

1 Actually, Judge, I'll just pass the
2 witness.

3 THE COURT: Thank you, sir. You may step
4 down and you're excused.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Call your next witness.

7 MR. BURDETTE: State calls Officer Anna
8 Laura.

9 THE COURT: You may proceed.

10 MR. BURDETTE: Thank you, Judge.

11 **OFFICER ANNA LAURA,**

12 having been called as a witness and being first duly
13 sworn, testified as follows:

14 **REDIRECT EXAMINATION**

15 **BY MR. BURDETTE:**

16 Q. Good afternoon, Officer Laura. Thank you for
17 coming back. I want to ask you a few follow-up
18 questions. Okay?

19 A. Okay.

20 Q. Yesterday when you testified, there was
21 testimony a little bit about the fact that
22 Mr. Westbrook gave a statement to you; is that correct?

23 A. Yes, sir.

24 Q. And that statement was recorded; is that
25 correct?

1 A. Yes, sir.

2 Q. Was he given his Miranda warnings on that
3 statement --

4 A. Yes, sir.

5 Q. -- prior to giving his statement?

6 A. Yes.

7 Q. Was that recorded?

8 A. Yes.

9 Q. Did he understand those rights?

10 A. Yes.

11 Q. Did he provide a statement?

12 A. Yes, he did.

13 Q. Did he ever request a lawyer?

14 A. No.

15 Q. Did you coerce him in any way to give that
16 statement?

17 A. No, we did not.

18 Q. Did you promise him anything?

19 A. No.

20 Q. Was his statement freely and voluntarily given?

21 A. Yes.

22 MR. BURDETTE: Judge, may I approach the
23 witness?

24 THE COURT: You may.

25 Q. (By Mr. Burdette) I'm showing you what's been

1 marked as State's Exhibit No. 46. Is this a copy of
2 that statement (indicating)?

3 A. Yes, it is.

4 MR. BURDETTE: Judge, at this time, State
5 offers into evidence State's Exhibit 46. I'll tender it
6 to opposing counsel for inspection.

7 **(State's Exhibit No. 46 Offered)**

8 MR. RUSHING: No objections, Judge.

9 THE COURT: States 46 is admitted.

10 **(State's Exhibit No. 46 Admitted)**

11 MR. BURDETTE: May I publish this, Your
12 Honor?

13 THE COURT: You may.

14 MR. BURDETTE: So the Court knows, it's
15 approximately 23 minutes.

16 THE COURT: We will break for lunch after
17 the jury hears the tape.

18 **(State's Exhibit No. 46 published.)**

19 Q. (By Mr. Burdette) Just briefly, Officer Laura.
20 Why is the defendant wearing this suit here?

21 A. They took his clothing for the evidence
22 collection.

23 Q. And so this is after the Crime Scene Unit
24 officer, Officer Taravella, had met with him?

25 A. Yes.

1 Q. Is that standard, to issue somebody a suit so
2 they can cover their body?

3 A. Yes.

4 (State's Exhibit No. 46 published.)

5 THE COURT: Okay. We are going to recess
6 for lunch. The jury's lunch is here, so I'll let you go
7 with the bailiff.

8 (Lunch recess.)

9 (Open court, defendant present, no jury.)

10 (Witness sworn.)

11 THE COURT: So, what is your name?

12 THE WITNESS: Shaquita.

13 THE COURT: Shaquita, what's your last
14 name?

15 THE WITNESS: Cain.

16 THE COURT: Cain?

17 THE WITNESS: Uh-huh.

18 THE COURT: And you're represented by
19 counsel?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: And you are?

22 THE WITNESS: Eric Clay. SPN number
23 02229704.

24 THE COURT: And so, Ms. Clay {sic},
25 Mr. Rushing has told me that you plan on testifying as a

1 witness in this case.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: And that potentially some of
4 what you testify to may be interpreted as a violation of
5 the law. Is that true?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Okay. And so, have you hired
8 Mr. Clay to represent you and consult with you about
9 that?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay. That's what -- basically
12 what I needed to know, that you have been advised by an
13 attorney of your rights and that you understand that as
14 a result of your testimony that --

15 THE WITNESS: Yes, ma'am.

16 THE COURT: I don't know what it is, but
17 I'm just assuming that there is potentially charges that
18 could be filed against you.

19 THE WITNESS: Yes, ma'am.

20 MR. CLAY: Yes, Judge.

21 THE COURT: Okay. So, since you have been
22 sworn in now, I need to advise you that the Rule has
23 been invoked, which means you can't be in the courtroom
24 while another witness is testifying. You also can't
25 tell any other witness what your testimony is or discuss

1 it in their presence.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: You can talk to the lawyers
4 about it as long as there's not any other witnesses
5 within earshot.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Okay. So, if you'll just wait
8 outside until your name is called.

9 And if we can get the detective back in,
10 we'll bring the jury back out.

11 (Pause.)

