

1 seat.

2 **MIKE MILLER,**

3 having been first duly sworn, testified as follows:

4 **DIRECT EXAMINATION**

5 **Q.** **(BY MS. JOHNSON)** Good morning.

6 A. Good morning.

7 **Q.** Would you please introduce yourself to the  
8 jury?

9 A. Officer Mike Miller, Houston Police  
10 Department, homicide division.

11 **Q.** Officer Miller, how long have you been with  
12 the Houston Police Department?

13 A. 19 years.

14 **Q.** And how long have you been in the homicide  
15 division?

16 A. For 15 years.

17 **Q.** If you could tell the jury, what types of  
18 cases do you investigate as a homicide officer?

19 A. We basically investigate deaths, any type  
20 of deaths, be it baby; natural; suicides; and, of  
21 course, murder investigations.

22 **Q.** Did you have to go through any type of  
23 training to become a homicide officer?

24 A. Yes, we did.

25 **Q.** What types of training did you go through?

1           A.     Blood spatter, basic death investigation,  
2     basic overall investigations, witness statements, the  
3     whole basic realm of investigations.

4           Q.     Where is your office located?

5           A.     1200 Travis.

6           Q.     Is that downtown Houston?

7           A.     It is.

8           Q.     Do you work by yourself or with a partner?

9           A.     With a partner.

10          Q.     Who is your partner?

11          A.     Officer T.W. Miller.

12          Q.     And are you related to him?

13          A.     I am.

14          Q.     How?

15          A.     Brothers.

16          Q.     And are you the younger or older brother?

17          A.     Younger.

18          Q.     How long have y'all been partners in  
19     homicide?

20          A.     We were partners for about two years, maybe  
21     a little longer.

22          Q.     Let me take you to August of -- August 31st  
23     and September 1, 2009, when this took place. How do  
24     you get assigned that investigation?

25          A.     Our supervisor takes the call and -- which

1 is the initial report of the call, and he then  
2 decides on who he is going to assign the case to.

3 Q. And do you work a particular shift as a  
4 homicide officer?

5 A. I do.

6 Q. And what shift is that?

7 A. Day shift.

8 Q. And what time is that?

9 A. 7:00 in the morning until 3:00 in the  
10 afternoon.

11 Q. Back on September 1, 2009, were you working  
12 the day shift?

13 A. I was.

14 Q. And at some point were you assigned to  
15 finish an investigation of a capital murder that  
16 occurred at the Siesta Food Mart involving the  
17 complainant, Joe Fernandes, at the food mart located  
18 on 390 Aldine Bender?

19 A. I was.

20 Q. And did that offense happen on August 31,  
21 2009?

22 A. It did.

23 Q. Explain to the jury how that works, where  
24 you, I guess, picked up an investigation from the  
25 previous officers?

1           A.     At the time -- and, actually, the homicide  
2     division still works that way. What happens is at  
3     nighttime, they do have investigators assigned to the  
4     night shift. They send those investigators out to  
5     work the primary scene, and either they keep that  
6     investigation, or in the morning the investigation in  
7     its entirety will be handed over to day shift  
8     investigators to follow up during the day shift  
9     hours.

10           Q.     And were you -- did you take over -- you  
11     and Officer Todd Miller take an investigation from  
12     Officers Lopez and Figueroa?

13           A.     Yes, we did.

14           Q.     And when you pick up an investigation like  
15     that, do you just pick up where they left off; or do  
16     you start over?

17           A.     We choose to start over. Of course,  
18     everybody has their different techniques.

19           Q.     And why do you choose to start over?

20           A.     We want to see basically what they saw. We  
21     want to go out and see the scene and talk to  
22     witnesses, just to sort of rehash everything that's  
23     been done already.

24           Q.     So, on September 1, 2009, did you and  
25     Officer Todd Miller go to the scene of the Siesta

1 Food Mart?

2 A. We did.

3 Q. And so, if you could kind of take us  
4 through your investigation on September 1<sup>st</sup>. What  
5 did you do when you arrived at the Siesta Food Mart?

6 A. We found the convenience store, which was  
7 locked up at the time.

8 Q. And how did you get in?

9 A. We called on -- actually, a former employee  
10 showed up and allowed us in.

11 Q. And what was the former employee's name?

12 A. (No response.)

13 Q. Does Luis Garcia sound familiar?

14 A. Luis Garcia. Thank you.

15 Q. Now, when you arrived at the store and went  
16 in, what did you and Officer Todd Miller do?

17 A. We looked around, specifically our  
18 attention was directed towards the video cameras  
19 inside the video store.

20 Q. Now, at the time you're starting your  
21 investigation, did you have information from Officers  
22 Lopez and Figueroa?

