

1 and out. So, thank you for your patience. You may  
2 proceed.

3 **MR. HAMM:** Thank you, Judge.

4 **TODD MILLER,**

5 having been previously duly sworn, testified as follows:

6 **RE-CROSS-EXAMINATION**

7 **Q. (BY MR. HAMM)** Investigator Miller, good  
8 morning.

9 A. Morning.

10 **Q.** I want to go back briefly over a couple of  
11 things that you went over on redirect before I finish  
12 with you. Okay?

13 A. Sure.

14 **Q.** All right. So that the jury has a better  
15 understanding, if they don't, the purpose of offense  
16 reports is to just collect the evidence as you-all  
17 find it; is that right?

18 A. To document the investigation.

19 **Q.** And oftentimes, if the defendant chooses,  
20 the offense report is used to refresh the witness'  
21 recollection of events told to whomever is taking  
22 that information down.

23 A. Yes.

24 **Q.** Sometimes it can be inaccurate because  
25 it's -- if it's not recorded, as your best

1 recollection of what happened?

2 A. There could be inaccuracies in it,  
3 depending on who is typing the report. The report is  
4 a compilation of many, many officers' actions  
5 throughout the investigation.

6 Q. And when you -- as an investigator in the  
7 department, when you interview, if you're lucky  
8 enough to get a statement from a person, suspect, you  
9 take that information and you call the district  
10 attorney's office; is that right?

11 A. That's right.

12 Q. And you tell the district attorney where  
13 your investigation has lead and what involvement this  
14 particular suspect has had in that investigation?

15 A. Correct.

16 Q. And then if you're lucky enough to get a  
17 statement or confession, you tell the prosecutor on  
18 call, if you will, what information that particular  
19 suspect told you?

20 A. Right. It's presented to the prosecutor  
21 either at the district attorney's office intake  
22 division --

23 Q. Yes, sir.

24 A. -- or in major offenders or special crimes  
25 division is where we go most of the time.

1           **Q.**     And if -- if it's called in -- for  
2 instance, it's not a difference, for the most part,  
3 the way charges are accepted, right?

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

5                   **THE COURT:**  I'm sorry.  I couldn't  
6 quite hear the question.

7                   **MR. HAMM:**  I said that there wasn't a  
8 difference in respect to the phone call to intake  
9 versus going down to the place that they physically  
10 go, was my question.

11                   **THE COURT:**  Overruled.  You may  
12 answer.

13           **A.**     We don't phone call in and ask for charges.  
14 We go in person.

15           **Q.**     **(BY MR. HAMM)**  Okay.  And so, you wouldn't  
16 have your offense report at that time, correct?

17           **A.**     No.  It wouldn't necessarily be completed.  
18 In fact, it almost never would be completed by the  
19 time we go to the D.A.'s office.

20           **Q.**     And so, you're not necessarily telling the  
21 intake individual -- or excuse me.  When you go to  
22 major offenders, you're not telling them everything  
23 that happened.  You're giving them a synopsis of what  
24 the involvement of the particular defendant is?

25           **A.**     Correct.

1           Q.       Then you have an opportunity to go back to  
2 your office and you complete your offense report  
3 based upon your notes and things of that --

4           A.       Correct.

5           Q.       And in the event the case goes to court,  
6 oftentimes the offense reports are forwarded to the  
7 prosecutors themselves?

8           A.       It's sent over to the district attorney's  
9 office along with any other relevant items such as  
10 the recorded statement of the defendant, photographs,  
11 and things of that nature, things in the case file.

12          Q.       Right. You would agree with me -- excuse  
13 me. You would agree with me that in this -- in this  
14 particular trial of capital murder, one of the most  
15 important things to try and figure out is the  
16 anticipation aspect of the shooting when it comes to  
17 the other codefendants; Neiman Nelson, Milton  
18 Holiday, and this man here, Dontreal Brown.

19          A.       I think the most important thing is to  
20 determine whether or not the defendant in this case  
21 committed capital murder or was a party to committing  
22 capital murder.

