

REPORTER'S RECORD
 VOLUME 5 OF 9 VOLUMES
 TRIAL COURT CAUSE NO. 1481930
 FIRST COURT OF APPEALS NO. 01-15-00999 FILED IN
 1st COURT OF APPEALS
 HOUSTON, TEXAS

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CHRISTOPHER A. BRINE
Clerk

STATE OF TEXAS * IN THE DISTRICT COURT OF
 VS. * HARRIS COUNTY, TEXAS
 DONALD NEALEY * 228TH DISTRICT COURT
 *

 *** TRIAL ON THE MERITS ***

On November 11, 2015, the following proceedings
 came on to be heard in the above-entitled and numbered
 cause before the Honorable Leslie Yates, Judge
 presiding, held in Houston, Harris County, Texas;

Proceedings reported by machine shorthand.

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E X H I B I T I N D E X

TRIAL ON THE MERITS
VOLUME 5 OF 9 VOLUMES
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	State's No.	Description	Offered	Admitted	Vol.
1					
2					
3					
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5	67	Photograph	60	60	5
6	68	Photograph	60	60	5
7	69	Photograph	60	60	5
8	70	Photograph	60	60	5
9	71	Photograph	69	72	5
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3	90	Photograph	69	72	5
4	91	Photograph	69	72	5
5	92	Photograph	69	72	5
6	93	Photograph	69	72	5
7	94	Photograph	69	72	5
8	95	Photograph	69	72	5
9	96	Photograph	69	72	5
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13	100	Photograph	69	72	5
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15	102	Photograph	69	72	5
16	103	Photograph	69	72	5
17	104	Photograph	69	72	5
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19	106	Photograph	69	72	5
20	107	Photograph	69	72	5
21	108	Photograph	69	72	5
22	109	Photograph	69	72	5
23	110	Photograph	69	72	5
24	111	Photograph	69	72	5
25	112	Photograph	69	72	5

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6	118	Photograph	69	72	5
7	119	Photograph	69	72	5
8	120	Photograph	69	72	5
9	121	Photograph	69	72	5
10	122	Photograph	69	72	5
11	123	Photograph	69	72	5
12	124	Wallet	96	98	5
13	125	Goggles	96	98	5
14	126	Latex Glove	96	98	5
15	127	Photograph	69		5
16	128	Photograph	69		5
17	129	Fingerprint Card	90	90	5
18	130	Fingerprint Card	90	90	5
19	131	Fingerprint Card	90	90	5
20	132	Fingerprint Card	90	90	5
21	133	Fingerprint Card	78	78	5
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P R O C E E D I N G S

November 11, 2015

(Open court, Defendant present.)

THE BAILIFF: Judge, are you ready?

THE COURT: Yes, ma'am.

THE BAILIFF: All rise for the jury.

(Jury enters courtroom.)

THE COURT: Thank you. Please be seated.

Good morning, ladies and gentlemen.

JURORS: Good morning.

THE COURT: Welcome back. Happy Veterans Day. Do we have any veterans on the panel? All right.

Ms. Meriwether, if you're ready to proceed.

MS. MERIWETHER: Yes, Your Honor.

THE COURT: Call your next witness, please.

MS. MERIWETHER: The State will call Officer Thangsri.

THE BAILIFF: Your Honor, I think this witness has been sworn in already.

THE COURT: Thank you, he was.

You may proceed.

MS. MERIWETHER: Thank you, Your Honor.

PATAPONG THANGSRI,
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

1 BY MS. MERIWETHER:

2 Q. Good morning, sir. Could you introduce
3 yourself to our jury?

4 A. I'm Officer Patapong Thangsri.

5 Q. And how are you employed?

6 A. I'm employed with the Houston Police
7 Department.

8 Q. And how long have you been with the Houston
9 Police Department?

10 A. Approximately seven years.

11 Q. And did you go through the police academy?

12 A. Yes, I did.

13 Q. And then what did you do after that?

14 A. I was assigned to patrol for about five and a
15 half years, and I'm currently working with the VICE
16 division for about a little bit more than a year and a
17 half.

18 Q. And what is the VICE division?

19 A. The VICE division we enforce prostitution,
20 illegal gambling, liquor violations and human
21 trafficking.

22 Q. And this case that you're here to testify about
23 today occurred back in March 6th, 2014, what was your
24 assignment back then?

25 A. I was at the Midwest patrol. I was on patrol.

1 Q. And what area does Midwest patrol cover?

2 A. Covers approximately around the Galleria all
3 the way up to 610, all the way up, way up to Gessner and
4 59, all the way up to I-10.

5 Q. What shift were you working back in March 2014?

6 A. I was working evening shift, from 3:00 to
7 11:00.

8 Q. 3:00 to 11:00. Did you have an occasion on
9 March 6th of 2014 to get dispatched to a robbery call?

10 A. Yes, ma'am.

11 Q. And tell us about that?

12 A. I was actually across the street pretty nearby
13 when the call dropped, and I arrived there in less than
14 a minute after the robbery occurred.

15 Q. And what was your dispatch time?

16 A. 2144.

17 Q. And in non-military time?

18 A. 9:44 p.m.

19 Q. 9:44 p.m.?

20 A. Yes, ma'am.

21 Q. And what location were you dispatched to?

22 A. It was the House of Pies. Let me get the
23 address. It was at 21 -- no, 6142 Westheimer Road.

24 Q. And is that a location here in Harris County,
25 Texas?

1 A. Yes, ma'am.

2 MS. MERIWETHER: Your Honor, may I approach
3 the witness?

4 THE COURT: You may.

5 Q. (BY MS. MERIWETHER) I'm going to show you
6 State's Exhibits 135 and 136. What are these two items?

7 A. Right here.

8 Q. Is this a map of the area that you went to on
9 March 6th of 2014?

10 A. Yes, ma'am.

11 Q. And 136 is also the same, a map of the area
12 that you went to on March 6th?

13 A. Yes, ma'am.

14 Q. Do you think this would help the jury
15 understand where we're talking about and where you went
16 to?

17 A. Yes, ma'am.

18 MS. MERIWETHER: Your Honor, at this time I
19 move to offer State's Exhibits 135 and 136.

20 (State's Exhibit Nos. 135 and 136 offered.)

21 MR. ROBERT SCARDINO: The document has been
22 examined; and there are no objections, Your Honor.

23 THE COURT: State's Exhibits 135 and 136
24 are admitted.

25 (State's Exhibit Nos. 135 and 136

1 admitted.)

2 MS. MERIWETHER: And may I publish?

3 THE COURT: You may.

4 MS. MERIWETHER: Thank you.

5 Q. (BY MS. MERIWETHER) We need some zooming in
6 here. All right. Officer, do you see the House of Pies
7 located here on the map right about here?

8 A. Yes, ma'am.

9 Q. And what is this major street running through
10 here?

11 A. Westheimer.

12 Q. What is this part of town like? Is it mostly
13 businesses or residential?

14 A. Mostly businesses in this area, and there's
15 residential behind the businesses.

16 Q. Directly behind the House of Pies, what's this
17 area?

18 A. Apartment complexes, residence.

19 Q. And residences, and along the front of
20 Westheimer is mainly businesses?

21 A. Correct.

22 Q. So, you get dispatched about 2144. You said
23 you got there within a minute. What did you do when you
24 got there?

25 A. I positioned my vehicle, I'm trying to see what

1 was going on inside; and I positioned my vehicle at
2 Briar Ridge and Westheimer.

3 Q. If you actually touch the screen, it will leave
4 a mark so the jury knows where you're talking about?

5 A. (Indicating.)

6 Q. So right there at the intersection of Briar
7 Ridge and Westheimer?

8 A. Correct.

9 Q. When you got to that position, did you have
10 lights and sirens on?

11 A. I had my rear strobe on, but not the front
12 strobe lights on, no siren.

13 Q. And why did you not have the front and siren
14 on?

15 A. Because I didn't want to let the possible
16 suspects know that I was there.

17 Q. What happened next?

18 A. After that I saw, I saw several people from a
19 distance inside the restaurant because it's glass
20 windows. And then eventually the manager, I think his
21 name is Mr. Canales, he ran out from the back of the
22 building and flagged me down. He was sweating. He was
23 scared. He didn't know that I already knew about the
24 robbery. Apparently several people had called from
25 inside. He came out, started telling me it's two

1 gunmen, two masked men with guns inside, and then when I
2 looked back, I mean, I didn't see anyone. I guess
3 everybody were on the ground by that time.

4 Q. Okay. So, he tells you that there's two masked
5 gunmen inside, what do you do then?

6 A. I was waiting for my backup to arrive -- oh, at
7 the same time I think the dispatch was telling me a shot
8 was fired inside, too. So, I'm pretty sure they had
9 guns, at least one.

10 Q. So, you heard that from Mr. Sanchez or from
11 Joseph Sanchez. You also heard it through the dispatch
12 that a shot had been fired?

13 A. Correct.

14 Q. Were you able to see inside of the House of
15 Pies very clearly to see if you could see suspects?

16 A. No, not at that time.

17 Q. Did backup arrive? Did other units make the
18 scene?

19 A. Yes.

20 Q. How many units if you recall?

21 A. Oh, I know at least, they were all scattered
22 around.

23 Q. A lot?

24 A. Yeah, it was a lot of units with supervisors on
25 scene and everything.

1 Q. So, you hear that there's people inside. You
2 hear shots fired. Backup units are arriving, what
3 happens next?

4 A. Mr. Canales told me that --

5 MR. ROBERT SCARDINO: Object to hearsay.

6 THE COURT: Sustained.

7 Q. (BY MS. MERIWETHER) Without going into what
8 someone told you, but what you know or observed, can you
9 tell us --

10 A. I observed, after I learned that suspect left
11 through the back door.

12 Q. Uh-huh.

13 A. I saw two men ran out of the back, but later
14 identified as the workers.

15 Q. Okay. So, you saw two kitchen workers?

16 A. Two kitchen workers ran out of the back door
17 instead of the suspect.

18 Q. And then what happens?

19 A. And then I heard, somebody told me that --

20 MR. ROBERT SCARDINO: Objection to hearsay.

21 THE COURT: Sustained. You can't say what
22 someone else said.

23 Q. (BY MS. MERIWETHER) Kitchen worker out the
24 back door and then what occurs next?

25 A. I went around and looked for the suspect.

1 Q. You went around to the back of the House of
2 Pies? You went around to the back of the House of Pies?

3 A. Around to the back of House of Pies and looked
4 for the suspect.

5 Q. Did you see anybody?

6 A. No, I did not.

7 Q. At that time, did you go ahead and go inside
8 the House of Pies?

9 A. Yes, I did.

10 Q. Was it relatively full, lots of customers?

11 A. A lot of customers.

12 THE COURT: I'm sorry to interrupt. Can I
13 ask you not to speak over each other, so wait until she
14 finishes before you answer so the court reporter can get
15 both the question and answer down.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Thank you.

18 Q. (BY MS. MERIWETHER) So, you made entry into
19 House of Pies, what do you do inside of the House of
20 Pies?

21 A. I was just trying to figure out where the
22 suspect went.

23 Q. Did you interview Joseph Canales more
24 thoroughly about what happened and what he saw?

25 A. I did not. I just did initial interview.

1 Q. Okay.

2 A. And that's it.

3 Q. And initial statement from him about the
4 incident?

5 A. Correct.

6 Q. Did you also take a statement from Casimiro
7 Sanchez?

8 A. Yes, I did.

9 Q. Kind of an initial interview just to get a
10 description of the individuals?

11 A. Yes, ma'am.

12 Q. And did you provide that information to back-up
13 units that were arriving in the area?

14 A. Yes, I did.

15 Q. And after taking care of that part, what did
16 you do?

17 A. I contacted robbery division, and the
18 investigators from the robbery division showed up.

19 Q. And did that conclude your time there at the
20 scene?

21 A. I helped them get name and information of all
22 the witnesses, the customers pretty much inside because
23 there were a lot of them there, and that's it.

24 Q. Okay.

25 MS. MERIWETHER: Pass the witness, Your

1 Honor.

2 MR. ROBERT SCARDINO: Proceed?

3 THE COURT: Mr. Scardino.

4 **CROSS-EXAMINATION**

5 BY MR. ROBERT SCARDINO:

6 Q. Tell me your rank so I can address you
7 properly? Are you a patrol officer?

8 A. Currently?

9 Q. Currently.

10 A. I'm with the VICE division.

11 Q. So if I say officer, address you as officer?

12 A. Officer Thangsri.

13 Q. Thank you. My name is Robert Scardino. We
14 haven't met before, have we?

15 A. No, sir.

16 Q. I wasn't in House of Pies that night, was I?

17 A. I didn't remember you.

18 Q. A couple of quick questions, not much. Did you
19 go inside the House of Pies?

20 A. I did.

21 Q. Okay. Would you describe the House of Pies for
22 the jury? How did the entrance to get into the House of
23 Pies, which way is it facing?

24 A. It's facing east, which is Briar Ridge.

25 Q. So, if I'm walking in the House of Pies,

1 Westheimer would be over here to my left?

2 A. Correct.

3 Q. In fact, the first street is Westheimer?

4 A. Westheimer.

5 Q. And then there's a street that runs right -- if

6 I'm getting ready to walk in the House of Pies, there's

7 a street right behind it that runs into a neighborhood?

8 A. Correct.

9 Q. And behind the House of Pies is a parking lot?

10 A. Correct.

11 Q. And actually to the north of the House of Pies

12 and actually to the east of the House of Pies is

13 additional parking?

14 A. Correct.

15 Q. And when you walk in, it's kind of like a

16 vestibule. You walk in one door and then there is an

17 area and then you walk in a second door?

18 A. Correct.

19 Q. And then when you walk in, there's a cash

20 register, isn't it?

21 A. Correct.

22 Q. And there's seating to your right?

23 A. Right and left.

24 Q. Some seating to the left?

25 A. Right.

1 Q. And there's windows all around?

2 A. On the east side, not the west side but in the
3 front.

4 Q. Not behind it, there's no windows behind it.
5 I'm getting ready to get there. As you walked in, can
6 you see the back of the restaurant when you walk in?

7 A. You talking about the kitchen?

8 Q. Yes.

9 A. No.

10 Q. Okay. So, you wouldn't -- if you walked in and
11 you'd never been there before, you would not know where
12 the kitchen is, would you?

13 A. I would guess that the kitchen would be on the
14 side that it was no access for customers.

15 Q. If you walked in and you were in a really big
16 hurry, you wouldn't necessarily know where the kitchen
17 is, would you?

18 A. I have been there before so I --

19 Q. You've been there?

20 A. Yes.

21 Q. To have dinner?

22 A. Correct. So I knew where the kitchen was.

23 Q. Wearing your service revolver when you go?

24 A. No.

25 Q. Okay. What I'm trying to get at, is there a

1 back door to the House of Pies?

2 A. There is, I learned that there was a back door.

3 Q. You couldn't see it when you walked in, could
4 you?

5 A. No, I couldn't see it.

6 Q. You couldn't even see it when you walked into
7 the kitchen, could you?

8 MS. MERIWETHER: Objection, asked and
9 answered.

10 A. I did not go into the kitchen.

11 THE COURT: Sustained.

12 Q. (BY MR. ROBERT SCARDINO) Is the back door, can
13 you see it when you walk into the kitchen?

14 A. I did not go into the kitchen, so I don't know.

15 Q. You never went through the back door then?

16 A. No.

17 Q. Okay. You said you interviewed a fella by the
18 name of Sanchez, did you not?

19 A. Yes.

20 Q. And you talked to him about what he might know
21 about what happened that night, right?

22 A. Correct.

23 Q. Do you have your report in front of you?

24 A. Yes.

25 MR. ROBERT SCARDINO: May I approach, Your

1 Honor?

2 THE COURT: You may.

3 Q. (BY MR. ROBERT SCARDINO) You were trying to get
4 a description of the persons who had committed this
5 crime, weren't you?

6 A. Correct.

7 Q. So, you were getting as much information as you
8 could from Mr. Sanchez, who was a victim and a
9 witness --

10 A. Correct.

11 Q. -- to this offense?

12 A. Yes.

13 Q. And were you able to get a description from Mr.
14 Sanchez?

15 A. All I got was two men with gun and hoodie.

16 Q. You got information that one of the men held a
17 gun to --

18 MS. MERIWETHER: Objection, hearsay.

19 THE COURT: Sustained.

20 Q. (BY MR. ROBERT SCARDINO) Did you learn anything
21 about the man that had gone in to commit the robbery?

22 A. I learned that he pointed a gun at Mr. Sanchez.

23 Q. Did you know -- did you learn which hand he
24 used?

25 MS. MERIWETHER: Objection, calls for

1 hearsay.

2 THE COURT: Sustained.

3 Q. (BY MR. ROBERT SCARDINO) Do you have
4 information about whether or not the person that held
5 the gun to the neck of the manager was right handed or
6 left handed?

7 MS. MERIWETHER: Objection, calls for
8 hearsay.

9 THE COURT: Sustained, Counselor.

10 Q. (BY MR. ROBERT SCARDINO) May I see your
11 report, please?

12 A. Yes, sir.

13 Q. As a result of your investigation, were you
14 looking for somebody that was right handed or left
15 handed?

16 MS. MERIWETHER: Your Honor, I'm going to
17 renew my objection. I believe the video is probably the
18 best evidence of that.

19 MR. ROBERT SCARDINO: Well, I object to the
20 speaking objection.

21 THE COURT: Both of your objections are
22 sustained.

23 MR. ROBERT SCARDINO: Thank you. Pass the
24 witness.

25 MS. MERIWETHER: Briefly, Your Honor.

REDIRECT EXAMINATION

1

2 BY MS. MERIWETHER:

3 Q. Officer Thangsri, on the situation with the
4 kitchen and its location, you said you've been in there
5 before, correct?

6 A. I've been inside the restaurant, not the
7 kitchen part.

8 Q. Does it have a bar area or a counter where you
9 can sit at?

10 A. It has a counter.

11 Q. And what is behind that counter?

12 A. The kitchen is behind that counter area.

13 Q. And does it have an open area where plates can
14 pass through as the servers prepare them?

15 A. Yes.

16 Q. And that's an open area that you can see
17 through?

18 A. Yes.

19 Q. And that would indicate to you that there's a
20 back area, would it not?

21 A. Yes.

22 Q. Were you aware that this House of Pies has a
23 whole lot of video cameras set up?

24 A. I was aware afterwards.

25 Q. Did you ever have an opportunity to look at any

1 of the video?

2 A. No.

3 MS. MERIWETHER: Pass the witness.

4 MR. ROBERT SCARDINO: Just a few questions,
5 if I may?

6 THE COURT: Yes.

7 **RECROSS-EXAMINATION**

8 BY MR. ROBERT SCARDINO:

9 Q. Officer, did you do any follow-up
10 investigation?

11 A. No, I did not, sir.

12 Q. You didn't look for any bullet strike marks or
13 anything like that?

14 A. No, I didn't.

15 Q. But you learned a gun was fired inside the
16 establishment, didn't you?

17 A. I learned from Mr. Canales and the dispatch.

18 Q. Okay. Thank you.

19 MR. ROBERT SCARDINO: That's all I have.

20 MS. MERIWETHER: Nothing further, Your
21 Honor.

22 THE COURT: May this witness be excused?

23 MS. MERIWETHER: Yes, Your Honor.

24 THE COURT: Thank you, sir. You may step
25 down, and you are excused.

1 Call your next witness.

2 MS. MERIWETHER: Officer Binckley.

3 THE BAILIFF: Your Honor, this witness has
4 already been sworn in.

5 THE COURT: Thank you.

6 You may proceed.

7 MS. MERIWETHER: Thank you, Your Honor.

8 **STEPHEN BINCKLEY,**

9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 BY MS. MERIWETHER:

12 Q. Good morning. Could you introduce yourself to
13 our jury?

14 A. I'm Officer Stephen Binckley with the Houston
15 Police Department.

16 Q. How long have you been with the Houston Police
17 Department?

18 A. A little over 13 years.

19 Q. What did you do prior to joining the Houston
20 Police Department?

21 A. I was a corporate head hunter.

22 Q. And what led you to law enforcement after head
23 hunting?

24 A. I reapplied after applying previously.

25 Q. So, police work is kind of something you've

1 always wanted to do?

2 A. Yes, ma'am.

3 Q. In your time with the Houston Police
4 Department, have you been through the police academy?

5 A. Yes, I have.

6 Q. And are you a certified peace officer?

7 A. I am.

8 Q. And what assignments have you held within the
9 Houston Police Department?

10 A. I've been on patrol with three different
11 divisions. I've held field training officer, field
12 performance evaluating officer.

13 Q. And are you currently assigned to any
14 particular division?

15 A. I am, I'm assigned to the Midwest division.

16 Q. And is that the same division that you were
17 assigned to back in March of 2014?

18 A. Yes, ma'am.

19 Q. And that kind of covers the Galleria, 610, down
20 to 59 area?

21 A. Down towards Sharpstown, yes, ma'am.

22 Q. And on March 6th, 2014, what shift were you
23 working?

24 A. Nightshift, 10:00 to 6:00.

25 Q. 10:00 p.m. to 6:00 a.m.?

1 A. Yes, ma'am.

2 Q. And did you have an occasion to make the scene
3 of a robbery?

4 A. Yes, ma'am.

5 Q. And where was that location?

6 A. The House of Pies at 62 something Westheimer.

7 Q. Okay. And we've got a map on the screen there;
8 is that the area that you made?

9 A. Yes, it is.

10 Q. Okay. And what did you do when you went to
11 that location?

12 A. I was asked to come to the scene and lift
13 prints from the register and a cell phone.

14 Q. And what kind of training or experience have
15 you had in lifting prints?

16 A. We're taught at the academy, all officers are
17 taught at the academy with lifting prints. And on my
18 shift I've just become the print officer. So, I've been
19 doing them for quite a long time.

20 Q. Fair enough. And in this case you lifted
21 several prints from a cash register?

22 A. Three print lift cards.

23 Q. And then also another one from a cell phone?

24 A. Single lift card for the full face of the cell
25 phone.

1 MS. MERIWETHER: Your Honor, may I approach
2 the witness?

3 THE COURT: You may.

4 Q. (BY MS. MERIWETHER) I'm going to show you what
5 I've marked as State's Exhibits 137, 138 and 139 and see
6 if you recognize these items?

7 A. I do.

8 Q. And what are they?

9 A. They are lift cards.

10 Q. Are these the ones that you did?

11 A. They are, that's my writing.

12 Q. And these lift cards, what do they relate to?

13 A. These three in particular relate to the three
14 sets that were lifted off of the front of the register
15 drawer.

16 Q. Okay. And why did you choose to lift off of
17 the front register drawer?

18 A. There was a video that was presented to some of
19 the officers on scene, and they showed me, basically, a
20 still where he was, the suspect in the video was
21 touching the register and that was basically the
22 position. So, any prints that were on the front of the
23 register were lifted.

24 Q. And then showing you State's Exhibit 140, what
25 is this item?

1 A. This is the full-face print card for the cell
2 phone that another officer recovered.

3 Q. Okay. Did you know whom it belonged to at that
4 point, or was it just a random cell phone recovery?

5 A. At that particular time, it was just some
6 random cell phone recovered.

7 MS. MERIWETHER: At this time, Your Honor,
8 I move to offer State's Exhibits 137 through 140, tender
9 to Counsel for any objections.

10 (State's Exhibit Nos. 137 through 140
11 offered.)

12 MR. ROBERT SCARDINO: Just a moment, Your
13 Honor.

14 Your Honor, the exhibits have been
15 examined; and there are no objections.

16 THE COURT: State's Exhibits No. 137
17 through 140 are admitted.

18 (State's Exhibit Nos. 137 through 140
19 admitted.)

20 MS. MERIWETHER: And may I publish, Your
21 Honor?

22 THE COURT: You may.

23 MS. MERIWETHER: Thank you.

24 Q. (BY MS. MERIWETHER) I want to start first with
25 State's Exhibit 137. All right. Showing you State's

1 Exhibit No. 137, the information here, is this all
2 entered by you?

3 A. That is written by me, yes, ma'am.

4 Q. And what about this very nice diagram, what is
5 that?

6 A. Thank you. This is a basic rendition of the
7 cash register drawer, and then they have a touch screen
8 on top of it. The "X" marks the position that this one
9 was particularly lifted from.

10 Q. And this area here, is that where the money is
11 kept?

12 A. That is correct.

13 Q. And then showing you the back of State's
14 Exhibit 137, is this the lift that you attempted to take
15 off of that spot?

16 A. That is correct.

17 Q. What method did you use to do the lifting? How
18 do you do it, explain it to us?

19 A. We have fingerprint dust, basically, which is
20 similar to copier toner, if you're familiar with that.
21 We have a brush that we use to dip into the dust and
22 then use the brush to spread it along wherever we're
23 trying to lift the prints. The dust will be attracted
24 by oils, namely, from the body. Once it's -- once we
25 find something that's visible, we'll use the lifting

1 tape to place over it, and then lift it from whatever
2 article that we're lifting it from and place it on the
3 card.

4 Q. And that's what you did here in State's
5 Exhibit 137, you put the dust on the register, put the
6 tape over it and then placed it on the back of this
7 card?

8 A. That is correct.

9 Q. And showing you State's Exhibit 138, did you do
10 a similar process here as well?

11 A. Absolutely, yes, ma'am.

12 Q. Again, with an "X" denoting where you lifted
13 that print from?

14 A. That is correct.

15 Q. And then on the back, similar process with the
16 dust and the lift?

17 A. That is correct.

18 Q. And then showing you State's Exhibit 139,
19 similar process, again, with the diagram and the "X"
20 marks the spot?

21 A. Yes, ma'am.

22 Q. Showing you the flip side, again, same process?

23 A. Same process, yes, ma'am.

24 Q. Lastly, showing you State's Exhibit 140. What
25 is this one?

1 A. Basically, the same concept the "X" marking
2 where it was lifted from, and then you'll notice the
3 dotted outline where it goes across just where the glass
4 face was as opposed to the edge here, which is not part
5 of the face, it was where the buttons are, the dotted
6 outline is where the lift was taken from.

7 Q. And I want to ask just one other question or
8 about the front of this one, there is an address for the
9 collection area. This was not a phone that was found
10 inside of the House of Pies?

11 A. It was not found in the House of Pies from my
12 recollection.

13 Q. Another officer recovered it and brought it to
14 you. Does that address denote where it was found?

15 A. That address is going to denote where I
16 actually lifted the print, which is the side street on
17 that map. You'll see is Briargrove, and that address
18 actually corresponds to that. The other prints were
19 lifted inside, so it would have the House of Pies
20 address. This one was lifted outside of the House of
21 Pies on Briargrove, which is where we put the actual
22 location where I lifted it.

23 Q. And showing you, again, State's Exhibit 135,
24 the map, just to orient, House of Pies here and
25 Briargrove on the left-hand side of the photo?

1 A. Correct.

2 Q. So this phone is found somewhere in this
3 general area?

4 A. That is correct.

5 Q. And now flipping over State's Exhibit 140, is
6 this the attempted lift off of the face of that cell
7 phone?

8 A. That's correct.

9 Q. Now, you mentioned that you saw still photos
10 from at one point from inside of the House of Pies?

11 A. Paused video, but, yes, ma'am.

12 Q. Okay. And there appears to be two gunmen in
13 the House of Pies robbery; is that correct?

14 A. Yes, ma'am, there appears to be so.

15 Q. And in particular there is one gentleman, who
16 is closest to the cash register?

17 A. Yes, ma'am.

18 Q. Were you able to look at any of those photos to
19 determine if he had anything covering his hands?

20 A. I could not determine from the video that I saw
21 at the time.

22 Q. You weren't sure --

23 A. From the still.

24 Q. From the stills?

25 A. Yes.

1 Q. You couldn't determine whether he had gloves on
2 or not?

3 A. Not at the time, no.

4 Q. So, you went ahead and lifted prints anyways?

5 A. Based on the touching of the register, yes.

6 Q. And you would agree with me -- have you ever
7 been to the House of Pies, not as a robbery scene but as
8 a customer?

9 A. Yes, I have.

10 Q. How -- what are the hours?

11 A. 24 hours.

12 Q. So, would it surprise you that there's often
13 lots of people at that cash register in and out?

14 A. The register, no, that wouldn't surprise me.

15 Q. Anticipate that a lot of different people are
16 touching both the register and the screen?

17 A. I would say, no, to touching the register and
18 the screen, no.

19 Q. Multiple workers there, though, employees that
20 are using it?

21 A. Yes.

22 MS. MERIWETHER: Pass the witness, Your
23 Honor.

24 MR. ROBERT SCARDINO: Proceed?

25 THE COURT: Yes, you may.

CROSS-EXAMINATION

1

2 BY MR. ROBERT SCARDINO:

3 Q. Officer --

4 A. Binckley, sir.

5 Q. Binckley, I was making sure I pronounced it

6 right. My name is Robert Scardino. We haven't met

7 before, have we?

8 A. No, sir.

9 Q. Your job was to go lift prints?

10 A. That evening, yes, sir.

11 Q. But you also had something else to do, did you

12 not, besides lift prints inside the House of Pies?

