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1 (Open court, parties present, jury not present.)

2 THE CLERK: You may be seated.

3 Are we ready?

4 MR. GONZALEZ: Yes, Your Honor.

5 THE COURT: Is everybody ready?

6 MR. ANTCLIFF: Yes, ma'am.

7 MS. RAMIREZ: Yes, ma'am.

8 THE COURT: Then the jury is all ready?

9 THE BAILIFF: Yes, ma'am.

10 THE COURT: Where are we going -- before we bring in
11 the jury, are we going to resume with yesterday's witness? I
12 know -- don't we have another doctor scheduled for today?

13 MS. KANOF: He's coming at 3:00 today, Your Honor.

14 THE COURT: Okay.

15 MS. KANOF: He's -- and we would appreciate your
16 understanding. This guy is nice, but he is going TDY to
17 New York next week.

18 THE COURT: Okay.

19 MS. KANOF: So we would appreciate the accommodation.

20 THE COURT: Okay. All right. Well, we're ready,
21 then?

22 MR. GONZALEZ: Yes, ma'am.

23 THE CLERK: All right. You can go ahead and bring
24 them in.

25 And where is the witness?

1 MR. GONZALEZ: I think he's in the witness room.

2 (Recess; open court, parties and jury present.)

3 THE COURT: You may be seated. Good morning.

4 You may resume, Mr. Gonzalez.

5 MR. GONZALEZ: Thank you, Your Honor.

6 OSCAR JUAREZ, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

7 DIRECT EXAMINATION

8 BY MR. GONZALEZ:

9 Q Mr. Juarez, yesterday, did I ask you about your immunity
10 agreement with the Government?

11 A. No, you did not.

12 Q. Okay. And did the Government give you immunity in exchange
13 for your cooperation of this investigation?

14 A. Yes.

15 Q. And what is your understanding of that immunity agreement,
16 sir?

17 A. Immunity agreement is to tell the truth.

18 Q. And what does it cover? What testimony regarding what
19 incidents?

20 A. The Fabens shooting incident.

21 Q. From the March -- February 17, 2005 incident?

22 A. Yes.

23 Q. But you would not be prosecuted if you cooperated with the
24 Government. Is that correct?

25 A. That's correct.

1 Q. Now, yesterday, I think I was asking you about the
2 different speeds that were reached during the pursuit of the
3 fleeing person. Did you tell us what the maximum speed reached
4 as far as you could tell?

5 A. It varies from downtown 35, and then it -- going out in the
6 country, 55.

7 Q. But my question to you, sir, the highest speed reached by
8 you?

9 A. Oh, by me?

10 Q. Yes.

11 A. I believe 60, 65.

12 THE COURT: Can -- I just do want to remind you, we
13 were looking at an -- Exhibit 20. So whatever you want to --

14 MR. GONZALEZ: Thank you, Judge.

15 Q. And you were going about how fast?

16 A. At least 60.

17 Q. And Ignacio Ramos was going faster than you were. Is that
18 correct?

19 A. That is correct.

20 MS. STILLINGER: Object to leading.

21 THE COURT: All right. I'll sustain.

22 BY MR. GONZALEZ:

23 Q. Was he traveling faster than you were?

24 MS. STILLINGER: Objection.

25 A. Yes, he was.

1 BY MR. GONZALEZ:

2 Q. He was ahead of you, correct?

3 MS. STILLINGER: Objection, leading.

4 BY MR. GONZALEZ:

5 Q. Where was his position to you, sir?

6 A. He was ahead of me.

7 Q. And did you catch up to him?

8 A. I never did.

9 Q. Did he get further away from you?

10 A. Yes, he did.

11 Q. Is it fair to say he was going faster than you were?

12 A. Yes.

13 MS. STILLINGER: Objection, Your Honor, leading.

14 THE COURT: All right. I'll sustain. Don't lead your
15 witness.

16 BY MR. GONZALEZ:

17 Q. And, sir, when this pursuit was going on, did you ever call
18 a supervisor?

19 A. No, I did not.

20 Q. And did you ever hear Agent Ramos call a supervisor?

21 A. No, I did not.

22 Q. And when you were in hot pursuit, you're required to call a
23 supervisor. Is that correct?

24 MS. STILLINGER: Objection, Your Honor. And could you
25 please ask Mr. Gonzalez to stop leading?

1 A. Yes.

2 THE COURT: All right. I believe that I have. But
3 again --

4 MR. GONZALEZ: I'll try. I'm just trying to move this
5 along. I apologize to Ms. Stillinger. That's all I'm trying
6 to do.

7 THE COURT: I understand.

8 BY MR. GONZALEZ:

9 Q At some point you turned off your lights, is that correct,
10 your emergency headlights?

11 MS. STILLINGER: Objection, Your Honor.

12 A. Yes.

13 BY MR. GONZALEZ:

14 Q. Did you ever turn off your emergency headlights?

15 A. Yes, I did.

16 Q. Why did you turn them off?

17 A. To conduct an immigration stop on the vehicle.

18 Q. Why did you turn them off?

19 A. Because I was given the signal by Nacho.

20 Q. First of all, who is Nacho?

21 A. Agent Ramos.

22 Q. And you refer to him as Nacho?

23 A. That's how I got to know him in the field.

24 Q. Were you friends with him?

25 A. No.

1 Q. All right. And you said you got the signal, what do you
2 mean?

3 A. His left hand came out. So he tapped the hood of the
4 vehicle he was driving. He went like this.

5 Q. The hood or the roof?

6 A. The top of door -- could be the door or roof, but he went
7 like that.

8 Q. And if you know, when he stuck his hand out to make that
9 gesture to signal to you, the roof of his vehicle, did his
10 window roll down, if you know?

11 A. I don't know.

12 Q. And, sir, if you know, was his radio functioning that
13 afternoon?

14 A. Yes, I'm assuming it was.

15 Q. And this could have been -- the turn -- could he have
16 communicated turn off your emergency headlights through the
17 radio?

18 A. Yes, sir.

19 Q. Did he do that?

20 A. No, sir.

21 Q. Would there have been a record had he done it through the
22 radio?

23 A. Yes, sir.

24 Q. Through where?

25 A. Through the records on the radio dispatch.

- 1 Q. But are all radio communications recorded?
- 2 A. Not all times.
- 3 Q. Local traffic, car-to-car, is that recorded?
- 4 A. No.
- 5 Q. So if it had been a car-to-car communication, would that
- 6 have been recorded?
- 7 A. No.
- 8 Q. But he could have done that, correct?
- 9 A. Yes.
- 10 Q. Had he done that through the repeater tower it could have
- 11 been recorded. Is that correct?
- 12 A. That is correct.
- 13 Q. When you were pursuing this vehicle, the van, in the Fabens
- 14 area, downtown Fabens area, what felony violations had it
- 15 committed, if any?
- 16 A. The driver?
- 17 Q. Yes, sir.
- 18 A. Nothing, yet.
- 19 Q. And when you and Agent Ramos were chasing this vehicle,
- 20 what felony violation had been committed?
- 21 A. Nothing, yet.
- 22 Q. What misdemeanor had been committed by the driver of that
- 23 van other than traffic infractions?
- 24 A. Nothing, yet.
- 25 Q. And do you have authority to issue traffic citations, sir?

1 A. No, I do not.

2 Q. Does Agent Ramos have that authority to make a traffic
3 stop?

4 A. No, he does not.

5 Q. And when you were chasing the vehicle, what immigration
6 laws had been violated by the driver of that vehicle?

7 A. Not -- not yet.

8 Q. To your knowledge, at that point in time, when you're in
9 the Fabens area, what violations has he committed?

10 A. Nothing, yet.

11 Q. And did Agent Ramos know something that you didn't -- did
12 not know?

13 MS. STILLINGER: Objection, Your Honor, he couldn't
14 know that.

15 A. No.

16 THE COURT: All right. I'll sustain.

17 BY MR. GONZALEZ:

18 Q. And you say you never asked for authorization for hot
19 pursuit, correct?

20 A. I never did.

21 Q. Have you ever asked for authorization for hot pursuit?

22 A. No, because this was my first one.

23 Q. And during this entire time from Fabens to the drainage
24 ditch, at any time, did you ever see Agent Ramos activate his
25 emergency overhead lights?

1 A. He never did.

2 MR. GONZALEZ: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 BY MR. GONZALEZ:

5 Q. Now, Mr. Juarez, I'm showing to you what's been marked for
6 identification purposes and entered into evidence as
7 Government's Exhibit 51B. Do you recognize what's shown in
8 that photograph?

9 A. Yes, I do.

10 Q. What's that?

11 A. That's the location where the incident took place.

12 Q. I'm going to go ahead and put this on the screen so you can
13 indicate to us where you were when you saw what was occurring
14 between Jose Alonso Compean and the fleeing driver of the van,
15 okay?

16 A. Yes, sir.

17 MR. GONZALEZ: May I approach the witness, Your Honor?

18 THE COURT: You may.

19 BY MR. GONZALEZ:

20 Q. Mr. Juarez, would you please, first of all -- the circled
21 area, I believe, that's where the van was situated. Obviously,
22 this picture was not taken on that date of February 17th. Is
23 that correct, this area?

24 A. That is correct.

25 Q. Now you tell us when you arrived you were parked -- where

- 1 were you parked, your vehicle, what area?
- 2 A. I parked my unit on the left side of the van.
- 3 Q. And did you get out of your vehicle?
- 4 A. Yes, I did.
- 5 Q. And where did you go?
- 6 A. I went inside the canal.
- 7 Q. And when you say you went inside the canal, what do you
- 8 mean?
- 9 A. Down the -- on the berm of the canal. I never went inside
- 10 the water. I was inside the canal.
- 11 Q. On the bank of the canal, on the side of it?
- 12 A. Yes. This is what it looks like, but on this side.
- 13 Q. How far did you go down on the north side of the canal?
- 14 A. I went almost halfway.
- 15 Q. And why did that happen?
- 16 A. Because I slipped.
- 17 Q. And when do you notice Agent Compean, at what point?
- 18 A. I noticed Agent Compean before I exit my unit. He was
- 19 standing here, approximately, here.
- 20 Q. That's where he ended up, or you saw him?
- 21 A. That's when I saw him initially holding the shotgun.
- 22 Q. You see point number one on the right-hand side?
- 23 A. Yes, I do.
- 24 Q. What's that?
- 25 A. That's the driver, that's when he moved from here, he ended

1 up here.

2 Q. That's what you recall?

3 A. Yes.

4 Q. And so then what happens?

5 A. This -- when the driver of the van jumped over -- I don't
6 know if he jumped over and hit the water. He was fast. He was
7 very fast. He jumped over. And that's when Agent Compean met
8 him here, approximately, this location. And that's when he
9 attempted to use the shotgun. And the driver, he was quick, he
10 dodged the shotgun. And that's when he ran away from this
11 area.

12 Q. Okay. Thank you. And -- and Agent Ramos, did he arrive
13 before you did, correct?

14 A. Yes, he did.

15 MR. GONZALEZ: Approach the witness, Your Honor?

16 THE COURT: Yes, you may.

17 BY MR. GONZALEZ:

18 Q. I want you to look at Government's Exhibit Number 11. And
19 look at it closely and see if you could determine where you
20 parked.

21 A. Yes, I could.

22 Q. Okay. And do you see an area where Agent Ramos parked his
23 vehicle?

24 A. Yes, I do.

25 Q. And is that correct on this exhibit?

1 A. It is correct.

2 Q. And there's another vehicle in there, the vehicle of Arturo
3 Vasquez. Is he someone who came on the scene after you did?

4 A. Yes, he did.

5 Q. And is that approximately where he parked his unit?

6 A. Yes.

7 Q. And do you see where Jose Compean's vehicle was parked?

8 A. Yes.

9 Q. And is that an approximate location?

10 A. Yes, it is.

11 Q. And in this photograph, this diagram, there's also an area
12 where -- showing your place, where you were parked, where you
13 stepped down into the ditch. Is that a correct approximation?

14 A. Yes, it is.

15 Q. Thank you.

16 MR. GONZALEZ: Your Honor, at this time we'll offer
17 Exhibit 11 into evidence and tender it to defense counsel for
18 any objections.

19 MS. STILLINGER: I think at this point we do have
20 objections as to the accuracy of the way this reflects the
21 witness's testimony. But I think Mr. Gonzalez may excise some
22 portion and tie up some other portions.

23 MR. GONZALEZ: I'll hold on on offering it.

24 THE COURT: All right. Then I assume there's an
25 objection. At this point I will sustain the objection.

1 BY MR. GONZALEZ:

2 Q And you testified yesterday that at some point in time you
3 saw Agent Compean holding a shotgun. Is that correct?

4 A. Yes.

5 Q. Now are you-all trained to use a shotgun as a baton?

6 A. Yes, we are.

7 Q. Okay. Do you-all have a baton that you can use?

8 A. Yes, we do.

9 Q. And you can use either one?

10 A. Yes.

11 Q. Now, after the person flees -- Mr. Aldrete-Davila flees
12 around Agent Compean, what do you do?

13 A. I get out from the canal and start exiting the canal. So I
14 walked over to the van.

15 Q. Does anything happen as you're walking towards the van?

16 A. Halfway between my unit and the van, that's when I hear the
17 shots. And then I turn around.

18 Q. Okay. Where are you when you hear shots?

19 A. Right, almost in the middle of my unit and the van, outside
20 the canal.

21 Q. Let me --

22 MR. GONZALEZ: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 BY MR. GONZALEZ:

25 Q. I want you to look at Government's Exhibits 9, 10 and 15,

1 and 12. Look through all these exhibits and see if any of
2 these exhibits show the area where you were when you hear shots
3 fired.

4 A. I would say this one more to the left.

5 Q. Sorry?

6 A. This area.

7 Q. Referring to Government's Exhibit Number 9?

8 A. Yes.

9 Q. Were you already on the road that's adjacent to the ditch?

10 A. Yes, I was.

11 Q. Okay. And so you referred to Government's Exhibit 9,
12 correct?

13 A. Yes.

14 Q. Why don't you indicate to the jury where you were standing
15 when you heard these shots?

16 A. I was, approximately, a little bit left here, right at the
17 edge of the road.

18 Q. And you see some vehicles on the levee up there on the
19 right-hand side?

20 A. Yes, I do.

21 Q. And do you know whose vehicles those were?

22 A. They were more units arriving.

23 Q. What about Agent Compean's vehicle, do you know where it
24 was?

25 A. I know his unit was up there.

1 Q. Do you know which of those two was his unit?

2 A. I believe that that's Lorenzo's.

3 Q. The one closest to you is Lorenzo who?

4 A. Yrigoyen.

5 Q. And there's another vehicle you can barely make out beside
6 that. Is that correct?

7 A. I can see the shell of the camper.

8 Q. And whose vehicle is that?

9 A. Compean -- Mr. Compean's.

10 Q. Thank you. So you're standing by your van and you hear
11 what?

12 A. I hear shots. That's when I turned around. And that's
13 when I saw Agent Compean shooting.

14 Q. Okay. Where was he shooting from? Where was he standing
15 when you saw -- first you heard the shots, right?

16 A. Yes.

17 Q. How many shots did you hear?

18 A. There were couple of fast, boom, boom, boom.

19 Q. And that's what makes you turn around?

20 A. Yes.

21 Q. And what do you see? Where is he standing?

22 A. He was -- he was not all the way inside, but he was almost
23 halfway from the -- from the levee to the vega. He was not --
24 he was halfway down from the levee.

25 MR. GONZALEZ: May I approach the witness, Your Honor?

- 1 BY MR. GONZALEZ:
- 2 Q. This is the levee road, correct?
- 3 A. On the top. Where the units are parked.
- 4 Q. And is he somewhere in this area?
- 5 A. A little bit farther south.
- 6 Q. What do you mean south?
- 7 A. A little bit more. All you see here --
- 8 Q. Let's pretend the van --
- 9 A. All you see is the levee. So he was more inside -- on the
- 10 other side of the levee.
- 11 Q. Could you see all of his body from where you were standing?
- 12 A. No, I did not.
- 13 Q. How much of his body could you see from where you were
- 14 standing?
- 15 A. I could see waist up.
- 16 Q. So had he already started going down the side of the levee
- 17 road?
- 18 A. Yes.
- 19 Q. When you say waist up -- pretend I'm Agent Compean. How
- 20 much of me would you see?
- 21 A. I could see a little bit here by where your hands are.
- 22 Q. Waist up?
- 23 A. Yes.
- 24 Q. And where are his hands positioned?
- 25 A. He has the fire stance position. Holding his weapon like

1 this.

2 MR. GONZALEZ: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 BY MR. GONZALEZ:

5 Q. Fire stance?

6 A. Yes.

7 Q. What is that?

8 A. When you're ready to shoot.

9 Q. Why don't you point in this direction. And just point what
10 you saw.

11 A. He was like this. And, of course, boom, boom, boom, boom.

12 And that's when I noticed he dropped -- something black

13 dropped. And I noticed there was a pause. Then he reached

14 over to do a magazine exchange. And after that, it was boom --

15 two. And after that he disappeared.

16 Q. When you say he disappeared --

17 A. South. I could no longer see him at all.

18 Q. Okay. And what is this, sir, Government's Exhibit 39B?

19 A. That is a magazine.

20 Q. And is this what you saw drop out of the handgun?

21 A. Yes.

22 Q. Did you count the number of times that he fired?

23 A. No. But they were -- they were a lot of rounds.

24 Q. And do you know how many rounds are in a magazine?

25 A. That magazine has a capacity of 11 rounds, plus the one in

- 1 the chamber.
- 2 Q. So at least 11 rounds were fired from the first magazine.
- 3 Is that correct?
- 4 A. Yes.
- 5 Q. And then you saw him actually change the magazine?
- 6 A. Yes, I did.
- 7 Q. Now you've received training in shooting. Is that correct?
- 8 A. Yes.
- 9 Q. Are you -- when you shoot -- when you shoot you just shoot
- 10 to maim, or do you shoot to kill?
- 11 A. No, we shoot to stop the threat.
- 12 Q. Stop the threat?
- 13 A. Yes.
- 14 Q. You're not trained to maim, are you?
- 15 A. No, we're not.
- 16 Q. Are you trained to shoot center mass?
- 17 A. Yes.
- 18 Q. That's to kill, right, stop the threat?
- 19 A. Yes.
- 20 Q. How often are you trained and qualified on firearms?
- 21 A. Quarterly.
- 22 Q. Okay. And what does the training entail?
- 23 A. You have to qualify with the Beretta, the small arms plus
- 24 the shotgun, and the M-16.
- 25 Q. And who does the teaching?

- 1 A. The firearms instructors.
- 2 Q. Okay. And is Agent Compean -- was he a firearms
3 instructor?
- 4 A. Yes, he was.
- 5 Q. Was he ever one of your instructors?
- 6 A. Yes.
- 7 Q. Okay. What else are you taught during firearms classes,
8 what other types of things are covered?
- 9 A. You -- they also teach you how to react to the threat. And
10 then the target when they appear.
- 11 Q. Now, yesterday you testified that when the fleeing person,
12 Osvaldo Aldrete-Davila -- you saw his hands, right?
- 13 A. Yes.
- 14 Q. Are you trained to look at a person's hands?
- 15 A. That's the first reaction we have to go by.
- 16 Q. What does that mean, sir?
- 17 A. The hands, the hands indicates, you know, the threat of the
18 individual.
- 19 Q. The threat of the individual?
- 20 A. Yes.
- 21 Q. That's why you looked at his hands?
- 22 A. Yes.
- 23 Q. Now that you've heard the shots, are -- what do you do?
- 24 A. I just stood there.
- 25 Q. Did you pull out your weapon?

1 A. No, I did not.

2 Q. Why not?

3 A. Because I didn't feel there was a threat --

4 Q. Why not, sir?

5 A. -- for me. He was almost in Mexico.

6 Q. Who was almost in Mexico?

7 A. The driver.

8 Q. Almost. Did you fear for, at that time, your partner's

9 safety, Mr. Compean?

10 A. No, I did not.

11 Q. Why is that?

12 A. I mean, he has the primary weapon, the shotgun.

13 Q. I'm sorry?

14 A. He has the primary weapon, the shotgun. That's a pretty

15 lethal weapon.

16 Q. Okay. And have you ever seen aliens run back before?

17 A. Yes.

18 Q. Does that happen all the time?

19 A. Very often.

20 Q. Did you ever hear Agent Compean or anyone else out there as

21 that person's fleeing, stop, stop?

22 A. No.

23 Q. Then at some point in time -- okay. Agent Compean shoots.

24 you can no longer see him. Is that correct?

25 MR. ANTCLIFF: Object, leading.

- 1 THE COURT: All right. I'll sustain.
- 2 Q. Did you see him anymore after he shoots?
- 3 A. I could not see him anymore.
- 4 Q. And what do you do after that?
- 5 A. After that I just turn around, didn't see him anymore.
- 6 Just when -- shortly after they came back up to the levee.
- 7 Q. Let's take that -- who came back?
- 8 A. Agent Ramos and Agent Compean.
- 9 Q. Came back from where?
- 10 A. From down the vega.
- 11 Q. And you know they were in the vega for what reason? How do
- 12 you know that?
- 13 A. How do I know they were down there?
- 14 Q. Yes, sir.
- 15 A. Because I know Compean was down there, I saw him running.
- 16 Q. But did you see Agent Ramos run to the vega?
- 17 A. No, I did not.
- 18 Q. But then who came back?
- 19 A. Agent Ramos and Agent Compean.
- 20 Q. And when they returned, did they come walking together?
- 21 A. Yes, they were.
- 22 Q. Were they doing anything from what you could see?
- 23 A. No.
- 24 Q. Were they talking to one another?
- 25 A. No.

- 1 Q. Were they close enough to talk to one another, though?
- 2 A. Yes.
- 3 Q. So they get to the levee road. And what do they do next?
- 4 A. Agent Compean asked me where's my shotgun.
- 5 Q. And what did you tell him?
- 6 A. I told him it's down there inside the canal.
- 7 Q. And what happened next?
- 8 A. I believe he went back and retrieved it. Because by then,
- 9 I went to the van.
- 10 Q. Now, I think, initially, you testified that you witnessed
- 11 all this because you were, yourself, halfway into the bank of
- 12 the ditch. Is that right?
- 13 A. That is right.
- 14 Q. Did you scratch yourself as you were slipping down there?
- 15 A. Yes, I did.
- 16 Q. Why did you scratch yourself?
- 17 A. There's a lot of weeds down there.
- 18 Q. And where on your body, sir, did you scratch yourself?
- 19 A. My hands.
- 20 Q. Anywhere else?
- 21 A. Mainly my hands, and my uniform was full of dirt.
- 22 Q. When Agent Compean and Agent Ramos returned, does anyone
- 23 yell "gun"?
- 24 A. No.
- 25 Q. Does anyone yell "fleeing person had a shiny object in his

1 hand"?

2 A. No.

3 Q. Does anyone yell "the fleeing person shot at us"?

4 A. No.

5 Q. Does anyone yell "take cover"?

6 A. No.

7 MR. GONZALEZ: Approach the witness, Your Honor?

8 THE COURT: You may.

9 BY MR. GONZALEZ:

10 Q. And let me direct your attention to Government's Exhibit
11 Number 9. And I believe you've indicated that you say -- I'll
12 just point to the blank part of the levee. You're saying that
13 you could see half his body. Is that correct?

14 A. Yes.

15 Q. Now, when you're saying shooting, in what direction is he
16 shooting, pointing?

17 A. South, towards Mexico.

18 Q. Okay. Why don't you indicate?

19 A. He's going to be shooting this way.

20 Q. And you see where the vehicles are situated. And I know
21 there's a second vehicle closest to us. You said that was
22 Agent Yrigoyen. Is that correct?

23 A. Yes.

24 Q. Now when Agent Compean is shooting, is he standing behind
25 his truck taking cover?

- 1 A. No.
- 2 Q. Because you're able to see all of his upper body area. Is
3 that correct?
- 4 A. That is correct.
- 5 Q. Thank you. And you're by the van. Is there a point in
6 time when Agent Ramos jumps across the ditch and joins you back
7 to where the van is located?
- 8 A. Yes.
- 9 Q. And how does he look to you?
- 10 A. He looks excited.
- 11 Q. What do you mean, sir?
- 12 A. I mean, like we got the van, like happy.
- 13 Q. Okay. Now, you returned to the station that evening,
14 correct?
- 15 A. Yes.
- 16 Q. Do you ever mention to anyone that you heard a shooting?
- 17 A. No, I did not.
- 18 Q. That you've witnessed a shooting?
- 19 A. No, I did not.
- 20 Q. Does anyone at the station mention to anyone, any
21 supervisor, to your knowledge, that there was a shooting?
- 22 A. No.
- 23 Q. Sir, what's the FTO?
- 24 A. That's the acronym for Field Training Officer.
- 25 Q. What is a Field Training Officer?

1 A. That's FTO, you're responsible for the trainee that just
2 finished the academy.

3 Q. And what does the FTO show you, teach you?

4 A. They teach you the basics, how to operate, and do your
5 functions as a Border Patrol agent properly.

6 Q. And how long is an FTO assigned to a new agent?

7 A. Six weeks.

8 Q. Who was your FTO?

9 A. It was Compean, Agent Compean.

10 Q. Is that the same Agent Compean that's sitting here today?

11 A. Yes.

12 Q. All right, sir. You've been interviewed a number of times
13 by the Government. Isn't that correct?

14 A. Yes.

15 Q. You were interviewed back in March. Is that true?

16 A. Yes.

17 Q. 2005?

18 A. Yes.

19 Q. And you were asked to tell the truth. And did you tell us
20 everything you know at that point in time?

21 A. No, I did not.

22 Q. Why were you protecting Agent Compean and Agent Ramos?

23 MS. STILLINGER: I object to that as facts not in
24 evidence. He hasn't said he was protecting.

25 THE COURT: I'll sustain.

- 1 BY MR. GONZALEZ:
- 2 Q. Did you tell us everything you know?
- 3 A. No, I did not.
- 4 Q. Were you protecting anyone?
- 5 A. No, I'm not.
- 6 Q. Why didn't you tell us everything back in March?
- 7 A. Because I was a selfish person.
- 8 Q. What does that mean?
- 9 A. Meaning, I was so concerned about me.
- 10 Q. What?
- 11 A. Being labeled as the blower that just snitches on people.
- 12 Q. You didn't want a reputation with the other agents that you
- 13 were the one who blew the whistle?
- 14 MS. STILLINGER: Objection, leading.
- 15 A. Yes.
- 16 MR. ANTCLIFF: Objection.
- 17 A. Yes.
- 18 BY MR. GONZALEZ:
- 19 Q. That's what you meant by whistle-blower?
- 20 A. Yes.
- 21 Q. And on or about April 25, 2005, did you tell us everything
- 22 you know at that time?
- 23 A. No, I did not.
- 24 Q. Why did you hold back?
- 25 A. For the same reason. I didn't want to be the snitch.

