

1 the lawyers, please do not do so in earshot of another
2 witness. Okay?

3 THE WITNESSES: Yes (in unison).

4 THE COURT: Deputy Bair, you may take the
5 stand. And the rest of you may wait outside, please.

6 I'm sorry. Deputy Bair.

7 MS. HARVEY: Not Berry. Bair.

8 THE COURT: I'm sorry.

9 THE WITNESS: Good morning,

10 THE COURT: Good morning.

11 All right. Ms. Harvey, you may proceed.

12 MS. HARVEY: Thank you, Your Honor.

13 (Discussion off the record)

14 MS. HARVEY: Maybe this morning we can just
15 publish pictures the old-fashioned way.

16 THE COURT: Sorry. You may proceed.

17 MS. HARVEY: Thank you, Your Honor.

18 **DAVID BAIR,**

19 having been first duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 **BY MS. HARVEY:**

22 Q. Would you let the jury know what your name is?

23 A. My name is David Bair.

24 Q. How are you currently employed?

25 A. I'm a deputy with the Harris County Sheriff's

1 Office, K-9 Division.

2 Q. How long have you been a deputy with the Harris
3 County Sheriff's Office?

4 A. Approximately eight years now.

5 Q. And what do you have to do in order to be a
6 deputy with the Harris County Sheriff's Office?

7 A. There's a background check, a physical test,
8 and then a mental evaluation. Once you've completed all
9 of those, then you go to a lie detector test, you pass
10 that, and then you have to go to -- we did -- we started
11 off -- it's changed since -- working in the jail. And
12 then once you work in the jail, you get accepted into an
13 academy after a testing process to become a deputy.
14 It's a six-month process to become a deputy.

15 Q. And did you successfully complete that entire
16 process?

17 A. Yes, ma'am.

18 Q. Were you working as a sheriff's deputy back on
19 March 20th of 2011?

20 A. I was.

21 Q. And what were your assignments at that time?

22 A. I was what's considered a district unit. Our
23 district was District 5. It's a large area, northwest
24 Harris County area. I patrolled -- it's approximately
25 220 square miles. I'm responsible for all calls for

1 service ranging from minor accidents to domestic
2 disturbances to murder.

3 Q. On March 20th of 2011, did you receive a call?

4 A. Yes, I did.

5 Q. And was that call at 1299 New Cypress Drive?

6 A. Yes, ma'am, it was. It was 12911, I believe.

7 Q. I'm sorry. Did I misspeak? 12911 New Cypress
8 Drive?

9 A. Yes, ma'am, it was.

10 Q. About what time was that call?

11 A. The call I was dispatched to was approximately
12 1524 hours or 3:24 p.m.

13 Q. Is that location within Harris County, Texas?

14 A. Yes, it was.

15 MS. HARVEY: May I approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 Q. (By Ms. Harvey) I'm showing you what's been
19 marked as State's Exhibits 1, 2, and 3. Do you
20 recognize those photographs (indicating)?

21 A. Yes, I do.

22 Q. And do they fairly and accurately depict the
23 location of the scene in question today?

24 A. Yes, ma'am, they do.

25 MS. HARVEY: Your Honor, at this time,

1 State offers State's Exhibits 1, 2, and 3 into evidence
2 and tenders to opposing counsel.

3 (State's Exhibit No. 1 through 3 Offered)

4 MR. VARELA: No objections.

5 THE COURT: They're admitted.

6 (State's Exhibit No. 1 through 3 Admitted)

7 MS. HARVEY: Thank you, Your Honor.

8 Judge, would you like me to tender them to
9 the bailiff to show to the jury?

10 THE COURT: Yes, please. And we will try
11 to get someone in here in the interim to figure out how
12 to work that.

13 Q. (By Ms. Harvey) Deputy, what kind of a call was
14 it you were responding to?

15 A. It was an in-progress call, a priority one
16 call, which means we go to the call lights and sirens.
17 There's a -- somebody's life is in danger at that time.

18 Q. And did you go by yourself or were you
19 traveling with someone else?

20 A. Me and Deputy Clint Myers. He was actually
21 behind me at the time.

22 Q. In two separate vehicles, then?

23 A. Yes, ma'am.

24 Q. When you arrived, what did you do?

25 A. The first thing we did was we approached the

1 residence. As we arrived, dispatch updated the call and
2 stated that a suspect had left the house. So,
3 tactically, we don't want to go approach the front door.
4 We parked several houses down. And I went to the north
5 side of the residence to check the gate. Deputy Myers
6 went to the south side. I heard him say the gate was
7 secured. My gate was also secured. I could not enter
8 the backyard. Nobody had come out of the backyard.
9 There was no forced entry on my side. Returned to the
10 front door.

