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RICHARD KESSLER,

having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOSS:

Q. Would you please state your name for the record?

A. Richard Kessler.

Q. And, Sergeant Kessler, how are you employed?

A. With the Houston Police Department.

Q. And what division do you work for presently?

A. Presently I'm at Bush Intercontinental Airport, Airport Division.

Q. And the date of January 22nd, 2008?

A. Repeat, sir.

Q. The date of January 22nd, 2008?

A. Yes, sir.

Q. What position did you hold during that time?

A. I worked Central Patrol, day shift.

Q. What were some of your duties in that position?

A. Calls for service and other activities in the neighborhood.

Q. What are calls for service?

A. Dispatched calls.

Q. And what area of town were you -- was your

1 beat?

2 A. Generally the Montrose area.

3 MR. MOSS: May I approach the witness?

4 THE COURT: Sure.

5 Q. (BY MR. MOSS) Now, on January 22nd, 2008, did
6 you respond to a murder call?

7 A. Yes, sir.

8 Q. And what address was that?

9 A. They dispatched it to 1322 West Pierce.

10 Q. Okay. Let me show you what has been
11 previously marked as State's Exhibit No. 1. Do you
12 recognize that?

13 A. Yes, sir.

14 Q. And what is it?

15 A. It's the address where the murder occurred.

16 Q. It's a map?

17 A. Right. It's a map of where the -- of Houston.

18 Q. And the marker is placed at the murder address
19 or the location of the murder?

20 A. Yes, sir.

21 MR. MOSS: Tender to Defense counsel
22 State's Exhibit No. 1 for any objection and ask that it
23 be put into evidence.

24 (State's Exhibit No. 1 offered)

25 MR. ALFORD: Your Honor, we don't object

1 as to State's Exhibit No. 1.

2 THE COURT: Okay. Thank you very much.

3 One is admitted.

4 (State's Exhibit No. 1 admitted)

5 MR. MOSS: May I publish to the jury?

6 THE COURT: Yes, sir.

7 Q. (BY MR. MOSS) So, how long had you been
8 working that beat?

9 A. At the time I had 24 years on. Excuse me.
10 But probably a total of about 20 years.

11 Q. So, you've been there for quite a while?

12 A. Yes, sir.

13 Q. Did you know a lot of the people around there?

14 A. I know a lot of residents in the Montrose
15 area, yes, sir.

16 Q. And I'm sorry. I don't remember if I asked
17 you this. How long have you been with the Houston
18 Police Department now?

19 A. Now, I just made 26 years in February.

20 Q. So, what time did you receive the call to go
21 to Pierce Street?

22 A. I received the call at 1252 hours.

23 Q. Is that a.m. or p.m.?

24 A. That would be p.m.

25 Q. So, around noon?

1 A. Yes, sir.

2 Q. Where were you when you got that call? Do you
3 remember?

4 A. I don't remember the exact address, but I was
5 relatively close to the area because I arrived quickly
6 to the scene.

7 Q. So, you make the scene. Had you ever been to
8 that part of town before?

9 A. Yes, sir.

10 Q. So, you knew the area?

11 A. Yes, sir.

12 Q. Now, when you get there, what do you see?

13 A. I arrived at 1255 hours. And I observed
14 Houston Fire Department running up the driveway to
15 attend to a male that was laying on his back in the
16 driveway.

17 Q. What are some of your duties as a first
18 responder to a homicide scene?

19 A. Immediately I was following the fire
20 department up to the scene to check on his condition and
21 to maybe -- to find out, to begin the investigation to
22 see what had happened.

23 Q. So, what happens when you go up the driveway?

24 A. I was walking up the driveway. And the scene
25 was very chaotic. A lot of people coming outside. And

1 then I was stopped. And the suspect began approaching,
2 coming up the driveway.

