

Kim Nealy - May 18, 2011  
Recross-Examination by Mr. Cantu

1 Q. And was it Ms. Gentles that told you this?

2 A. Yes.

3 Q. Okay.

4 MR. CANTU: Pass the witness, Your Honor.

5 THE COURT: Mr. Leslie?

6 MR. LESLIE: Nothing further, Your Honor.

7 THE COURT: May this witness be excused?

8 MR. LESLIE: Yes, Your Honor.

9 THE COURT: Sir, you may be excused. Step  
10 down. Thank you for coming down. Call your next  
11 witness.

12 MR. LESLIE: State calls Officer Berry.

13 THE COURT: If y'all need a break, just  
14 raise your hand. Anybody need a break?

15 THE JURY: (Shakes head side to side.)

16 THE COURT: Come on up, sir. This officer  
17 has already been sworn. Have a seat and keep your voice  
18 up for us.

19 You may proceed when you are ready.

20 MR. LESLIE: Thank you, Judge.

21 **LEE BERRY,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 BY MR. LESLIE:

25 Q. Officer, can you state your full name for the

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1 record.

2 A. Lee Berry.

3 Q. And where do you work?

4 A. Fondren IFR.

5 Q. What is IFR?

6 A. IFR stands for Investigative First Responder.

7 It's a small Investigative Division inside Homicide.

8 And there's a group of us inside, pretty much inside

9 every station throughout the City of Houston.

10 Q. When you say it's a small group, about what  
11 size group is that?

12 A. Total, I think, there's about 70 or 80 of us.

13 Q. And what are your duties with that unit? What  
14 do you do?

15 A. Same as every other investigator for the City  
16 of Houston. We investigate every crime except for  
17 murders and sexual assaults from beginning to end. Once  
18 patrol passes it on to us, then we take it over from  
19 there.

20 Q. Okay. So, how do you become involved in the  
21 case? What are the steps that happen?

22 A. There's different ways of doing it. Normally  
23 after the fact, a patrol officer can refer the case to  
24 you. The primary -- our primary focus is usually if  
25 there's a call that drops, a patrol officer will go out

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1 there. They ask for an IFR officer, and then we will go  
2 out there and assist them and tell them if it's a case  
3 worthy of investigation. Then we'll take over from that  
4 point. But that's our primary focus. We are supposed  
5 to be out there in the trenches with the patrol  
6 officers.

7 Q. Okay. So, on February 16, 2011, were you  
8 assigned to this Investigative First Responders Unit?

9 A. Yes.

10 Q. How long had you worked with them?

11 A. Since its inception. Pretty much about two  
12 years now.

13 Q. And how long have you been with the Houston  
14 Police Department?

15 A. Almost five years now.

16 Q. What did you do before then?

17 A. I worked for the County. I was a deputy for  
18 the County.

19 Q. And what does it take to get on this IFR team  
20 or unit?

21 A. Normally they want some kind of basic  
22 investigator background. I've gone through a 40-hour  
23 basic investigator school for regular investigators,  
24 also narcotics investigator school. I've got a number  
25 of cases that I've had assigned to me since I've worked

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1 for it. But prior to that I also -- in a basic way, me  
2 and my partner investigated some cases before. So we  
3 had some stuff under -- I had some stuff under my belt  
4 before I came over here.

5 Q. Okay. Is it considered like some sort of a  
6 special assignment or a prestige duty?

7 A. I mean, it's the same as any other  
8 investigative unit, burglary and theft, you know, any  
9 other division inside Homicide, Robbery. It's pretty  
10 much the same.

11 Q. Okay. And as part of this unit, do you -- you  
12 operate in a uniform?

13 A. Yes.

14 Q. And do you usually work with a partner or you  
15 work alone?

16 A. Sometimes we will work cases. We've got four  
17 officers or four investigators on day shift and then  
18 four investigators on evenings. And if there is a big  
19 case working, then usually we will come together and  
20 help each other out.

21 Q. How did you get involved in this case?

22 A. I believe I saw it over the -- each patrol car  
23 has a computer M.D.T., and I saw that Officer Nealy had  
24 been dispatched to the location in regards to an  
25 assault; and I told Dispatch that I was heading over

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1 there to check by to see if I could assist in any way.

