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**KATHRYN HADEN-PINNERI,**

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MS. MAGNESS:**

Q. Good morning.

A. Good morning.

Q. Please introduce yourself to our jury.

A. My name is Dr. Kathryn Haden-Pinneri.

Q. And, Dr. Pinneri, who do you work for?

A. I work for the Harris County Institute  
of Forensic Sciences or the Medical Examiner's  
Office.

Q. Do you need a moment to set up your  
files?

A. No, I'm good.

Q. All right. How long have you worked for  
the Medical Examiner's Office?

A. I have been with them since June of  
2004.

Q. Tell the jury --

A. 2005, sorry.

Q. Tell the jury about your educational  
background.

A. I went to college in Tennessee -- I'm  
sorry, in Louisiana. I went to medical school at

1 the University of Texas Southwestern Medical School  
2 in Dallas. I did my pathology residency in  
3 Tennessee and then I did a year of fellowship  
4 training at the Dallas County Medical Examiner's  
5 Office.

6 Q. Are you board certified?

7 A. Yes, I am.

8 Q. And in what area are you board  
9 certified?

10 A. Anatomic and forensic pathology.

11 Q. Can you explain to the jury the  
12 difference between clinical, anatomic and forensic  
13 pathology?

14 A. Sure. Pathology encompasses all of  
15 those sciences. Anatomical pathology is the branch  
16 of pathology that deals more with anatomic  
17 structures. Anytime someone undergoes a surgical  
18 procedure where their gallbladder is removed, that  
19 goes to an anatomic pathologist. So it's someone  
20 who has experience dealing with diseases of the  
21 body.

22 Clinical pathologist does more with  
23 laboratory tests, blood banking, things like that.

24 A forensic pathologist is a specialized  
25 branch of the field of pathology that applies the

1 basic work of pathology to individuals that have  
2 died. So we look at disease and disease processes  
3 that have occurred in someone to cause their death.  
4 We also find traumatic events that may be the reason  
5 the person died as well.

6 Q. Can you walk them through the various  
7 places where you have been employed where you have  
8 utilized your forensic pathology expertise?

9 A. Sure. I started doing forensic  
10 pathology when I was doing my residency in  
11 Tennessee. I worked as a medical examiner during my  
12 residency. Then I did my fellowship year in  
13 forensic pathology in Dallas County. And then I  
14 worked for two years as a medical examiner in  
15 Northern Virginia and then I came down here to  
16 Houston to work here.

17 Q. And what brought you to Houston?

18 A. The job pretty much.

19 Q. You have had a few unique experiences  
20 that I'd like for you to share with the jury because  
21 I find it very interesting. It's out of the  
22 ordinary.

23 My understanding is that you were part  
24 of the disaster mortuary response team?

25 A. Yes, I am a member of what's called

1 DMORT, which is Disaster Mortuary Operational  
2 Response Team; and it's a Federal team of volunteers  
3 that get deployed whenever there is a mass fatality  
4 situation.

5 Q. And what are some of the operations that  
6 you have assisted in in connection with that team?

7 A. Well, I joined in August of 2001. So  
8 September 11th, New York City, was my first  
9 deployment. After that I was deployed to an event  
10 in Georgia, a crematorium disaster where the person  
11 was not cremating the decedents. I've been to Haiti  
12 after the earthquake. Seems like I'm missing one  
13 but --

14 Q. Okay.

15 A. -- that's the bulk of it.

16 Q. Over the course of your professional  
17 career, any estimate as to how many autopsies you  
18 have performed?

19 A. Oh, gosh, well over 1,500. That was the  
20 last time I counted, and that was a couple of years  
21 ago. So it's probably a couple thousand by now.

22 Q. Explain to the jury what are the  
23 determining factors as to whether or not an autopsy  
24 is performed on a deceased in Harris County?

25 A. Well, all medical examiners in the State

1 of Texas are given their duties by Texas statute and  
2 that defines what types of cases that we have  
3 authorization over. And in the State of Texas  
4 anyone that dies of an unusual, unnatural,  
5 suspicious death, that falls under medical examiner  
6 jurisdiction.

7 So our office will be notified of those  
8 deaths and then we'll decide whether or not an  
9 autopsy needs to be performed based on the  
10 information that's given. If it's a traumatic  
11 death, such as a homicide or a suicide or even a  
12 motor vehicle accident, we do autopsies on those  
13 cases almost all the time. Unless it's a motor  
14 vehicle accident where they went to the hospital and  
15 injuries are documented and we may not do them then.

