

1 V. M. DELBROCCOLO,
2 the witness, having first been duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. VOLKMER:

6 Q Officer, could you spell that last name for the
7 court reporter?

8 A D-E-L-B-R-O-C-C-O-L-O. It's just like broccoli
9 with an O.

10 Q And could you introduce yourself to the jury?

11 A Officer Delbroccolo. I have been with the
12 department approximately two years including training. I
13 love what I do. Went to school, Sam Houston State
14 criminal justice degree. Minor in business.

15 Q What is your -- what is your assignment at the
16 department currently?

17 A Northeast patrol. Night shift with Lakeside.

18 Q What is your responsibility?

19 A Just respond to calls for service. Serve the
20 community, any -- take reports nor burglaries, assaults,
21 basically, answer calls for service.

22 Q I want to turn you back to June 9, 2013.

23 A Yes, sir.

24 Q How long had you been on the force at that time?

25 A Including training, about a year and a half.

1 Q How long had you been done with the field training
2 program?

3 A Since field training I would say probably about a
4 month and a half.

5 Q So about a month and a half on your own?

6 A Roughly, yes, sir.

7 Q Do you ever or had you ever at that time worked
8 with an Officer Greenhaw?

9 A Yes, sir.

10 Q Had you ever worked with an Officer Vargas?

11 A Yes, sir.

12 Q Officer Lopez?

13 A Yes, sir.

14 Q Few times or many?

15 A Few times.

16 Q On June 9th, 2013, did you encounter the
17 defendant, Jose Carapia?

18 A Yes, sir.

19 Q Okay. Tell the jury how it is that you
20 encountered him.

21 A We were dispatched to an assault in progress.
22 When I got there, basically, the complainant and two
23 defendants were already detained meaning handcuffed and
24 separated and complainant appeared to be -- complainant
25 and the defendants appeared to be like they were in some

1 kind of physical disturbance.

2 Q Why is it that they appeared to be in some kind of
3 physical disturbance? Start with the complainant, what
4 did you observe about him?

5 A Complainant had shirt, basketball shorts, no
6 shirt, scratches all over his body. He was soaking wet.
7 When I walked up to him it appeared that he had the odor
8 of gasoline protruding from his body.

9 Q Small odor or --

10 A It was pretty flagrant.

11 Q Okay. What about the defendants, what did you
12 observe about them?

13 A From what I recall, they just looked like they had
14 been basically scratched up also as if they had been
15 fighting.

16 Q When you arrived, were there other officers there?

17 A Yes, sir.

18 Q Which ones?

19 A Officer Vargas, Officer Lopez and Officer
20 Greenhaw.

21 Q What was your role at the scene?

22 A I collected evidence, I -- other officers informed
23 me basically a summary of what happened and what to look
24 for regarding evidence. I looked around the area. I
25 found the listed evidence in the report and --

1 Q Okay. The screen to your immediate left is
2 interactive. If you tap the bottom left it will clear the
3 marks that are already on there. Bottom left corner. And
4 then wherever you drag your finger there will be those
5 pink marks.

6 A Okay.

7 Q When you arrived, would you indicate to the jury
8 what vehicles that you saw when you arrived?

9 A Defendant's pickup truck was right over here.
10 Complainant's SUV was right over here.

11 Q If you would go ahead and kind of as best you can
12 complete those into kind of boxes.

13 A (Indicates).

14 Q Those are almost boxes. If you want to clear the
15 screen and start over.

16 A (Indicates).

17 Q Okay. Where were the patrol cars?

18 A Mine was over here for sure. I know another one
19 was right here and that's all I can recall off the top of
20 my memory.

21 Q Okay. Describe the vehicles that you have drawn
22 there to the jury.

23 A This vehicle was a pickup truck, label it with a P
24 and this was an SUV. I don't recall the colors.

25 Q Okay. Did you recall anything about the, anything

1 else about the vehicles?

2 A I believe the pickup truck was an older model. I
3 couldn't tell you what year. I know there was an older
4 model and then the SUV I would say was probably around
5 2000, maybe 2004, 2005.

6 Q Were there people in and around these?

7 A Around the vehicle, yes, sir.

8 Q Where were the people?

9 A One person was standing here, I believe the
10 complainant and the other complainant was standing right
11 by their vehicles also.

