

1 THE COURT: Is anybody invoking the Rule?

2 MR. GONZALEZ: Yes, Your Honor. Defense  
3 would invoke the Rule.

4 THE COURT: Okay. So, if you are going to  
5 testify, you can't sit here and listen to the testimony,  
6 so.

7 (Witness sworn.)

8 **VANCE BERRY,**

9 having been first duly sworn, testified as follows:

10 BY MR. ALLARD:

11 Q. Could you state your full name for the record,  
12 please?

13 A. Deputy Vance Berry.

14 Q. And what is it you do?

15 A. I'm currently assigned as a detective with the  
16 Polk County narcotics division, Livingston, Texas.

17 Q. How long have you been with the police agency?

18 A. Five years.

19 Q. What kind of training have you had to do the  
20 police that work you do?

21 A. Police work starts with basic police officer's  
22 certificate, which you receive through Angelina College,  
23 Lufkin, Texas.

24 Q. And are you getting licenses or certificates?

25 A. I have a basic peace officer's license.

1 Q. Were you employed with the Polk County  
2 Sheriff's Office on November 20th, 2010?

3 A. Yes.

4 Q. And what was your duty on November 20th, 2010  
5 as an officer?

6 A. Assigned to patrol, just patrol the county,  
7 take calls, go to disturbances, things like that.

8 Q. What was your duty back then? Was it the same  
9 as it is now?

10 A. No.

11 Q. What was your duty back then?

12 A. As a patrol officer, patrol the county, take  
13 calls, check businesses in whatever area you're assigned  
14 to, basically run traffic, make proactive traffic stops,  
15 things of that nature.

16 Q. And whatever possibly they dispatch you to?

17 A. Sir?

18 Q. Whatever they possibly dispatch you to?

19 A. That's correct.

20 MR. ALLARD: May I approach the witness,  
21 Your Honor?

22 THE COURT: You may.

23 Q. (BY MR. ALLARD) Showing the witness what's  
24 been premarked as State's Exhibits 1, 2, 3, 4, 6, and 7.

25 Would you please look at State's Exhibits

1 1, 2 and 3?

2 A. Yes.

3 Q. And tell me if you recognize those.

4 A. Yes, I do.

5 Q. How is it you recognize them?

6 A. You have A here. It's on 59. I believe that's  
7 marked in the Goodrich area.

8 Q. Is this the area you are familiar with?

9 A. Yes, it is. It is just outside of Livingston.  
10 It's in south Polk County, part of my area as far as I  
11 was assigned that night.

12 Q. Are those fair and accurate representations of  
13 the area which you are responsible for as a police  
14 officer?

15 A. Yes.

16 Q. Handing you what's been marked as State's  
17 Exhibit No. 4. Do you recognize this?

18 A. I believe this is the surveillance video from  
19 the store.

20 Q. Okay. Have you watched that surveillance  
21 video?

22 A. Yes.

23 Q. Is that a fair and accurate representation of  
24 the events that took place on November 20th, 2010?

25 A. Yes.

1 Q. Has it been altered or changed in any way?

2 A. No, sir.

3 Q. Would you please look at State's Exhibit 6 and  
4 7? Do you recognize those?

5 A. Yes, I do.

6 Q. Okay. Are those a fair and accurate  
7 representation of what they purport to depict?

8 A. Yes, sir.

9 MR. ALLARD: Tendering to defense counsel  
10 State's Exhibits 1 through 4, 6 and 7.

11 MR. GONZALEZ: No objections, Your Honor.

12 THE COURT: Then State's Exhibits 4  
13 through --

14 MR. ALLARD: One through 4, 6 and 7.

15 THE COURT: -- are admitted without  
16 objection.

17 MR. ALLARD: May I publish, Your Honor?

18 THE COURT: You may.

19 Q. (BY MR. ALLARD) Showing you State's Exhibit  
20 No. 1. What is it that State's Exhibit No. 1 is?

21 A. That's a map of -- looks like a map of 59  
22 between Houston and Livingston.

23 Q. That screen you're looking at, if you touch it,  
24 you can actually draw on it. Touch it on the lower  
25 left-hand corner and it will clear it.

1                   Is this part of area which you patrol?

2           A.    Yes, it is.

3           Q.    Draw a big circle over what part of your area  
4 is.

5           A.    It would actually -- could you move it down a  
6 little bit?  Actually, the county goes from the river  
7 here around the lake and kind of comes up goes back this  
8 way.  This is actually Tyler County on this side and San  
9 Jacinto, Trinity County.

