

1 Thank you.

2 *THE COURT:* Thank you, Mr. Cortes.

3 Call your first witness,

4 Mr. Tallichet.

5 *MR. TALLICHET:* The State calls Joseph
6 Flanagan.

7 *THE COURT:* You may proceed.

8 *MR. TALLICHET:* Thank you, Your Honor.

9 **JOSEPH LEROY FLANAGAN,**

10 having been first duly sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 *BY MR. TALLICHET:*

13 Q. Would you please state your name for the
14 record?

15 A. Joseph Leroy Flanagan.

16 Q. Okay. Mr. Flanagan, what do you do for a
17 living?

18 A. I'm a deputy constable with Harris County,
19 Texas.

20 Q. How long have you been with the Constable's
21 Office?

22 A. I've been back there since 2005, November.

23 Q. What do you do for them?

24 A. I serve civil papers, civil duty.

25 Q. What does that means?

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1 A. If someone sues you, I go to your house and
2 serve you. That way, if you don't come to trial, you
3 can't say you didn't know, because I served you.

4 Q. Do you have any other patrol duties or
5 anything that's associated with your job?

6 A. No, sir.

7 Q. What did you do before you had that
8 position?

9 A. I've been in and out of law enforcement for
10 26 years. My dad had a small company that did dirt
11 work and I left and did that and I do some of that on
12 the side with the tractor and stuff like that.

13 Q. What kind of dirt work is that?

14 A. Just spreading dirt and gravel. It's just
15 a side job, you know, deputy pay is not that great.

16 Q. And you still do that today?

17 A. Yes, sir.

18 Q. What's your family life like?

19 A. Wonderful.

20 Q. Do you have a family?

21 A. Twenty years. Been married 20 years three
22 kids.

23 Q. How old they?

24 A. 19, 14 and 10.

25 Q. What are they? Boys? Girls?

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1 A. 19 is a girl, 14 is a girl, and 10-year-old
2 is a boy.

3 Q. What is your wife's name?

4 A. Marisa.

5 Q. Now, I want to direct your attention to
6 June 3rd of this year, do you remember that day?

7 A. I do.

8 Q. It was a Sunday, I believe?

9 A. Correct.

10 Q. What were you doing that day?

11 A. We spent the day on the river on my boat:
12 my wife, her friends, and my two youngest kids, the
13 14 and 10-year-old.

14 Q. What river is that?

15 A. San Jacinto River.

16 Q. Do you know -- where is that in relation to
17 where we are now?

18 A. It's East Harris County below Lake
19 Houston -- the Dam.

20 MR. TALLICHET: May I approach the
21 witness, Your Honor?

22 THE COURT: Yes.

23 Q. (BY MR. TALLICHET) Mr. Flanagan, I'm
24 showing you what's been marked as State's Exhibit
25 No. 1, do you recognize this?

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1 A. I do.

2 Q. What is it?

3 A. It's an area where we were that day,
4 San Jacinto River.

5 Q. Does it accurately reflect that area?

6 A. Yes, it does.

7 MR. TALLICHET: State offers State's
8 Exhibit No. 1 and tenders it to Defense counsel for
9 objection.

10 MR. CORTES: No objection.

11 THE COURT: State's 1 is admitted.

12 MR. TALLICHET: Thank you.

13 May I publish it to the jury?

14 THE COURT: Yes.

15 Q. (BY MR. TALLICHET) Mr. Flanagan, do you
16 prefer to be called mister or deputy?

17 A. Mister is fine.

18 Q. I noticed you're not wearing your uniform
19 today, why is that?

20 A. I didn't think it would be appropriate in
21 court.

22 Q. Okay. Was there anything about this day --
23 were you working on that day?

24 A. No, sir, purely recreational.

25 Q. Okay. So, you were just out with your

1 family?

2 A. Yes, sir. My job is Monday through Friday
3 8:00 to 5:00.

4 Q. Gotcha. Okay. So, this location here
5 (indicating) on State's 1, that is marked by that
6 "A"?

7 A. "A" is the marina where we had launched the
8 boat.

9 Q. And if you can just kind of describe -- can
10 you describe the marina and the river there? Are you
11 familiar with it?

12 A. Yes, very much. I've been going there
13 probably 30 years.

14 Q. Okay. What do y'all do when you go there?

15 A. We head north up towards the Dam. There's
16 a subdivision called New Port, it has a really nice,
17 pretty white-sand beach where the kids can play on
18 the beach. It's just more of a family area up that
19 way toward the Dam.

20 Q. Okay. What are the other areas like?

21 A. Down on the lower part of the river towards
22 the other villas it's more adult speedboat, wild kind
23 of stuff. So, we didn't want to take the kids there.

24 Q. Okay.

25 A. And there's an area between New Port and

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1 the Dam where we can jet ski and pull the kids on a
2 tube and there's not a lot of boating activity there.

3 Q. Okay. Who was with you on June 3rd?

4 A. My wife Marisa, her friend Tammy, and my
5 two children: my 14-year-old daughter Hannah, and
6 10-year-old son Chance.

7 Q. Where was your other child?

8 A. The 19-year-old, she was home.

9 Q. Okay. Why didn't she go with you that day?

10 A. She decline. She has her own jet ski, and
11 she didn't feel like going out.

12 Q. Okay. So, about what time did you arrive?

13 A. I'd have to say about -- around noon. If I
14 had to guess, right around 12:00 o'clock.

15 Q. How do you get there?

16 A. From my house, we proceed westbound -- I
17 live right off of Highway 90 so it's approximately
18 six miles from the Marina. We go westbound on 90.
19 We take Lord Road to the Beaumont Highway -- that's
20 the old road -- and you exit there at the boat ramp.
21 It's called Loves Marina.

22 Q. And do you store your boat there?

23 A. No, I trailer it from my house.

24 Q. Okay. So, where do you store it?

25 A. It's at my house.

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1 Q. And how do you get it in the water?

2 A. Well, I like that marina because my wife
3 can't park a truck and a trailer so it's easy for me
4 to launch the boat and then stick it on the sand and
5 then go park the truck.

6 Q. Okay.

7 MR. TALLICHET: May I approach the
8 witness, Your Honor?

9 THE COURT: Yes.

10 Q. (BY MR. TALLICHET) Mr. Flanagan, I'm
11 showing you what's been marked as State's Exhibit
12 No. 2, do you recognize this?

13 A. I do.

14 Q. What is it?

15 A. This is -- the first boat ramp is where we
16 put it in, either one will do. This is the sandbar
17 where I stick the boat up here, then I go park my
18 truck and trailer.

19 Q. So, this is the marina?

20 A. Correct.

21 Q. Does it reflect the marina as it appeared
22 on June 3rd?

23 A. It does.

24 MR. TALLICHET: State offers State's
25 Exhibit No. 2 and tenders to Defense for objection.

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1 MR. CORTES: No objection, Your Honor.

2 THE COURT: State's 2 is admitted.

3 MR. TALLICHET: May I publish it to
4 the jury?

5 THE COURT: Yes.

6 Q. (BY MR. TALLICHET) All right.

7 Mr. Flanagan, if you touch the screen to your right,
8 you can mark the boat ramp that you used. I see that
9 there are two.

10 A. Right. It would be this one closest, right
11 there (indicating).

12 Q. Okay. And, again, that's pretty much how
13 the marina looks?

14 A. Right.

15 Q. Were there more boats there that day?

16 A. There were. It's a five-boat marina.

17 Q. Okay. Where is the sandbar where you pull
18 up?

19 A. I pull up right here (indicating), because
20 the bottom of my boat's a little high and it's easier
21 for my wife to step out on these -- you see these
22 real large boulders (indicating). You can step right
23 out of the boat, instead of climbing out in the sand.
24 It's approximately right here (indicating) where I
25 parked, at any space that's open but that day, I

1 pulled upright here (indicating).

2 Q. Okay. Can you describe your boat?

3 A. I'm sorry?

4 Q. Can you describe your boat?

5 A. It's a 22-foot Cobalt. It's more like a
6 station wagon on the water. It's just actually fun
7 for the kids. It's open; we pull tubes and stuff
8 like that.

9 Q. So, on June 3rd you arrived and you put
10 your boat in the water?

11 A. Correct.

12 Q. And then what did y'all do?

13 A. We left and went immediately to New Port to
14 play on the beach.

15 Q. Can you mark on there -- if you touch the
16 bottom left corner, it ought to clear it.

17 A. (Witness complies).

18 Q. Maybe a little bit further.

19 A. Okay.

20 Q. So, where is New Port?

21 A. It's not on this. It's a little bit higher
22 up the river. It's just below the Dam, about right
23 there (indicating), if you can see that.

