

1 PLANTIFF: MS. MARTIN

2 WITNESS:

3 COURT:

4 DEFENDANT: MS. COOK

5

6 WARM UP

7 THE COURT: Any objection to that procedure?

8 MS. MARTIN: No objection, your Honor.

9 MS. COOK: I have no problem with that. Thank you  
10 very much, your Honor.

11 THE COURT: Let's proceed, Ms. Cook. /

12 Q. BY MS. COOK: When Mr. Burns first entered the  
13 hotel, you were sitting on a couch, correct?

14 A. At first, yes.

15 Q. Now, you said that he entered briefly and /  
16 then left, correct?

17 A. Yes.

18 Q. Okay. So did you tell the police officer  
19 that?

20 A. I don't remember.

21 Q. And you said that the female was still inside  
22 / the hotel as Mr. Burns parked the car; is that  
23 correct?

24 A. Yes.

25 Q. And do you recall keeping an eye on her?

26 A. Not really.

1 Q. You testified / that you don't know if she had  
2 luggage in her hand or not, correct?

3 A. I don't remember if she did or not.

4 Q. When you saw / my client park the vehicle,  
5 what did you do next?

6 A. Went upstairs and waited outside the elevator  
7 on his floor.

8 Q. Why didn't you arrest him / at that point when  
9 he was parking his vehicle?

10 A. Because I had prior knowledge of --

11 MS. MARTIN: Your Honor, I object at this point.  
12 It's irrelevant. May / we approach sidebar?

13 MS. COOK: I will withdraw the question.

14 THE COURT: That's a good idea.

15 Q. BY MS. COOK: Now, when you went up to the  
16 hotel room, you went with \*/ Mr. Kelly. He was your  
17 partner that night?

18 A. Yes, ma'am.

19 Q. How long were you waiting by the hotel room?

20 A. About five or ten minutes.

21 Q. When / Mr. Burns came upstairs, you said that  
22 he was with the female, correct?

23 A. Yes.

24 Q. And you had prior knowledge as to which room  
25 he was / staying in; is that correct?

26

1 MS. MARTIN: Objection. Assumes facts not in  
2 evidence.

3 THE COURT: Overruled. You may answer.

4 THE WITNESS: That's correct.

5 MS. COOK: May I approach, your Honor?

6 THE COURT: Yes.

7 MS. COOK: If I / could have this diagram marked  
8 next in order and shown to the jury.

9 MS. MARTIN: No objection.

10 THE COURT: It may be so marked.

11 Q. BY MS. COOK: Do you recognize this diagram? /

12 A. Yes, I believe so.

13 Q. What is this area marked here on the drawing?

14 A. That would be the door to the defendant's room  
15 and that would / be the elevator.

16 Q. Is there any type of wall here that separates  
17 this area from the rooms where someone could hide?

18 A. I believe the elevators / are recessed off the  
19 hallway.

20 Q. You said that the defendant's room was on this  
21 side of the hall; is that correct?

22 A. Yes, ma'am.

23 Q. Had you / been in his room earlier?

24 A. Yes.

25 Q. How many times did you search?

26 A. Just once.

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Q. How did you gain access to his room?

A. The hotel staff. \*/

\*\*END OF WARMUP\*\*

1 EXAM

2 Q. BY MS. COOK: When both Mr. Burns and the  
3 female exited from the elevator, you said the first  
4 thing that you heard was the elevator door open; is /  
5 that correct?

6 A. I heard the alarm when the elevator opens,  
7 yes. It was like a bell.

8 Q. If you could point to the location where you /  
9 were waiting on the diagram.

10 A. I was down here around the corner.

11 Q. That would be out of view of the elevator; is  
12 that correct?

13 A. Yeah. /

14 Q. Is it fair to assume you were trying to avoid  
15 being seen?

16 A. Absolutely.

17 Q. You and your partner were not wearing any type  
18 of a bail / agent uniform; is that right?

19 A. Yes.

20 Q. The reason why you don't wear anything like  
21 that is because you don't want to be noticed by a /  
22 person you are looking for; is that correct?

