

1 mean, you can sit in the same place, that's fine, but
2 there's no particular order. You can sit anywhere you
3 want to. Okay?

4 All right. State, call your next witness.

5 MR. ALLARD: No further questions for
6 Officer Olivarez, who was on the stand.

7 THE COURT: Okay. That's fine.

8 MR. ALLARD: State would call Daniel
9 Costin.

10 THE BAILIFF: He needs to be sworn, Judge.

11 THE COURT: Okay.

12 (Witness sworn)

13 THE COURT: All right. Sit down.
14 Go ahead.

15 MR. ALLARD: Thank you, Your Honor.

16 **DANIEL COSTIN,**

17 having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MR. ALLARD:**

20 Q. For the record, would you state and spell your
21 name, please?

22 A. Daniel Costin. C-o-s-t-i-n.

23 Q. And who do you work for?

24 A. Houston Police Department.

25 Q. How long have you lived in Houston?

1 A. I've lived here for 16, 17 years.

2 Q. And how long have you been with the Houston
3 Police Department?

4 A. Nine years.

5 Q. And what kind of training have you had?

6 A. I had the standard six-month academy. I've
7 also had additional training at the divisions that I've
8 worked.

9 Q. And in 2010 -- in 2010, what was your
10 assignment?

11 A. I was an investigator with the Robbery
12 Division.

13 Q. And what kind of extra training did you have to
14 be part of the Robbery Division?

15 A. We have -- we go through a lengthy process
16 training school for interviewing interrogations, how to
17 follow up in a case, how to work leads in a case.

18 Q. And do you have any other certifications that
19 went along with being part of the Robbery Division?

20 A. Just the training hours, but no additional
21 certifications.

22 Q. And being in the Robbery Division, do you also
23 conduct interviews?

24 A. Yes.

25 Q. Tell me how HPD has trained you to conduct an

1 interview.

2 A. Once you have somebody that you're going to
3 interview, you've got to establish an in-custody or
4 noncustodial interview. You'll go through and explain
5 where you are, and then you'll read them their
6 magistrate warning.

7 Q. And when you're conducting an interview with a
8 person, is there a particular location that it has to be
9 at?

10 A. For adults, no. For juveniles, yes.

11 Q. And when you're -- let's say an in-custody
12 statement, interview. Is there any extra procedures
13 that you do with an in-custody interview?

14 A. No. You'll just read the Miranda warnings.

15 Q. Do you record those?

16 A. Yes.

17 Q. So, now in connection to this case, did you
18 come into contact with the defendant in the Family
19 Dollar aggravated robbery case?

20 A. Yes.

21 Q. And where and when did you come into contact
22 with him?

23 A. August 7th, 2010, at 61 Reisner, central police
24 station.

25 Q. And were you in a particular room?

1 A. An interview room, yes.

2 Q. And what does an interview room look like?

3 A. It's approximately 10-feet by 12, padded walls,
4 one door in and out. Most of them have a desk, a couple
5 chairs. And they're all monitored by video and audio.

6 Q. And so, those conversations that happen in that
7 room, they're all recorded by video and audio?

8 A. Yes.

9 Q. When you interview somebody, is it often that
10 there are more than one police officer in the room?

11 A. Yes.

12 Q. And you guys leave the door unlocked, locked?

13 A. Unlocked.

14 Q. Do you offer them anything to drink?

15 A. I generally don't, no.

16 Q. Do you refuse them the opportunity to go to the
17 restroom if they ask?

18 A. No.

19 Q. Is that your policy and procedure, to do those
20 things?

21 A. No.

22 Q. And so, speaking with the defendant in the
23 Family Dollar robbery, did you advise him of his
24 constitutional rights?

25 A. Yes, I did.

1 Q. Did you advise him of his privilege not to
2 self-incriminate?

3 A. Yes, I did.

4 Q. Did you advise the defendant that he had a
5 right to an attorney?

6 A. Yes, I did.

7 Q. That he had the right to remain silent?

8 A. Yes, I did.

9 Q. That anything he said could be used against
10 him?

11 A. Yes, I did.

12 Q. His right to have an attorney present prior to
13 and during the questioning?

14 MS. BIGGAR: Your Honor, at this time I
15 object to leading --

16 THE COURT: Overruled.

17 MS. BIGGAR: -- about what occurred.

18 THE COURT: Overruled.

19 A. Yes, I did.

20 Q. (By Mr. Allard) And his right to terminate the
21 interview at any time?

22 A. Yes, I did.

23 Q. Did he indicate to you that he understood each
24 of these rights and warnings?

25 A. Yes.

1 Q. And how did he indicate that to you?

2 A. Initially verbally. I don't know if you would
3 call it a grunt, "uh-huh." And he also nodded his head
4 up and down, which I understand to be a "yes."

