

1 THE WITNESS: Yes, sir, I have.

2

3 S.F. DUFFY,

4 having first been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MOSS:

7 Q. Would you please state your name for the
8 record?

9 A. I'm Officer S.F. Duffy. Last name is spelled
10 D-u-f-f-y.

11 Q. For whom do you work?

12 A. For the City of Houston Police Department.

13 Q. How long have you worked for the police
14 department?

15 A. For 20 years.

16 Q. What capacity do you hold right now?

17 A. Right now I'm a police officer, senior police
18 officer.

19 Q. With which division?

20 A. With the Central Patrol Division.

21 Q. On -- do you remember the date of January
22 22nd, 2008?

23 A. Correct, I do.

24 Q. What position did you hold on that date?

25 A. I was a patrol unit on that date.

1 Q. What were some of your duties as a patrol
2 officer?

3 A. I would run calls for service which were
4 dispatched by the dispatcher. If a citizen needed a
5 unit, police unit to the scene, they would call the
6 dispatcher. The dispatcher will in turn notify me or
7 the other units to run a call for service. That call
8 for service is a dispatch call.

9 Q. Were you dispatched to a murder call on
10 January -- I'm sorry, to a homicide call on January
11 22nd, 2008?

12 A. I was actually dispatched to a shooting in
13 progress call on that date.

14 Q. Where were you when you got that call?

15 A. I was in the -- near the vicinity of Montrose
16 and Westheimer, the intersection.

17 Q. Is that your normal beat?

18 A. Correct, it is.

19 Q. So, about how long -- first, let me ask you
20 this: Where was the dispatch call -- what was the
21 address to which you were dispatched?

22 A. It was in the 1300 block of West Pierce.

23 Q. Is that an address in Harris County, Texas?

24 A. That's correct.

25 Q. About how long did it take you to get from

1 where you were to that address?

2 A. Approximately a minute.

3 Q. So, when you get to the scene, what do you
4 see?

5 A. As I drove down from Waugh, which is the
6 intersecting street to West Pierce, I turned right to
7 West Pierce. I observed several patrol cars already at
8 the location, along with the ambulance from HFD, which
9 is the Houston Fire Department. They -- as I drove up
10 closer to the scene, I observed Officer Joe Mabasa, who
11 had a person in custody and was patting him down for
12 officer safety reasons. And as I exited the vehicle,
13 they had placed him in the backseat of the patrol car.

14 Q. Okay. So, when you get to a scene like that,
15 what are your duties?

16 A. First we need to make sure that the scene is
17 safe, that a shooting in progress, we obviously know
18 there's a shooter. We want to make sure that the
19 shooter, if he's still on the scene, that he has been
20 contained, that the scene is safe. Once the scene is
21 safe, we, at that point, start to determine what
22 happened, where it happened and how it happened. And at
23 that point we delegate duties.

24 Q. Okay. What duties were you delegated?

25 A. Once I realized that the suspect was in

1 custody, I looked down the driveway of the scene and
2 observed HFD personnel, the paramedics working on a
3 person. I walked down the driveway to see what was
4 going on and determined that was our crime scene.

5 Q. So, once you determined that that was the
6 crime scene, what did you do?

7 A. I looked around to see who else was on the
8 scene. Observed three males standing behind the house
9 in the backyard area, but in close proximity to the
10 crime scene. I asked them to back away. And then I
11 notified Officer Kessler that we needed to put some
12 crime scene tape around the crime scene to prevent
13 anybody that was not supposed to be there from entering
14 the scene.

15 Q. Okay. Did you do that?

16 A. Yes, sir, we did.

17 Q. Once you secured the crime scene in that form,
18 what did you do next?

19 A. As I was putting out the crime scene, I did
20 notice that there was three spent casings. The spent
21 casings are the casings that a bullet, projectile is
22 enclosed in prior to being fired. Once the projectile
23 is fired, the casings come out of a semiautomatic weapon
24 and land on the ground.

25 I observed that there was three of them laying

1 in the driveway. I asked one of the gentlemen, and I
2 didn't get the name, who were -- was in the backyard for
3 some sort of glass. Mainly because of the fact that it
4 had rained and was still raining on and off. So, to
5 protect the casings, I got the glasses and put them on
6 top of the casings themselves to protect them from the
7 elements.