16 Q. And I do want to make sure that the  
17 record is clear. My understanding is that you have  
18 published extensively in the field of pathology and  
19 forensic pathology?

20 A. Yes, I have.

21 Q. Okay. And you have held faculty  
22 appointments in your field, correct?

23 A. That's correct.

24 Q. Where were those appointments?

25 A. I am a Clinical Associate Professor, I

1 think is the term, at Baylor College of Medicine and  
2 the University of Texas Health Science Center.

3 Q. Do you also speak on -- speak  
4 professionally on your topic in your field?

5 A. Yes, I do.

6 Q. And any professional memberships or  
7 organizations that you are part of?

8 A. Yes.

9 Q. Can you tell them?

10 A. I'm a fellow member of the National  
11 Association of Medical Examiners. I'm also on  
12 several committees with that organization. And I am  
13 a fellow member of the American Academy of Forensic  
14 Sciences, which is one of our biggest organizations  
15 across the country. And I'm currently the Program  
16 Chair and Continuing Education Committee Member for  
17 the Pathology/Biology Section.

18 Q. Now, you have given us an indication of  
19 the number of autopsies that you've performed over  
20 the course of your career. Specifically have you  
21 been recognized as an expert in your field within  
22 Harris County?

23 A. Yes, I have.

24 Q. Okay. You described for us the various  
25 circumstances under which an autopsy would be

1 performed. So I'd like to talk a little bit about  
2 the process. When -- when a deceased is brought in  
3 to the Institute, what mechanism of tracking is used  
4 to identify and follow that body through the autopsy  
5 process?

6 A. Whenever we are notified of a death and  
7 we determine that it falls within the medical  
8 examiner jurisdiction, it is assigned a unique  
9 identifying case number which stays with them  
10 throughout the entire process as a decedent in our  
11 office as well as any associated paperwork.

12 Q. And that unique number, that is never  
13 used again to identify another body?

14 A. That's correct.

15 Q. And is the number in sequential order?

16 A. Yes, it is starting with No. 1 for the  
17 first case of the year until 4,000 and something at  
18 the end of the year.

19 Q. Okay. Let's go through the process,  
20 just the autopsy process itself. Once a body is  
21 brought into the Institute and is documented, what  
22 is the first step of the autopsy process?

23 A. The first thing that we do when we have  
24 a decedent is take photographs and document the  
25 external appearance of the decedent.

1 MS. MAGNESS: May I approach the  
2 witness, Judge?

3 THE COURT: Yes, ma'am.

4 Q. (By Ms. Magness) I'm going to show you  
5 what's been marked for identification purposes as  
6 State's Exhibits No. 86 through 106, and also  
7 State's Exhibit 55.

8 A. (Witness reviewing exhibits.)

9 Q. Beginning with State's Exhibit 86  
10 through State's Exhibit 106, are these photographs  
11 of the autopsy performed on the body of Phillip  
12 Anthony Little, Medical/Legal No. 113269?

13 A. Yes, they are.

14 Q. And are these photographs photographs  
15 that you reviewed in evaluating this case and  
16 forming your opinion as to the cause and manner of  
17 Phillip Little's death?

18 A. Yes.

19 Q. State's Exhibit 55, would you examine  
20 that item, please?

21 A. (Witness complies.)

22 Q. Could you compare State's Exhibit 55 to  
23 the original autopsy report in this case?

24 A. Yes, I have a copy.

25 Q. Can you compare it to your copy?



1           A.    Sure.

2           Q.    I just want to make sure there aren't  
3 any alterations or deletions and that it's an exact  
4 duplicate.

5           A.    (Witness complies.)

6                    State's Exhibit 55 is an exact copy of  
7 the original autopsy report.

8           Q.    And where is the original report kept?

9           A.    It's in our office, currently in my  
10 office.

11          Q.    The autopsy report, first of all, is  
12 that kept in the regular course of business of the  
13 Harris County Institute of Forensic Sciences?

14          A.    Yes.

15          Q.    Are the entries that are made on the  
16 autopsy report, are they made by a person who has  
17 personal knowledge of what's recorded?

18          A.    And they're documented by someone with  
19 personal knowledge, yes.

20          Q.    The information that's contained within  
21 the report, is it documented at or near the time  
22 that the autopsy is performed?

