

LINDSAY ROSIN, Ph.D.
CLINICAL PSYCHOLOGY
NEUROPSYCHOLOGY
3730 KIRBY DR., SUITE 825
HOUSTON, TEXAS 77098
TELEPHONE (713) 523-0000

PSYCHOLOGICAL EVALUATION

Name: Frank Martinez-Garcia
Date of Birth: 10-21-1972
Place of Evaluation: TDCJ-Polunsky Unit
Date of Evaluation: 8-25-2009

Procedures Administered:

Wechsler Adult Intelligence Scale-IV (WAIS-IV)
Wide Range Achievement Test-Revision 4 (WRAT-4)
Clinical Interview

Background Information:

Frank Martinez-Garcia is a 36 year old right handed male referred for psychological evaluation by his attorney, Simon Azar-Farr, to assess his intellectual functioning. He stated he dropped out of 12th grade in his twenties and did not obtain a GED. He said he attended partial special education classes in elementary school and repeated "a few" grades. He cannot recall which grades he repeated. He said he last attended Lanier High School in San Antonio. Available records indicate he last attended Jefferson High School in San Antonio. He said he was married for two years and separated and has one son and one daughter. He does not know the ages of his children. He reported painting automobiles for a cousin for one year and does not know how that job ended. He said he had also mowed lawns for a friend in the past.

Available records indicate he graduated in 1993 from Jefferson High School in San Antonio and previously attended Lanier and Brackenridge High Schools in San Antonio. Edgewood ISD school records indicate he obtained a WISC-R Full Scale IQ of 85, Verbal IQ of 79, and Performance IQ of 90 on 1-29-1985 at age 12. He previously obtained a WISC-R Full Scale IQ of 90, Verbal IQ of 82, and Performance IQ of 106 on 3-10-1982 at age 9. School personnel noted "There is a severe discrepancy between his academic functioning in reading, spelling, written language and math and his intellectual functioning" and that he "meets eligibility criteria for learning disabilities."

Mental Status Examination:

Mr. Martinez-Garcia was oriented to person and place and partially to time. He could state his name, age, and birth date. He knew the current month but not the current year, date, or day. He made one omission in naming the days of the week and four omissions in naming the months of the year. He could name two seasons of the year. He recalled 3 of 3 words at 0 minutes and 2 of

Frank Martinez-Garcia 2

3 words at 3 minutes. He recalled 4 digits forward and 2 digits backward. He made one error and one omission in reciting the alphabet. He could count backward from 10 to 1 but not from 20 to 1. He could spell "cat" forward and backward but could not spell "world" forward or backward. He could not perform tasks of serial 7's. He could not name the current president and incorrectly stated his immediate predecessor as Clinton. He was able to name the current governor. Abstraction ability was poor as he could not interpret proverbs presented to him. Judgment appeared to be limited. For example, he did not know what to do if he was the first person in a crowded movie theatre to see smoke and fire.

Test Results:

Mr. Martinez-Garcia obtained a WAIS-IV Full Scale IQ of 55 (0.1st percentile), Verbal Comprehension Index Score of 61 (0.5th percentile), Perceptual Reasoning Index Score of 69 (2nd percentile), Working Memory Index Score of 60 (0.4th percentile), and Processing Speed Index Score of 50 (less than 0.1st percentile). Individual subtest scaled scores were as follows:

<u>Verbal Comprehension Tests</u>	<u>Scaled Score*</u>
Similarities	3
Vocabulary	3
Information	4

<u>Perceptual Reasoning Tests</u>	<u>Scaled Score*</u>
Block Design	4
Matrix Reasoning	4
Visual Puzzles	6

<u>Working Memory Tests</u>	<u>Scaled Score*</u>
Digit Span	3
Arithmetic	3

<u>Processing Speed Tests</u>	<u>Scaled Score*</u>
Symbol Search	1
Coding	1

*Mean scaled score equals 10; one standard deviation equals 3

Tasks measuring the ability to analyze and synthesize abstract visual stimuli were in the borderline range of functioning. Tasks measuring verbal concept formation, expressive vocabulary, general fund of knowledge, visual-spatial organization, nonverbal abstract reasoning, auditory attention and concentration, mental arithmetic, visual processing of information, and hand-eye speed were in the impaired range of functioning.

Results of the Wide Range Achievement Test-Revision 4 were:

Test	Grade Score
Word Reasoning	3.2
Sentence Comprehension	3.6
Spelling (Written)	1.8

Frank Martinez-Garcia 3


Activities of Daily Living:

Mr. Martinez-Garcia lived in San Antonio with his parents, three brothers, and two sisters in his parents' five bedroom house prior to his incarceration. He said he is able to feed, bathe, and dress himself independently. He stated his household chores involved mowing the lawn, occasional vacuuming, and occasional painting of the house. He said his only close friends were several cousins and that he enjoyed riding bicycles and playing video games with them. He also enjoyed listening to the radio at home. He can tell time using an analog clock. He cannot count small amounts of money or make correct change. He could not make small purchases at a store independently and would send others to make purchases for him. He said he could prepare a sandwich, use a microwave, and wash dishes. He stated he could not cook simple meals or do basic laundry tasks. He said he has a driver's license but it is not clear if it was a Texas Identification Card. He said he could drive an automobile and ride certain bus routes in San Antonio independently. He cannot read newspapers and did not watch television news programs. He cannot describe any current events.

