

1 REPORTER'S RECORD

2 TRIAL COURT CAUSE NO. S-17-5182-CV-B

3 DENISE MAREZ) IN THE DISTRICT COURT
4 INDIVIDUALLY AND ON)
5 BEHALF OF THE ESTATE)
6 OF JUAN PEREZ,)
Plaintiff) SAN PATRICIO COUNTY, TEXAS
7 VS.)
8 ISAAC G. RODRIGUEZ, SR.)
d/b/a I&R TRUCKING AND)
9 RODRIGUEZ TRUCKING)
Defendant(s)) 156TH JUDICIAL DISTRICT

11 TRIAL ON THE MERITS

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17 On the 10th day of DECEMBER, 2019 the
18 following proceedings came on to be heard in the
19 above-entitled and numbered cause before the HONORABLE
20 PATRICK FLANIGAN, Judge Presiding, held in Sinton, San
21 Patricio, County, Texas:

22 Proceedings reported by Stenograph
23 Machine.

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2

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**INDEX TO PROCEEDINGS
(Trial on the Merits)**

	December 10, 2019	Page
1	Case called.....	5
2	Agreed preadmitted exhibits.....	5-9
3	Rule invoked.....	10
4	Court instructs Jury.....	11
5	Witnesses sworn.....	11
6	Opening Statements by Mr. Duff.....	13
7	Opening Statements by Mr. Thomas....	22
8	<u>PLAINTIFF'S WITNESSES</u>	
9	Name	Direct
10		Cross
11	MAREZ, D.....	26,39
12		36,40
13	RODRIGUEZ, E.....	42,66
14		62
15	RODRIGUEZ, III.....	69,80
16		79
17	RODRIGUEZ, JR.....	83
18		-
19	HERNANDEZ, R.....	110,142
20		129
21	RODRIGUEZ, SR.....	150,168
22		168,171
23	Plaintiff's rests.....	172
24	Defense's proffer outside Jury.....	173
25	Defense offers Exhibit evidence.....	187
26	Defense rests.....	187
27	Plaintiff & Defense rest and close..	187
28	Informal Charge conference.....	190
29	Evening Recess.....	191
30	Court Reporter's Certificate.....	192

* * * * *

INDEX TO EXHIBITS

	<u>PLAINTIFF'S</u>		
	No.	Description	Ofd
		Adm	
19	1	OSHA REPORT.....	5
			5
20	2	OSHA CITATIONS.....	5
			5
21	3	DEATH CERTIFICATE.....	5
			5
22	6	SAN PATRICIO ACCIDENT RPT.	5
			5
23	7	PHOTOGRAPHS.....	5
			5
24	8	MARRIAGE CERTIFICATE...	5
			5
25	10	CD - STMT OF E. RODRIGUEZ.	5
			5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**INDEX TO PROCEEDINGS - CONT'D
(Trial on the Merits)**

December 10, 2019 **Page**

INDEX TO EXHIBITS

PLAINTIFF'S CONT'D

No.	Description	Ofd	Adm
12	SAN PATRICIO CAD SEARCH.	5	5
13	AERIAL VIEW..... 9692 CR 803, MATHIS TX	5	5
14	PAYCHECKS TO JUAN PEREZ.	5	5
15	LOAD TICKETS-J. PEREZ...	5	5
16	LABOR PAYCHECKS-J. PEREZ.	5	5

DEFENSE'S

No.	Description	Ofd	Adm
3	SGT. LOVING REPORT.....	5	5

* * * * *

REPORTER'S NOTE: NO EXHIBIT COPIES ATTACHED.

TRIAL ON THE MERITS

December 10th, 2019

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2
3 THE COURT: Counsel, do we have any
4 matters to take up outside the presence of the jury
5 that were not addressed yesterday?

6 MR. MARTINEZ: I don't believe so, Your
7 Honor.

8 MR. THOMAS: No, Judge.

9 THE COURT: Okay. Just checking to make
10 sure.

11 MR. HILLIARD: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. HILLIARD: Your Honor, may I
14 approach?

15 THE COURT: Yes, sir.

16 MR. HILLIARD: We do have a courtesy copy
17 for the Court of the trial exhibits, which we have
18 agreed they're preadmitted.

19 THE COURT: Okay. Are these just
20 Plaintiffs or both?

21 MR. HILLIARD: Both.

22 THE COURT: Okay.

23 MR. HILLIARD: For purpose of the record,
24 as soon as we go on record, can we read in the
25 exhibits with their descriptions and ask the Court to

1 formally admit them?

2 THE COURT: Mr. Thomas, do you have any
3 objection to doing that?

4 MR. THOMAS: That's both Plaintiff and
5 Defendants?

6 MR. HILLIARD: Yes, sir.

7 MR. THOMAS: I have no objection, Your
8 Honor.

9 THE COURT: Okay. We can go --

10 THE BAILIFF: They're here.

11 THE COURT: Everybody here?

12 THE BAILIFF: Yes.

13 THE COURT: All right. We can do that
14 right now, if you want to.

15 MR. HILLIARD: Yes, Your Honor. I'm just
16 going to confer with Opposing Counsel really quick.

17 THE COURT: Okay.

18 (Pause.)

19 MR. HILLIARD: Ready in five seconds,
20 Your Honor.

21 May I proceed, Your Honor?

22 THE COURT: Yes, sir.

23 MR. HILLIARD: By stipulation and
24 agreement of the parties, without objection, the
25 following exhibits have been agreed to be preadmitted

1 as exhibits of evidence at this trial.

2 PX-01, OSHA Report; PX-02, OSHA
3 Citations; PX-03, Juan Perez's Death Certificate;
4 PX-05, Justice of the Peace Rosario Hernandez Audio
5 Recording; PX-06, San Patricio County Sheriff's
6 Department Accident Report Bates Number 0001 through
7 0004. And I apologize, Exhibit PX-05 was withdrawn,
8 so we will not be admitting Exhibit PX-05 into
9 evidence. PX-07 is San Patricio County Sheriff's
10 Department Accident Report Bates Number 00016 through
11 000115, also 000149 through 000150. PX-08, San
12 Patricio County Sheriff Department Marriage
13 Certificate Bates Number 000163 through 000166,
14 Marriage Certificate; PX-09, San Patricio County Isaac
15 Rodriguez Audio Recording; PX-10, San Patricio County
16 Estefana Rodriguez Audio Recording; PX-11, San
17 Patricio County Denise Marez Audio Recording; PX-12
18 San Patricio C.A.D. Property Search 9692 CR 803
19 Mathis, Texas, 78368; PX-13, 9692 CR 803 Aerial View;
20 PX-14, Paychecks to Juan Perez from Rodriguez
21 Trucking; PX-15, Juan Perez's Load Tickets for
22 Rodriguez Trucking; PX-16, Labor Paychecks to Juan
23 Perez from Rodriguez Trucking; DX-3, which will be
24 Defendant's Exhibit 3, Sergeant Loving report.

25 Your Honor, before we proceed with DX-3,

1 since we were just given a copy of Defendant's Exhibit
2 list yesterday morning, we do have an issue we'd like
3 to take up with the Court regarding one paragraph of
4 that report and I have copies for the Court and
5 Opposing Counsel.

6 MR. THOMAS: Thank you.

7 MR. HILLIARD: May I approach, Your
8 Honor?

9 THE COURT: Yes, sir.

10 MR. HILLIARD: So, Your Honor, if you
11 turn to page two of this report, Paragraph Five, I
12 believe -- yes, sir -- so Paragraph Five references a
13 quote, unquote, "...summation of a statement made to
14 me by Rosario Hernandez and is not verbatim." And
15 actually, Your Honor, for more context, it's best to
16 start with Paragraph One, the first page, because it
17 actually says that this is someone informing -- this
18 is a different deputy informing the deputy that wrote
19 this report about the second deputy's conversation
20 with Rosario Hernandez. Therefore, Judge, based on
21 the multiple layers of hearsay, we would argue that
22 these two paragraphs, Paragraphs 4 and Paragraph 5,
23 should be redacted from this report as it is hearsay
24 within hearsay within hearsay, thus making these two
25 portions of the report not factual findings under the

1 exception to hearsay that would allow this exhibit to
2 come in. These two paragraphs are not trustworthy and
3 they're not reliable given the three layers of hearsay
4 contained therein, Your Honor. So we would move to
5 exclude those and we do have courtesy copies of
6 redacted reports which have Paragraph 4 and Paragraph
7 5 redacted.

8 THE COURT: Mr. Thomas?

9 MR. THOMAS: First of all, Your Honor, I
10 thought the Court had already made a ruling on those
11 issues yesterday when the Court reviewed all three
12 reports that were offered. All three reports contain
13 hearsay within hearsay and that was our objection
14 yesterday to Exhibit P-6. The Court reviewed all
15 three different reports and admitted after that
16 argument this report and Defendant's Exhibit -- or
17 Plaintiff's Number 5, I'm sorry, 6. I apologize.
18 Additionally, I believe that the -- well, strike that.
19 So I thought that issue was settled. I am not, you
20 know, I haven't really looked at it that thoroughly to
21 prepare this morning. The Court made a ruling
22 yesterday and I think we're all relying on that,
23 Judge.

24 THE COURT: All right. I excluded the --
25 in my opinion -- the most egregious and objectionable

1 of all of the reports that were presented to me
2 yesterday. I'm going to deny the -- or overrule the
3 objection. It will be admitted. I'm not saying what
4 weight ought to be given to it. That will be up for
5 you to argue. You certainly have the opportunity to
6 call these folks as live witnesses, if you wish to.
7 Anything else?

8 MR. HILLIARD: Thank you, Your Honor.
9 Two very quick additional issues. The first issue is
10 that we would move at this time to invoke the Rule so
11 that any non-party witnesses that may be here for the
12 Defense be removed from the courtroom as soon as we
13 start the proceedings. I'm not sure if there are any,
14 but --

15 MR. THOMAS: There is one I'm aware of,
16 non-party witness, and that's Ms. Rodriguez. Would
17 you stand up, Ms. Rodriguez. Ms. Paiz is not a party,
18 but she is also not a witness, and I was kind of
19 relying on her to help translate what was going on to
20 her dad. This is Mr. Rodriguez's daughter. She is
21 not a witness and will not be testifying, to my
22 knowledge, so I kind of had her here to help me.

23 THE COURT: If you're representing that
24 she's not going to be a witness in the case, the Rule
25 would not apply to her.

1 MR. THOMAS: Very good. So the only
2 witness would be Ms. Rodriguez, Judge.

3 THE COURT: I'll wait until the jury gets
4 called in and then I will swear in all the witnesses
5 that are present and invoke the Rule in front of the
6 jury.

7 Bring the jury in, please.

8 MR. HILLIARD: Thank you, Your Honor.

9 THE BAILIFF: All rise for the jury.

10 (Jury In.)

11 THE COURT: All right. Be seated,
12 please. Good morning, ladies and gentlemen. Thank
13 y'all for getting here safely and on time this
14 spring-time kind of morning we're having. We're ready
15 to start the proceedings today. Y'all have been sworn
16 in as the jury. First things first, we'll have some
17 opening statements or the opportunity for opening
18 statements from the attorneys. After that's done,
19 there'll be the presentation of witnesses and
20 presentation of evidence.

21 With the attorneys, I've gone over some
22 exhibits that are going to be presented to you. Those
23 have largely been determined to be admissible and
24 admitted by the Court so that we don't have to take up
25 a whole lot of your time going through that legal

1 process here in the courtroom.

2 So again, formally, I'm calling Cause
3 Number S-17-5182-CV-B. Is the Plaintiff ready for
4 trial?

5 MR. DUFF: Plaintiff's ready, Your Honor.

6 THE COURT: Defense ready?

7 MR. THOMAS: We're ready, Judge.

8 THE COURT: The parties have witnesses
9 that can be sworn in? All of you that know yourselves
10 to be witnesses, please, stand and raise your right
11 hand and take this oath, everybody that's a witness.

12 (Large Group of Witnesses Sworn In.)

13 THE COURT: Very good. Thank you. Have
14 a seat. The Rule has been invoked in this case which
15 means that other than the parties, any witness that is
16 expected to testify must remain outside the courtroom
17 except for anytime that they are called into the
18 courtroom to actually testify. Do not discuss this
19 case or your testimony with anyone except for the
20 lawyers. Do not allow anyone to discuss this case or
21 their testimony in a location where you can overhear
22 what they've said. These restrictions and directions
23 will continue until the conclusion of the case.

24 Does everybody understand?

25 (Group answer "yes, sir".)

1 THE COURT: All right. Do we have any
2 witnesses that are not parties?

3 MR. THOMAS: Ms. Estefana Rodriguez, Your
4 Honor.

5 THE COURT: All right. Ms. Rodriguez,
6 you must remain outside the courtroom until you're
7 called in.

8 (Witness exits courtroom.)

9 THE COURT: Does the Plaintiff wish to
10 make an opening statement?

11 MR. DUFF: Yes, Your Honor.

12 THE COURT: You may proceed.

13 MR. DUFF: Your Honor, permission to grab
14 the podium?

15 THE COURT: Yes, sir.

16 THE BAILIFF: I've got one right here.
17 Already ahead of you.

18 MR. DUFF: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. DUFF: Mr. Thomas?

21 Members of the jury, my name is John
22 Duff, one of the attorneys that has the privilege and
23 honor of representing Denise Marez in a case that was
24 brought against the Defendants. I represent Denise
25 Marez. She is sitting here right with us today, along

1 with my Co-Counsel, John Martinez and Alex Hilliard.
2 Briefly, I want to introduce Denise to y'all. Can
3 you, please, stand up. Ladies and gentlemen of the
4 jury, this is Denise Marez. She's the widow of Juan
5 Perez and you'll hear today that Juan Perez died at
6 the Defendants' property and this is a wrongful death
7 case. You'll also hear that Denise had married Juan
8 about a year before they -- before he passed away and
9 they'd been dating for approximately four or five
10 years before they actually got married. And they
11 actually got married right here in this courtroom in
12 this courthouse. Judge Simpson is the one that
13 married them. Ladies and gentlemen of the jury, this
14 is Denise. Please, have a seat. Thank you.

15 First, I'd like to thank each and
16 every one of you for being here. I know Judge
17 Flanigan said it yesterday, but a lot of people don't
18 show up for jury duty. They refuse to participate in
19 this process and they refuse to invoke their civic
20 duty to hear cases and try -- hear cases that are
21 being tried and we just want to thank you-all for
22 being here today. You know, as Americans we have the
23 right to a trial by jury. The 7th Amendment
24 guarantees us that. We have the right to bring our
25 cases in front of people, just like you, in front of

1 our peers when we feel we've been wronged and that's
2 what Denise is doing here today.

3 A lot of people don't understand the
4 responsibility and the power that comes with being on
5 the jury. You are the sole judge of the credibility
6 of each witness you will hear in the next few days.
7 You will get to weigh the evidence as you see fit.
8 You will hear conflicting testimony in this case, but
9 that's what trial is for. The Plaintiffs will have
10 our side; the Defendants will have their side. The
11 power that comes with this duty is one of the biggest
12 powers known in our society. You guys have the power
13 to be heard and the power to make a decision based on
14 credible evidence and that's what we're going to ask
15 you to do these next few days. We're going to ask you
16 to be patient with us, to listen carefully to all of
17 the testimony that you're going to hear from each
18 witness and carefully review all the evidence before
19 rendering a verdict.

20 As Judge Flanigan said yesterday, this is
21 an important case. It's an important case because we
22 have a man that died; a man 60 years old as healthy as
23 he could be and he died on the Defendants' property
24 because of the dangerous condition that existed on
25 that property. As I stated, there are disputed facts

1 in this case and when everyone goes home at 4:30,
2 5:00, and I'll speak for Mr. Thomas and our team, we
3 both go back to the office. We both work tirelessly
4 to prepare to present you tomorrow's case and the next
5 day's case. So, again, thank you-all for being here
6 and listening to us and being patient with us.

7 Now, this is my chance to get to tell you
8 about the facts of this case; the facts that we could
9 not tell you about yesterday and the facts that I
10 could tell some of you were wanting to hear more
11 about. We have a man by the name of Juan Perez. He
12 was 60 years old and he died on Defendants' property.
13 He left behind his wife and a daughter that he loved.
14 Denise is here today to tell you about the man he was,
15 how much he cared for her, how much she cared for him,
16 how that he was her rock and her support. You'll hear
17 how they started dating, how he proposed to her, when
18 they got married, shortly thereafter when he passed
19 away. You'll hear and you'll see from the testimony
20 of Denise this left a gaping hole in her life and her
21 heart. This was her rock. This was her support and
22 he was gone. Over the next few days you will hear
23 from witnesses who knew Juan Perez well and you will
24 hear from the witnesses who were there when he died.
25 You will also hear testimony and you'll see evidence

1 showing that Juan was an employee of the Defendants.
2 Isaac Rodriguez, Sr. had known Juan since he was four
3 years old. Juan had worked there for 17 years.
4 You'll also see paychecks from Rodriguez Trucking or
5 sometimes called I&R Trucking. You'll see load
6 tickets. You'll also see payments to him as a laborer
7 for Rodriguez Trucking. Ladies and gentlemen, this is
8 not a criminal case. We're not here today to prove to
9 you beyond a reasonable doubt that the Defendants
10 intended for this man to die. We're not saying that
11 they intentionally killed him; they wanted him to die.
12 As Mr. Martinez said to you yesterday, this is a case
13 that we have to prove to you by a preponderance of the
14 evidence. Like he said, that's just a tipping of the
15 scales. We're going to prove this to you by showing
16 that the Defendants knew of this dangerous condition
17 that existed on their property; that they failed to
18 warn Juan about this dangerous condition and they
19 failed to provide him any safety training or safety
20 equipment to safely complete the task of the day. You
21 will also see OSHA citations, and for those of you who
22 don't know what OSHA is, it's the Office of Safety and
23 Health Administration. They are the ones that tell
24 employers how to safely protect their employees, what
25 they're supposed to do to protect employees that are

1 doing dangerous tasks. You'll see a citation that's
2 going to be titled a serious violation, according to
3 OSHA, that they failed to protect this employee on the
4 roof of a fall hazard greater than ten feet.
5 Essentially, that means that they failed to provide
6 him any safety harness, anything to protect him from
7 falling through this rotted roof. You'll see that
8 these OSHA citations will prove the Defendants
9 blatantly disregarded OSHA regulations. They chose
10 not to listen, and that was the cause of Juan's death.
11 You will see pictures of what this roof looked like.
12 You'll see the hole that Juan fell through. You'll
13 see how he landed 12 feet below on this cold cement
14 ground of Rodriguez Trucking. You'll see pictures of
15 him lying there, blood coming out of his eyes. They
16 are going to be tough, but we have to show them to
17 you. You have to see how this man passed away. You
18 will also see the death certificate to show that his
19 cause of death was falling 12 feet landing on his back
20 on cement ground below him.

21 You will also hear testimony from some of
22 the Defendants in this case. Their theory in this
23 case is that Juan snuck onto the property. He was
24 trespassing. He had no business being there. No one
25 saw him there. What was he doing there? These are

1 all smoking mirrors to distract you from their
2 responsibility.

3 MR. THOMAS: Judge, I'd object to any
4 argument made during opening statements.

5 THE COURT: Sustained.

6 MR. DUFF: The evidence will show that
7 the Defendants disregarded their duty to Juan Perez.
8 The evidence is further going to show that the
9 Defendants knew of the risk that they were taking and
10 put this man's life in jeopardy. You will hear from
11 Denise. She will tell you that she knew that Juan was
12 supposed to be working on the roof that day, that Juan
13 was a truck driver. He wasn't a roofer. He had no
14 business being on that roof, but as some of you know,
15 when our employees -- or when our employers ask us to
16 do something, we have to do it. We have to put food
17 on the table for our families. The testimony you will
18 hear him say will tell you that Juan didn't want to be
19 on that roof, but sometimes we got to do what we got
20 to do.

21 On March 7th, 2015, the date of Juan's
22 death, started out like any other morning for him and
23 Denise. He woke up at 5:30, got ready for work, made
24 a cup of black coffee, kissed his wife good-bye for
25 the last time. You will hear testimony that the

1 Defendants failed to warn Juan of how rotted this roof
2 actually was, failed to provide him any type of
3 protection that he would need on this roof. You will
4 see that replacing these metal sheets on the Rodriguez
5 Trucking garage was not a task for just one man.
6 These metal sheets were about six feet tall and about
7 three feet wide. Took two people to do this job.
8 They're going to tell you that they hired one man to
9 do this job and that one man's name was Rosario
10 Hernandez, that he was somehow supposed to carry these
11 metal sheets up 15 feet in the air, put them on the
12 roof by himself, that Juan had no business being
13 there.

14 Members of the jury, you alone are the
15 judges of the credibility of these witnesses. If you
16 think the testimony here just doesn't add up, doesn't
17 make sense, this Judge will instruct you later you can
18 disregard it. So when you're hearing the evidence,
19 when you're hearing the testimony, please, use your
20 common sense and figure out what actually makes sense
21 in this case. By the end of this case, you will see
22 that the Defendants failed to provide Juan a safe
23 workplace, failed to provide him with any kind of
24 safety training, failed to provide him with any safety
25 harness so he could safely do the task at hand. As I

1 stated, Juan was not a roofer. He needed these
2 protections put in place. He needed his employer to
3 do the right thing, to be a responsible employer, and
4 the evidence will show it's far from what they were.
5 These failures committed by the Rodriguezes, and
6 Rodriguez Trucking, as the evidence will show, were
7 the direct cause of Juan's death. As I stated, you
8 will see pictures of Juan laying on the cold cement
9 ground of Rodriguez Trucking. You will also hear
10 testimony that EMS wasn't called or didn't arrive for
11 several hours, that no lifesaving measure was
12 performed on Juan to try and save him. You'll hear
13 testimony that they didn't know what to do. They
14 couldn't take him to the nearest hospital.

15 Ladies and gentlemen of the jury, the
16 Rodriguezes have a duty. Their duty is to protect
17 their employees. So when we get up here at the end of
18 this case, my Co-Counsel or I will get up here, and
19 we'll walk through all the evidence one more time.
20 We'll show you the OSHA citation. We'll show you
21 stacks and stacks and stacks of payments from
22 Rodriguez Trucking to Juan showing that he was an
23 employee of Rodriguez Trucking. At that time, we will
24 ask you to return the only verdict that the evidence
25 supports and that's a verdict holding the Defendants

1 liable for Juan's death. Thank you.

