

1                   **THE COURT:** Then you're excused for  
2 today. Thank you so much.

3                   **(Witness released)**

4                   **THE COURT:** Who will be your next  
5 witness?

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

8                   **THE COURT:** Thank you.

9                   **THE BAILIFF:** Judge, this witness has  
10 not been sworn.

11                   **THE COURT:** Thank you.

12 Hello, Officer.

13                   **THE WITNESS:** Judge.

14                   **THE COURT:** If you would come on up  
15 and turn and face the jury, I will give you the oath.

16 Is your hand up? I can't see.

17                   **(Witness Duly Sworn)**

18                   **THE COURT:** Thank you.

19                   **TODD MILLER,**

20 having been first duly sworn, testified as follows:

21                   **DIRECT EXAMINATION**

22                   **Q. (BY MS. JOHNSON)** Good afternoon.

23                   **A.** Good afternoon.

24                   **Q.** Will you please introduce yourself to the  
25 jury?

1 A. My name is Todd Miller.

2 Q. Officer Miller, what do you do for a living?

3 A. I'm a Houston police officer, and I work in  
4 the homicide division.

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

7 A. Almost 30 years.

8 Q. And how long have you been in the homicide  
9 division?

10 A. Almost 20 of those years.

11 Q. Is your partner your brother, Officer Mike  
12 Miller?

13 A. He was at the time of this incident.

14 Q. Are y'all still partners?

15 A. No. He is in a different squad now.

16 Q. Let me take you back to September 1, 2009.  
17 You and your -- you and Officer Mike Miller were  
18 partners at that time, right?

19 A. That's correct.

20 Q. And at that time, were you assigned to  
21 conduct an investigation of a capital murder that  
22 was -- occurred at the Siesta Food Mart back on  
23 August 31, 2009 --

24 A. Yes.

25 Q. -- involving the victim of Joe Fernandes?

1 A. That's correct.

2 Q. And as a part of that investigation --  
3 well, let me back up a little bit.

4 Did you and Officer Mike Miller  
5 conduct that investigation together?

6 A. Yes. We conducted the follow-up  
7 investigation. Other detectives handled the scene  
8 investigation that occurred during the night.

9 Q. And you did the follow-up investigation?

10 A. That's correct.

11 Q. And it's been your investigation and case  
12 ever since then?

13 A. That's correct.

14 Q. Now, let me take you to September 5, 2009.  
15 Did you go with Officer Mike Miller to interview the  
16 defendant, Dontreal Brown?

17 A. Yes, I did.

18 Q. Do you see him in the courtroom today?

19 A. I do.

20 Q. Can you point to him and tell us what he is  
21 wearing?

22 A. The person seated to my left, wearing the  
23 white shirt, who's standing up at this moment  
24 (indicating.)

25 **MS. JOHNSON:** May the record reflect

1 the witness has identified the defendant?

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

3 **MR. HAMM:** No objection.

4 **(Defendant Identified)**

5 **Q. (BY MS. JOHNSON)** Now, when you made contact  
6 with the defendant, was he in custody?

7 A. Yes, he was.

8 **Q.** And at the time that you made contact with  
9 him, were you aware if he had a lawyer on another  
10 criminal matter?

11 A. On another criminal matter, he had an  
12 attorney, but not on this matter.

13 **Q.** Had he been charged with anything involving  
14 this capital murder at the time that you made contact  
15 with him on September 5th?

16 A. He had not been charged with anything  
17 related to this incident on -- when I first made  
18 contact with him on that day.

19 **Q.** And you also were present during the  
20 statement of Milton Holiday, correct?

21 A. Yes.

22 **Q.** And that was you, Officer Mike Miller,  
23 attorney Connie Williams, and Milton Holiday?

24 A. That's correct.

25 **Q.** Now, when you made contact with the

1 defendant, he was in custody, right?

2 A. He was in custody.

3 Q. And the room that you conducted this  
4 interview in, did it have any video recording  
5 capabilities?

6 A. No, it did not.

7 Q. And so, did you have on you an audio  
8 recording -- audio recorder?

9 A. Yes.

10 Q. Could you explain to the jury how that  
11 recorder works?

12 A. It's a digital pocket-sized audio recorder  
13 made by Olympus. When you punch the "record" button,  
14 it makes a digital recording. When you hit "stop,"  
15 it stops.

16 Q. Did you also use that same recorder to  
17 record the interview with Milton Holiday?

18 A. I did.

19 Q. And did you -- on September 5th, did you  
20 have Milton Holiday's recording with you?

21 A. It was on that same recorder, yes, I did.

22 Q. So, the recording can collect multiple --  
23 recorder can collect multiple recordings; is that  
24 right?

25 A. Yes, it can. I have never filled it up.

1 It's -- it can collect quite a few. And then at the  
2 end of the investigation, I transfer everything off  
3 the recorder onto a hard drive of a computer where  
4 it's stored.

5 Q. Now, when you first made contact with the  
6 defendant, were you and Officer Mike Miller together?

7 A. Yes. We went in the room together.

8 Q. And did Officer Mike Miller give the  
9 defendant his Miranda warnings?

10 A. Yes. He read them off of a blue card.

11 Q. And were you present for that?

12 A. I was.

13 Q. And did the defendant agree to waive his  
14 rights and have a conversation with you?

15 A. Yes, he did.

16 Q. Now, at that time, did you stay in the room  
17 or leave the room?

18 A. No. Shortly after the rights were read to  
19 the defendant, I left the room.

20 Q. And why did you do that?

21 A. Interviews -- it's been my experience,  
22 interviews typically go better when it is one-on-one  
23 conversation rather than two-on-one or three-on-one.  
24 It just doesn't -- the results -- people don't feel  
25 as comfortable.

1           Q.     Now, at that time that -- before you left  
2 the room, had you ever heard the defendant ask for a  
3 lawyer?

4           A.     No.

5           Q.     Had he ever asked you to call a lawyer for  
6 him?

7           A.     No.

8           Q.     So, you left the room; and how long was  
9 officer Mike Miller in the room with the defendant?

10          A.     About an hour and three quarters. One and  
11 three quarters hours.

12          Q.     And what were you doing that whole time?

13          A.     Just standing outside in the hallway.

14          Q.     Could you hear what was going on?

15          A.     No, I couldn't. The walls are thick,  
16 cinder block walls; and the doors are -- the door was  
17 a metal door. I couldn't hear anything.

18          Q.     Now, at the end of that time, did Officer  
19 Mike Miller come out of the room and discuss what had  
20 gone on with you?

21          A.     Yes, he did. After that time, he came out;  
22 and we discussed what was going on, what he had  
23 accomplished or hadn't accomplished.

24          Q.     Had he accomplished any type of recorded  
25 statement?

1 A. No, he had not.

2 Q. And so, based on your discussion, what did  
3 you decide to do?

4 A. Go in and talk to the defendant myself.

5 Q. Why did you decide to go in yourself and  
6 talk to him?

7 A. Sometimes when you're interviewing people,  
8 they represent to people differently. There has been  
9 cases where people represent well to me and open up  
10 to me and talk to me where they wouldn't talk to my  
11 partner and vice versa. So, it's just really a  
12 matter of personality, I suppose.

13 Q. And so, when you went in to interview the  
14 defendant, did Mike Miller stay outside?

15 A. Yes, he did, out in the hallway where I had  
16 been previously.

17 Q. And what time, approximately, would you say  
18 you started your contact with the defendant?

19 A. About 11:35 in the morning.

20 Q. Now, during this time -- well, let me back  
21 up.

22 What was your tactic when you went in  
23 to interview the defendant?

24 A. I spoke with the defendant about the crime  
25 and explained to him that witnesses had come forward



1 and told us what had happened and named the suspects  
2 that were involved and just kind of went through the  
3 investigation and how it had lead us to him at that  
4 point.

