

DIRECT EXAMINATION

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Q (BY MR. LESLIE) Deputy, where do you work?

A I work in CSU with the Harris County Sheriff's Office.

Q How long have you worked for CSU?

A For six years now.

Q What does CSU stand for?

A Crime scene unit.

Q How long have you been with the Deputy's Office?

A With the Sheriff's Office?

Q With the Sheriff's Office.

A Fourteen years.

Q So you were employed with the CSU division on November 16th of 2012?

A No. I've been with CSU for six years.

Q Which would include November 16th of 2012, correct?

A Yes.

Q What sort of training or education does it take to become a CSU?

A I have numerous hundreds of hours of crime scene-related courses, from photography, latent print examination, DNA collection. Just numerous crime scene-related courses. And I'm certified through the

1 International Association of Identification as a crime
2 scene investigator.

3 Q Do you have any kind of ongoing annual
4 training or anything like that?

5 A Yes. We're constantly all year long taking
6 different classes related to a crime scene
7 investigation.

8 Q How did you become involved with this case?

9 A I was contacted by my sergeant while I was at
10 work in my office and basically told that there was a
11 shooting incident that I needed to respond to.

12 Q Do you remember approximately what time that
13 was?

14 A About 11:20.

15 Q And do you remember approximately what time it
16 was you arrived on the scene?

17 A 11:50, 11:52, somewhere.

18 Q And can you just describe for us real briefly
19 what the scene was like when you showed up?

20 A Yes. It was, you know, a lot of sheriff
21 deputies there and the scene was secured with crime
22 scene tape.

23 Q And when you say "a lot," approximately how
24 many deputies were there on the scene?

25 A I don't really recall the exact number, but at

1 least ten or so.

2 Q Okay. And was the complainant still on the
3 scene?

4 A No.

5 Q What are your normal duties and
6 responsibilities when you show up at a crime scene?

7 A I document and collect and maintain a chain of
8 custody of the evidence.

9 MR. LESLIE: Permission to approach, Your
10 Honor.

11 THE COURT: You may.

12 Q (BY MR. LESLIE) Showing you now what has been
13 marked as State's Exhibits 11 through 23. Can you take
14 a look at these?

15 A Yeah.

16 Q Can you tell us what these are?

17 A Photos that I took at the scene.

18 Q And are these a fair and accurate depiction of
19 the scene as they appeared on that night?

20 A Yes.

21 MR. LESLIE: Tendering to defense
22 counsel, State offers State's Exhibits 11 through 23.

23 MR. NEWMAN: No objection, Your Honor.

24 THE COURT: 11 through 23 will be
25 admitted.

1 Q (BY MR. LESLIE) Showing you now State's
2 Exhibit No. 12, can you tell us what is this we're
3 looking at here?

4 A I took photos of the two shell casings with
5 the numbered placards placed beside them.

6 Q Do you remember in total how many shell
7 casings were recovered?

8 A Four casings and one projectile.

9 Q And do you remember what kind of shell casing,
10 what caliber?

11 A They were .45.

12 Q And who puts the little yellow markers down
13 there?

14 A I do.

15 Q Were you the one that located the shell
16 casings?

17 A Actually they were located prior to me getting
18 there.

19 Q Do you know who located them?

20 A I don't know exactly who, but it would have
21 been one of the deputies that responded to the scene.

22 Q Now, showing you State's Exhibit 11, is that
23 one of the shell casings that you located or documented
24 on the scene?

25 A Yes.

1 Q And State's Exhibit No. 14?

2 A Is the second shell casing that I have marked.

3 Q State's Exhibit No. 15, what is this we're
4 looking at here?

5 A It's the third and fourth shell casing next to
6 the sidewalk.

7 Q And No. 17?

8 A It's the third shell casing.

9 Q And No. 19?

10 A It's the fourth shell casing.

11 Q When you get to a crime scene, just to go back
12 a little bit, how do you go about looking for evidence?

13 A Basically what we normally do is we do a
14 walk-through with the lead deputy that's taking, I
15 guess, the report, the initial report, and along with a
16 homicide investigator and we'll walk through the area
17 and basically look for evidence pertaining to the scene.

