

CIRCUIT COURT - 11th JUDICIAL CIRCUIT

DADE COUNTY "CRIMINAL DIVISION"

THE STATE OF FLORIDA

VS. NO. 73- 5087 -CF- -03

*Humberto Lopez*

Evidence

W/M 12/7/41  
 460 W. 42 PL

I. D. # 170507

Notify Parent

Appoint Public Defender

Bonds 1000 RIC

Bond Estreature

Alias Capias  SEP 19 1974

(GW)

*new info*

Arraignment	AUG 1 1973	SEP 4 1973	SEP 10 1973	SEP 25 1973	DEC 13 1973
Guilty		/		/	nolo
Not Guilty	✓	/	✓	/	
Waiver of Jury		/		/	
State	C. Poole	Robt Kaye	do	do	do
Defense	M. Grossman	left now counsel	M. Grossman	no counsel	do
Reporter	B.A. Rolland	J. Casey	J. Garza	Robt Castillo	J. Ounan

Date	Description	Deft.	Continued	S
AUG 1 1973	DEFENSE ELECTED TO INVOKE STANDARD MOTION RULES			
SEP 4 1973	Recip. <i>State filed new info.</i>	(GW)	8-1-73	
SEP 10 1973	recip. <i>Desconey</i>		AUG 1 1973	
SEP 25 1973	mot to amend <i>Information in file.</i>	Gu	9-10-73 to	
		SEP 4 1973	9-10-73 arr	
		SEP 10 1973	10-1-73 tr	
		OCT 1973	10-4-73 Dept T	
		OCT 4 1973	12-3-73 tr	
		DEC 3 1973	12-4-73 report	
		DEC 4 1973	12-12-73 tr	
		SEP 12 1974	9-19-74 Prob	
			Notify Dept	
		OCT 10 1975	11-7-75 PWT	
			11-14-75 8AM	

Information Dismissed SEP 4 1973 *(off July 19-73)*  
*new info filed*

Case Dismissed

No Further Information

Absentee Docket

73. 50  
 2-1912

*Josef*



CIRCUIT COURT - 11th JUDICIAL CIRCUIT

DADE COUNTY "CRIMINAL DIVISION"

THE STATE OF FLORIDA

VS. NO. 73- 5087 -CF- -03

*berto Lopez*

Evidence

W/M 12/7/41

460 W. 42 PL

I. D. # 170507

Notify Parent

Appoint Public Defender

o R I C

ture

SEP 19 1974

(GW)

*new info*

	AUG 1 1973	SEP 4 1973	SEP 10 1973	SEP 25 1973	DEC 13 1973
Curry	✓	/	✓	/	<i>nolo</i>
	<i>C. Poole</i>	<i>Robt Kaye</i>	<i>do</i>	<i>do</i>	<i>do</i>
	<i>M. Grossman</i>	<i>deft now</i> <i>counsel</i>	<i>M. Grossman</i>	<i>not counsel</i>	<i>do</i>
	<i>B. P. Rolland</i>	<i>J. Casey</i>	<i>J. Barza</i>	<i>Robt Castillo</i>	<i>J. Duran</i>

DEFENSE ELECTED TO INVOKE STANDARD PROTECTIVE RULES

*Recip.*

*3 O/M dismiss info. State filed new info. recip. Discovery not to amend information in file.*

	Deft.	Continued	S	D
	<i>(GW)</i>	<i>8-1-73</i>		
		<del>AUG 1 1973</del>		
	<i>Gu</i>	<i>9-10-73 to</i>		
	SEP 4 1973	<i>9-10-73 arr to</i>		
	SEP 10 1973	<i>10-1-73 to</i>		
	OCT 1973	<i>10-4-73 Rept to TID</i>		
	OCT 4 1973	<i>12-3-73 to</i>		
	DEC 3 1973	<i>12-4-73 report to do</i>		
	DEC 4 1973	<i>12-12-73 to</i>		
	SEP 12 1974	<i>9-19-74 Prob hearing</i>		
		<i>Notify Dept</i>		
	information Dismissed SEP 4 1973	<i>11-7-75 PWT PWT 8AM</i>		
	<i>(off July 19-73)</i>	<i>11-14-75 8AM</i>		
	new info filed			
	Dismissed			
	Further Information			
	Ante Docket			

*closed*

INDEX

FERGUSON, J. SIEGENDORF, J.

73.4 50



Prob Viol

Date	DEC 13 1973	DEC 13 1973	DEC 13 1973	NOV 14 1975
State	R Kaye	do		J. Woodard + B. Kaye
Defense	M. Greenspahn	do	See plea	B. Negretti + M. Greenspahn (F. Orsorio, Span - Eng Interp)
Reporter	J. Ounan	do		J. Schwartz

JURY - NON-JURY TRIAL

All Witnesses (& Defendant) Sworn  
Rule Invoked (State) (Defendant)

- 205 Carl J. Feldman
  - 240 Anne Radnes
  - 214 Margaret A Causey
  - 265 Ronald Bowling
  - 256 Harry D. Locke
  - 245 Alberta Floson
- not sworn

deft withdrew plea +  
plead nolo

NOV 14 1975

Prob. Viol  
deft deny viol  
rule invok'd deft  
H's N.B.

- (1) Robert P. Kaye (sworn)
- (2) Ray Suarez (sworn)

STATES EXHIBIT #1 - copy of probation terms  
State Dist

- (1) see mot to want to divert itself of jurisdiction etc
- (2) OM (deft) for psych eval - Gino P. Negretti sworn + testified - deny

Finding of Guilt (Court) (Jury) DEC 13 1973

Adjudication DEC 13 1973 W/H  
(5) NOV 14 1975

Sentence DEC 13 1973 W/H  
NOV 14 1975 7 1/2 yrs at Pen off sent  
imposed in U. S. Federal Court,  
Southern District of Fla #  
74-633-CR-JE  
recomm'd maximum security facility

Acquitted (Court) (Jury)

Certified Copy Information (Delivered) (Mailed)

Meloy Greenspahn Date JUL 20 1973  
Gino Negretti OCT 20 1975

(4) NOV 14 1975 revoke  
Custody Probation Officer 2 Yrs. DEC 13 1973

Discharge From Probation



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF  
IN AND FOR DADE COUNTY

**- FILED -**  
SEP 4  
1973  
RICHARD P. BRINKER  
CLERK  
Term, 1973

SPRING

73-5087

THE STATE OF FLORIDA

INFORMATION FOR

vs.

**UNLAWFUL POSSESSION OF AN  
EXPLOSIVE 552.101 (FEL.)**

**HUMBERTO LOPEZ**

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

**N. JOSEPH DURANT JR., Acting**

~~RICHARD K. GERSON~~, State Attorney of the Eleventh Judicial Circuit of Florida,

prosecuting for the State of Florida, in the County of Dade, under oath, information makes that **HUMBERTO LOPEZ**

on the **29th** day of **JUNE**, 19 **73**, in the County

and State aforesaid, **did unlawfully, knowingly and feloniously have in his possession certain explosives, to-wit: HAND GRENADES, without having a license or permit therefor, in violation of 552.101**

**Florida Statutes, and 552.22, the penalty Clause of Chapter 552 Florida Statutes.**

RPK:eld  
8/30/73

Jail No. 73-31607 Bkd. 6/29/73 Jkt. No. 170507 IDS No. 3278532  
73-11927, Judge Ferguson

*Supp. information*



contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA:  
COUNTY OF DADE:

**N. JOSEPH DURANT JR., Acting**

Personally appeared before me, ~~ROBERT EXETER~~ State Attorney of the Eleventh Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth in the within Information are based upon facts that have been sworn to as true, and which facts, if true, would constitute the offense therein charged and that this prosecution is instituted in good faith.

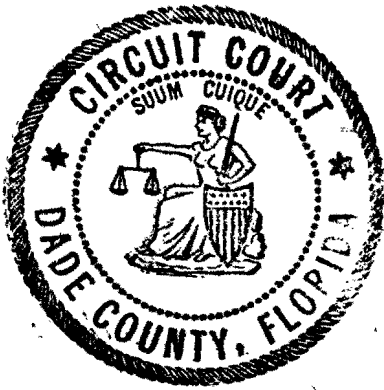
PROSECUTION INSTITUTED IN GOOD FAITH  
AND SUBSCRIBED UNDER OATH

Acting N. Joseph Durant Jr.  
State Attorney, Eleventh Judicial Circuit of Florida *PK*

Sworn to and subscribed before me this 30 day of August, 19 73.

Richard P. Brinker, Clerk  
Circuit Court of the Eleventh Judicial  
Circuit of Florida in and for Dade County

By *Richard P. Brinker*, D.C.



Case No. 73-5087

CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

WITNESSES FOR THE STATE  
**I. Lt. Russell Cole, HPD**

THE STATE OF FLORIDA

vs.

**HUMBERTO LOPEZ**

INFORMATION FOR

**UNLAWFUL POSSESSION OF AN  
EXPLOSIVE 552.101 (FEL.)**



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

SEP 4 1973 *diem*

.....SPRING.....Term, 19 73..

**73-5087**

THE STATE OF FLORIDA

INFORMATION FOR  
UNLAWFUL POSSESSION OF AN  
EXPLOSIVE 552.101 (FEL.)

vs.

HUMBERTO LOPEZ

73 JUL 19 PM 12 56  
RICHARD P. MINKER  
CLERK, CIRCUIT & COUNTY CLKS.  
DADE COUNTY, FLA.  
03

FILED FOR RECORD

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

N. JOSEPH DURANT, JR., Acting  
~~RICHARD P. MINKER~~, State Attorney of the Eleventh Judicial Circuit of Florida,

prosecuting for the State of Florida, in the County of Dade, under oath, information  
makes that.....HUMBERTO LOPEZ.....

on the 29th day of JUNE, 19 73, in the County  
and State aforesaid, did unlawfully, knowingly and feloniously have in  
his possession certain explosives, to-wit: HAND GRENADES, in violation  
of 552.101 Florida Statutes,

JG:jak  
7/16/73  
Jail No. 73-31607 Bkd. 6/29/73 Jkt. No. 170507 IDS No. 3278532  
73-11927



contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA:  
COUNTY OF DADE:

N. JOSEPH DURANT, JR., Acting

Personally appeared before me, ~~RICHARD M. GERSTEIN~~, State Attorney of the Eleventh Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth in the within Information are based upon facts that have been sworn to as true, and which facts, if true, would constitute the offense therein charged and that this prosecution is instituted in good faith.

*JPM*

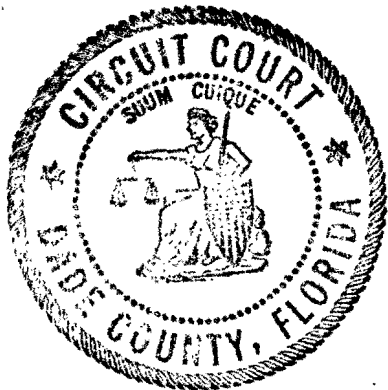
PROSECUTION INSTITUTED IN GOOD FAITH AND SUBSCRIBED UNDER OATH Acting

*N. Joseph Durant, Jr.*  
State Attorney, Eleventh Judicial Circuit of Florida

Sworn to and subscribed before me this 18 day of JULY, 19 73.

Richard P. Brinker, Clerk  
Circuit Court of the Eleventh Judicial  
Circuit of Florida in and for Dade County

By: *Richard P. Brinker*, D.C.



Case No. ....

CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

WITNESSES FOR THE STATE  
Off. Richard Kelly  
Hia. PD

THE STATE OF FLORIDA

vs.

HUMBERTO LOPEZ

INFORMATION FOR  
UNLAWFUL POSSESSION OF AN EXPLOSIVE



RESIDENT OF DADE COUNTY YES  NO   
RESIDENT OF FLORIDA YES  NO

CASE NO. 73-20648 JAIL NO. 31607

Defendant's Name: LOPEZ Humberto NMN Date of Birth: 7 DEC 41  
(Last) (First) (Middle) (Day, Month, Year)

Place of Birth: HAVANA, CUBA Local Address: 460 W. 42nd PL Scars: on CHEST  
Tattoos:

Permanent Address: 460 W. 42nd PL Phone: 833-8650 Occ.: FIELD MANAGER

Soc. Sec. No.: 264-60-262 Race: W Sex: M Eyes: BRN Hair: BRN Hgt: 5'8" Wt.: 160

Arrest Date: 29 JUNE 73 Time: 12 30P Location: 460 W. 42nd PL  
(Day, Month, Year) (Place of Arrest)

Co-Defendant's Name: \_\_\_\_\_ Taken To County Station: D.C.J.  
(Last) (First) (Middle)

Citation No.: \_\_\_\_\_ Capias No.: \_\_\_\_\_ Other: \_\_\_\_\_

**OFFENSES CHARGED:**

- POSSESSION OF EXPLOSIVES In Viol. of F.S. SS2.101 In Viol. of Sec. \_\_\_\_\_ of the Code of Metropolitan Dade County
- \_\_\_\_\_ In Viol. of F.S. \_\_\_\_\_
- \_\_\_\_\_ In Viol. of F.S. \_\_\_\_\_
- \_\_\_\_\_ In Viol. of F.S. \_\_\_\_\_

HOLD FOR MAGISTRATE'S HEARING - DO NOT BOND OUT (OFFICER MUST APPEAR)

**WITNESSES AGAINST DEFENDANT:**

- Name: Tom Brodie Address: Public Safety DEPT. Phone: \_\_\_\_\_
- Name: Robert POTTEN Address: 501 Palm Ave Phone: 888-8478

Physical Evidence against Defendant: \_\_\_\_\_

Arresting Officers: Kelly / [unclear] Ct. ID # 0067 Dept.: 04

Transporting Officers: BELETTE, J Ct. ID # 0004 Dept.: 04

The undersigned certifies and swears that he has just and reasonable grounds to believe, and does believe that:  
On the 29 day of JUNE, 1973, 460 W. 42 PL.  
(Location)

LOPEZ HUMBERTO (NMN)  
(Last Name) (First Name) (Initial)

committed the following violation of law:

Narrative: (Be specific)

SUBJECT HAD IN HIS POSSESSION CERTAIN EXPLOSIVES WITHOUT A LICENCE OR PERMIT THEREFORE FROM THE FIREARMS DIVISION OF THE STATE OF FLORIDA AS PROVIDED BY LAW

Sworn to and subscribed before me,  
the undersigned authority, this  
29 day of June, 1973  
Dee W. [unclear]  
Deputy of the Court or Notary Public

I swear the above statement is correct and true to the best of my knowledge and belief.  
[Signature]  
Officer's Signature  
Dept.: 04 Ct. ID Number 0067

COURT COPY

RECORDS ID NO.: \_\_\_\_\_

FILED FOR RECORD  
73 JUL 11 PM 3 44  
CLERK OF DISTRICT COURT  
DADE COUNTY, FLA.  
03





THE COUNTY COURT  
IN AND FOR  
DADE COUNTY, FLORIDA

TRANSFER OF DEFENDANT TO THE CIRCUIT COURT

AFTER PRELIMINARY HEARING

STATE OF FLORIDA  
vs.

Lopez Humberto  
Defendant

CASE NO. (s) 73-11927

This cause coming on to be heard before me, a Judge of The  
County Court in and for Dade County, Florida, acting as Magistrate, and  
Preliminary Hearing having been held on this date, and the Court, finding  
that there is probable cause to believe that the offense of Poss.  
Explosives HAS BEEN COMMITTED, AND THAT  
the defendant in this cause has committed it; it is

ORDERED AND ADJUDGED that the said defendant be held to answer  
to the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for  
Dade County, Florida.

DONE AND ORDERED IN open Court at Miami, Florida, on the  
10 day of July, 1973.

Jules J. Dale  
JUDGE OF THE COUNTY COURT  
IN AND FOR DADE COUNTY, FLORIDA



PROGRESS DOCKET  
COUNTY COURT OF DADE COUNTY  
MAGISTRATE DIVISION

Name of Defendant: Lopez, Humberto  
Companion Defendants, if any \_\_\_\_\_  
Case Numbers 73-11927  
Charges POSS EXPLOSIVES

A. BOND HEARING (Check appropriate numbers)

Date: JUL 2 1973

- 1. Amount of bond: \$ 210
- 2. Pre-trial release and/or alternate bond (amount): \$ \_\_\_\_\_
- 3. Release on Recognizance
- 4. Custody release, and/or alternate bond, (name, address, phone number, and relationship of custodian) \_\_\_\_\_
- 5. Public Defender appointed
- 6. No Public Defender appointed
- 7. Psychiatric evaluation ordered
- 8. Transfer to Crimes Division, County Court
- 9. Transfer to Juvenile Division, Circuit Court

B. PRELIMINARY HEARING (Check appropriate numbers)

Date: \_\_\_\_\_

- 1. Reset for State
  - (a) New date for Preliminary Hearing: \_\_\_\_\_
- 2. Reset for Defendant
  - (a) New date for Preliminary Hearing: \_\_\_\_\_
- 3. Reset for the Court
  - (a) Reset for Preliminary Hearing: \_\_\_\_\_
  - (b) Reset for Report \_\_\_\_\_
  - Reason for Report \_\_\_\_\_
- 4. Transferred to County Court W/O Preliminary Hearing
- 5. Transferred to Juvenile Division, Circuit Court, W/O Preliminary Hearing
- 6. Preliminary Hearing waived
- 7. Right to counsel waived
- 8. Defendant failed to appear
- 9. Complaining witness failed to appear
- 10. Complaining witness declined to prosecute
- 11. Direct filing by State
- 12. No action by State
- 13. Bound over to County Court
  - (a) Charge reduced to: \_\_\_\_\_
  - (b) State Statute No. \_\_\_\_\_
- 14. Bound over to Circuit Court (List case numbers and charges)  
73-11927 - POSS. EXPLOSIVES
- 15. Discharged (List case numbers and charges)
- 16. Guilty plea to misdemeanor \_\_\_\_\_
  - (a) Action \_\_\_\_\_
- 17. Bond changed as follows:
  - (a) Raised to \_\_\_\_\_
  - (b) Reduced to \_\_\_\_\_
  - (c) Release on Recognizance \_\_\_\_\_
  - (d) Custody release to: \_\_\_\_\_
  - (e) Pre-trial release or alternate bond of: \_\_\_\_\_
- 18. Other action or notes \_\_\_\_\_

JUL 10 1973

MAGISTRATE DIVISION OF THE METROPOLITAN COURT  
WAIVER OF FIRST APPEARANCE HEARING

Date: 29 Jun, 1973

I, HUMBERTO LOPEZ, have been fully advised of my right to have a Release Hearing before a Magistrate without an unreasonable delay after I have been booked into the Dade County Jail or any District Station detention facility. I have also been advised that at such Release Hearing held before a Magistrate, the conditions of my release would be determined upon the consideration of my past record of Court appearance, my community and family ties, my employment, and the offense charged against me. I have further been advised of my right to waive such Release Hearing by choosing, in lieu thereof, to post bail bond in the amount prescribed by the Bond Schedule of the Court in which the offense charged against me will be filed.

I understand the foregoing alternatives and freely, voluntarily, and without coercion, choose to waive my right to Release Hearing before a Magistrate.

WITNESSED BY:

W J Hester

Humberto Lopez  
Signature of person waiving  
First Appearance Hearing

504.01-273

73- 5087

Original

THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA

NOTICE TO APPEAR TO SCHEDULE PRELIMINARY HEARING

Bond Out Date 29 Jun 73 Case No.(s) 73-20648

You are hereby notified that you are to appear at 3:00 p.m. on

MONDAY, 2 July  
(day of week) (date)

1973, in courtroom # 5, on the 2nd floor of the Metropolitan Justice Building at 1351 N. W. 12th Street, Miami, Florida, to schedule your preliminary hearing in the above case.

Humberto Lopez  
Defendant

W J Hester  
Deputy Clerk

504.01.299

73- 5087



*Melvyn Greenspahn*  
*Attorney at Law*

*Suite 210-1150 Building - 1150 Southwest First Street Miami, Florida 33130*  
371-0691

73-5087

July 17, 1973

FILED FOR RECORD  
73 JUL 18 AM 11 25  
RICHARD P. FERRELL  
CLERK, CIRCUIT & COUNTY CTS.  
DADE COUNTY, FLA.  
03

Clerk, Circuit Court  
Criminal Division  
1351 N. W. 12th Street  
Miami, Florida

RE: State of Florida vs.  
Humberto Lopez

Gentlemen:

This will advise that the undersigned represents the above captioned Defendant.

Kindly forward all copies of further proceedings and notices directly to the undersigned.

Thanking you for your cooperation in this regard, I remain

Very truly yours,

*Melvyn Greenspahn*  
MELVYN GREENSPAHN

MG/mc

cc: Office of Richard Gerstein,  
States Attorney

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. 73-5087

STATE OF FLORIDA,	)	
Plaintiff,	)	DISCOVERY UNDER FLORIDA CRIMINAL PROCEDURE RULE 3.220
VS	)	STATEMENT OF PARTICULARS UNDER FLORIDA CRIMINAL PROCEDURE RULE 3.140 (n)
<b>HUMBERTO LOPEZ</b>	)	
Defendant.	)	DEMAND FOR NOTICE OF ALIBI UNDER FLORIDA CRIMINAL PROCEDURE RULE 3.200

Comes now, RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and files this Discovery, Statement of Particulars, and Demand for Notice of Alibi under Florida Criminal Procedure Rules 3.220; 3.140 (n) and 3.200, as follows:

1. The alleged offense occurred on or about \_\_\_\_\_

JUNE 29, 1973

at or in the vicinity of 460 WEST 42ND PLACE,  
Dade County, Florida.

2. The persons, known to the State at this time, that have information which may be relevant to the offense charge, and to any defense with respect thereto, are as follows:

1. Richard Kelly, #0067  
501 Palm Avenue  
Hialeah, Florida
2. Robert Potter, #104  
Hialeah, Police Department
3. Newton Porter, #905  
PSD-Crime Lab.
4. Lt. Russell Cole  
501 Palm Avenue  
Hialeah Fire Department
5. William Lynch  
909 North Dixie
6. Tom Brodie,  
PSD, Crime Lab.
7. Charles Hale  
Hialeah Fire Department
8. Robbie Clavier  
Hialeah Fire Department
9. Tom Quark  
PSD-Photos Department

NOTE: Paragraphs designated by asterik \* apply to the reciprocal provisions pursuant to Rule 3.220 of the Florida Rules of Criminal Procedure only.

73 AUG 14 PM 5 32  
RICHARD E. GERSTEIN  
CLERK OF COURT  
DADE COUNTY, FLA.

FILED FOR RECORD



10. Ellory Richtarcik  
Hialeah Police Department  
Crime Lab.
11. Wayne Martin  
Hialeah Water Department  
3700 W. 4th Ave.
12. Mr. Warren  
1401 East 4th Ave.  
Florida Power & Light
13. Earnest Zarembo  
Palm Springs Station  
Post Office  
635 W. 49 Place

3. Pursuant to Rule 3.220 (a)(1) of the Florida Rules of Criminal Procedure, the State will disclose to defense counsel and permit him to inspect, copy, test and photograph the material and information, if any, provided for in paragraphs (ii) through (xi), upon request, within five (5) days of receipt of this Discovery at a mutually convenient place.

4\*. Pursuant to Rule 3.220(b)(3) of the Florida Rules of Criminal Procedure, the State demands that within seven (7) days after receipt of this Discovery the defense counsel shall furnish to the prosecuting attorney a written list of all witnesses whom the defense counsel expects to call as witnesses at the trial or hearing.

5\*. Pursuant to Rule 3.220 (b)(4) of the Florida Rules of Criminal Procedure, the State demands that within fifteen (15) days after receipt of this Discovery that the defense disclose to the prosecuting attorney and permit him to inspect, copy, test, and photograph the following information and material which corresponds to that which the defense sought and which is in the defendant's possession or control:

(i) the statements of any person whom the defense expects to call as a trial witness other than that of the defendant;

(ii) reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons;

(iii) any tangible papers or objects which the defense counsel intends to use in the hearing or trial.

6. Comes now, RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and files this Demand for Notice of Intention to Rely upon Alibi Defense pursuant to Rule 3.200 of the Florida Rules of Criminal Procedure, demanding that the defendant furnish the prosecuting attorney with a Notice of Alibi, not less than ten (10) days prior to trial, stating the place the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses by whom he proposes to establish such an alibi, if such a defense will be relied upon at time of trial.





IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA  
IN AND FOR DADE COUNTY.

**CRIMINAL DIVISION**

CAUSE NUMBERED 73-5087  
**JUDGE FERGUSON**

STATE OF FLORIDA

VS

**HUMBERTO LOPEZ**

.....

NOTICE OF HEARING

73 AUG 30 PM 4 27  
CLERK, CIRCUIT COURT, DADE COUNTY, FLA.  
03

YOU ARE HEREBY NOTIFIED that the following pleadings herein, to-wit:  
**"MOTION TO AMEND THE INFORMATION"**

are scheduled for hearing before the Honorable **RALPH FERGUSON**,  
Judge of this Court, at his Courtroom located on the **Fourth Floor, 1351 N. W. 12**  
**Street**, Miami, Dade County, Florida, at **9:00 A. M.**,  
on the **4th** day of **September**, 19 **73**.

Please be governed accordingly.

RICHARD E. GERSTEIN, State Attorney  
Eleventh Judicial Circuit of Florida

By *Robert P. Kaye*  
Assistant State Attorney  
**ROBERT P. KAYE**

**CERTIFICATE OF SERVICE**

The undersigned hereby CERTIFIES that a true copy of the above and foregoing  
Notice of Hearing was mailed to **Melvyn Greenspahn, Esq., 1150 S. W. 1 Street**  
**Suite 301**

this the **30th** day of **August**, 19 **73**.

RICHARD E. GERSTEIN, State Attorney  
Eleventh Judicial Circuit of Florida

By *Robert P. Kaye*  
Assistant State Attorney  
**ROBERT P. KAYE**

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CAUSE NUMBERED 73-5087

STATE OF FLORIDA

vs.

**HUMBERTO LOPEZ**

MOTION TO AMEND INFORMATION

CLERK, CIRCUIT COURT OF FLORIDA,  
DADE COUNTY, FLA.  
03

73 AUG 30 PM 4 27

RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for and on behalf of the State of Florida, moves to amend the Information heretofore filed in this cause to change or correct the following, to-wit:

**After the words "Hand Grenades," add the words "without having a license or permit therefor."**

RICHARD E. GERSTEIN, State Attorney  
Eleventh Judicial Circuit of Florida

By *Robert P. Kaye*  
Assistant State Attorney  
**ROBERT P. KAYE**

**CERTIFICATE OF SERVICE**

The undersigned hereby CERTIFIES that a copy of the above and foregoing Motion

To Amend Information was mailed  
to: Melvyn Greenspahn, Esq. 1150 S.W. 1 Street, Suite 301  
(mailed or delivered)

Attorney for Defendant \_\_\_\_\_, this the 30th day of August, 19 73.

RICHARD E. GERSTEIN, State Attorney  
Eleventh Judicial Circuit of Florida

By *Robert P. Kaye*  
Assistant State Attorney  
**ROBERT P. KAYE**

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 73-5087

STATE OF FLORIDA, )

Plaintiff, )

-vs- )

HUMBERTO LOPEZ, )

Defendant, )

DEFENDANT'S WITNESS LIST

1. Mrs. Humberto Lopez  
460 W. 42nd Place  
Hialeah, Florida
2. Mr. Reinaldo Pattao  
Mrs. Catalina Pattao  
460 W. 42nd Place  
Hialeah, Florida
3. All persons named on the State's Witness List.

MELVYN GREENSPAHN, ESQUIRE  
Suite 210-1150 Building  
1150 S. W. 1st Street  
Miami, Florida 33130

BY: Melvyn Greenspahn  
Attorney for Defendant

I HEREBY CERTIFY that a true copy of the foregoing  
Defendant's Witness List was mailed to the office of the States  
Attorney, 1351 N. W. 12th Street, Miami, Florida this 29th day of  
August, 1973.

Melvyn Greenspahn  
MELVYN GREENSPAHN



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA, IN AND FOR DADE COUNTY SPRING TERM, 1973

CASE NO. **73-5087**  
**JUDGE FERGUSON**  
**CRIMINAL DIVISION**

STATE OF FLORIDA

vs.

NOTICE OF TAKING OF  
STATEMENT

**HUMBERTO LOPEZ**

DEFENDANT .

TO: **MELVYN GREENSPAHN, ESQ.**  
**Suite 210, 1150 SW 1 St.**  
**Miami, Florida 33130**

You are hereby notified that the undersigned  
Assistant State Attorney is taking the statement of  
**Mrs. Humberto Lopez, Mr. Reinaldo Pattao, Mrs. Catalina Pattao**

at **2:00 P.M.**, on **Wednesday**, the **19th** day  
of **September**, **1973**, at the State Attorney's Office,  
Suite 600, Metropolitan Justice Building, 1351 Northwest 12  
Street, Miami, Florida.

RICHARD E. GERSTEIN  
STATE ATTORNEY

By: *Robert P. Kaye*  
**ROBERT P. KAYE**  
Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing  
Notice of Taking of Statement was mailed/delivered to \_\_\_\_\_  
**Melvyn Greenspahn, Esq., Suite 210, 1150 S.W. 1 Street,**  
**Miami, Florida**, this \_\_\_\_\_ day of  
**September**, 19 **73**

*Robert P. Kaye*  
Assistant State Attorney  
**ROBERT P. KAYE**

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY SPRING TERM, 1973

CRIMINAL DIVISION  
CASE NO. 73-5087  
JUDGE FERGUSON

STATE OF FLORIDA

VS.

SUPPLEMENTAL WITNESS LIST

HUMBERTO LOPEZ,

DEFENDANT.

COMES NOW RICHARD E. GERSTEIN, State Attorney of the  
Eleventh Judicial Circuit of Florida, by and through the  
undersigned Assistant State Attorney, and files this  
Supplemental Witness List as follows:

In addition to those witnesses previously furnished,  
the State may call the following witness at time of trial:

Lloyd Erwin  
Alcohol, Tax and Firearm Division  
Treasury Department  
P. O. Box 2009  
Atlanta, Georgia 30301

RICHARD E. GERSTEIN  
STATE ATTORNEY

BY:   
ROBERT P. KAYE  
Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing  
Supplemental Witness List was mailed to Melvyn Greenspahn,  
Suite 210-1150, Building, 1150 S.W. 1 Street, Miami, Florida,  
this \_\_\_ day of September, 1973.

  
ROBERT P. KAYE  
Assistant State Attorney

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CRIMINAL DIVISION

CAUSE NUMBERED 73-5087

JUDGE FERGUSON

STATE OF FLORIDA

vs.

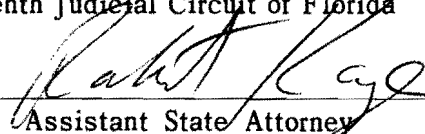
HUMBERTO LOPEZ

MOTION TO AMEND INFORMATION



RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for and on behalf of the State of Florida, moves to amend the Information heretofore filed in this cause to change or correct the following, to-wit: **To include Section 552.22, the penalty clause of Chapter 552 Florida Statutes.**

RICHARD E. GERSTEIN, State Attorney  
Eleventh Judicial Circuit of Florida

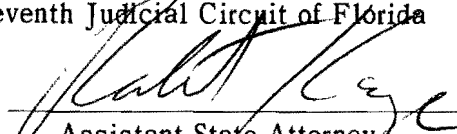
By   
Assistant State Attorney  
**ROBERT P. KAYE**

CERTIFICATE OF SERVICE

The undersigned hereby CERTIFIES that a copy of the above and foregoing Motion To Amend Information was mailed (mailed or delivered) to: Melvyn Greenspahn, Esq. 1150 SW 1 Street, Suite 301, Miami, Florida

Attorney for Defendant \_\_\_\_\_, this the 20th day of September, 19 73.

RICHARD E. GERSTEIN, State Attorney  
Eleventh Judicial Circuit of Florida

By   
Assistant State Attorney  
**ROBERT P. KAYE**

*grant*





IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA.

CRIMINAL DIVISION

Case No: 73-5087

THE STATE OF FLORIDA )  
-vs- )  
HUBERTO LOPEZ, )  
 )  
Defendant )  
\_\_\_\_\_ )

DEC-7 11:51  
CLERK OF COURT  
03

NOTICE OF HEARING

TO: STATE ATTORNEY  
1351 N. W. 12th Street  
Miami, Florida

YOU ARE HEREBY NOTIFIED that the undersigned has set down for hearing before the Honorable Ralph Ferguson, one of the Judge's of the above styled Court at the Metro Justice Building

Date December 12, 1973 Time 9:00 a.m.

or as soon thereafter as counsel may be heard on:

MOTION TO SUPPRESS

MELVYN GREENSPAHN, ESQUIRE  
Suite 210-1150 Building  
1150 S. W. 1st Street  
Miami, Florida 33130

BY: Melvyn Greenspahn  
Attorney for Defendant

I HEREBY CERTIFY that a true and correct copy of the foregoing hand-delivered was ~~mailed~~ this 7th day of December, 1973, to the above named addressee.

BY: Melvyn Greenspahn





In the instant cause, the fire department of the Municipality of Hialeah, Dade County, Florida was summoned by an unknown source to the premises commonly described as 460 W. 42nd Place, within the confines of the boundries of the Municipality of Hialeah, Dade County, Florida on June 29, 1973 in order to extinguish a fire or fires emanating from and upon said described premises. The fire department officers and men upon the scene effectively extinguished all fires upon the premises and abated all apparent fire sources upon said premises. Subsequent to the extinguishment of the fires and the abatement of any eminent necessity to proceed with further activity and absent any emergency, the Fire Prevention Bureau of the City of Hialeah was called to the scene to investigate the origin of the fire that had been extinguished. A singular and primary purpose of the Fire Prevention Bureau was to determine, by its investigation, whether the fire had originated as an act of arson and therefore, the quality of the investigation so conducted was that of a criminal as opposed to administrative investigation.

At no time did any person competent to do so give consent to further search in and upon the premises.

It is respectfully submitted that at such time as the fire department of the City of Hialeah had extinguished the fire upon the premises in question and abated the necessity of any further affirmative fire fighting action, any investigative acts conducted by either fire or police authorities, absent the consent of a person competent to give such consent, in the effort to determine whether the fire was originated by a criminal agency constitutes a clear violation of the constitutional rights of such persons who may ultimately be charged with a criminal offense as a direct and sole result of seizures made in the course of such search upon the premises. In the instant case,

neither the Defendant nor anyone else competent to give consent to such a search gave such consent. Further, if such consent had been given without a declaration by the fire or police authorities as to the purpose of their search, such consent having been made coercively would not be justified as consensual. If an individual merely acquiesces to what he takes to be the authority of the officer to carry out a search, the seizure thereupon obtained cannot be sustained on a theory of consent. Amos versus United States, 255 U.S. 313, 41 S.Ct. 266.

The premises which were subjected to the search in the instant cause were residential in nature. A search made by officers of the Fire Prevention Bureau and ultimately officers called by that bureau from the various law enforcement agencies of the City of Hialeah, Dade County, and the Federal Government, in the instant cause was made after the fire and for the purpose of obtaining by investigation evidence of arson. In the now landmark decision of Frank versus Maryland, 359 U.S. 360, 79 S.Ct. 804, Rehearing denied-360 U.S. 914, 79 S.Ct. 1292, the Supreme Court of the United States was faced with the question of whether a search warrant was needed for a statutorily authorized inspection by a city health inspector. In the Frank Case, the Court held that a warrant was not required because, among other things, no seizure of evidence for criminal prosecution was involved. The holding of the Frank Case, therefore, permitted inspection (i.e., search) of a residence by municipal officers to detect and prevent fire and health hazards without a warrant provided that such search was not in the nature of a criminal investigation and no seizure of evidence for criminal prosecution took place.

Subsequently, in 1967 the Supreme Court of the United States in the landmark/<sup>case</sup>of Cama versus Municipal Court of San Francisco, 387 U.S. 528, 87 S.Ct. 1727, even further elaborated upon the

rights of the occupant of residential premises. In overruling the Frank decision heretofore cited, the Supreme Court of the United States rejected the distinction previously drawn between searches for evidence of crime and administrative inspections and concluded that such inspection, even if not for the purpose of discovering evidence to be used in a criminal prosecution, could only be carried out pursuant to a warrant. The Court held:

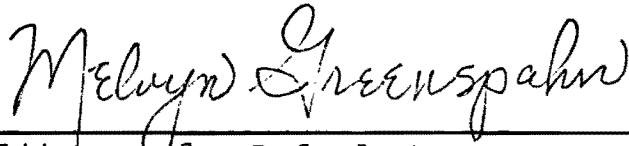
"It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. For instance, even the most law-abiding citizen has a very tangible interest limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security."

In both the Camma and See Cases as aforesaid, it has been held that a nonconsensual inspection of residential premises is impermissible in the absence of a warrant. In the instant case, failing to secure a search warrant under accepted statutory authority and upon the showing of probable cause, the further entry and search of the premises upon which the Defendant resided was unlawful. In the instant case, a warrant could, had probable cause for its issuance existed, been easily obtained and without prejudice to the investigation of the fire and police authorities.

Consequently and for the reasons as aforesaid, it is respectfully submitted that the search of the premises in question made by the fire and police authorities of the Municipality, County or State in the instant cause was unlawful and any articles or objects thereby obtained for the use by the authorities in the prosecution of the Defendant herein should be accordingly suppressed.

MELVYN GREENSPAHN, ESQUIRE  
Suite 210-1150 Building  
1150 S. W. 1st Street  
Miami, Florida 33130

BY:

  
Attorney for Defendant

I HEREBY CERTIFY that a true copy of the foregoing Motion to Suppress was hand-delivered to the office of the States Attorney, 1351 N. W. 12th Street, Miami, Florida this 7th day of December, 1973.

  
MELVYN GREENSPAHN



✓

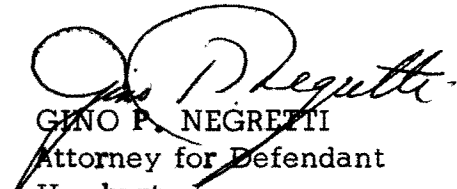
IN THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY,  
FLORIDA.  
CRIMINAL DIVISION  
CASE NO: 73-5087

THE STATE OF FLORIDA )  
vs. ) NOTICE OF APPEARANCE  
HUMBERTO LOPEZ, )  
Defendant. )

---

FILED FOR RECORD  
75 OCT 16 PM 2 32  
CLERK OF COURT  
DADE COUNTY FLA.  
03

NOTICE IS HEREBY GIVEN that GINO P. NEGRETTI, Attorney at Law, of Suite 103, 3061 N.W. 7th Street, Miami, Florida hereby files his Notice of Appearance in the above and foregoing cause and prays to be furnished with all moving papers and Notices of Hearing in the above and foregoing cause as Attorney of Record for Defendant.

  
GINO P. NEGRETTI  
Attorney for Defendant  
Humberto Lopez  
Suite 103  
3061 N.W. 7th Street  
Miami, Florida 33125  
Tel: 649-5104

I HEREBY CERTIFY that on this 16th day of October, 1975 a true and correct copy of the above and foregoing Notice of Appearance was personally delivered to HON. RICHARD GERSTEIN, State Attorney, 1351 N.W. 12th Street, Miami, Florida 33130.

  
GINO P. NEGRETTI

73-5087

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

Case No. 73-11927

STATE OF FLORIDA, :  
 :  
 Plaintiff, :  
 :  
 -vs- :  
 :  
 HUMBERTO LOPEZ, :  
 :  
 Defendant. :  
 :  
 -----X

73 JUL 24 PM 2:40  
 CLERK OF DISTRICT COURT  
 DADE COUNTY, FLORIDA

FILED FOR RECORD

The above-entitled cause came on for hearing before the Hon. John A. Tanksley, Judge of the above-styled Court, at the Metropolitan Justice Building, 1351 Northwest 12th Street, Miami, Florida, on Tuesday, July 10, 1973, at 10:15 a.m., pursuant to Notice.

\* \* \* \* \*

FILED FOR RECORD  
 Date 23 JUL 1973  
 RICHARD P. BRINKER  
 CLERK CIRCUIT COURT  
 DADE COUNTY, FLORIDA  
 BY [Signature] D.C.  
 MAGISTRATE DIVISION

APPEARANCES:

HON. RICHARD E. GERSTEIN,  
State Attorney,  
By: GERALD GIRALDI, ESQ.,  
Assistant State Attorney,  
On behalf of the State of Florida.

MELVYN GREENSPAHN, ESQ.,  
1150 Southwest 1st Street,  
Miami, Florida,  
On behalf of the Defendant.

- - - - -

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>
Richard Kelly	5	10
Thomas G. Brodie	13	15

— Thereupon the following proceedings were had.

THE COURT: Let the record show that the preliminary hearing scheduled for Humberto Lopez, set for 10 a.m., July 10th, 1973, is before the Court; that the defendant is present.

I do not have an appearance, Counsel.

MR. GREENSPAHN: I filed one the last time I was here.

THE COURT: Here we are.

The defendant is represented by Melvyn Greenspahn.

Are you ready for hearing, Mr. Greenspahn?

MR. GREENSPAHN: We are, sir. The plea is not guilty.

THE COURT: State ready?

MR. GIRALDI: State is ready.

THE COURT: Enter a Not Guilty for the defendant.

Who is handling it?

MR. GIRALDI: I am, your Honor.

MR. GREENSPAHN: Your Honor, if it please the Court, although it is not my customary

—



— practice to do so in a preliminary hearing, I would ask that the exclusionary witness rule be invoked.

THE COURT: It is as proper at this hearing as any others. Wait until everybody is sworn.

All witnesses before the Court who are going to testify in this case.

Swear them in.

(Thereupon the witnesses were duly sworn.)

THE COURT: The Rule has been invoked on witnesses. That means that all witnesses are required to remain outside of the courtroom. You will be called in one at a time to testify. You are not to discuss your testimony among yourselves or with anyone else, either before you testify or after you testify. Everybody understand the Rule?

Who is the first witness?

MR. GIRALDI: It will be this gentleman right here (indicating).

THE COURT: Everybody else step out.

(Thereupon the witnesses were excused.)

— Thereupon

RICHARD KELLY

was called as a witness by the State and, after having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GIRALDI:

Q State your name and official position, please.

A Richard Kelly, Police Officer, City of Hialeah, Dade County, Florida.

Q Were you so employed on the 29th of June, 1973?

A I was.

Q On that occasion did you happen to see--

THE COURT: Mr. Greenspahn, the defendant speaks English?

MR. GREENSPAHN: Yes, sir, very fluently.

Q (By Mr. Giraldi) On this date did you have occasion to see one Humberto Lopez?

A Yes, I did.

Q At what address, sir?

A At 460 West 42nd Place, in the City of Hialeah.

Q What if anything drew your attention to this particular address on this date?

A I was called to the scene due to the fact there had been a fire of suspicious origin. The Hialeah Fire Department requested us on the scene.

Q What if anything unusual did you observe when you arrived?

A Upon arrival I observed, in the utility room, a 20 millimeter cannon laying against the wall, a 60 millimeter mortar laying outside the door, and assorted ammunition, explosives.

MR. GREENSPAHN: If it please the Court, your Honor, I object to the characterization of, "explosives," which is the crux of the offense. Explosives must be defined.

THE COURT: What type of explosives? Describe them for the Court.

THE WITNESS: It was hand grenades, military type Mark II.

THE COURT: Anything else of explosive nature?

THE WITNESS: Assorted ammunition. I don't think that would be under explosives.

MR. GREENSPAHN: It is not included in the statute, Judge.

Q (By Mr. Giraldi) What if anything did you do when you first observed it?

A We had everybody stand back from the scene. I called my office and had them notify the FBI and Dade County Bomb Squad.

Q Where was the defendant at this time?

A The defendant was walking on the street, up and down.

I went over and I asked him if he was the owner of the house. He stated yes.

Q Now, did you make an official check of the records?

A Yes. I called West Palm Beach, the Office of the State Insurance, where the Fire Marshal, William Lynch, is located.

Q And did the defendant have a permit to have explosives under the state law?

MR. GREENSPAHN: Excuse me, your Honor. At this point, first of all, counsel's questions are all leading.

Secondly--

THE COURT: Do not lead him.

MR. GREENSPAHN: Secondly, the officer is relying on hearsay testimony.