1 Q. The snitch at the Border Patrol station?

2 A. Yes.

3 Q. And we had to talk to you again in September 26, 2005. Did
4 you still hold back on that date?

5 A. No.

6 MR. GONZALEZ: May I have a moment, Your Honor?

7 THE COURT: Sure.

8 BY MR. GONZALEZ:

9 Q. Let me just clarify something, Agent -- I'm sorry,
10 Mr. Ramos -- I'm sorry, Mr. Juarez. When you were arriving to
11 the ditch area --

12 A. Where?

13 Q. At the ditch, when you first arrive there, after you-all
14 were chasing Osvaldo Aldrete-Davila, did you happen to notice
15 Agent Ramos' vehicle, the position of his driver's side door?

16 A. Yes.

17 Q. Was it opened or closed?

18 A. His unit was open, his door.

19 MR. GONZALEZ: Pass the witness, Your Honor.

20 Your Honor, what I'm asking -- we previously offered
21 Government's Exhibits 9 and 11 into evidence, subject to my
22 taking additional facts, and now I'm asking defense counsel if
23 they have any objection, given the foundation has been laid.

24 MS. STILLINGER: There is information on this exhibit
25 that this witness did not testify about. So if Mr. Gonzalez

1 wanted to take that part out, I think we --

2 MR. GONZALEZ: We will redact the portion.

3 THE COURT: All right. Why don't you redact it, and
4 then we can approach the bench, and I will look at it and see
5 if it's redacted. I'll sustain the objection until it's
6 redacted and make sure it's ready.

7 MR. ANTCLIFF: Thank you, Your Honor.

8 MR. GONZALEZ: Okay.

9 CROSS-EXAMINATION

10 BY MS. STILLINGER:

11 Q. Agent Juarez?

12 A. Yes, ma'am.

13 Q. My name is Mary Stillinger. I represent Agent Ramos.

14 A. Yes, ma'am.

15 Q. I've never spoken to you, right?

16 A. No, ma'am.

17 Q. Okay. And you were approached by Fred Godina, that was
18 working for me, weren't you, the investigator?

19 A. I don't recall the name.

20 Q. Okay.

21 A. I recall a male voice.

22 Q. And -- you just talked to him on the telephone, correct?

23 A. Yes.

24 Q. Okay. And who was an investigator?

25 A. Yes.

1 Q. And he asked to speak to you about the events in the case?

2 A. No. I called.

3 Q. Okay. But did he ask to speak to you about the events in
4 the case?

5 A. Yes.

6 Q. Okay. And did you speak to him about the events in this
7 case?

8 A. No, I did not.

9 Q. Why is that?

10 A. Because when I got the letter, it was a very generic
11 letter. It was only addressed on the envelope on -- my name.
12 So when I opened up the letter, it was to whom it may concern.
13 And the thing that caught my eye was you are involved in a
14 potential witness case. And that was the only reason that I
15 called to find out what it was all about.

16 Q. Okay. You received a letter saying you're a witness in
17 this case. Could we speak to you. Something like that?

18 A. It only said for a potential witness.

19 Q. Right. Okay. But then let me ask, why -- you talked to
20 him on the phone. And he wanted to speak to you about this.
21 Were you under orders from your employer not to speak about
22 this case?

23 A. No.

24 Q. Okay. You just chose not to speak about this case?

25 A. That is correct.

1 Q. Okay. And, Mr. Juarez, or, Agent Juarez, you still are a
2 Border Patrol agent, correct?

3 A. Title only.

4 Q. Well, you still get the paycheck, right?

5 A. I cannot do immigration checks. On title and pay, yes, I
6 am.

7 Q. I'm asking if you still get the paycheck.

8 A. Yes.

9 Q. So, Agent Juarez, you were just telling Mr. Gonzalez that
10 you didn't tell the whole truth in March because you were being
11 selfish. When you met -- you met with Agent Sanchez in March.
12 Is that right?

13 A. Yes.

14 Q. Agent Chris Sanchez, that's sitting here, right?

15 A. Yes, that's him.

16 Q. And at that time he had presented you with a letter which
17 you signed off on, correct?

18 A. What letter?

19 Q. What we're calling a proffer letter?

20 A. No.

21 Q. Okay.

22 MS. STILLINGER: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

25

1 BY MS. STILLINGER:

2 Q. I'm going to show you what I've marked for identification
3 purposes as Defendant Ramos' Exhibit Number 12. If you could
4 just glance at that and --

5 A. That is the proffer that I requested.

6 Q. Okay. And could you just look at the back page to make
7 sure that's the one that you signed?

8 A. Yes, it is.

9 Q. Okay. You didn't have a lawyer at that time. Is that
10 right?

11 A. That is correct.

12 Q. Okay. And, Mr. Juarez, did you have this letter and have
13 the letter signed off on before you were interviewed by Agent
14 Sanchez?

15 A. Yes.

16 Q. Okay. I'm going to bring this back if we need to talk more
17 about it. That's when you spoke to Agent Sanchez on March
18 18th, you had already had this letter signed off on, correct,
19 that day, correct?

20 A. Yes.

21 Q. But prior to the interview, correct?

22 A. Yes.

23 Q. Okay. And under the terms of the agreement you just had to
24 tell him the truth and nothing you said would be used against
25 you, correct?

1 A. That is correct.

2 Q. Okay. So the most selfish thing you could do, I guess,
3 would be to tell him everything truthfully so that nothing
4 could possibly be used against you, correct?

5 A. Negative.

6 Q. Okay. It was in your best interest to tell the truth,
7 wasn't it?

8 A. Yes.

9 Q. Okay. And, in fact, part of the agreement is that if you
10 don't tell the truth, that you could be prosecuted for making a
11 false statement to a federal agent, correct?

12 A. That is correct.

13 Q. Okay. And you know that that's a federal felony offense,
14 to make a false statement to an agent?

15 A. Yes.

16 Q. Okay. And if you made a false statement, it wouldn't be
17 covered by this agreement, correct?

18 A. What do you mean? I don't understand.

19 Q. This agreement -- this agreement says that you're required
20 to make a completely truthful statement. And if you knowingly
21 provide information to the United States which is false,
22 misleading, or designed to obstruct justice, you will be
23 subject to prosecution for applicable criminal violations,
24 correct?

25 A. That is correct.

1 Q. Okay. That may include perjury prosecution for making
2 false statements or prosecution for obstruction of justice,
3 correct?

4 A. Correct.

5 Q. So this agreement provides you protection if you're
6 truthful. But it does not provide you any protection if you
7 lie, correct?

8 A. That's correct.

9 Q. Okay. And that's why it would be in your best interest to
10 tell the whole truth, right?

11 A. Yes.

12 Q. Okay. And you made a sworn statement on March the 18th,
13 correct?

14 A. That is correct.

15 Q. So not only were you interviewed, but you actually wrote
16 out in your own hand a statement and then swore that it was the
17 whole truth and nothing but the truth, correct?

18 A. Yes.

19 Q. And you're telling us now that that is a lie?

20 A. What was a lie?

21 Q. Your statement.

22 A. It was a lie that I didn't tell that I witnessed the
23 shooting. That was the only thing that I lied.

24 Q. Okay. The Agent came back and talked to you again, right?

25 A. Yes.

1 Q. And I'm talking about Agent Sanchez, I'm sorry, Agent Chris
2 Sanchez?

3 A. Yes.

4 Q. And did he tell you that he thought you hadn't told the
5 whole truth?

6 A. He just told me there were incomplete statements, that he
7 needed to go over my statements.

8 Q. Did he remind you that you could be prosecuted if you held
9 anything back?

10 A. He just told me just tell me the truth. And I need to ask
11 you questions about your last statement.

12 Q. Okay. The first time you met with him was he very -- did
13 he scare you?

14 A. The first time that I met him I was just in shock.

15 Q. And you were in shock because -- because why? Because he
16 was yelling at you and accusing you?

17 A. No, he was very professional.

18 Q. Why were you in shock?

19 A. Of the incident, the shooting.

20 Q. Well, this is a month after the shooting, right?

21 A. Yes.

22 Q. Okay. Were you in shock the whole month, or just in shock
23 he came to talk to you?

24 A. Of course, when he came to talk to me.

25 Q. You weren't scared?

- 1 A. No, I wasn't.
- 2 Q. Okay. You weren't worried about being prosecuted?
- 3 A. Of course, I was.
- 4 Q. Okay. From my reading of your statement, what you've said,
5 what really changed is that you finally came around to saying
6 yes, you witnessed the shooting, correct?
- 7 A. That is right.
- 8 Q. Nothing about what you said about Agent Ramos changed. Is
9 that right?
- 10 A. That is correct.
- 11 Q. Okay. Okay. Let me start at the beginning -- I've already
12 started. But let me -- what are your duties as a Border Patrol
13 agent? And I'm speaking very generally. Because I know you
14 have a long list of duties. But generally, what is your job?
- 15 A. My main job is to stop illegal immigration.
- 16 Q. Okay. And I guess even a simple way to say Border Patrol
17 agent, you patrol the border, right?
- 18 A. Yes.
- 19 Q. Okay. Now when people cross into this country at some
20 place other than a port of entry, is that illegal?
- 21 A. It is illegal.
- 22 Q. Okay. And it's illegal even if you're a U.S. citizen,
23 right?
- 24 A. Yes.
- 25 Q. That's called entering without inspection?

1 A. That's what it's called, yes.

2 Q. So any time you see someone crossing the river not on the
3 bridge, not at the port of entry but just wading through the
4 river, that's a criminal offense that you are absolutely
5 authorized and, in fact, obligated to investigate, correct?

6 A. That's not a criminal offense. It's an administrative
7 offense.

8 Q. Entering without inspection?

9 A. Yes.

10 Q. Okay. I might have to disagree with you on that. But as
11 far as you know, it's just an administrative problem?

12 A. It's an administrative problem. The database shows he has
13 no prior criminal records, meaning any entry, then the subject
14 is going to be returned back to the country, which we call RV.
15 Return voluntarily.

16 Q. Okay. So you're saying if you're a Mexican citizen without
17 any paperwork to enter, you would not view that as a criminal
18 violation if you cross the river?

19 A. That's administrative only.

20 Q. Okay. Well, you know -- okay. Okay. Let me move on. If
21 somebody enters without inspection, that certainly gives you a
22 reason to suspect that there's something illegal afoot. Would
23 that be a fair statement?

24 A. It gives us the right to stop them.

25 Q. Right.

1 A. And that's when I have to identify myself as a Border
2 Patrol. And I still have to ask the person his status.

3 Q. Right. Okay. And would you agree that the -- it is also
4 one of the missions of the Border Patrol to stop -- to fight
5 terrorism?

6 A. Yes.

7 Q. Specifically, terrorists entering the country?

8 A. Yes.

9 Q. Okay. And --

10 MS. STILLINGER: Could I have just a second, Your
11 Honor?

12 THE COURT: Sure.

13 BY MS. STILLINGER:

14 Q. Would you agree that one of a Border Patrol agent's most
15 important duties is stopping smugglers trying to smuggle things
16 into the country?

17 A. What I have said hasn't changed. The main thing the
18 illegal aliens.

19 Q. Okay. Okay. So are you saying that if somebody is
20 smuggling drugs into the country, that is not a matter of
21 interest to you?

22 A. Well, you have to understand the main -- the title was
23 given to us. Our main objective is to stop illegal entry into
24 the United States.

25 Q. Right.

- 1 A. Because we're not DEA, to enforce drugs --
- 2 Q. I understand that?
- 3 A. -- along the border.
- 4 Q. But you have authority to stop someone smuggling drugs into
- 5 the country, don't you?
- 6 A. If you see it.
- 7 Q. Well -- or if you have probable cause to believe that
- 8 that's happened, correct?
- 9 A. If you have reasonable suspicion, yes.
- 10 Q. Reasonable suspicion. Okay. If you have reasonable
- 11 suspicion that drugs have been smuggled, you have authority to
- 12 stop that person and investigate?
- 13 A. Yes.
- 14 Q. And, in fact, you're not just supposed to say oh, looks
- 15 like marijuana being smuggled, not illegal aliens. Let's go
- 16 the other way, right?
- 17 A. Right.
- 18 Q. That would be a dereliction of duty, wouldn't it?
- 19 A. Yes.
- 20 Q. Now, do you know what Area 76 is?
- 21 A. Seventy-six is Area 3.
- 22 Q. Okay. And -- but do you know, specifically -- and -- well,
- 23 let me ask you this. We talk about 76, because in this case,
- 24 Agent Compean called out that there was sensor activity at Area
- 25 76, correct?

1 A. Correct.

2 Q. Do you know where 76 is?

3 A. More or less I have a general idea, yes.

4 Q. Okay.

5 MS. STILLINGER: May I approach the witness, Your
6 Honor?

7 THE COURT: You may.

8 BY MS. STILLINGER:

9 Q. I'm just going to see --

10 MS. STILLINGER: Your Honor, by the way, I've marked
11 this map by the U.S. Geological Survey Department of the entire
12 area as Exhibit Ramos 7. And I would like to move for its
13 admission.

14 MS. KANOF: Could we see it?

15 MS. STILLINGER: He's seen it.

16 THE COURT: Any objections?

17 MR. GONZALEZ: No objections, Your Honor.

18 THE COURT: It will be admitted.

19 BY MS. STILLINGER:

20 Q Now, I don't know if you're familiar enough to say where
21 Area 76 -- now 76 connotates the actual sensor, correct?

22 A. That's very -- specifically, the sensor, yes.

23 Q. So we're not talking about a big area of square footage,
24 but we're talking about a specific sensor, correct?

25 A. Yes.

1 Q. So I understand you may not be able to pinpoint it exactly,
2 because it's a very small thing. But do you know -- and take a
3 minute to look at this and orient yourself. You see Fabens up
4 here? Do you know approximately where Area 76 is?

5 A. Seventy-six is somewhere in this area here.

6 Q. Okay. In this area here. I'm going to keep my finger here
7 and put it on the overhead so we can make sure we've got that.

8 THE COURT: Unfold it. Because I --

9 MS. STILLINGER: But if I move my finger, I'm going to
10 lose this spot.

11 MS. KANOF: I can help.

12 MS. STILLINGER: I'm sorry. I'm technologically
13 impaired.

14 BY MS. STILLINGER:

15 Q Agent Juarez, I've put a little yellow stickie here. And
16 do you recognize that as the approximate area where you were
17 just showing me, Area 76?

18 A. That's the vicinity, general area, yes.

19 Q. I'm going to write 76 on this note. As the approximate
20 area.

21 Now, let me see if I can zoom. We'll leave that for
22 just a second.

23 And this area where Area 76 is, it's a farming area,
24 isn't it?

25 A. Yes.

- 1 Q. Would you expect to see a van being used on a farm?
- 2 A. You see a lot of vehicles, yes.
- 3 Q. Would you expect a van to be used on the farm?
- 4 A. Yes.
- 5 Q. Okay. So when -- and by the way, 76 is on a dirt road that
6 goes along the drainage ditch. Is that right?
- 7 A. Yes.
- 8 Q. Okay. And when there's a call out that you have sensor
9 activity on 76, that's not necessarily -- that doesn't
10 necessarily mean illegal activity, correct?
- 11 A. That's correct.
- 12 Q. Okay. Is that a matter of interest to you as a Border
13 Patrol agent?
- 14 A. Yes.
- 15 Q. Okay. Is it of enough interest that you are authorized to
16 conduct an immigration check?
- 17 A. Yes.
- 18 Q. Okay. Now, Agent Compean, he had called out 46. What does
19 46 mean?
- 20 A. That's the ten code for narcotics.
- 21 Q. Okay. So he called out a code that indicated to you that
22 he suspected a narcotics transaction of some sort, correct?
- 23 A. Yes.
- 24 Q. And, of course, he didn't call out all of the details to
25 you or tell you exactly what he had seen, right?

- 1 A. That's correct.
- 2 Q. He didn't tell you whether or not he had seen people
3 running back across the river, right?
- 4 A. That's correct.
- 5 Q. Okay. But he's indicating to you that he has some
6 knowledge that leads him to believe there's reasonable
7 suspicion that a narcotics transaction has occurred in
8 connection with this van that has set off the sensors at Area
9 76?
- 10 A. When he called it out, he called it out to everyone
11 working, not specifically to me.
- 12 Q. Right. I understand. He called out on the radio to
13 everyone in the area, basically, right?
- 14 A. Yes.
- 15 Q. But he's calling out information that leads you to believe
16 he has reasonable suspicion that a drug transaction has
17 occurred with a van around Area 76, is that fair to say?
- 18 A. Yes.
- 19 Q. Now, you said that he called out -- well, you said that he
20 called out a minivan. Is that right?
- 21 A. Yes.
- 22 Q. Okay. Now I know you've looked at the transcript of the
23 radio transmission, correct?
- 24 A. Yes.
- 25 Q. And it doesn't have him calling out minivan on the radio

- 1 transmission. Is that right?
- 2 A. That's correct.
- 3 Q. Okay. So do you believe that the first call out he gave
- 4 was on the car-to-car radio -- rather, the tower?
- 5 A. I don't know. But that's what I copied.
- 6 Q. Okay.
- 7 A. Minivan.
- 8 Q. Okay. When you say that's what you copied, that's what you
- 9 heard?
- 10 A. That's what I got on my radio traffic, yes.
- 11 Q. But that's not what's on the tower radio traffic. So would
- 12 you assume that it came on the car-to-car radio traffic?
- 13 A. Yes.
- 14 Q. Okay. And probably also, then, the 46 is on that
- 15 car-to-car traffic, right?
- 16 A. Yes.
- 17 Q. Because that's not on the transcript, right?
- 18 A. Yes.
- 19 Q. Okay. Agent Juarez, tell me -- I didn't quite catch what
- 20 you said about when you got this call. Did you say you were
- 21 pushing back a large group of aliens?
- 22 A. Yes.
- 23 Q. What does that mean?
- 24 A. Pushing back is holding the line, not letting the aliens
- 25 come across illegally. You have to be high profile. And once

1 you're high profile, they will not attempt to come in.

2 Q. Okay. And how large a group are we talking about?

3 A. It was getting -- starting with ten. And then it started
4 getting bigger and bigger.

5 Q. Really?

6 A. Yes.

7 Q. And, really, what you do is you -- when you say you make
8 yourself high profile, you make yourself seen to these people,
9 right?

10 A. That's correct.

11 Q. To, basically, let them know don't try it. Is that right?

12 A. Yes.

13 Q. Okay. Do you ever find that sometimes when somebody is
14 smuggling drugs, they may also create a diversion somewhere
15 else on the border to take your-alls attention away?

16 A. I'm sure. They're smart people.

17 Q. You don't have specific experience with that, though, is
18 that --

19 A. Only illegal aliens.

20 Q. Okay.

21 MS. STILLINGER: May I approach the witness again,
22 Your Honor?

23 THE COURT: You may.

24 BY MS. STILLINGER:

25 Q. I would like -- if you could show me on this map, if you

1 could find it again, I can open it up a little bit more, where
2 the -- I think you said it was the C.C. Bills gate?
3 A. Yes.
4 Q. And where is that on this map? I'll tell you what --
5 A. I have never used this map. So -- I have landmarks that I
6 go by on the 76. I use the red barn to identify, then C.C.
7 Bills. I have the landmarks to go by.
8 Q. I understand.
9 A. It's going to very difficult to pinpoint that area.
10 Q. Right. I understand. The C.C. Bills gate, there is a road
11 that comes north out of it, correct? Let me help orient. This
12 would be Jess Harris Road here?
13 A. Wingo.
14 Q. This is Wingo Road here.
15 A. This is the C.C. Bills gate here.
16 Q. Okay. I'm going to put a sticker right there so that we
17 can mark that. I'm going to put C.C. Bills. Could you show
18 me? I'm sorry. I know you went through this with
19 Mr. Gonzalez. I have a very hard time. I don't know if the
20 jury might, too. But I have a very hard time understanding
21 these satellite pictures. But could you just show me on the
22 road map where you traveled?
23 A. I traveled on Wingo, up north. And then the next
24 intersection is Island. So Island would take you up north to
25 the next -- there's a lot of Islands. There's three. So the

1 next road is Island. That's the one I went left.

2 Q. How do you call them, Lower, Middle and Upper?

3 A. Lower, Middle -- yes.

4 Q. Okay. Okay. So you came up this road that way and then --
5 I'm sorry, just a -- I would like to get a highlighter and mark
6 this for us.

7 MS. STILLINGER: I won't highlight on the map then,
8 Your Honor.

9 Q. Then let's just go through this. And I can put it on the
10 overhead projector to show the area.

11 THE COURT: Do you want -- do you need a dark marker.

12 MS. STILLINGER: They don't want me writing on it, the
13 prosecutors.

14 THE COURT: I gotcha.

15 BY MS. STILLINGER:

16 Q You came up to this road?

17 A. Yes.

18 Q. Which is Middle Island?

19 A. Yes.

20 Q. Okay. And where did you turn there?

21 A. This is -- I don't know if I go left or right. But I know
22 it was Island Road.

23 Q. Okay.

24 A. I know it's an Island. I went left.

25 Q. You got up to this one?

1 A. I would say so. That's when I went left. These two roads
2 went left.

3 Q. Now let me put this on the projector so the jury can have
4 an idea what we're talking about.

5 THE COURT: Are you trying to adjust it?

6 MS. STILLINGER: I was trying to get it to zoom which,
7 I guess, it doesn't do.

8 BY MS. STILLINGER:

9 Q. This will be a little tricky. But I've marked C.C. Bills.
10 And I'm going to move it. You came up this road over here, up
11 to the Middle Island, or maybe up to the Upper Island. Is that
12 right? But you took one of the Island roads over to Fabens
13 Road?

14 A. Yes. I think it was an immediate left.

15 Q. This Middle Island Road?

16 A. Yes.

17 Q. Okay. And you came over to Fabens Road?

18 A. Yes.

19 Q. Okay. Now, I'm going to turn it here so we can see this is
20 Fabens Road, correct, it goes right into Fabens?

21 A. Yes.

22 Q. Okay. Now, where is it that you first see the van?

23 A. I would say where you have your finger. Okay.

24 Q. A little --

25 A. Almost in that direction.

1 Q. Okay. Let me put a sticker on that so --

2 MR. GONZALEZ: Your Honor, may we approach the bench?

3 THE COURT: Sure.

4 (Bench conference:)

5 MR. GONZALEZ: Jose Luis Gonzalez for the Government.

6 I'm looking at this map. And I looked at the aerial
7 maps. And I don't see the "S" road.

8 MS. STILLINGER: It's here.

9 MR. GONZALEZ: Where? I'm sorry. Okay.

10 MS. KANOF: What's the date on that map?

11 MR. GONZALEZ: Okay. No, that's fine. I hadn't seen
12 the "S" curve.

13 THE COURT: Okay. All right. You may proceed, then.

14 (End of bench conference; open court.)

15 BY MS. STILLINGER:

16 Q Okay. Okay. What I've marked here then is where you see,
17 approximately, here. Are you on the side street when you see
18 the van going north on Fabens Road?

19 A. I'm on the road, yes.

20 Q. You're on the side road? You're not actually on Fabens
21 Road yet?

22 A. I'm approaching the road, yes, the intersection.

23 Q. Okay. So I'm going to put "sees van". That's,
24 approximately, where you see the van as you're approaching
25 Fabens Road?

- 1 A. Yes.
- 2 Q. Okay. Now -- and you call that out on the radio, right?
- 3 A. Yes.
- 4 Q. Okay. And the van, it's -- it's a gray, but it -- it --
- 5 it's been called out to you as a blue van, correct?
- 6 A. I was mainly looking for a minivan. The color -- I wasn't
- 7 looking for a color. I was mainly looking for the size of the
- 8 van.
- 9 Q. Okay. Because it's not really clear whether this is a gray
- 10 or grayish blue or bluish gray, is that fair to say?
- 11 A. I knew he called blue. But the key was minivan in my head.
- 12 Q. But this wasn't a minivan, right?
- 13 A. That's correct.
- 14 Q. Okay. And -- but you don't have any doubt that's the van
- 15 Agent Compean called out, do you?
- 16 A. I had my doubts, yes.
- 17 Q. You didn't -- right then you had your doubts?
- 18 A. Yes.
- 19 Q. Yes. Why?
- 20 A. Full size and minivan are totally big -- a big difference.
- 21 Q. So why did you start following this van?
- 22 A. Because that was the only vehicle that came out from that
- 23 area.
- 24 Q. Okay. Now, the van was going very fast when you first saw
- 25 it, correct?

- 1 A. It was going fast.
- 2 Q. It's the only van you see and exceeding the speed limit,
3 correct?
- 4 A. I'm assuming, yes.
- 5 Q. Now, I understand you don't have authority to pull people
6 over for traffic violations. And that's not what you were
7 doing. But is that something that raised your suspicion about
8 the van?
- 9 A. Yes. Because it was the only van out of the area.
- 10 Q. And because he was traveling quickly, correct?
- 11 A. Yes.
- 12 Q. Okay. So you were falling behind him on this Fabens Road
13 driving into Fabens. Is that right?
- 14 A. Yes.
- 15 Q. Okay. And at that point in time is anyone else following
16 him?
- 17 A. I was the only one.
- 18 Q. Okay. And he's going very fast. Do you also travel as
19 fast following him?
- 20 A. Yes.
- 21 Q. Okay. And you did call it out to Compean to confirm that
22 you had seen the van, right?
- 23 A. Yes.
- 24 Q. Okay. And you told him that it was a full-size van, right?
- 25 A. Yes.

1 Q. Okay. And he didn't come back and say no, we're looking
2 for a minivan, did he?

3 A. No.

4 Q. Didn't he agree that's the van?

5 A. Yes.

6 Q. Okay. So -- okay. So he confirmed yes, that's the van
7 we're looking for, right?

8 MR. GONZALEZ: Objection, mischaracterization of the
9 transcript.

10 THE COURT: All right.

11 MS. STILLINGER: In response, Your Honor, obviously,
12 there is a lot of traffic that is not on the transcript, Your
13 Honor.

