

1 MS. FALK: Your Honor, may I have
2 just a moment to tell Officer Gabler so that he
3 knows he is allowed to talk about it?

4 THE COURT: Yes, ma'am.

5 MS. FALK: Thank you. Like 30
6 seconds, Judge.

7 THE COURT: Yes, ma'am.

8 MS. FALK: Would you like him to
9 take the stand?

10 THE COURT: Yes, I would. Bring
11 the jury.

12 THE BAILIFF: All rise.

13 (Jury in)

14 THE COURT: Call your next.

15 MS. FALK: I guess, for purposes of
16 the record, the State calls Officer Gabler.

17 THOMAS GABLER,
18 After having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 Q. (By Ms. Falk) Now I can start my
21 question. Can you tell us your full name for me?

22 A. Yes. Thomas Gabler.

23 Q. Who do you work for?

24 A. Houston Police Department.

25 Q. How long have you worked for the Houston

1 Police Department?

2 A. Twenty-six years.

3 Q. And are you a police officer?

4 A. Yes.

5 Q. Now, before you became a police officer
6 26 years ago, did you go to a police academy?

7 A. Yes.

8 Q. And then after you graduated from the
9 police academy, what was your first assignment as a
10 police officer?

11 A. Patrol.

12 Q. Tell us what patrol entails, like what
13 kinds of things you do when you're assigned to
14 patrol.

15 A. Be the first one to react to any calls
16 for service by the citizens.

17 Q. And have you been on patrol for 26
18 years?

19 A. Yes.

20 Q. Now, you have some, like, chevrons on
21 your sleeves, underneath your patch. Can you tell
22 us what those are for?

23 A. Corporal chevrons.

24 Q. So, what does it mean if you're a
25 corporal with HPD?

1 A. It's the next step from an officer,
2 seniority.

3 Q. So, do you have additional job
4 responsibilities or duties as a corporal?

5 A. Same as the other officers.

6 Q. Are you're just like the most senior
7 officer?

8 A. Correct.

9 Q. Do you get paid more to be a corporal?

10 A. No.

11 Q. You just are the senior officer when you
12 make a scene?

13 A. Correct.

14 Q. Having been with HPD for 26 years, that
15 would make you pretty senior? I meant that in a
16 nicer way than it came out. Having been with HPD
17 for 26 years, that would make you a senior police
18 officer?

19 A. Senior officer, yes.

20 Q. Are you still assigned to patrol?

21 A. Yes, I am.

22 Q. Have you been assigned to the patrol
23 throughout the entire 26 years?

24 A. Yes.

25 Q. What part of town are you currently

1 assigned to?

2 A. The Galleria area.

3 Q. Okay. Is that in Harris County, Texas?

4 A. Yes.

5 Q. Now, I want to direct your attention to
6 March 21st 2011. What was your job assignment or
7 what part of town back then?

8 A. The same area, Galleria.

9 Q. And what were your hours that you worked
10 back then?

11 A. 6:00 a.m. to 2:00 p.m., same as now.

12 Q. So, the same shift you work now?

13 A. Correct.

14 Q. So, come 3:40 in the afternoon, you're
15 past your shift hours, right?

16 A. Yes.

17 Q. So, turning back to March 21st of 2011,
18 did you respond to a call at the beginning of your
19 shift?

20 A. Yes.

21 Q. What type of call was it, if you recall?

22 A. It was a cutting in progress call.

23 Q. What does that mean, a cutting in
24 progress?

25 A. There was an altercation, and someone

1 received an injury by cutting instrument.

2 Q. Where was this -- where were you
3 dispatched to?

4 A. I was -- initial address was 2700 block
5 of Chimney Rock.

6 Q. When you say the initial address, did
7 you go out to that initial address?

8 A. Yes.

9 Q. Did you see anything there at the 2700
10 block of Chimney Rock?

11 A. No.

12 Q. Were you able to find a scene involving
13 an incident by cutting instrument nearby?

14 A. Yes.

15 Q. Where were you able to find the scene?

16 A. Down the road at Chimney Rock at
17 Westheimer, a few blocks down in the 5300 block of
18 Westheimer.

19 Q. Do you remember what time you got
20 dispatched to that area in that incident?

21 A. I believe it was 6:37 a.m.

22 Q. Do you just as part of your regular
23 procedure create an offense report to help you
24 remember some of the details of this case?

25 A. If it's necessary, yes.

1 Q. And did you do that in this case?

2 A. Yes.

3 Q. Make a report?

4 A. Yes.

5 Q. Okay. So, at 6:37 you get dispatched.

6 When you get to the first location, is there anybody
7 there?

8 A. The initial location, no.

9 Q. So, how do you decide you need to move
10 to the next location versus just packing it up and
11 leaving?

12 A. Go ahead and check back with our
13 dispatch where the call came through, see if there's
14 any followup, additional information.

15 Q. Was there any followup in this case or
16 additional information?

17 A. Yes.

18 Q. And based off that additional
19 information, where did you go next?

20 A. To the location of 5300 Westheimer.

21 Q. Describe for us what type of building or
22 location that is at 5300 Westheimer.

23 A. It was a commercial office building. We
24 were in the parking lot.

25 Q. When you pulled up into the commercial

1 office building parking lot, what did you observe?

2 A. There was another HPD officer on the
3 scene.

4 Q. Who was that officer?

5 A. Officer Saucedo.

6 Q. Does he also work your same shift, in
7 your same area?

8 A. Yes.

9 Q. Who else was at that scene?

10 A. There was two other people there, which
11 turned out to be the actual person that called in
12 the call, the security guard for the office property
13 and --

14 Q. Let me stop you there. Do you remember
15 his name?

16 A. Yes. Mr. Johnson.

17 Q. Then there was a second male. Who was
18 he?

19 A. Yes. Gentleman later identified as
20 Mr. Richie.

21 Q. What's his full name?

22 A. First name Antone.

23 Q. Do you see him here in this courtroom?

24 A. Yes.

25 Q. Can you describe him by an article of

1 clothing and point to him?