18 Q So for nighttime for something like this, do
19 you have flashlights?

20 A Yes.

21 Q Do you do your best to locate all possible
22 evidence?

23 A Yes, we do.

24 Q Is it possible that you miss evidence ever?

25 A Yes.

1 Q How could that happen?

2 A Being nighttime hours, just human nature, I
3 mean, you can't be perfect, I guess.

4 Q Fair enough. Showing you Exhibit No. 20, can
5 you tell us what this is that we're looking at?

6 A Yes. It's a projectile marked as number five.

7 Q And slightly a more close-up view of that?

8 A Yes.

9 Q And is this the same?

10 A Yes, it is.

11 Q And just for those of us that might not be
12 that familiar with guns and ammunition, what's the
13 difference between this, number five, and, say, three,
14 for example?

15 A Number three is the casing that the projectile
16 is in. So when it's fired, it's removed from the
17 projectile. The casing is ejected and the projectile
18 fires, shoots.

19 Q And were these all recovered right along that
20 sidewalk?

21 A Yes.

22 Q What do you do after you mark it, you
23 photograph it?

24 A Then I take measurements and they collect it.

25 Q Did you create a scene diagram also?

1 A I don't believe so in this case. I don't
2 believe unless I gave you one, but I don't remember.

3 Q And so you mark it, you photograph it and then
4 you collect it, is that what you said?

5 A Yes.

6 MR. LESLIE: Permission to approach the
7 witness, Your Honor.

8 THE COURT: You may.

9 Q (BY MR. LESLIE) When you're talking about
10 something like a shell casing, what do you do to collect
11 it to make sure that it's the same one when you're in
12 court?

13 A What I do is place them in those envelopes
14 that you have there and I use latex gloves to collect it
15 and place it in an envelope and mark it with the item
16 number.

17 Q I'm showing you now State's Exhibits 142, 143,
18 144, 145 and 146.

19 A Yes.

20 Q Do you recognize these?

21 A Yes.

22 Q How do you recognize them?

23 A From my initials on the tape. When I seal the
24 envelope, I put my initials and the date.

25 Q So all these have your initials on them; is

1 that correct?

2 A Yes, they do.

3 Q And are there any other additional markings on
4 them that you did not put there?

5 A Yes. The exhibit numbers, and it looks like
6 somebody else's, I guess, from the firearms lab,
7 initials also.

8 Q And is that a common practice for this type of
9 case?

10 A Yes.

11 Q Other than the evidence stickers and those
12 additional initials, do these appear to have been
13 tampered with in any way?

14 A No.

15 Q Do you know how they got to court today?

16 A I do not.

17 Q What did you do with them after you collected
18 them?

19 A I submitted them to the firearms laboratory.

20 Q And do you know what happens after the
21 firearms laboratory is done with them?

22 A Normally they send them to our property room
23 when they're done doing their testing.

24 Q Do you know if another deputy checked them out
25 of evidence and brought them to court?

1 A I would assume so. I'm not sure who did, but,
2 yes, that's normally the process.

3 MR. LESLIE: At this point State tenders
4 to opposing counsel and offers State's Exhibits 142
5 through 146.

6 MR. NEWMAN: Judge, we have a slight
7 numbering error that needs to be corrected, but other
8 than that, I have no objection.

9 THE COURT: So tell me what the exhibits
10 are so I can have them corrected.

11 MR. NEWMAN: 142 through 145 and then
12 148, and I do not object.

13 THE COURT: And they will be admitted.

14 Q (BY MR. LESLIE) Now, Deputy, other than
15 photographing the crime scene and collecting the shell
16 casings and the shell, did you conduct any kind of other
17 investigation on this scene?

18 A Yes. I located blood in front of the store
19 and a cell phone, I believe.

20 Q Did you conduct any investigation beyond that?

21 A I did some processing in the lab with the
22 items of evidence once I took them back to the lab.

23 Q Did you conduct any kind of gunshot residue
24 collection from the defendant?

25 A My sergeant did, yes, sir.

1 Q Did you witness him doing that?

2 A I did, yes.

3 Q Can you tell us what does that entail?

4 A We did a gunshot residue test on the subject
5 that was detained at the scene and we utilized an SEM
6 kit which has little doblers and you take samples of
7 their hand, looking for trace unburnt powders from a
8 fired firearm.

