

1                   **THE BAILIFF:** Judge, this witness has  
2 not been sworn.

3                   **THE COURT:** Thank you. If you would  
4 come around this way and turn and face the jury and  
5 raise your right hand.

6                   **(Witness Duly Sworn)**

7                   **THE COURT:** Thank you, sir. Please  
8 have a seat on the witness stand.

9                   **MR. DRIVER:** May I proceed, Judge?

10                  **THE COURT:** Yes, sir.

11                  **FRANCIS DEVITA,**

12 having been first duly sworn, testified as follows:

13                   **DIRECT EXAMINATION**

14                  **Q.**       **(BY MR. DRIVER)** Please introduce yourself  
15 to the jury and spell your name for the record.

16                  A.       Francis Devita. F-R-A-N-C-I-S, last name  
17 D-E-V-I-T-A.

18                  **Q.**       And they can see that you're in uniform.  
19 Who do you work for?

20                  A.       I'm employed by the City of Houston police  
21 department.

22                  **Q.**       How long have you worked for the Houston  
23 Police Department?

24                  A.       This is my 28th year.

25                  **Q.**       And what did you do before joining the

1 police department?

2 A. I was in the U.S. military, the army from  
3 72 to 78. I got out in 78, went to City College San  
4 Francisco, got my associates. From there, I moved to  
5 Texas and went to University of Houston Clear Lake  
6 and got my bachelor's. And I also have a master's  
7 degree from Sam Houston Tech -- Sam Houston State.

8 Q. And at some point, did you go to the  
9 Houston police academy?

10 A. Yes, I did. When I graduated from -- in  
11 1983. I became a city jailer in '83 and 1984 I  
12 became a Houston police officer.

13 Q. And what kind of assignments have you had  
14 in the Houston Police Department?

15 A. Patrol. With the exception one time I got  
16 drafted back to the jail for nine months.

17 Q. Have you had some continuing educational  
18 requirements you have to kept up with over the years  
19 for being a police officer?

20 A. Yes, sir. Every year we are required to  
21 get a minimum of 40 hours of continuing education.

22 Q. What kind of subjects do you brush up on?

23 A. They range from many things, but one of  
24 the -- for example, is critical incident management.  
25 We have a mental health situation where if you get

1 calls, somebody who has issues with mental health,  
2 for example, we get trained on how to, like,  
3 deescalate them and to try to prevent violence and  
4 try to prevent harm to a person who is ill.

5 Q. So, like the latest trends in law  
6 enforcement?

7 A. Absolutely, yes, sir.

8 Q. And you're up to date with all of that?

9 A. I do my best.

10 Q. Are you a certified peace officer in the  
11 State of Texas?

12 A. Yes, sir, I am.

13 Q. What part of town do you patrol?

14 A. I work the east side of town, East End they  
15 call it.

16 Q. And how long have you worked in the East  
17 End?

18 A. All my career.

19 Q. So --

20 A. Twenty-eight years.

21 Q. Okay. I'd like to show you State's Exhibit  
22 No. 1 and ask you if you recognize what we're looking  
23 at in State's Exhibit No. 1?

24 A. Okay.

25 Q. There is a screen just to your left if you

1 like, or a big screen.

2 A. Yes, sir, I recognize the area.

3 Q. All right. Is that the area that you have  
4 been patrolling the last 20 plus years?

5 A. Oh, yes, sir.

6 Q. So, would you characterize your knowledge  
7 of that area as very familiar or not?

8 A. Very, very familiar.

9 Q. Okay. What have your jobs been -- what  
10 sorts of assignments and tasks do you have as a  
11 patrol officer in the East End? What do you do from  
12 day to day?

13 A. Basically, whenever you call for the  
14 police, police officer, be it 911, somebody breaks in  
15 your car, a person is missing, whatever it is,  
16 somebody broke in your house, break in the car, you  
17 have a car accident, I'm there.

18 Q. And would you say that you kind of have  
19 covered a broad spectrum of the types of cases you  
20 have been involved in?

