

1 Please remain standing. The rule has been previously
2 invoked, which means you cannot discuss this case with
3 anyone, you cannot read any reports, compilations,
4 summaries, regarding anyone's testimony. You may
5 discuss the case with the lawyers, but you must do so
6 outside the presence and hearing of any other witness.
7 At this time you are excused to the hall until such time
8 that you are called in to testify. Please go to the
9 hall.

10 (Witnesses leaving courtroom)

11 THE COURT: Ms. Falk, call your next
12 witness.

13 MS. FALK: State calls Officer Daniel
14 Nunez.

15 THE COURT: You may proceed.

16 **DANIEL NUNEZ,**

17 having been previously duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 BY MS. FALK:

20 Q Good morning. Can you tell us your full name,
21 please?

22 A Yes. My name is Daniel Nunez.

23 Q What do you do you for a living?

24 A I'm a police officer with the Houston Police
25 Department.

1 Q How long have you been a police officer with
2 the Houston Police Department?

3 A About 11 years.

4 Q When you first -- did you go to the police
5 academy?

6 A Yes.

7 Q When you first became a police officer?

8 A Yes.

9 Q What type of job duties did you have or what
10 was your assignment?

11 A When?

12 Q When you first started with HPD.

13 A Okay. From going into the probationary --
14 well, following as a cadet in the academy, and then once
15 you graduate from the academy, you become a probationary
16 police officer for about six months and you go through a
17 field training program where you train with a senior
18 officer to learn how to do the job of a police officer.
19 Transition from the academy to the street. Then I was a
20 patrol officer for about six years -- I mean, I'm
21 sorry -- four years.

22 Q What part of town were you assigned to during
23 those four years on patrol?

24 A I was assigned to south central, which
25 consists of Second Ward, Third Ward, West U., the Museum

1 District. So just basically east of downtown.

2 Q After those four years on patrol, what
3 division or how did your job change?

4 A They posted openings in the crime scene unit,
5 and it's usually a difficult position to obtain, and I
6 applied, thinking I would not be accepted, but I was
7 actually accepted on the first go-round.

8 Q And so then you have been with the crime scene
9 unit for the past seven years; is that correct?

10 A About six-and-a-half years.

11 Q Tell us what some of the job duties and
12 responsibilities are. What is your assignment in the
13 crime scene unit?

14 A Basically our assignment is to assist other
15 divisions with any more in-depth investigating that they
16 need to do. It can be anything from a robbery case to a
17 juvenile case to a homicide scene to a burglary scene to
18 just assisting another agency.

19 Q Were you involved in a case that technically
20 started March 21st, but in late March of 2011, the
21 reason that we're here today?

22 A Yes.

23 Q And how did you get involved with that case?

24 A On March 27th I got a call from another crime
25 scene investigator who advised me that another

1 homicide --

2 MR. DAVIS: Objection, hearsay.

3 THE COURT: Sustained.

4 Q (BY MS. FALK) Don't tell us what he told you,
5 and before we even get near there, who was the other
6 officer who called you?

7 A It was Officer Terrevala.

8 Q And after speaking with Officer Terrevala,
9 where did you go?

10 A I went to 5353 West Alabama to the parking
11 garage.

12 Q You said it's a parking garage?

13 A Yes.

14 Q What type of parking garage is it?

15 A It's a two-story parking garage.

16 Q What's nearby in that area?

17 A There's a shopping strip center located
18 directly in front of it.

19 MS. FALK: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes, ma'am.

22 Q (BY MS. FALK) I'm going to show you some
23 different items. First I'm going to show you what I
24 have premarked as State's Exhibits 14 and 15. Are you
25 familiar with these two areas, these two depictions?

1 A Yes.

2 Q And are they both fair and accurate depictions
3 of kind of a map or layout of the scene that you
4 responded to?

5 A Yes.

6 MS. FALK: At this time I would tender
7 State's 14 and 15.

8 MR. DAVIS: No objection.

9 THE COURT: State's 14 and 15 are
10 admitted without objection.

11 MS. FALK: Your Honor, may I have
12 permission to publish these?

13 THE COURT: Yes, you may.

14 Q (BY MS. FALK) So you told us that the scene
15 you went to was 5353 West Alabama?

16 A Yes.

17 Q I'm going to zoom in here. What are we
18 looking at here?

19 A It's just an overall view of where the
20 shopping strip center is located in relation to Houston.

21 Q So if I draw with my finger a big circle right
22 here, can you tell us what highway that is?

23 A That's the 610 Loop.

24 Q And then this arrow or dot marking right here,
25 what is that?

1 A That's the location of the scene.

2 Q And then if you look at State's Exhibit No.
3 15, is this just a close-up of that area?

4 A Yes.

5 Q So the street that runs north to south on the
6 right of State's 15, what street is that?

7 A That would be the 610 Loop.

8 Q Tell us, like the Galleria is kind of a
9 monument most of us are familiar with, where in location
10 to 5353 West Alabama is the Galleria?

11 A The Galleria is going to be to the east, which
12 is over here, and the scene is just west of that in
13 another strip center on Alabama.

14 Q Can you name for us, if you can, any of the
15 businesses or properties that are over there that are
16 also kind of landmarks for that area?

17 A Some of the businesses I'm not familiar with.
18 The only one I know of is a club that officers have
19 responded to, which is the Roxy Club.

