

1 THE COURT: State is ready to proceed?

2 MS. FLADER: Yes, Judge.

3 THE COURT: The defense, as well?

4 MR. DUARTE: Yes.

5 (Open court, the defendant and the
6 jury are present.)

7 THE COURT: Welcome back. It's the State's
8 case-in-chief. Call your next witness.

9 MS. FLADER: Call Sergeant Clopton.

10 THE COURT: Did I swear you in yesterday,
11 sir?

12 THE WITNESS: No, sir.

13 THE COURT: Come forward. Please raise
14 your right hand.

15 (Whereupon the witness is sworn by the
16 Court.)

17 **DEPUTY CRAIG CLOPTON,**

18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 BY MS. FLADER:

21 Q. Would you introduce yourself to the ladies and
22 gentlemen of the jury?

23 A. I'm Sergeant Clopton, C-l-o-p-t-o-n.

24 Q. Where are you employed?

25 A. I work for the Harris County Sheriff's

1 Department. I'm in the homicide unit.

2 Q. How long have you been with the Sheriff's
3 Department?

4 A. Been over 22 years.

5 Q. How long have you been in the Homicide
6 Division?

7 A. A little over eight years.

8 Q. If you wouldn't mind, could you give the jury a
9 brief synopsis of your career as a police officer?

10 A. I started in 1991, and I began working in the
11 jail as a jailer until I became certified, which was a
12 police officer, sworn officer, then transferred to the
13 Patrol Division. I was in patrol for about eight years,
14 and then I went to Internal Affairs, and I was only there
15 about a year-and-a-half and I was promoted to detective.
16 And I then went to the Warrants Division, and I worked
17 there a short time before I was asked to go to homicide,
18 and I've been in homicide ever since.

19 Q. Do you have special training and education to
20 do your job as a homicide detective?

21 A. Yes. Over the years, I've taken countless
22 hours of training. You go to seminars, in-house training,
23 out-of-state training, just continuous.

24 Q. And what kind of things are you trained on?

25 A. Homicide investigations, interviewing,

1 interrogations, along with other training as well.

2 Q. How does your homicide division work? How is
3 it that you are called out to a certain scene?

4 A. We have what we call squads, and at this point
5 we have four squads. We usually range between four and
6 six detectives or investigators in a squad. We rotate on
7 a weekly basis on which squad will be on call because we
8 have regular work hours. I work 8:00 to 4:00 Monday
9 through Friday, but every fourth week my squad will be on
10 call. So, we take calls that come in after hours,
11 overnight, and all that weekend, and then the next week
12 another squad. So, we rotate. When we get a call -- if
13 I'm on call that week, and say there's four guys in my
14 squad, we rotate on who will be the actual lead. If we
15 get a scene, it depends on the parameters of that scene,
16 how many investigators we need. If we call everybody out,
17 we rotate on who will be the lead. In a certain case, if
18 I'm the lead, once we get there, then I delegate: I want
19 you to do this; you do this; you do this. And the next
20 scene, so that I don't get piled up, the next guy will be
21 the lead, and he will tell everybody what to do.

22 Q. Do you get called out on -- what kind of cases
23 do you get called out on?

24 A. Homicides, officer-involved shootings, any
25 questionable deaths.

1 Q. And why do you get called out on
2 officer-involved shootings?

3 A. It depends. It's not always -- nobody has to
4 die during the shooting, but as a matter of protocol, any
5 incident where an officer is shot, or an officer shoots,
6 then we come out and we investigate.

7 Q. Is it because those are very serious cases?

8 A. Yes.

9 Q. Were you called out to a scene on
10 September 2nd of 2011, in regards to an officer-involved
11 shooting?

12 A. Yes, I was.

13 Q. What time were you called?

14 A. I received a call at 4:25 a.m.

15 Q. And when you get called out, do you -- are you
16 at home in bed?

17 A. Sometimes -- sometimes if it's during the
18 weekend, I may have been out on a scene, and before we
19 make it home, I get called to another scene. I don't
20 remember this particular time if I was at home already
21 because I got called at 4:25, then I was on the scene at
22 5:20. It's kind of a long way from where I live, so I
23 could have already been out on another scene when I got
24 called.

25 Q. So, when you get out to the scene, what is your

1 job and responsibility?

2 A. Initially, I want to talk with the first
3 responders to that scene, any supervisors on the scene to
4 try to gather information on exactly what I have. Because
5 when I originally get called at home, I just get a real
6 brief synopsis of what the scene is. And, so, when I
7 initially get there, I want to find out as much
8 information as I can so I can find out where I want to
9 disperse my people and how I want to proceed with the
10 investigation.

11 Q. When you get called out to the scene, can you
12 describe it to the jury; is it organized, or is it
13 chaotic? What's going on?

14 A. Oftentimes, on an officer-involved scene, it's
15 kind of chaotic because so many officers respond to that
16 type of call. So, this particular scene, it was where the
17 actual shooting took place. It was a different location
18 than where the officer eventually stopped and a different
19 location where the initial suspects were taken into
20 custody. So, it's kind of widespread, and you have so
21 many people there, and then it's my job to try to get that
22 organized.

23 Q. In this situation there were potential suspects
24 that still hadn't been caught. So, there's still a
25 perimeter set up and they are still looking for people?

1 A. That's correct.

2 Q. And can you give us an estimate of how many
3 officers are on the scene during this incident?

4 A. I would be guessing. Numerous. I would be
5 guessing because I don't see every face.

6 Q. Sure.

7 A. Twenty, thirty, maybe more.

8 Q. Okay. Now, when an incident happens, is there
9 -- tell us how the dispatch works. When an officer is
10 shot at, how does the dispatch work? What happens?

11 A. Well, we have a radio system that if an officer
12 is in his car and he's -- he will be communicating with
13 dispatch, but everybody else can hear what he's saying and
14 what dispatch is saying to him. And if he gives a notice
15 to the dispatch that I'm going to make a traffic stop,
16 that way all the other officers can know where he is, what
17 kind of vehicle, in case something happens, or if they are
18 close, maybe they can start easing that way. So, when a
19 call comes out that there's any kind of problem, or
20 assistance needed, all of those officers already know
21 where he is and they can start heading that way. They
22 know that when there's a shooting, through their training,
23 their protocol is to try to hurry and get there and set up
24 a perimeter if there's any actors or suspects that are
25 running.

1 Q. So, the jury has heard a portion of the radio
2 dispatch. The actual radio dispatch in this incident was
3 quite lengthy; is that right?

4 A. Yes.

5 Q. Because you have, basically, multiple officers
6 out at the scene on the radio updating each other about
7 what's going on, and what they are doing, and getting
8 information back and forth; is that right?

9 A. Yeah, the dispatch, they record so that it's a
10 permanent record, but they begin at the initial onset when
11 the officer attempts to do a traffic stop until somebody
12 actually tells them, we're closing that incident.

13 Q. Okay. So, this incident, the deputy involved
14 was Deputy Whitlock. And you've met Deputy Whitlock; is
15 that right.

16 A. Yes.

17 Q. And he had worked nights. And, so, his shift
18 would start at 10:00 p.m.; is that correct?

19 A. Correct.

20 Q. And that would have been on September 1st,
21 2011?

22 A. That's correct.

23 Q. So, at 10:00 p.m. his shifts starts?

24 A. That's correct.

25 Q. At 2:00 a.m. he responds to a disturbance call

1 at 1601 Wooded Pine Drive?