8 MR. MOSS: May I approach?

9 THE COURT: Yes, sir.

10 Q. (BY MR. MOSS) Okay. Officer, let me show you
11 State's Exhibit No. 6. What is that?

12 A. It's a scene of the driveway of the crime
13 scene.

14 Q. Okay. And do you see the glasses you were
15 talking about?

16 A. I do see a blue glass, a clear drinking glass
17 and a -- further on up, almost in a straight line down
18 the driveway, another clear glass, drinking glass.

19 Q. I'm going to show you State's Exhibit No. 7.
20 Now, in those pictures where are the glasses in relation
21 to the bullets?

22 A. They're actually just off to the side.

23 Q. Is that how you left those glasses when you
24 first came to the scene?

25 A. No, sir.

1 Q. Okay. So, what did you actually do with those
2 glasses?

3 A. I placed the glass right over the bullet
4 itself, like I said, to protect it from the elements and
5 from anybody else walking by and perhaps kicking the
6 rounds.

7 Q. Now, once -- do you remember if those glasses
8 are in the same position that you left them when you
9 first put the glasses on top of the bullets? Does that
10 make sense?

11 A. Correct. No, they're not in the same
12 position.

13 Q. But are the bullet casings --

14 A. The casings, yes, sir.

15 MR. MOSS: May he step down, your Honor?

16 THE COURT: Sure.

17 Q. (BY MR. MOSS) Now, you said you observed the
18 body?

19 A. Correct.

20 Q. Now, in this chart could you just with your
21 finger show the jury where the body was located at the
22 time that you saw the body?

23 A. Here's the two shirts. A truck, a white Ford
24 truck would be parked right here. The body was just to
25 the left of the two shirts, the two white shirts.

1 Q. Was it in close proximity to the truck?

2 A. Yes.

3 Q. Have a seat.

4 A. Thank you.

5 Q. So, once you secured the crime scene, what did
6 you do next?

7 A. I went back to the three individual males that
8 were in the backyard. I determined that they were
9 friends of the victim, that they also lived in the house
10 that we were at. I obtained their information. Wrote
11 it down and gave it to Officer Kessler who was a primary
12 unit at the point.

13 Q. Now, did you do any further investigative work
14 after that point?

15 A. No, sir.

16 MR. MOSS: Pass the witness, your Honor.

17 THE COURT: Defense?

18 MR. ALFORD: Thank you, your Honor.

19 THE COURT: Yes.

20 CROSS-EXAMINATION

21 BY MR. ALFORD:

22 Q. Officer Duffy?

23 A. Yes, sir.

24 Q. You stated that Houston Fire Department
25 paramedics were working on Mr. Bruney when you arrived,

1 correct?

2 A. That's correct.

3 Q. Was there a -- let me take you back in time
4 sequentially just a little bit. You said when you
5 arrived at the -- that's easy for me to say -- the
6 shooting scene, when you arrived there, there were
7 already several patrol cars there, correct?

8 A. That's correct.

9 Q. About how -- how many were there?

10 A. I want to say there was three.

11 Q. Three already. And then you arrived, making
12 four, probably?

13 A. Yes, correct.

14 Q. There was obviously the Houston Fire
15 Department personnel was already there. Was there an
16 ambulance there?

17 A. That's correct.

18 Q. And was there an engine there, a fire truck as
19 we like to say -- as my daughter likes to say?

20 A. I believe I -- I don't remember what -- what
21 type of vehicle was there for the fire department other
22 than an ambulance and the patrol cars.

23 Q. How many HFD personnel were there working on
24 Mr. Bruney?

25 A. I don't recall.

1 Q. More than one?

2 A. Yes, sir.

3 Q. More than two?

4 A. I don't recall.

5 Q. So, at least more than one?

6 A. Correct.

7 Q. Did you -- did you prepare a report in this
8 case, Officer Duffy?

9 A. Yes, sir, I did.

10 Q. And I assume, as the other officers did, it's
11 a supplement to the homicide investigation report,
12 correct?

13 A. That's correct.

14 Q. Did you use that to refresh your recollection
15 before you testified here today?

16 A. Yes, sir.

17 Q. Do you have it with you?

18 A. Yes, sir. It's right here.

19 MR. ALFORD: May I approach the witness?

20 THE COURT: Sure.

21 Q. (BY MR. ALFORD) Thank you, Officer.

22 MR. ALFORD: Your Honor, again, may I have
23 just a moment to verify this is the same copy?

24 THE COURT: Yes, sir.

25 Q. (BY MR. ALFORD) Officer, I'll give this back

1 to you. It appears to be the same copy that I have.

