.  
4 MALE OFFICER All right.  
5 ANGARITA Ten something. I can't remember the exact number.  
6 MALE OFFICER Did you know where the 7-11...  
7 ANGARITA Yeah, behind the second, the second house behind  
8 there.  
9 MALE OFFICER The one that, you go on Tenth Street this way,  
10 Eleventh Street...  
11 ANGARITA On the right, when you go up, on the right side.  
12 It's by one, one guy had one house say income tax,  
13 the next house.  
14 MALE OFFICER Okay, on Tenth Street?  
15 ANGARITA On Tenth Street.  
16 MALE OFFICER Okay, which side of the street as you're going...  
17 ANGARITA Right side when you go down by 280.  
18 MALE OFFICER If you go down by 280 it's on the right hand side.  
19 ANGARITA Uh huh.  
20 MALE OFFICER Okay.  
21 FEMALE OFFICER Do you have any relatives here in town? Cousins,  
22 brothers, sisters?  
23 ANGARITA I have my sister.

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1 FEMALE OFFICER Your sister's here?  
2 ANGARITA My sister Maria.  
3 FEMALE OFFICER Okay. Is she married?  
4 ANGARITA Yeah-no-no. She's not married, she's single, but  
5 she live in Sunnyvale.  
6 FEMALE OFFICER Does she live by herself?  
7 ANGARITA Only his boyfriend.  
8 FEMALE OFFICER Her boyfriend? And what's his name?  
9 ANGARITA Maria Angarita.  
10 FEMALE OFFICER What's her last name?  
11 ANGARITA Angarita, A-N-G-A-R-I-T-A.  
12 FEMALE OFFICER Once again, A-N...  
13 ANGARITA A-N-G-A-R-I-T-A.  
14 FEMALE OFFICER That's, that's your uh, your last name also?  
15 ANGARITA Yes.  
16 FEMALE OFFICER Okay. And then she lives with her boyfriend.  
17 What's...  
18 ANGARITA Yes.  
19 FEMALE OFFICER What's his name?  
20 ANGARITA David Soto.  
21 FEMALE OFFICER Dave?  
22 ANGARITA David Soto.  
23 FEMALE OFFICER How do you spell the last name?

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1 ANGARITA S-O-T-O.  
2 FEMALE OFFICER S-O-T-O, Soto.  
3 ANGARITA Soto.  
4 FEMALE OFFICER Soto. See the problem we have is, Guerrero  
5 Family's mad at you. Number one, we wanna know  
6 why.  
7  
8 ANGARITA Uh huh.  
9 FEMALE OFFICER Number two, actually number one, we wanna help you,  
10 protect you.  
11 ANGARITA Oh.  
12 FEMALE OFFICER You have a thirteen year old son, you have a sister  
13 living in Sunnyvale.  
14  
15 ANGARITA Uh huh.  
16 FEMALE OFFICER But we have to understand, why is this happening?  
17 ANGARITA I don't understand either. I want to know what,  
18 what is the reason, the real reason why somebody  
19 say to him, I'd like to know why, who say that to  
20 them. Why they know these things, why for? That's  
21 why, somebody had to have some reasons for take  
22 that to them. I want to know why this person take-  
23 take it to court and straighten it out I think.  
24  
25 MALE OFFICER Okay, they, they understand that we have a man in  
26 custody.

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1 ANGARITA Yeah.

2 MALE OFFICER Do, do they know that?

3 ANGARITA I think so, I (inaudible).

4 MALE OFFICER I'm, you know, if I was, if it was my brother that

5 was killed and the police had somebody in custody,

6 I'm sure, --

7

8 FEMALE OFFICER They know.

9 MALE OFFICER -- I'm sure I would know that.

10 ANGARITA Um hum.

11 MALE OFFICER Why do you think they're threatening you?

12 ANGARITA I don't understand, I really don't understand. I,

13 I don't know have no de-no idea about that. I

14 don't know why they-this is the reason I here, I

15 want to know --

16

17 MALE OFFICER Sure.

18 ANGARITA -- what is the real reason. Something, we have one

19 little misunderstanding with Dan and Scott Burke

20 one time.

21

22 MALE OFFICER Who did?

23 ANGARITA Me and Dan Burke. You know, maybe somebody say

24 something to them for that, because we used to be

25 partners, with Dan and Scott. And then I have my

26 divorce problems and everything and then I put the

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1 business in, they tell me put the business in my  
2 son name and everything. And then, when I put the  
3 business and everything, they kick me out. You  
4 know, Dan and Scott kick me out the business and,  
5 and that way I didn't have no, no, no rights for  
6 sue them, because they have (inaudible) to sue the  
7 (inaudible) and everything when they kick me out of  
8 business, is the only thing we have (inaudible).  
9 And we have not really, not really good works right  
10 now because they already got my business.

11  
12 MALE OFFICER Okay, was Orestes working...

13 ANGARITA No, in that time, no.

14 MALE OFFICER At the, at that time?

15  
16 ANGARITA No, no-no. He's working, that is Maria is working  
17 with him. So that, they take my business away, Dan  
18 and Scott. We tried to make arrangements and then  
19 they say, "No, no, no. We don't owe you nothing.  
20 We don't na-na-na." So I just said to forget about  
21 it. You know. It's no big deal anyway. Rent a  
22 place and put in this and buy some gold, that's  
23 nothing. But still then, they take away business  
24 away from me.  
25  
26

