

1 PLAINTIFF: Ms. Sharp

2 WITNESS:

3 COURT:

4 DEFENDANT: Mr. Halberg

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6 WARM UP

7 THE COURT: In the matter of the People vs. Michael
8 Martinez. Are both sides ready?

9 MS. SHARP: Yes, your Honor.

10 MR. HALBERG: Yes, your Honor.

11 THE COURT: Could I have the appearances for / the
12 record, please.

13 MS. SHARP: Jennifer Sharp, Deputy District Attorney,
14 for the People.

15 MR. HALBERG: James Halberg on behalf of my client,
16 Mr. Martinez. He is here present in / custody before the
17 court.

18 THE COURT: I have a complaint with three counts
19 before me dated January 28th of 2014. Is that the one
20 that / we are going on?

21 MR. HALBERG: I think so.

22 MS. SHARP: Yes, it is.

23 THE COURT: No amendments that you are aware of?

24 MS. SHARP: No, your Honor.

25 MR. HALBERG: No.

26 THE COURT: You waive further reading / of the

1 complaint?

2 MR. HALBERG: Yes.

3 THE COURT: Your client has a right to a continuous
4 prelim. Will he waive that right and allow the court to
5 handle other / matters, if needed?

6 MR. HALBERG: I don't think he is willing to waive
7 that right, but I do know that the court is permitted
8 under the law / to take other matters.

9 THE COURT: Okay. Are there any preliminary motions
10 we need to address?

11 MS. SHARP: No, your Honor.

12 MR. HALBERG: Your Honor, I would just move to exclude
13 / any witnesses who are not testifying from the courtroom.

14 THE COURT: Are there any such witnesses in court?

15 MS. SHARP: No, your Honor.

16 THE COURT: All right. People may present their */
17 evidence.

18 MS. SHARP: Thank you.

19 People call Officer Perez.

20 THE COURT: Stand at the end of the table to your left
21 and raise your right hand and face the / clerk.

22 Please state your full name and spell it for the
23 record.

24 THE WITNESS: Yes, certainly. My name is Marcus
25 Perez. M-A-R-C-U-S. / Perez, P-E-R-E-Z.

26 THE COURT: You may proceed.

1 MS. SHARP: Thank you, your Honor.

2 DIRECT EXAMINATION

3 Q. BY MS. SHARP: Officer, what's your current
4 occupation?

5 A. I am a police officer for the / City of Tustin.

6 Q. And how long have you been a sworn peace officer?

7 A. 11 years.

8 Q. Were you on duty on July 23rd, 2013, / at about
9 14:30 hours?

10 A. Yes, I was.

11 Q. At that time did you respond to a location at
12 2833 North Fernwood Street?

13 A. Yes, I / did.

14 Q. Is that in Orange County?

15 A. Yes, it is.

16 Q. And when you arrived at that location, who did
17 you speak to?

18 A. I spoke to the / victim, Ms. Duran.

19 Q. What is her first name?

20 A. Teresa.

21 Q. And where did you speak to her?

22 A. In her apartment.

23 Q. Okay. And were you able to / make observations
24 about the apartment?

25 A. Yes.

26 Q. Did it appear that she was living there?

1 A. Yes.

2 Q. Did she say that she was living there?

3 A. Yes, she */ did.

4 Q. And did she report -- what did she tell you
5 happened on that afternoon?

6 A. She stated that her ex-boyfriend had broken into
7 her apartment.

8 Q. Okay. / Did she give you specifics about her
9 relationship with the person who had broken into her
10 apartment?

11 A. She did. That's correct.

12 Q. What did she tell / you?

13 A. That they had a child in common.

14 Q. And did she tell you -- did she give you his
15 information?

16 A. Yes, she did.

17 Q. What information did / she give you?

18 A. She gave me his name and date of birth, and
19 advised me that he was also on probation.

20 Q. And what name did / she give?

21 A. I would have to refer to my report.

22 MS. SHARP: Your Honor, may the witness please review
23 the report to refresh his recollection?

24 THE COURT: Proceed.

25 THE WITNESS: She / gave me the name of Michael
26 Martinez.

1 Q. BY MS. SHARP: And did she give you a date of
2 birth?

3 A. Yes, she did.

4 Q. What date of birth did she / give you?

5 A. 2/23 of '82.

6 MR. HALBERG: Your Honor, if you could just inform the
7 witness that if he needs to refresh his recollection,
8 that's fine. / But once it is refreshed, please just turn
9 the report over so he is not testifying from it.

