

1 less, maybe a couple more. I guess about 15. Okay. The
2 gentleman in the suit in the back. Okay. I know you're not
3 a witness. I couldn't see your face. Okay. Raise your
4 right hand, please.

5 (Witnesses sworn.)

6 *THE COURT:* Thank you. The Rule has been
7 invoked. That means that the witnesses may not discuss the
8 case with anyone except the lawyers or someone working for
9 the lawyers, such as a paralegal or an investigator. Also
10 you may not hear any other witness testify. So, you'll need
11 to step outside the courtroom until you're called to the
12 witness stand. Thank you so much.

13 (Witnesses exit courtroom.)

14 *THE COURT:* Thank you. Who will be your first
15 witness, Ms. Knecht?

16 *MS. KNECHT:* Sergeant McGray.

17 *THE COURT:* Thank you. Sergeant, come on up,
18 please. Of course this witness has just taken the oath.

19 *MS. KNECHT:* May I proceed, Judge?

20 *THE COURT:* Yes, ma'am.

21 **KRISTEN MCGRAY,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 Q. (BY MS. KNECHT) Could you please state your name
25 for the record and spell it for the court reporter.

1 A. Kristen McGray, K-R-I-S-T-E-N M-C-G-R-A-Y.

2 Q. Sergeant McGray, if you would, tell us who you work
3 for.

4 A. I work for Houston Police Department homicide
5 division.

6 Q. How long have you been with the homicide division?

7 A. About two years.

8 Q. Okay. I want to talk to you now about a case that
9 you worked. Do you recall working a case with a defendant
10 by the name of John Anthony Lopez?

11 A. Yes.

12 Q. Okay. And do you recall when you were initially
13 assigned that case?

14 A. Yes.

15 Q. Okay. When was that?

16 A. That was in October of 2010.

17 Q. And what was your role in that investigation?

18 A. I handled interviewing witnesses at the original
19 scene where the original incident happened.

20 Q. Okay. So, you talked to witnesses?

21 A. Yes.

22 Q. And did you actually go physically to the Wing Stop
23 where this occurred?

24 A. Yes, I did.

25 Q. Okay. And once at the Wing Stop, do you recall

1 about what time you arrived?

2 A. I really don't. It was early evening.

3 Q. Okay. And were you able to speak with people who
4 were employed at the Wing Stop and then other witnesses who
5 had viewed what had occurred?

6 A. Yes.

7 Q. And then also at some point were you able to obtain
8 some video footage from the Wing Stop?

9 A. Yes, we did get video footage.

10 MS. KNECHT: May I approach the witness,
11 please?

12 THE COURT: You may.

13 Q. (BY MS. KNECHT) I'm going to show you what's been
14 marked as State's Exhibit No. 2. Do you recognize this?

15 A. Uh-huh.

16 Q. Okay. Does this contain three videos that you
17 obtained from the Wing Stop?

18 A. Yes. I believe one of the videos was from that
19 other video from the parking lot, but, yes, there are three
20 videos.

21 Q. Okay. And do they fairly and accurately depict the
22 events as they occurred back in October, 2010?

23 A. Yes.

24 Q. Have you had an opportunity to view them in the
25 past?

1 A. Yes.

2 Q. And have they been altered in any way?

3 A. No, ma'am.

4 MS. KNECHT: Your Honor, at this time State
5 offers State's Exhibit No. 2.

6 MS. CARROLL: No objection.

7 THE COURT: Admitted.

8 Q. (BY MS. KNECHT) Now, before I publish State's
9 Exhibit No. 2, in speaking with the witnesses at the Wing
10 Stop, did you also learn that there was a second scene where
11 the victim was located?

12 A. Yes.

13 Q. Or had been located?

14 A. Yes.

15 Q. And where was that, approximately?

16 A. That was some distance down the road. It was
17 actually in Missouri City.

18 Q. Okay. And when you went to where the victim's
19 vehicle was located, what did you observe?

20 A. I did not go to that scene.

21 Q. You did not go there?

22 A. No.

23 Q. Okay. Once you conducted your investigation at the
24 Wing Stop, what did you do next?

25 A. We returned to the office -- once we finished our

1 on-scene investigation, we returned to the office and began
2 trying to locate the suspect.

