

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 **OFFICER DAMON MORTON,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 **BY MS. VOHRA:**

5 Q. Officer Morton, good afternoon. Can you
6 introduce yourself to the jury.

7 A. My name is Damon Morton.

8 Q. How are you employed?

9 A. As a Houston police officer.

10 Q. How long have you been a Houston police
11 officer?

12 A. For about two and half years.

13 Q. What kind of training when you first joined
14 HPD?

15 A. We have a six month academy in which we're
16 introduced to the legal aspects of what we're doing.
17 Classroom settings where we learn the law and basics of
18 what we're supposed to do. Sorry about the echo.

19 Practical hands on firearm training, drug
20 arrest.

21 Q. And do you have any other law enforcement
22 experience prior to HPD?

23 A. I do. I was a correctional officer with the
24 Texas Department of Criminal Justice prior to this.

25 Q. Are you currently seeking any degrees?

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 A. I'm getting my Masters in business
2 administration.

3 Q. As far as you said firearm training at HPD,
4 what does that consist of?

5 A. Like I said, part of our academy is hands-on.
6 So we go out to the firing range day after day and do
7 firearm exercises.

8 Q. And do you have training in identifying certain
9 firearms and other weapons?

10 A. Yes, ma'am.

11 Q. What does that consist of?

12 A. That was probably more of the in-class where we
13 would go over PowerPoint presentations and someone comes
14 in who specializes in SWAT team and we're shown examples
15 and weapons. Like she's speaks of hands-on. What
16 they're like, and they're made up of pictures and videos
17 of the destruction they can cause.

18 Q. What's your current assignment?

19 A. I'm currently a investigator for the division.

20 Q. What does that mean?

21 A. So no longer patrol investigation --

22 THE COURT: Officer, want you scoot back a
23 little bit. Raise your voice up. If you're on the
24 street you want somebody to hear you. Make yourself
25 heard. We'll try it that way. Slow your speech pattern

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 down.

2 A. What was the question again?

3 Q. (BY MS. VOHRA) What does an investigator do?

4 A. Right before a case is passed on to the
5 investigative division like robbery or homicide, we're
6 kind of an umbrella division where we would go in -- go
7 in and we pick up the cases before it's passed on. So
8 it's kind of like my foot into the door of
9 investigation. If I do well here, then I move forward.

10 Q. I guess let's go to May 17, 2013. What was your
11 assignment on that day?

12 A. I was working patrol.

13 Q. Just so the jury knows, what does patrol do?

14 A. To answer calls for service when someone calls
15 s 911 and dispatched out.

16 Q. What kinds of incidents do you get dispatched
17 to?

18 A. Every day is different. You can have a day
19 full of traffic accidents, and then the next day is full
20 of shootings and stabbings. The next day could be a
21 kidnapping. So all kinds of calls.

22 Q. So let's go to May 17, 2013, you were on patrol
23 that day; is that right?

24 A. Correct.

25 Q. And what shift do you typically work when

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 you're on patrol?

2 A. On that day I work evening shift.

3 Q. On evening shift?

4 A. On evening shift, yes, ma'am.

5 Q. What hours?

6 A. 3:00 p.m. to 11:00 p.m.

7 Q. So during those hours, were you dispatched to a
8 call at 1901 Richmond?

9 A. I was.

10 Q. And what was happening? What did you guys
11 do -- what did you see when you got there?

12 A. We arrived at the location. And initially we
13 did not see anything. We were met by someone who was
14 saying, he's over there. I don't remember exactly what
15 they said, someone was pointing around the west side of
16 Richmond. We were looking for a person with a weapon.
17 That was the title of our call, I believe.

18 And so we round the corner turning south
19 onto Hazard?

20 MR. GARZA: Objection, Your Honor, to
21 narrative.

22 THE COURT: Sustained.

23 Q. (BY MS. VOHRA) So after you turned, did you say
24 right on Hazard?

25 A. I believe it's south.

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 Q. What did you do next?

2 A. That's whenever we saw -- initially, I smelt
3 gasoline. And looking down around the corner of the
4 apartment complex, I saw the defendant.

