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MIKE MILLER,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (BY MS. JOHNSON) Would you please state and spell your name for the record?

A. Mike, Miller. M-I-K-E, M-I-L-L-E-R.

Q. And who do you work for?

A. Houston Police Department, homicide division.

Q. How long have you been a Houston police officer?

A. Almost 20 years. Going on 20 years. About 19 years.

Q. How long have you been in the homicide division?

A. For 16 of those 20 years.

Q. Let me take you back to September of 2009. Were you a homicide officer with HPD at that time?

A. I was.

Q. And were you assigned the investigation of a capital murder that occurred at the Siesta Food Mart at 390 Aldine Bender in Houston, Texas?

A. I was.

Q. And at the time, was your partner Officer Todd Miller?

1 A. He was.

2 Q. And that's your brother, correct?

3 A. That's correct.

4 Q. Now, during that investigation, did you
5 have -- did you identify four possible suspects
6 involved in that capital murder?

7 A. We did.

8 Q. And who were those suspects?

9 A. Vondra Joseph, Dontreal Brown, Neiman
10 Nelson, and Milton Holiday.

11 Q. And during the investigation, did you
12 conduct an interview with the suspect Dontreal Brown?

13 A. Yes, I did.

14 Q. When did you do that interview?

15 A. It was on September 5, 2009.

16 Q. Was that a Saturday?

17 A. It was.

18 Q. And who accompanied you to that interview?

19 A. My partner, Todd Miller.

20 Q. And where did this interview take place?

21 A. At the Harris County Jail facility lockup
22 facility.

23 Q. And at that time, were you aware that the
24 defendant or that the suspect Dontreal Brown was in
25 the jail currently charged with aggravated assault?

1 A. I was.

2 **Q.** And do you see Dontreal Brown in the
3 courtroom today?

4 A. I do.

5 **Q.** Could you point to him and tell me what he
6 is wearing?

7 A. Black male wearing the orange Harris County
8 Jail jumpsuit at the defendant's table.

9 **MS. JOHNSON:** May the record reflect
10 the witness has identified the defendant?

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

12 **(Defendant Identified)**

13 **Q.** **(BY MS. JOHNSON)** And when you spoke to --
14 when you interviewed the defendant, where did this
15 take place in the jail?

16 A. In one of the -- I'm not exactly sure what
17 they call them, but it was one of the interview rooms
18 on their first floor.

19 **Q.** Now, before the interview, were you aware
20 that the defendant had a lawyer appointed to him on
21 his aggravated assault case?

22 A. We were.

23 **Q.** And when you spoke to the defendant, did
24 you make him -- did you tell him that you were not
25 here to talk about his pending charges?

1 A. Yes, we did.

2 Q. Did you ever discuss his pending charges
3 with him?

4 A. No, we did not.

5 Q. Before -- when the defendant was brought to
6 the room, was he in handcuffs?

7 A. He was.

8 Q. And how was he cuffed?

9 A. The shackles with his hands and arms behind
10 his back.

11 Q. And when you conducted the interview, did
12 you leave him cuffed with his hands behind his back?

13 A. No. We asked the jail attendant to move
14 them to the front so he would be more comfortable.

15 Q. And y'all had them do that?

16 A. Yes.

17 Q. Now --

18 **THE COURT:** Excuse me just a moment.
19 I have to take a break. I've been waiting for a
20 phone call. I'm sorry. I need just a five-minute
21 break.

22 **MS. JOHNSON:** Yes, ma'am.

23 **(Recess taken)**

24 **THE COURT:** Sorry. Pardon the
25 interruption. You may continue.

1 **MS. JOHNSON:** Thank you, Judge.

2 **Q.** **(BY MS. JOHNSON)** Officer Miller, when
3 the -- when you began the interview with the
4 defendant, was Officer Todd Miller in the room with
5 you?

6 **A.** Yes, he was.

7 **Q.** At some point, did Officer Todd Miller
8 leave the room?

9 **A.** He did.

10 **Q.** How far into the interview was it that he
11 left the room?

12 **A.** After the Miranda warning that I read to
13 Mr. Brown was read.

14 **Q.** Okay. Let's talk about that. When you
15 first -- before you said anything to the defendant,
16 did you give him a -- his Miranda warnings?

17 **A.** Yeah. Obviously, you introduce yourself,
18 and told him we were from the police department and
19 told him that we were there to talk to him. And we
20 had to read him his rights before we said anything
21 else. And that's when we began the warnings. We
22 didn't just walk in and start with the warnings.

