

1 Pass the witness.

2 *THE COURT:* Nothing further, Ms. Epley?

3 *MS. EPLEY:* Nothing further, Your Honor.

4 *THE COURT:* Okay. You're excused. Thank  
5 you for coming.

6 Call your next witness.

7 *MR. BURDETTE:* State calls Officer Kevin  
8 Carr.

9 *(Witness sworn.)*

10 *THE COURT:* Mr. Burdette.

11 **KEVIN CARR,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. BURDETTE:**

15 Q. All right. I learned yesterday not everyone  
16 is "Officer." Is it Officer or Sergeant?

17 A. Officer.

18 Q. All right. Got Sergeant Chappell and Officer  
19 Carr?

20 A. Yes.

21 Q. How are you?

22 A. Pretty good. How are you?

23 Q. Good. Please introduce yourself to the ladies  
24 and gentlemen of the jury.

25 A. My name is Kevin Carr. I'm an investigator

1 with the Houston Police Department Homicide Division.

2 Q. How do you spell your last name?

3 A. C-A-R-R.

4 Q. Before we get into this case, give us a brief  
5 background about yourself.

6 A. I have been a police officer for -- let's see.  
7 This is 2012. Been a police officer for about 25 years  
8 now. I work over here in Houston and Milford,  
9 Connecticut. Spent about seven years up there. Started  
10 working down here mid-'80s. Came back mid-'90s. Been  
11 working homicide now for about 15 years. I was a CSU  
12 Unit before I became a homicide investigator. I've been  
13 a K-9 handler in the past. I'm in the Army Reserves.  
14 I'm retiring in June after 31 years. I have been in  
15 Iraq and Afghanistan. I have actually had more time  
16 with the Army since September 11th than I do with the  
17 police department.

18 Q. You are a certified peace officer in the state  
19 of Texas?

20 A. Yes.

21 Q. Do you stay pretty busy with the Houston  
22 Police Department?

23 A. Unfortunately.

24 Q. Let's talk about this case in particular and  
25 your involvement. How were you assigned this case?

1           A.    I was partnered up with Roger Chappell on this  
2 case. My regular partner was off on a business trip;  
3 so, he and I were assigned to investigate this. I was  
4 on-call and Roger was filling in for my partner.

5           Q.    When was that?

6           A.    That was May -- the night of May 5th into the  
7 morning of May 6th, 2011.

8           Q.    And being on homicide, when a call comes in,  
9 what type of information is given to you at that time to  
10 determine whether or not it's going to require your  
11 involvement?

12          A.    Basically what happens when patrol officers  
13 get called out to the scene, they determine what they  
14 have on the ground. Then they call up to our homicide  
15 office. They speak to an investigator or sergeant up  
16 there and explain to them what they have. And then from  
17 there, there is a determination made whether or not they  
18 are going to call the on-call investigators and send  
19 them out to the scene to conduct the investigation.

20          Q.    So, if it looks like it's going to be a  
21 homicide where someone is dead on arrival, that's when  
22 you get called?

23          A.    Yes. Or if they have already passed or if  
24 they are about to or they feel that the person is going  
25 to pass, like, within 24 hours or so, we'll be called

1 immediately to the scene.

2 Q. Is that what happened here in this case?

3 A. Yes.

4 Q. Walter Moore was the victim?

5 A. Yes.

6 Q. And he was expected to pass?

7 A. Yes. The information I had received at the  
8 time was that he was in the operating room and I believe  
9 I was told he had passed on already, but they brought  
10 him back.

11 Q. So, as far as you knew, it was just a matter  
12 of time before he died and it became a homicide?

13 A. Yes.

14 Q. Okay. So, that night, you and Officer  
15 Chappell go out to the scene?

16 A. I didn't respond directly to the scene. I  
17 responded to the homicide division to get some more  
18 information and try and contact the hospital to see what  
19 the status was on Mr. Moore. Chappell went directly to  
20 the scene.

21 Q. Because you're working with a partner, you  
22 kind of divide up the duties. Is that fair?

23 A. Yes.

24 Q. So, he's out at the scene. You are working  
25 another side of the case?

1           A.    Yes.

2           Q.    What were your duties and responsibilities  
3 initially in this case?

4           A.    At the time we had been told that this was a  
5 white male and not a black male.

6           Q.    The victim?

7           A.    The victim, Mr. Moore.  And that he had a  
8 strong -- I believe I want to say they said it was an  
9 Iranian accent.  We weren't sure whether or not he was  
10 an actual cab driver.  We had been told that he may have  
11 been a cab driver because we were looking for a vehicle  
12 that was taken in the incident.

13                    So, I left the homicide office and drove  
14 down -- we knew that the vehicle somehow or another had  
15 to be connected to the bus station downtown.  It may  
16 have been a cab driver from the bus station downtown.

17                    So, I left the homicide office on Travis  
18 Street, drove to the Greyhound Bus Station down Main  
19 Street and started the background investigation from  
20 there to try to determine, yes, this is a cab driver;  
21 yes, we're looking for cab, to find out what type of cab  
22 we were looking for.

23           Q.    Okay.  So, while Chappell is out at the scene,  
24 he's interviewing witnesses, talking to people there,  
25 you are working on establishing the identity of the

1 victim?

2 A. Yes. Positively identifying the complainant,  
3 Walter Moore.

4 Q. Was that an easy task for you? Did it happen  
5 right away?

6 A. No.

7 Q. What did you have to do to establish his  
8 identity?

9 A. I had to backtrack. We did find out it was a  
10 cab involved. Later on we were able to determine  
11 through the investigation that it was a gypsy cab, which  
12 means it wasn't affiliated with any true cab company.  
13 But in order to find that out, I had to contact the  
14 Liberty cab. We were told it might have been a Liberty  
15 cab, going over to the Liberty Cab Company, finding out  
16 that they are now owned by Lone Star Cab Company,  
17 sitting down with them, determining that this was one of  
18 their former cabs. It was still marked, but it was one  
19 of their former cabs and one of their former cab  
20 drivers. They assisted greatly in identifying Walter  
21 Moore.

22 Q. So, at that point they are calling people,  
23 helping you out in establishing an identity of the cab  
24 driver that picked up four individuals the night before?

25 A. Yes.

1 Q. And eventually they did that?

2 A. Yes.

3 Q. They give you a name, date of birth?

4 A. Well, we already had Walter Moore. Initially,  
5 back early on when we first got this thing, we were told  
6 Walter Moore was white. So, when I was telling them  
7 about my Walter Moore, they were telling me their Walter  
8 Moore who was an African-American. So, it wasn't adding  
9 up. So, finally, I went down to the hospital, got a  
10 picture of Walter in the ICU and sent it electronically  
11 via email back to the cab company. They confirmed that,  
12 yes, that is Walter Moore.

13 Q. And being there at the hospital trying to  
14 identify him, describe his condition as you are doing  
15 that?

16 MS. VALENTINE: Objection. Calls for  
17 speculation.

18 THE COURT: If you know, you can describe  
19 it. We're not asking you to speculate or guess, but you  
20 can tell us what you observed.

21 Q. (BY MR. BURDETTE) Please don't diagnose him,  
22 but tell me how he looked.

23 A. Walter was what we call intubated. He had a  
24 machine breathing for him. He had a tube going down his  
25 throat. He had tubes going in and out of his nose. He

1 had drainage tubes coming out of him. He was in SCICU  
2 unit, which is the surgery intensive care unit. I  
3 believe it was the fourth floor of Ben Taub, E-Wing.

4 Q. Okay.

5 A. Because it was so close to surgery, you can't  
6 just walk in like this. You have to put on the mask on,  
7 wash your hands, put the clothes on, all that other  
8 stuff before you can go in there.

9 He was on oxygen and he wasn't conscious.  
10 I think he was -- no, I can't say that. He was  
11 unconscious, so.

12 Q. At that time do you also talk to some doctors  
13 who are currently observing him?

14 A. Yes.

15 Q. Do they give you some of their present-sense  
16 impressions as they look at him?

17 A. I asked for a prognosis. They told me that  
18 he --

19 *MS. VALENTINE:* Objection. Calls for  
20 hearsay.

21 *THE COURT:* Sustained.

22 *MR. BURDETTE:* Judge, at this time I  
23 would like to get into what the doctors are telling him  
24 their present-sense impressions. They are in the room.  
25 These are statements made at the time of the event while



1 they are currently observing the event.