5 Q. And did you tell him about Milton Holiday  
6 giving a statement giving him up?

7 A. I did.

8 Q. And did he believe you?

9 A. No, he did not.

10 Q. And so, what did you do to make him believe  
11 you that Milton Holiday gave a statement?

12 A. I cued up the recorded statement from  
13 Milton that I had taken on September 4<sup>th</sup> and played  
14 a portion -- or a snippet of the statement  
15 provided -- that Milton had provided.

16 Q. Did you play Milton Holiday's whole  
17 statement for the defendant?

18 A. No, I did not.

19 Q. Now, after you played portions of the  
20 statement, did the defendant agree to tell you what  
21 had happened?

22 A. Yes, he did.

23 Q. Now, about how long would you say from the  
24 time you walked in to the time that he agreed to give  
25 you a statement and you started recording, about how

1 much time had passed?

2 A. Less than half an hour.

3 Q. And during this time, did you explain to  
4 the defendant how this recording was going to work?

5 A. Yes, before we -- before we turned the  
6 recorder on, I went over the process and explained to  
7 him how everything worked and how responses had to be  
8 verbal, that it was just an audio recorder, which  
9 didn't record head nods or nonverbal responses,  
10 anything that he wanted on the recording would have  
11 to be spoken.

12 Q. Now, as a police officer, when you're  
13 taking a recorded statement, do you have to redo the  
14 Miranda warnings?

15 A. Yes. On every statement that we take from  
16 a defendant, the Miranda warnings have to be on the  
17 statement, along with a waiver, along with the waiver  
18 by the defendant.

19 Q. Even though you have already given him  
20 that, I guess, about two hours ago?

21 A. Yes, that's correct.

22 Q. What time did you start the recording?

23 A. About noon.

24 Q. And did you read the defendant's Miranda  
25 warnings?

1           A.     Yes, I did.

2           Q.     Now, Officer Mike Miller did not have his  
3 blue card. Do you have your blue card with you?

4           A.     I do.

5           Q.     Can you pull it out and read for the jury  
6 what those warnings are?

7           A.     The warnings that I read the defendant are:  
8 You have the right to remain silent and not make any  
9 statement at all, and that any statement you make may  
10 be used against you and probably will be used against  
11 you at your trial.

12                     Any statement you make may be used as  
13 evidence against you in court.

14                     You have the right to have a lawyer  
15 present to advise you prior to and during any  
16 questioning.

17                     If you're unable to employ a lawyer,  
18 you have the right to have a lawyer present --  
19 appointed to advise you prior to and during any  
20 questioning.

21                     And you have the right to terminate  
22 this interview at any time.

23           Q.     And did he indicate to you that he  
24 understood those rights?

25           A.     Yes, he did.

1 Q. And that he wanted to waive them?

2 A. Yes, he did.

3 Q. Now, after the recording, did you download  
4 this recording to a CD?

5 A. I did.

6 Q. Officer Miller, I will show you what's been  
7 marked as State's Exhibit No. 84. Do you recognize  
8 this?

9 A. Yes. This is a copy of the recorded  
10 statement provided by the defendant to me.

11 Q. And -- sorry. Long day.

12 Has this recording been prepared on a  
13 device capable of making an accurate recording?

14 A. Yes, it has.

15 Q. And did you understand how to operate the  
16 device to make this accurate recording?

17 A. Yes, I do.

18 Q. And is this an accurate copy of the  
19 statements made by the defendant on September 5,  
20 2009?

21 A. Yes, it is.

22 Q. And has -- have you listened to this?

23 A. Yes, I have.

24 Q. Has it been altered in any way?

25 A. No.

1 Q. And whose voices are on this recording?

2 A. The defendant's and mine.

3 Q. And the Miranda rights are on this  
4 recording?

5 A. They are. You can hear me reading them.  
6 It's like the very first thing.

7 Q. And did the defendant waive his rights and  
8 agree to talk to you, and is all that on the  
9 recording?

10 A. Yes, it is.

11 Q. And --

12 **MS. JOHNSON:** Your Honor, at this time  
13 I'd offer State's Exhibit No. 84 into evidence. And,  
14 for the record, Defense counsel has been provided a  
15 copy more than 20 days before this trial.

16 **MR. HAMM:** Same objections, Judge.

17 **THE COURT:** Overruled.

18 Q. **(BY MS. JOHNSON)** Now, Officer Miller, I  
19 just want to ask you a few questions before we play  
20 the recording.

21 Did any -- at any time you coerce the  
22 defendant into making this statement?

23 A. No, I did not.

24 Q. Now, let me ask you this: Where were you  
25 sitting, and where was he sitting in this room?

1           A.       We were both sitting in chairs in the room  
2 kind of next to a table.

3           Q.       And were you sitting by him, or was there a  
4 table in between you?

5           A.       No. I was sitting like in front of him.

6           Q.       And was --

7           A.       The table was -- the table was against the  
8 wall and kind of like in a corner. The table wasn't  
9 between us.

10          Q.       Okay. And so, when you are talking to the  
11 defendant, is your face in his face?

12          A.       I mean, we're facing each other; but --

13          Q.       But you're not right up in his face?

14          A.       No, no, not at all.

15          Q.       You're not trying to intimidate him in any  
16 way?

17          A.       No, I did not intimidate him.

18          Q.       At any time before this recording, did the  
19 defendant ask for his lawyer?

20          A.       No, he did not.

21          Q.       Did he at any time show you a business card  
22 and tell you to call his lawyer for him?

23          A.       No, he did not.

24          Q.       Did he any time say, "I don't want to talk  
25 to you. I'm done talking"?

1 A. No, he did not.

2 Q. Did he ever ask to leave the interview  
3 room?

4 A. No, he did not.

5 Q. Did you deny him a bathroom break or food  
6 or water, anything like that?

7 A. No, I did not.

8 Q. Did he appear to you to be under the  
9 influence of any types of drugs or alcohol?

10 A. No, he did not.

11 Q. Did you beat him?

12 A. No, I did not.

13 Q. Did you tell him what he needed to say in  
14 this statement?

15 A. No, I did not.

16 Q. Did you make him any promises in exchange  
17 for his statement?

18 A. No. I promised him nothing.

19 Q. For example, did you tell him that --

20 **MR. HAMM:** Leading.

21 **THE COURT:** I will allow you to direct  
22 him to a particular area, but don't be too specific.

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

24 **THE COURT:** So, that's half sustained.

25 Q. **(BY MS. JOHNSON)** Did you make any promises

1 of how much time he would receive on an aggravated  
2 robbery?

3 A. No, I did not.

4 Q. Did you ever talk to him about his other  
5 criminal matter?

6 A. No, I did not.

7 Q. During -- before the statement, had the  
8 defendant been shown the surveillance video from the  
9 robbery?

10 A. No, he was not.

11 Q. Did you even bring a laptop or anything  
12 with you for that purpose?

13 A. No, we didn't have anything. Even if we  
14 had the surveillance video with us, we did not have  
15 anything to play it on. So, no, he was never shown  
16 that.

17 **MS. JOHNSON:** I will publish State's  
18 Exhibit No. 84.

19 **THE COURT:** Can we have an agreement,  
20 as we did before, that the court reporter does not  
21 have to write it down since the exhibit speaks for  
22 itself?

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

24 **MR. HAMM:** Yes, unless there is an  
25 area that I think somebody wants to point out that



1 and they want to type that; but, yes, ma'am, that is  
2 my understanding.

3 **THE COURT:** Thank you.

4 **MS. JOHNSON:** I don't know if it goes  
5 any louder. I don't know if you have a -- I don't  
6 think it's on yours.

7 **THE COURT:** I can hear the detective,  
8 but the defendant's voice is a little soft.

9 Can all the jurors hear it okay? Am I  
10 the only one having trouble?

11 Okay. I will listen more carefully  
12 then.

13 **(Exhibit Published)**

14 **Q. (BY MS. JOHNSON)** Now, Officer Miller,  
15 during the interview who did the defendant say had  
16 guns during the robbery?

17 A. Vondra, which is Vondra Joseph, and  
18 himself.

19 **Q.** And did he tell you that he knew that the  
20 complainant had gotten shot?