THE COURT: It is proper at a probable cause hearing if it involves an official agency. I do not require them to come down here for a probable cause hearing.

MR. GREENSPAHN: However, your Honor, if he is going to talk about anything related from the Fire Marshal's Office, he has got to indicate who it was that gave him that information, where it was that information came from.

THE COURT: I think that is important.

Q (By Mr. Giraldi) Who did you contact?

A William Lynch.

Q Who is he?

A He is the State Fire Marshal.

THE COURT: And where did he obtain



the information that he gave you?

A At the West Palm Beach office, where his office is at.

THE COURT: Is that where they keep all the permits on explosives?

THE WITNESS: Yes.

Q (By Mr. Giraldi) What did that check reveal?

A There had never been a license issued to Mr. Lopez to store or keep any explosives.

Q What if anything did you do in regards to the explosives?

A The explosives were turned over to the Dade County Crime Lab, Newton Porter. He took the explosives out of my direction and they were given to Tom Brodie, of the Bomb Squad, and he took them in.

Q Did this all happen in Dade County, Florida?

A It did.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Officer Kelly, were you the first police officer on the scene?

A No, I was not.

Q Were you the lead investigator in this case?

A Yes.

Q Did you attempt to determine the ownership of the house by any other means than those that you described?

A I made a check on the possession of the house in the records of the Postal Department. They showed that Mr. Lopez had lived in the house since November.

The City of Hialeah Water Supply showed him as being in there since November.

Q Does anybody else live in that house?

A His wife and, I think it is, his mother or his father or his wife's parents.

Q Other members of the family living in that house?

A Yes.

Q Describe the area--

THE COURT: Let me ask you one ques-

tion. Is there anyone living at that home, as far as you can determine, who is not related to the defendant?

THE WITNESS: No, sir.

Q (By Mr. Greenspahn) Do you know, of your own knowledge, that, in fact, the premises and the improvement, the house on the premises, is not owned by Mr. Lopez?

A Yes. I ran a check, and the Dade County Tax Assessor shows the house to be owned by a Jose Sanchez, who lived in Reparto Apolo, Puerto Rico.

Q Do you know by what means these various articles, including the 20 millimeter cannon and the mortar and the hand grenades, came to be upon the premises?

MR. GIRALDI: Objection to the form of the question.

THE COURT: Overruled.

If you know.

THE WITNESS: No, I don't know.

Q (By Mr. Greenspahn) Do you know, based upon your investigation, who was present at

the time the first officer--whether it be a fire officer or police officer--came upon the scene?

A Not definitely, no.

Q Do you know, of your own knowledge, whether, in fact, Humberto Lopez was present at the time that the first fire officer or first police officer came on the scene?

A I don't know at the first. When I had arrived, he had been there prior, and he had made statements to firemen.

Q You do not know if he was there, though, when the firemen appeared?

A Yes, he was there when the firemen appeared.

You mean, when they first, initially arrived on the scene?

Q Yes.

A No, I don't know.

Q In fact, do you know that he was at work at the time?

A No, I don't.

MR. GREENSPAHN: That is all I have.

MR. GIRALDI: Send in Brodie, please.

(Thereupon the witness  
was excused.)

Thereupon

THOMAS G. BRODIE

was called as a witness by the State and, after  
having been previously duly sworn, was examined and  
testified as follows:

DIRECT EXAMINATION

BY MR. GIRALDI:

Q Would you state your name and official position, please.

A Thomas G. Brodie, Criminalist for  
Dade County Public Safety Department.

THE COURT: He is qualified for the  
purposes of this hearing.

I think your work has been with  
matters involving detonations and explosives and  
things of that type, hasn't it?

THE WITNESS: Yes, sir.

THE COURT: How long have you been  
doing that?

THE WITNESS: 17 years.

THE COURT: That is qualified for



— this hearing. I am not going to let either one go into further qualification on him.

Go ahead.

Q (By Mr. Giraldi) Mr. Brodie, in reference to the case that is before the Court, at any time did you receive any of the evidence to test?

A Yes, sir.

Q What evidence, if any?

A Those were four Mark II fragmentation hand grenades.

Q What if anything did you do with any of them?

A I stored them in the magazine and I later tested one of them with a--

MR. GREENSPAHN: Judge, excuse me. Can we have a predicate as to how the hand grenades came into Mr. Brodie's possession.

THE COURT: How did you get ahold of them?

THE WITNESS: They were on the dining room table of the house.

THE COURT: Did you go to the location

— yourself?

THE WITNESS: Yes, sir.

THE COURT: You recovered them yourself, from the premises?

THE WITNESS: Yes, sir.

THE COURT: Go ahead, you can go into your testing. You tested them how?

THE WITNESS: I pulled the pin on the grenade from a distance, with a string, and the safety lever flew off and the grenade exploded in approximately four seconds, and it was an explosive.

THE COURT: Cross.

#### CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Do you know, of your own knowledge, Mr. Brodie, how the hand grenades came to be on the dining room table?

A Only by hearsay.

Q What have you heard?

A That Criminalist Newt Porter had picked them up out of the utility room and put them on the dining room table.

—

Q Do you know how many had been picked up from the utility room and brought to the dining room table?

A Four.

Q How many did you ultimately retain in your possession?

How many do you now have?

A I have three left.

Q Now, sir, do you have any knowledge, at all, as to any other facts relating to this case, as to, particularly, the manner and method by which the objects that you have heard about as being stored on the premises came to be on the premises?

MR. GIRALDI: Judge, I am going to object to the form of that question.

MR. GREENSPAHN: Well, let me shorten it.

THE COURT: I think it is going beyond the scope of his participation in the case.

MR. GREENSPAHN: That is what I want to know.

Q (By Mr. Greenspahn) There is nothing more that you have personally investigated with

— regard to this offense?

THE COURT: Did you make an investigation yourself, or did you only do those duties you were requested to do in reference to this matter?

THE WITNESS: Only the duties I was requested to.

THE COURT: Sustain the objection.

MR. GREENSPAHN: That is all I have.

THE COURT: Step outside, please, sir.

(Thereupon the witness was excused.)

MR. GIRALDI: State's case.

THE COURT: Anything for the defendant?

MR. GREENSPAHN: Move for discharge or dismissal. There is nothing showing that the items that were described by the police officer, or by Officer Brodie, were in the possession, as contemplated by the laws of the State of Florida, by this defendant.

— THE COURT: Oh, I think there is

— enough to show it. I think the checks that the officer made show that he had control of the premises from November. It is sufficient for probable cause, barring any testimony from any other source as to the fact that he does not.

MR. GREENSPAHN: Also, I would call to the Court's attention the statute, which is 552. I do not know if the Court has reviewed the statute.

There are administrative remedies available the State must first enforce before a criminal prosecution can ensue. They consist of a cease and desist order and various notices to the defendant or the possessor.

THE COURT: I am going to bind him over. Let the trial court go into that.

How much bond is he on now?

MR. GREENSPAHN: It is a thousand-dollar bond, your Honor.

He is a reputable member of the community. He has a steady, good employment.

THE COURT: Any record on the defendant?

—

THE CLERK: No.

THE COURT: Same bond.

(Thereupon the above proceedings were concluded.)

\* \* \* \* \*





IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

STATE OF FLORIDA, :  
 :  
 Plaintiff, :  
 :  
 -vs- :  
 :  
 HUMBERTO LOPEZ, :  
 :  
 Defendant. :  
 :  
 - - - - - X

CRIMINAL NO. 73-5087

RICHARD P. BRINKER  
CLERK, CIRCUIT & COUNTY CLERK  
DADE COUNTY, FLA.  
03

73 DEC 12 PM 2 11

FILED FOR RECORD

501 Palm Avenue  
Hialeah, Florida  
December 11th, 1973  
11:00 o'clock a.m.

DEPOSITION OF RUSSELL DEAN COLE

APPEARANCES:

No appearance on behalf of  
the State of Florida.

MELVYN GREENSPAHN, Esq.,  
on behalf of the Defendant.



The deposition of RUSSELL DEAN COLE, a witness of lawful age, taken for the purpose of discovery and for use as evidence in the above-entitled cause, pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, pursuant to notice, before MONA GESSE, Court Reporter and Notary Public in and for the State of Florida at Large, at the time and place aforesaid.

- - - - -

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
Russell Dean Cole	3	-



Thereupon--

RUSSELL DEAN COLE

was called as a witness on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREENSPAHN:

Q All right, sir, please state your name and your professional address.

A Russell D. Cole. Dean, middle name.  
My professional address--That is my home address?

Q The address--

A Fire Prevention Bureau, 501 Palm Avenue,  
City Hall.

Q What is your capacity with the City of Hialeah?

A Lieutenant in charge of Fire Prevention or Fire Marshal, if you wish.

Q All right, sir, how long have you been vested with the authority of Fire Marshal in the City of Hialeah?

A As of April 1 of '73, till now, through now.



Q How long have you been in the fire service of the City or any other municipality, State or County?

A 14 years total.

Q Has all that time been in the City of Hialeah?

A Yes.

Q Okay.

Lieutenant, did you have an occasion in the course of your official duties to investigate a fire at 460 West 42nd Place in the City of Hialeah?

A Yes.

Q On June 29th of this year?

A Yes, sir.

Q All right.

Can you tell us at what time you received notification that such a fire existed and your service as the Fire Prevention Bureau as opposed to line firemen would be required?

A Approximately 10:30 and about eleven minutes after the initial fire crew attacked the fire and had it partially subdued and I could add to that--

Q Go ahead.



A But you might already have that question.

Q Go ahead.

A I would add and probably concur very simply a matter of record the fire crew on their initial attack of the fire are trained and instructed to notice anything of a suspicious nature concerning the fire itself and they became suspicious and asked for the Fire Prevention Bureau in the form of myself as it occurred to come to the scene to in fact aid them or to assume to take notice of what they saw that alarmed them and passed it to us to see if it were--If we could deem it important or in fact, of a suspicious nature and then pursue further inquiries.

Q All right.

We have had Lieutenant Fogel's testimony that he became suspicious because of the nature of the two fires and the closed door which he described as being a locked door to the utility room that there might be the employment of some exterior agency, criminal agency, if we can and that's why he called Fire Prevention.

In any event, you arrived on the scene at approximately 10:35 as indicated on the alarm report?

A Correct. My unit was 153. There may have





been a slight error. The dispatcher did dispatch me and Charles Hale in unit 153 first and then they asked or our second unit to come in or I asked because I wanted all three of us there.

Q That would be Mr. Clavier?

A Mr. Clavier, correct.

Q There is some question as to who was driving 152 and who was driving 153, it's not terribly important.

In any event, when you arrived on the scene at 10:35, what other fire personnel were then present?

A That would be Lieutenant Fogel and his fire crew which I believe was Glen Bretch and Reynolds and possibly another man who was on that fire truck. Those three, possibly a fourth.

Q At that point were there any police or law enforcement agencies on the premises?

A No, sir.

Q When you arrived on the scene to what point on the premise did you go and what did you observe?

A We immediately advanced to the fire scene



and it was very hot and still smoking. The boys were still putting water. We stepped back a few feet and I observed a desk rather badly burned right near the door of the utility room. At that point Lieutenant Fogel and I discussed the rather strange appearance of a burned desk and then a burned utility room and the louvers of the utility room door, enamel white, not burned or not appearing badly scorched or even smoked up. That led me or attributed to the reasonable assumption that there were in fact, two fires.

At this point nothing had been further uncovered in this room. We were in the process of starting to remove a hand truck and lawn mower and--

Q This is what is referred to as an overhaul?

A This would be the overhaul, yeah. Very simply a thousand times out of a thousand fires we'll do this as I mentioned earlier. It's normal for fire crews to do, in fact, rather than stand there and just flood the room with tons of water. There's still a chance that in this type of material, any type of material, there can be embers that did not receive the water.



Q When you first observed the utility room was there any indication to you by way of smoke or any other sign that there were, in fact, yet burning embers or other sources rekindling?

A It was still not at all under control as far as the initial flames were not to be down and there were pads and furniture in there that was covered and a lot of hidden smoke pockets that providing height and smoke which right away tells the fireman with a room with this many goods you can't--You want to get a ladder and look down to see if the fire entered the main house through the eaves, something like this. It was quite away from what we call a controlled situation.

Q Okay.

What, at that point, did you do, sir?

A I asked who was the owner of the house and I believe the owner was present with us or very shortly became present or was in the general area. I think Lieutenant Fogel said it's Mr. Lopez. He's talking with his wife now or he'll be right here. He's the gentleman. And when he came over I think I relayed what I already seen into a question to him, something like I'm here--I



may possibly ask you some questions about what we term as a suspicious situation here because he was not there when the fire broke out and no eye witnesses told us the utility room burst into flames or anything like that. We had to start thinking about asking questions to kind of solve this rather queer looking scene, what appeared to be two separate fires.

It was determined then that we would start pulling stuff out of the room and that Mr. Lopez' truck or whoever's truck was parked in the carport--It would be easier for all of us if we pushed this vehicle back. I don't believe anybody had the key. It was locked or out of gear. We pushed it back.

Q I understand he assisted you at your request?

A Yes, sir.

Q Let me stop you there, Lieutenant, and ask you this: You said it was at this point you decided to pull things out of the room?

A Well, it was at that point the fire crew would have started anyway regardless whether I was there or not and I didn't instruct them to hold off. I did tell



them I'm viewing this now and that I made no objection to emptying the room because this is their job. They would be chewed out for not doing it.

Q Was it your understanding the door to the utility room was locked when the first unit arrived there?

A Yes, that's true.

Q All right.

You know now based on your investigation who was actually present on the premises when the fire was either initiated or when it was reported to the fire department?

A Just from my--From no further investigation or reasons we already had discussed--Although I did make a return on September 6th and talked to the family and Mrs. Lopez I assume the senior members of the family were home and Mrs. Lopez.

Q How about Mr. Lopez?

A No, no. He was there when I got there, but the fire crew said when they arrived they didn't see him or no one came in his person until some moments after he appeared to have driven up in a truck or car and came forward naturally worried about his house.



Q Did you ever determine who had the key to gain access?

A No, I did not press that information. I took it at face value. The fire crew said the door was locked. They knocked out some slats and I think opened it from the inside.

Q Would you in the investigation of the arson which I understand was your principal concern, would you be concerned in knowing who, if anybody, had keys to that room?

A No, because I would have assumed the door was locked and that an arsonist would not need a key to set fire to the utility room. I would assume the arsonist could go to the rear window and take a small container with flammable liquid and throw it through the jalousies. Of course, it would go through the screen and then set fire or spread the flammable liquid on the desk and set fire to it or flip a match in the slats and then set the fire.

Q Were those jalousies open?

A They were intact. They were about halfway in the fully opened position.

Q These are jalousies on the door or rear



—  
window?

A In the rear window. The door was a built non-adjustable slatted louver door.

Q Did you find evidence of any such property as gasoline or some flammable liquid at the rear window?

A No, sir, we didn't detect an odor of gasoline. I did not detect scorching about the rear window where I suspected the arsonist would have lit the room because residual fuel I surmised would be present on the scene and on the window the fire would also be burning there from the dripping of flammable liquid that I at the time had to consider was the alleged or the possible arsonist--

Q Even though the purpose of this deposition and further proceedings doesn't really concern it with the arson aspect of it, I would be curious to know first of all, are you still at the belief that it was an act of arson?

A No, I revised the thinking that I did do for probably an hour. I was still puzzled by what appeared to be two separate fires, the desk and the utility room with the door in between not scorched.

—



Now, I was not so strong on pursuing arson as some time went by because in the room there was a gas can. I believe a plastic three or four gallon or possibly five gallon gasoline can that's used to service lawn mowers and what not that had been burned on the top. The cap appeared to be missing.

Now, in that room with that amount of combustibles I believe the can of gasoline and the lawn mower and a gas hot water exposed flame. It is really conceivable I believe, although not as probable as I might lead you to believe, it's conceivable that the gas could have been a little spilled there from whoever used the gasoline--Later I think Mr. Lopez Senior from a remark from Mr. Lopez Junior made.

At any rate it is conceivable that the flammable liquid in the form of the gas can and the lawn mower could have filled the room with an explosive mixture even though the window was open and that the source of the ignition could have been the hot water heater suddenly signaling on, when they do signal on there's a flame. I believe the presence of the flammable vapors--That is usually when the exact fire begins and it would appear





in the form of a low level explosion.

Q Just a second. Let the record indicate it's a blowing or winding sound.

A Right. I can't characterize it. A low level rather minor expanding of the mixture not a contained explosion which would render walls apart.

It is conceivable that at that point there was a flame that shot through the louvers and directed themselves through the desk which is in the proximity.

Q Are you presently pursuing an investigation as to arson? Have you closed the case?

A I haven't closed it. I'm holding it open until such time--Revisiting, it won't help me any. We have photos. I. D. people took photographs. I'm in the air as to the arson or as to the accidental aspects. I'm not too certain that it was arson. I'm not certain it was not. I would like to talk to anyone who might bring my opinion to a stronger degree towards arson by process of elimination such as the passing of those who would be who owns the house and those who rent the house; do you have any suspicions about someone; has anyone been



near your house lately; have you seen anyone leaving as you approached; have you had any strange phone calls; any threats.

Q Of course, you have been stymied in that regards because of the criminal prosecution?

A Yes, plus I'm not certain now as first it did appear to me almost clear cut arson. This is before anything was taken out of this room. I would still study this situation with a burned desk and utility room.

Q And an intervening door?

A And an intervening door which says that was not accidental at first sight. Now, I revised my thinking unless I have more information or if we actually capture an arsonist that admits to other arsons and admits to this one or if there were some family fight or some ex-wife or some ex-husband, these are the things that the person that was the victim of the arson, the alleged arson has to come forth and reveal to me because my investigation cannot draw these type of facts out; therefore, if Mr. Lopez in any further questioning or a small little inquiry right in his property if we could--Because my inquiries are brief, you know, I don't have any stern



methods of drilling someone; under this condition I wouldn't. Sometimes I could if it's another case that's suspicious and I had a suspect of the fire I would be required to ask this man many, many questions and later on as time went by why I see it could have happened accidentally.

The elements were there for an accidental fire. It would be a little hard to explain the fire shooting out these slats of the door and catching with one blast the desk on fire unless it had some dripped gasoline or something because it burned pretty good. It left a pattern.

Q You indicated that you heard and I think if I quote you correctly you said Mr. Lopez said something about the older Mr. Lopez having used the gasoline or the lawn mower?

A It's a vague statement that he had mentioned.

Q When was the conversation with Lopez about that? When did that take place?

A Well, we took the gas cans out of there, the lawn mower out of there, the hand truck out of there. He looked at the gasoline can. He said something like, "I had told my father that I didn't want the cap left off that gas can and I scolded him for this." He was almost



talking to himself. He was trying to figure out about that gas can. Something was in his mind about this gas can.

Q He specifically referred to the other man as his father?

A I believe he said his father, but I can't quote it verbatim. It was a passing remark as at the time I was writing something and I was talking to someone and he was standing near by and said something about that gas can. He had scolded someone about that gas can was left with a lid off and in fact, you can see why I concern myself now that it was or could have been an accidental fire. Off the record.

(Thereupon, discussion  
off the record.)

Q (By Mr. Greenspahn) In any event, at the time you arrived on the premises had any weapons, ammunition, grenades been found yet?

A No.

Q Do you recall when it was that the first indication of any such prohibited weapons or explosive devices were found?



A Yes, I recall exactly. Sometime approximately in the process of the overhaul maybe eight minutes after my arrival or 11 minutes, we had moved the car back, I had asked a few questions, I had talked with Fogel about these two fires and the firemen began I think at Lieutenant Fogel's direction to start pulling this broom out because there was a very large amount of goods in this room. I was standing back inquiring of Mr. Lopez at the time when two rifles in plastic--little plastic covers clear through were handed out and a fireman brought it over and stood it against the wall and said something in Mr. Lopez' direction to the effect that, "Here, sir, you may wish to take these inside and clean them up." He made no move towards these. I happened to notice that in particular. I noticed him and I thought too, well, maybe they're hunting rifles and being a veteran while later on as I thought about it as the case progressed I thought, of course, they had a military look. They were identical, but that had no bearing, really and this was reiterated after possibly a 15 or 20 second pause and the fireman stood facing Mr. Lopez and wondered why he didn't act or anything. I believe I reiterated at the time, "Mr. Lopez, these guns here you



may want to take your guns in now, you know, wipe them off."

Q He was hesitate?

A Oh, yeah. He hesitated again and though in a moment of confusion or something, I don't know, he seemed a little nervous. He said, "It's okay to take them inside?" And I said, "Yes." He moved towards them and, in fact, went in the house. I didn't see him for awhile.

Q You say you were querying him at one point or another?

A Yes, I was probably asking him some questions when did you get here or did you have any gasoline or anything on that table, questions of that nature, just normal questions that I would ask anyone. Well, what was here now that you had the fire on the desk was there anything on there besides just the desk and the pieces of glass, little questions like that.

Q Lieutenant, you understand the reason why I'm taking your testimony now is in connection with the prosecution that's pending in the State Court and I want you to understand because I'll ask you some questions very specific and I want you to understand that the record



should reflect as I said yesterday that I have the greatest personal respect for you as a fire officer and as a man. I don't want you to take these as personal questions. They do go to some of the issues.

The first question is: At the time you directed inquiry to Humberto Lopez, did you advise him of his Constitutional Rights to remain silent, have the presence of counsel and the other so called Miranda Rights?

A No, and I might add that I'm not according to training I have had in arson detecting on a man's personal property and in the initial stages of a fire investigation I would not even consider reading a Miranda Rights to him.

Q You're training has been that's not necessary in that stage?

A Absolutely. I don't feel it's a transgression of the man's Rights. Let's put it that way.

Q Lieutenant, were you present when the hand grenades were discovered?

A No, sir, there is a slight story that goes with this.

Let me finish now as the rifles were



brought out and Mr. Lopez after our discussions, you know, trying to help him with the hunting guns, well, he didn't want to go near them. Finally he went near them when I reiterated it would be all right to take the guns in the house, clean them, oil them up and what not, so he did. He seemed very, very nervous to me. I had not suspicion of him. I had no suspicion at all about him or anything wrong with this fire, just to me so far was just another utility room fire. It happens quite often.

As this thing was progressing what is your correct address I might have asked him. I only asked two or three questions. I had not drilled the man or asked him anything.

Q You at that point formed some question in your mind as to accidental as opposed to intentional.

A I was trying to come up with what I saw to tell me, in fact, an arson occurred, still I had not had the owners of the building or residents out telling me we were sitting there and this thing started. I still was feeling that well, maybe, they were visiting next door or no one was home and someone watched their house and they weren't home and drove up. How did he do it. I was trying to figure this out.





At this point right after the rifles a fireman brought a box they had been stumbling on, I believe a heavy metal box out and it appeared to be an ammunition box and it was opened by my Inspector Hale and to find out, you know, is there something there in the box burning or valuable papers he'd want to give Mr. Lopez.

We wanted him there as we emptied the thing to claim the things, you know, and it was a box full of bullets and one bullet had gone off. We think from the heat of the fire already made a bump in the side of the box. Some of the rounds were that long (indicating).

It was within seconds later I think Lieutenant Fogel called me. He said, "Lieutenant Cole, will you come here a second?"

Standing right there easily not hidden behind anything the very first thing as we took some further pads away, you know, because we're going to clean this room, there was a tremendous size anti-tank weapon which my Inspector recognized as such, as well as an assortment of what appeared to be automatic military weapons.



It was our feelings that this now should be called to the attention of the police and I did proceed to do so. I asked for a policeman to come by and bring the identification bureau and I said also you may notify the detective bureau. I would like the people that are in the business knowing about arms to be here in these early stages now and see what it is and if it is of any interest to them.

Q That would be the Metro Bomb Squad?

A Well, I didn't call the Metro Bomb Squad. I called first a police car to come by. I asked also for the I. D. Bureau for pictures and fingerprints and I asked also for the detective bureau. I wanted them to now take over this portion because we're going to still concern ourselves with the room. I immediately went back to the fire scene. As I passed Mr. Lopez, I said, "Mr. Lopez, I'm going to ask you to stand back from this area and secure from the area for quite awhile."

Now, I said I'll ask you a question. I said, "Do you know anything about the gear in that room?"

And he said quite quickly, "I don't know anything about it."



I said, "Thank you."

He then did not make any attempt to interfere with our proceeding and subsequently the police car arrived.

We didn't want to really touch the weapons and they had called the arson squad, apparently the police; a couple Hialeah Detectives drove in and that's the source of the further calls to the agencies.

Q Well, what I'm concerned about particularly at this point is when the grenades were discovered, just the grenades, not talking about the weapons or ammunition.

A I can't answer it because it was very close to noon. We had to take one of our two cars to the garage for scheduled repairs. It was nearing--It was probably lunch time or close to it. The situation was in hand. The fire crew was continuously removing other items from the room.

We elected to then take the car that needed repairs to the repair station and then we stopped at the submarine sandwich take-out place and grabbed a submarine sandwich and came back to the scene. When we came back that's when the FBI, Treasury and the Bomb Squad



had been involved were removing things from the room. They were in the living room and had some items on the table.

Q Did you see grenades on the table?

A I did. I had gone around the back of the house looking for anything suspicious in the form of discarded flammable liquid can and as I checked the perimeter of the utility room I came face to face with the sliding glass doors of the room with some men taking written statements and what not or in fact, compiling information and that's when I saw three, I think, hand grenades.

Q Do you have any knowledge directly or indirectly, even by hearsay, as to who it was that found those hand grenades?

A No, sir.

Q Do you have any reason to believe that it was one of your department's people as opposed to one of the law enforcement agencies?

A No, that I'm sure of, our fellows did not discover those items.

Q Okay.

Lieutenant, I just have a couple more



questions and I'll let you get back to your work.

What was the status of the fire and the overhaul at the point that you made your first observations?

A Really, the room had been initially knocked down with a spray of water that you put the actual fire out with, just a little water, and that was when Fogel had called me. I think he was working with a two man crew and himself. The room had not been touched as far as anything being removed yet. They were worried about moving the truck, so we could get the material out of the room and as I stated earlier, a thousand times out of a thousand we'll start and we'll, in fact, remove the materials piece by piece and several times we find hidden charred embers. It lowers the heat too in the room, plus I wanted a clearance of the hot water heater. We didn't want to turn the man's gas off to have them without being able to cook.

I wanted it certain we could not leave the room with items in it. There was no hesitation on my part and no objection and we deemed it fully within the scope of our responsibility to, in fact, overhaul and remove the



items from the room.

Q Did you when you left to go out to get your lunch break, did you feel it, the overhaul, had been completed as of that point?

A I have to think back. This is for a purpose of fire extinguishment. I'm not talking about the overhaul for any other reason.

The answer would be no. I feel the entire room would have to be taken apart and emptied, even though the weapons or whatever you call this was brought to the attention of the police my boys would have to have--I'm not on the fire line anymore. They have new instructions I'm not even aware of, but these firemen would have no hesitation and no question about that from what I saw right through to what I left for lunch that the room still was a fire as such or could bust back into one until we had relieved the room of the contents and then inspected the upper elevations of the room and give it a couple sprays; check it here, check it here.

Q When did you go--Let's strike that.  
When you arrived on the scene, did you literally take command of the first crew?



A No, sir.

Q Would that still be ~~under~~ Lieutenant Fogel's command?

A Yes, unless I said, "Hold it. There's prints here. There's this. Wait. I got an arsonist-- a possible arson. Hold everything."

Q Did you do that?

A No, I couldn't. I still viewed the room as it was extremely hot, extremely hot. You couldn't stay in there more than a second. You couldn't breathe with the fumes and the heat still in this room.

Q Originally 208 went out, but then 208 left and 206 came in just as a standby a block away, why was it there as long as it was? Why were those teams there for over three hours?

A It was felt that since we didn't have valid information whether or not there could be additional material in on the premises that could in fact, be explosive plus I had been coached by a man, a newspaper man, that claimed he got an anonymous phone call revealing this place can and will explode, not to go in and try to put the fire out. I got the man's name and all, something about the Republica News that he represented. He sped



to the scene in his car to warn us and the neighborhood. I said fine, I'll take it for what it's worth and after already having seen the box of ammunition and these heavy weapons it wasn't hard to realize there could be Bazooka shells, hand grenades, who knows what. I said, "Thank you. Stick around, the police might want to get your testimony. Don't take off. I want to get your name."

I said, "Boys, we're going to back off this, " though it was somewhere towards the finalization of overhaul and we felt for the moment that with this anonymous warning we better go and start getting to the neighborhood and getting people out just in case something did blow up because there was still a lot of heat in there. Remember now this heat.

Q Let me put it to you this way: If you had felt--I'm asking you to assume something that you may not have felt at that time. If you had felt that you had made the discovery of prints or some other physical evidence that would have, in fact, substantiated your suspicion of arson and in that event you felt that the fire had not been totally extinguished, would you in order to have preserved the evidence if it was so required given the demand as you





put it, "Hold it, fellows. Stop with your overhaul," in the appropriate manner as to collect the evidence or would you have considered the fire the primary hazard and would have instructed them?

A I would have because I knew then the firemen had tried to open the door. That was the end of the prints. They busted it, reached in and touched that other handle. I thought if there were any prints that might appear on the handle now it would not appear, it was experience, no.

I knew whatever the situation was going to be there was a combination of very little chance for fingerprints. I can show you case after case the room gutted out and burned and we couldn't even attempt to get prints from a room that's like that and now with the firemen I did notice the glass was broken now on the rear window and the firemen broke that so they could put some spray in.

Q But was there testimony revealing the glass intact when they arrived? That's what I'm getting at. I know you have recalled for us your specific observations and your specific feelings at the time, but what



I'm asking you to do is to assume something else not factual, but I'm using it as an illustration assume that there were fingerprints or some other evidence of criminality in this that you had observed. Would you under those circumstances have ordered a suspension of the overhaul procedure until the police authorities came to collect the evidence or would you consider first the primary hazard of the fire and leave your evidence if it was necessary to burn it up in the fire in the overhaul?

A I could have under that type of question had I had the feeling that the fire scene, the room itself, was secure had there been nothing in that room. But a lawn mower and a can of paint or something I might have said let's take a quick look and see if the fire has entered the house. I want a man in the attic or something like that or you go ahead now and do what you have to do. I'm going to check what I have here. There's times I could do that. This was not one of them because the fire still was a major factor. The room still was a major factor as far as the firemen were concerned because they do not like to extinguish one--Grantly I yield to the fire crew to in fact, pursue his obligation because we're the



chief staff of the Fire Prevention Bureau. It's the Chief Staff. The firemen's chief staff. They're in fire suppression. We're in fire prevention and to stop them from securing the premises is something I could never get myself to do even knowing--Feeling strongly about an intruder or leaving prints because the fact is fingerprints probably don't figure in on any arson cases unless the can of gas is found in the weeds that has the arsonist's prints.

Q If you were given the command to stop the overhaul and the crew had no further necessity for the overhaul--I realize you're assuming something you know on the basis of your experience and training--What you would do and what your crew would do had you commanded to stop now because I don't want to disturb the evidence, I don't want to destroy the evidence, would you by giving that command bring about suspension of the overhaul if you would in turn give the command to the line officers putting out the fire and you, yourself, the fire no longer required further overhaul? I hope you understand the question.

A I do understand it.



I want to give the best answer I can come up with on this. Not under the circumstances, no.

In the event someone was killed or someone had been seen running from the scene and I had stronger indications of arson--As it was, it was just a mild--The fire officer was mildly suspicious or he had instructions to any time anything looks like some suspicion, something wasn't apparently or clearly accidental to call us and give us a chance to look at it and from what I saw I just didn't have anything to really--Broad daylight on a busy--semi-busy street, you know, I would be grabbing into the Dick Tracy comic books to start conjuring up--

Q I don't want you to do that.

A No, everything I did came as a natural feeling. As Stedman before--Don't touch it, blah, blah, blah--It doesn't work. I felt the scene. There was no way with everybody going in and out. I'm left with the bones after this thing is over with every time.

Q The thing is now, really, I'm not trying to back you into a corner, I'm trying to get a specific answer. Would you under any circumstances in the exercise of your duty, take it upon yourself to order or command that the fire crews stop their overhaul if in your mind



there was a real probability that further overhaul was necessitated in order to control or extinguish the fire?

A Not really. I know that it might appear to you that I could be in charge of that much power where I would say stop, but it is such an unnatural thing it is just not part and parcel. It is like trying to get guys to shoot at the enemy that's advancing on you and say stop shooting, I want the smoke to clear. I want to see how close the enemy is. Christ sake, if we stop shooting they'll be right upon us.

Q Is it fair to say you wouldn't have issued such a command if there was any continuing threat of fire either principally initiated or rekindling?

A Naturally there's a point that comes along when you feel the fire is very, very much under control and the premises are safe from further burning because the fire crew could have to leave immediately and go to another fire, so I want them to do the very most they can do to make sure this thing will not rekindle that residual heat. I want them to do the most even at the risk of destroying a potential arsonist calling card, so to speak. I wouldn't hesitate.



Q But if you were satisfied that the fire was, in fact, extinguished and there was no reasonable threat of rekindling, would you tell the firemen who came as a gratuitous effort on their part to leave the thing in place?

A Right, after waiting a period I could say gentlemen, I think you have done a great job. Have you got any pry bars here that you want? We're going to now call this an investigative fire scene and I know you fellows want to get back in service and fill your trucks with water and get your hose back on and so forth.

Q A nice way of telling them to get out and leave it alone?

A In other words, if I had a crew spending hours and hours doing more than they're required to do, yes, I'd probably say okay, that's enough boys, you know, but no, it was nowhere near that stage, believe me.

Q Lieutenant, do you have any idea how I could find out who, in fact, found the grenades?

A I think you'll find the Crime Lab--I do feel that they found the grenades.

Q The Crime Lab from Dade County?



A       Somebody may have said something that I remember. Back with the Crime Lab, these fellows went over the place. You see differently dressed fellows, the Metro Crime Lab, whatever. The lab man had arrived maybe before some of the FBI experts. He may have found the grenades. I think he did.

          Those people we would yield to immediately. Anyone who could determine or dismantle that bomb that could still go off any moment. I would naturally yield to them as well as the fire crew which I think we did.

          On their arrival they superseded our efforts and we were concluded anyway with our fire overhaul. I think at that point.

          We did yield to the weapons or the actual lifting of what was in there in the line of what could or could not be construed as illegal weapons or weapons that would be interesting to those who have the power to decide whether they're illegal or legal.

Q       Now, in light of what you just said, if I understood it correctly, it's sort of critical, I want to make sure I'm not misquoting you. You said when they arrived I think you're referring to the Crime Lab?



A Right, I was not there though, remember?

On the arrival of the Hialeah Policeman, the Hialeah Detectives and Hialeah I. D. Bureau and with the fire crew still there with the other fire truck down the street to aid in the evacuation of the houses in case some people were asleep in the bedrooms or whatever we might have to do--We might have gotten somebody on the scene that would order the entire block be evacuated, so that's what we had in mind for extra fire vehicles.

Q Do you have anyway of knowing when the overhaul was completed?

That's really a critical time.

A No, sir.

Q It was apparently not completed when you left the premise to go to lunch?

A I'd say the overhaul was never fully completed because of the entrance of the weapons people and then the fire crew's decision that the overhaul had progressed to the point it was felt that it could now be termed as safe and not capable of rekindling.

Q So, when the weapons people came, you would say that was the point at which the overhaul was terminated?





A I would almost have to say that, yes, because of the fact that now they wanted to start taking certain boxes and both of us were in there taking gear apart that I think one of us had to yield to the other because of the natural warning we got that the room will explode. I think that right there tells you that we had to then leave the weapons experts, bomb squad, policemen fully go into the operation.

Q All right.

Do you know who Ernest Zerumba (phonetic) is?

A I don't think I do.

Q Palm Springs, 645 West 49th Place?

A No, sir.

MR. GREENSPAHN: I have no further questions and I want to thank you as I thanked all the members of your department for your candid cooperation.

THE WITNESS: We could speak candidly on this, I think, because of the fact we all remember there was no great amount of crazy things happening. There was nobody screaming, running around, burning. There was nobody claiming I had \$800.00 in there that's burned up.



It was a good stop. The guys got in there real quick before it boiled out of control and made a pretty good stop and things were rather--It was really a very simple fire.

(Thereupon, discussion off the record.)

MR. GREENSPAHN: Lieutenant, you have the right to read your testimony and determine whether the Court Reporter has been accurate or not. You can waive that right.

THE WITNESS: See, it's one of these things that I just don't see anything there that would bother me so bad. I mean, you might find I might say one thing and another thing when I'm called to testify, but basically, I'm not trying to add to it. I know this in my heart. I'm not trying to add to what happened and by knowing that I feel as though you know whatever is asked of me is the truth as I saw it and will repeat it so to speak.

MR. GREENSPAHN: That's what we want.

(Thereupon, at 12:00 o'clock p.m., the taking of the deposition was concluded.)



(Thereupon, reading, sub-  
scribing and notice of  
filing of the deposition  
were waived.)





IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. 73-5087

WITNESS SUBPOENA  
"Criminal"

STATE OF FLORIDA, ss.  
  
vs.  
**HUMBERTO LOPEZ**

TO: MRS. CATALINA PATTAO  
460 W. 42 Place  
Hialeah, Fla.

(Defendants)

(Witnesses)

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA: GREETINGS

We command you to summon the above witnesses to be and appear before the State Attorney, of the Eleventh Judicial Circuit of Florida, on the Sixth Floor, Metropolitan Dade County Justice Building, 1351 N.W. 12th Street, Miami, Florida, on September 19 19 73 , at 2:00 P. M., to testify and the truth to speak in behalf of the STATE in a certain matter before said State Attorney pending and undetermined.

And this you shall in no wise omit.

WITNESS, RICHARD P. BRINKER, Clerk of said Court, and the seal of said Court at Miami, Dade County, Florida, this the 12 day of Sept. , 19 73 .

(Original)  
(Court Seal)

**SEE MR. KAYE**

By RICHARD P. BRINKER, Clerk  
*Kathleen H. Brennan*  
Deputy Clerk

SEP 13 1973

RECEIVED this Subpoena on the \_\_\_\_\_ day of \_\_\_\_\_ , 19 \_\_\_\_\_ , and executed the same on the SEP 13 1973 day of \_\_\_\_\_ , 19 \_\_\_\_\_ , by delivering a true copy thereof to the witnesses named above, as follows, to-wit:

*Personal*

SHERIFF, DADE COUNTY, FLORIDA

By *Bobby Felts*  
Deputy Sheriff

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. 73-5087

WITNESS SUBPOENA  
"Criminal"

STATE OF FLORIDA, ss.

TO: MR. REINALDO PATAO  
460 W. 42 Place  
Hialeah, Fla.

vs.  
**HUMBERTO LOPEZ,**

(Defendants)

(Witnesses)

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA: GREETINGS

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And this you shall in no wise omit.

WITNESS, RICHARD P. BRINKER, Clerk of said Court, and the seal of said Court at Miami, Dade County, Florida, this the 12 day of Sept. , 19 73 .

(Original)  
(Court Seal)

**SEE MR. KAYE**

By Kathleen H. Brennan  
RICHARD P. BRINKER Clerk  
Deputy Clerk

RECEIVED this Subpoena on the SEP 13 1973 day of \_\_\_\_\_ , 19 \_\_\_\_\_ , and executed the same on the SEP 13 1973 day of \_\_\_\_\_ , 19 \_\_\_\_\_ , by delivering a true copy thereof to the witnesses named above, as follows, to-wit:

*Personal*

SHERIFF, DADE COUNTY, FLORIDA  
By Bobby Felton  
S.A.O. Deputy Sheriff

STATE OF FLORIDA  
COUNTY OF DADE SS.

TO ALL AND SINGULAR, THE SHERIFFS OF THE STATE OF FLORIDA-GREETING:

WE COMMAND YOU TO SUMMON \_\_\_\_\_  
Andy Chicvara

**- FILED -**  
NOV 14 1975  
RICHARD P. BRINKER  
CLERK

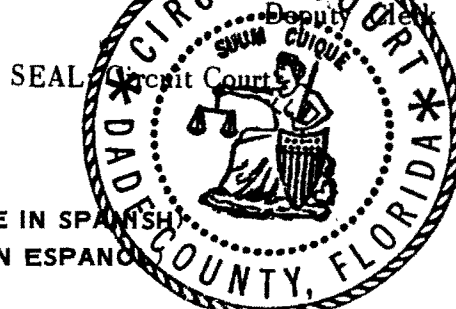
\_\_\_\_\_ to be and appear before the Honorable  
Arden M. Seigendorf Judge of the Circuit Court of the Eleventh  
Judicial Circuit of Florida, in and for Dade County, on the fourth floor of the Metropolitan Dade  
County Justice Building in Miami, on Friday the 14 day of November  
A. D. 19 75 at 9:00 o'clock A. M., to testify and the truth to speak ~~in relation to~~  
~~the DEFENDANT~~ in a certain matter before said Court pending and undetermined, wherein the  
State of Florida in Plaintiff and Lopez, Humberto is Defendant.  
And this you shall in no wise omit.

WITNESS, RICHARD P. BRINKER, Clerk and  
the Seal of said Court in Miami, Dade County,  
Florida, this November 13, 1975.

~~Amended by Order of the Court~~

FLORIDA PROBATION & PAROLE COMM:  
\_\_\_\_\_  
Joseph R. Suarez  
\_\_\_\_\_

Richard P. Brinker, Clerk  
By \_\_\_\_\_



(REVERSE SIDE IN SPANISH)  
(REVERSO EN ESPANOL)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. 73-5087

WITNESS SUBPOENA  
"Criminal"

STATE OF FLORIDA, ss.

TO: MRS. HUMBERTO LOPEZ  
460 West 42 Place  
Hialeah, Fla.

vs.

HUMBERTO LOPEZ,

(Defendants)

(Witnesses)

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA: GREETINGS

We command you to summon the above witnesses to be and appear before the State Attorney, of the Eleventh Judicial Circuit of Florida, on the Sixth Floor, Metropolitan Dade County Justice Building, 1351 N.W. 12th Street, Miami, Florida, on September 19 1973, at 2:00 P. M., to testify and the truth to speak in behalf of the STATE in a certain matter before said State Attorney pending and undetermined.

And this you shall in no wise omit.

WITNESS, RICHARD P. BRINKER, Clerk of said Court, and the seal of said Court at Miami, Dade County, Florida, this the 12 day of Sept., 1973.

(Original)  
(Court Seal)

SEE MR. KAYE

By Richard P. Brinker  
Deputy Clerk

RECEIVED this Subpoena on the SEP 13 1973 day of \_\_\_\_\_, 19\_\_\_\_, and executed the same on the \_\_\_\_\_ day of SEP 13 1973, 19\_\_\_\_, by delivering a true copy thereof to the witnesses named above, as follows, to-wit:

*Left with Walter*

SHERIFF, DADE COUNTY, FLORIDA

By Bobby L. [Signature]  
Deputy Sheriff  
S.A.O.



DEC 13 1973

FERGUSON, J.

State of Florida

vs: 73-5087

Humberto Lopez

Unlawful Possession of  
An Explosive

State: R. Kaye

Deft: M. Greenspan

Rept: J. Ounan

The Court reconvened with all officers and Deft. present and the Voir Dire examination of the prospective jurors continued from 12-12-73. (#'s 205, 214, 231, 233, #240 & 245 seated 12-12-73)

1	205	Carl D. Feldman	1	
3	214	Margaret A. Causey	3	
10	231	Esther Quiles	4	Excused State
11	233	Richard Viera	5	Excused State
12	240	Anne Radner	2	
13	245	Alberta Flason	6	
14	251	Mercedes Hernandez	4	Excused Deft
15	256	Harry D. Locke	5	
16	265	Ronald Bowling	4	

The following jurors were accepted  
# 205, 214, 240, 245, 256 & 265.

The Court recessed the trial of this cause for the noon hour

The Court reconvened with all officers and Deft present and the trial of this cause continued from the forenoon.



DEC 13 1973

FERGUSON, J.

State of Florida  
vs: 73-5087

Page 2.

The following proceedings were had on  
the Deft's Written Motion to Suppress.

Deft's Witnesses:

1. Newton E. Porter - sworn

proceedings were continued in Chambers with  
all officers & Deft present:

2. Russell D. Cole - sworn

3. Robert A. Clavier - sworn

Deft rests.

