

1 defendant and Honorable Judge Randy Roll.

2 At this time the State calls Alicia
3 Ibarra.

4 (Witness sworn.)

5 **ALICIA IBARRA,**

6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. BURDETTE:**

9 Q. Good morning, Ms. Ibarra. Please introduce
10 yourself to the members of the jury.

11 A. I am Alicia Ibarra. I'm the court liaison
12 officer, probation officer in the 179th Criminal
13 District Court.

14 Q. So, you work here on a daily basis?

15 A. Yes.

16 Q. Tell us a little bit about what you do.

17 A. I prepare the files for all the individuals
18 who are stipulated to do probation. I draw up the
19 conditions of probation. I instruct the clients what
20 they are supposed to do, where they are actually
21 supposed to report to as mandated by the Court.

22 Q. So, generally speaking, if the State and the
23 defendant and defense attorney agreed to place someone
24 on probation, they plead guilty before the Judge and are
25 either placed on probation or deferred adjudication?

1 A. True.

2 Q. Tell us what deferred adjudication is,
3 generally.

4 A. Deferred adjudication is a type of probation
5 where you are placed on probation for so many years and
6 if you successfully complete it, there is no conviction
7 on your record.

8 Q. For example, let's take a look at State's
9 Exhibit 129. We have here the judgment and sentence for
10 the defendant. Can you see here?

11 A. Yes.

12 Q. For Nicholas Paul Aker?

13 A. Yes.

14 Q. You see the offense?

15 A. Yes.

16 Q. Robbery. The date of offense, right?

17 A. Yes. January 14th, 2011.

18 Q. It says this is a second degree felony?

19 A. Yes.

20 Q. There was a plea of guilty; is that right?

21 A. That's right.

22 Q. Now, over here, findings on deadly weapon.

23 What does that mean?

24 A. None applicable.

25 Q. So that means no finding of a deadly weapon

1 was made; isn't that right?

2 A. Yes.

3 Q. And then here the terms of the plea bargain.
4 Plea bargain means both sides agreed on something; is
5 that right?

6 A. Yes.

7 Q. What are the terms of the plea bargain there?

8 A. Two years' deferred adjudication and a \$200
9 fine.

10 Q. Are there other conditions other than the
11 length of deferred adjudication and paying of a fine?

12 A. Yes.

13 Q. So, here we know Nicholas Aker was placed on a
14 two-year deferred adjudication, right?

15 A. Yes.

16 Q. What are the conditions that were imposed on
17 him?

18 A. The very first one is to commit no offense
19 against the law of this State or any other state or of
20 the United States. Along with that, there is: To avoid
21 injurious or vicious habits. You are forbidden to use,
22 possess or consume any controlled substance, dangerous
23 drug or marijuana, alcohol or prescription drugs.

24 Report immediately in person to a
25 community supervision officer. Permit the probation

1 officers to visit you at home, place of employment,
2 abide by the rules and regulations of Harris County
3 Community Supervision and Corrections Department, which
4 is the probation department.

5 Work faithfully at suitable employment
6 and present written verification of employment every
7 single month to your probation officer.

8 He was to remain within a specified place
9 within Harris County or contiguous counties.

10 Support your dependents as required by
11 law.

12 Submit to random drug and alcohol
13 analysis.

14 Then you have the list of fees here,
15 supervision fees, fines, court costs, lab, offender
16 identification.

17 The Crime Stoppers. He is to obtain his
18 Harris County ID, probation ID.

19 Submit to alcohol and drug evaluation by
20 3/10/2011.

21 Q. Let me stop you right there. This has been
22 admitted into evidence so the jury can take it back and
23 take a look at what his requirements are. Is that
24 right?

25 A. Yes.

1 Q. Okay. It's your responsibility to explain
2 those to the defendant; is that right?

3 A. Yes.

4 MR. BURDETTE: Judge, may I approach the
5 witness?

6 THE COURT: You may.

7 Q. (BY MR. BURDETTE) I'm showing you what's been
8 admitted as State's Exhibit No. 129. Is that your
9 signature there?

