

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

CRIMINAL DIVISION

STATE OF FLORIDA,)
)
Plaintiff,)
)
-vs-)
)
RAMON DONESTEVEZ,)
)
Defendant.)
)
)
)

CASE NOS. A-75-10539

72-7137 A

- FILED -
FEB 10 1976
RICHARD P. BRINKER
CLERK

The above-entitled cases came on for
Arraignment and Probation Report before The Honorable
ELLEN J. MORPHONIOS, Judge of the above-styled Court,
at the Metropolitan Justice Building, 1351 Northwest
12th Street, Miami, Florida, on Thursday, December
18th, 1975, commencing at 10:00 o'clock A.M., pursuant
to notice.

APPEARANCES:

JAMES WOODARD, Assistant State
Attorney, on behalf of the
State of Florida.

STARR W. HORTON, ESQUIRE,
on behalf of the Defendant.

* * *



45-523

I N D E XSTATE WITNESSES DIRECT CROSS REDIRECT RECROSS

Allen Vетtrick	10	16		
Daniel Benitez	20	30	39,45	42,45
Ignacio Vasquez	46	51		
George R. Havens	55	58		
Dewey Keller	60	64	70	72
Edward Madero	74	75		

DEFENSE WITNESSES

Alberto Marin	85	88	98,99	99
Calixto Izquierdo	101	105		
Tony Estrada	113	117		
Rafael Contreras	120	124		
Daisy Donestevez	126	132		
Ramon Donestevez, Jr.	138	145	147	

E X H I B I T SFOR IDENT. INTO EVID.

State's Exhibit 1-A	12		
State's Exhibit 1-B [Composite]	26		
State's Exhibit No. 1			27
State's Exhibit No. 2 [Composite]			27
State's Exhibit 1-C	50		
State's Exhibit No. 3			51

2



THE COURT: On page 15-3, Ramon Donestevez.

MR. WOODARD: State's ready, Your Honor.

THE COURT: Any and all persons in the case of Ramon Donestevez, please come forward.

Come on forward, Mr. Donestevez.

Swear the witnesses, violation of probation hearing.

[Thereupon, the witnesses were sworn.]

MR. WOODARD: I am sorry, Your Honor, where is Mr. Donestevez' attorney?

THE COURT: Where did Mr. Horton go? I am sorry. I didn't even notice he wasn't there.

PROBATION OFFICER KELLER: He is coming, Your Honor.

MR. HORTON: I apologize.

THE COURT: I am sorry. I didn't even notice you had stepped out of the room.

All right, the witnesses have been sworn. Are you ready on the violation of probation

3



hearing?

MR. HORTON: Yes, ma'am.

Let me ask you this, Your Honor: We haven't been arraigned yet on the charge of possession of firearms by convicted felon. We are going to have to, of course, go through this hearing today, and then try the case again.

THE COURT: We do that quite often.

MR. HORTON: What I'd like to do is, of course, go ahead and enter a not guilty; waive jury and try it all at once.

THE COURT: Sorry. We hold the violation of probation hearing on cases like this prior to the time of trial.

MR. HORTON: The other thing, let me advance this, Your Honor, as far as this case goes, from my standpoint there is not dispute as to fact. There is no factual dispute in this. It's going to be a matter of interpretation by this Court.

If I may enlighten the Court as to the circumstances, because I have a transcript from the Preliminary Hearing and we will take the arresting officer's testimony and go by that.



THE COURT: Well, the State is in charge of that. Whatever you all want to do.

MR. WOODARD: Judge, let me say this: I am willing to accept counsel's waiver of his right to jury trial in the other case. The only problem is that we are -- I don't know if counsel is ready to proceed on the other case this morning. I am not, because we have received no communication from Tallahassee concerning the restoration of Civil Rights and other niceties such as that. I don't know if counsel can ---

THE COURT: That's already been determined. We will be continuing with the violation of probation hearing this morning.

MR. WOODARD: Fine.

THE COURT: The only -- I gather that you are saying you want him to stipulate to some of the testimony. But, that's up to the State. I see an awful lot of people here, so apparently everybody is here and ready.

MR. WOODARD: We are ready, Judge.

THE COURT: All right.

MR. HORTON: Judge, as to the charge

5



that we are arrested on, I am willing to take the transcript that I have had typed, read it to the Court, argue the law on it and we can let it rest there without compelling you to listen to all the testimony that is going to transpire.

THE COURT: I don't mind. Frankly, I'd set aside this morning for this hearing and I had assumed it was going to be a long one. Time is no issue. I had called -- I think there is only two other matters that I had held pending that we couldn't dispose of prior to this. We are at your disposal.

MR. HORTON: All right.

I am just trying to shorten your time.

THE COURT: That's all right. I don't mind time.

MR. HORTON: And abbreviate mine, because frankly, I will have to do this all over again after this.

THE COURT: I understand that.

MR. HORTON: And we have this problem, too, Your Honor: We have the problem of -- let's just say, for instance, that you find parole violation. So then, you go ahead and put him -- incarcerate him.



THE COURT: Yes.

MR. HORTON: And then, we come back before you and we try this case without a jury and you find him not guilty. Then, technically there is no problem ---

THE COURT: One may have nothing to do with the other, because many times we have actions that are violation of probation but are not sufficient for the determination of guilt on a charge itself. That has happened many times. There are a lot of people who have been found guilty of violation of probation on charges that -- charges were filed on that same thing they were found not guilty on.

MR. HORTON: Yes, ma'am.

THE COURT: We have several of those that are the guests of the State right now.

MR. HORTON: Technically, it has no bearing. But, in reality it does.

THE COURT: Two different things. The standards are different and really they are two different things and can't really be -- it's apples and oranges.

MR. HORTON: But, what I am really



trying to get at, I think the entire thing can be disposed of on a motion to suppress.

THE COURT: On the violation of probation hearing?

MR. HORTON: No, sir. No, ma'am, on the charge.

THE COURT: See, that's what we are here for this morning, is the violation of probation hearing. You very well may be right on the case in chief. I don't know. I wasn't here when any of this happened. I was out of town at a Judge's Conference. I didn't see any of the media releases on any of it. Other than the hearing which we had when he first came up, I am without knowledge of any of it.

For all I know, you may be right on the motion to suppress. But, that has nothing to do with the violation of probation hearing that we are here for today.

MR. WOODARD: Judge ---

THE COURT: Witnesses have been sworn. Let's proceed.

MR. WOODARD: Let me ask Mr. Horton one thing: We have one witness only to testify the



weapons were test fired and they are operable. If counsel would like to stipulate to that, I can send him back.

MR. HORTON: Sure. No problem.

THE COURT: Better put the name in.

MR. WOODARD: Mel, would you state your name and position?

MR. ZON: Melvin Zon [phonetic], Criminalist, Dade County Crime Laboratory.

MR. WOODARD: All right.

We accept the stipulation of Mr. Horton and that in substance would be his testimony.

THE COURT: All right.

MR. WOODARD: Thank you very much.

THE COURT: Let's go.

MR. WOODARD: Your Honor, first witness for the probation violation hearing will be Officer Vettrick [phonetic].



Thereupon --

ALLEN VETTRICK

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

DIRECT EXAMINATION

BY MR. WOODARD:

Q Officer Vettrick, will you state your name, please, and official position?

A Officer Allen Vettrick [Phonetic], Dade County Public Safety Department.

THE COURT: One favor, please keep your voice up real loud. I'd like to be able to hear.

Q [By Mr. Woodard] Officer Vettrick, did you have occasion or were you so employed on the 12th of October, 1975, sir?

A Yes, I was.

Q On that date, sir, did you have occasion to proceed to a boat plant or a boat yard on Banyan Street in Perrine?

A Yes, I did.

Q Do you recall the location of that boat yard, sir?

10



A The exact location is 9970 Banyan Street.

Q Approximately what time were you at that location?

A At approximately 11:25 P.M.

Q All right, sir.

While at that location, did you have occasion to see a person who appeared to be armed with an unusual weapon?

A Yes, I did.

MR. HORTON: I am going to object to this type of question and move to strike his testimony. The question was: Did you see a man armed with an unusual weapon.

THE COURT: All right. Sustained to the conclusion of what is unusual.

Q [By Mr. Woodard] Officer Vетtrick, did you see a man who appeared to be armed at that time?

A Yes, I did.

Q Where were you and where was this other gentleman?

A I was positioned in my patrol car on

11



Banyan Street. The man was near the warehouse on Banyan Street. He was armed with a semi-automatic rifle.

MR. HORTON: I am going to move to strike the word "near" unless he can testify as to what he was near or what the premises pertained to.

THE COURT: Overruled. You will be allowed to cross on that.

MR. WOODARD: Miss Clerk, would you mark the rifle for identification, please?

THE CLERK: Becomes State's Exhibit 1-A for Identification.

[Thereupon, the article referred to above was marked as State's Exhibit 1-A for Identification.]

Q [By Mr. Woodard] Mr. Vетtrick, I ask you to take a look at State's Exhibit 1-A for Identification and ask you if you have ever seen a rifle similar to that before today, sir?

A Yes, I have.

Q When and where, sir?

A On the 12th of October, approximately

12



11:25 P.M., at the boat warehouse on Banyan Street.

Q All right.

Now, Mr. Vетtrick, did you have occasion to -- strike that.

At the time that you first observed the man with this particular weapon, did you make or did you form any opinion as to the type of weapon that it was?

A In my opinion it was a fully automatic weapon. I have no real full knowledge of weapons. But, to me at first glance it looks like an automatic weapon.

Q All right.

Based upon that original assumption, did you further investigate?

A Yes, I did.

I asked the man to please disarm himself. He dropped the weapon to the ground. He also was in possession of two more guns: one .380 caliber automatic pistol and a .45 caliber pistol.

Q Did you have a further conversation with the gentleman concerning other weapons?

A Yes, there was a communication



difficulty. The man spoke hardly any English. But, I did get the fact that there were more weapons inside where he led me inside the warehouse.

Q All right, sir.

Did you have occasion to accompany him inside the warehouse?

A Yes, I did.

Q When you went into the warehouse, what, if anything, did you see and where did you see it?

A I went in the north door of the warehouse, turned to my right. To my immediate right there was an office and in the office building on the north wall was a plywood cabinet which contained approximately three more of these weapons.

Q All right, sir.

At that time did you make any arrests or make any seizures?

A No, sir. I did not.

Q Did you have occasion to come into contact with a gentleman other than the gentleman that you first saw outside the building?

A Yes, I did.

Q Who was that person?

14



A That person was Ramon Donestevez.

Q Do you see Mr. Donestevez in the Courtroom?

A Yes, he is right there [indicating].

MR. WOODARD: Indicating, for the record, the Defendant, Ramon Donestevez.

Q [By Mr. Woodard] Would you tell the Court, please, what conversations you had, if any, with Mr. Donestevez concerning the weapons?

A The subject who I first observed called Mr. Donestevez by telephone. Mr. Donestevez came down to the warehouse. I asked Mr. Donestevez who these weapons belonged to and for what purpose they were there.

He stated they were his weapons and they were for protection of a half million dollar boat, the west side of the warehouse.

Q Did you have any further conversation with him at that time?

A No.

Q Inside the cabinet where these weapons were located, were there any other items?

A There were several boxes of ammunition

15



and clips. I believe there were several pairs of combat boots.

Q Your observations occur in Dade County, State of Florida?

A Yes, they did.

MR. WOODARD: Your witness, Counsel.

CROSS EXAMINATION

BY MR. HORTON:

Q Officer, would you describe the premises to us?

A It's on Banyan Street, sir. It's a sheet metal building and it's a boat warehouse, I believe.

Q Does it have a fence around it?

A No.

Q It does not have a fence around it?

A No, sir, it does not.

Q It's just a warehouse sitting out by itself?

A Right.

Q The warehouse itself with relation to this man you saw that was armed, what was the distance between it?



A There was a dippy dumpster, sir, at the north side of the building. He was behind the dippy dumpster, which is between the building -- he was between the building and between the dippy dumpster.

Q Well, would it be in your opinion within the boundaries of the real property on which this building was resting?

A Yes, I would believe so.

Q Did you not at any time see Mr. Donestevez who you have identified here in possession of any of these arms?

A No, sir, I did not.

Q The only one you saw in possession of these arms was another man?

A Yes, sir.

Q You did not arrest that man?

A No, sir, I did not.

Q This man took you inside the building and that is where you saw the other weapons?

A Yes, sir.

MR. HORTON: I have no further questions.

MR. WOODARD: State at this time,

17



Your Honor, will call Detective Benitez.

Your Honor, while we are waiting for Mr. Benitez to appear, we request the Court to respectfully take judicial knowledge of its Court record under file 72-7137, that being the case file upon which we are proceeding or upon which we are proceeding including the bench dockets, orders of adjudication, information and other pertinent documents in that case.

THE COURT: Counsel, any comment with regard to the Court taking notice of its own official Court file?

MR. HORTON: I haven't seen it, Your Honor.

THE COURT: All right.

Shirley, you have pulled out part of them. How about giving him the entire Court file which includes these.

MR. WOODARD: Mr. Horton, do you wish me to wait while you examine that document?

MR. HORTON: Go ahead with it.

MR. WOODARD: Mr. Benitez ---

THE COURT: Wait a minute. You just

18



what, sir?

MR. HORTON: I'd just as soon move along. I am sure I can agree to this, but I haven't looked at it.

But, I just hate to say I will. There is a judgment in there.

THE COURT: I think what he is asking is a stipulation that on whatever date it is, a man named Ramon Donestevéz was convicted in this Court of that charge, and placed on probation, am I correct?

MR. WOODARD: Your Honor, the history as I understand it, is that on April 19, '73, Mr. Donestevéz was adjudicated guilty and placed on five years probation for the felony of extortion.

Subsequent to that time, on October 2nd of 1974, the probation was modified. He was then sentenced to one year in the County Jail. Entry of sentence to the extent of 10 months was suspended. An additional five years was then placed upon the Defendant.

That is the history as I understand it, Mr. Horton. Would you stipulate to that?

MR. HORTON: ¹⁹Yes, I will.



MR. WOODARD: We accept the stipulation.

THE COURT: All right.

Hand me the documents back up, Shirley.

Thereupon --

DANIEL BENITEZ

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

DIRECT EXAMINATION

BY MR. WOODARD:

Q State your name.

A Daniel Benitez, Dade County Public Safety Department.

Q Were you so employed, sir, on the -- I am sorry. I believe it's the 21st or 22nd of October, 1975?

A Yes, sir, I was.

Q Did you have occasion to proceed -- I am sorry. That's the 21st of October, 1975.

Did you have occasion to proceed to a boat yard in Perrine?

A Yes, sir, I did.

Q Where did you go and when did you get



there?

A I went to the Piranha Boat Company, 9970 Banyan Street, in Perrine.

Q On what day, sir, in Perrine?

A On the 21st of October, 1975, approximately 5:00 P.M.

Q All right, sir.

Were you in the presence at that time, sir, of an officer of the Probation and Parole Commission?

A Yes, sir, I was.

Q Was that Mr. Dewey Keller?

A Yes, sir, it was.

Q Did you also have in your presence several other officers with the Public Safety Department?

A Yes, sir, I did.

Q Would you tell the Court, please, what happened upon your entry into the premises?

A Well, as I walked into the front entrance of the Piranha Boat Company, I observed Mr. Donestevéz directly across from the small office area and into a large work area.

21



Q All right.

Do you see Mr. Donestevez in the Courtroom today?

A Yes, sir, I do.

Q Would you point to him, please?

A The gentleman in the blue shirt [indicating].

MR. WOODARD: Indicating, for the record, Defendant Ramon Donestevez.

Q [By Mr. Woodard] All right.

Mr. Benitez, have you ever seen Mr. Donestevez before that date, sir?

A Yes, sir, I have.

Q On approximately how many occasions?

A Approximately two or three occasions.

Q Have you ever been in that building prior to that time, sir?

A Yes, sir, I had.

Q Have you ever been in the area that is referred to as the office that is a portion of the building that Officer Vетtrick just testified about?

A Yes, sir, I have.

Q Have you ever seen Mr. Donestevez in

22



that portion of the building?

A Yes, sir, I have.

Q Are you familiar with a desk that occupies a space within that office?

A Yes, sir, I am.

Q Have you ever seen Mr. Donestevez in any area in relation to that desk?

A Yes, sir, I have seen him sitting directly behind the desk, using the desk.

Q All right.

On approximately how many occasions?

A On one occasion, approximately.

