

1 **CHRIS CEGIELSKI,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 BY MS. ALLEN:

5 Q. Will you please state your name for the ladies
6 and gentlemen of the jury?

7 A. Yes, ma'am, I'm Chris Cegielski.

8 Q. How are you employed?

9 A. I'm a sergeant with the Houston Police
10 Department homicide division.

11 Q. How long have you been with the homicide
12 division?

13 A. Almost five years.

14 Q. And how long have you been with the Houston
15 Police Department?

16 A. 17 years.

17 Q. Did you go to the same type of academy as
18 Officer Vanderberry and Huston and those would have gone
19 to?

20 A. Yes, ma'am.

21 Q. And have kept up your TCLEOSE certification
22 during the years that you've been with HPD?

23 A. Yes, ma'am.

24 Q. What are your duties as a sergeant with the
25 homicide division?

1 A. I'm an investigator. I investigate murder
2 cases, capital murder cases, kidnapping, solicitation of
3 capital murder.

4 Q. How does, if a crime happens where someone is
5 seriously injured and someone calls 911, generally a
6 patrol officer would be dispatched; is that correct?

7 A. Yes, ma'am.

8 Q. Then would they call in some specialized
9 division needed to be assigned?

10 A. Yes, ma'am.

11 Q. Once homicide is contacted, how is it decided
12 what police officer makes what scene?

13 A. We're on a rotation-base system. So, there are
14 different squads in the homicide division. I work on a
15 murder squad; and within that murder squad, there is
16 kind of a pecking order, you get a case, you drop to the
17 bottom of the rotation. So, that's how it works.

18 Q. Were you on duty on May 5th of 2010?

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

20 Q. At that time, did you have a partner that you
21 worked with routinely?

22 A. Yes, ma'am.

23 Q. Who is that?

24 A. Art Palos.

25 Q. Were you working on, in the daylight hours of

1 May 5th of 2010?

2 A. Yes, ma'am.

3 Q. Did you receive an assignment to go to a
4 shooting that had occurred at the corner of Braeswood
5 and the 610 Loop?

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

7 Q. Did, in fact, you go there?

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

9 Q. When you arrived, what was the location that
10 you went to first?

11 A. That physical address?

12 Q. No, just --

13 A. It was a gas station.

14 Q. And was that on the corner of Braeswood?

15 A. Yes, ma'am, on the northeast corner.

16 Q. When you arrived there, what was going on?

17 A. There was a black SUV, window had been shot out
18 or broken out. We already know going out that a woman
19 had been shot and that we were going to investigate.
20 The scene had been secured by patrol officers. In other
21 words, some crime scene tape put up to try to secure the
22 scene. Arrived there and began talking to the officers
23 to try to figure out what was going on.

24 Q. Was the person who had been shot still at the
25 scene?

1 A. No, ma'am, she had been transported to Ben Taub
2 Hospital by ambulance.

3 Q. Did you later learn what her identity was?

4 A. Yes, ma'am.

5 Q. What is it?

6 A. Yvonne Stern.

7 Q. How do you go about dividing up
8 responsibilities at a scene like this -- let me start
9 over on that. If the gas station was the actual scene
10 of the shooting, how would you have gone by dividing up
11 the duties of the officers who are there at that scene?

12 A. As far as my partner and I would work it, one
13 of us would work the scene, meaning we would document
14 the scene. And one of us would talk to any witnesses in
15 trying to find any witnesses.

16 Q. Does the Houston Police Department have a crime
17 scene unit division?

18 A. Yes, ma'am.

19 Q. On May 5th, 2010, did a crime scene officer
20 come out to the area there on Braeswood and 610?

21 A. Yes, ma'am.

22 Q. And who was that?

23 A. Officer Taravela.

24 Q. Is Officer Taravela available this week?

25 A. No, ma'am, he's not.

1 Q. Do you work closely with Officer Taravela while
2 you're at a scene?

3 A. Yes, ma'am.

4 Q. Do you make sure that he is made aware of the
5 things that you see, and you are made aware of the
6 things that he sees?

7 A. Yes, ma'am. Ultimately it's kind of a two-way
8 street, but it's our responsibility to make sure that
9 Officer Taravela collects any evidence we need to be
10 collected.

11 Q. Did you, what did you learn about the actual
12 shooting when you arrived at the gas station?

13 A. We learned that the actual shooting had
14 occurred at an apartment complex maybe a block down the
15 street, down Braeswood.

16 Q. Was something done to maintain the scene at
17 both the apartment complex and at the gas station?

18 A. Yes, ma'am, a patrol had also, once arriving at
19 the gas station had learned that the shooting had
20 occurred down the street. They went there to secure
21 that scene. It was in a parking garage, actually, of
22 the apartment complex.

23 Q. Did you observe both scenes?

24 A. Yes, ma'am.

25 Q. When you learned that Ms. Stern had been

1 transferred, transported to Ben Taub, did you go there
2 on May 5th of 2010?

3 A. Yes, ma'am, we did.

4 Q. Were you able to speak with her that day?

5 A. Yes, ma'am, briefly.

6 Q. At the time that you spoke with her, was she
7 under medication?

8 A. I believe so, yes, ma'am.

9 Q. Was she able to tell you what had occurred in
10 general?

11 A. Yes, ma'am.

12 Q. Did she tell you the name of a person who she
13 thought did the shooting?

14 A. Yes, ma'am.

15 Q. What was that person's name?

16 A. Tino.

17 Q. Did you go and try and talk to her before or
18 after you did the kind of scene investigation?

19 A. We did the scene first and then went to the
20 hospital after the fact.

21 Q. I'd like to show you what has been marked as
22 State's Exhibit 92 through 108. Would you look at each
23 of those, please?

