

1 PLANTIFF: Mr. White
2 WITNESS: Claire Walker

3 COURT:

4 DEFENDANT: Ms. Carter

5

6 WARM UP

7 THE COURT: This is the case of People vs. Mendez.
8 Officer, go ahead and have a seat on the witness
9 stand, please.

10 MS. CARTER: Your Honor, just for clarification, /
11 I want to make sure that there are no other witnesses
12 in the courtroom.

13 MR. WHITE: I don't believe there are.

14 MS. CARTER: All right.

15 THE COURT: Okay. No other witnesses / are
16 present.

17 Officer, state and spell your name for the record.

18 THE WITNESS: Claire Walker.

19 C-L-A-I-R-E, W-A-L-K-E-R. /

20 THE COURT: Thank you. Please proceed.

21 MR. WHITE: Before we begin the hearing, I just
22 want to add some language to Count 1 to comport with
23 the language of */ the Penal Code. I have submitted
24 the corrected complaint.

25 THE COURT: We will make that correction in the
26 file, then.

1 MR. WHITE: Thank you, your Honor.

2 THE COURT: I have written / that in and I will
3 sign it.

4 MR. WHITE: Thank you, your Honor.

5 THE COURT: Counsel, waive arraignment on the
6 amended complaint?

7 MS. CARTER: Yes, your Honor. Enter plea of not /
8 guilty.

9 THE COURT: Waive reading and advisement?

10 MS. CARTER: Yes.

11 THE COURT: Ready to proceed?

12 MS. CARTER: Yes. Thank you.

13 DIRECT EXAMINATION

14 Q. BY MR. WHITE: Officer Walker, good morning.

15 A. Good morning.

16 Q. Can you tell the court where you / are
17 employed, please.

18 A. Yes, sir. I am employed as a police officer
19 with the Tustin Police Department.

20 Q. How long have you been a police officer **/
21 with the department?

22 A. Over seven years.

23 Q. I would like to ask you about an investigation
24 you were involved with on November 17, 2007, / around
25 2:40 a.m. Did something catch your attention as you
26 were on patrol that night?

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A. Yes.

Q. Describe what it was that you saw, / please.

A. My partner and I were driving eastbound on Maple in our patrol car when we saw another car driving south on Jackson.

The vehicle / began honking its horn at us. I saw the female driver point down the street on Maple where I saw a male subject running south. */

END OF WARM UP

1 EXAM

2 Q. BY MR. WHITE: When you saw him running, did
3 you take steps to see who that person was?

4 A. Yes.

5 Q. Did you ever have contact with that man?

6 A. Yes, / I did.

7 Q. Do you see that person as anyone that you
8 recognize in the courtroom today?

9 A. Yes.

10 Q. Can you point out for the record where / that
11 person is seated and what he is wearing, please.

12 A. He is seated to my left wearing the jumpsuit.

13 MR. WHITE: May the record reflect she has /
14 identified the defendant, your Honor?

15 THE COURT: The witness has identified the
16 defendant, Mr. Mendez.

17 Q. BY MR. WHITE: When you contacted the
18 defendant, did the female who was in the */ car that
19 you saw, did she come to your location after that?

20 A. Yes, she did.

21 Q. And did she tell you anything regarding the
22 defendant that / you had contacted there?

23 A. Yes.

24 Q. What did she tell you?

25 A. She told me that she was in her bedroom
26 watching television when she heard her / window being

1 slid open. She then saw Mr. Mendez stick his head
2 through the window and look around. He then looked
3 directly at her.

4 MS. CARTER: Your / Honor, I object to the
5 characterization that the witness saw my client as
6 lacks foundation and calls for speculation. Move to
7 strike that portion of **/ the answer.

8 THE COURT: Sustained.

9 Q. BY MR. WHITE: Did the witness identify the
10 person that she told you had put his head inside the
11 window of her bedroom?

12 A. Yes.

13 MS. CARTER: Same / objection, your Honor.

14 THE COURT: Overruled.

15 Q. BY MR. WHITE: Did she identify the same
16 person that you have already identified as the
17 defendant?

18 A. Yes, she did.

19 Q. Where she saw the / man in her window, was it
20 a house or apartment that she lived in?

21 A. It is a house. She was visiting there for the
22 weekend. /

23 Q. Okay. Who was she visiting?

24 A. She was staying with her uncle.

25 Q. Did she say if the window was open or closed
26 that evening?

1 A. She told */ me that it was closed and secured.

2 Q. All right. You testified that the window was
3 slid open. Is it the type of window that slides / from
4 side to side?