14 THE COURT: All right. Restate the question. I will
15 sustain. I haven't heard any -- I'm not exactly sure that I
16 understand the question in the sense that your question was he
17 called back. That was fine.

18 MS. STILLINGER: He confirmed this is -- this was the
19 van they were looking for.

20 THE COURT: He can answer that question.

21 BY MS. STILLINGER:

22 Q That was my question. Did he confirm that the van you had
23 found was the van they were looking for?

24 A. When I called it out, I said it's a full van. Yeah, that
25 could be the one.

1 Q. Okay. So because your real understanding had been, he
2 called out a minivan. But now he's confirming it's not
3 necessarily a minivan?

4 A. Yes.

5 Q. Now him, I'm talking about the van, is he going into Fabens
6 at a fairly fast pace? When do you put your lights on?

7 A. I put my lights almost at the intersection traffic light.

8 Q. Okay. You know what, we are or going to switch to a
9 close-up. This should fit nicely on this projector. I'm
10 putting up here what I've marked for identification as
11 Defendant Ramos' Exhibit 9. And, Agent Juarez, do you
12 recognize these streets, Fabens Road coming into Fabens here?

13 A. Yes, I do.

14 Q. And this is Highway 20, correct?

15 A. Yes.

16 Q. Also known as Alameda Street or Alameda Avenue, I think?

17 A. Yes.

18 Q. Okay. And is this the intersection you're talking about?

19 A. Yes, that's the traffic light.

20 Q. Okay. And when you say almost to the light, I mean, was it
21 a block before the light? Or how close to the light?

22 A. Almost like the intersection, right there almost.

23 Q. Okay. So I'm just going to put this here. You say you
24 turned on your lights there.

25 Now, as you are heading north into Fabens before this

1 happens that you turn your lights on, do you see Agent Ramos
2 parked in this little area right here?

3 A. I saw him. But that's not the area that I saw him.

4 Q. Okay. Where did you see him? I'm sorry. Let me --

5 MS. STILLINGER: May I approach the witness, Your
6 Honor?

7 THE COURT: Sure.

8 BY MS. STILLINGER:

9 Q. Let me hand you the pointer.

10 A. Thank you, ma'am.

11 Q. Uh-huh.

12 A. This is where I saw him, here.

13 Q. Okay. So you didn't see him -- this area right here is
14 like a little -- just sort of a little parking area, correct?

15 A. That's residential.

16 Q. Right. I understand. Just a second. This area here, I
17 mean, it shows those two streets here. But this area is open
18 for -- I mean, you could park there?

19 A. Yes, it's open space, yes.

20 Q. And you didn't notice Agent Ramos there as you were heading
21 north, correct?

22 A. That's correct.

23 Q. Okay. You saw him -- would this be about the spot?

24 A. No, ma'am.

25 Q. Okay.

1 A. Right there. Right in the middle.

2 Q. Okay. Let me -- when is it that you saw him, before you
3 came to the intersection, or after you've done that circle
4 following this guy?

5 A. When I was after that driver of the van, when I was going
6 northbound, this is where I saw him, right here.

7 Q. Okay. When you were going northbound towards the
8 intersection?

9 A. That's correct.

10 Q. And what is -- how is his vehicle situated?

11 A. His vehicle is facing south.

12 Q. Okay. So he's facing south and you're driving towards the
13 intersection. You put your lights on. And you actually hit
14 the -- barely hit the green light at the intersection. Is that
15 right?

16 A. Yes. He was able to take the green light.

17 Q. He took the green light as you followed, as, I guess, it
18 was turning yellow?

19 A. No. No. It was red and then turned green. Because you
20 have to slow down. That's when it turned green.

21 Q. Oh, it was just turning green when he got there?

22 A. Oh, we have to slow down because we have the light. So
23 when it turned green, that's when he crossed the intersection.

24 Q. Okay. What I'm asking is, did he come to a stop, the guy
25 in the van? Did he actually stop at the stoplight and have to

1 wait for it to change?

2 A. No.

3 Q. Okay. So he was driving up to it slow because it was red,
4 but then it turned green, and then he went?

5 A. Yes.

6 Q. Okay. Thank you. And is he going fast enough that his
7 tires are screeching?

8 A. He was going fast after I turned the lights on.

9 Q. Okay. So you activated those lights before you turn left
10 on Alameda?

11 A. He's kind of loaded down. I think he was going to pull
12 over.

13 Q. Uh-huh.

14 A. And, I guess, he changed his mind. That's when he got on
15 the gas, of course. And that's when he made the immediate
16 left.

17 Q. Okay. Now, you told Mr. Gonzalez that at this point in
18 time this guy hadn't committed any felony offenses, right?

19 A. That's correct.

20 Q. Okay. Well, you knew later, you find out he's got a huge
21 amount of marijuana in the van, right?

22 A. At the end.

23 Q. Right. So he was committing a felony?

24 MR. GONZALEZ: Objection, Your Honor. He did not know
25 at that point in time what crime he committed.

1 Mischaracterization of the evidence and the law.

2 THE COURT: I'll overrule the objection.

3 BY MS. STILLINGER:

4 Q. Maybe, you misspoke. But the question was, had he
5 committed any felony offense?

6 MR. GONZALEZ: I object, Your Honor. There is a
7 presumption of innocence, not only to the client here, but to
8 the person driving that vehicle as well. They haven't proven
9 any crime was, in fact, committed beyond a reasonable doubt.

10 MS. STILLINGER: I'll restate the question.

11 BY MS. STILLINGER:

12 Q. The man who was driving that van -- I'm sorry. The van
13 that you were following when you were here in Fabens, that's
14 the same van that later ran to the edge of the drainage ditch
15 at the foot of Jess Harris Road, correct?

16 A. Yes.

17 Q. And that's the same van that had a huge amount of marijuana
18 in it, isn't it?

19 A. Yes.

20 Q. Okay. So I understand at that point in time you hadn't
21 seen the marijuana. But, of course, it turned out later he was
22 committing a felony offense. Isn't that what you discovered
23 later?

24 A. Yes.

25 MR. GONZALEZ: Objection, Your Honor, assuming facts

1 not in evidence.

2 THE COURT: I'll overrule.

3 BY MS. STILLINGER:

4 Q. And when you were following that van, you have a reasonable
5 suspicion that he has committed a felony offense, don't you?

6 A. Yes.

7 Q. Okay.

8 MR. GONZALEZ: Objection, Your Honor. He's --

9 MS. STILLINGER: They can't object if they don't like
10 the answer.

11 MR. GONZALEZ: He has not testified as to what felony
12 offense was being committed. And if that is the case, then we
13 would like to hear what evidence.

14 MS. STILLINGER: He can ask that on redirect.

15 THE COURT: All right. I will overrule the objection.

16 BY MS. STILLINGER:

17 Q. Agent Juarez, you obviously -- I think this is obvious but
18 I should ask. You're on duty on this day, correct?

19 A. Yes.

20 Q. You're in a Border Patrol uniform, driving your Border
21 Patrol vehicle?

22 A. Yes.

23 Q. Okay. You're doing your job as a Border Patrol agent?

24 A. Yes.

25 Q. Okay. When you're following this van, are you doing

1 anything other than your job as a Border Patrol agent?

2 A. No.

3 Q. Okay. And is it fair to say you believe that you're
4 properly doing your job as a Border Patrol agent?

5 A. Yes.

6 Q. Okay. You weren't just stopping this van because you
7 thought, I don't care for the way this van looks, let's shake
8 him down, right?

9 A. Yes.

10 Q. You were telling him to pull over to do a valid
11 investigatory stop. Is that correct?

12 A. Yes.

13 Q. Okay. And when you turned your lights on, what are you
14 indicating to the person that you're following? What do the
15 lights mean?

16 A. It means pull over.

17 Q. Okay. And does the van pull over?

18 A. No.

19 Q. Okay. And as you're making these turns going left, left,
20 left, you have your lights on that whole time, correct?

21 A. Yes.

22 Q. Okay. And he doesn't -- the van, doesn't pull over or try
23 to as far as you can tell, to pull over any time there. Is
24 that right?

25 A. That's right.

- 1 Q. In fact, he's speeding up. Is that right?
- 2 A. Yes.
- 3 Q. Understand, he can't go very fast because you've got sharp
- 4 turns there, right?
- 5 A. Yes.
- 6 Q. But is it fair to say it's clear to you he's trying to
- 7 evade you?
- 8 A. That's correct.
- 9 Q. Okay. At that point in time doesn't this become a pursuit?
- 10 A. Yes.
- 11 Q. Okay. Now, when you come out of these little circles of
- 12 left, left, left and you come to here, you see Agent Ramos
- 13 again, correct?
- 14 A. Yes.
- 15 Q. But this time he's headed south, correct? He's pointed
- 16 south?
- 17 A. No, he's driving away already.
- 18 Q. Okay. Southbound, correct?
- 19 A. Yes.
- 20 Q. And he falls in behind the van. Is that right?
- 21 A. Yes.
- 22 Q. And that's how he becomes the lead vehicle in this pursuit.
- 23 Is that correct?
- 24 A. Yes, is it.
- 25 Q. Okay. Now is this when you say he made the motion like

- 1 this?
- 2 A. Not right away.
- 3 Q. Okay. When did that happen?
- 4 A. Approximately, around this area here. After we exit all
- 5 this, the residential area.
- 6 Q. Okay. And you have lights on top of your vehicle,
- 7 emergency lights on top, right?
- 8 A. Yes.
- 9 Q. Do you also have the lights in front of your vehicle?
- 10 A. Yes.
- 11 Q. And those are not just regular headlights, but they're --
- 12 you call them wigwags?
- 13 A. I don't know, they flash.
- 14 Q. They flash colors, right, the red and blue?
- 15 A. Yes.
- 16 Q. Okay. And those are also emergency lights, correct?
- 17 A. Yes.
- 18 Q. Okay. And when those lights are activated, what is that
- 19 intended to indicate to a person?
- 20 A. To pull over.
- 21 Q. Did you keep those lights on?
- 22 A. Yes.
- 23 Q. So you turned off your overheads somewhere in here?
- 24 A. Somewhere in there.
- 25 Q. Okay. I see. Past somewhere in here the lights go off?

- 1 A. Yes.
- 2 Q. But you keep your front emergency lights on?
- 3 A. No.
- 4 Q. Oh, you didn't. Okay. Could you tell whether Agent Ramos
5 had his front emergency lights on?
- 6 A. No.
- 7 Q. You can't tell from the back, right?
- 8 A. That's correct.
- 9 Q. And you could hear Agent Ramos on the radio after he picks
10 up the lead position in the pursuit, correct?
- 11 A. Yes.
- 12 Q. Okay. And you know he's calling out what he's doing,
13 right?
- 14 A. Yes.
- 15 Q. And not all of that appears on this radio transmission, the
16 transcript, does it?
- 17 A. Yes.
- 18 Q. That's correct. It's not all that, correct?
- 19 A. Yes.
- 20 Q. Because a lot of it was on the car-to-car radio, right?
- 21 A. Yes.
- 22 Q. And would it be fair to say that the person driving the van
23 is continually taking evasive action?
- 24 A. Yes.
- 25 Q. He doesn't slow down or pull over and try to find a place

1 to park, right?

2 A. That's correct.

3 Q. Okay. And you weren't trying to do -- when you turned --
4 well, let me back up just a little more. When you see Agent
5 Ramos do something like that, is that any kind of designated
6 Border Patrol signal for cut your lights off?

7 A. No.

8 Q. That was your understanding of it, right?

9 A. Yes.

10 Q. He might have been saying come on, let's go, right?

11 A. I don't know.

12 Q. But you took it to mean, turn your overhead emergency
13 lights off?

14 A. Yes.

15 Q. Which really at this point you're the second car anyway --
16 well, anyway. I'm sorry. Strike that.

17 Now, what -- would you agree with me that the
18 definition of a pursuit is when you signal to somebody to pull
19 over and they don't pull over, and then you continue to follow?
20 That is a pursuit, correct?

21 A. Yes.

22 Q. And that's a pursuit regardless of the speed you're going,
23 right?

24 A. Yes.

25 Q. I mean, there may be something called a high-speed pursuit.

1 A pursuit is a pursuit whether you're driving fast or slow,
2 correct?

3 A. That's correct.

4 Q. So even O.J. Simpson on his famous chase, that will be a
5 pursuit even though he was driving very slowly, correct?

6 A. Yes.

7 Q. And the pursuit requires a supervisor's supervision,
8 correct?

9 A. That's correct.

10 Q. Okay. And, in fact, isn't there a supervisor in the office
11 who has the designated responsibility for overseeing pursuits?

12 A. Yes.

13 Q. Okay. Do you know who that was that day?

14 A. The supervisor, which is a 12 or higher. Whoever is on
15 duty to make those determinations to approve the pursuit or
16 not.

17 Q. And on that day, do you know whether it was Arnold or
18 Richards?

19 A. I think immediate supervisor.

20 Q. So that would have been Agent Arnold?

21 A. I don't know the chain of command on that. I know you have
22 to notify a supervisor. But I don't know who approves it if
23 it's the higher one or the immediate supervisor.

24 Q. Okay. Now let me ask you this, when you turn on your
25 lights, when you're here -- and I imagine sometimes it takes

- 1 people a block or so to pull over, right?
- 2 A. Yes.
- 3 Q. Typically, but when you see him go left and left and left
- 4 and he speeds up, you know he's not pulling over, right?
- 5 A. Oh, yes.
- 6 Q. Do you call into the supervisor at this time and say this
- 7 is what's going on, can I get permission to pursue?
- 8 A. No, I did not.
- 9 Q. And you don't do that because you know the supervisor is
- 10 already listening, don't you?
- 11 A. No.
- 12 Q. Okay. Don't the supervisors monitor the radio traffic in
- 13 the office?
- 14 A. Yes.
- 15 Q. Okay. And where is the office? Is it on this map?
- 16 A. No, it's not on the --
- 17 Q. It's not designated on this but --
- 18 A. It's not on the map.
- 19 Q. This is -- would -- oh, this is Socorro Road here?
- 20 A. It's on 20.
- 21 Q. On 20?
- 22 A. Yes.
- 23 Q. A little bit further up?
- 24 A. It's not on that map visually.
- 25 Q. It's a little bit off of this map, correct?

1 A. Yes.

2 Q. But you're very close to the supervisor's office when
3 you're in this area, correct?

4 A. To the office, yes.

5 Q. Okay.

6 A. To the station.

7 Q. Yes, to the station. And the super- -- at the Border
8 Patrol station they monitor the radio traffic, right?

9 A. I'm assuming they do.

10 Q. They're certainly supposed to, correct?

11 MR. GONZALEZ: Objection, Your Honor. What he's
12 telling -- he doesn't know. Calls for speculation.

13 MS. STILLINGER: I can ask more specifically, Your
14 Honor.

15 THE COURT: Please do.

16 BY MS. STILLINGER:

17 Q. Have you ever been in the Border Patrol station?

18 A. Pardon me?

19 Q. Have you ever been in the station, the Border Patrol
20 station?

21 A. Yes.

22 Q. A lot of times, right?

23 A. Yes.

24 Q. When you're there, do you hear radio traffic?

25 A. Yes.

1 Q. Okay. So it's broadcast in the Border Patrol station,
2 correct?

3 A. Yes.

4 Q. And if there is a supervisor on duty, then that supervisor
5 would be hearing the radio traffic. Is that right?

6 A. Only if he goes on tower.

7 Q. Okay. You're saying they don't hear the car-to-car
8 traffic?

9 A. No.

10 Q. Okay. And how do you know that?

11 A. You hear the static.

12 Q. Oh, you mean it wouldn't come in very clearly?

13 A. No.

14 Q. How about if you were a quarter of a mile away, like right
15 here, you could hear it then, couldn't you?

16 A. I don't know.

17 Q. Okay. Okay. But you're saying it does come in, it's just
18 usually staticky?

19 A. Yes, you have to go to the tower to reach the station
20 clearly.

21 Q. Well, unless you're very close to it, right?

22 MR. GONZALEZ: Objection, asked and answered.

23 THE COURT: I'll overrule, this is cross.

24 Go ahead.

25

1 BY MS. STILLINGER:

2 Q. I'm sorry. I think you responded --

3 A. There's a lot of dead spots also. You can go point to
4 point. You're going to hit a dead spots. Even though you're
5 close. That's why it's best to get the repeater. That way the
6 repeater will avoid the dead spots.

7 Q. Could it be fair to say you don't really know whether they
8 can hear the car-to-car traffic, or what the range of the
9 car-to-car traffic is to the station?

10 A. That's right. I never made an analysis on that.

11 Q. Okay. But -- I'm sorry. Let me back up to where I was.
12 When you are engaged in a pursuit, are you supposed to pull
13 over and stop and call your supervisor and say let me explain
14 these facts to you. Do I have a permission to continue this
15 pursuit? What are you supposed to do?

16 A. For the pursuit?

17 Q. Yes.

18 A. The book dictates you have to call a supervisor to
19 authorize it.

20 Q. Okay. And how are you supposed to do -- when you're
21 driving down the road, all of a sudden this guy starts, you go,
22 he's not pulling over. He is getting away from you. I'm
23 asking realistically, how do you do that? How do you call into
24 the supervisor? Are you supposed to stop and get permission
25 before you continue?

1 A. You're supposed to notify the vehicle is failing to stop.

2 And then the supervisor will ask you how fast are you going,

3 ask you to estimate the speed of the unit -- I mean,

4 correction, the vehicle --

5 Q. Okay.

6 A. -- in the pursuit.

7 Q. Okay. Let me ask you, how long have you been a Border

8 Patrol agent?

9 A. Two and a half years.

10 Q. That's including this year you've been on desk duty?

11 A. Yes.

12 Q. And I know you told Mr. Gonzalez you had never been

13 involved in a high-speed pursuit or not in pursuit, I'm not

14 sure. Had you ever been involved in a pursuit before?

15 A. No.

16 Q. Okay. So you've never gone through this process. You've

17 read about it in the training materials, but you've never gone

18 through the process. Is that right?

19 A. Yes.

20 Q. Okay. Were you purposely violating the rules when you

21 didn't call in to the supervisor when the pursuit began?

22 A. No. Never came to my mind. I was just focusing on the

23 van.

24 Q. Of course.

25 A. I was excited.

- 1 Q. Trying to do your job, right?
- 2 A. Yes.
- 3 Q. Okay. You weren't trying to hide anything by not calling
4 the supervisor, were you?
- 5 A. That was the last thing on my mind to call.
- 6 Q. Of course. Okay. Then, as you're heading down Fabens Road
7 going south, you said that the van is going at a fairly high
8 rate of speed. Is that right?
- 9 A. Yes.
- 10 Q. Okay. And once -- there's a point which this road turns to
11 dirt, correct?
- 12 A. Yes.
- 13 Q. Okay. And Agent Ramos is ahead of you. And then the van
14 is ahead of him, correct?
- 15 A. Correct.
- 16 Q. The vehicles are kicking up a lot of dirt once it turns to
17 a dirt road, aren't they?
- 18 A. If you're going fast.
- 19 Q. I'm sorry. Let me back up. Before it turns to a dirt
20 road, are there people and vehicles on that road that you're
21 passing?
- 22 A. It was a public road. I'm assuming there were. I was
23 just -- focusing on the unit in front of me.
- 24 Q. Okay. But did you see any -- I mean, were there any
25 specific instances where somebody was put in danger by the

1 pursuit that you saw? And I'm not asking you to assume or say
2 it could have. But were you aware of any dangerous
3 circumstances?

4 A. Of course. Going fast, that speed will lead to accidents.

5 Q. Sure. But I'm talking, was there anybody out there that
6 was endangered by that that you saw?

7 A. No.

8 Q. Okay. Let me put this map up here again. Now, is this
9 what we call the -- what you-all call the S curves on Fabens
10 Road?

11 A. Yes.

12 Q. Okay. And, of course, you have to slow down for those
13 curves, correct?

14 A. You have to.

15 Q. I mean, physically, especially, a van, a heavily loaded
16 van, couldn't make these curves at a very fast speed?

17 A. He was threshold brake. Brake hard if you're going fast,
18 yes.

19 Q. Right. Right. So when you said the vehicles are going
20 maybe 60 miles an hour, I know that's the top speeds, but,
21 obviously, they weren't going 63, correct?

22 A. Not on the S curve. But on the straightaway, yes. That's
23 when you pick up the speed.

24 Q. The straightaways?

25 A. Yes.

- 1 Q. Now on this map, it looks like the road is paved up until
2 here. And then becomes dirt. Does that look about right?
- 3 A. It's right after the Wingo Reserve Road, yes.
- 4 Q. And when you're traveling south on Fabens Road, do you ever
5 see another Border Patrol vehicle?
- 6 A. I thought they were, yes.
- 7 Q. Do you remember where those were?
- 8 A. I think they were on the side road.
- 9 Q. Okay. And that would be -- do you know where those were?
- 10 A. I guess towards the end.
- 11 Q. Somewhere, either, maybe at one of these side roads?
- 12 A. More on the pavement.
- 13 Q. What?
- 14 A. On the paved road. Somewhere over here, I think.
- 15 Q. Okay. And when you say on the side, do you mean that they
16 were actually on Fabens Road, but pulled over to the side?
- 17 A. Yes.
- 18 Q. Or, do you mean they were on a side road?
- 19 A. Side road, I guess, waiting. Because they already knew
20 that van was going back.
- 21 Q. Do you know who it was that you saw?
- 22 A. I saw two units.
- 23 Q. But you didn't see who they were?
- 24 A. That's correct.
- 25 Q. Okay. And were the two units together or in different

1 places?

2 A. No, they went separately.

3 Q. And when you saw them, the best that you recall, they
4 weren't driving on Fabens Road. But they were pulled off on a
5 side road just waiting?

6 A. I know when I saw them, I don't know if they were
7 traveling. But I know they were there because I passed them.

8 Q. So they may have been traveling when you saw them?

9 A. Uh-huh.

10 Q. Add in any event you saw a couple of other units as you're
11 going south, correct?

12 A. Yes.

13 Q. And did you know whether one or both pulled in behind you?

14 A. No.

15 Q. You didn't know?

16 A. No, because the camper -- I was driving a pickup truck.
17 You don't see the back. You only see in the rearview mirrors.

18 Q. And you didn't notice from the side view mirrors? You
19 didn't notice whether anybody was behind you?

20 A. That's correct.

21 Q. Then once you get to this straightaway, there's a lot of
22 dirt being kicked up by the vehicles, right?

23 A. Yes.

24 Q. Can you still see the van?

25 A. I could see a lot of dust.

- 1 Q. Right.
- 2 A. That's all I could see.
- 3 Q. Okay. Because you've got the dust from Agent Ramos'
- 4 vehicle and the dust from the van, correct?
- 5 A. Yes.
- 6 Q. Okay. And would it be fair to say in this part where it's
- 7 a dirt road, you can't tell how close Agent Ramos is to the
- 8 van, can you?
- 9 A. No, because you can see balls of dust following, that's
- 10 all.
- 11 Q. Right. Right. Okay. When you pull up to the ditch, I
- 12 think you said that you put on the brakes. But you slid a
- 13 little bit. Is that right?
- 14 A. Yes.
- 15 Q. Because your brakes don't work as well on the dirt road,
- 16 correct?
- 17 A. Yes.
- 18 Q. Okay. And let me ask you, as you're drive -- as you're
- 19 engaged in pursuit, are you also on the radio?
- 20 A. Not at that time.
- 21 Q. Okay. And why is that?
- 22 A. Because I no longer have the eye, the pursuit. Meaning,
- 23 the lead.
- 24 Q. Okay.
- 25 A. The vehicle taking the responsibility of the pursuit, of

1 the chase.

2 Q. Okay. Isn't -- isn't the second vehicle more responsible
3 for the radio duties since the first vehicle is driving?

4 A. No, ma'am.

5 Q. Okay. Okay. I'm going to ask you a couple of questions.
6 When you -- I know you told us where Agent Ramos's vehicle is,
7 and you pull up on the left. When you first pull up, do you
8 see Ramos when you first pull up?

9 A. No, I did not.

10 Q. Okay. He wasn't in his vehicle though, right?

11 A. No.

12 Q. Okay. Because the driver side door was open, you notice
13 that?

14 A. Yes.

15 Q. So he's not in his vehicle. But you don't see him. Is
16 that right?

17 A. That's correct.

18 Q. That's not what you're concentrating on, correct?

19 A. That's correct.

20 Q. Okay. And you don't hear anything when you arrived to the
21 edge of the ditch?

22 A. No, ma'am.

23 Q. Okay. Everybody is just silent?

24 A. When I got there, that's when the alien ran back.

25 Q. Okay. You mean to tell me you didn't get there right away.

- 1 Okay. And you -- because you parked pretty close to the edge
2 of the ditch, right?
- 3 A. That's correct.
- 4 Q. And you get out of your vehicle right away?
- 5 A. Yes.
- 6 Q. And you go to look to see what's happening, right?
- 7 A. Yes.
- 8 Q. Did you actually see the alien as you were driving up? Did
9 you see the driver of the van go into the ditch?
- 10 A. No, I did not.
- 11 Q. But you saw that's where he went?
- 12 A. Yes.
- 13 Q. From your experience you figured out this guy is trying to
14 go back to Mexico, right?
- 15 A. Yes.
- 16 Q. So you go to the edge of the ditch because you want to see
17 what's happening. And I think you said that the -- at that
18 time the driver is in the ditch, but he's still on the north
19 side of the ditch, correct?
- 20 A. By the edge of the water.
- 21 Q. He hasn't passed through the water?
- 22 A. That's correct.
- 23 Q. Tell me a little bit about that ditch. Is it a pleasant
24 ditch to go into?
- 25 A. No, it smells. That's why we call it the Sierra Delta.

- 1 Q. Okay. Is there sewage water in there?
- 2 A. Yes. I mean, I'm assuming, if it smells.
- 3 Q. And is it heavily -- is it very bushy in there? Lots of
- 4 plants and --
- 5 A. Growth.
- 6 Q. A lot of growth? Okay. And it's a deep ditch, right?
- 7 A. Pardon me?
- 8 Q. A deep ditch?
- 9 A. The water is deep?
- 10 Q. No, not the water. The water is not that deep. But the
- 11 ditch itself, it's not a little ditch. You couldn't jump over?
- 12 A. That's correct.
- 13 Q. It's deeper than a person is tall?
- 14 A. Yes.
- 15 Q. So when you enter there in the bottom, you're -- you can't
- 16 see what's going on outside the ditch?
- 17 A. That's correct.
- 18 Q. And it's steep on the sides, isn't it?
- 19 A. Yes.
- 20 Q. And that's where you slipped and fell into it?
- 21 A. Yes.
- 22 Q. Okay. When you go the to edge of the ditch, and you see
- 23 the driver of the van in there, what you're saying is nobody is
- 24 saying anything?
- 25 A. That's correct.