13 Didn't you do something else later?

14 A. If you're referring to transporting.

15 Q. Well, even before that. I mean, you went to

16 the location where you said the cell phone was found at

17 2767 Briargrove, didn't you?

18 A. That's where I met with the officer that found

19 the cell phone.

20 Q. And that's in your report, right?

21 A. It is in there that I lifted the print, yes,

22 sir. As far as the actual address listed in the report,

23 I couldn't --

24 MR. ROBERT SCARDINO: May I approach, Your

25 Honor?

1 THE COURT: You may.

2 Q. (BY MR. ROBERT SCARDINO) Do you have your
3 report with you?

4 A. No, sir.

5 Q. Well, I happen to have a copy of it.

6 A. I imagine you did.

7 Q. Just to make sure we're on the same page, is
8 this a copy of your report?

9 A. That is.

10 Q. Other than the highlights that I've put on
11 here?

12 A. Yes, sir.

13 Q. So 2767 Briargrove is where you were handed a
14 cell phone?

15 A. Yes, sir.

16 Q. And there was a suspect under arrest at that
17 location, was there not?

18 A. I couldn't tell you if they had him in custody
19 at that time or not.

20 Q. They had somebody there, though, right?

21 A. Yes.

22 Q. And he wasn't going anywhere, was he?

23 A. No, sir.

24 Q. He was handcuffed, wasn't he?

25 A. I couldn't say. I wasn't at the same scene

1 with him.

2 Q. Did he have on any shoes?

3 MS. MERIWETHER: Objection, calls for
4 speculation.

5 THE COURT: He may answer if he knows.

6 A. I honestly don't know, sir.

7 Q. (BY MR. ROBERT SCARDINO) Well, if he didn't
8 have on any shoes, that would be significant, wouldn't
9 it?

10 MS. MERIWETHER: Object, speculation.

11 THE COURT: Overruled.

12 A. If he didn't have shoes on?

13 Q. (BY MR. ROBERT SCARDINO) Yeah.

14 A. I couldn't say whether it would be pertinent or
15 not.

16 Q. How about did you look to see whether or not he
17 had blood on his pants?

18 A. You're referring to the suspect, sir?

19 Q. Yes, sir, the suspect?

20 A. I did not have custody of the suspect until
21 later on; and, no, I would not have checked for blood on
22 his pants.

23 Q. Did you learn that he had blood on his pants?

24 A. No, sir.

25 Q. When you were there at that address, at 2767

1 Briargrove, where was the suspect? Was he on the
2 ground? Standing up? How was he positioned?

3 A. He wasn't on that particular scene.

4 Q. Okay.

5 A. So, I couldn't answer that. I didn't have him
6 at that point.

7 Q. So, other officers had him detained anyway,
8 right?

9 A. Had a suspect detained, yes, sir.

10 Q. And you were called to that location, were you
11 not?

12 A. To where the suspect was, no, sir.

13 Q. Okay. Well, you were the print guy there,
14 right?

15 A. Yes, sir.

16 Q. So, they wanted you to lift prints off of a
17 cell phone, right?

18 A. Correct.

19 Q. And the cell phone that was found on the person
20 of this guy that was detained at this address, at 2767
21 Briargrove?

22 A. No, sir.

23 Q. Pardon?

24 A. Not on their person, no, sir.

25 Q. Okay. It was found near the person?

1 A. The cell phone was -- that particular cell
2 phone was not found on or near the person.

3 Q. Where was it found?

4 A. In a backyard.

5 Q. Okay. And how far away from where the person
6 was detained?

7 A. I didn't detain him. I couldn't tell you. I
8 mean, he was at the block and a half away, based on
9 where I was told that he was detained.

10 Q. This person we're talking about is Marquis
11 Davis, right?

12 A. Yes, sir.

13 Q. Okay. And was the cell phone located in a
14 place that was consistent with a person fleeing from the
15 House of Pies to where Marquis Davis was being detained?

16 A. I really couldn't answer that; I wasn't a part
17 of chasing or detaining him.

18 Q. Now, this happened 18 months ago or so, did it
19 not?

20 A. Yes, sir.

21 Q. And you've had an opportunity to get a lot of
22 information about this case, about who knew what, how,
23 when and where, right?

24 A. Yes, sir, I mean, possible, yes.

25 Q. So, all this kind of stuff would not be

1 important for you to know?

2 A. Not for lifting prints, no, sir.

3 Q. Have you talked to the officers that, without
4 telling us what they said, have you talked to the
5 officers that had Marquis Davis detained out there at
6 that location?

7 A. No, sir.

8 Q. They're not here today?

9 A. They might be here today. There are several
10 officers here, sir.

11 Q. What did you do with the phone when you had
12 possession of it?

13 A. Lifted the prints or lifted a print card off of
14 it.

15 Q. And you were able to get a print off of it?

16 A. I don't know if the print is legible or not.
17 It's a lift, and we turn it in for the crime lab to
18 check against and see if it is a viable print.

19 Q. Okay. Were you able to determine whether you
20 got a viable print?

21 A. I have not been told whether they were viable
22 prints or not.

23 Q. So HPD just compartmentalizes all this
24 information? That's it. You do that and that's it, no
25 more?

1 MS. MERIWETHER: Objection, argumentative.

2 THE COURT: Overruled.

3 Q. (BY MR. ROBERT SCARDINO) You don't learn
4 anything else after you left that scene that night?
5 That was it?

6 A. Once I lifted the print cards, I turn them in,
7 until I come to a situation like this, that's the last I
8 associate with the cards.

9 Q. Nobody tells you or informs you that you got a
10 good print or not?

11 A. Sometimes I get a letter that will tell me that
12 I have a good print, but I have not received a letter
13 about these prints.

14 Q. The prints that you lifted or the attempt to
15 lift prints off the cash register, did you learn whether
16 or not those prints were able to -- the latent or unseen
17 prints, latent means unseen, does it not?

18 A. Okay.

19 Q. Latent prints, unseen prints, so you're trying
20 to lift them to compare them to a known print to see if
21 you can help somebody make a case, right?

22 A. Yes, sir.

23 Q. And the prints that you -- were you able to
24 lift prints off of the cash register?

25 A. Yes, sir.

1 Q. Did you ever find out if they were compared to
2 anybody else's prints?

3 A. No, sir.

4 Q. Nobody told you that?

5 MS. MERIWETHER: Asked and answered.

6 THE COURT: Sustained.

7 Q. (BY MR. ROBERT SCARDINO) Did you ever look at
8 the video in this case that was made by the security
9 cameras that were in the House of Pies?

10 A. I looked at a still of the video.

11 Q. But not the video itself?

12 A. I've never seen the video, no, sir.

13 MR. ROBERT SCARDINO: Pass the witness.

14 THE COURT: Ms. Meriwether.

15 MS. MERIWETHER: No additional questions,
16 Your Honor.

17 THE COURT: May this witness be excused?

18 MS. MERIWETHER: Yes, Your Honor.

19 THE COURT: Thank you, sir. You may step
20 down. You're excused.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MS. MERIWETHER: Officer Gonzalez.

24 THE BAILIFF: Your Honor, this witness has
25 already been sworn in.

1 THE COURT: Thank you.

2 You may proceed.

3 MS. MERIWETHER: Thank you, Your Honor.

4 R. GONZALEZ,

5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MERIWETHER:

8 Q. Good morning, sir. Could you introduce
9 yourself to our jury?

10 A. Officer R. Gonzalez with the Houston Police
11 Department.

12 Q. And how long have you been with the Houston
13 Police Department?

14 A. Thirteen years.

15 Q. Thirteen years?

16 A. Thirteen.

17 Q. And what did you do prior to joining the
18 Houston Police Department?

19 A. I think I did air condition work.

20 Q. Okay. Outdoor work?

21 A. Outdoor.

22 Q. What led you to the Houston Police Department?

23 A. Just to help people.

24 Q. Okay. Fair enough. During your time in the
25 Houston Police Department, what positions have you held?

1 A. Just worked patrol my whole time.

2 Q. You assigned to any particular patrol area?

3 A. The Fondren area at beginning, and then I
4 transferred over to the Midwest division.

5 Q. And how long have you been in the Midwest
6 division?

7 A. Approximately three years.

8 Q. And what shift are you assigned to?

9 A. Second shift, currently, I'm early side.

10 Q. What does that mean?

11 A. 2 o'clock to 10 p.m.

12 Q. Back in March of 2014, were you assigned to
13 Midwest?

14 A. Yes, I was.

15 Q. And were you on the early shift then or the
16 late shift?

17 A. Late shift, 3:00 to 11:00.

18 Q. I want to talk to you about a robbery scene.
19 Did you make a House of Pies location on March 6th of
20 2014?

21 A. Yes, I did.

22 Q. And approximately what time did you arrive at
23 that location?

24 A. About 21 -- or 9:46.

25 Q. Did you learn that the suspects had already

1 fled out the back door at that point?

2 A. Yes, when I arrived, the employees, people
3 running out of the business saying that they ran out
4 the back door.

5 Q. What did you do from there?

6 A. I exited out of the parking lot onto Westheimer
7 and proceeded to go westbound because everybody was
8 saying that they were going westbound in that direction.

9 Q. And let me show you State's Exhibit 135 and
10 House of Pies is here, this is Westheimer Road through
11 here?

12 A. Yes.

13 Q. And what direction of travel did you go?

14 A. This way, (indicating).

15 Q. You were going westbound way, which is towards
16 the left-hand side of this photo?

17 A. Yes.

18 Q. And what did you observe while going that
19 direction?

20 A. I observed somebody running across the
21 westbound lanes going southbound across the eastbound
22 lanes into a complex there at the 6200 block.

23 Q. An apartment complex?

24 A. Yes.

25 Q. And, again, looking at State's Exhibit 135,

1 could you point to where that apartment complex is, make
2 a mark on the screen for us?

3 A. It's going to be about right here (indicating).

4 Q. This area through here?

5 A. Correct.

6 Q. That's an apartment complex?

7 A. About right here, I saw him running right here.

8 Q. So, that's across Westheimer and near
9 Briargrove and then into an apartment complex?

10 A. Yes.

11 Q. What did you do next?

12 A. I drove in that direction, went into the
13 complex. As I drove into the parking lot, one of the
14 residents in the complex started waving me down, just
15 waving like this, so I stopped; and he told me that he
16 saw a black male run up on the third floor and went into
17 the attic. So, I looked at him, and I said, okay, show
18 me, show me where this attic is. So, we went into 2737
19 building Briargrove, and we walked up to the third
20 floor, and he showed me the attic. So, I held the
21 scene. I called for supervisor and K-9.

22 Q. About how long did it take for those folks to
23 arrive?

24 A. I'd say within at least 10 minutes.

25 Q. During that time nobody had left the attic?

1 A. No.

2 Q. Did you then go up into the attic and locate a
3 person?

4 A. K-9.

5 Q. K-9 located. And was he taken into custody?

6 A. Yes.

7 Q. Who was that individual?

8 A. Marquis Evans Davis is the name that was given
9 to me because he had no ID on him at the time.

10 Q. He had no identification on him?

11 A. Correct.

12 Q. Did he have any property on him, cell phone,
13 wallet, anything like that?

14 A. Nothing.

15 Q. Did he have a gun on him?

16 A. No.

17 Q. Was he missing shoes?

18 A. I don't recall.

19 Q. Okay. What did you do with this individual?

20 A. Placed him in handcuffs, put him in the
21 backseat of my car and took him back to the scene at the
22 House of Pies and waited for robbery investigators.

23 Q. And did you leave custody of Marquis Davis with
24 another unit, and that concluded your involvement at the
25 scene?

1 A. Yes, it was running late. I get off at 11:00,
2 so the robbery investigators released me and just told
3 me to leave Mr. Davis with nightshift unit, and I went
4 on.

5 Q. Thank you, sir.

6 MS. MERIWETHER: I'll pass the witness,
7 Your Honor.

8 MR. ROBERT SCARDINO: May I proceed, Your
9 Honor?

10 THE COURT: Yes, you may.

11 **CROSS-EXAMINATION**

12 BY MR. ROBERT SCARDINO:

13 Q. Officer Gonzalez, did you write a report of
14 what happened that night?

15 A. A supplement, yes.

16 Q. Do you have it with you?

17 A. Yes.

18 MR. ROBERT SCARDINO: And may I approach,
19 Your Honor?

20 THE COURT: Yes.

21 Q. (BY MR. ROBERT SCARDINO) May I see it?

22 Officer, when you arrived at the scene, you
23 were informed that you were to look somewhere southbound
24 at an address that was south of the House of Pies?

25 A. West.

1 Q. West of the House of Pies. And were you by
2 yourself, or did you have somebody riding with you?

3 A. No, I was one man, by myself.

4 Q. By yourself, okay. And you drove in that
5 direction?

6 A. Yes.

7 Q. And were you driving when this person was
8 waving at you, that you said somebody was waving at you
9 in an apartment complex?

10 A. When I entered the apartment complex at
11 Briargrove, yes.

12 Q. Do you have a reason for entering into the
13 apartment complex at Briargrove?

14 A. When I saw the individual run across the
15 westbound and eastbound lanes going southbound, he was
16 going into the direction of the complex.

17 Q. I mean, he was running in a manner that looked
18 like he was trying to avoid getting hit by traffic; or
19 was there a certain thing that brought him to your
20 attention?

21 A. Looked like he was running pretty fast.

22 Q. Trying to get away from something?

23 A. That's what it appeared to me.

24 Q. How would you describe that person you saw
25 running across Westheimer?

1 A. I guess, like a sprinter, somebody, like,
2 running.

3 Q. Was he a short, fat, white guy?

4 A. Looked median built, kind of slender.

5 Q. Slender?

6 A. Kind of tall, well, taller than me, I'm only
7 five-three. So, everybody is taller than me.

8 Q. You're my new hero.

9 (Laughter.)

10 Q. So, could you tell any more identifiers about
11 this person? I mean, did he have a hood on?

12 A. No, I couldn't see him.

13 Q. Could you tell whether he was black, white?

14 A. No.

15 Q. And how far away were you from this person when
16 you saw him?

17 A. Well, I'm not really good with distance, but a
18 block 61 to 6200 block, just a block.

19 Q. Too far to be able to see his face?

20 A. Yes.

21 Q. Could you tell whether he had shoes on or not?

22 A. No, sir.

23 Q. Could you tell whether he had a backpack on or
24 not?

25 A. No.

1 Q. And you couldn't tell whether he had a hood on?

2 A. No.

3 Q. So, you go in that direction where you see him
4 running?

5 A. Yes.

6 Q. And that's where the resident waved at you, I
7 assume you're in a marked vehicle?

8 A. Yes.

9 Q. And the resident points to where he sees a
10 person, you don't know if it's the same person?

11 A. Right.

12 Q. And he points to an attic?

13 A. Uh-huh.

14 Q. And you wait there, and you call for a back-up
15 K-9 unit?

16 A. Yes.

17 Q. About 10 minutes?

18 A. Yes.

19 Q. And I guess the K-9 unit -- did the dog bring
20 him down?

21 A. They opened the attic and he addressed himself
22 as the K-9 unit, and if somebody was in there that they
23 needed to come out, or if not that they were going to,
24 you know, let the dog in the attic.

25 Q. That did it?

1 A. That did it.

2 Q. What kind of dog was it?

3 A. I believe it was a German Shepherd.

4 Q. And so the person comes out, and what did that
5 person look like to you when he came out? Can you
6 describe him now that you're close to him?

7 A. All I remember he was a black male, young.

8 Q. Did he tell you who he was?

9 A. Yes.

10 Q. Who did he tell you?

11 A. Marquis Evans Davis.

12 Q. And did you ask him about why he was running?

13 A. No.

14 Q. Did you ask him anything?

15 A. Just his name.

16 Q. And when the other officers were there, did
17 they ask him anything?

18 A. I don't think so because I was the only one who
19 handled him and walked him down to the car, just waiting
20 for the robbery investigators.

21 Q. When he came out of the attic, you handcuffed
22 him, right?

23 A. Yes, and I searched him.

24 Q. And you didn't find any weapons on him?

25 A. I didn't find anything.

1 Q. You didn't find a cell phone?

2 A. No, sir.

3 Q. Didn't find anything?

4 A. No, sir, that's why I asked him his name.

5 Q. So, if he had something on him, he had gotten
6 rid of it before he got to you?

7 A. Correct.

8 Q. And when he was handcuffed, did that mean he
9 was under arrest?

10 A. He was detained at that time.

11 Q. He wasn't leaving no matter what?

12 A. Yes.

13 Q. At that point in time when he came out of the
14 attic, do you recall whether or not he had on shoes?

15 A. No, sir, I don't recall. I don't remember.

16 Q. Do you recall whether or not you could see
17 blood on his pants?

18 A. No, I don't recall.

19 Q. When you were there, did any -- were you
20 present when anybody in law enforcement presented
21 Marquis Davis with bloody shoes and asked him if they
22 were his?

23 A. No, not while he was with me in the car.

24 Q. Were you present when anybody asked him about
25 why he didn't have on shoes?

1 A. No, I don't remember that.

2 Q. Did he tell you he was running from the police
3 because he had marijuana on him?

4 MS. MERIWETHER: Objection to Counsel
5 testifying and hearsay.

6 THE COURT: Sustained.

7 MR. ROBERT SCARDINO: Pass the witness.
8 Thank you, Officer.

9 THE COURT: Ms. Meriwether.

10 MS. MERIWETHER: No further questions, Your
11 Honor.

12 THE COURT: May this witness be excused?

13 MS. MERIWETHER: Yes, Your Honor.

14 THE COURT: Thank you, sir. You may step
15 down.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness.

18 MS. MERIWETHER: State calls Officer
19 Looney.

20 THE COURT: Y'all ready for a break?

21 JUROR: One more.

22 THE COURT: One more witness, okay.

23 THE BAILIFF: Your Honor, this witness has
24 already been sworn in.

25 THE COURT: Thank you.

1 You may proceed.

2 MS. MERIWETHER: Thank you, Your Honor.

3 **AARON LOONEY,**

4 having been first duly sworn, testified as follows:

5 **DIRECT EXAMINATION**

6 BY MS. MERIWETHER:

7 Q. Good morning, sir. Could you introduce
8 yourself to our jury?

9 A. Yes, I'm Aaron Looney.

10 Q. And how are you employed?

11 A. I am a police officer with the Houston Police
12 Department.

13 Q. How long have you been with the Houston Police
14 Department?

15 A. Two years.

16 Q. First time having to testify?

17 A. Yes.

18 Q. Little nervous?

19 A. Yes, ma'am.

20 Q. If you'll just keep your voice up, and we'll be
21 fine. If I ask a weird question, let me know; and I'll
22 rephrase it, all right?

23 A. Okay. No problem.

24 Q. Are you assigned to any particular part of the
25 Houston Police Department?

1 A. Patrol South Gessner division.

2 Q. And how long -- is that been where you've been
3 for your whole two years?

4 A. Yes, since I got off of training.

5 Q. And when did you get off training?

6 A. Approximately two years ago, I don't remember
7 the date.

8 Q. That's okay. Were you still in training back
9 in March of 2014?

10 A. Yes.

11 Q. Were you riding with another Officer Deroam?

12 A. Yes.

13 Q. Did you and Officer Deroam on March 7th of 2014
14 go to an apartment to look for a vehicle?

15 A. Yes.

16 Q. Where was that apartment complex?

17 A. On the Beltway.

18 Q. Showing you State's Exhibit No. 1, is this the
19 area you went to over here?

20 A. Yes.

21 Q. That's the 8565 West Sam Houston Parkway?

22 A. Yes.

23 Q. And what apartment complex is that?

24 A. I believe it's Little Nell Apartment complex.

25 Q. And did the two of you have a vehicle that you

1 were looking for?

2 A. Yes.

3 Q. What kind of vehicle was that?

4 A. A either Crown Vic or Grand Marquis, I believe.

5 Q. Did you do a supplement as part of your work in
6 this case?

7 A. Yes.

8 MS. MERIWETHER: Your Honor, may I approach
9 the witness?

10 THE COURT: You may.

11 Q. (BY MS. MERIWETHER) I'm going to give you a
12 chance to look over this and see if it will help refresh
13 your memory. What kind of vehicle were you looking for?

14 A. A 1995 Mercury Grand Marquis.

15 Q. And that information, who was it provided to
16 you by?

17 A. Homicide division.

18 Q. And were you able to locate a vehicle?

19 A. Yes.

20 MS. MERIWETHER: May I approach the
21 witness, again?

22 THE COURT: You may.

23 Q. (BY MS. MERIWETHER) I'm going to show you
24 State's Exhibits 67 through 70. What are these items?

25 A. Those are the pictures of the vehicle that we

1 found.

2 Q. Do these fairly and accurately depict how you
3 found it back on March 7th of 2014?

4 A. Yes.

5 Q. And also it's location when you found it?

6 A. Yes.

7 MS. MERIWETHER: Your Honor, at this time I
8 move to offer State's Exhibits 67 through 70.

9 (State's Exhibit Nos. 67 through 70
10 offered.)

11 MR. ROBERT SCARDINO: Your Honor, the
12 exhibits have been examined; and there are no
13 objections.

14 THE COURT: State's Exhibits 65 through 70
15 are admitted.

16 (State's Exhibit Nos. 65 through 70
17 admitted.)

18 MS. MERIWETHER: Thank you, Your Honor.
19 May I publish?

20 THE COURT: You may.

21 Q. (BY MS. MERIWETHER) Showing you State's
22 Exhibit No. 68, is this a photograph of the Grand
23 Marquis as you found it?

24 A. Yes.

25 Q. And State's Exhibit 69, the other side of that

1 Grand Marquis?

2 A. Yes.

3 Q. And then lastly, State's Exhibit No. 70, what
4 is this showing?

5 A. That's just in reference to where the vehicle
6 was parked to the buildings.

7 Q. Is this the vehicle here?

8 A. Yes.

9 Q. And it's difficult to see. I'm going to zoom
10 in, but what building number is it parked near?

11 A. Building 11.

12 Q. Okay. And what did you do after locating this
13 vehicle?

14 A. After we located the vehicle, we contacted the
15 officer that told us to find the vehicle, another
16 officer came and took pictures of the vehicle; and then
17 a wrecker came and we just followed it to the Houston
18 Dart lot.

19 Q. Did y'all ever go inside of the vehicle at all?

20 A. No.

21 Q. Did y'all have a key to get inside?

22 A. We did not.

23 Q. So, basically, just hook it up and tow it over
24 to the Dart lot?

25 A. Yes.

1 Q. And that was all done on March 7th of 2014?

2 A. Yes.

3 MS. MERIWETHER: I'll pass the witness,
4 Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. ROBERT SCARDINO:

7 Q. Did you write a report, Officer?

8 A. Yes.

9 Q. And do you have it with you?

10 A. Yes.

11 MR. ROBERT SCARDINO: May I approach, Your
12 Honor?

13 THE COURT: You may.

14 MR. ROBERT SCARDINO: May I have just a
15 second, please?

16 THE COURT: You may.

17 Q. (BY MR. ROBERT SCARDINO) Officer, when you were
18 sent to the location at the Little Nell Apartments, you
19 had information, did you not, that that was the scene of
20 a homicide?

21 A. We were just told it may be involved in a case.
22 We had no information about the case.

23 Q. You didn't know if it was a kidnapping or
24 sexual assault or a murder case?

25 A. Did not know.

1 Q. Didn't have any of that information?

2 A. Well, homicide told us that it may have been
3 involved in a homicide; that's all the information that
4 I had.

5 Q. You did have information about the type of case
6 you were assigned to perform some function?

7 A. Yes.

8 Q. And was it -- were you -- was part of your duty
9 to determine the location of that vehicle in that
10 apartment complex, was that important to you?

11 A. Well, they told us where it was going to be at,
12 so we went there and we found it where they told us it
13 was going to be.

14 Q. And where was it?

15 A. It would have been at the -- well, near
16 Building 11 on the, I'm trying to think, I think that's
17 the south side of the complex.

18 Q. Was it located near where this poor dead man
19 was killed?

20 A. I have no -- I don't know anything about that.

21 Q. Okay. You weren't informed of where the person
22 was murdered?

23 A. No, I had no information about the case
24 whatsoever.

25 Q. But you did locate a vehicle either a Crown Vic

1 or Mercury Marquis?

2 A. Yes.

3 Q. And see was it parked, you said near Building
4 11?

5 A. Yes.

6 Q. And did you take pictures of it?

7 A. I didn't take the pictures, another officer
8 did.

9 Q. You don't have those with you?

10 A. No, those are the pictures.

11 Q. Same pictures here?

12 A. Yes.

13 Q. And just the two of you?

14 A. Yes.

15 Q. And did you call for somebody to tow the car
16 away?

17 A. Yes.

18 Q. Did you do anything to the car before you had
19 it towed?

20 A. No, we didn't touch the car.

21 Q. After the car was towed, did you do anything to
22 the car?

23 A. No.

24 Q. All you did was go get the car and tow it away?

25 A. Yes.

1 Q. Thank you.

2 MR. ROBERT SCARDINO: Pass the witness.

3 MS. MERIWETHER: No further questions, Your
4 Honor.

5 THE COURT: May this witness be excused?

6 MS. MERIWETHER: Yes, Your Honor.

7 THE COURT: Thank you, sir. You may step
8 down, and you are excused.

9 Ladies and gentlemen, let's take our
10 midmorning break. I'll let you go with the bailiffs.
11 Please feel free to go get a snack or step outside.
12 We'll resume when you turn.

13 THE BAILIFF: All rise for the jury.

14 (Jury exits courtroom.)

15 THE COURT: Thank you. Be seated. We'll
16 be in recess.

17 (A recess was taken.)

18 (Open court, Defendant present.)

19 THE BAILIFF: All rise for the jury.

20 (Jury enters courtroom.)

21 THE COURT: Thank you. Be seated.

22 Ms. Meriwether, you may call your next
23 witness.

24 MS. MERIWETHER: Officer Holmes.

25 THE BAILIFF: Judge, this witness has been

1 sworn in.

2 THE COURT: Thank you.

3 You may proceed.

4 MS. MERIWETHER: Thank you, Your Honor.

5 ALTON HOLMES,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MERIWETHER:

9 Q. Could you please introduce yourself to our
10 jury?

11 A. My name is Alton Holmes.

12 Q. How are you employed?

13 A. I work for the Houston Police Department.

14 Q. Are you assigned to any particular division?

15 A. Currently I'm assigned to our accident
16 division.

17 Q. Have you ever worked in a different division?

18 A. Yes.

19 Q. And what was that?

20 A. I was with the crime scene unit for five and a
21 half years.

22 Q. And were you assigned to any particular part of
23 the crime scene unit?

24 A. The last three and a half years I was assigned
25 to our vehicle examination building.

1 Q. And what is the vehicle examination building?

2 A. There's two CSUs assigned to that facility full
3 time. Basically, we process cars that are involved in
4 various crimes, typically, homicides, robberies, sexual
5 assaults, some aggravated assaults, intoxicated
6 manslaughters, something like that.

7 Q. What kind of training and experience do you
8 have that allows you to do this vehicle processings?

9 A. Most of it is on-the-job training, especially
10 when it comes to the cars. I've been to numerous
11 classes that do general crime scene processing,
12 fingerprint, photography, videography, evidence
13 collection preservation. I've been in some specialty
14 courses. I've got somewhere of over 4000 training
15 hours.

16 Q. So, I want to talk to you about a couple of
17 vehicles that you processed as it relates to both a
18 capital murder and aggravated robbery recovery of a
19 vehicle. In particular, a black Acura and a gold or
20 tan-colored Grand Marquis. What's the first step in the
21 process when you got a couple of vehicles, how are you
22 assigned them to look at?

23 A. Basically, we pretty much pick -- my partner
24 and I, if you take one car from a case, you take
25 everything from the case. So, we both don't get tied up

1 in court. So, since there were two cars in this case, I
2 took care of both vehicles.

3 Q. And how do you know what you're looking for?

4 A. We are told by the investigators what they need
5 us to look for. Typically we'll read over the incident
6 reports that we can see that are in the system, but we
7 rely on the investigators for what they want.

8 Q. Now, obviously, if they don't tell you things,
9 does that harm your ability to look for stuff?

10 A. Yes.

11 Q. Do you still do your best to do an overall
12 documentation of the vehicle?

13 A. Yes.

14 Q. Irregardless of what they're telling you to
15 look for?

16 A. Correct.

17 Q. And do you take a large number of photographs
18 to document the vehicle?

19 A. Yes.

20 Q. Any set number that you take in every case?

21 A. No.

22 Q. Did you do that in this case, take photographs
23 of both the Acura and the Grand Marquis?

24 A. Yes.

25 MS. MERIWETHER: Your Honor, may I approach

1 the witness?

2 THE COURT: You may.

3 Q. (BY MS. MERIWETHER) I'm going to show you
4 what's been marked as State's Exhibits 71 through 128;
5 have you had a chance to look at these?