21 A. Yes, he did.

22 **Q.** And who did he tell you was the shooter?

23 A. Vondra Joseph.

24 **Q.** And who did he say was the person who  
25 jumped over the counter when they first went into the

1 store?

2 A. He identified him as Nemo, which is Neiman  
3 Nelson.

4 Q. Now, is Nemo the nickname for Neiman  
5 Nelson?

6 A. Yes.

7 Q. And we hear the name Mel a lot. Who was he  
8 referring to?

9 A. Mel is the nickname for Milton Holiday.

10 Q. Now, did his statement pretty much  
11 corroborate everything that happened in the video?

12 A. Yes, it did.

13 Q. So, I'm going to go back to a couple of  
14 portions of the video.

15 **(Exhibit Published)**

16 Q. **(BY MS. JOHNSON)** Now, on the video, the two  
17 gunmen, specifically, their hats, what is the  
18 difference between their hats?

19 A. One of the caps has like white pen stripes  
20 on it, and the other one does not. They are both  
21 dark caps, but one has white pen stripes.

22 Q. So, as you're looking at it, are you able  
23 to tell the difference between the two gunmen by  
24 their hats that they are wearing?

25 A. Yes.

1 Q. I'm just going to move forward a little bit  
2 to get to the actual robbery.

3 So, based on the statement from the  
4 defendant, who is this jumping over the counter?

5 A. Neiman Nelson or, as he referred to him,  
6 Nemo.

7 Q. Now, in the defendant's statement, what did  
8 he say about the complainant and the cash register?

9 A. He said the complainant could not open the  
10 cash register.

11 Q. And then what did he say about that?

12 A. That I guess that he couldn't open it.

13 Q. Let me approach.

14 A. Okay. I asked him why he didn't open it.  
15 The defendant responded, because he either didn't  
16 know how or couldn't. Couldn't or didn't know how.

17 Q. Or didn't want to?

18 A. Didn't want to.

19 Q. Now, in this portion of the video, can you  
20 see another figure off to the left of the screen?

21 A. Yeah. You can see some movement  
22 occasionally when the individual is running, and it's  
23 going to be one of the other defendants in the case.

24 Q. And does it also appear that the  
25 complainant is looking towards someone in that

1 direction?

2 A. That's correct. He is looking in that  
3 direction more so than looking at Neiman Nelson, who  
4 is actually behind him.

5 Q. Let me stop it here. Now, at the bottom of  
6 the screen, do you see the second person with the  
7 baseball hat on?

8 A. Yes, I do. That is the white stripes that  
9 I was referring to on the cap.

10 Q. Very distinguished looking?

11 A. Yes, it is.

12 Q. And also, does it appear that the  
13 complainant still seems to be talking to someone to  
14 his left?

15 A. Yes. He is actually engaged with the other  
16 two suspects off to the left side of the screen while  
17 Neiman Nelson is taking stuff from underneath the  
18 counter.

19 Q. I'm going to go to the other angle from the  
20 slot machines.

21 **(Exhibit Published)**

22 Q. **(BY MS. JOHNSON)** Now, when we see -- what  
23 do we see here where I have a paused, with this  
24 gunman right here?

25 A. This is one of the suspects going behind

1 the counter from the direction -- I guess in the  
2 previous video, this would have been the direction  
3 off to the left side of the screen. So, this is  
4 where they are entering the area behind the counter.

5 Q. And are you able to tell the color of this  
6 suspect's hat?

7 A. Yeah. It's pretty much solid black.

8 Q. And now, what do we see here?

9 A. The second suspect is now coming around and  
10 going behind the counter, as well; and then the first  
11 one is going into the back offices. The area he is  
12 going into now is just the small little storage area  
13 and office in the back where there is -- the video  
14 equipment was back there and cleaning supplies and  
15 things like that.

16 Q. So, we clearly see the suspect like in this  
17 scene with a gun in his hand up and ready to go?

18 A. That's correct.

19 Q. Pointed?

20 A. Yes, pointed in the direction of the  
21 victim.

22 Q. And here we see this suspect still has a  
23 gun out and in his hands?

24 A. Yes, that's correct.

25 Q. He seems -- does he seem -- his body

1 position, what does he seem to be doing?

2 A. He is crouching down vertically, probably  
3 to try to avoid drawing any unwanted attention from  
4 anybody outside the store.

5 Q. So -- now, at this point in the video, at  
6 22:18:07, this is the suspect with the all-black hat.

7 A. Right. This is the suspect with the solid  
8 black hat. You can see he has still got the gun in  
9 his hand.

10 Q. And where does he go?

11 A. He goes behind the counter again. So, now  
12 all three suspects are behind the counter with the  
13 victim.

14 Q. And now what is he doing right here?

15 A. He is back out from the area behind the  
16 counter, and he is facing towards the front door  
17 area.

18 Q. He still has his gun out?

19 A. Yeah, he has still got his gun out; and he  
20 is just walking very, I guess, deliberately or  
21 casually.

22 Q. Now, here we see the second gunman with the  
23 striped hat?

24 A. Yes.

25 Q. Now, based on the defendant's statement,

1 who is the shooter in this case?

2 A. Vondra Joseph.

3 Q. And the second gunman was who?

4 A. Himself, the defendant in the case.

5 Q. And after looking at the videos, the person  
6 in the striped hat, who does that appear to be?

7 A. Vondra Joseph appears, the person that  
8 fired the shot that killed the victim.

9 Q. And the person in the all-black hat who  
10 went to the manager's office, crouching down with the  
11 gun out, who is that?

12 A. That's going to be the defendant in this  
13 case, Dontreal Brown.

14 Q. So, Vondra Joseph shoots. And so, who is  
15 this running out after he shoots?

16 A. That is the third suspect, Nemo, Neiman  
17 Nelson.

18 Q. And what type of covering was he wearing  
19 over his face?

20 A. Looks like a stocking, one of those knit  
21 caps that you can pull down all the way over your  
22 face.

23 Q. So, after looking at this video, is it easy  
24 to determine who's who?

25 A. Yes, it is.

1           Q.     And then that video corroborates the  
2 defendant's statement as to what happened?

3           A.     Yes, it did.

4           Q.     Now, when the defendant was telling you  
5 about the complainant either not knowing how to open  
6 the cash register or didn't want to, you asked him  
7 what happened next. And do you recall what he told  
8 you about the complainant?

9           A.     That the complainant jumped at him.

10          Q.     And so, I think you repeated "jumped at  
11 you." And what did he say? Do you remember?

12          A.     I'm sorry. You're going to have to --

13          Q.     Let me refresh your memory.

14          A.     Yeah. And then I asked him, "He jumped at  
15 you?"

16                     And the defendant says: Yes or yeah.

17                     And I said, "What happens next?"

18                     And he said, "Vondra shot him."

19          Q.     So, he knew that Vondra Joseph had shot the  
20 complainant?

21          A.     Yes, he did. He is the one that told me  
22 that Vondra shot the victim.

23          Q.     Now, when you look at the video, do you  
24 ever see the complainant or Mr. Fernandes jump at  
25 anyone?



1 A. No.

2 Q. Does he ever try to defend himself in any  
3 way?

4 A. No. Well, I mean, he is on the floor.  
5 Looks like he is kind of tucked up or covered up. He  
6 is obviously scared to death.

7 Q. But he is not trying to jump at any of the  
8 gunmen or Neiman Nelson?

9 A. No, it doesn't appear to me that he does.

10 Q. But that's what Dontreal Brown said that he  
11 did, that the complainant jumped at him, when he told  
12 you in the statement?

13 A. That's what he says, yes.

14 Q. And based on his statement, the  
15 complainant -- the man jumped at me, and Vondra  
16 Joseph shot him, hearing those two statements, what  
17 does that tell you that the defendant believed  
18 happened?

19 **MR. HAMM:** I object to that. That  
20 calls for your speculation. Can't get into the mind  
21 of the defendant.

22 **THE COURT:** Can you rephrase, please?

