

1 (Witness Sworn).

2 THE COURT: Bring them in please. Now on
3 the stand sergeant Chavez.

4 THE BAILIFF: All rise for the jury.

5 (Jury Present)

6 THE COURT: Please be seated.

7 Call your next please.

8 MS. FULLER: State calls sergeant Chavez.

9 THE COURT: Ladies and Gentlemen this
10 witness has been previously sworn.

11 Proceed.

12 MS. FULLER: Thank you Your Honor.

13 **H. A CHAVEZ,**

14 After having been duly sworn was called to the stand
15 and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. FULLER:

18 Q. Good afternoon. Would you please introduce
19 yourself to the jury?

20 A. Yes, ma'am. I'm sergeant H. A. Chavez.

21 Q. Sergeant Chavez who do you work for?

22 A. I work for the Houston Police Department and
23 currently I work for the Internal Affairs Division.

24 Q. How long you been with the Houston Police
25 Department?

1 A. Next month will be 30 years.

2 Q. Can you tell the jury a little bit about your
3 career progression, where you started?

4 A. Sure. I started in the academy back in
5 October of 85, graduated six months later. I was
6 assigned to the patrol station at South Central which
7 is just east of Downtown. I worked there until 1989
8 then I transferred to the Beechnut area which is down
9 in southwest Houston and I worked there from 1989
10 until December of '95 when I transferred to the
11 homicide division and from the homicide division I
12 worked 18 years there as an officer investigator. Got
13 promoted went out for a good nine weeks did some
14 patrol training and then came back to homicide. So I
15 did just shy of 19 years in homicide.

16 Q. All right. And how long have you been in the
17 Internal Affairs department?

18 A. Seven months.

19 Q. Seven months. Okay.

20 And prior to joining the Houston Police Department
21 were you in the military?

22 A. Yes I was.

23 Q. What branch?

24 A. I was in the Marine Corp.

25 Q. How long were you in the Marine Corp?

1 A. Four years.

2 Q. And you stated that you were in the homicide
3 department for 18 years or close?

4 A. Yes. As an investigator, yes.

5 Q. Okay. And total it was almost 19?

6 A. Correct. I went back as a sergeant after I
7 got promoted and just shy of 19 years.

8 Q. All right. So when you were -- when you went
9 to homicide did you receive specialized training that
10 aided you in being a homicide investigator?

11 A. It's mostly on-the-job training. We take
12 classes every year. The department offers us classes.
13 We have mandatory training and there's also
14 specialized training. Different classes we have.
15 There are case or classes homicide related so I'm sure
16 I took some of those classes and just basically going
17 out to scenes and learning on-the-job.

18 Q. All right. So you don't just go to the
19 academy and then you don't -- you still receive
20 education course work and scene work throughout the
21 progression of your career?

22 A. Yes, ma'am. Every year we have to go through
23 at least 40 hours mandatory training.

24 Q. I want to turn your attention to June 18th of
25 2011. Were you assigned a case that day for follow-up?

1 A. Yes I was.

2 Q. And how did you come about being assigned
3 that case?

4 A. Well, on that particular date I was assigned
5 the work weekend duty. That Saturday morning I believe
6 is when I got the case. We got the case. We were
7 notified that there was a delayed death and the
8 robbery division had originally had the case and it
9 was transferred over to the homicide division once the
10 complainant in the case died.

11 Q. All right. So do you recall when the event
12 occurred?

13 A. Yes, ma'am. The incident was reported or
14 occurred on June 17, 2011.

15 Q. All right. So when you get the case after
16 the victim in the case had passed away what was the
17 first thing that you did with the case?

18 A. Well, the first thing that you want to do of
19 course is read the report see what's been done up to
20 the point where you got the case. You want to do
21 research, try to find out the information on the
22 victim or witnesses and you just basically go from
23 there, start talking to people tied to the victim,
24 witnesses, anything that will help you get the case
25 going.

1 Q. All right. So, on that day on June 18th, did
2 you travel out to the location of the murder?

3 A. Yes we did and the location is 5445 East
4 Freeway, the I-10.

5 Q. And that's in Harris County, Texas right?

6 A. That's correct.

7 Q. When you got out there did you meet with
8 anybody?

9 A. Yes. One of the witnesses, one of the clerks
10 that was with the complainant at the time of the
11 incident.

12 Q. Do you recall what his name was?

13 A. I may be pronouncing it wrong but Sujesh.

14 Q. So you were able to meet with him?

15 A. That's correct.

16 Q. You take a statement from him?

17 A. Yes.

18 Q. What else did you do when you were out at
19 that location?

20 A. Well, one of the things we want to do when we
21 get out to a scene if we don't make the scene
22 originally we want to see if there is any kind of
23 evidence. In this particular case patrol had made the
24 original scene and robbery investigators went out so
25 any evidence that was collected was collected on the

1 day of the event. Our purpose and of course we already
2 knew this from the report that there was video
3 evidence out there.