20 Q Thank you for clearing that up for me. You
21 have clearly done this before, right?

22 A Yes.

23 Q The technology part?

24 A Yes, ma'am.

25 MS. FALK: Your Honor, may I approach?

1 THE COURT: Yes, ma'am.

2 Q (BY MS. FALK) Now I'm going to show you a
3 larger group. Is 5353 West Alabama in Harris County,
4 Texas?

5 A Yes.

6 Q I'm going to show you what I've marked as
7 State's Exhibits 16 through 35. I want you to flip
8 through these.

9 A (Complies.)

10 Q Are you familiar with what I have premarked
11 State's Exhibits 16 through State's 35?

12 A Yes.

13 Q And are they fair and accurate depictions of
14 the scene at 5353 West Alabama on the date you went out
15 there?

16 A Yes.

17 MS. FALK: Your Honor, at this time State
18 would offer State's Exhibits 16 through 35.

19 MR. DAVIS: There's no objection.

20 THE COURT: State's 16 through 35 are
21 admitted without objection.

22 MS. FALK: May I have permission to
23 publish these to the jury, Your Honor?

24 THE COURT: Yes.

25 Q (BY MS. FALK) Now, you told us this was a

1 two-story parking garage. You took some photos out
2 there, right?

3 A Yes.

4 Q And did you take a lot of photos or a few
5 photos?

6 A There was quite a large amount.

7 Q And why would you take a large number of
8 photos?

9 A A lot of those photos are general to specific
10 to the overall scene. Then we zoom in and get closer to
11 the evidence and we want to show where the evidence is
12 in relation to different objects to the scene so it's
13 easier to identify.

14 Q I want to show you State's Exhibit 16. Tell
15 us what is in this picture.

16 A What we're looking at is the west side of the
17 entrance to the parking garage. The street we're
18 looking at is Yorktown, and then the parking garage is
19 over here on the right. That's the entry. And then the
20 entry and exit area, go in, and then there's the second
21 level, and the strip center is located over here on this
22 side and the Galleria is behind this larger building.

23 Q Now, if we look within State's Exhibit 16, it
24 is hard to see on the picture, but can you tell us what
25 this item is right over here on the far right?

1 A Yes. This is a large blue garbage dumpster.

2 Q Now, when you make a crime scene like this
3 where it's kind of large and you don't know what you're
4 looking for, what's the first thing that you do?

5 A First I meet with the investigator and I get
6 general information and a summary of what's going on and
7 then we do a walk-through of the scene to try to
8 identify evidence. First, you just want to kind of
9 gauge what you have at the scene and just start from the
10 outside and work your way in.

11 Q So when you start from the outside and work
12 your way your way in, is this sort of your starting
13 point of your CSU investigation?

14 A Yes.

15 Q Now, I want to direct your attention to
16 State's Exhibit No. 17. There's some chalk markings
17 here on the sidewalk. Can you tell us first where this
18 sidewalk is in relation to State's Exhibit 16?

19 A Yes. It's going to be on the westside entry
20 area, kind of in this area where the pole is on the
21 sidewalk.

22 Q And what are the chalk markings here on
23 State's Exhibit 17?

24 A The markings with the chalk, I drew a big
25 circle to kind of outline where some evidence was

1 located and then I marked it with the letter A to group
2 that set of evidence with the letter A.

3 Q Now, tell us what type of evidence it is
4 you're talking about.

5 A They are blood stains.

6 Q How do you know they are blood stains?

7 A Since I've been doing this for quite some
8 time, I can identify what blood stains look like,
9 evidence, whether they're weathered or they're fresh.

10 Q Have you ever taken courses in blood spatter
11 and blood evidence?

12 A Yes.

13 Q Now, looking at State's Exhibit No. 18, where
14 is this view?

15 A That view is kind of similar to the first two
16 that -- well, the first one we saw on 16, where it said
17 driveway entry, closer to where that dumpster is. It's
18 going to be the south entrance to that parking garage on
19 that westside of Yorktown.

20 Q So where is the dumpster in relation to this
21 picture?

22 A Over here to the right.

23 Q Looking at State's Exhibit No. 19, can you
24 tell us where in relation to -- and I'll put our first
25 one, which is our overall up in just a second, but

1 looking at State's Exhibit 19, where is that in relation
2 to State's 16?

3 A That's just immediately inside the garage. As
4 you go in, there's a little turnaround area right here
5 and that's what that previous photo was showing.

6 Q This one?

7 A Yes.

8 Q Now, once you get into this part, what do you
9 do?

10 A Once I have already identified all the
11 evidence and I circled it, so now I'm going to make my
12 way through the garage actually to show the different
13 blood stains that I encountered on my way further into
14 the garage.

15 Q And do you mark each of those, what appear to
16 be blood stains, with chalk outlines?

17 A Yes.

18 Q So looking at State's No. 20, it's hard to
19 see, and I don't know if the light makes it better or
20 worse, but can you see any of those markings on State's
21 20?

22 A Yes. They're going to be over here. Like in
23 the center of the photo you see like a series of
24 circles, and that's where they are.

25 Q And where is this area right here in relation

1 to the entrance and the dumpster that we saw?

2 A It's just inside the entrance, and I guess the
3 dumpster would be to the right.

4 Q Now, looking at State's Exhibit No. 21, and I
5 am going to zoom in over here to the far bottom
6 right-hand corner, do we see more circles?

7 A Yes. These circles over here to the right are
8 the ones we saw in the previous photos and then there's
9 another group right here, a group of three.

10 Q And then looking at State's Exhibit No. 22,
11 are those more of the circles and the outline drawings?

12 A Yes.

13 Q Now, comparing State's -- let's go back to 20.
14 Where is this in State's 20 in relation to State's 22?
15 So the picture on the left, can you tell where that is
16 in relation to the picture on the right?

17 A Yeah. It's also in that little turnaround
18 area that they have as you immediately go into the
19 parking garage.

20 Q Now, we can see in State's Exhibit No. 22 that
21 it looks like a letter C. What's that for?

22 A That's what I labeled that set of bloodstain
23 grouping as.

24 Q We're going to walk through each of the
25 individual bloodstain groupings in just a minute, and

1 before we get there, looking at State's No. 23, are
2 these just more or a different angle of the pictures of
3 the groupings?

