

Testimony

IN THE MAGISTRATE'S
COURT IN AND FOR DADE
COUNTY, FLORIDA

No. 73-05451

STATE OF FLORIDA, :
vs. :
VALENTIN HERNANDEZ, :
Defendant. :

Proceedings had and taken before the
Honorable Arthur Maginnis, Magistrate, at 1351 North-
west 12th Street, Miami, Florida, on March 29, 1973,
commencing at approximately 5:00 o'clock p.m.

THE COURT: Good evening, Mr. Barone.

MR. BARONE: Good evening.

THE COURT: Is the defendant ready?

MR. BARONE: No, I am not ready.

THE COURT: Is the State ready?

MR. MISHKIN: The State is ready.

MR. BARONE: Judge, I would indicate to the Court that I have a copy -- I believe I have a copy -- in fact, I am sure of -- of the affidavit filed here and I would submit to the Court that I feel it would be subject to a valid motion to quash.

I would like an opportunity to prepare a written motion to submit to the affidavit itself which is the basis of the charge here.

THE COURT: That will be denied.

MR. BARONE: Pardon me?

THE COURT: You want to file a written motion?

MR. BARONE: Yes, Judge.

THE COURT: I don't know. Denied.

MR. BARONE: Your Honor, I would also indicate that the -- I don't know how many witnesses the State has, but I see a lot of people here.

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And, of course, I realize I am not entitled to any discovery at this time; but that is why I say, when I read the affidavit, I thought there would be only at the most the police officer here, since this was based on his affidavit, and probably another witness.

But if the State has --

THE COURT: They may not all testify.

Swear the witnesses.

All witnesses step up, Mr. Nieves and Mr. Lemon, stand up.

Nieves and Lemon.

Any officers involved here?

MR. MISHKIN: No officers are present, your Honor.

THE COURT: Swear the witnesses.

(Thereupon all witnesses present were duly sworn.)

THE COURT: Any witness that is not testifying, please leave the Courtroom.

Who is going to be first?

MR. MISHKIN: Mr. Nieves will be first.

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Have the other gentleman step out.

Mr. Lemon, please step outside.

THE COURT: Do you speak English?

MR. NIEVES: A little bit.

MR. MISHKIN: I would just indicate to the Court that I was unable to converse with him outside without an interpreter.

THE COURT: We will see how we do.

THEREUPON:

LUCIANO NIEVES

was called as a witness on behalf of the State of Florida and, having been previously duly sworn, was examined and testified through the aid of an interpreter, Manuel Yanez, as follows:

DIRECT EXAMINATION

BY MR. MISHKIN:

Q Please state your name and your address.

A Luciano Nieves.

THE COURT: Where do you live?

THE WITNESS: 6038 Southwest 24th Street.

BY MR. MISHKIN:

Q Now, on March 20th, 1973, did any-

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thing unusual happen to you?

A Of course, I received a hit with a chair.

Q Where were you at this time?

A I was sitting down in a restaurant in Bersayas Restaurant on 8th Street.

THE COURT: Whereabouts on 8th Street?

THE WITNESS: Southwest 8th Street and 36th Avenue.

BY MR. MISHKIN:

Q What were you doing in the restaurant?

A I was having my lunch. I was invited. A gentleman with us right now.

Q Just the two of you sitting there.

Now, would you please tell the Court exactly what happened and the order that it happened while you were sitting there.

THE COURT: Are you on this case?

UNIDENTIFIED OFFICER: Yes, sir.

THE COURT: The policemen just got here.

Would you officers please step outside.

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THE WITNESS: I happened by to my friend, I told before to have lunch in the restaurant. We were there eating and we have already finished our lunch.

Then came this subject (indicating).

MR. MISHKIN: Indicating the defendant for the record.

THE WITNESS: He took the chair and myself say nothing. He took an iron chair. Myself said nothing.

He took the chair and hit here (indicating).

My friend when he saw the action, he stepped up.

And I hear a cry.

BY MR. MISHKIN:

Q After he hit you with the chair, did he do anything else?

A He screamed.

Q Who screamed?

A The man (indicating).

Q Finished what?

THE COURT: Screamed what?

THE WITNESS: "I am going to kill you any place I see you."

BY MR. MISHKIN:

Q He said something in his testimony about a pistol.

A He took, have a pistol here (indicating); and when my friend stand up, he want to hit my friend.

He hit my friend; and he told me, "I want to kill you. I am going to kill you."

Q And where was the pistol pointed at that time?

A Right here (indicating).

Q It was pointed at him right there (indicating)?

A Here (indicating).

THE COURT: Why does this man want to kill you?

THE WITNESS: I don't know. I don't know why. I don't know he.

THE COURT: How long have you known him?

THE WITNESS: Exactly from the day

he hit me with the chair.

BY MR. MISHKIN:

Q Did you ever see him before he hit you with the chair?

A Never in my life.

THE COURT: Why did he hit you with the chair?

THE WITNESS: I don't know. It would be maybe he's crazy. Maybe he's a drunk.

THE COURT: Was he drunk?

THE WITNESS: I don't know.