3 Q. Okay. And do you know what the suspect's name
4 was?

5 A. Yes, sir.

6 Q. What's his name?

7 A. David Brown.

8 Q. And how were you able to identify him?

9 A. He told us his name after he was arrested by
10 myself and other officers. He identified himself.

11 Q. Do you see Mr. Brown in the courtroom today?

12 A. I do.

13 Q. Could you please point to him and describe an
14 article of clothing he's wearing?

15 A. He's the gentleman sitting to my right with
16 glasses and a gray suit, white shirt and a yellow tie.

17 MR. MOSS: May the record please reflect
18 that the witness has identified the Defendant?

19 THE COURT: It will.

20 Q. (BY MR. MOSS) And just for the record, was
21 this address in Pierce Street, is that in Harris County,
22 Texas?

23 A. Yes, it is.

24 Q. Okay. So, he comes up. And what does he say
25 to you?

1 A. He told me that he had a concealed handgun
2 license and that he had shot the man laying in the
3 driveway and that he had taken the gun back to his house
4 and placed it on the table inside his residence.

5 Q. So, when you learned that, what do you do?

6 A. Myself and two other officers that was
7 arriving on the scene, we placed him in the patrol car.

8 MR. MOSS: May I approach?

9 THE COURT: Sure.

10 Q. (BY MR. MOSS) I'm going to show you State's
11 Exhibits No. 2, 3, 4 and 5. Would you look at those and
12 tell me if you recognize them?

13 A. I do.

14 Q. What are they?

15 A. This is the crime scene.

16 Q. So, they're pictures of the crime scene?

17 A. Yes, sir.

18 Q. And are they true and accurate representations
19 of what they purport to depict?

20 A. Yes, sir.

21 MR. MOSS: Okay. For the record I'm
22 tendering to Defense counsel State's Exhibits 2 through
23 5, asking for any objections, that they be entered into
24 evidence.

25 (State's Exhibit Nos. 2 through 5 offered)

1 MR. ALFORD: We have no objection to
2 State's Exhibits 2, 3, 4 or 5, your Honor.

3 THE COURT: All right. Thank you very
4 much.

5 And for the court reporter, 2, 3, 4 and 5
6 are admitted.

7 (State's Exhibit Nos. 2 through 5 admitted)

8 MR. MOSS: May I publish to the jury, your
9 Honor?

10 THE COURT: Yes.

11 Q. (BY MR. MOSS) So, take a look at 2 for me.

12 A. Yes, sir.

13 Q. And would you kind of describe what State's
14 Exhibit 2 depicts?

15 A. That's the residence where the -- where the
16 driveway -- the driveway that belongs to that residence
17 where the Complainant was laying.

18 Q. Now, you said that Houston Police -- I'm
19 sorry. Houston Fire Department arrived as you did?

20 A. They were arriving, yes, sir, just ahead of
21 me. They were going up the driveway as I was pulling up
22 to the scene.

23 Q. And do you know what they were doing?

24 A. They were approaching a male laying in the
25 driveway.

1 Q. Okay. Do you know what their purpose of being
2 there was?

3 A. Yes.

4 Q. What was that?

5 A. Dispatched to a shooting, man down.

6 Q. Now, in State's Exhibits No. 2 through 5, we
7 don't actually see a body. Now, why is that?

8 A. They had already loaded the Complainant to
9 transport him to the hospital.

10 Q. Okay. So, let me show you State's Exhibit
11 No. 3.

12 A. Yes, sir.

13 Q. And kind of say, what's that a shot of?

14 A. At that point myself and another officer
15 preserved the scene. And we were waiting for Homicide
16 to come back -- to make the scene to begin the
17 collection of evidence.

18 Q. So, this is still the four-plex?

19 A. Yes, sir.

20 Q. And the driveway we see, is that the driveway
21 where you found the body?

22 A. Yes, sir.

23 Q. Okay. Show you State's Exhibit No. 4 and 5.
24 And what are these showing?

25 A. That's a photo of myself speaking to a

1 homicide detective describing the scene and what we had
2 had and the crime scene tape that's up where we --
3 myself and other officers placed up so no one else would
4 walk into the area to do any damage to the scene.