23 Q. **(BY MS. JOHNSON)** Based on the defendant's  
24 statement, what did that tell you, Officer Miller?

25 A. That the defendant saw Vondra Joseph shoot

1 the victim.

2 Q. Because the victim did what?

3 A. The victim, as soon as he got shot, he fell  
4 down.

5 Q. Well, backing up, when the defendant was  
6 explaining this to you, what was his explanation for  
7 the defendant -- Vondra Joseph shooting the  
8 complainant?

9 A. Because the -- he says the victim jumped at  
10 the defendant. In other words, the store clerk  
11 jumped at Dontreal; and that's why Vondra shot the  
12 victim. That's what his explanation was.

13 Q. And after listening to that statement, did  
14 he indicate to you that he was surprised or shocked  
15 by that?

16 A. Not particularly, no.

17 Q. Now, he did say -- did he say later that he  
18 didn't know that that was going to happen?

19 A. Yes, he does say he didn't know that was  
20 going to happen.

21 Q. And then he ran out the store?

22 A. Right. I believe that's what he said.

23 Q. Now, on video, you don't see the defendant  
24 trying to help the complainant after the fact, do  
25 you?

1 A. No.

2 Q. Does he -- did he ever tell you that he  
3 called 911 to get an ambulance there?

4 A. No, he did not.

5 Q. Before you made contact with the defendant  
6 on September 5th, did he ever try to contact y'all  
7 and say what happened?

8 A. No, he did not.

9 Q. And, in your opinion, when the defendant  
10 gave his statement, did he appear to be remorseful  
11 about anything?

12 **MR. HAMM:** Objection. She hasn't  
13 established the proper character -- improper  
14 character to --

15 **MS. JOHNSON:** He gave a statement.

16 **THE COURT:** It's overruled. But can  
17 you rephrase, please?

18 Q. **(BY MS. JOHNSON)** How did the defendant  
19 appear to you as he was giving the statement?

20 A. He appeared not to necessarily be  
21 remorseful. He appeared to be concerned with what  
22 was going to happen to himself, not with what had  
23 happened to the victim.

24 Q. Now, during the time that you spoke to the  
25 defendant, before the recording started and after or

1 during the recording, did he ever indicate to you  
2 that he didn't understand his rights or didn't  
3 understand the words that you were using?

4 A. No, he did not.

5 Q. Did he ever ask you to further explain or  
6 explain anything as to his rights concerning giving  
7 the statement?

8 A. No, he never did.

9 Q. So, after you played portions of Milton  
10 Holiday's statement, the defendant agreed to go ahead  
11 and tell you what had happened?

12 A. Yes.

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

14 **THE COURT:** Thank you.

15 **CROSS-EXAMINATION**

16 Q. **(BY MR. HAMM)** So, for the benefit of the  
17 jury, there is no doubt in your mind that Vondra  
18 Joseph -- Vondra Joseph was the shooter on State's  
19 49; is that fair?

20 A. Correct.

21 Q. No doubt in your mind, based on your  
22 involvement with all of the witnesses, that Vondra  
23 Joseph murdered Mr. Fernandes?

24 A. Correct.

25 Q. And that -- by saying that, that would mean

1 that Vondra Joseph committed capital murder; is that  
2 fair?

3 A. Yes, he did.

4 Q. Okay. Now, you're not telling the jury  
5 that Dontreal makes the statement that Vondra Joseph  
6 is the shooter to get any responsibility off of him,  
7 were you?

8 A. No.

9 Q. Where was Melvin Holiday interviewed at?

10 A. The homicide division at 1200 Travis.

11 Q. And you saw -- did you see Mr. Connie  
12 Williams -- have you seen him since then?

13 A. I saw Mr. Williams today, yes.

14 Q. Okay. And Melvin Holiday was there with  
15 his attorney, Mr. Williams?

16 A. Today I did not see Mr. Holiday.

17 Q. Yeah. Maybe I asked that -- I'm sorry.

18 I meant when you interviewed him on  
19 September 4th -- "him" being Milton Holiday, I  
20 apologize -- was Connie Williams, the attorney,  
21 present?

22 A. Yes, he was.

23 Q. And so that I understand, was your partner,  
24 Todd Miller, as well?

25 A. No. I'm Todd Miller. Mike Miller was my

1 partner, and it was four of us there. Mr. Williams,  
2 Milton Holiday, Mike Miller, and myself.

3 Q. And so that the ladies and gentlemen  
4 understand, when investigators are taking witness  
5 statements, one investigator is often questioning  
6 them sometimes, right?

7 A. Right. I mean, yes, that's correct.

8 Q. Is there ever times where the other  
9 investigator writes down what the suspect is saying  
10 to memorialize for himself?

11 A. I guess it depends on the person. Most of  
12 the time, if it is a recorded statement, we have the  
13 recording. You don't necessarily have to take notes  
14 at that point in time. You can take notes or  
15 summarize it later when we are typing a supplement.

16 Q. And both you and your partner had  
17 recordings at that time, correct?

18 A. Had?

19 Q. Recorders, I apologize. Recording devices  
20 at that time?

21 A. Yes.

22 Q. Did both you and your partner have y'all's  
23 recording devices recording Milton Holiday at the  
24 same time?

25 A. No. I believe we were just using one.

1           Q.       So, is there -- was there any reason for  
2 that?

3           A.       To use a recording device?

4           Q.       No. No. Was there any reason -- I'm  
5 sorry.

6                         Was there any reason that you had your  
7 recording device on and that your partner, Mike  
8 Miller, did not have his recording device on?

9           A.       Normally we just use one recording device.

10          Q.       Okay.

11          A.       I mean, that's the way it is. You make one  
12 recording, and there is no reason to use two or three  
13 or four different ones.

14          Q.       And during the interview, sometimes the  
15 investigators may think of a question that whomever  
16 is conducting -- conducting the questioning hasn't  
17 asked; is that fair?

18          A.       Yes.

19          Q.       Did -- did Mike Miller hand you any  
20 questions when you were discussing things with Milton  
21 Holiday?

22          A.       I don't really remember.

23          Q.       Okay. Do you know if your partner was  
24 getting anything further from the attorney,  
25 Mr. Williams, while you're conducting the interview?

1           A.     You know, again, I don't really know. I  
2 don't really remember --

3           Q.     Yes, sir.

4           A.     -- if he was or not. I was focused on  
5 Milton Holiday and what he was saying and trying to  
6 get a cohesive statement together so I understood  
7 what was going on.

8           Q.     And -- I'm sorry. And, presumably, your  
9 partner is probably paying attention, as well, so  
10 that you may not miss anything, any other  
11 questioning?

12          A.     Hopefully he is.

13          Q.     And then at some point, you guys fast  
14 forward; and you go and visit with Vondra Joseph?

15          A.     Then we what?

16          Q.     You go and try and obtain a statement from  
17 Vondra Joseph?

18          A.     That's correct.

19          Q.     Where did you guys try to obtain that  
20 statement from?

21          A.     At the jail.

22          Q.     And did you go -- did you have Vondra  
23 Joseph removed to a room?

24          A.     To an interview room.

25          Q.     How long would you say you spent -- you and



1 your partner spent there speaking with Vondra Joseph?

2 **MS. JOHNSON:** Objection to relevance.

3 **MR. HAMM:** It goes to -- I'm trying to  
4 get there, Judge. But I'm trying to get there. I'm  
5 not going into what Vondra Joseph may have said. I'm  
6 just establishing something.

7 **THE COURT:** All right. Overruled.

8 **MR. HAMM:** Thank you.

9 A. I wasn't the one that talked to him. So, I  
10 can't really say. My partner was the one that spoke  
11 with him, so you have to ask him. I don't know how  
12 long it was.

13 **Q. (BY MR. HAMM)** You didn't have any -- you  
14 didn't conduct the questioning of Vondra Joseph?

15 A. Correct.

16 **Q.** But you were present?

