

1 MR. DAVIS: Still need to hear him.

2 THE COURT: All right. Thank you.

3 (Conference concluded)

4 (Other proceedings had)

5 THE COURT: Ms. Falk, call your
6 next witness.

7 MS. FALK: At this time the State
8 calls Todd Miller.

9 THE COURT: You may proceed.

10 MS. FALK: Thank you, Judge.

11 (Suppression Hearing continued)

12 TODD MILLER,

13 After having been duly sworn, testified as follows:

14 DIRECT EXAMINATION (Jury out)

15 Q. (By Ms. Falk) Can you tell us your
16 name, please?

17 A. Officer Todd Miller.

18 Q. Where do you work?

19 A. Houston Police Department, homicide
20 division.

21 Q. And are you a police officer?

22 A. Yes, I am.

23 Q. And so if you'll let me finish my
24 questions so Ms. Julie can get it all down first.
25 How long have you been a police officer?

1 A. About 30 years.

2 Q. Has all 30 years been with the Houston
3 Police Department?

4 A. Yes.

5 Q. How long have you been assigned to
6 homicide?

7 A. About 20 years.

8 Q. Pretty long time, huh?

9 A. Yes.

10 Q. Is your rank officer, or do you have
11 some sort of specialized rank?

12 A. No. I'm an officer.

13 Q. Are you partnered with anyone within
14 homicide?

15 A. I currently am, yes.

16 Q. Who are you currently partnered with?

17 A. Officer Mike Miller.

18 Q. How long have you been partnered with
19 Officer Mike Miller?

20 A. For about three or four days this time.
21 We rode together previously on another -- in another
22 squad.

23 Q. Okay. So, within homicide, you get
24 assigned to a squad. Previously you were partnered
25 with Mike Miller. Then there was a split, and you

1 were not partnered?

2 A. Right. We were in different squads.

3 Q. Now you're back in the same squad?

4 A. Correct.

5 Q. Looking back to March 2011, who were you
6 partnered with then?

7 A. Officer Mike Miller.

8 Q. Now, I want to direct your attention
9 directly to your involvement in this case, the case
10 against Antone Richie. Were you involved at some
11 point in a homicide investigation?

12 A. Yes.

13 Q. Is that a homicide investigation that
14 started from on or about March 21st 2011?

15 A. The incident began on March 21st 2011,
16 but I was not assigned until March 26th 2011.

17 Q. And the investigation itself is a little
18 complicated, and we'll talk about that in front of
19 the jury. But for purposes of this hearing, at some
20 point did you come in contact with the defendant?

21 A. I did.

22 Q. And what is his name for us?

23 A. Antone Richie.

24 Q. Do you see him here in this courtroom?

25 A. I do.

1 Q. Can you identify him by an article of
2 his clothing and point towards him?

3 A. The person sitting to my right, wearing
4 the yellow tie and gray suit.

5 MS. FALK: Your Honor, let the
6 record reflect the witness has identified the
7 defendant.

8 THE COURT: Yes, ma'am.

9 Q. Mr. Miller, how was it you came in
10 contact with the defendant?

11 A. I was notified that he was in custody
12 and was being taken to our offices. I made
13 arrangements to meet him there at our office, at
14 1200 Travis.

15 Q. And, procedurally, what was he in
16 custody for?

17 A. He was under arrest for a 2B warrant,
18 for the charge of murder.

19 Q. And was that the murder that stemmed
20 from March 21st 2011?

21 A. Yes.

22 Q. The murder that you became involved with
23 on March 26th 2011?

24 A. Yes.

25 Q. Now, where did you interview the

1 defendant?

2 A. In one of the interview rooms on the
3 sixth floor in the homicide division at 1200 Travis.

4 Q. You said he was under arrest at that
5 time?

6 A. Yes, he was.

7 Q. Was he in handcuffs when you met with
8 him?

9 A. No, he was not.

10 Q. Had he been handcuffed previously?

11 A. I believe he was in handcuffs from the
12 time he was under arrest till the time he was
13 transported to the office, but once he arrived in
14 our office, the handcuffs were removed.