23 A. Correct.

24 MS. MARTIN: Objection. Assumes facts not in  
25 evidence.

26 THE COURT: Overruled.

1 Q. BY MS. COOK: Part of being effective in your  
2 job is to / avoid detection; is that correct?

3 A. That's correct.

4 Q. You don't drive a police vehicle either; is  
5 that fair to say?

6 A. That would be fair.

7 Q. Okay. And / when you were waiting around the  
8 corner, could you just pinpoint where your partner was?

9 A. He was down on this side.

10 Q. How many feet would \*/ you say Mr. Kelly was  
11 away from this door, if you recall?

12 A. I'm not really sure.

13 Q. Could you point to something here in the  
14 courtroom? /

15 A. Halfway to the back wall.

16 THE COURT: For the record, about 45 feet.

17 MS. MARTIN: I would stipulate to that.

18 THE COURT: The record may so reflect.

19 Q. BY MS. COOK: When you were at / this  
20 location, did you have your badge showing?

21 A. I don't remember.

22 Q. And you don't remember whether your partner  
23 had his badge displayed?

24 MS. MARTIN: Objection. Misstates the / testimony.

25 THE COURT: Sustained.

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1 Q. BY MS. COOK: When Mr. Burns and the female  
2 got off the elevator, he was walking next to the  
3 female, correct?

