

1 MR. AKERS: May I proceed, Your
2 Honor?

3 THE COURT: You certainly may.

4 ROBERT MOSS,
5 After having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 Q. (By Mr. Akers) Good afternoon, Officer
8 Moss. Would you mind stating and spelling your name
9 for the record?

10 A. Good afternoon. My name's Robert Moss,
11 R-O-B-E-R-T, M-O-S-S.

12 Q. And we can see that you are employed by
13 the Houston Police Department; is that right?

14 A. Yes, sir.

15 Q. How long have you been with HPD?

16 A. Just over ten years.

17 Q. What did you do before you were an HPD
18 officer?

19 A. I was in the Marine Corps.

20 Q. For how long?

21 A. Four years.

22 Q. And in your four years in the Marine
23 Corps, were you ever deployed?

24 A. I was.

25 Q. How many times?

1 A. Twice.

2 Q. In what years?

3 A. Ninety -- let's see, I think '97 and
4 '98.

5 Q. Where'd you go?

6 A. We went to -- off the coast of
7 Australia, then also went to the Persian Gulf.

8 Q. After your four years' military service,
9 you decided to be an HPD officer. So, I'd imagine
10 you went to the academy; is that right?

11 A. Yes, sir.

12 Q. And how long is the academy training?

13 A. About six months.

14 Q. And other than just -- general police
15 work is what you learn at the academy, right?
16 Anything else?

17 A. We learned all kinds of stuff.

18 Q. I mean, D.W.I. investigations?

19 A. Right, traffic laws.

20 Q. Traffic laws, just police work, right?

21 A. Yes, sir.

22 Q. Did you graduate from the academy?

23 A. I did.

24 Q. After you graduated, where do you go
25 from there?

1 A. From there, I trained out at west side,
2 on the west side of town, and I was there for about
3 a year. Then after that, I went to the jail. I was
4 in the jail for a year, working in the jail for a
5 year.

6 Q. And after your year as a jail guard --

7 A. Pretty much.

8 Q. After your year as a jail guard, where'd
9 you go?

10 A. Southeast Houston.

11 Q. And southeast Houston, do you patrol a
12 certain area as a member of southeast Houston?

13 A. I do, yes.

14 Q. And this is going to sound like a silly
15 question, but what area is that, southeast Houston?

16 A. The geographical borders are -- the west
17 end is 288. West end is 288. North border is Old
18 Spanish Trail. The east border is Interstate 45,
19 and the south border is the Beltway.

20 Q. And after your time in southeast patrol,
21 where did you go from there?

22 A. I went to the Gang Task Force.

23 Q. And is that -- have to ask you to speak
24 up a little bit.

25 A. Okay.

1 THE COURT: Excuse me, Mr. Akers.
2 Check that.

3 THE WITNESS: I think it went off
4 or something.

5 THE COURT: Let's go forward, but
6 keep your voice up.

7 MR. AKERS: Yes, Your Honor.

8 Q. Now, you say you went into the Gang Task
9 Force; is that right?

10 A. Yes, sir.

11 Q. Were you -- was your partner Officer
12 Eric Tewes?

13 A. Yes.

14 Q. Were you riding with Officer Tewes on
15 January 11th of 2012?

16 A. Yes, sir.

17 Q. There we go. And were you riding --
18 does this map on -- that "A" on that map, which is
19 State's Exhibit 5 -- 3, excuse me, on State's
20 Exhibit 3, is that around the location where you
21 were that day?

22 A. Yes, sir, at about 10:30.

23 Q. Is that 10:30 at night?

24 A. Yes, sir.

25 Q. And at around 10:30 at night, did you

1 come into contact with someone who you later found
2 out to be Evelt Davis?