24 A. Yes, ma'am.

25 Q. Did you take those photographs?

1 A. No, ma'am.

2 Q. Who took them?

3 A. Taravela.

4 Q. Did you observe each of the things that are
5 depicted in State's Exhibit 92 through 108 on May 5th of
6 2010?

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

8 Q. And are each of State's Exhibits 92 through 108
9 accurate photographs of what they depict?

10 A. Yes, ma'am.

11 MS. ALLEN: Your Honor, at this time I'd
12 tender 92 through 108 to Defense counsel and ask that
13 they be admitted into evidence.

14 (State's Exhibit Nos. 92 through 108
15 offered.)

16 MS. GONZALES: I have no objections, Your
17 Honor.

18 THE COURT: State's Exhibits No. 92 through
19 108 are admitted without objection.

20 (State's Exhibit Nos. 92 through 108
21 admitted.)

22 Q. (BY MS. ALLEN) Showing you State's Exhibit 92.
23 Can you tell the ladies and gentlemen of the jury what's
24 that a picture of?

25 A. That is Ms. Stern's vehicle, the black SUV.

1 Q. There is some glass at the, kind of the bottom
2 part of the picture, are you aware of why there is glass
3 there and the vehicle in a different area?

4 A. The vehicle was -- initially Ms. Stern stopped
5 there, and went inside to get help from the actual,
6 inside the store of the gas station and one of the
7 workers didn't know what was going on. He just got in
8 and moved the vehicle because it was right in front of
9 the garage, the mechanic shop.

10 Q. And showing you State's Exhibit 93, is that an
11 accurate picture of the window as it was when you
12 arrived at the scene?

13 A. Yes, ma'am, it was.

14 Q. Were you able to make any determinations based
15 on your examination of the window of how it had become
16 that way? If you had not known what had happened what
17 Ms. Stern told you, could you tell anything by looking
18 at the window?

19 A. No, ma'am.

20 Q. And State's Exhibit No. 94, what is depicted in
21 that photograph?

22 A. That's Braeswood, shooting from the parking lot
23 looking to Braeswood.

24 Q. And is that at the location that later became
25 important regarding a yellow vehicle?

1 A. Yes, ma'am.

2 Q. And is State's Exhibit 95 another angle of that
3 same shot?

4 A. Yes, ma'am, that's just a little bit further to
5 the west and actually showing Braeswood and the 610
6 Loop.

7 Q. So, was there really much of a scene
8 investigation to do at the gas station on the corner of
9 Braeswood and 610?

10 A. No, ma'am.

11 Q. So, where do you go?

12 A. We then went down to the apartment complex.

13 Q. And would that be the Meritage Apartments on
14 Braeswood?

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

16 Q. And did you and Officer Taravela, examine the
17 area where -- or did you find an area that appeared to
18 be involved in the shooting of Ms. Stern?

19 A. Yes, ma'am.

20 Q. How did you know what area in this garage if
21 she wasn't there to tell you?

22 A. Well, we went in -- patrol had already marked
23 off an area because they went in and found broken glass
24 and a shell casing and a live round.

25 Q. And you said that that area had been roped off;

1 is that correct?

2 A. Yes, ma'am.

3 Q. Show you State's Exhibit 96, is that an
4 accurate photograph of the area that day where evidence
5 that is associated with this case was found?

6 A. Yes, ma'am.

7 Q. When you know a shooting has occurred, what
8 types of evidence do you look for?

9 A. Obviously, firearms evidence, shell casings,
10 bullet fragments.

11 Q. Knowing that Ms. Stern had been shot through a
12 glass, the window of her vehicle, did you also look for
13 glass in this situation?

14 A. Yes, ma'am.

15 Q. And did you find some?

16 A. Yes, ma'am.

17 Q. When y'all find evidence of, like you said
18 before, bullet casings or cartridge or something, is
19 that something that is used to mark the area where that
20 evidence is found?

21 A. The numbers that are put out by the crime scene
22 unit.

23 Q. Showing you State's Exhibit 97. What do the
24 Nos. 1 and 2 indicate?

25 A. They're just marking the two cartridges.

1 Q. And I'm showing you State's Exhibit 99. Is
2 this a close-up of where State's Exhibit 97 had the one
3 and two?

4 A. Yes, ma'am.

5 Q. And what is on the pavement by the No. 1?

6 A. That's a live cartridge.

7 Q. Would you explain to the ladies and gentlemen
8 of the jury just, basically, how a semiautomatic weapon
9 works, handgun?

10 A. Yes, ma'am. The bullets, the cartridges are
11 loaded into a magazine, which are loaded into the handle
12 of a gun. As you fire the gun, the live round, or I'm
13 sorry, the empty cartridge, the brass comes out and it
14 expels. Kind of what you see on TV, where the bullets
15 come out of this section where the gunpowder is stored,
16 and a new round is then cycled into the chamber of the
17 gun.

18 Q. How do you ready a semiautomatic to fire?

19 A. You have to do what you call racking the slide,
20 which is to grab the slide and you pull it back which
21 slides it over the top of the magazine and as it comes
22 forward it then grabs the live round and pushes it into
23 the chamber.

