

On the 6th day of July, 2010, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Richard Davis, Judge presiding, held in Dallas, Dallas County, Texas; Proceedings reported by machine shorthand.

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TRIAL ON THE MERITS  
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) Contestee. ) OF DALLAS COUNTY, TEXAS  
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)  
) CARLOS MEDRANO,  
)  
)  
) VS. ) 14TH JUDICIAL DISTRICT  
)  
) Contestant,  
)  
)  
) LUIS DANIEL SEPULVEDA,  
) IN THE DISTRICT COURT  
)

TRIAL COURT CAUSE NO. DC-10-03186

REPORTER'S RECORD  
VOLUME 2 OF \_\_\_\_\_ VOLUMES

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Trial on the Merits  
July 6, 2010

I N D E X

VOLUME 2

(TRIAL ON THE MERITS)

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Trial on the Merits  
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1	2	3	CONTESTANT'S	NO. DESCRIPTION	OFFERED	ADMITTED VOL.
4	4		10 Banker boxes of	1	18	2
5	5		election records	2A	26	2
6	6		Daily Early Voter Listing	2B	26	2
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8	8		Election documents -		36	2
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23	23		understanding one		91	2
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30	30		Signature roster	13	131	2
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32	32		Signature roster	15	132	2
33	33		Signature roster	16	132	2
34	34		Signature roster	17	132	2
35	35		Signature roster	18	132	2
36	36		Signature roster	19	132	2
37	37		Signature roster	20	132	2
38	38		Signature roster	21	132	2
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P R O C E E D I N G S

(Interpreter sworn)

THE COURT: You ready to call your first

witness?

MR. WYDE: Yes, Your Honor.

THE COURT: You may proceed.

MR. WYDE: We call Mr. Sherbet. Judge, may

I ask just for -- before Bruce -- excuse me,

Mr. Sherbet, to take the stand, how many of these

contests that the Court has sat on, if you don't mind me

asking? It'll just help me in --

THE COURT: This is the third one.

MR. WYDE: Okay. I was going to make a

brief comment just before we started, if that's

acceptable to the Court --

THE COURT: Certainly.

MR. WYDE: -- just so you knew where we

kind of thought we were going, if you will, if that's

acceptable.

THE COURT: You may.

MR. WYDE: Okay. Bruce, give me a second.

If you want to --

MR. SHERBET: Okay.

MR. WYDE: (Shuffling through documents)

It's always in the one document -- the one folder you

1 can't find, Your Honor.  
2 Briefly, Judge -- I'll try to tweak this  
3 zooming here also. This case here -- and I'll -- as --  
4 I'd like a running rule that Mr. Wood is welcome to  
5 correct me on any of this case law that I cite that he  
6 sees obviously differently than I do.  
7 But this case, Kelley vs. Scott back in  
8 '87, shortly after the second -- or I think the Election  
9 Code was rewritten in '85, if you will, is a one-vote  
10 case. The judge who sat on this case ultimately said,  
11 hey, look, they found one illegal vote because it was by  
12 somebody who, I don't know, didn't live in that  
13 particular geographic district or wasn't a registered  
14 voter, or whatever the reason was. That was enough, one  
15 illegal vote. And of course, it was a small margin, it  
16 was just one or two votes is what happened. Eventually,  
17 they got to a tie, and that was enough to order a new  
18 election.  
19 So in that kind of situation, it's, you  
20 know, hard to imagine the old saying, one vote counts or  
21 every vote counts, but that was a classic example of one  
22 where, in fact, they had to do another election.  
23 The case behind that is -- I'll provide and  
24 these are for the Court, if you will, and this is the  
25 Green case we were talking about before. And if

1 Mr. Wood has no objection, I just wanted to tender those  
2 to the Court because we'll be citing them off and on  
3 throughout the case, if that's acceptable.

4 MR. WOOD: Sure.

5 MR. WYDE: Thank you, sir. Lastly, I tried

6 one of these back in May over in Fort Worth in front of  
7 Judge Walton from Hood County and it was 135 votes, it  
8 was a Justice of the Peace race, it was all about  
9 mail-in ballots. It was very much analogous to this  
10 case. And I was trying to explain to the judge in that  
11 situation that -- what the issue was, and I was --

12 opposing counsel was a very distinguished gentleman,  
13 Mr. Harold Hamet, and I'm sure Mr. Wood knows Mr. Hamet.  
14 He served as counsel to one of the state political  
15 parties for five years, if you will, and he's been  
16 involved up here, numerous election contests and  
17 battles. And you know, Mr. Hamet, I learned a great

18 deal from him.