2 Q. So, were you actually out patrolling or were  
3 you at the station?

4 A. I believe I was out on the streets, looking for  
5 a case out there; and then I happened to see the one  
6 that Officer Nealy was on.

7 Q. Okay. And do you recall about what time that  
8 was that you saw that?

9 A. I honestly don't remember. It was a while ago.

10 Q. And what did you do when you decided to respond  
11 to this call?

12 A. Once I got out there, I initially spoke with  
13 Officer Nealy to find out what was going on.

14 Q. Let me just back up for a second. When you  
15 showed up on the scene, what was the status? Where was  
16 Officer Nealy? Where were the parties?

17 A. He was speaking with the complainant in the  
18 case, just a few feet away from his patrol car, and I  
19 saw that the defendant was being detained in the back of  
20 his car.

21 Q. And so do you see the individual who's detained  
22 in his car in the courtroom here today?

23 A. Yeah.

24 Q. Can you identify him by an article of clothing,  
25 point to him?

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1           A.     He's sitting over there in the black shirt  
2     (indicating).

3                         MR. LESLIE:   May the record reflect he's  
4     identified the defendant, Your Honor.

5                         THE COURT:   Yes, it will reflect that.

6           Q.     (BY MR. LESLIE) So what did you do once you  
7     arrived on the scene?

8           A.     Then I asked Officer Nealy what he had, and he  
9     told me from there that it was an assault.  He told me  
10    what the complainant initially told him about how she  
11    was assaulted by the defendant, and then I took it over  
12    from there.

13          Q.     Okay.  Did you verify his statements or what  
14    she had told him?  Did you --

15          A.     I tried speaking with her.  She told me that  
16    she was assaulted by the defendant, and so from that  
17    point I was able to -- I tried to get more in depth with  
18    her.

19          Q.     Okay.  What was her demeanor?  Was she upset?  
20    Was she --

21          A.     She appeared to be upset.  Nothing stands out.  
22    You know, nothing just kind of jumps out at me right now  
23    but just, you know, she did seem to be upset at the  
24    time.

25          Q.     Okay.  Did you see any injuries on her?

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1           A.    I can't remember.  I've gone through so many  
2 cases on the top of my head, honestly, I can't remember.  
3 If I documented it in my investigation that I saw them,  
4 then I did.  But I can't remember right now.

5           Q.    So, would it help you refresh your memory if  
6 you could look at the offense report?

7           A.    Yeah.

8                         MR. LESLIE:  Permission to approach, Your  
9 Honor.

10                        THE COURT:  Yes, you may.

11           Q.    (BY MR. LESLIE) Take a look at that and refresh  
12 your memory.  Just let me know when your memory has been  
13 refreshed, officer.

14           A.    Yeah, I remember a few of the injuries.

15           Q.    What were they?

16           A.    Just the ones that I documented.  I observed  
17 that day that she had redness and a bruise to her eye,  
18 small scratch just below her collarbone.

19           Q.    Did she indicate those caused any pain to her?

20           A.    Yes, she did.

21           Q.    You obviously wrote it in your report.  Did you  
22 take any pictures?

23           A.    I tried to.

24           Q.    Now, these days everybody has a cell phone,  
25 pretty much, that takes cameras.  Are you allowed as an

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1 officer to just take pictures with your cell phone?

2 A. An officer can take pictures with their cell  
3 phone but it's in our S.O.P., in our general records,  
4 that if you do, then you have to tag it into evidence.  
5 Normally most officers, I'm not sure if they -- some do,  
6 some don't have cameras. For me, I have a camera that  
7 usually when I go on the scene, I am able to document  
8 any injuries. So, I wouldn't use my cell phone.

9 Q. So, basically under your general orders, your  
10 standard operating procedure, you are not supposed to  
11 take pictures with your own personal equipment?

