STATE OF ILLINOIS)
) SS:
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT OF DU PAGE COUNTY
FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, vs. STEPHEN BUCKLEY, ROLANDO CRUZ and ALEJANDRO HERNANDEZ Defendants.	Nos. 84 CF 361-01-12 84 CF 362-01-12 84 CF 363-01-12 BEFORE JUDGE KOWAL AND A JURY Wednesday, January 30, 1985 9:30 o'clock A.M.

The trial of the above-entitled cause resumed pursuant to adjournment.

PRESENT:

MR. KNIGHT

MR. KING

MR. JOHNSON

MR. LUND

MR. WESOLOWSKI

MR. LAZ.

written motion.

86 MR. KING: Are there any other motions you're going to file?

MR. LAZ: Well, it depends on what witnesses you're going to call.

(Whereupon, the following proceedings were had in the hearing of the jury:)

T H O M A S E. V O S B U R G H,

called as a witness by The People of the State of Illinois, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By: Mr. King

Q You're under oath?

A Yes.

Q Can you tell us your name and spell your last name for the court reporter?

A Thomas E. Vosburgh, V-o-s-b-u-r-g-h.

Q And how are you employed, sir?

A Detective for the DuPage County Sheriff's Office.

Q Were you so employed on April 16th of 1983?

A Yes, I was.

87

Q Directing your attention to that time, did you have an opportunity to meet with the defendant Rolando Cruz?

A I believe that would have been April 19th.

Q Did you meet with Rolando Cruz on April 19th?

A Yes, I did.

Q Where did you meet him, Officer?

A Myself and Detective Kurzawa met with him at 116 West Galena. It's a hotel there.

Q Do you recognize that individual, Rolando Cruz, as being present in the courtroom today?

A Yes. He's sitting at the second table behind these front two with the brown sportcoat on, tan, with the brown tie.

Q Longer or shorter hair since they're both wearing brown?

A Light brown, longer black hair.

MR. KING: May the record reflect the identification of the defendant?

THE COURT: The record may show identification.

BY MR. KING:

Q Directing your attention to the date of April 19th at approximately 10:00 o'clock in the morning, did you have a conversation with Mr. Cruz?

A Yes, we did.

Q Who was present for the conversation in addition to yourself and the defendant Rolando Cruz?

A Detective Kurzawa.

Q What, if anything, did the Defendant Cruz have occasion to relate to you at that time?

A We asked him if he knew Alexander Hernandez.

Q What, if anything, did he tell you?

A He stated that he did.

Q Did you have occasion to ask him any other questions reference geographical areas?

A We asked him if he was aware of any parties that took place in the Eola area and he said he was, but he never attended them.

Q Directing your attention to May 9th, 1983, approximately 8:30, were you on duty?

A I was at home at the time.

Q And at that time did you have occasion to receive a call from the Sheriff's Police?

A Yes, I did.

I received a telephone call from dispatch.

They stated that there was a subject by the name of Rolando Cruz that wanted to meet myself and

Detective Kurzawa.

Q Subsequent to receiving that dispatch from the Sheriff's Police, did you have occasion to go anywhere?

89

A Yes, I did.

First I telephone Dennis Kurzawa and advised that I was going over to Aurora to meet with Rolando. And he said, fine, I'll meet you back at the office. Bring him back to the office.

Q Where did you go?

A I first went over to the public library in Aurora. That's where I was supposed to meet him at.

Q Now, approximately what time do you suppose you got to the public library in Aurora?

A It was somewhere around 9:00 o'clock, shortly thereafter.

Q And when you arrived at the Aurora Public Library, did you observe the defendant Rolando Cruz?

A No, he wasn't there. The library was closed.

Q So where did you travel then?

A I went back over to 116 West Galena to the motel or hotel.

Q And at that time did you have occasion to meet with Rolando Cruz?

A Yes.

As I pulled up, he walked up alongside
90 of my car.

At that time I asked him to get in.

Q Did you have occasion, then, to travel with him anyplace?

A Yes, I did.

Q And where did you travel with him to?

A We came back to the Sheriff's Office here.

Q Now, while you were en route to the Sheriff's Office from the motel or hotel on Galena Avenue, did you have occasion to reach a particular intersection?

A Yes, the area of Route 56 and Kirk Road and Farnsworth. They're one and the same there.

Q As you reached this particular area did you begin to have a particular conversation with said defendant?

A Yes, I did.

Q Now, who had been present for this conversation at that time?

A Just myself and Rolando Cruz.

Q And approximately what time did it take place on May 9th, 1983?

A I would estimate about 9:30.

Q What if anything did the defendant Rolando Cruz have occasion to relate to you at that time?

MR. LAZ: Objection for the reasons previously stated, Judge.

THE COURT: All right.

You may continue.

MR. KING: Thank you, your Honor.

THE WITNESS: He stated that he had a vision earlier that day.

BY MR. KING:

Q Did he have occasion to relate to you the details of that vision that he had earlier that day?

A Yes, he did.

He stated that in this vision -- it was reference the girl that was abducted out of Naperville -- he stated that in his vision he saw her being taken from a home and placed into a car.

Q Did he tell you how she was taken from the home?

A I believe he said she was dragged out of the house.

Q What if anything else did he tell you?

A He stated that -- he kept telling me: It's not true.

He says, I don't want to believe this.

At that time I said, why don't you just continue with your vision and tell me everything that you saw in your vision, at which time he continued on with his vision.

Q And what if any other details did he have occasion to relate to you from his earlier vision?

A He stated that the girl was dumped near a field.

He stated also that she had been hit in the back of the head so hard that it left an impression in the mud of where she laid.

He also stated that she had been violated sexually anally.

Q What if anything happened next?

A He kept asking me: Is it true? Is it true?

I said, why don't we wait. We'll meet with Dennis at the Sheriff's Office.

At that time we arrived at the Sheriff's Office.

Q After you arrived at the Sheriff's Office, can you tell us where you went with the defendant Rolando Cruz?

A We went into the interview room where Dennis

was waiting for us and he sat down at the table there.

Q Can you relate what if anything transpired between you and Detective Kurzawa at that time?

93

A Dennis and I stepped out into the hallway and I advised Dennis what had transpired, what the conversation was, in the car en route to the office.

Q What happened next?

A Pardon?

Q What happened next?

A Next we walked into the interview room and I asked Rolando, I said, would you please repeat this for Dennis here?

And he related the story again to Dennis.

Q After he related the vision for the second time, did you have occasion to do anything?

A Yes.

We placed one picture, it was an 8 by 10 black and white, of the crime scene with the victim laying there.

We had that face down on the table.

We also had a 5 by 7, I believe it was a colored photograph, that I believe was taken out of the school book, or it was a school picture that was taken. We had that face up on the table. And we asked

him to take a look at the picture.

At that time he turned away and says, I don't want to look at it. I don't want to look at it.

94

I said, well, Rolando, we have another picture here. And I said, I think it's going to depict what your victim -- the vision that you had, it's true.

He said, I don't want to see it. I refuse to see it.

He became emotionally upset and started to cry.

At that time Dennis and I exited the room.

Q Up until the point --

MR. WESOLOWSKI: I didn't hear. Dennis and --

THE COURT: Repeat the last part of your answer, please.

THE WITNESS: Dennis Kurzawa, Detective Kurzawa, and I left the room.

BY MR. KING:

Q Up until that point that you have described where he turned around away from the pictures and started to cry, had he ever -- had you ever displayed to him or showed to him that 8 by 10 black and white crime

95

scene photo?

A No.

Q That particular photo that you're describing, the 8 by 10 black and white photo, was it a close-up of any particular injuries?

A No, it was not.

It was an overall picture of the body lying there.

Q A picture of the body as it appeared on the Prairie Path?

A Yes.

Q A short time later did Mr. Cruz have occasion -- the defendant Rolando Cruz have occasion to make a request of you as to where to stay?

A Yes.