3 Q. Okay. And did you have some luck doing that?

4 A. Yes.

5 Q. Okay. Do you recall if the defendant actually came
6 to your office and turned himself in?

7 A. He turned himself in to Missouri City Police
8 Department.

9 Q. Okay. And then what happened?

10 A. They contacted us; myself and the other
11 investigators went there and took custody of him. We had a
12 patrol unit take custody of him and transport him back to
13 our office.

14 Q. Now, the Wing Stop, is that because that -- where
15 the Wing Stop physically is located is in Harris County,
16 Texas?

17 A. Wing -- yes.

18 Q. And so, even though he wound up in Missouri City,
19 Fort Bend County, the actual shooting actually occurred in
20 Harris County?

21 A. Yes.

22 Q. Were you present for the interview of the
23 defendant?

24 A. I was.

25 Q. And were you able to observe his demeanor when he

1 was speaking with you all?

2 A. Yes.

3 Q. Okay. And if you would, just kind of describe that
4 for the Court.

5 A. He was very calm, he was cooperative. I didn't
6 participate in the actual interview. I just observed it
7 from outside, but he was cooperative. He was calm. He did
8 seem a little anxious.

9 Q. What did you do after you all interviewed the
10 defendant?

11 A. After we interviewed the defendant, we -- I think
12 that's when we contacted the District Attorney's Office in
13 reference to the appropriate charge to be filed.

14 MS. KNECHT: At this time I'd like to publish
15 State's Exhibit No. 12.

16 THE COURT: 12?

17 MS. KNECHT: I mean 2. Excuse me.

18 THE COURT: Granted.

19 MS. KNECHT: Sorry. I can't read my own
20 writing.

21 THE BAILIFF: Turn that off, please.

22 MS. KNECHT: It's the background music on
23 this.

24 (State's Exhibit No. 2, the surveillance
25 video, was played as the following testimony

1 A. No, we had not.

2 Q. Mr. Lopez voluntarily turned himself in, correct?

3 A. Yes.

4 Q. And did you go to the Stafford Police Department?

5 A. Yes.

6 Q. And you met with Patricia Lopez?

7 A. Yes.

8 Q. And you met with MuRita McKellery?

9 A. Yes.

10 Q. And they both agreed to provide you a statement,
11 correct?

12 A. They did, yes.

13 Q. And they told you where the vehicle was located?

14 A. Yes.

15 Q. Is it fair to say that both him and his family were
16 cooperative?

17 A. Yes.

18 Q. You said you were present at the time that
19 Mr. Lopez was interviewed?

20 A. I was in the office and I observed it for certain
21 periods, yes.

22 MS. CARROLL: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes, ma'am.

25 Q. (BY MS. CARROLL) I'm now going to show you what's

1 been marked as Defendant's Exhibit No. 80. Do you recognize
2 what's shown in this picture?

3 A. Yes.

4 Q. And is this a true and accurate depiction of what
5 it purports to be?

6 A. A picture of him being interviewed.

7 Q. Yes.

8 A. Yes.

9 MS. CARROLL: Defense is going to offer to the
10 State.

11 THE COURT: I didn't quite get the number.

12 MS. CARROLL: Defense is tendering that to the
13 State.

14 THE COURT: No, no. The number again?

15 MS. CARROLL: Oh, 80.

16 THE COURT: Thank you.

17 MS. CARROLL: State has no objection, Judge.

18 THE COURT: Admitted.

19 MS. CARROLL: Defense offers Defense Exhibit
20 No. 80 into evidence.

21 Q. (BY MS. CARROLL) That's Mr. Lopez when he's being
22 interviewed?

23 A. Yes.

24 Q. Can you describe what you observed as far as his
25 injuries?

1 A. He had some abrasions on his face and on his hands
2 and -- no serious injuries, required really medical
3 attention at that point but it was obvious he had, you know,
4 scuffs and abrasions.

5 Q. And would you agree with me that his face looks
6 pretty swollen in that picture?

7 A. Parts of his face are swollen, yeah.

8 Q. In fact, he has a bump on the top of his head.

9 A. It looks like it, yep.

10 Q. Okay. And do you know who took the pictures of the
11 suspect?

12 A. Officer Tompkins took the pictures.

13 *MS. CARROLL:* Defense is now going to offer
14 Defendant's Exhibits No. 1 through 25.

