

1 Q. I owe you an apology. I've been referring to
2 you as "officer" even to your face. I usual get
3 corrected quite quickly.

4 Do me a favor. Introduce yourself to the
5 ladies and gentlemen of the jury.

6 A. I'm Roger Chappell of the Houston Police
7 Department.

8 Q. How do you spell your last name?

9 A. C-H-A-P-P-E-L-L.

10 Q. Tell us a little bit about yourself. Where
11 are you from?

12 A. Well, I'm from Texas originally. All over.
13 Literally. I settled here in Harris County when I got
14 out of the Marines in '92. Been in Houston ever since.
15 And there we are.

16 Q. Tell us a little bit about when you became a
17 peace officer and what you have done since?

18 A. I joined the police department in August of
19 '92. I completed the police academy. From there, I did
20 my training and my first eight years of service in the
21 north division, which is the north sector of the city.

22 From there, I went to a gang unit where I
23 worked for five years as an investigator with gangs
24 basically. I then transferred to the robbery division
25 and once in robbery, I decided to go back to school. I

1 earned my bachelor's degree and master's degree while
2 there. I was in robbery for five years and then went to
3 homicide and spent the last six years in homicide up
4 until I was promoted.

5 Q. Promoted to sergeant?

6 A. Yes.

7 Q. Now what do you do?

8 A. Now I'm supervisor of the investigative first
9 responder's squad, southeast, evening shift.

10 Q. Just tell us briefly what those duties entail.

11 A. Basically we are investigators in uniform. We
12 respond to high-priority calls that may or may not have
13 leads. We try to develop those leads and follow up on
14 the case immediately versus, in the past, having a
15 police officer show up, take a report and then he refers
16 it to an investigative division later on.

17 Q. So now you oversee a group of IFRs?

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

19 Q. I see there -- don't see it here, but I saw it
20 earlier. You are a hostage negotiator?

21 A. Yes.

22 Q. You have to use that training very often?

23 A. Average about twice a month.

24 Q. And I learned today -- someone told me you're
25 fluent in Spanish?

1 A. Yes.

2 Q. Very impressive. Let's talk about this case.
3 All right?

4 A. (Nods head affirmatively.)

5 Q. Tell us how you got involved, going back to
6 May 5th, 2011.

7 A. On that particular weekend, I was filling in
8 for another homicide investigator who was off for the
9 weekend. At approximately 4:00 a.m. Friday morning, I
10 think it was May 6th, if memory serves me correctly --
11 no, 3:00 o'clock. I get called at home to make the
12 scene of a shooting on Dunlap. I arrived out there
13 about 4:00 o'clock in the morning.

14 Q. Who do you arrive there with?

15 A. By myself, but I met officers from homicide,
16 Sergeant McPherson and I can't remember the other
17 officer's name. Coleman, I think.

18 Q. Eventually, this case gets assigned to you and
19 Officer Carr?

20 A. Yes.

21 Q. Tell us a little bit about what a homicide
22 investigator does at the scene of a homicide or what's
23 believed to be a homicide shortly.

24 A. In this particular case, well, in general
25 homicide investigations, we arrive at the scene. We

1 look at the scene itself, looking for physical evidence.
2 We're also trying to document lighting conditions, the
3 weather, just a number of different things, looking for
4 witnesses. We do what we call a canvass, which is -- in
5 this case, it was an apartment complex. We knocked on
6 several apartment doors.

7 We also look for vehicles that may have
8 damage done to them caused by, like in this case, the
9 shooting, things of that nature. We literally check out
10 everything that we can while at that original scene.

11 From that point, we also, hopefully, are
12 able to develop some witnesses. In that case we talk to
13 them and, hopefully, that information will lead us to
14 eventual conclusion of the case.

15 Q. So, at that point you are looking for leads
16 and you're working with the primary officers and the CSU
17 officers to make sure the evidence is documented
18 correctly?

19 A. That's correct. In this particular case,
20 homicide investigators were already at the scene, but
21 they knew they were going to be passing that case off to
22 me and Officer Carr.

23 So, what we normally do, if they're going
24 to pass the case off to us, I want to be at the scene.
25 I want to see it before anything is disturbed or moved

1 so that I get a better idea when I am talking with
2 witnesses or maybe the suspects later on what they're
3 talking about. Because it's very difficult for someone
4 to explain to me what they have seen and what they have
5 done and me to truly understand or get a good picture of
6 it. I want that picture. I want to know everything.

7 Q. So, you went out to the scene?

8 A. Correct.

9 Q. Tell us why homicide was involved at this
10 point.

11 A. At this point it was our belief that the
12 complainant, Mr. Moore, was not going to survive.

13 Q. So, you don't sit around, wait for a week to
14 see if he passes. If it is believed that he is going to
15 pass, it gets assigned to homicide?

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

17 Q. And we all know now he obviously did not pass.

18 A. Thank God.

19 Q. So, when you are out at the scene, you are
20 working with the officers, were you able to identify
21 some witnesses?