17 A. I don't -- I don't believe I was present  
18 when Mike was talking with him.

19 **Q.** Do you know if you were even physically  
20 there?

21 A. I don't think I was.

22 **Q.** Okay.

23 A. I don't think I was.

24 **Q.** Now, you told the jury that typically an  
25 interview is conducted one on one, right?

1 A. Most of the time, yes.

2 Q. And that is just the way that you and your  
3 partner at the time preferred to do things?

4 A. That's correct. I mean, I have done it  
5 both ways. I mean, I have done it with other people  
6 in the room, as well.

7 Q. Right.

8 A. My experience has been I have had better  
9 results with one-on-one conversations with a person  
10 I'm talking to.

11 Q. And that often means because you can  
12 establish a rapport with the individual that you're  
13 speaking with?

14 A. That's correct.

15 Q. You have different methods than your  
16 partner may have?

17 A. Yes, I do.

18 Q. The individual may feel more comfortable  
19 with you than he or she may feel with your partner?

20 A. Correct. Or vice versa.

21 Q. And sometimes if the individual -- if the  
22 individual agrees to speak, sometimes they are more  
23 comfortable talking to one person?

24 A. That's correct.

25 Q. Dontreal Brown never expressed an interest

1 in speaking to either you or your brother, did he? I  
2 mean -- I'm sorry. Your partner. I apologize for  
3 that.

4 A. He never expressed?

5 Q. He didn't -- he didn't ask -- Dontreal  
6 didn't say, "I'm going to talk to you, Todd Miller,  
7 but not him Mike Miller"?

8 A. No, he never said that.

9 Q. In fact, the way you told the jury, once  
10 Mike Miller gave Dontreal his Miranda warnings, you  
11 left the room?

12 A. I did.

13 Q. And you didn't -- your testimony is that  
14 you didn't leave because Dontreal asked for his  
15 attorney, did you?

16 A. No.

17 Q. Because that wouldn't be proper, would it?

18 A. What wouldn't be proper?

19 Q. Let me back up. If Dontreal asks for his  
20 lawyer, the proper thing to do was to end the  
21 conversation, isn't it?

22 A. The conversation would have been ended  
23 right then and there immediately.

24 Q. And with respect to when the conversation  
25 was ended, wasn't it when you stepped out of the

1 room?

2 A. Yes. I left Officer Miller and Dontreal  
3 Brown talking in the room while I waited outside.

4 Q. And when you interviewed Milton Holiday,  
5 both of you two stayed, didn't you?

6 A. Right. There was both of us and Milton's  
7 attorney, Connie Williams.

8 Q. Yeah. There wasn't any uncomfortable --  
9 uncomfortable -- I can't say it --  
10 uncomfortability -- I can't say it. I'm sorry. It's  
11 been a long time. You understand what I'm trying to  
12 say?

13 A. Any -- wasn't uncomfortable.

14 Q. Thank you.

15 A. You're asking me if the defendant was  
16 uncomfortable? No, he did not appear to be  
17 uncomfortable.

18 Q. While he was talking to you and your  
19 brother?

20 A. No, he did not appear to be uncomfortable.

21 Q. So, you're telling the jury you just  
22 decided at that point, with an individual who had  
23 agreed to waive Miranda, you felt it better to leave  
24 the room?

25 A. Yes, I did.

1           **Q.**     Okay. Now, how long, if you recall, was  
2 Milton Holiday's statement to you and your brother?

3                   **MS. JOHNSON:** Objection to relevance.

4                   **THE COURT:** Sustained.

5           **Q.**     **(BY MR. HAMM)** Well, you said -- you told  
6 the jury that you let Dontreal hear snippets, right?

7           **A.**     That's correct.

8           **Q.**     Will you refer with me on your offense  
9 report of Page 23, sir?

10          **A.**     Yes.

11          **Q.**     You would agree with me that you allowed  
12 Mr. Dontreal to listen to four questions that you  
13 asked Milton Holiday; is that right?

14          **A.**     At the first part -- portion, yes.

15          **Q.**     And it's -- you would agree with me that  
16 Dontreal is not listening to a lengthy statement?

17          **A.**     No. The snippet that I played for him at  
18 first, we're probably talking --

19          **Q.**     Ten seconds?

20          **A.**     -- ten, 15 seconds.

21          **Q.**     And then the snippets you played for him  
22 last about what?

23          **A.**     A little bit longer. It's probably 15 to  
24 20 seconds.

25          **Q.**     Okay.

1           A.       It's a few more questions.  Maybe 20  
2 seconds long.

3           Q.       Okay.  And you would agree we me that  
4 you're directing this conversation that is going on  
5 between you and Dontreal when you were talking to him  
6 on --

7           A.       Yes.

8           Q.       -- September 5th?

9                         You are on the recorder.  You are  
10 asking him things that you want recorded?

11          A.       I'm asking him questions pertaining to what  
12 happened in the convenience store with regard to the  
13 crime.

14          Q.       There is a lot of things that aren't  
15 reflected in the recording that we hear that you and  
16 Dontreal discussed, isn't there?

17          A.       There was several other things that were  
18 discussed, yes.

19          Q.       That statement, State's 84, is not a  
20 complete and accurate representation of the  
21 conversation between you and Dontreal, is it?

22          A.       It's an accurate representation of the  
23 conversation that took place between us during that  
24 time, but it is not an accurate -- it is not a  
25 complete recording of the entire 25 or 30 minutes

1 that I spent with the defendant.

2 Q. It's -- you're saying that it is -- it has  
3 been altered with respect to what was said between  
4 you and Dontreal?

5 A. That's correct. It is accurate with regard  
6 to the portion and time that the recorder was  
7 running. It accurately captured everything during  
8 that time.

9 Q. Yes, sir.

10 A. And it is an accurate recording of that  
11 time.

12 Q. And you -- you didn't show Dontreal any  
13 survey -- the surveillance video?

14 A. No, I did not.

15 Q. You didn't have a statement to go over with  
16 Dontreal of Vondra Joseph --

17 A. I did not.

18 Q. -- correct?

19 The only thing that -- according to  
20 your testimony, that Dontreal was privy to was a  
21 10-second snippet of Milton Holiday the first time  
22 and then 15 to 20 seconds snippet the second time?

23 A. And those are just estimates; but, yes,  
24 small portions, two small portions of Milton  
25 Holiday's statement that I played for him. That was

1 the only thing he would have been privy to.

2 Q. And you reduced -- you spent about 30  
3 minutes with Dontreal, right?

4 A. Probably altogether, yes.

5 Q. So, in 30 minutes of talking to him, you  
6 reduced to questioning 4 minutes and approximately 33  
7 seconds, right, if the statement on that recorder is  
8 that long?

9 A. Yeah. However long that is, that's what  
10 was recorded.

11 Q. You would agree with me that there is a lot  
12 of -- big difference between a 4-minute statement and  
13 an elapsed time of 30 minutes, would you not?

14 A. Yes.

15 Q. 26 -- 25-some-odd-minute difference?

16 A. Yes.

17 Q. How long had you been an investigator at  
18 that time?

19 A. What is this, 2009? You know, like 28  
20 years.

21 Q. Twenty-eight years. And you know the  
22 importance at that moment of getting someone's  
23 information recorded, if they are going to speak with  
24 you?

25 A. To capture a recorded statement from a



1 suspect, yes.

2 Q. Once Dontreal agreed to waive his rights,  
3 you say, boom, let me record it, let me hear it,  
4 right?

5 A. If a defendant wants to make a statement --

6 Q. Yes, sir.

7 A. -- about the crime, then, yeah. He did --  
8 like I did with Dontreal, I explained the process,  
9 get the recorder, make sure it's working properly,  
10 turn it on, read the Miranda rights, introduce  
11 myself, read the Miranda rights, and get the  
12 defendant to introduce himself and then go into the  
13 statement about what happened regarding the crime.

14 Q. So, whatever information -- well, we have  
15 it. The information that we listened to on his  
16 statement is different information than Dontreal  
17 would have given your partner at the time?