3 A. Yes, sir.

4 Q. Do you see him here in the courtroom
5 today?

6 A. I do.

7 Q. Would you mind pointing him out for me
8 and identifying him by an article of clothing he's
9 wearing?

10 A. The male wearing the white shirt and
11 black tie.

12 MR. AKERS: Let the record reflect
13 the witness has identified the defendant, Your
14 Honor.

15 THE COURT: Record shall so
16 reflect.

17 Q. And when you saw the defendant, what was
18 he doing?

19 A. He was riding a bicycle.

20 Q. Was he riding it in -- for the record,
21 I'm going to publish State's Exhibit 5. Is this the
22 location where you saw the defendant approximately?

23 A. Yes, sir.

24 Q. Was he riding in a straight line or
25 what?

1 A. No. He was weaving back and forth
2 across Yellowstone.

3 Q. And this street right here, is this
4 Yellowstone?

5 A. Yes, sir, it is.

6 Q. For the record, that's the street that
7 goes up and down on the map. And when you -- who
8 was driving the car?

9 A. I was.

10 Q. And was the defendant -- you say he was
11 on a bicycle, weaving back and forth. Did he have a
12 headlight on his bicycle?

13 A. He did not.

14 Q. Are both of those City of Houston
15 municipal traffic violations?

16 A. Yes.

17 Q. When you saw that, what did you do?

18 A. At that point, I stopped the patrol car,
19 and my partner and I both made note of it, and I
20 don't remember exactly what we said to each other,
21 but we noticed his behavior.

22 Q. And did you ever call out to the
23 defendant?

24 A. I did, with the P.A. in my car.

25 Q. You weren't just yelling out the window

1 to him, were you?

2 A. No, sir.

3 Q. Is the P.A. something that's actually
4 connected to your vehicle?

5 A. It is. It's got a loud speaker in the
6 front of the car.

7 Q. Is that a marked police car that you're
8 talking about?

9 A. Yes.

10 Q. And you yourself and Officer Tewes, were
11 you both in full HPD uniform at that time?

12 A. Yes, sir.

13 Q. You said you used the P.A. to contact
14 the defendant. What did you say?

15 A. I told the defendant to come here.

16 Q. Did you say it -- how'd you say it?

17 A. I just got on and said -- I probably
18 said, "Hey, Bud, come here." For some reason I have
19 a thing of saying "bud".

20 Q. Okay. Well, Bud, why'd you want to talk
21 to him?

22 A. For the way that he was operating his
23 bicycle.

24 Q. Okay. Were you guys planning to arrest
25 him at that point or just speak to him?

1 A. At that point, just more or less speak
2 to him.

3 Q. Did -- in relation to where you are, I
4 mean, where was he? Was he facing you?

5 A. He was facing me. He was riding his
6 bike towards us. We were traveling westbound on
7 Yellowstone, so --

8 Q. You can actually draw on the screen to
9 your left.

10 A. We were going this way, and Mr. Davis
11 was coming towards us, this way.

12 Q. Clearly, that drawing's not exactly to
13 scale, is it?

14 A. No, it's not.

15 Q. Just showing where everyone's going.
16 And when you called out to him, was he in front of
17 you at that point?

18 A. At that point, yeah, he was pretty close
19 to us, pretty close to passing us at that point.

20 Q. How far away, do you think?

21 A. When I got on the P.A.?

22 Q. Right. I know it's been two years since
23 this happened but --

24 A. Maybe ten feet in front of us.

25 Q. Ten feet? How far do you think you and

1 I are standing right now?

2 A. About 20 feet.

3 Q. So, he was a little closer, you think?

4 A. Yes.

5 Q. And when you called out to him, what did
6 you do? Did you slow the car down and stop it?

7 A. Yes, sir.

8 Q. What did your partner do?

9 A. He was -- Officer Tewes was in the
10 process of getting out because it didn't look like
11 defendant Davis was going to stop for us.

12 Q. Okay. So, he turned and -- I mean,
13 where'd the defendant go? Was he on your --

14 A. He was on the passenger side of the
15 vehicle when he passed us.

16 Q. So, say, if your car is right here,
17 facing this -- facing the top of the map --

18 A. Right.

19 Q. And he's swerving around, he would have
20 gone this way, going across the moving lane of -- I
21 mean, the opposite lane of traffic, right?

