

1 You have Officer Carreon on the stand.

2 MR. TANNER: Thank you, Judge. At this
3 time we're going to offer a stipulation of evidence,
4 Defendant's Exhibit No. 1, which is a booking photo of
5 the defendant, which was taken on April 12th of 2011
6 right after his arrest.

7 MR. BURDETTE: I believe it was the 13th.

8 MR. TANNER: The day after the arrest, the
9 13th. We stipulate that was his booking photo; isn't
10 that correct?

11 MR. BURDETTE: Correct.

12 MR. TANNER: And we would ask that it be
13 published to the jurors.

14 THE COURT: You may. You can do it that
15 way or put it on the overhead.

16 MR. TANNER: I'll do it this way. I would
17 just as soon do it that way. Thank you.

18 THE COURT: Low tech.

19 MR. TANNER: The only way.

20 **CROSS-EXAMINATION CONTINUED**

21 **BY MR. TANNER:**

22 Q. Officer, how are you?

23 A. Good, sir.

24 Q. Let's start with when this case happened, you
25 went -- you were one of the officers who went to the

1 scene?

2 A. That's correct, sir.

3 Q. You had a partner with you, correct?

4 A. Yes, sir.

5 Q. And his name was what?

6 A. Wyssbrod, Paul Wyssbrod.

7 Q. And you met with the person who had been
8 robbed, correct?

9 A. Yes, that's correct, sir.

10 Q. And got some descriptors. And the two of you
11 put together an offense report, correct?

12 A. That's correct, sir.

13 Q. And did Officer Wyssbrod, is he the one who
14 actually wrote the report or entered it into the
15 computer?

16 A. No, he's the one that wrote it and entered it.

17 Q. Okay. But this is the report you did -- you do
18 it along with him?

19 A. Yes, sir.

20 Q. Okay. So together you did the report?

21 A. Yes, sir.

22 Q. Now, there is nothing in the record that I see
23 where they have a description of the person who did the
24 robbery, where he's described; is that correct?

25 A. That's correct.

1 Q. There is no section where you described, like,
2 he's this tall, he's this color, he was wearing jewelry,
3 he had tattoos all over him, things of that nature,
4 right? You never put in an entry of the initial
5 description given to the both of you, correct?

6 A. That's correct, but I can explain on that.

7 Q. Well, let me ask you: You didn't put in a
8 description, but you put out a description over the
9 radio, correct?

10 A. Over the computer, sir.

11 Q. Over the computer what you were looking for?

12 A. Yes, sir.

13 Q. And is it true you said you were looking for a
14 tall guy, around six one, light-skinned? Is that pretty
15 much what you put out and a description of the vehicle?

16 A. Mainly description of the vehicle and then the
17 description of the suspect.

18 Q. Okay. And you don't have in your report what
19 the description was, but did you say earlier today that
20 he was a tall guy, around six one with light skin?

21 A. That's correct.

22 Q. And the description for the vehicle was for
23 what color car?

24 A. I believe at the time it was a tan car.

25 Q. A tan car. So you put out a description that

1 it was a tan vehicle?

2 A. Yes, sir.

3 Q. And the car in which this defendant was
4 arrested in, what color was that car?

5 A. It was silver, but I could expound on it.

6 Q. Okay. So it was silver, but the description
7 was for a tan car, correct? That's what went out over
8 the radio?

9 A. That's correct.

10 Q. You were given descriptors of the first two
11 letters on the license plate, correct?

12 A. That's correct, sir.

13 Q. But you didn't enter them in your report what
14 they were, right?

15 A. No, sir.

16 Q. They're not in the report. You did at some
17 point put over the broadcast or in your communications
18 with other officers that the person had a gun, correct?

19 A. That's correct.

20 Q. And would you say it was about an hour later
21 that the other officer arrested this defendant, about an
22 hour later?