10          Q.    Was that the area that you were --

11          A.    Yes, the area inside the red.

12          Q.    -- working on on November 20th?

13                   Now, Deputy, wait for me to finish my  
14 question, even though you may already know the answer  
15 because she does have to type it all down.

16          A.    Okay.

17          Q.    If we speak over each other, she gets nothing  
18 and we have no record.

19          A.    Okay.

20          Q.    What is that?  That's State's Exhibit No. 2.  
21 What does it depict?

22          A.    Be an area where the truck stop would be  
23 located off 59 between Goodrich and Livingston.

24          Q.    Now, on November 20th, 2010, was there anything  
25 unusual that happened at that truck stop?

1 A. Yes.

2 Q. And what was that?

3 A. It would be an aggravated robbery --

4 MR. GONZALEZ: Object to as to hearsay,  
5 Your Honor.

6 THE COURT: He's not repeating what  
7 someone said. He's just asking what happened on that  
8 day.

9 You may continue.

10 A. Disturbance call that ended up being an  
11 aggravated robbery.

12 Q. (BY MR. ALLARD) Okay. Was that something you  
13 were dispatched to?

14 A. That's correct.

15 Q. And when you got that call, what did you do?

16 A. I was actually the one who responded to the  
17 call. Normally inside the county, there is three to  
18 four deputies working at one time at night. Usually  
19 when a call comes out where there may be -- the way the  
20 call was dispatched, it was dispatched over the radio as  
21 a physical disturbance involving a gun at the Polk's  
22 Truck Stop in Goodrich. Usually anything involving a  
23 gun, other officers will respond as well.

24 Q. But you responded to that call?

25 A. I did respond to that call.

1 Q. When you got to the scene, what did you do?

2 A. I got to the scene. I observed, of course, the  
3 truck sitting inside the store.

4 Q. I'm showing you what's been admitted as State's  
5 Exhibit No. 7. And this, State's Exhibit No. 7, what  
6 you just referred to?

7 A. That's correct.

8 Q. And is that a fair and accurate representation  
9 of what you saw that day?

10 A. Yes, sir.

11 Q. What else did you see?

12 A. Also observed a late model or early model tan  
13 Lincoln Town car parked outside the store in front of  
14 the doors that used to be there.

15 Q. Showing you what's been admitted at State's  
16 Exhibit No. 6. Is this the vehicle you were referring  
17 to?

18 A. That's correct.

19 Q. Now, once you got to the scene, what did you  
20 do?

21 A. I saw two white males sitting on a curb. There  
22 was also -- there was a reserve officer that works for  
23 Onalaska Police Department, which is also inside Polk  
24 County. He was actually on his way home in his personal  
25 vehicle and there was a portable radio. He heard us

1 dispatched to the call. He was actually the first  
2 person on scene.

3 Q. So, once you got to the scene, what did you do?

4 A. I got with him, asked him what he saw, was  
5 going on. And he said he had just gotten there just  
6 seconds before I did. And he pointed to two white males  
7 he had sitting on the sidewalk next to the car. He  
8 said, That's two --

9 MR. GONZALEZ: Objection to hearsay, Your  
10 Honor.

11 THE COURT: Okay. Can't repeat what other  
12 people said unless it's what he said personally, unless  
13 it was the defendant's own statements.

14 Q. (BY MR. ALLARD) So, what did you do?

15 A. Okay. There was two white males sitting on the  
16 curb. I talked to them. One of them identified his  
17 self to me as Mr. Erickson. Basically he said --

18 MR. GONZALEZ: Objection to hearsay.

19 MR. ALLARD: That would be the exception  
20 to the hearsay rule.

21 A. What he told me?

22 THE COURT: All right. Then you may  
23 continue.

24 A. He told me that he and Mr. Holland, Eugene  
25 Holland, who was with him, also sitting on the curb, he



1 pulled into Polk's, went to the store, they bought a  
2 couple items. When they came out, he noticed the tan  
3 truck parked beside his vehicle, which was the Lincoln.  
4 He saw two black males sitting in the truck. They were  
5 kind of staring at him and Mr. Holland.

6 Q. Now, the person that was telling you this, do  
7 you see that person in the courtroom today?

8 A. Yes, sir.

9 Q. Would you please point to him and identify him  
10 by the clothing that he is wearing?

11 A. Mr. Erickson is in the orange county jumpsuit.

12 MR. ALLARD: May the record reflect, Your  
13 Honor, that he has identified the person as the  
14 defendant, the person he was speaking to at the truck  
15 stop?

