

1 eliminated from the right hand. Is DNA always stored
2 on an item when someone touches it? I mean, can you
3 tell us with if that right hand ever touched him or
4 not? Or can you interpret that?

5 A. I couldn't say that with these results.

6 MR. PENEGUY: Pass the witness.

7 MR. SCOTT: No further questions,
8 Judge.

9 THE COURT: You are excused. Thank
10 you so much.

11 What time is lunch?

12 THE BAILIFF: Noon.

13 THE COURT: Next witness, please.

14 MR. PENEGUY: State calls Sergeant
15 Elliott.

16 THE COURT: From the State, please.

17 C.E. ELLIOTT,

18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. PENEGUY

21 Q. Sir, would you introduce yourself to the
22 jury.

23 A. I'm Sergeant C. E. Elliott of Houston
24 Police Department homicide division.

25 Q. How long have you been with the Houston

1 Police Department?

2 A. Over 37 years.

3 Q. Prior to that, did you go to the police
4 academy?

5 A. Before the police academy, I was a kid.
6 But I worked for nearly two years for the prison
7 system.

8 Q. And then once you attended the academy, did
9 you become a certified peace officer in the State of
10 Texas?

11 A. Yes, I did.

12 Q. Are you currently a certified peace
13 officer?

14 A. Yes, I am.

15 Q. How long have you been assigned to the
16 homicide division?

17 A. Over 23 years.

18 Q. In your 23 years, have you participated in
19 few or many homicide investigations?

20 A. I've been a murder squad investigator the
21 entire time I've been in homicide. Many.

22 Q. And have you participated in investigations
23 that have led to arrests?

24 A. Many.

25 Q. Let's kind of talk about where you were

1 back in June, 2012. Do you remember what murder
2 squad you were assigned to back then?

3 A. I've been with the same squad since '92,
4 Squad 11.

5 Q. Who was your partner in June, 2012?

6 A. That would be Officer Mark Stahlin.

7 Q. And typically when you're investigating a
8 homicide, would you guys go out to the scene or meet
9 at the scene?

10 A. If we were called out, we would meet at the
11 scene. We work a rotation. So we come directly from
12 the house on a call out, our respective homes, and go
13 to the scene.

14 Q. So normally would you be assigned to the
15 day shift?

16 A. We work a day shift with a rotation. We're
17 on call like nine months a year. Like I am currently
18 on the same rotation now I was then, which was I work
19 days Monday through Friday. I show up at work and
20 work 7:00 to 3:00. But the scenes I'm responsible
21 for are scenes that occur between 11:00 p.m. and 7:00
22 a.m. Monday through Thursday morning.

23 Q. Okay. So if it were after hours, how would
24 you get called out to a scene?

25 A. The homicide -- patrol makes the scene

1 originally. They get the call from dispatch. When
2 they get there and determine what it is, they would
3 call the homicide desk. The desk officer sergeant
4 makes the decision. And then they would contact
5 whoever is first up on the board. You do a rotation,
6 and if you're first up, you get the call.

7 Q. Did you receive a call in reference to a
8 homicide on the early morning hours of June 8th,
9 2012?

10 A. Yes, I did.

11 Q. Okay. Can you tell us what scene you
12 responded to?

13 A. We got called -- I got the call around
14 1:10 a.m. on Friday morning.

15 MR. SCOTT: It's nonresponsive to what
16 scene he responded to, your Honor. We'd object to
17 nonresponsive.

18 THE COURT: Listen to the question and
19 answer it as specifically as you can.

20 THE WITNESS: Okay.

21 A. 5126 Van Fleet at Jutland in southeast
22 Houston.

23 Q. (MR. PENEGUY) And can you tell us what time
24 you received the call?

25 A. 1:10 a.m. I got dressed and went there,

1 2:13.

2 Q. When you arrived at the scene, can you kind
3 of describe just the overview of the outside of the
4 location?

5 A. It's a single family residence. It was
6 located at the corner of Van Fleet and Jutland. I
7 noticed patrol cars around it. It had been a real
8 heavy thunderstorm that night. It had been raining.
9 The rain over, but it had been -- I passed through it
10 on the way in from the north side. Patrol cars
11 parked there. I noticed several people sitting in
12 the back of patrol cars. I noticed the front door of
13 the house of the address that was given, 5126, was
14 propped up. Both the metal door and the wooden door
15 was pushed to the inside.