5 Q. Now, you said that when you arrived, the body
6 was laying in the driveway?

7 A. Yes, sir.

8 Q. Where on the driveway was it laying?

9 A. It was -- the house faces south. So, it would
10 be all the way towards the back of the house on the
11 north side. And it was -- the body was laying between
12 basically the corner of the house and the truck that was
13 in the driveway.

14 Q. Let me show you what's State's Exhibit No. 29.
15 Do you recognize this?

16 A. I do.

17 Q. What is it?

18 A. That's a picture of the crime scene.

19 Q. Okay.

20 MR. MOSS: For the record I'm tendering to
21 Defense counsel State's Exhibit No. 29 and ask that it
22 be put in for demonstrative purposes only at this point.

23 (State's Exhibit No. 29 offered for
24 demonstrative purposes only)

25 MR. ALFORD: No objection, your Honor, to

1 State's Exhibit No. 6 -- 29, I'm sorry. State's 29.

2 THE COURT: All right, 29. Thank you.

3 (State's Exhibit No. 29 admitted for
4 demonstrative purposes only)

5 MR. MOSS: May I publish?

6 THE COURT: Yes.

7 MR. MOSS: May I have the officer step
8 down?

9 THE COURT: Sure.

10 Sergeant, keep your voice up, please.

11 MR. ALFORD: Your Honor, may I move where
12 I can see?

13 THE COURT: Yeah.

14 MR. ALFORD: Thank you, your Honor.

15 THE COURT: You can do that throughout the
16 trial.

17 MR. ALFORD: Do I need to ask your --

18 THE COURT: No, you can do that throughout
19 this trial whenever they're doing that.

20 MR. ALFORD: Thank you.

21 Q. (BY MR. MOSS) Okay. So, where is the
22 four-plex we saw on this map?

23 A. It would be this location here.

24 Q. Okay. And where -- this is the driveway where
25 you found the body?

1 A. Yes, sir.

2 Q. Now, is it -- on this map, show me where you
3 found the body.

4 A. It would be approximately in this area here.
5 There was a truck parked right there and he was laying
6 on his back right in this area.

7 Q. Okay. Now, what is this little --

8 A. It was some sort of a plumbing machine.

9 Q. Okay. So, where did you park on this map?

10 A. I believe I was parked just to the east of
11 this driveway.

12 Q. When you approached, where is the point at
13 which you found or you spoke to Mr. Brown?

14 A. I was somewhere in the driveway, midway in the
15 driveway when he approached me.

16 Q. Okay. You can have a seat back.

17 So, after Houston Fire Department took the
18 body away and you had taken Mr. Brown into custody, what
19 did you do next?

20 A. Myself and another officer, we preserved the
21 crime scene.

22 Q. Okay. And what do you mean, you preserved it?
23 What are you doing?

24 A. We're putting crime scene tape up so no one
25 else would walk through to contaminate the scene so

1 Homicide could gather their evidence.

2 Q. After you got through preserving the crime
3 scene, what did you do next?

4 A. Witnesses were gathered and made sure that the
5 suspect was secured in the patrol car until Homicide
6 made the scene.

7 Q. Okay. Did you do anything after Homicide made
8 the scene?

9 A. At what point?

10 Q. Anytime afterwards, did you do anything
11 pertinent to the investigation?

12 A. No. Just holding the scene -- staying with
13 the suspect basically and -- so -- and then preserving
14 it. Basically that's all my role was at that point.

15 Q. Now, when you were with the suspect, what was
16 his demeanor like?

17 A. He was calm.

18 Q. Okay. Did -- did you ever leave the scene?

19 A. When Homicide released us, yes. I transported
20 the suspect to the Homicide Division.

21 Q. About how long were you at the scene?

22 A. Approximately three hours.

23 Q. So, you transported the -- Mr. Brown back from
24 the scene?

25 A. Yes, sir.

1 Q. Describe how his demeanor was during that
2 time.

3 A. He was quiet --

4 MR. ALFORD: Objection, your Honor. That
5 was asked and answered. He already commented on his
6 demeanor.

7 THE COURT: Overruled.

8 A. (CONTINUING) While en route from the crime
9 scene to Homicide, he was quiet. And he did one time,
10 he yelled out that -- and I quote, "he," meaning the
11 Complainant, "He threw shit at me," unquote.

