

Orlando Caval - July 15, 2014
Redirect Examination by MS. LONGORIA

1 MR. HALPERT: I have nothing further from
2 this witness.

3 THE COURT: Thank you. May he be excused?

4 MS. LONGORIA: Subject to recall.

5 THE COURT: Subject to recall. Call your
6 next.

7 MS. LONGORIA: State calls Deputy Tarrence
8 Gaines.

9 THE COURT: Deputy Gaines, Dean. 116 is
10 not in evidence?

11 MR. HALPERT: That's correct, Your Honor.

12 THE COURT: After this witness, if you all
13 want to take a quick five or ten minute break, we will do
14 that.

15 Deputy Gaines, have a seat right there and write
16 your name on this piece of paper. Speak loud enough so
17 the furthest man in the jury box can hear you.

18 THE WITNESS: Yes, sir.

19 MS. LONGORIA: Please the Court?

20 THE COURT: Yes, sir -- yes, ma'am. Sorry.

21 **TARRENCE GAINES,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MS. LONGORIA:**

25 Q Good afternoon Deputy Gaines, how are you today?

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1 A I am doing good. Yourself?

2 Q I'm fine, thank you. State your name for the
3 ladies and gentlemen of the jury.

4 A My full name is Tarrence DeRoy Gaines.

5 Q And how are you employed, sir?

6 A Ma'am?

7 Q And how are you employed?

8 A Harris County Sheriff's -- Patrol Deputy with the
9 Harris County Sheriff's Department.

10 Q How long have you held that employment?

11 A Nine-and-a-half years.

12 Q And were you in law enforcement previous to your
13 employment with the Sheriff's Department?

14 A No, ma'am.

15 Q Do you have an educational background to prepare
16 you for being a peace officer in the State of Texas?

17 A No, ma'am, just the police academy.

18 Q Can you tell the jury a little bit about the
19 police academy?

20 A Exciting. We studied the law with the Penal
21 Code, Criminal Traffic Code, Family Law, Physics.

22 Q And as a sheriff's deputy, do you actually begin
23 your career working in the Harris County Jail?

24 A Yes, ma'am.

25 Q How long did you work there?

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1 A Four years.

2 Q And subsequent to your four years working in the
3 jail, where did you go?

4 A District 4.

5 Q And is that as a patrol officer?

6 A Yes, ma'am.

7 Q And tell the jury about a patrol officer.

8 What's the daily adventures of a Harris County Patrol
9 Deputy?

10 A In service in the area of patrol and helping the
11 citizens and taking calls.

12 Q And is it both proactive in terms of stopping
13 crime as it's happening and then also reactive responding
14 to calls for service?

15 A Yes, ma'am.

16 Q I would like to direct your attention back to
17 October 19th, 2013. Were you on duty in the late evening
18 hours of approximately 10:40 p.m.?

19 A Yes.

20 Q Can you tell the jury where you were working?

21 A The Colonies. Highway 6 and West Little York.

22 Q Is that in the northwest portion of Harris
23 County, Texas?

24 A Yes. Yes.

25 Q We have to do question and answer so the court

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1 reporter can get us.

2 A Okay.

3 Q Thanks. And how long had you patrolled that
4 area as of October, 2013?

5 A Four years.

6 MS. LONGORIA: May I approach the witness,
7 Your Honor?

8 THE COURT: Yes, ma'am, you may.

9 Q (By Ms. Longoria) Deputy Gaines, I'm going to
10 direct your attention to some exhibits that the jury has a
11 copy of beginning with Petitioner's Exhibit 139. Do you
12 recognize that map?

13 A Yes.

14 Q And does that contain the area known as The
15 Colonies that you were responsible for patrolling?

16 A Yes.

17 Q And I know it's horribly small. Can you tell
18 the jury approximately where The Colonies is on that map?

19 A Highway 6, 529 area. That would be -- that would
20 be the northwest -- the northwest side of the map.

21 Q Approximately, you said the intersection of
22 Highway 6 and 529; is that correct?

23 A Yes, ma'am.

24 Q Let me show you State's Exhibit -- Petitioner's
25 Exhibit 140. Does that fairly and accurately represent

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1 the area that you actually responded to that night?