4 A Yes. Now, we're looking from the opposite end
5 and looking out toward the exit of the parking garage.

6 Q Okay. So like in State's No. 22, we've got
7 kind of a bean-shaped or an eight-shaped circle, and is
8 that the same eight-shaped circle that's here in 23 but
9 closer up?

10 A Yes.

11 Q And when you're taking the photos, how is it
12 that you process, like where you're going to start and
13 where you're going to stop?

14 A It's easier to go from general to specifics.
15 I go from the outside in and then just work your way in
16 sequence.

17 Q Looking at State's Exhibit No. 24, can you
18 direct our attention to where the drops or the circles
19 are in this picture?

20 A Yes. They're over here to the left of the
21 column, another set and then another grouping, but you
22 can clearly see them right there by the pole, the little
23 dark stains. Actually they look better here.

24 Q Clearly it's kind of hard with technology to
25 see it, right?

1 A Yeah.

2 Q Do the pictures show it accurately?

3 A Yes.

4 Q Now, moving toward State's Exhibit 26, tell us
5 what you see in this picture.

6 A Now we're further in the garage behind the
7 yellow poles. If you look over here, I'm going to draw
8 a circle. That's that dumpster that we mentioned that's
9 outside, and where all this bright light is, that's
10 Yorktown and that's the street and the driveway
11 entrance. And right here is that circular drive that
12 goes in and out from those previous blood stains we were
13 looking at, and now we're into the individual parking
14 spaces where you can see more circles, different blood
15 stains.

16 Q And then if I focus in here to the right of
17 what you said was the entrance off of Yorktown, what is
18 this blue container right over there?

19 A I think that's another disposable container.

20 Q Now, turning to State's Exhibit 27, can you
21 tell us what's in this photo?

22 A Yeah. Here we're much further into the garage
23 and there is a parking space here that's, I guess, a
24 private parking space, a reserved parking space, and
25 then public parking spaces are closer to the columns and

1 there's a security office right here.

2 Q Now, if you look at State's 28, this is just
3 an up-close photo that we just saw, right?

4 A Yes.

5 Q But this one also has some chalk markings.
6 Can you tell us where those chalk markings are in this
7 photograph?

8 A Yes. They're over here to the right in the
9 yellow striping in the drive area.

10 Q And now turning to State's Exhibit No. 29, you
11 mentioned that there was a parking -- reserved parking
12 spot. Where in this picture is that reserved spot?

13 A It's right here in kind of the yellow box.

14 Q And then we can see some chalk writing down
15 here. What does that say?

16 A It says "Security Parking."

17 Q And then above it, it is really hard to make
18 out, but do you know what that says?

19 A Yes. I actually wrote in the reflective chalk
20 "Office" and put an arrow pointing to this door,
21 pointing to the security office door.

22 Q And looking at State's 30, that's just kind of
23 a close-up of the writing. What does it show down here
24 at the bottom of the parking?

25 A At the bottom it says "Security Parking" that

1 I wrote in the chalk, and then you have a space, and
2 then where I wrote "Office" and the arrow pointing
3 toward the office.

4 Q Now, looking at State's 31, is this the door
5 to the office?

6 A Yes.

7 Q Is it a large or small office?

8 A It's pretty small.

9 Q Looking at State's 32, tell us what this is.

10 A Now, the office door is completely open and
11 you can see inside the security office with the
12 honeycomb tile, a small desk, clipboard.

13 Q Referring to State's Exhibit No. 33, what is
14 depicted in here?

15 A Now we're further inside the office and we're
16 like in the northeast corner looking toward the only
17 window that the office has, and the door would be on the
18 adjacent wall.

19 Q And so the square you drew leads us to where
20 the window is?

21 A Yes.

22 Q Tell us what this item is toward the left.

23 A Yes. It's a computer monitor that gives
24 individual views on the security cameras that they have
25 on the premises.

1 Q Officer Miller, was he also with you when you
2 were doing this investigation?

3 A Yes.

4 Q Now, State's Exhibit No. 34, can you tell us
5 what this is a picture of?

6 A Now I'm at the east end or the back of the
7 office kind of like behind the desk and now we're
8 looking from the inside of the office. Here's the
9 security office door and then that wall that we couldn't
10 see while the door was open initially, there's a punch
11 card and a clock.

12 Q And State's Exhibit 35, is this just a picture
13 of the floor in the security office?

14 A Yes.

15 Q Were there any other portions -- do you
16 remember how many photos you took at that scene?

17 A Yes, I do.

18 Q How many?

19 A There was 440.

20 Q Were there any photos that we haven't covered
21 that you found anything important or relevant?

22 MR. DAVIS: Objection, Your Honor. Calls
23 for improper opinion and invades the province of the
24 jury.

25 THE COURT: Restate your question.

1 Q (BY MS. FALK) Just based on your observations,
2 were there any other portions of the scene that we have
3 not talked about that were important to your
4 investigation?

5 A No.

6 MS. FALK: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes, ma'am.

9 Q (BY MS. FALK) Let me talk to you and show you
10 what I have premarked as State's Exhibits 36 through
11 State's 52 and tell me if you are familiar with them.

12 A (Complies.)

13 Yes, I am familiar with them.

14 Q Are State's Exhibits 36 through 52 fair and
15 accurate depictions of what they purport to be?

16 A Yes.

17 MS. FALK: Your Honor, State offers
18 State's Exhibits 36 through 52.

19 MR. DAVIS: There's no objection, Your
20 Honor.

21 THE COURT: State's 36 through 52 are
22 admitted without objection.

23 Q (BY MS. FALK) Generally speaking, what's
24 contained within State's Exhibits 36 through 52?

25 A Generally they are more close-up photos of the

1 stains I took photographs of at the scene that day.

2 Q So if we're looking at State's 36, can you
3 tell us just what we're looking at? And we won't walk
4 through every single one of them like we did before, but
5 just generally what are we looking at?