5 MS. VOHRA: And, Judge, may I approach?

6 MS. VOHRA: Yes, you may.

7 Q. (BY MS. VOHRA) Officer, I'm showing you what
8 has been marked as State's Exhibit 2. Do you recognize
9 it?

10 A. I recognize the area, yes, ma'am.

11 Q. What is it?

12 A. That's the location that we're talking about,
13 aerial view.

14 Q. Is that aerial view accurately depict how it
15 looked that day?

16 A. As far as I can tell, yes, ma'am.

17 MS. VOHRA: State offers State's Exhibit 2
18 and tenders to opposing counsel for objection.

19 MR. GARZA: No objection, Your Honor.

20 THE COURT: State's Exhibit No. 2 will be
21 admitted without objection.

22 (State's Exhibit No. 2 admitted.)

23 MS. VOHRA: May I publish, Your Honor?

24 THE COURT: Yes, you may.

25 Q. (BY MS. VOHRA) You were describing how you

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 turned the corner.

2 You can actually use that screen there.
3 So just point out where the location of the disturbance
4 was that you were dispatched to.

5 A. So I'm pretty sure -- there we go. So I'm
6 pretty sure we arrived over here where I made that dot
7 on the vehicle. We came into this parking lot. That is
8 where people were yelling, he's over there, he's over
9 there, pointing toward this side.

10 Q. You can draw a line on it.

11 A. We come this way.

12 MR. GARZA: Objection, Your Honor,
13 hearsay.

14 THE COURT: Rephrase your question.

15 Q. (BY MS. VOHRA) Which way did you first go?

16 A. We went, we continued to go east on Richmond
17 toward this intersection there.

18 Q. And once you got to the intersection, what did
19 you find?

20 A. That's whenever we saw and smelled the
21 defendant.

22 Q. Let's talk about the smell. How far away do
23 you think you were when you got a smell of gasoline?

24 A. It's been a while since I've been out there,
25 but we were a good distance away.

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 Q. Do you know whether it's from 10 feet from
2 here?

3 A. Right. Probably like from here to the exit
4 sign, probably further.

5 Q. So when you followed the smell of gasoline,
6 where did you find the suspect?

7 A. We found him leaning over right about here
8 where I made that little circle.

9 (Witness drawing on screen.)

10 Q. Leaning over -- what was he leaning over?

11 A. He was just leaning over. He was kind of
12 stooped down like this, on a low little stoop, like a
13 little 1-foot ledge.

14 Q. What did you do next?

15 A. So I could see in front of him was a bomb.
16 What was a glass container with what appeared to be --

17 MR. GARZA: Objection, Your Honor. Calls
18 for conclusion.

19 THE COURT: Sustained.

20 Q. (BY MS. VOHRA) So can you describe what you saw
21 you said next to the defendant, or next to the suspect?

22 A. I saw a glass container with a liquid inside
23 that was consistent to be gasoline, and there was a blue
24 rag stuffed inside the top of it. And then in between
25 his feet was a crowbar. I believe that's what I saw.

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 Q. And at that point did you find him to be some
2 kind of a safety concern?

3 A. Yes. I was giving him direct orders to stand
4 up and get away from the glass container as well as the
5 crowbar. And he was not acknowledging my presence or
6 looking up at me.

7 Q. Have you ever been to a disturbance like that
8 before?

9 A. I've been dispatched to many, but not one with
10 a bomb.

11 MR. GARZA: Objection, again, Your Honor.
12 Calls for a conclusion.

13 THE COURT: Sustained.

14 Q. (BY MS. VOHRA) So to the object that you saw,
15 have you seen one of those before?

16 A. Yes.

17 Q. Or something similar? Where have you seen that
18 before?

19 A. I have seen that in our training. We were
20 shown examples of that. And I've also seen stuff like
21 that on a movie.

22 Q. Let's go back to your training: So how did
23 they teach you to identify those objects? What are you
24 supposed to look for?

