

DIRECT EXAMINATION

1

2 **BY MR. MULDROW:**

3 Q. Deputy Lewis can you state your name?

4 A. Deputy James Lewis.

5 Q. How are you employed?

6 A. Harris County Sheriff's department.

7 Q. How long have you worked with the sheriff's
8 department?

9 A. 20 years.

10 Q. During that 20 years, where have you been assigned?

11 A. Part of that time was on detentions. Since '97 I've
12 been on patrol.

13 Q. What is patrol?

14 A. Patrol is, patrol unit, we respond to radio calls on
15 the east side of town, dispatch, you know, take care of
16 traffic, different areas of town.17 Q. East side of town, is that where you are assigned
18 right now?

19 A. Yes, sir.

20 Q. Is that where you were assigned in August of 2010?

21 A. Yes, sir.

22 Q. What boundaries?

23 A. Basically, our district is District 3. It runs from
24 the beltway eastbound all the way up to 1960 all the way
25 southbound to Baytown. We do have a few spots down toward the

1 Clear Lake area and off of 288, but primarily most of our units
2 concentrated off of I-10, Beltway, up to 1960 in that area.

3 Q. During the years you've been employed to the
4 sheriff's department, have you responded to a number of calls
5 for robberies or aggravated robberies or assaults?

6 A. Yes. We call those "in progress."

7 Q. How many of those have you responded to?

8 A. How many? Several a month. I couldn't give you a
9 specific number, but several a month.

10 Q. Would it be over 100?

11 A. Within a years time? Oh, yes.

12 Q. Okay. Within your total time at the sheriff's
13 department, would it be over 1,000?

14 A. From the time I've been with the sheriff's
15 department?

16 Q. Yes?

17 A. I'd say yes.

18 Q. When you respond to a call for aggravated robbery or
19 robbery, what are your duties when you get on the scene?

20 A. What are my duties when I get on the scene?

21 Q. Yes, sir?

22 A. Usually, we get the description of cars involved,
23 suspects, actors involved, what has transpired, location, where
24 it's at.

25 Q. Okay. If you get a description of a suspect and you

1 are able to make an arrest shortly after it happens, what do
2 you do? What are the procedures for making an identification?

3 A. If the complainant and victim are still on the scene,
4 we will take the suspect back to that individual to identify a
5 possible ID.

6 Q. Why do you do that?

7 A. To verify I've got the right person.

8 Q. Does it help to release innocent people?

9 A. Does it help?

10 Q. Yes, sir.

11 A. It has happened from time to time.

12 Q. Okay. Because it makes sure you don't keep somebody
13 in jail longer than they should be?

14 A. Yes.

15 Q. And is that you-all's policy whenever you make an
16 arrest shortly over the incident happens to take them back for
17 identification?

18 A. Yes, sir.

19 Q. On August 23rd, 2010, were you on duty that day?

20 A. Yes, sir.

21 Q. Did you respond to an offense regarding Mr. Victor
22 Vincent?

23 A. Yes, sir.

24 Q. Okay. And was that in Harris County, Texas?

25 A. Yes, it was.

1 MR. MULDRROW: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes, you may.

4 MR. MULDRROW: I am going to show you State's
5 Exhibit No. 1 and No. 2. Do those fairly and accurately depict
6 an aerial view of the location where the robbery took place?

7 THE WITNESS: Yes.

8 MR. MULDRROW: Your Honor, at this time I offer
9 State's Exhibit 1 and 2 into evidence and tender to opposing
10 counsel.

11 (State's Exhibit 1 and 2 offered)

12 THE COURT: State's Exhibit 1 and 2 are
13 admitted. You may publish them to the jury.

14 (State's Exhibit 1 and 2 admitted)

15 MR. MULDRROW: Before I pick the pictures up.
16 Your Honor, we have had problems with that monitor in the past.
17 I don't know if it works.