9 Q And which deputy did you say you did that
10 with?

11 A It was Sergeant Garner, my supervisor.

12 Q Do you know what time that was done?

13 A It was -- let's see, I cleared the scene at
14 around 5:00, around that area, so it was in between the
15 time we arrived and the time we left. So probably
16 around 2:00. It should be marked on the kit itself the
17 time that it was taken.

18 Q Was the defendant on the scene when you
19 arrived?

20 A No.

21 Q Were you there when the defendant did arrive?

22 A Yes.

23 Q Can you describe to us how that occurred?

24 A All of a sudden numerous deputies started
25 approaching a vehicle that was leaving a parking lot

1 across an apartment complex parking lot across from the
2 store of the scene that I was processing and detained
3 the subject.

4 Q Do you remember what kind of car the suspect
5 was driving?

6 A It was a Chrysler Sebring.

7 Q And do you remember was the defendant in that
8 car alone?

9 A No.

10 Q Showing you now State's Exhibit No. 49, is
11 that the car that you saw the defendant driving?

12 A Yes.

13 Q And did you process that car as well?

14 A I did.

15 Q And when I say process the car, what do you do
16 when you process a car?

17 A Basically I search the vehicle for any
18 firearms-related evidence, photograph the vehicle, and I
19 took, I believe, a DNA swab from the steering wheel of
20 the vehicle, I believe, or that's another vehicle I'm
21 thinking of.

22 Q Did you locate any kind of firearms in this
23 automobile?

24 A No, I did not. No.

25 Q Any kind of ammunition?

1 A No.

2 Q Any blood?

3 A Nothing related to this investigation that I
4 found.

5 Q You said that you also processed another
6 vehicle; is that correct?

7 A Yes.

8 Q What car was that?

9 A It was a Pontiac Grand Prix, which was brought
10 to my attention later after I cleared the scene.

11 Q Do you remember where that car was?

12 A It was at an apartment complex probably a mile
13 from this location, approximately.

14 Q And what kind of car was that?

15 A It was a gray, I think -- no, it was a brown
16 2006 Pontiac Grand Prix.

17 Q And did you search that car also?

18 A I did, yes.

19 Q Did you find anything in that car?

20 A I did not.

21 Q So no firearm?

22 A No, sir.

23 Q No ammunition?

24 A Nothing related to the investigation.

25 Q No blood, anything like that?

1 A No, sir.

2 Q I will show you another photograph. Exhibit
3 No. 37, do you recognize this?

4 A I do, yes.

5 Q And on this photograph can you see where you
6 spotted the shell casings?

7 A It's back here where the marked unit is, along
8 the sidewalk.

9 Q Would you go ahead and circle it?

10 A I believe it's in this area right here, on the
11 sidewalk, along in that area.

12 Q So that's where the casings were recovered?

13 A Correct.

14 Q Where was the actual shell recovered, the
15 bullet?

16 A On the drive going into the parking lot of the
17 business.

18 Q Okay. I might have asked this already, but do
19 you remember what time it was that the defendant showed
20 up on the scene?

21 A I don't know exactly, but the SEM kit that was
22 taken of the samples had the time that we actually
23 processed his hands for GSR, which is going to be pretty
24 close to the time that he arrived, within probably 30
25 minutes or so.

1 Q And did you go to the hospital to collect any
2 evidence from the deceased?

3 A Another CSU went to the hospital.

4 Q Do you know which deputy that was?

5 A It was Maurice Carpenter.

6 Q And does he work with you?

7 A He does, yes.

8 Q Do you know if he recovered any cocaine, any
9 crack cocaine, from the decedent?

10 A Yes, I believe it was crack or cocaine, yes.

11 MR. LESLIE: Pass the witness.

12 THE COURT: Mr. Newman.

13 **CROSS-EXAMINATION**

14 Q (BY MR. NEWMAN) How are you, Deputy Mcelvany?

15 A Good.

16 Q I'm not going to take up a whole lot of time,
17 but it is standard procedure to do a scene diagram on
18 the majority of homicides, don't you?