2 A. That's correct.

3 Q. At approximately 2:25 Deputy Whitlock heard the
4 gunshots east of his location?

5 A. That's correct.

6 Q. At 2:29 Deputy Whitlock saw the white Cadillac
7 occupied by four individuals?

8 A. That's correct.

9 Q. At 2:33 Deputy Whitlock attempted to stop that
10 Cadillac, and the Cadillac evaded?

11 A. That's correct.

12 Q. At 2:34 shots are fired from the white Cadillac
13 and Deputy Whitlock was hit?

14 A. That's correct.

15 Q. At 2:48 a.m. the white Cadillac is located at
16 1911 Cobble Creek Drive?

17 A. That's correct.

18 Q. At 3:29 a.m. Juan Ybarra is taken into custody?

19 A. Correct.

20 Q. At 4:46 the defendant is found hiding in a tree
21 in the backyard at 21411 Silver Birch Drive?

22 A. That's correct.

23 Q. After that is when you arrive at the scene?

24 A. Yes.

25 Q. When you arrive at the scene, are you able to

1 see the different people that have already been detained
2 by other officers?

3 A. Yes.

4 Q. And who are those people that are already
5 detained when you get there?

6 A. There was the defendant and it was Juan Ybarra.

7 Q. Let me stop you for just a second. The person
8 that you're referring to as the defendant, do you
9 recognize him in court today?

10 A. Yes, I do.

11 Q. Would you point to him and identify an article
12 of clothing he is wearing?

13 A. He's sitting at this table with the white shirt
14 and multi-color tie.

15 THE COURT: He's identified the defendant.

16 MS. FLADER: Thank you, Judge.

17 Q. (By Ms. Flader) You said the defendant and then
18 you said Juan Ybarra. Who else was already detained?

19 A. There were four females that were inside the
20 residence where Juan Ybarra was -- I won't say hiding, but
21 where he was taken into custody from. They were in the
22 house, as well. They were being detained for further
23 investigation.

24 Q. And what were their names?

25 A. Sherri White, Sarah-Kathryn, Nicole Hernandez,

1 and Carolyn Bocanegra.

2 Q. Okay. So, those four women were also detained.
3 Had anyone else been detained at that point?

4 A. Yes. There was also a Lucia Furtado, Fredrick
5 Johnson, and Alonzo Cruz.

6 Q. Do you know why those individuals had been
7 detained?

8 A. At that point, the perimeter was still set up.
9 They were still actively -- the deputies were still
10 actively looking for more suspects. And at that hour,
11 they were stopping and questioning anybody that was out
12 and about.

13 Q. Why were they doing that?

14 A. One, I mean, it's kind of early in the morning.
15 So, most people aren't out at that hour. But also they
16 had a brief description of the suspects and the area that
17 they should be contained in. So, they wanted to find out
18 do they have a valid reason for being out at that time and
19 place and, you know, to find out whether or not they were
20 involved or saw anything.

21 Q. And this is a very serious case that all
22 deputies are taking very seriously?

23 A. Yes.

24 Q. When you arrive at the scene, you said that
25 you're with a group, a team. Who are the other homicide

1 detectives that are in your group -- I'm sorry, on your
2 squad. Is that what you called them, your squad?

3 A. Yes, we call it a squad. I mean, we all arrive
4 individually. But I believe there was Veramontez and
5 Sergeant Pinkens, that I recall.

6 Q. But you were the lead investigator?

7 A. Yes.

8 Q. So, did you make sure that everybody was doing
9 their job and making sure that everything -- all evidence
10 was recovered that needed to be recovered, all potential
11 suspects were dealt with appropriately? Were you making
12 sure that everybody was doing their job?

13 A. Yes. I have to -- it's so widespread I have to
14 delegate and rely on other people to complete certain
15 tasks because I can't see everything. So, I will tell
16 somebody, you're responsible for the scene, or you
17 investigate, or you interview witnesses, and then I depend
18 on what they do and what they relay back to me.

19 Q. What activities or what duties did you delegate
20 when you were out there?

21 A. I had Juan -- or his name is Juan Veramontez,
22 the deputy investigator. I had him assist in interviewing
23 witnesses that were there at the scene.

24 Q. And who did he interview?

25 A. A Sarah Bafford.

1 Q. And after his -- after his interview with her,
2 did he get information from her about her potential
3 involvement in the case?

4 A. I can't recall exactly what he got from her,
5 but she wasn't involved.

6 Q. She wasn't involved?

7 A. Right.

8 Q. Who else did he interview?

9 A. I want to say that's it.

10 Q. All right. So, what other duties did you
11 delegate?

12 A. I believe I then went to and interviewed the
13 rest of the witnesses that were detained at the site where
14 Ybarra was taken into custody.

15 Q. So, that would have been Sherri White. Did you
16 interview her?

17 A. Yes.

18 Q. And after your interview with her, did you
19 believe that she had anything to do with the shooting of
20 Deputy Whitlock?

21 A. I believe she had nothing to do with it.

22 Q. Did you then interview Carolyn Bocanegra?

23 A. Yes.

24 Q. And after your interview with her, did you
25 believe that she had anything to do with the shooting of

1 Deputy Whitlock?

2 A. I believe she had nothing to do with it.

3 Q. And did you also interview Nicole Hernandez?

4 A. Yes.

5 Q. And after your interview with Nicole Hernandez,
6 did you believe that she had anything to do with the
7 shooting of Deputy Whitlock?

8 A. I believe she had nothing to do with it.

9 Q. After you interviewed those women, what's the
10 next thing that you did?

11 A. I then went to the homicide office. I had Juan
12 Ybarra and the defendant. And I don't know if I can
13 address him by his name. I knew him as the defendant.

14 Q. Let me stop you there. When you are on the
15 scene and he is identified as a potential suspect, were
16 you aware that he had given his name and date of birth?

17 A. Yes.

18 Q. And what name and date of birth had he given?

19 A. Kendall Davis, and he gave the date of birth of
20 10-9 of '88.

21 Q. And before he identified himself to you, did
22 you learn at 6:14 a.m. he had identified himself to Deputy
23 Sams, the individual who did the GSR test and got a buccal
24 swab from the defendant?

25 A. Yes. I was told that he gave that name and

1 date of birth, and when he gives the buccal swab, he also
2 signs giving consent to do that, and he also signed the
3 name Kendall Davis.

4 Q. All right. So, you then go down to the
5 homicide detective -- the homicide office where Juan
6 Ybarra is in custody?

7 A. Yes.

8 Q. And, at that point, you knew that Juan Ybarra
9 was definitely involved in the incident because he was the
10 driver of the white Cadillac; is that right?

11 A. That's correct.

12 Q. And, so, other than that, you believe that the
13 defendant was also involved in the incident because he had
14 been found hiding in a tree?