23 A. Yes, we did.

24 Q. Did you have names of witnesses and the  
25 name of the complainant?

1 A. Yes, we did.

2 Q. Did you meet with any of the primary patrol  
3 officers who arrived or the crime scene unit officer?

4 A. No, we did not.

5 Q. Did you review any offense reports that  
6 they had written?

7 A. Yes, we did.

8 Q. Now, when you're touring the store, you  
9 said you're looking for cameras. Why are you looking  
10 for cameras?

11 A. Information was passed on by the primary  
12 investigators that there were cameras at the store  
13 but they were not able to access the footage or  
14 obtain the footage from the video cameras.

15 Q. So, when you arrive at a scene where there  
16 is a robbery and murder that has been committed and  
17 you see cameras, what is the one thing that you want  
18 to get?

19 A. Video footage.

20 Q. And try to see if the robbery is on video?

21 A. Absolutely.

22 Q. And are you also trying to identify any  
23 possible suspects?

24 A. Absolutely.

25 Q. Now, when you met with the store employee,

1 Luis Garcia, did he direct you to where the  
2 surveillance system was set up?

3 A. Yes, he did.

4 Q. And where was that?

5 A. In a back room. If you enter into the  
6 convenience store, it's a back room that is off to  
7 the right that contained all the video equipment.

8 Q. Was it like a manager's office?

9 A. Sort of. Very small room containing all  
10 the video equipment and a monitor.

11 Q. So, showing you State's Exhibit No. 18, can  
12 you see that?

13 A. I can.

14 Q. And was the manager's office back here  
15 through this hallway right here by the counter  
16 (indicating)?

17 A. Yes, it was.

18 Q. And here is another, State's Exhibit  
19 No. 26. Would it be back in this area past the  
20 cigarettes (indicating)?

21 A. That's correct.

22 Q. And showing you State's Exhibit No. 40, the  
23 diagram of the scene, is this the office that had the  
24 surveillance video?

25 A. Exactly.

1 Q. Do you recall what type of system it was?

2 A. No, I do not.

3 Q. Was it a system that recorded to digital or  
4 VHS tapes?

5 A. It was digital.

6 Q. Now, after reading -- or obtaining the  
7 information from Officers Lopez and Figueroa, did you  
8 reinterview the witnesses, Jeannie Ramos and Jose  
9 Lopez?

10 A. Yes, we did.

11 Q. And where did you do that?

12 A. Outside their residence.

13 Q. And did they live right across the street  
14 from the store?

15 A. Yes, they did.

16 Q. Did Jose Lopez show you any photos from a  
17 camera that he tried to take of the robbery?

18 A. Yes, he did.

19 Q. And did you see those photos?

20 A. Yes, I did.

21 Q. Were you able to see anything or identify  
22 anything in those photos?

23 A. No, I was not.

24 Q. Were they useful in the investigation?

25 A. Not at all.



1           Q.     Now, when you -- when you found the  
2 surveillance system, did you know how to operate it;  
3 or did someone have to help you?

4           A.     Yes, we were -- we worked our way through  
5 it, basically.

6           Q.     And who was there working their way through  
7 this, trying to get video?

8           A.     My brother, T.W. Miller.

9           Q.     And was Luis Garcia, the employee there,  
10 too?

11          A.     He was, as well.

12          Q.     Now, were you able to download the images  
13 from the video to a CD?

14          A.     Yes, we were.

15          Q.     And how were you able to do that?

16          A.     Just simply recording off the footage.

17          Q.     And so, when you looked at the video  
18 footage from the night before, were you able to see  
19 the robbery occur?

20          A.     Yes, we were.

21          Q.     Now, Officer Miller, I'm showing you what's  
22 been marked as State's Exhibit No. 49. Do you  
23 recognize this?

24          A.     I do.

25          Q.     And in the video are a copy of the images

1 that you downloaded into a CD back on September 1,  
2 2009?

3 A. They are.

4 Q. And did you participate in downloading  
5 these images on the CD?

6 A. I did.

7 Q. And have you watched State's Exhibit 49?

8 A. I have.

9 Q. And does it fairly and accurately depict  
10 the events that happened on August 31, 2009?

11 A. It does.

12 Q. Has it been altered in any way?

13 A. No, it has not.

14 **MS. JOHNSON:** At this time I offer  
15 State's Exhibit No. 49 into evidence and tender to  
16 opposing counsel.

17 **MR. HAMM:** No objection to State's 49.

18 **THE COURT:** Admitted.

19 Q. **(BY MS. JOHNSON)** Now, after meeting -- or  
20 after getting all the information that had been  
21 gathered the night before, at the time that you saw  
22 this video, were you able -- did you have any  
23 possible suspects identified yet?