2 THE COURT: It's a stretch, but I'll  
3 allow it.

4 Q. (BY MR. BURDETTE) As you're standing there  
5 with the doctors in Mr. Moore's room, what are they  
6 telling you about his condition?

7 A. It was highly critical.

8 Q. Was he expected to make it?

9 A. They gave him a 50/50 chance.

10 Q. From there, once you establish his identity,  
11 what's the next thing you did?

12 A. We had gotten the description of his cab. We  
13 were about to put that out on the news media when the  
14 cab was located down off Buffalo Speedway.

15 Q. Who located that cab? I mean, not what -- was  
16 it an officer that located that cab?

17 A. No. I don't know the name of the person. I  
18 didn't handle that end of it. But there was a woman  
19 that heard about an incident on the radio was driving  
20 her kids to school and saw the cab sitting off on the  
21 side of the road. It was off, like in a vacant lot.  
22 And she came home and thought about it and called a  
23 friend of hers who was a police officer. They called  
24 us. We sent a unit out there. Sure enough, that was  
25 the car we were looking for.

1 Q. You were able to verify that was Walter  
2 Moore's cab?

3 A. Yes. We had taken pictures of the cab while I  
4 was there at the cab company. Because it had been one  
5 of their cabs, they had pictures of it. Brought them  
6 back to the office with me. So, when the officer went  
7 out there to look at the car, there was numbers on the  
8 side of the car, 1593. I'm not exactly sure. We were  
9 able to send him the pictures. He said, This is the  
10 car. This is the license plate number.

11 Q. Now you have got the victim identified, cab  
12 identified. That cab was found and identified the  
13 following day, still on May 6th?

14 A. May 6th, yes.

15 Q. So, after getting that information, what's the  
16 next thing you do?

17 A. I was -- I had gone to the city hall office of  
18 the Homeland Security and they had installed -- all  
19 around downtown, they have installed these little  
20 cameras on different corners. I went to their office to  
21 see if the incident or any portion of the incident had  
22 been videotaped because they had just finished  
23 installing the cameras right behind the bus station.  
24 And I was able to view the complainant's vehicle and  
25 what I believed to be the persons involved in the

1 incident in that camera footage.

2 Q. What location or what part of town did you  
3 observe this?

4 A. That was in city hall itself on computer in  
5 the Homeland Security office.

6 Q. What part of town was being recorded?

7 A. It was a recording of Gray Street, which  
8 runs -- it's an east-and-west running street right along  
9 the north side of the bus station. It's between the bus  
10 station and McDonald's on other side of the street.  
11 This was a film from Fannin shooting back towards the  
12 west towards Main Street.

13 Q. Now, at that point had you personally spoken  
14 to any possible witnesses?

15 A. Not yet.

16 Q. But you have enough information that you know  
17 of, suspect pick-up location, that you were able to  
18 start looking for evidence at that scene?

19 A. I have to go back to your last question to  
20 answer that one.

21 I had spoken to a witness. I forgot  
22 about this. I talked to a cab driver at 4:00 in the  
23 morning outside the bus station. And his name was Tommy  
24 Breedlove and he told me about a group of individuals --

25 MS. VALENTINE: Objection, hearsay.

1                   THE COURT: Okay. Sustained.

2           Q.    (BY MR. BURDETTE) Without saying what he  
3 said, did he give you some possible suspect information?

4           A.    Yes.

5           Q.    Did he direct you to a particular area?

6           A.    Yes.

7           Q.    Did he indicate that he knew Walter Moore?

8           A.    Yes.

9           Q.    So, with that information, what -- at that  
10 time is when you went to city hall?

11          A.    Yes.

12          Q.    And you viewed the video. Do you have an  
13 approximate time you were looking for? Did you have to  
14 view the entire day of the video?

15          A.    I knew the incident happened at right almost  
16 straight up midnight. With the date, with the traffic  
17 being midnight, I estimated 20 to 30 minutes prior to  
18 midnight. So, we went back to about 11:15, started it  
19 11:00, 11:15, watched the video through until I saw what  
20 I recognized as being the vehicle involved in the  
21 incident.

22          Q.    Do you see any suspects at any point on the  
23 video?

24          A.    Yes.

25          Q.    What are they doing?

1           A.    You can see them crossing the street from the  
2 bus station going to the McDonald's parking lot.

3           Q.    Now, we have State's Exhibit 47 here.  It's  
4 been admitted into evidence.  I want to take a second to  
5 orient yourself.  Got the Greyhound Station here and  
6 McDonald's here.  Where do you see the suspects crossing  
7 the street.

8           A.    The camera is mounted on this tower right  
9 there.  And the view, this is the east side where it  
10 says Gray Street.  This is Fannin right here.  It is the  
11 east side of the video.  This is Main Street right here.  
12 That's where the Metro rail is.  That's the west side of  
13 the video.  The view of the camera points from east to  
14 west and you can see pretty much, if I draw a little  
15 line, this isn't exact, but the camera view is kind of  
16 like something along the lines of that right there.  And  
17 it shoots that way.

18          Q.    You can see them crossing that street to  
19 McDonald's?

20          A.    You can see them in the crosswalk coming  
21 across this way over to the McDonald's.

22          Q.    Now, that video, was that good enough to  
23 establish any sort of ID on anyone?

24          A.    Not really, no.

25          Q.    You couldn't see faces?

1 A. No, you can't see faces.

2 Q. Could you tell us if it was male or female in  
3 the video?

4 A. No.

5 Q. Were you able to make out someone in a  
6 wheelchair?

7 A. Yes.

8 Q. Was that significant to you?

9 A. Yes.

10 Q. Why?

11 A. In speaking to another witness who was another  
12 cab driver, we learned that one of the individuals was  
13 in a wheelchair, one of the group of individuals. We  
14 kept that information to ourselves. We didn't let  
15 anybody know about the wheelchair that we were looking  
16 for that day.

17 Q. So, at that point you have got possible  
18 suspects, but you can develop an ID. What do you do  
19 after viewing that footage?

20 A. After viewing that footage originally at 7:00  
21 o'clock in the morning when I was at Liberty Cab, I had  
22 learned of a possible complainant being Tony -- I can't  
23 think of his last name -- Onibokun. It was a cab  
24 driver, Liberty Cab driver that had been at the bus  
25 station that night and about six hours into it, it was

1 looking like Tony was going to be our complainant. Then  
2 I found that he had picked up another fare at the bus  
3 station after the incident. So, we knew that he wasn't  
4 our complainant, but I also knew there was a good chance  
5 he was a witness to the incident because his -- the  
6 meters on his cab showed him at the bus station at the  
7 time that the suspects would have been there.

8           And right when I was getting this  
9 information and after having gone back to the office to  
10 confer with Roger and my lieutenant, Tony called me.  
11 The thing I didn't know, he had been trying to reach me  
12 all day. He was asleep because he works midnight. He  
13 called me; so, I met him in the parking lot of the  
14 McDonald's over there.

15           Q. Did you talk about what he had observed that  
16 night?

17           A. Yes, sir.

18           Q. Did he tell you everything?

19           A. Yes, sir.

20           Q. Did he seem to have important and significant  
21 information as it pertains to this case?

22           A. Yes.

23           Q. So, at that point you feel like you have a  
24 good witness?

25           A. Yes, sir.

1 Q. After talking to him, what do you do?

2 A. After talking with him, I decided to bring him  
3 back to the homicide division to get a formal statement  
4 from him because I knew he was going to be a good  
5 witness because he had seen the individuals just prior  
6 to the incident.

7 Q. Now, did he indicate to you that he knew the  
8 individuals?

9 A. He didn't know them, but he indicated to me he  
10 could possibly identify them.

11 Q. At that point when he has made that indication  
12 to you, do you have any information about names or do  
13 you have any photographs of the suspects or anything  
14 yet?

15 A. No.

16 Q. When does that come in?

17 A. While I had gotten that phone call from him  
18 right after I had gotten a phone call from another  
19 witness who knew about four individuals involved in an  
20 incident, but that individual had told Roger or  
21 explained about that wheelchair being involved, which we  
22 had not released that information to the public. So, we  
23 knew that was going to be a good witness. So, Roger was  
24 talking to her while I was talking to Tony.

25 Q. Was she able to provide a couple names and



1 some photographs?