He wanted to stay either at the Sheriff's Office or someplace where we could put him because he was in fear of his life in Aurora.

Q And did you make arrangements at that point to begin letting him stay someplace?

A Yes.

He stayed -- that night he stayed at the Sheriff's Office.

We obtained a mattress and a blanket from

the jail.

MR. KING: I have no further questions, Judge.

96

THE COURT: You may cross examine.

CROSS EXAMINATION

By: Mr. Laz

Q Mr. Vosburgh, did you ever know Rolando Cruz to live in a wooded area in Aurora?

A In a wooded area?

Q Yes.

A No.

Q Any time that you were in contact with him, did he live in a regular apartment or something like that?

A When we made contact with him, yes, he was living at 116 West Galena.

Q Now, it's true -- you said that you got a call from him on May 9th and that's because he had yours and Kurzawa's number to call.

Is that right?

A No.

Q Did he just call the plain old Sheriff's number?

A Yes. We gave him the radio room number.

Q Now, you talked with him earlier than May 9th,

and that was on April 19th of '83?

A Yes.

Q And was that the first time that you talked to Rolando Cruz in connection with this case?

A Yes, April 19th was the first meeting.

Q And there developed after that a relationship, if you will, with Rolando Cruz going out to try to help you solve this crime, isn't that right?

A I don't know if he actually went out and helped us solve it.

We went and asked him questions.

Q And did you ask him to go out and ask other people questions and find information for you?

A No, I don't believe so.

Q You didn't make him an informant to try to help you?

A No.

Q When you met with him on April 19th of 1983, did you discuss the circumstances about the [redacted] case?

A We advised him why were were there, yes.

Q What did you tell him?

A That we were investigating the abduction and murder of a 10-year old girl out in Naperville.

98

Q Well, let me ask you if you knew at some point in time that Rolando Cruz was being paid by the State's Attorney's Office? Did you know that?

A On April 19th?

Q At any time in the investigation.

A Not to my knowledge, no.

Q Did you know they were paying for any of his room and board?

A I don't know.

Q Now, how long did you say you were with the Sheriff's Office?

A I'm starting my 12th year.

Q Is this the only time you have ever had a job as a law enforcement official?

A Yes. After I graduated college I started here.

Q And before you started college -- or I'm sorry.

After you graduated college and you started with the Sheriff's Office, did you receive any training?

A Yes, I have.

Q And that training was police-type training; you went to some school or what have you to learn how to be a policeman?

A Several schools, yes.

Q And how many of those schools talked about the importance of making reports?

99

A Basic training did, yes.

Q And you were told that you really should make reports; you get a lot of information; lots of times cases don't go to trial for a long time, so you should have reports to refresh your recollection if and when it becomes necessary.

Is that true?

A Yes.

Q And you were also told, and based on your experience, you don't put every little bitty thing into a report, do you?

A That's correct.

Q Just the important things?

A Yes.

Q And I take it that the testimony which you attribute to Ron Cruz was certainly important enough to come here and tell.

Is that correct?

A That's correct.

Q Was it important enough to make a report, sir?

A I was advised that a report was not necessary.

Q Who told you that?

A The State's Attorney's Office, because they were going to convene the Grand Jury within two days.

Q Well, you talked with Ron Cruz on tape, did you not, you and Kurzawa?

A No, I did not.

Q Did you know whether or not Kurzawa talked to him at any time that it was recorded on tape?

A Yes, I believe Dennis did talked to him twice.

Q He talked to him on May 2nd, didn't he?

A I'm not sure of the exact days, or that day. I know that he made one on May 10th.

Q And when you went with your tape recorded interview of Rolando Cruz on May 10th, that was eventually transcribed and reduced to writing, isn't that true?

A I didn't make that taped interview.

Q Were you present when this was done with Cruz?

A No, I was not.

Q Were you made aware of the substance of that conversation?

A I was advised that there was a tape recording made, yes.

Q And that was made by Kurzawa and Cruz alone?

A That's correct.

101 Q And during that conversation on May 10th, which was the day after you say Cruz told you about this vision that he had, to your knowledge, did Kurzawa ask him anything on tape about that vision?

A I wasn't present. I don't know.

Q To your knowledge. I know you weren't present.

A Did he ask him about it?

Q Yes.

A No, I don't believe so.

Q When is the first time that you told the State's Attorney's Office of this County that Cruz made that statement to you?

A Dennis relayed it the night of May 9th, 1983.

Q And I take it because the prosecutors told you it wasn't necessary to make a report, he didn't make one either about this?

A Who didn't?

Q Did Kurzawa make a report about this conversation with Cruz?

A No, he did not.

Q Now, let me direct your attention to January 9th of 1985, approximately 9:00 o'clock in the

morning, were you contacted by a Robert Mull in
102 connection with this case?
A Yes, I was.
Q And he said he wanted to talk to you reference this particular statement that you have given testimony here today.
Is that right?
A That's correct.
Q And Mr. Mull showed you a document, did he not?
A Yes, he did.
Q Sir, I will show you what's been marked Cruz Exhibit No. 8 for identification and ask you if that group of three pages is any of the documents that Mr. Mull showed you on that date and time; specifically, if you look at maybe the second page, Paragraph 10?
A It didn't appear like this, if this is it.
Q Do you remember seeing Paragraph 10?
A He showed me something similar to this.
I didn't really read it.
Q All right.
And after he showed that to you, he said that's what I want to talk to you about.
Is that correct?

A That's correct.

103 Q And this meeting occurred in the DuPage County Sheriff's Office?

A Yes.

Q And that was not in your working area, but outside in, like, a foyer.

Is that right?

A. Yes.

Q And isn't it true, sir, that after he said he wanted to talk to you about it and showed you that, you went back into your office for about 10 minutes before you came out to talk to him, isn't that about right?

A That's correct.

He wanted a specific date. And I said I'd have to get the reports on this.

Q So then you came back out. And he says, can you tell me when this conversation took place?

Didn't he ask you that?

A Yes.

Q And you said, I don't remember, isn't that right?

A I said, I don't remember. I'll have to check the reports for that time period.

104

Q And he asked you where the statement was made. And you said you would have to go back to look at your reports to find out when this happened.

Isn't that what you told Mr. Mull?

A I said I would have to check on that, yes.

Q And Mr. Mull said, well, would you -- didn't you then further tell him that -- didn't you go back and look at that time and try to find the reports right then so you could come back and tell him?

A Just the first time.

Q How many times did you go into the back room area, your working area, of the Sheriff's Office that day?

A Once. Well, during his meeting, once.

Q During Mull's conversation.

A Once.

Q Once?

And didn't you tell Mr. Mull that after you found the reports and refreshed your recollection, you'd give him a call if he left his calling card?

A Yes.

Q Did you ever call Mr. Mull back and tell him that you found out when these conversations took place?

A No, I did not.

Q As a matter of fact, if I understand your testimony here, sir, you're saying you had to go back
105 and refresh your recollection with reports that you have testified were never made.

Is that right?

A I told him -- he wanted a specific date.

I said I would have to check the reports for that period of the investigation.

Q So then, if I understand, there would have been reports made sometime somewhere which you then were able to refresh your recollection with so that you could come in here today and say that this happened on May 9th, isn't that --

A No.

Q You didn't know where or when this conversation occurred when you talked on January 9th?

A He was asking me the specific date.

Q Which you didn't know without looking at some other reports?

A That's correct

Q And none of these other reports, as you have testified now, contain any reference to this conversation, do they?

A That's correct.

106

Q So that what you didn't know on January 9th without looking at any reports, you come here today on January 30th and you recall the dates and the times and all the specifics.

Is that right?

A That's correct.

MR. LAZ: No further questions.

CROSS EXAMINATION

By: Mr. Wesolowski

Q Did you refresh your recollection from any personal notes before taking the witness stand today?

A No, I did not.