24 Q. So on State's 2, on the river --

25 A. That's correct.

1 Q. -- up towards the top?

2 A. Correct. Just above the screen here is the
3 Dam for Lake Houston.

4 Q. And what did y'all do?

5 A. We take one of those canopy things because
6 I don't like to sit in the sun; the kids play in the
7 sand and we play with them. That particular day my
8 daughter didn't take her jet ski; so, we didn't do
9 any playing between there and the Dam. We just sat
10 there. And it's a lot of boats; lot of families out
11 there --

12 Q. Okay.

13 A. -- they do the stuff like you would do at
14 the beach: play in the water, build sand castles,
15 stuff like that.

16 Q. Gotcha. How long were you there?

17 A. Approximately, four hours --
18 three-and-a-half, four hours.

19 Q. Were y'all drinking at all?

20 A. We were.

21 Q. What were you drinking?

22 A. I had -- I drink beer. My wife and her
23 friend had those little bottles of wine, little
24 bitty, small ones.

25 Q. How much?

1 A. I don't drink a lot, because my wife can't
2 drive a boat or pull a trailer. So, I normally take
3 six, when they're gone, I'm done because I'm also
4 responsible for the family. So possibly over a
5 six-hour period I had six beers.

6 Q. Okay. Now at the -- was there anything
7 eventful or anything stick out about that particular
8 day?

9 A. Well, with regards to the latter, no.

10 Q. Up to this point so far.

11 *THE COURT:* One at a time. Excuse me.
12 Y'all need to be more careful to speak one at a time
13 or else my court reporter is going to burst into
14 flames. Okay?

15 *THE WITNESS:* Yes, ma'am.

16 Q. (BY MR. TALLICHET) Up until this point.

17 A. No, nothing of any consequence.

18 Q. Kids having fun?

19 A. Yes, sir.

20 Q. Everybody -- are the adults having fun?

21 A. Yes.

22 Q. What was the lake like up there, in terms
23 of how many people there were?

24 A. The beach was pretty full. It's
25 approximately 150-, 160-linear feet of beach and

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1 boats, maybe, 20 feet apart, lots of families, lots
2 of kids.

3 Q. What time did y'all leave there?

4 A. About 4:00, 4:30. All you want is about
5 four hours of the sun and heat.

6 Q. What did you do?

7 A. We came back down -- there's a brand new
8 marina that had built a slide, where you slide down
9 in the river and so we stopped there. We paid \$5 per
10 kid, and we stopped there and let them play there for
11 approximately an hour, hour and a half, something
12 like that.

13 Q. Where was that?

14 A. It is --

15 Q. Did I zoom in too much?

16 A. Me or her?

17 Q. You.

18 A. Oh, it's about here. It's on this side of
19 the river, though.

20 Q. Okay. So, there's a slide?

21 A. Yeah, it's brand new; first summer it's
22 opened. We passed it on the way to New Port.

23 Q. What did y'all do there?

24 A. My wife and her friend and I stood in the
25 water and watched the kids come down the slide.

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1 Q. Had y'all ever been there before?

2 A. No, sir.

3 Q. About how long did you stay?

4 A. Approximately, an hour, hour-and-a-half.

5 Q. So, what time is it now?

6 A. It's approaching 6:00.

7 Q. So, why did you decide to leave there?

8 A. We -- originally, we were going to go get
9 out of the water because we'd had enough fun. The
10 kids wanted to ride some more because we had been
11 parked all day. So I agreed to go. I told them we
12 would ride up to Banana Bend, turn around, and come
13 back, before we took the boat out of the water.

14 Q. What is Banana Bends?

15 A. It's a water park that people get to mostly
16 by car. It would be down here (indicating) where it
17 says "Sandbar Estate." The reason I turned around
18 and had to go back is because there's a speed limit
19 in the river and it takes you forever to get by. So
20 I told them we're going to turn around and go back,
21 they like to ride.

22 Q. Okay. Now, so, tell me about that ride
23 down there, anything eventful happen?

24 A. Well, yeah, at the railroad trestle -- I
25 don't know if you can see the black line above the

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1 "A" is a railroad and it's a no wake zone. So we had
2 slowed down in between the piling there's only a
3 couple of places that you can get through there
4 that's deep enough. So we slowed down to get through
5 that, when we were cut off by another boat, a
6 speedboat.

7 Q. Okay. Can you describe that boat?

8 A. Sir?

9 Q. Can you describe that boat?

10 A. It's one of the, I think, they call it a
11 "pickle fork." It was one of the ones that ride this
12 high (indicating) out of the water with the outboard
13 motor that goes real fast.

14 Q. Okay. How many people were in it?

15 A. Two gentlemen.

16 Q. How many people could fit in it?

17 A. I'm not sure. I think it has two back
18 seats. I'm not sure.

19 Q. Can you describe it relative to your boat?

20 A. With regards to size?

21 Q. Yeah, just generally, what kind of boat it
22 was?

23 A. If you look at it, you would say it's a
24 speedboat.

25 Q. Okay. Now, what drew your attention to

1 them?

2 A. We had slowed down to comply with the no
3 wake zone and they kind of cut us off really close to
4 get in front of us.

5 Q. How did that make you feel?

6 A. Same way it would when somebody cuts you
7 off in traffic, but you go on.

8 Q. Anything else happen at that point?

9 A. No, we -- they went on through and took
10 off. And then after we passed the trestle, we got up
11 to speed.

12 Q. How fast does your boat go, when you say,
13 "got up to speed"?

14 A. It goes about 40 on a good day but that's
15 wide opened. It only goes about 30, 35 miles an hour
16 with people in it.

17 Q. So, what did you do?

18 A. We went to where I said, the Banana Bend
19 area --

20 Q. Uh-huh.

21 A. -- and we turned right there where it says,
22 "Sandbar Estates." You can't actually see it, but
23 there's actually an island there so you can go and
24 turn back to go through Muleshoe Lake and go back to
25 the lake and head back to the marina.

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1 Q. What was the lake like down there?

2 A. Right there where it says "Sandbar
3 Estates," that's a neighborhood. But across there is
4 Muleshoe Lake, where a lot of boats tie up together
5 and party. It's an adult area.

6 Q. So when you turned around and head back up,
7 did you notice anything in particular?

8 A. Not in particular.

9 Q. So you turned around and started heading
10 back up?

11 A. Yeah, there was a lot of boats tied up at
12 the entrance there where it says "Muleshoe Lake," and
13 we kind of blasted through there and went on back.

14 Q. What happened next?

15 A. Well, we were -- approximately, where it
16 says "Crosby Freeway," which is the new Highway 90
17 Bridge. We were approached on the right side by two
18 gentlemen in the speedboat and they were yelling
19 something at us. Obviously, it was noisy; we
20 couldn't understand. And the driver threw a full
21 beer can at my boat.

22 Q. How did you know it was full?

23 A. There was a very big thud and it hit the
24 boat and it went over my head and almost hit my
25 daughter who was seated in the seat beside my wife

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1 and Tammy, the other girl.

2 Q. What did you do?

3 A. Well, honestly, I don't remember. I mean,
4 I was, obviously, it upset me. But, you know, I
5 don't know what I've done to these people. You know,
6 did I go by you too fast and done something to
7 disrespect their wake?

8 My wife was saying the same thing:
9 Idiots, there's kids in the boat. What are you
10 doing? You know, you're coming too damn close;
11 you're going to hit us.

12 But I didn't want to stop. I've got
13 my family in the boat. I can't outrun them because
14 I'm in the station wagon so we just kept on going.

15 Q. How fast were you going when you were
16 yelling back and forth at each other?

17 A. Probably like -- my cruise speed 30, 35.

18 Q. Okay. Did you slow down at any point to
19 talk to them?

20 A. I was afraid to. I did slow down once, but
21 I was trying to keep them away from me. There's some
22 pilings there to hold up the bridge on Old 90 and I
23 kind of went around them, real slow, and then took
24 off back to the marina, but they just followed me
25 around and on back.

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1 Q. Did you get a look at them?

2 A. I did.

3 Q. Do you recognize the defendant in the
4 courtroom today?

5 A. I do.

6 Q. Can you identify him please by an article
7 of clothing that he's wearing and where he's sitting?

8 A. I can. Well, yes, come to find out they
9 were brothers so they look similar, but the driver
10 was, I believe, had more of a -- what they call a
11 "mullet" hairstyle and the passenger was his older
12 brother, had short hair.

13 Q. So, can you identify him by an article of
14 clothing that he's wearing?

15 A. Not by an article of clothing, I think he
16 was shirtless on the boat.

17 Q. I mean, the person you saw on the boat, do
18 you see him in the court today?

19 A. Yes, sir.

20 Q. What is he wearing today?

21 A. The striped shirt. If that's the younger
22 brother being James -- I know they look alike but if
23 that's the younger one, then, yes, that's him.