2 A. Roger was able to develop a name and from the  
3 name, he was able to go to the computer and develop a  
4 photograph.

5 Q. At that point is that photograph sent to you?  
6 Do you develop a photo array? What happens?

7 A. No. While I was in talking to Tony, they  
8 developed the photo array, the photo lineup. When I got  
9 done taking Tony's statement and came out of the  
10 interview room, that's when I first learned the name of  
11 the photo lineup. So, I went back into the interview  
12 room. I gave the standard admonishments for a photo  
13 array and showed the photo array to Tony.

14 Q. Was he able to make a positive identification?

15 A. Yes, he was.

16 Q. Of who?

17 A. Nicholas Aker.

18 Q. Do you see Nicholas Aker in the courtroom  
19 today?

20 A. Yes, I do.

21 Q. Could you point to him and identify him by an  
22 article of clothing?

23 A. He's seated there at the table with the  
24 three-piece suit, a gray suit on.

25 Q. What color shirt is he wearing?

1           A.     White shirt.

2                         MR. BURDETTE:  Judge, may the record  
3 reflect the witness has identified the defendant,  
4 Nicholas Aker?

5                         THE COURT:  It will.

6                         MR. BURDETTE:  May I approach the  
7 witness?

8                         THE COURT:  You may.

9           Q.     (BY MR. BURDETTE)  Officer Carr, I'm showing  
10 you what's been marked as State's Exhibit 88, not  
11 admitted yet.  Take a look at it and tell me if you  
12 recognize it.

13           A.     Yes, I do.

14           Q.     What is it?

15           A.     This is the -- the top page is the  
16 admonishment.  The bottom page is a photo array.

17           Q.     That was presented to who?

18           A.     To Tony Onibokun.

19           Q.     Is this a fair and accurate copy of the  
20 admonishments in the photo array that was shown to  
21 Mr. Onibokun?

22           A.     I believe that's the original.  That's the  
23 original.  Looking at the ink in comparison, it appears  
24 to be the original.

25           Q.     All right.  We need to get a copy of it but at

1 this time this is the original here?

2 A. Yes.

3 MR. BURDETTE: Judge, at this time State  
4 offers State's Exhibit 88, although we would like to  
5 only admit a copy of the original; but for purposes of  
6 this witness, we would like to be able to use State's  
7 Exhibit 88. I'll tender to opposing counsel for  
8 inspection.

9 MS. VALENTINE: No objection.

10 THE COURT: State's Exhibit 88 is  
11 admitted without objection. And you can submit a --  
12 with their approval -- with defense's approval, you can  
13 submit a copy of it.

14 MR. BURDETTE: May I publish this?

15 THE COURT: You may.

16 Q. (BY MR. BURDETTE) Do you -- I think you are  
17 going to have to clear that.

18 A. (Witness complies.)

19 Q. All right. We're looking at the front page of  
20 State's Exhibit 88 right below where it says  
21 admonishment. Is this the admonishment you gave --  
22 let's call him Tony.

23 A. Yes.

24 Q. You read that to him verbatim?

25 A. Yes.

1 Q. Why do you do that?

2 A. To make sure it's done accurately and  
3 correctly.

4 Q. Then do you have them date and sign?

5 A. Yes. I dated it. That's my handwriting right  
6 there.

7 Q. And then he signed it?

8 A. He signed it. He handwrote his name and then  
9 he signed it.

10 Q. He indicated he understood the admonishments  
11 you were giving him?

12 A. Yes.

13 Q. At that point then, you present to him a photo  
14 array; is that right?

15 A. Yes.

16 Q. Here, the defendant, you can see in the sixth  
17 position; is that right?

18 A. Yes.

19 Q. You have five other individuals who had been  
20 selected at random put in there as well; is that right?

21 A. Yes, sir.

22 Q. When you show this to Tony, what are you  
23 asking essentially?

24 A. Do you recognize anyone there?

25 Q. Was he able to recognize someone?

1 A. Yes, he was.

2 Q. Who did he pick out?

3 A. He picked out the No. 6 one, Nicholas Aker.

4 Q. Did he indicate to you that he was positive  
5 that was the person he had seen?

6 A. It was a very short time between me showing  
7 him the photo array and him actually placing his index  
8 finger on the picture.

9 MS. VALENTINE: Objection, nonresponsive  
10 to the question.

11 THE COURT: Okay. Sustained.

12 He asks very specific questions.  
13 Sometimes it's a yes-or-no answer. He'll follow up.

14 Q. (BY MR. BURDETTE) Did he make a positive  
15 identification of the defendant?

16 A. Yes, he did.

17 Q. How long did it take for him to make that  
18 identification?

19 A. Not long at all.

20 Q. When he tells you he recognizes this person,  
21 do you instruct him to sign his name next to that  
22 person?

23 A. Yes.

24 Q. Did he do that?

25 A. Yes, he did.

1 Q. Did you in any way suggest to Tony an  
2 individual that he needed to select out of the photo  
3 array?

4 A. No.

5 Q. Okay. Why do you do that? How come you don't  
6 suggest somebody or why are you careful not to suggest  
7 somebody?

8 A. That would ruin it. The typical admonishment  
9 is there and a little bit beyond that, I tell them,  
10 Look, if you recognize somebody in there, okay. If you  
11 don't recognize somebody or if you don't see them there,  
12 they ain't there. I don't want you to pick somebody  
13 just to pick somebody. That's not the way it's done.

14 Q. So, you're careful not to do things like:  
15 Hey, do you see anybody that's -- do you tap a finger or  
16 anything like that?

17 A. Everybody does it differently. The way I do  
18 it is I actually physically hand the thing to the person  
19 and let them hold it. I don't want my hand anywhere  
20 near there. I don't want any influence on it. And I  
21 tell them, If you see anyone that you recognize, tap the  
22 picture.

23 Q. And he did that?

24 A. Yes, he did.

25 Q. So, at that point you now have a name, a

1 photograph, a good identifier and a witness to  
2 incriminate Nicholas Aker in this robbery; is that  
3 right?

4 A. Yes.

5 Q. So, what's the next thing that you do?

6 A. I let Roger know that we got a positive ID.  
7 He contacted the District Attorney's Office and he  
8 applied for and received an arrest warrant for Nicholas  
9 Aker.

10 Q. At that point what is Mr. Moore's condition?  
11 We're talking May 6th, May 7th.

12 A. It was still up in the air. He was still  
13 highly critical. I was calling down to the hospital  
14 throughout the day, checking on his condition.

15 Typically when we work on these and we  
16 know the person may or may not expire before we file any  
17 charges, we try to make sure -- we try to get the best  
18 prognosis we can because you don't want to file a  
19 robbery charge and then have to go back and take it back  
20 and refile a murder charge. You want to do it right and  
21 you want to do it right the first time and carry it on  
22 from there.

23 So, throughout the day the whole time  
24 running around the city trying to get him identified and  
25 trying to find the car and trying to find witnesses,

1 every hour or two, I was calling the hospital trying to  
2 get updates on the prognosis.

3 Q. At some point you make the decision: What do  
4 we have to do? Act now, you file aggravated robbery  
5 charges?

6 A. Yes.

7 Q. Did you file them against just Nicholas Aker  
8 or did you develop another suspect?

9 A. We developed the second suspect the next day.

10 Q. Who is that suspect?

11 A. Last name, Peters.

12 Q. At the time what was he known to you as?

13 A. B, the letter B as in boy.

14 Q. Where did you get that information?

15 A. Roger had gotten that information from the  
16 witness and it had been developed and we were able to  
17 get a photograph of B from a Facebook page.

18 Q. And he got that from Latoya Sheehy?

19 A. Yes.

20 Q. Was B, or Brshai Peters, also identified by  
21 Tony?

22 A. Yes, he was.

23 Q. So, at that time the following day, you file  
24 an arrest warrant for Brshai Peters as well, for B?

25 A. Yes.



1 Q. What's the next thing that happens?

2 A. While we were getting B identified, we found  
3 out -- we learned Nicholas Aker's telephone number and  
4 we got a search warrant to go up live on his phone to  
5 track the phone and we learned that he was in Temple,  
6 Texas.