State rests.

The Court Denied the Deft's Written  
Motion to Suppress.

The Court reconvened with all officers and  
Deft present and the following proceedings  
were had:

The Deft withdrew his previously entered  
plea of Not Guilty and tendered a  
plea of nolo contendere, which plea was  
accepted



DEC 13 1973

FERGUSON, J.

State of Florida  
vs: 73-5087

Page 3

The Court withheld the entry of sentence and placed the Deft on 2 yrs probation

The <sup>prospective</sup> jury returned to the jury box, respective counsel conceding their presence without a call and the Court discharged the jurors from further consideration in the above cause



DEC 12 1973

J. Ferguson

State of Fla.

VS. 73-5087

Humberto Lopez

Unlawful Poss of  
an explosive

State R. Kaye  
Deft M. Greenspan  
Deft - J. Ouhah

In the absence of the judge  
the following jurors were called  
on Voir Dire:

1	205.	Carl Feldman	1	
2	213.	Fred Davis	Ex	Cause
3	214	Margaret Causey	3	Ex
4	217	Charlotte Campbell	Ex	Deft
5	218	Sarah Johnson	Ex	Deft
6	220	Amanda Vergara	Ex	Deft
7	221	Oscar Casas	3	Ex state
8	222	Nevart Zartarian	4	Ex Cause
9	224	Nahda Lutch	2	Ex Deft
10	231	Esther Quiles	4	4
11	233	Richard Viera	5	5
12	240	Anne Radner	2	6
13	245	ALBERTA Floroy	6	7

Court recessed until 10:30 12-13

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

STATE OF FLORIDA, :  
 :  
 Plaintiff, :  
 :  
 -vs- :  
 :  
 HUMBERTO LOPEZ, :  
 :  
 Defendant. :  
 :  
 - - - - - X

CRIMINAL NO. 73-508

FILED FOR PETER J.  
73 DEC 12 PM 2 11  
CLERK OF CIRCUIT COURT  
DADE COUNTY FLA.  
03

501 Palm Avenue  
Hialeah, Florida  
December 11th, 1973  
10:00 o'clock a.m.

DEPOSITION OF LIEUTENANT DONALD J. FOGEL

APPEARANCES:

No appearance on behalf  
of the State of Florida.

MELVYN GREENSPAHN, Esq.,  
on behalf of the Defendant.



The deposition of LIEUTENANT DONALD J. FOGEL, a witness of lawful age, taken for the purpose of discovery and for use as evidence in the above-entitled cause, pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, pursuant to notice, before MONA GESSE, Court Reporter and Notary Public in and for the State of Florida at Large, at the time and place aforesaid.

- - - - -

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
Lieutenant Donald J. Fogel	3	-



Thereupon--

LIEUTENANT DONALD J. FOGEL

was called as a witness on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREENSPAHN:

Q All right, sir, will you please state your name and your professional address.

A Lieutenant Donald J. Fogel, Hialeah Fire Department.

Q Lieutenant, how long have you been connected with the Hialeah Fire Department?

A About 14 years.

Q How long have you been a Lieutenant?

A Oh, about a year and two months.

Q Are you presently in anyway connected with the operations of the Fire Prevention Bureau of Hialeah?

A No, sir.

Q You're strictly a line officer with the Fire Department?



A Right.

Q I understand that you were on the day of the occurrence that we're talking about which I think was June 29th, this year, stationed at Station 3?

A Yes, sir.

Q And you still are?

A Yes, sir.

Q All right.

Did you receive a dispatch on that date to go to the premise at 460 West 42nd Place?

A Yes, sir.

Q How was it that you received your first notice or dispatch on this? Was it by radio or otherwise?

A No, by the alarm office by way of telephone.

Q Do you know what the source of the report to the alarm office was? Have you had an occasion to find out was it as a result of a fire box being activated? Was it as a result of a citizen's call?

A That I couldn't tell you, sir.

Q In any event, do you recall the time--  
If you need the official records for this, you're welcome to look at your records during the course of your testimony,





I don't know if you have any or not.

A I can get the copy of the report.

MR. GREENSPAHN: Why don't you do that, Inspector, you can be more specific in your answers. I can give you what I got here but I don't think it's the complete report. It's whatever Lieutenant Cole sent me.

Q (By Mr. Greenspahn) Would that report that I have just made available to you, would that reflect any written notes, memorandum or reports made by you in connection with your activity in this fire?

A Yes, sir, I'm the one that made this report and signed it.

Q All right.

Does that bear a date? Is there some descriptive term we can use? I'm going to ask the Court Reporter at the conclusion of the deposition to mark that as an Exhibit to the deposition. That was 6-29-73.

All right. Did that indicate, sir, when you received the fire call?

A Yes, sir, it did.

Q What time?

A 10:07.



Q A. m.?

A Yes, sir.

Q All right.

And does it also indicate when you rolled out of the Station?

A No, we rolled out as soon as possible after that.

Q Does it show the time of arrival?

A Yes, sir, 10:11.

Q In point of distance how far is the Station from the scene of the fire?

A Oh, I'd say approximately a mile.

Q Okay.

When you arrived on the scene, what did you observe?

A When we arrived on the scene there was a trash fire in the carport which we extinguished first.

Q How would you describe that fire in terms of dimension or severity?

A I would say you could consider that like a small trash fire. It was a desk and some other material sitting out in the carport.



Q How did you extinguish it?

A With our booster line from our pumper.

Q Now, did you subsequent to the extinguishment of that fire, have an occasion to observe another fire on the premises?

A Yes, we did.

Q Where was that?

A That was in the utility room.

Q And in point of time, from the time of the extinguishment of the first fire, how long was it until either you or one of your men noticed the second fire?

A I would say 30 to 45 seconds, something like that.

Q How would you describe that fire?

A I would call this as a more severe fire than the first one we encountered.

Q Do you have a reference to the severity of the fires or the degree of danger involved in terms of a code, like Code 1 we know is a very serious fire?

A Yes, sir.

Q How would you classify both the first and second fire?



A I code it in as Code 2.

Q What's the definition of Code 2?

A Code 2 means the vehicle on the scene can handle whatever is there.

Q How did you go about putting out the second fire?

A The second fire was extinguished by kicking the slats out of the louver door in front of the utility room.

Q Is that for ventilating--

A This is a forceable entry. In other words, we couldn't pry the lock or anything else to get it open. After we forced the slats, I couldn't open it by turning the handle.

Q Was it locked?

A Yes, sir.

Q Okay.

What was the means by which the fire was extinguished?

A With the booster line.

Q Again with the booster line.

Do you keep records--I don't know if this



is done or not--Do you keep the records of how much water in terms of gallons is used out of the pumper?

A Yes, sir, most of these are approximate. We usually approximate. A hundred gallons of water.

Q Is it fair to say putting out the two fires was not really a major task for you, that these were considered in your line of work to be small fires requiring small water consumption?

A You can't always go by the amount of water consummated because what mostly does if applied properly is the steam, the effect you get from the steam. This was the fire enclosed in the utility room. Once you put a given shot of water it produces steam which expands which puts out a lot of the fire.

Q Where in the utility room was that second fire?

A Totally involved.

Q Totally involved?

A Yes, sir.

Q In terms of time, how long did it take you to get that fire extinguished, approximately?

A I'd say under control--I'd say approximately



a minute or so.

Q Did you ultimately in fact, extinguish that fire?

A Yes, sir.

Q Okay.

Did you complete putting out both fires before any units from the Fire Prevention Bureau were called?

A No, sir.

Q Would you tell me what the sequence in terms of time was in regard to the fire extinguishment and calling Fire Prevention?

A After we put the first one out, we saw the other one, we had kicked the door down and there was no visible signs of how one fire could have gone from one place to the other. I thought it was funny how there was two separate fires. This is why I called the Fire Prevention Bureau to come out and investigate.

Q In other words, the possibility of arson existed in your mind and you called your appropriate authorities to investigate it?

A Yes, sir.



Q By the time Fire Prevention got there, I understand--Correct me if I'm wrong, I understand it was Lieutenant Cole and Inspector Hale?

A Yes, sir.

Q That came on the scene?

A Yes, sir.

Q By the time they arrived on the premises, had you extinguished the second utility room fire?

A It was extinguished, yes, not totally.

Q By extinguished, I mean totally.

A No, sir. The only time a fire is totally extinguished is after the completion of the overhaul.

Q That's what I wanted you to tell me about. First of all, was the flame out?

A Any visible flame was out.

Q Okay.

Were you engaged in the overhaul when Lieutenant Cole and Inspector Hale arrived on the scene?

A Yes, sir. We had just started.

Q And what were your overhaul procedures as to that utility room fire?

A To completely overhaul the utility room.



Things have to be removed to get back in the corner to make sure there is no visible embers or anything else coming out of the utility room.

Q Were you doing that at that time?

A I think we were. We had removed a few things from the utility room at this time.

Q Now, in the contemplation there might have been an arson and that you had summoned the Fire Prevention Bureau people, is it normally your procedure to move things around? In other words, do as we lawyers are fond of saying to move potential evidence or potential clues that might assist in the investigation?

A No, you don't move anything more than necessary.

Q All right.

In this instance, what, in fact, did you move in your overhaul proceedings, do you recall?

A Before we--The first thing we removed was a couple--I would call them packing blankets and I think there was one hand truck by U-Haul made from the U-Haul Company was about all we had removed up to this time.

Q Up to that point, did you find any embers?





Did you find any other indication the fire was still an active fire?

A Yes, there was still smoke coming out from the corner of the building.

Q Do you remember which corner it was in terms of direction, north, east, south, west?

A Let's see. The building is facing north, so this would be in the southeast corner of the building, in the southeast corner of this room.

Q Did you go to that area?

A Not at the present time because we couldn't get in that far without removing more of the equipment that was in the building.

Q Did you wet down that area?

A We did, yes.

Q Okay.

What then happened as you proceeded with your overhaul? What personally did you see?

A At this time the Fire Prevention Bureau was on the scene when they made the preliminary investigation, so we started to remove some of the merchandise, not merchandise, equipment, that was in the building to



gain access to the rear corner. We moved like I say, a couple packing blankets, things like this. We removed a metal box. It looked like an ammunition box.

Q Could you describe it to me? Was it closed or locked?

A It was closed.

Q Was it locked?

A No, sir, I don't believe so.

Q When you say it looked like an ammunition box--Were you in the service?

A Yes, sir.

Q Was that the basis of your determination it might have been an ammunition box?

A Yes, sir.

Q Could it have been some other kind of box other than an ammunition? Of course, we know now it was an ammunition box, but what about that box made you assume at that time that it was, in fact, an ammunition box?

A It just looked like all the ammunition boxes that I have seen in the military.

Q All right.



What did you do upon discovering that box?

A Removed it outside and it started to rattle, so we thought maybe it was some tools. We didn't know, we opened it up. This is when we found ammunition in the box.

Q And then continuing along with your procedures what did you do?

A Well, we continued to take more things out of the building. The next two things I think we took out were two rifles that were wrapped in like plastic and at the time I figured they were maybe hunting rifles which possibly a man stores in a utility room.

One man--Jack Reynolds was the one that took them out and handed them--Asked him if he wanted to put them inside for safe keeping. The man didn't want to touch them to start with, after awhile he did take them and put them inside.

Q Were you present when Mr. Reynolds proffered these weapons to Lopez?

A Yes, sir.

Q I take it it's Lopez you're talking about?

A Yes, sir.

Q Okay.



When you say he didn't want to touch them how did he evidence that?

A He just sort of backed off a little bit.

Q Did he say anything at that time?

A No, sir, not that I know of.

Q Finally he apparently did take them in the house?

A For safe keeping.

Q Okay.

What else?

A I went around the back to see if there was anything else while Reynolds and Bretch stayed there removing other things to get out of the utility room. I went around the back to look through the window to make sure something wasn't progressing farther in the back.

Q What did you see when you looked through the window?

A A normal work bench with things on it. At this time Glen Bretch called me around, "Hey, Lieutenant, look at this."

This is when I walked in the utility room. He pointed over to the corner to the right which would be the northwest corner of the building. It was a large



weapon. I looked--By the time I looked at the top of it it was taller than I was.

Q Can you describe it? What kind of weapon was it?

A I have no idea what kind of weapon. I just know it was a large weapon. It looked similar like I would say to a cannon, other than that description I wouldn't know.

Q You never seen anything like that in the course of military service?

A No.

Q What we commonly call a Bazooka type?

A I wouldn't know.

Q Then what did you do?

A At this time I confronted Lieutenant Cole, the Fire Prevention Bureau. I showed it to him. I think it would be advisable if we called the proper authorities.

Q For what purpose?

A To investigate this type of weapon being in a home. I didn't think it should be there.

Q Do you have any way of knowing or recalling in point of time how long after the fires had been principally extinguished that it was before you told Lieutenant



Cole about this cannon that you described?

A I would say it could be approximately 10 to 15 minutes.

Q Had the overhaul continued throughout that period?

A Yes, sir.

Q Had it been completed?

A No, sir.

Q When you looked in through the window in the back, did you see any indication of any incinerary activity? That is, did you see embers, flames or smoke coming?

A Yes, there was smoke coming from the one corner which would still be the southeast corner of the building.

Q Had your men progressed to the point where they were close to the corner at that time?

A Close? You mean in feet?

Q In feet, yeah.

A Well, they were close, not in feet, but in the procedures of the overhaul. I would say it would take them 10 or 15 minutes to get back to the corner due



to the amount of stuff that was in the building or in this particular room.

Q Were they doing anything to extinguish the embers or other possible activating factors?

A Yes, as we had taken blankets and other things out of the building, we laid them down out in the carport or what have you and extinguished them with the booster line which is standing by.

Q I'm talking about specifically the smoke coming from the southeastern corner that you told us about. Did they direct a spray of water?

A Yes, every once in awhile if smoke came out if they thought it advisable to let go they'd give a shot of water.

Q We're at the point you told Lieutenant Cole about the cannon, what else happened after that?

A After that, I just left it up to Lieutenant Cole. He said to stop the overhaul right there and not go any further at the present time.

Q Okay.

Was it within your professional judgement a safe thing as the very emergency passed at that point



to stop overhauling? In other words, what I'm getting at is this: When Lieutenant Cole said stop overhauling obviously because he didn't want you to disturb any of the evidence at that point, was there any question in your mind as an experienced, well trained and competent fire officer, that there was any question of safety by stopping the overhaul?

A The fire could have started up again. It's possible it could have rekindled itself.

Q Did you feel on a reasonable basis that it was all right to stop your overhaul at that point or did you express to Lieutenant Cole some feeling of misgiving about stopping the overhaul?

A Well, we stopped for the present time until it could be investigated further, the stuff that was in the building, otherwise we were still standing by with our line and nozzle right there in case something did re-occur.

Q Did there come a time subsequent to that time that there was a rekindling or reignition of the fire at any time after you stopped?

A The smoke continued to come up from the





corner in the back there.

Q Did it burn out?

A No, eventually we had to take the hose around the back, stick it back in the corner and try to more or less drown it.

Q Do you remember the time period from the stop overhaul demand to the time you went back and drowned the source of the smoke?

A No, sir, I couldn't say.

Q Is it--Not trying to put words in your mouth, could you estimate it? Could you measure it in terms of five minutes, 10 minutes, 15 minutes?

A It would have been approximately 10, 15 minutes.

Q With Lieutenant Cole's demand, you stopped your overhaul, did you retire back in the units?

A Yes, we were standing by in the yard. We were still on the premises.

Q Did you continue to make observations in that utility room after the overhaul demand was given to stop the overhaul? In other words, did you participate in the further investigation of the contents of the room?



A I, myself, no.

Q Were you in the utility room when others continued the investigation?

A No, sir.

Q Do you know when it was or where it was that some grenades, hand grenades were ultimately found?

A No, sir, I wasn't on the scene when they were found.

Q Were you back in your Station?

A No, sir, I was down the street approximately a block.

Q What was your purpose in being there?

A I was told that there was a possibility of more explosives in the building and at this time, I was asked to go down the street for safety.

Q In point of time, do you know how long it was from the time of the stop overhaul command and when the grenades were found?

A No, sir, I couldn't say.

Q How long were you down the street before you came back to the premises?

A I didn't come back to the premises. Another



truck came and relieved us. We went back to our Station.

Q Okay.

Were you present when the source of the smoke was drowned, ultimately?

A No, sir.

Q Okay.

So, you're referring then to your reliance on information that was given to you from some other source that, in fact, further activity was performed to put out the source, to extinguish the source of that smoke?

A Yes.

Q You didn't do it and you don't know when it was done?

A No, sir.

Q Lieutenant, did you prepare any other reports other than the one that you have before you now?

A No, sir.

MR. GREENSPAHN: Okay.

Can I borrow that from you just a second.

I hope you are assured that I have not in anyway, tried to trick you or in anyway confuse you in the course of my questioning. It's not my intent to.



Really, I'm trying to be as open as I can in this questioning of you. The time is a very important factor in this case for reasons not connected with your operation as a fire officer.

Q (By Mr. Greenspahn) In your report of June 29th, you have indicated that the Fire Prevention Bureau was called after the second fire in the utility room had been extinguished and that after the Fire Prevention Bureau made its investigation overhaul of the utility room was started.

So I'm clear that's a little different in semantics perhaps than what you said today.

As I understand your testimony today, the overhaul that actually commenced before the Fire Prevention came on the scene and investigated it.

That is somewhat in my mind, at any rate, a difference than the time sequence in the reports. I want you to think back. I want you to remember as well as you can in terms of time what was done first. Was the commencement of the overhaul or the investigation of the Fire Prevention Bureau first?

A I think the Fire Prevention Bureau was on the scene when we first took things out of the utility



room.

Q Okay.

And were they on the scene then when the small rifles that you thought might be hunting rifles were given to Lopez?

A Yes, sir. I don't know if they were hunting rifles, I just know there was two rifles.

Q At that point you hadn't given total significance to the rifles, you thought they might be hunting rifles. That didn't stir up any suspicion in your mind.

A My concern was two fires were separate. I could see no visible means where one could spread to the other. There was no showing of flames, charring, smoke damage to the door or how it could come to the door or outside or visa versa.

Q That was a very alert observation.

In the report you also indicated that after Fire Prevention made its investigation overhaul of the utility room was started, then the two rifles were given to Lopez and on further overhaul several automatic weapons were found and cases of ammunition.



A Yes.

Q So, again, in terms of the time sequence I understood you found the case of ammunition first and it was at that point--I may be confused--It was at that point that you called Fire Prevention.

A No, no. It was--I called as soon as I could not relate the two fires is when I called them. We hadn't--We just had broke the door down to extinguish the fire to some extent before and then I called them.

Q And then the next statement in your written report is we then stopped overhaul. This is after the automatic weapons and ammunition were found and called for the proper authorities to continue the investigation.

What authorities were those?

A That I don't know. I asked Lieutenant Cole to call the proper authorities.

Q Presumably that would be the police authorities?

A Yes, sir.

Q All right.

To wind this up you were not present when the grenades were found?



A No, sir.

Q You had not seen the grenades?

A No, sir.

Q No member of your crew saw the grenades as I understand the place where they were found--

A No, sir.

Q Do you know who found the grenades?

A I don't really know. I heard who found them, that's all.

Q What did you hear?

A I heard Tom Brody found them.

Q Were you present or on the scene when Tom Brody came?

A No, sir.

MR. GREENSPAHN: Lieutenant, thank you very much.

I have no further questions for you.

Off the record.

(Thereupon, discussion off the record.)

MR. GREENSPAHN: Lieutenant, procedurally I don't know if you have ever given testimony by deposition



before, have you?

THE WITNESS: No, sir.

MR. GREENSPAHN: You have the right to demand that the proceedings that have been taken by this stenographic machine today and this young lady be transcribed, written up. You have the right to read the transcript to see the questions as reflected there and the answers as reflected there are in fact, the questions and answers that were today given. You have the right to make any corrections you think should be made as to what conflicts between your recollection of today's testimony and the transcript might be. It is customary--I'm not suggesting you go one way or the other to you--It is customary to accept the competency of the Reporter who is an independent Court Reporter and is not my employee or any employee of the State. It is customary to waive the right to read and transcribe. If you elect to read and affix your signature to the record, you may do so, but it is an inconvenience to you, frankly, because you have to go down to her office. As I say, it's customary and I suggest you waive the right. It's your right. I'll leave it up to you.

THE WITNESS: If I do waive this right





and something does come up and a difference and I have no grounds to object to it, is that correct?

MR. GREENSPAHN: If it's different than from what you said or I said that's right, but then you have accepted the competency of the Reporter and accepted the fact she has properly transcribed everything that was said.

Now, if there are contradictions in what you said, frankly at that point, I don't see any contradictions whether you waive or don't waive it. That's fair to comment on if it comes time to do so.

THE WITNESS: Then the stenographic is actually still kept, it's not destroyed?

MR. GREENSPAHN: It will be part of the Court's record. You file the original with the Court.

THE WITNESS: So, otherwise, she could be back to reread this thing here if necessary?

MR. GREENSPAHN: Sure.

(Thereupon, discussion off the record.)

(Thereupon, at 10:50 o'clock a.m., the taking of the



deposition was concluded.)

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IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

STATE OF FLORIDA, :  
 :  
 Plaintiff, :  
 :  
 -vs- :  
 :  
 HUMBERTO LOPEZ, :  
 :  
 Defendant, :  
 :  
 - - - - - X

CRIMINAL NO. 73-5087

501 Palm Avenue  
Hialeah, Florida  
December 11th, 1973  
9:30 o'clock A. M.

03  
CHARLES S. RINKER  
CLERK, CIRCUIT & COUNTY CTS.  
DADE COUNTY, FLA.

'73 DEC 12, PM 2:11

FILED FOR RECORD

DEPOSITION OF CHARLES HALE

APPEARANCES:

No appearance on behalf of  
the State of Florida.

MELVYN GREENSPAHN, Esq.,  
on behalf of the Defendant.



The deposition of CHARLES HALE, a witness of lawful age, taken for the purpose of discovery and for use as evidence in the above-entitled cause, pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, pursuant to notice, before MONA GESSE, Court Reporter and Notary Public in and for the State of Florida at Large, at the time and place aforesaid.

- - - - -

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
Charles Hale	3	-



Thereupon--

CHARLES HALE:

was called as a witness on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREENSPAHN:

Q All right, sir, will you please state your name and your business or professional address.

A My name is Charles Hale. I'm an inspector with the Hialeah Fire Prevention Bureau, City of Hialeah Fire Department. Business address is City Hall, Hialeah, Florida.

(Thereupon, discussion off the record.)

Q (By Mr. Greenspahn) Inspector Hale, did you have an occasion to either go to the premises of 460 West 42nd Place or to investigate a fire that occurred upon those premises?

A Yes.

Q All right.

You have your records before you and I take it that you have the complete records compiled not



only by this department by the other law enforcement and Fire Prevention Bureaus in the County.

A I have our own and the City of Hialeah Police Department report.

Q All right, sir, you may, of course, make complete reference to the reports during the course of this testimony.

In what capacity were you involved in the investigation of the fire at 460 West 42nd Place?

A I was a driver, radio operator for Lieutenant Cole, the Fire Marshall of the City of Hialeah when we received the call. I assisted him in the investigation.

Q Did you arrive on the scene while the fire units were still engaged in putting out or extinguishing the fire?

A Yes, yes. I have to qualify that, though. They called us they were leaving the evidence as such alone until we got there. The fire was out, but there was still plenty of heat.

Q When you say, "They were leaving the evidence," what was your understanding at that time when you arrived on the scene of the fire as to the nature,



quality and quantity wise of the evidence to which you were referring?

A Well, when we arrived at the fire we found that there had been two fires, apparently one inside the utility room and the one outside the utility room.

The door had been kicked in so that they could get to the fire on the inside.

The louvers on the door were not blackened by smoke and we could see no way that logically that the fire could have traveled from the utility room to the outside or visa versa and that was the situation as it was when we arrived.

Q When you spoke in terms of evidence, you are talking principally as I understand as evidence of possible arson?

A Yes, sir.

Q At that point that is, at your arrival and subsequent to the extinguishing of the fires, were there in the possession or was there within the knowledge of any of your firemen on those premises at that time either gernades, guns, ammunition or explosive devices?





A No, sir.

Q So, when you arrived on the scene, your sole purpose was to investigate the possibility of an arson?

A Yes, sir.

Q Okay,

When you got on the scene, were any of the fire units still standing by?

A Yes.

Q Do you remember which crew or which engine number?

A It was Lieutenant Fogel's crew out of Station 3. I don't remember the engine number.

Q Was he the commanding officer as far as the extinguishment of that fire was concerned?

A Yes, sir.

Q I'm sorry, I didn't retain the number you said his crew number was.

A It was his crew out of Fire Station No. 3. I don't remember the engine number, but I can get it.

Q It's not important. Fire Station 3.  
All right, Inspector.

Now, upon arriving on the scene, were



there any other personnel other than Lieutenant Fogel's crew at the scene from the Hialeah Fire Department?

A No, sir.

Q When you arrived you were accompanied by Lieutenant Cole?

A Yes, sir.

Q Were there any police officers on the scene?

A No, sir.

Q To your knowledge, prior to your arrival, had there been any police officers or law enforcement people?

A No, sir.

Q What did you do when you arrived at the scene?

A When we arrived at the scene in assistance to Fire Marshall Cole, I followed him. We looked at the rear of the building to see if there had been entry from the rear window and we were looking at the damage where the fire was hottest and then we went around to the front. We were checking the first discovered fire which was on the desk sitting in the carport and Lieutenant Fogel



reiterated that he had kicked the door in to get into the utility room and wanted to show us the louvers on this door, this wooden door, to show no apparent smoke damage or evidence of travel--Fire travel in or out of the utility room.

He saw--Lieutenant Fogel saw two fires and that's why we were called on the scene.

Q Now, did there come a time when you--  
Strike that.

At that point when you and Lieutenant Fogel conversed, he demonstrated to you his feelings as to the probability of there having been two fires, to your personal observation of the premises as you saw them then, was the fire extinguished?

A I wasn't sure that it was at all. If my memory serves me correctly, there was a slight rekindling when we were there towards the rear of the building in the eaves. This I'm not sure of.

Q Would that be noted?

A There was tremendous heat in the utility room when we arrived and there was a hose in readiness to put out any fire that might be kindling.



Q Was there any reference in your reports, written reports, to the rekindling to which you now eluded which you're apparently not too certain of?

A No, sir.

Q Your recollection of that rekindling I take it is something--

A It's something that happens now. It seems to me there was a slight rekindling or something they wanted to put out with or an ember they wanted to put out with the hose they had on duty. I wouldn't want to swear to that, but there was a lot of heat and the main fire had been--

Q You would defer to rekindling to Lieutenant Fogel and his crew?

A Yes.

Q Inspector, let me ask you this question: Would you ordinarily, under normal circumstances, be summoned to the scene of a fire if there were no indication of criminality?

A Yes.

Q You would as a matter of course go to each and every fire of any consequence in Hialeah?



A Yes, sir. What we do call a Code 1 fire or any fire where there had been injuries.

Q Was this, in fact, a Code 1 fire?

A No, sir.

Q And it maybe repetitive, but why then did you go to this fire if it was not a Code 1 fire?

A We went to the fire because we were called by Lieutenant Fogel in his estimation, there was possible arson involved.

Q Okay.

I'm looking at a one paragraph report. I think you have the same in front of you dated June 29th, 1973, which bears your signature. In the second sentence-- In the third sentence of it you indicated that further this is in quotes, 'Further investigation disclosed military weapons and ammunition.' Did you make that discovery or did someone else make that discovery in your presence?

A Someone else made that discovery in our presence.

Q Do you recall it?

A It was called to our attention, yes, sir.

Q Do you remember who that was that called it to your attention?



A Let me see, it was one of the firemen on the scene. There was two that I remember particularly. There's Mr. Bretch (phonetic) and Mr. Reynolds. I'm not sure which one of them called me--Not called me, but called us to the presence of these weapons.

Q Do you remember the point of time--How much time had elapsed from the time of your arrival at the scene until either Mr. Bretch or Mr. Reynolds or whoever it was called to your attention the fact there were military weapons and ammunition on the premises?

A In pure recollection I would say that it would be between 10 and 20 minutes, 10, 15 minutes.

Q All right.

Do you have any reason to know why it was--that Mr. Bretch or Mr. Reynolds were further pursuing their investigation so to speak of the premises at the time that they ultimately discovered these materials?

A Well, they weren't making an investigation as such. They were participating in the operation called overhaul which we conduct in most every fire where there's a lot of debris or flambeau materials present.

Q Was there a lot of debris in this instance?



A Yes, the room was filled.

Q Okay.

Do you know of any other officers or men that were participating in the overhaul operation?

A I think there was one other, but I don't remember his name.

Q Okay.

A (Continuing) Let me see, no, I can't right off hand--The main ones that I remember are Lieutenant Cole, Mr. Bretch, Mr. Reynolds. I think there was another one.

Q Did you talk to any of the civilians on the premises at any time during the course of your investigation on that day?

A Pardon me, sir?

Q Did you talk to any civilians either on or about the premises during the course of your investigation that day?

A No, sir, not myself.

Q Were you present when any of your inspectors or any other fire officers did talk or police officers did talk to any civilians at that area?



A Yes, sir.

Q Can you relate to me, if you recall, who was spoken to and by which officer connected with which department?

A Fire Marshall Cole was talking with the owner of the--Or rentor of the house, Mr. Lopez. I'm sure Lieutenant Fogel was and not--I mean, just purely in trying to help the man realize the extent of his fire and even before the discovery of these weapons and ammunition.

Q Was to your knowledge, Mr. Lopez home at the time the fire broke out?

A To my knowledge he wasn't.

When I got there I don't remember seeing him. I think he came in after we arrived.

Q Do you recall any of the conversation that was had between Lieutenant Cole and Lopez? That is, what Lieutenant Cole said and what Lopez said in response?

A Some of it, yes, sir.

Q Would you relate to me, and you can certainly paraphrase what you heard on that date between those two people?





A Let me see, before the discovery of the weapons, Lieutenant Cole or Fire Marshall Cole asked Mr. Lopez to help us move his van out of the driveway so we could get into the utility room area. They'd have room to get the materials in the utility room out. That was before anything was discovered.

Q All right.

Did Mr. Lopez move his van?

A He helped. We pushed it out and he sat in the driver's seat.

Q Do you remember any other conversation?

A I remember various parts of conversations both before and after we discovered--It would be difficult to reiterate exactly what was said.

Q Let me put some pointed questions to you then we'll be finished with you because I know you have other business.

First of all, before the discovery of the weapons and ammunition, do you remember Lieutenant Cole or any other official authority asking any questions of Lopez relating to either arson or any store of explosives or any other violation of what you know to be the criminal



code of either the County or the State?

A I seem to remember Fire Marshall Cole asking Mr. Lopez who might have done this or do you know who might have done this and Mr. Lopez, who at that time was there reiterated that he had no idea who had started it.

Q Did you ever, in the course of your first duties as a fire inspector, render to a person who might be the suspect of a crime the so called Miranda Warnings?

A No, sir.

Q Do you know in this instance at the time that Lopez was being spoken to by members of your department if any such warnings had been given him before he spoke?

A Not to my knowledge, sir. We had no reason to suspect anything was wrong. That's about all I can say about that time.

I can say this, though, at the time of the discovery, we did at that time warn Mr. Lopez to move away from the immediate area and we, of course, Fire Marshall Cole immediately notified the proper authorities.

Q Up to the point of discovery, were there any police authorities on the scene that you recall?



A No, sir.

MR. GREENSPAHN: Thank you, Lieutenant, I appreciate it very much and you can go now.

You have the right, of course, to demand that this be transcribed of this record this morning and then read it to see that the questions and the answers as written by the Court Reporter are correct, and then, if they are correct to sign it.

You also have the prerogative of waiving that requirement and accept the competency of this independent Court Reporter.

THE WITNESS: Actually, I'd like to have it just for my own souvenir.

MR. GREENSPAHN: I'll tell you what. Let me suggest to you--Off the record.

(Thereupon, discussion  
off the record.)

THE WITNESS: To the best of my knowledge I have given everything that I can remember up to that point. I wouldn't want to volunteer any further testimony because mainly what I was interested in is helping my Lieutenant and investigate a possible arson.



MR. GREENSPAHN: I presume I'll get a great deal about arson from Lieutenant Cole and that's why I didn't go into it with you.

Q (By Mr. Greenspahn) The last question is, the one paragraph report that is dated June 29th, 1973, and bears your signature, is that the entirety of anything that you reduced to writing as a result of your experience on the premises on that day?

In other words, I'm now inquiring about any subsequent reports that were written.

A I have written no further reports on this.

MR. GREENSPAHN: Then this will be it.

(Thereupon, at 9:55 o'clock a.m., the taking of the deposition was concluded.)





11-14-75  
at 8:00 am  
Siegendorf

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT, IN AND FOR DADE  
COUNTY, FLORIDA.

NO: 73-5087

74-6113-B ✓

THE STATE OF FLORIDA )  
vs. )  
HUMBERTO LOPEZ, )  
Defendant. )

MOTION TO COURT TO DIVEST ITSELF OF JURISDICTION  
FOR SENTENCING PURPOSES AND FOR AN ORDER  
THAT THE DEFENDANT BE RELEASED AND TRANSPORTED  
OUTSIDE THE UNITED STATES AS A FREE INDIVIDUAL  
AND FOR AN EVIDENTIARY HEARING ON ALL PERTINENT  
ISSUES

CLERK OF THE COURT  
DADE COUNTY FLORIDA  
75 NOV 13 AM 8 58

COMES NOW the Defendant HUMBERTO LOPEZ, by and through his undersigned attorney Gino P. Negretti, Esq., and respectfully moves this Honorable Court to divest itself of jurisdiction for sentencing purposes and to order the defendant released and transported outside the United States as a free individual and as grounds alleges:

1.- That this Court can not acquire and retain jurisdiction for sentencing purposes in above cause over defendant who was forcibly abducted against his will from a foreign land by means of torture and brutality, cruel and inhumane treatment in violation of defendant's right to due process at the instigation and before the presence of United States Officers and for employees, with that foreign government in violation of defendant's rights to due process, and thus in violation of defendant's right to the 4th, 5th and 6th Amendment to the Constitution.

2.- That the United States had legal means to obtain jurisdiction and or apprehension of defendant and did not honor them. That the Dominican Republic did not institute extradition nor deportation proceedings against Lopez.

CLERK OF THE COURT  
DADE COUNTY FLORIDA

75 NOV - 4 PM 2 09

RECORDED

3.- That the jurisdiction of the defendant has been tainted by the unlawful acts of two government in cahoots, to wit:

The United States and the Republic of Santo Domingo.

4.- That the Defendant was never extradited or deported through legal process available to both nations but placed forcibly aboard a Dominican Aircraft with a member of the F.B.I., aboard, destined from Santo Domingo to Miami, Florida illegally and against his will, and made an unlawful entry through the Port of Miami, without a visa. An enclosed Affidavit is hereby made a part of this Motion.

5.- Defendant Lopez, was arrested in Santo Domingo, Dominican Republic, by Dominican Secret Police acting in concert with Agents of the United States Government. Defendant was held prisoner at the Palace of Justice Jail, placed in a cell with no bed, banks, light or Sanitary facilities. He was stripped naked and doused with water every two hours, to prevent him from sleeping. He was beaten with an ox penis repeatedly. Two days later approximately he was taken to the Office of General Ney and an American Officer where a gun was placed in his head, and there being made to strip was beaten by slaps in front of an American Officer, by the name of McCone. Ney calling the American:

Mr. McCone, we have in the bag, we will send him to Miami as the American Embassy wanted."

At all times during above interrogation Defendant asked for a lawyer and his request was answered by laughs. Next day Defendant was taken to the airport by a Dominican Agent together with an American Agent. Defendant protested telling the Dominicans he was a Cuban citizen, and a political refugee, to send him to Cuba. He again told them he wanted his attorney. He was not permitted to

talk to anyone. An F.B.I., Agent rode with him in the aeroplane and he was arrested upon arrival at Miami, Florida. During all this ordeal all throughout he had been fed three small loaves of bread, and a cup of water.

MEMORANDUM OF LAW,  
ARGUMENT AND PRAYER

Movant argues that this forcible abduction by means of torture brutality, cruel and indecent treatment was a violation of his constitutional right to due process.

The Ker-Frisbie doctrine which has been followed by most of the Circuit Courts approving forcible abduction is distinguishable from this case in that this case involves (as did Toscanino in the Second Circuit) outrageous, inconscionable conduct shocking to the sensibilities thereby involving the other notions of due process set out in cases such as Rochin, Russel, McNabb, Miranda, Mapp, Wong-Sun and others discussed in the main body of this Motion.

The Toscanino case of the 2d. Circuit is on all fours with the case in hand and its concepts were not abrogated or rejected by any circuit prior to or after its holding.

The presence of the Defendant in the United States and before this Court, is the "fruit" of illegal conduct by United States agents in violation of his right to due process. Therefore, the Court should recognize that the illegal fruits of a seizure of the person (defendant's presence here) and the verbal admissions obtained (identity and background) are suppressable as violations of due process. Consequently, since suppression is not a remedy when seizure of the person and identity constitute the illegal fruits, the Court should divest itself of jurisdiction and order the release of this defendant, or in the alternative order a full hearing which (if defendant proves his allegations) will result in his release.



The Court is asked to view the agent's conduct as Rochin conduct and consider the case as the 2d. Circuit considered Toscanino granting this Defendant the only remedy available and release defendant before or after a hearing.

### ARGUMENT

#### POINT I

THE COURT ACQUIRED NO JURISDICTION OVER THE APPELLANT BECAUSE HE WAS FORCIBLY BROUGHT INTO THIS COUNTRY BY UNITED STATES AGENTS BY MEANS OF TORTURE, BRUTALITY AND PHYSICAL ABUSE.

The Defendant argues and relies very heavily on the case of UNITED STATES v. TOSCANINO 500 F2d 267 (2d Cir. 1974), petition for rehearing en banc denied, 504 F2d 1380 (1974).

The center of controversy in legal arguments previously made was the cogency of this case in the light of the Ker-Frisbie rule and whether TOSCANINO has been followed in any other circuits. (KER v. ILLINOIS 119 U.S. 436, 7 S. Ct. 225, 30 L. Ed. 421 (1888) and FRISBIE v. COLLINS 342 U.S. 519, 72 S. Ct. 509, 36 L. Ed. 541 (1952).

KER v. ILLINOIS Supra was decided long before the Supreme Court's expansion of due process and constitutional guarantees. The case involved a "presidential messenger" sent to Peru to bring back KER. The messenger never presented his documents to the Peruvian government and "forcibly and with violence arrested him" (Ker), KER at 438. Ker was then put on board a ship, kept a prisoner and transferred from one ship to another until he was brought to the United States.

Other than the forcible abduction and the fact that Ker was held incommunicado, there is nothing in the case relating to torture, extreme physical abuse, cruel interrogation or outrageous conduct on the part of a federal officer. In fact the individual messenger was a Pinkerton agent

and the Court looked upon the defendant's remedies as private, civil and criminal case.

It should be noted that Ker took place prior to cases such as MAPP v. OHIO, 367, U.S. 643, 81 S. Ct. 1684, 6 LEd.<sup>2</sup> 1081 (1961); ROCHIN v. CALIFORNIA, 342 U.S. 165, 72 S. Ct. 205, 6 LEd. 183 (1952); U.S. v. RUSSEL, 411 U.S. 423, 93 S. Ct. 1637, 36 L. Ed. 2d. 366 (1973); MAPP v. OHIO, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed.<sup>2</sup> 1081 and the many other cases attempting to control improper and illegal conduct on the part of the government.

Despite this fact, the Ker Court, looking forward perhaps, stated:

".....so here, when found within the jurisdiction of the State of Illinois and liable to answer for a crime against the laws of that state, unless there was some positive provision of the constitution or of the laws of this country violated in bringing him into court, it is not easy to see how he can say that he is there without due process of law" within the meaning of the constitutional provisions" (emphasis added)

The Ker case did hold that a forcible abduction was not a violation of due process but at the same time was confronted with facts clearly distinguishable from both TOSCANINO Supra and this at hand. The Ker court was dealing with Treaties, Extradition, review of a state court case and all this took place in an atmosphere relatively devoid of expanded Bill of Rights decisions. Still, the court reacted by pointing out a possible exception to the ruling.

The next case to meet the issue was FRISBIE v. COLLINS, Supra. Collins (acting as his own lawyer) brought a habeas corpus petition for relief while serving a life sentence in Michigan State Prison for murder. His petition was denied by the same court that decided ROCHIN, Supra (FRISBIE was decided during the same term). However, the court pointed out very clearly that it was ready to overrule the Ker line of cases if sufficient reason was present, the Court said:

" This court has never departed from the rule announced in KER v. ILLINOIS, 119 U.S. 436, 444, that the power of a court to try a person for a crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a forcible abduction'.

No persuasive reasons are now presented to justify overruling this line of cases. (emphasis added).

Again the court pointed to the possibility of circumstances which might take government conduct outside the protection of KER.

The FRISBIE case is also distinguishable in that the outrageous conduct of TOSCANINO (supra) and the case in hand were not present.

It is interesting to note that pre TOSCANINO decisions never had come to grip with outrageous governmental behavior. It was for this reason defendant argues they decided to stick with the Ker-Frisbie rule.

For example, the 5th Circuit reviewed the problem in two cases prior to TOSCANINO and two after it. The prior cases were UNITED STATES V. VICARS, 467 F2d 452, (5th Cir. 1972) decided 7/21/72 and UNITED STATES CARAMIAN 468 F2d 1370 (5th Cir. 1972) decided 10/26/72.

There is nothing in the VICARS case (Supra) that indicates Gonzalez (a co-defendant) had any grounds other than a basic argument of illegality of arrest in Panama to base his claim on. Nothing in the case except the KER-FRISBIE rule relates to the TOSCANINO facts or the facts in the case on at hand.

The same holds true for the CARAMIAN case (Supra).

"Caramian's due process attack on the bond jumping conviction rests entirely on the theory that under the United States-Bolivia Extradition Treaty he was entitled to a hearing before he could legally be returned to this country to stand trial." [CARAMIAN Supra].

The court cited FRISBIE and KER and other cases stating that even if an extradition hearing was not held jurisdiction can still be retained. There are no facts in this case like TOSCANINO or the case at hand. No allegations of torture, etc. Caramian's sole contention was that he was brought to the United States without the benefit of extradition. The court felt there was no reason to disturb KER-FRISBIE.

The two 5th circuit cases that came after TOSCANINO were UNITED STATES V. HERRERA, 504 F2d. 859 (5th Cir. 1974) decided 12/5/74 and UNITED STATES V. WINTERS, 509 F2d. 975, (5th Circ. 1975) decided 3/13/75. These cases being to grapple with the second circuits TOSCANINO holding but both cases are distinguishable on the facts due to a lack of outrageous conduct that shocks the sensibilities and also supportive of TOSCANINO in the courts decisional analysis.

For example, HERRERA did not present the issue of torture, etc., at any time in the record until it appeared in this Motion.

The court held that the illegality of arrest in Peru; subsequent delivery to federal authorities; and failure to follow orderly processes of extradition, did not divest the court of jurisdiction. The court noted however, that:

"We have considered the case of U.S. V. TOSCANINO, w 2 Cir. 1974, 500 F d. 267, en banc hearing denied, two judges dissenting, 43 U.S.L.W. 2175 (October 8, 1974). It involves claims of kidnapping, extended torture and electronic surveillance by or at the direction of United States officials in a foreign country with the consent and knowledge of the United States Attorney for the Eastern District of New York. Aside from the wide variance between the facts of this case and the claims asserted in Toscanino were bound on the basic proposition by the Ker and Frisbie decisions of the Supreme Court and our decisions cited supra."

The use of this language seems to indicate that as far as the "basic proposition" stated in Ker-Frisbie was concerned (that an illegal abduction does not violate due process) the court was following that rule. However, had the claims of HERRERA been rooted in the record and the court been confronted with the same facts as TOSCANINO, Defendant believes the court would have followed that(TOSCANINO) decision. Had TOSCANINO facts been present the court could not have put them "aside" and following the basic rule.

