

1 MS. HARVEY: No, Your Honor.

2 THE COURT: May this witness be excused?

3 MS. HARVEY: Yes, Your Honor.

4 THE COURT: Thank you, Deputy. You may
5 step down and you're excused.

6 Call your next witness, please.

7 MS. HARVEY: State calls Deputy Clint
8 Myers.

9 THE COURT: You may proceed.

10 MS. HARVEY: Thank you, Your Honor.

11 **CLINT MYERS,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MS. HARVEY:**

15 Q. Would you tell the jury what your name is?

16 A. Clint Myers.

17 Q. And, Deputy Myers, how are you currently
18 employed?

19 A. As a deputy sheriff with the Harris County
20 Sheriff's Department.

21 Q. How long have you been a deputy sheriff with
22 the Harris County Sheriff's Department?

23 A. I was commissioned in January of 2007.

24 Q. And what qualifications and -- what did you
25 have to do to become a Harris County Sheriff's deputy?

1 A. I went through the Harris County Sheriff's
2 Training Academy.

3 Q. On March of 2011, were you working as a Harris
4 County Sheriff's deputy?

5 A. Yes, ma'am.

6 Q. And what were your duties on that date?

7 A. I was assigned to the Patrol Division where we
8 would answer and respond to calls for service.

9 Q. At around 3:23 in the afternoon, did you
10 respond to a call?

11 A. Yes, ma'am.

12 Q. And was that call at 12911 New Cypress Drive?

13 A. Yes, ma'am.

14 Q. Is that a location in Harris County, Texas?

15 A. Yes, ma'am, it is.

16 Q. Upon your arrival, were you there alone or were
17 there other deputies present?

18 A. Myself and Deputy Bair were the first two on
19 the scene.

20 Q. As you and Deputy Bair arrived on scene, what
21 did you do?

22 A. We both approached the house at either end. I
23 believe I was on the south side and he was on the north
24 side. And we approached from the corners and divulged
25 to the center of the house where the front door was.

1 Q. And why did you approach the house in that
2 manner?

3 A. The call slip advised that there was a suspect
4 in the area who had just sexually assaulted a
5 complainant and murdered another complainant, so we were
6 getting a view of all areas.

7 Q. Did you observe any signs of forced entry at
8 the house?

9 A. No, ma'am.

10 Q. Did you observe any gates to the backyard?

11 A. Yes, ma'am. There was a gate where I
12 approached.

13 Q. And what was the condition of the gate that you
14 saw?

15 A. It was closed and secured.

16 Q. Could you hear anything behind the gate?

17 A. There were a couple of dogs in the backyard
18 barking.

19 Q. Did you ever see those dogs?

20 A. Later, but not at that time.

21 Q. Can you describe what kind of dogs they were?

22 A. I do not recall.

23 Q. Big dogs or little dogs?

24 A. Medium size, I think.

25 Q. So, the dogs that are in the backyard, were

1 they ever in the house while you were in there?

2 A. No, ma'am.

3 Q. When you each approach from the corner and then
4 come to the door, how do you-all make entry into the
5 house?

6 A. The front door was locked and Deputy Bair had
7 knocked on the door and we waited until one of the
8 complainants answered the door.

9 Q. Who answered the door?

10 A. The female that was on scene.

11 Q. Do you see her here in the courtroom today?

12 A. Yes, I do.

13 Q. Can you point her out and describe an article
14 of clothing that she's wearing?

15 A. The female in the black shirt.

16 MS. HARVEY: If the record can reflect that
17 the witness has identified the defendant.

18 THE COURT: The record will so reflect.

19 Q. (By Ms. Harvey) What was she wearing as she
20 approached the door?

21 A. She was holding a towel up protecting, I guess,
22 herself. She was completely naked except wearing a pair
23 of white panties.

24 Q. Was she wet or dry?

25 A. She was wet.

1 Q. Once you-all entered into the house, do you
2 find the man that's been shot?

3 A. We did.

4 Q. And where did you find him?

5 A. He was in the far back in the master bathroom.

6 Q. When you find him, do you go check to see if
7 he's alive?

8 A. I did.

9 Q. And how did you do that?

10 A. I had checked for a pulse in his wrist.

11 Q. And have you had occasion to have to check
12 someone for signs of life on few or many occasions?

13 A. I guess you could say a few.

14 Q. Okay. On this particular occasion, was there
15 anything notable about the body when you touched it?

16 A. I remember looking up at Deputy Bair and
17 telling him that the body felt cold.

18 Q. After you felt the body and it felt cold, does
19 EMS then make the scene?

20 A. They did.

21 Q. Were you looking for signs or a location where
22 an intruder might have entered?

23 A. Yes.

24 Q. Was your attention directed to anyplace in
25 particular?

1 A. The call slip had advised, if my memory serves
2 me correctly, that the intruder escaped out the back
3 door of the residence. As we were standing in the
4 master bedroom, there was a back door that was partially
5 open in the corner of the bedroom.

