

No. 12 -

**In the Supreme Court of the
United States**



APPENDIX

to

Petition for a Writ of Certiorari

Nathan S. Berkman, Petitioner

v.

State of Indiana, Respondent

APPENDIX A

Opinion of the Court of Appeals of Indiana

68 Ind.

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further proceedings consistent with this opinion.

Reversed and remanded.

BAILEY, J. and CRONE, J. concur.



Nathan S. BERKMAN, Appellant-
Defendant,

v.

STATE of Indiana, Appellee-Plaintiff.

No. 45A04-1111-CR-583.

Court of Appeals of Indiana.

Sept. 4, 2012.

Background: Defendant was convicted by jury in the Superior Court, Lake County, Diane R. Boswell, J., of felony murder. Defendant appealed.

Holdings: The Court of Appeals, Bradford, J., held that:

- (1) retrial for felony murder after acquittal for murder did not violate "actual evidence" test;
- (2) collateral estoppel did not apply to bar retrial;
- (3) ill witness was unavailable and admission of testimony from prior trial did not violate right to confrontation;
- (4) admission of a witness's deposition testimony read into evidence at prior trial did not violate right to confrontation;
- (5) sixty-year executed sentence was not inappropriate so as to warrant revision.

Affirmed.

1. Criminal Law ¶1149

The Court of Appeals will review a trial court's grant of a motion to dismiss an information for an abuse of discretion.

2. Criminal Law ¶1147

In reviewing a trial court's decision in a criminal case for an abuse of discretion, the Court of Appeals will reverse only where the decision is clearly against the logic and effect of the facts and circumstances.

3. Double Jeopardy ¶150(2)

Retrial for felony murder after acquittal for murder did not violate "actual evidence" test under double jeopardy clause of state constitution, because there was no conviction other than the felony murder conviction; no other conviction could have been based on the jury's reliance on the same actual evidence used to establish the elements of felony murder. West's A.I.C. Const. Art. 1, § 14; West's A.I.C. 35-42-1-1(1, 2).

4. Double Jeopardy ¶150(2)

Judgment ¶751

Collateral estoppel did not apply to bar retrial for felony murder after acquittal for murder, pursuant to protection against double jeopardy; jury was permitted to find defendant guilty of felony murder without making the impermissible finding that he knowingly or intentionally killed victim, and Court of Appeals would presume it so did. U.S.C.A. Const. Amend. 5; West's A.I.C. 35-42-1-1(1, 2).

5. Judgment ¶713(1)

"Collateral estoppel," also known as issue-preclusion, provides that when an issue of ultimate fact has once been determined by a valid and final judgment, that

issue cannot again be litigated between the same parties in any future lawsuit.

See publication Words and Phrases for other judicial constructions and definitions.

6. Homicide \S 580, 581

State is not required to prove a knowing or intentional killing in order to sustain a felony murder conviction, only a killing, even an accidental one. West's A.I.C. 35-42-1-1(2).

7. Criminal Law \S 1155

The Court of Appeals reviews a trial court's decision to deny a mistrial for abuse of discretion because the trial court is in the best position to gauge the surrounding circumstances of an event and its impact on the jury.

8. Criminal Law \S 867.3

A mistrial is appropriate only when the questioned conduct is so prejudicial and inflammatory that the defendant was placed in a position of grave peril to which he should not have been subjected, and the gravity of the peril is measured by the conduct's probable persuasive effect on the jury.

9. Criminal Law \S 867.20

When faced with a circumstance that a defendant believes might warrant mistrial, generally, the correct procedure is to request an admonishment; however, if counsel is not satisfied with the admonishment, or it is obvious that the admonishment will not be sufficient to cure the error, counsel may then move for a mistrial.

10. Criminal Law \S 867.22(1)

When faced with a circumstance that a defendant believes might warrant mistrial, a failure to request an admonishment or move for a mistrial results in waiver of the issue.

11. Criminal Law \S 661

The admissibility of evidence is within the sound discretion of the trial court.

12. Criminal Law \S 539(1)

Decision whether to invoke the rule allowing admission of prior recorded testimony is within the sound discretion of the trial court. Rules of Evid., Rule 804(a)(1), (b)(1).

13. Criminal Law \S 543(1), 544

To invoke the rule allowing admission of prior recorded testimony, before a witness's prior recorded testimony may be admitted in lieu of in court testimony, the prosecution must first show the declarant/witness is unavailable; it must also be determined whether there is sufficient identification of the parties and the issues between the former and present proceedings. Rules of Evid., Rule 804(a)(1), (b)(1).

14. Criminal Law \S 543(2)

Trial court acted within its discretion by determining witness "unavailable" in trial for felony murder due to illness, and, thus, witness's testimony in murder trial against same defendant was admissible under prior recorded testimony exception to hearsay rule; at felony murder trial, the trial court observed and questioned the witness, who complained of nausea and possible developing a migraine, witness also indicated that she had very recently been hospitalized for four days, with medical personnel suspecting disease, seizure, or stroke as the cause of her symptoms. West's A.I.C. 35-42-1-1(2); Rules of Evid., Rule 804(a)(1), (b)(1).

See publication Words and Phrases for other judicial constructions and definitions.

15. Criminal Law \S 662.60

Admission, in felony murder trial, of witness's prior recorded testimony in murder trial against same defendant, did not

violate defendant's right to confrontation, where witness was unavailable in felony murder trial, and defendant cross-examined witness during her prior testimony. U.S.C.A. Const.Amend. 6; West's A.I.C. Const. Art. 1, § 13; West's A.I.C. 35-42-1-1(2).

16. Criminal Law ⚖543(1)

State made good-faith effort to secure witness's presence at trial, but was unsuccessful, such that witness was "unavailable," for purposes of admitting deposition testimony read into prior murder trial as evidence against defendant in felony murder trial; witness had apparently fled the jurisdiction to avoid an arrest warrant, state subpoenaed witness at his last known address and gave its investigator his last known address and telephone number, to no avail, and state had no other possible address. Rules of Evid., Rule 804(a).

17. Criminal Law ⚖662.60

Admission, in felony murder trial, of deposition testimony that was read into evidence at prior murder trial against same defendant, did not violate defendant's right to confrontation, even though defendant contended that deposition was taken to discover what witness's trial testimony would be, and that this motive did not afford an opportunity for effective cross-examination; witness was unavailable in felony murder trial, and defendant was never denied the opportunity to attempt to undermine the witness or his testimony during deposition or when it was read into evidence at murder trial. U.S.C.A. Const. Amend. 6; West's A.I.C. 35-42-1-1(2); Rules of Evid., Rule 804.

18. Homicide ⚖1567

Sentencing and Punishment ⚖66

Sixty-year executed sentence for felony murder was not inappropriate so as to

warrant appellate court's revision; nature of the murder was egregious and premeditated, and actions after the murder, of smoking crack cocaine, holding knife to girlfriend's throat, letting victim's body decompose for three days before burning it in victim's vehicle demonstrated that defendant's character also warranted lengthy sentence. West's A.I.C. 35-42-1-1(2); Rules App.Proc., Rule 7(B).

19. Criminal Law ⚖1134.75

Whether the Court of Appeals regards a sentence as inappropriate and subject to revision turns on its sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case. Rules App.Proc., Rule 7(B).

Mark A. Bates, Office of the Lake County Public Defender, Crown Point, IN, Attorney for Appellant.

Gregory F. Zoeller, Attorney General of Indiana, Brian Reitz, Deputy Attorney General, Indianapolis, IN, Attorney for Appellee.

OPINION

BRADFORD, Judge.

Appellant-Defendant Nathan Berkman appeals from his conviction of and sentence for Felony Murder.¹ Berkman raises five issues, which we restate as follows:

- I. Whether the trial court abused its discretion in denying Berkman's motion to dismiss, which was made on the basis that the instant charge was barred by prohibitions against double jeopardy;

1. Ind.Code § 35-42-1-1(2) (2008).

- II. Whether the trial court abused its discretion in denying Berkman's mistrial motion, which was made on the basis that the trial court abused its discretion in admitting certain testimony from a previous trial;
- III. Whether the trial court abused its discretion in admitting certain deposition testimony; and
- IV. Whether Berkman's sixty-year executed sentence is inappropriately harsh.

We affirm.

FACTS AND PROCEDURAL HISTORY

In August of 2008, Berkman owed approximately \$2000 to Olen Hawkins, from whom he had frequently purchased cocaine. On August 30, 2008, Berkman telephoned Hawkins, told him that he had the money he owed him, and arranged a meeting in a supermarket parking lot. Between 4:00 and 5:00 p.m., Berkman told Arlene Timmerman, his girlfriend and with whom he lived, that was going to leave to obtain money and cocaine and that he had to go by himself. Berkman left at approximately 6:00 p.m., in Timmerman's car.

Berkman met Hawkins in the supermarket parking lot, parked next to him, and entered Hawkins's vehicle. When Hawkins asked Berkman if he had the money that he owed him, Berkman slit Hawkins's throat "from ear to ear and he robbed him for a couple ounces of dope and a bunch of money." Tr. p. 1015. Berkman kicked Hawkins's dead body into the passenger seat and drove Hawkins's car back to Timmerman's house, arriving at approximately 9:30 to 10:00 p.m.

When Berkman arrived back at Timmerman's, he yelled for Timmerman. Timmerman went with Berkman to the garage, where she saw Hawkins's dead body in the

passenger seat of his car. Berkman told Timmerman that he had cut Hawkins's throat and taken an ounce of cocaine from him. Berkman, Timmerman, and Tanya Sullivan, who was visiting, then smoked crack cocaine in the basement until approximately 1:30 or 2:00 a.m.

Late in the evening of August 31, 2008, or early in the morning of September 1, Berkman retrieved a knife from the kitchen, held it to Timmerman's neck, and said, "Get your f* * * * * a* * * downstairs now." Tr. p. 517. Timmerman managed to elude Berkman, leave, and go to the home of friend Meghan Johnston. At approximately 7:00 or 8:00 a.m. on September 1, 2008, Timmerman called home, Berkman apologized, and Timmerman returned home. Berkman told her later that day that he had formulated a plan to dispose of Hawkins's body, which was still in Hawkins's car in the garage. Early in the morning of September 2, 2008, Berkman drove Hawkins's car to a field with Timmerman following in her car. While Timmerman waited, Berkman doused Hawkins's car with gasoline and set it aflame. Hawkins's burned-out car and remains were discovered on November 19, 2008.

On June 9, 2009, the State charged Berkman with murder and felony murder in the perpetration of robbery, both felonies. On July 27, 2011, a jury acquitted Berkman of murder but failed to reach a verdict on the felony murder count. On August 30, 2011, Berkman's second jury trial began, in which he was charged with felony murder. During its case in chief, the State called Timmerman to testify. Soon thereafter, Timmerman indicated that she was "having an issue[.]" and trial was recessed. Tr. p. 463. When questioned by the trial court in chambers, Timmerman said that she was "very nauseous [and] burning up" and afraid that she might be developing a migraine. Tr. p.

466. The trial court determined that Timmerman was unable to testify and ruled that her testimony from the first trial could be read into the record.

Later in the trial, on September 7, 2011, the State indicated that it wished to introduce deposition testimony of Paul Barraza, testimony that had been read into the record in the first trial. The deposition of Barraza had been conducted by Berkman's attorney, and the State did not question Barraza during the deposition. The prosecutor indicated that his office gave Barraza's address and telephone number to an investigator but were unable to serve Barraza with a subpoena on August 8, 2011. The prosecutor also indicated that his office had been unable to contact Barraza via telephone, Barraza was subject to at least one open Lake County arrest warrant, and he believed Barraza to be in Florida avoiding the warrant. The trial court allowed the deposition to be read into the record. The jury found Berkman guilty as charged, and on October 3, 2011, the trial court sentenced him to sixty years of incarceration for felony murder.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Denying Berkman's Motion to Dismiss

[1, 2] "On appeal, we will review a trial court's grant of a motion to dismiss an information for an abuse of discretion." *State v. Gill*, 949 N.E.2d 848, 849 (Ind.Ct.App.2011) (citing *Zitlaw v. State*, 880 N.E.2d 724, 728 (Ind.Ct.App.2008), *trans. denied*), *trans. denied*. "In reviewing a trial court's decision for an abuse of discretion, we reverse only where the decision is clearly against the logic and effect of the facts and circumstances." *Id.* (citing *Zitlaw*, 880 N.E.2d at 728-29). Berkman contends that the trial court abused its discretion in denying his motion to dismiss,

which was made on the basis that retrying him for felony murder after his acquittal for murder violated prohibitions against double jeopardy.

A. *Richardson* Same Actual Evidence Test

[3] Berkman contends that his retrial for felony murder violates Indiana's "actual evidence" test. In *Richardson v. State*, 717 N.E.2d 32 (Ind.1999), the Indiana Supreme Court held "that two or more offenses are the 'same offense' in violation of Article I, Section 14 of the Indiana Constitution, if, with respect to . . . the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense." *Id.* at 49-50. The *Richardson* court stated the actual evidence test as follows:

To show that two challenged offenses constitute the "same offense" in a claim of double jeopardy, a defendant must demonstrate a reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense.

Id. at 53.

Berkman's *Richardson* claim must fail for the simple reason that he has been found guilty of only one crime. *See, e.g., Lee v. State*, 892 N.E.2d 1231, 1235 (Ind. 2008) ("Since *Richardson*, this Court has decided several cases where there were separate facts to support *two convictions*, but the case was presented in a way that left a reasonable possibility that the jury used the same facts to establish both.") (second emphasis added). Because there is no conviction other than the felony murder conviction, there is no other conviction that could have been based on the jury's

reliance on the same actual evidence used to establish the elements of felony murder. Berkman's reliance on Richardson is unavailing.

B. Collateral Estoppel

[4, 5] Berkman also contends that the State was barred from trying him again for felony murder by the doctrine of collateral estoppel.

Collateral estoppel, also known as issue preclusion, provides that "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970). Collateral estoppel is a component of the Fifth Amendment's double jeopardy protections. *Id.* at 445, 90 S.Ct. 1189. However, collateral estoppel "will not often be available to a criminal defendant," for "it is not often possible to determine with precision how the judge or jury has decided any particular issue." 5 Wayne R. Lafave et al., *Criminal Procedure* § 17.4(a) (3d ed.2007) (quoting Walter V. Schaefer, *Unresolved Issues in the Law of Double Jeopardy*; Waller and Ashe, 58 Cal. L. Rev. 391, 394 (1970)).

Hoover v. State, 918 N.E.2d 724, 734 (Ind. Ct.App.2009), *trans. denied*.

Berkman contends that the issues litigated and disposed of in his favor in the first trial, i.e., that he did not murder Hawkins, preclude him from being tried subsequently for felony murder. In order to convict a person of murder, the State is required to prove that he "knowingly or intentionally kill[ed] another human being[.]" while a conviction for felony murder may rest upon proof that he "kill[ed] another human being while committing or attempting to commit . . . robbery[.]" Ind. Code § 35-42-1-1(1); -1(2).

[6] Based on the jury's murder acquittal and failure to reach a verdict on the felony murder charge in the first trial, the only issue of fact that we can say with certainty was litigated and decided against the State was that Berkman had not *knowingly or intentionally* killed Hawkins. Had the first jury found that Berkman had not killed Hawkins *at all*, it would have acquitted him of felony murder as well, instead of deadlocking on the charge. However, the State is not required to prove a knowing or intentional killing in order to sustain a felony murder conviction, only a killing—even an accidental one. In order to prevail on his collateral estoppel claim, Berkman must be able to firmly establish that the second jury impermissibly found that he had knowingly or intentionally killed Hawkins, which, on this record, he cannot do. Regardless of how the case was argued and evidence presented, we simply will not speculate regarding the jury's deliberations; it was permitted to find Berkman guilty of felony murder without making the impermissible finding that he knowingly or intentionally killed Hawkins, and we must presume that it did so.

II. Whether the Trial Court Abused its Discretion in Denying Berkman's Mistrial Motion

[7, 8] Berkman contends that the trial court abused its discretion in denying his mistrial motion, which was made on the basis that the allegedly erroneous admission of Timmerman's testimony from his first trial placed him in grave peril to which he should not have been subjected.

We review a trial court's decision to deny a mistrial for abuse of discretion because the trial court is in "the best position to gauge the surrounding circumstances of an event and its impact

on the jury." *McManus v. State*, 814 N.E.2d 253, 260 (Ind.2004). A mistrial is appropriate only when the questioned conduct is "so prejudicial and inflammatory that [the defendant] was placed in a position of grave peril to which he should not have been subjected." *Mickens v. State*, 742 N.E.2d 927, 929 (Ind. 2001) (quoting *Gregory v. State*, 540 N.E.2d 585, 589 (Ind.1989)). The gravity of the peril is measured by the conduct's probable persuasive effect on the jury. *Id.*

Pittman v. State, 885 N.E.2d 1246, 1255 (Ind.2008).

[9, 10] When faced with a circumstance that a defendant believes might warrant mistrial,

[g]enerally, the correct procedure is to request an admonishment. *See Brown v. State*, 572 N.E.2d 496, 498 (Ind.1991). However, if counsel is not satisfied with the admonishment or it is obvious that the admonishment will not be sufficient to cure the error, counsel may then move for a mistrial. *See Dresser v. State*, 454 N.E.2d 406, 407-08 (Ind.1983). [A] failure to request an admonishment or move for a mistrial results in waiver of the issue. *See Robinson v. State*, 693 N.E.2d 548, 552 (Ind.1998).

Etienne v. State, 716 N.E.2d 457, 461 (Ind. 1999).

[11] At the heart of Berkman's argument is his contention that Timmerman's previous trial testimony should not have been admitted. The admissibility of evidence is within the sound discretion of the trial court. *Curley v. State*, 777 N.E.2d 58, 60 (Ind.Ct.App.2002), *trans. denied*. We will reverse a trial court's decision on the admissibility of evidence only upon a showing of an abuse of that discretion. *Id.* An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circum-

stances before the court, or if the court has misinterpreted the law. *Id.* We may affirm the trial court's ruling if it is sustainable on any legal basis in the record, even though it was not the reason enunciated by the trial court. *Moore v. State*, 839 N.E.2d 178, 182 (Ind.Ct.App.2005), *trans. denied*. We do not reweigh the evidence and consider the evidence most favorable to the trial court's ruling. *Hirshy v. State*, 852 N.E.2d 1008, 1012 (Ind. Ct.App.2006), *trans. denied*.

[12, 13] Prior testimony is hearsay, but Indiana Rule of Evidence 804 (2008) provides a hearsay exception for the prior testimony of a declarant who is "unavailable" as a witness. "'Unavailability of a witness' includes situations in which the declarant . . . is unable to be present or to testify at the hearing because of death or then existing physical or mental illness of infirmity[.]" Ind. Evidence Rule 804(a)(1). If a witness is declared unavailable,

Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding [is admissible], if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

Evid. R. 804(b)(1).

The decision whether to invoke the rule allowing admission of prior recorded testimony is within the sound discretion of the trial court. *Moore v. State* (1982), Ind., 440 N.E.2d 1092, after remand [(1984)], 467 N.E.2d 720. Before a witness' prior recorded testimony may be admitted in lieu of in court testimony, the prosecution must first show the declarant/witness is unavailable. *Iseton v.*

State (1984), Ind.App., 472 N.E.2d 643, 648. It must also be determined whether there is sufficient identification of the parties and the issues between the former and present proceedings. *Spence v. State* (1979), 182 Ind.App. 62, 393 N.E.2d 277, 281. In *Spence*, this court states: "Absolute identity is not required, only sufficient identity to insure that cross-examination in the former case was directed to the issues presently relevant and that the former parties were the same in motive and interest." *Id.*

Johnston v. State, 517 N.E.2d 397, 399 (Ind.1988).