16 Q. And was the crime scene, was it considered
17 secure at the time you arrived?

18 A. Yes.

19 Q. What does that mean?

20 A. Means the police were in charge of the
21 situation. There was no one with weapons or anything
22 out there like that. They had put the crime scene
23 tape up where they needed to to block off people from
24 walking in and out and picking up or gathering
25 anything. As a matter of fact, one of the witnesses

1 had walked up as the scene was ended.

2 MR. SCOTT: Object unless he knows of
3 his own knowledge, your Honor. We also request a
4 question and answer as opposed to narrative.

5 THE COURT: Restate your question.

6 Q. (MR. PENEGUY) Okay, Sergeant Elliott. You
7 talked about the scene being secured. Is the effort
8 to secure scenes to preserve any evidence?

9 A. It's one of them, yes.

10 Q. What are some of the other reasons why you
11 secure a crime scene?

12 A. To make it safe for the citizens and the
13 police officers who have to conduct the
14 investigation.

15 Q. Can a citizen walk into a crime scene while
16 you guys are conducting a homicide investigation?

17 A. No, they may not.

18 Q. If somebody does that, is that a problem?

19 A. Yes, it is.

20 Q. By the time you had arrived, were there
21 already some individuals that had been, you said, put
22 in the back of patrol cars; is that fair?

23 A. The weather was bad. I didn't know why
24 initially. But I learned that they were witnesses or
25 complainants and they just wanted to isolate them,

1 let them calm down.

2 Q. Why do you isolate a witness from a
3 homicide scene?

4 A. Because you want to learn from the witness
5 only what they know. If you let them all get
6 together, they will start talking and you'll get
7 group thought or group knowledge instead of
8 individual knowledge.

9 Q. Is it important for you guys to have
10 particularized individual knowledge when you're
11 talking about a homicide investigation?

12 A. Yes.

13 Q. Why?

14 A. I want the truth and the facts of the case,
15 and I don't want someone to tell me something that
16 they don't know for a fact or the truth themselves.

17 Q. When you got to the homicide scene, you
18 described that there with were patrol units. Was
19 there any type of paramedics or emergency response
20 personnel?

21 A. When I got there, they were already gone.

22 Q. Did you learn during the course of your
23 investigation whether any individual had been
24 transported by emergency responders?

25 A. Yes. Quick. I mean, that is one of the

1 first things I asked and learned that there had been
2 two victims transported to the hospital. One had
3 been taken to Memorial Hermann.

4 *MR. SCOTT:* Object to hearsay, your
5 Honor.

6 *MR. PENEГУY:* I'll prove it up, Judge.

7 *THE COURT:* Go ahead.

8 Q. (*MR. PENEГУY*) Later during the course of
9 your investigation, did you learn what hospital
10 people had been taken to?

11 A. Yes. Yes.

12 Q. Did you ever go to those hospitals?

13 A. Yes.

14 Q. Personally?

15 A. Personally.

16 Q. Let's talk about -- still we're at the
17 scene right now. Two individuals have been
18 transported. Was the decedent still at the location?

19 A. Laying in the living room.

20 Q. Okay. Describe the decedent.

21 A. A middle aged black male with his face
22 down, severely beaten.

23 Q. Let me break that up. When someone is
24 found dead on arrival, right, you call that what?

25 A. Well, it's actually -- we call it "DRT" or

1 "dead right there."

2 Q. They are DRT. Are they touched or
3 manipulated, or are they left in that location?

4 A. They are left there. The body belongs to
5 the medical examiner, not me.

6 Q. So is it important that the body is not
7 moved for your investigation?

8 A. Very important.

9 Q. And was this a case of what you call a DRT?

10 A. That's -- excuse me, but that's the
11 language. He was dead right there. The paramedics
12 had responded, determined he was deceased. We did
13 not touch anything.

14 Q. Did you have an opportunity to kind of do a
15 basic walk-through of the house?

16 A. Yes, I did.

17 Q. Was it your primary responsibility to do
18 the reporting for homicide for the scene itself?

19 A. The physical evidence, no.

20 Q. Okay. Whose responsibility was that from
21 homicide?

22 A. On this scene it was Officer Mark Stahlin
23 and Crime Scene Unit Woody Tompkins.

24 Q. Okay. But did you personally familiarize
25 yourself with the scene?

1 A. Yes, I have to.

2 Q. Why is that?

3 A. We do -- we call it the front and back; the
4 witness side and the scene side. We have two
5 homicide investigators.

6 Q. What was your part?

7 A. I was the witness side or the detail side.

8 Q. Why is it important for you to know if
9 you're not the scene side that you're kind of doing a
10 walk-through?

11 A. Because when the people talk about
12 something that happened, they're going to describe
13 the physical end of it and I want to know what
14 they're talking about.

