

1 MR. BALDASSANO: May I proceed, Your
2 Honor?

3 THE COURT: You may proceed.

4 RUBEN HERNANDEZ,
5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BALDASSANO:

8 Q. Please introduce yourself to the jurors.

9 A. My name is Ruben Hernandez, Senior Investigator
10 for the Houston Arson Bureau.

11 Q. And how long have you been with Houston Arson?

12 A. Houston Arson, I've been six years.

13 Q. And have you been -- were you a firefighter
14 before that?

15 A. Yes, I was a firefighter for eight years.

16 Q. And can you tell us a little bit about that as
17 being a firefighter? Where were you a firefighter?

18 A. Okay. I was a firefighter at Station 40,
19 southeast part of Houston for most of my career. And
20 then from there I went to Station 6, which is on
21 Washington Avenue.

22 Q. All right. And were you an EMT?

23 A. Yes. Actually, I had a paramedic
24 certification, which is your highest pre-hospital
25 certification you can have.

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 Q. And how long were you a paramedic?

2 A. For eight years. Actually, I'm still a
3 paramedic now, still under certification.

4 Q. And so after being a firefighter and, I guess,
5 simultaneously being a paramedic, how do you become an
6 arson investigator?

7 A. Deals with promotional exams actually. You
8 graduate from the fire academy. And from there you
9 promote into engineer operator, which is your next
10 promotion. And then you have to promote to your next
11 step, which either it's a captain at the fire station or
12 the equivalent, an investigator. And I chose to be an
13 investigator.

14 Q. And so how do you make the jump from being a
15 firefighter captain at the firehouse to being an
16 investigator with the Arson Bureau?

17 A. It takes -- you have to read a series of four
18 or five books, policies and procedures; and you're
19 tested among other coworkers ranging up to about 300
20 guys who want the job. And it's a very small division;
21 so the lists that we're chosen from is a small division,
22 a small list.

23 Q. Just guys?

24 A. Guys and girls.

25 Q. Do you have any supervisors that are women?

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 A. Yes, we do.

2 Q. And right now, I think you said, you're a
3 supervisor there?

4 A. I'm actually -- now I'm actually promoted
5 senior investigator. I'm one step above your
6 investigator. I'm a supervisor.

7 Q. And how many people do you supervise?

8 A. I supervise five.

9 Q. And what's your day-to-day job for you? What
10 do you do on a regular basis?

11 A. Okay. Being I'm a southwest -- sorry --
12 southeast sector of Houston, any fire that comes in the
13 southeast sector, I review the case. I read the report.
14 And dependent on solvability factors, I will assign
15 those out to investigators to follow up on.

16 Besides that, I also coordinate and assist
17 in fire investigations. I help an investigator in
18 anything he might need. We conduct search warrants,
19 arrest warrants, anything of that factor.

20 Q. So are you also a peace officer in Texas?

21 A. I'm also a police officer, yes.

22 Q. How long have you been a police officer?

23 A. Been a police officer since 2005.

24 Q. Back in October of 2007, were you a supervisor
25 back then?

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 A. In 2007, I was not.

2 Q. And did you have anything to do with the
3 initial investigation of the scene out at 7200 Rampart
4 that's the subject of this trial?

5 A. No, sir.

6 Q. And were you working at arson then?

7 A. Yes, sir.

8 Q. And were you in that section?

9 A. I was assigned to the north sector of Houston
10 at that time.

11 Q. So were you kept up to speed on what was going
12 on in any way in this fire investigation, the initial
13 part?

14 A. No, sir.

15 Q. How did you come to get involved in looking at
16 this file?

17 A. In mid 2008, I moved to the south sector and I
18 was assigned the case. I was -- mid 2008 through early
19 2009, I conducted a series of fire investigations that
20 continued through that period. Through that
21 investigation, I learned of the defendant. In March, I
22 was instructed by my chief investigator to --

23 MR. BARROW: Your Honor, I'm going to
24 object to any hearsay.

25 THE COURT: Sustained.

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 THE WITNESS: Okay.

2 Q. (By Mr. Baldassano) Well, how -- did you take
3 it on your own, or did somebody assign you to the case?

4 A. It was assigned to me.

5 Q. And who assigned you the case?

6 A. Chef Investigator Gonzales.

7 Q. And so, what date was that again that you
8 started to first sort of look at this case?

9 A. In March, 2009.

10 Q. And to follow through with the assignment given
11 by your supervisor, what's the first thing you did?

12 A. I reviewed the case. I looked at all the
13 photos. I spoke to Investigator Garcia, who was the
14 original assigned investigator. I spoke to Investigator
15 Hicks.

16 Q. All right. Did you read their offense reports
17 and supplements?

18 A. Yes, I did.

19 Q. All right. So once you took -- you talked to
20 the two investigators and you read their material and
21 looked at the photographs, what's the next step you took
22 to further investigate this?