6 A. Yes.

7 Q. Do they all appear to be related to this case
8 both of the vehicles and of items collected from inside
9 of both vehicles?

10 A. Yes.

11 MS. MERIWETHER: Your Honor, at this time I
12 move to offer State's Exhibits 71 through 128, tender to
13 Counsel for any objection.

14 (State's Exhibit Nos. 71 through 128
15 offered.)

16 MR. ROBERT SCARDINO: This is going to take
17 us a minute, Your Honor, may I have?

18 THE COURT: Yes, you may.

19 MR. ROBERT SCARDINO: May we have a moment
20 just to confer?

21 THE COURT: Yes.

22 (Sotto voce discussion between attorneys.)

23 MR. ROBERT SCARDINO: Your Honor, may I
24 take the witness on voir dire to determine the legality
25 of the exhibits?

1 THE COURT: Yes.

2 VOIR DIRE EXAMINATION

3 BY MR. ROBERT SCARDINO:

4 Q. Officer Holmes.

5 A. Yes, sir.

6 Q. You were assigned the responsibility to process
7 these two vehicles?

8 A. Yes, sir.

9 Q. And you had information that they may or may
10 not have been used or may or may not be evidence of
11 criminal activity?

12 A. Yes, sir.

13 Q. And you knew or did you not know who owned
14 these vehicles?

15 A. We had on the paperwork, I knew who owned the
16 black Acura.

17 Q. And both of these vehicles were in the police
18 compound when you did your processing of the vehicles?

19 A. Yes, sir.

20 Q. And your processing of the vehicles was to
21 search the vehicles, correct?

22 A. Yes, sir.

23 Q. And to pull items out of the vehicle?

24 A. Yes, sir.

25 Q. Did you get a search warrant before you

1 processed these vehicles?

2 A. The black one, I believe the black one didn't
3 need a search warrant, it was the Complainant's vehicle;
4 and homicide investigator got a search warrant for the
5 Grand Marquis.

6 Q. Okay.

7 MR. ROBERT SCARDINO: And you have that?

8 MS. MERIWETHER: I do. I believe we
9 provided you a copy previously, but here it is.

10 MR. ROBERT SCARDINO: Okay. Thank you.

11 I pass the witness on voir dire and object
12 to the admission of State's Exhibits 71 through, 71
13 through 114 in that the proper legal process was not
14 used to obtain the information. There was no search
15 warrant, which he should have obtained before he
16 searched the vehicle.

17 THE COURT: That objection is overruled.
18 And the exhibits go through 128, am I correct about
19 that?

20 MS. MERIWETHER: They do, Your Honor.
21 State's Exhibits 1 -- I believe what he's attempting to
22 object to is that State's Exhibit --

23 THE COURT: I'm clear on the objection.
24 I'm not clear on the exhibits that were offered. They
25 were all photographs, and they go through No. 128; is

1 that correct?

2 MS. MERIWETHER: Through 123, Your Honor.

3 THE COURT: Thank you. State's
4 Exhibits Nos. 71 through 123 are admitted over
5 objection.

6 (State's Exhibit Nos. 71 through 123
7 admitted.)

8 MR. ROBERT SCARDINO: And if we may further
9 address the Court on Exhibits 94, 96, 97, 98, 99 and a
10 hundred.

11 THE COURT: I'm sorry, yes, 94 through a
12 hundred.

13 MR. ROBERT SCARDINO: 94, 96, 97, 98, 99
14 and a hundred, if we may submit these exhibits to the
15 Court and object to their admission, due to the fact
16 that it would reveal inadmissible information.

17 THE COURT: Okay.

18 (Bench conference.)

19 MR. ROBERT SCARDINO: 94, 96, 97, 98, 99
20 and 100, these exhibits would be information indicated
21 to the jury of prior crimes. They would not be
22 admissible in front of the jury, and the one exhibit
23 that talks about HIV would be prejudicial and not
24 probative.

25 MS. MERIWETHER: This is the flip side of

1 that card.

2 (End of bench conference.)

3 THE COURT: Okay. The Defense objections
4 to State's Exhibits No. 94 through 100, well, exclusive,
5 of 95, so 94 and then 96 through 100 is sustained.

6 (Bench conference.)

7 MS. MERIWETHER: Your Honor, may I provide
8 additional information as to why they're relevant?

9 THE COURT: I believe this is the same
10 issue we took up yesterday?

11 MS. MERIWETHER: This is the item that's
12 found in the center cup holder. It goes to identity of
13 the Defendant. These are items that are found inside of
14 the wallet.

15 THE COURT: That one?

16 MS. MERIWETHER: Yes, Your Honor.

17 They all go to the identity of the wallet.
18 These are items that are retrieved and found inside of
19 the wallet.

20 THE COURT: We didn't address 91?

21 MS. MERIWETHER: I showed you 91 to give
22 you an idea of where these items are found, Your Honor.

23 THE COURT: Defense objection is sustained
24 to 94, 96 and 97. You can have those back. 98 through
25 100 are admitted, 98, 99, 100 are admitted. I'm sorry.

1 That's confusing.

2 MR. PHILIP SCARDINO: I apologize, Your
3 Honor. 95 is the flip side of 94, we should have
4 included that in our objection.

5 THE COURT: Objection sustained as well.

6 MR. PHILIP SCARDINO: Thank you, Your
7 Honor.

8 MR. ROBERT SCARDINO: I think I got them in
9 order.

10 MS. MERIWETHER: Thank you, Your Honor.

11 (End of bench conference.)

12 Q. (BY MS. MERIWETHER) All right. Officer
13 Holmes, I want to start first with the Grand Marquis
14 vehicle. That was the vehicle that you obtained a
15 search warrant to look through; is that correct?

16 A. Homicide investigator obtained the search
17 warrant.

18 Q. What was the first step in your process of
19 documenting that vehicle?

20 A. First step on all cars is to photograph them
21 before we do anything so we can document the condition
22 that they came there in. We'll photograph the outside
23 and then in both these cases they needed, we'll
24 photograph the inside before we start moving anything.

25 Q. And showing you, showing you State's

1 Exhibit 117, is that the Grand Marquis that you
2 processed?

3 A. Yes.

4 Q. And did you have a key to process that vehicle?

5 A. The vehicle came in unlocked, but I did find a
6 key in the other vehicle that went to this one.

7 Q. Showing you State's Exhibit 116, is that the
8 key that you located?

9 A. Yes.

10 Q. And where was that key found?

11 A. The key was located inside the black Acura.

12 Q. Showing you State's Exhibit 115, what's
13 depicted here?

14 A. That's me putting it in the driver's door to
15 show that it actually functioned in that car.

16 Q. So, this set of keys found in the black Acura
17 that you also processed?

18 A. Correct.

19 Q. And do you also take some general overall
20 photos of the Grand Marquis?

21 A. Yes.

22 Q. And is that what we see here in State's
23 Exhibit 118?

24 A. Yes, that's looking in through the driver's
25 door.

1 Q. State's Exhibit 119?

2 A. Looking in through the left rear door.

3 Q. And State's Exhibit 121?

4 A. Looking in through the right rear door.

5 Q. And were you able to determine what this item
6 here and this item was?

7 A. Yes, I know the one closest to the door was a
8 tool kit. I believe the other one is a stereo.

9 Q. And showing you State's Exhibit 123, did you go
10 ahead and open that and verify it was a tool kit?

11 A. Yes.

12 Q. Did you also in State's Exhibit No. 122 find
13 this item on the floorboard area?

14 A. Yes.

15 Q. And what is this item?

16 A. It's a faceplate holder, a faceplate for a car
17 stereo.

18 Q. Did you find any weapons or any items, firearms
19 inside of the Grand Marquis?

20 A. No.

21 Q. What other processes did you do on the Grand
22 Marquis?

23 A. On the Grand Marquis I also took some DNA
24 swabs.

25 Q. Tell us what's involved in that?

1 A. Taking a DNA swab, we take sterile swabs like a
2 doctor would use. We use distilled water to wet the
3 swab and then we will swab for contact DNA or if we've
4 got bloodstains, we'll take swabs from the bloodstains.
5 In this case, it was all contact DNA.

6 Q. And where did you take contact DNA from?

7 A. Attempted to lift from the driver's area, which
8 was the steering wheel, gear shift and the interior door
9 handle, and the headrest. I used another swab for the
10 front passenger's interior door handle and then another
11 swab for the left rear interior door handle and another
12 for the right rear interior door handle.

13 Q. So you collected all of those DNA swabs, and do
14 you package them up individually?

15 A. Yes.

16 Q. And then where do they go?

17 A. Then they're put in an envelope and sent to our
18 property room.

19 Q. Did you attempt to lift any fingerprints off of
20 the Grand Marquis?

21 A. Yes.

22 Q. And how did that go?

23 A. I lifted possible prints. I lifted one from
24 the outside of the driver's door and one from the
25 outside of the left rear door.

1 MS. MERIWETHER: Your Honor, may I approach
2 the witness?

3 THE COURT: You may.

4 Q. (BY MS. MERIWETHER) I'm going to show you what
5 I've marked as State's Exhibits 133 and 134. Are these
6 the print cards for those lifts?

7 A. Yes.

8 Q. Okay. You were verifying the license plate and
9 seeing that it belonged to the Grand Marquis?

10 A. Correct.

11 Q. And these were done by you back when you
12 processed the vehicle?

13 A. Yes.

14 MS. MERIWETHER: Your Honor, at this time
15 I'd move to offer State's Exhibits 133 and 134, tender
16 for any objections.

17 (State's Exhibit Nos. 133 and 134 offered.)

18 MR. ROBERT SCARDINO: No objections, Your
19 Honor.

20 THE COURT: State's Exhibits 133 and 134
21 are admitted.

22 (State's Exhibit Nos. 133 and 134
23 admitted.)

24 Q. (BY MS. MERIWETHER) Showing you first State's
25 Exhibit 133, what is this item?

1 A. That's the information side of the lift card.

2 Q. And what date did you lift this on?

3 A. On March 11th, 2014.

4 Q. And it has the license plate number, and that's
5 consistent with the Grand Marquis vehicle?

6 A. Correct.

7 Q. And this information here, is that placed on by
8 you?

9 A. Yes.

10 Q. And then this very nice door diagram, was that
11 done by you as well?

12 A. Yes.

13 Q. And how do we know where you took the print
14 from on the door?

15 A. I've actually put a small circle and line with
16 the asterisks that's how I mark my drawings as to where
17 that print came from.

18 Q. Now showing you the backside of State's Exhibit
19 133, what's here?

20 A. That's the partial print that I lifted.

21 Q. And what makes it a partial print?

22 A. It's not a full hand print or a full
23 fingerprint.

24 Q. Okay. Now, showing you State's Exhibit 134,
25 yes, 134, what is this item?

1 A. It's the other latent lift card from this
2 Marquis.

3 Q. And where did you lift this print from?

4 A. This was the exterior left rear door, so
5 driver's side rear door.

6 Q. Driver's side rear door, and, again, you've
7 made a circle and an asterisk where you lift it from?

8 A. Yes.

9 Q. And showing you the backside, is this the print
10 that you lifted?

11 A. Yes.

12 Q. Okay. That concludes the items and work that
13 you did on the Grand Marquis?

14 A. Yes.

15 Q. There wasn't any actual physical evidence that
16 you tagged into the property room out of that vehicle;
17 is that correct?

18 A. Other than the swabs, no.

19 Q. Swabs. Now, I want to talk to you next about
20 the black Acura, showing you State's Exhibit 71, is this
21 the vehicle that you processed?

22 A. Yes.

23 Q. And the license plate for that vehicle as well?

24 A. Correct.

25 Q. And did you take a number of overall photos of

1 the vehicle?

2 A. Yes.

3 Q. Were you able to make any observations about
4 the contents that was found inside of it, namely, in the
5 backseat?

6 A. Yes.

7 Q. And did you do your best to document that in
8 State's Exhibit 74?

9 A. Yes.

10 Q. And also, I guess, first, in State's
11 Exhibit 74, what view are we looking at here?

12 A. That's looking in from the right rear door.

13 Q. And State's Exhibit 75?

14 A. That's looking in through the left rear door.

15 Q. Was that backseat area full of a lot of items?

16 A. Yes.

17 Q. All right. Now I want to move to the end, the
18 front compartment area of that vehicle; is that what we
19 see here in State's Exhibit 76?

20 A. Yes, that's looking in through the driver's
21 door.

22 Q. And showing you State's Exhibit 77, what's
23 depicted here?

24 A. It's the driver's seat and a pair of goggles
25 that were resting on the seat.

1 Q. Like swimming goggles?

2 A. Yes.

3 Q. And did you collect those items, showing you
4 State's Exhibit 78?

5 A. Yes.

6 Q. And I see that you're wearing gloves when
7 you're doing this process, why is that?

8 A. We wear gloves to try to keep from
9 contaminating anything that we may collect.

10 Q. So, what did you do with State's Exhibit 78, in
11 this picture, what did you do with that item?

12 A. They were actually -- after I took this photo,
13 I placed it in that plastic bag.

14 Q. And where do they go from there?

15 A. From there it gets packaged in another envelope
16 and then taken to our property room.

17 Q. Showing you State's Exhibit 79, what do we see
18 here?

19 A. Showing the center console and the front
20 passenger's seat.

21 Q. And there appears to be a laptop that's in that
22 center console area. Is that what we see here in
23 State's Exhibit 80?

24 A. Yes.

25 Q. And what did you do with that item?

1 A. That was tagged into the property room as well.

2 Q. And showing you State's Exhibit 127, is that a
3 picture of the label that denotes that laptop and its
4 tagging into the property room?

5 A. Yes.

6 Q. Now, in the center cup holder area, did you
7 find anything of note?

8 A. Yes.

9 Q. And what was that?

10 A. In the center cup holder area, there was a
11 black wallet.

12 Q. And is that what we see in the bottom,
13 right-hand corner of State's Exhibit 81?

14 A. Yes.

15 Q. Did you look inside of that wallet?

16 A. Yes.

17 Q. And before I move on from State's Exhibit 81,
18 we also see kind of a, it's a military camouflage
19 lanyard and a set of keys here.

20 A. Yes.

21 Q. What is that?

22 A. Those are the -- that's the key ring and
23 lanyard that had the key that fit the Grand Marquis.

24 Q. And did you take that into evidence as well?

25 A. Yes.

1 Q. I'm going to come back to the wallet in a
2 second, but I want to talk about a couple of other items
3 that you recovered from inside of that vehicle. What do
4 we see you holding here in State's Exhibit 82?

5 A. It's a latex or vinyl glove.

6 Q. And where was that item located?

7 A. It was in the center cup holder area.

8 Q. And what did you do with that item?

9 A. It was tagged into evidence.

10 Q. Okay. Showing you State's Exhibit 83, what do
11 we see here?

12 A. Was a cell phone that was in the center cup
13 holder.

14 Q. What did you do with that item?

15 A. It was tagged into the property room as
16 evidence.

17 Q. And is that what we see here in State's
18 Exhibit 84?

19 A. Yes.

20 Q. Now, in this cup holder area -- actually, I'm
21 going to move from the cup holder. Where the laptop is,
22 what's underneath that area?

23 A. It's a center armrest storage area or center
24 console with a lid. Basically, you got an armrest but
25 it opens up and you've got storage inside.

1 Q. And did you look inside that area?

2 A. Yes.

3 Q. And what did you find inside of that area?

4 A. I found an expired driver's license in the
5 upper storage area and a valid driver's license in lower
6 storage area for the owner of the vehicle.

7 Q. And showing you State's Exhibit 86, is this the
8 expired driver's license?

9 A. Yes.

10 Q. And then you said there's a lower storage area,
11 is that what we see here in State's Exhibit 87?

12 A. Yes.

13 Q. There's the top part, what is this area here?

14 A. That's the tray that separates, basically,
15 there's a small upper area and then that lifts up to get
16 into a much deeper lower area.

17 Q. And in the lower area is where you found the
18 valid driver's license?

19 A. Yes.

20 Q. And is that what we see here in State's
21 Exhibit 88?

22 A. Yes.

23 Q. All right. I now want to go to State's
24 Exhibit 89. What's depicted here?

25 A. That's a closer shot of the black wallet that

1 was in the center cup holder.

2 Q. Okay. And the angle that we're seeing it at,
3 is it near the driver's side or the passenger's side of
4 the vehicle?

5 A. It's closer to the driver's seat.

6 Q. For instance this area here, is the seatbelt
7 for the driver's side?

8 A. Yes.

9 Q. And then this area next to it is where the
10 wallet is located?

11 A. Correct.

12 Q. And you stated that you opened that?

13 A. Yes.

14 Q. Showing you State's Exhibit No. 91, is that
15 what we see here?

16 A. Yes.

17 Q. And were you able to locate an identification
18 inside of it?

19 A. Yes.

20 Q. And is that what we see depicted in State's
21 Exhibit 92?

22 A. Yes.

23 Q. And who does that identification belong to?

24 A. Donald Nealey.

25 Q. Showing you State's Exhibit 93, what is this

1 item?

2 A. It's a Visa debit card that was in the wallet.

3 Q. And is it in the name of anybody in particular?

4 A. Yes.

5 Q. And who is that?

6 A. Donald Nealey.

7 Q. And showing you State's Exhibit 98, what is
8 this item?

9 A. It was a traffic ticket or traffic citation.

10 Q. And were you able to tell whose name it was in
11 showing you State's Exhibit 99?

12 A. Yes.

13 Q. And who is that?

14 A. Donald Nealey.

15 Q. And showing you State's Exhibit 100, are you
16 able to tell us when this traffic offense occurred?

17 A. Yes.

18 Q. And when is that?

19 A. February 6th of 2014.

20 Q. And does it give you a location for the
21 offense?

22 A. Yes, the original offense was 9900 Westheimer,
23 and then the second offense is listed as 2600 Briar
24 Park.

25 Q. Showing you State's Exhibit 101, what is this

1 depicting?

2 A. That's the inside of the wallet where typically
3 we find any money or anything like that you open up the
4 long section.

5 Q. Did you find any money in there?

6 A. No.

7 Q. All right. Now showing you State's
8 Exhibit 104, what do we see here?

9 A. That's looking in through the front passenger's
10 door.

11 Q. And did you attempt to look at what was inside
12 of the items down here?

13 A. Yes.

14 Q. What did it appear to be?

15 A. Trash.

16 Q. All right. Now, I want to move to the -- away
17 from the picture side of it. So those pictures all
18 document the items and property that you found inside of
19 it. Did you take any fingerprints or locate any
20 fingerprints on the vehicle?

21 A. Yes.

22 Q. Okay. And how do you locate prints on the
23 vehicle?

24 A. First thing we do is go along with a flashlight
25 and see if we can actually find where there might be

1 some. If it looks like we've got possible prints, we'll
2 take latent dust and dust the area with brushing powder.

3 Q. Showing you State's Exhibit 106, did you do
4 that in this area of the vehicle?

5 A. Yes.

6 Q. And could you circle where we should be looking
7 at for prints?

8 A. Right there on the A-pillar.

9 Q. And did you collect a print card from that
10 location?

11 A. Yes.

12 Q. And showing you State's Exhibit 108, what do we
13 see here?

14 A. It's another location. This one is on the,
15 right at the rear of the front passenger's door.

16 Q. Okay. And did you collect any prints from that
17 location?

18 A. Yes.

19 Q. And showing you 109, is that a photograph of
20 the print collected?

21 A. Yes, although it's upside down.

22 Q. Oh, I'm sorry. And 110, what do we see
23 depicted here?

24 A. It's another shot on the front passenger's
25 door.

1 Q. And did you use a similar process as you did on
2 the Grand Marquis with print cards?

3 A. Yes.

4 MS. MERIWETHER: Your Honor, may I approach
5 the witness?

6 THE COURT: You may.

7 Q. (BY MS. MERIWETHER) Showing you what I've
8 marked as State's Exhibits 129 through 132, can you take
9 a look at these and see if you recognize them?

10 A. Yes.

11 Q. And what are these items?

12 A. These are the fingerprint lift cards.

13 Q. Off of the black Acura?

14 A. Yes.

15 MS. MERIWETHER: Your Honor, at this time
16 I'd move to offer State's Exhibits 129 through 132,
17 tender to Counsel for any objections.

18 (State's Exhibit Nos. 129 through 132
19 offered.)

20 MR. ROBERT SCARDINO: The documents have
21 been examined; and there's no objections, Your Honor.

22 THE COURT: State's Exhibits No. 129
23 through 132 are admitted.

24 (State's Exhibit Nos. 129 through 132
25 admitted.)

1 MS. MERIWETHER: Thank you, Your Honor.

2 Q. (BY MS. MERIWETHER) Showing you first State's
3 Exhibit 129. What date did you collect these prints on?

4 A. March 10th of 2014.

5 Q. And is that the date which you processed the
6 entire vehicle on?

7 A. Yes.

8 Q. So, you processed the black Acura on March 10th
9 and then the Grand Marquis on March 11th?

10 A. Correct.

11 Q. With regard to State's Exhibit 129, what is --
12 where did you lift this print from?

13 A. This came from the exterior driver's door near
14 the rear edge.

15 Q. And showing you the back of State's
16 Exhibit 129, is this the lift that you took?

17 A. Yes.

18 Q. Showing you State's Exhibit 130, what do we see
19 in this item?

20 A. That was the information for a lift from the
21 exterior right rear door with the front edge.

22 Q. So, that's the passenger side of the vehicle?

23 A. Yes.

24 Q. And on the rear door?

25 A. Rear door.

1 Q. Showing you State's Exhibit -- oh, I'm sorry,
2 and the back of State's Exhibit 130, is that the lift
3 that you took from that location?

4 A. Yes.

5 Q. And showing you State's Exhibit 131, what print
6 is lifted here?

7 A. It's from the front passenger's door at the
8 rear edge.

9 Q. And showing you the back of State's
10 Exhibit 131, is this the print you lifted?

11 A. Yes.

12 Q. Now, I want to show you State's Exhibit 132 and
13 spend a little bit more time with you on this one, so
14 this appears to contain two diagrams. Can you explain
15 this one to us?

16 A. Because of -- it's the A-pillar is basically
17 the structural piece that transitions from the doors to
18 the windshield, and this kind of wrapped over the top.
19 So, to be able to explain it better several years later
20 in court, I did the drawing where I could see it from
21 the side as well as from the front.

22 Q. And is State's Exhibit 106 a picture of that
23 item, of the area that we're talking about?

24 A. Yes.

25 Q. And could you point to where you're referring

1 to?

2 A. It's this area right here. This is the
3 A-pillar, and then it goes on to the windshield.

4 Q. Thank you. And showing you the back of this
5 Exhibit 132, there appears to be two sets of lifting,
6 can you explain that to us?

7 A. To keep from possibly messing the tape up
8 because it was such a large area, there was a distinct
9 clearance, if you will, where there was no latent ridge
10 detail in between, so I used the larger tape for the
11 A-pillar for the larger part of the print and then used
12 the smaller finger lift tape for the latents that were
13 on the windshield.

14 Q. Now, do you do any of the comparisons of these
15 prints to potential suspects, are any comparisons done
16 by you?

17 A. No.

18 Q. Why not?

19 A. That's not my training.

20 Q. Fair enough. What happens with those print
21 cards?

22 A. They end up in the property room. In this
23 case, homicide investigator came after I processed both
24 and I had not been to the property room yet, and she
25 took both of them to take them directly to the latent

1 lab.

2 Q. Was a homicide investigator also present when
3 you located the wallet in the cup holder?

4 A. I don't believe she was.

5 Q. Okay. Now, we've seen pictures of a number of
6 items. Did you also take items that you submitted to
7 the property room to allow for further DNA testing as
8 needed?

9 A. Yes, I actually took some DNA swabs from them
10 while I was processing it.

11 Q. Before I forget, did you take DNA swabs from
12 the black Acura, the vehicle itself?

13 A. Yes.

14 Q. And tell me about that. Where did you take
15 swabs from?

16 A. I did a set of swabs from a driver's area for
17 the steering wheel, gear shift, interior door handle and
18 headrest. And then I did all three of the other
19 interior door handles separately.

20 Q. And, again, similar process that you did with
21 the Grand Marquis in looking for contact DNA?

22 A. Correct.

23 Q. Now, you stated that you processed some items
24 as well for -- and took swabs from items?

25 A. Yes.

1 Q. What items did you do that on?

2 A. I took a DNA contact swab from the cell phone
3 and another from the laptop computer.

4 MS. MERIWETHER: Your Honor, may I approach
5 the witness?

6 THE COURT: You may.

7 Q. (BY MS. MERIWETHER) I'm going to start by
8 showing you State's Exhibit 124, are you familiar with
9 this item?

10 A. Yes.

11 Q. And what is it?

12 A. It's the black wallet I recovered from the
13 center console of the Acura.

14 Q. And does it still contain the contents of the
15 wallet as you found it? And I probably need to open it
16 so you can verify that. Would that be an accurate
17 statement?

18 A. Yes. You want me to open it?

19 Q. Yes.

20 A. Yes.

21 Q. Okay. Showing you State's Exhibit 125, what is
22 this item?

23 A. These were the goggles I recovered from the
24 driver's seat.

25 Q. And did you collect a DNA swab from that item?

1 A. No.

2 Q. Just submitted it to the lab?

3 A. Yes.

4 Q. And showing you State's Exhibit 126 and its
5 contents, what is this item?

6 A. This was the latent or rubber glove that I
7 located in the center cup holder.

8 Q. The latex glove?

9 A. Latex.

10 MS. MERIWETHER: Your Honor, at this time I
11 move to offer State's Exhibits 124, 125 and 126 and
12 contents.

13 (State's Exhibit Nos. 124 through 126
14 offered.)

15 MR. ROBERT SCARDINO: May I have just a
16 moment, Your Honor?

17 THE COURT: You may.

18 MR. ROBERT SCARDINO: Your Honor, we would
19 object to the admission of an item located in State's
20 Exhibit 124, which is the black wallet.

21 MS. MERIWETHER: Yes.

22 MR. ROBERT SCARDINO: There is an item that
23 we would object to that was in the wallet. If we may
24 approach?

25 THE COURT: Yes, you may.

1 (Bench conference.)

2 MR. PHILIP SCARDINO: It's this card, it's
3 the same card.

4 MS. MERIWETHER: I understand the Court's
5 ruling; but, obviously, I couldn't take it out at that
6 time.

7 THE COURT: Right.

8 MS. MERIWETHER: So, if I can offer 124
9 minus that content.

10 THE COURT: That's fine.

11 MS. MERIWETHER: Thank you, Your Honor.

12 THE COURT: Objection sustained as to that
13 one item. The remainder of the contents are admitted.

14 MS. MERIWETHER: Thank you, Your Honor.

15 (End of bench conference.)

16 MS. MERIWETHER: The same with 125 and 126?

17 THE COURT: I didn't hear an objection to
18 those items.

19 (Soto voce discussion between the
20 attorneys.)

21 MR. ROBERT SCARDINO: May we approach,
22 again, Your Honor?

23 THE COURT: Yes, you may.

24 (Bench conference.)

25 MR. ROBERT SCARDINO: 125 and 126 are items

1 that are apparently DNA swabs that he took. I don't
2 object to the swab itself, or the fact that he took a
3 swab. My objection would be to the results of any tests
4 from the swab.

5 THE COURT: When and if we get to that
6 point.

7 MR. ROBERT SCARDINO: When and if we get to
8 that point, okay.

9 THE COURT: Then State's Exhibits 125 and
10 126 are admitted.

11 (State's Exhibit Nos. 125 and 126
12 admitted.)

13 (End of bench conference.)

14 THE COURT: We'll take the other issue up
15 at the appropriate time.

16 MR. PHILIP SCARDINO: Yes, Your Honor.

17 THE COURT: You may proceed, Ms.
18 Meriwether.

19 MS. MERIWETHER: Thank you, Your Honor.

20 Q. (BY MS. MERIWETHER) Showing you State's
21 Exhibit 126, is this the -- what is this item?

22 A. That's the latex glove.

23 Q. And showing you State's Exhibit 125, what is
24 this item?

25 A. The swimming goggles.

1 Q. And State's Exhibit 124?

2 A. It's the black wallet.

3 Q. And is the contents of it still the same as it
4 was back on March 10th of 2014 when you recovered it?

5 A. They were when I opened it.

6 Q. Now, Officer Holmes, out of this evidence that
7 you've collected, do you do any of the processing of the
8 fingerprints that you recover?

9 A. No.

10 Q. Or comparison of those fingerprints?

11 A. No.

12 Q. What about the DNA work?

13 A. No.

14 Q. So, you take the buccal swabs; or you take the
15 Q-tip contact swabs and put them into evidence?

16 A. Correct.

17 Q. One more thing, on State's Exhibit 127, I
18 already asked you about it before; but this is the label
19 that's related to the laptop that was found in that
20 vehicle?

21 A. Correct.

22 Q. And it was taken into evidence as well?

23 A. Yes.

24 Q. And showing you State's Exhibit 128, is this a
25 photograph of that laptop?

1 A. Yes.

2 MS. MERIWETHER: And may I approach the
3 witness?

4 THE COURT: You may.

5 Q. (BY MS. MERIWETHER) It's a little difficult to
6 see on the overhead, but can you tell us what's all over
7 the laptop? It didn't appear to have this when we first
8 see it the vehicle?