24 MR. TALLICHET: May the record reflect
25 that the witness has identified the defendant.

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1 THE COURT: Did he ever? I may have
2 missed it.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: If you'll describe what
5 the person is wearing today, I may have missed it.

6 THE WITNESS: Blue-and-white-striped
7 shirt.

8 THE COURT: The record will so reflect
9 that he has identified the defendant in this case.

10 MR. TALLICHET: Thank you, Your Honor.
11 May I approach the witness?

12 THE COURT: Yes.

13 Q. (BY MR. TALLICHET) I'm showing you what has
14 been marked as State's Exhibit Nos. 3 and 4, do you
15 recognize these pictures?

16 A. I do.

17 Q. What are they?

18 A. This would have been the driver who
19 assaulted me, and this would have been the passenger.

20 Q. Does this accurately reflect how they
21 looked on that day?

22 A. Yeah, I remember the driver having longer
23 hair.

24 Q. Okay. And what about on State's Exhibit
25 No. 4?

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1 A. I believe that's him. He had -- the driver
2 had come at me really aggressively at the boat ramp,
3 and I wasn't paying attention to the one that went
4 around behind me, but as you can see the similar
5 looks. I believe this to be the driver, with the
6 longer hair.

7 *THE COURT:* The record is unclear when
8 he says "this."

9 Q. *(BY MR. TALLICHET)* When you say "driver,"
10 can you refer to them by State's Exhibit 3?

11 A. I'm sorry. State's Exhibit No. 3 would
12 have been the driver.

13 Q. And State's Exhibit No. 4?

14 A. Would have been the passenger.

15 Q. Thank you.

16 *MR. TALLICHET:* State offers State's 3
17 and 4 and then tenders to Defense counsel for
18 objection.

19 *MR. CORTES:* Your Honor, we're going
20 to object under 402, as well as, them being
21 cumulative and redundant. He's already identified
22 the defendant.

23 *THE COURT:* And those are overruled.
24 State's 3 and 4 are admitted.

25 *MR. TALLICHET:* May I publish them to

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1 the jury?

2 THE COURT: Yes.

3 Q. (BY MR. TALLICHET) Mr. Flanagan, I'm
4 showing you what has been admitted as State's Exhibit
5 No. 3, who is that?

6 A. I believe that to have been the driver of
7 the boat, sir.

8 Q. All right. And do you see this gentleman
9 in the courtroom today?

10 A. I do.

11 Q. And I'm showing you what's been admitted as
12 State's Exhibit No. 4. Do you recognize this
13 gentleman?

14 A. Yes, sir, he was the passenger.

15 Q. And do you see him in the courtroom today?

16 A. I do not.

17 Q. All right. Thank you.

18 All right. So I believe we left
19 off -- you were heading back and a beer can had just
20 come flying in your boat.

21 A. Yes, sir, they pulled up beside us.

22 Q. What happened next?

23 A. We continued on in the marina and they
24 stayed with us for a little while and I think they
25 turned around. In my mind, they had accomplished

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1 whatever retribution.

2 Q. So what, if any, contact was made between
3 the boats?

4 A. There was some physical contact between the
5 boats after the beer-can incident. I don't know if
6 it was from wave action from other boats or control
7 instances, because he was trying to drive a boat and
8 throw a beer can and hit the boat at the same time.

9 Q. Okay. So in relation to when the defendant
10 threw the beer can at you, how soon after or before
11 or during would you say that contact was, if you
12 remember?

13 A. Probably a few seconds, five or 10 seconds
14 after, there was some slight contact.

15 Q. But it was just sort of at the same time
16 when they're driving right along next to you?

17 A. Yes, sir.

18 Q. Okay. Where is the driver's seat of your
19 boat?

20 A. Mine is on the right side of the boat.

21 Q. Did you have has been opportunity to see
22 where the driver's seat was in the defendant's boat?

23 A. Yes, sir.

24 Q. Where was it?

25 A. It was on the left side of the boat.

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1 Q. So when he threw the beer can at you, about
2 how close would you say he was able to get to you?
3 Which side of your boat was he on?

4 A. He was on the right side. Which would have
5 put us close together with regards to the driving
6 position of the boats.

7 Q. Okay.

8 A. So, he was probably 10 to 12 feet from me.

9 Q. All right. So he was -- was he then
10 throwing over his passenger and over your passengers
11 or was he --

12 A. No, I was on my side that's closest to him,
13 and he was on the side that's closest to me.
14 Speedboats, for some reason have the steering wheel
15 on the left side like a car. He threw it forehand,
16 I'm assuming, with the right hand. I was trying to
17 drive the boat and look at them at the same time.

18 Q. Okay.

19 A. It is a crowded river.

20 Q. Okay. So at this point what's going
21 through your mind?

22 A. My family's safety.

23 Q. What are they doing?

24 A. My wife was screaming at them: What are
25 you doing? We've got kids in the boat.

1 And, obviously, to be honest, I was
2 occupied to the point of not knowing what my kids are
3 doing. My daughter had moved up to the bow, which is
4 an open bow. So her and my 10-year-old were in the
5 bow of the boat as we proceeded on.

6 Q. Why were you proceeding onward?

7 A. That was -- I wanted to get away,
8 obviously, but we were already headed back to pull
9 out of the water to go home.

10 Q. So, what happened next?

11 A. Well, we pulled into the marina and I
12 didn't -- it's like a lagoon area. I didn't see them
13 anywhere around so I beached the boat on the sand
14 that we looked at earlier and jumped out to go get
15 the truck and trailer.

16 Q. Okay. I'm showing you, again, what's been
17 admitted as State's 2. Is this the area where you
18 returned to?

19 A. Correct.

20 Q. Where was your truck and your trailer
21 parked?

22 A. The parking area is over here (indicating)
23 to the right of where I just pointed, where all the
24 trucks and trailers park.

25 Q. Where did you pull up?

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1 A. Approximately, right here (indicating).

2 Q. And that is about -- towards the bottom
3 there where the rocks are on that picture?

4 A. Correct.

5 Q. Why did you pull up there?

6 A. That's where -- it's at a point -- see
7 where you can see the rocks are closest to the
8 waterline, where my family can step off of the bow
9 and onto the rock. My bow is about 4 feet off the
10 dirt.

11 Q. Now you -- what do you do next?

12 A. I got out of the boat to go retrieve my
13 vehicle and trailer and go extract the boat.

14 Q. Where were the defendants at this point?

15 A. I was approximately right here (indicating)
16 walking toward the right towards the parking area,
17 when they came this way (indicating) right up --
18 coming at me this way (indicating).

19 Q. If you'd draw a line on there.

20 A. (Witness complies).

21 Q. Were they on foot or were they on the boat?

22 A. They were in the boat. The driver actually
23 started climbing out onto the bow before he came to a
24 complete stop and slipped and fell. And then jumped
25 off into the water here (indicating and began coming

1 at me in an aggressive manner.

2 Q. How deep is the water there?

3 A. 3 to 4 feet, not very deep.

4 Q. So, was he swimming towards you or was he
5 able to walk?

6 A. He walked.

7 Q. And when you say in an "aggressive manner,"
8 what do you mean?

9 A. The subject was cursing and screaming, you
10 know, loudly and walking towards me at a fast pace.

11 Q. What did you think was going to happen?

12 A. There was going to be an altercation.

13 Q. Why?

14 A. To this day I -- I don't know.

15 Q. So, what did you do?

16 A. Well, because they had followed us into the
17 lagoon area -- I left my weapon which I carry
18 off-duty in the boat -- and as fast as they got up on
19 me, I took a defensive stance about right here
20 (indicating). Maybe in ankle-deep water and was
21 preparing to defend myself.

22 Q. Was it just this defendant at this time or
23 was the brother out of the boat too?

24 A. The brother -- I was watching out of the
25 corner of my eye -- was still the boat. It came to a

1 stop here (indicating) in this shallow area and
2 that's when I believe he got out.

3 Q. Okay.

4 A. Most of my attention was on the individual
5 that was approaching me aggressively.

6 Q. And that's this defendant?

7 A. Yes, sir.

8 Q. So, what happened next?

9 A. We began to have an altercation, I guess,
10 for lack of a better word. He was swinging at me and
11 I was swinging at him and we were holding on pretty
12 good. I failed to notice that the passenger had
13 worked his way around behind me and grabbed me in a
14 bear hug pinning my arms to my side.

15 Q. So, the defendant's brother, the other
16 gentleman in State's 4 --

17 A. Correct.

18 Q. -- came around behind you and pinned your
19 arms down?

20 A. Correct. In a bear hug, sort of.

21 Q. At that point what -- could you move?

22 A. No.

23 Q. Could you get your arms up?

24 A. No.

25 Q. So, did they stop you and confront you

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1 about whatever it was that they wanted to know?