15 Q. He was by all accounts, in custody,
16 correct?

17 A. He was.

18 Q. When you're doing an in-custody
19 interview, what's the first thing you did in this
20 case?

21 A. I asked him if he understood what he was
22 under arrest for.

23 Q. And then what's the next subject that
24 you cover with him?

25 A. I read the defendant his rights off of a

1 blue card, his Miranda rights.

2 Q. When you say the blue card, is that the
3 blue card that officers carry that have the written
4 Miranda warnings?

5 A. That's correct.

6 Q. So, you said you asked him if he
7 understood what he was charged with and then you
8 read him his Miranda rights?

9 A. That's correct.

10 Q. Did you read all the Miranda rights as
11 listed in that blue card?

12 A. I did.

13 Q. And at the end of his Miranda rights,
14 did he agree to waive those rights?

15 A. Yes, he did.

16 Q. And for this portion of the conversation
17 is it recorded or unrecorded?

18 A. That portion is unrecorded.

19 Q. Do you then speak with the defendant?

20 A. Yes, I did.

21 Q. And was he willing to talk to you?

22 A. Yes, he was.

23 Q. Was he willing to waive his Miranda
24 rights?

25 A. Yes, he did.

1 Q. And you know before we even get there, I
2 asked you if he was cuffed or uncuffed. Was he
3 sitting or standing or --

4 A. He was seated in a chair similar to the
5 one I'm sitting in right now in the interview room.

6 Q. Did you provide him anything to drink?

7 A. Somebody else from our office had
8 already given him a cup of coffee, and he was
9 drinking that.

10 Q. If he needed to use the facilities,
11 would you have allowed him to do so?

12 A. I would have.

13 Q. Did you offer him at any point during
14 your conversation with him, did you offer him any
15 other refreshments or drinks?

16 A. Yes. After he finished the first cup of
17 coffee I asked him if he wanted a second cup. He
18 said he did, and I went and got it for him.

19 Q. Do you remember what kind of coffee it
20 was?

21 A. I do. Black with -- I have to look back
22 but I think cream and sugar.

23 Q. And you provided that for him?

24 A. Yes.

25 Q. And, so, you told us that you Mirandized

1 him and then you spoke with him, but that was not
2 recorded, correct?

3 A. Correct.

4 Q. At some point did you record a
5 conversation?

6 A. Yes.

7 Q. Walk me through how the beginning of
8 that began.

9 A. I took out my digital recorder, made
10 sure it was working properly, turned it on,
11 introduced myself. And then once again, read the
12 defendant his Miranda warnings off of the blue card,
13 went through the waiver and acknowledgment, and then
14 the statement is basically just question and answer.

15 Q. Okay. You said that this was a recorded
16 statement, correct?

17 A. That's the recorded statement.

18 Q. How was it recorded?

19 A. On that digital tape recorder.

20 Q. So, it's an audio recording?

21 A. Yes, it is.

22 Q. Whose digital recorder was it?

23 A. Mine.

24 Q. And you're competent to operate that
25 recorder?

1 A. I am.

2 Q. Did you check to make sure that it was
3 working?

4 A. I did.

5 Q. Then at the completion at some point in
6 your investigation did you check to make sure that
7 it was recorded?

8 A. After we finished the statement -- after
9 the defendant finished making the statement, I did
10 check to make sure that everything had recorded
11 properly and it had.

12 MS. FALK: Your Honor, may I
13 approach the witness?

14 THE COURT: Yes.

15 Q. I'm going to show you what I've marked
16 as State's Exhibit 1 for purposes of this hearing
17 only. Is this a recorded -- or it's a copy of a
18 recorded statement of Mr. Richie?

19 A. Yes.

20 MR. DAVIS: We have no objection to
21 the statement, Your Honor.

22 THE COURT: What's the exhibit
23 number?

24 MS. FALK: Judge, I marked it as
25 State's 1 for this hearing.

1 THE COURT: State's 1 for purposes
2 of this hearing is admitted without objection; is
3 that correct, Mr. Davis?

4 MR. DAVIS: Yes, Your Honor.

5 Q. (By Ms. Falk) And recorded on State's 1,
6 the recording, are all the Miranda warnings,
7 correct?

8 A. Yes, they are.

9 Q. And also recorded is his waiver, right?

10 A. Yes, it is.

11 Q. And then it's his statement?

12 A. Yes, it is.

13 Q. Correct? Now, at any point during your
14 interview of the defendant, both the unrecorded
15 portion and the recorded portion, and anything in
16 between or before or after, were there any threats
17 made to Mr. Richie?

