

1 until it gets here. So, we'll check and see.

2 If it's not here, who would be next?

3 MS. ONCKEN: Officer Avila.

4 And may this witness be on call,
5 Judge, if needed to be called back?

6 MR. MARTIN: Sure. That's fine.

7 THE COURT: Okay. Yeah. Just make
8 sure you keep in touch.

9 It is not here. Okay.

10 And have you discussed with him my
11 rulings?

12 MS. ONCKEN: I will.

13 THE COURT: We're going to pick up the
14 transcripts. Thank you.

15 MS. ONCKEN: This witness has not been
16 sworn.

17 THE COURT: Raise your right hand for
18 me, please, sir.

19 (Witness sworn)

20 THE COURT: Have a seat.

21 XAVIER AVILA,
22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 Q. (BY MS. ONCKEN) Good afternoon.

25 A. Good afternoon.

1 Q. Can you please introduce yourself to the
2 jury?

3 A. Senior police officer Xavier Avila.

4 Q. And where are you currently employed?

5 A. Houston Police Department.

6 Q. And which division?

7 A. Homicide division.

8 Q. How long have you been with H.P.D.?

9 A. Approximately 32 years.

10 Q. Thirty-two years. Wow. And how long have
11 you been working in the homicide division?

12 A. I've been assigned to homicide or Squad 1
13 30 years.

14 Q. I'm sorry?

15 A. 30 years in homicide.

16 Q. Wow. Okay. And during your tenure in
17 homicide, have you worked few or many cases involving
18 the death of an infant?

19 A. Many.

20 Q. I want to turn your attention to April the
21 1st of 2010. Did you receive a followup assignment
22 from the evening before's shift?

23 A. Yes, ma'am.

24 Q. Okay. And did that involve a case with an
25 infant?

1 A. Yes, ma'am.

2 Q. Okay. And what was the infant's name?

3 A. Kamron Kelly.

4 Q. And how is it that you receive assignments?

5 Is it random, or who makes that decision?

6 A. My lieutenant.

7 Q. Okay. And did you have a partner at that
8 time?

9 A. Yes, ma'am.

10 Q. Who was that?

11 A. Sergeant J. Delacruz.

12 Q. And when you first received the assignment,
13 did you review anything that had been done the
14 evening before by the other officers?

15 A. Yes, ma'am.

16 Q. Okay. And what did you review?

17 A. I reviewed the supplements that were
18 available at the time from the previous investigator.

19 Q. All right. So, what was the first thing
20 that you did on this investigation?

21 A. We drove to Texas Children's Hospital to
22 check on Kamron and interview the biological mother.

23 Q. Okay. And she had been interviewed -- is
24 that correct -- the evening before as well?

25 A. Yes, ma'am.

1 Q. Okay. Did you have a chance -- you said
2 you went to Texas Children's Hospital?

3 A. Yes, ma'am.

4 Q. Okay. Did you ever go to the scene of the
5 crime, the apartment?

6 A. Yes, I did.

7 Q. And for what purpose did you go over to the
8 apartment?

9 A. Looking to see if we could find Nathaniel
10 Flowers and interview him.

11 Q. Did you have any success locating him at
12 the apartment on Hallshire?

13 A. No, ma'am.

14 Q. Okay. And then what happened next? Did
15 you look for any other witnesses while you were there
16 at the apartment complex?

17 A. Yes. We knocked on the neighbor's doors
18 and interviewed some of the neighbors.

19 Q. Okay. And can you recall for the jury
20 which neighbors that you interviewed?

21 A. Yes, ma'am. I interviewed Christopher
22 Robinson who lives in Apartment 132, I believe, and a
23 friend of his that was there visiting, Patrick Baker.

24 Q. Okay.

25 A. I also interviewed Emanuel Ramirez who

1 lives in the upstairs apartment. I think it's
2 Apartment 233.

3 Q. And how old a person was Emanuel?

4 A. Um...

5 Q. In other words, was he a child? Was he an
6 adult?

7 A. He's a teen. Teenager.

8 Q. Okay. And --

9 A. And we also interviewed -- or I'm sorry.
10 In apartment 235 we interviewed Mr. Acosta, Alex
11 Acosta.

12 Q. Okay. Is he the same person that goes by
13 the nickname Paco?

14 A. Yes, ma'am.

15 Q. Did you also have the opportunity to review
16 a statement that Sergeant Robert Torres had taken
17 from the defendant the evening before?

18 A. Yes, ma'am.

19 Q. Okay. And based on -- well, let me go
20 back. What was your purpose for going to Texas
21 Children's Hospital that morning or the day of
22 April 1st?

23 A. Well, to check on Kamron's condition.

24 Q. And what was his status at that time?

25 A. It was critical, unstable, and likely to

1 die as a result of the injuries.

2 Q. That he had sustained?

3 A. That he had sustained, yes.

4 Q. You told the jury that you've worked many
5 cases involving the death of an infant. So, are you
6 familiar with some of the things that you're looking
7 for in a child abuse case -- in other words, when a
8 child dies by abuse or homicide versus SIDS or some
9 sort of accident?

10 A. Yes, ma'am.

11 Q. Okay. Did you discuss with any medical
12 personnel at Texas Children's whether or not this
13 would be a case involving abuse or homicide?

14 A. Yes, I did.

15 Q. Okay. And did your investigation become a
16 potential homicide case at that point?

17 A. Yes, ma'am.

18 Q. The explanation that was given by the
19 defendant in the statement to Torres, was it a
20 logical explanation based on the evidence?

