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REPORTER'S RECORD
VOLUME 5 OF 8 VOLUMES
TRIAL COURT CAUSE NO. 1412198
COURT OF APPEALS NO. 14-15-00380 - CR FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS

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THE STATE OF TEXAS

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IN THE DISTRICT COURT OF
CHRISTOPHER A. PRINE
Clerk

VS.

HARRIS COUNTY, TEXAS

GUSTAVO VASQUEZ

230TH JUDICIAL DISTRICT

GUILT/INNOCENCE PHASE
JURY TRIAL

On the 15th day of April, 2015, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Brad Hart, judge presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine; Reporter's Record produced by computer-aided transcription.

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1 THE COURT: Okay.

2 (Jury seated).

3 THE COURT: All right. Please be seated.

4 Good morning, everyone.

5 State, call your next witness, please.

6 MS. BARD: Your Honor, the State calls

7 Captain Lee to the stand.

8 THE COURT: Ladies and gentlemen, he has
9 been sworn.

10 Ms. Bard?

11 MS. BARD: Thank you, Your Honor.

12 MICHAEL LEE,

13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BARD:

16 Q. Could you please introduce yourself to the
17 jury?

18 A. My name is Michael Lee.

19 Q. And we can -- I called you captain. Did you
20 just recently get promoted?

21 A. Yes, ma'am, I did.

22 Q. About how long ago?

23 A. One month.

24 Q. Well, congratulations.

25 A. Thank you.

1 Q. Where are you currently assigned?

2 A. I'm currently assigned as the commander over
3 the airport division at Hobby Airport and the Ellington
4 Airport.

5 Q. How long have you been with the Houston Police
6 Department?

7 A. 25 years.

8 Q. And can you kind of just give us an idea of
9 throughout your career some of the major places that
10 you've been?

11 A. Started out as a patrol officer in the
12 northeast area of Houston for a number of years. I was
13 then selected to be an instructor at our academy for
14 approximately two years. Worked on a tactical unit
15 undercover for a couple of years. I was promoted to
16 sergeant in 2002. I was a patrol sergeant at the
17 central division, which is primarily the downtown and
18 near town area for two years. And then I was a
19 sergeant in the northeast patrol division for two
20 years. I was promoted to lieutenant in 2006. And as a
21 lieutenant, I've been a patrol lieutenant in the
22 southwest division and I was also, for about six years,
23 the lieutenant over our mental health division.

24 Q. Okay. So, pretty impressive distinctive
25 career. I appreciate your service.

1 A. Thank you.

2 Q. What kind of training and education do you
3 have specifically -- I believe you said you were a
4 lieutenant of the mental health unit.

5 A. Yes, ma'am.

6 Q. What kind of training and education do you
7 have there?

8 A. Well, my college degree -- I have a Master's
9 in psychology and sociology. I went through a pilot
10 program back in 1999. At that time Chief Bradford
11 started it up. They selected 60 officers in the
12 department to go through what's called crisis
13 intervention training. And that training teaches
14 officers to recognize the signs and symptoms of persons
15 in a mental health crises. And then more importantly,
16 teaches those officers to de-escalate those situations
17 safely. Put the person in custody. And then to get
18 the person to a facility to get them treatment, if
19 that's needed, or into the jail, if that's also needed.

20 That was a course that was 40 hours in
21 length. And then also we're required to go through an
22 eight-hour refresher class every year. And I've done
23 that since 1999.

24 Q. So, for at least the last 14, 15 years, you've
25 had specialized training in dealing with and how to

1 handle potentially mentally ill defendants --

2 A. Yes, ma'am.

3 Q. -- or suspects?

4 A. Yes, ma'am.

5 Q. Okay. And I believe during your distinguished
6 career, you also spent some time as a hostage
7 negotiator.

8 A. Yes, ma'am, that's correct.

9 Q. Okay. How long were you that?

10 A. Approximately 11 years I was a hostage
11 negotiator for our police department.

12 Q. What kind of training and education do you
13 have for that?

14 A. The Houston Police Department trains their
15 negotiators internally. We think that's the best
16 method. And a lot of the police departments and their
17 negotiators offer training in various locations around
18 the country. Our is internal. It was a two-week
19 training course at our academy. And then we also
20 attend a training monthly -- at least eight hours a
21 month to stay up on our training certification.

22 Q. Okay. Now, back in December of 2013, what was
23 your rank?

24 A. Lieutenant.

25 Q. And where were you assigned?

1 A. I was assigned to the southwest division.

2 Q. What are your job responsibilities and duties
3 as a lieutenant over the southwest division?

4 A. At the southwest addition, I was the shift
5 commander for the evening shift. That's the hours
6 basically between 2:00 p.m. and 10:00 p.m. at night.
7 It's flexible. Sometimes it's 1:00 p.m. up to 11:00
8 p.m. And you're responsible for all the officers and
9 all the sergeants assigned to that shift for that
10 section of Houston during those hours.

11 You're responsible for overseeing the
12 calls for service. Making sure the calls are being ran
13 properly. But it's basically an administrative job.
14 You're in an office. You have staff -- you have
15 administrative staff and you have sergeants out in the
16 field that are actually supervising the officers
17 directly in the field.

18 Q. Was Sergeant Jaramillo one of your supervising
19 sergeants out in the field?

20 A. Yes, he was.

21 Q. Was he a newer sergeant at that time?

22 A. I believe Sergeant Jaramillo had not been a
23 sergeant for that long.

24 Q. Okay. Back on December 20th of 2013 at around
25 4:00, 5:00, 6:00 o'clock at night, do you get notified

1 of a scene where you may need to get involved?

2 A. Yes, ma'am.

3 Q. Okay. And do you remember how you got
4 notified?

5 A. I believe my administrative -- or what they
6 call a desk sergeant who basically maintains the
7 station. He's the sergeant inside the station. That's
8 an administrative function. Usually they will come to
9 me to my office and notify me if we have a special
10 situation going on that may require my attention.

11 Q. What was the special situation that required
12 your attention?

13 A. I had been notified that we had a call in the
14 southwest part of Houston that involved a barricaded
15 suspect or a suspect had barricaded himself in his
16 residence after threatening to harm a couple of our
17 officers.

18 Q. Okay. And in a situation like that with the
19 barricaded suspect, does a lieutenant always make that
20 scene?

21 A. Yes, ma'am, they should. It's required by our
22 policy that it's called a special threat situation.
23 And by policy, the shift commander is to go to that
24 scene and oversee the situation.

25 Q. Do you go out to that scene?

1 A. Yes, ma'am. I physically get in my car and
2 drive out to oversee that situation.

3 Q. Where did you go?

4 A. The address that night was 5711 Vendi.

5 Q. And is that a location here in Houston, Harris
6 County, Texas?

7 A. Yes, ma'am, it is.

8 Q. Okay. Do you remember about what time you got
9 there?

10 A. I would say it was approximately between 5:00
11 and 5:30 in the evening.

12 Q. What's the first thing you do when you arrive
13 at the scene?

14 A. The first thing I do when I arrive at a
15 special threat situation like that is locate the scene
16 supervisor. Which on that night it was Sergeant
17 Jaramillo. I locate the scene supervisor and basically
18 have him just give me a debriefing or a quick briefing
19 of what's going on at that situation.

20 Q. What are you needing that debriefing for?

21 A. Well, like I said, being an administrative
22 lieutenant, you're in an office. You're not really
23 monitoring the radio that closely. So, obviously the
24 scene supervisor, he's already out there. He's already
25 been briefed by the officers that were the initial

1 responding officers. So, he has a lot more information
2 about what's going on at the scene than I do.

3 So, if I'm going to be in charge, I
4 really have to get briefed immediately. And just get
5 me a quick rundown on what's going on and what we're
6 dealing with.

7 Q. Was Sergeant Jaramillo able to give you that
8 quick rundown?

9 A. Yes, ma'am, he was.

10 Q. Is one of your concerns when you get out to
11 the scene the perimeter?

12 A. The perimeter is usually the -- in that type
13 of situation, is usually of the utmost importance.

14 Q. Okay. And when we say perimeter, can you kind
15 of describe that for the ladies and gentlemen of the
16 jury who might not be as familiar with police
17 perimeters as you or I?

18 A. Yes, ma'am. The perimeter is extremely
19 important when you have a barricaded suspect or a
20 suspect that maybe had ran from the police.

21 In this situation, a barricaded suspect
22 where he -- you know, he's believed and known to be in
23 his house. You don't want him to escape while you're
24 trying to find out what's going on. So, you want to
25 make sure all the exterior perimeter of the residence,

1 including the yard or the fence -- in this situation,
2 we have officers there that have a direct eye on that
3 residence in case they try to slip out the back window
4 or side door. You really want to secure that perimeter
5 first.

6 Q. Is it common in a situation involving, for
7 example, a house with a backyard to maybe knock out
8 some of the fence posts so that you can have a better
9 line of sight?

10 A. Yes, that's not uncommon.

11 Q. When you arrived at the scene and were briefed
12 by Sergeant Jaramillo, were you able to also ascertain
13 whether or not a proper perimeter was set up?

14 A. Yes. I was able to learn that from Sergeant
15 Jaramillo that we did have a proper perimeter. The
16 back was secure, the sides were secure and obviously
17 the front was very secure.

18 Q. Okay. About how many officers do you think
19 were out there?

20 A. I would say by the time I was notified in the
21 office and by the time I traveled and got out to the
22 scene, there were probably 30 police officers on that
23 situation.

24 Q. Okay. What's the first thing you do after you
25 make sure the scene is -- the scene is secure and

1 you've been debriefed?

2 A. Well, in this situation where you have someone
3 that is barricaded, you want to try to establish
4 communications because you really just want to resolve
5 the situation. You want to make contact with that
6 person. And then see if they'll come outside and speak
7 to the officers.

8 Q. Were you able to get information from Sergeant
9 Jaramillo that allowed you to try to make contact
10 inside that house?

11 A. Yes, ma'am. When I spoke with Sergeant
12 Jaramillo, he briefed me. I asked him if any
13 communications had been established. He did tell me he
14 had a phone number for the gentleman that was in the
15 house. And I asked him for that phone number. And
16 used it to make communication.

17 Q. Okay. Tell us about that.

18 A. I called into the residence with the number
19 provided by Sergeant Jaramillo. I had learned when I
20 was briefed that the gentleman that I was trying to
21 reach or the man that was in the house was named
22 Gustavo.

23 So, I called the residence. The first
24 time the phone rang. I don't know how many times it
25 rang. But the phone rang. It was picked up by an

1 answering machine. And on the answering machine there
2 was -- it was a woman's voice. So, obviously -- I
3 believe I left a message. This is common. You know,
4 it's happened to me numerous times as a negotiator
5 where a lot of times people won't answer the phone, but
6 they may be sitting there listening to what type of
7 message you're to going to leave.

8 So, I believe I just left a message
9 saying Gustavo, if you're in there, I need you to
10 answer the phone. I hung up and I called back in.

11 Q. All right. Let me stop you there.

12 A. Okay.

13 Q. After that first phone call and you leave your
14 message, do you -- what do you do immediately next?

15 A. I called the house again.

16 Q. All right. So, the next thing you do is
17 immediately redial?

18 A. Correct.

19 Q. Okay. What happens out -- on that redial?

20 A. When I called in the second time, the phone
21 was answered by a gentleman.

22 Q. Were you able to identify who that gentleman
23 was?

24 A. Well, when he answered the phone, I asked him
25 who I was speaking to. And he asked who do you want to

1 be speaking to.

2 MS. BECKNER: Objection, Your Honor,
3 hearsay.

4 MS. BARD: Your Honor, it's a statement
5 by a party opponent.

6 THE COURT: Overruled.

7 Q. (BY MS. BARD) You can continue.

8 A. Thank you.

9 He asked who I wanted to be speaking to.
10 I told him I was looking to speak to Gustavo. And he
11 stated he was Gustavo. I told him that we needed to
12 speak to him outside. Basically, I needed him to exit
13 the house. And he told me on the phone immediately
14 that, you know, you need to help get me out of here.

15 Q. When you were speaking with him, about how
16 long does your conversation -- on this second phone
17 call, about how long does that last?

18 A. It was a pretty quick conversation. I mean,
19 as soon as I asked him to speak to Gustavo, he said
20 that's who I'm speaking to. That's probably a
21 10-second conversation there. He told me -- I told him
22 I needed him to exit the house to talk to us about the
23 situation so we can find out what's going on. That
24 probably lasted another five, six seconds. And then he
25 told me I need you to get me out of here. And I told

1 him I would. I was going to help him do that.

2 So, at that point, we had probably been
3 speaking 20, 30 seconds.

4 Q. Okay. During that 20 or 30 seconds, was he
5 able to answer the questions you were asking?

6 A. Yes, ma'am.

7 Q. What was the tone of voice that you were
8 getting?

9 A. His tone was -- it was probably, you know,
10 normal I would say. I mean, he wasn't screaming at me.
11 I mean, as a negotiator, I'm used to getting cussed at
12 when we make contact with the person. Cussed at,
13 yelling, sometimes just unintelligible type
14 conversation. This wasn't. I mean, he seemed pretty
15 calm.

16 Q. On that same second phone call, do you start a
17 process to try and get him out of the house?

18 A. Yes, ma'am, I did.

19 Q. Okay. And what was that process?

20 A. Well, when Gustavo told me you need to help me
21 get -- help get me out of here. I mean, that was what
22 I wanted to hear. I mean, every negotiator wants to
23 hear that. And we do hear it more frequently than you
24 would think.

25 And so, I went ahead and gave him

1 instructions on how that was going to work. Because
2 really, it's a very -- when you have -- as you can
3 imagine -- 30 police officers heavily armed around that
4 residence, it's a very delicate maneuver to get someone
5 to exit their house. And hopefully, they obey
6 instructions and don't make any really furtive type
7 gestures that may endanger them. Where an officer may
8 actually think they're doing something that they -- you
9 know, reaching for a weapon and getting himself shot.

10 So, it's a very delicate situation. So,
11 I gave -- I told Gustavo I'd give him instructions on
12 how to exit the house safely. First thing I wanted to
13 do is make sure he's really listening to me. And so,
14 one of the tactics we use as a negotiator to make sure
15 they're listening to us and following our
16 instructions --

17 MS. BECKNER: Objection, Your Honor,
18 narrative at this point.

19 THE COURT: All right. Let's keep it to
20 question and answer, please.

21 MS. BARD: Yes, sir.

22 Q. (BY MS. BARD) So, what is the first
23 instruction you give him?

24 A. I told Gustavo to go up to the front door
25 inside his house. And to signal to me that he's

1 listening by turning his porch light off and on.

2 Q. What's the reasoning for that?

3 A. As I was saying, one reason -- the first
4 reason is to make sure he's listening to me and going
5 to follow my instructions. Two is to locate his
6 position inside that house. And that's important
7 because we want to know exactly where he's at at all
8 times.

9 Q. Was he able and did he follow your
10 instructions to flip the porch light on and off?

11 A. He did.

12 Q. Okay. Do you remember if he flipped it on or
13 off multiple times?

14 A. I believe he turned the porch light off and on
15 twice.

16 Q. Did that seem out of the ordinary to you?

17 A. No.

18 Q. Okay. What was the next set of instructions?

19 A. Now, that I knew he was at the front door, I
20 told him -- gave him instructions to exit the front
21 door. Told him to keep his cell phone with him.
22 Sometimes that's risky because if it's dark, sometimes
23 as you are aware, it could be mistaken for a weapon.
24 But it's important to us that they keep the cell phone
25 with them so they can follow our instructions as

1 they're exiting their residence.

2 So, I gave him instructions to open the
3 door and to step outside the residence.

4 Q. What do you do -- since you're having to keep
5 the cell phone up at his ear -- with his other hand?

6 A. Keep his free hand in clear view.

7 Q. Okay. Was the defendant able to open the
8 front door?

9 A. Yes, ma'am.

10 Q. Was he following your instructions, as far as
11 keeping the phone up to his ear?

12 A. Yes, ma'am.

13 Q. Was he following your instructions as far as
14 keeping his other hand free and clear?

15 A. Yes, ma'am.

16 Q. Okay. What was the next set of instructions?

17 A. Just to go ahead and exit the residence. And
18 then as he exited, I asked him to turn around and face
19 towards the residence. And to stop at that point and
20 place the phone on the ground. And to be placed in
21 custody.

22 Q. All right. At this point, does the defendant
23 exit the residence?

24 A. Yes, ma'am.

25 Q. Now, we noticed earlier in some picture

1 yesterday, there's sort of -- the front door is
2 recessed and there's sort of sidewalk to the driveway.

3 A. Yes, ma'am.

4 Q. Okay. Was he able to -- or how did he get to
5 the driveway?

6 A. Gustavo exited the residence and walked, I
7 guess, about four feet before it turns to -- I guess,
8 it would be his right. And the sidewalk curves to the
9 right. And he turned to the right and walked towards
10 the driveway.

11 Q. Okay. About how far down the driveway does he
12 get before you tell him to stop?

13 A. Gustavo went about half to three quarters of
14 the way down his driveway and he stopped.

15 Q. And why do you tell him to stop?

16 A. Well, we want him to stop, turn around and
17 face away from us so we could place him into custody.
18 He was getting rather close to the street where several
19 of the officers were.

20 Q. And at this point, are you able to communicate
21 or is someone else communicating with all of the
22 officers along the perimeter to know what's going on so
23 that they don't accidentally shoot the suspect or get
24 involved in a firefight?

25 A. Well, at this point, I mean, I was trying -- I

1 was still attempting to communicate. I mean, he had
2 basically taken the phone away from his ear, as happens
3 on numerous situations. The perimeter officers do
4 start shouting commands. 'Cause now they're -- they're
5 within eyesight. There other people yelling
6 instructions for him to turn around. You know, put the
7 phone down, that type of thing.

8 Q. Okay. At this point he's at the driveway.
9 You've told him to turn around, to put the phone down.
10 Does he comply?

11 A. No, ma'am, he doesn't.

12 Q. What does he do?

13 A. He hesitated for about 10 seconds -- probably
14 about 10 seconds. He just kind of stood there and
15 froze. And, you know, I didn't know what he was going
16 to do next. And he -- all of a sudden, he slammed his
17 phone down to the ground and just took off running to
18 his right and ran around to his backyard.

19 Q. Let me -- let me ask you there.

20 Okay. When you tell him to stop and turn
21 around, is he facing you and the officers on the
22 street?

23 A. Yes. When I was talking to him and telling
24 him, yes, he was facing me.

25 Q. When he does that 10-second hesitation, is he

1 still looking at you and all the officers on the
2 street?

3 A. Yes, ma'am, he was.

4 Q. Were police lights on?

5 A. Yeah. There were multiple police lights on.

6 Q. Okay. No way anybody could be confused that
7 the police were surrounding the house at this point?

8 A. No. It was pretty obvious.

9 Q. Okay. So, you said he hesitates. And then
10 all the sudden, he throws the phone down and run.

11 Which side of the -- does he like run
12 back into the house?

13 A. No, ma'am.

14 Q. Okay. Where does he run?

15 A. He runs to the backyard. And as I'm facing
16 the house, it would on the left side that he ran.

17 Q. Okay. Captain Lee, if we're looking at
18 State's Exhibit 8, is this that house that we were
19 talking about?

20 A. Yes, ma'am.

21 Q. Okay. Can you point out for the jury where in
22 the driveway he stopped and sort of stared, hesitated
23 and then took off running?

24 And what you can do, is on that screen to
25 the right -- if it's working -- you can draw kind of

1 like a line or an arrow.

2 A. It would have been on this side right here.

3 Q. Okay. So, he comes around the car?

4 A. Yes.

5 Q. Okay. Looking at State's Exhibit No. 9, would
6 this be sort of the side of the car that we're talking
7 about and that side the house that he took off to run
8 to?

9 A. Yes, ma'am, that's the side.

10 Q. Okay. I know that's kind of dark. If you see
11 it -- can you see sort of to the left of the house,
12 there are these two little white lights. Can you see
13 that?

14 A. Yes, ma'am.

15 Q. What is that indicating?

16 A. That there were police officers back there.

17 Q. Okay. Is that the direction that he runs to?

18 A. Yes, ma'am.

19 Q. And is your understanding that's where the
20 gate to the house is?

21 A. Yes, ma'am.

22 Q. Okay. Do you chase after him when he goes
23 running?

24 A. I did.

25 Q. Do other officers chase after him?

1 A. Multiple officers chased after him.

2 Q. Okay. What happens next?

3 A. By the time I made it around the gate and to
4 the backyard, he was already being placed into custody
5 by the officers that were in the back.

6 Q. Okay. Do you get close enough to hear what's
7 going on at this point as he's being arrested or are
8 you kind of more back towards the gate area?

9 A. Yeah. I'm more towards the rear. I didn't
10 overhear any conversation.

11 Q. Okay. What happens next?

12 A. Gustavo was placed into custody. He was
13 placed in a patrol car. And as you can imagine, it's a
14 -- now, it's a process of, you know, processing the
15 scene, seeing what we have going on there. Clearing
16 the residence. Making sure there's no one in the
17 residence that we're not aware of, making sure the
18 scene is safe.

19 Q. Let me ask you this, Captain. Do you remember
20 whether or not the defendant was wearing shoes that
21 night?

22 A. Honestly, I don't recall.

23 Q. If he had not been wearing shoes, would that
24 have stood out to you?

25 MS. BECKNER: Objection, Your Honor,

1 relevance, Your Honor.

2 THE COURT: Overruled.

3 A. Probably not.

4 Q. (BY MS. BARD) Fair enough.

5 All right. So, he's now in custody. And
6 at this point, sort of the scene changes you said.

7 What becomes the priority?

8 A. The priority at this point, like I said, is
9 making the scene secure. Making sure there's no one in
10 the house that we're not aware of, any other suspects
11 or anybody that's facing any type of harm.

12 And now, it's a process of once we found
13 out there was a person inside the home that had been --
14 that's deceased, now, it's a process of, you know,
15 securing the perimeter even tighter. You know, setting
16 up a staging area for the media. I believe media had
17 -- was on the way or had already showed up. I do know
18 they showed up. Contacting our SWAT team, who was en
19 route, and disregarding them. A couple of negotiators
20 actually arrived as the scene was winding down.
21 Disregarding SWAT from coming out. And then contacting
22 homicide. Letting them know that we had a person
23 possibly murdered at this situation.

24 And, you know, just starting to relieve
25 some of the officers. As I said, there were probably

1 30 police officers on that scene. There's lots of
2 calls to be ran out there. So, we started relieving
3 officers and sending them back into duty. But also
4 keeping enough officers on the scene to secure the
5 perimeter inside and out. Because as you can imagine,
6 this was around now 6:00, 6:30 in the evening. And it
7 was in a residential area. We have basically a whole
8 street shut down. Residents couldn't get to their
9 homes. We had a lot of neighbors trying to see what's
10 going on.

11 MS. BECKNER: Objection, narrative, Your
12 Honor.

13 THE COURT: Question and answer, please.

14 Q. (BY MS. BARD) While you're -- do you stay on
15 the scene to kind of sort of keep an eye out as say the
16 scene supervisor?

17 A. Yes, ma'am, I do.

18 Q. Okay. As you're sort of supervising this
19 scene, do you look back over to see the defendant in
20 the patrol car?

21 A. Yes, ma'am, I did.

22 Q. Can you identify the person that you were
23 talking with, not only on the cell phone, but the
24 person who ran from you and who was the person you
25 noticed that had gotten arrested and put in the patrol

1 car?

2 A. Yes.

3 Q. Do you see them here in the courtroom today?

4 A. Yes, ma'am, I do.

5 Q. Can you point to him and identify him by an
6 article of clothing he's wearing?

7 A. It's the gentleman on the left. I guess
8 that's a gray jacket -- yes, gray -- with the beard
9 and, I guess, tan shirt.

10 Q. Okay.

11 MS. BARD: Your Honor, may the record
12 reflect that the witness has correctly identified the
13 defendant?

14 THE COURT: It will.

15 Q. (BY MS. BARD) Is there a reason that you go
16 look over at him in the car?

17 A. Well, I turned and looked and saw that he was
18 on the right side in the backseat and he was kind of
19 slumped over. And I did go over there and check on his
20 safety.

21 Q. Okay. And why did you -- why did go over to
22 check on his safety?

23 A. Well, I mean, as the scene commander -- I
24 mean, once I get things under control and basically my
25 sergeant are running the situation at that time. I'm

1 for that scene being properly handled. I'm responsible
2 for the safety of not only the officers, but the safety
3 and welfare of the suspect that we have in custody. We
4 don't want anything happening to them or if they need
5 any type of medical attention, we want to make sure
6 they get that.

7 When I saw him in the patrol car, it
8 looked like he was slumped over. It just raised a red
9 flag. I've been on a long time. I've seen a lot of
10 stuff. And so, I went over to make sure he was okay
11 physically or that maybe he was up to no good and
12 trying to bring his handcuffs out from behind his back
13 up under his legs. Which happens to us often. Or he
14 was trying to get out of his handcuffs or he -- a lot
15 of times when we place them in custody initially --

16 MS. BECKNER: Objection, narrative.

17 THE COURT: Overruled.

18 A. To make sure he didn't have a weapon maybe he
19 was trying to get to. 'Cause he was just kind of
20 slumped over where I couldn't really see what he was up
21 to. So, I went over to check on him.

22 Q. (BY MS. BARD) You said he was on the right
23 side. So, what side do you go to check on him?

24 A. Well, since he was on the right side slumped
25 over basically against the door, I didn't want to open

1 that door. So, I went around to the left side and
2 opened the left rear patrol car door.

3 Q. And what do you do after you open the door?

4 A. I open the door.

5 MS. BECKNER: Your Honor, may we approach
6 at this point?

7 THE COURT: Okay.

8 (Bench conference on the record).

9 MS. BECKNER: At this time point, I think
10 we're about to be getting into a statement the
11 defendant made that was discussed at the suppression
12 hearing.

13 MR. DAVIS: Judge, we'd, of course, renew
14 our objection. And we'd ask the Court to give a
15 cautionary instruction to the jury at this time.
16 There's one that's like a pattern instruction. It's a
17 38.22 or 38 -- I've got the numbers all mixed up.

18 But there's cautionary instruction --
19 'cause we're going to be asking for an instruction in
20 the pattern -- in the charge. And so, there's
21 cautionary instruction that we can give him before this
22 witness testifies that about the statement that the
23 jury has to make a determination about the
24 voluntariness of this statement.

25 So, we'd ask at this time that the Court

1 give a cautionary instruction before he goes into the
2 statement of the defendant. Because it is a statement
3 that's in response to a question. And it is not a
4 Mirandized statement. So, out of abundance of caution,
5 we'd ask the Court to at least give a cautionary
6 instruction. It's our contention that the statement is
7 inadmissible because it's in response to interrogation.
8 The Supreme Court -- the U.S. Supreme Court may say
9 something. But Texas gives more protection to the
10 defendant than the Feds do on this issue.

11 So, under the state law, that statement,
12 we would contend, would be not admissible. And we'd
13 ask at this time, the Court give a preliminary
14 instruction prior to that statement being admitted in
15 this trial.

16 MS. BARD: How do you give a statement
17 that is him commenting on the evidence?

18 MR. DAVIS: I'm sorry?

19 MS. BARD: How do you get that statement
20 without him commenting on the weight of the evidence?

21 MR. DAVIS: You mean how do you give the
22 instruction without --

23 MS. BARD: Um-hum.

24 MR. DAVIS: There's a pattern instruction
25 that you give. I can give it to you, Judge. I can get

1 it. I didn't bring it this morning, but I know --

2 THE COURT: Well, that's not helpful.

3 MR. DAVIS: I know it isn't. I have it
4 on my computer. I could have printed. But I came
5 straight here instead of going to my office because I
6 was kind of running late dropping off my kids. I
7 apologize. That's not on you. But, you know, I got
8 here on time. But I didn't get a chance to get to the
9 office first.

10 But I think there's one like in that
11 little book. And there's also one the charge bank as
12 well. 'Cause I've done this in other cases. I can
13 tell you the name of the defendant I think one was
14 given and it may be on the charge bank.

15 And I hate to -- I don't want to waste
16 the Court's time, but I probably could do -- you know,
17 three minutes or maybe five minutes I probably could go
18 upstairs -- downstairs and grab it and come back and
19 give it to the Court.

20 Or if you wanted to say something to the
21 effect of well, ladies and gentlemen of the jury,
22 you're about to hear a statement from -- the last
23 statement of the defendant. It will be a decision to
24 determine whether or not --

25 THE COURT: Well, I'm not going to do it

1 off the top of my head because, you know --

2 MR. DAVIS: Would you like me to write it
3 down?

4 THE COURT: No, I don't want you to write
5 it out for me either.

6 (End of conference).

7 Ladies and gentlemen, can y'all step to
8 the back for a few minutes, please?

9 (Jury out).

10 THE COURT: You can be seated.

11 We've given that instruction before, I'm
12 pretty sure, in the jury charge. I just don't recall
13 us having done it during the witness testifying. And
14 I'm not saying I won't do it. I just wasn't
15 anticipating that since we already have had the motion
16 to suppress and I've made my ruling that the statements
17 were going to be admissible, both what was said at the
18 scene and then, of course, the recorded statement
19 itself. So, I wasn't prepared because I wasn't aware
20 that y'all were going to ask for that.

21 So, let's find it.

22 MR. DAVIS: Yes, Your Honor.

23 (Court recess).

24 THE COURT: All right. Okay. I've
25 considered your request regarding the voluntariness of

1 a statement, an instruction be given to the jury now
2 regarding their determination whether it was voluntary
3 or not. That certainly is something I will consider
4 and most likely will put into the jury charge once we
5 get to that point.

6 And for the record, the defense has
7 provided me with the Texas Criminal Pattern Jury Charge
8 Book and a copy of it regarding the jury charge --
9 potential jury charges on the voluntariness of the
10 statement requesting that I make an instruction to the
11 jury now regarding that.

12 I'm not going to give that instruction at
13 this point. But I will allow the defense, if they wish
14 -- since they've given me a copy of it -- to attach
15 this for the record, if you would like.

16 MR. DAVIS: Yes, Your Honor. I may want
17 to modify it because my request, as before, is to give
18 a modification of this instruction.

19 THE COURT: That's fine. You can modify
20 it to what you would like it to say. And provide that
21 to the Court to be attached as a part of the record for
22 appellate purposes should it be necessary.

23 And then again, once we get to the jury
24 charge part of it, like I said, I most likely will give
25 that instruction then for sure at that point. Okay.

1 MR. DAVIS: Thank you.

2 THE COURT: All right. Let's get the
3 defendant and the jury, please.

4 We had the motion to suppress regarding
5 the statement both in the patrol vehicle and the audio
6 recorded statements. I'm assuming since we've already
7 gone through this, that y'all are objecting to the
8 admission of those statements again. If you'd like to
9 formally do that now, I can note them for the record
10 and overrule them or do you want to do that in front of
11 the jury?

12 MS. BECKNER: We can do it now, Judge.

13 THE COURT: Okay. Go ahead.

14 MS. BECKNER: We'd like to, you know,
15 renew our objection and ask that the jury be instructed
16 on the voluntariness and also object to the statement
17 coming in.

18 THE COURT: All right. And I've already
19 made my ruling regarding the voluntariness instruction.
20 And I will stand at this point on the ruling I
21 previously made during the motion to suppress hearing
22 regarding the admissibility of the statements. But
23 your objections to those are noted for the record. And
24 you can have a running objection to all the statements.

25 MS. BECKNER: I would like that. Thank

1 you, Judge.

2 THE COURT: All right. Let's have the
3 jury, please.

4 (Jury in).

5 THE COURT: All right. Please be seated.
6 Ms. Bard, you may continue.

7 MS. BARD: Thank you, Your Honor.

8 Q. (BY MS. BARD) All right. I believe we left
9 off that we were at the car with the defendant slumped
10 over. You had opened the door. What happens next?

11 A. I opened the left side door and asked Gustavo
12 if he had any health issues that we should be aware of.

13 Q. What was his response?

14 A. When I asked that, Gustavo immediately replied
15 I'm sorry. I shouldn't have done it. I've been under
16 so much stress lately.

17 Q. Well, that clearly wasn't a direct response to
18 the question you had asked.

19 A. No, ma'am.

20 Q. Okay. What did that make you think?

21 MS. BECKNER: Objection, relevance, Your
22 Honor.

23 THE COURT: Overruled.

24 A. Well, he didn't answer the question I asked
25 about his health. So, I mean, if I had to guess, he

1 was talking about he did something --

2 MS. BECKNER: Objection to speculation.

3 THE COURT: Sustained.

4 Q. (BY MS. BARD) All right. So, he doesn't
5 answer the question about his health. What do you do
6 next? He says I'm sorry, I was under so much stress.

7 A. I repeated my question and asked him again if
8 he had any health issues that we needed to made aware
9 of.

10 Q. What was his response?

11 A. This time he responded no. And that -- he
12 asked me if I could get him a rag to wipe the sweat off
13 his head. And if I could get him some water.

14 Q. Was he sweating?

15 A. I believe I recall he was sweating.

16 Q. At the time that he was in the police car and
17 you were asking him these questions, was he cuffed?

18 A. Yes, ma'am, he was handcuffed.

19 Q. How long do you think you spent with him in
20 the back of that police car?

21 A. Probably 20, 30 seconds.

22 Q. Okay. And the purpose of it, was it to get
23 some sort of incriminating response from him?

24 A. No, ma'am, it was not.

25 Q. What was the purpose?

1 A. The purpose was to check on his welfare.
2 That's part of my responsibilities as the scene
3 commander. It is also to make sure our suspect is safe
4 and being handled properly.

5 Q. Did you hold him at gunpoint and force him to
6 the answer the question?

7 A. No, ma'am, I did not.

8 Q. Okay. While dealing with him both on the
9 phone, out in front of the house and in the patrol car,
10 about how long do you think you spent with him total?

11 A. Probably a couple of minutes total.

12 Q. During those couple of minutes, did he appear
13 intoxicated to you at all?

14 A. No, ma'am.

15 Q. Now, is it standard protocol in a barricaded
16 suspect with SWAT coming out for a mental health unit
17 to get dispatched?

18 A. Yes, ma'am. It's our department policy.

19 Q. And why is that?

20 A. We have our Crisis Intervention Response Team,
21 which is a unit that has a police officer that's
22 specially trained in dealing with persons in a mental
23 health crisis. They're partnered with a Master's level
24 clinician from the Mental Health and Retardation
25 Authority. They're partners. We send them to all SWAT

1 situations just in case there's a mental health
2 component to that call so they can be there as an
3 expert to take a look at the suspect. And then to
4 handle it properly if there is a mental health
5 component. So, it is department policy.

6 Q. Okay. Did they show up on this scene?

7 A. Yes, ma'am. We had one of those units arrive
8 on that scene.

9 Q. Was that -- can you give us a time frame of
10 when they showed up?

11 A. You know, probably towards the end of -- well,
12 after the scene was resolved, it was probably 30
13 minutes later.

14 Q. Okay. So -- and when you say the scene was
15 resolved, does that mean the defendant was put in
16 custody and put in the car?

17 A. Yes, ma'am.

18 Q. Okay. So, at this point you've sort of been
19 interacting and supervising the scene now for at least
20 probably an hour.

21 A. Yes, ma'am.

22 Q. Okay. When the mental health unit got there,
23 what did you do?

24 A. We let them know -- because they're a very
25 critical unit. It's a big city. We only have maybe

1 one or two on duty for the entire city. So, we try to
2 release them from a scene as quickly as possible if
3 they're not needed. So, we didn't see a mental health
4 component to this scene at that point. And we released
5 that unit to go back in service to check on other
6 situations.

7 Q. So, in your interactions and your observations
8 of the defendant over the course of this whole time,
9 did you believe he was suffering from some sort of
10 mental illness?

11 A. No, ma'am, I did not.

12 Q. Did you believe he was suffering from some
13 sort of psychosis?

14 A. It wasn't apparent to me that he was.

15 Q. Okay. If anything had triggered to you based
16 on your training and experience over the past 15 years
17 in mental health and crisis intervention, would you
18 have had them go talk to the suspect?

19 A. Most definitely. I wrote the department
20 policy. So, I would definitely follow it to tee. And
21 I didn't see any indications. So, I released them from
22 the scene.

23 Q. Okay. Does eventually homicide department
24 show up?

25 A. Eventually.

1 Q. Okay. And do you kind of -- at that point is
2 it sort of, I guess, policy if you will, to sort of
3 turn it over to them and let them do what they need to
4 do?

5 A. Yes, ma'am.

6 Q. Okay. Does that end your sort of interaction
7 with this scene and the responsibilities you had?

8 A. Yes. That pretty much ends my
9 responsibilities at that scene.

10 Q. Did you have any further contact with the
11 defendant after your conversation with him in the back
12 of the car?

13 A. No, ma'am, I did not.

14 Q. Okay. Did he ever get that rag or that bottle
15 of water?

16 A. I know I remember telling the officers to get
17 him the stuff. I didn't go back over to make sure he
18 had it. I had other duties at that point.

19 MS. BARD: I'll pass the witness, Your
20 Honor.

21 THE COURT: Ms. Beckner?

22 MS. BECKNER: Yes, Judge.

23 THE COURT: Yes, ma'am.

24 CROSS-EXAMINATION

25 BY MS. BECKNER:

1 Q. Good morning, Captain Lee.

2 A. Good morning.

3 Q. When you talked to Gustavo on the phone and
4 asked who you were speaking to -- I'm sorry.

5 When you talked to the person, that
6 person replied who do you want to be speaking to,
7 right?

8 A. Correct.

9 Q. And you would agree with me that this is not a
10 typical way that people answer the phone, right?

11 A. In a normal -- like if you're calling like a
12 friend or --

13 Q. Yes.

14 A. -- calling -- no. No.

15 Q. And you told the person you needed to speak to
16 Gustavo. And they said I am Gustavo.

17 A. Correct.

18 Q. Very formally, very -- a little awkward, we
19 could say, right?

20 A. He answered. You know, told me he was
21 Gustavo.

22 Q. Then you told him you would give him explicit
23 instructions to ensure his safety as he exited,
24 correct?

25 A. Yes, ma'am, I did.

1 Q. And the implication was that if Mr. Vasquez
2 didn't do exactly as you said, he might not make it out
3 alive, right?

