

1 step down.

2 Who's next?

3 MS. ONCKEN: State calls Officer  
4 Avila.

5 THE COURT: You were sworn in  
6 yesterday. So, you are still under oath.

7 THE WITNESS: Yes, ma'am.

8 XAVIER AVILA,  
9 having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 Q. (BY MS. ONCKEN) Good morning.

12 A. Good morning.

13 Q. And for the record, can you again state  
14 your name?

15 A. Senior Police Officer Xavier Avila.

16 Q. Are you the same Officer Avila who was here  
17 testifying yesterday?

18 A. Yes, ma'am.

19 Q. And I apologize for having to kind of pull  
20 you and go out of order to get the doctor back to the  
21 hospital. When we left off yesterday, I believe we  
22 had just introduced State's Exhibit 107, the evidence  
23 that you obtained from Alex Acosta; is that right?

24 A. Yes, ma'am.

25 Q. And you -- again, for our memory, what were

1 the specific items that you received from Mr. Acosta  
2 on -- and let's make sure I'm correct -- on  
3 April 1st, 2010?

4 A. Yes, ma'am. It was a baby towel and a baby  
5 shirt.

6 Q. Okay. We're looking at State's Exhibit 94  
7 and 95. Are those photographs of the baby towel that  
8 you received from Mr. Acosta?

9 A. Yes, ma'am.

10 Q. And then State's Exhibit 96 and 97, what  
11 are those photographs of?

12 A. That's the same baby towel and baby shirt  
13 that I recovered from Mr. Acosta.

14 Q. And yesterday I think when we were in the  
15 jury's presence we had looked at the box and it was  
16 all taped up; is that correct?

17 A. That's correct.

18 Q. And what kind of tape are we talking about?  
19 Like, what is the purpose of this red tape here?

20 A. The tape, it's for security and it seals  
21 and secures the box. And then the initials are put  
22 on the tape.

23 Q. Okay. Now, when was the tape cut open?

24 A. Yesterday.

25 Q. Okay. You and I did that together; is that

1 right?

2 A. Yes, ma'am.

3 Q. Okay. And prior to that time, everything  
4 has been then sealed in this box after it left the  
5 lab, I guess?

6 A. Yes, ma'am.

7 Q. Okay. Now -- but you don't obviously know  
8 what happened at the lab, correct?

9 A. That's correct.

10 Q. Okay. Now, a lot of the initials that are  
11 on the outside of the box, are those yours or someone  
12 else's?

13 A. Someone else's.

14 Q. Okay. And what was the purpose -- or you  
15 had told us yesterday you saw some red stains,  
16 correct?

17 A. That's correct.

18 Q. So, what were you hoping to determine  
19 through some sort of forensic testing?

20 A. Well, I wanted the stains to be analyzed  
21 for DNA and, if DNA was found, to develop a DNA  
22 profile.

23 Q. Okay. And for the purpose of what?

24 A. Of identifying whose -- if that was blood,  
25 to determine as to who it belonged to.

1 Q. Okay. Specifically to determine if it was  
2 the infant's blood?

3 A. Yes, ma'am.

4 Q. Okay. Sometimes are you able to find  
5 suspect DNA as well on certain items in cases?

6 A. Yes, ma'am.

7 Q. And just to make sure that I've got the  
8 chronology correct, you had told the jury yesterday  
9 that after you went to Texas Children's Hospital on  
10 April the 1st, you then went to the apartment, the  
11 crime scene; is that right?

12 A. That's correct.

13 Q. And is that when you first met and  
14 interviewed Mr. Acosta?

15 A. Yes, ma'am.

16 Q. Was it that same day when you were called  
17 back to retrieve these items?

18 A. Yes, ma'am.

19 Q. And did you receive any kind of consent to  
20 take the items?

21 A. Yes, I did.

22 Q. I'm going to show you what has already been  
23 admitted as State's Exhibit 93. And can you see that  
24 okay from that screen?

25 A. Yes, I can.

1 Q. And do you recognize your name on the form?

2 A. Yes, ma'am.

3 Q. And where is your name? Can you circle the  
4 screen in front of you or point to it?

5 A. It's right there. *(Indicating.)*

6 Q. Okay. And what was the purpose of getting  
7 some sort of consent from Mr. Acosta before you  
8 retrieved the property?