12 Q Who was primary on the scene?

13 A Officer Greenhaw.

14 Q So you said that your task was to complete
15 evidence. How did you go about doing that?

16 A I looked in the immediate I would say area of
17 where the disturbance occurred which I recalled a lead or
18 a metal pipe from the defendant's truck. Officer Greenhaw
19 informed me that some kind of pipe or tire jack or
20 whatever was used to assault the complainant.

21 Q Okay. I am going to stop you here and show you
22 what has been marked as State's Exhibit 5. Okay? Do you
23 recognize it?

24 A Yes, sir.

25 Q What is it?

1 A It looks like a metal pipe.

2 Q Specifically what -- do you remember any kind of
3 relation to June 9, 2013?

4 A I remember it being blue, minor scratches all over
5 it.

6 Q Okay. The pipe that you found in the truck, did
7 -- were you able to provide that to the complaining
8 witness, Mario Villa-Gomez? Were you able to show it to
9 him?

10 A Can you repeat your question?

11 Q The pipe, State's Exhibit 5 --

12 A Yes.

13 Q -- did you show that to Mario Villa-Gomez the
14 complainant?

15 A Yes.

16 Q And what did he -- if he did, did he gesture
17 anything about it?

18 A He said he was hit with this.

19 Q How did the pipe leave 22 Lucas Street or that
20 address on Lucas Street that night?

21 A I secured it in my patrol car and I tagged it into
22 the HPD property room myself.

23 Q Okay. Has anything changed about its appearance
24 today?

25 A Just this tag and this little tape, this little

1 State's Exhibit sticker. When I left I submitted this
2 along with a box which I sealed and signed.

3 Q Other than those changes, is it in the same
4 substantial condition as when you tagged it into evidence?

5 A It appears to be.

6 MR. VOLKMER: State moves to introduce
7 State's 5.

8 MR. TURNER: No objection, Your Honor.

9 THE COURT: Admitted.

10 Q (BY MR. VOLKMER) Were you privy to any
11 conversation with Mario, the complainant, about how the
12 pipe was used?

13 A Not that I recall, no.

14 Q Continue describing to the jury the evidence that
15 you recovered.

16 A Also Officer Greenhaw said that gasoline was
17 poured on the complainant I believed to be some kind of
18 cup along with matches struck in an attempt to light the
19 complainant on fire. So I searched around the immediate
20 area of the truck and I found a plastic cup underneath the
21 defendant's truck. I picked it up. It appeared to have
22 some kind of liquid in it which also smelt like gasoline.
23 Also alongside the truck right around in this area I found
24 another plastic cup that smelted like gasoline or some
25 kind of flammable liquid.

1 Q I'm showing you this box. Out of this box I'm
2 taking State's 6, 7 and 8. I want you to examine the box
3 and tell me if you recognize it.

4 A Yes, sir. This is the box I put the list of
5 property in. I sealed the box myself and I signed my name
6 and my payroll stub along this side and the other side
7 right here.

8 Q And could you read into the record what is on the
9 box tape there?

10 A It is the initials VMD for my first, middle and
11 last name along with my payroll.

12 Q Okay. And along the bottom of the box, what do we
13 see?

14 A Same thing, VMD 150161 which is my payroll.

15 Q Okay. And then before you sealed the box, did you
16 do anything, did you change the contents of the box before
17 you sealed it?

18 A I just, I put the listed evidence, those three
19 objects right there into the box.

20 Q And by those three objects, do you mean -- refer
21 to their exhibit numbers.

22 A The two plastic cups which is Exhibit 6, Exhibit 7
23 and then this bag Exhibit 8 containing the three matches.

24 Q And where did you place those?

25 A I placed them in the box and sealed them.

1 Q Okay. When was the next time that you saw these
2 items?

3 A In the back room back there before the court case.

4 Q Okay. Then starting with State's 6, is there
5 anything different from that night to right now?

6 A No.

7 Q Does it have an exhibit sticker?

8 A Yes, sir.

9 Q And what is that exhibit sticker?

10 A State Exhibit 6.

11 Q Okay. And then showing you State's 7, is it in
12 the same substantial condition as when you put it into the
13 box and checked it into evidence?

14 A Yes, sir.

15 Q Okay. Is State's 6, I forgot to ask you, in the
16 same and substantial condition as when you tagged it in?

17 A It appears to be. Minor smell of gasoline right
18 now.

19 Q Okay. Which -- we will get to that. Looking at
20 State's 8, are they in the same substantial condition as
21 when you tagged them into evidence?