22 A. Yes, sir.

23 Q. What was your primary duty out there at the
24 scene? Speaking to witnesses?

25 A. Yes, sir.

1 Q. Do you remember some of the witnesses that you
2 spoke to?

3 A. I do.

4 Q. Did you speak to a Letha Love?

5 A. Yes, sir.

6 Q. She was someone that was there and called 911?

7 A. That's correct.

8 Q. Did you take a statement from her?

9 A. I did.

10 Q. Were there various other witnesses that you
11 spoke with as well?

12 A. Yes, sir.

13 Q. Did you find that the information that you
14 were getting from them was consistent?

15 A. Yes, sir.

16 Q. So, for the most part, what picture is
17 developing in your mind? How are you are going to
18 proceed?

19 A. In my mind at this particular point, one of
20 our primary concerns is to identify the complainant. At
21 that time we didn't have information on who he was.
22 That is extremely important because we knew we had a
23 missing vehicle. I can usually find a vehicle if I know
24 who it belongs to. Or at least I can get license plate
25 numbers, addresses, things of that nature. So, that was

1 my primary -- that's one of the primary leads that I
2 want to try to develop as quick as possible.

3 Q. Through the victim?

4 A. Through the victim, yes.

5 Q. You're also trying to develop suspects?

6 A. Suspects.

7 Q. Names and number of suspects?

8 A. Everything about them. I needed to know a
9 physical description, if possible. And, you know,
10 depending on who the witness is depends on their
11 perspective, their view, what's in their way and things
12 of that nature. Everything changes and every scene is
13 different.

14 Q. In this case were you able to determine
15 Mr. Moore's identity right away?

16 A. No, sir.

17 Q. What did you have to do to determine just his
18 identity?

19 A. Eventually. We sent an identification officer
20 from our department to the hospital to fingerprint him
21 and we were able to identify him then.

22 Q. But up until then, you didn't even know who
23 the victim was?

24 A. No, sir.

25 Q. Did you have any suspect identifiers or

1 information on suspects that night?

2 A. The initial story that I was told is that it
3 was four black males.

4 MR. MARTIN: Objection to the hearsay,
5 Judge.

6 THE COURT: Sustained.

7 Don't repeat what other people said.

8 THE WITNESS: Yes, sir.

9 MR. BURDETTE: Judge, I'm not offering
10 that for the truth of the matter asserted. It's for the
11 effect on the listener to explain his investigation.
12 I'll try and clear it up a little bit.

13 THE COURT: Okay.

14 Q. (BY MR. BURDETTE) Did you receive information
15 about the number of suspects you were looking for?

16 A. Yes.

17 Q. Were you given information about the race or
18 sex or age or anything of that nature?

19 A. Yes.

20 Q. Were you able to immediately then develop
21 suspects?

22 A. No, sir.

23 Q. When did that break finally come? When did
24 you get some suspect information?

25 A. Later that day -- let me verify. Yes. Later

1 that day on the 6th of May around 2:30 p.m.

2 Q. How did that information come in?

3 A. I received a phone call.

4 Q. From whom?

5 A. From Toya -- I can't remember her last name.

6 Q. Let me see if I can help you. Was it Latoya
7 Sheehy?

8 A. Yes.

9 Q. You got a phone call from her or you received
10 information you needed to speak to her?

11 A. I received a message that she had called
12 looking for the investigators on this case. So, I
13 returned that phone call.

14 Q. Did you talk to her on the phone?

15 A. I did.

16 Q. For very long?

17 A. Maybe three minutes.

18 Q. What's the purpose of that short, preliminary
19 phone call?

20 A. It's typical in most cases when we get a Crime
21 Stoppers tip or any kind of tip, I want to verify that
22 the information they are giving me is accurate and does
23 it really pertain to my case.

24 Q. And in just three minutes, were you able to
25 tell she was someone you wanted to follow up with?

1 A. Yes, sir.

2 Q. Did you make arrangements to meet with her?

3 A. I did.

4 Q. Where did you meet with her?

5 A. I think it was at the corner of Fondren and
6 West Airport.

7 Q. Did you ever take her anywhere to get a formal
8 statement?

9 A. Yes, sir.

10 Q. Where was that?

11 A. I brought her back to the homicide division.

12 Q. Was she cooperative?

13 A. Very.

14 Q. How was the information that she provided you?

15 A. In my opinion, very accurate.

16 Q. Why is that? What type of things did she
17 know?

18 MR. MARTIN: Objection, Judge. It calls
19 for hearsay.

20 THE COURT: He's not asking to repeat
21 what she said, but he said: What kinds of information?
22 That's a generality and I would allow that.

23 So, overruled.

24 MR. BURDETTE: I can break it down to
25 topics, Judge.

1 Q. (BY MR. BURDETTE) Was she able to give you a
2 possible -- well, give you possible suspects?

3 A. Yes.

4 Q. Was she able to give you the number of
5 suspects?

6 A. Yes.

7 Q. What about gender?

8 A. Yes.

9 Q. And some names?

10 A. Yes, sir.

11 Q. And besides general descriptors, was she able
12 to tell you anything about a wheelchair?

13 A. Yes, sir.

14 Q. When you had broadcast or given that
15 information out to the news, to the media to send out,
16 did you release that bit of information?

17 A. No, sir.

18 Q. How come you don't release all the
19 information?

20 A. That's one of the things that I will keep
21 close to me in order to verify tips that we may receive.
22 I don't want to let too much information out because
23 then, once I speak to someone, they have learned it all
24 through the media and where am I at? I want them to
25 tell me. They'll get brief stuff, but they're not going

1 to get specifics.