Summary:

Current psychological test results indicate Frank Martinez-Garcia is functioning in the impaired range of intelligence (WAIS-IV Full Scale IQ of 55). He is functioning academically at or below the third grade equivalent level. Given past test results from his childhood revealing a below average to average range of intellectual functioning, Mr. Martinez-Garcia does not meet DSM-IV criteria for mental retardation in that the onset of cognitive impairments did not occur before age 18. It is not clear to this examiner why a significant discrepancy in IQ test results exist. It is not possible to conclude what may have occurred between the ages of 12 to 18 in Mr. Martinez-Garcia's life (the span of time between his last known IQ test at age 12 and age 18) based on available records. He does appear to have learning disabilities which were first diagnosed by school personnel early in his academic career according to available records. A neurological examination may help clarify the etiology of what appears to have been a decline in Mr. Martinez-Garcia's cognitive functioning. There may be other factors that can explain or address Mr. Martinez-Garcia's decline in IQ test scores. A neurological examination may help clarify the etiology of what appears to be a decline in his intellectual functioning. It would be beneficial to refer Mr. Martinez-Garcia to a neurologist for a neurological examination including CT scan of the brain to assess structural issues of the brain. Such examination may explain current psychological assessment denoting declines in intellectual functioning.

Thank you for the opportunity to evaluate your client. If I can be of further assistance, please let me know.


Lindsay Rosin, Ph.D.
License No. 2-3177 (Texas)

MEMORANDUM

To: Mia de Saint Victor
From: Alma Lagarda
Date: March 27, 2006
Re: Frank Garcia - Interview re possible MR claim

I met with Frank Garcia on March 23, 2006 at the Polunsky Unit. Frank had just finished visiting with his mother and sister, Leti. I explained to Frank that I was helping his attorney investigate an Atkins claim. The following is a summary of our interview.

Schools

Frank attended the following schools: Emma Frye Elementary School; Escobar Junior High School (closed down); ET Wrenn Middle School (transferred here when Escobar closed down); Lanier High School; and Thomas Jefferson High School. Frank could not remember exact dates of attendance, but all schools are reflected in the records.

Frank said that he always struggled in school, but that there was no one he felt he could ask for help. He said his parents could not help him, and he was the only child in the household beginning in the 5th grade.

In the sixth grade, Frank was in **special education**. He remembered that he would be pulled out of class and taken to another class where he would do puzzles. He said that there were shapes, and you had to guess what the shapes would be if they were turned around or added to other shapes. He may have also worked on reading. He said that it was one teacher to a student, and the name of his teacher may have been **Ms. Guy**. Frank and another student (**Gilbert Alvarado Alvarez**) were the only two who were pulled out of the classroom to go to special ed. He remembered this because the rest of the class would make fun of them when they left the classroom. When asked whether he thought the special ed class was easy or hard, Frank shrugged his shoulders.

Frank stated that he thinks he failed the first or second grade, or possibly both, and possibly also the ninth grade. Throughout school, he had perfect or almost perfect attendance. He stated that he never got suspended, never had any "write-ups" and that he got along with all of his teachers. He said that he liked school "alright" but did not like the schoolwork.

One of Frank's favorite teachers was **Ms. Milks**. She helped Frank with TAAS in elementary school (may have tutored him). Another favorite teacher was **Ms. Graves** (below).

One of Franks's favorite class in high school was "cluster class." It was a class that taught students things like electronics, printing, and photography. He stated that the students never actually got a chance to do these things, but that the class just gave a basic understanding of each subject to help students decide what electives to take the following year. The following year [10th grade?], Frank took Art at Lanier High School. Frank has always liked drawing, and Art was one of his favorite classes. His Art teacher was **Ms. Graves**.

Although he liked Art, Frank did not know why Ms. Graves would not let him do some projects. He said, “she just didn’t trust me.” For example, when the class was making ribbons for homecoming, Ms. Graves would say “don’t let Frank do it.” He said that maybe Ms. Graves thought it would come out “wild” or something. But he did not know why she would sometimes single him out like that.

Frank never graduated from high school because he did not have enough credits. He said he remembered trying to go back to school but not being allowed because he was too old. He was told that he could take some kind of test that would allow him to go back to school and graduate, but that he never followed through because he had started working. Frank stated that he never took any classes or exams after leaving Jefferson High School.

