

## PROCEEDINGS

SEPTEMBER 21, 2011

(Open Court. Defendant and jury present.)

THE COURT: Be seated, please.

Are we ready to proceed on the punishment phase of this trial?

MS. LOGAN: State is ready to proceed.

MR. MCCULLOUGH: Defense is ready.

THE COURT: All right.

MS. LOGAN: May I call my first witness?

THE COURT: Yes.

MS. LOGAN: State calls Deputy R. Garcia.

THE COURT: You may proceed.

MS. LOGAN: Thank you, Judge.

R. GARCIA,  
having been previously sworn, testified as follows:

## DIRECT EXAMINATION

BY MS. LOGAN:

Q. Good morning, sir.

Would you please introduce yourself to the ladies and gentlemen of the jury?

A. Good morning. My name is Deputy Garcia. I work with the Harris County Sheriff's Office.

1 Q. How long have you been with a deputy with  
2 the Harris County Sheriff's Office?

3 A. Eleven years now.

4 Q. Tell us what your current assignment is  
5 with the Harris County Sheriff's Office?

6 A. I'm the line up deputy. I work at 49 San  
7 Jacinto. And I have worked with different agencies  
8 that contact me and tell me, you know, when they need  
9 a line up. I'm the person they call.

10 Q. So basically you're the one deputy that  
11 works with the Harris County Sheriff's Office  
12 responsible for putting together live line ups; is  
13 that correct?

14 A. That's correct.

15 Q. We already heard a little bit about that  
16 procedure, but can you explain to us what process you  
17 go through to create a live line up?

18 A. Excuse me. Usually the investigator  
19 contacts me. They'll let me know the suspect's  
20 information that is the main focus. At that time  
21 I'll gather the focus information and enter it into  
22 the computer system. I'll find out the location  
23 where that person is located, whether it's one of our  
24 three jails. Once I have done that I'll match the  
25 description based on the height, weight and, you

1 know, color of the person that's going to be the main  
2 focus of that line up.

3 Q. So is your goal to collect how many other  
4 people to include in the line up?

5 A. It's going to be the main focus plus four  
6 more, five more, depending on the investigator. Some  
7 people like to have six in the line up, some like to  
8 have five in the line up.

9 Q. Once you get that information is it your  
10 job then to go around and collect people that all  
11 look similar to one another?

12 A. That's correct, ma'am.

13 Q. What do you do with those people once you  
14 collect those people?

15 A. Once I collect them I take them to my  
16 office at 49 San Jacinto and basically instruct them  
17 that, you know, they're just here for a line up.  
18 They have nothing to do with this case. It's a long  
19 process of walking. So I kind of tell them, you  
20 know, that -- like I said, has nothing to do with  
21 them. And are going to a cell block and pretty much  
22 have them waiting while the investigator shows up  
23 and, you know, does his thing. My job is basically  
24 just to get people down there, make sure that it's a  
25 fair line up and turn it over to the investigator.

1 Q. So when you say a fair line up, what do you  
2 mean by that?

3 A. A fair line up means that I'm not going to  
4 put a Hispanic male along with someone that's going  
5 to be darker or white male. If it's a six foot five  
6 male I'm going to put a six foot five male. If I  
7 can't find them I'll usually call the investigator  
8 and say, hey, it's not going to be a good line up.  
9 This guy is a little bit too tall in situations like  
10 that.

11 Q. I want to turn your attention to the  
12 investigation in the case we're here on and the jury  
13 has convicted the defendant for, which is the  
14 aggravated robbery investigation arising from the  
15 robbery at the First Convenience Bank at Kroger.

16 At some point were you contacted by  
17 investigators with the FBI Bank Robbery Task Force?

18 A. Yes, ma'am. I remember Sergeant Schobey,  
19 who works with the Harris County Sheriff's Office,  
20 and also is attached with the, you know, Federal Bank  
21 Unit. And he contacted me in regards to setting up a  
22 line up for a suspect for their main focus that was  
23 inside of one of the jails at the time.

24 Q. Did you follow the procedure that you just  
25 described for us as far as attempting to collect that

1 person along with suitable fill-ins?

2 A. Yes, ma'am. The first time I attempted I  
3 realized that he was at 701, which is one of the  
4 bigger jails. As soon as I pulled up the suspect's  
5 information or main focus information, I went  
6 directly to him, you know -- the first thing I do is  
7 I go through the information in the main focus of the  
8 procedure that's requested by an investigator and I  
9 carried on with that.

10 Q. So when -- do you see the person that you  
11 are calling the main focus with respect to the line  
12 up you were trying to put together in the courtroom  
13 today?

