

1 Because I agree with Mr. Martin and Mr. Aker's testimony
2 and I believe what he said that that's his bag. He had
3 had it for a long time. These are his contents. He had
4 it on May 5th. He has it on May 6th. He took it there.

5 Now, when he left, however, he
6 transferred possession of the bag and the contents to
7 Norris Briscoe who knew what it contained at that time.

8 I would say he probably has standing to
9 contest the search of the bag and then anything else, as
10 far as when officers searched it and who found what at
11 which time.

12 *THE COURT:* I agree with both of you. He
13 has standing to contest that. So, having said that, now
14 where are we at?

15 *MR. BURDETTE:* At this time State calls
16 Officer Mueller. The defense has a motion now to
17 suppress the evidence found.

18 *THE COURT:* Okay. Mueller.

19 (*Witness sworn.*)

20 **KEITH MUELLER,**
21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 **BY MR. BURDETTE:**

24 Q. Good afternoon, Officer Mueller.

25 A. Good afternoon.

1 Q. Please spell your last name for the court
2 reporter.

3 A. M-U-E-L-L-E-R.

4 Q. How are you employed?

5 A. With the City of Temple Police Department.

6 Q. You are a certified peace officer in the state
7 of Texas?

8 A. Yes, I am.

9 Q. All right. Right now, you can see we're
10 outside the presence of the jury. So, I would just like
11 to talk to you a little bit about the events of May 8th,
12 2011. Okay?

13 A. (Nods head affirmatively.)

14 Q. At some point prior to May 8th, 2011, you had
15 received information from someone -- or from the Houston
16 Police Department there were four aggravated robbery
17 potentially capital murder suspects in Temple, Texas,
18 right?

19 A. Yes, I did.

20 Q. So, at that point and with that knowledge,
21 y'all are trying to set up surveillance, find these
22 suspects and ultimately detain or arrest them, right?

23 A. That's correct.

24 Q. So, that goes on for maybe a day or so from
25 the Friday to the Saturday, which would be May 6th and

1 May 7th?

2 A. Or 7th to the 8th, a combination is what it
3 was.

4 Q. Sometime around that weekend?

5 A. Yes.

6 Q. At some point -- and we'll just fast-forward
7 to the end -- some point on May 8th, 2011, you received
8 information that the suspects have been located there at
9 an apartment complex in Temple, Texas, right?

10 A. Yes.

11 Q. At that time Houston police officers,
12 specifically Officer Carr and Officer Chappell, are on
13 their way from Houston to meet up with you for the
14 apprehension of these suspects?

15 A. We received information that they were in the
16 area. We conducted the surveillance. We saw what we
17 believed were them walking back and forth. We weren't
18 sure. And then the next day, I believe, which was the
19 8th, I believe, the officers from Houston came down and
20 said that they had seen him. So, we then came back.

21 Q. So, at that point it becomes a coordinated
22 effort between the Temple Police Department and you have
23 two HPD officers there and y'all are trying to figure
24 out how to apprehend them as safe as possible?

25 A. Safely. There was Temple police officers,

1 Houston officers, U.S. Marshals, and the Bell County
2 Organized Crime Unit.

3 Q. So, at that point y'all set up around Sam's
4 Club. Let me get a map. Showing you State's Exhibit 48
5 here. We've got -- north up here. We've got Maryland
6 (sic), South 31st and Canyon Creek. You see that?

7 A. Yes, sir.

8 Q. At some point you set up in that area over
9 near the Sam's Club, right?

10 A. In that area.

11 Q. At some point you see Nicholas Aker and Brshai
12 Peters walking through the parking lot, right?

13 A. I do not, but some of the individuals that are
14 on surveillance did.

15 Q. Well, that information goes out?

16 A. Correct.

17 Q. You've got eyes on two of the suspects.

18 A. Yes.

19 Q. The plan is, go in, take them down as quickly
20 as possible.

21 A. That's correct.

22 Q. So, an armored truck and several officers come
23 and arrest them?

24 A. Correct.

25 Q. They had arrest warrants out for their arrest?

1 A. Correct.

2 Q. So, at that point they are arrested over here
3 in this parking lot area, right, the Sam's Club?

4 A. The Sam's Club parking lot.

5 Q. You asked them where are y'all staying, right?

6 A. I personally did not. One of the officers on
7 scene did. I did hear the question. I was not the one
8 that asked it.

9 Q. The question was asked: Where are you
10 staying? And Brshai Peters said, Apartment 311.

11 A. That's the apartment, 311.

12 Q. By this point you know which apartment complex
13 they are referring to because they had been seen there
14 earlier?

15 A. Correct.

16 Q. In fact, even before you had that information,
17 y'all had it narrowed down to one of two apartments?

18 A. We did. We had seen what we believed were the
19 individuals we were looking for. And one of the
20 officers seen them go around to the back door of one of
21 the apartments. They was not positive that it was the
22 apartment. I believe it was 311 or 313. So, we weren't
23 sure, but had it narrowed down to that area.

24 Q. After they are arrested -- they are arrested
25 without incident, right?

1 A. Yes, sir.

2 Q. At that point no one physically abused them or
3 threatened them or anything?

4 A. No.

5 Q. They are arrested and at that point, someone
6 else handles their transport, right?

7 A. That is correct. I left to go back to the
8 apartments.

9 Q. Tell us what happens when you go back to the
10 apartment.

11 A. We go back to the apartments and myself and
12 U.S. Marshal Baize (phonetic) went to 311. He knocked
13 on the door. A lady came to the door and answered it.
14 He asked for -- I believe it was Jasmine and Norris, if
15 they were in the apartment. She said at first, I don't
16 know those people.

17 And I could see. The door is open. I'm
18 watching inside. And he basically says thank you and
19 goes to maybe the next-door apartment. Well, before he
20 moved, I said, I seen the people sitting inside. And I
21 said, What's your name? Because I seen a female and a
22 male inside.

23 And she said, Jasmine.

24 So, I looked over to the other
25 individual. I said, What's your name?

1 He said, Norris.

2 So, I said, These are the two people
3 we're looking for. So I said, Do you mind coming out
4 and talking to me.

5 Q. At this point two of the suspects are under
6 arrest and then there's still two additional suspects,
7 right?

8 A. Correct.

9 Q. Did you have information even before you
10 arrested them that the four suspects were considered to
11 be armed and dangerous?

12 A. That's correct.

13 Q. Were any weapons found on Brshai Peters and
14 Nicholas Aker?

15 A. No.

16 Q. At that point you still have two potentially
17 armed and dangerous suspects?

18 A. Correct.

19 Q. You have names for them, right?

20 A. Yes. As far as I knew, it was Jasmine and
21 Norris was the names that I had.

22 Q. Okay. So, in Apartment 311, you asked them
23 their names. She says, I'm Jasmine. And he says, I'm
24 Norris. What do you do first?

25 A. I asked them to step outside. As soon as they

1 came outside, I put them in handcuffs and told them they
2 were being detained at the time.

3 Q. These have not been admitted yet, but take a
4 look at State's Exhibit 59. Is that the exterior of
5 Apartment 311?

6 A. Yes.

7 Q. And then State's Exhibit 60, is that a view
8 from the front door?

9 A. Yes.

10 Q. Of Apartment 311?

11 A. Yes.

12 Q. And we'll look at it from another angle.

13 State's Exhibit 62. Off here to the left side, is that
14 the front door?

15 A. That's inside the apartment looking towards
16 the front with the front door being off to the left.

17 Q. Now, when the homeowner opens the door and you
18 see Jasmine and Norris, where are they seated?

19 A. If you can tell, this is the recliner.

20 *THE COURT:* You can make a mark on that.

21 Q. *(BY MR. BURDETTE)* You can draw on the screen.

22 A. Okay. This right here is a recliner I see
23 from the front door. What you can't see in this picture
24 in this area, I believe against the wall here, is
25 another little sofa/couch thing.