15 Q. Did you do that in this case?

16 A. Yes, and I need to know what to ask from
17 viewing it.

18 Q. You told us you arrived I think it was
19 2:13?

20 A. Yes, sir.

21 Q. Can you us about how long you were out
22 there?

23 A. I left the scene at 3:45 a.m. So from 2:13
24 to 3:45. When you do the math, it's two hours, you
25 know, a little over two hours.

1 Q. When you're out there, are you trying to
2 get names and identity of potential witnesses?

3 A. Yes.

4 Q. During the course of your investigation,
5 did you get names and identities of particular
6 individuals?

7 A. Yes.

8 Q. Did you do that personally?

9 A. Yes.

10 Q. Can you tell us the name and identity of
11 the person or the female that was in the patrol
12 vehicle?

13 A. Female in the patrol vehicle was Patricia
14 Moore Asbury.

15 Q. Okay. Just don't tell me anything that she
16 said or anything like that, but can you kind of
17 describe how did she look? Or how did she look to
18 you?

19 A. She looked emotionally upset and physically
20 scarred, traumatized, victimized, distraught. She
21 had been through a very traumatic experience, and she
22 was -- you could see it in the way she acted in
23 movements. And just she was a scared lady.

24 Q. And she was sitting there in a police car
25 by the time you showed up?

1 A. Yes.

2 Q. And that was a couple hours after whatever
3 this thing was that happened?

4 A. Yes.

5 Q. You said that there was another individual
6 that had been, I guess, put in the back of a squad
7 car. Did you get his identity?

8 A. Yes, I did.

9 Q. What was his identity?

10 A. His name?

11 Q. Yes, sir.

12 A. Brian Mosely.

13 Q. Okay. Were you able to determine based
14 upon your understanding of the investigation whether
15 he was an eyewitness to the event?

16 A. I carried him down, determined that he was
17 not.

18 Q. But just -- he had been somebody that had
19 been kind of held for a few minutes, right?

20 A. He was detained. He was put in the back of
21 a patrol car. He stayed at the house occasionally.

22 MR. SCOTT: If it please the Court, we
23 object to any comment by any witness that is not
24 going to be able to be cross-examined by me. It's
25 hearsay, your Honor.

1 *THE COURT:* So a hearsay objection?

2 *MR. SCOTT:* Yes, hearsay.

3 *THE COURT:* Overruled.

4 *Q.* (*MR. PENEГУY*) So was there anybody else
5 that you recall being in patrol cars at the scene?

6 *A.* Those two.

7 *Q.* Inside the living room of the house,
8 describe how you remember seeing the scene.

9 *A.* A violent -- a lot of violence had taken
10 place in the living room. The couch was on its end.
11 I don't mean turned over. I mean standing upright on
12 its end. There was broken chairs and tables
13 scattered around the room. Fixtures were --
14 planters, metal objects were turned over laying on
15 its side. There was broken glass and pottery laying
16 on the floor. Massive amount of blood.

17 *Q.* Specifically, did you get to look at the
18 victim as he lay on the ground?

19 *A.* Yes, I did.

20 *Q.* Okay. And did you -- were you able to get
21 an identity of him?

22 *A.* I was.

23 *Q.* What was his name?

24 *A.* Baron Keith Armstrong.

25 *Q.* Okay. And did you leave it to the crime

1 scene unit officers to kind of try to -- you know,
2 they're the primary ones for documenting and
3 photographing of how he lay; is that fair?

4 A. Correct.

5 Q. Now, when you're looking at him, what type
6 of things are you looking for?

7 A. Where his injuries are, anything laying
8 next to him, his clothing, how he died, if I can see
9 what killed him obviously.

10 Q. Okay. Was this -- was this one a little
11 bit more messy in regards to some of --

12 A. It was very messy, but I figured I knew
13 what killed him.

14 Q. And were there items throughout the living
15 room that you observed that contained blood evidence?

16 A. A lot of them.

17 Q. To your knowledge, were some of those items
18 tagged into evidence?

19 A. Yes.

20 Q. Now, was absolutely everything from that
21 living room tagged into evidence?

22 A. They would have had to be. The whole
23 room -- they tagged the whole room. Physically took
24 walls out and carried the whole room down if -- to
25 get -- they had to get every drop of blood out of

1 there.

2 Q. The items of evidence that were tagged that
3 you observed -- there was like a metal pole, right?
4 Did the metal pole, is it considered to be a blunt
5 object?