24 A. No, we did not.

25 Q. Now, this type of case where a robbery

1 happens at a convenience store and someone is killed  
2 during the robbery, is that something that would be  
3 considered newsworthy?

4 A. Yes, it would be.

5 Q. Why is that?

6 A. The senselessness of the act.

7 **MR. HAMM:** Object -- I object to  
8 the -- I object on relevance, Judge.

9 **THE COURT:** Sustained.

10 Q. **(BY MS. JOHNSON)** When you're investigating  
11 cases of this nature, is it helpful for you in your  
12 investigation to use the media?

13 A. Yes, it is.

14 Q. And in this particular case, did y'all want  
15 the media to aid you in your investigation?

16 A. Yes, we did.

17 Q. And why did you want that?

18 A. To release the footage that we had found on  
19 the video cameras.

20 Q. Now, specifically, about the footage, going  
21 back to when you viewed the video, were there certain  
22 things that caught your attention before the robbery  
23 happened?

24 A. Yes, there was.

25 Q. Based on your experience and investigating

1 these types of robberies, when you looked at the  
2 video, describe for the jury what you saw that is  
3 something that piqued your interest, so to speak?

4 A. The robbery itself?

5 Q. No. Before the robbery.

6 A. Prior to the robbery, an individual walking  
7 into the store to basically look around or case the  
8 establishment before the robbery drew our attention.

9 Q. And was there any activity that occurred  
10 outside the store that also drew your attention?

11 A. Yes. A vehicle pulling up outside the gas  
12 pumps, driving very slowly, and parking outside the  
13 camera view, just trying to case the establishment.

14 Q. Now, you have been working in homicide for  
15 14 years or 15 years, and your brother has been doing  
16 it for quite some time. Why did this behavior appear  
17 suspicious to you?

18 A. It showed to us that they were doing a  
19 little background, or at least a little insight, into  
20 what they were fixing to do. It's common practice  
21 for them to want to know -- for a person that is  
22 going to rob an establishment to want to know what is  
23 inside before they rob it, basically.

24 Q. Now, when you obtained the video, did you  
25 also have still photos or images printed from the

1 video?

2 A. Yes, we did.

3 Q. I'm showing you State's Exhibit Nos. 53,  
4 54, 55, 56, 57, 58, 59. Will you take a look at  
5 these?

6 A. (Witness complies.)

7 Q. Now, looking at -- you got them out of  
8 order. Hold on.

9 So, look at State's Exhibits 53 and  
10 59. Do these still photos fairly and accurately  
11 depict the way the video images appeared to you back  
12 on September 1, 2009?

13 A. Yes, they do.

14 **MS. JOHNSON:** I offer State's  
15 Exhibits 53 through 59 into evidence and tender to  
16 opposing counsel.

17 **MR. HAMM:** May I inquire, Your Honor?

18 **THE COURT:** All right.

19 **VOIR DIRE EXAMINATION**

20 Q. **(BY MR. HAMM)** Officer -- Investigator  
21 Miller?

22 A. Yes, sir.

23 Q. These photos that are in State's proposed  
24 53 through 59, are these the only pictures that you  
25 were able to take --

1                   **THE COURT:** Sir, the local rules  
2 require you to be seated. Thank you.

3           **Q. (BY MR. HAMM)** Are these the only pictures  
4 that you were able to take still photos from what is  
5 in evidence -- I believe it's 49, the video, the  
6 actual -- actual video?

7           **A.** Are they the only ones that I printed?

8           **Q.** Yes, sir.

9           **A.** I'm sure they are some of the ones I  
10 printed, yes.

11           **Q.** Okay. Do you have the other pictures at  
12 your -- right now at your disposal to get?

13           **A.** No, I do not.

14           **Q.** Are they somewhere that you can receive  
15 them?

16                   **THE COURT:** Sorry. What does that  
17 have to do with the admissibility of these pictures  
18 for the purposes of voir dire?

19                   **MR. HAMM:** Well, I ask under the  
20 option of completeness, they're included. But I was  
21 going to give the witness the opportunity --

22                   **THE COURT:** Of course, you may offer  
23 them under option of completeness; but the issue is  
24 has the predicate been made for these exhibits. Are  
25 you going to ask him questions about the predicate

1 for these exhibits?

2 **MR. HAMM:** Well, my objection -- and  
3 maybe I'm wrong. My objection may have been if the  
4 rest of the pictures weren't available, I was going  
5 to object to just these pictures because I had no way  
6 of knowing if the other pictures were to accompany  
7 them, for benefit of the jury. Your Honor, I was  
8 trying to see if the rest of them were going to be  
9 able to be viewed and admitted for the benefit of the  
10 jury.

11 **THE COURT:** All right.

12 **MR. HAMM:** And he has answered my  
13 question.

14 **THE COURT:** Thank you.