23 A. Well, I asked Investigator Garcia to join me
24 and go back to 7203 Rampart so we can re-interview some
25 of the guys, maybe some new information we can obtain

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 for the case.

2 Q. Has that ever happened before, where you go
3 back to try to re-interview someone to try to get more
4 information?

5 A. Absolutely.

6 Q. So when was that?

7 A. An example?

8 Q. No. I'm sorry. When did you go back? I think
9 you mentioned it already.

10 A. In I believe March 30th, 2009.

11 Q. So you and Juan Garcia go back to 7200 Rampart
12 to go and see what you can learn?

13 A. Correct.

14 Q. And where do you go, and who do you talk to?

15 A. I spoke to Mohamed Sonny. He's the owner of
16 7209 Rampart. And I also spoke to Efrain Mendoza at
17 7203 Rampart.

18 Q. Is that the same Efrain Mendoza who testified
19 in this case?

20 A. Yes, sir.

21 Q. When you talk to witnesses, do they always know
22 what's important in a case?

23 MR. BARROW: Your Honor, I'm going to
24 object. Calls for speculation as to what a witness
25 knows.

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 THE COURT: Sustained.

2 Q. (By Mr. Baldassano) Well, how many people have
3 you interviewed in cases over the past since you've been
4 an arson investigator?

5 A. Over hundreds.

6 Q. Has it ever come to pass in your experience in
7 those hundreds of people that sometimes people tell you
8 new and different things when you talk to them another
9 time?

10 A. Absolutely.

11 Q. Is that uncommon or common?

12 A. That's common.

13 Q. When you -- you talked to Efrain and Mohamed.
14 Anybody else out there?

15 A. On that particular day it was just them two.

16 Q. Okay. And without going into what they said,
17 did you learn any more new details about the case or
18 anything new about the case?

19 A. I learned that there might have been some envy
20 with the defendant and Mr. Mendoza.

21 Q. And at that time, did Efrain Mendoza tell you
22 anything about what the defendant had said?

23 MR. BARROW: Your Honor, I'm going to
24 object to hearsay.

25 THE COURT: Sustained.

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 MR. BALDASSANO: Well, I wasn't really
2 asking for what he said, Judge. I was asking if he said
3 it. But I'll move on, and I'll let -- I'll move on.

4 Q. (By Mr. Baldassano) Okay. So you talked to
5 those two. Did you talk to anybody else on March 30th
6 of 2009?

7 A. Yes, I did.

8 Q. All right. And who else did you talk to?

9 A. I spoke to Martin at Martin's Body Shop. Can I
10 look at my report?

11 Q. Sure.

12 A. I spoke with Filipe at a body shop on Alder
13 Street.

14 Q. At that point, did you tape-record anybody,
15 take any written statements, anything like that?

16 A. At that point, no.

17 Q. So now we're talking about March 30th of '09?

18 A. Correct.

19 Q. What did you do after March 30th of 2009, in
20 respect to the investigation?

21 A. On July 19, 2010, I went back 72 -- to the
22 Rampart address; and I spoke with Mr. Mendoza, Efrain
23 Mendoza.

24 Q. Let me stop you there. Based on the reports
25 that you read, the interviews that you conducted up to

*RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano*

1 that point, the examination of the photos, did you see
2 any red flags in the case, anything that made you
3 suspicious of anything?

4 A. Yes, I did.

5 Q. And what was that?

6 A. Okay. The original offense report, there were
7 several indicators that might raise concern. One thing
8 is that the defendant made a phone call. He notified
9 someone about the fire. That was one. The other was
10 that in the offense report, it stated that the doctor
11 said --

12 MR. BARROW: Your Honor, I'm going to
13 object to what he's going to quote out of the offense
14 report. That's not in evidence, and that's hearsay.

15 MR. BALDASSANO: Judge, he's telling the
16 jury what the red flags, as an investigator, that he saw
17 in the case up until this point of his investigation.

18 THE COURT: Is he reading from the report?

19 MR. BALDASSANO: He doesn't even have the
20 report, just the things that made it important to him,
21 as an investigator of the case that he was flushing out.

22 MR. BARROW: But he's getting that
23 information from a report that's not in evidence that's
24 written by somebody else; and that's hearsay, Your
25 Honor.

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 MR. BALDASSANO: But those people
2 testified already that wrote the report. It was Juan
3 Garcia and Hicks. They've already been here, and
4 they've already testified in front of the jury.

5 MR. BARROW: And the report is not in
6 evidence.

7 MR. BALDASSANO: Judge, we'd offer the
8 report into evidence.

9 Does that satisfy the defense attorney?

10 MR. BARROW: That's hardly the point, Your
11 Honor.

12 THE COURT: Okay. I'm going to ask the
13 attorneys to approach.

14 Okay. Let's take a brief recess.

15 *(Outside jury's hearing)*

16 THE COURT: Is this witness testifying
17 from a document as hearsay?

18 MR. BALDASSANO: Okay. I think if I ask
19 him the questions outside the presence of the jury, then
20 maybe you would have a clearer view of what is going to
21 be said.