9 A. It appears to be latent dust powder.

10 MS. MERIWETHER: I'll pass the witness,
11 Your Honor.

12 MR. ROBERT SCARDINO: Proceed, Your Honor?

13 THE COURT: Yes, you may.

14 **CROSS-EXAMINATION**

15 BY MR. ROBERT SCARDINO:

16 Q. Is it Officer Holmes?

17 A. Yes, sir.

18 Q. You're not in the crime scene unit anymore?

19 A. No, sir.

20 Q. How long have you been out of that unit?

21 A. Six months.

22 Q. Okay. Did you get tired of it?

23 A. It was time for a change.

24 Q. Okay. Gotcha. I've been thinking that for a
25 long time myself. So, your assignment was, in your

1 terms were to process these two vehicles?

2 A. Yes, sir.

3 Q. Get information out of the vehicle that may
4 assist the Prosecutor in any future prosecution?

5 A. Yes, sir.

6 Q. And specifically what you were trying to get
7 was information that might be of a scientific nature,
8 DNA?

9 A. That was part of it, yes.

10 Q. Fingerprints?

11 A. Yes, sir.

12 Q. And photographs?

13 A. Yes, sir.

14 Q. Anything else?

15 A. Anything that might lead to evidence in the
16 case.

17 Q. But your job isn't to analyze any of this, is
18 it?

19 A. No, sir.

20 Q. Were you -- after you turned this over to the
21 people that do analyze it, were you asked to do anything
22 else?

23 A. The only thing I was asked on the black Acura,
24 they had me go back the next day and take scale photos
25 of the tires, that's the only thing I had to do after

1 the initial processing.

2 Q. And did you do that?

3 A. Yes, sir.

4 Q. Do you have those?

5 A. Not with me. When we take scale photographs,
6 they're required to be in a format called Raw, which our
7 system won't take. They're actually burned onto a CD
8 and tagged into the property room. Our lab can't do
9 those comparisons.

10 Q. So, you can't tell us what the result of the
11 photographs of the tire was, right?

12 A. I don't know if they were ever, they were tried
13 to be matched to anything.

14 Q. How about did you try to get DNA off the tires?

15 A. No, sir.

16 Q. Were you asked to see if there was any blood on
17 the tires?

18 A. No, sir.

19 Q. And I believe you testified that when you were
20 searching the black Acura, you got certain items that
21 were in the black Acura that you documented and that are
22 now in evidence?

23 A. Yes, sir.

24 Q. And one of the things that you pulled out of
25 the black Acura were a set of car keys, were they not?

1 A. Yes, sir.

2 Q. And those car keys matched a Mercury Marquis?

3 A. Yes, sir.

4 Q. Did you learn who owned that car?

5 A. I believe it was in the search warrant.

6 Q. It belonged to a Marquis Davis, do you

7 remember?

8 A. I don't remember, no, sir.

9 Q. You wouldn't have any reason to disagree with
10 me it came back to a Marquis Davis?

11 A. I couldn't answer yes or no.

12 Q. In your processing either one of those
13 vehicles, could you determine who was driving those
14 vehicles at any time?

15 A. No, sir.

16 Q. And when you processed the Mercury Marquis, did
17 you find any prints that came back to a Donald Nealey
18 that you know?

19 A. I don't know.

20 Q. And when you processed the Acura, did you come
21 back with any prints that came back to Donald Nealey
22 that you know of?

23 A. I don't know the results of the prints.

24 Q. And the DNA that you took, however, the proper
25 term --

1 A. I swabbed for.

2 Q. -- obtained?

3 A. It's a best guess, and it's a hope to catch
4 some DNA, but there's no guarantee.

5 Q. Could you determine if you, in fact, did obtain
6 DNA?

7 A. I was never advised.

8 Q. Okay. So, you don't even know if you were
9 successful in trying to lift DNA out of either one of
10 the vehicles?

11 A. No, sir.

12 Q. How about the black wallet that you found in
13 the Acura, did you dust it for prints?

14 A. No, sir.

15 Q. Did you dust any of the items in the wallet for
16 prints?

17 A. No, sir.

18 Q. Did anybody ask you subsequently to go back and
19 retest that wallet?

20 A. No, sir.

21 Q. You said that when you obtained the black
22 wallet, it was -- the Prosecutor asked you was it closer
23 to the driver's seat or the passenger's seat, my notes
24 say you said it was closer to the driver's seat?

25 A. Yes, sir. It was laying on that side of the

1 cup holder.

2 Q. It was just leaning one way instead of the
3 other?

4 A. Yes, sir.

5 Q. There wouldn't be anything to prevent somebody
6 in the passenger's seat from setting it there, would it?

7 A. No, sir.

8 Q. And the wallet, it's just a standard black
9 wallet, right?

10 A. Yes, sir.

11 Q. That held information like driver's license and
12 any documents that a person might want to put in it?

13 A. Yes, sir.

14 Q. And it also had a place to put money, right?

15 A. Yes, sir.

16 Q. You didn't find any money in the wallet?

17 A. No, sir.

18 Q. Did you consider that significant when you
19 looked through the wallet?

20 A. No, sir.

21 Q. It didn't indicate to you that somebody had
22 gotten the wallet and taken the money out and sat it
23 there?

24 MS. MERIWETHER: Objection, calls for
25 speculation.

1 THE COURT: Sustained.

2 Q. (BY MR. ROBERT SCARDINO) You were able to lift
3 prints off of the Acura?

4 A. Yes, sir.

5 Q. And you knew that the Acura belonged to the
6 deceased?

7 A. Yes, sir.

8 Q. That was part of -- well, you didn't have an
9 affidavit for a search warrant for the Acura, but you
10 knew that as part of your processing information?

11 A. Correct.

12 Q. You were looking for evidence of a murder?

13 A. Yes, sir.

14 Q. Okay. And you were able to lift some prints
15 off of the Acura?

16 A. Yes, sir.

17 Q. I believe you said you lifted it off the right
18 side of the vehicle?

19 A. And I -- one of the prints came from the
20 exterior driver's door, one off the exterior driver's
21 door, one from the exterior front passenger's door, the
22 passenger's side A-pillar and windshield and an exterior
23 right rear door.

24 Q. But you don't know whose prints those match to?

25 A. No, sir.

1 Q. If anybody?

2 A. Correct.

3 Q. In your preparation for testimony here today,
4 did nobody tell you what the results of your work was?

5 A. No, sir.

6 Q. Thank you, Officer.

7 MR. ROBERT SCARDINO: Pass the witness.

8 THE COURT: Ms. Meriwether.

9 MS. MERIWETHER: No questions, Your Honor.

10 THE COURT: May this witness be excused?

11 MS. MERIWETHER: Yes, Your Honor.

12 THE COURT: Thank you, sir. You may step
13 down, and you are excused.

14 Call your next witness.

15 MS. MERIWETHER: Officer Peoples.

16 THE COURT: Need to stretch?

17 THE BAILIFF: Your Honor, this witness has
18 already been sworn in.

19 THE COURT: Thank you.

20 You may proceed.

21 MS. MERIWETHER: Thank you, Your Honor.

22 **CHARLIE PEOPLES,**

23 having been first duly sworn, testified as follows:

24 **DIRECT EXAMINATION**

25 BY MS. MERIWETHER:

1 Q. Okay. Would you please introduce yourself to
2 our jury?

3 A. I'm Officer Charlie Peoples with the Houston
4 Police Department.

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

7 A. Ten years.

8 Q. And are you assigned to any particular
9 division?

10 A. Midwest patrol.

11 Q. And how long have you been with Midwest patrol?

12 A. Right about six years.

13 Q. Where else have you been?

14 A. Basically, the same area just split off. It
15 was called Westside back then.

16 Q. So, it was Westside; and then it split and
17 became --

18 A. Substation, right.

19 Q. What kind of training and experience do you
20 have to allow you to be a police officer?

21 A. Usual six-month academy and then annual
22 20 hours, 20 to 40 hours extra.

23 Q. Are you a certified peace officer in the State
24 of Texas?

25 A. Yes, ma'am.

1 Q. I want to just go straight to why you're here
2 today. Were you involved in locating evidence on
3 March 6th of 2014 in a robbery, aggravated robbery?

4 A. Yes, ma'am.

5 Q. And what location was that at?

6 A. 6142 Westheimer. The actual where I located
7 was a backyard and a parking lot down the street, but
8 the robbery occurred at the restaurant, House of Pies.

9 Q. How did you learn about the robbery happening?

10 A. Radio dispatch.

11 Q. And did you go to that location?

12 A. Yes, ma'am.

13 Q. About what time did you get there?

14 A. About 10:21 or so, I think, p.m.

15 Q. And did you learn that the suspects had already
16 left the scene?

17 A. Yes, ma'am.

18 Q. And so what did you do? What was your role in
19 this investigation?

20 A. Basically, I started from the point that it
21 happened and walked the street looking for suspects in
22 the area. And then K-9 said they saw something, and I
23 went and investigated it.

24 Q. Was there quite a few officers at that location
25 trying to locate property?

1 A. There was, mostly looking for the suspects, not
2 property.

3 Q. Okay, looking for suspects. And were y'all
4 also finding property as well?

5 A. Yes, ma'am.

6 Q. Some of the property taken was cell phones; is
7 that correct?

8 A. Yes, ma'am.

9 Q. Were you able to locate some cell phones and
10 other property?

11 A. Yes, ma'am.

12 Q. I'm going to show you State's Exhibit 135.
13 Kind of orient you, this is the House of Pies location
14 here at the corner of Briargrove and Westheimer?

15 A. Correct.

16 Q. You stated that you started at the back area of
17 the House of Pies. What's back there?

18 A. There's a parking lot, just extra parking lot
19 here and a strip center back here.

20 Q. And what efforts did you do to locate suspects
21 and ultimately property?

22 A. I just basically canvassed the area on foot and
23 listened to the K-9, and I found a black hoodie that I
24 thought might be involved. And then K-9 said he was
25 looking through a fence and saw some cell phones. So, I

1 went to that house and investigated and found two cell
2 phones.

3 Q. Those items, what did you do with them?

4 A. I gave them to another officer because I had to
5 leave the scene.

6 Q. And what officer was that?

7 A. Officer Holden, Richard Holden.

8 Q. So, you passed off two cell phones and a black
9 hoodie jacket; is that correct?

10 A. Correct, yes.

11 MS. MERIWETHER: Pass the witness, Your
12 Honor.

13 **CROSS-EXAMINATION**

14 BY MR. PHILIP SCARDINO:

15 Q. How come you had to leave, Officer Peoples?

16 A. There were too many units on the scene and
17 there were more calls dropping, so we had to go answer
18 those calls.

19 Q. You just had something more important to go do?

20 A. The dispatcher wanted us to go to more calls.

21 Q. So, you found a couple of cell phones, found a
22 hoodie and turned them over to Officer Holden?

23 A. Yes, sir.

24 Q. When you said you listened to the K-9, tell the
25 ladies and gentlemen of the jury what that means?

1 A. I'm sorry. The K-9 officer is looking,
2 following scent, and there's a back alley behind the
3 houses, and he kind of was peeking through the fence and
4 he said he saw what he thought was cell phones.

5 Q. Okay. Thank you.

6 MR. PHILIP SCARDINO: Pass the witness,
7 Your Honor.

8 MS. MERIWETHER: No further questions.

9 THE COURT: May this witness be excused?

10 MS. MERIWETHER: Yes, Your Honor.

11 MR. PHILIP SCARDINO: No objections, Your
12 Honor.

13 THE COURT: Thank you, sir. You may step
14 down, and you are excused.

15 Call your next witness.

16 MS. MERIWETHER: Officer Holden.

17 THE BAILIFF: Your Honor, this witness has
18 already been sworn in.

19 THE COURT: Thank you.

20 **RICHARD HOLDEN,**
21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 BY MS. MERIWETHER:

24 Q. Good morning, sir. Could you introduce
25 yourself to our jury?

1 A. My name is Officer Richard Alfred Holden.

2 Q. And, Officer Holden, how are you employed?

3 A. I work for the City of Houston, Houston Police
4 Department Midwest division.

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

7 A. Over nine years.

8 Q. And what did you do prior to joining the
9 Houston Police Department?

10 A. I was a builder, construction.

11 Q. What led you to law enforcement?

12 A. A sense of need to doing better. I've wanted
13 to do since I've been 15.

14 Q. What kind of training and experience have you
15 had to be a police officer?

16 A. I went through the police academy.

17 Q. And does that also include, that's six months
18 long and then there's also on-the-job training?

19 A. Yes, another six months of field training.

20 Q. And I assume that you're a certified peace
21 officer in the State of Texas?

22 A. Yes.

23 Q. And I want to just go ahead and jump to what
24 you're here to testify to about today, March 6th of
25 2014, were you working?

1 A. Yes.

2 Q. And what shift do you work?

3 A. The nightshift, from 10 o'clock at night to
4 6 o'clock in the morning.

5 Q. Did you work last night?

6 A. Yes.

7 Q. Okay. If my questions don't make a lot of
8 sense, please let me know; and it's either me or sleep
9 deprived you?

10 A. Probably me.

11 Q. All right. Fair enough. Did you happen to
12 make a scene of a robbery?

13 A. Yes.

14 Q. And was that at House of Pies?

15 A. Yes.

16 Q. And what did you do at that location?

17 A. I was helping to support other officers. I
18 showed up with my partner, and we heard it over the
19 radio that the suspects --

20 MR. PHILIP SCARDINO: Excuse me.

21 Objection, Your Honor, hearsay.

22 THE COURT: Sustained.

23 Q. (BY MS. MERIWETHER) Now, you said you showed
24 up with a partner, who was that?

25 A. Officer Roesler.

1 Q. And did you and Officer Roesler assist in
2 locating property?

3 A. I did. I went one direction, and I assume he
4 went the other.

5 Q. Were you able to locate any property?

6 A. Yes.

7 Q. What did you locate?

8 A. I located two phones and some plastic gloves.

9 Q. And where did you locate those items?

10 A. In a backyard at 2601 Briarhurst.

11 Q. And to your right is a screen that's got a map
12 on it, and let me see if I can help orient you. The
13 House of Pies is located here?

14 A. Correct.

15 Q. Can you tell us approximately where you located
16 those items?

17 A. Roughly about right here, I believe that's
18 2601.

19 Q. So, back behind the House of Pies?

20 A. Yes.

21 Q. And what is back here? What is this area?

22 A. Well, this is homeowners' backyards; and
23 there's a fence system that runs back here between the
24 houses and the businesses.

25 Q. So, it's like a residential area?

1 A. Yes.

2 Q. Starts people houses, and if we go off this
3 direction, what's through here?

4 A. Shops.

5 Q. And behind the shops, what's behind that?

6 A. There's like a little area back there that's
7 fenced in.

8 Q. Okay. So, you located two cell phones and a
9 set of plastic gloves?

10 A. Correct.

11 Q. And how did you know that those didn't belong
12 there?

13 A. The homeowner allowed us into the backyard,
14 stated that that wasn't their property; and it wasn't
15 there before.

16 Q. And what did you do with those items?

17 A. I took those items back with me to the original
18 incident location, and I held onto them until I could
19 talk to the sergeant on scene.

20 Q. Did you also collect some other items from an
21 Officer Peoples?

22 A. Yes, he handed me a jacket and two phones.

23 Q. And so now you've got four phones and the
24 jacket and the gloves, and you go with all of that back
25 to the House of Pies?

1 A. Correct.

2 Q. Were you able to locate any owners at the House
3 of Pies for the cell phones?

4 A. Yes.

5 Q. For all four of them?

6 A. All four of the phones that we found.

7 Q. And those were returned to those individuals at
8 that time?

9 A. Yes.

10 Q. What did you do with the jacket and the gloves?

11 A. I took the jacket and gloves, and I secured
12 them until we could take them down to be tagged.

13 MS. MERIWETHER: Your Honor, may I approach
14 the witness?

15 THE COURT: You may.

16 Q. (BY MS. MERIWETHER) I'm going to show you what
17 I've marked as State's Exhibit 150, are you familiar
18 with this item?

19 A. Yes.

20 Q. And it appears to have an evidence tag on the
21 front of it?

22 A. Yes.

23 Q. Does it contain information that includes you?

24 A. Yes, it has my name on it.

25 Q. And are these the items that you -- let me pull

1 them out just to, showing you these items; and I'm
2 showing you first what's been marked as State's
3 Exhibit 150-A. Are you familiar with this item?

4 A. Yes, it looks like the jacket that I tagged.

5 Q. And I took that out of 150; is that correct?

6 A. Yes.

7 Q. And is this the item that was recovered by
8 Officer Peoples and then passed on to you?

9 A. Yes, yes, it does.

10 Q. Now looking at State's Exhibits 150-B and C,
11 what are these items?

12 A. Plastic gloves.

13 Q. And are those the latex plastic gloves that you
14 recovered?

15 A. Yes.

16 Q. And submitted into evidence as well?

17 A. Yes.

18 MS. MERIWETHER: Your Honor, at this time I
19 move to offer 150-A, B and C.

20 (State's Exhibit Nos. 150-A, B, C offered.)

21 MR. ROBERT SCARDINO: May we have just a
22 moment, Your Honor?

23 THE COURT: You may.

24 (Soto voce discussion between the
25 attorneys.)

1 MR. PHILIP SCARDINO: At this time, Your
2 Honor, we don't have an objection to 150-B and C.
3 150-A, however, contains four items that were not
4 testified to or identified; and we'd object to their
5 introduction.

6 THE COURT: Approach the bench.

7 (Bench conference.)

8 THE COURT: Where did they come from?

9 MR. PHILIP SCARDINO: I don't know.

10 MS. MERIWETHER: They are the swabs that
11 are part of the packaging. They're included in the box.

12 THE COURT: And did anybody identify them
13 yet?

14 MS. MERIWETHER: No, they're just part of
15 the box.

16 THE COURT: Well, you didn't offer the box.

17 MS. MERIWETHER: I did as 150, Your Honor.

18 THE COURT: You didn't, actually offered
19 the contents A, B and C.

20 MS. MERIWETHER: I apologize. I assume
21 that included the contents but I can --

22 THE COURT: Given the fact that no one
23 identified those or where they came from, I'm going to
24 exclude them.

25 (End of bench conference.)

1 THE COURT: So, State's Exhibit 150-A, B
2 and C are admitted. The other items are not --

3 MS. MERIWETHER: Yes, Your Honor.

4 THE COURT: -- at this time.

5 MS. MERIWETHER: And may I publish, Your
6 Honor?

7 THE COURT: You may.

8 Q. (BY MS. MERIWETHER) With regard to State's
9 Exhibit 150-A, that's the black hoodie jacket that you
10 received from Officer Peoples; is that correct?

11 A. Correct.

12 Q. And showing you State's Exhibit 150-B and its
13 contents, what do we see here?

14 A. A plastic glove.

15 Q. And you recovered that item, correct?

16 A. Correct.

17 Q. And 150-C, what is that?

18 A. A plastic glove.

19 Q. And also recovered next to -- were they
20 recovered next to each other?

21 A. Yes.

22 Q. You submitted both of those items in the
23 property room along with the black hoodie; is that
24 correct?

25 A. Correct.

1 Q. While you were at that scene, did you also
2 assist in having a vehicle towed from the scene?

3 A. Yes.

4 Q. And why was that done?

5 A. Sergeant Mora (phon.) came over to me and told
6 me to watch that vehicle.

7 MR. PHILIP SCARDINO: Excuse me, Officer
8 Holden. We'd object to hearsay, Your Honor.

9 THE COURT: Sustained.

10 Q. (BY MS. MERIWETHER) And do you recall what
11 kind of vehicle that was?

12 A. Acura.

13 Q. A black Acura?

14 A. Yes.

15 Q. And so you watched that vehicle while you were
16 at the scene?

17 A. Correct.

18 Q. Was it eventually removed from the scene?

19 A. Yes, Apple Towing picked it up; and we took it
20 to the Dart lot.

21 Q. Did you at any time touch it or attempt to
22 inventory it?

23 A. No, it was not opened at all.

24 Q. Did you also later on that evening come into
25 contact with a suspect, or I'm sorry, not in contact

1 with a suspect, but did you take responsibility for
2 tagging in some money that was found on a suspect's
3 right front pocket?

4 A. Yes.

5 Q. And was that suspect Marquis Davis, or do you
6 know?

7 A. I do not know.

8 Q. Another officer just passed you some money and
9 asked you to tag it into evidence?

10 A. Correct.

11 Q. Is that kind of a common course when one
12 officer is already headed to the property room?

13 A. Yes.

14 Q. And you were having to go to the property room
15 because of the jacket and the gloves?

16 A. Yes.

17 Q. And how much money did you tag in?

18 A. \$51, I believe, 52, I'm sorry, \$52.

19 Q. Okay. Thank you very much.

20 MS. MERIWETHER: I'll pass the witness,
21 Your Honor.

22 **CROSS-EXAMINATION**

23 BY MR. PHILIP SCARDINO:

24 Q. Officer Holden, the -- you said Apple Towing
25 towed off the Acura?

1 A. Yes, sir.

2 Q. So, the Houston Police Department doesn't do
3 their own towing?

4 A. I believe their contract is with Apple Towing.

5 Q. So, they tow a vehicle involved, or you think
6 to be involved in an aggravated robbery and it's just
7 turned over to a wrecker driver and a wrecker to be
8 towed off?

9 A. It's turned over to him, and I follow the
10 vehicle all the way to the Dart lot.

11 Q. Nobody rides with the wrecker driver or
12 anything?

13 A. No.

14 Q. But you follow them over there?

15 A. Yes.

16 Q. The -- do you know where Marquis Davis was
17 found?

18 A. No.

19 Q. So, you can't tell the ladies and gentlemen of
20 the jury if this hoodie and gloves were found in the
21 same direction from the House of Pies that Marquis Davis
22 was later apprehended at?

23 A. I would not know.

24 Q. You can't tell us if it's in that same
25 direction?

1 A. No.

2 MR. PHILIP SCARDINO: Could we get the map
3 that you were showing him back up, please?

4 Q. (BY MR. PHILIP SCARDINO) I just want to try to
5 find out if you could point to us and mark on there
6 where the House of Pies is located, just put a dot on
7 there?

8 A. (Indicating.)

9 Q. And then the 2601 Briarhurst, that backyard,
10 would you put a mark on there for us, too?

11 A. I believe it's either one of these houses in
12 here.

13 Q. One of those houses in there?

14 A. Yes, sir.

15 Q. All right.

16 MR. PHILIP SCARDINO: So, may I approach,
17 Your Honor?

18 THE COURT: You may.

19 Q. (BY MR. PHILIP SCARDINO) So, tell the ladies
20 and gentlemen of the jury where Westheimer is and where
21 Briarhurst is so they can see that.

22 A. This would be Westheimer, from here to here;
23 and this would be Briarhurst.

24 Q. Okay. Thank you.

25 MR. PHILIP SCARDINO: I'll pass the

1 witness, Your Honor.

2 THE COURT: Ms. Meriwether.

3 MS. MERIWETHER: Nothing further, Your
4 Honor.

5 THE COURT: May this witness be excused?

6 MS. MERIWETHER: Yes, Your Honor.

7 THE COURT: Thank you, sir.

8 No objections, Mr. Scardino?

9 MR. PHILIP SCARDINO: No objections, Your
10 Honor.

11 THE COURT: Thank you, sir.

12 Call your next witness.

13 MS. MERIWETHER: Officer Roesler.

14 THE BAILIFF: Your Honor, this witness has
15 already been sworn in.

16 THE COURT: Thank you.

17 You may proceed.

18 MS. MERIWETHER: Thank you, Your Honor.

19 **DAVID ROESLER,**

20 having been first duly sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 BY MS. MERIWETHER:

23 Q. Would you please introduce yourself to our
24 jury?

25 A. I'm Officer Roesler from the Houston Police

1 Department, Midwest patrol division.

2 Q. And how long have you been with the Midwest
3 patrol division?

4 A. I've been with Midwest patrol division
5 approximately seven years.

6 Q. And how long have you been with the Houston
7 Police Department?

8 A. Approximately 19 years.

9 Q. What other divisions have you worked in?

10 A. West side patrol.

11 Q. And were you part of the West side, Midwest
12 split into two divisions?

13 A. Yes, ma'am, I was.

14 Q. Were you working Midwest patrol back on March
15 6th of 2014?

16 A. Yes, ma'am.

17 Q. What shift do you work?

18 A. I was nightshift at that time.

19 Q. And what are nightshift hours?

20 A. My hours were 10:00 p.m. to 6:00 a.m.

21 Q. And on that evening, did you have an occasion
22 to go to a robbery scene?

23 A. Yes, ma'am.

24 Q. And about what time did you go there?

25 A. Approximately 10:30.

1 Q. And why were you over at that location?

2 A. We were there to assist in searching for any
3 suspects that might still be in the area and ascertain
4 if there was any evidence still in the area.

5 Q. And during your time there, was there any
6 attempts to locate cell phones that might possibly be
7 with suspects?

8 A. Yes, ma'am, there was.

9 Q. And how was that being done?

10 A. My partner at the time, Officer Holden, was
11 utilizing the Find My iPhone App.

12 Q. And were y'all kind of getting, for lack of a
13 better term, pings?

14 A. Yes, ma'am, we were.

15 Q. Or ideas of where to go?

16 A. Yes, ma'am, we were.

17 Q. And what direction did you head to look for
18 phones and ultimately locate some property?

19 A. West of the initial location in an alleyway
20 between approximately the 6200 block of Locke Lane and
21 the 6200 block of Westheimer.

22 Q. Okay. We've got a map here, State's
23 Exhibit 135. I'm going to zoom in a little bit to help
24 out, and to help orient you we've got the House of Pies
25 located here. And then you mentioned that you went to

1 an area where there's a strip center; is that this area
2 that you're referring to?

3 A. Yes, ma'am.

4 Q. It appears to have a jewelry store, a cell
5 phone place, a liquor store, that is just a strip center
6 area that runs along Westheimer?

7 A. Yes, ma'am.

8 Q. And what's behind it?

9 A. Directly behind it there's a service alleyway
10 between that and the backyards for the houses that are
11 on the south side of Locke Lane.

12 Q. So, this area between the strip center and
13 these little buildings here, that is an alley area?

14 A. Yes, ma'am.

15 Q. And these houses here they actually face toward
16 Locke Lane, and their backyards are facing the alley; is
17 that correct?

18 A. Yes, ma'am.

19 Q. And what did you find back there?

20 A. On my initial search I found a black backpack
21 leaning against a wall.

22 Q. Approximately where was it?

23 A. It was behind the Wright Pawn.

24 Q. Behind the pawn store?

25 A. Yes, ma'am.

1 Q. And what drew your attention to the backpack?

2 A. It was relatively clean for an alleyway, and it
3 stood out as being, you know, an object that was out of
4 place in the area. It appeared clean or new, not
5 something that would just, you know, be in the alleyway.

6 Q. And did you guys look inside of the backpack?

7 A. Yes, ma'am.

8 Q. And what was observed inside of it?

9 A. As I recall there were cell phones and a
10 checkbook.

11 MS. MERIWETHER: Your Honor, may I approach
12 the witness?

13 THE COURT: Yes, you may.

14 Q. (BY MS. MERIWETHER) I'm going to show you what
15 I've marked as State's Exhibit 146, 147 and 148.

16 A. Yes, ma'am.

17 Q. Do you recognize this item?

18 A. Yes.

19 Q. And do these photographs fairly and accurately
20 depict the item without it being here?

21 A. Yes, ma'am.

22 Q. Is this the backpack that you recovered back on
23 March 6th of 2014 in the kind of alleyway area?

24 A. Yes, ma'am.

25 MS. MERIWETHER: Your Honor, at this time I

1 move to offer 146 through 148.

2 (State's Exhibit Nos. 146 through 148
3 offered.)

4 MR. ROBERT SCARDINO: May we have just a
5 moment, Your Honor?

6 THE COURT: Yes.

7 MR. PHILIP SCARDINO: No objections, Your
8 Honor.

9 THE COURT: State's Exhibits 146 through
10 148 are admitted.

11 (State's Exhibit Nos. 146 through 148
12 admitted.)

13 MS. MERIWETHER: And may I publish, Your
14 Honor?

15 THE COURT: You may.

16 Q. (BY MS. MERIWETHER) Showing you State's
17 Exhibit 146, Officer, what is this?

18 A. This is a property tag that would be placed on
19 the item when it was entered into the property room.

20 Q. And does it indicate that it's the backpack
21 that you recovered?

22 A. Yes, ma'am.

23 Q. And showing you State's Exhibit 147, what is
24 this a photograph of?

25 A. That is a photograph of the backpack that I

1 recovered.