1 THE COURT: If you click on the bottom
2 left corner, it will erase.

3 A. Sorry.

4 Q. (BY MR. BURDETTE) So, off to that inside, I
5 don't think I have a good picture of it, but we can see
6 a beige recliner in the bottom right-hand corner of
7 State's Exhibit 62, right?

8 A. Yes.

9 Q. Look at State's Exhibit 61. Is that this same
10 recliner?

11 A. Yes, it is.

12 Q. Were these two bags there? Where was Norris
13 Briscoe sitting?

14 A. In that recliner.

15 Q. Where was the black bag in relation to Norris?

16 A. Where it is sitting now.

17 Q. Was he sitting on top of it?

18 A. Yes.

19 Q. And then State's Exhibit 61 is a red bag --
20 I'm sorry. In State's Exhibit 61, there is a red
21 backpack. Was that in that location as well?

22 A. Yes.

23 Q. So, you have them step out and they are
24 detained. Are there other people in the house?

25 A. At that time we have asked everybody to step

1 out of the house because there were guns involved. We
2 don't know who else is in the apartment. We asked
3 everybody to step out.

4 Q. At that point you're still concerned about
5 people being armed and dangerous and about guns being
6 out there?

7 A. Yes.

8 Q. Do you ask the homeowner for consent to
9 search?

10 A. Yes.

11 Q. Did she give you consent to search?

12 A. Yes. I did not ask her personally, but when
13 we talked to the officers there, she gave consent to
14 search.

15 Q. Were you there when she did that?

16 A. Yes.

17 Q. Did anybody threaten her, coerce her into
18 giving consent to everyone?

19 A. No, sir.

20 Q. What was requested of her?

21 A. The search of the apartment.

22 Q. Did anybody at any point say, We need to
23 search their items, referring to Norris' and Jasmine's
24 and Nicholas Aker's and Brshai Peters'?

25 A. We asked to search the apartment.

1 Q. Just in general?

2 A. For weapons or anything.

3 Q. Did she give you consent to search the entire
4 apartment?

5 A. Yes.

6 Q. At that point had any identifications been
7 made to you about any of the items in the house? Did
8 anyone say, This is mine, this is his, this is hers?

9 A. No.

10 Q. Did you or anyone have any information about
11 who particular bags or backpacks might belong to?

12 A. No.

13 Q. Officer Carr or Officer Chappell never told
14 you anything about a particular bag belonging to a
15 suspect?

16 A. No.

17 Q. So, at that point do you go into the house?

18 A. I do.

19 Q. Do you start searching the house?

20 A. I do.

21 Q. Tell us what that was like. How do you search
22 the house?

23 A. Basically, I start in one area and just
24 search, depending on what I am looking for, anywhere
25 that can be found or, you know, that can be hidden.

1 Q. When you are searching, do you have any reason
2 to believe that any of the items in the house belonged
3 to anyone other than the homeowner?

4 A. No. I assumed she had stuff in the house, but
5 I don't know what belongs to who or anything like that.

6 Q. Now, if you had to just guess by looking at
7 the scene, we can see in the photographs, there were
8 some items that might be consistent with someone who
9 was, perhaps, traveling, right?

10 A. Correct.

11 Q. What are those items?

12 A. The luggage.

13 Q. That's what stuck out to you?

14 A. Yes.

15 Q. So, did anyone tell you whose luggage that
16 was?

17 A. No, not at that time.

18 Q. Not at that time. For all you know, that
19 could have been the homeowner's luggage?

20 A. As far as I know, yes.

21 Q. You start searching everywhere. Where do you
22 search?

23 A. Everywhere. I just started searching. First,
24 we cleared to make sure no one is in the apartment.

25 Q. Okay.

1 A. And just started searching. I searched the
2 red backpack, the black bag, some clothing. I searched
3 cabinets in the kitchen. Everywhere. I'm trying to
4 think of everything. I'm trying to search the entire
5 house.

6 Q. What are you looking for?

7 A. Weapons.

8 Q. So, let's talk about the search of the bags
9 because those are there near the front door. I mean,
10 they're at least in the living room, right?

11 A. They're in the living room. I don't believe
12 it was near the front door, but it was in the living
13 room.

14 Q. But you could see it from the front door?

15 A. Yes, you could see it from the front door.

16 MR. BURDETTE: May I approach the
17 witness?

18 THE COURT: You may.

19 Q. (BY MR. BURDETTE) I'm showing you what's been
20 marked as State's Exhibit 116. It has something inside
21 it, as well as State's Exhibit 117?

22 A. Yes, that was in the back.

23 Q. And State's Exhibit 86, you recognize it?

24 A. Yes.

25 Q. How do you recognize these items?

1 A. It was in the bag that was in the chair.

2 Q. These are the same items?

3 A. Yes.

4 Q. Now, you photographed everything that you did
5 and how you searched everything, right, both before,
6 during and -- well, before and during?

7 A. What happened was we started searching. Once
8 we found something, we called detectives out to actually
9 come out and collect the items because when we started
10 to search, the detectives were not on the scene.

11 Once we found some stuff, we said, Let's
12 slow down. Let's get the detectives out here to collect
13 it because it could be considered a crime scene. So, we
14 had the detectives come out and actually photograph and
15 collect it.

16 Q. So, over on the one side, you've got a chair
17 with luggage, someone's luggage?

18 A. I believe it was on the couch.

19 Q. Sofa, couch, somewhere over there. Then in
20 the recliner, which is where I want to focus on for
21 right now, you have got a red bag in front of it and
22 this black bag, State's Exhibit 116. And its contents;
23 is that right?

24 A. That's correct, sir.

25 Q. Well, tell us what you do when you see this

1 bag.

2 A. When I see that bag, I pick it up. I touch
3 it. Once I picked it up, I knew what it was. I mean, I
4 could feel it. It was -- through my training and
5 experience, it was a handgun in the bag.

6 Q. Now, at this point, for the record, we have
7 State's Exhibit 86 and 117 inside of 116 and it's laying
8 here in front of Officer Mueller. Could you show the
9 Court and myself and the defense attorney how you
10 touched the bag?

11 A. I mean, I just picked it up. You can feel it.
12 As soon as you pick it up, you can feel what's inside.
13 Something very heavy. Once you grab it, it's obvious
14 what it is.

15 Q. What is it?

16 A. It's a revolver.

17 Q. Was it immediately apparent to you from the
18 time you touched it?

19 A. I mean, it's apparent it's a revolver.

20 Q. You can tell that by touching the outside of
21 it?

22 A. By touching the outside. You can even grip it
23 from inside this bag.

24 Q. Did you have to manipulate it?

25 A. You can pick it up. I mean, if you have dealt

1 with firearms of any kind, you can pick it up and know.

2 Q. Have you dealt with firearms before?

3 A. Yes.

4 Q. Few or many cases?

5 A. Many.

6 Q. Revolvers?

7 A. Revolvers.

8 Q. What else?

9 A. Long guns, any kind of pistol, most guns.

10 It's just about any kind of gun you can think of.

11 Q. Something that's easy for you to recognize?

12 A. Yes.

13 Q. Did you immediately recognize that when you
14 picked up State's Exhibit 116?

15 A. Yes, sir.

16 Q. Once you realize what it is, then what do you
17 do?

18 A. I open it to look at it.

19 Q. So, you didn't open it first. You felt it
20 first?

21 A. Yes.

22 Q. What did you find?

23 A. When you first open it, there was a green
24 book. I moved the book around. You could see the
25 revolver. Then I made it safe by taking the ammo out of

1 it.