9 A. Just to indicate that he voluntarily gave  
10 us permission to obtain those items.

11 Q. Just to make sure everything was done  
12 correctly?

13 A. Yes, ma'am.

14 Q. And did someone -- did Mr. Acosta sign the  
15 form?

16 A. Yes, sir, he did.

17 Q. And did someone witness the form other than  
18 yourself and Mr. Acosta?

19 A. Yes.

20 Q. Who was that?

21 A. That was Sergeant J. Delacruz.

22 Q. And is he your partner?

23 A. At the time he was.

24 Q. At the time. Did you work with  
25 Mr. Acosta -- okay. Let me back up for a second.

1 Did you at some point call the District Attorney's  
2 Office and ask that charges be accepted against the  
3 defendant in this case?

4 A. Yes, I did.

5 Q. And when did that happen?

6 A. It was on April the 1st.

7 Q. And had Kamron passed away at that point?

8 A. No, ma'am.

9 Q. Did you have a conversation while you were  
10 at Texas Children's Hospital that day on the 1st with  
11 the doctors about how critical his condition was?

12 A. Yes, I did.

13 Q. Did you feel that he had at least sustained  
14 serious bodily injury at that point?

15 A. Yes.

16 Q. So, based on what you had at that time,  
17 including the statement that Robert Torres --  
18 Sergeant Torres took from the defendant, did you get  
19 charges filed?

20 A. Yes, ma'am.

21 Q. And what charge was that?

22 A. Injury to a child.

23 Q. What happens when charges are filed? Does  
24 that trigger some sort of arrest warrant against the  
25 defendant?

1 A. Yes, ma'am.

2 Q. And in response to that arrest warrant, did  
3 you do something to try to get the defendant into  
4 custody?

5 A. Yes, I did.

6 Q. And what was that?

7 A. Well, I informed some of the persons that  
8 knew the defendant to call. I provided them with my  
9 business card and asked them to call me if they saw  
10 him.

11 Q. Okay. Did Mr. Acosta also attempt to aid  
12 you in that effort?

13 A. Yes, ma'am, he did.

14 Q. How did he do that?

15 A. He informed me that he had received a phone  
16 call and was going to -- supposed to pick him up that  
17 day and drive him to Texas Children's. And I asked  
18 him to call me if that did happen.

19 Q. And just to be clear, when Mr. Acosta said  
20 he got a phone call from him, you mean the defendant?

21 A. From Nathaniel Flowers.

22 Q. And as far as you knew, were they ever able  
23 to hook up in an effort to bring the defendant in?

24 A. As far as I know, they did not.

25 Q. Going forward a few days then to April the

1 7th of 2010, did you receive a call that day from  
2 someone in reference to the defendant coming in?

3 A. Yes, I did.

4 Q. And who was that phone call from?

5 A. From Sandra Jones, Nathaniel Flowers'  
6 sister.

7 Q. And what was your understanding of what was  
8 going to happen?

9 A. That she was going to drive him to the  
10 homicide office and turn him over to the police.

11 Q. And as far as you knew, was Mr. Flowers  
12 also aware that he was turning himself in?

13 A. Yes, ma'am.

14 Q. Was he aware that he had an arrest warrant?

15 A. Yes, he did.

16 Q. And did that happen?

17 A. Yes, ma'am.

18 Q. On the same day, on April 7th?

19 A. April 7th, yes, ma'am.

20 Q. Was that the first time that you had met  
21 the defendant?

22 A. Yes.

23 Q. So, were you interested in trying to obtain  
24 another statement?

25 A. Yes.



1 Q. And for what purpose, since you already had  
2 one statement by Officer Torres?

3 A. The statement that he had provided did not  
4 explain the injuries that the child had.

5 Q. So, am I correct then you were trying to  
6 give him another opportunity to make this make sense?

7 A. Yes, ma'am.

8 Q. And did you discuss with the defendant that  
9 you would like to get a statement from him?

10 A. Yes.

11 Q. Now, to be clear, at this point is the  
12 defendant in custody?

13 A. Yes.

14 Q. Now, if a defendant is not in custody, is  
15 it necessary under your procedure and the law to give  
16 them the reading of their warnings if they're not in  
17 custody?

18 A. No.

19 Q. Okay. So, in other words, like the first  
20 statement that you reviewed that Officer Torres took,  
21 that was not in custody and, so, he did not have his  
22 rights read, correct?