23 A. It was within an hour so it was less than an
24 hour. I wouldn't say more than an hour.

25 Q. Now, if you refresh your recollection, look at

1 your offense report, you state in there that Officer
2 Duran alerted you and Officer Wyssbrod over the radio
3 that he possibly had the suspect in custody and the
4 robbery had occurred about an hour before.

5 A. Where are you reading that, sir?

6 Q. Right in the middle of your --

7 THE COURT: You may approach if you like.

8 MR. TANNER: Thank you, Judge.

9 Q. (BY MR. TANNER) Right here.

10 A. Yes, sir. What was your question?

11 Q. Is it correct that in your report that you
12 reflected that the robbery had occurred only about an
13 hour before? Is that what was written in your report?

14 A. That's what is written in my report, yes, sir.

15 Q. Okay. So the defendant may have been stopped a
16 little bit less than an hour or a little bit more than
17 an hour, but you don't know the exact times, based on
18 your report doesn't indicate the exact times?

19 A. I don't recall the exact time, no.

20 Q. Now, were you surprised when you and the other
21 officer searched the vehicle and could not find a gun?

22 A. I wasn't surprised. I was disappointed, but --

23 Q. You expected to find a gun, correct?

24 A. Yes, sir.

25 Q. And you didn't find any drugs either, correct?

1 A. No, sir.

2 Q. And you testified earlier that people ditch
3 guns sometimes after they do robberies?

4 A. That's correct.

5 Q. But you think people ditch guns after they
6 think they have done a successful robbery? Like, if I
7 robbed someone and I get away, subsequent you think I am
8 going to throw my gun out?

9 A. I can't speculate on why they would or
10 wouldn't.

11 Q. Okay. So it would be fair to say you guys were
12 surprised there was no gun in the car, correct?

13 A. Yes, sir.

14 Q. And no wallet found in the car either, right?

15 A. No, no wallet was found.

16 Q. Nothing else other than the debit card,
17 correct?

18 A. That's correct.

19 Q. Now, were you the person who called
20 Mr. Castillo to tell him to come over and view the
21 person?

22 A. Yes, sir.

23 Q. And what exactly did you tell him?

24 A. I just told him if he could get to Sellers
25 Brothers, if he knew how to get there and if he could

1 come by and take a look at this guy that we had stopped.

2 Q. Now, where the robbery happened, the lighting,
3 did you and your partner note in the offense report that
4 it was a dimly lit apartment complex?

5 A. I believe that's what's on the report, yes,
6 sir.

7 Q. So you call Mr. Castillo to come over there,
8 see this person that had the credit card in his
9 possession, right?

10 A. Yes, sir.

11 Q. You don't have a gun. And did you ever think
12 of possibly calling robbery detectives and setting up a
13 lineup, a live lineup or maybe a photo spread, at least,
14 so that the witness would be able to compare different
15 faces and see if he could identify the person?

16 A. Well, our procedure would be if it's within an
17 hour, then it's okay. So that's what we did. If it
18 would have been longer, we would have referred it to an
19 investigative division.

20 Q. Would you agree with me that a photo spread or
21 a live lineup would have been a more fairer way to make
22 an identification than just bringing him back and
23 saying, Is this the guy?

24 A. I wouldn't necessarily say more fair, but
25 because it had just happened, it's fresh in that

1 person's mind. I believe that's just as equal.

2 Q. Are you familiar with weapons?

3 A. Yes, sir.

4 Q. Are you familiar with weapons which sometimes
5 shoot soft BB's or real BB's that look like real guns?

6 A. Yes, sir.

7 Q. And are they called Airsoft?

8 A. Yes, sir, they are.

9 Q. And would you agree with me one of those guns
10 can look exactly like a real gun?

11 A. Yes, sir, but I could explain on that as well.

12 Q. Okay. But would you agree they do look like
13 real guns?

14 A. Yes, sir, they do look like real guns.

15 Q. And have you heard of occasions where police
16 have shot somebody because they had one of those air
17 guns and the police thought it was a real gun?

18 A. Yes, sir.

19 Q. How hard would it have been for you and the
20 other officers to call robbery and maybe set up a
21 lineup? How much effort would that have taken?