21 A. Yes, sir.

22 Q. Maybe from traffic offenses all the way up  
23 to murders?

24 A. Yes, sir.

25 Q. And everything in between?

1 A. Everything in between.

2 Q. Do you recall if you were on duty back in  
3 June 30, 2010?

4 A. That's correct, I was.

5 Q. And do you know what shift worked at the  
6 time.

7 A. I worked day shift.

8 Q. What is day shift?

9 A. Day shift is -- my particular shift is  
10 6:00 in the morning to 2:00 in the afternoon.

11 Q. Do you remember getting a call from  
12 dispatch about a citizen following a suspect?

13 A. Yes, I do, sir.

14 Q. And where -- where was the citizen and  
15 where were you and how close were those two points?

16 A. Okay. I was in the 6600 block of  
17 Harrisburg. The call dropped as a citizen chasing a  
18 suspect in the 6700 block of Harrisburg. So, I was  
19 right there.

20 Q. And so, did it take you a long time or not  
21 very long to get there?

22 A. Not very long, sir.

23 Q. And where was this? Can we see on the map  
24 where it was that you ended up responding? If you  
25 look up to the other side on that smaller screen, you

1 can actually draw on the screen with your finger and  
2 put a dot or circle or something.

3 A. Okay.

4 Q. And I can move the map up or down if that  
5 helps.

6 A. Oh, okay. Let me see. Let me see. Right  
7 here, it says of Ceasar Chavez, and Harrisburg, it  
8 begins the 6700 block. I was right here.

9 Q. So, it didn't take long for you to get over  
10 there?

11 A. Seconds.

12 Q. Was there a description of the individual  
13 that you were looking for?

14 A. I believed there was, a Hispanic male.

15 Q. Once you got over there, what did you find  
16 when you finally pulled up at the scene?

17 A. There was another unit there, already,  
18 Officer McCardo. He was already on the scene.

19 Q. All right. And what was going on when you  
20 first arrived?

21 A. As I exited my patrol car, the citizen  
22 said, you know, that's him. There was an individual  
23 with his hands up. That's what I saw.

24 Q. Okay. And did you place that individual  
25 into custody?

1           A.     I did.

2           Q.     Did you put handcuffs on him?

3           A.     I did, sir.

4           Q.     And did you collect -- did he have any  
5 property on him?

6           A.     He had a bag, yes, sir. He did have a bag.

7           Q.     And did you take that bag from him?

8           A.     Yes, sir, I did.

9           Q.     What did you do with the bag?

10          A.     I placed it on the hood of the patrol car.

11          Q.     Did he have anything else on his person?

12          A.     Yes. According to the call slip, a citizen  
13 was chasing a suspect and he was armed with a knife.  
14 So, at that time, when I placed him into custody, I  
15 asked him, do you have any weapons on you before I  
16 put my hands on him, because I don't want to get cut.  
17 So, he said, "Yes, I have a knife. It's a small one,  
18 but it's sharp. And it's in my left hand pocket."  
19 Okay. I retrieved the knife, I put it on the hood of  
20 the patrol car.

21          Q.     All right. What kind of a knife was it?  
22 Can you describe it for the jury?

23          A.     Oh, yes, sir. It was when you have one of  
24 those little small folding knives, it had a little --  
25 it wasn't a big buck knife. It was small. It was a

1 small black plastic handle about 1 inch and a 1 inch  
2 blade, folding knife. But, it was really like this  
3 big.

4 Q. Was it sharp?

5 A. Oh, yes.

6 Q. Have you investigated cases involving  
7 stabbings and cuttings on few or many occasions?

8 A. Many.

9 Q. Now, knowing what you know about knives,  
10 even though it's a short knife, do you believe that  
11 that knife was capable of causing death or serious  
12 bodily injury if used in that way?

13 A. Yes, sir, it can.

14 Q. And so, do you believe based on your  
15 training and experience, that it was a deadly weapon?

16 A. Yes, sir, I do.

17 Q. What did you do with the knife?

18 A. I placed it on the hood of the patrol car  
19 until I secured the individual, and then we put him  
20 in the back of the patrol car.

21 Q. Do you see that person that you arrested  
22 here in the courtroom today?

23 A. Yes, I do.

24 Q. Point him out for the jury and describe an  
25 article of clothing.



1           A.       Okay.  He has khaki pants on and blue and  
2 white long sleeve dress shirt.

3                   **MR. DRIVER:**  May the record reflect  
4 the witness has identified the defendant he has  
5 identified the defendant, Judge?

6                   **THE COURT:**  Yes, sir.