15 **MR. HAMM:** So, I have no objections,  
16 with that understanding, of 53 through 59.

17 **THE COURT:** Thank you.

18 **DIRECT EXAMINATION (CONTINUED)**

19 **Q. (BY MS. JOHNSON)** Now, we discussed how you  
20 use -- sometimes use the media to help you identify  
21 possible suspects. Showing you State's Exhibit  
22 No. 53, what is in State's Exhibit No. 53?

23 **A.** The decedent, Joe Fernandes, and Milton  
24 Holiday.

25 **Q.** Now, at this time you did not know who that

1 was in State's Exhibit -- at the time on  
2 September 1<sup>st</sup>, you did not know who that was, did  
3 you?

4 A. No, I did not.

5 Q. And so, when we're looking at State's  
6 Exhibit 53, 54, and 55, were these the images that  
7 you saw of the person buying the water that appeared  
8 to be suspicious to you?

9 A. Yes, it is.

10 Q. And this person buying the water, why was  
11 that behavior -- did you believe that behavior to  
12 be --

13 **MR. HAMM:** I object as leading.

14 **THE COURT:** Sustained.

15 Q. **(BY MS. JOHNSON)** Why was that behavior  
16 suspicious?

17 A. It was just prior to the robbery, and it  
18 just looked unusual to us. It looked coincidental.

19 Q. Now, showing you State's Exhibit No. 57,  
20 what is the jury looking at in State's Exhibit 57?

21 A. A vehicle pulling past the gas pumps on the  
22 outside of the Siesta Food Mart.

23 Q. And is that the same thing in State's  
24 Exhibit No. 58?

25 A. Yes, it is.



1 Q. And State's Exhibit No. 59?

2 A. Yes, it is.

3 Q. Now, with regards to the video showing the  
4 actual robbery, could you describe for the jury what  
5 did the suspects -- what were they wearing in that  
6 video?

7 A. The suspects were completely clothed. We  
8 call it mummified, where they are clothed from head  
9 to toe, including gloves, so obvious not leave any  
10 evidence at the scene.

11 Q. And were you able to see any of the  
12 suspects' faces?

13 A. No, we were not.

14 Q. Were you even able -- were you able to  
15 determine their race or any identifying  
16 characteristics?

17 A. No, we were not.

18 Q. Did you see guns in the video?

19 A. Yes, you do.

20 Q. How many?

21 A. Two.

22 Q. And how many of the suspects have a gun?

23 A. Two of the three.

24 Q. So, as you're investigating, you do have a  
25 picture of one possible suspect; is that correct?

Mike Miller - March 29, 2012  
Direct Examination (Continued) by Ms. Johnson

1 A. Yes, we do.

2 Q. And so, what do you want to do with that  
3 image?

4 A. Find out who he is.

5 Q. And how did you do that?

6 A. By using the media.

7 Q. And what portions of the video did you  
8 release to the media?

9 A. The person depicted as Milton Holiday  
10 walking into the store purchasing the water.

11 Q. And did you release any portions of the  
12 video concerning the vehicle that was pulling up by  
13 the gas pumps?

14 A. Yes. Yes, we did.

15 Q. Officer Miller, what is Crime Stoppers?

16 A. A service that's commonly used by the  
17 public to -- for individuals with information related  
18 to a crime to call in and remain anonymous and  
19 provide information to the police involving an  
20 investigation.

21 Q. After you -- do you remember the day that  
22 you released this -- these videos to the media? Was  
23 it on September 1st?

24 A. Yes. I'm sorry it was September 1st.

25 Q. And what news -- what time news cycle were

1 you trying to get it released for?

2 A. The press conference was at around 3:00,  
3 and it hit the 5:00 news.

4 Q. And in the press conference, what type of  
5 information were you trying to get from the public?

6 A. Asking for the public's help in identifying  
7 the person that was seen walking in, buying the  
8 water, or if anybody knew the person that owned that  
9 vehicle that was passing by the gas pump.

10 Q. Now, without going -- going into any of the  
11 tips that you received, did you receive Crime  
12 Stoppers tips possibly identifying suspects involved  
13 in that robbery?

14 A. Yes, we did.

15 **MR. HAMM:** Excuse me. Excuse me. I  
16 object to the suspects involved in that robbery.  
17 It's indirect hearsay, Judge. She said -- do I need  
18 repeat what she said?

19 **THE COURT:** No. I'm just thinking.

20 **MR. HAMM:** The form of the suspects.  
21 I know what she wants, but the form of the --

22 **THE COURT:** I'm sorry. You object  
23 that she should have said "suspect" instead of  
24 "suspects"?

25 **MR. HAMM:** Yes.

1                   **THE COURT:** Okay. Then will you  
2 clarify whether or not it was suspect or suspects?