Q Now, Mr. Benitez, at the time that you entered the boat company, would you tell the Court, please, what occurred?

A As I entered along with the other detectives, I observed Mr. Donestevez who was in the workshop area just behind the small office area at the entrance. Mr. Donestevez walked towards us.

At the same time I walked, I told him who I was. He obviously recognized me.

He said, "Hi."

And he said at the same time he walked

23



in, walked towards us and motioned us to go into his office. Said, "Step into my office."

I asked him -- I told him why we were there and as we walked in, I observed on the couch in the front of the office four Heckler and Koch semi-automatic rifles.

Q In what manner were the weapons on the couch?

A They were standing upright, leaning against the backrest of the couch.

Q All right, sir.

Did you have occasion at any time to take a look at these weapons to determine whether or not they were loaded and operable?

A Yes, sir, I did, immediately.

Q What determination did you reach?

A They were loaded and operable.

Q All right.

Drawing your attention to what has been marked State's 1-A for Identification and ask you if you have ever seen that weapon before, sir? Would you take a look at it? Take it out of the bag, if necessary.



A Yes, sir, I do.

Q All right.

Would you tell us how you are able to recognize it and where it was that you first saw it, sir?

A I am able to recognize it by the markings, the initials on the receiver and also by the fact that I picked it up from the Property Room this morning, brought it in here as being the same weapon that I picked up at Mr. Donestevéz' place.

Q I am not familiar with the operation of the mechanism. How do you operate the bullet?

Were there other weapons also present in the building at that time?

A Yes, sir, there were three other similar weapons.

THE CLERK: Becomes State's Exhibit 1-B for Identification.

MR. WOODARD: Would you mark these all a composite exhibit?

THE CLERK: Becomes State's Exhibit Number 1-B Composite.



[Thereupon, the articles referred to were marked as State's Exhibit 1-B Composite for Identification.]

Q [By Mr. Woodard] Detective Benitez, are you able to identify the remaining items contained within State's 1-B for Identification?

A Yes, sir, I am.

Q How are you able to identify them, sir?

A By having verified the serial numbers being the same serial numbers I picked up and by observing the markings on the receivers at the time they were picked up.

Q With the exception of the items being in an unloaded condition, are they all in essentially the same condition as the date you observed them in the Piranha Boat Company?

A Yes, sir.

MR. WOODARD: At this time, Your Honor, State would offer State's 1-A and State's 1-B for Identification into evidence.

THE COURT: Counsel?

26



MR. WOODARD: For purposes of this hearing.

MR. HORTON: I have no objection.

THE COURT: Admitted for purposes of this hearing only.

THE CLERK: State's Exhibit 1-B for Identification now becomes State's Exhibit Number Two.

State's Exhibit 1-A for Identification becomes State's Exhibit Number One.

[Thereupon, State's Exhibit 1-A for Identification was marked as State's Exhibit No. 1.]

[Thereupon, State's Exhibit 1-B Composite for Identification was marked as State's Exhibit No. 2.]

MR. WOODARD: May I have just one moment, Your Honor?

THE COURT: All right.

27



[Thereupon, a short recess was taken, during which time other Court proceedings were had, following which this hearing resumed.]

Q [By Mr. Woodard] Detective Benitez, in addition to the items that have been introduced as State's One and State's Two Composite, were there any other weapons located in your presence inside of the premises?

A Yes, sir. There was a Browning high power semi-automatic pistol.

Q Did you locate any other weapons inside the premises?

A Yes, sir. There were two other weapons. One was outside of the -- of Mr. Donestevez' office, directly.

MR. HORTON: I am going to object to quote "His office", the use of that, unless there is some significant thing that would indicate that that particular office you are referring to is that of Mr. Donestevez.

THE COURT: Overruled, in view of his

28



testimony. You will be allowed to cross further on it.

Q [By Mr. Woodard] Detective Benitez, prior to finding the three remaining pistols that you have described -- I am sorry. Did you describe two or three?

A Two.

Q All right.

Was there a third pistol, also?

A Yes, sir.

Q Where was that found?

A It was found under a baseball cap at a workbench to the rear of the desk.

Q All right.

Now, prior to finding these three weapons, had you had any discussions with Mr. Donestevez concerning other weapons within the premises?

A Yes, sir, I had.

Q Would you describe that conversation?

A Upon observing the rifles, I made them safe. Not myself, but all of the detectives present picked them up and rendered them safe.

We asked Mr. Donestevez if there were

29



any other weapons on the premises, which he stated there wasn't.

Q You then proceeded to find three additional pistols, is that correct?

A Yes, sir.

Q Did you have any conversations with him about the pistols after you found them or did he make any statements to you after the pistols were located?

A I don't understand the question.

MR. WOODARD: I will withdraw the question.

Q [By Mr. Woodard] Your observations occur in Dade County, Florida, Mr. Benitez?

A Yes, sir, they did.

MR. WOODARD: One moment, please, Your Honor.

I have nothing further of this witness.

CROSS EXAMINATION

BY MR. HORTON:

Q Officer, would you describe to us whether or not there was a fence around this particular building?



A I seem to recall there is some type of fence on one side. I am not particularly sure of it.

Q Would you describe it as cyclone fence?

A I recall having described it as a cyclone fence in a prior hearing. However, I believe it's a sheet metal, corrugated sheet metal type fence.

Q All right, sir.

Didn't you also describe it as being higher than your height and having barbed wire on the top?

A Yes, sir. I believe that's correct.

Q You went past this fence and into the building?

A No, sir. I never went past that fence.

Q You never went past that fence?

A The front of the building isn't fenced in, sir.

Q As you looked at the building are there any identification signs on the building?

A There wasn't at the time of the arrest. There was a large white sign that it had something to do with the Operacion Pueblo de Cuba on it.

31



Q All right, sir.

Did you ascertain ownership of the building?

A I did, through Tallahassee.

Teletyped Tallahassee for the company records.

Q Who owned this building?

A I don't have the information with me.

Q Would Piranha Diesel Corporation be the corporation that owned it?

A Yes, sir, I believe so.

Q Yes, sir.

Now, after you entered the building you saw the Defendant here back in the work area?

A Yes, sir.

Q So you called to him?

A Well, he started walking towards us at the same time. We kind of met halfway.

Q All right, sir.

Did you tell him that there had been a report of his -- of guns being located on the premises?

A Yes, sir, I did.

Q Then he took you into another room?

32



A Took us into his office.

Q When you say "his office", was there anything there to identify this office as being that of Ramon Donestevez?

A Well, on prior occasion I have been there. There was some plaques on the wall with his name on them, I believe.

Q I didn't ask you what you believed. I asked you what you know. Do you know it to be his office or do you know it just to be an office?

A I have known it to be his office before.

Q Now, on direct didn't you testify that you said he invited you into his office?

A Yes, sir.

Q Do you remember this Preliminary Hearing that we had before Judge William Piquette on November 20th, 1975?

A Yes, sir, I do.

Q On page 16 your testimony is:

"I asked him if I may speak to

Mr. Donestevez, at which time he said,"

quote: " 'Yes, come into the office, ' " end of quote.

33



"Upon entering he went to
the office."

Do you recall that testimony?

A Yes, sir. If that's what you have on
there, that's what I said.

Q All right, sir.

So, there was no identifying marks
to this office or to this desk?

A There were.

Q Was there a name on them?

A The name plate?

Q Yes.

A I believe so.

Q Don't tell me what you believe; tell
me what you know.

A I can't recall.

Q All right.

Now, upon entering this particular
room you saw these guns back against the wall?

A Back against the back seat of the
couch, yes, sir.

Q Yes, sir.

How far was that from the entrance into

34



this office?

A About 10 or 15 feet.

Q All right, sir.

Did Mr. Donestevéz ever have possession of any weapon?

MR. WOODARD: Objection, Your Honor. That's questionable.

THE COURT: Sustained.

Q [By Mr. Horton] I mean, personally, did he have in his physical possession any weapon at any time?

A No, sir. Not on that day.

Q All right, sir.

Now, did you check to see whether or not these guns that you have identified here were registered?

A Yes, sir, I did.

Q Who are they registered to?

A Well, I have the copy of the Federal Firearms Registration Form.

Q Well, first, let me ask you this: Where were these guns purchased, if you know?

A They were purchased at Tamiami Gun Shop,

35



according to these records.

Q And by whom were they purchased?

A They were purchased -- three of them were purchased by a Juana Bengurian Toledo, white female.

One was purchased by Daisy Donestevez.

Q And these were all registered in their names?

A As far as I can ascertain, yes, sir.

Q Now, as to the hand guns, were there other owners other than these two ladies that you have mentioned as to those hand guns?

A Yes, sir, there were.

Q What were their names?

A If I may look at the rest of them. The Browning was registered to a Mr. Bobillo. The other weapon was registered to another person. I don't have the record with the name on it.

A All right, sir.

Can I show you these receipts and that will refresh your memory as to the other weapon.

MR. WOODARD: Judge, let me just

36



interpose a question, if Mr. Horton will permit. The receipts that counsel has shown the witness are not purchase receipts, they are P.S.D. Property receipts. To that we would object to his witness refreshing his recollection from Property receipts as opposed to purchase receipts.

MR. HORTON: These are the receipts he gave as to the ownership.

THE COURT: If it will assist him, overruled.

THE WITNESS: They do refresh my memory, Your Honor, but I can't read the signature on the bottom.

Q [By Mr. Horton] All right.

Maybe I can help you by showing you up here, your form has owner, name of owner?

A Yes, sir.

Q I believe you have the names of the owners on each one of these. Would that help you?

A Yes, sir. I wrote these forms out at the time I placed as owner Piranha Diesel Company on all the forms except on one I placed Armando Bobillo being the owner of the Browning. The

37



Piranha Boat Company, Alberto Marin as the owner of the Colt. And Piranha Boat Company as the owner of the Sterling firearm. Piranha Boats on the Heckler and Koch rifles.

Q Now, did anyone explain to you that these weapons were used -- were being used by security guards?

A Yes, sir. Mr. Donestevéz did.

Q Isn't it also a fact that there have been several attempts to bomb his boat yard?

A Yes, sir, that is true.

Q Isn't it also a fact that at that time he was constructing what he described to be a half million dollar boat?

A Yes, sir, it may be so.

Q Did you also know that there had been a previous threat to blow up this boat?

A I don't particularly remember a previous threat to blow up the boat. There have been many threats to his property.

Q All right, sir.

Did any of the security personnel --
was there any security personnel present at the time

38



you entered the premises?

A There was one person who identified himself to me as security personnel. That was Mr. Bobillo.

Q Did he at any time tell you that security guards stored weapons back on his couch?

A He did not say they stored them there, sir.

Q Did he tell you he stored them any other place?

A He stated that they were there for the protection of the factory, as best I can recall.

MR. HORTON: All right, I have no further questions.

REDIRECT EXAMINATION

BY MR. WOODARD:

Q Mr. Benitez, at the time that you and the other officers arrived, how many persons were in the boat plant and tell us who they were, if you know.

A I believe there were two secretaries. I don't know if they were working. I believe there were two secretaries and another lady. I don't recall her name. Mr. Donestevez, Mr. Bobillo, another

39



gentleman who owned one of the weapons. I believe maybe another person. I can't recall the name.

Q All right.

Was Daisy Donestevez present?

A I have never met her. I don't really remember.

Q Well, was there a person who identified themselves as Daisy Donestevez present?

A Later during the afternoon they did.

Q At that time?

A At the time I first went in?

Q Was she present at the time that you went into the store or into the shop?

A No, sir. Not to my knowledge.

Q Do you know a woman by the name of Juana Bengurian?

A Yes, sir, I do now.

Q All right.

Was she present that day?

A No, sir.

Q Three of these weapons are registered to her. One of them registered to Daisy Donestevez, is that correct?



A That is correct.

Q Now, you have described certain plaques on the wall of this office area. Are there more than one person's names as recipient on the plaque, if you recall?

A There may be on some plaques. Not on all the plaques.

Q Whose names are on the plaques?

A The ones I can remember say Ramon Donestevéz. The other name I am not too familiar with.

Q Do you recall any names from any other plaques?

A No, sir.

Q Now, Mr. Horton has asked you concerning certain Property receipts to ask you if you could refresh your recollection from them.

You had persons who represented themselves as being the owners of these weapons sign for the property that you were impounding, is that correct?

A Yes, sir.

Q Who signed the Property receipt concerning four Heckler and Koch rifles that are in



evidence in this case?

A Mr. Donestevez did.

Q You have indicated that you examined the records of this particular premise to determine who the owner was. And that I believe Mr. Horton refreshed your recollection that it was Piranha Diesel, is that correct, or some variation of that name?

A Well, that is basically correct.

Q Okay.

Did you determine in the same records search who the president of that corporation was?

A I have not received a response from Tallahassee as of this date.

Q Did you receive a teletype from them indicating that Mr. Donestevez was the president of this corporation?

A Yes, sir, I did.

MR. WOODARD: All right. I have no further questions.

RE-CROSS EXAMINATION

BY MR. HORTON:

Q Officer, the reason Mr. Donestevez

42



signed for those weapons is because you asked him to sign for them, is that right?

A Yes, sir. I asked him to sign the property that I was removing from his property.

Q You asked him and he signed it?

A Yes, sir.

Q You didn't tell him he was the owner, did you?

A No, sir.

Q All right.

Now, as to the plaque, what type of plaque are you speaking of?

A I am speaking of several plaques directly behind the desk. One of whom which I specifically remember saying Mr. Donestevéz' name as being named to something.

Q Well, describe the plaque. What did it look like?

A I believe it's a glass with white parchment or some type of paper similar to parchment bearing some black or blue writing on it.

Q How big was it?

A Approximately this big [indicating],

43



about 12, 18 inches.

Q How high?

A I don't specifically recall.

Q But, you do recall that the name of Ramon Donestevéz was on that plaque?

A Yes, sir, I do.

Q That was hanging on the wall?

A Yes, sir.

Q Behind the desk?

A Yes, sir.

Q Were there any other plaques up there?

A There were several other plaques.

Q Describe those to me.

A They are basically the same. They look like plaques or diplomas to me. I did not pay that much attention, other than the fact that they had been issued to Mr. Donestevéz.

Q Isn't it true while you were there that several of the people in the factory there use that office?

A They came in and out of the office.

Q Yes, sir. Everyone had free access to it?



A Yes, sir.

Q In fact, other than the desk it was just another room in that building?

A If you say so.

REDIRECT EXAMINATION

BY MR. WOODARD:

Q Only one other question, Mr. Benitez. Was there more than one desk in that office?

A No, sir.

MR. WOODARD: No further questions.

RE CROSS EXAMINATION

BY MR. HORTON:

Q Now, isn't it also a fact that the security personnel sleep in this particular room where the weapons were?

A I have no knowledge as to where they sleep. I know that they remain on the premises at night sometimes.

Q Yes, sir.

And they sleep in this particular room?

A I have no knowledge of them sleeping there.



MR. HORTON: All right, sir.

MR. WOODARD: No further questions,
Your Honor.

At this time, Your Honor, we would call
to the stand Officer Vasquez.

Thereupon --

IGNACIO VASQUEZ

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

DIRECT EXAMINATION

BY MR. WOODARD:

Q Detective Vasquez, state your name
and official position, please.

A Detective Ignacio Vasquez, Public
Safety Department, Police Officer.

Q Detective Vasquez, did you have occasion
to proceed to a building in Perrine on the 21st of
October, 1975?

A Yes, sir, I did.

Q Would you tell the Court, please, when
you arrived and where you went?

A We arrived approximately 5:00 o'clock

46



in the afternoon on that particular date. I was directly behind Detective Benitez. He was first. We walked right into the warehouse to the threshold. Directly at that same corridor we observed Mr. Donestevez working in the workshop area.

Once he noticed our presence there and Mr. Keller's presence there, he acknowledged us and started walking towards us.

At that time, we informed him of our purpose there and he said, "Come into my office."

Q Do you recall whether he said "my office", or "the office?"

A Yes, sir. "My office."

Q All right, go ahead.

A And we did.

So, Detective Benitez walked in first behind Donestevez. Myself walked behind Benitez. Like he stated before, on the couch directly on the north section of it, there is a couch. On it were all four of these four Heckler and Koch semi-automatic rifles.

Q All right.

Detective Vasquez, subsequent to the



or after the rifles were discovered, did you have an occasion to observe some things in the desk that was located in that office?

A Yes, sir. After the rifles ---

Q Prior to getting to that, during that period of time, had you seen anyone at the desk or behind the desk?