Q Did you refresh your recollection from any records of the Sheriff's Office as to either expenditures for Rolando Cruz' housing or other official records of the Sheriff's Office before testifying today?

A Expenditure records?

Q Yes.

A No, I did not.

Q Any other records, official records, of the Sheriff's Office before testifying here today?

A Yes, I did.

Q Did you bring those with you?

A No, I did not.

Q Weren't you under subpoena duces tecum to bring all records you used to refresh your recollection before testifying?

107

A I used the copies of the reports which the State's Attorneys gave me.

MR. WESOLOWSKI: I ask at this time under People v. Wolf that they be produced, Judge.

MR. KNIGHT: It's not under Wolf, but I don't care, anyway. He can look at them.

THE COURT: We won't worry about the citation. Just whatever was used to refresh.

MR. KING: I think if the detective can come down and find them, I'll give him whatever --

THE WITNESS: It would be the report dated April 19th and then the date of Dennis' second interview.

MR. WESOLOWSKI: I ask to have these marked as Defendant Hernandez Exhibit No. 4 for identification.

(The documents were thereupon marked Defendant Hernandez Exhibit No. 4 for identification.)

BY MR. WESOLOWSKI:

Q What date did this conversation take place with Cruz?

A Which conversation?

Q Where you picked him up and drove him into
108 the police station.

A That would have been May 9th.

Q And so from looking at a report dated May 26th, 1983 by you, referring to activity of you and Detective Kurzawa on April 19th, 1983, you refreshed your recollection that the conversation was 10 days before that?

A I did it because I knew it was between that time period of the first contact I had with Rolando Cruz and the taped interview. It was the night before Dennis took the taped interview.

Q It was the night before Dennis took the taped interview?

A Which was May 10th.

Q So this conversation was May 9th?

A Yes, sir.

Q That was taped interview No. 2, wasn't it?

A Yes, I believe it was.

Q Do you know the date of the first taped interview?

A Not exactly, no.

Q Was it before or after taped interview No. 2?

A If you're saying taped interview 2 was May 10th, it was the night before, which would be May 9th.

L09

Q May 9th was taped interview 1?

A I don't know when taped interview 1 was.

Q Where did Rolando Cruz spend the night after he spent the night at the Sheriff's Office?

A That I don't know.

Q Do you know if he was put in a motel and the motel bill was paid by the State's Attorney of DuPage County?

A I don't know that for a fact, no.

Q Did you hear that he was put into a motel and the motel bill was paid by the taxpayers?

A I may have heard it secondhand, but I don't know that for a fact.

Q The person you might have heard it from, would he be your supervising sergeant?

MR. KING: Objection, Judge.

It's calling for speculation.

THE COURT: That's only to determine if that would jar his memory, so to speak.

MR. WESOLOWSKI: If the Court please, they're trying to cover this up.

THE COURT: Just a minute.

110 I tried to explain to the witness.

Now, does that help at all?

THE WITNESS: No.

THE COURT: No?

All right. The answer is no.

BY MR. WESOLOWSKI:

Q. Did you hear from Cruz?

A Did I? No.

Q Did you ever see Cruz after May 9th, 1983?

A I may have. I don't know for sure.

Q Did you ever see him during the month of May or June of 1983?

A For a fact, no, I don't.

Q You don't recall?

A No.

Q Now, you went to the public library to pick him up on May 9th.

Is that correct?

A That's correct.

Q Did he report to you that somebody shot at him?

A Yes, for the third time.

Q And he said it was the third time?

A That's correct.

Q And he had Dennis' number to call, did he not?

A He had the Sheriff's Office number.

Q And the Sheriff's Office called you to go out to the library and get Rolando Cruz because somebody shot at him again?

A And he wanted to talk to us, yes.

Q And all you had was the conversation in the squad which was again repeated at the Sheriff's Office?

A That's correct.

Q And the Sheriff's Office, was that this building here or was it 421 County Farm Road known as the Task Force?

A It was this office right over here.

Q Why didn't you go to the Task Force?

A We weren't there.

Q You were out of there already?

A Yeah.

Q Did you serve any subpoenas, rules or body attachments on Jackie Estremera in this case?

MR. KING: Objection, Judge.

THE COURT: Sustained.

BY MR. WESOLOWSKI:

Q Do you know from official reports in the
112 Sheriff's Office who was the first deputy sheriff, or officer in the Sheriff's Office, such as lieutenant or commander, was that talked to Rolando Cruz before anyone else in the Sheriff's Office?

A No, I don't.

Q In other words, who was the first person in the Sheriff's Office that ever talked to Rolando Cruz?

A It would have been Dennis and I.

Q You and Dennis?

A Yes.

Q Did you go to his residence, wherever he happened to be at that time, and hang a note on his door?

A We left several messages there, yes.

Q Was one of them a note that was left on his door?

A No.

Q How would you leave a message?

A There's a lady that tends the desk down there.

Q This was at the hotel?

A Yes.

Q And did you make any reports on those contacts?

A No. They were a negative contact.
Q You never got to talk to him?
113
A The first time we talked to him was the 19th.
Q The 19th or the 9th?
A The 19th of April.
Q The 19th of April.
Who dispatched you to go to 116 West Galena in Aurora?
A On what occasion.
Q The first time.
A Nobody dispatched us there.
Q You went for a ride to Aurora to 116 West Galena for no reason?
A Dennis had checked information through Aurora P.D. and came up with that address for Cruz.
Q Dennis was looking for Cruz?
A We both were, yes.
Q This was in April?
A Yes.
Q Did someone tell you to look for him?
A No. Dennis had --
Q Did you write a report why you were looking for him?

A Dennis had come up with a tip that he may know information on this.

114

Q That's what I was looking for. Dennis came up with it.

Did he write a report on it?

A I don't know if Dennis did or not. I wasn't with him at that time.

Q. You weren't working with him at that time?

A No, I wasn't there when he developed that lead.

Q Did you investigate whether or not Rolando Cruz, after he made the taped statements to Kurzawa, if he went out and tried to buy a car or test drove a car?

A I don't understand the question.

Q Did you ever go to Aurora to check out with a car dealership whether Rolando Cruz test drove an automobile?

A No, I did not.

Q The first time you ever saw Rolando Cruz in your lift was May 9th?

A No. April 19th.

Q April 19th.

And at that time did you show him a photograph -- did you have a photograph with you of a

towel to show him?

A I don't know if we had it at that time or not.

115 I'm not sure.

Q Well, early on in this investigation did you have a photograph of a towel that you took and showed everybody that you talked to about this case?

A We had photographs of the towel, but I didn't show it to everybody, no.

Q Well, you showed it to most people that you talked to that you were trying to get information from?

A Yes, that's correct.

Q Did you have a photograph of a shoe that you carried with you to show to people prior to the time that Steve Buckley's shoe was turned over to the Sheriff's Office?

A No, I did not.

Q You never had one?

A No.

Q Did you at any time show Rolando Cruz at the April 19th meeting any photographs of [redacted] [redacted]s body in the woods?

A No, we did not.

Q Did you tell him about what the scene was?

A No, we did not.

116

Q And at that meeting you were not the first deputy to talk with Rolando Cruz.

Is that correct?

MR. KING: Which meeting is this, Judge?

MR. WESOLOWSKI: April 19th.

THE WITNESS: Dennis and I met him together.

BY MR. WESOLOWSKI:

Q. On that occasion, on April 19th?

A We were both standing together.

Q On April 19th?

A That's correct.

Q But that was not the first contact that the Sheriff's Office had with Rolando Cruz?

A To the best of my knowledge, that was the first contact.

MR. WESOLOWSKI: I have no other questions except for the exhibit I had marked.

MR. KNIGHT: It's up there, I think.

THE COURT: All right.

Any other questions?

MR. JOHNSON: Yes, Judge, I do. But before I do, I would ask for a sidebar to talk to you about some questions that I do have.

THE COURT: All right.

While we're doing this, ladies and gentlemen of the jury, stand up and stretch a little bit.