5 A. Yes, it does.

6 Q. Did she report anything in regard to how the
7 window could be opened if it was secured?

8 A. Yes, / she said --

9 MS. CARTER: Objection. Lacks foundation.
10 Calls for speculation.

11 THE COURT: Overruled.

12 THE WITNESS: She explained that all a person
13 needed to do was push the window open.

14 Q. BY MR. WHITE: Now, she / said while she was
15 in the bedroom the individual you have identified as
16 the defendant stuck his head all the way in?

17 A. Yes, he did. **/
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1 START TYPING

2 Q. BY MR. WHITE: And she made eye contact with
3 him in the bedroom?

4 A. Correct.

5 MS. CARTER: Objection. Leading.

6 THE COURT: Sustained.

7 Q. BY MR. WHITE: After they made eye contact,
8 what did she do at that / point?

9 A. She screamed. The defendant asked what was
10 happening and then immediately fled from the residence.

11 Q. Okay. Now, after she screamed or yelled, what
12 did / she immediately do thereafter?

13 A. At that point she got up from the bed, went to
14 her uncle's bedroom and told him what had just
15 happened. / They both walked outside and saw the
16 defendant running down the sidewalk.

17 Q. Did she say whether or not she knew the
18 defendant prior to him */ sticking his head inside of
19 her window?

20 A. That was the first time she had seen him.

21 Q. Did she say whether or not she gave him / any
22 permission to enter the residence?

23 A. She never had given him permission.

24 Q. All right. She got her uncle, and then what
25 did they do after / that time?

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1 A. After she woke up her uncle, they ran outside
2 and got into her vehicle. They began to drive around
3 looking for the defendant. / They lost him somewhere
4 between the residence and Maple. They made a turn on
5 Maple. They then found him again walking on Jackson.

6 Q. Okay. Was **/ that the point in time when
7 they saw you, or did they see you later?

8 A. That was much later.

9 Q. Okay. Did you also interview the / uncle?

10 A. Yes, I did.

11 Q. What is his first name?

12 A. It is Daniel.

13 Q. Did he identify to you anybody whom he had
14 been chasing?

15 A. Yes.

16 Q. Okay. / Who did he identify?

17 A. Mr. Mendez, the defendant.

18 Q. Did he tell you if at any time during the
19 chase he had any contact with the / defendant?

20 A. Yes.

21 Q. And what, if anything, did he say occurred
22 during that initial contact?

23 A. The uncle approached Mendez and asked him why
24 he broke into */ the residence. Mendez told him that
25 he was drunk and lost.

26 Q. What happened then?

1 A. The victim's uncle told him that he was going
2 to call / the police. The defendant ran away and he
3 was yelling that they were not going to catch him.

4 MS. CARTER: Your Honor, I object to that testimony
5 / as calls for double hearsay. I move to strike
6 anything that the witness is saying that my client
7 said.

8 THE COURT: Overruled.

9 Q. BY MR. WHITE: After the defendant said nobody
10 / would catch him, what did Daniel do at that point?

11 A. That's when they got into their vehicle and
12 that's when they observed our police unit. **/

13 Q. That's when your contact began?

14 A. Yes.

15 Q. Did Daniel say whether or not he knew the
16 defendant prior to this night?

17 A. He had never seen him / before.

18 Q. Did he say whether or not he gave the
19 defendant permission to enter his residence?

20 A. He told me he never had given him permission./

21 MR. WHITE: No further questions at this time, your
22 Honor.

23 THE COURT: Cross-examine.

24 MS. CARTER: Thank you, your Honor.

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1 CROSS-EXAMINATION

2 Q. BY MS. CARTER: Now, what time of night did
3 the woman in the bedroom first / hear anything with her
4 window?

5 A. The call came out at 2:40 a.m. She said it
6 was several minutes before that.

7 Q. Okay. So in */ the middle of the night, early
8 morning?

9 A. Correct.

10 Q. All right. Now, she reported she was in her
11 bed watching TV; is that right?

12 A. Yes. /

13 Q. Do you recall the layout of the bedroom she
14 was sleeping in?

15 A. Yes, somewhat.

16 Q. We have a diagram here. Does that look
17 familiar to you? /

18 A. Yes, that's her bedroom.

19 THE COURT: Counsel, what exhibit are you showing
20 the witness?

21 MS. CARTER: I am showing the exhibit previously
22 marked as 13.

23 THE COURT: Okay.

24 THE WITNESS: This is the / bedroom, but I believe
25 the doorway should be on this side.

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1 Q. BY MS. CARTER: When you say the doorway,
2 that's the door to the hallway or the interior **/ of
3 the apartment?

4 A. That's correct. I believe this was a hallway.

5 Q. And you see the furniture drawn on the
6 diagram, correct?

7 A. Yes. The bed would / be in this portion of
8 the bedroom. The TV was on a table or something
9 against this wall here.