7 Q. So, now they have fled your jurisdiction, what  
8 do you do?

9 A. Roger notified Temple, let them know what we  
10 had. We didn't have the information on Peters yet. We  
11 just had Nicholas Aker's information. We had his  
12 picture and we had the arrest warrant. So, we sent that  
13 information forward to Temple. We gave them a  
14 description of what we had, gave them a synopsis of the  
15 incident and the investigation at that point and gave  
16 them a general location provided by the cell telephone  
17 company: This is where the phone was.

18 Q. Okay. And what day are we talking now? Are  
19 we at May 7th?

20 A. This is May 7th on Saturday, yes.

21 Q. Now, at that point you're staying in contact  
22 with officers in Temple, Texas, trying to figure out how  
23 to get them arrested; is that right?

24 A. Yes, sir. Roger was doing the work with  
25 Temple. He was acting as the liaison between both of us

1 and Temple getting that tracked down.

2 In order for us to go out of town, we had  
3 to do what's called an Appendix B, which on a good day  
4 takes about six hours to get done because it has to go  
5 all the way up the chain of command. Everybody's got to  
6 sign off on it. On a Saturday and Mother's Day weekend,  
7 it was just a real chore. It took about ten hours to  
8 get that done. I was working on that and simultaneously  
9 working on getting Brshai Peters identified.

10 Q. So, once you get them identified, you learn  
11 they're in Temple, Texas, do you and Sergeant Chappell  
12 head out there?

13 A. No. By the time we got them identified, it  
14 was probably 3:00 in the afternoon. By the time I get  
15 the Appendix B signed, it was closer to 7:00 o'clock at  
16 night when we finally got the blessing: Yes, you may go  
17 out of town. And we decided to drive up to Temple the  
18 next day.

19 Q. That would be Sunday, May 8th?

20 A. Sunday, Mother's Day, yes.

21 Q. So, you and Sergeant Chappell head up there,  
22 the two of you?

23 A. Yes, sir.

24 Q. When you get there, do you know where to go?  
25 Are you familiar with the area?

1           A.    Not really.  That's where the iPhone came in.  
2  We were given the address where they thought the phone  
3  was.  We plugged that into the GPS and we drove to the  
4  location.

5           Q.    Did it turn out to be an apartment complex  
6  there in Temple?

7           A.    Yes, it was.

8           Q.    Now, as you and Sergeant Chappell go to that  
9  apartment complex, tell us what you see.

10          A.    I was driving.  I really didn't see the whole  
11  thing, but as we came down a side street, at least two  
12  of the individuals we were looking for were sitting on  
13  the side of a building.  They had a bunch of luggage,  
14  bags, stuff like that.  They were sitting under a shade  
15  tree.

16          Q.    Then we've heard a lot of testimony from  
17  Sergeant Chappell about what happened there.  So, let's  
18  try and skip forward to Brshai Peters and Nicholas Aker  
19  being arrested.  All right?  They were arrested there at  
20  the Sam's Club parking lot?

21          A.    Yes.

22          Q.    At that point what do you do?

23          A.    I wasn't at the arrest scene.  I was with the  
24  police chief a little bit away.  I responded with the  
25  police chief to the arrest scene.  They were already in

1 handcuffs by the time I got there.

2 I approached Peters and he wasn't saying  
3 anything. I just took my badge off and showed it to  
4 him. I said, You see the top name on the top of the  
5 badge that says Houston? So, why am I here on Mother's  
6 Day? I said, We're going to talk when we get back to  
7 the police station.

8 Q. And from there, where do you go? Do you go over  
9 to Apartment 311?

10 A. We went over to Apartment 311 from there, yes.

11 Q. When you get there, Temple officers are  
12 already there, right?

13 A. Yes.

14 Q. They are searching the house?

15 A. Yes.

16 Q. Do you then concern yourself with the possible  
17 witnesses or suspects there at the scene?

18 A. Yes.

19 Q. Specifically who?

20 A. Jasmine.

21 Q. Jasmine Stelly?

22 A. Yes, sir.

23 Q. Tell us a little bit about what that  
24 interaction was like from the beginning, from the first  
25 time you made contact with Jasmine.

1           A.    As we were walking up to the apartment, in the  
2           area between two apartment buildings, they were sitting  
3           out in the grass, half of them sitting off in the shade.  
4           That was a very hot day.

5                        I saw Jasmine kind of looking dejected  
6           off on the side. I knew we were looking for a female  
7           from what I learned from the witnesses. So, I asked  
8           Jasmine to stand up. She wasn't saying anything. I  
9           said, We're going to talk. I introduced myself to her,  
10          then walked back around the building so that no one else  
11          can see what was going on because I didn't want any of  
12          the others to influence whether or not she was going to  
13          tell me the truth. She looked scared; so, I didn't want  
14          any of the others influencing, you know, I'm scared, I'm  
15          not going to say anything. I wanted to separate her  
16          from the situation, get her off to the side to see what  
17          she was going to tell me.

18          Q.    Did she indicate to you that she wanted to  
19          talk to you?

20          A.    Yes, she did.

21          Q.    At that point you take her around the side.  
22          Does she start talking to you?

23          A.    Not right away. As soon as we got around the  
24          corner and the separation was there, she started  
25          violently shaking and crying. It took a minute or two

1 for her to get composed. Then she indicated to me that  
2 she wanted to talk.

3 Q. So, at that point you're out of the line of  
4 sight of Brshai Peters, Nicholas Aker and Norris  
5 Briscoe?

6 A. Yes.

7 Q. So, did you speak to her there at the scene?

8 A. Yes, I did.

9 Q. How was your interaction with her? Did she  
10 tell you about what had happened?

11 A. Yes, she was very cooperative.

12 Q. Did she have specific details about what  
13 happened?

14 A. Yes, she did.

15 Q. Was she able to tell you about the entire  
16 crime from start to finish?

17 A. She could have if I had let her continue; but  
18 I told her, Look, just compose yourself and we are going  
19 to talk when we get back to the Temple Police Station.  
20 I didn't have my recorder with me. I didn't want to  
21 take a statement right here.

22 I *Mirandized* her when I got around the  
23 corner. I said, Look, let's do this when we get back to  
24 the police station. Before I started talking to her,  
25 she finally had calmed down. Then I *Mirandized* off my

1     *Miranda* card. That's when she started talking. I said,  
2     Hang on, hold that thought. I'm going to put you in the  
3     car, we're going to go back to the Temple police  
4     station, and I'm going to interview you there where we  
5     can put it on tape. That way, it's accurate and we got  
6     it in her voice.

7             Q. Did she understand that?

8             A. Yes, she did.

9             Q. Did she tell you she was concerned for her  
10     safety?

11            A. She told me she was very scared and she told  
12     me that she was afraid she was going to be killed.

13            Q. Did she tell you she was afraid of what would  
14     happen if the others thought she was talking to you?

15            A. Yes.

16            Q. So, what did you do?

17            A. I told her I understood and I told her we were  
18     going to play a little game. So, I told her to compose  
19     herself, told her put her hard face back on. I told  
20     her, Look, I'm going to say some stuff that you're  
21     probably not used to someone saying this to you. There  
22     was a big crowd out. There were a bunch of people out  
23     there watching all the police activity.

24                     I said, I'm going to put a show on for  
25     these guys. It's all an acting job. I'm just going to

1 play with you. But I'm going to start screaming at you,  
2 start cussing at you, to make it look like you were  
3 uncooperative, because I don't want them knowing that  
4 you are talking to me. I gave her a minute to compose  
5 herself. Once she did, I said, Put your hard face on.  
6 And she did. I started yelling at her. I started  
7 yelling and saying a bunch of stuff. We went back  
8 around the building and I kind of -- and she knew I was  
9 going to do this. I was just kind of playing with her,  
10 holding her arm, kind of shaking her, things like that,  
11 but I really wasn't. I was just holding her, but I made  
12 it look like I was shaking her, but I wasn't. And we  
13 went back over and I sat her down by one of the police  
14 cars.

15 Q. That was to ease her fear of what the others  
16 would think of her with you at that time?

17 A. It was to ease her fears, but it was also to  
18 throw them off so that they didn't know, What did she  
19 tell this guy? Why is she so upset? So, you know, it  
20 was just camouflage. All it was was camouflage.