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1 FEMALE OFFICER Did you have any contact with Orestes after he  
2 opened up the jewelry store on the Alameda?  
3 ANGARITA I came to, to his shop for a few, few times.  
4 FEMALE OFFICER Just to visit a couple times?  
5 ANGARITA No, we sold, I sold the diamonds to him, a hundred  
6 diamonds.  
7 FEMALE OFFICER So you were still doing business with him?  
8 ANGARITA Oh yeah, he go every time to the, yeah, we had some  
9 business.  
10 FEMALE OFFICER Did he have any of your property when he was  
11 killed? Did...  
12 ANGARITA No, no-no-no.  
13 FEMALE OFFICER None of your property was --  
14 ANGARITA Nothing.  
15 FEMALE OFFICER -- in the jewelry store?  
16 ANGARITA Absolutely, no.  
17 FEMALE OFFICER Nothing with him?  
18 ANGARITA Nothing.  
19 FEMALE OFFICER 'Cause you were doing business, and how often was  
20 that business?  
21 ANGARITA Sometimes, you know, not really big business, you  
22 know, five or six diamonds or two or three  
23 diamonds, some gold.  
24  
25  
26

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1 FEMALE OFFICER Once, once a month?  
2 ANGARITA Once in a while, yeah, once he's coming by, and  
3 say, "We need, I need that and that." Whatever.  
4 FEMALE OFFICER Let me stop you for a minute. You said, "He comes  
5 by" ?  
6 ANGARITA He's come by most of the times to our shop.  
7 FEMALE OFFICER To what, to what shop?  
8 ANGARITA Second Street.  
9 FEMALE OFFICER He, so...  
10 ANGARITA Yeah, he's coming by to ours and say, "Okay, we  
11 need, I need some diamonds, some gold." Whatever,  
12 whatever he needed.  
13 FEMALE OFFICER When did...  
14 ANGARITA Or the pearls, we get the pearls too.  
15 FEMALE OFFICER When did you get a divorce from your wife and she  
16 got the store? What month and year?  
17 ANGARITA Oh geez, that was a long time ago.  
18 FEMALE OFFICER Long time, how long is a long time? A year?  
19 ANGARITA Yeah, almost a year. (inaudible) year.  
20 FEMALE OFFICER So she's owned that store for a year, but Orestes  
21 would go to that store and wanna buy that...  
22 ANGARITA No, he not went to that store, oh, you're talking  
23 about 24<sup>th</sup> Street? Oh no, this is year and a half.  
24  
25  
26

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1                                   That store, it's almost a year I, I just get out of  
2                                   it, almost a year. I'm not sure exactly.  
3 FEMALE OFFICER   Where did Orestes go to ask you for diamonds and  
4                                   gold?  
5 ANGARITA            Every time over here on Second Street.  
6 FEMALE OFFICER   Oh, so his wife would call him and say, "Jose's  
7                                   here now. Do you want any diamonds"?  
8 ANGARITA            Yeah, well anytime the diamonds, but we, I really  
9                                   don't have no many business with him, just  
10                                  sometimes he will. Every time I see him, you know,  
11                                  say nothing.  
12 FEMALE OFFICER   You never got in a fight with him?  
13 ANGARITA            No.  
14 FEMALE OFFICER   Argument with him?  
15 ANGARITA            Not really. Not really.  
16 FEMALE OFFICER   Would he pay you cash for those diamonds?  
17 ANGARITA            Most of the time, we make a trade.  
18 ANGARITA            Trade?  
19 ANGARITA            Yeah, he give me this and that, (inaudible) for me,  
20                                  whatever. Sometimes cash, sometimes...  
21 FEMALE OFFICER   Mostly trade, sometimes cash?  
22 ANGARITA            Yeah.



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1 FEMALE OFFICER I'm trying to figure out why uh, the Guerrero  
2 Family would say that to you. The one brother, you  
3 don't know his name, the one that you confronted...  
4  
5 ANGARITA Those, those guys, I don't know his name.  
6 FEMALE OFFICER You don't know his name?  
7 ANGARITA One of his, his brothers tried to work for us, just  
8 like (inaudible), back then, we don't really have  
9 the, the opportunity to give you a job like that.  
10 I think his name is Jesus or something like that, I  
11 can't remember, but I need his name because that  
12 way my attorney can start the action today.  
13 Because I going to sue them because there's no  
14 reason for they say to, that to me. You know?  
15 FEMALE OFFICER You're gonna sue them for, for saying that they  
16 thought you...  
17  
18 ANGARITA That, what happen tomorrow, they, they are real  
19 kind of ignorant people, you know. They, they  
20 believe everything you say to them. So I will  
21 protect myself that way for see, I (inaudible)  
22 anywhere they want, I going to sue them. I have  
23 to. You know, they say that in front of my son and  
24 my son is right there, I don't want my son think I  
25 criminal or something like that. Just because they  
26

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1 say those kind of things. And my son afraid too,  
2 you know, say, "I want to get out here, just go  
3 away, because I afraid for those people." I just  
4 want to sue them and prove to them (inaudible)  
5 court I don't have nothing to do with this kind of  
6 bullshit, sorry for my words, but that's true. So  
7 this is the reason I coming over here because I  
8 need his name, for starting action today.  
9  
10 FEMALE OFFICER Let me get the exact quote, Jose. What did he  
11 exactly say to you?  
12  
13 ANGARITA He said...  
14 FEMALE OFFICER First he kept denying that he was following you?  
15 ANGARITA Yes.  
16 FEMALE OFFICER And then when you finally said, "Listen, I wanna  
17 know why --  
18 ANGARITA Uh huh.  
19 FEMALE OFFICER -- you're here, what did he say?"  
20 ANGARITA He say, "I just looking for an address around  
21 here."  
22  
23 FEMALE OFFICER Uh huh.  
24 ANGARITA And I say, "You, you no say, you no looking for an  
25 address, you follow me." Say, "No-no-no-no-no, I  
26 don't see you, 'cause I looking..." And I know

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1 he's, because he stop the same house I stop and  
2 everything. So I said, "You have to tell me, what  
3 is going on?" And he say, "No, nothing. There's  
4 no problems at all. No problems." I say, "You  
5 have to tell me or we have to go to the police to  
6 that." And then now, after, we talking  
7 (inaudible), he say, "You kill my brother. You  
8 know you kill my brother." I say, "What?" I say,  
9 "You crazy?" And then we start talking. Say,  
10 "Let's go to the police and say that in front of  
11 the police. I mean that way they (inaudible)  
12 whatever you say to them, they (inaudible)." So I  
13 have to, I talking to my attorney, he say, "Sue  
14 these guys, or make it like a official thing,  
15 restraining order or something like that."  
16

17  
18 FEMALE OFFICER Restraining Order?