7                   **(Defendant Identified)**

8           **Q.       (BY MR. DRIVER)**  And you said that there was  
9 an individual citizen following you that said,  
10 "That's him"?

11           A.       Absolutely.

12           **Q.**       Was there a second person there on the  
13 scene on a bicycle?

14           A.       Yes, sir.  Another witness.

15           **Q.**       Were you able to communicate with him at  
16 all?

17           A.       He spoke mainly Spanish, so I had another  
18 officer come speak Spanish.  I understand Spanish,  
19 being in that neighborhood for 28 years, but it's  
20 always best in a case like this to get somebody  
21 that's a native to that language.

22           **Q.**       And is that -- can you describe the  
23 demographics over there?  It's heavy Spanish speaking  
24 and he is Spanish?

25           A.       Yes, sir, predominantly Hispanic.

1           Q.     So, over the years you picked up quite a  
2 bit?

3           A.     Oh, yes.

4           Q.     Did the other individual indicate that this  
5 was the same person that they had been following?

6           A.     Yes.

7           Q.     Now, once you had secured the defendant  
8 into your patrol car -- was it your patrol car you  
9 put him in?

10          A.     No. I put him in Officer McCardo's patrol  
11 car.

12          Q.     And was he the officer that was there right  
13 before you got there?

14          A.     Yes, sir.

15          Q.     Where was the backpack and the knife, whose  
16 patrol car was that on?

17          A.     It was on his car.

18          Q.     And?

19          A.     On the hood.

20          Q.     On the hood?

21          A.     Yes, sir.

22          Q.     Okay. Did you look into that backpack?

23          A.     Yes, I did.

24          Q.     And what did you find?

25          A.     There was several items that once I had the

1 individual gentleman here secured and he was no  
2 longer a threat, I made sure that I could open it up  
3 and find the different items. And the witness is  
4 over here, the complainant, the victim, is over here  
5 off my shoulder. And I was finding like antenna, a  
6 bit of -- an antenna, some other property that the  
7 victim claimed was his.

8 Q. All right. Give me just one moment. Let  
9 me show you what's been marked as State's Exhibit 4.  
10 Is this -- does it look like one of the items that  
11 you recovered from that black backpack?

12 A. Yes, sir.

13 Q. And State's Exhibit 6, does this appear to  
14 be one of the items that was in his backpack?

15 A. Yes, sir.

16 Q. And State's Exhibit 8, how about that?

17 A. Yes, sir.

18 Q. And what about State's Exhibit 10? Were  
19 either of those items in the backpack?

20 A. I don't believe they were in the backpack.  
21 I believe that was on his person.

22 Q. Which one was on his person or both?

23 A. I will be honest with you, I don't recall.

24 Q. What did you do with -- now, were you in  
25 the middle of an investigation out there?

1           A.     Yes, sir.

2           Q.     What is your protocol for dealing with an  
3 investigation like this? Do you handle the  
4 investigation?

5           A.     We start the investigation, yes, sir. The  
6 protocol is, okay, as the patrol officer -- and we  
7 have two different scenes. One is where the arrest  
8 was made. It was approximately five or six blocks  
9 away. So, once I talked with the victim, he said  
10 yes, this is the guy, not a problem, secure him in  
11 the car. Okay. And then we take him back to the  
12 other scene to where it actually happened.

13          Q.     Okay. Well, let's talk a little bit about  
14 the original -- about the original scene. After --

15          A.     Sure.

16          Q.     After you got all the property, all of  
17 those items out of the backpack?

18          A.     Yes, sir.

19          Q.     Did something happen with regard to like  
20 the elements that changed the plan?

21          A.     Yes.

22          Q.     What happened?

23          A.     Okay. As I was preparing to move the scene  
24 from there, back to where he got -- the house was  
25 burglarized, it started to rain. I scooped up

1 everything as best I could, and I will be straight up  
2 honest, I cannot find the little knife, that was on  
3 the hood of the patrol car. I showed it to Officer  
4 McCardo. I asked the witness, the victim, is this  
5 the little thing, is this it? Yes, it is. And then  
6 when I went to pack it up, it started raining. I  
7 will -- I went back on foot, I had three other  
8 officers with me, we walked from 67<sup>th</sup> to Wayside,  
9 scoured the area, walked back five other blocks. I'm  
10 most embarrassed. I cannot find that little knife.