THE COURT: Where is that, the Trio Diner? Was this in the Trio Diner?

MR. BARONE: No, Judge.

THE COURT: Where did this happen? 36th and the Trail.

What is the name the -- Bersayas.

Which side of the street is that on, north or south?

THE WITNESS: South.

THE COURT: South side?

THE WITNESS: Southwest 8th Street.

THE COURT: I know that. All right.

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MR. MISHKIN: I have two additional questions, if I may, your Honor.

BY MR. MISHKIN:

Q What injuries did you suffer from being hit with the chair?

A Right here (indicating). My head was broke. My head.

Q Did you require any medical attention? If so, what?

A Yes.

THE COURT: What kind of work do you do?

THE WITNESS: I am operate driver. Now--

THE COURT: Are you in the Union?

THE WITNESS: Yes.

THE COURT: Operating engineer?

THE WITNESS: Operate. I don't know they have the name of engineer.

THE COURT: Operating engineer. He does not work with you or anything?

THE WITNESS: No.

BY MR. MISHKIN:

Q Did all this happen in Dade County?

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additional testimony at this time. You can act as you wish.

MR. MISHKIN: I feel that I have showed more than probable cause for -- I withdraw that, if I may. I call the other witness.

THE COURT: You had better if you want to go any more with this.

THEREUPON:

MICHAEL LEMON

was called as a witness on behalf of the State of Florida and, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MISHKIN:

Q Please state your name and address for the record.

A My name is Michael Lemon, 11510 Southwest 40th Street.

Q Were you eating lunch on March 20th with Mr. Nieves who was just in Court?

A Yes.

Q Please tell the Court what happened during lunch.

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MR. BARONE: Well, that is all.

MR. MISHKIN: I will point out there were two deadly weapons: a pistol and a chair.

THE COURT: I am going to bind him over on assault and battery.

MR. BARONE: I think there is a question of identification. They have never seen this man. They have given no reason for this alleged attack. I mean, there could be an accident--

THE COURT: I am sure there is something but it is not before the Court as far as any motive or anything.

MR. BARONE: They have never seen this man before, if this is the man. I --

THE COURT: Are you sure this is the man?

MR. LEMON: Yes.

THE COURT: How do you know?

MR. LEMON: Well, when I get there to the restaurant, he was having lunch with somebody there.

And, you know, I walked to that table; and I say, "Hello," to a friend of mine that was

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having lunch with him and kind of say hello to him.

He finished his lunch and I guess he wasn't out because I was not facing the door when he went out.

THE COURT: How can you be sure this is the same fellow?

MR. LEMON: Well, his description, your Honor, and the hair and -- this fellow, I cannot be mistaken.

MR. MISHKIN: You had an opportunity to look at him?

MR. LEMON: Yes. Well, before and after.

When I walked into the restaurant, he happened to be there, and during the incident, you know.

MR. BARONE: Let me ask this man a couple of questions.

THE COURT: Go ahead.

MR. BARONE: Mr. Lemon, were you present when this gentleman was arrested?

MR. LEMON: No.

MR. BARONE: Was he arrested in or

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or about the premises, to your knowledge?

MR. LEMON: I have no knowledge.

MR. BARONE: So you do not know how he came to be arrested; do you?

MR. LEMON: I don't know.

MR. BARONE: In fact, you do not know what day, when he was, in fact, arrested; do you?

MR. LEMON: I have no idea.

MR. BARONE: Before this hearing here, of course, you said you had never seen him before or ever knew who he was before; is that correct?

MR. LEMON: Yes.

MR. BARONE: So you certainly had no way of knowing what his name was; is that correct?

MR. LEMON: I have no way, yes.

MR. BARONE: All right.

MR. MISHKIN: Okay. No further questions.

THE COURT: Well, the Court is going to bind him to the County Court.

MR. MISHKIN: The State will no action all charges at this time.

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THE COURT: No action?

MR. MISHKIN: No action, your Honor.
I am nolle prosequing it so I will not have to nolle
prosequere it in County Court.

THE COURT: I have already bound it
over. Do you what you want to.

MR. MISHKIN: Okay. Thank you,
your Honor.

(Thereupon the hearing
was concluded.)

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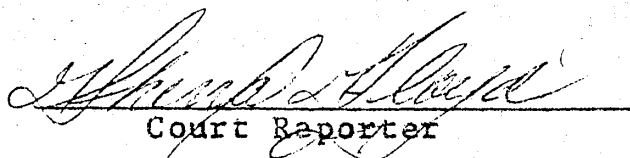
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CERTIFICATE

I, SHERRA FLOYD, do hereby certify that the foregoing transcript, pages 1 through 19, is a true and correct transcript of the testimony taken and proceedings had in the above cause of STATE OF FLORIDA versus VALENTIN HERNANDEZ, Defendant, case number 73-05451, heard before the Honorable Arthur Maginnis, Magistrate, on March 29th, 1973, in the Magistrate's Court in and for Dade County, Florida.

Dated Miami, Dade County, Florida,
this 13th day of September, 1973.


Court Reporter

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