23 **Q.** Did you tell him he had the right to an
24 attorney?

25 **A.** Yes, we did.

1 Q. Did you tell him that he had the right to
2 remain silent?

3 A. Yes, we did.

4 Q. That anything he said could be used against
5 him?

6 A. Yes, we did.

7 Q. Did you tell him that he had a right to
8 have an attorney -- to have an attorney present prior
9 to and during any questioning?

10 A. Yes, we did.

11 Q. Did you tell him that he had the right to
12 have an attorney appointed to advise him prior to and
13 during any questioning?

14 A. Yes, we did.

15 Q. And did you tell him he had a right to
16 terminate the interview at any time?

17 A. Yes, we did.

18 Q. Now, at this point, were you recording
19 this?

20 A. No.

21 Q. And why not?

22 A. It's just a matter of preference really.
23 What I typically do is begin the portion after the
24 Miranda, start talking to the person, develop where
25 we're going to go into the conversation. And at some

1 point, I will begin the recording.

2 Q. Now, after you read him the warnings, did
3 he waive those rights and agree to talk to you?

4 A. He did.

5 Q. Did he tell you that he understood them?

6 A. He did.

7 Q. Did he ask any follow-up questions as to
8 what does that mean, or what does that word mean or
9 anything like that?

10 A. No, he did not.

11 Q. Now, at the time that you began speaking to
12 him, did Officer Todd Miller leave?

13 A. Yes, he did.

14 Q. And so, it was just you and the defendant
15 in the room?

16 A. That's correct.

17 Q. And during the time that you were talking
18 to him, did the defendant ever tell you that he
19 wanted his lawyer to be called or that he wanted to
20 call his lawyer?

21 A. No, he did not.

22 Q. Did he ever tell you, "I don't want to
23 answer your questions until my lawyer gets here"?

24 A. No, he did not.

25 Q. Did he ever pull out a business card for a

1 lawyer and show it to you and ask you to call his
2 lawyer?

3 A. No, he did not.

4 Q. Did he pull out anything from his clothing
5 and show it to you?

6 A. No, he did not.

7 Q. During the time that you were speaking to
8 him, about how long do you think that was that you
9 spoke to the defendant?

10 A. I spoke to him from 9:45 to 11:30.

11 Q. So, a little while?

12 A. That's correct.

13 Q. And during that time from 9:45 to 11:30,
14 did the defendant, Dontreal Brown, ever ask for a
15 lawyer?

16 A. No, he did not.

17 Q. Did he ever ask to leave the interview
18 room?

19 A. No, he did not.

20 Q. Did he ever tell you, "I don't want to
21 answer any more questions"?

22 A. No, he did not.

23 Q. Did he ever say, "I don't want to talk any
24 more"?

25 A. No, he did not.

1 Q. Now, during the time you were speaking with
2 the defendant, did you ever hit him?

3 A. No, I did not.

4 Q. Choke him?

5 A. No. I did not.

6 Q. Punch him?

7 A. No, I did not.

8 Q. Let me ask you this: Where were y'all
9 sitting in the interview? How -- explain to the
10 Court how you were sitting --

11 A. I like --

12 Q. -- during that time.

13 A. When I interview a person I like to be
14 sitting with the chairs facing each other so we can
15 communicate directly. In other words, there is no
16 table between us.

17 Q. So, you're sitting by him?

18 A. Directly in his face, basically. Face to
19 face, but in your own chairs.

20 Q. And so, is your leg -- your legs touching
21 his leg?

22 A. You're close enough.

23 Q. Is that possible?

24 A. If you did reach out, you could touch legs.
25 But, no, not intentionally, no.

1 Q. Did you recall -- do you recall your legs
2 touching Dontreal Brown's legs?

3 A. I don't think so. No. That would be
4 unusual.

5 Q. During the time that you were speaking with
6 the defendant, was your face directly in front of his
7 face?

8 A. No. No, it was not.

9 Q. At any time, were you trying to intimidate
10 or threaten the defendant?

11 A. No, I was not.

12 Q. Were you telling him what he needed to be
13 saying in his statement?

14 A. No, I did not.

15 Q. Did you coerce him in any way?

16 A. No, I did not.

17 Q. Was he willingly talking to you?

18 A. He was.

19 Q. As a matter of fact, during the interview,
20 he denied having anything to do with this case,
21 correct?

22 A. He did.

23 Q. Repeatedly, right?

24 A. He did.

25 Q. And you weren't really able to get through

1 to him, were you, Officer Miller?