1 Q. Okay. You see Agent Compean and you don't see Agent Ramos,
2 correct?

3 A. That's correct.

4 Q. And everybody is just being quiet. Is that what you're
5 saying?

6 A. I saw Compean. I didn't hear anything -- Compean.

7 Q. Okay. Okay. Do you say anything to the driver?

8 A. No.

9 Q. Or to Compean or anything?

10 A. No, I did not.

11 Q. You just arrive there and everybody is being quiet. And I
12 think what you said -- let me ask you if this happened before
13 or after you slipped. What I remember, you say the driver
14 looked up and saw you. And that's when he made his move to
15 cross, right?

16 A. Yes.

17 Q. Did that happen before or after you slipped?

18 A. After I slipped.

19 Q. Okay. So first you slipped down and slipped about halfway
20 into the ditch, right?

21 A. Yes.

22 Q. And I imagine while you're slipping you're not really able
23 to keep watching what's going on because you're trying to keep
24 from going all the way in, right?

25 A. Yes.

1 Q. But you stop. And you're still watching the driver,
2 watching Compean to see what's going on, right?

3 A. Yes.

4 Q. Okay. And you're saying that's the point where you see the
5 driver. You actually see him see you, right?

6 A. This is taking seconds. It's not like minutes. It's
7 immediately.

8 Q. Right. Everything is happening very quickly?

9 A. Very fast. And you have to understand, there's engines
10 running. And it's loud engines. So we have engines running
11 so --

12 Q. And you're right. We're talking about like this happened
13 and this and this. But it's like, boom, boom, boom.

14 A. It's not slow motion, yes.

15 Q. Right. Okay. So the driver sees you and you said he
16 goes -- I think you said like a bullet. Is that what you said?
17 He crossed that quickly?

18 A. He was fast, like if he had jumped the water or leapt over.
19 I don't know if next time he was almost reaching over the other
20 side.

21 Q. Okay. Now when you slipped down, do you immediately try to
22 get back out, or do you stop there for a little while as you're
23 thinking should I go out, should I go to the other side? What
24 are you doing when you recover from your fall?

25 A. No, I recovered. And I stood up. That's when I saw the

1 alien going across.

2 Q. And did you head back out of the ditch?

3 A. Not immediately.

4 Q. Okay. And you do not have your weapon drawn. Is that
5 right?

6 A. That's correct.

7 Q. You never drew your weapon that day?

8 A. Yes.

9 Q. That's correct?

10 A. That's correct.

11 Q. Okay. And is it fair to say at that point in time you're
12 still working in your job, right?

13 A. Yes.

14 Q. And you're doing your job the best you can, is that fair to
15 say?

16 A. Yes.

17 Q. Did you want to -- well, at some point when you're in the
18 ditch, you make a decision -- well, let me ask you if this is
19 correct.

20 Were you making a decision to go help Compean here, or
21 go back to the van? Were those basically your two options?

22 A. The -- not the option that he was running. In my mind, he
23 had already made it to Mexico.

24 Q. Okay. And you thought he had made it to Mexico because
25 why?

- 1 A. He was right there at the canal.
- 2 Q. But Agent Compean is up there, right?
- 3 A. Yes.
- 4 Q. Okay. And don't you think Agent Compean is going to try to
5 arrest this guy?
- 6 A. It's not the first time that -- you know, like you just
7 want to make sure that person makes it back south.
- 8 Q. Okay. You're saying you want to make sure he makes it back
9 south, that he doesn't stay in our country, right?
- 10 A. Just to make sure.
- 11 Q. Okay. Meaning you wouldn't just walk away and leave him
12 there. You would make sure that you push him back to Mexico,
13 basically, right?
- 14 A. Yes.
- 15 Q. Okay. Well, under these circumstances, though, where
16 Compean has called out potential narcotics, the guy has led you
17 on a pursuit, don't you think you would want to detain the
18 person to investigate?
- 19 A. Not really.
- 20 Q. Okay. You wouldn't want to?
- 21 A. Right.
- 22 Q. And why is that?
- 23 A. Like I said, he was almost in Mexico. Not only he was in
24 the United States, but going that far back, he almost made it.
- 25 Q. Okay. If you had been Agent Compean, what you're saying,

1 you would have just stepped aside and let the guy go?

2 A. Well, I don't know if he likes to process aliens. It's a
3 lot easier to take the load and go back to the station.

4 Q. Right. And what you mean, you're talking about the load of
5 drugs that were in the van, right?

6 A. Yes.

7 Q. Agents like to be able to take credit for getting a load,
8 don't they?

9 A. Yes.

10 Q. And, in fact, aren't statistics kept at work about how many
11 pounds of marijuana or cocaine you have participated in
12 seizing?

13 A. Yes.

14 Q. Okay. So that's like -- well, that's like getting a gold
15 star, that's a good thing at work, responsibility for getting a
16 load, right?

17 A. Yes.

18 Q. And do you get the same kind of reward or recognition for
19 catching the driver?

20 A. No, it's the load.

21 Q. Okay. It's the load. That's what's emphasized, right?

22 A. What I have seen.

23 Q. And from what you have seen, have you seen that happen
24 where people just let the driver go so that they don't have to
25 do the paperwork?

1 A. They bring the loads without driver, a lot. And then
2 there's a few people that get, you know, loads with the driver.

3 Q. Okay. And is that why you didn't go help Compean because
4 you assumed he was going to let the driver go?

5 A. Yes.

6 Q. And, Agent Juarez, is that the policy of Border Patrol
7 to -- to let someone go back to Mexico when you suspect they've
8 been involved in a drug offense?

9 A. No.

10 Q. Would you agree that things are a little lax there in
11 Fabens as far as doing the paperwork?

12 A. Yes.

13 Q. Okay. But you've seen this happen before, right, this
14 isn't the first time, right?

15 A. Yes.

16 Q. And that's why you assumed, in fact, that Compean didn't
17 need your help, because he wasn't going to stop this guy,
18 right?

19 A. Yes.

20 Q. Okay. If you thought he was going to try to arrest this
21 man, wouldn't your responsibility be to go help your fellow
22 Border Patrol agent?

23 A. I don't know. I thought he was -- I can't say what he was
24 thinking.

25 Q. I know. But I'm saying -- let's assume for a moment that

1 Agent Compean is carrying out his duty to try to arrest this
2 person. And let's assume that, you know, that -- let's assume
3 that everybody always follows all the rules and nobody ever,
4 you know, forgets about things because they don't want to do
5 the paperwork. Let's assume that, you know, that he's going to
6 arrest this man. Wouldn't it be your responsibility to cross
7 that ditch and go over to try to help them?

8 A. That's if he feels there's a threat.

9 Q. Okay. Well, you saw the driver of the van, right?

10 A. Yes.

11 Q. A young man?

12 A. Yes.

13 Q. And I don't know if you remember what he looked like. Do
14 you remember he was pretty tall?

15 A. I remember skinny.

16 Q. Wiry?

17 A. Small.

18 Q. You thought he was small?

19 A. Skinny, small frame, not big frame like mine.

20 Q. Well, he wasn't overweight?

21 A. Yes.

22 Q. I'm not saying that you are, but -- but he's muscular,
23 wasn't he?

24 A. I don't know.

25 Q. He was fast, right?

- 1 A. Yes.
- 2 Q. You saw him fast?
- 3 A. Yes.
- 4 Q. Looked healthy to you?
- 5 A. Fast. I don't know fast and healthy are the same.
- 6 Q. Certainly a lot taller than Agent Compean isn't he?
- 7 A. Yes.
- 8 Q. Okay. Even if you had some way of assuring yourself this
9 man had no weapon, wouldn't a young, healthy, bigger man pose a
10 threat to an officer trying to arrest him?
- 11 A. You have the shotgun.
- 12 Q. Right. I guess he could shoot him. But you try not to
13 shoot people at work?
- 14 A. Right. You have the shotgun, that could emphasize officer
15 presence.
- 16 Q. Right. Typically when you present your shotgun, it's to
17 let the person know, don't run?
- 18 A. Yes.
- 19 Q. You don't get out your shotgun because you're going to
20 shoot somebody. You get it out to let the person know you're
21 not fooling around, they had better stop?
- 22 A. Yes.
- 23 Q. But what you saw here is the agent had a shotgun and the
24 driver is not stopping, right? You need to answer so the court
25 reporter can get your answer.

1 A. Yes.

2 Q. Thank you. And so what you're saying is this man is not
3 following the normal course that we expect which is when the
4 officer has a gun, we expect the person to stop?

5 A. I thought he was going to surrender, that's why they met
6 halfway up there. Compean moves and then the driver moves to
7 meet halfway, that's when he picked up the butt of the shotgun.

8 Q. Okay. Well, I have to ask you about that because you say
9 he's moving very fast to run up to the officer to surrender.

10 A. See, he zig-zagged. He went across. And then he went
11 towards the direction of Compean. That's how he moved halfway
12 there.

13 Q. Right.

14 A. If he could easily run away, he could have run the
15 opposite. But he never did the opposite way. He jumped over,
16 hit the water, whatever. That's when Compean moved. And he
17 went, also, towards his direction. And that's when the two
18 met.

19 Q. Wasn't it really that Compean is here, let's say, and the
20 alien is coming up this way. You're saying Compean moves this
21 way, and the driver moves that way, also?

22 A. Yes.

23 Q. Which could mean he's running over to surrender?

24 A. That's what I thought he was going to do.

25 Q. Or he's going to run over to try to assault him so he can

- 1 get past him, right?
- 2 A. His actions were -- to me, his actions were "I'm here".
- 3 Q. Well, and you never heard anybody tell him stop?
- 4 A. That's right.
- 5 Q. Okay. Or parate? You never heard that?
- 6 A. I know there were things. But, clearly, you know, it could
- 7 be parate.
- 8 Q. You think you might have heard people saying that?
- 9 A. Uh-huh.
- 10 Q. And I'm saying -- you said uh-huh?
- 11 A. Yes.
- 12 Q. Thank you. Whatever the guy was intending to do, what you
- 13 saw, the driver didn't stop, correct?
- 14 A. Yes.
- 15 Q. Okay. Now, you also saw when he was climbing out of the
- 16 drainage ditch, he's climbing up the south side. You saw
- 17 him -- and I mean, the driver of the van. You saw him using
- 18 both of his hands to climb out of the ditch, didn't you?
- 19 A. Yes.
- 20 Q. He's not climbing out of the ditch like this, is he?
- 21 A. Not until he gets to the top.
- 22 Q. It would be very hard, don't you agree, very difficult,
- 23 because of the steepness of the ditch to climb out with your
- 24 hands in the air?
- 25 A. Yes.

1 Q. Okay. When you climbed out yourself, did you have to reach
2 to the ground to help yourself out?

3 A. Yes.

4 Q. Now, in one of your statements that you made and -- at one
5 point in time when you were being interviewed by Agent Chris
6 Sanchez, you said that you heard gunfire, correct?

7 A. Yes.

8 Q. And, actually, in all of your statements you said you heard
9 gunfire, right?

10 A. Yes.

11 Q. And you said -- well, you didn't really know what it was,
12 that it might have been hunters shooting, right?

13 A. Yes.

14 Q. Or that it might have been the Mexican military, shooting,
15 correct?

16 A. Yes.

17 Q. Because in your experience those are occurrences that you
18 have experienced down by the river?

19 A. Yes.

20 Q. Okay. And is it fair to say that you were most interested
21 out there in getting back to the van to see what's in the van?

22 A. Yes.

23 Q. Okay. And, of course, that's because of everything that's
24 happened previously that it's been called out potential
25 narcotics, and been on this chase and the person is running

- 1 away?
- 2 A. Yes.
- 3 Q. What was your suspicion at that point in time before you
4 opened the doors to the van? Tell me what you were thinking.
- 5 A. Hopefully, there aren't aliens in there, smuggling aliens.
- 6 Q. Yes.
- 7 A. Yes, because the van --
- 8 Q. There could have been aliens in there?
- 9 A. Yes.
- 10 Q. Could have been terrorists in there, right?
- 11 A. Yes.
- 12 Q. For all we know? And also, you're hoping -- I mean, it was
13 called out as narcotics, potential narcotics transaction,
14 correct?
- 15 A. Yes.
- 16 Q. So is there some reasons you're thinking it's aliens
17 instead of narcotics?
- 18 A. At that point, oh, let's see what I'm going to find.
- 19 Q. Just like. And you're happy, one of the things you're
20 hoping is to find a load of drugs, correct?
- 21 A. Yes.
- 22 Q. And that's what you found, right?
- 23 A. Yes.
- 24 Q. Now, when you're back there checking on the load, is that
25 you, basically, go back to the van after you come out of the

1 ditch, you go back to the van, and you're not following what
2 Agent Compean or the driver or Agent Ramos are doing, is that
3 fair to say?

4 A. No, they were already back already.

5 Q. When you went to the van, you didn't go to the van until
6 Agent Ramos and Agent Compean were coming back?

7 A. Yes.

8 Q. Did somebody else open the van already?

9 A. No.

10 Q. You were the first one that opened it?

11 A. Yes.

12 Q. Okay. Agent Vasquez was there already wasn't he?

13 A. He was there, yes.

14 Q. What was he doing?

15 A. To secure the van to see what was the content of the van.

16 Q. Did you see when he arrived?

17 A. I didn't see him arrive. He approached me when I was up
18 there.

19 Q. And he had not opened the van?

20 A. No.

21 Q. Was he over there by the ditch watching what was going on
22 or did you see where he was?

23 A. No, I didn't see him. He approached me when I was outside
24 when I had no longer visual of Compean.

25 Q. Okay. And the time period we're talking about from the

1 time you see the driver bolt south -- I'm saying when you said
2 he ran very quickly when he goes south to the time you see
3 Agents Compean and Ramos returning, do you have any idea what
4 kind of time period we're talking about?

5 A. Seconds.

6 Q. Everything happened very quickly out there, didn't it?

7 A. Yes.

8 Q. And -- I'm sorry. Did you talk to any of the other agents
9 about the shooting?

10 A. No, I did not.

11 Q. Not to anybody?

12 A. Yes.

13 Q. Okay. And do you remember hearing someone yell out,
14 "shots", while you were there?

15 A. Yes.

16 Q. Do you know who that was?

17 A. No.

18 Q. Okay. Do you remember somebody asking "is he hurt?"

19 A. That was right after.

20 Q. That was after?

21 A. Everybody were there, yes.

22 Q. Hearing shots, when that did happen?

23 A. That was while he was inside the canal -- correction, when
24 I was outside when they were shooting.

25 Q. Okay. After you had gotten out of the canal?

- 1 A. Yes.
- 2 Q. And you got out of the canal back to the north side because
3 you thought Compean was not in any kind of danger, right?
- 4 A. Yes.
- 5 Q. Okay. And I take it when you're getting out of the canal,
6 you're not watching what's going on behind you, of course?
- 7 A. Yes.
- 8 Q. So you don't know whether the driver, or Compean had any
9 kind of physical altercation with the driver?
- 10 A. No, because the driver of the van, he ran. He was not in
11 the same area at that time. The driver was no longer in my
12 visual sight. He was gone.
- 13 Q. Right. I understand once you get out and turn around, you
14 don't see the driver ever again, right?
- 15 A. When I got out he was no longer there.
- 16 Q. Right. That's what I'm -- you never saw him again, right?
- 17 A. That's correct.
- 18 Q. The driver. So you wouldn't have any idea whether he ever
19 brandished a firearm, would you?
- 20 A. When I saw him, he never did that.
- 21 Q. Right. But from the point that he got out of the canal and
22 over the levee road, you wouldn't have any idea whether he
23 brandished a firearm?
- 24 A. No, I never had visual of that.
- 25 Q. And you never had visual of him running, crossing the

- 1 river, anything. Is that right?
- 2 A. The Rio Grande?
- 3 Q. Yes.
- 4 A. Oh, no.
- 5 Q. Okay. When you're getting out, I guess when you're
- 6 climbing out -- I mean, this is fairly obvious, but I have to
- 7 ask. You don't see what's going on behind you, right?
- 8 A. No.
- 9 Q. So there's a few seconds there where you lose a visual on
- 10 Agent Compean and the driver, right?
- 11 A. Well, ma'am, at that point he was already after the driver.
- 12 Q. Okay. Compean had started to go over after the driver?
- 13 A. Yes.
- 14 Q. Okay. So -- okay. I just want to make sure we all have
- 15 the sequence clear. When you're still standing in the ditch
- 16 watching what's going on, you see the driver coming up, you see
- 17 him get by Compean, and you see Compean try to pursue him?
- 18 A. No, ma'am. That's when he picks up the shotgun. That's
- 19 when he attempted to hit him. And that's when he slips and
- 20 that's when the driver, he ran. And that's when I stare --
- 21 that's when I watched Compean getting up and leaving the
- 22 shotgun there and start after him.
- 23 Q. Okay. So what you're saying, he had gotten by Compean and
- 24 Compean is running after him, right?
- 25 A. Yes.

- 1 Q. And that's when you turn around to go out, right?
- 2 A. Yes.
- 3 Q. So you don't know for that time period exactly what happens
- 4 between Compean and the driver --
- 5 A. That's correct.
- 6 Q. -- while you're climbing out. Okay. During all of this
- 7 sequence of events you never see Agent Ramos. Is that right?
- 8 A. That's correct.
- 9 Q. Okay. You don't see him until he's coming back with Agent
- 10 Compean from the levee road. Is that right?
- 11 A. Yes.
- 12 Q. Okay. Do you notice that Agent Ramos is wet from the knees
- 13 down?
- 14 A. I didn't pay attention to that.
- 15 Q. Okay. Okay. And you don't sit down and interview Agents
- 16 Ramos and Compean, do you?
- 17 A. No, I did not.
- 18 Q. That wouldn't be any part of your job to do that?
- 19 A. Oh, no. I'm the junior guy. How can I do that to them?
- 20 Q. Right. Mr. Gonzalez asked you first thing this morning
- 21 about your immunity agreement. That you have immunity from
- 22 prosecution. What is it that you think you could be prosecuted
- 23 for?
- 24 A. For not telling the truth.
- 25 Q. Okay. For the fact that you withheld information to Agent

- 1 Sanchez when he first interviewed you?
- 2 A. Yes.
- 3 Q. Anything else you thought you could be prosecuted for?
- 4 A. No.
- 5 Q. Now, I know that -- it's correct, isn't it, that under your
6 Border Patrol regulations you are supposed to report a
7 discharge of a firearm. Is that right?
- 8 A. That is correct. Yes, ma'am.
- 9 Q. And you can be suspended without pay for up to five days if
10 you don't do it, right?
- 11 A. Assuming, yes.
- 12 Q. You don't feel like you did anything wrong out there in
13 this whole sequence of events from pursuing the driver of the
14 van to when you stopped, got in the ditch, you didn't do any
15 wrong out there, did you?
- 16 A. Well, I violated by going hot pursuit on the van.
- 17 Q. Okay. You probably should have -- well, it's not
18 necessarily a violation to go on a hot pursuit, is it?
- 19 A. It's not.
- 20 Q. You just have to have -- the supervisor is supposed to
21 authorize?
- 22 A. If there's an accident and you fail to report it.
- 23 Q. Right. Right. You're supposed to get authorization before
24 continuing the pursuit, correct?
- 25 A. That's correct.

1 Q. That's whether it's a low speed or high speed, that's any,
2 isn't it?

3 A. Yes.

4 Q. And the supervisor is supposed to authorize you to continue
5 the pursuit, correct? And you didn't -- apparently, didn't
6 receive authorization?

7 A. I never requested one.

8 Q. You don't have to request one, do you?

9 A. Yes, because you're the only one that is up there doing the
10 chase.

11 Q. Well, but if the supervisor is monitoring the radio
12 traffic, isn't it the supervisor's responsibility to tell you
13 to stop?

14 A. Assuming that the person is near the radio.

15 Q. Right, of course. Okay. So that's one thing you failed,
16 like, maybe you didn't follow policy to the letter, correct?

17 A. Yes.

18 Q. Okay. Anything else?

19 A. No, ma'am.

20 Q. Okay. That day were you trying to do your job the best you
21 could as a Border Patrol agent?

22 A. Yes.

23 Q. Okay. Did you purposely fail to report the shooting
24 because you were trying to cover up something?

25 A. No, ma'am.

1 Q. Okay. You weren't trying to protect anybody when you
2 didn't report the shooting, were you?

3 A. No, ma'am.

4 Q. You didn't feel like you were committing any criminal
5 offense in not reporting the shooting, do you?

6 A. No, ma'am.

7 Q. Okay. This has been a hard year for you, hasn't it?

8 A. Pardon me?

9 Q. Has it been a hard year for you being on administrative
10 leave.

11 A. Yes.

12 Q. It's not administrative leave, it's administrative duties,
13 right?

14 A. Yes.

15 Q. And if you can do something different?

16 MR. GONZALEZ: Objection, Your Honor, relevance.

17 THE COURT: I'll sustain.

18 MS. STILLINGER: I'll go ahead and pass the witness.

19 THE COURT: Ladies and gentlemen of the jury, it's
20 getting close to 11:00. Let's take a break. We'll take about
21 a 15-minute recess. You remain under all the rules of the
22 Court.

23 (Recess; open court, parties present, jury not
24 present.)

25 THE COURT: You may be seated. Anything we need to

1 take up?

2 MR. GONZALEZ: Not from the Government.

3 MS. RAMIREZ: I'm going to file this motion.

4 THE COURT: That's fine. Then we will stand in recess
5 for 15 minutes.

6 MS. RAMIREZ: Thank you, Judge.

7 (Recess; open court, parties present, jury not
8 present.)

9 THE COURT: You may be seated. You're all standing
10 right there. That always makes me nervous.

11 We're back on the record outside the presence of the
12 jury. I have all these people staring at me. What's the
13 problem?

14 MS. KANOF: I've been voted spokesman by all attorneys
15 in this case, the only office I've ever been selected, to ask
16 the Court if it was possible if we have an hour and a half
17 lunch today instead of an hour.

18 THE COURT: Okay. That would be fine. Here is my
19 plan. I would really like to try -- it's 11:25. I would
20 really like to try to come as close to finishing with this
21 witness depending on how much we have, and then break at that
22 time. So whether it's 12:30 or 1:00, then we will take a lunch
23 break.

24 MS. KANOF: Yes. Everybody has things they need to do
25 in their offices.

1 THE COURT: We got it.

2 MS. KANOF: Maybe I will be re-elected.

3 THE COURT: Are we ready?

4 MR. ANTCLIFF: Yes, ma'am. You can bring in the jury.

5 (Recess; open court, parties and jury present.)

6 THE COURT: You may be seated.

7 You may proceed, Mr. Antcliff.

8 MR. ANTCLIFF: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. ANTCLIFF:

11 Q. Good afternoon, Agent Juarez.

12 A. How do you do?

13 Q. My name is Chris Antcliff. I'm one of the lawyers
14 representing Mr. Compean. I'm going to ask you a few
15 questions, okay?

16 A. Yes.

17 Q. As I understand your testimony, you've been a Border Patrol
18 agent for two a and half years. Is that right?

19 A. Yes, sir.

20 Q. And at the time of the commission of this offense, my
21 client's charged with, you were a Border Patrol agent for about
22 a year and a half, correct?

23 A. Yes.

24 Q. This incident occurred on February 17, 2005, right?

25 A. Yes.

1 Q. And you gave a statement for the first time on March 17th
2 of 2005, about a month later. Is that right?

3 A. Yes.

4 Q. At the same time that you gave that statement, on the same
5 day, you signed a proffer letter giving you immunity for what
6 you had to say. Is that right?

7 A. Yes.

8 Q. Okay. Who was present in the room when you signed that
9 proffer letter?

10 A. Mr. Sanchez and two more investigators.

11 Q. Okay. Was that the day that you were placed on
12 administrative leave?

13 A. No, I don't recall. I think it was the day after.

14 Q. So March 19th, about?

15 A. I think so, yes.

16 Q. And what is your understanding of why you were placed on
17 administrative leave?

18 A. Because there was an ongoing investigation for the shooting
19 that took place in Fabens.

20 Q. Okay. So you believe that you did nothing wrong on that
21 day. But you were put on administrative leave while the
22 investigation was pending?

23 A. There was an investigation pending, yes.

24 Q. I understand. But you believe you didn't do any wrong.
25 You were simply put on leave while that investigation

1 continued. Is that right?

2 A. That's correct.

3 Q. Okay. On February 17, 2005, I believe your testimony is

4 you were on the levee somewhere. Is that right?

5 A. Yes.

6 Q. Where were you?

7 A. On the levee.

8 Q. But where on the levee?

9 A. By Martinez Farming.

10 Q. Okay. And what were you doing?

11 A. I was holding back a group.

12 Q. And I think your testimony was it was a group of illegal

13 aliens, maybe ten to 12 of them?

14 A. It was getting bigger.

15 Q. So more people were coming into the area where you were?

16 A. Yes.

17 Q. How far away would you estimate those aliens were from

18 where your vehicle was?

19 A. I was almost across from there where they were, where I

20 was.

21 Q. 100 yards away?

22 A. I was on the levee and the vega, and then the Rio Grande,

23 and they were on the other side.

24 Q. So they were on the south side of the Rio Grande in Mexico,

25 but gathering in a group?

1 A. Yes.

2 Q. And you stayed where you were to make your presence known
3 so they wouldn't come across. Is that right?

4 A. That's right.

5 Q. Then you hear a call from Agent Compean saying that there
6 is a -- you hear a minivan leaving the 76 area going pretty
7 quick. Is that right?

8 A. Yes, sir.

9 Q. So you leave the area where you were by Martinez Farms,
10 correct?

11 A. Yes.

12 Q. Do you know what happened to all of those aliens that were
13 massing on the south side of the border?

14 A. I don't know what happened to them, no.

15 Q. They could have come across?

16 A. Yes.

17 Q. We went through some testimony about -- on the map, the
18 specific roads that you traveled. But, eventually, you drive
19 into the town of Fabens. Is that right?