25 A. You're looking for an object that the rag that

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 I described to you that when it is lit, the rag is deep
2 enough into the propellant, or whatever liquid is
3 inside, gasoline, whatever fuel you have in there. So
4 whenever you light the rag, the casing that is in the
5 glass when it lands where it's thrown, it breaks and
6 fires spread. Glass shards are thrown. So you identify
7 by something that is able to be lit and then when thrown
8 that when it breaks, the glass and fuel go everywhere
9 and catch everything on fire.

10 Q. Is that something you have specific training
11 in?

12 A. Yes.

13 Q. What is that commonly known as? That type of
14 explosive?

15 A. A molotov cocktail.

16 Q. At that point did the defendant or suspect make
17 any statements to you when you approached?

18 A. He didn't make any statements, and we didn't
19 approach. We kept yelling at him.

20 Q. What happened next were, were you able to
21 separate him from the molotov cocktail?

22 A. We kept yelling at him louder and louder.
23 Still no response. My partner and I came at a 90-degree
24 angle so we could defend ourselves if --

25 MR. GARZA: Object to the narrative, Your

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 Honor.

2 THE COURT: Sustained.

3 Q. (BY MS. VOHRA) So he's not complying, and then
4 you finally get him under control?

5 A. Finally get his attention.

6 Q. What did you guys do next?

7 A. From there we were able to get him to stand up,
8 and we take him into custody without further incident.

9 Q. Did he make any statement to you prior to
10 placing him in custody?

11 A. As I was applying the handcuffs, he did make a
12 statement. I don't recall exactly, but the offense
13 report is in front of me.

14 Q. Would it help you to refresh your memory with
15 the copy of the offense report?

16 A. Yes, it would.

17 MS. VOHRA: Judge, may I approach?

18 THE COURT: Yes, you may.

19 A. As I was putting the handcuffs on him, he made
20 a motion with his head towards the convenience store
21 that was across the street. This convenience store. He
22 made a motion with his head and he said, it was either
23 the guys across the street, or these bitches here. And
24 when he said "these bitches here," he motioned his head
25 back to the apartments.

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 Q. Did he say anything about what he was intending
2 to do with that molotov cocktail?

3 A. He said I just wanted to scare them.

4 Q. Let's talk a little more about that molotov
5 cocktail. So you have training identifying weapons of
6 that nature, correct?

7 A. Yes, ma'am.

8 Q. And is it a explosive device?

9 A. Yes.

10 Q. Do you know what a explosive weapon is?

11 A. Yes, ma'am.

12 Q. What is it for the jury?

13 A. An explosive weapon is an explosive device or
14 grenade rocket or mine adapted to cause serious bodily
15 injury or substantial property damage or to create such
16 a loud report that it causes public alarm.

17 Q. And this device, this molotov cocktail, you've
18 been trained on what it can do, correct?

19 A. Yes, ma'am.

20 Q. Is it capable of causing such damage as you
21 just described?

22 A. Yes, ma'am.

23 Q. Tell the jury in what way?

24 A. Like I was telling you earlier: If someone was
25 to light that rag, it's also touching the gasoline, and

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 then was to throw that, whenever that glass shell, kind
2 of like a grenade. Same principle, right. When that
3 molotov cocktail hits a building or in front of a
4 person, the glass shatters. The grass catches on fire
5 from where you lit the rag. And now you have an inferno
6 and flying pieces of glass.

7 Q. After you were able to detain the suspect, were
8 you able to identify him?

9 A. Yes.

10 Q. What was his name?

11 A. Richard Smith.

12 Q. Do you see the suspect in the courtroom today?

13 A. Yes, I do.

14 Q. Can you identify him, I guess, with an article
15 of clothing, a distinguishing article of clothing?

16 A. He is wearing the blue shirt and a gray tie.

17 MS. VOHRA: May the record reflect the
18 witness has so identified the defendant.

19 THE COURT: The record will so reflect.

20 Q. (BY MS. VOHRA) Were you able to take pictures
21 of the scene that day?

22 A. I was.

23 Q. What did you take pictures of?

24 A. I took pictures of the molotov cocktail, of a
25 lighter that was found in the defendant's pocket, the

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 location where he was sitting, and I think that's it.