12 Q. (BY MR. MOSS) Did he ever say anything about
13 a cell phone or anything like that?

14 A. No, not to me.

15 MR. MOSS: Pass the witness.

16 THE COURT: All right.

17 Mr. Alford?

18 MR. ALFORD: Thank you, your Honor.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. ALFORD:

22 Q. Sergeant Kessler, good morning again. We met
23 before the trial, correct?

24 A. Yes, sir. Good morning.

25 Q. Did you use any documentation or any police

1 reports or personal notes or anything like that to
2 refresh your recollection before you testified?

3 A. No, sir.

4 Q. You didn't review any documents?

5 A. Oh, yes. The offense report, yes, sir.

6 MR. ALFORD: Your Honor, may I approach
7 the witness?

8 THE COURT: Yes, you may.

9 Q. (BY MR. ALFORD) May I see them?

10 A. Yes, sir.

11 Q. Could you show me just to verify that's -- the
12 State was kind enough to give me a copy of your
13 supplement. I just want to verify that I've seen that,
14 everything that you've reviewed. Is this your
15 supplement that you added to the report?

16 A. It is, sir.

17 Q. Okay. And this is what you reviewed?

18 A. Yes, sir.

19 Q. Is there anything else in this report that you
20 reviewed before your testimony?

21 A. I reviewed what my testimony was.

22 Q. Okay. Do you have any personal -- personal
23 notes or anything that you took that you reviewed that
24 you have on your person?

25 A. No, sir.

1 Q. Okay.

2 MR. ALFORD: Your Honor, can I just verify
3 it's the same, please?

4 THE COURT: Sure.

5 MR. ALFORD: Thank you.

6 Q. (BY MR. ALFORD) Sergeant, I'll give you back
7 your supplement in case you need it --

8 A. Thank you.

9 Q. -- to use that while you're testifying.

10 A. Thank you.

11 Q. You're welcome.

12 Sergeant, I was looking at your supplement
13 that you made in this police -- investigation of this
14 homicide case. It's part of your duties as a police
15 officer, I would assume, that you are to make accurate
16 reports and write down accurate things in your report,
17 correct?

18 A. That's correct.

19 Q. All right. Because people are going to rely
20 on that, aren't they?

21 A. That's correct.

22 Q. You're going to rely on it, for instance, here
23 sometime after the offense to refresh your recollection,
24 correct?

25 A. That's correct.

1 Q. Prosecutor's office is going to rely on it in
2 preparing their prosecution, correct?

3 A. Uh-huh, that's correct.

4 Q. The Defense, we're going to rely on it to help
5 us prepare our defense of Mr. Brown, correct?

6 A. That's correct.

7 Q. So, I would assume that what's put into your
8 documentation in your supplement, you do everything
9 possible to make it accurate and an accurate
10 representation of what's in it, correct?

11 A. That's correct.

12 Q. And the things that are put in your report or
13 in this case, your supplement are done -- for instance,
14 are done much closer to the time of the alleged crime,
15 correct?

16 A. No, that's not correct.

17 Q. When did you make the supplement? Yesterday?

18 A. No.

19 Q. Okay. What I'm saying is you made the
20 supplement a lot closer to the time of the alleged
21 offense than a couple of years later as we sit here
22 today, correct?

23 A. That's correct.

24 Q. What day did you make -- what day did you do
25 that, make your supplement?

1 A. I made the supplement on the day of the
2 offense.

3 Q. All right. So, the same day that the -- that
4 the killing of Mr. Bruney occurred, correct?

5 A. That's correct.

6 Q. Now, you stated in response to Mr. Moss'
7 questioning about any statements that, for instance,
8 when Mr. Brown was being transported to the station, do
9 you recall that questioning?