4 Q. All right.

5 A. So that's the type of stuff that we're
6 looking for.

7 Q. All right. And was that Chevron video turned
8 over to you from the robbery division?

9 A. Yes it was.

10 Q. You also visit any other locations close to
11 5445?

12 A. Yes. There's a Walgreen's. I'll say behind
13 -- it's north from where the Chevron is. We also went
14 over there and looked to see if there was any kind of
15 video cameras that would point to the path where the
16 suspect went.

17 Q. I'm going to turn your attention to State's
18 Exhibit 18. Is that the Walgreen's you're talking
19 about?

20 A. Yes it is.

21 Q. And you were trying to see if there were
22 video cameras that were along this back side?

23 A. Yeah. That's the back side right there by
24 where the patrol officers are on the south side of the
25 building to the left of them. That's the back side of

1 the Walgreen's.

2 Q. All right. And were there are any video
3 cameras in that back area?

4 A. Not in the back area.

5 Q. You also go to 5314 Farmer Street.

6 A. Yes we did.

7 Q. And did you meet with somebody at that
8 location?

9 A. Yes. That would be John Washington.

10 Q. All right. And did you take a statement from
11 Mr. Washington?

12 A. Yes I did.

13 Q. Okay. And was that statement recorded?

14 A. Yes it was.

15 Q. You visit any other locations when you were
16 out there at that time?

17 A. On that particular date I believe that was
18 it. I don't recall off the top of my head we went
19 anywhere after we talked to Mr. Washington.

20 Q. Okay. So at this point you've received the
21 offense reports from robbery. Is that fair?

22 A. Yes, ma'am.

23 Q. All right. And you had spoken with witnesses
24 so you had somewhat of an understanding of what had
25 happened out there?

1 A. Yes.

2 Q. Okay. Did you -- so after you left that
3 location did you continue working on the case that
4 day?

5 A. Yes I did.

6 Q. And what did you do?

7 A. Well, like I said we want to research our
8 victim and witnesses to see if they can kind of give
9 us a reason why it happened, if there was anybody who
10 may have had a problem with them, stuff like that. So
11 basically just doing research and hoping that we're
12 going to get a lead.

13 Q. That was the research on the victim?

14 A. Yes.

15 Q. Now, did you work with an officer in your
16 public affairs division regarding the victim in the
17 case?

18 A. Yes. When I researched the complainant I
19 found a person at that scene.

20 MR. MONCRIFFE: That would be
21 non-responsive Your Honor.

22 THE COURT: Okay. Do the follow-up.
23 Sustained.

24 Q. (By Ms. Fuller) Okay. What did you and this
25 officer work on together?

1 A. Getting identifiers on the victim.

2 Q. Okay. And were you at one point able to get
3 the identifiers on the victim?

4 A. Yes.

5 Q. All right. And in fact --

6 May I approach Your Honor?

7 THE COURT: You may.

8 Q. (By Ms. Fuller) I'm going to show you what's
9 already been marked as State's Exhibit 36. Do you
10 recognize State's Exhibit 36?

11 A. Yes. It's a copy of a Pakistan passport.

12 Q. Okay. Was it the passport for the victim in
13 the case?

14 A. Yes it was.

15 Q. Is that a fair and accurate copy of that
16 passport?

17 A. Yes it is.

18 Q. All right. And were you speaking with --
19 excuse me -- the officer that you were working with
20 was he also working with the victim's family?

21 A. Yes he was.

22 Q. All right.

23 MS. FULLER: Your Honor at this time
24 State moves to admit State's Exhibit No. 36 and tender
25 to Defense counsel for inspection.

1 THE COURT: Is it the passport or
2 passport photo?

3 MS. FULLER: It's inside.

4 THE COURT: Okay. It's inside with the
5 photo.

6 36 is admitted.

7 MS. FULLER: May I publish Your Honor?

8 THE COURT: You may.

9 Q. (By Ms. Fuller) All right. So from this
10 photograph and this identification were you able to
11 see his age? And you -- might be easier to read the
12 one behind you.

13 A. I think the date of birth is what's -- well
14 it's in '83. I can't make out the month and the day.
15 Looks like 8, 9.

16 Q. And his name?

17 A. It's Syed Hussain.

18 Q. Now during your -- did your research
19 regarding this victim Mr. Hussain did it uncover any
20 leads in terms of who might be a suspect?

21 A. No it did not.

22 Q. Okay. So continuing your investigation that
23 was all on Saturday June 18, 2011. Is that fair; is
24 that right?

25 A. Yes, ma'am.

1 Q. The following day do you recall what you did
2 the next day?

3 A. I believe it's when I spoke to Mr. Smith,
4 Byron Smith.

5 Q. All right. And how did you speak with him?

6 A. It was a phone interview.

7 Q. All right. And were you able to obtain his
8 statement of what he saw?

9 A. Yes, ma'am.

10 Q. Okay. Now, continuing on in your
11 investigation what was some of the next things that
12 you did?

13 A. Of course one of the things, once we got the
14 video from the robbery division is we go through and
15 see what's on the video. So we reviewed the video
16 from the Chevron.

17 Q. All right. Now I'm going to stop you there.
18 The video is State's Exhibit 20. And I want to
19 talk a little bit about that when you reviewed it.