12 THE COURT: Y'all have seen the new
13 version? The only difference being that the charge bank
14 said that when the term "preponderance of the evidence"
15 is included in there, she puts the definition of it.
16 Other than that, it's what we've discussed.

17 Are we ready for the jury, Mr. Burdette?

18 MR. BURDETTE: Yes, Judge.

19 (Open court, defendant and jury present.)

20 THE COURT: Thank you. Please be seated.

21 Mr. Burdette, you may proceed.

22 MR. BURDETTE: Thank you, Judge.

23 Q. (By Mr. Burdette) All right. Officer Laura,
24 I've got some questions now that we've seen that video.

25 A. Okay.

1 Q. What was the approximate time of that
2 interview?

3 A. It was about 10:20 when it started.

4 Q. 10:20 a.m.?

5 A. Yes.

6 Q. On April 1st, 2012?

7 A. Yes.

8 Q. So, we're about six hours or so removed from
9 the time of the offense; is that right?

10 A. Yes, sir.

11 Q. How would you describe the defendant's mental
12 condition at that point?

13 A. Well, he was articulate with names, addresses,
14 phone numbers.

15 Q. Did he appear to be coherent?

16 A. Yes.

17 Q. Did you notice on the video, when you and
18 Officer Guzman stood up to leave, he pointed out that
19 you had left your recorder behind?

20 A. Yes.

21 Q. Did you think that was important to note?

22 A. Yes.

23 Q. Why?

24 A. Because he's paying attention to detail, so he
25 knows what's going on.

1 Q. Initially when the interview started, did he
2 indicate to you that he didn't know what happened?

3 A. Yes.

4 Q. As y'all spoke with him, did that change? Did
5 he start to give you information about the night before?

6 A. Yes.

7 Q. Starting with when?

8 A. When he was at his girl's house.

9 Q. Was he able to give you details about what
10 happened there?

11 A. Yes.

12 Q. About who he was with?

13 A. Yes.

14 Q. About who came over?

15 A. Yes.

16 Q. About who left?

17 A. Yes.

18 Q. About some of the statements that people made
19 to him while he was there?

20 A. Yes.

21 Q. Was he able to articulate some of what happened
22 to him after the crime had occurred?

23 A. Yes.

24 Q. Like what?

25 A. He pointed out how he remembers getting tased

1 and he thought it was going to hurt worse than what it
2 actually did.

3 Q. Was it significant to you that he could
4 remember being tased?

5 A. Yes.

6 Q. Was it significant to you that he could
7 describe the feeling and compare it to how he thought it
8 was going to feel?

9 A. Yes.

10 Q. Why?

11 A. Because he was claiming that he was drunk or
12 had been drinking.

13 Q. And so why is it important to point out that
14 distinction, that he was able to articulate how that
15 felt?

16 A. Because he was able to remember those specific
17 details, and he kept saying how he couldn't remember.

18 Q. Essentially what portion of the night did the
19 defendant tell you that he forgot?

20 A. The actual incident of what had occurred.

21 Q. And that's about it?

22 A. Yes.

23 Q. During the beginning of the interview, he was
24 asked if he had been smoking marijuana; is that right?

25 A. Yes.

1 Q. What was his response?

2 A. He denied it.

3 Q. Did that later change?

4 A. Yes, it did.

5 Q. To what?

6 A. That he was smoking.

7 Q. Marijuana?

8 A. Yes.

9 Q. Is smoking marijuana a voluntary act?

10 A. Yes.

11 Q. Is marijuana an intoxicating substance?

12 A. Yes.

13 Q. Is it significant to you, based on your
14 training and experience, that he was inconsistent about
15 that?

16 A. Yes.

17 Q. Why?

18 A. Because it will show that he had some knowledge
19 and he was keeping certain stuff.

20 Q. Keeping certain stuff from whom?

21 A. From us.

22 Q. At some point did his question about what
23 happened change from "what happened" to "what am I being
24 charged with"?

25 A. Yes.

1 Q. How many times did he say, "What am I being
2 charged with"?

3 A. At least three, I believe.

4 Q. Was that significant to you that he started
5 asking that question?

6 A. Yes.

7 Q. Why?

8 A. Because if he wasn't -- if he wasn't guilty,
9 then he wouldn't have asked, "What am I being charged
10 with?" He would have just asked, "What happened, why am
11 I here?" But he just kept asking, "What am I being
12 charged with?"

13 Q. Does that indicate to you that he had some
14 knowledge about some events?

15 A. Yes.

16 Q. Why?

17 A. Can you rephrase that? I'm sorry.

18 Q. Why does that indicate that he may have some
19 independent knowledge or recollection of what happened?

20 MR. RUSHING: Objection. Calls for
21 speculation.

22 THE COURT: Sustained.

23 Q. (By Mr. Burdette) Why is it important -- well,
24 I already asked that.

25 Did you see on the tape where he said that

1 a girl told him, "Khalon, you drunk"?