24 Q. If there is already a cartridge, that being
25 what we would commonly call a bullet in the chamber of

1 the gun and the gun is racked, what happens with that
2 bullet that was in the chamber?

3 A. It's going to be expelled.

4 Q. And is that consistent with what you saw in the
5 garage on May 5th of 2010?

6 A. Yes, ma'am.

7 Q. Showing you State's Exhibit 98, is that a
8 close-up of what was shown in State's Exhibit 99?

9 A. Yes, ma'am.

10 Q. And is that, in fact, a cartridge?

11 A. Yes, ma'am, it's a live round.

12 Q. So, it would be capable of being fired in a
13 gun?

14 A. Yes, ma'am.

15 Q. Now, showing you State's Exhibit 101. What is
16 shown in that?

17 A. That is a fired cartridge casing.

18 Q. That was as you described, if you pulled the
19 trigger and then the cartridge flies out?

20 A. That's what comes out. That's where the
21 gunpowder and primer are stored in the live round.

22 Q. And State's Exhibit 100, is that a picture of
23 the cartridge without the number?

24 A. Yes, ma'am, yes, ma'am.

25 Q. Now, in looking at the area where the shooting

1 occurred in the garage, do you look for evidence to --
2 that is unusual or kind of weird as well as obvious
3 stuff like bullets and casings and stuff like that?

4 A. Yes, ma'am.

5 Q. In this instance you testified earlier that you
6 had looked for glass because of the window being shot.
7 Let me show you what's been marked or introduced as
8 State's Exhibit 102. Can you see any areas of glass in
9 State's Exhibit 102?

10 A. Yes, ma'am, there's two areas of glass.

11 Q. Would you circle them on the screen on State's
12 102?

13 A. (Indicating.)

14 Q. The circle that you made to the right-hand side
15 as we look at the photograph was -- versus a bigger
16 circle on the left, which area had more glass in it?

17 A. The first one sort of to the right.

18 Q. And in your estimation, would that be
19 consistent with a window being damaged in some way, the
20 vehicle being moved and other glass coming out of the
21 window at another time?

22 A. Yes, ma'am.

23 Q. Did you also notice or did Sergeant, Officer
24 Taravela point out to you some scuff, I don't know what
25 you call it, like skid marks?

1 A. Yes, ma'am.

2 Q. Let me show you State's Exhibit 103 through
3 106, 103, 104, 105 and 106. Were those skid marks
4 visible there in the garage on May 5th, 2010?

5 A. Yes, ma'am, they were.

6 Q. Going back to State's Exhibit 102, which part,
7 if you recall, which parking spot were those skid marks
8 in?

9 A. I believe it's going to be the second one here.

10 Q. Okay. Sometimes if an offense occurs and the
11 police are not immediately sent to the location, can
12 evidence be obtained or recovered by someone other than
13 the police?

14 A. Yes, ma'am.

15 Q. And did that happen in this situation?

16 A. Yes, ma'am, it did.

17 Q. What type of evidence was recovered by someone
18 who was not police?

19 A. Ms. Stern's purse was recovered.

20 Q. And was it then turned over to y'all?

21 A. Yes, ma'am, it was.

22 Q. Show you State's Exhibit 107. What is depicted
23 in 107?

24 A. That's her purse.

25 Q. And is there some sort of damage to the purse?

1 A. It's a bullet hole in it.

2 Q. Why do you say it's a bullet hole?

3 A. My experience, it looks like a bullet hole to
4 me.

5 Q. And is there anything surrounding the hole?

6 A. It's also gunpowder residue.

7 Q. And then State's Exhibit 108, is this a
8 different view of the same purse?

9 A. Yes, ma'am.

10 Q. And is there any damage in this view?

11 A. Yes, ma'am, it looks like the exit for the
12 bullet.

13 Q. Was there anything else that you-all could find
14 that was of evidentiary value there in the garage on
15 May 5th of 2010?

16 A. No, ma'am.

17 Q. So, after you finished at the garage, where did
18 you go; and what did you do?

19 A. We then went to Ben Taub Hospital and met with
20 Ms. Stern.

21 Q. Let me ask you, I forgot, sorry. When you
22 arrived at the gas station on May 5th, was there any
23 other police agency representative there?

24 A. Yes, ma'am.

25 Q. Who was that?

1 A. Sergeant Greg Bartlett with Bellaire Police
2 Department.

3 Q. And why would Sergeant Bartlett have responded
4 to a scene in the City of Houston?

5 A. Sergeant Bart -- well, actually, Bellaire had
6 received a call about a shooting at the Stern home. And
7 then he -- where this incident occurred is very close to
8 Bellaire. And he heard the call go out that a woman was
9 shot at the gas station at 610 and Braeswood, he then
10 believing that that was Ms. Stern or at least someone
11 from the Stern home, went to that location.

12 Q. And when you got there, did you have a chance
13 to talk with him about his investigation into the
14 shootings at the Stern home in February and April?

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

16 Q. At that time, was he able to give you any leads
17 into anybody that he was investigating for those
18 shootings?

19 A. No, ma'am.

20 Q. Did you later have an opportunity to talk with
21 a private investigator by the name of Jim Binford?

22 A. Yes, ma'am.

23 Q. Did Mr. Binford give you any information
24 regarding the identification of --

25 MS. GONZALES: Objection, Your Honor,

1 hearsay.