22 A. Correct.

23 Q. So, he crossed fully in front of your
24 vehicle?

25 A. Yes.

1 Q. And when he crossed, had officer --
2 Officer Tewes got out of the car, did he not?

3 A. He did.

4 Q. Did the defendant stop and talk to you?

5 A. No, he did not.

6 Q. What did he do?

7 A. Kept going and accelerated.

8 Q. When you say accelerated --

9 A. He basically stood up on the peddles and
10 continued going a little bit faster than when he was
11 in front of us.

12 Q. And, so, at that point, what did Officer
13 Tewes do?

14 A. He ran after him.

15 Q. He bolted after him, right?

16 A. Right.

17 Q. What did you do?

18 A. Since I was facing the other direction,
19 I tried to turn the car around.

20 Q. Okay. So, like I -- we said earlier,
21 your car is here. Did you continue going eastbound
22 and then make a u-turn?

23 A. I basically tried to make a u-turn and
24 come back in this direction.

25 Q. Okay. And where exactly -- and like I

1 keep having to reiterate that this drawing is not to
2 scale. Where exactly did Officer Tewes and the
3 defendant end up? Was it around here?

4 A. They ended up, from what I remember, I
5 think it was more in the grassy area over here.

6 Q. But it's in the grass for sure, right?

7 A. Yes.

8 Q. And, so, you stated you made a u-turn to
9 pull the car around. Why did you do that?

10 A. Just in case he was -- if he was able to
11 get away from Officer Tewes, then I'd have the
12 advantage of speed in the vehicle.

13 Q. I mean, you'd be able to catch him in
14 the car?

15 A. Car better than on foot, yeah. I'm not
16 that fast.

17 Q. And, so, once you saw -- did you see
18 what happened to make them end up in the grass?

19 A. Basically by the time I turned the
20 vehicle around, they were already laying in the
21 grass.

22 Q. So, you didn't see it, right?

23 A. No.

24 Q. When you ran up there -- excuse me, you
25 made a u-turn. What'd you do next?

1 A. I saw that they were wrestling in the
2 grass. So, the patrol car -- how do I clear this
3 screen?

4 Q. Touch the bottom left.

5 A. Okay. I made the u-turn, came back and
6 saw they were in the grass. So, I stopped the car
7 right here.

8 Q. Did you run over -- did you get out of
9 the car?

10 A. Yes.

11 Q. What did you do next?

12 A. Ran over to assist my partner, and at
13 that point, he was screaming "gun".

14 Q. Let's -- you said he was what?

15 A. They were -- looked like they were
16 wrestling in the grass.

17 MR. AKERS: May I approach the
18 witness, Your Honor?

19 THE COURT: Yes, you may.

20 Q. Showing you State's 8. Have you ever
21 seen this before?

22 A. I have.

23 Q. Where did you first see it?

24 A. Laying in the grass.

25 Q. Laying in the grass on January 11th of

1 2012?

2 A. Yes, sir.

3 Q. About how far away from Officer Tewes
4 and the defendant was this gun laying?

5 A. Just a couple feet, two or three feet
6 away from them.

7 Q. And, so, when you saw that, what did you
8 do?

9 A. At that point I tried to get the
10 defendant into handcuffs.

11 Q. And is that when Officer Tewes was on
12 top of him?

13 A. When I got to him, they were -- Officer
14 Tewes was kind of on his back, on the defendant's
15 back, with his arm around his -- arm around his
16 neck.

17 Q. Trying to stop him from getting the gun,
18 correct?

19 A. Right.

20 Q. So, is that when you began giving the
21 defendant diversionary strikes?

22 A. I did.

23 Q. What is a diversionary strike?

24 A. It's basically just a strike to divert
25 somebody that's possibly resisting, divert their

1 actions or to persuade them to stop that behavior.