2 THE COURT: Thank you, Counsel.

3 Mr. Thomas, do you wish to make an
4 opening statement at this time?

5 MR. THOMAS: I do, Your Honor. Thank
6 you.

7 THE COURT: Go ahead.

8 MR. THOMAS: Please the Court? Counsel?

9 Good morning, ladies and gentlemen. Glad
10 everyone's here today. Thank you-all for coming back.
11 Listening to Plaintiff's Counsel opening statement,
12 it's good we have finders of fact here to determine
13 what the facts in this case actually are, because I
14 can tell you the Defense and the Plaintiff are very
15 far apart in what the facts actually were on this day
16 in question. Mr. Rodriguez, Isaac Rodriguez, you met
17 him yesterday. He is the father and grandfather of a
18 large family here today, as well. And he has been in
19 the trucking business basically his whole life. He
20 owns I&R Trucking. That's his business. He has
21 employees that work for him off and on, seasonally;
22 employee, contractor, truck drivers when there's work,
23 basically. And Juan Perez was a truck driver and he
24 did, in fact, work time to time for Mr. Rodriguez.
25 That's not in dispute. The problem with the

1 Plaintiff's story is that in January of 2015, Mr.
2 Perez ceased working for Rodriguez Trucking or I&R
3 Trucking. This accident occurred in March of 2015,
4 almost three months later, two months later. And you
5 will get to hear from Rosario Hernandez who was the
6 handyman working for Mr. Rodriguez that day on the
7 location. So Mr. Perez, the truck driver, who had
8 worked off and on for I&R Trucking showed up
9 uninvited, unannounced, unknown even to Isaac
10 Rodriguez that he was there on this day in March and
11 for some reason or not ended up on the roof of this --
12 this work shed and you'll see pictures of that. And I
13 have the same question as Mr. Duff did. "Why is a
14 truck driver on the roof at this facility?" This work
15 is something he'd never done before, to my knowledge.
16 Mr. Hernandez, Rosario Hernandez, will tell you that
17 he told Mr. Perez, "Hey, you're not supposed to be up
18 here. Get off." And he even said, "Watch out. Watch
19 where you walk because I'm replacing the fiberglass
20 roof with metal. You're not supposed to be here. Get
21 off the roof." And then he turned around and went
22 back to work using a drill and power tools that he
23 couldn't hear. Next thing Rosario knows is Isaac
24 Rodriguez is yelling at him that Mr. Perez has fallen
25 through and landed on the ground. And they did call

1 911 immediately. Now, this location is kind of remote
2 in the Mathis area and so I think EMS had some
3 difficulties locating the premises, but as soon as
4 they discovered Mr. Perez's body on the floor, they
5 did call 911. And those are the facts that we're here
6 about. That's the synopsis of the facts and I think
7 you'll see that's undisputed. Mr. Perez, a truck
8 driver, who had ceased working for Mr. Rodriguez in
9 January of 2015, shows up at the property in March of
10 2015, unaware if any -- if Mr. Rodriguez is even aware
11 he's there, climbs up on the roof because he sees
12 Rosario Hernandez up there changing out the roofing.
13 And he's told, "Hey, what are you doing up here? You
14 need to get down." And he's 60, 61, 60 years old.
15 Why is he up on the roof to begin with? That's a
16 question nobody can answer, unfortunately. And then
17 the tragedy, the accident happens. He apparently
18 falls through and his body is found. And it is
19 tragic, and it is a tragedy, and I'm sorry it's
20 happened and I know Mr. Rodriguez is sorry it's
21 happened. I mean, imagine finding a body. That's a
22 terrible thing for anybody to have to experience or to
23 deal with, but there was no breach of any duty owed
24 Mr. Perez. Mr. Perez was there without permission to
25 be there. There was no dangerous condition created

1 that Mr. Perez was asked or exposed to. He chose to
2 climb up there all, without any direction, on his own
3 and sometimes, ladies and gentlemen, accidents are
4 just accidents, and that's the fact. And it's tragic
5 because Mr. Perez lost his life and we're very sorry
6 about that, but just because accidents happen doesn't
7 mean that someone should file a lawsuit and receive
8 money for that. And I think you'll agree with me at
9 the end of the evidence and you'll find for Mr.
10 Rodriguez in this case. So I'd like to thank you-all
11 in advance again for your participation, for your
12 attention. I do want you to pay close attention to
13 all the evidence because it is an important case and
14 important case for everyone. Thank y'all.

15 THE COURT: All right. Plaintiff's first
16 witness?

17 MR. DUFF: Yes, Your Honor. Plaintiff
18 calls Denise Marez to the stand.

19 THE COURT: Mrs. Marez, please, take a
20 seat in the witness chair. Tell us your full name,
21 please.

22 THE WITNESS: Denise Lynn Marez.

23 THE COURT: And, please, spell all of
24 that for the court reporter.

25 THE WITNESS: D-e-n-i-s-e, L-y-n-n,

1 M-a-r-e-z.

2 THE COURT: Very good. Thank you.

3 Counsel?

4 DENISE LYNN MAREZ,

5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. DUFF:

8 Q. Good morning, Denise.

9 A. Good morning.

10 Q. Can you hear me?

11 A. Yes.

12 Q. Good morning, Denise. Could you, please,

13 introduce yourself to the jury?

14 A. Hello, jury. I'm Denise Lynn Marez.

15 Q. Denise, where were you born?

16 A. In Corpus Christi.

17 Q. Where do you currently live?

18 A. In Three Rivers, Texas.

19 Q. You ever lived in Mathis?

20 A. Yes, my whole life. Just recently moved to

21 Three Rivers.

22 Q. Denise, were you married to a man named Juan

23 Perez?

24 A. Yes, I was.

25 Q. Can you tell the jury how you met?

1 A. I've known him from -- it's a small town. We
2 were dating on and off for about five years. Within
3 that six months, he would go everyday to Calallen in
4 the morning and we'd have breakfast. He always had
5 his black coffee. Every morning at 9:00, he'd get
6 there. We'd talk and --

7 MR. THOMAS: Objection, nonresponsive,
8 Your Honor.

9 THE COURT: I'll sustain the objection.
10 Go ahead and ask questions.

11 MR. DUFF: Yes, Your Honor.

12 THE COURT: And, Mrs. Marez, please, keep
13 your voice up so that the jury can hear you.

14 THE WITNESS: Okay.

15 THE COURT: Your voice is trailing off a
16 bit and I know that you're speaking into the
17 microphone, but they need to hear what you have to
18 say. Thank you.

19 THE WITNESS: Yes, sir.

20 Q. (BY MR. DUFF) Denise, you were telling the
21 story about Juan; he'd come take you to breakfast.
22 Can you, please, finish that story?

23 A. Yes. Shortly after that, we -- I fell in
24 love with him after six months. I moved in with him,
25 and after that we -- we got together and then we got

1 married here in this courtroom. He took care of me
2 and my daughter; his -- his son, his daughter that are
3 disabled, I took care of them.

4 Q. Denise, when were you and Juan married?

5 A. On August 7. We got married in this
6 courtroom by Judge Simpson.

7 Q. Denise, how long did you know Juan before you
8 guys got married?

9 A. Five -- five years.

10 MR. DUFF: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes, sir.

13 Q. (BY MR. DUFF) Denise, I'm showing you what's
14 been previously admitted as Plaintiff's Exhibit 3.
15 Excuse me. Excuse me, Your Honor. I'm showing
16 Plaintiff's -- Plaintiff's Exhibit 8. Denise, can you
17 tell the jury what we're looking at?

18 A. Rights of Matrimony, my marriage certificate.

19 Q. Going through this marriage certificate, what
20 is the date of y'all's marriage?

21 A. August 8th, 2014.

22 Q. Can you tell the jury a little bit about that
23 day?

24 A. We got up early in the morning that day and
25 we -- he had already proposed to me, like, two months

1 prior to that. We were excited. Well, I was excited
2 because I -- (crying) -- I was still tired from the
3 night before, but he still got up and he was all happy
4 and drinking his coffee. I got upset with him for
5 waking me up. I got up. I got dressed and then I had
6 a whole different attitude. We were happy on the way
7 back to Sinton. We just walked in Judge Simpson's
8 office and we got married and walked out and it was
9 like a whole -- it was just a day, normal day, after
10 that. Went home, made dinner, and joked around, as
11 usual, him with his black coffee always smoking his
12 cigarettes, and that was the end of that day.

13 Q. Denise, how was Juan employed?

14 A. Juan was employed by the Rodriguez company.

15 Q. Which company or person specifically did he
16 work for?

17 A. Isaac Rodriguez.

18 Q. And we know there's a couple of different
19 Isaac Rodriguezes. Was it more than one?

20 A. Well, he worked for the -- the Senior.

21 Q. How long had he worked for Isaac Rodriguez,
22 Sr.?

23 A. He had been with him for 17 years.

24 Q. In the time that you had known Juan, had he
25 worked for any other employer?

1 A. No, none at all.

2 Q. What was Juan's regular work schedule?

3 A. He would get up at 5:30 every morning, give
4 me a kiss goodbye and Mr. Isaac Sr. would pick him up
5 in the morning.

6 Q. Would Mr. Rodriguez, Sr. pick him up every
7 morning?

8 A. Yes; if not, Junior, Isaac Jr.

9 Q. Did Juan work with Isaac Rodriguez, Jr.?

10 A. Yes.

11 Q. Did Isaac Rodriguez, Jr. have a trucking
12 company, --

13 A. Yes.

14 Q. -- as well? Where would Juan go to work at?

15 A. At their job site where the 18 wheelers are
16 at, where he passed.

17 Q. Do you know the address of that location?

18 A. No, I do not. No. It's a county road,
19 but --

20 Q. Denise, do you recall the night before Juan
21 passed away?

22 A. Yes.

23 Q. What were you and Juan doing that night?

24 A. We were watching TV. His phone rang a couple
25 of times. Mr. Isaac Rodriguez, Sr. called him.

1 MR. THOMAS: Objection, nonresponsive,
2 Your Honor.

3 THE COURT: Sustained. Listen to the
4 question that is asked.

5 THE WITNESS: Okay.

6 THE COURT: And just answer that
7 question.

8 THE WITNESS: Yes, sir.

9 THE COURT: And your attorney will follow
10 up.

11 Q. (BY MR. DUFF) Denise, I asked if you -- what
12 you were doing that night. I believe you said you and
13 Juan were watching TV and his phone rang a couple
14 times. Do you know who was calling Mr. Perez?

15 A. Isaac Sr.

16 Q. Do you know what Isaac wanted?

17 A. He wanted him to go the next day to work on
18 the roof.

19 Q. How do you know he wanted him to go up on the
20 roof?

21 A. Because Juan talked to me. He was very
22 angry. He said (Spanish).

23 THE COURT REPORTER: I'm sorry, I can't
24 write Spanish.

25 A. Which means, "I'm not a roofer. I'm a truck

1 driver."

2 Q. Had Juan had any previous training in
3 roofing?

4 A. Of course, not.

5 THE COURT REPORTER: Judge, I'm sorry,
6 the jurors can't hear.

7 THE COURT: You need to speak up. The
8 jurors can only consider what they hear.

9 THE WITNESS: Okay.

10 Q. (BY MR. DUFF) Be loud.

11 A. Okay.

12 THE COURT: Yeah, don't worry about being
13 too loud.

14 THE WITNESS: Okay.

15 Q. (BY MR. DUFF) Okay. I asked you if Juan had
16 any training in roofing?

17 A. No, of course not. No.

18 Q. Okay. Did he have any personal protection,
19 equipment, like a safety harness, that he could have
20 taken with him?

21 A. None.

22 Q. Did Juan, from your knowledge of him as his
23 wife, did he want to go work on the roof?

24 A. No. He was very angry. No, he didn't want
25 to go.

1 Q. The next morning, what time did he wake up?

2 A. He had his usual time. He was out the door
3 by 5:30, gave me a kiss, was upset to leave, but he
4 still went.

5 Q. And if he was upset, do you know why he left?

6 A. 'Cause he was faithful to them. He was a
7 loyal employee. He practically did anything for them.

8 MR. HILLIARD: Judge, I think we're
9 having some volume issues. Here, can you pull it
10 closer?

11 THE WITNESS: Can you hear me?

12 THE COURT: The microphone's working.
13 You just need to speak up.

14 Q. (BY MR. DUFF) Denise, getting into March 7th,
15 2015, how were you first notified about what happened
16 to Juan?

17 A. I got a phone call to identify his body.

18 Q. Who did you get a phone call from?

19 A. The Sheriff's Department.

20 Q. Were you able to identify his body?

21 A. No, but his daughter identified it.

22 Q. Denise, did you see a copy of his death
23 certificate?

24 A. Yes.

25 MR. DUFF: Your Honor, may I approach the

1 witness?

2 THE COURT: Yes, sir.

3 Q. (BY MR. DUFF) Denise, I'm going to show you
4 what's been previously admitted as Plaintiff's Exhibit
5 3. Do you recognize that document?

6 A. Yes, I do.

7 Q. What do you recognize it to be?

8 A. It's my husband's death certificate.

9 Q. Denise, on the top in Box One, can you tell
10 the jury what name that says?

11 A. Juan M. Perez.

12 Q. Then in Box Five, how old does it say Juan
13 was?

14 A. Sixty.

15 Q. And if you want to go down with me towards
16 the bottom of the page, it says, "Location, Street and
17 Number of Death."

18 A. 9692 County Road 803, Mathis, Texas 78368.

19 Q. And whose property do you know that to be?

20 A. The Rodriguez Trucking.

21 Q. And right under the location, it says,
22 "Describe how the injury occurred." Can you, please,
23 read that to the jury?

24 A. "He fall 12 feet from roof landing on back
25 onto concrete."

1 THE COURT: Again, please, keep your
2 voice up.

3 A. "He fell 12 feet from roof landing on back
4 onto concrete."

5 Q. (BY MR. DUFF) Denise, did you work at the
6 time of Juan's death?

7 A. No.

8 Q. Did he have any other support, income, other
9 than his work with the Rodriguezes?

10 A. Yes. He had his monthly -- his monthly SSI.

11 Q. Okay. Did he have any other jobs that he
12 would do to get some work?

13 A. No. No other jobs.

14 Q. And when Juan passed away, how did your life
15 change?

16 A. Well, I lost everything. I lost my husband.
17 I lost him, just (indecipherable - witness crying).

18 THE COURT REPORTER: I'm sorry, I didn't
19 understand that.

20 A. I said I lost a piece of me.

21 Q. Denise, do you have any fond memories you'd
22 like to share with the jury about Juan?

23 A. He was just -- he was good to me. He had --

24 Q. You need to speak up, Denise.

25 A. He would always just -- he just always had

1 his black coffee. That's all I remember, and his
2 cigarettes, and his cigarettes. I always wanted him
3 to stop smoking, just non-stop chain smoking, but he
4 had a young soul, always joking around with me and we
5 had a lot of fun together. He took care of my
6 daughter and me, his kids, but we'd always joke.
7 That's one thing about him, that he always joked
8 around. We argued, yes. We all argue, but we had a
9 good life.

10 Q. Thank you, Denise.

11 MR. DUFF: I'll pass the witness, Your
12 Honor.

13 THE COURT: Cross-Examination?

14 MR. THOMAS: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. THOMAS:

17 Q. Mrs. Marez, Juan Perez worked seasonally for
18 the Rodriguezes, correct?

19 A. No.

20 Q. So it's your testimony that he worked every
21 day for the --

22 A. Yes.

23 Q. -- the Rodriguezes? Yes?

24 A. Yes.

25 Q. Okay. And so -- well, strike that. When did

1 you meet Mr. Perez?

2 A. I met Mr. -- I knew him my whole life. Well,
3 as long as I knew him, but I started dating him.

4 Q. Yes, I'm sorry, that's a better question.
5 When did you start dating Mr. Perez?

6 A. In 2012, I want to say.

7 Q. Okay.

8 A. On and off.

9 Q. And you got married in August of 2014, is
10 that correct?

11 A. Yes.

12 Q. And where was Mr. Perez working from the
13 months of January and February of 2015?

14 A. He was working for the Rodriguez company.

15 Q. Okay. And why do you believe that, ma'am?

16 A. Because I would see him walk out the door
17 every morning.

18 Q. Okay.

19 A. And he --

20 Q. Did you see any pay stubs from the Rodriguez
21 company?

22 A. Yes, I did. We'd go and cash them.

23 Q. Okay. Do you have any of those pay stubs or
24 anything like that?

25 A. No, I don't. They were left in the house.

1 Q. And your testimony was that he got a phone
2 call the night before and he argued with somebody
3 about getting on the roof?

4 A. He wasn't arguing. He was upset after the
5 phone call and he told me he was upset. He told me he
6 was -- he didn't want to go to work that next morning,
7 but he was going to go anyway.

8 Q. Do you have the phone, any phone records or
9 anything to demonstrate --

10 A. He had a flip phone and I called to get
11 records. They don't keep the records after six
12 months.

13 Q. Who else worked for the Rodriguezes, do you
14 know?

15 A. Well, the whole family.

16 Q. Do you know Rosario Hernandez?

17 A. Yes, I do.

18 Q. How do you know him?

19 A. From Mathis. We all know each other.

20 Q. Okay. Did he work for the Rodriguezes?

21 A. No. He wasn't a truck driver.

22 Q. Okay. So he didn't work there?

23 A. No, he did not.

24 Q. All right.

25 MR. THOMAS: I have no further questions

1 at this time, Your Honor.

2 THE COURT: Additional questions?

3 MR. DUFF: Brief redirect.

4 REDIRECT EXAMINATION

5 BY MR. DUFF:

6 Q. Denise, did Juan work as a truck driver for
7 Rodriguez Trucking?

8 A. Yes, he did.

9 Q. Did he do any other work at Rodriguez
10 Trucking?

11 A. No.

12 Q. Did he do any labor work for the Rodriguezes?

13 A. Yes, uh-huh.

14 Q. And what kind of labor work would he do?

15 A. He would put in poles, like, for the fences
16 sometimes. One time, he was left outside when it was
17 cold and raining, left by himself to put -- dig a
18 post, the hole, so I went and picked him up.

19 Q. Who would you pick up -- or excuse me -- How
20 was Juan paid from the Rodriguezes?

21 A. With their check.

22 Q. And who would pay him?

23 A. Mr. Rodriguez.

24 Q. Would you ever go with him to pick up checks
25 from the Rodriguez family?

1 A. Yes.

2 Q. Who would you receive the checks from?

3 A. From the -- Mr. -- like, Isaac Sr.

4 Q. Did you consider Isaac Rodriguez, Sr. to be
5 Juan's employer?

6 A. Yes.

7 MR. DUFF: Thank you, Your Honor. No
8 further questions.

9 RE-CROSS EXAMINATION

10 BY MR. THOMAS:

11 Q. Did he get on the phone call this time he had
12 to build a fence, according to you, and complain about
13 that?

14 A. Yes. I went and picked him up.

15 Q. So he complained on the phone about that with
16 somebody, too?

17 A. When Isaac -- no. When Isaac Rodriguez, Sr.
18 dropped him off, they left him there. He called me
19 upset to go pick him up.

20 Q. And when was this, ma'am?

21 A. This was a couple months prior to the
22 accident.

23 Q. Okay. You don't know the exact date?

24 A. No.

25 Q. All right. But he didn't quit because he's a

1 truck driver and not a fence builder? He didn't
2 leave? He didn't -- He just kept going back to work?

3 A. He left. He called me to pick him up.

4 Q. Okay. So you and Mr. Perez were married
5 approximately six months, is that right?

6 A. Yes.

7 Q. And you testified you dated him for two
8 years. Was that every day, on and off, or you dated
9 other people during that time?

10 A. No. Six months before that, we were
11 together.

12 Q. So for approximately a year, then, y'all were
13 together?

14 A. Yes, but on and off before.

15 Q. Okay. Thank you.

16 MR. THOMAS: No further questions.

17 THE COURT: Additional questions?

18 MR. DUFF: No further questions, Your
19 Honor.

20 THE COURT: You may -- you may step down.

21 THE WITNESS: Okay. Thank you.

22 THE COURT: Next witness?

23 MR. HILLIARD: Your Honor, at this time,
24 Plaintiff calls Estefana Rodriguez.

25 MR. THOMAS: She's out -- she's the

1 witness that stepped outside, Your Honor.

2 THE COURT: Okay.

3 (Witness into courtroom.)

4 THE COURT: Please, come take a seat
5 right up here.

6 THE WITNESS: Yes, sir.

7 THE COURT: Please, tell us your full
8 name.

9 THE WITNESS: Estefana Rodriguez.

10 THE COURT: And would you spell that for
11 the court reporter.

12 THE WITNESS: E-s-t-e-f-a-n-a, Rodriguez,
13 R-o-d-r-i-g-u-e-z.

14 THE COURT: All right. Thank you very
15 much. I'm going to ask you to go ahead and speak
16 loudly and clearly in the microphone so that we can
17 all hear what you have to say.

18 THE WITNESS: Yes, sir.

19 THE COURT: Counsel?

20 ESTEFANA RODRIGUEZ,
21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. HILLIARD:

24 Q. Good morning, Ms. Rodriguez. My name is Alex
25 Hilliard. I represent Mrs. Denise Marez. Now, I'm

1 going to be asking you a few questions. First of all,
2 did you know Denise's husband?

3 A. Not very well.

4 Q. Had you seen him before?

5 A. Yes. I've seen him before.

6 Q. Had you seen him ever working in a work
7 capacity before?

8 A. He was a truck driver for my father.

9 Q. And your father owns a business, correct?

10 A. Yes.

11 Q. Okay. What's the name of that business?

12 A. It's I&R Rodriguez Trucking.

13 Q. And is I&R Rodriguez Trucking primarily just
14 a trucking company, loading to and from?

15 A. Yes.

16 Q. Okay. What's your occupation?

17 A. I'm his daughter. I would help him with his
18 paperwork.

19 Q. So if you had to give yourself a job title at
20 I&R Trucking, what would it be?

21 A. I was his secretary.

22 Q. And when you say, "his secretary", who are
23 you referring to?

24 A. My father, Isaac Rodriguez, Sr.

25 Q. And Mr. Rodriguez, Sr., is that the only

1 company that he owns?

2 A. Yes.

3 Q. And is it correct that that company is the
4 company that operates on the property which Mrs. Marez
5 (sic) was killed on?

6 A. Mrs. Marez?

7 Q. Sorry. Excuse me. Juan Marez? (sic)

8 A. Mr. Perez?

9 Q. Mr. Perez. I apologize.

10 A. Yes. Yes.

11 Q. And so -- just so the record is clear, and I
12 apologize, is I&R -- I&R Trucking the company that
13 owns the property which Mr. Perez was killed on?

14 A. Okay. Can you -- Can you say that question
15 one more time?

16 Q. Sure. Sure. I'll break it up. So I&R
17 Trucking --

18 A. Yes.

19 Q. -- owns this property, correct, or does
20 Mr. Isaac Rodriguez, Sr. own this property?

21 A. Mr. Isaac Rodriguez, Sr. owns that property.

22 Q. Okay. And this property, me and you, can we
23 have an understanding that we're referring to the
24 property where Mr. Perez was killed in March of 2015?

25 A. Yes, sir.

1 Q. Is that okay?

2 A. Yes, sir.

3 Q. Based on the previous testimony in this case,
4 my understanding is that you showed up to that
5 property at some point during the day that Mr. Perez
6 was killed, is that correct?

7 A. I showed up that morning. I have a key to my
8 father's office, so when I do not work in my regular
9 job, I go to my dad's office and I go do, like, his
10 mail or help him out in his office.

11 Q. Do you do the finances, write the checks to
12 employees?

13 A. Yes. I do help him with that, too, yes, sir.

14 MR. HILLIARD: Your Honor, permission to
15 approach?

16 THE COURT: Yes, sir.

17 Q. (BY MR. HILLIARD) Handing you what's been
18 previously admitted into evidence as PX-16 to Opposing
19 Counsel. Ms. Rodriguez, can you tell me what the
20 documents that we're looking at here on -- and I
21 apologize. Let me give you the copy that actually has
22 an exhibit sticker on it, Ms. Rodriguez. Here you
23 are. I'll take that other one back. Thank you.
24 Ms. Rodriguez, do you recognize these documents?

25 A. Yes.

1 Q. Okay. Is it correct that these are documents
2 which were created and referred to Juan Perez's
3 employment at I&R Trucking?

4 A. Yes. He's self-employed. We don't -- In my
5 father's Rodriguez Trucking, everybody that has been
6 working for him are -- is self-employed.

7 Q. So, ma'am, I just want you to listen to the
8 --

9 A. Oh, yes, sir.

10 Q. -- the question that I ask and I'm going to
11 ask you to answer only that question.

12 A. Yes, sir.

13 Q. And so these documents, they have Juan
14 Perez's name on it, correct?

15 A. Yes, sir.

16 Q. And they're transferring money from I&R
17 Trucking to Mr. Perez as payment for work that he
18 performed, correct?