14 A. Yes, ma'am.

15 Q. Can you tell us what he's wearing?

16 A. A white collared button down shirt.

17 MS. LOGAN: May the record reflect  
18 he's identified the defendant?

19 THE COURT: Record will so reflect.

20 Q. (BY MS. LOGAN) Is that the person you went  
21 and visited in the 701 jail the first time you tried  
22 to put a line up together?

23 A. Yes, ma'am.

24 Q. And at that time did you notify him that he  
25 was the main focus in an aggravated robbery?

1           A.    I usually don't let them know what the case  
2           is for.  I just let them know he's the main focus,  
3           you know.  I don't tell them if it's a bank robbery  
4           or robbery.  I just let them know that the  
5           investigator contacted me and would like to put them  
6           in a line up.

7           Q.    After you had that conversation with him  
8           tell us what did you observed?  What happened next?

9           A.    Right away he kind of smiled.  Kind of  
10          joking, he said, you know -- I don't know what you're  
11          talking about.  Which really doesn't happen, you  
12          know.  It just seemed like he was very uncomfortable  
13          and said, I'm not going to do this line up.

14                 MR. MCCULLOUGH:  I want to object to  
15          any further conversation that my client may have had  
16          -- supposedly said to him and what the circumstances  
17          were.

18                 THE COURT:  Overruled.

19                 MS. LOGAN:  All right.

20          Q.    (BY MS. LOGAN)  So during your conversation  
21          with him is it your position he was refusing to be  
22          included in the line up?

23          A.    Yes, ma'am, he was going to be the main  
24          focus and he just completely refused the first time I  
25          wanted to pull him for the line up.

1           Q.    Later on did you attempt a second time to  
2           put a line up together for that case?

3           A.    It was after the holidays.  The first time  
4           was before the holidays.  After the holidays I went  
5           back and I informed him that Sergeant Schobey had  
6           contacted his attorney and that we were going to  
7           proceed with the line up because that's what his  
8           defense attorney wanted to do.

9           Q.    So at that time what did you do next?

10          A.    We walked through a few of the cell blocks  
11          to go look for the fill-ins and he became  
12          uncomfortable and said, you know, I've got a free  
13          world attorney.  You guys are trying to play games  
14          with me.  Trying to set me up.

15          Q.    You said he became uncomfortable.  Tell us  
16          what made you believe he was uncomfortable?

17          A.    Well, you know, he became uncomfortable by,  
18          of course, trying to ask a lot of questions, you  
19          know.  Then once I started giving Sergeant Schobey's  
20          name and stuff like that he started cursing, started  
21          saying this is a bunch of BS.  This is not going to  
22          happen.  I've got a free world attorney.  I don't  
23          have a court appointed attorney.  He's one of those

24          --

25          Q.    Would you consider he became unruly at that

1 point?

2 A. Yes, ma'am.

3 Q. Tell us what you mean by that?

4 A. Unruly means, you know, if he was a general  
5 population inmate which means he's not in handcuffs  
6 or anything. Kind of you -- instead of being  
7 escorted he pretty much was walking away from me and  
8 letting me know he wasn't going to do this line up.

9 Q. What did you do at that point?

10 A. I just informed him that it would probably  
11 be best for him to talk to Sergeant Schobey first  
12 before he made any decisions. You know, it's just  
13 best for him to go down -- probably be the best  
14 decision to do especially if once I informed him that  
15 his attorney was going to be present.

16 Q. So did he end up cooperating with you in  
17 participating in a line up?

18 A. No, ma'am, I just placed him back in the  
19 cell block.

20 Q. So at that point was the line up cancelled?

21 A. Yes, ma'am, it was cancelled and I informed  
22 Sergeant Schobey.

23 Q. Did you have any other involvement with  
24 this case with respect to this defendant?

25 A. No, ma'am.



1 MS. LOGAN: Pass the witness.

2 MR. MCCULLOUGH: No questions.

3 THE COURT: May this officer be  
4 excused?

5 MS. LOGAN: He may.

6 THE COURT: You're excused. Thank  
7 you.

8 Call your next witness.

9 MS. LOGAN: State calls Sergeant  
10 Schobey.

11 May I proceed, Judge?

12 THE COURT: You may.

13 MS. LOGAN: Thank you.

14 ROBERT SCHOBAY,  
15 having been previously sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. LOGAN:

18 Q. Good morning, sir.

19 Are you the same Sergeant Schobey we heard  
20 from yesterday in this case?

21 A. Yes, ma'am.

22 Q. Now, I want to talk to you about some of  
23 the other investigations you were involved in  
24 pertaining to Mr. Starks?

25 A. Yes, ma'am.