23 A. Right. It was a noncustodial statement.

24 Q. Okay. But your statement was going to be  
25 an in-custody statement because he wasn't going home?

1 A. That's correct. Yes, ma'am.

2 Q. So, where did this interview take place?

3 A. At 1200 Travis on the sixth floor in one of  
4 the interview rooms.

5 Q. Okay. And is that there in the homicide  
6 division?

7 A. Yes, ma'am.

8 Q. And did the defendant understand that he  
9 was giving a statement?

10 A. Yes.

11 Q. And did he agree to that?

12 A. Yes, ma'am.

13 Q. And did you read him all of his rights?

14 A. Yes, I did.

15 Q. And is this statement that you obtained --  
16 was it recorded in some way?

17 A. Yes, it was.

18 Q. In what manner was it recorded?

19 A. It was recorded on a DVD, video and audio.  
20 And I also backed it up with my digital audio  
21 recorder that I placed on the table while the  
22 interview was being conducted.

23 Q. Was that just to be extra safe?

24 A. Just in case the video malfunctioned in  
25 some way.

1 Q. Because that never happens, right? Okay.  
2 Is it part of your standard procedure when you're  
3 reading a suspect their rights to also give them some  
4 sort of written copy of their rights?

5 A. That's --

6 Q. Or allow them to look at it?

7 A. I mean, that's the steps that I take.

8 Q. You, personally?

9 A. That I personally take.

10 Q. Does your police department provide a  
11 written copy of what we call the "Miranda Rights,"  
12 the right to remain silent, et cetera?

13 A. They provide what's referred to as a "blue  
14 card."

15 Q. And the rights are on that card?

16 A. Yes, ma'am.

17 Q. In terms of your personal standard  
18 operating procedures, what do you do?

19 A. I -- what I do is I Xerox my blue card and  
20 I read the rights off that card one at a time and I  
21 have the person initial each one as I'm reading them  
22 out to him.

23 Q. Did you do that in this case with  
24 Mr. Flowers?

25 A. Yes, ma'am, I did.

1 MS. ONCKEN: May I approach the  
2 witness?

3 THE COURT: Yes, ma'am.

4 Q. (BY MS. ONCKEN) I'm going to hand you  
5 what's been marked as State's Exhibit 117 and ask you  
6 if you can identify this document.

7 A. Yes, ma'am.

8 Q. And how can you identify it?

9 A. It's got Nathaniel's signature and his  
10 initials that he placed there as I was reading it to  
11 him.

12 Q. Next to each of his five legal rights, did  
13 he place his initials?

14 A. Yes, ma'am.

15 Q. Okay. And did he sign, date it, and  
16 indicate the time as well?

17 A. Yes, ma'am.

18 Q. Okay. And the time was when he signed it?

19 A. At 11:17 a.m.

20 Q. Okay.

21 MS. ONCKEN: At this time the State  
22 offers 117 and tenders to counsel for any objection.

23 MR. MARTIN: We have no objection.

24 THE COURT: Being no objection,  
25 State's 117 will be admitted.

1 Q. (BY MS. ONCKEN) Okay. Did Mr. Flowers  
2 indicate to you that he understood each of these  
3 warnings?

4 A. Yes, he did.

5 Q. And it's a little hard to see there, but on  
6 the left-hand side can you see his initials, N.F.?

7 A. Yes, ma'am.

8 Q. And at the bottom, his signature, date, and  
9 time?

10 A. Yes, ma'am.

11 Q. Did the defendant indicate that he wanted  
12 to waive or give up his rights and speak with you?

13 A. Yes.

14 Q. And did you get an interview with him on  
15 tape?

16 A. Yes, ma'am.

17 MS. ONCKEN: At this time may I  
18 approach the witness?

19 THE COURT: Yes, ma'am.

20 Q. (BY MS. ONCKEN) Okay. I'm going to show  
21 you what's been marked as State's Exhibit 100. And  
22 do you recognize this DVD?

23 A. Yes, ma'am.

24 Q. Okay. And does this DVD have on it a  
25 unique H.P.D. case number?

1 A. Yes.

2 Q. Does that case number match with this case  
3 against the defendant?

4 A. It does.

5 Q. Okay. And is this statement or this CD,  
6 State's Exhibit 100, is this a true and accurate copy  
7 of the statement that you took at around 11:17 on  
8 April the 7th, 2010, from this defendant?