22 A Appears to be.

23 Q Okay.

24 MR. VOLKMER: Move to introduce State's 6,
25 7 and 8 into evidence, tender to defense counsel for

1 inspection.

2 MR. TURNER: No objection, Your Honor.

3 THE COURT: Admitted.

4 Q (BY MR. VOLKMER) So I'm handing you State's 6.
5 Without breathing too deeply, could you observe State's 6
6 for any kind of odor?

7 A It smells like a flammable liquid of some sort was
8 in there at one point.

9 Q Okay. Handing you State's 7, can you do the same
10 thing?

11 A Yes.

12 Q Which one is stronger?

13 A The cup right there.

14 Q Okay. In the box, did you arrange the cups in any
15 kind of order that you recall?

16 A Not that I recall, no.

17 Q Okay. And then I want to show you State's 8.
18 Could you describe to the jury the contents of State's 8?

19 A It's three matches, two of which are struck.

20 Q Okay. And by struck, what do you mean?

21 A Attempted to ignite a flame.

22 Q Does it look like they have been ignited?

23 A At one point, yes.

24 MR. VOLKMER: Your Honor, may I publish to
25 the jury by way of bailiff State's 6 and 7?

1 THE COURT: Yes, sir.

2 Q (BY MR. VOLKMER) If you will clear the screen for
3 me.

4 Zooming in on State's 8, plastic bag
5 containing the three matches, is there any difference
6 between these matches?

7 A Not that I recall. These two are struck and this
8 one is unstruck.

9 Q Could you circle that on the screen?

10 A That these are the two struck. Unstruck.

11 Q All right. When you say struck, do you mean --
12 what do you mean as far as on fire or not on fire?

13 A At one point they produced a flame. I mean -- at
14 one point they produced a flame, striking against a box
15 and producing a flame.

16 Q I'm showing you State's 2 again.

17 A Okay.

18 Q Could you indicate where State's 8 the matches in
19 State's 8 were recovered?

20 A State's 8 is the matches, correct?

21 Q State's 8 is the matches.

22 A Okay. I recovered them closer to the Campbell
23 side of the street. Somewhere in this area right here.

24 Q Now, would you say that you recovered them in
25 front of the house?

1 A I would say it was a little bit further north than
2 the house. I would say it was right off the northeast
3 corner.

4 Q What I'll do is I'll put State's 14 which is a
5 map. Clear the screen for me.

6 And then could you mark Lucas, the address on
7 Lucas Street, if you remember?

8 A I believe it's somewhere in this vicinity right
9 here.

10 Q Okay. Where were the matches located?

11 A Somewhere in this vicinity right there.

12 Q So would you say that they were closer to Campbell
13 Street?

14 A I would say yes, sir. Yes, sir.

15 Q I want to turn you back to Mario Villa-Gomez, the
16 complainant.

17 A Okay.

18 Q Are you familiar with the reaction of gasoline to
19 an open flame?

20 A From when a -- I have never seen it personally,
21 but yes, I have heard about it, yes.

22 Q Okay. Have you ever seen it on television?

23 A Yes.

24 Q The amount of gasoline on Mario Villa-Gomez, if he
25 had been ignited, do you have an opinion as to what that

1 would have done to him?

2 A He definitely would have caught on fire. He had
3 enough gasoline or flammable liquid on him to ignite in
4 flames.

5 Q What would have been the result to him if you
6 know?

7 A Definitely serious bodily injury, possible death.

8 Q Using an open flame near Mario, would that be in
9 your opinion a deadly weapon?

10 A Yes.

11 MR. VOLKMER: Pass the witness.

12 THE COURT: Thank you.

13

14 CROSS EXAMINATION

15 BY MR. TURNER:

16 Q Officer, would it be your opinion that had he come
17 in contact with flame that night in that condition that he
18 would have combusted?

19 A Repeat your question.

20 Q He would have caught fire?

21 A Yes, if he would have maintained contact with the
22 flame.

23 Q Now you only found one pipe, correct?

24 A Correct.

25 Q You weren't looking for more than one, were you?

1 A No.

2 Q The matches, you said you kind of found them at
3 what would that be --

4 A I would say northeast corner.

5 Q Northeast corner of the house?

6 A Off the house. It was in the street but it was
7 northeast corner of the house.

8 Q How close were they to each other?

9 A I would say in about a three or four foot circle
10 of each other.

11 Q Consistent with somebody standing there lighting a
12 cigarette and dropping matches on the ground?

13 A Yes.

14 Q Did you look for any other matches anywhere else?

15 A I looked but once I found those matches, we
16 assumed that those were the matches used in the incident.

17 Q Did the complainant show you to look right there?

18 A He said in the general area which was
19 approximately right around this area, right over here. I
20 don't want -- I can't draw on top of that circle but right
21 over there is where I found them.