21 Q. At that point then everyone is transported  
22 back to the Temple police station; is that right?

23 A. Yes.

24 Q. Who do you meet with there at the station?

25 A. First person I met with was Jasmine.



1 Q. Did you pick up where you left off or did you  
2 kind of start over?

3 A. Restarted the whole thing.

4 Q. Was she still cooperative.

5 A. Yes, she was.

6 Q. Was she *Mirandized* at that time?

7 A. Yes, she was.

8 Q. Did she agree to waive any rights she might  
9 have and speak with you?

10 A. Yes, she did.

11 Q. Just generally, what did you speak to her  
12 about?

13 A. I just told her, Tell me your story. And  
14 that's what she did.

15 Q. Did you find that what she was telling you was  
16 consistent with the other information you had received?

17 A. Yes, I did.

18 Q. As that point you had spoken to several  
19 witnesses, not just Tony, but you knew Latoya had been  
20 spoken to by Sergeant Chappell and you and Chappell are  
21 communicating; is that right?

22 A. Yes.

23 Q. So, you have other information from other  
24 sources. Whatever Jasmine is telling you is adding up  
25 and making sense?

1           A.    Yes.

2           Q.    Did you have any reason to not believe what  
3 she was telling you there at the police station?

4           A.    No.

5           Q.    Did she tell you she was afraid of Brshai?

6           A.    Yes.

7           Q.    Did that seem genuine?

8           A.    Yes.

9           Q.    Did she explain to you why she was afraid of  
10 him?

11          A.    Yes.

12          Q.    Did she explain to you what she saw Brshai and  
13 Nicholas do?

14          A.    Yes.

15          Q.    Did she ever tell you that Norris was one of  
16 the shooters?

17          A.    No.

18          Q.    In fact, who did she say were the shooters?

19          A.    Nicholas and Brshai.

20          Q.    Did she tell you where they met the cab driver  
21 and where they were going and what happened once they  
22 got there?

23          A.    Yes.

24          Q.    Was she able to tell you where they went after  
25 the robbery and the shooting?

1 A. Yes.

2 Q. And then did she describe to you where they  
3 went from that location and how they ended up in Temple?

4 A. Yes.

5 Q. Did she ever say anything to you that just  
6 totally contradicted what you had seen the evidence  
7 indicating, whether it's what people have told you or  
8 what was observed out there at the crime scene?

9 A. No.

10 Q. Was she able to articulate the number of guns  
11 used?

12 A. Yes.

13 Q. And who had the guns?

14 A. Yes.

15 Q. And who was in the wheelchair?

16 A. Yes.

17 Q. What bags people were carrying?

18 A. Yes.

19 Q. Now, at that point, really, Jasmine is an  
20 eyewitness, right, to all of the events?

21 A. You could say that.

22 Q. More or less, she was someone that was there?

23 A. Yes.

24 Q. But at some point she actually gets charged by  
25 the District Attorney's Office; isn't that right?

1 A. Yes, sir.

2 Q. As a party to the offense?

3 A. Yes, sir.

4 Q. You are aware of that, right?

5 A. Yes.

6 Q. So, she is charged. Norris is charged, right?

7 A. Yes.

8 Q. And then Nicholas and Brshai were already  
9 under arrest and they were charged as well?

10 A. They were already charged before we went up  
11 there, yes.

12 Q. So, after you get everyone back from Temple,  
13 do you transport all the evidence back as well?

14 A. Yes, they were -- the four individuals were  
15 placed in the county jail up there. I believe it's Bell  
16 County. Then we stayed the night because we had been  
17 there all day. We went to their evidence room the next  
18 day, collected all evidence and drove back to Houston.

19 Q. At that point had you spoken to Walter Moore  
20 personally?

21 A. No.

22 Q. Do you recall when the first time that was  
23 that you were actually able to speak to him?

24 A. If I could refer to my report. I believe it  
25 was the 11th or 12th of May. It was like a week later.

1                   Yes, it was May the 11th, about a week  
2 later.

3           Q.     Was he in good shape?

4           A.     He was still in the SCICU. He was in better  
5 shape. He was recovering, but he was still in pretty  
6 bad shape.

7           Q.     Was he in good enough shape to take an  
8 additional statement from him?

9           A.     No, he wasn't.

10          Q.     So, at that point do you kind of delay that  
11 process?

12          A.     Yes. I didn't take a statement. He was  
13 conscious. He was still on a breathing machine; so,  
14 can't really talk. But I decided to show him the photo  
15 spreads to see if he was able to pick them out. I knew  
16 he could do that; but as far as him telling me what  
17 happened, it wouldn't be worth taking a statement  
18 regarding that day.

19          Q.     I think you actually showed him the photo  
20 arrays on May 23rd; is that right?

21          A.     Yeah. I didn't talk to him on the 11th.  
22 Didn't talk to him on the 16th. He had pneumonia on the  
23 19th. I think it was Monday, the 23rd, that I finally  
24 showed him the photo arrays.

25          Q.     So, was that the first time that you were

1 actually able to speak to him or was it the 11th?

2 A. The 11th, I talked to him because he was  
3 awake. And most of the visits I would talk to him; but  
4 some visits -- and I'm not exactly sure which ones,  
5 because I made about six, maybe eight visits out there  
6 while he was in SCICU -- he would be in and out. Either  
7 the drugs or whatever they were giving him or whatever,  
8 I would have to reiterate what was, have to go over  
9 everything with him again because he wouldn't remember  
10 from one time to the next time because of the treatment,  
11 I guess. I'm not sure what it was.

12 Q. On May 23rd, 2011, you finally showed him a  
13 photo spread; is that right?

14 A. Yes, sir.

15 Q. At that point, all the defendants are already  
16 arrested and charged, correct?

17 A. Yes.

18 Q. You were aware Nicholas Aker had already given  
19 a statement to Sergeant Chappell; is that right?

20 A. Yes.

21 Q. Incriminating himself in this crime?

22 A. Yes.

23 Q. But you still decided to present a photo array  
24 to Walter Moore?

25 A. Yes.

1 Q. Why?

2 A. He was the complainant. He was the person who  
3 got shot. Who better to know who shot him than the  
4 person who got shot?

5 Q. So, just as the photo array was prepared and  
6 shown to Tony, the same thing goes for Walter Moore; is  
7 that right?

8 A. Yes.

9 MR. BURDETTE: Judge, may I approach the  
10 witness?

11 THE COURT: You may.

12 Q. (BY MR. BURDETTE) I'm showing you what's been  
13 marked as State's Exhibit 89. Take a look at the first  
14 and second page and tell me if you recognize it.

15 A. This is the admonishments and this is the  
16 photo spread.

17 Q. Is this a fair and accurate copy of the same  
18 photo array that was shown to Walter Moore on May 23rd,  
19 2011?

20 A. Again, this is the original.

21 Q. These are the same admonishments that were  
22 given to him?

23 A. Yes.

24 MR. BURDETTE: Judge, at this time State  
25 offers State's Exhibit 89. As before, we ask this be

1 substituted at a later time with an exact copy so the  
2 State can retain the original. I'll tender to opposing  
3 counsel for inspection.

4 MR. MARTIN: On this portion of this  
5 item, I have the same objections we had earlier. This  
6 is what we talked about out of the presence of the jury  
7 with the tape recording. I have those same objections.

8 THE COURT: Okay. Then it is admitted  
9 over objection.

10 MR. BURDETTE: May I publish this, Your  
11 Honor?

12 THE COURT: You may.

13 Q. (BY MR. BURDETTE) Okay. Officer Carr, we're  
14 looking at State's Exhibit 89. We see the same  
15 admonishments. You use those for all witnesses,  
16 victims, whoever you show a photo array to; isn't that  
17 right?

18 A. Yes.

19 Q. You date it and have them sign?

20 A. He signed. This is my handwriting here for  
21 his name and that's my handwriting there for the date.  
22 I dated it and put his name there for him.

23 Q. Is there a written signature? That's the best  
24 he could do that day?

25 A. Yes.



1 Q. Was he mobile on May 23rd, 2011?

2 A. No.

3 Q. He is in the hospital bed still?

4 A. He's still in bed. He didn't have the tube in  
5 his mouth, but he had tubes running in his nose. He had  
6 stuff hooked up to his hands. He had all kinds of stuff  
7 going on.

8 Q. You read the admonishments to him, right?

9 A. Yes.

10 Q. And you actually recorded that, didn't you?

11 A. Yes, I did.

12 Q. And then you showed him the photo array. When  
13 you showed him the photo array, do you in any way  
14 suggest he has to pick out any particular person: One,  
15 two, three, four, five or six?