2 Q. And then lastly showing you State's
3 Exhibit 148, what do we see depicted here?

4 A. This would be a checkbook that was inside one
5 of the pouches on the backpack.

6 Q. And that was found inside of this backpack?

7 A. Yes, ma'am.

8 Q. After locating this item, what did you do?

9 A. We notified the other officers that were on the
10 scene at the original scene and what we had found, and
11 as I recall there were robbery detectives already on the
12 scene that advised us to recover the backpack and bring
13 it back to the original scene.

14 Q. And that backpack contained a number of cell
15 phones as well?

16 A. Yes, ma'am.

17 Q. So, you take the backpack and those items back
18 to the original scene?

19 A. Yes, ma'am.

20 Q. What happens after that?

21 A. The backpack was secured in one of the other
22 police vehicles, and the robbery detectives went through
23 the backpack and those things that they could return to
24 Complainants, they did.

25 Q. Did you then continue looking for items that

1 could be out there?

2 A. Yes, ma'am.

3 Q. And how did that happen?

4 A. Some of the Complainants had stated that their
5 phones --

6 MR. PHILIP SCARDINO: Excuse me, Officer.
7 We'd object as to hearsay.

8 THE COURT: Sustained. You can't testify
9 as to what someone else said.

10 A. I see.

11 Q. (BY MS. MERIWETHER) Without going into what
12 they said, did you have cause for concerns that there
13 were other phones out there?

14 A. Yes, ma'am.

15 Q. And what did you do?

16 A. Officer Holden, again, used the Find My iPhone
17 App and ascertained from the app that there was other
18 phones in the same general vicinity.

19 Q. So, what did you do then?

20 A. We returned to the same general vicinity, and
21 we could hear pings from those phones; and we located
22 those phones via the pings in a backyard of one of the
23 houses on Locke Lane.

24 Q. Did you locate any other items back there?

25 A. Yes, ma'am.

1 Q. What were those items?

2 A. There was a pair of shoes, a thermal shirt, a
3 toothbrush, cell phone adapter and a cell phone case.

4 MS. MERIWETHER: May I approach the
5 witness?

6 THE COURT: You may.

7 Q. (BY MS. MERIWETHER) All right. First, showing
8 you State's Exhibit 145. Are you familiar with this
9 item?

10 A. Yes, ma'am.

11 Q. And what is it?

12 A. It's a toothbrush.

13 Q. And is it the item that you recovered back on
14 March 6th of 2014?

15 A. Yes, ma'am.

16 Q. And showing you what I've marked as State's
17 Exhibit 144, what is this item?

18 A. It's a cell phone case.

19 Q. And is that also one of the items you recovered
20 back on March 6th in that backyard area?

21 A. Yes, ma'am.

22 Q. And then Item 143, what is this item?

23 A. It's an adapter.

24 Q. And, like, what kind of adapter?

25 A. It actually looks like a computer adapter, like

1 a laptop.

2 Q. And is that one of the items that you recovered
3 in the backyard area?

4 A. Yes, ma'am.

5 Q. Were all of these items generally in the same
6 area of that backyard?

7 A. Yes, they were scattered throughout the
8 backyard.

9 MS. MERIWETHER: At this time I move to
10 offer State's Exhibits 143, 44 and 45.

11 (State's Exhibit Nos. 143, 144 and 145
12 offered.)

13 MR. PHILIP SCARDINO: No objections, Your
14 Honor.

15 THE COURT: State's Exhibits 143 through
16 145 are admitted.

17 (State's Exhibit Nos. 143 through 145
18 admitted.)

19 MS. MERIWETHER: Thank you, Your Honor.
20 And may I approach again, Your Honor?

21 THE COURT: You may.

22 Q. (BY MS. MERIWETHER) All right. I'm going to
23 show you State's Exhibit 149 and some items that are
24 inside of it. 149 contains a label. Are you familiar
25 with the writing that's on this label?

1 A. Yes, ma'am.

2 Q. And is it something that was generated at the
3 time that you tagged in these items?

4 A. Yes, ma'am.

5 Q. And what does State's Exhibit 149 contain?

6 A. Two articles of clothing, a pair of Nike size
7 10.5 men shoes, a black, long-sleeved thermal T-shirt.

8 Q. And were those items that you recovered?

9 A. Yes, ma'am.

10 Q. And where were they recovered?

11 A. They were also recovered from the backyard.

12 Q. Okay. And let me first show you State's
13 Exhibit 149-C and 149, sorry, B and C; are these the
14 items that you recovered?

15 A. Yes, ma'am.

16 Q. And these were just discarded in the back of a
17 yard?

18 A. Yes, ma'am.

19 Q. And showing you State's Exhibit 149-A. Did you
20 recover this item as well?

21 A. Yes, ma'am.

22 Q. And what is it?

23 A. It's a black, long-sleeved thermal T-shirt.

24 Q. And you collected it in the same general area?

25 A. Yes, ma'am.

1 Q. And submitted it to the property room?

2 A. Yes, ma'am.

3 MS. MERIWETHER: Your Honor, at this time I
4 move to offer 149, A, B and C, tender to Counsel for any
5 objections.

6 (State's Exhibit Nos. 149, A, B and C
7 offered.)

8 THE COURT: You're not offering 149, the
9 actual box; is that correct?

10 MS. MERIWETHER: That's correct, Your
11 Honor.

12 THE COURT: I'm just clarifying that.

13 MR. PHILIP SCARDINO: We have no
14 objections, Your Honor.

15 THE COURT: State's Exhibits 149, A, B and
16 C are admitted.

17 (State's Exhibit Nos. 149, A, B and C
18 admitted.)

19 Q. (BY MS. MERIWETHER) And, again, State's
20 Exhibit 149-A just in a backyard with no person attached
21 to it, correct?

22 A. That's correct.

23 Q. And, I'm sorry, I should also show the shoes.
24 Showing you 149-B.

25 A. Yes, ma'am.

1 Q. And 149-C.

2 A. Yes, ma'am.

3 Q. In the area that these items were located,
4 there was also cell phones; is that correct?

5 A. Yes, ma'am.

6 Q. And did you take those cell phones back to the
7 House of Pies?

8 A. Yes, ma'am.

9 Q. And did you attempt to locate owners that
10 belong to those phones?

11 A. I did not, the robbery detectives did.

12 Q. Needless to say, you didn't tag in any cell
13 phones?

14 A. I don't believe so.

15 Q. So the phones that you recovered you just
16 passed them off to robbery, and robbery can either find
17 homes or move along?

18 A. Yes, ma'am.

19 MS. MERIWETHER: Pass the witness, Your
20 Honor.

21 THE COURT: Ladies and gentlemen, I think
22 the bailiffs have ordered lunch in for you, and it was
23 supposed to be here at 12:30, so we'll go ahead and take
24 our lunch break. Despite the fact that we're eating in,
25 please feel free to leave the floor if you would like

1 and step outside or go to the second floor if you would
2 like to do that. And when you're finished with your
3 lunch, we'll resume.

4 THE BAILIFF: All rise for the jury.

5 (Jury exits courtroom.)

6 THE COURT: Thank you. Be seated. We'll
7 be in lunch recess for about 45 minutes.

8 (A lunch recess was taken.)

9 (Open court, Defendant present.)

10 THE BAILIFF: Are y'all ready?

11 THE COURT: Yes, ma'am.

12 THE BAILIFF: All rise for the jury.

13 (Jury enters courtroom.)

14 THE COURT: Thank you. Be seated.

15 Mr. Scardino, you may proceed.

16 MR. PHILIP SCARDINO: Thank you, Your
17 Honor.

18 **CROSS-EXAMINATION**

19 BY MR. PHILIP SCARDINO:

20 Q. Officer, pronounce your last name for me,
21 please?

22 A. It's Roesler.

23 Q. Roesler. It's been a little bit since your
24 testimony. Let me see if I remember correctly. You
25 testified that you were, your job out there that night

1 was to kind of canvass the area and see if you could
2 find any evidence or anything like that?

3 A. Yes, sir, yes, sir.

4 Q. And I believe your testimony was that you found
5 a backpack and the shoes and a shirt?

6 A. Yes, sir.

7 Q. Correct?

8 A. Yes, sir.

9 Q. And a toothbrush?

10 A. Yes, sir.

11 Q. Now, do you personally know of any scientific
12 testing that was done on any of these items?

13 A. No, sir.

14 Q. Okay. The -- and my notes indicate to me, and
15 correct me if I'm wrong, you said that you found them in
16 a yard, in a backyard?

17 A. Yes, sir, some of the items.

18 Q. Okay. Help me with this, did you find them all
19 around the same spot or were they in different spots or
20 what was it?

21 A. The items that I found in the backyard were
22 scattered around in the backyard as though they had been
23 thrown over the fence.

24 Q. Okay. The same backyard?

25 A. Yes, sir, except for the backpack.

1 Q. Okay. The backpack was in the alley?

2 A. Yes, sir.

3 Q. And the other stuff was in the yard?

4 A. Yes, sir.

5 Q. Do you know the address of that yard?

6 A. Yes, sir, give me just a second here. The
7 backyard was at 6225 Locke Lane.

8 Q. 6225 Locke?

9 A. Yes, sir, L-0-C-K-E.

10 Q. All right. The map that you see there, it's to
11 your right, also?

12 A. Yes, sir.

13 Q. You see where the House of Pies is on that map?

14 A. Yes, sir.

15 Q. Can you touch the screen and so the ladies and
16 gentlemen of the jury can see where the House of Pies is
17 located?

18 A. (Indicating.)

19 Q. And right underneath that arrow that you put
20 there, that's Westheimer right there?

21 A. Yes.

22 Q. The main thoroughfare right there?

23 A. Yes, sir.

24 Q. All right. Where is Locke Road, Locke Lane?

25 A. Locke Lane is right here.

1 Q. Okay. And where on -- if you would point to
2 where on Locke Lane did you find these shoes and the
3 shirt?

4 A. Approximately right in here.

5 Q. Same place where that arrow is, where that
6 little yellow spot is?

7 A. Yes, sir.

8 Q. And then one more time, I'm sorry, and the
9 backpack was found where?

10 A. Approximately here.

11 Q. Okay. Right there?

12 A. Yes, sir.

13 Q. Do you know where Marquis Davis was located?
14 You know where he was found?

15 A. I don't have any first-hand knowledge of that,
16 no, sir. I know what I was told but --

17 Q. Okay.

18 MR. PHILIP SCARDINO: Pass the witness,
19 Your Honor.

20 MS. MERIWETHER: No further questions.

21 THE COURT: May this witness be excused?

22 MS. MERIWETHER: Yes, Your Honor.

23 MR. PHILIP SCARDINO: No objections, Your
24 Honor.

25 THE COURT: Thank you, sir. You may step

1 down, and you're excused.

2 Call your next witness.

3 MS. MERIWETHER: State calls Officer
4 Nealey.

5 THE BAILIFF: Your Honor, this witness has
6 not been sworn in.

7 THE COURT: Would you raise your right hand
8 to be sworn, please.

9 (Witness sworn.)

10 THE COURT: You may proceed.

11 MS. MERIWETHER: Thank you, Your Honor.

12 **KEN NEALEY,**
13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MS. MERIWETHER:

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

18 A. Good afternoon, my name is Ken Nealey. I'm a
19 robbery investigator assigned to the Houston Police
20 Department.

21 Q. How long have you been with the Houston Police
22 Department?

23 A. I've been with the Houston Police Department
24 for a little over 20 years now.

25 Q. And how long have you been in the robbery

1 division?

2 A. I've been assigned to the robbery division for
3 about eight and a half years now.

4 Q. And have you had an opportunity to make few or
5 many robbery scenes?

6 A. I've made many robbery scenes over the last
7 eight and a half years.

8 Q. I want to talk to you about a particular scene
9 that occurred back on March 6th of 2014 at a House of
10 Pies location. Did you make that scene?

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

12 Q. Approximately what time did you arrive?

13 A. Approximately around 11:00 p.m. that evening.

14 Q. And how did you find, or how did you get
15 assigned that scene or sent to the scene? How does that
16 work?

17 A. Yes, ma'am, any given night, actually, every
18 night we have three robbery detectives that are on call
19 to cover any robberies that may take place after hours.
20 I was the first investigator out, so I received a phone
21 call from Sergeant Mora; and he gave me a brief synopsis
22 of what had happened and also the location.

23 Q. And is Sergeant Mora a supervisor in the
24 robbery division?

25 A. Yes, ma'am, he is.

1 Q. And did he make the scene that night as well?

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

3 Q. Did another robbery investigator also make the
4 scene?

5 A. Yes, ma'am, Officer Russell Gray was also
6 assigned as an investigator; and he made the scene that
7 night as well.

8 Q. So, three robbery investigators made the scene,
9 why so many?

10 A. The complexity of the incident we were assigned
11 to investigate, the number of witnesses that were there
12 and the extensive amount of witnesses there. There were
13 a lot of officers there. So, typically, on a scene like
14 that, we like to have more investigators out there; and
15 that way there's no single investigator overwhelmed by
16 having to talk to 30 to 40 witnesses and try to collect
17 evidence that may be present.

18 Q. And this location you went to it's in Harris
19 County; is that correct?

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

21 Q. When you first get on the scene, did you meet
22 with the owner of the House of Pies?

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

24 Q. And what did you do when meeting with him?

25 A. Upon arriving and introducing myself and

1 learning he was the manager or the owner of the
2 business, he brought me into the office where I was able
3 to review the surveillance tape for the business. The
4 surveillance tape, the footage captured all the
5 activities inside of the business as well as an
6 extensive part of the parking lot on the exterior.

7 Q. Were you able to determine from watching the
8 video how many suspects were involved?

9 A. Yes, ma'am, by looking at the video, the
10 surveillance video, I was able to determine at least two
11 suspects had entered the business at the time of the
12 robbery.

13 Q. And were you able to tell that -- both an entry
14 and an exit from the building?

15 A. Yes, ma'am, I was.

16 Q. And from watching that video, were you able to
17 tell a vehicle that they had arrived in?

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

19 Q. And what did you do with that information?

20 A. Actually upon looking at the surveillance
21 footage, I was able to see a dark-colored vehicle that
22 parked on the side of the business. We were able to see
23 the two suspects as they exited that vehicle and also
24 entered into the business itself.

25 Q. Did you make any attempts to see if that

1 vehicle was still at the scene?

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

3 Q. What results?

4 A. After reviewing the surveillance footage myself
5 and Sergeant Mora, we went outside and located the
6 vehicle in the same position we saw it park at on the
7 surveillance footage.

8 Q. And what did you do then?

9 A. After we located and realized that it was, in
10 fact, the vehicle that the suspects came in, we called
11 for one of our city wreckers to take the vehicle down to
12 our vehicle impound lot to be processed.

13 Q. And was that a black Acura?

14 A. Yes, ma'am, it was.

15 Q. And so after that vehicle is towed off, do you
16 then continue meeting with folks that are inside of the
17 House of Pies?

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

19 Q. And did you interview a number of witnesses
20 that were inside of the House of Pies?

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

22 Q. And how did y'all decide who interviewed whom
23 between the three of you?

24 A. What we did we just decided to take control of
25 everybody that was out there, secure all our witnesses;

1 and we just kind of made a decision that we all would
2 just interview everyone that was there. No necessarily
3 particular order, we just wanted to ensure that everyone
4 that was inside of the business when the robbery took
5 place that we interviewed them to get their story
6 exactly what they had saw.

7 Q. And during the course of the interview, did you
8 also have other officers coming in that were bringing in
9 property that was recovered and cell phones that were
10 also recovered?

11 A. Yes, ma'am.

12 Q. And what did y'all do with those cell phones?

13 A. After speaking to those witnesses and the
14 victims that were inside of the business, we had already
15 been given a list and the description of the phones; and
16 after we started recovering those phones, we started
17 talking and conferring with those witnesses just to
18 verify those phones, in fact, were theirs. After
19 determining the phones were theirs, we gave them back to
20 the rightful owners.

21 Q. When you watched that video, were you able to
22 determine that one of the suspects fired a gun inside of
23 it?

24 A. Yes, ma'am, I was.

25 Q. And what attempts did you make to recover any

1 firearms evidence?

2 A. Well, we looked on the scene and we were
3 typically -- a semiautomatic handgun, once a round is
4 fired, the shell case is typically ejected and usually
5 lands somewhere in the area. We looked, continued to
6 look in the area, we could not find one at all. That's
7 typically consistent to a round that's fired by a
8 revolver; and in a revolver, a round is fired and the
9 shell casing remains in the cylinder of the handgun
10 itself.

11 Q. Thank you.

12 MS. MERIWETHER: Pass the witness, Your
13 Honor.

14 **CROSS-EXAMINATION**

15 BY MR. PHILIP SCARDINO:

16 Q. Is it officer or detective, how do I address
17 you?

18 A. Detective is fine, sir.

19 Q. Detective Nealey.

20 A. Yes, sir.

21 Q. The -- let's talk about that the bullet that
22 was -- the shot that was fired inside the House of Pies.
23 Did you -- do you see that on the surveillance video,
24 the video of the shot being fired?

25 A. During the time when he came inside of the

1 business itself?

2 Q. Yes, sir.

3 A. I don't recall. I just remember speaking to
4 some of the witnesses and looking in the ceiling of the
5 restaurant itself.

6 Q. Is there any doubt in your mind from your
7 investigation out there that one of the suspects came in
8 to the front part of that foyer, right when you come
9 into the House of Pies and shot into the ceiling?

10 A. No, sir, there was no doubt in my mind there
11 was a round fired.

12 Q. Did you or anybody at your instruction or
13 anybody that you know of make any effort to recover that
14 bullet out of the ceiling?

15 A. We initially looked the night of the incident
16 what happened to see if we could find anything. We were
17 making contacts with our crime scene unit to see if they
18 were available to come out and see if they could later
19 find a round inside of the ceiling.

20 Q. Okay. Well, all the way up until today, do you
21 know if that round was ever recovered from the ceiling
22 of the House of Pies?

23 A. No, sir, I do not know.

24 Q. Do you know of any crime scene person that made
25 an attempt to retrieve it from the ceiling?

1 A. No, sir, we did not have a CSU respond to the
2 scene on that evening.

3 Q. But anytime between then and now, do you ever
4 know if anybody attempted to get that bullet out of the
5 ceiling?

6 A. No, sir, I do not.

7 Q. Was Marquis Davis apprehended while you were
8 out there on the scene?

9 A. Prior to my arrival, yes, sir.

10 Q. So, they had him before you got there?

11 A. That's correct, yes, sir.

12 Q. Did you have an occasion to interview Marquis
13 Davis?

14 A. I did not, no, sir.

15 Q. When items were being brought back, cell phones
16 and the like, besides the cell phones, were there any
17 other pieces of evidence that were brought back to you
18 to look at?

19 A. It might have been a backpack that some of the
20 cell phones were recovered in.

21 Q. Anything else that you recall?

22 A. Nothing that I can recall, no, sir.

23 Q. Do you have an idea of how many cell phones
24 were recovered and given back to the -- to those folks
25 in the House of Pies?

1 A. I don't but I can look and see exactly how many
2 were.

3 Q. If you've got it in your offense report?

4 A. I can look and see if it's in the offense
5 report. I don't recall if it is. I just know we gave
6 or returned cell phones to several of the victims that
7 were out there.

8 Q. If you would just take a minute and see if
9 you've got just a number of those?

10 A. I don't know the exact amount. I just recall
11 giving them back to at least one individual, possibly
12 two.

13 Q. Okay.

14 A. That night shortly after the robbery happened
15 and that backpack was recovered.

16 Q. All right. Detective, I'll go on to something
17 else.

18 A. Yes, sir.

19 Q. Do you recall if one of the folks that you
20 talked to out there, did you talk to a gentleman by the
21 name of Green, Mr. Green, did you talk to him when you
22 were out there?

23 A. I'm sure I did, yes, sir. Is he listed in my
24 report?

25 Q. I don't know. I've got your report, but I

1 didn't pull it out and look at it while you were
2 testifying. Just if you find it in your report or you
3 recall speaking with a -- with one of the witnesses out
4 there by the name of Green?

5 A. I don't recall. I don't have a Green in my
6 supplement that talked to me.

7 Q. You testified in front of the ladies and
8 gentlemen of the jury that you interviewed a number of
9 witnesses out there. I'm just curious if one of the
10 ones that you personally interviewed was a man by the
11 name of Green?

12 A. I don't recall.

13 Q. And you don't see it in the offense report?

14 A. No, sir.

15 MR. PHILIP SCARDINO: May I have just a
16 moment, Your Honor?

17 THE COURT: You may.

18 MR. PHILIP SCARDINO: I'll pass the
19 witness, Your Honor.

20 MS. MERIWETHER: Brief redirect. May I
21 approach the witness?

22 THE COURT: You may.

23 **REDIRECT EXAMINATION**

24 BY MS. MERIWETHER:

25 Q. You said that there was an Officer Gray that

1 also is a robbery detective that made the scene?

2 A. Yes, ma'am.

3 Q. And you pulled the whole offense report as
4 related to this case?

5 A. Yes, ma'am.

6 Q. In showing you this supplement here, does this
7 look like a supplement done by Officer Gray?

8 A. Indeed it is.

9 Q. And does it reflect a witness that he
10 interviewed?

11 A. Yes, ma'am, it does.

12 Q. Being an Anthony Green?

13 A. That's correct.

14 MS. MERIWETHER: I'll pass the witness,
15 Your Honor.

16 MR. PHILIP SCARDINO: I don't have any
17 further questions for this witness, Your Honor.

18 THE COURT: May he be excused?

19 MR. PHILIP SCARDINO: No objections, Your
20 Honor.

21 MS. MERIWETHER: None from the State, Your
22 Honor.

23 THE COURT: Thank you, sir. You may step
24 down, and you're excused.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Call your next witness.

2 MS. MERIWETHER: Detective McLean.

3 THE BAILIFF: Your Honor, this witness has
4 not been sworn in.

5 THE COURT: All right. Would you raise
6 your right hand to be sworn?

7 (Witness sworn.)

8 THE COURT: You may proceed.

9 MS. MERIWETHER: Thank you, Your Honor.

10 **VA'SHAWNDA MCLEAN,**
11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 BY MS. MERIWETHER:

14 Q. Could you please introduce yourself to our
15 jury?

16 A. My name is Va'Shawnda McLean. I'm a police
17 officer with the Houston Police Department, assigned to
18 the homicide division.

19 Q. And how long have you been with the Houston
20 Police Department?

21 A. I began in 2008, roughly seven years.

22 Q. And what did you do prior to going to the
23 homicide division, what divisions have you worked in?

24 A. Prior to homicide, I worked in vehicular crimes
25 division, working crash investigations, accidents

1 involving fatalities as well as hit and run
2 investigations.

3 Q. And when you joined homicide, that was about
4 how long ago?

5 A. 2013, February.

6 Q. February of 2013, were you assigned a partner
7 to work with?

8 A. Not initially, no.

9 Q. At some point did you get one?

10 A. Yes.

11 Q. And who is that?

12 A. Eli Cisneros on dayshift.

13 Q. And how long had you and Eli been partnered?

14 A. Before when?

15 Q. This incident, March 6th of 2014, the homicide
16 that you're here to talk about, how long had you two
17 been partnered up together?

18 A. A few months.

19 Q. Between the two of you, who is senior, who is
20 junior?

21 A. Sergeant Cisneros is senior.

22 Q. Okay. Fair enough. Were you involved in an, a
23 homicide investigation that occurred at the Little Nell
24 Apartments back on March 6th, 2014?

25 A. Yes.

1 Q. And that was along with your partner, Cisneros?

2 A. Yes.

3 Q. And were y'all assigned as the follow-up
4 investigators?

5 A. Yes.

6 Q. And I want to talk about some of the things
7 that you did as part of this investigation. On the very
8 first day that you get the investigation, on March 7th
9 of 2014, what do you do?

10 A. On the very first day, I conduct scene
11 follow-up tasks, such as canvassing the apartment
12 complex, re-interviewing witnesses, gathering
13 information that may need to be conveyed to my partner.

14 Q. At that time did you have an opportunity to
15 interview a Shejuan Bumpers?

16 A. Yes.

17 Q. And she was in Apartment No. 1205?

18 A. Yes.

19 Q. Along with her mother, Sheryl Mitchell?

20 A. Yes.

21 Q. And did you take another statement from her --
22 or did you take a statement from her that night?

23 A. Not that night.

24 Q. That day, I'm sorry, earlier?

25 A. Yes.

1 Q. And while you were speaking to Ms. Bumpers
2 about what she saw during the night of the murder, did
3 you receive a photograph to show her?

4 A. Yes, I did.

5 Q. And tell us about that?

6 A. During my meeting with Ms. Bumpers, my partner,
7 who was Sergeant Cisneros, was back at the office, he
8 had obtained some intelligence regarding the
9 Complainant's or our victim's vehicle; and based on the
10 information that she had provided to me that she saw a
11 vehicle, I showed her that vehicle to ascertain whether
12 or not she recognized that vehicle.

13 Q. Okay. And was she able to recognize that
14 vehicle?

15 A. Yes.

16 Q. And did that turn out to be the black Acura
17 that was located at the House of Pies?

18 A. Yes.

19 Q. While you were at the apartment complex, were
20 you able to locate an individual by the name of Jerome
21 Monroe?

22 A. Yes, at some point, yes.

23 Q. At some point. But on that first day that
24 you're out there, March 7th of 2014, were you able to
25 locate him?

1 A. I was able to locate his actual residence, but
2 I was not able to locate him physically.

3 Q. How did you come to find out about this
4 individual and that he might know something about the
5 capital?

6 A. We received some information that there was a
7 contract news media person who conducted an interview
8 and we had gotten his name, and I spoke with the leasing
9 office and was able to verify that he was potentially an
10 occupant there on property.

11 Q. And he was allegedly occupying 1404?

12 A. I believe so.

13 Q. And did you try to make contact with Jerome
14 Monroe on that date?

15 A. Yes.

16 Q. Were you successful?

17 A. No.

18 Q. After canvassing the apartment complex trying
19 to find anybody else that might know something, what was
20 your next step in this investigation?

21 A. My next step in the investigation was to go to
22 the Complainant's residence.

23 Q. And how did you know where the Complainant
24 might live?

25 A. I received that information from Sergeant

1 Cisneros via telephone.

2 Q. And was that the address that was on a driver's
3 license, is that where you were headed to?

4 A. Yes.

5 Q. And where was that if you recall?

6 A. I believe it was on Millbanks Drive, I'm not
7 certain of the numerical address.

8 Q. And were you able to make contact with anybody
9 from the victim's family?

10 A. No, ma'am.

11 Q. What did you next do?

12 A. At that point, I went back to the office; and
13 we continued to conduct the investigatory tasks.

14 Q. At some point during the course of the
15 investigation, did you or Eli or Sergeant Cisneros make
16 the connection between the House of Pies and the capital
17 murder being connected?

18 A. Yes.

19 Q. And did you learn that there had been a suspect
20 taken into custody related to the House of Pies
21 aggravated robbery?

22 A. Yes.

23 Q. And who was that?

24 A. It was Marquis Davis.

25 Q. And what did you do with this information?

1 A. At that point we had him transported to 1200
2 Travis to conduct an interview.

3 Q. And are you the one that conducts the interview
4 of Marquis Davis?

5 A. Yes.

6 Q. Both interviews to be correct?

7 A. Yes.

8 Q. And the first interview does he admit his
9 involvement in this crime?

10 A. No, he does not.

11 Q. What happens after that interview is over?

12 A. He is then taken for processing of his clothing
13 for evidence, and then he's transported back to the
14 jail.

15 Q. Are you made aware that he wishes to speak to
16 you again at some point later that day?

17 A. Yes.

18 Q. And what happens then?

19 A. He was transported back to our office, 1200
20 Travis; and I asked him was it true that he wanted to
21 reinitiate conversation with me.

22 Q. Because at that point it's up to him whether he
23 talks to you. You've already terminated the first
24 interview, and he has to make the decision if he wants
25 to continue talking?

1 MR. ROBERT SCARDINO: Object to the leading
2 question.

3 THE COURT: Sustained.

4 Q. (BY MS. MERIWETHER) Once Davis has left your
5 custody, how does it -- how is he able to re-talk to you
6 again?

7 A. Officers Jesse Sosa and Avila (phon.) were
8 transporting Marquis Davis to the jail, at which time
9 they informed me that he wished to speak with me again.

10 Q. Okay. At that point did you, in fact, speak to
11 Marquis Davis again?

12 A. Yes.

13 Q. And this time is there a statement that's taken
14 from him that admits his involvement in the crime?

15 A. Yes.

16 Q. After obtaining this statement from him, did he
17 lead you to another possible suspect that was involved
18 in this crime?