16 THE COURT: It will.

17 Q. (BY MR. ALLARD) Then what happened?

18 A. He said -- he never went into detail about how  
19 things went in part of the chain of events, but he said  
20 he had some words with the guys in the truck. The guys  
21 got out. They got into a fight. One of the guys  
22 displayed a gun. He jumped -- Mr. Erickson jumped in  
23 the truck in an attempt to get away from the guys.

24 Q. Now, the truck you are referring to is the  
25 truck that is in State's Exhibit No. 7?

1 A. That's correct.

2 Q. Okay. Proceed.

3 A. He said the guys -- he got in the truck, hit  
4 the car, backed up, and then drove into the store while  
5 he was trying to get away from these guys. He said  
6 these guys ran towards the highway. That's the last he  
7 saw.

8 Q. Now, did the defendant tell you whose truck  
9 that was?

10 A. No.

11 Q. Did he say it was his truck?

12 A. No, he did not.

13 Q. After you got that information from the  
14 defendant, what did you do?

15 A. We actually -- it was a couple other witnesses  
16 who happened to see what was going on that was out  
17 there. By that time my sergeant and another deputy had  
18 arrived on the scene, began speaking with witnesses. I  
19 spoke to the two clerks inside the store.

20 Q. Was their recollection of what happened  
21 consistent with what the defendant had told you?

22 A. No.

23 MR. GONZALEZ: Objection.

24 Q. (BY MR. ALLARD) Proceed.

25 A. No, it was not.

1 Q. So, what did you do after you checked with  
2 these witnesses and you had conflicting testimony?

3 A. After all the witnesses were spoken to and  
4 everything, we were kind of making sense out of the  
5 whole deal, Mr. Erickson was placed in hand restraints  
6 then placed in the back of the car being detained at  
7 which time he was advised of his *Miranda* rights.

8 Q. Now, there were some other witnesses that you  
9 spoke to besides the clerks?

10 A. That's correct.

11 Q. Did you ever speak to the owner of the truck?

12 A. The owner of the truck was not on the scene at  
13 the time.

14 Q. Okay. Was there anybody else detained besides  
15 Mr. Erickson?

16 A. All of the witnesses were detained besides  
17 Mr. Erickson until -- with the exception of the clerks,  
18 it was obvious they worked there.

19 Q. Was there any video at the store?

20 A. Yes, surveillance footage.

21 Q. Was that video recovered?

22 A. Yes, it was.

23 Q. I'm going to show you now what has been  
24 admitted as State's Exhibit No. 4. What are we looking  
25 at right here?

1 A. The frames from the video cameras at the store.

2 Q. The bottom right-hand corner picture, what is  
3 that?

4 A. That's the inside of the front doors walking  
5 into the store.

6 Q. And what is the bottom left-hand camera?

7 A. That would be the gas pumps. It would be -- 59  
8 would be right behind that tractor-trailer you see out  
9 there.

10 Q. And the video in the top left-hand corner?

11 A. That would be facing 59 North.

12 Q. And then the top right-hand corner?

13 A. That would be facing the south side of the  
14 parking lot toward 59.

15 Q. I'm going to go ahead and advance these videos.

16 Now, is this the same video that you  
17 viewed when you were investigating this case?

18 A. Yes, sir.

19 Q. And, so, what is it we're looking at right now?

20 A. It would be the tan vehicle, which belonged to  
21 Mr. Wyatt. You can see him pulling up there. Mr. Wyatt  
22 is going inside the store there.

23 Q. Now, did you interview Mr. Wyatt?

24 A. Not until he had left the scene due to the  
25 circumstances with the --

1 MR. GONZALEZ: Objection, Your Honor,  
2 nonresponsive.

3 THE COURT: Okay. He'll ask you more  
4 questions.

5 Q. (BY MR. ALLARD) Did you interview Mr. Wyatt at  
6 any time?

7 A. No, I didn't. I did not speak with Mr. Wyatt  
8 personally.

9 Q. Was Mr. Wyatt interviewed by your agency?

10 A. Yes.

11 Q. Did you see Mr. Wyatt at the scene at some  
12 point that evening?

13 A. Yes, I did.

14 Q. Did you see Mr. Wyatt being interviewed by  
15 another officer?

16 A. Yes.

17 Q. What are we looking at now?

18 A. This would be in the bottom left-hand screen.  
19 The car pulls up next to Mr. Wyatt's vehicle. The guy  
20 sitting in the passenger seat would be Eugene Holland.  
21 The defendant would be standing between the door at the  
22 truck there.