4 A. Well, I don't know if it's that's extreme. I
5 mean, I asked him to follow my instructions.

6 Q. And you testified on direct that, you know,
7 any furtive movements could get him accidentally shot,
8 right?

9 A. Correct.

10 Q. So, it was important that he follow the
11 instructions to the letter?

12 A. It is important that they follow the
13 instructions.

14 Q. And first you gave him a signal, which was
15 very important, to turn the porch light on and off when
16 he was at the door of his house, correct?

17 A. Correct.

18 Q. And that would signal that he was ready to
19 come out.

20 A. Correct.

21 Q. And you just told him to turn it off and on
22 once.

23 A. I believe I just told him to turn it off and
24 on.

25 Q. And a few minutes later, you saw the porch

1 light flick on and off.

2 A. Correct.

3 Q. But it was a couple of times.

4 A. Couple of times.

5 Q. And Mr. Vasquez was -- you had told him to
6 keep his cell phone by his ear as he exited, right?

7 A. Yes, ma'am, I did.

8 Q. You told him to slowly open the door and to
9 step outside, right?

10 A. I told him to exit the house.

11 Q. And Mr. Vasquez did that initially, correct?

12 A. He did.

13 Q. When you saw him step outside, he had one hand
14 on the phone.

15 A. Yes, ma'am.

16 Q. And he had one hand raised.

17 A. Yes, ma'am.

18 Q. He wasn't carrying a bag.

19 A. A what?

20 Q. A bag of any kind.

21 A. Not that I recall.

22 Q. And you recalled seeing his hands very
23 clearly.

24 A. I do.

25 Q. You were focused on that.

1 A. Yes.

2 Q. And you didn't see a bag in his hands.

3 A. I didn't recall seeing a bag.

4 Q. And once -- once Mr. Vasquez got outside, you
5 told him he was supposed to turn so that his back was
6 facing you, correct?

7 A. Correct.

8 Q. And his front face -- his face facing his
9 house, correct?

10 A. Correct.

11 Q. And he didn't follow that instruction.

12 A. No.

13 Q. You told him to place his phone on the ground.

14 A. Yes.

15 Q. And he didn't follow this instruction either,
16 correct?

17 A. Correct.

18 Q. Instead he actually did the opposite, right?
19 Is that right?

20 A. The opposite being?

21 Q. Sorry. He kept walking down the driveway
22 facing towards you.

23 A. He did continue to walk.

24 Q. And he didn't put his phone down on the
25 ground.

1 A. Not at that time, he did not.

2 Q. So, he's still holding his cell phone and he's
3 walking towards you guys.

4 A. Correct.

5 Q. And at this point, your commands get even more
6 urgent, right?

7 A. They do.

8 Q. But Mr. Vasquez isn't following your commands.

9 A. No.

10 Q. So, he walks -- and I think you testified that
11 he made it almost three quarters of the way down the
12 driveway. And he was pretty close to guys at that
13 point, right?

14 A. He was nearing the street.

15 Q. And he stops near the end of the driveway and
16 he hesitates for about 10 seconds, right?

17 A. Yes, ma'am, he did.

18 Q. And then very suddenly, he throws his cell
19 phone to the ground, right?

20 A. Correct.

21 Q. And he starts running towards the house
22 towards the backyard, correct?

23 A. Yes, ma'am.

24 Q. Now, by the time Mr. Vasquez came outside,
25 there were at least 30 officers surrounding the house,

1 right?

2 A. Approximately.

3 Q. There were a ton of cars and lights, right?

4 A. Yes, ma'am.

5 Q. And he could see walking outside -- since he's
6 facing towards you, he could see that there were a ton
7 of police.

8 A. Yes.

9 Q. Most of the officers were holding firearms of
10 some kind.

11 A. They were.

12 Q. And they were pointing their firearms at
13 Mr. Vasquez.

14 A. They were.

15 Q. And he could see this again because he's
16 facing you.

17 A. I would assume so.

18 Q. Now, before you got -- I'm sorry.

19 Before you spoke to Mr. Vasquez, you
20 debriefed with the sergeant, correct?

21 A. Correct.

22 Q. And you knew that Mr. Vasquez had looked out
23 the blinds in the back of his house, correct?

24 A. In the rear of his house?

25 Q. Yes, sir.

1 A. That sounds familiar.

2 Q. And the sergeant knew that because there were
3 officers who had seen Mr. Vasquez peeking out
4 presumably?

5 A. It sounds familiar. I didn't read -- I didn't
6 put that in my report.

7 Q. Well, basically, what I'm getting at is
8 Mr. Vasquez knows the house is surrounded.

9 A. Okay.

10 Q. Now, when several trained officers have guns
11 trained on a person at close range, the logical thing
12 to do is not to run, correct?

13 MS. BARD: Your Honor, I would object to
14 speculation.

15 THE COURT: Overruled. I'll let him
16 answer that.

17 A. It may not be the logical thing to do, but we
18 see it often.

19 MS. BECKNER: Just one moment.

20 Q. (BY MS. BECKNER) Now, Captain Lee, I want to
21 go back and talk about your training for a moment if
22 that's all right.

23 A. Yes, ma'am.

24 Q. You said that you received quite a bit of
25 training on mental health issues, right?

1 A. Yes, ma'am.

2 Q. You wrote the book on the mental health
3 policy.

4 A. Correct.

5 Q. You would agree with me that people with
6 mental health issues often -- not always, but often
7 there's a drug intoxication contributing factor, right?

8 A. I've seen that.

9 Q. And this has been part of your training as
10 well, right?

11 A. Yes, ma'am.

12 Q. Now, in addition to dealing with people who
13 are mentally ill, you see people who are high on all
14 kind of different drugs in these crisis situations,
15 right?

16 A. Yes, ma'am.

17 Q. So, prior to actually talking to Mr. Vasquez
18 on the phone, you spoke to him in person -- I'm sorry.
19 Excuse me.

20 Prior to actually talking to Mr. Vasquez
21 in person, you spoke to him on the phone, right?

22 A. Yes.

23 Q. And you had also gathered information from the
24 sergeant and other officers at the scene.

25 A. Yes, ma'am.

1 Q. And you testified that there was no indication
2 that Mr. Vasquez might have been high on drugs.

3 A. Not to me.

4 Q. Now, you had never seen Mr. Vasquez before
5 December 20th, right?

6 A. Never.

7 Q. And you've never seen what he looks like
8 normally before that date?

9 A. No, ma'am.

10 Q. You've dealt with people who have been high on
11 drugs though, right?

12 A. I have.

13 Q. And you've noticed that sweating profusely is
14 common for people who are high on certain drugs, right?

15 A. I mean, sometimes.

16 Q. And you noted that Mr. Vasquez was sweating
17 quite a bit, right?

18 A. I noticed his sweating when I went to the
19 patrol car.

20 Q. Yes, sir.

21 And that he wanted a rag to dry off his
22 sweat.

23 A. Yeah. It's not uncommon because the backseat
24 of those patrol cars are very hot.

25 Q. It was in December though, correct?

1 A. Yeah. I don't know what the -- what the
2 temperature was that night.

3 Q. But it was in winter.

4 A. Well, it was in a Houston winter.

5 Q. Fair enough. But it was not this morning. It
6 wasn't that kind of humidity that you might expect in
7 say in July in Texas.

8 A. Honestly, I'd be speculating on the weather.

9 Q. All right. I understand, sir.

10 A few more questions, if that's all
11 right.

12 A. Yes, ma'am.

13 Q. When you spoke to Mr. Vasquez when he was in
14 the police car, there was no question in your mind that
15 he was in police custody, right?

16 A. No, ma'am. He was in custody.

17 Q. He was in handcuffs.

18 A. Yes, ma'am.

19 Q. Now, you did not read Mr. Vasquez his Miranda
20 rights when you approached him when he was sitting in
21 the back of the car, correct?

22 A. No, ma'am, I did not.

23 Q. And you're interaction with Mr. Vasquez was
24 not recorded in any way.

25 A. It was not.

1 Q. And you would agree with me that but for you
2 asking the question of him, you know, do you have any
3 health issues that we need to worry about while he's in
4 custody, he would not have given you the answer that he
5 gave you, correct?

6 A. Yeah. I had no -- you know, idea of what
7 answer he was going to give me. I asked him about his
8 health. I wasn't questioning him about the crime.
9 That was not my intention to question him about the
10 crime.

11 Q. But --

12 A. That happens to us frequently.

13 Q. I understand, sir.

14 But what I'm asking specifically -- and
15 if you don't mind is -- when you approached him and
16 asked him the question, but for you -- you approaching
17 him and asking him a question, he would not have given
18 you the answer he did, correct?

19 A. Yeah. If he had never been asked a question,
20 he would not have provided an answer.

21 Q. Thank you, sir.

22 MS. BECKNER: If you'll just give me one
23 moment, Judge?

24 THE COURT: Yes, ma'am.

25 MS. BECKNER: Just briefly, Your Honor.

1 Q. (BY MS. BECKNER) Captain Lee.

2 A. Yes, ma'am.

3 Q. You testified that you spent about 30 seconds
4 -- 20 to 30 seconds with Mr. Vasquez on the phone,
5 correct?

6 A. Approximately.

7 Q. And during that time, some of that time was in
8 the house, right?

9 A. While he --

10 Q. While he was in the house. Excuse me.

11 A. Yes, ma'am.

12 Q. And so, you weren't actually getting to see
13 him.

14 A. No, ma'am, I did not.

15 Q. You only had his voice to base your opinion of
16 him on.

17 A. Correct.

18 Q. And then you spent another 20 to 30 seconds
19 during the interaction at the police car, correct?

20 A. Correct.

21 Q. And those two interactions, the time that
22 you're on the phone, the time that he's walking and
23 standing and the time that he's in the police car,
24 that's only a couple of minutes you testified, correct?

25 A. Correct.

1 Q. And that was the sole basis of your
2 interaction with Mr. Vasquez, correct?

3 A. Correct.

4 Q. Okay. And just -- all right, sir.

5 MS. BECKNER: Pass the witness.

6 THE COURT: Ms. Bard?

7 MS. BARD: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. BARD:

10 Q. Captain Lee, are you required to read Miranda
11 when you go ask a suspect, whether they're in custody
12 or not --

13 MS. BECKNER: Objection, relevance.

14 THE COURT: Overruled.

15 Q. (BY MS. BARD) Are you required to read
16 Miranda, whether a suspect is in custody or not, if
17 you're going to ask them about health concerns?

18 A. No, ma'am, I'm not.

19 MS. BARD: Pass the witness, Your Honor.

20 THE COURT: Ms. Beckner?

21 MS. BECKNER: Just briefly.

22 THE COURT: Yes, ma'am.

23 RECROSS-EXAMINATION

24 BY MS. BECKNER:

25 Q. Captain Lee, in the photos that the prosecutor

1 showed you -- I believe State's Exhibit 8 and 9 --
2 there's a car parked in the driveway.

3 A. Okay.

4 Q. Do remember that?

5 A. Vaguely. On the picture, yes.

6 Q. On the picture?

7 A. Yes.

8 Q. Was the car parked there that night?

9 A. You know, that's a good question. I just
10 don't recall. All I recall is focusing on him. I know
11 where he -- what side of the house he walked to. I
12 just -- I couldn't tell you what was in the front yard
13 or front driveway.

14 Q. But you didn't make any note of the car being
15 in the report, correct?

16 A. In my report I did not.

17 Q. Okay. Thank you.

18 MS. BECKNER: Pass the -- no -- pass the
19 witness.

20 THE COURT: Ms. Bard?

21 MS. BARD: Nothing further.

22 THE COURT: All right. Thank you, sir.
23 You may step down and step outside.

24 Call your next witness, please.

25 MS. BARD: Your Honor, the State calls

1 Sergeant Robles to the stand.

2 THE COURT: Ms. Bard?

3 MS. BARD: Thank you, Your Honor.

4 JASON ROBLES,

5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BARD:

8 Q. Could you please introduce yourself to the
9 jury?

10 A. Jason Robles.

11 Q. And what do you do for a living, sir?

12 A. I work for the Houston Police Department
13 Homicide Division.

14 Q. How long have you been working for the Houston
15 Police Department?

16 A. Roughly 18 years.

17 Q. And do you have any law enforcement experience
18 before that?

19 A. I worked for a couple of agencies before I
20 became a Houston police officer.

21 Q. I'm going to need you to speak up just a
22 little because I'm having a hard time hearing you?

23 A. Is the mike working.

24 THE COURT: Not really.

25 Q. (BY MS. BARD) So, in total, how many years as

1 a police officer do you have?

2 A. Roughly 22.

3 Q. Okay. How long have you been assigned to
4 homicide?

5 A. Since 2007.

6 Q. So, give or take, seven, eight years?

7 A. I left for a year, but yes.

8 Q. Okay.

9 A. Seven or eight years.

10 Q. Prior to that during I guess that other 10 to
11 12 years, what other jobs assignments did you have with
12 the Houston Police Department?

13 A. I worked regular patrol, DWI unit, motorcycle
14 unit.

15 Q. Were you certified in field sobriety tests
16 when you were working as a DWI unit?

17 A. Yes.

18 Q. Were you certified in intoxication?

19 A. Yes.

20 Q. Okay. Do you remember when the last time that
21 was?

22 A. No.

23 Q. Okay. To be a homicide detective, what kind
24 of education or training do you need?

25 A. In homicide it's continual education,

1 continual training. We attend courses almost every
2 year.

3 Q. Okay. And what are those courses -- what do
4 they contain? What are they over?

5 A. Crime scene, interview techniques, just
6 science, DNA, medical examiner type issues.

7 Q. How -- when you're working with homicide, can
8 you kind of describe for the jury how it works when you
9 get notified of a call?

10 A. We work on a rotational basis. And sometimes
11 that may depend on who you're partnered up with. But
12 we may be at the office and a scene may come in. And
13 if we're up for the rotation, we'll make the scene.

14 Q. Do you get assigned a partner when you're in
15 homicide?

16 A. For the most part, yes.

17 Q. Who was your partner back in December of 2013?

18 A. That was Detective Bailey.

19 Q. On December 20th of 2013, were you and
20 Detective Bailey up for the rotation in the homicide
21 division?

22 A. Yes.

23 Q. Okay. Do you remember getting called out to a
24 homicide?

25 A. Yes.

1 Q. About what time?

2 A. It was roughly -- I don't remember the exact
3 time that the slip dropped at. About 5:00 o'clock --
4 5:02 was the time that it dropped. So, it was around
5 6:00 o'clock, I believe, that we got -- that we got
6 notified at homicide.

7 Q. Okay. What do you do?

8 A. We drive to the scene.

9 Q. And where was that scene?

10 A. At 5711 Vendi.

11 Q. Is that here in Houston, Harris County, Texas?

12 A. Yes, it is.

13 Q. About what time do you get to that scene?

14 A. It's 6:30 when we left the office and I
15 arrived at 7:12.

16 Q. Do you and Detective Bailey, do you come in
17 the same car or separate cars?

18 A. Depends. I don't remember if we traveled in
19 the same car that day or not.

20 Q. When you get to 5711 Vendi, can you describe
21 what you see?

22 A. Crime scene, police cars in the street
23 blocking off other vehicles from coming.

24 Q. Is this a residential area, business area?

25 A. It's a subdivision.

1 Q. Are you given any information before you
2 arrive at the scene or do you get the information as
3 you get there?

4 A. A little bit of both. We get a brief what
5 type of scene it is, if it's a murder scene or an
6 officer-involved shooting. Sometimes we get a little
7 bit of detail of what it may be about.

8 Q. When you first get to the scene, what do you
9 do?

10 A. Just kind of get a general idea of what's
11 going on. Try and find the primary patrol officer on
12 the scene and let him explain what the scene is about.

13 Q. And at that point -- we heard from Detective
14 Bailey yesterday. She says that y'all split up. And
15 one handles the scene and one handles the witness side.

16 Q. That's correct.

17 Mr. DAVIS: Object to counsel testifying
18 as well, Your Honor, as the leading question.

19 THE COURT: Sustained.

20 Q. (BY MS. BARD) What -- which side did you
21 take?

22 A. The witness side.

23 Q. Okay. And what does that entail?

24 A. That entails being the -- pretty much the
25 primary on the investigation and interviewing all the

1 witnesses and suspects.

2 Q. Do you and Detective Bailey kind of keep in
3 touch as things are going on or are you pretty separate
4 and independent?

5 A. We kept in --

6 MR. DAVIS: Objection to leading, Your
7 Honor, as well as compound.

8 THE COURT: Overruled.

9 A. We keep in touch.

10 Q. (BY MS. BARD) Okay. Now, on this scene it
11 was a house, right?

12 A. Correct.

13 Q. Okay. Do you remember if there was a car in
14 the driveway?

15 A. Yes.

16 MR. DAVIS: Objection, leading.

17 THE COURT: Overruled.

18 A. Yes, I believe there was.

19 Q. (BY MS. BARD) Okay. And if I show you
20 State's Exhibit No. 8, was this the house that you went
21 to for the homicide investigation?

22 A. Yes, ma'am.

23 Q. And is that the car in the driveway that you
24 saw?

25 A. Yes, it is.

1 Q. Okay. And just for purposes of the record,
2 that car is actually been backed in so that the trunk
3 is facing the garage.

4 MR. DAVIS: Objection, Your Honor, to
5 counsel testifying and describing what the evidence is.
6 It speaks for itself.

7 THE COURT: Sustained.

8 MR. DAVIS: Ask that the jury be
9 instructed to disregard the testimony of the lawyer.
10 She's not under oath.

11 THE COURT: That's denied.

12 Q. (BY MS. BARD) When you get there and get
13 briefed by the officers, do you do a walk-through of
14 the scene?

15 A. Yes.

16 Q. Okay. And why do you do that?

17 A. Again, just trying to slowly begin the
18 investigation, kind of get an overview of everything
19 that's going on.

20 Q. Do you go walk inside the house?

21 A. Yes.

22 Q. Okay. Do you notice -- what's the first thing
23 you notice when you walk inside the house?

24 A. The deceased.

25 Q. Okay. And where was she?

1 A. In the hallway close to the front door.

2 Q. Could you tell by looking at her what her
3 cause of death was based on what you could see?

4 MR. DAVIS: Objection, Your Honor, that
5 calls for an improper opinion and speculation.

6 THE COURT: Sustained.

7 Q. (BY MS. BARD) What kind of evidence did you
8 find around the house?

9 A. Gunshots, shotgun, shotgun shells, spent
10 casings.

11 Q. Was the complainant bleeding?

12 A. Actively bleeding -- there was blood
13 underneath her.

14 Q. Okay. When you get there, is the -- where is
15 the suspect.

16 Q. Out in front in a patrol car.

17 Q. Do you go talk to him at all?

18 A. Briefly, yes.

19 Q. And what was the purpose of that?

20 A. I believe it was just to introduce myself and
21 to get a consent-to-search of the house.

22 Q. Okay. And is Detective Bailey there with you?

23 A. I don't remember if she was with me or not.

24 Q. Do you end up getting consent to search the
25 house from the defendant?

1 A. Yes.

2 Q. Okay. After that, do you have any interaction
3 with him either out there or later that night?

4 A. Not really, not that I can recall.

5 Q. Okay. Where does he go?

6 A. From there, I believe he left and went to the
7 homicide division.

8 Q. Is that pretty standard procedure?

9 A. More or less, yes.

10 Q. Okay. When he goes to homicide, what's to
11 happen to him there while you're there out at the scene
12 investigating?

13 A. Usually he's placed in an interview room.
14 He's given access to a restroom, some water, food if he
15 requires.

16 Q. Is there somebody kind of there watching him
17 if necessary?

18 A. Yes.

19 Q. About how long do you spend at the house at
20 the scene?

21 A. That's all dependent on each scene. It could
22 be two or three hours. It could be six or seven hours.
23 It just depends.

24 Q. And here on that night on December 20th, how
25 long were you out there?

1 A. I don't recall exact number of hours.

2 Q. At some point you decide -- or you have to
3 make the decision as to -- if you're going to go talk
4 to the suspect that night or not, correct?

5 A. Correct.

6 Q. Okay. What goes into your decision making
7 during that?

8 A. More or less what -- what do I need from him
9 at the time. Dependant on the scene will depend on how
10 much I think I need --

11 MR. DAVIS: Object to the narrative, Your
12 Honor.

13 THE COURT: Overruled at this point.

14 A. It may depend on how much I need to talk to
15 somebody right away or how long with what I'm looking
16 for specifically.

17 Q. (BY MS. BARD) At this scene, based on your
18 investigation, did you need to talk to the suspect
19 immediately?

20 A. No.

21 Q. Okay. Why?

22 A. There was just such overwhelming evidence
23 There was no rush.

24 MR. DAVIS: Objection, Your Honor.
25 That's volunteered and nonresponsive and it's a comment

1 on the evidence. Invades the province of the jury.

2 THE COURT: Overruled.

3 Q. (BY MS. BARD) You can answer.

4 A. That was it. There was just so much
5 overwhelming evidence, there was no need to get a
6 statement from him that night.

7 Q. Okay. Did you keep in contact with the
8 homicide officer who was at the scene -- or I'm sorry
9 -- who was at the station with the suspect?

10 A. The desk sergeant? Yes.

11 Q. Okay. Once you make the decision to not
12 interview him that night, what happens? Where does he
13 go?

14 A. It depends on the situation. But most likely,
15 to the jail.

16 Q. Okay. And is that what happened here?

17 A. Yes.

18 Q. All right. Do you ever decide to go talk to
19 the suspect?

20 A. Yes.

21 Q. And when was that?

22 A. The following day.

23 Q. Okay. About what time?

24 A. Around 5:00 o'clock we decided to go over to
25 the jail and sign him out.

1 Q. Would this be 5:00 a.m. or 5:00 p.m.?

2 A. 5:00 p.m.

3 Q. So, at about 24 hours, give or take, from when
4 the initial call drops to the time that you go to talk
5 to him?

6 A. That's correct.

7 Q. Okay. What's the process to go talk to a
8 suspect?

9 A. Our jail's separate from where the homicide
10 division is. We're downtown jail at 61 Riesner. So,
11 we just drive over there. We have to go to the jail on
12 the sixth floor. They bring up the prisoner we want to
13 talk to. Then we sign him out and we go down to, I
14 believe, it's the second floor where there's some
15 interview rooms there.

16 Q. And is that where you conduct the interview?

17 A. Yes.

18 Q. Now, at the jail, has he been given access to
19 food, water, restroom, all of that?

20 A. Yes.

21 Q. Okay. Do you give him access if he needs it
22 either before, during or after your interview?

23 A. Yes.

24 Q. Okay. The rooms that you do the interview in,
25 can you describe it for the jury?

1 A. They're just small rooms with soundproofing,
2 table, couple of chairs.

3 Q. Is it capable of audio and video recording
4 inside of that room?

5 A. Yes.

6 Q. Was it working that day?

7 A. Yes.

8 Q. Were both the audio and video working that
9 day?

10 A. Yes.

11 Q. Okay. And have you had a chance to review the
12 audio and video that was taken during that statement
13 with the defendant?

14 A. Yes.

15 Q. Okay. The person that you were talking to,
16 both at the scene for the consent-to-search and the
17 person you checked out of the jail to actually get the
18 interview from, do you see that person here in the
19 courtroom today?

20 A. Yes.

21 Q. Can you point to him and identify him by an
22 article of clothing he's wearing?

23 A. The defendant in gray suit, beard.

24 MS. BARD: Your Honor, may the record
25 reflect that the witness has correctly identified the

1 defendant?

2 THE COURT: It will.

3 Q. (BY MS. BARD) Did you ever get his full
4 official name?

5 A. Yes, I believe so.

6 Q. And what was it?

7 A. Gustavo Vasquez.

8 Q. And is his middle name Andres?

9 A. I believe so.

10 Q. Did you ever learn if he had a nickname?

11 MR. DAVIS: Objection to hearsay, Your
12 Honor.

13 THE COURT: Sustained.

14 Q. (BY MS. BARD) Does the defendant ever tell
15 you if he goes by a nickname?

16 A. I believe so.

17 Q. What was that nickname?

18 A. I believe it was Andy.

19 Q. Okay. Now, when you start an interview with a
20 defendant, what's your process?

21 A. Depends on the situation that the defendant is
22 in. If he's under arrest, we begin by reading him his
23 rights.

24 Q. Is that what you did in this scene?

25 A. Yes.

1 Q. I'm sorry, in this case?

2 A. Yes, ma'am.

3 Q. When you say his rights, what kind of rights
4 are we talking about?

5 A. His Miranda rights.

6 Q. And how do you go about reading his Miranda
7 rights?

8 A. The district attorney's office issues us a
9 blue card that has the rights written out the way that
10 he want us to read them to the defendant.

11 Q. And did you do that in this case using that
12 blue card?

13 A. Yes.

14 MS. BARD: Your Honor, may I approach the
15 witness?

16 THE COURT: Yes, ma'am.

17 Q. (BY MS. BARD) Now, is it important when you
18 you're Mirandizing the suspect to make sure that he
19 understands what you're doing?

20 A. Yes.

21 Q. Is it important to get an acknowledgement from
22 him about -- that he understands the rights and that
23 he's willing to waive them?

24 MR. DAVIS: Objection to leading, Your
25 Honor.

1 THE COURT: Overruled.

2 A. Yes.

3 Q. (BY MS. BARD) I'm going to show you what has
4 previously been marked as State's Exhibit 96. Is this
5 the statement that was audio and video recorded and
6 that you did on December 21st of 2013?

7 A. Yes.

8 Q. Okay. Is everyone inside of that or on this
9 disk someone that you could identify?

10 A. Yes.

11 Q. Okay. And has -- was it fairly and accurately
12 recorded, any changes, alterations or deletions made to
13 it?

14 A. It was accurately recorded. No changes,
15 alterations or deletions.

16 MS. BARD: Your Honor, at this time State
17 would offer into evidence State's Exhibit 96 and
18 tenders to opposing counsel for any objection.

19 MR. DAVIS: May we approach briefly,
20 Judge?

21 THE COURT: Yes, sir.

22 (Bench conference on the record).

23 MR. DAVIS: We would renew our objection
24 to the statement, Your Honor. And we'd also request a
25 limiting instruction as well -- the same limiting

1 instruction that we requested before.

2 THE COURT: Okay. Your objection is
3 noted for the record. I stand by my ruling based on
4 the motion to suppress that we had. And your objection
5 will be overruled.

6 And the request for the instruction will
7 be denied.

8 MR. DAVIS: Okay. Thank you.

9 THE COURT: Are you going to play it?

10 MS. BARD: Yes, sir.

11 (End of conference).

12 MS. BARD: Your Honor, may I publish?

13 THE COURT: Yes, ma'am.

14 Q. (BY MS. BARD) While that's loading, I'll ask
15 you a question.

16 From the time that you go get him from
17 the sixth floor and you take him down to the second
18 floor and you get started with the interview process,
19 about how long have you spent with him?

20 A. 10 minutes, maybe.

21 Q. Okay. During that time, did you get any idea,
22 inclination that he could be intoxicated?

23 A. No.

24 (State's Exhibit 96 published but not
25 reported).

1 Q. (BY MS. BARD) All right. I paused there for
2 just a second.

3 All of those questions that you just
4 asked, were those the Miranda rights that we were
5 talking about?

6 A. Yes, ma'am.

7 Q. Okay. And can we hear on the video a clear
8 acknowledgement by the defendant that he understood
9 them?

10 A. Yes, ma'am.

11 Q. Okay.

12 (State's 96 continued).

13 Q. I'm going to pause right here for a moment.

14 The defendant is talking about how he
15 didn't mean to do it. You say I believe you. He says
16 it was an accident. You and Detective Bailey are kind
17 of agreeing and nodding with him, like it was an
18 accident.

19 Did you believe it was an accident?

20 MR. DAVIS: Objection, Your Honor, that's
21 a improper opinion.

22 May we approach?

23 THE COURT: Yes, sir.

24 (Bench conference on the record).

25 MR. DAVIS: If I had anticipated her

1 doing that, I would have filed a motion in limine.
2 There are a couple of cases that have come up out of
3 First Court of Appeals that constitutes or at least
4 says that improper opinion and has been found to be
5 reversible error in several cases where officers are
6 being asked to comment about the veracity of evidence,
7 whether or not it's truthful, whether or not they
8 believed it or anything of that nature. It's
9 tantamount to a police officer saying that the
10 confession is a lie, which is a decision for the jury
11 to make. And that's improper opinion and we'd object
12 to it, Your Honor.

13 MS. BARD: Your Honor, I'm asking him did
14 he believe in innocence. That he's using that as a
15 device to keep the defendant talking, sympathetic but
16 not necessarily that believed it. That it was a device
17 that he was using.

18 MR. DAVIS: There's no reason for him to
19 even offer that testimony. First, it's not relevant,
20 what he believed about the truth of the defendant's
21 statements. Second, there's no reason for him to offer
22 that. No reason for him to say I didn't believe it
23 true, but I wanted to keep him -- out of sympathetic.

24 The fact that he believed it or didn't
25 believed it -- believe it, Your Honor, or that he

1 thought it wasn't truthful, Your Honor, doesn't go to
2 anything about him being even more sympathetic. So, I
3 would argue that the prejudice of it far outweighs it.
4 And it's an improper opinion.

5 THE COURT: I'll sustain the objection in
6 regards to the specific question of -- of that specific
7 question.

8 MS. BARD: Okay.

9 (End of conference).

10 Q. (BY MS. BARD) Sergeant Robles, are you taught
11 during interview -- your interview classes different
12 techniques to keep defendants talking?

13 A. Yes.

14 Q. What are some of those devices?

15 MR. DAVIS: Objection to relevance, Your
16 Honor, as well as that question calls for a narrative.

17 THE COURT: Overruled.

18 A. Giving the defendants an out. Agreeing with
19 them when you don't agree with them.

20 MR. DAVIS: Objection, Your Honor, to the
21 narrative as well as that is an improper opinion.

22 THE COURT: Overruled.

23 A. Lying to an extent, just different ways to
24 build rapport with someone.

25 Q. (BY MS. BARD) And is -- are -- is that what

1 you and Detective Bailey are doing throughout this
2 interview, trying to build rapport?

3 MR. DAVIS: Objection to relevance, Your
4 Honor, as well that calls for an improper opinion.

5 THE COURT: Overruled.

6 A. Yes.

7 Q. (BY MS. BARD) Okay.

8 (States 96 continued).

9 Q. (BY MS. BARD) I'm going to stop here for
10 moment.

11 The defendant has his head in his hands.
12 Does he appear to be in any way to you crying?

13 MR. DAVIS: Objection, Your Honor, that's
14 an improper opinion, as well as the evidence speaks for
15 itself.

16 THE COURT: Overruled.

17 A. No.

18 Q. (BY MS. BARD) What is he doing with his head
19 in his hands?

20 A. Just putting his head in his hands in
21 frustration or acceptance. I'm not sure.

22 Q. We notice Officer Bailey kind of puts her hand
23 on his shoulder and kind of pats him. Is that one of
24 those devices that you're taught in the interview and
25 interrogation classes in order --

1 MR. DAVIS: Objection --

2 Q. (BY MS. BARD) -- to build rapport?

3 MR. DAVIS: Objection, Your Honor.

4 That's an improper comment on the evidence. It's an
5 improper opinion.

6 THE COURT: Overruled.

7 A. Yes.

8 (State's 96 continued).

9 THE COURT: All right. Ladies and
10 gentlemen, we're going to take our 10:30 break now a
11 little bit late. It will probably be at least 15
12 minutes or so. But as soon as we're done or I'm done
13 with my normal morning duties, I will see if y'all are
14 ready and we'll get started back.

15 (Jury out).

16 THE COURT: You can be seated.

17 (Court recess).

18 THE COURT: All right. Let's go.

19 (Jury in).

20 THE COURT: Please be seated.

21 Ms. Bard?

22 MS. BARD: Thank you, Your Honor.

23 Q. (BY MS. BARD) Sergeant Robles, several times
24 throughout the defendant's statement he says that he's
25 confused and he's scared. Do you remember those times?

1 A. Yes, ma'am.

2 Q. Okay. Did he seem unable to answer any of the
3 questions you asked?

4 A. No.

5 Q. Did he seem confused?

6 A. No.

7 Q. Now, he did have some problems with time. Do
8 you remember the timeline portion?

9 A. Yes, ma'am.

10 Q. Okay. When they're taken from the scene to
11 homicide room, are they in a room where there are
12 windows, that they can see kind of what time it is?

13 A. No.

14 Q. When they get taken to -- I think you said 61
15 Riesner is where they go?

16 A. Correct.

17 Q. When they go there, are they -- do they have
18 access to window and time?

19 A. I don't think so.

20 Q. Okay. When you were asking the questions, did
21 you feel that you were getting answers relevant to the
22 question you were asking?

23 MR. DAVIS: Objection, Your Honor,
24 relevance.

25 THE COURT: Overruled.

1 A. Yes.

2 Q. (BY MS. BARD) Okay. And at any point during
3 that interview -- it's about 22 minutes, give or take.
4 About -- during that 22-minute interview, do you ever
5 hear the defendant say that -- or blame the drugs for
6 why he shot and killed his wife?

7 MR. DAVIS: Objection, Your Honor, that
8 -- that actually invades the province of the jury as
9 well as it is violates the best evidence rule as well
10 in terms of the statement.

11 THE COURT: Overruled.

12 A. No.

13 MS. BARD: Pass the witness, Your Honor.

14 THE COURT: Mr. Davis?

15 MR. DAVIS: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. DAVIS:

19 Q. Sergeant Robles, you've been working with HPD
20 now for about 18 years.

21 A. Yes, sir.

22 Q. And at the time of this -- you did this
23 interview, you had been with HPD for about 17 -- 16
24 years or so. Is that accurate?

25 A. Roughly.

1 Q. All right. And prior to working with HPD, you
2 had some other years of law enforcement experience,
3 right?

4 A. Yes, sir.

5 Q. So, at that point, you had been law
6 enforcement for about 20 plus years.

7 A. Yes, sir.

8 Q. You agree with me, that documentation is
9 something that's fairly important in law enforcement,
10 right?

11 A. Yes, sir.

12 Q. Now, you obviously started off as a patrol
13 officer. Is that -- would that be accurate?

14 A. Correct.

15 Q. And when you were on patrol when you went to
16 scenes, you had to document in your reports and
17 document what you saw at scenes and what witnesses told
18 you. True?

19 A. Depends on the scene. Depends -- not
20 necessarily.

21 Q. Of course. But if you had some statements or
22 evidence that you wanted to present, documenting was
23 very important at that point as a patrol officer,
24 right?

25 A. It depends on the scene. You have to be more

1 specific.

2 Q. Right.

3 Obviously, if you went to a scene and it
4 was some evidence that you had collected, you'd
5 document the collecting of that evidence.

6 A. That's correct.

7 Q. And if it was some statements that were given
8 to you by witnesses, you document receiving those
9 statements. True?

10 A. They would be tagged into evidence. That's
11 how the documentation would be --

12 Q. Yes, sir.

13 A. -- noted.

14 Q. And if somebody told you something, you
15 document that in offense report as well; isn't that
16 right?

17 A. Again, it depends on what somebody is telling
18 me.

19 Q. You would agree with me, that if somebody told
20 you something that you thought was relevant to a case,
21 you would document it, right?

22 A. I would imagine.

23 Q. You would imagine you would document it.

24 A. Yeah. I can't give you a yes or no --

25 Q. I understand.

1 A. -- in essence for everything.

2 Q. Yes, sir.

3 So, it's your testimony that if you went
4 to a scene -- and you would agree with me that
5 oftentimes police reports are fashioned and put
6 together to help you recollect what happened.

7 A. Correct.

8 Q. That oftentimes when you're testifying in
9 cases, it's years later that you'll testify.

10 A. That's correct.

11 Q. Right.

12 And usually you run into or see hundreds
13 of people.

14 A. Yes, sir.

15 Q. Hundreds of witnesses, right?

16 A. Correct.

17 Q. And because you can't remember everything, you
18 document what you can, right?

19 A. Correct.

20 Q. And so, you would imagine that you would
21 document it. And I'm guessing you're saying that if it
22 was the right situation and you needed to help -- use
23 it to help you recall, you would document it.

24 A. Yes, overall.

25 Q. And as a homicide detective -- you'd agree

1 with me that as homicide detective, especially the lead
2 homicide detective, one of your duties is to collect
3 information.

4 A. Yes.

5 Q. And if you're looking at witnesses, you're
6 collecting informations [sic] from civilians as well as
7 police officers, right?

8 A. No.

9 Q. All right. Let me back up.

10 You're collecting information from
11 civilians, right?

12 A. If they're witnesses, yes.

13 Q. Of course. Of course.

14 If you're doing an investigation and you
15 go to a scene and you see a bunch people standing
16 around a scene, you might ask them questions to see
17 what they saw, right?

18 A. Not necessarily, no.

19 Q. All right. So, you wouldn't try to find
20 witnesses to a scene?

21 A. It depends on the scene we're talking about.

22 Q. Of course.

23 If you go to a scene and there are people
24 who were around -- standing around the scene when
25 you're there, you wouldn't ask them questions to

1 determine whether or not they're witnesses?

2 A. I would not talk to anybody standing around
3 the scene.

4 Q. I see. I see.

5 So, if you had information that someone
6 was a witness, you'd talk to that person.

7 A. If somebody said, hey, that guy's a witness to
8 the crime, then I would pull that person aside and talk
9 to them.

10 Q. Correct.

11 But you wouldn't do anything
12 affirmatively to try to find witnesses?

13 A. I wouldn't go through a crowd of on-lookers
14 and ask questions, no.

15 Q. Right. I understand.

16 Mostly that's a duty that you think might
17 be something that a patrol officer might do, right?

18 A. It just depends. It could effect somebody
19 else's eyewitness account. So, you don't want to go
20 into a crowd and start asking questions and saying
21 things about your case.