19 A. No.

20 Q. Did he give you the name of Donald Nealey?

21 A. Yes.

22 Q. And what did you do with this information?

23 A. At that point I conveyed that information to my
24 partner, who was also watching the interview, and the
25 information was presented to the Harris County District

1 Attorney's Office for a warrant.

2 Q. And was a warrant obtained for Donald Nealey's
3 arrest?

4 A. Yes.

5 Q. And Marquis Davis was also placed into custody
6 at that time for his charges; is that correct?

7 A. Yes.

8 Q. Did you learn of Donald Nealey's arrest on
9 March 10th of 2014?

10 A. Yes.

11 Q. And where was he arrested?

12 A. I'm not certain of the exact location. I
13 believe he was brought in by Gulf Coast Violence Task
14 Force.

15 Q. And was that in a different county than Harris
16 County?

17 A. I believe so, yes.

18 Q. Did you have an opportunity to see Donald
19 Nealey on March 10th of 2014?

20 A. Yes.

21 Q. And where was that? What location did you see
22 him at?

23 A. At our office at 1200 Travis in one of the
24 interview rooms.

25 Q. You recognize anybody in the courtroom today as

1 being the same individual that you saw on March 10th of
2 2014 and you know as Donald Nealey?

3 A. Yes, I do.

4 Q. And could you point to him and identify an
5 article of clothing that he has on?

6 A. The individual that I know to be Donald Nealey
7 is the gentleman sitting right there in the white shirt
8 with the black tie.

9 MS. MERIWETHER: Your Honor, may the record
10 reflect this witness has identified the Defendant?

11 THE COURT: The record will so reflect.

12 Q. (BY MS. MERIWETHER) Did you at some point
13 learn that Donald Nealey had been arrested on March 4th
14 of 2014?

15 A. Yes.

16 Q. And was that by another agency not the Houston
17 Police Department?

18 A. That is correct, it was --

19 MR. ROBERT SCARDINO: We would object to
20 the question.

21 THE COURT: Sustained.

22 Q. (BY MS. MERIWETHER) Did you learn whether or
23 not they had taken any property from him?

24 A. Yes.

25 Q. And what was that?

1 A. I believe it was amount of money in excess of
2 \$2,000 and a telephone.

3 Q. A cell phone?

4 A. Yes, ma'am.

5 Q. During the course of the investigation, two
6 vehicles were located as it relates to this case; are
7 you familiar with that?

8 A. Yes.

9 Q. One of those being a black Acura?

10 A. That's correct.

11 Q. And then another being a Grand Marquis?

12 A. That's correct.

13 Q. Tell us about how the Grand Marquis was come to
14 be located?

15 A. During my interview, my second interview with
16 Marquis Davis, the one in which he did admit to his
17 involvement, he stated that his vehicle was left at the
18 scene of the crime because that was the vehicle that the
19 Defendant drove to the crime.

20 Q. So, you had learned that the vehicle could
21 still be at the Little Nell Apartments?

22 A. Yes.

23 Q. And, in fact, was it located at the Little Nell
24 Apartments?

25 A. Yes, it was.

1 Q. And did you make some request to the vehicle
2 examination building to process both the black Acura and
3 the Grand Marquis?

4 A. Yes.

5 Q. And what items did you want them to process
6 for?

7 A. We standardly ask for fingerprinting, firearms
8 evidence analysis, latent prints, DNA analysis.

9 Q. And did you also go over to the vehicle
10 examination building and observe or collect any items
11 from there?

12 A. Yes, I did.

13 Q. And tell us about that?

14 A. At some point I went to the vehicle examination
15 building and met with the officer there and he provided
16 to me a wallet that was recovered from the vehicle that
17 included the identification of the Defendant as well as
18 a cell phone.

19 Q. I'm going to show you State's Exhibit 124. Is
20 this the wallet that you're referring to that you
21 observed back on -- back in March of 2014 when you went
22 to the vehicle examination building?

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

24 Q. And you took custody of that item?

25 A. I did not take custody of the wallet.

1 Q. You just saw it?

2 A. Yes.

3 Q. What about, you said that there was a cell
4 phone that was recovered from the vehicle, what happened
5 with that cell phone?

6 A. I took custody of the cell phone.

7 Q. And what did you do with it?

8 A. It was transported. I took care, custody and
9 control of it. That's what we normally do, and I took
10 it back to 1200 Travis, and we have or we had at that
11 time the capability to process that phone there in our
12 division.

13 Q. And was it possible to determine who that phone
14 belonged to?

15 A. Yes.

16 Q. And whose phone was it?

17 A. That phone belonged to the Complainant.

18 Q. To Stanly?

19 A. Correct.

20 Q. You also took custody of some fingerprint cards
21 that Holmes had lifted from the two vehicles; is that
22 correct?

23 A. Yes.

24 Q. And you transferred them over for further
25 analysis and review?

1 A. That is correct.

2 Q. At some point during the course of the
3 investigation, did you meet a second time with an
4 individual known as Shejuan Bumpers?

5 A. Yes, I did.

6 MS. MERIWETHER: Your Honor, may I approach
7 the witness?

8 THE COURT: You may.

9 Q. (BY MS. MERIWETHER) I'm showing you State's
10 Exhibits 141 and 142. What are these items?

11 A. Those items are what's called the Witness
12 Admonishment Form.

13 Q. Okay. And what's underneath each of these
14 items?

15 A. Attached to each of these items is a six pack
16 photo array used for identification purposes.

17 Q. Okay. And are these the items that you
18 presented to Shejuan Bumpers to review and see if she
19 recognized anyone?

20 A. Yes.

21 Q. And I'm going to ask you a couple of questions
22 specifically. Where did you do this at? Where did you
23 show her these photos?

24 A. That was in her residence there at the Little
25 Nell Apartments; I believe her apartment number was

1 1205.

2 Q. And was this done back on March 12th of 2014?

3 A. Yes.

4 Q. And we see, again, a date and a time; and is
5 this her signature on it?

6 A. Yes.

7 Q. And then finally at the bottom, HPD employ and
8 a signature, who is that?

9 A. That is my name and signature.

10 Q. And the same with State's Exhibit 142, it's an
11 exact, the same admonishment form, timeframe and so
12 forth. Tell us how you have -- when you had this
13 photospread and you're showing it to Shejuan, how does
14 it work, do you tell her who to pick out?

15 A. No, there are specific instructions and
16 generally I read the admonishment and make certain that
17 they understand that the individuals that may have
18 committed the crime may be included and may not be
19 included and the investigation will --

20 MR. ROBERT SCARDINO: Excuse me. Judge,
21 I'm going to object to them displaying an exhibit before
22 the jury that's not admitted into evidence.

23 MR. PHILIP SCARDINO: It has been admitted.

24 MS. MERIWETHER: I previously admitted it
25 with the witness, Your Honor.

1 THE COURT: Which number is that?

2 MS. MERIWETHER: This is 141 and 142.

3 THE COURT: I believe those were admitted.

4 MR. ROBERT SCARDINO: And I apologize.

5 I've been told it's in. Thank you.

6 Q. (BY MS. MERIWETHER) So, you read over the
7 admonishment form to her. And in it it says select
8 someone if you recognize them, if you don't recognize
9 them, don't do anything, correct?

10 A. That is correct.

11 Q. And she, in fact, did that. In one set of
12 photospreads she recognizes somebody. In another set of
13 photospreads, she doesn't recognize anybody; is that
14 correct?

15 MR. ROBERT SCARDINO: I object to the
16 hearsay witness testifying.

17 THE COURT: Sustained.

18 Q. (BY MS. MERIWETHER) Well, in 141 is she able
19 to identify anyone?

20 MR. ROBERT SCARDINO: I object to that.

21 THE COURT: It's hearsay, Counsel. It's
22 sustained.

23 Q. (BY MS. MERIWETHER) Were you present when she
24 made markings on this exhibit?

25 A. Yes.

1 Q. Did you make the markings on the exhibits, or
2 did she do it herself?

3 A. She makes the markings and initials and dates
4 it, time.

5 Q. Now, a little while ago, I asked you about an
6 individual by the name of Jerome Monroe. Did you have
7 an opportunity to speak to Jerome at some point?

8 A. Yes.

9 Q. And when was that?

10 A. It was a few days after the beginning of this
11 investigation. I believe it was on March 22nd.

12 Q. Okay. So, offense date of March 6th, and then
13 March 22nd you're able to catch up with him. Is that at
14 the Little Nell Apartment complex or somewhere else?

15 A. It's at the Little Nell Apartment complex.

16 Q. And were you able to take a statement from him?

17 A. Yes, I was.

18 Q. And do you recall that statement?

19 A. Yes, I do.

20 Q. During the course of that statement, how many
21 people did he state were involved?

22 MR. ROBERT SCARDINO: I'll object to the
23 form of the question and the hearsay that it's
24 soliciting.

25 THE COURT: Sustained.

1 Q. (BY MS. MERIWETHER) Did Mr. Monroe ever state
2 that there were four people involved in this incident?

3 MR. ROBERT SCARDINO: Object to the
4 hearsay.

5 THE COURT: Response?

6 MS. MERIWETHER: I believe that this is the
7 proper form of introducing a prior inconsistent
8 statement that he had given versus the testimony that he
9 gave previously, Your Honor.

10 THE COURT: Objection is overruled.

11 A. Jerome Monroe began his statement with me going
12 down one path; and by the time we were done, his story
13 had changed several times.

14 MR. ROBERT SCARDINO: I'll object to the
15 nonresponsive answer.

16 THE COURT: Overruled.

17 Q. (BY MS. MERIWETHER) His story had changed a
18 number of times during the course of that interview?

19 A. Yes, ma'am.

20 Q. During the course of his interview, did he ever
21 state that he observed four people involved in this
22 crime?

23 A. Yes, he did.

24 Q. Did he ever state that he observed three people
25 only observed in the crime?

1 A. Yes, he did.

2 Q. Did he ever state that he observed somebody
3 exit the vehicle and shoot the person on the ground?

4 A. Yes, he did.

5 Q. Did he also at times or during the course of
6 the statement state that there was two shooters instead
7 of one?

8 A. I don't remember that.

9 Q. Okay. Did he also state during the course of
10 the interview with you that he didn't actually see an
11 individual run past him to the extent that he could
12 identify?

13 MR. ROBERT SCARDINO: Object to leading
14 question.

15 THE COURT: Sustained.

16 Q. (BY MS. MERIWETHER) Would it be a fair
17 statement that during the course of the interview with
18 him, he stated that three people got into a vehicle and
19 left?

20 A. Yes.

21 Q. During the course of that interview, did he
22 ever state that an individual got out of that vehicle
23 and then shot the man that was on the ground?

24 A. Yes.

25 Q. Did he give multiple statements during the

1 course of the time that you spoke to him?

2 A. Yes, he did.

3 Q. And within those multiple statements, were they
4 contradictory?

5 A. Very much so.

6 Q. When you interviewed Shejuan and Sheryl,
7 Shejuan Mitchell and Sheryl -- I'm sorry, I mixed their
8 names up, Shejuan Bumpers and Sheryl Mitchell, were you
9 able to get statements from them on two occasions?

10 A. Yes.

11 Q. And did their stories remain consistent about
12 what they observed and saw?

13 A. Yes.

14 Q. You already testified that you showed a picture
15 of a vehicle to Shejuan. Did you show a picture of a
16 vehicle to Sheryl Mitchell?

17 A. Yes, I did.

18 Q. And what were the results of that?

19 A. I will have to review my report. I don't
20 remember.

21 Q. Could you take a moment and do that to refresh
22 your memory?

23 A. Uh-huh. Yes, at that time she did give a
24 positive identification of the black Acura.

25 Q. Okay. And I failed to ask, did you also go

1 with Officer Tesfay to the House of Pies and recover the
2 surveillance video there?

3 A. Yes.

4 Q. And then my only other question has to do with
5 the contact that you had with Donald Nealey back on
6 March 10th of 2014, were you present when he was brought
7 into the Travis building?

8 A. Yes.

9 Q. And what was his demeanor like then?

10 A. He was -- seemed to be very angry and
11 noncooperative.

12 Q. Did you have to request additional officers to
13 assist in his transport?

14 A. Yes, I did.

15 MS. MERIWETHER: Pass the witness, Your
16 Honor.

17 MR. ROBERT SCARDINO: May I proceed?

18 THE COURT: You may.

19 **CROSS-EXAMINATION**

20 BY MR. ROBERT SCARDINO:

21 Q. Is it Detective McLean, your title is
22 detective?

23 A. Detective or investigator, we use investigator
24 typically.

25 Q. Investigator McLean?

1 A. Yes, sir.

2 Q. Mrs. McLean?

3 A. Yes.

4 Q. My name is Scardino; we haven't met before,
5 have we?

6 A. No, sir.

7 Q. I have some questions for you. Let's talk
8 about this fella, Jerome Monroe, first. You remember
9 him? You'll have to answer out.

10 A. Yes.

11 Q. And he was the person that you learned about
12 through some news media, right?

13 A. That's correct.

14 Q. And he was a person that was an eyewitness to
15 this event, wasn't he?

16 A. If we're basing the answer to that question
17 based off of his statement, I can't say that he was an
18 eyewitness.

19 Q. So your testimony in front of this jury is that
20 he was not an eyewitness to the event?

21 A. That's not my testimony. My testimony is that
22 his statements were inconsistent, so based on the
23 inconsistency, I cannot say he was an eyewitness.

24 Q. You're telling this jury he's lying?

25 A. I'm telling this jury that Mr. Monroe gave me

1 several statements.

2 Q. Well, if he gave you several statements that
3 were inconsistent, is that the same as lying?

4 A. Yes, it is.

5 Q. So, your position is that this fella that lives
6 in the apartment complex that was there when it happened
7 lied to you about the events?

8 A. Yes.

9 Q. And it's your testimony in front of this jury
10 that when Jerome Monroe came into this courtroom and
11 testified in front of this jury, he lied to them?

12 MS. MERIWETHER: Objection, asked and
13 answered.

14 THE COURT: Sustained.

15 Q. (BY MR. ROBERT SCARDINO) But you're saying
16 that he lied to you, right?

17 MS. MERIWETHER: Asked and answered.

18 THE COURT: Overruled.

19 Q. (BY MR. ROBERT SCARDINO) Right, just trying to
20 clarify this.

21 A. He gave me multiple statements.

22 Q. Then he lied to the jury?

23 MS. MERIWETHER: Objection, again, Your
24 Honor, asked and answered. And she wasn't present when
25 that witness --

1 THE COURT: Sustained.

2 Q. (BY MR. ROBERT SCARDINO) Well, you've learned
3 what he told the jury, haven't you?

4 A. No, sir.

5 Q. Nobody told you what he told the jury?

6 A. No, sir.

7 Q. So, let's see if we can understand what he told
8 you and what you know about Mr. Monroe. When he told
9 you statements that you thought were inconsistent, did
10 you then try to determine why this man would say
11 something inconsistent when he was there that night?
12 Did you try to make a determination?

13 A. No, sir.

14 Q. You were the investigator in charge of the
15 case, right?

16 A. One of them, yes, sir.

17 Q. And he told you a statement that he -- one of
18 the statements was he saw men chasing another man down
19 the driveway in front of his garage, right?

20 A. Yes, sir.

21 Q. And one of the statements he made, you say he
22 changed it, was either two men or three men chasing --

23 MS. MERIWETHER: Objection, improper
24 impeachment.

25 THE COURT: Overruled.

1 Q. (BY MR. ROBERT SCARDINO) Two or three men
2 chasing the one man down the driveway?

3 A. I'm sorry, sir. Would you please repeat that
4 question?

5 Q. I'm trying to figure out what inconsistent
6 statements he made to you?

7 A. Do you want me to tell you the inconsistencies?

8 Q. I'm trying to figure it out. I have to ask you
9 questions, and then you answer them.

10 A. Okay.

11 Q. So, let's talk about the first statement that
12 he made to you, do you remember what that was?

13 A. The first statement was that he saw someone
14 getting out of a car.

15 Q. The first thing was he saw someone getting out
16 of a car?

17 A. Right.

18 Q. And that's the first thing that he remembered
19 when you talked to him?

20 A. That's correct.

21 Q. Detective, did you record that conversation?

22 A. Yes, I did, sir.

23 Q. And do you have that with you?

24 A. No, sir.

25 Q. Did you turn it over to the Prosecution?

1 A. Yes.

2 Q. So, we have a recorded statement of Jerome
3 Monroe making a statement to you?

4 A. Yes, sir.

5 MR. ROBERT SCARDINO: Your Honor, we would
6 like to have that statement before we proceed.

7 THE COURT: Approach the bench.

8 (Bench conference.)

9 MS. MERIWETHER: They have the statement.

10 MR. PHILIP SCARDINO: We have a statement.

11 THE COURT: Do you have a recorded
12 statement?

13 MR. PHILIP SCARDINO: We do.

14 THE COURT: Have you heard it?

15 MR. PHILIP SCARDINO: I have.

16 THE COURT: Do you need to hear it again?

17 MR. PHILIP SCARDINO: I know what it said.

18 MR. ROBERT SCARDINO: Well, I guess my
19 brother listened to it; and I didn't. I'll continue.

20 THE COURT: You want to hear it again?

21 MR. ROBERT SCARDINO: Can I have just a
22 moment?

23 THE COURT: Yes.

24 (Soto voce between Defense attorneys.)

25 MR. ROBERT SCARDINO: May I proceed, Your

1 Honor?

2 MS. MERIWETHER: Your Honor, for purposes
3 of the record, since I know that this could be
4 considered later, can it be clear that that statement
5 has been given to Defense counsel?

6 THE COURT: I think that's clear. Thank
7 you, Counsel.

8 MS. MERIWETHER: Thank you.

9 Q. (BY MR. ROBERT SCARDINO) Detective, in that
10 statement Jerome Monroe told you that the first thing he
11 saw was a man getting out of a car?

12 A. Yes, sir.

13 Q. And when did he give you that statement?

14 A. On March 22nd.

15 Q. And when did he give you the second statement?

16 A. The second statement is the statement that we
17 received from the contract videographer.

18 Q. So he told the contract videographer something
19 different than he told you?

20 A. Yes, sir, that's correct.

21 Q. Is that recorded?

22 A. Yes, sir.

23 Q. And you've listened to that?

24 A. Yes, sir.

25 Q. And did he give you a third statement?

1 A. During my statement with him, he gave me
2 multiple statements.

3 Q. And what were they?

4 A. He began by stating that he saw three men, two
5 black males, one Hispanic male, then he said he didn't
6 see anything. He said he saw them shoot the
7 Complainant, then he said he didn't see anything, he
8 just heard. He says he didn't see them run past and
9 then he said he ran past, there were multiple
10 statements.

11 Q. And when did he make those statements to you?

12 A. March 22nd.

13 Q. And did you make notes of that?

14 A. Yes, sir.

15 Q. And do you have those notes with you?

16 A. No, sir, I do not.

17 Q. Where are those notes?

18 A. In my report.

19 Q. You don't have your report with you?

20 A. I do have my report with me.

21 Q. I'm asking you if you wrote down, and you said
22 you did, the statements that he made to you that were
23 inconsistent on March 22nd?

24 A. I didn't write them down verbatim. I just
25 wrote enough to jar my memory. Our reports are

1 generated to help us, we don't typically write
2 everything in our report.

3 Q. Now Jerome Monroe's statement would be
4 important, wouldn't it?

5 A. Yes, sir.

6 Q. Because Jerome Monroe's statement is different
7 from what Marquis Davis told you?

8 A. Yes, sir.

9 Q. And you're relying on Marquis Davis in this
10 trial, aren't you?

11 MS. MERIWETHER: Objection, improper.

12 THE COURT: Sustained.

13 Q. (BY MR. ROBERT SCARDINO) What Jerome Monroe
14 told you is not consistent with what Marquis Davis told
15 you, is it?

16 MS. MERIWETHER: Objection, improper.

17 THE COURT: Overruled.

18 A. Would you repeat the question, please?

19 Q. (BY MR. ROBERT SCARDINO) What Jerome Monroe
20 told you about three men chasing a man down the road and
21 shooting him, shooting him to the ground and then
22 another man getting out of a car and shooting him once
23 he gets out of a car is not consistent with what Marquis
24 Davis said, is it?

25 A. No, it is not.

1 Q. And we have to believe Marquis Davis in order
2 to convict?

3 THE COURT: Sustained.

4 MS. MERIWETHER: Objection.

5 THE COURT: It was sustained. You don't
6 have to answer that question.

7 Q. (BY MR. ROBERT SCARDINO) Did you look in to
8 see, as a homicide detective in charge of this homicide
9 case, did you look to see why Jerome Monroe would lie
10 about three men chasing this poor victim and a fourth
11 man getting out to shoot him, why would he lie about
12 that?

13 A. I have no idea.

14 Q. Did you make any effort to try to determine if
15 he might have had a reason to lie?

16 A. Well, Counselor, you're saying that he's lying.

17 MR. ROBERT SCARDINO: Object to the
18 nonresponsive answer.

19 THE COURT: Overruled.

20 A. At that juncture of the investigation, we are
21 collecting much information, much evidence. At some
22 point we sit back, and we take a look and review all the
23 statements. And at that time we try to make some sense
24 of things. And if you're asking me if I questioned why
25 he would make inconsistent statements, yes, I did

1 question that. But I don't have an answer because
2 people make inconsistent statements all the time.

3 Q. Okay. You chose to believe Marquis Davis,
4 didn't you?

5 MS. MERIWETHER: Objection, improper.

6 THE COURT: Sustained.

7 Q. (BY MR. ROBERT SCARDINO) You told Marquis
8 Davis you were proud of him when you interviewed him,
9 didn't you?

10 A. Yes.

11 Q. You told him you were proud of him because you
12 believed him, right?

13 MS. MERIWETHER: Objection, relevance.

14 THE COURT: Overruled.

15 A. No, that is not why I told him that.

16 Q. (BY MR. ROBERT SCARDINO) You were just proud
17 of him because of who he is and what he is?

18 MS. MERIWETHER: Objection, improper
19 argument.

20 MR. ROBERT SCARDINO: Withdrawn, I
21 withdraw.

22 Q. (BY MR. ROBERT SCARDINO) When you have an
23 opportunity, Detective, if you would look at your notes
24 and find the point where you made notes of Jerome Monroe
25 giving you all these inconsistent statements on March

1 22nd, I'd appreciate it when you get a minute. Not
2 right now, but at some time before you leave the
3 courthouse, if you'd do that for me so I can look at it.

4 MS. MERIWETHER: I'm going to object. I'm
5 not sure if there's a question in that or a statement by
6 Counsel.

7 MR. ROBERT SCARDINO: It's just a request
8 that she produce something she said she had on the
9 witness stand.

10 THE COURT: Can we have her do it now?

11 MR. ROBERT SCARDINO: I'd rather go on to
12 something else. When she has a chance if it's
13 convenient to find those notes she said she had.

14 THE COURT: Okay.

15 MR. ROBERT SCARDINO: Let's move on.

16 THE WITNESS: Your Honor, may I respond?

17 MR. ROBERT SCARDINO: The Prosecutor can
18 straighten out anything she wants to ask.

19 THE COURT: Just wait for the next
20 question, please.

21 THE WITNESS: Yes.

22 Q. (BY MR. ROBERT SCARDINO) So, when you learned
23 that there was a person in custody named Marquis Davis,
24 you went to the jail to interview him; isn't that
25 correct?

1 A. That is not correct.

2 Q. Okay. You didn't interview Marquis Davis?

3 A. Yes, I did.

4 Q. You did or did not?

5 A. Yes, I did.

6 Q. What was incorrect about my question?

7 A. I did not go to the jail to interview him, sir.

8 Q. Oh, okay, I'm sorry. Where did you go to
9 interview him then?

10 A. I didn't go anywhere to interview him. He came
11 to me.

12 Q. Okay. And where were you when you interviewed
13 him?

14 A. At 1200 Travis.

15 Q. 400 Travis?

16 A. 1200 Travis.

17 Q. That's not the police station?

18 A. No, sir.

19 Q. Is that where your office is located?

20 A. Yes, that's our police headquarters, the Edward
21 A. Thomas building.

22 Q. Police headquarters?

23 A. Yes.

24 Q. So, he's brought to your head -- police
25 headquarters?

1 A. Yes, sir.

2 Q. And about what time was that?

3 A. I don't recall.

4 Q. And when he was brought to you, was it in your
5 office?

6 A. It was on the 6th floor of the homicide
7 division.

8 Q. Was it in a jail cell?

9 A. No, sir.

10 Q. Well, was it in an interview room?

11 A. Yes, sir.

12 Q. Did it look like a jail cell?

13 A. No, sir.

14 Q. It doesn't look like a jail cell, okay.

15 MR. ROBERT SCARDINO: May I approach the
16 witness, Your Honor?

17 THE COURT: You may.

18 MR. ROBERT SCARDINO: Can I get an evidence
19 sticker?

20 May I approach the witness, Your Honor?

21 THE COURT: You may.

22 Q. (BY MR. ROBERT SCARDINO) Detective, let me
23 show you what's marked as Defense Exhibit No. 1, and all
24 this stuff down here is my writing, so none of that is
25 admissible or even relevant. But what I want you to

1 look at is the photograph that's in that exhibit and ask
2 you if that is similar to the room where you interviewed
3 Marquis Davis?

4 A. May I?

5 Q. Oh, absolutely.

6 A. The wall is similar.

7 Q. And the desk and the chairs?

8 A. No, they're different.

9 Q. So, you interviewed him in a different room
10 than that room?

11 A. That is correct.

12 Q. Well, you see there's a person interviewing him
13 in there. Is that Marquis Davis in the picture?

14 A. Yes.

15 Q. And do you recognize the person that's in the
16 picture with him?

17 A. I do not.

18 Q. Okay. So, when he's brought to your office,
19 he's brought into a room and you talked to him; is that
20 correct?

21 A. Yes, that's correct.

22 Q. Did somebody tell you how to testify in this
23 case when you're on cross-examination?

24 A. No, sir.

25 Q. Did they tell you you're different on cross

1 than you are on direct?

2 A. No, sir.

3 Q. Okay. Just happens that way?

4 MS. MERIWETHER: Objection, improper.

5 THE COURT: Sustained.

6 Q. (BY MR. ROBERT SCARDINO) Who brought him into
7 the room where you talked to him?

8 A. He was transported to 1200 Travis, I believe,
9 by Officer Sosa and Officer Avila.

10 Q. And you learned that he had already made a
11 statement to those officers, didn't you?

12 A. No.

13 Q. You didn't know he had made any statements
14 before?

15 A. No, sir.

16 Q. Okay. And so you learned -- it was a reason
17 why he was brought to your office, right? They didn't
18 just happen to pick somebody up on the street and bring
19 him there for no reason?

20 A. That's correct.

21 Q. So, there was a reason why he was brought to
22 your office. Did you know what it was?

23 A. Yes, sir.

24 Q. Tell us why?

25 A. To question him about his involvement in this

1 murder.

2 Q. And you learned something about his involvement
3 in the murder and the robbery, didn't you?

4 A. Eventually, yes, sir.

5 Q. Before he was brought to the room, did you
6 learn that he was caught out there near the scene of the
7 robbery?

8 A. Yes, sir.

9 Q. Did you learn that he was caught and he had on
10 the backpack of the man that had been murdered
11 previously that night?

12 A. I had not learned that, not at that point, sir.

13 Q. When did you learn that?

14 A. I didn't learn that he had the backpack on, I
15 learned that he had it in his possession after I spoke
16 with him.

17 Q. Did you look at the videos of the robbery?

18 A. At that point I had not, sir.

19 Q. Did you eventually do that, though?

20 A. Yes, sir.

21 Q. So, you know that it was Marquis Davis in the
22 House of Pies with the deceased backpack on his back?

23 A. At that time I did not know that.

24 Q. But you eventually learned that?

25 A. Yes, sir.

1 Q. You interviewed Marquis Davis before you were
2 armed with that information?

3 A. That's correct.

4 Q. Did you learn then that he had on bloody shoes
5 that had the blood of the deceased on them?

6 A. I was not aware of that, sir.

7 Q. Did you ever learn that?

8 A. No.

9 Q. Even to this day you didn't know it?

10 A. Even to this day, sir.

11 Q. When you interviewed Marquis Davis, he lied
12 about having anything involved with the House of Pies
13 robbery?

14 A. I'm sorry. Would you repeat that, please?

15 Q. When you interviewed him that first time, he
16 lied to you about having anything to do with the robbery
17 in the House of Pies?

18 A. That is correct.

19 Q. He lied to you about going in there with a gun,
20 right?

21 A. Yes, sir.

22 Q. He lied to you about being the person that ran
23 out of the store after he had fired a gun into the
24 ceiling, out of the restaurant, after he fired a gun
25 into the ceiling?

1 A. Yes, sir.

2 Q. He lied to you about pointing a gun at the
3 patrons and threatening them with their lives, did he
4 not?

5 A. I'm not aware that he pointed a gun at the
6 patrons and threatened them.

7 Q. I'll ask you again, did you look at the video
8 of the robbery that was taken by the security cameras in
9 the House of Pies?

10 A. Yes, I did, sir.

11 Q. And you don't remember him threatening anybody
12 with a gun?

13 A. I do not remember, no, sir.

14 Q. If he did that, would that affect your
15 credibility of what he told you?

16 A. I can't answer if-then questions. I would have
17 to be faced with that scenario.

18 Q. Say that again, please?

19 A. I can't answer if-then questions, I would have
20 to be faced with that scenario.

21 Q. Okay. Did you ask him specific questions about
22 his involvement in this when you had him in that first
23 interview?