10 Q. Now, this woman told you / that she was just
11 staying the night there; is that correct?

12 A. Yes, ma'am. She was visiting.

13 Q. Was she from another state? Where was she
14 visiting / from?

15 A. I believe she possibly resides in another city
16 in Riverside County.

17 Q. So she was only there for the evening?

18 A. The night or the weekend. */ I don't recall.

19 Q. Did she tell you how often she visited her
20 uncle?

21 A. I don't recall asking.

22 Q. Did she tell you how many times she / had
23 stayed in that bedroom previously?

24 A. I didn't ask her that question.

25 Q. Did she discuss what she did immediately
26 before she went to bed?

1 A. No. /

2 Q. And did she tell you whether or not she
3 remembered opening or closing the window that night?

4 A. The only thing she told me was that / the
5 window was closed. I didn't ask her if she had opened
6 it earlier in the day.

7 Q. How did she know the window was closed? **/

8 A. Because she explained that she heard it being
9 slid open. Before she went to bed, she observed that
10 it was closed.

11 Q. Okay. She actually inspected / the window
12 before she retired to bed?

13 A. That's correct.

14 Q. All right. And that's what she told you?

15 A. Correct.

16 Q. Now, did she tell you what she / was watching
17 on television that evening?

18 MR. WHITE: Objection. Relevance.

19 THE COURT: Overruled.

20 THE WITNESS: No.

21 Q. BY MS. CARTER: Okay. Now, the TV was on when
22 this person allegedly stuck their head through / the
23 window?

24 A. She told me she was watching television.

25 Q. All right. Were there any lights on in the
26 bedroom?

1 A. I did not ask her.

2 Q. What */ size television was she watching?

3 A. I don't recall.

4 Q. Did you observe the television set?

5 A. Yes.

6 Q. Can you give an estimate of the size that you

7 / believe it was?

8 MR. WHITE: Objection. Relevance, your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: I don't remember.

11 Q. BY MS. CARTER: All right. Now, she reported

12 that she heard the window slide open; is that /

13 correct?

14 A. Yes.

15 Q. What did she do when she heard the window

16 slide open?

17 A. She turned to the direction of the window.

18 Q. Okay. Now, you said / she turned to the

19 direction of the window. How was she positioned in the

20 bed?

21 A. She was lying down. Her head was near the

22 west **/ wall, her feet pointing towards the east.

23 Q. All right. Was she facing east before the

24 window was slid open?

25 A. Towards the TV.

26

1 Q. Okay. Let / me ask you this: Is it possible
2 that she could have been laying on her side and not
3 really facing east?

4 MR. WHITE: Objection. Calls for speculation./

5 THE COURT: Overruled.

6 THE WITNESS: She told me she was lying on her
7 back.

8 Q. BY MS. CARTER: Okay. I guess your testimony
9 here today is that she had to turn her head / in order
10 to see the person whose head was in the window; is that
11 correct?

12 MR. WHITE: Objection. Misstates the testimony.

13 THE COURT: Sustained.

14 Q. BY MS. CARTER: I am asking you. If */ I have
15 misspoken, please clarify.

16 A. Can you repeat it again?

17 Q. Your testimony is that she had to turn her
18 head to see the person coming / through the window. Is
19 that your testimony?

20 A. She heard the window slide open. That's when
21 her attention was drawn to that direction. She saw the
22 / defendant stick his head inside the bedroom.

23 Q. She had to turn her head to see that; is that
24 correct?

25 MR. WHITE: Objection. Calls for speculation.

26 THE COURT: Sustained. Next / question, please.

1 Q. BY MS. CARTER: Did she tell you how long she
2 had been in bed?

3 A. No.

4 Q. Does she wear any type of corrective lenses?

5 A. I don't know. **/

6 Q. Okay. Did you ask her that?

7 A. No.

8 Q. How old is this woman?

9 A. I would have to look at my report.

10 THE COURT: You may look at your / report to
11 refresh your recollection.

12 THE WITNESS: 37 years old.

13 Q. BY MS. CARTER: Do you see the furniture
14 depicted on the diagram?

15 A. There were other items, but I don't recall. /

16 Q. Was there any furniture in front of the
17 window?

18 A. I don't recall seeing anything.

19 Q. Were there curtains on the window or anything
20 like a window / covering?

21 A. I believe there were curtains, but I am not
22 sure.

23 Q. All right. And did she tell you whether those
24 curtains were open or not */ when she went to bed?

25 A. No.

26 Q. She didn't tell you?

1 A. No, she did not.

2 Q. Did she give a description of that individual
3 that was at / the window?

4 A. Yes.

5 Q. All right. What description did she give?

6 A. Well, she told me it was Mr. Mendez.

7 Q. Did she give a description of the / individual
8 that poked his head through the window?

9 A. All she said was that it was a male Hispanic.

10 Q. She didn't give any information in terms / of
11 hairstyle, facial features, or anything like that?

12 A. No.

13 Q. Okay. And you never asked her that?

14 A. No. She already identified your client.

15 Q. Now, when she **/ identified my client was he
16 in custody at that point?

17 A. Well, we were chasing him and they were
18 directly behind us. They were present when / we took
19 him into custody.