22 Q. No. No. Not interviewing them on the spot in
23 the crowd. But you might take and find out these folks
24 and pull them aside and ask them questions.

25 A. That's correct, maybe.

1 Q. Not something that's uncommon, right?

2 A. It just depends, sir. It depends.

3 Q. Yes, sir.

4 And the information that you receive
5 oftentimes comes from patrol officers, right?

6 A. Yes.

7 Q. They fill out a report, right?

8 A. Yes, sir.

9 Q. And that information flows to you.

10 A. Well, it goes -- gets downloaded into the
11 system, correct.

12 Q. And so, one of the sources of information that
13 you receive is from patrol officers.

14 A. That is correct.

15 Q. And you also find information from civilian
16 witnesses who may be at a scene who may have witnessed
17 occurrences at a scene.

18 A. Correct.

19 Q. As a lead homicide detective, you actually
20 review all of the offense reports; isn't that right?

21 A. At one point or another, yes.

22 Q. So, you're familiar with what was said by all
23 of the different police officers involved in a case.

24 A. At one point towards probably the end when
25 this was sent to the district attorney's office, yes.

1 Q. Yes, sir.

2 At some point in time, you've had all of
3 the officers' reports and you're familiar with them.

4 A. At certain times over the past two years, yes.

5 Q. Now, when you first come in contact with
6 Gustavo Vasquez, you don't interview him immediately.

7 A. That's correct.

8 Q. In fact, there's a wait of about 24 hours
9 before he's interviewed. True?

10 A. Yes, sir.

11 Q. Is your testimony today that the reason you
12 waited was because of this overwhelming evidence? That
13 there was overwhelming evidence and you didn't feel the
14 need to interview him at that point in time; is that
15 right?

16 A. That was my major contributing factor, yes.

17 Q. And that's your testimony, is that was the
18 reason why you didn't interview him?

19 A. That was one of -- one of the reasons, one of
20 the main reasons, yes.

21 Q. All right. Now, you remember coming down and
22 being under oath and saying some things to the Judge
23 before, right?

24 A. Yes, sir.

25 Q. You remember myself, I wasn't here. But

1 Mr. Vasquez was here and it was different lawyer that
2 was here --

3 A. That's correct.

4 Q. -- and asking you some questions, right?

5 A. Yes, sir.

6 Q. And he was asking you questions about the
7 reason why you waited to interview him.

8 A. Yes.

9 Q. Right.

10 And you remember telling him -- saying
11 under oath -- because you were under oath at that time.
12 Do you remember that?

13 A. Yes.

14 Q. And you remember telling him that the reason
15 why you waited was because you had some question about
16 whether or not he was under the influence?

17 A. The way that it was asked was: If that was a
18 reason why I waited. And the reason for -- another
19 reason for waiting was if, in fact, there was any
20 chance that he may be under the influence that you
21 would wait. There's no rush.

22 Q. There were -- those weren't the words you used
23 though.

24 A. I don't remember the specific words.

25 Q. If I showed you a transcript, would it help

1 you?

2 A. Sure.

3 MR. DAVIS: May I approach the witness,
4 Your Honor?

5 THE COURT: Yes, sir.

6 Q. (BY MR. DAVIS) Right here. Do you see that?

7 A. Where are you at?

8 Q. Start right here and you can read all the way
9 down to here.

10 A. Let me read the pre-question.

11 Q. Okay. Does that help you?

12 A. Yes.

13 Q. All right. Now, when you were asked that
14 sequence of events, you never said anything about the
15 overwhelming evidence being a reason why you decided to
16 wait. And there wasn't any reason -- it wasn't
17 necessary for you to interview him on the spot; isn't
18 that right?

19 A. It says based on the totality -- the statement
20 was based on the totality of everything, I decided to
21 wait.

22 Q. Well, now before that, you were asked: Before
23 interviewing him, you had talked to different people;
24 isn't that right?

25 A. Correct.

1 Q. You told him you had talked to Sergeant Bailey
2 before interviewing.

3 A. I told who?

4 Q. I think you mentioned that Sergeant Brady. I
5 I'm sorry. That it was Sergeant Brady that you had
6 spoken to.

7 A. I told the other attorney, is that what you're
8 asking me?

9 Q. Yes, sir.

10 A. Yeah.

11 Q. You gave that as an answer.

12 A. Yes, sir.

13 Q. You actually said at some point did you speak
14 to --

15 COURT REPORTER: I'm sorry.

16 MR. DAVIS: I apologize.

17 MS. BARD: I'm going to object to him
18 reading from a document that's not in evidence.

19 MR. DAVIS: Well, I'm actually -- I can
20 show it to him, Judge.

21 THE COURT: All right.

22 MS. BARD: Thank you, Counsel. I'm
23 sorry.

24 Q. (BY MR. DAVIS) Do you see that?

25 A. Yes, sir.

1 Q. Now, you were asked about certain behaviors
2 that you saw the defendant exhibiting, right?

3 A. I was asked if -- whether he was under the
4 influence of any narcotic.

5 Q. Right.

6 And you were asked about --

7 A. His behaviors.

8 Q. Right.

9 Under the influence of any narcotics, you
10 were asked about the type of behaviors he was
11 exhibiting.

12 A. Correct.

13 Q. Right.

14 Prior to interviewing him, you said you
15 had talked to Sergeant Brady.

16 A. Correct.

17 Q. True?

18 And Sergeant Brady gave you information
19 about it, right?

20 A. Correct.

21 Q. About the behaviors he was exhibiting prior to
22 your interviewing.

23 A. Correct.

24 Q. And you're aware of Sergeant Brady's report as
25 well, that he documented it in the report.

1 A. Correct.

2 Q. So, you were aware at the time that the
3 defendant had been talking about airplanes and aliens
4 and was speaking a bunch of gibberish prior to you
5 interviewing him.

6 A. Specifically to Sergeant Brady telling me
7 that, I remember him telling me he was trying to get
8 out of his handcuffs and he was being difficult. I
9 don't remember specifically what we talked about about
10 what was being said.

11 Q. Would it refresh your recollection if you saw
12 Sergeant Brady's report?

13 A. Sure.

14 MR. DAVIS: May I approach the witness,
15 Your Honor?

16 THE COURT: Yes, sir.

17 Q. (BY MR. DAVIS) And you saw what he
18 documented, right?

19 A. No. I saw what he documented, yes, sir.

20 Q. Okay. So, you're aware that he documented
21 that?

22 A. He documented that.

23 Q. Yeah. He documented him speaking in a bunch
24 of gibberish.

25 A. Yes. Yes, sir. He documented that in his

1 report.

2 Q. And he -- about airplanes and aliens and not
3 making a lot of sense.

4 A. Yes, sir.

5 Q. And that was the night he was arrested, right?

6 A. That is correct.

7 Q. And that was 24 hours before you had
8 interviewed him.

9 A. That's correct.

10 Q. Okay. And when you were at the hearing
11 before, the reason you said -- and you talked about it.
12 You said you had talked to Sergeant Brady and you got
13 information from Sergeant Brady. And that you decided
14 to wait -- the totality of the circumstances,
15 everything you heard from Sergeant Brady, you decided
16 to wait to make sure he wasn't under the influence.

17 A. The totality of everything in the
18 investigation up to that point, correct.

19 Q. Well, now, I think you said that. You said
20 that based on the totality of everything, I didn't want
21 to interview him that night, right?

22 A. Correct.

23 Q. And then he asked you why. The question was
24 why is that. And your answer was just in case he
25 wasn't under the influence.

1 MS. BARD: Your Honor, I'm going to
2 object to him reading from a document that's not in
3 evidence and to improper impeachment at this point. He
4 has admitted that he said the statements.

5 MR. DAVIS: I'm asking him --

6 THE COURT: Overruled.

7 Q. (BY MR. DAVIS) So, when you were asked
8 questions about it -- 'cause I think you said that at
9 the hearing, it was the totality of the circumstances.
10 And then he asked you why. And you talked specifically
11 about him being under the influence, right?

12 A. Right. The context of that testimony was
13 based on -- we were talking about him being under the
14 influence.

15 MR. DAVIS: I object to this being
16 volunteered, Your Honor. That's nonresponsive.

17 THE COURT: Overruled.

18 Q. (BY MR. DAVIS) All right. Now, during the
19 context of that -- that testimony, you said nothing at
20 all about the greater weight of the evidence was the
21 reason why I didn't want to interview him; isn't that
22 right?

23 A. The argument for the suppression was about --
24 at that point was about narcotics and being under the
25 influence of narcotics.

1 Q. All right. So, when you sit down and talk to
2 Mr. Vasquez, this is 24 hours later.

3 A. Yes, sir.

4 Q. And at the time you're viewing him, you don't
5 know anything about him in terms of his background,
6 right?

7 A. Not too much, no, sir.

8 Q. Now, with the case you had -- let's back up.

9 You -- you talked a little bit about the
10 totality of the circumstances. During your
11 investigation of the case, you found that there were
12 other officers who said that Mr. Vasquez appeared to be
13 under the influence; isn't that right?

14 A. I don't remember anyone saying he appears to
15 be. But there had been some talk that maybe he was
16 under the influence.

17 Q. You heard that talk from some of the family
18 members.

19 A. I don't recall specifically who I heard it
20 from initially.

21 Q. Before you went in to interview Mr. Vasquez,
22 you knew that there were drug issues, right?

23 A. Yes, sir.

24 Q. And so, when you asked him -- because you-all
25 normally -- when you go in with a suspect, do you

1 normally ask them are you are under the influence of
2 any drugs or been taking any drugs?

3 A. Again, it depends on the murder itself.

4 Q. Certainly. If there's a case where there may
5 be some suggestion of it, you might ask that?

6 A. It just depends. I can't answer that
7 question.

8 Q. I understand.

9 But in this particular case, you do ask
10 that.

11 A. I ask about his drug use, yes.

12 Q. And he told you about drug use.

13 A. First he denied it, but he yes, he admitted to
14 it.

15 Q. Does he -- does he actually deny it or does he
16 -- does he seem like he's -- did he seem like he
17 understood what you were asking him?

18 A. Yes, sir.

19 Q. Okay. And so, he understood it. And then he
20 tells you about drug use.

21 A. I asked him about if he was under the
22 influence and I believe he says no, he wasn't. He
23 hadn't taken any drugs. And then he says he's -- yes,
24 he did do some PCP.

25 Q. Are you sure about that?

1 A. I think so. I believe so.

2 Q. Because it's in the written statement.

3 A. Are we talking about the video, sir?

4 Q. Yes, sir.

5 A. Yeah, I believe so.

6 Q. I want to talk to you a little bit about --
7 about something you said. You said there the greater
8 weight of the evidence was one of the factors and
9 reasons why you didn't interview him, right?

10 A. Yes, sir.

11 Q. So, you go to the scene -- from what you know,
12 you don't really know what happened inside the house;
13 isn't that right?

14 A. No. I mean, I have a general idea of what
15 happened. No specifics.

16 Q. But you don't know. You only have like a
17 hunch or some -- some speculation as to what happened
18 inside the house; isn't that right?

19 A. Yes.

20 Q. You -- you pretty -- when you get to the
21 scene, you don't have any witnesses who are -- who are
22 on the scene; is that right?

23 A. The officers.

24 Q. Yes, sir.

25 A. Yes, sir.

1 Q. But witnesses as to what happened inside the
2 house.

3 A. That is correct. There was nobody else inside
4 the house.

5 Q. And, in fact, you have to piece together maybe
6 some idea of something that could have happened inside
7 the house, right?

8 A. That is correct.

9 Q. And at the point you get to the scene, you
10 don't really have any evidence that actually shows that
11 a murder had taken place. True?

12 A. I don't have any evidence?

13 Q. Yes, sir.

14 A. I have officers telling me there's a body
15 inside.

16 Q. Um-hum.

17 A. And the defendant's holding a shotgun.

18 Q. Um-hum. That's the evidence you have.

19 A. That's -- that's -- was pretty important
20 evidence at the time, yes, sir.

21 Q. Of course. Right.

22 But you'd agree with me that with a
23 homicide, there's a lot more that goes into homicide
24 besides just the action and -- and the result, right?

25 A. Again, that depends on the specific homicide.

1 Q. Yes, sir.

2 You would agree with me that -- that the
3 reason why things happen is also important, correct?

4 A. Yes. To an extent, yes, sir.

5 Q. You would consider -- and I'm not saying that
6 this happened in this case. There's no way -- I'm not
7 suggesting that this happened in this case.

8 But in some cases, if there's suicide
9 call that you have, homicide would make the case in a
10 suicide case, right?

11 MS. BARD: Your Honor, I'll object to the
12 relevance.

13 THE COURT: Overruled.

14 A. No. We -- we don't make any suicide calls.

15 Q. (BY MR. DAVIS) Interesting.

16 So, if you have a death, right, that
17 hasn't been ruled a suicide, but there's a dead body
18 and there may be some suggestion of homicide --
19 suicide, you're saying a homicide detective would not
20 make that call?

21 A. If it's clearly a suicide --

22 Q. That's not my question.

23 A. Well, you're saying that there's something
24 indicating it's suicide.

25 Q. Some suggestion.

1 A. You'd have to be more specific on what you're
2 saying by a suggestion. I'm not quite sure I
3 understand.

4 Q. All right. You would agree with me that in
5 cases where there's a dead body, right --

6 A. Yes, sir.

7 Q. If there's a dead body and there may be some
8 appearance that a person's found with their wrists
9 slit --

10 A. Yes, sir.

11 Q. -- a homicide detective will make that scene.

12 A. No, sir.

13 Q. All right.

14 A. That would be the one we would not make.

15 Q. So, it's your testimony that in situations
16 where there are dead bodies and it isn't clear that
17 there's a homicide or isn't clear that there's a
18 suicide, that homicide wouldn't make the scene to do an
19 investigation.

20 A. If there is a situation where it was not
21 perfectly clear it was a suicide, there were some
22 suspicions to it being something other than a suicide,
23 we would make that scene.

24 Q. That's right.

25 And usually you only know that after

1 you've done some investigation.

2 A. That's correct.

3 Q. So, a lot of times you might have a dead body
4 and it may be a suggestion of suicide, but a lot of
5 times people make it look like that way, right? And
6 homicide detectives were to get involved and do an
7 investigation to make a conclusion.

8 A. Yes, sir.

9 Q. And in this particular case, you don't know
10 what the situation is until you've done an
11 investigation, right?

12 A. Somewhat, yes, sir.

13 Q. And wouldn't you agree that oftentimes with
14 homicide detectives, it's important to talk to a
15 suspect soon before he lawyers up?

16 A. Not necessarily, no.

17 Q. So, if a suspect lawyers up, that means you
18 aren't able to talk to him, right?

19 A. Right. If he asks for a lawyer, that's his
20 prerogative.

21 Q. That's right.

22 If he asks for a lawyer or desires of a
23 lawyer, that means any statement he has, you wouldn't
24 be able to use.

25 A. That's correct.

1 Q. So, oftentimes -- and I think you -- you know,
2 I think your sergeant -- one of the sergeants on your
3 -- do you know Sergeant Brian Harris?

4 A. Yes, sir.

5 Q. And you know Sergeant Phil Waters?

6 A. He's an officer, yes.

7 Q. Officer Phil Waters.

8 Those guys do a lot of training with you,
9 right?

10 That's what they testified to a lot --

11 A. They do a lot of training, yes, on their
12 own --

13 Q. They talk about --

14 A. -- not with me.

15 Q. -- your training inside HPD with all the other
16 homicide detectives and sergeants, that they train you
17 guys in terms of your interrogation techniques.

18 A. They train their techniques as an option for
19 seasoned investigators and new officers.

20 Q. One of the things that they talk about and one
21 of the things that's emphasized in your office as part
22 of your policy is try to stop the suspects soon to
23 avoid a suspect lawyering up.

24 A. There's -- there's no such policy. And that
25 is one investigator's opinion that can't be based on

1 every investigation.

2 Q. I understand.

3 But in any event, you decided to wait to
4 talk to Mr. Vasquez.

5 A. That is correct.

6 Q. And then you go in and you talk to him. And
7 what we see is basically the fruit of your
8 conversation, right?

9 A. Correct.

10 Q. Now, it appears that somebody else has talked
11 to Mr. Vasquez, doesn't it?

12 A. I have no idea.

13 Q. Mr. Vasquez is saying they're saying I
14 murdered her, saying I killed her. They're saying I
15 killed her. Do you remember hearing him say that on
16 the statement?

17 A. Yes, sir.

18 Q. Right.

19 Now, when you checked him out, you're
20 saying you spent about 10 minutes with him, right?

21 A. That's correct.

22 Q. Were you talking to him during that time?

23 A. Probably just general hi, my name is Jason,
24 type stuff. We haven't met or whatever. I don't
25 remember what we talked about.

1 Q. So, you didn't document that.

2 A. No. It wasn't relevant to what I was going to
3 talk to him about.

4 Q. And those conversations that you had in
5 between the time you checked him out and the time you
6 brought him into the interview room, those
7 conversations weren't recorded.

8 A. I don't know if we even had a conversation.

9 Q. You told me you talked to him.

10 A. No. I said in general, yes. I may have had
11 some type of conversation that was not relevant to the
12 interview coming up.

13 Q. But you don't even know if you really had
14 a --

15 A. I don't remember if I had any conversation at
16 all.

17 Q. You may have just said okay, Mr. Vasquez,
18 we're bringing you here. And he may not have even
19 given you any responses.

20 A. I may have -- I usually explain why I'm taking
21 you out of the jail to talk to you. So, I'm guessing I
22 might have said hey, you know, I'm taking you to an
23 interview room.

24 Q. All right. But you're only guessing as to
25 that?

1 A. That's correct.

2 Q. So, you don't know what conversation you had
3 with him for that 10 minutes that you may have taken
4 him out?

5 A. That's correct.

6 Q. And you just told the prosecutor when she was
7 asking you questions that -- that he didn't appear
8 intoxicated or anything like that to you either.

9 A. At the interview, no, sir.

10 Q. All right. But you don't document any of your
11 interaction with him?

12 A. I'm sorry?

13 Q. You don't document any of your interaction
14 with him?

15 A. I'm not sure what you mean by documenting the
16 interaction.

17 Q. We -- we spent all that time at the beginning
18 talking about documenting things with your report,
19 right?

20 A. Yes, sir.

21 Q. When you check him out of the jail, there's
22 nothing in your offense report about that or about what
23 you observed; isn't that right?

24 A. I would be surprised if you found that in any
25 of my offense reports for the past 20 years.

1 Q. But in this one in particular, when you know
2 that there's an issue about the person's intoxication
3 -- because it was a reason you waited, right?

4 When you pull him out to interview after
5 you've waited a day, you don't document anything about
6 him now appearing to not be intoxicated; isn't that
7 right?

8 A. No. I allowed him to explain that on the
9 video.

10 Q. Right. And -- of course.

11 But you were testifying about something
12 that wasn't on the video. The video is in evidence.
13 The jury can see that.

14 But what you testified to about before
15 was that he didn't appear intoxicated. And my question
16 to you is: There was no documentation at all about
17 that in your report; isn't that true?

18 A. Yeah. Sir, I don't document everybody who I
19 think is sober. Is that the question?

20 Q. The question is, is in your report in this
21 case, there was no documentation as to whether or not
22 he was intoxicated; isn't that true?

23 A. There was no documentation as to outwards
24 signs of intoxication. That's what you're saying? No,
25 because I didn't observe any.

1 Q. And, in fact, there was no documentation as to
2 anything involving your conversation with him as well;
3 isn't that right?

4 A. If there was a conversation.

5 Q. In fact, there's no documentation about you
6 even checking him out of the jail.

7 A. That's correct.

8 Q. Now --

9 A. Except for the log sheet. I'm sorry.

10 Q. Yes, sir.

11 There's a log sheet for --

12 A. Yeah. There's log sheets where we sign him
13 out.

14 Q. And is it your name or Sergeant Bailey's name
15 on the --

16 A. Officer Bailey's, I have no idea.

17 Q. You don't know which one of you?

18 A. That's correct.

19 Q. So, you can't say. You'd only be guessing if
20 you said you were --

21 A. I don't want to guess.

22 COURT REPORTER: I'm sorry. One at a
23 time, please.

24 Q. (BY MR. DAVIS) You would -- you can't say.
25 You'd only be guessing if you said you were the one

1 that logged him out.

2 A. That's correct.

3 Q. Would you agree with me, Sergeant, in that
4 you've handled a lot of homicide cases?

5 A. Yes, sir.

6 Q. And you have done countless of them.

7 A. No.

8 Q. Right.

9 Do you know how many?

10 A. I'm -- no.

11 Q. In Houston, you handle a lot of homicide
12 cases, right?

13 A. Yes, sir.

14 Q. And you would agree with me that one of the
15 main things in terms of homicides cases -- if you can
16 get it -- one of the key tools that you have is a
17 statement from a defendant --

18 A. It can be --

19 Q. -- right?

20 A. -- yes, sir.

21 Q. And you would agree that it's somewhat
22 important to get a statement of a defendant?

23 A. It can be, yes, sir.

24 Q. Now, in HPD, unlike some agencies, HPD tries
25 to video record all of its statements in homicide

1 cases; is that right?

2 A. That's the preferred method.

3 Q. In fact, in Texas if a statement is -- is a
4 custodial statement -- meaning it's a statement that
5 someone is giving while they're in custody, it can't be
6 admitted if it isn't recorded; isn't that right?

7 A. If it's a confession, correct.

8 Q. So, statements that are made that are off of
9 recordings, usually if they're statements made while in
10 custody, would not be admitted in the defendant's
11 trial; is that right?

12 A. Depends on the circumstances.

13 Q. Yes, I understand. There are some situations
14 it can be.

15 But in most cases where a defendant is in
16 custody and he's being asked questions in response to
17 you, usually it's your policy to record those or have
18 them written; isn't that right?

19 A. Again, it depends on the specifics.

20 Q. So, it's your testimony that there's some
21 situations where somebody is in custody and he's
22 responding to questions, that if that statement isn't
23 written or recorded here in Texas in state court --

24 A. It depends on the questions.

25 Q. All right. Have you done -- have you had some

1 interviews that you've done with suspects where you've
2 been talking about the allegations against them that
3 haven't been written or recorded, that a person has
4 been in custody that you've had and proffered in court?

5 A. I'm sorry. Could you ask that question again?

6 Q. You said that it depends on the questions.

7 A. Okay.

8 Q. Right?

9 A. Yes, sir.

10 Q. If a suspect's being questioned about a case
11 or if he's in custody and he's being questioned about a
12 case or being questioned related to a case, is it HPD's
13 policy to record those statements?

14 A. I don't think we have a set policy saying it
15 needs to be recorded, but it would be.

16 Q. Right.

17 Because it's the law, isn't it?

18 A. If I'm asking him questions in regards to his
19 culpability in a case --

20 Q. Um-hum.

21 A. -- and anything that's going to be used
22 against him, correct.

23 Q. Now, that may not be the law. But the law is
24 that if a person is in custody and is being asked
25 questions, those statements have to be recovered; isn't

1 that right?

2 A. He has to be read his Miranda rights.

3 Q. And his Miranda rights as well as any
4 statements he makes have to either be written or
5 recorded?

6 A. To be admissible in court, correct, for his
7 confession, yes, sir.

8 Q. And that was all I was asking.

9 A. Oh, I'm sorry.

10 Q. That's all I was asking.

11 A. I didn't know which direction you were going.

12 Q. Don't worry about direction I'm going. I'm
13 just asking you questions. I'm trying to --

14 MS. BARD: Your Honor, object to the
15 sidebar and testifying at this point.

16 THE COURT: Sustained.

17 Q. (BY MR. DAVIS) If you could just answer the
18 questions I'm asking.

19 A. I'm trying.

20 MS. BARD: Objection to the sidebar.

21 MR. DAVIS: This is a question, Judge.

22 THE COURT: Ask your question.

23 Q. (BY MR. DAVIS) Do you have a problem just
24 answering my questions that I ask you?

25 A. No, sir.

1 Q. That's a question.

2 All right. I was starting to ask you
3 questions about this overwhelming evidence against the
4 defendant. So, you have a shotgun when you get to the
5 scene, right?

6 A. Yes, sir.

7 Q. When you went inside and you went to the
8 scene, there wasn't any evidence -- at least any
9 attempt to dispose of the shotgun. True?

10 A. I'm sorry. Say that again.

11 Q. When you went to the scene, you didn't see any
12 evidence of any efforts to dispose of the shotgun; is
13 that right?

14 A. That's correct.

15 Q. There were shotgun shells that were scattered
16 all around.

17 A. Yes, sir.

18 Q. You didn't see any efforts to move or do
19 anything with those shotgun shells.

20 A. No, sir.

21 Q. And there was blood inside as well, right?

22 A. Yes, sir.

23 Q. And there was a body inside.

24 A. Yes.

25 Q. And when you went to the scene, there wasn't

1 any effort to move the body or to clean up the blood or
2 anything of that nature?

3 A. That's correct.

4 Q. It didn't appear that the blood had been
5 tracked through or anything, right?

6 A. I can't attest to that.

7 Q. I understand.

8 But for the most part when you went
9 through the scene, there wasn't any indication that the
10 evidence had been disturbed. True?

11 A. True.

12 Q. The scene hadn't been disturbed, right?

13 A. Didn't appear so.

14 Q. Sometimes you'll go in on scenes and it
15 appears the scenes have been disturbed; isn't that
16 right?

17 A. Yes.

18 Q. That would be something that would be
19 important for your investigation.

20 A. Yes.

21 Q. You note that, right?

22 A. Yes.

23 Q. It might be evidence that a person is trying
24 to -- to change the scene to make it appear to be
25 something different.

1 A. Correct.

2 Q. You've had experience with situations where
3 people have staged scenes, right?

4 A. I've had experience where people have tried to
5 clean up scenes, not so much stage it to look like
6 something.

7 Q. Have you had a situation where someone tried
8 to make something look like self-defense?

9 A. I can't recall off the top of my head.

10 Q. In this case -- you've been given training and
11 you received training about scene staging, right?

12 A. Somewhat.

13 Q. And you saw no evidence of any scene staging
14 here.

15 A. That's correct.

16 Q. Now, oftentimes to discover scene staging, you
17 have to do some investigation, right?

18 A. Correct.

19 Q. You can sometimes determine whether or not a
20 scene has been staged by asking a suspect questions
21 about the scene. True?

22 A. You could, yes.

23 Q. Your interview will kind of guide you towards
24 knowing information about whether or not a scene had
25 been staged?

1 A. It could, yes.

2 Q. And here, that wasn't the situation, right?

3 A. What's that?

4 Q. When you were talking to Gustavo, you didn't
5 have any indication that he tried to stage the scene?

6 A. That's correct.

7 Q. When you sat down with him, he didn't lawyer
8 up, did he?

9 A. No, sir.

10 Q. He agreed to answer all of your questions.

11 A. That's correct.

12 Q. Now, you said he seemed to understand his
13 Miranda rights.

14 A. Yes, sir.

15 Q. He seemed to say okay, right?

16 A. I don't remember specifically, but yes.

17 Q. And in addition, there was some things you
18 told him at the very beginning that he asked you about
19 later. Did that seem unusual to you?

20 A. Not necessarily.

21 Q. You told him that he was not going to be free
22 to leave. That he was charged with murder, right?

23 A. That's correct.

24 Q. He seemed surprise when you told him he was
25 being charged with the murder of Agnes.

1 A. I get varied reactions in that type of context
2 after murders.

3 Q. Yes, sir.

4 A. So, I didn't see anything out of the ordinary
5 from his reaction.

6 Q. But this was a case where you had overwhelming
7 evidence though, right?

8 A. That's correct.

9 Q. And he still seemed surprised that he was
10 being charged with her murder.

11 A. His response was in surprising way, yes.

12 Q. And then he still -- even though you told him
13 he wasn't going home, he wasn't going to leave, he's
14 asking to leave and go home.

15 A. Yes, sir.

16 Q. He asked that several times, right?

17 A. That he wanted to go home, yes, sir.

18 Q. He even asked you, can I just go home?

19 A. Yes, sir.

20 Q. You told him, no, sir. You're not going home.

21 A. That's correct.

22 Q. That doesn't seem unusual to you?

23 A. Not at all.

24 Q. Now, of course, when you're sitting and
25 talking to Mr. Vasquez, he's kind of -- does he seem

1 like to you he's saying some things that don't make
2 sense?

3 A. He did pretty well. I don't -- just the
4 things like I'm confused maybe, would be something that
5 kind of stood out there a little bit. But I thought he
6 responded very clearly.

7 Q. All right. And this is a day later, right?

8 A. That's correct.

9 Q. Did you talk to Mr. Vasquez any time after
10 that?

11 A. After that interview?

12 Q. Yes, sir.

13 A. No, I don't believe so.

14 Q. So, you haven't had a chance to talk to him.
15 You know he's been in custody now, right?

16 A. I did not know that.

17 Q. Okay. You know he was arrested and he was put
18 in jail and he was in custody while the case was
19 pending.

20 A. I did not know that, no.

21 Q. So, you never had an opportunity to go to the
22 jail to talk to him or anything of nature to sort of
23 compare how he appeared now as he appeared as to how he
24 appeared on the day you saw him?

25 A. That's correct, I have not.

1 Q. So, you don't know what Mr. Vasquez might
2 appear like if he was in an environment where he would
3 not have had any substances or he would have been
4 controlled in a controlled environment where he would
5 not have received any narcotics -- when didn't have
6 narcotics in his system?

7 A. He was in our jail for 24 hours. I'm assuming
8 that would be a controlled environment.

9 Q. Well, you would agree with me that some drugs
10 can have an effect on someone a little longer than 24
11 hours, wouldn't you?

12 A. Again, that depends on the drug.

13 Q. Absolutely. Absolutely, it does.

14 And in this particular situation, when
15 he's in this controlled environment that you have him
16 in, you have access to him, right, and control over
17 him?

18 A. I don't.

19 Q. But he wasn't free to leave, was he?

20 A. That's correct.

21 Q. And you work for HPD.

22 A. That's correct.

23 Q. And he's in your facility.

24 A. He's in our jail, correct.

25 Q. You have control over him, don't you?

1 A. The jail does, yes, sir.

2 Q. And you don't do anything to have a drug test
3 administered to him, do you?

4 A. No, sir.

5 Q. You don't have a hair follicle test?

6 A. No, sir.

7 Q. Right.

8 Which would test the substance or
9 presence of substances in his body.

10 A. That's correct.

11 Q. And urine test would as well; isn't that
12 right?

13 A. It would indicate if he had substances in his
14 system at the time.

15 Q. That's right.

16 A. The urine test would, yes, correct.

17 Q. You don't do one, do you?

18 A. Not for this situation, no.

19 Q. And you don't order a blood test either,
20 right?

21 A. No. Correct.

22 Q. So, you have the opportunity and ability to be
23 able to find what substances, if any, he had in his
24 system through testing, right?

25 A. I would imagine.

1 Q. And you don't do that, do you?

2 A. That's correct.

3 Q. And so, where we sit today in terms of science
4 -- because you didn't do the tests, we don't have any
5 means of knowing what he had in his system on that day,
6 do we?

7 A. No.

8 Q. And even though you got some indication that
9 there was substance abuse from family members, from
10 officers as well as the police officer sergeant who saw
11 him the night before when you decided not to interview
12 him, you still decided not to do a drug test.

13 A. That's correct.

14 MR. DAVIS: May I have one moment, Judge?

15 THE COURT: Yes, sir.

16 (Brief pause).

17 MR. DAVIS: I don't have any other
18 questions.

19 THE COURT: All right. Ms. Bard?

20 MS. BARD: Briefly.

21 REDIRECT EXAMINATION

22 BY MS. BARD:

23 Q. Sergeant Robles, in your training and your
24 experience, a drug like PCP, do you know about how long
25 that can stay active in someone's system.

1 MR. DAVIS: Objection, Your Honor, that's
2 not a proper lay opinion.

3 THE COURT: Sustained.

4 MS. BARD: Your Honor, if it's based on
5 his training and his experience and his education, he
6 talked about being a DWI task force officer with the
7 certifications and his background, if he knows the
8 answer.

9 THE COURT: All right. I will let him
10 answer.

11 Q. (BY MS. BARD) Do you know how long?

12 A. Roughly six to eight hours.

13 Q. Okay.

14 MS. BARD: Pass the witness, Your Honor.

15 THE COURT: Mr. Davis?

16 REXCROSS-EXAMINATION

17 BY MR. DAVIS:

18 Q. So, let me just get this straight. So, it's
19 your testimony that PCP will stay in somebody's system
20 six to eight hours.

21 A. Depends on what you mean by their system.
22 Usually the outward effects are between six to eight
23 hours.

24 Q. Let me back up.

25 So, it's your testimony that a person

1 will only be influenced by PCP for six to eight hours?

2 A. They will show outwardly effects of PCP from
3 six to eight hours.

4 Q. Are you familiar with any literature or
5 anything scholarship in that area, sir?

6 A. I was back when I was a drug recognition
7 expert.

8 Q. All right. So, when you were a drug
9 recognition expert back in, what? How long ago was
10 that?

11 A. Probably 10 years.

12 Q. 10 years ago?

13 A. Yes, sir.

14 Q. All right. So, are you familiar with the
15 literature that talks about PCP having an effect much
16 longer than six hours?

17 A. It depends on which literature you're reading.

18 Q. Right.

19 Are you aware that there are literatures
20 and scholarships that talk about PCP having an effect
21 for days?

22 A. I've read two different types of theories on
23 that, if it last. You know, flashbacks last days down
24 the road and nonexistent. I have -- it has been a
25 contributing factor during my experiences in the

1 Houston Police Department.

2 Q. Right.

3 And you agree with me that -- that
4 obviously, depending on what drugs would mixed, that
5 could have an effect on the length of time of the --

6 A. That is correct, yes, sir.

7 Q. And it's your testimony today though, that
8 based on your experience from a long time ago just as
9 an officer -- I guess as a DWI officer and were
10 arresting people for driving while under the influence,
11 it's your training -- or at least what you know -- that
12 PCP only last six to eight hours?

13 A. The outwardly effects, yes.

14 Q. The outwardly effects?

15 A. Yes.

16 Q. All right. So, in terms of the mental
17 effects, you're not saying that that's the same.

18 A. Yes. I don't know what the mental effects
19 would be.

20 Q. Okay. So, just the outwardly effects in terms
21 of someone maybe sweating profusely or someone having
22 the eyes -- their pupils being dilated a certain way,
23 that those effects only last six to eight hours.

24 A. That's correct.

25 Q. All right. I see. I understand.

1 So, you're saying a person may be under
2 the influence intellectually but not show any outwardly
3 effects.

4 A. I would say physically.

5 Q. Yes, sir.

6 They could be under the influence
7 intellectually, meaning their mind mentally, but not
8 show any physical effects; is that right?

9 A. I don't know.

10 MR. DAVIS: I don't have any other
11 questions, Judge.

12 THE COURT: Ms. Bard.

13 MS. BARD: Nothing further.

14 THE COURT: All right. Thank you, sir.
15 You may step down and step outside.

16 Call your next witness, please.

17 MS. BARD: Your Honor, the State calls
18 Dr. Hines to the stand.

19 THE COURT: All right. Doctor, if you'll
20 stand right there and raise your right hand and be
21 sworn in as a witness, please?

22 Ms. Bard?

23 MS. BARD: Thank you, Your Honor.

24 DR. MERRILL HINES,
25 having been first duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. BARD:

3 Q. Could you please introduce yourself to the
4 jury?

5 A. My name is Merrill Hines.

6 Q. And, Dr. Hines, we're having technical
7 difficulties today. So, sometimes that works and
8 sometimes it doesn't. So, you could keep your voice up
9 for us. Okay?

10 A. Okay.

11 Q. Where do you work, sir.

12 Q. I work at the Harris County Institute of
13 Forensic Sciences.14 Q. And is that what we sometimes refer to the
15 medical examiner's office?

16 A. Yes.

17 Q. Okay. What is your job at the Institute of
18 Forensic Sciences?19 A. I work as an assistant medical examiner. I'm
20 a forensic pathologist that performs autopsies and
21 external examinations.

22 Q. What is your educational background, sir?

23 A. I hold a medical degree from Louisiana State
24 University in New Orleans. I'm board certified in
25 anatomic and clinical pathology as well as forensic

1 pathology.

2 Q. And what kind of training do you have in
3 regards to autopsies and pathology?

4 A. I completed a five-year residency in anatomic
5 and clinical pathology at the University of California
6 in San Francisco and a one-year fellowship in forensic
7 pathology at The Office of the Medical Investigator in
8 Albuquerque, New Mexico.

9 Q. So, overall total, how many years experience
10 do you have in the -- in autopsies and forensic
11 pathology?

12 A. Approximately 12 years.

13 Q. Do you receive or are you required to take any
14 sort of additional classes or training throughout the
15 year in regards to your job as an assistant medical
16 examiner?

17 A. I receive continuing medical education for the
18 maintenance of my board certification as well as state
19 medical licensure.

20 Q. So, in fact, you're a medical licensed doctor?

21 A. I'm licensed to practice medicine in the State
22 of Texas.

23 Q. Okay. Now, can you walk the jury through,
24 generally speaking, how you get involved with a case?

25 A. As cases are reported and accepted by our

1 office, they are distributed in a systematic fashion to
2 the assistant medical examiner's that are scheduled to
3 perform examinations on a given day.

4 So, essentially the case assignment is
5 random. And we are assigned a case on this basis in a
6 morning meeting, at which time we're given a capsular
7 summary of the case as well as reviewing various
8 photographs.