15 A. Yes.

16 Q. And, so, did you have any other information at
17 that point about the other individuals in the car?

18 A. Not at that point.

19 Q. But did you believe that there were two other
20 individuals that hadn't been identified at that point?

21 A. Yes.

22 Q. And what were you basing that information on?

23 A. Deputy Whitlock.

24 Q. The fact that he saw four people in the car?

25 A. That's correct.

1 Q. When he was shot at?

2 A. That's correct.

3 Q. So, you then go and you interview Juan Ybarra?

4 A. Yes.

5 Q. Now, when you interview Juan Ybarra, can you
6 describe to the jury how he appeared, what his demeanor
7 was?

8 A. He was very nervous and scared.

9 Q. And is that pretty common with a young
10 individual that you interview?

11 A. Yes.

12 Q. When he -- when he talked to you, did you feel
13 he was being honest?

14 MR. DUARTE: I object. That's improper
15 bolstering, Your Honor.

16 THE COURT: Sustained.

17 Q. (By Ms. Flader) When you talked to him, did you
18 feel that he was being completely upfront with you about
19 exactly what happened?

20 A. Not completely.

21 Q. Okay. Why not?

22 A. Because he had told me the number of persons
23 that were in the car and it didn't fit with the number of
24 persons described by Deputy Whitlock.

25 Q. Okay. Did Juan Ybarra still appear to be sort

1 of in shock and nervous and, basically, still in a state
2 of confusion and distress?

3 A. Yes, he was nervous throughout.

4 Q. During the first interview, was he able to give
5 you an individual's name as someone in the car that you
6 didn't know?

7 A. Yes.

8 Q. And who was that?

9 A. The person that he knew by the name Kirby.

10 Q. Okay. Was he able to give you another
11 individual's name of someone in the car?

12 A. Yes, a Richard Rodriguez.

13 Q. All right. So, you had the defendant who you
14 knew as Kendall Davis in custody, but Juan Ybarra had
15 identified Kirby as the individual in the car with him?

16 A. Yes.

17 Q. Did that cause you some confusion?

18 A. Yes.

19 Q. Why?

20 A. Because I hadn't heard the name Kirby and I
21 just knew the name Kendall Davis. But when Ybarra said
22 the name -- he only knew his name as Kirby, but he had his
23 phone number in his phone under Cash.

24 Q. Okay.

25 A. So, I didn't know who was who at that point.

1 Q. So, you had heard -- you knew that you had a
2 Kendall Davis in custody, and you knew that Juan was
3 identifying an individual in the car and the shooter as
4 Kirby or Cash?

5 A. That's correct.

6 Q. Based on that, did you then want to clear up if
7 you had the right guy in custody?

8 A. Yes.

9 Q. What did you do in order to clear that up?

10 A. Well, I wanted to show him a picture of Kendall
11 Davis to see if that was the same person that he knew as
12 Kirby. So, I took a picture of him with my cell phone and
13 showed that picture to him because I didn't have a picture
14 in the system of him.

15 Q. Okay. So, you showed him that picture?

16 A. Yes.

17 Q. Was he able to positively identify the
18 defendant as the individual he knew as Kirby or Cash?

19 A. Yes.

20 Q. He also gave you the name Richard Rodriguez?

21 A. Yes.

22 Q. Were you able to then develop a potential
23 suspect that you didn't have before based on what he told
24 you?

25 A. Yes.

1 Q. So, after you talk to him the first time, you
2 then interviewed him a second time; is that correct?

3 A. That's correct.

4 Q. And why did you want to interview him a second
5 time?

6 A. Because after I interviewed him the first time
7 and I reviewed the statement from Deputy Whitlock, I knew
8 there were four people in the car and he had only told me
9 about three. So, I wanted to clarify that.

10 Q. Let's talk about that. You reviewed a
11 statement from Deputy Whitlock. Can you tell us what kind
12 of statement that was?

13 A. It's a written statement of his rendition of
14 the events that happened.

15 Q. Okay. Let me back up. So, the first time you
16 interview Juan Ybarra, that is on September 2, 2011, at
17 11:00 a.m.?

18 A. That's correct.

19 Q. Before you interview him again, the defendant
20 identified himself to you as Kendall Davis and gave you
21 his date of birth?

22 A. That's correct.

23 Q. And that was at approximately 1:05 p.m. on
24 September 2, 2011?

25 A. That's correct.

1 Q. So, then, on September 2, 2011, at 3:40 p.m.
2 you go back in and reinterview him?

3 A. That's correct.

4 Q. All right. At that point, you had the
5 opportunity to read the statement, the written statement
6 of Deputy Whitlock?

7 A. Yes.

8 Q. And did you get that statement from Deputy
9 Whitlock?

10 A. What do you mean?

11 Q. Were you the one that interviewed him to get
12 that statement?

13 A. No, another investigator I asked to take his
14 statement.

15 Q. So, you again delegated your responsibilities
16 to another detective, and who was that?

17 A. Deputy Jason Brown.

18 Q. So, he gets the written statement from Deputy
19 Whitlock about exactly what he remembered happening during
20 this incident?

21 A. Yes.

22 Q. When you reviewed that, did most of the -- most
23 of the details that you read in his statement comport with
24 what Juan Ybarra had already told you?

25 A. Yes, with the exception of the amount of

1 persons.

2 Q. Okay. So, everything else is very consistent
3 except for how many people were in the white Cadillac at
4 the time of the shooting?

5 A. Yes.

6 Q. All right. So, then you go back in to
7 reinterview Juan Ybarra?

8 A. Yes.

9 Q. And you had given him his warnings and told him
10 he didn't have to talk to you if he didn't want to, right?

11 A. That's correct.

12 Q. But he was willing to talk to you and he gave
13 you even a second statement?

14 A. That's correct.

15 Q. And in his second statement, did you confront
16 him with the fact that there were four people in the car?

17 A. Yes.

18 Q. And how did he respond to that?

19 A. He immediately admitted yes, there were four
20 people and that he didn't tell me about the other female.

21 Q. Okay. And did he know that female's name?

22 A. No.

23 Q. Was he able to give a description of her?

24 A. A description, but not enough to let me know
25 who it was.

1 Q. Basically, a Hispanic female and maybe some
2 height and weight, but nothing that you really could go
3 off of?

4 A. Right.

5 Q. In that second interview, did you have anything
6 else that you needed to talk to him about?

7 A. He also clarified that before the shooting,
8 there was an additional person in the car that had got
9 dropped off at home before the police saw them.

10 Q. Was he able to give you that individual's name,
11 as well?

12 A. Yes.

13 Q. And who was that?

14 A. Jose Gonzalez.

15 Q. So, that's another individual's name that Juan
16 Ybarra gave you that you didn't know before?

17 A. That's correct.

18 Q. After you interviewed Juan Ybarra for the
19 second time, did you get a call, a tip, regarding the
20 Hispanic female that was in the car?

21 A. Yes.

22 Q. Okay. And based on that information, did you
23 -- did you get a name?

24 A. Yes.

25 Q. And can you tell us, how did the tip come in?

1 A. I had a person from the Gulf Coast Task Force
2 that was looking for Richard Rodriguez, received an
3 anonymous tip that the female that was in the car during
4 the shooting what her name was, where she lived, and that
5 she was in a particular vehicle at that current time, and
6 that this person would try to stall them so that the
7 police could respond and find her.

8 Q. So, based on that information, what did you do?

9 A. Well, he in turn called me with that
10 information, and they were already in route to that
11 location. And I started to go in route to that location.
12 Before I got there, they were already in that area and
13 they found the vehicle, along with three other females in
14 that vehicle, and they were detained. They detained them
15 until I got there.