18 A. No.

19 Q. Were there any promises made to
20 Mr. Richie?

21 A. No.

22 Q. Was he under duress or coercion in any
23 form or fashion?

24 A. No.

25 Q. When speaking with Mr. Richie, did he

1 appear to make sense to you?

2 A. Yes, he did.

3 Q. Did he appear to be lethargic or sick in
4 any way?

5 A. No.

6 Q. Did he appear to be under the influence
7 of alcohol or drugs or any sort of intoxicant?

8 A. No.

9 MS. FALK: Judge, if I can have
10 just a minute.

11 THE COURT: Okay.

12 Q. At any point during him giving his
13 statement or you taking his statement, did he ever
14 request an attorney?

15 A. No, he did not.

16 Q. Did he ever ask the interview be
17 terminated?

18 A. No, he did not.

19 Q. At any time did you or anyone else
20 directly or indirectly promise, coerce or threaten
21 the defendant into giving this statement?

22 A. No.

23 MS. FALK: Pass the witness, Judge.

24 THE COURT: Mr. Davis.

25 MR. DAVIS: Yes.

1 CROSS-EXAMINATION (Jury out)

2 Q. (By Mr. Davis) Detective Miller, you did
3 most of the investigation in the case, correct?

4 A. Yes.

5 Q. Along with your partner, Detective
6 Miller?

7 A. Yes.

8 Q. The two of you interview numerous
9 witnesses?

10 A. Yes.

11 Q. You interviewed Officer Gabler as well,
12 right?

13 A. Yes.

14 Q. You took a statement from Officer
15 Gabler?

16 A. Yes.

17 Q. You wrote down notes, things he was
18 telling you?

19 A. Yes.

20 Q. And it's important for you to take down
21 accurate notes, right?

22 A. Yes.

23 Q. You pride yourself in trying to be
24 accurate in the notes you take?

25 A. Yes.

1 Q. Because it's very important, what's told
2 to you, that you record it properly?

3 A. Yes.

4 Q. And you record it truthfully?

5 A. Yes.

6 Q. And you record what Gabler told you
7 truthfully, right?

8 A. Yes.

9 Q. And Gabler -- he sort of repeated events
10 that were told to him by Antone Richie, right?

11 A. I'm sorry?

12 Q. Gabler told you that he repeated certain
13 events that were described to him by Antone Richie?

14 A. Yes. He did repeat things that happened
15 during his encounter with the defendant.

16 Q. He said that Richie told them that the
17 security guard hit him in the face, right?

18 A. Without looking back at my report, I'm
19 going to have to say I don't remember.

20 Q. Could you look at your report, sir, if
21 it will refresh your recollection?

22 A. Yes.

23 Q. On page 25, section 2.025 of your
24 report.

25 MR. DAVIS: May I approach the

1 witness, Your Honor?

2 THE COURT: Yes, sir.

3 Q. I'll show you what I have.

4 A. Which one are you talking about?

5 Q. You're in the right spot, that section,
6 that paragraph.

7 A. Yes.

8 Q. Okay. So, now that paragraph I'm
9 showing you is what you talked to Gabler about,
10 right?

11 A. Yes.

12 Q. Gabler said that Richie claimed the
13 security guard hit him in the face one time before
14 he pulled out his knife and attacked the guard, is
15 what Gabler told you, right?

16 A. That's right.

17 Q. And he said he looked for the guard and
18 intended to arrest Richie if he could find the guard
19 as the complainant?

20 A. Yes.

21 Q. Isn't that what he said?

22 A. Yes.

23 Q. So, he's saying he intended to charge
24 Richie if he could have found the security guard?

25 A. That's correct.

1 Q. He says he was unable to locate the
2 guard, right?

3 A. That's correct.

4 Q. And ended up doing an offense report and
5 seizing the knife?

6 A. That is correct.

7 Q. And Gabler said Richie had no visible
8 wounds, no injuries or anything like that, except
9 his thumb, true?

10 A. Except for the cut on his left thumb.

11 Q. And Gabler said and your report says
12 Gabler said he told Richie that he would be arrested
13 if Gabler could find the guard, and he said Richie
14 wasn't happy with that explanation?