2 Q. We'll go through them one by one.

3 When did you find the lighter in the
4 defendant's pocket?

5 A. After we detained him and made sure he didn't
6 have anything that can hurt us and put him in the back
7 of our car.

8 MS. VOHRA: Judge, may I approach?

9 THE COURT: You may.

10 Q. (BY MS. VOHRA) I'm showing you a couple of
11 photographs, State's Exhibit 4, 5, 6, and 7. If you
12 could review them, and let me know if you recognize
13 them?

14 A. Yes, ma'am. I took all of them except this
15 one.

16 Q. All of them, except this one? What is this
17 one?

18 A. That's the defendant.

19 Q. Is this a common booking photo?

20 A. Yes, ma'am. That booking photo from jail.

21 Q. Did you bring with you today any other items
22 that you took custody of from the scene?

23 A. I did.

24 Q. And what are those items?

25 A. So the crowbar, I told y'all about earlier.

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 This is the one he had on the floor in front of him.

2 Q. What else did you recover?

3 A. This is lighter that was in his pocket.

4 Q. Those photos that you took, do they accurately
5 represent how those objects looked on that day?

6 A. Yes, ma'am.

7 Q. As far as the physical evidence that you took
8 from the crowbar and the lighters, what's the process of
9 tagging evidence with your police department?

10 A. So when we recover anything of evidence of a
11 crime that we believe would be a benefit to have at
12 something like this, a setting at trial; we would take
13 custody of it, and we would take it to our property room
14 area where all the officers for the City of Houston take
15 property like this and store there for safekeeping until
16 trial.

17 Q. How do you know it's the same objects you
18 recovered from the scene?

19 A. So whenever you go in there, you fill out a
20 form. And it has my information on it, this case
21 number, the date, the time, and then you print a receipt
22 that's tagged on to the object itself. Also, sometimes
23 it's not awkwardly shaped like this. And then you put
24 it in an envelope and sealed.

25 Q. Those two latter objects -- let's call the

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 crowbar State's Exhibit 12, and State's Exhibit 13.

2 Were they in the same condition as they
3 were when you first recovered them today?

4 A. Yes, ma'am.

5 Q. How did get them into the courtroom today?

6 A. I picked them up from the third floor of this
7 building in the District Clerk's Office. They had
8 custody of it.

9 MS. VOHRA: At this time State offers
10 State's Exhibit 5 through, I believe, it was -- 4, 5, 6,
11 7, 12, and 13 and tenders to Defense counsel for
12 inspection.

13 MR. GARZA: No objection, Your Honor.

14 THE COURT: Very well, State's Exhibit 4,
15 5, 6, 12 and 13 are admitted without objection.

16 (State's Exhibit No's 4, 5, 6, 12, and 13
17 are admitted.)

18 Q. (BY MS. VOHRA) State's Exhibit 7, Your Honor,
19 as well?

20 THE COURT: Yes, 7 likewise.

21 (State's Exhibit No. 7 admitted.)

22 MS. VOHRA: Thank you. May I publish?

23 THE COURT: Yes, you may.

24 Q. (BY MS. VOHRA) Officer, you can double click
25 the screen.

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 Okay. Show us what we're looking at in
2 State's Exhibit No. 4?

3 A. That's the picture of the defendant.

4 Q. And that's how he looked on that date?

5 A. Correct.

6 Q. And then State's Exhibit Five, show us what
7 we're looking at here?

8 A. Like I was describing to y'all earlier, that's
9 the bomb that was there.

10 MR. GARZA: Objection, Your Honor, calls
11 for conclusion.

12 THE COURT: Overruled.

13 A. Like I was saying, explosive devices that's the
14 spitting image of a molotov cocktail. The harder outer
15 shell and propellant fuel inside, the gasoline. And
16 pretty much that's your fuse, the rag right there. You
17 would light the end and throw it and cause the
18 destruction I described to you earlier.

19 Q. State's Exhibit 6, is there anything else in
20 that image that you want to point out to the jury?

21 A. Certainly. The same image, the lighter, we
22 recovered from the pocket. It's basically the trigger
23 of a gun in this case.