6 Q. And this is in the back corner of the master
7 bedroom?

8 A. Yes, ma'am.

9 Q. I'm showing you what's been marked as State's
10 Exhibit 6. Do you recognize that (indicating)?

11 A. Yes, ma'am.

12 Q. And does it fairly and accurately represent
13 that door that was ajar in the back master bedroom?

14 A. Yes, ma'am, that is correct.

15 MS. HARVEY: State offers State's Exhibit
16 6, tenders to opposing counsel.

17 **(State's Exhibit No. 6 Offered)**

18 MR. VARELA: No objection to 6.

19 THE COURT: State's Exhibit 6 is admitted.

20 **(State's Exhibit No. 6 Admitted)**

21 Q. (By Ms. Harvey) So, the door that's ajar here
22 in the master bedroom, did it open and close freely
23 (indicating)?

24 A. So, this dog crate was here positioned so that
25 the door would only open a partial amount.

1 Q. And is that the location of the dog crate when
2 you arrived?

3 A. Yes, ma'am, it was.

4 Q. And, additionally, was the door open when you
5 arrived?

6 A. Yes, it was.

7 Q. Could the door be opened any further than that
8 with the dog crate in the way as it is?

9 A. No, ma'am. It was positioned that way -- I
10 don't know, but I'm assuming to keep the dogs from
11 coming inside the house.

12 Q. Now, during the time that you were at the
13 location, did the dog crate ever get moved?

14 A. Yes, ma'am, it did.

15 Q. And how did it get moved?

16 A. EMS personnel that were on scene had stepped
17 out the back of the residence to use a cell phone.

18 Q. And in order to get out the back door in order
19 to use his cell phone, did he have to move the dog
20 crate?

21 A. Yes, ma'am, he did.

22 Q. Could he have gotten out that back door without
23 moving the dog crate?

24 A. Not without climbing over it.

25 Q. Upon you noticing that the medic had moved the

1 dog crate, what did you do?

2 A. After having the medic come back inside the
3 residence, I moved it back into its original position.

4 Q. Were you able to tell exactly what the original
5 position was?

6 A. Yes, ma'am.

7 Q. And how could you do that?

8 A. The weight of the dog crate itself made lines
9 in the carpet to where you could see its exact position
10 prior to it being moved.

11 Q. After the scene was secure, did you do anything
12 else?

13 A. I went around and talked to neighbors
14 afterwards.

15 Q. Were you able to locate any neighbors who had
16 seen any masked men running through the neighborhood?

17 MR. VARELA: Objection. Hearsay.

18 THE COURT: Overruled to the extent of
19 whether he located it. It's sustained as to anything
20 they may have told him.

21 Q. (By Ms. Harvey) Were you able to locate any
22 neighbors that could corroborate anything that you were
23 being told by either off your call slip or off of the
24 defendant?

25 A. No, ma'am. One neighbor advised they heard --

1 MR. VARELA: Objection. Hearsay.

2 THE COURT: Sustained as to anything the
3 neighbors actually said.

4 A. One neighbor --

5 Q. (By Ms. Harvey) Let me ask you another
6 question.

7 A. Okay.

8 Q. There -- there was one neighbor that had
9 information; is that right?

10 A. Yes, ma'am.

11 Q. What was his name?

12 A. I do not recall.

13 Q. Ray McGill, does that sound correct?

14 A. It would be in my report. I identified him.

15 MS. HARVEY: Pass the witness.

16 **CROSS-EXAMINATION**

17 **BY MR. VARELA:**

18 Q. Deputy Myers, you talked about the location of
19 the dog crate and the door. Do you remember that?

20 A. Yes, sir.

21 Q. You had to step over the dog crate to go
22 through the door if you were leaving the room, right?

23 A. I did not.

24 Q. No. I mean, you would have to. A person who
25 was leaving the room through that door, would have to

1 step over the dog crate to go through the door, correct?

2 A. It would be difficult to do so, but, yes, sir.

3 Q. But a man in a hurry could do that, couldn't
4 he?

5 A. I don't think so.

6 Q. Okay. Why don't you think so?

7 A. You would have to first run into the wall in
8 order to make it through without moving the dog crate in
9 order to fit through the distance between the door frame
10 and the door itself.