5 Q. And after you had completed giving him all his
6 rights and warnings, did he request an attorney?

7 A. No, he did not.

8 Q. Did he ask to cease the interview?

9 A. No, he did not.

10 Q. And did he decline to give a statement?

11 A. No, he did not.

12 MR. ALLARD: May I approach the witness?

13 THE COURT: Yes.

14 Q. (By Mr. Allard) I'm showing the witness what's
15 been marked as State's Exhibit No. 12. Do you recognize
16 this (indicating)?

17 A. Yes.

18 Q. And how is it you recognize it?

19 A. It's going to be the interview that I conducted
20 with the defendant.

21 Q. And did you have an opportunity to watch this
22 recording?

23 A. Yes, I did.

24 Q. And are you able to recognize all of the voices
25 that are on the recording?

1 A. Yes, I am.

2 Q. And what voices are on the recording?

3 A. Myself and the defendant.

4 Q. And does this fairly and accurately represent
5 the conversation that happened between you and the
6 defendant?

7 A. Yes, it does.

8 MR. ALLARD: Tender to defense counsel and
9 offer into evidence State's Exhibit 12.

10 **(State's Exhibit No. 12 Offered)**

11 MS. BIGGAR: Your Honor, at this time, I
12 believe between Officer Olivarez and Officer Costin, I
13 have no objection.

14 THE COURT: All right.

15 MS. BIGGAR: Except for I would re-urge the
16 objections that I made previous.

17 THE COURT: And that will be overruled.
18 State's 12 is admitted.

19 **(State's Exhibit No. 12 Admitted)**

20 MS. BIGGAR: Thank you, Your Honor.

21 Q. (By Mr. Allard) When you're conducting
22 interviews, is it irregular for one person to do the
23 Miranda warnings and another person to do the interview?

24 A. No, not at all.

25 Q. Is there anything that would have, during this

1 Miranda warnings, led you to believe that the defendant
2 was -- felt threatened or coerced into giving his
3 statement?

4 A. No.

5 Q. And did you promise him anything directly or
6 indirectly in reward for giving a statement?

7 A. No.

8 Q. And did you interview the defendant for the
9 Family Dollar robbery?

10 A. No.

11 Q. And who was it that interviewed the defendant
12 for the Family Dollar robbery?

13 A. Officer Olivarez.

14 MR. ALLARD: Pass the witness.

15 THE COURT: Ms. Biggar.

16 MS. BIGGAR: Thank you, Your Honor.

17 **CROSS-EXAMINATION**

18 **BY MS. BIGGAR:**

19 Q. So, Officer Costin, in 2010 you had been with
20 HPD -- first of all -- I'm sorry -- my name is Staci
21 Biggar. And we've never met one another, have we?

22 A. Correct.

23 Q. Okay. We've never discussed this case, or
24 really anything else, except for maybe I might have seen
25 you earlier in the week, but that was it.

1 A. Correct.

2 Q. Right?

3 Okay. But we really haven't talked about
4 this case, your testimony, anything about Mr. Robertson,
5 right?

6 A. Correct.

7 Q. So, how long did you work for HPD in 2010?

8 A. Right around five years.

9 Q. And have you had any special training regarding
10 Miranda warnings?

11 A. Special training, no.

12 Q. And what about in how to conduct an interview
13 with a potential suspect?

14 A. Aside from department training, I attended a
15 week-long Reed School of Interview and Interrogation.

16 Q. So, in the Reed School they teach you how to
17 interrogate people?

18 A. It's more of different methods, advice, things
19 to try.

20 Q. So, it's methods of interrogation?

21 A. Yes.

22 Q. So, in this do they teach you to ask questions
23 about what a suspect's mental state might be?

24 A. Specifically?

25 Q. Well, two-fold. One, intellectual ability, and

1 second emotional ability. So, do they talk to you about
2 whether or not you should find out what their
3 intellectual ability is?