A No, sir.

All during this time we were talking to Mr. Benitez and he sat directly behind that desk. On that desk there is a name plaque with a name Ramon Donestevéz. He sits there.

During our conversation with him, employees came to ask him questions which I cannot recall now. They directed their conversation to him, asked him questions pertinent to which I cannot recall now.

But, he gave instructions and they left. He remained behind that desk and continued his conversation with us.

Q Did you have occasion, Detective Vasquez, to walk behind the desk to examine or look at some plaques that were on the wall?



A Yes, sir, I did.

Q Do you recall whose name was on the plaques?

A Ramon Donestevéz. There were approximately -- I can't give you an exact count of all the plaques that were there. But, there is one particular plaque that I remember, an award for outstanding boat builder. His name is written right on it.

Q While you were behind the desk, did you have occasion to look into the desk that was in front of you?

A Yes, sir, I did. As I looked to the right of the desk there was -- top drawer was somewhat ajar and I could see -- may I?

I could see this gun setting in this position. I noticed the grip of this gun.

MR. WOODARD: All right.

I would mark this for identification, please.

THE CLERK: Becomes State's Exhibit Number 1-C for Identification.

49



[Thereupon, the article referred to was marked as State's Exhibit 1-C for Identification.]

Q [By Mr. Woodard] Detective Vasquez, asking you to look at State's 1-C for Identification, ask you, sir, whether that's the same weapon that you have just been referring to?

A Yes, sir, it is.

Q All right.

What position was the weapon in when you observed it?

A Well, this would be the position of the desk to the right top drawer. It was in this manner [indicating].

Q Was the gun loaded or unloaded?

A Yes, sir, loaded with one in the chamber.

MR. WOODARD: All right.

Now, we would request that the exhibit be moved into evidence as a composite exhibit with the magazines and ammunition.

THE COURT: Counsel?

MR. HORTON: I have no objection.

50



THE COURT: Admitted.

THE CLERK: State's Exhibit 1-C for Identification now becomes State's Exhibit Number Three.

[Thereupon, State's Exhibit 1-C for Identification was marked as State's Exhibit No. 3.]

MR. WOODARD: I have no further questions of the witness, Your Honor.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. HORTON:

Q Officer ---

THE COURT: I am sorry.

MR. HORTON: Excuse me. I am sorry.

THE COURT: I just said cross exam.

Q [By Mr. Horton] Officer Vasquez, did you run any fingerprint tests on any of these weapons?

A No, I did not.

Q At the time that you were on the premises did you meet any of the security personnel?

A When you refer to security personnel,

51



are you referring to uniform security personnel?

Q No, not necessarily uniformed. People that identified themselves as owners of these weapons and said that they were guards?

A They stated they were guards, but all they have -- one individual produced an expired identification making him ---

Q How ---

A Excuse me. Identifying him as a security guard for this bonded security firm.

Q How many people there identified themselves as security guards?

A The individual that I just spoke about.

Q No one else?

A No, sir, not to me.

Q Did anyone else tell you that the security personnel had been using that room to sleep and store their weapons?

A Mr. Donestevéz did.

Q All right.

He told you that?

A Not to sleep. He said -- said the

52



security personnel uses those guns and they store it here.

Q You didn't have any difficulty with Mr. Donestevez, did you?

A In what respect, sir?

Q In any respect?

A No.

Q All right.

You saw the gentleman and you discussed with him these weapons when you met him?

A I didn't ask him; Benitez conducted most of the inquiries.

Q After this inquiry by this officer that you were with, he took you into the room, you showed him the gun ---

A He took Benitez, myself and the remaining of the detectives in when we first made eye contact. He acknowledged us and we informed him of our purpose.

Q Yes, sir.

So he took you into the room where the guns were?

A He took us into his office, yes, sir.

53



Q Now, you said "his office"?

A Yes, sir.

Q Did he say it was his office?

A He said, "Come into my office."

Q Was there any other than the plaques on the wall, was there any other identifying marks?

A Like I stated before, sir, there was a name plate with the name Ramon Donestevéz.

Q Where?

A Right in front of the desk.

MR. HORTON: All right, sir.

I have no further questions.

MR. WOODARD: Nothing further from this witness, Your Honor.

State at this time would call George Havens to the stand.



Thereupon --

GEORGE R. HAVENS

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

DIRECT EXAMINATION

BY MR. WOODARD:

Q Sergeant, would you state your name and official position, please?

A George R. Havens, H-a-v-e-n-s, Police Sergeant, Dade County Public Safety Department.

Q Sergeant, did you ever have occasion to come into contact with a Ramon Donestevez in 1972?

A Yes, sir, I did.

Q Do you see Mr. Donestevez in the Courtroom today?

A Yes, sir. He is the gentleman with the glasses and the blue shirt, blue pants sitting directly to my left [indicating].

MR. WOODARD: Indicating, for the record, the Defendant, Mr. Donestevez.

Q [By Mr. Woodard] Mr. Havens, on that occasion did you ever have occasion to proceed to the



area of the office in the premises that have been previously described by other witnesses in this case?

A Yes, sir, I did.

Q During that period of time, what observations, if any, or discussions did you have with Mr. Donestevez concerning whose office it was?

A On September 15th, 1972, at approximately 12:00 o'clock P.M, I entered the Piranha Diesel Corporation located at 9970 Banyan Street in Perrine, Florida. Once inside the building, I had a conversation with a gentleman later identified as Ramon Donestevez. The conversations took place in an office which was directly to the right of the main door which is a steel building.

A subsequent discussion after search warrant in that office was conducted in the presence of the same afore mentioned gentleman, Mr. Ramon Donestevez.

Q All right, sir.

At that time did he make any statements to you or did you make any observations concerning whose office it was?

A Yes. This was a business office. It



contained one wooden desk which was located directly to the left of the main entrance door. Directly behind that were a number of plaques, pictures of Mr. Donestevez and another person standing next to boats, inside of boats. There was a name plate, a wooden name plate on the front of the desk. I believe it had Mr. Donestevez' last name. I am not certain of the first name on it.

There were other business files, papers, and company material sitting on the desk which Mr. Donestevez sat behind and subsequently locked prior to leaving the factory.

Q All right.

Now, Sergeant Havens, were you present in Court before Judge Baker, I believe, on the 19th of April of 1973?

A Yes, sir. I was.

Q At that time, were you present when Mr. Donestevez entered a plea of guilty to extortion under case number 72-7137?

MR. HORTON: I am going to object to it, Your Honor, because that's not proper evidence. They have already introduced the Court file and it

57



speaks for itself.

THE COURT: Well, they have introduced the Court file, but that shows a man named Ramon Donestevez was convicted on that date.

If I am correct, they are going to show which Donestevez.

MR. WOODARD: Yes, Your Honor.

If there is a stipulation as to the person who is on probation, then this would be unnecessary.

MR. HORTON: I will so stipulate.

MR. WOODARD: I will accept the stipulation.

I have no further questions of this witness, Your Honor.

THE COURT: Cross exam.

CROSS EXAMINATION

BY MR. HORTON:

Q Officer, you spoke of these premises as being used by the Piranha Diesel Corporation?

A Yes, sir.

Q And as far as you know, they were the owners of the premises?



A Yes, sir.

Q What was their business?

A They manufactured commercial and pleasure boats of a fiberglass category.

Q They transacted their business right there on the premises?

A Yes, sir.

Q I would assume that Mr. Donestevez was the director of that corporation?

A I believe he was the president and chief corporate officer.

MR. HORTON: All right, sir.

I have no further questions.

MR. WOODARD: Nothing further, Your Honor.

State at this time will call Mr. Keller to the stand.

[Thereupon, a short recess was taken, during which time other Court proceedings were had, following which this hearing resumed.]

THE COURT: All right.

59



Do you mind if I interrupt just for a moment, Starr?

Just stay right there.

[Thereupon, a short recess was taken, during which time other Court proceedings were had, following which this hearing resumed.]

THE COURT: All right. Back into Donestevez.

Proceed.

Thereupon --

DEWEY KELLER

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

DIRECT EXAMINATION

BY MR. WOODARD:

Q Mr. Keller, would you state your name and official position, please?

A Dewey Keller, Florida Parole and Probation Commission, Officer One.

Q Mr. Keller, in the course of your

60



official duties as a parole and probation officer, have you had occasion to come into contact with a Mr. Ramon Donestevez?

A Yes, sir.

Q Do you see Mr. Donestevez in the Courtroom today?

A Yes, sir, I do.

Q Would you point to him, please?

A Mr. Donestevez is on my left in the blue shirt [indicating].

MR. WOODARD: Indicating, for the record, the Defendant, Ramon Donestevez.

Q [By Mr. Woodard] All right.

Now, Mr. Keller, at any time prior to the 21st day of October, 1975, did you ever have occasion to advise Mr. Donestevez of his obligation as a probationer under case number 72-7137?

A Yes, sir, I did.

Q All right, sir.

Would you tell the Court, please, when and where and under what circumstances?

A On February 3rd, 1975, between 8:00 A.M. and 9:00 A.M. in the morning, in my office at



1570 Madruga, in Coral Gables, Mr. Donestevez was instructed by myself on his rules of probation.

Q Would you tell the Court, please, what the rules of probation were relating to Mr. Donestevez?

A May I read from the probation rules that I read him?

Q Yes, if you would.

A I read each of these rules to Mr. Donestevez. At the conclusion, I asked if he understood and if he had any questions.

The first one was condition A: not change the Defendant's residence or employment or leave the County of residence without first procuring the consent of the Court, which consent shall be obtained through the Defendant's probation supervisor.

MR. WOODARD: Your Honor, if the Court please, in the interest of time, may we just go to those portions that are pertinent to this hearing?

THE COURT: All right, we may.

Q [By Mr. Woodard] Did you have occasion to advise Mr. Donestevez under paragraph F and paragraph H of his rules of probation?

A Yes, sir, I did, as to ---

62



Q Tell the Court, please, what paragraph F and paragraph H pertain to.

A Sentence F states: Neither carry nor own any weapon without first securing the consent of the probation supervisor.

Condition H is: Live and remain at liberty without violating any law.

Q Did you ever have occasion, Mr. Keller, to receive any request from Mr. Donestevez concerning his right to own, possess or carry weapons?

A Mr. Donestevez and I talked about his possessing weapons on several occasions.

He, in my judgment, attempted to get me to admit that it would be permissible for him to have a weapon in defense of his personal property.

I can remember the one incident. I do not remember the date, however, but ---

Q Did you ever give Mr. Donestevez permission to own, possess, carry or otherwise be in the presence of weapons?

A Absolutely not.

MR. WOODARD: I have no further questions.

63



CROSS EXAMINATION

BY MR. HORTON:

Q Would you read that portion of that probation order that you reviewed with him about the weapons again?

A Yes, sir.

That would be condition F: Neither carry nor own any weapon without first securing the consent of the probation supervisor.

Q Yes, sir. That doesn't have anything in there about possess or control?

A The word "possess" is not in there.

Q Has this man given you any difficulties prior to October 21st, 1975?

A What do you mean by "difficulties"?

Q Any difficulties with respect to his conforming with your requests as to the terms of the probation?

A Mr. Donestevez reported on his written monthly reports on time. I can think of right off-hand nothing that has -- he has violated on his probation conditions up to that point.

64



Q At any time have you had any fear that he would leave the jurisdiction?

MR. WOODARD: Objection. If the Court please, irrelevant and immaterial.

MR. HORTON: He is a professional man.

THE COURT: Sustained.

Sustained.

Q [By Mr. Horton] All right.

At any time have there been any circumstances that would cause you to be apprehensive that this man might leave the jurisdiction?

A Yes.

Q When was that, sir?

A I have been in contact practically from the day I received Mr. Donestevez' case -- I have been in contact with agents of the Federal Bureau of Investigation, the U. S. Department of Customs, the U. S. Department of Immigration, the Department of Organized Crime with Public Safety Department, Homicide Department of the Public Safety Department. I believe -- I think that's all.

Throughout the past year, this, of

65



course, I could never prove any of this, but I have been told on numerous occasions that ---

Q Please don't tell us what you were told.

A Okay. I have received information that would lead me to believe that Mr. Donestevéz would possibly attempt a -- to leave Miami and travel to Cuba.

Q Now, isn't it a fact that this stems from a previous incident in which he went to Cuba and returned to this country?

A I don't know. That happened before I was his probation officer.

Q Yes, sir.

But, these facts that have come to you stem from that particular incident?

A No, sir. Well, I received some information several months ago from -- to the best of my recollection, it was an agent for the U. S. Customs.

May I say what he told me?

Q Well, let me ask you this: The Customs were involved in connection with his previous trip to Cuba. So, let's say their thinking was jaded.

66



But, let me ask you this further:
Your anxiety that you are expressing to us now all stems from statements and facts, or let's say just statements that were furnished to you by law enforcement officials?

A Yes.

Q Isn't it also a fact that there are several Cuban factions that oppose Mr. Donestevéz?

MR. WOODARD: Objection. Outside the scope of the case.

Q [By Mr. Horton] Now, previous to this incident that occurred on October 21st, 1975, were you aware of any particular threats to his premises?

A No.

Q Were you aware of any bombings that took place on this premise?

A Nothing more than what I read in the paper.

Q All right.

A Pardon me. I did receive a call one time about one of the alleged bombs that was on the premises. But, I never saw any bombs. I was never on the premises when any of this happened.

67



Q Were you aware that he had security personnel there guarding the premises or the corporation did?

A Mr. Donestevéz told me on one occasion-- in fact, the occasion when we discussed his possessing weapons, that he did have a security guard. I did not know until the day of his arrest who he designated as security guard. That this man did have a pistol in his possession.

I told Mr. Donestevéz that I felt that as long as the security guard had a pistol and I specified a pistol, that he would not be in violation of his probation.

But, he was well aware and I had told him before not to possess or in any way have any contact with any weapons.

Q All right, sir.

Now, prior to this arrest that took place on October 21st, did I understand you to say that you had some conversation with him just immediately prior to that about these weapons?

A No, not about these weapons. It was about -- we were discussing -- he had asked me and

68



was in my opinion trying to get me to give permission for him to have weapons to protect his premises.

At that time he stated that he did employ a security guard who had -- and I specifically remember this -- a pistol. That was the only discussion about a pistol ever being on the premises that we had.

Q Now, let me ask you this: Did you ever know him to possess or carry or own a weapon?

A Of my personal knowledge, no.

Q You were with the detectives the day they went to these premises?

A Yes, I was.

Q Did Mr. Donestevéz in any way hesitate in showing them and yourself the weapons that were stored on the premise?

A He did not hesitate to show the rifles.

If I may digress back, when we first entered the building, I approached Mr. Donestevéz in the work area and told him that I had reason to believe that he was in violation of his probation by being in possession of weapons.

69



At that point, some conversation ensued and he said, "Come into my office."

We walked with the detectives into his office and there were the rifles. He did not in my estimation, attempt to conceal the rifles.

The pistol, I really wasn't in there when the pistol was discovered. So, I know nothing about -- he did not furnish the pistol voluntarily while I was in his office.

Q Could it be he didn't know where the pistol was because it wasn't his?

A I have no knowledge of that.

Q All right.

Did you also ascertain whether or not the security guards were sleeping in this particular office where the weapons were stored?

A No, sir. He never told me they were.

MR. HORTON: All right.

I have no further questions.

REDIRECT EXAMINATION

BY MR. WOODARD:

Q Mr. Keller, let me ask you one question:
Mr. Horton asked you whether or not you ever had any

70



reason to believe that Mr. Donestevez might flee the jurisdiction of the Probation Parole Commission.

Did you ever become aware, sir, that within the last several months, the exact date is unknown to me, that Mr. Donestevez in addition to several other Latin men with full supplies and a quantity of approximately \$10,000 in cash were rescued by the Coast Guard somewhere in the vicinity of the Dade County line in Biscayne Bay?

A Yes, sir.

Q Were you made aware of the facts and circumstances surrounding that rescue of Mr. Donestevez?

A Yes, sir.

Q Based upon what you learned from those facts and circumstances, do you believe, sir, that perhaps Mr. Donestevez might at that time, have been planning to leave the jurisdiction?

A In my personal opinion I have no doubt but what Mr. Donestevez was attempting to go to Cuba.

MR. WOODARD: All right.

I have no further questions.



RE CROSS EXAMINATION

BY MR. HORTON:

Q Officer Keller, isn't it a fact there were 77 persons on board this boat?