2 A. Gentleman with the yellow tie on.

3 MS. FALK: Your Honor, let the
4 record reflect the witness has identified the
5 defendant.

6 THE COURT: Yes, ma'am.

7 Q. (By Ms. Falk) Now, when you originally
8 drove up on the scene, where was Officer Saucedo?

9 A. His vehicle was parked in the parking
10 lot, and he was sitting in his vehicle, patrol
11 vehicle.

12 Q. Were you also in a patrol vehicle?

13 A. Yes.

14 Q. Is this a marked car?

15 A. Yes, marked patrol car.

16 Q. Clearly labeled HPD, and it's got the
17 lights and sirens, right?

18 A. Yes.

19 Q. When you pull up, how do you pull up
20 your car compared to Officer Saucedo's car?

21 A. I pulled up pretty much next to him
22 because he was the first unit on the scene.

23 Q. Now, you said Officer Saucedo was the
24 first unit on the scene, but who was technically the
25 primary investigator on this case?

1 A. That would be myself.

2 Q. How do you guys -- or how do you
3 determine who's primary and who's secondary?

4 A. Generally the dispatcher makes that
5 selection.

6 Q. So, how was it that Officer Saucedo was
7 technically the first one there, you were still the
8 primary unit?

9 A. It was the backup unit.

10 Q. How many years of service does Officer
11 Saucedo have compared to you?

12 A. I believe he has 12, 13 years on him.

13 Q. Fewer than you, correct?

14 A. Yes.

15 Q. When you get to the scene, what's the
16 first thing that you do?

17 A. You go and try and assess the situation.

18 Q. Were you able to do that in this case?

19 A. Yes.

20 Q. And how did you assess the situation in
21 this case?

22 A. First made contact with Officer Saucedo,
23 see what he observed upon his arrival.

24 Q. You can't tell us what all Officer
25 Saucedo told you, but did he give you anything?

1 A. Yes.

2 Q. What did he give you?

3 A. Identification. There was a Texas I.D.
4 card.

5 Q. Of who?

6 A. Belonged to Mr. Richie.

7 Q. After you retrieved Mr. Richie's
8 identification card from Officer Saucedo, who do you
9 contact next?

10 A. I approached the two gentlemen, which
11 was Mr. Johnson, the security guard, and Mr. Richie.

12 Q. Now, when you say that you approached
13 them, did you approach them to talk to them?

14 A. Yes.

15 Q. Did you keep them separate, or did you
16 talk to them together?

17 A. No. They were standing apart.

18 Q. Who did you talk to first, if you
19 recall?

20 A. I believe I talked to the security
21 guard, Mr. Johnson, first.

22 Q. Upon completing your conversation with
23 the security guard, what did you do next?

24 A. Then I spoke with Mr. Richie.

25 Q. When you first made contact with

1 Mr. Richie, just when you first laid eyes on him,
2 what was his physical appearance like?

3 A. He had the appearance of a homeless
4 person.

5 Q. Why do you say that? Some details about
6 why you would say that.

7 A. Well, we have quite a few in that area,
8 unfortunately. He had the appearance of unkeptness,
9 old, dirty ragged clothes, and he had a shopping
10 basket nearby full of miscellaneous items, which is
11 typical.

12 Q. When you say a shopping basket, do you
13 mean a little handheld basket or a pushing?

14 A. A grocery cart.

15 Q. When you met with Mr. Richie did you
16 observe him to have any visible injuries or any
17 bandages on?

18 A. Yes.

19 Q. Walk me through those injuries.

20 A. He had a visible bandage on his left
21 thumb.

22 Q. Did that bandage appear to be a fresh
23 bandage or old bandage?

24 A. Fresh.

25 Q. How could you tell it was fresh?

1 A. Well, I'd been informed that the fire
2 department paramedics had left the scene prior to my
3 arrival. They treated him.

4 Q. So, EMS came there before you?

5 A. Yes, correct.

6 Q. You make the scene and interview
7 Mr. Johnson, the security guard, and Mr. Richie,
8 right?

9 A. Yes.

10 Q. You said that you observed a bandage on
11 his left thumb. What, if any other injuries, did
12 you see on Mr. Richie?

13 A. I did not observe any other injuries.

14 Q. What was his demeanor like?

15 A. Overly excited, irritated, angry.

16 Q. And tell me, like, what about his
17 demeanor when you say angry?

18 A. He was talking very loudly, to the point
19 of yelling and very insistent that someone had gone
20 ahead and basically jumped and beat him up.

21 Q. Now, I want to talk to you about exactly
22 what he said. Did you mark in your report and take
23 note of your conversation with Mr. Richie?

24 A. Yes.

25 Q. Did you also take note of your

1 conversation with Mr. Johnson?

2 A. Repeat.

3 Q. Did you also take note or make notes
4 about your conversation with the security guard?

5 A. It was very brief. Mr. Johnson -- he
6 just called in to see I focused my attention on
7 Mr. Richie.

8 Q. When you first made contact with
9 Mr. Richie, did you identify yourself as a police
10 officer?

11 A. Yes.

12 Q. And you're in uniform, right?

13 A. Correct.

14 Q. Were you wearing the same uniform you're
15 wearing here today?

16 A. Yes, same uniform.

17 Q. Well, maybe not the exact same one. But
18 the same, you know, blue uniform with the badge and
19 all that stuff, correct?

20 A. Yes.

21 Q. So, when you made contact with
22 Mr. Richie what was the first thing that was said in
23 your conversation?

24 A. I inquired to what had happened to him.

25 Q. What did he tell you had happened?

1 A. He said he had gone ahead and been at
2 another location and gotten into an altercation.

3 Q. Let me stop you there. Did he tell you
4 exactly what location he'd been at?

5 A. He said it was a parking garage where a
6 club was.

7 Q. Are you familiar with that part of town?

8 A. Yes.

9 Q. You patrolled it for a long time?

10 A. Yes.

11 Q. Do you know of a parking garage or
12 parking lot where a club is nearby?

13 A. Yes.

14 Q. What is the name of that club?

15 A. Roxy club.

16 Q. Now, you use the words, attributing them
17 to Mr. Richie, Mr. Richie said he got into an
18 altercation. Was that his word, or is that your
19 word?

