

1 **THE COURT:** All right. Thank you.
2 Then we're ready to proceed on the Motion to Suppress
3 the defendant's statement. Who will be the first
4 witness?

5 **MS. JOHNSON:** The State calls Officer
6 Todd Miller.

7 **THE COURT:** Thank you. Thank you.
8 Come on around and raise your right hand.

9 **(Witness Duly Sworn)**

10 **THE COURT:** Thank you. Sir.

11 **TODD MILLER,**
12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

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

15 A. Good morning.

16 **Q.** Would you please state and spell your name
17 for the record?

18 A. Todd Miller. T-O-D-D, Miller, M-I-L-L-E-R.

19 **Q.** And where do you work, Officer Miller?

20 A. In the Houston Police Department homicide
21 division.

22 **Q.** And how long have you been a Houston police
23 officer?

24 A. Almost 30 years.

25 **Q.** And how long have you been in the homicide

1 division?

2 A. Almost 20 years.

3 Q. And were you assigned to the homicide
4 division back on August 31, 2009?

5 A. I was.

6 Q. And actually, on September 1, 2009?

7 A. I was.

8 Q. At that time, were you working with a
9 partner?

10 A. I was.

11 Q. And what was your -- who was your partner?

12 A. Officer Mike Miller.

13 Q. And at the time, were you assigned a case
14 under incident No. 128041309?

15 A. I was.

16 Q. Aggravated robbery that occurred at the
17 Seista Food Mart on 390 Aldine Bender.

18 A. Yes, I was.

19 Q. And the complainant in that aggravated
20 robbery was Joe Fernandes?

21 A. That's right.

22 Q. And how did you get assigned that
23 investigation?

24 A. When I showed up for work on the morning of
25 September 1, 2009, at 7:00, my lieutenant gave me the

1 assignment to follow-up on the case, which had
2 been -- the investigation had been begun by night
3 shift homicide investigators Mueller and Lopez.

4 Q. And did that investigation get turned over
5 to you and Officer Mike Miller?

6 A. Yes. It was turned over to us the morning
7 of September 1st after the incident had occurred.

8 Q. Is it fair to say that you did the -- you
9 did the complete investigation, you and your partner?

10 A. We did everything except for the scene
11 investigation, the documenting of the scene. But, we
12 did everything else.

13 Q. At some point during your investigation,
14 did a potential suspect turn himself in to y'all's
15 custody to give a statement?

16 A. Yes.

17 Q. And who was that?

18 A. Milton Holiday.

19 Q. And did you get a statement from Milton
20 Holiday?

21 A. Yes, I did.

22 Q. And from Milton Holiday's statement, who
23 did he identify as the other suspects involved in
24 this aggravated robbery?

25 A. Dontreal Brown, the defendant in this case,

1 Vondra Joseph, and Neiman Nelson.

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

4 A. I do.

5 Q. Can you point to him and describe what he
6 is wearing?

7 A. The person seated to my left wearing the
8 orange shirt.

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)** After identifying the
14 other three suspects, did you locate Dontreal Brown?

15 A. Yes.

16 Q. And where was he?

17 A. In the Harris County Jail.

18 Q. And how did you find out that he was in the
19 Harris County Jail?

20 A. Just by running a history on his arrest
21 history, he was found to be incarcerated at the time
22 in the Harris County Jail on an aggravated assault
23 case.

24 Q. And were you aware if he had a lawyer on
25 the aggravated assault case?

1 A. I believe he did, but I don't really know.
2 I mean, I didn't speak with anybody. It was just
3 what I read on the computer screen.

4 Q. And did you and your partner, Officer Mike
5 Miller, go to the Harris County Jail?

6 A. Yes.

7 Q. And why did you do that?

8 A. To interview Dontreal Brown.

9 Q. And how did you interview -- how did you
10 get him out of the jail to interview him?

11 A. We -- we never really left the jail
12 facility. We made arrangements with the jail, called
13 over and spoke with one of the people in their
14 administration and arranged for him to be brought
15 down to one of the interview rooms on the first floor
16 where we would be able to talk to him.