A I was told there were 72 passengers and a crew of five.

Q Isn't it also a fact they didn't have any food or water on board?

A That's what I had been told.

Q Yes, sir.

So likely it's not very likely they'd be going to Cuba without any food or water and 77 people?

A It's only 90 miles from Key West.

Q Yes, sir. Key West is 175 miles from here, isn't that correct?

A That's approximately right.

Q All right.

Isn't it also a fact that he even discussed with you about the launching of this boat?

A Yes, we have talked about it.

Q Yes, sir.

That was just recently when he put the



boat in the water?

A I believe approximately two or two and a half weeks ago. I am not sure at this point.

Q It was just recent that he put this boat in the water?

A Yes.

Q So they were taking it out for the first time outside and they were trying to test the load limits?

A No, sir, the second time, to my knowledge.

Q The second time, all right. It was the second time and they had -- how many children were among those 77 on board?

A I personally do not know.

Q Do you know how many women were on board?

A No, sir.

MR. HORTON: I have no further questions.

MR. WOODARD: One moment, please, Your Honor.

I have no further questions of this

73



witness.

Your Honor, may I have just one moment, please?

THE COURT: Certainly.

MR. WOODARD: Your Honor, we would call Detective -- I am sorry -- Madero.

THE COURT: Swear him. I don't believe he was sworn earlier.

[Thereupon, the witness was sworn.]

Thereupon --

EDWARD MADERO

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

DIRECT EXAMINATION

BY MR. WOODARD:

Q State your name, please, and your official position.

A Detective Edward Madero, Dade County Public Safety Department.

Q Detective Madero, are you familiar with the incident that was just described by Officer Keller



concerning the matter with Mr. Donestevéz' boat?

A Yes, sir. I believe you are referring to the boat trip which took place last Saturday.

Q All right.

Was there food on board the boat, to your knowledge?

A Yes, sir, there was.

Q Do you know how much gasoline was on the boat at that time?

A I heard ---

MR. HORTON: I am going to object to what he heard.

A [Continuing] Okay. I observed the refrigerator full of water, full of food. I don't know about the fuel.

MR. WOODARD: All right.

I have no further questions.

CROSS EXAMINATION

BY MR. HORTON:

Q How many people were on board, do you know?

A There was in excess of 70 persons on board. I don't know the exact count.

75



Q Isn't it also a fact that Mr. Keller gave permission for him to take this boat out?

A I don't have any knowledge of that.

Q All right.

Isn't it also a fact they had permission from an Officer Michael Thompson?

A I don't have any personal knowledge of that.

MR. HORTON: Never mind.

I have no further questions.

MR. WOODARD: Nothing further, Your Honor.

State rests on the probation hearing.

MR. HORTON: Your Honor, would you hear me in just an argument for just a moment?

THE COURT: Sure.

MR. HORTON: You know, this man right now everything stems on these guns.

THE COURT: Um-hum.

MR. HORTON: And these guns were purchased and they were registered, the ownerships and names other than his.

But, just for the sake of this

76



argument, let's just say that he is Piranha Diesel Corporation. This is a business that he operates. He does business there.

Now, he's been charged under 790.23 as being a felon possessing, carrying, controlling firearms after having been convicted of a felony.

Let me say this: 790.05, and Subsection .08 provide that one, if you are a law enforcement agent you can possess and carry a concealed weapon or carry weapons.

THE COURT: He is hardly that.

MR. HORTON: The other section says that you can get a permit to carry a gun.

Then, you turn around and you look at 790.25, Subsection immediately after this and it gives a list of exceptions of those who are privileged to carry guns. It says if you are going hunting you can carry a gun in your car.

THE COURT: Not if you are a convicted felon.

MR. HORTON: Pardon?

THE COURT: Not if you are a convicted felon.

77



MR. HORTON: I am getting to this, though, Judge. The Attorney General -- and they were supposed to send me this opinion. I will give you the number of the opinion. It's on 73 - 229, June 22nd, 1973.

There, the Attorney General said that a convicted felon who is working as a guard for a correctional institution for the State of Florida did not come under this section as possessing a gun because he was exempt. He was exempt under 790.05, being a law enforcement agent and working for an agency.

He said there that all the sections are all in pari materia. They are equal and the assumptions apply.

Now, in this 725 it says that a person is privileged to carry a gun or have a gun on his business premise or in his home. That's an exemption.

The Declaration of Rights for the State of Florida, and I will quote it verbatim: Section Eight says right to bear arms.

The first sentence says: The right of the people to keep and bear arms in defense of

78



themselves. And in the Statute and I have the Statute here, 725 or 790.25, this is exceptions. Subparagrah three, subparagraph N: Exempt is a person possessing arms at his home or place of business.

This man, let's say he is for all intents and purposes the owner of Piranha Diesel Corporation. These weapons were purchased by his wife, by someone else. There has been no evidence that he ever handled them or that he dominated or controlled them.

But, aside from that, let's for the purpose of argument assume that he did. They were maintained on his premise. No one ever saw them used for anything else except security purposes.

Therefore I say, Your Honor, that this is not a proper charge. That he has a Constitutional privilege as well as Legislative exemption in this particular instance to bear arms.

THE COURT: If he weren't a convicted felon.

MR. HORTON: Pardon me?

THE COURT: If he weren't a convicted



felon.

MR. HORTON: The only thing, Judge, is a convicted felon under Subsection of this same Chapter was found by the Attorney General to be exempt by working for a law enforcement agency.

Now, all these cases ---

THE COURT: Do you say he is?

MR. HORTON: Yes, I would say -- that's my argument.

THE COURT: That Mr. Donestevéz is working for a law enforcement agency?

MR. HORTON: No, sir. No, sir. No, ma'am. I am saying this: he comes under another exemption. That exemption is a person possessing an arm at his home or place of business.

Now, you see, Judge, there's been a number of these decisions. But, all these decisions, the most remote that I can find, pertain to people that are driving in cars and they have a gun in the car.

But, there is no exception for that.

Now, of course, they argue dominion and control. They have failed, of course. But, in

80



— this instance, he is not traversing the public highway. He is going under a Constitutional privilege and under an exemption of the Statute.

I feel -- if you would, may I get that decision or are you satisfied with my explanation of it, of the Attorney General?

THE COURT: I accept it, if you say that's what it says. I accept what you say without question. It's just that I don't see Mr. Donestevéz is working for a law enforcement agency.

MR. HORTON: No, ma'am. Maybe I am not getting myself over.

I am saying that this is an exemption. So, if that's an exemption and all these exemptions in the Statute are in pari materia, then I would say this would be an exemption just as it would for a convicted felon would be exempt. He is working for a law enforcement agency, carrying arms. This man is exempt because he has arms on his premise for protection.

MR. WOODARD: Your Honor, may I respond to that just briefly?

THE COURT: Well, I would like for us

81



to make a determination of what we are doing at this point.

Are you, Mr. Horton, at the conclusion of the presentation of the State's case moving for a dismissal of the affidavit alleging violation of probation?

MR. HORTON: Yes, ma'am.

MR. WOODARD: Am I also to assume that this is also counsel's argument concerning the adjudication or the finding of the Court?

THE COURT: No, I don't know that.

MR. WOODARD: At any rate ---

THE COURT: It's only a the close of the State's case.

MR. WOODARD: Let me respond to counsel's argument concerning the Attorney General's opinion. I have also read the opinion and am familiar with it.

THE COURT: As have I.

MR. WOODARD: The provision of the Attorney General's opinion and the provisions of the exceptions under 790.25 Subsection Three says -- and I will read it verbatim: The provisions of 790.05

82



790.06 shall not apply to the following instances. And then it goes through the specific exemption: hunting, protecting your place of business and whatever.

Now, 790.05 and 790.06 are not the provisions under which this man is charged with having violated the firearms law. He is charged with having violated the firearms law under 790.23, as I recall, and 790.05 and 790.06 pertain to the obtaining of permits both to carry a concealed weapon and permits to carry repeating rifles and other provisions under the Florida Statutes.

So, insofar as Mr. Donestevéz' falling under an exemption whether he be a convicted felon or not that does not apply to this situation.

With regard to -- now, I don't want to address myself to the factual issues that are not concerning Mr. Donestevéz' alleged violation of probation. If counsel has no further argument to make on the law or the facts of this case, I'd like to address myself to my final summation in terms of what I feel the evidence is in the case. Not the evidence, but the application of the law to the evidence.

83



THE COURT: Counsel, we are now at the point of a ruling with regard to your motion at the close of the State's case.

Is there any further argument?

MR. HORTON: Just this, Judge: The Attorney General's opinion says all these circumstances are in pari materia. They are equal. So, if they are, if a jail guard, I mean, has been a convicted felon, if he was given an exemption under one section, then this man should get an exemption under that same subsequent section where it says that he can carry them in his home or place of business.

That's the only thing I speak of.

THE COURT: All right.

Motion at the close of the State's case be and the same is hereby denied.

Proceed with the defense portion.

MR. HORTON: May we just have a few minutes?

Are you ready, Your Honor?

Mr. Alberto Marin.

THE COURT: Mr. Marin, come forward, please.

64



Swear him, please.

THE CLERK: Please raise your right hand.

[Thereupon, the witness was sworn.]

Thereupon --

ALBERTO MARIN

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

DIRECT EXAMINATION

BY MR. HORTON:

Q State your name and your address.

A My name is Alberto Marin. I live in 1050 West 27th Street.

Q What is your occupation?

A I used to work as a security guard.

Q By whom were you employed?

A Interamerican Detective Bureau.

Q Did you ever have occasion to do any security work for the Piranha Diesel Coproration?

A Yes, I was working as a security guard.

Q What period of time were you so

85



employed by Piranha Diesel Corporation?

A Working there for about three months, something like that.

Q Can you give us the period of time that you were so employed as to months and year?

A Not exactly. Just about three or four months.

Q Well, it was during the year 1975?

A Oh, yes. This year.

Q Was it recent?

A Yes, I am still working for them.

Q Were you there on October 21st, 1975?

MR. WOODARD: Objection to providing the date.

THE COURT: Overruled.

Q [By Mr. Horton] What were your hours of employment as a security guard?

A I really was working there any hours. I was taking care of the place any hour between, you know, with the other guards.

Q All right, sir.

Do you recognize any of the exhibits, State Exhibits meaning rifles that are in front of you?

85



A Oh, yes, I do.

Q Were those the weapons that you used in conjunction with your services?

A Yes, sir, I did.

Q Where did you store those guns?

A Right in the couch in there around the place.

Q Had you placed any of those weapons on the couch?

A Not that I recall.

Q Did you ever have occasion to know of any of -- yourself or anyone else sleeping in that particular room?

A Oh, yes.

Q Is that the reason the guns were stored there?

A Oh, yes, they were always there.

Q Did you ever have occasion to see Mr. Donestevéz in that room?

A Once in awhile, you know.

Q Did you ever know him to handle one of these rifles?

A I never saw him handle one of the

87



rifles.

Q Did he ever tell you what to do with the rifles?

A Not really, no.

MR. HORTON: All right.

I have no further questions.

You may inquire.

CROSS EXAMINATION

BY MR. WOODARD:

Q I am sorry. Is that Mr. Marina [phonetic]?

A Marin, M-a-r-i-n.

Q M-a-r-i-n?

All right, Mr. Marin. You have indicated that you were employed by the Interamerican Detective Agency, is that correct?

A Yes, sir.

Q That's owned and operated by Mr. Orlando Batista, is that right?

A Right.

Q Were you, during the time you were working at the Piranha Boat Yard, employed by Interamerican Detective Agency?

83



A No, I wasn't.

Q In other words, you'd worked for Mr. Batista before and during this period of time you were working for Mr. Donestevez?

A That's right.

Q Is that correct?

How many other security guards were employed at the Piranha Diesel?

A I don't exactly -- don't know the number. But, there was about four or five other guys.

Q Well, give me the names of the people that worked as guards at the plant.

A Armando Bobillo.

Q Who else?

A Izquierdo.

Q Is that a last name or first name?

A Last name.

Q How do you spell that?

A You want me to write it down for you?

Q Can you spell it?

INTERPRETER OSSARIO: I-z-q-u-i-e-r-d-o.

Q [By Mr. Woodard] Is that correct?

A Right.

89



Bebe.

Q How do you spell that?

A B-e-b-e.

Q Is that a last name, also?

A No, that's, you know, a nickname.

Q Nickname.

What does it mean translated in
English?

A Baby.

Q All right.

Who else?

A I cannot recall any more names right
now.

Q And yourself, is that correct?

A That's right.

Q All right.

You were working on the day that Mr.
Donestevez was arrested with these rifles?

A I was that date.

Q You were working there that night or
the afternoon that the police came?

A Yes, I was.

Q Were you present on the premises that

90



day?

A [Witness nods head.]

Q How many of these other persons, Mr. Bobillo, Izquierdo and Bebe were present on the premises at that time?

A Izquierdo and Bebe.

Q There were two other gentlemen on the premises, is that correct, plus yourself?

A Right.

Q And Mr. Donestevéz?

A Right.

Q Now, these are the four people that worked security at the plant as far as you know, is that correct?

A Yes, as far as I can remember. I know there was maybe another couple of guys. I can't recall the names now.

Q Well, all of you don't work at one time, do you? You stagger your shifts so you cover the entire 24 hour period?

A Sometimes we are just there, but ---

Q Well, as a security guard -- you may all be there at one time, but as a security guard, you

91



don't all four of you work one eight hour shift and leave the place open the other eight hours, do you?

A Sometimes we are there a lot, every night. The hours doesn't ---

Q Well, do you work a particular shift?

A Not really.

Q You didn't have any particular hours to come or any particular hours to go?

A No, sir.

Q Did you have any particular hours to work during the course of the day?

A No, sir.

Q You just showed up when you wanted to and went home when you wanted to?

A Right.

Q Okay.

Was the plant guarded 24 hours a day?

A Yes, sir, it was.

Q Were the guns provided to you by Mr. Donestevéz or did you purchase them yourselves?

A No, they were in there when I started working with them, you know. Mr. Bobillo was kind of the guy, you know, that knows everything there. We



started using the guns, so he tell me: "This is the gun we take care of the place."

Q All right.

So, the guns were there when you started working?

A Right.

Q And Mr. Donestevéz is Piranha Diesel Company, isn't he? He owns and operates it?

MR. HORTON: I will object to that because the testimony has always been brought out that it is a corporation in Tallahassee.

THE COURT: All right, sustained.

Q [By Mr. Woodard] Who paid you?

A Excuse me?

Q Who ran the company from your observations of the company? Who ran it?

MR. HORTON: I will object to that, too, Your Honor.

THE COURT: Overruled.

MR. HORTON: Because I don't believe he is qualified to say.

THE COURT: Overruled.

Q [By Mr. Woodard] Who ran the company?

93



A I don't know.

Q Well, were you paid?

A You mean if I was paid for working there? No.

Q You weren't paid?

A No.

Q You worked gratuitously, for nothing?

A Right.

Q Did you see Mr. Donestevéz giving orders to other people perhaps to do certain work or do certain things?

A On the boat.

Q On the boat? Okay.

Did it appear to you from what you saw during the time that you worked there that Mr. Donestevéz was the boss?

MR. HORTON: I will object to that question. It's improper.

THE COURT: Overruled.

Q [By Mr. Woodard] Your answer is yes or no, sir?

A I cannot really tell you no, he told me to do something and I do it. But, I mean, nobody



is the boss over there. Everybody tries to ---

Q There is no boss, just a bunch of Indians?

A I mean, it's not really shifts, you know. Just like you tell me what to do, if I don't know how to do it. I was working there, too, and he told me how to do the rifle and I did it.

Q Well, Mr. Marin, are you telling the Court that at this plant where there were a number of people working that no one appeared to be the boss, is that your testimony?

A I don't know. He told me what to do sometimes. He could have been the boss.

Q He, being Mr. Donestevez?

A Yes. Anybody else, Bobillo, who was the walking, you know, comparable, too.

Q Did you know Mr. Donestevez before you started working with Piranha Diesel?

A A few months before.

Q Pardon me? You knew him for a few months?

A A few months before.

Q And had you been in the boat yard

95



during those few months before you actually started working there?

A I was working in there, you know.

Q Did you ever draw a paycheck from Mr. Donestevez' company?

A No.

Q Never got paid?
Have you ever seen Mr. Donestevez in the office?

A Once in awhile.

Q Okay.
Have you ever seen him sitting behind the desk?

A Not that I recall.

Q Do you recall the desk in the office?