9 Q. Do you know who takes those photographs?

10 A. The photographs from the scene, if they are
11 available, are taken by our investigative staff.

12 Q. And is it common practice for the Institute or
13 the medical examiner's office to go to the scene of a
14 crime and actually transport the body from that scene
15 to your office?

16 A. Yes.

17 Q. And while they're there, if they can,
18 typically take photos.

19 A. Yes.

20 Q. Okay. And do you get a chance to look at
21 those photos and if you need to in forming your
22 opinions as to the cause and manner of death?

23 A. Yes.

24 Q. Okay. Now, what is the purpose of an autopsy?

25 A. To determine the cause and manner of death.

1 In some cases to aid in the identification of a
2 decedent. And to identify and document findings that
3 may be of legal interest.

4 Q. Now, you said the cause and manner of death.
5 Could you describe what you mean by that?

6 A. Absolutely. The cause and manner of death are
7 items that are found on a state death certificate that
8 are typically used, among other things, for statistical
9 purposes in the public health arena as well as for
10 legal proceedings to prove somebody's death.

11 The cause of death is literally why
12 somebody died. And can be any number of things from a
13 gunshot wound to blunt force trauma to drowning or even
14 natural disease, such as a heart attack or myocardial
15 infarction.

16 The manner of death on the other hand,
17 may be only one of five accepted manners. And that
18 includes natural, accident, homicide, suicide and
19 undetermined. And those five descriptions indicate not
20 why somebody died, but how somebody died.

21 Q. Were you given a case in regards to a body by
22 the name of Agnes Arnez Whitaker-Vasquez?

23 A. Yes.

24 Q. And do each case that you work on, do they get
25 assigned a specific case number for the total -- for

1 the totality of the case?

2 A. Yes. Every case that we receive is assigned a
3 sequential year coded number. And all information
4 relating to that case is associated with that unique
5 sequential number.

6 Q. In this case what was the unique sequential
7 number for Ms. Agnes Arnez Whitaker-Vasquez?

8 A. ML for medical/legal, 13 referring to the year
9 2013, 4160. That is the 4,160th case we would receive
10 for the year 2013.

11 Q. Now, does -- that specific unique number does
12 that get attached to any documentation that you do or
13 any evidence that you collect in regards to your
14 autopsy?

15 A. Yes.

16 Q. Okay. Now, what do you do when you begin your
17 autopsy?

18 A. The first step in an autopsy is to remove the
19 decedent or view them in the body transport bag and
20 take a first round of photographs. I make my initial
21 observations of the body as they are received at our
22 office. So, they're clothed as they were when we took
23 custody of the body. And every attempt is made to
24 disturb them as little as possible during transport and
25 storage so that I may see the amount of clothing, the

1 configuration of the clothing, any other items that may
2 be on them of interest, any trace evidence, et cetera.

3 Once I've made those observations and had
4 a series of standard photographs taken as well as any
5 additional photographs that I think are necessary to
6 document my interest and findings, the body is
7 disrobed. The clothing is removed. The body is
8 cleaned. And a second round of photographs are taken
9 along with observations by myself looking for injuries,
10 external evidence of disease, identifying marks or
11 characteristics.

12 Q. So, would be it safe to say that you do an
13 sort of overall picture of what you're looking at and
14 then you start to kind of narrow in your field?

15 A. I'd say that in this instance, I'm doing an
16 overall examination both clothed and/or dirty as well
17 as you have the unclothed cleaned body, but still
18 general observations.

19 Q. Okay. So, there's the outward examination.
20 Do you do any sort of internal examination?

21 A. Yes. Following the first and second rounds as
22 well as recovering certain bodily fluids such as blood
23 and vitreous humor or the eye fluid, the body is opened
24 and the internal organs as well as the brain are
25 examined as they are in the body and then removed and

1 further examined through dissection as well additional
2 items for possible laboratory testing, such as recovery
3 of tissue and other bodily fluids are performed.

4 All the while my observations are
5 recorded in the form of notes, including weights of the
6 various organs, possibly any evidence of disease or
7 injury.

8 Q. At the end of your external and internal
9 observations and investigation, do you complete an
10 autopsy report?

11 A. Yes.

12 MS. BARD: Your Honor, may I approach the
13 witness?

14 THE COURT: Yes, ma'am.

15 Q. (BY MS. BARD) Show you what's previously been
16 marked as State's Exhibit 97. Is this a copy of the
17 autopsy report that you did for this case?

18 A. Yes.

19 Q. Okay. And does it contain your findings and
20 your documentation as to the autopsy you performed?

21 A. Yes.

22 Q. Okay. And is this document kept in the
23 regular course of business at the Institute of Forensic
24 Sciences?

25 A. Yes.

1 Q. Is it made at or near the time of the autopsy
2 itself?

3 A. I guess it depends on your definition of near.

4 Q. Okay.

5 A. Certainly not at the time. Typically it takes
6 weeks, in some cases months, to complete the report.

7 Q. Okay. And is that because you're waiting for
8 all the pathology or toxicology or other results?

9 A. In some instances, yes.

10 Q. Okay. So, was this autopsy done at or near
11 the time of the autopsy when everything was completed?

12 A. The autopsy report was completed approximately
13 seven weeks after the autopsy.

14 Q. Okay. Is it regular practice of the Institute
15 of Forensic Sciences to record and document the
16 autopsy?

17 A. Yes.

18 Q. And is it made by you, somebody with personal
19 knowledge of the actual autopsy and the findings?

20 A. Yes.

21 Q. Okay.

22 MS. BARD: Your Honor, at this time State
23 would offer into evidence State's Exhibit 97 and
24 tenders to opposing counsel for any objection.

25 MR. DAVIS: Judge, I'm not going to have

1 any objection to it if it's stapled. They're all loose
2 right now. And if she is offering it as one exhibit --
3 there are several different pages that are loose. And
4 if it could be stapled to avoid any confusion or any
5 losing of parts of the exhibit, it would be
6 appreciated.

7 But I have no objection to it other than
8 that I request that it be stapled.

9 THE COURT: All right. No objection,
10 State's No. 97 will be admitted, stapled.

11 Thank you.

12 MS. BARD: Your Honor, may I approach?

13 THE COURT: Yes, ma'am.

14 Q. (BY MS. BARD) As we were talking about your
15 autopsy, part of what you do is also do photographs
16 documenting what you see, correct?

17 A. Correct.

18 Q. Okay. Looking at State's Exhibit 98 all the
19 way through State's Exhibit 120.

20 A. (Witness complying).

21 Q. Having looked at all of these, are those all
22 pictures of what you documented in regards to this
23 autopsy for this case?

24 A. Yes.

25 Q. And we know that based on the unique number

1 that's attached and in the pictures, correct?

2 A. Yes.

3 Q. Okay. Do these pictures fairly and accurately
4 depict the autopsy of the body as you saw it and the
5 evidence that you saw during your autopsy?

6 A. Yes.

7 Q. Okay. Looking at State's Exhibit No. 93, are
8 you familiar with the contents inside?

9 A. Yes.

10 Q. Okay. And what are we looking at inside of
11 State's Exhibit 93?

12 A. These are the packages and ammunition
13 components of shotgun pellets and wadding material that
14 I recovered during the course of the autopsy
15 predominantly from the body of the decedent as well as
16 from the surface of her skin in one instance.

17 Q. So, you -- as part of the autopsy, you will
18 document, collect and bag the evidence as we see it
19 here in State's Exhibit 93?

20 A. Yes.

21 Q. Okay. And then does it get sealed and
22 initialed by you and the people that you're working
23 with?

24 A. It gets sealed and initialed by me.

25 Q. Okay. And you see your initials on what we

1 see here in State's Exhibit 93?

2 A. Yes.

3 Q. And does it also have that same unique case
4 number so that we know that it gets tied to this case?

5 A. Yes.

6 Q. Okay.

7 MS. BARD: Your Honor, at this time State
8 would offer into evidence State's Exhibit 93 and its
9 contents and State's Exhibit 98 through 120.

10 MR. DAVIS: There's no objection to
11 State's Exhibit 93, Your Honor.

12 But if I can have a moment to look at 98
13 through 120?

14 THE COURT: Yes, sir.

15 No objection, State's 93 will be
16 admitted.

17 MR. DAVIS: May we approach briefly,
18 Judge?

19 THE COURT: Yes, sir.

20 (Bench conference on the record).

21 MR. DAVIS: I want to object, of course,
22 firstly to all of the exhibits. They're pretty
23 gruesome pictures. And I think, Judge, that the fact
24 that this witness could testify from diagram that's
25 already in evidence that depicts how those injuries and

1 everything occurred, the places they occurred. That he
2 could testify to everything in these photos and the
3 jury have -- has an illustration of it through that
4 diagram.

5 These particular pictures are
6 particularly hard based on the number of times and
7 number of different injuries she has on all the
8 different locations on her body. And it's -- it's
9 pretty graphic. Some of it -- at least some of the
10 injuries are due because of -- at least some of the
11 pictures are and I've kind of pulled those out.

12 104, we would specifically object to
13 because it's duplicitous of another photo that depicts
14 the same injuries. I think two other photos that
15 depict those same injuries. 103 depicts those
16 injuries, along with 100 also depict those injuries.

17 THE COURT: Okay.

18 MR. DAVIS: Those are some of the
19 pictures that are duplicative, meaning they show the
20 same injuries. It's not necessary and has a -- renders
21 a risk of inflaming the jury. Any probative value is
22 substantially outweighed by -- by -- and the
23 prejudicial value that the danger of confusing the jury
24 -- of them being inflamed by these graphic photographs.

25 THE COURT: Okay. Understanding that

1 you're objecting to all of them, do you have any
2 response to these specific --

3 MS. BARD: May I see them?

4 THE COURT: Yes.

5 MR. DAVIS: We object to them all. And
6 specifically pointing out that 104 -- 104 is
7 duplicitous.

8 THE COURT: Got you.

9 MS. BARD: If you want, what I will -- I
10 can do is I'll pull these --

11 COURT REPORTER: I can't hear you,
12 Ms. Bard.

13 MS. BARD: Your Honor, if you would like,
14 what I can do is pull 104, keeping 100 and 103 as a top
15 and side view which shows different entrance and exit
16 wounds which would be necessary for jury's testimony --
17 for the doctor's testimony.

18 THE COURT: Your objection to 104 will be
19 sustained. Your objection to the rest will be
20 overruled. The rest will be admitted.

21 (End of conference).

22 Q. (BY MS. BARD) Doctor, as part of your
23 autopsy, do you perform a toxicology or do you ask that
24 toxicology be done on some blood samples from the body?

25 A. Yes. It's a matter of routine. In fact,

1 standard operating procedure at our office to perform a
2 specific panel of toxicology tests on homicide victims.

3 Q. And is that toxicology report included and a
4 part of your autopsy report?

5 A. Yes.

6 Q. Okay. Looking at State's Exhibit 97,
7 specifically the autopsy report. We can see that it
8 has the unique case number attached to it, that
9 ML-134160, correct?

10 A. Yes.

11 Q. All right. It has the deceased name. And
12 then at the bottom, can you tell us what, if any,
13 substances were found in the complainant -- the
14 victim's body?

15 A. None of the substances that were searched for
16 -- which are indicated on the left side of the report
17 -- including ethanol or regular consumable alcohol or
18 amphetamine, methamphetamine, cocaine and PCP were
19 found.

20 Q. Okay. Now, as part of your examination you
21 determined the cause and manner of death, correct?

22 A. Yes.

23 Q. And that would be on the front page of your
24 autopsy report, State's Exhibit 97.

25 A. Correct.

1 Q. Okay. What was your cause of death in this
2 case?

3 A. Multiple shotgun wounds.

4 Q. And your manner of death?

5 A. Homicide.

6 Q. Okay. Now, do you take x-rays as a part of
7 your autopsy?

8 A. X-rays or radiographs are taken of the body
9 prior to my coming into contact with the case as a
10 matter of routine in suspected firearms injuries.

11 Q. And did we do some x-rays -- were x-rays done
12 in this case?

13 A. Yes.

14 Q. Okay. Looking at State's Exhibit 109, we're
15 looking at an x-ray of what?

16 A. This is the torso, primarily the chest.

17 Q. We see this sort of perfect circle up over by
18 the rib area kind of to the north of the picture. What
19 was that?

20 A. That represents a buckshot pellet.

21 Q. And were you able to recover that buckshot
22 pellet?

23 A. Yes.

24 Q. Okay. Looking at State's Exhibit 111, what
25 are we looking at here?

1 A. An additional four buckshot pellets.

2 Q. Were you able to recover those?

3 A. Yes.

4 Q. Looking at State's Exhibit 110, what are we
5 looking at here?

6 A. These are called birdshot pellets.

7 Q. And we're looking -- and this would be what
8 part of the body?

9 A. The pelvis.

10 Q. Okay. And if a shotgun wound came in from the
11 back side, like if it hit your butt, would this be
12 consistent with where the buckshot would be on this
13 x-ray?

14 A. Yes.

15 Q. Were you able to recover some of those
16 birdshot?

17 A. Yes.

18 Q. Okay. Were you able to recover all of them?

19 A. I did not recover all of them.

20 Q. As part of the evidence, what we see here in
21 State's Exhibit 93, the envelopes and the evidence that
22 you recovered, you also take pictures of each and every
23 one that you recover as well, correct?

24 A. Yes.

25 Q. All right. So, when we look at State's 112

1 through 120, what we can see is -- is the envelope in
2 which you put the evidence. And it's got the
3 handwriting kind of identifying it to which case; is
4 that correct?

5 A. Yes.

6 Q. Okay. And then what you do is you label kind
7 of at the bottom where you recovered the evidence from.
8 So, for example, in 112, you recovered wadding from --
9 you have an L circled. I'm assuming that's left?

10 A. Correct.

11 Q. Okay. So, wadding from left flank.

12 A. Yes.

13 Q. Okay. So, if we go through State's
14 Exhibit 113 -- that was recovered from the right
15 buttock?

16 A. Correct.

17 Q. State's 114 was wadding and buckshot pellets
18 from the left breast tissue.

19 A. Correct.

20 Q. 115 is a wad recovered from the autopsy table.

21 A. Correct.

22 Q. Can you describe what -- what that means or
23 how that happens?

24 A. In some cases material that has exited the
25 body, but is contained within the clothing may be

1 identified during the course of manipulation of the
2 body on the autopsy table, oftentimes underneath the
3 decedent. And it's identified when they're rolled
4 over.

5 Q. And State's Exhibit 116, 117, 118, 119 and
6 120, are all similar to what we were looking at as
7 evidence that you recovered and where you recovered it
8 from.

9 A. Yes.

10 Q. Okay. Now, during your autopsy, you create
11 diagrams to help you identify exit and entry wounds of
12 gunshots, correct?

13 A. Yes.

14 Q. Okay. How many gunshots total did the
15 complainant receive in this case?

16 A. Seven.

17 Q. Okay. Looking at -- is this one of the
18 diagrams that you created in this case?

19 A. It appears so, yes.

20 Q. Scrolling up to the top here a little bit.

21 Is this the diagram that you did for this
22 case?

23 A. Yes.

24 Q. Okay. And, in fact, you did three diagrams
25 for this case. This is Page 1. There's Page 2 and

1 there's Page 3, correct?

2 A. Correct.

3 Q. Okay. Going through -- I notice on your
4 diagram that there are labeled marks. For example, on
5 Page 1 of 3, you have an A, an F, an E, a D, C, B.
6 What are those indicating or what do those indicate?

7 A. Those are arbitrary designations referring to
8 each of the gunshot or shotgun wounds I identified.

9 Q. Okay. Are you trying to say that those are
10 the order in which the wounds came up?

11 A. No. They're strictly for correlation with my
12 report and my pathologic findings.

13 Q. Okay. So, if you look at your autopsy report.
14 And we see, for example, Letter A on your diagram. If
15 we flip to your report where you write pathological
16 findings and it says A, shotgun wound to the head, are
17 those the correlations that you're talking about?

18 A. Yes.

19 Q. Okay. So, if the jury wanted to go through
20 and figure out, for example, what D meant, they just
21 would have to look and find the Letter D on the
22 pathological findings?

23 A. Correct.

24 Q. Okay. All right. Well, let's start with A.
25 What did you discover about Wound A?

1 A. Shotgun Wound A is a grazing shotgun wound, in
2 that the path of the shot mass was tangential or along
3 the surface of the head. So, it essentially scraped
4 away tissue. It did not perforate or go through and
5 through the head or even lodge within the head. It
6 just grazed the back of the head.

7 Q. All right. If we look at State's Exhibit 99,
8 is this a picture of that wound?

9 A. Yes.

10 Q. Okay. Can you describe how you know it grazed
11 and in what direction it went?

12 A. I can tell it's a grazing wound because it's
13 superficial. There is no distinct entrance and exit.
14 And one side of the wound, which is at the bottom of
15 the photograph, demonstrates semi-circular to irregular
16 areas that are surrounded by a rim of abrasion which is
17 typical of an entrance wound.

18 So, that indicates to me that that is the
19 side of the head that the shot mass struck initially.
20 There are no such abrasions on the opposite side. And
21 along the top and bottom of the wound are tears and
22 corresponding tags of skin caused by the tears that
23 generally point in this direction, which would indicate
24 the location of the muzzle of the gun.

25 So, there are multiple factors that tell

1 me that the shot mass traveled in this direction
2 causing the grazing shotgun wound.

3 Q. What kind of damage would this do to some --
4 would they -- would this knock them out? Would this
5 kill them? What kind of wound would this cause?

6 MR. DAVIS: Objection, compound, Your
7 Honor.

8 THE COURT: Overruled.

9 A. I discovered, in addition to the wound on the
10 surface of the scalp, a small amount of bleeding on the
11 surface of the brain. That bleeding indicates that the
12 brain itself was injured. But not so severely that
13 would necessarily cause a loss of consciousness. So, I
14 can't say if this grazing shotgun wound merely was
15 painful and somewhat disorienting versus actually
16 caused unconsciousness.

17 Q. So, at a minimum disorientation?

18 A. I would think so, yes.

19 Q. Okay. Could you tell the direction -- I know
20 you have it pointed here, but so the jury gets an idea.
21 Are we talking up, down, left, right? What direction?

22 A. From right the to left.

23 Q. Okay. Would this wound be consistent with
24 somebody either sitting or standing up from a chair and
25 they get a shotgun wound across from the right to the

1 left?

2 A. Yes.

3 Q. If we saw pictures, for example, of the house
4 where there was scalp on the wall from this -- and this
5 was the only head wound, correct?

6 A. Correct.

7 Q. Would that be consistent with the victim
8 getting a shot right to left and that scalp ending up
9 on the wall?

10 A. Yes.

11 Q. Okay. Are you able to tell anything in
12 regards to how far the gun was when it created the
13 injury?

14 A. Yes.

15 Q. Can you describe that for the jury in regards
16 to what we have here in State's 99?

17 A. So, in addition to the actual wound, I noted
18 the presence of stippling, which is tiny abrasions --
19 dot-like abrasions or scrapes on the skin.

20 And in the case of shotgun wounds that
21 involve buckshot, that stippling may occur when the
22 muzzle or the end of the gun is within three yards or
23 so or possibly less. So, if the muzzle of the gun is
24 greater than three yards or meters, I should say, the
25 stippling will not be seen.

1 So, I can say that the muzzle of the gun
2 was less than three meters or approximately 10 feet
3 away when it was fired causing this grazing wound.

4 Q. And when we're talking about that stippling,
5 can you kind of point out to the jury a little bit
6 about what you mean?

7 And let me zoom in a little more.

8 A. So, I've circled a number of the areas of
9 stippling, which are these small marks here. And
10 they're caused by small grains of plastic known as
11 filler that are packed around the buckshot pellets
12 within the shotgun shell. And so, they are ejected
13 from the muzzle of the gun along with the buckshot
14 pellets and strike the skin causing this injury up to
15 approximately three meters away.

16 I can't say if it was three meters or two
17 meters or two and one half meters. But I can be
18 confident in saying that it was less than three meters
19 away.

20 Q. Okay. Let's go to Wound B. We'll just kind
21 of go in order of A, B, C, D.

22 Wound B, as we see on this diagram -- and
23 then if we look at second page of your diagram. You
24 say shotgun wound to the axilla. What is axilla?

25 A. That's a medical term for armpit.

1 Q. Okay. Looking at State's Exhibit 101, is this
2 that wound?

3 A. Yes.

4 Q. Okay. What can you tell us about this wound?
5 Is this the entrance or the exit?

6 A. This is an entrance wound.

7 Q. And how do we know that?

8 A. The first thing I notice is that there's
9 extensive stippling around the top portion of the wound
10 and on the adjacent arm next to the axilla or armpit.
11 So, this dense red collection of dots and abrasions
12 represents stippling. Which, as I described earlier,
13 is caused by material that's ejected from the muzzle of
14 the gun. Therefore, you would not expect to see that
15 around an exit wound, only an entrance wound.

16 Q. Let me stop you there for a moment, Doctor.

17 It looks like there is sort of a straight
18 line, if you will, of stippling where it starts and
19 stops. Can clothing interrupt stippling from reaching
20 the skin?

21 A. Certainly. So, clothing can act as a mask.
22 Similar to masking tape when one would paint. And so,
23 in this instance, the clothing the decedent was wearing
24 blocked the granules of filler material and possibly
25 burned or unburned gunpowder from striking the skin and

1 causing stippling.

2 Q. Were you able to determine where or -- I'm
3 sorry.

4 Were you able to determine the direction
5 of the pellets in this case for Wound B?

6 A. Yes. They passed generally from right to
7 left, slightly upward and slightly from back to front.

8 Q. Okay. So, if we're talking right to left,
9 slightly up, back to front, if we're talking about an
10 armpit, we're talking it came from this way. Where did
11 it exit out?

12 A. Generally the right side -- I mean, the left
13 side of the chest.

14 Q. Okay. And in this case do you know where
15 Wound B as it traveling through the chest exited?

16 A. Well, there were multiple exits primarily the
17 -- involving the left breast as well as the medial or
18 mid side or middle side of the right breast and the
19 right upper chest not involving the breast.

20 So, think of this as multiple objects
21 passing through the body and exiting in different
22 places. But all of them exiting after passing
23 generally from right to left and slightly from back to
24 front. So, they exited the front of the body generally
25 on the left side of the body. And all of them exited

1 to the left side of the entrance wound.

2 Q. Where or, if any, organs does that wound
3 across the chest go through?

4 A. The injuries associated with this shotgun
5 wound included injuries to both lungs as well as the
6 aorta, which is largest artery in the body.

7 Q. What kind of wound would this be, Dr. Hines,
8 in your opinion?

9 A. This would be a -- likely fatal wound that
10 would lead to rapid decomposition and incapacitation.

11 Q. Would this wound cause a body -- if it was,
12 for example, laying on a floor -- to bleed a lot?

13 A. The majority or a significant proportion of
14 hemorrhage from this sort of injury would be internal.
15 So, in that sense, yes. It's difficult to say how much
16 external bleeding would be the result of this injury.

17 Q. Looking at State's Exhibit 102, are we looking
18 at a close-up of the exit wound in regards to Wound B?

19 A. This is one of them, yes.

20 Q. Okay. Are you able to tell, based on this
21 wound, how close the gun was?

22 A. I can venture an estimate.

23 Q. Okay. And what would that estimate be based
24 on?

25 A. The presence of the stippling as well as the

1 shape of the wound. As I mentioned previously,
2 stippling occurs up to three meters away. Clearly this
3 is much more dense stippling than the stippling around
4 the graze wound of the head. And therefore, I would
5 infer that the muzzle was significantly closer than
6 that outer limit of three meters.

7 And the shape of the wound in shotgun
8 wounds including buckshot wounds is a factor of the
9 distance of the muzzle from the skin. In that as the
10 mass of pellets travel through the air before striking
11 the target, the longer they are in the air, the more
12 they spread apart before striking the target.

13 And so, initially with a closer wound,
14 the pellet mass produces a single roughly circular
15 hole. And as that distance increases, the wound
16 becomes irregular and eventually satellite holes are
17 seen around the central hole. And finally, the shotgun
18 wound resembles a series of small individual wounds
19 without a central hole.

20 In this case you can see essentially one
21 roughly circular wound. That tells me that the
22 distance is closer to four feet versus this theoretical
23 maximum of three meters or nearly 10 feet.

24 And then finally, the fact that I found
25 the wadding material inside of this wound indicates

1 that the muzzle was less than -- in the source I used
2 -- five to eight feet. So, all three of those
3 observations are consistent. With the most informative
4 being the shape of the wound, which indicates
5 approximately four feet or possibly somewhat less. But
6 I think four feet is the most reasonable
7 interpretation.

8 Q. Okay. Moving on to Wound C. Where did that
9 wound enter?

10 A. C was on the right chest, essentially the
11 inferior or bottom of the right breast.

12 Q. Looking at it State's Exhibit 103 now. We see
13 here on 103 the wound to the left of the white sticker,
14 if you will or the white little plastic, that's the
15 wound we were just talking about, B, correct?

16 A. Yes.

17 Q. Okay. Which of these other several wounds
18 that we see is Wound C?

19 A. (Indicating).

20 Q. What direction -- what direction did Wound C
21 take?

22 A. Wound C passed upward and slightly from right
23 to left.

24 Q. Now, I notice that we don't see any stippling
25 in this wound or around this wound; is that correct?

1 A. Correct.

2 Q. Okay. If the complainant was wearing a sports
3 bra -- which I believe she was when she first came into
4 the medical examiner's office -- would that sports bra
5 have blocked any stippling from making its way on to
6 her skin?

7 A. Immediately surrounding the wound in the
8 distribution of the sports bra, but would not
9 necessarily block stippling in nearby areas that were
10 not covered.

11 Q. Okay.

12 A. The wound is in an area that was near the edge
13 of the coverage area provided by the sports bra.

14 Q. Okay. Where did this wound exit?

15 A. Along the medial aspect of the right breast.
16 So, the -- this side of the right breast versus the
17 lateral. So, this side of the right breast.

18 Q. If we're looking at State's Exhibit 103, are
19 we talking about the wound that's slightly north of the
20 nipple area?

21 A. In the picture, yes. It's above. In fact,
22 it's actually to the left of the nipple.

23 Q. Okay. And if I understand -- I want to make
24 sure I understand. What direction are we saying this
25 wound came? Was it horizontal, kind of like what we

1 saw with A, the head wound or B, the armpit wound?

2 What kind of direction was it?

3 A. No. This wound had a significant vertical
4 component. So, it was closer to vertical or up, if the
5 individual is standing up, than it is horizontal. So,
6 it's a -- it's neither completely vertical or
7 horizontal. It's a diagonal or oblique direction. But
8 it's closer to vertical than it is horizontal.

9 Q. Would this wound be consistent with somebody
10 who, after having been shot, is falling to the ground
11 and sort of falling, if you will, parallel to the
12 floor?

13 A. I think so, yes.

14 Q. Okay. Moving on. This wound -- was -- would
15 you classify this as a catastrophic lights-out wound?
16 What kind of wound would you classify this as?

17 A. This is what many people would refer to as a
18 flesh wound. This is perforating wound that involved
19 the -- basically soft tissue of the breast.

20 Q. Okay. Moving on to Wound D. Looking at
21 State's Exhibit 103. Which wound are we discussing?

22 A. This is the large wound on the right flank,
23 essentially at the waist.

24 Q. I want to go back for one moment.

25 Looking at State's Exhibit 100, Wound C

1 that we were discussing -- I think you can see it a
2 little better here. Is here to here, correct?

3 A. Yes.

4 Q. Okay. All right. Going back to and closer up
5 to Wound D now. Do you see stippling in Wound D?

6 A. Yes.

7 Q. Okay. Is that all of those sort of little
8 pink dots that we see surrounding the wound?

9 A. That's correct.

10 Q. Okay. Was this wound that we're looking at
11 here in State's Exhibit 103, was this an entrance or an
12 exit?

13 A. Entrance.

14 Q. And how do you know that?

15 A. From the appearance of the wound as far as
16 parts of the wound are abraded, similar to the right
17 side of the graze wound indicating the bullet passing
18 or the pellet passing into the body versus out of the
19 body, as well as the stippling, which you would not
20 expect to see in an exit wound.

21 Q. Looking at this wound, can you tell us -- were
22 you able to determine an exit wound?

23 A. Yes.

24 Q. Okay. Let me scroll out a little bit.

25 Can you tell us where that exit wound is?

1 A. (Indicating).

2 Q. And just for purposes that -- I don't know --
3 best way to describe it is like a little bit of a
4 hurricane sort of picture?

5 A. Yes.

6 Q. Okay. So, that's the exit wound that
7 correlates with Wound D. How do you know that's the
8 exit wound?

9 A. Because it is at the end of the wound track
10 that starts with the entrance wound.

11 Q. Okay. Were you able -- based on this exit and
12 this entrance -- to determine angle as to how the shot
13 came into the body?

14 A. Yes. It had a similar direction to the
15 gunshot or Shotgun Wound C, somewhat more horizontal.
16 But right to left, upward and from back to front.

17 Q. So, right to left, upward and from the back to
18 the front?

19 A. Correct.

20 Q. So, would that be consistent, Doctor, if I
21 have been hit by a gun -- or I've been hit by some
22 shotgun pellets. I'm falling to the ground. Would
23 that be consistent with the grazing or the shot coming
24 in at sort of this angle? That's hard to -- probably
25 blocking your aim.

1 So, if you're falling to the ground,
2 would it be consistent with this sort of angle and
3 trajectory?

4 A. Yes.

5 Q. Okay. Were you able to tell a distance on
6 this wound?

7 A. Yes.

8 Q. Okay. And what was the distance on this
9 wound?

10 A. Less than nine feet or I should say less than
11 three meters. In this instance, I see significant
12 stippling which would bring it down from the three
13 meters that I previously discussed, as well as the
14 early separation of the shot mass producing some
15 individual wounds as well as a central wound.

16 Q. Okay. Looking at wound -- we're on E. All
17 right. Wound E comes in -- looking at State's Exhibit
18 105. This is a wound -- is this the wound that we see
19 in State's Exhibit 105?

20 A. Yes.

21 Q. Okay. And are we looking at the entrance or
22 exit here?

23 A. Entrance.

24 Q. Okay. And I notice that we sort of have one
25 big wound, if you will, and then three smaller sort of

1 triangulated. What does that indicate?

2 A. So, that indicates separation beginning to
3 occur of the shot mass, which indicates that this --
4 the muzzle of the gun was greater than say four to five
5 feet away based strictly on that component of the
6 wound.

7 Q. So, this entrance wound is where on sort of
8 the back side, if you will, Dr. Hines?

9 A. It's on the small of the back on the left side
10 immediately above the left buttock.

11 Q. Okay. Were you able to determine an exit
12 wound for this wound?

13 A. Yes. So, the exit wound I attributed to this
14 particular entrance wound was on the left upper chest.
15 This wound path intersected with that of Wound B, in
16 that both wounds shared a common area of exiting on the
17 left upper chest.

18 Q. Would this wound also be consistent with what
19 we were just describing about if somebody is falling
20 the directionality of that wound coming from the back
21 -- lower back side and exiting up towards the chest
22 area as if they were falling?

23 MR. DAVIS: Objection, Your Honor, asked
24 and answered. I think the same question was asked
25 about this wound.

1 THE COURT: Overruled.

2 A. Yes.

3 Q. (BY MS. BARD) Okay. Would this -- how would
4 you classify this wound as a lights-out, significant
5 wound or more of a flesh wound?

6 A. It's a significant wound. I don't think it's
7 immediately incapacitating and it's not as severe as
8 the gunshot wound of the armpit that injured the aorta
9 and lungs.

10 Q. Okay. Did this wound affect any of the organs
11 down in sort of the southern half the body?

12 A. Yes. I noted injuries to the stomach, spleen,
13 liver and left kidney.

14 Q. Dr. Hines, looking at the directionality of
15 this and the triangulation, where it exited and what it
16 went through, does this wound seem like it could have
17 been caused by somebody standing up?

18 A. Caused by --

19 Q. I'm sorry. Could this have happened to
20 someone standing up? Not caused by.

21 A. This wound seems unlikely to have been
22 sustained while the decedent was in a standing upright
23 position. Because of the relatively extreme vertical
24 component of the directionality that would place the
25 muzzle of the gun essentially near someone's feet,

1 which would be unusual in a standing position. So, I
2 think it's unlikely.

3 Q. Okay. Moving on to Exhibit F. Exhibit F as
4 we see is to the right buttock area, correct?

5 A. Correct.

6 Q. Okay. Looking at State's Exhibit 106, what
7 are we looking at here?

8 A. This is a close-up photograph of that shotgun
9 wound. And you can see that it differs from the other
10 shotgun wounds in that there's clear, very small holes
11 surrounding the central defect as opposed to the larger
12 holes surrounding central defects in some of the other
13 wounds.

14 Also this wound features a shot cup,
15 which is made of translucent white plastic partially
16 protruding from the wound.

17 Q. Would that be consistent with what we see
18 here, for example, in State's Exhibit 91 of a shot cup
19 that was protruding from her buttocks area?

20 A. Yes.

21 Q. Okay. So, the jury can get a better -- what
22 we see here is this sort of a piece of plastic, is
23 actual something that looks similar to this in
24 State's 91.

25 A. Yes.

1 Q. Okay. Was this an entrance or exit wound?

2 A. Entrance.

3 Q. Okay. Did this wound have an exit wound?

4 A. No.

5 Q. Okay. When we were looking at the x-ray
6 photos of the one of the pelvis area and the buttocks,
7 would this be where all of those little pellets that we
8 saw -- would this be where that wound was?

9 A. Yes.

10 Q. Okay. Are you able to tell us distance based
11 on this wound?

12 A. I believe the muzzle of the shotgun was
13 between five and eight feet from the surface of her
14 skin.

15 Q. Moving on to no. 7, Shot G. Shot G is best
16 indicated by Page 3 of your diagrams to the left arm,
17 correct?

18 A. Yes.

19 Q. Okay. Looking at State's Exhibit 107. All
20 right.

21 We'll start with State's 107. Are we
22 looking at the entrance or exit in State's 107?

23 A. Entrance.

24 Q. And is that based on the circular part of the
25 hole of the injury and the -- this little red stippling

1 dots?

2 A. Yes.

3 Q. Okay. Where did that wound exit to?

4 A. The back of the forearm.

5 Q. Okay. So, looking at State's Exhibit 108, is
6 that the exit wound?

7 A. Yes.

8 Q. Okay. Were you able to tell a direction as to
9 this wound?

10 A. Yes.

11 Q. What was the direction of the left arm wound?

12 A. So, with the body in the anatomic position --
13 and I should say that all of these directions are
14 related to the body in the position as it's shown on
15 the diagram. Which is a somewhat unnatural position
16 for the arms. Because the arms are held at the side
17 with the palms facing forward in the anatomic position.

18 The direction was back to front and
19 slightly downward, that is toward the fingers.

20 Q. Would this wound be more horizontal or was
21 this wound more vertical?

22 A. Horizontal.

23 Q. Okay. Are you able -- are you able to tell
24 distance in this wound?

25 A. Yes. I believe this was under three meters

1 based on the presence of stippling. Unfortunately, I
2 can't say much more than that other than it was most
3 likely greater than three to four feet because there
4 was a satellite entrance wound that suggests that the
5 shot mass had begun to disperse prior to striking her
6 arm.

7 Q. Dr. Hines, is it typical for your office, when
8 performing an autopsy, to do what we call an ID shot?

9 A. Yes.

10 Q. Or what would be the identification shot?

11 A. Correct.

12 Q. Okay. And is this the identification shot
13 that your office made in regards to this case involving
14 Agnes Whitaker-Vasquez?

15 A. Yes.

16 Q. Okay. Dr. Hines, after having looked through
17 all of those wounds and all of those injuries, do you
18 have a determination as to which or in combination of
19 the wounds that Agnes Whitaker-Vasquez received was the
20 wound that killed her?

21 A. All of the injuries contributed to her death.
22 I can say that the most severe wound was gunshot wound
23 or Shotgun Wound B, the one of the right axillary
24 region.

25 Q. Okay. Dr. Hines, in your expert opinion, do

1 you believe that a shotgun is a deadly weapon?

2 A. Yes.

3 Q. Do you believe that a shotgun is capable of --
4 and in this case did cause the death of Agnes
5 Whitaker-Vasquez?

6 A. Yes.

7 Q. Okay.

8 MS. BARD: At this time, Your Honor, I'm
9 going to pass the witness.

10 THE COURT: All right. Ladies and
11 gentlemen, we're going to take our lunch break now.
12 The bailiffs are going to take y'all out for lunch
13 today. It will be a couple of minutes and then they'll
14 be back there to take you to lunch. When y'all return
15 from lunch, we will continue on.

16 Go with the bailiff, please.

17 (Jury out for lunch).

18 THE COURT: You can be seated. We'll be
19 on lunch break for an hour.

20 (Court recess).

21 MS. BARD: Your Honor, the defense and I
22 had talked over the lunch break about doing a quick
23 stipulation. Specifically that the complainant's body
24 in this case, that was examined by Dr. Hines, is, in
25 fact, Agnes Arnez Whitaker-Vasquez, the defendant's

1 wife, in this case.

2 THE COURT: Is that your stipulation,
3 Mr. Davis?

4 MR. DAVIS: Yes, Your Honor.

5 THE COURT: All right.

6 (Jury in).

7 THE COURT: Please be seated.

8 Mr. Davis?

9 MR. DAVIS: May it please the Court.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. DAVIS:

13 Q. Dr. Hines, good afternoon.

14 A. Good afternoon.

15 Q. You and I have met before.

16 A. Yes, we have.

17 Q. I think we've met at least on two occasions
18 before.

19 A. Yes.

20 Q. And the last occasion, we came down to the
21 medical examiner's office and sat down and talked to
22 you.

23 A. Correct.

24 Q. And you went over your findings in this case
25 with us.

1 A. Yes, I did.

2 Q. And we thank you for taking time out of your
3 schedule, sir, and sitting down with us and going over
4 everything. We appreciate that.

