

Paulo Oliveira - July 15, 2014  
Direct Examination by MS. LONGORIA

1 you can talk about that.

2 MR. HALPERT: I understand.

3 THE COURT: That's the fact.

4 MR. HALPERT: Are you getting in -- I mean,  
5 the shotguns are found there and both shotguns.

6 MS. LONGORIA: The shotguns were there.

7 THE COURT: You can keep it.

8 MR. HALPERT: Make a copy?

9 THE COURT: No, I don't need it.

10 MR. HALPERT: Okay.

11 THE COURT: Deputy Milstead, did you sign  
12 your name for me?

13 THE WITNESS: Yes, sir.

14 THE COURT: Talk loud enough to hear you in  
15 the far back corner over there.

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you.

18 **GERALD MILSTEAD,**

19 having been first duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 **BY MR. MCLEAREN:**

22 Q Deputy Milstead, can you please introduce  
23 yourself to the jury?

24 A I'm Deputy Milstead with the Harris County  
25 Sheriff's Office.

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 Q And how long have you been with the Harris  
2 County Sheriff's Office?

3 A I have been a deputy with the Harris County  
4 Sheriff's Office for 17 years.

5 Q Okay. Were you at any other kind of law  
6 enforcement before coming to the Deputies Office?

7 A Yes, sir. I was a university police officer --

8 Q How long were you with the university police  
9 departement?

10 A University of Houston Police, one year, and  
11 Houston Baptist University for five years.

12 Q And how long have you been with the HCSOs, for  
13 16?

14 A 17.

15 Q Over 20 years in law enforcement?

16 A Yes.

17 Q What kind of training have you had to become a  
18 certified peace officer?

19 A Well, we go through the Police Academy. We take  
20 different classes, criminal justice, just basic law  
21 enforcement.

22 Q And you maintain current certifications and go  
23 through continuous training to be current for a peace  
24 officer?

25 A Yes, sir, I do.

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 Q And you're current on all of your  
2 certifications?

3 A Yes, sir.

4 Q And one of the things you're trained at the  
5 Academy is how to approach a scene and work an  
6 investigation?

7 A Yes, sir.

8 Q Okay. What area are you responsible for as a  
9 Harris County Sheriff?

10 A I work in District H for the Harris County  
11 Sheriff's Office. And we do mostly patrols in the  
12 community. We respond to any calls, citizen calls, and  
13 basically patrol the area and just look out for anything  
14 suspicious.

15 Q And let's talk about a call you responded to on  
16 October 20th, 2013. Did dispatch notify you of -- of a  
17 call for service?

18 A Yes, sir. I received a call about a burglary in  
19 progress.

20 Q Okay. When you hear "burglary in progress",  
21 what do you do as an officer?

22 A When it's in progress, we go Code 1. That means  
23 we get there as soon as possible because someone is  
24 burglarizing a home.

25 Q And were you dispatched to a location?

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 A Yes, sir. I was dispatched to 6 -- 6007  
2 Plantation Crest.

3 MR. McLEAREN: Approach, Judge?

4 A In Katy, Texas.

5 Q (By Mr. McLearen) And that would be in Harris  
6 County?

7 A Harris County, Texas.

8 MR. McLEAREN: Judge, may I approach?

9 THE COURT: Yes, sir. You may.

10 Q (By Mr. McLearen) Deputy Milstead, I'm handing  
11 you what is previously marked as Petitioner's Exhibit 143.  
12 Do you recognize that picture?

13 A That's across the -- what's the cross street? I  
14 can't --

15 Q That a little difficult to read.

16 A I'm trying to figure out what angle. I recognize  
17 the house. I'm trying to figure out what street.

18 Q You said you were dispatched to 6007 Plantation  
19 Crest?

20 A Correct. Yes.

21 Q Petitioner's 143, does that fairly and  
22 accurately depict the area that you were dispatched to?

23 A Yes. Yes, it does.

24 MR. McLEAREN: Upon tendering to defense,  
25 Your Honor, State would offer State's 143.

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 (Petitioner's Exhibit No. 143 offered)

2 MR. HALPERT: No objection to Petitioner's  
3 Exhibit 143.

4 THE COURT: 143 admitted without objection.

5 (Petitioner's Exhibit No. 143 admitted)

6 MR. McLEAREN: Publish, Your Honor?

7 THE COURT: Yes. You may.

8 Q (By Mr. McLearen) And Deputy Milstead,  
9 Petitioner's 143, in the top left corner we see a  
10 photograph of a house; is that right?