18 MS. JOHNSON: Objection, calls for  
19 speculation.

20 THE COURT: Sustained.

21 Q. (BY MR. HAMM) Okay. Explain to the jury  
22 then, if somebody agrees to waive their rights, why  
23 it wouldn't be recorded at that time?

24 A. If somebody agrees to --

25 Q. To waive.

1 A. I did make a recording.

2 Q. So, then why wasn't there a recording of  
3 the first time that Dontreal allegedly waives his  
4 rights when you and your partner were sitting there?

5 A. During the time -- during all of that time,  
6 the defendant denied any involvement, denied -- he  
7 didn't provide us with any information regarding the  
8 crime or his involvement in the crime.

9 Q. And you weren't present for that, were you?

10 A. No, I wasn't.

11 Q. So, you're telling the jury whatever your  
12 brother, your partner, told you?

13 A. That's right.

14 **(Cell phone ringing)**

15 **MR. HAMM:** Sorry, Judge. I'm sorry.  
16 I thought it was off.

17 Q. **(BY MR. HAMM)** So, again, it doesn't make  
18 sense if someone agrees to waive the Miranda rights,  
19 according to you, Investigator Miller, the recorder  
20 goes on?

21 A. I always give the suspects or the  
22 defendants an opportunity to make a statement if they  
23 want to.

24 Q. Right.

25 A. I don't start recording right off the bat.

1 I believe in being up front and honest with them and  
2 asking them if they want to make a recorded  
3 statement.

4 Q. Right.

5 A. I don't make recorded statements that  
6 aren't going to provide any kind of evidence in the  
7 case, in other words, if somebody is not admitting  
8 any kind of involvement and denying any involvement,  
9 most of the -- sometimes -- sometimes those  
10 statements will be made, if the defendant wants to  
11 make those statements; but most of the time, if there  
12 is evidence that proves otherwise, those  
13 statements -- those portions of the statement aren't  
14 recorded.

15 Q. Well, the digital recorder is just a hit  
16 record and start, right?

17 A. Yes, it is.

18 Q. And you can erase that information, as  
19 well, right?

20 A. Well, you could, yes.

21 Q. You could. And the purpose of having the  
22 recorder is so whatever that person is going to say  
23 is memorialized, right?

24 A. That's correct.

25 Q. You don't know what information that

1 individual is going to say, do you?

2 A. No, not usually, not until they start  
3 talking.

4 Q. And the person could change his or her  
5 statement after some time has went by; and you decide  
6 now to record it, right?

7 A. That's correct. They could.

8 Q. So, it's important to get it when you can  
9 get it, is it not?

10 A. Yes, it is.

11 Q. And your testimony is that after Mr. Brown  
12 waived his rights, it wasn't recorded?

13 A. That's correct.

14 Q. Okay. You didn't ask him on the recording,  
15 "How do you know Vondra Joseph shot him because he  
16 grabbed at you," do you? We don't hear that, do you?

17 A. That's correct.

18 Q. It is clear from that video that Mr. Brown  
19 is nowhere near Mr. Fernandes when he is shot; is  
20 that fair?

21 A. It doesn't appear that he is.

22 Q. It's clear that there is a barrier between  
23 where Dontreal would have been as he left and where  
24 Mr. Fernandes would have been when he was shot?

25 A. The counter is in between them, yes.

1 Q. Five seconds went --

2 THE COURT: Excuse me. The rules  
3 require you to be seated, sir. Thank you.

4 Q. (BY MR. HAMM) Five seconds had went by  
5 before Vondra shoots Mr. Fernandes; and we don't even  
6 see Dontreal in the store anymore, do we?

7 A. I think he is out of the camera shot. I  
8 don't think he is out of the store at that point  
9 because other -- a little while later in the video,  
10 you can see the people running out.

11 MR. HAMM: Can you turn the video on  
12 for me, please?

13 Q. (BY MR. HAMM) Sir, it's clear that Dontreal  
14 is answering your question of why Vondra shot  
15 Mr. Fernandes?

16 A. Yes. He did answer my questions, yes.

17 Q. And his answer, if you will agree with me,  
18 was because he jumped at me?

19 A. That's correct.

20 Q. It -- it makes sense -- bless you. It  
21 makes sense that that explanation is what was told to  
22 him by Vondra --

23 MS. JOHNSON: Objection, calls for  
24 speculation.

25 THE COURT: Sustained.

1           **Q.**       **(BY MR. HAMM)** Let's look at the -- let's  
2 look at the video together, and then you tell me if  
3 it's possible. Okay?

4           A.       Sure.

5                   **MR. HAMM:** I want the last slot  
6 machine. Yes, ma'am.

7                   **(Brief pause)**

8                   **MR. HAMM:** Can you pull that to -- try  
9 18.

10                  **MS. KNECHT:** It's at 22.

11                  **MR. HAMM:** Pull it to 1807.

12                  **MS. KNECHT:** Please?

13                  **MR. HAMM:** Please.

14                  **(Exhibit Published)**

15                  **(Sidebar discussion outside hearing of**  
16 **the Court Reporter)**

17           **Q.**       **(BY MR. HAMM)** Excuse me. Bear with me,  
18 Officer. I have got so many pieces of paper.

19                   You see where it says 1811, sir?

20           A.       Yes.

21           **Q.**       Okay .when it gets to 1816ish, that's the  
22 substance of my questions. All right. Right there.  
23 It's at 1815 on the video.

24                   Can you see your screen, as your  
25 screen lit up?

1           A.       It's all blurry.  It's either 1815 --  
2       22:18:15 or 22:18:16.  I can't tell.

3           Q.       At that moment you have identified that  
4       individual in the screen as Dontreal Brown?

5           A.       That's correct.

6           Q.       And at that moment, he is -- appears to be  
7       exiting the Siesta Mart?

8           A.       Well, he is out from behind the counter.

9           Q.       Right.

10          A.       And he is walking toward the front portion  
11       of the store.

12          Q.       That's right.

13          A.       The front portion of the counter.

14          Q.       And I'm going to show you what's in  
15       evidence as State's 14.  Can you take a look at that,  
16       and tell me when you're finished?

17          A.       Okay.

18          Q.       That is the front of the -- that is the  
19       front entrance of the Siesta Mart, is it not?

20          A.       Yes, it is.

21          Q.       And in that picture you see from outside  
22       looking in the doors and the counter area, do you  
23       not?

24          A.       Yes.  You see the front portion of the  
25       store facing the counter where the victim was.

1           **Q.**       And in relation to what we see now on the  
2 screen to your right, that is the area that -- if the  
3 person in that picture makes a right and goes around  
4 that corner, that is the area that that individual  
5 would be in front of, is it not?

6           A.       Yes.

7                   **MR. HAMM:** Judge, may I have the  
8 bailiff publish this picture to the jury for their  
9 benefit, please?

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

11                   **(Brief pause)**

12           **Q.**       **(BY MR. HAMM)** Now, Officer, you would agree  
13 with me that it is factually impossible for -- if  
14 Mr. Fernandes was outside of the cash register area  
15 and in the area that we see Dontreal Brown in camera  
16 6 at 22:18:15, then it's possible that Mr. Fernandes  
17 would have jumped or grabbed at Dontreal; is that  
18 fair?

19           A.       You lost me somewhere in there. Sorry.  
20 You're going to have to --

21           **Q.**       Yes, sir.

22           A.       -- make it more clear.

23           **Q.**       If -- if Mr. Fernandes is within the cash  
24 register area -- okay?

25           A.       Yes.



1           Q.     -- it's impossible for him to be jumping or  
2 grabbing at Dontreal as we see him leaving, is it  
3 not?

4           A.     That's correct.

5           Q.     Is there -- that's at 1822 and some change.  
6 That is Vondra Joseph about to shoot Mr. Fernandes,  
7 right?

8           A.     Right.

9           Q.     You do not see Dontreal in this frame, do  
10 you?

11          A.     That's correct.

12          Q.     And what I just showed you and the jury,  
13 Dontreal was -- appears to be going out of the door?

14          A.     He is in front of the counter or right at  
15 the front door; but, yeah, he is no longer behind the  
16 counter where the victim was.