5 A. You're very welcome.

6 Q. And when we sat down, we went over -- and I
7 think we talked a lot about distances basically when we
8 met, right?

9 A. We did.

10 Q. It was almost the focal point of our
11 discussion where the distances of the different shots.

12 A. Yes.

13 Q. Now, you've been with the medical examiner's
14 officer here in Harris County for how long, sir?

15 A. Nearly eight years.

16 Q. And prior to that, you have some training and
17 experience also doing pathology.

18 A. Yes.

19 Q. Could you tell the jury a little bit about
20 that training and experience, sir?

21 A. So, prior to my employment here, I received
22 training in forensic pathology during a one-year
23 forensic pathology fellowship and Albuquerque, New
24 Mexico. And participated in a five-year residency in
25 pathology in San Francisco.

1 Q. So, for about 14 years you've been working as
2 -- doing pathology work.

3 A. Correct.

4 Q. And you've been doing autopsies during that
5 time.

6 A. Yes.

7 Q. Would you say you've done hundreds of
8 autopsies?

9 A. Yes.

10 Q. Or would you say -- would it be closer to the
11 thousand range now?

12 A. Yes, thousands.

13 Q. And if I'm not mistaken, they are often days
14 where you do multiple autopsy in one day.

15 A. Correct.

16 Q. And part of the reason you do this report is
17 to document your findings.

18 A. Yes.

19 Q. You're documenting your findings with reports
20 as well as with photographs as well?

21 A. Yes.

22 Q. And then on occasion you take x-rays as well.

23 A. Yes.

24 Q. And on some cases -- I don't think this was
25 one of them. But on some cases, you actually consult

1 with pathologists -- I'm sorry -- other people in your
2 office. For example, you may look at someone who's a
3 bone specialist, like an anthropologist.

4 A. That's right.

5 Q. And you oftentimes -- in almost every case you
6 consult with a toxicologist, right?

7 A. On many cases we do, not necessarily on
8 homicide that don't involve toxic ingestion as a cause
9 of death.

10 Q. Yes, sir.

11 And in all other cases, you do have a
12 toxicology screening done on the body.

13 A. No. In many cases we don't perform any
14 toxicology testing.

15 Q. I see.

16 In this case, you had toxicology testing
17 done.

18 A. As a matter of routine, yes.

19 Q. And all of the tests came back negative, of
20 course.

21 A. Yes.

22 Q. Usually you find that out because it can help
23 you or impact the cause of death, right?

24 A. The toxicology test may help in some instances
25 determine the cause of death. In the homicide panel

1 instances such as this, the toxicology testing in no
2 way assists me in my particular analysis of the case.

3 Q. Yes, sir.

4 Even if the person had been impaired, the
5 gunshots, et cetera, would have been the cause of
6 death.

7 A. Absolutely correct.

8 Q. And in this situation -- we talked before and
9 you were telling me before that this -- you had never
10 seen this many gunshots.

11 A. I've never had a case of this many shotgun
12 wounds, correct.

13 Q. So, this was something that was unusual in
14 terms of the number of gunshot wounds that you saw.

15 A. Yes.

16 Q. And it was a considerable amount of damage
17 done to the body.

18 A. Yes.

19 Q. And oftentimes with shotguns, depending on the
20 type of shotgun and the type of shell that's used, it
21 will reflect the type of damage that may have been
22 inflicted on the body.

23 A. Yes.

24 Q. Now, you talked a little bit earlier about
25 finding wadding inside some of the wounds.

1 A. Yes.

2 Q. Now, wadding is the packaging that's inside of
3 a shotgun shell, right?

4 A. Yes.

5 Q. And wadding is dispelled once a shotgun is
6 fired.

7 A. That's correct.

8 Q. The wadding doesn't always go inside the
9 body --

10 A. No.

11 Q. -- isn't that right?

12 It would matter what distance the shot as
13 from to determine whether or not the wadding was inside
14 the body.

15 A. Absolutely.

16 Q. If the shotgun was -- what distance, sir,
17 would it require for the wadding to be inside the body?

18 A. Five to eight feet or less.

19 Q. Or less, yes, sir.

20 So, in those cases -- there were some
21 cases where you did not find wadding inside the shots.
22 Would it be safe to assume, sir, that in those cases
23 where there wasn't wadding and those wounds where there
24 wasn't any stippling, that -- that the distance of the
25 shot was greater than eight feet?

1 A. In cases of penetrating wounds, yes. In cases
2 of perforating wounds where an exit is present, there
3 remains the possibility that wadding may have exited
4 and therefore, not been found within the wound track.

5 Q. I understand.

6 But oftentimes you can tell by the wound
7 trajectory whether or not wadding passed through the
8 wound. Would that be accurate, sir?

9 A. I can't tell by the appearance or direction of
10 the wound track if wadding had been temporarily within
11 that wound track.

12 Q. In this case the different shotgun wounds were
13 all at varying distances; is that right?

14 A. I think that the chances of more than one
15 wound being at identical distance would be slim to
16 none.

17 Q. That's right.

18 And in this case -- I know you can't say
19 exactly the distance between the wounds. But based on
20 the evidence that you found, the wounds were in close,
21 far away, close. They were very varying; is that
22 right?

23 A. Yes. In my opinion they varied from
24 approximately four to nearly 10 feet.

25 Q. And in addition, they varied in terms of

1 direction as well.

2 A. Yes.

3 Q. Some were going downward. Some were going
4 upward; is that right?

5 A. I know some were going upward. I'd have to
6 double-check to see if some were going down.

7 MR. DAVIS: Your Honor, can I approach
8 the view finder?

9 THE COURT: Yes, sir.

10 A. Yes. I believe the one in the arm I listed as
11 slightly downward.

12 Q. (BY MR. DAVIS) And I'm putting up here what's
13 in evidence as State's Exhibit 97, right? This is part
14 of your pathology report. And I think this is Page
15 No. 11 --

16 A. Yes.

17 Q. -- of your pathology report for the record.

18 A. Yes.

19 Q. Right.

20 And this page contains sort of a summary
21 of what your findings are.

22 A. Yes, exactly.

23 Q. All right. So -- so, if someone wanted to
24 capsule or summarize what your findings were during
25 the course of your autopsy, these two pages, Page 11

1 and Page 12 would be a good source for someone to look
2 to.

3 A. Yes.

4 Q. And in each one, you describe each wound as
5 you break them out, right?

6 A. Yes.

7 Q. You say shotgun wound of the head. And then,
8 you know, for No. 1, you say multiple gunshot wounds.
9 And I'm assuming you're saying that that's the cause of
10 death, right?

11 A. Correct.

12 Q. And then you break them down into A, B, C and
13 D. True?

14 A. And -- and more.

15 Q. Yes, sir.

16 D, E, F and G.

17 A. Yes.

18 Q. Right.

19 You list all seven of the gunshot wounds
20 that you noted as seven separate shots.

21 A. Yes.

22 Q. And when you do that, you list them out A
23 through G and then you draw a diagram. And just for
24 purposes of the jury when they're deliberating and
25 looking at this, they'll be able to it figure out.

1 You draw a diagram and you list all of
2 the different areas on the diagram. I'm showing you
3 what's marked as Page 1 of 3 of a diagram. You've got
4 marked A, right?

5 A. Yes.

6 Q. And then you've got marked B, right?

7 A. Yes.

8 Q. And all of these instances that are on the
9 diagram correspond to what's in your report.

10 A. Correct.

11 Q. Is that accurate?

12 A. Yes.

13 Q. All right. So, if you look at each of these
14 different -- now, you would agree with me that A, B, C,
15 D, E, F, G does not denote an order, right?

16 A. That's right. My designation is purely
17 arbitrary based on the location on the body.

18 Q. Right.

19 And based on each alphabet, the direction
20 of travel as well as the area of impact all varies.
21 True?

22 A. True.

23 Q. There's one wound based on how the exit wound
24 is that you can tell was one wound that was inflicted
25 while she was on the ground; is that right?

1 A. There is a wound with an atypical, what
2 appears to be a shored exit.

3 Q. And would that generally occur because if an
4 object is against something hard and something is
5 coming out, it will blunt up against something that
6 hard.

7 A. That's right. a supporting surface and
8 contact with the area of the body through which the
9 projectile exits can cause the skin surrounding that
10 exit wound to become abraded. As I noted in the
11 Gunshot Wound, I believe, it's D exit.

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

14 THE COURT: Yes, sir.

15 Q. (BY MR. DAVIS) I want to show you what's in
16 evidence as State's Exhibit 103. Does State's
17 Exhibit 103 show that exit wound?

18 A. Yes, it does.

19 Q. All right. Is it this area here?

20 A. Yes.

21 MR. DAVIS: If I may publish this, Your
22 Honor?

23 Q. (BY MR. DAVIS) Is this the area here?

24 A. Yes, it is.

25 Q. Okay. And that's that abraded area that would

1 have been facing to a hard subject -- a hard object,
2 right?

3 A. A supporting surface of some sort.

4 Q. It could have been a wall, right?

5 A. Yes.

6 Q. Or it could have been the ground?

7 A. Could have been.

8 Q. Or the floor?

9 A. Correct.

10 Q. Right.

11 And based on the angle of that -- the
12 travel of it, the person who would have fired that shot
13 would have been standing behind her while she was
14 either on the ground or really close to it.

15 A. If she were on the ground face down, then the
16 individual firing the weapon would have been to her
17 right, above and toward her feet.

18 Q. Now, there were no shots directly to the head;
19 is that right?

20 A. A graze wound the head.

21 Q. Yes, sir.

22 But in terms of a shot directly to the
23 head, meaning a shot to the head -- there were no shots
24 directly to the head?

25 A. I take that to mean a perpendicular or nearly

1 perpendicular shot. You're correct.

2 Q. Yes, sir.

3 A. There were not.

4 Q. And there were no shots directly to the heart;
5 is that right?

6 A. One of the shots caused injuries near the
7 heart adjacent to the heart. But I do not believe the
8 heart itself was injured.

9 Q. Now, the shot that caused injury near the
10 heart, was a shot that was from the side.

11 A. That's correct.

12 Q. And that shot from the side, you would agree
13 with me, was a shot of buckshot. True?

14 A. Yes.

15 Q. And when the buckshot traveled through the
16 body, the buckshot spread out; is that right?

17 A. Yes.

18 Q. And so, there were areas where the buckshot
19 may have impacted the side. And upon impact the
20 different pellets spread in different directions.

21 A. Yes.

22 Q. And on that particular occasion --

23 MR. DAVIS: And may I approach the
24 witness again, Your Honor?

25 THE COURT: Yes, sir.

1 Q. (BY MR. DAVIS) I'm going to show you what's
2 marked as State's Exhibit 103 again. And ask you: Is
3 this the shot to the side?

4 A. Yes.

5 Q. Okay. So, the shot to that side, do you know
6 if it was traveling upward or downward?

7 A. Slightly upward.

8 Q. All right.

9 A. So, is this the shot to the side, sir?

10 A. Yes.

11 MR. DAVIS: If I may publish to the jury,
12 Your Honor?

13 THE COURT: Yes, sir.

14 Q. (BY MR. DAVIS) And that area of the side,
15 just to be clear, was traveling slightly upward.

16 A. Yes.

17 Q. Which was a different direction of travel than
18 this injury right, right?

19 A. They were different directions.

20 Q. And once that entered the body, it spread and
21 went in three different directions. And one of those
22 pellets went close to the heart.

23 A. Some of the pellets exited. Some remained in
24 the body.

25 Q. Dr. Hines, is it possible that some of the

1 shots where you did not find wadding could have been
2 shots or injuries that could have been inflicted from
3 ricochets?

4 A. I can't determine if perforating or through
5 and through injuries where I did not recover
6 projectiles were associated with ricochet. I can't
7 tell.

8 Q. All right. So, some of the injuries that you
9 saw, could have been associated with ricochets?

10 A. Yes.

11 Q. In fact, when you have buckshot -- and you
12 recovered buckshot -- multiple pieces of buckshot,
13 right?

14 A. Yes.

15 Q. They're actually the size of bullets. Would
16 that be accurate?

17 A. Yes.

18 Q. In fact, they're oftentimes bigger than some
19 bullets.

20 A. Typically we think of buckshot and small
21 caliber projectiles as being similar size.

22 Q. So, someone has a .22 caliber weapon, that
23 would be similar to the buckshot from the 12-gauge?

24 A. Yes.

25 Q. And is it your experience in dealing with

1 autopsies, that the generally buckshot will spread and
2 you'll have multiple projectiles that would be blunt?

3 A. Yes.

4 Q. So, you may have a surface that's hit by
5 buckshot and may leave two or three indentions of
6 damage; is that right?

7 A. Could you please rephrase the question?

8 Q. You may have a person who has two or three
9 entrance wounds that could be caused from one shot of
10 buckshot; isn't that right?

11 A. Yes.

12 Q. And in your experience, you would not be able
13 to chart if it was an individual wound or if it came
14 from the same shot.

15 A. It's difficult to say with 100 percent
16 certainty that -- which shot every hole in a multiple
17 shotgun wound case is associated with.

18 Q. I see.

19 A. And in this instance, I associated small holes
20 with larger ones if they were near one another in an
21 area of stippling. If they were symmetrically
22 surrounding a larger hole, I attributed those holes to
23 that particular shotgun wound.

24 I can't say with 100 percent certainty
25 that some of the holes I attributed to an individual

1 shotgun wound weren't, in fact, caused by an arrant
2 projectile such as a buckshot pellet. I think it's
3 unlikely in that all of the compound shotgun wounds I
4 saw, appeared similar to other shotgun wounds that I've
5 seen.

6 And the same thing would go for
7 stippling. It's impossible to say with 100 percent
8 certainty that every bit of stippling is associated
9 with a particular wound. But I feel confident that my
10 attribution of stippling to individual shotgun wounds
11 is correct because it appeared typical. But again, I
12 can't be 100 percent.

13 Q. Now, you found some evidence of stippling,
14 right?

15 A. Yes.

16 Q. But you didn't find any evidence of soot.

17 A. I did not find soot.

18 Q. And usually you'll find soot deposits if a gun
19 barrel is relatively close. Would you agree?

20 A. Yes, within say a foot or less.

21 Q. All right. So, you've got someone who puts a
22 gun right up to somebody and shoots it, then oftentimes
23 you'll find soot inside of the wound.

24 A. Yes.

25 Q. If it's further distance away, in order to --

1 in a shotgun to about five feet away, you might find
2 stippling?

3 A. You might find stippling from filler up to
4 nearly 10 feet --

5 Q. Yes, sir.

6 A. -- away.

7 Q. But the closest perimeter would be about where
8 you would find stippling if the shotgun was right up on
9 someone as well, right?

10 A. Within an inch or two, you begin to see
11 significant stippling.

12 Q. Yes.

13 But up to 10 feet away, you could see
14 some stippling.

15 A. That's correct and buckshot.

16 Q. At that distance are you familiar with the
17 spread of buckshot? How soon buckshot would spread?

18 A. Yes. Buckshot begins, I believe, to spread
19 and cause satellite injuries in the roughly five foot
20 range, give or take.

21 Q. Now, here in some of the injuries you noted
22 there wasn't any stippling; isn't that right?

23 A. Yes.

24 Q. If I'm not mistaken, I think it was three
25 injuries that you noted. Three wounds that you saw.

1 And we can look at them, Doctor. You can
2 tell me, how many of them were -- that you saw that you
3 did not see any stippling?

4 A. I saw stippling on Gunshot Wound A. I saw
5 stippling on Gunshot Wound B. I did not see stippling
6 in association with Gunshot Wound C. I saw stippling
7 with Gunshot Wound D and Gunshot Wound E. I did not
8 see stippling with Gunshot Wound F. And I did see it
9 with G.

10 So, two wounds I observed were devoid of
11 stippling.

12 Q. All right. Now, Doctor -- Dr. Hines, you told
13 us earlier that there were different categorizations
14 that you would consider certain deaths, right?

15 I think one was homicide. The other was
16 accident. It was suicide and then it was undermined.

17 A. That's right, in addition to natural.

18 Q. In addition to natural causes of death.

19 In your training and experience, have you
20 been involved in cases that appeared to be suicides
21 that you've actually ruled as homicides?

22 A. I personally have not had a case of that
23 nature.

24 Q. You're familiar with cases like that.

25 A. I am.

1 Q. In your training and experience, you're
2 familiar with situations where a death might appear one
3 way, but actually be ruled a homicide or may not be
4 ruled a homicide after further investigation.

5 A. Yes.

6 Q. So, usually when you get cases that come in --
7 let me back up.

8 Is it often that you have contact with
9 homicide detectives?

10 A. Yes. It's the norm rather than the exception
11 in these sorts of instances with the case appearing to
12 be a homicide.

13 Q. Yes, sir.

14 Do you have situations where homicide
15 detectives make contact with you in cases that people
16 think might have been suicides?

17 A. Yes, very commonly.

18 Q. So, it's more routine for it -- even if it's
19 thought of being a suicide, that homicide detectives
20 would do thorough investigation to find out information
21 to rule one way or the other.

22 A. That's right. They will investigate
23 suspicious deaths that often appear to be initially as
24 suicides as well as ones appearing to be homicides.

25 Q. Okay. Sometimes during your investigation

1 when you're doing your autopsy, do you -- to figure out
2 what happened, are you sometimes given information from
3 the police?

4 A. Yes.

5 Q. Do you oftentimes will get statements or
6 descriptions from the police that guide you during your
7 autopsy?

8 A. Yes.

9 Q. It's helpful to know what information the
10 police has, 'cause you know what evidence to look for,
11 right?

12 A. In some cases, yes.

13 Q. In some cases it's important to know what
14 evidence -- so, you'll know to confine your
15 investigation, whatever tests you might order as well,
16 right?

17 A. Yes.

18 Q. For example, in some cases you can order
19 gunshot residue tests, right?

20 A. That's right. If the fact that the death did
21 not involve a firearm, if it's not clear, and we were
22 informed that a firearm may have been fired by the
23 deceased, we would in that instance consider getting
24 gunshot residue samples for possible analysis.

25 Q. Yes, sir.

1 And sometimes you won't know what
2 investigation to do unless you get that information
3 from the police. True?

4 A. Yes.

5 Q. So, it's oftentimes incumbent upon the police
6 to interview suspects quickly so that you can have that
7 information for your autopsy. Would that be accurate
8 or a fair statement?

9 A. I think that's going to be beyond my field of
10 expertise.

11 Q. I understand.

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

14 THE COURT: Ms. Bard?

15 MS. BARD: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. BARD:

18 Q. Dr. Hines, the wounds that did not have
19 stippling were C and F, correct?

20 A. Yes.

21 Q. C was covered by a sports bra and F was
22 covered about her pants.

23 MR. DAVIS: Objection leading, Your
24 Honor.

25 THE COURT: Sustained.

1 Q. (BY MS. BARD) Were Wound C and F, the ones
2 that didn't have stippling, was she wearing clothes at
3 those wounds?

4 A. The sports bra covered the actual wound, but
5 not the adjacent skin which is where stippling is often
6 deposited not necessarily in the wound, but around the
7 wound. And the area surrounding F was covered as well
8 the skin surrounding Wound F.

9 Q. Well, correct me if I'm wrong if -- when we
10 were talking about Wound C, we were talking about
11 because of the angle of the wound that she was most
12 likely not standing, which require her to be in either
13 a laying or falling position.

14 MR. DAVIS: Objection to leading.

15 THE COURT: Sustained.

16 Q. (BY MS. BARD) Do you remember that part of
17 the -- that they were discussing?

18 MR. DAVIS: Again, objection to leading,
19 Your Honor.

20 THE COURT: Sustained.

21 Q. (BY MS. BARD) Is it possible that as the
22 Wound C is coming into the body, because of falling or
23 laying, that her -- the pants, her bra whatever, are
24 sort of coming together as she's falling to prevent
25 some of that stippling from being adjacent to the

1 wound?

2 A. Yes.

3 MS. BARD: Pass the witness, Your Honor.

4 THE COURT: Mr. Davis?

5 RECROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q. I mean, Doctor, you don't really know what
8 happened in that scene; is that right?

9 A. Correct.

10 Q. You pretty much can only talk about the damage
11 done to the body right?

12 A. I disagree. I can give informed opinions
13 about the distance.

14 Q. Yes, sir.

15 I didn't mean to minimize what you were
16 saying. I apologize.

17 I merely just said that you could only
18 draw inferences from what you have and you gather from
19 the body.

20 A. Yes.

21 Q. All right. And from those inferences, you can
22 tell that this was abnormal in terms of your training
23 and experience.

24 A. It was an unusually large number of shotgun
25 wounds, yes.

1 Q. And there was no wound directly to the head --

2 MS. BARD: Objection.

3 Q. (BY MR. DAVIS) -- essentially someone trying
4 blow out the brain.

5 MS. BARD: Objection to asked and
6 answered, Your Honor.

7 THE COURT: Sustained.

8 Q. (BY MR. DAVIS) There wasn't a wound directly
9 to the chest aiming towards the heart either, was
10 there?

11 MS. BARD: Objection to asked and
12 answered.

13 MR. DAVIS: I haven't asked that one,
14 Your Honor.

15 THE COURT: Sustained.

16 MR. DAVIS: I don't have anything else,
17 Your Honor.

18 THE COURT: Ms. Bard?

19 MS. BARD: Nothing further from this
20 witness.

21 THE COURT: All right. Thank you,
22 Doctor. You may step down and step outside.

23 Call your next witness, please.

24 MS. BARD: Your Honor, at this time the
25 State rests.

1 THE COURT: Okay. Ladies and gentlemen,
2 the State has rested its case, which means there's some
3 business that I need to take up with the attorneys
4 outside your presence. So I need you to step to the
5 back for a few moments. As soon as I get that done,
6 we'll be back with you.

7 (Jury out).

8 THE COURT: You can be seated.

9 MS. BECKNER: Your Honor, at this time --

10 THE COURT: Hold on a moment. Let the
11 doctor out of here so he can get on his way.

12 Yes, ma'am?

13 MS. BECKNER: Your Honor, at this time
14 the defense would move for a directed verdict based on
15 the State has not proved all the elements of the
16 offense beyond a reasonable doubt.

17 THE COURT: All right. Your motion for
18 directed verdict will be denied.

19 We'll proceed to the defense case. Are
20 y'all going to have witnesses? I mean, I know we've
21 talked about that, but so I will know? You are?

22 MR. DAVIS: Yes, Judge. We have
23 witnesses.

24 THE COURT: Are they here? Are they
25 ready? Do y'all need a moment to check on them or --

1 MR. DAVIS: There are some that are here.
2 If I can have a moment just to see who's here.

3 THE COURT: Sure. Let's take five
4 minutes. Y'all get yourself lined up and ready to go.

5 (Court recess).

6 THE COURT: All right. Let's go.

7 (Jury in).

8 THE COURT: All right. You may be
9 seated.

10 The State has rested. What says the
11 defense?

12 MS. BECKNER: At this point the defense
13 would call Dr. Karim Alkadhi.

14 MS. BARD: Your Honor, may we approach?

15 THE COURT: Yes.

16 (Bench conference on the record).

17 MS. BARD: Your Honor, since I don't know
18 their order, I don't know when to do this. But I would
19 like to take this witness on voir dire as to the
20 relevance of his testimony and what he's going to
21 testify to.

22 It's my understanding that he is an
23 expert that will be talking about general PCP stuff.
24 And I would like some time to develop what his
25 testimony may or may not be in this trial and whether

1 that becomes relevant to this case. Because at this
2 point, nobody has said that the defendant for sure took
3 PCP. He says in his statement that, you know, he had
4 been on it before. He says that he may have been on it
5 that day. But at this point, I'm not sure that becomes
6 relevant.

7 MR. DAVIS: She said it's in his
8 statement -- he says that in his statement that he was
9 on PCP. So -- and the whole issue -- all the witnesses
10 were coming in and talking about him being under the
11 influence of drugs. We had one witness that they put
12 on talk about PCP every day. That it looked like he
13 was high on the day that this happened. So, I mean,
14 how can she say it's not relevant? I don't know. But,
15 you know, it is what it is, Judge.

16 He's an expert pharmacologist with the
17 University of Houston. And we anticipate that he will
18 talk about PCP and other drug effects as well. There's
19 been testimony offered by the State --

20 THE COURT: Okay.

21 MR. DAVIS: -- to that effect as well.
22 So, we'd be entitled to rebut it with our expert
23 testimony as well.

24 MS. BARD: And in all fairness, if my
25 understanding is correct, this witness never met with

1 the defendant. Has no idea anything about whether or
2 not -- what PCP does to him, how it effects him, how it
3 could possibly generally have any impact on him at all
4 because he never spoke with the defendant.

5 MR. DAVIS: But we had State testimony
6 about the effect of PCP.

7 MS. BARD: Those people knew the
8 defendant.

9 MR. DAVIS: But they talked generally
10 about the effects of PCP. That was offered by State.
11 We can offer it alone just to rebut what she says.

12 THE COURT: I can talk now?

13 MR. DAVIS: Yes, sir.

14 THE COURT: Okay. So, would you like to
15 take him on voir dire about his experience and his
16 background and his training and his qualifications to
17 testify?

18 MS. BARD: About PCP, yes.

19 THE COURT: Okay.

20 MS. BARD: And what -- the opinion he may
21 be trying to get at here, what it is.

22 THE COURT: Okay.

23 MS. BARD: He didn't to a report, right?

24 MR. DAVIS: No. He didn't do a report.

25 But he's a full professor at University

1 of Houston, Judge.

2 THE COURT: Well, let me tell you -- of
3 course, I haven't heard from him. But my inclination
4 is to let him testify about the effects of PCP.
5 Doesn't mean that he's qualified. And I think the
6 State is entitled to take him on voir dire and test his
7 qualifications.

8 If you want to do outside the presence of
9 the jury, I will send them back out and we will do
10 that. So, basically what I'm saying is I'm going to
11 let you take him on voir dire. My inclination is to
12 let him testify. So, I'm going to go through the
13 process if that's what y'all want to do.

14 And I'm not -- I'm not fussing either
15 way. Just y'all tell me what you want to do.

16 MS. BARD: I would like to take the
17 witness on voir dire.

18 THE COURT: Outside the presence of the
19 jury?

20 MS. BARD: Yes, sir.

21 THE COURT: Okay.

22 (End of conference).

23 THE COURT: All right. Ladies and
24 gentlemen, sorry to do this. But I'm going to have to
25 ask y'all to step to the back, please.

1 (Jury out).

2 HEARING OUTSIDE THE PRESENCE OF THE JURY

3 THE COURT: You can be seated.

4 And, Doctor, you can come up.

5 It's Doctor, right?

6 MS. BECKNER: Yes, sir.

7 THE COURT: All right.

8 MS. BARD: Thank you, Judge.

9 DR. KARIM ALKADHI,

10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. BARD:

13 Q. Good afternoon, sir. How are you doing?

14 A. Fine. Thank you.

15 Q. Okay. My name is Lauren Bard. And you and I
16 spoke a couple of weeks ago. Do you remember?

17 A. Right. Sure.

18 Q. Okay. We talked a little bit about your
19 background and what we -- you were contacted for in
20 this case.

21 A. Right.

22 Q. Okay. And it's my understanding that you
23 didn't write a report in this case, correct?

24 A. No.

25 Q. In fact, you never met with the defendant in

1 this case at all, did you?

2 A. Never.

3 Q. The only information you have about this case
4 is from the defense counsel at a meeting y'all had.

5 A. Right.

6 Q. Okay. And it's my understanding that you are
7 a proffer of pharmacology at U of H.

8 A. That's correct.

9 Q. When was the last time you dealt with PCP?

10 A. In my profession, actually I don't. I have
11 been teaching drugs of abuse, toxicology and
12 pharmacology, the drugs of abuse for the past, I should
13 say, at least 20 years.

14 Q. Does that include PCP?

15 A. Includes PCP.

16 Q. All right. Do you remember telling me that
17 you haven't dealt with PCP and the drugs or the effects
18 of that for several years?

19 A. Remember -- I think -- I don't -- I remember
20 correctly, I told you that I actually had maybe one
21 publication on the effect of PCP in tissue or animal --
22 not in animal. So, I -- I have no experience with PCP
23 effect on a human, per se. Because all of my research
24 actually was animal -- experiment on animals.

25 Q. Well, and if I remember correctly, in fact,

1 you told me that you don't work with PCP and --

2 MS. BECKNER: Objection, improper
3 impeachment, Judge. At this point, she's testifying
4 for him.

5 THE COURT: Overruled.

6 She's asking him questions on voir dire
7 regarding his ability to be able to testify about this
8 subject. So, I'll certainly allow some leeway for
9 that.

10 Go ahead.

11 MS. BARD: Thank you, Your Honor.

12 Q. (BY MS. BARD) If I remember correctly, what
13 you talked about was that you had done a study on --
14 back in the '80s regarding PCP and enzymes.

15 A. That's right.

16 Q. Is that right? Okay.

17 A. Yes.

18 Q. Since then you've never done any other study?

19 A. Not with PCP.

20 Q. Okay. And, in fact, you -- I think you said a
21 moment ago -- and I just want to make sure I heard it
22 correctly -- you don't know the effect that PCP has on
23 humans.

24 A. No, I know that. It's my business. I teach
25 that. And I, you know, research that. So, I have no

1 actual physical experience with people who have been on
2 PCP.

3 Q. So, your study then would be limited to what
4 you've read and other reports?

5 A. Right and what I've taught.

6 Q. Based on what you've read of other people's
7 work?

8 A. Exactly.

9 Q. All right. Are you familiar with the term
10 wet?

11 A. No, not really.

12 Q. Okay. Are you familiar with the term fry in
13 regards to drugs?

14 A. No.

15 Q. If I told you that those were the common
16 street names for PCP on either cigarettes or weed,
17 would that surprise you?

18 A. No.

19 Q. Okay. But you've never heard of those terms?

20 A. Well, I've never heard of it because there's
21 so many names for PCP. I mean, you're talking about
22 over scores of various street names.

23 Q. How familiar are you with the PCP and what's
24 going here in the Houston, Harris County area?

25 A. I'm not familiar.

1 Q. How familiar are you, sir, with regards to PCP
2 in combination with other drugs?

3 A. I know that at least 90 percent of the people
4 who are under the influence of PCP and they go to the
5 emergency rooms, they usually have another drug
6 together with PCP. It could be amphetamine or cocaine
7 or crystal meth. So, it is very common to -- people to
8 have combination. That's -- makes it very difficult to
9 study the effect of PCP because it's not usually taken
10 purely as such.

11 Q. Did you do any sort of independent research in
12 this case?

13 A. I actually looked at a lot of articles. I
14 looked at videos of people who are under the influence
15 of PCP. Yes, I did.

16 Q. How do you know they're under the PCP?

17 A. That's what the -- the video says. That's
18 what the videos actually indicated.

19 Q. And was this on like You Tube or where were
20 you watching these videos?

21 A. It's usually You Tubes or others.

22 Q. So, it's possible you could have seen people
23 not on PCP, but on something completely different?
24 They just labeled it PCP.

25 A. Possible.

1 Q. How familiar are you with marijuana?

2 A. Again, academic teaching in both pharmacology
3 and toxicology.

4 Q. And is that teaching based on what other
5 people have done or based on experiments you've run?

6 A. No, other people have done.

7 Q. Sir, if I understand correctly, your main
8 field of study at this point and over the past several
9 years is in regards to hypo -- hypothyroidism,
10 Alzheimer's disease and sleep deprivation in regards to
11 behavioral neuropsychological and the molecular effects
12 of stress.

13 A. Yes. My interest is to look at the -- you
14 know, anything that effect the brain in terms of
15 diseases that can actually be relieved by something.
16 For example, one such aspect I looked at the effect of
17 exercise on Alzheimer using animal models.

18 Q. Okay. Certainly weren't using PCP?

19 A. No, not PCP.

20 Q. Okay. Certainly weren't using weed?

21 A. No.

22 Q. Okay.

23 A. No. I said actually diseases, not -- not
24 intoxication.

25 Q. Okay.

1 A. We're talking about hypothyroidism, Alzheimer,
2 sleep deprivation, chronic stress, all of these.

3 Q. Okay. Is chronic stress a disease?

4 A. You know, it is. I mean, you know -- and some
5 form of it is actually classified as disease.

6 Q. I must be under the disease every day then.

7 Okay. So --

8 MS. BARD: I have nothing further for
9 this witness, Your Honor.

10 THE COURT: Ms. Beckner?

11 MS. BECKNER: Yes, Judge.

12 CROSS-EXAMINATION

13 BY MS. BECKNER:

14 Q. Hello, Dr. Alkadhi.

15 A. Hello.

16 Q. Dr. Alkadhi, what's your title currently?

17 A. I'm full professor at the University of
18 Houston.

19 Q. How long have you been a full professor at the
20 University of Houston?

21 A. 10 years.

22 Q. Before that, what were you doing?

23 A. Was associate professor. Before that
24 assistant professor. So, it's, you know, I go -- went
25 through the ranks.

1 Q. Can you tell me about the education and
2 training that you went through to get to full
3 professor?

4 A. Okay. My -- my background actually is
5 pharmacy.

6 Q. Yes, sir.

7 A. So, I'm -- you know, I dealt with drug. And
8 then I went to the University of New York at Buffalo
9 Medical School and got a Doctorate in pharmacology.

10 And that actually, you know, made me
11 eligible to become a faculty member.

12 Q. And as a faculty member in the Department of
13 Pharmacology at U of H, what are your duties? What do
14 you do?

15 A. You know, the duty as a faculty member are
16 really three categories. No. 1 is research, which, you
17 know, it's considered 70 percent of the activity. And
18 then the other 10 percent is administrative. You know,
19 serving on committees, cetera. And the 20 percent that
20 is left is actually for teaching.

21 Q. And do you serve on any boards related to
22 pharmacology?

23 A. Not at present. I used to, you know, go to
24 NIH and, you know, be on boards and NSF, National Sens
25 Foundation.

1 MS. BECKNER: Just one moment.

2 Q. (BY MS. BECKNER) Dr. Alkadhi, in terms of
3 your research, could you tell me about the kind of
4 research that you've done on different drugs?

5 A. Right. As I mentioned my, you know, really
6 main interest is chronic stress and what it does to the
7 brain. So, we -- you know, we -- by we, I say my
8 students and myself worked on stress and how we
9 actually counter the effect of stress. And then, you
10 know, I looked at PTSD, for example, you know.

11 Q. I don't mean to cut you off. But have -- have
12 you also done research on particular illegal
13 substances, drugs?

14 A. No. No.

15 Q. But have -- maybe I'm framing research poorly.

16 Not your own studies, but have read other
17 people's studies?

18 A. Of course, yes. In the process of teaching
19 the subjects, I have to read and prepare every time I
20 teach the course.

21 Q. How much do you read when you prepare for a
22 course?

23 A. It depends, you know -- actually a lot. You
24 know, you go to many references. You pull out
25 references. You become up to date on what's new on

1 certain subjects and so on. So, it involves --

2 Q. And is this an accepted method --

3 A. Exactly.

4 Q. I'm sorry, Dr. Alkadhi. The woman in front of
5 you, Trish. She's taking down everything we're saying.
6 So, it will drive her crazy if we talk over each other.

7 A. Okay.

8 Q. So, you'll have to bear with me on that.

9 A. Yeah.

10 Q. But if you could just wait till the end of my
11 question.

12 In your -- in your research reading other
13 people's reports and research and studies, is that an
14 accepted way in academia of educating yourself on an
15 issue?

16 A. Yes.

17 Q. And -- and, Dr. Alkadhi, are you familiar with
18 the research out there, with the literature, on PCP and
19 its effects on the brain?

20 A. As I said, I actually have to do it every year
21 because I teach the course once a year.

22 Q. So, you're pretty familiar --

23 A. Yes. And when --

24 Q. -- when you read it every year.

25 A. -- when you approached me about this case,

1 actually I read more and more about it.

2 Q. And are you also similarly somewhat familiar
3 with the effects of other drugs?

4 A. Yes. I teach them too, marijuana,
5 amphetamines, cocaine, all of these.

6 Q. A pretty wide --

7 A. Yes.

8 Q. -- spectrum?

9 THE COURT: Okay. Y'all -- Doctor, y'all
10 cannot talk over each other.

11 Q. (BY MS. BECKNER) See, it's nicer when I say
12 it.

13 One moment.

14 THE COURT: Well, I can be nicer or I can
15 be worse.

16 MS. BECKNER: You're just fine, Judge.

17 Q. (BY MS. BECKNER) Just briefly, Dr. Alkadhi,
18 you mentioned that you hadn't I think -- and correct me
19 if I'm phrasing this wrong. But you hadn't done
20 studies on the effects of PCP on people. Is that
21 because there are certain rules in place about how
22 drugs are tested on people and that's why it's more
23 prevalent to read studies on the effects on animals?

24 A. Actually it's almost impossible to test the
25 effect for us, on people. You have to use animals.

1 It's -- you know, it's illegal to do it on people
2 unless it's a clinical trial, which I'm not involved
3 in.

4 MS. BECKNER: Judge, that's all we have
5 for now.

6 MS. BARD: Nothing further, Your Honor.

7 THE COURT: All right.

8 MS. BECKNER: Are you going to hear
9 argument, Judge?

10 THE COURT: I am. You're objecting,
11 so --

12 MS. BARD: I guess I'll go first.

13 Your Honor, this doctor -- is it -- it's
14 Alkadhi?

15 THE WITNESS: Alkadhi, yes.

16 MS. BARD: Alkadhi. Okay.

17 THE WITNESS: Yes.

18 MS. BARD: Dr. Alkadhi, while a --
19 clearly a pharmacologist has, in his own words, said he
20 cannot describe the effect that it has on humans, the
21 actual physical experience. His only experience about
22 that is reading articles and watching You Tube. I
23 don't feel that that's enough to qualify him to talk to
24 this jury about that. Particularly considering that
25 he's not familiar with the terms wet or fry, which is

1 pretty common knowledge for anybody down in the Harris
2 County or Houston area who knows anything about PCP and
3 its use in this area. He says he's not familiar with
4 it all here in Harris County.