12 A. Pretty much, yeah.

13 Q. So, you have a department-issued camera that  
14 you use for investigation; is that right?

15 A. Not department issued, but I do have a camera  
16 that I document with any investigation that I have.

17 Q. Okay. And you said that she wouldn't let you  
18 take pictures of her injuries?

19 A. Yeah. She wouldn't allow me to take any  
20 injuries -- or any pictures of her injuries.

21 Q. Did she say why not?

22 A. Once I got to the point where I was trying to  
23 further the investigation, she was very reluctant to  
24 cooperate at that point. She just wanted it all to go  
25 away. She just wanted to leave. She just wanted it to



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1 go away.

2 Q. Did she tell you how long she had been dating  
3 the defendant?

4 A. I believe she had only been seeing him for a  
5 short time. I don't believe it was too long that she  
6 had actually been dating him, if she was -- I'm not  
7 entirely sure exactly how long they had been together,  
8 but I know they were in some way, shape, or form in some  
9 kind of a dating relationship.

10 Q. All right. Did you try to conduct any kind of  
11 interview with the defendant?

12 A. I spoke to him. He kept asking me -- he kept  
13 screaming at me from the back of Officer Nealy's patrol  
14 car.

15 Q. Screaming?

16 A. Yeah. He was yelling at me. He wanted to get  
17 my attention.

18 Q. What was he saying?

19 A. But he wasn't -- he wasn't telling me anything  
20 of use to the investigation. He just kept yelling at me  
21 that, you know, that he didn't do this, he wanted to  
22 talk to the complainant. He wanted to talk to the  
23 complainant.

24 Q. But did you try to talk with him?

25 A. Yeah, I tried to speak with him.

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1 Q. And how many -- so, you said that you've been  
2 with this Investigative First Response team for two  
3 years or was it three?

4 A. About two years.

5 Q. How many domestic violence scenes have you  
6 responded to?

7 A. At least a hundred. I'm -- you know, just off  
8 the top of my head, maybe a hundred.

9 Q. Then going back before that to when you weren't  
10 with the IFR, just as a regular patrol officer, and  
11 let's throw in when you were a deputy before that, how  
12 many domestic violence scenes have you responded to,  
13 would you say?

14 A. Since 2002, a number of them. Hundreds, maybe  
15 even a thousand. I'm not sure.

16 Q. Have you ever seen a situation where the victim  
17 didn't want the defendant to go to jail?

18 A. All the time.

19 Q. Have you ever seen a situation where the  
20 defendant didn't want to cooperate with you?

21 A. All the time.

22 Q. Ever seen a situation where they wouldn't let  
23 you even photograph their injuries?

24 A. Yes.

25 MR. LESLIE: No further questions, Your

1 Honor.

2 THE COURT: Mr. Cantu.

3 MR. CANTU: Thank you, Judge.

4 **CROSS-EXAMINATION**

5 BY MR. CANTU:

6 Q. So, it's pretty difficult out there on the  
7 streets trying to get cooperation from complainants and  
8 witnesses?

9 A. It can be at times.

10 Q. All the time, you say?

11 A. Well, it can be at times.

12 Q. How long have you been with the police force?

13 A. Altogether, I've been a police officer for  
14 about eight years.

15 Q. With H.P.D.?

16 A. With H.P.D.?

17 Q. Yes, sir.

18 A. Almost five years.

19 Q. It takes about five years to get as scenical as  
20 you are at this point?

21 MR. LESLIE: I'm going to object to that,  
22 Your Honor.

23 THE COURT: Sustained.

24 A. I don't --

25 THE COURT: You don't have to answer that,

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1 sir.

2 THE WITNESS: Okay.

3 Q. (BY MR. CANTU) Because didn't Mr. Tarley talk  
4 to you or did he want to talk to you?

5 A. He attempted to try and get me so that I can  
6 bring the complainant over to him, but during that he  
7 was just yelling at me.

8 Q. Didn't you want to go over there and listen to  
9 what he might say as to the total case?

10 A. No. I was over there.

11 Q. Did you go by and listen to what he might have  
12 to say? Did you write it down in your report?

13 A. I didn't document what he was yelling at me.  
14 No, I didn't.

15 Q. But you documented what Ms. Gentles said,  
16 right?

17 A. Uh-huh.

18 Q. So, there was a point in time you accepted what  
19 she said to be the truth and what Mr. Tarley was saying  
20 of no use to you?