2 Q. Now, at that point do you even know who this
3 belongs to?

4 A. No.

5 Q. Do you even know that it's one of the
6 suspect's weapons?

7 A. No. I just know that it was in the chair that
8 Norris was sitting in.

9 THE COURT: And you said he was sitting
10 on it.

11 THE WITNESS: On top of it right there in
12 the back of the chair.

13 Q. (BY MR. BURDETTE) Let's talk about that for a
14 little bit. When you see Norris sitting there on the
15 bag and you have knowledge of what had happened and the
16 information that they're considered armed and dangerous,
17 what's going through your mind when you see him sitting
18 on top of a bag like that? Do you have any suspicions?

19 A. I mean, I know I'm there to look for a gun,
20 that there was a gun involved in the shooting. I see
21 that there's a bag sitting underneath him. I assume
22 there could be a weapon in it.

23 Q. Was it suspicious to you that he was sitting
24 on the bag?

25 A. Yeah. Why would you sit on a bag? If I was

1 going to sit in a chair, I would generally empty the
2 chair to sit in it.

3 Q. Well, okay. Do you remember which bag you
4 went to first, the red bag or the black bag?

5 A. The red bag.

6 THE COURT: The defense is -- this is the
7 only thing that he's asking to suppress. Let's just
8 concentrate on this. We don't need to go into the other
9 bags, do we, at this point?

10 MR. BURDETTE: Okay. No.

11 Q. (BY MR. BURDETTE) Just briefly, there is a
12 red tub in the home, which is contained in State's
13 Exhibit 119. Contained in the image of State's Exhibit
14 119, 123 and 122. Do you recognize the tub?

15 A. Yes.

16 Q. Is this something you searched as well?

17 A. I think, yes.

18 Q. Do you know who this tub belonged to at that
19 time?

20 A. No.

21 Q. Could it have belonged to the homeowner?

22 A. It could have.

23 Q. Did you have any reason to think that it did
24 not?

25 A. No.

1 MR. BURDETTE: I'll pass the witness at
2 this time.

3 THE COURT: Okay. Mr. Martin.

4 **CROSS-EXAMINATION**

5 **BY MR. MARTIN:**

6 Q. Officer Mueller, did y'all get written consent
7 from Ms. Davis?

8 A. Yes.

9 Q. Do you have that written consent?

10 A. I did not get the actual consent.

11 MR. BURDETTE: I have it. I haven't
12 marked it, if you want to inspect it.

13 MR. MARTIN: Approach the witness and
14 show this?

15 THE COURT: You may.

16 Q. (BY MR. MARTIN) Officer, that's not been
17 marked. Does that appear to be a voluntary consent for
18 search and seizure?

19 A. Yes.

20 Q. I believe you are a witness to that, correct?

21 A. Yes.

22 Q. And it is signed by Ms. Keisha Davis?

23 A. That's correct.

24 Q. To search her apartment?

25 A. That's correct.

1 Q. And the consent was given to two officers from
2 HPD; is that right? Chappell and Carr?

3 A. Correct.

4 Q. Were they there when the search was going on?

5 A. They were in and out, talking to the people
6 while myself and Marshal Baize searched.

7 Q. Okay. They were in and out of the apartment?

8 A. Yes.

9 Q. Okay. All four of the suspects had been
10 removed from the apartment prior to you beginning your
11 search, correct?

12 A. Correct.

13 Q. And I believe you said everybody, even
14 Ms. Davis and the residents in the apartment, had been
15 removed?

16 A. We left the door open so people could go out
17 there in the living room for the majority of it. We
18 left the door open so we could see who came in.

19 Q. Before you started your search, did you ask:
20 Does any of this stuff belong to the four people who we
21 have arrested or detained who came up and have been
22 staying with you?

23 A. No. We just asked if we could search the
24 apartment.

25 Q. Did you ask her specifically: Can we search

1 every little container in the apartment whether it
2 belongs to you or not?

3 A. No, we did not.

4 Q. Did you communicate with her at all?

5 A. Yes. I talked to her.

6 Q. Did you ask her for something in addition to
7 the written consent that she signed for y'all?

8 A. No.

9 Q. Did you ever ask her: Who does this stuff
10 belong to?

11 A. Yes.

12 Q. When was that?

13 A. After we located the guns, we wanted to know
14 whose the guns and stuff were.

15 Q. Did she tell you that it was not hers, that it
16 belonged to the four people that come to visit her?

17 A. Yes.

18 Q. Did she point out various items, bags and
19 containers --

20 A. Yes.

21 Q. -- that she said belonged to the people that
22 had come to her apartment?

23 A. She said, This is all their stuff. And we
24 decided to take all of the items that they brought with
25 them back with us.

1 Q. How did you ask her which is their stuff?

2 A. I don't remember.

3 Q. You said she pointed out everything that was
4 there?

5 A. Stuff was just scattered amongst the living
6 room. So, it wasn't like it was all just packed up in
7 one little spot. It was scattered about the living
8 room.

9 Q. Did you bring her in the apartment and say,
10 What belongs to those four people?

11 A. Yes.

12 Q. Did she point it out to you?

13 A. Yes.

14 Q. Did y'all remove all that stuff from her
15 apartment?

16 A. We did.

17 Q. So, how long did that procedure take? After
18 you completed your search, how long did it take for you
19 to bring in Ms. Davis in and say, Which of this is
20 yours?

21 A. I don't remember.

22 Q. Now, the bag that we have been talking about
23 in which you found the pistol, we have described it as a
24 black nylon bag, but you would agree with me if you just
25 hold it, you couldn't see that there was a gun in there,

1 could you?

2 A. I did not see it.

3 Q. If you had picked this bag up from the top, it
4 hangs down 18 inches or so and has drawstrings, two
5 drawstrings, like you could put it on your back almost
6 like a lightweight cheap backpack or something?

7 A. Right.

8 Q. If you pick it up like this, you couldn't feel
9 that there was a pistol in the bottom, could you, if
10 you're holding it from the top?

11 A. You could feel there was something heavy. If
12 you put the revolver back in there and pick it up, you
13 can feel there's --

14 Q. You can feel that it is heavy?

15 A. It's not, like, heavy. How can I explain? If
16 it was full of books, you would be able to tell that it
17 was a large amount of heavy. But when you pick it up,
18 you can tell that it's a small compact heavy item.

19 Q. You demonstrated earlier putting your hand to
20 the bottom of the bag and feeling what you then knew to
21 be a gun?

22 A. Yes.

23 Q. Based on your experience, you could feel it
24 and you knew that was a gun?

25 A. Yes.

1 Q. You didn't have to see it?

2 A. Correct.

3 Q. But you didn't have that suspicion until you
4 felt it?

5 A. That's correct.

6 Q. You handled it?

7 A. I picked it up and I felt it. I knew it was
8 heavy. I started feeling the bag.

9 Q. Like you just demonstrated, you picked the bag
10 up, knew it was heavy. Felt it by bringing your hand to
11 the bottom of the bag and you felt it, you knew then it
12 was a gun?

13 A. Yes, sir.

14 Q. But only after you felt it did you know it was
15 a gun?

16 A. Yes, sir. That's what I said.

17 Q. All right.

18 MR. MARTIN: Judge, just to be clear for
19 the record because sometimes I'm not, the black bag was
20 marked as State's Exhibit 116, correct?

21 Q. (BY MR. MARTIN) Let me show you.

22 A. I believe that's correct.

23 Q. And it was inside 116 that you found the
24 revolver?

25 A. Yes.

1 *THE COURT:* We don't need to go into
2 that. We're really only concerned with the black bag,
3 aren't we? Was there anything in the bag that would
4 have been subject to suppression?

5 *MS. EPLEY:* (Inaudible.)

6 *THE COURT:* That has nothing to do with
7 this defendant, does it?

8 *MR. BURDETTE:* He testified it's his
9 container, Judge.

10 *THE COURT:* Both of the bags with both of
11 the guns?

