

1 THE WITNESS: He was talking with my husband
2 and he would say how he did it and everything. And my
3 husband was nervous. I came down and then my husband
4 told me what is going on. And they both was talking with
5 him and me.

6 BY MR. PATTERSON:

7 Q Now, let's back up. What, if anything, did
8 the individual in the orange uniform say he did in your
9 presence, Ms. Soto? And I know it's difficult, but
10 please tell us.

11 A ~~He say that he killed his wife, okay, how he~~
12 ~~did it, and that his brother was there.~~ We were so
13 nervous that it was like shock. They wanted to stay in
14 the house and we say no. My husband say, please go to
15 the police, you know. They say no, that they cannot do
16 that. And they stayed a while there inside the house.
17 And then his brother -- his girlfriend, she was in the
18 van and then she came inside. They stayed like at least
19 like half an hour and was talking. We were so nervous.
20 And they go away and then we go back to work.

21 Q Now, Ms. Soto, can you tell me if you recall
22 specifically who, if anyone, the man in the orange
23 uniform said he killed? Focusing in on the man in the
24 orange uniform.

25 A Well, I say what he said. You know what I am

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saying? I don't think he killed the woman. It was his brother who killed her, because before that, they was in the store and his brother say that he wanted to kill her.

MR. RENDINE: Objection, Your Honor.

THE COURT: Objection sustained.

Counselor, I believe you confused the issue by adding to your statement. Please address your sentence more directly. You took her off the path of what she was talking about there, Counselor.

MR. PATTERSON: Your Honor, I was asking her what again -- because there were two people there.

THE COURT: And there were two questions you had asked her there apparently in her mind. Please rephrase the question if you wish to do it again.

MR. PATTERSON: I will withdraw that.

BY MR. PATTERSON:

Q Did the man who is now in the orange uniform tell you how he committed the killing?

A ~~He said that he killed her.~~

Q Now, Ms. Soto, I think you were making reference to a time when these two people were in the store before, were you not?

A Yes.

Q That is, before this day?

A Yes.

1 Q Can you tell me if you recall that prior
2 occasion when these two individuals were in your store?

3 A They was in the store. His brother, he was
4 inside the store back of the jar. He was talking with
5 his girlfriend and saying that he wanted to kill her
6 because she say that she is going to come to the police
7 and say what is going on and everything. And he was mad
8 and he was so nervous.

9 And the guy with the orange suit, he was
10 arguing with his wife by the phone. I don't say nothing,
11 you know. It is not my problem. So I just stay inside
12 the store and I was taking care of the people.

13 And they stayed for a while. They came like
14 at ~~12~~ o'clock and they stayed there until I closed the
15 store.

16 Q Can you tell us how long before that Sunday
17 they were in the store and these events took place?

18 A How long?

19 Q Yes. How much earlier than that Sunday, April
20 19, did this take place?

21 A Well, they came like at 12 o'clock and I close
22 like at 11:30.

23 Q Do you recall what day that was, Ms. Soto, is
24 what I am asking, if you know.

25 A No.

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1 MR. PATTERSON: Just a moment, Your Honor.
2 Your Honor, that's all I have for now.

3 THE COURT: You may cross-examine.

4 MR. RENDINE: Thanks, Judge.

5 CROSS-EXAMINATION

6 BY MR. RENDINE:

7 Q Ms. Soto?

8 A Yes.

9 Q I am going to ask you some questions. Okay?
10 Do you want to take a break?

11 A (Nods head)

12 Q Are you okay?

13 A (No response)

14 Q Ms. Soto, you said that --

15 THE COURT: Excuse me, Counselor. Ms. Soto,
16 would it be any better for you if you spoke in Spanish?
17 Would that assist you better?

18 THE WITNESS: (No response)

19 THE COURT: Ma'am?

20 THE WITNESS: Yes.

21 THE COURT: Okay. From now on, you may speak
22 in Spanish and Ms. Rivera will interpret.

23 Go ahead, Counselor.

24 BY MR. RENDINE:

25 Q Ms. Soto, earlier in the day, you said that

1 the gentleman that is sitting next to me and his brother
2 were in your store. Correct?