2 Q. Did she start telling you things that could
3 not have been learned through the media?

4 A. Correct.

5 Q. So at that point in your mind, you have got a
6 good witness?

7 A. Yes, sir.

8 Q. What leads was she able to give you?

9 A. She gave me one full name, a telephone number,
10 some nicknames, a very good physical description and a
11 location where they had gone.

12 Q. Okay. At that point what do you do with that
13 information?

14 A. The first thing we do is get a photo array
15 with the person that she had a full name on.

16 Q. Whose name is that?

17 A. Nicholas Aker, the defendant.

18 Q. And let me just ask you -- we'll put that out
19 there -- do you see Nicholas Aker in the courtroom
20 today?

21 A. Yes, sir, I do.

22 Q. Would you point to him and identify him by an
23 article of clothing?

24 A. He is the young man sitting over here in a
25 suit wearing -- I can't tell what color tie it is. It's

1 kind of a beige shirt with a tie.

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

4 THE COURT: Well, three or four different
5 people come up with a different color every time on that
6 shirt. Let's be more specific.

7 THE WITNESS: He has a slight mustache.
8 I'd say a medium-skin black male, approximately 20 years
9 of age, short black hair.

10 MR. BURDETTE: At this time, Judge, may
11 the record reflect the witness has identified the
12 defendant?

13 THE COURT: Yes, it will.

14 Q. (BY MR. BURDETTE) She gave you his name and
15 actually provided you with a picture of him?

16 A. She did.

17 Q. Then with that information, you assembled a
18 photo array?

19 A. Yes, sir.

20 Q. What's the purpose of assembling a photo array
21 and how is it done?

22 A. The way we do it now is the computer actually
23 generates it for us. We go through and we select the
24 specific individual that we term the so-called target,
25 if you will. The computer randomly selects other people

1 that have similar physical characteristics. Believe it
2 or not, it's based on only information provided when
3 they are booked. So, it's not any information that I
4 put in there. It just automatically randomly searches.
5 So, then, I'm allowed to go through and select photos
6 from a group of, say, 130,000 for example, where I can
7 go and pick folks to fit in these photo arrays.

8 Q. When you're selecting five -- well, you use
9 six photos, right?

10 A. Yes, sir.

11 Q. When you are selecting five other random
12 individuals, computer has already screened them somewhat
13 and then and you select others.

14 A. Yes, sir.

15 Q. And the purpose of getting random individuals
16 and selecting five others is what?

17 A. Well, it eliminates the possibility if I'm
18 trying to pick somebody myself that may be either
19 totally opposite of this individual or be exactly the
20 same. It's random. That's the point of it. It's
21 supposed to be random without my influence.

22 Q. It's looking for people who are similar in
23 terms of age, maybe hair length, race? What else?

24 A. Maybe tattoos, if I wanted to look for. I
25 mean, there are different parameters that I can set for

1 it.

2 In this particular case, I just put the
3 number in there and then let the computer select it.
4 And then I'll go through and start looking for a skin
5 tone, for example. I may look at shirt color, the
6 background, because I don't want my person to be the
7 only person that has a white shirt on, for example, or
8 be the only person that has a blue background when
9 everybody else has a white background.

10 Q. The purpose of that is so you are not
11 suggesting to the witness to pick anybody?

12 A. That's correct.

13 Q. So, that was done in this case?

14 A. Yes, sir.

15 Q. And then with that photo array, who do you
16 send that to?

17 A. Actually, I spoke to Toya and I explained to
18 her what we call the admonition. She's not under any
19 obligation to pick anyone. The person we're talking
20 about may or may not be present in the photo array.
21 Take your time looking at it. If she sees somebody she
22 recognizes, point out that person to me and tell me
23 where she recognizes that person.

24 I have had in the past where a witness
25 actually went to school with another person in the photo

1 array. So, sometimes they'll identify that way. I want
2 them to explain to me where they know that person from.

3 Q. So, was she able to pick out the defendant?

4 A. Yes, sir.

5 Q. With no problem?

6 A. No problem at all.

7 Q. In fact, she told you she knew him by sight,
8 name and everything?

9 A. Yes, sir.

10 Q. Was a photo array given to Officer Carr to
11 show to witnesses?

12 A. Yes.

13 Q. Do you know who he was showing it to?

14 A. I don't recall. He did that.

15 Q. So, he handled a different part of the
16 investigation?

17 A. Yes.

18 Q. But at some point, did someone make a positive
19 identification to Officer Carr of the defendant?

20 A. Yes.

21 Q. So, based on that information, now you have
22 two witnesses who have identified the defendant and
23 incriminated him in this crime?

24 A. Yes, sir.

25 Q. So, what happens?

1 A. At that point I contacted the District
2 Attorney's Office and I believe it was Caroline -- no,
3 Connie Spence, because I spoke to both -- Connie Spence
4 authorized me to file the arrest warrant against the
5 defendant.

6 Q. Was that done?

7 A. Yes.

8 Q. Were you also able to file an arrest warrant
9 for the arrest of Brshai Peters?

10 A. Yes.

11 Q. What day was that that those warrants were
12 signed off? What point can you go arrest them?

13 A. The first warrant, I believe, was assigned the
14 same day, May the 6th. The second warrant, we got
15 signed the following day on May the 7th.

16 Let me look at my dates here. Yeah. I
17 believe that's right.

18 Q. So, at that point, now you have got valid
19 arrest warrants. Do you also have additional suspect
20 information on the other two?