20 A. Okay.

21 Q. Tell me some of the things that you saw in
22 that video clip. And I'm going to be -- I want to
23 speak specifically to --

24 Permission to publish the video clip?

25 THE COURT: You may. Just a portion of it

1 this time right?

2 MS. FULLER: Yes. Just a portion.

3 Q. (By Ms. Fuller) This is camera eight that's
4 up right now. And you were able to review this
5 portion of the video?

6 A. Yes, ma'am.

7 Q. All of this video clip?

8 A. Yes.

9 Q. All right. Now, when you were reviewing the
10 video what are some of your first observations that
11 you made when you reviewed it?

12 A. Well, I mean as you can see it's daylight
13 hours. There's a lot of traffic right there.
14 Customers coming in pumping gas and at some point on
15 the right of the screen close to the vehicle on that
16 far pump you'll see someone walk-up and walk toward
17 the bushes that are directly behind the pumps.

18 Q. Okay. And I think we're seeing that right
19 now. Is that correct?

20 A. That's correct. There's a vehicle passing
21 right by the person now.

22 Q. Okay. So that would be this person right
23 here?

24 A. That is correct.

25 Q. And it looks in the video that he is doing

1 what?

2 A. He walks and he sits over there by where the
3 bushes are.

4 Q. All right. Is that where my cursor is?

5 THE COURT: And I don't see the cursor.
6 Where is it? Okay.

7 Q. (By Ms. Fuller) It is ten minutes. Says
8 10:20 all right; so when you're viewing the video --

9 THE COURT: I'm sorry. That's not the
10 converted time. It's what's in --

11 MS. FULLER: It's what's on the video
12 Your Honor.

13 THE COURT: Okay.

14 Q. (By Ms. Fuller) The beginning of this clip
15 you can see a person that walks and then he appears to
16 be just waiting right back there in the bushes?

17 A. That's correct.

18 Q. Is that correct?

19 Alright; now you continued watching the video is
20 that correct?

21 A. That's correct.

22 Q. All right. And at a certain point did you see
23 -- what did you see happen of importance?

24 A. Okay. I want to say it was probably around
25 15 minutes after that person walks and sits over by

1 the bushes --

2 Q. And just for the record sake I sped this up.
3 So I've sped it up to ten minutes and 34 -- 10:34:08,
4 09.

5 A. Yes.

6 Q. Okay. And you see the victim and the witness
7 Mr. Mahajan and Seyed walk into --

8 A. There's a vehicle that's parked next -- I
9 think it's pump 11 right next to the white vehicle
10 facing this way towards the camera. Yeah right there
11 and I believe that vehicle belonged to Mahajan.

12 Q. Okay.

13 A. And you can see they're carrying a bag.
14 There's a Subway in the gas station and there's or
15 money in the bag. You can see they go to the driver's
16 side and then you'll see that the person gets up and
17 starts walking towards them right there and that's
18 where the encounter happens, the struggle and then you
19 see them running off after the gunshots.

20 Q. Now the jury watched all of this clip
21 yesterday but when you watched this clip did it appear
22 that the person who walked into those bushes at any
23 point between when we saw him go to the bushes and
24 when we saw the encounter with the victim did it ever
25 appear that he got up and moved from where he was?

1 A. No.

2 Q. Now, there was another camera angle. Is that
3 correct?

4 A. Yeah. There were several camera angles but
5 in relation to this incident I think there was
6 probably 2 or 3.

7 Q. Let me show you -- this is camera eight that
8 we've been watching.

9 A. Correct. This is camera 15.

10 Q. What view is camera view 15?

11 A. That's behind the Chevron the building that
12 you're right there by where your cursor is. That's
13 the Family Dollar store so that's on the west side of
14 the Chevron building.

15 Q. All right. And do you know what this is this
16 area right here?

17 A. That's a dumpster right there and there's a
18 vacant lot just pass the dumpster and right next to
19 that is Mrs. Washington's house. Mr. Washington's
20 house.

21 Q. All right. Try to speed the video up just a
22 little bit.

23 What was significant about this video angle?

24 A. Well, the camera points to the path that the
25 suspect fled in which is going to be across. That

1 would be northbound.

2 THE COURT: I know you're looking down
3 but we've seen --

4 Q. (By Ms. Fuller) Is that what we're talking
5 about?

6 MS. FULLER: Trying to find the time.

7 THE COURT: Are you set up on replay?

8 MS. FULLER: I've got it going quickly so
9 I've got it at five times five speed.

10 Q. (By Ms. Fuller) Officer Chavez did you
11 see --

12 A. I haven't seen it run pass yet. That's just
13 somebody else. That's not our suspect.

14 Q. All right. I believe that we just saw him.

15 A. Right.

16 Q. At about -- let me back up just a little.
17 I've slowed it down.

18 THE COURT: Is the -- I know that you
19 said that the time in sequence is off but is it in
20 sync with the other tape?

21 MS. FULLER: It might be Judge. I'm going
22 to give you the time soon as I see them come into
23 view. Right there. It was 10:34 and 42 seconds you
24 start to see him.