A. Timmerman's Unavailability

[14] Berkman contends that the trial court abused its discretion in declaring Timmerman unavailable. Soon after beginning her testimony, Timmerman indicated that she was "having an issue[.]" and trial was recessed. Tr. p. 463. When questioned by the trial court in chambers, Timmerman said that she was "very nauseous [and] burning up[.]" she was afraid that she might be developing a migraine, and she had "thought [she] was going to throw up." Tr. pp. 466-67. Timmerman also indicated that she had been hospitalized from Wednesday to Saturday of the previous week, she had undergone testing for multiple sclerosis, and hospital personnel believed that she may have had a seizure or "possibly a stroke[.]" Tr. p. 466. After observing the witness, the trial court remarked that "I don't see how we're going to be able to continue with this. I'll get [Timmerman] the Turns [she requested], but it doesn't even seem possible to me." Tr. p. 468.

Under the circumstances of this case, we cannot conclude that the trial court abused its discretion in declaring Timmerman unavailable. The trial court questioned Tim-

merman, who complained of nausea and felt that she might be developing a migraine. Timmerman also indicated that she had very recently been hospitalized for four days, with medical personnel suspecting MS, seizure, or stroke as the cause of her symptoms. Most importantly, the trial court personally interviewed Timmerman and was able to observe her behavior, demeanor, and appearance, something we cannot do. Berkman has failed to establish that the trial court abused its discretion in declaring Timmerman unavailable due to present illness.

B. Confrontation Rights

[15] The Sixth Amendment to the United States Constitution provides, in part, that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" Similarly, Article I, Section 13 of the Indiana Constitution provides, in part, that "In all criminal prosecutions, the accused shall have the right . . . to meet the witnesses face to face[.]" Berkman argues that his right to confront witnesses against him was violated by the admission of Timmerman's prior testimony.

It is well-settled that the admission of prior testimony is constitutional provided certain requirements are met.

In *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the Supreme Court held that the Confrontation Clause of the Sixth Amendment to the Federal Constitution prohibits admission in a criminal trial of testimonial statements by a person who is absent from trial, unless the person is unavailable and the defendant had a prior opportunity to cross-examine the person.

Fowler v. State, 829 N.E.2d 459, 464 (Ind. 2005). Moreover, the Indiana Supreme Court has held that the Indiana right to meet witnesses face-to-face "is secured

where the testimony of a witness at a former hearing or trial on the same case is reproduced and admitted, where the defendant either cross-examined such witness or was afforded an opportunity to do so, and the witness cannot be brought to testify at trial again[.]” *Brady v. State*, 575 N.E.2d 981, 987 (Ind.1991). As we have discussed, the trial court did not abuse its discretion in declaring Timmerman unavailable, and there is no dispute that Berkman cross-examined Timmerman during her prior testimony. Berkman’s rights to confront the witnesses against him were not violated.

III. Whether the Trial Court Abused its Discretion in Admitting Barraza’s Deposition Testimony

Berkman contends that the trial court abused its discretion in admitting Barraza’s deposition testimony. Berkman contends that the State failed to adequately show that Barraza was unavailable and that the deposition testimony should not have been admitted in any event because Berkman did not have an opportunity for cross-examination and did not have a similar motive when deposing Barraza.

A. Barraza’s Unavailability

[16] Indiana Rule of Evidence 804(a) provides, in part, that “[u]navailability as a witness’ includes situations in which the declarant . . . is absent from the hearing and the proponent of a statement has been unable to procure the declarant’s attendance by process or other reasonable means.”

In several cases the United States Supreme Court has discussed the test for determining the unavailability of a witness. It stated a witness is not unavailable unless prosecutorial authorities make a *good-faith effort* to secure his presence at trial. *Ohio v. Roberts* (1980), 448 U.S. 56, 100 S.Ct. 2531, 2543,

65 L.Ed.2d 597; *Berger v. California* (1969), 393 U.S. 314, 315, 89 S.Ct. 540, 541, 21 L.Ed.2d 508; *Barber v. Page* (1968), 390 U.S. 719, 88 S.Ct. 1318, 1322, 20 L.Ed.2d 255. (Emphasis supplied). If no possibility of procuring the witness’s attendance exists, “good faith” demands nothing of the prosecution; however, if there is even a remote possibility affirmative measures will be successful, good faith may demand their effectuation. *Ohio, supra*. The extent to which the prosecution must go to produce a witness is a question of reasonableness. *Id.*

Bartruff v. State, 528 N.E.2d 110, 113–14 (Ind.Ct.App.1988).

As previously mentioned, the prosecutor indicated that his office had unsuccessfully attempted to serve Barraza with a subpoena on August 8, 2011, approximately one month before trial. The prosecutor also indicated that his office had been unable to contact Barraza via telephone, that Barraza was subject to at least one open Lake County arrest warrant, and that he believed Barraza to be in Florida avoiding the warrant.

Under the circumstances of this case, we conclude that the State made a reasonable, good-faith effort to secure Barraza’s presence at trial. Barraza failed to appear for two trials and had apparently fled the jurisdiction to avoid an arrest warrant. The State subpoenaed Barraza at his last known address and gave its investigator his last known address and telephone number, to no avail.

Whether the State could have secured Barraza had it put forth considerably more effort is speculative at best. Given that Barraza was already subject to at least one Lake County arrest warrant, there was no reason for the State to request a Lake

County writ of body attachment.² Moreover, resort to the Uniform Act for Securing the Presence of Witnesses from Without a State in Criminal Proceedings ("the Act"), Ind.Code ch. 35-37-5 (2008), would almost certainly have been wasted effort, as there was no known address for Barraza. The Act provides for the subpoena or arrest of a witness in a foreign jurisdiction upon request of an Indiana trial court, but there is little point in attempting to subpoena or arrest a witness if his whereabouts are unknown, as was the case here.³ It should also be noted that Barraza, even if his whereabouts were known, had more incentive to ignore a subpoena than the typical reluctant witness, as he was subject to at least one arrest warrant. Finally, we cannot say that the State's failure to send an investigator to Florida was at all unreasonable, given that the record does not reflect the State had a possible address for Barraza in Florida. Under the circumstances of this case, we cannot say that the State was required to do more than it did to secure Barraza.

B. Confrontation Rights

[17] Berkman also contends that even if the State put forth a good faith effort to secure Barraza for trial, the admission of his deposition testimony violated his confrontation rights because he did not have an opportunity for adequate or effective cross-examination and because the deposition testimony was not developed with a similar motive. As we have already noted,

2. "When duly subpoenaed, the attendance of all witnesses may be enforced by attachment." Ind.Code § 35-37-5-2 (2008).
3. *Bartruff*, 528 N.E.2d at 110, on which Berkman relies, is distinguishable. *Bartruff* addressed the adequacy of State efforts to secure the testimony of an out-of-state witness, and we stated that

we believe the minimum required to show a good faith effort in this regard is evidence the prosecution filed a petition for the issu-

Evidence Rule 804 provides that prior testimony can be admitted if the party against whom the evidence is offered "had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." Evid. R. 804(b)(1).

1. Opportunity to Cross-Examine

As previously mentioned, the confrontation requirements of both the Federal and Indiana Constitutions are met when a defendant either cross-examined the unavailable witness whose prior testimony the State seeks to admit or had the opportunity to do so. *Fowler*, 829 N.E.2d at 464; *Brady*, 575 N.E.2d at 987. Berkman notes that the State did not question Barraza during his deposition, arguing that this deprived him of the opportunity to cross-examine him. While this may be technically true, we conclude that the cross-examination requirement was nonetheless satisfied here, in spirit if not in word. As the Indiana Supreme Court has recognized, "the right to adequate and effective cross-examination is fundamental and essential to a fair trial [and] includes the right to ask pointed and relevant questions in an attempt to undermine the opposition's case, as well as the opportunity to test a witness's memory, perception and truthfulness." *State v. Owings*, 622 N.E.2d 948, 950 (Ind.1993). At no point in Barraza's deposition, the reading of which spanned ninety-four pages in the tran-

ance of a subpoena under [the Act] and continuing reasonable attempts to procure the witness's attendance at trial before his deposition is admissible, even though the witness was subject to cross-examination when the deposition was taken.

Id. at 115. Unlike here, however, it is clear from *Bartruff* that the precise whereabouts of the witness in question were known to the State. Berkman's reliance on *Bartruff* is unavailing.

script, is there the slightest indication that Berkman was denied the opportunity to attempt to undermine Barraza or his testimony by asking any questions he saw fit. To the extent that Berkman did not do so, it was not because he was denied the opportunity. Under the circumstances, we conclude that requirement for the opportunity to cross-examine was satisfied here.

2. *Similar Motive*

Berkman contends that his deposition of Barraza was performed for discovery purposes, with the goal of helping his trial counsel understand what Barraza's trial testimony might be so that he might better advise Berkman. Berkman argues that this difference in motive did not afford an opportunity for effective cross-examination. We cannot agree. Even if the primary motive of a discovery deposition in a criminal case is to obtain a preview of a witness's testimony, this certainly does not exclude the need to understand how the witness's story and credibility might be attacked. We believe that a prudent defense attorney conducting a discovery deposition in a criminal case would not only attempt to ascertain what the substance of the testimony might be but also explore avenues by which the testimony or the witness's credibility might be attacked. Indeed, Berkman's trial counsel did just that, spending considerable time during the deposition impeaching Barraza with prior criminal convictions and arrests and also exploring his motive for approaching the authorities regarding Berkman's confession.

Berkman's trial counsel questioned Barraza at great length regarding his criminal history, eliciting responses indicating that Barraza had been arrested thirteen times; had been first incarcerated between the ages of nine and eleven; and had "four or five" felony convictions, including for "[a] couple batteries[.]" dealing in cocaine, and

theft. Tr. p. 952. It is worth noting that most, if not all, of this could have been ruled inadmissible for impeachment purposes at trial, with the possible exception of Barraza's theft conviction. Pursuant to Evidence Rule 609, evidence of a prior conviction is only admissible for impeachment purposes if the conviction is for "murder, treason, rape, robbery, kidnapping, burglary, arson, criminal confinement or perjury; or . . . a crime involving dishonesty or false statement." Theft is considered to be a crime of dishonesty and would therefore have been admissible for impeachment purposes, assuming the other requirements of Evidence Rule 609 were met. See *Rowe v. State*, 704 N.E.2d 1104, 1108 (Ind.Ct.App.1999) ("Hodges' Burglary and Theft convictions would both have been admissible as crimes which involve dishonesty and reflect upon a witness' credibility for truth and veracity."), *trans. denied*.

As for Barraza's motive for coming forward, Berkman's trial counsel asked him whether he hoped to receive help from the State in pending criminal cases and to explain why he "would rat out a fellow inmate like this." Tr. p. 1032. Berkman does not explain how he was prevented from pursuing any of these lines of questioning fully or how they would have been pursued any differently at trial. We conclude that the motive for the discovery deposition, as well as how the deposition actually played out, was similar enough to that of trial testimony to satisfy the requirements of Evidence Rule 804(b)(1).

We decline to adopt the Florida rule that the use of discovery depositions during a criminal trial does not satisfy constitutional confrontation requirements. In *State v. Lopez*, 974 So.2d 340 (Fla.2008), the Florida Supreme Court held that the exercise of the right to take a discovery deposition under rule 3.220 does not

serve as the functional substitute of in-court confrontation of the witness because the defendant is usually prohibited from being present, the motivation for the deposition does not result in the "equivalent of significant cross-examination," and the resulting deposition cannot be admitted as substantive evidence at trial.

Id. at 350. The first and third reasons identified simply do not apply, as Indiana law does not seem to prohibit a defendant's attendance at discovery depositions and does not prohibit the use of depositions from unavailable persons as substantive evidence. See Ind. Trial Rule 32(A)(3). Also, we must respectfully disagree with the Florida Supreme Court's second reason, as we have already concluded that the motive for a discovery deposition in a criminal case is close enough to that driving a defendant's approach to trial testimony to satisfy the requirements of Evidence Rule 804(b)(1). The trial court did not abuse its discretion in admitting Barraza's deposition testimony.

IV. Whether Berkman's Sentence is Inappropriate

[18, 19] We "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind.Ct.App.2006), *trans. denied* (citations and quotation marks omitted). "[W]hether we regard a sentence as appropriate at the end of the day turns on our

sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind.2008). In addition to the "due consideration" we are required to give to the trial court's sentencing decision, "we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind.Ct.App.2007). The trial court sentenced Berkman to sixty years of incarceration.

The nature of Berkman's offense was quite egregious. Berkman lured Hawkins to a meeting place with a promise of paying him the money he owed him, only to kill and rob him instead. After keeping Hawkins's decomposing corpse in Timmerman's garage for three days, Berkman drove Hawkins's car to an isolated location and set it aflame. Berkman's offense was premeditated, and Hawkins died for no better reason than Berkman owed him \$2000 that he did not wish to repay. The nature of Berkman's offense justifies a lengthy sentence.

As for Berkman's character, it also justifies a lengthy sentence. While Berkman's criminal history is not extensive, he has a 2006 battery conviction and a 2009 theft conviction, for which he was on probation when he committed the instant offense. In the course of three years, Berkman progressed from relatively minor crimes to felony murder, which certainly does not speak well of his character. Berkman's actions following his offense at issue are, to be blunt, disturbing. Immediately after the killing, Berkman returned home and smoked crack cocaine for several hours, and then, over the course of the next three days, went on a binge, "f* * * * * part[y]ing] and s* * *, smoking crack and stay[ing] f* * * * * up." Tr. p. 1015.

Berkman also held a knife to Timmerman's throat and on another occasion choked her while laughing and saying, "Oh, I could kill you." Tr. p. 573. There is also some indication that after Berkman's arrest he made some attempts to "get her [and] make her pay" for speaking with police. Tr. p. 1021. After allowing Hawkins's body to decompose for three days in Timmerman's garage, Berkman disposed of it in an isolated area by burning it, preventing Hawkins's wife from knowing her husband's fate for several more months. In light of the nature of his offense and his character, Berkman has failed to establish that his sixty-year sentence for felony murder is inappropriate.

We affirm the judgment of the trial court.

ROBB, C.J., and BAKER, J., concur.



HOOD'S GARDENS, INC., Appellant,

v.

Jason YOUNG, Craig Mead d/b/a/
Discount Tree Extraction a/k/a D
& E Tree Extraction, Appellees.

No. 29A04-1201-PL-8.

Court of Appeals of Indiana.

Sept. 4, 2012.

Background: Greenhouse brought declaratory judgment action against tree removal company seeking determination of responsibility for workers' compensation benefits for subcontractor of tree removal company. The Superior Court, Hamilton County, William J. Hughes, J., dismissed action. Greenhouse appealed.

Holding: The Court of Appeals, Darden, Senior Judge, held that Workers' Compensation Act did not deprive trial court subject matter jurisdiction.

Reversed and remanded.

1. Appeal and Error ⇐863

The standard of review for motions to dismiss for lack of subject matter jurisdiction is dependent on what happened at the trial level.

2. Pretrial Procedure ⇐554

A motion to dismiss for lack of subject matter jurisdiction presents a threshold question concerning the trial court's power to act.

3. Courts ⇐40

Actions taken by a court lacking jurisdiction are void.

4. Courts ⇐35

The party challenging subject matter jurisdiction has the burden of establishing that jurisdiction does not exist.

5. Pretrial Procedure ⇐554, 685

In ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court may consider not only the complaint and motion but also any affidavits or evidence submitted in support.

6. Pretrial Procedure ⇐554, 684

In ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court may weigh the evidence to determine the existence of the requisite jurisdictional facts.

7. Declaratory Judgment ⇐276

Workers' Compensation ⇐2084

Exclusivity provisions of the Workers' Compensation Act did not deprive trial court subject matter jurisdiction to consider declaratory judgment action concerning

Judgment of the Superior Court, Lake County, Indiana

)SS:

SUPERIOR COURT OF LAKE COUNTY
CRIMINAL DIVISION
CROWN POINT, INDIANA
CASE 45G03-0906-MR-00003

Y.

Defendant.

OCT 04 2011

[Signature]
CLINTON LAKE SUPERIOR COURT

10-03-11 The State of Indiana appears by Deputy Prosecuting Attorneys Reginald Marcus and Judith Massa.
The defendant appears in person with Deputy Public Defender T. Edward Page.

The parties having reviewed the pre-sentence investigation report, the Court now accepts the pre-sentence investigation report as amended.

1. Prior to this incident the defendant had lead a productive life and lacked a significant violent criminal history.

1. The circumstances of this case in that it was heinous in nature, going above and beyond what was necessary.
2. The transporting of the victim to another location, and disposing of his body by burning it, and compound this effect was the fact the victim made another complicit in the act also by requiring, Arlene, to participate with the disposal of the body.

Pursuant to IC 35-38-1-5(b), the court notes that it currently costs an average of \$53.96 per day to house an adult inmate at the Indiana Department of Correction. The defendant's sentence calls for an executed term of imprisonment of 21,900 days. Accordingly, the estimated total cost to incarcerate the defendant for this term of imprisonment is \$1,181,724.00. This estimated costs does not include reductions which will result if the

defendant is eligible to receive credit for time served in confinement prior to conviction prior to conviction, credit time earned to date or in the future, or any other credits against the sentence. The estimated cost also does not reflect any future changes in the cost of incarceration.

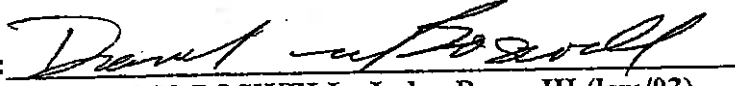
The defendant is to receive credit for eight hundred forty-eight (848) days spent in confinement as a result of this charge, plus eight hundred forty-eight (848) days of good time credit as provided by law for a total of 1696 days credit.

Court costs are imposed and are to be entered as a judgment against the defendant. Deputy Public Defender Page to submit an affidavit of services which are to be entered as a matter of record only.

The Court reads Criminal Rule 11 regarding the defendant's right to appeal or to file a motion to correct errors of the Court's judgment of sentence under Criminal Rule 11. The defendant orally requests the appointment of an Appellate Public Defender. Granted. The Court now appoints the Lake County Appellate Public Defender to represent the defendant in any appeal determined to be appropriate. *The Lake County Clerk is directed to notify the parties.*

The defendant is remanded to the hands of the Lake County Sheriff for execution of judgment of the Court. Cause ordered disposed. (Diane C. Iannessi reporting.)