11 A Yes.

12 Q Was that the house you responded to on October  
13 20th, 2013?

14 A Yes, sir.

15 Q When you approached the house, what was your  
16 first course of action?

17 A Well, we had several deputies already on the  
18 scene. First three deputies went on the north side of the  
19 house, there is a gate that leads to the back of the house.  
20 And Deputy Sobota and myself, we entered the house at the  
21 front door. Deputy Sobota was about to approach and go  
22 inside the house when he noticed a male went up the stairs  
23 and stepped back and went inside the house.

24 Q Did you announce your presence while you were at  
25 the scene as being law enforcement?

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1           A     Several times, sir. I told them Harris County  
2     Deputies, come out with your hands up.

3           Q     Was the caller that made the call to dispatch,  
4     were they present at the house when you arrived?

5           A     No, sir. The caller was not at the house.

6           Q     So, after Deputy Sobota saw an individual run up  
7     the stairs, what did you do next in your course of action?

8           A     After the suspect ran up the stairs, we entered  
9     the house and assist the other deputies with the two other  
10    suspects on the first level.

11          Q     So, there were two suspects on the first level  
12    when will you came in the house?

13          A     Yes, sir. There were three deputies already  
14    taking them into custody.

15          Q     Okay. So, we had two individuals already been  
16    taken into custody. Were you able to identify the two  
17    individuals that were downstairs?

18          A     At the time it was a black male and a Hispanic  
19    female.

20                   MR. McLEAREN: Permission to approach, Your  
21    Honor?

22                   THE COURT: Yes.

23          Q     (By Mr. McLearen) Department Milstead, I'm  
24    handing you what has been previously marked as  
25    Petitioner's 114. Do you recognize that picture?

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 A Yes, I do. This is the house where the burglary  
2 took place.

3 Q Now, this is where you responded to the scene?

4 A Yes, sir. That's the house, sir.

5 Q Does it fairly and accurately depict the house  
6 that you responded to?

7 A That is the correct house, sir. Yes, it is.

8 MR. McLEAREN: Upon tendering to defense,  
9 Your Honor, Petitioner would offer Petitioner's 114?

10 (Petitioner's Exhibit No. 114 offered)

11 MR. HALPERT: No objection to 114.

12 THE COURT: Petitioner's 114 admitted  
13 without objection.

14 (Petitioner's Exhibit No. 114 admitted)

15 Q (By Mr. McLearen) So, 6007 Plantation Crest,  
16 this is the address that you responded to initially?

17 A Yes, sir. That's the home that we responded to  
18 initially when we got the call.

19 Q And then as you got there, Deputy Sobota noticed  
20 an individual run up the stairs and you all made entry?

21 A Yes, sir. We tried to come out the front door  
22 and we saw Deputy Sobota. We went back in and went  
23 upstairs.

24 Q You were able to detain two individuals in the  
25 bottom stairs, is that correct?

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 A Yes, sir. A male and a female.

2 Q I'm handing you what has previously been marked  
3 as Petitioner's 120 and Petitioner's 121, do you recognize  
4 those individuals?

5 A Yes, sir.

6 Q Okay. Do these fairly and accurately depict the  
7 individuals that you detained on the first floor when you  
8 made entry?

9 A Yes, sir. Ms. Flores and Mr. Gasper, I think it  
10 is.

11 Q Okay.

12 MR. McLEAREN: Upon tendering to defense,  
13 Your Honor, State would offer Petitioner's 120 and 121.

14 (Petitioner's Exhibit Nos. 120 and 121 offered)

15 MR. HALPERT: No objection to Petitioner's  
16 120 and 121.

17 THE COURT: 121 and 120 admitted without  
18 objection.

19 (Petitioner's Exhibit Nos. 120 and 121 admitted)

20 Q (By Mr. McLearen) So after you made entry --

21 MR. McLEAREN: Permission to publish, Your  
22 Honor?

23 THE COURT: Yes. Dean would you publish  
24 that to the jury please?

25 After you made entry --



Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 MR. McLEAREN: Sorry, Judge.