12 *MR. BURDETTE:* No. The black bag and
13 then there's a red container with another blue backpack
14 and a bunch of stuff.

15 *THE COURT:* And another gun was found in
16 that?

17 *MR. BURDETTE:* No. Ammunition.

18 *THE COURT:* Ammunition? Okay.

19 I'm sorry to interrupt you.

20 *Q. (BY MR. MARTIN)* Do you recall, Officer, was
21 it you that found the ammunition or whatever that was in
22 the blue bag that we see in State's Exhibit 122?

23 *A.* I believe so.

24 *Q.* What kind of ammunition was that? Do you
25 remember?

1 A. I don't recall.

2 *THE COURT:* Was it loose ammunition or in
3 a box?

4 *THE WITNESS:* I believe the ammunition
5 was in a box.

6 *THE COURT:* Okay.

7 Q. (*BY MR. MARTIN*) Not to beat a dead horse, but
8 you knew that these four suspects did not live in that
9 apartment?

10 A. That's correct.

11 Q. They were not residents. They were visitors
12 or guests or something like that?

13 A. Yes, sir.

14 Q. In fact, you suspected they were from Houston?

15 A. That was the information I was given, yes.

16 Q. Thank you.

17 *MR. MARTIN:* I'll pass the witness.

18 *THE COURT:* Thank you.

19 *MR. BURDETTE:* Just briefing, Judge.

20 **REDIRECT EXAMINATION**

21 **BY MR. BURDETTE:**

22 Q. Officer Mueller -- now, the homeowner didn't
23 put any restrictions on the area you searched, did she?

24 A. No, she did not.

25 Q. So, at that time you believed you can search

1 everywhere?

2 A. That's correct.

3 Q. Now, additionally, when you get Norris out of
4 the house, I know you say he's been detained, but you
5 weren't letting Norris go at that point, right?

6 A. That is correct. When we detain them, they're
7 detained until we determine whether they are free to go
8 or under arrest.

9 Q. Well, to be frank, Norris was never released
10 after that, right?

11 A. That's correct.

12 Q. He was actually turned over or taken to the
13 Temple police station, changed out, photographed,
14 booked. He spoke to Officer Carr, et cetera?

15 A. They were taken back to the Temple Police
16 Department. We house our -- if they go to jail, they
17 end up going to Bell County jail. And they were later
18 transported there.

19 Q. Did he end up there?

20 A. Yes.

21 MR. BURDETTE: I'll pass the witness.

22 THE COURT: Okay, anything further?

23 MR. MARTIN: No, Your Honor.

24 THE COURT: Okay. Thank you, sir.

25 Argument?

1 MR. MARTIN: If I may, Judge.

2 THE COURT: You may.

3 MR. MARTIN: I've got three cases, if you
4 want to look at them. One would be *Stokvis*,
5 S-T-O-K-V-I-S. I have a copy of that if you would like
6 to look at it. Basically it says: The driver of a
7 vehicle who is lawfully stopped by police cannot consent
8 to the search of the purse of a passenger.

9 More importantly, a U.S. Supreme Court
10 case, Judge, *Bond v. United States*, 120341462, a law
11 enforcement officer's manipulation of a person's bag is
12 a search. In that case, they realized it was a brick,
13 which turned out to be drugs. They suppressed the
14 drugs.

15 Here, Officer Mueller testified when he
16 picked the bag up, he didn't know it was a gun. As soon
17 as he started manipulating it, touching it, then he
18 could feel it was a gun. I certainly don't quarrel with
19 that. But this case says: A law enforcement officer's
20 physical manipulation of defendant's carry-on bag on bus
21 violated the Fourth Amendment. You can't do that.

22 And the last case I have is *Carrera v.*
23 *State* (phonetic) in which someone who owns an apartment
24 cannot consent to the search of another bedroom that is
25 used by another person. They don't have consent just

1 because you are the tenant of an apartment or the person
2 on the lease, you don't have consent to search
3 everything in that apartment if it belongs to someone
4 else.

5 This record, I think we have established
6 it belonged to someone else. Certainly the manipulation
7 Officer Mueller testified to violates the teachings of
8 *Bond v. United States*. I have those three cases.

9 THE COURT: I would like to see the
10 Supreme Court case on manipulation of a bag.

11 MR. MARTIN: I've got a copy for the
12 State.

13 THE COURT: Okay.

14 MR. BURDETTE: I would like to advance
15 several theories, Judge, as to why this evidence is
16 admissible against this defendant. First, the easy one
17 is search incident to arrest. Norris Briscoe was placed
18 under arrest at the time Officer Mueller went to
19 Apartment 311, identified Jasmine and identified Norris.
20 At that time the only person that may even have any
21 association with that bag besides the homeowner is
22 Norris Briscoe. He's sitting on top of it. He was
23 never released from that moment. I know Officer Mueller
24 said he was detained, but you know he is not free to
25 leave and a reasonable person would believe they are not

1 free to leave. They're under arrest. Norris Briscoe
2 was under arrest. That bag could be searched at that
3 time incident to arrest.

4 Additionally --

5 *THE COURT:* You don't have to go any
6 further. I came to that same conclusion.

7 *MR. BURDETTE:* Can I at least put it on
8 the record for appellate purposes?

9 *THE COURT:* You may.

10 *MR. BURDETTE:* Additionally, Keisha Davis
11 had given consent to search her entire house to Officer
12 Mueller and other officers there at the scene. At that
13 time they have no knowledge of what belongs to whom.
14 So, as they are searching the house, they can search
15 anywhere they want. She gave them unlimited consent.
16 She does not restrict where they could search in any
17 way, shape or form.

18 As they are searching the house, they
19 searched this bag and inside of it is a revolver and a
20 book. To think that an officer cannot search that when
21 they have consent to search the whole house is
22 incorrect. The law does not set the limit there. Had
23 the officer had information that maybe it belonged to
24 somebody else, we might be in a different situation, but
25 he did not. He searched the bag as he was searching the

1 apartment. The reason it's admissible against this
2 defendant is because Ms. Davis at that time had apparent
3 authority to search the entire --

4 *THE COURT:* To give consent to search.

5 *MR. BURDETTE:* -- to give consent to
6 search the entire house, including the bag. She had
7 apparent authority to consent to the search of the bag.
8 Officer Mueller and the other Temple officers relied on
9 that consent in good faith when searching that bag.

10 Now, additionally, there is the Plain
11 Touch Doctrine, which is an outgrowth of *Perry* that says
12 if an incriminating character of an object is
13 immediately apparent, then based on an officer's
14 knowledge and experience, then that can provide
15 authority for them to then search and retrieve that
16 item.

17 Okay. Officer Mueller testified that he
18 grabbed the bag, picked it up and then grabbed it and
19 immediately knew that it was a gun. Now, Mr. Martin
20 says, It wasn't until you felt it that you knew it was a
21 gun. Well, of course not. That's what the plain touch
22 is. You have to feel it. You can't have a plain touch
23 without feeling something. Officer Mueller did not say,
24 I manipulated it first before I knew what it was. He
25 said it was immediately apparent. He did say, Well, you

1 can also do this and you can tell that it is a gun if
2 you grab the handle. But his testimony was: It was
3 immediately apparent at the time that he touched the bag
4 or he felt the bag; and, so, that should be admissible
5 against this defendant as something that was discovered
6 through plain touch or plain feel.

7 With regards to the searching of the
8 container, I believe Ms. Davis also had apparent
9 authority to consent to the search of the red container.
10 Moreover, we may not even need to get there because this
11 red container, there is no evidence that it was a closed
12 container or there's no legitimate expectation of
13 privacy in this container that you can see in State's
14 Exhibit 123 is open. So, I don't even know that that's
15 been established and I think that the items of evidence
16 discovered inside the red container, namely, the
17 ammunition, should be admissible, as well.