23          A.    Yes, it is.

24          Q.    Okay.

25                    MS. MAGNESS:   Tendering State's

1 Exhibit 55 and State's Exhibits 86 through 106 to  
2 opposing counsel and offering them into evidence.

3 (State's Exhibits No. 55 and 86  
4 through 106, Autopsy Report and Autopsy photographs,  
5 offered.)

6 MR. CORNELIUS: No objection to 55,  
7 Judge.

8 THE COURT: All right. 55 is  
9 admitted. You may publish.

10 (State's Exhibit No. 55 admitted.)

11 MR. CORNELIUS: I have no objection  
12 to the photographs either, Judge.

13 THE COURT: All right. They are  
14 admitted.

15 (State's Exhibits No. 86 through  
16 106 admitted.)

17 MS. MAGNESS: May I publish, Judge?

18 THE COURT: Yes, ma'am.

19 Q. (By Ms. Magness) I just want to begin  
20 with the autopsy report itself, State's Exhibit 55.  
21 The autopsy report, again, has the unique  
22 Medical/Legal No. 113269. November 3rd, 2011, what  
23 is that date indicative of?

24 A. That is the date that the autopsy was  
25 performed.

1           Q.    And it identifies the autopsy as  
2 performed on the body of Phillip Anthony Little.

3                    Now, down at the bottom -- just to be  
4 clear, you were not the physician who performed this  
5 autopsy, correct?

6           A.    That's correct.

7           Q.    When it shows here on the autopsy report  
8 that the autopsy was performed by a forensic  
9 pathology fellow, what exactly does that mean?

10          A.    That is someone that's in training in  
11 our office to become a forensic pathologist, so  
12 we're actually training them in the skills of  
13 forensic pathology.

14          Q.    And when it indicates "reviewed by  
15 Dr. Stephen Wilson," does that indicate that  
16 Dr. Stephen Wilson was there to, I guess, observe  
17 and assist the fellow as the fellow performed the  
18 autopsy?

19          A.    That's correct.

20          Q.    And there is a second -- actually a  
21 second review by the Deputy Chief Medical Examiner,  
22 Dr. Dwayne Wolf. Is that indicative of him looking  
23 at the fellow's work and then Dr. Wilson's work and  
24 signing off and agreeing with the findings?

25          A.    That's correct.

1           Q.    Now, in -- and I understand that neither  
2 the fellow or Dr. Wilson was available for trial  
3 today?

4           A.    That's correct.

5           Q.    So were you asked to review both the  
6 autopsy reports and the photographs so that you  
7 could render an opinion in this case?

8           A.    Yes, I was.

9           Q.    And did you do that?

10          A.    Yes.

11          Q.    When you say that the body comes in and  
12 is photographed documenting the condition of the  
13 body, let me start here with State's Exhibit No. 86.  
14 One of the first things that I wanted to point out  
15 here is that there is a placard that is depicted in  
16 these photographs and, in fact, in many of these  
17 photographs. What -- what is that -- what is that  
18 documenting?

19          A.    The placard is a number board with the  
20 case number, the date that the examination is being  
21 performed, as well as the pathologist that performed  
22 the examination. And we use that for these overall  
23 pictures because it's big and you can see it. In  
24 the smaller more close-up pictures, we use a smaller  
25 number because that would be too big for some of our

1 other photos. But that is the way that we designate  
2 the case number so you could see it in photographs.

3 Q. Now, obviously here we're documenting  
4 that there's evidence of medical intervention. Can  
5 you explain to the jury what the purpose of this bag  
6 over Phillip's hands are?

7 A. Sure. We place paper bags over a  
8 decedent's hands when there's a suspicion that there  
9 was some foul play or inflicted trauma to the  
10 decedent such as a gunshot wound or something --  
11 stab wounds or something like that in order to  
12 preserve any evidence that may be on that person's  
13 hands.

14 Q. And then State's Exhibit No. 87 is just  
15 a photograph documenting the back of Phillip.

16 State's Exhibit No. 88 is the first  
17 photograph or one of the first photographs that we  
18 have depicting an actual injury. Tell the jury what  
19 they're looking at there.

20 A. So on this photograph right above the  
21 smaller number, which I was describing earlier,  
22 there's a wound which is a gunshot wound, an  
23 entrance wound, which is right here that I circled  
24 in green (indicating).

25 Q. Once the photographs are taken to

1 document the condition that the body comes into the  
2 Institute in, is there any sort of cleaning process  
3 before the actual autopsy itself begins?