22 A. We would have had to either release the
23 defendant and it probably could have taken days before
24 that could have happened, unless we had some reason to
25 arrest him.

1 Q. And you had the credit card on him, correct?

2 A. That's correct.

3 Q. But couldn't they have done a lineup or a photo
4 spread that evening if you wanted it that way?

5 A. I'm not really familiar with the procedures of
6 robbery. I know they work day shift. I'm sure there
7 are some on call. I'm not sure they would do it right
8 then that evening or wait until the morning.

9 Q. But it's possible it could have been done
10 pretty quickly, right?

11 A. Possibly, yes, sir.

12 Q. And you could have held them overnight or 24
13 hours in determining whether or not there was an
14 identification from the lineup?

15 A. Procedures would not allow us to hold them just
16 as a hold unless we have a charge on them. They won't
17 take holds anymore. They used to.

18 Q. So your option would have been you get a
19 detective to work on it right away that evening or early
20 that morning, correct?

21 A. That would have been if we had it, yes, sir.

22 Q. You didn't put any information out over the
23 radio or on your computer that night that you were
24 looking for someone with a scar on his face or multiple
25 tattoos, did you?

1 the witness?

2 THE COURT: You may.

3 Q. (BY MR. BURDETTE) Go ahead and turn to the
4 second page there. I'm going to direct your attention
5 to the top part there.

6 Now, this is the original report that was
7 entered that night by you and your partner, right?

8 A. That's correct.

9 Q. And you have the defendant's name correct in
10 there?

11 A. Yes, sir.

12 Q. And what is his name?

13 A. His name is Chad Collins.

14 Q. Okay. What do you have for his race?

15 A. Black male.

16 Q. Okay. And sex is male. What do you have in
17 there for height?

18 A. Six five.

19 Q. And what about weight?

20 A. 170.

21 Q. And color of hair?

22 A. Black.

23 Q. And for dress, what do you have in there?

24 A. I have a coat, hooded, black. Shorts, short
25 pants, blue -- blue short pants.

1 Q. And for a weapon used?

2 A. Pistol.

3 Q. So there are identifiers in your report?

4 A. Yes, sir.

5 Q. When you said on cross-examination that the
6 description wasn't entered, what did you mean?

7 A. I meant in the officer's narrative. These are
8 just little fill-in screens.

9 Q. Okay. So was that information filled in?

10 A. Yes, sir.

11 Q. Did you also write in your narrative that you
12 had sent the identifiers over the MDTs?

13 A. Yes, sir.

14 Q. And no question that was done?

15 A. No question.

16 Q. Now, you said you were expecting or
17 disappointed that you didn't find a gun in the car,
18 right?

19 A. Yes, sir.

20 Q. Have you ever encountered that scenario before
21 where someone has committed a crime and you're expecting
22 to find the evidence there, but it wasn't there?

23 A. That's correct.

24 Q. And the explanation for that could be a million
25 different reasons, right?

1 A. That's correct.

2 Q. And it's true you don't know what happened to
3 the gun that was used to rob Mr. Castillo, do you?

4 A. No, sir. I cannot speculate.

5 Q. Okay. I don't want you to do that, but I do
6 want you to tell us about Airsoft guns and how you can
7 determine whether or not an Airsoft gun is different
8 than an actual gun.

9 A. Well, what I want to explain is using an
10 Airsoft gun as a real gun and robbing somebody is still
11 a robbery, still an aggravated robbery.

12 MR. TANNER: Excuse me. I'm going to
13 object to the witness testifying as to what the law is,
14 Judge.

15 THE COURT: I'm going to sustain that.

16 Q. (BY MR. BURDETTE) Listen carefully to my
17 question. I just want you to explain to the jury, first
18 of all, what's an Airsoft gun?