19 ANGARITA Yeah.

20 FEMALE OFFICER After he said, "You killed my brother," did he show  
21 you a weapon of any sort, a knife or a gun or  
22 anything?  
23

24 ANGARITA No, he didn't show me no weapon. He didn't show me  
25 no weapons.  
26

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1 FEMALE OFFICER After he accused you of that, he didn't say  
2 anything else?

3 ANGARITA Uh, he say uh, okay, he say, "You kill my brother."  
4 Okay, but, you know, okay. And I say, "Well,  
5 whatever you want to think," I said, "Let's go to  
6 the police and then," then he say, "I don't want to  
7 talking," and he disappeared. And then I, I say,  
8 "Well if these people believe this kind of things,  
9 I have to protect myself," you know. I wish that  
10 somebody was talking to my lawyer, but I have to go  
11 and do something to them too, go to court or  
12 whatever. But I, so I afraid, somebody cannot do  
13 something for me or my kid or something like that.  
14 That's is the real reason I be here.

17 FEMALE OFFICER To protect your family?

18 ANGARITA I need a Restraining Order. If they try to near me  
19 or something like that, do something. I don't know  
20 why he's gonna kill me, just for, because they  
21 think I do something or because somebody I don't  
22 know for what reason, said that to them. That's  
23 the real reason I'm here.

25 FEMALE OFFICER You don't know which brother though, you don't know  
26 uh, his brother's name?

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1 ANGARITA Well it's the other one, and the other one is, I  
2 can't remember, it's Jesus or something.  
3  
4 FEMALE OFFICER Where did you meet them at? Where did you meet the  
5 Guerrerro brothers?  
6 ANGARITA Oh, this is in, what is this, this is Saturday?  
7 It's uh, Monday, one Monday, they say, the funeral,  
8 Orestes' funeral is one Sunday. So I coming back  
9 to Orestes-uh, I call Maria, and Maria, he give me  
10 (inaudible). I go all the way down to his house  
11 to, Orestes' daughter, and she introduce me to him,  
12 say, "This is my brother." And then Maria told me  
13 what happened, say, "Oh, sorry." You know. This  
14 is one Monday, I remember I was to Maria's house  
15 and I say, "Well, anything I can do, whatever."  
16 You know. And she say, (inaudible) and this is the  
17 last time I seen her.  
18  
19 FEMALE OFFICER And that was after you knew Orestes was killed?  
20  
21 ANGARITA Oh yeah. This is one month, I can't remember  
22 exactly the day.  
23  
24 FEMALE OFFICER So Monday after Orestes was...  
25  
26 ANGARITA Yeah, it was to, today. Maria give me the address  
and then I went to his address. He live by Alameda  
somewhere.

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1 FEMALE OFFICER Where does he live?  
2 ANGARITA By Alameda.  
3 FEMALE OFFICER Did you say Santa Clara?  
4 ANGARITA I'm not sure what that's belongs to Santa Clara,  
5 Alameda by...  
6  
7 FEMALE OFFICER The City of Santa Clara?  
8 ANGARITA I had to go and try, I'll find out if that's the  
9 way they are. I had some plans to do that, go  
10 around the house and write it then, for give to my  
11 attorney. But I afraid maybe they gonna..."  
12 FEMALE OFFICER Or give it to us.  
13 ANGARITA Give it to us.  
14 FEMALE OFFICER You let us know.  
15 ANGARITA But I had to go, I had to go and come by here. I  
16 don't like to, you know, go out and they shoot me.  
17 How do I get the address. I, the only way I have  
18 to talk to Maria, I going to talk to them and  
19 explain to her. I don't know if that's good  
20 enough, for giver me his brother's name and  
21 everything. I have good relation with Maria, I  
22 don't know why they (inaudible) with others. She  
23 (inaudible).  
24  
25  
26

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1 FEMALE OFFICER So Monday after, how did you learn about Orestes'  
2 death?  
3 ANGARITA Pardon me?  
4 FEMALE OFFICER How did you learn about Orestes'...  
5 ANGARITA By the newspapers.  
6 FEMALE OFFICER The newspaper?  
7 ANGARITA Yes, and I was to the shop, to the Second Street,  
8 for talk to Scott. Say, "Oh look at it." I say,  
9 "Really?" And I can't believe that. I can't  
10 believe, say, "What happen to him?" "They shoot  
11 him." And I really surprised, because I can't  
12 believe in the moment that happened, you know. Why  
13 these guys, (inaudible) don't have no money there.  
14 Just maybe few rings. You know. And I say, "Well,  
15 I don't know, I don't know nothing about it."  
16 FEMALE OFFICER After you found out Orestes had been killed, and  
17 you went to see Maria...  
18 ANGARITA Oh, I call Maria for say, you know, told her that  
19 happen. So then we go to drive with Maria, "I'd  
20 like to talk to you in person." So I went to town,  
21 she'd give me (inaudible) and everything. I talked  
22 to her like thirty, forty-five minutes.  
23 FEMALE OFFICER She was staying at Orestes' mother's?