117

(Whereupon, the following sidebar discussion was had outside the hearing of the jury:)

MR. JOHNSON: Judge, I intend to ask this witness if during the course of either of those statements my client's name was mentioned.

I cannot find the police reports on the April -- what was it? The 16th or 19th?

MR. KING: 19th.

MR. JOHNSON -- April 19th.

And I don't know whether I'm treading on thin ice regarding prior Court rulings.

MR. KING: You are.

There is no mention of Steve Buckley in any of the statements.

MR. JOHNSON: Was there mention of Hernandez?

MR. KING: Yes, there was. Alex Hernandez was burgling Naperville.

MR. JOHNSON: If I ask the question: Was there mention of Steve Buckley being involved in this crime

on April 19th, would that be sufficient?

MR. KING: That violates -- he can't ask that.

118

MR. KNIGHT: And it's only used against Cruz. And they're entitled to an instruction.

THE COURT: There's a purpose for all of this and --

MR. JOHNSON: I believe I'm entitled to get into these statements where the actual truth of the matter is my client's name was not mentioned.

THE COURT: In keeping with the case as it is, I'm going to deny the going into whether or not your client's name was mentioned.

MR. JOHNSON: Okay.

And, then, Judge, the secondary problem I have with that is that on the May 9th statement, where neither -- I don't know because I don't have a report -- but neither Hernandez nor Buckley's name is mentioned, I can't go into that now because then if I'm going to ask about one statement and I can't ask about another statement, the only inference that can be drawn is that somebody was mentioned, or Buckley was mentioned in the first statement. So it completely blocks me --

MR. KING: There's no inference --

THE COURT: Just a minute.

In any arguement, you're not going to
119 draw any inference from that, are you?

MR. KING: No.

MR. JOHNSON: The inference exists whether they argue it or not.

MR. KING: Not unless they sleep together.

MR. JOHNSON: I just want the record to reflect that I wanted to ask if Cruz had ever mentioned Buckley's name during either of those statements.

If I'm not allowed to ask it on the first -- I feel the inference, if I do ask it on the second statement, on May 9th, and don't ask it on the first, the inference will be that he was mentioned on the first and, therefore, that's the reason I'm not going into it on the May 9th statement.

And I just want that to be known on the record.

THE COURT: Okay.

(Whereupon, the following proceedings were had in the hearing of the jury:)

THE COURT: Mr. Laz, would you care to ask your questions now?

MR. LAZ: Yes, Judge.

THE COURT: Go right ahead.

L20

CROSS EXAMINATION

By: Mr. Laz

Q Just a couple, Deputy Vosburgh.

You were told not to write a report because the Grand Jury was going to look into this, right?

A That's correct.

Q Now, were you ever called before the Grand Jury?

A No, I was not.

Q So, therefore, you never told anybody about this until you told this jury here today, some 20 months later?

A I advised State's Attorney Knight.

Q That was the same day, or the day after it happened?

A Right, that's correct.

Q And the next time you knew you'd have to have any remembering about this was somewhere around January 3rd or 4th of this year?

A I don't recall the exact day, but it was this month, yes.

Q Based on your knowledge of the investigation in this case, is Rolando Cruz the only one who had a
121 dream or vision about this girl and what happened to her?

MR. KING: Objection.

THE COURT: Excuse me. That he knows personally?

MR. LAZ: Yes, sir.

THE COURT: You may answer.

THE WITNESS: No, I don't know if anybody else had other visions.

BY MR. LAZ:

Q You don't know about John Ruiz, then?

A No.

MR. LAZ: No further questions.

THE COURT: Okay.

Mr. Johnson.

MR. JOHNSON: Thank you, Judge.

CROSS EXAMINATION

By; Mr. Johnson

Q Detective Vosburg, were you an investigator for the Sheriff's Office at the time you obtained this statement from Ron Cruz?

A Yes.

Q How long have you been an investigator for

the Sheriff's Office going back from today?

122 A I believe it was the summer of '80 I started in Detectives'.

Q So we're closing in on, what, five years, your being an investigator?

A Yes.

Q The other seven you were a street officer, correct?

A No, not all the time.

Q What were you the other seven years?

A I was approximately six months in Corrections, about four and a half years in Patrol and then I was a field training officer.

Q And as a detective and as a police officer, you're called upon to testify in Court quite often, are you not?

A That's correct.

Q All right.

As a matter of fact, right now you probably have a caseload, what you consider to be a caseload, do you not?

A Yes.

Q And in some of those cases that you have on your caseload now and in some of them you had in the

past, you have testified in Court pertaining to the
123 investigations you took part in?
A That's correct.
Q And sometimes you would testify as to what you saw, correct?
A Yeah.
Q In some of these cases you testified to statements that people gave you, correct?
A That's correct.
Q And in some of these cases you would testify to statements that accused persons or suspected persons gave you, also, correct?
A That's correct.
Q And when you're called in to testify, sometimes you don't testify for six months or a year or two years until after the event took place, correct?
A That's correct.
Q And when you're called to testify, usually before you come into Court you have a conversation with the prosecuting attorney, isn't that correct?
A That's correct.
Q And that's to help you refresh your recollection and also let you know the general area of the questioning that's going to take place during the course of

any given trial you might testify in?

A Yeah, that's correct.

124

Q And before you visit the prosecuting attorney, you make it your habit to go to your case file on whatever given case and go through your reports, whether they be police reports or investigative reports, to refresh your recollection, isn't that correct?

A The reports, yes.

Q All right.

And then you talk to the prosecutor based on your refreshed recollection as to what you just read in those police reports?

A Yes.

Q And then you testify a week, two weeks, maybe three weeks later, whatever, correct?

A It depends, yeah.

Q And before you come into Court to testify, you go back to those police reports so that you get it right, so you don't make any mistakes at trial?

A That's correct.

Q And the reason for that is because when you take the witness stand and swear to tell the truth, you want to be absolutely as accurate as you possibly

can, correct?

125 A That's correct.

Q You don't want to say something wrong one way or the other; you want to be fair and cut it down the middle and tell the truth as best you can recall it with your memory refreshed from your prior reports?

A To the best of my recollection, yes.

Q. When were you first requested to testify in this case pertaining to the statement that you just testified to?

A I don't know exactly.

Q Give me a ballpark date, if you can.

A I really don't know.

Q January of '85?

A I could have been earlier.

Q How much earlier could it have been?

A A month or two.

Q So we're talking November, December of '84 or January of '85?

A That's correct.

Q And you didn't have a report at that time, did you?

A No, I did not.

Q And you never did write out a report, correct?

A No, I did not.

Q And who contacted you to tell you that you
126
were going to testify to this May 9th, 1983 statement?

A The State's Attorney's Office.

Q Was it Pat King or Tom Knight?

A I believe it was Pat King.

Q Okay.

And he told you that you were going to be testifying to a statement that was made to you sometime in the past, correct?

A That's correct.

Q All right.

Did you tell him at that time that oh, yes, I recall the statement took place May 9th, 1983?

A I told him I did not know the exact date that it took place.

Q Okay.

Subsequent to that you found out the exact date somehow that this conversation took place?

A Yes.

Q With regard to the taped statements that were alluded to earlier, there was a taped statement on May 10th, 1983, correct?

A That's correct.

127

Q You weren't there and you don't know what was said, correct?

A No.

Q You were there and you know what was said?

A What?

Q Let me ask it to you in another way.

Were you at the taped statement on May 10th, 1983?

A No, I was not.

Q So do you know what was said at that statement?

A No, I do not.

Q Were you there for the taped statement of May 2nd, 1983?

A No.

Q Do you know what was said at that statement?

A No, I do not.

Q Does the name Little Joe Sanchez mean anything to you?

A I know Little Joe, yes.

Q And was his name mentioned in the May 9th statement in any way, shape or form?

A The May 9th statement --

Q That you just testified to on direct.

