

Raymond Berryman - January 14, 2014
Direct Examination by Ms. Bacy

1 *(Open court, defendant present, no jury)*

2 THE COURT: All right. State, call your
3 first witness.

4 *(Rachel Fleischer sworn as interpreter)*

5 **RAYMOND BERRYMAN,**

6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 BY MS. BACY:

9 Q. Can you please state your name.

10 A. Officer Raymond Berryman.

11 Q. And can you please tell us a little bit about
12 your experience in law enforcement.

13 A. I have been working with the Webster Police
14 Department for five years. This is my sixth year.

15 Q. And what are your responsibilities with the
16 Webster Police Department?

17 A. I am a patrol officer.

18 Q. And what does that mean?

19 A. I do routine traffic stops, enforce Criminal
20 and City Code.

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

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

24 Q. And were you dispatched to a call at Clear
25 Lake Hospital?

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1 A. Yes, ma'am.

2 Q. And is Clear Lake Hospital in Harris County,
3 Texas?

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

5 Q. Okay. And why were you dispatched to Clear
6 Lake Hospital?

7 A. I responded as a backup officer to Officer
8 Thomas who was the primary officer for a call of a
9 physical disturbance between a male and a female.

10 Q. And did you learn the name of the person -- of
11 the person who was accused or who was -- who was called
12 on?

13 A. Yes, ma'am.

14 Q. And what was his name?

15 A. I want to refer to my report or to the report.

16 THE COURT: Okay. He was there in
17 response to the defendant.

18 A. His first name is Ivan, last name
19 unpronounceable.

20 Q. (By Mr. Bacy) Does it sound correct to say it
21 is Osuna-Ayuste?

22 A. Yes, ma'am.

23 Q. And do you see Ivan Osuna-Ayuste in the
24 courtroom today?

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

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1 Q. Can you please identify him by an article of
2 clothing?

3 A. He is wearing a blue tie and a blue shirt.

4 THE COURT: The record will so reflect.
5 Go ahead.

6 MR. BACY: Thank you, Your Honor.

7 Q. (By Mr. Bacy) And during your investigation,
8 did you have a chance to talk with Mr. Osuna-Ayuste?

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

10 Q. And while you were talking with him, did --
11 what did he say when you were talking with him?

12 A. I'm sorry?

13 Q. What did -- well, let me rephrase that.

14 While you were talking with him -- tell
15 us about the beginning of your conversation with Mr.
16 Osuna-Ayuste.

17 A. My conversation was just a follow-up
18 conversation that he originally had with Officer Thomas
19 in reference to what occurred that night.

20 Q. Okay. And at this time, did you have the
21 defendant in the back of your patrol car?

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

23 Q. Did you put him in handcuffs at the time?

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

25

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1 Q. Okay. At this time, were you investigating
2 the case?

3 A. Yes, I was assisting the investigation.

4 Q. Okay. Had you already determined that charges
5 would be filed at this point in time?

6 A. No, ma'am, I had not.

7 Q. Okay. And during this time, did he tell
8 you -- did he ever admit to striking the complaining
9 witness?

10 A. At the beginning of the investigation, he did
11 not.

12 Q. Okay. When did he -- tell us a little bit
13 about the investigation. When did he admit to that?

14 A. After telling the defendant that the video was
15 being reviewed, that I had reviewed the video a few
16 times, he then stated that -- he went into greater
17 detail about what happened and eventually stated that he
18 struck the victim.

19 Q. Okay. Now, immediately after you viewed the
20 video, was the defendant under arrest by you?

21 A. He was detained at that point.

22 Q. Okay. But was he under arrest?

23 A. No, ma'am.

24 Q. Okay. Let's talk a little bit about that
25 video that you saw. What was on -- how did you learn of

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1 this video?

