Rephrase the question.

Q. Where were you in relation to the scaffolding at the point that you --

A. I was on the scaffolding side but I was in the street, in between the car and the Dumpster that was there.

Q. Does the scaffolding extend or did it extend into the street or was it on the sidewalk?

A. No. It was on the sidewalk.

MR. ARNONE: Okay. I have nothing further. Thank you.

THE COURT: All right. Cross examination? Mr. Kuruvilla?

MR. KURUVILLA: Yes. Thank you.

CROSS EXAMINATION

BY MR. KURUVILLA:

Q. Good morning, Mr. Spencer.

A. Good morning, sir. Good morning.

Q. So on the date of the incident you arrived at the block party at approximately, you said, what, midnight?

A. About 12, sir, yes, sir.

Q. Okay. And you said that you arrived there -- you testified you arrived there with somebody named -- did you say Kurt?

A. Kenny and Charles, sir.

Q. I'm sorry?

A. Kenny and Charles, sir.

Q. Kenny Johnson. Okay.
A. Kenny and Charles.
Q. Kenny and Charles?
A. Yes, two people.
Q. Didn't you previously testify that you arrived there with somebody named Elise?
A. Oh, yes, my ex-girlfriend.
Q. Okay. So you actually arrived at the party with your ex-girlfriend, Elise?
A. Elise, yes, sir.
Q. So you didn't actually go there with Kenny and Charles?
A. Yes, we all went together.
Q. You went with Kenny and Charles as well?
A. Yes, sir.
Q. Okay. And were Kenny and Charles and Elise all at the party, block party as well?
A. Yes. Elise stayed on -- she stayed on Lenox Avenue, and me, Kenny, and Charles, we was in between the block, 143rd between Lenox and Fifth.
Q. Okay. And so the party was taking place between 143rd and 145th on Lenox Avenue?
A. It was like -- it was a whole like block party from 143rd to 144th, 145th, but it didn't -- it was -- in between the block, a lot of people was hanging out too. That's where we was hanging out at, listening to music from the van.

Q. Okay. And when you arrived, by the time you arrived at the party, you had smoked some marijuana, you mentioned?
A. Yes, sir.
Q. And you had about ten blunts?
A. Yes, sir. Yes, sir.
Q. And you smoke marijuana on a daily basis, right?
A. I used to, sir. Not no more.
Q. Okay. When did you stop?
A. Probably about three years ago, sir.
Q. Okay. But when you were smoking, you were smoking about 20 times a day, is that fair to say?
A. About 20 times, yes, sir.
Q. Okay. And so at the time of this incident you were smoking marijuana about 20 times a day.
A. I probably smoked like ten blunts that day, sir.
Q. That day you smoked ten blunts.
A. Yes, sir.
Q. Okay. You did testify previously in this case, correct?
A. Yes, sir.
Q. You came to a deposition previously?
A. Yes, sir.
Q. You testified under oath there?
A. Yes, sir.
Q. Okay. And when you came to that deposition, you had smoked marijuana also, correct?

A. Yes, sir.
Q. Okay. The marijuana that you smoked on the day of the incident, that's called Purple Haze, right?
A. Yes, sir.
Q. Okay. So you were under the influence of marijuana when you arrived at the party?
A. Yes, sir.
Q. And when you arrived, I think you described on direct that you saw Angel Alvarez at some point?
A. Yes, sir.
Q. When you saw him, wasn't he holding a nutcracker?
A. Nutcracker, sir.
Q. What was that?
A. A nutcracker, sir.
Q. A nutcracker. And he was drunk also when you saw him, right?
A. Yes, sir.
Q. So from the time that you first saw him at the party, you saw him drunk.
A. Yes, sir.
Q. Okay. You testified, I believe, that there were police in the area?
A. Yes, sir.
Q. A lot of police in the area?
A. Yes, sir.

