

Terrance O'Neill - August 26, 2014
Cross-Examination by Ms. Meador

1 A. No, ma'am, I did not.

2 MS. MEADOR: Nothing further.

3 THE COURT: Anything else?

4 MS. GAIDO: Not from the State, Your
5 Honor.

6 THE COURT: May this witness be excused?

7 MS. GAIDO: He may.

8 THE COURT: Call your next.

9 MS. GAIDO: Your Honor, the State calls
10 Officer Flora.

11 THE COURT: Ladies and gentlemen, this
12 witness has been sworn outside your presence.

13 **CHARLES FLORA,**

14 having been first duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 Q. (BY MS. GAIDO) Good morning.

17 A. Good morning.

18 Q. Would you please introduce yourself to the
19 ladies and gentlemen of our jury.

20 A. I'm Officer Charles Flora of the Houston
21 Police Department.

22 Q. Officer Flora, where are you from originally?

23 A. I'm originally from Indianapolis, Indiana.

24 Q. Did you go to high school up there?

25 A. I did, yes.

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1 Q. What did you do after high school?

2 A. I was in the Navy for a while.

3 Q. How long is awhile?

4 A. I was in the Navy for about 11 years.

5 Q. What did you do with the Navy?

6 A. I was a gunner's mate, weapons specialist and
7 I taught sailors how to shoot small arms and I was an
8 armor.

9 Q. Where were you located while you were in the
10 Navy?

11 A. I spent most of my time in San Diego and on
12 the West Coast, Washington state. And my last tour of
13 duty was in Guantanamo Bay, Cuba, as a detention guard.

14 Q. When did you come out of the Navy?

15 A. In 2009.

16 Q. What did you do after 2009 or after you got
17 out of the Navy for a vocation?

18 A. I literally joined a police department, HPD,
19 and moved to Houston and got a job with HPD.

20 Q. Did you move to Houston specifically to be
21 with the Houston Police Department?

22 A. Yes, ma'am, I did.

23 Q. Can you tell the jury what sort of training
24 you go through upon joining the Houston Police
25 Department?

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1 A. The initial training is six months in the
2 Houston Police Academy where you go through different
3 things like -- such as driving, the law, shooting, all
4 them sorts of things. And then after you get out of the
5 police academy, you go through six months of
6 probationary training where you ride with a training
7 officer. He evaluates what you do and once you pass
8 that, after the probationary period is over, you become
9 a police officer -- well, you're a police officer, but
10 you get to ride by yourself, if that makes sense.

11 Q. Sure. After the academy did you go to patrol?

12 A. Yes, ma'am, I did.

13 Q. Where did you go on patrol?

14 A. I patrol the west side of Houston.

15 MS. GAIDO: Your Honor, may I approach
16 briefly?

17 (At the Bench, on the record.)

18 MS. GAIDO: Your Honor, rather than us
19 violating the Motion in Limine, this officer was late
20 today. So, I have not admonished him regarding the
21 Motion in Limine. May I briefly admonish him?

22 THE COURT: You can have a moment as long
23 as -- I'm just going to excuse the jury so you can have
24 the conversation.

25 (In open court.)

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1 THE COURT: Ladies and gentlemen, at this
2 time please step back to the jury room with the bailiff.
3 We'll take just a short recess. Same instructions apply
4 that I gave you yesterday. Don't discuss the case
5 amongst yourselves or with anybody else. We'll be back
6 with you shortly in a moment.

7 Also, I think I mentioned it yesterday, but
8 if I didn't, you are free to have coffee with you or water
9 with you in the jury box if you wish.

10 Please step back to the jury room with the
11 bailiff.

12 (Jury exits courtroom.)

13 THE COURT: I'll give you a few minutes
14 just to make sure everybody is on board and clear with
15 the Motion in Limine and then we'll get started back in
16 a few minutes.

17 (Recess.)

18 (Jury enters courtroom.)

19 THE COURT: Be seated.

20 State, you may continue.

21 Q. (BY MS. GAIDO) Officer Flora, after you
22 completed the Houston Police Department training
23 program, where were you assigned?

24 A. I was assigned to the Westside Patrol Command.

25 Q. And I can't remember if we've already heard

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1 it. Can you tell the jury where Westside is?