2 A Yes, ma'am.

3 Q And where is that location?

4 A 6565 Highway 6 North.

5 Q And is that the Marshalls parking lot?

6 A Yes.

7 Q And is that location in Houston, Harris County,
8 Texas?

9 A Yes.

10 Q What caused you to respond to that location?

11 A I was dispatched to that location for a call, a
12 call of service.

13 Q What was the call for service that you were
14 dispatched to?

15 A Aggravated robbery.

16 Q Sorry?

17 A Aggravated robbery.

18 Q And for the benefit of the jury, when you as a
19 patrol officer are responding to an aggravated robbery,
20 what kind of robbery are we responding to?

21 A Just an aggravated robbery.

22 Q That indicates to you that a weapon was
23 involved?

24 A A weapon involved, yes, ma'am.

25 Q Did you happen to be close to the scene of 6565

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1 North Highway 6 at 10:40 p.m.?

2 A Yes.

3 Q How long did it take you to get there to the
4 parking lot?

5 A Approximately two minutes.

6 Q And from where you were patrolling, could you
7 see the parking lot or did you actually have to drive some
8 distance?

9 A I drove some distance.

10 Q That parking lot -- are there multiple major
11 roadways, avenues of ingress and egress from that parking
12 lot?

13 A Just one.

14 Q And which one would that be?

15 A Highway 6 North.

16 Q Is there a back way to get out of the Marshalls
17 parking lot?

18 A Yes.

19 Q And where would that take you?

20 A Smith Stone.

21 Q That is a residential area in back?

22 A Yes.

23 Q When you responded to the parking lot, did you
24 meet Orlando Caval?

25 A Yes.

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1 Q Can you describe his demeanor for the jury when
2 you first met him?

3 A Scared.

4 Q Was it apparent that he was still under the
5 shock of whatever events had just happened?

6 A Yes.

7 Q And what was the first thing he told you?

8 A That he was robbed.

9 Q Did he give you a description of the
10 individuals?

11 A Yes.

12 Q Did you know, at this point, whether or not
13 those individuals were still on the scene or whether they
14 had fled?

15 A I knew that they were gone.

16 Q How did you know that? Was that from your
17 dispatcher?

18 A Yes. Yes, ma'am, the dispatcher received a call
19 from Mr. Caval --

20 THE REPORTER: Repeat that please. Can you
21 repeat that, please?

22 Q (By Ms. Longoria) How did you know that the
23 suspects were already gone from the scene?

24 A Dispatch.

25 Q And when you arrived at the scene, and that was

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1 with Mr. Caval, did he also confirm that?

2 A Yes.

3 Q That they had fled?

4 A Yes.

5 Q What did Mr. Caval tell you had happened?

6 A He was sitting at a parking lot and two Hispanic
7 males and one female Hispanic pointed a gun and robbed him
8 for his car.

9 Q And they told you -- he told you they took his
10 vehicle?

11 A Yes.

12 Q Did he tell you they had taken anything else?

13 A No.

14 Q Did he describe to you the weapon that was used?

15 A Yes.

16 Q How did he describe it?

17 A A shotgun.

18 Q Did he describe to you what the individual -- at
19 least one of the individuals was wearing?

20 A Yes.

21 Q Which of those -- which of the suspects was that
22 that he described to you?

23 A Could you repeat that?

24 Q As far as -- well, let me back up. Was he able
25 to describe the three individuals to you being two

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1 Hispanic males and one Hispanic female?

2 A Yes.

3 Q What additional items of description did he
4 provide to you?

5 A One Hispanic male and one had a white gray
6 sweatshirt.

7 Q Did he describe that as a hoodie sweatshirt?

8 A Yes, ma'am.

9 Q What else did he tell you about the individual?

10 A Five three to five six tall.

11 Q Did he describe to you how old he believed that
12 individual to be?

13 A Yes.

14 Q And how old was that?

15 A 17 to 20.

16 Q 17 to 20?

17 A 17 to 20.

18 Q Was he able to give you similar descriptions or
19 as much description about the other two individuals
20 involved?

21 A Just the age.

22 Q And how did he describe the age of the other two
23 individuals involved?

24 A Also 17 to 20.

25 Q Did he give you a height for the second male

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1 individual?

2 A Yes.

3 Q What was that description?

4 A Five three to five nine.

5 MS. LONGORIA: May I approach the witness,
6 Your Honor?

7 THE COURT: Yes, ma'am, you may.

8 Q (By Ms. Longoria) I'll show you what I believe
9 to be your offense report. Is this your supplement to
10 this offense report?

11 A Yes.

12 Q And if you could, you've got three suspects
13 listed; is that correct?

14 A Yes.

15 Q Were you the officer that entered this initial
16 suspect information on the second page?

17 A Yes.

18 Q And can you tell us, the first suspect that is
19 listed here, Suspect 1, the age and height range, is that
20 the first individual that you described to me?