Q. That's uniformed and otherwise?
A. Yes, sir.
Q. And you noticed this presence throughout the course of that evening.
A. Come again, sir?
Q. You noticed the presence of the police officers --
A. Yes, sir.
Q. -- throughout the course of the evening.
A. Yes, sir.
Q. And you were aware of a prior incident between Mr. Alvarez and Luis Soto, correct?
A. No. There wasn't a prior incident between Mr. Alvarez and Luis Soto. It was a prior incident between Luis Soto and a kid from our neighborhood.
Q. Correct. Okay. I'm sorry. So you were aware that the plaintiff, Mr. Alvarez, had a dispute with Soto, correct?
A. No. They had no dispute at this time. It was never no dispute between the two.
Q. Well, I'm sorry. Were you aware that Mr. Alvarez wanted it fight Luis Soto?
A. No, not at this time. Only when he said he was gonna punch him in the face, that's when he went to fight him; not before that, though.
Q. Okay. So you weren't aware that plaintiff, Mr. Alvarez, had a desire to beat up Luis Soto.

A. No, sir.
Q. Okay. But there came a time during the course of this block party that you did see Angel Alvarez and Luis Soto looking at each other?
A. Soto was staring him down like he was gonna fistfight him, like, with arms crossed, keep fixing his hat and just staring at Angel.
Q. Okay.
A. Trying to get his attention.
Q. Right. And who was Luis Soto with at that time?
A. He was with three kids. I only even know one. One guy name was Kurt. I didn't know the other kids he was with.
Q. Did you get an opportunity to talk with Luis Soto?
A. Come again, sir?
Q. Did you get an opportunity to talk to --
A. No, I never -- I didn't talk to him. We never talked at all, sir.
Q. Okay. But at that time you became aware that Mr. Alvarez wanted to fight Luis Soto, didn't you?
A. Yes. He said he wanted to punch him in the face at this time, yes, sir.
Q. Okay. And when he said that, did you know why he wanted to do that?
A. Because it was, like, supposed to be like a truce, like being that the incident happened two weeks ago, that they just

stayed in their area and you stay in that area and just let everything die down so everybody go on peacefully and just let it die down.

Q. So there was some incident two weeks ago?

A. Where Soto hit a kid named Box in the head with something from the fire hydrant thing and put him in a slight coma.

Q. Okay. So as far as you know, was Mr. Alvarez aware of that?

A. Yes, everybody was aware of that.

Q. Okay. So when Mr. Alvarez said he wanted to go punch Soto in the head, did you know why; you knew the reason?

A. Yes, I knew why.

Q. Okay. And you tried to stop him, right?

A. Yes, sir.

Q. Okay. And I think you described that you actually physically put your hands around him?

A. Gave him a bearhug, yes, sir.

Q. And you told him that there were police in the area, right?

A. Yes, sir.

Q. You brought that to his attention?

A. Yes, sir.

Q. Okay. Why did that matter, that there were police in the area?

A. Because I knew he would have got arrested for assault.

Q. Okay. And then at some point didn't you ask him if he was

good? Didn't you say that, "Are you good?"
A. Yes, sir.
Q. Okay. And by that you meant, are you not going to go over?
A. Yes, sir.
Q. And then he promised you that he was not going to go over, right?
A. Yes, sir.
Q. Then you let go at that point?
A. After I seen Boo Billz got a good distance from him, then I let him go.
Q. Okay. And then what did Angel Alvarez do?
A. He took off running.
Q. He ran after Luis Soto.
A. Yes, sir.
Q. Okay. So he lied to you when he said, I'm not going to run over to him, right?
A. Yes, sir.
Q. I'm sorry?
A. Yes, sir.
Q. He did. Okay. And you ran after him, you said, right?
A. Yes, sir.
Q. Okay. Because you were trying to stop him?
A. Yes, sir.
Q. And you described you were running from -- you were running on Lenox Avenue, correct?

A. Across.
Q. Across Lenox Avenue?
A. Yes.
Q. From what side to what side?
A. From the park side -- from the east side to the west side, sir.
Q. Okay. And then you described that you saw Luis, you saw Mr. Alvarez punch Luis Soto, correct?
A. Yes, sir.
Q. And this was on what side of Lenox Avenue?
A. On the west side, sir.
Q. All right. Where were you when you saw Angel Alvarez punch Luis Soto?
A. I was still running at this time.
Q. Where had you reached on Lenox Avenue at that point?
A. I remember when I got to the scaffold, they was on the floor fighting, so like when I seen him punch Soto, I was still running, I was still in motion.
Q. Okay. What I'm asking you is, at the point when you saw Mr. Alvarez punch Luis Soto --
A. Yes.
Q. -- where exactly were you standing?
A. I would still be on the other side of the street running, towards the median at this time.
Q. Okay. So you're still on the east side of the street?