2 A. I was not.

3 Q. Okay. So, at the time that you ended the
4 interview, what did you do?

5 A. I left. And --

6 Q. Sorry, go ahead.

7 A. I couldn't get anywhere with him. We
8 weren't -- we didn't have that communication, so I
9 left.

10 Q. And what -- did you talk to Officer Todd
11 Miller?

12 A. Yes, I did.

13 Q. And what did you tell him?

14 A. That I was finished, I couldn't -- we
15 weren't communicating. He wasn't telling me
16 anything. And then Todd Miller opted to go in there
17 and talk to Dontreal Brown.

18 Q. And were you in there during the time that
19 Officer Todd Miller was in there?

20 A. No, I was not.

21 Q. Now, when you ended the interview, did the
22 defendant say, "Call my lawyer"?

23 A. No, he did not.

24 Q. Did he say, "I want to go back to my jail
25 cell now"?

1 A. No, he did not.

2 Q. And could you hear what was going on when
3 Officer Todd Miller was in the room with the
4 defendant?

5 A. Not really, no.

6 Q. Were you really paying attention?

7 A. Not really, no.

8 Q. And so, when Officer Todd Miller came back
9 out of the room, did you learn that he then got a
10 statement from the defendant?

11 A. I did.

12 Q. How did that make you feel?

13 A. Not so worthy. But, yeah.

14 **MS. JOHNSON:** May I have a moment,
15 Your Honor?

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

17 **MS. JOHNSON:** I'll pass the witness.

18 **THE COURT:** Thank you.

19 Cross-examination?

20 **MR. HAMM:** May I inquire?

21 **THE COURT:** Yes, sir.

22 **CROSS-EXAMINATION**

23 Q. **(BY MR. HAMM)** Detective Miller, your
24 testimony is that you knew that Mr. Brown was facing
25 charges in an unrelated matter during the time you

1 interviewed him, right?

2 A. Yes, sir.

3 Q. And knew that he had an attorney?

4 A. Yes. We were aware he had an attorney,
5 yes.

6 Q. And you knew that he had just been to court
7 the day before?

8 A. I'm not sure if I knew that.

9 Q. You -- it's fair to say that based upon the
10 physical evidence that you all had reviewed at the
11 time -- and by time, I mean up to the point you made
12 contact or prior to making contact with Mr. Brown,
13 and from witness statements, you had enough
14 corroboration to link Mr. Brown with some type of
15 involvement in the capital murder investigation. Is
16 that fair?

17 A. That's correct.

18 Q. It's -- you had evidence enough to charge
19 Mr. Brown with involvement irrespective of whether
20 you were going to receive a confession from him or
21 not; is that fair?

22 A. I'm not sure if we did.

23 Q. Okay. You had the statement of Milton
24 Holiday?

25 A. That's correct.

1 Q. You know, linking -- putting Mr. Brown at
2 the scene and involving him with what happened inside
3 the Siesta Food Mart, right?

4 A. That's right?

5 Q. The physical evidence that would tend to
6 suggest -- corroborate what Mr. Milton Holiday
7 informed you-all, is that fair?

8 A. We did have physical evidence, yes.

9 Q. I don't mean fingerprints or anything like
10 that. I'm saying the physical evidence you were
11 receiving up to the point that you made contact with
12 Mr. Brown tended to add more credibility to the
13 things that Milton Holiday told you?

14 A. That's correct.

15 Q. All right. And you had interviewed a
16 couple of witnesses who, although they couldn't
17 identify the suspects, again, added weight to what --
18 the evidence that Milton Holiday was suggesting to
19 you-all?

20 A. It did.

21 Q. Along with some anonymous tips and things
22 from Crime Stoppers that were identifying the things
23 told to you by Milton Holiday, as well as identifying
24 Dontreal Brown as a suspect?

25 A. That's correct.

1 Q. Now, during -- during your time with
2 Mr. Brown, you didn't ever show him the surveillance
3 video, right?

4 A. No, I did not. No.

5 Q. You never showed him any pictures or
6 anything of the scene, did you?

7 A. Of the scene?

8 Q. Of --

9 A. Of the scene?

10 Q. Yes, sir.

11 A. No, I did not.

12 Q. You never showed him -- you never played
13 for him Milton Holiday's statement, did you?

14 A. No, I did not.

15 Q. You never acknowledged to him that you had
16 witnesses that identified three males at the Siesta
17 Food Mart -- excuse me -- that early evening or late,
18 whichever it was, did you?