19 A. Yes. It's a time sheet.

20 Q. Ma'am, in these documents, you'll see, you
21 know, how when you write a check and there's always
22 the line where you can put what the check is for, so
23 you can put "groceries", you can put anything you
24 want. And if you look at this exhibit, the checks
25 that Isaac Rodriguez, Sr. and Rodriguez Trucking wrote

1 to Juan Perez in the "For" underlined space, it says,
2 "Labor", doesn't it?

3 A. Yes, sir.

4 Q. Thank you. Ms. Rodriguez, I want to talk to
5 you about the day of the incident where Mr. Perez was
6 killed. Do you recall that day?

7 A. Yes, I do.

8 Q. And you had referenced it earlier in telling
9 us that you had shown up to the house in the morning,
10 is that right?

11 A. Yes, sir.

12 Q. Now, you also showed up to the house again at
13 another point in the day, I'm assuming, correct?

14 A. No.

15 Q. Okay. So you were at the house all day?

16 A. I was there, yes. Nobody could -- When that
17 accident happened, we couldn't leave.

18 Q. Based on your recollection, Ms. Rodriguez,
19 what time do you think the accident happened?

20 A. Honestly, truly, I don't know, sir.

21 Q. Because you told the San Patricio County
22 Sheriff's Department that you arrived 15 minutes after
23 the incident occurred, is that correct?

24 A. No, sir, I did not. I'm the one that called
25 911. I was inside the office. My father opened the

1 door and he told me, he said, "Juan fell." He says,
2 "Call -- Call the ambulance." I'm the one that called
3 911. When I talked to the lady, she told me that they
4 didn't have an ambulance. They were going to get an
5 ambulance, and then she told me, "Is he breathing?" I
6 said, "I don't know. I'm inside the office." So she
7 told me, "Don't hang up. Go outside. Go look at him
8 and then come back inside", and I did. I went out
9 there and I looked at him, came back inside, and I
10 told her, I said, "I don't think he's alive. His eyes
11 are open and I call him, I said, 'Juan. Juan.' No
12 response." So she said, "We're sending over a sheriff
13 and we're sending an ambulance from another town."

14 So then what I did was I went outside and
15 I waited there so I could see the sheriff pass, come
16 by. Well, the sheriff actually passed, so then I ran
17 to the road so I could wave him back down and he came
18 back. When he came back, he got off and he did CPR on
19 Juan and then that's when he went ahead and said that
20 he had passed away and he asked for me to see if I
21 have -- if we had a sheet so we could cover him, so...

22 MR. HILLIARD: Permission to approach the
23 witness, Your Honor?

24 THE COURT: Yes, sir.

25 Q. (BY MR. HILLIARD) I'm going to show the

1 witness two photographs which have previously been
2 marked as Exhibit PX-7. Ms. Rodriguez, I apologize
3 for having to show you these pictures; however, since
4 you're an eyewitness to this tragic incident
5 occurring, I have to ask you, do these pictures
6 accurately reflect Mr. Perez in the state that you saw
7 him after he fell through the roof?

8 A. Exactly. He was laying flat like that,
9 uh-huh.

10 Q. And do you see the blood coming out of Mr.
11 Perez's eyes and ears or eyes and nose?

12 A. Well, I don't think it -- the way I look at
13 it, it was from his nose because he was back like
14 this.

15 Q. I said, "nose." I apologize.

16 A. So...

17 Q. And, ma'am, do you see in that picture how
18 there's a piece of the roof that's actually under Mr.
19 Rodriguez's (sic) arm?

20 A. No, I don't.

21 MR. HILLIARD: Permission to approach the
22 witness, Your Honor?

23 THE COURT: Yes, sir.

24 Q. (BY MR. HILLIARD) I'm going to show you two
25 more photographs which have been admitted as PX-07.

1 Ms. Rodriguez, do you see on the first photo which
2 depicts -- I'm going to show you one more, as well, in
3 which you can see the plastic.

4 A. Okay. I could see it here, sir.

5 Q. Okay. Based on your recollection and based
6 on these photos, it's clear that Mr. Perez fell
7 through the roof, correct?

8 A. Yes.

9 Q. Okay. And describe for the jury what type of
10 structure was this? Was this a garage? Was it a
11 building?

12 A. I -- I call it a shed. I call it a shed
13 because it -- it's -- I guess they made it back then,
14 like, when they had the -- for the onions when they
15 had, like, I don't know what you call it, where they
16 stored it or they worked with the onions back then a
17 long time ago. So it's just a big ole shed, opened.
18 That's what it is, so...

19 Q. So what was kept in this shed? Was it a
20 storage shed?

21 A. No -- Well, it's open. You could see right
22 through it, you know, so...

23 Q. Ah, so -- so, like, a pavilion? I mean, --

24 A. Yeah. It's, like -- well, yeah, like, an
25 open -- an open pavilion, you know.

1 Q. Does it have an opening on both sides?

2 A. Yes. Yes.

3 Q. And what is underneath that -- that opening?

4 A. It's cement.

5 Q. Understood. And I apologize that my question
6 is not really being clear. I'm trying to figure out
7 what this shed is used to cover on the property. Does
8 it cover trucks? Do you park trucks underneath?

9 A. My father sometimes parks his truck in there,
10 you know, but -- but other than that, you cannot put
11 an 18-wheeler on there. It wasn't built for that.

12 Q. So, ma'am, just based on your recollection,
13 what was the primary purpose of what this shed was
14 used for?

15 A. The shed -- the -- maybe, I mean, I don't
16 think he bought the property because of the shed. I
17 think he got --

18 Q. Ma'am -- ma'am, and I'm going to interrupt
19 you a little --

20 A. Okay.

21 Q. -- because I don't think that you're hearing
22 my question.

23 A. Okay.

24 Q. And it's a very simple question. What was
25 the -- I don't know how to phrase it any differently,

1 ma'am -- what was the shed used for?

2 A. Well, he lived -- he lived there. That was
3 his home.

4 Q. Are you referring to Isaac Rodriguez, Sr.?

5 A. Isaac. Yes, my father, Isaac G. Rodriguez,
6 yes, Sr.

7 Q. Yes, ma'am.

8 A. He -- He got a piece of that shed and he made
9 his -- his home there.

10 Q. And I apologize. That may have been my fault
11 for not understanding. You're saying that that was
12 the home where Mr. Rodriguez, Sr. --

13 A. Yes.

14 Q. -- lived, was the shed?

15 A. Yes.

16 Q. Okay. And we're referring to the same shed
17 that Mr. Perez was --

18 A. Yes.

19 Q. -- working? Okay. Where was the bedroom in
20 this -- in this shed?

21 A. If you're facing it from the road, it's to
22 the right side to the corner.

23 Q. You have the pay stubs or the checks in front
24 of you that went to Mr. Perez, correct?

25 A. Do I have them right here?

1 Q. The pay stubs, the checks that I showed you
2 earlier?

3 A. Yes.

4 Q. Okay. Did you ever write Mr. Perez a check
5 for anything but truck driving?

6 A. No. It was -- no. Yes, I did when they
7 worked on the trucks.

8 Q. Yes, but his work for Mr. Rodriguez, Sr. and
9 the company was primarily related to trucks or --

10 A. Yes.

11 Q. -- truck driving, correct?

12 A. Yes, that's all it was. It was just based on
13 driving and doing some maintenance on the trucks.

14 Q. Had you ever written him a check or have you
15 ever seen a pay stub for Mr. Perez performing work on
16 a roof?

17 A. No.

18 Q. As far as you know, this was the first time
19 that Mr. Perez had ever been asked to do roofing work
20 on this property, correct?

21 A. No, --

22 Q. He had done roofing work --

23 A. -- because he wasn't asked to do roofing.

24 Q. -- before? I understand that that's -- that
25 that's your side of the story.

1 A. Okay.

2 Q. And my question is Mr. Perez working on this
3 shed, that's the first time that he'd ever done work
4 not related to trucks or truck driving, correct?

5 A. Mr. Juan Perez, the only type of work that
6 Mr. Juan Perez did was he would be a -- he was a truck
7 driver and he did work, maintenance, on the truck, and
8 it even shows right here with the paperwork that you
9 just gave me. It even tells you he was the laborer on
10 the trucks, four hours; how much he got paid also.

11 Q. Ma'am, when someone is climbing on a roof --

12 A. Yes, sir.

13 Q. Well -- strike that. First, let me ask you,
14 are you aware of what repair needed to be performed on
15 this shed?

16 A. No.

17 Q. Okay. If I tell you that there was some
18 metal sheets that were being replaced, would that
19 sound approximately adequate that that was the work
20 being performed?

21 A. That morning when I got there, I didn't know
22 there was anybody working on the roof, so...

23 Q. Well, you did tell the San Patricio County
24 Sheriff's Department that when you arrived at the
25 house Mr. Perez was already there and Mr. Rosario was

1 already there, as well, correct?

2 A. No, sir. When I got there, I went straight
3 into the office. I didn't know who was on the
4 property, at all, because I didn't even look for my
5 father neither. I just went straight inside to the
6 office.

7 MR. HILLIARD: Your Honor, --

8 THE COURT: Yes, sir.

9 MR. HILLIARD: -- at this time for
10 purposes of impeachment, I would like to play a
11 previously recorded audio statement which is on
12 Plaintiff's Exhibit list. It has been preadmitted
13 into evidence. I'm just going to play a small portion
14 for the jury, and that Exhibit Number is PX-10.

15 THE COURT: Audio statement of who?

16 MR. HILLIARD: Of this witness, Your
17 Honor.

18 THE COURT: Okay. Any objection,
19 Mr. Thomas?

20 MR. THOMAS: I don't know that that's the
21 proper way to impeach a witness. I believe a witness
22 is entitled to have a chance to hear it or refresh her
23 memory and see if she remembers that or not.

24 THE COURT: Okay. I'll overrule your
25 objection. She can hear it as we do.

1 Q. (BY MR. HILLIARD) Ma'am, do you recall giving
2 a statement to the San Patricio County Sheriff's
3 Department?

4 A. I might have. I might have. I just don't
5 remember anymore.

6 Q. I'm going to play you a small portion of that
7 audio statement --

8 A. Okay.

9 Q. -- right now, and we're going to play it for
10 the jury, as well.

11 A. Okay.

12 (Portion of PX-10 played at this time.)

13 Q. (BY MR. HILLIARD) Ma'am, your statement to
14 the San Patricio Sheriff's County was that Juan Perez
15 was already present and working at the time that you
16 arrived at the house on the date of the incident,
17 correct?

18 A. Well, I -- I believe I said I saw him there,
19 so...

20 Q. Understood. My question to you is that Mr.
21 Perez, as you arrived, was already working at the
22 property?

23 A. I don't know if he was working. I can't tell
24 you that.

25 Q. Ma'am, are you aware that OSHA

1 investigated --

2 A. Yes, sir, I do.

3 Q. So that the court reporter has an easier job,
4 I'm going to ask you if you can let me finish my
5 question --

6 A. Yes, sir.

7 Q. -- before you --

8 THE COURT: All right.

9 Q. -- answer.

10 THE COURT: I can only hear you at one --
11 one of you at a time. The jury can only hear one of
12 you at a time, so let him finish his question, please,
13 and then you can answer. He'll let you finish your
14 answer before he asks the next question.

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you very much.

17 MR. HILLIARD: Thank you.

18 Q. (BY MR. HILLIARD) My question was, do you
19 recall that OSHA investigated this incident relating
20 to Mr. Perez's death?

21 A. Yes.

22 Q. Were you interviewed by the OSHA
23 investigator?

24 A. I don't know; don't remember.

25 Q. You don't recall whether or not an

1 investigator came to the property to do an inspection?

2 A. Yes. I know that somebody did come.

3 Q. Were you present at that time?

4 A. I might have been. I don't remember.

5 Q. Do you recall what the outcome was of the
6 OSHA investigation?

7 A. No, not really.

8 MR. HILLIARD: Permission to approach the
9 witness, Your Honor?

10 THE COURT: Yes, sir.

11 Q. (BY MR. HILLIARD) Showing the witness what
12 has been preadmitted as Plaintiff's Exhibit 1 and
13 Plaintiff's Exhibit 2. And I apologize,
14 Ms. Rodriguez, I'm going to get you a copy that has
15 the exhibit sticker on it. You can keep those up
16 there with you for a moment.

17 Now, first, I'd like to direct your
18 attention to Plaintiff's Exhibit 1, ma'am, this one,
19 and if you'll look at the first page of this -- and
20 I'll represent to you this is the OSHA report. The
21 first page of this document is a check that is written
22 by Isaac G. Rodriguez, Sr., Rodriguez Trucking, to
23 D.O.L. OSHA. Is that correct?

24 A. Yes, sir.

25 Q. And the amount is for \$2,424.00, is that

1 correct?

2 A. Yes, sir.

3 Q. Ma'am, did you write this check?

4 A. Yes, I did.

5 Q. And the purpose of writing this check was
6 because Mr. Rodriguez, Sr. and Rodriguez Trucking had
7 received a safety violation citation from OSHA, is
8 that correct?

9 A. Yes.

10 Q. Okay. That was the fine that OSHA penalized
11 Mr. Rodriguez, Sr. and Isaac Rodriguez Trucking for,
12 correct?

13 A. Yes.

14 Q. And I'd like to direct your attention
15 specifically to what type of citation was issued. And
16 if you could turn --

17 A. Okay, yes, sir.

18 Q. -- if you could turn to -- you'll see on the
19 bottom right, it will say, "Marez" --

20 A. Uh-huh.

21 Q. -- and the last two numbers will be "11."
22 Are you there?

23 A. Yes.

24 Q. Okay. And if you'll see there at the top, it
25 says, "Citation and Notification of Penalty." Do you

1 see that?

2 A. Yes.

3 Q. And then do you see where it says, "Type of
4 Violation, Serious"?

5 A. Yes.

6 Q. And I'm going to go ahead and read for you
7 what type of violation this is as it specifically
8 relates to this incident. It says, "Based on 29
9 CFR...", which stands for Code of Federal Regulation,
10 "... 191 -- apologies -- 191023 Subsection A,
11 Subsection 4, every skylight floor opening and hole
12 shall be guarded by a standard skylight screen or a
13 fixed standard railing on all exposed sides. At this
14 establishment, an employee, open parenthesis,
15 (handyman), closed parenthesis, replacing skylight on
16 the top of the shed roof was exposed to fall hazards
17 of greater than ten feet. The skylights were not
18 guarded." Ma'am, did I read that correctly?

19 A. Yes.

20 Q. Did any sort of protective equipment get
21 installed on the roof after this incident happened?

22 A. I don't know.

23 Q. Have you ever seen a worker performing any
24 sort of roofing activities with fall protection, some
25 sort of latch to prevent you from falling?

1 A. No, because I've never really paid attention
2 to who -- if they work on the roof or not.

3 Q. Do you know if whether part of the inventory
4 at Isaac Rodriguez, Sr.'s company is to have safety
5 equipment, such as fall protection, any sort of
6 latches that can keep you safe on top of a roof while
7 you work?

8 A. Well, I am thinking -- I really don't know
9 what they keep in there, honestly, truly, because they
10 do have a section that he has locked up where they
11 store things in there, and I really don't know what
12 they keep in there, sir.

13 MR. HILLIARD: Your Honor, permission to
14 publish these two exhibits to the jury?

15 THE COURT: Yes, sir.

16 Q. (BY MR. HILLIARD) Ma'am, the property where
17 Mr. Perez was killed, can you tell the jury who owned
18 that property?

19 A. Who owned it?

20 Q. Yes, ma'am.

21 A. Isaac G. Rodriguez, Sr.

22 Q. Can you speak up a little bit, please?

23 A. Isaac G. Rodriguez, Sr.

24 Q. That's -- and is that your father? Correct?

25 A. My father, yes, sir.

1 MR. HILLIARD: Your Honor, I have no
2 further questions for this witness. Pass the witness.

3 THE COURT: Cross-Examination,
4 Mr. Thomas?

5 MR. THOMAS: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. THOMAS:

8 Q. Ms. Rodriguez, did you write the checks for
9 your dad's drivers? Did you pay them?

10 A. Yes, sir.

11 Q. Okay. Do you recall when the last paycheck
12 you wrote for Juan Perez was?

13 A. It was on January 2015.

14 Q. Okay. And you're certain about that?

15 A. Yes, sir.

16 Q. Now, Opposing Counsel asked you about the
17 "labor" written in the memorial or the memo line of
18 the checks, correct?

19 A. Yes, sir.

20 Q. And you answered that that was reflected on
21 the time sheet or the instrument or the document he
22 gave you, "Labor work on trucks"?

23 A. Yes, sir.

24 Q. What kind of labor work on trucks would
25 Mr. Pena do -- or Mr. Perez do? Sorry.

1 A. They did the tires. They did brakes. They
2 did oil changes.

3 Q. Did Mr. Perez, to your knowledge, do any
4 other type of labor on the premises?

5 A. No, sir.

6 Q. Did you ever see Mr. Perez working on a
7 fence, for example?

8 A. No, sir.

9 Q. Okay. Now, you testified, I believe, your
10 father was in the trucking business, correct?

11 A. Yes.

12 Q. Your father is not a roofer or a roof repair
13 business is he?

14 A. No, sir.

15 Q. Okay. And you testified you didn't even know
16 anybody was working on the roof, correct?

17 A. No, sir.

18 Q. In the recorded video where you said that you
19 saw your dad and Mr. Perez talking to the young man,
20 who was the young man you were talking about?

21 A. Rosario Hernandez.

22 Q. And who is he?

23 A. He -- He's a young man that my father
24 sometimes hires to help him around, to do, like, yard
25 work or help him with things around the -- on the --

1 around the home.

2 Q. Was he a truck driver?

3 A. No, he's not a truck driver.

4 Q. Did you ever write him a check for driving
5 trucks or anything?

6 A. No, sir.

7 Q. Did you pay him for other things?

8 A. I didn't. He did.

9 Q. Who is "he"?

10 A. My father, Isaac G. Rodriguez, Sr.

11 Q. And how do you know that?

12 A. Because most of the time, he was the one that
13 would talk to him or look for him when he needed some
14 work done, so -- and I -- and I didn't know when. You
15 know what I mean?

16 Q. That was your dad's decision?

17 A. That was his decision, yes.

18 MR. HILLIARD: Objection, Judge. It's
19 leading.

20 THE COURT: Sustained.

21 Q. (BY MR. THOMAS) So, now, you were showed the
22 OSHA reports by Counsel, correct?

23 A. Yes, sir.

24 Q. And you don't remember if he interviewed you
25 or not?

1 A. He might have, sir. I just don't remember
2 anymore.

3 Q. Did you write that report?

4 A. What report? The report from --

5 Q. The OSHA report that was shown to you. Did
6 you draft -- Did you write that?

7 A. No.

8 Q. Okay. So whoever wrote that report and
9 labeled the -- let me rephrase that. You don't know
10 where that information came from, then, do you?

11 A. No.

12 Q. Inside that report?

13 A. No, sir.

14 Q. Okay. Who would actually, physically pay the
15 drivers, do you remember?

16 A. I would pay the drivers.

17 Q. Was there ever an occasion where Mrs. Marez
18 came and picked up a check from you for Mr. Perez?

19 A. No.

20 Q. Okay. Did you ever see Mrs. Marez come by
21 the shop or anything?

22 A. No, uh-huh.

23 Q. Do you ever remember Mrs. Marez being with
24 Mr. Perez to come pick up the check?

25 A. No.

1 MR. THOMAS: Pass the witness.

2 THE COURT: Additional questions from the
3 Plaintiff?

4 MR. HILLIARD: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. HILLIARD:

7 Q. Ms. Rodriguez, you testified that the memo
8 line on the checks was listed as "labor", correct?
9 And then you just told Opposing Counsel that that
10 primarily related to truck work.

11 A. Yes.

12 Q. Do you remember that -- the checks that you
13 wrote to Mr. Perez?

14 A. Yes.

15 Q. Yes. And it wouldn't -- strike that. It
16 would be fairly often where Isaac Rodriguez, Sr. would
17 call Mr. Perez and ask him to do a particular job on
18 the property, correct?

19 A. I don't know because, like I said, my father
20 does things on his own so I wouldn't know, sir.

21 Q. All right. He does things on his own. He
22 runs his business. He directs his business. If he
23 needs someone to come work on a job, just like you
24 just told Opposing Counsel --

25 A. Yes.

1 Q. -- about Mr. Rosario, --

2 A. Yes.

3 Q. -- he'll call that person and he'll say,
4 "Hey, I got a job for you tomorrow." Correct?

5 A. Yes.

6 Q. We talked about the OSHA report and the OSHA
7 citations that were issued to Isaac Sr. and Rodriguez
8 Trucking. Now, if those documents are in front of
9 you, or you can just confirm for me, the citations
10 were issued to Isaac Rodriguez, Sr. doing business as
11 Rodriguez Trucking, correct?

12 A. Yes.

13 Q. And the address listed on those citations is
14 the same address where Mr. Perez was killed?

15 A. Yes.

16 MR. HILLIARD: No further questions, Your
17 Honor.

18 MR. THOMAS: No questions.

19 THE COURT: You may step down. Yeah,
20 just leave all of those documents there, please.

21 All right. Ladies and gentlemen, we're
22 going to take a short break, about 15 minutes. Be
23 ready to come back in at 10:45.

24 THE BAILIFF: All rise for the jury.

25 (Jury out.)

1 THE COURT: All right. We'll be in
2 recess.

3 (Morning Recess.)

4 THE COURT: All right. Counsel, we have
5 one matter before we bring the jury back in?

6 MR. HILLIARD: Yes, Your Honor.

7 MR. THOMAS: Sure.

8 MR. HILLIARD: Yes, Your Honor. Earlier
9 this morning on the record we had stated that
10 Plaintiff's Exhibit PX-5, PX-9 and PX-11 were agreed
11 to and stipulated to be preadmitted; however, my
12 Co-Counsel has informed me I was mistaken. Plaintiff
13 has withdrawn those exhibits. We would ask the record
14 to so reflect those exhibits as not being introduced
15 into evidence.

16 THE COURT: Five, 9 and 11?

17 MR. HILLIARD: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. THOMAS: Noted.

20 THE COURT: All right. Let's bring the
21 jury back in.

22 THE BAILIFF: All rise for the jury.

23 (Jury in.)

24 THE COURT: All right. Be seated,
25 please. Next witness?

1 MR. HILLIARD: Your Honor, at this time,
2 Plaintiff calls Isaac Rodriguez, III.

3 THE COURT: Isaac Rodriguez, III.

4 Tell us your full name for the record,
5 please.

6 THE WITNESS: Isaac C. Rodriguez, III.

7 THE COURT: And, please, spell all of
8 that for the court reporter.

9 THE WITNESS: I-s-a-a-c,
10 R-o-d-r-i-g-u-e-z.

11 THE COURT: Thank you very much.
12 Counsel?

13 ISAAC C. RODRIGUEZ, III,
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HILLIARD:

17 Q. Mr. Rodriguez, good morning.

18 A. Good morning.

19 Q. My name is Alex Hilliard. I represent the
20 Plaintiff in this case, Denise Marez. I'm just going
21 to ask you a few questions.

22 A. Uh-huh.

23 Q. Now, your Isaac Rodriguez, III, so Mr. Isaac
24 Rodriguez, Sr. is your grandfather, correct?

25 A. (Shaking head.)

1 Q. You have to say --

2 A. Yes, sir.

3 Q. So -- so, two things that will make this
4 process go a lot smoother is if you'll give me an
5 audible yes or no rather than a head nod so the court
6 reporter can take down your answer.