A Yes, sir, I do.

Q Do you recall Mr. Donestevez' name-plate on the desk?

A No, sir.

Q Do you recall the plaques on the wall with his name on them?

A The plaques on the wall, but I don't recall the names. I didn't read them.

96



Q Were you registered as a security guard at this time, sir?

A Yes. The company I was working for, they closed. And to the moment, the officers came to the place and tell me it was closed. And opened by another name. Orlando Batista closed and opened another name. I didn't know that that happened.

Q Well, were you licensed as a security guard for Piranha Diesel with Dade County?

A I got my identification here.

Q Well, your identification concerns your work with Interamerican Detective Agency, doesn't it?

A Right.

Q You weren't working for Interamerican Detective Agency at that time, is that right?

A Right.

Q Were you licensed by Dade County as a security guard for Piranha Diesel Company?

A No.

MR. HORTON: Just a minute. Let me object to that question because I don't know that there is any requirement that a company has to license

97



a security guard to protect its premises.

THE COURT: As of October 21st, all right, sustained.

MR. WOODARD: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. HORTON:

Q Let me ask you this, sir: Are you also acquainted with Mrs. Donestevez?

A Will you repeat that question?

Q Are you also acquainted with Mrs. Donestevez, the wife of Mr. Ramon Donestevez?

A If I know her, you mean?

Q Yes.

A Yes, sir, I do.

Q Did she ever come on the premises?

A Oh, yes.

Q Did she work there?

A Yes, sure she works there. She gets in there, starts making phone calls, this and that, you know.

Q Was she also in a position of authority that she could ask you to do something and you would



do it?

A Oh, yes.

MR. HORTON: All right. I have no further questions.

RE CROSS EXAMINATION

BY MR. WOODARD:

Q Well, Mr. Marin, did you ever see Mrs. Donestevéz carrying one of those around?

A Never, sir.

MR. WOODARD: No further questions.

REDIRECT EXAMINATION

BY MR. HORTON:

Q As a matter of fact, have you ever seen anyone carry any of those guns around except those who were doing security work?

A No, sir.

MR. HORTON: All right, thank you.

MR. WOODARD: No further questions.

THE COURT: May I ask one?

Don't answer yet because the State may object or Defense may object.

Why would you work for somebody for free?



Wait. Don't answer.

Any objection to the Court's question?

MR. HORTON: No.

MR. WOODARD: I don't object.

THE COURT: Why were you working there for free?

THE WITNESS: I think the Operacion Pueblo de Cuba, which is the name is very -- it's something you can work for free. I mean, if you feel like it. I mean, if you feel, you know, something you can do for your country and help in some way, you could do it. And that's what I was working there for free, because I feel good, you know, doing something for somebody else. Not for Ramon Donestevez, for my country.

THE COURT: All right.

MR. WOODARD: I have no further questions, Your Honor.

THE COURT: Who?

MR. HORTON: All right. I have a -- I believe his name is Izquierdo.

THE COURT: All right, you may have a seat. Thank you, Mr. Marin.

100



THE CLERK: Please raise your right hand.

[Thereupon, the witness was sworn.]

Thereupon --

CALIXTO IZQUIERDO

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

DIRECT EXAMINATION

BY MR. HORTON:

Q State your name and address, please.

A My name is Calixto Izquierdo. I live 4360 Southwest 2nd Street.

Q What is your occupation?

A Electrician.

Q Are you acquainted with the Defendant, Ramon Donestevez?

A Come again?

Q Are you acquainted with the Defendant here, Mr. Ramon Donestevez?

A No.

Q You are not acquainted with him?

101



A I don't understand what you say acquainted.

THE COURT: Do you know him?

Q [By Mr. Horton] Do you know him?

A I know him. Sorry, I don't understand the question.

Q Have you had occasion to do any work for either he or the Piranha Diesel Corporation?

A Sometime when I went there he told me one day he need a corporation to do some electrical job on the boat. I tell him yes.

Q So, you did electrical work on the boat?

A That's right.

Q Did you ever do any security work as a guard?

A Yes, sir.

Q Do you remember what months or what period of time you did this work?

A I do it like part-time, because I do it free, you know. I didn't collect nothing for that because I believe in the Operacion Pueblo de Cuba, too.

Q So, your explanation is you work for

102



nothing the same as the previous witness did?

A That's right.

Q Have you ever seen these exhibits being rifles or whatever you want to call them that are here on the Clerk's desk? Have you seen those?

A Yes.

Q Have you ever handled any of those?

A Yes.

Q Did you use them in the performance of security work?

A Yes, sir.

Q Where were those weapons maintained, stored?

A That weapon we got -- I don't know what you call in English, like a big cloth, or something. Sometimes, we have got it open. Sometimes we got it open, because we use it back and forth.

Q Do you recall the day when Mr. Donestevez was arrested?

A The day Donestevez was arrested I went in the morning to the factory and do some electrical job on the boat. I went out to do one electrical job for myself. I don't remember exactly the moment when

103



Donestevéz was arrested. I come back about ten minutes after.

Q Was he there at that time or had he been taken away?

A When I come back Ramon was taken away already.

Q Now, the room where these weapons were stored, was that used by the security guards?

A Yes.

Q What did you use it for other than the storage of these rifles?

A One thing we put the rifle in the room and also we got a big couch in there. And we use it when we are two or three in there. We got some hour working one and the other one sleeping. And we make it back and forth like that.

Q In other words, while one was doing duty, the other one would be sleeping?

A Be sleeping.

Q And you slept there on the couch?

A That's right.

Q You are also acquainted with his wife?

A Yes.

104



Q I mean, Mrs. Donestevez?

A Mrs. Donestevez.

Q Was she active in the operation of this business?

A Yes.

Q Did you ever know Mr. Donestevez to take physical possession of these guns?

A No.

Q Did he ever tell you what to do with the guns?

A Never.

Q And you just were your own so-called boss, as the Prosecutor has said, in connection with this security work?

A Yes, sir.

MR. HORTON: I have no further questions.

You may inquire.

CROSS EXAMINATION

BY MR. WOODARD:

Q Mr. Izquierdo, who provided these weapons for you?

A We got -- weapon belonged to Mrs. Donestevez. Belonged to Juana. Another weapon



belonged to Orlando Bobillo. Another weapon belonged to Marin.

Q Well, the weapons you specifically referred to as belonging to Mrs. Donestevez and to Juana are the rifle type weapons, are they not?

A That's right.

Q Mrs. Bengurian is a lady about maybe 35 or so, dark hair, about that tall [indicating], isn't she?

A Yes, sir.

Q You ever see her carrying those guns around?

A Who?

Q Mrs. Bengurian.

A One time.

Q Really?

A Yes.

Q Was she wearing combat boots at the same time?

A What?

Q Was she wearing combat boots at the same time?

A Combat boot?

106



Q Yes.

A No, sir.

Q How heavy is that gun, sir?

A What?

Q How heavy is that gun?

A I never weighed it.

Q Pick it up.

Is it a relatively light gun or relatively heavy rifle?

A Heavy rifle.

Q Did you ever see Mrs. Bengurian carrying three of those at one time, one on either shoulder and one in her hand?

A No.

Q Have you ever seen Mrs. Donestevéz patrolling the perimeter with one of those rifles?

A No.

Q You didn't purchase any of those weapons, is that correct?

A Pardon me?

Q You did not purchase any of those rifles?

A Property?

107



Q Buy. You didn't buy any of those?

A No, I didn't buy.

Q Who was the boss at Piranha?

A Boss is a corporation. I don't know.

I don't recognize any exactly any boss.

Q Well, when you got paid, who paid you?

A I don't get paid.

Q When you got called to work, who told you to work?

A Everybody. When I have to work, I tell everybody what to do if it's specifically my job. I am an electrician and if I have to do electrical job, I know what to do. And if it's somebody go help me, I tell him what to do, because I know what I do.

Q Did you get paid for doing electrical work at Piranha?

A No, I did that for free.

Q You did it for free, too?

A Yes, sir.

Q Who asked you to do the work?

A Who?

108



Q Who?

A Who asked me to do the work?

Q Um-hum.

A I told you before, Mr. Ramon Donestevez asked me if I could help do electrical work on the boat, and I said yes. But, he didn't give me any order to do that.

Q How long were you working at Piranha?

A Around Piranha about three months.

Q During that period of time, nobody appeared to be running the show, no one appeared to be the boss? Everybody was the boss and everybody worked, right?

A That's right.

Q As far as you know, Mr. Donestevez was the same level as a worker as everybody there?

A Exactly right.

MR. WOODARD: I have no further questions.

MR. HORTON: I have no questions.

THE COURT: I would like to ask one.

Once again, do not answer until both counsel have indicated whether there is any objection

109



The question is: Who trained you to use these machine guns?

Don't answer.

Do you have any objection?

MR. HORTON: I have no objection.

THE COURT: Do you have any objection?

MR. WOODARD: I have no objection.

No objection.

THE COURT: All right.

Who trained you to use those machine guns?

THE WITNESS: Your Honor, I was in the Cuban Army five years. I was in the United States Army one year. I was in the Interamerican Detective Bureau about two years after. I am not working right now at the present time, but I am -- I got my credit card in some Federal Detective Bureau. I also cross my examination and everything that the State of Florida required.

THE COURT: Do you know whether Mr. Marin also had Army experience?

THE WITNESS: Yes.

THE COURT: Okay.

110



Just curious.

MR. WOODARD: One question, Your Honor.

MR. HORTON: Go ahead.

Q [By Mr. Woodard] Mr. Izquierdo, were you working for Interamerican at the time that Mr. Donestevez was arrested?

A No.

MR. WOODARD: No further questions.

THE WITNESS: Interamerican is broke out. The company are not working at the present time. I worked on Piranha Diesel, was solved Federal Detective Bureau.

Q [By Mr. Woodard] I am sorry. Were you working for them, the Federal Detective Bureau?

A I no working right now. I have my own credit card because I am working before.

Q No, no. At the time you were working for Piranha, were you employed by any detective agency at that time?

A No, no exactly employed.

MR. WOODARD: All right.

THE COURT: All right, Counsel.

111



MR. HORTON: I just wanted -- that's all. Thank you very much.

THE COURT: Thank you, sir.

If you will have a seat.

MR. HORTON: These are classified as rifles, Judge. They can't sell machine guns.

THE COURT: All right, rifles. Sorry. They look like a machine gun.

MR. HORTON: I know they do and believe me, they would have had Tamiami Gun Shop in here with us if they would have been machine guns.

THE COURT: Lousey phraseology.

MR. HORTON: Estrada.

State your name, please, sir.

MR. ESTRADA: Tony Estrada.

THE CLERK: I have to swear him.

MR. HORTON: I thought you had sworn him.

[Thereupon, the witness was sworn.]

THE COURT: All right, go ahead.

MR. HORTON: Thank you, Miss Clerk.



Thereupon --

TONY ESTRADA

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

DIRECT EXAMINATION

BY MR. HORTON:

Q State your name and your address.

A Tony Estrada, 11272 Southwest 203 Terrace.

Q What is your occupation?

A Plumber.

Q Plumber?

A Yes.

Q Are you presently employed?

A Yes.

Q Where are you employed?

A Not too much speak English. Me have Interpreter?

Q Who do you work for?

THE DEFENDANT: He needs an Interpreter.

THE COURT: Mr. Ossario will interpret.

Q [By Mr. Horton] Ask him who he works



for.

A [Through the Interpreter] I am not working now.

Q Did you ever have occasion to be employed or do any work for the Piranha Diesel Corporation?

A [Through the Interpreter] Yes, sir.

Q Can you tell us what period of time that was?

A [Through the Interpreter] A period of time, more or less it could have been, for instance, more or less, you know, would have been six months. But, I was working there before.

Q Were you working there during 1975?

A [Through the Interpreter] Yes, sir.

Q Can you tell us how long ago that your work there ceased?

A [Through the Interpreter] It could have been three, four months.

Q What type of work did you do?

A [Through the Interpreter] I just did all the plumbing on the boats.

Q Did you ever do any security work?



A [Through the Interpreter] Yes, sir.

Q Do you recognize the exhibits being the rifles that are on the Clerk's desk?

A [Through the Interpreter] Yes, I recognize those weapons.

Q Can you tell us were those weapons ever maintained on the premises of Piranha Diesel Corporation?

A [Through the Interpreter] We used to utilize them for the security of the building.

Q Did you, yourself, utilize those weapons?

A [Through the Interpreter] Yes, some occasions I did.

Q Did you ever have occasion to store or put the weapons inside the premises, being the building?

A [Through the Interpreter] Yes, most of the time I used my own weapon. I have a pistol.

Q All right.

Can you see the pistol that you owned on the desk?

A [Through the Interpreter] My pistol was not taken from me.

115



Q All right.

Were these weapons stored in a room there in the building used by Piranha Diesel Corporation?

A [Through the Interpreter] Yes, exactly the occasion I saw them, they were stored there.

Q Did you ever have occasion to see them stored on a couch in one of the rooms?

A [Through the Interpreter] I saw them always away somewhere.

Q All right.

Did you ever have occasion to sleep on the premises while doing security work?

A [Through the Interpreter] Yes, sir.

Q Is that -- did you sleep in the same room where these rifles were stored?

A [Through the Interpreter] I did not sleep because I was on duty.

Q All right.

Did anyone else sleep?

A [Through the Interpreter] Yes, there was always one or two persons there. Due to the situation that the factory was going through, they

116



were being threatened about being bombed out.

Q And did you ever see Ramon Donestevez in possession of one of these rifles or pistols?

A [Through the Interpreter] On no occasion at all.

Q Did he ever give any orders with respect to the use of these weapons?

A [Through the Interpreter] Never. Not that I know.

MR. HORTON: I have no further questions.

You may inquire.

CROSS EXAMINATION

BY MR. WOODARD:

Q I am sorry. What is your name, last name, please?

A [Through the Interpreter] Tony Estrada, E-s-t-r-a-d-a.

Q All right.

Mr. Estrada, who was the boss of the Piranha Boat Company?

A [Through the Interpreter] Piranha's Company under the name of Mr. Ramon Donestevez.

117



Q Do you have a nickname, Mr. Estrada?

A [Through the Interpreter] No, sir.
Tony Estrada is my name.

Q Were you working for Mr. Donestevéz at the time that he was arrested and these rifles were taken by the police?

A [Through the Interpreter] No, when he was arrested -- when he was arrested I wasn't present. I did some duty the night before that.

Q Who gave you the guns to use in your security work?

A [Through the Interpreter] I already mentioned that I used my own pistol.

Q All right.

Do you know where the guns on the table as State's Exhibit No. One and No. Two, that's the rifles, where they came from?

A [Through the Interpreter] I ignore that.

Q Did you ever work as a detective or as a private security officer?

A [Through the Interpreter] No, sir.
I always work as a plumber.

118



Q More money?

A [Through the Interpreter] I was a member of the military in Cuba. I know how to handle weapons.

Q Are you familiar with the office that is just inside the door to the Piranha Company?

A [Through the Interpreter] Yes.

Q Is that Mr. Donestevé' office?

A [Through the Interpreter] Well, he goes in and out into that office. He is the one who utilizes it to run his business.

Q Is there a desk inside of that office?

A [Through the Interpreter] Um-hum.

Q Is that Mr. Donestevéz' desk?

A [Through the Interpreter] It looks that way. I think so.

MR. WOODARD: I have no further questions.

MR. HORTON: I have no further questions.

THE COURT: All right.

Who do you want, Counsel?

MR. HORTON: I would like Mr. Rafael

119



Contreras.

THE DEFENDANT: Contreras.

THE COURT: Swear him.

THE CLERK: Please raise your right hand.

THE COURT: Do you understand English?
Mr. Ossario?

INTERPRETER OSSARIO: Yes, ma'am?

THE COURT: Translate.

Proceed.

[Thereupon, the witness was sworn.]

Thereupon --

RAFAEL CONTRERAS

was called as a witness on behalf of the Defendant and, after having been first duly sworn, was examined and testified through Interpreter Fausto S. Ossario, as follows:

DIRECT EXAMINATION

BY MR. HORTON:

Q State your name and your address.

A Rafael Contreras, R-a-f-a-e-l

C-o-n-t-r-e-r-a-s. 1310 West 29th Street, Hialeah.

120



Q What is your occupation?

A Television.

Q Are you presently ---

A [The witness] Repair television.

Q Are you presently employed?

A Yes.

Q By whom?

A [The witness] My own shop.

Q Where is that located?