18 THE COURT: It should work. It always worked in
19 the past.

20 Q. (BY MR. MULDRROW) When you were dispatched to a
21 robbery on August 23rd, 2010, what were you dispatched to do?

22 A. The dispatch needed additional units in the air for a
23 suspect that ran from a responding deputy.

24 Q. Did you have a description?

25 A. Yes.

1 Q. What was that description?

2 A. Black male dressed in black shirts and black shorts.

3 Q. Okay. How many suspects were you told were there?

4 A. At the time one male had run toward the woods.

5 That's the information I had at my time.

6 MR. MULDROW: I'm going to show you State's
7 Exhibit No. 2. And Your Honor, could the deputy step down to
8 be able to point to the television?

9 THE COURT: Certainly.

10 Q. (BY MR. MULDROW) Can you tell us what we are looking
11 at there on the television screen?

12 A. I'm sorry.

13 Q. Tell the jury what we are looking at.

14 A. The basic area of this that's facing north is this
15 road is Wallisville. This area right here is the piece of it
16 is Walmart parking lot. The Walmart is actually back here.
17 This road here coming up is Black Rock.

18 Q. What is that main road down the center?

19 A. Down the center here that's Wallisville Road.

20 Q. When you were dispatched, was that the location you
21 were dispatched to?

22 A. Yes. The information goes to the intersection
23 additional units needed at this intersection, Wallisville and
24 Black Rock.

25 Q. How did you approach that location?

1 A. I was already on the Beltway coming southbound. So
2 when I came in, I came in from this area. The Beltway is
3 actually -- the Walmart is here the Beltway is right to the
4 right of that. I came in off of there and straight down
5 Wallisville to that intersection?

6 Q. Okay. From the time that you heard the incident go
7 out on the dispatch and call for officers to respond, how long
8 did it take you guys to get to the scene?

9 A. Just several minutes.

10 Q. How many minutes?

11 A. It's on the call slip, the time I was dispatched.

12 Q. When you arrived on the location, what did you do?

13 A. As soon as I got close to this intersection here, I
14 slowed down and started scanning the area. Another report went
15 out they had moved down further and there was a white vehicle
16 or something involved. So I stopped at this area and started
17 scanning the area. It was later on in the evening time so
18 there wasn't much vehicle traffic and or foot traffic. It was
19 10:00 o'clock at night.

20 Q. Did you see someone who matched the description?

21 A. Yes, I did.

22 Q. What did you do when you saw that person?

23 A. He was -- actually, the individual was walking on the
24 east side of the Pizza Hut right there, that red building is a
25 Pizza Hut. He was walking and I don't know if he came out of

1 that building or what, but he was walking from that building
2 straight across the parking lot. So I just pulled in here, and
3 at that time he was carrying a black shirt and black shorts.
4 He was wearing the black shorts.

5 Q. You mean he was carrying a black shirt in his hand?

6 A. Yes.

7 Q. What color shirt was he wearing at that time?

8 A. Nothing.

9 Q. Did you arrest him?

10 A. I stopped him, yes.

11 Q. Okay. Did you take him back to the scene where the
12 complainant was at?

13 A. Yes, I did.

14 Q. Did you later learn the name of the person that you
15 apprehended?

16 A. Yes, I did.

17 Q. And what was his name?

18 A. He gave me his name as Eugene Rivon.

19 Q. Okay. Do you have -- were you present when
20 Mr. Victor identified Mr. Rivon?

21 A. Was I present when he was identified?

22 Q. No, sir?

23 MR. MULDRROW: Okay. No further questions.

24 THE COURT: Your witness.

25 MR. TRENT: Briefly.

CROSS EXAMINATION

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BY MR. TRENT:

Q. Deputy Lewis, my name is Mike Trent. We' never met before have we?

A. No, sir.

Q. I represent Mr. Robinson. I just have a few questions for you. Now, you're talking about the different duties of the initial responding deputy when called to in progress?

A. Yes, sir.

Q. Who was the initial responding deputy in this case?

A. In this case was Ellington.

Q. Okay. And the duties, that's kind of like the organizing officer in situations like these, right? That first responding deputy, he takes the description, if there is one, right?

A. Right.

Q. Takes kind of a basic account of what happened, right?

A. Yes.

Q. And he can kind of direct various responding deputies who come to assist in what to do. Like, you know, they went that way, try going that way? Am I right?