A Oh. No.

Q It was not.

Did your investigation turn up the fact that Little Joe Sanchez had access to a green Granada?

128

A Yes; not personally my investigation.

Q That's what the investigation turned up?

A Yeah.

Q With regard to your prior cases that you testified to, have you in some of those cases testified before the Grand Jury as well as written out a police report?

A Yes.

Q So you have taken part in Grand Jury proceedings on a given case as well as given a police report, correct?

A That's correct.

Q And there are some cases that you investigate that you write a police report for and the prosecutor obtains an indictment from the Grand Jury nonetheless, whether you testify before it or not.

Is that correct?

A Yes.

Q Those Grand Jury proceedings have never inhibited you from writing up a report in the past, have

they?

129 MR. KING: Which Grand Jury?

MR. JOHNSON: Any case he's been involved in where a Grand Jury returned an indictment.

MR. KING: Judge, I object. This is irrelevant.

MR. JOHNSON: I don't believe it is, Judge.

I believe this is --

THE COURT: I will allow one or two more questions and then let's go to another part of the cross examination.

BY MR. JOHNSON:

Q Have Grand Jury proceedings ever inhibited you in the past from writing a police report?

A Is that before or after the Grand Jury?

Q At any time.

A Have they ever stopped me from writing a report?

Q Yes, simply because of the fact that a Grand Jury was going to be working on a case.

A Not that I can recall.

Q So this would be the first time that you know of.

Is that correct?

A Yes.

MR. JOHNSON: I don't have any further questions. Thank you, Judge.

130 THE COURT: All right. No further cross examination.

Anything on redirect?

MR. KING: Just a few.

REDIRECT EXAMINATION

By: Mr. King

Q First things first, Detective:

With respect to when you learned that you were going to testify about the contents of a conversation that you had with the defendant Rolando Cruz in which he related his vision and the various details of the vision to you, are you aware of who -- well, who contacted who first to relate that that conversation took place?

A It was you.

Q Fine.

And prior to my contacting you and telling you that you would be required to come into Court and testify about it, did you have occasion to contact me at a social gathering and inform me of this conversation?

A Yes.

Q Prior to you informing me of that conversation at a social gathering in the month of late December, early January, 1985, had I had any contact with you reference that statement at all?

131

A No.

Q Had I ever asked you to come to Court and testify about that statement prior to you informing me about this statement?

A No.

Q And the context of your contacting me, that was to remind me that you knew the statement existed and someone hadn't talked to you about it, isn't that right?

MR. JOHNSON: Objection, Judge. It's a leading question.

THE COURT: Objection sustained.

BY MR. KING:

Q Sir, describe the circumstances which prompted you to contact us to remind us of this statement?

A Nobody had brought it up to me.

Q Now, when you were contacted by my office, or myself to inform you that you needed to testify, or we request your presence to testify, did we ever tell you what to say?

A No.

Q With respect to your needing to refresh your
132 recollection, I believe the exhibits Mr. Wesolowski handed you -- can you tell the jury what they are?

MR. WESOLOWSKI: Objection.

MR. KING: Your Honor, they have been referred to.

THE COURT: Well, he can describe them, but he's not going to read from them.

MR. KING: I don't want him to, Judge.

I just want him to describe them.

THE COURT: All right.

BY MR. KING:

Q Can you describe what they are, sir?

A Yes.

One is a 1983 calendar.

One is the first contact that I had with Rolando Cruz.

Q Dated what?

A April 19th, 1983 at 10:00 o'clock in the morning.

And the other one is the taped interview by Detective Kurzawa and Rolando Cruz dated 5/9/83.

Q Are those the documents that you refer to when Mr. Laz and Mr. Wesolowski asked you what you

needed to make sure you had the right date before you talked to this investigator?

133 A That's correct.

Q And why did you want to check the date to make sure it was right before you talked to their investigator?

A To be sure I had it right.

Q Virtually all of the counsel have asked you about your report writing techniques for the last 12 years, so let me ask you this:

Do you always write a report in every case that you're involved?

A No, I do not.

Q Is there anything special or different about the particular facts or statements that this particular defendant Rolando Cruz related to you in the vision that made them somewhat different or make them stick out in your mind?

MR. LAZ: Objection.

THE COURT: Overruled. May answer.

THE WITNESS: That was the first time during the investigation of this case that somebody came up with specifics as to relating to the crime scene.

BY MR. KING:

Q As we understand from cross examination, you
134 and Detective Kurzawa were the first detectives to initiate contact with the Defendant Cruz.

Is that correct?

A That's correct.

Q From the period of time that you first made contact with Rolando Cruz on April 19th, 1983, up until the time that he related his vision to you, were you the two detectives that were working that particular aspect of the case?

A Yes.

I don't believe anybody else made contact with him.

I'm not sure, but I think it was just Dennis and I.

Q During that period of time, from the first time that you made contact with Rolando Cruz, up until the time that he has gone through and related the vision both to you and Detective Kurzawa, had you or Detective Kurzawa ever related any of the facts that he put in the vision to you?

A No.

We wanted to keep all of those off of

the street; any knowledge about the crime scene, we
135 wanted to keep that to ourselves.
Q And when you say specific knowledge about the crime scene, Detective, can you refer to some of the facts that weren't matters of public knowledge and weren't facts that were related to the defendant Rolando Cruz that he told you?
A That her head was bashed in from behind and it formed an impression in the mud and that she had been violated anally.
Q After the defendant Rolando Cruz related the vision and you related it to Detective Kurzawa and you put him up for the night, did you have any more direct involvement with Rolando Cruz after May 10th of 1983?
A None.
Q You were assigned to other matters?
A Yes, that's correct.
Q And was there anything in particular about the nature of this particular investigation with regards to paperwork being done or completed?
A (No response.)
Q I can rephrase that.
A I don't understand.
Q What can you tell us about the volume of

paperwork that was involved in this particular investigation, at least from your aspect?

136 A Quite a bit.

Q Were you able to keep up with it anytime?

A No.

Q When you contacted the State's Attorney's Office initially after the defendant had related those various facts that weren't matters of public knowledge, did you specifically relate the details of what he had said or just a general substance of what he knew?

A Dennis Kurzawa talked to Tom Knight that night.

Q Were you specifically directed not to write anything or not to worry about it; he'd be appearing before the Grand Jury?

A Not to worry about it; he'd be appearing before the Grand Jury and it would come out in testimony there.

Q And that Grand Jury that you're referring to took place on the 12th, just days after you talked to him, isn't that right?

A It was a couple of days later.

I don't know the exact date.

MR. KING: I have nothing further, Judge.

THE COURT: Recross examination.

137 MR. LAZ: Yes, sir.

RECROSS EXAMINATION

By: Mr. Laz

Q You looked at certain reports to refresh your recollection before testifying today, correct, sir?

A Yes.

Q And that was how you were able to assist your memory being refreshed that this conversation occurred May 9th of '83, right?

A No, I did not refresh my memory from any reports about May 9th.

Q How is it that you remember today about the date of this conversation and all the particulars that you didn't remember in January when Mr. Mull came to talk to you?

A I think Mr. Mull was concerned at that time about the date. And I said I did not know the date. When I had it, I would get back in touch with him.

Q So you had to look at these reports to refresh yourself about the date, right?

A Yes, that's correct.

Q When is the last time that you looked at any reports to assist you about this date prior to today?

138

A When is the last time?

Q Yes.

A I don't know exactly.

It was within this week.

Q What about before then?

A I think this week was the first time that I really sat down and looked at the reports.

Q So that sometime in, what, December of '84 you were at this social gathering with Pat King.

Is that correct?

A That's correct.

Q And you said something like: Pat, do you remember that conversation that I don't remember when it happened? Am I going to have to testify about that with Rolando Cruz?

Is that the way the subject came up?

A No.

MR. LAZ: No further questions.

THE COURT: Mr. Wesolowski.