21 MR. MARTIN: Objection, your Honor.

22 Calls for a conclusion.

23 THE COURT: Sustained.

24 Q. (BY MS. ONCKEN) All right. At some
25 point -- you said that on April the 1st you

1 interviewed Alex Acosta, or Paco, right?

2 A. Yes, ma'am.

3 Q. Did you talk to him about, you know, if he
4 needed to contact you again how to do it?

5 A. Yes.

6 Q. Okay. Is that something that you normally
7 do, like give your card and say, "If you think of
8 anything else, call me"?

9 A. It's normal for me to provide them with my
10 business card so they can contact me with additional
11 information.

12 Q. And did you offer that to Paco?

13 A. Yes, ma'am.

14 Q. To Mr. Acosta. At some point did he
15 contact you?

16 A. Yes.

17 Q. Was there an arrangement made for you to
18 maybe meet him somewhere or to pick something up?

19 A. Yes, ma'am.

20 Q. Okay.

21 MS. ONCKEN: May I approach the
22 witness?

23 THE COURT: Yes, ma'am.

24 Q. (BY MS. ONCKEN) I'm going to hand you this
25 box that has been marked State's Exhibit 107 and ask

1 if you can identify this box based on an H.P.D. case
2 number or your name or initials.

3 A. Yes, ma'am.

4 Q. Okay. So, yes, you can identify it?

5 A. Yes, ma'am, I can.

6 Q. And how is that?

7 A. It contains the two items that I recovered.

8 It's labeled on the --

9 Q. Okay. You see your name?

10 A. And my name's on there.

11 Q. Okay. And when we say "two items," what
12 were the two items that you recovered from Alex
13 Acosta?

14 A. It's a baby towel and a baby shirt.

15 Q. Okay. And what did you do with those
16 items?

17 A. I tagged them in the H.P.D. property room.

18 Q. Okay. And after that, do you have any
19 further contact with those items?

20 A. Yes, ma'am.

21 Q. Okay. You did?

22 A. Well, I didn't have any physical contact
23 with them, no, ma'am.

24 Q. Okay. So, from there, after you tag it
25 into the property room, it's taken over by those

1 officers; is that right?

2 A. Yes, ma'am.

3 Q. And at some point did you make a request of
4 the H.P.D. DNA lab to do something in regard to the
5 baby shirt and baby towel that are in 107?

6 A. Yes, ma'am.

7 Q. Okay. And what was that?

8 A. I requested that the items be checked for
9 possible DNA on some stains that were on there and
10 develop a DNA profile if that was -- if they were
11 found.

12 Q. Okay. And specifically what was it on the
13 items that you thought might be DNA?

14 A. There was some stains on the items that
15 appeared to be blood.

16 Q. Okay.

17 MS. ONCKEN: At this time the State
18 offers 107 and its contents into evidence and tenders
19 to counsel for any objection.

20 MR. MARTIN: Judge, we have no
21 objection subject to tieing it up tomorrow.

22 THE COURT: Can you approach for a
23 second?

24 (At the Bench)

25 THE COURT: Has anybody opened it to

1 see what's in there?

2 MS. ONCKEN: No. I mean, we will; but
3 I didn't.

4 THE COURT: Well, I'm a little
5 uncomfortable just admitting a box if nobody's
6 actually opened it to see what's in there.

7 MS. ONCKEN: We didn't open it on
8 purpose so nothing would be tainted by why is the box
9 open. But I mean --

10 THE COURT: Okay. If y'all are
11 comfortable with that, then I'll admit it.

12 But while y'all are up here -- this is
13 completely off the topic, but the food should be here
14 shortly. Before we take the break and before I send
15 the jury out, I'm considering asking the jury if they
16 want to work late or if they would rather stop at
17 3:30 because that protest is at 4:00 o'clock. I've
18 gotten two more emails about it, and they said they
19 think it will probably last until about 6:00.

20 MS. ONCKEN: Okay.

21 MR. HOCHGLAUBE: Yeah, I think that's
22 wise.

23 MS. ONCKEN: Okay. That's fine.

24 THE COURT: If they want to work late,
25 fine. If they don't, we'll stop at about 3:30.

1 MR. HOCHGLAUBE: That's wise.

2 MS. ONCKEN: That's fine. And the
3 sooner we know -- that's great because what I
4 actually -- and y'all tell me. Dr. Donaruma is the
5 attending Texas Children's physician. She is not
6 available tomorrow. She'll be here at 2:00. And,
7 so, what I'm thinking is if we're going to leave
8 early, if there's no objection to almost, like,
9 pulling him off, putting her on, and then putting him
10 back on. But since she's a doctor, I told her we'll
11 do our best to work with her to get her on and off
12 today. And since you said we were staying late --

13 THE COURT: Well, then I'll leave that
14 up to y'all. I certainly don't care if you take
15 people out of order, but that's kind of --

16 MS. ONCKEN: It's not my preference,
17 but I've got to get her on and off.

18 MR. HOCHGLAUBE: We don't have an
19 objection to altering the timeline.

20 THE COURT: Okay. And then is there
21 any objection if I just tell the jury that there's
22 supposed to be a protest out there and it's supposed
23 to be from 4:00 to 6:00 and just leave it at that and
24 ask them if they want to stop early?

25 MS. ONCKEN: Can we call it something