9 A. Yes, ma'am.

10 Q. Okay.

11 MS. ONCKEN: At this time the State  
12 offers Exhibit 100 and tenders to counsel for any  
13 objection.

14 MR. MARTIN: We just have the same  
15 objections we discussed previously. Other than that,  
16 we have no objections.

17 THE COURT: All right. The Court's  
18 ruling will remain the same; and with that  
19 understanding, State's 100 will be admitted.

20 Q. (BY MS. ONCKEN) I'm going to show you  
21 what's been marked as State's Exhibit 104 and ask you  
22 if you have seen and reviewed this document  
23 previously?

24 A. Yes, ma'am.

25 Q. Okay. And what is State's 104?

1           A.       It's a transcript of the interview that's  
2 on that DVD that you just showed me.

3           Q.       Number 100?

4           A.       Right, that was conducted at approximately  
5 11:17 a.m.

6           Q.       All right. And is this, to the best of  
7 your understanding as you re-listened, a true and  
8 accurate transcription of that interviewed  
9 conversation between yourself and the defendant?

10          A.       Yes, ma'am.

11          Q.       Okay.

12                    MS. ONCKEN: State offers at this time  
13 for demonstrative purposes only State's 104.

14                    MR. MARTIN: We have no objections to  
15 that for demonstrative purposes, your Honor.

16                    THE COURT: State's 104 will be  
17 admitted for demonstrative purposes only.

18                    Members of the jury, this  
19 transcript -- I'm giving the same instructions as  
20 before. It's admitted to aid you, if it does aid  
21 you. If you hear something different from what's  
22 typed down on the paper, go with what you hear, not  
23 what's on the paper.

24                    (Audio and video statement played in  
25 open court)

1 Q. (BY MS. ONCKEN) All right. What happened  
2 after you turned the tape off?

3 A. I turned off the tape; and then I informed  
4 him what was going to happen, that he was going to  
5 be -- I was going to call for a unit to transport him  
6 to the city jail and then later he would be  
7 transferred over to the Harris County Jail.

8 Q. Now, before that, was he afforded the  
9 opportunity to use the telephone?

10 A. Yeah. He requested -- he wanted to use the  
11 telephone.

12 Q. And was he able to make a phone call?

13 A. Yes.

14 Q. And did you actually speak to the person on  
15 the other end of the line as well as allow the  
16 defendant to?

17 A. Yes, I did.

18 Q. Who was -- who did the defendant call?

19 A. He called his mother and his sister, Sandra  
20 Jones.

21 Q. And that's the same lady that you talked to  
22 earlier that day that agreed to bring him down?

23 A. Yes, ma'am.

24 Q. And after the defendant spoke to his family  
25 and you also spoke to his family, is that when you



1 said, "We're going to transport you now to the jail"?

2 A. Yeah. After that, yes, ma'am.

3 Q. And when you told him that, "Okay, we're  
4 going to take you over to the jail now," what  
5 happened?

6 A. That's when he said he had a problem, he  
7 needed help, and he wanted to make another statement.

8 Q. When he's saying "I have a problem and I  
9 need help," what is his demeanor like?

10 A. Well -- well, he got emotional. He started  
11 crying and he said, "I have a problem. I need help.  
12 And I want to give you another statement."

13 Q. Is it fair to say at that point when you  
14 told him that you were going to send him off to the  
15 jail that your interview was done?

16 A. Yes, ma'am.

17 Q. As we've watched this whole tape just now,  
18 State's Exhibit 100, at any point did he appear  
19 emotional during the taking of the statement?

20 A. No, ma'am.

21 Q. So, you're saying he sort of opens up and  
22 does become emotional afterwards?

23 A. Yes, ma'am.

24 Q. In addition to saying "I have a problem,"  
25 did you say that he needed something?

1                   MR. MARTIN: Objection. This is asked  
2 and answered.

3                   THE COURT: Sustained.

4           Q.     (BY MS. ONCKEN) I just wasn't sure if you  
5 had said anything. So, in response to him saying "I  
6 want to give another statement," what did you do?

7           A.     I -- we went back into the interview room  
8 and I activated the DVD recorder and went inside,  
9 activated my digital recorder, and started the -- I  
10 placed it on the table and I started the interview.

11          Q.     And when y'all started that next interview,  
12 did you give him the same warnings and rights that  
13 you told the jury about that you gave the first time?