6 A. Yes, it is.

7 Q. Is it capable of causing serious bodily
8 injury and death?

9 A. Yes, it is.

10 Q. Let's talk about a chair.

11 *THE COURT:* Let's approach.

12 *(At the Bench.)*

13 *THE COURT:* Why are you telling -- why
14 don't you tell the jury something that they
15 don't know, that they don't already know? So far
16 we've heard about all of this from somebody else. I
17 don't need him to rehash it. The jury doesn't need
18 it to be rehashed. Say something new. Otherwise,
19 let's move on. Thank you.

20 *MR. PENEGUY:* Yes, sir.

21 *(In open court.)*

22 Q. *(BY MR. PENEGUY)* Sergeant Elliott, let's
23 talk about what you did when you left the scene here.
24 You said it was around 3:45?

25 A. Yes, sir.

1 Q. Where did you go?

2 A. I first went to the hospital to see the
3 victim, Charles Howard, went to Ben Taub.

4 Q. And are you referring to some notes of
5 yours?

6 A. Yes, sir.

7 Q. Is that part of the offense report in this
8 case?

9 A. It's my notes with keywords from the
10 offense report which is right behind it.

11 Q. Okay. Is that something that you prepared?

12 A. Yes.

13 Q. When you're talking about Charles Howard,
14 what hospital was he at?

15 A. He's at Ben Taub. It's Willy Howard
16 actually.

17 Q. Did you go to Ben Taub and meet with him?

18 A. Yes, I did.

19 Q. Were you able to take any pictures or
20 photographs of him?

21 A. I did there in the trauma room.

22 MR. PENEГУY: Judge, may I approach
23 the witness?

24 THE COURT: You may.

25 Q. (MR. PENEГУY) Showing you what has been

1 marked for identification purposes as State's Exhibit
2 Number 136 and 137. Do you recognize these?

3 A. Yes, I do.

4 Q. Are these photographs that you took?

5 A. I personally took these with my Olympus
6 Style, a little point and scoot digital camera, yes.

7 Q. Do they fairly and accurate depict how
8 Mr. Howard appeared when you met with him?

9 A. Yes.

10 MR. PENEGUY: Judge, at this time we'd
11 offer 136, 137; tender to counsel.

12 MR. SCOTT: May we approach, your
13 Honor?

14 THE COURT: You may.

15 (At the Bench.)

16 MR. SCOTT: Object to the introduction
17 of 136 and 137 in that there has been no testimony in
18 any way whatsoever that connects this person to the
19 occurrence on Van Fleet. There is an Oscar that has
20 been named. The only person we know of is Oscar and
21 a T.J. This is neither one of those by name.

22 Therefore, we will object that it's immaterial to any
23 issue in this case and not probative.

24 MR. PENEGUY: Judge, he's identified
25 the individual that he went to the house that was

1 transported from that scene. It's relevant to this
2 case, Judge.

3 *MR. SCOTT:* He has not identified
4 anyone that was transported from that scene because
5 he was not there when anyone was transported. He
6 goes to Ben Taub and takes pictures of that
7 individual.

8 *MR. PENEGUY:* He also speaks to that
9 individual.

10 *THE COURT:* He's going to object to
11 hearsay.

12 *MR. SCOTT:* Of course I will.

13 *THE COURT:* You can ask him how did he
14 know the person was connected.

15 *(In open court.)*

16 *MR. PENEGUY:* Judge, at this time we
17 offer State's Exhibit Number 171, which are business
18 record affidavit containing records from Ben Taub
19 Hospital. They have been on file with the Court
20 pursuant to a business record affidavit.

21 *MR. SCOTT:* We have no objection.

22 *THE COURT:* State's Exhibit Number 171
23 is admitted.

24 *Q.* (*MR. PENEGUY*) Sergeant Elliott, you went to
25 Ben Taub Hospital. Did you identify the individual

1 you met with there?

2 A. Yes.

3 Q. Did you learn whether he was present at the
4 scene?

5 A. He was.

6 Q. Is that by his own statement?

7 A. Yes.

8 Q. And you're not personally familiar, I'm
9 assuming, with these hospital records, are you, sir?

10 A. No, I'm not.

11 Q. The photographs that you took of him, were
12 those photographs to try to document what he appeared
13 like?

14 A. Yes.

15 *THE COURT:* 136? 137?

16 *MR. PENEGUY:* State would offer
17 State's Exhibit Number 136, 137.

18 *MR. SCOTT:* We would renew our
19 objection.

20 *THE COURT:* Overruled. State's
21 Exhibit Number 136, 137 are admitted.