11 Q. But, you had the knife in your possession  
12 at some point?

13 A. I did.

14 Q. And you found it on the person of the  
15 defendant?

16 A. I did, sir.

17 Q. And did the complainant identify that knife  
18 as belonging to him, as well?

19 A. Yes. It was one of his knives, yes.

20 Q. Now, did you look in Officer McCardo's car  
21 as well for the knife?

22 A. I scoured that car. Because I was  
23 embarrassed. Underneath the hood, I thought maybe it  
24 fell down; on the engine block; underneath -- moved  
25 the car, move this way, that way. I thought maybe I

1 put it in the trunk. Looked in the trunk, looked in  
2 my car, I just could not find it.

3 Q. All right. So, somewhere between when you  
4 first stopped the defendant and got all the property  
5 back and when it rained, and you got back to the  
6 burglary scene?

7 A. Yes, sir.

8 Q. It just went missing?

9 A. Yes.

10 Q. Okay. But it was not through any lack of  
11 trying to find it, correct?

12 A. Oh, no, sir. No.

13 Q. Once you went back -- now, let me ask you a  
14 little question about this: The complainant, did he  
15 ride with one of the officers back to the original  
16 scene?

17 A. I'm not sure.

18 Q. If he were to be secured in handcuffs and  
19 placed in the back of a patrol car and taken back to  
20 the scene, would that be because he was under arrest  
21 or because that's protocol for anybody riding in a  
22 police car?

23 A. It's protocol.

24 Q. To anybody who gets in the back of a squad  
25 car, they are going to have cuffs on them whether the

1 complainant, victim, whatever?

2 A. Yes. Because we're not sure all the time.

3 Q. And was -- at any point did you place Henry  
4 Sanchez under arrest?

5 A. I did not.

6 Q. As far as you're concerned, he was never  
7 under arrest?

8 A. That's correct, sir.

9 Q. Because he is the victim?

10 A. Yes, sir.

11 Q. When you get back to the main -- to the  
12 other crime scene?

13 A. Yes, sir.

14 Q. Did you make any observations about the  
15 windows or did you even go inside --

16 A. There was so many officers there, I just  
17 primarily stayed outside.

18 Q. Did you see the state of the exterior of  
19 the complainant's house?

20 A. I did.

21 Q. Let me show you what's been marked as  
22 State's Exhibit 2 and it's admitted as State's  
23 Exhibit 2. When you got back to the complainant's  
24 residence, was the window open or closed?

25 A. It was just like this.

1 Q. And did you see broken glass all around it?

2 A. Yes, I did.

3 Q. And I guess somebody pulled the window down  
4 so it's easier to see the broken panes in State's  
5 Exhibit 3. But, that's the state of the window.  
6 That's the state that the window was in when you came  
7 back to the original scene?

8 A. Yes.

9 Q. Based on your years of training and your  
10 experience, that somebody -- was somebody breaking  
11 into a house?

12 A. Yes, sir.

13 Q. Did you have a chance to speak with the  
14 defendant at all?

15 A. Mostly for his name and address and that  
16 sort of thing.

17 Q. So, just basic demographic-type  
18 information?

19 A. Yeah.

20 Q. You didn't interview him or anything?

21 A. No. Just basic stuff.

22 Q. All right. And once you got back to the  
23 original scene, what is your role?

24 A. My role was to secure the scene. And then  
25 what I did was, we have a special unit at our



1 station, we call it the initial first responder. And  
2 what they do is they follow up on cases such as this.  
3 We had a good -- we had a victim, we had a good lead  
4 as to who did it, so they would come in and just take  
5 it from me. They would take the interviews and they  
6 would take over for me, basically.

7 Q. And was it the investigator first responder  
8 that took the photos?

9 A. Yes, sir.

10 Q. And did any further witness interviews and  
11 that sort of thing?

12 A. That's correct.

13 Q. And do you know who that person was in this  
14 case?

15 A. This is Officer Ware, Justin. J-U-S-T-I-N.

16 Q. Let me show you what's been marked -- been  
17 admitted as State's Exhibit 18. Does this show the  
18 defendant as he was on the day that you arrested him?