10 THE COURT: Officer, do you understand that?

11 THE WITNESS: Yes.

12 THE COURT: Okay. */

13 **END OF WARM UP**

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1 EXAM

2 Q. BY MS. SHARP: After you were provided with a
3 name and a date of birth, were you able to conduct a
4 search for more information?

5 A. Yes. I ran / a records check and then got some
6 more identifying information on the suspect.

7 Q. Is this something that you have done as a part of
8 your / job duties for many years?

9 A. Yes.

10 Q. Are you familiar with how to conduct a records
11 check when you are investigating someone?

12 A. We are trained in / the academy to do these
13 things, yes.

14 Q. And you said you have been an officer for 11
15 years; is that correct?

16 A. That's correct.

17 MR. HALBERG: Objection. Asked / and answered.

18 THE COURT: Overruled. The answer remains.
19 Next question, please.

20 MS. SHARP: Your Honor, at this time I would like to
21 mark an exhibit that I will be / using later. It is a
22 photo. Counsel has seen it and has a copy of that same
23 photo.

24 MR. HALBERG: No objection. That's fine.

25 THE COURT: Very well. That / will be marked next in
26 order.

1 MS. SHARP: Thank you. If I may proceed.

2 THE COURT: Yes. The clerk has your exhibit whenever
3 you need it. Next question, please. /

4 Q. BY MS. SHARP: At some point were you able to
5 observe a DMV document for that individual with the date
6 of birth February 23rd of '82? */

7 A. Yes.

8 Q. And do you see that man in court today?

9 MR. HALBERG: Objection. Foundation. Speculation.

10 THE COURT: Overruled.

11 THE WITNESS: Yes.

12 Q. BY MS. SHARP: Can you describe where he is
13 seated and what he / is wearing.

14 A. He is to my left, wearing an orange shirt.

15 MS. SHARP: May the record reflect the witness has now
16 identified the defendant?

17 THE COURT: Yes, it may. /

18 Q. BY MS. SHARP: Now, what did she tell you
19 happened when she arrived at her apartment?

20 A. She walked into her home. Everything seemed
21 normal until she walked into / her bedroom.

22 Q. What happened when she walked into her bedroom?

23 A. She screamed.

24 Q. Why did she scream?

25 A. She saw the defendant standing there, and she
26 wasn't / expecting anybody to be inside her house.

1 Q. Did she say he had permission to be in the house?

2 A. She reported he did not have permission. /

3 Q. Did she say whether he resided at that house?

4 A. He no longer resided at the house.

5 Q. Okay. But at some point he had lived there? /

6 A. Yes.

7 Q. How long ago was it that he had lived there?

8 A. He had relocated about three weeks prior.

9 Q. Had she done anything to the locks / in the three
10 weeks?

11 A. Yes, she did. She had replaced the locks.

12 MR. HALBERG: Objection. Leading. The form of the
13 question lacks foundation.

14 THE COURT: Rephrase the question, please. */

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1 START TYPING

2 Q. BY MS. SHARP: What, if anything, did she tell
3 you she had done to the doors of the apartment?

4 A. She had replaced the locks to the apartment.

5 Q. Did / she tell you -- strike that.

6 On this day when she left her apartment, did she
7 secure the apartment?

8 A. Yes.

9 MR. HALBERG: Objection. Leading. Foundation.

10 THE COURT: Overruled.

11 Q. BY MS. SHARP: What did / she tell you?

12 A. That she locked the doors.

13 Q. Okay. Did she tell you whether the windows were
14 closed?

15 A. Yes, they were.

16 Q. Okay. When she returned / and she discovered the
17 defendant in her bedroom, what happened when she
18 encountered him?