17 Q. And when you started talking to the
18 defendant in this case, did you make it clear from
19 the beginning it was not about his pending charges?

20 A. Yes, we did.

21 Q. And did you read him his legal warnings
22 before you began talking to him about your
23 investigation?

24 A. Officer Mike Miller did. But, yes, I was
25 in the room when this happened, and he was read his

1 rights off of a blue card.

2 Q. And did he agree to waive his rights and
3 talk to y'all?

4 A. Yes, he did.

5 Q. At the time during the interview, did he --
6 let me back up. Who started interviewing the
7 defendant first?

8 A. Officer Mike Miller started interviewing
9 him first. We were both in the room together with
10 Dontreal. After the rights were read and the first
11 couple of questions were asked, I excused myself from
12 the room and waited out in the hall while Officer
13 Mike Miller continued the interview with Dontreal for
14 about an hour and 45 minutes.

15 Q. And so, that first hour and 45 minutes of
16 the interview between the defendant and Officer Mike
17 Miller, was that portion recorded?

18 A. No.

19 Q. Now, at some point, did you go back into
20 the interview room and continue the interview with
21 the defendant?

22 A. I did.

23 Q. And at the time that you went back in, did
24 you start recording the interview immediately?

25 A. Not immediately, no.

1 Q. About how long would you say that you spoke
2 to the defendant before you started the recording?

3 A. Less than half an hour.

4 Q. Now, do you recall what time you started
5 recording the defendant?

6 A. Yes, I do. It was at noon.

7 Q. And what day did y'all go and visit the
8 defendant at the jail?

9 A. September 5, 2009, on a Saturday.

10 Q. So, when you started the recording, did you
11 read the defendant his Miranda warnings?

12 A. Yes, I did, off a blue card.

13 Q. Did you tell him that he had a right to an
14 attorney?

15 A. I did.

16 Q. That he had the right to remain silent?

17 A. I did.

18 Q. And that anything he said could be used
19 against him?

20 A. I did.

21 Q. That he had a right to have an attorney
22 present prior to and during any questioning?

23 A. I did.

24 Q. That he had a right to have an attorney
25 appointed to advise him prior to and during any

1 questioning?

2 A. I did.

3 Q. Did you tell him that he had a right to
4 terminate the interview at any time?

5 A. Yes, I did.

6 Q. Now, backing up, before you started your
7 recording, at any time during the hour and 45 minutes
8 that officer Mike Miller spoke to the defendant, and
9 during the 30 minutes that you spoke to the
10 defendant, did at any time he request a lawyer to be
11 present?

12 **MR. HAMM:** Excuse me. I object to
13 that. He said he left the room. With respect to
14 Mike Miller.

15 **THE COURT:** Sustained. Could you
16 rephrase, please?

17 Q. **(BY MS. JOHNSON)** Were you aware -- during
18 the time that Officer Mike Miller was interviewing
19 the defendant, did the defendant invoke his right to
20 an attorney?

21 **MR. HAMM:** That would be a
22 confrontation violation, Judge.

23 **THE COURT:** Yeah. Sustained. You
24 will have to establish if he could hear what was
25 going on in there, otherwise, it's just hearsay.

1 **Q.** **(BY MS. JOHNSON)** Were you able to hear what
2 was going on in the interview when he was talking to
3 Officer Mike Miller?

4 A. No.

5 **Q.** Did Mike Miller ever end the interview
6 because the defendant invoked his right?

7 A. No.

8 **Q.** Did Mike Miller terminate the interview
9 because the defendant didn't want to keep talking?

10 A. No.

11 **MR. HAMM:** I object. It's outside the
12 scope of his knowledge.

13 **THE COURT:** Just in terms of
14 confrontation, is Detective Mike Miller here?

15 **MS. JOHNSON:** He is not here, but he
16 is available.

17 **THE COURT:** Okay. Probably you're
18 going to have to get him down here.

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

20 **THE COURT:** Okay.

21 **Q.** **(BY MS. JOHNSON)** Now, if Officer Miller --
22 going to your recording. After you read the
23 defendant his rights, did he waive his rights and
24 agree to talk to you?