A. Yes, sir.
Q. All right. And you described on direct testimony that you saw Luis Soto fall to the ground.
A. Yes, sir.
Q. All right. And that was after the punch.
A. Yes, sir.
Q. He hit a car and then he fell down to the ground?
A. Bounced off a car and then fell to the floor.
Q. And then you also described that at that point you saw Mr. Alvarez punching down at Luis Soto.
A. On top of him, yes, sir.
Q. Right. He was using his left and his right hands?
A. Yes, sir.
Q. I believe you said before, you've testified previously that you actually saw Luis Soto crawling at some point, is that right?
A. Crawling to the floor, I seen him on the floor.
Q. Was he on his hands and knees?
A. He was on the floor, he was trying to get away from Angel at this time, and Angel was punching him.
Q. Mr. Soto was trying to get away from Mr. Alvarez and --
A. He was on top of him, yes.
Q. Mr. Alvarez was on top of Mr. Soto.
A. Yes, sir.
Q. Okay. And you described hearing a gunshot?

A. I heard one gunshot, yes, sir.
Q. One gunshot. What point was that? What was happening at that point?
A. Angel Alvarez was on top of him, I was on the median at this time.
Q. So when you heard that first gunshot, Luis Soto was on the ground, Mr. Alvarez was on top of him punching down?
A. Yes, but I couldn't see so at this time.
Q. You're still on the median.
A. Yes, sir.
Q. Okay. Do you have a clear view of --
A. No, sir.
Q. -- Mr. Soto and Mr. Alvarez?
A. I had a view of Mr. Alvarez, not Mr. Soto, sir.
Q. Okay. But you can see Mr. Alvarez clearly.
A. Yes, sir.
Q. Standing.
A. Yes, sir.
Q. All right. Then you continued running, is that right?
A. No, sir.
Q. What did you do after --
A. I started running after I heard rapid fire from the police, then I ran across.
Q. So you --
A. When I heard the one shot, I stopped. I stopped running.

Stopped on the median. And then after the one shot, rapid shots came, then I ran across toward the scaffold.

Q. Okay. So your testimony is that you heard one shot, you stopped, and then you didn't run again, you didn't continue running until after you heard more bullets?

A. Yes.

Q. More shots?

A. Yes, sir.

Q. Okay. I'm just going to refer you to your -- you testified that you gave a deposition earlier, correct? You testified under oath previously --

A. Yes, sir.

Q. -- in this case?

MR. KURUVILLA: Okay. Referring counsel to page 122 of the deposition transcript, reading from line 6.

Q. "Q. You were right because it's going south. So you were cut off from seeing Soto's body because of double-parked cars obstructing your view?"

"A. I couldn't see him because Angel was on top of him."

"Q. What do you remember happening next?"

"A. I went to get off the median. I heard a shot."

"Q. Where did you understand the shot to be coming from?"

"A. I don't know. I just heard a shot."

"Q. Before that happened did you see either Mr. Alvarez or Mr. Soto hold the gun?"

"A. No. Neither one of them."

"Q. What was your reaction when you heard a shot go off?"

"A. Duck, and I went this way (indicating)."

"Q. So you ducked and you went west of this area?"

"A. Yeah."

"Q. So you went over the sidewalk away from the cars parked on the sidewalk?"

"A. Toward the scaffolding. I was on the scaffolding but right there in front. I wasn't actually here, but I could see in between."

Were you asked those questions and did you give those answers?

A. Yes, sir.

Q. Okay. Is it fair to say from this testimony that you heard a shot and then you ducked and then you ran toward the sidewalk?