24 A. I did ask him specific questions about the
25 robbery because he denied all involvement of the robbery

1 and the murder.

2 Q. But you had to have some information in order
3 to question him at all, right?

4 A. Yes, sir.

5 Q. And where did you get that information in order
6 to question him?

7 A. My partner had advised me that they arrested
8 him in a very near proximity to our murder investigation
9 and that the vehicle of the Complainant was found at the
10 robbery, and so at that point we connected the two that
11 he was involved in the murder.

12 Q. And do you recall how long that first interview
13 was?

14 A. I do not recall.

15 Q. It was over 30 minutes, wasn't it?

16 A. I do not recall.

17 Q. Don't remember, okay. And then did you have a
18 second interview with him?

19 A. Yes, sir.

20 Q. And what was the reason for the second
21 interview?

22 A. He initiated the second interview. He wanted
23 to come clean and tell what happened.

24 Q. Okay. Now, did you learn before you talked to
25 him that he had an interview already in the interview

1 room on Defense Exhibit No. 1 that I've already shown
2 you by another police officer who had already talked to
3 Donald -- had already talked to Davis, Marquis Davis,
4 named Officer Bedingfield?

5 A. Say that again, sir.

6 Q. Are you familiar with the police officer named
7 Bedingfield?

8 A. Yes, sir.

9 Q. Was he involved in this investigation?

10 A. Not in our investigation. They have their own
11 separate robbery investigation.

12 Q. Did you know that Officer Bedingfield had
13 interviewed Marquis Davis before you did?

14 A. At that point, no, I did not; but I wasn't
15 interviewing him for the robbery.

16 Q. I didn't ask you that. I asked you if you knew
17 whether or not Officer Bedingfield had interviewed
18 Marquis Davis?

19 A. No, sir, I did not.

20 Q. Did you subsequently learn that he had?

21 A. Later on in the investigation.

22 Q. Was that after your second interview with
23 Marquis Davis?

24 A. I don't recall. I know at some point I was
25 made aware that he had already provided a statement to

1 the investigators about the robbery.

2 Q. It wasn't important to you to know what he told
3 Officer Bedingfield before you interviewed him?

4 A. It's always important to have information, but
5 if you're faced with a challenge of not having it, you
6 have to move forward in the interest of justice, you
7 don't just stop your investigation.

8 Q. No, I'm not asking you that. Officer
9 Bedingfield interviewed him in the same office or the
10 same building you interviewed him in, right?

11 A. No, sir.

12 Q. Different building?

13 A. That is not the same office as ours, if you're
14 talking about the photo that you showed me, that's not
15 our office. The walls look similar, but it's not the
16 same office.

17 Q. You learned that Marquis Davis lied to Officer
18 Bedingfield in an interview that lasted an hour, right?

19 A. No, sir.

20 Q. You know that Marquis Davis lied when Officer
21 Bedingfield took -- asked him specific questions about
22 the robbery and the murder before you interviewed him
23 because Officer Bedingfield was armed with a lot of
24 information about both cases before you interviewed him?

25 MS. MERIWETHER: Objection, compound

1 question.

2 THE COURT: Sustained.

3 Q. (BY MR. ROBERT SCARDINO) Would there be a
4 reason why Officer Bedingfield would have information
5 you wouldn't have?

6 MS. MERIWETHER: Objection, calls for
7 speculation.

8 THE COURT: Overruled. She can answer if
9 she knows.

10 A. I'm sorry, would you repeat the question?

11 Q. (BY MR. ROBERT SCARDINO) Would there be a
12 reason why Officer Bedingfield would have information
13 that you wouldn't have?

14 A. I'm not sure, sir. The course of their
15 investigation may have gone quite differently than ours.

16 Q. The second interview that you had with Marquis
17 Davis, he lied to you again, didn't he?

18 A. Yes, he did.

19 Q. You asked him basically the same questions; and
20 he gave you basically the same answers, right?

21 A. I don't know if I asked him the same questions
22 or not.

23 Q. Well, in the second interview, he told you that
24 he picked up Donald Nealey, went to a gas station and
25 picked up another guy named K.C., didn't he?

1 MS. MERIWETHER: Objection, improper
2 impeachment.

3 THE COURT: Overruled.

4 Q. (BY MR. ROBERT SCARDINO) Did he tell you that?

5 A. I don't recall him ever saying he went to a gas
6 station and picked up someone named K.C.

7 Q. You don't remember him telling you that?

8 A. No.

9 Q. And that he picked him up and then they went
10 to the Little Nell Apartments?

11 A. No, he said he went to Fondren and picked up
12 someone and went to Little Nell.

13 Q. He gave you the name K.C., didn't he?

14 A. Yes, he did at some point.

15 Q. Which interview did he give you that name?

16 A. I don't remember. I'd have to look at the
17 interviews.

18 Q. Wasn't the first interview, was it?

19 A. No, because the first interview he denied all
20 culpability.

21 Q. And then he slowly started admitting things;
22 but he was still telling lies, wasn't he?

23 A. I believe he was at first, yes.

24 Q. And then eventually he said that there wasn't
25 even a guy named K.C. involved?

1 A. Would you repeat, please?

2 Q. Eventually in another third interview, he said,
3 he finally said, no, there was nobody really named K.C.
4 involved; or did he ever deny that?

5 A. At some point he said there was no K.C.
6 involved.

7 Q. And he lied and said that he didn't know what
8 was going on when he went to the Little Nell Apartments,
9 didn't he?

10 A. I don't believe that he lied.

11 Q. You don't believe that he lied?

12 A. No.

13 Q. Did he tell you that he was so close to the
14 poor dead man when he was killed that he got the dead
15 man's blood on his shoes? Did he tell you that?

16 A. No, he did not tell me that.

17 Q. Did he tell you that the poor dead man was
18 begging for his life --

19 MS. MERIWETHER: Your Honor, I'm going to
20 object to this line of the questioning and the use of
21 "the poor dead man" repeatedly.

22 THE COURT: Overruled.

23 Q. (BY MR. ROBERT SCARDINO) Did he tell you that
24 the poor dead man was begging for his life, and he just
25 stood there? Did he tell you that?

1 A. I don't believe he used those words, but he did
2 say that he heard him begging.

3 Q. And he denied having a gun in his hand?

4 A. That is correct.

5 Q. And he told you that Donald Nealey forced him
6 to go to the House of Pies, that he was afraid not to
7 go, right?

8 A. He didn't use the word "force," but he did say
9 he was afraid.

10 Q. He claimed when he was talking to you that he
11 didn't know anything about a plan to rob the House of
12 Pies, did he tell you that?

13 A. Yes.

14 Q. And you believed that, didn't you?

15 A. Yes, I did.

16 Q. Did you look at the video of the two men
17 walking into the House of Pies, the grainy black and
18 white video, you see two guys bent over walking in, have
19 you seen that video?

20 A. Yes, I did.

21 Q. Did you ask Donald Nealey -- did you ask
22 Marquis Davis if he was the second man walking in there?

23 A. No, the video was a robbery investigation.

24 Q. Yes, ma'am, I realize that.

25 A. Okay. Ours was the murder investigation.

1 Q. I understand that, but Marquis Davis told you
2 that he was afraid not to do it, didn't he?

3 A. Yes.

4 Q. You believed that. And then you look at that
5 video, and you see he is the second man going in there.
6 Did it look to you like somebody was forcing him to go
7 into the House of Pies?

8 A. I don't recall; but I'm sure that if we can see
9 the video again, it would jog my memory.

10 Q. He told you that Donald Nealey told him, after
11 he gave him a gun --

12 MS. MERIWETHER: Objection, multiple rounds
13 of hearsay.

14 THE COURT: Is this impeachment, Counsel?

15 MR. ROBERT SCARDINO: This would be
16 impeachment, and it would be, I believe the Prosecutor
17 has opened the door to what Mr. Davis said to this
18 police officer.

19 THE COURT: Objection is overruled.

20 Q. (BY MR. ROBERT SCARDINO) So he told you, did
21 he not, that Donald Nealey gave him a gun, right?

22 A. Yes, sir.

23 Q. A .38, right, or do you remember?

24 A. I don't remember specifically.

25 Q. .38s don't leave shell casing when they're

1 fired, do they?

2 A. I'm not certain.

3 Q. You're not sure?

4 A. No, sir, I'm not.

5 Q. Okay. Marquis Davis told you that Donald
6 Nealey told him when he went into the House of Pies to
7 shoot the gun; you remember that?

8 A. Would you repeat the question, please, sir?

9 Q. That Marquis Davis told you that Donald Nealey
10 told him when they go into the House of Pies to shoot
11 the gun and that's why he shot it?

12 A. That is correct.

13 Q. Have you looked at that video?

14 A. Yes, sir.

15 Q. Did it look like somebody was making Marquis
16 Davis shoot that gun in the air?

17 A. I'm not sure what you mean by "making." What
18 would that look like?

19 Q. Well, maybe somebody pointed a gun at him, or
20 indicated go ahead and shoot the gun or somebody hold
21 their hand up and say now is the time to shoot the gun
22 or something like that?

23 A. I believe if someone is in fear that they just
24 watched someone shoot someone that that could be
25 constituted as being made to do something.

1 Q. So, we have to believe Marquis to believe that?

2 MS. MERIWETHER: Objection, improper.

3 THE COURT: Sustained.

4 Q. (BY MR. ROBERT SCARDINO) When you learned that
5 the shoes that Marquis Davis had on had the deceased
6 blood on them, did that change your mind about Mr.
7 Davis' credibility.

8 A. Again, I was not aware about the shoes.

9 Q. When did you quit being the lead investigator
10 in this case?

11 A. We shared responsibility.

12 Q. Do you know when it was determined that the
13 blood on his shoes belonged to the deceased? You know
14 when they determined that?

15 A. No, I'm not certain.

16 Q. You told Marquis Davis when you interviewed
17 him, did you not, that you had witnesses that saw him
18 running down the alley at the scene of the murder,
19 didn't you tell him that?

20 A. I believe I did, yes.

21 Q. In fact, you were trying to convince him that
22 you had a case against him so he would be a cooperating
23 witness for you?

24 A. No, that's not my purpose of saying those
25 statements.

1 Q. When you told him that, the witness that you
2 got that information from was Jerome Monroe, wasn't it?

3 A. No.

4 Q. Who else told you that there were men running
5 down the alleyway after the complaining witness?

6 A. Shejuan Bumpers' statement is what I was
7 referring to. But generally when we're in the
8 interrogation room, in the interview room, it is not
9 uncommon to use tactics to get someone to tell the
10 truth.

11 Q. And you relied on Shejuan Bumpers that she's
12 the one that actually picked out somebody that was
13 running down the alleyway?

14 A. Beg pardon?

15 Q. Didn't you tell the jury that when you
16 interviewed Shejuan Bumpers, you showed her a
17 photospread?

18 A. Yes.

19 Q. And she picked somebody out of that
20 photospread?

21 A. Yes.

22 Q. And do you remember, who did she pick out?

23 A. I believe the person seated in Position No. 1.

24 Q. That was Marquis Davis, wasn't it?

25 A. Yes.

1 Q. She picked him running down the alley, right?

2 A. I have to look at my report.

3 Q. Isn't that what you testified to on direct just
4 a minute ago?

5 A. I'm not sure of his specific action.

6 THE COURT: Is there an objection?

7 MS. MERIWETHER: Yes, Your Honor. The
8 State would object that Counsel is not allowing the
9 witness to answer the question.

10 THE COURT: Overruled. You can refer to
11 your report if you need to.

12 A. Yes, okay, here I write in my report after she
13 made identification --

14 Q. Not to read from your report, please.

15 A. Okay.

16 Q. If your memory is refreshed by what Ms. Bumpers
17 told you, if your report helps you with that, you can
18 answer my question, didn't she tell you she saw a man
19 running down the alleyway that she identified as Marquis
20 Davis?

21 A. That's correct.

22 Q. Running down the alleyway?

23 A. Not the alleyway, just running.

24 Q. Just running. That's completely different from
25 what Marquis Davis told you?

1 A. No, actually he did say he was running.

2 Q. Didn't Marquis Davis tell you that he was
3 standing there, didn't know what was going on and here
4 comes Donald Nealey with a guy in a headlock, hurting
5 him. And he's going, what's going on? And the poor guy
6 is begging for his life according to Marquis Davis.
7 He's just standing there. Isn't that what he told you?

8 MS. MERIWETHER: I'm going to object to
9 Counsel testifying. Compound question.

10 THE COURT: Sustained.

11 Q. (BY MR. ROBERT SCARDINO) Didn't Marquis Davis
12 tell you he was just standing there when Donald Nealey
13 brought the poor deceased up in a headlock?

14 A. Yes.

15 Q. So that's a lie. Somebody is lying, is it
16 Sharon (sic) Bumpers or Marquis Davis?

17 A. I don't know that either one of them are lying.
18 I think from their vantage point Shejuan Bumpers may
19 have seen the after statement of Marquis Davis. Marquis
20 Davis actually did say that he saw him coming up in a
21 headlock; and then after the shooting occurred, Marquis
22 ran, took off running. I believed and I still believe
23 that at that point is when Shejuan Bumpers looked out
24 the window and saw him running. So, both of them are
25 correct.

1 Q. You're taking it that she saw Marquis Davis
2 after the shooting?

3 A. That is correct.

4 Q. Did she tell you that?

5 A. No.

6 Q. That's just something you've assumed?

7 A. Right, based on the fact that she didn't
8 actually see the shots fired, so they would have to be
9 after, which means they are both correct.

10 Q. So you have two witnesses at the scene that
11 live in the Little Nell Apartments that see people
12 chasing this man down the alleyway, right?

13 A. No, I don't believe there's two witnesses that
14 see him chased.

15 Q. Did you ever have an opportunity to talk to
16 Officer Bedingfield about his interview with Marquis
17 Davis?

18 A. No, I did not.

19 Q. Do you know that Officer Bedingfield took a DNA
20 swab from Marquis Davis?

21 A. I believe that was something that my partner
22 may have been made privy to.

23 Q. So, there are things that happened in this case
24 that you don't know about?

25 A. Well, it's not that I don't know. We work

1 collectively as a team. Because when you do work a
2 case, there is a lot of information. And we rely on
3 each other, and that's where our trust comes in and our
4 abilities and our expertise comes in. That's not
5 uncommon in law enforcement investigations. Much like
6 probably you and your brother, a moment ago he was aware
7 of something that you weren't aware of.

8 (Laughter.)

9 Q. That's true. There's a whole lot that he's
10 aware of that I'm not aware of, you're right about that.

11 MR. ROBERT SCARDINO: May I approach, Your
12 Honor?

13 THE COURT: You may.

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

16 THE COURT: Yes, sir.

17 Q. (BY MR. ROBERT SCARDINO) Detective, earlier I
18 showed you what's marked as Defense Exhibit No. 1 and
19 asked you if you recognized the room and the persons in
20 it. You remember that?

21 A. Yes.

22 Q. And, again, I'll ask you again, do you
23 recognize who's in this photograph?

24 A. I can make out Marquis Davis' face, but I can't
25 make out this individual because his face is turned in a

1 different way.

2 Q. And the room is the room -- you recognize the
3 room?

4 A. It looks like our room downtown at 61 Riesner.

5 Q. Now, let me show you Defense Exhibit No. 2 and
6 ask if you recognize that?

7 A. Yes, uh-huh.

8 Q. And what is that? Forget about all the
9 writing. I'm not trying to offer any of that. That's
10 my writing.

11 A. This is our room at 1200 Travis. You see the
12 carpet is different. The carpet is different and we
13 have a board, they don't. We have different colored
14 tables, different sized. They're different rooms.

15 Q. They are different rooms. But it's the same
16 wall covering, and so if you don't recognize one room,
17 you can tell in Defense Exhibit No. 1 that's one of your
18 interview rooms, right?

19 A. It appears to be, but I can't say with
20 certainty.

21 Q. You don't recognize Officer Bedingfield in the
22 first photo?

23 A. Is that Officer Bedingfield?

24 Q. I'm asking you.

25 A. It may be, but I can't see his face.

1 Q. Did you talk to any police officers in
2 preparation for your testimony here today, discuss what
3 they knew about the case or refresh your memory with any
4 details?

5 A. Well, I've talked a lot about this case prior
6 to being sworn in.

7 Q. Did you review any videotapes or photographs
8 before you testified here today?

9 A. Oh, yes, sir. I mean, that's just part of
10 preparing for trial.

11 Q. Do you review all the video that you made with
12 Marquis Davis?

13 A. Not all the video.

14 Q. Okay. You just reviewed some of the video you
15 had with Marquis Davis?

16 A. Yes, sir.

17 Q. Did you bother to count the number of lies that
18 he told you when you interviewed him?

19 A. Again, I don't know that he's, he was telling
20 lies. I believe that he was scared, and I believe that
21 he didn't want to tell me really what happened for fear.

22 Q. You don't think he was telling you lies, that's
23 your testimony?

24 A. In the beginning, I believe that he was
25 fearful; and I believe that he told the truth towards

1 the end of our interview.

2 Q. The last thing he told you was that he didn't
3 know there was going to be a House of Pies robbery,
4 didn't he?

5 A. I'm not sure if that's the last thing he told
6 me.

7 Q. The last thing he told you --

8 MS. MERIWETHER: Objection, improper
9 impeachment.

10 THE COURT: Sustained.

11 Q. (BY MR. ROBERT SCARDINO) Didn't he tell you
12 that he was forced to go to the House of Pies and afraid
13 not to go?

14 MS. MERIWETHER: Objection, asked and
15 answered.

16 THE COURT: Sustained.

17 Q. (BY MR. ROBERT SCARDINO) It wasn't a lie when
18 he said those weren't his tennis shoes?

19 MS. MERIWETHER: Objection, asked and
20 answered.

21 THE COURT: Overruled.

22 Q. (BY MR. ROBERT SCARDINO) Was that a lie?

23 A. What tennis shoes are you referring to, sir?

24 Q. Say it again?

25 A. What tennis shoes are you referring to?

1 Q. What tennis shoes am I referring to? I'm
2 referring to these tennis shoes.

3 MR. ROBERT SCARDINO: May I approach, Your
4 Honor?

5 THE COURT: You may.

6 Q. (BY MR. ROBERT SCARDINO) This is State's
7 Exhibit 149-C. You recognize these shoes?

8 A. I can tell you without looking at them I don't
9 recognize them. I know during our interview he talked
10 about switching shoes or made some reference to shoes,
11 but I never saw the shoes.

12 Q. Didn't he lie to you and tell you that Donald
13 Nealey made him switch shoes? Did he tell you that?

14 A. I don't recall, sir.

15 Q. You don't remember that?

16 A. No.

17 Q. If he did, that's a lie, though, right, because
18 we know that Marquis Davis was wearing these shoes and
19 took them off to hide the fact that he had on bloody
20 shoes. You know that now, don't you?

21 A. No, sir, I do not know that now.

22 MR. ROBERT SCARDINO: Pass the witness.

23 THE COURT: Ladies and gentlemen, let's
24 take our afternoon break. Get up and stretch a little,
25 go get some coffee if you'd like; and we'll resume when

1 you get back.

2 THE BAILIFF: All rise for the jury.

3 (Jury exits courtroom.)

4 (A recess was taken.)

5 (Open court, Defendant present.)

6 THE COURT: Are we ready?

7 MS. MERIWETHER: Yes, Your Honor.

8 THE BAILIFF: All rise for the jury.

9 (Jury enters courtroom.)

10 THE COURT: Thank you. Be seated. Thank
11 you. Be seated. Thank you. Be seated.

12 MR. PHILIP SCARDINO: Yes, ma'am.

13 THE COURT: Ms. Meriwether, you may
14 proceed.

15 MS. MERIWETHER: I have no further
16 questions, Your Honor.

17 THE COURT: May this witness be excused?

18 MS. MERIWETHER: Yes, Your Honor.

19 MR. PHILIP SCARDINO: No objections, Your
20 Honor.

21 THE COURT: Thank you, ma'am. You may step
22 down, and you are excused.

23 Call your next witness.

24 MS. MERIWETHER: State would call Sergeant
25 Bedingfield.

1 THE COURT: And while we're waiting on the
2 next witness, ladies and gentlemen, some good news for
3 you, we will not be working as late tonight as we did
4 last night. We've made such good progress that we're
5 going to be stopping early today. So, I don't know
6 exactly when, it depends on the lawyers, but I would
7 suspect around 4:30 or 5:00, so have a little bit of
8 time off today.

9 JURORS: Thank you.

10 THE BAILIFF: Judge, this witness has not
11 been sworn in.

12 THE COURT: Sir, if you'll raise your right
13 hand to be sworn in, please.

14 (Witness sworn.)

15 THE COURT: Have a seat, please.

16 THE WITNESS: Thank you.

17 MS. MERIWETHER: May I proceed?

18 THE COURT: You may.

19 **JOHN BEDINGFIELD,**

20 having been first duly sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 BY MS. MERIWETHER:

23 Q. Would you please introduce yourself to our
24 jury?

25 A. John Bedingfield.

1 Q. And how are you employed?

2 A. I'm not. I'm retired.

3 Q. Where were you employed prior to leaving?

4 A. The Houston Police Department as a criminal
5 investigator with the Houston Police Department.

6 Q. And how long were you with HPD?

7 A. Approximately 30 years.

8 Q. And was one of the assignments you held in the
9 robbery division?

10 A. That is correct.

11 Q. And kind of the last assignment?

12 A. That's correct.

13 Q. All right. When did you retire?

14 A. June the 20th, 2015.

15 Q. Did you take part in a follow-up investigation
16 related to an aggravated robbery at House of Pies?

17 A. That is correct.

18 Q. And that occurred on March 6th of 2014, the
19 robbery itself?

20 A. That's correct, yes, ma'am.

21 Q. And how did you come -- how did you become
22 involved in the case?

23 A. My normal shift was 6:00 to 2:00 and this
24 happened on the 6th, so it would have been the next
25 morning. There were a couple of individuals in jail, so

1 I was the one tasked as handling them as prisoners.

2 Q. During the course of the investigation, did you
3 have an opportunity to review the surveillance video as
4 it related to this case?

5 A. That particular time, no, I did not.

6 Q. Okay. Did you at a later date and time review
7 surveillance video?

8 A. If I'm not mistaken, that video surveillance
9 was actually recovered by the officers on the scene; so
10 I never, I never got to look at that video.

11 Q. Were you able to learn how many suspects were
12 involved?

13 A. It was my understanding there were two that
14 were involved.

15 Q. And did you also learn that a vehicle was
16 recovered as the -- that the suspects had arrived in?

17 A. That is correct, ma'am.

18 Q. And did you learn that a possible suspect was
19 being held in custody related to this case?

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

21 Q. And what did you do?

22 A. At that time there was one suspect in jail,
23 it's my responsibility to go down there and talk to him.

24 Q. And that was a Marquis Davis?

25 A. That is correct.

1 Q. You went and interviewed Marquis Davis?

2 A. That is correct.

3 Q. And after interviewing him, did you take a DNA
4 sample from him?

5 A. That is correct.

6 Q. Explain to us what is involved in doing that?

7 A. It's a buccal swab. I asked him if he was
8 willing to give me a sample of his DNA. He said, yes.
9 And at that particular time, I swabbed the inside of his
10 mouth, upper and lower cheek area with two swabs, placed
11 it into a container and took it to the property room to
12 be tagged.

13 Q. And at the time that you were interviewing
14 Marquis Davis, were you aware of any surrounding
15 homicide investigation?

16 A. No, ma'am.

17 Q. The questions that you asked him, did they
18 strictly relate to the aggravated robbery and his
19 potential involvement?

20 A. They were more directed to the investigation
21 going on at the House of Pies, yes.

22 Q. And during the course of that investigation,
23 did he deny involvement?

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

25 Q. Now, after talking to Marquis Davis, did you

1 make some further attempts to contact witnesses from the
2 House of Pies?

3 A. That is correct.

4 Q. And how did you do that?

5 A. By phone, most of them were contacted by phone.

6 Q. Just calling them up and reinterviewing them
7 about what they saw?

8 A. That's correct.

9 Q. During the course of those interviews, was
10 there a witness in particular that might possibly have
11 been able to identify the suspects?

12 A. There was, there was one particular witness
13 that I think lived out of state or maybe out of the city
14 that said that he could possibly identify them.

15 Q. And was that an Anthony Green?

16 A. Green is his last name.

17 Q. Green's his last name?

18 A. I think Anthony is his first name, I'm not
19 sure.

20 Q. Did you learn that he lived in the Keller area,
21 Keller, Texas?

22 A. That's correct.

23 Q. And did you contact the law enforcement there?

24 A. I did.

25 Q. And what happened when you contacted them?

1 A. I contacted a, I think it was a Detective
2 McGrew; and I sent him copies of the photospread.

3 Q. And who was contained in the photospreads, what
4 suspects?

5 A. There were two photospreads of Mr. Davis,
6 Marquis Davis; and then there would have been two
7 photospreads of Mr. Nealey.

8 Q. And how did you get those to Sergeant McGrew?

9 A. In the mail.

10 Q. Just mailed them?

11 A. Yes, ma'am.

12 Q. Over the course of your investigation, did you
13 contact a number of those witnesses that were at the
14 House of Pies?

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

16 Q. And were a number of them able to describe
17 suspects and guns but unable to recognize or identify?

18 A. A majority of them were, they described, some
19 described an automatic, some of them described a
20 revolver, and most of them said that they were wearing
21 something concealing their face, so they would not be
22 able to identify them.

23 Q. Were they all consistent in that there were two
24 guns involved?

25 A. That's correct.

1 Q. On April 7th of 2014, did you receive the
2 photospreads back from Sergeant McGrew in Keller PD?

3 A. I believe. I don't know exactly what day it
4 was, but somewhere around there.

5 Q. Do you have a copy of your offense report in
6 front of you there?

7 A. I do.

8 Q. Could you use that to refresh your memory?

9 A. I did not see that in here.

10 Q. Okay. That may be my fault. You don't have
11 access to HPD's computer system anymore, do you?

12 A. No, ma'am.

13 Q. Do you want to have access to it?

14 A. Do I want to have access to it?

15 Q. Yes.

16 A. Not really.

17 MS. MERIWETHER: Your Honor, may I approach
18 the witness?

19 THE COURT: You may.

20 Q. (BY MS. MERIWETHER) I think this one is on me.
21 Here's another supplement that you prepared. See if
22 this will help refresh your memory.

23 A. Okay. Yes, I did get the photospread back from
24 Sergeant McGrew, John McGrew.

25 Q. And did you review the photospread to see if

1 any notations were made and identifications?

2 A. Yes, I did.

3 MS. MERIWETHER: Your Honor, may I approach
4 the witness again?

5 THE COURT: You may.

6 Q. (BY MS. MERIWETHER) Showing you State's
7 Exhibit 151 and 152, are these those photospreads that
8 you received back?

9 A. 42475 is one of them that's positive ID.

10 Q. Okay.

11 A. And then the other one is 42478, that's not one
12 of them, that was a negative ID.

13 Q. I think I've got it. This appears to be your
14 handwriting?

15 A. 42478, oh, I'm sorry, maybe it's on this other
16 page. It is. 42478 was a positive ID.

17 Q. Okay. Very good. So, are these the ones that
18 you received back from Sergeant McGrew?

19 A. That is correct.

20 Q. And I see some notation here at the bottom,
21 does that contain your signature?

22 A. That would be my printed name and also my
23 signature, yes.

24 Q. And then this additional information that's
25 placed here, who places that?

1 A. That's the information that I put there, which
2 would indicate that he had selected No. 1 in this
3 photospread and No. 4 in this photospread.

4 MS. MERIWETHER: Your Honor, at this time I
5 move to offer State's Exhibits 151 and 152, tender to
6 Counsel for any objection.

7 (State's Exhibit Nos. 151 and 152 offered.)

8 MR. PHILIP SCARDINO: May I take this
9 witness on voir dire briefly, Your Honor?

10 THE COURT: Yes, you may.

11 **VOIR DIRE EXAMINATION**

12 BY MR. PHILIP SCARDINO:

13 Q. Do I still refer to you as Sergeant
14 Bedingfield?

15 A. I guess, if you'd like to, that's fine.

16 Q. Nah, I'll call you whatever you want.

17 A. John is fine with me.

18 Q. Mr. Bedingfield.

19 A. That's fine, also.

20 Q. Mr. Bedingfield, State's Exhibit 152 --

21 MR. PHILIP SCARDINO: May I approach the
22 witness, Your Honor?

23 THE COURT: Yes.

24 Q. (BY MR. PHILIP SCARDINO) 152 and 151, it's
25 your testimony that this, these are the photospreads

1 that you sent up to Keller for a police officer up there
2 to show to a witness?

3 A. Correct.

4 Q. And they came back to you in this condition
5 that we see here?

6 A. Well, this would be a photocopy of it.

7 Q. Okay. So, is it the colored page, the second
8 page what actually they looked at?

9 A. The colored page is what they looked at.

10 Q. Oh, okay. I was a little confused about that.
11 So, then they just photocopied it in black and white and
12 sent it back to you?