7 A. Yes, sir.

8 Q. And then you are doing a good job, but just
9 let me finish my question before you start answering,
10 okay? Okay?

11 A. Okay.

12 Q. Thank you. Are you familiar with the
13 property where Mr. Perez was killed in March of 2015?

14 A. Yes.

15 Q. Do you know who owned the property at that
16 time in March of 2015?

17 A. The best of my -- The best of my knowledge,
18 my grandfather.

19 Q. Your grandfather, Isaac Rodriguez, --

20 A. Senior.

21 Q. -- Sr? Did you know Mr. Juan Perez or had
22 you ever seen him working at --

23 A. I've seen him driving -- I'm sorry. Sorry.

24 THE COURT: Again, yeah, let him finish
25 his question, please.

1 Q. (BY MR. HILLIARD) That's all right. Had you
2 ever seen Mr. Juan Perez working at your grandfather's
3 property?

4 A. Doing oil changes, changing out fuel filters,
5 oil filters, driving for my grandfather at some point
6 or another.

7 Q. Just so we're clear, it sounds like you had
8 seen him working on this property a few times,
9 correct?

10 A. Well, it is my grandfather's property.
11 I've -- I've grown up there, so seeing him there, you
12 know, wasn't much of a big deal.

13 Q. Right. So while you may have been there
14 frequently, Mr. Perez who would have to travel there
15 for work, that's what my question is directed at. You
16 saw him multiple times, multiple separate days working
17 on your grandfather's property, correct?

18 A. Yes.

19 Q. Okay. And these were all times where
20 Mr. Perez was working on your grandfather's property
21 prior to the incident in March of 2015, correct?

22 A. Yes, sir.

23 Q. It was your father or your grandfather who
24 first informed you that Mr. Perez had been killed on
25 the Defendant's property?

1 A. It was actually my ex-girlfriend.

2 Q. I apologize. When was the first time that
3 you learned that there had been --

4 A. About three days after.

5 Q. Three days after?

6 A. Yes, sir.

7 Q. And what information was conveyed to you
8 about what happened?

9 A. Well, the day -- I guess the day or day of or
10 a day later or whatever, my ex calls me and asks me to
11 see if I was still alive because they heard somebody
12 had passed away. That's when I called my dad and
13 everybody and, well, what was going on, and that's
14 when they informed me about it.

15 Q. So when you say "your dad", you're now
16 talking about Isaac Rodriguez, --

17 A. Junior.

18 Q. -- Jr., who would be the son of Isaac
19 Rodriguez, Sr., correct?

20 A. Yes.

21 Q. I want to go back to something you said. You
22 testified that you grew up on this property. Is that
23 right?

24 A. I grew up, like, not on the property, but I
25 grew up going to the property.

1 Q. Okay. So you spent a lot of time there in
2 your childhood, correct?

3 A. Yes, sir.

4 Q. And I don't mean any offense by this, but how
5 old are you?

6 A. I'm 32.

7 Q. So we're in 2019 right now and this happened
8 in 2015. Let's see, so can we agree that about 28
9 years prior to this incident happening, you know,
10 would be the time that you were alive prior to the
11 incident, correct?

12 A. Yes.

13 Q. Okay. So ever since you can remember as a
14 child as you were frequently on this property, was
15 this shed in existence? Was it there from the first
16 time you can remember?

17 A. Yes, sir.

18 Q. So you don't have a memory when you were nine
19 or ten of it being built or constructed?

20 A. No.

21 Q. Okay. So do you know how long it had been
22 there -- well, strike that. Do you know when this
23 shed was built that Mr. Perez was killed on?

24 A. No, sir.

25 Q. Do you know -- well, I guess, have you heard

1 of whether it was old? Had -- Have you heard whether
2 it was there for a long time before you were born,
3 longer than the 28 years?

4 A. I never asked.

5 Q. Did it look old when you were a child?

6 A. To be honest, I don't recall. Never really
7 paid attention.

8 Q. Have you seen it since this incident
9 happened?

10 A. After it happened? Yes.

11 Q. It was -- It underwent significant repairs
12 and remodeling after this incident happened, correct?

13 A. No. It was going under repair and
14 significant remodeling while the incident happened.

15 Q. Right. That's -- That's what Mr. Perez was
16 tragically working on when he was killed, but my
17 question is this shed looks nothing like it used to
18 today, right?

19 A. Well, the statement you just said was false,
20 too. He was not working on it.

21 Q. Let me ask you about that. Were you an
22 employee of --

23 A. No, sir.

24 Q. Let me finish my question, sir.

25 THE COURT: Please, let him finish the

1 question.

2 Q. (BY MR. HILLIARD) Were you an employee of the
3 business that your grandfather owns?

4 A. No, sir.

5 Q. Were you present at the time of the incident?

6 A. No, sir.

7 Q. When was the last time that you were at the
8 property in March of 2015? How recently had you been
9 to that property?

10 A. I go to that property very often.

11 Q. Very often?

12 A. Yes, sir.

13 Q. Do you recall the last time that you had been
14 to the property in March of 2015 when this incident
15 happened?

16 A. No, sir.

17 Q. Had it been months?

18 A. Couldn't recall.

19 Q. Had it been years?

20 MR. THOMAS: Your Honor, asked and
21 answered.

22 THE COURT: Overruled.

23 Q. (BY MR. HILLIARD) Had it been years, multiple
24 years, since you had visited your grandfather's
25 property in March of 2015 when Mr. Perez was killed?

1 A. No.

2 Q. So --

3 A. It's --

4 Q. -- somewhere in between years and months?

5 A. It's a place of business and it's also my
6 grandfather's house, so I do go visit him and I do go
7 visit. It's more, like, family property, so...

8 Q. Okay. I understand that it may be a
9 Rodriguez family property, but what we're trying to
10 zero down on is what personal knowledge you had about
11 the statement you make that Mr. Perez wasn't working
12 at the time of the incident when he fell through this
13 shed roof and died on the concrete on the Rodriguez
14 family property?

15 A. Because in January, beginning of the year,
16 anybody who is eligible of driving has to go --
17 undergo a drug test. He did not pass the drug test.

18 MR. HILLIARD: Objection, Your Honor.
19 May we approach? First of all, this is nonresponsive.

20 THE COURT: Sustain your objection.

21 MR. HILLIARD: May we --

22 Q. (BY MR. HILLIARD) Mr. Rodriguez, were you
23 interviewed by OSHA after this incident?

24 A. No, sir.

25 Q. Are you aware that OSHA conducted an

1 investigation?

2 A. Yes, sir.

3 Q. And are you aware that OSHA cited Mr. Isaac
4 Rodriguez, Sr. doing business as Rodriguez Trucking?

5 A. Yes, sir.

6 Q. And you're aware that Rodriguez Trucking paid
7 that citation?

8 A. Yes, sir.

9 Q. Do you know what that citation was for?

10 A. No, sir.

11 Q. Would it surprise you to know that it was for
12 a serious safety violation?

13 A. Wouldn't surprise me, at all. I'm very
14 familiar with OSHA. I deal with OSHA on a daily
15 basis.

16 Q. It wouldn't surprise you that it was for a
17 serious safety violation?

18 A. Anything to do with OSHA is a serious
19 violation. It could be anything from a nail sticking
20 out of the wall, a piece of iron that's rusted, could
21 be anything. OSHA takes everything with a serious
22 matter.

23 Q. Exactly. It could be for a roof that had
24 rotted and didn't have any fall protection equipment
25 for an employee working on it, too, right?

1 A. Only if it was employed. The thing is when
2 it's a contract labor, they fall under a total,
3 separate --

4 Q. Exactly. Only if he was employed. That is
5 the only way that OSHA would issue a citation.

6 A. No, sir.

7 Q. That's what you just testified to, to this
8 jury.

9 A. No, sir, I did not.

10 Q. Isn't that true?

11 A. You're twisting my words.

12 Q. You said, "only if employed". Isn't that
13 true?

14 A. The only time OSHA can file any kind of thing
15 against my grandfather for an employee would be if he
16 was an employee. A contractor is supposed to supply
17 his own equipment.

18 Q. Correct. A contractor is supposed to supply
19 their own equipment and that's exactly why Rodriguez
20 Trucking received a citation for the employee safety
21 violation exactly related to --

22 MR. HILLIARD: Your Honor, may I
23 approach?

24 THE COURT: Yes, sir.

25 Q. (BY MR. HILLIARD) -- exactly related to Mr.

1 Perez and the activities that he was performing when
2 he was killed. I'm showing the witness what has been
3 previously admitted as the OSHA citation, Plaintiff's
4 Exhibit No. 2. Sir, do you see that document in front
5 of you?

6 A. Yes, sir, I do.

7 Q. And do you see that that citation is directly
8 related to the fall protection, the roof of the shed
9 that Mr. Perez was working on and the safety issues
10 that existed at the time of the incident in March of
11 2015?

12 A. Yes, sir, but these do not apply to
13 Mr. Perez.

14 Q. In your expert opinion, right?

15 A. He was no longer employed at the beginning of
16 the year. He was no longer allowed on the premises at
17 the beginning of the year. He failed his drug test.

18 MR. HILLIARD: No further questions for
19 this witness.

20 THE COURT: Cross-Examination?

21 CROSS-EXAMINATION

22 BY MR. THOMAS:

23 Q. Mr. Rodriguez, do you have any ownership
24 interest in I&R Trucking?

25 A. No, sir.

1 Q. Do you have any ownership interest in the
2 property that we're talking about?

3 A. No, sir.

4 Q. How are you employed, sir?

5 A. I am employed right now, as of now, through
6 H&V Equipment.

7 Q. Okay. And do you remember where you were
8 working in March of 2015?

9 A. I was working with Scott Makon. (phonetic)

10 Q. Okay. So you're not -- you never -- did you
11 ever work for your grandfather or at this time in 2015
12 were you working for your grandfather?

13 A. No, sir.

14 MR. THOMAS: I have no further questions.

15 MR. HILLIARD: Two quick follow-ups, Your
16 Honor.

17 REDIRECT EXAMINATION

18 BY MR. HILLIARD:

19 Q. You testified that Mr. Perez was not allowed
20 on the property anymore. Do you recall testifying to
21 that just about a minute and a half ago?

22 A. Yes, sir.

23 Q. And I know that you may know what my question
24 is going to be before I finish it, but it really is
25 for purposes of the court reporter because she can't

1 type as we're both talking. So I promise I'll let you
2 finish your answer if you let me finish my question,
3 okay?

4 A. Yes, sir.

5 Q. Is that -- okay. Thank you. At the end of
6 my question, you had said Mr. Perez wasn't allowed on
7 the property anymore. Do you remember that?

8 A. Yes.

9 Q. All right. Which would, I guess, in your
10 expert opinion make him a trespasser? Is that -- Is
11 that what you think was happening?

12 A. Yes, sir.

13 Q. Mr. Rodriguez, the document which I will show
14 to you, again, as Plaintiff's Exhibit No. 2, showing
15 the OSHA citation for a serious safety violation would
16 never be issued if Mr. Perez had shown up on the
17 property as a trespasser, would it have?

18 A. Yes, it would have because it was a death on
19 the property.

20 Q. So --

21 A. Regardless if OSHA -- regardless if anything
22 would have happened, OSHA will show up due to a death.
23 So it doesn't matter who was there or what the problem
24 was. They're just there for the property. They're
25 not there for anybody else. So if he was trespassing

1 on property, that's his deal. He was never called.
2 He wasn't contracted for the work, so for him being on
3 there, on the property, is his own fault.

4 Q. Mr. Rodriguez, do you know what "D.O.L."
5 stands for when I say, "OSHA D.O.L."?

6 A. Why don't you go ahead and tell me?

7 Q. It stands for the Department of Labor. And
8 if, like you said, OSHA will come out for anything
9 whenever there's a death, let's say someone breaks
10 into your house in the middle of the night and they
11 take a few things out of the kitchen and on their way
12 out they tripped and they fall and they break their
13 arm, would you expect OSHA to come out and investigate
14 and determine if there was a safety violation in your
15 doorway?

16 A. No, sir.

17 Q. Exactly, because OSHA doesn't come out for
18 trespassing in criminal matters; they come out for
19 employees in the scope of work, don't they?

20 A. You're really good at twisting shit around,
21 man.

22 MR. HILLIARD: Your Honor, I have no
23 further questions for this witness.

24 THE COURT: Mr. Thomas?

25 MR. THOMAS: No questions, Judge.

1 THE COURT: You may step down.

2 Your next witness?

3 MR. DUFF: Your Honor, Plaintiff's call
4 Isaac Rodriguez, Jr. to the stand.

5 THE COURT: Tell us your full name,
6 please.

7 THE WITNESS: Isaac N. Rodriguez, Jr.

8 THE COURT: And, please, spell all of
9 that for the court reporter.

10 THE WITNESS: Isaac, I-s-a-a-c,
11 R-o-d-r-i-g-u-e-z.

12 THE COURT: Thank you very much.

13 ISAAC N. RODRIGUEZ, JR.,
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DUFF:

17 Q. Good morning, Mr. Rodriguez.

18 A. Good morning.

19 Q. Do you remember me?

20 A. Yes, sir, sure do.

21 Q. I took your deposition a couple of months
22 ago.

23 A. Yes, sir.

24 Q. Okay. You remember our rules when we took
25 the deposition?

1 A. Kind of have an idea, but, nah, I don't
2 remember everything, you know. You got it in front of
3 the papers; I don't.

4 Q. Got it.

5 A. Go ahead.

6 Q. We'll go through some of those papers, okay?

7 A. Okay.

8 Q. But like the deposition rules, let me ask you
9 a question and then go ahead and give your response
10 whenever I'm done asking the question, okay?

11 A. Yes, sir.

12 Q. Mr. Rodriguez, where do you currently reside?

13 A. 9042 FM 666, Mathis, Texas.

14 Q. And your father is Isaac G. Rodriguez, Sr.,
15 correct?

16 A. Yes, sir.

17 Q. And that was your son that just testified a
18 minute ago?

19 A. Yes, sir.

20 Q. Where does your father currently reside?

21 A. I think at 9082 or something like that. I'm
22 not too sure about his address.

23 Q. 9692 County Road 80--

24 A. I guess, I --

25 THE COURT REPORTER: I'm sorry.

1 A. I guess that's --

2 THE COURT REPORTER: Too fast.

3 THE COURT: All right. Y'all, both of
4 you, you need to slow down. Again, Mr. Rodriguez, let
5 him finish --

6 THE WITNESS: Yes, sir.

7 THE COURT: -- the question. He'll let
8 you finish your answer. I can only hear one of you at
9 a time. I suspect the jury is the same way.

10 THE WITNESS: Yes, sir.

11 THE COURT: They can only hear one of you
12 at a time.

13 THE COURT REPORTER: Repeat, please.

14 MR. DUFF: Okay. Yes.

15 Q. (BY MR. DUFF) Your father resides at 9692
16 County Road 803, correct?

17 A. Yes, sir.

18 Q. Do you own a trucking company?

19 A. Yes, sir.

20 Q. What's the name of that trucking company?

21 A. Isaac Rodriguez, Jr. Trucking.

22 Q. Who owns Rodriguez Trucking?

23 A. My dad.

24 Q. Do you have any ownership interest in Isaac
25 Rod--

1 A. No, sir.

2 Q. Do you have any ownership interest in
3 Rodriguez Trucking?

4 A. No, sir.

5 Q. Does your father have any ownership interest
6 in Isaac Rodriguez, Jr. Trucking?

7 A. No, sir.

8 Q. How did you hear about Juan Perez passing
9 away?

10 A. I was at the house and my sister, Estefana
11 called me and -- that Juan fell down. So I really
12 didn't want to go because maybe he just fell down.
13 And I said, "Well, maybe he broke a leg or something",
14 you know. That's when I went over there and then I
15 showed up and he was laying on the cement.

16 Q. Did you say you were at your house?

17 A. Yes, sir.

18 Q. You were at your house when you found out
19 that Juan had fallen?

20 A. Yes, sir.

21 Q. And you said that your sister, Estefana
22 Rodriguez, called you to tell you?

23 A. Yes, sir.

24 Q. Did you know we took her deposition in this
25 case?

1 A. I guess, yes, sir.

2 Q. Do you know what number she called you from?

3 A. I don't look at my phone. It just says,
4 "Estefana Rodriguez" on the phone.

5 Q. And you spoke with her on the phone?

6 A. Yes, sir.

7 Q. Would it surprise you to learn that she
8 testified in her deposition that she never called you
9 to tell you about Juan Perez's death?

10 A. Maybe she forgot; long time ago.

11 Q. Fair enough. When you arrived to the scene,
12 who was all present?

13 A. My sister, me. I don't remember too good,
14 and, I think, like I said, I might, but I think the
15 Sinton guys, investigators, were there, and I think
16 that the judge -- a judge was there.

17 Q. Did you give a statement to any police
18 officers that day?

19 A. I don't remember. The only thing that I told
20 the judge, that he needs to do a drug -- drug test on
21 this guy because he does a lot of drugs.

22 Q. Excuse me?

23 A. I told that judge he needed a drug test.

24 Q. Okay.

25 A. Juan.

1 Q. Let's talk about that, Mr. Rodriguez.

2 A. Go ahead.

3 Q. Are you any kind of medical expert?

4 A. Sir, you don't have to be a scientist to
5 know.

6 Q. Okay. Are you a scientist, sir?

7 A. No, sir.

8 Q. Okay.

9 A. Like I said, you don't have to be a
10 scientist.

11 Q. Okay. Did you see Mr. Perez take any drugs
12 that morning?

13 A. No, sir.

14 Q. Okay.

15 A. I know he does.

16 MR. DUFF: Okay, Your Honor, we'd like
17 that -- Objection. Jury instructed to disregard that
18 statement.

19 THE COURT: Sustain your objection. The
20 jury is instructed to disregard the response that was
21 given was not to the question that was asked.

22 MR. DUFF: Your Honor?

23 THE COURT: Please, answer the questions
24 that are asked.

25 THE WITNESS: Well, he said if I knew

1 about drugs, so I answered his question.

2 THE COURT: That's a yes or no question.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you.

5 MR. DUFF: Your Honor, several of the
6 pretrial orders have been violated already to this
7 point. We'd like, at least, Opposing Counsel to
8 instruct his clients and witnesses to remind them of
9 your pretrial orders before they testify.

10 THE COURT: I'm reminding you to listen
11 carefully to the question --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- and just answer the
14 question that's asked. If it is a yes or no question,
15 yes or no should be sufficient.

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you very much.

18 Q. (BY MR. DUFF) Mr. Rodriguez, in your
19 deposition testimony, you testified that you own a
20 trucking company called Rodriguez Trucking. Do you
21 recall that?

22 A. Yes, sir.

23 Q. Okay. So you own Rodriguez Trucking?

24 A. Isaac N. Rodriguez, Jr. Trucking.

25 Q. I'm specifically asking about Rodriguez

1 Trucking?

2 A. No, sir.

3 Q. Mr. Rodriguez, I'd like to show you part of
4 your deposition testimony. You can't see that, can
5 you? Can -- Can you see the screen, Mr. Rodriguez?

6 A. Ain't no way. The screen's over there. I'm
7 over here.

8 Q. Okay.

9 MR. DUFF: May I approach the witness,
10 Your Honor?

11 THE COURT: Yes, sir.

12 Q. (BY MR. DUFF) Mr. Rodriguez, I took your
13 deposition on January 21st, 2019.

14 A. Okay.

15 Q. Do you recall that?

16 A. Yes, sir, I guess.

17 Q. You gave the truth in that deposition?

18 A. Yes, sir.

19 Q. You didn't lie to me, at all?

20 A. No, sir.

21 Q. You see right here on page seven, line seven,
22 I said, "Okay. Mr. Rodriguez, do you own a trucking
23 company?"

24 "Yes."

25 "What's the name of that trucking company?"

1 "Rodriguez Trucking."

2 Did I read that correctly?

3 A. Yes, sir.

4 Q. So you do own Rodriguez Trucking?

5 A. Junior, because my D.O.T. number, has -- you
6 go by your D.O.T. numbers. You don't go by just the
7 name.

8 Q. Do you do business as Rodriguez Trucking?

9 A. Isaac Rodriguez, Jr. --

10 Q. Okay.

11 A. -- Trucking.

12 Q. So, did you lie to me in your deposition or
13 are you lying to me now?

14 A. No, I'm not lying to you, at all.

15 MR. THOMAS: Objection, Your Honor,
16 arguing with the witness.

17 A. It's just different. Rodriguez Trucking is
18 Rodriguez Trucking, but you go by -- you go by your
19 D.O.T. numbers.

20 Q. Okay. So you go by Rodriguez Trucking?

21 A. Isaac Rodriguez, Jr.

22 Q. Okay. So were you untruthful with me --

23 A. It's almost same thing, Rodriguez Trucking,
24 Isaac Rodriguez.

25 THE COURT: Mr. Rodriguez, again, please,

1 let him finish the question.

2 THE WITNESS: Okay.

3 Q. (BY MR. DUFF) Mr. Rodriguez, did you testify
4 in your deposition that you own a trucking company
5 called Rodriguez Trucking, yes or no?

6 A. Yes, sir.

7 Q. Okay, thank you. Mr. Rodriguez, did you know
8 that OSHA came out to inspect Juan Perez's death?

9 A. I heard.

10 Q. Do you know what OSHA is?

11 A. Not really, sir.

12 Q. You're not familiar with them?

13 A. No, sir.

14 Q. As the owner of Rodriguez Trucking, you would
15 store trucks at your father's property, wouldn't you?

16 A. When -- when it rained.

17 Q. So, on the date of Juan's death, you had
18 trucks stored there, didn't you?

19 A. I -- yes, sir.

20 Q. So that's kind of where you keep some
21 trucks --

22 A. No, sir.

23 Q. Excuse me, sir. Let me finish.

24 A. Okay.

25 Q. You would keep trucks at that property as a

1 side lot for your Rodriguez Trucking company, wouldn't
2 you?

3 A. Just when it rained.

4 Q. Okay. And is that a "yes" that you would
5 keep your trucks there?

6 A. When it rained.

7 Q. Yes?

8 A. After that, I keep it at the house. I got my
9 own yard.

10 Q. Okay. I need a yes or no to my question,
11 sir. You can add "when it's raining" or not.

12 A. That, I can't really get. What do you mean?

13 Q. Would you store your Rodriguez Trucking
14 trucks at your father's property?

15 A. But what do you mean, like, store?

16 Q. Would you leave them parked there?

17 A. Yes.

18 Q. Okay. Do you recall talking about OSHA
19 during your deposition?

20 A. Not really.

21 Q. Okay. We went through the OSHA citations and
22 you've been in here all day today, right?

23 A. Yes, sir.

24 Q. You've seen the OSHA citations that we've
25 been talking about?

1 A. I didn't see anything.

2 Q. Okay.

3 MR. DUFF: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes, sir.

6 Q. (BY MR. DUFF) Recalling Plaintiff's Exhibit
7 1, and it's actually the OSHA citation that's right
8 here in front of you, okay?

9 A. Okay.

10 Q. So Plaintiff's Exhibit 1 is to your left and
11 Plaintiff's Exhibit 2 is to your right. Do you see
12 those?

13 A. Okay.

14 Q. Do you see those documents in front of you,
15 sir?

16 A. Yes, sir.

17 Q. Okay. On Plaintiff's Exhibit 2, do you see
18 where it says, "Serious violation committed by
19 Rodriguez Trucking"?