2 A. Westside is going to be the far west side of
3 town. Some people consider it a little bit of the
4 southwest side of town as well, but it's going to be
5 west of the West Sam Houston Parkway. No further north
6 than I-10. All south of the Katy Freeway all the way
7 down to like West Bellfort/59 area and all the way east
8 to South Gessner. That kind of square.

9 Q. And you were on patrol there?

10 A. Yes, I was.

11 Q. How long were you on patrol?

12 A. Patrol for about three years as a patrol
13 officer.

14 Q. After patrol where did you go next?

15 A. I applied to the Westside Divisional Gang
16 Unit.

17 Q. Were you accepted?

18 A. I was, yes.

19 Q. Is that your current assignment?

20 A. Yes, ma'am. That's where I'm currently
21 assigned.

22 Q. When you say "Westside," is it still the same
23 geographic area that you were patrolling when you were
24 on patrol or is it a little different?

25 A. No. That divisional gang unit is responsible

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1 for the Westside Patrol Command's whole area.

2 Q. Can you tell the jury where that is?

3 A. It's going to be the same exact area. The
4 Gang Unit is typically the captain's tool to combat gang
5 crime within his patrol area, which is made up of two
6 districts.

7 Q. So, when you were on Westside patrol, you were
8 in the same area?

9 A. That's correct, yes.

10 Q. How long have you been with your current
11 assignment?

12 A. Two years.

13 Q. Were you in that assignment on April 11, 2013?

14 A. Yes, I was.

15 Q. And were you on patrol that day?

16 A. Yes.

17 Q. Did you have occasion to come into contact
18 with someone that you know now to be named William
19 Columbus Horhn?

20 A. Yes, ma'am, I did.

21 Q. And do you see that person in the courtroom
22 here today?

23 A. Yes, I do.

24 Q. And can you please identify him by an article
25 of clothing that he's wearing?

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1 A. He's going to have a long-sleeve red plaid
2 shirt on.

3 Q. Without going into specifics of what anyone
4 said to you that day, how did you come into contact with
5 him initially?

6 A. I came into contact with Mr. Horhn when I was
7 advised by our supervisor of our unit that he had
8 spotted --

9 MS. MEADOR: Objection as to hearsay.

10 THE COURT: Sustained.

11 Q. (BY MS. GAIDO) Without saying what anyone told
12 you -- let me rephrase.

13 Were you called out to a location?

14 A. Yes, I was.

15 Q. What was that location?

16 A. It was the Chevron gas station at 3880 South
17 Dairy Ashford.

18 Q. Is that a location here in Harris County,
19 Texas?

20 A. Yes, it is.

21 Q. And is that a location within your patrol, the
22 Westside patrol?

23 A. Yes, ma'am, it is.

24 Q. You said called out. Is that different than
25 being dispatched?

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1 A. Yes, it is.

2 Q. Can you tell the jury how it's different?

3 A. It would be different as in we work as a small
4 unit and we have a few undercover officers in our unit,
5 as well. If they spot something up such as a crime
6 taking place within where they're at, they would call in
7 a marked unit, which is myself in a patrol car, to come
8 in and that's the difference between being called out, I
9 guess, and being dispatched through HPD dispatch.

10 Q. What did you see when you arrived on location
11 at that Chevron?

12 A. I saw Mr. Horhn along with two of his
13 associates there at the gas station.

14 Q. Where were they specifically at the gas
15 station?

16 A. They were all surrounded -- one of the
17 other -- not Mr. Horhn's car, but one of the other guy's
18 car and they were all just hanging out outside the car
19 with the hood up.

20 Q. When you arrived, were they in custody or were
21 they detained or were they free?

22 A. Yes. So, I arrived shortly after the primary
23 unit arrived and all three were being taken into custody
24 as myself and my partner had arrived.

25 Q. Do you know who the members of the primary

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1 unit were?

2 A. It was myself and Officer Joseph Miako.

3 Q. I guess --

4 A. No, I'm sorry. The primary unit was Officer
5 O'Neill and Officer Mishka.

6 Q. So, when you arrived on scene, they were in
7 the process of being detained?

8 A. That is correct.

9 Q. Do you know why they being detained?

10 A. Mr. Horhn had some outstanding warrants.

11 Q. Did you check those warrants or did somebody
12 else?

13 A. I can't remember exactly which unit checked
14 them, but one of the marked -- I say marked as in one of
15 the uniformed officers -- checked and verified that he
16 did, in fact, have good warrants.

