

1 the witness.

2 MR. MULDRROW: At this time the State calls
3 Deputy Elizondo.

4 DEPUTY ELIZONDO,
5 having been first duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 **BY MR. MULDRROW:**

8 Q. Will you introduce yourself to the ladies and
9 gentlemen of the jury?

10 A. I am Deputy Elizondo, E-L-I-Z-O-N-D-O.

11 Q. How long have you been with the sheriff's department?

12 A. Five years.

13 Q. And what do you do currently?

14 A. Patrol.

15 Q. Part of your duties with patrol, have you responded
16 to many aggravated robbery and robbery calls?

17 A. Yes, sir.

18 Q. Did you respond to an aggravated robbery call on
19 August 23rd, 2010?

20 A. Yes.

21 Q. Were you dispatched to Black Rock?

22 A. Yes.

23 Q. And is that a location in Harris County, Texas?

24 A. Yes.

25 Q. About what time of the day was that?

1 A. It was about 10:00 o'clock p.m.

2 Q. Can you kind of describe the location that you were
3 dispatched to at Black Rock?

4 A. It's about four -- it was an intersection and there
5 is businesses along the north side of Wallisville.

6 Q. Is there a Walmart parking lot there?

7 A. Yes.

8 Q. Are there other shopping centers there?

9 A. Yes.

10 Q. Are those parking lots relevant?

11 A. Yes.

12 Q. Were they relevant on the day that you went there?

13 A. Yes.

14 Q. When you got there, what was your objective when you
15 first arrived?

16 A. We had been advised on the radio that a suspect had
17 fled, and my objective was to set up a perimeter and possibly
18 find a suspect.

19 Q. Is that often your duties when you respond to an
20 aggravated robbery call?

21 A. Yes.

22 Q. What description did you get?

23 A. A black male wearing a black shirt and dark shorts.

24 Q. When you got there to the scene that evening, were
25 there a lot of people walking around?

1 A. No.

2 Q. Was there a lot of foot traffic?

3 A. No.

4 Q. Did you see a lot of people wearing black shirts and
5 black shorts?

6 A. No.

7 Q. Did you see one person wearing a black shirt and
8 black shorts?

9 A. Yes.

10 Q. Where was he at?

11 A. He was on the north side of Wallisville between Pizza
12 Hut in the parking lot.

13 Q. I am going to direct your attention to State's
14 Exhibit No. 1 which is up on the screen there. Do you see the
15 Pizza Hut where you observed that suspect?

16 A. Yes.

17 MR. MULDRROW: Your Honor, may the deputy step
18 down and point to the screen?

19 THE COURT: You may.

20 Q. (BY MR. MULDRROW) When you arrived at that location,
21 what direction were you coming from?

22 A. I was coming from west.

23 Q. Okay. And when you got your back to the jury, make
24 sure you talk loud, okay.

25 When you were coming up, where did you see the

1 suspect that you mentioned?

2 A. I seen him right here in this little driveway. There
3 is an entrance to this shopping center between the Pizza Hut
4 and some other things.

5 Q. And there on the exhibit that we're looking at is
6 that red building, is that the Pizza Hut that you are talking
7 about?

8 A. Yes.

9 Q. And was the suspect wearing a black shirt and black
10 shorts in between that main road in that Pizza Hut?

11 A. Yes.

12 Q. When you saw the suspect, what did you do?

13 A. I parked right in front of him. He stopped right in
14 the middle of the driveway, and I stopped my vehicle and he
15 basically stopped; we made eye contact. I told him to stop and
16 he stopped.

17 Q. Did the suspect say anything or make any facial
18 expressions when he saw you and you told him to stop?

19 A. No. Just looked at me.

20 Q. Was the suspect out of breath?

21 A. Yes.

22 Q. When you say out of breath, what does that mean?

23 A. He was, like, breathing heavily.

24 Q. Okay. After you stopped him, what did you do?

25 A. Stopped. I detained him. Handcuffed him and patted

1 him down, made sure he didn't have any weapons.

2 Q. Did he have any weapons?

3 A. No.

4 Q. Did he have anything on his person that you remember?

5 A. No, he didn't have anything.

6 Q. After you handcuffed him, patted him down, what did
7 you do?

8 A. Put him in the backseat of my patrol car.

9 Q. Where did you take him when you put him in the
10 backseat of your patrol car?

11 A. I then took him behind the Walgreens where the
12 complainant was.

13 Q. What was your purpose for taking him to the
14 complainant?

15 A. So he could see if this was the male that had robbed
16 the complainant.

17 Q. Okay. In 2010, was that the normal procedure if you
18 had made an arrest shortly afterwards to do a showup like that?