3 A Yes.

4 Q And it was his brother, you said, who was
5 threatening to kill this woman. Correct?

6 A Yes.

7 Q Because he was angry at her for something?

8 A Yes.

9 Q And it wasn't my client. It wasn't the man
10 who is sitting here next to me who told you that he
11 killed his wife. Is that correct? He didn't say that to
12 you. Correct?

13 A Yes.

14 Q ~~It was his brother who said that.~~ Correct?

15 A ~~Yes.~~

16 Q It was his brother who said that -- and you
17 know his brother's name to be Noel Italiano?

18 A Italiano.

19 Q ~~It was Italiano who said to you that I killed~~
20 Milton's wife. Correct? Italiano said that?

21 A Well, he said that he wanted to kill her, but
22 that night, that morning when they were in the house,
23 ~~they both was talking.~~ And the guy with the orange suit,
24 ~~he say that he killed her and the other guy.~~

25 Q Now, this conversation that you heard, you

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1 said that my client -- you don't know his name. Correct?

2 A His?

3 Q ~~Yes. You don't know his name, you said?~~

4 A ~~I know his name.~~

5 Q I am just going to refer to him as my client.
6 Okay? You said that my client was talking to your
7 husband?

8 A Yes.

9 Q And these statements that you say that you
10 heard my client make were made to your husband. Correct?

11 A Yes.

12 Q And when these statements were made to your
13 husband, where were they made? Were they outside in the
14 front of your home or inside your home?

15 A Inside.

16 Q When he was making these statements to your
17 husband, where were you?

18 A I was in the room. I hear everything. And I
19 came down and I was with my husband.

20 Q All right. Now, when you say you came down,
21 does that home that you live in have two floors?

22 A Yes, but the steps in the room is close, so
23 you can hear everything.

24 Q Initially, it was 7 o'clock in the morning.
25 Were you still in bed when somebody knocked at your door?

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A I was waked up.

Q You had already been awake?

A Yeah.

Q Were you upstairs or downstairs?

A I was up.

Q So who let them in? Your husband?

A Yeah.

Q When he let them in, where were you?

A I was in the room.

Q Were you upstairs or downstairs?

A I was up. He was in the steps. I was sitting down in the room.

Q How far away were you upstairs from where you say you heard these statements downstairs?

A It's too close. It's very close.

Q Well, is it 20 feet, 30 feet? Can you estimate?

A It's too close.

Q Well, what do you mean by that? Can you tell me distancewise? Can you point to something?

A Like the room is here and the steps is right here. (Indicating)

Q So you were right next to this room?

A Yeah.

Q Do you remember telling the police that it was

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1 Noel who said that he killed my client's wife?

2 A Yes.

3 Q And that was when you were interviewed by
4 Detective Camacho on December 12, 1998. Is that correct?

5 A Yes.

6 Q Do you recall that? And that's the statement
7 which he tape recorded. Is that correct?

8 A Yes.

9 Q When you told that to Detective Camacho, that
10 it was Noel who told you that he killed my client's wife,
11 were you telling him the truth?

12 A Yes.

13 Q Today you said that you heard my client say
14 that he killed his wife.

15 A I was there when he say it.

16 Q But Noel also said that he killed her. Is
17 that right?

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18 A He say everything, how he killed her.

19 Q Noel did. Right?

20 A Milton.

21 Q Italiano?

22 A Let me explain.

23 Q Can I ask you --

24 MR. RENDINE: Judge, I would ask --

25 MR. PATTERSON: Your Honor, I think she is

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1 trying to explain.

2 THE COURT: Just a minute.

3 THE WITNESS: When Italiano --

4 THE COURT: Ms. Soto, please stop talking.
5 I don't want to get the issue confused.

6 Address the issue as to who Noel is. That's
7 the first I heard that name.

8 MR. RENDINE: Okay.

9 THE COURT: And who Italiano is. Separate
10 that for me, please.

11 MR. RENDINE: I sure will, Judge. I am sorry,
12 Judge.

13 BY MR. RENDINE:

14 Q Ms. Soto, the brother who you referred to, his
15 name is Noel. Correct?

16 A I don't know his name.

17 Q Okay. Well, you know him as --

18 A Italiano.

19 Q So Noel and Italiano are the same person.
20 Correct?

21 A I don't know.

22 Q Well, in any case, you told Detective Camacho
23 that it was Italiano, not my client who said that he
24 killed the wife. Correct?