19 A. She asked him how he got into the inside of the /
20 apartment.

21 Q. What did he say?

22 A. He didn't reply. He just demanded his property.
23 He said he was there to get his property.

24 Q. What did she / tell him?

25 A. She wanted him to leave the apartment. She
26 wanted to call the police and his probation officer.

1 Q. What did she say happened next? /

2 A. She ran out of the apartment.

3 Q. Did the defendant leave?

4 A. That's correct.

5 Q. Did she describe how he left?

6 A. He ran out holding a duffel bag / and a backpack
7 over his shoulder.

8 Q. Did the victim observe how the defendant left the
9 apartment?

10 A. He got on a bicycle and fled the scene. */

11 Q. Okay. And did she follow him?

12 A. Yes, she did.

13 Q. And what did she say happened when she followed
14 him?

15 A. She got in her vehicle and / was able to cut him
16 off, ask for the duffel bag and backpack to verify that he
17 wasn't stealing any property.

18 Q. Then what happened?

19 A. He / threw the duffel bag in her direction but
20 refused to give up the backpack.

21 Q. At that point did the defendant run?

22 A. Yes.

23 Q. Did Ms. Duran / return back to her apartment?

24 A. Yes, she did.

25 Q. At that point what did she observe, if anything?

26 A. She noticed that property was missing from the /

1 house. Also, the screen to the kitchen window was cut
2 open.

3 Q. Did she say what property she observed to be
4 missing?

5 A. Yes.

6 Q. What did she / tell you?

7 A. It was a gaming system for her children, an iPad,
8 and \$800 in U.S. currency.

9 Q. Were you able to observe / -- well, strike that.
10 Were those items found in the duffel bag?

11 A. No.

12 Q. What was found in the duffel bag?

13 MR. HALBERG: Objection. Foundation. Speculation.
14 Personal knowledge.

15 THE COURT: Sustained. /

16 Q. BY MS. SHARP: Did she tell you what she located
17 in the duffel bag?

18 A. Clothing.

19 Q. And were you able to observe the kitchen window
20 screen that she had */ described?

21 A. Yes.

22 Q. What did you observe?

23 A. The screen had been cut.

24 Q. And did she say whether that screen had been cut
25 before?

26 A. The screen was / not damaged prior.

1 Q. Did you observe any other points of forced entry?

2 MR. HALBERG: Objection to the form of the question.

3 THE COURT: Sustained.

4 Q. BY MS. SHARP: Did you make observations as / to
5 the doorways in the apartment?

6 A. Yes, I did.

7 Q. What observations did you make?

8 A. There was no forced entry to the doorways.

9 MS. SHARP: Thank you. Nothing / further.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 Q. BY MR. HALBERG: Officer Perez, when you spoke
13 with Ms. Duran, she confirmed for you that, in fact, my
14 client had lived in that apartment with / her prior to
15 July 23rd, correct?

16 A. That's correct.

17 Q. Okay. And she reported to you he had moved out
18 of the apartment a couple weeks before; / is that correct?

19 A. Three weeks prior.

20 Q. Did she tell you whether or not she had informed
21 him he had been evicted or kicked out?

22 A. I / don't recall.

23 Q. Okay. Did she tell you the last time she had
24 actually spoken to Mr. Martinez?

25 A. I don't remember.

26 Q. Okay. Did she tell you / whether or not he

1 actually still had a set of keys to the apartment?

2 A. Not to the locks that were currently being used.

3 Q. Did she */ tell you whether or not he still
4 possessed a set of keys to the apartment?

5 A. She did not.

6 Q. When she reported to you there were / three items
7 missing, did she tell you who had actually purchased those
8 items?

9 A. She did.

10 Q. Okay. She specifically said she had purchased
11 them?

12 A. Yes.

13 Q. Did / she say when she purchased the gaming
14 system?

15 A. She did not.

16 Q. Did she tell you when she had purchased the iPad?

17 A. No.

18 Q. So based on / your conversation with her, you
19 don't know whether those were purchased when she and Mr.
20 Martinez were still together versus once they had
21 separated?

22 A. I / do not.

23 Q. Okay. Did you actually observe the duffel bag
24 Ms. Duran said that my client allegedly threw back at her?

25 A. That's correct.

26 Q. When you / arrived to the apartment location,

1 where was that duffel bag?