Frank said that he could never pass the TAAS tests but that he finally passed in the 12th grade. He cheated on tests whenever he could get away with it. He stated that one time, the TAAS tests changed so that each test was differently numbered. He said this made it harder to cheat, and that when he wanted an answer he could not just give a number; he would have to tell his friend the problem he wanted an answer to. Frank said that he took night and summer classes, and these were the classes where he earned his school credits. He said it was like a joke because no one really cared if you did the work or not.

Frank’s friends in school were **Pete Alonzo** and **Jessie Martinez**. He said that he had some friends who were into sports. Frank could not play sports because he could never keep his grades up. In the 7th grade, he tried out for football but he couldn’t play because his grades were not good enough.

Family

Frank grew up on South San Eduardo Street in San Antonio. He is the youngest of five siblings; he has two older sisters (Leti and Yolanda) and two older brothers (Ernest and Ruben). Leti is about ten years older than Frank and closest to him in age. Growing up, Frank lived with his parents and Leti, but Leti got married and moved out when Frank was in the 5th grade. From that point on, it was just Frank and his parents. Frank’s father died in January 2006.

There were no other family or non-family members in the household, but several relatives on his mother’s side lived on the same street. Frank said that family members lived in five houses on South San Eduardo. Some of the relatives Frank was close to include: **Joe Arbaiz and Genaro Arbaiz** (twins his age); **Teleforo Urbina** (never married and still lives on S. San Eduardo). He named some of his aunts and uncles from his mother’s side: **Virginia** (aunt, San Antonio); **Gabriel** (uncle, San Antonio); **Inez** (aunt, Florida); **Lupe** (aunt, Ohio)

Jobs

Frank said that he had several jobs but that he could never keep them. One was a summer job taking care of kids at a community center near Lanier High School. He said that he liked that job a lot because he liked playing with kids.

Frank Garcia Interview
March 23, 2006
Page 3 of 3

About age 22, Frank worked at Grande Ford Truck in San Antonio for one year. He said his responsibilities were to make trucks ready for sale, which meant washing the trucks. He enjoyed this job and thought he was very good at it. He was fired for not showing up to work on good Friday.

Frank worked for a few months with a San Antonio-based company doing landscaping. He said that he did gardening and that he left to look for a better job.

About age 26/27, Frank worked for one year at Levi Strauss. His job was pressing Dockers. He enjoyed this job very much but was laid off when the company had to fire several workers. One of his supervisor's, Dolores, testified at punishment that Frank was a good worker.

Frank stated that he owned several cars and enjoyed working on them. When I asked what kind of work he did, he stated that with the help of his father, he cut out the back seat of one of his cars and put a big speaker in the back. He said that he had to cut off some of the metal with a hammer and chisel. He said he also liked to paint his cars.

Priors

Frank's criminal history is one charge for evading arrest which was eventually dropped. Frank said that when he and about four or five friends went to downtown San Antonio and one of them was tagging a wall when the cops showed up and arrested them all. He spent about four hours in Bexar County Jail. According to Frank, the police were trying to make them out to be gang members. All the friends in his group were charged with evading arrest.

General Observations

It appeared that Frank had problems either understanding questions, expressing himself, or both. For example, when I asked whether he thought his sixth grade special ed class was easy or hard, he paused and thought about it but just shrugged his shoulders and shook his head. I asked this question a different way ("do you think the regular sixth grade class harder than the special ed class?") and his response was the same. He never said he did not remember. When I asked if it was because he did not remember, he responded again by shrugging his shoulders and shaking his head. It's unclear whether he responded this way because he could not remember, because he did not know how to assess the question, or for some other reason.

Another example is when I asked who, of all his siblings, came to visit him the most. Frank asked, "Besides my mom?" and I said, "Yes." He just shrugged and said, "Well, all of them I guess." Later, he revealed that his mother and sister Leti visit him about once a month.

CONFIDENTIAL MEMORANDUM

Attorney-Client Privilege

To: Mia de Saint Victor
From: Jonathan Kerr
Date: 04/30/06
Case: Garcia
Re: Visit with Frank Garcia 04/28/06

I visited with Frank Garcia on 04/28/06 at 10.00 am. The visit lasted just over two hours. I began by explaining that I had come from TDS to get some more information about his life, as a follow-up on the visit Alma had with him. It seems that after Alma visited with him he went back and talked to “a friend” in Polunsky and from this got the idea that he “would have to go back to school”. I asked him what he meant by this and he said that as part of his case he thought he would have to go back to school to study and to take a test.

I thought that he had perhaps got this impression from being told about an IQ test and explained to him that sometimes in an mr claim there are tests given in prison but that he was not to worry about this, as it might not happen and even if it did he would not need to study. I also said that if it was to happen it would not be anytime soon and we would keep him informed about what was going on.