25 A Yeah.

1 Q And it was Italiano who explained to your
2 husband and/or you how he killed the wife. Is that
3 correct?

4 A Italiano say that he want to kill the woman
5 because the woman make him angry. But both, they went
6 inside the house. And the one who say everything, it was
7 the guy with the orange suit.

8 Q I want to get this straight, ma'am. You said
9 that it was Italiano who said that he wanted to kill the
10 wife?

11 A Yes.

12 Q Is that when you were talking about earlier in
13 the day?

14 A Yeah.

15 Q Now, I am talking about when the men returned
16 at 7 o'clock in the morning. Right? And the men that
17 returned at 7 o'clock in the morning were the same men
18 who were there earlier in the day. Correct?

19 A Yeah.

20 Q The guy who is sitting next to me, you don't
21 know his name, my client, and the guy that you know as
22 Italiano. Correct?

23 A Yes.

24 Q And you have already told the judge that that
25 morning, at 7 o'clock in the morning, you told Detective

1 Camacho that it was Italiano who said that he killed the
2 wife. Correct?

3 A Um-hum.

4 Q And he did say that at 7 o'clock in the
5 morning. Correct?

6 A Um-hum.

7 Q And it was Italiano who explained to you and
8 your husband how he did it. Correct?

9 A No.

10 Q Isn't that what you told the detective?

11 A The one who explained everything what was
12 going on is the guy with the orange suit.

13 Q Well, do you remember when the detective was
14 asking you how it happened --

15 A When --

16 Q Let me finish my question. Then you can
17 answer it. Okay?

18 The question was, he kicked her. And your
19 answer was, you know, he broke, you know, her arm. And
20 then there is some Spanish. I am sorry. I can't say
21 that. And he put the knife in her eyes or something like
22 that. That was your answer. Do you remember that
23 answer?

24 A Yeah.

25 Q Okay. The question was okay. Answer: You

1 know, he was there. I'll fuck her. I am glad that I
2 fuck her. Do you remember that answer?

3 A Yeah.

4 Q Question: Okay. Now, who was telling you
5 that? Milton? Is that Milton told you that or Noel said
6 that? Your answer: Noel said that. Do you remember
7 that answer?

8 A Yes.

9 Q So it was Noel that described the details?

10 A Italiano.

11 Q Italiano?

12 A Yeah.

13 MR. RENDINE: Thank you. I have no further
14 questions.

15 MR. PATTERSON: Redirect, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. PATTERSON:

18 Q Ms. Soto, the attorney asked you about that
19 interview that you gave to Detective Camacho and now you
20 remember some things with regard to that interview, do
21 you?

22 A Yes.

23 Q Can you tell me whether or not you remember
24 telling Detective Camacho that Milton said he killed the
25 guy?

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1 MR. RENDINE: Judge, I would object. That's
2 beyond the scope of cross-examination.

3 MR. PATTERSON: Your Honor, it's for the
4 purpose of straightening --

5 THE COURT: I disagree that it's beyond the
6 scope of cross-examination. This is an issue that you
7 presented during cross-examination, this second issue of
8 what happened before the 7 o'clock incident. I assume
9 that's what we are talking about.

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10 MR. RENDINE: No, he is talking about the 7
11 o'clock incident, Judge. And the only thing I asked
12 about is what he said or the other guy said about the
13 wife.

14 THE COURT: In the course of the 7 o'clock
15 examination, you used the name Noel, you used the name
16 Italiano, you used the name Milton. And now I assume you
17 are going to clear that up because I am not certain at
18 this point. I know only by the documents here today as
19 to who two of the three names refer to. I know by
20 testimony as to who one of the two people --

21 MR. RENDINE: I am not trying to obfuscate the
22 issue, Judge.

23 THE COURT: I understand, but I believe I am
24 going to allow clarity.

25 MR. RENDINE: Can I reserve a right, Judge, to

1 object? Your ruling is your ruling. I understand that.