22 *MR. SCOTT:* May I publish State's
23 Exhibit Number 136, 137, Judge?

24 *THE COURT:* You may.

25 Q. (*BY MR. PENEGUY*) This is State's Exhibit

1 Number 136. Sergeant Elliott, who is that?

2 A. That's Charles Willy -- Charles Willy
3 Howard at Ben Taub Hospital. I took a photo of him
4 there at the trauma room where he was being treated
5 and administered to.

6 Q. Let me show you what's been admitted into
7 evidence at State's Exhibit Number 137.

8 A. That's my picture. The glare is right
9 here, but he's got staples in the back of his head
10 from where they stapled his -- well, he had
11 laceration to the back of his head, and they had
12 stapled it closed.

13 Q. Will you clear that marker, please.

14 A. *(Complies.)*

15 Q. The glare from the overhead makes it
16 difficult to see. Is it more clear to see when
17 you're actually looking --

18 A. Yes. Right here. It's centered in the
19 photo. You can see at least three of the staples.

20 *(Indicating.)*

21 MR. PENEГУY: Judge, may I publish by
22 passing it to the jury?

23 THE COURT: Sure.

24 *(Exhibit Published.)*

25 Q. *(BY MR. PENEГУY)* What did you do after you

1 went to the location where Mr. Howard was?

2 A. I obtained ID, hospital information from
3 him. Then I left there and went to Memorial Hermann.

4 Q. What was your purpose in going to Memorial
5 Hermann?

6 A. To check on the other victim.

7 Q. What was the name of the other --

8 A. Margaret Stewart.

9 Q. Did you, in fact, meet with -- did you see
10 Margaret Stewart?

11 A. I physically observed her and photographed
12 her and obtained her information, yes.

13 *MR. PENEKUY:* Judge, at this time the
14 State would offer State's Exhibit Number 172,
15 business records that have been on file with this
16 Court pursuant to a business record affidavit,
17 records from Memorial Hermann Hospital pertaining to
18 Margaret Stewart.

19 *THE COURT:* Mr. Scott?

20 *MR. SCOTT:* We have no objection, your
21 Honor.

22 *THE COURT:* State's Exhibit Number 172
23 is admitted. Thank you.

24 *MR. PENEKUY:* Judge, may I approach
25 the witness?

1 *THE COURT:* You may.

2 *Q.* (*BY MR. PENEGUY*) Showing you what has been
3 marked for identification purposes as State's Exhibit
4 Number 134, 135. Ask if you recognize these items?

5 *A.* Yes, I do.

6 *Q.* Okay. Were these items -- are they
7 photographs?

8 *A.* Again, they are photos I personally took
9 with my camera.

10 *Q.* Okay. Do they fairly and accurately depict
11 how Margaret Stewart appeared?

12 *A.* Yes.

13 *MR. PENEGUY:* Judge, offer 134, 135;
14 tender to counsel.

15 *MR. SCOTT:* May we approach, your
16 Honor?

17 *THE COURT:* You may.

18 (*At the Bench.*)

19 *THE COURT:* May I see it?

20 *MR. SCOTT:* Object to 134 in that it's
21 more inflammatory and prejudicial than it is
22 probative as to any issue in this case which has to
23 do with aggravated sexual assault of Patricia Moore
24 Asbury or the murder of Baron Armstrong, your Honor.

25 *THE COURT:* Who is the person?

1 MR. PENEGUY: That is Margaret
2 Stewart, Judge. She's the witness that was chased
3 down the street.

4 THE COURT: It's overruled.

5 (In open court.)

6 THE COURT: 134, 135 are admitted.

7 MR. PENEGUY: Judge, may I publish
8 134, 135?

9 THE COURT: You may.

10 Q. (MR. PENEGUY) Show what has been marked for
11 identification purposes State's Exhibit Number 134.
12 Can you tell us where you found Margaret Stewart?

13 A. In one of the trauma rooms there at
14 Memorial Hermann Hospital.

15 Q. Can you describe her condition?

16 A. She was unconscious when I saw her. She
17 had an obvious laceration above both eyes. Her left
18 chin had a laceration on it. You can see. Her
19 arm -- not in the picture, but her left arm was
20 broken. She had a broken jaw, and her skull was
21 possibly fractured. They hadn't determined that at
22 the time. You can obviously see the big bruise in
23 the center of the head over the left eye. A skull
24 fracture. She had been severely beaten.

25 Q. State's Exhibit Number 135.

1 A. It's her left hand. It shows it's been
2 stomped on or beaten. That's the swelling. That's
3 not an offensive wound because it's back here.