17 Q. Was there an unmarked unit there?

18 A. Yes. So, we have officers in our unit who
19 ride in regular unmarked city vehicles, cars that we use
20 in our area of operation.

21 Q. What did you do upon arriving at the scene and
22 seeing the defendant as well as other individuals being
23 detained? What was your next role?

24 A. I located a cell phone close to where --
25 inside the vehicle where Mr. Horhn was seated at.

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1 Q. Okay. Can you describe -- do you remember the
2 vehicle?

3 A. No. I would have to look at the report. I
4 want to say -- it was a little car, four-door sedan, but
5 exact make and model, I would have to look at the
6 offense report.

7 Q. Do you remember if the doors were open or
8 shut?

9 A. When I got there, the doors were open.

10 Q. And do you remember where was Mr. Horhn?

11 A. He was outside the vehicle next to -- they
12 kind of had all three of the people we had detained were
13 outside of the target vehicle.

14 Q. Were they outside near the specific doors or
15 we were they all outside away from the area?

16 A. They were near the area of the vehicle.

17 Q. Could you tell based on where they were
18 detained where they had been in the vehicle? So, for
19 example, was --

20 MS. MEADOR: Objection, speculation.

21 THE COURT: Sustained as to any
22 speculation. He can testify to personal knowledge, if
23 he has any.

24 MS. GAIDO: Yes, Your Honor.

25 Q. (BY MS. GAIDO) Was Mr. Horhn by the driver's

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1 side door? The passenger side door? If you remember.

2 A. The front passenger side door.

3 Q. At this point was he in handcuffs?

4 A. He was when I was there, yes.

5 Q. You said that you looked into the vehicle?

6 A. Yes.

7 Q. What did you see when you looked inside that
8 vehicle?

9 A. I don't remember exactly everything I saw, but
10 I located a cell phone inside the vehicle, an iPhone.

11 MS. GAIDO: Your Honor, may I approach
12 the witness?

13 THE COURT: You may.

14 Q. (BY MS. GAIDO) Officer Flora, I'm showing you
15 what's been premarked as State's Exhibit No. 8. Do you
16 recognize State's Exhibit No. 8?

17 A. Yes, I do.

18 Q. And what is it?

19 A. It's an iPhone.

20 Q. How did you -- when did you come into contact
21 with State's Exhibit No. 8?

22 A. On that day, April 11.

23 Q. How can you be sure that State's Exhibit No. 8
24 is the same iPhone that you came into contact with on
25 April 11, 2013?

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1 A. I took possession of the iPhone out of the
2 vehicle and I'm the one who did the follow-up
3 investigation on the iPhone and I initially tagged it
4 into the property room.

5 Q. Does State's Exhibit No. 8 look to you the way
6 that it looked back on April 11, 2013?

7 A. Yes, except it was powered on. The phone was
8 on when we got it.

9 Q. And today it's off?

10 A. Right. Correct.

11 Q. Is State's Exhibit No. 8 somewhat distinct?

12 A. Yes.

13 Q. And what -- I'll bring it back. What
14 specifically is distinct about State's Exhibit No. 8?

15 A. The screen is cracked and the case is pretty
16 distinct.

17 Q. Where was State's Exhibit No. 8, the cell
18 phone, when you saw it first?

19 A. It was inside the vehicle.

20 Q. Okay.

21 A. And to be exact, I don't know exactly where it
22 was at inside the vehicle.

23 Q. Do you remember if it was in the front seat or
24 the backseat?

25 A. It was in the front of the vehicle. I do

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1 remember that. But as far as, like, if it was on the
2 floor, I don't remember if it was on the floor or on the
3 seat, but it was on that front passenger side.

4 Q. Based on where you saw State's Exhibit No. 8,
5 did you ask one of the suspects that was being detained
6 about the cell phone?

7 A. Yes, I did.

8 Q. Who did you talk to about it?

9 A. I talked to William Horhn initially about the
10 phone and he told me it was his phone.

11 Q. Why did you choose to speak to the defendant
12 about the phone as opposed to anybody else that was
13 being detained currently?

14 A. Well, I assumed that's where William Horhn was
15 seated.

16 Q. You said that you asked him about the phone,
17 correct?

18 A. Correct.

19 Q. What did you ask him?

20 A. I just asked, Hey, is this your phone?

21 He said, Yes, it's my phone. It doesn't
22 work.

23 I said, What do you mean, it doesn't
24 work?

25 He said, Well, it's turned off.

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1 Such as the bill hasn't been paid or
2 whatever. The phone wasn't operational as far as
3 calling people.