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1 ANGARITA Yeah. I was talking to them and then she  
2 introduced me to, to this other guy. And I  
3 thought, and this is the person come to me and say  
4 that.  
5  
6 FEMALE OFFICER In the blue car.  
7 ANGARITA I know his younger brother too when he's, he's try,  
8 he tried to work for us on Second Street. But we  
9 no have no chance for give to him. But I can't  
10 remember his name. (inaudible).  
11 MALE OFFICER You keep saying Jesus. Why?  
12 ANGARITA I think it's Jesus or something, I cannot remember,  
13 Jesus or Jose. I don't know the name, the older  
14 brother's name. That one, I want to find out.  
15 Because he's the person say that to me. His  
16 brother don't say nothing to me because he, it's  
17 only him in the car in the moment. So he's, when  
18 he's in the restaurant. So I don't know, maybe  
19 it's that, I, I have to sue only this guy. We'll  
20 find out what's going on, because I want to have  
21 (inaudible) for nothing.  
22  
23  
24 MALE OFFICER Right.  
25 ANGARITA When I do something, I supposed to pay for that. I  
26 no have to ask (inaudible) just for (inaudible)



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1                                   somebody's not (inaudible) or something like that,  
2                                   just for (inaudible).  
3 FEMALE OFFICER   I'd like to take a, a picture of him and I'd like  
4                                   to, this way I can have that to show uh, find out  
5                                   what brother knew you.  
6  
7 ANGARITA            Pardon me?  
8 FEMALE OFFICER   See your name doesn't mean anything, but your  
9                                   picture, I could show it to, to the, maybe one of  
10                                  the family members, to find out who the oldest  
11                                  brother is, who knows you. So I'd like to take  
12                                  your picture.  
13  
14 MALE OFFICER        Sure.  
15 FEMALE OFFICER    So that way...  
16 ANGARITA            And that you have it in your records then.  
17 FEMALE OFFICER    No, no, no.  
18 MALE OFFICER        No, it's not. It's not in the records.  
19 FEMALE OFFICER    Do you have a Polaroid?  
20 MALE OFFICER        Yeah.  
21 FEMALE OFFICER    Oh good.  
22 MALE OFFICER        It'll be black and white.  
23 FEMALE OFFICER    That's fine.  
24 ANGARITA            I don't care, anything.  
25 FEMALE OFFICER    No, sit down, Jose. I'm...

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1 ANGARITA I really don't care, what can you do.  
2 FEMALE OFFICER I'm just trying to get this all straight. Trying  
3 to figure out why the Guerrero Family...  
4 ANGARITA I don't know, I don't understand. Sometimes  
5 (inaudible), maybe enemies, you know, I don't know.  
6 FEMALE OFFICER Let me ask you something. Do you know Miguel  
7 Padilla? Have you ever met him?  
8 ANGARITA Miguel what?  
9 FEMALE OFFICER Padilla.  
10 ANGARITA Miguel Padilla.  
11 FEMALE OFFICER Did you ever meet him?  
12 ANGARITA No.  
13 FEMALE OFFICER Maybe that's why.  
14 ANGARITA No. Miguel Padilla.  
15 FEMALE OFFICER No?  
16 ANGARITA No.  
17 FEMALE OFFICER He's Peruvian.  
18 ANGARITA No. I don't have no, really, when I have my  
19 business I meet so many people, but I don't  
20 (inaudible). If I (inaudible) anything.  
21 FEMALE OFFICER Sure. He's from New York.  
22 ANGARITA Yeah.  
23 FEMALE OFFICER His name is Miguel Padilla.  
24  
25  
26

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1 ANGARITA No, I never...

2 FEMALE OFFICER Never heard of him?

3 ANGARITA No, never. No.

4 FEMALE OFFICER He's the one in custody, for killing Orestes.

5 ANGARITA Yeah?

6 FEMALE OFFICER And Jose Guerrero. But you never met him?

7 ANGARITA Never, never. I can't believe how, so crazy things

8 that, (inaudible) can really say, and now he can

9 say that to me. I know when I coming around here,

10 and I talk to my attorney, he say (inaudible), and

11 then we, we start action, today, you know.

12 (inaudible) like, "Why you take action?" I don't

13 understand.

14 FEMALE OFFICER Well I, I'm trying to help you.

15 ANGARITA That's crazy, I don't understand. That's, somebody

16 say things to me. I don't know, I want to know in

17 court, he has to say who's saying that to him.

18 That is when he has to say. And then I have to

19 find out why that person does say that. Maybe say

20 anything, you know, we'll see.

21 FEMALE OFFICER I talked to the Guerrero Family.

22 ANGARITA Um hum.

23 FEMALE OFFICER 'Cause I'm involved with the Padilla case.

24

25

26

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1 ANGARITA I don't understand why they say that. What is the  
2 real reason? I don't understand what, I know they  
3 not like me around.  
4  
5 FEMALE OFFICER Why?  
6 ANGARITA I don't understand, I just, you know, making money  
7 here, and do that here, and then you know, some  
8 people, you in here, they have (inaudible) trouble  
9 with the Police Department (inaudible), you know,  
10 arrive (inaudible), but...  
11 FEMALE OFFICER But you were the victim of that. You talking about  
12 the 211, the armed robbery?  
13  
14 ANGARITA Oh yeah, that one too.  
15 FEMALE OFFICER But you were the victim?  
16 ANGARITA Yeah, I the victim of that one.  
17 MALE OFFICER Jose, can you uh, stand right up, right up there?  
18 That's fine.  
19 FEMALE OFFICER Does it work without flash?  
20 MALE OFFICER Yeah. Super duper.  
21 FEMALE OFFICER Jose, I'm trying to figure all this out. There's a  
22 couple things...  
23  
24 ANGARITA Me too, I just act so surprising, I say, well, I  
25 said to him, "Let's go to the Police Department,  
26

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1 and then you find out what the truth. Let's go  
2 there, they, I, be a (inaudible) for anything."