11 Q. But you could open the door partially, step
12 over the dog crate, squeeze through, and be gone,
13 correct?

14 A. If you could squeeze through that wall right
15 there, yes, sir.

16 Q. But if the door is open, you could squeeze
17 through the space created by the partial opening of the
18 door, right?

19 A. A person small enough, maybe. I could not.

20 Q. All right. But a smaller person could very
21 well be able to do that?

22 A. Sure.

23 Q. You say the body felt cold?

24 A. Yes, sir.

25 Q. You touched the what, the hand and the wrist to

1 check the pulse?

2 A. Yes, sir.

3 Q. So, that extremity felt cold?

4 A. Yes, sir.

5 Q. All right. You don't know -- obviously, you're
6 not a crime scene investigator, are you?

7 A. No, sir.

8 Q. You didn't take the temperature of the body,
9 that sort of thing?

10 A. No, sir.

11 Q. All right. You ever touch a corpse before?

12 A. Yes, sir.

13 Q. Not pleasant, is it, sir?

14 A. No, sir, it's not.

15 Q. You kind of don't linger in the process of
16 doing that, do you?

17 A. Just long enough to feel the pulse.

18 Q. Yeah. It's kind of cold and clammy and not
19 pleasant, right?

20 A. To some, no.

21 MR. VARELA: Pass the witness.

22 THE COURT: Anything further?

23 MS. HARVEY: Just briefly, Your Honor.

24 **REDIRECT EXAMINATION**

25 **BY MS. HARVEY:**

1 Q. When counsel asked you if someone was thin
2 enough could they get by, is there room behind the crate
3 on this side to squeeze through?

4 A. No, ma'am.

5 Q. So, the only way to get out would be to go up
6 and over this crate?

7 A. Yes, ma'am.

8 Q. Is it something that your average person can
9 just step over with their foot?

10 A. Not with the width of that crate. It would be
11 difficult to not disturb the area.

12 MS. HARVEY: Pass the witness.

13 MR. VARELA: Approach the witness, Your
14 Honor?

15 THE COURT: Sure.

16 MR. VARELA: Or, actually, I need to
17 approach the projector.

18 **RECROSS-EXAMINATION**

19 **BY MR. VARELA:**

20 Q. Can you give me an estimate of how tall that
21 crate is, the one closest to that -- the swinging door
22 that I'm pointing to (indicating)? That's the crate
23 with the white towel --

24 A. Approximately 2 foot.

25 Q. Okay. So, it's a 2-foot crate. And it's about

1 what, a foot-and-a-half wide, maybe 2 feet wide?

2 A. Approximately.

3 Q. Okay. So, an agile person wouldn't have any
4 difficulty -- let's say the crate is about as tall as my
5 chair sitting here. Correct? Maybe a bit taller, a
6 couple inches taller?

7 A. Yes, sir.

8 Q. All right. And there's nothing extraordinary
9 about the height of that chair, right?

10 A. No, sir.

11 Q. I mean, it's a normal size chair?

12 A. Yes, sir.

13 Q. Let's just use that for demonstration purposes.
14 Ordinarily, an agile person wouldn't have too much
15 difficulty stepping on top of the crate and stepping
16 over the crate, would he?

17 A. If it could support your weight.

18 Q. Well, I mean, a 2-foot tall object, an ordinary
19 person that's not physically handicapped or otherwise
20 suffer from some kind of detriment, that shouldn't be an
21 insurmountable object for a man, should it?

22 A. No, sir.

23 Q. Okay. And a 2-foot width wouldn't present any
24 difficulties to anybody already on top and just jumping
25 off the other end through the door, correct?

1 A. Depends on the length of the legs.

2 Q. Sure.

3 A. When it comes to the crotch, it's hard to move
4 your crotch away any wider.

5 MR. VARELA: Pass the witness.

6 THE COURT: Anything further?

7 MS. HARVEY: Nothing further, Your Honor.

8 THE COURT: May this witness be excused?

9 MS. HARVEY: Yes, Your Honor.

10 THE COURT: Thank you, Deputy. You may
11 step down. You may be excused.

12 Call your next witness.

13 MS. HARVEY: State calls Deputy Tommy
14 Berry.

15 THE COURT: You may proceed.

16 MS. HARVEY: Thank you, Your Honor.

17 **TOMMY LEE BERRY,**

18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MS. HARVEY:**

21 Q. Would you tell the jury what your name is?

22 A. First name is Tommy, T-o-m-m-y. Middle name,
23 Lee, L-e-e. And my last name is Berry, B-e-r-r-y.

24 Q. How are you currently employed?

25 A. Harris County Sheriff's Office.