4 A. They were side by side. /

5 Q. You testified Mr. Burns was attempting to get  
6 in his room, correct?

7 A. That's what I believed, yes.

8 Q. Did he have his hand by the door / knob or the  
9 card access area?

10 A. I don't remember specifically.

11 Q. You testified he had a backpack in his hand;  
12 is that correct?

13 A. Yes, ma'am.

14 Q. Do / you recall telling the police officer he  
15 had a backpack in his hand?

16 A. I don't recall if I told him or not.

17 Q. Do you recall / what color the backpack was?

18 MS. MARTIN: Objection. Irrelevant.

19 THE COURT: Overruled.

20 THE WITNESS: No.

21 Q. BY MS. COOK: You came around the corner when  
22 they are at the door; is that correct?

23 A. Yeah.

24 Q. Did \*/ you tell them you were bounty hunters  
25 or bail enforcement agents?

26 A. Yes.

1 Q. Tell the jury what you said to Mr. Burns.

2 A. "Bail agents. Don't move." /

3 Q. Did you have your badge displayed?

4 A. It was showing, yes.

5 Q. After that statement, then at that point in  
6 time you tackled my client?

7 MS. MARTIN: Objection. Misstates / the testimony.

8 THE COURT: Sustained.

9 Q. BY MS. COOK: When did you take him down?

10 A. I didn't take him down.

11 Q. When you approached him, you just remained  
12 standing?

13 MS. MARTIN: Objection. Misstates the / testimony.

14 THE COURT: Sustained.

15 Q. BY MS. COOK: Did you approach him?

16 A. Yes.

17 Q. What happened then?

18 A. Kelly took him down. I didn't touch him.

19 Q. So Mr. Kelly made it to him / before you did?

20 A. Yes, ma'am.

21 Q. What was the female doing?

22 A. I wasn't really paying attention to her.

23 Q. How close would you estimate she was from /  
24 him?

25 A. Pretty close.

26



1 Q. When Mr. Kelly took him down, did he hit or  
2 touch her in any fashion?

3 A. I didn't observe anything.

4 Q. When Mr. Kelly / took my client down, you said  
5 that my client had a knife; is that correct?

6 A. That's correct.

7 Q. When you made your announcement, did my client  
8 / look at you?

9 MS. MARTIN: I am going to object. Vague.

10 THE COURT: Sustained.

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1 START TYPING

2 Q. BY MS. COOK: When you announced yourself as a  
3 bail agent, did you make eye contact with my \*/ client?

4 A. Not eye contact, but he heard me.

5 Q. How do you know he heard you?

6 A. I announced myself loudly and clearly.

7 Q. But, there was no / eye contact?

8 A. No.

9 Q. Let's talk about the second 911 call that was  
10 placed that afternoon.

11 A. All right.

12 Q. Do you carry a telephone?

13 A. Yes. /

14 MS. COOK: Can I approach, your Honor?

15 THE COURT: Certainly.

16 Q. BY MS. COOK: You testified Mr. Kelly made the  
17 call while you guys were on top of my client; is that  
18 correct? /

19 A. Yes.

20 Q. You also testified you are the one who spoke  
21 to Newport Beach police, correct?

22 A. Yes.

23 Q. Did you ever instruct my client to stop  
24 moving?

25 A. I / don't remember.

26

1 Q. Okay. But, you were cursing at my client that  
2 day; is that fair to say?

3 A. Absolutely.

4 Q. Now, we heard some swearing on the / 911 call,  
5 but you don't believe that was you, correct?

6 A. That was Mr. Kelly.

7 Q. Okay. You were asked if the defendant had a /  
8 weapon by the 911 operator. Someone responded that he  
9 did not. Do you think that was your partner?