2 A. It was in her car.

3 Q. In Ms. Duran's car?

4 A. That's correct.

5 Q. She had told you / that she had already opened it
6 up and looked through it, correct?

7 A. That's correct.

8 Q. Had she taken items out of the duffel bag prior
9 to / your arrival, as far as you know?

10 A. No.

11 Q. Okay. So where was the gaming system?

12 A. It was not at the apartment.

13 Q. Did you see the */ gaming system?

14 A. No. The defendant had stolen it.

15 MR. HALBERG: Your Honor, the witness is now
16 testifying to legal conclusions.

17 THE COURT: Sustained.

18 MS. SHARP: Well, the witness already testified the /
19 defendant had taken the three items.

20 THE COURT: My ruling stands. Next question.

21 Q. BY MR. HALBERG: All right. You viewed the
22 duffel bag when it was inside of Ms. Duran's / car?

23 A. Yes.

24 Q. Did you open it up and look inside, or did she
25 just point at it?

26 A. I looked inside.

1 Q. Okay. Was there a gaming / system inside that
2 duffel bag?

3 A. There was not.

4 Q. Was there an iPad inside the duffel bag?

5 A. No.

6 Q. There were clothes inside the duffel bag?

7 A. Yes. /

8 Q. Was there cash inside the duffel bag?

9 A. No.

10 MS. SHARP: I object. Asked and answered, your Honor.

11 THE COURT: Overruled. Next question.

12 Q. BY MR. HALBERG: According to Ms. Duran, when she
13 saw / Mr. Martinez in the house on July 23rd, he explained
14 to her he was there to retrieve his property, correct?

15 A. That's correct.

16 Q. You were asked / on direct about whether you had
17 used the name and date of birth Ms. Duran gave you to look
18 in the DMV system; / is that right?

19 A. That's correct.

20 Q. You located a photograph that you said matches
21 Mr. Martinez, the person sitting next to me; is that
22 correct?

23 A. Yes. */

24 Q. Did you ever take that photograph back to Ms.
25 Duran and question her if the individual in that DMV photo
26 that you discovered / was the person she claims to have

1 allegedly seen on July 23rd?

2 A. I did not.

3 Q. The kitchen screen that you were asked about on
4 direct, / you had C.S.I. come out and take photographs of
5 things like that; is that correct?

6 A. That's correct.

7 Q. And that screen that you indicated / had been cut
8 or ripped, was that photographed, as far as you remember?

9 A. It definitely was.

10 Q. And it was the screen in the kitchen; is / that
11 correct?

12 MS. SHARP: I object. Asked and answered.

13 THE COURT: Sustained.

14 Q. BY MR. HALBERG: Was it a screen above the sink
15 in the kitchen? Where is this screen located that you /
16 were asked about on direct?

17 A. The screen was located just east of the front
18 door. It is facing southbound in the kitchen.

19 Q. Okay.

20 A. I can't / tell you that it is directly above the
21 sink.

22 MR. HALBERG: Your Honor, just one moment.

23 THE COURT: Okay.

24 Q. BY MR. HALBERG: Did you ask Ms. Duran any
25 questions about the iPad / with respect to whether Mr.
26 Martinez had ever used it or if it was something they

1 considered joint property when they were together?

2 A. The iPad */ was purchased for her son.

3 Q. Okay. Is that what she told you?

4 A. Yes.

5 Q. But I asked you before, and you previously
6 testified she didn't tell / you when she purchased it; is
7 that correct?

8 A. Yes, that's correct.

9 Q. Did she tell you whether or not Mr. Martinez had
10 ever used it?

11 A. She / did not.

12 Q. And what about the gaming system? Did she tell
13 you whether or not Mr. Martinez had ever used it?

14 A. She did not discuss / that with me.

15 Q. Okay. She did tell you they actually had been
16 together for about three years; is that correct?

17 A. That's correct.

18 Q. Okay. And did / she say whether those three
19 years were at that property or at that location on
20 Fernwood Street?