6 A This is a close-up of the stains where you can
7 see the chalk outline and you can see where I
8 individually labeled it letter B, and the darker stains
9 under letter B are larger concentration of the
10 blood stains in that photo.

11 Q And then if we walk through 37, can you tell
12 us or highlight for us where the chalk outline is?

13 A Yes. I'm going to circle it. It's kind of
14 like a kidney-bean shape.

15 Q And then in the next photo we have got that
16 same circle but with the letter C; is that correct?

17 A Correct.

18 Q And the photos go on like that. But let me
19 get back through and let me show you State's Exhibit No.
20 48. Where is the security office in relation to this?

21 A It's going to be closer to the top of the
22 photo up here.

23 Q And can you show us with a line where the
24 blood trail is that's documented in 48?

25 A There's stains over here in the foreground and

1 then there's more that continue over this way and they
2 lead in that direction.

3 Q Where in the parking garage do the blood
4 stains that you observed begin?

5 MR. DAVIS: I'll object to the leading
6 form of the question, Your Honor.

7 THE COURT: Overruled.

8 Q (BY MS. FALK) I guess you don't know if
9 they're beginning or they're ending there, but when
10 you're looking at them, where is it that you started
11 observing them compared to the outside entrance of the
12 garage?

13 A From the outside there is a massive
14 concentration of the outside by the sidewalk where we
15 saw on Yorktown and then there's more of a concentration
16 at the entry area to that south end of the drive, which
17 is to the left of that dumpster, and the stains just
18 continue toward the security office.

19 MS. FALK: Pass the witness, Your Honor.

20 THE COURT: Mr. Davis.

21 **CROSS-EXAMINATION**

22 Q (BY MR. DAVIS) You were just asked about where
23 the stains began. You label them by number when you see
24 them; is that right?

25 A By letter on this occasion, yes.

1 Q I apologize. You say A, B, C, D, and it's
2 your theory that the stains began out on the parking --
3 I'm sorry -- out on the sidewalk and steadily progressed
4 into the parking garage; is that right?

5 A No, sir, that's not my theory.

6 Q You can't really determine one way or the
7 other?

8 A Not by those stains. There was no
9 directionality to the stains.

10 Q Right. But you'll agree with me there's no
11 tracking of the stains?

12 A Correct.

13 Q And one of the things you do -- let me back up
14 a little bit. One of the things you do, one of the
15 functions of your job is also to go and not just to
16 collect evidence but to interpret evidence?

17 A Correct.

18 Q You come to court and you interpret blood
19 splatter evidence?

20 A Blood spatter, yes.

21 Q You can kind of determine by the way of blood
22 splatter, you can determine if there has been a struggle
23 in the place, right?

24 A Yes.

25 Q You can determine whether or not someone was

1 killed instantly based on the way the blood may have
2 been?

3 A Yes.

4 Q Even if someone moved the body?

5 A Yes.

6 Q You can tell whether they were injured and
7 then bled continuously after being injured, true?

8 A Yes.

9 Q At the very beginning, I should say, when you
10 go out and you put or mark spot A on the sidewalk,
11 there's no traffic or tracking through that blood,
12 right?

13 A Correct.

14 Q It is just as if someone had been cut there
15 and bled there, right?

16 A Correct.

17 Q Now, obviously the more information you have
18 to be able to interpret, the better you are able to
19 determine what could have occurred, true?

20 A Yes.

21 Q Is that right?

22 A Yes.

23 Q If, for example, you were able to see a video,
24 like a surveillance video, where it may have showed the
25 alleged complainant moving around in different places,

1 it might help you interpret where a beginning point was,
2 right?

3 A Correct. Yes.

4 Q For example, if you had a surveillance video
5 that shows the complainant coming out of the office and
6 he doesn't appear to be cut and then later it shows him
7 going back in the office appearing to be cut and then
8 getting in his car and driving off, that might help you
9 determine where he may have actually first been cut,
10 right?

11 A Right.

12 Q Because you can determine if he came from his
13 office and there was no tracking through the blood, you
14 know he didn't walk through the blood, going back and
15 forth through the blood, true?

16 A True.

17 Q You know that he walked in one direction,
18 right?

19 A Yes.

20 Q And then he got in his car and drove off, then
21 you know that that blood came from the direction that he
22 came from, right?

23 A Right.

24 MR. DAVIS: May I approach, Your Honor?

25 THE COURT: Yes.

1 (Discussion up at bench:)

2 MR. DAVIS: We talked yesterday about
3 introducing that video, and there are some technical
4 issues, Judge, that we have enough in it to play, so I
5 don't know if you want to take a break at some point. I
6 can finish this line of questioning and then take a
7 break and set that up so the jury doesn't have to sit
8 and wait for us to do that. Would you mind?

9 THE COURT: No.

10 (In the hearing of the jury)

11 MR. DAVIS: Your Honor, at this time I
12 would like to mark this item as Defense Exhibit 2.

13 MS. FALK: With no objection from the
14 State, Your Honor.

15 THE COURT: Are you offering it?

16 MR. DAVIS: I'm offering it.

17 MS. FALK: No objection.

18 THE COURT: Defense 2 is admitted with no
19 objection.

20 Q (BY MR. DAVIS) Now, you took pictures of the
21 dumpster, right?

22 A Yes.

23 Q There was some photos that you took of the
24 area in front of the dumpster as well?

25 A Yes.

1 Q And you took a lot of pictures of that
2 sidewalk, right?

3 A Yes.

4 Q And you went around the whole scene, you went
5 inside and you went outside as well?

6 A Yes.

7 Q One of the things you have been trained to do
8 as a crime scene investigator that's crucial to your
9 investigation is to observe things like lighting, right?

10 A Yes.

11 Q To observe lighting in different locations as
12 well?

13 A Correct.

14 Q When you were at the scene, you went inside
15 the parking garage and there was lighting inside the
16 parking garage?