17          Q.     And so, it's impossible, then, for the  
18 victim to have jumped at Dontreal, isn't it?

19          A.     Well, he could have.

20                   **MS. JOHNSON:**  Objection, calls for  
21 speculation.

22                   **THE COURT:**  I'm sorry.  Will you  
23 specify at what point?

24                   **MR. HAMM:**  Yes.

25          Q.     **(BY MR. HAMM)**  At the point where Vondra

1 Joseph is about to shoot Mr. Fernandes, it's  
2 impossible for Mr. Fernandes to be in the process of  
3 jumping or grabbing towards Dontreal Brown?

4 A. Right. I mean, Dontreal is not behind the  
5 counter anymore.

6 Q. Right. So --

7 A. That is correct.

8 Q. So, again, then it is reasonable, based  
9 upon your investigation, to conclude that Dontreal is  
10 telling you what was told to him by Vondra Joseph?

11 **MS. JOHNSON:** Objection, calls for  
12 speculation.

13 **THE COURT:** Sustained.

14 Q. **(BY MR. HAMM)** Is it unreasonable to think  
15 that when all of the individuals got back to the car,  
16 they discussed what had happened?

17 **MS. JOHNSON:** Objection, calls for  
18 speculation.

19 **MR. HAMM:** Judge, it's based on the  
20 fact --

21 **THE COURT:** Excuse me. That's  
22 overruled. You may answer that.

23 What was the question again?

24 Q. **(BY MR. HAMM)** Is it unreasonable to think  
25 that the suspects would talk about what had just

1 happened?

2 A. No, it is not.

3 Q. That's why you ask Dontreal, "What did  
4 y'all do with the guns," isn't it?

5 A. No. I asked him what they did with the  
6 guns because I wanted to know where the gun was at so  
7 I could recover it.

8 Q. Yes, sir. Yes, sir. Yes, I understand.

9 It -- based upon the answer to your  
10 question of why did Vondra shoot this man, based on  
11 the evidence that you have, all the evidence you  
12 have, we don't know why Vondra Joseph shot  
13 Mr. Fernandes, do we?

14 A. All I know is what the defendant told me,  
15 which is when I asked him why did Vondra Joseph  
16 shoot --

17 Q. Uh-huh (affirmative.)

18 A. -- the defendant, he says on the tape, and  
19 you can listen to it, because he jumped at me.

20 Q. That's right.

21 A. That's all I know. I wasn't there. So, I  
22 have to rely on the defendant and the people that  
23 were there to tell me.

24 Q. We don't see that happening, though, do we,  
25 on the video?

1 A. No.

2 Q. Okay. And you don't ask Dontreal on the  
3 video, on the recording, "Could someone have gotten  
4 hurt based upon what y'all did" --

5 A. No, I did not.

6 Q. -- do you?

7 That's not on the recording, is it?

8 A. No, it's not.

9 Q. On the recording you don't ask him how he  
10 knows that Vondra Joseph shot him because he grabbed  
11 at you, do you?

12 A. No, I don't.

13 Q. On the recording you don't ask him was he  
14 upset about what Vondra had done, did you?

15 A. No.

16 Q. On the recording you don't ask him if he  
17 was mad at Vondra Joseph for what he had done, did  
18 you?

19 A. No.

20 Q. On the recording you don't ask him if it  
21 was possible that someone would get shot, did you?

22 A. No.

23 Q. On the recording you didn't ask Dontreal if  
24 he felt threatened, did you?

25 A. No.

1           Q.     On the recording you didn't ask him if he  
2 was scared?

3           A.     No.

4           Q.     You didn't ask him if he was worried?

5           A.     No.

6           Q.     You didn't ask him did he have a gun in  
7 case he needed to use it, did you?

8           A.     Did -- I didn't ask the defendant that?

9           Q.     Yes, sir.

10          A.     That's correct.

11          Q.     You don't ask him on the recording did he  
12 anticipate Vondra shooting Mr. Fernandes, did you?

13          A.     No.

14          Q.     And there was a 24-minute conversation  
15 going on between you and Dontreal prior to you  
16 hitting "record," right?

17          A.     Somewhere between 20 and 25 minutes, yeah.

18          Q.     And you testified that you told him how to  
19 respond, was your direct examination?

20          A.     No, I did not tell him how to respond. I  
21 told him that the recording picked up only verbal  
22 responses. So, any response that he wanted recorded  
23 had to be verbal, that it did not record nonverbal  
24 responses like head shakes or head nods. I did not  
25 tell him what to say or how to respond in any way.

1           Q.       I'm talking about -- and I'm not suggesting  
2 that you were telling him, "Hey, I want you to say  
3 this story." My point is: You are explaining --  
4 your testimony was you told him how to respond.

5                       In explanation of that, is what you  
6 are saying, you're telling him the answers to the  
7 questions I'm going to ask you and the recorder can't  
8 take head nods, right?

9           A.       The -- the responses needed to be verbal is  
10 what I told him. I did not tell him what to say with  
11 regard to responses to specific questions. I did not  
12 tell him that.

13           Q.       And your testimony is that Dontreal was  
14 never promised an amount of time in exchange for his  
15 statement, was he?

16           A.       No, I didn't promise him any time or even  
17 discuss any time with him.

18                       **MR. HAMM:** Can you put the recording  
19 part on so I can place it --

20           Q.       **(BY MR. HAMM)** You're telling the jury that  
21 Vondra Joseph -- you're telling the jury that  
22 Dontreal never had my business card and tried to hand  
23 it to you, right?

24           A.       That's correct.

25                       **(Exhibit Published)**

1           **Q.**       **(BY MR. HAMM)** Now, let me ask you. He,  
2           Dontreal, has a very slurred speech, if you will; is  
3           that fair?

4           **A.**       At times it's more slurred than others.

5           **Q.**       But that's an accurate representation of  
6           how he sounded?

7           **A.**       He is not very articulate. That's correct.

8                           **(Exhibit Published)**

9           **Q.**       **(BY MR. HAMM)** He said, "You need to be  
10          taking this here"? Do you want to hear it again?

11          **A.**       I don't know what he said; and I believe,  
12          in my opinion, the next question was, I didn't  
13          understand him.

14                           **(Exhibit Published)**

15          **Q.**       **(BY MR. HAMM)** "You need to be taking this  
16          here."

17          **A.**       I don't know. I'm sorry. I don't  
18          understand him.

19                           **(Exhibit Published)**

20          **Q.**       **(BY MR. HAMM)** I'm hoping I can slow it  
21          down.

22                           **(Exhibit Published)**

23          **Q.**       **(BY MR. HAMM)** Are you telling the jury that  
24          Dontreal was sitting down when you were discussing  
25          things with him?

1 A. Yes, he was.

2 Q. And how tall of a man are you?

3 A. 6 foot 4.

4 Q. How big of a man is your brother -- your  
5 partner?

6 A. Probably a couple of inches shorter.

7 Q. Do you know how tall Mr. Brown is?

8 A. About 5'6, 5'5.

9 Q. At that time much smaller than he is now,  
10 weight wise; is that fair?

11 A. He was thinner.

12 Q. You two are big men, right?

13 A. Calling me fat?

14 Q. No, not at all.

15 A. No. You're right. I'm a big guy, yeah.

16 Q. And your testimony to the jury is that  
17 Dontreal didn't just say you need to take this here  
18 and hand you my business card or present it to you?

19 A. No, he did not.

20 **MR. HAMM:** Pass the witness, Judge.

21 **THE COURT:** Thank you.

22 **REDIRECT EXAMINATION**

23 Q. **(BY MS. JOHNSON)** Now, during your  
24 investigation, did you have photos of the other  
25 suspects involved -- or all the suspects involved?