18 *THE COURT:* I came to that conclusion. I
19 think you had a very good Supreme Court case of *Bond*
20 that was on point. But there are other means that they
21 can get to that gun. I believe that Mr. Norris was in
22 possession of it at that time. He was seated on top of
23 it, either trying to hide it or in possession of it and
24 at that point transfer of the ownership of it went to
25 Mr. Norris. So, I think there are several ways the

1 State can get to this gun.

2 So, I find your Motion to Suppress the
3 gun is overruled and I'm going to suppress the bullets
4 as well.

5 *MR. BURDETTE:* You are going to suppress?

6 *THE COURT:* The red container that had
7 the bullets in it. That is not granted. It's
8 overruled.

9 *MR. BURDETTE:* Oh, okay.

10 *THE COURT:* I didn't mean to say it was
11 suppressed. I meant to say it was overruled.

12 *MR. BURDETTE:* So, it can come in?

13 *THE COURT:* Yes.

14 *MR. MARTIN:* I would like to respond to
15 the State's argument that this incident to arrest, all
16 four of the individuals were arrested outside the
17 apartment. They were nowhere near this container.

18 *THE COURT:* I think they were detained.
19 They were put outside and not allowed to leave at that
20 time.

21 *MR. MARTIN:* They were handcuffed and
22 under the supervision of police officers. They were
23 certainly not able to get back to any of those weapons.

24 Also, just like Officer Mueller testified
25 that after the conclusion of the search, they brought

1 Ms. Davis in. She correctly pointed out what belonged
2 to the four people. They could have done that before
3 the search. So, I would just like the record to show
4 that.

5 *THE COURT:* The record will reflect that,
6 but I think there are several -- as the State said,
7 there are several ways that they can get to the gun.
8 Your case on manipulation of the bag, it's very close on
9 point. But I don't think that gets away from the fact
10 that Mr. Norris was in possession of the bag at that
11 time.

12 *MR. MARTIN:* Okay.

13 *THE COURT:* All right. Shall we bring
14 the jury in? Do we have any other issues that we have
15 to talk about at this time.

16 *MR. MARTIN:* Judge, I wanted to put this,
17 a citation, on the record for the proposition that a
18 valid search done on the basis of consent is valid, even
19 if it turns out that the person consenting to the search
20 did not actually have the authority to consent as long
21 as the police reasonably believed the person had that
22 authority. It's a U.S. Supreme Court case. It's
23 *Illinois v. Rodriguez*, 497 U.S. 177.

24 *(Jury in.)*

25 *THE COURT:* You have not called him yet.

1 Call your next witness.

2 MR. BURDETTE: State calls Officer
3 Mueller.

4 THE COURT: Officer Mueller, you have
5 been sworn outside the presence of the jury. You're
6 still under oath.

7 Okay. Mr. Burdette.

8 MR. BURDETTE: Thank you, Judge.

9 KEITH MUELLER,
10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BURDETTE:

13 Q. Good afternoon, Officer Mueller.

14 A. Good afternoon.

15 Q. Please introduce yourself to the jury.

16 A. My name is Keith Mueller. I'm an officer in
17 the Temple Police Department in Temple, Texas.

18 Q. Where is Temple, Texas, for those who don't
19 know?

20 A. Central Texas, just south of Waco.

21 Q. How long does it take to get here from there?

22 A. Four hours.

23 Q. When did you make the drive?

24 A. Last night.

25 Q. We're going to try to get you out so you can

1 get back to Temple, okay?

2 A. Thank you.

3 Q. Tell us a little bit about yourself. Where
4 are you from?

5 A. I'm from the Central Texas area. I graduated
6 from high school in Gatesville, Texas. I went to work
7 for the police department right about ten years ago.
8 I've been with them ever since.

9 Q. So, you are a certified peace officer in the
10 state of Texas?

11 A. Yes.

12 Q. Besides working with the Temple PD, do you
13 have any other affiliations?

14 A. Yes. I'm assigned to the Bell County
15 Organized Crime Unit and I'm also deputized as a U.S.
16 Marshal.

17 Q. Sounds like you have a lot on your plate.

18 A. Yes, sir.

19 Q. Well, let's talk about approximately May 6th,
20 May 7th, and May 8th of 2011.

21 A. Yes, sir.

22 Q. At the time you are a Temple police officer?

23 A. Yes.

24 Q. Did you receive information from a source that
25 there were some suspects in your part of town?

1 A. Correct.

2 Q. What was the information you had received?

3 A. Received information from another marshal that
4 there was four individuals from Houston that came to our
5 area, that two of them had warrants for aggravated
6 robbery and they were considered armed and dangerous.

7 Q. Did you know how many people were involved,
8 even though only two had warrants at the time?

9 A. We had the impression four people were
10 involved. I got warrants on two of them at the time.

11 Q. Did you have information about the nature of
12 the offense?

13 A. From what I understood, there was a cab driver
14 had been shot. They was not expecting him to live. I
15 believe he was also ran over is the information that I
16 received.

17 Q. All right. At some point were you given
18 identification or information about identification of
19 the suspects?

20 A. Yes. I was given names, the names that we
21 had, and then I was given a picture, a description of
22 some clothing that they may be wearing.

23 Q. Do you recall the names that you were given?

24 A. I believe Nicholas Aker was a full name and we
25 had somebody known as B was the information I originally

1 got. And I want to say Jasmine and Norris were the
2 other names.

3 Q. So, at that point you have names. And how
4 many photographs did you have?

5 A. I don't remember. I believe it was just two,
6 the Subject B and Norris -- I'm sorry -- and Aker.

7 Q. At some point did you receive information
8 about a possible location of the suspects?

9 A. Yes.

10 Q. Where was that location?

11 A. At Canyon Creek Townhomes in Temple.

12 Q. Temple. And which county is Temple? Bell
13 County?

14 A. Bell County.

15 MR. BURDETTE: Judge, may I approach the
16 witness?

17 THE COURT: You may.

18 Q. (BY MR. BURDETTE) Showing you what's been
19 marked as State's Exhibit 48. Take a look at it. Tell
20 me if you recognize it.

21 A. Yes, I do.

22 Q. Is it fair and accurate?

23 A. Yes, it is.

24 MR. BURDETTE: Judge, at this time State
25 offers State's Exhibit 48 into evidence, tenders to

1 opposing counsel for inspection.

2 MR. MARTIN: We have no objection.

3 THE COURT: Okay. State's 48 is admitted
4 without objection.

5 MR. BURDETTE: May I publish?

6 THE COURT: You may.

7 Q. (BY MR. BURDETTE) Okay. Officer Mueller,
8 tell us what we're looking at in State's Exhibit 48.

9 A. The Canyon Creek Townhomes that I am referring
10 to is this area here. This is South 31st Street. This
11 is Canyon Creek Drive. Here's the Sam's Club and this
12 is Marlandwood Drive.

13 Q. What information did you have about where the
14 suspects were staying?

15 A. We believed that they were staying in this
16 area of the complex. We eventually --

17 Q. Is that where the "A" is?

18 A. It's more right in this area, I believe.
19 Either one of those two areas. From the angle, I don't
20 recall exactly if it was this area here or that area
21 right in here.

22 Q. That complex?

23 A. Yes.

24 Q. What happened with that information? What do
25 you do with that?

1 A. We conduct surveillance on it, see if we can
2 locate the subjects.

3 Q. What day did the surveillance start?

4 A. I believe we started on the 7th around -- and
5 I believe it was sometime during the day on the 7th and
6 then it went all the way through the night and went to
7 5:30 the next morning of the 8th. At that time we went
8 home to get some sleep, some rest. A few hours later,
9 we get called back that they had been spotted and we
10 come right back.