21 A Yes.

22 Q And is that the individual that Mr. Caval said
23 was wearing a hooded sweatshirt?

24 A Yes.

25 Q Suspect No. 2, is that the second male?

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1 A Yes.

2 Q And what was the description of the height of
3 that male that he gave?

4 A Five three to five six.

5 Q And then the female suspect, was he able to give
6 a height on the female suspect?

7 A No.

8 Q And do you know why?

9 A No.

10 Q And was he able to give you a general
11 description of the vehicle that they had pulled up in?

12 A Yes.

13 Q And what was that?

14 A A small vehicle.

15 Q And did you take that to mean some kind of a
16 sedan?

17 A Yes.

18 Q Deputy Gaines, how long did you say, as of
19 October 2013, you had been patrolling this area.

20 A One year.

21 MS. LONGORIA: May I approach?

22 THE COURT: Yes, ma'am, you may.

23 Q (By Ms. Longoria) Show you Petitioner's Exhibit
24 141 and ask you if that fairly and accurately represents
25 an area close to the Marshalls parking lot?

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1 A Yes.

2 Q And what is depicted in Petitioner's Exhibit
3 141? What location, I guess, I should say.

4 A 6120 Fry Road.

5 Q And are you familiar with that location at 6120
6 Fry Road?

7 A Yes, ma'am.

8 Q Approximately how far is this from the Marshalls
9 parking lot?

10 A Two miles.

11 MS. LONGORIA: Offering Petitioner's
12 Exhibit 141 to defense counsel and tendering it for
13 evidence, Your Honor.

14 (Petitioner's Exhibit No. 141 offered)

15 MR. HALPERT: No objection to Petitioner's
16 141.

17 THE COURT: 141 is admitted without
18 objection.

19 (Petitioner's Exhibit No. 141 admitted)

20 MS. LONGORIA: Ask permission to publish
21 these to the jury?

22 THE COURT: Dean, would you publish that to
23 the jury, please?

24 THE BAILIFF: Yes, sir.

25 Q (By Ms. Longoria) In Petitioner's Exhibit 141,

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1 the red balloon in the top quadrant of the map, is that
2 6120 North Fry Road that you referenced?

3 A Yes.

4 Q And what do we find at that location?

5 A McDonald's restaurant.

6 Q Is there, additionally, a convenience store gas
7 station next to that McDonald's?

8 A Yes.

9 Q And what is that gas station?

10 A Chevron.

11 Q Are those two locations depicted at the bottom
12 of the Petitioner's Exhibit 141?

13 A Yes.

14 Q Is there a red box outside the McDonald's
15 outside of that location?

16 A Yes.

17 Q And can you describe to the jury that Chevron,
18 are those pumps operational 24 hours a day?

19 A Yes.

20 Q And if there is not an attendant there, how are
21 those pumps separated?

22 A Credit card.

23 Q What did you do, did Mr. Caval have a way to get
24 home that night?

25 A Yes.

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1 Q How did he get a ride home, if you recall?

2 A I believe his daughter. I'm not sure.

3 Q Family?

4 A He did have a ride. I'm not sure who picked him
5 up.

6 Q Not sure who picked him up. Deputy Gaines, have
7 you had the occasion to be in that parking lot of the
8 Marshalls on few or many occasions that night?

9 A That night?

10 Q Any night of your patrol.

11 A Yes. Yes, ma'am.

12 Q Can you describe to the jury the lighting
13 conditions in that parking lot?

14 A Fair. It's lit pretty -- it's okay, but pretty
15 dark after midnight. Pretty dark at night.

16 Q And fair to say there is artificial lighting in
17 the parking lot?

18 A Yes.

19 Q And it would be lighting up on lampposts from
20 above?

21 A Yes.

22 Q Are those lampposts located in the front of the
23 store on the strip center?

24 A No.

25 Q Where are the lights located?

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1 A From the entry of the parking lot from the
2 roadway.