20 A. Yes.

21 Q. And you approach a stoplight following a van. Is that
22 right?

23 A. Yes.

24 Q. Is it your testimony, or did I -- maybe I misunderstood.
25 But is it your testimony today that the light was changing to

1 green when the van went through the light?

2 A. Yes.

3 Q. And it was full-on green when you went through the light.

4 Is that correct?

5 A. Yes.

6 Q. Have you ever told anyone else that the light was changing
7 to red as the van approached it?

8 A. No.

9 Q. Okay. You gave, as I understand it, three separate
10 statements in the case, correct?

11 A. Yes.

12 Q. The first statement was on March 18th, about a month after
13 the incident in question, right?

14 A. Yes.

15 Q. Would you agree with me that the information you provided
16 in there was fairly fresh in your memory, given that it had
17 only happened a month before?

18 A. Yes.

19 Q. Then you give another statement about a month after that on
20 April 25th, I believe. Is that right?

21 A. Yes.

22 Q. And that statement was kind of a supplement to what you had
23 to say in the first statement, right?

24 A. Yes.

25 Q. You handwrote out the second statement just like you had

1 the first, and you swore to its truthfulness, correct?

2 A. Yes.

3 Q. Then later Agent Sanchez and the prosecutors asked you to
4 meet with them again to clarify more of what you had given in
5 the first two statements. Is that right?

6 A. Yes.

7 Q. And that third time was sometime in mid-September of 2005?

8 A. Yes.

9 Q. That would be six months, about, after February 17, 2005,
10 right?

11 A. Yes.

12 Q. Okay. Let's talk about those statements. In the first
13 statement that you gave, was it your testimony, because you
14 swore to it, that you went directly to the van when you arrived
15 at the scene to check on what was inside of it?

16 A. Yes.

17 Q. Today it's your testimony that you slipped and fell and
18 went into the ditch. And you were in the ditch for a while
19 before you got out and went to the van. Is that right?

20 A. Yes.

21 Q. Okay. I believe your testimony was that the only thing
22 that was mistaken or a lie in your first statement, was that
23 you did not report the shooting. Was that your testimony?

24 A. Yes.

25 Q. Okay. In the first statement you never mentioned anything

1 happening in the ditch between Agent Compean and the alien, did
2 you?

3 A. No, sir.

4 Q. Today, you saw an awful lot of things happening in the
5 ditch between those two individuals, correct?

6 A. Yes.

7 Q. In the first statement you never mentioned Agent Compean
8 attempting to hit the alien with his shotgun, correct?

9 A. That's correct.

10 Q. Today, you saw him at least once try to hit him with the
11 shot -- the butt of the shotgun, right?

12 A. Yes.

13 Q. In the first statement that you gave you -- you testified
14 that you never saw the driver and he never saw you, correct?

15 A. I saw him.

16 Q. You said in your first statement that you saw the driver in
17 the ditch?

18 A. That's correct.

19 Q. Okay.

20 MR. ANTCLIFF: Your Honor, may I approach the witness?

21 THE COURT: You may.

22 MR. ANTCLIFF: What number am I on, Your Honor?

23 THE COURT: Just a second.

24 MR. ANTCLIFF: Excuse me, sir.

25 THE WITNESS: Yes, sir.

1 THE COURT: I show 5. Mr. Martinez or --

2 THE CLERK: 5.

3 THE COURT: 5. Okay. 5.

4 BY MR. ANTCLIFF:

5 Q Okay. Agent Juarez, I'm showing you what I'm marking as

6 Defendant Compean's Exhibit Number 5. I'll mark it DC 5. And

7 I would ask you to take a look at that document. You can touch

8 it.

9 A. Okay, sir.

10 Q. Do you recognize that document, sir?

11 A. Yes.

12 Q. And what is it?

13 A. That's my handwriting.

14 Q. And the date on it?

15 A. The date shows 03-18-05.

16 Q. So March 18th, '05. That's the first statement you gave,

17 correct?

18 A. Yes.

19 Q. And it's in your handwriting?

20 A. Yes.

21 Q. And it's a copy of that statement?

22 A. Yes.

23 Q. Okay. Did you read it just then?

24 A. No.

25 Q. Okay. I would ask you to review it right now. And point

1 out to me where it says that you saw the alien in the ditch.

2 A. It's not in here.

3 Q. Very well. Today, is it your testimony, though, that you
4 did see the alien in the ditch, correct?

5 A. Yes, sir.

6 Q. Okay. When you first approached the ditch, the van is
7 already stopped with its front wheels over the edge of the
8 ditch, correct?

9 A. Yes.

10 Q. The alien was already out of the van?

11 A. Yes.

12 Q. Okay. You didn't see where he went when he got out of the
13 van?

14 A. That's correct.

15 Q. Okay. And when you approach, there is another vehicle
16 behind the van. Is that right?

17 A. Yes.

18 Q. And you didn't see -- that was Agent Ramos's vehicle,
19 correct?

20 A. Yes.

21 Q. You didn't see where he was at that moment?

22 A. That's correct.

23 Q. Okay. You look across the ditch and you see Agent
24 Compean's vehicle across in front of the van on the other side
25 of the ditch, correct?

1 A. Yes.

2 Q. You get out of your vehicle. And instead of, like you said
3 in your first statement, going directly to the van to check it
4 out, you went around the front of it and slipped and fell. Is
5 that right?

6 A. I didn't go around. I opened the door and then I have to
7 go around the door to get to the ditch.

8 Q. Okay. So you open the door and get out of your vehicle and
9 then you're going to the front of it?

10 A. No, I didn't go around. I went on the side of the vehicle
11 to get inside the ditch.

12 Q. So you ran straight into the ditch. Today, is that your
13 testimony?

14 A. That's what I'm saying, yes.

15 Q. So how far away from the ditch did you park?

16 A. Right --

17 Q. Pardon?

18 A. I parked very close to the lip of the canal.

19 MR. ANTCLIFF: May I have a moment, Your Honor?

20 THE COURT: Yes.

21 BY MR. ANTCLIFF:

22 Q. This is the van. It's Government's Exhibit Number 10. And
23 this is the van that you had been chasing for those few minutes
24 that afternoon, correct?

25 A. Yes.

1 Q. You came up behind, you parked to the left of, right
2 next to the ditch?

3 A. I parked over here.

4 Q. Okay. And when you open your driver's side door, was it
5 over the ditch?

6 A. Negative. No.

7 Q. So you had to get out, go around and you went directly into
8 the ditch?

9 A. Yes.

10 Q. Did you fall into the ditch?

11 A. I almost slipped, yes.

12 Q. How far down did you go?

13 A. Halfway.

14 Q. Did you think that this fact that you fell into the ditch
15 was not important when you gave your first statement?

16 A. No.

17 Q. It's not -- it wasn't an important thing to say, right?

18 A. Yes.

19 Q. Okay. On April, I think, it's the 25th you went and met
20 with Agent Sanchez again to give a second statement to clarify
21 some of the information in the first statement. Is that right?

22 A. Yes.

23 Q. In the second statement you said that when you arrived, you
24 saw Agent Compean and the alien about six to eight feet apart
25 from one another when you first got there. Is that right?

1 A. Yes.

2 Q. Is that different from your testimony today where you saw
3 the alien down in the ditch before he got up to the top?

4 A. No, it's the same.

5 Q. It's the same. Very well. In the second statement it was
6 your testimony that you saw the alien using both of his hands
7 to crawl up out of the ditch. Is that right?

8 A. Yes.

9 Q. Today, I believe it's your testimony that as he was getting
10 out of the ditch, he had his hands raised, correct?

11 A. Yes.

12 Q. Okay. In the statement, the second statement -- as a
13 matter of fact, in the first statement, it was still your
14 testimony that you went from your car directly to the van. Is
15 that right?

16 A. Yes.

17 Q. But today, you went down into the ditch, correct?

18 A. Yes.

19 Q. I'm not sure I followed it. But your testimony is you saw
20 Agent Compean shooting at the alien. Is that right?

21 A. Yes.

22 Q. And you saw a magazine fall out and you saw him reload. Is
23 that right?

24 A. Yes.

25 Q. In the statement that you gave, particularly, I think it

1 was the third one in September, you mentioned that you thought
2 shots could have been from hunters or the Mexican military. Do
3 you recall saying that?

4 A. Not on the third one. I say it on the second one.

5 Q. The second one is fine. But do you recall saying it?

6 A. Yes.

7 Q. If you thought that it was the Mexican military or
8 hunters -- oh, tell me why you thought that given that you saw
9 Agent Compean shooting?

10 A. Because I was lying to them.

11 Q. I see. So there were more lies in the first two statements
12 than just the fact that you had not reported you saw the
13 shooting. Is that right?

14 A. Yes.

15 Q. One of the conditions of your proffer agreement with the
16 Government is that you not lie to them, correct?

17 A. Yes.

18 Q. When you gave the second statement and the third statement,
19 you had a lawyer. Is that right?

20 A. Yes.

21 Q. Where did you meet with Agent Sanchez and whoever else,
22 your lawyer, whoever else may have been present when you gave
23 the third statement?

24 A. At the office of the United States Attorney.

25 Q. And who was present?

1 A. Mr. Sanchez, Mr. Jose, Mr. Weiser, and myself.

2 Q. Mr. Jose would be Mr. Jose Luis Gonzalez, one of the
3 prosecutors?

4 A. Yes, sir.

5 Q. Okay. And you were told in that meeting that they didn't
6 believe the information you had provided in the first two
7 statements. Is that correct?

8 A. They had said it didn't make any sense.

9 Q. Okay. And they didn't believe it?

10 A. That's correct.

11 Q. And they wanted to know the truth, correct?

12 A. Yes.

13 Q. Okay. And you were told that if you did not tell the truth
14 at this time, that you were going to be indicted. Is that
15 right?

16 A. Yes.

17 Q. Okay.

18 MR. ANTCLIFF: One moment, Your Honor.

19 THE COURT: Sure.

20 BY MR. ANTCLIFF:

21 Q. Were you told what you could be charged with during that
22 meeting before you gave the third statement?

23 A. Yes.

24 Q. And tell us about that.

25 A. I was told by my lawyer.

1 Q. Were you told by anyone else what you could be charged
2 with?

3 A. With lying.

4 Q. So you understood that you could be charged with making a
5 false statement, basically. Is that right?

6 A. Yes.

7 Q. You didn't believe that you could be charged for failing to
8 report the discharge of a firearm on February 17, 2005, right?

9 A. Right.

10 Q. Do you have any idea what the penalties for lying to the
11 Government or making a false statement are?

12 A. Yes, very severe.

13 Q. It is very severe. Do you know what they are?

14 A. Jail time.

15 Q. Okay. How much jail time?

16 A. Years.

17 MR. ANTCLIFF: May I approach the witness, Your Honor?

18 THE COURT: You may.

19 BY MR. ANTCLIFF:

20 Q. I'm showing you, sir, what I've marked --

21 MR. ANTCLIFF: One moment, Your Honor.

22 THE COURT: Sure.

23 BY MR. ANTCLIFF:

24 Q. You didn't give a written statement in September when you
25 met with the Government. Is that right?

- 1 A. That's correct.
- 2 Q. Okay. Everything you told them that day they wrote down,
3 but you didn't?
- 4 A. Yes, sir.
- 5 Q. That's different from the first two statements you gave
6 where you wrote everything down?
- 7 A. Yes.
- 8 Q. Okay. When you get the call from Agent Compean, and I'm
9 not sure how the wording of it was, but, you know, there is a
10 suspected load vehicle leaving the area of 76 pretty quickly,
11 right?
- 12 A. Yes, sir.
- 13 Q. And it's your testimony that that area is known for drug
14 and illegal alien smuggling, correct?
- 15 A. It's well-known. The whole area of Fabens.
- 16 Q. Sure. And that includes the 76 area?
- 17 A. Yes.
- 18 Q. In fact, you weren't that far from the 76 area when you saw
19 a group of aliens on the south side of the river getting ready
20 to come in, right?
- 21 A. Yes.
- 22 Q. Based on the call-out from Agent Compean, the blue -- the
23 gray van, that you saw, was certainly a suspicious vehicle,
24 right?
- 25 A. Yes.

1 Q. You believed at that moment you had a reasonable suspicion
2 to stop it?

3 A. Yes.

4 Q. When you make the turn at the light in Fabens, you're
5 following the van pretty close, correct?

6 A. Trying to, yes.

7 Q. Okay. You -- you turn on your emergency lights and you
8 want him to stop, right?

9 A. Yes.

10 Q. He doesn't stop. And this elevates your suspicion,
11 correct?

12 A. Yes.

13 Q. In your mind, if he wasn't doing something wrong, he would
14 stop?

15 A. Yes.

16 Q. But he didn't. He continues on. And you run into --
17 excuse me, that's a bad way to put it.

18 You see Agent Ramos on one -- on Fabens Road, I guess,
19 coming back south, correct?

20 A. Yes.

21 Q. He takes over what you call the eye of the pursuit, right?

22 A. Yes.

23 Q. And all that means is that he is the agent now with primary
24 focus on the -- the suspect vehicle, right?

25 A. Yes.

1 Q. You're aware that Border Patrol policy dictates that the
2 second vehicle in the pursuit is responsible for handling the
3 radio calls so that the eye can focus on the violator. Is that
4 right?

5 A. Not in Fabens protocol.

6 Q. Not at Fabens protocol. Border Patrol policy is that
7 person is responsible for radio traffic, the second vehicle.
8 Is that right?

9 A. I always thought it was the main person that has the
10 radio -- has the responsibility of informing everyone what's
11 going on because you don't want to step on the traffic.

12 Q. Okay. When did you go through the Border Patrol academy?

13 A. June '03.

14 Q. And did you take a class in pursuit while you were there?

15 A. We don't take a class on pursuits, no. It's just defensive
16 driving.

17 Q. So you took a defensive driving class?

18 A. Yes.

19 Q. Did you go over Border Patrol policies while you were at
20 the academy?

21 A. Yes.

22 Q. Where was this academy?

23 A. At Charleston.

24 Q. Charleston, South Carolina?

25 A. Yes.

1 Q. And it's your testimony today that you're unaware of any
2 policy requiring the second vehicle to take over radio traffic?

3 A. That's correct.

4 Q. Okay. And you did not take over responsibility for the
5 radio on February 17, 2005. Is that right?

6 A. I had it when I had the eye.

7 Q. So it's your testimony that the lead vehicle in a more than
8 one car pursuit is responsible?

9 A. Yes.

10 Q. Okay. When you first saw Agent Ramos -- strike that.

11 At some point you're following Agent Ramos and he's
12 following this van that everybody has been chasing. Is that
13 right?

14 A. Yes.

15 Q. You hear Agent Ramos on the radio, correct?

16 A. Yes.

17 Q. And let me ask you this, when you talk on the radio, do you
18 have to hold something in your hand?

19 A. Yes.

20 Q. What is it?

21 A. The microphone.

22 Q. Okay. And the microphone is attached to the radio?

23 A. Yes.

24 Q. Is it one of those, like a telephone cord squiggly things?

25 A. Yes.

- 1 Q. So while you're talking on the radio, that has to be held
2 in your hand?
- 3 A. Yes.
- 4 Q. When you're driving and talking on the radio at the same
5 time, what hand do you hold that microphone in?
- 6 A. With the right hand.
- 7 Q. Okay. And while you're talking on the radio and driving,
8 your other hand is driving the vehicle, correct?
- 9 A. Yes.
- 10 Q. You don't let go of the steering wheel?
- 11 A. No.
- 12 Q. Okay. Let's talk about -- go back to the ditch when you
13 arrived out there. I'm sorry. I'm kind of jumping around.
14 When you run out the door of your vehicle and down into the
15 ditch, where do you go?
- 16 A. I went down.
- 17 Q. All the way to the water?
- 18 A. No.
- 19 Q. You didn't want to get in the water. Isn't that right?
- 20 A. I didn't go all the way down.
- 21 Q. I understand. You didn't want to get in the water. It's
22 nasty, correct?
- 23 A. Yes.
- 24 Q. So you -- while you're in the ditch, you see the driver of
25 the van running up towards the top of the ditch, I guess, and

- 1 Agent Compean come across to meet him. Is that right?
- 2 A. Yes.
- 3 Q. And then, I guess, it's your testimony now -- yesterday --
- 4 yesterday it was that Agent Compean took a swing at him, and he
- 5 was pretty scared, and that's how his hands got up. Is that
- 6 right?
- 7 A. No, that was before. He put his hands up before.
- 8 Q. So where was he when he raised his hands above his head?
- 9 A. Almost right on top of the canal, the lip.
- 10 Q. When you got in the ditch, was he on the north or the south
- 11 side of the inside of the ditch?
- 12 A. He was on the north side.
- 13 Q. The north side. So he had not crossed the water yet?
- 14 A. That's correct.
- 15 Q. So you were awfully close to this guy. Is that right?
- 16 A. He was in the space between my unit and his van.
- 17 Q. The space between -- eight or ten feet?
- 18 A. Approximately.
- 19 Q. So you were right there with him?
- 20 A. Yes.
- 21 Q. Okay. You didn't run over and tackle him or anything?
- 22 A. No.
- 23 Q. He runs through the water, or jumps over it, or however he
- 24 got over there, and you start heading back up the north side.
- 25 Is that right?

- 1 A. Not yet.
- 2 Q. Not yet. Okay. What do you do when he goes through the
3 water and heads up the south side of the ditch?
- 4 A. I was observing what was going on, that's why I noticed
5 that incident.
- 6 Q. You're just checking it out?
- 7 A. I was observing.
- 8 Q. Okay. Did you draw your weapon?
- 9 A. No.
- 10 Q. Did you ever draw your weapon that day?
- 11 A. No.
- 12 Q. Behind you, agents were arriving down the road that you had
13 traveled to get to the ditch. Is that right?
- 14 A. Yes.
- 15 Q. Did you see any of them?
- 16 A. No.
- 17 Q. So the only agents that saw at that moment were Compean at
18 the top of the ditch and you?
- 19 A. Yes.
- 20 Q. No other agents out there?
- 21 A. I know they were getting near.
- 22 Q. Yeah, those were the only two you knew of?
- 23 A. Yes.
- 24 Q. And are you trained to apprehend aliens?
- 25 A. Yes.

- 1 Q. Okay. Agent Compean was all alone at the top of the ditch
2 on the other side where the alien was heading. Is that right?
- 3 A. Yes.
- 4 Q. And it's your testimony that you did not go over to help.
5 A. That's right.
- 6 Q. Okay. You said, and I'm not sure that it was both ways,
7 but somebody said "parate, parate". Is that right?
- 8 A. Yes.
- 9 Q. And that was Agent Compean you heard, correct?
10 A. Yes.
- 11 Q. And you heard other agents yelling, but you don't know who
12 they are?
- 13 A. I hear -- yes.
- 14 Q. Did you ever of hear Agent Compean yell any obscenities at
15 the alien?
- 16 A. No.
- 17 Q. Okay. The only words you heard were in Spanish telling
18 that alien to stop?
- 19 A. Yes.
- 20 Q. Is that right? Did you hear Agent Ramos yelling "parate"?
21 A. No.
- 22 Q. Do you know if he was in the ditch?
23 A. No.
- 24 Q. When you got there, Agent Ramos' car was behind the van,
25 the door was open, and he wasn't around, correct?

- 1 A. Correct.
- 2 Q. Do you know where he went?
- 3 A. No.
- 4 Q. Did you make any assumptions as to where he might have
5 gone?
- 6 A. Inside the canal.
- 7 Q. Okay. It's not likely he ran back south to get away or
8 something, right?
- 9 A. No.
- 10 Q. He was attempting to apprehend the alien in your mind,
11 correct?
- 12 A. Not really.
- 13 Q. So you think he was hanging out in the ditch?
- 14 A. I don't know what he was doing.
- 15 Q. What he is charged with as a Border Patrol agent
16 apprehending aliens, correct?
- 17 A. Yes.
- 18 Q. Okay. When is the first time -- strike that.
19 When you got to the van, had you already seen Agent
20 Compean shooting?
- 21 A. Before I got to the van, yes.
- 22 Q. You had?
- 23 A. Yes.
- 24 Q. Okay. And you open what on the van first?
- 25 A. The door.

- 1 Q. Which door?
- 2 A. The driver's side.
- 3 Q. You open the driver's side door first? That's what your
4 testimony is today?
- 5 A. Yes.
- 6 Q. Did you smell marijuana when you opened the door?
- 7 A. Strong, yes.
- 8 Q. Strong odor of marijuana?
- 9 A. Yes.
- 10 Q. Okay. When you looked in the driver's side door, you could
11 see the bundles in the back of the van. Is that right?
- 12 A. Yes.
- 13 Q. You looked under the seats looking to see if there were any
14 weapons, correct?
- 15 A. Yes.
- 16 Q. And you looked to see if there were any weapons in the
17 vehicle because that's one of the things you're trained to do,
18 correct?
- 19 A. Yes.
- 20 Q. Then after you open that door and you take a look in the
21 van and you look for weapons, what do you do next?
- 22 A. Secure the load.
- 23 Q. And tell me how you secured the load.
- 24 A. That's when we started getting everything off the van.
- 25 Q. Did you open any other doors on that vehicle?

- 1 A. Yes.
- 2 Q. After you opened the driver's door?
- 3 A. Yes.
- 4 Q. What other doors did you open?
- 5 A. I went to the other side to open the passenger door.
- 6 Q. And what you did do when you looked in there?
- 7 A. It was full of dope.
- 8 Q. You didn't find any people?
- 9 A. No.
- 10 Q. You were pretty excited at this point because this was a
- 11 pretty big load of dope, correct?
- 12 A. Yes.
- 13 Q. Was it the first time you had ever been involved in a
- 14 marijuana seizure?
- 15 A. No.
- 16 Q. No. You've been involved in other marijuana seizures that
- 17 involved significant amounts of marijuana, right?
- 18 A. Yes.
- 19 Q. Okay. But, in any event, you were pretty excited to catch
- 20 this load, correct?
- 21 A. Yes.
- 22 Q. Okay. When you're securing the load of marijuana that's in
- 23 the vehicle, other agents are arriving, correct?
- 24 A. Yes.
- 25 Q. Tell me who.

1 A. That's when Vasquez arrived. And then Mendoza arrived.

2 And then that's when everybody were getting -- more units on
3 the other side, and also on the our side.

4 Q. Sure. I understand. Generally, when you heard a 46 call,
5 and somebody spots a van like in this case that's suspected of
6 containing marijuana, all the agents in the immediate area
7 flood to that area. Is that accurate?

8 A. Yes.

9 Q. Their job is to apprehend the person for dope, whatever it
10 may be, correct?

11 A. Yes.

12 Q. Okay. Do you know how many agents came to the area where
13 the van stopped on February 17, 2005?

14 A. Yes.

15 Q. How many?

16 A. Vasquez, Mendoza, Jacquez, Richards, and Roberts and Lance.

17 Q. Lance, is that his last name?

18 A. No. Medrano.

19 Q. Medrano. So that's six you mentioned, plus you would be
20 the seventh. Mr. Ramos and Mr. Compean would be eight and
21 nine. Is that about right?

22 A. Yes.

23 Q. Okay. Was -- by the time all of that group of agents you
24 just talked about arrived, the shooting was over. Is that
25 right?

- 1 A. Yes.
- 2 Q. You don't know whether anybody other than you and Mr. -- or
3 Agent Ramos or Compean heard the shooting, correct?
- 4 A. Yes.
- 5 Q. It's possible, you don't know?
- 6 A. They heard the shooting, of course, Nacho and Ramos.
- 7 Q. I understand you don't know whether the other agents did
8 that arrived?
- 9 A. That's correct.
- 10 Q. Okay. Who was the first agent on the scene after you came
11 up and got to the van?
- 12 A. It was Vasquez.
- 13 Q. Do you know whether Agent Vasquez heard the shooting?
- 14 A. No.
- 15 Q. Have you -- strike that.
16 You've discharged your firearm in the Fabens sector
17 before while you were on duty. Is that not true?
- 18 A. Yes, I did.
- 19 Q. And you didn't report it?
- 20 A. That's correct.
- 21 Q. Okay. You shot at a snake?
- 22 A. Yes.
- 23 Q. Okay. You were aware that Border Patrol policy requires
24 you to report the discharge of your firearm regardless of what
25 circumstances, correct?

1 A. Yes.

2 Q. And that requires you to do it orally to a supervisor
3 within an hour. Is that right?

4 A. Yes.

5 Q. And you have an obligation under Border Patrol policy to
6 report the discharge of a firearm when you hear it or see it,
7 whether it's your weapon are not. Is that right?

8 A. Correct.

9 Q. Okay. So part of the immunity that you got in this case is
10 for the -- not reporting the discharge of a firearm. Is that
11 right?

12 A. Yes.

13 Q. And do you know what the penalties are for that charge?

14 A. I don't know.

15 Q. You can be prosecuted criminally, correct?

16 A. Yes.

17 Q. That's one of the charges against these two defendants,
18 right?

19 A. Yes.

20 Q. So you're aware that your immunity agreement protected you
21 from being prosecuted for that charge?

22 A. Yes.

23 Q. Do you know what the criminal penalty is for that?

24 A. Jail time.

25 Q. That's right. Nobody asked you not to report the shooting,

1 correct?

2 A. That's correct.

3 Q. That was your decision?

4 A. Yes.

5 Q. Okay. I think it was your testimony, and I'm not certain
6 of this, that you thought Agent Compean was going to let the
7 alien go because he didn't want to do paperwork. Is that
8 right?

9 A. Yes.

10 Q. Have you done that before?

11 A. That's what it's called pushing them back. When they see
12 you, they run back. So you just want to make sure they go back
13 south.

14 Q. I think your testimony was that on February 17th out in the
15 Martinez Farms, you were pushing aliens back that day?

16 A. Yes.

17 Q. Had they crossed over the river?

18 A. Yes, because they play with you. What you do is if there's
19 another sensor, then you move. And then once you see, you
20 move. That's when they come across. And then you come back
21 and then they go back. If --

22 Q. I understand. Is it kind of scary out there?

23 A. Yes.

24 Q. Okay. You've run into hunters out there shooting weapons
25 before?

1 A. Yes.

2 Q. You've seen the Mexican military shooting weapons before?

3 A. Yes.

4 Q. You've apprehended a number of illegal aliens attempting to
5 come into the United States, right?

6 A. Yes.

7 Q. You have apprehended a number of people involved in drug
8 smuggling. Is that right?

9 A. I never got a load under my belt.

10 Q. You -- so you weren't the primary person involved in the
11 load to get credit for it. Is that what you're saying?

12 A. Yes.

13 Q. You were hopeful that was going to happen this day?

14 A. Yes.

15 Q. You said, I think, on your testimony that there are a few
16 people in the Fabens sector who have gotten drivers and a load
17 of marijuana before, or a load of drugs and gotten credit for
18 it out of the 76 Area. Is that right?