2 A. No. What was it, No. 3, was the picture?

3 Q. Yes.

4 A. Began to beat me in the face, in the facial
5 area.

6 Q. With what?

7 A. His fist.

8 Q. How long did that go on?

9 A. It's heart hard to say, but it seems like a
10 lot longer than it probably was, 10, 15 seconds.

11 Q. And then what happened?

12 A. Some people -- there were some people there
13 that had docked that approached and began saying
14 things, like, Hey, cut it out. Leave him alone.
15 And, I guess, that's why it stopped.

16 Q. Did it hurt?

17 A. Yeah, pretty much.

18 Q. Did you suffer any injuries from it?

19 A. I did.

20 Q. What?

21 A. The initial one was a cut across the left
22 eyebrow, which required 19 stitches. I had to go to
23 the emergency room in an ambulance. And then later
24 on through subsequent visits, I found out I had a
25 blowout of the lower orbital floor, which is the area

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1 your eyeball sits on, which had to be surgically
2 repaired. There were other bumps and bruises, but
3 nothing that required any attention.

4 MR. TALLICHET: May I approach the
5 witness, Your Honor?

6 THE COURT: Yes.

7 Q. (BY MR. TALLICHET) I'm showing you what has
8 been marked as State's Exhibit No. 5. Do you
9 recognize this?

10 A. I do.

11 Q. What is it?

12 A. That is me several days after the
13 altercation, the photographic area of the stitches
14 and the bruised area around the eye.

15 Q. Does that accurately reflect --

16 A. It does.

17 MR. TALLICHET: State offers State's 5
18 and tenders to Defense counsel for objection.

19 MR. CORTES: Your Honor, we would
20 object under 403, as well as relevance. The witness
21 already admitted it was several days after the
22 incident.

23 THE COURT: State's 5 is admitted.

24 Q. (BY MR. TALLICHET) I'm now showing you
25 what's marked as State's Exhibit No. 6.

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1 A. Correct.

2 Q. What is this?

3 A. That would be the same. It must have been
4 a later date. The stitches had been removed, but
5 there's residual damage of the eye, blood in the eye.

6 Q. Does that accurately reflect what your face
7 looked like?

8 A. It does.

9 MR. TALLICHET: State offers State's 6
10 and tenders to Defense counsel for objection?

11 MR. CORTES: Same objection.

12 THE COURT: Same ruling. That's
13 overruled.

14 State's 6 is admitted.

15 MR. TALLICHET: May I publish State's
16 Exhibit 5 and 6 to the jury?

17 THE COURT: Yes.

18 Q. (BY MR. TALLICHET) If you'd touch the
19 bottom left of the screen, there to clear it.

20 I'm showing you what has been admitted
21 as State's 5, what is that?

22 A. Me.

23 Q. Yes.

24 A. That's me several days after the trip to
25 the emergency room, where the stitches are obviously

1 visible and the bruising underneath the eye.

2 Q. And I'm showing you what has been marked as
3 State's 6 -- admitted as State's 6, pardon me. What
4 is that?

5 A. That's the same. It must have been at
6 least a week later, because the stitches are gone,
7 obviously. But I was concerned about the
8 discoloration of the eye.

9 Q. Now, I see there are some bandages that are
10 in State's 6 that weren't in 5, what are those?

11 A. Where at?

12 Q. Here (indicating). Can you see those?

13 A. I'm not sure other than the -- I can see
14 the bandage, but I don't remember what it was for.

15 Q. Okay. At some point did you get -- did you
16 have any other medical treatment?

17 A. The surgery, yes.

18 Q. Okay. And where was the surgery?

19 A. On me? Or the hospital?

20 Q. On you.

21 A. Under the left eye.

22 Q. So would you just mark for us here, about
23 where that was?

24 A. (Witness complies)

25 Q. Did your eye appear normal before this

1 incident?

2 A. Yes.

3 Q. So it didn't have any of this bruising or
4 stitches or cut or any of that?

5 A. No, sir.

6 Q. Can you describe for us what -- if you saw
7 or if you know, what did that cut look like before it
8 was stitched up?

9 A. It was gaping pretty good. I actually
10 didn't want to ride in the ambulance to the hospital
11 to the emergency room, but my wife and the responding
12 Deputy Sheriff and subsequent EMTs advised that it
13 was big enough -- deep enough for sutures.

14 Q. Why didn't you want to go to the hospital?

15 A. I just don't like going to the hospital --
16 emergency rooms. You spend seven or eight hours in
17 there.

18 Q. So, after -- returning back to June 3rd.
19 When did they -- when did the defendant and his
20 brother let you go?

21 A. I believe when they were approached by
22 other patrons of the marina. Two men, one of which
23 subsequently helped me get the boat onto my trailer
24 and get it pulled out of the water, because I
25 couldn't see out of the eye.

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1 Q. Why not?

2 A. Because blood was running down in it.

3 Q. Where did they go, if you know?

4 A. They left and then returned. Which, I
5 don't know why they got in the boat and left.

6 Q. Okay. So, what did do you?

7 A. I got the family unloaded, and then with
8 the help of the other gentleman that interceded, got
9 the boat onto the trailer and we pulled it up on to
10 the side of the ramp to get out of the way.

11 Q. What was your family doing during this?

12 A. During the altercation?

13 Q. Yes.

14 A. My wife was calling 911 and her friend was
15 screaming at them and my kids were frantic. I was
16 busy getting beat in the face, so I don't remember a
17 lot of it.

18 Q. So at one point did the police arrive?

19 A. They did. A Deputy Sheriff arrived.

20 Q. When?

21 A. Took them about 30, 40 minutes to get
22 there.

23 Q. What did he do?

24 A. He questioned me about the incident and he
25 called EMTs, and then the two gentlemen returned in

1 their boat.

2 Q. Were you able to ever look at your boat or
3 look at their boat and determine if there was any
4 damage or anything from the contact?

5 A. Not that day, no, I didn't.

6 Q. Did you later at any point have a chance to
7 inspect your boat?

8 A. Yes, there was some scratches on the right
9 side, just very light scratches.

10 Q. Did they penetrate the hull?

11 A. No.

12 Q. Have you gotten them fixed?

13 A. I'm sorry?

14 Q. Have you gotten them fixed?

15 A. No, sir, they were just scratches. It
16 wasn't anything that I was concerned with as far as
17 appearance.

18 Q. After the Deputy called the EMTs, did you
19 talk to them?

20 A. The EMTs?

21 Q. Yes.

22 A. Yes.

23 Q. Did they treat you?

24 A. They did. They treated me on the scene and
25 advised that I should get sutured.

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1 Q. What did you do next?

2 A. They loaded me in the ambulance and I left.

3 Q. What happened after that?

4 A. My wife called a neighbor friend of ours to
5 come down and pull the truck and trailer down to my
6 house -- she's unable to manage that much vehicle.
7 And I went to the emergency room to get sutured.

8 Q. How long did that take?

9 A. We were there a long time. I probably got
10 home about midnight.

11 Q. Now, you mentioned earlier that when you
12 were -- when you were being punched in the face --

13 A. Right.

14 Q. -- what was that with?

15 A. His fist.

16 Q. And when you say, "fist" you mean hands?

17 A. Closed hands, yes.

18 Q. I just want to show you again State's 1.
19 And you said this was in east Harris County, Texas,
20 are you familiar with the boundaries of Harris
21 County, Texas?

22 A. Yes, correct.

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

24 A. It is.

25 Q. What date did this happen on?

1 A. June 3rd.

2 Q. Of what year?

3 A. Of this year 2012.

4 MR. TALLICHET: Pass the witness, Your
5 Honor.

6 THE COURT: Mr. Cortes.

7 MR. CORTES: If it pleases the Court.

8 **CROSS-EXAMINATION**

9 BY MR. CORTES:

10 Q. Deputy, my name is Eddie Cortes. You and I
11 have never spoken before about this case?

12 A. We have not.

13 Q. Never met?

14 A. Never.

15 Q. Have you talked to the DAs about this case?

16 A. Sir?

17 Q. Have you spoken with the DAs about this
18 case prior to testifying here today?

19 A. Yes, sir.

20 Q. Did you review any information prior to
21 testifying here today?

22 A. Pertinent facts.

23 Q. Police report?

24 A. Not the police report.

25 Q. What Precinct do you work with?

1 A. Precinct 3.

2 Q. Who responded?

3 A. Deputy sheriffs -- deputies, sheriffs.

4 Q. You said you've been in and out of law
5 enforcement for 26 years; have ever work for the
6 Sheriff's Office?

7 A. Never have.

8 Q. What sort of training did you receive as a
9 Deputy Constable?

10 A. We're required to receive remedial training
11 every two years. We range -- we shoot at the range
12 once a year, and then the division I'm in, I'm civil,
13 sometimes I have to take civil process every two
14 years, sometimes it skips.