24 Q. In State's Exhibit 7, it's like -- what is
25 that? Just another close up?

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 A. Yeah. Another image. I had a quarter in my
2 pocket to see how much gasoline was in there.

3 Q. As far as those two pieces you have there with
4 you, if you wouldn't mind, Officer, can you show me how
5 the crowbar was positioned? State's Exhibit 12.

6 A. How it was positioned on the ground?

7 THE COURT: Officer, raise your voice.

8 MS. VOHRA: Judge, may I have the Officer
9 come down to show -- if you wouldn't mind?

10 THE COURT: Sure.

11 Q. (BY MS. VOHRA) When you and another officer
12 came down, can you show us how you found the defendant?

13 A. So I don't remember exactly if it was pointing
14 this way, or this way. Imagine that I've a little stoop
15 behind me. He would be sitting on a stoop, and
16 squatting down like this.

17 (Witness demonstrating.)

18 THE COURT: You may stand up and look.

19 (Judge addressing the jury.)

20 Q. As far as the -- what you refer to as the bomb,
21 how was that position with everything?

22 A. This was still in the middle of his feet. This
23 was standing up just like this. About that distance.

24 MS. VOHRA: Thank you, Officer.

25 THE COURT: Take your seat, sir.

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 Q. (BY MS. VOHRA) So let's get to the contents of
2 that explosive weapon. You said earlier you smelled
3 gasoline from about 20, 30-yards away?

4 A. That would be a fair statement, yes, ma'am.

5 Q. When you got closer, did you continue to smell
6 gasoline?

7 A. I did.

8 Q. And we noticed that in State's Exhibit 5,
9 correct? What kind of bottle is that?

10 A. A glass bottle.

11 Q. And it looks like a beer bottle, right?

12 A. It does. Old English.

13 Q. Does it smell like beer to you?

14 A. It did not.

15 Q. Did it smell like urine?

16 A. It did not.

17 Q. Do you think it was anything other than
18 gasoline in that bottle?

19 A. I'm certain that it was gasoline in that
20 bottle.

21 Q. And it was within his reach?

22 A. Yes, ma'am.

23 Q. What was his demeanor at the time you
24 approached him, the defendant's?

25 A. He was pretty lethargic. Enough to scare me.

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 I deal with lot of people. I'm talking soft with you
2 guys, but I can get loud giving directs and orders very
3 loudly to stand up and get away from the molotov and get
4 away from the crowbar. And when someone is totally
5 ignoring you, it was creepy. He was totally lethargic.
6 He was sweating a lot. He didn't have a shirt on, and
7 he was sweating way more than me.

8 MR. GARZA: Object to narrative, Your
9 Honor.

10 THE COURT: Sustained.

11 Q. (BY MS. VOHRA) You said he was acting
12 lethargic. Was he upset with you guys? What did he
13 seem upset at the time?

14 A. He seemed like he was high. He was upset, but
15 not really at us.

16 Q. Who was he upset at?

17 A. He was generally upset, but not directed at
18 myself.

19 Q. Officer, did you know about a video that may
20 have captured this incident?

21 A. While I was on the scene, I didn't observe any
22 video recorders, and I didn't view any video.

23 Q. So you weren't able to get a video of this
24 incident?

25 A. Right. I didn't know there was any video

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 available.

2 Q. Let's talk about what you did with this
3 explosive weapon once you were able to separate it from
4 the defendant. Tell me what time you arrived at the
5 scene about?

6 A. Is it okay if I reference my report?

7 Q. Sure?

8 A. We arrived at 5:01 p.m.

9 Q. Once you were able to detain the defendant, and
10 separate him from the bomb, if you will, what did you do
11 with him?

12 A. We put him in the back of the police car to
13 detain him.

14 Q. Was he arrested?

15 A. At that point he was being detained so we could
16 complete our investigation.

17 Q. Once you -- what did your completed
18 investigation reveal to you?

19 A. That he was in possession of a explosive
20 device. And then he was put under arrest once we called
21 the D.A. and consulted them.