20 A. My word.

21 Q. So, what exactly did Mr. Richie tell you
22 took place over at this nightclub parking garage?

23 A. He said he'd gone ahead and was going to
24 the dumpster on the property there and he was
25 told -- security guard on the property told him he

1 couldn't do it. He had to leave the property.

2 Q. Did he describe for you what the
3 security guard looked like?

4 A. Not in detail.

5 Q. After he told you the security guard
6 stopped him from going onto the property -- and
7 actually let me ask you, what words exactly did he
8 use about the security guard stopping him? Do you
9 recall?

10 A. He was very unhappy that the security
11 guard had told him that, you know, he couldn't go in
12 a dumpster, he had to leave the property.

13 Q. What did Mr. Richie say happened next
14 between him and the security guard?

15 A. He went ahead and told me the words he
16 used, he told the security guard. He cursed at him
17 and --

18 Q. Did he tell you what language he used?
19 You said cursed at him?

20 A. Yes.

21 Q. Did he tell you what he said?

22 A. You want me to use the exact words?

23 Q. I would like for you to use the exact
24 words.

25 A. Mr. Richie went ahead and told the

1 security guard, "fuck you".

2 Q. Did he say it as calmly as you just
3 repeated it here, or was he reciting it to you in an
4 agitated or angry way?

5 A. Everything Mr. Richie said was very
6 overly excited, agitated, yelling.

7 Q. Now, after the defendant said he used
8 profanity at the security guard, what did he he tell
9 you happened next?

10 A. Mr. Richie went ahead and walked to the
11 sidewalk of the property and gave the same profane
12 gesture of, you know, the finger salute to the
13 security guard and the security guard went ahead and
14 asked him "what'd you say?"

15 Q. Let me stop you there. You said that --
16 and I want to make sure I've got all the "he's"
17 right here. Mr. Richie went over to the sidewalk
18 and you said gave the finger salute. He pointed his
19 middle finger at the security guard; is that
20 correct?

21 A. It was directed at the security guard,
22 yes.

23 Q. After he directs that at the security
24 guard, what did Mr. Richie say happened next?

25 A. Mr. Richie said the security guard

1 approached him and said "what'd you say?" And
2 Mr. Richie, he repeated what he told him initially.

3 Q. For the benefit of the record and just
4 so that we're clear, tell us exactly what Mr. Richie
5 said he said to the security guard a second time.

6 A. Mr. Richie told him, he said, "I said
7 fuck you."

8 Q. Did Mr. Richie tell you what happened
9 next?

10 A. Yes. He said a security guard went
11 ahead and raised his hand and go ahead and strike
12 him. [Sic]

13 Q. What did Mr. Richie say happened after
14 that?

15 A. Mr. Richie said he went ahead and pulled
16 a pocketknife that he had and he stabbed the
17 security guard in the arm and said he was going to
18 try to stab him again in the midsection, stomach
19 area.

20 Q. When you say he was going to stab him
21 again, did Mr. Richie say that Mr. Richie was going
22 to stab the security guard again?

23 A. Yes.

24 Q. In the stomach area?

25 A. Yes.

1 Q. What did he say happened after that?

2 A. He said -- when Mr. Richie tried to stab
3 the security guard in the midsection, the
4 pocketknife that he had folded back on his hand, on
5 his own hand.

6 Q. Did Mr. Richie say if he was able to
7 actually make contact with the victim the second
8 time?

9 A. No. He said he wasn't sure if he had
10 stabbed him since the knife had folded back over on
11 his thumb.

12 Q. What did Mr. Richie say happened after
13 that?

14 A. He had gone ahead and left the property.

15 Q. When you made contact with him, did he
16 still have that big grocery cart he'd been pushing
17 around?

18 A. He had it out there in this contact,
19 yes.

20 Q. How many blocks away would you say it is
21 from the Roxy nightclub parking garage to where you
22 interviewed Mr. Richie?

23 A. It's down the block, about -- as blocks
24 go, probably half a block down, I would say.

25 Q. But it's not just directly next door?

1 A. No. You couldn't go and just stand --
2 it was dark at the time. You couldn't go out and
3 see it, no.

4 Q. When you heard Mr. Richie's rendition
5 about what happened, did you ask him about the
6 knife?

7 A. Yes.

8 Q. And were you able to retrieve the knife
9 from him?

10 A. Yes.

11 Q. And tell us what type of knife it was.

12 A. It was a folding pocketknife with kind
13 of about -- I don't know, five inches folded at
14 length, with kind of a design on it.

15 Q. Do you remember what kind of design it
16 was?

17 A. I think it was kind of like a motorcycle
18 design.

19 Q. A unique design, right?

20 A. Yes, uh-huh.

21 Q. When you saw the knife, did you actually
22 take it from Mr. Richie?

23 A. Yes.

24 Q. What did you do with it after that?

25 A. I secured it for safety purposes and

1 also for evidence. I saw it had fresh blood on it.

2 Q. Where were you able to observe that it
3 had fresh blood on it, like where within the knife
4 did it have fresh blood?

5 A. Had it on the blade, if I remember.

6 Q. You said you tagged it into evidence,
7 correct?

8 A. Correct.

9 Q. And then you walk me through how you tag
10 something into evidence.

11 A. Later after I left the scene and
12 completed my report, I can take it over to our
13 property room.

14 Q. Where's the property room located?

15 A. It's off of Washington, across from our
16 central location on Riesner Street.

17 MS. FALK: Your Honor, may I
18 approach the witness?

19 THE COURT: Yes, ma'am.

20 Q. Officer Gabler, I'm going to show you
21 what I've premarked as State's Exhibit No. 1. This
22 is a sealed envelope, right?

23 A. Yes.

24 Q. I'm going to ask you, do you have a
25 pocketknife on you?

1 A. Yes.

2 Q. All officers carry pocket knives, right?

3 A. Yes.

4 Q. Can you slice this open for me? And as
5 you're pulling that out, is this marked with any
6 unique identifiers so you know it's connected to
7 your case?