3 FEMALE OFFICER Um hum.

4 ANGARITA I'm not afraid for anything, 'cause I have my mind  
5 clean for anything. So, I have my son, I have my  
6 family, I don't, why can I do some crazy thing. I  
7 don't even have no reason for doing nothing like  
8 that to nobody. You know. And I just like to work  
9 in peace, they, you know, (inaudible) why...  
10

11 FEMALE OFFICER I gotta tell you a couple things though that, that  
12 bothers me about this. I don't understand why you  
13 don't have a residence, I mean that's just...  
14

15 ANGARITA Well, I no have no place right now. They kick me  
16 out from my business. I try to apply, and then I  
17 talked to people, "Find me a place."  
18

19 [END OF RECORDING]  
20  
21  
22  
23  
24

25 DD\mcm\1133\7-01  
26

**EXHIBIT 13B**

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ANGARITA Nothing, nothing (inaudible).

INTERVIEWER Do you have a girlfriend?

ANGARITA Mm, some friends.

INTERVIEWER But not a steady girlfriend?

ANGARITA Not a steady girlfriend.

INTERVIEWER Have you had a steady girlfriend since your wife and you broke up?

ANGARITA Well, that has something to do with-

INTERVIEWER Well, yes, it does.

ANGARITA Uh-

INTERVIEWER It does.

ANGARITA No, really-just friends, just friends.

INTERVIEWER Just friends-no steady girlfriend?

ANGARITA No, no.

INTERVIEWER Your ex-wife, is she mad at you about anything?

ANGARITA No, re-, the American girl?

INTERVIEWER Were you married to an American girl?

ANGARITA Yeah, this is my ex-wife.

INTERVIEWER And she's the one that has the place on 2<sup>nd</sup>, 3<sup>rd</sup>-

ANGARITA Uh-

INTERVIEWER Excuse me, on 24th Street now?

ANGARITA On 24th Street. Where we didn't really know how good, (inaudible).

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INTERVIEWER That close?

ANGARITA She's accusing me of the child molested, we go to court, and everything—I don't know, you (inaudible) or whatever. She accuse me anything she say—okay, let's go to jail, and you prove that to me.

INTERVIEWER So she's mad at you?

ANGARITA She's mad, the only time, I don't know.

INTERVIEWER She thought you molested your son, your 13-year-old son?

ANGARITA No, he thought I molested his daughter.

INTERVIEWER Whose daughter?

ANGARITA Her daughter, she has a daughter.

INTERVIEWER From a prior marriage?

ANGARITA Yes.

INTERVIEWER Oh. And how old was her daughter?

ANGARITA It's like uh, five years old.

INTERVIEWER Five years?

ANGARITA We go to court and everything.

INTERVIEWER Is that almost over with?

ANGARITA It's over (inaudible).

INTERVIEWER It's all over with?

ANGARITA Yeah, it's over.



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INTERVIEWER Good.

ANGARITA They find out, I don't know, they, she don't (inaudible) the truth, and, and they find me innocent in that one. So we had to go to prove of (inaudible) that one. So this happened to these guys too, they say I do--then let's go. You know, I don't have nothing (inaudible).

INTERVIEWER But you don't wanna go to court on this--you'd rather have this straightened out with the police?

ANGARITA I want to straighten it out before, because I don't want to have no problems.

INTERVIEWER You've had enough grief with--

ANGARITA Because I see Vicky, close to me, you know, I don't know. When it start raining, when I start fighting with her, I don't want to, you know, somebody come and (inaudible). You know?

INTERVIEWER Would you rather have this straightened out with, as far as uh, the police department?

ANGARITA Yeah, we can talk to them, and say what happened to, what did you find? You know, just give me a (inaudible), what the fuck? They have people there in jail, go and ask him. You know, why

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they going to come to me—I don't know who say  
that to him.

INTERVIEWER So you don't know Miguel Sedilla?

ANGARITA No, no.

INTERVIEWER So if he uh, gave them your name, or mentioned  
your name—

ANGARITA Yeah. Wha-what do you mean?

INTERVIEWER Then there's no connection there?

ANGARITA Oh no, you can talk to any person. (Inaudible)  
be down here. (Inaudible) my (inaudible) right  
now, I'll have some coffee or something like  
that. But I just like to finish this, and I want  
to see what is going on. I don't want to running  
away. I don't want to wait, nothing. Running  
away, when somebody, you know, might happen, my  
son coming to stay here in United States, and  
somebody kill it—hey, you kill my father, son—I  
don't want stuff like that. Because I know how  
these South Americans think. I found it out how  
they think.

INTERVIEWER Yeah.

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ANGARITA            You know, somebody comes to me and say, hey, that  
                          guy kills his father—you know, (inaudible) to  
                          that.

INTERVIEWER        Do you know Carlos Tijiboy? [phonetic]

ANGARITA            Carlos what?

INTERVIEWER        Tijiboy.

ANGARITA            No, (inaudible).

INTERVIEWER        You don't know him?

ANGARITA            Carlos Tee—no.

INTERVIEWER        Tijiboy.

ANGARITA            No.

INTERVIEWER        Have you ever heard of him?

ANGARITA            No, I didn't.

INTERVIEWER        No? How about uh, Jose Ibanez?

ANGARITA            Jose Ibanez?

INTERVIEWER        Do you know that name, Jose Ibanez?

ANGARITA            No.

INTERVIEWER        He owns a restaurant on El Camino.

ANGARITA            I had to take a look at the pictures.

INTERVIEWER        See, that's why a picture, (inaudible).

ANGARITA            Yeah. No, I don't--

INTERVIEWER        You don't know that name?

ANGARITA            No, uh-uh.

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INTERVIEWER No?

ANGARITA No.

INTERVIEWER Do you know that name Luis Lorianano?

ANGARITA Luis Lorianano? Yeah, I meet him from before.

INTERVIEWER You met him?

ANGARITA Yeah.

INTERVIEWER Who, who is he?