2 Q. So, in issuing those diversionary
3 strikes, what was your goal? Were you trying to
4 inflict pain on him, or are you trying to get him to
5 submit?

6 A. No. At that point, my biggest fear was
7 him getting back towards that gun. I just wanted to
8 get him in handcuffs as soon as possible.

9 Q. After the struggle -- during the
10 struggle what happened?

11 A. I threw a couple of punches at
12 Mr. Davis. He blocked a few.

13 Q. Let's be clear. Was it more than just a
14 couple?

15 A. It was probably around ten. Not all of
16 them landed but, I mean, up until that point, I mean
17 before that started, I had my pistol out and my
18 partner screaming "gun", and he's wrestling with
19 this guy. Before I saw the gun laying on the floor,
20 I didn't know if he was trying to kill my partner or
21 what but --

22 Q. You clearly didn't discharge your
23 firearm. You didn't shoot him?

24 A. No.

25 Q. Why?

1 A. Because I saw the gun laying on the
2 ground, and then I saw the defendant's hands, and he
3 did not have a gun.

4 Q. You didn't want to shoot your partner
5 either, did you?

6 A. Right.

7 Q. So, at that point, you put the gun back
8 in your holster and continue running over to help?

9 A. Right.

10 Q. And you said you issued maybe, what,
11 about ten diversionary strikes?

12 A. Yes, sir.

13 Q. You were eventually able to get him into
14 custody?

15 A. Yes, sir.

16 Q. About how long, would you say?

17 A. From the time I got over to Officer
18 Tewes and Mr. Davis, it was, gosh, probably less
19 than a minute.

20 Q. Y'all were able to get him into custody;
21 is that right?

22 A. Yes.

23 Q. Where did you put him?

24 A. We put him in the back of our patrol
25 car.

1 Q. At that point did you go retrieve the
2 evidence?

3 A. I did.

4 MR. AKERS: May I approach the
5 witness, Your Honor?

6 THE COURT: Yes, you may.

7 Q. Now, we've already spoke about State's
8 8, which is the gun. Have you ever seen these
9 before?

10 A. Yes.

11 Q. What are they?

12 A. They are live rounds.

13 Q. What do you mean, "live rounds"?

14 A. They're ready to shoot.

15 Q. They're bullets, right?

16 A. Bullets, yes.

17 Q. Where'd you find them?

18 A. They were inside the cylinder of the
19 recovered revolver.

20 Q. Now, are these in the same or
21 substantially the same condition as when you found
22 them?

23 A. They look to be, yes.

24 Q. Are these, in fact, the same bullets you
25 pulled out of the defendant's gun?

1 A. Yes, sir.

2 Q. Just to be clear, this bag right here,
3 this is not where you found them, right?

4 A. No, sir.

5 Q. Okay.

6 MR. AKERS: Judge, after tendering
7 to opposing counsel, we'd offer State's 9.

8 MS. TERRY: No objection, Your
9 Honor. I'm sorry, running objection, Your Honor.
10 Running objection.

11 THE COURT: You have your same
12 running objection you lodged earlier. State's 9 is
13 admitted over objection.

14 Q. (By Mr. Akers) Officer Moss, like you
15 said, where did you find these bullets?

16 A. They were inside the cylinder of the
17 revolver.

18 Q. When you say "the cylinder", you mean
19 this part right here?

20 A. Yes, sir.

21 Q. So, what we learned about this is, this
22 gun was loaded?

23 A. Right.

24 Q. Do you remember if the hammer was back
25 or not?

1 A. I do not remember. I don't think it
2 was.

3 Q. And, so, what did you do with the gun
4 and bullets?

5 A. Secured them in my vehicle.

6 Q. When you were securing them in your
7 vehicle, would that be in the front seat or the
8 trunk? Defendant's in the backseat, right?

9 A. Right. We have to run the serial
10 numbers on like when we come across a gun. So, I'm
11 sure it was in the front with me while we were doing
12 that and then afterwards -- no, I'm sorry.
13 Afterwards, it was given to another officer to tag
14 as evidence.