16 Q. So, can you describe to us how many officers
17 are out there to detain Brianna Garza?

18 A. Several.

19 Q. Okay.

20 A. I don't remember how many.

21 Q. Are they armed with weapons?

22 A. Yes.

23 Q. When they take a suspect into custody like
24 that, do they draw their weapons and order the individual
25 out of the car?

1 A. In most cases, yeah.

2 Q. And, so, when you arrive, can you describe what
3 you observed in regards to Brianna Garza? Where was she
4 at?

5 A. They were all detained in police vehicles
6 separately.

7 Q. Was she -- did she identify herself as Brianna
8 Garza?

9 A. Yes.

10 Q. And did you speak to her there when she was in
11 the back of the patrol car?

12 A. Just briefly, yes.

13 Q. And did you then have her taken down to the
14 station to interview her?

15 A. Yes.

16 Q. And, then, were you -- did you -- and that was
17 at 10:45 p.m. on September 2, 2011; is that correct?

18 A. Yes.

19 Q. So, then, on September 3, 2011, at 12:05 a.m.
20 you interview her?

21 A. Yes.

22 Q. So, you have been awake nearly 24 hours at this
23 point; is that right?

24 A. That's not uncommon.

25 Q. All right. Unfortunately, right?

1 A. Yeah.

2 Q. So, you then have her in your interview room
3 and do you begin interviewing her?

4 A. Yes.

5 Q. Also, do you read her her warnings and tell her
6 she doesn't have to talk to you if she doesn't want to?

7 A. Yes.

8 Q. And can you describe to the jury how she
9 appeared? What was her demeanor?

10 A. Initially, when I spoke to her at the complex
11 where she was found, she was real cocky, like, I don't
12 know what you're talking about, and I took that as because
13 she was there with her friends. Then when we got to the
14 office, when I initially spoke to her and told her that I
15 wanted to take a statement from her, she told me, "I
16 didn't even know Richard Rodriguez that long. I'm going
17 to tell you everything." I said, "Hold on because I want
18 to get everything on video, and since you're telling me
19 that you're going to implicate yourself, I want to get it
20 on video and read you your warnings."

21 Q. Okay. When she gave her statement, did you she
22 give up the name Richard Rodriguez?

23 A. Yes.

24 Q. And did she tell you exactly what his
25 involvement was?

1 A. Yes.

2 Q. And was she able to identify the defendant as
3 an individual in the car?

4 A. Yes.

5 Q. And did she identify him as the shooter in the
6 incident?

7 A. Yes.

8 Q. Did she also -- did she know Juan Ybarra's
9 name?

10 A. I want to say that she knew Juan. Let me
11 double-check. Yes, she had known him for some time.

12 Q. Okay. So, she knew Juan's name, and she knew
13 Richard Rodriguez's name, and she had -- how did she
14 identify the defendant? What did she know him as?

15 A. She didn't know anything about him. She
16 described him as a black male, but that she would
17 recognize him.

18 Q. And did you show her a picture of him, as well?

19 A. Yes.

20 Q. In fact, did you show her a photo spread of
21 him?

22 A. Yes.

23 Q. I'm going to let them look while I ask you more
24 questions. After she identified the defendant as the
25 shooter, was she also able to give you a lot of specific

1 details about the incident?

2 A. Yes.

3 Q. And you had already interviewed Juan, and you
4 had already read Deputy Whitlock's statement?

5 A. Yes.

6 Q. Did her details of the incident match the
7 details that Juan had given you?

8 A. Yes.

9 Q. And did the details that she gave you also
10 match the details Deputy Whitlock had given you?

11 A. Yes.

12 Q. After that date, did you also interview Richard
13 Rodriguez?

14 A. Yes.

15 Q. You said earlier that the Gulf Coast Task Force
16 was out looking for Richard Rodriguez when they got the
17 tip about Brianna Garza?

18 A. Yes.

19 Q. So, they had already started looking for him?

20 A. Yes.

21 Q. How long was it before they found him?

22 A. That was on Tuesday, September the 6th, about
23 four days later.

24 Q. Okay. So, on September 6, 2011, and that was
25 at approximately 7:00 p.m., Richard Rodriguez was taken

1 into custody?

2 A. Right.

3 Q. What were the circumstances around his arrest?

4 A. They had received a tip that Rodriguez was
5 currently outside his -- the house of his aunt. And they
6 gave the address, and those investigators drove to that
7 location and took him into their custody.

8 Q. After he was taken into custody on September 6,
9 2011, at 8:15 p.m., did you also interview him?

10 A. Yes.

11 Q. And where was he -- where was he at when he was
12 arrested?

13 A. 1911 Cobble Creek.

14 Q. And that's the same location where Juan was
15 originally arrested, as well?

16 A. Yes.

17 Q. I found the photo spread. I guess I'm showing
18 you what's been marked as State's Exhibits 146 and 147.
19 In State's Exhibit 146, is this your instructions to a
20 witness that you give them before they are shown the photo
21 spread?

22 A. Yes.

23 Q. And what is the purpose of that admonition?

24 A. Just to give them the instructions to let them
25 know that I'm showing them a photo spread. Just the mere

1 fact that I'm showing them a photo spread doesn't mean
2 that I know who's in that photo spread, or that anybody
3 involved is in that photo spread; to only choose someone
4 if they recognize them; and it's important to clear
5 somebody and not feel the pressure of having to select
6 somebody.

7 Q. Okay. After you read the instructions sheet to
8 Brianna Garza, did you have her sign and date it?

9 A. Yes.

10 Q. And did she understand everything?

11 A. Yes.

12 Q. After you did that, did you then show her the
13 photo spread?

14 A. Yes.

15 Q. When you showed her the photo spread, did you
16 point to an individual to indicate who she should choose?

17 A. No.

18 Q. All right. And did she -- was she immediately
19 able to choose the individual that was the suspect, the
20 defendant in this case?

21 A. Yes.

22 Q. And did you ask her to circle, and sign, date
23 and time that selection?

24 A. Yes.

25 Q. Did you also then ask her to make a written

1 statement about what she observed?

2 A. Yes.

3 Q. Okay. And I think we've already seen this.

4 MS. FLADER: I think these are already
5 admitted. Are they already admitted?

6 THE COURT: Yes, ma'am.

7 Q. (By Ms. Flader) So, we see that she identified
8 the defendant and said he was the one that shot at the
9 officer?

10 A. That's correct.

11 Q. When you interviewed these individuals, did
12 they also give you information about other locations where
13 the gun had been shot that night before the gun was shot
14 at Deputy Whitlock?

15 A. Yes.

16 Q. And when you -- when you got the information
17 about those sites -- let me ask you first. Did Juan
18 Ybarra tell you those locations?

19 A. Yes.

20 Q. When he told you about those locations, what
21 did you do?

22 A. I sent two other investigators to that location
23 to see if they could find any spent, which is the bullet
24 casings that come out of the gun after it's shot. We call
25 them spent casings. To see if they could locate those

1 spent casings.