3 Q So there is additional lighting back from the
4 stores on the roadway?

5 A Yes.

6 Q Thank you, sir.

7 MS. LONGORIA: Pass the witness, Your
8 Honor.

9 THE COURT: Thank you. Cross?

10 MR. HALPERT: Thank you.

11 **CROSS-EXAMINATION**

12 **BY MR. HALPERT:**

13 Q Deputy Gaines, as part of your training, you
14 learn how to write offense reports, correct?

15 A Yes.

16 Q And you're certainly trained that they are to be
17 accurate, right?

18 A Yes.

19 Q To include all of the important details of any
20 offense that you're investigating, right?

21 A Yes.

22 Q Now you wrote a portion, as you pointed out, of
23 the offense report for this case, correct?

24 A Yes.

25 Q And were you able to, prior to testifying,

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1 review a portion of the offense report distributed to you?

2 A Repeat that, sir.

3 Q Sure. Prior to testifying today, did you have a
4 chance to review your portion of the offense report?

5 A Yes.

6 Q Do you feel confident the information you
7 included in your part of the offense report was accurate?

8 A Yes.

9 Q Anything additional you're remembering today you
10 feel that you need to add that wasn't put in back then?

11 A No.

12 Q You were asked questions about descriptions of
13 the individuals and ages. When the first suspect, one,
14 which would be the person listed as having the shotgun,
15 the age you said was 17 to 20 was the description given to
16 you by Mr. Caval, correct?

17 A Yes.

18 Q Which would mean and checked your notes under
19 juvenile not a juvenile, correct? Well, it said on your
20 report, if -- obviously, if the person is older than 17
21 years old it, it must say "no" as far as juvenile?

22 A Yes.

23 Q Because you have to be under 17 to be a
24 juvenile, correct?

25 A Yes.

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1 Q And just so we're clear, and I apologize if I
2 didn't hear it, but for the person that was supposedly
3 with the shotgun, Mr. Caval told you that person was five
4 three up to five four in height, between five three and
5 five four in height.

6 A Five three, yes.

7 Q It was a second male that he said appeared to be
8 taller, correct, when he said five three to five six?

9 A Five three to five nine, I believe.

10 Q Okay. The report says five six, but you think
11 it was five nine?

12 A What Mr. Caval told me.

13 Q Okay. And also 17 to 20 years old,
14 approximately, for that individual as well, right?

15 A Yes.

16 Q Okay. Now, had -- you said that Mr. Caval told
17 you a shotgun was used in this case, correct?

18 A Yes.

19 Q Had Mr. Caval given you any sort of description
20 of that shotgun, you would have put it in your report,
21 correct?

22 A Yes.

23 Q There is no description of a shotgun in your
24 report, is there?

25 A No.

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1 MR. HALPERT: May I approach the witness,
2 Your Honor?

3 THE COURT: Yes, sir.

4 Q (By Mr. Halpert) Deputy Gaines, I want to show
5 you what has been previously admitted into evidence as
6 Petitioner's Exhibit 133 through 138.

7 If you could look at these and tell
8 me, sir, if these are accurate as far as the
9 lighting conditions, if you remember, that night,
10 October 19th, 2013?

11 A Can you repeat your question, sir?

12 Q Sure. The pictures you're looking at now, do
13 they fairly represent the darkness in that parking lot at
14 the time you were out there with Mr. Caval?

15 A Yes.

16 Q Not brighter than that, it's dark, isn't it? Is
17 that fair, what's in those pictures?

18 A You asked me is it darker.

19 Q No, I'm asking you, is this what it looked like
20 to you when you went out there that night and met Mr.
21 Caval?

22 A I'm not sure.

23 Q Is that -- in your mind, did it seem lighter
24 than this, darker than this, or as dark?

25 A It was nighttime.

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1 Q But is it dark in that parking lot?
2 A It had a little light.
3 Q Right. Those towers?
4 A Right.
5 Q Did he point out to you where he was parked?
6 A Yes.
7 Q Okay. When you went and checked out those --
8 that McDonald's, I think you said, and Chevron where the
9 credit cards were used.
10 A Yes.
11 Q You physically went there, right?
12 A Yes.
13 Q Did you notice whether they had any video
14 surveillance cameras in those locations?
15 A Did I? No.
16 Q You didn't look for them?
17 A I did.
18 Q And the McDonald's and gas station, none of them
19 had video surveillance?
20 A Yes.
21 Q You are saying they didn't have them or did have
22 them?
23 A The cameras?
24 Q Yes.
25 A They did.

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1 Q Did you try and secure the video footage from
2 when those credit cards were used?