19 A. It's a gun that shoots little white
20 projectiles -- I mean, plastic projectiles. Could be
21 different colors.

22 Q. And those guns are modeled after actual
23 firearms; is that right?

24 A. That's correct. They look very --

25 Q. They look very similar, don't they?

1 A. Yes, sir.

2 Q. Now, have you ever personally inspected an
3 Airsoft gun?

4 A. Yes, I have.

5 Q. Do they feel differently when you hold them
6 than an ordinary gun?

7 A. They're a little lighter.

8 Q. I'm showing you what's been admitted for
9 demonstrative purposes as State's Exhibit 15. You
10 haven't seen this before yet, have you?

11 A. No, I haven't.

12 Q. Just go ahead and hold it. And tell me based
13 on your training and experience if you think this is an
14 Airsoft gun.

15 A. It feels like a real gun.

16 Q. What are you basing that on?

17 A. The way it's metal on the top, plastic on the
18 bottom. Most Airsoft guns are not metal on the top.

19 Q. If there was metal, would that be dispositive?
20 Would that necessarily mean that it's a real gun?

21 A. No. I would look in the front and the hole is
22 much bigger than that small hole that most of those guns
23 have.

24 Q. So the jury can see what you are talking about,
25 did you have a chance to inspect the caliber of this

1 firearm?

2 A. I didn't get to.

3 MR. BURDETTE: May I approach the witness,
4 Judge?

5 THE COURT: You may.

6 Q. (BY MR. BURDETTE) Take a look at that and tell
7 me if you can tell me what caliber of gun that is.

8 A. .40.

9 Q. Okay. Can you take a look at the muzzle here?
10 Does that look consistent?

11 A. Yes.

12 Q. It's what caliber firearm?

13 A. It's a .40 caliber.

14 Q. That's what we have here. Where does a .40
15 caliber fall in terms of caliber? Is it bigger than a 9
16 millimeter?

17 A. It's slightly bigger. It's between a .45 and a
18 9.

19 Q. All right. So a .45 is slightly bigger. Take
20 a look down the barrel of the gun here and explain why
21 the barrel of the gun is important when determining
22 whether or not it is a firearm or an Airsoft gun?

23 A. Airsoft guns, it would be a really small hole,
24 mostly a .177, I believe, the size of the little
25 projectile. Really small.

1 Q. And the caliber of a .40 caliber or 9
2 millimeter or a .45 is bigger?

3 A. Much bigger, yes, sir.

4 Q. Do you know how big a pellet those Airsoft guns
5 shoot?

6 A. I believe it's .177.

7 Q. What does that mean for us?

8 A. It's just the size of the diameter of the
9 actual round.

10 Q. Can you give us some perspective? Compare it
11 to a BB, perhaps?

12 A. It's just like a BB. Just like a BB, if you
13 have seen a little BB.

14 Q. Okay. And this is much bigger?

15 A. Uh-huh, yes. That's correct.

16 Q. That's right?

17 Do Airsoft gun oftentimes have orange tips
18 on them?

19 A. Some of them do.

20 Q. What is the purpose of having an orange tip?

21 A. So that people could determine whether it's
22 real or not.

23 Q. But it's possible, perhaps, maybe one doesn't
24 or maybe that gets removed somehow?

25 A. That's correct.

1 Q. Now, based on your training and experience, is
2 a firearm a deadly weapon?

3 A. That's correct.

4 Q. Could an Airsoft gun also be considered a
5 deadly weapon?

6 A. Depending on what kind of BB it shoots.

7 Q. Is it possible?

8 A. Yes, it's possible.

9 Q. At any point during your investigation, did you
10 receive any evidence that Mr. Castillo was robbed with a
11 toy gun?

12 A. No.

13 Q. That indication was never made to you?

14 A. No, sir.

15 Q. Now, you testified regarding the show-up ID.
16 You said if it's within an hour that that's suitable for
17 your department. Those are department regulations?

18 A. Yes, sir.

19 Q. But that is not necessarily what the law is; is
20 that right?

21 A. Yes, sir.

22 Q. And when you are talking about the hour, are
23 you talking about from the last time the victim saw the
24 defendant to the first time the police officers detain
25 him?