5 Furthermore, the fact that he never met,
6 spoke with, talked to, has any idea about the defendant
7 and his use of PCP, I feel would be confusing
8 misleading and prejudicial to the jury based on the
9 opinions that he may give in regards to what this
10 defendant may have been experiencing, what this
11 defendant may have been feeling because he doesn't
12 know.

13 While I respect his work and I appreciate
14 the work that he does do, I don't know that he can
15 truly qualify and truly tell this jury based on just
16 reading some articles and watching You Tube about the
17 general effects of PCP on the human body.

18 THE COURT: Okay. Is that it?

19 MS. BARD: Yes, Your Honor.

20 MS. BECKNER: Your Honor, if I may just
21 have two seconds, Judge?

22 THE COURT: I'll give you three.

23 MS. BECKNER: Yes, Judge.

24 (Brief pause).

25 MS. BECKNER: At this point we would

1 argue that, first of all, under State versus Vela,
2 education is an accepted means that an expert can be
3 qualified to testify. Dr. Alkadhi doesn't just watch
4 You Tube videos and read articles, he teaches a class
5 annually for which he prepares extensively. He reads
6 the scholarly literature. These accepted academic
7 articles and this is the accepted way of educating
8 oneself on the effects.

9 We believe the argument about Harris
10 County specifically is completely irrelevant. Because
11 we're asking about the effects of PCP and other drugs
12 generally on people. It has no bearing about what's in
13 Harris County. And similarly, we're not asking him to
14 evaluate our defendant for whether he was intoxicated.
15 We're asking about the effects of PCP, which the State
16 has already put at issue throughout several of their
17 witnesses. And we believe that this would help rebut
18 some of what they've put out there and that we're
19 entitled to do so, sir.

20 THE COURT: All right. I'm fine with not
21 being able to say whether or not your client was
22 intoxicated or not. And I'm okay with somebody
23 testifying about the effects of PCP on people
24 generally.

25 MS. BECKNER: Yes, sir.

1 THE COURT: And I'm not worried about it
2 being confined to Harris County or whether or not
3 somebody knows what wet or fry is.

4 My concern here -- and this is what I'm
5 going need some help from y'all on. My concern is the
6 doctor said that he doesn't know and has had no
7 experience -- from my recollection and I actually went
8 back and looked at it again -- about the experience or
9 the effects of PCP on people, but on animals.

10 And I understand the ethical
11 considerations of well, you can't really do experiments
12 with PCP on people. But how is that helpful to this
13 jury in understanding anything? And how is that
14 helpful to me in saying okay, you can talk about
15 articles that you've read that you don't have any
16 experience with and you can -- you can help, Mr. Davis.

17 MR. DAVIS: Thank you, Judge.

18 For clarity purposes, I think there may
19 have been some confusion. Because his research is
20 directly with animals and not human research in terms
21 of the effects it has on humans. But most doctors like
22 himself, they extrapolate from what they see with
23 animals as to the effects of humans. And he testified
24 earlier that he wrote an article about the effects of
25 PCP on humans that she asked him about.

1 When he was asked the question about him
2 not knowing about the effects it has on humans, he's
3 talking about the effects through testing. But by
4 education, he has experience as to the effects PCP has
5 on humans. And we can ask him that question directly.

6 Q. (BY MR. DAVIS) Through --

7 MR. DAVIS: May I ask him that question?

8 THE COURT: You may.

9 CONTINUED CROSS-EXAMINATION

10 BY MR. DAVIS:

11 Q. Dr. Alkadhi, through your education -- through
12 reading articles and also through research that you've
13 observed and reviewed, do you have knowledge of the
14 effects of PCP on humans?

15 A. Yeah. You can always extrapolate. And then,
16 you know, you have to start it on animal and then
17 extrapolate from that on human. Making, of course,
18 you know, adjustment for human -- between human and
19 animals.

20 Q. Yes, sir.

21 And in addition to your extrapolation,
22 you've also had experience with looking at research and
23 literature as to the effects of PCP as well.

24 A. Right. On -- on humans.

25 Q. Yes, sir.

1 MR. DAVIS: So, he's able to by way --
2 State versus Vela allows education to be a means in
3 which an expert can be qualified. And by -- just think
4 about it, Judge. If it's --

5 THE COURT: Oh, I'm thinking about it.

6 MR. DAVIS: Yes, sir.

7 If it's something that's illegal for
8 people to use and test, it can't be in a human trials.
9 It can't be even to test. So, he's not going to have
10 experience on that. But he will have experience from
11 his observations that he's had through research and
12 looking at research and by drawing extrapolation.

13 I think the Court's concern, right?

14 THE COURT: No. I get you. I understand
15 that --

16 MR. DAVIS: Right.

17 THE COURT: -- you can't just say here,
18 let me give you some PCP and run some tests on you.

19 MR. DAVIS: Yes, Judge.

20 THE COURT: But they're -- I'm pretty --
21 I feel pretty good in saying there probably have been
22 research into actual people who have ingested PCP and
23 the things that it does to their body --

24 MR. DAVIS: That's correct.

25 THE COURT: -- such as somebody who --

1 you know, an officer -- I don't an officer just catches
2 smoking some wet or fry and --

3 MR. DAVIS: Documenting what they saw.

4 THE COURT: -- there being documentation
5 of that, going to a hospital and research being done on
6 by people and so --

7 MR. DAVIS: Yes, Your Honor.

8 THE COURT: -- what's his relation with
9 that?

10 MR. DAVIS: Part of his testimony -- if
11 the Court remembers -- he says that when he observed
12 cases of people checking into the emergency room,
13 checking into the hospital who were on drugs. He's had
14 that experience. He's talk about it. Her
15 cross-examination was somewhat narrow and left out some
16 of that experience. But he has that experience and has
17 talked about it directly. And when asked the question,
18 does he have knowledge of the effects of PCP on humans,
19 he says he does. And that's something by an expert
20 with training and experience could aid and assist the
21 jury.

22 Now, other issues may go to the weight of
23 his testimony, the extensiveness of his experience --

24 THE COURT: Now, I agree with that. I
25 mean, that -- I agree that if allowed to testify,

1 certainly the State is going to be able to go into --

2 MR. DAVIS: Right.

3 THE COURT: -- those things and how much
4 those would bear on the weight the jury should give to
5 his testimony or not. And that's -- that's -- I get
6 that.

7 I'm just trying to get to the point of --
8 because like I told you when you're up here, I'm
9 inclined to let him testify.

10 MR. DAVIS: Yes, sir.

11 THE COURT: I think it's important, you
12 know -- and just so everyone is aware, we all know if I
13 preclude him from testifying and your client gets
14 convicted --

15 MR. DAVIS: Yes, sir.

16 THE COURT: -- then that is a huge
17 appellate issue that could cause us to have to do this
18 again. And certainly, I don't want that to happen.

19 MR. DAVIS: I understand.

20 THE COURT: But I -- you know, I have
21 some concerns -- and maybe it is because I'm confused.
22 Because he specifically said -- and maybe he didn't
23 understand the question. But he specifically said --
24 to the point that I actually scrolled back up and read
25 it again -- that he didn't know the effects of PCP on

1 humans.

2 MR. DAVIS: He's talking about with
3 firsthand research. Because if you'd seen what
4 happened in his answer following that, he talked about
5 being involved with research with -- can I ask him a
6 couple of questions --

7 THE COURT: Well, now, how do you know
8 what his answer was? You ain't reading along like I
9 am.

10 MR. DAVIS: I was listing. I was
11 remembering --

12 THE COURT: You aren't listening that
13 good.

14 MR. DAVIS: Trust me.

15 THE COURT: Okay. You can ask him some
16 more questions.

17 CONTINUED CROSS-EXAMINATION

18 BY MR. DAVIS:

19 Q. Dr. Alkadhi, are you familiar with the effects
20 of PCP on humans?

21 A. On humans?

22 Q. Yes, sir.

23 A. Yes.

24 Q. All right. Now, your basis of that knowledge
25 is through what, sir?

1 A. Through reading.

2 Q. And you teach a course on it regularly?

3 A. Yes. Not a full course, but part of the -- of
4 the course on drugs of abuse and psychoactive drugs.

5 Q. So, when you -- you have this -- you teach
6 this course, one of the things you use as a resource
7 for the course is that you do research on situations
8 and articles that have studied the effects of PCP on
9 humans?

10 A. Correct.

11 Q. Right.

12 So, based on your training and the
13 knowledge you gained through education, you have
14 experience as to what the effects of PCP are on a
15 human?

16 A. Yes, I do.

17 Q. So, the Judge's question was: Do you know
18 what the effects of PCP are on humans? When you were
19 asked that question, were you referring to or at least
20 looking at the fact that you've never done any human
21 trials?

22 A. While I've never done any human research on --
23 concerning PCP. And actually, there are very few
24 research that were done on human before they discovered
25 that it has all these very bad effects. One was done

1 with the Army and the other was done pre-clinical when
2 it was actually synthesized as an aesthetic. Was
3 actually an aesthetic. And they discovered that it has
4 bad effect and they stopped. That's -- that's what --
5 the only two -- two cases of testing on humans.

6 The rest of it are all case studies from
7 people come under PCP and they go to the emergency
8 room. And then you get report from interns or
9 physicians.

10 Q. And you're familiar with those reports.

11 A. Yes, I read them.

12 Q. All right. So, you've read these different
13 reports. And even though there aren't any more human
14 studies that are done, the two that were done way back
15 when, you're familiar with the results and the
16 consequences of those human studies as well?

17 A. Correct.

18 MR. DAVIS: I don't know if that helps
19 the Court. But I think that at least shows that he has
20 the knowledge base, Your Honor. And he knows what the
21 effects of PCP were. His basis of knowledge is from
22 research.

23 Q. (BY MR. DAVIS) Now, Dr. Alkadhi, we use the
24 -- as lawyers, we use the word research differently
25 than you do. When you say research, you don't include

1 research to mean looking at or reading case studies
2 alone. You consider research to be actual hands-on
3 administering a drug to someone. And then charting
4 what the results were, right?

5 A. Correct.

6 MR. DAVIS: So, Your Honor, I think that
7 may be a source of some of the confusion, in terms of
8 we think of research is he went out and he read
9 information, he knows information. And that's enough
10 on Vela for an expert to testify by basis of education.
11 An expert goes out and has educated himself by
12 reviewing documents and looking at reports. He has the
13 knowledge base in which to testify.

14 He looks at research a little differently
15 than we do. He says he done what he would consider
16 research as lawyers. He says he's done that by looking
17 at the case studies and by looking --

18 THE COURT: I understand the difference.

19 MR. DAVIS: Yes, sir.

20 But he hasn't done research in the sense
21 of hands-on. And when asked the question directly,
22 does know the effects on humans, he says he does.

23 THE COURT: Well, look, I'm just going to
24 be honest with y'all. I'm uncomfortable with both of
25 it, to be quite honest with you.

1 I'm uncomfortable with his ability to
2 actually inform this jury in such a way as to say what
3 the effects of PCP are on any person. But I'm also
4 uncomfortable with not letting him testify since this
5 appears to be a crucial part of your defense.

6 MR. DAVIS: And, Your Honor, it is a
7 crucial part of our defense. It's the crux of the
8 defense.

9 THE COURT: I understand that. So, since
10 he does have a background in pharmacology and has done
11 some education and research -- however you want to
12 define that -- into the subject, I'm going to let him
13 testify about it.

14 Y'all do what y'all will with that.

15 MS. BARD: Yes, sir.

16 THE COURT: All right. I just have a
17 question before we get started. Are we going to do
18 this a bunch more times?

19 MS. BARD: I don't know, Judge.

20 THE COURT: All right.

21 MS. BARD: I believe he's got for sure
22 one other expert.

23 MR. DAVIS: Two other experts, but one
24 for sure.

25 THE COURT: Fabulous.

1 MS. BARD: So, I don't -- if they wrote
2 reports, I certainly don't have them. I would need
3 time if they did do them to look into all of that as
4 well.

5 MR. DAVIS: We, Judge, I'm not required
6 to give her the reports prior to the experts
7 testifying.

8 THE COURT: I know that.

9 MR. DAVIS: But I'll give them to her as
10 a courtesy and to save time.

11 THE COURT: Okay. I'm just -- I'm just
12 asking how many more times we're going to have to do
13 this. That's all.

14 You know, I like to be prepared. That's
15 all. I know y'all don't have -- there are certain
16 things y'all don't have to do -- particularly y'all.
17 And I'm not asking you to do something you don't have
18 to do.

19 MR. DAVIS: I understand.

20 THE COURT: I just -- if, as a courtesy
21 to me, I'd like to be prepared next time, if possible.
22 But I'm not going to be upset with you if you don't
23 tell me.

24 MR. DAVIS: Judge -- Judge, you've asked
25 us nothing unreasonable throughout this whole trial.

1 So, don't -- that shouldn't be a concern for the Court.

2 THE COURT: Okay.

3 MR. DAVIS: Nothing -- nothing has been
4 asked unreasonably.

5 THE COURT: All right. Thank you.

6 MR. DAVIS: Thank you.

7 **END OF HEARING OUTSIDE PRESENCE OF JURY**

8 (Jury in).

9 THE COURT: You may be seated.

10 Ms. Beckner?

11 MS. BECKNER: Thank you, Judge.

12 DIRECT EXAMINATION

13 BY MS. BECKNER:

14 Q. Good afternoon, Dr. Alkadhi.

15 A. Good afternoon.

16 Q. Could you introduce your full name to the
17 jury?

18 A. I'm Karim Alkadhi, professor of pharmacology
19 at the University of Houston.

20 Q. And, Dr. Alkadhi, how long have you been a
21 professor at the University of Houston?

22 A. 32 years.

23 Q. And what did you do before that?

24 A. Before that, actually I was -- my basic
25 education was a pharmacist. After that I went and got

1 my degrees.

2 Q. And where did you get your degrees?

3 A. I got a Master's Degree from University of
4 Connecticut and Doctorate from the University of New
5 York at Buffalo.

6 Q. And as a professor at the University of
7 Houston in pharmacology, what kinds of things are you
8 doing on a daily basis? Like, what are you doing?

9 A. Well, on a daily basis I have a lab and I have
10 graduate students that work on different projects
11 related to my interests, which is the -- the you know,
12 brain, effect on the brain of various, you know,
13 conditions. And then, you know, a lot of time I spent
14 writing articles about my research or writing research
15 review articles on, you know, related to my research.

16 Q. And I'm realizing -- if we could back up just
17 a little bit.

18 Could you explain sort of what
19 pharmacology is?

20 A. Pharmacology can be defined as actually the
21 study of the effects of the drugs on the body, being
22 human or non-human.

23 Q. And do you teach any classes?

24 A. Yes, I do. I teach a class in toxicology
25 involving toxic effect of central nervous system drugs.

1 I also teach a graduate school -- a graduate course for
2 graduate students, doctorate students called
3 neuropharmacology. Again, my background is
4 neuroscience. So, that's what I teach mostly.

5 Q. And as an -- as a full professor, you
6 mentioned you write articles. Have you written any
7 articles on drugs in the past?

8 A. Yes. I mean, you know, always involve one --
9 one drug or another, not necessarily PCP or others.
10 But I have published, you know, like 125 research
11 articles, plus chapters in books, plus review articles.
12 So, I mean, I have a publication up to 150
13 publications.

14 Q. Now, I'm not asking you for -- for what the
15 trials were for, but have you been involved in any
16 clinical trials, research trials in the past?

17 A. I'm not.

18 Q. So, your work -- what does it primary involve?

19 A. Primarily involving working on animal models
20 of diseases.

21 Q. Dr. Alkadhi, in these animal models, do you
22 ever do any work extrapolating, what effects might be
23 on humans?

24 A. When we finish animal experiment, we usually
25 have to write a report to be published. And then you

1 try to extrapolate if it's, in fact, relevant to
2 humans.

3 Q. Those types of studies, what kinds of drugs
4 have they been on?

5 Let me rephrase that. I apologize.

6 What kind of drugs have you studied in
7 those kind of studies?

8 A. I try -- in the past way back in the '80s, I
9 actually looked at some, you know, like morphine or
10 morphine derivatives. But recently in the past few
11 years, I've been concentrating on the effect of the
12 stimulant drugs, such as nicotine and caffeine and
13 their effect on the body -- on the brain.

14 Q. In the classes that you teach annually, what
15 kinds of drugs are you studying with your -- or are you
16 teaching your students about?

17 A. This particular course that I coordinate -- I
18 teach and use to coordinate, it's called toxicology.
19 And my section that I teach is toxicology of the drugs
20 that effect the central nervous system. So, I talk
21 about amphetamines, cocaine and morphines, the opiates,
22 PCP included, and other drugs, marijuana, all of these.

23 Q. Those drugs that you're teaching in your
24 classes, are you familiar with the literature that's
25 written about them in the academic community?

1 A. Yes.

2 Q. How are you familiar with it?

3 A. You know, I have to go to -- to the data and
4 pull out the -- what's written about them in terms of
5 animal and human experiment, both.

6 Q. Are you also familiar with case studies of
7 these drugs?

8 A. Case studies also.

9 Actually for case studies, let's talk
10 about PCP in particular. I went and actually looked at
11 case studies. And there aren't very many case studies
12 really. It's just reports from -- from hospitals about
13 people admitted under the effect of PCP.

14 Q. So, in human trials of drugs, how many kinds
15 of testing are there or --

16 A. The human trial -- actually one that was done
17 by the Army volunteered --

18 Q. Let me back up just a moment.

19 A. Yes.

20 Q. I'm sorry. I think it's my questions are
21 poor.

22 A. Yes.

23 Q. So, in studies that deal with the effect of
24 drugs on people --

25 A. Yes.

1 Q. -- you mentioned case studies.

2 A. Yes.

3 Q. Are there different kinds of -- like are there
4 case studies and then some -- a different kind of study
5 or is just the hospital reports?

6 A. Yeah. No. The case studies are when somebody
7 has a case that -- that is interesting. And usually
8 case studies are not very reliable because it's usually
9 one -- one or two persons or, you know, small. Unlike
10 clinical trial where they have hundred or thousands of
11 people. So, there is a difference between -- and the
12 other thing is that in science and particularly in
13 medical research, we talk about controlled study.
14 Studies and a half actually appropriate control where,
15 you know, people that you can compare to. And that is
16 what -- what makes it reliable.

17 Case study is somebody that found some --
18 somebody that is admitted and that person is
19 interesting in terms of symptoms and they write a
20 report about it.

21 Q. Dr. Alkadhi, are you familiar with any human
22 trials on PCP?

23 A. Yes. As I mentioned, there is human trial
24 that was done with the volunteers in the Army. That's
25 at the beginning -- before 1965 when it was stopped

1 being used. They actually looked at the dosage. They
2 looked at different -- different route of
3 administration when they gave it as oral and then as
4 inhalation and as intravenous.

5 Q. And were there any other human trials besides
6 that Army one?

7 A. There was one or two more where they
8 categorize what happened when -- this is not a clinical
9 trial. But what they do is they put a -- they looked
10 at the cases of people who are admitted under the
11 influence of PCP. And they categorize them in terms of
12 what kind of behavior, for example, violence. For
13 example, what happened to the blood pressure or what
14 happened to, you know, loss of memory and all of these
15 things.

16 Q. So, Dr. Alkadhi, have you -- have you read on
17 the -- read the literature on the effects of different
18 drugs on people?

19 A. Yes.

20 Q. And in terms of the general effects, are you
21 familiar with the general effects of drugs on say
22 memory?

23 I'm sorry. You have to answer out loud
24 for Trish.

25 A. Yes.

1 Q. And behavior, are you familiar with their
2 effects on behavior?

3 A. That's right.

4 Q. And are you familiar with people building a
5 tolerance to certain drugs over time?

6 A. Correct.

7 Q. And are you familiar with whether drug --
8 certain drugs can be unpredictable depending on how
9 they're taken?

10 A. Correct.

11 Q. And --

12 A. That's called individual variation. You give
13 one drug to somebody and they will react differently
14 than the next person. So, each individual has certain
15 variations. That's why you need a large number of
16 cohort, if you will, a lump number of people to look
17 at.

18 Q. Yes, sir.

19 And are you also familiar with the -- how
20 the strength of different drugs and the dose -- the
21 strength of dosages can effect people?

22 A. Exactly. They usually -- invariably any --
23 any drug -- it's depending on the drugs. The more you
24 give, the different intensity of responses occur.

25 Q. And I think you mentioned this earlier. But

1 are you familiar with different drugs being able to
2 effect different people in different ways?

3 A. Yes.

4 Q. So, if we take PCP in particular, have you
5 done -- have you read any studies or any literature on
6 how PCP effects people?

7 A. Yes.

8 Q. Have you read -- you mentioned clinical trials
9 on how PCP effects people.

10 A. Right.

11 Q. And based on your research -- excuse me -- not
12 research. Based on your reading of the literature and
13 your reviewing of the studies, are you familiar with
14 PCP ever causing some type of psychosis in people?

15 A. Yes. In fact, as a result of that, it's -- it
16 has effects very similar to schizophrenia. And as a
17 result of the similarity between the effect of PCP and
18 schizophrenia -- actually nowadays in the medical
19 research, it's been used to make models -- animal
20 models of schizophrenia and even bipolar in certain --
21 certain cases.

22 Q. Yes, sir.

23 And are you familiar with PCP ever
24 causing symptoms of depression in people?

25 A. Yes.

1 Q. What about warping reality?

2 A. Actually one of the effect I saw that was
3 prominent in many reports is that they -- the person
4 under the influence actually they feel unreal and
5 things look unreal to them. For example, they look
6 smaller or bigger than they are. And it's -- it's
7 called a dissociative actually. When it's
8 manufactured, it's called a disassociative anesthetics.
9 Because it disassociate the thought from the body, in
10 that term.

11 Q. Yes, sir.

12 And perhaps similar to that, but are you
13 familiar with PCP ever causing hallucinations for
14 people?

15 A. Definitely, yes.

16 Q. What about paranoia?

17 A. Paranoia and violence.

18 Q. And then in terms of the effect of PCP on
19 people, are you familiar with it ever having a
20 prolonged or delayed effect?

21 A. Yes. Delayed and prolonged. Actually the
22 effect can peak maybe within four hours and then
23 continue to about 12 hours. And again, from person to
24 person, there could be a delay. You don't see anything
25 until an hour after the dose.

1 Q. And is it possible that it could go --
2 depending on the person, it could effect them even
3 longer than that 12-hour period?

4 A. It is actually. I've read 24 hours. And I
5 read a report by looking at the level of PCP in the
6 urine that was actually detectable at least a week
7 after the dose.

8 Q. Now, based on the literature you've read, are
9 you aware -- is it possible for some people to be more
10 effected than others by PCP, for example?

11 A. Yes. As I said, that is called individual
12 variation. And also depends on the history of that
13 person. Has that person been using PCP for a long
14 time. That will effect the outcome.

15 Q. What about say persons with any kind of mental
16 illness or mental illness in their history? Would be
17 possible in -- based on your reading of the literature
18 that they might be more sensitive to any of the effects
19 of PCP?

20 A. It makes it worse. People who are
21 pre-schizophrenic or schizophrenic, they become more
22 flagrantly so.

23 Q. Dr. Alkadhi, could you -- could you tell me or
24 describe what sort of the general effects of PCP on the
25 body are?

1 A. Okay. The first thing that happen -- which is
2 actually characteristic for diagnosis -- the eyeball
3 actually becomes like a pendulum. This is called
4 nystagmus in medicine. Either could be horizontal.
5 Their eyeballs go like this very fast or -- and/or
6 vertical. That's -- then it effects the blood
7 pressure. The blood pressure becomes very high.
8 Respiration is increased. Then they -- there is memory
9 impairment or, you know, cognitive impairment in
10 general. Not just memory but other, you know, things
11 that are related to memory.

12 The other thing that -- it puts the
13 person under illusion that they are actually very
14 strong. And, in fact, some -- some, you know,
15 policemen think that actually PCP increase the strength
16 of the person. It does not. It's an anesthetic. And
17 the person feels that he is strong -- illusion
18 actually. And they -- they -- they try to -- to, you
19 know -- to hold them and they don't feel the pain. So,
20 they -- they struggle. That makes it -- that makes
21 them look they are more -- more strong than they are.

22 Q. I understand.

23 And just to clarify though. Is it
24 possible that a person might exhibit some of the
25 symptoms, none of the symptoms? It changes on the

1 person, right?

2 A. Definitely, yes. Yeah.

3 Q. And are you familiar, based on your reading of
4 the literature and the studies, on sort of different
5 ways that PCP can be ingested?

6 A. I just didn't --

7 Q. Ingested in them?

8 A. Ingested, yes. It's actually three ways. The
9 most popular is inhalation. They either smoke it or
10 they sniff it, snorting. The second -- the other way
11 is to actually ingest is orally. And the other way is
12 IV, intravenous, which is not very common.

13 Q. And in terms of smoking it on something else,
14 have you read studies where that could sometimes be
15 cigarettes or sometimes be marijuana?

16 A. Yeah. I mean, another -- another name --
17 street name for PCP is actually embalming fluid. And
18 what they do they actually -- that might be the wet she
19 talked. They can actually dip the cigarette in -- in
20 the fluid and then smoke it. And all of these
21 embalming fluid cases, they check them. They all have
22 PCP in them.

23 Q. And, Dr. Alkadhi, are there any drugs that
24 could be laced onto marijuana besides PCP, for example?

25 A. I'm sure they can. You know, they can -- they

1 can put, for example, crystal meth. And, you know, in
2 fact, in some cases they take oregano and put PCP
3 powder on it to sell it as marijuana.

4 MS. BECKNER: Pass the witness, Judge.

5 THE COURT: Ms. Bard?

6 MS. BARD: Thank you, Your Honor.

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. BARD:

10 Q. Good afternoon, sir.

11 A. Hi.

12 Q. How are you doing?

13 A. Fine, thank you.

14 Q. Okay. Now, Dr. Alkadhi, are you being paid to
15 be here today?

16 A. I don't really know.

17 Q. You just volunteered out of the goodness of
18 your heart?

19 A. Well, no. Well, I wouldn't say that. I was
20 called -- the college was called looking for somebody
21 who would be an expert witness in this case and
22 somebody referred me to -- to the defense.

23 Q. Are you expecting anything in return for your
24 testimony?

25 A. I was told that there is something, that

1 there's payment.

2 Q. There is payment. Okay.

3 And what is that payment?

4 A. I really have no idea. They said -- somebody
5 -- I don't know what -- I don't remember what he said.
6 I think maybe 200 an hour or something like that.

7 Q. Okay. Would you be expecting about \$200 an
8 hour?

9 A. Yes.

10 Q. Okay. How many hours have you spent on this
11 case?

12 A. Maybe three so far.

13 Q. Okay. So, that would put us at about \$600.
14 Yeah?

15 Is it -- she can't take down head nods.

16 A. Yes.

17 Q. Okay. And do you get any extra money for
18 testifying?

19 A. I don't think so.

20 Q. It's actually pretty customary for experts to
21 get paid extra for testifying. Were you aware of that?

22 A. No.

23 Q. Okay. You should be charging more,
24 Dr. Alkadhi.

25 Okay. But you're expecting to be paid

1 for the research that you did and your testifying
2 today?

3 A. I assume so.

4 Q. Okay. Now, you never had any contact with
5 this defendant, have you?

6 A. No.

7 Q. Okay. Never talked to him?

8 A. Never.

9 Q. Never called him on the phone?

10 A. Never.

11 Q. Never met him in person?

12 A. Never.

13 Q. Okay. So, you have no idea if any of the
14 things you were talking about had any effect on him.

15 A. Correct.

16 Q. Okay. When was the last time you taught a
17 class on PCP?

18 A. About a month ago.

19 Q. About a month ago. Okay.

20 And how time did you spend on it?

21 A. An hour.

22 Q. Okay. And to prepare for your testimony
23 today, during those three hours, you read some
24 scientific articles.

25 A. Right.

1 Q. Okay. And I believe you said you watched some
2 videos.

3 A. Right.

4 Q. Okay. And those were You Tube videos.

5 A. Right.

6 Q. And the reason that you were watching those
7 videos was they were labeled PCP -- like people on PCP.

8 A. Right.

9 Q. Okay. It's possible that those people could
10 have been on something completely different.

11 A. Very possible.

12 Q. Okay. But that went into some of your
13 research to testify here today.

14 A. Not really. I -- I am more interested in the
15 scientific articles.

16 Q. Okay. But you, in fact, did look at the --

17 A. I really -- I did want to see what happened in
18 some cases. So, I just Google PCP, you know, video.
19 And I wanted to see if there are actually any videos
20 and there were.

21 Q. Okay. And you'd agree with me that your main
22 focus is not on PCP, correct?

23 A. Correct.

24 Q. In fact, it's not even really on illegal
25 substances at all.

1 A. No.

2 Q. In fact, your main area of study -- what you
3 spend your time and research is spent on diseases like
4 Alzheimer's, chronic stress and the effects that it has
5 on the brain.

6 A. Correct.

7 Q. Okay. Now, you were talking about some of the
8 effects that PCP can have on somebody. It can make
9 them paranoid.

10 A. Correct.

11 Q. It make them delusional.

12 A. Yes.

13 Q. It could make them sometimes even sedate.

14 A. Yeah, that's true.

15 Q. In fact, PCP was developed as an anesthetic,
16 correct?

17 A. That's correct.

18 Q. Okay. So, at probably lower doses, it
19 actually can kind of calm people down.

20 A. It could.

21 Q. Okay. And that totally depends on the human
22 being and the person.

23 A. True.

24 Q. Okay. Marijuana can make people paranoid.

25 A. Correct.

1 Q. Remember, she can't take down a head nod.

2 A. Yes.

3 Q. Okay. Marijuana can make people have
4 delusions.

5 A. That's correct.

6 Q. Marijuana can make people sedate.

7 A. That's correct too.

8 Q. Okay. So, there would really be no way,
9 hypothetically, if someone smoked a cigarette with
10 marijuana and PCP, to distinguish what was causing the
11 intoxication between the marijuana and the PCP,
12 correct?

13 A. That's correct. And as I mentioned earlier,
14 that 90 percent of the people who take PCP, it is not
15 pure PCP. It's always in conjunction with some other
16 drug.

17 Q. Okay.

18 A. Be it marijuana or cocaine or anything, you
19 know, amphetamines and so on.

20 Q. So, hypothetically, if someone said that they
21 smoked a weed cigarette --

22 A. Yes.

23 Q. -- and it had PCP in it. There would be no
24 way to distinguish what was intoxicating them, if at
25 all.

1 A. Very difficult.

2 Q. Very difficult.

3 Impossible?

4 A. Not impossible if you actually -- you know,
5 there are certain characteristics you can -- for
6 example, as I mentioned, that nystagmus, eye, that's
7 very characteristic of PCP, but not of marijuana.

8 Q. But, in fact, people with marijuana can have
9 nystagmus, can they not?

10 A. Very rarely.

11 Q. But they can have it?

12 A. Right.

13 Q. Okay.

14 A. But they can have it. We're talking about 60
15 percent of people with PCP and under PCP have this
16 particular characteristic.

17 Q. But so do people with marijuana as well?

18 A. I don't know the percentage, but I think it's
19 very low.

20 Q. Okay. But my point is that if someone has,
21 for example, nystagmus, you can't tell whether or not
22 it's the PCP or the marijuana that's causing it.
23 Traditionally, you would think it might be more the
24 PCP, but you can't really distinguish what's causing
25 it.

1 A. You cannot separate.

2 Q. Okay. Now, would you agree that someone could
3 develop a tolerance to PCP?

4 A. Yes, definitely.

5 Q. Okay. But that there's no actual studies that
6 have been out there that show a physical dependence.
7 That doesn't develop with PCP.

8 A. Physical dependence in human, no. But in
9 monkeys definitely. Okay.

10 Q. Well, we're not talking about monkeys here
11 today, are we?

12 A. Right. But they're --

13 Q. Okay.

14 A. They're the closest to humans anyway.

15 Q. Fair enough.

16 But in humans --

17 A. Yeah.

18 Q. -- no physical dependence.

19 A. But there's psychological dependence.

20 Q. I'll get there.

21 A. Yes.

22 Q. But my question is: There is no physical
23 dependence -- the body does not require PCP.

24 A. Not as far as I read.

25 Q. Okay. But, in fact, there can be a

1 psychological dependence, more of like a craving to --

2 A. Craving, exactly.

3 Q. Okay. Can PCP have long term -- if somebody
4 is chronically using PCP, can it have long-term
5 effects?

6 A. It depends on the personality. If the person
7 is pre-psychotic or psychotic they will actually
8 become, you know, regularly psychotic.

9 Q. Okay. Are you aware of the smell of PCP?

10 A. No.

11 Q. Okay. Did you read in any of your literature
12 or your studies about the awful chemical smell that PCP
13 has with it?

14 A. I don't believe so.

15 Q. No. Okay.

16 Now, I believe that you said that there
17 were different ways that people could take PCP. There
18 is inhalation, IV or like a powder.

19 A. Oral, yes.

20 Q. Okay. And you said something about people
21 could sprinkle powder PCP on oregano and sell it as
22 marijuana.

23 A. I assume that's not people, that the pushers
24 do that. They sprinkle it on oregano and sell it as
25 marijuana. Because PCP -- it's very easy to make and

1 very cheap to make. So, it's probably cheaper than
2 marijuana. That's why they do that.

3 Q. Well, Doctor, would it surprise you to learn
4 that street value of PCP is significantly higher than
5 marijuana?

6 A. It comes and goes, up and down like -- like
7 the prices of oil, I guess.

8 Q. So, is your testimony today that you feel
9 qualified to tell this jury that PCP is cheaper than
10 marijuana?

11 A. I -- I didn't say -- I assume. Because why
12 would they do that, oregano and then they put Angel
13 Dust on it? I assume that.

14 Q. Well -- and that's kind of my point. Is the
15 economics of it doesn't make sense.

16 MS. BECKNER: Objection, Counsel is
17 testifying for the witness, Your Honor.

18 THE COURT: Overruled.

19 Q. (BY MS. BARD) You're making assumptions,
20 correct?

21 A. Yes.

22 Q. Okay. And you would agree with me that you
23 know nothing about the PCP trade in Harris County?

24 A. I don't -- I don't know anything with that.

25 Q. Okay. Safe to say I probably, as a

1 prosecutor, might know more than you do?

2 A. Probably.

3 Q. Okay. So, when you tell this jury that people
4 could sprinkle dust -- like the PCP powder on oregano
5 and sell it as marijuana, you don't know that that's
6 actually happened in Harris County.

7 A. No, not in Harris County, but I read somewhere
8 in the United States.

9 Q. Somewhere else in the United States?

10 A. Yes.

11 Q. Okay. And that was from a study that was done
12 in the '70s, '80s?

13 A. Usually the '80s.

14 Q. Okay. Okay. Now, you said something about
15 that the peak is typically between four to 12 hours.

16 A. No. The peak is about four hours, but then it
17 continues to 12 hours.

18 Q. Okay. When you say peak is -- I want to make
19 sure that we're meaning the same thing when we say
20 peak. Okay.

21 When we say peak, are we talking about
22 sort of a -- at the height of the effect of the PCP on
23 the body?

24 A. The height of the effect.

25 Q. Okay. So, the height of the effect is four

1 hours.

2 A. Right, when it reaches that height.

3 Q. Okay. You mean it last for four hours?

4 A. It -- it's -- think of it as a curve going up.
5 And then at four hours, it is very slightly going down
6 to -- until 12 hours.

7 Q. Until 12 hours.

8 A. 12 hours it's still there.

9 Q. Okay. But that doesn't necessarily mean you
10 would have the outward signs of it, correct?

11 A. Yes, you do.

12 Q. Absolutely every time?

13 A. Not -- depending on the person.

14 Q. Okay.

15 A. It's really ranges. They say, you know, for
16 example, two to four hours or eight to 12 hours. So,
17 that's a range because of that variation -- individual
18 variation.

19 Q. Doctor, your opinion, in having read all the
20 research, are you saying that you don't know what the
21 peak is? Because you threw out two to four, eight to
22 12 and four to 12. So, I'm confused.

23 What, in your expertise --

24 MS. BECKNER: Objection, misstatements
25 the testimony.

1 THE COURT: Overruled.

2 Q. (BY MS. BARD) What in your expert testimony
3 to this jury that you feel confident explaining to them
4 is the peak of PCP?

5 A. In the literature, the peak says it peaks
6 between two and four hours.

7 Q. Okay.

8 A. Okay.

9 Q. Okay. All right. So, two to four?

10 A. Right.

11 Q. Okay. Just because someone is under the
12 influence of PCP or PCP and marijuana, that does not
13 necessarily mean that they can't tell the difference
14 between right or wrong, correct?

15 MS. BECKNER: Objection as to outside his
16 expertise.

17 THE COURT: Overruled.

18 A. Again, this depends on the person and on their
19 background in terms of use of drugs.

20 Q. (BY MS. BARD) If they use it fairly regularly
21 -- if it's their, if you will, vice, would that factor
22 into your decision-making as to whether or not they
23 knew it was right or wrong?

24 A. You know what, when they use it regularly,
25 tolerance develop. Tolerance is escalation of the dose

1 to reach the effect. So, again, that's -- that again
2 depends on that person.

3 Q. Okay. So, my question is: Is it possible for
4 someone on PCP and/or marijuana to know the difference
5 between right and wrong?

6 MS. BECKNER: Objection, calls for
7 speculation.

8 THE COURT: Overruled.

9 Q. (BY MS. BARD) It's a simple yes-or-no.

10 A. Say that again.

11 Q. Sure.

12 Is it possible, yes or no, for someone
13 who is on PCP and marijuana to know the difference
14 between right or wrong?