SO ORDERED:


DIANE ROSS BOSWELL, Judge Room III (lcm/03)

STATE v. N. BERKMAN
CASE 45G03-0906-MR-00003
10-03-11 AMENDED SENTENCING ORDER
PAGE 2

APPENDIX C

Order of the Indiana Supreme Court Denying Transfer

CAUSE NO.: 45A04-1111-CR-00583

LOWER COURT CAUSE NO.: 45G030906MR3

BERKMAN, NATHAN SCOTT V. STATE OF INDIANA

YOU ARE HEREBY NOTIFIED THAT THE SUPREME COURT HAS ON THIS DAY, 03/07/2013, ORDERED AS FOLLOWS:

THIS MATTER HAS COME BEFORE THE INDIANA SUPREME COURT ON A PETITION TO TRANSFER JURISDICTION FOLLOWING THE ISSUANCE OF A DECISION BY THE COURT OF APPEALS. THE PETITION WAS FILED PURSUANT TO APPELLATE RULE 57. THE COURT HAS REVIEWED THE DECISION OF THE COURT OF APPEALS. ANY RECORD ON APPEAL THAT WAS SUBMITTED HAS BEEN MADE AVAILABLE TO THE COURT FOR REVIEW, ALONG WITH ANY AND ALL BRIEFS THAT MAY HAVE BEEN FILED IN THE COURT OF APPEALS AND ALL THE MATERIALS FILED IN CONNECTION WITH THE REQUEST TO TRANSFER JURISDICTION. EACH PARTICIPATING MEMBER OF THE COURT HAS VOTED ON THE PETITION. EACH PARTICIPATING MEMBER HAS HAD THE OPPORTUNITY TO VOICE THAT JUSTICE'S VIEWS ON THE CASE IN CONFERENCE WITH THE OTHER JUSTICES.

BEING DULY ADVISED, THE COURT NOW DENIES THE APPELLANT'S PETITION TO TRANSFER OF JURISDICTION.

BRENT E. DICKSON, CHIEF JUSTICE
ALL JUSTICES CONCUR.

(ORDER REC'D 03/07/13 AT 3:20 P.M.) ENTERED ON 03/08/13 KJ

TRANSMITTED PURSUANT TO MY AUTHORITY UNDER APPELLATE RULE 26.

SIGNED,
KEVIN S. SMITH
CLERK OF THE SUPREME COURT, COURT OF APPEALS, AND TAX COURT
216 STATE HOUSE
200 W. WASHINGTON ST.
INDIANAPOLIS, IN 46204

APPENDIX D
Excerpts from Trial Proceedings

STATE OF INDIANA)
) SS:
COUNTY OF L A K E)

SUPERIOR COURT OF LAKE COUNTY - CRIMINAL DIVISION
SITTING AT CROWN POINT, INDIANA

STATE OF INDIANA,)
)
Plaintiff,)
)
-vs-) CAUSE NO.
) 45G03-0906-MR-00003
NATHAN SCOTT BERKMAN,)
)
Defendant.)

BE IT REMEMBERED that heretofore, pursuant to
agreement as to time and place and pursuant to the
Statutes of the State of Indiana, the above cause came
on for JURY TRIAL on the 29th day of August, 2011,
before the HONORABLE DIANE ROSS BOSWELL, Judge, Room 3,
at Superior Court of Lake County, Criminal Division,
2293 North Main Street, Crown Point, Indiana.

Proceedings Reported by CAT
DIANE C. IANNESSI, CSR, RPR
OFFICIAL COURT REPORTER

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

- 1 A. Yes.
- 2 Q. Okay. Was Olen a friendly type of guy?
- 3 A. Very friendly.
- 4 Q. Was he friendly to you?
- 5 A. Always.
- 6 Q. What sorts of things would Olen do that caused you
- 7 to categorize him as being friendly?
- 8 A. At one point when I was behind on the NIPSCO bill,
- 9 he did pay that.
- 10 Q. Olen did?
- 11 A. Yes, he did.
- 12 Q. Okay.
- 13 A. And I paid him back for it.
- 14 Q. You did?
- 15 A. Yes, I did.
- 16 Q. Okay.
- 17 A. Also, he would give me \$20 here and there to take
- 18 the kids out just for fun, you know, whether it
- 19 was McDonald's or whatever the case may be.
- 20 Q. Okay. Did there come a point in time when --
- 21 strike that.
- 22 MR. MARCUS: Could I have just a second,
- 23 Judge?
- 24 THE COURT: Yes.
- 25 THE WITNESS: (Indicating).

1 MR. MARCUS: Judge, may I approach?
2 THE COURT: Yes.
3 MR. MARCUS: Are you okay?
4 THE WITNESS: No, I'm not.
5 THE COURT: No, all right.
6 THE WITNESS: I'm having an issue.
7 THE COURT: Okay. Take her to the back.
8 (Whereupon the witness exited the courtroom.)
9 THE BAILIFF: (Indicating).
10 THE COURT: You might as well leave it
11 there.
12 (The following proceedings were
13 held at the bench.)
14 MR. MARCUS: Although I do have a motion
15 in limine, I think it would be appropriate to at
16 least inform the jury that she has issues with
17 migraines.
18 THE COURT: I think she just testified to
19 that.
20 MR. MARCUS: Did she?
21 MR. PAGE: She did.
22 THE COURT: She said that's why she got
23 fired.
24 MR. PAGE: This is new testimony, of
25 course. We'll go over it later. I am terribly

1 afraid we are rapidly heading towards a mistrial
2 in this case.

3 THE COURT: This is a mess. This is a
4 mess.

5 MR. PAGE: And I don't know how many days
6 we want to draw it out.

7 MR. MARCUS: Well, if she's medically
8 unavailable, I've got the case law to support --

9 THE COURT: Well, she's not medically
10 unavailable. She's here.

11 MR. PAGE: The problem is, is that now
12 she's begun to testify and I'm going to be unable
13 to cross-examine that testimony. So the question
14 is at what point we cut that off, because if
15 she --

16 MR. MARCUS: We'll cut that off when we
17 get there, I suppose.

18 MR. PAGE: Because I mean, if she's
19 getting ready to lose it when she's being asked
20 the friendly questions, I'm not going to be
21 gentle.

22 THE COURT: I thought -- is she losing it
23 because she's nervous or because she's sick?

24 MR. PAGE: It could be anything.

25 MR. MARCUS: She said she was sick.

1 She's feeling nauseous and she's started having
2 these auras.

3 MR. PAGE: I like nauseated. When you're
4 nauseous is when you're making other people sick.

5 THE COURT: I'll remember that.

6 MR. PAGE: I'm sorry. Strike that from
7 the record.

8 MR. MARCUS: I don't even know what you
9 said.

10 THE COURT: Is Ms. Massa with her?

11 MR. MARCUS: Yes, Judy's with her.

12 THE COURT: Let's see what happens here,
13 let's just see what happens here.

14 (Whereupon the following proceedings
15 were held in open court.)

16 THE COURT: Ladies and gentlemen, we're
17 going to take a brief break, and counsels, I'll
18 see you in chambers.

19 (A recess was had.)

20 (Whereupon the following proceedings were
21 held in Judge's chambers.)

22 THE COURT: We're on the record now.

23 Okay. Present is the witness, Ms. Massa,
24 Mr. Marcus and Mr. Page, and the court reporter.

25 Can you kind of tell me what's going on with

1 you right now? What's happening here?

2 THE WITNESS: I'm very nauseous. I was
3 in the hospital for -- since Wednesday until
4 Saturday and they were testing me for MS. They
5 thought I might have had a seizure, possibly a
6 stroke, and they released me Saturday. I'm sorry,
7 I'm burning up, very nauseous, and I have nothing
8 in my stomach at all.

9 THE COURT: You haven't eaten this
10 morning?

11 THE WITNESS: I'm afraid to.

12 THE COURT: Okay.

13 THE WITNESS: Anyways --

14 THE COURT: Can I get you a 7-Up or
15 something like that, a Sprite? You think that
16 might help?

17 THE WITNESS: That might help because
18 I've had Coke and Mountain Dew, and with my
19 medicine I'm not supposed to have caffeine because
20 there's caffeine in the medicine.

21 THE COURT: Let's not get you any more
22 caffeine.

23 MR. PAGE: 7-Up is caffeine free.

24 THE COURT: I think Sprite is, too.

25 Either one.

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

1 THE WITNESS: I'm just very sick to my
2 stomach. It came on suddenly. It was nothing to
3 do with the questions that Reggie was asking me.
4 I'm very comfortable answering anything either one
5 of you guys have to ask me.

6 THE COURT: But now can you go back out
7 there and do that? That's the question.

8 THE WITNESS: In a few minutes, I felt
9 very nauseous. I thought I was going to throw
10 up.

11 THE COURT: Let's take a few more
12 minutes, get her a 7-Up and see if that settles
13 her stomach down a little bit and see where we go
14 from there.

15 THE WITNESS: I'm very sorry. I don't
16 want to delay this. I want to get this done with.
17 It's been delayed long enough due to me being in
18 the hospital and I'm afraid I'm getting another
19 migraine.

20 THE COURT: Okay. All right. Let's get
21 the 7-Up and see if that will help you at all.
22 You can go back in that room and sit down and
23 relax and we'll bring you something.

24 THE WITNESS: Thank you.

25 THE COURT: Ms. Massa, would you ask

1 Linda to get her a 7-Up out of there -- ask one of
2 the bailiffs to go in -- the jury's in there.

3 THE WITNESS: Can I ask you another
4 question? In my purse, I have some Tums in a
5 baggy. Would I be able to get one of those?

6 MR. MARCUS: Where's your purse?

7 THE WITNESS: In Patty's office.

8 THE COURT: I'll call Patty to bring it
9 up. Thank you.

10 MR. PAGE: I can't be in here alone on
11 the record.

12 MS. MASSA: John took people to smoke.

13 THE COURT: The other bailiff is with the
14 defendant.

15 MS. MASSA: Yes, Pam's off today so Linda
16 was going to go into the jury room and get a
17 Sprite.

18 THE COURT: Can she go into Judge
19 Stefaniak's courtroom and get a Sprite? I don't
20 see how we're going to be able to continue with
21 this. I'll get her the Tums, but it doesn't even
22 seem possible to me. Now, as far as your
23 unavailability and wanting to read the
24 transcript.

25 MS. MASSA: Sierra Mist, caffeine free.

1 THE COURT: Okay. On the grounds of
2 privilege person is refusing to testify, lack of
3 memory, is unable to be present or to testify at
4 the hearing because of death, or then existing
5 physical or mental illness or infirmity. Now that
6 says is unable to be present. That to me is very
7 clear that the person doesn't show up.

8 MR. MARCUS: It just says be able to be
9 present and something.

10 THE COURT: Unable to be present or to
11 testify.

12 MR. PAGE: Or to testify.

13 MR. MARCUS: I believe this falls under
14 the "or to testify" part.

15 MR. PAGE: I tend to agree grammatically
16 with counsel's interpretation that's what that
17 says. They can come, but for some reason they
18 just can't testify.

19 MR. MARCUS: Something happens to -- and
20 I can get my iPad.

21 THE COURT: She is present and unable to
22 testify to --

23 Hi, Patty. She's in there.

24 MR. PAGE: Can you get the name of the
25 medication on the record?

1 THE COURT: Tums is what she said.

2 MR. PAGE: No, the medication that she's
3 taking.

4 THE COURT: Oh, okay. All right. Then
5 let's proceed without her. Then counsels agree
6 that she's unable to be present. She's unable to
7 testify.

8 MR. MARCUS: Unable to testify. She is
9 present.

10 THE COURT: She's present but unable to
11 testify so we'll proceed with reading the -- you
12 can take her home and we'll read in the record her
13 transcript from the prior trial.

14 MR. MARCUS: Did you do the marking?

15 MR. PAGE: No, no, I actually wanted to
16 wait. If you wanted to send the jury to an early
17 lunch and we'll start going through it right now,
18 we just have to cross out the --

19 THE COURT: You were supposed to do that
20 over the weekend.

21 MR. PAGE: I know, your Honor.

22 MS. MASSA: I kind of looked at one and
23 there were only three or four places where it
24 needs redaction.

25 MR. MARCUS: I went through it.

1 MR. PAGE: The side bars come out and a
2 few objections, when an objection was made and
3 overruled.

4 THE COURT: All right. Let's get busy,
5 let's get busy. Thank you. We need to work
6 together during the hour.

7 (Whereupon the parties returned into
8 open court.)

9 (Whereupon the jury returned into open court
10 and the following proceedings were had.)

11 THE COURT: All right. Ladies and
12 gentlemen, we're going to take an early lunch this
13 morning and we'll be back at 12:00 o'clock. It's
14 ten after 11:00 now. 12:00 o'clock, we'll be back
15 and ready to proceed at that time.

16 All right. Remember while we're not all
17 together in the jury room, don't discuss the case.
18 If anyone tries to talk to you or in your presence
19 about the case, let the bailiff know as soon as
20 possible, and we'll be back at 12:00 o'clock to
21 proceed.

22 (Whereupon the jury exited the courtroom.)

23 THE COURT: All right. You may be
24 seated. In chambers, we were on the record and
25 interviewed the witness. I determined at that

1 point in time that she is not going to be able to
2 continue with this trial. I'm declaring her
3 unavailable. And when we proceed at 12:00
4 o'clock, the State will read in testimony from her
5 prior -- from the prior trial.

6 Mr. Page.

7 MR. PAGE: Yes, your Honor, I would like
8 to interpose an objection to that being done, the
9 reason being that under Crawford and classic
10 confrontational case law, it denies the jury the
11 number one thing they need, and that's an
12 opportunity to see the face-to-face confrontation
13 between the defendant and the witness, and to
14 judge the demeanor of the witness by her
15 appearance and her voice.

16 I recognize we have a prior trial at which I
17 cross-examined her at length. There may be some
18 things that have been brought up so far that
19 are -- they don't go directly to the substance of
20 Mr. Hawkins' death, but they deal with some
21 significant collateral issues.

22 And the problem with reading the transcript
23 from the previous trial into the record here and
24 maybe as appropriate at the deposition that was
25 previously taken of her, the problem with that is

1 that, as I say, it doesn't give the jury the
2 opportunity to do the number one thing so many of
3 them say during voir dire they need in order to
4 judge a witness, and that is to observe how they
5 testify.

6 The last trial testimony was -- she was what
7 I would call successfully cross-examined,
8 successfully impeached on a number of points. But
9 if one can only but see how she reacted to some of
10 the questions and how she testified, it just
11 doesn't come across in this transcript.

12 And I think in this particular instance while
13 we've got a witness who's physically unable to
14 testify today, I believe there could come a time
15 in the future when she could come available to
16 testify, when she is feeling better, when we do
17 have the opportunity to present her to the jury so
18 that they can see and judge her testimony based on
19 how she testifies.

20 And therefore, my suggestion is that the time
21 has come for a mistrial altogether.

22 THE COURT: Okay. All right. Well, the
23 new matters that you brought up, while they may be
24 significant, they're collateral issues, not
25 directly on point to the merits of this case or

1 the charges of this case, the Crawford cases and
2 their prodigy do not deal with the jury's ability
3 to view the witness, merely the defendant's
4 opportunity to have cross-examined the witness,
5 and he did have an opportunity to cross-examine
6 the witness at the prior trial, so we'll proceed
7 this afternoon with the -- your request for a
8 mistrial is denied. We'll proceed this afternoon
9 with the reading of the transcript.

10 State, could you get someone from victim
11 witness or something to --

12 MR. PAGE: My thought is this, is that
13 Mr. Marcus can play the role of Ms. Scott; I can
14 play myself.

15 MR. MARCUS: I think a woman would be
16 better suited to play the role of Ms. Scott, and
17 I'll find someone to do that. I'll play the role
18 of me.

19 MR. PAGE: And if we could find someone
20 who would then be appropriate to read
21 Ms. Timmerman's testimony after we've redacted it
22 accordingly.

23 MS. MASSA: I can do that, your Honor.

24 MR. MARCUS: You want to be Ms. Scott?

25 MS. MASSA: I'll be Ms. Scott or Arlene.

1 THE COURT: Let's get -- do you have
2 someone available in victim witness to do
3 Ms. Timmerman?

4 MR. MARCUS: Judge, we can make this
5 happen, yes.

6 MR. PAGE: Maybe we can get a court
7 employee so that there's no question of
8 partiality.

9 THE COURT: Well, there can't -- what
10 impartiality -- what partiality can there be if
11 they're reading what's in the transcript?

12 I mean, if they don't read what is in the
13 transcript, you're going to -- or I'm going to
14 tell them to read just what's in the transcript.

15 All right. Could you find somebody?

16 MR. MARCUS: I will.

17 THE COURT: All right. Very good. We'll
18 reconvene at 12:00 o'clock.

19 (A recess was had.)

20 (Whereupon the jury returned into open court
21 and the following proceedings were had.)

22 THE COURT: Counsels approach, please.

23 (The following proceedings were
24 held at the bench.)

25 THE COURT: We're not ready?

1 MR. PAGE: No, we've been working nonstop
2 since we left. We're almost there. I've got like
3 ten, 15 pages out of 200. I'm lining stuff out
4 and then Judy's going to double check, but I'm
5 going to make the copies for everybody.

6 THE COURT: How much more time?

7 MR. PAGE: I'm terribly afraid that it
8 would be until 1:00 o'clock. I mean, I could say
9 earlier, but that's a realistic estimate.

10 THE COURT: Uh-huh, uh-huh. I would
11 appreciate being realistic.

12 MS. MASSA: We would agree.

13 THE COURT: Is your witness ready?

14 MS. MASSA: Yes.

15 THE COURT: She's doing okay?

16 MS. MASSA: Oh, not that witness.

17 MR. MARCUS: I thought you meant our --

18 MR. PAGE: Ms. Parry is going to be a
19 cocaine and heroin addict for us.

20 THE COURT: Okay.
21 (Whereupon the following proceedings
22 were held in open court.)

23 THE COURT: All right. Ladies and
24 gentlemen, we're not ready. It will be 1:00
25 o'clock. I'm sorry.

1 (A recess was had.)

2 THE COURT: All right. Are we ready to
3 proceed?

4 MR. PAGE: Your Honor, we did our best.
5 You have before you the original redacted copy
6 where we've lined out that which is not to be
7 read.

8 In other words, if there's a question asked
9 and an objection sustained, the question was taken
10 out as well as the Court's discussion.

11 We think we've done a good job of making it
12 clear that it's not a prior trial that we're
13 coming from.

14 Ms. Parry's going to be reading the answers
15 and some of us will be reading the questions and
16 we'll do everything we can -- where you might say
17 "tell the jury" we will say "tell us" or where it
18 might say "show the Judge," "show us," whatever we
19 can do to improvise when we come to those points
20 to make sure the jury's not left with the
21 impression.

22 I will renew my objection in front of them
23 when I agree to read my part.

24 THE COURT: Thank you.

25 MR. PAGE: Shall we refer to it as a

1 deposition or what shall we refer to it as?
2 THE COURT: Prior testimony.
3 MR. MARCUS: Prior testimony.
4 THE COURT: Prior testimony.
5 MR. MARCUS: And Judge, in addition, I
6 would request, and I think it's appropriate, that
7 the jury be informed that the Court has declared
8 the witness unavailable; therefore, we're reading
9 the prior testimony.

10 THE COURT: I'll do that, Mr. Marcus.

11 MR. MARCUS: Thank you, Judge.

12 THE COURT: Anything else?

13 MS. MASSA: No.

14 THE COURT: Now, how long do you think
15 it's going to take us to get through this? You
16 had two other witnesses. I'd like to hear them
17 today, too.

18 MR. MARCUS: This is going to take a
19 couple hours.

20 MR. PAGE: I imagine this will take the
21 balance of the afternoon.

22 THE COURT: It's 1:10. You think we're
23 going to be doing this until 4:00 o'clock?

24 MR. PAGE: It's probably over a day's
25 worth of testimony, but we can -- there's a

1 certain amount of dispatch and side bars that are
2 all taken out. The recesses are cut out, so --

3 THE COURT: Are your other witnesses
4 here?

5 MR. MARCUS: Judge, I don't have any
6 other witnesses to go today. I anticipated Arlene
7 being all day.

8 THE COURT: Okay.

9 MR. MARCUS: We are still on track.

10 THE COURT: I'd like to -- we're on track
11 but we're slowly on track, Mr. Marcus. I'd like
12 to get us speeding a little bit faster on track.