13 A. That's correct.

14 MR. PHILIP SCARDINO: Okay. No objections,
15 Your Honor.

16 THE COURT: State's Exhibits 151 and 152
17 are admitted.

18 (State's Exhibit Nos. 151 and 152
19 admitted.)

20 MS. MERIWETHER: Thank you. I'll pass the
21 witness, Your Honor.

22 **CROSS-EXAMINATION**

23 BY MR. PHILIP SCARDINO:

24 Q. Couple of questions, Mr. Bedingfield.

25 A. Yes, sir.

1 Q. You interviewed Marquis Davis, correct?

2 A. That is correct.

3 Q. Prosecutor asked you that. He said he denied
4 his involvement in the House of Pies robbery?

5 A. That's correct.

6 Q. Now, in that interview you confronted him with
7 some pieces of evidence that you knew about that
8 robbery, correct?

9 A. I believe so. I don't recall exactly what it
10 was.

11 Q. Like if they had his fingerprints?

12 MS. MERIWETHER: Objection, improper
13 impeachment.

14 THE COURT: Overruled.

15 Q. (BY MR. PHILIP SCARDINO) Do you remember that
16 you confronted him with the fact that they had his
17 fingerprints; that they had his picture on a video; that
18 he'd been identified and that kind of stuff and that he
19 still denied his involvement in it?

20 A. I don't know that I said that we have that. I
21 would ask him if there was a possibility if that was
22 there.

23 Q. But, nonetheless, he denied having any
24 involvement?

25 A. That is correct.

1 Q. Okay. Did you make the scene of the House of
2 Pies robbery the night of the robbery?

3 A. No, sir, I did not.

4 Q. Did you ever come to find out how many people
5 were in that restaurant the night of the robbery?

6 A. Exact numbers I couldn't tell you. I want to
7 say anywhere from 15 to 20 maybe.

8 Q. It could have been more?

9 A. It could have been more.

10 Q. And to the best of your knowledge, there was
11 only one person who said they could identify both of the
12 suspects in that robbery?

13 A. To the best of my knowledge, there was only
14 one.

15 Q. Only one. Okay. And do you know -- have you
16 seen the videos of the robbery?

17 A. I have not.

18 Q. Okay.

19 MR. PHILIP SCARDINO: I'll pass the
20 witness, Your Honor.

21 MS. MERIWETHER: No further questions.

22 THE COURT: May he be excused?

23 MS. MERIWETHER: Yes, Your Honor.

24 MR. PHILIP SCARDINO: No objections, Your
25 Honor.

1 THE COURT: Thank you, sir. You may step
2 down, and you are excused.

3 THE WITNESS: Thank you.

4 THE COURT: Call your next witness.

5 MS. MERIWETHER: John McGrew.

6 THE BAILIFF: Your Honor, this witness has
7 not been sworn in.

8 THE COURT: Sir, if you will stand there
9 and raise your right hand to be sworn.

10 (Witness sworn.)

11 THE COURT: You may proceed.

12 MS. MERIWETHER: Thank you, Your Honor.

13 **JOHN MCGREW,**

14 having been first duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 BY MS. MERIWETHER:

17 Q. Could you please introduce yourself to our
18 jury?

19 A. I'm John McGrew, M-C-G-R-E-W.

20 Q. And how are you currently employed?

21 A. I'm currently a safety representative with
22 Swole Energy out of Dallas.

23 Q. And are you working out of Dallas or elsewhere?

24 A. I'm working out of town.

25 Q. Where?

1 A. Currently I'm in West Virginia.

2 Q. West Virginia. Prior to switching to the
3 energy world, where did you work?

4 A. I worked for the Keller Police Department.

5 Q. And how long had you been with the Keller
6 Police Department?

7 A. I was there 25 years.

8 Q. When did you leave Keller?

9 A. End of March.

10 Q. End of March of 2014?

11 A. 2015.

12 Q. 2015?

13 A. Yes, ma'am.

14 Q. When you left Keller PD, what position were you
15 holding?

16 A. At the end of my career, I was actually a
17 patrol sergeant.

18 Q. And were you contacted by a Houston Police
19 Department officer to show some photospreads?

20 A. Yes, ma'am.

21 Q. Do you recall about when you were contacted?

22 A. Sometime in March.

23 Q. And did you receive in the mail some
24 photospreads to show to a witness?

25 A. Yes, ma'am.

1 Q. And how did you make contact with the witness?

2 A. I just contacted them and sat up an appointment
3 at my office.

4 Q. And was one of those witnesses a Anthony Green?

5 A. Yes, ma'am.

6 Q. And did he come into your office to view the
7 photospreads?

8 A. Yes, ma'am.

9 Q. Was that done on March 23rd of 2014?

10 A. I believe so, yes, ma'am.

11 Q. And when you had these photospreads in your
12 possession, did you have any knowledge of who the
13 suspects were?

14 A. No, ma'am.

15 Q. Of the six people that are displayed in the
16 photos, you didn't know any of them at all?

17 A. No, ma'am.

18 Q. Sergeant Bedingfield had not shared any of that
19 information with you, correct?

20 MR. PHILIP SCARDINO: Objection, Your
21 Honor, asked and answered.

22 THE COURT: Overruled.

23 Q. (BY MS. MERIWETHER) He had not supplied you or
24 given you any of that information?

25 A. No, ma'am.

1 Q. Now, give us an idea of when Anthony Green came
2 in to look at the photospread, where does this take
3 place?

4 A. We have two interview rooms at the Keller
5 Police Department. It was in one of those rooms.

6 Q. And showing you, is this a copy of the Witness
7 Admonishment Form that you did with Mr. Green?

8 A. Yes, ma'am.

9 Q. And this part down here, does that contain your
10 signature?

11 A. I can't see it from there.

12 THE COURT: There should be a screen right
13 here to your right that you can look at it closer.

14 A. Oh, I'm sorry. No, ma'am, that doesn't appear
15 to be my signature.

16 Q. Okay. Is this another officer within Keller PD
17 that witnessed this for you as well? Do you remember
18 doing that part of the process?

19 A. No, ma'am. I don't believe that's my
20 admonishment sheet that I provided.

21 Q. Okay. Is this admonishment sheet that was sent
22 by the Houston Police Department?

23 A. I did not complete that form.

24 Q. Okay. But you would agree with me that this is
25 from the Houston Police Department?

1 A. Yes, ma'am.

2 Q. And did it contain some photographs that you
3 allowed Mr. Green to review?

4 A. Yes, ma'am.

5 Q. And showing you State's Exhibit 152, did it
6 also contain a second set of photographs for the witness
7 to review?

8 A. Yes, ma'am.

9 Q. When allowing Mr. Green to look at this
10 photospread, did you have him look at each one
11 separately?

12 A. Yes, ma'am.

13 Q. Did you allow him as much time as he needed to
14 make the identification?

15 A. Yes, ma'am.

16 Q. And in any way did you suggest to him who he
17 should select?

18 A. No, ma'am.

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

21 **CROSS-EXAMINATION**

22 BY MR. PHILIP SCARDINO:

23 Q. It's Mr. McGrew --

24 A. Yes.

25 Q. -- at this point, right?

1 A. Yes, sir.

2 Q. You know Anthony Green, don't you?

3 A. No, sir.

4 Q. Never met him?

5 A. Not prior to this case, no, sir.

6 Q. How long were you in Keller?

7 A. 25 years.

8 Q. 25 years?

9 A. Yes, sir.

10 Q. Did you know he practices law up there?

11 A. I'm familiar with him. He told me that he
12 practices law, yes, sir.

13 Q. But you'd never encountered him in the
14 courtroom or in and around any law enforcement
15 circumstance or any cases or anything like that?

16 A. No, sir.

17 Q. Never testified in a case that he was involved
18 in?

19 A. No, sir.

20 Q. Met him for the first time when he looked at
21 these photosreads?

22 A. Yes, sir.

23 MR. PHILIP SCARDINO: Pass the witness,
24 Your Honor.

25 MS. MERIWETHER: I forgot to ask a couple

1 of questions, Your Honor.

2 **REDIRECT EXAMINATION**

3 BY MS. MERIWETHER:

4 Q. There was another individual that came in with
5 him; is that correct?

6 A. Yes, ma'am.

7 Q. What was her name?

8 A. Elizabeth Denlum.

9 Q. And was she shown photospreads as well?

10 A. Yes, ma'am.

11 Q. Did you show them together or separately?

12 A. The photospreads separately.

13 Q. And each of them were not in the same room when
14 they were looking at the photographs; is that correct?

15 A. Correct.

16 Q. And was Elizabeth able to make an
17 identification in either of the photospreads?

18 A. I don't recall. I'd have to look at the
19 spreads.

20 MS. MERIWETHER: I'll pass the witness,
21 Your Honor.

22 MR. PHILIP SCARDINO: No further questions,
23 Your Honor.

24 THE COURT: May this witness be excused?

25 MS. MERIWETHER: Yes, Your Honor.

1 MR. PHILIP SCARDINO: No objections, Your
2 Honor.

3 THE COURT: Thank you, sir. You may step
4 down, and you are excused.

5 Call your next witness.

6 MS. MERIWETHER: Anthony Green.

7 THE BAILIFF: Your Honor, this witness has
8 not been sworn in.

9 THE COURT: All right. If you'll raise
10 your right hand to be sworn, please.

11 (Witness sworn.)

12 THE COURT: Have a seat, please.

13 You may proceed.

14 MS. MERIWETHER: Thank you, Your Honor.

15 ANTHONY GREEN,
16 having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MERIWETHER:

19 Q. Could you please introduce yourself to our
20 jury?

21 A. My name is Anthony Green.

22 Q. And how are you employed, Mr. Green?

23 A. I'm a defense attorney.

24 Q. Criminal defense attorney?

25 A. Criminal defense.

1 Q. You also practice both juvenile, civil and
2 family?

3 A. Yes, I do.

4 Q. Where at?

5 A. Usually in Dallas County and Tarrant County and
6 Harris County sometimes.

7 Q. Where do you reside?

8 A. Tarrant County.

9 Q. Which is close to Dallas, right?

10 A. Yes, Fort Worth.

11 Q. Fort Worth area. And how long have you lived
12 there?

13 A. Since 1999.

14 Q. What did you do after high school?

15 A. I worked for the military, and then I
16 officially joined the military in 1984.

17 Q. About how old were you when you joined into the
18 military?

19 A. 20.

20 Q. 20 years old into the military?

21 A. Uh-huh.

22 Q. Thank you for your service.

23 A. Thank you, ma'am.

24 Q. From -- what roles, what did you do within the
25 military?

1 A. I was an armored cavalry scout or Indian scout,
2 both. I was a CID agent, which is basically we work for
3 a commanding general or an admiral on internal
4 government matters or military matters.

5 Q. What is a cavalry expert?

6 A. You scout out enemy positions or track enemies
7 either behind the lines or at the forward lines or on
8 the flank of a large military unit.

9 Q. Did you ever serve overseas?

10 A. Yes, I did.

11 Q. And where?

12 A. I served at Panzer in Germany. I've been to
13 Korea, and I served in the Gulf War.

14 Q. Your time in Germany, about when were you
15 there?

16 A. I was there when the Berlin Wall fell.

17 Q. And from there you said also in Korea as well?

18 A. I've been to Korea, yes, ma'am.

19 Q. And you were in Iraq?

20 A. I was in Iraq on the first Gulf War.

21 Q. What was your role in Iraq?

22 A. I was a platoon sergeant in our Army Cavalry
23 platoon. Those are three tanks and two Bradley scout
24 vehicles.

25 Q. And did you command that group?

1 A. Yes, I did.

2 Q. And were you there prior to the Iraq war
3 beginning?

4 A. Yes, President Bush sent us in there as soon as
5 Kuwait was invaded. We were actually in Iraq several
6 months before actual hostilities began.

7 Q. Approximately how long did you serve in the
8 military?

9 A. About nine years.

10 Q. Did you attain any accommodations or medals
11 during the time of service?

12 A. Yes, I have quite a few decorations.

13 Q. And give us an idea of what some of those were?

14 A. I have Army accommodations, medals, good
15 conduct medals, Army achievement medals, overseas
16 ribbons.

17 Q. After leaving the military, what did you do
18 next?

19 A. I joined the El Paso Fire Department.

20 Q. What led you down that road?

21 A. I was in El Paso and the border patrol had a
22 hiring freeze or I would have become a border patrol
23 agent. So, I did that. I was a paramedic and hazard
24 materials technician.

25 Q. How long did you serve with El Paso Fire

1 Department?

2 A. Nine years.

3 Q. And after that where did you go?

4 A. To the South Lake Department of Public Safety,
5 which is a police/fire unit both together.

6 Q. And is that in the Dallas area?

7 A. Yes, it is.

8 Q. Okay. So you're at South Lake with the police
9 department, where do you go after that?

10 A. I went to work for Boots and Coots Special
11 Services, which is an oil well fire fighting unit and
12 hazard material response unit out of La Porte here in
13 Houston.

14 Q. And how long did you stay with that position?

15 A. I worked for them for a couple of years on and
16 off, and then I went to work for Blood Systems
17 Laboratories in Bedford making biologicals and blood
18 plasma units.

19 Q. And what happened after that?

20 A. Well, during that time I went to law school at
21 the same time I was working at the laboratory.

22 Q. So, you working in the blood, medical field,
23 did you ever have thoughts of going to medical school?

24 A. Yes.

25 Q. And what happened?

1 A. University of North Texas accepted me and then
2 I didn't hear from them for a year, and I was already
3 halfway through law school, so I'm like, I'm not going
4 to go through this again.

5 Q. Fair enough. You attended law school at
6 Wesleyan School of Law?

7 A. Texas Wesleyan University, yes, ma'am.

8 Q. And when did you enter private practice?

9 A. In 2004.

10 Q. And, again, primarily as a criminal defense
11 attorney?

12 A. Yes, ma'am, federal and state criminal defense.

13 Q. I want to talk to you about March 6th of 2014,
14 do you recall that day?

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

16 Q. Were you here in Houston?

17 A. Yes, I was.

18 Q. And what led you to be here?

19 A. We were attending a sexual assault of children
20 conference for defense lawyers in Houston.

21 Q. And you say "we," who else was here with you at
22 that time?

23 A. My girlfriend was here at the time.

24 Q. And is that Elizabeth?

25 A. Elizabeth Denlum, yes, ma'am.

1 Q. So, the two of you were here for a conference
2 and getting an urge for some pie?

3 A. I have a lot of friends in Houston because I
4 used to live here. So, we have a lot of friends. So,
5 we decided to meet here, meet at the House of Pies down
6 on Westheimer.

7 Q. So, what happens when you get to the House of
8 Pies?

9 A. I walked in, when I went to the double doors, I
10 smelled gunpowder, which was strange, kind of gave me an
11 alert to my senses, opened the door and was accosted by
12 a young man in a blue mask holding a pistol, a .38 Smith
13 and Wesson or .357.

14 Q. Let me take a couple of parts here. Let me
15 slow you down and ask you a few more questions. The
16 smell of gunpowder --

17 A. Uh-huh.

18 Q. Something you've smelled on prior occasions?

19 A. Yes, 4th of July, real guns, yes, ma'am.

20 Q. From your service?

21 A. Yes, ma'am.

22 Q. Okay. So you walk in the door, and you said
23 that you first see a man that's got a .38 revolver?

24 A. Yes, ma'am.

25 Q. How do you know that that's what it is?

1 A. No. 1, I own a .38 Smith and Wesson revolver.
2 I have a lot of experience with them, and I've seen .38s
3 and 357s Smith and Wesson revolvers. I knew it was a
4 real gun because the bluing was worn off around the end
5 of the barrel and inside of the barrel where the bullet
6 comes out showing it's been used.

7 Q. What does that person say to you as they
8 approach you?

9 A. He wanted me to give me his money.

10 Q. And what happens next?

11 A. Well, I kind of took a look at the situation.
12 I saw another guy, young man in a blue mask, cloth mask
13 over his face, too, holding what appeared to be a black
14 automatic pistol. I couldn't see the end of it to see
15 if it was a real gun or not. There was, like, a
16 cigarette machine or a candy machine and a video machine
17 off to my right. I see a bullet hole in the roof. I
18 see security cameras. I see people down on the ground.
19 I hear a lady crying.

20 Q. Were you able to figure out what was going on?

21 A. Yes, very quickly figured out that these people
22 were holding the place up at gunpoint.

23 Q. And what were your thoughts at that point?

24 A. Well, No. 1, to get in a safe situation. Get
25 him close enough to myself, if not, you know, to get all

1 the information I can to relay to the police when they
2 do get there.

3 Q. Did you give them money out of your wallet?

4 A. Yes, I did. I opened up my wallet and got him
5 to look down, the guy with the .38, and I got a pretty
6 good look at his face that way. As he looked down, I
7 could see basically under his mask, his face.

8 Q. Mr. Green, I want to have you look at part of
9 the video from Camera No. 1 and if you could help give
10 the ladies and gentlemen of the jury an idea which
11 person you are in the video?

12 (Publishing surveillance video.)

13 Q. (BY MS. MERIWETHER) Now, let me ask you a
14 couple of questions. This is clearly at the beginning
15 of the video. Do you come in as the robbery is in
16 progress?

17 A. From what I gathered from the scene, because I
18 haven't seen that video until, like, noon today; and I
19 never seen this part you're showing me, but I came in
20 after they already had everybody on the ground, et
21 cetera, and they had already fired off a gun, that's why
22 I think I smelled gunpowder because the gun had to be
23 fired or a fire cracker set off, one of the two.

24 Q. So, I'm going to fast forward a bit ahead.

25 (Publishing surveillance video.)

1 A. That's me coming to the door right now with the
2 gray sweatshirt, and that's the guy with the .38 right
3 there with the backpack on.

4 Q. So, this individual with the gray sweatshirt on
5 is you?

6 A. Uh-huh.

7 Q. And who else comes in with you?

8 A. That's my girlfriend at the time, Elizabeth
9 Denlum.

10 Q. And this individual that's approached you, what
11 kind of gun does this person have?

12 A. He's got a revolver, a .38.

13 Q. And I'm going to play a little bit more.

14 (Publishing surveillance video.)

15 A. He's looking down into my wallet.

16 Q. (BY MS. MERIWETHER) This second individual
17 that's got his arm extended in the black hoodie, what
18 type of gun does that individual have?

19 A. It's an automatic, either a 9-millimeter or a
20 10-millimeter, but I couldn't ascertain if it was a real
21 gun or not.

22 Q. But it was a semiautomatic in comparison to the
23 revolver?

24 A. Uh-huh.

25 Q. Were you able to get a look at this

1 individual's face?

2 A. Yes, I was. In just a minute, he takes his
3 mask off.

4 Q. I'm going to continue to play it.

5 (Publishing surveillance video.)

6 A. This other guy comes in is also a defense
7 lawyer here in Harris County.

8 Q. (BY MS. MERIWETHER) Okay. Mr. Green, we can
9 hear some loud noises coming from that black hooded man
10 that's near the door. Do you recall what he said?

11 A. Well, earlier he was making me give me his
12 phone and Lizbeth's phone, which is good because it's an
13 iPhone and she made sure she turned it on. And I don't
14 know if you can see it, but I was trying to distract him
15 because this lady was trying to use her cell phone to
16 dial 9-1-1 in that green shirt. And then he said, when
17 he got up to the door, the guy with the black shoes on,
18 the guy with the automatic, he said the laws are here or
19 the laws are coming.

20 Q. And at that point do they then leave?

21 A. Yeah, there was a patrol car parked out there
22 on Richmond with his lights on, his flashy lights on;
23 and then they took off out the back door.

24 Q. I want to show you one more camera angle, and
25 this is camera number -- no, I'm sorry, wrong choice,

1 Camera No. 6.

2 (Publishing surveillance video.)

3 A. See there, he's trying to put his mask back on.
4 We've already taken a good look at him, the one with the
5 automatic. There's a little doorway right there by
6 where that lady is crouched hiding under the counter.

7 Q. (BY MS. MERIWETHER) And back that way takes
8 you towards the kitchen, did it appear?

9 A. Yes, ma'am.

10 Q. At some point were you contacted by an officer
11 with the Keller Police Department to come look at some
12 photospreads?

13 A. First, I was contacted by a detective from the
14 Houston Police Department.

15 Q. Okay.

16 A. And he wanted to know the best place -- the
17 quickest way to get me to look at the photospreads. So,
18 I suggested he contact the Keller Police Department
19 because I live, like, a mile or two from the Keller
20 Police Department; and they have a really good
21 reputation in law enforcement.

22 Q. Very good. Before I talk to you about the
23 photospreads, let me ask you this, do you recognize
24 anybody in the courtroom today as the same individual
25 that you saw back on March 6th of 2014 at that House of

1 Pies?

2 A. Yes, ma'am.

3 Q. Could you point to him and identify an article
4 of clothing?

5 A. The young man in the white shirt with the black
6 tie sitting next to the lawyers.

7 Q. And that person that you've just identified,
8 you saw him back at the House of Pies?

9 A. Yes, ma'am.

10 MS. MERIWETHER: Your Honor, may the record
11 reflect this witness has identified the Defendant?

12 THE COURT: The record will so reflect.

13 Q. (BY MS. MERIWETHER) Which individual was he in
14 the video?

15 A. He was the first person that accosted me that
16 had the revolver.

17 Q. Let me show you some photographs. Showing you
18 State's Exhibit 64, is that the individual that you've
19 identified in the courtroom? I'm sorry. I should
20 probably put them -- you would agree with me that
21 State's Exhibit 63 shows one suspect and State's
22 Exhibit 64 shows another.

23 A. Yes, ma'am.

24 Q. And showing you again State's Exhibit 57, also
25 shows you two suspects?

1 A. Yes, ma'am.

2 Q. And are you able to make an identification from
3 that?

4 A. Yes, ma'am, the one here on the left where I
5 made a little mark --

6 MR. ROBERT SCARDINO: I'm sorry. I missed
7 that, can you have it back up?

8 THE COURT: I'm sorry?

9 MR. ROBERT SCARDINO: She took it off so
10 quick, I wasn't able to make a note of it.

11 MS. MERIWETHER: I'm sorry. I missed.
12 What is --

13 THE COURT: He wanted to see the pictures
14 again.

15 MS. MERIWETHER: Oh, sure, certainly.
16 Is that sufficient for you, Counselor?

17 MR. ROBERT SCARDINO: Thank you.

18 Q. (BY MS. MERIWETHER) You also looked at
19 photospreads, is that correct, back on March 23rd of
20 2014?

21 A. Yes, ma'am.

22 Q. And showing you State's Exhibit No. 1, does
23 this contain, I'm sorry, State's Exhibit No. 152, I
24 apologize, showing you State's Exhibit 152; is that the
25 color photos that you were shown?

1 A. They appear to be, ma'am, that was about a year
2 ago, so --

3 Q. And then showing you State's Exhibit No. 1, is
4 this your initials and identification of an individual?

5 A. Yes, it is, ma'am. That's the one I made the
6 full circle around.

7 Q. And, again, this is the admonishment that you
8 were shown?

9 A. Yes, ma'am.

10 Q. And showing you State's Exhibit 151, again,
11 color photos of six individuals?

12 A. Yes, ma'am.

13 Q. And, again, your notation and mark identifying
14 the Defendant that we have here in the courtroom today?

15 A. Yes, ma'am, because that's all the face I could
16 positively identify, that's why I did a half circle
17 around the part I could actually see.

18 Q. Correct. You were identifying on State's
19 Exhibit No. 4 the eyes and the upper part of his face?

20 A. On the upper part of his nose, yes, ma'am.

21 Q. And, I'm sorry, there appears to be a date of
22 March 23rd, 2014, is that when you reviewed these
23 photospreads?

24 A. That's when the detective at the Keller Police
25 Department met with me and had me look at those

1 pictures, yes, ma'am.

2 MS. MERIWETHER: I'll pass the witness,
3 Your Honor.

4 MR. PHILIP SCARDINO: May I have just a
5 moment, Your Honor?

6 THE COURT: You may.

7 **CROSS-EXAMINATION**

8 BY MR. PHILIP SCARDINO:

9 Q. Mr. Green, you and I have met before, have we
10 not?

11 A. Yes, we have. We had coffee.

12 Q. My brother and I both met you a few months ago?

13 A. Yes, sir.

14 Q. The guy with the backpack in the -- when you
15 were in the House of Pies that night --

16 A. Uh-huh.

17 Q. -- did he appear like he was being forced to do
18 what he was doing?

19 A. No, sir. They both appeared very intoxicated
20 and very willing to take property because one took my
21 money and one took my phone, and I saw them take them
22 from other people while we were there.

23 Q. Looked like they were acting freely and
24 voluntarily?

25 A. Yes, sir.

1 MR. PHILIP SCARDINO: May I have just a
2 moment, Your Honor?

3 THE COURT: Yes, you may.

4 Q. (BY MR. PHILIP SCARDINO) All right. Now, Mr.
5 Green, Mr. Green, on your direct examination, my notes
6 indicate to me and Prosecutor went over it a couple of
7 times with you, and you looked at the video with it, and
8 you identified my client here in the courtroom as the
9 man with the revolver, correct?

10 A. I need to see the pictures, again; but, yes,
11 I'm pretty sure that's him.

12 Q. And you remember testifying on direct that that
13 guy, that my client was the man with the revolver in the
14 robbery?

15 A. Yes.

16 Q. Okay.

17 MR. PHILIP SCARDINO: May I have just a
18 moment, again, I'm sorry, Your Honor?

19 THE COURT: Yes, you may.

20 MR. PHILIP SCARDINO: I'll pass the
21 witness, Your Honor.

22 MS. MERIWETHER: Just briefly, Your Honor.

23 **REDIRECT EXAMINATION**

24 BY MS. MERIWETHER:

25 Q. Showing you Camera 1 again, this is you walking

1 in, correct?

2 A. Yes, ma'am.

3 Q. And the first person you encountered did you
4 testify had the revolver?

5 A. Yes, he did.

6 Q. And in the photos that you identified, that
7 would be showing you State's Exhibit 152, that's the
8 person that you gave a full circle to the face, correct?

9 A. No, the one with the automatic I gave the full
10 circle because he actually took his mask off.

11 Q. Okay. Let me play it all the way through. I
12 think I might have confused you?

13 A. Okay.

14 MR. PHILIP SCARDINO: Excuse me, Your
15 Honor. We'll object it's repetitious.

16 THE COURT: Overruled.

17 A. So the guy that's taking my money right now
18 took his mask off.

19 Q. (BY MS. MERIWETHER) So, the guy that's taking
20 your money right now took his mask off. Okay. The guy
21 that's taking your money right now is the one you got a
22 full view of their face?

23 A. Uh-huh, yes, ma'am.

24 MS. MERIWETHER: May I approach the
25 witness?

1 THE COURT: You may.

2 MS. MERIWETHER: Thank you, Your Honor.

3 Q. (BY MS. MERIWETHER) Showing you this State's
4 Exhibit 152. This is the full circle; is that correct?

5 A. Yes, ma'am.

6 Q. And that's the person that you saw all the face
7 of holding a revolver?

8 A. Yes, ma'am. I know I saw his full face.

9 Q. And showing you State's Exhibit 152, which is
10 that gentleman sitting over there, that's the upper
11 level of the face of the individual you saw with the
12 semiautomatic, correct?

13 A. That's the one I only saw part of his face
14 because he never took his mask off.

15 MS. MERIWETHER: Okay. Thank you, sir.
16 I'll pass the witness, Your Honor.

17 MR. PHILIP SCARDINO: May I have just a
18 minute, Your Honor?

19 THE COURT: Sure.

20 MR. PHILIP SCARDINO: I'll pass the
21 witness, Your Honor.

22 THE COURT: May this witness be excused?

23 MS. MERIWETHER: Yes, Your Honor.

24 THE COURT: Thank you, sir. You may step
25 down.

1 THE WITNESS: Thank you, Judge. May I be
2 excused?

3 THE COURT: Yes, thank you.

4 And I believe that concludes the witnesses
5 for today. Is the Court correct about that?

6 MS. MERIWETHER: Yes, Your Honor.

7 THE COURT: All right. Well, good news,
8 ladies and gentlemen, because as I said we've made such
9 good progress. We're stopping early for today. We will
10 resume again tomorrow at 9:30. We'll basically keep the
11 same schedule. We'll provide your lunch. We'll take
12 mid morning and mid afternoon breaks, and I hope you
13 enjoy the rest of your day.

14 THE BAILIFF: All rise for the jury.

15 (Jury exits courtroom.)

16 THE COURT: Thank you. Be seated.

17 (Adjourned until 11/12/15.)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF HARRIS)

I, Mattie Kimble, Deputy Court Reporter in and for the 228th District Court of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is (See Exhibit Index) and was paid by Harris County.

WITNESS MY OFFICIAL HAND this the 21st day of January, 2016.

/s/Mattie Kimble
Mattie Kimble, Texas CSR 7070
Expiration Date: 12/31/2016
Deputy Court Reporter
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