2 Q (By Mr. McLearen) After you made entry, these  
3 were the two individuals that you detained?

4 A Those are the two that the other deputies  
5 detained. Yes, sir.

6 Q What did you do next in the investigation?

7 A Okay. Next Deputy Reyes, after he assisted with  
8 detaining those two individuals, he stated that, Let's go  
9 upstairs and clear the house and search for the other  
10 suspect.

11 So, we went up the stairs, and Deputy Reyes  
12 went in and cleared the right, cleared the north side --  
13 north side of the house and I cleared from the south side  
14 of the house. And at that time while I was clearing, we  
15 were constantly saying, Harris County Sheriff's Deputy,  
16 come out with your hands up. Several times. I cleared my  
17 side. There was no one there. Deputy Reyes went inside  
18 and can hear from a distance as Deputy Jones was also  
19 present, he went upstairs, came upstairs and assist Deputy  
20 Reyes with the -- with the taking the other suspect into  
21 custody.

22 Q So -- so after you went upstairs and cleared  
23 your side and no one was present?

24 A Right.

25 Q And then Deputy Reyes and Deputy Jones cleared

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 the other side?

2 A Yes. Cleared the north side of the house.

3 MR. McLEAREN: Permission to approach, Your  
4 Honor?

5 THE COURT: Yes, you may.

6 MR. McLEAREN: Let the record reflect, Your  
7 Honor, that he identified Mariano Sandoval.

8 THE COURT: Record will so reflect.

9 Q (By Mr. McLearen) And hand you what has been  
10 previously marked as Petitioner's Exhibit 119, do you  
11 recognize the individual in picture?

12 A Yes, ma'am, I do.

13 Q Does it fairly and accurately depict the  
14 individual that was taken into custody by Deputy Reyes?

15 A Yes, sir, that's him.

16 Q Okay.

17 MR. McLEAREN: Upon tendering to defense,  
18 Your Honor, Petitioner would offer Petitioner's 119.

19 (Petitioner's Exhibit No. 119 offered)

20 MR. HALPERT: No objection to Petitioner's  
21 119.

22 THE COURT: 119 admitted. May I see it,  
23 please?

24 (Petitioner's Exhibit No. 119 admitted)

25 MR. McLEAREN: Yes, Your Honor.

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 THE COURT: Okay.

2 MR. McLEAREN: Thank you, Your Honor.

3 Q (By Mr. McLearen) So this is a copy of -- or a  
4 picture of the respondent on October 20th of 2013 when he  
5 was apprehended?

6 A Yes, sir.

7 Q And he was with -- you said the female was --  
8 what's her name?

9 A Ms. Flores.

10 Q And the male?

11 A Mr. Gasper.

12 Q Okay. Was there anyone else in the house after  
13 you finished clearing it?

14 A No, sir, the house was vacant.

15 Q So, after Deputy Reyes took him into custody,  
16 what happened next in the investigation?

17 A Once he took him into custody, we brought him  
18 outside and had him treated by EMS for nose bleed.

19 Q Did you see how the nose, I guess, bleed  
20 occurred?

21 A No, sir, I didn't see that.

22 Q The complainant that initially called in, did  
23 she respond back to the scene?

24 A Yes, sir. She came back later after we had all  
25 suspects in custody, and I talked with her.

Gerald Milstead - July 15, 2014  
Direct Examination by MR. McLEAREN

1 Q Did you notify any additional officers after you  
2 had taken into custody the three individuals?

3 A No, sir.

4 Q Okay. Did Sergeant Ashmore ever arrive at the  
5 scene?

6 A Yes, sir, Sergeant Ashmore did.

7 Q Okay. But other than the detainment that you  
8 had just done for the vacant house, what was the extent of  
9 your investigation?

10 A Once we took them into custody and transport them  
11 to the Clay Road Station and processed them in, and I spoke  
12 with the realtor, Ms. Lisa Hamner, I think it was, and she  
13 stated that she would --

14 Q Okay. And we just can't get into what someone  
15 else said, because it's just a technical evidence rule.

16 A Okay. All right.

17 Q Do you remember what time your dispatch called  
18 you out to the scene?

19 A About 5:30, 5:55 somewhere up in there, p.m.

20 Q Is it fair to say it was light outside?

21 A Yes, sir.

22 MR. McLEAREN: Pass the witness, Your  
23 Honor.

24 THE COURT: Thank you. Cross?  
25

**CROSS-EXAMINATION****BY MR. HALPERT:**

Q Hi, Deputy Milstead.