11 As we get to the front door, I checked the
12 door to see if there was any forced entry. Door was
13 still secured. Knocked on the door loudly, announcing:
14 Sheriff's office, sheriff's office, all while our guns
15 are drawn, you know, just because of safety issues.
16 There was supposed to be a suspect there that had
17 already shot somebody.

18 Q. Let me ask you -- let's do one question at a
19 time. Okay?

20 A. Sorry.

21 Q. So we don't get ahead of ourselves.

22 A. Okay.

23 Q. All right. So, you approached the door?

24 A. Yeah.

25 Q. Guns drawn?

1 A. Yes, ma'am.

2 Q. You also checked the door to see if
3 it's locked, the front door, and it is locked?

4 A. Yes, ma'am.

5 Q. So, upon then knocking and announcing your
6 arrival, did someone come answer the door?

7 A. Yes, ma'am. After approximately, what I
8 believe is 30 seconds, a female came from the south side
9 of the residence and unlocked the door.

10 Q. Okay. And when you say "from the south side of
11 the residence," if we're looking at State's Exhibit 3,
12 can you show us from what side of the residence that
13 would have been (indicating)?

14 A. It would have been from the left side. So, if
15 you're staring at the glass window, she came from the
16 left.

17 Q. So, from this side of the residence
18 (indicating)?

19 A. Yes, ma'am.

20 Q. The left side of the door on our -- on our
21 picture.

22 How was she dressed?

23 A. She was wearing white panties and a
24 light-colored towel over her upper body area.

25 Q. Okay. Was there anything else notable about

1 her appearance?

2 A. She was wet. Her hair was soaking wet.

3 Q. When you say "soaking wet," do you mean that it
4 looked like she had gotten out of the shower and toweled
5 off or was she dripping wet?

6 A. It was dripping wet, like she had just placed a
7 towel over her shoulders and had just gotten out of a
8 shower or bath or something.

9 Q. Do you see the person who answered the door
10 here in the courtroom today?

11 A. I do.

12 Q. Would you point her out and describe an article
13 of clothing that she's wearing?

14 A. That would be her. She's wearing the black
15 overcoat or the jacket (indicating).

16 MS. HARVEY: If the record can reflect the
17 witness has identified the defendant?

18 THE COURT: The record will so reflect.

19 Q. (By Ms. Harvey) When this woman approached the
20 door dripping wet, wearing only panties and a towel,
21 what did you do?

22 A. Immediately she -- as she opened the door, she
23 stated that her husband had been shot and was dead in
24 the back room.

25 Q. Was she specific about his condition?

1 A. Yes.

2 Q. And how specific was she?

3 A. That he was dead.

4 Q. So, did you then find her husband in a back
5 room?

6 A. We did.

7 Q. And where did you find him?

8 A. He was in the bathroom, the master bathroom.

9 Q. I'm showing you what's been marked as State's
10 Exhibit 4. Do you recognize that document (indicating)?

11 A. I do.

12 Q. And is it a fair and accurate depiction of the
13 location of the defendant when you found him?

14 A. Yes, ma'am, it is.

15 Q. Or of the victim -- I'm sorry -- when you found
16 him?

17 A. Yes, ma'am, it is.

18 MS. HARVEY: State offers State's Exhibit 4
19 and tenders to opposing counsel.

20 **(State's Exhibit No. 4 Offered)**

21 MR. VARELA: No objection to 4.

22 THE COURT: State's Exhibit 4 is admitted.

23 **(State's Exhibit No. 4 Admitted)**

24 Q. (By Ms. Harvey) Now, in State's Exhibit 4, is
25 the location of the body where you found the victim?

1 A. No, ma'am. The body had been moved already.
2 Or in that picture the body had been moved from its
3 original state.

4 Q. Okay. Who moved the body?

5 A. The paramedics did.

6 Q. And so, this is not how you saw him immediately
7 upon entry?

8 A. No, ma'am, it's not.

9 Q. Can you describe how he was positioned when you
10 arrived?

11 A. The male was in a fetal position on his left
12 side with -- his head was facing towards the east, but
13 his back was kind of towards the tub. So, they
14 basically -- in that picture you see, they had rolled
15 him onto his back and were checking him for signs of
16 life, but his legs were pulled up closer to his chest,
17 just a regular fetal position.

18 Q. So, when you arrived and you observed this male
19 in the fetal position with his back to the tub, is EMS
20 present yet?