RECROSS EXAMINATION

By: Mr. Wesolowski

Q You said there was a May 9th taped conversation, or did you mean May 10th?

A Taped conversation is May 10th.

Q By looking at the May 10th conversation notes,
139 you concluded that the day before was the day that you
picked up Rolando Cruz in Aurora?
A Yes.
Q Did you report to the Aurora Police that
Rolando Cruz might have been shot at?
A We checked with -- or I did --
Q Answer my question: Did you report?
A No, I did not.
Q Did you investigate whether Rolando Cruz was
really shot at?
A Yes, I did.
Q Did you find any bullets or areas where there
would be a report that a bullet struck something?
A No, I did not find anything.
Q Did you tell that to Mr. Knight and Mr. King,
too?
A I believe I did tell Mr. Knight that.
Q You did?
A Yes.
Q Do you recall exactly what you told Mr. Knight
about the shooting in Aurora?
A He had asked me on the day of the 10th to see
if I could substantiate that through Aurora P.D. and

check the area where the alleged shooting took place.

And I told him that both were met with negative results.

Q It was negative that you could check with Aurora?

A Aurora had no report of it and I could find no report of it.

Q And you didn't make a report to Aurora?

A No.

Q When you were at the library, did you -- you knew that he had called and said he was shot at in the area of the library?

A I don't know if he -- I didn't talk to him when he called.

Q I didn't think you did.

Did you have a radio report of a telephone report that he was shot at at the library?

A I don't know if it was that he was shot at at the library; no, not at the library.

Q Where did you go to investigate the shooting?

A I went to Aurora P.D. first and checked their records to see if they had any suspicious noises in the area of where this shooting took place.

Q No reports of that?

A No reports.

Q Did you talk to Cruz and ask him where he was

141 shot at?

A Yes, I did.

Q And did you go there and look?

A Yes.

Q And you found nothing?

A Nothing.

Q And you told that to Mr. Knight?

A Yes.

Q And you think you did that on May 10th or 11th?

A I believe it was the day right afterwards. It would have been the 10th.

Q May 10th?

A Yes, that's correct.

MR. WESOLOWSKI: I have no other questions.

MR. JOHNSON: I have no other questions.

THE COURT: All right, sir, you may step down.

(Witness excused.)

THE COURT: All right.

How long will this witness take, approximately?

MR. KING: It's Detective Kurzawa.

I don't anticipate any longer.

142 THE COURT: All right. Well, let's do this:

Let's start with him and go to about 20 after 5:00.

MR. KING: Your Honor, I know he has a problem appearing tomorrow.

Can we anticipate how long the examination will be of the detective? Because we can't continue him on Friday.

If we might have a moment, Judge, I can check with him.

MR. KNIGHT: We're starting at 1:30 tomorrow.

THE COURT: We're starting at 1:30 tomorrow.

THE CLERK: Raise your right hand, please.

(The oath was thereupon duly administered to the witness by the Clerk.)

THE CLERK: Be seated, please.

THE COURT: You may proceed.

MR. KING: Thank you, your Honor.

D E N N I S K U R Z A W A,

called as a witness by The People of the State of Illinois, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By: Mr. King

143

Q Detective, would you please state your name and spell your last name for the court reporter?

A Yes.

My name is Dennis Kurzawa, K-u-r-z-a-w-a.

Q And how are you employed, Detective?

A I'm a detective with the DuPage County Sheriff's Police.

Q Directing your attention to May 10th of 1983, did you have an opportunity to have a conversation with defendant Rolando Cruz?

A Yes, I did.

MR. LAZ: I'm sorry, is that May 9th?

THE COURT: Repeat your question.

BY MR. KING:

Q May 10th, 1983, did you have an opportunity to have a conversation with Rolando Cruz?

A Yes, I did.

Q And approximately what time was it on May 10th of 1983?

A It was in the morning hours, approximately 10:00 a.m.

Q And where did it take place at?

144

A It happened at the DuPage County Sheriff's Office, our old office right here in Wheaton.

Q Who was present for the conversation in addition to yourself and the defendant Rolando Cruz?

A It was just myself and Mr. Cruz.

Q Can you identify Mr. Cruz for the record by an item of clothing he is wearing and where he is seated?

A Yes.

He's seated at the back middle table there.

He has a brown tie and a corduroy jacket, dark hair parted down the middle.

MR. KING: May the record reflect --

THE COURT: The record may show identification.

MR. KING: Thank you.

BY MR. KING:

Q Can you relate to the ladies and gentlemen of the jury the conversation that you had with Mr. Cruz at this time?

A Yes, I can.

Basically, Mr. Cruz related to me what he had, in essence, two conversations, one with a specifically named individual and the other one was with

a subject by the name of Emilio.

145 MR. LAZ: Judge, I'm going to object at this point.

It's been testified to that the conversation was taped. The conversation should be played.

MR. JOHNSON: I also have another objection, Judge, and I'd like to be heard on it, also.

(Whereupon, the following sidebar discussion was held outside the hearing of the jury:)

THE COURT: He made the objection first.

Any answer to that?

MR. KING: The objection is -- yes, Judge.

There was a tape recorded conversation.

THE COURT: Any objection to him having a transcription?

MR. KNIGHT: We'll give him a transcript.

MR. KING: I have no problem with giving the transcription, Judge.

THE COURT: Do you agree with that?

MR. LAZ: I don't have a problem.

I'm sure that the written transcription is accurately transcribed and that's what happened and

146

that's what was said.

MR. KING: It saves a lot of time.

The only problem, Judge --

MR. WESOLOWSKI: I have an objection.

In the transcription Cruz tells that my client confessed to him along with two other people.

THE COURT: That's what I wanted to know.

Is that going to be --

MR. KNIGHT: We can delete it, Judge.

THE COURT: All right. With that removed, okay.

MR. JOHNSON: That's where my objection comes in.

I don't want any reference to any other individual because I want to be able to ask: Was that other individual Buckley?

And according to your prior rulings, now I can't ask that.

MR. KING: This is the same guy that doesn't want to be able to have Alex Hernandez say, I recognize Steve Buckley's shoes.

MR. KNIGHT: You can't have it both ways.

THE COURT: Now, we're getting -- just a minute now -- we're getting the statement that's only pertaining to Defendant Cruz?

MR. KNIGHT: Correct.

THE COURT: All right.

Now, you got -- normally a witness would
147 testify as to any conversation. But you're saying you'd like to have the transcript and you'd like to have it edited?

MR. WESOLOWSKI: I don't want the conversation edited.

MR. KNIGHT: We'll go with what we have, then.

THE COURT: It doesn't go to you. It goes to Defendant Cruz.

I know you don't want it in.

MR. JOHNSON: What's going to be said?

THE COURT: Did you read the transcript?

MR. JOHNSON: Yes, I did. And I want the tape to be played.

THE COURT: At the time, if it's necessary, if there's any question about it.

MR. KNIGHT: He wants the tape because he knows if you play the tape, you have to play the part about who it was.

MR. JOHNSON: I'm not making any secret about that.

THE COURT: Just a minute now.

Is the transcript true and accurate of

the tape?

MR. KING: Fine. I can do that, Judge.

148 THE COURT: The tape can only be a backup in the event of impeachment, but in the absence of that -- the transcript, it's going to be stipulated that it can be put in except for the editing --

MR. KNIGHT: Otherwise he should go ahead with his oral recollections.

THE COURT: -- in the absence of that, we do it the old-fashioned way.

MR. JOHNSON: May I ask the question: Was Buckley's name mentioned at any time?

THE COURT: Don't you have the transcript?

MR. JOHNSON: Yes, I do, Judge.

THE COURT: Okay.

MR. WESOLOWSKI: Also, if we're going into this conversation, this is not the first conversation this witness had with Cruz.

MR. KING: I will back up and get the next one. No problem. I've got no problem. I'll back up.

(Whereupon, the following proceedings were had in the hearing of the jury:)

149

(The document was thereupon marked People's Exhibit No. 66 for identification.)