16 A. No.

17 Q. Was he able to make a positive identification  
18 to you at that time?

19 A. Yes, he was.

20 Q. Who did he pick out?

21 A. He picked out the No. 3 picture.

22 Q. And did he sign his name indicating that?

23 A. Yes, he did, right there.

24 Q. And who is in the No. 3 spot there?

25 A. That's the Harris County booking photo of

1 Nicholas Aker.

2 Q. The defendant?

3 A. Yes.

4 Q. Did he make a statement to you at that time  
5 about anyone else: One, two, four, five or six, about  
6 them being involved?

7 A. Yes, he did.

8 Q. What was that?

9 A. He was saying that one of the other four or  
10 five may or may not have been involved in the incident.

11 Q. Then did you instruct him that there is one  
12 per set of photos?

13 A. Yes, sir. I told him there was one and only  
14 one per six photos.

15 Q. Did you ever tell him or did he ever say  
16 anything to you about No. 5 being in the commission of  
17 the crime?

18 A. I can't remember which one it was, but he  
19 did -- he pointed to one of the other pictures and said  
20 that might have been the guy in the wheelchair or  
21 something along those lines. I told him, No, there is  
22 only one per photo spread.

23 Q. Was that before or after he picked out the  
24 defendant, Nicholas Aker?

25 A. It was after he picked out the defendant.

1 Q. When he made the identification of Nicholas  
2 Aker, was he positive.

3 A. Yes, he was.

4 Q. There is a difference between positive,  
5 negative and tentative; is that right?

6 A. Yes.

7 Q. What's the difference?

8 A. Positive is it is an absolute. They know, Yes  
9 this is the person.

10 Tentative is, Well -- the best way I can  
11 describe is I think that's him, but I'm not sure.

12 And negative, they don't see anyone at  
13 all. They're just not clear at all whether or not the  
14 person involved in their deal is there.

15 Q. He then stated to you that it was the  
16 person -- he was positive that Nicholas Aker, No. 3, was  
17 involved?

18 A. Yes.

19 MR. BURDETTE: May I have a moment,  
20 Judge?

21 THE COURT: You may.

22 MR. BURDETTE: I'll pass the witness at  
23 this time, Judge.

24 THE COURT: Thank you, Mr. Burdette.

25 Mr. Martin? Or is it Ms. Valentine?

1 MR. MARTIN: Ms. Valentine.

2 MS. VALENTINE: Thank you, sir.

3 **CROSS-EXAMINATION**

4 **BY MS. VALENTINE:**

5 Q. Good afternoon, Officer Carr.

6 A. Hi.

7 Q. I want to talk to you first about the photo  
8 arrays.

9 A. Okay.

10 Q. You indicate you showed the photo array to  
11 Tony Onibokun?

12 A. Tony.

13 Q. Yes, sir. You showed him one as well; is that  
14 correct?

15 A. Yes, ma'am.

16 Q. That was the photo array that was prepared by  
17 Officer Chappell; is that right?

18 A. No. I have the name here. Hang on a second.  
19 I'll give the officer's name. Chappell was in the  
20 interviewing.

21 Q. It was Chappell that got the information?

22 A. Chappell got the name, found the pictures in  
23 the computer. Another officer made the photo array.  
24 That was --

25 Q. If you can't find it, it's okay.

1           A.    I'm on the right page.

2                    *THE COURT:* That is fine. She will ask  
3 you another question.

4                    *THE WITNESS:* Okay.

5           Q.    (*BY MS. VALENTINE*) So, Officer, when it comes  
6 to photo arrays, you have certain standards that you  
7 have to follow; is that correct?

8           A.    Yes, ma'am.

9           Q.    There are procedures set up at the Houston  
10 Police Department; is that right?

11          A.    Yes, ma'am.

12          Q.    One of the reasons for that is so that one  
13 officer doesn't do it in a completely contrary way to  
14 all the other officers. Is that fair to say?

15          A.    Yes, ma'am.

16          Q.    Kind of want more of a controlled environment  
17 when it comes to identification procedures; is that  
18 correct?

19          A.    Yes, ma'am.

20          Q.    There has also been some changes to  
21 identification procedures; is that correct?

22          A.    Yes, ma'am.

23          Q.    Most specifically, you all -- there are  
24 general orders that you follow at the Houston Police  
25 Department?

1 A. Yes, ma'am.

2 Q. Those will include things -- well, it can  
3 include something as simple as maybe where to park or  
4 where you are going to eat lunch. Is that a fair  
5 statement?

6 A. Yes, ma'am.

7 Q. But it also goes into more specific -- things  
8 that you have to follow regarding arresting people; is  
9 that right?

10 A. Yes, ma'am.

11 Q. Securing evidence?

12 A. Yes, ma'am.

13 Q. And in this case, doing eyewitness  
14 identifications; is that correct?

15 A. Yes, ma'am.

16 Q. And the most recent orders that you all have  
17 for witness identification was updated in 2009; is that  
18 correct?

19 A. I'll take your word for it. I'm not sure.

20 Q. Okay.

21 A. I wasn't here in '09. I was in Afghanistan.  
22 So, if they updated it while I was gone, I wouldn't know  
23 it.

24 Q. But you are trained on the most current  
25 procedures in force at the Houston Police Department?

1 A. Yes, ma'am.

2 Q. One of the concerns with eyewitness  
3 identification is that you want to get the right person;  
4 is that correct?

5 A. Yes, ma'am. I want it to be accurate.

6 Q. Exactly. And there has been a lot of talk  
7 about eyewitness identification as of late. Is that  
8 true?

9 A. Fair amount, yes, ma'am.

10 Q. Especially in Texas where there have been  
11 quite a number of exonerations due to DNA; is that  
12 correct?

13 A. Yes, ma'am.

14 Q. And the No. 1 cause for wrongful convictions  
15 has been misidentification?

16 A. I guess. I'm not up on those stats.

17 Q. But the procedures that you all have, the  
18 admonishments, that's one of procedures that you have at  
19 the Houston Police Department; is that correct?

20 A. Yes, ma'am.

21 Q. And you want to advise a person that the  
22 person may or may not be there; is that right?

23 A. Yes, ma'am.

24 Q. You also want to let the person whether or not  
25 you identify anyone in this photo away, this

1 investigation is going to continue.

2 A. Yes, ma'am.

3 Q. You don't want to in any way try to influence  
4 what the person is going to say.

5 A. No. Don't want to do that at all.

6 Q. Now, you showed a photo array to Tony and he  
7 identified No. 6.

8 A. Yes.

9 Q. Is that correct?

10 Later on, May 23rd, you show Mr. Moore  
11 several photo arrays as well; isn't that correct?

12 A. Yes, ma'am.

13 Q. There was one we talked about, that  
14 Mr. Burdette just talked about, that is the one where he  
15 selected the No. 3, which contained Mr. Aker's picture;  
16 is that right?

17 A. Uh-huh.

18 Q. In that same array, he tried to point to  
19 someone else saying they may be here. Then you said  
20 that there is only one photo of one suspect in that  
21 array; is that right?

22 A. Uh-huh.

23 Q. Mr. Moore also made another positive  
24 identification in another array; is that correct?

25 A. Yes, ma'am.



1 Q. I believe you showed him at least two more,  
2 but there was no identification made in the other two?

3 A. I showed him four that day and the first one I  
4 showed him was the one containing Nicholas Aker. I have  
5 got it all here. And the second one was Brshai Peters.  
6 The third one was Norris and the last one was the  
7 female, Jasmine.

8 Q. And he was able to identify two?

9 A. He identified Nicholas Aker and he identified  
10 Jasmine as being the female involved.

11 Q. One of the things that you indicated to him is  
12 that he got two out of four correct?

13 A. After everything was all said and done, yeah.

14 Q. Okay. And, Officer Carr, I want to go back to  
15 May 8th when you were in Temple and you were talking to  
16 Jasmine. You indicated she was cooperative with you  
17 from the start?

18 A. Pretty much, yes.

19 Q. But you did have to kind of go through the  
20 show to make it seem like she wasn't being cooperative  
21 in front of everyone else; is that right?