20 A. I guess so, yes, sir.

21 Q. Were you there when OSHA did the inspection?

22 A. I ain't got glasses.

23 THE COURT: He asked, "Were you there
24 when OSHA did their inspection", --

25 THE WITNESS: Oh.

1 THE COURT: -- I think was the question.

2 THE WITNESS: No, sir.

3 Q. (BY MR. DUFF) Do you need some glasses to be
4 able to read that, sir?

5 A. Yes, sir.

6 Q. Do you have glasses in this room with you?

7 A. Let me see there.

8 THE COURT: Was that your question?

9 Q. (BY MR. DUFF) Do you have glasses?

10 A. No. What was the question anyways?

11 Q. Sir, do you need glasses to be able to read
12 that document?

13 A. What was the answer?

14 Q. Can you read that document, sir?

15 A. Okay. Who -- What was the question, first
16 question, that you told me first?

17 Q. Can you read that document?

18 A. What was the question?

19 Q. That is my question.

20 A. Yeah, if I got glasses I can read it.

21 Q. Can you read it without glasses, sir?

22 A. Let me see. Yes, sir.

23 Q. Okay. Do you see that Rodriguez Trucking was
24 cited for a serious violation there? Correct?

25 A. Yes, sir.

1 Q. It says that, "an employee or handyman was
2 replacing the skylights on the top of the shed roof
3 and exposed to fall hazards of greater than ten feet
4 and skylights were not guarded", correct?

5 A. Yes, sir.

6 Q. Do you think OSHA did a proper investigation?

7 A. I wasn't there. I don't know. I'm not
8 familiar with that, at all.

9 Q. Do you recall in your deposition giving
10 testimony about OSHA?

11 A. Sir?

12 Q. Do you recall giving testimony about OSHA
13 during your deposition?

14 A. Maybe he fall, sir. Maybe he did; maybe he
15 didn't. I don't know.

16 MR. DUFF: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes, sir.

19 Q. (BY MR. DUFF) Recalling Isaac N. Rodriguez,
20 Jr.'s deposition January 21st, 2019, page 21, line 6.

21 A. Okay.

22 Q. Sir, what did you say in response to my
23 question about OSHA?

24 A. Where is line 6? Oh, yeah.

25 Q. Tell the jury what you said.

1 A. Yeah, that they were lying because I said I'm
2 not familiar with OSHA, at all.

3 Q. So OSHA was lying, according to you?

4 A. Yes, sir, that's what I said.

5 Q. Did you also say that OSHA didn't do its due
6 diligence to properly investigate this incident?

7 A. Yes, sir, because I'm not familiar with OSHA,
8 at all. I'm just saying my opinion.

9 Q. And where does that opinion come from?

10 A. (Witness pointed.)

11 Q. Let the record reflect the witness pointed to
12 his head.

13 A. Yes, sir.

14 Q. Okay. Mr. Rodriguez, I'm going to show you
15 what's been previously admitted as Plaintiff's Exhibit
16 13.

17 MR. DUFF: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes, sir.

20 Q. (BY MR. DUFF) Here you go, sir. Can you tell
21 the jury what we're looking at here?

22 A. The shed.

23 Q. Is that your father, Isaac Sr.'s property?

24 A. Yes, sir.

25 Q. The one where Juan Perez was killed at?

1 A. Yes, sir.

2 Q. We see a bunch of tractor-trailers here in
3 this picture. Are some of these yours?

4 A. Yes, sir.

5 Q. Do you know which ones are yours?

6 A. Not really. I got -- I need my -- let me
7 see. I need glasses.

8 Q. Does someone have glasses I can get for you?

9 A. Yeah.

10 UNIDENTIFIED SPEAKER: Can you see with
11 my glasses?

12 THE WITNESS: Let me see those.

13 MR. DUFF: Your Honor, may I approach?

14 THE COURT: Yes, sir.

15 (Glasses handed to witness.)

16 THE WITNESS: Let me see.

17 (Witness reviewing exhibit.)

18 THE WITNESS: I guess I got to see them
19 closer because I can't -- I still can't -- I mean, I
20 see them.

21 Q. (BY MR. DUFF) So, by the color of them,
22 you're not able to determine which ones are yours?

23 A. No, sir, because some are the same color.

24 Q. Okay. How many trucks did your father have
25 in 2015?

1 A. Oh, I think he had one, two, three -- four.
2 I think he had four.

3 Q. And what about you, how many did you have in
4 2015?

5 A. Five.

6 Q. How many trucks do you see in this picture?

7 A. Seven.

8 Q. Did Rodriguez Trucking own all seven of those
9 trucks?

10 A. No, sir.

11 Q. Okay. Which Rodriguez Trucking company --
12 scratch that. The Rodriguez Trucking company that you
13 said you testified that you own, owns several trucks,
14 right?

15 A. Junior, yeah.

16 Q. Okay. So if there's Rodriguez Trucking,
17 there's also Rodriguez, Jr. Trucking, right?

18 A. Same thing.

19 Q. Okay. You have trucks that are registered to
20 you?

21 A. Yes, sir.

22 Q. And they're parked on your father's property?

23 A. Yes, sir. When it rains, I park them there.

24 Q. And he also goes by Rodriguez Trucking, too,
25 doesn't he?

1 A. No, sir.

2 Q. Your father's never gone by Rodriguez
3 Trucking?

4 A. I&R Rodriguez.

5 Q. Is it raining in this picture here?

6 A. No, but if it rained and then I park them
7 here because my -- where I live is black dirt. It
8 kind of takes awhile to dry up.

9 Q. When you arrived to the property on the date
10 of Juan's death, did you see Mr. Perez?

11 A. Yes, sir.

12 Q. Was he breathing at all when you saw him?

13 A. Sir, I didn't -- I didn't get close to him.
14 That -- That investigator and everybody were there. I
15 didn't get to ask them.

16 Q. Was Mr. Perez, was he covered in a sheet at
17 that time?

18 A. I don't remember, sir.

19 Q. Did you look at the ceiling or the metal
20 roof?

21 A. No, sir.

22 Q. Mr. Rodriguez, who lives next-door to your
23 father?

24 A. Where is it, right or left?

25 Q. If we're looking at this picture, to the

1 right?

2 A. Well, anyways, one -- one side my sister
3 lives and my other side my -- my niece lives there.

4 Q. So the picture I handed you, on the right
5 side, who lives there?

6 A. Depends on the right. My sister, Dalia.

7 Q. Okay. And then the big building in the
8 center, who lives there?

9 A. My dad.

10 Q. And that's the property where Juan fell to
11 his death, --

12 A. Yes, sir.

13 Q. -- right? That's where Rodriguez Trucking
14 does its business at, right?

15 A. Yes.

16 MR. DUFF: Thank you, Your Honor. I'll
17 pass the witness.

18 THE COURT: Cross?

19 MR. THOMAS: No, Your Honor, no
20 questions.

21 THE COURT: You may step down. Thank
22 you. Just leave all those documents right there,
23 please.

24 (Witness steps down.)

25 THE COURT: Next witness?

1 MR. HILLIARD: Your Honor, may we
2 approach just briefly?

3 THE COURT: Yes, sir.

4 (Bench conference as follows:)

5 MR. HILLIARD: Judge, one of the
6 witnesses is going to require a translator. She's
7 going to be present after lunch.

8 THE COURT: Okay.

9 MR. HILLIARD: Is there any way we can
10 have an early lunch break and, I mean, reconvene --

11 THE COURT: Okay. How many more
12 witnesses do we have?

13 MR. DUFF: Two.

14 MR. HILLIARD: Two.

15 THE COURT: Extensive witnesses or not
16 very --

17 MR. HILLIARD: Probably rest today at the
18 end of the day.

19 THE COURT: Okay. All right.

20 All right, we'll take a recess.

21 (Bench conference concluded.)

22 THE COURT: All right. Ladies and
23 gentlemen, we do have someone we're waiting on. It's
24 on me, so we're going to recess a little bit early.
25 We're going to take a lunch break until 1:15. Be

1 ready to come back in at 1:15, all right. Leave all
2 your notes there. Please, keep on your juror badges
3 so that as you're out, folks will recognize you as
4 jurors and not ask you about anything that's going on
5 here, hopefully. Be back here at 1:15.

6 THE BAILIFF: All rise for the jury.

7 JUROR: What was the last thing you said?

8 THE COURT: Be back here at 1:15.

9 JUROR: Oh.

10 (Jury out.)

11 THE COURT: All right. We'll be in
12 recess until 1:15. At one o'clock, Judge Bauer is
13 going to be in here. She's got a short public hearing
14 that she's going to be conducting. That will take
15 about 45 seconds probably, hopefully.

16 MR. THOMAS: Very good.

17 MR. HILLIARD: We'll tidy up here, Your
18 Honor, so that if there's Counsel that needs to be --

19 THE COURT: Actually, there's not going
20 to be any Counsel there. It's just at the Bench.
21 It's regarding some statutorily required auditor and,
22 I think, court reporter salary hearings, so don't need
23 to move anything out. Once everybody is cleared out
24 of the courtroom, the bailiff will lock everything up
25 so you can leave things, if you'd like.

1 MR. HILLIARD: I'm just going to take two
2 minutes, Judge, and get our exhibits, make sure we
3 have everything that we've introduced.

4 THE COURT: Okay, that's fine. Yeah, I'm
5 not rushing you out, just want to make sure that you
6 know that we will be locking up the courtroom while
7 we're on break.

8 MR. HILLIARD: Yes, Judge.

9 (Lunch Recess.)

10 (Proceedings resume as follows:)

11 THE COURT: All right. Outside the
12 presence of the jury, we've got Counsel back.

13 Had some matter to visit with us?

14 MR. HILLIARD: Quick and short matter, so
15 we can get the jury back, Your Honor.

16 THE COURT: Yeah.

17 MR. HILLIARD: A few of the witnesses
18 that we were questioning clearly came into the
19 courtroom with something to proffer, albeit, in my
20 opinion, it was nonresponsive to the question that we
21 were asking, certain testimony that the Court had
22 excluded in pretrial motion practice. It seems like
23 that was the intent that -- that the jury hear it.
24 Therefore, Counsel for Plaintiff is -- I want to tread
25 lightly as we go into our next witnesses because I

1 anticipate that there will be -- that both of the
2 witnesses this afternoon may decide that they would
3 also like to proffer a non-responsive answer to a
4 question which violates the Motion in Limine, Judge.
5 And to be honest with you, I could show you the
6 specific rulings which would exclude any mention of a
7 drug test, and we also have a Motion in Limine, which
8 was agreed to, that says any request for production
9 that we had made to Defendants for an employee file
10 and documents contained therein, which would have a
11 drug test in it, and if that was not produced to us,
12 you can't reference it. And that would be another
13 reason why this, you know, any testimony about this --
14 this alleged drug test should be completely,
15 completely excluded. And at this point, we're going
16 to ask the Court to either admonish the witnesses to
17 follow the Court's rulings or ask Counsel if the
18 witness is under the control of Defendants to inform
19 the witnesses as to the Court's ruling so that they
20 don't go awry, because, Judge, it's getting -- it's
21 getting close to stepping over a line that's way too
22 far.

23 THE COURT: Mr. Thomas?

24 MR. THOMAS: Your Honor, the question was
25 propounded by Plaintiff's Counsel that was answered

1 that way. That was -- the Motion in Limine asks, I
2 think, us not to bring up anything without approaching
3 the Bench. I didn't ask the question, Your Honor.
4 And I believe also that while it may be a
5 technicality, the witness said, "I told the medical
6 examiner" or "I told the judge that they needed to do
7 a blood test." They didn't refer to any results of
8 any blood test or anything like that. There is no
9 intent on behalf of the Defense or anybody like that
10 to violate the Court's order, that's for sure.

11 THE COURT: Well, I think it was fairly
12 clear from my view of their testimony and what I heard
13 that they did have an agenda that they wanted to
14 advance; not only they wanted to, regardless of what
15 the question was, have certain things said in court in
16 front of the jury, I finally had to step in and say,
17 "Listen to the question. Answer the question. If
18 it's a simple yes and no, answer yes and no." Your
19 job would be to follow up, if necessary, on any of
20 those. My rulings were pretty clear on the Motion in
21 Limine. That stuff needs to be out. I'm not going to
22 parse particular about whether or not it's the autopsy
23 or some other drug screen. That all was determined to
24 not be relevant pursuant to the agreement and what was
25 agreed to be brought in. Hopefully --

1 MR. THOMAS: I thought that was clear to
2 my clients, Judge, and to the witnesses, Your Honor,
3 as well.

4 THE COURT: Well -- okay.

5 MR. THOMAS: Perhaps I didn't speak with
6 every single one of them. I'll have to review that.

7 THE COURT: Well, I'm just warning you
8 that if we get into it, again, I may wind up needing
9 to be a bit more harsh in my admonishments to the jury
10 and what I remind your clients or any witness about
11 what they can get into, what they can't get into and
12 how their testimony could ultimately be excluded if it
13 comes to that point, so...

14 MR. THOMAS: Very good.

15 THE COURT: All right. Thank you very
16 much.

17 MR. HILLIARD: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. THOMAS: Let me just visit with
20 everyone, again, to make sure they understand what it
21 is.

22 THE COURT: Okay. Let me let you do that
23 while Ms. Gebert's getting herself ready.

24 (Pause while Defense Counsel addresses
25 audience off the record.)

1 MR. THOMAS: I'll talk to my witnesses
2 outside.

3 THE COURT: Thank you very much,
4 Mr. Thomas.

5 (Defense Counsel exits courtroom.)

6 (Brief Recess.)

7 (Defense Counsel re-enters courtroom.)

8 THE BAILIFF: Ready?

9 THE COURT: Yeah. Are we all ready to
10 have the jury brought back in?

11 MR. DUFF: Yes, Your Honor.

12 THE COURT: All right. Bring them in.
13 Ms. Gebert, are you ready? Are you all set?

14 THE INTERPRETER: Yes, Your Honor. I
15 couldn't get my equipment to work, Your Honor, so if
16 you don't mind, I'll do it without it.

17 THE COURT: That's fine, if you're
18 comfortable.

19 THE BAILIFF: All rise for the jury.

20 (Jury in.)

21 THE COURT: Yes, ma'am?

22 THE INTERPRETER: I've just been informed
23 that he's hard of hearing and I'm going to have to
24 raise my voice at him, so...

25 THE COURT: Be seated, please. It's not

1 going to disturb me; whatever you need to do.

2 THE INTERPRETER: Thank you, sir.

3 THE COURT: Okay. Next witness?

4 MR. DUFF: Yes, Your Honor. Plaintiff
5 calls Rosario Hernandez to the stand.

6 MR. THOMAS: He's in the hallway, Your
7 Honor.

8 THE COURT: Go get him, please, Robert.

9 (Witness into courtroom.)

10 THE COURT: Have you been sworn in as a
11 witness, yet?

12 THE WITNESS: No, sir.

13 THE COURT: All right. Please, raise
14 your right hand and take this oath.

15 (Witness sworn in.)

16 THE COURT: Very good, thank you.
17 Please, come have a seat up here. Tell us your full
18 name, please.

19 THE WITNESS: Rosario Hernandez.

20 THE COURT: And, please, spell that for
21 the court reporter.

22 THE WITNESS: R-o-s-a-r-i-o,
23 H-e-r-n-a-n-d-e-z.

24 THE COURT: All right. I'm going to ask
25 you to, please, pull that microphone closer to you or

1 lean into it, speak loudly and clearly into the
2 microphone so that we all can hear what you have to
3 tell us.

4 THE WITNESS: Okay.

5 THE COURT: Counsel, you may proceed.

6 ROSARIO HERNANDEZ,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. DUFF:

10 Q. Good afternoon, Mr. Hernandez. Can you hear
11 me?

12 A. Yeah.

13 Q. I need you to speak up for the jury, okay?

14 A. Okay.

15 Q. My name is John Duff. I'm one of the
16 attorneys that represents Denise Marez to my right.

17 A. Yes.

18 Q. Do you understand who I am?

19 A. Yeah.

20 Q. Okay. I'm going to ask you a couple of
21 questions today. I want you to listen carefully to
22 the questions I'm asking you. Please, give a response
23 to the whole question I'm going to be asking you,
24 okay?

25 A. Okay.

1 Q. What is your full name?

2 A. Rosario Hernandez.

3 Q. Where do you currently reside?

4 A. Like, what do you mean, like?

5 Q. Where do you live?

6 A. Right now, I live in Mississippi.

7 Q. How long have you lived in Mississippi?

8 A. I moved there about a month ago.

9 Q. And before that, where did you live?

10 A. In Mathis. Mathis, Texas.

11 Q. Mr. Marez -- excuse me -- Mr. Hernandez, did
12 you know that we were trying to get your deposition
13 scheduled before this trial?

14 A. Like, what is it that you mean, like?

15 Q. We wanted to sit down and talk with you
16 before this trial started.

17 A. Well, I never got a hold of nobody. Nobody
18 called me either.

19 Q. No one reached out to you or anything?

20 A. No, sir.

21 Q. Did you used to work with the Rodriguez
22 family?

23 A. Yes, off and on.

24 Q. When was the last time you worked with them?

25 A. More or less, I'm not too sure, say, a couple

1 of -- actually, it was about before I left back to
2 Mississippi.

3 Q. When was that?

4 A. Say about two weeks ago.

5 Q. The last time you worked with them was --

6 A. Yeah, worked just for the one day.

7 THE COURT: Let me ask you, let him
8 finish his question, please.

9 THE WITNESS: Okay.

10 THE COURT: Then you can answer. Thank
11 you.

12 Q. (BY MR. DUFF) So you worked with them about
13 two weeks ago?

14 A. Yeah.

15 Q. And how long have you been working with the
16 Rodriguez family off and on?

17 A. I say about four years or so.

18 Q. Were you working for them in 2015?

19 A. Yes.

20 Q. What about 2014?

21 A. That I recall, I think so.

22 Q. Who would you consider your direct supervisor
23 to be?

24 A. Like?

25 Q. Who is your boss at Rodriguez Trucking?

1 A. Mr. Rodriguez.

2 Q. Is that Rodriguez Sr.?

3 A. Yes.

4 Q. Did you know Juan Perez?

5 A. By saying -- the only way I knew him, it
6 was -- 'cause of the -- my friend that would lease to
7 pick up the grain. Well, I used to live where my mom
8 lives at, they used to go and just grab coffee from
9 mom, from my mom's house. That's the only time I knew
10 him.

11 Q. So you weren't friends with him, at all?

12 A. No.

13 Q. And you're from Mathis?

14 A. Yeah.

15 Q. So have you known him most of your life?

16 A. No. No, sir.

17 Q. Do you know Denise Marez?

18 A. Yeah.

19 Q. You message her on Facebook a couple weeks
20 ago?

21 A. Actually, she's the one who messaged me.

22 Q. So were you messaging with Denise a couple
23 weeks ago?

24 A. No. I didn't message her back.

25 Q. At all?

1 A. Not that I recall.

2 Q. Sir, are you on anything today that might
3 affect your ability to testify truthfully?

4 A. No, sir.

5 Q. Mr. Hernandez, are you being paid to be here
6 today?

7 A. No, sir.

8 Q. You're not being compensated for your time?

9 A. No, sir.

10 Q. Were you paid for any travel to come here
11 from Mississippi?

12 A. No, sir.

13 Q. How did you get here from Mississippi, then?

14 A. I got me a job up there.

15 Q. And what do you do in Mississippi?

16 A. I work for -- actually, used to be a law
17 enforcement, so that's who I'm working for right now.
18 He's retired law enforcement.

19 Q. What do you do for him?

20 A. Like, construction and remodeling houses and
21 stuff like that.

22 Q. What's his name?

23 A. I know him by Foster.

24 Q. Is that a first name or a last name?

25 A. That's his last name.

1 Q. What's his first name?

2 A. I'm not too sure on his last -- his first
3 name.

4 Q. How much are you getting paid to work with
5 Mr. Foster?

6 A. Ten dollars an hour.

7 Q. Did you drive here from Mississippi?

8 A. Yeah.

9 Q. You got -- your car is here? Your car is
10 here in town?

11 A. Yes.

12 Q. What kind of car do you have?

13 A. It's a Jeep.

14 Q. Did you ever live in Arizona at anytime?

15 A. No, sir.

16 Q. Have you visited Arizona?

17 A. Yeah.

18 Q. Recently in the past four years?

19 A. No, sir.

20 Q. Mr. Hernandez, you were with Juan Perez on
21 the day he passed away, correct?

22 A. Correct.

23 Q. You were working at Rodriguez Trucking?

24 A. I wasn't driving. I was there just, like, to
25 do maintenance work. That's about it.

1 Q. Okay. You were doing maintenance work --

2 A. Yeah, that's all I do for him.

3 Q. -- for Rodriguez Trucking? Let me finish my
4 question.

5 A. Okay.

6 Q. You were doing maintenance work for Rodriguez
7 Trucking?

8 A. Yes, sir.

9 Q. It was on property that Isaac Sr. owns,
10 correct?

11 A. Correct.

12 Q. Is that 9692 County Road 803?

13 A. Yes, sir.

14 Q. Would you work there all the time that you
15 worked with Rodriguez Trucking?

16 A. It was mainly there and, like, other houses
17 that he had to get, like, stuff fixed and stuff like
18 that. That's the only time that I will do.

19 Q. What other houses are those?

20 A. Like, the houses that he's got, that he's got
21 for rent.

22 Q. Do you know the address for them?

23 A. No, sir.

24 Q. Juan Perez was with you at Rodriguez Trucking
25 on the day he passed away, correct?

1 A. Correct.

2 Q. You knew he was there, right?

3 A. Correct.

4 Q. And Mr. Rodriguez knew he was there, too,
5 right?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes. Yes, sir.

9 Q. And Estefana Rodriguez knew he was there,
10 too, as well, right?

11 A. Yes, sir.

12 Q. It wasn't unusual for Mr. Perez to be there,
13 right?

14 A. So far that I know, he wasn't supposed to be
15 on top where I was sup-- where I was doing my job, and
16 it's like I'm saying, I told him five times for him to
17 get down.

18 Q. Okay, sir, I'm asking the question. It
19 wasn't unusual for Mr. Perez to be on that property,
20 right?

21 A. Yes, correct.

22 Q. He was on that property quite often that you
23 would see, right?

24 A. Not quite often. Like, mainly by the time I
25 would get there -- he would pick me up, Mr. Rodriguez,

1 he'll pick me up, like, around nine o'clock or
2 sometimes ten o'clock. So by the time I would get
3 there, they weren't there no more so it was rare that
4 I would see him.

5 Q. So Juan would show up before you got there?

6 A. Yeah, correct.

7 Q. What were you assigned to do that day?

8 A. I was assigned to put the tin on the ones
9 that are, like, made -- the ones that are made, like,
10 fiberglass. So we removed those, the ones that were
11 cracked, and put the new tin.

12 Q. Okay. And you were doing that with Mr.
13 Perez?

14 A. No.

15 Q. You were doing that by yourself?

16 A. Yeah.

17 Q. How big are these metal sheets?

18 A. They were -- some of them ten feet.

19 Q. Okay. So you're taking a ten-foot metal
20 sheet onto a roof by yourself?

21 A. Yes, sir, correct.

22 Q. How do you do that?

23 A. With a rope.

24 Q. Okay. So you go up to the top of the roof.

25 Excuse me. You start on the bottom on the ground.

1 You tie up a rope.

2 A. That's correct.

3 Q. And you walk around to the side of the
4 building, climb up on the shed, get on the roof and
5 then pull up the metal sheet by yourself?

6 A. Yes, sir.

7 Q. And then you hold the metal sheet in place
8 while you're drilling it in?

9 A. Correct.

10 Q. And then you walk all the way back down, tie
11 the rope, and do it all over again?

12 A. Yes, sir.

13 Q. Now, how wide were these metal sheets?

14 A. They're, I think -- not too sure, what,
15 42-inch wide, something like that.

16 Q. Okay. About shorter than four feet?

17 A. Yes.

18 Q. So ten foot long, four feet wide, okay. I'm
19 about 6'4, so you're saying about this tall and about
20 this wide? (indicating)

21 A. Correct.

22 Q. And your testimony to this jury is that you
23 did that all by yourself?

24 A. Yes, sir.

25 Q. And you were able to hold it in place on top

1 of the metal garage, the metal roof, without it
2 sliding, at all?