4 *(Indicating.)*

5 MR. SCOTT: If it please the Court, I
6 would object unless there is some predicate laid for
7 this man to talk about his expertise.

8 THE COURT: Sustained.

9 Q. (MR. PENEGUY) Where is that located?

10 A. It's on the back of the hand back up here,
11 not on the knuckles or the front of the fist.

12 *(Indicating.)*

13 Q. And was there swelling that you could
14 observe?

15 A. It was very swollen. The hand was very
16 injured.

17 Q. In the time that you met with or in the
18 time you were at Memorial Hermann, taking
19 photographs, trying to get information on Margaret
20 Stewart, was she conscious?

21 A. No.

22 Q. After you had gone to Memorial Hermann
23 Hospital, what did you do next?

24 A. Returned to the office or went to the
25 office, 1200 Travis, and began putting everything

1 together and calling in other investigators to assist
2 who come in at 7:00 a.m. to start assisting me in the
3 followup.

4 *MR. SCOTT:* Your Honor, I would
5 object. This is nonresponsive to the question.

6 *THE COURT:* Restate it.

7 *Q.* (*MR. PENEGUY*) What did you do when you got
8 back to the homicide division?

9 *A.* I started the followup investigation.

10 *Q.* Okay. Were there other officers called to
11 assist in the canvassing?

12 *A.* Yes. The remainder of my squad pretty much
13 jumped in and started helping. We work a 10-man
14 squad, Squad 11. They started jumping in. And we
15 all do that on other people's cases.

16 *Q.* Why do you guys conduct homicide
17 investigations in the whole squad?

18 *A.* Because these are people who need to be --
19 the case needs to be cleared, the person who did the
20 charge, did the crime arrested and got off the
21 streets to make the City of Houston safer.

22 *Q.* When you guys were doing -- and the whole
23 squad was working on the case, did you guys have a
24 general description of a suspect?

25 *A.* Yes.

1 Q. What was the general description of the
2 suspect put out?

3 A. Well, a black male, big, over 240 pounds,
4 initial description. Well over 6-foot tall, long
5 ponytail hair. And we had a name.

6 Q. And was the name placed -- did you obtain a
7 photograph of the individual to try to obtain and get
8 a photo array prepared in this case?

9 A. We did that same morning.

10 Q. Did you attempt to get that photo array to
11 witnesses to make a positive identification?

12 A. Did.

13 Q. Later on in the course of your
14 investigation -- let me go back. There has been some
15 terminology thrown around by a couple of witnesses in
16 the case. Sounds like street slang or something.
17 Have you ever heard the term smoking wet?

18 A. Yes.

19 Q. What is your understanding of smoking wet?

20 A. Wet is marijuana laced with -- it's laced
21 with PCP, formaldehyde, embalming fluid. It's bad
22 stuff.

23 Q. And is that sometimes referred to as
24 smoking water?

25 A. Yes.

1 Q. During the course of your investigation at
2 some point in time did you come into contact with a
3 person identified as Johnathan Renard Castaneda?

4 A. I did.

5 Q. Okay. Do you recognize Johnathan Renard
6 Castaneda in the courtroom today?

7 A. I do.

8 Q. Please point to him and identify him by an
9 article of clothing.

10 A. The person sitting at defense table with a
11 goatee and he's got his hair in a ponytail again.

12 *MR. PENEGUY:* Judge, may the record
13 reflect the witness has identified the defendant,
14 Johnathan Castaneda?

15 *THE COURT:* Record will so reflect.

16 Q. (*BY MR. PENEGUY*) Where did you come in
17 contact with the defendant?

18 A. At the homicide office on June 11.

19 Q. On June 11 did you have the opportunity to
20 take some photographs of the defendant as he
21 appeared?

22 A. I did.

23 *MR. PENEGUY:* May I approach the
24 witness?

25 *THE COURT:* You may.

1 Q. (MR. PENEKUY) Show you what has been marked
2 State's Exhibit Number 138 through 153. Prior to
3 testifying today, have you had an opportunity to
4 review these?