22 A. Uh-huh.

23 Q. At some point you did to go back to the Temple  
24 Police Department; is that right?

25 A. Yes.

1           Q.    You were able to get a statement from  
2 Ms. Stelly at that time?

3           A.    Yes, ma'am.

4           Q.    You recorded that statement as well?

5           A.    Yes, ma'am.

6           Q.    And that statement took place at the Temple  
7 Police Department in one of their interrogation rooms;  
8 isn't that right?

9           A.    Yes, ma'am.

10          Q.    From your recording, the recording started at  
11 4:36 p.m.; is that right?

12          A.    Yes.

13          Q.    And ended at 1733, which for those of us not  
14 in the military is 5:33 p.m.?

15          A.    Yes, ma'am.

16          Q.    Officer Carr, have you had an opportunity  
17 since then to listen to that recording?

18          A.    No, I haven't listened to it.

19          Q.    Do you remember, though, the things that you  
20 talked about with Ms. Stelly?

21          A.    Yes, ma'am.

22          Q.    Do you remember generally what you talked  
23 about, some general -- general -- generally and  
24 sometimes specifically what you-all talked about?

25          A.    Going on memory from a year ago, for the most

1 part.

2 Q. Do you recall that you had asked her about her  
3 relationship with Mr. Peters, with Brshai Peters?

4 A. Yes, I do remember that.

5 Q. Do you recall Ms. Stelly telling you he was,  
6 for lack of a better term, abusive?

7 A. Yes.

8 Q. Do you remember her telling you that Brshai  
9 had punched her and would use profanity with her and  
10 disrespect her in front of other people?

11 A. Yes.

12 Q. Do you remember asking Ms. Stelly about  
13 specifically what happened that night, how things were  
14 going at Denny's? Do you remember that?

15 A. Uh-huh.

16 Q. Do you remember that at first she said that  
17 she didn't know anything and that she hadn't been part  
18 of the discussion, but later you actually told her, I  
19 heard this information from another witness that you  
20 were going to stay at Denny's but they said -- Brshai  
21 said he needed you to come. Do you remember having that  
22 conversation with her?

23 A. Yes, I do.

24 Q. Do you remember her later staying, Well, yeah,  
25 I was going to. Toya had asked if I could say, but B

1 said I needed to come because they needed me?

2 A. Yes. She was -- if I remember correctly, she  
3 said something along the lines, That's my woman. You're  
4 coming with us. We're using you. You are going to be  
5 the distraction or something like that.

6 Q. So, you did talk to Ms. Stelly about actually  
7 being a distraction during the robbery?

8 A. Something about her being a distraction.

9 Q. Do you also remember that when you had talked  
10 to Ms. Stelly, she said that she knew that Norris Brshai  
11 and Nicholas had guns that night?

12 A. I remember asking her about the guns. I can't  
13 remember what she told me. She said they had guns, but  
14 as far as who had the guns, I don't remember that part.

15 Q. But she did admit that she knew they had guns?

16 A. She knew they had guns, yes.

17 Q. Do you also remember her telling you that  
18 Norris had the smaller gun, but -- the smaller gun was  
19 for Norris but Brshai had it.

20 A. Something along those lines, yes.

21 Q. And it was when you had kind of confronted her  
22 about, Wait a minute, you were supposed to be the  
23 distraction, then she said, Well, you know, I'm going to  
24 tell you the truth because I have no reason to lie. She  
25 did tell you that; is that right?

1           A.    Uh-huh.

2           Q.    And when you had asked her about the actual  
3 shooting, do you remember her telling you she couldn't  
4 see who shot first? Do you remember her telling you  
5 that?

6           A.    Because she was -- she said she was in the van  
7 looking out the back window and saw the fire coming out  
8 of the gun and all that. She didn't know who shot  
9 first, but she knew who was behind the van.

10          Q.    But she was always pretty consistent that it  
11 was Nicholas and B, or Brshai, that had guns?

12          A.    Yes.

13          Q.    Do you remember asking Ms. Stelly whether she  
14 could see them going through Mr. Moore's pockets?

15          A.    Being as this is a robbery, I probably asked  
16 her that; but I don't specifically remember asking that  
17 question.

18          Q.    Do you remember that she said she couldn't see  
19 them going through the pockets because of where she was,  
20 her line of vision, she couldn't see that?

21          A.    Again, if I asked that question, I don't  
22 remember what answer she gave me. I mean --

23                    *THE COURT:* There's another question  
24 she'll ask you.

25                    *THE WITNESS:* Sorry.

1                   THE COURT: That's okay. But respond to  
2 the questions. I'd appreciate it.

3           Q.    (BY MS. VALENTINE) Do you remember sometimes  
4 just a little bit after you guys were talking about  
5 the -- what had happened that night, you had asked her  
6 if she had ever been involved -- if she had ever used  
7 drugs before. Do you remember asking her that?

8           A.    I probably asked her that.

9           Q.    Do you remember if she told you whether or not  
10 she had been using drugs or whether she had used drug  
11 before?

12          A.    If I remember correctly, I think she said she  
13 had and that's why she had been getting in a fight with  
14 her mother or something like that. I know she had been  
15 in a fight with her mom. I think that was the impetus  
16 behind it. I probably asked that question.

17          Q.    Do you remember asking her if this was the  
18 worst thing that she had been involved in or if this was  
19 the worst thing that ever happened to her?

20          A.    I remember asking that one.

21          Q.    Do you remember her responding that -- she  
22 waited, she kind of thought about it, and then she  
23 responded that she had gotten into a fight with her  
24 mother and been charged with an assault on her mother?

25          A.    Yes, I remember that. Yes.

1 Q. Then she told you that she had been accused of  
2 stealing before, but they didn't find anything on her?

3 A. Yes, I remember that.

4 Q. When you had asked -- do you remember asking  
5 Ms. Stelly if -- you had talked to her about why didn't  
6 she wait for the police? Do you remember that?

7 A. Yes.

8 Q. And she did tell you that right after the  
9 shooting happened, she knew that the police were going  
10 to be coming pretty quickly; isn't that right?

11 A. Yes.

12 Q. And she said that she left because she didn't  
13 have a ride back to Baytown?

14 A. Yes.

15 Q. And she also had -- when you asked her if she  
16 was sorry that this happened, do you recall her saying,  
17 Well, yeah, but I didn't do anything?

18 A. Yes.

19 Q. And when you asked her again if she was sorry  
20 that it happened, do you remember her saying, Yeah, but  
21 I didn't have anything to do with it?

22 A. She might have said that, yes.

23 Q. Officer Carr, you prepared the report in this  
24 case; is that correct?

25 A. Yes, ma'am.

1 Q. One of the things that you did in your report  
2 is you went through detail and kind of recalled what you  
3 had done in the order pretty much that you had done it  
4 in.

5 A. Yes.

6 Q. Is that fair?

7 A. Yes, ma'am.

8 Q. You talk about the statements that you had  
9 taken from various people; is that right?

10 A. Uh-huh.

11 Q. And one of the statements that you had taken  
12 from was Jasmine Stelly?

13 A. Uh-huh.

14 Q. Do you recall in your report saying that  
15 Ms. Stelly kind of varied on her description of what  
16 happened at times?

17 A. Well, let's see.

18 THE COURT: Well, first of all, it's a  
19 yes or no.

20 A. I don't recall.

21 THE COURT: Okay.

22 Q. (BY MS. VALENTINE) Would looking at your  
23 report refresh your recollection?

24 A. Yes, it would. I've got it right here.

25 Q. (BY MS. VALENTINE) Your numbers may be



1 different?

2 MS. VALENTINE: May I approach, Judge?

3 THE COURT: You may. Thank you.

4 (Discussion off the record.)

5 Q. (BY MS. VALENTINE) Does that refresh your  
6 recollection?

7 A. Uh-huh.

8 Q. Did you indicate Ms. Stelly had kind of varied  
9 in her description of what happened?

10 A. Yes, I did.

11 Q. And we talked about -- well, you had said that  
12 that was a supplement but still a supplement that's  
13 written by you?

14 A. Yes, that's my supplement report. I've got a  
15 copy of my supplement report here. That part is  
16 missing. I don't know why.

17 MS. VALENTINE: Thank you very much.

18 Pass the witness.

19 THE COURT: Okay. Mr. Burdette.

20 MR. BURDETTE: Yes, Judge, briefly.

21 **REDIRECT EXAMINATION**

22 **BY MR. BURDETTE:**

23 Q. I would like to follow up, give Officer Carr a  
24 chance to explain to the jury what he meant when he said  
25 Jasmine varied in her description of the events.