1 A. Yes, we did obtain photographs.

2 Q. And there were actually photos of the  
3 suspects you were looking for released to the media,  
4 weren't there?

5 A. Yes, there were.

6 Q. I'm showing you what's been marked as  
7 State's Exhibit 88, 89, and 90. Do you recognize  
8 these photographs?

9 A. This one is Vondra -- Vondra; this one is,  
10 I believe, Milton Holiday; and this is Neiman  
11 Nelson's picture here, the one with the gold teeth.

12 Q. And do those photos fairly and accurately  
13 depict the way they appeared back in -- or during  
14 this time -- during your investigation?

15 A. Yes.

16 Q. And these are photos of these guys?

17 A. Right. Yes, they are.

18 **MS. JOHNSON:** At this time I offer  
19 State's 88, 89, and 90 into evidence. Tender to  
20 opposing counsel.

21 **MR. HAMM:** Objection to relevance.

22 **THE COURT:** Overruled. Admitted.

23 Q. **(BY MS. JOHNSON)** Showing you State's  
24 Exhibit 88, who is this in State's Exhibit 88?

25 A. That's Vondra Joseph.

1 Q. Showing you State's Exhibit 89?

2 A. Milton Holiday.

3 Q. And showing you State's Exhibit No. 90?

4 A. And that is Neiman Nelson.

5 Q. Also known as Nemo?

6 A. Nemo.

7 Q. And 89, also of Milton also known as Mel?

8 A. Yes. That's correct.

9 Q. Now, going back over a couple of things,  
10 during the defendant's statement, the Defense  
11 attorney was asking you -- you didn't ask him if he  
12 anticipated -- you didn't ask him this, that, and the  
13 other.

14 Did the defendant volunteer any of  
15 this information to you?

16 A. No, he did not.

17 Q. If he had volunteered it and wanted to be  
18 recorded, would it have been on the recording?

19 A. It would have been on the recording, yes.

20 Q. Are defendants allowed to say, "I want to  
21 say something more" during the statement?

22 A. They can say whatever they want,  
23 absolutely. There is no limit on what they can say.

24 Q. And, now, you have seen this video numerous  
25 of times. Does it appear to you -- when Dontreal

1 Brown is entering the store with his gun out and his  
2 face covered and he is crouching down, walking  
3 around, does he appear to you to be scared or  
4 threatened or forced into doing this?

5 A. No, not at all. Quite the opposite,  
6 actually.

7 Q. He appears to be in control here?

8 A. Yes, he does, very much so.

9 Q. He doesn't have a gun pointed to the back  
10 of his head, does he?

11 A. No, he doesn't.

12 Q. Doesn't appear as if -- does it even appear  
13 if the three robbers are even really saying anything  
14 to each other or directing each other to do anything?

15 A. Really, I really can't tell if they are  
16 saying anything to each other; but you don't see  
17 anybody really directing each other. They are not  
18 directing each other with hand movements. They go  
19 about their separate -- they are actually split up at  
20 points, doing the different things. So --

21 Q. Now, in the defendant's statement, the  
22 Defense attorney kept playing that one part over and  
23 over saying the defendant said, "Take this here."  
24 And let me approach to refresh your memory.

25 When he said that part that you didn't

1 understand, what was your response?

2 A. I said, "I'm sorry," as in a question,  
3 because I did not understand him then and I don't  
4 understand what he is saying today.

5 Q. And what did he say after you said, "I'm  
6 sorry?"

7 A. After I said "I'm sorry," indicating I  
8 didn't understand him, he says, "We met up at -- we  
9 met up at Vondra's house."

10 Q. So, when you're saying "I'm sorry," you're  
11 trying to get him to repeat what he just said?

12 A. Yes, absolutely, so I can understand it  
13 because I didn't. It was incomprehensible to me,  
14 and; if I didn't understand it, I was sure that the  
15 people in the courtroom today wouldn't be able to  
16 understand it.

17 Q. And so, his next statement was "We met up  
18 at -- we met up at Vondra's house"?

19 A. That's -- yes, that's --

20 Q. Not --

21 A. That's about it.

22 Q. Not, take my lawyer's business card here so  
23 you can call him.

24 A. No, absolutely not.

25 Q. And he talked about wanting to hit a lick.

1 Do you remember that?

2 A. Yes.

3 Q. And you asked him "Hit a lick? What does  
4 hit a lick mean?"

5 Have you heard that term before,  
6 during your 28 years of investigating homicides and  
7 robberies?

8 A. Many times.

9 Q. And is that a common slang term used in  
10 Houston when people are describing going to rob  
11 somebody?

12 A. Yes, it is very common.

13 Q. And so, you asked him what does that mean;  
14 and what does he say?

15 A. To go rob someone.

16 Q. Now, when you're talking about the shooting  
17 and the defendant has said that Vondra Joseph shot at  
18 him, the man jumped at him, do you also ask him how  
19 many shots did Vondra fire?

20 A. I did.

21 Q. And what was his answer?

22 A. His answer was one.

23 Q. So, he didn't say "I don't know because I  
24 wasn't in there and didn't hear it or see it or  
25 anything"?

1 A. No. He answered one shot.

2 Q. Okay. And you asked him, "Do you know  
3 where the guy got shot at?"

4 And what was his answer?

5 A. His answer was "no, sir."

6 Q. And what was your next question?

7 A. I said, "Okay. After y'all -- after the  
8 shooting, what happened next?"

9 Q. And what did he say?

10 A. "We just left."

11 Q. So, after the shooting, we just left?

12 A. That's correct.

13 Q. Now, going back to the video, looking at  
14 the portion where -- before the shooting, now, we see  
15 Dontreal Brown going towards the back manager's  
16 office, right?

17 A. That's correct.

18 Q. Now he is coming back out of the manager's  
19 office area, right?

20 A. Yes.

21 Q. And where does he go?

22 A. Behind the counter where the victim is.

23 Q. And also the other two robbers?

24 A. Yeah. At this point everybody is behind  
25 the counter. The victim is behind the counter,

1 Neiman is behind the counter, Vondra is behind the  
2 counter, and Dontreal is behind the counter.

3 Q. So, he goes behind the counter; and then he  
4 comes back out, correct?

5 A. That's correct.

6 Q. And then, of course, that's when, seconds  
7 later, Vondra comes out and shoots the complainant?

8 A. Yes.

9 Q. And then after that, Nemo or Neiman Nelson  
10 runs out behind him?

11 A. Yes. Neiman is the only one that  
12 actually -- that you can actually see running. The  
13 others are just walking.

14 Q. Now, the defendant never told you he didn't  
15 know that Vondra Joseph had a gun, right?

16 A. No, did he not. In fact, he mentioned that  
17 Vondra did have a gun when I asked him who had guns.

18 Q. Now, when you were doing this recording,  
19 did the defendant know that he was being recorded?

20 A. He did.

21 Q. And you didn't hide it from him, did you?

22 A. No, quite the contrary. I informed him of  
23 the process, how it would work, had the recorder  
24 actually out sitting on the edge of the table or the  
25 corner of the table.

1           **Q.**       Now, based on your 30 years of experience  
2 as a police officer, would you agree that when people  
3 bring guns to --

4                   **MR. HAMM:** I object. That calls for a  
5 legal conclusion, Your Honor, invades the province of  
6 the jury.

7                   **THE COURT:** Sustained.

8                   **MR. HAMM:** Jury be instructed --

9                   **THE COURT:** Overruled.

10           **Q.**       **(BY MS. JOHNSON)** Are firearms or guns  
11 deadly weapons?

12           A.       They are very deadly weapons.

13           **Q.**       And are they cable of causing death or  
14 serious bodily injury?

15           A.       Yes, they are.

16           **Q.**       And as a police officer, were you trained  
17 that when you pull a gun, you better be prepared to  
18 use it?

19           A.       Each and every time, absolutely.

20           **Q.**       And did it appear to you, watching this  
21 video and after talking to the defendant, that he  
22 knew exactly what he was doing?

23           A.       Yes. I believe they knew exactly what they  
24 were doing. The defendant included.

25                   **MS. JOHNSON:** Pass the witness.