A. I heard the shot and I stopped on the median.

Q. Okay.

A. And then it was rapid fire after that and then I ran.

Q. So is your testimony that you heard additional shots before you ran again to the sidewalk?

A. Yes.

Q. All right. When you moved toward the scaffolding, where was the scaffolding that you're referring to?
A. It was on the -- not the park side, the other side; the west side, I guess.
Q. Okay. The west side of Lenox Avenue?
A. On that side, that's the west side -- yes, sir.
Q. Okay. Okay. When you ran toward the scaffolding, you're facing the scaffolding, correct?
A. I turned around, I ran, I turned around, I was in between the Dumpster and the car.
Q. There's a period of time where you are --
A. Running that way.
Q. -- running in that direction, correct?
A. Yes, sir.
Q. Okay. And so then you're not looking at that point at Luis Soto or Angel Alvarez.
A. No.
Q. Okay. So you don't know what's going on at that point.
A. No, sir.
Q. Okay. Is it fair to say it was about a five-second period of time where you weren't looking at Luis Soto and Angel Alvarez?
A. Yes, sir.
Q. Okay. And during that time you had your back turned so you had no idea what was going on then.

A. I was running towards --
Q. When you turned around, isn't it a fact that you saw Mr. Alvarez with his hand up in the air?
A. Come again, sir?
Q. When you turned around after you got to the scaffolding, isn't it a fact that you saw Mr. Alvarez with his hand up in the air?
A. I seen that when I was going to the median.
Q. I'm sorry?
A. When I was on the median.
Q. You are saying you did not again at any point see Mr. Alvarez standing up with his hands in the air?
A. No, sir. I seen him, he was punching him in his head.
Q. Okay. Didn't you see an object in his right hand?
A. It was his cellphone.
Q. Okay. So you're saying you saw a cellphone in his right hand?
A. Yes.
Q. All right. So this was -- you've heard gunshots at this point?
A. One shot fired off.
Q. You've heard a shot. You've gone to the scaffolding, correct?
A. After the police were shooting, I ran to the scaffold.
Q. You turn around, you see Angel Alvarez with his hand up in

the air.
A. No. When I got to the scaffolding, I turned around, I seen him pop up and went back down.
Q. Okay. But did you see him holding a cellphone in his hand?
A. Not at that time.
Q. Not at that time?
A. No, sir.
Q. Okay. When did you see the cellphone in his hand?
A. When I was on the median, when he was punching on top of his head.
Q. So when was that? That was after the gunshots had been fired.
A. That was before the gunshot went off and -- when the gunshot went off, he punched him again.
Q. Okay. All right. Referring to your deposition again, page 127, line 22.
"Q. I appreciate that. So after the first shot we have talked about what happened with where you are, directionally. Then when you see Angel Alvarez, his hand, his arms are up. Is that correct?"
"A. The right."
"Q. His right arm is up and he has a phone in his hand?"
"A. Yes."
"What did the phone look like?"

"A. It was a skinny phone."

"Q. Was it metallic?"

"A. No. It was a black phone."

"Q. Black phone?"

"A. Yes."

Were you asked those questions, did you give those answers?

A. Yes, sir.

Q. Okay. So this says here, after the first shot is when you saw Angel Alvarez with a cellphone in his hands.

A. He was punching, yeah.

Q. He was punching down. You're saying he was punching down with a phone in his hand?

A. Yeah, but he didn't have his hand like this. You said did I see Angel Alvarez with his hand in the air like this.

Q. Okay. But again, this was after a gunshot is fired.

A. After one gunshot, he kept punching, yes.

Q. And again, you're seeing a phone in his hands at that point.

A. He was punching down like this.

Q. The phone is a dark object?

A. It was black, yes.

Q. Right. Okay. Is it your testimony that he was beating him with the phone?

A. He was hitting him on top of his head, yeah.

Q. Did you ever see him take the phone out of his hands at that point, take the phone out of his pocket at any point?
A. He had the phone in his hand the whole time, when we was on the sidewalk.
Q. Okay. So referring to your deposition again, page 128, line 24 -- I'm sorry -- page 128, line 22.
"Q. Is that in Angel's right hand?"
"A. Yes."
"Q. And you hear another shot go off when Angel's right hand is up, correct?"
"A. No."
"Q. Tell me what happened next."
"A. There was a shot. When the shot went off, boom, and I ran to the scaffolding. I looked back and I seen Angel raising his hands. Soto got up, he got up, spins around --"
MR. ARNONE: That's not what the testimony says. "Soto got up, he got shot, spins around."
MR. KURUVILLA: Sorry.
Q. "Soto got up, he got shot, spins around, and the police just formed a circle, and they came and shot him down to the ground."
"I'm going to pause for a second. How many police officers did you see with their guns raised?"
"A. It had to be seven, six police officers."
Were you asked those questions and did you give those