8 A. It's got my signature on the back and
9 case number, and the case number matches.

10 Q. Why is it you mark your signature across
11 the back on the seal?

12 A. Once it's sealed, so it's not disturbed.

13 Q. Now, if you can go ahead and open this
14 for me wherever it's easiest to open, maybe right
15 there.

16 A. (Witness complies)

17 Q. Within State's 1, State's 1 is an
18 envelope and there's envelopes within it, correct?

19 A. Yes.

20 Q. Looking at this large envelope, can you
21 slice that one open? I think it's actually open
22 right now. I've got a glove for you if you want to
23 use it, or you can spill it out into here.

24 A. That's it.

25 Q. And is that knife in the same or

1 substantially similar condition as it was back when
2 you tagged it into evidence?

3 A. Take a closer look at it here. Yes.

4 MS. FALK: Your Honor, at this time
5 the State would offer Exhibit 1, which is the large
6 envelope and its contents.

7 MR. DAVIS: There's no objection,
8 Your Honor.

9 THE COURT: State's 1 and its
10 contents are admitted without objection.

11 MS. FALK: May I have permission to
12 publish this to the jury? I'm going to do it on
13 the --

14 THE COURT: Yes, ma'am.

15 Q. (By Ms. Falk) Now, Officer, you said
16 the knife in its entirety is about five inches,
17 right?

18 A. Excluding the length of the blade.

19 Q. Right. That's just kind of the bulk of
20 the knife when it's folded over?

21 A. Right.

22 Q. I'm going to show it to the jury as we
23 talk about it. You would agree with me it's a
24 pretty hefty knife, right?

25 A. Yes.

1 Q. It's not like a tiny little Swiss army
2 knife, right?

3 A. No.

4 Q. And it's not like a kitchen knife,
5 right?

6 A. No. It is not a kitchen knife.

7 Q. So, can you explain to the jury the way
8 this knife works?

9 A. It's a folding pocketknife. You unfold
10 it, and the blade is going to lock into position to
11 lock in a fixed position.

12 Q. When you say it's a folding, is it the
13 type of folding knife where you fold a button and it
14 pops open?

15 A. Not on this one, I don't believe.

16 Q. So, how is it that you open this knife?

17 A. You have to physically lift up on the
18 blade and open it up from the handle that it's set
19 into.

20 Q. So, typically speaking, would you be
21 able to open this knife with just one hand?

22 A. You could in some knives if -- you know,
23 not everybody does, but if you're more proficient
24 with it you could.

25 Q. Is this the type of knife people hunt

1 with?

2 A. No.

3 Q. Is it the type of knife that people --

4 MR. DAVIS: Objection to relevance,
5 Your Honor.

6 THE COURT: Sustained.

7 Q. (By Ms. Falk) Once you tagged this knife
8 into evidence, have you seen it at all since then
9 until today?

10 A. First time today.

11 Q. Now, I want to go back to your
12 investigation. All right? I want to go back to
13 March 21st 2011. You stated that you tagged this
14 into property, but before you tagged it into
15 property, you told the jury you completed your
16 investigation. So, let's talk about the completion.
17 After you interviewed the defendant and you took the
18 knife, what did you do next?

19 A. Finished my interview with Mr. Richie,
20 and then I went ahead and proceeded over to the
21 location where this apparently occurred.

22 Q. And when you left the location with
23 Mr. Richie, was he under arrest?

24 A. No.

25 Q. Was he in handcuffs?

1 A. No.

2 Q. Was he in your patrol car?

3 A. No.

4 Q. At any time was he cuffed?

5 A. No.

6 Q. At any time was he threatened or told he
7 needs to remain there?

8 A. No.

9 Q. When you left Mr. Richie what were your
10 instructions with Mr. Richie?

11 A. I told him I had all of his information
12 and he could go.

13 Q. What did you do after that? Where did
14 you go next?

15 A. I went over to the parking garage where
16 Mr. Richie had told me where this incident may have
17 occurred.

18 Q. Were you able to find anybody over at
19 that second parking garage?

20 A. No.

21 Q. Do you remember the address of that
22 second parking garage?

23 A. Let's see. Refer to it in my report
24 here, 5353 West Alabama.

25 Q. Is that a location in Harris County,

1 Texas?

2 A. Yes.

3 Q. When you went over to 5353 West Alabama,
4 you said you weren't able to observe any people, but
5 did you find any other evidence when you went
6 through there?

7 A. No.

8 Q. And at this point tell me a little bit
9 about the lighting. Is it dark? Is it light? Is
10 the sunlight out? Is there artificial lighting?

11 A. No. It was still dark, early morning.

12 Q. After you go over to 5353 West Alabama,
13 where do you go next? What do you do next?

14 A. I go to compile the report.

15 Q. Are there any other steps in your
16 investigation at this point?

17 A. I was unable to confirm that that
18 person, with the limited information, where their
19 whereabouts were or where they were.

20 Q. At that point are you charging anybody
21 with any crime?

22 A. No. This point here, it's information
23 only, just documented the report.

24 Q. What's the purpose of making a report if
25 it's just for informational?

1 A. In the event that the other party
2 actually existed and came forward.

3 MS. FALK: Pass the witness.

4 THE COURT: Mr. Davis.

5 CROSS-EXAMINATION

6 Q. (By Mr. Davis) Officer Gabler, when you
7 went to 5353 West Alabama, you testified that you
8 didn't see any evidence of anything?

9 A. Correct.

10 Q. It's late at night, right?

11 A. Early in the morning.

12 Q. I'm sorry, early in the morning and
13 still dark out?

14 A. Yes.

15 Q. You went to the parking garage where
16 Mr. Richie told you stuff happened or at least the
17 area where he told you stuff happened?

18 A. I did not receive detailed information
19 from Mr. Richie.

20 Q. Yes, sir. He told you the location
21 where this occurred?

22 A. He said it happened in the -- over there
23 next to the street of the property.

24 Q. Where the Roxy was?

25 A. Right.

1 Q. You go to that spot, right?

2 A. Yes.

3 Q. You look around and see if you can find
4 anybody?

5 A. Yeah. There was no body, no vehicles,
6 no lights on in the buildings. There was no
7 evidence of anybody being there.