15 Does the State have any objection? I think
16 you agreed.

17 *MS. KNECHT:* No objection.

18 *THE COURT:* Admitted.

19 *MS. CARROLL:* Judge, that's Defense Exhibit 1
20 through 25, Your Honor.

21 *THE COURT:* Uh-huh.

22 Q. (*BY MS. CARROLL*) And can you describe his demeanor
23 during the interview?

24 A. He was cooperative and calm, like I said before.
25 He seemed a little anxious but --

1 Q. Was he crying?

2 A. He cried at a couple points, he did.

3 Q. Was he remorseful?

4 A. I can't speak to what he said in the interview. I
5 just observed it from outside.

6 Q. Well, in your opinion, was he remorseful?

7 A. Probably a little bit.

8 Q. And did he talk about how he felt sorry for the
9 family of Mr. Ford?

10 A. I did not hear the interview, so I don't know if
11 he, in fact, said that.

12 Q. And during your investigation of this case, did you
13 investigate whether Travone Ford or Landon Johnson were
14 involved in any gang affiliations?

15 A. Their criminal history would have been researched.
16 I did not do that.

17 Q. Did you find out whether or not they had been
18 involved in any gang affiliations?

19 A. I personally did not.

20 Q. Do you know if anyone did find out whether they
21 were involved in any gangs?

22 A. It would be reflected in the report if they had
23 been, yes.

24 Q. Would it be reflected in the report if they had
25 done a search on it?

1 A. Yes. If it was done, the officer that did it would
2 have reflected -- documented that in the report.

3 Q. And there was nothing in the offense report
4 indicating if they had ever done a search on whether or not
5 Landon Johnson or Travone Ford were involved with any gangs,
6 is there?

7 A. I don't know. I just am familiar with what I did
8 on the investigation, so.

9 Q. Would it help you if you look through the offense
10 report, to reflect (sic) your memory?

11 A. Sure.

12 *MS. KNECHT:* Judge, I'm going to object. This
13 calls for hearsay and then also lack of personal knowledge
14 by this witness.

15 *THE COURT:* Sustained.

16 Q. (*BY MS. CARROLL*) During your investigation of this
17 case, did you discover that Travone Ford was on probation
18 for robbery when this incident occurred?

19 A. I did not.

20 Q. During your investigation of this case, were you
21 aware that Travone Ford had pled guilty to assault on a
22 public servant before this incident occurred?

23 A. I did not research his criminal history, so I would
24 not have knowledge of any of that.

25 Q. Based on your investigation of this case, were you

1 previously -- were you aware that he had been previously
2 arrested for terroristic threat and possession of marijuana?

3 *MS. KNECHT:* Judge, I'm going to object.
4 These are improper questions, one; and two, she has already
5 stated that she has no personal knowledge of any criminal
6 history of any witness.

7 *THE COURT:* Sustained. So, please follow the
8 rules of evidence.

9 *MS. CARROLL:* Yes, Your Honor.

10 *Q. (BY MS. CARROLL)* And you were also provided the
11 keys to Patricia Lopez's vehicle where the gun was located.

12 *A.* Yes, we were.

13 *Q.* And based on your experience, would it be fair to
14 say that if a man had choked, punched and kicked an
15 individual, that he could be charged with assault?

16 *A.* He could.

17 *Q.* Was Landon Johnson ever charged with assaulting
18 John Lopez?

19 *A.* No.

20 *Q.* And these videos, these are two videos, correct,
21 that were shown?

22 *A.* Yes. It's actually two. The last two are of the
23 same video but because a portion of it was cut off, we
24 revideoed it where that corner was -- could be seen clear.

25 *Q.* And these videos were actually taken from the

1 Subway location, right? I think you originally said Wing
2 Stop?

3 A. Yes, you're correct. It was the Subway location.

4 Q. And you have no reason to believe that the time
5 stamps on these are inaccurate, do you?

6 A. I don't know. I have no reason to believe that,
7 no.

8 Q. Would you agree with me that Landon Johnson and
9 Travone Ford were aggressively beating John Lopez in that
10 video?