4 A. Yes.

5 Q. And can you describe that for the jury,  
6 please?

7 A. Sure. After we first examine the  
8 decedent, on gunshot wounds we tend to take a  
9 photograph of the wound. We call it dirty. So  
10 before it's been cleaned, in case there's any  
11 evidence of residue, firearm residue around the  
12 wound, then we will take the clothes off, take  
13 photographs of the clothing and clean the body so  
14 that we can see if there's any other wounds or any  
15 other scars, tattoos, things like that that we  
16 might -- that will be noted on our autopsy report.

17 Q. And what substance is used to clean  
18 them?

19 A. Water.

20 Q. You indicated that you document the  
21 condition of the clothing. Let me show you State's  
22 Exhibit No. 97. Is that what that photograph is  
23 doing is just showing the various items of clothing  
24 that Phillip was wearing when he came into the  
25 Institute?

1           A.    That's correct.

2           Q.    Is there any point where the body is  
3 x-rayed?

4           A.    Yes.

5           Q.    And what is the purpose of x-raying the  
6 body?

7           A.    The x-rays help us localize any bullets  
8 that may still be in the body.

9           Q.    Once the body is cleaned and the next  
10 step of the autopsy process has begun -- which is  
11 I'm assuming the secondary external examination?

12          A.    Yes.

13          Q.    And what -- what is it that you're  
14 looking for during this portion of the examination?

15          A.    So once we have the decedent cleaned, we  
16 will again look for trauma that may have been  
17 obscured by overlying blood.  We'll document it,  
18 we'll measure it, and again photograph it in the  
19 clean state.

20          Q.    State's Exhibit No. 92 is Phillip in a  
21 cleaned state and is the first indication that we  
22 have here of an injury.  I'm going to show State's  
23 Exhibit No. 95.  It's a little more -- a more  
24 close-up view of that injury, and then, finally,  
25 State's Exhibit No. 96 is a close-up of that wound.

1                   What kind of injury is that?

2                   A.    This is a gunshot wound of entrance.  
3                   So, it's the entry point for the bullet.

4                   Q.    And was there any corresponding exit  
5                   wound on Phillip's body?

6                   A.    No.

7                   Q.    That gunshot wound, when Phillip was  
8                   x-rayed, did the x-rays indicate any projectile that  
9                   had remained in his body?

10                  A.    Yes, it did.

11                  Q.    Can you tell the jury approximately  
12                  where that injury, that wound was located?

13                  A.    The entrance wound is located on the  
14                  left lower back still overlying the rib area on the  
15                  back.

16                  Q.    Okay.  Other than that gunshot wound,  
17                  did you -- I'm sorry.  Is there any indication  
18                  during the autopsy that there were any other  
19                  external injuries that were observed that would have  
20                  contributed to his death?

21                  A.    No, none that would have contributed to  
22                  his death.

23                  Q.    After the external examination, is there  
24                  then an internal examination of the body?

25                  A.    Yes.



1           Q.   Now, in a case like this when we're  
2   dealing with a gunshot wound, it seems relatively  
3   obvious as to what caused the death. Why is it  
4   necessary to then go one step further and do an  
5   internal examination?

6           A.   Well, the internal examination is very  
7   important in these cases so that we can see exactly  
8   what was injured. When we do that, it will give us  
9   an idea of how immediately incapacitating the injury  
10  may have been. If it did, in fact, cause the death  
11  of the individual. So it's very important that we  
12  track the bullet path as it goes through the body.

13          Q.   And explain to the jury the process of  
14  conducting the internal examination.

15          A.   When we do the internal examination, we  
16  reflect the skin through what's called a Y incision  
17  and we remove the front part of the chest plate.  
18  And by doing that we can pretty much look at every  
19  organ in the internal body cavity with the exception  
20  of the head.

21                    So once we take that and expose the  
22  organs, then we can look for any trauma to those  
23  organs and follow the bullet path if there are  
24  those.

25          Q.   During the -- when you reviewed the

1 findings of the internal examination, does the  
2 autopsy report indicate the path that the bullet or  
3 projectile traveled through Phillip's body?