Frank said he has written to his attorney asking about this and had not received a reply. I reassured him that he did not have to worry about getting books and studying. I also said it was not a good idea to talk to other people about the attorney visits he had as others could sometimes give him the wrong advice.

Attorney Contact

Frank said his attorneys in the past had never come to see him and when they did it was always short visits, not like the one he had with Alma. He did say Richard Langlois had spent some time with him. He said he could not remember having a visit in one of the attorney booths before. His friend (see above) had advised him at the time of his next attorney visit to “take paper and pens” and he was annoyed that he had not brought these materials with him to write things down. I told him if he wanted he could write to Texas Defender Service with questions he had.

Family Tree

NB From here on, any names appearing in bold are ones that were not mentioned by Frank in his previous interview with Alma.

I explained to Frank that I wanted to get as much detail on his family as possible. Throughout this part of the interview it was hard to get concrete details on people such as their current addresses, phone numbers or full names. A frequent answer to those questions was “my mum would know”.

Frank is the youngest in his family. The order of his brothers and sisters from youngest to

oldest is then Ernest, Yolanda, Ruben and Leti (this would contradict the order that appears in Alma's memo and so it is possible he got confused in ordering this sequence) . Frank says they are all still in San Antonio and his mum would know addresses. Leti, he says used to live near his mum but he thinks she has moved now. He thought Yolanda had recently been the hospital.

Frank said his father, also Frank, died last year. His mother lives on San Eduardo Street but he's not sure who else from the family lives there now. Frank never knew his grandparents, who are all dead.

He named the following Uncles/Aunts - **Uncle John** who lives in the same neighbourhood, possibly even the same street. He remembers helping him wash cars. Uncle Gaby (Gabriel?) - lives in San Antonio but Frank didn't go to his house. Aunt Lupe who is from Ohio, **Aunt Regina** who used to write to him but doesn't anymore, Aunt Virginia, he doesn't know where she is, Aunt Ines in Florida. He said all these are on his father's side of the family (again different from information he gave Alma).

The cousins he could name were - the twins Joe and Genaro Arbaiz, who he used to play together with they were at school and Foro (Teleforo Urbina - Alma memo) who lives near his mum's house. They all appear to have lived in the same street as Frank's family. He mentioned another cousin named **Lucy** at a later point in the conversation.

Current Contact with Family

I asked who visited him in prison and he said his mum had been to see him at the same time as Alma, along with his sister, Yolanda (in Alma's memo the sister who visited that day was Leti) . He said his mum did not come often. I asked Frank how often his mum came to visit and he said "her car's not working" but did not give another answer.

I asked who he wrote to and he said his mum but that when he wrote to her she "didn't understand his letters". I asked him what he meant by this and he said that he would tell her things and ask her questions like "did you hear this show on the radio?" and she would not reply to what he had said in her letters. His mum sends stickers but the prison seem to have stopped allowing him to have them, she also sends pictures. I asked how often she writes and he said "maybe today I will get a letter". I then tried to get him to say in weeks or months how often she wrote and he seemed confused by the question. At another point in the conversation he said he couldn't remember who wrote to him. However it does seem from other remarks in our visit that he has received mail from at least one of his sisters.

He also said that sometimes he didn't have addresses to write back. There seem to have been occasions when the mail-room have told him that he forgot to put an address on a letter to his mum and he has then asked them to address it to her, telling them "you should have the address".

School

We went through the list of schools given in Alma's memo. He did not mention any different schools. When I asked him the question "Where did you go after Emma Frye Elementary School?" he replied "home". Once again, it was hard to pin Frank down on times, dates or full names of teachers and friends.

I asked what school Frank was in when he remembered being in Special Education and he said Emma Frye. He remembers Gilbert (see Alma memo) and one of his twin cousins also

being in this class. He associates doing the puzzles with a teacher called **Ms Lane**, that she was “pretty good” and had time to spend with him.

In Jefferson he remembered that there weren’t too many students in his class, “only eight” and that the teacher there would help him and give the class special help with the problems. He can’t remember this teacher’s name but seems to like her.

The friends Frank remembers from Lanier are Pete Alonzo and Jesse Martinez. He says does not know where either of them would be now, but Pete used to live “by the railroad close to another school” and Jesse lived close to Lanier. He remembers being in class with Pete, an art class that Ms Graves taught. He liked this one and a mechanics class also taught by Ms Graves. He also liked physical education but was not allowed to play football because of his test scores.

I asked Frank why he had been taking night and summer classes at Jefferson and he told me it was because he “wasn’t passing other classes”. He remembers being taught by Ms Milks at Jefferson, that she would read to her pupils and “teach you how to do things”. At Jefferson the only names Frank could remember was a ‘**Robert**’ who was in his class.

We talked for a while about tests at school. Frank said he found them hard and would cheat. He didn’t tell his mum that he was cheating. The teachers wouldn’t check the papers. He cheated with the help of a friend of his, a girl whose name he can’t remember.