19 A. That shows him at that day, that time, yes,  
20 sir.

21 Q. Where is he standing in the photo? Or can  
22 you tell?

23 A. I didn't take that picture.

24 Q. You didn't take the picture?

25 A. No.

1 Q. Do you recognize the background?

2 A. I wouldn't -- I wouldn't hazard to guess.

3 Q. But, this is the clothing he is wearing?

4 A. Yes, sir.

5 Q. And looks exactly in this picture like he  
6 looked when you placed him into custody, correct?

7 A. Then, yes.

8 Q. And the big difference today is that he has  
9 shaved off the mustache and goatee, correct?

10 A. That's correct.

11 Q. But the -- on the defendant, definitely the  
12 goatee, you arrested that same day?

13 A. Yes, sir.

14 MR. DRIVER: Pass the witness, Judge.

15 THE COURT: Thank you. Questions,  
16 sir?

17 CROSS-EXAMINATION

18 Q. (BY MR. DRIVER) What is your name?

19 A. My name is officer DeVita.

20 Q. Huh?

21 A. DeVita.

22 Q. DeVita?

23 A. DeVita.

24 Q. Okay. DeVita. When you arrested me,  
25 apprehended me --

1 A. Okay.

2 Q. I had the bag?

3 A. Yes, sir.

4 Q. You want to tell the jury what else was in  
5 the bag besides the property?

6 A. I don't recall a list of everything.

7 Q. You don't remember there being clothes in  
8 there?

9 A. It's possible.

10 Q. Okay. When you went to the crime scene,  
11 did y'all take fingerprints?

12 A. Did I? No.

13 Q. So, there was no fingerprints taken (sic)?

14 A. I don't know if there was any. I don't --  
15 I did not take any fingerprints, no.

16 **THE DEFENDANT:** I'm through.

17 **THE COURT:** That's all you have, sir?

18 **THE DEFENDANT:** Yes.

19 **MR. DRIVER:** Just one more question,  
20 Judge.

21 **REDIRECT EXAMINATION**

22 Q. **(BY MR. DRIVER)** Just to belt and suspender  
23 this issue, where you're patrolling, and where all of  
24 this happened, is that Harris County, Texas?

25 A. Yes, sir.

1                   **MR. DRIVER:** Pass the witness.

2                   **THE COURT:** Anything further,  
3 Mr. Morris?

4                   **THE DEFENDANT:** No, ma'am.

5                   **THE COURT:** Thank you. Is this  
6 witness excused or on call?

7                   **MR. DRIVER:** I'm fine with him being  
8 excused, Judge.

9                   **THE COURT:** Mr. Morris?

10                  **THE DEFENDANT:** Huh?

11                  **THE COURT:** May this witness be  
12 excused or do you need him on call?

13                  **THE DEFENDANT:** I want to ask one  
14 question. One more question.

15                  **THE COURT:** You may.

16                                   **RECROSS-EXAMINATION**

17                  **Q.**        **(BY THE DEFENDANT)** Since you have been  
18 serving in law enforcement, how many weapons have  
19 y'all lost?

20                  **A.**        When you say "y'all," what do you mean?

21                  **Q.**        Well --

22                  **A.**        You mean me personally?

23                  **Q.**        There was a couple of y'all involved, and  
24 that's what you are saying, that you had the other  
25 guy and -- I don't know how many other people had

1 that weapon, four police cars, I don't know, you want  
2 to say that you lost it or somebody else lost it?

3 A. I will have to take the blame on that.

4 Q. You're going to take the blame on that one?

5 A. I will.

6 Q. How many have you lost?

7 A. This is my first.

8 Q. Your first one?

9 A. Yes.

10 **THE DEFENDANT:** I'm through.

11 **THE COURT:** May he be excused then?

12 **THE DEFENDANT:** Yes, ma'am.

13 **THE COURT:** All right. Then you're  
14 released as a witness. Thank you, officer.

15 **THE WITNESS:** Thank you.

16 **THE COURT:** Members of the jury, your  
17 lunch has arrived. And we're going to take about 55  
18 minutes for lunch, and so that will -- we hope to  
19 start up about 20 until 1:00. When you finish lunch,  
20 you may walk around the courthouse if you wish. If  
21 you will come back by 20 until. Thank you. Let me  
22 just mention to you that during the breaks or the  
23 recesses, you should not discuss the case even among  
24 yourselves. It's too early to do that. You have to  
25 wait until deliberations begin. Thank you.