A Business, 213 Palm Avenue.

Q That's in Hialeah, Florida?

A [The witness] Yes.

Q Did you ever have occasion to work for the Piranha Diesel Corporation at 9970 Banyan Street?

A No.

Q Did you ever do any security work for them?

A Yes.

Q Can you tell us what period of time that you performed security work?

A At nights.

Q Can you tell us, was that in the year 1975?

121



A Yes.

Q Were you so employed say during the month of October, 1975?

A Yes.

Q Did you have occasion to see these rifles and pistols that are on the Clerk's desk?

A Yes.

Q Can you tell us what they were being -- were they being used?

A Just taking care of the place outside.

Q Did you ever have occasion to use one of these rifles?

A Yes.

Q And you used it in conjunction with a security guard?

A Yes.

Q Where did you store it?

A [The witness] I gave them back to Izquierdo. I don't know where he put it.

Q Did you ever see these rifles in any of the rooms of the Piranha Diesel Corporation?

A No.

Q Did you ever see Mr. Ramon Donestevéz



in possession with one of these guns?

A [The witness] Never.

Q Did he ever give you any ---

MR. WOODARD: Judge, let me make one objection for the record and that pertains to all of the remarks of counsel. So far when counsel is saying Mr. Donestevéz in possession, I presume that's saying in the manual possession of these items.

THE COURT: I assume the same.

MR. WOODARD: Otherwise, we are objecting as it being a legal conclusion.

THE COURT: I am making the same assumption, otherwise you'd be sustained.

MR. HORTON: I intended it that way, Your Honor, because the other I think is subject to a lot of interpretations.

Q [By Mr. Horton] Did Mr. Ramon Donestevéz ever tell you or instruct you in any manner in which these rifles or pistols were to be used?

A [The witness] No.

MR. HORTON: I have no further questions.

123



CROSS EXAMINATION

BY MR. WOODARD:

Q How -- I am sorry. How do you pronounce your last name, sir?

A Contreras, C-o-n-t-r-e-r-a-s.

Q Mr. Contreras, where did you get the rifles that you used in your security work with Piranha?

A Where did I get them from?

Q Yes, sir.

A Mr. Estrada gave them to me.

Q All right.

Who was the boss at Piranha?

A What kind of boss are you referring to?

Q Do you know Mr. Donestevéz to run and operate Piranha?

A So far as the construction of the boats, yes.

Q Were you paid in the activities as security that you were working?

A No.

Q Have you ever worked as a security guard for pay?

124



A No.

Q How many days a week would you normally work?

A There?

Q There at Piranha.

A A lot of times.

Q Well, on the average, how many days a week would you go into work to work security?

A Weekly.

Q Well, would you go in once a week, twice a week, three times a week?

A Four or five.

Q How many hours would you work a week?

A Five or six hours at night.

Q Five or six per night?

A Yes, sir.

Q So, a total of 25 to 30 hours per week on the average?

A More or less.

Q All right.

The other men who have already testified here today, not being full time security, would do as you would do and come in part-time for

125



four or five hours, is that correct?

A Yes, more or less.

MR. WOODARD: I have no further questions.

THE COURT: Next witness.

MR. HORTON: All right.

We will call Mrs. Donestevez.

THE COURT: Mrs. Donestevez, please come forward.

Thank you, Mr. Contreras.

THE CLERK: Please raise your right hand.

[Thereupon, the witness was sworn.]

Thereupon --

DAISY DONESTEVEZ

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

DIRECT EXAMINATION

BY MR. HORTON:

Q State your name and your address.

A Daisy Donestevez, 9290 Southwest 99th



Street.

Q I tell you, don't talk to the
Prosecutor. He's got to root for himself. Talk to
the Judge.

Are you married?

A Yes.

Q To whom are you married?

A Mr. Ramon Donestevéz.

Q Do you have any children?

A Four children.

Q How many?

A Four children.

Q What are their ages?

MR. WOODARD: Objection. Irrelevant
and immaterial.

THE COURT: Sustained.

Q [By Mr. Horton] All right.

Do you have any official position with
the Piranha Diesel Corporation?

A Yes, my husband.

Q Pardon?

A I am vice-president of the company.

Q You are a director, also?

127



A No, I am a housewife.

Q I see. All right.

Do you own any stock in the corporation?

A Yes.

Q How many shares of stock do you own?

A No, I don't know anything about the stock. I don't know anything about that.

Q Did you ever have occasion to do any work at the Piranha Diesel Corporation?

A Well, sometime I help my husband.

Q Did you ever have occasion to purchase these rifles that you see on the Clerk's desk?

A Yes.

Q Do you recall when that purchase was made?

A I don't know exactly, but I do it in my own way to give it to the man to protect our factory.

Q Protect your factory?

A Our factory, yes.

Q Did you purchase those guns at the request of and direction of your husband or did you



purchase them on your own?

A He doesn't have anything to do with it. It's for protection of my husband's life and our factory. My husband's and my children's factory.

Q Did your husband at any time physically take possession of these guns?

A No, I personally went to the Tamiami Gun Shop and give it to Juana for the man in the factory.

Q Have you ever heard your husband give any of the security guards any directions or instructions as to the use of these rifles?

A No, at that time I wasn't there.

Q All right.

Do you know whether or not your husband has at any time maintained an office for himself on the premises?

A Well, this office is for everybody.

Q Everybody uses the office?

A Yes.

Q Do you use that office?

A Sometimes I sit down in the desk.

And another person, everybody goes ---

129



Q Do the security guards use that office?

A Of course, yes.

Q Do they sleep there?

A Yes, there, of course.

Q Have you ever observed any of the security personnel or these men that have testified before you, sitting at the desk?

A In the desk and taking the couch sometimes at night.

Q You mean, they sleep on the couch at night?

A Yes.

Q Do you have any authority to tell anyone to do any certain particular act there around the Piranha Diesel Corporation?

A In reference to boat?

Q Yes.

A They work in the boats, but no other things.

Q Did anyone ever give -- was anyone in charge of the security there?

A Well, the man who work with my husband

130



the Operacion Pueblo de -- people of Cuba.

Q Your husband was in charge of the Pueblo de Cuba?

A No, this is an operation from everybody.

Q No. My question was -- and I just want to see if I got the right answer was -- who was in charge of the security personnel?

A Well, everybody wants to help.

Q Was there anyone that was, as the Prosecution says, the boss of the security personnel?

A Well, not exactly the boss because everybody want to help. They offered to help and they are welcome.

Q And you just let them go their own way?

A Their own way, if they know what they are doing.

Q All right.

Did the men that have testified previous to you, did they know what to do in connection with security work?

MR. WOODARD: Objection. Calling for a conclusion.

131



THE COURT: Sustained.

MR. HORTON: I have no further questions.

You may inquire.

THE COURT: Any cross?

MR. WOODARD: Yes, Your Honor.

CROSS EXAMINATION

BY MR. WOODARD:

Q Mrs. Donestevez, concerning Piranha Diesel Corporation, that corporation was dissolved or disbanded, was it not?

A I don't understand that question.

Q Do you know that there was a corporation doing business at this Banyan Street address, the Piranha Diesel Corporation?

A Yes.

Q You are the vice-president of that corporation?

A Yes.

Q Is it not true that Piranha Diesel Corporation was dissolved, disbanded and no longer exists under that name?

A Yes.

Q All right.

132



Was there another corporation formed to replace Piranha Diesel Corporation?

A Not at that moment.

Q No corporation?

A No.

Q So, now you and Mr. Donestevéz are doing business under your own name rather than under the corporate name is that correct?

A Maybe I don't understand.

Can you explain in Spanish?

[Thereupon, the Interpreter assisted.]

A No, there is a corporation for making the boats.

Q What is the name of the corporation?

A Piranha Diesel.

Q The corporation has not been dissolved?

A No.

Q Did you purchase these weapons while -- well, let me clear up one matter Mr. Horton brought up.

You didn't buy all four of these rifles, did you?

133



A Oh, no.

Q You bought one of them?

A Yes.

Q Did you buy the gun in your name or in the corporate name?

A Well, I signed my name because they were registered in my name.

Q And the other three guns were bought by Mrs. Bengurian?

A Yes, my husband's secretary. Yes.

Q Were you present when Mrs. Bengurian bought the other three guns?

A No, I wasn't.

Q Did she buy the other three guns before or after you bought the gun?

A I don't know anything about it.

Q Now, have you ever been in the military, Mrs. Donestevez?

A No.

Q Have you ever been a police officer?

A Never.

Q Have you ever been trained in the use of firearms?

134



A No, no, no. I only bought this for the protection of the factory, not for me.

Q All right.

Who told you to buy these guns?

A Myself.

Q Yourself?

A Yes.

Q You took it upon yourself to go with a check or with the money?

A Yes.

Q Down to the gun store?

A Because ---

Q You picked these out by yourself and took them back, is that correct?

A Yes. I took it to one of the men at the factory.

Q But, before you went down there nobody said go buy a particular rifle?

A No, no. But, I knew my husband need protection. The factory need protection.

Q I understand that, Mrs. Donestevez.

My question is: Before you went down to the gun store, put your money down on the table and

135



got one of these rifles, no one told you: "Mrs. Donestevez, please go down to the gun store and buy one of these rifles?"

A No, I went myself and I took it to the factory and give it to one of the men.

Q And you picked this particular gun out all by yourself, is that right?

A Didn't tell me which one because to me all look the same.

Q Who told you to buy that particular rifle?

A I told you.

MR. HORTON: I will object to the question as being repetitious.

THE COURT: Sustained. Let's go. Anything further?

MR. WOODARD: One further question, Your Honor.

Q [By Mr. Woodard] Mrs. Donestevez, who was the boss of Piranha Diesel?

A My husband is not the boss. Apparently, is the boss of the working in the factory for the boss.

Q Well, if there are two areas or two

136



bosses ---

THE COURT: Not charged with being a boss, he is charged with possession of a firearm by a convicted felon. Can we proceed?

Q [By Mr. Woodard] Mrs. Donestevez, other than your husband, who was in a position to give orders at Piranha Diesel Corporation?

A I can give order if he is not there.

Q If he is not there?

Who else?

A My son. They are too small, too young. And they can say what they want to do in the factory.

THE COURT: Next witness.

MR. HORTON: All right. We will call Ramon Donestevez, Junior.

THE CLERK: Please raise your right hand.

[Thereupon, the witness was sworn.]

137



Thereupon --

RAMON DONESTEVEZ, JUNIOR

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

DIRECT EXAMINATION

BY MR. HORTON:

Q State your name and your address.

A My name is Ramon Donestevez. I live at 9290 Southwest 99th Street.

Q What is your age?

A I am 21 years old.

Q Are you married?

A No, I am not.

Q Are you employed?

A Not right now.

Q Do you do any -- are you doing any type of work right now?

A No, sir, not right now.

Q In the immediate past, have you been employed?

A Yes, I have.

Q What type of work were you doing?

138



A I was in construction.

Q By whom were you employed?

A I don't remember the name of the company.

Q Are you a student?

A Yes, I am.

Q Where are you attending school?

A Dade South.

Q How long have you been attending school there?

A One year.

Q Have you ever had occasion to be on the premises of the Piranha Boat or Diesel Corporation at 9970 Banyan Street?

A Yes, sir.

Q Have you ever had occasion to do any type work there?

A Yes, I used to work there for my dad a long time ago.

Q What type of work did you do?

A Worked on the boats, made boats in the back.

Q Have you ever had occasion to see

139



these rifles that are on the desk?

A Yes, sir.

Q Where did you see those rifles?

A Well, they were inside the office where anybody could see them. They weren't being hidden or anything. They were right there on the couch.

Q Let me ask you this: Were those guns ever there on the premises -- or, first of all, are you acquainted with Mr. Dewey Keller?

A Dewey Keller?

Q Yes, the probation officer.

A No, sir, I am not.

Q Now ---

A I have seen him before.

Q You have seen him before?

A I have seen him before.

Q Has he ever been on the premises of the Piranha Diesel Corporation before?

A Yes, sir. I saw him there at one time.

Q Were these guns there at that time?

A I don't remember. I don't remember.

Q Can you tell us when it was?

140



A A pretty long time ago, sir. I don't exactly know what date.

Q Was there ever any attempt to hide these guns that you know of?

A Like I said, anybody could have walked in the office and there they were. There was nothing to hide. They were there and everybody knew they were there.

Q Who used those guns?

MR. WOODARD: Let me object and move to strike the witness's remarks: "Everybody knew that they were there. And that everyone could see them there."

THE COURT: All right. Sustained.

Q [By Mr. Horton] Well, there was nothing to obscure the sight of these guns when you walked on the premises?

A I don't exactly -- what ---

Q In other words, when you stepped into the front door of this building, there was nothing to obscure your view of these guns?

A No, sir.

MR. WOODARD: Objection, Your Honor.

141



Is that a statement or question?

MR. HORTON: That's a question in a statement form.

MR. WOODARD: Well, I object to questions in statement form.

THE COURT: Overruled.

It's already been established they were laying on top of the sofa.

MR. WOODARD: At that particular time.

Q [By Mr. Horton] Who had the custody of those guns?

A Well, sir, I know that he had -- like, I guess it's security guards.

Q All right.

When you speak of "He", you are speaking of your father?

A No, sir. He's got nothing -- he's not the one that takes care of the factory. It's the men that are there.

Q Who was in charge of security, did you know?

A Really, nobody was in charge. The men came voluntarily and they take care of the factory.



Q Did you ever see your father in possession of one of these guns?

A No, sir, not at all.

Q To your knowledge, has your father ever owned a gun?

A He owned a gun a long time ago. I know he doesn't carry one now because he's not allowed to.

Q When you say "a long time ago", when was that?

A A couple of years ago.

Q This room in which these guns were stored, is there a desk located in that room?

A Yes, sir, there is.

Q Is this an office? Would you call this room an office, described as an office?

A Yes, you could call it an office.

Q Would you tell us who used this office?

A Well, sir, everybody had access to this office. So, I could say that everybody used the office.

Q And the desk, did anyone in particular

143



— sit behind that desk?

A No, no, no. A lot of security -- when I would walk in the office, a lot of security people would be sitting. Like a couple of men would be sitting behind the table. Not a couple, but a few of the men.

Q When you say, "the table", is there a table along side the desk or are you speaking of the desk?

A I am speaking of the desk.

Q So, the security personnel would sit behind that desk?

A Of course.

Q Now, is there any plaque or sign on that desk that has a name on it?

A There is no plaque. I know they have mentioned that a few times. There is no plaque on that desk. There is no name on that desk.

Q Is there any indication on the door as to the identification of that office?

A No, sir, there isn't. The only thing outside it says is Piranha Diesel. That's the only thing that I can remember.

144



Q Now, the plaques on the wall, were there any plaques on the wall?

A Yes, sir, there were.

Q Would you tell us what those plaques describe?

A Well, one was from -- saying that my dad's a marine engineer. And there was another plaque, some other award he got a long time ago.

Other than that ---

Q There is nothing else?

A There is a picture of us, you know, of his family, as far as I can remember. And an American Flag. But, that's not a plaque.

MR. HORTON: I have no further questions.

THE COURT: Any cross of the son?

CROSS EXAMINATION

BY MR. WOODARD:

Q Mr. Donestevez, are you familiar with the present corporate status of Piranha Diesel?

A What exactly do you mean by that, sir?

Q Are you an officer or have you been an officer in Piranha Diesel?

145

A No, no.

Q Are you familiar sir, as to whether or not the corporation, Piranha Diesel Corporation is still in existence?

A I couldn't tell you that, sir.

Q Your father owns and operates Piranha Diesel, does he not?

A Yes, sir. He does.

Q That's a family held organization, is it not?

Your mother and your father primarily?

A Yes. Yes.

Q Are there any other -- strike that. Is the desk in the office used by your father?

A It's not primarily used by my father. It's been used by my father and a lot of other people.

Q Is the office used by your father?

A It's been used by my father and a lot of other people.

MR. WOODARD: I have no further questions.

THE COURT: Next.

146



MR. HORTON: May I just ask him one question on this boat trip that transpired and took place on Saturday, I believe it was? Would be the 13th, I guess.

REDIRECT EXAMINATION

BY MR. HORTON:

Q Did you have occasion to go on that trip with your dad this past Saturday?

A Did I go on it?

Q Yes.

A No, sir, I didn't go on it.

Q Did your mother go?

A No, sir, she didn't go on it.

Q All right.

Were you at home?

A Yes, sir, I was at home.