ANGARITA Oh, he used to have a, be a manager in a shop--

INTERVIEWER (Inaudible.)

ANGARITA I have my business in 24th Street. He used to work in East Side Auto Sales.

INTERVIEWER He, he worked what?

ANGARITA East Side Auto Sales, right in the corner. I have my shop in 24th Street.

INTERVIEWER Okay, here's Santa Clara, and here's 24th.

ANGARITA Uh-huh.

INTERVIEWER Where's your shop, right in the corner?

ANGARITA Here's, oh, excuse me. Here is my shop.

INTERVIEWER Mm hmm.

ANGARITA And here is his shop over here.

INTERVIEWER Oh, his shop's across the street?

ANGARITA Yeah. And he har-, he's (inaudible)--I know him, before.

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INTERVIEWER      So Luis owns this store?

ANGARITA          Yeah.

INTERVIEWER      Does he know Orestes?

ANGARITA          I don't think so.

INTERVIEWER      No?

ANGARITA          I don't think so.

INTERVIEWER      And what kind of business is that?

ANGARITA          This is a car sales-

INTERVIEWER      Car sales?

ANGARITA          Import cars, yeah. Of cars, and so-

INTERVIEWER      Did he sell you a car?

ANGARITA          Pardon me?

INTERVIEWER      Did he sell you a car?

ANGARITA          No, we, he just drops by my business, and I go  
into, he goes there, and coming back here.  
Nervous.

INTERVIEWER      What nationality is he?

ANGARITA          I think he's Puerto Rican.

INTERVIEWER      Puerto Rican?

ANGARITA          Yeah.

INTERVIEWER      So he's not Colombian?

ANGARITA          No, he's not. Not what I know.

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INTERVIEWER Well, we're gonna try to figure this out for your protection, and I'll definitely talk to the Groyo family.

ANGARITA Yeah. Whatever it is, I be (inaudible). Yeah.

INTERVIEWER 'Cause you don't wanna go through a lawsuit of any sort.

ANGARITA Wh-what do you mean by that?

INTERVIEWER I mean, you'd rather have this straightened out, and not be going to-

ANGARITA Yeah, I'd like to straighten it out, this thing, because I don't like to be in problems.

INTERVIEWER Yeah.

ANGARITA I just like to go outside for lunch, and I be sure I have my lunch, and not somebody come and shoot me.

INTERVIEWER If we called your uh, if we needed to get a hold of you, and called your-

ANGARITA Just call my attorney.

INTERVIEWER And we called your-

ANGARITA I be sure (inaudible) have my address. I don't know (inaudible)-

INTERVIEWER (Inaudible)-

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ANGARITA           And I have to talk to my attorney about that, because in that case, I really, I have some, too many problems in this town, you know. But I don't want to go away, and running away, just for (inaudible).

INTERVIEWER       Well, we'll get this straightened out.

ANGARITA           Yeah. I appreciate that.

INTERVIEWER       We'll definitely get this straightened out.

ANGARITA           Whatever. I-

INTERVIEWER       But tell me one thing: if umm, if we try to get a hold of you through your attorney, and we called him, let's say, this afternoon, lawyer's (inaudible)-

ANGARITA           It's my promise-I going straight to his office right now, again. He's in court this morning.

INTERVIEWER       Jose, listen...

ANGARITA           Oh, I'm sorry.

INTERVIEWER       (Inaudible), listen.

ANGARITA           (Inaudible.)

INTERVIEWER       Let's say we straighten something out today, and we try...

ANGARITA           Mm.

INTERVIEWER       To get a hold of you.

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ANGARITA Mm hmm.

INTERVIEWER So we call your attorney. How is he...

ANGARITA Yeah.

INTERVIEWER Gonna find you?

ANGARITA Oh, I going to give you a phone number, that way...

INTERVIEWER (Inaudible)-

ANGARITA He can find me. I going to talk to a friend of mine-

INTERVIEWER You're gonna give him a phone number?

ANGARITA Yes.

INTERVIEWER I think you'd better give us a phone number.

ANGARITA No, I'm going to talk to friend of mine, and tell him, can I use the phone for, I don't have no phone right now.

INTERVIEWER Why don't you call us then, and give us that phone number...

ANGARITA Okay.

INTERVIEWER Too?

ANGARITA I give you too, yeah. Okay. I don't know...

INTERVIEWER 'Cause if we're gonna-

ANGARITA What I'm thinking.

INTERVIEWER Well, we're not gonna give that phone number out.



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ANGARITA Oh, okay.

INTERVIEWER Obviously.

ANGARITA Okay, because you know, I-

INTERVIEWER I don't like going through attorneys.

ANGARITA Okay-

INTERVIEWER (Inaudible)-

ANGARITA I go this two years, and this time I only been  
(inaudible) coming (inaudible), coming for. You  
know, I (inaudible) like that. You know, he  
goes, coming by, and coming for. For what? For  
nothing-lose money, and lose money in, in  
lawyers, and everything.

INTERVIEWER How long has this person been your lawyer? How  
long has he been...

ANGARITA Oh, I don't know.

INTERVIEWER Your attorney?

ANGARITA Oh, my lawyer? (Inaudible.) I thought you say  
how long (inaudible). Uh, like a couple years.

INTERVIEWER Couple years?

ANGARITA Couple years.

INTERVIEWER Have you owned any jewelry businesses in uh,  
Santa Cruz, or any other...

ANGARITA Mm-mm.

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INTERVIEWER Counties?

ANGARITA No.

INTERVIEWER Only this county? Santa Clara-

ANGARITA Only right here, yeah.

INTERVIEWER Can you think of anything else?

INTERVIEWER 2 No, I just, I need to get one more picture-I've got one, came out a little bit dark.

INTERVIEWER Oh.

INTERVIEWER 2 (Inaudible)-

INTERVIEWER I need, I'm gonna put a new telephone number down here, okay, while--

ANGARITA Okay.