BY MR. KING:

Q Detective, the conversation you had with the defendant Rolando Cruz, did you have occasion to have that tape-recorded?

A Yes, sir, I did.

Q And after you had that tape-recorded conversation, did you have occasion to take the tape and turn it over to a stenographer by the name of Nancy Jenkins to transcribe for you?

A That's correct.

Q During that period of time you had the tape, from the time you tape-recorded the conversation until you turned it over to the stenographer, did you keep it in your possession unaltered, unchanged with no additions, no deletions until you turned it over?

A Yes, sir.

Q Did you have occasion to receive the transcription from the stenographer back and have occasion to review it?

A That's correct.

Q And when you reviewed it, did it appear to be

a true and accurate copy, a true and accurate recitation of the conversation that you had between yourself and
150 Defendant Cruz on May 10th, 1983, at approximately 10:00 a.m.?

A Yes.

Q I'm going to show you a copy of People's Exhibit No. 66 for identification and ask you to take a look at that item.

A This is the transcript, sir.

Q Is that a true and accurate copy of the transcript that you have referred to?

A Yes.

Q Now, Detective, backing up one day, May 9th, 1983, around 9:30, 10:00 o'clock at night, did you have an opportunity to have another conversation with Rolando Cruz?

A Yes, I did.

Q Where did that take place?

A That was again at our office located right here in Wheaton.

Q And who was present for that conversation in addition to yourself and the defendant Rolando Cruz?

A Myself and Detective Vosburgh.

Q Now, what if anything did the defendant

Rolando Cruz have occasion to relate to you at that time?

151 A He related to me the facts of a vision that he had.

This vision, according to Mr. Cruz, was that the girl was in a field and that she had been dragged from a house in a blanket.

He also related to us that she had been struck in the head so hard that it left an impression in the mud.

And he also related that she had been violated anally.

Q Now, Officer, had you ever mentioned any of the details of this particular vision to Rolando Cruz before?

A No.

Q Had you ever mentioned the fact that Jeanine Nicarico was assaulted anally?

A No.

Q Had you ever mentioned that she was carried from the house in a blanket?

A No.

Q Had you ever mentioned that she was dragged out of the house?

A No, I didn't.

152 Q Did you ever mention anything about being struck in the back of the head?

A No, sir.

Q And did you ever mention anything about being struck in such a manner as to leave a face impression in the mud?

A No, sir.

MR. KING: Nothing further, your Honor.

THE COURT: Before we proceed any further, I just want to indicate to the jury that I gave you an instruction. I'll read the instruction again.

Statements received in evidence shall be considered by you only as they apply to the author of the statement. No other person or persons in this case are to be considered by you in any connection with any such statement.

I just want to make sure that you do recall that limited instruction and state it for the record at this time.

All right. Now, you may cross examine.

CROSS EXAMINATION

By: Mr. Laz

Q Detective Kurzawa, I take it you didn't make

out a report of your conversation about the vision that Rolando Cruz said he had, either, did you?

153 A No, sir.

Q And that was because you told this to Tom Knight and Tom Knight said, don't worry about it. You don't have to make out a report about this newly discovered piece of evidence that only Ron Cruz knows about.

Is that right?

A Basically, he indicated to me that there was an up and coming Grand Jury inquiry within the next several days.

Q Did you ever get called before the Grand Jury?

A No, I didn't.

Q So you never told the Grand Jury about this vision of Ron Cruz, either, did you?

A Correct.

Q And neither did Vosburgh as far as you know, did he?

A I don't believe so.

Q What did you use to refresh your recollection about an event that no report was made on?

A I basically recall the incident basically because of the impact it had on the case at that point

in time.

Q How many times in your life -- how long have you been a police officer?

154

A A little over 12 years, sir.

Q And how many cases of this magnitude have you been involved in?

A I've been involved in a number of homicide investigations.

I would have to say this had a little bit more of an impact.

Q And wouldn't you say, sir, that this is the first time in all your experiences as a police officer you received a piece of evidence as important as this vision of Ron Cruz and a prosecutor said, don't make a report on it?

MR. KING: Objection. That's not what the witness testified.

THE COURT: Sustained.

BY MR. LAZ:

Q How many other times has a prosecutor told you not to make a report on it?

MR. KING: Objection, Judge. Misstatement.

THE COURT: In this case or in any?

MR. LAZ: In any case.

THE COURT: All right. He may answer.

THE WITNESS: I don't recall any.

155

BY MR. LAZ:

Q So this is novel as far as your 12 years as a police officer are concerned, right?

A Yes, sir.

Q Did you question anybody as to whether it was proper not to write a report given this type of vision and the way it fitted into this case as you testified?

A No, sir.

Q The prosecutor told you and that was good enough for you; is that it?

A Yes.

Q Now, when you talked to Ron Cruz on the following day, he called you, didn't he, or he set up the contact?

A No, sir. He was at our station already.

Q And he told you that he -- your conversation was about 10:00 o'clock in the morning?

A Yes.

Q And he told you, did he not, that about a half hour before that he had had a conversation with a certain person, true?

A A half hour before 10:00 A.M.?

Q Yes, sir.

A He had a certain conversation?

156 Q He had a conversation with a certain individual.

Isn't that what he told you?

A I don't believe so.

Q Would looking at Page 1 of the transcript refresh your recollection?

A Yes.

Q Would you do that, please, say about two-thirds of the way down.

A Yes.

Q So he did have a conversation with somebody?

A I think what he's referring to, later on --

MR. JOHNSON: Your Honor, I'm going to object at this time.

MR. KING: Objection, Judge. He should be able to answer.

THE COURT: Overruled. May explain.

THE WITNESS: I think he's referring to an incident that happened on a prior occasion, sir.

BY MR. LAZ:

Q So that there's no misunderstanding, if I can look at your front page.

A You're talking about this right here. (Indicating).

157 Q Right.

He had a conversation about 30 minutes before he talked to you.

Is that right?

A Yeah. I think he's talking about an incident where he alleged he had been shot at in the Aurora area that happened on a prior date, sir.

Q And he talked to you about an Emilio in that conversation, didn't he?

A Yes.

Q And he talked to you about a Ray Ortega, didn't he?

A Yes.

Q And that conversation was in reference to Jeanine Nicarico, wasn't it?

A Yes.

Q And he told you Emilio had told him certain things, right?

A Correct.

Q And while you had him on tape did you bother to ask him to explain the difference of the rest of what he told you on May 10th versus this vision that he

had the night before so there could have been a recording for posterity?

158

A No.

Q Did you tell him it was somewhat different from what he seemed to have been saying the night before?

A Whatever is on the transcript, sir, is what I said.

I don't believe that came up.

Q When is the first time that you were told you would have to testify about the May 9th statement?

A I really don't recall. Possibly last week.

Q And then that was the first time that you had to remember what happened about 20 months ago.

Is that right?

A Yes.

Q And you had nothing to refresh your recollection about where or when or anything about this conversation other than your memory of 20 months ago.

Is that right?

A That's correct.

MR. LAZ: No further questions.

THE COURT: Mr. Wesolowski.

MR. WESOLOWSKI: Judge, I submit I feel I could do

a much better job if I could read all his reports and
159 statements overnight.
THE COURT: Wasn't this furnished to you?
MR. KNIGHT: Yes, Judge.
MR. WESOLOWSKI: Yes. But there must be at least 15 pages of the May 2nd statement.
THE COURT: Can I just speak to you for a moment.
(Whereupon, the following sidebar discussion was had outside the hearing of the jury:)
THE COURT: Maybe I'm missing something here. But this is a statement of Defendant Cruz. And you represent Hernandez, right? But you still want to cross examine something?
MR. WESOLOWSKI: I absolutely have to cross examine him, Judge.
First of all, on April 19th --
THE COURT: No. We're only talking about --
MR. WESOLOWSKI: -- he contacted Cruz.
On May 10th Cruz made a statement.
If true, Hernandez, Ortega and Donatland would be the three defendants. And each one of them made confessions to him.