4 Q. You're saying the phone wasn't operational.
5 Do you remember the words that he used, roughly?

6 A. It was just, Hey, man, it doesn't even work.
7 The phone doesn't work. That was pretty much it.

8 Q. Did you talk to the defendant further about
9 the phone?

10 A. I did. I did.

11 Q. What did you say to him?

12 A. Well, I asked him, Hey, is there anything
13 illegal on the phone that we need to know?

14 He was, like, No, there's nothing on that
15 phone.

16 I asked him, Hey, do you mind if we look
17 into the phone?

18 And at that time he said he didn't care
19 if we looked into the phone.

20 Q. At that time did you?

21 A. I did.

22 Q. How did you go about doing that?

23 A. When I initially got the phone, I went right
24 way to his images and I observed it looked like someone
25 had taken a picture of a database and it had a lot of

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1 names, dates of birth, social security numbers.

2 I figured there was a larger operation
3 going on. So, we contacted the District Attorney's
4 Office and asked them, Hey, we're at this. I told them
5 what point of the investigation we were at, and what did
6 they suggest? And the District Attorney told us we
7 needed to get a search warrant for the phone.

8 Q. When you were looking through the photos,
9 where are those found on an iPhone?

10 A. In the gallery, I guess.

11 Q. Can you describe specifically, if you
12 remember, what caught your attention regarding names and
13 numbers, if anything?

14 A. I found it odd that there was a picture of a
15 database with all these dates of births and social
16 security numbers and addresses and e-mail addresses that
17 just anyone would have that of all those different
18 people.

19 Q. Did ask you the defendant about what you had
20 found on his phone?

21 A. I did not.

22 Q. Are you the one that called the DA's Office?

23 A. Yes, I did.

24 Q. Did you act as affiant for the search warrant?

25 A. I did.

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1 Q. What happened to the defendant after you took
2 custody of his phone?

3 A. He ultimately went to jail.

4 Q. What did you do with State's Exhibit No. 8,
5 the cell phone you found after -- let me rephrase.

6 Did you take the defendant to jail?

7 A. I personally did not, no.

8 Q. What did you do with State's Exhibit No. 8
9 after obtaining the search warrant?

10 A. I took it to the digital forensics lab there
11 at the Federal Building where we have officers to work
12 along with the Secret Service and they're able to pull
13 that information off the phone that we need in
14 accordance with our warrant.

15 Q. At any point did you tag State's Exhibit No. 8
16 into evidence?

17 A. I did.

18 Q. And can you tell the jury when you did that
19 and how you did that?

20 A. I don't remember the exact day. I think we
21 did it the next day. I went and got the search warrant
22 the next day. After getting the search warrant signed,
23 I took it over to the lab. I think they contacted me.
24 What they do is they take possession of the phone and
25 they do what they need to do. But they have a caseload

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1 as well. So, the priority of your phone might be
2 different than for, say, a capital murder phone.

3 I had to wait awhile. I don't remember
4 how many days it was, but I want to say it was, like, a
5 week and a half, maybe two weeks. I got a call, Hey,
6 your phone is ready for pickup. That's when I went to
7 the lab, collected the phone along with a DVD of the
8 contents of the phone.

9 Q. I'm showing you what's been marked as State's
10 Exhibit No. 10. Do you recognize State's Exhibit
11 No. 10?

12 A. Yes, ma'am.

13 Q. What do you recognize it as?

14 A. That's going to be the DVD with the contents
15 of the phone.

16 Q. How did you get State's Exhibit No. 10?

17 A. I got that from the DFL lab.

18 Q. What did you do with State's Exhibit No. 10
19 and State's Exhibit No. 8, the cell phone, after you
20 retrieved it from the forensics?

21 A. I took it to our HPD Property Room and tagged
22 it as evidence.

23 Q. When evidence is tagged, is it given any
24 identifying characteristics, a number or something like
25 that?

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1 A. Yes, it is. They put our case number, which
2 is attached to it, and they tag it in the envelopes and
3 they seal them and we initial them and date them, saying
4 they were tagged that day.