11 A. No.

12 Q. You don't believe that they were aggressively
13 beating John Lopez?

14 A. I would classify that as a mutual combat situation.

15 Q. But you agree with me that Landon Johnson grabbed
16 John Lopez by his throat and threw him on top of the trunk.

17 A. Yes, that did happen.

18 Q. And John Lopez never punched him or did anything
19 before that occurred.

20 A. No, I don't believe that he did.

21 Q. You don't -- pardon?

22 A. I don't believe that he did. The video does not
23 show that.

24 Q. So, it was Landon Johnson who originally, I guess,
25 assaulted John Lopez?

1 A. I believe he did make the original -- yes.

2 Q. But your opinion here today is that it was mutual
3 combat?

4 A. Because I don't know what transpired prior to that
5 in the restaurant. And I would classify the -- on the
6 totality of the circumstances, I would call that a mutual
7 combat situation.

8 Q. But you don't know of anything that happened inside
9 the Wing Stop where John Lopez had punched or assaulted in
10 any way Travone Ford or Landon Johnson?

11 A. I'm not aware of that, no.

12 Q. And you can see on the video that they kick John
13 Lopez over and over again?

14 A. I can see that he was kicked.

15 Q. And you can see that they are punching John Lopez?

16 A. Yes.

17 Q. And you would agree with me on the video that those
18 men are larger than John Lopez?

19 A. Yes.

20 Q. Would you agree with me that they were using quite
21 a large amount of force when they were kicking John Lopez?

22 A. That would be fair to say, yes.

23 Q. And you would agree with me at the point where
24 he -- at the point where he finally got off the ground, that
25 they did not stop assaulting John Lopez?

1 A. At which point in the video?

2 Q. When he jumped off the ground after they finished
3 kicking him, that they continued to punch him and they took
4 him onto -- right outside the Wing Stop?

5 A. I can't remember exactly what point in the video
6 you're saying but when the assault was over --

7 *MS. CARROLL:* Objection, Your Honor,
8 nonresponsive.

9 *THE COURT:* Sustained.

10 *(State's Exhibit No. 2, the surveillance*
11 *video, was played as the following testimony*
12 *was heard.)*

13 *THE COURT:* For the record, defense counsel's
14 publishing -- can you state the exhibit number?

15 *MS. CARROLL:* I believe it's State's Exhibit
16 No. 2, Your Honor.

17 *THE COURT:* Thank you.

18 Q. *(BY MS. CARROLL)* You don't believe that's
19 aggressively attacking him?

20 *MS. KNECHT:* Judge, I'm going to object to
21 asked and answered.

22 *THE COURT:* Overruled.

23 A. I think, yes, they attacked him. I believe they
24 were provoked verbally.

25 *MS. CARROLL:* Your Honor, calls for hearsay.

1 *THE COURT:* Sustained. Listen carefully to
2 the question asked and answer just that question.

3 A. Yes, ma'am.

4 Q. (*BY MS. CARROLL*) You can see them using quite a
5 lot of force when they're kicking John Lopez, correct?

6 A. Yes, ma'am.

7 Q. Then they even continue to kick him behind the car,
8 correct?

9 A. That would appear to be, although I can't see
10 behind the parked car, yes.

11 Q. And at that point John gets up off the ground.

12 A. Uh-huh.

13 Q. Now, the fight could have ended at that point,
14 correct?

15 A. Presumably, yes.

16 Q. But did they stop?

17 A. No.

18 Q. He comes back and Travone Ford attacks John Lopez.

19 A. Yes.

20 Q. And at this point Travone Ford has John Lopez
21 pinned against the wall?

22 A. It looked like -- it's kind of cut off but it looks
23 like it.

24 Q. That time he was hit so hard, he actually went off
25 the sidewalk?

1 A. I can't say. I can't see that part of the video.

2 Q. It doesn't look like he was being thrown off the
3 sidewalk?

4 A. I think it looks like he stepped off the sidewalk.

5 (State's Exhibit No. 2, the surveillance
6 video, was stopped.)

7 MS. CARROLL: Your Honor, I pass the witness.

8 THE COURT: Thank you. Any redirect?

9 MS. KNECHT: Yes, Judge.

10 **REDIRECT EXAMINATION**

11 Q. (BY MS. KNECHT) Are you aware, as a homicide
12 detective, that fights occur in Harris County all the time?

13 A. Yes.

14 Q. And is it uncommon for there to be a mutual combat
15 fight in Harris County?

16 A. It's not uncommon.

17 Q. And is it uncommon for someone to get the upper
18 hand in a fight? In other words, is it uncommon for someone
19 to, I guess, be beat up more than other people?