15 A. It's possible.

16 Q. Okay. So, that's a yes?

17 A. That's yes, again, depending on the person.

18 Q. Okay.

19 MS. BARD: Pass the witness, Your Honor.

20 THE COURT: Ms. Beckner?

21 REDIRECT EXAMINATION

22 BY MS. BECKNER:

23 Q. Dr. Alkadhi, anything is possible, right?

24 A. Yes.

25 Q. Is PCP an hallucinogen?

1 A. It is.

2 Q. And what does that mean?

3 A. Means that they see things, they hear things.
4 For example, I'll give you one case study. Somebody
5 was under the influence and he thought that on the ark
6 with Noah. So, I mean --

7 Q. Really?

8 A. -- they -- they could go the extreme. Or they
9 think they are Superman, something like that. So, that
10 -- that -- so, again, you know, these are reports.

11 Q. So, it sounds like -- are you saying that PCP
12 could cause people to lose touch with reality?

13 A. Yes.

14 Q. See things that aren't there and hear things?

15 A. That's right.

16 Q. On cross-examination the prosecutor said that
17 there were three kinds of ways that you could ingest
18 PCP.

19 Is it right that when we talked on first
20 direct, you also mentioned that someone could smoke?
21 That that was a fourth way?

22 A. No, it's three ways. Either take it orally
23 or, you know, snort it or giving it IV. But I think
24 the most common method is smoking it or snorting it.

25 Q. And just finally, the peak that you talked

1 about, the two to four hours --

2 A. Yes.

3 Q. -- does that depend on the person?

4 A. It depends on the person.

5 Q. Does it also depend on what other intoxicants
6 might be in their system?

7 A. Definitely.

8 Q. So, other intoxicants could have -- could they
9 have an effect on the length of the peak of the PCP
10 high?

11 A. Yes. So, if you have another -- for example,
12 if it has marijuana with it, they may reach the peak
13 earlier than four hours.

14 Q. And could it also have something even besides
15 marijuana?

16 A. Besides marijuana too.

17 MS. BECKNER: Pass the witness too.

18 THE COURT: Ms. Bard?

19 MS. BARD: Yes, Your Honor.

20 RE-CROSS-EXAMINATION

21 BY MS. BARD:

22 Q. You said that PCP causes hallucinogens and
23 losing touch with reality, correct?

24 Is that a yes?

25 A. Yes.

1 Q. Marijuana can do that as well, right?

2 A. Yes.

3 Q. Okay.

4 MS. BARD: Nothing further, Your Honor.

5 THE COURT: Ms. Beckner?

6 REDIRECT EXAMINATION

7 BY MS. BECKNER:

8 Q. Dr. Alkadhi, based on your reading of the
9 literature, is there a different -- can there be a
10 difference in the level of hallucinogen between PCP and
11 marijuana?

12 A. The hallucinogenic effect of marijuana really
13 are mild. And again, it's something unrelated to -- to
14 reality. For example, they would, you know -- there
15 was one case somebody under the effect of marijuana all
16 of a sudden came out and looked at it and he said what
17 happened to my leg. He couldn't see his leg. So, I
18 mean, this kind of -- it's much mild type of
19 hallucination that you could see with, for example, LSD
20 or PCP.

21 Q. So, are you saying drugs like LSD or PCP, do
22 they have a greater hallucinogenic effect?

23 A. Yes.

24 MS. BECKNER: That's all, Judge.

25 THE COURT: Ms. Bard?

1 MS. BARD: Nothing further.

2 THE COURT: All right. Thank you,

3 Doctor. You may step down and step outside.

4 THE WITNESS: Thank you.

5 THE COURT: Call your next witness,

6 please.

7 MR. DAVIS: The defense would call

8 Sergeant Brady.

9 THE COURT: Mr. Davis?

10 MR. DAVIS: May I proceed, Your Honor?

11 THE COURT: Yes, sir.

12 MATTHEW BRADY,

13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DAVIS:

16 Q. How you doing, sir?

17 A. I'm good. How are you?

18 Q. I'm good.

19 Could you introduce yourself to the jury?

20 A. Yes. My name is Sergeant Matthew Brady. I'm

21 with the Houston Police Department Homicide Division.

22 Q. Now, Sergeant Brady, you're a homicide

23 detective?

24 A. Yes, sir.

25 Q. How long have you been working with the

1 Houston Police Department?

2 A. Since 2006 -- since 2006.

3 Q. Did you have any previous law enforcement
4 experience?

5 A. Three years with Harris County Precinct 1.

6 Q. And after the three years -- so, you've been a
7 law enforcement officer since 2000 --

8 A. And 3, yes, sir.

9 Q. All right. So, now, approximately about 12
10 years?

11 A. Yes, sir.

12 Q. Okay. Back in 2013, sir -- well, let me just
13 ask you. You've been called to testify because you had
14 some contact with Gustavo Vasquez back in 2013.

15 A. That's correct.

16 Q. You didn't do any investigation in the case in
17 the sense of being an officer who goes out and talks to
18 witness, right?

19 A. No, sir.

20 Q. Okay. You're a homicide detective. And
21 generally you weren't the lead detective on this case.

22 A. No. I was at the office.

23 Q. You weren't assigned to the case.

24 A. No, not at all.

25 Q. You were at the office near where the holding

1 tanks and everything were?

2 A. Exactly.

3 Q. And you observed Mr. Vasquez by the holding
4 tanks.

5 A. In our interview room, yes, sir.

6 Q. Yes, sir.

7 He was in an interview room, right?

8 A. He was in an interview room.

9 Q. And, of course, you don't leave suspects in an
10 interview room by themselves.

11 A. Correct.

12 MS. BARD: Your Honor, I'm going to
13 object to him leading.

14 THE COURT: Don't lead your witness.

15 MR. DAVIS: Yes, Your Honor.

16 Q. (BY MR. DAVIS) When you saw Mr. Vasquez,
17 where was he, sir?

18 A. I originally saw him in the lobby of 1200
19 Travis and we took him up to the sixth floor, which is
20 where the homicide office is and I put him in an
21 interview room.

22 Q. While he was in an interview room, you had an
23 opportunity to observe him.

24 A. Yes.

25 Q. And was it your understanding that he had

1 previously been arrested?

2 A. He was detained. I wasn't sure what the
3 situation was.

4 Q. So, you know he was being transported from the
5 scene.

6 A. Yes.

7 Q. And while he was in an interview room, was he
8 doing something with his handcuffs?

9 A. Yes.

10 Q. What was he doing with his handcuffs?

11 A. He was trying to get them off. He was banging
12 them. He was handcuffed from behind. Banging them
13 against the chair and pulling them, you know,
14 laterally.

15 Q. He was physically trying to pull off the
16 handcuffs, right?

17 A. Yes. Yes.

18 Q. And he was saying that he was going break them
19 as well.

20 A. He said he was going to get out of the
21 handcuffs.

22 Q. So much so it caused you to turn -- you went
23 in and handcuffed him again.

24 A. Put another set on, yes, sir.

25 Q. So, you put two sets of handcuffs on him when

1 you saw him?

2 A. At some point I did, yes.

3 Q. Yes, sir.

4 Because he was pulling at them and saying
5 he was going to break those handcuffs.

6 A. Right.

7 Q. Right.

8 Now, when you were talking to him, you
9 observed that he was saying some things that were
10 somewhat erratic.

11 A. Yes, sir.

12 Q. You documented things in your report, right?

13 A. One or two lines, yes, sir.

14 Q. You documented stuff about him saying --

15 MS. BARD: Your Honor, I'm going to
16 object to any sort of hearsay that comes out at that
17 point.

18 MR. DAVIS: Not offered for the truth of
19 the matter asserted, Your Honor. Goes to state of mind
20 in this issue. We're not trying to prove that things
21 that were being said by Mr. Vasquez were true. We're
22 -- we're proving them to show his state of mind at that
23 time, which is the issue in this case.

24 THE COURT: All right. Why don't you
25 come up here and tell me -- I think I know. But come

1 up here and tell me what the statements are.

2 (Bench conference on the record).

3 MR. DAVIS: He says he was speaking
4 incoherently, talking about aliens and airplanes.

5 THE COURT: Okay.

6 (End of conference).

7 THE COURT: Objection is overruled.

8 Q. (BY MS. BECKNER) While Mr. Vasquez was
9 struggling with those handcuffs, you heard him speaking
10 incoherently.

11 A. Yes.

12 Q. He was saying stuff about airplanes and
13 aliens.

14 A. Airplanes and other planets.

15 Q. You thought it was necessary to document this
16 in your report because you had received information
17 about him being under the influence potentially of some
18 substance, right?

19 A. Yes.

20 Q. Did you call this to the attention of the
21 other detectives who were working?

22 A. I don't recall that.

23 Q. If I showed you a report, would it help
24 refresh your recollection, sir?

25 A. Sure.

1 Q. I don't know if you had chance --

2 MR. DAVIS: May I approach the witness,
3 Your Honor?

4 THE COURT: Yes, sir.

5 Q. (BY MR. DAVIS) Did you have a chance to
6 review your report before today?

7 A. Yes.

8 Q. Okay. This is the section of your supplement.
9 This isn't. Because you wrote some stuff on there.
10 Look at it.

11 A. Um-hum.

12 Q. Is that it?

13 A. Yeah.

14 Q. Do you want to take a second to look at it?

15 A. (Witness complying).

16 Okay.

17 Q. All right. Does that refresh your
18 recollection?

19 A. Yes.

20 Q. All right. So, now, you had some conversation
21 about all of this with Sergeant Robles, right?

22 A. About what?

23 Q. About what you saw?

24 A. About what I saw?

25 Q. In terms of what you saw with Mr. Vasquez.

1 A. I might have. I don't -- I don't remember.

2 MR. DAVIS: May I approach again?

3 THE COURT: Yes, sir.

4 Q. (BY MR. DAVIS) Does that help you -- does
5 that refresh your recollection?

6 A. Doesn't say anything about me telling Sergeant
7 Robles anything about saying it.

8 Q. I understand.

9 It talks about your conversation -- you
10 having a conversation with him, right?

11 A. That he accepted charges, yes.

12 Q. Yes, sir.

13 A. He called and told me that.

14 Q. And then you have this notation after those
15 statements that you decided not to talk to him.

16 A. Decided -- oh, yeah. We were never -- I was
17 never questioning him.

18 Q. I understand you weren't because you weren't
19 the detective --

20 A. Right.

21 Q. -- on the case.

22 A. Right.

23 Q. But you have that conversation with Detective
24 Robles. You say that we decided not to talk to him.

25 A. No. That's not -- that's not -- that's not

1 the case, I don't think.

2 Q. Okay.

3 A. I'm not going to talk to him, period. Because
4 it's not my -- right. So, there's no conversation
5 about that. That's just the way it is.

6 Q. Yes, sir.

7 Was there ever any discussion about -- do
8 you -- did you have any discussion with Sergeant Robles
9 about the need to have a drug test done?

10 A. No.

11 MR. DAVIS: I don't have any other
12 questions, Judge.

13 THE COURT: Ms. Bard?

14 MS. BARD: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. BARD:

17 Q. Sergeant Brady, I think it's safe to say that
18 this was not your case, correct?

19 A. That's correct.

20 Q. Okay. You were basically told to sort of
21 baby-sit the defendant when you weren't doing other
22 jobs.

23 A. Yes. I was at the office. And because I was
24 the only supervisor at the office, when someone comes
25 into office, someone has to be there to make sure that,

1 you know, he's okay.

2 Q. Got to make sure they don't escape.

3 A. Yes.

4 Q. Someone trying to get out of their handcuffs,
5 is that common or uncommon?

6 A. I have not seen that before myself that I can
7 think of.

8 Q. Okay.

9 A. But people aren't happy to be in handcuffs.

10 MR. DAVIS: Objection to that last part
11 as volunteer, Judge, and not responsive.

12 THE COURT: Sustained.

13 Q. (BY MS. BARD) So, people aren't happy to be
14 in handcuffs.

15 MR. DAVIS: Again, objection, Your Honor,
16 that's nonresponsive.

17 Well, I'll withdraw that objection.

18 THE COURT: Okay.

19 Q. (BY MS. BARD) So, people aren't happy to be
20 in handcuffs?

21 A. Usually not, no.

22 Q. Okay. And if they can, they may be trying to
23 get out of them?

24 MR. DAVIS: Objection, relevance, Your
25 Honor, as to what other people were doing.

1 THE COURT: Overruled.

2 Q. (BY MS. BARD) And if they can, they'll try to
3 get out of them?

4 A. I suppose.

5 Q. Okay. When you were talking with the
6 defendant, you were having sort of brief interactions.
7 Yeah?

8 A. Yes. I was coming in and out occasionally.

9 Q. Okay. Was he following your instructions?

10 A. Yes.

11 Q. Did he have any problem when you asked him to
12 do something?

13 A. No.

14 Q. You said you heard him or he was talking about
15 airplanes.

16 A. Yes.

17 Q. Okay. You later had a conversation with his
18 mother, correct?

19 A. Yes.

20 Q. And after talking with his mom, did it make
21 sense when he was referring to airplanes what that was
22 -- what he was talking about?

23 A. In the sense that there may be --

24 MR. DAVIS: Objection to hearsay, Your
25 Honor.

1 THE COURT: It's sustained if we're going
2 to talk about something someone said.

3 Q. (BY MS. BARD) What I'm asking is after
4 talking with his mom, did the comments that he was
5 making about the airplanes make sense to you?

6 A. Yes.

7 Q. Okay. When you were dealing with the
8 defendant, if I remember correctly, you were giving him
9 some water.

10 A. Yes.

11 Q. Okay. Did he have any problems drinking the
12 water?

13 A. No.

14 Q. Okay. In fact, I believe he said thank you.

15 A. Yes.

16 Q. Okay.

17 MS. BARD: Nothing further, Your Honor.

18 THE COURT: Ms. Davis?

19 REDIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q. Sergeant, you've never seen anybody try to do
22 what Mr. Vasquez was doing with those handcuffs, is
23 what you testified to, right?

24 A. I have not, no.

25 Q. And he talked not just about airplanes, but he

1 was saying something about aliens and other planets.

2 MS. BARD: I would object to the leading.

3 THE COURT: Don't lead your witness.

4 A. I remember him mentioning other --

5 MS. BARD: Your Honor, I object at this
6 point the until the next question.

7 THE COURT: All right. Just ask your
8 question, Mr. Davis.

9 Q. (BY MR. DAVIS) He wasn't only talking about
10 airplanes.

11 MR. DAVIS: That's not leading.

12 THE COURT: Overruled.

13 A. No.

14 Q. (BY MR. DAVIS) Was he also talking about
15 aliens?

16 A. I don't remember that word being specifically
17 used.

18 Q. You remember him -- I think you said other
19 planets.

20 A. Yes.

21 Q. I think you may have documented aliens and
22 saying aliens in your report though.

23 A. I don't think I did.

24 MR. DAVIS: May I have one moment, Your
25 Honor?

1 THE COURT: Yes, sir.

2 Q. (BY MR. DAVIS) While I'm looking for that,
3 you weren't there to interrogate or interview
4 Mr. Vasquez, right?

5 A. No.

6 Q. And even though you weren't there to interview
7 Mr. Vasquez, he was saying all of this stuff in your
8 presence?

9 A. Yes.

10 Q. You weren't in the same room with him though.

11 A. I was in the same room with him, in and out,
12 yes.

13 Q. All right. But for the most part, were you
14 sitting in the same room with him or were you sort of
15 in an area adjacent to the room he was in?

16 A. Both.

17 Q. Okay. So, you were going back and forth both
18 times?

19 A. Yes.

20 Q. So, it would appear as though you weren't in
21 the room with him. There were periods of time --

22 A. Oh, yes. Yes, that's true.

23 MR. DAVIS: That's all I have, Judge. I
24 don't have anything else.

25 THE COURT: Ms. Bard?

1 RE-CROSS-EXAMINATION

2 BY MS. BARD:

3 Q. Sergeant Brady, do you know whether or not he
4 could have been faking talking other planets and
5 airplanes?6 MR. DAVIS: Objection, calls for
7 speculation.

8 THE COURT: Sustained.

9 Q. (BY MS. BARD) Do you have any way of knowing
10 -- let me ask it this way.11 Would he only say those things when you
12 were in the room.13 MR. DAVIS: Again, objection speculation,
14 Your Honor. He can't testify as to what's said when
15 he's not in the room.

16 THE COURT: Sustained.

17 Q. (BY MS. BARD) Do you know or did you ever
18 hear him when you were outside the room talking about
19 airplanes?

20 A. Not that I can remember.

21 Q. And you could have heard him.

22 MR. DAVIS: Objection, Your Honor, calls
23 for speculation.

24 THE COURT: Overruled.

25 Q. (BY MS. BARD) You could have heard him.

1 A. If I was standing outside the room, maybe yes.
2 But I was not always on that side of the floor. I was
3 going back and forth to the other side of the floor,
4 yeah.

5 Q. So -- but only when you would walk in as a
6 homicide detective with HPD --

7 MR. DAVIS: Again, Your Honor, calls for
8 speculation as to when he only walked into the room.
9 He can't testify as what happened when he wasn't in the
10 room. He didn't hear him.

11 THE COURT: I don't even know what the
12 question is because we only got like four words into
13 it. So, let her finish.

14 Q. (BY MS. BARD) But when you would walk in,
15 you're -- I assume you're wearing your suit and your
16 lanyard that says you're a homicide detective.

17 A. Yes.

18 Q. Okay. So, is it possible he could have been
19 saying those things --

20 MR. DAVIS: Objection, Your Honor, calls
21 for speculation.

22 THE COURT: I understand. Let her finish
23 the question, please.

24 MR. DAVIS: Yes, Your Honor.

25 Q. (BY MS. BARD) Is it possible he could have

1 been saying those things when you're in the room to
2 make you think that he might be acting crazy.

3 MR. DAVIS: Objection --

4 THE COURT: Sustained.

5 MR. DAVIS: -- calls for speculation.

6 Q. (BY MS. BARD) Do you have an opinion as to
7 whether or not he was acting crazy?

8 MR. DAVIS: Objection, Your Honor, calls
9 for speculation as well as an improper lay opinion.

10 THE COURT: Overruled. I'll let him
11 answer that one.

12 A. I don't know what he was doing.

13 Q. (BY MS. BARD) All right. So, I just want to
14 be clear. You don't have an opinion either way.

15 MR. DAVIS: Objection, asked and
16 answered.

17 THE COURT: Overruled.

18 A. I don't know if he was -- I don't really have
19 an opinion either way. I don't -- I don't know what
20 he's like normally. I don't have an opinion either
21 way.

22 Q. (BY MS. BARD) Okay.

23 MS. BARD: Nothing further, Your Honor.

24 THE COURT: Mr. Davis?

25 REDIRECT EXAMINATION

1 BY MR. DAVIS:

2 Q. It was your job just to document what you saw,
3 right?

4 MS. BARD: Object to the leading.

5 Q. (BY MR. DAVIS) You were just documenting what
6 you saw.

7 A. Yes.

8 Q. And you wrote down what you observed.

9 MS. BARD: That's still leading, Your
10 Honor.

11 MR. DAVIS: That's not leading.

12 THE COURT: Well, it is, but

13 MS. BARD: Asked and answered at this
14 point.

15 THE COURT: That's true.

16 Q. (BY MR. DAVIS) Thank you, Detective.

17 MR. DAVIS: I don't have anything else,
18 Your Honor.

19 THE COURT: Ms. Bard?

20 MS. BARD: Nothing further.

21 THE COURT: All right. Thank you, sir.
22 You may step down and step outside.

23 Call your next witness, please.

24 MR. DAVIS: We call Officer Solis, Your
25 Honor.

1 THE COURT: Mr. Davis?

2 MR. DAVIS: Yes.

3 KRISTOPHER SOLIS,
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DAVIS:

7 Q. Can you tell the jury your name?

8 A. I'm sorry. My ears is congested.

9 Q. Can you tell the jury your name?

10 A. Kristopher Solis.

11 Q. All right. Can you hear me when I speak this
12 loud, Officer Solis?

13 A. Yes, sir.

14 Q. Now, obviously you're wearing an HPD uniform.

15 A. Yes, sir.

16 Q. And so, you're employed by HPD.

17 A. Houston PD, yes, sir.

18 Q. What do you do for them?

19 A. I'm a patrol officer?

20 Q. Were you working on December 20th of 2013?

21 A. Yes, sir.

22 Q. Now, you've been called down today because you
23 witness some stuff, right?

24 A. Yes, sir.

25 Q. What happens, sir?

1 A. From what I know, basically a murder took
2 place.

3 Q. Right.

4 You got out to a scene, right.

5 MS. BARD: Object to leading.

6 MR. DAVIS: Trying to direct the witness,
7 Your Honor, preliminary question.

8 THE COURT: All right. I'll let a little
9 leeway go. Go ahead.

10 Q. (BY MR. DAVIS) You got called to a scene,
11 right?

12 A. That's accurate, yes, sir.

13 Q. You didn't do any investigation.

14 A. No.

15 Q. From what you know, first-hand knowledge, you
16 got called to the scene and what did you do?

17 A. Basically set a perimeter because we -- from
18 what the radio we had -- radio chatter was that --

19 Q. Without telling me what was said or what you
20 heard, just tell me what you did.

21 A. As soon as I got there, I pulled out my patrol
22 carbine.

23 Q. What is that, sir?

24 A. AR-15.

25 Q. Can you describe to the jury what an AR-15 is?

1 A. A sub-machine -- well, not a sub -- a
2 semiautomatic rifle, military style rifle.

3 Q. When you say military style, what do you mean?

4 A. If anybody knows what an MC -- M-16 looks
5 like, basically that's what it looks like.

6 Q. It's a big gun.

7 A. Yes, a long gun.

8 Q. Long gun.

9 Well, if you could describe it to the
10 jury in terms of what the clip looks like and in terms
11 of its size?

12 A. Barrel was 16-inch barrel, expandable stock.
13 If you extend it all the way, maybe, what, 35 inches
14 long, maybe. I have no idea, to be honest with you.

15 Q. And that's the stock?

16 A. The stock, if you expand it all the way out.

17 Q. All right. Now, sir, is every officer allowed
18 to carry one of those?

19 A. If you take a class, yes.

20 Q. So, you have to get certification?

21 A. Yes, sir.

22 Q. On December 20th, were you certified?

23 A. Yes, sir.

24 Q. And you took it out of your car and then you
25 did what with it, sir?

1 A. I basically loaded it, you could say. I
2 charged the handle, putting a round in the chamber.

3 Q. Then you said you set up a position around the
4 perimeter.

5 A. Yes.

6 Q. What did you see, sir?

7 A. At that time I just saw other officers setting
8 up behind their vehicles for protection for -- because
9 we from -- like I said, supposedly an armed suspect
10 inside the residence.

11 Q. At some point in time, did somebody come out?

12 A. A long time after that, yeah.

13 Q. Were you in the front of the house or the back
14 of the house?

15 A. Well, when I first got there, I was in front
16 of the house. Sergeant Dinh saw that it was several
17 officers out there. So, he sent more officers out in
18 the back.

19 Q. And you were in the back of the house?

20 A. I was actually -- if you're looking at the
21 front door of the house --

22 Q. Yes, sir.

23 A. -- of the house in question, I was to the
24 right, which is the west side of the house in a
25 neighbor's backyard.

1 Q. So, when you were there, did you see anybody
2 run into the backyard?

3 A. When I set up a perimeter in the back?

4 Q. Yes, sir.

5 A. At that time, no.

6 Q. At some point in time, did somebody come into
7 the backyard that wasn't a police officer?

8 A. Yes.

9 Q. What happened when that person came there?

10 A. Where do you want me to start from?

11 Q. You can start from the first point you see
12 him.

13 A. First point that I see him?

14 Q. Yes, sir.

15 A. Basically I saw him run around from the
16 opposite end of the house coming towards where --
17 basically where I was at.

18 Q. Now, can you describe to the jury what his
19 position was like -- what was his body position like?

20 A. Running position.

21 Q. Where was his hands?

22 A. As if he was running.

23 Q. All right. And when he got to the back, what
24 happened?

25 A. Basically turned on the flashlight to my rifle

1 so he could see that there's officers back there. And
2 I started yelling at him to get down on the ground, get
3 down on the ground.

4 Q. What did he do at that point?

5 A. At that point he stopped. Put his hands up.
6 Probably about shoulder -- shoulder height. He started
7 going down. That's when he put his hands down. So, I
8 started yelling again, get down on the ground.

9 That's when several other officers came
10 in from the back of the fence -- well, from the back of
11 the house -- 'cause they kicked out pickets as well.
12 Came back in and they took him down to the ground.

13 Q. All right. Now, when he went in the back, was
14 he mumbling stuff you couldn't understand?

15 A. Well, from where I was -- 'cause I was still
16 on the opposite side of the fence. And he's a good
17 maybe, what, 15 feet on the opposite side of the fence.
18 I can hear him say some -- what sounded like mumbling
19 to me 'cause I couldn't understand what he was saying.
20 I couldn't hear what he was saying.

21 Q. So, it appeared to you that he was mumbling?

22 A. To me, yeah. Because the other officers as
23 well were telling him give us your hands, you know,
24 stuff like that. Giving him verbal commands.

25 Q. All right. Now, when you wrote your report,

1 you -- you documented in your report some of those
2 things that occurred.

3 A. Yes, sir.

4 Q. Would it aid and assist your memory to review
5 your report?

6 A. Yes.

7 MR. DAVIS: May I approach the witness,
8 Judge?

9 THE COURT: Yes, sir.

10 Q. (BY MR. DAVIS) Is that your part of the
11 report, sir?

12 A. Yes.

13 Q. Just read it to yourself. I just want to make
14 sure that --

15 A. (Witness complying).

16 Okay.

17 Q. Okay. Does that help you?

18 A. Yes, sir.

19 MR. DAVIS: I don't have any other
20 questions, Judge.

21 THE COURT: Ms. Morneau?

22 CROSS-EXAMINATION

23 BY MS. MORNEAU:

24 Q. Officer Solis?

25 A. Yes, ma'am.

1 Q. Okay. So, on December 20th of 2013, do you
2 get dispatched out to the scene?

3 A. No, I did not.

4 Q. Okay. You heard it over the radio.

5 A. Yes.

6 Q. And so, you volunteered to go by.

7 A. Exactly.

8 Q. Because you knew that help was needed at the
9 scene.

10 A. Yes, ma'am.

11 Q. And the scene that we're talking about is the
12 scene that's at 5711 Vendi.

13 A. Yes.

14 Q. And that's in Houston, Harris County, Texas.

15 A. Yes, ma'am.

16 Q. When you get there, there's already a lot of
17 officers on the scene.

18 A. There were several other officers. I don't
19 know about a lot, but there were several, yes.

20 Q. Okay. And they were primarily in the front.

21 A. Yes.

22 Q. And you had a carbine?

23 A. Yes, ma'am.

24 Q. And they specifically needed officers who had
25 carbines on the scene.

1 MR. DAVIS: Objection to hearsay, Your
2 Honor.

3 THE COURT: Overruled.

4 A. From what I -- from what I heard, yes.

5 Q. (BY MS. MORNEAU) Okay.

6 MR. DAVIS: Again, objection, hearsay.

7 THE COURT: That's sustained.

8 Q. (BY MS. MORNEAU) And when you first got to
9 the scene, you set up in the front of the house.

10 A. Yes, ma'am.

11 Q. And you were behind your patrol car.

12 A. I was on the driver's side of the patrol car
13 behind the front driver's -- front driver's side tire
14 and engine block.

15 Q. Okay. And you were doing that in order to
16 have cover in case there was gunshots.

17 A. Yes, ma'am.

18 Q. Okay. And at some point, a sergeant told you
19 to go to the back of the house.

20 MR. DAVIS: Objection to hearsay, Your
21 Honor.

22 THE COURT: Sustained.

23 Q. (BY MS. MORNEAU) At some point, did you go to
24 the back of the house?

25 A. Yes.

1 Q. And you went through the neighbor's yard.

2 A. Yes, ma'am.

3 Q. And again, that was so that you could maintain
4 cover.

5 A. Correct.

6 Q. And that was because you used the neighbor's
7 fence.

8 A. No. We actually had to kick out some pickets
9 of the fence to see the -- the house from the back.

10 Q. Okay. And you were back there for quite a
11 long time in the neighbor's backyard.

12 MR. DAVIS: Objection to counsel
13 testifying, Your Honor.

14 THE COURT: Overruled.

15 Q. (BY MS. MORNEAU) I'm sorry. You were back
16 there for quite a long time.

17 A. Yes, ma'am.

18 Q. Do you know about how long?

19 A. I actually can't even -- I know it was over 30
20 minutes. I don't know exactly how long I was back
21 there, but it was a good time.

22 Q. And you could see through the blinds that
23 there was a suspect in the house.

24 A. Yes.

25 Q. You could see the silhouette.

1 A. Yes, ma'am.

2 Q. You could actually see the silhouette of a
3 long gun also.

4 A. Yes, ma'am.

5 Q. Okay. And you were shining your flashlight
6 towards the window also.

7 A. Yes, ma'am.

8 Q. And that was to let the suspect know that
9 there were police officers who were out there.

10 A. Yes, ma'am.

11 Q. Okay. And at some point, the suspect entered
12 the backyard.

13 A. Yes, ma'am.

14 Q. And you were still there in the backyard when
15 that happened.

16 A. Yes, ma'am.

17 Q. And you said that when he came into the
18 backyard, he was running.

19 A. Yes, ma'am.

20 Q. And do you recall if he had shoes on?

21 A. Actually I don't. I was looking straight from
22 his waist up.

23 Q. Okay. So, you don't know either way?

24 A. No.

25 Q. Okay. And when he came into the backyard, did

1 he have his hands up?

2 A. After I ordered him to put his -- to get down
3 on the ground -- as soon as I ordered him, like two --
4 like the second time I ordered him, that's when he put
5 his hands up.

6 Q. Okay. So, did it appear to you that he
7 understood your command?

8 A. Yes.

9 Q. Okay. And what did he do next?

10 A. He started going down. But when he was going
11 down, he started to put his hands down. And that's
12 when the several other officers came in, like I said,
13 from the back pickets of the fence and ordered him down
14 and took him down to the ground.

15 Q. Okay. A suspect who doesn't immediately
16 comply with commands, is that common or uncommon?

17 MR. DAVIS: Objection, relevance, Your
18 Honor.

19 THE COURT: Rephrase your question.

20 It will -- sustained. Ask another
21 question.

22 Q. (BY MS. MORNEAU) Have you ever seen a -- have
23 you ever seen a suspect try to get away from you
24 before?

25 MR. DAVIS: Objection relevance.

1 THE COURT: Overruled. I'll let him
2 answer that.

3 A. Say again.

4 Q. (BY MS. MORNEAU) Have you ever seen a suspect
5 try to get away from you before?

6 A. Yes.

7 Q. Even with guns pointed at them?

8 A. Yes.

9 MR. DAVIS: Objection, relevance.

10 THE COURT: Overruled.

11 Q. (BY MS. MORNEAU) Was that a yes?

12 A. Yes.

13 Q. Okay. So, eventually when it became clear
14 that the defendant -- that the defendant wasn't going
15 to comply with commands, other officers came forward
16 and took him to the ground?

17 A. Yes, ma'am.

18 Q. And you provided cover for them.

19 A. Exactly.

20 Q. Would it be fair to say that those officers
21 were closer to the defendant than you were?

22 A. Yes, they were.

23 Q. And it was at that time that you noticed that
24 the defendant was saying something.

25 A. Exactly.

1 Q. And you stated that he was mumbling something.

2 A. From what -- that's all I could hear was
3 mumbling because the other officers as well were giving
4 him commands as well.

5 Q. Okay. When you say mumbling, you mean that he
6 was speaking in a quiet voice.

7 A. Yes.

8 Q. Okay. You don't -- you don't mean that he was
9 saying something crazy.

10 A. No.

11 Q. You just mean you couldn't hear what he was
12 saying.

13 A. Exactly.

14 Q. Okay. How far away from him?

15 A. I was across the fence on -- still in the
16 neighbor's yard. So, I would say 15 feet more.

17 Q. Okay. And do you recall who the officers were
18 who were closer to him?

19 A. Actually, I don't.

20 Q. Okay.

21 A. My -- my main focus was him to make sure that
22 he didn't have no other weapons on him.

23 Q. Okay. And how much time did he spend in your
24 presence?

25 A. As soon as I knew that he was in handcuffs, I

1 moved to the back door. So, maybe, what, 30 seconds --
2 30 to 40 seconds.

3 Q. Was that enough time for you to make any
4 determination on whether or not he was intoxicated?

5 A. No.

6 Q. Okay.

7 MS. MORNEAU: Pass the witness.

8 THE COURT: Mr. Davis?

9 MR. DAVIS: No other questions, Judge.

10 THE COURT: All right. Thank you, sir.
11 You may step down and step outside.

12 Call your next witness, please.

13 MR. DAVIS: Your Honor, can I see if this
14 witness is outside? The witness I'm about to call, can
15 I see if she's here?

16 THE COURT: Yes, sir.

17 (Brief pause).

18 MR. DAVIS: May we approach brief -- very
19 briefly?

20 THE COURT: Yes, sir.

21 (Bench conference on the record).

22 MR. DAVIS: I have a copy of a report
23 that I'd like to give to the DA. She brought a copy of
24 the report. I was wondering if I could just copy it
25 quickly so I give them a copy -- a fresh copy because

1 she has everything she has. And it would be faster for
2 me just to make a copy of everything she has and give
3 it to Ms. Lauren instead of my pulling stuff out of my
4 box and giving it to her.

5 Is that okay? Would that be acceptable?
6 It would take two minutes for me to run in the back,
7 copy it and come back out.

8 THE COURT: We're going to have everybody
9 sitting here.

10 MR. DAVIS: Well, that's why I was asking
11 to approach to see if you wanted to take like a
12 five-minute break 'cause we're ready otherwise. I
13 don't know if she wants to take her outside the
14 presence of the jury either.

15 MS. BARD: I don't know what the report
16 says, so I don't know.

17 MR. DAVIS: I didn't think we'd move this
18 fast, but we moved a little faster than I was
19 expecting. I thought we'd have at least a moment to
20 get it to her and I haven't.

21 THE COURT: Well, now you know.

22 MR. DAVIS: Yes, sir, I do.

23 (End of conference).

24 THE COURT: Ladies and gentlemen, can you
25 step to the back for a few minutes?

1 (Jury out).

2 THE COURT: Let me ask you this. Based
3 on what you have read so far, are you going to be
4 talking this witness on voir dire? Do we need to do
5 anything outside the presence of the jury, which we
6 could be accomplishing now since it is after 5:00
7 o'clock and I might as well just go ahead and send them
8 home and us continue to work. That's kind of what I'm
9 trying to get at.

10 MR. DAVIS: If we could press forward,
11 Judge, I'd appreciate that. 'Cause I don't think
12 direct testimony is going to be that long.

13 THE COURT: Oh, trust me. I want to
14 press forward.

15 MR. DAVIS: Yes, Your Honor.

16 THE COURT: But if we're going to do a
17 hearing outside the presence of the jury and they're
18 going to be sitting back there for 30 or 40 minutes
19 while we go through that and it's almost 6:00 o'clock
20 and I've told them we're working till about 6:00
21 o'clock every day --

22 MS. BARD: I'm trying skip to the end.
23 If I can just a couple more minutes just to skip to the
24 end just to see? I'll skip some of the stuff in the
25 middle.

1 (Brief pause).

2 MS. BARD: Yes, Judge. I'm going to need
3 the voir dire.

4 THE COURT: Let's have the jury and then
5 the defendant, please.

6 (Jury in).

7 THE COURT: Please be seated.

8 All right. Ladies and gentlemen, we've
9 been working to try to continue on out here. But it's
10 become apparent to me that it's going to take us a
11 little bit longer in order for us to get to the point
12 to where we can continue with y'all.

13 So, instead of having y'all sit back
14 there while we continue to do that, I'm going to go
15 ahead and send you home now. We are going to continue
16 to work and stay here until we can get the issues
17 resolved that we need to get resolved so we can
18 continue on with y'all. So, we're going to stay. But
19 I'm going to go ahead and send y'all home for the
20 evening now.

21 I am going to once again remind you of
22 all of the admonishments and instructions that I gave
23 you, to please continue to follow those to the best of
24 your abilities that I know you have been doing. I'm
25 going to ask you once again to be here at 8:30 tomorrow

1 morning ready to go. Hopefully, we should be ready to
2 go with you then as well.

3 All right. Y'all have a good evening.
4 We'll see you tomorrow morning.

5 (Jury excused for the day).

6 **HEARING OUTSIDE THE PRESENCE OF THE JURY**

7 THE COURT: You can be seated.

8 All right. Call your witness, please.

9 MR. DAVIS: Your Honor, the defense
10 intends to call Dr. Cassandra Smisson.

11 THE COURT: Come on up, Doctor.

12 You can proceed.

13 Well, I mean, I don't -- I don't know
14 what we're doing. I mean, I don't know who she is,
15 what she's doing. Actually the way this is supposed to
16 work -- if y'all are offering her has an expert on
17 something, then really it's upon y'all to first
18 establish what her credentials are. And for y'all, if
19 you're going to test those -- if that's the true
20 gate-keeping process that we're going through.

21 So, if you would like to go through what
22 her training and background and experience and
23 credentials are, we can start with that.

24 So, Mr. Davis.

25 MR. DAVIS: Thank you, Your Honor.

1 DR. CASSANDRA SMISSON,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. DAVIS:

5 Q. Ma'am, can you tell the Judge your name?

6 A. Cassandra Smisson.

7 Q. And now, I said Dr. Smisson. Is it
8 Dr. Smisson?

9 A. Yes.

10 Q. Dr. Smisson, can you tell the Judge where you
11 went to school?

12 A. I started my education at Clemson University
13 where I got my Bachelor's Degree in psychology. Then
14 went on to get a Master's at Georgia Southern
15 University. And then a Doctoral Degree in counseling,
16 psychology and human systems Florida State University.