17 A Yes.

18 Q And you went to the security office and there
19 was lighting inside the security office as well?

20 A Yes.

21 Q Now, if someone had gone there earlier and had
22 gone to the security office when it was nighttime, do
23 you think they would be able to see the lighting from
24 the street?

25 A I don't know.

1 Q Fair enough. When you went there, the lights
2 were on and functioning?

3 A Yes.

4 Q And you were able to find the security office
5 without a problem?

6 A Yes.

7 Q Now, tell me this, that area, are you familiar
8 with the area?

9 A Somewhat, yes.

10 Q Are you familiar with how the area appeared at
11 that time?

12 A At what time?

13 Q From March 26th, I think you were going there,
14 in March 2011?

15 A Yes.

16 Q There was a Prosperity Bank building around
17 the corner. Are you familiar with that?

18 A No, I'm not.

19 Q You weren't asked to take photographs of that?

20 A No.

21 MR. DAVIS: May I approach the witness,
22 Your Honor?

23 THE COURT: Yes, sir.

24 Q (BY MR. DAVIS) I haven't had these premarked,
25 but I'm going to mark them now. I'm going mark this as

1 Defendant's Exhibit 3. I'm going to show you that.

2 Have you seen that photograph before, sir?

3 A Yes.

4 Q And that's one of the photographs you took of
5 the scene?

6 A Yes.

7 Q Does that photo substantially and accurately
8 depict how that scene appeared at the time you took
9 those photos?

10 A Yes.

11 MR. DAVIS: Your Honor, at this time I
12 offer Defense Exhibit 3 and tender to the State for
13 inspection.

14 MS. FALK: I have no objection.

15 THE COURT: Defendant's Exhibit 3 is
16 admitted without objection.

17 Q (BY MR. DAVIS) You talked a little bit about
18 the dumpster and you going in there and taking pictures
19 of the dumpster, right?

20 A Yes.

21 Q I'm going to mark that Defendant's Exhibit No.
22 4. If you will take a look at that. And is this the
23 area that you took the photographs of the dumpster?

24 A Yes.

25 Q Does this photograph substantially and

1 accurately depict how it appeared on that day?

2 A Yes.

3 MR. DAVIS: Your Honor, at this I would
4 offer Defendant's 4 and tender to the prosecution for
5 inspection.

6 MS. FALK: No objection.

7 THE COURT: Defendant's 4 is admitted
8 without objection.

9 MR. DAVIS: Your Honor, may I publish
10 these exhibits?

11 THE COURT: Yes, sir.

12 Q (BY MR. DAVIS) Now, Officer, this is a picture
13 of the dumpster, right?

14 A Yes.

15 Q That's the dumpster we've been talking about?

16 A Yes.

17 Q In front of the dumpster you found no blood?

18 A No.

19 Q Meaning you didn't find blood; is that
20 correct, sir?

21 A Correct, I didn't find any blood.

22 Q So you've got this area here where you don't
23 have any circles?

24 A Correct.

25 Q Now, this picture, which is Defendant's

1 Exhibit No. 3, is of a similar area, right, just from a
2 different angle?

3 A Yes.

4 Q This is the view as if you were standing back
5 this way and looking down the sidewalk?

6 A Yes.

7 Q Is what's in this picture, right?

8 A Correct.

9 Q And so this is the sidewalk that's in
10 question, and behind these bushes and shrubs is this
11 same dumpster?

12 A Yes.

13 Q You have that circle of shrub and you've got
14 that circle of shrub again, right?

15 A Yes, sir.

16 Q And you're looking down the street. The area
17 where you see or first see the blood that you label as
18 A, as a point of A, starts about right here; is that
19 correct, sir?

20 A Yes, on the other side of the driveway. Kind
21 of where that yellow mark, where the yellow pole is, on
22 that part of the sidewalk.

23 Q Let me see if I zoom in a little bit. And
24 this yellow pole here?

25 A Yes, they were over here.

1 Q And is it more so right there in the sidewalk
2 area?

3 A Yes, sir.

4 Q So the first point you see blood -- and of
5 course there's no tracking here of blood, right?

6 A Right. That was the furthestest less blood
7 stain I located.

8 Q So this bloodstain isn't anywhere in the
9 garage? You talked about it being a big pool of blood
10 here.

11 A I didn't say big pool. I said just a round
12 blood stain.

13 Q I think your words were massive collection of
14 blood.

15 A I don't recall saying massive collection.

16 Q Sorry. But, nevertheless, this is where you
17 first see it over here on the sidewalk, and this isn't
18 anywhere in the garage or anything like that?

19 A Correct.

20 Q And then after this spot, you have a trail, or
21 at least you think it might be a trail, but you can't
22 say, because you weren't provided with the information,
23 right?

24 A Correct.

25 Q But there's something that appears to be a

1 trail leading in towards the security office?

2 A Correct.

3 Q And at no point during the course of that
4 trail do you see any footprints or anything in the
5 blood?

6 A No.

7 Q At no point do you see any disturbance of the
8 blood, right?

9 A Correct.

10 Q And by "disturbance," I mean you might see
11 some droplets that may be odd shaped, right?

12 A Right.

13 Q That would be something you would look for,
14 because if someone tried to disturb it?

15 A Yes.

16 Q Someone may have gone to clean it up?

17 A Yes.

18 Q Or someone may have walked through it?

19 A Right.

20 Q In fact, in this situation you don't see
21 anything that indicates that there was a struggle
22 following that blood trail, do you?

23 A No.

24 Q There was nothing indicating that there was a
25 struggle right there at the points in between that you

1 saw the blood trail?

2 A Yes.

3 Q And you know what I mean by "struggle"?

4 A Yes.

5 Q Two people may be fighting or engaged in some
6 fistfight?

7 A Yes.

8 Q Someone at some point in time somewhere in
9 that little line based on the information you were given
10 was injured and started bleeding?