23          Q.       That's right. You said it better. And if  
24 you have a statement, that statement can go to -- can  
25 speak to that individual's mindset at the time and

1 his intents at the time. Is that fair?

2 A. The statement is the defendant's words.

3 Q. Yes.

4 A. And it is -- it speaks for itself, I  
5 believe.

6 Q. And -- thank you. And in your offense  
7 report, there was a section where you dictate what  
8 the statement was, and you put that in writing.

9 A. I believe there is a summary.

10 Q. And why is that important -- or how is that  
11 important? I'm sorry.

12 A. It's just a summary of what the statement  
13 contained. It's a short synopsis, I believe.

14 Q. Is there any reason that your synopsis did  
15 not include Mr. Brown's statement to you, in answer  
16 to your questions, that he had no idea that that was  
17 going to happen?

18 A. No.

19 Q. Was that an oversight?

20 A. No, not necessarily. I mean, the synopsis  
21 or the summary that I put in is like just a -- I  
22 believe a short two or three -- two- or  
23 three-sentence summary. Just one second. Let me get  
24 to it.

25 Q. I'm looking at Page 25 of the 2.025, if you

1 will. Did you have -- have you had an opportunity to  
2 look --

3 A. Just one second.

4 Q. Okay. All right.

5 A. It's just three paragraphs.

6 Q. Yes, sir. Those three paragraphs are  
7 essentially the entire statement,  
8 4-minute-and-33-second statement, when it comes to  
9 all of the answers that Mr. Brown answered you. Is  
10 that fair?

11 A. It's not a complete summary. It's not a  
12 complete transcript of everything that he said, no.  
13 That's not fair. It's a summary, three -- it's the  
14 statement reduced down to three paragraphs.

15 Q. Okay. Does it -- does it say -- does your  
16 summary indicate who Mr. -- who Dontreal identified  
17 as being with him?

18 **MS. JOHNSON:** I object to counsel  
19 testifying from something that's not in evidence and  
20 the witness testifying from something that's not in  
21 evidence.

22 **THE COURT:** Of course, you may ask him  
23 what he put in his report and what he did not put in;  
24 but I think you need to rephrase. Sustained.

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

1           **Q.**       **(BY MR. HAMM)** In your synopsis, did you  
2 indicate the three individuals that Dontreal  
3 admitted -- acknowledged were there with him?

4           A.       I did.

5           **Q.**       Did you put in your report the term "hit a  
6 lick"?

7           A.       Hitting a lick.

8           **Q.**       Hitting a lick?

9           A.       Yes.

10          **Q.**       Did you put in your report what Mr. Brown's  
11 understanding of that term was? Bless you.

12          A.       Two words, yes.

13          **Q.**       Which were what?

14          A.       Robbing somebody.

15          **Q.**       Okay. Did you put in your report who  
16 Mr. Brown said provided the guns?

17          A.       Yes.

18          **Q.**       Did you put in there who drove the car that  
19 Mr. Brown, Neiman Nelson, Vondra Joseph, and Milton  
20 Holiday were in?

21          A.       Yes.

22          **Q.**       Did you put in there who went into the  
23 store to purchase the water?

24          A.       Yes.

25          **Q.**       Did you put in there what the person said

1 when they came back from purchasing the water?

2 A. Yes.

3 Q. Did you put where Mr. Brown said they  
4 parked before they got out of the car?

5 A. I did.

6 Q. Did you put in there that they covered  
7 their face with hats and bandannas?

8 A. I did.

9 Q. And that they went into the store and the  
10 clerk didn't know how to open the register?

11 A. Yes.

12 Q. Okay. Did you put in there Mr. Brown's  
13 statement to you about the circumstances behind  
14 Mr. Fernandes getting shot?

15 A. Yes. He said that the clerk jumped at him.

16 Q. Did you put in there Brown's admission that  
17 he had a weapon?

18 A. I did.

19 Q. And that Vondra Joseph went in with a  
20 weapon?

21 A. I did.

22 Q. And that Neiman was the person jumping over  
23 the counter?

24 A. I did.

25 Q. And that he, Mr. Brown, was unaware of how



1 much money was returned?