5 A. Yes, I have.

6 Q. Can you look through them briefly?

7 A. Yes. (*Complies.*)

8 Q. Do those photographs fairly and accurately
9 depict how the defendant appeared?

10 A. On June 11th, yes.

11 Q. Okay.

12 MR. PENEKUY: Judge, at this time we
13 would offer State's Exhibit Number 138 through
14 State's Exhibit Number 153.

15 MR. SCOTT: We have no objection to
16 the offer, Judge.

17 THE COURT: Thank you. State's
18 Exhibit Number 138 through 153 are admitted.

19 MR. PENEKUY: Judge, may I publish
20 these?

21 THE COURT: You may.

22 Q. (MR. PENEKUY) Show you what has been marked
23 as State's Exhibit Number 138. What is that a
24 photograph of?

25 A. That is my identifying photo. Like I say,

1 I'm taking the picture and I write the person's name
2 on a piece of paper so I have a reference of who it
3 is when I look at it later. And that is Johnathan
4 Renard Castaneda, the defendant.

5 Q. And is the writing able to be read when
6 you're actually holding the photograph?

7 A. Yes, it is. You can read it. It's my
8 writing.

9 Q. State's Exhibit Number 139, does that show
10 how his face and upper shoulders and that area
11 appeared?

12 A. Yes.

13 Q. What date are you taking these photographs?

14 A. June 11th, three days after the crime.

15 Q. State's Exhibit Number 140, does that show
16 his left cheek, left side of his neck?

17 A. Yes.

18 Q. I want to talk to you about the defendant's
19 hair. How did the defendant's hair appear on
20 June 11th?

21 A. He had cut it. It was short.

22 Q. Was short hair consistent with the
23 description that had been given by the witnesses in
24 the description of the suspect?

25 A. No. Everyone had said the defendant had

1 long hair.

2 MR. SCOTT: Objection.

3 Non-responsive. Object to the form of the answer,
4 your Honor. Nonresponsive.

5 THE COURT: Restate the question.

6 Q. (MR. PENEGUY) What was your understanding
7 of the length of the defendant's hair on the date of
8 the offense?

9 A. It was long and in a ponytail.

10 Q. Did you see any evidence of that when you
11 photographed him on June 11th?

12 A. It was short. It was like a Number 2
13 maybe.

14 Q. What do you mean Number 2?

15 A. The hair cut they put them, the length is
16 the Number 2.

17 Q. Denoting the length, correct?

18 A. Yes, sir.

19 Q. State's 141, what are you trying to
20 document on all of these photographs?

21 A. Well, what the defendant looks like and
22 noting that there's no injuries on him.

23 Q. Are you looking for injuries on him?

24 A. Yes.

25 Q. Are you looking for any injuries on his

1 face and on his body?

2 A. Yes.

3 Q. If there is an injury, are you going to try
4 to take a photograph of it?

5 A. I would have, yes. And I did the few I
6 saw.

7 Q. Okay. 142. That kind of show the upper
8 body?

9 A. Yes.

10 Q. Describe his build.

11 A. Big. The man is -- he's thick. He is --
12 he's one of these that you see -- he's not a
13 weightlifter in the true sense that he's cut like
14 Hulk Hogan or something. He's just one of those
15 naturally big, strong guys.

16 Q. State's 143, you're just going down and
17 trying to document the body; is that fair?

18 A. Correct.

19 Q. State's 144. What is that a photo of?

20 A. That was showing again his size and the
21 fact that there is no injuries on his back. He
22 hasn't been hit across the back or lower back with
23 anything. There isn't any bruising. There's no
24 marks or scratches or tears back there from someone
25 assaulting him.

1 Q. 145, what does that show?

2 A. Well, that begins to show you when you look
3 at him from the side, when I talk about thick, you
4 see now how big the guy is across the shoulders and
5 all, and recording his tattoos.

6 Q. 146. Hang on. What are we looking at
7 there?

8 A. There's a scratch mark there that's got
9 blood on it. It's an injury. I recorded it. It's
10 not bad. I mean, you see it's just a little dried
11 blood. But it's an injury, so I took note of it.

12 Q. And that injury, that scratch is on what
13 arm?

14 A. That would be on his right arm.

15 Q. What part of his right arm?

16 A. On his forearm right here. (*Indicating.*)

17 Q. Can you describe for the jury that injury?
18 Was it perpendicular to his forearm?

19 A. Yes, it was across it.

20 Q. Okay. 147, what are you capturing here?

21 A. The back shoulder of his left shoulder, the
22 muscle down his back, on his side.

23 Q. Did you denote any injuries to his left
24 arm?

25 A. I don't see any. None.

1 Q. If there was injury on the left arm, would
2 you have documented it?

3 A. I would have.

4 Q. State's Exhibit Number 148, what are we
5 looking at here?

6 A. I'm showing his arms out front with his
7 tattoos and the tops of his hands and all.

8 Q. Are you looking for injuries there?

9 A. Yes, I am.

10 Q. 149. What are you trying to capture here?

11 A. His hands, his knuckles. You see there's a
12 little abrasion from his right hand like he had maybe
13 hit something, has an abrasion on his knuckle from a
14 blow strike. And lack of injuries other than that.