21 A. Let me think. I had the first names, but
22 that's it. No other information.

23 Q. And their names?

24 A. One of them is Jasmine -- I forgot Jasmine's
25 last name.

1 Q. But you only knew the first name at that time?

2 A. Yes, exactly. And a guy named Morris.

3 Q. Morris or Norris?

4 A. Norris, I believe.

5 Q. Okay.

6 A. Yeah, Briscoe Norris.

7 Q. And you have that information now on May 6th
8 and then going into May 7th?

9 A. All I had was Norris' last name and Jasmine's
10 first name, if I recall correctly. The other
11 information I had by that Saturday, yes.

12 Q. But you have got two suspects now that are
13 warranted for aggravated robbery and potential possible
14 capital murder?

15 A. Correct.

16 Q. So, how do y'all proceed once you have arrest
17 warrants for these individuals?

18 A. Well, I learned through my investigation that
19 these guys were up in Temple. So, beginning Friday
20 evening, I contacted the Gulf Coast Violent Offenders
21 Task Force here in Houston. They're the ones that
22 advised me that they had also learned that these folks
23 were still in Temple and that they had another U.S.
24 Marshal that they used, another group similar to theirs
25 in the Temple area.

1 So, they put me in contact with them. I
2 think it was Agent Nash -- no, Agent Hicks. Special
3 Agent Hicks. I contacted him and passed the information
4 on to them, including sending them warrants and
5 photographs, both of the defendant and Brshai Peters.

6 Q. And the purpose of passing that information
7 along to them is what?

8 A. So they can identify them.

9 Q. It's possible, did they have authority then to
10 arrest them?

11 A. Yes, sir.

12 Q. Were they able to arrest them right away?

13 A. No, sir.

14 Q. When did that take place -- or tell us what
15 happened after you passed that information along to
16 them.

17 A. Well, one of the difficulties was that
18 particular location where they were at is an apartment
19 complex in Temple. And they were having difficulty
20 trying to pin down the specific apartment. And the
21 warrants, considering the distance that they were at, in
22 looking trying to get a positive identification on these
23 guys, they were unable to do that.

24 So, they contacted me Saturday night and
25 asked that I come up Sunday with Officer Carr.

1 Q. How difficult is it to get approval to leave
2 the city of Houston to go to Temple, Texas?

3 A. Sometimes it's rather difficult.

4 Q. Why is that?

5 A. Because of money. That's the bottom line.

6 Q. Were y'all able to get approval fairly quickly
7 on this date to go to Temple?

8 A. Yes.

9 Q. So, you and Officer Carr get in a vehicle and
10 drive to Temple?

11 A. We do.

12 Q. Were they arrested by the time you got there?

13 A. No.

14 Q. Tell us what happens when you and Officer Carr
15 get to Temple, Texas.

16 A. Officer Carr was driving. He is much more
17 familiar with the Temple area. So, he was driving and
18 I'm in the passenger seat. When we pulled up to this
19 major intersection -- I don't even remember the
20 intersection -- I looked to my left and there is an
21 apartment complex there. And I saw the defendant,
22 Brshai Peters, this girl Jasmine and Norris all standing
23 out front with a whole bunch of luggage.

24 Q. How do you know it was them?

25 A. I was working the case. I was looking at the

1 pictures. To me, it was obvious. They have got bags
2 and stuff out there ready to go somewhere, somewhere
3 else. So, to me, it was pretty obvious.

4 Q. So, what do y'all do? Do you and Officer Carr
5 go in and take them down?

6 A. No, sir.

7 Q. Why not?

8 A. Well, we know that they're armed. We also
9 know what they've already done. We're not -- we're
10 holding at that point. I mean, I'm not wearing a vest.
11 I'm not going to go into someone else's jurisdiction not
12 with them. I mean, I don't want to cause harm to
13 anybody else. I don't want them thinking that I'm
14 trying to rob them, for example. That's not the point.
15 The point is trying to get them in custody safely.

16 Q. What happens after you lay eyes on them?

17 A. We initially start surveillance, which was
18 rather difficult to do. We pulled off into a parking
19 lot. I got out of the vehicle, just leaned up against
20 the building, just sat there in the grass watching them
21 for a period of time.

22 At the same time I am also reaching out
23 to Officer Mueller and Agent Hicks in an effort to roust
24 these guys out of bed and get them back out there again.
25 Now we believe they are fixing to leave again.

1 Q. This is your window?

2 A. Yes, sir.

3 Q. Now, as you're conducting surveillance on
4 them, do they stay there the entire time?

5 A. No, they don't.

6 Q. Where did they go back to?

7 A. They went back inside the complex.

8 Q. Did you know which apartment they went into at
9 that time?

10 A. No, sir.

11 Q. So, what's the plan at that point as they go
12 back into the complex?

13 A. Well, we knew that an apartment number had
14 possibly been identified the night before. So, with all
15 the folks we were trying to contact there in Temple, I
16 knew somebody would know some surveillance locations
17 where we would be able to better keep an eye on them in
18 case they came back out again.

19 So that's what we did. We met up with
20 everybody, came up with a strategy in order to safely
21 make the arrest or proceed from there. I mean, at that
22 point we had several plans in place.