2 THE COURT: Overruled.

3 Q. (BY MS. ALLEN) Of anyone he was investigating?

4 A. Yes, ma'am.

5 Q. Was he able to give you some identifiers, date
6 of birth, address, that type of thing?

7 A. Yes, ma'am, he was.

8 Q. After you spoke -- when did you speak with Mr.
9 Binford?

10 A. Actually, while we were still at the gas
11 station while on the scene, I spoke with him on the
12 phone.

13 Q. So, you had spoken to him prior to you leaving
14 for the garage?

15 A. Yes, ma'am.

16 Q. Then after you left the garage, where did you
17 go?

18 A. We went to Ben Taub.

19 Q. When you arrived at Ben Taub, was there anyone
20 of interest that you could talk to right away?

21 A. Initially spoke with Mr. Stern.

22 Q. And was that regarding not only the May 5th
23 shooting but also the February and April?

24 A. Yes, ma'am.

25 Q. Did you and other investigating officers kind

1 of make the assumption that they must all be connected?

2 A. Yes, ma'am. That's what we believed at that
3 time.

4 Q. And ultimately did you find that in the big
5 scheme of things they were connected?

6 MS. GONZALES: Objection, relevance, Your
7 Honor.

8 THE COURT: Overruled.

9 A. Yes, ma'am, they were connected.

10 Q. (BY MS. ALLEN) But the actual shooting on
11 May 5th, the shooter, the alleged shooter, Damian
12 Flores, who Ms. Stern identified, was not involved in
13 the February shooting or the April shooting, correct?

14 A. That is correct.

15 Q. But there was another person who was involved
16 in all of them together, correct?

17 A. Yes, ma'am.

18 Q. In fact, there were two other people who were
19 involved in all of them together, correct?

20 A. Yes, ma'am.

21 Q. Now, when you went to the hospital and you
22 spoke with Mr. Stern, was he able, without saying what
23 he said, was he able to give you any real guidance on
24 who might be responsible?

25 A. Not really, no, ma'am.

1 Q. Did you then have an opportunity to interview
2 Yvonne Stern on May 5th?

3 A. Yes, ma'am.

4 Q. At that time she was under medication, to the
5 best of your knowledge?

6 A. Yes, ma'am.

7 Q. Was she able to give you a description of the
8 person who shot her?

9 A. She gave me a name of who she believed at that
10 time.

11 Q. And that name was?

12 A. Tino.

13 Q. Did she, at the time, describe what the shooter
14 was wearing or anything like that?

15 A. Yes, ma'am.

16 Q. What did she say?

17 A. That he was wearing mirror-typed aviator
18 sunglasses like the very silver frame and a black
19 jacket.

20 Q. Later, by later I mean the next day, May 6th of
21 2010, did you again interview Ms. Stern?

22 A. Yes, ma'am.

23 Q. At that time, based on the information that she
24 gave you, that Jim Binford gave you, were you able to
25 figure out who this Tino Posada or Tino was?

1 A. Yes, ma'am.

2 Q. And is that a person by the name of Faustino
3 Posada?

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

5 Q. Were you able to make a photospread with a
6 picture of Mr. Posada in it?

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

8 Q. What is a photospread?

9 A. A photospread, basically, are six pictures.
10 They're just facial pictures, it could be from a booking
11 photograph, an arrest photograph, it could be a driver's
12 license picture. And they're just on a piece of paper.

13 Q. And are those six pictures of people who are of
14 similar characteristics?

15 A. Yes, ma'am.

16 Q. So, if Mr. Posada is a Hispanic male, would the
17 six pictures be of he and five other Hispanic males?

18 A. Yes, ma'am.

19 Q. Did you show the photospread containing the
20 photo of Mr. Posada to Yvonne Stern on May 6th of 2010?

21 A. Yes, ma'am, we did.

22 Q. And what instructions, if any, did you give her
23 prior to showing her the photospread?

24 A. Prior to showing anyone a photospread, we
25 always give an admonishment, meaning we're going to show

1 you these photos. There may or may not be someone you
2 recognize. If you recognize someone, tell us where.
3 Also understand that people's hairstyles change, facial
4 hair changes. Some pictures may have people wearing
5 glasses, some may not.

6 Q. After you gave her those instructions, did you
7 show her the photospread?

8 A. Yes, ma'am, we did.

9 Q. What did she do?

10 A. She pointed to Tino's picture.

11 Q. And where did she say she knew him from?

12 A. He was the man that had -- he was the man that
13 did work at her house and she believed he was the man
14 that shot her in the parking garage.

15 Q. As a result of that identification, what did
16 you do?

17 A. We obtained an arrest warrant.

18 Q. For?

19 A. For Faustino Posada.

20 Q. Were you able to determine a location where you
21 believed that Mr. Posada would be?

22 A. Yes, ma'am.

23 Q. Did you go to that location?

24 A. Yes, ma'am.

25 Q. Was anybody there, like Tino?

1 A. You mean his -- the house?

2 Q. Yeah.

3 A. No, ma'am.

4 Q. Okay. Were you able to locate Mr. Posada?

5 A. Eventually, yes, ma'am, we were.

6 Q. How did you locate him?

7 A. Cell phone records.

8 Q. How did that work?

9 A. We were able to obtain his cell phone number
10 from Mrs. Stern's cell phone. She had told me she --
11 actually, when we interviewed her in the hospital that
12 she had his phone number. We obtained that phone
13 number. We obtained a court order for that phone. And
14 through a, through the Court order we were able to get
15 what we call historical data.