19 But the one thing we disagreed with was

20 basically the difference between ascertainable unlawful  
21 votes and unascertainable lawful votes, and this is one  
22 where I suspect, as we said just a few minutes ago, we  
23 don't expect to be able to prove at this point in time  
24 -- subject to who shows up to testify, we don't expect  
25 to be able to prove on a mail-in ballot who that vote

1 went to. I think Mr. Sherbet will tell you here in just  
2 a minute that once that ballot comes into the elections  
3 department, there's the early voting ballot board,  
4 there's the signature verification committee, and those  
5 folks are appointed by the respective county chairs.  
6 And if the Court knows all this ahead of time and is  
7 aware of all this, I apologize because I -- you never  
8 know in one of these types of cases. You know, it's  
9 just -- it's not -- they're not that common, if you  
10 will. And so since you've heard some of these, you've  
11 probably heard of all that.  
12 And you know, it's not even Mr. Sherbet's  
13 responsibility to count the early ballot -- or the  
14 mail-in ballots, I don't believe. I believe he just  
15 gets a total eventually and he keeps the records, and  
16 that's pretty much it. It's done by the political  
17 parties' appointees.  
18 So long story short, once that carrier  
19 envelope separates from that mail-in ballot and the  
20 ballot itself, we're never able to track who casts that  
21 vote. Consequently, if there is any shenanigans,  
22 irregularities, what have you, you are going to have an  
23 unascertainable unlawful vote, and then, you know,  
24 depending on the number the Court finds that we prove by  
25 clear and convincing evidence, then ultimately, once you

1 get to that margin of victory, more unlawful votes than  
2 the margin of victory, we'll ask the Court to void the  
3 election and order a new election, and that's the end of  
4 that. I hope that didn't try your patience. We --  
5 THE COURT: It's Tuesday. I'm still pretty  
6 patient today.

7 If you'll raise your right hand.

8 (Witness sworn)

9 THE COURT: If you'll have a seat, please.

10 MR. WYDE: May I, sir?

11 THE COURT: You may.

12 BRUCE SHERBET,

13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WYDE:

16 Q. State your name, spell your last name for the

17 court reporter, please, Mr. Sherbet.

18 A. Yes, Bruce Sherbet, S-H-E-R-B-E-T.

19 Q. And how are you employed?

20 A. I'm the Dallas County elections administrator.

21 Q. And are you also the Custodian of the --

22 Custodian of the Records for Dallas County when it comes

23 to election records?

24 A. Yes.

25 Q. Do you also wear the hat of voting registrar?

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A. Yes.

Q. Okay. Back on, I believe, March 2nd this

year -- because Monday was the 1st; is that right?

A. Correct.

Q. And you had these elections on the first

Tuesday after the first Monday; is that correct?

A. Yes.

Q. So it's the earliest day it could ever be,

right?

A. Right, for the primaries.

Q. In fact, this year, I think the general is

November 2nd; is that right?

A. Correct.

Q. So it happens to be another first -- Monday

falls on the 1st, and it's the earliest that you can

have one of these things, correct?

A. Correct. Now, on the primaries, they can be

different months in different states.

Q. Right. And how long have you occupied this

position?

A. I've been the Dallas County elections

administrator since 1987.

Q. Okay. So going on 23 years now; is that right?

A. Yes, correct. Yes.

Q. And you actually have to work with the

1 commissioners?  
2 A. Yes.  
3 Q. And you've managed to do that for 23 years --  
4 20 --  
5 A. So far. But there's commissioners court today,  
6 so we'll see.  
7 Q. You never know. You're employed from Tuesday  
8 to Tuesday; is that how that works?  
9 A. I'm appointed, so --  
10 Q. Yes, sir. Now, Mr. Wood mentioned at the bench  
11 with Judge Davis that y'all had been involved in some  
12 cases in the past?  
13 A. Yes.  
14 Q. Was -- were those cases actually here in  
15 Dallas?  
16 A. I think some were, but some outside of Dallas,  
17 too.  
18 Q. Okay. Were you called as an expert witness in  
19 some of those matters?  
20 A. Yes.  
21 Q. And is that based on your knowledge of election  
22 procedures?  
23 A. Yes.  
24 Q. Okay. We've known each other for a while; is  
25 that correct?