19 A. Did I tell him that we had witnesses?

20 Q. Yes, sir.

21 A. I'm not sure if I did or not.

22 Q. You're allowed to -- I don't mean -- but
23 you're allowed to mislead suspects into getting the
24 suspects to tell you information; is that, fair?

25 A. Yes.

1 Q. The law allows that?

2 A. Yes.

3 Q. And you weren't misleading Mr. Brown into
4 coercing him to give you any type of information,
5 were you?

6 A. No, I was not.

7 Q. Now, is it fair to say the entire
8 conversation recording -- you have heard the
9 recording of Mr. Brown's confession, right?

10 A. I believe I have, yes.

11 Q. It's fair to say that that is not a
12 complete reflection of the things that were said
13 between Mr. Brown and law enforcement that day?

14 A. That's correct.

15 Q. It's not totally accurate; is that fair?

16 A. I don't know what you mean by accurate?
17 It's not complete.

18 Q. Okay.

19 A. But, accurate, yes, it is.

20 Q. Now, your testimony is Mr. Brown never did
21 tell you that he had an attorney?

22 A. We were aware that he had an attorney but,
23 I don't recall him telling us that he had an
24 attorney.

25 Q. And your testimony is that he never did say

1 he wanted to speak with his attorney?

2 A. He certainly never told us that he wanted
3 to speak to an attorney.

4 Q. And he never showed you his attorney's
5 business card?

6 A. No, I don't recall him handing me or seeing
7 his business card.

8 Q. Never requested to make a phone call from
9 either -- well, I guess to you, never requested to
10 make a phone call to anyone while he was in your
11 presence?

12 A. No, he did not.

13 Q. Mr. Brown never told you, "Hey, I'd like to
14 tell you what I know now"?

15 A. Did he tell me? No, he did not.

16 Q. When you were attempting to leave the room,
17 he never tried to get your attention to come back in,
18 did he?

19 A. No, he did not.

20 Q. He didn't acknowledge to you and Detective
21 Todd Miller while you two were out of the room that,
22 "Hey, I'd like to talk to one or both of you now,"
23 did he?

24 A. No, he did not.

25 Q. He didn't initiate any other conversation

1 between himself and you and the other Detective
2 Miller while you were both in the room there? Did
3 you understand my question?

4 A. Initiated it?

5 Q. Yes, sir.

6 A. No, I believe we initiated it.

7 Q. And while you were in the room with him,
8 Mr. Brown himself, he never initiated the
9 conversation between himself and yourself?

10 A. No. I believe I initiated it.

11 Q. The rooms that you were in don't have the
12 ability to record video surveillance?

13 A. I don't believe they do, no.

14 Q. You feel comfortable saying that, or you're
15 not sure?

16 A. Well, they're not -- it's not HPD, but I'm
17 pretty sure they do not. No.

18 Q. Okay.

19 A. Never in my experience have we recorded
20 using Harris County's facility to record.

21 Q. Okay. You're the individual who took
22 Milton Holiday's -- are you the individual who took
23 Milton Holiday's statement -- recorded statement.
24 Excuse me.

25 A. We actually both did with his attorney.

1 Q. Okay. Now, let me be clear. The person
2 who had the recording device, was that -- would that
3 be you or Detective Todd Miller?

4 A. Todd Miller.

5 Q. Okay.

6 A. With Milton Holiday?

7 Q. Yes, sir. And your testimony is you didn't
8 have a recording device on September 5th while you
9 were interviewing Mr. Brown?

10 A. You're asking which recording device we
11 recorded it on?

12 Q. No, no, no no, no. No, I confused you.
13 I'm saying, did you possess a recording device when
14 you were interviewing Mr. Brown?

15 A. I did. I did.

16 Q. Which makes sense. Because you never know
17 if the suspect is going to say something to you, so
18 you want to have it handy?

19 A. That's correct.

20 **MR. HAMM:** I pass the witness, Judge.

21 **THE COURT:** Thank you.

22 **MS. JOHNSON:** No further questions,
23 Your Honor.

24 **THE COURT:** Thank you. Is this
25 witness excused?