19 A. Overall.

20 Q. Throughout the whole Fabens sector?

21 A. Yes.

22 Q. Okay.

23 MR. ANTCLIFF: A moment, Your Honor?

24 THE COURT: Yes.

25

- 1 BY MR. ANTCLIFF:
- 2 Q. Please tell me if I understand your testimony correctly in
- 3 this regard. After -- I think, you testified that you saw
- 4 Agent Compean fall into the ditch. Is that right?
- 5 A. Yes.
- 6 Q. And that's the moment when the alien ran around him?
- 7 A. Yes.
- 8 Q. And that's also the moment when he dropped his shotgun,
- 9 correct?
- 10 A. Yes.
- 11 Q. And it's your testimony that the shotgun was dropped inside
- 12 the ditch?
- 13 A. Yes.
- 14 Q. Okay. Do you recall ever telling Agent Sanchez that the
- 15 shotgun was dropped up closer on the levee?
- 16 A. No, I said he dropped the shotgun when he fell.
- 17 Q. So where was he when he fell, I guess, would be the
- 18 question.
- 19 A. He was right on the top of the lip of the canal.
- 20 Q. And the shotgun fell down into the ditch?
- 21 A. Yes. Because he went forward.
- 22 Q. He did?
- 23 A. Yes.
- 24 Q. Head first right into it?
- 25 A. Yes.

1 Q. Okay. He did not fall up on the top by -- closer to the
2 levee?

3 A. He was up on the top on the lip.

4 Q. I mean, fall back awards towards the levee?

5 A. Oh, no.

6 Q. What is an estimate of the space between the edge of the
7 ditch and the levee where Agent Compean was that day?

8 A. The lip where he was on the canal?

9 Q. No, the lip. And behind that is the levee. Is that right?

10 A. Yes.

11 Q. Okay. There's a slope to the levee. It rises up and then
12 it's flat and comes back down?

13 A. Down the canal.

14 Q. Oh. Well, I need a picture.

15 THE COURT: I think because some people use ditch,
16 some use canal.

17 MR. ANTCLIFF: Right.

18 THE COURT: There may be some confusion.

19 MR. ANTCLIFF: Here they are.

20 THE COURT: Is 11 not a good picture for that?

21 MR. ANTCLIFF: 11, Judge?

22 THE COURT: Isn't it? This one will work.

23 BY MR. ANTCLIFF:

24 Q. This is Government's Exhibit 27.

25 THE COURT: That has not been admitted.

1 MS. KANOF: That's the Fabens point of entry.

2 THE COURT: How about 28, might be similar to it.

3 MR. ANTCLIFF: This one is not in. I don't know where
4 it came from.

5 MS. KANOF: 29. 28 or 29.

6 THE COURT: 28 or 29.

7 MR. ANTCLIFF: That looks the same. All right. This
8 is 28.

9 THE COURT: All right.

10 BY MR. ANTCLIFF:

11 Q. Can you see that?

12 A. Yes.

13 Q. Okay. Where my finger is pointing this is Jess Harris
14 Road. Is that right?

15 A. Yes.

16 Q. And the ditch is what terminates Jess Harris Road?

17 A. Yes.

18 Q. Okay. And when the gray van came down, it ran kind of into
19 the ditch right there. Is that right?

20 A. On the side here.

21 Q. Yeah. Okay. Then you see the ditch there and then you see
22 there's a vehicle up on the levee road?

23 A. Yes.

24 Q. Okay. I don't know if you can see it real good up there.
25 That's right. What is the distance between the top of the

- 1 ditch and the levee road there?
- 2 A. Between the top of the ditch and the levee road?
- 3 Q. Yes.
- 4 A. Approximately 20 feet.
- 5 Q. Okay. And it's your testimony that Agent Compean, when you
- 6 saw him fall headfirst into the ditch, was right on the edge of
- 7 the ditch. Is that right?
- 8 A. It was right here.
- 9 Q. Okay.
- 10 A. Somewhere in the vicinity right there.
- 11 Q. And the shotgun was picked up from down in there?
- 12 A. It was picked up, yes.
- 13 Q. And you have never told anyone that the shotgun was picked
- 14 up much closer to the slope of the levee road here, right?
- 15 A. It was somewhere there, yes.
- 16 Q. What?
- 17 A. The shotgun was inside here.
- 18 Q. In the ditch?
- 19 A. Inside, yes.
- 20 Q. That's -- right. And it's your testimony that you've never
- 21 said to anyone that the shotgun was found or dropped up closer
- 22 to the slope of the levee road?
- 23 A. What was that?
- 24 Q. This is the ditch we're talking about right here, right?
- 25 A. Yes, sir.

1 Q. Okay. There's a space between the top of the ditch and the
2 levee road slope. Is that right?

3 A. Yes.

4 Q. Okay. And your testimony right now is that the shotgun was
5 found inside the ditch?

6 A. It was in that area, yes.

7 Q. Okay. Dropped. Dropped in there, I guess. And I'm asking
8 you, have you ever told anyone that the shotgun was found up
9 closer to the slope of the levee road here, that's where it was
10 dropped?

11 A. No.

12 Q. You never said that?

13 A. No. I would have said that to one agent when he arrived,
14 Vasquez. That's the shotgun there. And they're over there on
15 the other side.

16 Q. Where did you tell Agent Christopher Sanchez that the
17 shotgun was found?

18 A. In the canal.

19 Q. Okay. It's your testimony between yesterday and today that
20 Agent Compean took a swing with the butt of the shotgun at the
21 alien. Is that right?

22 A. Yes.

23 Q. And only once?

24 A. He lifted it. So I don't know if he was going to go like
25 that. That's when he lost the balance. So when he went like

1 that. So it could have been more than once. But he most
2 definitely tried to hit him.

3 Q. I see. And the first time you mentioned that to Agent
4 Sanchez would be the September 2005, correct?

5 A. Yes.

6 Q. After you had been threatened with an indictment for lying?

7 A. That's correct.

8 Q. Okay. Have you ever told Agent Sanchez that Agent Compean
9 took several swings with the butt of the shotgun at the alien?

10 A. I don't know if you call several when you go like that,
11 like you're getting ready.

12 Q. Okay. You don't believe the alien was trying to surrender
13 on February 17th, do you?

14 A. I thought he was.

15 Q. You do?

16 A. Yes.

17 Q. So when did you think he was trying to surrender?

18 A. When he went towards Compean's path.

19 Q. Okay. Everything happened out there -- from the time you
20 got out of your car and into the ditch, things were happening
21 pretty quickly. Is that right?

22 A. Yes, sir.

23 Q. The alien was moving very fast, I think your testimony is?

24 A. That's correct.

25 Q. Okay. How much time would you say lapsed between the time

1 that you first got into the ditch and he's gone?
2 A. Seconds.
3 Q. 30 seconds?
4 A. That's too much.
5 Q. Ten seconds?
6 A. Five, ten.
7 Q. So he was moving?
8 A. Yes.
9 Q. That's the only time you saw him running was when he got
10 out of the van and you were in the ditch, right?
11 A. I didn't see him get out of the van, no.
12 Q. I understand. But he was already in the ditch when you got
13 there and he was running when you saw him?
14 A. Yes.
15 Q. And he was running up the side of the thing, the ditch,
16 right?
17 A. Yes.
18 Q. And then he ran across and Agent Compean came to meet him,
19 right?
20 A. He ran towards his path.
21 Q. Okay. And then he took off running for Mexico?
22 A. Yes.
23 Q. And was he running on a direct line south to Mexico to the
24 river? Or was he running on some angle?
25 A. I can't say that because once you go from the levee down to

1 the vega, you don't see anything.

2 Q. So you lost sight of this guy when?

3 A. Once he went inside the vega.

4 Q. So he gets up out of the ditch, goes 20 feet away, across
5 to the slope of levee, runs over the levee, and then you can't
6 see him anymore?

7 A. Yes.

8 Q. But it's your testimony that you saw the top half of Agent
9 Compean shooting at the alien from your vantage point. Is that
10 right?

11 A. Yes.

12 Q. So you didn't see the top half of the alien, just the top
13 half of Compean?

14 A. Yes.

15 Q. Okay. I'm going to show you Government's Exhibit -- I
16 don't know if this is --

17 MR. ANTCLIFF: 57 or 55. 51C. May I approach, Your
18 Honor?

19 THE COURT: Yes.

20 BY MR. ANTCLIFF:

21 Q. I'll ask you to take a look at it.

22 A. Yes, I do.

23 Q. And how do you recognize it?

24 A. This is the where the incident took place.

25 Q. This is the same document that the Government showed you on

- 1 your direct testimony. Is that right?
- 2 A. Yes.
- 3 Q. Okay. This exhibit, I think -- let's see. Use the pointer
- 4 and orient me to where you were when you first arrived at the
- 5 ditch, the canal.
- 6 A. Inside.
- 7 Q. So your car is back behind there a little bit --
- 8 A. Oh, my truck, my unit, is here at the edge.
- 9 Q. Gotcha. You're right at the edge?
- 10 A. Yes.
- 11 Q. And the alien's already down in the ditch, right?
- 12 A. Yes.
- 13 Q. You see him cross through or jump over the water where that
- 14 line follows. Is that right?
- 15 A. Yes.
- 16 Q. How far behind the van and Agent Ramos would you estimate
- 17 you were in terms of time when you arrived at the ditch in your
- 18 vehicle?
- 19 A. Seconds.
- 20 Q. Okay. But you didn't see the guy get out of his van,
- 21 right?
- 22 A. That's correct.
- 23 Q. Okay. When you get there, he's where?
- 24 A. Inside the canal.
- 25 Q. So he's actually in the water when you get there.

- 1 A. He's not in the -- well, very near here -- the water -- on
2 the water. I don't know if he was in the water. But he was by
3 the water.
- 4 Q. Was he on the north side or the south side?
- 5 A. No, he was on the north side.
- 6 Q. So he had already crossed the water when you first saw him?
- 7 A. No. No. No, this is the north side. He is on the north
8 side. There's no water on the north side. North side. South
9 side. And water between.
- 10 Q. Right here, before the water, what side of the canal is
11 this?
- 12 A. North side.
- 13 Q. Okay. I had them backwards. And I'm sorry. He was where
14 on this?
- 15 A. Inside the canal, north side.
- 16 Q. Okay. And which way was he going?
- 17 A. He went up straight.
- 18 Q. He went up, straight up?
- 19 A. Uh-huh.
- 20 Q. And Agent Compean was there?
- 21 A. Yes.
- 22 Q. And so the alien sees him and goes somewhere else or he
23 keeps going straight up?
- 24 A. No. He walks towards -- that's when he was walking towards
25 him.

- 1 Q. That's when who walks towards who?
- 2 A. The driver, I mean. He's approaching his path.
- 3 Q. That's when the driver is heading up the hill like this?
- 4 A. That's when he's climbing up and that's when he goes like
- 5 that.
- 6 Q. I see. And do you think, in your mind, was he surrendering
- 7 at that point, or warding off a blow?
- 8 A. Protected or -- something. I don't know what he was trying
- 9 to do.
- 10 Q. You think he was surrendering. I think that's your
- 11 testimony?
- 12 A. Yes.
- 13 Q. All right. But you did not testify that he was
- 14 surrendering in the first two statements you gave to the
- 15 Government, correct?
- 16 A. That's correct.
- 17 Q. Okay. Your testimony on direct was that it's always best
- 18 to use the repeater. Is that right?
- 19 A. Yes, sir.
- 20 Q. Okay. On that day, February 17, 2005, you used both the
- 21 repeater and local. Is that right?
- 22 A. No, I was on repeater.
- 23 Q. You were? You read a copy of the transcript of all of the
- 24 radio traffic between 1:11 p.m. and, say, 1:30 p.m. on February
- 25 17th, didn't you?

- 1 A. Yes.
- 2 Q. And was everything that you said on the radio on there?
- 3 A. No.
- 4 Q. Okay. And tell me why that would be.
- 5 A. I don't know. I guess they didn't get copied.
- 6 Q. Okay. It's not because you had gone local at some point?
- 7 A. No.
- 8 Q. You were always on the repeater?
- 9 A. We're not always on the repeater. Sometimes you go local.
- 10 Q. Okay. I understand. So that I'm clear, you saw no other
- 11 Border Patrol vehicle arrive until after you had looked in the
- 12 van, correct?
- 13 A. No. Negative. That was not before. There was at least
- 14 one agent there already.
- 15 Q. Who?
- 16 A. Agent Vasquez.
- 17 Q. At the time you looked into the van?
- 18 A. Before that.
- 19 Q. So he arrived before you even got to the van?
- 20 A. Yes.
- 21 Q. Where did he go?
- 22 A. That's when he approached me. And that's when I said
- 23 there's Compean's weapon, shotgun. And they're over there.
- 24 Q. And so you tell him there's Compean's weapon. And it's in
- 25 the ditch, the canal?

- 1 A. Somewhere over there. I pointed. I don't know if he was
2 able to see it visually.
- 3 Q. Is he in the canal with you?
- 4 A. No, I was outside already.
- 5 Q. That's what I'm asking. Where were you when you first
6 talked to him?
- 7 A. I was halfway almost more closer to the van.
- 8 Q. You had come up out of the ditch, the canal, and you were
9 near the van, just not there yet?
- 10 A. Yes.
- 11 Q. You go to the door to look in the van, right?
- 12 A. Yes.
- 13 Q. What does he do?
- 14 A. We went there to see, to find out what was in there.
- 15 Q. He was with you?
- 16 A. Yes.
- 17 Q. He's standing right there with you when you open the door?
18 He's right there?
- 19 A. Yes.
- 20 Q. Okay. And you both kind of look in and see what's going
21 on?
- 22 A. Yes.
- 23 Q. He saw the marijuana, right?
- 24 A. Yes.
- 25 Q. Did he look for a gun?

1 A. We looked for -- under the seats.

2 Q. You walked around to the other side and opened the door on
3 that side. Is that -- that's what your testimony is, right?

4 A. Yes.

5 Q. What did he do?

6 A. I think we find a telephone, a cellular telephone.

7 Q. Okay. Was he opening doors to the van?

8 A. Yes.

9 Q. He was pretty excited, too?

10 A. Yes.

11 Q. Under the terms of your proffer letter, your immunity
12 agreement, the Government is the sole entity that determines
13 whether or not you've been truthful. Is that right?

14 A. Yes.

15 Q. And if they determine you have not been truthful, you could
16 be prosecuted, right?

17 A. Yes, sir.

18 Q. It's your belief you can only be prosecuted for lying,
19 correct?

20 A. Yes, sir.

21 MR. ANTCLIFF: I believe that's all I have.

22 THE COURT: All right.

23 MR. GONZALEZ: I don't think I'm going to use that.

24 Can we have the lights on?

25 THE COURT: Sure. Thank you.

1 REDIRECT EXAMINATION

2 BY MR. GONZALEZ:

3 Q. Mr. Juarez, let's go to the -- your immunity. And it's
4 your testimony that you met with the Government including
5 myself and Agent Sanchez on about September 26, 2005. Is that
6 correct?

7 A. Yes, sir.

8 Q. And you didn't come by yourself, did you?

9 A. No, sir.

10 Q. Who came with you?

11 A. Mr. Weiser, my attorney.

12 Q. That was your attorney, correct?

13 A. Yes, sir.

14 Q. And at any time when we met did we tell you what to tell
15 us?

16 A. No, sir.

17 Q. Did we tell you what had occurred out there?

18 A. No, sir.

19 Q. Have you ever met with Osvaldo Aldrete-Davila?

20 A. No, sir.

21 Q. Do you know who he is?

22 A. No, sir.

23 Q. Have you ever read his report?

24 A. No, sir.

25 Q. Have you ever talked to him?

1 A. No, sir.

2 Q. Has anyone ever told you what Osvaldo Aldrete-Davila has
3 had to say about what happened on February 17, 2005?

4 A. No, sir.

5 Q. And I told you that I did not believe what you were telling
6 me on September 26th. Is that correct?

7 A. Yes, sir.

8 Q. That your story made no sense?

9 A. Yes, sir.

10 Q. I told you you're saying you're at the scene and you hear
11 nothing and say nothing?

12 A. Yes, sir.

13 MS. STILLINGER: I'm going to object to Mr. Gonzalez
14 testifying.

15 THE COURT: All right. I'll sustain.

16 Q. What were you told you were going to be prosecuted for?

17 A. For lying.

18 Q. And at that point did you realize --

19 A. Yes, sir.

20 Q. -- we were serious?

21 A. Yes, sir.

22 MS. STILLINGER: Objection, leading.

23 THE COURT: All right. I'll sustain.

24 BY MR. GONZALEZ:

25 Q And you thought you were going to be prosecuted for what,

1 sir?

2 A. Lying.

3 Q. Were you ever told you're going to be discharged for
4 firing --

5 A. No, sir.

6 Q. -- for assaulting another human being?

7 A. No, sir.

8 Q. Now let's go back to some of the questions that
9 Ms. Stillinger asked you. She was asking about what you are
10 authorized to do. Are you a DEA Agent?

11 A. No, I'm not.

12 Q. And DEA is Drug Enforcement Administration, correct?

13 A. Yes, sir.

14 Q. Who enforces the drug laws in Fabens? Who has primary
15 jurisdiction?

16 A. DEA.

17 Q. Not Border Patrol. Is that correct?

18 A. No, sir.

19 Q. In fact, after you seize the load who's called?

20 A. DEA.

21 Q. What do they do?

22 A. They take over the case.

23 Q. And what do you mean by taking over?

24 A. They will go to the station to pick up the load of
25 narcotics.

1 Q. And I believe you also told Ms. Stillinger that you saw a
2 felony had been committed. Is that correct?

3 A. Can you repeat that?

4 Q. That the van had committed a felony.

5 A. Yes.

6 Q. At what time did that van commit a felony?

7 A. Only when he -- the person, the driver, failed to stop.

8 MR. GONZALEZ: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 BY MR. GONZALEZ:

11 Q. This the van that you saw on February 17, 2005?

12 A. Yes.

13 Q. Can you see what's inside that van?

14 A. No.

15 Q. Why not?

16 A. Because they were tinted windows and curtains on the side.

17 Q. So you didn't know if there were aliens, children, what in
18 this van, did you?

19 A. That's correct.

20 Q. When did you find out that there was drugs in this van?

21 A. That's when we -- when I get there and opened up the doors.
22 That was the first time.

23 Q. Now you thought you heard minivan. Is that correct?

24 A. Yes.

25 Q. Why is that important to you -- "minivan" or "full-sized

1 van"? What distinction do you draw, if any, in your mind?

2 A. I was looking for a small-sized van. So when I saw the
3 full-size van, I thought that wasn't it. That's why I have to
4 confirm it, if that was the one.

5 Q. Okay. But in your experience -- and I've -- how long were
6 you in Border Patrol before you were placed on administrative
7 duty?

8 A. It's, approximately, a year and a half.

9 Q. Do drug smugglers use one type of van versus another?

10 A. No, sir.

11 Q. What about alien smugglers?

12 A. They use --

13 Q. Either van?

14 A. -- whatever they need.

15 Q. Now, let's go back to downtown Fabens. You're pursuing
16 this van, correct?

17 A. Yes.

18 Q. When Agent Ramos gets in front of you, how does that
19 happen?

20 A. He -- because he sees me, that I'm passing him. But he
21 doesn't move until he got on the radio. And I say, He's going
22 to be heading back the same way. And that's when I got to the
23 intersection. That's when I saw Agent Ramos already heading
24 southbound on the road.

25 Q. Do you almost run into him when he pulled in front of you?

1 A. Oh, yes.

2 Q. Did you expect him to pull in front of you?

3 A. No.

4 Q. Why not?

5 A. Because I was the leading the pursuit.

6 Q. Did he almost cut you off?

7 A. Yes.

8 MS. STILLINGER: Objection, Your Honor, leading.

9 THE COURT: Don't lead.

10 BY MR. GONZALEZ:

11 Q. Characterize what he did, movement, when he moves his car
12 in front of your car.

13 A. Like, get out of the way. Let me take over.

14 Q. Did you let him take over?

15 A. I have to.

16 Q. Why?

17 A. If he was already ahead of me.

18 Q. Now, Agent Ramos at some point makes a tapping motion on
19 the roof of his vehicle. And you take that to mean what?

20 A. Turn off your lights.

21 Q. Did Agent Ramos ever get back on the phone -- sorry, on the
22 radio, local or repeater, and say I'm sorry. I made a mistake.
23 And turn on your emergency overhead lights, that was a mistake?

24 A. No, he never did.

25 Q. And as far as you know, your understanding of Border Patrol

1 policy, who has the responsibility to call in a hot pursuit?

2 A. The one who is behind the pursuit.

3 Q. And who was that on February 17, 2005?

4 A. I was the one, initially.

5 Q. And what happened?

6 A. I didn't do it.

7 Q. How long did you have the eye before it was taken away from
8 you?

9 A. Well, ten minutes.

10 Q. No. Well, let's talk about that.

11 MS. STILLINGER: Objection, Your Honor. Directing the
12 witness' testimony.

13 THE COURT: I'll sustain.

14 BY MR. GONZALEZ:

15 Q. When do you catch up to the van?

16 A. At the light.

17 Q. At the light. But before that, where were you?

18 A. I was trying to catch up with him.

19 Q. You've seen the vehicle, correct?

20 A. Yes.

21 Q. When do you start pursuing it actively?

22 A. When he failed to stop with my emergency lights.

23 Q. When you-all go around the block in Fabens. Is that
24 correct?

25 A. Yes.

1 Q. And then soon thereafter, how soon thereafter does Agent
2 Ramos take over?

3 A. Right after the van made a right turn into Fabens Road.

4 Q. And at any point do you ever hear Agent Ramos call out over
5 the radio, either local or repeater, that a felony is being
6 committed by the driver of that van?

7 A. No, sir.

8 Q. That it has been committed?

9 A. No, sir.

10 Q. And if you know, why is the reason that you are not allowed
11 to engage in these high-speed pursuits?

12 MS. STILLINGER: Objection, Your Honor.

13 MR. GONZALEZ: If he knows.

14 MS. STILLINGER: I'm sorry. If he could repeat the
15 question. It sounded objectionable. But I'm not sure.

16 THE COURT: Please restate.

17 BY MR. GONZALEZ:

18 Q. If you know, why are you not allowed to engage in these
19 high-speed pursuits?

20 A. You have to do it safely. If there was any harm around the
21 units, like citizens or like -- like that, that could be --

22 Q. Citizens could get hurt. Is that what you said.

23 A. Yes.

24 Q. Let me take you to the testimony about letting aliens flee
25 back to Mexico. Why do you-all do that?

1 MR. ANTCLIFF: Objection, Judge.

2 A. Less paperwork.

3 MR. ANTCLIFF: All -- he can't testify about what
4 anybody else knows.

5 MR. GONZALEZ: I'll rephrase.

6 THE COURT: Restate the question.

7 BY MR. GONZALEZ:

8 Q. Do you allow aliens to flee back to Mexico?

9 A. Only if it's not safe to do.

10 Q. What does that mean?

11 A. If it's a lot of group why should I get in harm's way to
12 try to apprehend a group if they're almost at the levee and
13 then there's the Rio Grande?

14 Q. And you don't like to do paperwork. Is that correct?

15 A. Yes, sir.

16 Q. All right. However, that's your choice, right?

17 A. Yes, sir.

18 Q. Who is the supervisor out there at Fabens, or who are the
19 supervisors?

20 A. They're -- there was Thomason, Roberts.

21 Q. Should --

22 A. Thomason. Roberts. I can't recall their names. But there
23 were more. There are more.

24 Q. What about Johnathan Richards, was he on duty February
25 17th?

- 1 A. He's not immediate supervisor. He's more upper management.
- 2 Q. Okay. Does either supervisor Arnold or Richards, are they
- 3 lax with their policy?
- 4 A. No, sir.
- 5 Q. Writing your paperwork?
- 6 A. No.
- 7 Q. What are they like?
- 8 A. They like to see everything is done properly, especially
- 9 Mr. Richards.
- 10 Q. By the book?
- 11 A. Yes, sir.
- 12 Q. Now, you've also testified about the Mexican military and
- 13 hunters. Do you remember that testimony?
- 14 A. Yes.
- 15 Q. Where -- have they shot at you?
- 16 A. No.
- 17 Q. And these aliens that -- you have arrested some aliens. Is
- 18 that correct?
- 19 A. Pardon me?
- 20 Q. Have you arrested any aliens during your career?
- 21 A. Yes.
- 22 Q. Any of these aliens ever have weapons on them?
- 23 A. No.
- 24 Q. And I think you were asked about someone brandishing a gun.
- 25 Do you remember that testimony?

- 1 A. Brandishing a gun?
- 2 Q. Yes, sir.
- 3 A. What is the brandishing?
- 4 Q. I don't know. I think you answered it. Do you know what
- 5 that means?
- 6 A. I don't know what's the definition of brandishing.
- 7 Q. To display a gun, sir, display, show. Okay?
- 8 A. I understand.
- 9 Q. Did Agent Ramos or Agent Compean ever come back and say
- 10 that the alien was brandishing, showing, had a gun, anything
- 11 like that?
- 12 A. Oh, no.
- 13 Q. Now, let's take you back to the top of the levee, that's
- 14 your testimony about the alien going up the south side?
- 15 A. Yes.
- 16 Q. Does he have his hands raised?
- 17 A. Not all the way, but about here.
- 18 Q. To his face?
- 19 A. Yes.
- 20 Q. Open palm?
- 21 A. Like this.
- 22 Q. Open palm?
- 23 A. Not like that. But like this.
- 24 Q. Okay. And he has his hands raised at what point?
- 25 A. When he got almost real close to Agent Compean.

1 Q. Okay. And then does his position change? Does it -- he's
2 got his hands raised. Does it go from side to side at that
3 point?

4 A. Made a complete move -- the movement.

5 (Witness demonstrating.)

6 Q. What do you mean?

7 A. To move around for the blow.

8 Q. So he's dodging the blow, trying to avoid the blow. Is
9 that correct?

10 A. Yes.

11 Q. But before he ducks, he's coming straight up to where Agent
12 Compean is. Is that correct?

13 A. Yes.

14 Q. Now, after the alien, Osvaldo Aldrete-Davila, flees around
15 Agent Compean -- and your testimony is what happens to Compean?