4 A. Yes.

5 Q. And will you describe that for the jury,  
6 please?

7 A. Sure.

8 So the bullet enters the left mid-back  
9 area, mid to lower back, and after going through the  
10 skin, it goes through the muscle that's between or  
11 just below the ninth rib. It goes through the  
12 diaphragm, which is the muscle that enables us to  
13 breathe. It goes through the left kidney, the  
14 stomach, the liver. It goes back into the --  
15 through the diaphragm, goes through the heart and  
16 then it strikes the inner surface of the sternum or  
17 the breast bone, which is where part of the bullet  
18 was recovered.

19 Q. Now, in describing the path of the  
20 bullet, you've indicated multiple organs that that  
21 bullet traveled through. As a result of that  
22 trauma, is there going to be significant blood loss?

23 A. Yes.

24 Q. The projectile came to rest underneath  
25 the sternum. Is there an indication in the autopsy

1 report that that projectile was recovered from  
2 Phillip's body?

3 A. Yes.

4 Q. And I'm going to show you specifically  
5 State's Exhibit No. 103 and then a little bit closer  
6 view, State's Exhibit 104. Is that the projectile  
7 that was recovered?

8 A. Yes.

9 Q. Now, there was an indication in the  
10 autopsy report that there was also a fragment that  
11 was recovered from Phillip's shirt. And I'm going  
12 to show you State's Exhibit No. 105. Is that the  
13 fragment that the autopsy report is referencing?

14 A. Yes.

15 Q. And I think that's further documented in  
16 State's Exhibit 101 and State's Exhibit No. 102.

17 I'm going to show you what's been  
18 introduced as State's Exhibit -- that's State's  
19 Exhibit 98; and this originally, I guess, was a  
20 white T-shirt. There is also a red shirt that  
21 Phillip was wearing. Let me show you State's  
22 Exhibit No. 100.

23 In looking at these defects in his  
24 clothing, is that consistent with the gunshot wound  
25 that you have previously described?

1           A.    Yes.

2           Q.    When you reviewed the findings from the  
3 internal examination, did you find any other sign of  
4 disease or defect that would have contributed to his  
5 death?

6           A.    No, I did not.

7           Q.    As part of the autopsy procedure, is  
8 there -- are there samples taken, blood samples  
9 taken from the deceased in order to determine if  
10 they have any drugs or alcohol in their system at  
11 the time of death?

12          A.    Yes.

13          Q.    And is that toxicology report included  
14 as part of the official autopsy report?

15          A.    Yes, it is.

16          Q.    And State's Exhibit 55, the autopsy  
17 report, also has a toxicology report. Did you  
18 review this report?

19          A.    Yes, I did.

20          Q.    Just in terms of the findings, it says  
21 that the specimen that was used here was femoral  
22 blood?

23          A.    Yes.

24          Q.    Are there -- are there different  
25 specimens that you can use and how is it that you

1       come to decide what sample, representative sample to  
2       use?

3               A.    Well, in the course of the autopsy we do  
4       collect blood in addition to urine, if there is any,  
5       bile from the gallbladder, we take some liver, any  
6       stomach contents; but typically the best sample to  
7       use is blood.  We like to get it from a peripheral  
8       source, meaning away from the heart and lungs  
9       because the closer you get to those organs the  
10      more -- or the less reliable your results are  
11      because there might be some diffusion contamination  
12      from the heart to the lungs as the drugs are going  
13      through those organs.

14               So peripheral femoral blood is our  
15      preferable source for toxicology testing.

16               Q.    And when the toxicology testing was  
17      performed on the sample taken from Phillip, it  
18      appears that he was not under the influence of any  
19      drugs or alcohol, prescription drugs or street drugs  
20      for that matter?

21               A.    That's correct.

22               Q.    Okay.  So he sustains this gunshot wound  
23      and associated with the injury there is a  
24      significant amount of blood loss.  Do you have any  
25      opinion one way or the other as to the amount of

1 time that he would have been able to maintain  
2 consciousness?

3 A. I can't put an exact minute to it, but I  
4 can tell you that the injuries that he sustained  
5 were not immediately incapacitating. There would be  
6 a period of time where he could still do something  
7 such as walk, talk, run, you know, drive short  
8 distance with these injuries because as the blood is  
9 being pumped through the body he's still getting  
10 oxygen to his brain because the way the defects  
11 are, the blood is pooling inside the body and so it  
12 takes time for that to build up. So there would be  
13 a period of time for him to be able to function.

14 Q. So, in other words, his death was not  
15 instantaneous?

16 A. That's correct.

17 Q. And there was nothing in terms of drug  
18 or alcohol within his system that would have numbed  
19 or dulled his ability to be aware of his  
20 surroundings or to feel the sensations of pain?