2 Thank you very much.

3 A. You're welcome.

4 Q. If you need to use that to refresh your
5 recollection. How many -- I assume it's -- it's one of
6 your duties as a police officer is that you are to make
7 accurate police reports with accurate information,
8 correct?

9 A. To the best of our ability, correct.

10 Q. That's all we can hope for, is the best of our
11 ability to be accurate as you can, correct?

12 A. That's correct.

13 Q. People are going to rely on the documents,
14 aren't they?

15 A. That's correct.

16 Q. You're going to rely on them like you have
17 today to refresh your recollection, correct?

18 A. Correct.

19 Q. Prosecutor is going to rely on those documents
20 in order to prepare their case for trial, correct?

21 A. Yes, sir.

22 Q. And we in the Defense as well are going to
23 rely on those documents in preparing the defense of
24 Mr. Brown correct?

25 A. That's correct.

1 Q. I wanted to ask you, how many people in your
2 opinion is a couple of people?

3 A. Two.

4 Q. How many people is several people?

5 A. More than two.

6 Q. More than two. All right. So, if you would
7 please, if you would refresh your recollection with your
8 document there, it reads that you observed several HPD
9 personnel working on a white male, correct?

10 A. That's correct.

11 Q. So, that would indicate -- although we can't
12 remember at this point, that would indicate based on
13 this document made there at the time of the shooting
14 that there were more than two Houston Fire Department
15 people working on him, correct?

16 MR. MOSS: I object. Only if it's
17 personal knowledge.

18 THE COURT: You can only testify to your
19 personal knowledge. Don't guess or speculate.

20 A. (CONTINUING) All I know is that there were
21 some paramedics over there. How many, I don't know.

22 Q. (BY MR. ALFORD) But you put in your report
23 there were several paramedics, correct?

24 A. That's correct.

25 Q. You agree that that's more than two, correct?

1 A. Could be, yes.

2 Q. So, we have several paramedics at the scene
3 and then we have three other white males at the scene
4 that you recall, correct?

5 A. That's correct.

6 Q. And, of course, all the other police officers
7 that are around?

8 A. That's correct.

9 Q. If we look -- if we look at State's Exhibit
10 No. 29, you've already testified in response to the
11 prosecutor's questions that Mr. Bruney was in this area
12 up here on the exhibit where it reads, "Two White
13 Shirts," correct?

14 A. That's correct, sir.

15 Q. And that the shell casings that are listed on
16 this exhibit, State's Exhibit No. 29, that are listed as
17 Shell No. 3, Shell No. 2, Shell No. 1, those are below
18 on the diagram, those are below on the diagram below the
19 two shirts, correct?

20 A. That's correct, yes, sir.

21 Q. So, these several Houston Fire Department
22 paramedics, when they had to come up the driveway in
23 order to get back to the very back of the driveway,
24 would have had to go through the crime scene, correct?

25 A. That's correct.

1 Q. And therefore, there is the potential for
2 those individuals before anyone else was there at that
3 point, you would agree with me, to have contaminated the
4 crime scene, correct?

5 A. Possibility.

6 Q. All right. Now, you have also three white
7 males listed in your report and that you testified to
8 that you noticed that were there at the scene, correct?

9 A. That's correct, sir.

10 Q. And -- if I could see your report? Thank you.
11 All right.

12 Where -- your recollection here today, where
13 on this diagram were the three white males that you
14 spoke of, where were they congregated?

15 A. If we're looking at the diagram right now, the
16 residence at 1320, it was just north of that in the
17 backyard, right in that general area.

18 Q. Okay. Back here. So, I'm pointing --

19 A. In the backyard.

20 Q. -- to the top -- on the top of State's Exhibit
21 No. 29. Back behind there it's listed as the square
22 that's identified as 1320 for the record. And above
23 where it reads, "Cell Phone," correct? You're stating
24 that was the backyard?