15 Q. So, you have arms training?

16 A. Yes.

17 Q. Do you have any sort of martial arts
18 training?

19 A. Negative. No, sir.

20 Q. The Deputy Constable's Office does not
21 teach y'all how to fight?

22 A. No, sir.

23 Q. Any law enforcement agency you've ever
24 worked for, have they ever given you any sort of
25 martial arts training?

1 A. No, martial arts, no.

2 Q. Any sorts of fight training?

3 A. Handgun retention would be one, how to
4 affect an arrest with somebody who is resisting
5 arrest.

6 Q. How to use a baton?

7 A. Yes, they do.

8 Q. How to use an ASP?

9 A. I'm not sure what an ASP is.

10 Q. Those batons that extend out?

11 A. Oh, yes.

12 Q. They teach you how to use those too, right?

13 A. Yes, sir.

14 Q. In those classes, do they teach you how to
15 fight somebody with your fists?

16 A. No.

17 Q. What other agencies have you worked for?

18 A. In 1985, I went to work for this
19 constable -- well, it was a different constable, same
20 agency -- and I worked there for several years. Then
21 I worked for Baytown Police Department several years.
22 A small town called Clear Lake Shores, and then I
23 laid out for 10, 12 years before I came back
24 full-time.

25 Q. Why did you leave Baytown PD?

1 A. Why did I leave Baytown PD?

2 Q. Uh-huh.

3 A. I was asked to resign.

4 Q. Why was that?

5 A. There was a police party; there was a lot
6 of us on our team that had gotten together, gotten a
7 little wild, and I had been there -- I was not off of
8 probation yet. The others were reprimanded; I was
9 asked to resign.

10 Q. What about Clear Lake Shores?

11 A. I left voluntarily.

12 Q. All right. So this was the map the State
13 showed you of the area of the incident?

14 A. Yes, sir.

15 Q. I need you to clear it up for me a little
16 bit. Y'all go down to Banana Bend, right?

17 A. Correct.

18 Q. That dogleg?

19 A. Correct.

20 Q. Now, is this where you first made contact
21 with him and his brother?

22 A. No, sir.

23 Q. There was some splashing going on, right?
24 Somebody splashed somebody -- they splashed your
25 boat, right?

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1 A. Right, when they cut in front of us.

2 Q. Yeah. They got water in the boat -- got
3 water all over everybody?

4 A. It wasn't bad, yes, sir.

5 Q. Where was that?

6 A. That was southbound at the railroad
7 trestle.

8 Q. Touch that lower left side real quick.
9 Show me where y'all first got splashed.

10 A. (Witness complies).

11 Q. Okay. Y'all first got splashed there?

12 A. Correct.

13 Q. Where did you go immediately after that?

14 A. We rode to Banana Bend, which is Banana
15 Bend Estates and U-turned to go back to the marina.

16 Q. Okay. So you didn't follow them down to
17 Banana Bend?

18 A. No, I couldn't keep up with that boat.

19 Q. Okay. And you didn't splash that boat?

20 A. I don't know whether I did or not. We have
21 cut back through where it says "Muleshoe Lake," and
22 there were a lot of boats up there.

23 Q. Where is that?

24 A. That would be right there (indicating).

25 Q. So, you could have possibly splashed their

1 boat in that area, right?

2 A. Possibly.

3 Q. Okay. And what is the distance between
4 those two points, do you recall?

5 A. If I had to guess it's less than --
6 probably two-and-a-half, three miles. It's not far.

7 Q. You've been going there for how long, 30
8 years?

9 A. Yes, sir.

10 Q. So you followed them down to splash them
11 back?

12 A. No, sir.

13 Q. Okay. Did you make contact with their boat
14 at that time?

15 A. No, I did not.

16 Q. Okay. But you did at some point make
17 contact?

18 A. There was contact.

19 Q. And you said that your boat had scratches?

20 A. Yes, sir.

21 Q. That it could have been the waves that
22 pushed y'all's boat together?

23 A. Yes, sir. There's a lot of boat traffic,
24 which generates a lot of waves.

25 Q. Yours is a Cobalt, 22-footer?

1 A. Yes, sir.

2 Q. What year is it?

3 A. 1992, I believe.

4 Q. Okay. Just to get a feel for the size of
5 the boat, you said it's a station wagon boat. The
6 size of the hull --

7 MR. TALLICHET: I'm going to object to
8 this picture not being in evidence, if that's what
9 we're about to do.

10 THE COURT: What are we about to do?
11 Why don't I talk to y'all up here?
12 (Discussion at the Bench, on the
13 record)

14 MR. CORTES: It's just a picture of a
15 2007 Cobalt. I wasn't sure what kind of boat it was.

16 THE COURT: How are we going to
17 preserve that for our record if it's on your
18 computer?

19 MR. CORTES: It's for demonstrative
20 purposes, Your Honor. I wasn't going to ask to enter
21 it.

22 THE COURT: Well, it has to be
23 identified and somehow be a part of the record to do
24 that.

25 MR. CORTES: Okay. I'll withdraw the

1 question.

2 THE COURT: Okay.

3 (Open court)

4 MR. CORTES: May I approach, Your
5 Honor?

6 THE COURT: Yes.

7 Q. (BY MR. CORTES) You see the height of this
8 rail?

9 A. Yes, sir.

10 Q. Is that about how high your boat is?

11 A. It may be a little lower than that when
12 sitting in the water.

13 Q. Okay. So about 3 and a half, 4 feet high?

14 A. Correct.

15 Q. Where were the scratches on your boat?

16 A. On the right side, midway.

17 Q. And there were two guys in the boat, one
18 with long hair and one with a mustache, right?

19 A. As I remember, yes, sir.

20 Q. Who was driving, long hair or mustache?

21 A. Long hair, I believe.

22 MR. CORTES: Your Honor, may I
23 approach?

24 THE COURT: Yes.

25 Q. (BY MR. CORTES) Do you remember what their

1 boat looked like?

2 THE COURT: Are those marked?

3 MR. CORTES: It is, Your Honor,
4 Defense Exhibit No. 1.

5 THE COURT: Thank you.

6 Q. (BY MR. CORTES) I'm going to show you what
7 is marked as Defense Exhibit No. 1 and ask you if you
8 recognize that vehicle?

9 A. I recognize the style. I remember it being
10 blue -- bluer, a bluish-beige color.

11 Q. What did you call it earlier? What kind of
12 boat did you call it?

13 A. They call it a pickle fork.

14 Q. Because it looks like a pickle fork?

15 A. I recognize the style, but I don't remember
16 it being white.

17 Q. Okay. Would you be able to say if that was
18 the marina that y'all were at?

19 A. I believe so.

20 Q. Okay. And do you recall if that, in fact,
21 is the boat that you had the incident with?

22 A. It could be. But like I said, I don't
23 recall it being white, but everything happened pretty
24 fast so. I recall it being a bluish color, blue,
25 gray, but I could be wrong.

1 Q. I'm going to show you what's marked as
2 Defense Exhibit 2, would you agree that's the same
3 boat?

4 A. Same boat as this one (indicating)?

5 Q. Yes, sir.

6 A. Looks like it is by the Harley decal right
7 there (indicating).

8 Q. Right. And there's damage to it?

9 A. Correct.

10 Q. I'll show you what's marked as Defense
11 Exhibit 3. That's more damage, right?

12 A. Correct.

13 Q. And Defense Exhibit 4, what is that?

14 A. I see a crack; I can't tell you what those
15 two black things are.

16 Q. The hull is cracked, right?

17 A. There's a crack in whatever part of the
18 boat that is.

19 MR. CORTES: I ask to publish at this
20 time, Your Honor?

21 THE COURT: Are you offering those
22 into evidence?

23 MR. CORTES: Yes, Your Honor.

24 THE COURT: And those were Defense 1,
25 2, 3?

1 MR. CORTES: And 4, Your Honor.

2 THE COURT: Any objections?

3 MR. TALLICHET: May I take the witness
4 on a brief voir dire?

5 THE COURT: Yes.

6 VOIR DIRE EXAMINATION

7 BY MR. TALLICHET:

8 Q. Do these -- did you have a chance to
9 observe the defendant's boat?

10 A. Not after the incident, no.

11 Q. Do you believe that those accurately
12 reflect the type of boat the defendant was driving?

13 A. It was the type of boat, but like I said,
14 honestly, I believe it to have been more of a
15 bluish-gray color, but I could be wrong. There was a
16 lot going on.

17 Q. Okay.

18 MR. TALLICHET: I have no objection to
19 Defendant's Exhibit 1, but I will object to 2, 3, and
20 4, because they haven't been properly authenticated.
21 He doesn't know what they are.