25 Q. (By Ms. Fuller) Did you determine that these

1 were the two best camera angles?

2 A. Correct. And as you just saw the suspect
3 went back behind the dumpster towards the field there
4 was another person that ran this way towards -- and
5 that's Lockwood coming in this direction and then the
6 truck enforcement officer was actually back there and
7 he circled around but the suspect went towards the --
8 towards the vacant lot and that was the only person
9 that went that way.

10 Q. All right. Now did you determine that these
11 two camera angles, the one from the back and the one
12 from the front were the two best camera angles that we
13 have?

14 A. Yes.

15 Q. So after you viewed -- after you viewed the
16 video surveillance tell me your next step in your
17 investigation.

18 A. Well, you know we're hoping that we're going
19 to get phone calls. Usually people calling Crime
20 Stoppers but we really didn't have a whole lot going
21 on as far as leads. I forgot the minutes that we did
22 the Family Dollar store that was right next door. We
23 did go over there to see if there was video on the
24 side of the building on the day that we start our
25 follow-up.

1 Q. Were you able to get video from them that
2 day?

3 A. We got it eventually but it wasn't of any use
4 to us. We weren't really able to see anything on it.

5 Q. Before we go any further I also want to ask
6 the video that we've just seen did you take that to
7 anybody in your own, within HPD to see if they could
8 do anything to enhance the quality of the video?

9 A. Yes. The camera at the front of the store
10 looks a little distorted but we have a video -- some
11 video technicians with HPD and sometimes they can
12 enhance the video and sometimes they can't. Sometimes
13 we get still pictures if they're good enough to where
14 we can show them but as you can see that the distance
15 was a little bit from the camera.

16 Q. All right. So they weren't able to enhance
17 anything or get still photos?

18 A. No.

19 Q. All right. You had started to talk about
20 didn't get any crime. Did you -- let me back up.

21 Did you use Crime Stoppers to try to generate
22 information within the public?

23 A. I don't recall if we did on this particular
24 case. Sometimes when we're not getting any leads we go
25 that angle to see if anybody will call in but I don't

1 recall using them on this particular case.

2 Q. Okay. Now, at about that point did you get
3 any possible leads from from anyone?

4 A. Yes. That would have been on, I think around
5 June 21st, there was a female who went into the
6 Chevron said she might have some information.

7 Q. Did you investigate any information she had?

8 A. Yes.

9 Q. Ultimately did you figure out which
10 information it was that she had?

11 A. Yes. It was information that we had already
12 checked out.

13 Q. Okay. Who is it involving?

14 A. It was involving three juvenile males that
15 were detained on the day of the incident.

16 Q. Okay. All right. So the information that
17 she had did it lead you to believe that those
18 individuals were suspects?

19 A. That was what we initially believed but once
20 we worked that lead out we determined no those are the
21 ones that have already been investigated.

22 Q. Okay. All right. Did you also in fact find
23 out that most of the information --

24 MR. MONCRIFFE: Object to leading
25 question Your Honor.

1 THE COURT: Sustained.

2 Q. (By Ms. Fuller) All right. So after
3 June 21st -- let me back up.

4 After June 21st what were some of the next things
5 that you did on the case?

6 A. At one point my partner sergeant Padilla
7 Carrillo he requested a stocking cap that was dropped
8 to be submitted for DNA.

9 Q. Okay.

10 A. To be checked for DNA rather.

11 Q. And his last name is Carrillo?

12 A. Yes.

13 Q. How is it spelled?

14 A. C-A-R-R-I-L-L-O.

15 Q. Now, up to that point did you have any new
16 leads on the case?

17 A. No.

18 Q. All right. So what happens with the case at
19 that point when you have no leads?

20 A. Well, I mean it remains open however you know
21 if a lead comes in we'll work it but in the meantime
22 we've got other cases that we have to also follow-up
23 on and so it just kind of stayed open.

24 Q. Okay. When was the next point in time that
25 you received information about this case?

1 A. September the 27th, 2012.

2 Q. Okay. So approximately how many months later
3 was that?

4 A. Let's see. A year and three months.

5 Q. Okay. So about 16 months later or so?

6 A. 15, yeah.

7 Q. All right. And what was the information that
8 you received in September of 2012.

9 A. It was a result of the DNA request on the
10 stocking cap that we got a hit in the database.

11 Q. All right. And did that database identify a
12 person that led you to further investigation?

13 A. Yes it did. It was a DNA hit.

14 Q. Okay. So who was the person that the DNA came
15 back to?

16 A. DNA came back to Michael Jerome Clark.

17 Q. Okay. And at a certain point -- well let me
18 strike that. After you received that DNA match what
19 did you do you with that information next in the
20 investigation?