15 Q. Okay. Let's go back a little bit to the
16 struggle because I forgot to ask. Were you at all
17 injured during the fight with the defendant?

18 A. I was.

19 Q. What happened?

20 A. I got kicked in the groin.

21 Q. Are we talking just kind of like -- was
22 he kicking around wildly, or did he purposely kick
23 you?

24 A. Yeah. It was pretty much of a full-on
25 fight. He was actively resisting, pushing and

1 pulling away and trying to kick away.

2 Q. So, what I mean to say, as he was being
3 choked by Officer Tewes, right --

4 A. Right.

5 Q. -- was he just kind of flailing about
6 because of the choking, or did he consciously look
7 at you and aim for your groin?

8 MS. TERRY: Objection, speculation.

9 THE COURT: That's overruled.

10 A. I don't know if he made eye contact.

11 THE COURT: If you don't know, you
12 don't know, Officer. Let's move on.

13 Q. (By Mr. Akers) What do you know?

14 A. That I got kicked in the groin.

15 Q. And, so, you guys attempted to I.D. the
16 defendant; is that right?

17 A. Yes.

18 Q. Did he give you his information?

19 A. He did not at first.

20 Q. And, so, what did you guys end up doing?

21 A. Another unit came by and attempted to
22 get the information from him.

23 Q. Would that be Officer Hubenak and
24 Officer Pardo?

25 A. Yes, sir.

1 Q. All right. At any point in time while
2 the defendant was in the backseat of either of the
3 vehicles, did he say anything, without telling me
4 what he said?

5 A. Yes.

6 Q. When he said anything, was he being
7 interrogated by you or any officers, or did he say
8 it of his own free will?

9 A. He said it of his own free will.

10 Q. Thank you very much, Officer.

11 MS. AKERS: Pass the witness.

12 MS. TERRY: Thank you, Your Honor.

13 THE COURT: Thank you.

14 CROSS-EXAMINATION

15 Q. (By Ms. Terry) Good afternoon, Officer
16 Moss.

17 A. Hello.

18 Q. Officer Moss, I'm not going to go
19 through everything, and I promise to try not to jump
20 around. Okay?

21 A. Okay.

22 Q. You said over the P.A. system, did you
23 speak to Mr. Davis, or was it Officer Tewes?

24 A. Myself.

25 Q. Do you recall telling him to stop his

1 bike?

2 A. No. I said, "Come here."

3 Q. "Come here"? When you write a report,
4 do you start off by writing something called DIMS?
5 Do you know what I mean when I say DIMS?

6 A. Yes, ma'am.

7 Q. What is DIMS?

8 A. DIMS is basically a probable cause
9 statement for the charge information.

10 Q. After you spoke to Mr. Davis over the
11 P.A., you then tried to turn the car around after
12 Officer Tewes got out; is that right?

13 A. Yes, ma'am.

14 Q. Do you recall if there was any other
15 traffic outside when you were trying to make that
16 turn?

17 A. There was.

18 Q. Do you know how much traffic?

19 A. A few cars.

20 Q. So, you had to wait for the cars to pass
21 before you made the u-turn?

22 A. I did. From what I remember, I had to
23 wait for one car that was coming eastbound on
24 Yellowstone because I was trying to go back
25 eastbound.

1 Q. By the time you turned around, what you
2 saw was Officer Tewes and Mr. Davis in the grass,
3 where the "X" is up there on the screen; is that
4 correct?

5 A. Yes, ma'am.

6 Q. And you did not see a gun from
7 Mr. Davis' hands; is that correct?

8 A. That's correct.

9 Q. When you approached, you were
10 approaching with your gun drawn; is that correct?

11 A. After -- when I exited the car, I did
12 not have it in my hand, but when I heard my partner,
13 Officer Tewes, scream out, "gun", yes, I pulled it
14 out.

15 Q. I'll break it down. You got out your
16 car and you approached where you saw Mr. Davis and
17 Officer Tewes, correct?