19 A. Yes.

20 Q. Is that still your procedure today?

21 A. Yes.

22 Q. Did the person you arrested match the description
23 that you had?

24 A. Yes.

25 Q. When you took him back to the complainant, did you

1 show him to the complainant?

2 A. Yes.

3 Q. Were you present when the complainant saw him?

4 A. Yes.

5 Q. Did you talk to the complainant?

6 A. Yes. I asked him if this was the male.

7 Q. What did you say? What were your exact words?

8 A. I had him in the back of the patrol car. I opened
9 the door. I asked the complainant if -- we had this man
10 detained, if he was one the suspects and right away; he said
11 yes.

12 Q. Was there light back behind the Walgreens?

13 A. Yes.

14 Q. Did you have a flashlight?

15 A. I had a flashlight and also the dome light inside of
16 my vehicle.

17 Q. Did you shine the flashlight on the suspect?

18 A. Yes.

19 Q. Was the suspect handcuffed?

20 A. Yes.

21 Q. When you asked him is this the suspect, what did the
22 complainant say?

23 A. He said that was him.

24 Q. Okay. What happened after that?

25 A. Gathered his name, date of birth and identified who

1 he was.

2 Q. Did you take him back to the station?

3 A. Yes.

4 Q. Were you the one who booked him in the jail?

5 A. Yes.

6 Q. Did anything unusual happen when you booked him into
7 custody?

8 MR. TRENT: Judge, can we approach for just a
9 minute.

10 THE COURT: Certainly.

11 (At the Bench, on the record)

12 MR. MULDRROW: I want to make sure we are not
13 allowed to solicit the defendant. There were some statements
14 made when he was in custody, and they are not recorded;
15 however, the grill, it was a gold grill that was in his mouth.
16 We need to take this outside the presence of the jury. He
17 threw the grill in the trash, and said that's what got him in
18 trouble.

19 (Jury not present)

20 THE COURT: The question on the offense report
21 is: What did he do with that.

22 MR. TRENT: He was talking about the grill and
23 my client supposedly says, "I threw it in the trash. That
24 grill is what got me in trouble."

25 THE COURT: Mr. Trent, you may take this witness

1 on voir dire.

2 **VOIR DIRE EXAMINATION**

3 **BY MR. TRENT:**

4 Q. Deputy Elizondo, my name is Mike Trent. I just have
5 a few questions for you. We were about to, I think, we were
6 about to ask some things that happened at the Wallisville
7 substation, right?

8 A. Yes.

9 Q. Once you were back there -- when you became aware
10 that my client no longer was in possession of a gold grill that
11 had been in his mouth; is that right? Did he have a gold grill
12 at first?

13 A. Yes, he did have a gold grill at first.

14 Q. Okay. And then he did have a gold grill, and you
15 asked him what he had done with it, right?

16 A. Well, he had it, and I was inventorying his property
17 and he had taken the grill off and so admitted all his property
18 and he said he didn't need it, and threw it in the garbage
19 right in front of me.

20 Q. At that point, you asked him something, right, or was
21 it later that you asked him?

22 A. I walked out of the room, and I went back, and I
23 looked in the garbage, and the grill was not in there anymore,
24 and I asked him what had happened to the grill.

25 Q. And he was in custody at that point, right?

1 A. He was still detained, yes.

2 Q. He was in custody for aggravated robbery; he wasn't
3 going home, right?

4 A. He was being -- I'm not sure at that time if he had
5 talked to the detective or not.

6 Q. But he was not free to leave?

7 A. Yes, he was not free.

8 Q. He was being processed into the jail?

9 A. Yes.

10 Q. That's why his property was being taken from him. He
11 was in custody, correct?

12 A. Yes, sir.

13 Q. And you asked him what he had done with the grill,
14 correct?

15 A. Yes, sir.

16 Q. And that's when he made a response to the effect
17 "That grill is what got me in trouble in the first place,"
18 correct?

19 A. Yes.

20 MR. TRENT: Judge, that's what we object to.

21 THE COURT: All right. Any questions?

22 MR. MULDROW: I don't have any questions. I
23 just want to make it clear that there was the initial statement
24 "I don't need that anymore." And then he leaves the room,
25 talks to the supervisor, comes back, and the grill is gone.