14          A.     Yes, I did.

15                   MS. ONCKEN: May I approach the  
16 witness?

17                   THE COURT: Yes, ma'am.

18          Q.     (BY MS. ONCKEN) I'm showing you what's been  
19 marked as State's Exhibit Number 118 and I'll ask you  
20 if you can identify 118.

21          A.     Yes, I can.

22          Q.     And how can you?

23          A.     It's got Nathaniel Flowers' initials,  
24 signature, and dated April the 7th, 2010, at 1:10  
25 p.m.

1 Q. Okay. So, 1:10 p.m. Now we've finished  
2 the first statement and y'all have talked and now  
3 it's about ten after 1:00 on the same day?

4 A. Yes.

5 Q. And is 118 a true and accurate copy of what  
6 it purports to be, the warnings and his signature?

7 A. Yes, ma'am.

8 MS. ONCKEN: Offer 118 into evidence  
9 and tender to counsel for any objections.

10 MR. MARTIN: We have no objection.

11 THE COURT: Being no objection,  
12 State's 118 will be admitted.

13 Q. (BY MS. ONCKEN) I'll just kind of show the  
14 jury. Is this the exact same form that you had  
15 showed him before -- and Ms. Dickson has it up there  
16 for us -- with his initials by each right?

17 A. Yes, ma'am.

18 Q. Okay.

19 A. It's just a different Xerox copy.

20 Q. Of the exact same form that you used?

21 A. Exactly.

22 Q. Okay. And, so, he -- is it correct that a  
23 second time he was told his rights and he initialed  
24 each one of them?

25 A. Yes, ma'am.

1 Q. And at the conclusion of this, did the  
2 defendant tell you that he wished to waive or give up  
3 his rights and talk to you?

4 A. Yes, ma'am.

5 Q. Now, at any point after the first statement  
6 was done and before this second statement, did you in  
7 any way try to coerce him or threaten him in order to  
8 get the second statement?

9 A. No, ma'am.

10 Q. At any time the entire day were you ever  
11 physically violent with him?

12 A. No, ma'am.

13 Q. During both the first and the second  
14 statements, did you afford him all the physical  
15 comforts he might need like bathroom, water, food, if  
16 he needed it?

17 A. Yes.

18 Q. And on that day did he appear like he  
19 understood everything that was happening, like,  
20 mentally he understood what you were talking about?

21 A. Yes, ma'am.

22 Q. Did he in any way appear intoxicated or not  
23 able to understand for that reason?

24 A. No.

25 Q. And this next statement, approximately what

1 time did that statement begin?

2 A. Approximately at 1:06 p.m.

3 Q. Okay.

4 MS. ONCKEN: May I approach the  
5 witness?

6 THE COURT: Yes, ma'am.

7 Q. (BY MS. ONCKEN) I'm going to hand you first  
8 what's been marked as State's Exhibit 102-A and ask  
9 you if you can identify this DVD.

10 A. Yes, ma'am. It's a DVD of the second  
11 interview.

12 Q. Okay. Is it again marked with your unique  
13 H.P.D. case number that corresponds to this case?

14 A. Yes, ma'am.

15 Q. Okay. And this is the second interview  
16 that you took on April the 7th from the defendant?

17 A. Yes, ma'am.

18 Q. Okay. And except any Court-ordered  
19 deletions from it, is it a true and accurate copy of  
20 the statement that you obtained from the defendant,  
21 the second statement that day?

22 A. Yes, ma'am.

23 MS. ONCKEN: At this time we offer  
24 State's 102-A and tender to counsel for any  
25 objection.

1                   MR. MARTIN: We've seen it. We have  
2 no objection, your Honor.

3                   THE COURT: Being no objection --

4                   MR. MARTIN: I'm sorry. Other than  
5 what we had previously.

6                   THE COURT: Other than what's  
7 previously been discussed -- and my rulings will  
8 stand on that -- State's 102-A will be admitted.

9           Q.     (BY MS. ONCKEN) And I'm now going to show  
10 you State's Exhibit Number 105 and ask if you can  
11 identify 105.

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

13           Q.     And what is it?

14           A.     It's a transcript of the second interview  
15 that was conducted by myself and Nathaniel Flowers.

16           Q.     Okay. And is that a true and accurate  
17 transcription of your interview between yourself and  
18 the defendant, the second interview on the 7th?