18 A. Yes, ma'am.

19 Q. Once you got out and approached, you did
20 not have your gun drawn; is that correct?

21 A. Immediately, no, correct.

22 Q. As you're approaching, that's when you
23 heard Officer Tewes say "gun"; is that correct?

24 A. Yes, ma'am.

25 Q. And at that point is when you drew your

1 gun?

2 A. Yes, ma'am.

3 Q. What does it mean to draw your gun?

4 A. Take it out of the holster.

5 Q. And do what with it once you take it
6 out?

7 A. Basically, be at the ready. We call it
8 be at the ready is just not pointing it at anything
9 specific, just pointing it in a safe direction.

10 Q. What was the safe direction you pointed
11 it at this time when you were approaching Officer
12 Moss and Mr. Davis?

13 A. Officer Tewes?

14 Q. Yes.

15 A. I can't remember exactly where I was
16 pointing it at that time, just away from the
17 defendant and Officer Tewes, immediately.

18 Q. That's because they were close together,
19 correct?

20 A. Yes, ma'am.

21 Q. Officer Tewes, was he on Mr. Davis'
22 back?

23 A. Yes, ma'am.

24 Q. Was he fully on his back, or was it to
25 the side? Do you recall?

1 A. When I got to them, they were both on
2 their right sides.

3 Q. So, Officer Tewes is on Mr. Davis' back,
4 but they're laying on their right sides?

5 A. Yes, ma'am.

6 Q. At the time you're approaching, Officer
7 Tewes was choking Mr. Davis; is that correct?

8 A. He had his arm around his neck, yes,
9 ma'am.

10 Q. And choking him?

11 A. I don't know if he was choking him, but
12 he was in a choke position basically, yes, ma'am.

13 Q. And you could see Mr. Davis' hands,
14 correct?

15 A. When I first got out there, I couldn't
16 see one of his hands.

17 Q. The question was, could you see
18 Mr. Davis' hands when you were approaching and you
19 saw Officer Tewes was choking Mr. Davis?

20 A. I could see one of his hands.

21 Q. And no gun in that hand?

22 A. No, ma'am.

23 Q. At some point you saw the second hand,
24 correct?

25 A. Yes, ma'am.

1 Q. And there was no gun in that hand
2 either, correct?

3 A. No gun in that hand, yes, ma'am.

4 Q. You testified that you just testified
5 you didn't know if Mr. Davis was trying to kill your
6 partner or not, correct?

7 A. Correct.

8 Q. There was no gun in his hands though,
9 correct?

10 A. Correct.

11 Q. And Mr. Davis was being choked by
12 Officer Tewes at the time?

13 A. Correct.

14 Q. When you approached, you started hitting
15 Mr. Davis, correct?

16 A. It eventually led to that, yes.

17 Q. Well, how long were you standing there
18 before you started hitting Mr. Davis?

19 A. Probably just a couple of seconds.

20 Q. And what were you hitting Mr. Davis
21 with, a weapon or your hands?

22 A. My fists.

23 Q. And where were you hitting him?

24 A. In the torso. I tried to hit him in the
25 face a couple times, but he effectively blocked

1 those strikes.

2 Q. Trying to hit him everywhere you could?

3 A. Yes, ma'am.

4 MS. TERRY: I'm sorry, Your Honor.

5 Q. You just testified Mr. Davis was
6 blocking some of your punches; is that correct?

7 A. Blocking --

8 Q. Did you just testify --

9 THE COURT: Excuse me. Pardon me.
10 You can't talk at the same time.

11 Q. Officer Moss, the question was,
12 Mr. Davis was trying to block some of your punches,
13 correct?

14 A. Yes, ma'am.

15 Q. And he was using his hands to try to
16 block your punches?

17 A. Sometimes he blocked them with his
18 hands. Sometimes he dodged them, I guess, or moved
19 out of the way.

20 Q. So, a dodge is not a block?

21 A. No. No, ma'am.

22 Q. And during the time you were hitting
23 him, Officer Tewes was choking him, correct?

24 A. Again, he was -- he had him in the choke
25 position. I could hear defendant Davis speaking, so

1 apparently the choking was not too effective.