22 THE COURT: Okay. I believe he --

23 MR. CORTES: He identified them by the
24 Harley decal.

25 THE COURT: -- I believe he said all

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1 four are of the same boat, but he hasn't said it was
2 the same boat as that day.

3 *THE WITNESS:* Well, No. 4 you can't
4 tell what it is. You just see a crack in part of
5 the boat.

6 *THE COURT:* Okay. So, the objection
7 to 2 and 3?

8 *MR. TALLICHET:* Would be relevance,
9 Your Honor.

10 *THE COURT:* Maybe I need to see these.
11 I don't know what we're discussing.

12 *(Discussion at the Bench, on the*
13 *record)*

14 *THE COURT:* May I have all three?

15 *MR. CORTES:* Yes.

16 *THE COURT:* Thank you.

17 *MR. CORTES:* That goes directly to
18 contradict his testimony.

19 *THE COURT:* Hold on a second. Are we
20 talking about the one in the foreground?

21 *MR. CORTES:* Yes. Yes, that's his
22 boat. He said there were scratches and incidental
23 contact. I don't think that's going to happen from
24 incidental contact, Your Honor.

25 *THE COURT:* I'm sorry. What?

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1 MR. CORTES: I don't think that's
2 going to happen from incidental contact.

3 MR. TALLICHET: There is no testimony.

4 THE COURT: Yeah, here's my problem.
5 He has said, yes, this is the same kind, but he can't
6 tell you that's the same boat as that day. So, when
7 we start talking about the same kind but not the same
8 one, we're at demonstrative.

9 MR. CORTES: I understand.

10 THE COURT: So -- but at the same
11 time, you don't have an objection to Defense 1, so if
12 you don't have an objection to 1, how do you have an
13 objection to 2, 3 and 4?

14 MR. TALLICHET: Well, as a
15 demonstrative on Defense 1.

16 THE COURT: But that wasn't what you
17 said.

18 MR. TALLICHET: I don't have an
19 objection to it as a demonstrative on Defense 1,
20 because it's the same type of boat. If they just
21 want to see the type of boat it is, that's fine. But
22 on 2, 3, and 4, it's not showing what type of boat it
23 is it's showing some damage.

24 THE COURT: Your witness has
25 identified these as being the same, because of the

1 sticker.

2 MR. TALLICHET: Well, okay.

3 THE COURT: That's my point.

4 MR. TALLICHET: Then, in that case I
5 don't see the relevance of 2 and 3, if we're only
6 admitting them for demonstrative for the type of
7 boat.

8 MR. CORTES: That goes directly to
9 contradict his point that the damage was caused by
10 the waves and that he had scratches on his boat. He
11 rammed the back of his boat, that's contradicting the
12 witness' testimony.

13 MR. TALLICHET: Not unless somebody
14 can say that this damage was caused by -- or that the
15 damage was already there.

16 THE COURT: At this point I will
17 sustain the objections to 2, 3, and 4, at this point.

18 MR. CORTES: Right. I understand.

19 THE COURT: But you may be able to get
20 them in -- Defense 1 is just coming in now for a
21 demonstrative.

22 MR. CORTES: Roger that.

23 (Open court)

24 THE COURT: Okay. So, Defense 1 is
25 admitted for demonstrative purposes.

1 MR. CORTES: Thank you, Your Honor.

2 THE COURT: Your objections are
3 sustained on the others.

4 MR. CORTES: Thank you.

5 THE COURT: Subject to photo
6 identification.

7 **CROSS-EXAMINATION (CONTINUED)**

8 BY MR. CORTES:

9 Q. Is this what you are talking about when you
10 say, "pickle fork"?

11 A. That's correct.

12 Q. Okay. And you identified this boat as the
13 boat from that day, the one y'all had the altercation
14 with?

15 A. Well, with the exception that I thought it
16 was more of a bluish-gray color, but I could be wrong
17 because of all the action that was taking place. But
18 It could very well be that boat. I wouldn't
19 positively swear to it, but it's the exact style.

20 Q. Okay. It's a speedboat?

21 A. Yes.

22 Q. They go pretty fast?

23 A. They do.

24 Q. And they throw off pretty big waves -- a
25 lot of waves, so if they splash you, it's a lot of

1 water, right?

2 A. I guess, I don't really know. I wouldn't
3 think they would make as big a wave like a larger
4 boat. I'm not sure.

5 Q. Okay. And your boat stands a little bit
6 higher in the water?

7 A. It does.

8 Q. So, if you hit their boat, it would almost
9 push it down into the water, would it not, you
10 basically come over the top of it?

11 A. Yeah, the boat like the one in the
12 background. Yeah, if someone wanted to, they could
13 cut across the top of it.

14 Q. And you almost did that, right, when you
15 contacted their boat?

16 A. No, sir.

17 Q. You didn't damage their boat?

18 A. I never saw it afterwards. I never saw
19 that boat.

20 Q. You said you had scratches on your boat?

21 A. Correct.

22 Q. Whereabouts?

23 A. On the right side.

24 Q. High? Low?

25 A. About midway between top and bottom and

1 front and back.

2 Q. And when those scratches occurred you
3 didn't see the damage that you caused to his boat?

4 A. I did not.

5 Q. Okay. All right. So you get splashed over
6 by the trestle where you marked?

7 A. Yeah, right there (indicating).

8 Q. You get splashed over by the trestle. You
9 come back over to Muleshoe Lake, you splash them,
10 then everybody heads towards the marina, right?

11 A. I assume so. I don't know if we splashed
12 anyone. We did go by some boats pretty fast.

13 Q. And your boat goes up to 40 miles an hour?

14 A. Yes, sir, top speed, loaded.

15 Q. So, they were coming -- they followed y'all
16 to the marina?

17 A. Yes, sir.

18 Q. Okay. They have followed y'all to this
19 spot here (indicating)?

20 A. Correct.

21 Q. Okay. At what point was the beer can
22 thrown?

23 A. The beer can was thrown.

24 Q. You want me to put the map back up?

25 A. Yeah. The beer can was thrown somewhere

1 midway between Muleshoe Lake and Crosby Freeway.

2 Q. Not at the dock?

3 A. No, no, sir.

4 Q. Okay. So they splashed you, you splashed
5 them, there's some jaw-jacking that goes back and
6 forth, and somebody throws a beer can?

7 A. Yes, sir.

8 Q. Okay. And y'all had been drinking, right?

9 A. Yes, sir.

10 Q. And how did you respond to the beer can
11 being thrown?

12 A. I might have responded verbally, I don't
13 know. I wasn't going to stop. I was in fear for the
14 safety of my family. I knew there was no way I could
15 outrun them so we kept on going toward the marina.

16 Q. You were in fear for the safety of your
17 family?

18 A. Correct.

19 Q. At that point?

20 A. At that point. The gentlemen were very
21 belligerent and very aggressive.

22 Q. You had a gun in the boat?

23 A. Yes, I did.

24 Q. Why would you fear for your safety if
25 you've got a gun?

1 A. Up to that point I don't think I had
2 justification to use deadly force.

3 Q. But you could if you had to?

4 A. I would have if I had to, yes, sir.

5 Q. And you're well trained in weapons --

6 A. I am.

7 Q. -- correct?

8 A. I am.

9 Q. Over 30 years of experience with weapons.
10 What kind bullets do you use in that gun?

11 A. The one I had that day was a 9mm
12 Smith & Wesson.

13 Q. What kind of bullets?

14 A. Hollow points.

15 Q. What are hollow points designed to do?

16 A. Make large holes in people.

17 Q. They expand on impact?

18 A. They do.

19 Q. And come apart?

20 A. They do.

21 Q. Go through different parts of the body?

22 A. Correct.

23 Q. Tear up organs a lot better than a
24 revolver?

25 A. They do.

1 Q. But you were in fear at that point?

2 A. Yes, sir.

3 Q. With a 9mm with hollow points in your boat?

4 A. Yes, sir.

5 Q. You took a gun on a boat with kids and
6 y'all were drinking?

7 A. We're required to carry weapons off-duty at
8 all times.

9 Q. You could have left it in your truck,
10 though, couldn't you?

11 A. What if I'm attacked on the river by
12 someone with a weapon?

13 Q. Pirates on a river. Okay. So, the beer
14 can is thrown?

15 A. Yes, sir.

16 Q. You were not happy with that?

17 A. I was not.

18 Q. Did you cuss at them?

19 A. I don't recall.

20 Q. Okay. Did you ram their boat at that time?

21 A. Our boats made contact, but I did not ram
22 it.

23 Q. Oh, okay. And then they followed you back
24 to the marina?

25 A. Yes, sir.

1 Q. Now at the marina -- at the marina, you got
2 out of your boat --

3 A. Yes, sir.

4 Q. -- to go get the truck --

5 A. I did.

6 Q. -- is what you said?

7 A. I did.

8 Q. The truck and the trailer?

9 A. I did.

10 Q. Okay. You said -- show me where you pulled
11 up on the sand again on the shore with the boat?

12 A. Approximately right here (indicating).

13 Q. You get out -- where is your truck at?

14 A. It is out of the picture to the right.

15 Q. Past that tree?

16 A. Yes, sir.

17 Q. About how far away?

18 A. I don't remember -- that day maybe 60, 70
19 feet.

20 Q. Okay. Did you make it to the truck?

21 A. No, sir.

22 Q. Okay. So you get out -- where did you get
23 out at?

24 A. I jumped off the bow right here
25 (indicating) where this dot is.

1 Q. And where was my client and his brother?

2 A. Well, the reason I got off to go get the
3 trailer is because they hadn't followed us into the
4 marina, the lagoon area. I thought for whatever
5 reason they turned around and they decided the beer
6 can was retribution so I got out without my weapon
7 because I didn't see them. And I got to about right
8 there (indicating) walking through the parking lot
9 when they approached.