Jobs and Co-Workers

Again, Frank had a hard time remembering the names of people and places. He could say where some places he worked were, and give first names of people, but beyond that could not remember. These jobs are listed in no particular order, just the order we talked about them in.

He worked for a while as a lorry driver delivering food to various places. He said this job originated from the Bell Medler (he couldn’t spell this for me) restaurant. He would get in trouble in this job for a variety of reasons - food falling off the lorry, getting caught eating the food, getting lost and going to the wrong store. He said “everyone there was his friend” but could only give nicknames he knew them by, e.g. ‘Pepper’ and ‘Bela’. He thinks the boss, Richard, is still over there. When I asked if he could tell me when he worked there, he said “a long time ago, maybe two years ago”.

He had a job washing trucks and was fired from this because he did not come to work on Good Friday. The name of this place was ‘Grande Trucks’. Frank thought the boss there didn’t like him.

He also worked at the Levis factory “by the Highway”. His mum used to work there and would know the names of the people there and the bosses’ name. He remembers working with Delores (see Alma memo) because she testified at his punishment phase of trial, along with his sister and a Priest..

Another job Frank had involved frying fish in a takeaway shop but he was sacked from this when the boss said he wasn’t doing it fast enough.

It appears that throughout his working life Frank would take off from work for periods of time. He remembers bosses asking him “where have you been all this time?” and he would reply lunch, but it seems he was away for significant periods as he would get in trouble for it.

Frank told me he tried out for a mechanics job, he thinks this was at the Home Depot by Westlakes, San Antonio. He said it is near a mall. He was given a test but couldn’t pass it. I asked what the test was and he gave me an example of one of the problems. It seemed to revolve around a room and bricks, with the question how many bricks would you need to fill the room?

He had replied “as many as it takes” and couldn’t answer it further.

Another job Frank tried out for was the police, he remembers going to the police station in San Antonio, “where the jail is” and doing a written test. He thought he would have to go back for the physical but he was told that he did not need to.

Life in Prison

Towards the end of the interview I asked Frank about what he spent his time doing in prison. He said doesn’t read books because he finds it too hard to concentrate. He says that he keeps reading but forgets what he has just read “and so I have to read it over and over again”. He tries to read the Bible and this happens with him.

He does read magazines, the last one he got was ‘Star’ which is a celebrity magazine “with lots of pictures”. His mum or sister sent it. He asked me did I think “it was good to read it?”, having heard something negative on the radio about these kinds of magazines. Sometimes he gets books and sends them back because he knows he won’t read them.

He is interested in cars, although when I asked him which his favorite one was he could only give a description and a color, rather than the model. He differentiated cars by size, asking “do you drive a big or small car?” and referring to cars in the outside world by their size but not any particular model. He draws and was recently sent a tracing to do.

Other Questions I Asked

Frank was unable to remember if he had ever spent time in any hospital. He could not give me any names of neighbors of his that he remembered.

I asked Frank if he had ever been to Houston. Frank remembered a time when he was attempting to find a friend of his and got lost. He phoned his Dad who told him “you’re on the way to Houston”. He had to turn around and his Dad directed him on the phone. This was not the only story he told which involved him driving and getting lost. He also told two or three stories which involved him or someone else “driving fast”.

General Observations

When the notary came and Frank had to sign the releases he signed his name in the space above ‘notary public’ (although I had not pointed out to him where to sign) and did not seem to understand what was going on very well, the notary even made a comment about him “having a tough time” with the forms. He also could not remember his social security number.

At one point in the interview I looked at Frank’s TDCJ badge and saw that his date of birth was given as the 10/31/1972. This is in fact the wrong date, but I did not know this at the time and remarked that he had a birthday on Hallow’een, like my sister. He said he did not have his birthday on Hallow’een but was unable to give me the correct date of his birth instead and seemed confused by my observation.

At another point in the conversation Frank looked down and realized that he had only one sock on. He laughed about this and made a comment about being forgetful.

Impressions

Overall I found this a difficult interview to conduct. Frank was slow to respond to questions and seemed to have problems understanding them or answering them (examples can be seen above). Sometimes a question would not get answered at all, especially questions like “How often..?” or “When?”. Even when a choice was given in a question, like “every week or every month?” Frank will still be unable to answer.

He would frequently jump around with his thoughts to new observations or stories that had nothing to do with what we were talking about.

He also had trouble spelling and seemed to get confused in his order and recollections of events. At one point he said he was in a job “two years ago” (he has been in Polunsky since 2002).