13 MR. MARCUS: I'll speed the train up
14 tomorrow, I promise you.

15 THE COURT: Speed the train up, please.

16 MR. PAGE: Do you guys need two copies?

17 MR. MARCUS: We do.

18 Put the witness in the chair, Judge?

19 THE COURT: Not yet.

20 MR. MARCUS: Okay. Judge, we do have
21 Detective Azcona is here. If we get to him today,
22 we will call him.

23 THE COURT: Okay.

24 (Whereupon the jury returned into open court
25 and the following proceedings were had.)

1 THE COURT: Ladies and gentlemen, we are
2 ready to proceed at this time, although there have
3 been -- there has been a change of events.

4 Ms. Timmerman is not available to testify, to
5 continue her testimony this afternoon. Therefore,
6 we will be reading testimony from a prior hearing
7 where she did testify under oath.

8 We'll be reading that testimony to you for
9 your consideration today. And I'll advise you
10 that this written testimony, what you will hear,
11 would be considered the same as Ms. Timmerman
12 testifying here today.

13 So we have parties who will be playing the
14 parts of the -- Ms. Timmerman and the attorneys
15 will be reading their questions to her.

16 Yes?

17 MR. PAGE: And Judge, if I could make the
18 record clear, that while I will be reading the
19 part of the questions that I previously asked
20 Ms. Timmerman, I object to this procedure for the
21 reason that it denies my client the right of
22 confrontation, it denies the jury the opportunity
23 to see and observe the testimony of the only
24 witness in the case.

25 THE COURT: Okay. Your objection is so

1 noted, it's overruled, and we'll continue.

2 State, you have what you call --

3 MR. MARCUS: Ms. Timmerman.

4 THE COURT: All right. You may --

5 (Whereupon Christine Marilyn Parry was first
6 duly sworn by the Court.)

7 THE COURT: Thank you. You may be
8 seated.

9 Mr. Marcus.

10 MR. PAGE: Can we identify who she
11 actually is for the record, please?

12 THE COURT: Ms. Parry, would you identify
13 yourself, please.

14 THE WITNESS: Yes, my name is Christine
15 Marilyn Parry; C-h-r-i-s-t-i-n-e, Marilyn,
16 M-a-r-i-l-y-n, Parry, P-a-r-r-y.

17 MR. PAGE: And her occupation, please,
18 Judge?

19 THE COURT: Are you employed?

20 THE WITNESS: I am.

21 THE COURT: And where are you employed?

22 THE WITNESS: With the Lake County
23 Prosecutor's Office in their felony division.

24 THE COURT: As?

25 THE WITNESS: A deputy prosecutor.

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

1 Mr. Marcus, Ms. Massa, what do you have for us
2 tomorrow?

3 You may be seated.

4 Two witnesses?

5 MR. MARCUS: We've got more than that.

6 THE COURT: Two witnesses?

7 MS. MASSA: No, we have a lot more than
8 that.

9 MR. PAGE: No there's more than that.

10 THE COURT: A lot more than that?

11 MR. MARCUS: Tomorrow, we have -- these
12 are all short witnesses -- Detective Azcona,
13 Detective Perez, Meghan Johnston.

14 THE COURT: Are these new witnesses,
15 Mr. Marcus, or am I nuts?

16 MR. MARCUS: These are not new
17 witnesses.

18 THE COURT: Okay. When we were here on
19 Thursday and Ms. Timmerman couldn't testify, I
20 said bring your other witnesses.

21 MR. MARCUS: They weren't here.

22 THE COURT: And at that time, you
23 explained to me that there were two.

24 MR. MARCUS: There were two that we had
25 called for that day, but there are more witnesses

1 in this trial than two.

2 THE COURT: How many more?

3 MR. MARCUS: What's tomorrow? Wednesday?

4 We anticipate actually being able to finish

5 Wednesday with our case in chief. We're looking

6 at probably --

7 THE COURT: Yeah, because my question was

8 how many more witnesses.

9 MR. MARCUS: I'm estimating six, at the

10 most seven.

11 THE COURT: Six or seven, and that's an

12 estimate.

13 MR. MARCUS: We may not use them all.

14 THE COURT: Okay. So the maximum number

15 is seven?

16 MR. MARCUS: Correct.

17 THE COURT: And they will all be here

18 tomorrow.

19 MR. MARCUS: They will all be here

20 tomorrow.

21 THE COURT: Starting at 9:00 o'clock.

22 MR. MARCUS: Starting at 9:00 o'clock.

23 THE COURT: What's tomorrow? Wednesday?

24 Let's see if we can get the magistrate to do this.

25 See if we can get somebody else to do this because

1 witness.

2 MR. PAGE: Will you identify the date of
3 that conversation, please?

4 THE COURT: Do you have the date,
5 Mr. Marcus?

6 MR. MARCUS: No, I don't. It was --

7 THE COURT: If you don't have the date,
8 that's fine.

9 MR. MARCUS: I don't have the date.

10 THE COURT: Okay.

11 MR. PAGE: We'll find it.

12 THE COURT: Ms. Massa.

13 MR. PAGE: Seventh of January; we believe
14 it was the 7th of January.

15 THE COURT: Okay.

16 MR. MARCUS: That sounds about right.

17 MS. MASSA: May I have permission to turn
18 off the --

19 THE COURT: Yes, please.

20 MR. MARCUS: State's next witness is Paul
21 Barraza.

22 THE COURT: Ladies and gentlemen,
23 Mr. Barraza is unavailable at this time to appear
24 before you. The -- once again, a record of a --
25 of his sworn testimony at a prior deposition will

1 be read to you.

2 MR. MARCUS: State's Exhibit 86, and I
3 would move its admission.

4 THE COURT: All right. That would be
5 admitted.

6 (Whereupon State's Exhibit 86 is admitted
7 into evidence.)

8 MR. PAGE: And once again, it's over my
9 objection that the witness is not available for
10 the jury to have the ability to judge his
11 credibility.

12 But I have agreed that once the Court's made
13 the decision that it can be read, that I would
14 read the questions that I asked of him at that
15 deposition, and the State will provide someone to
16 stand in for Mr. Barraza, and Mr. Marcus will ask
17 the questions that he asked at that deposition
18 which was taken January 13th of this year.

19 THE COURT: Who's going to read?

20 MR. MARCUS: Mr. Woods.

21 THE WITNESS: Mr. Haynes.

22 THE COURT: Mr. Haynes.

23 MR. MARCUS: I mean Mr. Haynes.

24 THE COURT: Mr. Haynes, would you
25 approach, please.

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 MR. MARCUS: Mr. Mike.

2 THE COURT: And identify yourself to the
3 jury, please. Good morning. My name is Michael
4 Haynes. I'm a deputy prosecutor with the Lake
5 County Prosecutor's Office. Thank you.

6 Are we ready?

7 MR. MARCUS: We are.

8 THE COURT: All right.

9 PAUL BARRAZA (via deposition),
10 having been previously duly sworn to testify the
11 truth and nothing but the truth, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. PAGE:

15 Q. My name is T. Edward Page and the purpose of my
16 questioning you today is to find out whatever
17 information I can about you, to see how I can
18 piece together your situation with what evidence
19 I'm already aware of, to see what connections
20 there are or might be.

21 It's to help me understand what evidence you
22 would give if called as a witness at trial, and
23 also it helps me to counsel my client on what his
24 options may otherwise be.

25 I'm going to ask you a number of very, very

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 personal questions. It's not my intention, nor do
2 I see any advantage, especially under the
3 circumstances we're dealing with now, to share
4 this information.

5 My purpose is to get information from you so
6 that I can use that information for myself and my
7 investigators to explore possibilities more
8 thoroughly than what we've been able to do up to
9 now. That's why the Court has granted a
10 continuance.

11 So I know that some of these questions will
12 make you uncomfortable, but it's important that
13 you answer truthfully. If you tell me a lie now,
14 it can constitute a crime because you're under
15 oath.

16 So if you're not going to tell me the truth,
17 just say "I refuse to answer the question," or
18 something along those lines and then we can
19 determine if the Judge can compel you to answer
20 the question.

21 A. Okay.

22 Q. You will find me a gentleman, but you'll find me,
23 as I said earlier, thorough.

24 A. Okay.

25 Q. Would you spell your full legal name, including

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 your middle name, if any.

2 A. Paul, P-a-u-l; Jerry, J-e-r-r-y; Wayne, W-a-y-n-e,

3 Barraza.

4 Q. Again, a little slower. I have Paul Jerry?

5 A. Wayne, W-a-y-n-e; Barraza, B-a-r-r-a-z-a.

6 Q. Mr. Barraza, is this the name that appears on your

7 birth certificate?

8 A. Yes, sir.

9 Q. Have you gone by any other name ever, even a

10 nickname, or something of that nature?

11 A. Taco.

12 Q. When were you known as Taco?

13 A. From birth.

14 Q. Friends still call you that?

15 A. Yes.

16 Q. And what does Nathan Berkman call you?

17 A. Paul, Taco.

18 Q. He calls you both?

19 A. Yes.

20 Q. We're in the Porter County Jail right now. Can

21 you tell me why you're here, please.

22 A. On a two-year-old probation violation.

23 Q. From whose court?

24 A. Mary Harper.

25 Q. For what offense?

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION
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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. Invasion of privacy.

2 Q. Was that invasion of privacy as a misdemeanor or a
3 felony?

4 A. Misdemeanor.

5 Q. Who was the alleged victim in that offense?

6 A. Tara Seeba.

7 Q. Spell that, please.

8 A. T-a-r-a, S-e-e-b, as in "boy," a.

9 Q. Was this a girlfriend of yours?

10 A. Yes.

11 Q. Had you lived together?

12 A. Yes.

13 Q. When you lived together, where did you live?

14 A. 726 Camelot Manor.

15 Q. Is there an apartment number?

16 A. No.

17 Q. What city is that?

18 A. Portage, Indiana.

19 Q. When someone is committed because of a probation

20 violation, it's usually because they're alleged to

21 have done something new, as well. What is it you

22 were alleged to have done that led to a violation

23 of your probation?

24 A. My son had passed away, my brother passed away --

25 Q. I'm sorry. I'll get into the details. Failure to

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 report or commission of a new offense or both?

2 A. Both.

3 Q. Okay. So what was the new offense you were

4 alleged to have committed?

5 A. I failed a drug test and failure to comply.

6 Q. You failed a drug test on your probation officer?

7 A. Yes.

8 Q. Who was your probation officer?

9 A. I don't know. Debbie. I don't know her name.

10 Q. Any other offenses related to this revocation?

11 A. I just never complied with my classes and I left.

12 Q. Mr. Barraza, where were you born?

13 A. Hobart, Indiana.

14 Q. When you say "Hobart," do you mean St. Mary's

15 Medical Center?

16 A. Yes, sir.

17 Q. What is the date of your birth?

18 A. 11/3/74.

19 Q. So if my math is right, you're 26?

20 A. 36.

21 Q. 36 years old. What is your Social Security

22 number?

23 A. 312-78-1100.

24 Q. Do you know your driver's license number?

25 A. No, I don't.

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. Who is your mother?

2 A. Linda King.

3 Q. How is Linda spelled?

4 A. L-i-n-d-a.

5 Q. The last name?

6 A. King, K-i-n-g.

7 Q. Is that the name with which she was born?

8 A. Yes.

9 Q. Has she gone by any other name?

10 A. She got married, so it's Gomez now.

11 Q. So it's Linda King Gomez now?

12 A. Yes.

13 Q. What is her date of birth?

14 A. I don't know.

15 Q. Do you know the month and date?

16 A. Um, ten -- I don't know her birthday. I don't

17 know the year she was born.

18 Q. About how old is she?

19 A. 54 maybe.

20 Q. Was she married to your father when you were born?

21 A. No.

22 Q. Do you know who your father is?

23 A. Yes.

24 Q. Who is your father?

25 A. Jose Luis.

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SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. Spelling?

2 A. L-u-i-s, Barraza.

3 Q. Do you know his date of birth?

4 A. No, I don't.

5 Q. Do you know his age?

6 A. 56, somewhere around there.

7 Q. Is he living?

8 A. Yes.

9 Q. When is the last time you saw him?

10 A. Eight months ago, nine months ago.

11 Q. How often do you see him?

12 A. Maybe once, twice a year.

13 Q. And your mother, when is the last time you saw

14 her?

15 A. Um, April or May.

16 Q. How often do you see her?

17 A. A couple of times a year.

18 Q. Are you an only child?

19 A. I have a brother.

20 Q. Is that brother a son of Linda or a son of Jose?

21 A. Son of Linda.

22 Q. And what is his name?

23 A. Dave King.

24 Q. Is it David?

25 A. David King.

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SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. Do you know his middle name?

2 A. I can't think of it.

3 Q. How old is he?

4 A. 41.

5 Q. So an older brother?

6 A. Yes.

7 Q. Did the two of you grow up together in your

8 mother's household?

9 A. Yes.

10 Q. I'm sorry, you said your mother and your father

11 were not married at the time of your birth?

12 A. No.

13 Q. Did your mother and father ever marry?

14 A. No.

15 Q. Was your father living in the same household with

16 your mother and you and your older brother?

17 A. No.

18 Q. Is David also Jose's child?

19 A. No.

20 Q. Who is David's father?

21 A. I have no idea.

22 Q. Does he?

23 A. I'm sure, but he's dead.

24 Q. When did that happen?

25 A. I think a year or two ago.

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. Did you ever meet him?

2 A. We lived in the same house.

3 Q. And you don't know -- I'm a little confused?

4 MR. MARCUS: I think he's suggesting that

5 David is dead.

6 MR. PAGE:

7 Q. David is dead; is that correct?

8 A. Yes.

9 Q. David's father, do you know if David ever knew who

10 he was?

11 A. I think so.

12 Q. Did you ever know who David's father was?

13 A. No.

14 Q. What did David, your brother, die of?

15 A. A drug overdose.

16 Q. What kind of drug? Do you know?

17 A. Heroin.

18 Q. Did you know that he was a heroin user at the

19 time?

20 A. I found out like after he did it.

21 Q. Let's talk a little bit about David, if I may.

22 Was David married at the time of his death?

23 A. Yes.

24 Q. To whom was he married?

25 A. Janet King.

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. Do you know Janet King's maiden name?

2 A. No, I don't.

3 Q. Did David and Janet have any children?

4 A. Yes.

5 Q. How many children did they have?

6 A. Two.

7 Q. How old are those children?

8 A. I can guess for you.

9 Q. Please.

10 A. 11 and maybe 13 or 14.

11 Q. What are their names, if you know?

12 A. Brendan King.

13 Q. How do you spell that?

14 A. I have no idea.

15 Q. And the other?

16 A. Tristan King.

17 Q. Both young men?

18 A. Yeah, I said they were like 11 or 13 or 14.

19 Q. Yes, but they're both male?

20 A. Yes.

21 Q. When was the last time you saw them?

22 A. At my brother's funeral.

23 Q. Where were you when your brother died?

24 A. Incarcerated.

25 Q. For what?

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SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. I think it was theft. Yeah.

2 Q. Theft of what?

3 A. Two fans.

4 Q. From where?

5 A. Walgreen's.

6 Q. And where were you incarcerated?

7 A. Porter County Jail.

8 Q. But you were permitted to go to the funeral?

9 A. Yes.

10 Q. What did they do, let you out, or they escorted

11 you there?

12 A. Escorted me.

13 Q. Were you in jail clothing at the funeral?

14 A. No.

15 Q. They don't do that in Lake County, not since the

16 eighties, so I was just curious.

17 MR. MARCUS: Objection, relevance.

18 MR. PAGE: That wasn't a question; it was

19 a statement.

20 MR. MARCUS: We need to move on.

21 MR. PAGE:

22 Q. I'd like to know a little something about David.

23 Did you know that David had a criminal history?

24 A. A little one.

25 Q. What did you know about his criminal history?

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. He stole stuff.

2 Q. Did you know about Janet's criminal history?

3 A. I don't believe she was ever in trouble.

4 Q. Let's talk a little bit about your criminal

5 history. Mr. Barraza, when is the very first time

6 in your life, either as an adult or juvenile,

7 that you were taken into police custody for any

8 reason?

9 A. You said as an adult?

10 Q. Or a juvenile. When is the first time that you

11 ever had your first encounter with law

12 enforcement?

13 A. I think my cousin stole a bike.

14 Q. How old were you?

15 A. Like nine, 10 years old, 11 years old. I don't

16 remember exactly.

17 Q. Your cousin's name?

18 A. David King.

19 Q. Now, imagine I'm starting to get a little

20 confused.

21 A. There's a couple Davids in my family.

22 Q. Got it. So this is the David King cousin?

23 A. Yes. He's passed away, too.

24 Q. So this is a son of one of your mother's brothers?

25 A. Yes, sir.

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. What can you tell me about your mother's parents?

2 What are their names?

3 A. Molly King.

4 Q. Do you know her maiden name?

5 A. No, I don't.

6 Q. And your mother's father?

7 A. I believe it's Benny King.

8 Q. Did you ever meet them?

9 A. Yes.

10 Q. When was the last time you saw them?

11 A. I saw him -- I don't know -- I was like 22. And I

12 saw her at a funeral.

13 Q. At a funeral of whom?

14 A. Her funeral. She passed away.

15 Q. Oh, her funeral. Is Benny still living?

16 A. No.

17 Q. So the first time you encountered the police was

18 at nine years old. Were you arrested?

19 A. No, I just got taken to court; my cousin stole a

20 bike.

21 Q. But you were part of it, too?

22 A. I was there.

23 Q. So you were taken to court as well?

24 A. Yes.

25 Q. What happened?

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. They released me and put me on probation.

2 Q. When is the next time you came into contact with

3 law enforcement?

4 A. I was like 20-something. I don't remember exactly

5 when, but it was probably a ticket or something.

6 Q. Were you arrested?

7 A. I don't remember.

8 Q. Why don't you do this: Tell me the first time you

9 were arrested because that's usually something

10 that sticks in someone's mind. Tell me about the

11 first time you were arrested.

12 A. The first time, I really can't remember.

13 Q. You've been arrested how many times in your life?

14 So many you can't --

15 A. Quite a few.

16 Q. Okay. Estimate for me how many times you've been

17 arrested?

18 A. Thirteen.

19 Q. In what counties?

20 A. Lake and Porter.

21 Q. Have you ever been arrested in any county other

22 than Lake County, Indiana or Porter County,

23 Indiana?

24 A. Nope.

25 Q. Have you ever been arrested for a felony?

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. Yes.

2 Q. Have you ever been convicted of a felony?

3 A. Yep.

4 Q. Was that "yes"?

5 A. Yes, I'm sorry.

6 Q. How many felonies have you been convicted of in

7 your life?

8 A. Four maybe, five. I'm not sure.

9 Q. Tell me about those. What's the first felony you

10 were ever convicted of?

11 A. It might have been a battery charge or something.

12 Q. Against whom?

13 A. I don't remember.

14 Q. You don't even remember the name? Do you remember

15 the year?

16 A. No.

17 Q. And can you share with me any of the other crimes

18 for which you've been convicted?

19 A. A DUI.

20 Q. Well, that's a misdemeanor; right?

21 A. I'm just telling you. I have no clue. I'm just

22 telling you what I was arrested for.

23 Q. Okay. Tell me -- since you've got so many

24 arrests, why don't we talk about your convictions.