3 A. Correct.

4 Q. You didn't need any help?

5 A. No, sir.

6 Q. Mr. Rodriguez, Sr. couldn't help you, could
7 he?

8 A. No, sir.

9 Q. Mr. Rodriguez didn't provide you any safety
10 harnesses, did he?

11 A. No, sir.

12 Q. He didn't tell you that the roof was rotted
13 out, did he?

14 A. Well, actually, I saw it on my own, but I
15 was, like, being careful while I was walking.

16 Q. Excuse me, sir. My question is, did Mr.
17 Rodriguez specifically tell you that his roof was
18 rotted out?

19 A. Yes, he already had told me.

20 Q. Okay. And if he testified under oath that he
21 didn't, you're sitting here today telling this jury
22 that you swear he told you it was rotted out?

23 A. Yes.

24 Q. Okay. And when did he do that?

25 A. Before I got up there.

1 Q. When he was downstairs talking to you and
2 Juan?

3 A. No. He was talking to me first. Juan wasn't
4 there at that time.

5 Q. Well, what time did Juan arrive?

6 A. I'm not too sure what time he arrived
7 because, like I told you, he would always pick me up
8 around 9:30 or 9:00, between nine and ten o'clock.

9 Q. Well, Juan was on the property with you and
10 Mr. Rodriguez, right?

11 A. I was already there and then after that is
12 when he got there, so I'm not too sure what time was
13 it more or less.

14 Q. Well, you just testified a second ago that
15 you were on the property with Juan Perez, correct?

16 A. Yes.

17 Q. And Isaac Rodriguez, Sr.?

18 A. Yes, but I was already there first.

19 Q. Okay. So your testimony is that you were
20 there and then Juan showed up?

21 A. Correct.

22 Q. Okay. But Mr. Rodriguez knew he was there?

23 A. Yes, sir.

24 Q. And his daughter, Estefana Rodriguez, knew he
25 was there?

1 A. Yes.

2 Q. And you guys were all downstairs in the
3 garage talking together?

4 A. Well, I was talking to Mr. -- Mr. Rodriguez
5 and asking him what -- like, which one -- which one he
6 wanted me to take off, but I wasn't talking, not at
7 all, to Juan.

8 Q. So who was Juan talking to?

9 A. To Mr. Rodriguez.

10 Q. Okay. What were they talking about?

11 A. I'm not too sure because I wasn't, like,
12 paying attention to what they were talking about.

13 Q. Okay. So Juan's talking to Mr. Rodriguez,
14 you're talking to Mr. Rodriguez, but you're not
15 talking to Juan?

16 A. Yeah, correct.

17 Q. Are you still currently employed by the
18 Rodriguezes?

19 A. No, sir.

20 Q. So if they called you tomorrow to do some
21 work, would you go do work for them?

22 A. Yes, sir.

23 Q. How much money do you make from the Rodriguez
24 family?

25 A. He pays me ten dollars an hour.

1 Q. How many hours do you work a week?

2 A. Sometimes -- a week, sometimes like 30 hours.

3 Q. Okay.

4 A. That's if I work the whole week.

5 Q. So about three hundred dollars a week, right?

6 A. Yes, sir.

7 Q. Twelve hundred dollars a month and that's
8 your only income, isn't it?

9 A. But sometimes, whenever he needs me, not all
10 the time.

11 Q. And my question is that's your only income,
12 right?

13 A. Correct.

14 Q. And you don't want to lose that income, do
15 you?

16 A. No, sir.

17 Q. You'd do anything to keep that income, right?

18 A. Correct.

19 Q. Mr. Hernandez, you were on the roof with Juan
20 Perez, correct?

21 A. Actually, I was there on top first and then
22 when I looked towards my side, towards -- towards one
23 side, that's when I saw Juan up there.

24 Q. Okay. My question is, though, you were both
25 on the roof at the same time?

1 A. Yes, sir.

2 Q. When he was on the roof with you, did you
3 call down to Mr. Rodriguez and say, "Hey, Juan's up
4 here with me"?

5 A. No, sir.

6 Q. Did you tell Estefana, "Hey, Juan's up here
7 with me"?

8 A. No, sir.

9 Q. Why not?

10 A. 'Cause I was already doing my job, what I was
11 supposed to be doing, but I --

12 Q. So was Juan, right?

13 A. No, 'cause I had told Juan he wasn't -- he
14 wasn't working with me, so -- and I told him five
15 times to go down and he never listened to me.

16 Q. Are you Juan's supervisor by any chance?

17 A. No, sir.

18 Q. Then how are you giving Juan orders on the
19 job?

20 A. 'Cause he wasn't supposed to be up there in
21 the first place.

22 Q. Okay. Mr. Rodriguez told you that?

23 A. Well, actually, nobody told me that, but I
24 knew he wasn't working with me, so what was he doing
25 up there? Something I wouldn't know.

1 Q. So if no one told you that, then why are you
2 sitting here today saying that he wasn't supposed to
3 be up there with you?

4 A. 'Cause it's like what happened, he got hurt.
5 Like -- like, more common sense, like, what is he
6 doing up there when he wasn't supposed to be up there
7 in the first place?

8 Q. How do you know Mr. Rodriguez didn't grab
9 Juan and say, "Hey, go up there and help out Rosario
10 who's carrying up these ten-foot-by-four-foot metal
11 sheets up there by himself. Go give him a hand"? How
12 do you know that didn't happen?

13 A. Because he would have told me.

14 Q. Did he tell you specifically that Juan was
15 not supposed to be up there with you?

16 A. At first, when I was up there, I tried to
17 tell him that, but he never told me that, but it's
18 like -- but he didn't tell me that Juan was going to
19 help me, so that's why I told Juan he needs to go
20 down, down there, because I didn't want him to get
21 hurt and I told him five times.

22 Q. And my question is, did Isaac Rodriguez, Sr.
23 tell you specifically that Juan was not supposed to be
24 up there?

25 A. No, sir.

1 Q. To this day, he hasn't told you that?

2 A. He's told me that he wasn't supposed to be up
3 there.

4 Q. He told you after the fact?

5 A. Yes.

6 Q. After Juan fell through and died?

7 A. Yes.

8 Q. You came up with this story after Juan had
9 died, didn't you?

10 A. What story, like?

11 Q. The story that he wasn't supposed to be up
12 there.

13 A. No. I already had told him from the
14 beginning.

15 Q. Okay. Your testimony that he was not
16 supposed to be up there was created after he died,
17 correct?

18 A. Correct.

19 Q. Okay. Mr. Perez fell through one of the
20 skylights, one of the rotted skylights, right?

21 A. Well, actually, it wasn't rotted because the
22 way -- because the way he told me, "Fix the ones that
23 are broken and the ones that are not broken, just
24 leave them like that." So I -- it's, like, when you
25 get a feeling that -- because it's, like, you see him

1 and then you look back to start doing what you're
2 doing, your job, and then you look back again and then
3 you don't see him, it's, like, you get a feeling about
4 something.

5 Q. My question, though, is he fell through the
6 roof?

7 A. Yes, sir.

8 Q. Did he fall through the skylight?

9 A. Yes.

10 Q. The skylight didn't have any guards on it,
11 did it?

12 A. What do you mean, like?

13 Q. There were no guards on the skylight in case
14 he fell through it, right?

15 A. Only the purlings.

16 THE COURT REPORTER: I didn't understand.
17 The what?

18 THE WITNESS: The purlings.

19 THE COURT REPORTER: The purlings?

20 Q. (BY MR. DUFF) I don't know what that is.

21 A. Those are the ones that are those beams, the
22 ones that -- the tin.

23 Q. There wasn't a guard on the skylight, that's
24 my question to you, --

25 A. No, sir.

1 Q. -- right? Did you go down on the floor to
2 check on Juan?

3 A. After, when he called -- called me, that he
4 screamed at me that Juan was down there, that he was
5 thrown. That's when I went down there.

6 Q. He was thrown?

7 A. That he was -- that he was gone already; that
8 he had fell down from the top to the bottom.

9 Q. Who was on the property that day with you?

10 A. Estefana, she was inside the office, and it
11 was only me and Mr. Rodriguez outside and then Juan.

12 Q. Juan wasn't wearing any safety harness when
13 he was on top of the roof, was he?

14 A. No, sir.

15 Q. Do you even know if Rodriguez Trucking has
16 safety harnesses for people on the roof?

17 A. I'm not too sure.

18 Q. Have you ever seen any?

19 A. I think I seen some inside the warehouse, but
20 I -- like, I don't like to go through people's things
21 without me asking permission.

22 Q. You were never provided any?

23 A. No, sir.

24 Q. You were never provided any safety training,
25 were you --

1 A. Ah --

2 Q. -- by the Rodriguez family?

3 A. No, sir.

4 MR. DUFF: Your Honor, I pass the witness
5 at this time.

6 THE COURT: Mr. Thomas?

7 MR. THOMAS: Thank you.

8 CROSS-EXAMINATION

9 BY MR. THOMAS:

10 Q. Had you done work repairs before, work roof
11 repairs, excuse me, before?

12 A. Yes, sir.

13 Q. So you were accustomed -- and when Counsel
14 was asking you about these sheets of metal, we're
15 talking about tin, right?

16 MR. DUFF: Objection, leading, Your
17 Honor.

18 THE COURT: Sustained.

19 Q. (BY MR. THOMAS) Is tin a heavy material?

20 A. If it's kind of -- if it's a little bit
21 longer, like, if it's a twelve-footer, it's a little
22 bit heavier, but if it's, like, a ten-footer, an
23 eight-footer, it's not that heavy.

24 Q. And you had installed -- had you installed
25 metal roofing like that before?

1 A. Yes, sir.

2 Q. Many times, a few times?

3 A. A few times.

4 Q. Now, you testified, sir, that often when you
5 would show up at Mr. Rodriguez's property there, Mr.
6 Perez would have already left. You said, "They had
7 already left." Who were you talking about when you
8 said "they"?

9 A. Like, what do you mean like?

10 Q. Well, you testified that when you showed up
11 between 9:00 and 10:00, you said Juan Perez, they
12 would have already left. Were you talking about truck
13 drivers?

14 A. Yeah, the truck drivers. They had left
15 already, like.

16 Q. Were there other truck drivers besides Mr.
17 Perez?

18 A. Working for Mr. Rodriguez? Yes.

19 Q. Yes. Okay. Do you know how many?

20 A. Not that I recall.

21 Q. And I believe you were asked how many times
22 you had been out to Mr. Rodriguez's property and this
23 is the trucking lot or property. Had you been there
24 many times or a few times?

25 A. Many times.

1 Q. And, typically, what kind of jobs would you
2 do there?

3 A. Sometimes I would do, like, help them with
4 the oil change and, like, clean up the yard and do
5 little things, odd, like, clean up and stuff like
6 that.

7 Q. How would you describe yourself, as a -- what
8 is your -- what is your job?

9 A. It's just like a -- like a laborer.

10 Q. Okay. You do small construction projects?

11 A. Yes.

12 Q. Remodeling, I think you said?

13 A. Yes, remodeling.

14 Q. Okay. And you had worked for Mr. Rodriguez
15 in town at other properties?

16 A. Yes, sir.

17 Q. Had you ever seen Mr. Perez do any of the
18 type of jobs that you were doing there on the
19 property?

20 A. No, sir.

21 Q. Had you ever seen, for example, Mr. Perez
22 building a fence or anything like that?

23 A. No, sir.

24 Q. All right. So what instructions did Mr.
25 Rodriguez give you as far as the roof, this time

1 that -- the day we're talking about, the day that the
2 accident happened?

3 A. Well, he just told me to just take out the
4 ones that were -- like, the ones that are the
5 fiberglass, just to take out the ones that were broken
6 and put the ones that -- the regular tin.

7 Q. And did he tell you that before Mr. Perez was
8 there?

9 A. Correct.

10 Q. Okay.

11 A. He had told me a day before.

12 Q. The day before?

13 A. Yeah.

14 Q. Did you see Mr. Perez that day?

15 A. No, sir.

16 Q. Okay. And so what did you do to make these
17 repairs or fix the roof?

18 A. I would just take off the, like, the screws
19 with the drill, take them off, and then the tin, the
20 old tin that was the ones that was broken, just throw
21 them to one side, but I would make sure that nobody
22 was there so I won't hit -- so I wouldn't hurt nobody.

23 Q. Did you go and get the materials or were the
24 materials already there at the scene of the location?

25 A. They were already there, the location.

1 Q. And so how would you physically install the
2 tin panels? What did you do?

3 A. I would go down, go -- go to the bottom and
4 kind of, like, pick them up, like, at an angle, like,
5 in a 45-degree angle, and then put the rope, tie the
6 rope, and then I'll climb up the ladder and go up
7 there and then that's when I would grab the rope and
8 start pulling them up by myself.

9 Q. Okay. And so how did you fasten or connect
10 the panels to the structure, to the building?

11 A. To one of the purlings.

12 Q. And how do you do that? Can you tell the
13 jury?

14 A. Once you get all the -- the ones that are
15 broken from the fiberglass, you got that hole that's
16 open and you got those purlings, all you do is just
17 tie the rope, and once you bring it up or once you get
18 it to where you're supposed to have it, take off the
19 rope and they wouldn't move no more, put one screw in
20 there and they wouldn't move; it was the purling.

21 Q. So would you hammer a nail through it? Would
22 you drive a screw through it? How would you --

23 A. No. Some type of screws.

24 Q. Okay. So you would drill into the purlings,
25 is that what you call it?

1 A. Correct.

2 Q. Are they, like, rafters or beams underneath?

3 A. The purlings are, like, going towards at an
4 angle.

5 Q. All right. And what kind of equipment were
6 you using?

7 A. It was just a drill and some type of screws.

8 Q. Okay. And I believe you testified that you
9 were already on the roof when you noticed Mr. Perez
10 was talking to Mr. Rodriguez that day, is that right?

11 A. Correct.

12 Q. Did you actually participate in a
13 conversation with Mr. Rodriguez and Mr. Perez, like,
14 all three of you together?

15 A. No, sir.

16 Q. So you were on the roof when the conversation
17 was happening?

18 A. Yes.

19 Q. Okay. And I believe you testified to
20 Opposing Counsel that you were not expecting Mr. Perez
21 to help you in any way?

22 A. Correct.

23 Q. So the day before when you met with Mr.
24 Rodriguez, no one mentioned any help or anybody
25 helping you?

1 A. No. No.

2 Q. That day, when Mr. Rodriguez was talking to
3 Mr. Perez, no one told you anything about --

4 MR. DUFF: Objection, leading, Your
5 Honor.

6 THE COURT: Sustained.

7 Q. (BY MR. THOMAS) Did anyone tell you they
8 were going to help you or that Mr. Perez was going to
9 help you?

10 A. No, sir. Nobody told me nothing.

11 Q. And so you just noticed Mr. Perez on the roof
12 with you?

13 MR. DUFF: Objection, leading, Your
14 Honor.

15 THE COURT: Sustained.

16 A. Correct.

17 Q. Okay. And you told -- well, what did you
18 tell Mr. Perez when --

19 A. I told -- I told Juan for him to get down
20 five times.

21 MR. DUFF: Objection, Your Honor. Calls
22 for hearsay.

23 MR. THOMAS: It's what this witness said,
24 Your Honor.

25 MR. DUFF: It's an out-of-court statement

1 used for the truth of the matter asserted.

2 THE COURT: Overruled.

3 Q. (BY MR. THOMAS) What did you tell him, sir?

4 A. For him to get down so he won't hurt himself,
5 or, like, the age that he was, right, so --

6 Q. How old was Mr. Perez?

7 A. I'm not too sure how old was he because I
8 didn't know him that good, so...

9 Q. Would you consider him elderly or older?

10 A. More or less.

11 Q. Was he in good health?

12 A. Not quite.

13 Q. I'm sorry?

14 A. Not quite.

15 Q. Not fight?

16 A. Not -- like, you didn't see him, like, in a
17 healthy -- in a healthy body, sir.

18 MR. DUFF: Objection, Your Honor. That
19 calls for speculation. He's not a medical expert.

20 Q. (BY MR. THOMAS) In your opinion, could you
21 tell, did he look like a hardy, hale man?

22 A. No.

23 THE COURT: I'm going to overrule his
24 opinion as to the physical condition. I don't know
25 what value it is. It's just your opinion as to what

1 he looked like.

2 A. Yes. He wasn't, like, in a healthy -- like,
3 in a -- like, putting somebody young and somebody,
4 like, in -- like, in an older age, he wasn't that
5 type.

6 Q. (BY MR. THOMAS) Did he look like somebody who
7 would get up on a roof and install sheeting, metal
8 sheeting?

9 A. No, sir.

10 MR. DUFF: Objection, Your Honor. That
11 calls for speculation.

12 THE COURT: I'll sustain that.

13 Q. (BY MR. THOMAS) You asked him five times, you
14 said.

15 A. Correct.

16 Q. What did he do?

17 A. He didn't listen to me. He just started
18 walking towards my back and I was doing my job.

19 Q. Okay. Did you give him any other
20 instructions?

21 A. No, sir. It's, like, I told him to get off
22 and he didn't listen to me so I couldn't -- like, I
23 ain't the boss, so I couldn't tell him, "You know
24 what...", like, tell him something else because it
25 wasn't my property or --

1 Q. And what happened next?

2 A. And that's when -- it's, like, when you look
3 -- I looked toward on one side, that's when I didn't
4 see him, but it's, like, when you get a gut feeling
5 that something happened, I -- like, I didn't know if
6 he had went down there, if he had got off or if he had
7 fell. And then I kind of noticed that that
8 fiberglass, yet, wasn't broken. And I say about five
9 minutes later, that's when Mr. Rodriguez screamed at
10 me that he was -- that he had fell, fell down from the
11 top.

12 Q. Did you hear Mr. Perez make any type of
13 noise?

14 A. He didn't scream or nothing.

15 Q. Did you hear any sound of the roof breaking
16 or anything like that?

17 A. No, sir.

18 Q. This is while you were operating that
19 electric drill, correct?

20 A. Correct.

21 Q. After Mr. Rodriguez yelled at you, what did
22 you do next?

23 A. I went down there and it's, like, I would
24 have done CPR, but it's, like, I don't know -- I've
25 never done CPR before. And so far that I know, if you

1 do something, something kind of wrong, you can -- I
2 didn't want to damage that person more than what --
3 more than what he was.

4 Q. Do you remember giving the police statements?
5 Did you talk to the investigators?

6 A. Correct.

7 Q. Do you remember an OSHA investigator coming
8 to -- to the premises?

9 A. Yes, sir.

10 Q. Did you talk to the OSHA investigator?

11 A. Yes, sir.

12 Q. Did you give him a statement?

13 A. Yes, sir.

14 Q. Pretty-much the same thing you told the jury?

15 A. The same thing.

16 Q. Were you still working there at the time when
17 the OSHA inspector came?

18 A. They stopped me -- for me to stop doing what
19 I was doing so they could investigate everything, and
20 it's, like, I had left one tin on top that was kind of
21 loose, well, it was loose, that I didn't get to put
22 only one screw so I told that OSHA, the person that --
23 I said I only put one screw and it was getting kind of
24 windy, so they gave me the okay to go up there and
25 finish screwing the tin.

1 Q. Were you familiar with the violations that
2 the inspector found?

3 A. Yes, sir.

4 Q. Can you tell the jury what it -- what
5 violations did the inspector find?

6 A. It was, like, wall pluggings that weren't --
7 that weren't covered and some that were supposed to be
8 connected with the -- with the pipe, and stuff like
9 that, that they weren't. And then my -- my safety,
10 that I wasn't --

11 Q. They were concerned about you being up on the
12 roof?

13 A. Correct.

14 MR. DUFF: Objection, leading, Your
15 Honor.

16 THE COURT: Sustained.

17 Q. (BY MR. THOMAS) Do you know whether they were
18 concerned about you being up on the roof?

19 MR. DUFF: Objection. That's
20 speculation, Your Honor.

21 A. Correct.

22 MR. THOMAS: It's a does-he-know
23 question, Your Honor. If he knows or doesn't know.

24 THE COURT: I'll overrule that.

25 Q. (BY MR. THOMAS) You can answer, sir. What

1 did you say?

2 A. Correct.

3 Q. You believe they were concerned about you
4 being up on the roof?

5 MR. DUFF: Objection, Your Honor. That's
6 speculation.

7 A. Correct.

8 THE COURT: Sustained.

9 Q. (BY MR. THOMAS) How much longer did you stay
10 employed by Mr. Rodriguez? Did you continue to work
11 for him after that?

12 A. After that happened, I stopped -- like, I
13 told -- like I said, I screwed that tin, so I didn't
14 come back until the following day.

15 Q. Okay. This was in March of 2015?

16 A. Correct.

17 Q. How much longer in 2015 did you continue to
18 work for Mr. Rodriguez?

19 A. I'd say about another six to eight months,
20 but it's not every day. It's like off and on.

21 Q. Okay. Do you know if the violations were
22 corrected or fixed?

23 A. Yes. They were fixed.

24 MR. THOMAS: Pass the witness.

25 THE COURT: Additional questions?

1 MR. DUFF: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. DUFF:

4 Q. Who paid you at Rodriguez Trucking?

5 A. Mr. Rodriguez.

6 Q. No one else?

7 A. No one else.

8 Q. He pay you cash, check?

9 A. Cash.

10 Q. Always paid cash?

11 A. Correct.

12 Q. Did Juan fall through a broken skylight?

13 A. No, sir.

14 Q. He fell through what, then?

15 A. It wasn't broken. It was completed. It
16 was -- it wasn't cracked or nothing. It was the
17 whole, full sheet.

18 Q. One that wasn't guarded, though, correct?

19 A. Correct.

20 Q. Who called you here to testify today?

21 A. Mr. Thomas.

22 Q. Okay. Did any of the Rodriguezes reach out
23 to you to testify for them today?

24 A. Actually, since I was a witness, that I was
25 there, well, they told me that if they needed me, they

1 were going to call me.

2 Q. Okay. When did they tell you that?

3 A. I'm not too sure when it was. Say about
4 three weeks ago or so.

5 Q. Okay. So you've been working with them for
6 the past year or so, right?

7 A. Yes, sir, correct.

8 Q. They never told you once that we wanted to
9 sit down and take your deposition, did they?

10 A. No, sir.

11 Q. Mr. Thomas never reached out to you to take
12 your deposition, did he?

13 A. He reached me out, try to call me, but it's,
14 like, on my phone I get, like, I get that scam, so
15 sometimes I don't answer. I don't answer my calls.

16 Q. Do you have any family in town?

17 A. In Mathis, yes.

18 Q. What are their names?

19 A. Dalia Hinojosa, Raymond Hernandez, Rudy
20 Hernandez, Gilbert Hernandez and Lucy Hinojosa.

21 Q. Did anyone tell you a couple nights ago that
22 we tried reaching out to you to talk with you before
23 trial?

24 A. No, sir.

25 Q. Mr. Hernandez, you don't have any medical

1 training whatsoever, do you?

2 A. What do you mean?

3 Q. You don't have any medical training, do you?

4 A. No, sir.

5 Q. You don't know how to tell if someone's
6 healthy or not, do you?

7 A. Like, in healthy, like, in --

8 Q. If someone was sick and someone had cancer,
9 could you look at them and diagnose them with cancer?

10 A. No, sir.

11 Q. You don't know how to determine whether
12 someone's healthy or not, do you?

13 A. In a way, if you look at them, you might.

14 Q. Someone could look sick and their nose is
15 red, right?

16 A. Correct.

17 Q. But you're not saying that someone is
18 completely unhealthy? You're not qualified to make
19 that determination, are you?