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A. Correct.

Q. And I think I -- when I sent you the -- you

were out of pocket last week; is that right?

A. Yes, sir.

Q. I inaccurately suggested you were on vacation,

but tell Judge Davis and Mr. Wood where you were. They

hadn't visited with you.

A. I was at a national election seminar in

Chicago.

Q. Were you doing teaching?

A. I was facilitating some and attending some of

their courses.

Q. Okay. Do you have a law degree, by any chance?

A. No, I do not.

Q. Congratulations. We -- let me ask you a couple

of things before we get to the records, if you will.

Was I accurate in what I said just a minute ago about

how it's not even your responsibility to count these

mail-in ballots?

A. Well, in a way, no. And I'll explain this a

little bit better.

Q. Sure.

A. I'm under contract with both political parties

to fulfill certain obligations for their elections, and

one of those is to count the ballots. Now, I count the

1 ballots that are presented to us by the ballot board, so  
2 I work independently from the ballot board, the ballot  
3 board makes their decisions whether to count or not  
4 count signature verification, makes their decision  
5 whether to accept. That's all independent of my office  
6 because they're a separate entity, if you will. But I  
7 do count the ballots once they present them to us.  
8 Q. Okay. So do they actually try to present a  
9 total, or do they just verify the signatures and then  
10 hand them to you?  
11 A. Well, they have several functions that they  
12 perform. One of those is signature verification,  
13 compare signatures, ballot board. If there are  
14 questionable signatures, ballot board will rule on those  
15 ultimately to see whether they accept them or not accept  
16 them. So they have full authority over that part of the  
17 process to determine valid ballots or what they consider  
18 invalid ballots.  
19 Q. Do they actually count them and then ask you to  
20 double check them, or do you do the actual counting?  
21 A. They do a numeric count. They don't count the  
22 votes, but they do a numeric count to say batch X has X  
23 number of ballots, and when they turn over their -- the  
24 ballots to us, they have a report attached to them  
25 saying this batch has X number of ballots for you to

1 count.

2 Q. Okay. And was all that done in this

3 particular -- the 2010 Democratic party primary for

4 Dallas County?

5 A. Yes.

6 MR. WYDE: And Judge, if it's acceptable to

7 Mr. Rich and Mr. Wood, when we say "the election," can

8 we basically shorten that to this particular election,

9 if you will?

10 MR. WOOD: Certainly.

11 THE COURT: That'll be fine.

12 MR. WYDE: Yes, sir.

13 Q. (BY MR. WYDE) And there was no runoff in the

14 Justice of the Peace, Precinct 5, Place 1 with Luis

15 Daniel Sepulveda, Judge Sepulveda, and Mr. Carlos

16 Medrano, correct?

17 A. There was no runoff.

18 Q. Okay. And for the record, this -- are you --

19 do you know Judge Sepulveda or Mr. Sepulveda?

20 A. Yes, I do.

21 Q. Okay. Is he present here in the courtroom, as

22 the record reflects that?

23 A. Yes, sir.

24 Q. And have you met Mr. Medrano?

25 A. We just met, and I think we've maybe met on

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another occasion. Today's the only time I remember

meeting him.

Q. All right. Well, the other person on that

ballot for that particular race was Mr. Carlos Medrano,

correct?

A. Correct.

Q. And that might not be the most unique name, if

you will, but do you have any reason to not believe that  
this is the Carlos Medrano that was on -- or is a

candidate and -- at this point the canvassed winner for

the 2010 Democratic Dallas County party primary

election?

A. I'm sure this is Carlos Medrano who is on the

ballot, yes.

Q. Okay. Thank you. Sorry for those questions.

Now, Mr. -- I think Mr. Stool and yourself

are arranging to bring up basically all of the election

records for that particular election; is that correct?

A. Yes, and they're right back there now, so we do

have them in here, yes.

Q. Okay. For the record, are those all of the

records, election records, that are associated with

just, you know, Judge Sepulveda and Mr. Medrano's race?

