

Melissa Friedley - January 14, 2014
Cross-Examination by Mr. Ash

1 MS. BACY: Could we just step back for
2 one second?

3 THE COURT: Okay. Walk quickly, please.
4 (Discussion off the record)

5 THE COURT: All right. Thank you. You
6 may proceed.

7 MS. BACY: Thank you, Your Honor.

8 **RAYMOND BERRYMAN,**
9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 BY MS. BACY:

12 Q. Can you please state your name for the record.

13 A. Officer Raymond Berryman.

14 Q. And can you please tell us a little bit about
15 your experience as a peace officer?

16 A. I work for the Webster Police Department. I
17 have been a police officer for six years -- five years.
18 This is my sixth year. I am a field training officer.
19 I'm also a police instructor. And I served as a
20 detective with the Webster Police Department in 2012.

21 Q. Okay. And, Officer Berryman, were you working
22 on September 8th of 2013?

23 A. Yes, ma'am, I was.

24 Q. Okay. And where were you working?

25 A. I was working for the Webster Police

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1 Department.

2 Q. Okay. And were you dispatched to a call that
3 day?

4 A. Yes, ma'am, I was.

5 Q. Do you know -- where were you dispatched to?

6 A. In this particular case, I was dispatched to
7 the Clear Lake Regional Hospital.

8 Q. And do you know the address of that hospital?

9 A. It's 500 West Medical Center Boulevard,
10 Webster, Texas.

11 Q. And is that in Harris County, Texas?

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

13 Q. And why were you dispatched there?

14 A. I was dispatched as a responding officer -- as
15 a backup officer to the lead officer in reference to a
16 physical disturbance between a male and a female.

17 Q. Okay. And during your investigation -- or
18 during the investigation, did you learn who the suspect
19 was?

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

21 Q. Okay. And what was that suspect's name?

22 A. His first name was Ivan. I couldn't pronounce
23 his last name.

24 Q. Would it be pronounced Osuna-Ayuste?

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

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1 Q. And do you see Ivan Osuna-Ayuste in the
2 courtroom today?

3 A. Yes, ma'am, I do.

4 Q. Can you please identify him by an article of
5 clothing?

6 A. He's wearing the blue tie and blue shirt.

7 MS. BACY: I would like the record to
8 reflect that this witness has identified the
9 defendant --

10 THE COURT: Yes, it will.

11 MS. BACY: -- Ivan Osuna-Ayuste.

12 THE COURT: Okay. Thank you.

13 Q. (By Ms. Bacy) And tell us about your
14 investigation.

15 A. When I made it on the scene, I was acting as a
16 support officer for the lead case officer, Officer
17 Selwyn Thomas.

18 Q. Okay. And during that investigation, did you
19 learn -- did you learn that there might have been any
20 evidence -- I guess, any reporting of this alleged
21 incident?

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

23 Q. Okay. And who alerted you to that?

24 A. The hospital staff, security staff.

25 Q. Okay. Now, where did they -- did you happen

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1 to view this evidence?

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

3 Q. Where did you view it?

4 A. In the security -- the main security staff
5 office.

6 Q. Did you know where that was?

7 A. Yes, ma'am. I have been there before.

8 Q. Okay. And who let you into that room?

9 A. One of the security staff escorted me in.

10 Q. Okay. And once escorted in, did you view
11 anything?

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

13 Q. What did you view?

14 A. I on-viewed a -- what appeared to be an
15 altercation between a male and a female found to be the
16 defendant and the victim in this case.

17 Q. Okay. Could you identify the woman on that
18 video?

19 A. Yes, I can.

20 Q. Okay. And did you learn, what was the
21 complaining witness' name?

22 A. It was Renee Roberts.

23 Q. Excuse me. Would you like to refresh your
24 memory or review your report?

25 A. I'm sorry. I'm sorry. That was the witness.

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1 The complainant was actually Melissa.

2 Q. And when you viewed the video, what did you
3 see?

4 A. The video was very choppy. It was very
5 distorted. You can -- the way that the cameras were set
6 up at the hospital is it's on an automatic motion where
7 it scans the parking lot. And while doing so, it's very
8 choppy. It's very grainy. So you are seeing bits and
9 pieces as it moves back and forth.