The court in WINTERS supra would not permit a jurisdictional challenge based on fact that they were unlawfully brought within the courts

territorial jurisdiction following an illegal arrest by the Coast Guard. [WINTERS Supra at Page 985 and 986.

The WINTERS court cited TOSCANINO and its modification by LUJAN V. GENGLER 510 F2d. 62 ( 2 Cir. 1975) decided 1/8/78 . The court discussed the distinction between the outrageous conduct in TOSCANINO and facts similar to WINTERS which are found in the LUJAN decision . ( See notes 34, 35, 36, 37, 38, 39 and 40 at pages 986 and 987 in WINTERS supra ).

Even though the defendants in WINTERS were not subjected to the outrageous conduct of TOSCANINO, the court added at page 986 and 987 that they had not receded from the Ker-Frisbie Rule and said:

Although Ker-Frisbie has been severely criticized, and the Second Circuit, in an extreme case of outrageous governmental conduct of physical and emotional brutality and indignity, had held on the basis of post 1960 due process decisions, that Ker-Frisbie bends, in such situations the Supreme Court has not receded from Ker-Frisbie and neither has this Court. [WINTERS supra at 986-987].

The court cited HERRERA supra on in support of their position that they never receded from the Ker-Frisbie Rule. " It is true that neither they nor the Supreme Court ever receded from KER-FRISBIE simply because they were never faced with a TOSCANINO situation involving torture and brutality and had no need to "recede or consider receding" from it. (See court's description of HERRERA in the WINTERS case supra at page 987; also see analysis of HERRERA in this Motion supra).

Referring to HERRERA supra and LUJAN supra the court gives a glimpse of its true basis for decision at page 988:

"Bound as we are by Herrera, we think that the Second Circuit recognized in Lujan more errors on the exertion of action by agents beyond the strict territorial limit does not make the conduct so outrageous as to invoke these more drastic remedies." (emphasis added).

Despite strenuous efforts by defendant to distinguish Ker and its progeny, we are convinced that they are controlling as to the defendant. (emphasis added).

Defendant in WINTERS were not subjected to the outrageous conduct

of TOSCANINO, and the case at hand. Had they been so subjected, the court may well have branched off into ROCHIN (supra) and held that the same way as the Second Circuit in TOSCANINO [See note 36 at page 986 of WINTERS indicating that TOSCANINO'S roots were found in ROCHIN].

A number of older decisions on the LEE-FRISBIE rule continued support but none of the cases involved the flagrant and outrageous conduct of TOSCANINO. (See HOBSON V. CROUSE 332 F2d 561 (10th Cir. 1964); KYMAN V. KYMAN 371 F2d. 764 (9th Cir. 1967); BACON V. UNITED STATES 449 F2d. 933 (9th Cir. 1971); U.S. V. SHERWOOD, 435 F2d. 867 (10th Cir. 1970); U.S. V. VICARS, supra; U.S. V. CARAMIAN, supra; and U.S. V. COTTON, 471 F2d 744 (9th Cir. 1973), Cert. denied 93 S. Ct. 1913 where some physical restraint of the prisoner was used to subdue his physical resistance but no factors, deprivation or outrageous TOSCANINO conduct appears).

The only prior 3rd Circuit case relevant is GOVERNMENT OF THE VIRGIN ISLANDS V. ORTIZ, 427 F2d. 1043 (3rd Cir. 1970) decided 6/9/70. ORTIZ was arrested in Puerto Rico for a murder that took place in the Virgin Island where an information had been filed. Two F.B.I. agents arrested him there and took him to La Princesa Jail in San Juan. The next day two Virgin Island detectives picked him up and brought him to the Virgin Island without a warrant and without extradition proceedings. The government said nothing about the illegality of arrest or removal.

The court cited LEE and FRISBIE and stated that even if the arrest was illegal there are decisions which support the fact that he could still be brought to trial. [ORTIZ at 1045] BUT, the court in note 2 on page 1045 very clearly stated their concern about this conduct and indicated they were not deciding that issue.

We recognize that the validity of the Frisbie doctrine has been seriously questioned because it condones illegal police conduct. See Allen, Due Process and State Criminal Procedure: Another

Look 1973, 48 NW U.L. Rev. 16, 27-28;  
Pittler, 'The Fruit of the Poisonous Tree'  
Revisited and Shepardized, 1968, 56  
Calif. L. Rev. 579, 600; The Supreme  
Court 1951 Term, 1952, 66 Harv. L.  
Rev. 89, 127. (emphasis added).  
and continuing "We also recognized that  
the Supreme Court cases cited in the  
text dealt with State prosecutions, rather  
than federal or territorial proceedings, and  
that federal courts can impose higher standards  
of conduct on federal and territorial law  
enforcement officers through the exercise of  
supervisory power. Cf. Scott Criminal Juris-  
diction of a State over a Defendant Based Upon  
Presence Secured by Force or Fraud, 1953, 37  
Minn. L. Rev. 100 & n. 40.

However, it is not necessary to decide whether  
the Frisbie doctrine immunized the misconduct  
of other than State officers because the evidence  
here is conflicting on the circumstances of the arrest  
and removal and the District Court found that the  
accused returned to the jurisdiction voluntarily."  
(emphasis added).

Therefore, the 3rd Circuit in ORTIZ clearly indicated concern and  
(prophetically) in discussing the Court's ability to require higher standards  
of conduct from federal officers as well as the possibility that other than  
State officers (i.e. federal officers) may not be immunized from misconduct  
by Frisbie, gave a glimpse of the arguments which were to form the basis  
of TOSCANINO At least 4 years before the second circuit heard the case.

Two additional post TOSCANINO cases are worthy of mention.

UNITED STATES V. MILLER, 384 F. Supp. 2d 57 (USDC Southern District of  
Florida 1974) decided 11/5/1974 and UNITED STATES v. MARZANO, 388 F. Supp.  
2d 909, (N.D. Illinois E.D. 1975) decided 1/28/75.

MILLER Supra merely distinguished TOSCANINO saying the illegality  
of method which was used by the government in TOSCANINO led to the TOSCANINO  
decision but that in MILLER the arrest was lawful and the deportation from  
Jamaica was also lawful.

MARZANO supra also distinguished the facts from TOSCANINO saying the illegality of method which was used by the government in TOSCANINO led to the TOSCANINO decision but that in MILLER the arrest was lawful and the deportation from Jamaica was also lawful.

MARZANO supra also distinguished the facts from TOSCANINO saying the government conduct was clearly lawful. However, Judge Bauer in the MARZANO decision clearly followed the TOSCANINO court. [See MARZANO supra at 908, 909 and 910]. Judge Bauer's appraisal of the law at page 910 reads:

"This court is also of the opinion that the Ker-Frisbie rule is still the appropriate test to be applied in evaluating the question of a Court's jurisdiction over defendants who have been returned to the United States against their will. The Toscanino decision is only applicable in those cases that present an egregious factual situation involving torture, brutality, or, some form of an official protest to the violation of an extradition treaty by a foreign government."

The court found in MARZANO that none of those factors existed in the case it was deciding.

These previous cases have not rejected TOSCANINO have distinguished their facts on TOSCANINO. It is possible to hold the KER-FRISBIE but followed it on facts not involving outrageous conduct. Only the 3rd circuit, four years before TOSCANINO voiced the principles that eventually became part of the TOSCANINO decision and indicated that perhaps there is something seriously wrong with the KER-FRISBIE rule itself.

Echoing the 3rd circuit observations in ORTIZ supra the 2nd circuit in TOSCANINO (cite supra) used its supervisory power over the administration of criminal justice in the District Courts within its jurisdiction to remedy the abuse of the District Court process. The Court held that this power is not merely limited to the exclusion of evidence. The court stated at Page 276:

In any event, since Ker and Frisbie involved state court convictions only, the views expressed in those cases would not necessarily apply to the present case, which is



an appeal from a judgement entered by a federal district court. Here we possess powers not available to a federal court reviewing a state tribunal's resolution of constitutional issues. In this case we may rely simply upon our supervisory power over the administration of criminal justice in the district courts within our jurisdiction. See McNabb v. United States, 318 U.S. 322, 63 S. Ct. 608, 87 L. Ed. 619 (1943); United States v. Estea, 471 F. 2d 1132 (2nd Cir. 1972); United States v. Freeman 357, F2d 106 (2nd Cir. 1967); Williamson v. United States 311 F2d 441 (5th Cir. 1962). See Hogan & Snee, The McNabbMallory Ryles: Its Rise Rationale and Rescue 47 Geo. L.J. 29, 32 (1952)

(The real roots of the McNabb rule' are found in a refusal to countenance trials which are the outgrowth or fruit of the Government's illegality since they debase the processes of justice.) (emphasis added).

and continuing, "See also Government of the Virgin Islands v. Ortiz 427 F2d 1043, 1045 n.2. Clearly this power may be legitimately used to prevent district courts from themselves becoming 'accomplices in wilful disobedience of law. See McNabb supra at 345. Moreover the supervisory power is not limited to the admission or exclusion of evidence, but may be exercised in any manner necessary to remedy abuses of a district courts process. Ct. Res v. United States, 350 U.S. 214, 76 S. Ct. 292, 100 L. Ed. 233 (1955).

.....we think a federal court's criminal process is abused or degraded where it is executed against a defendant who has been brought into the territory who has been brought into the territory of the United States by the methods, alleged here. ....we could not tolerate such an abuse without debasing 'the processes of justice'. (emphasis added).

Judge Mansfield found the power in the Circuit Court to deal with the illegal kidnapping problem. He also defined that power to enable to court to do more than exclude evidence.

The judge based the court's rejection of KER-FRISBIE on the Supreme Court's expansion of due process in cases such as UNITED STATES V. RUSSELL, 411 U.S. 420 at 430, 431 13 S. Ct. 1637, 36 L. Ed. 2d. 366 (1973); MAPP V. OHIO supra; MIRANDA V. ARIZONA 384 U.S. 436, 86 S. Ct. 1602 16 L. Ed. 2d. 694 (1966); WONG SUN V. UNITED STATES, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 411 (1963); SILVERMAN V. UNITED STATES, 365 U.S. 505 81 S. Ct. 677, 5 L. Ed. 2d 734 (1961); ROCHIN V. CALIFORNIA supra and pointed out that (at page 275):

... the issue in most cases forming a part of this evolutionary process was whether evidence should have been excluded (eg. Mapp, Miranda, Wong Sun, Silverman) it was unnecessary in those cases to invoke any other sanction to insure that an ultimate conviction would not rest on government illegality.

However, where suppression will not suffice, the court must be guided by the underlying principle that it may not reap the benefits of its own wrongdoing. TOSCANINO Supra at 275).

"...and when an accused is kidnapped and forcibly brought within the jurisdiction, the courts acquisition of power over his person represents the fruits of the governments exploitation of its own misconduct. Having unlawfully seized the defendant in violation of the Fourth Amendment, which guarantees 'the right of the people to be secure in their persons against unreasonable . . . . seizures,' the government should as a matter of fundamental fairness be obligated to return him to his status quo ante. (emphasis added).

The extraterritorial application of the Fourth and Fifth Amendment was asserted by the court at page 280 with citations and the court stated:

'The constitution of the United States is in force . . . whenever and wherever the sovereign power of that government is exerted,' *Balyac v. Puerto Rico* . . .

There is no sound basis for a distinction between aliens and citizens especially when the fruit to be reaped is to be reaped in a criminal prosecution in the United States. (TOSCANINO supra at 280).

The cogency of the TOSCANINO argument is unyielding. Judge Mansfield's expression of the argument however went further than Judge Anderson (who wrote a separate concurring opinion) felt was necessary.

'My concurrence is so limited because this case can be disposed of on due process grounds alone. *ROCHIN V. CALIFORNIA*, 342 U.S. 165, 72 S. Ct. 205, 86 L. Ed. 183 (1952)' [TOSCANINO supra at pg. 281].

Judge Andersons limiting concurrence proved to be a forerunner of the Second Circuits modified approach in the Lujan case supra.

Nevertheless, the TOSCANINO court remanded the case for further proceedings requiring an evidentiary hearing with respect to TOSCANINO'S allegations of forcible abduction. If TOSCANINO could prove a due process

violation, the District Court would have to divest jurisdiction over him.  
[See Lujan supra at page 64].

It was only a matter of another 8 months before the Second Circuit was confronted with the same type of application but lacking in one respect, there was no brutality or torture alleged. This time the opinion of the Court was given Chief Judge Irving R. Kaufman. The court concluded that TOSCANINO does not extend to LUJAN'S case. [LUJAN supra at page 63].

Judge Kaufman pointed out that the court in TOSCANINO intended to deprive the government of a carte blanche to bring defendants from abroad to the United States by use of torture, brutality and outrageous conduct but not to vitiate jurisdiction because of just any irregularity in the circumstances of a defendant's arrival in the jurisdiction. [LUJAN at page 65].

He said that the twin pillars of TOSCANINO were ROCHIN V. CALIFORNIA supra and the dictum of UNITED STATES v. RUSSELL supra, both these cases deal with outrageous government conduct.

The ROCHIN due process holding is clear. The court held that:

"Regard for the requirements of the Due Process Clause' inescapably imposes upon this court an exercise of judgement upon the whole course of proceedings [resulting in a conviction] in order to ascertain whether they offend the canons of decency and fairness which express the notions of justice of English speaking people even toward those with the most heinous offenses"  
[ROCHIN supra at Page 169].

The Court went on to say that:

"Due Process of Law, as a historic and generative principle, precludes defining, and thereby confining, these standards of conduct more precisely than to say that convictions cannot be brought about by methods that offend a sense of justice'."  
[ROCHIN at Page 173]. (emphasis added).

The TOSCANINO court's sense of justice was offended by the alleged conduct of the federal agents. The LUJAN court was not offended because there was no brutality alleged at all, nothing to involve ROCHIN or RUSSELL.

**RUSSELL was an entrapment case but the Court spoke out concerning conduct that might be so outrageous as to bar the government from prosecuting. Citing ROCHIN, the court said:**

**While we may someday be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction. [RUSSELL supra at pages 431 , 432].**

**The Court dismissed Russell's petition claiming that the instant case is distinctly not of that breed. [RUSSELL Id]. The court found that the government agent did not act illegally and violated no independent constitutional right of Russell.**

**In its dictum however the RUSSELL court did quote Justice Brandeis at page 442 to the effect that a prosecution should be stopped "not because some right (of Caseys) has been denied, but in order to protect the Government. To protect it from the illegal conduct of its officers. To preserve the purity of the courts. Cf. Olmstead v. United States, 277 U.S. 438, 470 (1928). (emphasis added).**

**TOSCANINO then stands unscathed. The LUJAN court merely found no allegations of outrageous conduct to bring it under TOSCANINO. The application of ROCHIN to the TOSCANINO situation demanded that the court provide a remedy. Since there is no "fruit" of an abduction to be suppressed, the only effective remedy was to order that TOSCANINO be released if he proved his allegations. [LUJAN Supra at page 66].**

**In so far as the other cases relating to the TOSCANINO problem are concerned they are all distinguishable in that the outrageous conduct alleged in TOSCANINO did not occur and also was not part of the record.**

**The Defendant HUMBERTO LOPEZ has alleged and continues to allege brutalizing, indecent and cruel conduct worked upon him to and during his abduction by Dominican and federal agents.**

**The Defendant claims violations of his constitutional rights as follows:**

**1.- Violation of his right to due process because of the outrageous, unconscionable conduct of federal law enforcement agents in that:**

**(A) he was tortured, beaten, not fed, kept without sleep, etc.,**

**(B) he was held incommunicado in order to prevent his resorting to legal processes to effect his release.**

**(C) he was kidnapped, forcibly abducted against his will,**

**(D) he was arrested without any charge by the Dominicans and federal agents.**

**(E) the above took place in cooperation with and at the instigation of United States federal agents.**

**(F) no attempt at legal extradition was made.**

**2.- Further violations of defendants 4th, 5th and Amendment rights took place because he was:**

**(a) arrested (detained) tortured and abused.**

**(b) he was held incommunicado,**

**(c) as a result of admission and statements made he was brought to the United States.**

**(d) As a result of being held incommunicado his attorneys could not use legal process to secure his freedom and prevent his ultimate kidnap.**

**This Motion presents facts that fall directly under the TOSCANINO prohibitions and the ROCHIN rule. The court should consider all the conduct of the agents and their methods of bringing the defendant into the United States in order to determine whether their conduct was outrageous.**

**As to part (1) above, the conduct of the federal agents alleged by defendant is prohibited by TOSCANINO supra, ROCHIN supra, RUSSELL supra in all other root cases used by the court in their analysis.**

**As to part (2) above, illegal arrest constitutes a seizure of the person in violation of the Fourth Amendment. [HENRY v. UNITED STATES, 361 U.S.]**

384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); under ROCHIN supra; verbal and otherwise would have been suppressed under MIRANDA V. ARIZONA. If the government acted this way in the United States, all evidence

were easier, tougher and more certain.

and because the government ignored legal proceedings because the illegal ones then have counsel and could have sought the aid of the Court in Santo Domingo the brutality and torture involved in open a interrogation; because he would the answer is simply because of a formal proceeding would have prevented. Why didn't the government use normal extradition proceedings.

BRADY conduct.

in a trial here, but the conduct is nevertheless as reprehensible as the he was illegally seized there? The illegal conduct did not enter the courtroom contrivance to keep the defendant from seeking the aid of the courts even when says this is a violation due process. Is it less of a violation or less of a evidence favorable to the defendant, using perjured testimony, etc., BRADY, MARYLAND, [373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194] from suppressing prosecuting cases and has been prohibited by the Supreme Court in BRADY V. The government should be held to a high standard of conduct in

of the judicial process.

to effect his release. The government very simply deprived this defendant him and actually depriving defendant of legal resources available to him seizure of his person and the impeding (preventing) his counsel from locating presence of the defendant in the United States is the fruit of an illegal remedy is to order defendant's release. [LUIAN supra at page 66]. The very STATES, supra, at page 485]. Since suppression would not be effective

of official illegality and should be suppressed. [WONG-SUN V. UNITED

Verbal admission resulting from an unlawful arrest are the "fruit"

into the United States.

in the United States. This material is turned to the defendant's abduction and questioning resulted in verbal admissions as to identity and background 98, 100-101, 86 S. Ct. 168, 4 L. Ed. 2d 124 (1966)]. The illegal arrest

under WONG-SUN, supra and even under RUSSELL supra. The fact that these incidents took place outside the United States as to 6th Amendment rights should not prevent this Court from condemning this type of conduct.

All of the factors of behavior mentioned above were part of the grand scheme of the United States Government to kidnap persons abroad. Regardless of overriding policies relating to society's need to suppress crime and regardless of the status of this or any defendant in the eyes of society, the law cannot afford to condone and assist in such lawlessness without severely jeopardizing its honor.

Defendant urge the court to abandon any utilitarian approaches to analysis of this type of governmental conduct. The end cannot justify the means in this case. The honor of the court much more socially desirable than the mechanics of illegal governmental activity to suppress crime.

Defendant Lopez's case compares to TOSCANINO and LUJAN as follows:

- (1) all federal agents were acting ultra-vires as paid agents of the United States; they were paid by the United States; they were acting at the instance of the federal agents. [ Same as TOSCANINO at page 269 and LUJAN at page 63],
- (2) there had never been a formal or informal request for extradition. [Same as TOSCANINO at page 270 and LUJAN at page 63].
- (3) Lopez was held incommunicado; his requests for counsel, was denied. [Same as TOSCANINO at page 270 and LUJAN at page 63].
- (4) He was denied food and water [same as TOSCANINO at Page 270].
- (5) He was tortured and interrogated in cooperation with and at the instigation of the United States federal agents who were at times present during the sessions. [Same as TOSCANINO at page 270].
- (6) The United States Government and federal agents were aware of what was being done and had in fact set up a program of volunteer duty to effect kidnapping in foreign countries. [Same as TOSCANINO at Page 270].
- (7) Lopez was denied sleep for days at a time; he was kicked and beaten. [Same as TOSCANINO Page 270].

The Defendant asks that the court not let this governmental conduct escape with impunity. To do so would be to permit a governmental agency to practice extraterritorial terror in the name of justice. The full scope of TOSCANINO on its own and as grounded in ROCHIN and RUSSELL should be applied to this case at hand.

#### CONCLUSION

The due process provisions of the United States Constitution as set out and defined in Rochin, Russell, Toscanino and other cases made a part of the main argument prohibits the District Court from exercising jurisdiction over the defendant because of the outrageous and illegal methods used by federal agents in obtaining his physical presence in this district.

Defendant urges this court to condemn the outrageous acts practised upon him and to divest itself of jurisdiction and to set the Defendant Humberto Lopez free, or in the alternative order a full hearing on the Motion to give the Defendant the opportunity to prove the allegation expressed with provisions that if they are shown to have occurred, that the Defendant be released.

It is only through a return of the defendant to his "status quo ante" that justice can be done in this case.

Respectfully Submitted,

GINO P. NEGRETTI  
Attorney for Defendant  
Humberto Lopez  
Suite 103  
3061 N.W. 7th Street  
Miami, Florida 33125  
Tel: 649-5104



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4 day of <sup>NOV.</sup> ~~October~~, 1975

a true and correct copy of the above and foregoing MOTION TO COURT TO DIVEST ITSELF OF JURISDICTION FOR SENTENCING PURPOSES, AND FOR AN ORDER THAT THE DEFENDANT BE RELEASED AND TRANSPORTED OUTSIDE THE UNITED STATES AS A FREE INDIVIDUAL, AND FOR AN EVIDENTIARY HEARING ON ALL PERTINENT ISSUES, was personally delivered to STATES ATTORNEY, 1351 NW 125<sup>th</sup> St., Miami, Florida.

GINO P. NEGRETTI

NOV 14 1975

State: J. Woodard + R. Page  
Left: S. Negretti + M. Greenyaka  
Lately: F. Ossorio (Span - Eng lately)  
Right: J. Schwartz

Henry

MEMORANDUM

37-37-17A

TO GENE WILLIAMS  
ADMINISTRATIVE JUDGE  
CRIMINAL DIVISION  
CIRCUIT COURT

DATE

SUBJECT TRANSFER OF CASE UPON RECUSAL  
OR DISQUALIFICATION OF JUDGE

FROM  
CLERK'S OFFICE  
CRIMINAL DIVISION

STATE OF FLORIDA

VS.

CASE NO. 73-5087

4

Humberto Lopez  
\_\_\_\_\_  
\_\_\_\_\_

JUDGE Ralph Ferguson HAS DIRECTED  
THE ABOVE CASE BE TRANSMITTED TO THE ADMINISTRATIVE JUDGE FOR RE-  
ASSIGNMENT FOR THE FOLLOWING REASONS: \_\_\_\_\_

Judge Arden Siegenhof has another  
Case with same Defendant  
\_\_\_\_\_

\*\*\*\*\*

DATE 11/7/75

THE CLERK OF THE COURT IS DIRECTED TO RE-ASSIGN  
THE ABOVE CASE TO JUDGE Arden M. Siegenhof

Gene Williams  
ADMINISTRATIVE JUDGE  
CRIMINAL DIVISION  
CIRCUIT COURT

CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

ALIAS  
CAPIAS

RICHARD P. BRINKER  
CLERK, CIRCUIT & COUNTY CTS.  
DADE COUNTY, FLA.  
03

75 NOV 18 PM 4 09

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, GREETINGS:

You are Hereby Commanded to take \_\_\_\_\_

**HUMBERTO LOPEZ**

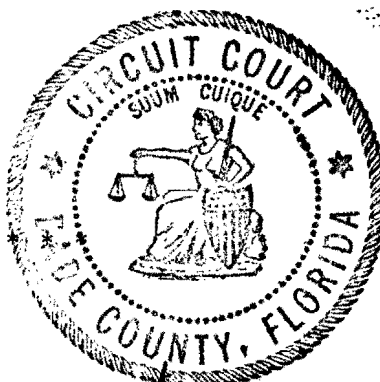
if he be found in your County, and him safely keep so that you have his body before the Judge of our Circuit Court of the Eleventh Judicial Circuit of Florida and for the County of Dade and State of Florida in Miami, instanter, to answer unto the State of Florida on ~~an information filed against~~ <sup>a finding of guilt</sup> ~~by the State Attorney~~ for UNLAWFUL POSSESSION OF AN EXPLOSIVE

\_\_\_\_\_ . And have you then and there this writ  
WITNESS, RICHARD P. BRINKER, Clerk of said Court, and the seal of our said  
Court, in Miami aforesaid, this 19th day of  
SEPTEMBER, A. D. 19 74

RICHARD P. BRINKER, Clerk

By Natalia Azzari  
Deputy Clerk

RICHARD E. GERSTEIN, State Attorney



9.75  
9.75

\* \* \* \* \*

Received this <sup>Alias</sup> Capias the 19 day of Sept, A.D. 19 74,  
and executed it on the 14 day of Nov, A.D. 19 75,  
by arresting the within named Humberto Lopez  
and having him now before the Court this \_\_\_\_\_ day of \_\_\_\_\_,  
A.D. 19 \_\_\_\_\_.

**E. WILSON PURDY, DIRECTOR**  
**PUBLIC SAFETY DEPARTMENT**  
Sheriff  
BY [Signature]  
Deputy Sheriff

Appearance Bond fixed at \$ \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
\_\_\_\_\_  
Judge.

~~MILES~~

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

STATE OF FLORIDA : CASE NUMBER 73-5087  
vs. : WRIT OF HABEAS CORPUS AD  
HUMBERTO LOPEZ : PROSEQUENDUM

TO: DIRECTOR, U. S. BUREAU OF PRISONS;  
WARDEN OF \_\_\_\_\_;  
and / or  
UNITED STATES MARSHAL, SOUTHERN  
DISTRICT OF FLORIDA

FILED FOR RECORD  
75 NOV - 7 AM 10 35  
RICHARD J. FRANKER  
CLERK, CIRCUIT COURT  
DADE COUNTY, FLA.  
03

This cause came on to be heard upon petition of the STATE OF FLORIDA for a Writ of  
Habeas Corpus Ad Prosequendum to produce one HUMBERTO LOPEZ

to this jurisdiction for the purpose of standing trial herein, said defendant being reportedly confined at  
BROWARD COUNTY JAIL, FT. LAUDERDALE, FLORIDA

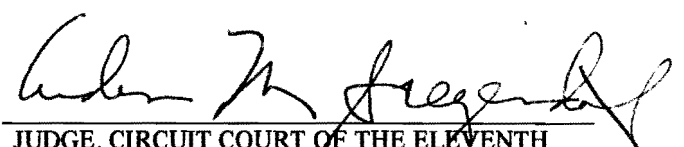
\_\_\_\_\_ as a prisoner of the UNITED STATES GOVERNMENT, and the court being fully advised in  
the premises, it is, upon consideration

ORDERED that the Clerk of this Court forthwith issue this Writ of Habeas Corpus Ad  
Prosequendum directed as hereinabove set forth requesting that the said HUMBERTO LOPEZ  
\_\_\_\_\_ be produced to this jurisdiction or before the 14th day of  
November, 19 75, at 8:00a.m., before Judge Siegenдорf

for the purpose of standing trial herein; it being a  
condition of this Writ that said prisoner shall remain at all times in custody as a prisoner of the UNITED  
STATES GOVERNMENT and that all expenses of travel and other expense incurred in effectuating the  
provisions hereof shall be assumed and paid from the Fine and Forfeiture Fund of Dade County, Florida;  
and it is further

ORDERED AND DIRECTED that the Clerk of this Court shall forthwith furnish four  
certified copies of this Writ to the UNITED STATES MARSHAL, SOUTHERN DISTRICT OF FLORIDA, for  
distribution to the proper agencies and to effectuate the provisions hereof.

DONE AND ORDERED at Miami, Dade County, Florida, this the 7<sup>th</sup> day of  
November, 19 75.

  
JUDGE, CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND  
FOR DADE COUNTY

DEC 13 1973  
RICHARD P. BRINKER  
CLERK

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF  
IN AND FOR DADE COUNTY

NO. 73-5087

THE STATE OF FLORIDA

VS.

HUMBERTO LOPEZ

**ORDER WITHHOLDING ADJUDICATION**

IT APPEARING UNTO THE COURT that the defendant,

HUMBERTO LOPEZ

has been found guilty of the charge of UNLAWFUL POSSESSION OF AN EXPLOSIVE

by the Court upon entry of a plea of nolo contendere

and it appearing unto the Court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, and the Court being fully advised in the premises, it is thereupon

CONSIDERED, ORDERED, AND ADJUDGED that an adjudication of guilt be, and the same is hereby, stayed and withheld.

DONE AND ORDERED in open Court at Miami, Dade County, Florida this 13th day of December, A. D. 19 73.

*Ralph B. Ferguson, Jr.*  
JUDGE  
RALPH B. FERGUSON, JR.

FILED AND RECORDED  
IN CIRCUIT COURT  
MINUTES AS INDICATED HEREON

Richard P. Brinker, Clerk

By: \_\_\_\_\_  
Deputy Clerk

RECORDED  
JAN 4 1974  
RICHARD P. BRINKER  
CLERK

*JB*

STATE OF FLORIDA

UNIFORM COMMITMENT TO CUSTODY  
OF DIVISION OF CORRECTIONS

11/17/75

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

FALL Term, 1975

Conviction for UNLAWFUL POSSESSION OF AN EXPLOSIVE  
(Offense)

Date of sentence imposed NOVEMBER 14, 1975

Date of conviction NOVEMBER 14, 1975

Term of sentence SEVEN AND A HALF (7½) YEARS, to begin at the expiration  
of sentence imposed by the United States District Court, Southern  
District of Florida, in Case No. 74-633-CR-JR

STATE OF FLORIDA,

Plaintiff,

vs.

Case No. 73-5087

HUBERTO LOPEZ

Defendant.

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA TO THE SHERIFF  
OF SAID COUNTY AND THE DIVISION OF CORRECTIONS OF SAID STATE, GREETING:

The above named defendant having been duly charged with the above named offense in the above  
styled Court, and he having been duly convicted and adjudged guilty of and sentenced for said offense  
by said Court, as appears from the attached certified copies of

INFORMATION OR INDICTMENT

judgment and sentence, which are hereby made parts hereof;

Now, therefore, this is to command you, the said Sheriff, to take and keep and, within a reasonable  
time after receiving this commitment, safely deliver the said defendant into the custody of the Division  
of Corrections of the State of Florida; and this is to command you, the said Division of Corrections,  
by and through your director, superintendents, wardens, and other officials, to keep and safely imprison  
the said defendant for the term of said sentence in the institution in the state correctional system to  
which you, the said Division of Corrections, may cause the said defendant to be conveyed or thereafter  
transferred. And these presents shall be your authority for the same. Herein fail not.

**ARDEN M. SIEGENDORF**

WITNESS the Honorable \_\_\_\_\_

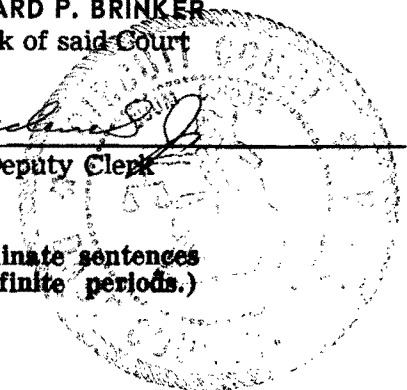
Judge of said Court, as also RICHARD P. BRINKER,

Clerk and the Seal thereof, this the 14th day of NOVEMBER, 19 75

RICHARD P. BRINKER  
Clerk of said Court

By J. A. Frederick  
Deputy Clerk

(To be used in committing defendants under indeterminate sentences  
as well as under sentences of imprisonment for definite periods.)



BENCH DOCKET

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY

**FILED**  
S NOV 14 1975  
RICHARD P. BRINKER  
CLERK

STATE OF FLORIDA

VS.

HUMBERTO LOPEZ

CHARGE, UNLAWFUL POSSESSION OF AN EXPLOSIVE Case No. 73-5087

J U D G M E N T

It appearing unto this Court that you

HUMBERTO LOPEZ

have ~~been regularly tried and convicted~~ pleaded nolo contendere to  
~~UNLAWFUL POSSESSION OF AN EXPLOSIVE~~

UNLAWFUL POSSESSION OF AN EXPLOSIVE

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offense as above set forth, and it is hereby certified that the fingerprints on the certificate attached hereto and made a part hereof are the fingerprints of the Defendant in this cause and were placed thereon by the Defendant in my presence in Open Court on the date therein certified.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

S E N T E N C E

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that you be imprisoned by confinement at hard labor in the STATE PENITENTIARY for a term of SEVEN AND A HALF (7½) YEARS, sentence to begin at

the expiration of the sentence imposed by the United States District Court, Southern District of Florida, in Case No. 74-633-CR-JE.

IT IS FURTHER RECOMMENDED that you be incarcerated in the maximum security facility.

**RECORDED**  
NOV 19 1975  
RICHARD P. BRINKER  
CLERK

IT IS FURTHER ORDERED that costs in this cause shall be taxed in accordance with the law.

DONE AND ORDERED in Open Court at Miami, Dade County, Florida, this 14th day of NOVEMBER, A.D. 19 75

*Arden M. Siegendore*  
ARDEN M. SIEGENDORE JUDGE

*[Handwritten mark]*



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,

IN AND FOR DADE COUNTY

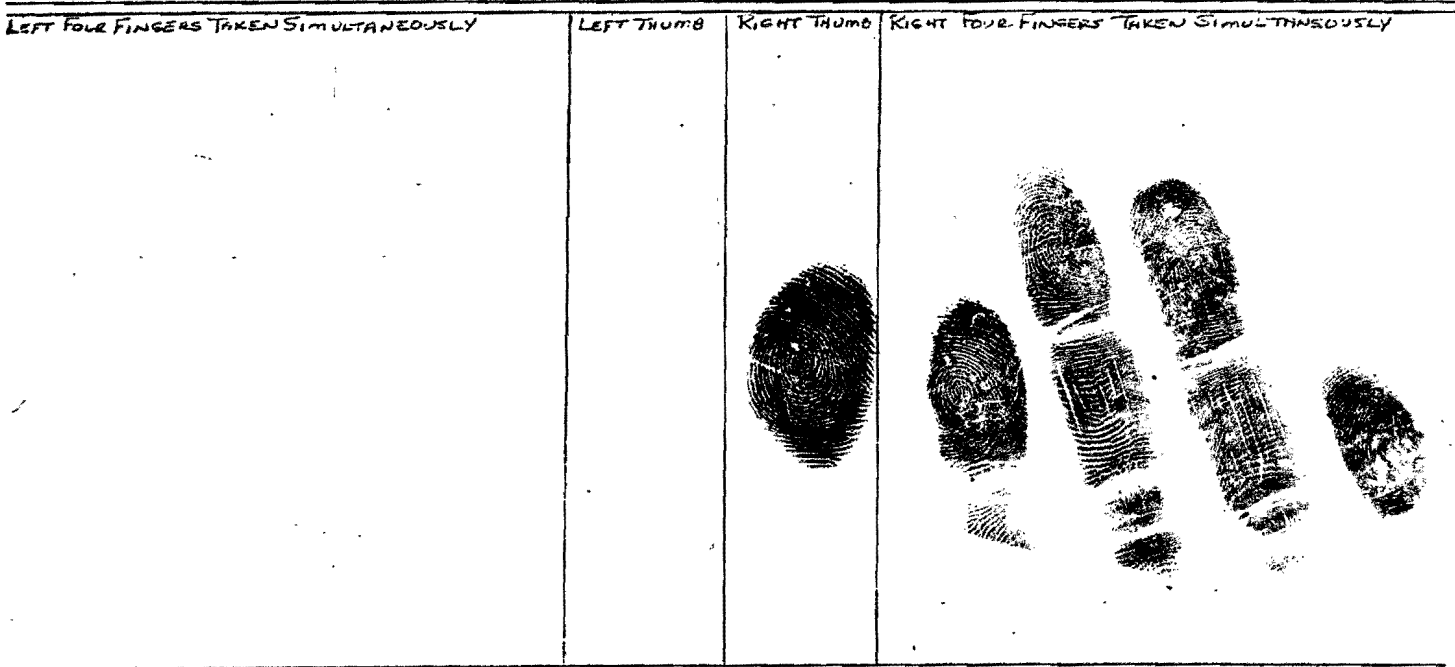
STATE OF FLORIDA

VS.

**FILED**  
5 NOV 14 1975  
RICHARD P. BRINKER  
CLERK

Humberto Lopez

CHARGE, Unlawful Possession of an Case No. 73-5087  
Explosive



I hereby certify that the above and foregoing fingerprints are the fingerprints of the Defendant, Humberto Lopez and that they were placed thereon by said Defendant in my presence in Open Court, this the 14<sup>th</sup> day of November, 19 75, and that they shall be affixed to and made a part of the Judgment in this cause.

Arden M. Siegendorf  
ARDEN M. SIEGENDORF JUDGE





FLORIDA PAROLE AND PROBATION COMMISSION  
1350 N.W. 12TH AVE. ROOM 461  
MIAMI, FLORIDA  
INTAKE DEPARTMENT

NAME HUMBERTO LOPEZ

IT IS FURTHER ORDERED THAT YOU SHALL COMPLY WITH THE FOLLOWING  
CONDITIONS OF PROBATION:

- (A) NOT CHANGE THE DEFENDANT'S RESIDENCE OR EMPLOYMENT OR LEAVE THE COUNTY OF RESIDENCE WITHOUT FIRST PROCURING THE CONSENT OF THE COURT, WHICH CONSENT SHALL BE OBTAINED THROUGH THE DEFENDANT'S PROBATION SUPERVISOR.
- (B) NOT LATER THAN THE FIFTH DAY OF EACH MONTH, UNTIL THE DEFENDANT'S RELEASE, MAKE A FULL AND TRUTHFUL REPORT TO THE DEFENDANT'S PROBATION SUPERVISOR ON THE FORM PROVIDED FOR THAT PURPOSE, OR AS OTHERWISE DIRECTED BY THE SUPERVISOR.
- (C) USE NO NARCOTIC DRUGS; NOR VISIT PLACES WHERE INTOXICANTS OR DRUGS ARE SOLD, DISPENSED, OR USED UNLAWFULLY, NOT USE INTOXICANTS OF ANY KIND TO EXCESS.
- (D) AVOID INJURIOUS OR VICIOUS HABITS, AVOID ASSOCIATION WITH PERSONS OF HARMFUL CHARACTER OR BAD REPUTATION.
- (E) IN ALL RESPECTS LIVE HONORABLE, WORK DILIGENTLY AT A LAWFUL OCCUPATION, AND SUPPORT DEPENDENTS, IF ANY, TO THE BEST OF DEFENDANT'S ABILITY, AND LIVE WITHIN WHAT INCOME IS AVAILABLE.
- (F) NEITHER CARRY NOR OWN ANY WEAPONS WITHOUT FIRST SECURING THE CONSENT OF THE PROBATION SUPERVISOR.
- (G) VISIT NO GAMBLING PLACES OR "JUKE JOINTS."
- (H) LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING ANY LAW.
- (I) PROMPTLY AND TRUTHFULLY ANSWER ALL INQUIRIES DIRECTED BY THE COURT AND THE PROBATION SUPERVISOR, ALLOW THE PROBATION SUPERVISOR TO VISIT THE HOME, EMPLOYMENT SITE, OR ELSEWHERE, AND CARRY OUT ALL INSTRUCTIONS HE GIVES.
- (J) IF AT ANY TIME IT BECOMES NECESSARY TO COMMUNICATE WITH THE PROBATION SUPERVISOR FOR ANY PURPOSE AND HE IS NOT ACCESSIBLE, DIRECT SUCH COMMUNICATION TO THE FLORIDA PROBATION AND PAROLE COMMISSION, TALLAHASSEE.

I UNDERSTAND THE FOREGOING AND AGREE  
TO THE TERMS AND CONDITIONS THEREOF.

DATE \_\_\_\_\_

Humberto Lopez

ADVISED IN ENGLISH \_\_\_\_\_  
ADVISED IN SPANISH \_\_\_\_\_

FLORIDA PAROLE AND PROBATION COMMISSION

#73-5087

*See (1) cc to Office Prob. Office #2.*

Affidavit

VIOLATION OF PROBATION

RECEIVED  
CLIFFORD SUMMERS  
DADA COUNTY, FLA.  
AUG 30 PM 11  
R

Before me Ralph Ferguson, Judge of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, Florida, personally came Andrew H. Chicvara, (Supervisor)

who, being first duly sworn, says that HUMBERTO LOPEZ (Probationer), hereinafter

referred to as the aforesaid, on the 13 day of December, A. D. 1973

entered a plea of Nolo Contendere to the offense of Possession of Unlawful Explosives

in the Circuit Court of Dade County, which Court withheld adjudication of guilt and the imposition of sentence and placed the aforesaid on probation for a term of Two (2) years, in accordance with the provisions of Chapter 948, Florida Statutes.

Deponent further states that the aforesaid has not properly conducted himself, but has violated the conditions of his probation in a material respect by violating:

Condition (h) Live and remain at liberty without violating any law in that the aforesaid is charged by information filed in Case #74-6113 with Count I, Unlawful Possession of an Explosive and Count II, Unlawful Possession of an Explosive.

Andrew H Chicvara

(Supervisor)

Andrew H. Chicvara

Sworn to and subscribed before me this 30 day of August, A. D. 1974.

Ralph B. Ferguson  
RALPH FERGUSON

Judge of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County.

REVIEWED & APPROVED

DATE: Aug 26 74

AHC:cy

Clifford Summers  
CLIFFORD SUMMERS

ORDER WITHHOLDING ADJUDICATION OF GUILT AND PLACING DEFENDANT ON PROBATION

STATE OF FLORIDA, Plaintiff

In the \_\_\_\_\_ CIRCUIT Court OF THE ELEVENTH JUDICIAL CIRCUIT of FLA. IN AND FOR DADE County, Fla.

— vs. —

HUMBERTO LOPEZ Defendant

Case No. 73-5087

This cause coming on this day to be heard before me, and you, the defendant,

HUMBERTO LOPEZ, being now present before me, and you

having: ENTERED A PLEA OF NOLO CONTENDERE TO the offense of POSSESSION OF UNLAWFUL EXPLOSIVES.

FILED JAN 7 1974 RICHARD P. BRINKER CLERK

and

It appearing to the satisfaction of the Court that you are not likely again course of conduct, and that the ends of justice and the welfare of society do not presently be adjudged guilty and suffer the penalty authorized by law;

Now, therefore, it is ordered and adjudged that the adjudication of guilt and imposition of sentence are hereby withheld, and that you are hereby placed on probation for a period of TWO (2) years under the supervision of the Florida Probation and Parole Commission and its supervisors, such supervision to be subject to the provisions of the laws of this State.

It is further ordered that you shall comply with the following conditions of probation:

- (a) Not change the defendant's residence or employment or leave the county of residence without first procuring the consent of the Court, which consent shall be obtained through the defendant's Probation Supervisor.
(b) Not later than the fifth day of each month, until the defendant's release, make a full and truthful report to the defendant's Probation Supervisor on the form provided for that purpose, or as otherwise directed by the Supervisor.
(c) Use no narcotic drugs; nor visit places where intoxicants or drugs are sold, dispensed, or used unlawfully; nor use intoxicants of any kind to excess.
(d) Avoid injurious or vicious habits; avoid association with persons of harmful character or bad reputation.
(e) In all respects live honorably, work diligently at a lawful occupation, and support dependents, if any, to the best of defendant's ability, and live within what income is available.
(f) Neither carry nor own any weapons without first securing the consent of the Probation Supervisor.
(g) Visit no gambling places or "juke joints."
(h) Live and remain at liberty without violating any law.
(i) Promptly and truthfully answer all inquiries directed by the Court and the Probation Supervisor; allow the Probation Supervisor to visit the home, employment site, or elsewhere, and carry out all instructions he gives.
(j) If at any time it becomes necessary to communicate with the Probation Supervisor for any purpose and he is not accessible, direct such communication to the Florida Probation and Parole Commission, Tallahassee.
(k)

RECORDED JAN 25 1974 RICHARD P. BRINKER CLERK

You are hereby placed on notice that the Court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision; and that if you violate any of the conditions of your probation, you may be arrested and the Court may revoke your probation, adjudge you guilty and impose any sentence which it might have imposed before placing you on probation.

It is further ordered that when you have reported to the Probation Supervisor and have been instructed as to the conditions of probation, you shall be released from custody if you are in custody and if you are at liberty on bond, the sureties thereon shall stand discharged from liability.