22 Q Okay. The cups that you found, were you the
23 person to pick them up and bag them for evidence and all
24 that?

25 A Yes, sir.

1 Q Okay. So at any point that Officer Greenhaw may
2 have seen those cups would they have already been moved
3 from their original location?

4 A I picked them up and brought them over to the
5 officers.

6 Q Okay. So did you take Officer Greenhaw to the
7 location exactly where you picked them up and showed him?

8 A I pointed out where -- I walked him over and I
9 pointed, hey, I found those cups underneath the truck and
10 beside the truck.

11 MR. TURNER: I pass the witness.

12 THE COURT: Thank you. Redirect?

13 MR. VOLKMER: Yes, Your Honor.

14

15 REDIRECT EXAMINATION

16 BY MR. VOLKMER:

17 Q When you found the cups, did you notice anything
18 about where they were resting?

19 A I just knew that it was underneath the defendant's
20 truck. It was in front of the residence also, and we were
21 informed that the fight happened in the general area in
22 front of the house which would have been all in this area
23 right here, so we used this as our perimeter to search for
24 evidence.

25 Q At any point you need to clear the screen feel

1 free to clear and start over. Were the cups dry?

2 A At the time, no. There was just a little bit of,
3 you can tell that they were wet. Liquid in it. I would
4 say two or three minutes prior, I would say fairly recent
5 to us getting there.

6 Q And so by dry were they wet in the -- I mean
7 describe how they -- if they were dry and if they weren't
8 where you found them?

9 A I mean there was definitely residue inside as if
10 someone filled it up and then poured it out. There wasn't
11 standing gasoline inside, but definitely you can tell that
12 there was gasoline in there in the cups at some point.

13 Q What about in the area around the cups, did you
14 see or observe any kind of wet liquid?

15 A Not to my -- I truly don't recall.

16 Q Okay. You are not saying it did happen, you are
17 saying --

18 A I don't recall.

19 MR. VOLKMER: Pass the witness.

20 THE COURT: Thank you.

21 MR. TURNER: No further questions of this
22 witness, Judge.

23 THE COURT: Is this witness excused for
24 all purposes?

25 MR. VOLKMER: This witness can be excused,

1 Your Honor.

2 MR. TURNER: He can, Your Honor.

3 THE COURT: You are released as a witness.

4 Thank you, sir.

5 And does the State have another witness?

6 MR. VOLKMER: State rests at this time,

7 Your Honor.

8 THE COURT: Thank you. Members of the
9 jury, we will start tomorrow at 10:30, same time, same
10 place.

11 MR. TURNER: Can I interrupt just briefly?
12 Can we approach just for a minute?

13 THE COURT: Yes.

14 (Conference at bench outside hearing of court
15 reporter.

16 MR. TURNER: I just have one question I
17 want to ask Officer Greenhaw. If we can do it, he won't
18 have to come back tomorrow.

19 THE COURT: On your case, you can call him
20 now?

21 MR. TURNER: Thank you. I can do that.

22 (Open court)

23 THE COURT: I have been informed that a
24 witness is being recalled and it will be very brief.

25 Come on up, officer. And of course, jurors,

1 once a witness takes the oath it goes through the entire
2 trial so we don't do it each time the witness is called.
3 Thank you, sir.

4
5 J. GREENHAW,

6 the witness, resumed the stand and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. TURNER:

9 Q Officer Greenhaw, Officer Lopez was the first
10 officer on the scene, right?

11 A Officer Lopez and Officer Vargas were there before
12 me. I don't know who arrived first.

13 Q Okay. And at the time that you arrived did
14 Officer Lopez tell you that he had to separate the
15 complainant from the defendants because they were arguing?

16 MR. VOLKMER: Objection, calls for
17 hearsay.

18 MR. TURNER: Judge, it's impeachment.

19 THE COURT: Overruled. I think he has
20 laid the predicate.

21 THE WITNESS: Can you repeat it?

22 Q (BY MR. TURNER) Did Officer Lopez tell you that
23 when he arrived at the scene he had to separate the
24 complainant, Mr. Mario Villa-Gomez, from the defendants
25 because they were arguing?