15 A. That's correct.

16 Q. So, Gabler tells you during the course
17 of his investigation that he encounters Richie,
18 tells him that he's going to find this guard. If he
19 can find him, he's going to charge him with the
20 case, right?

21 A. Charge Richie --

22 Q. With the case?

23 A. Yes, file charges against Richie.

24 Q. So, the way you look at it, in terms of
25 what you wrote in your report, Gabler is not able to

1 find the guard?

2 A. Not able to find the -- there's two
3 guards. He's not able -- Gabler is not able to find
4 the complainant in the murder case, the guard that
5 was stabbed.

6 Q. And, so, he makes an offense report?

7 A. Yes, he did.

8 Q. Takes Richie's information down?

9 A. Yes, he did.

10 Q. Then cuts Richie loose?

11 A. I don't know if it was he cut him loose
12 so much as when he got back that he was already
13 gone.

14 Q. Is that what you wrote in your report?

15 A. I -- once again, let me look and see.

16 Q. You don't have that written anywhere in
17 your report, do you?

18 A. I don't know. Let me take a look.

19 Q. The way your report is written, you're
20 writing your report -- I'll give you a chance to
21 look.

22 A. I didn't write that down. I don't know
23 if that was something that he mentioned after the
24 fact or --

25 Q. Yes.

1 A. -- or not. You'd have to ask Officer
2 Gabler about that. I don't know.

3 Q. But in your report, just a couple lines
4 up you said, "Gabler said he looked for the guard
5 and intended on arresting Richie if he could find
6 the guard as a complainant"?

7 A. That's correct.

8 Q. Now, obviously and logically, if an
9 officer's intending on arresting someone, he's not
10 going to let that person leave the scene, wouldn't
11 you agree?

12 A. I don't know. You'd have to ask Officer
13 Gabler.

14 Q. In the course of your business -- you've
15 been an officer for 30 years, right?

16 A. Yes, I have.

17 Q. One could argue you're an expert in
18 police tactics and the operations of HPD?

19 A. Yes.

20 Q. Right? If an officer is on the scene
21 intending to arrest someone, it's very unlikely he's
22 going to let that person leave the scene if he
23 thinks that person's a homeless person that he's not
24 going to be able to locate at another time?

25 MS. FALK: Objection. Calls for

1 speculation.

2 MR. DAVIS: Asking, based on his
3 experience. He's been in HPD for 30 years.

4 THE COURT: I can rule on the
5 objection. I don't need speeches. That objection
6 is sustained.

7 Q. (By Mr. Davis) You wouldn't have let
8 him go, would you?

9 A. Well --

10 MS. FALK: Objection, relevance.

11 THE COURT: Overruled.

12 A. Not intentionally, but things happen.
13 Sometime events happen that you don't intend for
14 them to happen, unintended consequences sort of
15 thing. You know, a lot of times when you begin the
16 investigation, you don't have all the details, you
17 know. I'd like to be able to sit here and tell you
18 I've never made a mistake, but that's not true.
19 I've made plenty. And I'd like to tell you that
20 suspects haven't escaped from me before, but I've
21 had it happen more than once, so --

22 Q. Yes, sir.

23 A. -- could it happen, absolutely. Did it
24 happen? You'd have to ask Officer Gabler. I don't
25 know.

1 Q. I understand.

2 MR. DAVIS: One moment, Your Honor.

3 THE COURT: Yes, sir.

4 MR. DAVIS: I don't have anything
5 else for him, Your Honor.

6 THE COURT: Ms. Falk.

7 MS. FALK: I have no further
8 questions. May this witness step down?

9 MR. DAVIS: Yes, he may, Your
10 Honor. I spoke with my client, Your Honor, and
11 we're not contesting the second statement, the
12 statement that was made to Officer Miller.

13 THE COURT: All right. You may
14 stand down.

15 THE WITNESS: Thank you, Judge.

16 THE COURT: Thank you. State, call
17 your next.

18 MS. FALK: Judge, I have no further
19 witnesses.

20 THE COURT: What says the defense?

21 MR. DAVIS: One moment, Your Honor.

22 THE COURT: Yes, sir. While
23 they're talking, off the record.

24 (Off the record discussion)

25 MR. DAVIS: Just one moment, Your