25 What have you been convicted of and sent to jail

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1 for?

2 A. Battery; a couple of batteries.

3 Q. Can you remember who the batteries were on, any of

4 them?

5 A. One of Tara, one was some guy, I don't even know

6 his name, I was convicted for dealing cocaine, and

7 I think that's about it.

8 Q. You said four or five felonies?

9 A. I told you the batteries.

10 Q. A couple batteries.

11 A. Theft, I'm sorry, theft. I told you that earlier.

12 Q. Well, you told me that you were in custody for a

13 theft, but were you later convicted of theft?

14 A. Yes.

15 Q. Tell me about your dealing in cocaine case. Where

16 were you arrested for that?

17 A. Porter County.

18 Q. By whom were you arrested?

19 A. Porter County Task Force.

20 Q. Who was the head of that task force?

21 A. Robert Taylor.

22 Q. What year were you arrested?

23 A. 2001.

24 Q. Were you supposed to have been dealing?

25 A. Portage.

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 MR. PAGE: I'm sorry, I misspoke, your
2 Honor.
3 Q. Where were you supposed to have been dealing?
4 A. Portage.
5 Q. Where in Portage?
6 A. Trailer park. Pine Island -- I don't exactly know
7 the name of the park.
8 Q. Was it a controlled confidential informant buy?
9 A. Yes.
10 Q. Who was your lawyer in that case?
11 A. I don't remember.
12 Q. Do you have a sister?
13 A. No.
14 Q. Do you have anybody you consider your sister?
15 A. Not really.
16 Q. You kind of hesitate on that. Is there anybody
17 that has lived in your household that you might
18 consider a sister that might not actually be blood
19 related to you?
20 A. My cousin.
21 Q. And who would that be?
22 A. Linda.
23 Q. Spelling?
24 A. L-i-n-d-a.
25 Q. Last name?

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. Singh, S-i-n-g-h.

2 Q. How is it that --

3 MR. PAGE: I'm sorry, your Honor.

4 Q. How is it she came to live in your house?

5 A. We grew up in the same house. Her mother got into

6 a bad accident and she was paralyzed and my mom

7 took them in.

8 Q. Them?

9 A. Yeah, brothers and sisters.

10 Q. Tell me all the names of the people that your

11 mother took in.

12 A. Brian King, Michelle King.

13 Q. Anyone else?

14 A. Linda King.

15 Q. So Linda Singh and Linda King?

16 A. That's the same girl.

17 Q. Oh, same girl?

18 A. Right.

19 Q. Those three?

20 A. Bernice King, David King, that's it.

21 Q. So the cousin David King that stole the bike also

22 lived with you?

23 A. Yes.

24 Q. How did he die?

25 A. He got shot and killed.

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. Where at?

2 A. In Gary.

3 Q. Was that drug related?

4 A. No.

5 Q. Do you know what it was connected to?

6 A. Over a pool game at a bar.

7 Q. Which bar?

8 A. Annetta Lounge -- excuse me, Aetna Lounge.

9 Q. Robert Taylor arrested you in 2001. Where did he

10 arrest you?

11 A. In front of Don's Motel.

12 Q. You were charged and convicted?

13 A. Yes.

14 Q. Who was your attorney?

15 A. I don't remember.

16 Q. What sentence did you get?

17 A. 12 years.

18 Q. And did you serve that 12 -- where did you serve

19 that 12 years?

20 A. Westville Correctional.

21 Q. Was any of that on probation?

22 A. Parole.

23 Q. When were you paroled?

24 A. 2006.

25 Q. And when did your parole end?

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. 2008.

2 Q. I want you to listen very carefully to the
3 question I'm about to ask. Have -- have you ever
4 acted as a confidential informant for the police
5 before?

6 A. Yes.

7 Q. Was that for Robert Taylor?

8 A. No.

9 Q. For whom?

10 A. Lake Station.

11 Q. For whom at Lake Station?

12 A. Michael Smith and a Dennis Dover.

13 Q. What were they investigating?

14 A. Drugs.

15 Q. How is it that you came to be a confidential

16 informant for them?

17 A. Talking to them.

18 Q. I assume you were arrested for something and they

19 said if you want to work your way out of trouble,

20 be a CI?

21 A. Yeah.

22 Q. What year was that?

23 A. 2010.

24 Q. Can you be more precise? What month?

25 A. July, August, somewhere around there maybe. Maybe

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 September.

2 Q. Now, you told me a little while ago that there was

3 a probation violation for Mary Harper's court.

4 You described it being as something a couple years

5 old. So do I understand that there was a warrant

6 out for your arrest out of Porter County at the

7 time that you were working for Lake Station?

8 A. Uh-huh.

9 MR. MARCUS: Was that a "yes" or a "no"?

10 THE WITNESS: Yes.

11 MR. PAGE:

12 Q. And they knew that; correct?

13 A. Yes.

14 Q. And they didn't take you into custody?

15 A. No, they didn't. I'm sorry, they didn't know.

16 Q. You say they didn't know?

17 A. No.

18 Q. On whom did you inform?

19 A. Lucky; um, William Ross.

20 Q. Who else?

21 A. That was it.

22 Q. How long have you known William Ross?

23 A. Five years, five and half years.

24 MR. MARCUS: How long?

25 THE WITNESS: Five, five and a half

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 years.

2 MR. PAGE:

3 Q. Tell me what it was that Officer Dover and Smith

4 found you with that enabled them to convince you

5 to assist them.

6 A. Found me with?

7 Q. Yes. They found you in some compromising

8 situation, probably possession of drugs, and in

9 return for your working for them, they agreed not

10 to file charges; correct?

11 A. Yes.

12 Q. What was it they found on you?

13 A. Oh, they didn't find -- they didn't find nothing

14 on me. I just had a warrant for Lake County.

15 Q. What was the warrant for Lake County?

16 A. One was for a two- or three-year-old battery

17 charge, one was for a doctor bill. That was it.

18 Q. How is it that they even came to talk to you to

19 arrest you and elicit your help? Were you stopped

20 in a traffic stop?

21 A. Oh, they came to a house I was staying at.

22 Q. Where were you staying?

23 A. At 2334 -- I can't remember the name of the

24 street. I know it was 2334 but I can't remember

25 the name of the street right now.

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SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. And they came to your house with those warrants,

2 and rather than book you on the warrants, they

3 asked for your help?

4 A. I told them I would help.

5 Q. And did you help them?

6 A. Yes.

7 Q. Were you able to make a successful bust for them?

8 A. Yes.

9 Q. Are you a witness in that case now?

10 A. No.

11 Q. Do you know if that case is still pending?

12 A. I believe it's over with.

13 Q. Was it in Lake County?

14 A. Yes.

15 Q. You don't remember where you lived last year?

16 A. I just stayed over there. I didn't say I lived

17 there actually.

18 Q. Oh, okay. They came to the house?

19 A. Yes.

20 Q. Then answer two questions for me: Who lived at

21 the house you were staying at that they came to?

22 A. Terri Seeba.

23 Q. Spelling?

24 A. T-e-r-r-i, Seeba.

25 Q. Spelling?

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. S-e-e-b-a.

2 Q. What relationship to Tara?

3 A. Her mother.

4 Q. Were you in a relationship with her mother?

5 A. No.

6 Q. How was it you came to be staying in that house

7 then?

8 A. I stayed with her daughter.

9 Q. Tara lived there also?

10 A. Yes.

11 Q. You don't remember the address?

12 A. No, I told you the address. I don't remember the

13 street name. I didn't stay there long.

14 Q. What was your legal address? Did you have a home?

15 A. Montgomery Street.

16 Q. 2500 block or something?

17 A. Yeah.

18 Q. Who lived at the Montgomery Street address?

19 A. Me and Tara.

20 Q. For how long?

21 A. Maybe five months, six months, four months,

22 somewhere around there.

23 Q. Who's your girlfriend right now?

24 A. I don't have one.

25 Q. What happened to your relationship with Tara?

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. We're friends.

2 Q. What happened to the relationship?

3 A. I went to jail.

4 Q. When did you go to jail?

5 A. October 22nd.

6 Q. Why did you go to jail October 22nd?

7 A. Warrants and false information.

8 Q. Warrants for what?

9 A. Child court.

10 Q. For what?

11 A. Child court, battery and doctor bill.

12 Q. You have a child?

13 A. Yes.

14 Q. What is the name of the child?

15 A. Nevaeh.

16 Q. Spelling?

17 A. N-e-v-a-e-h, Barraza.

18 MR. PAGE: Sorry, your Honor, that would

19 be my office calling. I thought I had it off.

20 MR. MARCUS: You stopped with spelling.

21 MR. PAGE:

22 Q. Spelling?

23 A. B-a-r-r-a-z-a.

24 Q. That's a daughter?

25 A. Yes.

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SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. What is her date of birth?

2 A. 3/14/07.

3 Q. Who is the mother of that child?

4 A. Tara Seeba.

5 Q. Where is Nevaeh living now?

6 A. With Angie, her aunt.

7 Q. What is Angie's last name?

8 A. Soderquist.

9 Q. Can you try to spell it?

10 A. It's the mayor of Lake Station's brother or --

11 Q. It's the mayor of Lake Station's what?

12 A. It's his brother's wife. Soderquist. I don't

13 know how to spell it.

14 Q. We'll look it up and add it to the transcript.

15 Now Tara, does she have a new love life?

16 A. I have no idea right now.

17 Q. You're sure?

18 A. I have no idea.

19 Q. Did Tara have other relationships while she was

20 also having a relationship with you?

21 A. No.

22 Q. Are you sure?

23 A. No. I mean yeah, I'm sure.

24 Q. You suspect her of having another relationship

25 with a woman; do you not?

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SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. No.

2 Q. Do you understand you're under oath?

3 MR. MARCUS: The record presumes that he

4 understands he's under oath.

5 MR. PAGE:

6 Q. Do you know the name Rachel?

7 A. Yes.

8 Q. Do you know the relationship between Tara and

9 Rachel?

10 A. That's her brother's girlfriend.

11 Q. Tara's brother?

12 A. No, Tara's cousin, I'm sorry.

13 Q. Who's Tara's cousin?

14 A. Chris Edmonds.

15 Q. And who is Rachel to Chris Edmonds?

16 A. Girlfriend.

17 Q. So maybe my information is somewhat confused; is

18 that right?

19 MR. MARCUS: Objection, calls for

20 speculation on behalf of this witness, speculating

21 what information you have or may not have. If you

22 know the answer to the question, go ahead.

23 MR. PAGE:

24 Q. Let me put it this way: You know what I'm talking

25 about; right?

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SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 A. Not really.
- 2 Q. Well, you have an idea of what I'm talking about.
- 3 Do you want to explain it a little better to me?
- 4 A. I don't have an idea what you're talking about.
- 5 Q. All right. What is Rachel's last name?
- 6 A. I don't know.
- 7 Q. What is Rachel's sister's name?
- 8 A. I don't know if she has a sister. I don't know
- 9 Rachel. I know Rachel from Chris.
- 10 Q. Somewhere in the connection of all of this,
- 11 there's a relationship going on between two of the
- 12 girls. Do you know what I'm talking about?
- 13 A. I'm locked up.
- 14 Q. Yes, I know, but this has been going on for
- 15 awhile. Do you know what I'm talking about?
- 16 A. No, I don't.
- 17 Q. What if I was to suggest to you that Rachel's last
- 18 name is Johnson. Does that sound familiar to you
- 19 now?
- 20 A. No, it don't.
- 21 Q. Do you know what -- that Rachel Johnson's sister
- 22 is Meghan Johnson?
- 23 A. No, I don't.
- 24 Q. Okay. I mean no judgment by this question, but
- 25 you have used drugs before; correct?

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. Yes.

2 Q. What sort of drugs have you used in your past?

3 A. Cocaine, marijuana, heroin.

4 Q. Have you ever left the State of Indiana ever in

5 your life?

6 A. Yes.

7 Q. When you left the State of Indiana, where have you

8 gone?

9 A. Texas.

10 Q. Is that the farthest you have been?

11 A. Arizona.

12 Q. And why did you go to Arizona?

13 A. I was 11 or 12 years old and my aunt sent for me.

14 Q. What is your aunt's name?

15 A. Barbara King or Dixon.

16 Q. And when you went to Texas, how old were you then?

17 A. I was young. I don't remember how old I was.

18 Q. Younger than the 11 or 12 or slightly older than

19 the 11 or 12?

20 A. Younger than the 11 or 12.

21 Q. Why did you go to Texas?

22 A. My aunt sent for me.

23 Q. Which aunt?

24 A. Barbara Dixon.

25 Q. Any other times you left the State of Indiana?

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. No.

2 Q. You've been to Chicago?

3 A. Yeah, you got me.

4 Q. No, no, that's not "I got you," just most -- most

5 of us don't think of Chicago as particularly being

6 out of state.

7 A. I mean, I'm thinking if you go out of state, you

8 go and you stay for awhile, and not just --

9 MR. MARCUS: You've been to Chicago;

10 right?

11 THE WITNESS: Yeah.

12 MR. MARCUS: You don't need to explain

13 your answer; just answer the question.

14 MR. PAGE:

15 Q. How often do you go to Chicago?

16 A. Not often.

17 Q. But during your lifetime, you've gone a number of

18 times?

19 A. Yes.

20 Q. Other than Indiana, Illinois, Chicago complex,

21 you've been to Arizona, you've been to Texas.

22 Ever been anywhere else, gone to any other states?

23 A. I went to Georgia.

24 Q. When did you go to Georgia?

25 A. '07.

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SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 Q. What for?
- 2 A. Drop a kid off.
- 3 Q. Which kid?
- 4 A. I don't remember his name.
- 5 Q. All right. I'm a little confused. You dropped a
- 6 kid off. How did that come about?
- 7 A. It was Tara's ex-boyfriend's brother.
- 8 Q. Who is Tara's ex-boyfriend?
- 9 A. Larry Rogers.
- 10 Q. Where does Larry Rogers live?
- 11 A. Prison somewhere.
- 12 Q. Where?
- 13 A. Prison somewhere.
- 14 Q. What for? Do you know?
- 15 A. Robbing people, I guess. He robbed somebody.
- 16 Q. For murder?
- 17 A. Robbed.
- 18 Q. And you don't remember the name of the young man
- 19 that you took down there?
- 20 A. No.
- 21 Q. How old was he?
- 22 A. I don't remember. Do you want me to guess or do
- 23 you want me to tell you the truth?
- 24 Q. No, no, no. You're fine that you don't remember,
- 25 I understand. But now I'm going to ask you some

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 questions to see if I can narrow it for me because
- 2 you probably have a pretty good impression on
- 3 whether or not he was two or three or four or five
- 4 or 15, 16, 17, 18.
- 5 A. Ten.
- 6 Q. Okay. That's what I'm trying to get an idea of.
- 7 Did you drive alone?
- 8 A. No, Tara drove with me.
- 9 Q. Any other times you have been out of state?
- 10 A. No.
- 11 Q. So when you have used this cocaine and this
- 12 marijuana and heroin, it's all been here in Lake
- 13 and Porter County?
- 14 A. Yes.
- 15 Q. And from whom did you obtain these substances?
- 16 A. A drug dealer.
- 17 Q. Can you tell me who?
- 18 A. I don't remember the names.
- 19 Q. Usually when -- I mean, you bought from strangers
- 20 or you bought from people you knew?
- 21 A. Strangers, a couple of people I knew.
- 22 Q. How often would you use these substances?
- 23 A. Explain that more.
- 24 Q. Well, when is the first time in your life you used
- 25 a controlled substance, a drug that wasn't

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 prescribed for you by a doctor?
- 2 A. Eighteen.
- 3 Q. And what was it?
- 4 A. Marijuana.
- 5 Q. Where did you get that marijuana?
- 6 A. A friend.
- 7 Q. Who was the friend?
- 8 A. Rodney.
- 9 Q. What was Rodney's last name?
- 10 A. Don't know it.
- 11 Q. And did you use marijuana for awhile?
- 12 A. No, I smoked it one time and that was it for a
- 13 long time.
- 14 Q. When was the next time you used the drug?
- 15 A. I was 22 maybe.
- 16 Q. What was that drug?
- 17 A. Cocaine and marijuana.
- 18 Q. And where did you get those drugs?
- 19 A. At a party.
- 20 Q. Where was that party?
- 21 A. In Lake Station.
- 22 Q. Whose party was it?
- 23 A. I went with a friend. I don't know who was
- 24 hosting it.
- 25 Q. Who was this friend?

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. Mark.

2 Q. What's Mark's last name?

3 A. I believe it's Gonzalez; I'm not for sure on that.

4 Q. And the next time you used drugs after that?

5 A. Probably another party.

6 Q. So we're talking 14 years ago, right, back in the

7 mid nineties?

8 A. Yeah, I'd say 22, 23, 20-something. I believe

9 somewhere in there.

10 Q. When is the first time you ever bought this stuff

11 for yourself?

12 A. Around the same time after I did it, you know,

13 when I --

14 Q. Who did you buy from?

15 A. It's been so long, I don't know. I remember doing

16 it and getting it, but I was so caught up in it

17 that I don't remember.

18 Q. Were the people you bought from white or black?

19 A. They were white.

20 Q. And in what town?

21 A. Lake Station.

22 Q. And you don't remember any flames?

23 A. Jeff, Arthur, a couple of people at the bar.

24 Q. Which bar?

25 A. Hide-A-While.

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. So at what point in time did your using cocaine

2 turn into you selling cocaine to others?

3 A. Not too long. I mean, I'm thinking like 24, maybe

4 25. I got caught when I was 26. I didn't sell it

5 for long. 24, 25. Yeah, 24 or 25; somewhere

6 around there.

7 Q. Who were your suppliers?

8 A. Drug dealers.

9 Q. Yes, I'm assuming so.

10 A. I don't believe I have to give you the name, you

11 know, because it's not really relevant to what's

12 going on here. That's jeopardizing, you know.

13 Q. Actually, it kind of is.

14 A. Oh, is it?

15 Q. Yes.

16 A. Mark.

17 Q. Mark who?

18 A. Marcos.

19 Q. Mark Marcos?

20 A. Yes.

21 Q. That was your regular supplier?

22 A. Yes.

23 Q. Did you ever buy drugs from Olen Hawkins?

24 A. No.

25 Q. Do you know the name Olen Hawkins?

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. I don't know the last name, but I remember the

2 first name.

3 Q. When is the first time you heard that name?

4 A. Nathan Berkman.

5 Q. Now, you indicated that you acted as a

6 confidential informant to the police in Lake

7 Station, after they came and told you there was

8 some warrants outstanding for you last year; is

9 that correct?

10 A. Yes, sir, it is.

11 Q. Tell me the other occasions on which you have

12 acted as an informant for the police.

13 A. There is no other.

14 Q. You have never, for lack of a better word,

15 snitched to the police about anyone else ever?

16 A. No, I have not.

17 Q. Nathan Berkman is the first time you've ever done

18 that?

19 A. I haven't done that to Nathan.

20 Q. You haven't done that?

21 A. I was just speaking the truth of what he done.

22 Q. That's what snitching is; isn't it?

23 A. Well, I guess you're right, yes.

24 Q. So isn't it a fact that you've had occasion to

25 give law enforcement authorities information about

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 your friends before?

2 A. Isn't it a fact what?

3 Q. That you have given law enforcement authorities

4 information about your friends before.

5 A. Right.

6 Q. And you've done that sometimes even regarding some

7 of your relatives; correct?