23 Q. Tell us how everything finally came to
24 fruition.

25 A. Well, finally, I saw the defendant walk out of

1 the complex with Brshai Peters. When they walk out of
2 the complex, they walked down the street and disappeared
3 back behind some buildings. At that point we lost sight
4 of them, so -- and I'm with the U.S. Marshal at that
5 point. So, we went driving around, spotted them again
6 going across the Sam's parking lot, which literally is
7 adjacent to the apartment complex. When they did that,
8 the Temple SWAT team was able to take them down,
9 actually quite easily and safely.

10 Q. So, without incident?

11 A. Without incident, yes.

12 Q. You were there on the scene when they were
13 placed under arrest?

14 A. Yes.

15 Q. Where was Officer Carr?

16 A. At that point I don't know.

17 Q. He wasn't there?

18 A. I don't know where he was. I couldn't -- I
19 don't know. It was a lot going on right there.

20 Q. Well, when they were arrested, you said it was
21 without incident. No one was hurt?

22 A. Correct.

23 Q. Was anyone physically assaultive towards
24 Mr. Akers (sic) or Brshai Peters?

25 A. No.

1 Q. Were they cooperative at the time?

2 A. Define "cooperative."

3 Q. Tell me how they were.

4 A. They didn't put up a fight. They actually
5 went down very easily. One of them had some marijuana
6 on them, was complaining about that. Short of that, it
7 was very easy. They went into the cars. There was no
8 shouting or fighting or arguing. Nothing.

9 Q. And from what you observed, no one physically
10 harmed Mr. Akers (sic)?

11 A. Correct.

12 Q. No one threatened him?

13 A. No, sir.

14 Q. Said he had to say anything?

15 A. Pardon me?

16 Q. No one said he had to say anything?

17 A. No, sir.

18 Q. At that point did you ask them where they were
19 staying?

20 A. Yes.

21 Q. What did they tell you or -- yes, what was
22 said to you?

23 A. I was advised they were staying at Apartment
24 No. 311.

25 Q. So, now you have an apartment to go to?

1 A. Yes, sir.

2 Q. What happens?

3 A. At that point I believe the Temple officers
4 took Peters and Aker over to the Temple Police
5 Department.

6 Q. Okay.

7 A. I also know that Officer Carr was with me at
8 that scene before we went to the apartments. So,
9 whether he was there when the actual arrest occurred or
10 not, I don't know; but I know he was there when we
11 decided to all go over to the apartment.

12 Q. So, you go over to Apartment 311.

13 A. Yes.

14 Q. Is Officer Mueller and the Temple officer
15 already there?

16 A. Yes.

17 Q. Have they made contact with the homeowner?

18 A. Yes.

19 Q. Were you there when she gave consent to search
20 her apartment?

21 A. Yes.

22 Q. Did she do that freely and voluntarily?

23 A. She did.

24 Q. Did she give consent to search the entire
25 apartment?

1 A. Yes, she did.

2 Q. At any point prior to searching the apartment,
3 was anything made known to you about who or what items
4 belonged to what person?

5 A. No, sir.

6 Q. So, at that point, for all you know,
7 everything inside could belong to the homeowner?

8 A. Yes.

9 Q. Or perhaps to maybe some of the defendants?
10 You just don't know?

11 A. That's possible.

12 Q. So, was the home searched?

13 A. Yes.

14 Q. And what did you find?

15 A. I didn't actually search the home, but I do
16 know a lot of stuff was found. There was a laundry
17 basket --

18 MR. MARTIN: Objection, Judge. The
19 sergeant wasn't there. This is hearsay. I object to
20 this man testifying who found what where.

21 THE COURT: If you know and you
22 personally observed it, you may testify to it. We're
23 not asking you to guess.

24 MR. BURDETTE: I can move along, Judge.

25 THE COURT: Okay.

1 Q. (BY MR. BURDETTE) Who searched the apartment?

2 A. Officer Mueller.

3 Q. Were all the items that were recovered by them
4 tagged and then ultimately transferred over to you and
5 Office Carr and the Houston Police Department?

6 A. Yes, sir.

7 Q. What items were transferred from Temple Police
8 Department to you?

9 A. Again, these are items that I also saw in the
10 apartment, by the way. There was a big red tub that had
11 a lid over the top of it. There was a black-colored
12 suitcase. There was a -- I believe it was a
13 light-colored laundry basket full of clothing. There
14 was a black -- I've been calling it a backpack because I
15 don't know what else to call it. It's a little small,
16 flimsy-looking backpack with a string on it.

17 Q. We've heard some of the testimony so I'll hit
18 the high points to move this along.

19 A. That's it.

20 Q. You recognize this bag?

21 A. Yes, I do.

22 Q. So, you recognize this gun?

23 A. Yes, I do.

24 Q. And this book?

25 A. Yes.

1 Q. These were all found in this bag?

2 A. Yes.

3 Q. And red backpack?

4 A. Yes, sir.

5 Q. You recognize it?

6 A. Yes, I do.

7 Q. And this gun?

8 A. Yes.

9 Q. Do you want to take a look at it because I'm
10 going to ask you some questions about them.

11 MR. BURDETTE: May I approach the
12 witness, Judge?

13 THE COURT: You may.

14 Q. (BY MR. BURDETTE) I'm assuming you know a lot
15 about guns with your military and police experience.

16 A. A little.

17 Q. Tell us a little bit about State's Exhibit 87.
18 What type of gun is it? Semiautomatic?

19 A. This is a semiautomatic pistol.

20 Q. Do you know the caliber?

21 A. I believe this is -- I think it's a .32
22 caliber. It says 7.76, but I believe that's .32
23 caliber.

24 Q. Now, were any shell casings found at the scene
25 of this aggravated robbery?

1 A. Yes.

2 Q. Do you recall the caliber of those shell
3 casings?

4 A. I believe they are .32s.

5 Q. You told us this is a semiautomatic firearm.
6 What makes a semiautomatic firearm unique compared to a
7 revolver?

8 A. In a revolver, as you can see, it has a
9 cylinder on it where six bullets would be loaded into
10 it. As the trigger is pulled, the cylinder rotates to
11 get to the next bullet.