22 Q. Then after you put him -- did you take him down
23 to book him in as you do with suspects?

24 A. My partner and I did not take him. Another
25 unit checked by with us. That's pretty common place

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 whenever you have a call of this nature, you know, more
2 than one cop car with a call like this. They helped us
3 out and took him down to book him for us.

4 Q. And then what did guys do with that molotov
5 cocktail?

6 A. So like I said earlier, this isn't a call you
7 get every day. So we called our homicide division and
8 asked what we needed to do. They're our kind of go-to
9 guys.

10 They said you need to call bomb squad, and
11 see what they want you to do.

12 Q. So after you got in touch with bomb squad? Did
13 they come out?

14 A. No. Bomb squad informed us they would not be
15 making it out. The best course of action was to dispose
16 of it at a fire station.

17 Q. Do you know happened to the bomb?

18 A. My partner and I drove it two or three blocks
19 down the street on Richmond, and we gave it to a fire
20 fighter at the fire station.

21 Q. Were they able to properly dispose of that
22 weapon?

23 A. They were.

24 Q. Your partner, who was your partner that day?

25 A. Officer Saenz.

Officer Damon Morton - April 15, 2014
Direct Examination by Ms. Vohra

1 Q. Based on your training experience, do you
2 believe the defendant knew that that bottle was right
3 next to him?

4 A. Yes. I believe he knew it was right next to
5 him.

6 MS. VOHRA: Pass the witness.

7 THE COURT: Mr. Garza?

8 MR. GARZA: Yes, Your Honor. Thank you.

9 **CROSS-EXAMINATION**

10 **BY MR. GARZA:**

11 Q. Officer Morton, is a crowbar a prohibited
12 weapon?

13 A. In and of itself, no, sir, it's not.

14 Q. Is a lighter a prohibited weapon?

15 A. No, sir.

16 Q. And who wrote -- who prepared the report, the
17 offense report? Was it you or Officer Saenz, your
18 partner?

19 A. I believe it was entered on under my partner's,
20 Saenz's, number.

21 Q. It says the call is received here time 17:57,
22 what time would that be?

23 A. I just want to make sure we're looking at the
24 same page.

25 Q. Page 1002 of the offense report?

Officer Damon Morton - April 15, 2014
Cross-Examination by *Mr. Garza*

1 A. What was your question, sir?

2 Q. That was when a call would have been received?

3 A. 17:57, yes, sir.

4 Q. And what does this report 5:17, 20:29, 5:17,
5 20:29?

6 MS. VOHRA: I'm going to object to Defense
7 counsel reading from a document not in evidence.

8 THE COURT: Sustained.

9 Q. (BY MR. GARZA) On that same page you see
10 there's a time period 20:29, what does that reflect?

11 A. That's the time -- so we have two reporting
12 systems. We have a new system called Wires. I know it
13 doesn't mean anything to you guys, basically took our
14 archaic 1970 model of reporting up to 1990's. Wires is
15 the new system. Once you complete a report in Wires,
16 you have to push it over into another system called 000
17 {sic}. That's our mainframe where all the information
18 is stored. So I think 20:29 is when the transfer was
19 accepted.

20 Q. Okay. You never saw the bottle in Mr. Smith's
21 hands, right?

22 A. That's right.

23 Q. So did anyone talk to Mr. Wieche?

24 A. Sir?

25 Q. Did you or Officer Saenz talk with Mr. Wieche?

Officer Damon Morton - April 15, 2014
Cross-Examination by *Mr. Garza*

1 A. Yes, sir.

2 Q. Who did? Which one of you did?

3 A. We probably both did.

4 Q. Did he tell you about a video?

5 A. No, sir.

6 Q. You didn't ask him about a video?

7 A. We checked out the area. Like I said, I didn't
8 see any cameras.

9 THE COURT: That's a yes or no.

10 A. No, sir, I didn't.

11 Q. (BY MR. GARZA) That bottle and the coloring of
12 it is more similar to beer; is that correct?

13 A. No, sir. Not normal in normal Old English.
14 It's probably too clear.

15 Q. All right. I a previous hearing in January you
16 stated --

17 MS. VOHRA: Objection. Improper
18 impeachment.

19 THE COURT: Sustained.

20 Q. (BY MR. GARZA) Doesn't gasoline has more of a
21 reddish color to it?

22 A. No, sir. Not to my knowledge.

23 Q. So, even though you've had this training, or
24 you an expert with explosives?

25 A. I believe I'm well equipped to save my life and

Officer Damon Morton - April 15, 2014
Cross-Examination by *Mr. Garza*

1 other people's life with the knowledge I have. I don't
2 know if that makes me an expert.