16 A. He slips into that canal.

17 Q. And what does the alien do, sir?

18 A. He ran.

19 Q. And does he pause?

20 A. No.

21 Q. And he looked very healthy to you. And he was quick. Is
22 that correct?

23 A. He was quick.

24 Q. Did he ever look back from what you can see?

25 A. No.

- 1 Q. Now then you say you hear some shots. Is that correct?
- 2 A. Yes.
- 3 Q. And do you see when Agent Compean gets to where he starts
- 4 shooting?
- 5 A. Yes.
- 6 Q. Between the point where he gets up to the point where he
- 7 starts shooting, is the alien anywhere in there?
- 8 A. No.
- 9 Q. Does the alien ever stop running to confront Agent Compean?
- 10 A. I don't think so. I didn't see that.
- 11 Q. Sir, did you ever discharge your weapon on that day?
- 12 A. No, sir.
- 13 Q. Not once or not 14 times did you?
- 14 A. No, sir.
- 15 Q. Did you shoot a person that day?
- 16 A. No, sir.
- 17 Q. And if you know, was supervisor Richards available on
- 18 February 17, 2005?
- 19 A. Yes, he was.
- 20 Q. And, in fact, did he respond to the scene?
- 21 A. He was there right away.
- 22 Q. Now what did you say his position is? He's not the
- 23 immediate supervisor?
- 24 A. No, he's not.
- 25 Q. Who is the immediate supervisor?

- 1 A. During that day it was Roberts, Mr. Roberts.
- 2 Q. Do supervisors always respond to crime scenes?
- 3 A. They have to.
- 4 Q. They do?
- 5 A. Yes.
- 6 Q. Both of them or only one of them?
- 7 A. Whoever is available. But at least a supervisor needs to
- 8 be there.
- 9 Q. When you're in the ditch watching what's going on with
- 10 Agent Compean and Osvaldo Aldrete-Davila, why don't you cross?
- 11 A. Why should I do that? I mean, he was -- I felt like he was
- 12 already under control, Agent Compean.
- 13 Q. Were you in any -- were you ever in any fear of your life,
- 14 sir, when you were down in the ditch?
- 15 A. No.
- 16 Q. And you said that your car was turned on or you left it on
- 17 when you arrived. Is that correct?
- 18 A. Yes.
- 19 Q. What about Agent Ramos' vehicle, was that turned on?
- 20 A. Yes.
- 21 Q. How loud was the noise?
- 22 A. It was -- I mean, the engine running. I had a truck. And
- 23 then I don't know if they had a diesel engine.
- 24 Q. And when you inventoried the van, you did, in fact, find a
- 25 cellular telephone in the van?

1 A. Yes.

2 Q. Do you remember when you find out --

3 A. I don't know if it was in the console or under the seats or
4 dashboard. But we did find a telephone.

5 Q. Evidently, the alien left so quickly he left it behind?

6 A. Yes.

7 MR. GONZALEZ: May I have a moment, Your Honor?

8 THE COURT: Yes.

9 MR. GONZALEZ: I'll pass the witness, Your Honor.

10 THE COURT: Ms. Stillinger?

11 RE-CROSS-EXAMINATION

12 BY MS. STILLINGER:

13 Q. Agent Juarez, when you met with Agent Sanchez and Jose Luis
14 Gonzalez, the prosecutor, in September of last year, was
15 Mr. Gonzalez yelling at you the way he was yelling at you now?

16 A. Yes, he was very upset.

17 Q. And he was sharing his personal opinion that he didn't
18 think your story made sense. Is that correct?

19 A. Yes.

20 Q. Okay. And he was explaining to you that they could indict
21 you if they didn't think your story made sense, correct?

22 A. Yes.

23 Q. Okay. A so at that point in time it was in your best
24 interest to tell a story that made sense to Mr. Gonzalez,
25 correct?

1 A. No, because prior to that I told Mr. Weiser the truth.

2 Q. Okay. But I'm asking it was in your best interest to say
3 something that Mr. Gonzalez found acceptable, wasn't it?

4 A. Not acceptable but the truth.

5 Q. Of course, it was always in your best interest to tell the
6 truth, wasn't it?

7 A. Yes.

8 Q. Okay. And that was explained to you in March when you
9 talked to Agent Sanchez, wasn't it, that that was in your best
10 interest to tell the truth?

11 A. Yes.

12 Q. Okay. And it was explained to you again in April when you
13 gave another statement, that you should tell the truth, right?

14 A. Yes.

15 Q. But when Mr. Gonzalez told you he didn't like -- he didn't
16 believe your statements, that's when they changed, correct?

17 A. Yes.

18 Q. Well, and what he was telling you is that he could indict
19 you so that you would be sitting over here at this table
20 instead of up here, correct?

21 A. Mr. Weiser was the first one to notify me of that. He
22 goes, Come to my office. That's when he explained to my lawyer
23 what I have actually seen.

24 Q. Okay. Okay. Okay. And, naturally, you would much rather
25 be a witness in a case than a defendant in the case, right?

1 A. Yes.

2 Q. Of course. Let me go back just a little bit to -- well,
3 let me go back to -- I wanted to ask you about when
4 Mr. Ramos -- Agent Ramos took over as lead vehicle on the
5 pursuit. Okay. He was pointed south on Fabens Road, correct?

6 A. Yes.

7 Q. And, basically, he was in a position where he was poised to
8 follow the van more closely than you could, wasn't he?

9 A. Yes.

10 Q. Because he was already in the direction that the van was
11 turning. Is that right?

12 A. Yes, because, I mean, he surprised me -- to see him,
13 actually.

14 Q. Right. Right. But he was able -- because he had turned
15 around and was pointing south, he was able to get right behind
16 the van as the van went south, right?

17 A. Yes.

18 Q. And you couldn't get that close behind the van because you
19 were having to make the right turn, right?

20 A. Yes.

21 Q. Of course, you had to slow down to make that right turn,
22 correct?

23 A. Yes.

24 Q. But you're not telling us that Agent Ramos pushed you out
25 of the way, or put you in danger are you?

1 A. Well, he just took the lead when he got in front of me
2 because he never said anything to me, "I got the eye". He
3 just took over.

4 Q. He was there and he was in a better position to get closer
5 to the van, wasn't he?

6 A. Because when I saw him at first I --

7 Q. I'm sorry. I'm just asking a question. If you can answer
8 my questions. And if you have need to explain your answer,
9 that's fine.

10 He was in a better position to follow the van more
11 closely as it went on Fabens Road, wasn't he?

12 A. He was in a better position before they were heading
13 towards the light.

14 Q. Well, he was parked on Fabens Road, wasn't he?

15 A. Yes. But he never moved because I knew when he called it
16 out, he's going to town. That's why it surprised me to see him
17 just facing south. And I said to myself "he's not moving".
18 That's when I thought, well, he's not going to go when we make
19 the left turn, or either way, at the intersection left or
20 right. Because he was facing south. Because I called it out.
21 The van is heading towards the town. And then when I saw Agent
22 Ramos facing south. That's when it strike -- he's not moving
23 when I called it out, that the van is going north.

24 Q. Okay. Okay. But what I'm asking about is when he took
25 over as the lead vehicle -- Mr. Gonzalez discussed a few

1 questions about did he push you out of the way, and you were
2 pretty much agreeing with everything Mr. Gonzalez said. But
3 you're not saying you had to put on your brakes to avoid
4 hitting Mr. Ramos there?

5 A. He was getting to the intersection. That's when I saw him
6 passing right away.

7 Q. I'm sorry.

8 A. When I got to the intersection, that's when I saw Agent
9 Ramos unit passing my intersection that I was traveling on.

10 Q. Right. Because he was already pointed southbound on Fabens
11 Road, right?

12 A. That's correct.

13 Q. And he was able to get in right behind the van as the van
14 went south?

15 A. Yes. But he never mentioned "I got it". Once he leaves
16 the block and comes back into Fabens south, I thought I was the
17 only one.

18 Q. I understand. It surprised you that he was waiting for the
19 van there?

20 A. Surprised me that he took off right away.

21 Q. That he was chasing the van?

22 A. He took over the eye, yes.

23 Q. Right. But you did have a stop sign where you were and he
24 didn't, right?

25 A. No, he did not.

1 Q. Okay. So he's able to just go, whereas, you have to stop
2 and yield the right of way?

3 A. I was going to yield. I was not going to stop.

4 Q. Okay. Okay. Then let me ask you about the pursuit. Your
5 supervisors knew that a pursuit exists, correct? I'm sorry.
6 Later in the day, at least, they knew that there had been that
7 pursuit, correct?

8 A. No, it was never called a pursuit. And they were not aware
9 there was a pursuit. They knew we were trailing a van. But if
10 they knew there would have been a pursuit, then they have to --
11 you have to let them know your speed, location, and what's the
12 weather like.

13 Q. Okay. Well, let's be clear about this because -- because
14 Mr. Gonzalez asked you you're not supposed to engage in
15 high-speed pursuits. And you said yes, that's right. But,
16 really, you're just supposed to get authority from the
17 supervisor?

18 A. Get approval.

19 Q. Right. And that's not just for high-speed pursuit, that's
20 for any, right?

21 A. It's only one pursuit. You pursue, you pursue. What do
22 you mean?

23 Q. A pursuit is when the person -- when you tell the person to
24 stop, you put on your emergency lights indicating they should
25 stop, and the person doesn't stop.

- 1 A. Yes.
- 2 Q. Then it's a pursuit, right?
- 3 A. Yes.
- 4 Q. When I was asking about O.J. Simpson, even though he was
5 driving very slowly, that was a pursuit, right? Because he
6 wasn't stopping when he was supposed to.
- 7 A. Yes.
- 8 Q. Okay. And your supervisors knew that there was a pursuit
9 that day, didn't they?
- 10 A. They knew we were after a van.
- 11 Q. Right.
- 12 A. If they knew there was a pursuit, then they have to
13 terminate. They only have the discretion of saying terminate
14 it. That's why a lot of agents don't like to call it a
15 pursuit. Then they have to -- if the supervisor says
16 terminate, regardless what's in there on the load, it could be
17 cocaine, marijuana, the alien smugglers, doesn't matter, if
18 they tell you terminate regardless of what's in there, you have
19 to do it.
- 20 Q. Okay. But the supervisors don't always tell you to
21 terminate it, right?
- 22 A. I guess not.
- 23 Q. If it's not a very high speed, and it's a desolate road,
24 chances are, they're going to let you do the pursuit, aren't
25 they?

1 A. If you do it safely. If you do it in a safe manner, yeah,
2 perhaps you could continue following that unit until it comes
3 to a complete stop.

4 Q. Okay. And you weren't trying to avoid detection by the
5 supervisor when you failed to call it in, were you?

6 A. No.

7 Q. Okay. And so we really don't know whether the supervisor
8 would have authorized that pursuit or not, do you?

9 A. No.

10 Q. Okay. What I'm asking about now is that afterwards when
11 the supervisor arrives at the scene of the crime, I guess I'm
12 saying where the crime terminated. Because, really, the driver
13 was committing a crime the whole time he was driving around,
14 right? Because he's driving around this load of marijuana,
15 right?

16 A. I don't know if he had a load. I know he was driving fast.

17 Q. You opened the van. Why are you saying you don't know?

18 A. I thought you said if he knew that he was committing a
19 crime around during the chase.

20 Q. No. No. I'm just saying that it turns out that your
21 suspicion was correct, he was committing a crime.

22 A. Oh, okay. Yes.

23 Q. Supervisor arrives -- let me ask you a question about that.
24 You say they tend to come when there's a seizure, right?

25 A. Right away, yes.

- 1 Q. And the supervisor in this case, Mr. Richards, arrived
2 right away, didn't he?
- 3 A. Yes.
- 4 Q. Did he arrive just as you were opening the van?
- 5 A. No.
- 6 Q. Okay. Did he wait for you to call him and tell him that
7 you had found a load?
- 8 A. No.
- 9 Q. He was already on his way before you opened the van, wasn't
10 he?
- 11 A. Yes.
- 12 Q. Okay. So he also, apparently, had the reasonable belief
13 that there was going to be a load in this, didn't he?
- 14 A. Yes.
- 15 Q. Okay. Then let me get back to the supervisors. Were they
16 informed that there had been a pursuit?
- 17 A. They were informed -- if they had before?
- 18 Q. Yes. Once you're here, and I'm saying here. This is after
19 the van is stopped and you talk to your supervisors about it.
20 Did you inform them that you had engaged in a pursuit?
- 21 A. Okay. I did not.
- 22 Q. Okay. Were they aware, as far as you know -- I'm not
23 asking to read their minds. Were people talking about it, or
24 were they aware from radio traffic that, you know, that there
25 had been a pursuit?

- 1 A. No.
- 2 Q. Not that you know of?
- 3 A. Yes.
- 4 Q. Okay. They didn't ask how did it go? I mean, they knew
5 that you were following the van, correct?
- 6 A. All I remember is Mr. Richards arrived. And he was kind of
7 upset because of lack of radio traffic.
- 8 Q. Uh-huh.
- 9 A. And he also mentioned that he said "we need to start
10 getting the driver more often for now."
- 11 Q. Okay. Okay. So I guess he's not in favor of the Fabens
12 policy of tending to let people just go back to Mexico?
- 13 A. No. He already gave notice to stop a pattern for that. We
14 need to get the driver.
- 15 Q. Didn't he say that you guys did just a pretty good job?
- 16 A. That is a good job. I want to make sure we're trying to
17 get the driver.
- 18 Q. Okay. Right. And, basically, he was congratulating you
19 all on your good job, right?
- 20 A. Yes.
- 21 Q. And Richards was aware that you had followed the van for
22 some time period, wasn't he?
- 23 A. If he listened to the radio at first, yes.
- 24 Q. Do you know whether he filled out a vehicle pursuit report
25 form?

- 1 A. No.
- 2 Q. And did you fill out any form like that?
- 3 A. No.
- 4 Q. Okay. So your knowledge of whether Mr. Richards is really
5 a by the book kind of guy -- do you have a lot of personal
6 interactions with Mr. Richards?
- 7 A. No.
- 8 Q. You're certainly not checking over his work, are you?
- 9 A. No.
- 10 Q. Okay. So you wouldn't have a lot of knowledge about how
11 much he's by the book?
- 12 A. I know at least when I do my paperwork, he checks it
13 thoroughly.
- 14 Q. Right. Right. That's your experience with him checking
15 your work?
- 16 A. Yes.
- 17 Q. Mr. Gonzalez just asked you again about whether stopping
18 drug smuggling is one of your duties. Would you agree that due
19 to the increase in drug smuggling operations the Border Patrol
20 is the primary drug interdicting agency along the land border
21 between the ports of entry?
- 22 A. Yes.
- 23 Q. So it's very clear and obvious to you as a Border Patrol
24 agent that that is your job, to interdict drugs, when they come
25 across the --

1 A. My secondary job.

2 Q. Secondary job. Right now the actual investigation and
3 prosecution you may turn over to the DEA. Is that right?

4 A. Yes.

5 Q. But that has nothing to do with whether or not you're
6 authorized to use your judgment as a law enforcement officer to
7 stop a van that you believe is carrying drugs, right?

8 A. Yes.

9 Q. Okay. And, Agent Juarez, if the driver of that van had
10 stopped in Fabens when you put your emergency lights on, what
11 would you have done?

12 A. Well, see, that would have been my first stop with a 46.

13 Q. Uh-huh.

14 A. So I don't know what I would have done. I never have done
15 a stop by myself with a 46. So --

16 Q. Uh-huh. Would you have waited for backup, maybe?

17 A. No. I would approach him right away.

18 Q. Okay. I'm assuming you would have gone through your --

19 MR. GONZALEZ: Objection, relevance, outside the scope
20 of my redirect.

21 THE COURT: All right. Well, I haven't heard the
22 questions. But wait until I hear the question before you
23 answer, Agent Juarez.

24 BY MS. STILLINGER:

25 Q. I can go slightly a different direction. But I take it,

1 Agent Juarez, you weren't interested in abusing this driver in
2 any way. You were interested in arresting him or
3 investigating, and if you found evidence of a crime arresting
4 him. Is that fair to say?

5 A. Yes.

6 Q. And Mr. Antcliff asked you a couple of questions about
7 whether you could have been prosecuted for failing to report
8 the gunshots. Now, it's not a crime to fail to report the
9 discharge of a firearm, is it?

10 A. To report, yes, it is.

11 Q. It's a crime to fail to report the discharge of a firearm?
12 I'm sorry. Let me be clear.

13 I asked you about Border Patrol policy. It's
14 certainly against policy to fail to report the discharge within
15 an hour, right?

16 A. Yes.

17 Q. And -- but you're telling us you violated that policy,
18 correct?

19 A. Yes.

20 Q. But you also told us you weren't trying to cover anything
21 up, were you?

22 A. That's correct.

23 Q. So what crime could have been violated by failing to report
24 that?

25 A. Failing to report the shooting?

1 Q. Right.

2 A. I was not trying to cover up a crime. I was mainly
3 concerned about me being singled out as a snitch, like, why did
4 you make this accusation? When -- then things have to be
5 changed at Fabens station.

6 Q. Right. Okay. You weren't trying to obstruct justice or
7 any kind of investigation in failing to report this discharge
8 of the firearm, were you?

9 A. Yes.

10 Q. You were? Well, I thought you didn't think you weren't
11 trying to do anything wrong when you failed to report it?

12 A. I didn't tell them the truth that I actually witnessed the
13 shooting.

14 Q. I'm not talking about March 18th when you were interviewed
15 by Agent Sanchez, okay. I'm talking about February 17th when
16 the shooting occurred.

17 A. Uh-huh.

18 Q. Okay. Were you trying to cover up for -- I mean, I'm
19 sorry. Let me start that question over.

20 Do you feel like you did anything wrong other than we
21 talked about how you should have gotten authority for the
22 pursuit, besides that, did you do anything wrong in this whole
23 incident having to do with the stopping of this van?

24 MR. GONZALEZ: Objection. Those questions have been
25 asked and answered repeatedly.

1 MS. STILLINGER: But answered differently or confusing
2 to me, anyway.

3 THE COURT: All right. I think you're talking about
4 when Mr. Antcliff was questioning him. I'll overrule. He can
5 answer the question.

6 BY MS. STILLINGER:

7 Q. Okay. Did you want me to repeat that question?

8 A. Yes.

9 Q. Other than failing to get the supervisor authority for the
10 pursuit, did you do anything wrong having to do with the -- the
11 pursuit and the stopping of this van?

12 A. There was just only failure to report the shooting --
13 actually, witnessing firing the weapon.

14 Q. Okay. When I say "something wrong", that violated Border
15 Patrol policy, right?

16 A. Yes.

17 Q. What I'm asking you, you weren't trying to obstruct an
18 investigation on February 17th, were you?

19 A. No, ma'am.

20 Q. Okay. Nobody came and asked you, Please don't report the
21 discharge of a firearm, did they?

22 A. No.

23 Q. There weren't any -- nobody told you not to report it?

24 A. That's correct.

25 Q. And you decide on February 17th, "I think I'll commit a

1 crime and fail to report this discharge of the firearm", right?

2 A. That's correct.

3 Q. In fact, you're a law enforcement officer, right?

4 A. Yes.

5 Q. You're sworn to uphold the law aren't you?

6 A. Yes.

7 Q. And that's what you were trying to do, weren't you?

8 A. Yes.

9 Q. And are you proud of your position as a Border Patrol
10 agent?

11 A. Yes.

12 Q. Thank you.

13 MS. STILLINGER: I'll pass the witness.

14 THE COURT: Mr. Antcliff?

15 MR. ANTCLIFF: Briefly, Your Honor.

16 RECCROSS-EXAMINATION

17 BY MR. ANTCLIFF:

18 Q. Sir, in your experience, do most agents call out a felony
19 is being committed?

20 A. No.

21 Q. They call out a ten code for 46, for example, saying it's a
22 suspected load vehicle, right?

23 A. Yes.

24 Q. And that's what you heard on this day, February 17th?

25 A. Yes.

1 Q. You're trained to be careful in dealing with apprehensions
2 of drug smugglers along the border because they may have
3 weapons. Is that right?

4 A. Yes.

5 Q. When Agents Ramos and Compean were coming back across the
6 ditch, I guess, you didn't talk to them, did you?

7 A. No.

8 Q. Okay. I believe it was your testimony that you thought
9 that Agent Compean was going to let the alien run back to
10 Mexico. Is that right?

11 A. Yes.

12 Q. And everything you saw while you were in the ditch
13 regarding interaction between the alien and Agent Compean, that
14 didn't change your mind?

15 A. No.

16 Q. You never saw any of the agents who came to the scene
17 behind you draw their weapons. Is that right?

18 A. That's right.

19 Q. The alien in this case never came rushing at you. Your
20 perspective was you were always behind him while he was running
21 away. Is that right?

22 A. Sideways.

23 Q. Okay. He was trying to get away, right?

24 A. He was trying to get to Mexico.

25 Q. Yeah. Away?

1 A. Yes.

2 Q. From all of the Border Patrol agents, right?

3 A. Yes.

4 Q. He never was rushing directly at you at any time?

5 A. That's correct.

6 Q. You don't know who the cell phone in the van belonged to,
7 do you?

8 A. No.

9 Q. You don't even know if it belonged the alien who was
10 driving that van?

11 A. That's correct.

12 Q. And I want to understand your testimony about the pursuit a
13 little bit. It's not that you have to get approval for a
14 pursuit. It's that the supervisor's monitor the traffic, and
15 they have the discretion to terminate that pursuit. Is that
16 right?

17 A. Yes.

18 Q. Okay. And, finally, you gave two handwritten sworn
19 statements which were not true, and one oral statement to the
20 Government, which was true. Is that your testimony?

21 A. Yes.

22 MR. ANTCLIFF: Pass the witness.

23 THE COURT: Go ahead, Mr. Gonzalez.

24 MR. GONZALEZ: Thank you, Your Honor.

25

1 REDIRECT EXAMINATION

2 BY MR. GONZALEZ:

3 Q. Mr. Juarez, when I met with you back on September 26th, had
4 you met with your attorney prior to meeting with me?

5 A. Yes, sir.

6 Q. And did you tell your attorney what had occurred on
7 February 17, 2005?

8 A. That's when I told my lawyer, yes.

9 Q. And you told him everything that occurred?

10 A. Yes.

11 Q. You told him before you met with me and Agent Sanchez. Is
12 that correct?

13 A. Yes, sir.

14 Q. And when you met with us, is that when you told us what you
15 told him?

16 A. Yes, sir.

17 Q. And that's your September 26th statement. Is that correct?

18 A. Yes, sir.

19 Q. And when Supervisor Richards congratulated you on the good
20 job that you-all had done on that date, was he told there had
21 been a shooting, that a person had been shot, that a person had
22 been assaulted? Were any of those things told to him?

23 A. No, sir.

24 Q. You think he would have congratulated you had he known
25 that?

1 A. He didn't congratulate, personally, to me. He went with
2 the whole group. He goes good job.

3 Q. Thank you.

4 MR. GONZALEZ: Pass the witness.

5 MS. STILLINGER: No more questions.

6 THE COURT: Anything further?

7 RE CROSS-EXAMINATION

8 BY MR. ANTCLIFF:

9 Q. When you met with Mr. Weiser before you talked to the
10 Government on the 26th, he told you after you told him this new
11 story, he didn't believe you, didn't he?

12 A. He told me you need to come to my office.

13 Q. Listen to my question, please. When you told him this new
14 story, and that were you were going to tell the Government, he
15 said he didn't believe you, didn't?

16 A. He didn't say -- he said you will get indicted.

17 Q. Okay.

18 MR. ANTCLIFF: Pass the witness.

19 REDIRECT EXAMINATION

20 BY MR. GONZALEZ:

21 Q. Who threatened to indict you, Mr. Weiser?

22 A. No.

23 Q. Who?

24 A. He said you need to come see me.

25 Q. Mr. Weiser told you you need to see him and tell him

1 everything that happened?

2 A. Yes.

3 Q. And that's what you did?

4 A. Yes.

5 Q. Thank you.

6 MS. STILLINGER: No further questions.

7 MR. GONZALEZ: Pass the witness.

8 RE CROSS-EXAMINATION

9 BY MR. ANTCLIFF:

10 Q. The threat to indict you came from the Government. Is that
11 right?

12 A. Yes.

13 MR. ANTCLIFF: Pass the witness.

14 THE COURT: Anything further?

15 MR. GONZALEZ: No, Your Honor.

16 MS. KANOF: I know it's late, Your Honor, but --

17 THE COURT: I know you have one more short witness. I
18 would like to finish up today.

19 MS. KANOF: Yes, Your Honor. It's a doctor, and he's
20 on TDY in New York next week.

21 THE COURT: Okay.

22 MS. KANOF: Colonel Warme.

23 This witness has not been sworn.

24 (Witness sworn.)

25 THE COURT: Have a seat, please.

1 WINSTON WARME, GOVERNMENT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MS. KANOF:

4 Q. State your name for the jury.

5 A. Winston Warne.

6 Q. How are you employed?

7 A. I'm an orthopedic surgeon in the United States Army.

8 Q. You're in the United States Army. Is that correct?

9 A. That's correct.

10 Q. And where do you practice as a physician?

11 A. William Beaumont Army Medical Center.

12 Q. If you could just move the mike, so that we can get you
13 real clear. Thanks.

14 And how long have you been a physician?

15 A. Since 1989.

16 Q. Where did you go to undergraduate school?

17 A. University of Colorado.

18 Q. And where did you get your medical degree?

19 A. Uniform Services Medical School.

20 Q. Where is that located?

21 A. Bethesda, Maryland.

22 Q. And do you have any specializations?

23 A. Orthopedic surgery, sports medicine.

24 Q. So you are board certified in both?

25 A. Board certified in orthopedic surgery. They don't have a

1 board for sports medicine as of yet.

2 Q. Okay. But you also do practice sports medicine?

3 A. Uh-huh. Yes, ma'am.

4 Q. For the court reporter, you have to say words and not

5 uh-huhs.

6 A. Yes.

7 Q. Okay. I take it you haven't testified very often?

8 A. I try to stay out of courtrooms.

9 Q. Me, too.

10 THE COURT: Not me.

11 BY MS. KANOF:

12 Q. How long have you been at Beaumont?

13 A. Seven years.

14 Q. Okay. And all the time in orthopedic surgery?

15 A. Correct.

16 Q. Okay. And, generally, you service soldiers and their

17 dependents, correct?