10 A. Yes.

11 Q. Okay. And you stated that -- I believe your
12 testimony was is that Mr. Brown yelled out that
13 Mr. Bruney had thrown shit on him; is that correct?

14 A. That's correct.

15 Q. Well, I would like for you to look at your
16 report. If you recall, you wrote something different
17 saying that the suspect stated, "He threw shit on me"?

18 A. That's correct.

19 Q. So, the day of you wrote that he stated that
20 he threw shit on Mr. Brown. But today as you testify,
21 you state that he yelled, as in anger, that Mr. Bruney
22 had thrown that on him, correct?

23 A. The statement was said, yes, sir.

24 Q. But today you said that he had yelled it,
25 right?

1 A. It was blurted out. It was what appeared to
2 be a yell, yes, sir. We have a cage between the front
3 seat of my patrol car and --

4 Q. That's fine, sir. You've answered the
5 question. Thank you.

6 A. Okay.

7 Q. The point is is that when you state what was
8 his demeanor? Well, he was calm. Remember stating
9 that?

10 A. Yes, sir.

11 Q. Okay. And as you wrote the day of the offense
12 a statement that he stated, implying calmly, that he had
13 had shit thrown on him makes more sense than he yells
14 that he had had shit thrown on him, correct?

15 A. Yeah, the voice --

16 Q. Wouldn't you agree with that?

17 A. The voice was louder. That's correct. The
18 voice was louder when he stated that. Because the
19 conversation had to be between a bulletproof cage up to
20 the front seat of my patrol car.

21 Q. Okay. Thank you, Sergeant. But my question
22 is is, well, it's -- to be able to speak through that,
23 he may have to raise his voice. But we don't want to
24 imply that he in anger, he yelled it at you, right?

25 A. I was looking forward and the statement was

1 yelled out. I heard it clearly, yes, sir.

2 Q. Okay. Now, if we look back as well as some
3 other things that you talked about --

4 MR. ALFORD: May I approach the witness?

5 THE COURT: Yes.

6 Q. (BY MR. ALFORD) If we use the State's diagram
7 that's marked State's Exhibit No. 29, I believe you
8 testified that when you arrived --

9 MR. ALFORD: Your Honor, can you see that?

10 THE COURT: Yes. Thank you very much.

11 Q. (BY MR. ALFORD) When you arrived at the scene
12 and when you finally got back to where Mr. Bruney's body
13 was, I believe you indicated it was on State's Exhibit
14 No. 29 in the area where it is listed or written on the
15 Exhibit, "Two shirts"; is that correct?

16 A. Yes. Right in that area, yes, sir.

17 Q. All right. And you stated as well there was
18 the white pickup truck at the back that would be at the
19 very top of State's Exhibit No. 29 near where it reads
20 and there's a drawing of two shirts, correct?

21 A. Yes, sir.

22 Q. Now, if we look on State's Exhibit No. 29 --
23 also indicated on State's Exhibit No. 29, we have some
24 writing and some other little drawings, correct?

25 A. Correct.

1 Q. And it's stated here, "This drawing is not to
2 scale." But can you see on State's Exhibit No. 29 lower
3 on the diagram it reads, "Cell phone"? Can you see
4 that?

5 A. Yes, sir.

6 Q. And there's a little drawing, a little
7 rectangle that I presume is to indicate a cell phone.
8 Would you agree with me?