3           **Q. (BY MS. JOHNSON)** Did you receive  
4 information about the suspect buying the water?

5           A. Yes, we did.

6           **Q.** Did you receive any information about the  
7 other possible suspects involved in the actual  
8 robbery?

9                   **MR. HAMM:** And that would be hearsay.

10                   **THE COURT:** Sustained.

11           **Q. (BY MS. JOHNSON)** Now, going back to the  
12 video, before I play it, I just want to kind of have  
13 you explain to the jury what they are going to be  
14 looking at. How does the video play? Is it all on  
15 one continuous movie-type scene?

16           A. No, it's not. We basically spliced  
17 together what we needed to provide to the media so  
18 they don't have to watch countless hours of useless  
19 video footage.

20           **Q.** Did you find relevant portions and put  
21 those together?

22           A. Absolutely.

23           **Q.** How many different cameras angles were on  
24 the video?

25           A. I believe it is a total of five cameras

1 inside the video store.

2 Q. And on the video, was -- how many angles  
3 did you actually see of the robbery, if you recall?

4 A. I believe two.

5 Q. And what was one of the angles?

6 A. Mr. Fernandes behind the counter when the  
7 masked intruders entered into the store and basically  
8 overwhelmed him during --

9 **MR. HAMM:** Object -- I object to the  
10 narrative, Judge, and nonresponsive. The end part  
11 was nonresponsive to the first question.

12 **THE COURT:** Sustained.

13 Q. **(BY MS. JOHNSON)** The first angle that the  
14 camera -- first view of the camera, what portion of  
15 the robbery did it show with Mr. Fernandes at the  
16 counter?

17 A. I'm not sure exactly which camera you're  
18 talking about.

19 Q. The one that's from behind the complainant  
20 looking down.

21 A. Shows an individual jumping the counter.

22 Q. And so, can you see the other two  
23 individuals on that angle or that view of the camera?

24 A. Briefly.

25 Q. Is there another view that shows another

1 portion of the robbery?

2 A. Yes.

3 Q. And what was that one?

4 A. Two of the other suspects going in through  
5 the other entryway behind the counter.

6 Q. And were you able to see guns visible in  
7 that view?

8 A. Yes, you are.

9 Q. Is there a view of the gas pumps outside  
10 the store?

11 A. Yes, there is.

12 Q. And does that show the vehicle driving by  
13 the gas pumps?

14 A. Yes, it does.

15 Q. Do you recall what time the first  
16 suspects -- first suspect enters into the store to  
17 purchase the water?

18 A. 10:17.

19 Q. Was it 10:17 or 10:09?

20 A. The car driving by was 10:08 -- I'm sorry.  
21 Yeah. And the person walking in was 10:09. I'm  
22 correct.

23 Q. And what time did the robbery begin?

24 A. 10:17.

25 **MS. JOHNSON:** At this time I will

1 publish State's Exhibit 49.

2 **(Exhibit Published)**

3 **Q. (BY MS. JOHNSON)** Now, Officer Miller, after  
4 watching that video, are you able to see the  
5 complainant, Mr. Fernandes get shot?

6 A. Yep, you are.

7 **Q.** At what point do you see the complainant  
8 get shot? What do you see his body do?

9 A. Convulse or spasm and then fall backwards.

10 **Q.** And are you able to see the person or the  
11 robber who shot the complainant?

12 A. Yes, you are.

13 **Q.** Now, we have identified three robbers in  
14 that video, correct?

15 A. That's correct.

16 **Q.** And so, the person that shot the  
17 complainant, do you recall what color his hat that he  
18 was wearing was or the design on the hat?

19 A. I believe it was the multi-colored hat.

20 **Q.** Was it the one with stripes on it?

21 A. Yes.

22 **Q.** And the other gunman who came in around the  
23 corner -- counter first, what did his hat look like?  
24 Do you recall?

25 A. No, I do not.

1           Q.     Now, after you release the suspect buying  
2 the water and the vehicle, were you contacted by an  
3 attorney?

4           A.     Yes.

5           Q.     And who was that attorney?

6           A.     Connie Williams.

7           Q.     And after talking to Connie Williams, did  
8 you set up a meeting with Connie Williams and his  
9 client?

10          A.     Yes, we did.

11          Q.     And who was his client?

12          A.     Milton Holiday.

13          Q.     And did you develop Milton Holiday as the  
14 person that was the one buying the water in the  
15 video?

16          A.     Yes, we did.

17          Q.     When did you meet with Milton Holiday?

18          A.     Friday, September 4, 2009.

19          Q.     And where did the meeting take place?

20          A.     Our headquarters, 1200 Travis.

21          Q.     And who was with -- who was there present  
22 during the meeting or the statement?

23          A.     T.W. Miller, myself, Connie Williams, and  
24 Milton Holiday.

25          Q.     And did Milton Holiday give you a voluntary



1 statement?