8 Q. You didn't see any blood or anything?

9 A. No.

10 Q. Because if you had seen blood, you'd
11 call the crime scene investigator, right?

12 A. I would have investigated further, yes.

13 Q. You talk about a statement Mr. Richie
14 gave you. You obviously made a report in the case?

15 A. Yes.

16 Q. When you're talking to Mr. Richie,
17 you're talking to him on the side of the street,
18 right?

19 A. Talking to him in the parking lot.

20 Q. You're talking to him in the parking lot
21 of the Prosperity Bank?

22 A. Yes.

23 Q. There's another officer present?

24 A. Yes.

25 Q. And a security guard that's also

1 present?

2 A. Yes.

3 Q. And Mr. Richie is there?

4 A. Yes.

5 Q. Prior to your arrival, Mr. Richie was
6 there before you came?

7 A. Yes.

8 Q. Right. He wasn't under arrest or
9 anything when he was there?

10 A. No.

11 Q. He was free to leave?

12 A. Yes.

13 Q. He waits for you to come?

14 A. Yes.

15 Q. And he waits to talk to you?

16 A. Yes.

17 Q. And you're saying Mr. Richie spoke to
18 you voluntarily?

19 A. Yes.

20 Q. He was upset, you said?

21 A. Yes.

22 Q. Like he had experienced the distress of
23 an event?

24 A. Yes.

25 Q. Now, you don't record the statement with

1 Mr. Richie, do you?

2 A. With a recording device?

3 Q. Yes, sir.

4 A. No.

5 Q. You don't put him in your patrol car to
6 try to record him through your car?

7 A. I'm not able to do that, no.

8 Q. You have a recording device in your car,
9 but you're unable to record statements?

10 A. There's no recording device that I can
11 use to record statements in my patrol vehicle.

12 Q. I'm sorry. Does your MDT record
13 information, sir?

14 A. Only the information that's received
15 from the dispatch or what I would send to dispatch.

16 Q. I see. So, at that point in time when
17 you're talking to Mr. Richie, you pretty much don't
18 have him write down a statement?

19 A. No.

20 Q. You don't take down any written
21 statement from Mr. Richie nor a recorded statement
22 from him?

23 A. No. That's not standard procedure.

24 Q. You do talk to him and get information
25 from him, right?

1 A. Correct.

2 Q. And later you put the information that
3 he told you in the report?

4 A. Yes.

5 Q. And you try to put things in the report
6 because it helps you recall what happened?

7 A. Yes.

8 Q. In this particular situation, you do
9 your report some two hours later?

10 A. I don't know what time I actually
11 complete it, but it's not unusual for it to be a
12 couple hours later.

13 Q. On your report there's a time where it
14 says the report is entered, right?

15 A. Should be.

16 Q. And on the report you have the time that
17 you were dispatched, at least the time you were
18 there on the scene. Do you have your report in
19 front of you?

20 A. Yes.

21 Q. You have the time you were dispatched at
22 6:10 a.m. in the morning; is that right? Do you see
23 that?

24 A. I have call received, time of 6:37 a.m.

25 MR. DAVIS: May I approach the

1 witness, Your Honor?

2 THE COURT: Yes, sir.

3 A. Okay. The 6:00 a.m. time is the
4 beginning date and time.

5 Q. Yes, sir.

6 A. That's the information we received from
7 the party involved in the incident. That's the time
8 they give us as to when the incident actually began.

9 Q. All right. Do you have the end time as
10 6:10?

11 A. 6:10 is the information also the
12 involved party gave us as to the duration of the
13 incident.

14 Q. Yes, sir. Then you have the time that
15 the report was entered as; is that right?

16 A. Yes.

17 Q. That's what time, sir?

18 A. 8:07 a.m.

19 Q. So, I guess maybe an hour and a half or
20 so later you write this down and put it in your
21 report?

22 A. I write it down, yes.

23 Q. You make your report based on your
24 recollection of your interaction with Mr. Richie?

25 A. Write it down from the report, yes.

1 Q. Do you have copies of notes you were
2 taking, sir?

3 A. All my notes are in the report.

4 Q. In your report there's some things you
5 talked about today that aren't in your report; isn't
6 that right?

7 A. I'm not sure about that.

8 Q. You said Mr. Richie said something about
9 trying to stab him again? Do you remember saying
10 that?

11 A. Yes, I do.

12 Q. Now, in your report you don't have any
13 mention of Mr. Richie saying he tried to stab him a
14 first time?

15 A. I'll look at that.

16 Q. That would be on page four of your
17 report. Do you see that section towards the top of
18 the report, maybe the third paragraph?

19 A. Yeah. I see where it says -- I have in
20 there that -- do you want me to read it to you?

21 Q. No, because your report isn't in
22 evidence. I need you to look at your report.

23 A. Okay.

24 Q. Do you see your report, the section?

25 A. Yes.

1 Q. Now, in your report when you're writing
2 down what's occurring, Mr. Richie says he cut him on
3 his own, right?

4 A. Yes.

5 Q. And those are the words you use in your
6 report, true?

7 A. Yes.

8 Q. You would agree with me that at this
9 stage, you're trying to be as accurate as you can in
10 your report, right?

11 A. Try to, yes.

12 Q. Because you're going to be asked to
13 testify about it later?

14 A. Yes.

15 Q. In your report you don't say anything
16 about him stabbing him or at least making attempts
17 to stab him twice; isn't that true?

18 A. The reference is, yes, there was a
19 repeated attempt.

20 Q. Your first thing is that he tried to cut
21 him on his arm?

22 A. Yes.

23 Q. Then he tried to stab him, and the knife
24 closed on his finger?

25 A. Yes.

1 Q. That was the summation of Mr. Richie's
2 incident with the police officer, right? In other
3 words, that's the summary of what you say happened
4 to him and the security guard, not police officer?

5 A. That was the repetitive statement he
6 gave me, yes.

7 Q. He doesn't say he stabbed him and then
8 tried to stab him again?

9 A. Yes.

10 MR. DAVIS: I'm going to approach.

11 Q. Would you show me that in your report,
12 too? Show me that in your report.

13 A. Right there.

14 Q. Where he said he stabbed him and he was
15 trying to stab him again. Where is that? Now, I'm
16 going to ask you, your report reads "and the
17 security guard hit him. Mr. Richie pulled out his
18 knife and cut the security guard on his arm. Then
19 he tried to stab him but his knife folded and he cut
20 his own thumb." Is that an accurate reading of your
21 report?