5 Q. Was that done in this case?

6 A. Yes.

7 Q. Is just anyone allowed to retrieve property
8 that's been tagged by you from the property room?

9 A. No, ma'am, not without authorization.

10 Q. Did you eventually retrieve State's Exhibit
11 No. 8 and 10 from the property room?

12 A. I did.

13 Q. When did you do that?

14 A. I did that last night.

15 Q. Did you bring State's Exhibit No. 8 and
16 State's Exhibit No. 10 to the court today?

17 A. I did.

18 MS. GAIDO: Your Honor, at this time I
19 would offer State's Exhibit No. 8 into evidence and
20 tender to Defense Counsel for objection.

21 MS. MEADOR: I renew my previous
22 objection.

23 THE COURT: It will be overruled.
24 State's 8 is admitted.

25 Q. (BY MS. GAIDO) Officer Flora, at any time did

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1 the defendant say that the phone was not his?

2 A. No, he did not say it was not his.

3 Q. At any time did he claim to not have knowledge
4 of what was in the phone?

5 A. No.

6 Q. Was the only thing that he told you was that
7 the phone was his but that it wasn't on or that it
8 wasn't working?

9 A. Yes, ma'am. That was it.

10 MS. GAIDO: Pass the witness, Your Honor.

11 THE COURT: Ms. Meador.

12 **CROSS-EXAMINATION**

13 Q. (BY MS. MEADOR) Officer Flora, when you
14 arrived on the scene, Mr. Horhn was already being
15 detained?

16 A. That's correct.

17 Q. And he was in handcuffs at that point?

18 A. That is correct.

19 Q. And before you left the scene, he was placed
20 under arrest?

21 A. Correct.

22 Q. You found the phone in the car, right?

23 A. Correct.

24 Q. And that car did not belong to Mr. Horhn?

25 A. That's right.

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1 Q. And there were at least two other people in
2 the area of the car?

3 A. That's correct.

4 Q. And you didn't actually see any of them inside
5 the car?

6 A. No, ma'am.

7 Q. And you can't remember exactly where you found
8 the phone in the car? You just found it?

9 A. Right, that's correct.

10 Q. In the car. You wrote an offense report about
11 this, correct?

12 A. That's correct.

13 Q. It's important in your offense report to be
14 thorough and accurate.

15 A. That is correct.

16 Q. You never put any mention of him saying this
17 was his phone in the offense report; is that correct?

18 A. That is correct.

19 Q. So, that whole conversation of him saying it
20 was his and it doesn't work is not mentioned in the
21 offense report?

22 A. That's right.

23 Q. I believe your report is about 16 pages long.
24 Does that sound right?

25 A. That's correct. Well, I did a supplement on

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1 that report. So, I think mine is, like, four pages
2 maybe.

3 Q. So, you did not write the majority of the
4 report? You just wrote a supplement?

5 A. I did write the majority, yes.

6 Q. But in your part of supplement, you never
7 memorialized that conversation, right?

8 A. No.

9 Q. And it's your testimony that you had the phone
10 and at this point when you have the phone, he is under
11 arrest, correct?

12 A. That's correct.

13 Q. Because you said he had warrants?

14 A. Right.

15 Q. So, at this point he is going to jail?

16 A. Right.

17 Q. And at that point when he is going to jail and
18 he knows he's under arrest, I assume you tell him or
19 someone tells him? That's when he says, Yeah, you can
20 look at this phone, right?

21 A. That's correct.

22 MS. MEADOR: Nothing further.

23 THE COURT: Anything else?

24 MS. GAIDO: Just briefly, Your Honor.
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REDIRECT EXAMINATION

Q. (BY MS. GAIDO) How many other people were present at the scene and being detained?

A. There were two. Three, including Mr. Horhn.

Q. If you know, were they close enough to hear your discussion with Mr. Horhn regarding the cell phone?

A. I don't believe so.

THE COURT: Anything else?

MS. GAIDO: Pass the witness.

THE COURT: May the witness be excused?

MS. MEADOR: He may, Your Honor.

THE COURT: You're excused.

Call your next.

MS. GAIDO: Officer Wilson.

THE BAILIFF: Your Honor, the witness has been sworn.

THE COURT: Let the record reflect the witness has been sworn.

State.

MS. GAIDO: Thank you, Your Honor.

MARK WILSON,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (BY MS. GAIDO) Good morning.

A. Good morning.