1 That's when he asked what happened to it.

2 THE COURT: And then what was the answer to
3 that?

4 MR. TRENT: Well, yes, see he asked him what he
5 had done with the grill.

6 THE COURT: "I don't need" -- he asked him a
7 question with regard to "I don't need this anymore."

8 MR. TRENT: Here is what is in the offense
9 report, Judge, and I'll ask him again and more clearly if you
10 want. "I asked him what he had done with this grill. He
11 stated he had it in his pocket, and this grill is what got me
12 into trouble in the first place." That's in response to the
13 question.

14 THE COURT: Is that what happened, officer?

15 THE WITNESS: Yes. That was the second time.
16 After he I had thrown it in the garbage, I walked out of the
17 room, talked to the detective and let him know what had
18 happened, that he had thrown it away in front of me and that
19 when I went back that's when I asked him.

20 THE COURT: You asked him and he said what?

21 THE WITNESS: That he had put it in his pocket.
22 That it was in his pocket and he took it out and he said that
23 he didn't need this anymore. That's what got me in trouble in
24 the first place.

25 THE COURT: Is that exactly what he had said at

1 the substation?

2 THE WITNESS: Yeah. I asked him -- first, I
3 asked him who had got the grill; where was the grill at?

4 THE COURT: Your objection is sustained. It was
5 pursuant to a question. He was in custody and it was for
6 purposes of interrogation because it was evidence in the case
7 that would lead to an ID.

8 MR. MULDRROW: Yes, sir. Just to be clear, the
9 initial statement that "I don't need this anymore" was not in
10 response to a question.

11 THE COURT: No. You just indicated in the
12 offense report that was in response to a question. "What
13 happened to the grill? I put it in my pocket. I threw it
14 away. I don't need it. That's what got me in trouble." That
15 was in response to a question. That's what this deputy just
16 testified to.

17 MR. MULDRROW: Can I ask a question to clear that
18 up?

19 THE COURT: Sure. I am going by what he wrote
20 in that offense report and what was just told to me on the
21 witness stand.

22 MR. MULDRROW: May I approach with a copy for the
23 officer?

24 THE COURT: You may.

25 **FURTHER VOIR DIRE EXAMINATION**

1 **BY MR. MULDROW:**

2 Q. (BY MR. MULDROW) The first statement that the
3 defendant made when he threw the grill away, what did he say?

4 A. He said, "I don't know need this."

5 Q. Okay. Did you ask him any questions about why he
6 threw it away?

7 A. Huh-uh.

8 Q. Is that a no?

9 A. I didn't ask him anymore questions.

10 Q. Any questions at all?

11 A. Not why he threw it away.

12 Q. After he threw it away, he said, "I don't need this
13 anymore"?

14 A. Yes.

15 Q. After that happened, what happened next?

16 A. That's when I walked out of the room and let the
17 detective know.

18 Q. What did the detective tell you?

19 A. He said to take it out of the garbage and put it in
20 his property.

21 Q. When you went back in the room, was the grill still
22 in the garbage?

23 A. It was not in the garbage.

24 Q. What did you do?

25 A. That's when I asked him "Where is the grill?" He

1 told me he had it in his pocket and this is what got me in
2 trouble in the first place.

3 Q. So when he took it out of his pocket, and said,
4 "That's what got me in trouble in the first place," that was in
5 response to your question of "Where is the grill?"

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes.

9 Q. His initial statement "I don't know need this
10 anymore. He just threw that in the trash," you didn't ask any
11 questions?

12 A. Huh-uh.

13 Q. Is that what you wrote down in your offense report?
14 Turning your attention to your offense report, this paragraph
15 here, will you read the first couple lines for me?

16 A. "While at the Wallisville station, Brandon Robinson
17 was advised to place his gold grill from his teeth inside of
18 property bag. He stated that he didn't want it and threw it in
19 the trash can."

20 MR. MULDRROW: Thank you. No further questions.

21 THE COURT: Mr. Trent.

22 MR. TRENT: Judge, I don't contend that he is
23 not able to testify about anything about this. But I don't
24 want any statements from my client about that gold grill coming
25 in even if they're in response to being instructed something or

1 told what to do. I mean, I think the deputy can say what he
2 saw, you know, and what he did in response to it. But I don't
3 want any statements. I'm objecting any statements made by the
4 complainant by the defendant while he was in custody.

5 MR. MULDRROW: State's argument is that one, the
6 statement was not done in interrogation. That it wasn't in
7 response to any questions or interrogations by default.
8 Secondly, it is a booking procedure he was being booked into
9 jail.