4 A. Through a line of other questions, normal
5 day-to-day questions.

6 Q. Okay. So, when you're regularly interviewing
7 somebody, do you find out if they -- how far they've
8 gone in school or how much education they've had?

9 A. Sometimes, on occasion.

10 Q. Okay. And in this particular case, did you?

11 A. No.

12 Q. Did you find out whether or not anybody -- on a
13 regular basis would you find out whether or not anybody
14 had been special-needs, special education, mentally
15 retarded, anything like that?

16 A. No.

17 Q. Okay. And in this particular case, did you ask
18 whether or not Mr. Robertson had been -- gone through
19 special education in school?

20 MR. ALLARD: Your Honor, objection. He's
21 not the one who conducted the interview.

22 MS. BIGGAR: He conducted the Miranda
23 warnings.

24 THE COURT: Overruled. He can answer the
25 question.

1 A. No.

2 Q. (By Ms. Biggar) Okay. So, you wouldn't know
3 whether or not he did take special education in school?

4 A. That's correct.

5 Q. And had you asked him how far he had gone in
6 school?

7 A. I don't believe so, no.

8 Q. Okay. So, you wouldn't know that he only went
9 to the ninth grade?

10 A. That would be correct.

11 Q. And then do you -- do you look or try to find
12 out whether or not they have any sort of mental
13 retardation or mental illness?

14 A. When conducting a criminal history check on
15 somebody, which we'll do before an interview, if there's
16 any history with the department, that's the only way
17 we'll be aware of that.

18 Q. Okay. And in Mr. Robertson's case, did you
19 check to see if he had ever been diagnosed as mentally
20 retarded?

21 A. I don't have any way to check into that if it's
22 not listed in his HPD criminal history.

23 Q. Okay. So, the answer would be no, you would
24 not know whether or not he's mentally retarded?

25 A. That's correct.

1 Q. What about if he had any sort of mental
2 illness?

3 A. I have no idea to check that.

4 Q. So, you don't check any of these things prior
5 to doing your Miranda warnings?

6 A. No.

7 Q. And when you do the Miranda warnings --

8 MS. BIGGAR: May I approach the exhibits,
9 Your Honor?

10 THE COURT: Yes.

11 Q. (By Ms. Biggar) We have what's been marked --
12 entered as State's Exhibit No. 16. Do you recognize
13 what this is (indicating)?

14 A. Yes.

15 Q. And this is the statutory warnings that -- it's
16 called a blue card, right?

17 A. Correct.

18 Q. And most police officers have a blue card,
19 right?

20 A. Correct.

21 Q. It's a pretty standard type of thing that
22 you-all have --

23 A. Yes.

24 Q. -- right?

25 And I believe that you read your warnings

1 off of this blue card --

2 A. Correct.

3 Q. -- or a similar blue card?

4 A. Correct.

5 Q. Okay. And what about the questions and the
6 things below that, did you read or consider any of those
7 at the time?

8 A. No. Those are suggestions for things. So, I'm
9 required to read the Miranda at the top.

10 Q. Okay. And the suggestions, no?

11 A. Correct.

12 Q. So -- so, the blue card was developed to help
13 you-all do things correctly or meet the legal
14 requirements, correct?

15 A. I could only assume that it was developed so
16 that we had a standard card to read Miranda off of.

17 Q. And you understand that when doing a statement
18 for a case, when you read the warnings, the law says
19 that you also have to make sure that each person
20 knowingly, intelligently, and voluntarily waives that
21 particular right, correct?

22 A. Correct.

23 Q. And so, when you're reading those warnings, do
24 you specifically ask "yes" or "no"?

25 A. I ask if he understands each of the rights as I

1 read them.

2 Q. And do you wait for them to say "yes" or "no,
3 sir," or just "yes" or "no," maybe not say the "sir"?

4 A. Verbally or with a nodding of the head up and
5 down yes. Or if they don't understand, a "no" or they
6 shake their head back and forth no. And then I can go
7 into further detail.

8 Q. Okay. But if they don't answer specifically,
9 you don't ask for a clarification?

10 A. If they say they don't understand, then I need
11 clarification, but if they say they agree, then, no, I
12 do not.