11 Q. So, we know everybody leaves to go and get
12 some rest Sunday morning. Is that also Mother's Day?

13 A. Yes, it is.

14 Q. So, everyone leaves and then you get
15 information later that day that kind of ruins it for
16 you, huh?

17 A. Yes.

18 Q. Is that when the Houston police officers came
19 up?

20 A. They drove up from Houston to our area and
21 they spotted the subjects.

22 Q. Did they tell you where they had seen them?

23 A. Yes, which is in the same area that I just
24 pointed out.

25 Q. So, they also saw them there?

1 A. Yes.

2 Q. At that point what's the plan?

3 A. We had -- the night before, we see -- let me
4 back up a little bit. I apologize.

5 We see the subjects walking in the area
6 that we believe were them. We went to the store that --
7 if you can pull this back a little bit, there is a
8 store, convenience store located right there --

9 Q. Circle it.

10 A. (Complies) -- in that area. And we went in
11 there and asked the clerks if they had seen these
12 subjects and we showed them the pictures that we had.
13 They said they had been in the store earlier that day.
14 I reviewed the surveillance tape and the clothing
15 description that stood out to me was a Charlotte
16 Hornet's hat, a cap, and the subject in the video had
17 that hat on.

18 So, we conducted surveillance on that
19 location. I asked the clerk if they see the subjects
20 come back if they would give me a call. Later I get a
21 call that they were in the store. Before I could get
22 back over there, the clerk called me back and said that
23 they had walked over to the Walgreens, which is across
24 31st Street a little bit, but you can see it from the
25 store.

1 Q. So, you have a rough idea where they are at
2 that time?

3 A. Yes.

4 Q. Once the Houston officers get there Sunday
5 morning-ish --

6 A. Yes, sir.

7 Q. -- what's the plan at that time, once they get
8 there?

9 A. We called in more officers because the
10 subjects were considered to be armed and dangerous. So,
11 we were trying to get a plan together how we could
12 safely take the people into custody and we still was not
13 positive whether they were in Apartment 313 or 311.

14 Q. So, at that point, based on the surveillance
15 you had already conducted, you had it narrowed down to
16 two apartments?

17 A. Yes, sir.

18 Q. So, you get together with the two officers
19 from Houston and backup. And what do y'all do?

20 A. Surveillance observes the two subjects with
21 warrants walking towards northbound. We already had a
22 team in place that if they were to get out that we could
23 conduct an arrest, a takedown, and that's what happened.

24 Q. Tell us about that. How does the takedown
25 finally take place and where?

1 A. The subjects had left these apartments and
2 walked up and they were over into the Sam's Club parking
3 lot. And excuse my scribbling out. I'm not sure what
4 route they took. They get to the Sam's Club parking
5 lot. We didn't know if they were armed or not. We had
6 an armored vehicle that came up behind them as they
7 walking and pulled over in front of them. At that time
8 I see one of them reach for his pocket. They employed a
9 distraction device. At that time the subjects jumped
10 back and immediately went to the ground and officers
11 convened on top of them.

12 Q. Who are the two subjects that were arrested
13 there in the parking lot?

14 A. The subjects were Mr. Peters and Aker.

15 Q. Y'all you verified their identity?

16 A. Yes.

17 Q. And placed them under arrest?

18 A. Yes.

19 Q. Did you ask them where they were staying?

20 A. One of the officers on scene asked where they
21 were staying. They stated that they were staying in the
22 apartments in 311.

23 Q. So, at that point now you know where to go?

24 A. Yes. I immediately leave there and go to the
25 apartments.

1 Q. Who do you go with?

2 A. Several officers. Myself and U.S. Marshal
3 Baize and other Temple officers.

4 Q. Before we talk about that, I just want to talk
5 a little bit more about the parking lot.

6 Before you leave, you see them taken into
7 custody, right?

8 A. Yes.

9 Q. Was that without incident?

10 A. Yes.

11 Q. In other words, you didn't have to use any
12 violence? They didn't run from you, none of that?

13 A. No.

14 Q. Were they ever physically assaulted or
15 threatened or anything there at the scene?

16 A. No.

17 Q. So, when they were arrested without incident,
18 are they then transported to the Temple Police
19 Department?

20 A. Yes.

21 Q. And from what you observed, were they treated
22 well?

23 A. Yes.

24 Q. No problems?

25 A. No.

1 Q. So, at that point you and some other officers
2 go back to this apartment complex. Tell us what happens
3 when you arrive there.

4 A. We have officers surround the area just in
5 case the other subjects are in this location or anything
6 happens. We walk to Apartment 311. We make contact at
7 the door. A female comes to the door. Deputy Baize
8 asked if Jasmine and Norris were at this location.

9 They stated that there was nobody there
10 by that name. Well, the door is open and I can see in
11 the apartment and Mr. Baize says, Thank you, and starts
12 to walk towards 313. And I stop and ask -- inside this
13 apartment, you can see recliner and there was a love
14 seat or couch off to the right just inside the
15 apartment. I could see a female sitting there. I asked
16 her her name.

17 She said, Jasmine.

18 I asked the male his name. He said,
19 Norris.

20 I then said, You are the two people we're
21 looking for. Do you mind coming out and talking to me?

22 Q. At that point were they handcuffed?

23 A. I detained them at that point and handcuffed
24 them.

25 Q. At that point, since you have Jasmine and

1 Norris detained or handcuffed, do you ask the homeowner
2 anything?

3 A. One of the officers, myself and some officers
4 talked to the homeowner about consent to search the
5 apartment.

6 Q. Tell us about that. What do you say to her?

7 A. When I say I cannot -- I believe it was
8 Chappell was the one that got the consent to search
9 signed. I witnessed it. I was there as we were talking
10 to them. Basically asked for her consent to search her
11 apartment for any guns.

12 Q. Let me stop and back up. We'll take it piece
13 by piece.

14 A. I'm sorry.

15 Q. Did you identify the homeowner?

16 A. Yes.

17 Q. Is that Keisha Davis?

18 A. Yes.

19 Q. Did you ask her for consent to search her
20 house?

21 A. I believe the other officer is the one who
22 actually asked.

23 Q. Were you there --

24 A. Yes, I was there present. Yes.

25 Q. Let me ask the question and then I'll let you

1 answer.

2 THE REPORTER: Yes. One at a time,
3 please.

4 THE WITNESS: I apologize.

5 Q. (BY MR. BURDETTE) We're speeding right along.
6 I'll try and slow it down a little bit.

7 Were you there when the officer asked for
8 a consent to search the house?

9 A. Yes.

10 Q. Now, did you break it down any and say, Now
11 can we search for guns, or did you just say, Can we
12 search or did the officers say, Can we search your
13 house?

14 A. We asked for consent to search the house.

15 Q. Did that extend to everything?

16 A. Yes.

17 Q. Is that the purpose of that question?

18 A. Yes.

19 Q. Why do you want to search the entire house?

20 A. Because we don't know what's in the house or
21 where anything is located.

22 Q. Now, why is it important to identify the
23 homeowner when you asked for consent to search?

24 A. Because it's their house. That gives you
25 consent.

1 Q. Fair enough.

2 MR. BURDETTE: May I approach the
3 witness?

4 THE COURT: You may.

5 Q. (BY MR. BURDETTE) Officer Mueller, please
6 take a look at State's Exhibit 59 through 66, 68, 70
7 through 72. And 119 through 124.

8 A. Okay.

9 Q. Do you recognize all of these?

10 A. Yes, I do.

11 Q. Are they fair and accurate?

12 A. Yes.

13 MR. BURDETTE: Judge, at this time State
14 offers State's Exhibits 59 through 66, 68, 70, 71 and 72
15 and 119 through 124 into evidence. I will tender to
16 opposing counsel for his inspection.