22 A. Yes, it is.

23 Q. Okay. So, in your report -- so, I'm
24 guessing you're saying when Mr. Richie cut him on
25 his arm, that was him trying to stab him. You're

1 referring to that as a stab?

2 A. Yes.

3 Q. I see. Would you agree with me that a
4 cut and a stab are two different things in terms of
5 injuries?

6 A. It could be the same thing.

7 Q. I understand. Now, when you see
8 Mr. Richie, you assume he's homeless; isn't that
9 right?

10 A. Yes.

11 Q. You approach him because he has this
12 disheveled look, right?

13 A. I approach him because he called for
14 police attention.

15 Q. Yes, sir. You approach him, you believe
16 he's homeless because he has this disheveled look?

17 A. Yes, outward appearance, yes.

18 Q. He's been in and out of dumpsters, so he
19 was smelling at that time, I guess?

20 A. I don't recall that.

21 Q. You couldn't recall whether he smelled
22 different than normal people would?

23 A. That's correct.

24 Q. You wouldn't know what Mr. Richie would
25 smell like anyway?

1 A. No.

2 Q. You hadn't had an interaction with him
3 before then?

4 A. No.

5 Q. You wouldn't know what he would normally
6 dress like?

7 A. No.

8 Q. You wouldn't know what his work clothes
9 might look like?

10 A. No.

11 Q. You wouldn't know what he might appear
12 like normally, would you?

13 A. I would not.

14 Q. All right. Now, if you look at
15 Mr. Richie, he's got some scars on his face.

16 MS. FALK: Objection, Your Honor,
17 relevance.

18 THE COURT: Overruled.

19 A. I don't observe any from this distance.

20 MR. DAVIS: Stand up, Mr. Richie.

21 Q. (By Mr. Davis) Do you see how his skin
22 has some discoloration in his skin, some parts of
23 his skin is darker?

24 A. It does appear so.

25 Q. Do you see how he has some stubble?

1 THE DEFENDANT: (Motioning)

2 THE COURT: Excuse me. Approach
3 the bench, please.

4 (Conference at the bench, on the
5 record)

6 MR. DAVIS: I know. I asked
7 Mr. Richie not to move. I'll instruct him not to
8 move or point to anything.

9 THE COURT: Thank you.

10 (Conference concluded)

11 Q. (By Mr. Davis) Step back just a little
12 bit so you won't have to point. When you see him
13 he's got discoloration on his face and his skin,
14 right?

15 A. When I see him now, yes.

16 Q. He's got like a scar here which is a
17 dent in his head. Do you see that?

18 A. I can't see that from here, no.

19 Q. You couldn't see that? When you were
20 talking to him, you were pretty close to him?

21 A. At the scene?

22 Q. Yes, sir.

23 A. It was dark. It was night. No, I
24 didn't observe anything.

25 Q. I'm going to ask you to step down.

1 MR. DAVIS: Your Honor, may the
2 witness step down?

3 THE COURT: You may step down.

4 Q. Can you step down, Officer, and come a
5 little closer this way, please, sir?

6 THE COURT: Officer, keep your
7 voice up since you're away from the microphone.

8 Q. (By Mr. Davis) From where you're
9 standing, Officer, can you see a scar on his head?

10 A. There appears to be one where you're
11 pointing.

12 Q. Yes, sir. Do you see that?

13 A. Yes.

14 Q. Do you see the discoloration around his
15 cheek and on his face?

16 A. Yes. I see that here.

17 Q. Discoloration on his eye?

18 A. Yes.

19 Q. And I think it may be on one side but
20 not the other, how he has a little swelling on his
21 cheek here. Do you see those things?

22 A. Yes.

23 Q. Looks like different scars that he might
24 have?

25 A. If you point it out, yes, it's apparent.

1 Q. I understand. You can have a seat.
2 Thank you, sir. You can sit back down, sir.

3 A. Thank you.

4 Q. When you encounter him --

5 THE COURT: Let him return to his
6 seat.

7 MR. DAVIS: Yes, Your Honor. May I
8 proceed, Your Honor?

9 THE COURT: Yes, sir.

10 Q. (By Mr. Davis) When you encounter him
11 you don't know what's on his face or what's there,
12 do you?

13 A. No.

14 Q. You make the conclusion because of some
15 reason that he doesn't have or doesn't appear to
16 have any injuries; is that right?

17 A. Also, along with -- I asked him if he
18 was injured, and he said only his thumb.

19 Q. All right. You asked him now -- none of
20 that's in your report again, in terms of you asking
21 him whether he was injured, and he said only his
22 thumb; isn't that right?

23 A. That's pretty common practice if you ask
24 someone if they're injured.

25 MR. DAVIS: And I'll object to that

1 as being nonresponsive.

2 THE COURT: Objection sustained.
3 Listen to the question that you're asked, Officer
4 Gabler, and answer just that question, please.

5 Q. (By Mr. Davis) None of that is in your
6 report about you asking if he was injured and he
7 told you only his thumb; isn't that right?

8 A. Yeah. I guess I didn't get that
9 detailed.

10 Q. Obviously, you would agree with me that
11 now it's been more than a year, two years since this
12 has happened, what a year and a half maybe since
13 this has happened, right, since you encountered
14 Mr. Richie?

15 A. Yes.

16 Q. And you agree with me again that you
17 didn't record your encounter with Mr. Richie, so we
18 have to rely on what you put in your notes, true?

19 A. Yes.

20 Q. You called Mr. Richie a complainant in
21 your report?

22 A. Yes.

23 Q. It's typical if you're doing an
24 investigation, the person who is the victim or the
25 person who's had something happen to them is

1 categorized as a complainant, right?

2 A. Not always.

3 Q. Most of the time that person is listed
4 as the complainant?

5 A. Depends on the situation.

6 Q. Yes, sir. But my question to you was,
7 most of the time in your business, in your dealings,
8 when you fill out a report, you call someone a
9 complainant when that person is listed as the one
10 who's had something happen to them; isn't that true?