20 A. Is it uncommon or common?

21 Q. Uncommon?

22 A. It's not uncommon.

23 Q. Okay. And is it fair to say that in all of these
24 fights that occur in Harris County, that they don't all
25 result in murder, right?

1 A. That would be fair to say, yes.

2 Q. And in watching the video, do you see John Lopez
3 initially pop his trunk?

4 A. Yes.

5 Q. And did you learn after your investigation that he
6 actually had the weapon inside that trunk?

7 A. Yes.

8 Q. And in watching the video, can you see him keep
9 that trunk open as he goes and talks to the two individuals
10 he gets in the fight with?

11 A. Yes.

12 Q. So, is it fair to say that he had easy access to
13 that weapon when those two individuals come out of the
14 store?

15 A. Yes.

16 Q. And in watching the video, can you observe a time
17 period before those two individuals exit the Wing Stop where
18 the defendant could have gotten into his vehicle and left?

19 A. Yes.

20 Q. He had time to do that.

21 A. Probably.

22 Q. But he didn't do that.

23 A. No.

24 Q. And at any time do you see John Lopez, the
25 defendant, running to his vehicle to get away or anything

1 like that?

2 A. No.

3 Q. And after the fight is over, do you actually see
4 the two individuals hand him his keys and kind of end the
5 fight?

6 A. Yes.

7 Q. So, in your opinion, after watching the video, has
8 the physical altercation ended?

9 A. Yes.

10 Q. And does, in fact, the defendant, drive in an
11 opposite direction as the complainant?

12 A. Yes.

13 Q. Okay.

14 MS. KNECHT: I pass the witness.

15 THE COURT: Thank you. Any recross?

16 MS. CARROLL: Yes, Your Honor.

17 **RECROSS-EXAMINATION**

18 Q. (BY MS. CARROLL) Now, you noted that Mr. Lopez
19 had -- Mr. Lopez had opened his trunk when he went outside
20 the Wing Stop, correct?

21 A. He had -- before he went in the -- he had opened it
22 and left it open.

23 Q. Well, before he approached, correct? Before he
24 approached the front door?

25 A. Yes, he did that and then he went into the Wing

1 Stop.

2 Q. And this is after he had originally gone in the
3 Wing Stop, whatever happened in the Wing Stop and came
4 outside, that's when this happened, right?

5 A. Yes. I believe he was in the Wing Stop, he came
6 out, opened, did this with his trunk, left the trunk open
7 and then went back into the Wing Stop.

8 Q. And he never pulled his weapon out of the trunk?

9 A. He did not.

10 Q. And he did not approach with the weapon when he
11 went towards the front door?

12 A. No.

13 Q. He went unarmed towards the front door?

14 A. Yes.

15 Q. And you would agree with me that if you were
16 looking at the front of the Wing Stop, that where Mr. Lopez
17 reversed was going towards the right?

18 A. I'm sorry. Repeat the question.

19 Q. If you're looking at the front of the Wing Stop --
20 you went to the location of the scene?

21 A. Yes.

22 Q. If you're looking at the front of the Wing Stop,
23 the way he reversed, he veered out this way and then he went
24 to the right, correct?

25 A. Yes. If you were facing the Wing Stop, he backed

1 out and went to the right, which would have been like a
2 north or westerly -- yeah.

3 Q. Okay. And you can tell in the video that after
4 Mr. Lopez got in his car and reversed, you can see Mr. Ford
5 getting in his car and reversing?

6 A. Yes.

7 Q. And they're both reversing towards the right,
8 correct? Mr. Ford reversed towards the right originally,
9 correct?

10 A. Well, he reversed to the right to back up to go to
11 the left. It was only a reverse, like, to back up to go the
12 other way. Does that answer the --

13 Q. Right. But he went to the right before he started
14 going forward, correct?

15 A. Well --

16 Q. Yes or no?

17 A. Yes.

18 MS. CARROLL: Pass the witness, Your Honor.

19 THE COURT: Thank you.

20 MS. KNECHT: Nothing further, Judge.

21 THE COURT: May this witness be excused?

22 MS. KNECHT: Yes, Judge.

23 MS. CARROLL: Yes, Judge.

24 THE COURT: Thank you so much.

25 THE WITNESS: Thank you, Judge.