2 Q. He said Mr. Davis was kicking when he
3 was being choked?

4 A. Yes, ma'am.

5 Q. And trying to block your punches?

6 A. Yes, ma'am.

7 Q. And at some point during that, I believe
8 you said that Mr. Davis was actively resisting,
9 pulling, pushing, and kicking; is that correct?

10 A. Yes, ma'am.

11 Q. That's when you got kicked in the groin?

12 A. Yes, ma'am.

13 Q. The car -- up there on the screen, is
14 that where the "X" is on the screen? That's where
15 you said the car was facing; is that correct?

16 A. Yes. When I turned it around, that's
17 where I ended up parking, facing in this direction.

18 Q. So, the front of your car was, for lack
19 of a better word, pointed at where Mr. Davis and
20 Officer Tewes were on the ground in the grass?

21 A. More or less, yes, ma'am.

22 Q. Did you have a camera in your car where
23 you could have recorded anything?

24 A. No, ma'am.

25 Q. The business there, there's Capital Inn

1 there, correct?

2 A. Yes, ma'am.

3 Q. Is there another business nearby?

4 A. There's a little grocery store on --
5 it's out of view, but it's just to the east or to
6 the right of the picture.

7 Q. Do you know if they have any
8 surveillance videos?

9 A. I do not.

10 Q. Did you go see if they had any
11 surveillance videos?

12 A. No, ma'am.

13 Q. Do you know if Officer Tewes did?

14 A. I don't think so, no, ma'am.

15 Q. The other two officers that you said
16 arrived, I'm probably going to butcher his name,
17 Hubenak?

18 A. Hubenak.

19 Q. Did he go see if there were any
20 surveillance videos?

21 A. To my knowledge, no, he did not.

22 Q. And Officer Pardo arrived with Mr. --
23 I'm sorry, Officer Hubenak, correct?

24 A. Yes, ma'am.

25 Q. Do you know if Officer Pardo went to see

1 if there was any surveillance video?

2 A. No, he did not. I don't know if it was
3 opened or not. It may have been closed.

4 Q. Capital Inn?

5 A. No, the grocery store next door.

6 Q. And let me make it clear. When I'm
7 asking those questions about surveillance videos,
8 I'm asking about Capital Inn --

9 A. Okay.

10 Q. -- and the grocery store.

11 A. Okay.

12 THE COURT: You need to let Counsel
13 finish her question before you answer that question.

14 THE WITNESS: I apologize.

15 THE COURT: It's all right. And
16 even though you know what your answer's going to be
17 because the court reporter can only take one voice
18 at a time. Likewise, Ms. Terry.

19 MS. TERRY: Yes, Your Honor.

20 THE COURT: Let the officer finish
21 his answer before you start your question. Proceed.

22 MS. TERRY: Yes, Your Honor.

23 Q. During this entire incident, you never
24 saw a gun in Mr. Davis' hands, correct?

25 A. Correct.

1 Q. You didn't submit the gun to get printed
2 or anything?

3 A. Correct.

4 Q. Do you know if Officer Tewes did submit
5 the gun for printing?

6 A. He did not.

7 MS. TERRY: Pass the witness, Your
8 Honor. Thank you.

9 THE COURT: Anything further, Mr.
10 Akers?

11 MR. AKERS: Briefly, Judge.

12 REDIRECT EXAMINATION

13 Q. (By Mr. Akers) We focused a lot on cross
14 on the strikes you had on the defendant. But you
15 said those are -- what are those strikes called?