It is further ordered that the Clerk of this Court file this order in his office, record the same in the Minutes of the Court, and forthwith forward a certified copy of same to the Probation Supervisor in this District for his use in compliance with the requirements of law.

DONE AND ORDERED IN OPEN COURT, this the 13 day of DECEMBER, 19 73.

I understand the foregoing and agree to the terms and conditions thereof.

Ralph B. Ferguson, Jr. Judge RALPH FERGUSON

Defendant

A certified copy of this order has been delivered to the probationer, who has been instructed regarding same.

This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.



RICHARD E. GERSTEIN

STATE ATTORNEY

DADE COUNTY, FLORIDA

Case No:

13-5887

Police Case No:

Judge:

Ferguson

Prosecutor:

LB

THE STATE OF FLORIDA

VS.

LOPEZ, Humberto

Jail

ROR. OR BOND

CHARGES

Poss. Explosive

ARRAIGNMENT

SPEEDY DEMANDS

DEFENSE COUNSEL

GUILTY

NOT GUILTY

WAIVE JURY

BND. HRG.

1.

2.

3.

4.

5.

WAIVER

✓

July

MELUVA

GRACE SPAN

371-0691

MOTIONS

BILL OF PARTICULARS

SUPPRESS

DISMISS

ALIBI DEMAND

FILED

HEARD

RULE

ANS.

FILED

HRD.

RULE

FILED

HRD.

RULE

FILED

COMP.

I have read the State Files and contents of Sept 25 1973 in response to standard discovery.

ETD 24 DEC 1973

REPORTS AND TRIAL DATES

REPORTS AND TRIAL DATES

DATE

PURPOSE OR EXPLANATION

PURPOSE OR EXPLANATION

8/1/73 Arr.  
9/10/73 G.J. - and an  
10/1 G.J.  
10/4 Sent TR DATE.  
12/3 TR. (NOLO - 2yr Prob) w/H -  
(AGREED UPON BY SGT KELLY HRD. AND LT. COLE - H.F.D. - AND JOE DURANT SAO)

9/19/74 PROB VIOL HEARING -  
3.220 ✓ 8-3-73 - BY.  
9/19/74 ALIAS CAPAS - A DID NOT APPEAR

DISPOSITION

FINDING

P. S. I.

ADJ.

SENTENCE

NOLO -

w/H

2 1/2 R PROBATION



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR DADE COUNTY

CASE NO. 73-5087

STATE OF FLORIDA,	)	
Plaintiff,	)	DISCOVERY UNDER FLORIDA CRIMINAL PROCEDURE RULE 3.220
vs	)	STATEMENT OF PARTICULARS UNDER FLORIDA CRIMINAL PROCEDURE RULE 3.140 (n)
<b>HUMBERTO LOPEZ</b>	)	
Defendant.	)	DEMAND FOR NOTICE OF ALIBI UNDER FLORIDA CRIMINAL PROCEDURE RULE 3.200

Comes now, RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and files this Discovery, Statement of Particulars, and Demand for Notice of Alibi under Florida Criminal Procedure Rules 3.220; 3.140 (n) and 3.200, as follows:

1. The alleged offense occurred on or about \_\_\_\_\_

JUNE 29, 1973

at or in the vicinity of 460 WEST 42ND PLACE,

Dade County, Florida.

2. The persons, known to the State at this time, that have information which may be relevant to the offense charge, and to any defense with respect thereto, are as follows:

1. **Richard Kelly, #0067**  
501 Palm Avenue  
Hialeah, Florida
2. **Robert Potter, #104**  
Hialeah, Police Department
3. **Newton Porter, #905**  
PSD-Crime Lab.
4. **Lt. Russell Cole**  
501 Palm Avenue  
Hialeah Fire Department
5. **William Lynch**  
909 North Dixie
6. **Tom Brodie,**  
PSD, Crime Lab.
7. **Charles Hale**  
Hialeah Fire Department
8. **Robbie Clavier**  
Hialeah Fire Department
9. **Tom Quark**  
PSD-Photos Department

NOTE: Paragraphs designated by asterik \* apply to the reciprocal provisions pursuant to Rule 3.220 of the Florida Rules of Criminal Procedure only.

10. Ellory Richtarcik  
Hialeah Police Department  
Crime Lab.
11. Wayne Martin  
Hialeah Water Department  
3700 W. 4th Ave.
12. Mr. Warren  
1401 East 4th Ave.  
Florida Power & Light
13. Earnest Zarembo  
Palm Springs Station  
Post Office  
635 W. 49 Place



3. Pursuant to Rule 3.220 (a)(1) of the Florida Rules of Criminal Procedure, the State will disclose to defense counsel and permit him to inspect, copy, test and photograph the material and information, if any, provided for in paragraphs (ii) through (xi), upon request, within five (5) days of receipt of this Discovery at a mutually convenient place.

4\*. Pursuant to Rule 3.220(b)(3) of the Florida Rules of Criminal Procedure, the State demands that within seven (7) days after receipt of this Discovery the defense counsel shall furnish to the prosecuting attorney a written list of all witnesses whom the defense counsel expects to call as witnesses at the trial or hearing.

5\*. Pursuant to Rule 3.220 (b)(4) of the Florida Rules of Criminal Procedure, the State demands that within fifteen (15) days after receipt of this Discovery that the defense disclose to the prosecuting attorney and permit him to inspect, copy, test, and photograph the following information and material which corresponds to that which the defense sought and which is in the defendant's possession or control:

(i) the statements of any person whom the defense expects to call as a trial witness other than that of the defendant;

(ii) reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons;

(iii) any tangible papers or objects which the defense counsel intends to use in the hearing or trial.

6. Comes now, RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and files this Demand for Notice of Intention to Rely upon Alibi Defense pursuant to Rule 3.200 of the Florida Rules of Criminal Procedure, demanding that the defendant furnish the prosecuting attorney with a Notice of Alibi, not less than ten (10) days prior to trial, stating the place the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses by whom he proposes to establish such an alibi, if such a defense will be relied upon at time of trial.

RICHARD E. GERSTEIN  
STATE ATTORNEY

---

ASSISTANT STATE ATTORNEY

**LARRY BERRIN**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above  
and foregoing was mailed to the MELVYN GREENSPAN, SUITE 210-1150

BUILDING 1150 SOUTHWEST FIRST STREET, MIAMI, FLORIDA 33130

on this \_\_\_\_\_ day of AUGUST, 1973.

---

ASSISTANT STATE ATTORNEY

**LARRY BERRIN**

**PUBLIC SAFETY DEPT.**  
DADE COUNTY, FLORIDA

ROBBERY  CRIME GENERAL  
 CRIME AGAINST PERSON

2. CASE NO.  
73-20648

4A. OFFENSE  
POSSESSION OF EXPLOSIVES 460 WEST 42 PL.

14. VICTIM'S NAME  
STATE OF FLORIDA

11. RADIO NO. 1934  
5. DAY FRI.  
6. DISP. 11:00A  
7. ARR.  
8. IN SERV. 2:30p  
74. DATE 29 JUNE 73

RES. PHONE  
AGE  
SEX  
RACE  
BUS. PHONE

3. HOW ASSIGNMENT RECEIVED  
 RADIO  SUPERVISOR  CITIZEN  
 REQUESTED BY OFFICER

15. REPORTED BY  
KELLY, RICHARD

17. WITNESSED BY  
SEE BODY

ADDRESS  
501 PALM AVE.  
RES. PHONE 888-8478  
AGE 38  
SEX M  
RACE W  
BUS. PHONE

49. OWNER  
LOPEZ, HUMBERTO

16. DISCOVERED BY

ADDRESS  
460 WEST 42 PL.

RES. PHONE  
AGE 32  
SEX m  
RACE W  
BUS. PHONE

4. UCR CLASSIFICATION  
9. DATE & TIME OF OCCURRENCE  
29 JUNE 73 11:00A

63. VICTIM'S OCCUPATION  
42. TYPE OF PREMISES  
RESIDENCE

129. PROTECTIVE DEVICE  
NONE  
135. VICTIM'S SOBRIETY  
 SOBER  H.B.D.  INTOX.  
34. WHAT TOOL, WEAPON OR MEANS USED TO COMMIT CRIME  
STORAGE

35. HOW USED TO COMMIT CRIME  
STORED IN UTIL. ROOM

37. GENERAL TYPE OF PROPERTY TAKEN  
N/A  
130. VALUE  
45. TRADE MARK OR UNUSUAL EVENT (MODUS OPERANDI)

31.  SUBJECT  JUV.  SUSPECT  
AGE-RACE-SEX  
32 M W  
NAME: LOPEZ, HUMBERTO  
ADDRESS: 460 WEST 42 PL.

PH: INCARCERATED WHERE OCCUPATION  
 YES  NO HTALEAH  
137. DISGUISES

54. VEHICLE USED  
 BY OFFENDERS  BY VICTIM  
MODEL N/A  
MAKE YEAR BODY STYLE

53. COLOR 52. LIC. NO. STATE YEAR 55. IDENTIFYING MARKS

136. NO. OF OFFENDERS 1  
68. WHAT DID OFFENDERS SAY?  
SEE BODY

67. HOSPITAL (14) 95. CONDITION

72. HOW OFFENDERS APPROACHED & FLED  
N/A

131. KIND OF PROPERTY RECOVERED  
SEE BODY  
132. VALUE 133. RECOVERY-FULL/PARTIAL

41. PERSON OR UNIT NOTIFIED  
F.B.I., BOMB SQD, A.T.F. 11:30a

71. VICTIM REFERRED TO  
38. EXACT LOCATION OF VICTIM OR PROPERTY  
UTILITY ROOM

65. NATURE OF INJURIES & LOCATION ON BODY

69. ATTENDING PHYSICIAN 134. CHANGE OF VALUE

86. NEXT OF KIN NOTIFIED:  YES  NO BY WHOM

70. WILL VICTIM PREFER CHARGES  YES  NO  
90. PARENT (IF 14 IS JUVENILE)

48. PROPERTY RECEIPT  YES  NO  
73. FURTHER POLICE ACTION REQUIRED  YES  NO  
HAS VICTIM BEEN REQUESTED TO VIEW MUG FILES?  YES  NO

10A. ADDRESS DISPATCHED TO  
460 WEST 42 PL.

60. CONTACT INFORMATION

20. REPORTING OFFICER'S NAME (PRINT)  
(A) R. KELLY  
(B) POTTER, ROBERT

13. DISTRICT 04  
19. APPROVED BY  
21. PERSON REPORTING CRIME (SIG.)

36. GRID 665

29. REPORT PREPARED BY (SIGNATURE)  
R. Kelly

28. REFERRED TO SIGNATURE

27. RECORDED BY 25. INDEXED BY 24. STATISTICS

30. DISPOSITION  
 CLEARED BY ARREST  UNFOUNDED  
 EXCEPTIONALLY CLEARED  PENDING

ASSIGNED TO \_\_\_\_\_ BADGE NO. \_\_\_\_\_ DATE \_\_\_\_\_  
SUPERVISOR \_\_\_\_\_ DATE \_\_\_\_\_

Page 2	Type of Report Continued CRIME GENERAL	Offense - Charge or Incident (4A) POSSESSION OF EXPLOSIVES	Victim's Name (14) STATE OF FLORIDA	Case No. (2) 73-20648
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33. Remarks Continued:  
 THE UNDERSIGNED RESPONDED ON A SIGNAL 15 WITH THE HIALEAH FIRE DEPT. AND MET WITH THE FIRE MARSHALL LT. CO  
 WHO STATED THAT A FIRE HAD BEEN STARTED IN THE UTILITY ROOM OF THE RESIDENCE AT 460 WEST 42 PL. HE STATED  
 THAT AFTER THE FIRE WAS EXTINGUISHED IT WAS DISCOVERED THAT NUMEROUS WEAPONS HAD BEEN STORED THERIN.  
 SGT. MARTIN ADVISED THAT THE WEAPONS THAT HE COULD SEE APPEARED TO BE A 20MM CANNON AND LYING OUT SIDE T  
 DOOR WAS A 60 CAL. MORTER, at this time the owner of the house Humberto Lopez appeared on the scene  
 and he was asked by the undersigned if any explosives had been in the room and to this he stated that i  
 don't know any thing about it, Fire Marshall cole advised that he had removed 2 rifles from the room and t  
 had been taken into the house by Lopez, the undersigned asked Lopez for the weapons and he entered the hou  
 with the udersigned and entered the S/W bedroom and produced the 2 weapons which had been wrapped in  
 cosmoline. He was advised of his rights from a Miranda card and placed under arrest for possession of exp  
 losives and transported to the city jail by officer Bellette, at this time F.B.I Agents Mills, Cavanaugh and Ro  
 arrived on the scene along with agent Hall of the Alcohol tobacco and firearm div. of the treasury dept.  
 and Dep. Sheriff Porter of the crime lab. A complete inventory of the utility room revealed the following  
 4 Mark 2 hand grenades which the undersigned filed under 552.001, possession of explosives without  
 a license, 1 50mm Cannon, 2 M14 rifles, 1 Browning 50 cal. machine gun, 1 M314 grease gun, 1 silencer for the grease gu  
 1 60 mm MORTER, 1 sleeve and 1 insert for 50 cal. mac. gun and a tripod for the cannon all of which have  
 been confiscated by agent Hall for storage, except for the grenades which dep. Porter took into his posses  
 for storage, and trial. N.F.I.

20. Reporting Officer's Name (Print) R. Kelly	Badge No. DET/57	13. District 04	36. Grid 665	29. Report Prepared by (Signature) R. Kelly
--	---------------------	--------------------	-----------------	--

11. Radio No. 1934  
 12. Zone  
 10. Multiple Clear-Up Ret. Case No.  
 131. Kind of Property Recovered  
 48. Property Receipt  
 Yes  No  
 132. Value  
 71. Referred To  
 73. Further Police Action Required  
 Yes  No  
 70. Will Victim Prefer Charges  
 Yes  No  
 95. Victim's Condition or Change Therein  
 50. Vehicle Model Make Year Body Style  
 51. Motor or Serial No. 52. License Tag No. State Year  
 61. Where Recovered  
 134. Change of Value  
 NO CHANGE  
 47. Storage Receipt  
 Yes  No  
 41. Person or Unit Notified Time

31.  Subject  Suspect  Juvenile  
 LOPEZ, HUMBERTO  
 Age 32  
 Sex M  
 Race W  
 Address 460 WEST 42 PLACE  
 Res. Phone  
 Bus. Phone  
 Incarcerated  Yes  No  
 Where  
 Occupation  
 4A. Original Offense  
 POSS.OF EXPLO.W/O LIC.  
 4. Original UCR Classification  
 Offense Changed To: UCR Classification Changed To:  
 10. Address of Occurrence 460 WEST 42 PL.  
 74. Date 2 JULY 73  
 14. Victim's Name  
 STATE OF FLORIDA

33. Remarks  
 THE UNDERSIGNED CONTACTED THE STATE FIRE MARSHALL WILLIAM LYNCH AT WEST PALM BEACH AND HE STATED THAT THE SUBJECT LOPEZ HAS NOT BEEN ISSUED A PERMIT TO POSSESS OR STORE AN EXPLOSIVE AND HAD NEVER BEEN ISSUED A PERMIT FOR SAME, THE COUNTY FIRE DEPT. WAS CONTACTED AND LT. SAN PERRI STATED THAT THE SUBJECT HAS NEVER BEEN ISSUED A PERMIT THRU THEIR OFFICE. N.F.I.

*Booc*

20. Reporting Officer's Signature  
 (a) R. KELLY *R Kelly*  
 (b)  
 22. State TWX Msg. No.  
 23. Local TWX Msg. No.  
 13. District 04  
 36. Grid 665  
 19. Approved By  
 27. Recorded By  
 25. Indexed By  
 24. Statistics  
 20. Referred To Signature  
 30. Disposition  
 Cleared By Arrest  Unfounded  Pending  Suspended  
 Exceptionally Cleared  
 26. Investigation  
 Assigned To \_\_\_\_\_ Date \_\_\_\_\_  
 Supervisor \_\_\_\_\_ Date \_\_\_\_\_



PUBLIC SAFETY DEPT.  
DADE COUNTY, FLORIDA

SUPPLEMENTARY

2. Case No.  
73-20648

11. Radio No. 1934	12. Zone	18. Multiple Clear-Up Ret. Case No.	
131. Kind of Property Recovered		48. Property Receipt <input type="checkbox"/> Yes <input type="checkbox"/> No	
132. Value	71. Referred To	73. Further Police Action Required <input type="checkbox"/> Yes <input type="checkbox"/> No	
70. Will Victim Prefer Charges <input type="checkbox"/> Yes <input type="checkbox"/> No	95. Victim's Condition or Change Therein		
50. Vehicle	Model	Make	Year
51. Motor or Serial No.	52. License Tag No.	State	Year
61. Where Recovered		134. Change of Value NO CHANGE	
47. Storage Receipt <input type="checkbox"/> Yes <input type="checkbox"/> No		41. Person or Unit Notified Time	

31. <input checked="" type="checkbox"/> Subject <input type="checkbox"/> Suspect <input type="checkbox"/> Juvenile		Res. Phone
Address 460 WEST 42 PLACE		Age 32 Sex M Race W
Incarcerated Where <input type="checkbox"/> Yes <input type="checkbox"/> No		Occupation
4A. Original Offense POSS.OF EXPLO.W/O PERMIT		4. Original UCR Classification
Offense Changed To:		UCR Classification Changed To:
10. Address of Occurrence 460 WEST 42 PL.		74. Date 3 JULY 73
14. Victim's Name STATE OF FLORIDA		

33. Remarks

A CHECK WITH THE CITY OF HIALEAH WATER DEPT. SHOWS THAT LOPEZ OPENED AN AC CNT WITH THAT OFFICE ON 20 NOV. 72 UND R ACCOUNT #101-165 AND POSTED A \$25.00 DEPOSIT. (INFO.FROM MR.MARTIN) **WATNE.** 3700 <sup>W</sup> 4 AVE

FLORIDA POWER AND LIGHT STATES THAT LOPEZ OPENED AN ACCOUNT WITH THAT COMPANY IN DEC. 72 UNDER ACOUNT #19-107-2760-6 (INFO.FROM MR.WARREN) **1401 EAST 4 AVE.**

**EARNEST ZAREMBA** MAIL CARRIER FROM THE PALM SPRINGS STATION 635 W.49 PL. STATED THAT HE HAS BEEN DELIVERING MAIL TO LOPEZ SINCE 1 NOV.72. N.F.I.

20. Reporting Officer's Signature (a) <i>R. KELLY</i>		Badge No. DET/57	13. District 04	19. Approved By		22. State TWX Msg No.	
(b)			36. Grid 665			23. Local TWX Msg. No.	
28. Referred To		Signature		27. Recorded By		25. Indexed By	
30. Disposition <input type="checkbox"/> Cleared By Arrest <input type="checkbox"/> Exceptionally Cleared		<input type="checkbox"/> Unfounded <input type="checkbox"/> Pending		26. Investigation <input type="checkbox"/> Suspended		Assigned To _____ Date _____ Supervisor _____ Date _____	



None. Defendant to be arrested upon federal indictment.

ARMED STUNTS AND DISPOSITION OF WEAPONRY

Section 5872 - forfeiture of firearm in violation of this chapter.  
both,  
more than \$10,000, or imprisoned not more than 10 years or  
Section 5871 - person violating this chapter shall be fined not  
number obliterated, removed, changed or altered.  
Section 5861(h) - receiving or possessing firearm with serial  
Section 5861(d) - receiving or possessing firearm not registered.  
Chapter 53, Title 26, U.S.C., National Firearms Act

STATUTES VIOLATED

Lopez-Kuman, Humberto  
460 W. 42nd Place  
Hialeah, Dade County, Florida

REFERENCE TO BE APPROPRIATE

This report relates to alleged violations of the Gun Control  
Act of 1968 by Humberto Lopez-Kuman by possessing firearms not  
registered to him in the National Firearms Registration and Trans-  
fer Record on June 29, 1973, at Hialeah, Dade County, Southern  
Judicial District of Florida.

United States Attorney  
Miami, Florida

Special Agent in Charge

*William A. Quinn*

Report examined, approved, and  
recommended for prosecution,  
August 8, 1973.

Case# 3603 0673 1534M

August 8, 1973

ATJ:GMB:jsd

### SEARCH WARRANT

None used. Violation discovered by City of Hialeah, Florida Fire Department members while they were extinguishing a fire at the defendant's residence.

### SEIZURE

One Springfield Armory, U. S. rifle, M-14, 7.62mm, S/N 345790.  
One M&R Arms, U. S. rifle, M-14, 7.62mm, S/N 338051.  
One High Standard, Browning M-2, .50 cal. machine gun, S/N 1092051.  
One General Motors Corp. M-3, .45 cal. submachine gun, S/N obliterated.  
One Finnish Lahti, 20mm cannon, serial number 936.  
Four Mark II fragmentation grenades.  
One .45 cal. silencer & barrel, overall length 12 $\frac{1}{2}$ ", outside diameter 1- $\frac{7}{8}$ ", no serial number.  
One .45 cal. silencer, overall length 7- $\frac{3}{4}$ ", outside diameter 1 $\frac{1}{2}$ ", no serial number.  
Sixty-three rounds of 20mm ammunition.  
Eleven rounds of .50 caliber ammunition.  
One hundred and forty rounds of .45 caliber ammunition.  
Five hundred and ninety rounds of 7.62mm ammunition.

### LISTING OF FIREARMS

(a) General: On June 29, 1973, Humberto Lopez-Munoz possessed at his residence, 460 W. 42nd Place, Hialeah, Dade County, Florida, one Springfield Armory, U. S. rifle, M-14, 7.62mm, serial number 345790; one M&R Arms, U. S. rifle, M-14, 7.62mm, serial number 338051; one High Standard, .50 caliber, Browning M-2, machine gun, serial number 1092051; one General Motors Corporation, Guide M-3, .45 caliber submachine gun, serial number obliterated; one Finnish Lahti, 20mm cannon, serial number 936; four Mark II fragmentation grenades; one .45 caliber silencer with an overall length of 12 $\frac{1}{2}$ " and an outside diameter of 1- $\frac{7}{8}$ ", no serial number; and one .45 caliber silencer with an overall length of 7- $\frac{3}{4}$ " and an outside diameter of 1- $\frac{1}{2}$ ", no serial number.

The Springfield Armory, U. S. rifle, M-14, serial number 345790, had been entered in the National Crime Information Center by the U. S. Army as stolen from Fort Bragg, North Carolina, on June 3, 1969.

(b) Registration status: A search of the National Firearms Registration and Transfer Record disclosed no evidence that the four firearms, two silencers, and five destructive devices are registered or were acquired by lawful making, transfer, or importation by Humberto Lopez-Munoz.



(c) Test firings: On July 18, 1973, Special Agents George A. Nowicki and Robert A. Schmidt test fired the Finnish 20mm cannon, serial number 936, and the High Standard .50 caliber machine gun, serial number 1092031, in the Bureau of Alcohol, Tobacco and Firearms Office, Miami, Florida. Special Agent Nowicki removed the projectiles and powder from 20mm and .50 caliber cartridges and fired them in the weapons, using the primer only. Both weapons were in operable condition.

On July 18, 1973, in a wooded area off U. S. Highway 41 in Dade County, Florida, Special Agents George A. Nowicki and Spurgeon J. Anderson test fired the Springfield Armory M-14 rifle, serial number 345790, the M1A Arms M-14 rifle, serial number 338051, and the M-3, .45 caliber submachine gun with the serial number obliterated. All three weapons fired fully automatic. At this time Special Agent Nowicki also test fired the .45 caliber silencer with an overall length of 12-1/4" and the .45 caliber silencer with an overall length of 7-3/4". The larger silencer was attached to the seized M-3 submachine gun, and the smaller silencer was attached to a .45 caliber pistol. Both silencers appreciably diminished the explosive report of the firearms.

#### DISPOSITION AND VALUE OF SEIZURE

The four described firearms, one destructive device, two silencers and three hundred and thirty-four rounds of ammunition (value \$1,323.40) were stored in the evidence locker, Bureau of Alcohol, Tobacco and Firearms, Miami, Florida.

The four grenades and four hundred and seventy rounds of ammunition (value \$67.00) were stored in the explosives locker, Dade County Public Safety Department, Miami, Florida.

#### PERSONAL HISTORY OF SUSPECT

Lopez-Munoz, Humberto (YEA) Social Security No. 264-60-2682

Alias: None.

Address: 460 W. 42nd Place, Hialeah, Dade County, Florida.

Description: Male; white; age 31, (Born 12/7/41); 68"; 160 pounds; brown eyes; medium complexion; brown hair; medium build; scar on chest; married.

Criminal record: Unknown.

Financial responsibility: Unknown.

Capacity in current case: Possessor of T-11 weapons.

### SUMMARY

On Friday, June 29, 1973, at approximately 10:10 A.M., members of the City of Hialeah, Florida, Fire Department extinguished a fire in the utility room at the residence of Humberto Lopez-Hines. During the standard procedure of removing articles from the room to prevent further fire from hot embers, the firemen discovered a Springfield Armory, U. S. rifle, M-14, 7.62mm, serial number 345790, and an IMA Arms, U. S. rifle, M-14, 7.62mm, serial number 338051. They also observed a Finnish Lahti, 20mm cannon, a High Standard .50 caliber machine gun, a General Motors Corporation M-3 submachine gun and boxes of ammunition. (Exh. 1, Reynolds; Exh. 2, Fogal; Exh. 3, Cole; Exh. 4, Kelly)

At approximately 11:30 A.M., members of the Dade County Public Safety Department Bomb Squad arrived and removed from the utility room a General Motors Corporation, Guide M-3, .45 caliber, sub-machine gun, serial number obliterated; a High Standard, Browning M-2, .50 caliber machine gun, serial number 1092051; a Finnish, Lahti, 20mm cannon, serial number 936; four Mark II fragmentation grenades; one .45 caliber silencer with an overall length of 12 $\frac{1}{2}$ " and an outside diameter of 1-7/8", no serial number; and one .45 caliber silencer with an overall length of 7-3/4" and an outside diameter of 1 $\frac{1}{2}$ ", no serial number. Also removed from the room were 63 rounds of 20mm ammunition, 11 rounds of .50 caliber ammunition, 140 rounds of .45 caliber ammunition and 590 rounds of 7.62mm ammunition. (Exh. 5, Porter)

### LIST OF EXHIBITS

#### Statements with attachments

- ✓ 1. John B. Reynolds, Fireman, City of Hialeah Fire Department, Hialeah, Florida.
- ✓ 2. Donald J. Fogal, Lieutenant, City of Hialeah Fire Department, Hialeah, Florida.
- ✓ 3. Russell D. Cole, Lieutenant, City of Hialeah Fire Prevention Bureau, Hialeah, Florida.
- ✓ 4. Richard J. Kelly, Detective, City of Hialeah Police Department, Hialeah, Florida.
- ✓ 5. Newton B. Porter, Criminalist II, Dade County Public Safety Department, Miami, Florida.
6. Robert A. Schmidt, Special Agent, ATF, Miami, Florida.
- ✓ 7. Robert F. Fetter, Detective, City of Hialeah Police Department, Hialeah, Florida.
8. George A. Nowicki, Special Agent, ATF, Miami, Florida.
9. Certification of signature of Raymond L. Lesage, A<sup>+</sup>, Washington, D. C.
- 9-A Certification of non-registration of firearms by National Firearms Registration and Transfer Record Center.

OTHER EXHIBITS NOT ATTACHED

- 1-A Springfield Amory, U. S. rifle, M-14, 7.62mm, serial number 345790.
- 1-B M&R Arms, U. S. rifle, M-14, 7.62mm, serial number 138051.
- 1-C General Motors Corporation, Guide M-3, .45 caliber sub-machine gun, serial number obliterated.
- 1-D Finnish, Lahti, 20mm cannon, serial number 936.
- 1-E High Standard, Browning M-2, .50 caliber machine gun, serial number 1092051.
- 5-A Four Mark II fragmentation grenades.
- 5-B Silencer, .45 caliber, overall length of 12 $\frac{1}{2}$ ", outside diameter 1-7/8", no serial number.
- 5-C Silencer, .45 caliber, overall length of 7-3/4", outside diameter 1 $\frac{1}{4}$ ", no serial number.



**PUBLIC SAFETY DEPARTMENT  
DADE COUNTY, FLORIDA**

**CRIME SCENE SECTION REPORT**

P.S.D. CASE  
 ASSIST TO OTHER AGENCY (A.O.A.) CASE

CASE NO.  
119897R

Victim's Name: LOPEZ      Scene Location (Address of): 460 W 42 PLACE      Phone No.: -      Date: 29 JUNE 73

Offense: RECOVERED EXPLOSIVES HIALEAH      Agency: HIALEAH      Investigator: KELLY      O.D.C.N.      Radio No.: 313

Request Rec'd. From: HIALEAH      Rec'd in Lab. By: FRANK      Time Rec'd.: 1 PM      Time Assigned: 1:00 PM      Time of Arrival: 1:20 PM      Time in Service: 3:00 PM

RECEIVED 4 MARK II FRAGMENTATION HAND GRENADES FROM UTILITY ROOM & EXAMINED THEM ON DINING ROOM TABLE.

BLACK POWDER, TNT + FLASH POWDER

# 1 LIGHT GREEN BLUE FUZE M205A2 SGK-1-40 5-56 FILLED WITH FLAKY RED, ALUMINUM & CAUSHED PENTOLITE EXPLODED GREEN ON 10 JULY 73. ALUMINUM CAP MARKED IN RED "DANGEROUS BLASTING CAP"

# 2 LIGHT GREEN BLUE FUZE OP17-2 10-68 CONTAINING CAUSHED PENTOLITE

# 3 SHINY OLIVE DRAB # FUZE M-10A LOT 8 HE1-20 GREEN CAP # FILLED WITH SMOKELESS POWDER

# 4 OLIVE DRAB WITH YELLOW RING FUZE M204A1 OLIVE DRAB NFO-3-31 4-53 ALUMINUM CAP FILLED WITH FLAKY TNT. DET. VALD AT ON JULY 10, 1973

LATENTS DEVELOPED

YES       NO

PHOTOS TAKEN

B & W -       COLOR -

Reporting Officer's Signature: J. Brodie, N. PORTER      Badge No.: 346      Approved By (Signature): J. Brodie  
S. QUIRK, NEWTON

NOTE: If additional space is required use departmental continuation report form.

**DEPARTMENT OF THE TREASURY**

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

P. O. Box 35064

JACKSONVILLE, FLORIDA 32202

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

**ALCOHOL, TOBACCO AND FIREARMS**  
FEDERAL OFFICE BLDG.  
91 S. W. 1ST AVENUE  
MIAMI, FLORIDA 33125



POSTAGE AND FEES PAID

DEPARTMENT OF  
THE TREASURY

TREAS-564



Assistant State Attorney Jim Woodard  
6th Floor Metro Justice Bldg.  
1351 N.W. 12th Street  
Miami, Florida 33125

September 21, 1973

Mr. Lloyd Erwin  
Alcohol, Tax and Firearm Division  
Treasury Department  
P.O. Box 2009  
Atlanta, Georgia 30301

RE: STATE OF FLORIDA VS. HUMBERTO LOPEZ  
CASE NO. 73-5087

Dear Sir:

I am prosecuting the case against one, Humberto Lopez, who has been charged in the State of Florida with possession of hand grenades.

My record reflects that a chemical analysis of the contents of the grenades was made by you. I will need a copy of your findings in order that we may ascertain that the explosive chemical does in fact comport with the wording of the Florida Statute.

If you have any questions regarding this matter, please contact me as soon as possible so that we may obtain the information I need for the trial prior to October 1st.

Sincerely yours,

RICHARD E. GERSTEIN  
STATE ATTORNEY

BY \_\_\_\_\_  
ROBERT P. KAYE  
Assistant State Attorney

RPY:mtm



FIELD LABORATORY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
ATLANTA, GEORGIA

OCT 1 1973

August 17, 1973

AL 551  
Re: Humberto Lopez - Nunez  
3603 0673 1534N  
(Rec'd 7-30-73 via RM 559614)

Subject : Suspected explosives.

Submitted By : Special Agent George A. Nowicki  
Bureau of Alcohol, Tobacco and Firearms  
Miami, Florida

Exhibits : Lab. No. Exh. No.

2241	1	Explosive charge removed from a Mark II fragmentation grenade.
2242	2	Explosive charge removed from a Mark II fragmentation grenade.
2243	3	Explosive charge removed from a Mark II fragmentation grenade.
2244	4	Explosive charge removed from a Mark II fragmentation grenade.

Purpose : To determine the type of explosives contained in Exhibits 1, 2, 3 and 4.

Findings and Conclusions : All exhibits were given a macroscopic and a microscopic examination.

The exhibits were also analyzed by thin layer chromatography, infrared spectroscopy and chemical spot tests.

Exhibit 1 was found to contain black powder, TNT and a trace of flash powder.

Exhibit 2 was found to contain a mixture of TNT and PETN which is known as Pentolite.

AL 551

Re: Humberto Lopez - Munez

Exhibit 3 was found to contain smokeless powder. This powder was found to be a single base powder and having a grain size normally found in high-power rifle ammunition.

Exhibit 4 was found to be flake TNT.

The above exhibits are being returned to SA George A. Norwicki via registered mail.

Lloyd T. Erwin  
Chemist

Reviewed By \_\_\_\_\_

Clarence E. Paul  
Chief, Field Laboratory



**DEPARTMENT OF THE TREASURY**

**BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

**P. O. Box 2009**

**ATLANTA, GEORGIA 30301**

**OFFICIAL BUSINESS**

**PENALTY FOR PRIVATE USE, \$300**

**POSTAGE AND FEES PAID**

**DEPARTMENT OF  
THE TREASURY**

**TREAS-584**



Robert P. Kaye  
Assistant State Attorney  
Metropolitan Dade County Justice Bldg.  
1351 N. W. 12th Street  
Miami, Florida 33125



RESIDENT OF DADE COUNTY YES  NO

RESIDENT OF FLORIDA YES  NO

CASE NO. 73-20648 JAIL NO. 31607

Defendant's Name: LOPEZ Humberto Nnn Date of Birth: 7 DEC 41  
(Last) (First) (Middle) (Day, Month, Year)

Place of Birth: HAVANA, CUBA Local Address: 460 W. 42nd PL Scars: LOW CHEST  
Tattoos: FIELD MANAGER

Permanent Address: 460 W. 42nd PL Phone: 833-8650 Occ.: FIELD MANAGER

Soc. Sec. No.: 264-60-2692 Race: W Sex: M Eyes: BRN Hair: BRN Hgt.: 5'8" Wt.: 160

Arrest Date: 29 June 73 Time: 12:30P Location: 460 W. 42nd PL  
(Day, Month, Year) (Place of Arrest)

Co-Defendant's Name: \_\_\_\_\_ Taken To County Station: D.C.J.  
(Last) (First) (Middle)

Citation No.: \_\_\_\_\_ Capias No.: \_\_\_\_\_ Other: \_\_\_\_\_

**OFFENSES CHARGED:**  
1. POSSESSION OF EXPLOSIVES In Viol. of F.S. 882.101 In Viol. of Sec.: \_\_\_\_\_  
2. \_\_\_\_\_ In Viol. of F.S. \_\_\_\_\_ of the Code of Metropolitan  
3. \_\_\_\_\_ In Viol. of F.S. \_\_\_\_\_ Dade County  
4. \_\_\_\_\_ In Viol. of F.S. \_\_\_\_\_

HOLD FOR MAGISTRATE'S HEARING - DO NOT BOND OUT (OFFICER MUST APPEAR)

**WITNESSES AGAINST DEFENDANT:**  
1. Name: Public Safety DEPT. Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
2. Name: 501 Palm Ave Address: \_\_\_\_\_ Phone: 488-8479

Physical Evidence against Defendant: 43 Mark II Fragmentary Grenades.

Arresting Officers: KELLY J. HARRIS Ct. ID # 0067 Dept.: 04  
Transporting Officers: BELETTE J Ct. ID # 0004 Dept.: 04

The undersigned certifies and swears that he has just and reasonable grounds to believe, and does believe that:  
On the 29 day of June, 1973, 460 W. 42nd PL,  
LOPEZ, Humberto, (Initial)  
(Last Name) (First Name) (Initial)

committed the following violation of law:  
Narrative: (Be specific) \_\_\_\_\_  
\_\_\_\_\_ Subject hidden in his possession certain explosives  
\_\_\_\_\_ without a license or permit which are  
\_\_\_\_\_ for members of the state of Florida as provided by  
\_\_\_\_\_ law.  
\_\_\_\_\_ REIN ISIGORRY 201 0110 ONE

Sworn to and subscribed before me, the undersigned authority, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_  
I swear the above statement is correct and true to the best of my knowledge and belief.  
Officer's Signature: [Signature]

Deputy of the Court or Notary Public \_\_\_\_\_ Dept.: 04 Ct. ID Number 0067  
3278532 170507



FILL OUT IN AS MUCH DETAIL AS POSSIBLE:

Chain of Custody: \_\_\_\_\_

Arresting Officer(s) Days Off: SAT - SUN Duty Hours: \_\_\_\_\_

Arresting Officer(s) Days Off: \_\_\_\_\_ Duty Hours: \_\_\_\_\_

WITNESSES NOTE: CHECK APPROPRIATE BOX

1. Name: Kelly Richard #0067 Address: 501 PALM AVE Phone: 885-1530  
VICTIM  OWNER  WITNESS

Synopsis of Testimony: Saw grenades - called for Vengeance of LCI, asked Lopez for the weapons and he entered the house with Lopez + the Δ produced 2 weapons which had been wrapped in cosmoline.

2. Name: POTTER, Robert #104 Address: Hieloh Police Dept. Phone: \_\_\_\_\_  
VICTIM  OWNER  WITNESS

Synopsis of Testimony: ASSISTED Kelly - Can Test. as to the facts that Kelly observed.

3. Name: POTTER, Newton #905 Address: PSD. Linn Co. Ia Phone: \_\_\_\_\_  
VICTIM  OWNER  WITNESS

Synopsis of Testimony: Removed grenades & PLACED IN HOUSE (Placed the grenades on the dining room table.)

4. Name: LT. COLE Address: 501 PALM AVE Hieloh Fire Dept. Phone: \_\_\_\_\_  
VICTIM  OWNER  WITNESS

Synopsis of Testimony: called to fire advised of possible explosives. Removed 2 rifles from the house.

5. Name: William Lynch Address: STAT FIRE MARSHAL W PALM Bk FLA Phone: \_\_\_\_\_  
VICTIM  OWNER  WITNESS

Synopsis of Testimony: STATED NO PERMIT, CUSTODIAN OF RECORDS RE EXPLOSIVE PERMIT OF HUNDERT LOPEZ  
WIT IS STATE FIRE MARSHAL & CUSTODIAN RECORDS

OFFICER SHALL NOT FILL OUT ANYTHING BETWEEN DOUBLE LINES!

Date of Preliminary Hearing: \_\_\_\_\_ Time \_\_\_\_\_ Courtroom No. \_\_\_\_\_

Public Defender Appointed: YES  NO

Misc. \_\_\_\_\_

BOCC  BOMC  Continued Date \_\_\_\_\_

Discharged-(Reason in Detail) \_\_\_\_\_

1016  
1121  
1153

# FIRE ALARM REPORT

## INCIDENT IDENTIFICATION

DEPARTMENT NUMBER										DATE										ALARM SOURCE									
0430074751										0629										244041									
TYPE SITUATION										PROPERTY										ADDRESS OF INCIDENT									
1010										411										460 W. 42 PL									
NUMBER OF ALARMS										WIND										HUMIDITY									
11007										1319																			
INCIDENT REPORTED BY: N.A.																													

UNIT IDENTIFICATION		TYPE		DISPATCHED		ARRIVED		RETURNED TO SERVICE		DISPATCHED FROM		TO DEPT.		STA.	
04	208	1	1007	1011	1230	1									
2	04	206	1	1008				1011							07
	04	403	1	1008	1018	1018	1								
	04	152	1	1027	1035	1153	3								
3	04	361	1	1054	1102	1205	1								
	04	206	1	1218	1227	1319	1								STANDBY-FOR-208
4															
5															

REMARKS: ESTIMATED VALUE ESTIMATED LOSS INJURIES DEAD

Reported: Smoke Coming From Carport  
 Found: " " " " & Cache Of  
 Ammunition & Machine Guns, Grenades & Etc.

[ ] ALARM SUPPLEMENT USED

SIGNED BY OIC

125.01-61

T. J. [Signature] POSITION WT. DATE 6/29/71  
 1-set (complete) to State Fire Marshall inc. HFD Rep  
 1-set " " HFD - Fire Prevents  
 1-set of HFD Reports (only) to Mr. Greenspan  
 DEPARTMENT COPY

✓



FIRE INCIDENT REPORT

**A. INCIDENT IDENTIFICATION**

DEPARTMENT: 04 NUMBER: 30074721 DATE: 0629244

JURISDICTION: 04 TIME: 1007 DISPATCH: 1011 FIRST UNIT ARRIVE: 1230 UNDER CONTROL: 1237 SECURED: 1237

TYPE SITUATION: 10 ACTION TAKEN: 10

PROPERTY CLASSIFICATION: 411 ACRES INVOLVED: 5 TYPE CONSTRUCTION: 5 HEIGHT: 01

PROPERTY VALUE: [ ] PROPERTY LOSS: [ ] CONTENT VALUE: [ ] CONTENT LOSS: [ ]

INCIDENT ADDRESS: 400 W 42 PL 823-0650

INCIDENT OCCUPANT: Humberto Lopez

OWNER OF PROPERTY: JOSE SANCHEZ

OWNER ADDRESS: [ ]

**B. METHOD OF EXTINGUISHMENT**

27 Booster LINE

WATER VOLUME TO CONTROL: 100 GALLONS

NUMBER OF STREAMS USED TO CONTROL: 1

FEET OF HOSE USED: 75

TOTAL WATER USED: 0200

CHEMICAL AGENT ONE VOLUME: 0400

CHEMICAL AGENT TWO VOLUME: 0000

MEDICAL EQUIPMENT: 05

IDENTIFY FIRE UNITS: 208-403-CMDR 1-152-153

OTHER EQUIPMENT USED: Kelly tool, Pike Pole, Attic Ladder

**C. 1. EQUIPMENT INVOLVED: 98**

2. FORM OF HEAT: [ ]

3. TYPE MATERIAL: [ ]

4. FORM MATERIAL: [ ]

5. ACT OR OMISSION: 21

AREA OF ORIGIN: 47 Car Port

LEVEL OF ORIGIN: 01

EXTENT OF FLAME DAMAGE: 4

EXTENT OF OTHER DAMAGE: 4

INTERNAL FIRE PROTECTION FACILITIES: [ ]

OTHER PERSONS PRESENT: 0400

SUPPORT PERSONNEL PRESENT: 72-76

APPARATUS WORK TIME RESPONSE DISTANCE: 04208 230012

SINGLE COMPANY: CC

NAMES OF COMPANY PERSONNEL PRESENT: Lt Fogel, R. Rogers, G. Bretch, J. Reynolds

**D. NARRATIVE**

ON ARRIVAL, A SMALL TRASH FIRE WAS FOUND OUTSIDE OF THE UTILITY ROOM. AFTER EXTINGUISHING IT, SMOKE WAS STILL COMING FROM THE EAVES OF THE HOUSE. A SECOND FIRE WAS LOCATED IN THE UTILITY ROOM AND EXTINGUISHED. THE FIRE PREVENTION BUREAU WAS CALLED BECAUSE IT COULD NOT BE DETERMINED HOW THE TWO SEPARATE FIRES STARTED. AFTER THE FIRE PREVENTION BUREAU MADE ITS INVESTIGATION, OVERHAUL OF THE UTILITY ROOM WAS STARTED. TWO SMALL RIFLES WERE FOUND AND GIVEN TO MR. HUMBERTO LOPEZ TO PUT IN HIS HOUSE FOR SAFEKEEPING. UPON FURTHER OVERHAUL, SEVERAL AUTOMATIC WEAPONS WERE FOUND AND CASES OF AMUNITION. WE THEN STOPPED OVERHAUL AND CALLED FOR THE PROPER AUTHORITIES

[ ] SEE NARRATIVE ATTACHMENT TO CONTINUE THE INVESTIGATION.