2 Q. All right. I'm going to --

3 MS. FLADER: Judge, may I approach?

4 THE COURT: Yes, ma'am.

5 Q. (By Ms. Flader) I'm going to show you what has
6 been marked as State's Exhibits 132 through 142. Can you
7 tell me, do you recognize these items?

8 A. Yes, I do.

9 Q. And the photographs that you've just looked at,
10 do these fairly and accurately depict those locations
11 where the additional evidence was found?

12 A. Yes.

13 Q. And in State's Exhibit 136, are these the
14 cartridge cases that were recovered at that first
15 location?

16 A. Yes.

17 Q. And 137, are those the DNA swabs that were
18 taken from those fired cartridge cases?

19 A. Yes.

20 Q. And in State's Exhibit 143, is that the
21 cartridge case that was recovered at the second location?

22 A. Yes.

23 Q. And in State's Exhibit 144, is that the swab
24 that was taken from that fired cartridge case?

25 A. That's correct.

1 MS. FLADER: Judge, at this time, the State
2 would offer State's Exhibits 132 through 144 into
3 evidence. Tendering to opposing counsel for
4 inspection.

5 MR. DUARTE: If I could just have a moment,
6 Judge.

7 THE COURT: Yes.

8 MR. DUARTE: 132 through 1 -- no objection
9 to 132 through 142, Judge.

10 THE COURT: 142?

11 MR. DUARTE: Yes, sir, 132 through 144.

12 THE COURT: Okay. They are admitted.

13 MR. DUARTE: No objection to 136, 43 or 44,
14 Judge, or 137, Judge.

15 THE COURT: Okay. You said no objection
16 to -- did you say 43 and 44 also?

17 MS. FLADER: So, it's going to be State's
18 Exhibits 132 through 143.

19 THE COURT: 143. Okay.

20 MS. FLADER: I'm sorry, 144.

21 THE COURT: Okay. Were there objections to
22 144 and --

23 MR. DUARTE: There weren't, Judge.

24 THE COURT: All right. Thank you. They're
25 admitted.

1 (Whereupon State's Exhibit Nos.
2 132-144 are admitted into evidence.)

3 Q. (By Ms. Flader) So, the first location that you
4 were directed to by Juan Ybarra, that's here at the corner
5 of Burnt Amber and Woodcreek Lane where we see this red
6 flag in approximately the middle of the map about a fourth
7 of the way from the bottom; is that correct?

8 A. That's correct.

9 Q. And what we can see is that at that location
10 some casings were recovered?

11 A. That's correct.

12 Q. And you can see those casings on the ground in
13 State's Exhibit 134. And those are the casings that are
14 included in State's Exhibit 136?

15 A. That's correct.

16 Q. And in 135, that's a close-up of all of those
17 casings -- I'm sorry, 133 --

18 A. That's correct.

19 Q. -- a close-up of those casings? And what we
20 see on the map is that behind that location is a wooded
21 area?

22 A. Correct.

23 Q. What we see in State's Exhibit 135 is that
24 wooded area?

25 A. Yes.

1 Q. And if you could point to it on the picture to
2 your left.

3 A. Point to it?

4 Q. The wooded area.

5 A. Here, all the way to the top left.

6 Q. Just press down on your screen.

7 THE COURT: You can touch the screen.

8 There you go.

9 Q. (By Ms. Flader) Where are the casings found?

10 A. They're off screen.

11 Q. But just to the right of the end of that
12 picture?

13 A. Yes.

14 THE COURT: Touch the very bottom, left
15 corner, that will erase it.

16 A. (Witness complies.)

17 Q. So, then, the second scene was located up here
18 close to the intersection of Dogwood Springs and North
19 Forest Drive?

20 A. That's correct.

21 Q. And we have a picture of that intersection in
22 State's Exhibit 138?

23 A. Correct.

24 Q. And in State's Exhibit 140, you can see -- can
25 you show the jury where Dogwood Springs is?

1 A. Right there is the entrance to that street.

2 Q. And where is the evidence marker where the
3 casing was found?

4 A. Right here.

5 Q. Click on the right hand.

6 A. (Witness complies).

7 Q. In State's Exhibit 139, we see a close-up of
8 that casing?

9 A. That's correct.

10 Q. And that's the same casing that we have in
11 State's Exhibit 143 --

12 A. That's correct.

13 Q. -- and its contents? And all of those casings
14 were swabbed for DNA?

15 A. That's correct.

16 Q. During your investigation, were you also able
17 to look at the white Cadillac that was involved in the
18 shooting?

19 A. Yes.

20 MS. FLADER: Your Honor, may I approach
21 again?

22 THE COURT: Yes, you may.

23 Q. (By The Court) I'm going to show you what's
24 been marked as State's Exhibits 167 through 169. Do you
25 recognize those items?

1 A. Yes, I do.

2 Q. Do they fairly and accurately represent the
3 Cadillac as it appeared that night?

4 A. Yes.

5 MS. FLADER: Your Honor, at this time, the
6 State would offer State's Exhibits 167 through 169.
7 Tendering to opposing counsel for any objections.

8 MR. DUARTE: No objection to 167, 168 or
9 169, Your Honor.

10 THE COURT: They are admitted.

11 (Whereupon State's Exhibit Nos.
12 167-169 are admitted into evidence.)

13 MS. FLADER: May I publish them to the
14 jury?

15 THE COURT: Yes.

16 Q. (By The Court) I'm showing you what has been
17 previously marked as State's Exhibit 167. What's
18 important in this picture is the information in Deputy
19 Whitlock's statement is that the black male that leaned
20 out of the car and shot at him had leaned out quite
21 significantly; is that right?

22 A. That's correct.

23 Q. And in State's Exhibit 167, we can see that
24 that rear window is completely down?

25 A. That's correct.

1 Q. You're familiar that a lot of cars have the
2 window stops so that children can't jump out the window
3 when they are in the backseat?

4 A. Correct.

5 Q. And if the car had that feature, that feature,
6 the window would had to have been pushed down in order for
7 that window to be completely open?

8 A. That's correct.

9 Q. And that's consistent with what Brianna told
10 you she saw the defendant do?

11 A. That's correct.

12 Q. So, we can see that window open also in State's
13 Exhibit 168. We can see that this window, the little
14 window is tinted, and the big window is -- there's no
15 tint, so it's completely down?

16 A. That's correct.

17 Q. And, again, we can see in State's Exhibit 169
18 the tinting on the driver side -- the tinting on the
19 driver side window, and there being nothing all the way
20 down on the passenger -- rear passenger window?

21 A. That's correct.

22 Q. In addition to speaking to all of the
23 individuals you believed involved -- and let me --

24 THE COURT: What is that exhibit number?

25 MS. FLADER: I'm sorry. That's State's

1 Exhibit 169.

2 THE COURT: Okay. Thank you.

3 MS. FLADER: Thank you.

4 Q. (By The Court) Did you also try to speak with
5 Jose Gonzalez, the other individual that was identified to
6 you as having been in the car?

7 A. Yes, I did.

8 Q. And when were you able to do that?

9 A. That was on Friday, September 16th.

10 Q. Where did you meet with him?

11 A. At his residence, which was on Dogwood Springs.

12 Q. And when you spoke to him, were you able to
13 fine out if he was in the car at the time of the shooting
14 of the deputy?