17 MR. MARTIN: Your Honor, may I have the
18 same objections we discussed earlier?

19 THE COURT: Yes, you may have a running
20 objection.

21 MR. MARTIN: Thank you.

22 MR. BURDETTE: But as far as the
23 pictures?

24 MR. MARTIN: I have no objection other
25 than as we have discussed.

1 THE COURT: As to the exhibits, let's go
2 through them. What numbers?

3 MR. BURDETTE: 59 through 66.

4 THE COURT: 59 through 66, do you have
5 any objections to those, Mr. Martin?

6 MR. MARTIN: None other than we discussed
7 before.

8 THE COURT: Then they are admitted
9 without objection.

10 What else?

11 MR. BURDETTE: 68, 70, 71 and 72.

12 THE COURT: Do you have any objection to
13 those?

14 MR. MARTIN: Just a same as we discussed
15 earlier.

16 THE COURT: Okay. Then they are
17 admitted.

18 MR. BURDETTE: And 119 through 124.

19 THE COURT: Do you have any objections
20 those?

21 MR. MARTIN: None other than what we
22 discussed earlier.

23 THE COURT: Then they are admitted.

24 MR. MARTIN: Yes, sir.

25 MR. BURDETTE: May I publish, please?

1 THE COURT: You may.

2 Q. (BY MR. BURDETTE) So, at that point or the
3 point at which Ms. Davis had given you consent to search
4 her house, what is your intention?

5 A. To search the house.

6 Q. The entire house?

7 A. Yes.

8 Q. Everything in it?

9 A. Yes.

10 Q. At that point did you have any information
11 about who particular items in the home might belong to?

12 A. No.

13 Q. For all you knew at that time, could they all
14 have belonged to Ms. Davis?

15 A. Yes.

16 Q. The bottom line is you didn't know who any of
17 it belonged to?

18 A. Correct.

19 Q. Before you began searching, did anyone ever
20 tell you this belonged to him or this belongs to me?

21 A. No.

22 Q. None of that?

23 A. No.

24 Q. Let's run through these. You said you went to
25 Apartment 311.

1 A. Yes, sir.

2 Q. Is that the front door of Apartment 311?

3 A. That's correct.

4 Q. And State's Exhibit 59. We have State's
5 Exhibit 60. What vantage point is that?

6 A. That's from the front door looking in.

7 Q. We have a beige recliner here?

8 A. Correct.

9 Q. With a black bag on it?

10 A. Correct.

11 Q. State's Exhibit 61 here. You can see the
12 recliner and the black bag. There is also a red bag?

13 A. Correct.

14 Q. Now, when you looked in before you got consent
15 to search, you saw Norris and Jasmine. Where was Norris
16 Briscoe sitting?

17 A. In that recliner.

18 Q. Was he sitting on top of anything?

19 A. The black bag.

20 Q. And where was the red bag?

21 A. In the same location as it is in this picture.

22 Q. There on the floor?

23 A. Yes.

24 Q. Was it suspicious to you that he was sitting
25 on a black bag?

1 A. It was suspicious that he sitting on a bag,
2 period.

3 Q. Well, at that point you have information that
4 the suspects you're after are armed and dangerous?

5 A. Correct.

6 Q. Were any guns located on Nicholas Aker or
7 Brshai Peters when they were arrested in the parking
8 lot?

9 A. No.

10 Q. When Norris and Jasmine came out, did you find
11 any weapons on their person?

12 A. No.

13 Q. But at that point you still believed that
14 there were weapons in the area, perhaps?

15 A. Yes.

16 Q. So, State's Exhibit 62, what's this?

17 A. This is from behind the recliner facing
18 towards the front of the living room.

19 Q. And, so, here on the sofa, I see two things of
20 luggage, two black suitcases; is that right?

21 A. That's correct.

22 Q. Then there's a purse on the ground?

23 A. Correct.

24 Q. And then you've got the black bag and red bag?

25 A. Correct.

1 Q. Over here is various items. There is a bag?

2 A. Yes.

3 Q. There was also a red container on the ground
4 near the sofa; is that right?

5 A. That's correct.

6 Q. And various items inside that?

7 A. Yes.

8 Q. Did that have a name or anything on the
9 outside? Did you know who that belonged to?

10 A. No.

11 Q. And that's State's Exhibit 124. 123
12 beforehand.

13 A. Yes.

14 Q. Did you search that container?

15 A. That container was searched, yes.

16 Q. We'll go through and look at State's Exhibits
17 122. We can see this. This is the inside of the
18 container?

19 A. Yes.

20 Q. And State's Exhibit 70, just a different
21 angle?

22 A. Correct.

23 Q. Of the contents inside the red container.

24 State's Exhibit 71, where you can see a
25 close-up of the blue bag, right?

1 A. Correct.

2 Q. You can zoom in. Were you able to see what
3 that is?

4 A. It's a box of ammunition.

5 Q. Did you pull that out?

6 A. Yes.

7 Q. State's Exhibit 72 here; is that right?

8 A. That's correct.

9 Q. And this brown table, this is the table next
10 to that red container?

11 A. The end table, yes.

12 Q. Then a close-up of the watch?

13 A. Yes.

14 Q. Some more miscellaneous contents in State's
15 Exhibit 120; is that right?

16 A. Yes.

17 Q. And then at the bottom of the red container,
18 other various items?

19 A. Yes.

20 Q. Now this is -- was not a real gun?

21 A. No.

22 Q. You checked that out. You were able to
23 determine that?

24 A. Yes.

25 Q. What type of gun? What was it?

1 A. It was just a toy, just plastic.

2 Q. Okay. So, as you're searching, you searched
3 the red container. Do you also search the bags we saw
4 there on the recliner, the red bag and the black bag?

5 A. I do.

6 MR. BURDETTE: Judge, may I approach the
7 witness?

8 THE COURT: You may.

9 Q. (BY MR. BURDETTE) Showing you what's been
10 marked as State's Exhibit 115 and 87. Take a look at
11 those items.

12 A. (Complies.)

13 Q. 116, 117 and 86.

14 THE COURT: Would y'all approach, please?
15 (At the Bench, on the record.)

16 THE COURT: Didn't we discuss the red
17 bag, a red bag? Are you going to show what was in this
18 red bag?

19 MR. BURDETTE: Yes.

20 THE COURT: Well, I was ruling on the
21 black bag that he was seated on top of.

22 MR. BURDETTE: That's right. They didn't
23 establish any standing to contest --

24 THE COURT: Okay.

25 MR. BURDETTE: -- that bag.

1 MR. MARTIN: While we're here, may I
2 withdraw -- may I go ahead and make my objection now to
3 the black bag and the gun so I don't have to do it again
4 in front of the jury?

5 THE COURT: Yes, you may.

6 MR. MARTIN: And the record is perfected
7 this way. That way, I don't have to do it in front of
8 the jury.

9 THE COURT: That's fine.

10 MR. MARTIN: Thank you, Judge.

11 MR. BURDETTE: Judge, just so you know,
12 the proffer, we don't believe the defendant -- well, the
13 defense does have standing to contest the search of the
14 red bag because we've never once thought that that was
15 Nicholas Aker's bag or gun.

16 THE COURT: Okay. That's all I needed to
17 know. Thank you.

18 (*End of bench discussion.*)

19 THE COURT: You may continue.

20 MR. BURDETTE: Thank you.

21 Q. (BY MR. BURDETTE) Do you recognize these
22 items?

23 A. I do.

24 Q. How do you recognize them?

25 A. They were the same bag that were in the photos

1 of the recliner -- in the recliner.

2 Q. When did you first see those items?

3 A. The red bag, when I was standing outside the
4 door looking in. When I asked Mr. Norris to come to me,
5 I could see that it was sitting in the chair he was
6 sitting in.

7 Q. So, May 8th, 2011?

8 A. Yes.

9 Q. At that point were they then secured and
10 tagged into evidence?

11 A. Yes.

12 Q. At some point then transferred from Temple
13 police custody to the Houston -- to Officer Carr or
14 Officer Chappell with the Houston Police Department?