16 MS. GONZALES: Objection, Your Honor,
17 hearsay.

18 THE COURT: Overruled.

19 A. We were able to get historical data meaning we
20 can look at where the cell towers are that the phone is
21 contacted with when making phone calls in order to kind
22 of figure out where the person may be.

23 Q. (BY MS. ALLEN) As a result of that, did you
24 determine a location you should go to look for Mr.
25 Posada?

1 A. Yes, ma'am.

2 Q. Did you come in contact with Mr. Posada?

3 A. Yes, ma'am, we did.

4 Q. Who is we?

5 A. Myself and my partner, also Officer Eric Powell
6 and Officer, I believe Vehill (phon.) and Sergeant
7 Gonzalez.

8 Q. And who is Sergeant Gonzalez?

9 A. He works with me in the homicide division.

10 Q. Does he speak Spanish?

11 A. Very fluent, yes, ma'am.

12 Q. Was that part of the reason why you wanted him
13 along?

14 A. Yes, ma'am.

15 Q. And why is that?

16 A. Our understanding was that Faustino Posada
17 spoke predominately Spanish.

18 Q. So then were you able to locate Mr. Posada?

19 A. Yes, ma'am, we were.

20 Q. Tell me what happened when you first
21 encountered him?

22 A. He and another, I guess, one of his workers
23 were getting in their van to drive off, and we just kind
24 of pulled up and blocked them in. I got out, pretty
25 much dressed like we are, I think I didn't have a jacket

1 on, I had my ID out. Asked him to step out of the van.
2 He was very cooperative. Sergeant Gonzalez immediately
3 began talking with him at that point.

4 Q. Did y'all request for him to come down to the
5 police station with you?

6 A. Yes, ma'am, we did.

7 Q. Did he go voluntarily?

8 A. Yes, ma'am.

9 Q. What about the person who he was with?

10 A. We also asked if he would come down with us;
11 and he came, also.

12 Q. Did you question them regarding their
13 whereabouts on May 5th of 2010 at around 10:30 in the
14 morning?

15 A. Yes, ma'am.

16 Q. Did they give you a story of where they were?

17 A. Yes, ma'am.

18 Q. Were you able to check out what they told you?

19 A. Yes, ma'am.

20 Q. And were you able to verify what they told you?

21 A. Yes, ma'am.

22 Q. Were they at the Meritage Apartments on May 5th
23 of 2010?

24 A. No, ma'am.

25 Q. Were you able to obtain other information that

1 confirmed that at least --

2 MS. GONZALES: Objection, Your Honor,
3 hearsay.

4 THE COURT: Overruled.

5 Q. (BY MS. ALLEN) That at least the phone of Mr.
6 Posada was not at the Meritage Apartments?

7 A. Yes, ma'am, that's correct.

8 Q. Once you did all -- did you ask Mr. Posada to
9 take a lie detector test?

10 A. Yes, ma'am, we did.

11 Q. And was he willing to do so?

12 MS. GONZALES: Objection, Your Honor,
13 irrelevant and inadmissible.

14 THE COURT: Sustained.

15 MS. GONZALES: Your Honor, may I ask that
16 the jury be instructed to disregard that last --

17 THE COURT: Ladies and gentlemen, you'll
18 disregard the last question and answer by the Prosecutor
19 and witness.

20 MS. GONZALES: And, Your Honor, I'd like to
21 move for a mistrial at this time.

22 THE COURT: Denied.

23 Q. (BY MS. ALLEN) After having spoken with Mr.
24 Posada, with the person with Mr. Posada and evaluating
25 all of the evidence that you had at that time, did you

1 end up arresting Mr. Posada for shooting Yvonne Stern?

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

3 Q. So, where were you in your investigation at
4 that point?

5 A. Back to square one.

6 Q. Now, when you talked with Ms. Stern on May 6th
7 of 2010, did she or did she not give you another
8 description of the person who shoot her?

9 A. Yes, ma'am, it was more detailed.

10 Q. And what was that description?

11 A. Can I refer back to my --

12 Q. Certainly.

13 A. She described him as Hispanic or Mexican male,
14 she said about -- she believed about 35 to 37 years of
15 age, five-five to five-six, stocky with a 5 o'clock
16 shadow. He looked unshaven. Short hair, almost
17 balding, wearing silver-framed aviator sunglasses with a
18 mirror-type tint, black T-shirt and a black jacket.

19 Q. Did she on May 6th also tell you what the
20 shooter said to her?

21 A. Yes, ma'am.

22 Q. And what did she say?

23 A. That as he approached and she jumped in her
24 vehicle, he said give me your money, or actually give me
25 your fucking money was her words at that time.

1 Q. And what else did he say during the encounter?

2 A. Don't start your fucking car, or I'll shoot
3 you. And then as she pled with him that she didn't have
4 any money, turned her purse upside down, she ended up
5 taking her keys and he's telling her don't start your
6 fucking car, and then she honked the horn.

7 Q. Go back real quick, when I asked you if you had
8 arrested Tino, when you had the encounter with Tino, and
9 asked him to go down to the police station, in your mind
10 were you arresting him?

11 A. No, ma'am.

12 Q. Why not? You had a warrant for his arrest?

13 A. We had what we call a probable cause warrant,
14 and it's -- if he was willing to come down, it was no
15 reason to actually execute that warrant and arrest him.
16 He didn't know we had a warrant for his arrest. We
17 simply said, hey, we'd like to talk to you. A woman's
18 been shot. Your name has come up in this. And he said,
19 yeah, I want to come down and clear my name.