A. What's -- it's all the ones that were on the

subpoena minus some -- the signature rosters for the

1 THE COURT: You may.

2 MR. WYDE: Thank you. And Judge, did you

3 say that you wanted the court reporter to keep these

4 with her at all times?

5 (Contestant's Exhibit No. 1 marked.)

6 Q. (BY MR. WYDE) Bruce -- excuse me,

7 Mr. Sherbet --

8 A. Yes.

9 Q. Mr. Sherbet, tell me how you've kind of got

10 them organized, if you will, so we can refer to them.

11 THE WITNESS: Your Honor, may I step down,

12 please?

13 THE COURT: Sure.

14 A. I was out of town, so -- last week, so I came

15 in yesterday to try to pull these all together. We have

16 in boxes here, you'll see 1 of 6, 2 of 6, 3 of 6, 4 of

17 6. We have all of the precincts within this JP district

18 range, the carrier envelope, the application for mail-in

19 ballot. We have -- if there were courier receipts, we

20 have them flagged within those; we also have ballots

21 that were submitted for cancellation so that the person

22 could vote in person, things that you had on the

23 subpoena that you wished for us to gather for you.

24 We did -- you had three separate precincts

25 isolated out that you wanted some additional information

1 Like the list of registered voters, like the signature  
2 roster, some particular things that were just pertinent  
3 to the three precincts, and we have all of those  
4 segregated for these precincts here. So in these boxes  
5 are these three precincts that you segregated out on the  
6 subpoena.

7 You'll also see within this box the

8 application for ballot and return carrier envelope,  
9 everything pertaining to that particular precinct.

10 Otherwise, the other items on your subpoena should be

11 found here with exception to those signature rosters for

12 these three precincts, and we're retrieving those from

13 record storage, as I speak. We didn't have access to

14 them because they were secured within record storage. I

15 didn't get the subpoena until Thursday, so I didn't have

16 time for that, but everything else I think you'll find

17 complete. We went through them as best I could.

18 Q. (BY MR. WYDE) Okay. And I think in my e-mail

19 to you, I'd actually told you that -- I said we

20 didn't -- it was my personal opinion that we didn't see

21 any irregularities on behalf of your employees and

22 department. That's not what this case is about.

23 A. That's what -- you said --

24 Q. I just want to say that for the record.

25 A. Yes, sir.

1 Q. Yes, sir. And you know, some -- because in  
2 some ways, had you and Mr. Wood hadn't been through this  
3 before and you and I not having been through one of  
4 these before, in some ways, these cases can be where  
5 you're grading -- you know, we're exposing that  
6 elections department to how the election was conducted,  
7 and you know, and you guys are professionals, and you  
8 take this responsibility with the utmost seriousness; is  
9 that --  
10 A. We'll take our lumps if we make mistakes.  
11 Q. All right. Well, and your counterparts in Fort  
12 Worth didn't quite see it that way. But that's not what  
13 this is about. This is not about any election  
14 irregularities on your watch; is that --  
15 A. Well, I hope not.  
16 Q. Okay. At least that's what I said to you in  
17 the e-mail.  
18 A. Yes, sir.  
19 Q. But being a lawyer, you're going to basically  
20 wait until all this is over and reserve any judgment,  
21 right?  
22 A. Right. Not being a lawyer.  
23 Q. Me being a lawyer.  
24 A. Yes.  
25 Q. Okay.

1 MR. WYDE: Just to defer to the Court,

2 obviously, we don't have a jury, you know, does the

3 Court have any questions about what's the contents of

4 these boxes or anything like that?

5 THE COURT: No. You may proceed on.

6 MR. WYDE: Yes, Your Honor. May I approach

7 the witness?

8 THE COURT: You may.

9 MR. WYDE: And I apologize, I was running a

10 few minutes late this morning and didn't have these

11 premarked. I'll try not to make that mistake again.

12 (Contestant's Exhibit Nos. 2A-2B marked.)

13 Q. (BY MR. WYDE) Let me show you what's been

14 marked and I believe actually has a seal --

15 A. Yes.

16 MR. WYDE: May I approach?

17 THE COURT: Yes.

18 Q. (BY MR. WYDE) Do you recognize what's been

19 marked as 2A and 2B?

20 A. Yes, I do.

21 Q. Okay. Would you tell Judge Davis and Mr. Wood

22 and Mr. Rich what those documents are?