8 A. Yeah.

9 Q. Okay. Tell me what that was about.

10 A. That was about she was with Lucky.

11 Q. Okay. Let's go slowly. She being whom?

12 A. Bernice King.

13 Q. Bernice King is one of the women that your mother

14 raised as though it was her own?

15 A. Yes.

16 Q. And she was with whom?

17 A. Lucky -- well, William Ross.

18 Q. Now, what was it that led you to snitch on

19 Bernice?

20 A. I didn't snitch on Bernice; I snitched on Lucky.

21 Q. Why?

22 A. For one, I don't like him, and two, they was going

23 to send me to jail; it was my choice.

24 Q. So you snitched on him to stay on out of jail?

25 A. And plus, I didn't like him.

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
SUPERIOR COURT OF LAKE COUNTY, CRIMINAL DIVISION

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 Q. Was Bernice ever charged with a crime?
- 2 A. I heard she was.
- 3 Q. So that was also the result of the work you did
- 4 regarding William Ross through the Lake Station
- 5 Police?
- 6 A. Yes.
- 7 Q. So basically the work you did led to your sister
- 8 being arrested; correct?
- 9 A. I never said she was my sister.
- 10 Q. You called her a sister, you treated her as a
- 11 sister; is that right?
- 12 A. I didn't call her a sister.
- 13 Q. You two were never close?
- 14 A. We were close.
- 15 Q. She grew up in your home?
- 16 A. Yeah, she's maybe a year or something like that
- 17 when we were kids. We grew up together, yes.
- 18 Q. So your cousin?
- 19 A. Right.
- 20 Q. Okay. Any other informing you've done that has
- 21 gotten people in trouble, other than William Ross
- 22 and Bernice King?
- 23 A. No.
- 24 Q. Was the summer of 2010 the very first time you had
- 25 acted as an informant for the police in your

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 entire life?

2 A. 2001.

3 Q. Tell me about that.

4 A. I got caught for dealing. They asked me to rat.

5 I got out. I didn't rat.

6 Q. You did not?

7 A. I did not.

8 Q. Go on.

9 A. They picked me up on a warrant.

10 Q. What warrant?

11 A. Dealing cocaine, failure to go to court.

12 Q. Okay.

13 A. The Feds picked me up.

14 Q. Where?

15 A. At Waffco.

16 Q. Where?

17 A. Waffco.

18 Q. I don't know -- the spelling, please?

19 A. W-a-f-f-c-o. It's a towing yard.

20 Q. So the Feds came and they picked you up?

21 A. Yes.

22 Q. And then you were asked to act as an informant?

23 A. Yes.

24 Q. Tell me what you did.

25 A. I -- they asked me and I told them that I was with

DIANE C. IANNESSI, CSR, RPR, OFFICIAL COURT REPORTER
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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 Jose and then I just told them that's where I got
2 my cocaine from.
- 3 Q. Jose?
- 4 A. Yeah.
- 5 Q. Now, was that a lie?
- 6 A. Was what a lie?
- 7 Q. That you got your drugs from Jose.
- 8 A. How is it a lie?
- 9 Q. No. Was that a lie or is that the truth? You
10 told them the truth?
- 11 A. Yes.
- 12 Q. What's Jose's last name?
- 13 A. Ortiz.
- 14 Q. And did you try to make a buy for them from him?
- 15 A. No, I did not.
- 16 Q. You just told them that information?
- 17 A. Yes.
- 18 Q. And that was it?
- 19 A. Yes.
- 20 Q. That's the only information you gave them?
- 21 A. They asked did I buy cocaine from him and did I
22 get cocaine from him, and I said yes.
- 23 Q. Okay. Now I'm trying to -- I'm not trying to
24 catch you out or anything. I just want to make
25 sure I'm getting a full picture here because a

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 little while ago, you told me the person you

2 bought your cocaine from was Mark Marcos.

3 A. Right, right, right.

4 Q. So now I want you to please add to the list.

5 We've got Jose and we've got Mark Marcos.

6 A. Right.

7 Q. Who else did you buy from?

8 A. That was it.

9 Q. Just those two?

10 A. Well, Lucky too, I'm sorry.

11 Q. So you bought from Lucky back in '01 and you acted

12 as an informant?

13 A. No, no, no.

14 Q. No, I'm talking about in '01.

15 A. That was Jose Ortiz and Mark Marcos.

16 Q. Uh-huh. Who else?

17 A. That was it.

18 Q. Okay. Those were Lake Station guys?

19 A. Yes.

20 Q. Any other times you've acted as an informant?

21 A. No.

22 Q. Ever?

23 A. No.

24 Q. Now I'm going to work a little bit backwards. You

25 ended your relationship with Tara when you came to

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 jail here; correct? Did I understand that? You

2 said you got arrested?

3 A. Yeah.

4 Q. When was it that that was, that you got arrested?

5 A. October 22nd.

6 Q. And what jail did you go to?

7 A. Lake County.

8 Q. Are where did they put you?

9 A. I can't remember the dorm.

10 Q. One of the pods?

11 A. Yeah, a pod.

12 Q. And then you got moved; correct?

13 A. Yes.

14 Q. Why did you get moved?

15 A. I got into a fight.

16 Q. Why did you get into a fight?

17 A. A couple dudes came to me calling me a snitch.

18 Q. Do you know who those dudes were?

19 A. David, I want to say Barnes. The other two dudes,

20 I have no idea.

21 Q. Did you report that to the COs -- Did you report

22 it to the COs?

23 A. They came in and moved me.

24 Q. And when they -- and then they took you away to

25 another section?

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1 A. Yes.

2 Q. Who was it that they were accusing you of

3 snitching on?

4 A. Lucky and Bernice.

5 Q. So the word was around the jail that you were a

6 snitch?

7 A. Uh-huh.

8 Q. Is that a "yes" or "no"?

9 A. Yes.

10 Q. Where did you get moved?

11 A. WC. I think it was WC.

12 Q. What's WC?

13 A. A pod.

14 Q. Is that where you met Nathan?

15 A. No, the dorm I got into the fight on, that's the

16 dorm where Nathan came in.

17 Q. So you were actually in a dorm when you got into a

18 fight because you were accused of being a snitch,

19 and that's the same dorm you were in at the time

20 you talked with Nathan Berkman allegedly about all

21 of this stuff?

22 A. Yes.

23 Q. All right. Now how long were you and Tara

24 boyfriend and girlfriend?

25 A. About five years.

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. So I'm going back to 2005. Where did you meet?

2 A. I was in prison in 2005.

3 Q. Okay. Tell me when you came out of prison.

4 A. February 21st of '06.

5 Q. Had you met Tara before?

6 A. Yes.

7 Q. So let me find out. When's the first time in your

8 life you ever met Tara?

9 A. I want to say '98, '99, '97, somewhere in there.

10 Q. Party?

11 A. Through a friend.

12 Q. Who was the friend?

13 A. Larry Joe.

14 Q. Larry who?

15 A. Larry Rogers.

16 Q. And what was the relationship between Tara and

17 Larry Rogers?

18 A. They were boyfriend and girlfriend.

19 Q. Okay. So Larry Rogers was somebody you knew,

20 introduced you to his girlfriend, and the two of

21 you hit it off?

22 A. Later on.

23 Q. And that eventually ended her relationship with

24 Larry Rogers; right?

25 A. No, I was in prison when they ended their

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1 relationship.

2 Q. All right. So tell me as best you can, give me

3 your terms of imprisonment.

4 A. Incarcerated?

5 Q. Yes.

6 A. Oh, the terms right now?

7 Q. Yes.

8 A. From '01 to '06.

9 Q. '01 to '06. So you got a little good time on your

10 12 years?

11 A. Yes.

12 Q. What was that for that you got the good time?

13 A. I did my GED, I did drug and alcohol; I did two of

14 them. I did 18 FEMA courses, I did one-on-one

15 counseling, two parenting, one lifestyle, two

16 stress, two anger, I got a drafting degree,

17 Autocad, that's it.

18 Q. So --

19 A. I tried to get my high school diploma but they

20 wouldn't let me.

21 Q. Once you got your GED, they won't let you?

22 A. Right.

23 Q. Now, prior to going to jail in '01, were you and

24 Tara an item?

25 A. We talked here and there. We hit it off here and

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1 there, yes. Here and there, not together.

2 Q. You two were sweet on one another from time to
3 time?

4 A. Right.

5 Q. Okay. And when you came out in '06, was she still
6 your friend?

7 A. Yeah.

8 Q. Now, what I want to know is between 2006 until you
9 ended up in this jail here where you lived. When
10 the first -- you first came out of prison in
11 February of 2006. Where did you move?

12 A. I moved to my cousin's.

13 Q. Which cousin?

14 A. I paroled to 57th and I want to say Hobart. I
15 want to say it's Hobart. I was only there for a
16 couple of weeks maybe, and I went to Linda Singh's
17 house.

18 Q. Then to where?

19 A. Linda Singh's house.

20 Q. Okay. So you and Linda Singh, who is also known
21 as Linda King, was also a cousin of yours that
22 grew up with you?

23 A. Yes.

24 Q. And who lived in Linda Singh's house?

25 A. Her and her three small children.

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 Q. When you say "small," what ages?
- 2 A. Um, Mariah's 15, I think, Brian is like 13, India
- 3 like 10 or 11.
- 4 Q. All the same father?
- 5 A. No.
- 6 Q. Did you ever meet the fathers?
- 7 A. I know one of their fathers.
- 8 Q. What is the name of one father you know?
- 9 A. Dojique (phonetic).
- 10 Q. Spelling?
- 11 A. Don't know.
- 12 Q. Last name?
- 13 A. Singh.
- 14 Q. That's the father of which child?
- 15 A. India Singh.
- 16 Q. Now, is Linda Singh's name, is that a married
- 17 name?
- 18 A. Yes.
- 19 Q. Was she married to Dojique?
- 20 A. Yeah.
- 21 Q. Dojique?
- 22 A. Yeah.
- 23 Q. Thank you. So how long did you live there?
- 24 A. A couple weeks maybe.
- 25 Q. Where did you go after that?

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. I moved in with Tara.

2 Q. And what was that address, the street you can't

3 remember?

4 A. No, that was Camelot. 774 or 775, Camelot Manor.

5 Q. Now, where was Larry Rogers at this time?

6 A. I think he was in jail.

7 Q. Did he stay in jail the whole time that you were

8 together with Tara after that?

9 A. No.

10 Q. Did he think that he and -- to the best of your

11 knowledge, did he think that he and Tara were

12 still an item?

13 A. No.

14 Q. So you had no problems with the fact that you and

15 Tara had become boyfriend and girlfriend?

16 A. Yeah.

17 Q. Did you and Tara then live together until you were

18 finally arrested in this case and brought here to

19 this jail now?

20 A. Yes.

21 Q. Did you ever live with anyone else during that

22 time?

23 A. We moved in with her mom next door.

24 Q. With her mom?

25 A. Yes.

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 Q. Okay. And other than living with Tara or Tara and
2 her mom, did you live anywhere else during that
3 period of time after you got out of jail in '06?
4 A. No, we moved around. We lived together. We moved
5 around different houses.
6 Q. Can you give me the different addresses as best
7 you can remember them?
8 A. 1515 Elm Street.
9 Q. City?
10 A. Griffith, Indiana.
11 Q. Apartment number?
12 A. There is no apartment.
13 Q. Go on.
14 A. I can't think. Something Union Street.
15 Q. That's Hobart; right?
16 A. Lake Station.
17 Q. Oh, Lake Station. Any others?
18 A. The one on Montgomery.
19 Q. And that's the 2534?
20 A. 2515, I believe, and um, yeah, just back with her
21 mom. Between a house and her mom's.
22 Q. Now, why did you move around so much?
23 A. We would work, we wouldn't work because business
24 would be slow.
25 Q. What was your line of work?

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 A. Custom polishing.
- 2 Q. What did Tara do?
- 3 A. She helped me.
- 4 Q. And so about a year -- well, a year after you got
- 5 out of prison on the drug case, that's when your
- 6 daughter was born?
- 7 A. Yeah.
- 8 Q. Did your daughter always live with you after that?
- 9 A. Yes, up until we lost the kids.
- 10 Q. Tell me when you lost the kids.
- 11 A. In '08.
- 12 Q. When you say "kids," how many kids?
- 13 A. We have one together and she has two.
- 14 Q. Why did you lose the child in '08?
- 15 A. We had a restraining order that the State put on
- 16 us.
- 17 Q. Why?
- 18 A. A battery.
- 19 Q. By you on Tara?
- 20 A. Yes.
- 21 Q. So they took the children away, as Children in
- 22 Need of Services, CHINS it's sometimes called?
- 23 A. Yes, CHINS.
- 24 Q. And have you seen the children since?
- 25 A. Yeah.

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. Where are the children living now?

2 A. Angie Soderquist's.

3 Q. You how often did you see the children?

4 A. We was on visitation once a week.

5 Q. Now, between the time of '06 and the time you went

6 to jail in October of 2010, were there times when

7 you would use drugs?

8 A. Uh-huh.

9 Q. Is that a "yes"?

10 A. Yes.

11 Q. Where would you get those drugs?

12 A. A drug dealer.

13 Q. Can you be more precise?

14 A. Two-Five. I don't know his real name.

15 Q. Where?

16 A. In Gary.

17 Q. What sort of drugs?

18 A. Heroin.

19 Q. How often would you get heroin?

20 A. Daily.

21 Q. Can you tell me something about the cost of

22 heroin, how much you would get, how much you would

23 spend?

24 A. 20 bucks, 40 bucks or 60 bucks.

25 Q. Do they have nicknames for those?

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1 A. No.

2 Q. And how long would \$20 worth of heroin last?

3 A. It would last three, four, five, six a day.

4 Q. How much were you spending on heroin a day?

5 A. It all depends.

6 Q. Can you average it?

7 A. Maybe, like I said, 20, 40 bucks a day.

8 Q. Also Tara was using, too?

9 A. Yes.

10 Q. The fight that you had, that was -- were drugs

11 present?

12 A. No, not at all.

13 Q. What was the fight about?

14 A. She had went to her mom's down the street. She

15 came down and she wanted to use the truck. I

16 wouldn't give her the keys. I was sleeping. I

17 had to go do a job at 11:00 o'clock or 12:00

18 o'clock, somewhere around that time.

19 I wouldn't give her the keys, so she got mad,

20 and she sat on the bed and kept smacking me --

21 smacking on me and smacking on me. "Give me the

22 keys, give me the keys".

23 I said, "Leave me alone or I'm going to smack

24 the shit out of you".

25 She kept smacking on me, so I smacked her and

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 that's what she wanted was for me to smack her
- 2 back. She called the cops and I went to jail.
- 3 Q. Was that the last time you and Tara lived
- 4 together?
- 5 A. No, that was in '08.
- 6 Q. Now, did the fact that you were buying heroin as
- 7 often as you were buying it, did that have
- 8 something to do with you were working sometimes
- 9 and sometimes you weren't?
- 10 A. It was just the economy. I detail semi trucks.
- 11 Q. Did you use other drugs, other than heroin?
- 12 A. No.
- 13 Q. And you're telling me that every time you bought
- 14 this heroin, you bought it from strangers?
- 15 A. Yeah.
- 16 Q. Up on 25th?
- 17 A. No, his name is Two-Five, not up on 25th. His
- 18 name is Two-Five.
- 19 Q. Where was he located?
- 20 A. In Gary.
- 21 Q. Where in Gary?
- 22 A. Off of 15th Avenue; he'd meet me on different
- 23 blocks.
- 24 Q. Were you using drugs constantly until you came in
- 25 here?

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. Yes.

2 Q. Have you done anything to help you with that
3 problem?

4 A. As far as -- I don't understand.

5 Q. What are you going to do when you get out?

6 A. Oh, yeah, I'm done with it.

7 Q. Did you ever do drugs with other people during
8 this period from '06 through you going to jail?

9 A. Yes.

10 Q. Did you ever do drugs with Nathan Berkman?

11 A. No.

12 Q. Did you ever do drugs with Arlene Timmerman?

13 A. No.

14 Q. Did you ever do drugs with Meghan Johnston?

15 A. No.

16 Q. Did you ever do drugs with any of the people who
17 you named here?

18 A. Tara.

19 Q. Anybody else?

20 A. Lucky.

21 Q. Anybody else?

22 A. Mark.

23 Q. Mark who?

24 A. Markco.

25 Q. Markco or Marcos?

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. Marcus Marco, Mark Marcos.

2 Q. Where did he live?

3 A. Lake Station and Gary. He lived in Gary and then

4 he moved to Lake Station, and I heard he moved

5 back to Gary. I heard he lived in Lake Station;

6 he was back and forth.

7 Q. I'm sorry? Did you say he was back and forth?

8 A. He was back and forth, I'm sorry.

9 Q. Was he in trouble with the law from time to time,

10 too?

11 A. Not that I know of.

12 Q. How about this Jose Ortiz?

13 A. Yes.

14 Q. Did you know Meghan Johnston?

15 A. No.

16 Q. Do you know Meghan Johnston?

17 A. No, I don't.

18 Q. Have you ever met her?

19 A. If I did, I don't remember her.

20 Q. Have you ever heard her name?

21 A. No, I have not.

22 Q. Have you ever heard the name Arlene Timmerman

23 before?

24 A. Yes, I have.

25 Q. And where did you hear that from -- that name?

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 A. From Nathan.
- 2 Q. Have you ever heard that name other than from
- 3 Nathan Berkman?
- 4 A. No, I have not.
- 5 Q. Do you know the name Peter Resto?
- 6 A. No, I do not.
- 7 Q. Do you know the name Tanya Sullivan, T-a-n-y-a?
- 8 A. No.
- 9 Q. What?
- 10 A. No, I do not.
- 11 Q. Do you know the name Donna Hawkins?
- 12 A. Who?
- 13 Q. Donna, D-o-n-n-a, Hawkins?
- 14 A. No, I do not.
- 15 Q. Do you know the name Shawn Black, S-h-a-w-n,
- 16 B-l-a-c-k?
- 17 A. No, I don't.
- 18 Q. Do you know anybody by the name of Shawn?
- 19 A. No, I do not.
- 20 Q. Do you know anybody by the name of Meghan?
- 21 A. No, I do not.
- 22 Q. Do you know anybody by the name of Arlene?
- 23 A. No, I do not.
- 24 Q. Do you know the name Dennis Kopper, K-o-p-p-e-r?
- 25 A. No, I do not.

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. Do you know anybody else by the name of Dennis?

2 A. No, I do not.

3 Q. Do you know the name of Steven Carson,

4 S-t-e-v-e-n?

5 A. No, I don't.

6 Q. Do you know anybody by the name of Steve or

7 Steven?

8 A. My cousin.

9 Q. What's his full name?

10 A. Steven King.

11 Q. Do you know the name Jeremy Ogden?

12 A. No, I don't.

13 Q. Do you know any Jeremys?

14 A. No, I don't.

15 Q. Let me try this: Do you know David Grissom?

16 A. I know John Grisham.

17 Q. How do you know the name John Grisham?

18 A. He's an author.

19 Q. Have you ever met anybody by the name of David

20 Grissom?

21 A. No, I haven't.

22 Q. About how about Thomas Autterman? Do you know

23 that name?

24 A. No.

25 Q. Do you have any friends by the name of Tom?

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. No.

2 Q. How about Jay Bailey? Do you know that name,

3 B-a-i-l-e-y?

4 A. No, I don't.

5 Q. How about Stephen Houck, H-o-u-c-k? Do you know

6 that name?