10 MS. MARTIN: Objection. Speculation.

11 THE COURT: Sustained.

12 Q. BY MS. COOK: Do you / know whether that was  
13 your partner?

14 A. That was not Kelly.

15 Q. Could you tell us who else was on their cell  
16 phones in this area?

17 A. Well, \*/ some hotel people showed up. Whether  
18 or not they were talking on their phones, I don't know.

19 Q. Was this when the female was still there? /

20 A. I don't remember.

21 Q. When you made the call, do you recollect any  
22 hotel employees in the area?

23 A. I don't particularly recall any employees  
24 being present. /

25 Q. You don't know whether someone was present or  
26 not, other than you, Mr. Kelly and Mr. Burns; correct?

1 A. That's fair.

2 MS. COOK: Could I have a moment, / your Honor?

3 THE COURT: Yes. Do you need a recess at this  
4 time?

5 MR. COOK: No, thank you. I was just retrieving  
6 some notes, your Honor.

7 THE COURT: Let's proceed.

8 Q. BY MS. COOK: Did / you punch my client in the  
9 face or did Mr. Kelly punch Mr. Burns in the face?

10 A. It wasn't me.

11 Q. Very well. So if you / are testifying it  
12 wasn't you, who was it?

13 A. I assume Mr. Kelly.

14 Q. Did you observe Mr. Kelly hit him in the face?

15 A. Correct.

16 Q. Do you / know whether my client was struck in  
17 the eye?

18 MS. MARTIN: Objection. Speculation.

19 THE COURT: Overruled. You may answer.

20 THE WITNESS: I imagine somewhere in that area.

21 Q. BY MS. COOK: Do you recall if / he punched  
22 him in the left eye?

23 A. I don't remember if it was right or left.

24 Q. I am going to show you a picture marked \*/ as  
25 defense exhibit A. Who is that picture of?

26 A. That's Mr. Burns.

1 Q. You testified you struck him in the kidney  
2 area; is that correct?

3 A. That's / correct.

4 Q. Would this be a fair representation of the  
5 area of his body where you repeatedly beat Mr. Burns?

6 A. That's correct.

7 Q. Did you kick him / at all?

8 A. I kneed him.

9 Q. You didn't kick him, but you kneed him?

10 A. With my knee, yes.

11 Q. How many times did you do that?

12 A. Probably / a lot.

13 Q. More than ten?

14 A. No, not that many.

15 Q. You also testified you were repeatedly  
16 punching him, too?

17 A. Absolutely.

18 Q. How many times did you punch / him?

19 A. Until I was so tired I couldn't do it anymore.

20 Q. Were you sweating immediately afterwards?

21 A. I was completely exhausted. I could hardly  
22 move.

23 Q. Now, / you said that Mr. Kelly was the person  
24 hitting him in the face; is that correct?

25 A. Yes.

26

1 Q. You couldn't accurately testify whether Mr.  
2 Kelly struck / him in the right or left eye; is that  
3 correct?

4 A. I couldn't.

5 Q. When you got cut was there any blood on the  
6 floor or on / the carpet?

7 A. Not that I noticed.

8 Q. But, you claim you were bleeding from your  
9 injuries?

10 A. You could see a little bit of blood, but it \*/  
11 wasn't dripping or anything like that.

12 Q. All right. Did any blood get on your clothes?

13 A. Maybe a couple places on my jeans. That's  
14 what I / remember.

15 Q. Did you report to the police officer about  
16 that?

17 A. No. I didn't even notice until I arrived  
18 home.

19 Q. In looking at this photograph, can / you  
20 explain why it appears there is a gap where you said  
21 you got cut?

22 MS. MARTIN: I am going to object. The photograph  
23 speaks for itself. /

24 THE COURT: Overruled. You may answer.

25 THE WITNESS: There does appear to be a little gap  
26 there.

1 Q. BY MS. COOK: You said Mr. Burns sliced you  
2 with the knife; is that correct? /

3 A. Definitely.

4 Q. You believe he cut you twice in the exact same  
5 spot?

6 A. Maybe. I believe it is possible.

7 MS. COOK: If I could have a moment, your / Honor.

8 THE COURT: Yes.

9 Q. BY MS. COOK: Now, you were involved in a  
10 similar incident on January 27th, 2005, somewhere in  
11 Riverside; is that correct?

12 A. Yes, that's correct. /

13 Q. Isn't it true that on that date you walked up  
14 to a store and were looking for a person wanted by the  
15 court system?

16 A. We / were looking for a fugitive, yes.

17 Q. And when you walked up to the store, you came  
18 into contact with a Mr. John Fox; is that \*/ correct?

19 A. No, that's not correct.

20 Q. Who did you initially come in contact with?

21 A. I didn't come into contact with anyone. I  
22 never even got out / of the automobile.

23 Q. Who was the person outside of the car?

24 A. Kelly was outside the car.

25 Q. Mr. Fox wasn't a suspect; is that correct?

26 A. No, / he wasn't.

1 Q. Did you see Mr. Kelly strike Mr. Fox?  
2 MS. MARTIN: Objection. Vague.  
3 THE COURT: Overruled. You may answer.  
4 THE WITNESS: Hit him, no.  
5 Q. BY MS. COOK: Did you see Mr. Fox fall / down?  
6 A. I saw my partner lift him up and throw him to  
7 the ground.  
8 Q. Did you see Mr. Kelly throw the phone Mr. Fox  
9 had / in his hand?  
10 A. Yeah.  
11 Q. Did you see him then display a firearm?  
12 A. Absolutely not.  
13 Q. Did you hear Mr. Kelly threaten to run Mr. Fox  
14 over? /  
15 A. That never happened.  
16 Q. Did you hear Mr. Kelly tell Mr. Fox, "I will  
17 shoot you if you come close to me again?"  
18 A. I never heard / that.  
19 Q. Isn't it true that your partner did not  
20 identify himself at that time as a bail enforcement  
21 agent?  
22 MS. MARTIN: Objection. Vague.  
23 THE WITNESS: That's not true.  
24 THE COURT: Overruled. /  
25 THE WITNESS: That's not true.  
26