23 A. They are early voting lists from our department

24 that denotes people that vote early voting by mail and

25 people who vote early voting in person. These, in

1 particular, are for the March 2nd Democratic primary

2 election.

3 Q. Okay. So is that -- would 2A and 2B be both of

4 those stacks of documents -- be a complete list of

5 everybody that voted just by mail?

6 A. That actually includes both mail and in-person

7 early voting. They're denoted next to the voter's name

8 if it was a mail ballot or a personal appearance early

9 voting ballot.

10 Q. Okay. Do you see where -- or have any reason

11 to question, you know, the reliability? In other words,

12 do all those look like they're legitimate documents that

13 came to your office, or you know, did we slip in any

14 invoices or bills that we're going to try to get you to

15 pay later?

16 A. No, everything -- this looks like our complete

17 list for the JP District 5, J -- what we call our early

18 voting roster.

19 Q. And it actually has a seal there with a

20 signature on the first -- on 2B; is that correct?

21 A. Which is my signature, yes.

22 Q. Okay.

23 MR. WYDE: Mr. Wood, these are the

24 originals, and I just thought I --

25 MR. WOOD: I just want to glance at them.

1 MR. WYDE: Yeah. I -- Judge, I think they  
2 got some copiers next door. You know, Dallas County is  
3 in paper clip mode right now where they're making  
4 departments count paper clips and thumbtacks, but I'd be  
5 happy to make any copies we need to and provide those to  
6 Mr. Wood.  
7 MR. WOOD: Can I ask the witness just one  
8 question?  
9 THE COURT: Certainly.  
10 THE WITNESS: Yes.  
11 MR. WOOD: When you say there's an  
12 indication of whether or not it's in person or by  
13 mail --  
14 THE WITNESS: Yes, sir.  
15 MR. WOOD: -- where is that indication?  
16 THE WITNESS: It's denoted like two-thirds  
17 of the way over with a P or an M. You'll see on a  
18 column with a P or an M.  
19 MR. WOOD: Yes.  
20 THE WITNESS: And if there's an M, you'll  
21 see three categories, the date we mailed it --  
22 MR. WOOD: All right.  
23 THE WITNESS: -- the date we received it --  
24 the date it was requested, the date it was mailed, and  
25 date it was received back from --

1 MR. WOOD: I noticed that some of them that  
2 say request and mailed, it doesn't have an M or a P.  
3 THE WITNESS: I would have to look at that  
4 to see.  
5 MR. WOOD: May I, Your Honor?  
6 THE COURT: Certainly.  
7 MR. WOOD: Just on this front page here,  
8 here's one that doesn't have a P, doesn't have an M. It  
9 says mailed out here.  
10 THE WITNESS: Right. If it hasn't gone  
11 through the full cycle of coming back to us in return,  
12 it won't show. As you see, it was requested and mailed,  
13 but not returned to us.  
14 MR. WOOD: Okay.  
15 THE WITNESS: That would indicate either it  
16 was in the mail ballot and actually was counted because  
17 it was never received back.  
18 MR. WOOD: I understand. And you were  
19 looking at this, and I'm going to hand it back to you.  
20 THE WITNESS: Okay. And there was  
21 another -- I believe there were two.  
22 MR. WOOD: I have no objection to the  
23 admission, assuming he asks to admit them.  
24 THE COURT: Are you offering those at this  
25 time?

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MR. WYDE: Yes, Your Honor.

THE COURT: Exhibits 2A and 2B are

admitted.

MR. WYDE: And permission to publish just

at the Court's leisure?

Q. (BY MR. WYDE) Let me --

MR. WYDE: May I reapproach?

THE COURT: You may.

Q. (BY MR. WYDE) Let me show you a couple of

documents here -- or a couple of folders I have, and

this first set of documents is going to be the one that

I was going to ask you about here in just a minute.

Would you take a -- this has not been marked. We're

going to mark this 3 in just a moment, okay?

A. Okay.

Q. Would you take a minute and kind of thumb

through what I would suggest to you are copies of

mail-in -- applications for mail-in ballots? Can we

refer to those as MIBS?

A. Mail-in ballots, yes.

Q. Okay.

A. Are you talking about the carrier envelopes or

-- because you have an application that's mailed in and

you have a carrier envelope with the ballot contained

within it that's mailed.