2 A. The security staff at the hospital --

3 Q. Okay.

4 A. -- advised.

5 Q. Now, is the security staff at the hospital an
6 agency of the Webster Police Department?

7 A. No, ma'am, it is not.

8 Q. Okay. Do y'all control their video
9 surveillances?

10 A. No, we do not.

11 Q. Okay. And when they told you that there was a
12 video, did you know how to go and retrieve it and look
13 at it to view it?

14 A. I did not know myself. The security staff
15 pulled it up.

16 Q. The security staff at the hospital?

17 A. Yes, ma'am.

18 Q. Okay. And when you looked at the video, what
19 did you see?

20 A. The video was -- was poor quality. It is on
21 an automatic timer or motion -- not necessarily motion
22 sensor, but it moves automatically throughout the
23 parking lot at the particular video camera that we were
24 looking at.

25 Q. Okay. And in that video, did you see the

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1 interactions between Ms. Melissa Friedley, the
2 complainant, and the defendant?

3 A. Yes, ma'am.

4 Q. Tell us what you saw.

5 A. Again, the video being of a poor quality, it
6 showed glimpses and -- of the two in some type of
7 argument. It showed the two walking away from the
8 vehicle. It showed the victim on the ground at some
9 point. It showed the male over the female. It showed
10 the two speaking at the rear of the vehicle at some
11 point as well.

12 Q. Okay. When you said it showed them walking
13 away, were they walking away together?

14 A. The female was walking ahead of the defendant.

15 Q. Okay. And at any time, did you see the female
16 who is Melissa Friedley being aggressive towards the
17 defendant?

18 A. I had not.

19 Q. Okay. Did you see her raise her hand to
20 strike him?

21 A. I had not.

22 Q. Did you see her pushing him?

23 A. No, ma'am.

24 Q. Did you see her appear to be screaming or
25 irate with him?

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1 A. She seemed to be distressed, not irate.

2 Q. Okay. And what about the defendant, did you
3 see him following after Ms. Friedley?

4 A. The defendant did follow her.

5 Q. All right. And was she appear -- did she
6 appear to try to get away?

7 A. I cannot -- I cannot say from the video what
8 it looked like.

9 Q. But she was walking away from the scene and he
10 was following after her?

11 A. Yes, ma'am.

12 Q. Okay. And she was in front of him; is that
13 correct?

14 A. Yes, ma'am.

15 Q. Okay. And at any time did you see -- you said
16 you saw her on the ground. Where was the defendant when
17 she was on the ground?

18 A. Over the defendant -- over the victim.

19 Q. And how would you describe his stance when he
20 was standing over her?

21 A. It was a -- what I would consider an
22 aggressive posture over the --

23 THE COURT: Ms. Bacy, where are you
24 intending to go with this line of questioning? I
25 believe we were here to discuss the statements made by

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1 the defendant.

2 MR. BACY: Your Honor, we have two --
3 there are two motions.

4 THE COURT: Right.

5 MR. BACY: One for the spoliation of
6 evidence and then also for the statements that were
7 made.

8 THE COURT: Okay.

9 MR. BACY: At this time, based off of
10 some of the law that was provided to me from defense
11 counsel, I do believe what was on the video is
12 pertinent.

13 THE COURT: Okay. I don't have that case
14 law; but okay. Go ahead. Thank you.

15 Q. (By Mr. Bacy) Okay. Now, after you viewed
16 the video, did you tell Officer Thomas about the video?

17 A. Yes, I did.

18 Q. Okay. And was there a record made of that?

19 A. Of the actual video?

20 Q. A record. Like, a notation of any sort.

21 A. As far as to giving Officer Thomas the
22 information?

23 Q. Yes. Was there anything in the offense
24 report, anything documented by the Webster Police
25 Department that there was a surveillance video?

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1 A. I believe there was.