9 A. Yes, sir.

10 Q. Below that the next writing reads, "Shell
11 No. 3" and a little rectangle and an arrow. Can you see
12 that?

13 A. Yes, sir.

14 Q. And "Shell No. 2" below that. Do you see
15 that?

16 A. Yes, sir.

17 Q. And finally below that, "Shell No. 1" with an
18 arrow and another little rectangle indicating a shell
19 casing?

20 A. Yes, sir.

21 Q. Now, in order for you to get back to where
22 Mr. Bruney's body was, you would agree with me that you
23 had to come up the driveway, across all the way through
24 the driveway, past Shell No. 1, Shell No. 2, Shell
25 No. 3, a drawing here that we haven't identified yet and

1 then the cell phone before you would get back to where
2 Mr. Bruney was, correct? Would you agree with that?

3 A. That's correct, yes, sir.

4 Q. That's you in State's Exhibit No. 3, correct?

5 A. That's correct.

6 Q. Did they get your good side there?

7 A. I hope that I have a good side.

8 Q. This right here is what I wanted to -- this is
9 the one I wanted to see. State's Exhibit No. 4, is that
10 you speaking there?

11 A. Yes, sir.

12 Q. And who are you speaking with there?

13 A. I believe it's the Homicide detective.

14 Q. Is that -- which one was that? Do you recall?

15 A. I don't recall his name.

16 Q. And this -- State's Exhibit No. 4 shows the
17 entire driveway. Wouldn't you agree with me?

18 A. Yes, sir.

19 Q. Shows the entire driveway from the street all
20 the way back to the back where we see the white pickup
21 that would be where Mr. Bruney was found, correct?

22 A. Yes, sir.

23 Q. So, that's -- do you have any idea how long of
24 a driveway that is, the distance?

25 A. I don't know the distance, no, sir.

1 Q. All right. So, for you to -- what I want to
2 go into now is when you arrived there at the scene, you
3 said HPD, the paramedics were just showing up at that
4 time?

5 A. No, not HPD. I'm HPD. HFD

6 Q. HFD. I'm sorry. Houston Fire Department.

7 A. Yes, sir.

8 Q. Thank you for correcting me. That's exactly
9 right. HFD, Houston Fire Department paramedics were
10 just arriving at the scene, correct?

11 A. That's correct.

12 Q. So, they arrived there about 12:55. That's
13 when you arrived at the scene?

14 A. Right. I assume that's the correct time.

15 Q. How many paramedics and firemen and whatnot --
16 I guess -- assume they send an ambulance as well as a
17 fire truck?

18 A. I believe so, but I don't recall how many were
19 actually on the scene.

20 Q. How many -- did you look back -- if you close
21 your eyes and think back of people running up the road
22 there and running up the driveway, how many people would
23 you estimate were running up that driveway to try to
24 take care of Mr. Bruney?

25 A. I couldn't even give you a number. I don't

1 know how many HFD were sent up there. I don't know.

2 Q. You don't know?

3 A. No.

4 Q. Give me your best guess.

5 MR. MOSS: Objection to speculation, your

6 Honor.

7 THE COURT: Sustained.

8 Q. (BY MR. ALFORD) Was it more than one?

9 A. Yes, sir.

10 Q. More than two?

11 A. Yes, sir.

12 Q. More than three?

13 A. No, I don't know.

14 Q. Okay. So, at least two?

15 A. Yes, sir.

16 Q. At least more than two, but probably no more
17 than -- or you don't know if it's more than three?

18 A. I would say at least two. But I don't recall
19 how many HFD were sent to the scene to attend to the
20 body.

21 Q. If we look at the diagram --

22 MR. ALFORD: Your Honor, do I need to ask
23 to approach every time or just the first time?

24 THE COURT: First time is fine.

25 MR. ALFORD: Okay. Thank you, your Honor.

1 Q. (BY MR. ALFORD) So, therefore, at least two
2 Houston Fire Department employees or paramedics, at
3 least two had to travel up through the same crime scene
4 that you would have to get back to where the body was?

5 A. I would -- yeah, I guess. That would be
6 approximately two, including myself.

7 Q. Now, I'm not worried about the number. What
8 I'm worried -- my point I'm making here is they ran --
9 everybody that went up that driveway ran through the
10 crime scene, correct?