12 In this particular weapon, it's fed with
13 a magazine through the bottom. This is already put in
14 here, but when this magazine is removed, we can fill it
15 up with bullets and then put it back up in there. And
16 then every time the trigger is pulled, the weapon
17 self-cycles, going back, discharging the empty shell
18 casing and then feeding another live round into the
19 chamber.

20 Q. So, this gun, for every bullet that's fired, a
21 spent shell casing is ejected --

22 A. Yes, sir.

23 Q. -- assuming it's working properly?

24 A. Correct.

25 Q. With a revolver, anytime a shot is fired, the

1 cylinder rotates, a new bullet is put in front of the
2 firing pin, but the shell casing is not ejected?

3 A. That is correct.

4 Q. So, would you expect to find shell casings at
5 a scene where a revolver was used in a shooting scene?

6 A. I would not.

7 Q. Why is that?

8 A. Well, they are going to be in the pistol
9 itself. It is probably carried away from the scene.

10 Q. If you take the gun, you've got the shell
11 casings?

12 A. Correct.

13 Q. Here, the shell casings are on the ground?

14 A. Well, they are somewhere.

15 Q. They could be picked up?

16 A. They could be anywhere.

17 Q. They could be kicked around?

18 A. They could be on clothing, on top of vehicles,
19 on the ground. They could be anywhere.

20 Q. So, just because you have shell casings
21 somewhere, you're not able to determine exactly where
22 the someone was when they fired the weapon that ejected
23 that shell casing?

24 A. Not specifically but maybe generally. It just
25 depends.

1 Q. But if it was moved by anybody, kicked, run
2 over, no way to tell?

3 A. It depends on how much evidence we have. For
4 example, on a scene where we have massive amounts of
5 shells fired or gunshots fired, when it's from a
6 semiautomatic, that's going to tell a different story.

7 When we have two or three shots fired,
8 that's not going to help us. So, the more, the better.

9 Q. So, when those guns and backpacks are
10 transferred to your possession, what do you do with
11 them? Where do you take them and why?

12 A. We bring them back to the Houston Police
13 Department property division and tag it as evidence in
14 this case.

15 Q. Is that a secure facility?

16 A. It is.

17 Q. Now, should any testing be done on those
18 items, can a criminalist at the lab check out the items
19 or have the items brought to them for testing?

20 A. Yes.

21 Q. Is that common?

22 A. Yes.

23 MR. BURDETTE: May I approach the
24 witness, Judge?

25 THE COURT: Yes, you may.

1 Q. (BY MR. BURDETTE) Showing you what's been
2 marked as State's Exhibit 109 and -10, 111 and 112 and
3 113 and 114. Take a look at all these and tell me if
4 you recognize these.

5 A. Yes.

6 Q. Okay. Just generally, what are they?

7 A. These are items of evidence that we collected
8 in Temple and brought back with us.

9 Q. Were they found there at Apartment 311 by the
10 Temple Police Department?

11 A. Yes.

12 Q. Once they were given to you, they're tagged in
13 to the property room?

14 A. Actually, Officer Carr did that, yes.

15 Q. How can you tell that Officer Carr did that?

16 A. His initials. His initials are here.

17 Q. How did these get to court here today?

18 A. I went and picked them up and brought them
19 this morning.

20 MR. BURDETTE: Judge, at this time State
21 offers State's Exhibit 109, 110, 111, 112, 113 and 114
22 into evidence. I'll tender to opposing counsel for
23 inspection.

24 MR. MARTIN: Can we approach, Judge?

25 THE COURT: You may.

1 (At the Bench, on the record.)

2 MR. MARTIN: I take it, it is all
3 ammunition. I don't know what container it came from.
4 So, it's got my guy's name on here as a suspect and
5 Brshai Peters' name, but not anybody else's name on the
6 other two. I object to the names. They are just
7 pointing to two of the four suspects. I object to that.

8 I object. I don't know where this came
9 from, if I can object to all of it. So, I don't know if
10 it came out of any of my guy's containers or not. And I
11 know you've already -- I'm not trying to argue with the
12 Court's ruling. I just want to make a record. I want
13 to object to anything that came out of my guy's
14 containers that we did establish standing on.

15 MR. BURDETTE: Let me clarify on a couple
16 of them. State's Exhibit 109 -- well, before I get into
17 the specifics, we can redact the suspect's name if he
18 has an objection to the hearsay on each of the
19 containers. No problem. I'll either tear it off, cut
20 it out or go over it in black, whatever makes Mr. Martin
21 comfortable.

22 Now, with regards to the specifics of
23 each one, State's Exhibit 109 are two unfired .38 auto
24 cartridges found in Brshai Peters' pocket.