2 Q. Okay. Have you had a chance to review the
3 report?

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

5 Q. Okay. Did you review anything in the report
6 that mentions that there was a surveillance video that
7 was watched?

8 A. Yes.

9 Q. Okay. Now, after that, you returned. What
10 did you say to the defendant or what -- what was -- tell
11 us about the interactions between the defendant after
12 you reviewed the video?

13 A. Despite the video being poor quality, I used
14 that as a -- as a leverage to get both parties -- or at
15 least particularly the defendant to -- to be completely
16 honest about what happened that night, because he was
17 giving bits and pieces of information.

18 So I told the defendant that I have
19 watched the video. The video shows clearly, despite it
20 did not, of what was going on and what had happened that
21 night.

22 Q. And then what happened?

23 A. He began telling me the story again. And each
24 time that he told me the story, parts of the story,
25 particularly insofar as -- I'm sorry -- particularly as

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1 it pertains to him striking her, that changed.

2 Q. Okay. Now, when you said you told him that it
3 clearly showed something different, did you ask him a
4 question or did you just make that statement to him?

5 A. I made that statement to him.

6 Q. Okay. Did you ask him any other questions
7 after you made that statement to him?

8 A. I am sure I had.

9 Q. Do you remember --

10 A. As far as?

11 Q. You told him the video clearly shows that
12 something happened. And then did he volunteer the
13 statement next or did you ask him a follow-up question?

14 A. I asked him -- I continued to ask him
15 questions.

16 Q. What did you ask him?

17 A. After I had Mirandized him, he was asked a
18 series of questions as a step by step as to what had
19 happened.

20 Q. Okay. And you Mirandized him. And did he
21 waive his rights?

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

23 Q. How do you know he waived his rights?

24 A. He advised that he understood his rights and
25 he advised that he wished to continue to speak with me.

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1 Q. Okay. And then what happened after he spoke
2 with you and told you the story that he did, in fact,
3 assault the complainant?

4 A. After continuing to be dishonest or continuing
5 to -- to go back and change things that he had
6 originally said, I told him -- I said, you need to be
7 completely honest with me. Your story is continuously
8 changing. He continued to continually get more nervous.
9 And it went from he did not strike her to just a push to
10 a swipe to possibly backhanding her, then he did not
11 remember what happened.

12 MR. BACY: Okay. Thank you.

13 All right. At this time, State passes
14 the witness.

15 THE COURT: Okay. Mr. Ash.

16 **CROSS-EXAMINATION**

17 BY MR. ASH:

18 Q. You stated that you Mirandized him.

19 A. Yes.

20 Q. Was he standing when you Mirandized him?

21 A. At the time, yes, sir, he was.

22 Q. Was he in handcuffs?

23 A. No, sir, he was not.

24 Q. Okay. Did you tell him he was free to leave?

25 A. No, sir, I did not.

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1 Q. Okay. Now, you Mirandized him. I am assuming
2 that you Mirandized him in the English language; is that
3 correct?

4 A. That is correct.

5 Q. Okay. Did you have any indication that he did
6 not understand his Miranda warning?

7 A. No, sir, he did not. The whole conversation,
8 he spoke clear English.

9 Q. Okay. You also stated that when you saw this
10 poor quality video that you saw him over the female.

11 A. That is correct.

12 Q. Did it appear to you that she fell down?

13 A. It could have -- she could have fallen down.

14 Q. Okay. Did you speak with the complaining
15 witness, Ms. Friedley, before you spoke to him?

16 A. I never spoke with the complaining witness.

17 Q. Now, when you said that you wanted to use
18 leverage to be completely honest, what do you mean by
19 that? That you were not being truthful with him about
20 what's on the videotape?

21 A. That is correct.

22 Q. And you had hoped that by telling him that the
23 videotape was clear that he would be more forthcoming?

24 A. That's correct.

25 Q. Now, when you Mirandized him, did you record

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1 that Miranda warning with your video camera that's on
2 your patrol car?