10 And as it's -- in doing that, you can see
11 the complainant and you can see the defendant pretty
12 much going back and forth with each other. You see the
13 victim walking away from a vehicle and then the
14 complainant -- then the defendant following the
15 complainant. Then you see at some point the victim on
16 the ground with the defendant over her. You see the two
17 up against the vehicle. And that is pretty much the
18 extent of it.

19 Q. And when you see her walking away, does she
20 look like she was trying to flee the scene?

21 A. It looked like she was wanting to walk away
22 from the scene, yes, ma'am.

23 Q. And you see the defendant following her?

24 A. That is correct.

25 Q. Did he follow her in an aggressive manner?

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1 A. I could just tell that they were walking.

2 Q. Okay.

3 A. I cannot tell if they were actually running or
4 not.

5 Q. Okay. And you said that you also viewed her
6 on the ground?

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

8 Q. And you viewed the defendant standing over
9 her?

10 A. That is correct, I did.

11 Q. Is he standing over her in an aggressive
12 manner?

13 A. Yes, he was, from what it appeared. While she
14 was on the ground, it appeared that he was above her in
15 a very aggressive manner or dictative manner.

16 Q. Okay. And what was he doing? Why are you
17 saying that he was aggressive?

18 A. I cannot -- from the video, I could not tell
19 exactly why or what was going on.

20 Q. Okay. And were his fists balled up?

21 A. I could not tell or remember.

22 Q. Okay. And what else did the video show?

23 A. From what I can remember, that is probably the
24 extent of it.

25 Q. Did you ever see --

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1 A. I did see -- I'm sorry. I did see him at one
2 point attempting to -- what appeared to be picking up
3 the victim off the ground, I did see that.

4 Q. And in what manner was he picking her up?

5 A. Almost like he was scooping her up off the
6 ground.

7 Q. Okay.

8 A. Picking up one arm under her upper body and
9 then her legs -- one arm under her legs -- under the
10 fold of her legs.

11 Q. Okay. Was it like in a loving manner?

12 A. No, not at all.

13 Q. Okay. It was in....

14 A. It appeared that she was not wanting to be
15 picked up.

16 Q. And he was forcing her up?

17 A. That is correct.

18 Q. Okay. And then after -- after viewing this
19 video, what did you do?

20 A. I spoke with the lead case officer, Officer
21 Selwyn Thomas, about what I observed.

22 Q. Okay. And did you make any attempts to
23 preserve this video?

24 A. The hospital video, no, ma'am, I did not.

25 Q. Okay. Did you ask anyone for a copy of the

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1 video?

2 A. No, ma'am, I did not.

3 Q. Why did you do that?

4 A. Normally the case officer would handle all of
5 the evidentiary values of the case.

6 Q. Okay. You did not tell him it would be
7 pertinent to grab that video?

8 A. One would assume that he would have done that,
9 but I just learned that he had not.

10 Q. Okay. Now, when you were helping
11 investigating -- helping out with the investigation, did
12 you have a chance to -- you viewed the defendant,
13 correct?

14 A. That is correct, I did.

15 Q. What was his physical appearance?

16 A. He was very sweaty, out of breath at the time
17 of me initially meeting him. His clothes were -- were
18 not together. You could tell that something had
19 happened.

20 Q. He appeared as though he was in a physical
21 altercation?

22 A. That is correct.

23 MS. BACY: State would pass the witness.

24 THE COURT: Okay. Thank you.

25 Mr. Ash.

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1 MR. ASH: Yes.

2 **CROSS-EXAMINATION**

3 BY MR. ASH:

4 Q. You went to the security staff of the hospital
5 to view the videotape. What was the reason that you
6 decided to do that?

7 A. The hospital staff had met with Officer
8 Thomas, which he was the first officer on the scene; and
9 advised that there possibly was video.

10 Q. So was it -- did you see cameras up there and
11 then thought, well, maybe there is a video or was it
12 Officer Thomas that told you, hey, come in. There is a
13 possible video?

14 A. No. The staff and all my experience of
15 working several cases at the hospital, I knew that there
16 were multiple cameras throughout the parking lot and in
17 the hospital; but the security staff did inform the
18 officers that there was possible footage.

19 Q. So you are saying that from previous cases,
20 you know that there is a video system in that area?

21 A. That is correct.

22 Q. Okay. And so you are aware of the methods by
23 which it could be preserved for --

24 A. I am aware, yes, sir.

25 Q. And now you said you observed the -- on the

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1 video that there was an altercation. Were you able to
2 see the faces of the people?