15 Q. Okay. 150. 151. 151 actually, does that
16 show the defendant's open hand?

17 A. Yes. Again, I'm looking for any injuries
18 and the fact that no one hit him with anything. He
19 didn't try to grab it or block it or anything with
20 his hand. See, he didn't block any blows with his
21 hand, which is what you naturally first throw out to
22 stop someone from hitting you.

23 Q. 152, did you photograph the upper torso
24 chest and this area without a shirt on?

25 A. I did.

1 Q. Okay. Did you denote any injuries on his
2 upper torso or stomach area?

3 A. Did not.

4 Q. 153, what have we got there?

5 A. That is the patrol officer who transported
6 him to the station. Since there was no reference to
7 size in any of the photos, that is Officer Horace
8 Jackson, I think is his -- Johnson, just the
9 transporting officer taking him to jail. I took a
10 picture of Johnson next to him, and Johnson is
11 wearing his vest and all his accouterments that go
12 with it and showing the size of the two men that --
13 you're talking about a big man.

14 Q. So it's not like you've got a ruler or a
15 tape measure on the back wall?

16 A. Correct. It's just taken in our office.

17 MR. PENEГУY: Judge, I pass the
18 witness.

19 THE COURT: Your lunch is supposed to
20 be here in a couple minutes. Let's break for lunch.

21 When you're through, let us know.

22 *(Jury leaves courtroom.)*

23 THE COURT: You may be seated. Thank
24 you.

25 *(Luncheon recess.)*

1 THE COURT: All right. Bring them in.

2 *(Jury enters courtroom)*

3 CROSS-EXAMINATION

4 Q. (BY MR. SCOTT) For the record, you're
5 Sergeant Elliott with HPD homicide, Murder Squad 11,
6 right?

7 A. Yes, sir.

8 Q. And you were testifying earlier, were you
9 not?

10 A. Yes, sir.

11 Q. The pictures that you've talked about,
12 which is 138, 139, 140, 142, 143, 144, 146, 145,
13 these are picture taken where and when?

14 A. By me on June 11th at 1200 Travis Street.

15 Q. Where is Travis. And "when" was what
16 again?

17 A. Where? Yes, sir.

18 Q. Was on Travis. And when?

19 A. June 11th.

20 Q. All right. Now, you were shown 146 that
21 shows this wound to I think Mr. Castaneda's right
22 arm; is that correct?

23 A. The lateral scratch on his right arm, yes.

24 Q. All right. So that's referred to as a
25 lateral scratch, right?

1 A. That's the way I describe it.

2 Q. Okay. What would you describe this in
3 relation to 130? What kind of injury is that?

4 A. I did not take this picture.

5 Q. No, sir. I understand that you did not.

6 A. It's a scratch, an abrasion.

7 Q. Where is the scratch?

8 A. Right there around -- between the 1 and 2
9 mark. There's some bruising at the 6 mark.

10 Q. Do you know how old those scratches are in
11 relation to that exhibit?

12 A. I didn't -- I have never seen this exhibit
13 until you handed it to me, Counselor.

14 Q. I understand. Do you have any idea how old
15 this scratch is in Exhibit 130?

16 A. No.

17 Q. No, correct? Do you know how old the same
18 type of scratch is in 146 in your opinion?

19 A. I took that picture and I see the blood on
20 it, so it's relatively fresh.

21 Q. All right. Now, in relation to the scene
22 out there, did you in fact notice -- let me back up a
23 minute. You talked about walking through the scene
24 out there and looking at the house and its condition,
25 correct?

1 A. Correct.

2 Q. All right. Did you notice any bullet holes
3 in the ceiling in the living room?

4 A. I did not.

5 Q. Did you look for any .22 type bullet holes
6 in the ceiling of that room?

7 A. I did not.

8 MR. SCOTT: Pass the witness, your
9 Honor.

10 MR. PENEGUY: No further questions for
11 this witness.

12 THE COURT: You may be excused subject
13 to being recalled.

14 Call your next witness.

15 MR. PENEGUY: Call Dr. Chu, C-H-U.

16 THE COURT: From the State.

17 ALBERT CHU,
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 Q. (BY MR. PENEGUY) Please introduce yourself
21 to the jury.

22 A. My name is Albert Chu. I'm an assistant
23 medical examiner at the Harris County Institute of
24 Forensic Sciences.

25 Q. Can you tell us how long you've worked at