16 A. They're diversionary strikes.

17 Q. Is a diversionary strike a tactic that
18 you were taught and is policy by the Houston Police
19 Department?

20 A. Yes, sir.

21 Q. Do you believe that diversionary strikes
22 were necessary with --

23 MS. TERRY: Objection, asked and
24 answered.

25 THE COURT: Sustained.

1 Q. (By Mr. Akers) When Officer Tewes and
2 the defendant were wrestling, did it seem like they
3 were getting closer to or further away from the gun?

4 A. They were getting closer towards the
5 gun.

6 MR. AKERS: Pass the witness.

7 THE COURT: Anything further?

8 MS. TERRY: One question, Your
9 Honor.

10 THE COURT: One question only.

11 MS. TERRY: Yes.

12 REXCROSS-EXAMINATION

13 Q. (By Ms. Terry) Officer Moss, why didn't
14 you pick up the gun and secure it when you got close
15 to Officer Tewes and Mr. Davis?

16 A. At that time I felt it was -- that the
17 defendant was a bigger threat getting back to the
18 gun then having to deal with an unproven firearm or
19 something that I was unfamiliar with since the
20 firearm -- I didn't know what kind of working
21 condition it was in or if it had some kind of
22 defect. I didn't have time to mess with that at
23 that time. Basically, the biggest threat was the
24 defendant.

25 MS. TERRY: Your Honor, I had one

1 question, but that led me to one more.

2 THE COURT: Go ahead. Let's finish
3 up though.

4 Q. You said "unproven". Does that mean if
5 you would have kicked it, you wouldn't know what
6 would have happened to it?

7 A. Right.

8 MS. TERRY: Thank you. Pass the
9 witness.

10 THE COURT: Anything further?

11 MR. AKERS: Nothing further, Judge.

12 THE COURT: May this witness step
13 down, not subject to recall?

14 MS. TERRY: Subject to recall,
15 please.

16 THE COURT: All right. You're
17 subject to recall. Thank you for your time and your
18 testimony. Please remain outside the courtroom
19 until such time as you're called back to testify if
20 you are, sir.

21 THE WITNESS: Yes, sir.

22 THE COURT: I think it's time we
23 take a 15-minute break.

24 THE BAILIFF: All rise.

25 (Jury out)

1 THE COURT: We'll stand in recess
2 until 3:40.

3 MR. AKERS: Judge, the court
4 reporter reminded me that when we offered State's 1
5 and 2, you simply stated that State's 1 is admitted.
6 Just so I'm clear --

7 THE COURT: My notes say the same
8 thing. I don't think 2 was offered, but if it was,
9 I didn't hear it. So, on the record, State's 2 is
10 admitted without objection.

11 MR. AKERS: Okay.

12 THE COURT: Thank you for reminding
13 me.

14 MS. BELL: Can I get a running
15 objection? I believe the next witness will be the
16 statement. And to avoid having to approach, can I
17 ask for a running objection?

18 THE COURT: You have a continued
19 running objection as to the weapon and the
20 statement.

21 MS. BELL: Thank you, Your Honor.

22 THE COURT: Let's bring the jury.

23 THE BAILIFF: Yes, sir. All rise.

24 (Jury in)

25 THE COURT: You may be seated,

1 ladies and gentlemen. Please call your next, Mr.
2 Akers.

3 MR. AKERS: State calls Officer
4 Oscar Pardo.

5 THE COURT: Thank you.

6 THE BAILIFF: This witness has been
7 sworn in.

8 THE COURT: Officer, will you
9 please come around the court reporter to the witness
10 box. Make yourself comfortable. Adjust that
11 microphone where it's in line with your mouth. Keep
12 your voice up. Thank you. You may proceed when
13 you're ready.

14 MR. AKERS: Thank you, Judge.

15 OSCAR PARDO,

16 After having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 Q. (By Ms. Akers) Officer Pardo, would you
19 go ahead and state and spell your name for the
20 record?

21 A. Oscar Pardo, O-S-C-A-R, P-A-R-D-O.

22 Q. And, Officer Pardo, are you an HPD
23 officer?

24 A. Yes, sir.

25 Q. How long have you been with HPD?