21 A. No, ma'am.

22 Q. Where is EMS at that point?

23 A. They're staged because it was still considered
24 a hot scene and we had to clear it for any suspects or
25 any bad guys that may still be in the area or the house.

1 Q. Explain to me what it means to have EMS staged.

2 A. It means they stage down the street or several
3 blocks over because they don't want to put themselves in
4 risk if there's somebody armed with a gun or a knife or
5 anything like that. So, once we deem the residence is
6 secure of any suspects, we'll advise our dispatch that
7 the scene is secured, have the EMS go ahead and move up.
8 And they immediately move up upon hearing that it's
9 secured.

10 Q. So, at the time you make entry into the
11 location, EMS is staged, the victim is in the fetal
12 position next to the tub. Do you or your partner check
13 him, you or Myers check him for any signs of life?

14 A. Deputy Myers checks him for signs of life.

15 Q. What else did you observe about his immediate
16 location?

17 A. As far as?

18 Q. As far as, were there items around him that
19 were notable?

20 A. Yes, ma'am. There was a pistol that was laying
21 at his feet and a black revolver.

22 Q. Did you come to talk to the defendant to
23 determine what had happened?

24 A. Yes, ma'am, I did. As she was being checked
25 out by EMS -- they had already showed up, they were

1 checking her out, I went out to the ambulance. Because
2 she had said there was a suspect that had broken into
3 the house, I asked her for the suspect information
4 quickly as to what occurred so that I could broadcast
5 the information to surrounding deputies to check the
6 area for the suspect.

7 Q. And what description of the suspect did she
8 give you?

9 A. Refer back to my original report.

10 The suspect information she gave me was
11 that of a Hispanic male that was approximately 5-foot-6,
12 weighing 160 pounds, wearing a black mask, a black shirt
13 with a white stripe, and black shorts.

14 Q. Did she indicate where she believed the
15 intruder had come from?

16 A. From her back patio door in her master bedroom.

17 Q. When we talk about the back patio door, that's
18 one that's inside the master bedroom; is that correct?

19 A. Yes, ma'am.

20 Q. And would that door open out into the gated
21 fenced area or out to an area more accessible in the
22 front of her house?

23 A. It opens to the backyard area, the gated area.

24 Q. Did she also indicate whether or not the
25 intruder had injured her?

1 A. Yes, she did.

2 Q. What was it she told you in terms of what the
3 intruder did to her?

4 A. She had specifically stated that the suspect
5 had placed a knife into her vagina.

6 Q. And in giving you that description, was she
7 specific about what had been done with the knife?

8 A. As far as him taking the knife or --

9 Q. As far as where he placed it in her.

10 A. Yeah, she was very specific on what had
11 occurred.

12 Q. And what was the -- with specificity, what is
13 it that she said happened with the knife?

14 A. That he had placed it and shoved it into her
15 vagina.

16 Q. Was she able to explain why she was soaking
17 wet?

18 A. I did not ask her or question that.

19 Q. As EMS was there at the scene, did you refer
20 the defendant for medical treatment?

21 A. Yes.

22 Q. And did she indicate to you whether she was
23 interested in medical treatment?

24 A. She at first had refused medical treatment,
25 stated that she was okay.

1 Q. Did you later then obtain a consent to search
2 her house?

3 A. Yes, ma'am, one was obtained. I had filled one
4 out.

5 Q. I'm going to show you what's been marked as
6 State's Exhibit 5. Is that a true and accurate copy of
7 the consent to search --

8 A. Yes.

9 Q. -- that was signed by the defendant
10 (indicating)?

11 A. Yes, ma'am, it is.

12 MS. HARVEY: State offers State's Exhibit 5
13 and tenders to opposing counsel.

14 **(State's Exhibit No. 5 Offered)**

15 MR. VARELA: No objection to 5.

16 THE COURT: State's Exhibit 5 is admitted.

17 **(State's Exhibit No. 5 Admitted)**

18 Q. (By Ms. Harvey) And did this document then
19 allow you-all to do what?

20 A. It allowed us to search the residence and --
21 for evidentiary value. It -- basically, it's mainly
22 used for us for our Crime Scene Unit to come in,
23 photograph, and collect evidence.

24 Q. Once you -- once you and the other deputies
25 obtain the consent to search, take care of, to the

1 extent that you can, the male who is in the bathroom,
2 and refer Ms. Dinanno for medical treatment, what did
3 you do then?