25 MR. MARTIN: All right.

1 MR. BURDETTE: State's Exhibit 110 are
2 .38 auto unfired cartridges that were found in a short
3 sleeve. I don't exactly know what that means, so -- I
4 don't know exactly where they were found, other than
5 inside the apartment.

6 MR. MARTIN: A .38 auto. We don't know
7 where this came from.

8 THE COURT: You have a point.

9 MR. MARTIN: That's why I object to all
10 of it.

11 THE COURT: For those that he can --

12 MR. BURDETTE: The testimony has just
13 been it was all found inside the apartment.

14 MS. VALENTINE: It's a foundation issue.

15 THE COURT: I don't know if you have
16 anybody that will be able to say where or what.

17 MR. BURDETTE: The where is inside
18 Apartment 311. I don't see how it changes anything,
19 whether it was in a room, on the floor. It was found
20 inside the apartment. I don't think that goes to
21 admissibility. I think these are questions to Officer
22 Chappell.

23 MR. MARTIN: I would just want to make
24 sure the record shows I'm maintaining my same objection
25 I had earlier to all of these items, too.

1 MR. BURDETTE: Are there any of these
2 that you can agree to? Now, if the box of ammunition
3 that was found in his red container --

4 MR. MARTIN: In my guy's red -- I object
5 to that. I want to maintain my objection. That's all
6 I'm trying to say. I don't want to waive anything.

7 MR. BURDETTE: Judge, we can establish
8 that State's Exhibit 112 was found in his -- Nicholas
9 Aker's red container?

10 THE COURT: That's one I think it would
11 be admissible.

12 MR. BURDETTE: Okay. Well, I understand
13 this is .38 auto cartridges found in Peters' pockets.

14 MR. MARTIN: I'll have to ask him about
15 that.

16 MR. BURDETTE: No, Peters, not Aker's.

17 MR. MARTIN: Okay.

18 MR. BURDETTE: And -- well, there is six
19 here, Judge. Testimony was that -- from Officer Mueller
20 was that Nicholas Aker's firearm was loaded in -- has
21 six cartridges here.

22 MR. MARTIN: Coming from the gun?

23 MR. BURDETTE: Presumably.

24 MR. MARTIN: That's what I object to is
25 "presumably."

1 THE COURT: I agree with Mr. Martin on
2 this. I think you need to be more specific. And those
3 that you can be specific with, they will be admitted.
4 Those that are not --

5 MR. MARTIN: Where was this found?

6 MR. BURDETTE: It is the only box of
7 ammunition. My problem is these were all testified to
8 be found in Apartment 311 by Officer Mueller.

9 MR. MARTIN: Right. But I don't know if
10 he even knows where they were found. That was the
11 question earlier to Mueller.

12 THE COURT: You will be able to cross him
13 on that. I mean, I'll let have the cross that you need
14 on that.

15 MR. BURDETTE: If we can admit 112?

16 THE COURT: I think the red bucket has
17 already been explained.

18 MR. MARTIN: I object because I think I
19 understand -- I have the same objection I had earlier.
20 I understand your ruling. I just want to make sure.
21 These, I object on the other basis, to ask for the
22 Court's ruling on them.

23 MR. BURDETTE: On 109, 110, 111, 113 and
24 114.

25 THE COURT: Are you -- do you have any

1 specificity of where they were found?

2 MR. BURDETTE: Apartment 311, Temple,
3 Texas.

4 THE COURT: Okay. I'm going to admit
5 them, but you can cross on them.

6 MR. MARTIN: I understand, Your Honor.
7 My objection is overruled. That's all I needed.

8 THE COURT: Okay.

9 MR. MARTIN: Thank you.

10 (End of bench discussion.)

11 MR. BURDETTE: May I continue, Judge?

12 THE COURT: You may.

13 MR. BURDETTE: May I approach, Judge?

14 THE COURT: Yes, you may.

15 Q. (BY MR. BURDETTE) Officer Chappell, these are
16 bullets that were found inside of Apartment 311, Temple,
17 Texas?

18 A. Yes.

19 Q. Take a look here. Are they live cartridges?

20 A. Yes.

21 Q. And are you able to tell the caliber?

22 A. Yes.

23 Q. Thanks. What are they?

24 A. They are .38 caliber Winchesters.

25 Q. And the revolver that we were looking at

1 earlier, State's Exhibit 86, what type of gun was it?

2 A. That's a .38 caliber Smith & Wesson.

3 Q. Is it capable of firing this type of bullet?

4 A. Yes.

5 Q. Were any of the bullets that were given to you
6 by Officer Mueller any caliber other than a .38 Special
7 and a .32 Auto?

8 A. No.

9 Q. So, the only bullets you took from Apartment
10 311 in Temple, Texas, were .38 Special and .32 caliber?

11 A. Correct.

12 Q. Just again, the types of guns that you took
13 from Temple, Texas, are .38 auto and .32?

14 A. It's .38 revolver and .32 semiautomatic.

15 Q. Okay. Now, going back, after you leave
16 Apartment 311 in Temple, Texas, where do you go?

17 A. To the Temple Police Department.

18 Q. What is the purpose in going to Temple Police
19 Department?

20 A. Now we are in an interview mode. We need to
21 go and talk to all the people that were involved there.

22 Q. Who is down there at the Temple Police
23 Department? What suspects?

24 A. Well, initially, the first two were Brshai
25 Peters and Nicholas Aker; but we also sent down Briscoe

1 Norris, who volunteered to come and speak with us, and
2 Jasmine Stelly.

3 Q. Now, when you go to the police department, who
4 are you going to speak with?

5 A. We hadn't really discussed that initially. We
6 just decided to start speaking to folks. I spoke to
7 Briscoe and to the defendant here.