22 THE COURT: Okay.

23 MR. BALDASSANO: My question initially
24 was: Were there any red flags presented that you saw,
25 as an arson investigator in the case? And I think he

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 said, yes. And then I was asking him to recount the red
2 flags.

3 *THE WITNESS:* The phone call that was made
4 to alert of the fire.

5 *COURT REPORTER:* I'm sorry. I can't hear
6 you.

7 *THE WITNESS:* The other thing was 1.3
8 percent myoglobin. That is really low. That tells me
9 that the carbon monoxide did not cause him to lose
10 consciousness. The other thing, Investigator Garcia's
11 interview. Defendant's interview with Mr. Garcia is
12 inconsistent to what happened. He said the roll-up
13 door, when he rolled up the door, it was full of fire.
14 That can't be. There was no fire where he was at. So
15 those are three little red flags to me that something is
16 not --

17 *MR. BALDASSANO:* One is, I guess, a party
18 opponent, the defendant. The other thing is that low
19 carbon monoxide is in evidence already. It was part of
20 the hospital and EMT reports, so they've already heard
21 that. And the defendant notified somebody. That's
22 already in evidence.

23 That's already in evidence when Efrain
24 testified the defendant called him three times around
25 the time of the fire, telling them there was smoke. So

*RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano*

1 those things are all in evidence.

2 The only thing that's not in evidence is
3 the defendant's inconsistent story, but that's just him
4 testifying that the defendant gave a story that didn't
5 match up to the facts. And that's a party opponent.

6 *MR. BARROW:* And the only place he's
7 getting this information is from an offense report.

8 *MR. BALDASSANO:* That's not true. The
9 carbon monoxide comes from something that's in evidence.
10 That's not from the offense report. The defendant
11 notified somebody of something. It's in evidence. That
12 was Efrain saying that that's a red flag.

13 It would be like asking a homicide
14 detective, what made you suspicious? Well, because a
15 neighbor saw some guy with a black mask run away from
16 the scene. I mean, that's just what he's thinking.
17 It's not asking for hearsay. It's asking for what he's
18 thinking and why he's seeing red flags. Just asking why
19 he's seeing the red flags. It's a state of mind, not
20 new evidence in the case.

21 *MR. BARROW:* Our objection is he's getting
22 all this information from the offense report.

23 *MR. BALDASSANO:* Our response again is
24 it's a state of mind.

25 *THE COURT:* Are you testifying from an

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 offense report?

2 *THE WITNESS:* Some from interviews with
3 Investigator Garcia.

4 *THE COURT:* Investigator Garcia testified
5 already.

6 *MR. BARROW:* Yes, he did. And he did not
7 testify as to anything about interviews with Mr. Morin.
8 There was no testimony from Mr. Garcia about that.

9 *MR. BALDASSANO:* We're going to re-call
10 Garcia, Judge. And we'll have that in, and that will
11 satisfy the defense attorney. So we'll go ahead and
12 re-call him. He's outside in the hallway.

13 *MR. BARROW:* Judge, I'm going to object to
14 the sidebar about trying to satisfy the defense
15 attorney. It's not for my satisfaction, Your Honor.
16 It's for the law and a fair trial, due process for
17 Mr. Morin.

18 *THE COURT:* Okay. Sustained. And okay,
19 that's how we'll handle it.

20 *MR. BALDASSANO:* Can I call the
21 investigator, I guess, to make this, what he's saying,
22 go smoothly, to call that person out of order, put him
23 on and ask him those questions?

24 *THE COURT:* You may do so.

25 *MR. BALDASSANO:* Thank you.

RUBEN HERNANDEZ - October 5, 2011
Direct Examination by Mr. Baldassano

1 *(Jury enters courtroom)*

2 THE COURT: All right. Please be seated.
3 You're ready to proceed, Counsel.

4 **JUAN GARCIA,**

5 having been first duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 BY MR. BALDASSANO:

8 Q. You're not Ruben Garcia, are you?

9 A. Juan Garcia.

10 Q. Are you the same Juan Garcia that testified
11 earlier?

12 A. Yes, sir.

13 Q. All right. I'm going to ask you some questions
14 that I didn't ask you before. I'm going to bring you
15 back to a day after the fire, talking to the defendant.
16 Do you remember telling us about talking to the
17 defendant?

18 A. Yes, sir.

19 Q. All right. And what did you -- first of all,
20 was the defendant in custody or under arrest or anything
21 when you dealt with him the next day?

22 A. No, sir.

23 Q. Where was he?

24 A. He was at M & M Auto Detail Shop, just in the
25 open area out in the yard.