21 A. No, I did not.

22 Q. You did not do that?

23 A. No, I did not.

24 Q. Okay. So, it's written here somewhere what  
25 Mr. Tarley -- when he spoke to you?

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1 A. There was no speaking going on.

2 Q. No speaking?

3 A. No. He was yelling at me.

4 Q. Trying to get your attention?

5 A. I was right next to him. I was right next to  
6 the window where he was sitting.

7 Q. Did you speak with him --

8 A. Yes, I did.

9 Q. -- and ask him for the information that he  
10 might have?

11 A. He was yelling the information.

12 Q. Did you go to his apartment and document what  
13 might have occurred at the apartment?

14 A. No, I did not.

15 Q. Well, didn't Ms. Gentles tell you that that's  
16 where it all occurred?

17 A. No, she did not.

18 Q. Did you talk to her about where it might have  
19 occurred?

20 A. I tried to.

21 Q. Did you ever get a sense of where it might have  
22 occurred from the other police officer that was there  
23 prior to you arriving?

24 A. I believe I did. I think he said where it  
25 started, but the majority of it took place outside.

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1 Q. Did you go to where it started? And was this  
2 Police Officer Nealy that told you this?

3 A. No, I did not.

4 Q. Is there anything in your report that was said  
5 to you by Mr. Tarley or anyone that represented  
6 Mr. Tarley on that particular night?

7 A. I'm not sure. I don't believe so.

8 Q. At some point in time, Ms. Gentles indicated  
9 either implicitly or explicitly that she didn't want to  
10 talk to you anymore?

11 A. Yes.

12 Q. Nor did she want you to take her photographs?

13 A. Yes.

14 Q. What did you take from that when she told you  
15 this?

16 A. In any domestic-violence case that I've ever  
17 worked before, there is a number of cases where the  
18 complainant takes her word; she gets scared; she doesn't  
19 want to go forward anymore. That's what I took from it.

20 Q. What did you take from that when she told you  
21 that night, not what you've learned in the past?

22 A. That she didn't want to cooperate that night.  
23 That's what I took from that.

24 Q. Because you didn't know her well enough to take  
25 anything other than what she said, what her words were,

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1 right?

2 A. Exactly.

3 Q. And did she indicate to you that as a matter of  
4 fact she's thinking about leaving town?

5 A. I don't recall.

6 Q. Did you -- at any time after this initial night  
7 did you speak with her?

8 A. After that night, no, I did not.

9 Q. And that was based on her conversation with you  
10 about leaving her alone?

11 A. Well, at that point my investigation was over.

12 Q. Okay. You had done all that you could as a  
13 police officer?

14 A. At that point, yes. Once I passed it on to the  
15 D.A.'s Office, yes.

16 Q. And did you pass on the idea that Ms. Gentles  
17 did not want to prosecute Mr. Tarley?

18 A. I just passed on the fact that she wasn't  
19 cooperating at that point.

20 Q. Are there any photographs taken by anyone of  
21 Ms. Gentles?

22 A. Not to my knowledge.

23 Q. Are there any photographs taken of where it  
24 started? And I think that's how you phrased it, where  
25 all of this started, which I understand it to be

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1 Mr. Tarley's apartment. But maybe you didn't get that  
2 far.

3 A. Not to my knowledge. No photographs were taken  
4 of the scene.

5 Q. Had you ever had an occasion to meet  
6 Ms. Gentles prior to this time --

7 A. No.

8 Q. -- as a police officer making calls?

9 A. No.

10 Q. You generally -- were you located -- was your,  
11 I guess, your substation, your station, was it nearby?

12 A. It's fairly close, I believe.

13 Q. Is it the neighborhood station?

14 A. It's the district's, yeah.

15 Q. Okay. It's the neighborhood district?

16 A. Yeah.

17 Q. Okay. So, disturbances there you go to quite  
18 often?

19 A. I don't remember being there before.

20 Q. Okay. And you will have -- so I can recall,  
21 your shift is what now?

22 A. I work day shift now.

23 Q. Your shift then, though, was --

24 A. Was evenings.

25 Q. -- evenings. This is 6:00 to --



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1 A. 2:00 p.m. to 10:00 p.m.