15 A. Was I able to find that out from him?

16 Q. Yes.

17 A. Yes.

18 Q. And was he?

19 A. He wasn't.

20 Q. He was dropped off before the shooting of the
21 deputy?

22 A. Yes.

23 Q. Was he able to give you information that
24 confirmed that this defendant was in the car at the time
25 of the shooting --

1 A. Yes.

2 Q. -- or when he was let out of the car, that the
3 defendant was in the Cadillac?

4 A. Yes.

5 Q. And that Juan Ybarra was in the Cadillac?

6 A. Right.

7 Q. And that Richard Rodriguez was in the Cadillac?

8 A. Right.

9 Q. And that Brianna Garza was in the Cadillac?

10 A. Right.

11 Q. Did you also do some canvassing in an effort to
12 try to find the weapon that was used in this case?

13 A. Yes.

14 Q. I think you're going to have to step down from
15 the stand.

16 THE COURT: You may.

17 Q. (By Ms. Flader) Just make sure you keep your
18 voice up when you describe to the jury on State's
19 Exhibit 1 exactly where all you canvassed looking for this
20 weapon.

21 A. Okay. I knew that the shooting occurred along
22 this roadway.

23 Q. And what roadway is that?

24 A. This is Millstone Drive. And that the deputy
25 had last seen the suspect vehicle when it turned left onto

1 Old Woods. I knew the location that Ybarra was taken into
2 custody.

3 Q. And where was that located?

4 A. That was on -- you've got it covered up.

5 Q. I'm sorry.

6 A. Cobble Creek.

7 Q. Did you also know where Richard Rodriguez
8 lived?

9 A. Yes.

10 Q. And was that located on Briarcreek?

11 A. Briarcreek.

12 Q. Okay.

13 A. And I knew the location where the defendant was
14 found hiding in the tree.

15 Q. What road was that on?

16 A. It's on Briarcreek and Silver Birch.

17 Q. Okay.

18 A. So, I wanted to canvas the area that the
19 suspects could have possibly run leading back to this
20 area. So, I knew that at that first turn on Old Woods
21 there were a lot of trees in this area.

22 Q. On State's Exhibit 1 we can see that it's a
23 heavily wooded area. Is there not just trees, but is
24 there underbrush and other foliage in that area, as well?

25 A. Yes, it was very heavy. You couldn't see

1 through the bushes and trees.

2 Q. Were you able to go into that area to do some
3 searching?

4 A. Just a small area. I couldn't access very far.
5 But there was an area behind these houses that was cut
6 that ran along this tree line that you could walk and walk
7 down that line. The fence to the back of everybody's
8 house would be on one side, and then all these trees would
9 be on the other side, and we walked down there.

10 Q. Let me ask you this. If an individual were to
11 be at the edge of that wooded area and had a gun like we
12 see in State's Exhibit 158 -- I'm going to show you that
13 gun -- a gun like this that's black, if they threw that as
14 hard as they could into that wooded area, would you have
15 been able to find that weapon?

16 MR. DUARTE: I object to speculation.

17 THE COURT: Sustained.

18 Q. (By The Court) All right. Did you look as far
19 into that wooded area as you could?

20 A. As far as I could see.

21 Q. Is it possible that it still could have been in
22 there?

23 A. Yes.

24 MR. DUARTE: I object to speculation.

25 THE COURT: It's sustained.

1 MR. DUARTE: Instruct the jury to
2 disregard.

3 THE COURT: I'm sorry?

4 MR. DUARTE: I'd request that you instruct
5 the jury to disregard that last testimony.

6 THE COURT: Disregard it.

7 Q. (By The Court) So, where else did you survey or
8 did you look for the gun?

9 A. After walking down that tree line, we also
10 walked down Millhouse and Briarcreek. As we walked down
11 the street, it was myself and Sergeant Pinkens. He would
12 be on one side of the street and I would be on the other
13 side. As we walked down the street, we would look through
14 everybody's yards, and their bushes, and the front of the
15 house, or down the side of their house. We went all the
16 way down Millhouse and Silver Birch, and then we came down
17 Briarcreek doing the same. But on Briarcreek, there are
18 also houses on one side of the street and houses on the
19 other side, but the thoroughfare is two separate streets
20 going in each direction. But there was a cement ditch
21 that ran along, and every so often on the ditch there
22 would be an opening, culvert, where the water drains
23 through. We would actually walk down there and look in
24 those ditches.

25 Q. So, did you pretty much canvas that entire

1 neighborhood?

2 A. Yes.

3 Q. And you looked everywhere where you could see
4 in order to try to find that weapon?

5 A. Yes.

6 Q. And were you able to find that weapon?

7 A. No.

8 Q. You can go ahead and have a seat. Thank you.

9 A. (Witness complies).

10 Q. I'm going to ask you to step down again.

11 Sorry.

12 A. (Witness complies). That's all right.

13 Q. If you would, put the white flag where Deputy
14 Whitlock was shot.

15 A. Along here.

16 Q. Okay. And are there many places that an
17 individual could have hidden the gun between there and
18 that neighborhood where it wouldn't have been found?

19 MR. DUARTE: I object to speculation.

20 THE COURT: Well, he can -- well, it is
21 speculation. The testimony is he looked for it and
22 didn't find it. Okay. Where it is, if it existed --

23 Q. (By Ms. Flader) You can go ahead and take the
24 stand.

25 A. (Witness complies).

1 THE COURT: Remind me that we have to take
2 a photograph of this.

3 MS. FLADER: Yes, Judge.

4 THE COURT: Because we didn't do it
5 yesterday and we need to. Because I'm afraid that a
6 flag might fall off or something.

7 MS. FLADER: I taped them on there so they
8 wouldn't fall off.

9 THE COURT: Okay. Thank you.

10 MS. FLADER: Judge, may I approach the
11 witness?

12 THE COURT: Yes, ma'am.

13 Q. (By The Court) I'm showing you what has
14 previously been marked as State's Exhibit 145. Do you
15 recognize that?

16 A. Yes.

17 Q. And does that fairly and accurately depict that
18 neighborhood, as well?

19 A. Yes.

20 MS. FLADER: Your Honor, at this time, the
21 State would offer State's Exhibit 145 into evidence.
22 Tendering to opposing counsel for any objections.

23 MR. DUARTE: No objection to 145, Judge.

24 THE COURT: It's admitted.

25 (Whereupon State's Exhibit No. 145 is

1 admitted into evidence.)

2 Q. (By Ms. Flader) Can you tell the jurors what
3 they are looking at in State's Exhibit 145?

4 A. It's a picture of a roadway and somebody's
5 yard, as well as the drainage ditch.

6 Q. Would a weapon fit in that drainage ditch?

7 A. Yes.

8 Q. And the weapon that I showed you, would that
9 fit in the drainage ditch?

10 A. Very easily.

11 Q. Were you able to look in those drainage ditches
12 to be able to see if the weapon was there?

13 A. Not without pulling that cover off or climbing
14 in there.

15 Q. And you didn't do that?

16 A. No, I didn't.

17 Q. Because are there a lot of those in that
18 neighborhood?

19 MR. DUARTE: I object as to relevance,
20 Judge.

21 THE COURT: Well, he can testify as to
22 whether or not there are a lot of drainage ditches in
23 the neighborhood.

24 A. Yes, there are.

25 Q. (By Ms. Flader) Okay. Were you ever able to

1 determine where the defendant was living at the time of
2 this incident?