2 A. Yes, he did.

3 Q. Did he fully cooperate with any requests  
4 y'all had for -- to continue your investigation?

5 A. Yes, he did.

6 Q. Did you -- did you search a vehicle that  
7 belonged to Milton Holiday?

8 A. Yes, we did.

9 Q. I'm showing you what's been marked as  
10 State's Exhibit No. 60. Do you recognize this?

11 A. I do.

12 Q. Does this picture fairly and accurately  
13 depict Milton Holiday's vehicle when y'all got him  
14 into police custody?

15 A. It does.

16 **MS. JOHNSON:** At this time I offer  
17 State's Exhibit No. 60 into evidence and tender to  
18 opposing counsel.

19 **MR. HAMM:** No objection to 60, Judge.

20 **THE COURT:** Admitted.

21 Q. **(BY MS. JOHNSON)** And is that the vehicle in  
22 State's Exhibit 60 that Milton Holiday turned over to  
23 your custody?

24 A. Yes, it is.

25 Q. When you searched this vehicle, did you

1 find any guns or clothing or anything that would  
2 connect this vehicle to the robbery?

3 **MR. HAMM:** I'm sorry. May I have some  
4 clarification if this witness is actually who  
5 participated in the search? If I hear that he was --

6 **Q. (BY MS. JOHNSON)** Did you search this  
7 vehicle?

8 A. No, I did not.

9 **Q.** Did you find out the results of the search?

10 A. I did.

11 **Q.** Was there any additional physical evidence  
12 obtained from searching this vehicle?

13 A. No. No guns, no clothing.

14 **Q.** Did you develop three other suspects  
15 involved in this robbery?

16 A. Yes, we did.

17 **MR. HAMM:** I object to that. That  
18 calls for backdoor hearsay, Judge, based on the form  
19 of the question.

20 **THE COURT:** It's just a "yes" or "no"  
21 question. So, that's overruled.

22 **Q. (BY MS. JOHNSON)** I missed your answer. Did  
23 you develop three other suspects?

24 A. Yes, we did.

25 **Q.** And who did you start looking for to talk

1 to in connection with this robbery?

2 A. Vondra Joseph; Neiman Nelson; and the  
3 defendant, Dontreal Brown.

4 Q. And do you see Dontreal Brown in the  
5 courtroom here today?

6 A. I do.

7 Q. And could you point to him and describe  
8 what he is wearing?

9 A. Seated at the defendant table, white shirt  
10 (indicating.)

11 **MS. JOHNSON:** May the record reflect  
12 the witness has identified the defendant?

13 **MR. HAMM:** Without objection.

14 **THE COURT:** The record will show that,  
15 please.

16 **(Defendant Identified)**

17 Q. **(BY MS. JOHNSON)** Now, after Milton Holiday  
18 gave his statement, did you charge him at that time  
19 with capital murder?

20 A. No, we did not.

21 Q. Was he taken into custody and arrested?

22 A. No, he was not.

23 Q. Why not?

24 A. We allowed him to remain free to help us in  
25 the ongoing developing investigation.

1           Q.     Before you allowed -- released him, did you  
2 promise him anything or make him any type of deals?

3           A.     No, we did not.

4           Q.     Did you or Officer Todd Miller do that?

5           A.     No, he did not.

6           Q.     Are you allowed to do that as a police  
7 officer?

8           A.     No, we are not.

9           Q.     Who are the only people allowed to make any  
10 kind of deals with possible suspects or defendants?

11          A.     Senior representatives of the district  
12 attorney's office.

13          Q.     Now, based on your contact with Milton  
14 Holiday, can you describe his demeanor to us, to the  
15 jury?

16                   **MR. HAMM:** I -- okay.

17          A.     Certainly, cooperative and way in over his  
18 head.

19          Q.     **(BY MS. JOHNSON)** Did he appear to you --  
20 based on your contact with him and what you observed  
21 about his behavior and the way he spoke, did he  
22 appear to you to be any type of mastermind of this  
23 robbery?

24                   **MR. HAMM:** Your Honor, that calls for  
25 a legal conclusion, calls for speculation.

1                                   **THE COURT:** Sustained.

2           **Q.**       **(BY MS. JOHNSON)** Was he the only person who  
3 came forward and cooperated with you?

4           **A.**       Yes, he was.

5           **Q.**       Now, did you try to locate Vondra Joseph,  
6 Dontreal Brown, and Neiman Nelson?

7           **A.**       Yes, we did.

8           **Q.**       Did you locate the defendant, Dontreal  
9 Brown?

10          **A.**       Yes, we did.

11          **Q.**       And did you interview Dontreal Brown?