A Yes, sir.

Q This property that we have been talking about is a vacant townhome?

A It's a vacant two-story home. Yes, sir.

Q Something that is up for sale?

A Yes, sir.

Q Do you know the last time Ms. Hamner was at that property?

A Yes, sir, on the day of the arrest, October 20th.

Q Right. And prior to that, do you know when the time was?

A No, sir, I have no clue.

Q You have been on patrol for a long time, right?

A No, sir.

Q You are aware thought, with your police experience, that vacant homes can sometimes be attractive to young people to go into and smoke marijuana, hang out?

A Yes, sir.

Q Place away from their own home, right?

A Yes, sir.

Q And so, when you got a call for a burglary in progress, there is -- you responded as such because that's

Gerald Milstead - July 15, 2014  
Cross-Examination by MR. HALPERT

1 the way it was reported.

2 A Right.

3 Q You have no evidence there actually was a  
4 burglary in progress, do you?

5 A No, sir.

6 Q If -- if someone was just inside a place that's  
7 vacant and they weren't burglarizing it, it would be  
8 criminal trespass, correct?

9 A Yes, sir.

10 Q Which is a misdemeanor?

11 A Except for the back door being kicked in and  
12 wood.

13 Q And you don't know when that happened?

14 A It appeared to be pretty fresh.

15 Q You can tell?

16 A From the wood.

17 Q You can tell when a door was kicked within a day  
18 or two or a week?

19 A Yes, sir. We had classes on that in the Academy.

20 Q Okay. Okay. And Ms. Hamner didn't tell you  
21 the last time she was there, did she?

22 A No, sir.

23 Q But you have no evidence that -- who entered,  
24 who went out of, who was the person that entered that  
25 home, do you?

Gerald Milstead - July 15, 2014  
Cross-Examination by MR. HALPERT

1 A No, sir, I don't.

2 MR. HALPERT: I have nothing further of  
3 Deputy Milstead.

4 THE COURT: Redirect?

5 MR. McLEAREN: Very brief, Your Honor.

6 **REDIRECT EXAMINATION**

7 **BY MR. McLEAREN:**

8 Q After you met with Ms. Hamner, were you notified  
9 that the three individuals apprehended did not have  
10 permission to be in the house?

11 A Yes, sir.

12 Q And they weren't supposed to be there?

13 A No, sir. They were not supposed to be inside the  
14 house.

15 Q And you stated that you noticed forced entry at  
16 the back door?

17 A Yes, sir.

18 Q How do you know it was forced entry?

19 A Well, when I went on the outside -- first of all,  
20 there was wood on the inside of the house, and the dead  
21 bolt was still intact, as if you locked it from the inside  
22 and someone kicked it in, and there was wood all over the  
23 carpet.

24 MR. McLEAREN: Pass the witness, Your  
25 Honor.

Gerald Milstead - July 15, 2014  
Redirect Examination by MR. McLEAREN

1 THE COURT: Recross?

2 **RECROSS-EXAMINATION**

3 **BY MR. HALPERT:**

4 Q Do you have any photos of this damaged door that  
5 you're talking about?

6 A No, sir. I didn't take any.

7 MR. HALPERT: Nothing further.

8 THE COURT: Thank you. May he be excused?

9 MR. McLEAREN: Yes, Your Honor.

10 THE COURT: Thank you Deputy Milstead. You  
11 can go back. Call your next.

12 MR. McLEAREN: State calls Deputy Reyes.

13 THE COURT: Deputy Reyes. Thank you Deputy  
14 Reyes, would you write your name on the paper there and  
15 talk loud enough so they can hear you furthest in the jury  
16 box there?

17 THE WITNESS: Yes, sir.

18 THE COURT: You can adjust that mike.

19 There you go.

20 THE WITNESS: Yes, sir.

21 **BASILIO REYES,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. McLEAREN:**

25 Q Deputy Reyes, can you please introduce yourself