20 A. No, sir.

21 Q. No one did CPR on Juan, did they?

22 A. No, sir.

23 Q. No one's trained to do CPR that you know of
24 at Rodriguez Trucking?

25 A. No, sir.

1 Q. Rodriguez Trucking never provided any medical
2 training with -- for you as one of their employees,
3 did they?

4 A. No, sir.

5 Q. How long before Juan was found dead did EMS
6 or Sheriff's Office arrive?

7 A. It took the Sheriff Office, like, that I
8 recall, say about ten minutes, between seven to ten
9 minutes to arrive. By the time -- but when he arrive,
10 he already had pronounced Juan that he was already
11 dead.

12 Q. So, from the time that he was found, your
13 testimony is it took seven minutes for them to get
14 there?

15 A. Correct.

16 Q. Were you there when -- did anyone -- did
17 anyone perform CPR on him, at all?

18 A. No, sir. It's like I said, I don't know how
19 to do CPR. If I would have known how to do CPR, I
20 would have done it for him.

21 Q. Why didn't you ask Mr. Rodriguez to take him
22 to the hospital?

23 A. Because if you move a person that's -- that
24 fell down on a solid concrete, you're going to injure
25 them -- you're going to injure them more, so it was,

1 like, not a point in moving a person like that
2 already.

3 Q. But if you don't do anything, they're just
4 going to die, right?

5 A. Correct. We didn't have, like -- like, to
6 put a neck brace or nothing like that on him, to move
7 him, whatever.

8 THE INTERPRETER: I'm sorry, Your Honor.
9 Can I have just a second, please. I think he's having
10 some kind of choking with something, either he needs
11 maybe some water or a Kleenex or something.

12 THE COURT: We'll take care of some water
13 for him.

14 MR. DUFF: Your Honor, we'll pass the
15 witness.

16 THE INTERPRETER: Your Honor, he needs to
17 step outside, please.

18 THE COURT: All right. We'll take a
19 short break.

20 (Pause.)

21 THE COURT: Yeah, just stretch in place
22 for a second. We'll let Mr. Rodriguez go outside for
23 a second. Thank you.

24 THE WITNESS: I can step out?

25 THE COURT: No, just stay where you're at

1 for right now.

2 (Pause.)

3 JUROR: Judge, can we use the restroom or
4 no?

5 THE COURT: Are you going to have some
6 additional questions?

7 MR. THOMAS: No, I don't think so.

8 THE COURT: Okay. Yeah, go ahead and
9 take a short break. We'll come back in about ten or
10 15 minutes. Thank you.

11 THE BAILIFF: All rise for the jury.

12 (Jury out.)

13 THE COURT: Yeah, now you can step down.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Hernandez, yeah, come on
16 up. The Rule has been invoked that you are not to
17 discuss your testimony or this case or any of these
18 proceedings with anybody other than the attorneys --

19 THE WITNESS: Okay.

20 THE COURT: -- until the case is over
21 with.

22 THE WITNESS: Yes, sir, I understand.

23 THE COURT: Don't let anybody discuss the
24 case or their testimony or any of these proceedings
25 some place where you can overhear what they're saying,

1 all right?

2 THE WITNESS: All right, I understand.
3 Yes, sir. Appreciate it.

4 THE COURT: Okay, thank you. Go ahead
5 and have a seat, everyone.

6 MR. HILLIARD: Judge, what do you think
7 on this break, do I have three, four --

8 THE COURT: No, go ahead and -- yeah, go
9 ahead.

10 MR. HILLIARD: Okay.

11 (Afternoon Recess.)

12 THE COURT: All right. The jurors are
13 ready to come back in?

14 THE BAILIFF: Yes.

15 THE COURT: Bring them in.

16 THE BAILIFF: All rise for the jury.

17 (Jury in.)

18 THE COURT: Be seated, please.

19 All right. Am I correct that both sides
20 had concluded their questions for Mr. Hernandez?

21 MR. DUFF: Yes, Your Honor.

22 MR. THOMAS: Yes, Judge.

23 THE COURT: Okay. Next witness?

24 MR. HILLIARD: Your Honor, at this time,
25 Plaintiff calls Defendant, Isaac Rodriguez, Sr.

1 THE INTERPRETER: Do you mind if he sits
2 here, Your Honor?

3 THE COURT: I need to make sure that he
4 sits up here, please.

5 (Defendant takes witness stand.)

6 MR. HILLIARD: Court's indulgences for
7 one moment, Your Honor?

8 THE COURT: Sure.

9 THE INTERPRETER: Your Honor, may I get
10 the chair that's over there?

11 THE COURT: That's fine. Are you going
12 to be needing him to look at anything on the screen?

13 MR. HILLIARD: I'm going to put this on
14 the Elmo, but I'll also hand him a copy, if that
15 works.

16 THE COURT: Okay, that will be fine. I
17 just didn't want to have him needing to go up and
18 down.

19 MR. HILLIARD: Yes, Your Honor. And I'm
20 just going to make sure that we can get this Elmo
21 focused.

22 (Pause.)

23 MR. HILLIARD: May I proceed, Your Honor?

24 THE COURT: Yes. Tell us your full name,
25 please.

1 THE WITNESS (through Interpreter): Isaac
2 Garza Rodriguez.

3 THE COURT: All right. And for the
4 record, we're being assisted by our English-Spanish
5 certified translator, Ms. Gebert.

6 THE INTERPRETER: He said -- I asked him,
7 "If you could hear me?" And he said, "Yes." Then he
8 said that, "I have an interpreter and that your name
9 is?" And then I said, "Araceli."

10 THE COURT: All right. Counsel, you may
11 proceed.

12 ISAAC GARZA RODRIGUEZ, SR.,
13 having been first duly sworn and testified **through an**
14 **official court interpreter**, as follows:

15 DIRECT EXAMINATION

16 BY MR. HILLIARD:

17 Q. Good afternoon, Mr. Rodriguez.

18 A. Good afternoon, sir. I want to tell you,
19 "Good afternoon."

20 Q. Thank you. Mr. Rodriguez, I'm going to be as
21 quick as I can with my questions and I'll speak slow
22 for you, okay? Please, tell me if you need me to
23 clarify any question.

24 A. Okay.

25 Q. At the time of the incident where Mr. Perez

1 was killed by falling through the roof, were you the
2 owner of the property --

3 A. Yes.

4 Q. -- in which -- were you the owner of the
5 property -- Can --

6 THE COURT: Mr. Rodriguez? Mr.
7 Rodriguez, please, let the attorney finish his answer
8 --

9 THE WITNESS (through Interpreter): Yes,
10 sir.

11 THE COURT: -- before you, I'm sorry,
12 finish his question before you start to answer.

13 THE WITNESS (through Interpreter):
14 Well --

15 THE COURT: The attorney will ask a
16 question; the Interpreter will interpret that for you;
17 then you may answer. Can you do that?

18 THE WITNESS (through Interpreter):
19 That's fine.

20 THE COURT: Thank you very much.

21 Q. (BY MR. HILLIARD) Mr. Rodriguez, did you own
22 the property where Mr. Perez was killed when he fell
23 through the roof in March of 2015?

24 A. Yes, sir.

25 Q. How long had you been the owner of that

1 property?

2 A. I have no idea.

3 Q. Was it more than ten years that you had been
4 the owner?

5 A. I do not know.

6 Q. Was it more than 20 years that you had been
7 the owner?

8 A. No. I don't know.

9 Q. Can you tell me how long you had lived at
10 that property before Mr. Perez's death in 2015?

11 A. Neither, that I still do not know how long I
12 have lived in that property.

13 Q. Do you remember about what decade you started
14 living on this property where Mr. Perez was killed?

15 MR. HILLIARD: Judge, I'm going to hand
16 the witness this. May I approach?

17 THE COURT: Sure.

18 Q. (BY MR. HILLIARD) Handing the witness what's
19 been premarked as Plaintiff's Exhibit 5.

20 A. I have no idea, but I believe it's been over
21 25 years.

22 Q. Okay, thank you. Do you think between 25 and
23 35 years?

24 A. I do not know, but I really don't know, but I
25 know that I've lived there for many, many years.

1 Q. Okay. And this photograph that we're looking
2 at here, this is a photograph of the property that you
3 own where Mr. Perez was killed in 2015, correct?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Well, yes. Yes, that's the property where
7 the accident occurred.

8 Q. And is this the building which you lived in
9 where Mr. Perez fell through the skylight?

10 A. Where I'm still residing at.

11 Q. I'm sorry?

12 THE INTERPRETER: "Where I'm still --
13 still residing at."

14 Q. (BY MR. HILLIARD) So -- so, yes, that is the
15 building that you lived in on the day Mr. Perez was
16 killed?

17 A. Yes.

18 Q. Do you sometimes call this building a shed?

19 A. No. No.

20 Q. And I apologize. It's because a different
21 witness had referred to it as a shed, but my question
22 is you slept in that building here every night?

23 A. I live there, so I sleep -- I sleep there.

24 MR. HILLIARD: And, Your Honor,
25 permission to publish an exhibit to the jury --

1 THE COURT: Yes.

2 MR. HILLIARD: -- during this line of
3 questioning?

4 A. I do not understand that word, that word that
5 you are saying.

6 MR. HILLIARD: Your Honor, I think the
7 witness was confused with what I was saying about
8 publishing an exhibit.

9 THE COURT: That's fine.

10 MR. HILLIARD: I'm not going to respond.

11 THE COURT: Go ahead and ask your next
12 question.

13 MR. HILLIARD: Okay. Your Honor, may I
14 approach the witness?

15 THE COURT: Yes, sir.

16 Q. (BY MR. HILLIARD) I'm handing the witness a
17 photograph of what's been marked as Plaintiff's
18 Exhibit 7. Is this a photograph of the inside of the
19 building of which you lived?

20 A. This one?

21 Q. Yes.

22 A. No. There's an apartment inside here where I
23 live. This is the outside of it. There's an
24 apartment there and that's where I live.

25 Q. All right. I understand, but you can only

1 see what's here in this photograph from the inside of
2 the house, correct? You would have to be inside and
3 looking up to see what's in this photograph, correct?

4 A. What are you saying?

5 Q. This photograph here, you have to be inside
6 the house in order to see?

7 A. No, no, no. The apartment is covered. It's
8 covered on the other side.

9 Q. Yes, okay. We're on the same page. We're
10 saying the same thing. I think -- and this is also
11 Plaintiff's Exhibit 7. This will give the jury and
12 Mr. Rodriguez, hopefully, some clarification for my
13 question. Mr. Rodriguez, my question is that every
14 day you would walk through this area, correct?

15 A. Not every day. I need just, you know, the
16 cement area and the area that is open.

17 Q. Right. Right. And you saw -- I'll hand to
18 the witness what's been marked as Plaintiff's -- this
19 is preadmitted as Plaintiff's Exhibit 7.

20 MR. HILLIARD: Permission to publish the
21 previous documents to the jury, Your Honor?

22 THE COURT: Yes.

23 Q. (BY MR. HILLIARD) Mr. Rodriguez, you saw the
24 rust and deteriorated condition of this roof every day
25 for years before Mr. Perez was killed, correct?

1 A. Yeah.

2 Q. And you had knowledge of the rust and the
3 deteriorated and weakened condition of this roof
4 before Mr. Perez was killed, didn't you?

5 A. Well, look, there was nothing wrong with the
6 roof. The roof was completely okay, fine. There was
7 some areas that it had some of that plastic and one of
8 them was rotted, but it already -- there was a hole.
9 That is the reason why I was going to patch this one.
10 I told -- I told Mr. Hernandez, I had told him even
11 before that, that it needed to be patched.

12 MR. HILLIARD: Your Honor, I'm going to
13 object. The witness is going on a bit of a narrative.

14 THE COURT: Sustained.

15 MR. HILLIARD: I'm trying to be quick
16 with my questions.

17 Q. (BY MR. HILLIARD) I want to show you what's
18 also been preadmitted as Plaintiff's Exhibit 7.

19 MR. HILLIARD: And, Your Honor,
20 permission to publish -- it's the same exhibit -- to
21 the jury?

22 THE COURT: Yes.

23 Q. (BY MR. HILLIARD) Mr. Rodriguez, this is a
24 photo of the view that Mr. Perez would have while he's
25 on the roof, correct?

1 A. What?

2 Q. This is the view, what you can see, when Mr.
3 Perez is on the roof?

4 A. I do not know when that man arrived. He had
5 no business there.

6 Q. Hold on. Hold on.

7 MR. HILLIARD: Judge, I'm going to
8 object.

9 THE COURT: Sustained.

10 MR. HILLIARD: Objection.

11 THE COURT: Go ahead and ask your next
12 question.

13 Q. (BY MR. HILLIARD) This picture shows the top
14 of the covered metal area, correct? It's a yes or no
15 question, Mr. Rodriguez. Does this photograph show
16 the top of the covered metal area?

17 A. Yes. Yes, it is.

18 Q. And from the viewpoint while you're looking
19 at the top of the covered metal area, you can't see
20 any of that rust in that deteriorated, weakened
21 condition of the roof? You can't see it from that
22 viewpoint, can you?

23 A. What do you mean? What are you saying, that
24 -- what are you saying?

25 Q. You can see the rust while you're standing

1 inside, but you can't see the rust in the deteriorated
2 condition if you're the one on the roof, isn't that
3 true?

4 A. You can see it from the inside up ahead, up
5 above.

6 Q. Right. But you can't see it if you're on the
7 roof, can you?

8 A. No. Well, no, not if you're on top.

9 Q. Mr. Rodriguez, do you remember the day of the
10 accident in May of 2015?

11 A. I don't recall it.

12 Q. You don't remember when Mr. Perez fell
13 through the roof and was killed just moments after
14 speaking with you in your house?

15 A. I recall that I was there when the accident
16 occur.

17 Q. And -- and I know that you had known Mr.
18 Perez for a long time before this, correct?

19 A. Oh, yes. Yes, he was my friend.

20 Q. And you had been the house owner, as you
21 said, for over 25 years, at least 25 years?

22 A. Maybe more, because for sure the exact number
23 of years, I couldn't tell you.

24 MR. HILLIARD: Judge, may I approach the
25 witness?

1 THE COURT: Yes, sir.

2 Q. (BY MR. HILLIARD) I'll hand you what's been
3 premarked as Exhibit No. 12, Plaintiff's Exhibit No.
4 12. Mr. Rodriguez, I'm going to direct your attention
5 to the bottom of the last page. Mr. Rodriguez, I'll
6 represent to you that this exhibit shows a transfer of
7 the deed to your property four days after -- apologies
8 -- nine days after Mr. Perez was killed.

9 A. No one came during that time to give me a
10 letter or to -- for -- or to tell me, no one, no way.

11 Q. Why did you transfer the deed to your
12 property nine days after Mr. Perez was killed?

13 A. What?

14 Q. Why did you transfer the deed, the ownership
15 of your property, nine days after Mr. Perez was
16 killed?

17 A. Nine days after the man died, this gentleman
18 came by that was for the lighting and one of the plugs
19 there was bad.

20 MR. HILLIARD: Judge?

21 A. And he told me, "You know what?"

22 MR. HILLIARD: Judge? Ma'am, I
23 apologize. I'm going to object to nonresponsive of
24 the question.

25 THE COURT: He's not finished the

1 question. I'm not sure what he's, yet, going to say.

2 MR. HILLIARD: I asked why he transferred
3 the warranty deed.

4 THE COURT: Yeah.

5 MR. HILLIARD: Okay, I apologize, ma'am.
6 I didn't mean to interrupt you.

7 THE INTERPRETER: His response was, "Nine
8 days after that, the accident, a man came by and he
9 checked and he said that one of the plugs was bad and
10 that I needed to replace it."

11 THE COURT: Okay. Now, I'll sustain your
12 objection.

13 MR. HILLIARD: Thank you, Judge.

14 Q. (BY MR. HILLIARD) The name that you
15 transferred the property to is Josefa Rodriguez. Who
16 is Josefa Rodriguez?

17 A. She was my wife.

18 Q. Is Ms. Josefa Rodriguez no longer or
19 currently your ex-wife?

20 A. No.

21 Q. Were you married when you gave her the family
22 property?

23 A. She got a divorce. She got some -- a
24 divorce.

25 Q. When did you get a divorce from Ms. Josefa

1 Rodriguez?

2 A. Well, ma'am, (sic) I guess you are
3 misunderstanding me. The thing I'm saying is that it
4 has been many, many years that we have not, yet,
5 gotten divorced or a divorce, I guess, the papers.

6 Q. The woman who now owns your property, is that
7 your wife?

8 A. Which property?

9 Q. Where Mr. Perez was killed.

10 A. Oh, that one. Yes, she is.

11 Q. She is currently your wife?

12 A. This is my wife. Well, not really, because
13 we're separated, but she has her own business and I
14 have my business, part from her.

15 Q. Is it correct that you and Josefa have been
16 separated for 30 years? Do you remember saying that
17 in your deposition?

18 A. Over 30 years.

19 Q. Over 30?

20 A. Yes.

21 Q. Mr. Rodriguez, how much did Josefa Rodriguez
22 pay to buy the family property only nine days after
23 Mr. Perez was killed?

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

25 Q. Do you understand that you sold the property

1 to Josefa Rodriguez nine days after Mr. Perez was
2 killed?

3 A. Yes. And what about that?

4 Q. How much money was paid for the purchase of
5 the family property?

6 A. She gave me sixty thousand.

7 Q. Why did you sell it?

8 A. Because I needed the money.

9 Q. What did you need the money for?

10 MR. THOMAS: Objection, relevance, Your
11 Honor.

12 THE COURT: How is that relevant?

13 MR. HILLIARD: Your Honor, I'll -- I'll
14 withdraw the question.

15 THE COURT: Thank you.

16 Q. (BY MR. HILLIARD) Mr. Rodriguez, do you
17 recall taking a deposition in this case?

18 A. On which one? On this case?

19 Q. Yes.

20 A. Yes.

21 Q. Do you recall testifying that you gave the
22 property to Josefa Rodriguez?

23 A. Given it?

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

1 THE COURT: Yes, sir.

2 Q. (BY MR. HILLIARD) Mr. Rodriguez, I'd like to
3 direct your attention to this question and this
4 answer.

5 (Interpreter translated to the witness.)

6 Q. (BY MR. HILLIARD) Mr. Rodriguez, my question
7 is --

8 MR. HILLIARD: Ma'am? I'm sorry.

9 THE INTERPRETER: I'm sorry.

10 Q. (BY MR. HILLIARD) -- do you remember
11 testifying that you gave her the property?

12 A. I don't recall. I don't recall that. I
13 don't recall it nor do I recall ever doing a paper
14 such as that. She bring me some kind of a receipt,
15 some other paper of someone else that was also there.
16 There should have been someone else.

17 Q. Mr. Rodriguez, you swore under oath to tell
18 the truth and you said that you gave it to Josefa
19 Rodriguez.

20 A. Look, if I give this lady, it doesn't matter
21 if I've been separated from her 40 years or so, I can
22 give this woman -- I can give her fifty, a hundred,
23 two hundred thousand dollars. Maybe not two hundred
24 thousand dollars. Maybe a hundred. I can give her a
25 hundred dollars, two hundred dollars for while she was

1 my wife. We lived together for a long period of time,
2 and I believe and I feel that I can give her, when I
3 have something, that I can give her anything I want.

4 Q. I understand, but the issue that we're having
5 right now --

6 A. That's fine. That's fine.

7 Q. -- is that regardless of how you feel about
8 transferring property to your wife, I'm trying to
9 figure out the truth about whether the property was
10 purchased or whether you gave it to her and she paid
11 you money, because you swore --

12 A. Comes back to, I believe, the same thing that
13 I said. If she pays me, that's fine. And if she
14 doesn't pay it, that's also fine.

15 Q. But did she pay it?

16 A. No, she still has not, yet, paid it.

17 Q. So when you said earlier that she had paid
18 sixty thousand dollars for this property, that was not
19 true?

20 A. Well, that's the amount that I sold it to her
21 for, sixty thousand.

22 Q. Are you -- I understand. So you -- you
23 agreed to sell it to her for sixty thousand and she
24 never paid the sixty thousand of the purchase
25 agreement. Does that sound right?

1 A. Yes, that is correct.

2 Q. Mr. Rodriguez, do you recall Rosario
3 Hernandez who just testified right before you?

4 A. Yes. Yes, I do recall.

5 Q. Rosario has worked for you up until about a
6 week ago. That's what he testified to. Is that
7 correct?

8 A. Yes.

9 Q. So, over the last year, Rosario has been
10 working at your property at various points, is that
11 true?

12 A. Just days, whenever I needed her (sic) she'd
13 come over and help.

14 Q. But -- And did Rosario live in Mathis during
15 the last year that he was working for you?

16 A. I believe that I recall that she (sic) was,
17 yes.

18 Q. You understand that I'm talking about the --
19 the male individual that just testified?

20 A. The man?

21 Q. Yes.

22 A. The man, Hernandez?

23 Q. Yes. The man who just testified right before
24 you.

25 A. Yeah.

1 Q. Because I thought I heard the response of
2 "she" came. I wanted to make sure that we were
3 talking about the same person.

4 A. Whenever I needed him, he would come and do
5 the work.

6 Q. How did you get in touch with Mr. Hernandez
7 to come here and testify today?

8 A. Through his brother. Through his brother and
9 we called him.

10 Q. And what did you say on this phone call?

11 MR. THOMAS: Your Honor, I'm going to
12 object to hearsay, Your Honor.

13 THE COURT: Overruled.

14 A. We just said to come over here because the
15 attorney wanted to talk to him.

16 Q. (BY MR. HILLIARD) And you offered to pay for
17 Rosario's flight from Mississippi to Texas, isn't that
18 true?

19 A. Yes, sir, I paid for it. I paid it because
20 it was necessary, because no one is to blame. There
21 is no blame because of that man's accident there. No
22 one is at fault. No one is at fault.

23 Q. Well, --

24 A. Nobody. Nobody.

25 Q. -- Mr. -- Mr. Rodriguez, that's -- that's not

1 true, because you said that you woke up every day for
2 years and you saw the dangerous condition on that
3 roof, the rust, the deterioration.

4 A. No, no, no. It was just a small little
5 piece.

6 Q. Mr. Hernandez, (sic) --

7 A. It was just a tiny little piece.

8 Q. -- this whole roof is rusted.

9 A. And that is the reason why I was repairing
10 it.

11 Q. Exactly, because it was in a dangerous
12 condition, wasn't it?

13 A. Look, may I tell you something?

14 Q. No. No. I apologize. I'm going to ask you
15 questions and I'm going to ask you to just answer my
16 questions.

17 A. Okay.

18 Q. The entire inside was rusted, wasn't it?

19 A. No.

20 Q. We'll let the jury decide for themselves.

21 MR. HILLIARD: Your Honor, may I publish
22 this photo to the jury?

23 THE COURT: Yes, sir.

24 MR. HILLIARD: No further questions at
25 this time, Your Honor.

1 THE COURT: Mr. Thomas?

2 MR. THOMAS: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. THOMAS:

5 Q. Sir, was Juan Perez working for you in March
6 of 2015?

7 A. No.

8 Q. Did you ask Mr. Perez to go on the roof that
9 day?

10 A. No, sir.

11 Q. Did Mr. Perez have permission from you to go
12 on that roof?

13 A. No, sir.

14 MR. THOMAS: I have no further questions,
15 Your Honor.

16 THE COURT: Additional questions,
17 Counsel?

18 MR. HILLIARD: Just a quick follow-up.

19 REDIRECT EXAMINATION

20 BY MR. HILLIARD:

21 Q. Mr. Perez was trained as a truck driver,
22 correct?

23 A. What? What?

24 Q. Mr. -- Mr. Perez drove trucks for you, that's
25 what -- that's the work he normally did.

1 A. Just every once in awhile.

2 Q. Then why would he voluntarily go on top of
3 the roof to do roofing work without permission,
4 without instruction from his boss?