19           A.     Yes, ma'am.

20           Q.     Okay. And would it aid the jury to assist  
21 in listening to the statement to have that?

22           A.     Yes.

23                   MS. ONCKEN: State will offer State's  
24 Exhibit 105 for demonstrative purposes only.

25                   MR. MARTIN: We have no objection to

1 that.

2 *THE COURT:* Being no objection, 105  
3 will be admitted for demonstrative purposes only.

4 Once again, members of the jury,  
5 anything that you read on there is for your  
6 assistance only. If you hear something differently  
7 from what's on the transcript, go with what you hear,  
8 not with what's on the written paper.

9 *(Video and audio played in open court)*

10 *THE COURT:* All right. Members of the  
11 jury, we are going to stop at this time and go ahead  
12 and send -- I think lunch is being delivered for you  
13 today. So, please don't discuss the case amongst  
14 yourselves or with anybody else. If you want to step  
15 out of the jury room at some point, you can. We're  
16 going to take a one-hour lunch. Please make sure you  
17 put those transcriptions up there so they can collect  
18 them. And we will be in recess until 1:35.

19 Please retire the jury.

20 *(Jury leaves courtroom)*

21 *THE COURT:* All right. So, we'll be  
22 in recess for an hour.

23 *(Luncheon recess)*

24 *THE COURT:* Bring them in.

25 *(Jury enters courtroom)*

1 THE COURT: Be seated, please.

2 Let's continue.

3 Q. (BY MS. ONCKEN) Officer Avila, all right.  
4 When we finished before the break, we had just  
5 finished listening to the second interview you took  
6 of the defendant; is that correct?

7 A. Yes, ma'am.

8 Q. After that day, I want to talk about what  
9 other things that you did in relation to this case.  
10 Well, I guess we'll go back to after you concluded  
11 the last statement that we just saw, was the  
12 defendant officially arrested on the charge of injury  
13 to a child?

14 A. Yes, ma'am.

15 Q. Okay. In May of that same year, 2010, did  
16 you make a formal request for the DNA lab at H.P.D.  
17 to conduct any testing?

18 A. Yes, ma'am.

19 Q. And what were the items again that you  
20 wanted tested?

21 A. A baby towel and a baby shirt.

22 Q. And that would be the ones that are in the  
23 box labeled 107?

24 A. Yes, ma'am.

25 Q. And going forward a little bit to



1 June 18th of 2010, did you pick up any evidence in  
2 relation to possible DNA testing?

3 A. Yes, ma'am.

4 Q. And what was that?

5 A. It was the bloodstain card of the deceased.

6 Q. Explain to the jury what a bloodstain card  
7 is.

8 A. A bloodstain card contains a sample of a  
9 victim's blood that is used for DNA processing.

10 Q. So --

11 A. It's collected at the morgue. I'm sorry.

12 Q. So, in other words, it's preserved for any  
13 future testing?

14 A. Yes, ma'am.

15 Q. And did you yourself go pick up that  
16 bloodstain card from the Medical Examiner's Office?

17 A. Yes, ma'am.

18 Q. And does the M.E.'s Office have a unique  
19 identifier number similar to how H.P.D. does on their  
20 cases?

21 A. Yes, ma'am.

22 Q. And is that the way that you were able to  
23 determine that that card related back to Kamron  
24 Kelly?

25 A. Yes, ma'am.

1 Q. Then going forward a bit, in March of 2011,  
2 did you get a request from me to do anything in  
3 relation to the DNA testing?

4 A. Yes, ma'am.

5 Q. What was that?

6 A. To obtain a buccal swab from Nathaniel  
7 Flowers.

8 Q. And what is a buccal swab?

9 A. It's a saliva sample that is used for DNA  
10 processing by the crime lab.

11 Q. And was that after the DNA lab completed  
12 one round of analysis on the evidence that you had  
13 submitted?

14 A. Yes, ma'am.

15 Q. And what is the purpose of getting saliva  
16 or inner cheek swab from a suspect? What does it  
17 give us?

18 A. It gives us a DNA profile.

19 Q. And was that obtained through consent from  
20 the defendant?

21 A. Yes, ma'am.

22 Q. Did you yourself go collect that sample  
23 from the defendant?

24 A. Yes, ma'am.

25 Q. Before you did that, did you have contact

1 with his defense attorney?