3 A. Not exactly, no.

4 Q. So, were you able to get a warrant for his
5 apartment?

6 A. No.

7 Q. Why not?

8 A. To get a warrant to search a location, you have
9 to know that location.

10 Q. And you didn't know that location?

11 A. No.

12 Q. After the defendant had been -- had been
13 detained and he had given you the fake name, were you
14 later able to find out that he went by a different name?

15 A. Yes.

16 Q. And was that name Kirby Hall?

17 A. Yes.

18 Q. And is that an individual with the date of
19 birth of May 10, 1989?

20 A. Yes.

21 Q. And that's a different name and date of birth
22 than he had given you?

23 A. That's correct.

24 Q. Were you also later able to find out that the
25 defendant had a warrant for his arrest?

1 MR. DUARTE: I'm going to object at this
2 point, Your Honor, under Rule 404(b) and 403 of the
3 Texas Rules of Evidence, Your Honor.

4 THE COURT: Let me give a brief instruction
5 to the jury real quick.

6 MR. DUARTE: And I would request an
7 instruction.

8 THE COURT: All right. First of all, your
9 objection is overruled. Okay, this is the law. The
10 law says that you can consider testimony or evidence
11 that a defendant was wanted for an offense -- for
12 some other offense other than what he's been charged
13 with, but you can consider it if you believe it's
14 true, and then in this particular case, you can only
15 consider that evidence in determining the defendant's
16 motive, his intent, or for purposes of
17 identification. Those are the limited purposes for
18 this testimony that you'll hear. All right.

19 You may proceed.

20 MS. FLADER: Thank you, Judge. May I
21 approach the witness?

22 THE COURT: Yes, ma'am.

23 Q. (By Ms. Flader) I'm going to show you what has
24 been marked as State's Exhibit 131. Do you recognize
25 that?

1 A. Yes, I do.

2 Q. And this is how you learned of the fact that
3 the defendant had a warrant for his arrest out of
4 Louisiana?

5 A. That's correct.

6 Q. And that the offense that he was -- had the
7 warrant for is an offense where he could get up to life in
8 prison?

9 A. That's correct.

10 Q. Okay.

11 MS. FLADER: And, Your Honor, the State,
12 for purposes of the record, is offering 131 not into
13 evidence, but just for purposes of the record.

14 THE COURT: All right. That's fine.

15 MS. FLADER: Tendering to opposing counsel
16 for any objections.

17 THE COURT: Okay, that will be not
18 submitted. The jury will not have access to that,
19 but it will be part of the record. All right.

20 MR. DUARTE: Same objections, Judge. My
21 understanding is it will be just part of the Court's
22 record?

23 THE COURT: That's correct.

24 (Whereupon State's Exhibit No. 131 is
25 admitted into evidence.)

1 Q. (By Ms. Flader) When you learned that the
2 defendant had that warrant for his arrest, did the fact
3 that he shot at Deputy Whitlock that night make more
4 sense?

5 A. Yes.

6 Q. I forgot to ask you. Can you tell the jury
7 what date that warrant for the defendant's arrest was
8 signed?

9 A. It was signed on May the 31st of 2010.

10 MS. FLADER: Your Honor, at this time, the
11 State would offer State's Exhibit 1, 161 and 162 into
12 evidence. Tendering to opposing counsel for any
13 objections.

14 MR. DUARTE: There's no objection to 161 or
15 162, Your Honor.

16 THE COURT: They are admitted.

17 MS. FLADER: State's Exhibit 1 as well.

18 MR. DUARTE: Nor to State's Exhibit No. 1,
19 Judge.

20 THE COURT: State's Exhibit 1 is admitted.

21 (Whereupon State's Exhibit Nos. 1, 161
22 and 162 are admitted into evidence.)

23 MS. FLADER: I pass the witness.

24 THE COURT: You may proceed.

25 MR. DUARTE: Thank you, Judge.

1 THE COURT: One other thing for purposes of
2 State's Exhibit 1. I know it's in evidence, but if
3 you need to modify it, that will be permitted, but it
4 won't be -- you can't destroy it. You understand?

5 MR. DUARTE: Yes, sir.

6 THE COURT: It may be necessary to use it
7 again to put another mark on there, another flag.

8 **CROSS-EXAMINATION**

9 BY MR. DUARTE:

10 Q. Good morning, Sergeant Clopton.

11 A. Good morning.

12 Q. Just a couple of questions. So, you -- in this
13 investigation you were kind of the initial coordinator of
14 the investigation. Is that a good word maybe to use? You
15 were the lead investigator?

16 A. Yes, I'm the lead investigator.

17 Q. So, you went out the morning of September --

18 THE COURT: You know what, it's 10:30.
19 Let's take a morning break. I'm sorry. I meant to
20 do that.

21 (Whereupon the Court stood in a brief
22 recess.)

23 THE COURT: Bring in the jury.

24 (Whereupon the following proceeding is
25 held in the presence of the jury.)

1 THE COURT: Cross-examination?

2 MR. DUARTE: Yes, sir.

3 THE COURT: You may proceed.

4 MR. DUARTE: Thank you, Judge.

5 Q. (By Mr. Duarte) I think I was about to start
6 asking you was -- we had started, was that you were kind
7 of -- you were the lead investigator, kind of the
8 coordinator of the whole shooting scene, the couple of
9 scenes, and interviews, the coordinating, the Harris
10 County Sheriff's investigation of this matter, correct?

11 A. That's correct.

12 Q. So, you did meet with Juan Ybarra and
13 interviewed him and talked to him at least on two
14 occasions, correct?

15 A. Yes.

16 Q. And then you met with Brianna Garza and
17 interviewed her at least on one occasion, correct?

18 A. Yes.

19 Q. And you met with a person named Richard
20 Rodriguez and interviewed him at least one occasion,
21 correct?

22 A. Yes.

23 Q. Now, they weren't all the same date, of course,
24 that you interviewed them and talked to them. But from
25 your experience in law enforcement, talking to those three

1 individuals, were you able to surmise that they all kind
2 of knew each other, correct? They were friends?

3 A. To different degrees, yes.

4 Q. Different degrees. And you testified earlier
5 that Brianna Garza had indicated to you that she had known
6 Juan Ybarra for some time, correct?

7 A. That's what I have in my report.

8 Q. That's what you had in your report, correct?

9 A. That's correct.

10 Q. That's what you reported that she indicated to
11 you that she had known Juan Ybarra for some time?

12 A. That's what I took from -- that's the
13 impression I got.

14 Q. Yes, sir. Absolutely. That's fair. And did
15 you have the same impression that maybe Richard and Juan
16 -- Richard Rodriguez and Juan Ybarra had known each other
17 for some time also? Did you get that impression also?

18 A. Yes.

19 Q. Did you get the impression also that Richard,
20 Juan, and Brianna had not known the person you knew
21 originally as Kendell Davis or Cash, they had not known
22 that person for very long at all? Did you get that
23 impression also?

24 A. To different degrees.

25 Q. Different degrees of shortness of time that

1 they'd actually known him; is that correct?