SIGNED BY: OIC [Signature] POSITION: Lt. DATE: 6/29/73

[ ] FILE DATE: [ ] PENDING INVESTIGATION DATE: [ ] FIRE CODE INVESTIGATION SEE INSPECTOR'S REPORT

# UNIT ACTIVITY REPORT

3

**A**

INCIDENT IDENTIFICATION									UNIT IDENTIFICATION				FIRE FIGHTERS			NAMES OF COMPANY PERSONNEL PRESENT		
DEPARTMENT NUMBER			TYPE	CARD	DEPARTMENT		UNIT NUMBER		PRESENT	INJURY	DEAD	Jones, Johnson, Proctor, Dore						
0	4	3	0	0	7	4	7	6	1	0	4				2		0	6
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19

**B**

FEET OF HOSE USED															WATER VOLUME USED															AERIAL LADDERS					GROUND LADDERS															
1" - 1"					1 1/2"					2"					3" PLUS					USED					FEET					USED					FEET															
20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70
CHEMICAL AGENT ONE					CHEMICAL AGENT TWO					MEDICAL EQUIPMENT					APPARATUS WORK TIME					RESPONSE DISTANCE																														
TYPE		AMOUNT			FORM		TYPE		AMOUNT			FORM		ONE		TWO		THREE		HOURS		MINUTES		MILES		TENTH																								
46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80																

OTHER EQUIPMENT USED

**C**

COMPLETE THIS BOX IF UNIT ACTIVITY

MONTH		DAY		ZONE		START OF ACTIVITY		COMPANY WORK TIME		PERSONS INVOLVED		PROPERTY CLASSIFICATION		COMPLEX									
2																							
10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33

TYPE ACTIVITY

34	35
----	----

ACTIVITY LOCATION

**D** NARRATIVE

460 W. 42nd Pl. Stood by till we were released by Capt. Lane. No action taken by us.

This was a call handled by Station 3, on 29 June 73, for information on this report no. please see incident report same no.

[ ] SEE ATTACHMENT FOR ADDITIONAL APPROVALS

SIGNED BY OIC Robert D. Ryles POSITION LT. DATE 29 June 73

DEPARTMENT COPY

FIRE DEPT CASE # 3007  
Date " " # 73-206

FIRE REPORT  
FIRE PREVENTION BUREAU  
HIALEAH FIRE DEPARTMENT

Date 6/29/73 Time 10:27 A.M. Weather CLEAR

Location 460 W. 42nd Place

Owner's Name JOSE SANCHEZ Address \_\_\_\_\_

Lessee Humberto Lopez Address 460 W. 42 Place 823-865

Insurance on Building \_\_\_\_\_ On Contents \_\_\_\_\_

Policy No. \_\_\_\_\_ Amount \_\_\_\_\_

Type of Building CBS Type of Business HOME

Damage Utility Room & outer soffet and facia

Estimated Loss \_\_\_\_\_

Photographs Taken Yes

Probable Cause ARSON

Remarks My investigation as follows: Burned out utility room containing furniture, beds, handtruck, mower, gas can, etc. Fire Dept. notified by Mrs. Lopez. Station #3 crew called for investigation. Mr. Lopez arrived on scene approximately 10:30 A.M. and seemed apprehensive and nervous. Arms and ammo still undiscovered at this point. He assisted us in pushing his truck out of carport to facilitate overhaul. Then he made occasional appearances, mostly standing in neighbors front yard to the east. He was present when in the removal of material from Utility Room during overhaul two rifles were handed out of room and stood against wall of carport. At the time it was thought that they were hunting guns and it was suggested to Lopez that he may want to take them inside and clean them up. He seemed hesitant at this and when the thought was mentioned again he responded after some hesitation with "Oh, it's OK to take them in the house?" and proceeded to do so. Then I didn't see him again for approximately 5 - 10 minutes. Meanwhile, the discovery of a large box of large calibre shells was brought out and opened by Inspector Hale. Our suspicions grew and subsequently the heavy automatic weapons and ammo were discovered. With this I immediately over

radioed for Hialeah Detectives and ID people and then instructed Lopez to stay out of immediate area and asked him if he knew anything about the gear in that room. His answer was "I don't know anything about it", he returned to neighbors yard and we were discussing the possible necessity of evacuating the neighborhood when a man, who was seen just prior talking to Lopez, approached us and announced that he was a newspaper representative and he had received a phone call approximately 20 minutes ago (anonymous) warning that the house in question was on fire and that it was going to explode and that he wanted the neighbors and firemen to evacuate and not try to go in and put the fire out because there was danger from the explosives in the room.

At this we in fact cleared the area and adjacent home sites and secured until the proper authorities arrived. Newspaper man gave his name and operation as Jenero Perez of 120 SW 19 Ct., Apt. 7 and Replica News - Candilejas News. This man remained in general area and later was questioned by authorities.

ON SCENE:           Hialeah Police & ID  
                      Detective Bureau - Capt. Semanski  
                      Metro Bomb Squad  
                      F.B.I. Agents Mills, Hopgood, Hall, Ross, Cavanaugh and  
                      possibly others.

*Lt. R.D. Cole*

Lt. R.D. Cole

9



JUNE 29, 1973  
460 W. 42nd Place  
C. Hale

Called to 460 W. 42nd Place, arrived at 10:35 A.M. Found suspected arson case - two fires. Further investigation disclosed military weapons and ammunition. This led to evacuation of near neighborhood. Case involved HPD, FBI, and Fed. Alcohol and Tobacco Tax personnel. Fire crew at Station #3 credited as saving selves, many civilians, and other Fire personnel from injury. Their quick professional stop resulted in minor damage to structure, lives saved, and discovery of strictly illegal weapons and ammunition for Federal Investigators.

Lt. C. Hale

*Insp. C. Hale*

UNLAWFUL POSSESSION OF AN  
EXPLOSIVE 552.101 (FEL.)

HUMBERTO LOPEZ

*HAROLD KEEFFE  
AS. ATTORNEY*

*Amended Information*

*Frank  
8/25/73*

*N. Joseph Durant Jr., Acting*

HUMBERTO LOPEZ

29th

JUNE

73

did unlawfully, knowingly and feloniously have in  
his possession certain explosives, to-wit: HAND GRENADES, without  
having a license or permit therefor, in violation of 552.101  
Florida Statutes,

RPK:eld  
8/30/73

Jail No. 73-31607 Bkd. 6/29/73 Jkt. No. 170507 IDS No. 3278532  
73-11927, Judge Ferguson

UNLAWFUL POSSESSION OF AN  
EXPLOSIVE 552.101 (FEL.)

HUMBERTO LOPEZ

N. JOSEPH DURANT, JR., Acting  
XXXXXXXXXXXXXXXXXXXXX

HUMBERTO LOPEZ

29th

JUNE

73

did unlawfully, knowingly and feloniously have in  
his possession certain explosives, to-wit: HAND GRENADES, in violation  
of 552.101 Florida Statutes,

JG:jak  
7/16/73  
Jail No. 73-31607 Bkd. 6/29/73 Jkt. No. 170507 IDS No. 3278532  
73-11927

Handwritten signatures and initials on the right margin, including a large signature at the top and several initials below it.

WITNESSES (List in order to be called) NOTE: List civilian witnesses first; officers last (show badge No. of Officer)

1. **RICHARD KELLY** *was days off work* HPD 885 1530 - *1531-268*  
Name Address Phone

Synopsis of testimony: *SAW Grenades* saw grenades and rifles. spoke to Lopez  
*see 2 rifles for*

2. **ROBERT POTTER** HPD  
Name Address Phone

Synopsis of testimony: *was days off SAT 1/5/04* WITH KELLY *887-7321*

3. **NEWTON PORTER** PSD CRIME LAB  
Name Address Phone

Synopsis of testimony: *SA 9-3* REMOVED GRENADES PUT ON TABLE  
*was days off SAT 1/5/04*

4. **LT COLE** HIALEAH FIRE DEPT  
Name Address Phone

Synopsis of testimony: CALLED TO FIRE---ADVISED OD POSSIBLE EXPLOSIVES-FOUND RIFLES

5. **CHARLES HALE** H F D  
Name Address Phone

Synopsis of testimony: FIREMAN ON SCENE  
*open for govt*

6. **ROBBIE CLAVIER** HFD  
Name Address Phone

Synopsis of testimony: FIREMAN ON SCENE

7. **ELLORY RICHTARCIK** *Browns 5th grade office* HPD I.D. *WA 1-765-4377*  
Name Address Phone

Synopsis of testimony: PHOTOS OF SCENE

8. **TOM QUARK** *Quincy* ~~MEB~~ I.D. PSD  
Name Address Phone

Synopsis of testimony: PHOTOS OF SCENE  
*photos @ on 7. photo collect on EDV*

9. **TOM BRODIE** PSD CRIME LAB  
Name Address Phone

Synopsis of testimony: EXAMINED GRENADES - *FAP photo 16 samples*

10. **LLOYD ERVIN** ALCOHOL FIREARMS AND TAX DIV P.O. BOX 2009 ATLANTA GEORGIA 350-4248  
Name Address Phone

Synopsis of testimony: EXAMONED GRENADES *COMPONAS*

11. **WAYNE MARTIN** HIALEAH WATER DEPT 3700 W 4th Ave 822 0581  
Name Address Phone

Synopsis of testimony: lopez opened account for house

12. **MR WARREN** 1401 E 4 Ave FP&L  
Name Address Phone

Synopsis of testimony: Lopez opened account for house

13. **EARNEST ZAREMBA** *635 W 49 Pl* PALM SPRINGS STATION POST OFFICE *WA 821-7311* 635 W 49 Pl *R2 821-2941*  
Name Address Phone

Synopsis of testimony: *SA 9-3 or Kenton* mailman delivered mail to Lopez  
*2:30* *can't I O Lopez*

14. **WILLIAM LYNCH** FIRE MARSHALL WPM CUSTODIAN OF RECORDS -Lopez has no permit

cc

△ HUBERTO LOPEZ

DATE ~~8/1~~ 11 A  
TIME 8-29-73  
PLACE 460 W 42 ST

CASE# 119897-2  
73-20048 HSD

EVIS      Photos - Quina (orig Porter)  
            Grenada - Porter - Brody  
            Cert FT insur cover - File  
            Auto weapons - Porter - Hall  
            Interview -

TO-7 152026 PSS 2023

Examined Greenman (trial score  
17 YAS in 5073 work  
Rec 4 Greenman, for dining room  
1 table @ 900 (with west table)  
around score for table  
TEST trial Greenman - IT F-1000  
w 4 Secs -

Pointer out Greenman for utility work  
Placed on table

J. Quinn Polak

you as below

work photo

went Police 150 693

you as usual

got 4 Grenades for utility room  
placed in dining room table  
found Grenades in util room. n. wall  
shelf in 300.  
removed all weapons but 0145

Report when Grenades tested 31 Brady



RICHARD Nelly ASD

1000 - 2000

out at Cole @ 5000

around the north of 20 17 corner of 60 east  
north.

with about 10000 exposure & 10 million sq  
knowledge

with about 10000 per out of 10000

with west of 10 to 50 million per 2  
little.

with about 10 of rights & about some by  
the 10000.

owned inventory of utilities, which would  
& business,  
50 10000

2. 17-14 little

1. 50 east north out

1. 13 north out

1. 5000

1. 60 10000

1. 5000 & 10000 for 50 east

TRIP

1. 5000 the north owner of the (10000?)

EXPI 10000 by 10000

1. 10000 wife & other family members  
in 10000

Robert Potter

H.P.O.

same as Kelly

Sgt NATHAN HPO

1 Hall

ATF

no

Russell  
LT 1 Cole HFO  
501 Polk Ave

Hist 1 Fire Marshall  
74 hrs in fire dept.  
notified ~ 10:30 arr ~ 10:35 w/ Holo  
Present at scene, blew sketch, returned, no sketch  
still very hot & smoky.  
found signs of arson.  
Began overhaul - S.O.P. to protect residents,  
arrived - until we saw smoke when Lt  
fire units got there - west main  
with hood not  
now believe - not arson. believe gas from  
vented 3 V heaters  
where are windows not yet found  
Arms found 2 Rifle 1 set keys  
eject with jelly in the car  
clean them off - & make no  
move toward them.

point source of lights  
not present when Greener found - west main was  
after rifle arms brought and boxes - opened to find  
auto weapons & anti tank armor found it  
called Police ~~to find source~~  
with assault in in main study apt weapons  
is now - & denied it  
left to lunch - set found rest source of  
Greener.

Greener not found 137 fire dept.  
got TR of evidence for replica news

1 WSP Charles Hall HFD  
Hail CT Hall

Assigned Cole

arr to court Arson only  
weapons found BY McNoldy & BRETCH.

in with present

10-20 mins but arrived & seej

Arms -

spoke to no one with

heard call today to looking for  
with never heard weapons - no suspect.  
opened area pot found BY Arson

ABT clavier HF9

Edment 2 April 73  
Post office  
Calm Springs STA  
635 W 49 P 1

ad rail n v suit - 11-1-72



John Reynolds H.F.O.

LT # Oswald forgot H+D.

noted Oswald's auto weapon

Fireman 14723

97A 3

Rec call 10:07 AM found trash bin in east port  
2nd floor in utility room. - you secure  
area to reach out stairs in util room  
door.

considered area

call to make area later

over wall still big refusal.

around 11:00 AM but found area.

~~Re 11:00 AM~~ ~~found~~ ~~area~~ ~~of~~ ~~area~~ - a unit west to touch reference.

but work area there is

Other BATCH found camera in NW corner  
of door - with scan it & 5/10/70  
coll

over wall & stopped per call

not present when O'Connell found

~100!  
#

~~ATF~~ - LLOYD ERWIN

AT F LAB

ATLANTA, GA

Other ERWIN contents of envelope

George Nowicki  
ATF

Chair of Court of Appeals - -

SEP 20 1973

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR DADE COUNTY, FLORIDA

No. 73-5087

STATE OF FLORIDA,	:
	:
VS.	:
	:
HUMBERTO LOPEZ,	:
	:
Defendant.	:
_____	:

State Attorney's Office  
Metropolitan Justice Bldg.  
September 19, 1973  
2:00 o'clock p.m.

STATEMENT OF MATILDA LOPEZ

Taken before Sherra Floyd,  
court reporter.

APPEARANCES:

ROBERT KAYE,  
Assistant State Attorney,  
State Attorney's Office.

MELVYN GREENSPAHN, Esquire,  
on behalf of Mrs. Matilda Lopez.

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MR. KAYE: Let the record reflect that Mrs. Humberto Lopez -- what is your first name?

MRS. LOPEZ: Matilda.

MR. KAYE: Matilda Lopez is furnished to me, State Attorney Robert Kaye, reference the case against Humberto Lopez case 73-5087, her name having been submitted to me as a defense witness in a communique related to me by attorney Melvyn Greenspahn.

Present in the room at the moment in answer to the subpoena issued by the State is Mrs. Lopez and her counsel, Mr. Melvyn Greenspahn.

The State also previously subpoenaed for the purpose of this deposition a Mr. Reinaldo, R-e-i-n-a-l-d-a P-a-t-t-a-o, and Mrs. Catalina Pattao.

I have in my possession two letters signed by Rolando Lopez, M.D., on his official stationery. He is a doctor of internal medicine and cardiology, that in his official capacity, he has treated both Mr. Pattao and Mrs. Pattao for various heart conditions and diseases and indicate that

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neither of the two individuals would be physically able to attend court. Therefore, they are not here today.

MR. GREENSPAHN: The record should reflect that Dr. Lopez is not related by marriage or blood to the defendant, although the name is the same.

MR. KAY: Prior to taking the official record, I had a conference with attorney Mr. Greenspahn reference the status of today's depositions and the absence of the two witnesses and the ability or the inclination of counsel to present Mrs. Lopez for testimony.

It was related to me that counsel is invoking the husband-wife marital privilege and instructing his client, Mrs. Lopez, not to answer my questions other than to state her name and address as I understand it.

MR. GREENSPAHN: Correct.

MR. KAYE: If you would, ma'am, state your name and address for the record.

MRS. LOPEZ: Matilda Lopez. And my address?

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MR. KAYE: Yes.

MRS. LOPEZ: 460 West 42 Place,  
Hialeah.

MR. KAYE: Have you been in conference  
with your attorney, Mr. Melvyn Greenspahn?

MRS. LOPEZ: I don't --

MR. KAYE: Discussions with him?

MRS. LOPEZ: Yes.

MR. KAYE: Has he advised you not to  
answer any questions today about the matter involving  
your husband, Mr. Humberto Lopez?

MRS. LOPEZ: Yes.

MR. KAYE: And are you going to take  
his advice and follow his advice and not answer  
my questions today about this case?

MRS. LOPEZ: Yes.

MR. KAYE: All right.

MR. GREENSPAHN: For the record only,  
Mrs. Lopez, are you now and were you on -- what is  
the date of the offense?

MR. KAYE: June 29, 1973.

MR. GREENSPAHN: Are you now and were  
you on June 29th, 1973, the lawful wife of

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Humberto Lopez?

MR. KAYE: Were you married to Humberto on that day?

MRS. LOPEZ: Yes.

MR. KAYE: Are you still married to him?

MRS. LOPEZ: Yes.

MR. GREENSPAHN: For the record, I have instructed Mrs. Lopez not to answer any questions on a dual ground:

First of all, invoking of the husband-wife privilege; and secondly, were she to be denied that privilege, she would probably have to invoke the Fifth Amendment privilege against self-incrimination.

As to Mr. and Mrs. Pattao, I would announce for this record that the defense will not call Mr. or Mrs. Pattao as witnesses for the defense at any rate and the defense will not call Mrs. Lopez at the time of trial as a witness for the defendant.

And I can foresee no reasonable basis to think that that announcement will be modified in any way.

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MR. KAYE: Then let me get for the record a definite and definitive statement from her in relation to a question pertaining to the facts of this case.

MR. GREENSPAHN: All right.

MR. KAYE: All right. Mrs. Lopez, will you tell me anything you know about your husband possessing a hand grenade on or about June 29th, 1973? You can confer with counsel.

MR. GREENSPAHN: I instruct you to answer counsel's question no.

MRS. LOPEZ: No.

MR. KAYE: On what ground do you --

MRS. LOPEZ: Yes, I refuse to answer. I don't understand too much English.

That is a problem.

MR. GREENSPAHN: If you wish to -- now, Mrs. Lopez obviously knows the statement as to the tendency to incriminate.

MR. KAYE: Have her state that on the record.

MR. GREENSPAHN: She knows it in Spanish and not English.

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Do you know how to say that in English?

MRS. LOPEZ: Because I don't want to be incriminate. Is that right?

MR. KAYE: Are you invoking the privilege guaranteed to you by the United States Constitution, Fifth Amendment?

MRS. LOPEZ: Yes, I take Fifth Amendment.

MR. KAYE: Are you also invoking your privilege as stated by counsel earlier as to the privilege of husband-wife relationship?

MR. GREENSPAHN: Yes.

MRS. LOPEZ: Yes.

MR. KAYE: All right. Thank you for coming and I appreciate you taking your time.

Thank you, Counsel.

-----

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CERTIFICATE

STATE OF FLORIDA )  
 : SS.  
 COUNTY OF DADE )

I, SHERRA FLOYD, court reporter,  
 do hereby certify that the foregoing transcript,  
 pages 1 through 7, is a true and correct transcript  
 of the statement of MATILDA LOPEZ, taken before  
 me at the time and place specified in the caption  
 thereof.

I FURTHER CERTIFY that I am neither  
 attorney or counsel for, nor related to or employed  
 by, any of the parties to this action, and further  
 that I am not a relative or employee of any attorney  
 or counsel employed by the parties hereto, or  
 financially interested therein.

IN WITNESS WHEREOF I hereunto set  
 my hand this 20<sup>th</sup> day of September, 1973.

  
 Sherra Floyd  
 Court Reporter

ESQUIRE REPORTING SERVICE

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IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

STATE OF FLORIDA, :  
 :  
 Plaintiff, :  
 :  
 -vs- : CRIMINAL NO. 73-5087  
 :  
 HUBERTO LOPEZ, :  
 :  
 Defendant. :  
 :  
 - - - - - X

501 Palm Avenue  
Hialeah, Florida  
December 11th, 1973  
10:00 o'clock a.m.

DEPOSITION OF LIEUTENANT DONALD J. FOGEL

APPEARANCES:

No appearance on behalf  
of the State of Florida.

MELVYN GREENSPAHN, Esq.,  
on behalf of the Defendant.



The deposition of LIEUTENANT DONALD J. FOGEL, a witness of lawful age, taken for the purpose of discovery and for use as evidence in the above-entitled cause, pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, pursuant to notice, before MONA GESSE, Court Reporter and Notary Public in and for the State of Florida at Large, at the time and place aforesaid.

- - - - -

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
Lieutenant Donald J. Fogel	3	-



Thereupon--

LIEUTENANT DONALD J. FOGEL

was called as a witness on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREENSPAHN:

Q All right, sir, will you please state your name and your professional address.

A Lieutenant Donald J. Fogel, Hialeah Fire Department.

Q Lieutenant, how long have you been connected with the Hialeah Fire Department?

A About 14 years.

Q How long have you been a Lieutenant?

A Oh, about a year and two months.

Q Are you presently in anyway connected with the operations of the Fire Prevention Bureau of Hialeah?

A No, sir.

Q You're strictly a line officer with the Fire Department?



A Right.

Q I understand that you were on the day of the occurrence that we're talking about which I think was June 29th, this year, stationed at Station 3?

A Yes, sir.

Q And you still are?

A Yes, sir.

Q All right.

Did you receive a dispatch on that date to go to the premise at 460 West 42nd Place?

A Yes, sir.

Q How was it that you received your first notice or dispatch on this? Was it by radio or otherwise?

A No, by the alarm office by way of telephone.

Q Do you know what the source of the report to the alarm office was? Have you had an occasion to find out was it as a result of a fire box being activated? Was it as a result of a citizen's call?

A That I couldn't tell you, sir.

Q In any event, do you recall the time--  
If you need the official records for this, you're welcome to look at your records during the course of your testimony,





I don't know if you have any or not.

A I can get the copy of the report.

MR. GREENSPAHN: Why don't you do that, Inspector, you can be more specific in your answers. I can give you what I got here but I don't think it's the complete report. It's whatever Lieutenant Cole sent me.

Q (By Mr. Greenspahn) Would that report that I have just made available to you, would that reflect any written notes, memorandum or reports made by you in connection with your activity in this fire?

A Yes, sir, I'm the one that made this report and signed it.

Q All right.

Does that bear a date? Is there some descriptive term we can use? I'm going to ask the Court Reporter at the conclusion of the deposition to mark that as an Exhibit to the deposition. That was 6-29-73.

All right. Did that indicate, sir, when you received the fire call?

A Yes, sir, it did.

Q What time?

A 10:07.



Q A. m.?

A Yes, sir.

Q All right.

And does it also indicate when you rolled out of the Station?

A No, we rolled out as soon as possible after that.

Q Does it show the time of arrival?

A Yes, sir, 10:11.

Q In point of distance how far is the Station from the scene of the fire?

A Oh, I'd say approximately a mile.

Q Okay.

When you arrived on the scene, what did you observe?

A When we arrived on the scene there was a trash fire in the carport which we extinguished first.

Q How would you describe that fire in terms of dimension or severity?

A I would say you could consider that like a small trash fire. It was a desk and some other material sitting out in the carport.



Q How did you extinguish it?

A With our booster line from our pumper.

Q Now, did you subsequent to the extinguishment of that fire, have an occasion to observe another fire on the premises?

A Yes, we did.

Q Where was that?

A That was in the utility room.

Q And in point of time, from the time of the extinguishment of the first fire, how long was it until either you or one of your men noticed the second fire?

A I would say 30 to 45 seconds, something like that.

Q How would you describe that fire?

A I would call this as a more severe fire than the first one we encountered.

Q Do you have a reference to the severity of the fires or the degree of danger involved in terms of a code, like Code 1 we know is a very serious fire?

A Yes, sir.

Q How would you classify both the first and second fire?



A I code it in as Code 2.

Q What's the definition of Code 2?

A Code 2 means the vehicle on the scene can handle whatever is there.

Q How did you go about putting out the second fire?

A The second fire was extinguished by kicking the slats out of the louver door in front of the utility room.

Q Is that for ventilating--

A This is a forceable entry. In other words, we couldn't pry the lock or anything else to get it open. After we forced the slats, I couldn't open it by turning the handle.

Q Was it locked?

A Yes, sir.

Q Okay.

What was the means by which the fire was extinguished?

A With the booster line.

Q Again with the booster line.

Do you keep records--I don't know if this



is done or not--Do you keep the records of how much water in terms of gallons is used out of the pumper?

A Yes, sir, most of these are approximate. We usually approximate. A hundred gallons of water.

Q Is it fair to say putting out the two fires was not really a major task for you, that these were considered in your line of work to be small fires requiring small water consumption?

A You can't always go by the amount of water consummated because what mostly does if applied properly is the steam, the effect you get from the steam. This was the fire enclosed in the utility room. Once you put a given shot of water it produces steam which expands which puts out a lot of the fire.

Q Where in the utility room was that second fire?

A Totally involved.

Q Totally involved?

A Yes, sir.

Q In terms of time, how long did it take you to get that fire extinguished, approximately?

A I'd say under control--I'd say approximately



a minute or so.

Q Did you ultimately in fact, extinguish that fire?

A Yes, sir.

Q Okay.

Did you complete putting out both fires before any units from the Fire Prevention Bureau were called?

A No, sir.

Q Would you tell me what the sequence in terms of time was in regard to the fire extinguishment and calling Fire Prevention?

A After we put the first one out, we saw the other one, we had kicked the door down and there was no visible signs of how one fire could have gone from one place to the other. I thought it was funny how there was two separate fires. This is why I called the Fire Prevention Bureau to come out and investigate.

Q In other words, the possibility of arson existed in your mind and you called your appropriate authorities to investigate it?

A Yes, sir.



Q By the time Fire Prevention got there, I understand--Correct me if I'm wrong, I understand it was Lieutenant Cole and Inspector Hale?

A Yes, sir.

Q That came on the scene?

A Yes, sir.

Q By the time they arrived on the premises, had you extinguished the second utility room fire?

A It was extinguished, yes, not totally.

Q By extinguished, I mean totally.

A No, sir. The only time a fire is totally extinguished is after the completion of the overhaul.

Q That's what I wanted you to tell me about. First of all, was the flame out?

A Any visible flame was out.

Q Okay.

Were you engaged in the overhaul when Lieutenant Cole and Inspector Hale arrived on the scene?

A Yes, sir. We had just started.

Q And what were your overhaul procedures as to that utility room fire?

A To completely overhaul the utility room.



Things have to be removed to get back in the corner to make sure there is no visible embers or anything else coming out of the utility room.

Q Were you doing that at that time?

A I think we were. We had removed a few things from the utility room at this time.

Q Now, in the contemplation there might have been an arson and that you had summoned the Fire Prevention Bureau people, is it normally your procedure to move things around? In other words, do as we lawyers are fond of saying to move potential evidence or potential clues that might assist in the investigation?

A No, you don't move anything more than necessary.

Q All right.

In this instance, what, in fact, did you move in your overhaul proceedings, do you recall?

A Before we--The first thing we removed was a couple--I would call them packing blankets and I think there was one hand truck by U-Haul made from the U-Haul Company was about all we had removed up to this time.

Q Up to that point, did you find any embers?





Did you find any other indication the fire was still an active fire?

A Yes, there was still smoke coming out from the corner of the building.

Q Do you remember which corner it was in terms of direction, north, east, south, west?

A Let's see. The building is facing north, so this would be in the southeast corner of the building, in the southeast corner of this room.

Q Did you go to that area?

A Not at the present time because we couldn't get in that far without removing more of the equipment that was in the building.

Q Did you wet down that area?

A We did, yes.

Q Okay.

What then happened as you proceeded with your overhaul? What personally did you see?

A At this time the Fire Prevention Bureau was on the scene when they made the preliminary investigation, so we started to remove some of the merchandise, not merchandise, equipment, that was in the building to



gain access to the rear corner. We moved like I say, a couple packing blankets, things like this. We removed a metal box. It looked like an ammunition box.

Q Could you describe it to me? Was it closed or locked?

A It was closed.

Q Was it locked?

A No, sir, I don't believe so.

Q When you say it looked like an ammunition box--Were you in the service?

A Yes, sir.

Q Was that the basis of your determination it might have been an ammunition box?

A Yes, sir.

Q Could it have been some other kind of box other than an ammunition? Of course, we know now it was an ammunition box, but what about that box made you assume at that time that it was, in fact, an ammunition box?

A It just looked like all the ammunition boxes that I have seen in the military.

Q All right.



What did you do upon discovering that box?

A Removed it outside and it started to rattle, so we thought maybe it was some tools. We didn't know, we opened it up. This is when we found ammunition in the box.

Q And then continuing along with your procedures what did you do?

A Well, we continued to take more things out of the building. The next two things I think we took out were two rifles that were wrapped in like plastic and at the time I figured they were maybe hunting rifles which possibly a man stores in a utility room.

One man--Jack Reynolds was the one that took them out and handed them--Asked him if he wanted to put them inside for safe keeping. The man didn't want to touch them to start with, after awhile he did take them and put them inside.

Q Were you present when Mr. Reynolds proffered these weapons to Lopez?

A Yes, sir.

Q I take it it's Lopez you're talking about?

A Yes, sir.

Q Okay.



When you say he didn't want to touch them how did he evidence that?

A He just sort of backed off a little bit.

Q Did he say anything at that time?

A No, sir, not that I know of.

Q Finally he apparently did take them in the house?

A For safe keeping.

Q Okay.

What else?

A I went around the back to see if there was anything else while Reynolds and Bretch stayed there removing other things to get out of the utility room. I went around the back to look through the window to make sure something wasn't progressing farther in the back.

Q What did you see when you looked through the window?

A A normal work bench with things on it. At this time Glen Bretch called me around, "Hey, Lieutenant, look at this."

This is when I walked in the utility room. He pointed over to the corner to the right which would be the northwest corner of the building. It was a large



weapon. I looked--By the time I looked at the top of it it was taller than I was.

Q Can you describe it? What kind of weapon was it?

A I have no idea what kind of weapon. I just know it was a large weapon. It looked similar like I would say to a cannon, other than that description I wouldn't know.

Q You never seen anything like that in the course of military service?

A No.

Q What we commonly call a Bazooka type?

A I wouldn't know.

Q Then what did you do?

A At this time I confronted Lieutenant Cole, the Fire Prevention Bureau. I showed it to him. I think it would be advisable if we called the proper authorities.

Q For what purpose?

A To investigate this type of weapon being in a home. I didn't think it should be there.

Q Do you have any way of knowing or recalling in point of time how long after the fires had been principally extinguished that it was before you told Lieutenant



Cole about this cannon that you described?

A I would say it could be approximately 10 to 15 minutes.

Q Had the overhaul continued throughout that period?

A Yes, sir.

Q Had it been completed?

A No, sir.

Q When you looked in through the window in the back, did you see any indication of any incinerary activity? That is, did you see embers, flames or smoke coming?

A Yes, there was smoke coming from the one corner which would still be the southeast corner of the building.

Q Had your men progressed to the point where they were close to the corner at that time?

A Close? You mean in feet?

Q In feet, yeah.

A Well, they were close, not in feet, but in the procedures of the overhaul. I would say it would take them 10 or 15 minutes to get back to the corner due



to the amount of stuff that was in the building or in this particular room.

Q Were they doing anything to extinguish the embers or other possible activating factors?

A Yes, as we had taken blankets and other things out of the building, we laid them down out in the carport or what have you and extinguished them with the booster line which is standing by.

Q I'm talking about specifically the smoke coming from the southeastern corner that you told us about. Did they direct a spray of water?

A Yes, every once in awhile if smoke came out if they thought it advisable to let go they'd give a shot of water.

Q We're at the point you told Lieutenant Cole about the cannon, what else happened after that?

A After that, I just left it up to Lieutenant Cole. He said to stop the overhaul right there and not go any further at the present time.

Q Okay.

Was it within your professional judgement a safe thing as the very emergency passed at that point



to stop overhauling? In other words, what I'm getting at is this: When Lieutenant Cole said stop overhauling obviously because he didn't want you to disturb any of the evidence at that point, was there any question in your mind as an experienced, well trained and competent fire officer, that there was any question of safety by stopping the overhaul?

A The fire could have started up again. It's possible it could have rekindled itself.

Q Did you feel on a reasonable basis that it was all right to stop your overhaul at that point or did you express to Lieutenant Cole some feeling of misgiving about stopping the overhaul?

A Well, we stopped for the present time until it could be investigated further, the stuff that was in the building, otherwise we were still standing by with our line and nozzle right there in case something did re-occur.

Q Did there come a time subsequent to that time that there was a rekindling or reignition of the fire at any time after you stopped?

A The smoke continued to come up from the





corner in the back there.

Q Did it burn out?

A No, eventually we had to take the hose around the back, stick it back in the corner and try to more or less drown it.

Q Do you remember the time period from the stop overhaul demand to the time you went back and drowned the source of the smoke?

A No, sir, I couldn't say.

Q Is it--Not trying to put words in your mouth, could you estimate it? Could you measure it in terms of five minutes, 10 minutes, 15 minutes?

A It would have been approximately 10, 15 minutes.

Q With Lieutenant Cole's demand, you stopped your overhaul, did you retire back in the units?

A Yes, we were standing by in the yard. We were still on the premises.

Q Did you continue to make observations in that utility room after the overhaul demand was given to stop the overhaul? In other words, did you participate in the further investigation of the contents of the room?



A I, myself, no.

Q Were you in the utility room when others continued the investigation?

A No, sir.

Q Do you know when it was or where it was that some grenades, hand grenades were ultimately found?

A No, sir, I wasn't on the scene when they were found.

Q Were you back in your Station?

A No, sir, I was down the street approximately a block.

Q What was your purpose in being there?

A I was told that there was a possibility of more explosives in the building and at this time, I was asked to go down the street for safety.

Q In point of time, do you know how long it was from the time of the stop overhaul command and when the grenades were found?

A No, sir, I couldn't say.

Q How long were you down the street before you came back to the premises?

A I didn't come back to the premises. Another



truck came and relieved us. We went back to our Station.

Q Okay.

Were you present when the source of the smoke was drowned, ultimately?

A No, sir.

Q Okay.

So, you're referring then to your reliance on information that was given to you from some other source that, in fact, further activity was performed to put out the source, to extinguish the source of that smoke?

A Yes.

Q You didn't do it and you don't know when it was done?

A No, sir.

Q Lieutenant, did you prepare any other reports other than the one that you have before you now?

A No, sir.

MR. GREENSPAHN: Okay.

Can I borrow that from you just a second.

I hope you are assured that I have not in anyway, tried to trick you or in anyway confuse you in the course of my questioning. It's not my intent to.



Really, I'm trying to be as open as I can in this questioning of you. The time is a very important factor in this case for reasons not connected with your operation as a fire officer.

Q (By Mr. Greenspahn) In your report of June 29th, you have indicated that the Fire Prevention Bureau was called after the second fire in the utility room had been extinguished and that after the Fire Prevention Bureau made its investigation overhaul of the utility room was started.

So I'm clear that's a little different in semantics perhaps than what you said today.

As I understand your testimony today, the overhaul that actually commenced before the Fire Prevention came on the scene and investigated it.

That is somewhat in my mind, at any rate, a difference than the time sequence in the reports. I want you to think back. I want you to remember as well as you can in terms of time what was done first. Was the commencement of the overhaul or the investigation of the Fire Prevention Bureau first?

A I think the Fire Prevention Bureau was on the scene when we first took things out of the utility



room.

Q Okay.

And were they on the scene then when the small rifles that you thought might be hunting rifles were given to Lopez?

A Yes, sir. I don't know if they were hunting rifles, I just know there was two rifles.

Q At that point you hadn't given total significance to the rifles, you thought they might be hunting rifles. That didn't stir up any suspicion in your mind.

A My concern was two fires were separate. I could see no visible means where one could spread to the other. There was no showing of flames, charring, smoke damage to the door or how it could come to the door or outside or visa versa.

Q That was a very alert observation.

In the report you also indicated that after Fire Prevention made its investigation overhaul of the utility room was started, then the two rifles were given to Lopez and on further overhaul several automatic weapons were found and cases of ammunition.



A Yes.

Q So, again, in terms of the time sequence I understood you found the case of ammunition first and it was at that point--I may be confused--It was at that point that you called Fire Prevention.

A No, no. It was--I called as soon as I could not relate the two fires is when I called them. We hadn't--We just had broke the door down to extinguish the fire to some extent before and then I called them.

Q And then the next statement in your written report is we then stopped overhaul. This is after the automatic weapons and ammunition were found and called for the proper authorities to continue the investigation.

What authorities were those?

A That I don't know. I asked Lieutenant Cole to call the proper authorities.

Q Presumably that would be the police authorities?

A Yes, sir.

Q All right.

To wind this up you were not present when the grenades were found?



A No, sir.

Q You had not seen the grenades?

A No, sir.

Q No member of your crew saw the grenades as I understand the place where they were found--

A No, sir.

Q Do you know who found the grenades?

A I don't really know. I heard who found them, that's all.

Q What did you hear?

A I heard Tom Brody found them.

Q Were you present or on the scene when Tom Brody came?

A No, sir.

MR. GREENSPAHN: Lieutenant, thank you very much.

I have no further questions for you.

Off the record.

(Thereupon, discussion off the record.)

MR. GREENSPAHN: Lieutenant, procedurally I don't know if you have ever given testimony by deposition



before, have you?

THE WITNESS: No, sir.

MR. GREENSPAHN: You have the right to demand that the proceedings that have been taken by this stenographic machine today and this young lady be transcribed, written up. You have the right to read the transcript to see the questions as reflected there and the answers as reflected there are in fact, the questions and answers that were today given. You have the right to make any corrections you think should be made as to what conflicts between your recollection of today's testimony and the transcript might be. It is customary--I'm not suggesting you go one way or the other to you--It is customary to accept the competency of the Reporter who is an independent Court Reporter and is not my employee or any employee of the State. It is customary to waive the right to read and transcribe. If you elect to read and affix your signature to the record, you may do so, but it is an inconvenience to you, frankly, because you have to go down to her office. As I say, it's customary and I suggest you waive the right. It's your right. I'll leave it up to you.

THE WITNESS: If I do waive this right





and something does come up and a difference and I have no grounds to object to it, is that correct?

MR. GREENSPAHN: If it's different than from what you said or I said that's right, but then you have accepted the competency of the Reporter and accepted the fact she has properly transcribed everything that was said.

Now, if there are contradictions in what you said, frankly at that point, I don't see any contradictions whether you waive or don't waive it. That's fair to comment on if it comes time to do so.

THE WITNESS: Then the stenographic is actually still kept, it's not destroyed?

MR. GREENSPAHN: It will be part of the Court's record. You file the original with the Court.

THE WITNESS: So, otherwise, she could be back to reread this thing here if necessary?

MR. GREENSPAHN: Sure.

(Thereupon, discussion off the record.)

(Thereupon, at 10:50 o'clock a.m., the taking of the



deposition was concluded.)

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

Case No. 73-11927

STATE OF FLORIDA, :

Plaintiff, :

-vs- :

HUMBERTO LOPEZ, :

Defendant. :

-----X

The above-entitled cause came on for hearing before the Hon. John A. Tanksley, Judge of the above-styled Court, at the Metropolitan Justice Building, 1351 Northwest 12th Street, Miami, Florida, on Tuesday, July 10, 1973, at 10:15 a.m., pursuant to Notice.

\* \* \* \* \*

APPEARANCES:

HON. RICHARD E. GERSTEIN,  
State Attorney,  
By: GERALD GIRALDI, ESQ.,  
Assistant State Attorney,  
On behalf of the State of Florida.

MELVYN GREENSPAHN, ESQ.,  
1150 Southwest 1st Street,  
Miami, Florida,  
On behalf of the Defendant.

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>
Richard Kelly	5	10
Thomas G. Brodie	13	15

— Thereupon the following proceedings were had.

THE COURT: Let the record show that the preliminary hearing scheduled for Humberto Lopez, set for 10 a.m., July 10th, 1973, is before the Court; that the defendant is present.

I do not have an appearance, Counsel.

MR. GREENSPAHN: I filed one the last time I was here.

THE COURT: Here we are.

The defendant is represented by Melvyn Greenspahn.

Are you ready for hearing, Mr. Greenspahn?

MR. GREENSPAHN: We are, sir. The plea is not guilty.

THE COURT: State ready?

MR. GIRALDI: State is ready.

THE COURT: Enter a Not Guilty for the defendant.

Who is handling it?

MR. GIRALDI: I am, your Honor.

— MR. GREENSPAHN: Your Honor, if it please the Court, although it is not my customary

practice to do so in a preliminary hearing, I would ask that the exclusionary witness rule be invoked.

THE COURT: It is as proper at this hearing as any others. Wait until everybody is sworn.

All witnesses before the Court who are going to testify in this case.

Swear them in.

(Thereupon the witnesses were duly sworn.)

THE COURT: The Rule has been invoked on witnesses. That means that all witnesses are required to remain outside of the courtroom. You will be called in one at a time to testify. You are not to discuss your testimony among yourselves or with anyone else, either before you testify or after you testify. Everybody understand the Rule?

Who is the first witness?

MR. GIRALDI: It will be this gentleman right here (indicating).

THE COURT: Everybody else step out.

(Thereupon the witnesses were excused.)

— Thereupon

RICHARD KELLY

was called as a witness by the State and, after having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GIRALDI:

Q State your name and official position, please.

A Richard Kelly, Police Officer, City of Hialeah, Dade County, Florida.

Q Were you so employed on the 29th of June, 1973?

A I was.

Q On that occasion did you happen to see--

THE COURT: Mr. Greenspahn, the defendant speaks English?

MR. GREENSPAHN: Yes, sir, very fluently.

Q (By Mr. Giraldi) On this date did you have occasion to see one Humberto Lopez?

A Yes, I did.



Q At what address, sir?

A At 460 West 42nd Place, in the City of Hialeah.

Q What if anything drew your attention to this particular address on this date?

A I was called to the scene due to the fact there had been a fire of suspicious origin. The Hialeah Fire Department requested us on the scene.

Q What if anything unusual did you observe when you arrived?

A Upon arrival I observed, in the utility room, a 20 millimeter cannon laying against the wall, a 60 millimeter mortar laying outside the door, and assorted ammunition, explosives.

MR. GREENSPAHN: If it please the Court, your Honor, I object to the characterization of, "explosives," which is the crux of the offense. Explosives must be defined.

THE COURT: What type of explosives? Describe them for the Court.

THE WITNESS: It was hand grenades, military type Mark II.

THE COURT: Anything else of explosive nature?

THE WITNESS: Assorted ammunition. I don't think that would be under explosives.

MR. GREENSPAHN: It is not included in the statute, Judge.

Q (By Mr. Giraldi) What if anything did you do when you first observed it?

A We had everybody stand back from the scene. I called my office and had them notify the FBI and Dade County Bomb Squad.

Q Where was the defendant at this time?

A The defendant was walking on the street, up and down.

I went over and I asked him if he was the owner of the house. He stated yes.

Q Now, did you make an official check of the records?

A Yes. I called West Palm Beach, the Office of the State Insurance, where the Fire Marshal, William Lynch, is located.

Q And did the defendant have a permit to have explosives under the state law?

8

MR. GREENSPAHN: Excuse me, your Honor. At this point, first of all, counsel's questions are all leading.

Secondly--

THE COURT: Do not lead him.

MR. GREENSPAHN: Secondly, the officer is relying on hearsay testimony.

THE COURT: It is proper at a probable cause hearing if it involves an official agency. I do not require them to come down here for a probable cause hearing.

MR. GREENSPAHN: However, your Honor, if he is going to talk about anything related from the Fire Marshal's Office, he has got to indicate who it was that gave him that information, where it was that information came from.

THE COURT: I think that is important.

Q (By Mr. Giraldi) Who did you contact?

A William Lynch.

Q Who is he?

A He is the State Fire Marshal.

THE COURT: And where did he obtain

the information that he gave you?

A At the West Palm Beach office, where his office is at.

THE COURT: Is that where they keep all the permits on explosives?

THE WITNESS: Yes.

Q (By Mr. Giraldi) What did that check reveal?