VOLUNTARY STATEMENT OF : Frank Garcia

I, Frank Garcia, after first being duly warned by Det. Thomas Matjeka #2353 at ^{10:33 hrs} ~~10:33 hrs~~, at 214 W. Nueva, on March 29, 2001 that 1) I have the right to remain silent and not make any statement at all, and any statement I do make may be used against me at my trial; 2) Any statement I make may be used as evidence against me in Court; 3) I have the right to have a lawyer present to advise me prior to and during any questioning; 4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; 5) I have the right to terminate the interview at any time; and I understand that the above rights are continuing rights and may be urged by me at any stage of the proceedings, and I hereby prior to and during the making of this statement, knowingly, intelligently, and voluntarily waive the above rights and give to the said, Det. Thomas Matieka #2353, the person to whom this statement is being given, the following statement:

My name is Frank Garcia and I live at 923 S. San Eduardo. My date of birth is 10/21/72. I work for Bill Millers; I am a truck driver there. I graduated from Jefferson High School in 1993. I can read, write, and understand English. I am here at the police station because of the chaos at my house. Det. Matjeka asked me if I would give him a statement about what happened and I said I would. Det. Saidler read me my rights when I came in and I understand my rights.

Since last night, me and my wife had an argument. It was just a typical dispute. It was over stupid stuff. We've been married for six years and we have two kids. I got mad last night and told my wife stuff. I just shook her around until my kids started crying and then I stopped. That's it. No one called the police last night. I did hit my wife last night but I only hit her once. She just came back at me and started throwing punches and that's when the kids started crying. The kids weren't in the room; they came in after we started fighting. This was like at about 8:30 p.m. last night. After we stopped fighting I stayed there. Everything was like before, back to normal after the fight. We went to bed and that was it.

This morning my wife woke me up at 3:00 a.m. because I have to be at work at 4:00 a.m. She didn't really say nothing, it was just like a regular day. The fight from last night was over and it was just a normal day. I left for work and everything was okay. We just talked about regular stuff.

I left the house at about 3:20 or 3:30 a.m. I went to work and had a regular day when I started work. At about 8:00 a.m. I was on a delivery in my truck and my wife called me. My wife wasn't going to work because she had a meeting at school concerning my daughter's next school year. She said was she was going to the meeting and she would give me a call after the meeting. I said okay and just said goodbye and hung up. There was no argument or anything at that time. I was way over on Loop 1604 and Hwy. 281 when I made this call.

think she called

Like about an hour later I called my phone started beeping for voice mail. I picked it up and checked it but there was no voice mail so I called home. When I called I talked to my wife and she was crying. Her voice was kind of shaky and I told her what was wrong and she said she was leaving and she was going to take the kids. She said someone was coming to pick her up. She said someone on her dad's side of the family was

WITNESS: Mary Bowen

SIGNATURE: Frank Garcia

WITNESS: Joseph [unclear]

VOLUNTARY STATEMENT OF : Frank Garcia

I, Frank Garcia, after first being duly warned by Det. Thomas Matjeka #2353 at 1033 hrs, at 214 W. Nueva, on March 29, 2001 that 1) I have the right to remain silent and not make any statement at all, and any statement I do make may be used against me at my trial; 2) Any statement I make may be used as evidence against me in Court; 3) I have the right to have a lawyer present to advise me prior to and during any questioning; 4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; 5) I have the right to terminate the interview at any time; and I understand that the above rights are continuing rights and may be urged by me at any stage of the proceedings, and I hereby prior to and during the making of this statement, knowingly, intelligently, and voluntarily waive the above rights and give to the said, Det. Thomas Matjeka #2353, the person to whom this statement is being given, the following statement:

coming to get her. I asked her why she was doing this and she told me it was because of all the shit I put her through, like the arguing and the stuff that I would tell her. I told her about the kids and she said she was going to take them too. I asked her why and she said that the kids wanted her not me. She said they preferred her not me. I just started telling her that she was only thinking about herself and she started telling me I wasn't thinking about her and all the shit I was putting her through and I told her if she wanted to leave to go ahead and leave just leave me the kids. Then I heard my mom in the background and she was saying that she already had her stuff and someone was coming to get her. My mom was kind of yelling so I could hear over the phone. My mom was saying in Spanish for her to wait until I got home so we could talk and maybe we could work things out. I'm driving my truck and I'm still on the phone going down 410 and I was a couple of miles from home. I was trying to keep my wife on the phone until I got home. I drove home and when I got there my wife was outside about to leave. I parked my Bill Miller's truck right in the middle of the street and there was a white Cadillac parked in the front of the house and there was a man and a lady outside the car. I guess they were just waiting for my wife. I didn't know who the people were, I had never seen them before.

My wife was coming out of the house and when she saw me she got this, "oh shit" look on her face. I met up with her by the tree in the front yard. I went inside and she followed me inside. I went inside to see if my kids were there. I didn't care if my wife left; I just didn't want my kids to leave. I saw my daughter in the living room sitting on the couch; she's five years old. I didn't see my son, he's gonna be two, and I asked my wife where my son was. My mom was there in the kitchen. My wife told me my son was outside and I just saw her go out the front door real fast. I went outside too because I thought she was going to take off with my son. When I followed her outside I grabbed her. She was wearing a jacket and I grabbed her by the jacket and I pulled her back inside. When I was pulling her inside I think I remember my mom had my son already. At this time I was already getting hostile. The fire had already started building up inside me. I pulled my wife into the house and we went into the bedroom and we started talking. We were talking about her just to stay and for her to have thoughts about what she was doing before she left.