10 Q. I'm sorry. Run that by me again. They
11 turned around?

12 A. We didn't see them follow us into the
13 marina area, so I'm assuming they turned around. I
14 don't know for sure. I assumed they didn't follow us
15 into the marina, or I would have probably defended
16 myself right here (indicating) with my weapon,
17 because there were two of them and one of me and my
18 family.

19 Q. Okay. Okay. So you're saying up river
20 when y'all made contact --

21 A. Right.

22 Q. -- at that point you took off?

23 A. Yes, sir.

24 Q. You don't know if they were following you?

25 A. I don't know.

1 Q. If you make contact with somebody else's
2 boat and you cause damage to it, should you not
3 exchange information, insurance and stuff?

4 A. In a normal incident, yes.

5 Q. But you didn't do that?

6 A. Did not.

7 Q. And so they followed you to the marina to
8 get your information?

9 A. That's not the reason I believe they
10 followed me to the marina.

11 Q. Okay. All right. And how many minutes
12 after the beer can was thrown, did you get to the
13 marina?

14 A. Two to three minutes.

15 Q. Okay. So two to three minutes later you
16 drove up to the marina. You didn't give them
17 information or anything, you didn't give them your
18 insurance or nothing like that and you came and you
19 were going to get the truck. And it's your testimony
20 that the guy with the mustache jumped you first, or
21 the longhaired guy jumped you first?

22 A. The driver, the longhaired guy.

23 Q. My client?

24 A. Yes, sir.

25 Q. Where exactly?

1 A. Approximately, right here (indicating). As
2 I stated before, he tried to exit the boat before it
3 came to a complete stop, slipped and fell on the bow,
4 and kind of slid off into the water on his feet, as
5 it was still approaching -- coasting, I guess, would
6 be the word.

7 Q. Okay. Let's say this is it your boat.
8 Okay. Front and back, right and left. You're on the
9 right side, driver's side?

10 A. Correct.

11 Q. So you jump out here (indicating)?

12 A. No, sir, I went off the bow.

13 Q. You went off which side?

14 A. The bow, the front of the boat.

15 Q. The front. Okay. So, you jump out the
16 front, right?

17 A. Yes.

18 Q. So, you're in front of your boat?

19 A. Yes, sir.

20 Q. At this point when you jump out, did you
21 notice them?

22 A. I did not.

23 Q. Okay. You start walking towards your
24 truck?

25 A. Yes, sir, towards the vehicle.

1 Q. Okay. Let's say this is where your boat
2 is, stop me, about how far you got.

3 A. About 10 feet, 10 to 12 feet.

4 Q. At this point still hadn't noticed them?

5 A. No, that's when I did notice them.

6 Q. Okay. That's when you turned around and
7 somebody fell out of a boat and splashed in the
8 water?

9 A. Obviously, I'm keeping an eye out to see if
10 they're going to return. So, I'm keeping an eye out
11 on the marina to see if they return.

12 Q. What do you mean return?

13 A. To see if they return. I have no idea if
14 they're gone for good, if they might return.

15 Q. So you suspected they might have followed
16 you into the marina?

17 A. Anything is possible.

18 Q. Because you hit their boat?

19 A. Well, the boats collided. I didn't hit the
20 boat. The boats collided in a manner of which I'm
21 not sure.

22 Q. Well, earlier you testified -- you said you
23 didn't see them. You had no reason to believe he was
24 going to following you. You didn't know they were
25 following you and now you're saying that: Well, I

1 looked back because maybe they were following me.

2 A. I had my guard up, yes.

3 Q. Okay. So you had your guard up. You
4 turned around, and you noticed that Mr. Park falls
5 out of the boat?

6 A. As he's approaching me.

7 Q. How far away from you was he when that
8 occurred?

9 A. Probably, 15 feet. It's very shallow
10 there.

11 Q. About here (indicating)? Further back?

12 A. No, a little closer.

13 Q. Little closer. So you fall out of your
14 boat into the water?

15 A. Yes, sir.

16 Q. And you turn around?

17 A. Yes, sir.

18 Q. That's when you got into a defensive
19 stance?

20 A. I did.

21 Q. Because you said he's coming at you, he's
22 screaming at you?

23 A. Very aggressively, yes.

24 Q. What's he screaming?

25 A. Curse words. I don't remember the exact --

1 you know, I'm going to beat your fucking ass, that
2 kind of stuff. I couldn't put it in a transcript for
3 you, but it's very aggressive, verbally and
4 physically.

5 Q. And what did do you?

6 A. I stood in my defensive stance.

7 Q. You just stood there. Like
8 (demonstrating), I'm ready to fight.

9 A. I am.

10 Q. You didn't say I'm a cop?

11 A. Never said it once.

12 Q. Never said that. You think possibly if you
13 would have said that nothing would have happened?

14 A. I don't know if it would have had any --
15 what's the word I'm looking for? I don't think it
16 would have changed the circumstance, given their
17 nature -- their aggressive nature.

18 Q. You had your badge with you?

19 A. It was in the glove compartment of the
20 boat.

21 Q. Of the boat. So, you could have pulled
22 your badge out?

23 A. I could have. I didn't have it with me.

24 Q. You could have said, You need to settle
25 down, or you're going to jail. Right?

1 A. Right.

2 Q. But you had a defensive stance, you're
3 ready to fight, right?

4 A. Right.

5 Q. You because you're still angry, because
6 your daughter almost got hit with a beer can, right?

7 A. No, because I was being approached by a
8 very aggressive individual.

9 Q. So instead of showing them your badge,
10 instead of telling them you're law enforcement,
11 you're a cop; you just stood there in a defensive
12 stance waiting for him to attack you?

13 A. Yes, I did.

14 Q. And did he attack you?

15 A. He did.

16 Q. Okay. Where did he hit you?

17 A. The original altercation, again, I think
18 there were more misses than hits. I don't know that
19 I contacted with him once or twice. I know that
20 before I was restrained, it was just a lot of swinging
21 going on.

22 Q. Okay. So, do you recall if you made
23 contact with him, or he made contact with you?

24 A. I don't think -- I think a little contact
25 was made before I was restrained but not a lot.

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1 Q. So, maybe one or two licks?

2 A. Yes, sir.

3 Q. Okay. So, you each get a couple of licks
4 in?

5 A. That would be a way to describe it, yes.

6 Q. All right. You each get a couple of licks
7 in. And it's your testimony his brother, the guy
8 with the mustache, comes up behind you and grabs you?

9 A. I just remember he had a mustache. That's
10 the way I identified him. I think it was his older
11 brother --

12 Q. Uh-huh.

13 A. -- I think his name is Timmy.

14 Q. Uh-huh?

15 A. The passenger got around behind me.

16 Q. Exactly. Bear hugged you?

17 A. Correct.

18 Q. And then what happened?

19 A. That's when the suspect beat me in the
20 face.

21 Q. How many more times did he hit you?

22 A. Six to eight.

23 Q. And at no time during this -- when you got
24 a couple of licks in, or when he comes to hug you to
25 restrain you, or when he's hitting you five or six

1 times do you say: I am a cop. What are you doing?
2 You're assaulting a police officer, that's a felony.

3 A. It's only a felony if you're on duty. It's
4 not a felony when you're off duty. And I did not
5 identify myself at that point. I was busy being
6 beaten.