answers?
A. Yes, sir.
Q. Okay. So you said you hear another shot go off when Angel's right hand is up in the air, correct?
A. It was only one shot. Not another shot.
Q. Well, you'd already heard a shot at this point, hadn't you?
A. I heard one shot, but then after that I heard police shooting.
Q. But here you say you hear another shot after you run to the scaffolding, is that correct?
A. Yeah, might have -- might have been police then. I don't know. I only heard one shot over that way.
Q. How do you know that these were police shots that you heard after you heard that first shot?
A. 'Cause they -- they was shooting. They was -- it was a lot of shots. I know.
Q. But you didn't see any police, did you?
A. What?
Q. You didn't see any police, did you?
A. Did I see? Yeah, I seen police.
Q. At that point, when you heard that first shot, did you see any police at that point?
A. Did I see them shoot or did I see them period?
Q. I'm sorry?
A. Did I see them shooting or did I see them period?

Q. Did you -- say that again?
A. Did I see the police period or did I shoot --
Q. No, no. At the point when you saw the first gunshot, did you see the police?
A. Yes.
Q. Where were they?
A. They was already running toward that way.
Q. They were running where?
A. They was running towards that way where they was fighting at.
Q. Okay. But the point when you saw the first shot, Angel Alvarez is on top of Luis Soto, correct?
A. When I heard the first shot, yes, sir.
Q. Okay. And after you heard that first shot, you ran to the scaffolding.
A. No.
Q. No? Okay. You said you heard what, police shots after that?
A. No. I heard the police shooting, then I ran towards the scaffolding.
Q. Okay. And then you lost sight of what was going on for five seconds, correct?
A. Yes.
Q. And then you turned back around.
A. Yes, sir.

Q. All right. And then you see Angel Alvarez standing, correct?
A. I seen him pop up and he went back down.
Q. When you saw him pop up and pop down --
A. When the police shoot, he popped up.
Q. Was he laughing at that time?
A. Yes.
Q. Okay. So you saw Angel Alvarez go down to the ground, you saw him get back up, and you saw him laughing?
A. He was laughing, then he went back down.
Q. And that was while the shots were being fired, is that correct?
A. Yes, sir.
Q. Okay. You can see him laughing?
A. Yes, sir.
Q. Okay.
THE COURT: Is this just for the witness or for the jury?
MR. KURUVILLA: This is already in evidence so I'm just going to publish it to the jury.
THE COURT: Okay.
Q. Okay. Mr. Spencer, you were asked on direct to indicate where you were standing at the point when you heard the shots --
A. Yes, sir.

Q. -- or the shot initially.
A. Yes, sir.
Q. You put your initials on the median, correct?
A. Yes, sir.
Q. Okay. And I see that you have -- you initially were asked to put an arrow in the direction that you ran.
A. Yes, sir.
Q. Okay. And you initially had an arrow pointed toward the median, correct?
A. Yes, 'cause that's the way I was facing.
Q. Okay. And then you turned that around to face the other direction?
A. Yes, sir.
Q. Okay. So the scaffolding that we're talking about was on the sidewalk --
A. Yes, sir.
Q. -- here?
A. Yes, sir.
Q. Okay. And it covered the entire sidewalk?
A. Mostly it's like from 144th closer to 143rd, 'cause it was -- the recreation center that was there, I guess it was under construction or something. That's why the scaffold was there.
Q. Okay. And so you ran to the scaffolding, according to you, while -- from the median to the scaffolding while shots were

going off?
A. Yes, sir.
Q. Wouldn't you have been in the line of fire at that point if you did that?
A. Come again, sir?
Q. You don't think so?
A. I said come again, sir?
Q. Wouldn't you have been in the line of fire if you ran from the median to --
A. No, sir.
Q. -- the sidewalk?
A. No, sir, 'cause the police was coming from the direction I was coming in, shooting towards -- shooting down towards Soto and Angel. They were like a little up some. They wasn't like -- I wasn't in they direction like.
Q. When you saw Angel Alvarez on the ground, could you ever see any bullets?
A. No, sir.
Q. Okay. And you never actually saw Angel Alvarez being shot, did you?
A. No, sir.
Q. Okay. But you testified that at some point he went down, popped up, was laughing, and then went back down to the ground.
A. Yes, sir.
Q. Okay. And you've testified that there were six or seven