21 A. Well, at some point I went -- I want to talk
22 to Mr. Clark about the case.

23 Q. You actually meet with him in person?

24 A. Yes I did.

25 Q. Okay. Do you see the person who is Michael

1 Jerome Clark here in the courtroom today?

2 A. Yes.

3 Q. Could you please point him out and identify
4 him by an article of clothing?

5 A. Yes. He's wearing a blue suit. Behind the
6 defense attorney.

7 MS. FULLER: Your Honor, may the record
8 reflect that this witness has identified the
9 Defendant?

10 THE COURT: It will.

11 Q. (By Ms. Fuller) Does Mr. Clark look
12 different today than he did previously?

13 A. Slightly.

14 Q. What ways.

15 A. He has a goatee now or looks like a goatee,
16 wearing glasses.

17 Q. You see how he walked when he -- have you
18 seen him walk today?

19 A. Yes. When he came into the courtroom.

20 Q. Okay. And was he walking that way when you
21 met with him back in 2012?

22 A. No.

23 Q. Okay. When you met with him back in 2012 was
24 he walking with a cane?

25 A. No.

1 Q. Was he walking with a limp?

2 A. No, not that I recall, no.

3 Q. At some point did you ask the Defendant for
4 consent to take a buccal swab?

5 A. Yes I did.

6 MS. FULLER: May I approach the witness?

7 THE COURT: You may.

8 Q. (By Ms. Fuller) I'm going to show you what's
9 been marked as State's Exhibit 37. Do you recognize
10 that?

11 A. Yes. At this time evidence envelope with the
12 buccal swab of Michael Clark.

13 Q. All right. And did you actually collect that
14 evidence?

15 A. Yes I did.

16 Q. And after you collected that evidence did you
17 put it in that envelope?

18 A. Yes it's in a little cardboard box inside.

19 Q. Okay.

20 A. I say box but --

21 Q. Okay. Did you seal the envelope?

22 A. Yes.

23 Q. Are those your initials on the back?

24 A. Those are my initials.

25 Q. All right. And I'm going to open State's

1 Exhibit 37. And are those your initials taken on the
2 outside of the box?

3 A. Yes. Actually, I actually wrote on the little
4 or box what the buccal swab of Michael Jerome Clark
5 and right here I indicated it was taken by H. A.
6 Chavez, me, the case number and the date that the
7 sample was collected.

8 Q. Okay. And what was the date that it was
9 collected?

10 A. October 31, 2012.

11 Q. All right.

12 MS. FULLER: Your Honor, at this time
13 State moves to admit State's Exhibit 37 and its
14 contents.

15 MR. MONCRIFFE: I've reviewed it and have
16 no objections Your Honor.

17 THE COURT: State's Exhibit 37 and its
18 contents are admitted.

19 Q. (By Ms. Fuller) Let's talk about what a
20 buccal swab is. Can you explain to the jury what that
21 is?

22 A. It's a sample of a person's saliva and we
23 collect it for DNA purposes.

24 Q. Okay. How do you collect that evidence?

25 A. They're like Q-tips and we rub the Q-tips

1 inside the mouth, inside the gums to collect the
2 saliva sample.

3 Q. And after you collect it what do you do with
4 it?

5 A. It's placed into that little cardboard box.

6 Q. Okay. And afterward we take it to our
7 property room where they store it.

8 Q. Okay. Alright; so you were able to obtain
9 his buccal swab on that day.

10 May I approach the witness again Your
11 Honor?

12 THE COURT: You may.

13 Q. (By Ms. Fuller) I'm going to show you what's
14 been marked as State's Exhibit 35. Do you recognize
15 State's Exhibit 35?

16 A. Yes I do.

17 Q. And who is that a photograph of?

18 A. That's a photograph of Mr. Clark, Michael
19 Jerome Clark.

20 Q. Okay. Do you know what year that picture was
21 taken?

22 A. I believe it was around the time that I
23 interviewed him.

24 Q. All right. Is that what he looked like back
25 in 2012?

1 A. Yes.

2 Q. At the end of the year?

3 A. Yes.

4 Q. Fair and accurate picture?

5 A. Yes.

6 MS. FULLER: Your Honor, at this time
7 State moves to admit State's Exhibit No. 35 and
8 tenders to Defense counsel for inspection.

9 MR. MONCRIFFE: No objections Your Honor.

10 THE COURT: State's 35 is admitted.

11 MS. FULLER: May I publish?

12 THE COURT: You may.

13 Q. (By Ms. Fuller) So State's Exhibit 37 that is
14 a picture that was taken at or near the time that you
15 spoke with him in 2012?

16 A. That's correct.

17 Q. Okay. After you obtained his identity did
18 you go back and speak with witnesses that you had
19 talked to in 2011 and show them any photographs?