25 A. Yes, he did.

1 Q. And how did he indicate that he wanted to
2 waive his rights and speak to you?

3 A. On -- are we referring to on tape?

4 Q. Yes.

5 A. I asked him specifically if he wanted to
6 give up his rights and talk to me about what
7 happened, and you can hear it on the tape where he
8 says that he does.

9 Q. Did he indicate though that he understood
10 his rights?

11 A. Yes, he did.

12 Q. Did he ask you any follow-up questions
13 concerning his rights?

14 A. No, he did not.

15 Q. Now, during the time that you were speaking
16 to him, and the part that wasn't recorded and the
17 part that was recorded, did at any time the defendant
18 say he wanted a lawyer there?

19 A. No, he did not.

20 Q. Did at any time the defendant say he wanted
21 to terminate the interview?

22 A. No, he did not.

23 Q. That he wanted to stop talking?

24 A. No, he did not.

25 Q. As far as you were aware, during your

1 contact with the defendant, did he appear to be under
2 the influence of any kind of alcohol or drugs?

3 A. No, he did not.

4 Q. Did he appear to you to be aware of what
5 was going on?

6 A. Yes, he did. He was oriented as to person,
7 place, and thing, very well.

8 Q. Did he need to go to the restroom or eat or
9 anything like that?

10 A. No.

11 Q. Did he request that?

12 A. No, he never requested that.

13 Q. During your time that you interviewed the
14 defendant, did you ever threaten or commit any type
15 of physical violence towards the defendant?

16 A. I did not.

17 Q. Did you coerce him into saying anything?

18 A. I did not.

19 Q. Did you tell him what to say during the
20 interview?

21 A. No, I did not.

22 Q. Did he willingly answer your questions
23 during the interview?

24 A. Yes, he did.

25 **MS. JOHNSON:** May I approach the

1 witness?

2 **THE COURT:** Granted.

3 **Q. (BY MS. JOHNSON)** Officer Miller, at this
4 time, I'm showing you what's been marked as State's
5 Exhibit A as in apple for the purposes of this
6 hearing. Do you recognize this?

7 A. Yes. That's a copy of the statement that
8 the defendant gave in this case.

9 **Q.** And have you listened to the statement?

10 A. I have.

11 **Q.** And has it been altered in any way since
12 September 5, 2009?

13 A. No.

14 **Q.** And is it a clear recording of your giving
15 the defendant his Miranda warnings?

16 A. Yes. It's one of the first things on the
17 recording.

18 **Q.** Okay.

19 **MS. JOHNSON:** At this time, I offer in
20 State's Exhibit A for the purposes of this hearing
21 and tender to opposing counsel.

22 **MR. HAMM:** No objection for purposes
23 of this hearing.

24 **THE COURT:** Admitted.

25 **MS. JOHNSON:** And may I publish to the

1 Court?

2 **THE COURT:** Granted. May we have an
3 agreement for the record that the court reporter need
4 not take down what's on the tape since the exhibit
5 speaks for itself?

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

7 **MR. HAMM:** Yes, Judge.

8 **THE COURT:** Thank you.

9 **THE WITNESS:** Times like these I miss
10 the old cassette tapes.

11 **(Brief pause)**

12 **MS. JOHNSON:** Judge, do you need to
13 turn on anything up there?

14 **THE COURT:** See if it helps. One of
15 my buttons was switched while I was gone.

16 Should we call the IT people?

17 **MS. JOHNSON:** Probably. It was
18 working fine downstairs.

19 **THE COURT:** Let me see if I can do
20 anything about the volume.

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

22 **(Exhibit Published)**

23 **THE COURT:** Is that his statement?

24 **MS. JOHNSON:** It's another person.

25 **THE COURT:** So this defendant only

1 made one statement?

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

3 **THE COURT:** Thank you.

4 **(Brief pause)**

5 **THE COURT:** Play the first part again.

6 **(Exhibit Published)**

7 **THE COURT:** Is that it?

8 **MS. JOHNSON:** Yes, ma'am. May I
9 proceed?