officers firing?
A. Yes, I seen that.
MR. ARNONE: Objection.
THE COURT: Overruled.
Q. When Soto was crawling on Lenox Avenue, you described him on the ground, was he moving in a northbound direction?
A. Like probably closer to 144th, that way, he was like -- it was like a double-parked car.
Q. He was moving toward 144th, correct?
A. There was a parked car that was there.
Q. And it was at that point that Angel Alvarez was still punching down on him, right?
A. Yes, sir.
Q. Okay. And it was at that point when you heard the first shot.
A. When he was punching him, yes, sir.
Q. Okay. And he was using his left and his right.
A. Yes, sir.
Q. All right. Now Angel Alvarez is a close friend of yours, correct?
A. Yes, sir.
Q. Okay. You've been friends with him for some time, haven't you?
A. Yes, sir.
Q. Okay. How long have you been friends with him?

A. 16 years, sir.
Q. Okay. That's around the time since Angel Alvarez has been about 18 years old or so?
A. Probably about 15, 16.
Q. Okay. And you were aware, prior to today, that he had brought a lawsuit, correct?
A. Come again, sir?
Q. You were aware prior to today that he's brought a lawsuit, right? You were aware of his lawsuit before today.
A. Yes, because I was coming for the depositions and things like that.
Q. And you testified on his behalf previously, haven't you?
A. Yes.
Q. Okay. And you have spoken to his attorneys previously, haven't you?
A. Yes, sir.
Q. Okay. You've spoken to his attorneys today, haven't you?
A. No, sir.
Q. You didn't speak to his attorneys today before you came in?
A. Just briefly outside.
Q. Okay. Did you speak to his attorneys before you gave a deposition previously?
A. No, sir.
Q. Okay. When did you first become aware that he was bringing a lawsuit?

MR. ARNONE: Objection.

THE COURT: Overruled.

A. I guess when I first start testifying and things like that.

Q. Have you spoken to him about the facts, or have you spoken to him since the time that you became aware of his lawsuit?

A. Mr. Alvarez?

Q. Yes.

A. Yeah, I spoke to him about twice.

Q. Okay. Since you became aware of his lawsuit?

A. Oh, no, no, I didn't speak to him at all.

Q. Okay. You've never spoken to him since the incident in this case? Have you spoken to him since then?

A. Since -- since this trial been starting or --

Q. No, no. Since August 8, 2010.

A. Oh, yes. Yes, sir.

Q. You've socialized with him, correct?

A. Yes, sir.

Q. In fact, you've been to clubs with him since then, haven't you?

A. Yes, sir.

Q. All right. And this is after the shooting incident, correct?

A. Yes, sir.

Q. Okay. In fact, you celebrated your birthday together after this incident, correct, at some point after this incident?

A. Yes, sir.
Q. Okay. That was at the Phuket Lounge, is that correct?
A. Who?
MR. ARNONE: Objection.
Q. Was that at the Phuket Lounge?
A. Phuket Lounge?
THE COURT: Overruled. You can answer.
A. Never heard of Phuket Lounge, sir.
Q. Okay. At 133rd and 12th Avenue?
A. That's -- that's not Phuket Lounge. That was Pluket (ph), Pluket.
Q. I'm sorry. What's that called?
A. Pluket, Pluket Lounge.
Q. Plucky Lounge? Okay. So you've been to the Plucky Lounge with him?
A. Yes, sir.
Q. And that was to celebrate your birthday, correct?
A. Yes, sir.
Q. And Angel Alvarez was there at that time? Was he drinking? He was drinking champagne then?
A. Yes, sir.
MR. ARNONE: Objection.
THE COURT: Overruled.
Q. And that was after the shooting incident, correct?
A. Yes, sir.