20 Q. So, you then let him go because you didn't
21 think he did the crime?

22 A. After he came down to our office and we spoke
23 with him, yes, ma'am, there was no doubt in my mind that
24 he wasn't the person.

25 Q. So, then you continued your investigation; is

1 that correct?

2 A. Yes, ma'am.

3 Q. And ultimately, did you end up arresting a
4 woman by the name of Michelle Gaiser?

5 A. Yes, ma'am.

6 Q. Was she charged with an offense?

7 A. Yes, ma'am.

8 Q. What offense was she charged with?

9 A. Solicitation of capital murder.

10 Q. What does that mean?

11 A. Murder for hire.

12 MS. GONZALES: Objection, Your Honor,
13 relevance.

14 THE COURT: Overruled.

15 A. Means she tried to hire someone to kill
16 someone. Meaning she tried to hire people to kill Ms.
17 Stern.

18 Q. (BY MS. ALLEN) And was she charged with that
19 solicitation of capital murder?

20 A. Yes, ma'am.

21 Q. Did you end up or was another person charged
22 with the April 15th attempt on Ms. Stern's life, in
23 fact, were three other people charged with that?

24 A. Yes, ma'am.

25 Q. And who all was charged with that?

1 A. Richard Gutierrez, James Lowery, and Nhut
2 Nguyen.

3 Q. And have all of those people been convicted of
4 and or sentenced to the penitentiary because of their
5 involvement in Ms. Stern being shot at in April of 2010?

6 A. Yes, ma'am, they have.

7 Q. Did ultimately, Mr. Jeff Stern get indicted for
8 two cases of --

9 MS. GONZALES: Objection, Your Honor,
10 relevance.

11 THE COURT: Sustained.

12 Q. (BY MS. ALLEN) After Michelle Gaiser was
13 arrested, did you have any direct -- or let me rephrase
14 it. Based on all of your investigation, was Damian
15 Flores at all involved in the April or February
16 incidences at the Stern house?

17 A. No, ma'am.

18 MS. GONZALES: Objection, Your Honor, it
19 calls for a legal conclusion.

20 THE COURT: Overruled.

21 Q. (BY MS. ALLEN) So then after Ms. Gaiser was
22 charged in July of 2010, did you have any idea who the
23 shooter was on May 5th of 2010?

24 A. No, ma'am.

25 MS. GONZALES: Objection, Your Honor, calls

1 for -- withdraw.

2 THE COURT: Okay, withdrawn.

3 Q. (BY MS. ALLEN) Did you receive information in
4 August of 2010 that pointed you to Damian Flores?

5 MS. GONZALES: Objection, Your Honor,
6 that's hearsay. It's denying my client the right to
7 confront whoever it is they're alleging.

8 THE COURT: All right. I've reviewed the
9 question. Your objection is overruled.

10 Q. (BY MS. ALLEN) As a result of that
11 information, did you attempt to locate Mr. Flores?

12 A. Yes, ma'am.

13 Q. Were you able to locate him?

14 A. Yes, ma'am.

15 Q. Where was he?

16 A. He was in Harris County Jail.

17 Q. And what was he in jail for?

18 A. Delivery, drug charge.

19 Q. The possession with intent to deliver?

20 A. Yes, ma'am. That's what it was, possession
21 with intent and also a retaliation charge.

22 Q. Were you able to research the records of the
23 Harris County Jail and determine that Mr. Flores was on
24 bond on May 5th of 2010?

25 A. Yes, ma'am, he was.

1 Q. So knowing all of that, what did you do?

2 A. At that time I -- actually my partner contacted
3 the Harris County Jail and also Ms. Stern to set up what
4 we call a live lineup.

5 Q. And what is a live lineup?

6 A. It's an actual lineup where five individuals,
7 like you see on TV, they come into the room, the witness
8 or Complainant is in a two-way mirror so they can't be
9 seen. The individuals are brought in, asked to turn, do
10 half turns so they get a full circle view of each
11 individual.

12 Q. And were you present during that lineup?

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

14 Q. And when the lineup was concluded, did you ask
15 Ms. Stern if she recognized anybody?

16 A. Yes, ma'am.

17 Q. Did she?

18 A. Yes, ma'am.

19 Q. And who did she identify?

20 A. Mr. Flores.

21 MS. ALLEN: Your Honor, may we approach?

22 THE COURT: Yes.

23 (Bench conference.)

24 MS. ALLEN: On cross-examination of Ms.

25 Stern, Mr. Davis asked her isn't it true that the source

1 who named Mr. Damian Flores as the shooter in this case
2 you do not believe is credible, you do not believe that
3 source. He asked a second question, you do not think
4 that the source you maintain is credible. I believe he
5 opened the door for me to go into who the source was,
6 the tip that led to the lineup on August 2011. And
7 that's what I want to ask.

8 MR. DAVIS: Who was the source that led to
9 the tip?

10 MS. ALLEN: Michelle Gaiser.

11 MR. DAVIS: Your question is going to be
12 that Michelle Gaiser is the person who led the tip? I
13 asked Ms. Stern whether or not she thought that person
14 was credible, she said no. If she wants to ask that, I
15 guess, she can. I think I kind of already asked that,
16 though.

17 THE COURT: Okay.

18 (End of bench conference.)