2 A. Yes.

3 Q. Or -- excuse me. I'm sorry -- was stolen?

4 A. Yes.

5 Q. And that Vondra fired a shot?

6 A. Yes.

7 Q. And they ran back to the car where Milton  
8 Holiday was waiting?

9 A. Yes.

10 Q. And then drove off?

11 A. That's correct.

12 Q. And then you put that Brown didn't know  
13 what happened to the guns, right?

14 A. That's right.

15 Q. Because Milton was going to get rid of  
16 them?

17 A. That's correct.

18 Q. And that's all you have?

19 A. Yes. Yes.

20 Q. Regarding the summary of the statement?

21 A. That's correct.

22 Q. That's basically the entire statement, is  
23 it not, Investigator Miller?

24 A. It's not everything, no; but it's a summary  
25 of the statement --

1 Q. Do you not -- do --

2 A. -- at the time, not a transcript.

3 Q. Do you not think that it's important to  
4 memorialize in this the fact that Dontreal said that  
5 I had no idea that that was going to happen?

6 MS. JOHNSON: Objection,  
7 argumentative.

8 THE COURT: Overruled.

9 A. I think that what's important is what's on  
10 the statement, not what I wrote about the statement.  
11 I think that's what the statement says --

12 Q. (BY MR. HAMM) Yes, sir.

13 A. -- on the recording is the important thing,  
14 not what I write about it or what anybody else says  
15 about it.

16 Q. And you would agree with me that you  
17 weren't -- you remember the prosecutor going over  
18 with you certain points of what -- let me back up.

19 You recall being asked certain  
20 questions from the transcription of the statement of  
21 Dontreal, right?

22 A. Yes.

23 Q. Yesterday?

24 A. Yes.

25 Q. Yesterday. I'm sorry. Right?

1 A. Correct.

2 Q. And you would agree with me that neither  
3 you nor the prosecutor went into --

4 **THE COURT:** Excuse me. Do you need to  
5 be standing?

6 **MR. HAMM:** Yes, ma'am. I'm about  
7 to -- well, I'm about to play a video.

8 **THE COURT:** Thank you.

9 Q. **(BY MR. HAMM)** You would agree with me that  
10 neither you nor the prosecutor mentioned that aspect  
11 that you and I went over. Is that fair?

12 A. Which aspect are you referring to?

13 Q. Whether Mr. Brown had an idea that Vondra  
14 Joseph was going to shoot the gun or was going --  
15 that what took place was going to happen.

16 A. I'm sorry. Sorry. I don't remember  
17 whether we did or did not.

18 Q. That's fair.

19 **(Exhibit Published)**

20 **THE COURT:** And just for the record,  
21 the Defense counsel is playing the statement again.

22 **(Exhibit Published)**

23 **THE COURT:** Are you fast forwarding  
24 it?

25 **MR. HAMM:** I'm trying to, Judge. Yes,

1 ma'am.

2 **THE COURT:** Okay.

3 **(Exhibit Published)**

4 **THE COURT:** He is fast forwarding  
5 again.

6 **MR. HAMM:** Yeah, I was, Judge.

7 **THE COURT:** Okay.

8 **(Exhibit Published)**

9 **Q. (BY MR. HAMM)** Okay. I'm sorry. It's  
10 difficult to operate this thing. There is no stop  
11 and go. I believe on his statement -- I think it's  
12 around the 430 mark. I can't recall. But did you  
13 hear what -- right before I paused, did you hear what  
14 he said?

15 **A.** There is so much stuff that just played.  
16 I'm sorry. I don't know.

17 **Q.** That's okay.

18 **A.** You're going to have to play it, and I will  
19 listen.

20 **Q.** Certainly.

21 **(Exhibit Published)**

22 **Q. (BY MR. HAMM)** Okay. All right. Here we  
23 go. So, after you asked him do you know where the  
24 guy got shot at, he is going to respond: "No, sir."  
25 Do you recall that?