INTERVIEWER While you're gettin' your picture taken.

INTERVIEWER 2 Okay, that should, that should do it, Jose.

INTERVIEWER Okay, that's my direct line. Call me, umm--

ANGARITA Okay.

INTERVIEWER So you're gonna call me this afternoon, and give me-

ANGARITA I call you.

INTERVIEWER Give me your...

ANGARITA I call you.

INTERVIEWER Friend's telephone number?

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ANGARITA Yeah, I have to tell it to, to my attorney,  
explain to him everything, what happen  
(inaudible).

INTERVIEWER Well, he told you to come over here, didn't he?

ANGARITA Well I, I tried to (inaudible) last Friday, and,  
but he (inaudible).

INTERVIEWER Tried to get-

ANGARITA He's in court right now.

INTERVIEWER Back up a minute. You tried to get a hold of him  
Friday?

ANGARITA Yeah, like, it's last uh, last, because we had  
not finish my divorce then.

INTERVIEWER Oh.

ANGARITA So it's coming on that, he say he's in the limbo,  
(inaudible) working, and I need to finish that  
one too.

INTERVIEWER Have you told him anything about this?

ANGARITA Not right now, not yet.

INTERVIEWER (Inaudible.)

ANGARITA (Inaudible), I just go straight to talk to him  
what happened. I say, I better go to the police  
department first, and then I go and tell to him  
what happen.

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INTERVIEWER Umm-

ANGARITA I just explain to him something (inaudible), and so he don't understand, so I have to go in person. We already had large thing, uh, we can't understand. But I go to then, and explain to him what happen.

INTERVIEWER And then you tell him you've contacted...

ANGARITA Yeah, well-

INTERVIEWER The San Jose Police, well-

ANGARITA I no have nothing to hide, so I come in here, and-

INTERVIEWER 2 (Inaudible) look like you got, got him when he was, uh-

INTERVIEWER Sleeping.

INTERVIEWER 2 Sleeping.

INTERVIEWER We'll try to get this straightened out right away.

ANGARITA Mm.

INTERVIEWER You know what I was thinking, too, as far as-do you normally on all your interviews, take fingerprints?

INTERVIEWER 2 Most of 'em.

INTERVIEWER For interviews?

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INTERVIEWER 2 Most of 'em.

INTERVIEWER So we know who's who?

INTERVIEWER 2 Yes.

INTERVIEWER And then, plus, if uh—we'll get this straightened out with him.

ANGARITA Mm.

INTERVIEWER I promise you, we will.

ANGARITA (Inaudible) for anything.

INTERVIEWER This way, you won't have to involve lawyers. You're gonna, do you have an appointment with your lawyer right now?

ANGARITA Well, I was this morning, and I leave a note, and so I coming by--so he's, he's supposed to be in court--so I have to coming by and talk to him.

INTERVIEWER Okay. Do you have any problem with me contacting your lawyer after you talk to him?

ANGARITA Pardon?

INTERVIEWER Do you have any problem with me contacting your lawyer--

ANGARITA No, no, no, no.

INTERVIEWER Okay. I'll wait 'til you talk to him first.

ANGARITA Okay, that's fine.

INTERVIEWER Okay. What, what's his address, and first name?

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ANGARITA My attorney?

INTERVIEWER Mm hmm.

ANGARITA Just (inaudible) Leonardo.

INTERVIEWER Lee, Leonardo?

ANGARITA Yes. This is change--this here by (inaudible) and  
by, Hedding?

INTERVIEWER Hedding.

ANGARITA He just moved in one, one--do I give you the, I  
give you the (inaudible) his card.

INTERVIEWER 2 You gave me uh, the card, I thi-, or I gave the  
card back to you, Jose.

INTERVIEWER So you got a son, and you have a sister in town.  
That's the only family we have to worry about,  
besides yourself? No cousins?

ANGARITA No family.

INTERVIEWER No family except sister and son.

ANGARITA Mm hmm.

INTERVIEWER And ex-wife.

ANGARITA And ex-wife.

INTERVIEWER Now, the 13-year-old son, is he your natural son?

ANGARITA He's my son. What do you mean, naturally? Uh--

INTERVIEWER How long were you married to the American woman?

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ANGARITA Oh, I only been married when, had like in, we had a daughter with her.

INTERVIEWER You had one daughter with her?

ANGARITA Yeah, she's uh, matter of fact, she's four right now. Four years old.

INTERVIEWER You have that all straight? You were married to what, a Colombian lady for-

ANGARITA No, no, no, no. We uh, he, she just the mother of my son.

INTERVIEWER Oh, the mother of your son. Was she--

ANGARITA Yeah. And then I married to the American girl, uh, I (inaudible). Julie.

INTERVIEWER Julie? And uh, does she still have your last name?

ANGARITA I don't know. Maybe not, I don't--

INTERVIEWER 2 What was her, her last name before she was married?

ANGARITA Hubka. [phonetic]

INTERVIEWER 2 Hope?

ANGARITA Hubka.

INTERVIEWER -ka?

ANGARITA Hubka, yeah.

INTERVIEWER How do you spell it?

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ANGARITA Ay yi yi. This is H-o-o-b-a-a-r-b, I guess.

INTERVIEWER (Inaudible.)

ANGARITA Hubka.

INTERVIEWER (Inaudible) is this?

ANGARITA This is it.

INTERVIEWER Okay. So you call me this afternoon--first we'll get the fingerprints. Then you call me this afternoon...

ANGARITA Mm hmm.

INTERVIEWER Give me that telephone number, and I'll let you know...

ANGARITA Okay.

INTERVIEWER If I got anywhere on this yet.

ANGARITA Okay. Whatever.

INTERVIEWER Okay?

ANGARITA Okay.

INTERVIEWER Thank you.

ANGARITA So what time you let me come in? Oh, you have me coming by (inaudible) call you?