A. Right. First, the information he gets to us; he relays back. And then dispatch --

1 Q. Okay. And he can kind of organize, if there is a
2 pursuit to, or he can kind of organize and tell people where to
3 go, right?

4 A. In a pursuit, yes.

5 Q. Okay. And I think -- now you said Eugene Rivon. You
6 are talking about Paul Eugene Rivon as the person that you
7 arrested, correct?

8 A. Yes.

9 Q. And he matched a description that Deputy Ellington
10 had broadcast on the radio, right?

11 A. Yes.

12 Q. And that description was what, black male?

13 A. Black male, black shorts, black shirt.

14 Q. Okay. And you had mentioned that the policy of the
15 sheriff's department when it comes to crimes that have just
16 occurred is to sometimes conduct what's called a showup; is
17 that right?

18 A. Yes.

19 Q. And tell the jury what a showup is?

20 A. Basically, you take the individual back to the
21 original scene and/or where the complainant is for a positive
22 identification, make sure we don't have the wrong person.

23 Q. And positive identification meaning, they identify
24 that person as the perpetrator?

25 A. As being involved, yes.

1 Q. And now are you aware of some changes in policies via
2 the code of criminal procedure on what should be done with
3 respect to identifications?

4 A. There is new ones coming up on September of this
5 year, I know that, as far as lineups and stuff; but those
6 aren't in effect to September 2012.

7 Q. Well, I'm talking about something that it -- it
8 wasn't in effect granted on August 23rd, 2011, but it has been
9 in effect for almost a year now, since 2011. I am talking
10 about 3820 photograph of live lineup identification procedure;
11 have you heard anything about that?

12 A. There's new procedures coming up September of this
13 year I know.

14 Q. Why did they enact those procedures?

15 A. I'm not sure --

16 MR. MULDRON: Objection. Speculation and
17 relevance.

18 THE COURT: Overruled.

19 Q. (BY MR. TRENT) Are you aware of any problems with
20 some identification procedures?

21 A. Am I aware of them?

22 Q. Yes.

23 A. No, sir.

24 Q. You've never heard of anybody identifying the wrong
25 person?

1 A. I've seen the news reports and stuff like that, yes
2 sir.

3 Q. Okay. In a showup situation, it's not like a live
4 lineup or a photo spread where there are other possible
5 candidates they can choose, right? In a showup, either yes or
6 no, right?

7 A. At that point, yes.

8 Q. Now, were you present at the scene when showups were
9 conducted in this case?

10 A. Yes.

11 Q. Okay. And how many showups were conducted for
12 Mr. Victor?

13 A. Mr. Who?

14 Q. Is it Vincent or Victor, the complainant?

15 A. Mr. Rivon was in my patrol car and I had custody of
16 him and he identified him at that time as being a person
17 involved.

18 Q. Okay. Do you know how many people total were shown
19 to the complainant on the night of the incident?

20 A. Total, I do not know.

21 Q. Okay. Was that the only one you were present for?

22 A. Yes, sir.

23 Q. And who was the one who conducted that showup?

24 A. Deputy Ellington.

25 Q. And Ellington spoke to Mr. -- I keep getting it

1 wrong, but Mr. Victor. Ellington spoke to Mr. Victor, right?

2 A. Yes, sir.

3 Q. Brought him over to your patrol car?

4 A. Yes, sir.

5 Q. Did you -- were you privy to what was said between
6 the two of them?

7 A. No, sir.

8 Q. But basically, Ellington showed him Mr. Rivon, right?

9 A. Yes, sir.

10 Q. After which time, Mr. Victor gave a positive
11 identification of Rivon as being one of the males who had
12 robbed him, right?

13 A. Yes, sir.

14 MR. TRENT: Thank you, Deputy. I have no
15 further questions.

16 THE COURT: Anything further?

17 MR. MULDRROW: Nothing further from the State.

18 THE COURT: Thank you Deputy. You may step
19 down. May this witness be excused?

20 MR. MULDRROW: No objections from the State.

21 MR. TRENT: Subject to recall, Judge.

22 THE COURT: You are excused unless you receive a
23 call to come back. Thank you very much.

24 You may call your next witness.

25 MR. MULDRROW: At this time the State calls