A There had never been a license issued to Mr. Lopez to store or keep any explosives.

Q What if anything did you do in regards to the explosives?

A The explosives were turned over to the Dade County Crime Lab, Newton Porter. He took the explosives out of my direction and they were given to Tom Brodie, of the Bomb Squad, and he took them in.

Q Did this all happen in Dade County, Florida?

A It did.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Officer Kelly, were you the first police officer on the scene?

A No, I was not.

Q Were you the lead investigator in this case?

A Yes.

Q Did you attempt to determine the ownership of the house by any other means than those that you described?

A I made a check on the possession of the house in the records of the Postal Department. They showed that Mr. Lopez had lived in the house since November.

The City of Hialeah Water Supply showed him as being in there since November.

Q Does anybody else live in that house?

A His wife and, I think it is, his mother or his father or his wife's parents.

Q Other members of the family living in that house?

A Yes.

Q Describe the area--

THE COURT: Let me ask you one ques-

tion. Is there anyone living at that home, as far as you can determine, who is not related to the defendant?

THE WITNESS: No, sir.

Q (By Mr. Greenspahn) Do you know, of your own knowledge, that, in fact, the premises and the improvement, the house on the premises, is not owned by Mr. Lopez?

A Yes. I ran a check, and the Dade County Tax Assessor shows the house to be owned by a Jose Sanchez, who lived in Reparto Apolo, Puerto Rico.

Q Do you know by what means these various articles, including the 20 millimeter cannon and the mortar and the hand grenades, came to be upon the premises?

MR. GIRALDI: Objection to the form of the question.

THE COURT: Overruled.

If you know.

THE WITNESS: No, I don't know.

Q (By Mr. Greenspahn) Do you know, based upon your investigation, who was present at

— the time the first officer--whether it be a fire officer or police officer--came upon the scene?

A Not definitely, no.

Q Do you know, of your own knowledge, whether, in fact, Humberto Lopez was present at the time that the first fire officer or first police officer came on the scene?

A I don't know at the first. When I had arrived, he had been there prior, and he had made statements to firemen.

Q You do not know if he was there, though, when the firemen appeared?

A Yes, he was there when the firemen appeared.

You mean, when they first, initially arrived on the scene?

Q Yes.

A No, I don't know.

Q In fact, do you know that he was at work at the time?

A No, I don't.

MR. GREENSPAHN: That is all I have.

MR. GIRALDI: Send in Brodie, please.

(Thereupon the witness  
was excused.)

Thereupon

THOMAS G. BRODIE

was called as a witness by the State and, after  
having been previously duly sworn, was examined and  
testified as follows:

DIRECT EXAMINATION

BY MR. GIRALDI:

Q Would you state your name and official position, please.

A Thomas G. Brodie, Criminalist for  
Dade County Public Safety Department.

THE COURT: He is qualified for the  
purposes of this hearing.

I think your work has been with  
matters involving detonations and explosives and  
things of that type, hasn't it?

THE WITNESS: Yes, sir.

THE COURT: How long have you been  
doing that?

THE WITNESS: 17 years.

THE COURT: That is qualified for



— this hearing. I am not going to let either one go into further qualification on him.

Go ahead.

Q (By Mr. Giraldi) Mr. Brodie, in reference to the case that is before the Court, at any time did you receive any of the evidence to test?

A Yes, sir.

Q What evidence, if any?

A Those were four Mark II fragmentation hand grenades.

Q What if anything did you do with any of them?

A I stored them in the magazine and I later tested one of them with a--

MR. GREENSPAHN: Judge, excuse me. Can we have a predicate as to how the hand grenades came into Mr. Brodie's possession.

THE COURT: How did you get ahold of them?

THE WITNESS: They were on the dining room table of the house.

THE COURT: Did you go to the location

— yourself?

THE WITNESS: Yes, sir.

THE COURT: You recovered them yourself, from the premises?

THE WITNESS: Yes, sir.

THE COURT: Go ahead, you can go into your testing. You tested them how?

THE WITNESS: I pulled the pin on the grenade from a distance, with a string, and the safety lever flew off and the grenade exploded in approximately four seconds, and it was an explosive.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. GREENSPAHN:

Q Do you know, of your own knowledge, Mr. Brodie, how the hand grenades came to be on the dining room table?

A Only by hearsay.

Q What have you heard?

A That Criminalist Newt Porter had picked them up out of the utility room and put them on the dining room table.

—

Q Do you know how many had been picked up from the utility room and brought to the dining room table?

A Four.

Q How many did you ultimately retain in your possession?

How many do you now have?

A I have three left.

Q Now, sir, do you have any knowledge, at all, as to any other facts relating to this case, as to, particularly, the manner and method by which the objects that you have heard about as being stored on the premises came to be on the premises?

MR. GIRALDI: Judge, I am going to object to the form of that question.

MR. GREENSPAHN: Well, let me shorten it.

THE COURT: I think it is going beyond the scope of his participation in the case.

MR. GREENSPAHN: That is what I want to know.

Q (By Mr. Greenspahn) There is nothing more that you have personally investigated with

— regard to this offense?

THE COURT: Did you make an investigation yourself, or did you only do those duties you were requested to do in reference to this matter?

THE WITNESS: Only the duties I was requested to.

THE COURT: Sustain the objection.

MR. GREENSPAHN: That is all I have.

THE COURT: Step outside, please, sir.

(Thereupon the witness was excused.)

MR. GIRALDI: State's case.

THE COURT: Anything for the defendant?

MR. GREENSPAHN: Move for discharge or dismissal. There is nothing showing that the items that were described by the police officer, or by Officer Brodie, were in the possession, as contemplated by the laws of the State of Florida, by this defendant.

— THE COURT: Oh, I think there is

— enough to show it. I think the checks that the officer made show that he had control of the premises from November. It is sufficient for probable cause, barring any testimony from any other source as to the fact that he does not.

MR. GREENSPAHN: Also, I would call to the Court's attention the statute, which is 552. I do not know if the Court has reviewed the statute.

There are administrative remedies available the State must first enforce before a criminal prosecution can ensue. They consist of a cease and desist order and various notices to the defendant or the possessor.

THE COURT: I am going to bind him over. Let the trial court go into that.

How much bond is he on now?

MR. GREENSPAHN: It is a thousand-dollar bond, your Honor.

He is a reputable member of the community. He has a steady, good employment.

THE COURT: Any record on the defendant?

THE CLERK: No.

THE COURT: Same bond.

(Thereupon the above proceedings were concluded.)

\* \* \* \* \*

CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
                          ) SS:  
COUNTY OF DADE )

I, BRUCE HARTMAN, do hereby certify that I reported the foregoing hearing before the Hon. John A. Tanksley, Judge of the above-styled Court, at the time and place hereinabove set forth; and that the foregoing pages numbered from 1 through 18a, inclusive, constitute a true and correct transcription of my shorthand report of the proceedings at said hearing.

WITNESS MY HAND at Miami, Dade County, Florida, this 19th day of July, 1973.

\_\_\_\_\_  
Reporter

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

STATE OF FLORIDA, :  
 :  
 Plaintiff, :  
 :  
 -vs- : CRIMINAL NO. 73-5087  
 :  
 HUMBERTO LOPEZ, :  
 :  
 Defendant. :  
 :  
 - - - - - X

501 Palm Avenue  
Hialeah, Florida  
December 11th, 1973  
9:30 o'clock A. M.

DEPOSITION OF CHARLES HALE

APPEARANCES:

No appearance on behalf of  
the State of Florida.

MELVYN GREENSPAHN, Esq.,  
on behalf of the Defendant.





The deposition of CHARLES HALE, a witness of lawful age, taken for the purpose of discovery and for use as evidence in the above-entitled cause, pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, pursuant to notice, before MONA GESSE, Court Reporter and Notary Public in and for the State of Florida at Large, at the time and place aforesaid.

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
Charles Hale	3	-



Thereupon--

CHARLES HALE

was called as a witness on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREENSPAHN:

Q All right, sir, will you please state your name and your business or professional address.

A My name is Charles Hale. I'm an inspector with the Hialeah Fire Prevention Bureau, City of Hialeah Fire Department. Business address is City Hall, Hialeah, Florida.

(Thereupon, discussion off the record.)

Q (By Mr. Greenspahn) Inspector Hale, did you have an occasion to either go to the premises of 460 West 42nd Place or to investigate a fire that occurred upon those premises?

A Yes.

Q All right.

You have your records before you and I take it that you have the complete records compiled not



only by this department by the other law enforcement and Fire Prevention Bureaus in the County.

A I have our own and the City of Hialeah Police Department report.

Q All right, sir, you may, of course, make complete reference to the reports during the course of this testimony.

In what capacity were you involved in the investigation of the fire at 460 West 42nd Place?

A I was a driver, radio operator for Lieutenant Cole, the Fire Marshall of the City of Hialeah when we received the call. I assisted him in the investigation.

Q Did you arrive on the scene while the fire units were still engaged in putting out or extinguishing the fire?

A Yes, yes. I have to qualify that, though. They called us they were leaving the evidence as such alone until we got there. The fire was out, but there was still plenty of heat.

Q When you say, "They were leaving the evidence," what was your understanding at that time when you arrived on the scene of the fire as to the nature,



quality and quantity wise of the evidence to which you were referring?

A Well, when we arrived at the fire we found that there had been two fires, apparently one inside the utility room and the one outside the utility room.

The door had been kicked in so that they could get to the fire on the inside.

The louvers on the door were not blackened by smoke and we could see no way that logically that the fire could have traveled from the utility room to the outside or visa versa and that was the situation as it was when we arrived.

Q When you spoke in terms of evidence, you are talking principally as I understand as evidence of possible arson?

A Yes, sir.

Q At that point that is, at your arrival and subsequent to the extinguishing of the fires, were there in the possession or was there within the knowledge of any of your firemen on those premises at that time either gernades, guns, ammunition or explosive devices?



A No, sir.

Q So, when you arrived on the scene, your sole purpose was to investigate the possibility of an arson?

A Yes, sir.

Q Okay.

When you got on the scene, were any of the fire units still standing by?

A Yes.

Q Do you remember which crew or which engine number?

A It was Lieutenant Fogel's crew out of Station 3. I don't remember the engine number.

Q Was he the commanding officer as far as the extinguishment of that fire was concerned?

A Yes, sir.

Q I'm sorry, I didn't retain the number you said his crew number was.

A It was his crew out of Fire Station No. 3. I don't remember the engine number, but I can get it.

Q It's not important. Fire Station 3.  
All right, Inspector.

Now, upon arriving on the scene, were



there any other personnel other than Lieutenant Fogel's crew at the scene from the Hialeah Fire Department?

A No, sir.

Q When you arrived you were accompanied by Lieutenant Cole?

A Yes, sir.

Q Were there any police officers on the scene?

A No, sir.

Q To your knowledge, prior to your arrival, had there been any police officers or law enforcement people?

A No, sir.

Q What did you do when you arrived at the scene?

A When we arrived at the scene in assistance to Fire Marshall Cole, I followed him. We looked at the rear of the building to see if there had been entry from the rear window and we were looking at the damage where the fire was hottest and then we went around to the front. We were checking the first discovered fire which was on the desk sitting in the carport and Lieutenant Fogel



reiterated that he had kicked the door in to get into the utility room and wanted to show us the louvers on this door, this wooden door, to show no apparent smoke damage or evidence of travel--Fire travel in or out of the utility room.

He saw--Lieutenant Fogel saw two fires and that's why we were called on the scene.

Q Now, did there come a time when you--  
Strike that.

At that point when you and Lieutenant Fogel conversed, he demonstrated to you his feelings as to the probability of there having been two fires, to your personal observation of the premises as you saw them then, was the fire extinguished?

A I wasn't sure that it was at all. If my memory serves me correctly, there was a slight rekindling when we were there towards the rear of the building in the eaves. This I'm not sure of.

Q Would that be noted?

A There was tremendous heat in the utility room when we arrived and there was a hose in readiness to put out any fire that might be kindling.



Q Was there any reference in your reports, written reports, to the rekindling to which you now eluded which you're apparently not too certain of?

A No, sir.

Q Your recollection of that rekindling I take it is something--

A It's something that happens now. It seems to me there was a slight rekindling or something they wanted to put out with or an ember they wanted to put out with the hose they had on duty. I wouldn't want to swear to that, but there was a lot of heat and the main fire had been--

Q You would defer to rekindling to Lieutenant Fogel and his crew?

A Yes.

Q Inspector, let me ask you this question: Would you ordinarily, under normal circumstances, be summoned to the scene of a fire if there were no indication of criminality?

A Yes.

Q You would as a matter of course go to each and every fire of any consequence in Hialeah?





A Yes, sir. What we do call a Code 1 fire or any fire where there had been injuries.

Q Was this, in fact, a Code 1 fire?

A No, sir.

Q And it maybe repetitive, but why then did you go to this fire if it was not a Code 1 fire?

A We went to the fire because we were called by Lieutenant Fogel in his estimation, there was possible arson involved.

Q Okay.

I'm looking at a one paragraph report. I think you have the same in front of you dated June 29th, 1973, which bears your signature. In the second sentence-- In the third sentence of it you indicated that further this is in quotes, 'Further investigation disclosed military weapons and ammunition.' Did you make that discovery or did someone else make that discovery in your presence?

A Someone else made that discovery in our presence.

Q Do you recall it?

A It was called to our attention, yes, sir.

Q Do you remember who that was that called it to your attention?



A Let me see, it was one of the firemen on the scene. There was two that I remember particularly. There's Mr. Bretch (phonetic) and Mr. Reynolds. I'm not sure which one of them called me--Not called me, but called us to the presence of these weapons.

Q Do you remember the point of time--How much time had elapsed from the time of your arrival at the scene until either Mr. Bretch or Mr. Reynolds or whoever it was called to your attention the fact there were military weapons and ammunition on the premises?

A In pure recollection I would say that it would be between 10 and 20 minutes, 10, 15 minutes.

Q All right.

Do you have any reason to know why it was that Mr. Bretch or Mr. Reynolds were further pursuing their investigation so to speak of the premises at the time that they ultimately discovered these materials?

A Well, they weren't making an investigation as such. They were participating in the operation called overhaul which we conduct in most every fire where there's a lot of debris or flambeau materials present.

Q Was there a lot of debris in this instance?



A Yes, the room was filled.

Q Okay.

Do you know of any other officers or men that were participating in the overhaul operation?

A I think there was one other, but I don't remember his name.

Q Okay.

A (Continuing) Let me see, no, I can't right off hand--The main ones that I remember are Lieutenant Cole, Mr. Bretch, Mr. Reynolds. I think there was another one.

Q Did you talk to any of the civilians on the premises at any time during the course of your investigation on that day?

A Pardon me, sir?

Q Did you talk to any civilians either on or about the premises during the course of your investigation that day?

A No, sir, not myself.

Q Were you present when any of your inspectors or any other fire officers did talk or police officers did talk to any civilians at that area?



A Yes, sir.

Q Can you relate to me, if you recall, who was spoken to and by which officer connected with which department?

A Fire Marshall Cole was talking with the owner of the--Or rentor of the house, Mr. Lopez. I'm sure Lieutenant Fogel was and not--I mean, just purely in trying to help the man realize the extent of his fire and even before the discovery of these weapons and ammunition.

Q Was to your knowledge, Mr. Lopez home at the time the fire broke out?

A To my knowledge he wasn't.

When I got there I don't remember seeing him. I think he came in after we arrived.

Q Do you recall any of the conversation that was had between Lieutenant Cole and Lopez? That is, what Lieutenant Cole said and what Lopez said in response?

A Some of it, yes, sir.

Q Would you relate to me, and you can certainly paraphrase what you heard on that date between those two people?



A Let me see, before the discovery of the weapons, Lieutenant Cole or Fire Marshall Cole asked Mr. Lopez to help us move his van out of the driveway so we could get into the utility room area. They'd have room to get the materials in the utility room out. That was before anything was discovered.

Q All right.

Did Mr. Lopez move his van?

A He helped. We pushed it out and he sat in the driver's seat.

Q Do you remember any other conversation?

A I remember various parts of conversations both before and after we discovered--It would be difficult to reiterate exactly what was said.

Q Let me put some pointed questions to you then we'll be finished with you because I know you have other business.

First of all, before the discovery of the weapons and ammunition, do you remember Lieutenant Cole or any other official authority asking any questions of Lopez relating to either arson or any store of explosives or any other violation of what you know to be the criminal



code of either the County or the State?

A I seem to remember Fire Marshall Cole asking Mr. Lopez who might have done this or do you know who might have done this and Mr. Lopez, who at that time was there reiterated that he had no idea who had started it.

Q Did you ever, in the course of your first duties as a fire inspector, render to a person who might be the suspect of a crime the so called Miranda Warnings?

A No, sir.

Q Do you know in this instance at the time that Lopez was being spoken to by members of your department if any such warnings had been given him before he spoke?

A Not to my knowledge, sir. We had no reason to suspect anything was wrong. That's about all I can say about that time.

I can say this, though, at the time of the discovery, we did at that time warn Mr. Lopez to move away from the immediate area and we, of course, Fire Marshall Cole immediately notified the proper authorities.

Q Up to the point of discovery, were there any police authorities on the scene that you recall?



A No, sir.

MR. GREENSPAHN: Thank you, Lieutenant, I appreciate it very much and you can go now.

You have the right, of course, to demand that this be transcribed of this record this morning and then read it to see that the questions and the answers as written by the Court Reporter are correct, and then, if they are correct to sign it.

You also have the prerogative of waiving that requirement and accept the competency of this independent Court Reporter.

THE WITNESS: Actually, I'd like to have it just for my own souvenir.

MR. GREENSPAHN: I'll tell you what. Let me suggest to you--Off the record.

(Thereupon, discussion  
off the record.)

THE WITNESS: To the best of my knowledge I have given everything that I can remember up to that point. I wouldn't want to volunteer any further testimony because mainly what I was interested in is helping my Lieutenant and investigate a possible arson.



MR. GREENSPAHN: I presume I'll get a great deal about arson from Lieutenant Cole and that's why I didn't go into it with you.

Q (By Mr. Greenspahn) The last question is, the one paragraph report that is dated June 29th, 1973, and bears your signature, is that the entirety of anything that you reduced to writing as a result of your experience on the premises on that day?

In other words, I'm now inquiring about any subsequent reports that were written.

A I have written no further reports on this.

MR. GREENSPAHN: Then this will be it.

(Thereupon, at 9:55 o'clock a.m., the taking of the deposition was concluded.)





CERTIFICATE OF NOTARY

STATE OF FLORIDA :  
 : SS.  
 COUNTY OF DADE :

I, MONA GESSE, Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I reported the deposition of CHARLES HALE, a witness called by the Plaintiff in the above-styled cause; that the said witness was duly sworn by me; and that the foregoing pages, numbered from 1 to 17, inclusive, constitute a true and correct record of the deposition by said witness.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

WITNESS my hand and official seal in the City of Miami, County of Dade, State of Florida, this 11th day of December, 1973.

Mona R. Gesse

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The deposition of RUSSELL DEAN COLE, a witness of lawful age, taken for the purpose of discovery and for use as evidence in the above-entitled cause, pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, pursuant to notice, before MONA GESSE, Court Reporter and Notary Public in and for the State of Florida at Large, at the time and place aforesaid.

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
Russell Dean Cole	3	-



Thereupon--

RUSSELL DEAN COLE

was called as a witness on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREENSPAHN:

Q All right, sir, please state your name and your professional address.

A Russell D. Cole. Dean, middle name.  
My professional address--That is my home address?

Q The address--

A Fire Prevention Bureau, 501 Palm Avenue,  
City Hall.

Q What is your capacity with the City of Hialeah?

A Lieutenant in charge of Fire Prevention or Fire Marshall, if you wish.

Q All right, sir, how long have you been vested with the authority of Fire Marshall in the City of Hialeah?

A As of April 1 of '73, till now, through now.



Q How long have you been in the fire service of the City or any other municipality, State or County?

A 14 years total.

Q Has all that time been in the City of Hialeah?

A Yes.

Q Okay.

Lieutenant, did you have an occasion in the course of your official duties to investigate a fire at 460 West 42nd Place in the City of Hialeah?

A Yes.

Q On June 29th of this year?

A Yes, sir.

Q All right.

Can you tell us at what time you received notification that such a fire existed and your service as the Fire Prevention Bureau as opposed to line firemen would be required?

A Approximately 10:30 and about eleven minutes after the initial fire crew attacked the fire and had it partially subdued and I could add to that--

Q Go ahead.



A But you might already have that question.

Q Go ahead.

A I would add and probably concur very simply a matter of record the fire crew on their initial attack of the fire are trained and instructed to notice anything of a suspicious nature concerning the fire itself and they became suspicious and asked for the Fire Prevention Bureau in the form of myself as it occurred to come to the scene to in fact aid them or to assume to take notice of what they saw that alarmed them and passed it to us to see if it were--If we could deem it important or in fact, of a suspicious nature and then pursue further inquiries.

Q All right.

We have had Lieutenant Fogel's testimony that he became suspicious because of the nature of the two fires and the closed door which he described as being a locked door to the utility room that there might be the employment of some exterior agency, criminal agency, if we can and that's why he called Fire Prevention.

In any event, you arrived on the scene at approximately 10:35 as indicated on the alarm report?

A Correct. My unit was 153. There may have



been a slight error. The dispatcher did dispatch me and Charles Hale in unit 153 first and then they asked or our second unit to come in or I asked because I wanted all three of us there.

Q That would be Mr. Clavier?

A Mr. Clavier, correct.

Q There is some question as to who was driving 152 and who was driving 153, it's not terribly important.

In any event, when you arrived on the scene at 10:35, what other fire personnel were then present?

A That would be Lieutenant Fogel and his fire crew which I believe was Glen Bretch and Reynolds and possibly another man who was on that fire truck. Those three, possibly a fourth.

Q At that point were there any police or law enforcement agencies on the premises?

A No, sir.

Q When you arrived on the scene to what point on the premise did you go and what did you observe?

A We immediately advanced to the fire scene



and it was very hot and still smoking. The boys were still putting water. We stepped back a few feet and I observed a desk rather badly burned right near the door of the utility room. At that point Lieutenant Fogel and I discussed the rather strange appearance of a burned desk and then a burned utility room and the louvers of the utility room door, enamel white, not burned or not appearing badly scorched or even smoked up. That led me or attributed to the reasonable assumption that there were in fact, two fires.

At this point nothing had been further uncovered in this room. We were in the process of starting to remove a hand truck and lawn mower and--

Q This is what is referred to as an overhaul?

A This would be the overhaul, yeah. Very simply a thousand times out of a thousand fires we'll do this as I mentioned earlier. It's normal for fire crews to do, in fact, rather than stand there and just flood the room with tons of water. There's still a chance that in this type of material, any type of material, there can be embers that did not receive the water.





Q When you first observed the utility room was there any indication to you by way of smoke or any other sign that there were, in fact, yet burning embers or other sources rekindling?

A It was still not at all under control as far as the initial flames were not to be down and there were pads and furniture in there that was covered and a lot of hidden smoke pockets that providing height and smoke which right away tells the fireman with a room with this many goods you can't--You want to get a ladder and look down to see if the fire entered the main house through the eaves, something like this. It was quite away from what we call a controlled situation.

Q Okay.

What, at that point, did you do, sir?

A I asked who was the owner of the house and I believe the owner was present with us or very shortly became present or was in the general area. I think Lieutenant Fogel said it's Mr. Lopez. He's talking with his wife now or he'll be right here. He's the gentleman. And when he came over I think I relayed what I already seen into a question to him, something like I'm here--I



may possibly ask you some questions about what we term as a suspicious situation here because he was not there when the fire broke out and no eye witnesses told us the utility room burst into flames or anything like that. We had to start thinking about asking questions to kind of solve this rather queer looking scene, what appeared to be two separate fires.

It was determined then that we would start pulling stuff out of the room and that Mr. Lopez' truck or whoever's truck was parked in the carport--It would be easier for all of us if we pushed this vehicle back. I don't believe anybody had the key. It was locked or out of gear. We pushed it back.

Q I understand he assisted you at your request?

A Yes, sir.

Q Let me stop you there, Lieutenant, and ask you this: You said it was at this point you decided to pull things out of the room?

A Well, it was at that point the fire crew would have started anyway regardless whether I was there or not and I didn't instruct them to hold off. I did tell



them I'm viewing this now and that I made no objection to emptying the room because this is their job. They would be chewed out for not doing it.

Q Was it your understanding the door to the utility room was locked when the first unit arrived there?

A Yes, that's true.

Q All right.

You know now based on your investigation who was actually present on the premises when the fire was either initiated or when it was reported to the fire department?

A Just from my--From no further investigation or reasons we already had discussed--Although I did make a return on September 6th and talked to the family and Mrs. Lopez I assume the senior members of the family were home and Mrs. Lopez.

Q How about Mr. Lopez?

A No, no. He was there when I got there, but the fire crew said when they arrived they didn't see him or no one came in his person until some moments after he appeared to have driven up in a truck or car and came forward naturally worried about his house.



Q Did you ever determine who had the key to gain access?

A No, I did not press that information. I took it at face value. The fire crew said the door was locked. They knocked out some slats and I think opened it from the inside.

Q Would you in the investigation of the arson which I understand was your principal concern, would you be concerned in knowing who, if anybody, had keys to that room?

A No, because I would have assumed the door was locked and that an arsonist would not need a key to set fire to the utility room. I would assume the arsonist could go to the rear window and take a small container with flammable liquid and throw it through the jalousies. Of course, it would go through the screen and then set fire or spread the flammable liquid on the desk and set fire to it or flip a match in the slats and then set the fire.

Q Were those jalousies open?

A They were intact. They were about halfway in the fully opened position.

Q These are jalousies on the door or rear



— window?

A In the rear window. The door was a built non-adjustable slatted louver door.

Q Did you find evidence of any such property as gasoline or some flammable liquid at the rear window?

A No, sir, we didn't detect an odor of gasoline. I did not detect scorching about the rear window where I suspected the arsonist would have lit the room because residual fuel I surmised would be present on the scene and on the window the fire would also be burning there from the dripping of flammable liquid that I at the time had to consider was the alleged or the possible arsonist--

Q Even though the purpose of this deposition and further proceedings doesn't really concern it with the arson aspect of it, I would be curious to know first of all, are you still at the belief that it was an act of arson?

A No, I revised the thinking that I did do for probably an hour. I was still puzzled by what appeared to be two separate fires, the desk and the utility room with the door in between not scorched.



Now, I was not so strong on pursuing arson as some time went by because in the room there was a gas can. I believe a plastic three or four gallon or possibly five gallon gasoline can that's used to service lawn mowers and what not that had been burned on the top. The cap appeared to be missing.

Now, in that room with that amount of combustibles I believe the can of gasoline and the lawn mower and a gas hot water exposed flame. It is really conceivable I believe, although not as probable as I might lead you to believe, it's conceivable that the gas could have been a little spilled there from whoever used the gasoline--Later I think Mr. Lopez Senior from a remark from Mr. Lopez Junior made.

At any rate it is conceivable that the flammable liquid in the form of the gas can and the lawn mower could have filled the room with an explosive mixture even though the window was open and that the source of the ignition could have been the hot water heater suddenly signaling on, when they do signal on there's a flame. I believe the presence of the flammable vapors--That is usually when the exact fire begins and it would appear



in the form of a low level explosion.

Q Just a second. Let the record indicate it's a blowing or winding sound.

A Right. I can't characterize it. A low level rather minor expanding of the mixture not a contained explosion which would render walls apart.

It is conceivable that at that point there was a flame that shot through the louvers and directed themselves through the desk which is in the proximity.

Q Are you presently pursuing an investigation as to arson? Have you closed the case?

A I haven't closed it. I'm holding it open until such time--Revisiting, it won't help me any. We have photos. I. D. people took photographs. I'm in the air as to the arson or as to the accidental aspects. I'm not too certain that it was arson. I'm not certain it was not. I would like to talk to anyone who might bring my opinion to a stronger degree towards arson by process of elimination such as the passing of those who would be who owns the house and those who rent the house; do you have any suspicions about someone; has anyone been



near your house lately; have you seen anyone leaving as you approached; have you had any strange phone calls; any threats.

Q Of course, you have been stymied in that regards because of the criminal prosecution?

A Yes, plus I'm not certain now as first it did appear to me almost clear cut arson. This is before anything was taken out of this room. I would still study this situation with a burned desk and utility room.

Q And an intervening door?

A And an intervening door which says that was not accidental at first sight. Now, I revised my thinking unless I have more information or if we actually capture an arsonist that admits to other arsons and admits to this one or if there were some family fight or some ex-wife or some ex-husband, these are the things that the person that was the victim of the arson, the alleged arson has to come forth and reveal to me because my investigation cannot draw these type of facts out; therefore, if Mr. Lopez in any further questioning or a small little inquiry right in his property if we could--Because my inquiries are brief, you know, I don't have any stern





methods of drilling someone; under this condition I wouldn't. Sometimes I could if it's another case that's suspicious and I had a suspect of the fire I would be required to ask this man many, many questions and later on as time went by why I see it could have happened accidentally.

The elements were there for an accidental fire. It would be a little hard to explain the fire shooting out these slats of the door and catching with one blast the desk on fire unless it had some dripped gasoline or something because it burned pretty good. It left a pattern.

Q You indicated that you heard and I think if I quote you correctly you said Mr. Lopez said something about the older Mr. Lopez having used the gasoline or the lawn mower?

A It's a vague statement that he had mentioned.

Q When was the conversation with Lopez about that? When did that take place?

A Well, we took the gas cans out of there, the lawn mower out of there, the hand truck out of there. He looked at the gasoline can. He said something like, "I had told my father that I didn't want the cap left off that gas can and I scolded him for this." He was almost



talking to himself. He was trying to figure out about that gas can. Something was in his mind about this gas can.

Q He specifically referred to the other man as his father?

A I believe he said his father, but I can't quote it verbatim. It was a passing remark as at the time I was writing something and I was talking to someone and he was standing near by and said something about that gas can. He had scolded someone about that gas can was left with a lid off and in fact, you can see why I concern myself now that it was or could have been an accidental fire. Off the record.

(Thereupon, discussion  
off the record.)

Q (By Mr. Greenspahn) In any event, at the time you arrived on the premises had any weapons, ammunition, grenades been found yet?

A No.

Q Do you recall when it was that the first indication of any such prohibited weapons or explosive devices were found?



A Yes, I recall exactly. Sometime approximately in the process of the overhaul maybe eight minutes after my arrival or 11 minutes, we had moved the car back, I had asked a few questions, I had talked with Fogel about these two fires and the firemen began I think at Lieutenant Fogel's direction to start pulling this room out because there was a very large amount of goods in this room. I was standing back inquiring of Mr. Lopez at the time when two rifles in plastic--little plastic covers clear through were handed out and a fireman brought it over and stood it against the wall and said something in Mr. Lopez' direction to the effect that, "Here, sir, you may wish to take these inside and clean them up." He made no move towards these. I happened to notice that in particular. I noticed him and I thought too, well, maybe they're hunting rifles and being a veteran while later on as I thought about it as the case progressed I thought, of course, they had a military look. They were identical, but that had no bearing, really and this was reiterated after possibly a 15 or 20 second pause and the fireman stood facing Mr. Lopez and wondered why he didn't act or anything. I believe I reiterated at the time, "Mr. Lopez, these guns here you



may want to take your guns in now, you know, wipe them off."

Q He was hesitate?

A Oh, yeah. He hesitated again and though in a moment of confusion or something, I don't know, he seemed a little nervous. He said, "It's okay to take them inside?" And I said, "Yes." He moved towards them and, in fact, went in the house. I didn't see him for awhile.

Q You say you were querying him at one point or another?

A Yes, I was probably asking him some questions when did you get here or did you have any gasoline or anything on that table, questions of that nature, just normal questions that I would ask anyone. Well, what was here now that you had the fire on the desk was there anything on there besides just the desk and the pieces of glass, little questions like that.

Q Lieutenant, you understand the reason why I'm taking your testimony now is in connection with the prosecution that's pending in the State Court and I want you to understand because I'll ask you some questions very specific and I want you to understand that the record



should reflect as I said yesterday that I have the greatest personal respect for you as a fire officer and as a man. I don't want you to take these as personal questions. They do go to some of the issues.

The first question is: At the time you directed inquiry to Humberto Lopez, did you advise him of his Constitutional Rights to remain silent, have the presence of counsel and the other so called Miranda Rights?

A No, and I might add that I'm not according to training I have had in arson detecting on a man's personal property and in the initial stages of a fire investigation I would not even consider reading a Miranda Rights to him.

Q You're training has been that's not necessary in that stage?

A Absolutely. I don't feel it's a transgression of the man's Rights. Let's put it that way.

Q Lieutenant, were you present when the hand grenades were discovered?

A No, sir, there is a slight story that goes with this.

Let me finish now as the rifles were



brought out and Mr. Lopez after our discussions, you know, trying to help him with the hunting guns, well, he didn't want to go near them. Finally he went near them when I reiterated it would be all right to take the guns in the house, clean them, oil them up and what not, so he did. He seemed very, very nervous to me. I had not suspicion of him. I had no suspicion at all about him or anything wrong with this fire, just to me so far was just another utility room fire. It happens quite often.

As this thing was progressing what is your correct address I might have asked him. I only asked two or three questions. I had not drilled the man or asked him anything.

Q You at that point formed some question in your mind as to accidental as opposed to intentional.

A I was trying to come up with what I saw to tell me, in fact, an arson occurred, still I had not had the owners of the building or residents out telling me we were sitting there and this thing started. I still was feeling that well, maybe, they were visiting next door or no one was home and someone watched their house and they weren't home and drove up. How did he do it. I was trying to figure this out.



At this point right after the rifles a fireman brought a box they had been stumbling on, I believe a heavy metal box out and it appeared to be an ammunition box and it was opened by my Inspector Hale and to find out, you know, is there something there in the box burning or valuable papers he'd want to give Mr. Lopez.

We wanted him there as we emptied the thing to claim the things, you know, and it was a box full of bullets and one bullet had gone off. We think from the heat of the fire already made a bump in the side of the box. Some of the rounds were that long (indicating).

It was within seconds later I think Lieutenant Fogel called me. He said, "Lieutenant Cole, will you come here a second?"

Standing right there easily not hidden behind anything the very first thing as we took some further pads away, you know, because we're going to clean this room, there was a tremendous size anti-tank weapon which my Inspector recognized as such, as well as an assortment of what appeared to be automatic military weapons.



It was our feelings that this now should be called to the attention of the police and I did proceed to do so. I asked for a policeman to come by and bring the identification bureau and I said also you may notify the detective bureau. I would like the people that are in the business knowing about arms to be here in these early stages now and see what it is and if it is of any interest to them.

Q That would be the Metro Bomb Squad?

A Well, I didn't call the Metro Bomb Squad. I called first a police car to come by. I asked also for the I. D. Bureau for pictures and fingerprints and I asked also for the detective bureau. I wanted them to now take over this portion because we're going to still concern ourselves with the room. I immediately went back to the fire scene. As I passed Mr. Lopez, I said, "Mr. Lopez, I'm going to ask you to stand back from this area and secure from the area for quite awhile."

Now, I said I'll ask you a question. I said, "Do you know anything about the gear in that room?"

And he said quite quickly, "I don't know anything about it."





I said, "Thank you."

He then did not make any attempt to interfere with our proceeding and subsequently the police car arrived.

We didn't want to really touch the weapons and they had called the arson squad, apparently the police: a couple Hialeah Detectives drove in and that's the source of the further calls to the agencies.

Q Well, what I'm concerned about particularly at this point is when the grenades were discovered, just the grenades, not talking about the weapons or ammunition.

A I can't answer it because it was very close to noon. We had to take one of our two cars to the garage for scheduled repairs. It was nearing--It was probably lunch time or close to it. The situation was in hand. The fire crew was continuously removing other items from the room.

We elected to then take the car that needed repairs to the repair station and then we stopped at the submarine sandwich take-out place and grabbed a submarine sandwich and came back to the scene. When we came back that's when the FBI, Treasury and the Bomb Squad



had been involved were removing things from the room. They were in the living room and had some items on the table.

Q Did you see grenades on the table?

A I did. I had gone around the back of the house looking for anything suspicious in the form of discarded flammable liquid can and as I checked the perimeter of the utility room I came face to face with the sliding glass doors of the room with some men taking written statements and what not or in fact, compiling information and that's when I saw three, I think, hand grenades.

Q Do you have any knowledge directly or indirectly, even by hearsay, as to who it was that found those hand grenades?

A No, sir.

Q Do you have any reason to believe that it was one of your department's people as opposed to one of the law enforcement agencies?

A No, that I'm sure of, our fellows did not discover those items.

Q Okay.

Lieutenant, I just have a couple more



questions and I'll let you get back to your work.

What was the status of the fire and the overhaul at the point that you made your first observations?

A Really, the room had been initially knocked down with a spray of water that you put the actual fire out with, just a little water, and that was when Fogel had called me. I think he was working with a two man crew and himself. The room had not been touched as far as anything being removed yet. They were worried about moving the truck, so we could get the material out of the room and as I stated earlier, a thousand times out of a thousand we'll start and we'll, in fact, remove the materials piece by piece and several times we find hidden charred embers. It lowers the heat too in the room, plus I wanted a clearance of the hot water heater. We didn't want to turn the man's gas off to have them without being able to cook.

I wanted it certain we could not leave the room with items in it. There was no hesitation on my part and no objection and we deemed it fully within the scope of our responsibility to, in fact, overhaul and remove the



items from the room.

Q Did you when you left to go out to get your lunch break, did you feel it, the overhaul, had been completed as of that point?

A I have to think back. This is for a purpose of fire extinguishment. I'm not talking about the overhaul for any other reason.

The answer would be no. I feel the entire room would have to be taken apart and emptied, even though the weapons or whatever you call this was brought to the attention of the police my boys would have to have--I'm not on the fire line anymore. They have new instructions I'm not even aware of, but these firemen would have no hesitation and no question about that from what I saw right through to what I left for lunch that the room still was a fire as such or could bust back into one until we had relieved the room of the contents and then inspected the upper elevations of the room and give it a couple sprays; check it here, check it here.

Q When did you go--Let's strike that.

When you arrived on the scene, did you literally take command of the first crew?



A No, sir.

Q Would that still be under Lieutenant Fogel's command?

A Yes, unless I said, "Hold it. There's prints here. There's this. Wait. I got an arsonist-- a possible arson. Hold everything."

Q Did you do that?

A No, I couldn't. I still viewed the room as it was extremely hot, extremely hot. You couldn't stay in there more than a second. You couldn't breathe with the fumes and the heat still in this room.

Q Originally 208 went out, but then 208 left and 206 came in just as a standby a block away, why was it there as long as it was? Why were those teams there for over three hours?

A It was felt that since we didn't have valid information whether or not there could be additional material in on the premises that could in fact, be explosive plus I had been coached by a man, a newspaper man, that claimed he got an anonymous phone call revealing this place can and will explode, not to go in and try to put the fire out. I got the man's name and all, something about the Republica News that he represented. He sped



to the scene in his car to warn us and the neighborhood. I said fine, I'll take it for what it's worth and after already having seen the box of ammunition and these heavy weapons it wasn't hard to realize there could be Bazooka shells, hand grenades, who knows what. I said, "Thank you. Stick around, the police might want to get your testimony. Don't take off. I want to get your name."

I said, "Boys, we're going to back off this, " though it was somewhere towards the finalization of overhaul and we felt for the moment that with this anonymous warning we better go and start getting to the neighborhood and getting people out just in case something did blow up because there was still a lot of heat in there. Remember now this heat.

Q Let me put it to you this way: If you had felt--I'm asking you to assume something that you may not have felt at that time. If you had felt that you had made the discovery of prints or some other physical evidence that would have, in fact, substantiated your suspicion of arson and in that event you felt that the fire had not been totally extinguished, would you in order to have preserved the evidence if it was so required given the demand as you



put it, "Hold it, fellows. Stop with your overhaul," in the appropriate manner as to collect the evidence or would you have considered the fire the primary hazard and would have instructed them?

A I would have because I knew then the firemen had tried to open the door. That was the end of the prints. They busted it, reached in and touched that other handle. I thought if there were any prints that might appear on the handle now it would not appear, it was experience, no.

I knew whatever the situation was going to be there was a combination of very little chance for fingerprints. I can show you case after case the room gutted out and burned and we couldn't even attempt to get prints from a room that's like that and now with the firemen I did notice the glass was broken now on the rear window and the firemen broke that so they could put some spray in.

Q But was there testimony revealing the glass intact when they arrived? That's what I'm getting at. I know you have recalled for us your specific observations and your specific feelings at the time, but what



I'm asking you to do is to assume something else not factual, but I'm using it as an illustration assume that there were fingerprints or some other evidence of criminality in this that you had observed. Would you under those circumstances have ordered a suspension of the overhaul procedure until the police authorities came to collect the evidence or would you consider first the primary hazard of the fire and leave your evidence if it was necessary to burn it up in the fire in the overhaul?

A I could have under that type of question had I had the feeling that the fire scene, the room itself, was secure had there been nothing in that room. But a lawn mower and a can of paint or something I might have said let's take a quick look and see if the fire has entered the house. I want a man in the attic or something like that or you go ahead now and do what you have to do. I'm going to check what I have here. There's times I could do that. This was not one of them because the fire still was a major factor. The room still was a major factor as far as the firemen were concerned because they do not like to extinguish one--Grantly I yield to the fire crew to in fact, pursue his obligation because we're the





chief staff of the Fire Prevention Bureau. It's the Chief Staff. The firemen's chief staff. They're in fire suppression. We're in fire prevention and to stop them from securing the premises is something I could never get myself to do even knowing--Feeling strongly about an intruder or leaving prints because the fact is fingerprints probably don't figure in on any arson cases unless the can of gas is found in the weeds that has the arsonist's prints.

Q If you were given the command to stop the overhaul and the crew had no further necessity for the overhaul--I realize you're assuming something you know on the basis of your experience and training--What you would do and what your crew would do had you commanded to stop now because I don't want to disturb the evidence, I don't want to destroy the evidence, would you by giving that command bring about suspension of the overhaul if you would in turn give the command to the line officers putting out the fire and you, yourself, the fire no longer required further overhaul? I hope you understand the question.

A I do understand it.



I want to give the best answer I can come up with on this. Not under the circumstances, no.

In the event someone was killed or someone had been seen running from the scene and I had stronger indications of arson--As it was, it was just a mild--The fire officer was mildly suspicious or he had instructions to any time anything looks like some suspicion, something wasn't apparently or clearly accidental to call us and give us a chance to look at it and from what I saw I just didn't have anything to really--Broad daylight on a busy--semi-busy street, you know, I would be grabbing into the Dick Tracy comic books to start conjuring up--

Q I don't want you to do that.

A No, everything I did came as a natural feeling. As Stedman before--Don't touch it, blah, blah, blah--It doesn't work. I felt the scene. There was no way with everybody going in and out. I'm left with the bones after this thing is over with every time.

Q The thing is now, really, I'm not trying to back you into a corner, I'm trying to get a specific answer. Would you under any circumstances in the exercise of your duty, take it upon yourself to order or command that the fire crews stop their overhaul if in your mind



there was a real probability that further overhaul was necessitated in order to control or extinguish the fire?

A Not really. I know that it might appear to you that I could be in charge of that much power where I would say stop, but it is such an unnatural thing it is just not part and parcel. It is like trying to get guys to shoot at the enemy that's advancing on you and say stop shooting, I want the smoke to clear. I want to see how close the enemy is. Christ sake, if we stop shooting they'll be right upon us.

Q Is it fair to say you wouldn't have issued such a command if there was any continuing threat of fire either principally initiated or rekindling?

A Naturally there's a point that comes along when you feel the fire is very, very much under control and the premises are safe from further burning because the fire crew could have to leave immediately and go to another fire, so I want them to do the very most they can do to make sure this thing will not rekindle that residual heat. I want them to do the most even at the risk of destroying a potential arsonist calling card, so to speak. I wouldn't hesitate.



Q But if you were satisfied that the fire was, in fact, extinguished and there was no reasonable threat of rekindling, would you tell the firemen who came as a gratuitous effort on their part to leave the thing in place?

A Right, after waiting a period I could say gentlemen, I think you have done a great job. Have you got any pry bars here that you want? We're going to now call this an investigative fire scene and I know you fellows want to get back in service and fill your trucks with water and get your hose back on and so forth.