12          **A.**       Yes, we did.

13          **Q.**       And when did you do that?

14          **A.**       Saturday, September 5, 2009.

15          **Q.**       And who did you interview the defendant  
16 with?

17          **A.**       Officer T.W. Miller.

18          **Q.**       Now, when you interviewed the defendant,  
19 was he in custody?

20          **A.**       He was.

21          **Q.**       Did he have a lawyer on another criminal  
22 matter?

23          **A.**       He did.

24          **Q.**       Did he have a lawyer on this case?

25          **A.**       No, he did not.

1           Q.     At the time that you spoke to him, had he  
2     been charged with capital murder?

3           A.     No, he was not.

4           Q.     Now, the room that you interviewed this  
5     defendant in, can you describe for the jury what it  
6     looked like?

7           A.     A standard. I believe the dimensions were  
8     10-by-10 cinder block room, with a table and chairs.

9           Q.     And was there any type of capabilities to  
10    video record your contact with the defendant?

11          A.     No, there was not.

12          Q.     Officer Miller, explain to the jury what  
13    are Miranda warnings.

14          A.     Legal rights. Miranda warnings are legal  
15    rights that police officers provide to an individual  
16    who is in custody, not free to leave at any time.  
17    It's exactly the same that they show on the movies,  
18    where you have the right to remain silent. And there  
19    is five of them. We read all of those to him.

20          Q.     And do you have those memorized, or do you  
21    read them off a blue card?

22          A.     I read them off a blue card.

23          Q.     And so, when you first made contact with  
24    the defendant, did you read him his Miranda rights?

25          A.     Yes, I did.

1           Q.     And what are those rights, if you can read  
2     them into the record for the jury?

3           A.     Actually, I don't have my card -- in my ID  
4     card now. I just switched over. I don't have a copy  
5     with me.

6           Q.     Okay. Well, did it include the right to  
7     remain silent?

8           A.     Yes, it did.

9           Q.     The right to have an attorney present?

10          A.     Yes, it did.

11          Q.     That if you don't have an attorney, one  
12     will be provided for you?

13          A.     Yes, it did.

14          Q.     He had the right to terminate the interview  
15     at any time?

16          A.     Yes, it did.

17          Q.     And when you read him these rights, did he  
18     waive those rights and agree to speak to you?

19          A.     Yes, he did.

20          Q.     Now, at the time you started the interview,  
21     was Officer Todd Miller in the room with you?

22          A.     Yes, he was.

23          Q.     And at some point, did he leave the room?

24          A.     Yes, he did.

25          Q.     And did you talk to the defendant by

1 yourself?

2 A. Yes, I did.

3 Q. When you were speaking to the defendant,  
4 did you tell him what you were there for?

5 A. Yes, I did.

6 Q. About how long it was -- what time did your  
7 contact with the defendant begin?

8 A. 9:45 in the morning.

9 Q. And what time did you end your contact with  
10 the defendant?

11 A. 11:30.

12 Q. Now, during this time that you had contact  
13 with the defendant, did you violate his rights?

14 A. No, I did not.

15 Q. At any time did he ask for a lawyer?

16 A. No, he did not.

17 Q. Did he show you a business card that he had  
18 for his lawyer?

19 A. No, he did not.

20 Q. Did he ever ask you to stop talking and end  
21 the interview?

22 A. No, he did not.

23 Q. During any of your contact with the  
24 defendant, did you coerce him or threaten him with  
25 anything?



1 A. No, I did not.

2 Q. Did you deny him anything, like the  
3 bathroom -- bathroom or food or water?

4 A. No, I did not.

5 Q. During the time that you spoke to him, did  
6 the defendant deny being involved in this robbery?

7 **MR. HAMM:** Pardon me. I would object  
8 to that. It's not written down or recorded or signed  
9 by the defendant. Any possible statement he may have  
10 made, we have no way of knowing that.

11 **THE COURT:** Sustained.

12 Q. **(BY MS. JOHNSON)** Did he appear to be under  
13 the influence of any type of drug or alcohol?

14 A. No, he was not.

15 Q. Did you make any promises to him in  
16 exchange for his statement, such as I will give  
17 you -- you will get 7 to 25 years on an aggravated  
18 robbery?

19 A. No, I did not.

20 Q. Did you tell him what he should say in his  
21 statement?

22 A. No, I did not.

23 Q. During the time that you spoke to the  
24 defendant, were you able to get anywhere with him?

25 A. No, I was not.

1           Q.     Did you -- after you ended your contact  
2 with the defendant, what did you do?

3           A.     I left the room.

4           Q.     And who did you talk to?

5           A.     My partner, T.W. Miller.

6           Q.     And what did you talk to him about? What  
7 did you say to him?

8           A.     Simply told him that I wasn't getting  
9 anywhere. We weren't getting a statement from him --  
10 I wasn't getting a statement from him.