23 Q. So, in the bottom left-hand camera view, the  
24 person standing up between the two cars is the  
25 defendant?

1 A. That's correct.

2 Q. He's the one wearing the green shirt?

3 A. Yes, sir.

4 Q. Who did we just see get in the truck?

5 A. The defendant.

6 Q. Where was Mr. Wyatt at the time the defendant  
7 got in the truck?

8 A. He was in the store purchasing a couple items,  
9 just in the store.

10 Q. Now, the defendant told you there was two black  
11 guys in the truck. The video shows how many black guys  
12 were in the truck?

13 A. Other than Mr. Wyatt, none.

14 Q. Was there any video -- did you see any  
15 confrontation with two black guys and a pistol on the  
16 video at any time?

17 A. No.

18 THE COURT: Did he have a gun in his hand  
19 there?

20 A. (No response.)

21 Q. (BY MR. ALLARD) What just happened right  
22 there?

23 A. Mr. Wyatt went to the driver's side of the  
24 Lincoln, seeing after he had went back in the store to  
25 ask for the clerks to call 911, and he went back

1 outside. He took the keys out of the Lincoln to keep  
2 the other suspects from driving away. And as he did  
3 that, it was just a little physical confrontation  
4 between him and Mr. Holland near the front of the car.  
5 That's what the defendant drove down this side of the  
6 car and struck the front of the store the first time,  
7 trying to hit Mr. Wyatt.

8 MR. GONZALEZ: Objection to hearsay, Your  
9 Honor.

10 MR. ALLARD: This is not hearsay, Your  
11 Honor. It's something he watched on video.

12 MR. GONZALEZ: I don't -- it is  
13 speculation as to frame of mind as to whoever was  
14 driving that truck as to what his intent was in driving  
15 by.

16 THE COURT: Okay. I'm watching it also.  
17 I can see that Mr. Wyatt was in the frame and the truck  
18 almost hit him.

19 MR. ALLARD: A person's intent can clearly  
20 be derived by their actions.

21 THE COURT: And we're all viewing it.

22 A. You can see in this part of the video, the  
23 defendant at the hood of the tan car.

24 Q. (BY MR. ALLARD) Are you talking about the  
25 bottom left-hand -- the bottom right-hand frame?

1 A. I'm sorry. The top right-hand frame.

2 Q. The top right-hand frame?

3 A. That's the one I'm looking at.

4 Q. What was significant about the actions when you  
5 observed this?

6 A. After watching -- seeing this and you see the  
7 other two -- the other witness that walked up, he had  
8 told us about this actions --

9 MR. GONZALEZ: Objection to hearsay.

10 THE COURT: You can't repeat what someone  
11 said.

12 THE WITNESS: Okay. I got you.

13 A. The defendant is right there at that area of  
14 the car. There was -- later a weapon was found hidden  
15 there inside the fender of the car.

16 Q. (BY MR. ALLARD) You say "weapon," what type of  
17 weapon was recovered from that car?

18 A. It was a 9 millimeter Ruger semiautomatic  
19 pistol.

20 Q. As part of this investigations, was there  
21 anything else you did with the investigation?

22 A. No, sir. Just took the initial photographs.  
23 Once Detective Allen arrived on the scene, the scene was  
24 handed over to her for the criminal investigation  
25 division to work it.



1 MR. ALLARD: Pass the witness.

2 THE COURT: Okay. Mr. Gonzalez.

3 **CROSS-EXAMINATION**

4 BY MR. GONZALEZ:

5 Q. Detective, is it your testimony today that you  
6 didn't see any of this firsthand with your own eyes? Is  
7 that correct?

8 A. That is correct.

9 Q. By the time you got there, it was all said and  
10 done?

11 A. That's correct.

12 MR. GONZALEZ: I'll pass the witness,  
13 Judge.

14 THE COURT: All right. Call your next  
15 witness.

16 MR. ALLARD: No further questions, Judge.

17 THE COURT: Thank you, Officer.

18 THE WITNESS: Yes, sir.

19 THE COURT: How far was it that you had to  
20 drive?

21 THE WITNESS: From Livingston, about two  
22 hours.

23 MR. ALLARD: May this witness be released.

24 MR. GONZALEZ: Yes.

25 THE COURT: Then you are released, sir.