

Richard DeVito.

anticipate anything this soon.

By The Court:

Go with those you have, and if you can locate some of the other ones, we will try to locate those. I would like to get quite a bit of it out today. Proceed with what you have.

RICHARD DeVITO, being duly sworn according to law, testified as follows:

By Mr. Fierro:

I would like to have an offer on the record.

(AT SIDE BAR.).

By Mr. Ertel:

This guy will testify he was at the Barr's, he was subpoenaed by the Defense. The guy left there about two minutes of four. That he observed the white helmet on the ledge of the car.

By The Court:

The other time agrees exactly with his time.

By Mr. Fierro:

Did he observe it on that day?

By Mr. Ertel:

He can't specify the day.

By Mr. Fierro:

Then it is not rebutting.

By Mr. Ertel:

Yes, because they testified the helmet was never on the ledge.

By The Court:

Yes, he did, he testified he never had the helmet

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on the ledge. Can he fix the time at all?

By Mr. Ertel:

He can't.

By Mr. Fierro:

If he can't fix it, it is not proper rebuttal.

By The Court:

It is really not, because that is exactly the time you have him leaving the Barr's.

By Mr. Ertel:

The point is he observed the white helmet on the ledge, and can't specify the time.

By Mr. Fierro:

The rebuttal should be for October 19th.

By Mr. Ertel:

They said never, they had witnesses that said never.

By Mr. Fierro:

The Defendant said he had this in his car.

By The Court:

The witnesses said they never saw it on the back ledge.

By Mr. Fierro:

You are going to leave it in whether he says it is October 19th?

By The Court:

I hesitate if you can't tie it down.

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By Mr. Ertel:

I can't tie it down.

By The Court:

Put the specific offer?

By Mr. Ertel:

I told you.

By The Court:

Refused.

(END OF SIDE BAR.).

By Mr. Ertel:

Step down, Richard.

(Excused from witness stand.).

JOHN GOERTZ, being duly sworn according to law,  
testified as follows:

By Mr. Fierro:

I would like an offer on the record.

By The Court:

Side Bar.

(AT SIDE BAR.).

By Mr. Ertel:

He is in charge of records of Rishel Furniture.  
He has Keith Sampsell's time card for the time in question.  
Keith Sampsell checked in at approximately 3:58, we think, it is  
either 3:51, 3:58 or 3:59, he stamped over the time record.  
He said he got there late that day. They spent 20 minutes at  
the Bubb home and then he went straight to work. He said he got  
there late and saw the Defendant at five minutes of four and he