10 THE COURT: I understand. All right. I am
11 confused. Did he say that statement twice, or did he say that
12 statement once?

13 THE WITNESS: The statement about.

14 THE COURT: I don't know need this.

15 THE WITNESS: That was just one time.

16 THE COURT: He only said it once. You indicated
17 that in the offense report, he said that statement in response
18 to a question.

19 MR. TRENT: Well, I was reading verbatim, Judge.
20 I asked him what he had done with this grill, and he stated he
21 had it in his pocket; Brandon Robinson stated, "This grill is
22 what got me into trouble in the first place." I didn't mean to
23 misquote if I did, but the deputy has said two different
24 things. Now, maybe the first one is or is not in response to
25 interrogation.

1 THE COURT: Can I see the offense report?

2 MR. TRENT: That's the one I am more concerned
3 about is the second one.

4 THE COURT: Okay. You asked the question with
5 regards to it didn't have anything or not to do with
6 identification. Okay. The officer may testify to while at the
7 Wallisville station, Brandon Robinson was advised to place his
8 gold grill from his teeth inside the property bag. He stated
9 that he didn't want it and threw it in a trash can, period.
10 That's it. Because after that there is a question. I think
11 that question was I believe to be an interrogation based on the
12 fact that was obviously a similar part of identification of the
13 defendant. So you can go into what he did; but once there is a
14 question asked, you cannot go into the question nor the answer.

15 MR. MULDRROW: And I would not get into the
16 defendant's statement where he says, "This is what got me into
17 trouble." That was in response to a question. His statement
18 "I don't know need that anymore," my belief is not a response
19 to a question.

20 THE COURT: That is correct. In other words,
21 that first couple of sentences, you can go into that all you
22 want. You cannot go into anything after the question asked:
23 "I don't need this anymore." Whatever it was he said. .

24 Q. MR. MULDRROW: And you understand that,
25 Deputy Elizondo?

1 THE COURT: I am asking you to stick with the
2 first part of the report and not go into any part of the report
3 that is subsequent to "What happened to the grill?" Don't go
4 into the question. All right. Okay. Thank you, sir.

5 All right. Let's bring the jury back in.

6 MR. TRENT: May I ask counsel for a sidebar?

7 THE COURT: Sure.

8 MR. TRENT: Is there any other statements we
9 need to address? There is one other statement that I --

10 MR. MULDROW: No.

11 MR. TRENT: Okay.

12 THE COURT: All right. Please don't volunteer
13 any information. Just answer.

14 (Jury Present)

15 All right you may be seated.

16 **FURTHER DIRECT EXAMINATION**

17 **BY MR. MULDROW:**

18 Q. When you were booking the defendant into jail, did he
19 do anything that was unusual?

20 A. Yes. He threw some of his property away in the trash
21 can.

22 Q. What was the property that he threw away?

23 A. His gold grill.

24 Q. Can you describe the grill for us?

25 A. It was gold; I don't know if it had any diamonds or

1 cuts in it.

2 Q. Okay. You can't testify as to what the defendant
3 said in response to your question, but did the defendant make
4 any statement that was not in response to your question?

5 A. Yes.

6 Q. What did he say?

7 A. He said he didn't want it and threw it in the trash
8 can.

9 Q. Okay. As far as you know, did any of the other
10 suspects who were arrested know of this?

11 A. Not before.

12 THE COURT: Hold on a second. Counsel,
13 approach.

14 (At the Bench, on the record)

15 MR. MULDRON: I have no objection. I apologize
16 for my misinterpretation.

17 THE COURT: All right. You may sit down.

18 Ladies and gentlemen of the jury, please listen to me
19 carefully. You are not to consider in any way, you are to
20 completely forget the statements made by the prosecutor in this
21 case because I don't want anyone misled about what may or may
22 not have happened regarding the statement made by the
23 prosecution that, you can't go into anything they had asked the
24 accused or an answer that may be given any answers that he may
25 have given.

1 You are not to consider that as any progress here against
2 that statement made by the prosecution. It's what we call a
3 sidebar. Sidebars are not admissible for your consideration;
4 and if you are not a lawyer, you do not, forget it for all
5 purpose. You understand? I don't want you misled into
6 thinking that this person was interrogated; this person didn't
7 give any answers or anything of that nature. His statements I
8 don't believe are malicious. I believe his statement was a
9 statement regarding the law and only the law.