13 Q. But if they don't say "yes" specifically, you
14 don't ask for a clarification beyond that; if they just
15 made a head movement or said "yeah, uh-huh," you
16 wouldn't ask?

17 A. No, because I understand that as a "yes."

18 Q. So, then do you ask after each and every
19 question?

20 A. Yes.

21 Q. And then you ask again in the totality at the
22 end when everything has been finished?

23 A. No. I ask each and every question as I read
24 them.

25 Q. Okay. So, then when you're finished reading

1 from this -- because you're reading from it. So, then
2 when you actually finish to start the statement, do you
3 ask the question again: Do you understand all of these
4 rights?

5 A. Not again, no.

6 Q. And you don't ask whether or not they want to
7 waive those rights?

8 A. Not again, no.

9 Q. And then at that point, you just start asking
10 questions?

11 A. Yes.

12 Q. You said that this video was taken on what
13 date?

14 A. I believe it was August 7th, 2010.

15 Q. Did you take any notes or bring anything that
16 refreshed your memory regarding this case today?

17 A. No.

18 Q. Did you refresh your memory from any of your
19 notes about this case for today?

20 A. The offense report.

21 Q. Okay. And I'm going to show you what I was
22 given earlier, and I just want to see if it's the same
23 offense report that you had or if there was additional
24 pages or so forth.

25 A. Okay.

1 MS. BIGGAR: I'm sorry. May I approach,
2 Your Honor?

3 THE COURT: Yes.

4 A. I'm through.

5 Q. (By Ms. Biggar) Was there any -- is that the
6 same?

7 A. No.

8 Q. So, what was -- what is different between that
9 report and the report you refreshed your memory on?

10 A. I entered a supplement to an additional report.

11 Q. Do you have that supplement with you?

12 A. Not with me, no.

13 MS. BIGGAR: I'm sorry, Judge, if I could
14 just have one second.

15 THE COURT: Okay.

16 MS. BIGGAR: I'm trying to figure out...

17 Q. (By Ms. Biggar) So, Officer Costin, is this the
18 supplement that you reviewed, or is there something
19 different (indicating)?

20 A. There's additional pages.

21 Q. There's just additional?

22 A. Yes.

23 Q. I was just trying to look at the part that
24 might be -- but this is essentially it, right?

25 A. That's a portion.

1 Q. If I show you this, will you just let me know
2 if this is everything or --

3 A. Sure.

4 Q. -- if there is anything additional that I don't
5 have (indicating)?

6 A. This looks like it.

7 Q. Okay. So, there's not anything else, then,
8 that I wouldn't have privy to?

9 A. No, not that I can see.

10 Q. So, who else was in -- you said that you were
11 in the room, and then who else was in the room with you
12 when you did the Miranda warnings?

13 A. Just me when I was doing Miranda warnings.

14 Q. It was just you?

15 A. Yes.

16 Q. Okay. So -- so, nobody else would have
17 personal knowledge about the Miranda warnings except for
18 you because you -- I mean, it was just you and
19 Mr. Robertson, that was it?

20 A. Right, but they were captured on the audio and
21 video.

22 Q. Right. But in the room, it was just the two of
23 you-all?

24 A. Yes, correct.

25 Q. So, if anyone said they were in the room, they

1 were wrong?

2 A. During Miranda?

3 Q. Yes, sir.

4 A. Correct.

5 MS. BIGGAR: I pass the witness, Your
6 Honor.

7 THE COURT: Mr. Allard.

8 MR. ALLARD: Nothing further.

9 THE COURT: You may step down, sir.
10 Call your next witness.

11 MR. ALLARD: Vincent Olivarez.

12 THE COURT: All right. Go ahead.

13 MR. ALLARD: Thank you.

14 **VINCENT OLIVAREZ,**

15 having been first duly sworn, testified as follows:

16 **REDIRECT EXAMINATION**

17 **BY MR. ALLARD:**

18 Q. When you were on the stand before, you said
19 that you had an opportunity to speak with the defendant,
20 correct?

21 A. Yes, sir.

22 Q. And we talked about you doing an interview with
23 him?

24 A. Yes, sir.

25 Q. And, again, you said you didn't promise him