11 A Yes.

12 Q Now, I want to talk to you a little bit about
13 the amount of blood.

14 A Okay.

15 Q There were no pools of blood?

16 A No.

17 Q You've gone to crime scenes and seen pools of
18 blood?

19 A Yes, sir.

20 Q And, in fact, sometimes you'll see pools of
21 blood from one injury; isn't that right?

22 A Yes.

23 Q If someone has a major artery that's cut, you
24 might see a pool of blood?

25 A Yes.

1 Q If someone has a major organ that's been
2 injured, you might see a pool of blood?

3 A Yes.

4 Q For example, if someone was stabbed in the
5 heart, you would see a lot of blood in those situations,
6 right?

7 A Right.

8 Q And if someone is stabbed in the spleen, you
9 might see a lot of blood, right?

10 A Okay, I guess so. I'm not a doctor.

11 Q I know you're not.

12 A I don't know about the spleen.

13 Q Yes, sir. The spleen might be unusual, but
14 what I'm asking in terms of different major organs, when
15 you go and you see pools of blood, that's something you
16 factor in, isn't it?

17 A Yes.

18 Q You're able to determine, based on the amount
19 of blood, what type of injury may have been sustained?

20 A More or less, yes.

21 Q There's been a lot of cases where you see
22 someone sustaining a mortal injury, meaning an injury
23 that it's likely that that person is going to die,
24 you've oftentimes seen a lot of blood; isn't that true?

25 A True.

1 Q In this situation you didn't see any pools of
2 blood or anything like that?

3 A No.

4 Q And you didn't see any tracking of the blood
5 from different places from one point to another?

6 A No.

7 Q Now, I want to show you one more photo and
8 then I'm going to sit down.

9 MR. DAVIS: May I approach the witness,
10 Your Honor?

11 THE COURT: Yes, sir.

12 Q (BY MR. DAVIS) I'm going to mark this as
13 Defendants Exhibit 6.

14 MS. TERRY: No. 5.

15 Q (BY MR. DAVIS) Exhibit 5. Does this fairly
16 and accurately represent and depict how it appeared on
17 that particular day when you took it?

18 A Yes.

19 MR. DAVIS: Your Honor, at this time I
20 offer Defendant's Exhibit 5 and tender to opposing
21 counsel for review.

22 MS. FALK: I have no objection.

23 THE COURT: Defendant's 5 is admitted
24 without objection.

25 MR. DAVIS: May I publish it, Your Honor?

1 THE COURT: Yes, sir.

2 Q (BY MR. DAVIS) Now, you're familiar with that
3 area. Obviously this is the area -- I'll zoom out a
4 little bit. This is the area on this corner that you
5 have marked as spot A, right?

6 A Yes.

7 Q Also in this picture you can see a building in
8 the back over here. Do you see that building?

9 A Yes, sir.

10 Q The Prosperity Bank building sits right over
11 here. Are you aware of that?

12 A No, I'm not familiar with that area.

13 Q You're not that familiar with the area?

14 A To know specific buildings, no, sir.

15 Q Did you have a map out there, like where the
16 addresses were of different buildings?

17 A No. Just the parking garage and that complex.

18 Q You were shown a map by the State. I don't
19 know if that map actually has the addresses on it.

20 A I don't recall any addresses on it.

21 Q So you aren't familiar with the Prosperity
22 Bank building that sits over there? You're not familiar
23 with whether or not it does?

24 A Correct.

25 Q You would agree with me that this -- over to

1 this area is maybe what, 150 yards, 100 yards or so?

2 A Probably a little more than that.

3 Q You think from this spot?

4 A Probably a little more than 150 yards.

5 Q Maybe 160 yards?

6 A Something like that.

7 MR. DAVIS: May I have a moment, Your
8 Honor?

9 THE COURT: Yes, sir.

10 MR. DAVIS: Judge, at this time I wanted
11 to publish Defendant's Exhibit No. 2.

12 MS. FALK: I don't know what part.

13 MR. DAVIS: The blue statement.

14 MS. FALK: But just the blue statement?

15 MR. DAVIS: Just the blue statement.

16 It's probably three minutes' tops.

17 We're getting it, Judge, if I have
18 additional technical support.

19 THE COURT: Are you supposed to make a
20 bigger screen?

21 MR. DAVIS: I think it does.

22 THE COURT: Yes, but I don't have that
23 capability.

24 Deputy, will you excuse the jury, please?

25 (Recess taken)

1 THE COURT: All right. Bring the jury
2 in.

3 (Jury seated)

4 THE COURT: Be seated, please.

5 You may continue, Mr. Davis.

6 Q (BY MR. DAVIS) I was asking you a little bit
7 about publishing this video. Remember I asked you if it
8 would help if you saw additional information to help you
9 with your interpretation?

10 A Yes.

11 Q We have a person from IT here to help us with
12 that.

13 MR. DAVIS: If you could play that.

14 (Playing Defendant's Exhibit No. 2)

15 Q (BY MR. DAVIS) Officer Nunez, you saw the
16 gentleman go into the door?

17 A Yes.

18 Q Now, for purposes of doing your analysis, I
19 want you to assume that is the security guard showing up
20 for work. Do you see the time frame as being a little
21 after 6:00, right?

22 A No.

23 Q See in the left photo?

24 A I see 5:46.

25 Q I'm sorry, a little bit before 6:00?

1 A Yes, sir.

2 Q In terms of the type of video, the time is
3 going to change rapidly, because it's a motion-detector
4 or motion-activated video. Okay?