8 Q. Now, prior to speaking to Nicholas Aker --
9 he's obviously under arrest, right?

10 A. Yes.

11 Q. Did you advise him of his constitutional
12 rights?

13 A. I did.

14 Q. Why do you do that?

15 A. That's the way we do things. Once he's in
16 custody, we have to advise them. He can have his
17 attorney present. He doesn't have to talk to us at all.
18 He can stop the interview anytime he wants to. And
19 anytime he wants to have his attorney, he's allowed to
20 do that.

21 Q. Do you have something called a blue card?

22 A. Yes.

23 Q. What is the blue card?

24 A. That literally is the *Miranda* warning, what we
25 call the *Miranda* warning. And it's five different

1 sentences that explains exactly what the rights are,
2 just like we have seen on TV a hundred million times.

3 Q. Now, did you read those rights to the
4 defendant, Nicholas Aker?

5 A. Yes, I did.

6 Q. Did he indicate to you that he understood each
7 one of those rights?

8 A. Yes, he did.

9 Q. How did he indicate that?

10 A. I asked him: Do you understand this?

11 He said, Yes.

12 Q. Did he say that for each of the rights that
13 were read to him?

14 A. Yes.

15 Q. At that time after reading his rights, did he
16 indicate that he wanted to speak with you?

17 A. He did.

18 Q. At any time did he say, No, I don't want to
19 speak with you?

20 A. No.

21 Q. At any time did he ask for an attorney?

22 A. He did not.

23 Q. At any time was he coerced to give a statement
24 to you?

25 A. No, sir.

1 Q. Did he speak to you freely and voluntarily?

2 A. I wouldn't say "freely," but I would say
3 voluntarily.

4 Q. So, by not being freely, because he's at the
5 police department?

6 A. Correct.

7 Q. But he did --

8 A. He did openly talk to me, yes.

9 Q. At any time did you threaten him to give
10 him -- threaten him saying he had to give a statement?

11 A. No, sir.

12 Q. Did you observe anyone else do that?

13 A. I did not.

14 Q. Did you withhold food or water or anything
15 from him prior to getting a statement from him?

16 A. No.

17 Q. Describe the conditions in the Temple Police
18 Department where you met with this defendant.

19 A. It's a small building. I mean, they only have
20 135 officers, I believe. So, it's a very small
21 building. They have a room that they use as an
22 interview room. I think they had a couple of them. But
23 to me, it looked more like a small closet, very small
24 office space that had very little functioning area.
25 Very antiquated. It's old, but it had a table in it and

1 a couple of chairs.

2 Q. Did you have a recorder with you?

3 A. Yes, I did.

4 Q. Why do you have a recorder?

5 A. Because I want to make sure that what I am
6 telling you right now actually occurred; so, I record
7 it.

8 Q. And did you take a statement from this
9 defendant?

10 A. Yes, I did.

11 MR. BURDETTE: May I approach the
12 witness?

13 THE COURT: You may.

14 MR. BURDETTE: May we approach the bench
15 before that?

16 (At the Bench, on the record.)

17 MR. BURDETTE: I think it's only about 11
18 minutes.

19 THE COURT: Wouldn't it be better in the
20 morning?

21 MR. MARTIN: I would appreciate that.

22 MR. BURDETTE: I think that would be
23 fine. I think he needs to listen to it because, by
24 agreement, we made a redaction on the defendant's
25 statement. So, the officer has the evening to redact

1 the version. I am going to be offering a copy of the
2 unredacted version for the record, but for the jury, I
3 will have a copy of the redacted version.

4 *THE COURT:* Okay. So, we're going to
5 adjourn for the day and come back and start shortly
6 after 10:00 tomorrow. We can go into that then. You
7 will have to come back tomorrow.

8 *(End of bench discussion.)*

9 *THE COURT:* Ladies and gentlemen, it's a
10 good time to break. I know Myrna is so happy. As I
11 said, she was here until 11:30 last night, didn't get to
12 go home.

13 So, please don't discuss this with your
14 family. Don't tell them the facts and ask them their
15 opinion. Don't do any searching on the Internet and
16 Wickipedia or anything about this case. Don't bring in
17 any information from the outside. Don't Facebook, don't
18 Twitter, don't -- what are some others? Just don't any
19 of those. Don't tell anybody you're on a jury right
20 now. It's amazing. You tell them you're on a jury,
21 tell us about it. Then you type in everything. Don't
22 do that, please.

23 Have I forgotten anything?

24 *MR. BURDETTE:* I don't believe.

25 *THE COURT:* Then we are going to adjourn.

1 We are going to start again -- we started early before
2 you came in because we had other things we had to do
3 without you. So, I didn't want you to think we weren't
4 working. We were working on this case earlier than you
5 came in. We may do that again tomorrow. We'll shoot
6 for 10:00 again, hopefully. It might be 10:30. I'm
7 sorry.

8 You may bring your own drinks and your
9 own food if you like. Did you like the food today?
10 It's sandwiches.

11 All rise for the jury.

12 *(Jury out and Court in recess for the*
13 *day.)*

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