25 A. That's correct.

1 Q. So, if we assume as you just have that this is
2 north to the top of the diagram, correct?

3 A. Yes, sir.

4 Q. Then they would have been standing in an area
5 somewhere to the --

6 A. Northwest.

7 Q. -- west of where Mr. Bruney was, correct?

8 A. North, northwest.

9 Q. Okay. North, northwest, in this area above
10 the rectangle identified as 1320 for the record.

11 Now, where were you when you noticed them
12 standing there northwest of Mr. Bruney? Where were you
13 at that time?

14 A. I was next to the area by where Mr. Bruney was
15 laying.

16 Q. Okay. Instead of having to get you to get up,
17 I'll bring the diagram to you. Point on this for the
18 jury.

19 A. I was approximately in this general area right
20 here. I observed them in this area (indicating).

21 Q. About how far from you were they, in feet?

22 A. Twenty, 30 feet.

23 Q. Okay. About as -- from here to where
24 co-counsel in the black dress is, Ms. Gotro?

25 A. That's correct.

1 Q. Okay. And about how far were you from
2 Mr. Bruney there on the -- as he lay there on the
3 ground?

4 A. Five feet.

5 Q. Now, as far as these individuals, you don't
6 know whether or not they had been anywhere near
7 Mr. Bruney or his body depending on when he passed away,
8 you don't have any idea if any of these three gentlemen
9 out there had ever approached Mr. Bruney, do you?

10 A. No knowledge whatsoever.

11 Q. All right. And, therefore, you don't have any
12 idea where they had been in that shooting scene as far
13 as near Shell Casings 1, 2 or 3? You don't know where
14 they would have been before you arrived, correct?

15 A. That's correct.

16 Q. In fact, you don't know whether or not the
17 body -- they could have even moved the body, correct?

18 A. Correct.

19 MR. MOSS: Object to speculation.

20 THE COURT: Unless he knows.

21 Q. (BY MR. ALFORD) Correct?

22 A. That could be correct.

23 Q. You don't know whether -- personally whether
24 any evidence could have been moved or even removed from
25 the scene, correct?

1 A. That's correct.

2 Q. Now, therefore, those three individuals,
3 again, to use the term, potentially could have
4 contaminated the scene?

5 MR. MOSS: Object to speculation.

6 THE COURT: Sustained.

7 Unless you know of your own personal
8 knowledge.

9 Q. (BY MR. ALFORD) Is it possible?

10 A. It's possible.

11 Q. The -- I wanted to go back to the -- your
12 testimony regarding putting the glasses over the shell
13 casings. You stated that you actually put the glasses
14 over the shell casings, correct?

15 A. That's correct, sir.

16 Q. And if we look in the photographs of those
17 shell casings with glasses, for instance, State's
18 Exhibit No. 7, State's Exhibit No. 8, State's Exhibit
19 No. 9 and State's Exhibit No. 10, these clearly indicate
20 as was stated that these shell casings are no longer
21 under the glass as you state you originally put the
22 glasses on them, correct?

23 A. That's correct.

24 Q. So, someone at some point has at the very
25 least moved the glasses. Wouldn't you agree with that?

1 A. I would agree with that.

2 Q. And you've stated that in response to
3 Mr. Moss' question that you believe those bullets or
4 those shell casings, spent shell casings to be in the
5 same position as when you put the glasses over them, but
6 you can't really state whether or not that's the case,
7 can you? Clearly someone has moved things at that
8 scene, correct, after you put them there? Wouldn't you
9 agree with that?

10 A. I would agree that they moved the glasses.

11 Q. Okay. Further, Officer, you've stated that
12 you put the glasses there, and I quote, "To protect it
13 from anyone else disturbing the scene." Do you recall
14 that?

15 A. I remember saying that, to protect it from the
16 elements and from anybody possibly walking by.

17 Q. Well, and I wrote down "disturbing the
18 scene" --

19 MR. MOSS: Objection to hearsay, what he
20 wrote down.

21 THE COURT: Sustained.

22 Q. (BY MR. ALFORD) The -- so, obviously the
23 question is, is that you do these things because the
24 potential is always there that the scene can be
25 contaminated and disturbed, correct? Before, for

1 instance, you arrive to do anything about it?
2 Possibility, isn't it?

3 A. There's a possibility, yes.

4 MR. ALFORD: Thank you, Officer.

5 I'll pass the witness.

6 MR. MOSS: No further questions.

7 THE COURT: All right. May he be excused?

8 MR. MOSS: As far as the State's
9 concerned, yes.

10 MR. ALFORD: No, your Honor.

11 THE COURT: All right. You're on call.

12 Thank you very much.

13 Call your next.

14 MR. MOSS: State calls Officer Hammerle.

15 THE BAILIFF: This witness was previously
16 sworn, your Honor.

17

18 JAY HAMMERLE,

19 having been previously duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MOSS:

22 Q. Would you please state your name for the
23 record?

24 A. My name is Jay Hammerle. I'm a Houston Police
25 officer.