INTERVIEWER He can call me.

ANGARITA Oh.

INTERVIEWER 'Cause I know you're busy.

ANGARITA Call-



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INTERVIEWER He can call me.

INTERVIEWER 2 (Inaudible), want this one too?

INTERVIEWER Yeah, thank you. Where we just go, come from  
(inaudible).

INTERVIEWER 2 No, we gotta go downstairs on the second deck.  
Uh, I'll be, why don't you hang tight, Jose, and  
I'll be right, right back.

INTERVIEWER I'll find out something today on-

ANGARITA (Inaudible) nothing.

INTERVIEWER Got one person in custody, already, on this  
(inaudible).

ANGARITA Yeah. You know, I, I-

INTERVIEWER If you knew him, I could understand that.

ANGARITA Yeah, but I don't-

INTERVIEWER But you've never met him.

ANGARITA I don't know (inaudible). I don't even know why  
(inaudible). I don't even know why (inaudible)  
he's lying about it. I don't understand why  
(inaudible). And I know Luis is going to jail  
for (inaudible) something like this. But I don't  
know nothing.

INTERVIEWER Did, did Luis know uh-

ANGARITA (Inaudible.)

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INTERVIEWER Orestes?

ANGARITA No.

INTERVIEWER You don't think so?

ANGARITA No.

INTERVIEWER Hmm.

INTERVIEWER 2 Okay.

INTERVIEWER (Inaudible.)

INTERVIEWER 2 Good. Alright. (Pause.) Here.

ANGARITA (Inaudible.)

[Inaudible voices continue in background]

End of tape

**EXHIBIT 14**

Date	Comments
2/06/84	Met w/D.D.A. and Timothy Guero advised to O/T and interviewed the Guero family, report
2/07/84	Worked on report attempted to reach Maria San Tried to call Det McDonald NYPD 212 222-5339 (415) #297-9377 Attempted contact of Doses 326-6522
2/08/84	Sent police report to Det McDonald @ 52nd Precinct 3016 Webster Ave Bronx, New York 10467
"	Worked on reports / memos to D.A.
2/10/84	Worked on Field spoke to NYPD w/reports on their case Talked to Sgt. Brockman re / Ancestry NANCE, Ronnie
2/17/84	Interviewed w/inmate Ronnie NANCE re / Homicide info
"	Called Svalle P.D. Det Jim Stone re / info
"	" Santa Clara P.D. Det <del>Jim</del> Fries check ownership of gold + silver
"	995-6506 Santa Cruz P.D. Det Vinco Hurley - will check <sup>on photo in file</sup>
"	Worked on checking info w/ D.A. Jim Lassit
2/22/84	Re-interviewed Nance re info
2/23/84	Checked apt located @ 655 So. Fair <sup>New</sup> <sup>York</sup> <sup>East</sup> <sup>Side</sup> <sup>NY</sup> Svalle Gold + Silver Exchange
2/24/84	Talked to Sgt. Brockman S.A.P.D. / Sgt. Tom Henneley Santa Clara re / Luis A. Laureano / AKA JOSE, Lynn (NANCE) France advised she spoke to Price / CALE re / Hit. Told D.D.A. W. V. LEAMAN
2/27/84	Met w/ Det Vinco Hurley Santa Cruz P.D. interviewed NANCE met w/ Steven John PRICE requested him to contact Svalle. Met w/D.D.A. Tom Ehrenhoffs re / case + C.I.
2/28/84	Worked on gasl report etc ... info
2/29/84	Went to Main Jail w/ P.D. Jim David on sales inter NANCE advised info chad end re gasl. Met w/ Parole officer Eric Saylor (discuss confidential info)
3/01/84	Worked on case met w/T. Guenoro @ 2/29/84 re / Dose (Columbian) x-partner to Scott Burke / advised D.D.A. Beatty the info on the whole investigation so far, no decision re / search warrant.
3/02/84	Met w/D.D.A. re search warrant / negative (not enough PC) will interview next week
3/05/84	Attempted to contact Dose's mother Dena re / evidence
3/06/84	Checked <del>Don</del> Gold-Silver store located @ 385 2nd St. S. 95112
"	" w/ Scott Burke @ coin store on 2nd St. gave Jose Ingarit
"	as dad's x-partner - ran name
"	Contacted S.P.D. Burglar requested call back re / West Bay Gold + Silver
"	Went to A's mother residence and <sup>1655 E. Santa Clara St.</sup> picked up evidence

**DECLARATION OF SERVICE BY MAIL**

Case Name: *People v. Miguel Angel Bacigalupo*

Case No. **S079656**

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 6, 2001, I served the attached

**RETURN TO ORDER TO SHOW CAUSE AND MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF RETURN**

in the internal mail collection system at the Office of the Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, California 94102, for deposit in the United States Postal Service that same day in the ordinary course of business in a sealed envelope, postage fully prepaid, addressed as follows:

Kevin Little, Esq.  
2115 Kern Street, Suite 330  
Fresno, CA 93721

Robert Bryan, Esq.  
1738 Union Street, Second Floor  
San Francisco, CA 94123-4425

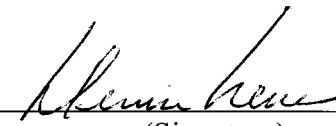
California Appellate Project  
Steven W. Parnes, Esq.  
One Ecker Place, Suite 400  
San Francisco, CA 94105

Clerk of the Court  
Santa Clara County Superior Court  
Criminal Division  
190 West Hedding Street  
San Jose, CA 95110-1706

Honorable George Kennedy  
Santa Clara County District Attorney  
70 W. Hedding Street, 5<sup>th</sup> Floor  
San Jose, CA 95510

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on September 6, 2001, at San Francisco, California.

DENISE NEVES

  
\_\_\_\_\_  
(Signature)