21 A. That's correct.

22 Q. Having reviewed the autopsy report and  
23 the photographs that were taken during the autopsy  
24 report, do you have an opinion as to the cause of  
25 Phillip Little's death?

1 A. Yes, I do.

2 Q. And what is that opinion?

3 A. The cause of death is penetrating  
4 gunshot wound of the torso.

5 Q. And did you form an opinion as to the  
6 manner of death of Phillip Little's death?

7 A. Yes, I did.

8 Q. And what is your opinion?

9 A. The manner of death is homicide.

10 MS. MAGNESS: I'll pass this  
11 witness.

12 THE COURT: Mr. Cornelius?

13 **CROSS-EXAMINATION**

14 **BY MR. CORNELIUS:**

15 Q. Dr. Haden-Pinneri, we have met before.  
16 My name is Skip Cornelius, but we've never talked  
17 about this case before, right?

18 A. That's correct.

19 Q. Just a couple questions for you.

20 The fragment that was recovered from the  
21 shirt, was there any attempt to determine if that  
22 was a copper jacket or a lead fragment from the  
23 projectile itself?

24 A. From the photos it did not look like  
25 there was any sort of jacketing on it but all I know

1 is that it was described as a metal fragment but I  
2 don't know if they did any further testing or  
3 anything on it.

4 Q. And the projectile that was found in the  
5 body, was that lead or do you know?

6 A. It looks like it's just a lead fragment.

7 Q. Okay. The path of the projectile,  
8 particularly whether it went up, down or on a plane,  
9 what was discovered?

10 A. The wound path goes from the left side  
11 of the body to the right side. It goes from the  
12 back of the body towards the front, and it goes  
13 upward. And it does mention that the jacket from  
14 the -- under the sternum was not jacketed.

15 Q. Okay. So the bullet was traveling --  
16 and this is from head to toe --

17 A. Yes.

18 Q. -- up?

19 A. Correct.

20 MR. CORNELIUS: Okay. I don't have  
21 any other questions, Judge.

22 THE COURT: Ms. Magness?

23 MS. MAGNESS: Nothing further, Your  
24 Honor.

25 THE COURT: May this witness be



1 excused?

2 MS. MAGNESS: Yes, sir.

3 MR. CORNELIUS: Yes, sir.

4 THE COURT: All right. Doctor,  
5 you're free to go. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: All right. We're going  
8 to go ahead and take our lunch break, folks. And so  
9 I think probably one of you has a hurt foot or  
10 something and is going to hang back. But we'll go  
11 ahead and we're going to take you out to eat. I  
12 think we're going to take you across the street and  
13 bring your lunch back so it won't take too long to  
14 eat lunch today. So we'll go ahead and take our  
15 lunch break. Take your time eating and we'll be  
16 back after that.

17 THE BAILIFF: All rise for the  
18 jury.

19 *(Jury retired.)*

20 *(Lunch recess.)*

21 THE COURT: Both sides have been  
22 provided a copy of the Jury Charge. Included in the  
23 Jury Charge is capital murder, the lesser of felony  
24 murder. There is an instruction on the Defendant's  
25 right not to testify. Obviously the State has not

1 rested yet. If the Defense puts on a case and the  
2 Defendant testifies, we will remove that page.

3 In addition, there's a page on  
4 extraneous since there was -- there is testimony  
5 and I anticipate there will be testimony from the  
6 next witness that the statement was taken -- there's  
7 already some testimony anyway, but that the  
8 Defendant was in custody. What he was in custody  
9 for, the jury does not know; but they do know that  
10 he was in the Harris County Jail. I believe one of  
11 the witnesses this morning mentioned he had  
12 warrants. So, the extraneous charge is in there as  
13 well. The other language in here seems to be the  
14 standard jury instructions.

15 So, is there any additions or  
16 subtractions by the State?

17 MS. MAGNESS: No, Your Honor.

18 THE COURT: All right. And,  
19 Mr. Cornelius, from the Defense?

20 MR. CORNELIUS: Judge, we're  
21 requesting a charge on manslaughter, which as the  
22 Court well knows, is essentially recklessly causing  
23 the death of an individual. We're basing that  
24 charge on -- even though Cisneros hasn't testified  
25 and the confession hasn't come in but I know you've

1 heard it already -- on the Defendant saying in his  
2 statement he did not intend to kill the person,  
3 shooting at the tires, shooting at the car,  
4 something like that. We think that creates enough  
5 evidence in the case to request a charge on  
6 manslaughter.