17 Q. Now, after you have got your Doctorate, did
18 you any intern or any clinical work?

19 A. I did. I did a year clinical internship here
20 at the Houston VA. And then after that, I did a
21 fellowship or specialization year in forensic
22 psychology.

23 Q. Now, you currently have a practice in forensic
24 psychology.

25 A. I do.

1 Q. And do you do any work for any state agencies
2 right now?

3 A. Yes. I actually have a contract with Harris
4 County Psychiatric Center. We work closely with MHMRA
5 there where I do competency evaluations on their
6 competency restoration unit.

7 Q. And in addition to doing work with the
8 competency restoration unit, have you also acted or
9 assisted different governmental entities as an expert?

10 A. Yes. I've done some work with MHMRA through
11 the county.

12 Q. Have you also done any work with the Harris
13 County District Attorney's Office?

14 A. Yes. In a sense, yes.

15 Q. And you've done some evaluations with the
16 Harris County Public Defender's Office as well.

17 A. Yes, correct.

18 Q. And you've also done some for private lawyers.

19 A. Yes.

20 Q. Now, ma'am, do you regularly evaluate people
21 for competency and sanity?

22 A. I do.

23 Q. Now, ma'am, what training and experience do
24 you have in giving or at least doing sanity
25 evaluations?

1 A. Well, in addition to the educational
2 background that I have in it, doing the one-year
3 residency or internship, I did a rotation in forensic
4 psychology where that's a lot of what I did. Under the
5 mentorship of Jerome Brown, who's another forensic
6 psychologist here in town. He's also who I did my
7 Fellowship with as well.

8 So, I've done numerous evaluations of
9 these -- of this nature. And in addition to that, in
10 order to do competency evaluations, you have to have
11 specialized training in competency and in sanity
12 evaluation. It's a 24-hour continuing education
13 requirement. And then every year, we have to do
14 continuing education to -- to make sure that our
15 knowledge is up to date.

16 Q. And is that the certification that you have to
17 go through as well?

18 A. Yes.

19 Q. So, you've gone through certification by the
20 State of Texas.

21 A. Yes. Correct.

22 Q. And can someone -- a doctor not certified to
23 do sanity evaluations by the State of Texas -- even
24 though they may be a psychologist, can that person do
25 sanity evaluations?

1 A. They're not supposed to.

2 Q. So, legally to be able to render an opinion on
3 a sanity case and a sanity evaluation, you have to have
4 that certification?

5 A. Correct.

6 Q. All right. And, ma'am, can you tell the Judge
7 how many times you've evaluated people for sanity? Do
8 you know?

9 A. I don't know off the top. But I've done it at
10 least 100 times.

11 Q. And then for competency as well?

12 A. For competency, it's been much more than that.

13 Q. Yes, ma'am.

14 Now, in this case, you were asked to do a
15 sanity evaluation of Gustavo Vasquez.

16 A. Yes.

17 Q. Now, in terms of your actual sanity evaluation
18 -- without telling me about the one you did for Gustavo
19 -- what do you generally do when you do a sanity
20 evaluation?

21 A. Typically I will do a thorough clinical
22 interview with -- with the defendant. Which really
23 covers his background information, education, work
24 history, medical history, mental health history. Then
25 we talk about the alleged offense. I get a version of

1 his events, as he remembers them. And in addition to
2 that, I review collateral information, anything from
3 jail medical records or medical records from other
4 facilities to police offense reports. Make contact
5 with various family members or any other pertinent
6 people that might have relevant information, like a
7 family member. And use all of that information to make
8 the decision.

9 Q. And, ma'am, do you also at times -- do you
10 also use testing?

11 A. At times, yes.

12 Q. Now, you had an opportunity to evaluate
13 Mr. Vasquez.

14 A. Yes.

15 Q. All right. And how many times did you
16 evaluate Gustavo Vasquez?

17 A. I saw him twice.

18 Q. Do you normally need to see someone twice to
19 be able to render an opinion?

20 A. No.

21 Q. How long did your evaluation of Mr. Vasquez
22 last?

23 A. The first time I saw him, I saw him for just
24 about two hours. It took me about three hours or so to
25 review records. I spoke with his mother, which took 20

1 minutes -- 20 to 30 minutes. And then the second time
2 that I saw him, it was just under two hours.

3 Q. So, now when you -- you talked to people like
4 his mother and you review records, you're doing that
5 for what purpose?

6 A. Just to obtain collateral information. It's
7 -- we don't like to just go on the word of the person
8 that we're evaluating. We like to take multiple
9 sources of information and put them all together to see
10 if they make sense.

11 Q. All right. So, now, when you do this
12 investigation -- when you get that collateral
13 information, does it assist you with your evaluation?

14 A. Yes.

15 Q. So, the more information you have, the more
16 likely you are to get an accurate diagnosis.

17 A. I believe.

18 Q. And so, part of it is that you also rely on
19 interview of the defendant.

20 A. Yes, part of it.

21 Q. And you rely on records that you may receive.

22 A. Yes.

23 Q. And interviews of different people.

24 A. Yes.

25 Q. Right.

1 You find out relevant medical or
2 psychological history?

3 A. Um-hum. Yes.

4 Q. Can you tell the Judge a little bit about what
5 you're looking for when you do a sanity evaluation?

6 A. Basically looking to see what -- obviously
7 what the mental state was at the time of the offense.
8 I obtain information about that through the defendant
9 himself, also using the various records to see if they
10 corroborate what he's saying.

11 Q. Now, is that an opinion -- the opinion as to
12 what a person's mental state was at the time of the
13 offense, is that an opinion that is rendered frequently
14 or infrequently in -- in the psychiatric community?

15 A. I'm not sure I understand the question.

16 Q. Now, whenever you do a sanity evaluation, is
17 that what you're looking for?

18 A. Yes.

19 Q. So, in all sanity evaluations, are people
20 trying to render opinions about whether or not a person
21 could appreciate right from wrong at the time of an
22 event?

23 A. Yes. That's what a sanity evaluation is.

24 Q. And that's the main component that you're
25 rendering opinions on.

1 A. Correct.

2 Q. And you have rendered that opinion on many a
3 different occasion.

4 A. Correct.

5 Q. And you've been qualified to do so.

6 A. Correct.

7 Q. And basically, you do that -- based on your
8 review of all of the information, you render that
9 opinion.

10 A. Yes.

11 Q. Now, in Texas, does the sanity have a two-part
12 test?

13 A. Yes.

14 Q. What's that test?

15 A. Well, somebody has to be able to understand
16 the difference between right and wrong at the time of
17 the alleged offense.

18 I'm sorry. I apologize. I haven't been
19 feeling very well today. I'm so sorry.

20 Q. That's okay, Doctor.

21 THE WITNESS: Is it okay if I grab a
22 drink of water?

23 THE COURT: Yeah, that's fine.

24 THE WITNESS: Okay. Thank you.

25 A. Okay. Okay. Sorry about that.

1 Q. (BY MR. DAVIS) That's all right.

2 A. As I was saying, a person needs to be able to
3 understand the difference between right and wrong at
4 that time. I mean, that's the main component of what
5 we're looking for in a sanity evaluation.

6 Q. And the second component is that the person
7 has to have a serious documented mental illness.

8 A. That is part of it, right, in order to qualify
9 for that -- for that defense.

10 Q. Right.

11 Are there occasions where you've
12 evaluated people who did not have a serious mental
13 illness, but because of drug use or some other reason,
14 they did not or were not able to appreciate right from
15 wrong?

16 A. Yes.

17 Q. And is that an opinion that you've rendered in
18 situations where you said that this person, based on
19 drug use, was not able to appreciate right from wrong?

20 A. Yes.

21 Q. Are there even cases where people may have
22 drug use, but as a result of drug use, they manifest a
23 serious mental illness?

24 For example, where drug use may bring on
25 the onset of schizophrenia or some other mental

1 illness?

2 A. May not bring on the onset of a mental illness
3 necessarily, but might mimic symptoms of.

4 Q. Um-hum.

5 And so, a person could actually be
6 diagnosed or receive a mental health diagnosis as a
7 result of drugs, but still not qualify for a sanity
8 defense.

9 A. That could happen.

10 Q. Right.

11 And so, that person may not be able to
12 appreciate right from wrong. But at the same token,
13 because of drug use, may have manifested that -- that
14 ability, not to be able to appreciate right from wrong.

15 A. Correct.

16 Q. And in Mr. Vasquez's case, based on all that
17 you reviewed in terms of the records, your interview of
18 Mr. Vasquez and your review of all the documents that
19 you've seen and you've used, did you have an opinion as
20 to whether or not he appreciated the difference between
21 right and wrong?

22 A. Yes, I did.

23 Q. And what was that opinion?

24 A. Well, I determined that he was able to
25 understand or he -- not because of mental illness, not

1 because of a severe mental illness. So, that was not
2 in play here. So, because of that reason, I did find
3 him to be sane at the time of the offense.

4 Q. Right.

5 A. But that because he was under the intoxicating
6 effects of a substance, that he may not have known the
7 difference between right and wrong in that moment.

8 MR. DAVIS: And, Your Honor, that's
9 pretty much the extent of the testimony in the brief
10 state that we would be offering or be anticipating
11 offering that.

12 THE COURT: All right. Ms. Bard?

13 MS. BARD: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. BARD:

16 Q. So, your opinion is he may not have known the
17 difference between right and wrong?

18 A. Yes.

19 Q. It's possible he did know the difference?

20 A. It's possible. But because he was intoxicated
21 at the time, he may not have known, correct.

22 Q. Okay. Are you aware of the standard for
23 involuntary intoxication in Texas?

24 A. What do you mean exactly?

25 Q. Are you aware of the -- I guess, the prongs,

1 if you will, that you have to meet in order to get the
2 defense of involuntary intoxication?

3 A. Well, it's my understanding that if you
4 voluntarily take a drug -- you know, if you voluntarily
5 take a substance, then you were not eligible for that.

6 But it's also my understanding based on
7 what the defendant told me that he took a substance
8 that he was not exactly sure what it was.

9 Q. Well, he told you he thought it was marijuana,
10 correct?

11 A. He thought it was marijuana.

12 Q. Okay. So, he voluntarily took the -- what he
13 thought was marijuana?

14 A. Yes.

15 Q. Okay.

16 A. That's correct.

17 Q. Nobody forced him?

18 A. Correct.

19 Q. Nobody coerced him?

20 A. Correct.

21 Q. Okay. Nobody held a gun to him to make him do
22 that marijuana?

23 A. As far as I know.

24 Q. Okay. He never told you that?

25 A. No, he never told me that.

1 Q. And, in fact, he smoked that marijuana -- that
2 funny marijuana, if you will, multiple times in that
3 day?

4 A. Yes.

5 Q. Okay. And nobody forced him at any time to do
6 it during those multiple times?

7 A. Correct.

8 Q. Okay. And the second part -- well, so, for
9 involuntary intoxication, you have to prove that one,
10 you didn't make any sort of independent judgment,
11 decision, no volition on your part to take the
12 substance.

13 MR. DAVIS: I object to counsel
14 testifying, Your Honor.

15 THE COURT: Overruled.

16 Q. (BY MS. BARD) The second part is -- the
17 second prong of sanity, which is did not know that his
18 conduct was wrong at the time. Which would be same
19 part of sanity, correct?

20 A. Correct.

21 Q. Okay. So, based on your conversation with the
22 defendant -- it looks like you talked to him in July of
23 2013 and then in April of 2014?

24 A. 2014 -- July 2014 and then April --

25 Q. 15.

1 A. -- of 15, yes.

2 Q. You're right. I'm sorry.

3 Okay. During those times, do you have an
4 opinion as to whether or not he was involuntary taking
5 that substance?

6 A. Whether was involuntarily taking that
7 substance? No, other than the -- whatever might have
8 been in -- in the substance that he was taking right
9 before the offense.

10 Q. Okay. But in your opinion, Dr. Smisson, he
11 voluntarily took the substance.

12 MR. DAVIS: Objection, Your Honor, that
13 calls for an improper opinion and it calls for a legal
14 conclusion. And it's not relevant to this
15 determination.

16 THE COURT: Overruled.

17 Q. (BY MS. BARD) Do you remember the question?

18 A. Can you repeat it?

19 Q. Sure. In your opinion, he voluntarily took
20 the substance?

21 A. Yes.

22 Q. Okay. And then if we go to sort of the second
23 part of the prong of sanity, whether it's for
24 involuntary intoxication or sanity itself, it's he may
25 not have known. But you cannot say he did not know

1 that his conduct was wrong.

2 A. We can never make a definitive decision about
3 that. But I believe because of the -- because of how
4 he described his intoxication, I believe that he likely
5 did not know the difference between right and wrong at
6 that time.

7 Q. Dr. Smisson, is it your testimony when you
8 opine on just regular sanity at this point, that you
9 couch your opinions in may's and likely's, but not did
10 or did not?

11 A. No. We couch them in reasonable psychological
12 probability.

13 Q. Okay. And, in fact, the standard for sanity
14 is did not know the conduct was wrong.

15 A. Yes. Correct.

16 Q. You would agree with me that that language is
17 different than may not have known?

18 A. Yeah, that's different.

19 Q. Okay. In fact, it implies two very different
20 things. Did not is an absolute. May or likely is not
21 absolute.

22 A. Sure.

23 Q. Okay. So, the standard of did not know that
24 his conduct was wrong, you can't give an opinion as to
25 that absolute?

1 A. Absolute? No, I cannot.

2 Q. Okay. Would you say that your opinion would
3 be more a mitigation and more for mitigation of the
4 defendant than it would be -- are you -- well, let me
5 ask it this way. Let me back up.

6 Are you familiar with mitigation for
7 punishment purposes?

8 A. Yes.

9 MR. DAVIS: Objection to relevance, Your
10 Honor, to this hearing. There is no relevance.

11 THE COURT: Sustained.

12 MS. BARD: Your Honor, if I may address
13 that? There is a big difference in temporary insanity
14 as mitigation at punishment versus involuntary
15 intoxication and that charge.

16 THE COURT: Right. And I get that. And
17 I understand that that's what the law says under, you
18 know, 804 or whatever it is. But that's not for her to
19 determine, whether it's mitigation or not.

20 MS. BARD: No, not --

21 THE COURT: As a part of whether or not
22 this -- her testimony should come in front of the jury
23 at guilt/innocence, which I think is what he's
24 objecting to.

25 I don't want to put words in your mouth.

1 MR. DAVIS: You are, Your Honor.

2 THE COURT: So, that's -- his objection
3 is sustained.

4 I understand what you're saying and what
5 you're asking, but that's not relevant right now.

6 MS. BARD: Your Honor, I swear I'm not
7 trying to argue with you.

8 But in her opinion in her report, from
9 what I can tell, she's crouching in terms of
10 mitigation. In fact, that's how she frames her
11 conclusion and opinion. Her summary and recommendation
12 is that there are mitigating factors, not a sanity, not
13 an involuntary intoxication. So, I would like to
14 explore that with her for just a moment.

15 MR. DAVIS: Again, objection, relevance,
16 Your Honor.

17 THE COURT: You know, since it's not in
18 front of the jury and -- fine. Go ahead.

19 MS. BARD: Okay.

20 Q. (BY MS. BARD) Dr. Smisson, you, in fact --

21 THE COURT: I'm trying to say I agree
22 with you, Mr. Davis. It's not relevant.

23 But go ahead.

24 Q. (BY MS. BARD) In your original sanity eval --
25 'cause you end up doing two different reports, correct?

1 A. Well, not two different reports, but just two
2 -- the second one was just an addendum, where I just
3 added some information.

4 Q. Okay. Fair enough.

5 In your first -- I guess, the main -- the
6 body one --

7 A. Yes.

8 Q. -- if you will, you -- under your summary and
9 recommendations, you state that he should be held
10 legally responsible for his actions. However, there
11 are mitigating factors to be considered.

12 A. Yes.

13 Q. Okay.

14 MS. BARD: Nothing further, Your Honor.

15 THE COURT: Mr. Davis?

16 REDIRECT EXAMINATION

17 BY MR. DAVIS:

18 Q. Dr. Smisson, the report you completed, what
19 type of report was it?

20 A. A sanity evaluation.

21 Q. Right.

22 And so, when you're doing a sanity
23 evaluation, you're evaluating a defendant's mental
24 state.

25 A. Correct.

1 Q. And when do that psychological evaluation,
2 that component, when you say to a psychological
3 certainty or degree of psychological certainty, that
4 comes into play when you're evaluating sanity.

5 A. Correct.

6 Q. And your initial evaluation of Mr. Vasquez was
7 for a sanity evaluation.

8 A. Yes.

9 Q. And you found him sane.

10 A. I did.

11 Q. And in the law, a person is legally
12 responsible, even if they couldn't appreciate the
13 difference between right and wrong if they didn't have
14 a serious mental illness; is that right?

15 A. Yes.

16 Q. So, there could have been some other reason
17 that a person could not have appreciated right from
18 wrong based on drugs or something, he still would be
19 considered sane and technically legally responsible.

20 A. Correct.

21 Q. Now, she asked you questions about involuntary
22 intoxication and voluntary intoxication.

23 The substance that intoxicated
24 Mr. Vasquez by his account was different than
25 marijuana, right?

1 A. By his account, yes.

2 Q. And he said that that wasn't his intent to
3 take that substance.

4 A. Correct.

5 Q. So, it's -- she asked you for an opinion about
6 whether or not he voluntarily took the substance. Did
7 he voluntarily take a substance that wasn't marijuana?

8 A. He did not voluntarily take a substance that
9 was not marijuana, but he did voluntarily take
10 marijuana.

11 Q. Yes.

12 MR. DAVIS: I don't have any other
13 questions, Judge.

14 THE COURT: Ms. Bard?

15 MS. BARD: Nothing further, Your Honor.

16 THE COURT: All right. You can stand
17 down for now, Doctor.

18 MS. BARD: Your Honor, I don't believe
19 this is the appropriate time for this witness to
20 testify. It's very clear under the law and it is very
21 clear under the case law. For her to put her
22 background and credibility behind an opinion of may
23 have known his conduct was wrong is not the legal
24 standard that the jury is going to be asked to decide.

25 Experts take the stand every day and form

1 the legal opinion and opine did or did not know the
2 deference between right or wrong.

3 The fact that she is couching it in may
4 or likely is, I feel, highly prejudicial. It's
5 confusing to the jury. It's misleading to the jury.

6 Furthermore, the standard under voluntary
7 versus involuntary intoxication -- through her own
8 conversations with the defendant, he admits that he was
9 trying to take a mind-altering substance. He was never
10 forced to. He was never made to. He was never coerced
11 to.

12 So, her testimony is appropriate under
13 804 for temporary insanity as mitigation in punishment.
14 It is inappropriate at this point under the
15 guilt/innocence phase for her to testify when she
16 cannot say for certain one, did not know that his
17 conduct was wrong; and two, when she's going to say
18 that his testimony -- when she will agree that his
19 intoxication was, in fact, voluntary.

20 That will be all.

21 THE COURT: Okay. Well, you're still
22 standing. I didn't know.

23 MR. DAVIS: Judge, I respond that I think
24 her testimony is relevant. I think she meets all the
25 criteria under State versus Vela and as well as Kelly.

1 It's a situation, Your Honor, where her
2 testimony could aid and assist the jury. She's
3 testified that if he had a mental health issue -- that
4 was the reason he was found to be sane was because he
5 didn't have a mental health diagnosis. She went in and
6 she did tests and they weren't able to diagnosis him
7 with any mental health diagnosis. So, based on that,
8 he wasn't found to be insane.

9 But if he had one, she probably would
10 have opined that he was insane at the time of the
11 offense. Because the second prong was met in her mind.
12 And her testimony was that he may have not been able to
13 appreciate the difference between right from wrong on
14 the basis of substances, not on the basis of a mental
15 illness.

16 The issue -- the whole issue -- the whole
17 crux of an involuntary intoxication defense is -- is
18 that component, that a defendant was under the
19 influence of a substance involuntarily and that the
20 defendant could not appreciate right from wrong. Her
21 testimony goes to one of the elements of the defense --
22 that the defense has to show.

23 The weight of her testimony important to
24 the prosecutor based on her cross-examination might be
25 such that a jury might not give it a whole lot of

1 weight, but it does afford some weight and does assist
2 them. Because she says based on her evaluation of him,
3 he may have not been able to appreciate right from
4 wrong. She talks about that and about the intoxicating
5 substances.

6 She's an expert by training and
7 experience who's done a bunch of sanity evaluations.
8 Can explain what she doing with him. She's had
9 firsthand contact with the defendant, has talked to him
10 on occasions. There's more to her testify that I'm
11 going to offer. But in terms of the expert opinion
12 that the State is contending against, Your Honor, I
13 think she's offered enough to say that it would be
14 instructive to the jury. The standard is met through
15 Vela. Her testimony is indeed relevant and would aid
16 and assist the jurors in reaching a decision about an
17 issue that's crucial to this case.

18 THE COURT: All right. I will go ahead
19 and say now that should we get to punishment, should we
20 get there, I do think her testimony would be relevant
21 as it relates to mitigation. So, we're all, I think,
22 on the same page far as that goes.

23 Regarding her testimony in the
24 guilt/innocence phase -- while I certainly appreciate
25 your stance, Mr. Davis, and what your attempting to do

1 -- my reading of it is and where I have issue with what
2 the Doctor is saying is that -- okay. Temporary sanity
3 is relied upon as a defense and the evidence shows --
4 tends to show that such sanity was caused by
5 intoxication -- well, that's talking about insanity.

6 When you go over to -- and it refers back
7 to in the notes in my book here, back to 801, which is
8 insanity. Where the standard is did not know, not may
9 not have known. But did not know that his conduct was
10 wrong.

11 And we have doctors all the time -- I've
12 got several people who have been found not guilty by
13 reason of insanity here in this court that have indeed
14 opined, given a professional opinion that not may not
15 have or probably didn't have, but did not know that
16 their conduct was wrong.

17 So, that's the issue that I'm having
18 right now with allowing her to testify at this point.
19 What she said is very clear -- and y'all can tell me
20 because I haven't seen the report if it's in the report
21 is by the reason of the introduction of this substance,
22 voluntarily or involuntarily, he may not have known.

23 MR. DAVIS: Judge, can I clarify? If
24 that's the issue the Court's hung up on, the witness is
25 still here. If I can recall her and just ask her that

1 question directly. And the Court's ruling will be what
2 the record is.

3 Is that okay, Your Honor?

4 THE COURT: I'm fine with that. I mean,
5 she was pretty clear about it. It was asked several
6 times, but ask her again.

7 MR. DAVIS: I think there was some
8 question about her using that definition in terms of
9 psychiatric cases. And this not being a psychiatric
10 case, Judge. Because we had that discussion as well
11 when I talked to her outside of the court --
12 courthouse.

13 MR. DAVIS: May I proceed briefly?

14 CONTINUED REDIRECT EXAMINATION

15 BY MR. DAVIS:

16 Q. Now, Dr. Smisson, there is some difference --
17 would you disagree with me that when you're reaching an
18 opinion because of someone's psychological impairment
19 that you factor that in in making the decision about
20 whether or not someone can appreciate right from wrong?

21 A. Yes.

22 Q. Right.

23 So, if you've got someone who has
24 schizophrenia and they've presented with the same
25 information you receive, you would say that that person

1 did not appreciate right from wrong.

2 A. Yes.

3 Q. Right.

4 Because you look at and factor in the
5 mental illness.

6 A. Correct.

7 Q. Right.

8 And your hesitance to do so with the
9 prosecutor was because you weren't being asked to reach
10 that opinion without a mental illness being present.

11 A. Correct.

12 Q. But if you have what Mr. Vasquez was, using a
13 drug that mimics schizophrenia, that mimics a mental
14 illness that has the same thing, can you say in your
15 opinion that Mr. Vasquez, based on all of the
16 information you reviewed, that he did not appreciate
17 right from wrong at this time of the event?

18 A. If it was a drug that mimicked something like
19 schizophrenia, where somebody is having possible
20 hallucinations, delusions, paranoia, things like that,
21 then I could -- then I would feel a little better about
22 coming to that conclusion.

23 Q. Right.

24 And the information you received was that
25 there was -- from your review of the police reports and

1 your review of Mr. Vasquez's statement, that he was
2 under the influence of some substance that was
3 hallucinogen; is that right?

4 A. Yes. It appeared that way.

5 Q. All right. And so, based on that experience
6 and the information you have, can you say that he -- he
7 did not appreciate right from wrong?

8 I know you're used to looking at it in
9 the context of mental illness. But I'm asking you in
10 the sense -- in the context of drugs. Because it's a
11 different defense.

12 Can you say that he did not appreciate
13 right from wrong -- based on what you've seen, that
14 your opinion is that he did not appreciate right from
15 wrong based on all of those things you saw?

16 A. Well, it's -- again, it's hard for me to say
17 that with certainty because we don't know exactly what
18 that substance was.

19 Q. Yes, ma'am.

20 But based on what you saw in terms of
21 your observation of him, right -- based on your
22 observation of him, based on the history that was given
23 to you and the reactions that were described to you,
24 assuming those thing to be true -- assuming them to be
25 true, can you say that he did not appreciate right from

1 wrong?

2 A. Correct. I think there's enough corroborating
3 evidence. The police reports show that he was
4 disorganized and making bizarre statements, that his
5 behavior was fairly bizarre around that time. I think
6 there is enough supporting evidence to say that.

7 MR. DAVIS: All right. If that's the
8 Courts concern, Your Honor, I think that that's met
9 with the testimony.

10 There is some -- some -- there could
11 easily be some confusion because the witness is used to
12 testifying in the context of -- of psychiatry and
13 psychology, which is a little bit different when you're
14 talking about drug use. So, I would submit, Your
15 Honor, that her testimony would aid and assist the
16 jury. It's very similar to others that you've seen.
17 The weight of her testimony may be different than the
18 admissibility of it.

19 Now, her cross-examination certainly
20 could go to the weight. But the admissibility of it is
21 there because it's, of course -- it could help and
22 assist the jury in making a decision on a crucial
23 component of the State's [sic] defense. It's a crucial
24 component because it's one of the elements of the
25 defense -- that the defense is raising in this case.

1 It's our whole case, Your Honor. And not allowing her
2 to testify would deny the defendant due process as
3 well.

4 MS. BARD: Your Honor, may I ask the
5 witness one question based on something she said versus
6 her report?

7 THE COURT: Why not?

8 MS. BARD: Okay.

9 CONTINUED RE-CROSS-EXAMINATION

10 BY MS. BARD:

11 Q. You said that he appeared -- based on what you
12 observed -- to have some hallucinations or delusion at
13 the time --

14 A. At the date of the --

15 Q. -- of the offense?

16 A. -- offense.

17 Q. Okay. Isn't it true on Page 9 of your report
18 that you say there's little to suggest that he was
19 experiencing hallucinations or delusions at the time of
20 the alleged offense or that he did not understand the
21 difference between right or wrong?

22 A. Based on a mental -- severe mental illness.

23 Q. That's not what that sentence says though, is
24 it?

25 Would you like for me to refresh your

1 memory?

2 A. I have it.

3 Q. Okay.

4 A. But based on -- based on the reason why I was
5 sent there to evaluate him, that was to determine if he
6 had a -- some sort of mental defect caused by mental
7 illness or mental retardation.

8 Q. Dr. Smisson, are you telling me that when you
9 say in a report there is little to suggest that he was
10 experiencing hallucinations or delusions at the time of
11 the alleged offense or that he did not understand the
12 difference between right or wrong, it changes if you're
13 doing a sanity evaluation with mental illness versus
14 intoxication?

15 A. I would say yes. In the context of the sanity
16 evaluation that I was asked to do, again it was to
17 determine whether or not he had a psychiatric disorder
18 that would cause him to not be able to understand the
19 difference between right and wrong at that time. And I
20 determined that he did not.

21 So, in the context of that report -- of
22 that evaluation, I found that he was sane at the time
23 of the offense.

24 Q. Okay. So, Dr. Smisson, at the end of all of
25 this, did the defendant -- did he not know that his

1 conduct was wrong?

2 MR. DAVIS: Your Honor, object, that's
3 repetitive.

4 THE COURT: Go ahead. Overruled.

5 Q. (BY MS. BARD) Yes or no?

6 A. Again, it's hard.

7 Q. You can't answer that question, correct?

8 A. It's difficult for me to answer that question.

9 Q. Okay. So, the answer is no, he did not. You
10 can say absolutely --

11 MR. DAVIS: Objection, Your Honor. The
12 witness has answered the question and --

13 THE COURT: All right. That's sustained.
14 It's sustained.

15 MS. BARD: Nothing further, Your Honor.

16 THE COURT: Would you like to ask more
17 questions again?

18 MR. DAVIS: No, Your Honor.

19 THE COURT: Okay. Any of y'all got
20 anything else to say?

21 MS. BARD: No, Your Honor.

22 MR. DAVIS: At this time --

23 THE COURT: I'm -- you know, I know I'm
24 testy and irritated and grumpy and all those -- fussy
25 and all those things that y'all like to call me. I get

1 it. I understand it.

2 But I'm giving y'all the opportunity.
3 I'm letting y'all talk. So, I -- here in a moment, I'm
4 going to be done. But I'm letting you talk. Because
5 it is important. It's -- and I know it is crucial from
6 y'all's side. I get that.

7 I've already made a ruling today that I
8 wasn't comfortable with necessarily, letting y'all have
9 an expert testify because I know how crucial it is.
10 And I tend to err on the side of making sure the
11 defense gets to present their defense. But I've got an
12 issue here.

13 Now, here's your chance. Last chance,
14 both of you, to say whatever y'all need to say for me
15 or for the record purposes.

16 MS. BARD: I have nothing further to say.

17 THE COURT: Mr. Davis? And I'm not --
18 I'm not trying to be cute or fancy or anything like
19 that. I'm honestly, legitimately just trying to let
20 you say whatever you need to say for either me or for
21 the record or for both.

22 MR. DAVIS: If the record could reflect,
23 Your Honor, that initially Dr. Smisson did a sanity
24 evaluation. I'm not asking her to testify -- and her
25 testimony won't be based on the report. Which is what

1 Counsel's cross-examination is based on, on her report,
2 which was a sanity report. Her testimony is going to
3 be based on her evaluation and her observations of
4 Mr. Vasquez. Those things that she saw when she
5 evaluated him.

6 Her sanity, for the most part, is done
7 like all sanity reports are. They're looked through
8 through the prism of someone who has a mental illness.
9 They go and analyze things from that perspective, which
10 is one of the prongs of sanity. If the defendant
11 doesn't have a mental illness -- even if he can't
12 appreciate right from wrong, they'll find that person
13 sane. And oftentimes, if there isn't any lack of
14 appreciation for right -- for wrongfulness, on the
15 basis of a mental illness, they'll still find that it
16 doesn't -- that it isn't present.

17 And that's what we have here, Your Honor.
18 We have a situation where she has drafted a report from
19 the perspective of a sanity report. On top of the
20 report -- I don't think the Court has it. And I'd
21 submit --

22 THE COURT: I don't.

23 MR. DAVIS: -- and I'd offer as
24 Defendant's 1 --

25 COURT REPORTER: No, 3.

1 MR. DAVIS: Defendant's Exhibit 3, a copy
2 of the report.

3 THE COURT: Defense Exhibit 2 is the
4 instructions that you wanted that you need to make sure
5 that gets presented. Okay?

6 MR. DAVIS: Yes, sir. I'm going to bring
7 those. I'm going to get those before we close.

8 THE COURT: Okay.

9 MR. DAVIS: Thank you.
10 Submit Defendant's No. 3 for purposes
11 this hearing.

12 THE COURT: Thank you.

13 MR. DAVIS: And the report's written as
14 sanity report. The issue in this case -- when you have
15 involuntary intoxication as a defense, it comes under
16 the sanity section. And one prong of it is that the
17 defendant can appreciate right from wrong as a basis of
18 drugs, which is different from the evaluation that she
19 did.

20 Even though she did her evaluation on the
21 basis of the defendant may be having a psychological
22 impairment, she has an opinion absent that, that based
23 on his use of drugs or ingestion of some substance, and
24 based on the totality of circumstances, all the stuff
25 she saw and all the stuff she evaluated, her opinion is

1 that he did not appreciate right from wrong. And she
2 can opine that based on all those things.

3 And assuming that those things were true,
4 the interview of Mr. Vasquez was one of the things that
5 she relied on as well as her review of videos, her
6 review of police reports, her review of witness
7 accounts. She interviewed Mr. Vasquez's mother as
8 well, Your Honor. And she's talked to people about the
9 case. So, based on those things, she's able to give
10 that opinion. And it's an opinion that she always
11 gives.

12 This is a unique situation, Your Honor.
13 Involuntary intoxication isn't a defense that's raised
14 frequently in the court system. Insanity is a defense
15 that's raised frequently. They are similar. And being
16 similar, the testimony from the psychologist who opines
17 frequently whether or not someone can appreciate right
18 from wrong on a basis of a mental illness would help a
19 jury because we have drugs that mimic mental illnesses.
20 The drugs potentially that Mr. Vasquez could have
21 taken, PCP and others that we've heard of -- which it
22 seems like he exhibited the symptoms of some of those
23 drugs, being under the influence of some of those
24 drugs, those drugs mimic mental illnesses. That if he
25 had, she would have found him insane on, Your Honor.

1 And I think the Court should allow her
2 testimony on that basis. Because it meets all of the
3 criteria of State versus Vela. It is -- it is
4 definitely something that she's qualified to testify to
5 based on training and experience. Her testimony is
6 certainly relevant, Your Honor, because it's the crux
7 of the case. It's the issue that the case is. And --
8 and her testimony is likely to -- to reach that result
9 in which -- it's likely to assist the jury in reaching
10 that result.

11 So, we'd ask the Court to allow
12 Dr. Smisson to testify.

13 (Brief pause).

14 THE COURT: All right. Based on the
15 testimony that I've heard at this point and reviewing
16 Defense Exhibit No. 3, I'm going to find that -- well,
17 first, I'm going to say that, you know, the doctor is
18 certainly, I think based on her training and background
19 and experience and education is qualified to render
20 opinions on both competency and sanity.

21 And I will tell you, I appreciate the
22 fact that you actually talk to people. Because I see
23 doctors come in here all the time that want to opine
24 and give opinions about sanity and competency and don't
25 ever talk to family members. So, I appreciate that.

1 Based on the testimony I've heard though
2 and looking at Section 801 regarding sanity and 804
3 regarding intoxication and temporary insanity caused by
4 such intoxication, I'm going to say that the inability
5 to say that at the time, he did not know that his
6 conduct was wrong, that I'm going to allow the
7 testimony regarding being temporarily insane due to
8 involuntary intoxication in front of the jury during
9 the guilt/innocence phase of the trial.

10 If we get to punishment and you wish to
11 present the evidence at that point -- present the
12 doctor's testimony for mitigation purposes at that
13 point, certainly I will allow that.

14 Your objections will be noted for the
15 record.

16 MR. DAVIS: Judge, just for clarity.
17 It's the Court's ruling -- I'm sorry. I didn't mean to
18 cut you off if you were -- so, it's the Court's ruling
19 that because she can't say that he wasn't able to
20 appreciate right from wrong, that you will not allow
21 her testimony on that issue? Is that --

22 THE COURT: Correct.

23 MR. DAVIS: If she's able to say it, that
24 he wasn't able to appreciate right from wrong, is it
25 the Court's position that you would allow that

1 testimony?

2 THE COURT: I'm made my ruling. That's
3 what I've said, is that she is not able to say that --
4 and I understand all the questions that y'all have
5 asked, but even then -- even after calling her back up
6 here, there was still some equivocation in what she was
7 saying.

8 So, I'm ruling that she's not going to be
9 allowed to testify to that during guilt/innocence.
10 Okay.

11 MR. DAVIS: Before we -- before we stop,
12 Judge, just for clarity.

13 She has testified that she is able to say
14 that he wasn't able to appreciate right from wrong on
15 the basis of drugs. And that -- that's her testimony
16 -- it's my understanding of her testimony. If she's
17 able to say that, and the Court's ruling is that --
18 that's the reason why you wouldn't allow the testimony.
19 But I think that there's evidence in the record that
20 she's saying that. But the reason she had some
21 hesitation was because -- in her report is because she's
22 looking at it from the standpoint of psychological
23 impairment. But from the standpoint of drugs, she's
24 able to say he wasn't able to appreciate right from
25 wrong. That's her testimony. She testified to that

1 today.

2 THE COURT: Mr. Davis, I heard her
3 testimony.

4 MR. DAVIS: Yes, sir.

5 THE COURT: I heard her testimony when
6 you asked her. I heard her testimony when she asked
7 her. I heard y'all argue about it. I heard her
8 testimony when you called her back up here and when you
9 asked her more questions and you asked her more
10 questions. And I've given everybody the opportunity to
11 continue to talk and talk and talk about it. And I've
12 made my ruling. Because what I hear is -- and I
13 understand what you're saying and I understand what
14 your position is. And again, I'm not upset at you for
15 it.

16 MR. DAVIS: Yes, Your Honor.

17 THE COURT: I understand it, what you're
18 getting at. But I'm telling you what I have heard her
19 say during through, basically two or three rounds of
20 questioning.

21 All right. You can step down, Doctor.

22 THE WITNESS: Thank you.

23 THE COURT: 8:30 tomorrow morning.

24 (Proceedings adjourned).

25

1 THE STATE OF TEXAS)

2 COUNTY OF HARRIS)

3 I, Trisha Matthews, Official Court Reporter in
4 and for the 230th District Court of Harris County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings
8 requested in writing by counsel for the parties to be
9 included in this volume of the Reporter's Record, in
10 the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported
12 by me.

13 I further certify that this Reporter's Record
14 of the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND this the 26th day
17 of May, 2015.

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/s/ Trish Matthews
Trisha Matthews, Texas CSR#6606
Expiration Date: 12/31/15
Official Reporter, 230th District Court
Harris County, Texas
Houston, Texas 77002