Q. Okay. And you yourself have been convicted of some offenses, correct?
A. Misdemeanors.
Q. Okay. You've been convicted of assault, is that correct?
A. Misdemeanor assault, sir, yes, sir.
Q. Okay. Was that a domestic assault?
A. Yes, sir.
Q. Okay. Have you had other convictions as well?
A. No, sir.
Q. When was your misdemeanor assault conviction?
A. 2002.
Q. Okay. Did you have a conviction for assault in 2015?
A. A conviction?
Q. Yes.
A. No, sir. For assault? No, sir.
Q. Okay. Were you arrested for assault in 2016?
MR. ARNONE: Objection.
THE COURT: Sustained.
Q. Have you had convictions for drug offenses?
A. YO.
MR. ARNONE: Objection. It's not a conviction.
THE COURT: Sustained.
Q. Have you had convictions for drug offenses within the last ten years?
A. No, sir.

Q. I'm just going to go back to when you were under the scaffolding again.
A. Yes, sir.
Q. You're under the scaffolding. Does this scaffolding have bars on them?
A. Yes, sir.
MR. ARNONE: Objection to the characterization. Oh, sorry. Objection.
THE COURT: Overruled.
Q. Okay. The scaffolding have bars on them, correct?
A. Yes, sir.
Q. After you heard shots, you ran under that scaffolding.
A. I ran towards the scaffold but I was in the street. I wasn't under the scaffold.
Q. Okay. And then you turned around?
A. Yes, sir.
Q. And then at that point did you have the bars of the scaffolding blocking your view?
A. No. They were behind me, sir.
Q. You came out in front of the scaffolding.
A. I ran towards the scaffolding. I never was under the scaffolding where the bars was at. I turned around and I was like between the cars, on the street; in the street but on the scaffold side, sir.
Q. Okay. And at that point you initially don't see Luis Soto,

correct?
A. Nah. I could see Luis Soto at this time.
Q. Okay. But you described earlier that Angel Alvarez was beating Luis Soto at one point, correct?
A. When I got on the scaffold side, Angel Alvarez popped up and he popped down, and then it was just Soto there and I seen Soto.
Q. Okay. Down on the ground.
A. Yes. But he was climbing up like trying to get up on top of the double-parked car that was there, sir.
Q. When Angel Alvarez popped up and was laughing, do you know why he was laughing at that point?
A. He always laughs.
Q. Okay. And while this was happening, gunshots were going off.
A. He laughed, yes.
Q. All right. I just want to go back to your deposition testimony one more time.
A. Yes, sir.
Q. I want to get something clear about the shots --
A. Yes, sir.
Q. -- that you heard. All right. So page 24, line 12.
"Q. So I want to pause for a second. Am I correct that after the first shot goes off, you move west toward the scaffolding?"

MR. ARNONE: I'm sorry. This is page 24?

MR. KURUVILLA: Page 124.

Q. "Q. So I want to pause for a second. Am I correct that after the first shot goes off, you move west towards the scaffolding? There is a point where your body is not facing Lenox, correct?"

"A. For five seconds. It was quick."

"Q. But that's -- that's correct, right?"

"A. Yes."

"Q. And then you turned back around to head towards Lenox and about five seconds pass and then you are facing Lenox, correct?"

"A. Yes."

"Q. So in between the time you heard the first shot go off and when you go to the scaffolding, I want to be clear, your back is to Mr. Alvarez, correct?"

"A. Say that again?"

"Q. So I'm trying to break down what happened. So you cross Lenox heading towards the west side of the street and you hear a shot go off, correct?"

"A. No. When I was on the median, as soon as I got off the median, a shot went off."

"Q. And at that point you head towards the scaffolding crossing Lenox and the sidewalk, is that correct?"

"A. I was already on this side over here. Once I got

off the median, I hear the shot, boom."

"Q. So the shot goes off at some point while you were on Lenox?"

"A. No. When I'm on the median."

"Q. Around the median and Lenox Avenue, the south side, at some point you hear the shot go off around then."

"A. Yes."

So don't you run to the scaffolding after you hear one shot?

A. No. I was on the median, and I heard one shot, and then right after the one shot, the shot, rapid shots came.

Q. But previously you testified that you ran to the scaffolding, to the sidewalk, after you heard one shot?

A. That's not what you just said, sir. That's not what my deposition just said. If you could read it again to me. I don't think that's what you just said.