11 A. Yeah. They were trying to get to the -- to
12 attend to the body as quickly as possible, yes, sir.

13 Q. I don't have any doubt about that. That's not
14 my question. My question is, "Yes" or "No." Everyone
15 who was going back there to try to attend and save
16 Mr. Bruney had to run through that crime scene?

17 A. That's correct, yes, sir.

18 Q. Thank you. And to use your words and your
19 testimony, that when someone runs into a crime scene,
20 that is referred to as contamination of a crime scene,
21 isn't it?

22 A. At that point we are doing anything we can to
23 save a life. So, no, I would not call that
24 contamination of a crime scene. We're trying to get to
25 the body to save a life.

1 Q. I appreciate that, Sergeant. I do. And we
2 all do. But that's not my question. When someone who
3 is not -- when a crime scene has not been sealed off and
4 someone comes in -- if I were to walk up that driveway
5 or run up that driveway, I am potentially contaminating
6 that crime scene, correct? And I'm not -- it doesn't
7 matter what my intent is there. Wouldn't you agree with
8 me?

9 A. You wouldn't be allowed to go up to the crime
10 scene. But the medical staff could, yes, sir.

11 Q. I appreciate that. But that still doesn't
12 answer my question. The thing is, let's say that it
13 doesn't matter what my intent. I know I shouldn't be
14 allowed up there. But if I go through that crime scene,
15 I am potentially contaminating the crime scene and the
16 evidence that is there, correct?

17 A. There is potential, yes, sir.

18 Q. All right. So, we know that those paramedics
19 are trying to do their job and that they need to be
20 there and they're allowed to be there. But regardless
21 of that, they are potentially contaminating the crime
22 scene, yes?

23 A. There is potential, yes, sir.

24 Q. Thank you, Sergeant.

25 So, did you see anybody else up there? When

1 you arrived there and the paramedics had gone up the
2 driveway, were there any other witnesses that you
3 noticed?

4 A. I don't recall. When I was approaching, going
5 up the driveway approaching the body, that's when I --
6 sidetracked by the suspect.

7 Q. You don't recall whether there were other
8 people, any of the other neighbors or people living at
9 the complex were out there in the driveway?

10 A. There were several people out in the area, but
11 I don't recall who was up -- who was in the area or who
12 was up around that area, no, I don't.

13 Q. Okay. Well, I'm confused. You do recall
14 seeing people there at the scene, correct?

15 A. That's correct.

16 Q. But you don't know where they were or -- I
17 don't understand that.

18 A. There was several people standing outside the
19 front directness up to where the body was. They were
20 out front flagging us down and directing us up to the --
21 up the driveway where the body was laying.

22 Q. Okay. Sergeant, if we look at the diagram of
23 State's Exhibit No. 29, you said there was several other
24 people there. Do you recall what they looked like, who
25 they were, white males, white females?

1 A. I don't recall that, sir.

2 Q. All right. Well, you said you recall they
3 were there directing you up the driveway to where
4 Mr. Bruney was?

5 A. It would have been towards the front of the
6 house.

7 Q. Could you then on the diagram for the jury
8 point out where you recall those people were?

9 A. I can't recall exactly where they were, no,
10 sir.

11 Q. How do you know they were in front of the
12 house?

13 A. Because there's a difference between the front
14 and the back.

15 Q. Right. But I mean, they could have been here
16 in the driveway. That's in front of the house. Or they
17 could have been back here with Mr. Bruney; is that
18 correct?

19 A. No, sir. HFD was running up to the body.

20 Q. Okay. Then how do you know where they were?
21 Why can't you point it out?

22 MR. MOSS: Objection to argumentative.

23 THE COURT: Overruled.

24 Just answer that question if you can.

25 A. (CONTINUING) I can't. I don't remember

1 exactly where they were standing.