5 A. He didn't offer, no, no, no, no, no. No one
6 even called him. No one asked him to get up there nor
7 did anyone ever see him get up there. No one, no one,
8 no one told him. There was just three people there.

9 Q. That's right.

10 A. Three persons there.

11 Q. There was you, there was Rosario and there
12 was Juan.

13 A. No, no. Mr. Rosario, myself, and my girl, my
14 daughter.

15 Q. Mr. -- Mr. Rodriguez, Rosario testified just
16 a half an hour ago that you were speaking with
17 Mr. Perez --

18 A. No, sir.

19 Q. -- on the property.

20 A. I didn't speak to him, not one single word,
21 none.

22 Q. So are you saying Rosario Hernandez was lying
23 just now when he testified that he saw you speak with
24 him?

25 A. I do not know. I do not know, because when I

1 saw it, I was about 300 feet away and when I looked
2 back, I saw someone falling and then someone fell.
3 Then I thought that it was Mr. Rosario, the one that
4 was on top. And then when I got close --

5 MR. HILLIARD: Your Honor, I'm going to
6 object to nonresponsive.

7 A. -- I saw him over there on the floor.

8 THE COURT: Sustained. That's it.

9 MR. HILLIARD: Your Honor, I have no
10 further questions for this witness at this time.

11 MR. THOMAS: May we approach the Bench?

12 THE COURT: Yes.

13 (Bench conference as follows:)

14 MR. THOMAS: Your Honor, Counsel asked a
15 question as to why he believes or my client believes
16 that Mr. Perez would go up on that ladder. I believe
17 that's opening the door to talk about what was found
18 in the Defendant's -- in the decedent's blood system
19 because of his unusual or strange behavior and I'm
20 approaching the Bench to talk about maybe asking those
21 kind of questions.

22 THE COURT: Denied.

23 (Bench conference concluded.)

24 THE COURT: Additional -- let's see. The
25 Plaintiff had passed.

1 Additional questions, Mr. Thomas?

2 RE-CROSS-EXAMINATION

3 BY MR. THOMAS:

4 Q. Do you know, sir, when was the last time
5 Mr. Perez worked for you?

6 A. I don't recall, but there's check stubs.

7 Q. Okay.

8 A. Yes. More or less, I think that it has been
9 about three weeks since I had let him go.

10 Q. Did Mr. Perez come to your business to ask
11 you for a job that day?

12 A. He would call.

13 THE INTERPRETER: First, he said, "No."

14 A. He would call. Just about every day, he
15 would call me.

16 MR. HILLIARD: Objection, Your Honor.
17 This is nonresponsive at this point.

18 THE COURT: Sustained.

19 Q. (BY MR. THOMAS) Yes, sir. My question was,
20 do you remember on the day that Mr. Perez had his
21 accident, was he there asking you for a job?

22 A. No.

23 MR. THOMAS: I have no further questions.

24 THE COURT: Additional questions,
25 Counsel?

1 MR. HILLIARD: No further questions, Your
2 Honor.

3 THE COURT: All right. You may step
4 down.

5 Next witness?

6 MR. HILLIARD: Your Honor, at this
7 time -- Your Honor, at this time, Plaintiff rests her
8 case.

9 THE COURT: All right. Plaintiff has
10 rested.

11 Witnesses, Defense?

12 MR. THOMAS: May we have just a moment or
13 two to kind of talk about that real quick?

14 THE COURT: Yeah. We'll take a short
15 recess, folks. Stretch your legs, use the restroom,
16 if you need to, get a drink of water. The exhibits
17 that you have, if you would leave them on the front
18 bar there. That's good.

19 THE BAILIFF: All rise for the jury.

20 (Jury out.)

21 (Hearing held before the Court outside
22 the presence of the jury, as follows:)

23 THE COURT: All right. Be seated,
24 everybody.

25 MR. THOMAS: May we approach the Bench?

1 I have an issue I'd like to discuss outside the
2 presence of the jury.

3 THE COURT: Yeah.

4 MR. THOMAS: We don't have to approach.
5 I'll stand up here.

6 MR. HILLIARD: Sorry about that, Counsel.

7 MR. THOMAS: Judge, I have some pages
8 here that were not included in the Plaintiff's
9 exhibit. These are part of the OSHA report and
10 they're Bates stamped pages 57 and 58. I am concerned
11 because of the questioning of one of the witnesses,
12 Mr. Rodriguez, III. Counsel, in my mind, indicated or
13 tried to indicate that the report said that an
14 employee was the basis of the report. That's not
15 correct, Your Honor. The employee the report refers
16 to was Mr. Hernandez, not the decedent. In fact, the
17 pages that are not included noticed that the employee
18 was the handyman and that the non-employee fell
19 through the skylight and died. Under Rule 107, and
20 because I believe, perhaps, there's confusion in the
21 minds of the jury, I would like to include pages 57
22 and 58 from -- and, again, this is documents that were
23 provided to me by the Plaintiffs under the Rule of
24 Optional Completeness. So I'd be offering these two
25 pages into evidence at this time.

1 THE COURT: Response?

2 MR. HILLIARD: Your Honor, I think the
3 testimony that's been heard at this point -- and I
4 remember exactly what Opposing Counsel is talking
5 about -- and where we are now, I don't think there's
6 any need for a clarification in regards to the OSHA
7 report, the jury's understanding of the citations, the
8 parties that those citations refer to, rely to. No
9 question that I asked through any witness was seeking
10 any answer that -- to infer as to which citation went
11 to whom, whether it was an employee or independent
12 contractor. If a witness proffered such testimony
13 through their own intent and own agenda, I don't think
14 that that should be allowed to be the basis for now
15 adding in three new exhibits which, Judge, I don't
16 think that there's any need for clarification. You
17 know, we would object, Your Honor. I'm --

18 MR. THOMAS: I think Counsel specifically
19 said right, an employee, and confronted Mr. Rodriguez
20 with that, which in my mind left the impression that
21 Counsel was saying the result of the investigation and
22 the person they're calling an employee was the
23 deceased. This just clarifies that, Your Honor, and
24 says specifically that the decedent is somebody who
25 was a non-employee and the employee was the handyman,

1 that Mr. Hernandez who testified.

2 MR. HILLIARD: Well, Your Honor, I have
3 to object because the jury is going to be asked to
4 determine the status of whether or not Mr. Perez was
5 an employee. That goes into their deliberations, and
6 now we have pages from an OSHA report that aren't
7 specifically referring to what their burden is for
8 them to decide which is a legal -- whether he is
9 legally considered an employee. Those are different
10 elements. Now, under Rule 403, this is way too
11 prejudicial, way too confusing, and this is only going
12 to confuse, inflame and possibly influence the jury's
13 decision as to thinking whether or not Mr. Perez was
14 an employee. It has too much undo influence on the
15 jury, Your Honor. Plaintiff would object under Rule
16 403. This should not be allowed. I mean, this is
17 verbatim a phrase of law contained within an OSHA
18 report that Opposing Counsel's trying to use to
19 inflame the jury.

20 MR. THOMAS: It's an attempt to
21 explain --

22 MR. HILLIARD: And it invades the
23 province of the jury.

24 MR. THOMAS: -- and the impression was
25 made by Counsel. If the Court would like to see the

1 pages?

2 THE COURT: Is -- Is the offer of these
3 two pages --

4 MR. THOMAS: Made under 107.

5 THE COURT: -- part of that same report
6 that for some reason you decided not to include in
7 your offer?

8 MR. HILLIARD: Yes, Your Honor, but we
9 timely disclosed all of our exhibits, our lists, the
10 documents. You know, this request to now add these
11 two exhibits after witnesses have already been
12 questioned, this is the untimely request.

13 MR. THOMAS: There is no way to
14 anticipate that Counsel was going to try to influence
15 the jury by calling Mr. Perez, an employee, or
16 implying that he was an employee with that report when
17 he was, you know, cross-examining Mr. Rodriguez. It
18 is documents that they control. They provided it and
19 it's part of the same report that's already been
20 admitted.

21 MR. HILLIARD: Exactly, Your Honor. It's
22 documents that Defendant's control. Each -- each
23 witness has had a chance --

24 MR. THOMAS: No, Plaintiff's control.

25 MR. HILLIARD: -- to explain and explain.

1 I mean, these are Defendant's citations. We have gone
2 over it at length with each witness and they've all
3 clarified the same point, that they don't believe that
4 Mr. Perez was an employee. This document is not going
5 to do anything, but have witnesses repeat testimony
6 that they've already given today, which is that they
7 don't believe that Mr. Perez was an employee or that
8 he was authorized to be on the premises. And it's
9 only going to sort of prejudice the jury because now
10 you have some sort of government investigation with a
11 conclusion of law contained within it, and Counsel's
12 trying to use that to proffer in his case when all the
13 witnesses have already been called. I'm not sure what
14 sponsoring witness would testify as to this optional
15 completeness in these additional documents.

16 MR. THOMAS: I don't think I need a
17 witness under 107. It's just part of the same
18 reports. It's got their -- their Bates stamps on it
19 and it's part of the report.

20 MR. HILLIARD: Just for my own
21 clarification, are these unredacted pages of a
22 previously redacted report?

23 THE COURT: I don't have any idea. I'm
24 seeing it for the first time right now.

25 MR. THOMAS: They are -- they are not

1 redacted from the entire report.

2 MR. HILLIARD: I was just seeking
3 clarification. Our prior --

4 THE COURT: Yeah.

5 MR. HILLIARD: Our prior stated objection
6 still stands, Your Honor. We think it would only
7 serve to inflame the jury, invade their province in
8 making a conclusion as these documents contain
9 conclusions of law which have not been tested for
10 reliability or trustworthiness. It's going to confuse
11 the jury with their decision.

12 THE COURT: Well, I think the jury may
13 already be confused or, perhaps, misled because of the
14 testimony that's been received thinking that OSHA gets
15 involved only when it's an employee-related incident
16 and that the only employee that's been talked about is
17 Mr. Perez.

18 MR. HILLIARD: Well, Your Honor,
19 Mr. Rosario was asked the -- the open-ended question
20 of, "Please explain what these citations mean to the
21 jury." Now, I know that -- that pre-rehearsed answer
22 that Mr. Rosario Hernandez gave to the jury, I mean,
23 if that's not the ample -- an example of clarification
24 that is justified, if -- and he was justified in this
25 matter, you know, of what Defendants believe it is.

1 THE COURT: Clarification of a handyman
2 as opposed to clarification of the report that really
3 is in question. I'm overruling your objection.
4 They'll be included.

5 MR. THOMAS: Thank you. Can I get a
6 sticker from you?

7 MR. HILLIARD: They're going to be
8 included within the same exhibit, correct, not as a
9 new exhibit?

10 THE COURT: Depends on how you would like
11 to have that.

12 MR. THOMAS: I don't have a problem
13 including it in the same --

14 MR. HILLIARD: We want it in the same
15 exhibit.

16 THE COURT: They can be included as an
17 additional part of that same exhibit.

18 MR. THOMAS: Very good.

19 THE COURT: You don't want to highlight
20 it necessarily by having it be a separate exhibit.

21 MR. DUFF: And, Your Honor, if I may?
22 We've sent discovery requests to the Defendants for
23 years, now, at this point. They had the full,
24 unredacted OSHA report that actually had all the
25 interviews that were conducted by these OSHA

1 investigators. They have a lot of information that
2 went into these factual and legal findings that we
3 never had access to. That's why we did not include it
4 in our exhibit list. Since they did fail to produce
5 that report and agreed to Motion in Limine Number One
6 that they cannot produce any -- discuss or produce any
7 discovery that they withheld from us throughout this
8 entire process, I think this is improper because we
9 don't even know what the basis of the OSHA
10 investigators' interviews --

11 MR. THOMAS: This is your exhibit. This
12 was your production.

13 MR. DUFF: I understand, but those are
14 opinions from investigation documents that were
15 redacted that were never provided to us.

16 THE COURT: The same opinions that went
17 into the first dozen pages or however many pages of
18 that report that have already been admitted and are
19 going to go to the jury. I just think it's fair to
20 the jurors to have a complete report.

21 MR. DUFF: Thank you, Your Honor.

22 MR. HILLIARD: Your Honor, what we would
23 propose, since we're on the topic of exhibits outside
24 the presence of the jury, is that tomorrow morning
25 we're going to bring a binder with the exhibits that

1 have been admitted into evidence with the additional
2 two pages of optional completeness. We'll have a copy
3 for Opposing Counsel and a copy for the Court and a
4 copy to be sent back with the jury.

5 THE COURT: Okay.

6 MR. HILLIARD: And we'll -- we're going
7 to go back tonight and make sure that everything is
8 there.

9 MR. DUFF: Redact Social Security numbers
10 and stuff, but we'll submit a joint one, if that's
11 okay with the --

12 THE COURT: Yeah, the personal
13 identifying information needs to be excluded.

14 MR. THOMAS: That's fine with me. I
15 appreciate you doing that.

16 THE COURT: Thank you very much for
17 volunteering to do that.

18 MR. THOMAS: For the Defense, all we're
19 going to do is offer that, that offense report, that
20 we previously discussed.

21 THE COURT: Okay, from --

22 MR. THOMAS: Do I need to do that or, I
23 mean, is it already admitted?

24 THE COURT: It's already admitted. If
25 you want to --

1 MR. THOMAS: I think I want to publish it
2 to the jury and then rest.

3 THE COURT: That's fine. That's fine.
4 Do you have any objection to doing that?

5 MR. HILLIARD: Publishing to the jury in
6 the sense that we're bringing the jury back in?

7 THE COURT: Yeah. We'll bring the jury
8 back in. You've already rested. I'll ask to see if
9 the State -- or the Defense has any witnesses and
10 he'll announce, I guess, that no witnesses, but just
11 for the benefit of the jury offering the preadmitted
12 investigator's report.

13 MR. MARTINEZ: So, when you say, "publish
14 it to the jury", --

15 MR. THOMAS: I'm going to hand it to
16 them.

17 MR. MARTINEZ: -- just hand it to them
18 with no comment or --

19 MR. THOMAS: I'm going to say this report
20 was previously admitted into court and hand it to
21 them.

22 THE COURT: Okay. Okay.

23 MR. MARTINEZ: Okay, fair enough.

24 MR. THOMAS: I don't have all your fancy
25 equipment.

1 MR. HILLIARD: Your Honor, for -- Your
2 Honor, for purposes of the record, at this time, we
3 would reurge our objection to Paragraph 4, Paragraph 5
4 contained within that. Defendant's Exhibit No. 3 is a
5 triple layer of hearsay.

6 THE COURT: Okay, same objections and
7 same rulings.

8 MR. HILLIARD: Oh, I apologize. I didn't
9 -- Same rulings?

10 THE COURT: Same ruling, yeah. Same
11 ruling in that regard.

12 MR. THOMAS: I'm going to present that
13 and then I'm going to rest. You're going to allow us
14 to come back tomorrow, correct?

15 THE COURT: Yeah. I'll tell the jury
16 that we do have a lot of documents that we're going to
17 put into a binder for them to use during their
18 deliberations, as they wish to. I'll also be working
19 with the attorneys on the Charge. That's going to
20 take us a little while. I'm going to keep to my word
21 and not keep them past five o'clock, so we'll recess a
22 little bit early today and have them come back in at
23 nine o'clock tomorrow. Hopefully, we'll be ready to
24 go with the Charge and closing arguments, okay?

25 MR. HILLIARD: That sounds great, Your

1 Honor. Thank you.

2 THE COURT: Okay. Very well. Thank
3 y'all very much.

4 (In Recess.)

5 MR. THOMAS: So I just marked it Defense
6 Exhibit 3 and I'll --

7 MR. HILLIARD: You're going to give it to
8 them?

9 MR. THOMAS: I'm going to just give it to
10 them and rest.

11 MR. HILLIARD: Your Honor, does the Court
12 need to keep the original exhibits after trial is over
13 for any purpose?

14 MR. MARTINEZ: They don't leave the
15 courtroom.

16 MR. HILLIARD: Right. That's why I'm
17 confirming that as we're trying to tidy up our exhibit
18 space.

19 THE COURT: Frankly, everything that's
20 been exhibited -- admitted right now is in the
21 possession and control and custody of our court
22 reporter.

23 MR. HILLIARD: Which we agree to and
24 respect and we'll make sure it stays the way it is.

25 THE COURT: Yeah.

1 MR. DUFF: Your Honor, I don't know that
2 we've gone through all the exhibits at this point, and
3 so we do have some kind of scattered around and we do
4 also have a binder that I was planning on giving to
5 the court reporter that had all of the exhibits in it.

6 THE COURT: Okay. I assume that y'all
7 have copies of every single exhibit as they've been
8 admitted right now, is that correct?

9 MR. DUFF: The ones that we've talked
10 about in trial?

11 THE COURT: Right.

12 MR. DUFF: Yes. We have copies of all of
13 those.

14 THE COURT: Right. Well, and we've got a
15 couple of exhibits that have not necessarily been
16 talked about --

17 MR. DUFF: Yes, Your Honor.

18 THE COURT: -- but were admitted, as
19 well?

20 MR. DUFF: Yes, Your Honor.

21 THE COURT: All right. Need to make sure
22 that those get to the court reporter also. The copies
23 that you're going to be using to put together in a
24 binder for the jury to use, I assume that those are
25 all -- you can get color copies and all those things.

1 What are you proposing to do regarding the recordings?

2 MR. DUFF: We have it on a flash drive,
3 and then we're also going to get them on a CD disk, as
4 well.

5 THE COURT: Okay. All right.

6 MR. HILLIARD: I guess we're only
7 satisfying one step of the process if all they have is
8 this. Your Honor, would you mind if we brought in --
9 we don't have to say what party is providing it -- but
10 some sort of device that would allow the jury to hear
11 it?

12 THE COURT: Well, what I'm going to do is
13 if, I mean, they'll have all the paper documents. If
14 they need to hear any of the recordings, we'll have
15 them come back in the courtroom and we'll do that in
16 this environment here.

17 MR. HILLIARD: Okay.

18 MR. DUFF: Okay. Thank you, Your Honor.

19 THE COURT: Okay. All right. Are we
20 ready to have the jury brought back in?

21 MR. THOMAS: Ready.

22 THE COURT: Okay.

23 THE BAILIFF: All rise for the jury.

24 (Jury in.)

25 THE COURT: All right. Be seated,

1 everyone. Let's see, the Plaintiff has rested their
2 case.

3 Mr. Thomas, do you have witnesses for the
4 Defense?

5 MR. THOMAS: No witnesses, Your Honor.
6 We would like to just publish Defendant's Exhibit 3
7 which has been previously admitted.

8 May I publish this to the jury?

9 THE COURT: Yes, sir.

10 Additional evidence, Mr. Thomas?

11 MR. THOMAS: No, Your Honor. Defense
12 rests.

13 THE COURT: Defense rests, okay.

14 Any rebuttal from the Plaintiff?

15 MR. HILLIARD: Plaintiff rests and close,
16 Your Honor.

17 THE COURT: Close?

18 MR. THOMAS: Close.

19 THE COURT: Close. All right.

20 Ladies and gentlemen of the jury, you
21 have received all of the evidence that you're going to
22 in this case; testimony from witnesses; documents,
23 some of which you've had ample opportunity to review,
24 some of which you have not really had complete
25 opportunity to review some of these documents. They

1 will be available for you after the closing arguments
2 and Charge of the Court and during your deliberations.

3 What's going to happen now is I'm going
4 to recess for the day. I hope nobody has objection to
5 leaving a little bit early. We'll come back tomorrow
6 morning at nine o'clock. The same location by nine
7 o'clock tomorrow morning. At that time, I'll read a
8 document to you called the "Charge of the Court."
9 That document has those instructions and definitions
10 and directions for you to guide you during your
11 deliberations.

12 Additionally, the attorneys will be
13 working with me and each other to prepare a binder
14 that will have all of these document exhibits that
15 have been admitted for you to take back and utilize
16 during your deliberations in the jury room. You'll
17 have all of those available to have an index so that
18 you can review them and digest them and determine the
19 value that those may have in your deliberations.
20 That's going to take us a little while, so even though
21 you guys are going home, the attorneys and I are going
22 to be busy doing some of that prep work to be ready
23 for tomorrow for the Charge, closing and then your
24 deliberations on this case.

25 Be ready and be back at what time

1 tomorrow?

2 JURY: (Group answer of 9:00 a.m.)

3 THE COURT: Very good. Thank you.
4 Hopefully everything will go well overnight. We'll
5 see you tomorrow morning.

6 THE BAILIFF: Rise for the jury.

7 (Jury out.)

8 THE COURT: All right. Be seated,
9 please. Let's do some housekeeping. Y'all are going
10 to prepare the binder with all of the exhibits --

11 MR. HILLIARD: Yes, Your Honor.

12 THE COURT: -- tabbed and indexed for
13 everyone?

14 MR. HILLIARD: Yes, Your Honor.

15 THE COURT: Do you need to or wanting to,
16 again, have the exhibits that have been used by the
17 witnesses? Some of those have been passed around or
18 published to the jury. The exhibits all have stickers
19 and identifiers on them. Do you want to use those so
20 that they match up with what we've got?

21 MR. HILLIARD: So, Your Honor, what we've
22 done is we've kept a list of which exhibits have been
23 admitted and which haven't. I think it's okay if we
24 leave these exhibits that have the physical sticker in
25 the courtroom.

1 THE COURT: Okay.

2 MR. HILLIARD: Because based on our list
3 of what was admitted in the Court's rulings regarding
4 certain exhibits, we can create an exact duplicate in
5 a binder.

6 THE COURT: Okay, that's fine. You'll
7 prepare one for the jury, one for me and one for
8 the --

9 MR. HILLIARD: Yes.

10 THE COURT: -- court reporter?
11 Mr. Thomas will have one, too. Okay.

12 MR. HILLIARD: I think we had an
13 agreement that we would redact the personal privacy,
14 if there is a Social Security number or --

15 THE COURT: Social Security numbers --

16 MR. THOMAS: I have no objection to that.

17 THE COURT: -- or other similar
18 identifiers need to be taken out.

19 All right. Then let's go off the record,
20 here, while we discuss the Charge informally.

21 (Off-the-record Charge conference.)

22 THE COURT: Do you need anything else on
23 the record for right now?

24 MR. DUFF: I don't believe so.

25 THE COURT: No? Okay.

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(END OF PROCEEDINGS.)

(EVENING RECESS.)

1 THE STATE OF TEXAS)

2 COUNTY OF SAN PATRICIO)

3 I, Kori Luckenbach Hosek, Official Court
4 Reporter in and for the 156th Judicial District Court of
5 Aransas, Bee, Live Oak, McMullen and San Patricio Counties,
6 State of Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of portions of
8 evidence and other proceedings requested in writing by counsel
9 for the parties to be included in this volume of the Reporter's
10 Record, in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of
13 the proceedings truly and correctly reflects the exhibits, if
14 any, admitted by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$984.50 and was
17 paid/will be paid by Mr. Alex Hilliard, attorney.

18 WITNESS MY OFFICIAL HAND this the 5th day of
19 March, A.D., 2020.

20
21 /s/ Kori Luckenbach Hosek
22 KORI LUCKENBACH HOSEK, CSR, Texas CSR #4627
Expiration Date: 07/31/2021
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