MR. ARNONE: Objection to the -- I'm objecting.

THE COURT: Okay. Sustained. Please clarify it. If you want to read it again.

MR. KURUVILLA: Sure. I'll read it again.

Page 24 -- 124, line 12.

"Q. So I want to pause for a second. Am I correct that after the first shot goes off, you move west towards the scaffolding? There was a point where your body is not facing Lenox, correct?"

"A. For five seconds. It was quick."

"Q. But that's correct, right?"

"A. Yes."

Q. So let's just stop right there. So it said after the first shot goes off, you move west towards the scaffolding. Isn't that correct?

A. But I was on the median. So I'm still like -- I'm moving west. I didn't go -- I wasn't on the scaffold. You just said I was on the scaffold side when the first shot went of.

Q. No. I understand you were on the median when you heard the first shot.

A. Yes, sir.

Q. Then you ran over to the scaffolding, didn't you?

A. After the shots, right after that one shot, it was rapid shots right after that, so I ran when more shots was coming.

Q. But previously you testified that you went after one shot, didn't you?

A. That's my --

MR. ARNONE: Objection.

A. That's my testimony, sir.

Q. Well, that's what I just read.

MR. ARNONE: Objection. Renewing my objection.

THE COURT: The testimony is what it is.

Q. When this first shot goes off, do you see the phone that you referred to earlier in Angel Alvarez's hands?

A. Yes.
Q. Okay. And is it up in the air?
A. Beth of his hands was coming down. It wasn't just one hand in the air. It was just -- it was coming down.
Q. You were under the influence of marijuana at the time, correct?
A. Yes.
MR. ARNONE: Objection.
THE COURT: Overruled.
Q. So is it possible that what you thought to be this black dark object, this phone, was actually a gun?
A. No, sir.
Q. Okay. Why do you say that?
A. I was smoking marijuana forever. It's -- it was regular to me. It didn't make me hallucinate or see things that wasn't there.
Q. This all happened in a very short period of time, didn't it, this whole incident?
A. What, everything that happened at --
Q. Well, the time from when you first started running across the street --
A. Mm-hmm.
Q. -- okay, after Mr. Alvarez to when --
A. When I -- when I seen him, I was on the median, when he was hitting like that.

Q. No. What I'm asking -- I want to go back to the timeline. From the time that you first run after Luis Soto across Lenox Avenue to when you hear the first shot is how long of a period of time?
A. The time when we start running first?
Q. Correct. When you first start running to when you hear the first shot.
A. It was like a minute and a half, two minutes.
Q. That took a minute and a half to run from --
A. You're saying from the time I ran to the time I heard the first shot, right?
Q. Correct. From when you ran from the east side of Lenox across the median to the west side of Lenox. How long, up to the median? How long did that take?
A. How long did it take me to run from the other side to the median?
Q. Correct.
A. Oh, about ten seconds.
Q. Okay. About ten seconds. So then you hear a shot, you hear a shot go off, right?
A. When they was fighting on the floor, yes, sir.
Q. Okay. Then you said you hear a number of shots at that point.
A. Yes, sir.
Q. And then at some point the shots stop.

A. Yes, sir.
Q. All right. How long of a period of time was it from when you heard the first shot to the last shot?
A. From when I heard the first shot to the -- say that again, sir?
Q. How long a period of time was it from when you heard the first shot go off till you heard the last shot go off?
A. I'd say about 20 seconds, 15 seconds.
Q. 15 seconds. Okay. And at some point during this encounter you turn your back to what's going on, correct, because you had to run to the scaffolding?
A. Yes, sir.
Q. Okay. And that's a period of about five seconds.
A. Yes, sir.
Q. Okay. When Angel Alvarez popped down and popped back up and was laughing, was he also holding the phone in his hands?
A. No.
Q. Okay. Do you know where the phone went at that point?
A. No, sir.
Q. I'm sorry?
A. No, sir.
MR. KURUVILLA: Okay. One moment, your Honor.
THE COURT: Yes.
MR. KURUVILLA: That's all I have, your Honor.
THE COURT: Okay. Is there any redirect?