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

11 **Q. (BY MS. JOHNSON)** Now, Officer Miller,
12 during the three hours or so that -- or two and a
13 half hours you spoke to the defendant, did at any
14 time you show the defendant the surveillance video
15 from the robbery at the Seista Food Mart?

16 **A.** No, I did not.

17 **Q.** Are you aware if Mike Miller ever showed
18 him the surveillance video?

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

20 **Q.** Did you even bring it with you to the jail?

21 **A.** We didn't -- we did not even have it with
22 us at the jail during this interview.

23 **Q.** Based on your investigation, did the
24 defendant's statement corroborate the surveillance
25 video that you recovered from the Seista Food Mart?

1 A. Yes.

2 Q. And how did y'all record -- how did you
3 record the statement? What device did you use?

4 A. I used an Olympus digital recorder. A
5 little small pocket recorder.

6 Q. And then you transferred it to a CD?

7 A. Right. It actually was transferred to the
8 hard drive of a computer in the homicide office and
9 then from the hard drive of the computer there, it
10 was burned to a CD.

11 Q. After you ended the recording on the
12 statement, was there -- did the interview end at that
13 time or did you keep talking to the defendant?

14 A. No, the interview ended at that time and he
15 was returned back to his cell.

16 Q. Did the defendant give any other statements
17 in this investigation?

18 A. No.

19 Q. That was the only one?

20 A. That was the only one.

21 **MS. JOHNSON:** I pass the witness.

22 **THE COURT:** Thank you.

23 Cross-examination?

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

25 Judge, I ask the Court before I begin to take

1 judicial notice in Cause No. 1230754, the clerk's
2 file, specifically, the order appointing me as
3 Mr. Brown's attorney on September 4, 2009.

4 **THE COURT:** In this case?

5 **MR. HAMM:** In the aggravated assault
6 case. That was the reason for Mr. Brown being in
7 custody, the way that the investigators found out
8 where he was.

9 **THE COURT:** Okay. Are you on the
10 appointment list?

11 **MR. HAMM:** Yes, ma'am. I was at that
12 time. I believe I still am. I don't know, but, yes.

13 **THE COURT:** Okay. I don't -- I don't
14 remember that because you don't do much appointed
15 work, but is that true?

16 **MR. HAMM:** Yes, it is.

17 **THE COURT:** If that's true, I take
18 judicial notice.

19 **MR. HAMM:** May I inquire, Judge?

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

21 **CROSS-EXAMINATION**

22 **Q. (BY MR. HAMM)** Is it detective or
23 investigator?

24 **A.** Either one. Or officer.

25 **Q.** Okay. I will say detective. Detective

1 Miller, Mike Miller is related to you, right?

2 A. He is. He is my brother.

3 Q. Big brother or little brother?

4 A. My younger brother.

5 Q. Younger brother. Okay?

6 A. I'm technically bigger physically, and --

7 Q. I understand.

8 A. Age wise.

9 Q. Now, there is a couple of things that I'd
10 like to ask you. You told the Court that you and
11 your brother looked in the computer and ran Mr. Brown
12 after receiving information from Mr. Holiday; is that
13 right?

14 A. Yeah. I don't know which one of us ran it,
15 but we ran the records in the HPD criminal history --

16 Q. Yes, sir.

17 A. -- section. And that's when we found out
18 that he was in custody.

19 Q. And when those records come up, it tells
20 you any pending charges that an individual may have
21 as well as court dates; is that right?

22 A. That's correct.

23 Q. Along with that, it identifies an attorney,
24 if the person has an attorney, does it not?

25 A. If one has been appointed yeah, it usually

1 does.

2 Q. And so, it's fair to say that on -- did you
3 guys do that on Saturday, or do you recall?

4 A. I don't believe we did it on the day we
5 were interviewing. It would have been a day or two
6 prior to that. It was probably -- probably on the
7 4th. Sometime on September 4th.

8 Q. Okay. Now, your shift typically begins
9 when?

10 A. 7:00 a.m.

11 Q. So when -- what was the approximate time
12 you received the information from Mr. Holiday that
13 identified Mr. Brown as a participant?