2 Q. 2:00 p.m. to 10:00 p.m.?

3 A. That was the shift that I was working at the  
4 time.

5 Q. At the time. So, you've got a lot of work as a  
6 person investigating these types of cases?

7 A. In 17 District, yes.

8 Q. But you had never gone to this apartment?

9 A. I don't remember ever going there.

10 Q. Okay.

11 MR. CANTU: Pass the witness, Your Honor.

12 THE COURT: Mr. Leslie.

13 MR. LESLIE: Briefly, Your Honor.

14 **REDIRECT EXAMINATION**

15 BY MR. LESLIE:

16 Q. You mentioned something about passing the case  
17 off to the District Attorney's Office. What do you mean  
18 by that?

19 A. At the point, once I get all of the  
20 complainant's information, she tells me at that point  
21 that she had been assaulted, the fact that she felt pain  
22 once she was assaulted by the defendant, and pass that  
23 to the point where she's telling me that she didn't want  
24 me to take any pictures of her. But I was able to  
25 observe the fact that she did have visible injuries, and

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1 Officer Nealy also observed the fact that she had  
2 visible injuries and I told him to document that in his  
3 original report and I would document that in my  
4 investigation. Then I present all of that information  
5 to the District Attorney's Office.

6 Q. Why do you do that?

7 A. Because it's at that point the D.A. decides  
8 whether or not this case has enough legs to stand on.

9 Q. When you say, "legs to stand on" --

10 A. If there's enough evidence from what the  
11 officers observed, from what the investigators observed,  
12 from what was said by the complainant and from that  
13 point. And if there were any photos that could be  
14 taken, then, I mean, that would also help. But for the  
15 most part, we get on scene and a lot of times  
16 complainants don't want to cooperate, you know.

17 Q. So, are you allowed to arrest individuals on  
18 your own authority?

19 A. Not at all. Not unless it's a Class C  
20 misdemeanor. Above a Class C misdemeanor, a Houston  
21 police officer has to get the authority from the D.A.'s  
22 Office.

23 Q. And have you ever tried to get that authority  
24 from the D.A.'s Office and had it declined?

25 A. Yes.

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1 Q. Have you ever had an assault case where you've  
2 called and had them decline to accept those charges?

3 A. Yes.

4 Q. Have you ever had an assault case where you've  
5 gone out and you've listened to the parties and said,  
6 I'm not even going to call the D.A.'s Office. I don't  
7 think there's enough to even present to them?

8 A. Me personally, no. I usually just call the  
9 District Attorney's Office just to touch base with them,  
10 just to cover all of my ins and outs. So, I would say I  
11 would always call the D.A.'s Office just to cover  
12 myself. But at this particular time, with this  
13 investigation, I felt that it was necessary to call the  
14 D.A.'s Office.

15 Q. Okay. And what was their response?

16 A. They asked me what I observed, what the  
17 officer -- responding officer observed. And I told them  
18 that I did observe some minor injuries, the fact that  
19 initially as soon as I arrived there the complainant  
20 stated that she was assaulted by the defendant. And I  
21 spoke to the responding officer and he said that the  
22 complainant told him in depth what actually occurred.  
23 And I got her statement from him, from what he got from  
24 her; and that's everything that I told to them.

25 Q. Okay.

1 MR. LESLIE: Nothing further, Your Honor.

2 THE COURT: Mr. Cantu.

3 MR. CANTU: Thank you, Your Honor.

4 **RECROSS-EXAMINATION**

5 BY MR. CANTU:

6 Q. Now, did she go into detail or did she -- as a  
7 matter of fact, did she define in any moment what an  
8 assault was to her?

9 A. She just said that she felt pain and the manner  
10 in which she received -- you know, that she was struck.

11 Q. Well, no. No. You had said that she told you,  
12 I was assaulted, officer.

13 That's what you said?

14 A. Yeah.

15 Q. So, she used that word. Did you ask her what  
16 that meant to her?

17 A. I asked her how she was assaulted, yes.

18 Q. Because that's, as you well know, that's a  
19 legal term, isn't it?

20 A. What's a legal term?

21 Q. "Assault".

22 A. Yes.

23 Q. But she knew this term. And did you ask her  
24 what it meant to her, whether she was dragged or what --  
25 I mean, did she explain this to you?