2 THE COURT: All right. Next question.

3 MR. ALFORD: Okay.

4 Q. (BY MR. ALFORD) Did you talk to any of those
5 people that were out there at the crime scene?

6 A. We began to -- we began to gather witnesses on
7 the scene, but I never interviewed any of the witnesses.

8 Q. All right. You've stated that those witnesses
9 were demonstrating to you where Mr. Bruney was?

10 A. Yes, sir.

11 Q. So, they obviously knew where Mr. Bruney was?

12 A. Yes, sir.

13 Q. So, potentially they could have been where
14 Mr. Bruney was before they came back to the front of the
15 house, correct?

16 MR. MOSS: Objection to speculation.

17 THE COURT: Sustained.

18 Q. (BY MR. ALFORD) It's possible, isn't it?

19 MR. MOSS: Objection to speculation.

20 THE COURT: Sustained.

21 Q. (BY MR. ALFORD) Now, you said that you and --
22 was it Officer Duffy that put up the crime tape?

23 A. Yes, sir.

24 Q. You said -- your statement was that you and
25 officer put up the crime scene, and I quote, "So that no

1 one else would do any damage to the scene," correct?

2 A. That's correct.

3 Q. Officer, had you ever been called out to this
4 location before in the past on a service call?

5 A. I don't recall.

6 Q. Officer, would you take a look at what has
7 previously been marked as Defendant's Exhibit No. 1,
8 please.

9 A. This is the front page of an offense report.

10 Q. Is that the front page of an offense report
11 that you prepared?

12 A. It appears to be, yes.

13 Q. All right. And it's -- the offense report
14 states what address?

15 A. 1322 Parkway.

16 Q. Where is that located? Do you know where 1322
17 Parkway is?

18 A. No, sir.

19 Q. All right. And who are the Complainants
20 listed on that?

21 MR. MOSS: Objection to hearsay, your
22 Honor.

23 THE COURT: Sustained.

24 (At the bench, on the record)

25 MR. ALFORD: Your Honor, This is

1 Defendant's Exhibit 1 that shows that a call for service
2 by this officer and Mr. Brown and Jim Mabry, who's also
3 a witness on the State's witness list, about threats
4 being made to -- with weapons. I wanted to see if the
5 State had any objection to me introducing this into
6 evidence.

7 MR. MOSS: Objection. It's a hearsay
8 document, your Honor.

9 THE COURT: At this time I'm going to
10 sustain his objection. You might bring it in later.

11 MR. ALFORD: Yes, Judge. Thank you.

12 (Open court, Defendant and jury present)

13 Q. (BY MR. ALFORD) You said that, Sergeant
14 Kessler, you've never made any calls to this address
15 before?

16 A. I don't recall. I don't know.

17 Q. Well, let me show you what I've -- like I've
18 stated, I've marked as Defense Exhibit No. 1. See if
19 this helps refresh your recollection as to making a call
20 with these two individuals at 1322 West Pierce?

21 A. Yes, I did do an offense report from this
22 location in 2006.

23 Q. All right. And if you look on there, does
24 that -- does it tell you what the offense report --
25 without going into that specifically, what the offense

1 report was made about, what type of offense?

2 A. The title was "Investigation Homicide."

3 Q. And it deals with threats being made with
4 weapons, correct?

5 MR. MOSS: Objection to reading from a
6 hearsay document.

7 MR. ALFORD: It's a question, your Honor,
8 for impeachment purposes.

9 MR. MOSS: This has not been certified as
10 an impeachment document, your Honor. There's no marking
11 on it. There's no signature on it. There's nothing --

12 THE COURT: That's sustained.

13 Rephrase your question.

14 MR. ALFORD: Yes, your Honor.

15 Q. (BY MR. ALFORD) And this call, this homicide
16 call deals to threats being made with guns, correct?

17 MR. MOSS: I'm going to object to
18 reading --

19 THE COURT: Sustained.

20 MR. ALFORD: Thank you, Officer.

21 I'll pass the witness.

22 THE COURT: All right.

23 Mr. Moss?

24 MR. MOSS: No further questions, Judge.

25 THE COURT: All right. Thank you, sir.