7 THE COURT: Based on the testimony  
8 that I've heard -- and, yes, I've already heard  
9 Sergeant Cisneros testify in the suppression hearing  
10 and I've heard his statement -- I don't believe that  
11 the evidence, at least at this point -- if after he  
12 testifies something changes, we can revisit this;  
13 but at this time I do not believe that the lesser of  
14 manslaughter is appropriate but rather the lesser of  
15 felony murder is more appropriate based on the way  
16 the testimony has gone and I think that both sides  
17 anticipate it will go.

18 MR. CORNELIUS: I understand that,  
19 but we are requesting the lesser of felony murder.

20 THE COURT: Okay. Yes, and that's  
21 in there. Yeah.

22 MR. CORNELIUS: In addition to  
23 that, though, just for the record -- I know you  
24 understand, but just for the record --

25 THE COURT: Yes.

1                   MR. CORNELIUS:  -- I'm requesting  
2                   the manslaughter charge.

3                   And a note to appellate counsel:  
4                   Court reporters generally don't record the statement  
5                   as it's being played to the jury and I'm sure that's  
6                   not going to happen in this case and I'm not  
7                   requesting that it happen, but appellate counsel is  
8                   responsible to make sure that that recording of that  
9                   statement, which should go with the record, but to  
10                  make sure that it goes with the record so that the  
11                  briefing attorneys that work for the Court of  
12                  Appeals will actually hear it.  Because that's the  
13                  whole basis for requesting the charge of  
14                  manslaughter is what's said by the Defendant in his  
15                  interview.

16                  THE COURT:  Anything from the  
17                  State?

18                  MS. MAGNESS:  No, Judge, I don't  
19                  believe the Defendant's entitled to the lesser of  
20                  manslaughter.

21                  THE COURT:  Okay.  All right.  Yes?

22                  MS. MAGNESS:  There is one other  
23                  thing that I do want the record to reflect, though.  
24                  Prior to beginning trial or testimony, we did have a  
25                  hearing outside the presence of the jury as to the

1       admissibility of the Defendant's statement. The  
2       Court has ruled that the Defendant's statement is  
3       admissible. The State is going to introduce the  
4       Defendant's recorded statement through this next  
5       witness, Sergeant Cisneros.

6                       In discussing off the record the  
7       Jury Charge and the special instructions that are  
8       requested by each side, Counsel and I did discuss  
9       whether or not the Charge should include a 38.22 or  
10      38.23 charge as to the voluntariness of the  
11      Defendant's statement, that being a fact issue that  
12      the jury could consider in their deliberations.

13                      It's my understanding that  
14      Mr. Cornelius has made the strategic decision not to  
15      include that within the Jury Charge and that he just  
16      plans to go forward with the Charge as it currently  
17      stands.

18                      THE COURT: Mr. Cornelius?

19                      MR. CORNELIUS: I'll speak to that  
20      on the record. Everything that she just said is  
21      true. I think I probably could persuade the Judge  
22      to put a 38.22 and 23 instruction, not that I think  
23      that I've raised it. There's not a scintilla of  
24      evidence in here that the statement wasn't  
25      voluntarily given. So if you didn't give it to me,

1 it probably wouldn't be error. I'm -- I don't think  
2 I've raised it, and it's not our issue in the case.  
3 We're -- strategically we're banking on the fact  
4 that he cooperated with the police and hoping in  
5 hopes that that helps us.

6 THE COURT: It's my recollection  
7 from the hearing that we had yesterday that it's  
8 very -- it's fairly clear and unambiguous that this  
9 was a voluntary statement. And while it was in the  
10 jail and in custody, that the Defendant was very  
11 cooperative; and some of those questions were made  
12 very clear by Cisneros, I think, at the beginning  
13 and the end of the statement.

14 Unless there's anything else either  
15 side needs or would like to put on the record, we'll  
16 bring in the jury.

17 MS. MAGNESS: No, Your Honor.

18 MR. CORNELIUS: Yes, sir.

19 THE COURT: All right.

20 *(Brief pause.)*

21 THE BAILIFF: All rise for the  
22 jury.

23 *(Jury seated.)*

24 THE COURT: All right. Y'all may  
25 be seated.