21 A. She reported they were in a relationship while /
22 he was still in jail.

23 Q. Okay.

24 A. That included the three years.

25 Q. Okay. But did she indicate one way or the other
26 whether they had been / at that same location?

1 A. No. He had not been at that same location for
2 three years.

3 Q. But when they were together, was she at that /
4 same location on Fernwood Street?

5 A. I don't recall.

6 MR. HALBERG: Your Honor, I have no further questions.

7 THE COURT: Any redirect?

8 MS. SHARP: Yes, your Honor.

9 THE COURT: All right. Proceed.

10 REDIRECT EXAMINATION

11 Q. BY MS. SHARP: Ms. Duran */ reported to you that
12 the defendant had moved and had not been living at this
13 apartment for three weeks?

14 MR. HALBERG: Objection. Leading.

15 THE COURT: Overruled.

16 Q. BY MS. SHARP: Did she tell / you if he had taken
17 his belongings?

18 A. He had not taken his items.

19 Q. But did she tell you that he had moved out?

20 A. Yes.

21 Q. Okay. / What did she say that she had done with
22 the belongings that he had left behind?

23 MR. HALBERG: Objection. Relevance.

24 THE COURT: Overruled.

25 THE WITNESS: She had boxed up his property / and left
26 that in the living room.

1 Q. BY MS. SHARP: And so was the iPad, the gaming
2 system, or the money in that box?

3 A. No.

4 MR. HALBERG: Objection. Foundation.

5 THE COURT: Overruled. /

6 Q. BY MS. SHARP: Did she say whether the \$800 worth
7 of cash was hers?

8 A. Yes.

9 Q. What did she say?

10 A. That the money belonged to her.

11 Q. Okay. / Thank you.

12 A. You're welcome.

13 MS. SHARP: Your Honor, nothing further.

14 THE COURT: Recross.

15 RECCROSS-EXAMINATION

16 Q. BY MR. HALBERG: Did she tell you that any of
17 that money was child support?

18 A. No, she didn't.

19 Q. She / didn't tell you where she got the \$800 in
20 cash?

21 A. She did not.

22 MR. HALBERG: Nothing further.

23 THE COURT: Anything further?

24 MS. SHARP: Just briefly, your Honor.

25 THE COURT: Please proceed. /

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1 Q. And was that a gift that she had recently
2 received / from them?

3 A. Yes, it was. Her birthday was the week prior,
4 and she had received \$1,000 from her parents for her
5 birthday present. /

6 MS. SHARP: Nothing further.

7 MR. HALBERG: Nothing further, your Honor.

8 THE COURT: Okay. I have a question or two.

9 Officer, do you know when the DMV photo that helped */
10 you identify the defendant was taken?

11 THE WITNESS: I had received it earlier in the week
12 from an officer at our station who works closely with
13 probation. /

14 THE COURT: But do you know when that photo was taken?

15 THE WITNESS: Oh, I'm sorry. No, I don't.

16 THE COURT: Is the defendant's appearance in that
17 photo pretty much identical / to the way he looks now?

18 THE WITNESS: With the exception of his hair, yes.

19 THE COURT: What is the difference in hair?

20 THE WITNESS: Well, he had hair in the / DMV photo.

21 THE COURT: As I understand your testimony, there were
22 two bags that the defendant took when he left the
23 apartment. One was a / duffel bag, and one was a
24 backpack?

25 THE WITNESS: Yes, that's correct.

26 THE COURT: Were you told by the victim who owned the

1 duffel bag and who owned the / backpack?

2 THE WITNESS: No, I was not.

3 THE COURT: And as I understand it, the duffel bag was
4 returned to the victim, but the backpack was not?

5 THE WITNESS: That's correct. /

6 THE COURT: Okay. Anything further from either side
7 based on my questions?

8 MS. SHARP: No, your Honor. Thank you.

9 MR. HALBERG: No questions.

10 THE COURT: Okay. Can we excuse this witness?

11 MS. SHARP: Yes, your / Honor.

12 MR. HALBERG: Yes.

13 THE COURT: You are excused at this time.

14 Thank you for being here today.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: Okay. Any other witnesses?

17 MS. SHARP: Yes, your Honor. */

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22 *****EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY BE**

23 **SLIGHTLY DIFFERENT*****

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