5 A Okay.

6 (Continued playing Defendant's Exhibit
7 No. 2)

8 MR. DAVIS: Can you pause?

9 Q (BY MR. DAVIS) Do you see the time reference
10 there, sir?

11 A Yes, sir.

12 Q Does it appear that he is holding something up
13 to his nose?

14 A I can't tell. The only thing I notice is he
15 doesn't have a jacket on anymore.

16 Q He has on a blue shirt?

17 A Right.

18 Q We saw him coming out a few minutes earlier
19 wearing that blue shirt come out of that building?

20 A Yes.

21 Q And now he's returning to the building, right?

22 A Yes.

23 Q And he's holding something up to his nose?

24 MR. DAVIS: Can you press play?

25 Q (BY MR. DAVIS) Do you see him holding a rag

1 with something dark on the rag?

2 A Yes.

3 Q Do you see that?

4 A Yes, sir.

5 Q He's holding that rag up to his nose, right?

6 A Yes.

7 Q And you don't see him grabbing or holding
8 anyplace else from that video?

9 A Just from the limited view, no, I don't.

10 Q You only see him from his nose? Now you see
11 him opening the door and part of him is off the video.

12 (Continued playing Defendant's Exhibit
13 No. 2)

14 Q (BY MR. DAVIS) Do you see those lights after
15 he walked out?

16 A Yes.

17 Q It looks like a car driving up?

18 A Yes.

19 Q Based on what we've seen from this video, we
20 saw the person exit, come back holding something to
21 their nose and then come back out and get inside their
22 car and drive off?

23 A Yes.

24 Q Based on what we've seen, right?

25 A Yes.

1 Q Now, if you look at that, if you take it that
2 this person who may have been bleeding, because he was
3 holding a rag, a white rag, to his nose that had some
4 dark object or at least something dark on it that looked
5 like blood, would you agree with me?

6 A Yes.

7 Q If you take it that he's holding this rag to
8 his nose and he's going in, would you also agree with me
9 as he was coming out, he wasn't holding his sides or
10 grabbing himself in any way?

11 A From the limited view, I only see from the
12 chest up. So, no, I didn't see him holding anything
13 else.

14 Q You could see his arms, right?

15 A Yes.

16 Q And we see that his arms are either here or
17 out in front of him moving, right?

18 A Yes.

19 Q So from what we can see, we can see he's not
20 using his arms to do anything like this (indicating)?
21 In other words, to touch himself or press or apply
22 pressure to his sides?

23 A Yes.

24 Q And from the limited view we have, we don't
25 see any blood or anything on his shirt?

1 A Correct.

2 Q But we do see him come out holding this rag
3 and get in the car and drive off, right?

4 A Yes, but I'm confused, because we saw the car
5 drive off and then another image of him popped up going
6 into the office.

7 Q That's the question, who that is. I'm asking
8 if you notice the person who went in the office had on a
9 different jacket, right?

10 A Had on a different jacket and the hat was a
11 different color, too.

12 Q Different colored hat as well. So would you
13 take it that the person that we saw driving away, we saw
14 him come out, go back in and then go to his car and
15 leave?

16 MS. FALK: Objection, Your Honor. That's
17 a compound question.

18 THE COURT: Rephrase your question.

19 Q (BY MR. DAVIS) We saw him come out and head
20 in the direction toward the sidewalk?

21 A Yes.

22 Q And then we saw him return, go inside the
23 office?

24 A Yes.

25 Q Then we saw him come out, get in his car and

1 drove off?

2 A I didn't see him get in the car. I saw him
3 come out and then I saw car lights back up, and then
4 after the car lights backed up, I saw that same light
5 blue shirted figure go back into the office.

6 Q The figure had on a jacket and had on a
7 different hat?

8 A Throughout the video there's two different
9 shirts. You have one with the light blue shirt and the
10 dark blue jacket on and then we just see the one without
11 the dark blue jacket and just the light blue shirt, but
12 then the two hats appear to be different. I can't tell
13 if it's the video quality itself that makes one gray or
14 one a little bit darker than the other. But I can't
15 tell if those two individuals are the same person or
16 not.

17 Q For purposes of what I'm asking, though, at
18 least I want you to assume, because I can't tell you
19 facts, but I want you to assume that the person you see
20 coming out and then going in and then coming out again
21 and getting in the car is the same person and that the
22 subsequent person you see after that comes is a
23 different person. Do you follow me?

24 A Yes, sir.

25 Q Because we don't see a car pull back up, do

1 we?

2 A No.

3 Q We see a car pull off and go away?

4 A Right.

5 Q But we don't see another car pull up and
6 somebody else getting out. Do you agree?

7 A Yes.

8 Q So this person that gets in the car and drives
9 off, leaves, there's no tracking. In other words, from
10 that information, from what you've seen in terms of
11 where the blood was, it would be logical for the blood
12 to have began at the sidewalk; isn't that correct?

13 A It's possible.

14 Q I'm asking you if it's possible. I agree,
15 anything is possible. But I'm asking you in terms of
16 just from what you've seen, you see this person come
17 out, then come back holding their nose and then go
18 inside and then come out and get in the car and drive
19 off, right?

20 A Yes.

21 Q It's logical that the blood would have began
22 at point A and worked its way into the garage, true?

23 A Yes, true.

24 Q And you would agree with me -- you wouldn't
25 even have to assume, because some of the physical

1 evidence supports that, because there's no tracking in
2 the blood?

3 A Yes. And I'm assuming by "tracking," you mean
4 the direction of the blood?

5 Q That and footprints.

6 A Okay.

7 Q There's no footprints through the blood,
8 right?

9 A Correct.

10 Q There's no one walking back through the blood
11 or anything like that, messing up the pattern?

12 A Correct.

13 Q You would normally see that if that happened,
14 right?

15 A Yes, you would normally see a transfer of a
16 shoe print that steps through the blood and then a
17 subsequent shoe print that leaves an impression of the
18 shoe blood print behind.

19 MR. DAVIS: May I have one moment, Your
20 Honor?

21 THE COURT: Yes.

22 (Brief pause)

23 Q (BY MR. DAVIS) One last question, and I have
24 to see a photo for that.

25 MR. DAVIS: Thank you, Mr. Giatono.

1 Your Honor, may Mr. Giatono be excused?

2 THE COURT: Yes. Thank you.

3 Q (BY MR. DAVIS) All right. Now, I want to show
4 you what's in evidence as State's Exhibit 17. This is
5 that picture from the sidewalk which was marked as A,
6 right?