20 A. Excuse me. Yes.

21 Q. All right. And what are those photographs
22 commonly called?

23 A. Called photo spreads or photo arrays.

24 Q. And let's talk about -- did you show a photo
25 spread to Sujesh Mahajan?

1 A. Yes I did.

2 Q. Did you show one Byron Smith?

3 A. Yes.

4 Q. And did you show one to Mr. Washington?

5 A. I believe I did. I don't -- I don't recall.

6 Q. Okay. Now any --

7 A. I'm saying I don't recall. I think because
8 he said he didn't get a good enough look at him but I
9 don't recall.

10 Q. Okay. So you might not have showed Mr.
11 Washington?

12 A. Right.

13 Q. Based on the information he had given you?

14 A. Right.

15 Q. Okay. Was anybody able to pick out Mr. Clark
16 from the photo spread?

17 A. No.

18 Q. In your line of work is a handgun a deadly
19 weapon?

20 A. Yes.

21 Q. Is a gun a deadly weapon?

22 A. Yes.

23 Q. And both of those things are commonly also
24 referred to as firearms?

25 A. That's correct.

1 Q. All right. So after you had the information
2 that you did concerning the DNA, the information that
3 you had on the scene what was the next part of your
4 investigation?

5 A. Well, that was the only other lead that we
6 had gotten. So at that point it was time to present
7 the case to the District Attorneys Office.

8 Q. All right. And did they accept charges?

9 A. Yes.

10 MS. FULLER: Pass the witness Your Honor.

11 MR. MONCRIFFE: May I proceed Your Honor?

12 THE COURT: Please.

13 MR. MONCRIFFE: And Judge may I walk
14 toward the door, please?

15 THE COURT: You may.

16 MR. MONCRIFFE: Thank you.

17 **CROSS EXAMINATION**

18 BY MR. MONCRIFFE:

19 Q. Officer how are you doing this afternoon sir?

20 A. Just fine sir. Thank you.

21 Q. Look you've been on the force for 30 years
22 and homicide 19 years. Am I correct?

23 A. Yes, sir.

24 Q. You're trained to observe?

25 A. Yes.

1 MR. MONCRIFFE: Judge I would like to have
2 published the videos again. I'd like to have a few
3 questions from -- if the State will.

4 THE COURT: Could we pick a spot that
5 we're going to look at?

6 MR. MONCRIFFE: Where the gentleman's run
7 behind the bush.

8 And, Your Honor, I want to take it from
9 where the gentleman runs behind the bush.

10 Q. (By Mr. Moncriffe) You see the two gentlemen
11 would be walking out in just a second. Here it is.

12 A. Yes, sir.

13 Q. Officer you see the gentleman running?

14 A. Yes I do.

15 Q. Your observation since you're trained to
16 observe looks like a young person or old person?

17 A. From there?

18 Q. Yes, sir.

19 A. Well the video is not of good quality that I
20 can tell you the age of the person.

21 Q. Well, I mean just observing the -- one's
22 mannerisms and running does it look like a older
23 person or young person, just your observation, if I
24 were to ask you the question?

25 A. Depends on what you call older person or

1 younger person.

2 Q. Person in their early twenties or person in
3 their sixties. What would you guess as an expert?

4 A. I think in my thirties and early forties I
5 could run like that.

6 Q. Okay. All right. Not in your sixties.

7 A. No. I'm not 60 yet.

8 Q. How old was Mr. Clark when you interviewed
9 him, if you have for your records?

10 A. When was he born? In 58.

11 Q. So that's three years ago. He might have been
12 about 53?

13 A. Somewhere around there, yes.

14 Q. Now, officer and I want to go -- Your Honor
15 to the next photograph, next video where you see the
16 gentleman running in the back. If the prosecutor
17 would help me with that.

18 Now sir I'm trying to get to the point where the
19 gentleman is running to the back.

20 A. Sure.

21 Q. Because I want to put it on pause, alright.

22 Now officer right now this gentleman running
23 through here if you would observe that would you say
24 this was a younger person or an older person running?

25 A. Here again I can't tell just based on the

1 video but right now I'm 53 and I can run like that. I
2 run two and a half miles in about 25 minutes.

3 Q. Okay. Then you would be looking for older
4 people in your investigation right?

5 A. Not necessarily.

6 Q. Well, let me go back to the point was you
7 said people in their fifties can run like that then
8 your investigation would have been focused upon people
9 who would be older too?

10 A. Not necessarily. We didn't get a particular
11 age. I mean peoples ideas of age are different. Some
12 person may look at somebody and think they look in
13 their twenties. Somebody else may say in their
14 thirties.

15 Q. Who were you detaining?

16 A. I'm sorry.

17 Q. Young people or older people sir, who were
18 you detaining?

19 A. I wasn't detaining anybody.

20 Q. Was anybody detained?

21 A. Yes.

22 Q. And were they young people or older people?

23 A. They were younger people.

24 Q. All right. And they were basically detained
25 on information given somebody else correct?

1 A. Based on the clothing description, yes.

2 Q. And you were given a description by Mr.
3 Byron Smith for example right?

4 A. Correct.

5 Q. You have that in your report sir?

6 May I approach the witness Your Honor?

7 THE COURT: You may.

8 Q. (By Mr. Moncriffe) You know what supplement
9 it was? They have different format now. I'm trying
10 to see what --

11 MS. FULLER: Judge I'm not sure if the
12 question was asked but it was hearsay.

13 THE COURT: The subject is Mr. Byron
14 Smith.

15 MR. MONCRIFFE: Right. Was he given a
16 description by Byron Smith?

17 THE COURT: Just a yes or no please sir.

18 THE WITNESS: Okay. I've got it here,
19 yes.

20 Q. (By Mr. Moncriffe) All right. Did Byron
21 Smith's description fit the person you see running on
22 the video there sir?