3 Q. Question again: Are you an expert with
4 explosives with the bomb squad?

5 A. No, sir. Not the bomb squad.

6 Q. Did Mr. Smith appear to be intoxicated or high?

7 A. Yes, sir.

8 Q. Did anyone test the contents of that bottle?

9 A. No, sir. It was, like I said, handed over to
10 the fire station.

11 Q. Let me ask you this: Gasoline is pretty
12 powerful smell, isn't it?

13 A. Yes, sir.

14 Q. Even a drop of gasoline on your hands can smell
15 pretty powerful?

16 A. It can smell, yes, sir; but I think it's to
17 varying amounts.

18 THE COURT: Excuse me. If you have an
19 objection, lodge it, and I'll rule on it.

20 MR. GARZA: Objection. Nonresponsive,
21 Your Honor.

22 THE COURT: That's sustained.

23 Q. (BY MR. GARZA) So there could have been other
24 elements in that bottle, correct? Other elements like
25 more water?

Officer Damon Morton - April 15, 2014
Cross-Examination by *Mr. Garza*

1 A. I guess that anything is possible.

2 Q. Or beer and just one drop of alcohol even on
3 the outside might make it smell very potent -- I'm
4 sorry, of gasoline might make it smell very potent?

5 A. No, sir. Not like it smelled.

6 Q. So you're saying you smelled it, like, 30-yards
7 away when you rounded the corner?

8 A. I smelled gasoline, yes, sir.

9 Q. Where did you take this the -- where did you
10 take it? Where did you deposit it?

11 A. To the Houston Fire Station on Richmond. Fire
12 Station 60, I believe.

13 Q. Did anyone there test the contents of this?

14 A. No, sir.

15 Q. And wasn't the defendant actually sitting
16 further away from that bottle and lighter when y'all
17 approached him?

18 A. No, sir. How I showed the jury down there is
19 how I recall it. And, sorry, the lighter was in his
20 pocket. It wasn't sitting out.

21 Q. Who took the photos?

22 A. I did.

23 Q. After disposing of the liquid, where it might
24 be -- why didn't y'all keep the bottle?

25 A. Because we had nothing to put the liquid in,

Officer Damon Morton - April 15, 2014
Cross-Examination by *Mr. Garza*

1 sir.

2 Q. Well, the fire department disposed of the
3 liquid, didn't they?

4 A. Yes, they did.

5 Q. Why didn't you keep the rag?

6 A. Because it was doused in gasoline.

7 Q. Fire department, did they --

8 A. I think they're more equipped than two officers
9 in a police car.

10 Q. Thank you, Officer Morton.

11 MR. GARZA: Judge, I want to go over my
12 notes, please. Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 Q. (BY MR. GARZA) Did you speak to the person that
15 made the 911 call?

16 A. No, sir, I did not.

17 Q. So that you know of, no one actually saw or
18 that you know of, no one that you spoke with actually
19 saw Mr. Smith with that bottle in his hands other than a
20 so-called video?

21 A. No, sir. Can I look through my report? I
22 believe I had a witness in here that did tell me they
23 did.

24 Yes, sir. I did speak with someone.

25 Q. Okay. Is that person here today that you know

Officer Damon Morton - April 15, 2014
Cross-Examination by Mr. Garza

1 of?