18 A. And civilian trauma.

19 Q. Okay. And, like, you do rape kits for the FBI, and

20 Beaumont does other services other than just military, correct?

21 A. I don't know about rape investigations for the FBI.

22 Q. I understand you're --

23 A. That's out of my area.

24 Q. Yeah. You're an orthopedic surgeon. I understand.

25 Did you have an opportunity, on February -- I'm

1 sorry -- in March, on March 16th, 2005, about a year ago, to
 2 attend to a patient at the request of the Department of
 3 Homeland Security, Office of the Inspector General?

4 A. Yes.

5 Q. Okay. And was that individual Osvaldo Davila -- Osvaldo
 6 Aldrete-Davila?

7 A. Yes.

8 Q. Okay. What -- how did he come to be in your care?

9 A. It was arranged with the hospital commander, through the
 10 commander's office, that we would help the Homeland Security
 11 team and manage the care of the patient.

12 Q. Okay.

13 A. And, basically, the hospital commander asked me to take
 14 care of him.

15 Q. And did you take care of him?

16 A. Yes, ma'am.

17 Q. What did you do first when you saw him?

18 A. Obtained a history.

19 Q. And then?

20 A. And then did a physical examination.

21 Q. Was it told you, basically -- when you obtained the
 22 history, did you find out he had a bullet in his leg?

23 A. Yes, ma'am.

24 Q. Okay. And what was the purpose of his visit to you on that
 25 occasion?

1 A. The purpose was to remove the bullet from the patient.

2 Q. And you were actually going to be the surgeon that would do
3 that, or assist in doing that?

4 A. Yeah, I was the surgeon.

5 Q. Okay. So you took a history, and what next?

6 A. Physical examination. Then we obtained some x-rays.

7 Q. And then what did you do next?

8 A. And then determined that we can remove the bullet.

9 Q. Okay. Did you determine that the bullet could be removed?

10 A. Yes, ma'am.

11 Q. And how did you go about doing that?

12 A. Surgically, we made an incision over the area where you
13 could palpate the bullet -- it was very superficial -- and
14 removed it.

15 MS. KANOF: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 MS. KANOF: Well, actually, this one is in evidence,
18 so I can do this from where he is.

19 BY MS. KANOF:

20 Q. I'm showing you what's been marked and admitted into
21 evidence as Government's Exhibit Number 63, a photograph. And
22 is that your finger in that picture?

23 A. Yes, sir.

24 Q. Your gloved finger? And what are you indicating in that
25 picture?

- 1 A. That I could palpate the bullet right underneath my finger.
- 2 Q. And by "palpate," you mean you could actually feel it?
- 3 A. Yes, ma'am.
- 4 Q. Okay. Did it -- as part of the history, did
- 5 Mr. Aldrete-Davila tell you anything about that bullet?
- 6 A. He told me that he had been shot. And --
- 7 MS. RAMIREZ: I'm going to object as to hearsay,
- 8 Your Honor.
- 9 MS. KANOF: Your Honor, medical exception.
- 10 THE COURT: I'll overrule the objection.
- 11 BY MS. KANOF:
- 12 Q. Go ahead.
- 13 A. And that -- can you repeat the question?
- 14 Q. What he told you in the history about the bullet.
- 15 A. He told me that he had been shot, and was informed that
- 16 there was an internal investigation ongoing.
- 17 Q. I'm just asking you what he told you.
- 18 A. He told me that he had been shot.
- 19 Q. Okay. And what did he tell you about the bullet? Like,
- 20 was it bothering him?
- 21 A. It was bothering him, so that was an important reason to go
- 22 after the bullet.
- 23 Q. And the other reason was for evidence. Is that correct?
- 24 A. Yes, ma'am.
- 25 Q. Have you ever had to do surgery to collect evidence before?

1 A. I don't recall.

2 MS. KANOF: Okay. May I approach the witness,
3 Your Honor?

4 THE COURT: You may.

5 BY MS. KANOF:

6 Q. You said that x-rays were taken. Let me hand you what's
7 been marked as Government's Exhibit Numbers 87 and 88, and ask
8 whether or not those are basically printouts of the x-rays that
9 you're talking about.

10 A. Yes, these are.

11 Q. And what -- Government's Exhibit Number 87, what portion of
12 the body does it depict?

13 A. This depicts the left hip.

14 Q. And --

15 A. You can see across to the right leg.

16 Q. Okay. And in 88?

17 A. Basically the same, just a slightly different view.

18 Q. Thank you.

19 MS. KANOF: Your Honor, we would ask that 87 and 88 be
20 admitted into evidence.

21 THE COURT: Any objection?

22 MR. PETERS: May I see them, please?

23 MS. RAMIREZ: I'm not going to have any objection,
24 Judge.

25 MR. PETERS: No objection.

1 THE COURT: 87 and 88 will be admitted.

2 BY MS. KANOF:

3 Q. First, Dr. Warne, with relation to Government's Exhibit
4 Number 87 -- and this isn't the greatest -- you have a -- there
5 you go.

6 You have a pointer of a -- an infrared pointer, laser
7 pointer. If you could, use it and tell us if there are any
8 foreign objects depicted in this x-ray.

9 A. Yes. There are these lead objects here (indicating).
10 These are all foreign bodies.

11 Q. Okay. That's, again, the right leg. Is that correct?

12 A. Well, you're seeing both of the legs coming down. And
13 there is a lateral -- going through both the legs. So you
14 can't tell on this radiograph exactly where they are, as far as
15 whether they're in the left or the right leg.

16 But we can tell that they're anterior, or in front of,
17 the femur. This is the femur. This would be the patient's
18 back side, and this is the front side. So they're in front
19 somewhere.

20 Q. And when you conducted surgery, did you surgically remove
21 any of those items?

22 A. Yes. I removed the big fragment here (indicating).

23 Q. Okay. You said the other ones are lead, as well, the other
24 fragments?

25 A. Well, they're metal.

1 Q. Okay. Do you know if they were fragments from the bullet?

2 A. They would be from the bullet, yes.

3 Q. Okay. Let me show you what's already been admitted into
4 evidence as Government's Exhibit Number 89, in layman's terms,
5 another x-ray. And what position is this x-ray being taken
6 from?

7 A. The patient is laying on his back, and an x-ray was taken
8 from the front to the back.

9 And in this radiograph you can -- do you want me to
10 explain the radiograph?

11 Q. Yes, please.

12 A. This radiograph, you can see a large metal fragment that's
13 over here on the right leg. And these small metal fragments
14 are within an area of bone that we call the pubic symphysis.

15 Q. Okay. And are those also bullet fragments?

16 A. Yes, they are.

17 Q. Okay. And what, if anything, is abnormal in the human
18 anatomy in this x-ray?

19 A. There's a fracture of the right pubic symphysis here
20 (indicating). There's a fracture through this bone
21 (indicating). There's a small fragment of bone here that's
22 been displaced by the bullet that hit it.

23 Q. Okay. So that injury, in your opinion, was caused by that
24 bullet?

25 A. Yes.

- 1 Q. So, after entering the body, the bullet hit that bone?
- 2 A. That's correct.
- 3 Q. And at least four fragments were created from the bullet as
4 it traveled. There's four there, or are there five?
- 5 A. Well, there's five small ones here and one large one here,
6 that I can see.
- 7 Q. Okay. With regard to the other exhibit I was showing you,
8 the fragments that you see in this Government Exhibit, which is
9 87, are those the same fragments that you see in the one that's
10 already admitted, in the one we just looked at?
- 11 A. Yes.
- 12 Q. Okay. So the bullet only let off four fragments, not
13 eight -- or five fragments, rather?
- 14 A. There appear to be five small fragments just in the area of
15 the pubic symphysis, and one large one in the anterior right
16 thigh.
- 17 Q. Okay. And you removed this large one. Is that correct?
- 18 A. That's correct.
- 19 Q. And it was -- you're in the military. It was what was left
20 of a bullet, correct?
- 21 A. Yes.
- 22 Q. A .40 caliber bullet?
- 23 A. Yes.
- 24 Q. Now, Dr. Warne, you are familiar, from examining Osvaldo
25 Aldrete-Davila, where the bullet entered his body, correct?

- 1 A. Yes, ma'am.
- 2 Q. And where was that?
- 3 A. His left buttocks.
- 4 Q. And when it entered the body, did it travel directly to
- 5 that pubic symphysis bone?
- 6 A. Yes.
- 7 Q. Okay. And then once it hit that bone and fractured the
- 8 bone, is the direction of the travel continuous and straight
- 9 from the entrance wound?
- 10 A. I would say no.
- 11 Q. No? And that's based on your professional opinion as a
- 12 physician?
- 13 A. Yes.
- 14 Q. Okay. What happened, basically, when it hit the bone?
- 15 A. It got deflected.
- 16 Q. Okay.
- 17 A. It went from where it entered to the bone, and then it got
- 18 diverted to a different area.
- 19 Q. You removed the bullet. Is that correct?
- 20 A. Yes, ma'am.
- 21 Q. And Agent Sanchez -- you recognize Christopher Sanchez in
- 22 the courtroom?
- 23 A. Yes, I do.
- 24 Q. He was standing right next to you?
- 25 A. Yes.

- 1 Q. And you gave it to him immediately. Is that correct?
- 2 A. That's correct.
- 3 Q. And then he took off?
- 4 A. Yes.
- 5 Q. So he observed the initial part of the surgery. Is that
- 6 correct?
- 7 A. That's correct.
- 8 Q. Was the surgery unremarkable?
- 9 A. My part of the surgery was unremarkable, yes.
- 10 Q. Okay. But you have also, as a physician that was caring
- 11 for this individual, and particularly as a -- someone that is
- 12 still in the service -- a responsibility for knowing what all
- 13 his injuries were, correct?
- 14 A. Yes.
- 15 Q. What other injuries did he have?
- 16 A. He had an injury to his urethra. And that was his
- 17 primary -- most significant injury.
- 18 Q. Can you use the laser pointer and indicate where, in this
- 19 photograph, the urethra was injured?
- 20 A. In this area (indicating).
- 21 Q. And, in your opinion, was it injured by the bullet itself
- 22 or by one -- a piece of bone that broke off, or by a fragment,
- 23 or do you know? Can you tell?
- 24 A. I can't tell.
- 25 Q. Okay. So you don't really know how it got injured, just

1 some repercussion of the gunshot?

2 A. Correct.

3 Q. Okay. In your medical opinion, Doctor, are the injuries
4 that were sustained by Osvaldo Aldrete-Davila, did they amount
5 to a protracted loss or impairment of the functions of a bodily
6 member or of an organ?

7 A. Yes.

8 Q. And that's basically because of the urethra, correct?

9 A. That's correct.

10 Q. Severing of the urethra?

11 A. Yes.

12 MS. KANOF: I have nothing further.

13 THE COURT: All right.

14 Ms. Stillinger, Ms. Ramirez, any questions?

15 MS. STILLINGER: I was going to let Mr. Peters --

16 THE COURT: All right. Mr. Peters?

17 MR. PETERS: Yes. Give me just one second,

18 Your Honor.

19 THE COURT: If you're looking for -- are you looking
20 for the photos?

21 MR. PETERS: Yes.

22 THE COURT: 62, 63, around there?

23 In the other pile?

24

25

1 CROSS-EXAMINATION

2 BY MR. PETERS:

3 Q. Good afternoon, Dr. Warne. My name is -- it's Dr. Warne.

4 Is that correct?

5 A. That's correct.

6 Q. My name is Stephen Peters, and I represent Ignacio Ramos.

7 I'm going to put up here on the screen what has already been

8 admitted into evidence as the Government's Exhibit Number 62

9 and ask you whether where I'm pointing right here (indicating),
10 would that be the entry wound for the bullet?

11 A. Yes.

12 Q. Okay. And that would be -- whereabouts, or what portion of
13 the left buttock, would that be in?

14 A. You don't really have it on this -- you need to slide the
15 x-ray over.

16 Q. You want to see this?

17 A. No.

18 THE COURT: No, slide the x-ray over.

19 A. If you want to see it on the x-ray, you need to slide it
20 over, because it's way over here.

21 BY MR. PETERS:

22 Q. Okay.

23 That's where it came in (indicating), right?

24 A. Right about -- yeah, right about that area (indicating),
25 uh-huh.

1 Q. And that is located on the -- to the left of the body,
2 right?

3 A. That's correct.

4 Q. Now, where the bullet hit the bone was to the right of the
5 central -- if I drew a central line through the body
6 perpendicular to the ground, where the bullet hit the bone is
7 on the right-hand side of that line?

8 A. That's correct.

9 Q. Where it entered is on the left-hand side of the line?

10 A. That's correct.

11 Q. And then, after shattering this bone, or breaking this
12 bone, the bullet, the part -- some of the fragments went there;
13 the rest of it, the bulk of the bullet, went into the right
14 thigh, right?

15 A. That's correct.

16 Q. Now, are you telling the jury that you can tell, in
17 reasonable medical probability, to what extent the bullet was
18 diverted by the -- by that bone?

19 A. Can you restate the question?

20 Q. Bullets travel, unless something gets in their way, they
21 travel in a straight line. Is that correct?

22 A. A relatively straight line, yes.

23 Q. Okay. And the only thing that I'm aware of -- and maybe
24 you know something else. The only thing that could have
25 deflected the bullet, based on this evidence, is the pubic

1 symphysis?

2 A. That's correct.

3 Q. Okay. Now, can you tell, from either the fragmentation or
4 the damage you observed to the pubic symphysis, or where the
5 bullet landed in the thigh, to what extent it was diverted by
6 the pubic symphysis?

7 A. I can tell you it was diverted anteriorly.

8 Q. Okay. Why can you tell that?

9 A. Because it -- the track from where it entered to the pubic
10 symphysis, as you mentioned, would be straight. However, then
11 it basically went anteriorly --

12 Q. Would it make any --

13 A. -- and laterally --

14 Q. I'm sorry.

15 A. -- on the limb.

16 Q. Laterally. Okay.

17 Would it make a difference, in terms of trying to
18 decide to what extent it was deflected, if the leg was
19 extended, if the right leg was extended in a direction away
20 from, say, the left hip?

21 A. Certainly. How -- the position of the limb could --
22 could -- could affect where the bullet ends up. That's
23 correct.

24 Q. Can you tell, from the amount of fragmentation, the amount
25 of number of the bullet fragments and the size of those

1 fragments, to what extent the bullet was deflected, and to what
 2 extent it's in the thigh because of the extension of the thigh?

3 A. I can't tell exactly. I know that it left some of its
 4 energy there at the pubic symphysis, because it broke it. It
 5 left part of the projectile there. But I can't really put it
 6 together for you.

7 Q. From the left hip to the right pubic symphysis is a line
 8 that is not only front to back, but also sideways across the
 9 body. Is that correct?

10 A. Yes.

11 Q. In other words, from that evidence, would you say that the
 12 bullet was fired directly into the back of the person who was
 13 shot, or was it fired at an angle through his body?

14 A. Well, his body was on angle to the bullet.

15 Q. That's -- exactly. So his body was turned somewhat, at
 16 least, back towards the shooter?

17 A. I don't really know exactly how it was turned. But, like
 18 you said, the bullet went in on an angle.

19 Q. Right. Which indicates the person did not fully have his
 20 back turned to the shooter.

21 MS. KANOF: Your Honor, I would -- I would object to
 22 that question. I don't think you can draw that conclusion,
 23 because he doesn't know where the shooter is standing.

24 MR. PETERS: Well, he's standing where it -- at a line
 25 from the person who was shot to where the bullet went in.

1 BY MR. PETERS:

2 Q. Correct, Doctor?

3 MS. KANOF: I understand, but -- no, that assumes
4 facts not in evidence, Your Honor. If the shooter is there,
5 it's different than if the shooter is there. And I --

6 MR. PETERS: Well, if he doesn't know, he can tell us
7 if it's beyond his expertise, or that I'm not giving him enough
8 information.

9 THE COURT: Okay. Restate the question.

10 MR. PETERS: Okay.

11 BY MR. PETERS:

12 Q. We've already established that bullets travel essentially
13 in a straight line, correct?

14 A. Correct.

15 Q. And if there's nothing to obstruct the line, I mean, if
16 there's nothing to obstruct the path of the bullet, or deflect
17 the bullet or to send it on a different trajectory, okay, then
18 it would -- then it would be fair to say that from the spot
19 where it hits through the path that it traveled is a straight
20 line, right?

21 A. It should be a straight line unless it hits something.

22 Q. Okay. Now, we know that when the bullet hit this person's
23 body, okay, it entered through his left hip, right there
24 (indicating), right? And there's nothing that obstructed it
25 until it got to the pubic symphysis, correct?

- 1 A. Correct.
- 2 Q. So that means that we can see that there is an angle that
 3 the bullet is traveling, from that hip to the pubic symphysis,
 4 right?
- 5 A. Yes.
- 6 Q. And that angle required the bullet to cross over about half
 7 of this person's body as it made its way forward, correct?
- 8 A. I would say less than half.
- 9 Q. Well, it goes from the left hip to the right pubic
 10 symphysis, right?
- 11 A. But, as you mentioned before, the right pubic symphysis is
 12 just next to the midline to the body. And this -- you're
 13 right, it goes at an angle, but it's going more straight than
 14 it's going on an angle.
- 15 Q. Well, if you were to draw a line from the pubic symphysis
 16 through the entry wound -- right?
- 17 A. Uh-huh.
- 18 Q. That would -- that would be an angle that would go off to
 19 the left there, correct?
- 20 A. Correct.
- 21 Q. And if you drew that line, eventually that line is going to
 22 go to where the bullet was fired, correct?
- 23 A. That's correct.
- 24 Q. Okay. So what -- you would agree with me that the bullet
 25 that the shooter -- that the person who was shot was standing

1 at an angle to the shooter, that would be reflected by the
2 angle from the gunshot wound to the right pubic symphysis?

3 A. Yes.

4 MR. PETERS: Pass the witness.

5 THE COURT: All right. Hold on.

6 Ms. Ramirez?

7 MS. RAMIREZ: I don't have any questions, Judge.

8 THE COURT: Ms. Kanof?

9 REDIRECT EXAMINATION

10 BY MS. KANOF:

11 Q. Can you tell from this photograph where the shooter was
12 standing?

13 A. No.

14 Q. Wouldn't you need to know where the shooter was standing to
15 get the trajectory of the bullet?

16 A. All I can speak to is the trajectory that happened inside
17 his body.

18 Q. Inside his body, correct?

19 A. Yes.

20 Q. Dr. Warme, is the angle consistent with the person turning
21 and being shot?

22 A. It's possible.

23 Q. Okay. Where would the shooter have to have been standing?

24 A. I would say, if they were turning, as you demonstrated,
25 they would have to be right behind the person.

1 Q. They would have to be right behind the person?

2 A. Yes.

3 Q. Okay. So they couldn't have been at an angle?

4 A. Based off the trajectory that we know of inside the
5 patient, they would have had to have been straight behind him.

6 MS. KANOF: Thank you.

7 THE COURT: Anything further?

8 RE-CROSS-EXAMINATION

9 BY MR. PETERS:

10 Q. I'm sorry, Doctor. What do you mean when you say he had to
11 be right behind him?

12 A. Well, if you are turning so you straighten out that angle
13 that we spoke of, then the bullet would have to be going
14 straight at that point of contact, in order to continue on a
15 straight line to where it ended up.

16 Q. What does that have to do with how far behind the person
17 who's shot the shooter was?

18 A. I didn't mention anything about distance.

19 Q. So when you say right behind, you don't mean close?

20 A. No.

21 Q. What do you mean, then?

22 A. In a direct line behind the individual.

23 Q. Well, you mean he would have to be at a right angle to the
24 center of his back?

25 A. Right angle to the center of his back?

- 1 Q. Well, you said directly behind --
- 2 A. Directly behind him, yeah. I'm not sure if that's a right
- 3 angle.
- 4 Q. Well, no. Well, directly behind him would be a right
- 5 angle. But why would he not be at some angle off to the left
- 6 of him, or -- depending on the way his body is oriented, right?
- 7 He could have been -- I mean, the -- the bul- -- if you draw a
- 8 line from the pubic symphysis, which is slightly to the right
- 9 of the center of the body, how can the bullet -- and extend
- 10 that line to some point, you're going to get to the shooter,
- 11 right?
- 12 A. That's correct.
- 13 Q. And that line is not straight behind him. That line goes
- 14 off in this direction, to the left, correct?
- 15 A. Unless the person was turned, as you mentioned.
- 16 Q. Exactly.
- 17 A. Or if the person was running, you know, that would -- like
- 18 you mentioned -- his limb being in a different position, that
- 19 could change the -- where the bullet would have had to come
- 20 from.
- 21 Q. Right. So what you really just mean is that the shooter is
- 22 facing the rear of the person at some angle?
- 23 A. That's correct.
- 24 Q. And you can't tell what that angle is?
- 25 A. I can't tell.

1 Q. And this is consistent with a person turning around and
2 pointing back at the shooter?

3 A. I said that's possible.

4 Q. You can't rule it out?

5 A. I cannot rule it out.

6 Q. Thank you.

7 MR. PETERS: No further questions.

8 MS. KANOF: I have no further questions, Your Honor.

9 THE COURT: I just want it clear, because I'm confused
10 about something I just want to clear up.

11 I think Mr. Peters asked you that the -- where -- the
12 bullet ended up in his leg, which was towards the front, right?

13 THE WITNESS: Yes.

14 THE COURT: That if he had extended his leg, once the
15 bullet hit, and it was deflected, that would be consistent with
16 that leg being extended, I thought you said. Am I
17 understanding that?

18 THE WITNESS: Well, the limb could move, obviously, in
19 such a way as to allow a bullet to go and -- end up in a
20 variety of places.

21 THE COURT: Well, I guess my question is -- is --
22 does -- because if he's turned, and -- are you saying he can be
23 turned and limb extended for that to happen? Or is he
24 turned -- I'm just trying to understand the angle that you're
25 talking about for the bullet to go in there, hit the pubic

1 symphysis, and then end up in the front of the leg. Can both
2 of these things be happening at the same time, where his leg
3 extended, and he's turned, and he's doing all those things, for
4 that to happen?

5 THE WITNESS: Well, I guess I'd want to clarify what
6 we're talking about with extension --

7 THE COURT: Okay.

8 THE WITNESS: -- extending of the leg.

9 THE COURT: Okay.

10 THE WITNESS: A lot of people, you would think
11 extension is the leg out in front.

12 THE COURT: Right. That's what I thought you said, or
13 someone said.

14 THE WITNESS: That's correct. The leg would have to
15 be out in front for it to get there.

16 But, in medical terminology, extension of the leg is
17 actually going backwards.

18 THE COURT: Okay.

19 THE WITNESS: So what I meant was, yes, it would
20 appear that the leg, if it was extended to the front, it would
21 have allowed the bullet to end up where it ended up.

22 THE COURT: Okay. All right. I think I understand.

23 I didn't mean to confuse more. Ms. Kanof, do you have
24 another question.

25 MS. KANOF: No.

1 THE COURT: Okay.

2 MS. KANOF: That's enough.

3 MR. PETERS: Your Honor, I think you helped to clarify
4 it. Thank you.

5 THE COURT: All right. And, Ms. Ramirez?

6 MS. RAMIREZ: No questions, Judge.

7 THE COURT: All right. Is he free to go?

8 MS. KANOF: Yes, Your Honor.

9 MR. PETERS: He's free to go.

10 MR. ANTCLIFF: Yes.

11 THE COURT: All right. Thank you.

12 Could the attorneys approach?

13 (Off-the-record bench discussion.)

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, two things. We're going to recess today. It's now 5:30.
16 Remember it is the weekend, so -- it's a long weekend. You
17 remain under all the rules of the Court, especially the rules
18 about reading anything about this case or hearing anything on
19 the radio, et cetera.

20 Over the weekend, I don't know what may or may not
21 come up. And it's important that you listen only to the
22 testimony you hear and the evidence you receive in this room.
23 And so please, if -- and family members, people that want to
24 talk, I mean, if you socialize this weekend, or go to the
25 basketball game and someone finds out you're on the jury, you

1 cannot talk about this case.

2 Everybody understand that?

3 JURORS: Yes.

4 THE COURT: The other thing I want to mention to you
5 is that, in anticipating how long a trial takes, I can never
6 know for sure. It appears to me we're going to go beyond
7 Monday. We are probably going to go to Tuesday or Wednesday.
8 That doesn't count deliberation. You are going to have to
9 deliberate as long as it takes to come to a verdict.

10 And so I just wanted to let you know that, for
11 purposes of making arrangements for next week. If any of you
12 need a letter or something from this Court, in order for you
13 not to get in trouble with your boss or spouse or whoever, let
14 me know, and I will be happy to supply that to you. All right?
15 Otherwise, We will see you next Monday -- Monday morning, I'm
16 sorry, February 27. We will see you at 8:30 in morning here.
17 All right? We'll see you then.

18 (Open court, parties present, jury not present.)

19 THE COURT: Does this need to be on the record?

20 MS. STILLINGER: I would like it to be on the record.

21 THE COURT: Sure.

22 MS. STILLINGER: Your Honor, I wanted to ask the Court
23 to order one piece of paper in discovery.

24 THE COURT: Okay.

25 MS. STILLINGER: Which is a memo Agent Sanchez

1 referred to when he testified. It's a memo written by, I
2 think, a Supervisor Karhoff, who is a supervisor of Rene
3 Sanchez. It's a memo -- he was testifying, and I was asking if
4 he could bring it to court the next day, and he didn't bring it
5 to court the next day. And I asked the assistance of the U.S.
6 Attorney if they would provide it, and --

7 THE COURT: That's the memo that he sort of instructs
8 Mr. Sanchez to continue to look into the --

9 MS. KANOF: Your Honor, I don't mind giving it to
10 them. The Court doesn't have to order it. I just forgot their
11 request.

12 THE COURT: Okay. So if you could make that
13 available, that would be fine.

14 All right. In the meantime, let me check on that
15 charge for you.

16 The Court stands in recess.

17 (Transcript continues in Volume X.)

18 * * * * *

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter. I
21 further certify that the transcript fees and format comply with
22 those prescribed by the Court and the Judicial Conference of
23 the United States.

24

25 Signature: _____ Date: _____
David A. Perez, CSR, RPR

David A. Perez, CSR, RPR

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