4 A. At that point, made sure the scene was secured
5 and made sure that her hands were bagged. Just because
6 there was a shooting victim, we wanted to reserve or
7 preserve any type of gunshot residue that may or may not
8 have been on her hands. It's what we do in all
9 shootings scenes, whether it's someone else in the
10 residence or in close proximity to the person that was
11 shot.

12 Q. How did you secure the scene?

13 A. The scene was secured by, I believe -- it was
14 another deputy, but it was crime scene tape all around
15 the yard, the front yard and the side yards.

16 Q. Did you then eventually turn the scene over to
17 someone else?

18 A. I did. The scene was released to -- it would
19 be Investigator Wolford. He's a homicide detective.
20 And also our crime scene investigator, Glover, who's a
21 crime scene investigator.

22 MS. HARVEY: Pass the witness.

23 **CROSS-EXAMINATION**

24 **BY MR. VARELA:**

25 Q. Deputy --

1 A. Yes, sir.

2 Q. -- when Ms. Dinanno came to the door, she was
3 distraught, correct?

4 A. She was upset, yes, sir.

5 Q. She was crying?

6 A. To be honest, I do not remember that, if she
7 was crying or not.

8 Q. Did you make a report based upon your
9 experiences at this scene, sir?

10 A. Yes, sir, I did.

11 Q. Did you have a chance to reread that to refresh
12 your memory?

13 A. Yes, sir, I did.

14 Q. I'd like you to do that again so we can discuss
15 that.

16 A. Okay.

17 (Witness complies).

18 Okay. Yes, sir.

19 Q. All right. So, she was crying and upset when
20 she first came to the door and greeted you-all; is that
21 correct?

22 A. Yes, sir.

23 Q. All right. Later on, she herself requested to
24 go to the hospital for treatment and examination, right?

25 A. Yes, she did go to the hospital.

1 Q. All right. Now, you say that she indicated
2 right off the bat that her husband was dead or she
3 believed him to be dead, correct?

4 A. Yes, sir.

5 Q. You -- who saw the body first, you or Deputy
6 Myers?

7 A. It was about the same time. When we entered,
8 it was an open doorway, so we entered at the same time.

9 Q. And it would have been a few seconds after you
10 entered that you actually saw the body?

11 A. Yes, sir.

12 Q. When you first saw the body, did you have a
13 chance to inspect it or were you still clearing the
14 rooms for potential bad guys?

15 A. We were clearing first.

16 Q. All right. But later on, you came back to the
17 body, correct?

18 A. Correct.

19 Q. That would have been -- well, that took you a
20 couple of minutes to clear the house, right?

21 A. No, sir. Maybe 30 seconds.

22 Q. Okay. So, it was real quick that you came back
23 to the body?

24 A. Yes, sir.

25 Q. Okay. And when you looked at the body, you

1 can't tell just by looking at it if it's still alive or
2 not, if a person is still alive or not, right?

3 A. In this situation, no, sir.

4 Q. He appeared to be in real bad shape, though,
5 correct?

6 A. Yes, sir.

7 Q. So, a person that obviously doesn't have any
8 training or doesn't have the opportunity to really
9 examine the body could conclude that he was quite likely
10 dead?

11 A. I couldn't say that. I mean, I've seen people
12 in bad condition that were still alive.

13 Q. Right. But he looked pretty dead when you saw
14 him, correct?

15 A. He was not in good shape.

16 Q. He was not moving?

17 A. No, sir.

18 Q. He was not saying anything or doing anything?

19 A. Not that I could see.

20 Q. Okay. But you can't tell just by looking at
21 your initial look whether he's dead or not?

22 A. Correct.

23 MR. VARELA: Pass the witness, Your Honor.

24 THE COURT: Anything further from the

25 State?

1 MS. HARVEY: No, Your Honor.

2 THE COURT: May this witness be excused?

3 MS. HARVEY: Yes, Your Honor.

4 THE COURT: Thank you, Deputy. You may
5 step down and you're excused.

6 Call your next witness, please.

7 MS. HARVEY: State calls Deputy Clint
8 Myers.

9 THE COURT: You may proceed.

10 MS. HARVEY: Thank you, Your Honor.

11 **CLINT MYERS,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MS. HARVEY:**

15 Q. Would you tell the jury what your name is?

16 A. Clint Myers.

17 Q. And, Deputy Myers, how are you currently
18 employed?

19 A. As a deputy sheriff with the Harris County
20 Sheriff's Department.

21 Q. How long have you been a deputy sheriff with
22 the Harris County Sheriff's Department?

23 A. I was commissioned in January of 2007.

24 Q. And what qualifications and -- what did you
25 have to do to become a Harris County Sheriff's deputy?