11 A. Yes.

12 Q. In this particular situation, you called
13 Mr. Richie a complainant, right?

14 A. Yes.

15 Q. You had no information at that point in
16 time that was contrary to what Mr. Richie was saying
17 to you, true?

18 A. Contrary?

19 Q. Yes, sir.

20 A. Or supportive?

21 Q. I'm asking you right now. You had
22 nothing that was contrary. You had no information
23 that was supportive, you'd agree with me?

24 A. No, nothing that was completely, no.

25 Q. His finger was cut. He told you the

1 knife cut on his finger?

2 A. Right.

3 Q. And he's still at the scene, true?

4 A. He's at the dispatch -- well, away from
5 the scene, yes.

6 Q. He's like half a block away; is that
7 what you said, right?

8 A. Yes.

9 Q. He's still in the general area?

10 A. Yes, general area.

11 Q. The addresses you're using are all 5300
12 something West Alabama, right?

13 A. Yes.

14 Q. So, he's still there when you arrive?

15 A. Yes.

16 Q. And in addition to him still being
17 there, you have him pointing you to a direction
18 where things have occurred and him remaining; isn't
19 that right?

20 A. Yes.

21 Q. And he gives you his identification
22 card?

23 A. I have his identification card, yes.

24 Q. So, he's not being coy in terms of not
25 giving you his ID or not cooperating with you,

1 right?

2 A. No.

3 Q. And so, you list him as a complainant?

4 A. Yes.

5 Q. And you have nothing that you've been
6 given contrary. At least, you found no evidence to
7 say what he's saying to you isn't true; isn't that
8 right?

9 A. No. I don't disclaim anything.

10 Q. But in your report, you say the other
11 complainant. You list in your report that there is
12 another complainant; isn't that right?

13 A. There's a possible other complainant,
14 yes.

15 Q. But you've got no information. He tells
16 you he's been attacked by somebody and he defended
17 himself and you got no information this person is in
18 the right and you list that you have another
19 complainant in your report; isn't that true?

20 A. Yes. I don't know the other person even
21 exists at that time.

22 Q. You don't believe Mr. Richie, do you?

23 A. I have no reason not to.

24 Q. He's a homeless guy, right?

25 A. With the appearances, yes.

1 Q. In your mind, he's a homeless guy?

2 MS. FALK: Objection, Your Honor.

3 This is asked and answered.

4 THE COURT: Sustained.

5 Q. (By Mr. Davis) He's out there with a
6 basket?

7 MS. FALK: Objection, asked and
8 answered.

9 THE COURT: Overruled.

10 Q. (By Mr. Davis) He's out there with a
11 basket that he's pushing around, right?

12 A. Yes.

13 Q. And he's this guy who's telling you that
14 he's going into dumpsters, is what you're saying?

15 A. Yes.

16 Q. He's got some patterns in your mind
17 that's consistent from what you've heard with him
18 being someone that doesn't have a house to live in?

19 A. Yes.

20 Q. He starts telling you this account, and
21 is it true that you leave him and go looking for Jim
22 Lee because you want to file charges on Antone
23 Richie?

24 A. No.

25 Q. Isn't it true that you told Antone

1 Richie that you're going to find a complainant, find
2 Jim Lee, and have him file charges against
3 Mr. Richie?

4 A. No.

5 Q. Isn't it true when you sat down and
6 talked to Detective Miller that you told that to
7 Detective Miller?

8 A. I don't recall.

9 Q. You know when Detective Miller does his
10 investigations and he takes his notes, you know he
11 does reports as well?

12 A. Yes.

13 Q. You're aware Officer Miller actually
14 records --

15 MS. FALK: Objection, Your Honor.

16 THE COURT: Let me hear the
17 question first.

18 Q. (By Mr. Davis) Are you aware Officer
19 Miller actually records his conversations with his
20 interviewees? Are you aware of that?

21 A. I don't remember if he did or not.

22 Q. Have you seen Detective Miller's report?

23 A. No.

24 Q. Do you know in Detective Miller's report
25 that he lists -- that he recorded your interview

1 with him?

2 MS. FALK: Objection, Your Honor --

3 MR. DAVIS: I asked him if he's
4 aware --

5 THE COURT: At this point, that's a
6 yes or no.

7 A. Was I aware at the time?

8 Q. (By Mr. Davis) Yes, sir.

9 A. Not that I recall.

10 Q. Are you aware that Detective Miller
11 states in his report --

12 MS. FALK: Objection, hearsay.

13 THE COURT: Sustained.

14 MR. DAVIS: I'll ask the question a
15 slightly different way, Your Honor.

16 THE COURT: All right.

17 Q. (By Mr. Davis) Isn't it true that you
18 told Mr. Richie -- I'm sorry. You told Detective
19 Miller that you looked for the guard and intended on
20 arresting Richie if you could find the guard as a
21 complainant?

22 MS. FALK: Objection, hearsay.

23 THE COURT: Overruled.

24 A. If there was any support and evidence.

25 THE COURT: Sir, listen to the

1 question he asks, and answer that question, please.

2 A. Repeat the question.

3 Q. (By Mr. Davis) Sure. Isn't it true that
4 you told Detective Miller that you looked for the
5 guard and intended on arresting Richie if you could
6 find the guard as a complainant?

7 A. Honestly, I don't recall.

8 Q. You don't recall?

9 A. No.

10 Q. So, now let me get this straight. You
11 remember all these things, some things that aren't
12 in your report, right?

13 A. I'm going by the report.

14 Q. Going by the report now?

15 A. Uh-huh.

16 Q. So, we've been having this discussion
17 going back and forth about different things you
18 might recall and you're telling me you don't recall
19 this event, in terms of things you told Detective
20 Miller about. You agree with me, you talked to
21 Detective Miller after you talked to Mr. Richie,
22 right?

23 A. Yes, right.

24 Q. You talked to Mr. Richie down in the
25 homicide office, right?

1 A. At a later date, yes.

2 Q. You're talking with Detective Miller,
3 telling him about what the investigation is. You
4 know it's a homicide at that point, true?