10 A. Yes.

11 Q. What does that mean?

12 A. It means that I went ahead and I explained the
13 conditions of probation to the client.

14 Q. And he has a thumbprint placed there; is that
15 right?

16 A. Yes.

17 Q. Do people leave here not understanding or at
18 least not being told what they are expected to do?

19 A. No.

20 Q. And some of the things you mentioned are
21 fairly ordinary things; is that right?

22 A. Yes.

23 Q. Don't commit new law violations; is that
24 right?

25 A. Uh-huh.

1 Q. Don't use drugs. Maintain employment.

2 A. Don't associate with anybody who was in
3 possession or under the influence of illegal drugs or
4 alcohol.

5 Q. Don't hang out with bad people?

6 A. Uh-huh.

7 Q. Perform community service?

8 A. Reporting.

9 Q. You have to report, what? Once a month?

10 A. It depends on what level of supervision you
11 fall under. We have people that report daily, weekly,
12 biweekly, monthly, and once every three months.

13 Q. As long you do those things satisfactorily,
14 there will be no finding of guilt at the end of the
15 probation; is that right?

16 A. That is right.

17 Q. But if you violate even one condition of that
18 deferred, you can be sentenced up to the full range of
19 punishment; is that right?

20 A. Yes.

21 Q. So, if you leave Harris County when on
22 probation, you could get up to 20 years in prison; is
23 that right?

24 A. Yes.

25 Q. But at the end of day, who has to make that

1 finding?

2 A. The Judge.

3 Q. Does everybody successfully complete their
4 probation?

5 A. No.

6 Q. But does everybody automatically go to prison
7 if they violate their probation?

8 A. No.

9 Q. So, there is other things that can be done to
10 work with somebody?

11 A. Yes.

12 Q. Someone could get maybe jail therapy; is that
13 right?

14 A. Yes.

15 Q. Someone could be stipulated to a boot camp?

16 A. Yes.

17 Q. That's all in hopes of rehabilitating a
18 person; is that right?

19 A. Yes.

20 Q. But if you can't rehabilitate them, at the
21 other end of the spectrum, there is a possibility of
22 prison time; is that right?

23 A. Yes.

24 Q. Do you have Nicholas Aker's probation file
25 there?

1 A. Yes, I do.

2 Q. Now, he wasn't on probation for very long; is
3 that right?

4 A. He was placed on probation February 10th,
5 2011. He picked up this new law violation May 5th,
6 2011.

7 Q. And "picked up" is the common nomenclature
8 that we use, but what does it really mean?

9 A. He committed a new law violation, felony law
10 violation.

11 Q. Were there any other violations of his
12 probation?

13 A. Yes.

14 Q. What were they?

15 A. He never made a payment on his fees. He
16 failed to report on April of 2011. He failed to
17 complete his alcohol/drug evaluation. He failed to
18 enroll in the English/Spanish classes. He stipulated to
19 80 hours of community service and he failed to complete
20 any hours whatsoever.

21 Q. Not even one hour?

22 A. Not even one.

23 Q. Those are just the violations that you have
24 there in front of you?

25 A. Yes, sir, besides picking up the new law

1 violation.

2 Q. Besides committing a new crime?

3 A. Uh-huh.

4 Q. Which you now know he has been convicted of?

5 A. I don't think he has, has he? Is that the one
6 he's on trial for?

7 Q. That's right.

8 A. Yes.

9 Q. So, now you know?

10 A. Yes.

11 MR. BURDETTE: I'll pass the witness at
12 this time.

13 THE COURT: Thank you.

14 Mr. Martin.

15 **CROSS-EXAMINATION**

16 **BY MR. MARTIN:**

17 Q. Ms. Ibarra, there is deferred adjudication,
18 which Mr. Aker is on right now on this case which you
19 have the file in front of you, correct?