19 Q. (BY MS. ALLEN) So, regarding the August tip
20 that led to Mr. Flores, was the source of that tip the
21 same Michelle Gaiser, who was charged with solicitation
22 of capital murder of Yvonne Stern?

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

24 Q. Once the identification of the Defendant was
25 made by Ms. Stern, did you do any research into vehicles

1 that were associated with the Defendant, Damian Flores?

2 A. We ultimately went out to where he was
3 arrested, to where he had been staying.

4 Q. And were there any vehicles that matched the
5 description of the vehicle described by Ms. Stern that
6 was involved in the shooting?

7 A. Yes, ma'am.

8 Q. After May 5th, did you have additional contact
9 with any people at the gas station on the corner of
10 Braeswood and the 610 Loop?

11 A. Yes, ma'am.

12 Q. Who did you have contact with?

13 A. May I look back?

14 Q. Mr. Syal?

15 A. Yes, ma'am.

16 Q. And who was he in regards to the gas station?

17 A. He's either the owner or manager.

18 Q. Did he give you a surveillance video that was
19 taken at the time that Ms. Stern drove up into the gas
20 station and the time around that?

21 A. Yes, ma'am.

22 Q. Were you able to obtain still photographs from
23 those videos?

24 A. Yes, ma'am, we were.

25 MS. ALLEN: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 Q. (BY MS. ALLEN) Let me show you what have been
4 marked as State's Exhibits 110 and 111. Are these the
5 still photos that you were able to develop from the
6 videotape?

7 A. Yes, ma'am, they are.

8 MS. ALLEN: Your Honor, at this time I
9 tender State's Exhibits 110 and 111 to Defense counsel
10 and ask that they be admitted into evidence.

11 (State's Exhibit Nos. 110 and 111 offered.)

12 THE COURT: Is there any objection?

13 MS. GONZALES: No, Your Honor.

14 THE COURT: All right. State's
15 Exhibits No. 110 and 111 are admitted without objection.

16 (State's Exhibit Nos. 110 and 111
17 admitted.)

18 Q. (BY MS. ALLEN) You also, actually, obtained
19 the videotape from that surveillance, correct?

20 A. Yes, ma'am.

21 Q. Let me show you what has been marked as State's
22 Exhibit 91.

23 A. Yes, ma'am.

24 Q. Is that the video that you obtained from Mr.
25 Syal from the gas station?

1 A. Yes, ma'am.

2 Q. And State's Exhibit 112, is this a -- well, let
3 me rephrase that. In 91, was there a long period of
4 time that was taped and turned over to you?

5 A. Yes, ma'am.

6 Q. And was there only a short period of time that
7 was relevant?

8 A. Yes, ma'am.

9 Q. And did we make a copy and take just the
10 relevant time and put it on State's Exhibit 112?

11 A. Yes, ma'am.

12 MS. ALLEN: Your Honor, at this time I
13 would tender State's Exhibit 91 and 112 to Defense
14 counsel and ask that they each be admitted into
15 evidence.

16 (State's Exhibit Nos. 91 and 112 offered.)

17 THE COURT: All right. Is there any
18 objection?

19 MS. ALLEN: I'll withdraw the offer and
20 reoffer them tomorrow.

21 THE COURT: All right.

22 Q. (BY MS. ALLEN) So, showing you State's
23 Exhibit 111. Which vehicle was of interest to you in
24 State's Exhibit 111?

25 A. Right here.

1 Q. And then I have these numbered in the wrong
2 order, but State's Exhibit 111, actually was it earlier
3 in time than the photograph in State's Exhibit 110?

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

5 Q. Okay. And then 110, which photograph was of
6 interest? I mean, which car was of interest?

7 A. Right here.

8 Q. Were you able to tell by looking at the actual
9 video or from these pictures what type of license plate
10 was on that vehicle?

11 A. No, ma'am, I was not.

12 Q. What type of license plate, if any, had Yvonne
13 Stern told you was on the vehicle that the shooter was
14 driving?

15 A. She said that it had a paper license plate.

16 Q. Once you have determined that Damian Flores was
17 a suspect in this shooting and then Ms. Stern identified
18 him as a suspect, did you go to a location where he was
19 reported to live?

20 A. Yes, ma'am.

21 Q. And where was that location?

22 A. It was 4203 Dragonwick.

23 Q. And what area of town is that?

24 A. South, southwest Houston.

25 Q. When you arrived there, was there a vehicle

1 that matched the description of the vehicle both in the
2 surveillance photos and given by Ms. Stern?

3 A. Yes, ma'am.

4 MS. ALLEN: May I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 Q. (BY MS. ALLEN) Show you State's Exhibit 113
8 and 114. Are these accurate photographs of the vehicle
9 that you saw at the Dragonwick location?

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

11 MS. ALLEN: Your Honor, at this time I'll
12 tender State's Exhibit 113 and 114 to Defense counsel
13 and ask that they be admitted.

14 (State's Exhibit Nos. 113 and 114 offered.)

15 THE COURT: All right. Is there any
16 objection?

17 MS. GONZALES: No, Your Honor.

18 THE COURT: State's Exhibits 113 and 114
19 are admitted without objection.

20 (State's Exhibit Nos. 113 and 114
21 admitted.)