2 A. I have not seen them today.

3 Q. Okay. Did Mr. Smith say that anyone had been
4 threatening him?

5 A. Did Mr. Smith say that?

6 Q. Yes.

7 A. No, he did not say that.

8 Q. Is the bomb squad and SWAT the same division of
9 HPD?

10 A. Yes.

11 Q. Bomb squad is SWAT? Was SWAT called also?

12 A. Bomb squad is within SWAT.

13 Q. Okay. Officer Morton, where was the bottle in
14 proximity to the Mr. Smith, which side of him?

15 A. I believe it was just to the left of him.

16 Q. Okay.

17 MR. GARZA: Pass the witness, Your Honor.

18 THE COURT: Thank you.

19 Anything further Ms. Vohra?

20 **FURTHER REDIRECT EXAMINATION**

21 **BY MS. VOHRA:**

22 Q. So, Officer, based on your training experience
23 that you have and identification of weapons, were you
24 able to make a determination whether this was an
25 explosive weapon?

Officer Damon Morton - April 15, 2014
Further Redirect Examination by Ms. Vohra

1 A. Yes, ma'am, I was.

2 Q. What was that determination?

3 A. That it was in fact an explosive device. And
4 based on that assessment, that was why the defendant was
5 arrested.

6 Q. How do you know that?

7 A. Because just as I was saying, I know what
8 gasoline smells like. I was taught how to identify
9 these things; and, like I said, kind of cookie-cutter.
10 You have the gasoline inside, and I know what gasoline
11 smells like. I pump gas every day.

12 MR. GARZA: Objection, Your Honor.

13 Narrative.

14 THE COURT: Overruled.

15 A. So, I mean, that's how I know what it was. You
16 have the propellant, the gasoline, the casing, the gas,
17 the fuse, which was the rag. Add that to the fact that
18 we found the lighter. This is like your --

19 THE COURT: Anything further?

20 MS. VOHRA: No, Your Honor.

21 No further questions of this witness.

22 MR. GARZA: Judge, I have few questions.

23 THE COURT: Very briefly.

24 **FURTHER RECROSS-EXAMINATION**

25 **BY MR. GARZA:**

Officer Damon Morton - April 15, 2014
Further Recross-Examination by Mr. Garza

1 Q. So you don't know for a fact that that beer
2 bottle could have exploded though?

3 A. Sir?

4 Q. Seeing that there might be other contents in
5 that bottle, you don't know for a fact that the beer
6 bottle could have actually exploded?

7 A. I believe there was very direct threat of
8 exploding that's why I was so scared to have someone so
9 close to it.

10 Q. Okay.

11 Officer, but again, you didn't test the
12 contents, do you know if your partner tested contents,
13 or if the fire department tested the contents?

14 A. No, we don't. We're not equipped with gasoline
15 testers.

16 Q. Y'all didn't think -- you didn't the fire
17 department -- you didn't ask for the bottle again or
18 keep the bottle?

19 A. No, sir, we did not. That's why we made the
20 point to take pictures.

21 Q. And other than just the bottle by his side you
22 never saw him walking around with that bottle?

23 A. I did not, no, sir.

24 MR. GARZA: Pass the witness, Your Honor.

25 THE COURT: Thank you.

Officer Damon Morton - April 15, 2014
Further Recross-Examination by Mr. Garza

1 MS. VOHRA: No further question.

2 THE COURT: You may step down.

3 May this witness be excused and not
4 subject to recall?

5 MS. VOHRA: Yes, Your Honor.

6 MR. GARZA: Yes, Your Honor.

7 THE COURT: Thank you for your time.

8 Call your next.

9 MS. VOHRA: We call Officer Jose` Saenz.

10 THE COURT: You may proceed when you're
11 ready.

12 **DIRECT EXAMINATION**

13 **BY MS. VOHRA:**

14 Q. Can you please introduce yourself to the jury,
15 and spell your last name for the court reporter.

16 A. My name is Jose` Saenz. Last name S-a-e-n-z.
17 Police officer with the Houston Police Department.

18 Q. How long have you serving with the Houston
19 Police Department?

20 A. Two and a half years.

21 Q. Did you do anything prior to joining law
22 enforcement?

23 A. I was in the military.

24 Q. How long were you in the military for?

25 A. Four years.