3 A. They were -- you could not definitively see
4 the face of the person in the -- on the video.

5 Q. Is it because it's a little bit blurry? Is
6 that what it is?

7 A. Correct. Like I said, it's grainy; but you
8 can identify them by the clothing that they were
9 wearing, the location of where they said that they were
10 and then other things.

11 Q. All right. Is the video in color or is it in
12 black and white?

13 A. The video is in -- in a very low saturated
14 color.

15 Q. And now did the video show that a man punched
16 a woman on the face?

17 A. You did not see that in the video.

18 Q. Okay. Did it show a man throwing somebody
19 down?

20 A. It did not show -- it just showed the female
21 on the ground at the point that it panned back over to
22 her.

23 Q. Okay. So did it show the female falling down?

24 A. It did not.

25 Q. But it showed that she was down on the ground?

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1 A. That is correct.

2 Q. And you said that he was picking her up with
3 two hands. Was it with two hands or was it with one
4 hand?

5 A. Yes, it appeared that he was scooping her up.

6 Q. With -- and on her arms?

7 A. I'm sorry?

8 Q. On her elbows, her arms?

9 A. Underneath -- underneath her arms.

10 Q. On her back?

11 A. That is correct.

12 Q. On her back. Okay. Now, you then -- did
13 you -- after you saw that videotape, is it then when you
14 went to look for the male, which is -- or was it your
15 partner?

16 A. No, sir. We already had the defendant in
17 our -- with us outside of the hospital.

18 Q. Okay. Now, you said that he appeared to be
19 sweaty?

20 A. Yes, sir.

21 Q. Because it looked like he could have come from
22 working out at a gym or a dance hall or something like
23 that?

24 A. No, sir, it did not. He could have -- if he
25 was leaving a dance hall, that is very well possible;

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1 but he was -- it looked like more that he just finished
2 running a marathon. That is how much he was sweating.

3 Q. But the videotape does not show him running.
4 You said that the videotape showed him walking.

5 A. I advised I could not -- I could not tell if
6 he was walking or running.

7 Q. Now, how long was this videotape? Was it two
8 minutes, three minutes?

9 A. The footage is -- it's on a 24-hour system.
10 So it continues to record. The incident appeared to be
11 anywhere in between 10 to 15 minutes.

12 Q. So you viewed 10 or 15 minutes of the video --
13 the two persons that were on video for about 10 to 15
14 minutes?

15 A. That is correct.

16 Q. Now, did you have the occasion to see --

17 MR. ASH: Well, I will pass the witness.

18 THE COURT: All right. Anything else?

19 MS. BACY: Okay. Just one question.

20 THE COURT: All right, ma'am.

21 **REDIRECT EXAMINATION**

22 BY MS. BACY:

23 Q. The surveillance video, it was scanning back
24 and forth?

25 A. Yes, ma'am, it was on a pan back and forth.

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1 Q. Okay. So it would not have caught the whole
2 incident?

3 A. No, ma'am, it would not.

4 MS. BACY: Nothing further from this
5 witness.

6 THE COURT: All right. Anything else,
7 Mr. Ash?

8 MR. ASH: Nothing further.

9 THE COURT: All right. You may step
10 down. May this witness be excused?

11 MS. BACY: This witness may be excused
12 from the State.

13 THE COURT: And, Mr. Ash, do you have any
14 objection to that, sir?

15 MR. ASH: Yeah. No objection.

16 THE COURT: Okay. Thank you. All right.
17 Thank you, sir.

18 Okay. Ladies and gentlemen, it has been
19 a long day for everybody. I know for y'all
20 particularly. And considering the State is passing this
21 witness, they still have other witnesses. I do not
22 think it would behoove us to stay any longer. It is not
23 going to further our case any more significantly. So we
24 are going to go ahead and break for the day.

25 If you do not mind excusing us for just a

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1 moment to let me decide what time I'm going to have
2 y'all return, just based on some other issues that we
3 need to hammer out. That way y'all won't be waiting
4 forever back in the jury room tomorrow.

5 So just bear with us just a little bit
6 longer. Thank you.

7 (Jury leaves courtroom)

8 (Discussion off the record)

9 THE COURT: Let's resume tomorrow morning
10 at 10:45. Let's tell the jury 10:45 tomorrow morning.

11 MS. BACY: Thank you, Judge.

12 MR. ASH: Thanks, Judge.

13 ADJOURNMENT

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