2 A. Yes.

3 Q. How does somebody get drunk?

4 A. By drinking.

5 Q. Drinking what?

6 A. Alcohol.

7 Q. Is drinking alcohol a voluntary act?

8 A. Yes.

9 Q. Is alcohol an intoxicating substance?

10 A. Yes, it is.

11 Q. Did the defendant tell you that he consumed
12 alcohol?

13 A. No, he did not. That he was consuming at the
14 time?

15 Q. No. Let me ask it in a more general sense.
16 Did he tell you that he consumes alcohol?

17 A. Yes.

18 Q. Did you see when Officer Guzman -- or Sergeant
19 Guzman asked him the question about whether he had been
20 drinking too much that night?

21 A. Yes.

22 Q. Did he respond to that question?

23 A. Yes, he did.

24 Q. How did he respond?

25 A. He denied drinking.

1 Q. Did he ever, at any time on that interview,
2 indicate or become suspicious that he was involuntarily
3 intoxicated?

4 A. No.

5 Q. Did he offer up some other reason for his
6 behavior?

7 A. No.

8 Q. Now, lack of memory can be a symptom of being
9 intoxicated; is that correct?

10 A. Correct.

11 Q. Is that lack of memory different than the
12 ability to know right from wrong?

13 MR. RUSHING: Objection. Calls for
14 speculation.

15 THE COURT: She can answer if she knows.

16 A. Does it call for?

17 Q. (By Mr. Burdette) Is the lack of memory
18 different than the ability to know right from wrong?

19 A. Yes.

20 MR. BURDETTE: I'll pass the witness.

21 THE COURT: Mr. Rushing?

22 MR. RUSHING: Thank you, Judge.

23 **CROSS-EXAMINATION**

24 **BY MR. RUSHING:**

25 Q. Did Mr. Westbrook remember a lot of detail

1 about being tased?

2 A. He remembers being tased and falling down.

3 Q. Didn't he respond, when asked -- or when it was
4 suggested that he fell down, didn't he respond with, "I
5 did" as a question?

6 A. Yes.

7 Q. So, how could he remember it if he asked if he
8 did when it was suggested to him?

9 A. I don't know.

10 Q. Did he ask how he got an injury on his hand?

11 A. Yes.

12 Q. And was that injury on his hand a result of
13 falling down from being tased?

14 A. I don't know. I wasn't there. It could have
15 been.

16 Q. Did he remember -- did his memory of the events
17 prior to leaving the party seem pretty clear based on
18 his conversation with you?

19 A. Yes.

20 Q. And it was about that same point in time, based
21 on his conversation with you as he was leaving the
22 party, according to the video, going to the bus stop,
23 that's when his memory started getting fuzzy; is that
24 right?

25 A. Right.

1 Q. And this was seven hours later. Did you notice
2 through the course of your interview with Mr. Westbrooks
3 that he became more alert?

4 A. I wasn't there whenever it happened, so I don't
5 know how he was at the time.

6 Q. Sorry. My question wasn't clear. When the
7 interview started, was he more alert based on what you
8 saw at the end of the interview than at the beginning?

9 A. He seemed the same to me.

10 Q. Did he? Was this video available in working
11 condition yesterday?

12 A. Yes.

13 Q. And do you remember yesterday when you were
14 being dismissed that the D.A. agreed to release you and
15 the defense said they wanted you to be on call?

16 A. Yes.

17 Q. Do you know why?

18 MR. BURDETTE: Objection, Judge. That
19 calls for speculation. This is not relevant.

20 THE COURT: Sustained.

21 MR. RUSHING: Pass the witness, Judge.

22 MR. BURDETTE: No further questions.

23 THE COURT: May she be excused?

24 MR. BURDETTE: I have no objection.

25 MR. RUSHING: She can be excused, Judge.

1 THE COURT: Thank you, ma'am. You may step
2 down and be excused.

3 Call your next witness.

4 MR. BURDETTE: At this time, Your Honor,
5 the State of Texas rests.

6 THE COURT: Mr. Rushing?

7 MR. RUSHING: Judge, at this time the
8 defense would call Shaquita Cain to the stand.

9 THE COURT: You may proceed.

10 MR. RUSHING: Thank you, Judge.

11 **SHAQUITA CAIN,**

12 having been called as a witness and being first duly
13 sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MR. RUSHING:**

16 Q. Would you introduce yourself to the jury?

17 A. I'm Shaquita Cain.

18 Q. Can you spell your name for the record, please?

19 A. S-h-a-q-u-i-t-a. Last name, C-a-i-n.

20 Q. And what do you do for a living?

21 A. I'm a mother of two children.

22 Q. And do you know Khalon Westbrooks?

23 A. Yes, sir.

24 Q. What is your relationship with him?

25 A. An ex-boyfriend.