My mom had come outside too the first time and my mom told the lady that was outside that my wife wasn't going to be leaving after all. My mom was coming in the house with my little boy. My wife went past me and she went back to the living room and she started to go outside again. She got outside but she didn't get out of the front gate and I caught up to her and grabbed her by the arm. The guy that was by the Cadillac saw

WITNESS: Mary Edwards

SIGNATURE: Frank Garcia

WITNESS: Charles Perez

COUNTY OF BEXAR E

VOLUNTARY STATEMENT OF : Frank Garcia

I, Frank Garcia, after first being duly warned by Det. Thomas Matjeka #2353 at 1034 hrs, at 214 W. Nueva, on March 29, 2001 that 1) I have the right to remain silent and not make any statement at all, and any statement I do make may be used against me at my trial; 2) Any statement I make may be used as evidence against me in Court; 3) I have the right to have a lawyer present to advise me prior to and during any questioning; 4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; 5) I have the right to terminate the interview at any time; and I understand that the above rights are continuing rights and may be urged by me at any stage of the proceedings, and I hereby prior to and during the making of this statement, knowingly, intelligently, and voluntarily waive the above rights and give to the said, Det. Thomas Matjeka #2353, the person to whom this statement is being given, the following statement:

FG

had shot at them I think it was later

what happened and he started telling me like hey what was I doing. I think the guy was trying to defend my wife and as I was pulling my wife back in the house the guy by the Cadillac started shooting at me. I saw the guy was standing on the driver's side of the Cadillac and he was just shooting across the car. I saw he had a small revolver when he was shooting at me. I don't know how many times he shot at me.

I still had my wife pulling her inside and my mom started yelling at the guy that was shooting that the kids were in the house. I pulled my wife back inside and I pulled her inside the bedroom. I had my wife and I didn't know if the guy was coming in after me so I threw my wife on the bed and reached under the bed and grabbed my Mac-10. I got a clip from right beside the gun and threw it in the gun and I clocked the gun, I mean I loaded it.

My wife saw what I was doing and she probably got scared and she started saying, "okay, okay, I won't leave. Let me go get Frankie." I told her where was he at and she said he was outside. I was getting ready to go outside and shoot that other guy that shot at me but before that my mom had came in and said the cops were there. When she said that my mom left. I couldn't see where she went. My wife was kneeling down in the corner between the wall and the bed and she was scared because she told me she was gonna stay. I was kneeling beside the bed in front of her talking to her. She couldn't get by me. That's when the officer came in. When I saw him I said to myself, "oh shit" because I had the gun in my hand. I had asked my wife if she had called the police and she said no. My right side was towards the door and I had the gun in my right hand and the officer couldn't see the gun because it was below the bed. The officer walked in and stood at the foot of the bed when he was talking to me and I was hiding the gun so he couldn't see it. My wife had already told me that she didn't call the police. The gun was still loaded and clocked. The first thing the officer said was that he had already got a report and then he asked me if that was my truck outside. I said yes and he said to go move it right now. I told him he could leave that we would take care of our problem. The officer was getting loud and telling me to go move the truck right now or he was gonna tow it. My wife also told me to go move it or I would get fired. I think my wife saw the gun in my hand. I told my wife to tell the officer he could leave already and she was like telling me to go move the truck. My wife told the officer that he could leave but he didn't because he still seemed concerned. After my wife told him he could leave, the officer started getting closer towards both of us. He took two steps towards me. I saw he put his hand on something but I couldn't see what it was. I think it was either his gun or his radio. He was coming towards me and I just

WITNESS: Mary Beavers

SIGNATURE: Frank Garcia

WITNESS: Cecile C. Perez

STATE BAR OF TEXAS Case 5108-AD-00062-XR Document 31-3 Case No. 11/09/2009 Page 15 of 18
COUNTY OF BEXAR

VOLUNTARY STATEMENT OF : Frank Garcia

I, Frank Garcia, after first being duly warned by Det. Thomas Matjeka #2353 at 1033 hrs, at 214 W. Nueva, on March 29, 2001 that 1) I have the right to remain silent and not make any statement at all, and any statement I do make may be used against me at my trial; 2) Any statement I make may be used as evidence against me in Court; 3) I have the right to have a lawyer present to advise me prior to and during any questioning; 4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; 5) I have the right to terminate the interview at any time; and I understand that the above rights are continuing rights and may be urged by me at any stage of the proceedings, and I hereby prior to and during the making of this statement, knowingly, intelligently, and voluntarily waive the above rights and give to the said, Det. Thomas Matjeka #2353, the person to whom this statement is being given, the following statement:

2678
can't remember two shots

** Did not say that*

said, "fuck this" in my mind and I just turned and went pow, pow, and I shot the officer. I saw that I hit the officer in the head. I know officers wear a bullet proof vest and when I shot I aimed for his head and that's where I hit him. I don't know how many times I shot my gun. I just turned real fast and fired. I saw the officer go down. The officer never had his gun out that I noticed.