MR. HORTON: All right. I have no further questions.

MR. WOODARD: Nothing further.

MR. HORTON: Shall we continue on, Your Honor? I have five more witnesses I am going to call.

THE COURT: No. Something has come

147



up that I am going to have to depart on. We will have to recess until 4:15.

MR. WOODARD: All right, Your Honor.

THE COURT: All right. This hearing is recessed until 4:15.

[Thereupon, this hearing was recessed until 4:15 o'clock P.M.]

THE COURT: All right, are we ready to reconvene?

MR. WOODARD: Yes, Judge.

MR. HORTON: Yes, Judge.

THE COURT: All right.

MR. HORTON: Judge, I am advised that while we were in a hearing this morning, that certain Metro Officers made an investigation of this boat of my client and came upon some type of bomb.

It's now necessary that my client move that boat immediately. They have ordered him to move it.

THE COURT: Someone else can move it.

MR. HORTON: In other words, if I interpret your remark correctly, Your Honor -- I am

148



not laughing. I am merely more or less of an affliction..

THE COURT: No, I know.

MR. HORTON: You are going to revoke the probation?

THE COURT: You read me about wrong. We are in a deadly serious situation and you know it and I know. And the Prosecution knows it. Those weapons look like they guard Fort Knox, not a boat company.

MR. HORTON: Judge ---

THE COURT: I mean -- I don't mean I am not pulling punches. I don't like to play games with people. That's why I am telling you very candidly that we are in a very serious situation.

MR. HORTON: Let me ask you this, Your Honor.

THE COURT: Yes, sir.

MR. HORTON: Because, my testimony is going to be rather cumulative of what has transpired this morning as you perhaps know. I am also going to bring in a number of people that were on the boat. It's going to take a great deal of time to go into

140



that testimony.

I have here the Attorney General's opinions in which he does take the section I am relying on for an exemption along with the other sections. Says they are all in paria materia.

THE COURT: I understand what you are saying so far and I have read opinions of that nature because under the present situation we are trying to encourage ex-offenders to work in correctional institutions and working with young people and things like that.

MR. HORTON: Yes, ma'am.

THE COURT: That is where these cases come from. But, we don't have that situation here now.

MR. HORTON: Let me say this, Your Honor: This man, it's his life that appears to be really in jeopardy. If it's his freedom he wants, I believe he is entitled to it.

I hate to see this man incarcerated and let me pose this to you: Let's say the reason you would be incarcerating this man and revoking his probation is because of some assumed fact that he

150



would make a flight to Cuba.

If he made a flight to Cuba it certainly would relieve the State of Florida's responsibility, plus the fact that he would be faced, if he ever came back here, with flight to avoid prosecution, a Federal offense and other charges.

MR. WOODARD: Judge, let me say one thing, if I may interrupt Mr. Horton. The remarks concerning Mr. Donestevéz' propensity to go to Cuba were brought up as a collateral issue only because Mr. Horton brought them up in his inquiry of the probation officer. It's not part of the allegation of the probation violation as far as I am concerned. It's a collateral issue. I am not going to address that in my remarks to the Court.

THE COURT: All right.

MR. HORTON: I had assumed that had been an issue in this.

THE COURT: A lot of things are in issue. Mr. Donestevéz is well known in the community. His activities are well known. He's never made any secret of those activities. From a personal standpoint and a friend in many respects, I wholeheartedly

151



sympathize with his efforts in attempting to free the people in Cuba.

I am glad that he feels that way. I am glad others do.

But, the battleground belongs on Cuban soil; they do not belong within the confines of Dade County, Florida. Guns like that do not belong being walked up and down in front of any business in Dade County, Florida, handled by somebody who is not a licensed security agent under the laws of the State as they exist.

MR. HORTON: Your Honor, let me take that particular factual issue.

THE COURT: Bearing in mind, let me add, because I am seeing things -- I am trying to tell you my feelings in it.

MR. HORTON: Yes, ma'am.

THE COURT: Because, I think you are trying to get a lay of the land as to determine whether you want to continue with putting on your witnesses. I am trying to be as fair with you as I can.

Mr. Donestevéz, being a convicted

152



felon, has no right to have that kind of gun sitting on a couch in his office right by where he is. And those pistols right within arms' reach where he is walking back and forth from them every day.

Now, if that isn't constructive possession, man, I haven't seen it in a long time. That's about as constructive as you are ever going to get.

MR. HORTON: All right.

Now, Your Honor, if I may ---

THE COURT: Sure.

MR. HORTON: They licensed the dealers to sell those guns. And they were purchased, as was stated by the Prosecution's own witness, at the Tamiami Gun Shop. So, they are sold just like many other firearms are sold.

People can buy these weapons.

The next thing is the fact that -- and I am repeating myself, trying to find a new approach to it. And that is, I have the Attorney General's opinion here that says under the Statute security agents do not have to be licensed in order to protect premises.

153



Because that comes under the Constitution as well as the exemption privilege of 790.25, 3-N.

I also -- and if you would like to see that opinion, I have it right here.

I also have these opinions. I have underlined them in red, the Attorney General, and they give the citations. I have the cases for you, too. It would only take you a few brief minutes to read this.

THE COURT: I don't mind reading it. I would be glad to read it.

MR. HORTON: I would appreciate it if you would. If I may point this out, this is the section that gives us the exemption of 725. There are two opinions there.

THE COURT: I am not questioning any of this. You and I are completely in accord with the fact that a security officer properly licensed could carry a firearm in a bank or anywhere else. If that were not true, these gentlemen who have just testified would be the ones who would be on trial.

MR. HORTON: Yes, ma'am.

154



THE COURT: The distinction is Mr. Donestevez was on probation. He was a convicted felon. It is a violation of the law for him to have constructive or physical possession of a firearm. There is the difference.

MR. HORTON: Judge, just do me one more favor.

THE COURT: Sure.

MR. HORTON: Because I am representing this man, because I don't want to see him go to jail.

THE COURT: I know, and you are doing a very fine job of it, too.

MR. HORTON: This is the second portion about the fellow who was a jail guard. They bring in the very exceptions under 790.25.

THE COURT: It's the same thing we were arguing this morning. He is not a law enforcement officer.

MR. HORTON: Yes, sir. Yes, ma'am.

But, the exemption under 790.25 is applied in conjunction with all previous provisions of that Statute, including 790.23.

But, Your Honor, may I have a brief

155



recess to confer with my client in light of your expressions?

THE COURT: Do you mind -- I suggest, Counsel, if you want, that you can step into the jury room. We can wait just right here. Wouldn't that be better?

MR. HORTON: That would be fine.

THE COURT: All right.

Take whatever time you need. The jury room is at your disposal, sir.

MR. HORTON: All right.

Does somebody have a key to this room?

THE CLERK: They locked it this morning.

MR. HORTON: We are not going to offer any more testimony, Your Honor. I would like to ask you for one favor. Of course, the Prosecution I imagine will oppose it.

Everything this man has is in this boat. Everything in this world. He would like to move the boat to another dock with a police escort. Can he have five days before he goes to jail to do it?

Judge, I will tell you. I will tell

158



you this ---

THE COURT: I will split it down the middle.

MR. HORTON: Let me just -- you have been patient with me and I appreciate it.

THE COURT: This is no easy matter. That boy over there and my boy are friends.

MR. HORTON: Who?

THE COURT: His son Ramon and my son are friends. I don't know whether he remembers it or not, but I remember Ramon. He is a nice kid. I feel bad about it. That's why I put it out in the beginning. This is a toughy and I wish to Heaven one of you -- well ---

MR. HORTON: Judge, I will guarantee this man if you let him have the five days.

THE COURT: I can't do that, Starr. I know he's got problems.

MR. HORTON: I will tell you a man that will guarantee it and you know him. I know you know Mr. Frank Randolph Martin in New York. He called me at noon and he says, "Starr, I will guarantee him if you don't."

157



THE COURT: I tell you the whole problem, Starr. In all candor, he can't and I can't and you can't, and even Mr. Donestevéz at this point couldn't because we are dealing with factions. With emotions and things that are uncontrollable by rules of law.

MR. HORTON: Yes, sir.

THE COURT: I will go this far: If you really want it and I understand that with a bomb having been found on his boat and I believe it's a half a million dollar boat that he has a problem and needs to have it moved. I imagine Ramon could help him move it to wherever it belongs.

But, I understand it's his boat and he wants to be there with the proviso that the police are with him.

MR. HORTON: All right.

He has an engine out on this boat. You know, this boat is not functioning. He's just got one engine going and this is ---

THE COURT: Ramon?

MR. DONESTEVÉZ, JR.: Could I say something please, ma'am? I don't know. This has

158



nothing to do with the case. This morning in my dad's boat there was 11 pounds of dynamite placed in the bottom of the hull.

THE COURT: I just found out about that.

MR. DONESTEVEZ, JR.: Yes, ma'am. The only person that can move the boat from that spot is my dad. The mechanics that were working on the engine, they left. So, the boat, you know, we are finding ourselves in a bit of trouble here. My dad is the only one that can move the boat. The mechanics have left as soon as they saw the dynamite there. They haven't fixed the boat.

The people, the man already talked to me and he said, "Make sure your dad moves the boat by tonight."

Like I said, my dad is the only one who could move that boat out of there. If I could, I would. That's all I am ---

THE COURT: All right. I understand what you are saying.

Mr. Woodard, can one of the Sergeants-- maybe I can just ask directly.

159



Sergeant, is there some way that can be worked where you all can escort him and move the boat? I understand the problem. You are talking about a half million dollar boat. And there certainly is no doubt that there's somebody that is not friendly toward him.

MR. WOODARD: Judge, let me make this remark directly to Sergeant Havens, though you directed it to Sergeant Havens. I am advised that the County doesn't have sufficient boat equipment to supervise this. However, it may be the Coast Guard can lend some assistance as far as moving. And ---

MR. HORTON: They have a Johnson Prowler. They can move him.

SERGEANT HAVENS: Logistics. You are talking about a boat, by my understanding which is over 6500 feet, six tons of weight. My understanding the boat is requested to be moved from a general location which is a populous area in the way of boats.

At the Court's request, I believe we can make arrangements logistically with the boat.

Once again, of course, it would be under the supervision if Mr. Donesteyez is rendered to the



custody that he remain in the custody of the Public Safety Department.

THE COURT: Let me see if I am understanding it. In other words, if I let him move the boat assuming I take him into custody and at the same time say that he can go move the boat, you all would go with him and help him move the boat together with the Coast Guard. Then, he'd be brought back.

OFFICER DIAZ: Your Honor, that question came up today and we told Mr. Donestevéz we would escort him and protect him from whatever people he is afraid that may take retaliation against him.

But, we told him that we couldn't tow his boat in case he had any engine problems. And advised him that if he would get a tug boat to follow him we would offer him the protection.

However, we cannot tow him, to be very candid.

THE COURT: What about the Coast Guard? Coast Guard ought to be able to. You are going to have a little problem locating people that are going to be wanting to tow him out.

MR. WOODARD: I am sure they can. The

161



question is will they.

SERGEANT HAVENS: Another question is where? Where would the boat be towed to? Where are they going to moor it?

MR. HORTON: I will let him explain it to the Court.

Go ahead.

THE DEFENDANT: Your Honor, the main problem that I have is that the two engines quit. I have got one fixed which is not enough to move the boat properly. The boat has a fortune inside in penicillin and everything. That boat should be secured. I am willing to go to jail. There is only one condition that the Coast Guard take custody of that boat.

Other than that, I need about five days. I have to hire two mechanics, put the engine at work. And if I have to go to prison, you know, I am not scared to go. I go. But, I need a chance.

THE COURT: I understand.

THE DEFENDANT: I need a chance to secure that.

THE COURT: Are there any Coast Guard

162



people here?

MR. WOODARD: No, Judge.

MR. HORTON: Judge, if you will let him go for the five days, he will move the boat and have it escorted over. I will guarantee he will be back.

THE COURT: I am not going to do that, Starr. I am not going to do that.

All right, let's take one thing at a time.

Both sides rest on the violation of probation hearing?

MR. WOODARD: State is resting, Your Honor.

THE COURT: Defense resting on the violation of probation hearing?

MR. HORTON: Yes, I am.

THE COURT: All right.

It is the ruling of the Court that Mr. Donestevez is in violation of the probation that was placed upon him by Judge Baker.

The Court is revoking that probation.

All right, what about sentencing?

163



You want to proceed with sentencing at this time?

MR. WOODARD: Yes, Your Honor.

But, I think the Court is probably cognizant of the remarks the State would make as anything I could say at this time.

THE COURT: All right.

I would like recommendations from both sides.

MR. WOODARD: Your Honor, at this time we would recommend under the -- considering the severity of the original charge that a substantial jail term be imposed by the Court.

THE COURT: Starr?

MR. HORTON: Your Honor, let's go back to the beginning.

Trouble started for this man because another man by the name of Canto [phonetic] owed him \$4400 on a boat he had purchased from him.

Yes, he used improper methods to effect collection of his indebtedness out of heat of temper.

As a result of that, of course, he was set up for a buy. This man gave him \$800 and this

164



\$800 was marked money of Metro's. It evolved itself around to a charge of armed robbery and extortion.

Armed robbery was dropped and the extortion he pled guilty to in order to have the freedom to be with his family.

Now, he comes back and all his troubles grow over not of his threats or his acts of gangsterism or anything of that, but only the fact that he has attempted on occasions to go to Cuba and free political prisoners and help Cuban people.

That's where his trouble lies.

As a result, this has brought upon him unfortunately, it was an ill advised time for him to take this boat out that he had built and have it capsize almost.

It became disabled and he had to anchor it in order to keep it from capsizing.

As a result of that, a lot of adverse publicity has been built up. A lot of people's opinions have been changed about this man.

Heretofore, they always looked upon him as the Rock of Gibraltar.

I think the Court has been swayed by

165



the size of the guns and the fact that he made a trip in this boat over the weekend.

I don't think that we are going to save anybody because somebody wants to blow him up. We are going to put him away and deprive him of his liberty. I don't think we are going to help anybody by trying to impose a substantial penalty on the man.

I believe this: I believe that it should be a very light sentence, particularly under these circumstances, because it seems to be more of a protective nature than of a punishment.

If you please, Your Honor, I would like for you to make it the briefest duration as possible.

MR. WOODARD: Your Honor, may I respond in rebuttal to the two matters Mr. Horton has brought up?

First of all, it's my understanding -- I don't speak from any degree of expertise in this matter, because I did not handle the original extortion case. I believe Mr. Tunkey handled that.

But, I am advised that the sum of money that was in issue between Mr. Donestevéz, his co-defendant, and the alleged victim in the case did

166



not arise over a dispute concerning a boat, but on the other hand, arose out of an extorted amount of money concerning money allegedly for the return to Cuba during the time Mr. Donestevéz was engaged in that type of activity.

Secondly, concerning the matter with the bombs and the dynamite, I'd like to draw one matter to the Court's attention that has been brought to my attention. I have been advised by -- not by directly, but through Mr. Brody, the bomb expert at the Public Safety Department that the bomb on Mr. Donestevéz' or under Mr. Donestevéz' boat this morning was wired in identically the same way that a boat that was placed in front of his boat yard some months back was. And that both of these bombs, if you wish to call them that, were wired in such a way that they could not mechanically detonate. There is some question in my mind and some question in the law enforcement community's mind as to whether or not these bombs were not placed either by or at the direction of Mr. Donestevéz in order to create a false sense of insecurity as it relates to his ability to protect himself and his community.

167



Now, I bring this to the Court's attention not insofar as being able to prove these allegations, and I am not sure that they should even be considered by the Court in its final ruling any more so than they should be considered by the Court if they were, in fact, really placed and rigged to explode.

But, I think the thing that the Court should consider is that the possibility exists that these items are being placed in that fashion in order to raise a false issue before the Court.

With all due respect I don't think it really has any place in the Court's consideration of the sentence to be imposed in the matter.

THE COURT: We seem to have gotten along pretty well for a couple of hundred years without having to worry about bombs in our streets or guns like that being held by people walking down in front of businesses.

Battlegrounds involving other countries have always been on their territory and not in the streets of our city.

There is entirely too much ---

163



THE DEFENDANT: Judge ---

THE COURT: --- revolution -- yes,
Mr. Donestevez?

MR. HORTON: All right, go ahead.

THE DEFENDANT: Can I?

THE COURT: You may.

THE DEFENDANT: For the last 11 years
we never had to try to create a war, not in Cuba or
here. We tried to terminate it. And you can check
in our records. You are going to find out that what
I am telling you is exactly the truth.