22 MS. ALLEN: At the time when you went to
23 the Dragonwick location, was there anyone home?

24 A. Yes, ma'am.

25 Q. Who was home?

1 A. I believe her name is Melanie Hunt.

2 Q. And were you able to determine if there was any
3 relation between she and the Defendant, Damian Flores?

4 A. She claimed to be his wife.

5 Q. Showing you State's Exhibit 113, is that the
6 rear of the vehicle?

7 A. Yes, ma'am.

8 Q. And what kind of plates were on it?

9 A. Paper plate.

10 Q. And what -- I guess we're all a little bit
11 familiar with paper plates, like if you buy a new car or
12 a new car to you, can you have paper plates until you
13 get your real plates?

14 A. Yes, ma'am, generally, I think there's 30 days
15 that you can drive with paper plates.

16 Q. Are you familiar with how dealers' paper plates
17 work?

18 A. Yes, ma'am, they're different.

19 Q. And how are they different from when we just go
20 buy a car and get paper plates?

21 A. A dealer doesn't know how long they're going to
22 have a particular car on their lot, so they may have a
23 paper plate for extended period of time. In other
24 words, if they need to shuffle cars from one lot to
25 another, they put a dealer tag on there, a dealer paper

1 plate that allows them to move that car around.

2 Q. And is it possible to track a paper plate that
3 is shown on the vehicles in State's Exhibit 113 and 114,
4 and find if, in fact, it is registered to a dealer?

5 A. Yes, ma'am.

6 MS. ALLEN: May I approach?

7 THE COURT: You may.

8 Q. (BY MS. ALLEN) Let me show you what has been
9 marked as State's Exhibit 116. What is that?

10 A. It's registration for a vehicle.

11 Q. And is this the registration for the vehicle
12 that is shown in State's Exhibits 113 and 114?

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

14 Q. And is it a certified copy of a public
15 document?

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

17 Q. Tender State's Exhibit 116 to Defense counsel
18 and ask that it be admitted into evidence?

19 (State's Exhibit No. 116 offered.)

20 MS. GONZALES: No objections.

21 THE COURT: State's Exhibit No. 116 is
22 admitted without objection.

23 (State's Exhibit No. 116 admitted.)

24 Q. (BY MS. ALLEN) And who was the vehicle in
25 State's Exhibit 113 and 114 registered to as of May 4th

1 of 2010?

2 A. A. H. Flores Auto Sales.

3 Q. Were you able to find a connection between
4 A. H. Flores and the Defendant, Damian Flores?

5 A. Ms. Hunt told me that they had bought that
6 vehicle from --

7 MS. GONZALES: Objection, Your Honor,
8 hearsay.

9 THE COURT: Sustained.

10 Q. (BY MS. ALLEN) Did Ms. Hunt tell you the
11 relation between A. H. Flores --

12 MS. GONZALES: Objection, Your Honor, same
13 objection, hearsay.

14 MS. ALLEN: It goes to family history, Your
15 Honor. It's not hearsay. It's an exception to the
16 hearsay rule.

17 THE COURT: Overruled.

18 Q. (BY MS. ALLEN) The relation between Mr. A. H.
19 Flores and the Defendant, Damian Flores?

20 A. Yes, ma'am.

21 Q. What is that relationship?

22 A. It's his uncle.

23 Q. So, A. H. Flores is Damian Flores' uncle?

24 A. That's my belief, yes, ma'am.

25 Q. That's what she told you?

1 A. Yes, ma'am.

2 Q. Did you also request or have discussions with
3 people regarding getting cellular telephone records for
4 the phone used by Damian Flores on May 5th of 2010?

5 A. Yes, ma'am.

6 Q. And to your knowledge have those records been
7 obtained?

8 A. Yes, ma'am, they have.

9 Q. And have you assisted both me and Eric Powell
10 in examining those records and determining certain phone
11 calls that were made to and from the phone of Damian
12 Flores on May 5th, 2010, at the time surrounding the
13 shooting of Ms. Stern?

14 A. Yes, ma'am.

15 Q. After obtaining those records and obtaining the
16 information regarding the vehicle found at the
17 Dragonwick location, did you really have much else to do
18 regarding the investigation of the May 5th shooting and
19 Mr. Flores in particular?

20 A. No, ma'am.

21 Q. Mr. Keiter isn't sure if I asked a question, so
22 I'm going to make sure. The August 2010 lineup, did
23 Yvonne Stern identify anyone in that lineup as the
24 shooter?

25 A. Yes, ma'am, Damian Flores.

1 Q. Thank you.

2 MS. ALLEN: I have no further questions,
3 Your Honor. I pass the witness.

4 THE COURT: Ladies and gentlemen, we are
5 going to recess for the evening. I know it's been a
6 long day for everyone. It is my intention to start
7 testimony tomorrow morning at 9:30.

8 I want to give you the admonitions that I
9 gave you earlier just as a reminder. In the punishment
10 phase of this trial, the same rules apply. You aren't
11 to discuss this case with fellow jurors or any family
12 members or friends. You're not to discuss it with your
13 fellow jurors until all 12 of you are in the jury room,
14 and you are deliberating. Please don't do any outside
15 investigation regarding this case. The information that
16 you receive will be received here in the courtroom.

17 There is the possibility that there will be
18 media coverage on this case. Don't seek out any media
19 coverage; and certainly if you see anything on TV or you
20 read anything in the newspaper, you are to turn it off
21 immediately or not read it. Do you all have any
22 questions? All right. Have a wonderful evening. We'll
23 see you tomorrow morning.

24 THE BAILIFF: Rise for the jury.

25 (Jury exits courtroom.)