20 A. Yes.

21 Q. Now, deferred adjudication is not a
22 conviction, is it?

23 A. That's correct.

24 Q. It's what the Court does. It's what the title
25 says. The Court defers adjudication of judgment or

1 adjudication?

2 A. Yes.

3 Q. Probation is a conviction?

4 A. Probation is a conviction.

5 Q. So, if a person gets probation from a judge or
6 jury, they have been convicted of that offense?

7 A. Yes.

8 Q. They have been sentenced to a set number of
9 years up to a maximum of ten to get probation, right?

10 A. Yes.

11 Q. If they violate that probation, they can be
12 brought back to Court and the judge can then give them
13 up to the number of years they are on probation for?

14 A. Right.

15 Q. Just by way of comparison, if a guy is on
16 probation for robbery, if he got two years' probation,
17 the most he could get if he violated would be two years
18 in prison?

19 A. Yes.

20 Q. If he got ten years' probation and violated
21 the conditions of probation, he could even get ten years
22 in prison?

23 A. Yes.

24 Q. All from the Judge?

25 A. Yes.

1 Q. On deferred adjudication, he can be on
2 deferred for two years all the way up to ten years, if
3 you violate the deferred, then the Judge, if he wants to
4 after a hearing, could find you guilty of the original
5 robbery, correct?

6 A. Yes.

7 Q. And he could give you anywhere from two to
8 twenty years in prison?

9 A. Yes.

10 Q. Because you're on deferred adjudication rather
11 than probation?

12 A. Yes.

13 Q. So, if a person is on deferred adjudication
14 and that is the only felony they have every had, they
15 can say, I have never been convicted of a felony?

16 A. Yes.

17 Q. Even though at that very moment, they are on
18 community service on a deferred adjudication?

19 A. Yes.

20 Q. Can you tell from the paperwork, was this a
21 plea bargain for the two years' deferred adjudication?

22 A. I don't have that in here.

23 Q. And I believe you testified that -- it's
24 pretty commonsensically, I guess -- some people make it
25 and some people don't?

1 A. Yes.

2 Q. And if you don't make it, if there's a program
3 that the Court feels and the probation department feels,
4 We can work with this guy, there is all kind of
5 programs, sanctions, options -- there is a bunch of
6 different things you and your office and the Court can
7 do if they think it's appropriate?

8 A. Yes.

9 Q. If none of that is appropriate, the only thing
10 that's left is prison?

11 A. Yes.

12 MR. MARTIN: I'll pass the witness.

13 THE COURT: Further direct?

14 MR. BURDETTE: Nothing further for this
15 witness, Judge.

16 THE COURT: All right. Thank you,
17 Ms. Ibarra.

18 Call your next witness.

19 MR. BURDETTE: State calls Walter Moore.

20 THE COURT: Mr. Moore.

21 Come on up, Mr. Moore.

22 THE BAILIFF: He's been previously sworn
23 in, Judge.

24 THE COURT: Thank you.

25 You are still under oath.

1 THE WITNESS: Yes, sir.

2 **WALTER MOORE,**

3 having been first duly sworn, testified as follows:

4 **DIRECT EXAMINATION**

5 **BY MR. BURDETTE:**

6 Q. How are you, Mr. Moore?

7 A. Good.

8 Q. Well, you know now that the jury has convicted
9 the defendant, Nicholas Aker, correct?

10 A. Yes, sir.

11 Q. I'd like to talk a little bit more about what
12 effect this crime has had on you, okay?

13 A. Okay.

14 Q. Tell us what the days and weeks were like as
15 you woke up there in the hospital.

16 A. Well, a lot things were going through my mind.
17 I was just wondering would I be able to walk again. I
18 might have been an invalid the rest of my life. I would
19 need somebody to carry me around. Those are things I
20 would think about. I didn't want to go (inaudible).

21 Q. Why not?

22 A. I was, like, maybe five -- they cut toes off
23 my body and tubes and stuff and three machines on both
24 sides. So, I don't feel anything around me. So, I
25 didn't know if I could, you know. There wasn't a