7 A. No.

8 Q. How about Joseph Clemmons? Do you know that name?

9 A. No.

10 Q. How about that name Corey Hanrahan, C-o-r-e-y,

11 H-a-n-r-a-h-a-n?

12 A. No.

13 Q. Do you know Troy Campbell? Do you know Troy

14 Campbell?

15 A. No, I don't.

16 Q. Do you know somebody by the name of James Bond,

17 other than the fictional character?

18 A. No, I don't.

19 Q. Do you know the name Brian Woods?

20 A. No.

21 Q. Do you know the name Bill Fazekas, F-a-z-e-k-a-s?

22 A. No, I don't.

23 Q. Do you know the name Shawn Weiss, W-e-i-s-s?

24 A. No, I don't.

25 Q. Do you know the name Azcona, A-z-c-o-n-a?

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1 A. No, I don't.

2 Q. Ever heard the name Eickelberger before,

3 E-i-c-k-e-l-b-e-g-e-r?

4 A. No.

5 Q. Do you know anybody with the last name of Perez,

6 P-e-r-e-z?

7 A. Yes.

8 Q. Who do you know by the name of Perez?

9 A. I'm trying to think. I can't think of his first

10 name right now. It rings a bell. I know somebody

11 named Perez. I can't think of his first name.

12 Q. How about Jackie, J-a-c-k-i-e, last name

13 DeChantel, D-e-c-h-a-n-t-e-l?

14 A. No.

15 Q. You don't know any of those people?

16 A. No, I don't.

17 Q. Okay. Do you know anybody by the name of Donna?

18 A. Yeah, my cousin Donna.

19 Q. Anybody else by the name of Donna?

20 A. No.

21 Q. Do you know anybody by the name of Mary Medved?

22 A. No.

23 Q. Do you know the name of Phillip Stavrakis;

24 S-t-a-v-r-a-k-i-s?

25 A. No.

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. Do you remember back in 2008 that a drug dealer

2 had been going missing?

3 A. No.

4 Q. Did the police ever question you about that?

5 A. About a missing person?

6 Q. Yes.

7 A. No. Can we take a break?

8 Q. Absolutely.

9 A. Thank you.

10 MR. MARCUS: Break taken.

11 MR. PAGE: Can we take a break?

12 THE COURT: Does the jury need a break?

13 MR. PAGE: If the jury doesn't need a

14 break, I'll keep going.

15 THE COURT: Thank you.

16 MR. PAGE:

17 Q. Now we have returned from our break. So you

18 understand, I'm trying to establish if you know of

19 anybody else who might potentially be a witness in

20 the case, so I'm going to ask you about some

21 various other names. You said you don't know any

22 Donnas at all?

23 A. No, I don't.

24 Q. How about any Shirley? Do you know any Shirleys,

25 S-h-i-r-l-e-y or l-y?

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. No, I don't.

2 Q. Do you know any J-a-n-i-s-e-s or J-a-n-s?

3 A. Janis, my aunt.

4 Q. What's your aunt -- don't tell me -- Janis King?

5 A. Yes.

6 Q. Any other?

7 A. No.

8 Q. How about any Ericas? Do you know any Ericas?

9 A. No.

10 Q. Now, running in the world that you ran in, you

11 know the name Hannis; right?

12 A. Hannah, I know one Hannah.

13 Q. Not Hannah, Hannis.

14 A. Hannis.

15 Q. H-a-n-n-i-s.

16 A. No, I never heard of it.

17 Q. Tell me something about, you know, you've more or

18 less been a Lake Station guy, right, over the

19 years?

20 A. A little bit.

21 Q. Well, where else did you live? You lived in

22 Hobart and Griffith for a little bit?

23 A. No, I haven't been in ten or 11 years because

24 after I got out of prison, I didn't really

25 interact with too many people. I mean, it was

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 just me, my kids, my family, work.

2 Q. Did you go to the bar sometimes?

3 A. Used to. I don't anymore.

4 Q. Tell me about what bars you'd go to at that time.

5 A. In 2001 and 2000, I'd go to Hide-A-While.

6 Q. I'm sorry, Hide-A-While. And then the next one?

7 A. He Ain't Here.

8 Q. That's on Ridge; right?

9 A. It's on Central.

10 Q. Central?

11 A. Lake Station.

12 Q. Well, I'm just trying to think, what's the one on

13 Ridge Road? It's got a name like that. But

14 anyhow, go on.

15 A. It was Central Lounge and D.D. Krangles. It was

16 out of Portage on Route 20.

17 Q. Lisa's? Ever heard of a Lisa's?

18 A. In 2001.

19 Q. Ever been there since?

20 A. No.

21 Q. You and I ever meet before -- met before?

22 A. No.

23 Q. Tell me the name Hannah. You said you knew a

24 Hannah?

25 A. Yeah.

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. What Hannah did you know?

2 A. Heavy-set girl, friend of mine.

3 Q. Was that a first name or her last name?

4 A. That was her first name.

5 Q. Do you know an Erica Hannah?

6 A. No, I don't.

7 Q. That's with a C?

8 A. No.

9 Q. When is the very first time in your life you ever

10 met Nathan Berkman?

11 A. Porter County Jail, 2008.

12 Q. Why were you there in 2008?

13 A. Theft.

14 Q. What about the battery on Tara, wasn't that 2008

15 also?

16 A. Yes.

17 Q. So you had a couple of charges back in 2008?

18 A. Yes.

19 Q. Tell me about the theft. What was that all about?

20 A. I stole two fans from Walgreen's.

21 Q. And they caught you in the process?

22 A. No.

23 Q. How did you get caught?

24 A. I walked over by Tara, which was picking up

25 medication from the pharmacy, and they ran her

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 name to see what she was picking up, and they
2 found my name on the computer, and they had my
3 address. And they came to the house and they told
4 her mom they knew the stuff was there, and her mom
5 gave them the stuff.

6 Q. And you got arrested?

7 A. Later on.

8 Q. So they recovered the fans, and later on you got
9 charged with it?

10 A. Yes.

11 Q. And now you were already charged with the theft
12 when you had the fight with Tara?

13 A. Yeah, there was a warrant. That's part of the
14 reason why they took me to jail, because there was
15 no physical marks or nothing. She kept smacking.
16 I had more marks on me than she did. I only
17 smacked her one time. It didn't even leave a
18 mark.

19 Q. Do you know any Veldas? V-e-l-d-a?

20 A. No, I don't.

21 Q. How many different Debbies do you know?

22 A. One.

23 Q. What is Debbie's full name?

24 A. Debra Benham.

25 Q. Spelling?

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1 A. Debra, D-e-b-r-a, B-e-n-h-a-m. She's older;
2 that's my mom's friend.

3 MR. MARCUS: You've answered the
4 question. Let him do his job.

5 MR. PAGE:

6 Q. Did you know any Matts?

7 A. No.

8 Q. Did you ever know Willie Hawkins?

9 A. No.

10 Q. You know any Lisas?

11 A. Ex-girlfriend.

12 Q. What was your ex-girlfriend's name?

13 A. Lisa Barrera.

14 Q. Spelling?

15 A. B-a-r-r-e-r-a.

16 Q. Do you know any Lisa that spells their Lisa with a

17 "Y" in it?

18 A. No.

19 Q. Do you know anybody by the name of Fisk?

20 A. No.

21 Q. Prior to meeting Nathan Berkman, did you know any

22 Berkman's?

23 A. No.

24 Q. Other than Tara and the Lisa you just mentioned,

25 name the other girlfriends you've had in your

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1 life, to the extent that you ever knew their names

2 in the first place.

3 A. Suzanne.

4 Q. Give me the last name when you have it.

5 A. Suzanne Barrera.

6 Q. Spelling for that?

7 A. B-a-r-r-e-r-a; Rita Rivera, R-i-t-a, R-i-v-e-r-a;

8 Michelle, don't know her last name.

9 Q. What is it?

10 A. Michelle, don't know her last name; April, don't

11 remember her last name. You want me to keep

12 going?

13 Q. Yes.

14 A. Um --

15 Q. Yes, I'm trying to figure out who your friends

16 have been.

17 A. Okay. Crystal Mejia.

18 Q. Spelling of both names, please.

19 A. I don't know how to spell her last name. Her

20 first name is C-r-y-s-t-a-l. I don't know how to

21 spell her last name.

22 Q. Okay.

23 A. Stacey Gentry.

24 Q. How do you spell Stacey?

25 A. S-t-a-c-e-y, Gentry. Kathy Lucas.

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1 Q. How do you spell Kathy?

2 A. K-a-t-h-y. Shawna Slavik.

3 Q. Spelling of all of that, please.

4 A. S-h-a-w-n-a, S-l-a-v-i-k.

5 Q. Okay.

6 A. Damaris Bergos.

7 Q. Spelling, please.

8 A. D-a-m-a-r-i-s, B-e-r-g-o-s. Angelica Mattull.

9 Q. If you can spell it, please do.

10 A. A-n-g-e-l-i-c-a, M-a-t-t-u-l-l. That's about it,

11 unless you want me to go when I was a kid.

12 Q. What?

13 A. That's about it, unless you want me to -- to go to

14 when I was really young. I mean, I really

15 don't -- Kathy Lucas, I got with her when I was

16 18 -- or I was 13 and she was 18. So that fills a

17 whole gap, five years.

18 Q. What about John Enson? Do you know any Johns?

19 A. No.

20 Q. E-n-s-o-n or E-n-s-i-g-n, either way?

21 A. Never heard of it.

22 Q. The name doesn't mean a thing to you?

23 A. No.

24 Q. David Storey or Dave Storey, that doesn't mean

25 anything to you?

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. No.

2 Q. You've talked about girlfriends. Tell me the

3 names of the people over the last four years that

4 have been your buddies or boyfriends, whatever the

5 term is.

6 A. I haven't had any friends or buddies.

7 Q. You don't hang out with anyone but your

8 girlfriends?

9 A. That's it.

10 Q. No buddies at all?

11 A. No.

12 Q. Nick Morales?

13 A. Don't know him.

14 Q. Any Nicks at all?

15 A. No.

16 Q. Share with me exactly how it was you first met

17 Nathan Berkman. Tell me exactly how it came

18 about. You told me it was here, you were here on

19 a theft and battery charge, but go on.

20 A. I was here in Porter County Jail and he came in

21 the dorm, and I helped him out with like hygiene

22 and stuff, talked to him here and there.

23 Q. Why is that?

24 A. To talk to him, see why he's here, I mean just,

25 you know, he told me his name and we went from

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1 there.

2 Q. You guys seemed to hit it off as friends well

3 enough?

4 A. No.

5 Q. No?

6 A. No.

7 Q. I don't understand.

8 A. Just because I talked to him --

9 Q. You use the word in question. Acquaintances. Let

10 me use that term. You hit it off as

11 acquaintances?

12 A. Not really.

13 Q. Well --

14 A. I mean, we talked here and there.

15 Q. Why did you talk to him? Help me to understand

16 that. I mean, this is a guy you don't know but

17 you have been talking to him and you help him out;

18 right?

19 A. Right.

20 Q. I call that a friend, but you don't use that term?

21 A. Right.

22 Q. Tell me what you consider your relationship with

23 him to be.

24 A. Somebody to help him out.

25 Q. And that was because?

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 A. He was lost. He looked like a train wreck and

2 didn't have nobody to help him.

3 Q. Did you tell him why he -- did you tell -- did he

4 tell you why he was the way he was?

5 A. Drugs.

6 Q. Did he tell you what kind of drugs?

7 A. Crack cocaine.

8 Q. And that was a scene you knew so you helped him

9 out?

10 A. No, I helped him out because he needed some

11 hygiene.

12 Q. You mean he smelled bad and you wanted to help him

13 out?

14 A. I know -- I know how it is to not have no shampoo

15 or deodorant.

16 Q. That's what I mean.

17 A. So I looked out. I said, "Hey, if you're going to

18 take a shower or something, I'd do it now". That

19 don't mean I like him. I just know how it is. I

20 hate to be in that situation.

21 Q. That's what I mean. You recognized somebody

22 that's been through the same things as you?

23 A. Yeah.

24 Q. All right. So it's been my experience that people

25 in situations like that tend to talk about their

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1 cases.

2 A. Yeah.

3 Q. Did you two talk about your cases when you were

4 here in Porter County?

5 A. Yes.

6 Q. You told him what you were in for?

7 A. I believe so, yeah.

8 Q. Did he tell you why he was there?

9 A. Yes.

10 Q. And did he tell you the reason he was there?

11 A. Stealing steaks.

12 Q. Did he say from where?

13 A. WiseWay in Valpo.

14 Q. How long would you say the two of you were here

15 together at the same time?

16 A. I remember like meeting him like a month or

17 something like that, because I never really talked

18 to him really too much.

19 Q. How many times would you say you talked to him

20 altogether?

21 A. That is something I couldn't even possibly tell

22 you.

23 Q. A dozen? Half a dozen? How often did you talk

24 about your cases?

25 A. Not often. Maybe once.

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1 Q. And then when he was --

2 A. Twice. I don't know.

3 Q. Did you know when he left?

4 A. No.

5 Q. Did you leave before him or did he leave after

6 you?

7 A. I don't remember. Like I said, it's something I

8 wasn't too cool with. I mean, I just helped him.

9 Q. Let me ask you in a different way. Did you not

10 like him?

11 A. No.

12 Q. It was neither way. He just was?

13 A. He just was what?

14 Q. You neither liked nor disliked him? He just was?

15 A. He was all right. He looked like somebody that

16 needed some help.

17 Q. All right. But there wasn't anything about you

18 (sic) that got on your nerves or irritated you?

19 MR. MARCUS: Anything about him.

20 MR. PAGE:

21 Q. Anything about him that got on your nerves or

22 irritated you?

23 A. No.

24 Q. When is the next time you ever saw him?

25 A. Lake County Jail.

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1 Q. How did that come about?

2 A. I was in the dorm and he came in at like 6:00 or

3 7:00 o'clock at night, I guess it was, when he

4 checked in. He got into it with a bunch of guys

5 on his dorm and they ended up moving him.

6 Q. That was the same dorm you were in that you later

7 ended up getting into a fight in; right?

8 A. Yes.

9 Q. How long would you say you were together?

10 A. A couple of weeks.

11 Q. And since that time that you were together in that

12 same unit, have you ever seen him since?

13 A. No, I haven't.

14 Q. During that time that you were together, do you

15 know what bunk you were in or what bunk he was in?

16 A. Visually, yes. But no, I don't remember the real

17 numbers exactly, no.

18 Q. I don't know quite how the layout there works, but

19 tell me about it. I mean, how many bunks are in a

20 particular little area?

21 A. There was like 24 rooms, two men to a room.

22 Q. Twenty-four two-man rooms?

23 A. Yes.

24 Q. So you weren't in the same room with him?

25 A. No.

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1 Q. But he was in the same, what they call pod, with

2 you?

3 A. Yes.

4 Q. So during the course of the day, the doors were

5 open and you could all congregate together in the

6 center of the pod area; right?

7 A. Yes.

8 Q. They used to call that the range. Do they still?

9 A. No.

10 Q. And when you would be out there, that's when you

11 would have occasion to talk to Nathan?

12 A. Yeah, I worked out a lot, and he just wanted to be

13 involved.

14 Q. They had workout equipment there?

15 A. No.

16 Q. But they had stuff that you could work out on?

17 A. No.

18 Q. I'm sorry, I misunderstood then. You said you

19 liked to work out a lot?

20 A. Walk around and do push-ups.

21 Q. Okay. Now sometime during the times that you

22 would talk to Nathan Berkman while you were

23 together for the two or three weeks --

24 A. Yeah, it was something like that.

25 Q. As is natural between prisoners, you'd talk about

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1 your cases with one another; right?

2 A. Yes.

3 Q. What did you tell him about why you were arrested?

4 A. I told him I was there for false informing and --

5 Q. What was this false informing about? Why don't

6 you tell me why you're here?

7 A. I had warrants so I lied about my name.

8 Q. To whom?

9 A. The police.

10 Q. Which police?

11 A. Merrillville.

12 Q. And they figured out who you were anyhow?

13 A. Yes.

14 Q. So how was it that you came into the custody of

15 Merrillville?

16 A. We was at Walgreen's.

17 Q. What happened at Walgreen's?

18 A. They said Tara was stealing.

19 Q. So the police were called?

20 A. Yes.

21 Q. And what date was that?

22 A. October 22nd.

23 Q. And that's the last time you seen Tara?

24 A. Uh-huh.

25 Q. Is that "yes" or "no"?

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1 A. Yes.

2 Q. So when you were in the Lake County Jail, you

3 stayed in the Lake County Jail for a while and

4 then eventually you came here; right?

5 A. Yes.

6 Q. How many different times did you move around in

7 the Lake County Jail?

8 A. Just once.

9 Q. And that was for that fight?

10 A. Yes.

11 Q. So you were in a unit with Nathan. After a while

12 you got into a fight with guys and they moved you

13 away and that's the last time you saw Nathan?

14 A. Yes.

15 Q. Did Nathan tell you why he was in custody?

16 A. Yes.

17 Q. And did he tell you he was -- what he was -- did

18 he tell you he was in custody -- what did he tell

19 you -- your Honor, forgive me.

20 THE COURT: What?

21 MR. PAGE: With my eyes, it gets tiring

22 after awhile.

23 Q. What did he tell you he was in custody for?

24 A. He said that he was being set up. They were

25 trying to get him for murder.

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STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 Q. And did he tell you in what way they were setting
2 him up?

3 A. Yes.

4 Q. Tell me about that. Tell me exactly, was this a
5 conversation that took place on one particular day
6 during this three-week period?

7 A. Okay. Like when we first got there, he was
8 telling me why he was there, and he said that --
9 her and her girlfriend said that he murdered a
10 guy.

11 Q. Did he tell you who the guy was?

12 A. Owen.

13 Q. Owen?

14 A. Owen.

15 Q. That's how you understood the name, Owen, O-w-e-n?

16 A. Yeah, I don't know exactly. I don't know how to
17 spell it.

18 Q. Then did he proceed to tell you what the evidence
19 was against him?

20 A. He said they didn't have nothing.

21 Q. What?

22 A. He said they didn't have nothing besides what she
23 said.

24 Q. And did he proceed to tell you what she had said?

25 A. Yeah.

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1 Q. Did he ever show you your testimony?

2 A. No.

3 Q. Did he have any of his papers there at the time?

4 A. None in my face, no.

5 Q. I mean nothing that you ever saw that way?

6 A. No.

7 Q. Sometimes guys have their court papers and

8 sometimes they don't?

9 A. Right.

10 Q. Do you know whether Nathan had his court papers?

11 A. I have no clue.

12 Q. So you never saw Nathan's court papers?

13 A. No, I did not.

14 Q. So Nathan proceeded to tell you that Arlene had

15 said this, that, and the other thing against him;

16 correct?

17 A. Yes.

18 Q. And he **gave** you all this stuff in which way he

19 felt that she was framing him; correct?

20 A. Yes.

21 Q. And you relayed that information to the police;

22 correct?

23 A. Yes.

24 Q. Now, when you relayed that information to the

25 police, were you telling the police that Nathan

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1 confessed or were you telling the police that this

2 was the evidence that he told you that they had

3 against him?

4 A. I just told him what he told me.

5 Q. Tell me from start to finish exactly what he told

6 you.

7 A. He ended up telling me that he called a drug

8 dealer, Owen. He met him at WiseWay; he was going

9 to rob him.

10 Owen pulled out a big bag of coke and he cut

11 him. He cut him from ear to ear and he robbed him

12 for a couple ounces of dope and a bunch of money.