23 A. It could.

24 Q. Could not.

25 A. He just gave a description and like I said I

1 can't tell you based on what I see there the age of
2 the person.

3 Q. Well, was Mr. Smith closer, close to the
4 person who committed the offense, if you remember?

5 A. Yes he was. I don't recall exactly how close
6 but he was. He was pretty close.

7 Q. He gave you a description of how tall the
8 person was is that correct?

9 A. An approximate, yes.

10 Q. Gave you a description of what the person's
11 age was?

12 A. An approximate, yes.

13 Q. 22-year old.

14 MS. FULLER: Objection Your Honor.

15 THE COURT: Sustained.

16 Q. (By Mr. Moncriffe) He gave you a description
17 of the person's age. Is that correct sir?

18 MS. FULLER: Objection. Asked and
19 answered.

20 THE COURT: Sustained.

21 Q. (By Mr. Moncriffe) Did he give you a
22 description of the person's clothing?

23 A. Yes.

24 Q. Give you a description of the person's
25 height?

1 A. Yes, an approximate.

2 Q. Description of the person's weight?

3 A. Yes.

4 Q. When you interviewed Mr. Washington -- you
5 remember interviewing Mr. Washington?

6 A. Yes I do.

7 Q. Do you remember Mr. Washington saying the
8 person I saw had run away from the scene?

9 MS. FULLER: Objection hearsay.

10 THE COURT: Sustained.

11 Q. (By Mr. Moncriste) Do you remember talking
12 to Mr. Washington about what he observed?

13 A. Yes.

14 Q. Now, are you an expert at DNA?

15 A. No.

16 Q. I know you're not. I'm just asking.

17 Do you know if you and I had on the same shirt DNA
18 could be taken from me but not from you?

19 MS. FULLER: Objection Your Honor.

20 MR. MONCRISTE: If he knows.

21 Q. (By Mr. Moncriste) If DNA is taken from
22 clothing --

23 A. Do I know if DNA is taken from clothing --

24 Q. Can it be taken from clothing?

25 A. I think it can, yes.

1 Q. Is it possible, if you know, two people to
2 have on an object say a shirt DNA can only be taken
3 from one?

4 A. I'm not sure I really understand your
5 question.

6 Q. It's my fault and I'm confusing. A shirt.

7 A. Yes.

8 Q. Two people put on that shirt.

9 A. Okay.

10 Q. But DNA is only taken from one, going back to
11 one and not the other. Is that possible?

12 A. Are you saying that only one person's DNA is
13 on the shirt?

14 Q. Right. But two people have worn it.

15 A. I don't know.

16 Q. Okay. Now officer if I understand --

17 Judge you mind if I walk around here?

18 THE COURT: I don't mind.

19 MR. MONCRIFFE: Thank you.

20 Q. (By Mr. Moncriste) When you talk to Mr.
21 Smith -- you can turn that off. You put Mr. Clark in
22 what they called a photo spread. Right?

23 A. Yes, sir. That's correct.

24 Q. And you assembled those photographs together
25 right?

1 A. In the photo array, yes.

2 Q. And you told Mr. Smith to take his time and
3 take a good look at it and see if you recognize
4 anybody in the photo spread didn't you sir?

5 A. Something like that, yes.

6 Q. And Mr. Smith did take his time and look at
7 those photographs didn't he?

8 A. I'm sure he did.

9 Q. And Mr. Smith after looking at the
10 photographs said he did not see the person who
11 committed the offense in that --

12 MS. FULLER: Objection.

13 THE COURT: Sustained. Repeat.

14 Q. (By Mr. Moncriffe) Was there any
15 identification made in the photo spread of Mr. Clark?

16 A. No, sir.

17 Q. Now officer did you interview several other
18 people during this incident?

19 A. After?

20 Q. Yes, sir. After you got on the case how many
21 people altogether did you end up interviewing?

22 A. 7. 7 or 8. Somewhere around there.

23 Q. The juveniles who you detained did you put
24 their photographs in the photo spread also?

25 A. Once again I did not talk to those juveniles

1 they were detained the day before I got the case.

2 Q. Okay.

3 A. And they were brought back and ruled out.

4 Q. I'm saying do you know if anybody, if you
5 know?

6 A. No. It would have had to have been me. I
7 was one of the case agents on the case. No their
8 photos were not shown to the witnesses.

9 Q. So the three young peoples photographs was
10 not shown to Mr. Smith or to Mr. Washington. Is that
11 correct?

12 A. That's correct. As I said we ruled them out
13 early.

14 Q. Okay. I'll get there; alright.

15 When you talked to Mr. Clark did you know if he had
16 ever suffered from any disability in his leg?

17 A. Personally or did he mention something?

18 MS. FULLER: Objection Your Honor. May
19 we approach?

20 THE COURT: You may.

21 (Bench conference on the Record).