3 A. Yes, sir, it was recorded.

4 Q. Okay. And did you preserve that recording?

5 A. I had not preserved the recording.

6 Q. Did you speak to anybody else other than
7 Mr. Osuna-Ayuste?

8 A. Other than the security staff, no, sir.

9 Q. Now, getting back to the security staff. Did
10 they inform you or anybody in the security staff inform
11 you how the video surveillance of the parking lot could
12 be preserved?

13 A. They -- they did not speak with me, because I
14 was not the case officer with regards to that, no, sir.

15 Q. Did you make any attempts to try to preserve
16 or request or otherwise get a copy of the video
17 surveillance that you saw that was provided to you?

18 A. As it being not my case, I did not.

19 Q. Do you know if there was -- after reviewing
20 the report or reviewing anything in the file, if a copy
21 of the video surveillance was made?

22 A. Of the security at the hospital or the patrol
23 vehicles?

24 THE COURT: I'm sorry. What was that?

25 THE WITNESS: I was asking him if --

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1 MR. ASH: Oh, yes, yes. If I may correct
2 that, Judge.

3 THE COURT: Uh-huh.

4 Q. (By Mr. Ash) We will start with the video
5 surveillance. Let's start with that one.

6 A. Okay.

7 Q. Did anybody -- did you have any --

8 A. I have learned that it had not since then.

9 Q. Okay. And as far as the videotape of the --
10 the statement of the defendant, what happened to that?

11 A. There is a 90-day retention program built into
12 the system. And if it is not tagged or they call it
13 exported then --

14 Q. So you did not export it?

15 A. No, sir, I did not.

16 Q. You did not tag it?

17 A. It would not be my responsibility to.

18 Q. It would be?

19 A. It would not.

20 Q. Okay. Whose responsibility would it have
21 been?

22 A. It would be the case officer.

23 Q. Okay. Were you to give that video tag or
24 information to your case officer?

25 A. No, sir. It is automatically -- it is

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1 something that we do not have control over. Anytime
2 that we make it on scene, a trigger is initiated when we
3 cut our emergency lights on, the audio recording and
4 video recording automatically starts. We have no
5 control over deleting or adding or anything like that.

6 Q. Okay. This is the last question: Did you
7 ever try to identify Mr. Osuna-Ayuste? Did you ask for
8 his driver's license or any kind of identification?

9 A. Yes, sir, we did.

10 Q. And what kind of identification did you obtain
11 or see?

12 A. From what I can remember, it was a passport.

13 Q. You do not remember what kind of --

14 A. From my memory, I believe it was a passport,
15 but he was identified by name and date of birth.

16 Q. And did you do a criminal background check
17 through your computer to see if he was wanted?

18 A. One would, yes.

19 Q. But did you?

20 A. Not me personally, no, sir.

21 Q. Okay. So you did not see any other
22 identification other than the passport from him?

23 A. That's correct.

24 MR. ASH: Okay. I don't have any further
25 questions.

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1 THE COURT: Okay. Anything else, Ms.
2 Bacy?

3 MR. BACY: Nothing further from this
4 witness.

5 THE COURT: All right. You may step
6 down.

7 We are going to go ahead and seat the
8 jury panel. Pick a jury. Y'all have 15 minutes each
9 side for the jury selection, okay? All right.

10 (Discussion off the record)

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1 STATE OF TEXAS

2 COUNTY OF HARRIS

3 I, Karen Bauer, Official Court Reporter in and
4 for County Criminal Court at Law No. 3 of Harris
5 County, State of Texas, do hereby certify that the
6 foregoing contains a true and correct transcription
7 of all portions of evidence and other proceedings
8 requested in writing by counsel for the parties to be
9 included in this volume of the Reporter's Record, in
10 the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, admitted, tendered in an offer of
16 proof or offered into evidence.

17 WITNESS MY OFFICIAL HAND this the 5th day of
18 March, 2014.

19

20

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22

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24

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/s/Karen Bauer_____
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