1 Q. BY MS. COOK: How far were you away from your  
2 partner?

3 A. 15 or 20 feet.

4 Q. And this happened almost two years ago; is  
5 that correct? \*/

6 A. Yes.

7 Q. You have a distinct memory of that; is that  
8 correct?

9 A. I definitely do.

10 Q. You are inside the vehicle the whole time; is  
11 that correct? /

12 A. Yes, I was.

13 Q. Your windows were completely up; is that  
14 correct?

15 A. No.

16 Q. The windows were down?

17 A. Yes, windows were down.

18 Q. And you never exited out / of the vehicle at  
19 any point in time; is that correct?

20 MS. MARTIN: Objection. Misstates his testimony.

21 MS. COOK: I will withdraw it.

22 THE COURT: It does misstate the testimony. Ask /  
23 your next question.

24 Q. BY MS. COOK: Did you get out of the car at  
25 any point in time?

26

1 A. After he already had him on the ground.  
2 Q. This was / not the person you were looking  
3 for, correct?  
4 A. It was not.  
5 Q. And you handcuffed him anyway?  
6 A. I did not.  
7 Q. Your partner handcuffed him?  
8 A. Yes, he / did.  
9 Q. Were you later arrested for that incident; is  
10 that correct?  
11 MS. MARTIN: Objection. Relevance.  
12 THE COURT: Sustained.  
13 Q. BY MS. COOK: Now, when you were checking on  
14 the warrant in this case, / were you ever made aware  
15 that my client had just missed a court date?  
16 MS. MARTIN: Objection. Vague.  
17 THE COURT: Sustained.  
18 Q. BY MS. COOK: Did you know that you were  
19 looking for / a person who was wanted by the court  
20 system simply for missing a court date?  
21 A. Yes.  
22 MS. COOK: No further questions.  
23 THE COURT: Redirect.  
24 MS. MARTIN: Thank you.

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1 REDIRECT EXAMINATION

2 Q. BY MS. MARTIN: Now, you spoke \*/ to the  
3 police officer at the hotel after this event occurred.  
4 You said that was Officer Moss who you spoke to in the  
5 lobby, right? /

6 A. Yes, ma'am.

7 Q. Okay. And how long would you say your  
8 conversation lasted with that officer?

9 A. It was short.

10 Q. Would you say that you provided more / details  
11 to Officer Moss on that date, or have you explained  
12 more details here today in court?

13 A. More details here today in court.

14 Q. Now, were / you interviewed separately from  
15 your partner?

16 A. Yes.

17 Q. How long would you say that your interview  
18 with Officer Moss lasted?

19 A. Just a few minutes.

20 Q. Okay. And / you had a chance prior to coming  
21 to court to review Mr. Kelly's statement; is that  
22 correct?

23 A. I briefly looked it over yesterday.

24 Q. When you / looked over that statement he had  
25 provided to the police, were there details you recall  
26 that were not in the statement?

1 A. Yeah, there were things / that aren't in  
2 there.

3 Q. From the testimony we heard, you recall when  
4 the defendant turned around he had the weapon in his  
5 hand, correct?

6 A. Yes. /

7 Q. At no time did you ever observe him remove it  
8 out of anywhere?

9 A. Correct.

10 Q. When you clearly announced you were bail  
11 agents, what kind of \*/ voice or tone of voice did you  
12 use?

13 A. Loud and deep, like I meant business.

14 Q. With some authority in your tone?

15 A. Absolutely.

16 Q. Louder than I / am talking now?

17 A. Yes.

18 Q. You indicated that the defendant had a female  
19 with him, correct?

20 A. Yes.

21 Q. Do you recall the female -- strike that. Did  
22 you / ever tell the officer that she saw Mr. Burns cut  
23 you or something to that effect?

24 A. I don't remember.

25 Q. Okay. You might have said that? /

26 A. I might have.

1 MS. COOK: Objection. Calls for speculation.  
2 THE COURT: Sustained.  
3 MS. COOK: Move to strike.  
4 THE COURT: Last answer is stricken. The jury is  
5 admonished not to consider it.

6 Next question, / please.

7 Q. BY MS. MARTIN: Do you recall making any  
8 statement at all that the female was aware of your  
9 being cut?

10 A. No, I don't recall.

11 Q. Do you recall / ordering Mr. Burns to put his  
12 hands behind his back when you were trying to handcuff  
13 him?