7 Q. You made a statement earlier that you
8 slowed down to comply with the no wake zone?

9 A. Correct.

10 Q. Because you do that, you comply with rules
11 and regulations, laws, you're a law-abiding citizen?

12 A. As much as I can, yes, sir.

13 Q. As much as you can. You said you have no
14 formal martial arts training through your jobs?

15 A. No, sir, I do not.

16 Q. But have you been in fights before,
17 correct?

18 A. Several. A couple of times, yes, sir.

19 Q. Okay. Off duty?

20 A. Off duty.

21 Q. How many fights?

22 MR. TALLICHET: Objection. Relevance.

23 THE COURT: That's sustained.

24 Q. (BY MR. CORTES) Would you say that you have
25 a short fuse?

1 A. I do not.

2 Q. But yet you've been in several fights?

3 MR. TALLICHET: Objection. Relevance.

4 THE COURT: Could I see y'all up here,
5 please?

6 (Discussion at the Bench, on the
7 record)

8 THE COURT: We seem to be dangerously
9 close to violating a Motion in Limine here.

10 MR. CORTES: It's first impression
11 testimony, Your Honor. He's saying that he's not the
12 first aggressor that he's not an aggressive person,
13 doesn't have martial arts training.

14 MR. THOMAS: And you're inviting us to
15 correct a false impression that this is the only
16 person that's involved that is aggressive. And we
17 have already filed a motion and there's been a ruling
18 and you're violating it.

19 THE COURT: I'm not sure what you
20 think you're referring to other than that case that
21 was dismissed.

22 MR. CORTES: He just admitted he's
23 been in several fights. I think you should allow me
24 to question him about these fights.

25 (Open court)

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1 *THE COURT:* Remove the jury, please.

2 *THE BAILIFF:* Please rise.

3 *(Jury leaves courtroom)*

4 *THE COURT:* You may be seated.

5 Mr. Cortes, at this point I consider
6 that line of questioning a violation of the Motion in
7 Limine. I removed the jury so that we can
8 investigate this further, but you were supposed to
9 approach the Bench before asking these questions, if
10 you'll recall my ruling yesterday.

11 *MR. CORTES:* I do.

12 *THE COURT:* This all goes to that same
13 area, as I understand it. You have no knowledge of
14 any other fights going into cross-examination other
15 than the case that was dismissed; is that correct?

16 *MR. CORTES:* That's correct, Your
17 Honor. The testimony that he just gave was that he
18 had been in several fights.

19 *THE COURT:* And that was elicited on
20 cross-examination even though I have ruled that you
21 would not go into the one case you knew about.

22 *MR. CORTES:* Again, Your Honor --

23 *THE COURT:* Am I correct?

24 *MR. CORTES:* Yes, Your Honor.

25 *THE COURT:* Unfortunately, the State

1 was a little late getting to their feet for an
2 objection -- about three questions late. So, now we
3 have something floating around in the room. I think
4 we probably need to see what we can do to clear this
5 up.

6 You may pursue the line of questioning
7 outside the presence of the jury.

8 MR. CORTES: Thank you, Your Honor.

9 **VOIR DIRE EXAMINATION**

10 BY MR. CORTES:

11 Q. Deputy, you testified that you've been in
12 several fights?

13 A. I did.

14 Q. Did you say they were on or off duty?

15 A. Off duty.

16 Q. How many altercations?

17 A. Two.

18 Q. Was either one of those two altercations
19 related to the pending charges?

20 THE COURT: Excuse me. Can y'all step
21 outside the courtroom to talk?

22 (Attorneys comply)

23 THE COURT: Thank you.

24 Q. (BY MR. CORTES) Was either one those two
25 incidents related to the charges you had pending?

1 A. One was.

2 Q. Okay. So, one other fight other than the
3 one presented?

4 A. Right.

5 Q. How long ago was that?

6 A. The first one was elementary school.

7 MR. CORTES: Pass the witness, Judge.

8 THE COURT: And do you have any reason
9 that you should be able to offer this line of
10 questions to the jury?

11 MR. CORTES: Other than my previous
12 comments yesterday, with regard to the evidence of
13 the complaining witness being the first aggressor,
14 no, Your Honor.

15 THE COURT: That is overruled.

16 I'd like to the see the lawyers up
17 here, please.

18 (Discussion at the Bench, on the
19 record)

20 THE COURT: You were late on your
21 objection. I don't know why, but you were late. So,
22 now, you're stuck with this impression. I'm not
23 going to let him go into this, and I'm not going to
24 let you go into it anymore. I expect you to pay
25 closer attention from now on.

1 If you violate another one of my
2 rulings, or another one of my court orders -- I'm
3 putting you on notice now that you will be held in
4 contempt. And it's not going to come out of your
5 pocketbook; it's going to be spent in jail. Am I
6 clear?

7 MR. CORTES: Yes, ma'am.

8 THE COURT: Take a five-minute break;
9 then we'll go back into testimony.

10 (Recess taken)

11 (Open court)

12 THE BAILIFF: Please rise for the
13 jury.

14 (Jury enters courtroom)

15 THE COURT: You may be seated.

16 Let the record reflect that the
17 parties and jurors are present and seated in the
18 courtroom.

19 You may continue with cross, with my
20 rulings in mind.

21 MR. CORTES: May it please the Court?

22 **CROSS-EXAMINATION (CONTINUED)**

23 BY MR. CORTES:

24 Q. Deputy, you said that when you got splashed
25 you felt as if you had been cut off as in traffic?

1 A. Similar to that, yes, sir.

2 Q. How does that make you feel?

3 A. Makes you feel a little agitated, but it
4 happens almost on a daily basis.

5 Q. Were you angry?

6 A. I wouldn't say angry.

7 Q. Upset?

8 A. Perturbed.

9 Q. Perturbed. And then how many minutes
10 passed before a beer can is thrown at your daughter's
11 head, is that what you said?

12 A. I believe it was being thrown at me. It
13 hit the side of the boat, flipped it over, and got
14 close to where my daughter was sitting.

15 Q. How close did it get to hitting your
16 daughter?

17 A. It missed her by a foot or two.

18 Q. And how did that make you feel?

19 A. Angry.

20 Q. So, you're already perturbed. And then a
21 couple minutes later a beer can is thrown?

22 A. Well, I was over perturbed. I was just in
23 the state, like, when someone cuts you off in
24 traffic.

25 Q. Okay. And a few minutes later you wind up

1 at the marina?

2 A. Correct.

3 Q. Isn't it true, Deputy, that you, in fact,
4 you were the one who charged his brother for throwing
5 a beer can at your daughter?

6 A. Charged, by meaning what? What do you mean
7 by "charge"?

8 Q. Physically charged him, you ran up on him.

9 A. No, I did not.

10 Q. You started beating up his brother, the guy
11 with the mustache --

12 A. No, I did not.

13 Q. -- because he's the one that threw the beer
14 can at your daughter?

15 A. I believed it to be the driver, but I'm not
16 sure. I was trying to drive the boat and watch them
17 at the same time.

18 Q. Isn't it true you were beating up on his
19 brother, he came to his brother's defense and
20 coldcocked you?

21 A. Negative, no, it's not.

22 MR. CORTES: Pass the witness, Your
23 Honor.

24 MR. TALLICHET: No further questions.

25 THE COURT: May this witness be

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1 excused, then? I'm guessing that probably isn't
2 practical considering the other witnesses.

3 MR. CORTES: That's correct.

4 THE COURT: All right.

5 We will be in lunch recess, though.
6 Let's go ahead and excuse our friends to go to lunch.

7 THE BAILIFF: Please rise.

8 *(Jury excused for luncheon recess)*

9 THE COURT: You may be seated.

10 I need the parties back here by 1:15,
11 including witnesses, unless they give you different
12 instructions.

13 MR. CORTES: Thank you, Your Honor.

14 THE COURT: I suggest everyone be on
15 time.

16 MR. CORTES: Yes, Your Honor.

17 *(Luncheon recess for the parties)*

18 *(Open court)*

19 THE BAILIFF: Please rise for the
20 jury.

21 *(Jury enters courtroom)*

22 THE COURT: You may be seated. Let
23 the record reflect that the parties and jurors are
24 present and seated.

25 Call your next witness.

1 MR. TALLICHET: State calls
2 Deputy Wright.

3 THE COURT: Come on up, sir.

4 THE BAILIFF: Judge, this witness
5 hasn't been sworn in.

6 THE COURT: I'm so sorry. I believe
7 you're right.

8 (Witness Sworn)

9 THE COURT: All right.
10 You may proceed.

11 MR. TALLICHET: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 **ADAM WRIGHT,**
14 having been first duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 BY MR. TALLICHET:

17 Q. Would you please state your name for the
18 record?

19 A. I'm Deputy Wright.

20 THE COURT: Your full name, please.

21 A. Deputy Adam Wright.

22 Q. (BY MR. TALLICHET) Deputy, how are you
23 employed?

24 A. I'm a deputy with the Harris County
25 Sheriff's Office.