19 A Normally since I work so many homicides,
20 normally I'll wait prior to the case and I'm usually
21 contacted by the prosecutor and they tell me "I want a
22 scene diagram." Because there are a lot of cases that I
23 work that never go to trial, so if I'm doing scene
24 diagrams on all my cases, I don't really have the time
25 to invest in doing that.

1 Q And I can understand and appreciate that, but
2 you would agree we are in trial and there's not a scene
3 diagram?

4 A Yes, I do agree with that.

5 Q When you were investigating the scene, did you
6 see anything --

7 MR. NEWMAN: May I approach, Your
8 Honor?

9 THE COURT: Sure.

10 Q (BY MR. NEWMAN) -- anything in the center of
11 the street -- and that's Old Bammel?

12 A Yes.

13 Q -- that indicated any type of like a pooling
14 of blood, like someone might have fallen somewhere and
15 rested for a while?

16 A I never observed that, no.

17 Q Okay. And, let's see, you would agree with me
18 that when it comes to processing a crime scene, that you
19 do want to have it sealed off and the integrity of it
20 preserved, correct?

21 A Yes.

22 Q What are some of the risks if that's not
23 properly done?

24 A You can lose evidence from people going into
25 the scene.

1 Q And can you also have contamination, things
2 that weren't --

3 A Of course, yes.

4 Q Showing you Defense Exhibit No. 9 and ask if
5 this appears to be one of the pictures that you took in
6 connection with the scene as well. Just for
7 perspective, this would be Primos?

8 A Yes.

9 Q And this truck was a taco truck inside the
10 perimeter; is that correct?

11 A That's correct, yes.

12 Q And part of what you do is you do document the
13 license plate and stuff like that?

14 A Correct.

15 Q And this is a clear and accurate depiction of
16 a picture you took there, correct?

17 A Yes, sir.

18 MR. NEWMAN: I tender Defense Exhibit 9.

19 MR. LESLIE: No objection.

20 THE COURT: 9 will be admitted.

21 Q (BY MR. NEWMAN) Now, in fairness, you don't
22 set up that perimeter; patrol does, correct?

23 A Correct.

24 Q And what we're looking at is something inside
25 the perimeter of the crime scene, correct?

1 A Correct, yes.

2 Q The crime scene tape actually is -- would be
3 over here to the left, correct?

4 A I don't remember how -- I mean, it's been a
5 year ago. I don't remember exactly where the crime
6 scene tape was placed in this scene.

7 Q But the location where the body fell is
8 actually right behind this truck, correct?

9 A It's actually where the blood pool and stuff
10 is next to that door. I'll circle it.

11 Q Well, here, I was going to zoom in for you.

12 A Yeah, it was like right behind this brick
13 column.

14 Q A little to the left of the brick column,
15 correct?

16 A To the right.

17 Q To the right or left?

18 A Well, if we're facing --

19 Q Sir, I don't mean to confuse you.

20 A See where the brick column is, it's going to
21 be where the blood, I believe, was right behind, in that
22 area.

23 Q And I am not criticizing you, because I
24 understand that you just collect what's in there, but
25 would you agree with me there is actually a person there

1 inside the crime scene eating from the taco truck as the
2 scene is being processed?

3 A That's what it appears, yes.

4 THE COURT: Mr. Newman, can I stop you
5 for just a moment?

6 MR. NEWMAN: Yes.

7 THE COURT: Ladies and gentlemen, can I
8 have you step in the jury room for just a few minutes?

9 (Recess taken)

10 (Jury seated)

11 THE COURT: Mr. Newman, I'm sorry. You
12 may proceed.

13 MR. NEWMAN: Thank you, Your Honor.

14 Q (BY MR. NEWMAN) You said that ultimately while
15 you are there processing the scene, a Sebring drove up
16 and Mr. Caldwell was driving that vehicle, correct?