After I shot the officer I just went crazy. My mind just went blank and I turned towards my wife and shot her too. I couldn't believe I had already shot the officer and my mind just went crazy. I don't know how many times I shot, I just shot her and I saw her go down. I didn't see where I shot her either.

Just remember firing 2 shots total

ammunition fire

After that I took off outside. I still had the Mac-10 with me and I left the bedroom and went towards the outside of the house and went outside just before the gate. When I got outside I saw that guy still there at the Cadillac. I can't remember if he was sitting in the Cadillac or standing by the Cadillac and I think the woman was there too. My mom was outside and I didn't see my kids. I didn't see my dad. I went straight from the bedroom through the house out the front door and I saw the guy sitting in the driver's side of the Cadillac. I just started shooting at him. I was already angry when I started shooting and then he got out and got behind the car and started shooting over the hood. I was standing out on the porch when I was shooting. I shot until I ran out of ammunition. When I ran out of ammo I took off back inside. I grabbed an AK rifle from where I had it hidden up in the attic and I took off back outside to go look for that guy. The clip to the AK was loaded with four or five rounds. I put the clip in the AK and I went outside looking for the guy I think I saw the guy behind the Bill Miller truck in front of the truck and I started shooting at him with the AK. I shot the AK until I ran out of ammo too. I knew there was a school behind the truck but I didn't see anyone outside at the school. I walked out to the Cadillac and looked inside to see if he was ducking down and I didn't see him. Then at that time I went back inside.

Then my mom came inside and looked at me and I told her it was over. My mom was looking at me and I was standing in the kitchen and I told her that I was sorry I had gave her this for her birthday. I had thrown the AK in a chair in the kitchen and I had already gotten rid of the Mac-10 but I can't remember where I put it but it should have been inside the house. She just started crying, my mom. After that, my mom said she was taking off with the kids because she didn't want them to see anything and she left. I just stayed there. My mind was just like shit, I was wondering why all this happened, like why did it all end up this way.

WITNESS: Mary Brown

SIGNATURE: Frank Garcia

WITNESS: Joseph Perez

COUNTY OF BEXAR

VOLUNTARY STATEMENT OF : Frank Garcia

26 FG

I, Frank Garcia, after first being duly warned by Det. Thomas Matjeka #2353 at 1033 hrs., at 214 W. Nueva, on March 29, 2001 that 1) I have the right to remain silent and not make any statement at all, and any statement I do make may be used against me at my trial; 2) Any statement I make may be used as evidence against me in Court; 3) I have the right to have a lawyer present to advise me prior to and during any questioning; 4) If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; 5) I have the right to terminate the interview at any time; and I understand that the above rights are continuing rights and may be urged by me at any stage of the proceedings, and I hereby prior to and during the making of this statement, knowingly, intelligently, and voluntarily waive the above rights and give to the said, Det. Thomas Matjeka #2353, the person to whom this statement is being given, the following statement:

I just waited there because I knew officers would be getting there at any time. When the first officer showed up I had already picked up the AK again and the officer showed up by the front door holding a gun up in the air. I had already picked up the AK because I was thinking that I would let the officers that showed up kill me. While I was waiting for the officers to show up I was reloading the AK, I had to take the ammo out of a box and load it in a clip and then load the AK. I did it all real fast. I don't know why I reloaded the gun. My mind was like shit. When the officer saw me holding the AK he just backed up behind the door, then he came back in the room pointing the gun at me. When he ducked behind the door I knew I could have shot the officer even if he was behind the door. I know the AK is a high powered rifle and it can go through the wall. Before the officer had came back in I had already thrown the AK on the floor because I decided to give up. When the officer came back in the room he was yelling at me to freeze and to get on the floor. I laid on the floor face down and then the officer cuffed me. The same officer that cuffed me was the one that told me to get on the floor.

Then everybody else just got there and the officers took me outside and put me in the police car. Before they did that a couple of the officers stepped on me and kicked and hit me.

One of the officers read me my rights and when I was in the police car, I asked the officer about the other guy, asking the officer where the other guy that was shooting at me was. You stuck your head in the car and I started asking you stuff about the other guy and then I told you what happened. No one asked me any questions to start me talking; I just started talking on my own.

I have read this statement and it is all true and correct. I was not promised anything or threatened in any way to give this statement.

Wt Mad

WITNESS: Mary Bowers

SIGNATURE: Frank Garcia

WITNESS: Charles Perez