2 A. Yes, I did.

3 Q. Which one was that? Which attorney?

4 A. He's sitting right here. Mr. Randy -- I  
5 don't remember.

6 Q. Mr. Martin?

7 A. Yes, ma'am.

8 Q. All right. And did he say that that was  
9 okay to get that sample from his client?

10 A. Yes, ma'am.

11 Q. And explain to the jury: The swab, is this  
12 a Q-tip?

13 A. Yes, ma'am.

14 Q. Basically. And how did you obtain the  
15 sample from the defendant?

16 A. I had -- there's two Q-tips and they come  
17 in a sterile package and I explained to him to take  
18 one of the Q-tips and rub it against his gum back  
19 like he was brushing his teeth. And then after he  
20 did that, I had him drop it in a sterile box. And  
21 then I asked him to take the second Q-tip and rub it  
22 against the -- well, one against the inside of his  
23 cheek and the other one against his gum. And just to  
24 rub it back and forth like he was brushing his teeth.

25 Q. Okay. And the second one was also placed

1 in a sterile container?

2 A. Yes, in the same container.

3 Q. And what did you do then with those two  
4 swabs?

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

6 MS. ONCKEN: May I approach the  
7 witness?

8 THE COURT: Yes, ma'am.

9 Q. (BY MS. ONCKEN) I want to show you what's  
10 been marked as State's Exhibit 108 and its contents  
11 and State's Exhibit 109 and its contents and ask you  
12 if you can identify these two exhibits.

13 A. Yes, ma'am.

14 Q. And how can you identify them?

15 A. They have my initials on the back.

16 Q. I'm going to hold it up just so -- right  
17 here?

18 A. Yes, ma'am.

19 Q. Okay.

20 A. And this one has my initials on the back.

21 Q. Right here?

22 A. Yes, ma'am.

23 Q. Okay. And, so, then would you have put --  
24 in State's Exhibit 109, which piece of evidence does  
25 that contain?

1           A.       This contains the bloodstain card from the  
2 victim.

3           Q.       Okay.  And State's Exhibit 108 contains  
4 what?

5           A.       It contains two buccal swabs that are from  
6 Nathaniel Flowers.

7           Q.       Okay.  And do both of the envelopes bear  
8 your name?

9           A.       Yes, ma'am.

10          Q.       Okay.  And also the H.P.D. case number?

11          A.       Yes, it does.

12          Q.       Okay.

13                    MS. ONCKEN:  At this time State offers  
14 108 and 109 and tenders to counsel for any objection.

15                    MR. MARTIN:  We have no objection.

16                    THE COURT:  Being no objection,  
17 State's 108 and 109 will be admitted.  And the  
18 contents?

19                    MS. ONCKEN:  Yes, ma'am, and the  
20 contents.

21          Q.       (BY MS. ONCKEN)  Did you ever have occasion  
22 to speak to another sister of the defendant named  
23 Stephanie Flowers?

24          A.       No, ma'am.

25          Q.       On or around April the 2nd, 2010, or any

1 time after that, did she try to contact you to give  
2 you any information about the case?

3 A. No, not that I'm aware of.

4 Q. Now, did you tell us yesterday that you've  
5 been doing homicide cases for 30 years?

6 A. Yes, ma'am.

7 Q. In the last 30 years, have you -- I mean,  
8 have you ever tried to count how many cases you've  
9 worked?

10 A. No, ma'am.

11 Q. Might depress you. Then clearly you've  
12 worked many cases. In your experience, can a  
13 person's hands be a deadly weapon in their manner of  
14 use?

15 A. Yes, ma'am.

16 Q. And in a case such as this, with an infant  
17 three months old like Kamron Kelly was, could the  
18 defendant's hands have been used as a deadly weapon  
19 against that baby?

20 A. Yes, ma'am.

21 Q. Is it possible for any kind of blunt object  
22 known -- or let's say an unknown blunt object, if it  
23 was struck against the child or the child struck  
24 against that object, in this case could that have  
25 been a deadly weapon?

1 A. Yes, ma'am.

2 MS. ONCKEN: All right. We'll pass  
3 the witness.

4 THE COURT: Mr. Martin.

5 CROSS-EXAMINATION

6 Q. (BY MR. MARTIN) Officer Avila?

7 A. Yes, sir.

8 Q. Changing course going away from the  
9 statements that we've seen, going back to April the  
10 1st, which would have been, I believe, the day after  
11 this incident, was it part of your responsibilities  
12 to go out and interview some folks that day, talk to  
13 some witnesses?