14 A. Sometime that morning.

15 Q. Morning of?

16 A. September 4th.

17 Q. Okay.

18 A. Sometime -- sometime the morning of
19 September 4, 2009, is when he came in to our office
20 and gave us the information.

21 Q. "He" would be Melvin Holiday?

22 A. Milton Holiday.

23 Q. Milton?

24 A. Milton. Milton Holiday.

25 Q. And I believe that Milton Holiday came into

1 the office along with his attorney at the time,
2 Connie --

3 A. Spence.

4 Q. Sorry, not Spence.

5 A. No, Williams.

6 Q. Connie Williams.

7 A. Sorry.

8 Q. I did the same thing. Now, it's fair to
9 say that Mr. Williams brought his client into the
10 office in the afternoon hours, is that fair? If
11 you --

12 A. I thought it was in the morning, but I can
13 check here.

14 Q. Does your offense report reflect a time?

15 A. No.

16 Q. Okay.

17 A. It doesn't. But, my recollection is that
18 it was that morning.

19 Q. Okay. At some -- at some time the morning
20 of September 4th, the attorney brought Milton Holiday
21 into y'all's office?

22 A. That's correct.

23 Q. And based upon your interview of Milton
24 Holiday, you discovered that Dontreal Brown was a
25 suspect in the possible robbery and death at the

1 Siesta Mart; is that right?

2 A. That's correct.

3 Q. And after you learned that information, you
4 and Mr. Miller, your younger brother, or Mike Miller
5 on his own, ran Dontreal Brown's information and
6 discovered in the computer that he had a pending
7 charge unrelated to the capital murder?

8 A. Yes. And that he was in custody in the
9 jail.

10 Q. And at -- and that would have been on
11 September 4th. And after you received that
12 information regarding where Mr. Brown was located,
13 you and your brother, Mr. Miller, went to the Harris
14 County Jail?

15 A. On September 5th, the following day.

16 Q. Following day?

17 A. Saturday, the following day.

18 Q. So, it's fair -- it's fair to say then that
19 you understood that Mr. Brown was represented by an
20 attorney?

21 A. Yes. On the aggravated assault case.

22 Q. And the circumstances surrounding you
23 meeting with Mr. Brown in the jail, I want to talk
24 about that.

25 Do you recall where or how you got

1 Dontreal, Mr. Brown, from his dormitory cell to the
2 investigator's room?

3 A. We called over and spoke with somebody in
4 the administration staff of the Harris County Jail
5 and made arrangements for him to be brought down from
6 the cell to an interview room in the Harris County
7 Jail. I believe it was in the facility on San
8 Jacinto Street.

9 Q. Okay. And do these rooms have the ability
10 of having video recording?

11 A. No.

12 Q. During the time that you made contact with
13 Mr. Brown, he was in custody, correct?

14 A. He was. On the aggravated assault case.

15 Q. So, he was not free to leave -- well, let
16 me do it like this: When Mr. Brown was placed inside
17 the room, was he handcuffed?

18 A. He was.

19 Q. Was he shackled?

20 A. He was.

21 Q. Was he free to leave?

22 A. No, he was not. He was in custody in the
23 Harris County Jail on the aggravated assault case.

24 Q. And with respect to ending the interview
25 with Mike Miller and yourself, was he free to leave?

1 A. He could have ended the interview at any
2 time and left the interview room, yes. Absolutely.
3 He would have been returned to the jail. He wasn't
4 going to leave the Harris County Jail.

5 Q. Right. But he certainly could have
6 terminated the interview and left the interview room?

7 A. He would have been free to leave the
8 interview room and return to his jail cell at any
9 time; that is correct.

10 Q. You told the Court that there was at least
11 approximately an hour and 45-minute session between
12 Mr. Brown and Detective Mike Miller?

13 A. That's correct.

14 Q. And during this time, you were not privy to
15 what was going on or present in that room?

16 A. I was -- no, I was not. I was in the
17 hallway right outside the interview room.

18 Q. It's fair to say that there are things that
19 were talked about that aren't reflected within the
20 recording we listened to that's in evidence as
21 State's A or B?