160

THE COURT: Mr. Laz, I want to make sure you hear this.

MR. LAZ: Yes.

MR. WESOLOWSKI: And according to Cruz, Hernandez, Donatland and Ortega confessed to the murder, the details. And immediately Cruz is put into a motel.

THE COURT: Okay.

In other words, you have --

MR. WESOLOWSKI: And this is the only key to --

THE COURT: I just want to make sure that you have been apprised at this time. And you want to cross examine. Okay.

MR. WESOLOWSKI: But they're not all in one report. They're scattered.

MR. KING: I can short circuit all this.

He's referring to things which took place on dates other than the two dates he's referring to.

He's talking about things which occur weeks, months, or so, before.

The only two dates we put in --

THE COURT: That's what I was going to say.

MR. KING: They can always call him, do whatever they want with him later.

But right now the only two dates we're talking about are the 9th and 10th.

161

THE COURT: That's what I'm going to restrict your cross examination to, the 9th and 10th.

MR. WESOLOWSKI: If the Court please, in the tape-recorded statement of May 2nd, if there are details related to Kurzawa by Cruz, I have a right to go into that.

THE COURT: Even though you represent Hernandez?

MR. KING: He's going to implicate Cruz.

MR. WESOLOWSKI: Well, Cruz was working for the police at the time.

THE COURT: Is he going to be back?

MR. KNIGHT: He'll be around.

THE COURT: Okay. Good.

We can't go any further right now, anyway.

MR. KNIGHT: There is a problem. He has a problem tomorrow. That's why we're trying to finish.

THE COURT: How about Friday?

MR. KING: What we're saying, Judge, is we're finished with him, and their scope should be limited to what he has testified to.

If they want to bring him back, they can

always call him. He's available.

162 MR. WESOLOWSKI: I can call him as my witness?

MR. KNIGHT: Sure.

MR. WESOLOWSKI: That's absolutely unfair.

THE COURT: Oh, no. The witnesses are not beholding to anyone.

They're beholding to everybody.

Okay. We can recess for today.

(Whereupon, the following proceedings were had in the hearing of the jury:)

MR. KING: Your Honor, are we going to go the 10 minutes or are we going to --

THE COURT: No. I have a commitment to the jury here to leave by a certain time, and we're starting to push that right now.

MR. KNIGHT: We just meant the 10 minutes --

THE COURT: And I feel this is the best time to call a recess for the evening.

All right. Ladies and gentlemen of the jury, that will be enough for today.

Again, because of what I indicated to you, certain commitments made for Thursday morning and to honor those, we will not meet tomorrow until

1:30.

Now, again, you are admonished not to
163 discuss this case amongst yourselves nor allow anyone to discuss it with you, not to read nor have anyone read to you nor to view anything about this case.

1:30 tomorrow. Thank you.

(The following proceedings were had outside the presence and hearing of the jury:)

THE COURT: The jury is now out of the courtroom.

Court is still in session.

The defendants, remain seated.

All right. First of all, as to the transcript, all of counsel have it, and I want to find out what the editing is going to be because at the appropriate time it will be read to the jury and placed of record.

I want to make sure that the editing is on before any cross examination.

MR. KING: Here is a copy of the transcript, Judge.

It's People's 66.

What I suggest to you is anyplace the name Alex or Alex Hernandez appears, we just take out the name Alex Hernandez and have it specific -- a

specifically named individual, and we can have it retyped so that there will be no problem which would even indicate there had been something changed there.

THE COURT: Well, make those necessary corrections and give them to the defendants.

MR. KING: Before I type it, if there's going to be an objection, Judge, I just hate to waste someone's time.

MR. LAZ: Rather than read it to them, Judge, my suggestion would be that it go back to them as a piece of evidence and let them read it during their deliberations.

THE COURT: No.

There's no way the record can pick up the fact that there is this conversation between witness and Mr. Cruz.

MR. LAZ: All right, Judge.

THE COURT: So it's got to go in the record.

All right. Do the necessary that you have to do, that we discussed in view of prior motions.

Now, what is your schedule, sir?

DETECTIVE KURZAWA: Tomorrow I'm working afternoon, sir. I do have a babysitting commitment of sorts involving my own family.

THE COURT: Can you be here Friday?

165 DETECTIVE KURZAWA: I should be able to, sir.

THE COURT: Okay.

MR. WESOLOWSKI: He can't be here tomorrow?

MR. KNIGHT: That's what we said. That's why we wanted you to finish tonight.

MR. WESOLOWSKI: Isn't he a detective anymore?

THE COURT: Well, why don't you talk to him on your own rather than put it in the record.

You can be here Friday?

DETECTIVE KURZAWA: Yes, sir.

THE COURT: All right. Fine.

Then chances are you will be here, depending on the witnesses tomorrow, 9:30 on Friday, but schedule it with the State's Attorney. He'll let you know what time you have to be here.

DETECTIVE KURZAWA: All right.

MR. LAZ: Judge, for the record, I would move to strike the testimony of Thomas Vosburgh and this witness as well. I know he has not completed, but, perhaps, then, he wouldn't have to come back.

And the basis is: The prosecution was aware, according to Vosburgh's statement and Detective Kurzawa's testimony, as of approximately May 9th or

May 10th, 1983.

The record reflects and the Court file
166 shows the first time that I was made aware of this statement was pursuant to Supplemental Disclosure to the Defendants 10, which was filed January 3rd, 1985, four days before we started picking the jury, and approximately 20 months after the statement was made.

I think it is certainly highly prejudicial and violative of my client's Constitutional rights for preparation and defense at trial to get a 20-month old statement four days before we pick a jury in a capital case.

THE COURT: You're talking about the May 10th or May 9th?

MR. LAZ: I'm talking about the May 9th alleged vision statement.

MR. KNIGHT: For the record, your Honor, it was me that the witness referred to.

I do remember having a conversation back at about that time.

What was told to me was simply that this guy Cruz has some details that he shouldn't have from anything that's in the news, and wanted to know whether -- what course of action to take with him.

At the time I told them there was a Grand Jury coming up.

167 And they, then, the next day took the taped statement, this statement.

Ever since then, at least, I have assumed that what they were referring to as the details are what appear in the statement that they took the next day, which does have a lot of details in it, and never knew that statement. I think that's -- that's all we ever knew, that he knew some details, and whether they should try to go ahead and interrogate him at that time or not.

We had the Grand Jury coming up. We thought we'd bring him in, see what the details were.

The next day they took a statement. It does have a lot of details.

I've always assumed that that's what the details were that he was alluding to that night when he called, but apparently there were other details that he had given them earlier.

THE COURT: When was the first time the May 9th was revealed?

MR. KNIGHT: When Pat King -- to me, it was when Pat King told me, which would have been --

MR. KING: Shortly before the discovery answer, Judge.

168 It was at a social gathering. It was referred to me.

THE COURT: And this was given by you to the --

MR. KING: That's correct.

My recollection is the early part of January, the very last part of -- after Christmas.

THE COURT: Motion to strike will be denied.

MR. KING: Thank you.

THE COURT: All right.

Now we stand adjourned.

Now you can talk to the witness if you wish.

(Whereupon, the trial of the above-entitled cause was continued to Thursday, the 31st day of January, A.D. 1985, at the hour of 1:30 o'clock P.M.)

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

I, ERNEST C. SCOLA, C.S.R., Official Court Reporter, do hereby certify that I reported in shorthand the proceedings had at the trial of the above-entitled cause, and that the foregoing Report of Proceedings, consisting of Pages 1 to 326, inclusive, is a true, correct and complete transcript of my shorthand notes so taken at the time and place hereinabove set forth.

Ernest C. Scola

Official Court Reporter
Eighteenth Judicial Circuit of Illinois
DuPage County.