14 A. Yes, sir.

15 Q. And did you go out to the apartment complex  
16 to do that?

17 A. Yes, sir.

18 Q. And did you meet more than one person out  
19 there that day?

20 A. Yes, sir, I did.

21 Q. All right. And did you take a recording  
22 device with you of some kind?

23 A. Yes, sir.

24 Q. Is it the one we see in the video?

25 A. Yes, sir, it is.

1 Q. Okay. Did you have an occasion when you  
2 were out at those apartments where this incident  
3 occurred to visit with a Patrick Keith Baker?

4 A. Yes, sir.

5 Q. All right. And, so, refresh everyone's  
6 memory. He was there at the scene when this incident  
7 happened and he was involved in the 9-1-1 call; is  
8 that right?

9 A. Yes, sir.

10 Q. And I believe, if I remember his testimony  
11 yesterday, he works at Starbucks as a barista or  
12 something like that. Is that -- do you remember?

13 A. I don't remember where he works, but --

14 Q. All right. But you and I talked yesterday  
15 and I asked you about the conversation you had with  
16 him that you recorded that day?

17 A. Yes, sir.

18 Q. Do you remember that?

19 A. Yes, sir.

20 Q. Okay. And you told me you did remember the  
21 interview you had with him back on April the 1st of  
22 2010?

23 A. Yes, sir.

24 Q. All right. And did he in fact -- do you  
25 remember him telling you that day that Mr. Flowers



1 was there in the apartment and that he was --

2 MS. ONCKEN: Object to hearsay.

3 THE COURT: Let me hear the question.

4 Q. (BY MR. MARTIN) Do you remember him telling  
5 you when you interviewed him on the 10th [sic]  
6 Mr. Flowers was nervous and pacing around the  
7 apartment?

8 A. Yes, sir.

9 Q. All right. Do you remember him telling you  
10 that he, the witness, Patrick Keith Baker, blocked  
11 the doorway of the apartment to keep Mr. Flowers from  
12 leaving?

13 A. No, sir.

14 Q. He did not say that, did he, sir?

15 A. No, sir.

16 Q. And he did not say he felt that he needed  
17 to do something to prevent Mr. Flowers from leaving  
18 that scene, did he, Officer?

19 MS. ONCKEN: Excuse me. Same  
20 objection. Hearsay and improper impeachment, as this  
21 was not -- no predicate was laid with Mr. Baker.

22 THE COURT: That's overruled.

23 Q. (BY MR. MARTIN) Same question, Officer  
24 Avila. Mr. Baker did not say to you that he felt the  
25 need to stand in the door to block Mr. Flowers from

1 leaving the apartment?

2 A. No, he didn't say that.

3 Q. Did you also have occasion to interview  
4 Shara Kelly, the mother of the deceased?

5 A. Yes, sir.

6 Q. And would that have been the same day on  
7 April the 1st?

8 A. Yes, sir.

9 Q. All right. When you interviewed her on  
10 that day, were you aware of any other 9-1-1 calls  
11 that had been called in about this matter, other than  
12 the ones from the day before?

13 A. No, sir.

14 Q. All right. You testified that a person's  
15 hands can be deadly weapons in certain circumstances?

16 A. Yes, sir.

17 Q. That would depend, of course, upon how the  
18 hands were used, correct?

19 A. Yes, sir.

20 Q. I mean, anything -- almost anything could  
21 be a deadly weapon depending upon how it is used?

22 A. Yes, sir.

23 Q. But if it's not a gun, if it's something  
24 not made or designed or adapted to be a deadly  
25 weapon, then it's going to depend on how it was used

1 on the occasion in question?

2 A. Yes, sir.

3 Q. Thank you, Officer Avila.

4 MR. MARTIN: I'll pass the witness,  
5 your Honor.

6 THE COURT: Anything else?

7 MS. ONCKEN: We'll pass the witness.

8 THE COURT: Thank you, sir. You can  
9 step down.

10 Please call your next witness.

11 MS. ONCKEN: State calls Officer  
12 Rodriguez.

13 THE BAILIFF: This witness has not  
14 been sworn.

15 THE COURT: Thank you.

16 Raise your right hand, please, ma'am.

17 (Witness sworn)

18 THE COURT: Have a seat.

19 ALINDA RODRIGUEZ,  
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

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

23 A. Hello.

24 Q. Could you please state your name and  
25 introduce yourself to the jury?