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1           A.    I asked her how she was assaulted, and she  
2 said -- very briefly, she said that, He hit me.

3           Q.    Okay.  And she said where, right?

4           A.    With me -- she didn't go into detail with me.  
5 She pretty much shut down at this point.

6           Q.    Did she say when?

7           A.    Did she say when she was assaulted?

8           Q.    When she was hit.  She said, He hit me?

9           A.    She did not tell me, no.

10          Q.    Because you say you saw some minor injuries?

11          A.    Uh-huh.

12          Q.    You are able to detect some minor injuries?

13          A.    Uh-huh.

14          Q.    But you didn't tell the jury when those  
15 injuries might have occurred and by whom they were  
16 inflicted.  Did you get that information from her?

17          A.    She said that the defendant assaulted her.

18          Q.    We are talking about the injuries that you are  
19 talking about, minor injuries -- you said she said she  
20 had some minor injuries that you said you saw?

21          A.    Uh-huh.

22          Q.    Okay.  Were you able to determine when she got  
23 those and from whom she got them?

24          A.    She didn't tell me the exact time in which she  
25 said the defendant assaulted her.  She didn't pinpoint

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1 the exact hour and second, no.

2 Q. Okay. When she said, I've been assaulted by  
3 this person --

4 A. Uh-huh.

5 Q. -- and to better explain that, she showed you  
6 these minor injuries?

7 A. Well, she didn't have to show them. They were  
8 visible. They are out of her clothing. They are very  
9 visible.

10 Q. Did you go to the apartment to see that she  
11 might have gotten hurt in the apartment?

12 A. No, I did not.

13 Q. Did you ask her that question about when it  
14 occurred, a direct question?

15 A. I don't recall.

16 Q. Would it be in your report, your -- you've got  
17 a supplement which means you added onto Officer Nealy's  
18 initial report?

19 A. Yeah. Normally I will ask a complainant if  
20 they were assaulted and roundabout when it occurred.

21 Q. And you had that in your supplement, your  
22 add-on?

23 A. If I asked her that, then it would be in my  
24 supplement somewhere.

25 Q. And if you will bear with me, sir.

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1                   Did you ever stand in front of the  
2 apartment?

3           A.    I -- no.

4           Q.    If you will refresh your memory with your  
5 report and go to Page 2.006.

6           A.    Uh-huh.

7           Q.    There is a supplement narrative.

8           A.    Uh-huh.

9           Q.    It's the last page -- last sentence, rather, of  
10 the first paragraph. Do you see that, sir?

11          A.    Say that again.

12          Q.    The last sentence of the first paragraph.

13                   THE COURT: Just read it to yourself.

14          Q.    (BY MR. CANTU) Read it and I will ask you a  
15 question. First read it, sir.

16          A.    Yeah.

17          Q.    You stood by that apartment --

18          A.    No.

19          Q.    -- at one time?

20          A.    No.

21          Q.    Your report indicates that you are there in  
22 front of the apartment with Officer Berry?

23                   MR. LESLIE: I'm going to object to  
24 improper impeachment. It's been asked and answered.

25                   THE COURT: Sustained. You should

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1 rephrase your question.

2 MR. CANTU: Thank you, Your Honor. Sorry,  
3 Your Honor, for not standing.

4 Q. (BY MR. CANTU) Let's go beyond that, then. You  
5 didn't write about anything that you might have seen  
6 near the apartment or in the apartment? You never went  
7 there, right?

8 A. I didn't -- I didn't describe the scene inside  
9 the apartment or near the apartment itself, no, because  
10 I was not there.

11 Q. Okay. You don't have anything to document what  
12 you've told this jury today, do you?

13 A. Say that again.

14 Q. You don't have any photographs, audiotapes,  
15 CDs, disks, anything that you might have used to record  
16 and document what you saw, what you observed on this  
17 evening or that evening, rather?

18 A. No.

19 MR. CANTU: Okay. Pass the witness, Your  
20 Honor.

21 THE COURT: All right. I think this is a  
22 good time -- do you have any more questions?

23 MR. LESLIE: I have no further questions  
24 for this witness, Your Honor.

25 THE COURT: Okay. May he be excused?