22 A. Correct.

23 Q. Correct?

24 A. Correct.

25 Q. Right. It's not actually accurate of what

1 all was said, is that fair?

2 A. Correct. Yes.

3 Q. Now, at some point, Mike Miller came
4 outside and visited with you about the lack of
5 progress that was going on between what -- the reason
6 for interviewing Mr. Brown and what Mr. Brown was --
7 the information he was receiving; is that fair?

8 A. Yes.

9 Q. And both of you-all are now discussing
10 where the interview has went, this thing that has
11 been covered, what was said, and what was not said;
12 is that right?

13 A. Correct.

14 Q. And during that hour and 45 minutes, and
15 after speaking to Mr. Miller, there was -- there
16 wasn't anything that was -- that linked, if you will,
17 Mr. Brown with being present on the scene of whatever
18 the address is at that Siesta Mart?

19 A. Okay.

20 Q. And there wasn't any information that
21 Mr. Brown had conveyed that even put Mr. Brown
22 physically with either Milton Holiday, Neiman Nelson
23 or Vondra Joseph; is that fair?

24 A. That is fair. In fact, he said that he
25 didn't even know these people.

1 Q. Okay. And based upon the conversation and
2 the lack of progress, you made the decision to go in
3 and try and interview Mr. Brown?

4 A. Correct.

5 Q. And I think you told the Judge that your
6 interview with him lasted approximately an additional
7 30 minutes?

8 A. Less than 30 minutes before he made a
9 statement.

10 Q. And at some point, Mr. Brown, according to
11 your testimony, agrees to provide you a statement of
12 what happened?

13 A. That's correct.

14 Q. And knowing that Mr. Brown already had an
15 attorney, your testimony is that he never requested
16 the presence of his attorney?

17 A. No, he did not. And the attorney that he
18 had was appointed with regards to the aggravated
19 assault case. And we made it very clear that we were
20 not discussing or interviewing him with regards to
21 the aggravated assault case in any way, shape, or
22 manner.

23 Q. Right. It wouldn't necessarily matter what
24 attorney was representing him -- representing
25 Mr. Brown for, as long as Mr. Brown and you-all know

1 that he has an attorney, period?

2 A. I knew he had attorney on the assault case.

3 Q. Now, at one point you had a warrant for
4 Vondra Joseph and Neiman Nelson shortly after
5 interviewing Melvin Holiday -- excuse me, Milton
6 Holiday on September 4th; is that right?

7 A. That's right.

8 Q. Did you -- you had the information that
9 placed Dontreal as a defendant?

10 **THE COURT:** Excuse me just a moment.
11 Would somebody get the phone?

12 Thank you. Pardon me.

13 **MR. HAMM:** May I finish?

14 **THE COURT:** Yes.

15 Q. **(BY MR. HAMM)** You had the information from
16 Milton Holiday already identifying Dontreal on
17 September 4th, as well; is that right?

18 A. That's correct.

19 Q. Did you -- do you recall when you received
20 the warrant for the arrest of Dontreal on the capital
21 murder?

22 A. The charges were filed after he made the
23 statement. I believe it was immediately after
24 obtaining the statement from the defendant in this
25 case.

1 Q. Right.

2 A. We went straight from the jail over to the
3 Harris County district attorney's office.

4 Q. Okay.

5 A. In-custody charges were filed.

6 Q. So, you didn't -- you didn't need to get a
7 warrant because Mr. Brown was in custody?

8 A. He was in custody right. If somebody is
9 already in custody on another case, it's filed as
10 in-custody charges, and it's just entered into the
11 system, and then the paperwork is drawn up and we
12 sign the commitment. And then it's added to his
13 other charge.

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

15 **THE COURT:** Thank you. Redirect?

16 **MS. JOHNSON:** No redirect at this
17 time, Your Honor.

18 **THE COURT:** Thank you.

19 **THE WITNESS:** Thank you, Judge.

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

21 Can he go or do you need him to
22 remain?

23 **MS. JOHNSON:** I'd just ask that he
24 remain a little bit.

25 **THE WITNESS:** Sure.