7 A Yes.

8 Q Now, again, the blood we see, there's some
9 spots that you have identified. I want to zoom in a
10 little bit. There's some spots, again, that you've
11 identified as being blood?

12 A Yes.

13 Q And there's several different spots, right?

14 A Yes.

15 Q And, again, in this spot there's not any
16 trafficking or anything in the blood?

17 MS. FALK: Objection. Asked and
18 answered.

19 MR. DAVIS: I'm asking about this
20 particular spot.

21 THE COURT: Just ask one more time and
22 then we'll move on.

23 MR. DAVIS: Yes, Your Honor.

24 A Yes.

25 Q (BY MR. DAVIS) So it's safe to assume that at

1 this point after the person was cut, in other words,
2 after they started bleeding, there wasn't any struggle?

3 MS. FALK: Objection, Your Honor. He's
4 asking him to speculate.

5 THE COURT: You can answer the question
6 if you can, sir. If you can't, tell the lawyer that you
7 can't.

8 MR. DAVIS: I can preface the question.

9 THE COURT: Do you understand the
10 question?

11 A Yeah, if you could clarify.

12 Q (BY MR. DAVIS) Part of your experience in
13 interpreting blood evidence and interpreting crime
14 scenes is to help get a picture of what occurred, right?

15 A Yes.

16 Q You often look at pictures like this and
17 determine what may have occurred in that location?

18 A Yes.

19 Q And it's your expertise, right?

20 A Yes.

21 Q And part of your expertise is being able to
22 look at this and determine whether or not there was a
23 struggle after the cut occurred; isn't that right?

24 A Yes.

25 Q Okay. And from the way the blood is, because

1 obviously a person isn't going to bleed unless they've
2 been cut, from where the blood is, you can tell that
3 there wasn't a struggle after the person was cut?

4 A Correct.

5 Q For example, you might have a situation where
6 someone attacks someone and that person cuts them and
7 then they continue to struggle and he cuts him more and
8 cuts him and continually cuts the person, you might see
9 tracking of blood, right?

10 A Yes and no.

11 Q I'm assuming that there's a struggle.

12 A You wouldn't see what you're referring to as
13 tracking. We refer to it as cast-off and
14 directionality. If somebody is repeatedly stabbing
15 somebody else, you're going to get cast-off, because
16 once the initial blow is put in, then as the wound is
17 open now, you have blood on whatever weapon was used and
18 that will fall to the ground or land on the person's
19 clothing and it gives you a directionality, because you
20 can tell something is being thrust forward and pulled in
21 and out. So, yes, you can get that. Now, if it is just
22 the one wound, you just get the one wound. I'm really
23 trying to understand your question.

24 Q Let me phrase it this way. In this case you
25 had no directionality?

1 A No, I don't.

2 Q You've got something that would be consistent
3 possibly with one wound?

4 A Yes. What we're showing here consistently
5 throughout the entire scene is just passive bleeding.
6 That's what we refer to as passive bleeding: Somebody
7 is cut and they're just dripping blood. That's it. No
8 direction. I can't tell if the person is walking to the
9 east, to the west. I just know that the blood is
10 falling straight down, giving me a 90-degree drop.

11 Q If it's a situation where a person is cut and
12 there's no more struggling, more moving around, you
13 would expect to see a different spatter?

14 A Right. I wouldn't see that 90-degree drop. I
15 would see an elliptical shape, maybe like an oval, and
16 would give me direction and let me know if there's more.

17 Q Now, you can't tell what happened prior to the
18 cut, though, from this?

19 A No, I cannot.

20 Q You can't say what was going on prior to the
21 person being cut. You can just say after that person
22 was cut, it was more of a stabbing situation and there
23 wasn't a lot of moving after the cut, correct?

24 A Correct.

25 Q Now, I want to ask you this last question.

1 Did anyone ever show you a knife or any type of weapon
2 analyzed?

3 A No.

4 Q You're often asked that, right?

5 A On occasion, yes.

6 Q You are shown weapons, because they
7 oftentimes can help you figure out what happened and
8 interpret crime scenes?

9 A Yes.

10 Q And you've worked with Detective Miller?

11 A True.

12 Q And Detective Miller didn't show you a knife
13 that was recovered or anything?

14 A No.

15 Q He didn't show you any weapons or any
16 materials that were recovered?

17 A No.

18 MR. DAVIS: One moment, Your Honor.

19 Pass the witness, Your Honor.

20 THE COURT: Ms. Falk.

21 MS. FALK: Just briefly.

22 **REDIRECT EXAMINATION**

23 Q (BY MS. FALK) What date did you take all those
24 photos?

25 A On March 27th. It was a Sunday.

1 Q Of what year?

2 A 2011.

3 MS. FALK: Pass the witness.

4 THE COURT: Mr. Davis?

5 MR. DAVIS: No other questions.

6 THE COURT: You may stand down, sir.

7 May he be excused?

8 MS. FALK: No objection.

9 MR. DAVIS: Subject to recall.

10 THE COURT: You may be excused. Thank
11 you.

12 Approach the bench, please.

13 (Discussion up at bench:)

14 THE COURT: Who's next?

15 MS. FALK: The medical examiner.

16 MR. DAVIS: I think we can finish with
17 her in 30 minutes, but if you wanted to wait, we could.
18 I think that's what you're thinking. Is that right,
19 Your Honor?

20 THE COURT: That would be my preference
21 to finish with this witness.

22 (In the hearing of the jury)

23 MS. FALK: State calls Doctor Sara Doyle.

24 And also, Your Honor, State would offer
25 State's Exhibit No. 53, which are records that have been