2 THE COURT: Of course. Continue.

3 BY MR. PATTERSON:

4 Q Ms. Soto, I am attempting to refresh your
5 memory. Okay? Do you understand that?

6 A (Nods head)

7 Q Can you tell me whether or not you recall
8 telling Detective Camacho, but then Milton said that he
9 killed the guy. Do you recall that?

10 A Yes.

11 Q Is that in fact what you told Detective
12 Camacho when he interviewed you?

13 A Yes.

14 Q All right. So is your memory refreshed now?

15 A Yes.

16 Q Please explain what you said on that occasion.

17 A Would you repeat the question.

18 THE COURT: Just a minute, please. Mark that
19 question. I am going to take a brief recess for about
20 five minutes.

21 Ms. Soto, I am going to take a recess at this
22 time. That means we are going to take a break for five
23 minutes. You may get up and walk around, but I am asking
24 you to stay in the room if at all possible and not talk
25 about the case until I return.

1 (Recess taken)

2 THE COURT: Are we ready to proceed?

3 MR. PATTERSON: Yes, Your Honor. I believe
4 that Mrs. Rivera is going to translate the question to
5 Ms. Soto and then she will respond.

6 MR. RENDINE: Can I have the question read
7 back.

8 THE COURT: Please read the question back.

9 (Previous question read by the reporter)

10 THE WITNESS: Who, him?

11 MR. PATTERSON: To Detective Camacho.

12 THE COURT: Do you remember which occasion
13 they are talking about?

14 THE WITNESS: Yes.

15 MR. PATTERSON: If the witness will now please
16 answer.

17 THE WITNESS: (Through interpreter) I told
18 him what he told me when he came to the house. I told
19 him that the man in the orange suit told me he had killed
20 the woman.

21 BY MR. PATTERSON:

22 Q Do you recall anything else that you told
23 Detective Camacho?

24 A (Through interpreter) And how he killed her.

25 Q And do you recall how in fact he killed her?

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A (Through interpreter) ~~He said he cut her neck~~
~~and smashed her shoulder.~~ He put a knife in her eye.

MR. PATTERSON: Nothing further, Your Honor.

THE COURT: Cross on that issue.

MR. RENDINE: Thank you very much.

RE-CROSS-EXAMINATION

BY MR. RENDINE:

Q Ms. Soto, I asked you some questions a little while ago and I want to ask you again.

MR. RENDINE: Is this Detective Camacho?

DETECTIVE CAMACHO: Yes.

BY MR. RENDINE:

Q Ms. Soto, is this Detective Camacho sitting right over here looking at you?

A (Through interpreter) Yes.

Q And do you recognize him as the gentleman who took your statement on December 12, 1998?

A (Through interpreter) Yes.

Q And were you speaking to Detective Camacho that time in the York City Police Department detective division?

A (Through interpreter) Yes.

Q And you told him a lot of things which he recorded on a tape recorder?

A (Through interpreter) As far as I know.

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1 Q And the statement that you gave was also
2 written down and typed up. Is that correct?

3 A No.

4 Q It wasn't?

5 A (Through interpreter) No, it wasn't typed.

6 Q Was it written down?

7 A (Through interpreter) He taped it.

8 Q He taped it. Okay. And one of the things he
9 asked you was -- excuse me, Your Honor. His question is
10 okay. And the answer is: And when Milton, Milton see
11 the guy, Milton went to the guy. And Italiano, Noel,
12 when he take the knife and cut her. Do you remember that
13 answer? Do you remember that answer?

14 A (Through interpreter) Can you repeat that?

15 Q His question is okay. And your answer was:
16 And when Milton see the guy, Milton went to the guy. And
17 Italiano, Noel, when he take the knife and cut her. Do
18 you remember that?

19 A Um-hum.

20 Q Indicating yes?

21 A (Through interpreter) Yes.

22 Q Question: Okay. Answer: You know, he,
23 Garganta, cut her. Do you remember that answer?

24 A (Through interpreter) Would you repeat that
25 again?

1 Q Question: Okay. Your answer: You know, he,
2 Gargantá, cut her. Do you remember that answer?

3 A (Through interpreter) ~~He~~ was the one that
4 cut her.

5 Q I am just asking you whether you remember that
6 question and that answer. Do you remember that question
7 and answer?