11          Q.     So, what did Officer Todd Miller do?

12          A.     He entered into the room.

13          Q.     Did he get a statement from the defendant?

14          A.     Yes, he did.

15          Q.     So, I guess he kind of had a better go at  
16 it than you did?

17          A.     Yeah, he did.

18          Q.     Was that statement recorded?

19          A.     Yes, it was.

20          Q.     How was it recorded?

21          A.     By audio recorder. Micro audio recorder  
22 that we carry on our person.

23          Q.     Now, after getting the statement from the  
24 defendant, did you and Officer Todd Miller pursue  
25 capital murder charges against him?

1 A. Yes, we did.

2 Q. Did you file those charges that same day?

3 A. Yes, we did.

4 Q. Did you continue trying to -- trying to  
5 find Vondra Joseph and Neiman Nelson?

6 A. Yes, we did.

7 Q. Now, the pictures, did you have pictures of  
8 all the suspects you believed to be involved in this?

9 A. Yes, I did.

10 Q. Did you release the pictures of the other  
11 suspects to the media?

12 A. Yes, we did.

13 Q. Why did you do that?

14 A. To try to locate them.

15 Q. And at some point, did Vondra Joseph turn  
16 himself in?

17 A. Yes, he did.

18 Q. When was that?

19 A. September 8, 2009.

20 Q. And was there a press conference or any  
21 type of media involved with him turning himself in?

22 A. Yes, there was.

23 Q. And who did you --

24 **MR. HAMM:** Object to that as  
25 relevance, Judge.

1                                   **THE COURT:** Overruled.

2           **Q.**       **(BY MS. JOHNSON)** And who accompanied him  
3 when he turned himself in?

4           A.       The community activist, Ralph Evans, also  
5 known as Quanell X.

6           **Q.**       When he turned himself in to police  
7 custody, did he give a statement?

8           A.       No, he did not.

9           **Q.**       Was he charged with capital murder?

10          A.       Yes, he was.

11          **Q.**       Now, did Neiman Nelson ever turn himself  
12 in?

13          A.       No, he did not.

14          **Q.**       Did you acquire any type of warrant to try  
15 to arrest Neiman Nelson?

16          A.       Yes, we did.

17          **Q.**       What type of warrant was that?

18          A.       A probable cause arrest warrant.

19          **Q.**       And what is that?

20          A.       We filed probable cause arrest warrants,  
21 also known as pocket warrants, which are not entered  
22 into the statewide or nationwide database.  
23 Basically, it's warrants kept on the investigator  
24 because we want to find that person ourselves; and we  
25 don't want them to be arrested in other

1 jurisdictions.

2 Q. And were you ever able to find and arrest  
3 Neiman Nelson?

4 A. No, we were not.

5 Q. At the time that you filed charges on  
6 Dontreal Brown and Vondra Joseph, did you actually  
7 have hard charges against Neiman Nelson?

8 A. No, we did not.

9 Q. Just the probable cause arrest warrant?

10 A. That's correct.

11 Q. Have you ever been able to find and arrest  
12 or talk to Neiman Nelson?

13 A. No, we were not. No, we have not.

14 Q. Now, you stated earlier that you released  
15 Milton Holiday to help you with the ongoing  
16 investigation. At some point, was he also charged  
17 with capital murder?

18 A. Yes, he was.

19 Q. And when was that?

20 A. Do you have the page number?

21 Q. I have the information. Maybe that will  
22 refresh your memory.

23 A. November 3, 2009.

24 Q. And when did he turn himself in to the  
25 police?

1           A.       November 5, 2009.

2           **Q.**       Now, during the course of your  
3 investigation, Officer Miller, were any other  
4 different suspects identified as being involved?

5           A.       No, there were not.

6                   **MS. JOHNSON:** I pass the witness, Your  
7 Honor.

8                   **THE COURT:** I think this would be a  
9 good time for the lunch break. I take it lunch has  
10 arrived?

11                   **THE BAILIFF:** Yes, ma'am, it's  
12 awaiting them.

13                   **THE COURT:** Thank you. All rise,  
14 please, for the jury.

15                   **(Jury released)**

16                   **(AFTERNOON SESSION)**

17                   **MR. HAMM:** Judge --

18                   **THE COURT:** On the record.

19                   **MR. HAMM:** -- if the Court pleases,  
20 Judge, the State has passed Investigator Michael  
21 Miller. During the break, Milton Holiday's attorney  
22 came into the courtroom and had a conversation with  
23 me and told me that if I planned on calling  
24 Mr. Holiday, that he would invoke his client's Fifth  
25 Amendment -- his client would invoke his Fifth