13 He kicked him over to the passenger seat --

14 pushed him over to the passenger seat, drove the

15 car. It was right next to WiseWay and he parked

16 the car in a garage.

17 He had a cell phone he threw up on the

18 WiseWay building. He left the guy there for two

19 or three days and he went into the house.

20 And I remember him saying that Arlene was

21 there and there was other people, but he didn't

22 say who.

23 He said, "We just fucking partied and shit,

24 smoking crack and stayed fucked up". I'm sorry

25 for the language.

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1 He was like, you know, "All the drugs were
2 gone and I had to get rid of the body, so Arlene
3 followed me to Chase Street".

4 He ditched the car, took a gas can, poured it
5 on him, lit it on fire. He left the gas can. He
6 jumped in the car with Arlene and took off.

7 He said that Arlene snitched him out because
8 he threatened to kill her. And I told him, "Well,
9 yeah, you just fucking cut a guy from ear to ear
10 for some dope. What makes her think you're not
11 going to kill her? That's why she snitched on
12 you. You threatened your woman". That was it.
13 And he got scared -- excuse me, and she got scared
14 and she went to the police.

15 Q. Now, what you have just revealed to us, are there
16 any details you've left out?

17 A. Not that I can think of, not really.

18 Q. Did he tell you this story almost as quick as
19 that?

20 A. Yeah -- well, probably not as quick as that. But
21 he told me a little bit one day, and then the next
22 day he told me everything.

23 Q. Okay. Now I'm of the impression from what you
24 said at the beginning, that he told you he was
25 charged with murder, that he was being framed?

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1 A. Right.

2 Q. Can you suggest to me what it was that happened in

3 the course of your relationship with him during

4 those two or three weeks that led him -- led to

5 him telling you, not that he had been framed

6 apparently, but that he did it?

7 A. I think it has a lot to do with -- he was happy to

8 see me on the dorm, okay? He was like, "If

9 anything happens to me, you've got my back.

10 You've got my back".

11 I was like, "Yeah".

12 He was like, "I just came from the dorm where

13 dudes tried to jump me all the time. I got in a

14 bunch of fights and stuff".

15 He was like, "I know you're a solid dude. I

16 know I can't ever push you around, you know,

17 because you've got my back and I got yours". You

18 know what I'm saying? Like a buddy-type thing in

19 the jail. "You watch my back, I'll watch yours".

20 And we were working out together every day and

21 eating and stuff, and he felt comfortable with me.

22 That's what I got.

23 Q. And so all of a sudden he said well --

24 A. He just needed somebody to talk to and somebody to

25 tell, and so he told me.

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- 1 Q. So he just said, "Yeah, it's true, I did it," and
2 he proceeded to tell you how it happened?
3 A. Yeah.
4 Q. Did he ever say why he was telling you?
5 A. No.
6 Q. And what did you do after he told you? How long
7 were you there before you were taken from the
8 section because of your fighting?
9 A. I couldn't even tell you.
10 Q. Did Nathan have anything to do with you getting in
11 that fight?
12 A. No.
13 Q. Was Nathan getting into fights with anyone else?
14 A. No.
15 Q. Did he ever threaten you not to tell anybody?
16 A. No.
17 Q. And after he told you these things again, you say
18 you don't know how long it was before you were
19 taken away?
20 A. No, I don't.
21 Q. Days? Weeks?
22 A. I just told you, I don't know.
23 Q. I mean at all. Once again, you would have a
24 better idea. Was it toward the end of your stay
25 there or toward the beginning of your stay there

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1 or the middle of your stay there?

2 A. I would say middle.

3 Q. Where did you go after they took you out of that

4 section?

5 A. To another pod, WC.

6 Q. And when you were in that other section, what if

7 anything did you do with the information that

8 Nathan had given you?

9 A. What was that?

10 Q. What if anything did you do with the information

11 that Nathan had given you?

12 A. I wrote the prosecuting attorney.

13 Q. Who did you write?

14 A. I can't remember the name.

15 Q. Why that particular prosecutor?

16 A. Because it said prosecuting attorney on the window

17 with a bunch of names and a bunch of different

18 courts and a bunch of different offices, and that

19 was the closest one that said Lake County, so I

20 wrote one of them.

21 Q. And what did you write?

22 A. I wrote what he told me.

23 Q. What exactly did you write?

24 A. That I had information about him threatening his

25 girlfriend to kill her through some guy named

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- 1 Danny through a visiting window to his dad.
- 2 Q. Let's talk about that. What's that about, that
- 3 Danny thing? What are you talking about?
- 4 A. He was going to visit; I went upstairs.
- 5 Q. In the pod?
- 6 A. In the pod. I went upstairs and found a note.
- 7 Q. Found a note where?
- 8 A. On the tier, on the ground.
- 9 Q. And when you say tier, help us understand for
- 10 those of us that aren't familiar.
- 11 A. A tier is like a catwalk.
- 12 Q. Okay. So you had found a note. What does that
- 13 have to do with anything?
- 14 A. The note had said to extent of, "Get Danny to stop
- 15 her. Set her up. She's taking 30 to 60 years of
- 16 my life. Help me. Let Danny know" then he said,
- 17 "Dad".
- 18 Q. What?
- 19 A. It said "Dad".
- 20 Q. It was signed "Dad"?
- 21 A. No, it wasn't signed. It said "Dad".
- 22 Q. It was addressed to dad?
- 23 A. Yes.
- 24 Q. What does that have to do with Nathan Berkman?
- 25 A. I don't know if it had anything to do with him at

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

- 1 that time. I said, "Hey, who is Danny"?
- 2 Q. To whom?
- 3 A. To Nathan.
- 4 Q. Why did you say that to Nathan?
- 5 A. To see if it was his letter.
- 6 Q. Why did it even occur to you that it might be his
- 7 letter?
- 8 A. 30 to 60 years, set her up, get her, make her pay.
- 9 It sounds like it would be Berkman because he kept
- 10 talking about Arlene. Arlene, Arlene, Arlene.
- 11 "I should do this to her and that to her".
- 12 He was going to get her. He had a personal
- 13 vendetta against her.
- 14 And the fact that he's saying, "Have Danny
- 15 get her, set her up, don't let her do this,
- 16 30 years I'll miss of my life".
- 17 And it was upstairs right by his room. And
- 18 everybody else was up there for drugs, drugs,
- 19 beating up a kid, so I assumed -- I didn't even
- 20 show him the -- it was in my pocket and I walked
- 21 in his room and said, "What's up, man? You going
- 22 to your visit?"
- 23 He was like, "No, man".
- 24 He was looking under his bed and stuff, you
- 25 know. I was like, "Hey, who's Danny"?

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1 And that's when he freaked out on me. He
2 said, "Give it here, give it here now. Give it to
3 me, give it to me".

4 I was like, "Whoa, give you what?"

5 He was like, "You know what I'm talking
6 about. Give it to me. I'll get in trouble for
7 that".

8 I was like, "Here". I gave him the little
9 note. It was about that big. (Indicating)

10 Q. What were you doing up on that tier?

11 A. I was going upstairs to talk to one of the guys
12 that was up there.

13 Q. Who?

14 A. They call him Opie.

15 Q. Opie?

16 A. Yeah. I don't know his full name, but I was cool
17 with a couple of guys that was up there before he
18 even came along.

19 Q. So you go on up there, you found this note, you
20 stick it in your pocket why?

21 A. Because it was something not good. Me being --
22 you know, I picked it up.

23 Q. What difference did it make to you?

24 A. Because I thought it was Nathan.

25 Q. So you were going to help your buddy out or you

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 were going to threaten him with it?

2 A. No, I wasn't going to threaten him at all. I was

3 just going to give him his information.

4 Q. Any other encounters other than that, other than

5 him telling you over what you say was a couple of

6 days, that you say he confessed to you, told you

7 all the details of how it happened; right?

8 A. Yeah.

9 Q. And he also told you beforehand that those were

10 the ways in which Arlene was trying to set him up

11 also; right?

12 A. Yeah.

13 Q. And then you say you found this letter?

14 A. Uh-huh.

15 Q. And you kind of played with him on it and then you

16 gave it back to him; right?

17 A. Yes.

18 Q. And then you two were buddies after that still?

19 A. Yeah, I mean, I still talked to him and stuff.

20 Q. And he was never negative to you after that or

21 anything?

22 A. Uh --

23 Q. No threatening, nothing?

24 A. No, he didn't threaten me or nothing like that,

25 no.

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- 1 Q. And then after you got out of this section, the
2 first thing you did was you wrote to a prosecuting
3 attorney? You don't know the name of the person?
4 A. I don't know if it was the first thing I did.
5 Q. How long was it?
6 A. Couple of days, we'll say a week.
7 Q. Now at the time you wrote that letter, what was
8 your situation? What were you in custody for?
9 A. A doctor bill.
10 Q. About what?
11 A. A doctor bill.
12 Q. What else?
13 A. The battery in Lake Station and false informing.
14 Q. Did they have a hold on you from here in Porter
15 County also?
16 A. Yeah.
17 Q. All right. Now, had the battery case been
18 resolved yet?
19 A. No.
20 Q. Who was your lawyer in that case?
21 A. Don't have one.
22 Q. You were representing yourself?
23 A. I just ain't been to court, so I'll probably get
24 an attorney.
25 Q. So you never went to court in that battery case?

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1 A. I have, yeah.

2 Q. Who was the Judge?

3 A. I don't even know his name.

4 Q. But it's a "him"?

5 A. Yes.

6 Q. And so what about the doctor bill case? What

7 happened there?

8 A. They OR'd me.

9 Q. And who did that?

10 A. Julie Cantrell.

11 Q. So you also had, besides that, you had a theft

12 case. What was the other case? You had the

13 battery, the doctor bill and what else?

14 A. I had to do a paternity test in the CHINS court in

15 Porter County.

16 Q. Who was that supposed to be with?

17 A. What do you mean, "with"?

18 Q. Well paternity of whom?

19 A. My daughter, Nevaeh.

20 Q. Okay. So at that time, Tara was trying to get

21 child support?

22 A. No, the state.

23 Q. The state because Tara was getting benefits?

24 A. No.

25 Q. I don't understand. Why would the state come in?

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1 A. My daughter was with her aunt.

2 Q. I understand now. They wanted -- aren't you on

3 the birth certificate?

4 A. Yes.

5 Q. How long was it before you wrote the prosecutor

6 after you got out of the cell with Berkman?

7 A. I told you about a week; that's guessing.

8 Q. And did somebody come talk to you?

9 A. No. Yeah, later on in the Porter County Jail.

10 Not in Lake County, no.

11 Q. You only wrote the one letter?

12 A. I wrote two. I wrote --

13 Q. Tell me about the first one and then tell me about

14 the second one.

15 A. I wrote one and nobody responded, and I think it

16 was the second one, I got a response. It could

17 have been the first or the second. I don't

18 remember, no. One of them didn't because they sent

19 it back and said I needed a cause number, so that

20 is the second letter.

21 (Defendant's Exhibit No. 2, document marked

22 for identification.)

23 MR. PAGE:

24 Q. I will show you what's been marked for

25 identification purposes as Deposition Exhibit A.

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1 I'd ask you to look at it and tell me if you
2 recognize what it is.

3 And your Honor, it's been marked for the
4 purposes of the trial as Defendant's Exhibit 2.

5 THE COURT: I have it.

6 THE WITNESS:

7 A. Yeah.

8 MR. PAGE:

9 Q. What is that?

10 A. That's what I wrote.

11 Q. I'm sorry, that's one of the letters you wrote?

12 A. Yes.

13 Q. Is that a true and accurate copy and complete copy
14 of the letter you wrote?

15 A. Yes.

16 Q. Is that the first or second letter you wrote?

17 A. Second.

18 Q. And when did you send it -- that?

19 A. Is it dated?

20 Q. I don't know. I don't have it. Did you date it?

21 A. Is there one on there?

22 Q. I don't know. Look at your handwriting. Did you
23 date it?

24 A. There's no date on it.

25 Q. When did you leave the Lake County Jail and come

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1 over here to the Porter County Jail?

2 A. December 10th.

3 Q. Do you know why?

4 A. Because I had a hold.

5 Q. You'll forgive me, but it's unusual for somebody

6 to be taken out of the Lake County Jail for a hold

7 in Porter County before they finish their Lake

8 County cases.

9 A. I was done.

10 Q. Tell me when you first finished your battery case.

11 A. It's still pending; I got OR'd.

12 Q. You were OR'd on the battery case as well?

13 A. Yes.

14 Q. Do you remember when somebody came here, a police

15 officer came here and talked to you about this?

16 A. Like maybe two weeks ago?

17 Q. Did he have a tape recorder with him?

18 A. Yes.

19 Q. And did he ask you about a bunch of questions and

20 go through what he wanted to talk to you about?

21 A. Yes.

22 Q. And then did he later then turn on the recorder

23 and take a formal statement from you?

24 A. Yes.

25 Q. I'd ask you to look at what's been marked for

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1 identification purposes as Exhibit B. I'd ask you

2 to tell me if you recognize what that is.

3 A. Yes.

4 Q. Have you seen that before?

5 A. No.

6 Q. Would you read through it and tell me if that's

7 what you told the police officer on the tape

8 recording that day.

9 A. The whole thing?

10 Q. Yes. I'm sorry, yes. And if you have any changes

11 or corrections you want to make, we'll take that

12 up afterwards. And reading. Take your time, read

13 through it, make a little "X" next to it if you

14 need to. We'll come back to it.

15 Mr. Barraza, you've had awhile here and you

16 have taken your time and you've gone through all

17 17 pages of this statement; is that correct?

18 A. Yes, sir.

19 Q. And to the best of your recollection, is that how

20 your tape recorded conversation went down?

21 A. Yes, sir.

22 Q. And are there any changes you would make to this

23 statement?

24 A. Just like his name Olen. He was like Owen.

25 Q. So you remembered it being Owen, but they have

STATE'S WITNESS: PAUL BARRAZA (VIA DEPOSITION)

1 written Olen; correct?

2 A. Yes.

3 Q. And did Mr. Berkman ever at any time tell you the

4 last name of the person he was accused of having

5 harmed?

6 A. No, he did not.

7 Q. So when the last name is used in here, that's just

8 the officer's choice of the words, not yours;

9 correct?

10 A. Yeah.

11 Q. And although they have typed "Olen" each time,

12 when you were answering, you were saying "Owen"?

13 A. Right.

14 Q. Is that correct?

15 A. (No response.)

16 Q. I need to have you answer out loud, please.

17 A. Yes, I'm sorry.

18 Q. And you're saying that this was something more

19 than Nathan tell (sic) you what he believed the

20 framed evidence was against him? You're saying

21 that you understood him to be telling you that

22 this was something that he actually did?

23 A. Yes.

24 Q. Have you at any time in your life ever had

25 occasion to talk about this case with anyone but

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1 Detective Grissom?

2 A. No.

3 Q. Have you ever met anybody in this room before

4 today?

5 A. No, sir.

6 Q. Your out date is in March; correct?

7 A. Yes, sir.

8 Q. Where are you going to live when you leave here?

9 A. Probably with my sister, the one you referred to.

10 Q. And are you going to at that time -- and you're

11 currently on bond for several offenses, even

12 though it's your own recognizance?

13 A. Oh, yeah.

14 Q. So you still have those charges in Lake County to

15 answer for; is that correct?

16 A. Yes, sir.

17 Q. When did you expect to wrap those up?

18 A. This year.

19 Q. What are you doing about getting a lawyer in those

20 cases?

21 A. I don't really need a lawyer; I'll probably go

22 pro se.

23 Q. By "pro se," you mean represent yourself?

24 A. Yes, sir.

25 Q. And is the Judge in those cases, is that

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1 Judge Cantrell also?

2 A. Yes, sir.

3 Q. Are you hoping the State will help you out somehow

4 in those cases on account of your helping them

5 out?

6 A. No, sir.

7 Q. Mr. Barraza, please tell me in your own words why

8 you would rat out a fellow inmate like this.

9 A. In my own words?

10 Q. In your own words.

11 A. Because I really think he's a piece of crap to

12 kill somebody's parent. That's cold-blooded. And

13 if he'd do it to him like he threatened his old

14 lady -- well, his girlfriend -- I believe he would

15 kill her or the next man for a sack of drugs.

16 Just like if he would kill you, I would say

17 the same things. He's wrong. I've done a lot of

18 things but I ain't no cold-blooded murderer.

19 That's like killing -- that's like somebody

20 killing my dad. Even though he's a drug dealer or

21 what he may do, that's just wrong.

22 Q. What made you think the guy that was killed was a

23 father to anyone?

24 A. He told me he was an old man. That's somebody's

25 grandfather.

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1 Q. How do you know he had children or grandchildren?

2 A. It don't matter. I assumed.

3 Q. So you're doing this because you think Nathan

4 Berkman is a terrible person for killing him?

5 A. Yeah, I think it's wrong.

6 MR. PAGE: I have nothing further at this

7 time.

8 MR. MARCUS: I believe that that's all of

9 the substantive matter.

10 Do you want to advise him?

11 MR. PAGE: Oh, yes, the rest is just

12 standard, end of deposition advisement, waiving

13 signature.

14 THE COURT: Finish it off.

15 MR. PAGE: Mr. Marcus.

16 THE COURT: Mr. Marcus.

17 MR. MARCUS: Question -- all right. You

18 want to advise him?

19 MR. PAGE: You can advise him.

20 MR. MARCUS: You have the opportunity to

21 come back and read this transcript if it's reduced

22 to a transcript. You have the right -- you have

23 that right and you have that privilege. You don't

24 have to do that.

25 If you read the transcript and you believe

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1 that she recorded something in error or that you
2 testified mistakenly or that you can recall
3 something differently, you can't change what's in
4 the transcript, but you can provide what's called
5 an errata sheet, and you can write those
6 differences on that errata sheet and that document
7 will be maintained with a record of these
8 proceedings.

9 You can do that or trust that everything went
10 down properly, that you testified truthfully and
11 completely and waive the reading. What would you
12 like to do?

13 THE WITNESS: I believe he did a good
14 job. I mean, I believe --

15 MR. MARCUS: It's notwithstanding whether
16 he did a good job or not.

17 THE COURT: Mr. Page.

18 MR. PAGE: Thank you. I appreciate that,
19 Mr. Barraza.

20 THE WITNESS: I believe it's okay.

21 MR. MARCUS: So you want to waive the
22 reading?

23 THE WITNESS: Yes.

24 MR. MARCUS: Okay.

25 MR. PAGE: Now, at this time, your Honor,

1 they are testifying.

2 And that's not just true of a courtroom. The
3 Judge will even mention that in her instructions,
4 I believe. Their demeanor, their behavior while
5 testifying.

6 But even the detectives told you that that
7 was the number one thing that many of them look
8 for.

9 And you know it as well. Whether you're
10 dealing with a child of your own or you're dealing
11 with a friend, you want to see what their reaction
12 is when they're confronted.

13 Even if you hear that maybe someone, another
14 friend said something, you call them together and
15 say so-and-so told me you said this, so they're
16 confronted so the truth comes out because then you
17 can judge it from that, you can judge which one of
18 those --

19 THE COURT: Mr. Page, don't give your
20 appeal argument to this jury, just do the facts.

21 MR. PAGE: I'm sorry, I'm passionate.

22 THE COURT: I know.

23 MR. PAGE: The fact of the matter is,
24 ladies and gentlemen of the jury, is you did not
25 have that opportunity. You had only two people