Q A nice way of telling them to get out and leave it alone?

A In other words, if I had a crew spending hours and hours doing more than they're required to do, yes, I'd probably say okay, that's enough boys, you know, but no, it was nowhere near that stage, believe me.

Q Lieutenant, do you have any idea how I could find out who, in fact, found the grenades?

A I think you'll find the Crime Lab--I do feel that they found the grenades.

Q The Crime Lab from Dade County?



A           Somebody may have said something that I remember. Back with the Crime Lab, these fellows went over the place. You see differently dressed fellows, the Metro Crime Lab, whatever. The lab man had arrived maybe before some of the FBI experts. He may have found the grenades. I think he did.

          Those people we would yield to immediately. Anyone who could determine or dismantle that bomb that could still go off any moment. I would naturally yield to them as well as the fire crew which I think we did.

          On their arrival they superseded our efforts and we were concluded anyway with our fire overhaul. I think at that point.

          We did yield to the weapons or the actual lifting of what was in there in the line of what could or could not be construed as illegal weapons or weapons that would be interesting to those who have the power to decide whether they're illegal or legal.

Q           Now, in light of what you just said, if I understood it correctly, it's sort of critical, I want to make sure I'm not misquoting you. You said when they arrived I think you're referring to the Crime Lab?



A Right, I was not there though, remember?

On the arrival of the Hialeah Policeman, the Hialeah Detectives and Hialeah I. D. Bureau and with the fire crew still there with the other fire truck down the street to aid in the evacuation of the houses in case some people were asleep in the bedrooms or whatever we might have to do--We might have gotten somebody on the scene that would order the entire block be evacuated, so that's what we had in mind for extra fire vehicles.

Q Do you have anyway of knowing when the overhaul was completed?

That's really a critical time.

A No, sir.

Q It was apparently not completed when you left the premise to go to lunch?

A I'd say the overhaul was never fully completed because of the entrance of the weapons people and then the fire crew's decision that the overhaul had progressed to the point it was felt that it could now be termed as safe and not capable of rekindling.

Q So, when the weapons people came, you would say that was the point at which the overhaul was terminated?



A I would almost have to say that, yes, because of the fact that now they wanted to start taking certain boxes and both of us were in there taking gear apart that I think one of us had to yield to the other because of the natural warning we got that the room will explode. I think that right there tells you that we had to then leave the weapons experts, bomb squad, policemen fully go into the operation.

Q All right.

Do you know who Ernest Zerumba (phonetic) is?

A I don't think I do.

Q Palm Springs, 645 West 49th Place?

A No, sir.

MR. GREENSPAHN: I have no further questions and I want to thank you as I thanked all the members of your department for your candid cooperation.

THE WITNESS: We could speak candidly on this, I think, because of the fact we all remember there was no great amount of crazy things happening. There was nobody screaming, running around, burning. There was nobody claiming I had \$800.00 in there that's burned up.



It was a good stop. The guys got in there real quick before it boiled out of control and made a pretty good stop and things were rather--It was really a very simple fire.

(Thereupon, discussion off the record.)

MR. GREENSPAHN: Lieutenant, you have the right to read your testimony and determine whether the Court Reporter has been accurate or not. You can waive that right.

THE WITNESS: See, it's one of these things that I just don't see anything there that would bother me so bad. I mean, you might find I might say one thing and another thing when I'm called to testify, but basically, I'm not trying to add to it. I know this in my heart. I'm not trying to add to what happened and by knowing that I feel as though you know whatever is asked of me is the truth as I saw it and will repeat it so to speak.

MR. GREENSPAHN: That's what we want.

(Thereupon, at 12:00 o'clock p.m., the taking of the deposition was concluded.)





(Thereupon, reading, sub-  
scribing and notice of  
filing of the deposition  
were waived.)









IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA IN AND FOR DADE COUNTY                      SPRING TERM, 1973

CRIMINAL DIVISION  
CASE NO. 73-5087  
JUDGE FERGUSON

STATE OF FLORIDA

VS.

SUPPLEMENTAL WITNESS LIST

HUMBERTO LOPEZ,

DEFENDANT.

COMES NOW RICHARD E. GERSTEIN, State Attorney of the  
Eleventh Judicial Circuit of Florida, by and through the  
undersigned Assistant State Attorney, and files this  
Supplemental Witness List as follows:

In addition to those witnesses previously furnished,  
the State may call the following witness at time of trial:

Lloyd Erwin  
Alcohol, Tax and Firearm Division  
Treasury Department  
P. O. Box 2009  
Atlanta, Georgia 30301

RICHARD E. GERSTEIN  
STATE ATTORNEY

BY: \_\_\_\_\_  
ROBERT P. KAYE  
Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing  
Supplemental Witness List was mailed to Melvyn Greenspahn,  
Suite 210-1150, Building, 1150 S.W. 1 Street, Miami, Florida  
this \_\_\_ day of September, 1973.

\_\_\_\_\_  
ROBERT P. KAYE  
Assistant State Attorney

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF  
FLORIDA, IN AND FOR DADE COUNTY

**SPRING** TERM, 197**3**

CASE NO. **73-5087**

**JUDGE FERGUSON  
CRIMINAL DIVISION**

STATE OF FLORIDA

vs.

NOTICE OF TAKING OF  
STATEMENT

**HUMBERTO LOPEZ**

DEFENDANT .

TO: **MELVYN GREENSPAHN, ESQ.**

**Suite 210, 1150 SW 1 St.**

**Miami, Florida 33130**

You are hereby notified that the undersigned  
Assistant State Attorney is taking the statement of \_\_\_\_\_  
**Mrs. Humberto Lopez, Mr. Reinaldo Pattao, Mrs. Catalina Pattao**

at **2:00 P.M.**, on **Wednesday**, the **19th** day  
of **September**, **1973**, at the State Attorney's Office,  
Suite 600, Metropolitan Justice Building, 1331 Northwest 12  
Street, Miami, Florida.

RICHARD E. GERSTEIN  
STATE ATTORNEY

By: \_\_\_\_\_  
**ROBERT P. KAYE**  
Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing  
Notice of Taking of Statement was mailed/delivered to \_\_\_\_\_  
**Melvyn Greenspahn, Esq., Suite 210, 1150 S.W. 1 Street,**  
**Miami, Florida**, this \_\_\_\_\_ day of  
**September**, 19**73**.

\_\_\_\_\_  
Assistant State Attorney  
**ROBERT P. KAYE**







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1973

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 73-5087

STATE OF FLORIDA, )  
  
Plaintiff, )  
  
-vs- )  
  
HUMBERTO LOPEZ, )  
  
Defendant, )  
  
\_\_\_\_\_ )

DEFENDANT'S WITNESS LIST

1. Mrs. Humberto Lopez  
460 W. 42nd Place  
Hialeah, Florida
2. Mr. Reinaldo Pattao  
Mrs. Catalina Pattao  
460 W. 42nd Place  
Hialeah, Florida
3. All persons named on the State's Witness List.

MELVYN GREENSPAHN, ESQUIRE  
Suite 210-1150 Building  
1150 S. W. 1st Street  
Miami, Florida 33130

371-0500

By: \_\_\_\_\_  
Attorney for Defendant

I HEREBY CERTIFY that a true copy of the foregoing  
Defendant's Witness List was mailed to the office of the States  
Attorney, 1351 N. W. 12th Street, Miami, Florida this 29th day of  
August, 1973.

\_\_\_\_\_  
MELVYN GREENSPAHN

~~373-7773~~



ROLANDO LOPEZ, M. D.  
INTERNAL MEDICINE — CARDIOLOGY

SUITE 206  
1431 EAST 4TH AVENUE  
HIALEAH, FLORIDA 33010

TELEPHONE  
887-7077

September 14, 1973

TO WHOM IT MAY CONCERN  
-----

I hereby certify that I have been treating Mr. Reynaldo Patao since  
6/15/72 due to the above:

Acute Coronary Insufficiency, Severe Angina, Arteriosclerotic heart  
disease, Cerebral Vascular Accident, Hypertension, Cardiovascular  
disease.

Due to the above mentioned conditions, my patient Mt. Patao will not  
be able to go to Court.

If I can be of any further help do not hesitate to call on me.

Yours truly

  
Rolando Lopez, M.D.

RL/rp

ROLANDO LOPEZ, M. D.  
INTERNAL MEDICINE — CARDIOLOGY

SUITE 206  
1431 EAST 4TH AVENUE  
HIALEAH, FLORIDA 33010

TELEPHONE  
887-7077

September 14, 1973

TO WHOM IT MAY CONCERN  
-----

I hereby certify that I have treating Mrs Catalina Patao since  
2/27/73 due to:

Calcific Aortic Stenosis, Arteriosclerotic Heart disease,  
Congestive Heart failure, Acute Bronchal Pneumonia, Old Myo-  
cardial Infarction and Right Ventricular Hyperthrophy.

Due to the above mentioned conditions, my patient Mrs Patao  
will not be able to go to Court.

If I can be of any further help do not hesitate to call on me.

Yours truly

  
Rolando Lopez, M.D.

RL/tp



*J. P. Kaye*  
12/12

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

CRIMINAL DIVISION

Case No. 73-5087

DEC 6 1973

STATE OF FLORIDA,

Plaintiff(s),

vs.

HUMBERTO LOPEZ,

Defendant(s).

NOTICE OF TAKING DEPOSITION

TO: ROBERT P. KAYE, ESQUIRE  
Assistant States Attorney  
States Attorney Office  
1351 N. W. 12th Street  
Miami, Florida

Please take notice that at 11:00 o'clock, am., on Monday,  
the 10th day of December, 19 73, we desire to take the deposition of

**Lt. Russell Cole, Hialeah Fire Department**

upon oral examination, before JOSEPH S. SCHWARTZ, a notary public, or any  
other notary public or officer authorized by law to take depositions in the State of  
Florida, at **States Atty. Office, 1351 N.W.12th Street**, Miami, Florida.  
The oral examination will continue from day to day until completed. This deposition  
is being taken for the purpose of discovery, for use at trial or for such other purposes  
as are permitted under the applicable Statutes or the Rules of Court.

Dated at Miami, **Dade County** Florida, this 4th day  
of December, 19 73.

MELVYN GREENSPAHN, ESQUIRE

By Melvyn Greenspahn  
Attorneys (for Defendant  
Suite 210-1150 S.W.1st Street  
Miami, Florida 33130  
371-0691

WE HEREBY CERTIFY that a true copy of the foregoing Notice of  
Taking Deposition was **mailed** to the addressee herein, this 4th day  
of December, 19 73.

By Melvyn Greenspahn  
of Counsel

DEC 6 1973

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

CRIMINAL DIVISION

Case No. 73-5087

STATE OF FLORIDA,

Plaintiff(s),

vs.

HUMBERTO LOPEZ,

Defendant(s).

NOTICE OF TAKING DEPOSITION

TO: ROBERT P. KAYE, ESQUIRE  
Assistant States Attorney  
States Attorney Office  
1351 N. W. 12th Street  
Miami, Florida

Please take notice that at 11:15 o'clock, a m., on Monday,  
the 10th day of December, 1973, we desire to take the deposition of

**Charles Hale, Hialeah Fire Department**

upon oral examination, before JOSEPH S. SCHWARTZ, a notary public, or any other notary public or officer authorized by law to take depositions in the State of Florida, at **States Attorney Office, 1351 N.W. 12 Street**, Miami, Florida. The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial or for such other purposes as are permitted under the applicable Statutes or the Rules of Court.

Dated at Miami, Dade County, Florida, this 4th day  
of December, 1973.

MELVYN GREENSPAHN, ESQUIRE

By Melvyn Greenspahn  
Attorneys for Defendant  
Suite 210-1150 S.W. 1st Street  
Miami, Florida 33130  
371-0691

WE HEREBY CERTIFY that a true copy of the foregoing Notice of  
Taking Deposition was **mailed** to the addressee herein, this 4th day  
of December, 1973.

By Melvyn Greenspahn  
of Counsel

DEC 6 1973

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff(s),

vs.

HUMBERTO LOPEZ,

Defendant(s).

CRIMINAL DIVISION

Case No. 73-5087

NOTICE OF TAKING DEPOSITION

TO: ROBERT P. KAYE, ESQUIRE  
Assistant States Attorney  
States Attorney Office  
1351 N. W. 12th Street  
Miami, Florida

Please take notice that at 11:30 o'clock, a m., on Monday,  
the 10th day of December, 19 73, we desire to take the deposition of  
**Robbie Clavier, Hialeah Fire Department**

upon oral examination, before JOSEPH S. SCHWARTZ, a notary public, or any  
other notary public or officer authorized by law to take depositions in the State of  
Florida, at **St. Attorneys Office, 1351 N.W. 12 Street,** Miami, Florida.  
The oral examination will continue from day to day until completed. This deposition  
is being taken for the purpose of discovery, for use at trial or for such other purposes  
as are permitted under the applicable Statutes or the Rules of Court.

Dated at Miami, **Dade County** Florida, this 4th day  
of December, 1973.

MELVYN GREENSPAHN, ESQUIRE

By Melvyn Greenspahn  
Attorneys for **Defendant**  
Suite 210-1150 S. W. 1st Street  
Miami, Florida 3330  
(371-0691)

WE HEREBY CERTIFY that a true copy of the foregoing Notice of  
Taking Deposition was **mailed** to the addressee herein, this 4th day  
of December, 19 73

By Melvyn Greenspahn  
of Counsel



DEC 6 1973

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

CRIMINAL DIVISION

Case No. 73-5087

STATE OF FLORIDA,

Plaintiff(s),

vs.

HUMBERTO LOPEZ,

Defendant(s).

NOTICE OF TAKING DEPOSITION

TO: **ROBERT P. KAYE, ESQUIRE**  
**Assistant States Attorney**  
**States Attorney Office**  
**1351 N. W. 12th Street**  
**Miami, Florida**

Please take notice that at 11:45 o'clock, am., on Monday,  
the 10th day of December, 1973, we desire to take the deposition of

**Robert D. Jones, Hialeah Fire Department**

upon oral examination, before **JOSEPH S. SCHWARTZ**, a notary public, or any  
other notary public or officer authorized by law to take depositions in the State of  
Florida, at **St. Attorneys Office, 1351 N. W. 12th Street** Miami, Florida.  
The oral examination will continue from day to day until completed. This deposition  
is being taken for the purpose of discovery, for use at trial or for such other purposes  
as are permitted under the applicable Statutes or the Rules of Court.

Dated at Miami, **Dade County**, Florida, this 4th day  
of December, 1973.

**MELVYN GREENSPAHN, ESQUIRE**

By Melvyn Greenspahn  
Attorneys for Defendant  
Suite 210-1150 S. W. 1st Street  
Miami, Florida 33130  
371-0691

WE HEREBY CERTIFY that a true copy of the foregoing Notice of  
Taking Deposition was **mailed** to the addressee herein, this 4th day  
of December, 1973.

By Melvyn Greenspahn  
of Counsel

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

DEC 6 1973

STATE OF FLORIDA,

Plaintiff(s),

vs.

HUMBERTO LOPEZ,

Defendant(s).

CRIMINAL DIVISION

Case No. 73-5087

NOTICE OF TAKING DEPOSITION

TO: ROBERT P. KAYE, ESQUIRE  
Assistant States Attorney  
States Attorney Office  
1351 N. W. 12th Street  
Miami, Florida

Please take notice that at 12:00 o'clock,     m., on Monday,  
the 10th day of December, 1973, we desire to take the deposition of

**Donald J. Fogel, Hialeah Fire Department**

upon oral examination, before JOSEPH S. SCHWARTZ, a notary public, or any  
other notary public or officer authorized by law to take depositions in the State of  
Florida, at **St. Attorneys Office, 1351 N.W. 12 Street,** Miami, Florida.  
The oral examination will continue from day to day until completed. This deposition  
is being taken for the purpose of discovery, for use at trial or for such other purposes  
as are permitted under the applicable Statutes or the Rules of Court.

Dated at Miami, **Dade County** Florida, this 4th day  
of December, 1973.

MELVYN GREENSPAHN, ESQUIRE

By Melvyn Greenspahn  
Attorneys for Defendant  
Suite 210-1150 S. W. 1st Street  
Miami, Florida 33130  
371-0691

WE HEREBY CERTIFY that a true copy of the foregoing Notice of  
Taking Deposition was **mailed** to the addressee herein, this 4th day  
of December, 1973.

By Melvyn Greenspahn  
of Counsel

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

DEC 6 1973

STATE OF FLORIDA,

CRIMINAL DIVISION

Case No. 73-5087

Plaintiff(s),

vs.

HUMBERTO LOPEZ,

NOTICE OF TAKING DEPOSITION

Defendant(s).

TO: ROBERT P. KAYE, ESQUIRE  
Assistant States Attorney  
States Attorney Office  
1351 N. W. 12th Street  
Miami, Florida

Please take notice that at 12:15 o'clock, p m., on Monday,  
the 10th day of December, 1973, we desire to take the deposition of

**CAPTAIN LANE, Hialeah Fire Department**

upon oral examination, before JOSEPH S. SCHWARTZ, a notary public, or any  
other notary public or officer authorized by law to take depositions in the State of  
Florida, at **St. Atty, Office, 1351 N. W. 12th Street,** Miami, Florida.  
The oral examination will continue from day to day until completed. This deposition  
is being taken for the purpose of discovery, for use at trial or for such other purposes  
as are permitted under the applicable Statutes or the Rules of Court.

Dated at Miami, **Dade County,** Florida, this 4th day  
of December, 1973.

**MELVYN GREENSPAHN, ESQUIRE**

By Melvyn Greenspahn  
Attorneys for **Defendant**  
Suite **210-1150 S. W. 1st Street**  
**Miami, Florida 33130**  
**(371-0691)**

WE HEREBY CERTIFY that a true copy of the foregoing Notice of  
Taking Deposition was **mailed** to the addressee herein, this 4yh day  
of December, 1973.

By Melvyn Greenspahn  
of Counsel

73-  
JUL 18 1973

*Melvyn Greenspahn*  
*Attorney at Law*

*Suite 210-1150 Building - 1150 Southwest First Street Miami, Florida 33130*  
371-0691

July 17, 1973

Clerk, Circuit Court  
Criminal Division  
1351 N. W. 12th Street  
Miami, Florida

RE: State of Florida vs.  
Humberto Lopez

Gentlemen:

This will advise that the undersigned represents the above captioned Defendant.

Kindly forward all copies of further proceedings and notices directly to the undersigned.

Thanking you for your cooperation in this regard, I remain

Very truly yours,

*Melvyn Greenspahn*  
MELVYN GREENSPAHN

MG/mc  
cc: Office of Richard Gerstein,  
States Attorney

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

CASE NO: 73-5087

CRIMINAL DIVISION

STATE OF FLORIDA, )  
 )  
 Plaintiff, )  
 )  
 -vs- ) MOTION TO SUPPRESS  
 )  
 HUMBERTO LOPEZ, )  
 )  
 Defendant, )  
 )  
 \_\_\_\_\_ )

COMES NOW the Defendant by and through his undersigned attorney and pursuant to Rule 3.190 (h) (1) (2) (3) (4) and Rule 3.190 (I) (1) (2) (3) of the Florida Rules of Criminal Procedure does respectfully move this Court to suppress as evidence in this cause all tangible items of property and other evidence seized by the police from the Defendant, the home and appurtenances thereto within which Defendant resides or otherwise situated upon said premises.

As grounds therefor, the Defendant would show unto the Court that said evidence was obtained by the police as a result of an unreasonable search and seizure in violation of the Defendant's rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and Section 22, Declaration of Rights, Florida Constitution, in that :

1. The property was illegally seized without a warrant.
2. The search of the premises resulting in the seizure of the materials and objects herein sought to be suppressed was conducted unlawfully and contrary to the criteria and standards set forth by the Supreme Court of the United States establishing the manner and means by which such a search and seizure may be lawfully carried out.

In the instant cause, the fire department of the Municipality of Hialeah, Dade County, Florida was summoned by an unknown source to the premises commonly described as 460 W. 42nd Place, within the confines of the boundries of the Municipality of Hialeah, Dade County, Florida on June 29, 1973 in order to extinguish a fire or fires emanating from and upon said described premises. The fire department officers and men upon the scene effectively extinguished all fires upon the premises and abated all apparent fire sources upon said premises. Subsequent to the extinguishment of the fires and the abatement of any eminent necessity to proceed with further activity and absent any emergency, the Fire Prevention Bureau of the City of Hialeah was called to the scene to investigate the origin of the fire that had been extinguished. A singular and primary purpose of the Fire Prevention Bureau was to determine, by its investigation, whether the fire had originated as an act of arson and therefore, the quality of the investigation so conducted was that of a criminal as opposed to administrative investigation.

At no time did any person competent to do so give consent to further search in and upon the premises.

It is respectfully submitted that at such time as the fire department of the City of Hialeah had extinguished the fire upon the premises in question and abated the necessity of any further affirmative fire fighting action, any investigative acts conducted by either fire or police authorities, absent the consent of a person competent to give such consent, in the effort to determine whether the fire was originated by a criminal agency constitutes a clear violation of the constitutional rights of such persons who may ultimately be charged with a criminal offense as a direct and sole result of seizures made in the course of such search upon the premises. In the instant case,

neither the Defendant nor anyone else competent to give consent to such a search gave such consent. Further, if such consent had been given without a declaration by the fire or police authorities as to the purpose of their search, such consent having been made coercively would not be justified as consensual. If an individual merely acquiesces to what he takes to be the authority of the officer to carry out a search, the seizure thereupon obtained cannot be sustained on a theory of consent. Amos versus United States, 255 U.S. 313, 41 S.Ct. 266.

The premises which were subjected to the search in the instant cause were residential in nature. A search made by officers of the Fire Prevention Bureau and ultimately officers called by that bureau from the various law enforcement agencies of the City of Hialeah, Dade County, and the Federal Government, in the instant cause was made after the fire and for the purpose of obtaining by investigation evidence of arson. In the now landmark decision of Frank versus Maryland, 359 U.S. 360, 79 S.Ct.804, Rehearing denied-360 U.S. 914, 79 S.Ct. 1292, the Supreme Court of the United States was faced with the question of whether a search warrant was needed for a statutorily authorized inspection by a city health inspector. In the Frank Case, the Court held that a warrant was not required because, among other things, no seizure of evidence for criminal prosecution was involved. The holding of the Frank Case, therefore, permitted inspection (i.e., search) of a residence by municipal officers to detect and prevent fire and health hazards without a warrant provided that such search was not in the nature of a criminal investigation and no seizure of evidence for criminal prosecution took place.

Subsequently, in 1967 the Supreme Court of the United States <sup>case</sup> in the landmark/of Canna versus Municipal Court of San Francisco, 387 U.S. 528, 87 S.Ct. 1727, even further elaborated upon the



rights of the occupant of residential premises. In overruling the Frank decision heretofore cited, the Supreme Court of the United States rejected the distinction previously drawn between searches for evidence of crime and administrative inspections and concluded that such inspection, even if not for the purpose of discovering evidence to be used in a criminal prosecution, could only be carried out pursuant to a warrant. The Court held:

"It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. For instance, even the most law-abiding citizen has a very tangible interest limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security."

In both the Camma and See Cases as aforesaid, it has been held that a nonconsensual inspection of residential premises is impermissible in the absence of a warrant. In the instant case, failing to secure a search warrant under accepted statutory authority and upon the showing of probable cause, the further entry and search of the premises upon which the Defendant resided was unlawful. In the instant case, a warrant could, had probable cause for its issuance existed, been easily obtained and without prejudice to the investigation of the fire and police authorities.

Consequently and for the reasons as aforesaid, it is respectfully submitted that the search of the premises in question made by the fire and police authorities of the Municipality, County or State in the instant cause was unlawful and any articles or objects thereby obtained for the use by the authorities in the prosecution of the Defendant herein should be accordingly suppressed.

MELVYN GREENSPAHN, ESQUIRE  
Suite 210-1150 Building  
1150 S. W. 1st Street  
Miami, Florida 33130

BY: \_\_\_\_\_  
Attorney for Defendant



I HEREBY CERTIFY that a true copy of the foregoing Motion to Suppress was hand-delivered to the office of the States Attorney, 1351 N. W. 12th Street, Miami, Florida this 7th day of December, 1973.

---

MELVYN GREENSPAN

WITNESS LIST FOR PROSECUTOR THAT MUST ACCOMPANY ALL COMPLAINT AFFIDAVITS AND ARREST FORMS

DEFENDANT: \_\_\_\_\_ CASE NUMBER \_\_\_\_\_

WITNESSES (List in order to be called) NOTE: List civilian witnesses first; officers last (show badge No. of Officer)

- ⑥ ~~(ATF)~~ Lloyd Erwin ALCOA 2, TAX & FIREARM DIVISION OF TREASURY DEPT SW 1 ST + FLAGLER Yd FEDERAL BLDG 350-424  
 Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_  
 Synopsis of testimony: TO RUN CHEMICAL TEST ON GRENADES P.O. Box 2009 Atlanta, Ga 3030
- ⑦ Tom BRODIE P.S.D. Crime Lab  
 Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_  
 Synopsis of testimony: Tested grenades and found them to be explosives exploded 1 grenade. 3 MARK II fragmentation hand grenades retained as evidence
- ⑧ Charles Hale Hiawah Fire Dept.  
 Name \_\_\_\_\_ Address 501 PALM AVE Phone \_\_\_\_\_  
 Synopsis of testimony: Fireman who responded to the scene of the fire.
- ⑨ Robbie Clavier Hiawah Fire Dept.  
 Name \_\_\_\_\_ Address 1501 PALM AVE Phone \_\_\_\_\_  
 Synopsis of testimony: Fireman who responded to the scene of the fire.
- ⑩ Tom <sup>QUINN</sup> Quark P.S.D. Photos Dept.  
 Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_  
 Synopsis of testimony: Took photos at the scene.
- ⑪ ELLORY RICHARCZIK Hiawah Photos Dept.  
~~Ellory Richarczik~~ Brown St. 5 blocks off I 10  
 Name \_\_\_\_\_ Address \_\_\_\_\_ Phone 885-1531  
 Synopsis of testimony: Took photos at the scene.
- ⑫ Wayne Martin Hiawah Water Dept. 3700 W. 4th Ave. 822-0581  
 Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_  
 Synopsis of testimony: Can test. that Lopey opened an account with that office on Nov. 20, 1972, under account # 101-165
- ⑬ Mr. Warren 1401 East 4th Ave. Fla. Power + Light  
 Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_  
 Synopsis of testimony: Can test. that Lopey opened an account with F.P.L. on Dec. 1972, under account # 19-107-2760-6
- ⑭ Earnest Zaramba Palm Springs Station (Post Office) 635 W. 49 Place  
 Name \_\_\_\_\_ Address \_\_\_\_\_ Phone 821-7311  
 Synopsis of testimony: Can test. that he has been delivering mail to Lopey since Nov 1, 1972.

DATE: JULY 10, 1973

DEFENDANT HUMBERTO LOPEZ

M-Number	CHARGE	DISPOSITION
		CC-MET-JUV-DISCH
<u>73-11927</u>	<u>Poss. of EXPLOSIVES</u>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

JUDGE TANKSLEY

J. Gerald / F.H.

IDS NO. 3278532  
 73-31607  
 JAIL NO. \_\_\_\_\_ BKD. 6/29/73  
 JKT. NO. 170507  
 OFFENSE NO. 24648 HPD  
 ASAO J. Gerald  
 LOG DATE 7/13

Bace

DIT

73-11927

1-809 555 1212

ADDR 460 W 42 PL\*\*\*\*  
PROP ADDR....460 W 42 PL

FOLIO.....04 3001 11 0410 2

TOTAL VAL.... 16,858

NON-EXEMPT... 16,858

JOSE C SANCHEZ &W ELSA F  
ORTGO EB-14 -  
REPARTO APOLO P R 00902

PAULA PARK 1ST ADDN PB 64-83  
LOT 4 BLK 5

*owner of the house.  
Lopez rents house.*

PUBLIC SAFETY DEPARTMENT  
DADE COUNTY, FLORIDA

CRIME SCENE SECTION REPORT

P.S.D. CASE  
 ASSIST TO OTHER AGENCY (A.O.A.) CASE

CASE NO.  
119897R  
Date:  
29 JUNE 73

Victim's Name: LOPEZ		Scene Location (Address of): 460 W 42 PLACE			Phone No.: -	Date: 29 JUNE 73
Offense: RECOVERED EXPLOSIVES	Agency: HIALEAH	Investigator: KELLY	O.D.C.N.	Radio No.: 313		
Request Rec'd. From: HIALEAH	Rec'd in Lab. By: FRANK	Time Rec'd.: 1 PM	Time Assigned: 1:00 PM	Time of Arrival: 12:00 PM	Time in Service: 3:00 PM	

RECEIVED 4 MARK II FRAGMENTATION HAND GRENADES FROM UTILITY ROOM & EXAMINED THEM ON DINING ROOM TABLE.

BLACK POWDER, TNT + FLASH POWDER

#1 LIGHT GREEN BLUE FUZE M205A2 SGK-1-40 5-36 FILLED WITH FLAKY RED, ALUMINUM & CAUSHEO PENTOLITE EXPLODED GRENADE ON 10 JULY 73. ALUMINUM CAP MARKED IN RED "DANGEROUS BLASTING CAP"

#2 LIGHT GREEN BLUE FUZE OP17-2 10-68 CONTAINING CAUSHEO PENTOLITE

#3 SHINY OLIVE DRAB # FUZE M-10A LOT 8 HE1-20 GREEN CAP # FILLED WITH SMOKELESS POWDER

#4 OLIVE DRAB WITH YELLOW RING FUZE M204A1 OLIVE DRAB NFO-3-31 4-53 ALUMINUM CAP FILLED WITH FLAKY TNT.

DETONATED AT ON JULY 10 1973

LATENTS DEVELOPED  
 YES  NO  
PHOTOS TAKEN  
B & W -  COLOR -

Reporting Officer's Signature J. Brodie, N. PORTER D. QUIRK, NEWTON	Badge No.: 346	Approved By (Signature) J. Brodie
---	-------------------	--------------------------------------

NOTE: If additional space is required use departmental continuation report form.



*Kaye*

RESIDENT OF DADE COUNTY YES  NO

73-5087

RESIDENT OF FLORIDA YES  NO

CASE NO. \_\_\_\_\_ JAIL NO. 53107

Defendant's Name: LOPEZ HUMBERTO \_\_\_\_\_ Date of Birth: 12-7-41  
(Last) (First) (Middle) (Day, Month, Year)

Place of Birth: CUBA Local Address: 460 W 42 PL. HIA Scars/Tattoos: 212-1000000  
3 FINGERS LEFT HAND

Permanent Address: 460 W 42 PL. HIA Phone: \_\_\_\_\_ Occ.: UNEMPLOYED

Soc. Sec. No.: 264-60-2682 Race: W Sex: M Eyes: BRN Hair: BRN Hgt.: 5'8" Wt.: 160

Arrest Date: 6 Sept 74 Time: 1500 Location: JUSTICE BLDG CT # 5  
(Day, Month, Year) (Place of Arrest)

Co-Defendant's Name: \_\_\_\_\_ Taken To County Station: DJC  
(Last) (First) (Middle)

Citation No.: \_\_\_\_\_ Capias No.: 74-6113 Other: \_\_\_\_\_

**OFFENSES CHARGED:**

- UNLAWFULL POSN OF EXPLOSIVES In Viol. of F.S. 552.101 In Viol. of Sec.: \_\_\_\_\_
- \_\_\_\_\_ In Viol. of F.S. \_\_\_\_\_ of the Code of Metropolitan
- \_\_\_\_\_ In Viol. of F.S. \_\_\_\_\_ Dade County
- \_\_\_\_\_ In Viol. of F.S. \_\_\_\_\_

HOLD FOR MAGISTRATE'S HEARING - DO NOT BOND OUT (OFFICER MUST APPEAR)

*Jerguson*  
*R 9/19*  
*Kaye*

**WITNESSES AGAINST DEFENDANT:**

- Name: \_\_\_\_\_ Address: \_\_\_\_\_ Phone: \_\_\_\_\_
- Name: \_\_\_\_\_ Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Physical Evidence against Defendant: \_\_\_\_\_

Arresting Officers: H. ROSENTHAL Ct. ID # 2433 Dept.: CR

Transporting Officers: \_\_\_\_\_ Ct. ID # \_\_\_\_\_ Dept.: \_\_\_\_\_

The undersigned certifies and swears that he has just and reasonable grounds to believe, and does believe that:

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_  
(Last Name) (First Name) (Initial)

committed the following violation of law:

Narrative: (Be specific)

FINDING OF GUILTY - DEFER SENT - REMAND TO DCJ  
P.S.I. 21 OCT 74  
BOND RAISED TO 10,000 DEF OUT ON 1,000 BOND

DET SIEGENDORF

Sworn to and subscribed before me,  
the undersigned authority, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

I swear the above statement is correct and true  
to the best of my knowledge and belief.  
H. Rosenthal  
Officer's Signature

Deputy of the Court or Notary Public

Dept.: CR Ct. ID Number 2433  
District \_\_\_\_\_ Section \_\_\_\_\_

**STATE ATTORNEY'S COPY**

RECORDS ID NO.: 170507



OCT 2 1973

*Thomas D. O'Malley*

STATE TREASURER  
INSURANCE COMMISSIONER  
FIRE MARSHAL

*Office of Treasurer*

*Insurance Commissioner*

STATE OF FLORIDA

TALLAHASSEE 32304

September 27, 1973

Mr. Robert Kaye  
Assistant State's Attorney  
1351 N. W. 12th Street  
Miami, Florida 33136

Dear Mr. Kaye:

In response to your request to DSFM W. J. Lynch there is enclosed the certification concerning Humberto Lopez.

Anytime this office can be of service, please do not hesitate to contact us.

Sincerely,

*Willard T. Knight*

Willard T. "Tommy" Knight  
Chief Deputy State Fire Marshal  
Chief of Arson and Fire Prevention

WTK:tb  
Enclosure

92.18 ES



# State of Florida

DEPARTMENT



OF INSURANCE

Tallahassee, Florida

September 27, 1973

I, the undersigned, Insurance Commissioner of the State of Florida, do hereby certify that

Humberto Lopez  
460 42nd Plaza  
Hialeah, Florida

does not currently possess, nor  
has he ever been issued by this  
office, an explosives license  
or blasters' permit



IN TESTIMONY WHEREOF, I hereto subscribe  
my name, and affix the Seal of my Office,  
at Tallahassee, the day and year first above  
written.

  
THOMAS D. O'MALLEY

Insurance Commissioner and Treasurer





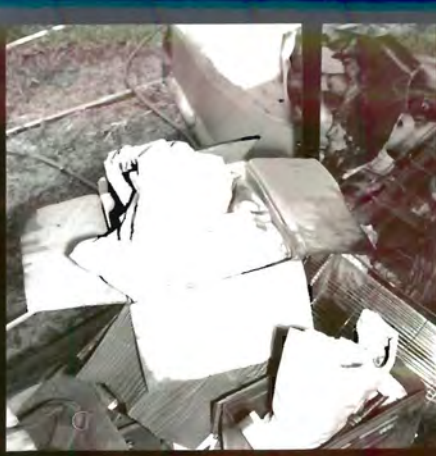
















60602

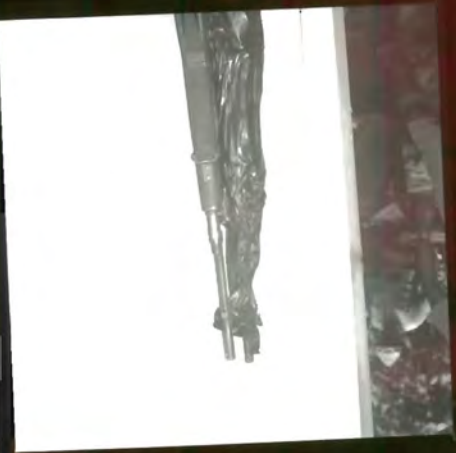




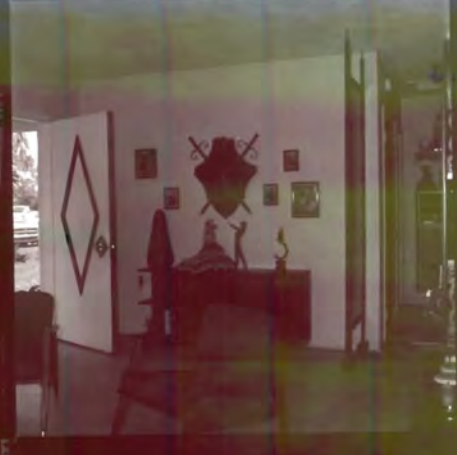














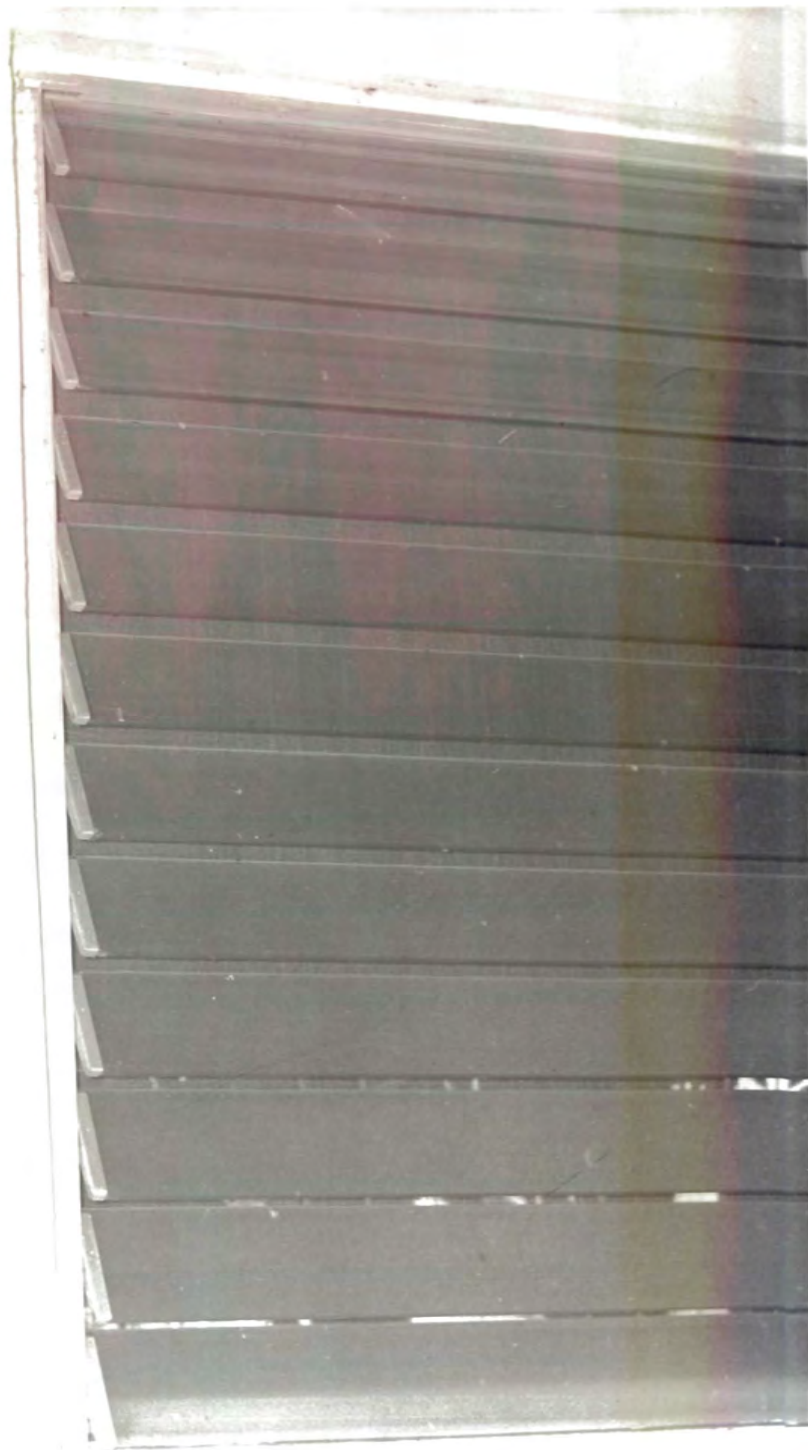








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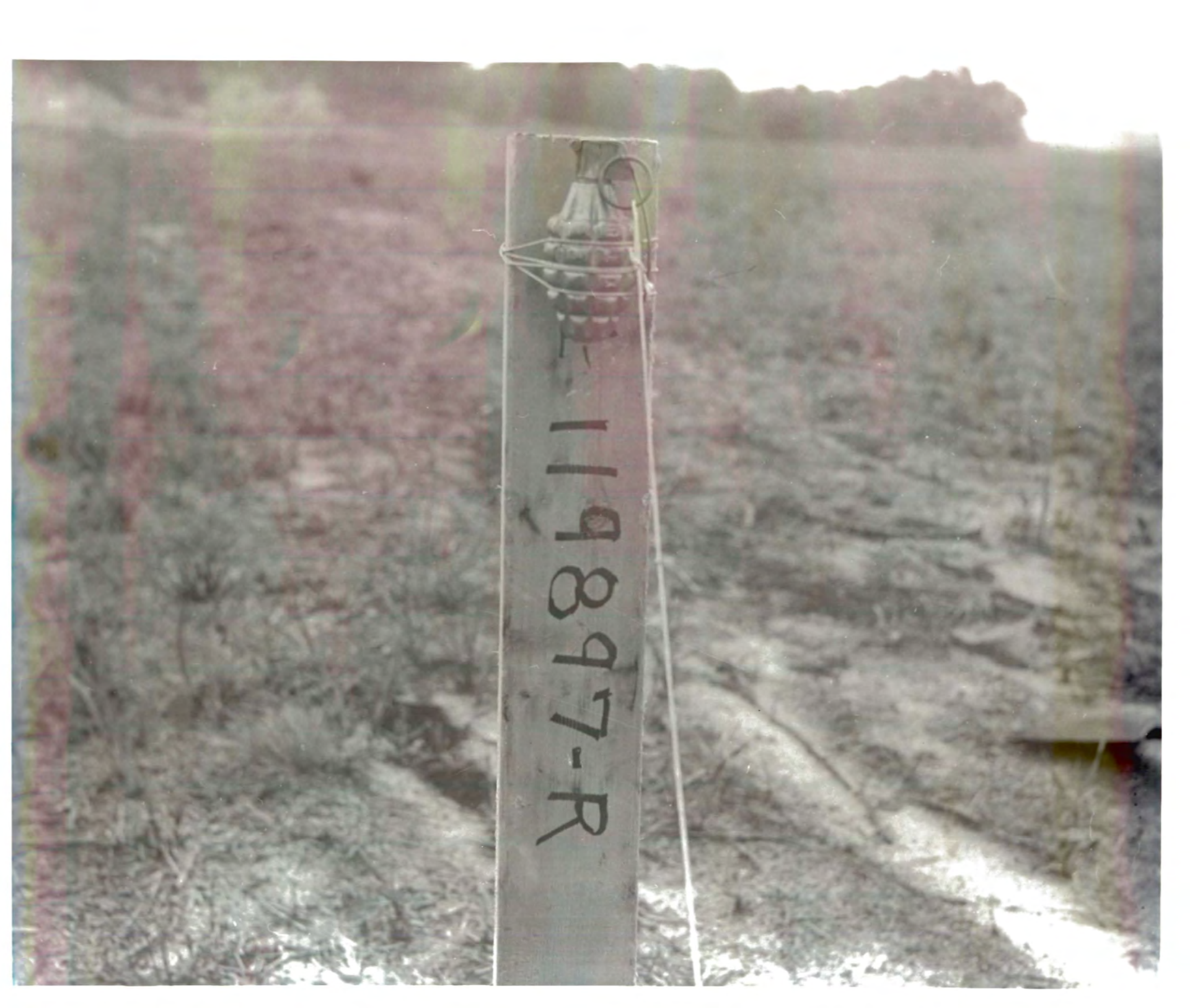










A photograph of a metal marker in a field. The marker is a vertical metal rod with the handwritten text "119897-R" on it. At the top of the rod, there is a small, white, dome-shaped object with a wire loop on top, possibly a sensor or a marker cap. The background is a field of low-lying vegetation under a bright sky.

119897-R



19897-R

1