10 All right. You may proceed.

11 Q. (BY MR. MULDRON) As far as you know, did any other
12 suspects who were arrested that night have a gold grill?

13 A. No.

14 Q. After you booked the defendant into jail that night,
15 did you have any further involvement with this case?

16 A. Other than transporting him to downtown, that was it.

17 Q. Okay. Earlier Deputy Lewis testified that he also
18 arrested a gentlemen in that Pizza Hut parking lot. I just
19 want to be clear Mr. Robinson was not that person?

20 A. Correct.

21 MR. MULDRON: No further questions.

22 **CROSS-EXAMINATION**

23 **BY MR. TRENT:**

24 Q. Just briefly, Deputy Elizondo. Now, you told the
25 jury a few minutes ago about a description you were originally

1 operating under a black male wearing black shirt and black
2 shorts?

3 A. Correct.

4 Q. Now, Mr. Robinson, in fact, was not the only person
5 wearing articles of that nature, was he? Paul Rivon also had
6 on a black shirt and black shorts; is that correct?

7 A. That's correct.

8 Q. Now, is it your testimony that you were the main
9 deputy who conducted the showup?

10 A. Correct.

11 Q. What was Deputy Ellington doing at that time?

12 A. He was with the complainant. And had also -- because
13 one of the suspects had ran from him.

14 Q. Okay. And, in fact, Ellington was the one who
15 brought over the complainant to view my client as he sat, I
16 think, in the back of your patrol car?

17 A. The complainant was already at the Walgreens, and I
18 transported the defendant to the Walgreens where the
19 complainant was located.

20 Q. Correct. And Deputy Ellington brought other.
21 Mr. Victor to view my client in the back of your patrol car,
22 correct?

23 A. Correct.

24 Q. Were you privy of anything Deputy Ellington told
25 Mr. Victor prior to that?

1 A. No.

2 Q. No, you don't know what prefatory remarks he may have
3 made before bringing him over to that vehicle, right?

4 A. Correct.

5 Q. All that you were able to see was that once he got up
6 there the complainant identified my client as being one of the
7 guys who robbed him, right?

8 A. Correct.

9 Q. Now, he was also shown two other people that night,
10 right? Paul Rivon and Steven Cooper?

11 A. Correct.

12 Q. And he was shown a total of three people in using the
13 showup procedure, correct?

14 A. Correct.

15 Q. Same one for each guy. Each of those three gentlemen
16 that I have just mentioned were in the back of a vehicle and
17 the complainant was shown them individually?

18 A. Correct.

19 Q. And he identified all three as having been involved
20 in a robbery against him?

21 A. Yes, sir.

22 Q. Now, let me ask you just a couple of questions about
23 your initial interaction with Brandon Robinson. You see him
24 walking, where was he?

25 A. He was in the driveway walking from the Pizza Hut.

1 Q. Okay. And when he saw you, did he make any effort to
2 run away?

3 A. No.

4 Q. Did he make my effort to resist?

5 A. No.

6 Q. When you, when you got him detained for officer
7 safety, you knew you were dealing with an aggravated robbery,
8 right?

9 A. Correct.

10 Q. So for officer safety, did you pat him down?

11 A. Correct.

12 Q. Did he have any weapons?

13 A. No.

14 Q. Did he have any property that appeared to belong, or
15 that was later learned to belong, to the complainant on him?

16 A. No.

17 Q. And I think since you talked about things that
18 happened at the jail, you did a thorough search of him before
19 the evening was over, correct?

20 A. Correct.

21 Q. At any time, did he have a weapon or property
22 belonging to the complainant on him?

23 A. No.

24 Q. Now, is the -- you've been shown a part of the
25 offense report, correct?

1 A. Correct.

2 Q. That is something written by you, right?

3 A. Correct.

4 MR. TRENT: No further questions.

5 THE COURT: Anything further.

6 MR. MULDROW: Nothing further from the State.

7 THE COURT: May this witness be excused?

8 MR. MULDROW: No objection from the State.

9 THE COURT: May this witness be excused?

10 MR. TRENT: Just subject to recall, on call.

11 THE COURT: Mr. Elizondo, you are free to go
12 about your business. Thank you very much.

13 You may call your next witness.

14 MR. MULDROW: At this time the State calls
15 Vincent Victor.

16 THE COURT: Is everyone okay? Everybody is all
17 right? You don't need a break of any sort?

18 You may proceed.

19 VINCENT VICTOR,

20 having been first duly sworn, testified as follows:

21 **FURTHER DIRECT EXAMINATION**

22 **BY MR. MULDROW:**

23 Q. Can you introduce yourself to the ladies and
24 gentlemen of the jury?

25 A. Vincent Curtis Victor.