5 A. Yes.

6 Q. You know he's investigating homicide,
7 pretty serious business?

8 A. Yes.

9 Q. Some guy's liberty is on the line,
10 right?

11 A. Yes.

12 Q. And you go in and you talk to him and
13 you say certain things to him. You're telling me
14 now you don't recall what you told him?

15 A. No. I'll be honest. I don't recall.

16 Q. You recall what happened on the scene,
17 and that was longer ago.

18 A. I refreshed my memory with the report,
19 yes.

20 Q. Would it refresh your recollection if
21 you saw Detective Miller's report?

22 A. I reckon it would.

23 MR. DAVIS: May I approach the
24 witness, Your Honor?

25 THE COURT: Yes, sir.

1 Q. This section. Just read it -- don't
2 read it out loud.

3 A. Which section?

4 Q. This section right here, that paragraph.
5 Read it to yourself, please.

6 A. If it's in there, that's what I said.

7 Q. I've got to ask you a question. I
8 apologize, didn't mean to be rude.

9 A. I didn't take it as being rude.

10 Q. Thank you. Does that refresh your
11 recollection, sir?

12 A. Yes.

13 Q. Now, I'll ask you again. Isn't it true
14 you told Detective Miller that you intended on
15 finding the complainant, Mr. Richie, and arresting
16 him?

17 A. Yes.

18 Q. In other words, at that point in time
19 you had spoken with Mr. Richie and you intended on
20 not accepting what Mr. Richie said but finding Jim
21 Lee and charging Richie with a crime?

22 A. Everything led to that, yes.

23 Q. So, you wanted the jury to believe you
24 believed Mr. Richie? When I asked you that
25 question, you said, "I didn't really know"?

1 A. I didn't at that time.

2 Q. Now you're changing your answer to, you
3 didn't believe Mr. Richie?

4 A. I had no supporting evidence either way.
5 I had one statement from one party allegedly
6 involved.

7 Q. You didn't believe Mr. Richie though,
8 even though you didn't have evidence that refuted
9 what he was saying; isn't that right?

10 A. I didn't believe him. I didn't
11 disbelieve him.

12 Q. Wait a second.

13 A. Neutral party.

14 Q. You're saying you were intending to
15 charge him if you could find the other person?

16 A. If the facts supported it, yes.

17 Q. You also told that to Mr. Richie; isn't
18 that right?

19 A. Yes.

20 Q. You told Mr. Richie that you were
21 planning on arresting him if you could find the
22 other person?

23 A. Yes, according to those notes.

24 Q. Now, you're doing an investigation.
25 You've got a guy who's waited for you to come when

1 you go to the scene, right?

2 A. Yes.

3 Q. This guy's anxious to tell you what
4 happens. He does. He tells you what happens, and
5 before you do anything else, you tell him you plan
6 on arresting him and charging him if you can find
7 the complainant; isn't that correct?

8 A. No, sir. I didn't do it that way.

9 Q. Is it your testimony you did some
10 investigation before you talked to Mr. Richie and
11 told him you were planning on arresting him?

12 A. What part of the investigation are you
13 referring to?

14 Q. Isn't it true you told Detective Miller,
15 and this is going to sound convoluted, but I'm going
16 to try to make it simpler. You told Richie that he
17 would be arrested if you could find the guard and
18 that Richie wasn't happy with that explanation?

19 A. Yeah. The possibility existed, yes.

20 Q. So, Mr. Richie is there. He's reporting
21 about him being attacked, and before you do any
22 investigation, you tell Richie, I'm going to arrest
23 and charge you if I can find the other guy; isn't
24 that right?

25 A. If it was by -- as Mr. Richie had stated

1 with me the events that occurred.

2 Q. So, before you do any investigation
3 you've already made a decision that Mr. Richie is
4 worthy of being arrested?

5 A. No, not entirely, no.

6 Q. In fact, even though you tell that to
7 Mr. Richie, he still stays there until you tell him
8 to leave; isn't that right?

9 A. Yes. I advised him of the possibility.

10 Q. But he stays there?

11 A. Yes.

12 Q. He doesn't run, right?

13 A. That's correct.

14 Q. He doesn't lie about his information in
15 terms of who he is, his address, or any of that
16 information, correct?

17 A. Correct.

18 Q. He gives you a way in which you can find
19 him?

20 A. Yes.

21 Q. That's somewhat inconsistent with
22 someone who's homeless, would you agree with me?

23 MS. FALK: Objection.

24 THE COURT: Sustained.

25 Q. (By Mr. Davis) Based on your training

1 --

2 THE COURT: The objection is
3 sustained.

4 MR. DAVIS: Can I ask this
5 question, Judge --

6 THE COURT: You can ask another
7 question.

8 MR. DAVIS: I'll do that.

9 Q. (By Mr. Davis) Richie doesn't run?

10 A. No.

11 MR. DAVIS: May I have one moment,
12 Your Honor?

13 THE COURT: Yes.

14 MR. DAVIS: One more question.

15 Q. Isn't it true, sir, when you left, you
16 gave Mr. Richie a card that had like a case number
17 on it that was an aggravated assault case number?

18 A. Yes.

19 Q. You gave him a case that said, hey,
20 you're being charged with aggravated assault, a
21 piece of paper?

22 A. No, not for being charged.

23 Q. It's for the case number?

24 A. Right, yes.

25 Q. There was an aggravated assault and this

1 is the case number you gave to Richie?

2 A. Yes.

3 Q. You listed Mr. Richie as the alleged
4 assailant in that aggravated assault case number you
5 gave him?

6 A. I listed him as a complainant and
7 possible suspect.

8 Q. And at that point you hadn't even talked
9 to Jim Lee?

10 A. No, never made contact with the
11 individual.

12 MR. DAVIS: I don't have anything
13 else, Your Honor.

14 THE COURT: Ms. Falk.

15 MS. FALK: I have no further
16 questions. May this witness step down?

17 THE COURT: You may stand down.
18 May this witness be excused?

19 MR. DAVIS: Subject to recall.

20 MS. FALK: I have no questions.

21 THE COURT: You can be excused.
22 Call your next.

23 MS. FALK: At this time the State
24 calls Shauna Schoonover.

25 THE BAILIFF: Your Honor, this