3 A Yes.

4 Q And did you get that video footage?

5 A No.

6 Q Why not?

7 A They didn't have it.

8 Q They didn't have it?

9 A Right.

10 Q Was the video cameras working?

11 A Not sure.

12 Q Okay. So, all we know is we have no video of
13 the time frame when those credit cards would have been
14 used?

15 A Not sure about that. I didn't get any video.

16 Q Now, Deputy Gaines, let me ask you some
17 questions about what Mr. Caval talked to you about that
18 night as to what happened. And if you need to look at
19 your police report, feel free to look at that.

20 Do you recall that Mr. Caval told you, the
21 first thing that happened was a Hispanic male approached
22 his passenger window? That was the first thing that
23 happened, after he was sitting in his car.

24 A Yes.

25 Q And do you recall him telling you that he then

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1 lowered his passenger window after that person came up to
2 that window?

3 A No.

4 Q Would you like to review your police report?

5 A Yes, that's fine.

6 MS. LONGORIA: Judge, I think I need to
7 object at this point to the jury's view of this exhibit.

8 THE COURT: Turn it around.

9 Q (By Mr. Halpert) Do you have your police report
10 in front of you, sir?

11 A No.

12 MR. HALPERT: May I approach the witness,
13 Your Honor?

14 THE COURT: Yes, sir, you may.

15 Q (By Mr. Halpert) Deputy Gaines, take a look at
16 this and see if, in fact, this is the supplement that you
17 did this night.

18 A Yes.

19 Q And isn't it true that Mr. Caval was giving you
20 a description of the events. Told you that the first
21 thing that happened was a Hispanic male first approached
22 his passenger window?

23 A Yes.

24 Q And that he then lowered his passenger window
25 because of that?

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1 A Yes.

2 Q And that that Hispanic male asked him for
3 directions?

4 A Yes.

5 Q And that the Hispanic male returned with a
6 shotgun and that Hispanic male yelled for him to get out
7 of his car?

8 A Yes.

9 Q And that the Hispanic male then got in his car
10 and drove off?

11 A Yes.

12 MR. HALPERT: Your Honor, if I may, and
13 again, we established the person that he said had the gun
14 was five three to five four inches. May I approach, Your
15 Honor?

16 THE COURT: Yes, sir.

17 Q (By Mr. Halpert) Deputy Gaines, would this be
18 fair then, based on your testimony, is this an accurate
19 rendition of the facts as Mr. Caval told you that night
20 what happened to him?

21 A Yes.

22 Q It is accurate?

23 A To my report.

24 Q And to what Mr. Caval told you?

25 A Yes.

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1 MR. HALPERT: Nothing further of this
2 witness.

3 MS. LONGORIA: Nothing further, Judge.
4 Thank you. You're excused, Deputy. Call your next.
5 We're going to take a ten-minute break. Ten minute break.
6 Court is in recess ten minutes.

7 THE BAILIFF: All rise for the jury.

8 THE COURT: Short break.

9 (Short recess at 3:05 p.m.)

10 THE BAILIFF: All rise for the jury.

11 (Jury returns at 3:21 p.m.)

12 THE COURT: Thank you. Be seated. Please
13 call your next witness.

14 MS. LONGORIA: Petitioner calls Deputy
15 Paulo Oliveira, Your Honor.

16 THE COURT: Deputy, have a chair, and would
17 you write your name on that piece of paper? And you need
18 to talk loud enough so the juror on the furthest top right
19 can hear you, please.

20 THE WITNESS: Yes, sir.

21 THE COURT: And you've been sworn?

22 THE WITNESS: Yes, sir, I have.

23 THE COURT: All right.
24
25

Paulo Oliveira - July 15, 2014
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1 **PAULO OLIVEIRA,**

2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 **BY MS. LONGORIA:**

5 Q Good afternoon, Deputy.

6 A Good afternoon.

7 Q Could you please introduce yourself to the jury?

8 A Good afternoon. I'm Harris County Deputy Paulo
9 Oliveira.

10 Q How are you employed, sir?

11 A I'm working deputy for Harris County Precinct 5.

12 Q How long have you held that employment?

13 A For 16 years 11 months.

14 Q And what have some of your assignments been with
15 your precinct throughout the course of your employment?

16 A Harris County Precinct Patrol through the
17 divisions of patrol, of course, and the parks division.
18 Which gives me more direct contact with the public by
19 patrolling, bicycle patrol and ATV patrols, you know,
20 patrolling the parks and direct contact with the public.

21 Q And where is Precinct 5 in Harris County, Texas?
22 What area of the county are we talking about?

23 A Precinct 5 is one of the largest areas of Harris
24 County. We patrol from southwest, west, and northwest of
25 the county.