1 A. That's correct.

2 Q. Okay. So the show-up doesn't necessarily have
3 to be done within an hour, but from the time he leaves
4 the victim to the time he's first detained should be
5 within an hour?

6 A. That's correct.

7 Q. Is there some leeway -- you know, if you are at
8 hour and two minutes, is that still acceptable?

9 A. That is still acceptable, yes, sir.

10 Q. Okay. So the purpose behind it is to be fair
11 and to make sure the victim still remembers the person?

12 A. That's correct.

13 MR. BURDETTE: I'll pass the witness at
14 this time.

15 THE COURT: Okay. Mr. Tanner, further?

16 MR. TANNER: Thank you.

17 **RECROSS-EXAMINATION**

18 **BY MR. TANNER:**

19 Q. Officer, you were just questioned about an
20 identification in your offense report that you made.
21 Six foot five, 170 pounds, correct?

22 A. That's correct.

23 Q. And this was under the name of Chad Collins,
24 correct?

25 A. That's correct.

1 Q. So you put all this in after you had arrested
2 Chad Collins, correct?

3 A. That's correct.

4 Q. Okay. So this wasn't given earlier by the
5 victim to you and entered at that time? This was
6 entered specifically for Chad Collins after he was
7 arrested?

8 A. They matched, but, yes, sir.

9 Q. Well, once you arrested him, you said he was
10 six five. Before you said the person described the man
11 as being six one, right?

12 A. That's correct.

13 Q. So it didn't quite match, right? Six one and
14 six five is a little bit different?

15 A. That's correct.

16 Q. Without going into what was told to you or who
17 told you, did you receive information which you put into
18 your offense report that sometime after the point when
19 Mr. Castillo was robbed and the point that this
20 defendant was arrested, do you have some information,
21 without saying what it was, that this defendant was seen
22 on the 1200 block of Fennel talking to somebody?

23 A. No, I didn't, sir. I just received that phone
24 call from Duran. I don't know where he stopped him
25 originally. He didn't tell me where he stopped

1 originally.

2 Q. But did you put something into your report?

3 A. I believe my partner did write something.

4 Maybe relayed it back to my partner.

5 Okay. He told my partner that.

6 Q. That this defendant was seen somewhere else
7 between the two times?

8 A. Correct. 1200 Fennel, yes.

9 MR. TANNER: All right. Thank you.

10 MR. BURDETTE: Nothing further at this
11 time.

12 THE COURT: Okay, Officer. Thank you.
13 You're excused. I guess you're on call if we need you.

14 THE WITNESS: Okay.

15 THE COURT: Call your next witness.

16 MR. TANNER: Judge, can I talk to Aaron
17 for a minute before this officer leaves?

18 THE COURT: Yes.

19 Can you just wait in the hallway?

20 THE WITNESS: Sure.

21 MR. BURDETTE: State calls Jose Castillo.

22 THE COURT: Jose Castillo. Mr. Castillo,
23 come on up.

24 THE BAILIFF: He's already been sworn in.

25 THE COURT: Okay. You're still under

1 oath, sir. Would you take the stand?

2 MR. BURDETTE: May I approach the bench,
3 Judge, just briefly, just scheduling?

4 THE COURT: Yes, you may.

5 *(Discussion at the bench off the record.)*

6 **JOSE CASTILLO,**

7 having been first duly sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MR. BURDETTE:**

10 Q. Good morning, Mr. Castillo. I need you to
11 speak into the microphone.

12 A. Good afternoon, sir.

13 Q. How are you?

14 A. Fine.

15 Q. Would you please introduce yourself to the
16 members of the jury?

17 A. My name is Jose Castillo.

18 Q. Spell your last name for the court reporter.

19 A. C-A-S-T-I-L-L-O.

20 Q. Why don't you tell us a little bit about
21 yourself. Where are you from?

22 A. I'm originally from the Rio Grande Valley.
23 Moved up to Houston when I was about five and I have
24 been living in Houston ever since.

25 Q. Where did you go to high school?