20 Q. Now, was that individual running or walking?

21 MR. WHITE: Objection. Vague as to time.

22 THE COURT: Sustained.

23 Q. BY MS. CARTER: Well, this woman and her uncle
24 walked / outside of their house; is that correct?

25 A. Yes.

26

1 Q. Okay. And once they got outside, they said
2 they saw a person; isn't that right?

3 A. Correct.

4 Q. What / was that person doing at that moment
5 when they walked outside?

6 A. I don't recall who said it, but one of them
7 told me he was */ walking swiftly.

8 Q. Okay. I believe your testimony was that the
9 uncle told you my client was very drunk that night; is
10 that correct?

11 A. He appeared / to be drunk, yes.

12 Q. And he also told you that my client was drunk
13 and looked lost; is that correct?

14 MR. WHITE: Objection. Misstates the testimony.

15 THE COURT: Sustained. /

16 Q. BY MS. CARTER: Now, were you in a marked
17 patrol unit while you were chasing my client?

18 A. Yes.

19 Q. You were in uniform?

20 A. Definitely.

21 Q. All right. I presume you / ordered him to
22 stop?

23 A. Yes.

24 Q. And did he?

25 A. He stopped, yes.

26 Q. Did you have to draw your weapon at all?

1 MR. WHITE: Objection. Relevance.

2 THE COURT: Overruled.

3 THE WITNESS: I don't **/ remember if I drew my
4 firearm or my Taser.

5 Q. BY MS. CARTER: Okay. Well, you drew a weapon
6 of some sort?

7 A. Yes.

8 Q. All right. You didn't have to / shoot the
9 Taser; is that right?

10 A. No.

11 Q. Okay. Now, I presume you ordered him to the
12 pavement?

13 MR. WHITE: Objection. Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: Yes.

16 Q. BY MS. CARTER: Okay. Did he immediately /
17 comply?

18 A. No.

19 Q. All right. And when he did not comply, what
20 did you have to do?

21 MR. WHITE: Objection. Relevance.

22 THE COURT: Overruled.

23 Q. BY MS. CARTER: Go ahead. You can answer.

24 A. After / we ordered him in both Spanish and
25 English, we had to push him down to the pavement.

26

1 Q. Okay. When you say push him down, did */ you
2 tackle him?

3 A. Definitely not.

4 Q. Did you handcuff him?

5 A. Yes.

6 Q. Once he was handcuffed, did you notice
7 anything about his condition?

8 A. Other than sweaty and / breathing hard at that
9 time, no.

10 Q. Did you eventually notice the odor of alcohol?

11 A. Yes.

12 Q. How quickly did you notice it with him?

13 A. It was / several minutes later that I noticed
14 the odor, because we drove back to the residence.

15 MS. CARTER: Your Honor, I would like to make a
16 motion out / of the presence of the jury.

17 THE COURT: Is that something we can do at the
18 break?

19 MS. CARTER: Yes. I just wanted the record to
20 reflect that now. **/

21 THE COURT: That's fine. Redirect.

22 REDIRECT EXAMINATION

23 Q. BY MR. WHITE: Officer, let me ask you some
24 questions about that. Did you notice the smell of
25 alcohol, or was it your partner who / noticed it first?
26

1 A. I don't know if my partner noticed it prior to
2 that.

3 Q. So the two of you never talked about his level
4 of / intoxication?

5 A. Not at that moment.

6 Q. How would you describe the defendant's
7 demeanor once you noticed either the smell of alcohol
8 or the objective signs of / him drinking?

9 A. Watery eyes. Slurred speech.

10 Q. And the odor of alcohol?

11 A. Yes, that's correct.

12 Q. At any point after you got him in the back of
13 the car, */ but before you get him to the station, was
14 he ever standing outside or anything?

15 A. I don't believe so.

16 Q. He was only seated in the / back of the
17 vehicle?

18 A. Yes.

19 Q. What was his demeanor while he was seated in
20 the back of the police vehicle, if you recall?

21 A. I believe / he was quiet.

22 Q. Once you got back to the residence, did you
23 then do anything with the victim and her uncle?

24 A. I had them show / me the bedroom.

25 Q. Did they identify the defendant while he was
26 in the back of your patrol car?

1 A. No. They had already identified him earlier.

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25 ******EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY BE***
26 ***SLIGHTLY DIFFERENT******