17 A I don't recall who -- if it was the other
18 person driving or him. I'm not sure, because once he
19 was removed, both people were removed by the time I got
20 up there.

21 Q A vehicle containing him?

22 A Yes.

23 Q And at that point did you administer the SEM
24 test?

25 A My sergeant did.

1 Q And he's standing out there and basically he
2 just gives you both hands, correct?

3 A Yeah, that's normally how it's done, yes.

4 Q And is it standard practice to collect his
5 clothing, a suspect's clothing?

6 A It depends on the situation. If there's blood
7 on the clothing, then we'll collect it or something
8 that's visible.

9 Q You saw him that night, correct?

10 A When you say "him" --

11 Q I'm sorry, Mr. Caldwell.

12 A For a little bit, yes, I did.

13 MR. NEWMAN: If I may, Your Honor.

14 THE COURT: Sure.

15 Q (BY MR. NEWMAN) You didn't observe any type
16 of -- you didn't observe any blood on him or anything
17 like that?

18 A Nothing that was brought to my attention, no.
19 Nothing I saw.

20 Q In this picture there is a red dot, but that's
21 actually like a laser sight, correct?

22 A It looks probably maybe from the flash, some
23 type of light.

24 Q But it's not blood?

25 A No.

1 Q So do you know if Mr. Caldwell's clothing was
2 collected or not?

3 A I don't believe so, unless it was collected by
4 the detectives at a later time. I'm not sure.

5 Q Were you in charge of searching the Sebring
6 that had contained him?

7 A Yes.

8 Q And you found nothing of any relation to the
9 crime scene you were currently processing?

10 A Correct.

11 Q And later on you were directed to, was it a
12 Grand Prix?

13 A Correct.

14 Q How far away from the crime scene was it?

15 A Approximately about a mile.

16 Q And you were made aware of the fact that that
17 Grand Prix -- you were told that it belonged to Derion
18 Caldwell?

19 A Yes.

20 Q And you processed it as well?

21 A Correct.

22 Q And you found nothing of evidentiary value in
23 relation to the crime scene either, correct?

24 A Correct.

25 Q And, lastly, you mentioned, was it your

1 sergeant that went and did the evidentiary processing of
2 Mr. Owens at the hospital?

3 A That was another CSI, yes.

4 Q And who's that again?

5 A Maurice Carpenter.

6 Q And you were aware of the fact that he
7 recovered almost 4 grams of cocaine?

8 A Correct.

9 Q From the body of Mr. Owens?

10 A Yes.

11 Q Crack cocaine?

12 A Yes.

13 MR. NEWMAN: I'll pass the witness, Your
14 Honor.

15 THE COURT: Mr. Leslie?

16 MR. LESLIE: No further questions, Judge.

17 THE COURT: May this witness be excused?

18 MR. LESLIE: Yes.

19 MR. NEWMAN: Yes.

20 THE COURT: Thank you, Deputy. You are
21 free to go.

22 Call your next witness, please.

23 MR. LESLIE: State calls Deputy Smidt.

24 THE COURT: Come right up here, please,
25 Deputy. If you will just have your seat. Once you get

1 settled in, if you would state and spell your name for
2 my court reporter.

3 THE WITNESS: Sergeant Gary Smidt,
4 G-a-r-y, S-m-i-d-t.

5 THE COURT: You may proceed.

6 MR. LESLIE: Thank you, Judge.

7 **GARY SMIDT,**

8 having been previously duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 Q (BY MR. LESLIE) Deputy, where do you work?

11 A Harris County Sheriff's Department, District
12 2, nights.

13 Q And I apologize, you're sergeant now, correct?

14 A It is now.

15 Q How long have you worked for the Sheriff's
16 Office?

17 A Sixteen years.

18 Q And you are a sergeant now?

19 A I am now.

20 Q You weren't in November of 2012?

21 A No, sir. I was a field training officer.

22 Q So as a field training officer, are you
23 assigned to a regular patrol job?

24 A I am. At the time I was assigned to District
25 1, which is northwest Harris County.