15 A. Yes.

16 Q. To your knowledge, have they been tampered
17 with in any way since then?

18 A. Not to my knowledge.

19 Q. You are able to recognize them because of the
20 unique identification numbers or marks on each item?

21 A. Yes.

22 MR. BURDETTE: Judge, at this time State
23 offers State's Exhibit 115, 87, 86, 116 and 117 into
24 evidence and I'll tender to opposing counsel.

25 MR. MARTIN: No objection as we have

1 already discussed.

2 THE COURT: Okay. Same ruling on that.

3 MR. BURDETTE: Permission to publish or
4 use these, Judge?

5 THE COURT: You may.

6 MR. BURDETTE: This is -- for the record,
7 they have been cleared by the bailiff outside the
8 presence.

9 THE COURT: Okay.

10 MR. BURDETTE: Are they admitted, judge?

11 THE COURT: Yes, they are. Let's do them
12 by number.

13 MR. BURDETTE: Got 115, 116, 117, 86 and
14 87.

15 THE COURT: So, 115, 116, 117, 86 and 87
16 are admitted.

17 THE BAILIFF: Judge, just reinspected
18 both weapons and both are found to be clear.

19 THE COURT: Okay. We appreciate it.

20 Q. (BY MR. BURDETTE) Okay. Officer Chappell,
21 you said you searched --

22 A. It's Mueller.

23 Q. I'm sorry. Officer Mueller, you said you
24 searched the red bag first that was sitting there in
25 front of the recliner?

1 A. Correct.

2 Q. You got it here. You open it up. What do you
3 find inside?

4 A. There is a pistol inside. I believe there
5 were some gloves and a black hood.

6 Q. What kind of pistol?

7 A. This pistol here.

8 Q. Do you know the caliber?

9 A. I believe it's a .32 or 7. --

10 Q. You want to take a look at it?

11 A. Yes, sir. 7.65.

12 Q. What caliber bullet does that fire?

13 A. It's a .32 caliber, I believe.

14 Q. Okay. Was the grip broken like this?

15 A. Yes.

16 Q. Was there a magazine?

17 A. Yes.

18 Q. Did you find any ammunition with the gun at
19 any point?

20 A. Yes.

21 Q. What kind of ammunition did you find?

22 A. Ammunition that was in it.

23 Q. What caliber ammunition was in it?

24 A. I believe it was .32 caliber.

25 Q. Then after that, you see the black bag. It's

1 laying there, right?

2 A. Yes.

3 Q. So, what do you do with the black bag there?

4 A. I pick it up.

5 Q. Do you touch it?

6 A. Yes.

7 Q. When you touch it, can you tell what's inside?

8 A. Yes.

9 Q. Was it immediately apparent?

10 A. Yes.

11 Q. What was inside?

12 A. A handgun.

13 Q. How could you tell -- how did you know it was
14 a handgun without opening the bag?

15 A. I picked it up like so. You can feel the gun.
16 Just as soon as you grab the bag, you can see what it
17 is.

18 Q. Does it require any manipulation?

19 A. No.

20 Q. Now, this is a pretty flimsy bag, right?

21 A. Correct.

22 Q. So, you can manipulate it if you need to?

23 A. Sure.

24 Q. Did you have to do that to identify it?

25 A. No.

1 Q. So, at that point you know what's inside,
2 right?

3 A. Yes.

4 Q. Did you go in the bag?

5 A. I did.

6 Q. What do you find? A book?

7 A. Green book.

8 Q. And what else? You have already told us.

9 A. A revolver. Pistol. Handgun.

10 Q. Do you know the caliber of the gun?

11 A. I would like to look at it just to make sure.

12 Q. Sure.

13 A. I think your sticker got on it. I believe
14 it's a .38 Special.

15 Q. So, what kind of ammunition does a .38 Special
16 fire?

17 A. .38 Special.

18 Q. How many rounds does a gun like this carry?

19 A. It depends on if it's a five or six.

20 Q. You would have to open it up?

21 A. I would have to open it up to tell, but I
22 believe it's a five or six rounds.

23 Q. Well, it has numbers there on the outside?

24 A. Yes.

25 Q. Six rounds?

1 A. Six.

2 Q. Okay. What else do you find in your search of
3 the home?

4 A. We find lots of items of clothing, these bags.
5 I'm trying to think. Many items.

6 Q. Did you find any ammunition?

7 A. Yes. I'm sorry.

8 Q. Do you recall what ammunition you found?

9 A. I do not.

10 Q. Was Officer Chappell there helping you search?

11 A. He was there. He was in and out, talking to
12 different people.

13 Q. Now, did he take custody of some of those
14 items?

15 A. Later.

16 Q. So, would he be aware or be able to tell us
17 what type of ammunition was found?

18 A. Yes.

19 Q. Now, at that point you have got Nicholas Aker
20 and Brshai Peters on their way down to the Temple Police
21 Department. Are Jasmine and Norris taken there as well?

22 A. Eventually, yes.

23 Q. But they are not released there at the scene
24 or anything, are they?

25 A. No, they are not.

1 Q. Were they treated well there at the scene?

2 A. Yes.

3 Q. Once you and the other officers were searching
4 the apartment, where were the Houston officers, Officer
5 Carr and Officer Chappell?

6 A. They were in and out, talking to people. Like
7 I said, there was a lot of officers on the scene. They
8 were in and out talking to different people. They were
9 not at one specific place the whole time.

10 Q. Now, at that point, once you have all the
11 suspects arrested, the evidence identified and tagged,
12 do you have much more involvement there at the scene
13 with this case?

14 A. No. We called -- detectives actually came
15 down. We called a couple detectives to come down and to
16 process and collect the stuff and take it back to the
17 police department. After that, I was pretty much done
18 with it.

19 Q. You searched it. They come down and tag it
20 and process it and that's it?

21 A. Yes, sir.

22 Q. Did you ever speak to any of the suspects
23 there at the scene?

24 A. Not that I can recall.

25 Q. You never took a statement from them at a

1 police station, did you?

2 A. No, I did not.

3 MR. BURDETTE: I'll pass the witness.

4 THE COURT: Thank you, Mr. Burdette.

5 Mr. Martin.

6 MR. MARTIN: Yes, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. MARTIN:**

9 Q. Real quickly, were you involved in the arrest
10 of Mr. Aker and Mr. Peters in the parking lot?

11 A. I was present.

12 Q. And neither one of them had a gun?

13 A. No.

14 Q. You were also -- you were the officer at the
15 front door of the apartment and you saw the fellow named
16 Norris sitting in a recliner?

17 A. That's correct.

18 Q. After y'all got him out of the apartment or he
19 came out voluntarily, you took him into custody or
20 detention. That's when you went in and found the black
21 bag with the revolver? That's the bag Norris was
22 sitting on in the recliner; is that right?

23 A. Correct.

24 Q. All right.

25 MR. MARTIN: Thank you. That's all I

1 have, Your Honor.

2 THE COURT: Okay. Further?

3 MR. BURDETTE: Nothing further, Judge, of
4 this witness.

5 THE COURT: Can he go back to Temple?

6 MR. MARTIN: Yes, sir.

7 MR. BURDETTE: Yes, sir.

8 THE COURT: Okay. Thank you for coming.

9 THE WITNESS: Thank y'all.

10 THE COURT: Call your next witness.

11 MR. BURDETTE: State calls Officer
12 Chappell.

13 (Witness sworn.)

14 THE COURT: I guess you are a sergeant,
15 aren't you? Are you a sergeant or what?

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. Burdette.

18 R. W. CHAPPELL,

19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BURDETTE:

22 Q. Good afternoon, Sergeant Chappell.

23 A. How you doing, sir?

24 Q. I'm well. Yourself?

25 A. I'm okay.