22 THE COURT: Real curious as to where
23 you're going.

24 MS. FULLER: And Your Honor I've towed
25 the line and I can tell you he's getting into the

1 Defendant's statement and I don't --

2 THE COURT: You're moving on.

3 MR. MONCRIFFE: I'm moving on.

4 (Back on the Record).

5 Q. (By Mr. Moncriste) And officer Chavez that's
6 sort of the totality of your work towards the case is
7 that correct, everything that the prosecutor said you
8 just did?

9 A. Yes.

10 Q. That's all you did?

11 A. Pretty much.

12 MR. MONCRIFFE: No further questions of
13 this witness at this time Your Honor.

14 MS. FULLER: Just briefly Your Honor.

15 **RE-DIRECT EXAMINATION.**

16 BY MS. FULLER:

17 Q. When you met with -- when you saw the
18 Defendant in this case Jerome Clark or Michael Jerome
19 Clark did he match some of the identifiers that you
20 were given when you had started your investigation?

21 A. Yes.

22 Q. All right. What were those identifiers that
23 he matched?

24 A. Well, the descriptions vary. Black male,
25 he's -- he's -- I guess he's tall, my opinion. The

1 weight. He comes close to the weight so stuff like
2 that.

3 Q. All right. Now, Mr. Moncriffe was trying to
4 get you -- I believe this is State's Exhibit 20 camera
5 15. The shot is upon the screen. Can you make much --
6 can you make an identification of a person based on
7 what you see right there?

8 A. Just that is a person looks like a light
9 color shirt and dark pants.

10 Q. All right. And you started to answer one of
11 his questions about age being subjective. Why is age
12 subjective?

13 A. I'm not really sure I understand your
14 question.

15 Q. When you ask people to give you an age
16 estimation is that something you rely heavily on in
17 your investigation?

18 A. Well, like I said people can look at somebody
19 and think they look younger than they actually are and
20 somebody may look at that same person and think
21 they're older. So it's not a certain thing but it's
22 kind of a range that kind of helps us.

23 MS. FULLER: Pass the witness.

24 **RE-CROSS EXAMINATION.**

25 BY MR. MONCRIFFE:

1 Q. Your description you said he's tall, six
2 feet. That's how you say he's tall.

3 How tall is he?

4 A. I didn't say six feet. He's tall. He's
5 taller than me. I'm 5'9.

6 Q. How tall is he?

7 A. I would guess probably 5'11 maybe.

8 MR. MONCRIFFE: Can I stand up Your
9 Honor?

10 THE COURT: You may.

11 Q. (By Mr. Moncriffe) I'm six feet. Is he as
12 tall as I am?

13 A. I don't think he's quite as tall as you are
14 but probably just a tad shorter.

15 MR. MONCRIFFE: Judge can I have him to
16 stand up?

17 THE COURT: You may.

18 Q. (By Mr. Moncriffe) He's a tad shorter than
19 me. Is that what you say?

20 A. He's kind of hunched over right now.

21 Q. Let's get him to stand straight up. Almost
22 to my height right?

23 A. And really kind of depends on the angle too.
24 Somebody is running.

25 Q. No. No sir. Right now is he as tall as I

1 am?

2 A. Not as tall as you are but like I said that's
3 just a guess of mine. Just by looking when he walked
4 in.

5 Q. We do lot of guessing don't we?

6 A. Who?

7 MS. FULLER: Objection speculation.

8 THE COURT: Sustained. Side-bar.

9 MS. FULLER: Objection side-bar.

10 MR. MONCRIFFE: Judge that's what he
11 said. Side-bar.

12 THE COURT: The question was you said you
13 do you a lot of guessing. If that was a question.

14 Q. (By Mr. Moncriffe) You said you guess. Is
15 that what you said?

16 A. Just now?

17 Q. Yes, sir.

18 A. I probably did say I guess.

19 Q. So then officer in your observations a person
20 could be 53, 20, doesn't really matter 'cause age
21 doesn't really matter. They could be six feet, 5'7,
22 doesn't really matter 'cause height doesn't really
23 matter.

24 MS. FULLER: Objection. I don't know if
25 it's a question but side-bar.

1 MR. MONCRIFFE: It's coming Judge.

2 Q. (By Mr. Moncriffe) So that the factors in
3 terms of description don't really matter, physical
4 descriptions don't really matter do they?

5 A. Sure they do. They matter somewhat but like I
6 said different people describe things differently.

7 Q. Yes, sir.

8 A. You may have a certain angle, a person may
9 have a different angle. It's just really a matter of
10 that witness, what they remember.

11 Q. Yes, sir. But those -- your officers were
12 looking for young people?

13 MS. FULLER: Objection.

14 THE COURT: Sustained.

15 Q. (By Mr. Moncriffe) Did Mr. Washington give
16 you any information that was contradictory to the
17 evidence that you saw?

18 A. As far as what?

19 Q. What he saw, what his observations saw did he
20 give you anything, you know how some witnesses will
21 say one thing and another witness saying something
22 totally contradictory?

23 MS. FULLER: Objection Your Honor.

24 THE COURT: Sustained. Among other
25 things.