THE COURT: All right.

Anything further?

MR. WOODARD: Nothing further, Your
Honor.

THE COURT: Enter an adjudication of
guilt; seven years in the State Prison.

MR. WOODARD: Your Honor, before the
Court adjourns, may I confer with Mr. Horton regarding
one other matter?

THE COURT: All right, yes. But, I
want to make arrangements because I want him to be
able to move that boat. So, I don't know how this

169



will set with the Coast Guard, but we can try it for size.

I am ordering the Public Safety Department to escort Mr. Donestevéz to give him an opportunity to move his boat to Coast Guard jurisdiction, if that be the only alternative, or to a place that Mr. Donestevéz can designate. Any place that will take it. I understand there is a little problem with that. But, move it to somewhere.

Ordering the Coast Guard to cooperate with you.

OFFICER DIAZ: Can you place a limit where you say he can take the boat?

THE COURT: Within the confines of Dade County.

OFFICER DIAZ: Thank you.

THE COURT: All right.

Now ---

MR. HORTON: Your Honor ---

THE COURT: When the Coast Guard, because these guys are the ones that are going to have to put it into effect, if the Coast Guard needs any other wording, in other words, if they are willing

170



to help you with it, which I think they will be, if they are willing to help you and they don't like the phraseology I used, then change the phraseology, whatever the Government needs for this purpose.

But, I am recommending, I am suggesting, I am ordering, I am asking, whatever phraseology that they want. Sometimes one word makes a difference with the United States Government.

All right, I am sorry, Mr. Woodard, what?

MR. WOODARD: Your Honor, I will be happy to make my remarks on the record for Mr. Horton's education. We have had an arraignment this morning concerning the subsequent charge. I believe Mr. Horton indicated ---

MR. HORTON: No, we didn't.

THE COURT: We haven't.

MR. HORTON: I said I would know.

THE COURT: We haven't had an arraignment. He is not going to waive trial by jury. Of course not.

MR. WOODARD: Let me just say this for Mr. Horton's education, that it is a 15 year felony

171



in light of the Court's actions in this case, Mr. Horton would like to discuss the possibility of disposing of the matter at this juncture short of a trial, perhaps we can dispose of the matter at this time.

THE COURT: You are talking about a plea with a concurrent sentence?

MR. HORTON: No, I am not going to plead this man guilty. We are going to try it.

THE COURT: Not guilty; jury, Starr?

MR. HORTON: Yes, ma'am.

THE COURT: All right.

Set it for trial January 19th.

MR. HORTON: The sooner the better, Your Honor.

THE COURT: All right. January 19th for trial. Is that all right, Jim?

MR. WOODARD: Judge, let me check my calendar to see what we have set.

MR. HORTON: Judge, can this man go home and come back on Monday? They let many of them do it and they have done ---

THE COURT: No. 172



MR. HORTON: Committed some heinous crimes. And they let them get their affairs straight.

MR. WOODARD: Judge, the week of ---

THE COURT: Can't do it.

MR. WOODARD: The week of the 19th will be fine.

THE COURT: January 19th for trial.

MR. HORTON: He can't report back here on Monday?

THE COURT: Not this one.

MR. HORTON: I will guarantee it.

THE COURT: I know, but can't do it.

Just can't do it.

MR. HORTON: Your Honor, the man's been free ---

THE COURT: No.

MR. HORTON: He's appeared for everything I have ever asked him.

THE COURT: Starr.

MR. HORTON: And everything the Court has asked him.

THE COURT: Things are in a different status now and in the community we are in right now

173



I cannot and will not do it.

MR. HORTON: This man hasn't bombed anybody and he hasn't shot anybody.

THE COURT: I can't and will not do it.

MR. HORTON: He hasn't threatened anybody.

THE COURT: Starr.

Court is in recess.

MR. HORTON: May he visit with his family in the jury room?

THE COURT: That is their prerogative.

Print him.

[Thereupon, this hearing was concluded.]

* * *



CERTIFICATE OF REPORTER

STATE OF FLORIDA :
 : SS.
 COUNTY OF DADE :

I, KATHERINE POPE WYATT, do hereby certify that the cause of STATE OF FLORIDA, Plaintiff, versus RAMON DONESTEVEZ, Defendant, case numbers A-75-10539 and 72-7137 A, pending in THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA, came on for arraignment and probation report before The Honorable ELLEN J. MORPHONIOS, as Judge, on December 18th, 1975; that I was authorized to and did report in shorthand the proceedings and evidence in said hearing; and that the foregoing pages, numbered from 1 to 174, inclusive, constitute a true and correct transcription of my shorthand report of the proceedings in said cause.

IN WITNESS WHEREOF I have hereunto affixed my hand this 24th day of January, 1976.


 KATHERINE POPE WYATT,
 Registered Professional Reporter.

175



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

CRIMINAL DIVISION

STATE OF FLORIDA,)
)
 Plaintiff,)
)
 -vs-)
)
 RAMON DONESTEVEZ,)
)
 Defendant.)
)
)

CASE NO. 72-7137-A

- FILED -

MAR 1 - 1976

RICHARD P. BRINKER
CLERK

The above-entitled case came on for motion to correct sentence before The Honorable ELLEN J. MORPHONIOS, Judge of the above-styled Court, at the Metropolitan Justice Building, 1351 Northwest 12th Street, Miami, Florida, on Friday, January 23rd, 1976, at 9:30 o'clock A.M., pursuant to notice.

APPEARANCES:

JAMES H. WOODARD, Assistant
State Attorney, on behalf of
the State of Florida.

MECHANIC and GOLDSTEIN, ESQS.,
on behalf of the Defendant.
By: Stephen J. Goldstein, Esq.

* * *

176

THE COURT: You are going to handle Ramon Donestevez?

Wait a minute. Woodard will want to be here, won't he?

MR. GOLDSTEIN: I assume.

THE COURT: I guess I ought to wait for him.

[Thereupon, a short recess was taken, during which time other Court proceedings were had, after which the following proceedings were had.]

THE COURT: Ramon Donestevez.

MR. WOODARD: This is on for Defendant's motion to correct sentence.

THE COURT: He is out on Judge Klein's bond, right?

MR. WOODARD: Correct, Judge.

MR. GOLDSTEIN: Yes.

I submit a copy for the Judge.

The motion sets out the chronological order which brought the Defendant around to your Court to be sentenced on the violation of probation.

We would rely on the Third District's holdings in cases of Reynolds, Williams and Hutchins, which I am sure Your Honor is abundantly familiar with.

Especially in the case of Hutchins v. State, cited at 286 So. 2d. 244, which is a Third District case.

Specifically that Court stated in the Williams case it was pointed out that the authority granted by Section 948.01, Section Four, Florida Statutes to add a period of probation to be combined with a jail sentence was to provide for the Defendant to be placed on probation upon any completion of any specified period of such sentence. Thus, with the Court in sentencing a Defendant to imprisonment in County Jail provides after serving a stated portion thereof, the Defendant should be on probation for some period, the penalty for a violation of probation would call for return of the Defendant to the County Jail for the unserved balance of the jail sentence or such part thereof as the Court should determine.

This is specifically what occurred in this case.

Judge Baker on, I believe it was, October 2nd, sentenced Ramon Donestevéz to be imprisoned by confinement at hard labor in the Dade County Jail for a term of one year; sentence to begin from date of incarceration, provided however, after you have served two months of such sentence, 10 months shall be stayed and withheld and you be placed on probation as a result of five years.

THE COURT: That was as a result of an action of Judge Baker on his original sentence which was straight probation, am I not correct?

MR. GOLDSTEIN: Yes. The original sentence was straight probation. That probation was violated and then Judge Baker, at that time, had various alternates.

One was to place the Defendant in State Prison for the maximum allowable under the initial charge or place the Defendant on a new probation or to give the Defendant a split sentence. He chose to give the Defendant a split sentence and impose a maximum jail time of one year, suspending 10 months.

Under the Third District decisions to date, the maximal allowable sentence the Court could

now impose upon a further violation would be the unserved and withheld portion of that sentence which in this case is 10 months.

Further, it was the intention of the Court, meaning Judge Paul Baker, that that should be the case. It was the intention that upon a violation of the probation then given by Judge Baker on October 2nd at that time, that the maximum Ramon Donestevéz would ever be called upon to serve, would be 10 months.

MR. WOODARD: May I reply, Your Honor?

THE COURT: Certainly.

MR. WOODARD: First of all, as to the intention of the Court, which as far as I know, is not recorded in the records which we have before us, that I think is interesting speculation on the part of Defense Counsel. Secondly, certainly not binding upon this Court since it's called upon of this Court to enter sentence for Judge Baker in his absence.

Secondly, counsel is correct that the decisions in Hutchins and Williams from the Third District appear to contrary to the position of the Court in the sentencing of Mr. Donestevéz previously.

However, unfortunately for Mr.

Donestevéz, the Supreme Court of Florida on the 14th day of January, 1976, rendered an opinion in the State of Florida versus Johnny Lee Jones, reversing the decisions of Hutchins and Williams.

The opinion is not yet final since the time for rehearing has not run.

However, if the Court will address itself to the certified question on page two, read page two, page three and then the final conclusion on page 13, setting forth the holdings of the Court, I think the feelings of the Supreme Court of Florida in this area are very well set forth.

MR. GOLDSTEIN: Judge ---

MR. WOODARD: The opinion is a very well researched opinion; addresses itself specifically to Williams and Hutchins.

THE COURT: Overton wrote it.

MR. WOODARD: All the previous cases decided by the Third District and effectively reverses it all.

MR. GOLDSTEIN: Judge, I would ask you read the entire decision and not just the pages that were outlined by Mr. Woodard.

THE COURT: Oh, I will read it.

I may not be wrong on Alex James, either. Boy, it's a long one.

MR. WOODARD: Fifteen pages.

MR. GOLDSTEIN: Probably the last several are the dissents.

MR. WOODARD: I don't think there is a dissent.

THE COURT: Yes, but a dissent is a dissent; it has no weight except to show you if they ever change the members of the Court that one might come in power.

MR. WOODARD: I am sorry. Fourteen through 16.

THE COURT: Boyd dissented.

Anything else?

MR. GOLDSTEIN: Yes.

First of all, the decision is not final. Second of all, Judge, although the question that it was certified may be on point, the decision and the answer to the question is not just a yes or no. Yes the Court can do this or no, it can't.

The case cites numerous cases in it.

Every case that it talks about and the center of its concentration is on whether or not it's necessary for a Court to establish at initial sentencing procedure a total sentence in order to implement the split sentence alternative. You either put the man in jail; you put him on probation or you do a split sentence.

Prior, it has always been required that the Court set a total time and withhold a portion of that in order to implement the split sentence.

This decision is saying that is no longer required. Everything they talk about is making the term of incarceration a condition of probation.

Its final conclusion, it's on page 11, I think. It states further what their main point is. It says these cases illustrated the several ways Trial Judges have attempted to impose split sentence probation and the various interpretation by the respective District Courts of Appeal to clarify and establish this clearly.

We hold Trial Courts of both general and specific authority for the split sentence probation alternative. We hold that the Trial Courts of this State have the general authority to require

incarceration as a condition of probation.

That's their holding that now purely as a condition of probation, incarceration can be given.

But, that was not the case in the Donestevez situation.

Judge Baker instituted a specific sentence. He did not make probation or incarceration a condition of probation. If he had, according to this case, Your Honor could then revoke it and sentence him to the maximum allowed him under the law to the extortion charge.

But, since he didn't, I don't believe Your Honor can now oppose any sentence that could have been imposed initially.

Judge Baker sets the limits of the sentence by imposing one year. It was Judge Baker's intention at that time that that be the maximum sentence that Ramon Donestevez be sentenced to serve upon a violation of that probation.

The general holding of the case, Judge, on page 13: In conclusion we hold, one, the Trial Court may place a Defendant on probation and include as a condition, incarceration for a specific period of

time within the maximum sentence allowed. They are only giving the Court now the authority to place the Defendant on ---

THE COURT: Want to read two and three of that same paragraph? The Trial Court may revoke, revise, modify for incarceration probation.

MR. GOLDSTEIN: But, this is presuming the Court gave the incarceration period as a condition of probation rather than as a maximum term that the Defendant could be called upon to serve.

In any event, your Honor, I can see by the expression on your face that you are not going for any of that.

But, to apply this case, Judge, to Ramon Donestevéz would certainly be to violate the prohibition in the U. S. and Florida Constitutions, prohibiting ExPost facto laws. Your Honor is certainly well oriented with what those laws are.

I am not going to belabor this. But Ramon Donestevéz entered a plea to this probation violation. Not before your Honor, but before Judge Baker. He had an alternative of not entering the plea and forcing the State to prove the violation.

But, he did, upon advice of the State

* and the Court, he would in essence receive the sentence that Judge Baker imposed. That sentence was imposed with the understanding by the State, by the Defense Counsel and by the Court as it was under the applicable laws at that time. The applicable laws at that time would prohibit this Court from imposing any further sentence beyond 10 months.

Now, if Your Honor is, at this time, planning to rule against Ramon Donestevéz, I would ask Your Honor to defer ruling until I can submit to your Honor an affidavit from Judge Baker indicating to your Honor that it was, indeed, his intent after negotiations with the State and the Defense that that is the only reason that Ramon Donestevéz entered a plea to that violation.

To sentence him now to more time than he could have gotten at that time when he entered the plea is certainly to apply this decision retroactively which would violate the Rules against ExPost facto laws.

Just to cite one case to Your Honor, the Florida Supreme Court as it interpreted ExPost facto laws in Higginbotham versus State, 101 So. 2d. 233, it interpreted [One] as by one in its operation makes that

criminal that was not so at the time the operation was performed or which increases the punishment in relation to the offense or increases the consequences, alters the situation of a party to its disadvantage.

Clearly applying this case to Ramon Donestevéz is going to alter the situation of that party to his disadvantage and it's going to increase the consequences and increase the punishment clearly in violation of the Florida Supreme Court's decision prohibiting the application of ExPost facto laws.

MR. WOODARD: If the Court please, we are not talking about an ExPost facto law; we are talking about a decision which interprets laws that have been in existence as of the time of the commission of the offense.

So, the distinction is obvious.

THE COURT: Anything else?

MR. GOLDSTEIN: Yes, Judge.

As to the point Mr. Woodard just made the U. S. Supreme Court in *Bowie (phonetic) versus City of Columbia*, cited at 373 U. S. 347, states even where vague Statutes are concerned, it has been pointed out that the vice in such an enactment cannot be cured

in a given case by a construction in that very case placing valid limits on the Statute for the objection of vagueness is two-fold: inadequate guidance to the individual whose conduct is regulated and inadequate guidance to the triers of the fact.

The U. S. Supreme Court has construed ExPost facto laws to also mean the narrowing of the interpretation of Statutes, which is exactly what the Florida Supreme Court is now doing in Johnny Lee Jones.

THE COURT: Anything else?

MR. WOODARD: No, Your Honor.

THE COURT: Motion denied.

MR. GOLDSTEIN: Your Honor, defer ruling until I can get an affidavit?

THE COURT: I will give you permission to supplement it, to add it in there if you want to.

MR. GOLDSTEIN: I would like to do it.

THE COURR: But, I am ruling now. You can put it back on the calendar regardless of the affidavit.

MR. GOLDSTEIN: You mean, can I supplement it to the file and a copy to Mr. Woodard?

THE COURT: As far as I am concerned,

you can just supplement it.

MR. WOODARD: Thank you, Your Honor.

THE COURT: Is that all yours, Jim?

MR. WOODARD: I believe so.

[Thereupon, this hearing
was concluded.]


* * *

CERTIFICATE OF REPORTER

STATE OF FLORIDA :
 : SS.
COUNTY OF DADE :

I, KATHERINE POPE WYATT, do hereby certify that the cause of STATE of FLORIDA, Plaintiff, versus RAMON DONESTEVESZ, Defendant, case number 72-7137 A pending in the CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA, came on for hearing before the Honorable ELLEN J. MORPHONIOS, as Judge, on January 23rd, 1976; that I was authorized to and did report in shorthand the proceedings and evidence in said hearing; and that the foregoing pages, numbered from 1 to 14, inclusive, constitute a true and correct transcription of my shorthand report of the proceedings in said cause.

IN WITNESS WHEREOF I have hereunto affixed my hand this 27th day of February, 1976.


KATHERINE POPE WYATT,
Registered Professional
Reporter.