8 A No.

9 Q No, okay. Question: He cut her throat.
10 Answer: Yeah. He kicked her.

11 A Yes.

12 Q Question: And he kicked her. Do you remember
13 that question? Answer: You know, he broke -- and I read
14 you this before. You know, he broke, you know, her arm.
15 And then there is some Spanish which I can't read. I am
16 sorry, Your Honor. You know, he put the knife in her
17 eyes or something like that. Do you remember that
18 answer?

19 A (Through interpreter) I remember what he
20 said.

21 Q Question: Okay. Answer: You know, he was
22 there. I'll fuck her and I am glad that I fuck her.

23 A Yes.

24 Q Okay. Now, who was telling you that? Is it
25 that Milton told you that or Noel said that?

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1 A Italiano.

2 Q Italiano said that.

3 MR. RENDINE: Thank you.

4 MR. PATTERSON: Refollow-up, Your Honor, in
5 light of those questions.

6 REDIRECT EXAMINATION

7 BY MR. PATTERSON:

8 Q ~~Ms. Soto~~, do you recall from this same
9 interview this answer: But then Milton say that ~~he~~
10 ~~killed the guy?~~

11 A (Through interpreter) Yes.

12 Q ~~And do you recall this question~~: Okay. Did
13 ~~he tell you how he killed the guy?~~

14 A (Through interpreter) ~~Yes~~.

15 Q ~~And do you recall this answer~~: Well, he said
16 with a knife, he put it in -- in --

17 A (Through interpreter) In the chest.

18 Q And the question: In his chest?

19 A (Through interpreter) Yes.

20 Q And the answer: Yeah?

21 A (Through interpreter) Yes.

22 MR. PATTERSON: Okay.

23 THE COURT: Cross on that?

24 MR. RENDINE: I don't have any recross, Judge.
25 I would request and in accordance with my understanding,

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1 that Noel and Italiano are the same person. I would
2 request -- I am not asking the witness. I would request
3 that the prosecutor stipulate to that so I won't have to
4 prove it.

5 MR. PATTERSON: Your Honor, I don't believe we
6 are in a position to stipulate. I believe that one can
7 glean from that that they are the same person. However,
8 I think the witness will have to answer in the fashion
9 she feels comfortable. If, therefore, she refers to
10 Italiano and it's clear that Italiano is not Mr.
11 Montalvo, then I'll stipulate that.

12 MR. RENDINE: Because I know the Court had a
13 question.

14 MR. PATTERSON: I will stipulate that.

15 MR. RENDINE: Then with that, Judge, I don't
16 have any further questions. And I would move to strike
17 her replies to the last I guess it's re-re-redirect
18 concerning what happened to the male and my client's
19 statements regarding the male as I believe the reason
20 Your Honor let those statements in in the first place,
21 because they were beyond the scope of cross-examination,
22 was because there was some confusion concerning who the
23 parties were. So for that reason, I reserve the right to
24 make this objection. So therefore, in accordance with
25 that --

1 THE COURT: Your objection is noted. I
2 disagree with your objection and the reason for your
3 objection. I believe it was personally my opinion that
4 it was within the scope of your cross-examination at that
5 particular juncture because in the course of that time,
6 if my memory serves me correctly, you used the name Noel.
7 You used the name for the first time Milton. It was the
8 first time I heard the name in the testimony of Milton at
9 that particular point. And I also heard Italiano in the
10 course of that time. And he directed himself towards
11 Milton, which I believe he had the right to do. I note
12 your objection, but overrule it.

13 MR. RENDINE: Then I have no more questions.

14 MR. PATTERSON: I have no more questions of
15 this witness, Your Honor.

16 THE COURT: Ms. Soto, thank you very much for
17 taking your time and appearing. Is there any reason why
18 she must remain?

19 MR. RENDINE: No.

20 MR. PATTERSON: No, Your Honor.

21 THE COURT: You may leave or you may remain.
22 Thank you very much.

23 Does that mean the Commonwealth rests?

24 MR. PATTERSON: Your Honor, we wanted to bring
25 in one more witness very briefly.