14 A. I don't recall that either.

15 Q. Could you have / said that?

16 A. Yes.

17 MS. COOK: Objection. Calls for speculation.

18 THE COURT: Sustained.

19 MS. COOK: Move to strike.

20 THE COURT: Stricken.

21 Q. BY MS. MARTIN: Now, you said you don't recall  
22 saying you were going to break the / defendant's wrist.  
23 Could you have said that?

24 MS. COOK: Objection. Calls for speculation.

25 THE COURT: Sustained.

26

1 Q. BY MS. MARTIN: Do you know if that was said,  
2 anything about breaking the defendant's wrist? \*/

3 MS. COOK: Objection. Vague as to time.

4 THE COURT: Sustained.

5 Q. BY MS. MARTIN: Looking at these photographs  
6 the defense attorney showed you. Do you know when  
7 these were taken?

8 A. No, I do / not.

9 Q. Okay. The recording that was played for you --  
10 well, let me back up.

11 At some point during trying to detain the  
12 defendant, you indicated / a second emergency call was  
13 made to 911?

14 A. Yes, ma'am.

15 Q. Actually, I believe you stated that it was  
16 Mr. Kelly who made that / call, or was it you?

17 A. Kelly made the call and was unable to talk  
18 with the dispatcher, so I told him to hold the phone /  
19 up. When he did, I told them what was going on because  
20 we were both --

21 MS. COOK: Objection.

22 THE COURT: It is nonresponsive at this point. Next  
23 question.

24 Q. BY MS. MARTIN: Let / me interrupt you.

25 When the emergency call was made to 911, it was  
26 Kelly who had the telephone, correct?

1 A. He dialed the numbers, / yes.

2 Q. You are still fighting with the defendant?

3 A. We were both still fighting. It was during  
4 the fight.

5 Q. Did you recognize your voice on the / tape we  
6 heard?

7 MS. COOK: Objection. Asked and answered.

8 THE COURT: Overruled.

9 Q. BY MS. MARTIN: Do you recognize your own  
10 voice on that recording?

11 A. I do not.

12 Q. Counsel asked you about this \*/ incident with  
13 a Mr. Fox. Do you recall that?

14 A. I do.

15 Q. You went out on that incident in your capacity  
16 as a bounty hunter looking / for a wanted person?

17 A. Yes.

18 Q. And was the person there?

19 A. No, he wasn't.

20 Q. Do you recall Mr. Fox not being happy that you  
21 were at / that store?

22 A. Yes.

23 Q. What was his demeanor when you tried to deal  
24 with him in trying to look for this suspect?

25 MS. COOK: Objection. Relevance.

26 THE COURT: Overruled. You / may answer.

1 THE WITNESS: He attacked my partner.

2 Q. BY MS. MARTIN: He was not happy about your  
3 being there, right?

4 A. That's true.

5 Q. Okay. And that incident has nothing to do /  
6 with our trial here today, right?

7 A. That's true.

8 Q. Okay. And you were never convicted of any  
9 charges in that matter; is that correct?

10 A. Yes.

11 Q. Thank / you, sir.

12 A. Thank you.

13 MS. MARTIN: I have nothing further.

14 THE COURT: Counsel, how long on recross?

15 MS. COOK: Less than one minute.

16 THE COURT: All right. Proceed.

17 RE-CROSS-EXAMINATION

18 Q. BY MS. COOK: Regarding your alleged injury.  
19 You / refused treatment that night, correct?

20 A. Yes, I did.

21 Q. Did you see your own doctor at any time?

22 A. No.

23 Q. You don't recall seeing a suitcase in / my  
24 client's left hand?

25 MS. MARTIN: Objection. Asked and answered.

26 THE COURT: Sustained. It is beyond the scope.



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MS. COOK: Nothing further, your Honor.

THE COURT: Thank you, sir. You may step down.

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