1 A. I believe that's correct.

2 Q. And then your next question is: "After the  
3 shooting happened, what happened next?"

4 And Mr. Dontreal said: "We left."

5 Do you recall that?

6 A. I don't know if that was before. At some  
7 point I asked him how many shots did Vondra Joseph  
8 fire. I think that was after the question of where  
9 did the man get shot. I asked him how many times did  
10 Vondra shoot, and he said once. And then I think I  
11 asked what happened next, and then he answered. The  
12 defendant answers.

13 Q. And you asked him didn't the man fall to  
14 the ground after he got shot?

15 A. Did the man fall to the ground.

16 Q. Yes, sir. And the purpose of that is  
17 you're trying to figure out where Dontreal was at  
18 during the shooting. Is that fair?

19 A. No. I wanted to find out if he saw the man  
20 fall to the ground.

21 Q. Okay.

22 A. That's why I asked him did the man fall to  
23 the ground.

24 Q. And listen to this for me, please.

25 **(Exhibit Published)**

1           **Q.**       **(BY MR. HAMM)** Did you hear what he said.

2           A.       I did.

3           **Q.**       And what did he say?

4           A.       I didn't even take time to look. I didn't  
5 know what was going to happen.

6           **Q.**       That's important, isn't it, Investigator  
7 Miller?

8           A.       The whole statement is important. Yes,  
9 it's very important.

10          **Q.**       Listen to the question, and tell me if you  
11 don't understand it. Dontreal's answer to your  
12 question was important. That answer -- after you ran  
13 out the store, or pardon me, after the man -- after  
14 the man -- did the man fall to the ground after he  
15 got shot, I don't -- "I didn't know that was going to  
16 happen is important," isn't it?

17                   **MS. JOHNSON:** Objection, asked and  
18 answered.

19                   **THE COURT:** Overruled. You may  
20 answer.

21          A.       It's as important as any other answer that  
22 he gives throughout the entire statement. Yes, it's  
23 as important as every other answer that I asked him  
24 that he gives.

25                   **MR. HAMM:** May I have a moment, Judge?

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

2                   **MR. HAMM:** Your Honor, I pass the  
3 witness.

4                   **THE COURT:** Thank you.  
5 Redirect?

6                   **FURTHER REDIRECT EXAMINATION**

7                   **Q. (BY MS. JOHNSON)** Officer Miller, is there a  
8 difference between knowing something and anticipating  
9 something?

10                   **MR. HAMM:** Objection, that calls for a  
11 legal conclusion.

12                   **MS. JOHNSON:** You asked --

13                   **THE COURT:** Excuse me. Overruled.  
14 You may answer, sir.

15                   **Q. (BY MS. JOHNSON)** Is there a difference  
16 between knowing something and anticipating something?

17                   A. Yes, I believe there probably is.

18                   **Q.** What do you think the difference is?

19                   **MR. HAMM:** Calls for speculation,  
20 Judge.

21                   **THE COURT:** Sustained.

22                   **Q. (BY MS. JOHNSON)** But knowing something has  
23 a different definition than -- knowing versus  
24 anticipating?

25                   A. Yes, it does.

1           **Q.**     Now, the -- your offense report, the CD  
2 kind of speaks for itself, right?

3           **A.**     It does. The statement -- recorded  
4 statement does speak for itself.

5           **Q.**     So, you're not trying to hide anything from  
6 anyone?

7           **A.**     Absolutely not.

8           **Q.**     You provided a copy of the defendant's  
9 statement to the State, correct?

10          **A.**     I did.

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

12                   **THE COURT:** Thank you.

13                   **MR. HAMM:** No further questions,  
14 Judge.

15                   **THE COURT:** Is this witness excused,  
16 or do you need him on call?

17                   **MS. JOHNSON:** On call, Your Honor.

18                   **THE COURT:** All right. Thank you,  
19 sir. Free to go today.

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

21                   **THE COURT:** Thank you so much.

22                   **(Witness released)**

23                   **THE COURT:** Who will be your next  
24 witness?

25                   **MS. JOHNSON:** The State calls Agnes