2 A. In clarifying knowing someone, you know
3 somebody, you know their name, have a certain relationship
4 with them. You can know somebody for a short period or a
5 long time and never know their name, or you can know
6 somebody, just met them that day and learned their name
7 and say that you know them. So, it's different degrees
8 when somebody says, I know him.

9 Q. You may know somebody without really knowing
10 them, correct?

11 A. You may know them without knowing them, you may
12 know them knowing their name, or knowing them as a street
13 name.

14 Q. So, during your investigation, there was a
15 part -- I guess you prepare a report and supplements, do
16 you not, as far as an investigation is progressing; is
17 that correct?

18 A. That's correct.

19 Q. In one you prepared a supplement, I believe
20 Supplement No. 32, I believe. Here's Supplement 32, and I
21 think it has the date of 4-29-13, I believe.

22 A. You said 32?

23 Q. Yes, sir.

24 A. Okay.

25 Q. And on that, do you recall -- when you look at

1 that, do you recall reporting, as far as your official
2 duties, reporting that you had received, I guess, a report
3 from -- the lab report from the Harris County Institute of
4 Forensic Sciences, and it referred to specific findings
5 from that institute regarding GSR testing; do you remember
6 that?

7 A. Yes.

8 Q. And, in fact, you report on there that --

9 MS. FLADER: Judge, I'm going to object to
10 the hearsay. The reports are already in evidence and
11 have been talked about by that person that wrote
12 those reports.

13 THE COURT: It's overruled.

14 Q. (By Mr. Duarte) Do you recall reporting
15 that the lab reports indicated that there had been GSR
16 testing on K. Davis' jeans, T-shirt, belt, and there was
17 no gunshot residue particles on those items?

18 A. Do I recall reading that report?

19 Q. Do you recall making that report on --
20 including that on your report? Did you include that into
21 your report? Did you dictate that down in your report?

22 A. That I read that report and that's what I
23 concluded on that report?

24 Q. Yes, sir. Okay, that's better said.

25 A. Yes.

1 Q. Okay. Now, regarding Juan Ybarra, when you
2 interviewed him originally, he was not completely truthful
3 with you; is that right, when you interviewed him the
4 first time?

5 A. To some degree.

6 Q. He wasn't completely truthful with you. He
7 lied to you about who all was in the car, correct?

8 A. That's correct.

9 Q. So, then, you reinterviewed him the second time
10 because you had some additional information. And then he
11 kind of told you who the other people were, correct?

12 A. That's correct.

13 Q. Now, originally, when you, I guess, went out to
14 -- did you go out to the staging area out at the Shell
15 Station at 1960 and Westfield Road?

16 A. The original night?

17 Q. Yes, sir.

18 A. Yes.

19 Q. And, so, out there, at some point during the
20 investigation, I guess, early on, the Sheriff's
21 Department, they were looking for just four black
22 individuals because that's what was originally reported
23 from Deputy Whitlock's dispatch transmission, correct?

24 A. That he thought it could have been four black
25 individuals.

1 Q. Yes, sir. So, y'all were looking for four
2 black individuals originally, correct?

3 A. When you say "y'all" --

4 Q. Y'all, the Harris County Sheriff's Office.
5 They were looking for four black individuals originally,
6 were they not?

7 A. To my knowledge, yes.

8 Q. So, then, I guess at some point, was there
9 information that maybe the Sheriff's Department was
10 looking for two black individuals and one Puerto Rican
11 individual; were you aware of that?

12 A. I don't recall that.

13 Q. You don't recall that. Were you aware that --
14 I guess Ms. Flader's timeline is quite good actually as
15 far as the presentation is concerned. On the timeline, I
16 think Juan Ybarra was taken into custody at 3:29 a.m., and
17 I guess that the Cadillac was recovered at some moments
18 before then at 2:48 a.m. Were you aware that Juan
19 Ybarra's first contact when he arrived to the house was a
20 phone call from Richard Rodriguez; were you aware of that?

21 A. His first -- repeat that.

22 Q. That his first telephone contact when he
23 arrived over to the 1911 Cobble Creek where his car was
24 discovered, that his first telephone contact was with
25 Richard Rodriguez's friend. Were you aware of that?

1 A. No.

2 Q. Did he tell you that he had contacted Richard
3 Rodriguez originally when he first arrived to 1911 Cobble
4 Creek when you interviewed him? Did he indicate that to
5 you?

6 A. I don't believe so.

7 MR. DUARTE: I pass this witness, Judge.

8 THE COURT: Any redirect?

9 MS. FLADER: Yes, Judge.

10 **REDIRECT EXAMINATION**

11 BY MS. FLADER:

12 Q. Now, the relationship of all of these
13 individuals, Richard and the defendant, were you able to
14 determine how long Richard had known the defendant?

15 A. No. I mean, nobody gave exact dates of how
16 long. And like I said before, you know, somebody can say,
17 yeah, I know this guy. We go way back. How long is way
18 back? If I say way back is somebody I went to school
19 with, some people say, I know him from way back, and it's
20 two months ago. So, they all gave different timelines of
21 how they knew him; or if they said, well, yeah, I know
22 this guy Juan, it doesn't mean they knew his last name.
23 And I may refer to where they said they knew Juan Ybarra,
24 but not that they knew him as Juan Ybarra. They just knew
25 him as Juan, or the street name. There was confusion on

1 how long they'd known them. Well, I know him. How long
2 is that?

3 Q. When you're questioning each of these
4 individuals that were in the car, was it really important
5 for you to know exactly how long they had known each
6 other?

7 A. It didn't -- it really didn't matter to me how
8 long they knew him. Just that do you know him? Would you
9 be able to identify him? Because in most cases, if you
10 say, well, I know this guy, I know him as whatever his
11 street name is, I speak to him. Well, I can show you a
12 picture. Are we talking about the same person versus I
13 don't know this guy. I only saw him today. Well, then, I
14 don't want to show you his picture. Is this him? I do a
15 photo spread. Can you pick who you are talking about out
16 of that photo spread?

17 Q. Okay. And when you said that Brianna -- you
18 got the impression that Brianna had known Juan for a
19 while, you didn't ever ask her, when is the first time
20 that you met Juan?

21 A. No.

22 Q. So, if she said she had met him that day, would
23 that surprise you?

24 A. No, it wouldn't surprise me.

25 Q. Now, when you're interviewing Juan Ybarra, did

1 you ask him if he had spoken on the phone with anyone
2 during that time after he arrived at Sherri's house till
3 the time he was arrested?

4 A. I don't believe I asked him that. I knew that
5 he had spoken to his father.

6 Q. All right. But you didn't specifically ask
7 him, did you talk to Richard before you were arrested?

8 A. No.

9 Q. And Juan had Cash's phone number in his phone.
10 So, we know that he knew him for at least some period of
11 time well enough to put his number in his phone?

12 A. Yes. For him to give him his phone number, he
13 had to have some kind of relationship where he trusted him
14 to give him his phone number.

15 MS. FLADER: I pass the witness.

16 MR. DUARTE: Nothing further.

17 THE COURT: All right. Thank you, sir.
18 You may step down. State?

19 MS. FLADER: With that, the State would
20 rest, Judge.

21 THE COURT: All right. The State rests.
22 What say the defense?

23 MR. DUARTE: I need to make a motion,
24 Judge.

25 THE COURT: Let's make your motion here.