1           A.    I would have to read through the entire thing.  
2    Like I explained to the defense, I've got my copy of the  
3    report here, but the fact her statement is missing, if  
4    you have your copy of the report, I can see read through  
5    it really fast.  Page 58, it's not in here, which just  
6    pisses me off.

7                                Ready?

8           Q.    Ready.

9           A.    At the top of the paragraph, I explain it  
10   initially when I talked to her.  She said she ran out of  
11   the van, tried to get away then she went back and said  
12   she was sitting in the van.  So, she was -- I was, Okay,  
13   which is it?  You were either in the van or you weren't?

14                                She said, No, she was in the van looking  
15   through the rear window when she saw what happened.

16           Q.    So that little variance, you followed up on?

17           A.    The part where I say that she was -- let's  
18   see.  Varied in her description of what happened --

19                                *THE COURT:*  Read it to yourself.

20           A.    Then where she initially said she ran away  
21   from the van, then she said she was in the van when the  
22   shooting happened.  That's what I meant by the variance  
23   in the description of what happened.

24           Q.    *(BY MR. BURDETTE)*  Did she ever vary her  
25   description of who the shooters were?

1 A. No.

2 Q. Did she ever vary as to who the parties  
3 involved were?

4 A. No.

5 Q. Did she ever vary about who was robbed?

6 A. No.

7 Q. Or where the robbery took place?

8 A. No.

9 Q. Always consistent with regards to those  
10 things?

11 A. Yes.

12 Q. Was she cooperative, for the most part from  
13 the beginning?

14 A. Yes, sir, she was.

15 Q. And of the four of them, in your opinion, who  
16 was the least culpable?

17 MS. VALENTINE: Objection, calls for  
18 speculation.

19 MR. BURDETTE: I'm asking for his  
20 opinion, Judge. It is allowed under 701.

21 THE COURT: All right. I'll allow it.

22 A. I would say her.

23 Q. (BY MR. BURDETTE) Did you say that  
24 essentially from the beginning?

25 A. I said that when we were deciding charges and

1 stuff like that, calling the DA.

2 Q. And have you, in fact -- well, you and I have  
3 discussed that, right?

4 A. Yes.

5 Q. And you know that her case was actually  
6 dismissed, right?

7 A. Yes.

8 Q. I told you that?

9 A. Yes.

10 Q. And she agreed to testify here under oath to  
11 this jury. Did you know that?

12 A. Yes.

13 Q. And she has, in fact, testified. Did you know  
14 that?

15 A. Yes.

16 MR. BURDETTE: I'll pass the witness,  
17 Judge.

18 MR. MARTIN: May we have a moment, Your  
19 Honor?

20 THE COURT: You may.

21 **RECROSS-EXAMINATION**

22 **BY MS. VALENTINE:**

23 Q. Officer Carr, do you know how long Ms. Stelly  
24 was in jail before the charges were dismissed?

25 A. No.

1 Q. Now, Mr. Burdette had asked if you knew she  
2 had been charged, if you knew that the charges had been  
3 dismissed.

4 A. Yes.

5 Q. And you knew she had testified earlier?

6 A. I knew she was testifying in this.

7 Q. Did you know that she testified on some things  
8 differently than she told you?

9 MR. BURDETTE: Object to that. The Rule  
10 has been invoked. He hasn't been in the courtroom until  
11 he came to testify.

12 THE COURT: Okay. You can say, no, that  
13 you don't know because you weren't here.

14 THE WITNESS: I don't know what she said.

15 THE COURT: Okay. So, we won't go any  
16 further.

17 Q. (BY MS. VALENTINE) But you are aware that she  
18 only testified after the case was dismissed?

19 A. Yes.

20 MS. VALENTINE: No further questions.

21 THE COURT: Anything further?

22 MR. BURDETTE: Nothing further, Judge.

23 THE COURT: Okay. Thank you, sir.

24 Call your next witness.

25 MR. BURDETTE: Your Honor, at this time

1 the State of Texas rests.

2 THE COURT: Okay. Call your first  
3 witness or --

4 MR. MARTIN: I would like -- I have a  
5 matter I would like to take up out of the presence of  
6 the jury.

7 THE COURT: Okay. We're going to take an  
8 short break and we'll call you in a few minutes.

9 Please rise.

10 You can file out.

11 (*Jury out.*)

12 THE COURT: The jury has gone into the  
13 jury room and at this time Mr. Martin has a motion.

14 MR. MARTIN: Yes, Your Honor. I  
15 respectfully move for a motion of instructed verdict on  
16 the basis the State has not proved each and every  
17 element beyond a reasonable doubt, especially not proven  
18 the corroboration of Ms. Stelly.

19 THE COURT: Okay. Then that motion is  
20 denied.

21 We should have them back. I'm going to  
22 ask them. If they want to stay, we'll stay. They may  
23 have things to do on Friday. I just want to ask them.  
24 I apologize if I had gotten your hopes up.

25 (*Jury in.*)

1           THE COURT: Call your first witness.

2           MR. MARTIN: We rest, Your Honor.

3           THE COURT: Okay. Both sides have rested  
4 putting on evidence in the first phase of this trial.  
5 That means you are not going to hear from either of them  
6 before you get the case.

7           And, so, what are we going to do? We  
8 could break right now and come back early in the morning  
9 and then you will hear both sides argue for about 10 to  
10 15 minutes each side, and then you will have the case.  
11 We could stay and work through it and then you could  
12 have the case and start deliberating. I imagine -- I  
13 have to read this charge to you and it's about six pages  
14 long. It will take 15 or 20 minutes for me to read it  
15 to you. And then each side will have 15 minutes to talk  
16 to you, so that's another 30 minutes. That's almost an  
17 hour and then you would deliberate.

18           I don't know how long you want to do  
19 that. Do you want to do it today? You want to work  
20 through or do you want to come back early tomorrow?

21           *(Jurors talk among themselves.)*

22           A JUROR: We have two votes for tomorrow.

23           THE COURT: Okay. Then that vote will  
24 carry. We're going to come back. What's a good time  
25 then? We need to do it earlier than 10:00. Would 8:00

1 be too early for anybody? Because I want you to have  
2 plenty of time to do what you need to do and there is no  
3 time limit if we start early enough.

4 A JUROR: It just means that I have to be  
5 at work by 4:00 in the morning in order to be here by  
6 8:00.

7 THE COURT: Oh, you are still working two  
8 jobs?

9 A JUROR: Yes.

10 THE COURT: And you are doing your job  
11 as -- you are not supposed to be doing this. You're  
12 supposed to be devoting your full time to this.

13 Okay. How about 9:15? Can we all be  
14 here at 9:15? We'll start at 9:15. Is that okay?  
15 Ma'am?

16 A JUROR: Yes, sir.

17 THE COURT: So, 9:15. If you come at  
18 9:00, it will be very crowded out front. At 9:15,  
19 everyone is supposed to be in court by that time at  
20 9:00; so, if you are here just moments after 9:00, there  
21 won't be a line. You're wearing these tags around your  
22 neck. That tells you go to the front of any line. If  
23 there is a line, you go straight to the head of it. I'm  
24 on a jury. I'm supposed to be there right now. They  
25 are supposed to let you go to the head of any line.



1           So, remember to wear that and we're going  
2 to be back here at 9:15 in the morning. Is that okay  
3 with everybody?

4           Please don't Facebook, Twitter, Internet,  
5 anything about this case. Don't bring in any evidence  
6 from the outside. Everything you're going to hear is  
7 coming from right here. All that evidence is right  
8 here. I don't want anything from the outside.

9           So, what happens when we get here at  
10 9:15? Both sides have rested. I'm going to read you  
11 the charge, might take 15 minutes and each side will  
12 have 15 minutes to talk to you. Then you will have the  
13 case and as much time as you need. All right?

14           Okay. Ladies and gentlemen, please don't  
15 discuss the case with anybody else. See you in the  
16 morning.

17           *(Jury out.)*

18           *THE COURT:* You had the charge last  
19 night. Do you have any objections to the charge as  
20 written?

21           *MR. MARTIN:* I do.

22           *THE COURT:* All right. Mr. Martin.

23           *MR. MARTIN:* I didn't have the charge  
24 last night, Judge. I haven't read it.

25           *THE COURT:* Okay.

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*(Court in recess for the day.)*